



**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

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

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

**អង្គជំនុំជម្រះសាលាដំបូង**  
Trial Chamber  
Chambre de première instance

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

**Before:** Judge NIL Nonn, President  
 Judge Jean-Marc LAVERGNE  
 Judge YA Sokhan  
 Judge Claudia FENZ  
 Judge YOU Ottara

**Greffiers:** LIM Suy-Hong, SE Kolvuthy, EM Hoy, CHEA Sivhoang,  
 Elinor FRY, Milan JOVANČEVIĆ, Céline RIVAT

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**CASE 002/02 JUDGEMENT**

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## 1. INTRODUCTION

1. The Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“Chamber” and “ECCC”, respectively), seised of Case File 002/19-09-2007/ECCC/TC (“Case 002”), renders its Judgement against NUON Chea and KHIEU Samphan in Case 002/02.

### **1.1. Brief Procedural Overview of the Case**

#### *1.1.1. Case 001 and Case 002*

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

3. Between 19 September and 19 November 2007, NUON Chea, IENG Sary, KHIEU Samphan and IENG Thirith were arrested by order of the Co-Investigating Judges, transferred to the ECCC detention facility and notified of the charges against them.<sup>5</sup> On 15 September 2010, following a three-year judicial investigation in Case 002 during which 3,866 persons were admitted as Civil Parties, the Co-Investigating Judges

<sup>1</sup> Introductory Submission, D3, 18 July 2007.

<sup>2</sup> Separation Order (OCIJ), D18, 19 September 2007.

<sup>3</sup> *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/TC, Judgement, E188, 26 July 2010 (“Case 001 Trial Judgement”). *See also*, *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/SC, Appeal Judgement, F28, 3 February 2012 (“Case 001 Appeal Judgement”).

<sup>4</sup> Dismissal Order (OCIJ), D420, 14 September 2010.

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

indicted the Accused for crimes against humanity, genocide, grave breaches of the Geneva Conventions and violations of the 1956 Criminal Code.<sup>6</sup> On appeal, the Pre-Trial Chamber confirmed the extensive Closing Order, with some amendments, formally forwarding the four Accused for trial on 13 January 2011.<sup>7</sup>

#### 1.1.2. *Case 002/01*

4. On 22 September 2011, in order to safeguard its ability to reach a timely judgement in Case 002 given the length and complexity of the Closing Order as well as the physical frailty and advanced age of all Accused, the Chamber issued a severance order pursuant to Internal Rule 89*ter*. This severance order limited the scope of the first trial in Case 002 to factual allegations described in the Closing Order as population movement phases one and two and crimes against humanity committed in their course.<sup>8</sup> The Chamber subsequently expanded the scope of Case 002/01 to include the executions of former Khmer Republic officials at Tuol Po Chrey.<sup>9</sup>

5. Following an appeal by the Co-Prosecutors of the Trial Chamber's severance order, the Supreme Court Chamber annulled the severance order and ordered the Trial Chamber to reassess the scope of Case 002/01 after allowing further submissions from the Parties. Having heard the Parties accordingly, the Trial Chamber again severed the proceedings in Case 002 on 29 March 2013, limiting the scope of Case 002/01 to crimes

<sup>6</sup> Case 002/19-09-2007/ECCC/TC, Closing Order indicting NUON Chea et al. (OCIJ), D427, 15 September 2010 ("Closing Order"), para. 1613.

<sup>7</sup> Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011, p. 6; Decision on KHIEU Samphan's Appeal against the Closing Order (PTC), D427/4/14, 13 January 2011, p. 4; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/26, 13 January 2011, pp. 4-5. The Pre-Trial Chamber amended the Closing Order to require a nexus between crimes against humanity and an armed conflict and affirmed that rape may be categorised as another inhumane act. The Trial Chamber later rejected the nexus requirement. *See* Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity, E95/8, 26 October 2011, para. 33; Case 002/01 Trial Judgement, para. 177.

<sup>8</sup> Severance Order Pursuant to Internal Rule 89*ter*, E124, 22 September 2011 ("Case 002 First Severance Decision"); Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, Amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163), E124/7.3.

<sup>9</sup> Notification of Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of the Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs, E163/5, 8 October 2012.

against humanity committed during the course of population movement phases one and two, and the executions of Khmer Republic officials at Tuol Po Chrey.<sup>10</sup>

6. On 17 November 2011, the Chamber found IENG Thirith unfit to stand trial due to the impact of a progressive, dementing illness (most likely Alzheimer's disease) and ordered the severance of the charges against her from Case 002, a stay of the proceedings against her and her release.<sup>11</sup> IENG Thirith died on 24 August 2015 while under judicial supervision, extinguishing all criminal and civil actions against her.<sup>12</sup> IENG Sary, IENG Thirith's husband, died on 14 March 2013, extinguishing all criminal and civil actions against him.<sup>13</sup>

7. Opening statements in Case 002/01 commenced on 21 November 2011 and hearings on evidence concluded on 23 July 2013. The trial, including closing statements, lasted for a total of 222 hearing days. Ninety-two individuals gave evidence during the trial, including three experts, 58 witnesses and 31 Civil Parties. The Parties submitted Closing Briefs on 26 and 27 September 2013 and presented Closing Statements between 16 and 31 October 2013.

8. On 7 August 2014, the Trial Chamber found NUON Chea and KHIEU Samphan guilty of crimes against humanity relating to the forced movement of the population from Phnom Penh, the subsequent movement of the population to other areas and the

<sup>10</sup> Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01, E163/5/1/13/1, 8 February 2013; Memorandum on Directions to the Parties in consequences of the Supreme Court Chamber's Decision on Co-Prosecutor's Immediate Appeal of the Trial Chamber's Decision concerning the Scope of Case 002/01, E163/5/1/13, 12 February 2013; T. 29 March 2013, E1/176.1, pp. 2-4. *See also*, Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013 ("Case 002 Second Severance Decision"). On 23 July 2013, the Supreme Court Chamber dismissed appeals by the Co-Prosecutors and NUON Chea against the Trial Chamber's decision to again sever the proceedings and limit the scope of Case 002/01. *See* Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002, Summary of Reasons, E284/4/7, 23 July 2013 ("Case 002 SCC Decision on Second Severance Decision"). *See also*, Case 002 Second Severance Decision.

<sup>11</sup> Case 002/01 Trial Judgement, para. 6, fn. 15.

<sup>12</sup> Termination of the Proceedings against the Accused IENG Thirith, E359/1, 27 August 2015.

<sup>13</sup> Termination of the Proceedings against the Accused IENG Sary, E270/1, 14 March 2013. In the interests of justice, the Chamber still took into account relevant submissions made by the IENG Sary Defence prior to his death that remained pertinent to issues in Case 002/01 (*see e.g.*, Case 002 Second Severance Decision, para. 53; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013, fn. 2).

executions of former Khmer Republic soldiers at Tuol Po Chrey, sentencing them to life imprisonment.<sup>14</sup>

9. Following appeals by NUON Chea, KHIEU Samphan and the Co-Prosecutors, respectively, the Supreme Court Chamber delivered its Appeal Judgement in Case 002/01 on 23 November 2016.<sup>15</sup> The Supreme Court Chamber upheld the convictions of NUON Chea and KHIEU Samphan for the crimes against humanity of murder, persecution on political grounds and other inhumane acts in relation to the evacuation of Phnom Penh immediately after the fall of the city on 17 April 1975.<sup>16</sup> It also affirmed the Accused's convictions for the crime against humanity of other inhumane acts and entered convictions for the crime against humanity of murder with regard to the second phase of population transfers that occurred between 1975 and 1977.<sup>17</sup>

10. The Supreme Court Chamber reversed the convictions entered by the Trial Chamber for the crime against humanity of extermination in relation to the evacuation of Phnom Penh. With regard to the second phase of population transfers, it reversed the convictions for extermination and persecution on political grounds.<sup>18</sup> The Supreme Court Chamber also reversed NUON Chea's and KHIEU Samphan's convictions for the crimes against humanity of extermination, murder and persecution on political grounds at Tuol Po Chrey.<sup>19</sup> The Co-Prosecutors' appeal, seeking recognition of the applicability of the extended form of Joint Criminal Enterprise liability, was found to be inadmissible.<sup>20</sup>

11. Finally, the Supreme Court Chamber upheld the sentence of life imprisonment for each Accused based on the massive scale of the crimes; the complete lack of consideration for the ultimate fate of the Cambodian population, especially the most

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<sup>14</sup> Trial Chamber Judgement Case 002/01 (NUON Chea and KHIEU Samphan), E313, 7 August 2014 (Case 002/01 Trial Judgement), paras 1106-1107, Disposition.

<sup>15</sup> Case 002/01 Appeal Judgement.

<sup>16</sup> Case 002/01 Appeal Judgement, para. 541, Disposition.

<sup>17</sup> Case 002/01 Appeal Judgement, paras 541, 560-562, 868, Disposition.

<sup>18</sup> Case 002/01 Appeal Judgement, paras 541, 560, Disposition.

<sup>19</sup> Case 002/01 Appeal Judgement, para. 972.

<sup>20</sup> Case 002/01 Appeal Judgement, paras 1142-1143. The substance of the rulings on the Co-Prosecutors' appeal are addressed below. *See* Section 15.2: Applicable Law: Individual Criminal Responsibility: Commission through a Joint Criminal Enterprise.

vulnerable groups; the fact that the crimes were not isolated events but occurred over an extended period of time; and the significant roles of the Accused.<sup>21</sup>

### 1.1.3. Case 002/02

12. On 25 November 2013, in its decision on the appeals against the Trial Chamber's second severance decision in Case 002,<sup>22</sup> the Supreme Court Chamber ordered that evidentiary hearings in Case 002/02 commence as soon as possible after closing submissions in Case 002/01 and that the combination of the charges within the scope of Case 002/01 and Case 002/02 be reasonably representative of the entire Case 002 Closing Order.<sup>23</sup> To that end, it ordered that Case 002/02 comprise at a minimum the charges related to S-21, a worksite, a cooperative and genocide.<sup>24</sup> The Trial Chamber heard submissions of the Parties on the proper scope of Case 002/02 at a Trial Management Meeting on 11 and 12 December 2013, at a public hearing of 11 February 2014 and through written submissions.<sup>25</sup> It then ordered on 4 April 2014 that Case 002/02 would comprise the portions of the Closing Order pertaining to: S-21 Security Centre; 1<sup>st</sup> January Dam Worksite; Tram Kak Cooperatives; genocide (Vietnamese and Cham peoples); Kraing Ta Chan Security Centre; Kampong Chhnang Airport Construction Site; Au Kanseng Security Centre; Phnom Kraol Security Centre; Trapeang Thma Dam Worksite; and the charges of: Forced Marriage and Rape within Forced Marriage (nationwide); and Internal Purges.<sup>26</sup> On 12 September 2014, the Chamber issued a further decision setting forth the order in which the Case 002/02 trial topics would be heard, namely Cooperatives (including Treatment of Buddhists),

<sup>21</sup> Case 002/01 Appeal Judgement, paras 1118-1121.

<sup>22</sup> Case 002 SCC Decision on Second Severance Decision; Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002 (Full Reasons), E284/4/8, 25 November 2013 ("Full Reasons for Second Severance Decision").

<sup>23</sup> Case 002 SCC Decision on Second Severance Decision, para. 11; Full Reasons for Second Severance Decision, paras 70, 72.

<sup>24</sup> Case 002 SCC Decision on Second Severance Decision, paras 11, 13; Full Reasons for Second Severance Decision, paras 70-71, 76.

<sup>25</sup> T. 11 December 2013 (Trial Management Meeting), E1/238.1; T. 12 December 2013 (Trial Management Meeting), E1/238.2; Co-Prosecutors' Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A, E301/2, 5 December 2013; Co-Prosecutors' Submission Regarding the Scope of Case 002/02, E301/5/1, 31 January 2014; *Conclusions de la Défense de M. KHIEU Samphân relatives à la portée du procès 002/02*, E301/5/2, 31 January 2014; Civil Parties' Submission on the Scope of Case 002/02, E301/5/3, 31 January 2014; NUON Chea's Response to the Trial Chamber's Request for Submissions Concerning the Scope of Case 002/02, E301/5/4, 31 January 2014; T. 11 February 2014, E1/239.1.

<sup>26</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014 ("Case 002 Additional Severance Decision"), Disposition.

Worksites, Treatment of Targeted Groups (Cham, Vietnamese, and former Khmer Republic officials), Security Centres and Internal Purges, Regulation of Marriage, Nature of the Armed Conflict and the Roles of the Accused.<sup>27</sup>

13. On 17 October 2014, the Trial Chamber opened the substantive hearings in Case 002/02.<sup>28</sup> The KHIEU Samphan Defence team absented themselves from the hearings for the remainder of 2014 (*see* Annex I: Procedural History), necessitating an adjournment of the proceedings.<sup>29</sup> The NUON Chea Defence team attended only the hearing of 24 November 2014.<sup>30</sup> Hearings on evidence commenced on 8 January 2015 and concluded on 11 January 2017 after 274 hearing days. One hundred and eighty-five individuals gave evidence during the trial in Case 002/02, including 114 witnesses, 63 Civil Parties and eight experts. On 27 February 2017, the Chamber reduced the scope of Case 002 by excluding all facts set out in the Closing Order not included in Case 002/01 or Case 002/02, and terminated proceedings concerning these facts.<sup>31</sup> The Parties submitted Closing Briefs on 2 May 2017 and presented Closing Statements during nine hearing days between 13 and 23 June 2017. The Parties subsequently filed amended briefs.<sup>32</sup>

## **1.2. Summary of the Charges against the Accused**

14. The Closing Order alleges that, between 17 April 1975 and 6 January 1979, NUON Chea *alias* “Brother Number Two”, served as Deputy Secretary of the Communist Party of Kampuchea (“CPK”) Central and Standing Committees and at times also filled various other roles within the government of Democratic Kampuchea, including Minister of Propaganda and Information, Acting Prime Minister, Chairman of the People’s Representative Assembly and Chairman of the Standing Committee of the People’s Representative Assembly.<sup>33</sup>

15. The Closing Order alleges that, between 17 April 1975 and 6 January 1979, KHIEU Samphan *alias* “Haem”, “Hem”, “Khang” and “Nan”, had various positions

<sup>27</sup> Decision on Sequencing of Trial Proceedings in Case 002/02, E315, 12 September 2014.

<sup>28</sup> T. 17 October 2014, E1/242.1.

<sup>29</sup> T. 24 November 2014, E1/246.1.

<sup>30</sup> T. 24 November 2014, E1/246.1.

<sup>31</sup> Decision on Reduction of the Scope of Case 002, E439/5, 27 February 2017.

<sup>32</sup> Closing Briefs and Closing Statements in Case 002/02, E449/1, 16 December 2016, paras 8-11. *See also*, Annex I: Procedural History, paras 81-82.

<sup>33</sup> Closing Order, paras 869-894.

and roles in the CPK and Democratic Kampuchea including President of the State Presidium, Chairman of Political Office 870 and member of the CPK Central Committee.<sup>34</sup>

16. The Closing Order further alleges that, while serving in these various capacities, the Accused committed (through a joint criminal enterprise), planned, instigated, ordered, aided, abetted and/or were responsible as superiors for the following crimes falling within the scope of Case 002/02: genocide of the Cham and Vietnamese; grave breaches of the Geneva Conventions of 1949 consisting of: (i) wilful killing; (ii) torture; (iii) inhumane treatment; (iv) wilfully causing great suffering or serious injury to body or health; (v) wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial; (vi) unlawful deportation of a civilian; and (vii) unlawful confinement of a civilian; and the following crimes against humanity: (i) murder; (ii) extermination; (iii) enslavement; (iv) deportation; (v) imprisonment; (vi) torture; (vii) persecution on political, religious and racial grounds; and (viii) other inhumane acts through attacks against human dignity and conduct characterised as rape, forced marriage, forced transfer and enforced disappearances.<sup>35</sup>

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<sup>34</sup> Closing Order, paras 1131-1150.

<sup>35</sup> Case 002 Additional Severance Decision Annex; Closing Order, paras 1335-1495, 1498-1545, 1547-1548, 1550-1551, 1553-1554, 1557-1560, 1613.



## 2. PRELIMINARY ISSUES

### 2.1. Jurisdiction

17. Following the signing of the Agreement between the United Nations and the Royal Government of Cambodia on 6 June 2003, the Cambodian parliament adopted the “Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea” which was promulgated in its final version on 27 October 2004.<sup>36</sup> According to Article 2(1) of the Agreement and Articles 1 and 2 (new) of the ECCC Law, the ECCC has personal jurisdiction over “senior leaders” of Democratic Kampuchea and those who were “most responsible” for the crimes and serious violations of Cambodian penal law, international humanitarian law and international conventions recognised by Cambodia, committed between 17 April 1975 and 6 January 1979.<sup>37</sup>

18. The Co-Investigating Judges ruled that they had personal jurisdiction over NUON Chea and KHIEU Samphan, finding that they were senior leaders of Democratic Kampuchea and/or those most responsible for crimes committed between 17 April 1975 and 6 January 1979.<sup>38</sup> Based on the overwhelming weight of the evidence and by their own admission, the Trial Chamber finds that the Accused were Khmer Rouge officials between 1975 and 1979.<sup>39</sup> The nature of their positions qualifies them as senior leaders.<sup>40</sup> A similar finding was not challenged on appeal to the Supreme Court Chamber in Case 002/01. No evidence that would challenge this finding surfaced in

<sup>36</sup> Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law Of Crimes Committed during the Period of Democratic Kampuchea, 6 June 2003 (“ECCC Agreement”), Articles 1, 2; Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 10 August 2001 with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) (“ECCC Law”), Article 2.

<sup>37</sup> The Supreme Court Chamber has held that the qualification of an Accused as a senior leader or a person most responsible is primarily a matter of prosecutorial and investigative policy within the sole discretion of the Co-Prosecutors and Co-Investigating Judges. As such, it is not justiciable before the Trial Chamber unless an abuse of discretion is alleged. Whether or not an Accused is a Khmer Rouge official, however, is a jurisdictional requirement justiciable before the Trial Chamber. *See* Case 001 Appeal Judgement, paras 79-80.

<sup>38</sup> Closing Order, paras 1327-1328.

<sup>39</sup> Section 7: Roles and Functions – NUON Chea; Section 8: Roles and Functions – KHIEU Samphan. *See also*, Case 002/01 Trial Judgement, paras 14, 347-348, 408-409. Note, the French version of Case 002/01 Trial Judgement, para. 14 of translated the words Khmer Rouge officials as « *hauts dirigeants khmers rouges* ».

<sup>40</sup> Section 7: Roles and Functions – NUON Chea; Section 8: Roles and Functions – KHIEU Samphan.

Case 002/02. The Chamber therefore finds that it has personal jurisdiction over NUON Chea and KHIEU Samphan.

19. The crimes against humanity, war crimes and counts of genocide with which the Accused are charged in Case 002/02, allegedly committed between 17 April 1975 and 6 January 1979, fall within the subject-matter and temporal jurisdiction of the ECCC as defined in Articles 1 and 9 of the Agreement and Articles 1 and 5 of the ECCC Law.

## **2.2. The Principle of Legality**

20. Article 11(2) of the Universal Declaration of Human Rights provides that:

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.<sup>41</sup>

21. Both the Cambodian and international principles of legality, connected with the general principles of *nulla poena sine lege* (no penalty without law) and *nullum crimen sine lege* (no crime without law), require that the law concerning crimes and modes of criminal liability be clear, ascertainable and non-retrospective.<sup>42</sup> Thus, in the specific context of the ECCC, the principle of legality requires that the offences and modes of responsibility charged must have been recognised under Cambodian or international law (including customary international law) as it existed between 17 April 1975 and 6 January 1979, and were sufficiently foreseeable and accessible.<sup>43</sup> This principle does not prohibit a chamber from interpreting and clarifying the law or from relying on those decisions that do so in other cases, even where those cases post-date the period under

<sup>41</sup> Universal Declaration of Human Rights, Article 11(2).

<sup>42</sup> Case 001 Appeal Judgement, para. 91; Cambodian Criminal Code 2009, Articles 1 (“The criminal law defines the offenses, determines those who may be found guilty of committing them, sets penalties, and determines how they shall be enforced”), 3 (“Conduct may give rise to criminal conviction only if it constituted an offence at the time it occurred. A penalty may be imposed only if it was legally applicable at the time the offence was committed.”), 5 (“In criminal matters, the law shall be strictly construed. A judge may neither expand its scope of application nor interpret it by analogy.”), 8 (“The provisions of this Code may not have the effect of denying justice to the victims of serious offences which, under special legislation, are characterised as violations of international humanitarian law, international custom, or international conventions recognised by the Kingdom of Cambodia”); Case 002/01 Trial Judgement, para. 16; Case 002/01 Appeal Judgement, para. 761.

<sup>43</sup> Case 001 Trial Judgement, paras 26-34 citing *Milutinović et al.*, Decision on Ojdanić’s Motion Challenging Jurisdiction: Joint Criminal Enterprise (AC), para. 38); Case 001 Appeal Judgement, paras 89-97; Cambodian Criminal Code, Article 3; Case 002/01 Trial Judgement, para. 16; Case 002/01 Appeal Judgement, para. 761.

review. It does, however, prevent a chamber “from creating new law or from interpreting existing law beyond the reasonable limits of acceptable clarification”.<sup>44</sup> In this regard, the Chamber considers itself bound by the principle of strict interpretation of criminal law as set out in Article 5 of the Cambodian Criminal Code, which provides that criminal law shall be strictly construed and prohibits the extension of the definition of crimes by analogy. In case of ambiguity, the definition shall be interpreted in favour of the charged person or accused person (*in dubio pro reo*).<sup>45</sup>

22. The Supreme Court Chamber has ruled that the jurisdiction of the ECCC over crimes against humanity is limited by the definitions of the crimes as they stood under international law at the time of the alleged criminal conduct.<sup>46</sup> The Chamber considers that this applies with equal force to grave breaches of the Geneva Conventions and to the crime of genocide. Insofar as the Trial and Supreme Court Chambers did not previously evaluate whether the crimes and modes of responsibility at issue in Case 002/02 were recognised in domestic or international law by 1975, the Chamber does so in this Judgement.<sup>47</sup>

23. Crimes and modes of liability must be sufficiently foreseeable and accessible *in general*, rather than *to the accused specifically*, as determined by an “objective analysis”.<sup>48</sup> In this context, the Supreme Court Chamber has held that it is not unreasonable to take into account the senior positions occupied by the accused in determining whether the principle of legality was adhered to with respect to both the offences and modes of liability charged.<sup>49</sup> Furthermore, the Chamber may consider domestic law in assessing whether it was foreseeable that the conduct in question could entail criminal responsibility in the way it was charged.<sup>50</sup> However, the recognition of

<sup>44</sup> Case 001 Appeal Judgement, para. 95 *citing* *Aleksovski* Appeal Judgement, paras 126-127; Case 002/01 Trial Judgement, para. 16.

<sup>45</sup> *Limaj et al.* Appeal Judgement, para. 21; *Naletilić and Martinović* Appeal Judgement, para. 120; *Renzaho* Appeal Judgement, para. 474.

<sup>46</sup> Case 001 Appeal Judgement, paras 99-100; Case 002/01 Appeal Judgement, paras 576-579.

<sup>47</sup> Section 9: Applicable Law: Crimes; Section 15: Applicable Law: Individual Criminal Responsibility.

<sup>48</sup> Case 002/01 Appeal Judgement, para. 761.

<sup>49</sup> Case 002/01 Appeal Judgement, para. 761. *See also*, *Streletz, Kessler and Krenz v. Germany*, ECtHR, Application Nos. 34044/96, 35532/97 and 44801/98, 22 March 2001, para. 78 (which held in the context of foreseeability of criminal convictions that because of the “very senior position [the applicants] occupied in the State apparatus, they evidently could not have been ignorant of the GDR’s Constitution and legislation, or of its international obligations”).

<sup>50</sup> Case 001 Appeal Judgement, para. 96 *citing* *Milutinović et al.*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise (AC), para. 40.

a crime or mode of liability under domestic law is not necessary for the conduct to be punishable by the ECCC, provided that it has a basis in customary international law.<sup>51</sup>

24. According to the KHIEU Samphan Defence, the approach taken by the Supreme Court Chamber assimilates the foreseeability of the crimes with the foreseeability of the reprehensible nature of the acts (*caractère répréhensible de l'acte*) and is contrary to the principle of legality.<sup>52</sup> The KHIEU Samphan Defence further points to case law of the ECtHR which states that the principle of legality requires “that an offence must be clearly defined in the law, be it national or international. This requirement is satisfied where the individual can know from the wording of the relevant provision [...] what acts and omissions will make him criminally liable.”<sup>53</sup> The Defence contends that, in contrast to this requirement, the Supreme Court Chamber has taken the position that it was sufficient for the accused to be able to “appreciate that the conduct is criminal in the sense generally understood, without reference to any specific provision” thus not requiring “an analysis of the technical terms of the definition of the crimes”. It submits that this approach is not acceptable and is contrary to the object and purpose of this fundamental principle.<sup>54</sup> The Defence further submits that the principle of legality is a fundamental principle from which there can be no derogation, even in times of war or public emergency. Therefore, criminal offences must be precise, unequivocal and unambiguous in all circumstances.<sup>55</sup> Accordingly, the Defence submits that the reprehensible nature of an accused’s actions and the nature of the alleged offences can never make up for the absence of a clear and precise definition of the crime at issue.<sup>56</sup> The Defence concludes that the Trial Chamber must therefore depart from the Supreme Court Chamber’s reasoning.<sup>57</sup>

25. The KHIEU Samphan Defence further submits that relying on the gravity of the crimes effectively allowed the Supreme Court Chamber to dispense with an examination of the accessibility of post-war jurisprudence to KHIEU Samphan.<sup>58</sup> The

<sup>51</sup> Case 002 Pre-Trial Chamber Decision on JCE, paras 45-46.

<sup>52</sup> KHIEU Samphan Closing Brief, para. 361.

<sup>53</sup> *Vasiliauskas v. Lithuania*, Judgement, ECtHR, Application No. 35343/05, 20 October 2015, para. 154; KHIEU Samphan Closing Brief, paras 362-369.

<sup>54</sup> KHIEU Samphan Closing Brief, paras 361-362, 378. *See also*, KHIEU Samphan Closing Brief, paras 366-380.

<sup>55</sup> KHIEU Samphan Closing Brief, paras 369-372.

<sup>56</sup> KHIEU Samphan Closing Brief, para. 373.

<sup>57</sup> KHIEU Samphan Closing Brief, para. 380.

<sup>58</sup> KHIEU Samphan Closing Brief, para. 356.

Defence stresses that in determining whether a particular rule exists under customary international law, it is crucial to be particularly rigorous and cautious in determining the accessibility and foreseeability of that rule.<sup>59</sup> While the KHIEU Samphan Defence made these arguments in the context of JCE and murder as a crime against humanity, they apply generally to the principle of legality and will thus be addressed here. No other parties made any relevant submissions in this regard. The Chamber will address the arguments specifically pertaining to JCE and murder in the relevant applicable law sections.

26. The Trial Chamber finds that the KHIEU Samphan Defence's submissions challenging the Supreme Court Chamber approach to the principle of legality conflate two different requirements under that principle: that the offences and modes of responsibility charged be recognised under Cambodian or international law at the time of the alleged criminal conduct, and that they be sufficiently foreseeable and accessible. The Trial Chamber will examine these different aspects in turn.

27. The approach taken by the Supreme Court Chamber in Case 002/01 clearly demonstrates that it recognised the need to ascertain that "offences and modes of liability charged before the ECCC [...] existed either under national law or international law at the time of the alleged criminal conduct".<sup>60</sup> Further, the Supreme Court Chamber also recognised the need to define the *actus reus* and *mens rea* of the underlying crimes.<sup>61</sup> To the extent that it incorporated by reference its legal analysis and findings from Case 001 in Case 002/01, the incorporated analysis of whether crimes against humanity were established as international crimes as of 1975 was extensive,<sup>62</sup> and took a cautious and rigorous approach when determining how crimes against humanity were defined during the ECCC's temporal jurisdiction.<sup>63</sup> Contrary to the submissions of the KHIEU Samphan Defence, there is no indication that the Supreme Court Chamber failed to require clear definitions of crimes, at the relevant time, by relying on the gravity of those crimes.

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<sup>59</sup> KHIEU Samphan Closing Brief, para. 386.

<sup>60</sup> Case 002/01 Appeal Judgement, para. 762 citing Case 001 Appeal Judgement, para. 91.

<sup>61</sup> For example, the Supreme Court Chamber extensively considered the definition of the crimes of murder, extermination, other inhumane acts and persecution. *See* Case 002/01 Appeal Judgement, paras 387-410, 510-528, 572-590, 664-680.

<sup>62</sup> Case 001 Appeal Judgement, paras 91-104.

<sup>63</sup> Case 001 Appeal Judgement, paras 105-116.

28. The Chamber finds that the KHIEU Samphan Defence's reliance upon the *Vasiliauskas v. Lithuania* Judgement from the ECtHR shows a selective reading of the ECtHR jurisprudence.<sup>64</sup> In the relevant passage the ECtHR stated:

It follows from these principles that an offence must be clearly defined in the law, be it national or international. This requirement is satisfied where the individual can know from the wording of the relevant provision – and, if need be, with the assistance of the courts' interpretation of it and with informed legal advice – what acts and omissions will make him criminally liable.<sup>65</sup>

However, Article 7(1) of the ECHR requires a twofold approach. In the first place it requires examination of whether there was a sufficiently clear legal basis, having regard to the state of the law at the time of the alleged offence to support a conviction.<sup>66</sup> Secondly, it must be determined whether the alleged offence was “defined by law with sufficient accessibility and foreseeability so that the applicant could have known [at that time] what acts and omissions would make him criminally liable for such crimes and regulated his conduct accordingly”.<sup>67</sup> The need for a clear legal basis does not preclude that in any field of law, including criminal law, there is an inevitable element of judicial interpretation; in particular there will always be a need for elucidation of doubtful points and for adaptation to changing circumstances.

29. In this regard, the Chamber notes that the ECtHR recognised that the law providing the legal basis for the definition of a crime may comprise written and unwritten law, and held that: “Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen”.<sup>68</sup> The Chamber considers this approach to be reasonable and often necessary when dealing with crimes under customary international law which are not necessarily codified as in national jurisdictions.

<sup>64</sup> KHIEU Samphan Closing Brief, paras 362-369.

<sup>65</sup> *Vasiliauskas v. Lithuania*, Judgement, ECtHR, Application No. 35343/05, 20 October 2015, para. 154.

<sup>66</sup> *Kononov v. Latvia*, Judgement, ECtHR, Application No. 36376/04, 17 May 2010, para. 187.

<sup>67</sup> *Kononov v. Latvia*, Judgement, ECtHR, Application No. 36376/04, 17 May 2010, para. 187.

<sup>68</sup> *Vasiliauskas v. Lithuania*, Judgement, ECtHR, Application No. 35343/05, 20 October 2015, para. 155. See also, *Kononov v. Latvia*, Judgement, para. 185.

30. In its analysis of the foreseeability and accessibility requirements, the Supreme Court Chamber had regard to the purpose of the principle of legality, which is to ensure that an accused is not held responsible for conduct which could not be envisaged as criminal when that conduct occurred.<sup>69</sup> In its analysis of foreseeability in particular, the Supreme Court Chamber found that the gravity of the crimes in issue was relevant in determining whether KHIEU Samphan could argue that he did not understand at the time of the alleged criminal conduct that his conduct was criminal in the sense generally understood.<sup>70</sup> It did not suggest that this is the sole factor to be considered when assessing foreseeability. Rather, it addressed the issue of gravity in response to a submission by the Co-Prosecutors.<sup>71</sup> The Trial Chamber concurs with the view that the higher the gravity of crimes, the more likely that an accused would be aware in a general sense that such conduct is punishable.

31. With respect to accessibility in particular, the Chamber finds that, contrary to the KHIEU Samphan Defence submissions, the Supreme Court Chamber did not rely on the gravity of the crimes in order to avoid an assessment of whether those crimes were accessible to the Accused. The Supreme Court Chamber expressly found that both the offences and modes of liability must have existed under national or international law at the time of the alleged criminal conduct and that “in addition to treaties, ‘laws based on custom [...] can be relied on as sufficiently available to the accused’”.<sup>72</sup> The Supreme Court Chamber relied on this, together with the positions of authority held at the relevant time by the Accused, in determining that the crimes were sufficiently accessible.

32. The KHIEU Samphan Defence’s submissions with respect to the principle of legality are accordingly rejected.

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<sup>69</sup> Case 002/01 Appeal Judgement, paras 761-762 (finding that the approach taken “accords with the purpose of principle of legality”).

<sup>70</sup> Case 002/01 Appeal Judgement, para. 762 *quoting* Co-Prosecutors’ Response (Case 002/01 Appeal), para. 26.

<sup>71</sup> Case 002/01 Appeal Judgement, para. 762 *quoting* Co-Prosecutors’ Response (Case 002/01 Appeal), para. 26.

<sup>72</sup> Case 002/01 Appeal Judgement, para. 762 *citing* Case 001 Appeal Judgement, para. 96 *referring to* *Hadžihasanović and Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), para. 34 and *Milutinović et al.*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise (AC), para. 40.

**2.3. The Case File**

33. The Trial Chamber was seised with the Case File following resolution of all appeals against the Closing Order on 13 January 2011.<sup>73</sup> Once notified of the charges, a Charged Person, and after an indictment, an Accused, has ongoing access to the Case File throughout the proceedings.<sup>74</sup> Thus NUON Chea has had access to the Case File since 19 September 2007 and KHIEU Samphan since 19 November 2007.<sup>75</sup>

34. At the conclusion of closing submissions, 14,476 documents and other materials put before the Chamber pursuant to Internal Rule 87(3) remained “confidential”. The majority of this material retains the classification automatically assigned during the judicial investigation in Case 002, although many documents presented during public trial hearings were reclassified as public and made available on the court’s website. While certain justifications for non-disclosure continue to be valid,<sup>76</sup> reclassification of material generated by, and collected during, the judicial investigation in Case 002 no longer poses a generalised risk of prejudice to the rights of the Parties or the integrity of the investigation.<sup>77</sup> Thus, in reaching its judgement and publicly relying upon and/or referring to classified information, the Chamber considers whether any justification for such classification, beyond the confidentiality of the judicial investigation, exists. The Chamber, on its own motion, determined that confidentiality is no longer justified for that information publicly disclosed in this Judgement.<sup>78</sup>

<sup>73</sup> Order to File Material in Preparation for Trial, E9, 17 January 2011, p. 1. *See also*, Decision on IENG Thirith and NUON Chea’s Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011, p. 6; Decision on KHIEU Samphan’s Appeal against the Closing Order (PTC), D427/4/14, 13 January 2011, p. 4; Decision on IENG Sary’s Appeal against the Closing Order (PTC), D427/1/26, 13 January 2011, pp. 4-5.

<sup>74</sup> Internal Rules 9(5)-(6), 10(4), 55(6), 55(11), 86. *See also*, Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred during the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, para. 18.

<sup>75</sup> Written Record of Initial Appearance of NUON Chea (OCIJ), E3/54, 19 September 2007; Written Record Initial Appearance of KHIEU Samphan (OCIJ), D42, 19 November 2007.

<sup>76</sup> Classification and Management of Case-Related Information, Practice Direction, ECCC/004/2009/Rev.1, 7 March 2012, Articles 5-7.

<sup>77</sup> Case 001, Decision on Guidelines for Reclassification of Documents on the Case File (SCC), F30/2, 26 July 2012, para. 6.

<sup>78</sup> Insofar as the Chamber reclassified particular portions of a document in this Judgement, the Chamber clarifies that this partial disclosure does not affect the classification pertaining to those undisclosed portions of, and information in, a document or other material as a whole.



**2.4. Evidentiary and Procedural Principles****2.4.1. Introduction**

35. The Cambodian Code of Criminal Procedure governs proceedings before the ECCC. Guidance may also be drawn from international law in situations where existing procedures do not deal with a particular matter, there is uncertainty regarding their interpretation or application, or where they may be inconsistent with international standards.<sup>79</sup> The Internal Rules consolidate the Cambodian procedures applicable before the ECCC and adopt international procedure in order to ensure justice, fairness and due process of law.<sup>80</sup> Within this framework, the Chamber must “ensure that trials are fair and expeditious [...] with full respect for the rights of the accused and for the protection of victims and witnesses”.<sup>81</sup>

36. The Chamber notes that the Case 002/01 Appeal Judgement, delivered on 23 November 2016, addressed a number of the procedures adopted by the Trial Chamber during the Case 002/01 trial, providing guidance for the conduct of future proceedings. As the Case 002/01 Appeal Judgement was delivered approximately seven weeks (17 hearing days) prior to the end of evidentiary hearings in Case 002/02, the Trial Chamber did not have the benefit of this guidance for the conduct of most of the trial hearings in Case 002/02. In several respects the Supreme Court Chamber’s guidance reflects the Trial Chamber’s approach to Case 002. No importation of criminal responsibility is made between cases and factual findings are not transposed from Case 002/01 to Case 002/02.<sup>82</sup> In this context, although there is partial commonality between the oral and documentary evidence in each case, the Trial Chamber evaluates all the material now before it: different conclusions may be reached, including on evidence and matters commonly relevant.<sup>83</sup> When evaluating material from Case 002/01 in relation to issues

<sup>79</sup> ECCC Law, Articles 20 *new*, 23 *new*, 33 *new*; ECCC Agreement, Article 12(1); Internal Rule 2.

<sup>80</sup> ECCC Agreement, Article 12(2); Internal Rules, Preamble; Case 001 Judgement, para. 35.

<sup>81</sup> ECCC Law, Article 33 *new*. An accused is guaranteed certain fundamental rights during the trial phase of proceedings. *See* ECCC Agreement, Article 13(1) (referring to ICCPR, Articles 14 and 15); ECCC Law, Articles 34 *new*, 35 *new*.

<sup>82</sup> Case 002/01 Appeal Judgement, para. 228. *See also*, Clarification on the consequences of the severance of Case 002, E318, 13 October 2014, para. 3.

<sup>83</sup> Case 002/01 Appeal Judgement, para. 228; Decision on KHIEU Samphan’s Immediate Appeal Against the Trial Chamber’s Decision on Additional Severance of Case 002 and Scope of Case 002, E301/9/1/1/3, 29 July 2014, para. 82 (so long as there is no sameness “of the offence in question [...] the evidentiary base is immaterial for the purpose of *ne bis in idem*”, fn. 196 (the “same offence” is defined as “identical facts or facts which are substantially the same”). Since the alleged offences in Case 002/02

in Case 002/02, the Chamber satisfies itself that the right to full adversarial debate is preserved.<sup>84</sup> In this regard and concerning the evaluation of oral evidence heard during Case 002/01 proceedings, the Chamber will consider whether the Parties were prevented from examining in court the declarant on matters within the scope of Case 002/02. The Chamber rejects as unsubstantiated the KHIEU Samphan Defence's contention that oral evidence from Case 002/01 becomes (via transcripts) documentary evidence in Case 002/02.<sup>85</sup>

37. The Chamber afforded the Parties an opportunity to make written and oral submissions on the impact of the Case 002/01 Appeal Judgement on the conclusion of the evidentiary proceedings in Case 002/02.<sup>86</sup> None of the Parties filed written submissions. During a Trial Management Meeting held on 8 December 2016, scheduled in part to discuss "the impact, if any, of the Supreme Court Chamber Judgement on the conclusion of the proceedings in Case 002/02", the Parties did not raise any issue which they considered should delay the closure of evidence in the case.<sup>87</sup> However, the Parties made submissions based on the Case 002/01 Appeal Judgement concerning the legal principles governing the consideration of the evidence.<sup>88</sup> Where relevant, these submissions and the jurisprudence set forth by the Supreme Court Chamber are addressed in this Judgement.

#### 2.4.2. *Burden and Standard of Proof*

38. The Accused are presumed innocent until proved guilty.<sup>89</sup> The Co-Prosecutors bear the burden of proof.<sup>90</sup> In order to convict, the Chamber must be convinced of an Accused's guilt "beyond reasonable doubt".<sup>91</sup> In order to resolve any discrepancy

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are substantially different from those in Case 002/01, the principle of *ne bis in idem* does not preclude the Trial Chamber's assessment of NUON Chea and KHIEU Samphan's responsibility for the crimes alleged in Case 002/02. Where the Chamber uses language similar or identical to Case 002/01, this simply reflects that the Trial Chamber's conclusion following its analysis of the evidence afresh in Case 002/02 is the same as the one it reached in Case 002/01.

<sup>84</sup> Decision on KHIEU Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/1/3, 29 July 2014, para. 75.

<sup>85</sup> See KHIEU Samphan Closing Brief, paras 552-556.

<sup>86</sup> Closing Briefs, SCC judgement in Case 002/01 and TMM (TC), E449, 3 November 2016, paras 4-5.

<sup>87</sup> T. 8 December 2016 (Trial Management Meeting), E1/509.1, p. 2.

<sup>88</sup> T. 8 December 2016 (Trial Management Meeting), E1/509.1, pp. 4-7, 18.

<sup>89</sup> Internal Rule 21(1)(d).

<sup>90</sup> Internal Rule 87(1).

<sup>91</sup> Internal Rule 87(1). See also, Article 321 of the Cambodian Code of Criminal Procedure, which refers to the concept of intime conviction. See NUON Chea Closing Brief, para. 106.

between the different language versions of Internal Rule 87(1) that reflect the common law “beyond reasonable doubt” standard and the civil law concept of “*intime conviction*”, the Chamber has adopted a common approach that evaluates the sufficiency of the evidence. Upon a reasoned assessment of the evidence, the Chamber interprets any doubt as to guilt in the Accused’s favour.<sup>92</sup>

39. “*Intime conviction*” is a concept that developed to ensure that judges are generally free to make their own assessment of evidence heard during the trial. This assessment must be based on “reason”, meaning that it is neither the automatic result of the evaluation of evidence according to abstract standards imposed by law,<sup>93</sup> nor the outcome of mere conjecture or emotion. Whatever the principle relied upon to draft a judgement, either “*intime conviction*” or “beyond reasonable doubt”, both require a logical and comprehensive reasoning that first accords with common sense. The Chamber finds that these two notions are compatible, but that the standard of “beyond reasonable doubt” supplements and allows for an interpretation of the “*intime conviction*” concept that accords with the highest requirements foreseen at the international level. This approach is consistent with the ECCC legal framework.<sup>94</sup> Moreover, it stresses that the proof of each element of the crime, the mode of liability and any fact which is decisive of guilt is subject to a reasoned assessment of evidence. Any reasonable doubt in this regard shall be interpreted in the Accused’s favour, in accordance with the principle of the presumption of innocence.<sup>95</sup>

<sup>92</sup> The English and Khmer versions of Internal Rule 87(1) provide a “beyond reasonable doubt” standard, while “*intime conviction*” is provided in the French version. See Case 001 Trial Judgement, para. 45.

<sup>93</sup> The concept of “*intime conviction*”, which arose in France at the end of the 18<sup>th</sup> century, was first a reaction against rules of evidence that instituted a hierarchy and a strict calculation of so-called “objective elements of evidence”, defined by law (*système des preuves légales*). Under these rules a confession was considered as the highest possible evidence reflecting the only and unchallengeable truth. With the introduction of the concept of “*intime conviction*”, lawmakers intended to give judges the ability to make their own assessment of evidence based upon reason, instead of a mere calculation of the probative value of evidence imposed by law. The concept of “*intime conviction*” has since been frequently but inappropriately associated with judgements issued with very poor or even no reasoning. This was mainly because decisions made by the *Cour d’Assises*, a court based on a jury system, did not contain any reasoning. Effective 1 January 2012, the French *Cours d’Assises* has been required to provide reasons for its judgements.

<sup>94</sup> ECCC Agreement, Article 12 (“The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.”). See also, ECCC Law, Articles 23 *new*, 33 *new*.

<sup>95</sup> In the *Hissène Habré Case*, the Assize Chamber of the Extraordinary African Chambers, whose legal framework shares many common features with the one of the ECCC, referred to both the concept

40. All facts underlying the elements of the crime or the form of responsibility alleged, as well as all facts which are indispensable for entering a conviction, especially those forming the elements of the crime or the form of responsibility alleged against the accused, must be established beyond reasonable doubt.<sup>96</sup> This must be supported by a reasoned opinion on the basis of the entire body of evidence, without applying the standard of proof “beyond reasonable doubt” in a piecemeal fashion.<sup>97</sup> Of course, as found by the Supreme Court Chamber, this does not mean that “a multiplicity of evidentiary items may add up to meet the burden of proof beyond reasonable doubt by virtue of their sheer number, irrespective of their probative value”.<sup>98</sup> The Chamber clarifies below the impact of the standard of proof beyond reasonable doubt on the assessment of the probative value of the evidence put before it.<sup>99</sup>

### 2.4.3. *Admissibility of Evidence*

#### 2.4.3.1. *Management of requests for evidence*

41. Prior to the commencement of the trial, the Chamber ordered all Parties to file initial lists identifying, briefly describing and indicating the relevance of all proposed evidence.<sup>100</sup> On 8 April 2014, the Chamber further directed all Parties to provide updated lists of documents previously filed and updated lists of intended exhibits for Case 002/02, including a description of their nature and contents as well as the relevant points of the Closing Order.<sup>101</sup>

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of “*intime conviction*” and the standard “beyond reasonable doubt”, and stated that both required the same level of proof. *See Prosecutor v. Hissène Habré*, Chambre Africaine Extraordinaires d’Assises, Trial Judgement, 30 May 2016, paras 182, 184 (« Se fondant sur la jurisprudence internationale, la Chambre a donc déterminé, pour chaque cas, s’il existe des preuves suffisantes pour établir l’existence de chaque élément constitutif des crimes et des modes de responsabilité retenus à l’encontre de l’Accusé, ainsi que l’existence de tout fait indispensable pour entrer en voie de condamnation. Ainsi après une analyse souveraine et raisonnée des éléments de preuve, la Chambre a interprété tout doute raisonnable, quant à l’existence de ces éléments et quant à la culpabilité de l’Accusé, en faveur de ce dernier, conformément au principe de la présomption d’innocence »).

<sup>96</sup> Case 002/01 Appeal Judgement, para. 418; *Halilović* Appeal Judgement, para. 129 referring to *Ntagerura et al.* Appeal Judgement, para. 174 and *Blagojević and Jokić* Appeal Judgement, para. 226; *Dragomir Milošević* Appeal Judgement, para. 20 referring to, *inter alia*, *Ntagerura et al.* Appeal Judgement, paras 174-175.

<sup>97</sup> Case 002/01 Appeal Judgement, para. 418; *Ntagerura et al.* Appeal Judgement, paras 174-175; *Mrkšić and Šljivančanin* Appeal Judgement, para. 217; *Lubanga* Appeal Judgement, para. 22.

<sup>98</sup> Case 002/01 Appeal Judgement, para. 419.

<sup>99</sup> *See below*, para. 61.

<sup>100</sup> Internal Rules 80(1)-(3); Order to File Material in Preparation for Trial, E9, 17 January 2011.

<sup>101</sup> Order to File Updated Material in Preparation for Trial in Case 002/02, E305 (“Filing Order”), 8 April 2014, paras 11, 12.

2.4.3.2. Legal framework

42. Unless provided otherwise, all evidence is admissible.<sup>102</sup> Any decision of the Chamber shall be based only on evidence that has been put before the Chamber and subjected to examination.<sup>103</sup> The Chamber may reject any request for evidence that is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under the law or intended to prolong proceedings.<sup>104</sup>

43. While parties may propose the admission of evidence at any stage of the trial,<sup>105</sup> all proposed evidence not available at the time of the opening of the trial is considered “new” evidence subject to the requirements of Internal Rule 87(4).<sup>106</sup> Moving parties must demonstrate that new evidence was not available prior to the opening of the trial and/or could not have been discovered earlier with the exercise of reasonable diligence.<sup>107</sup> If a request for admission of evidence is untimely, the Chamber may nonetheless admit the requested evidence in the interests of justice.<sup>108</sup>

44. In order to be considered as put before the Chamber, all evidence must be summarised, read out or otherwise appropriately identified.<sup>109</sup> Where the Chamber rejects an objection posed to a document, or where no objections are raised, a document which has been properly summarised or identified including in the request for

<sup>102</sup> Internal Rule 87(1).

<sup>103</sup> Internal Rule 87(2).

<sup>104</sup> Internal Rules 87(3). *See below*, paras 74-77. *See also*, Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 40-43.

<sup>105</sup> Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, paras 16-21; NUON Chea Defence Notice to the Trial Chamber Regarding Research at DC-Cam (E211), E211/2, 13 August 2012, para. 4; Case 001, Decision on Parties’ Requests to Put Certain Materials before the Chamber pursuant to Internal Rule 87(2), E176, 28 October 2009, para. 13.

<sup>106</sup> Decision on Joint Request for de novo Ruling on the application of Internal Rule 87(4), E307/1/2, 21 October 2014, paras 11-12; Decision on Parties’ Joint Request for Clarification regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists Evidence (E305/3), E307/1, 11 June 2014; Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012.

<sup>107</sup> Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, paras 17, 23, 28, 38.

<sup>108</sup> Decision on NUON Chea’s Rule 87(4) Requests for Admission of 29 Documents Relevant to the Testimony of 2-TCE-95, E367/8, 5 May 2016, para. 11. *See also*, Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), E276/2, 10 April 2013, para. 2.

<sup>109</sup> Internal Rule 87(3); Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 31; Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para. 19.

admission and which otherwise satisfies the criteria set out in Internal Rules 87(3)-(4) is admitted and considered put before the Chamber. Each document which has been admitted and put before the Chamber is accorded an E3 number.<sup>110</sup>

45. In its Closing Brief and Closing Statements, the NUON Chea Defence cited evidence which was not admitted, either because it did not meet the requirements of Internal Rule 87 or because the evidence was never produced and sought for admission.<sup>111</sup> As this material has not been properly put before the Chamber pursuant to Internal Rule 87, the Chamber is unable to rely upon it in this Judgement.<sup>112</sup>

46. The Chamber recalls that in Case 002/01, it found that the methodology used by DC-Cam in obtaining, archiving and preserving contemporaneous DK-era documents was reliable and therefore accorded such documents a rebuttable presumption of *prima facie* relevance and reliability (including authenticity).<sup>113</sup> The Chamber has likewise accorded a presumption of relevance and reliability (including authenticity) to documents cited in the Case 002 Closing Order based upon the assessment of these documents by the Co-Investigating Judges and the fact that the Closing Order had been subject to appeal to the Pre-Trial Chamber.<sup>114</sup> The Trial Chamber reiterated these principles in its Case 002/01 Judgement.<sup>115</sup> The Supreme Court Chamber saw no error in this approach, noting that “[i]t was for the party disputing the authenticity of a document which is judicially presumed to be *prima facie* authentic to rebut this presumption”.<sup>116</sup> The Trial Chamber emphasises that it is incumbent upon the Party contesting the reliability or authenticity of evidence to identify evidence and proffer reasons to rebut the presumption. Where such issues are raised, the Chamber addresses

<sup>110</sup> Decision Concerning New Documents and Other Related Issues, E190, 30 April 2012, para. 18; Requests by the KHIEU Samphan Defence to Clarify the Status of Certain E3 Documents (E178) and its Motion E167, E178/1, 11 April 2012, para. 2.

<sup>111</sup> NUON Chea Closing Brief, para. 73. *See below*, para. 58.

<sup>112</sup> Case 001 Trial Judgement, para. 38; Case 002/01 Trial Judgement, para. 23; Decision on KHIEU Samphan Defence Motion on Co-Prosecutors’ Disclosure Obligations, E363/3, para. 32.

<sup>113</sup> Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 28.

<sup>114</sup> Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 20.

<sup>115</sup> Case 002/01 Trial Judgement, para. 34.

<sup>116</sup> Case 002/01 Appeal Judgement, para. 375.

them on a case-by-case basis. Where no such reasons have been provided, the presumption of reliability (including authenticity) stands.

#### 2.4.4. *Sources of Evidence Put Before the Chamber*

##### 2.4.4.1. *Evidence of the Accused*

47. Pursuant to Internal Rules 21(1)(d) and 90(1), the President informed each Accused of his fundamental right to remain silent.<sup>117</sup> On 17 October 2014, subsequent to this warning, NUON Chea and KHIEU Samphan each gave opening statements.<sup>118</sup> Both Accused indicated that they would not be responding to questions pursuant to Internal Rule 90.<sup>119</sup> The President informed the Accused that the Chamber would proceed on the basis that they had exercised their right to remain silent and would not answer questions unless and until such time as the Chamber was expressly informed otherwise by the Accused or their counsel.<sup>120</sup> When Civil Parties sought to put questions to the Accused through the President, the President informed the Civil Parties that the Accused had exercised their right to remain silent and would not respond to such questions.<sup>121</sup> During the trial, the Chamber has indicated which inferences, if any, it may draw from an accused's selective exercise of his right to remain silent.<sup>122</sup>

48. On 1 July 2016, upon the request of the Co-Prosecutors, the Chamber invited the Accused to indicate whether they intended to testify in Case 002/02.<sup>123</sup> KHIEU Samphan responded that he maintained the position that he would not answer any questions.<sup>124</sup> NUON Chea also confirmed his intention not to respond to questions in Case 002/02, noting however that he would strongly reconsider this position if the Chamber summonsed HENG Samrin to testify and gave the Defence a fair opportunity to examine him.<sup>125</sup> The Accused did not respond to questions posed by any of the

<sup>117</sup> T. 17 October 2014, E1/242.1, p. 8.

<sup>118</sup> T. 17 October 2014, E1/242.1, pp. 64-73, 74-79.

<sup>119</sup> T. 17 October 2014 (Accused NUON Chea), E1/242.1, p. 9; T. 8 January 2015 (Accused KHIEU Samphan), E1/247.1, p. 19.

<sup>120</sup> T. 8 January 2015, E1/247.1, p. 19.

<sup>121</sup> See e.g., T. 12 February 2015, E1/262.1, p. 71.

<sup>122</sup> T. 18 April 2012, E1/63.1, p. 40; T. 16 July 2013, E1/224.1, pp. 1-2; T. 23 July 2013, E1/227.1, pp. 68-69.

<sup>123</sup> Co-Prosecutors' Request Regarding Testimony of the Accused, E421/1, 1 July 2016.

<sup>124</sup> «Clarification» de la position de M. KHIEU Samphan sur son éventuel témoignage, E421/1/1, 1 August 2016.

<sup>125</sup> NUON Chea's Notice of Current Intention to Exercise His Right to Remain Silent in Case 002/02, E421/1/2, 1 August 2016.

Parties or the Chamber. However, KHIEU Samphan made final statements on 23 June 2017 and asserted that he intended to answer some of the questions previously raised by Civil Parties.<sup>126</sup>

#### 2.4.4.2. Evidence of Civil Parties, Witnesses and Experts

49. By virtue of their special status, Civil Parties were not required to take an oath.<sup>127</sup> The Chamber approaches Civil Party, witness and expert evidence on a case-by-case basis in light of the credibility of the testimony and in consideration of factors such as the demeanour of the person testifying, consistencies and inconsistencies in relation to material facts, possible ulterior motivations, corroboration and all of the circumstances of the case.<sup>128</sup>

50. Witnesses were informed of their right not to self-incriminate and were assisted by counsel where necessary.<sup>129</sup> Expert opinion was also heard by the Chamber on specific technical issues, to assist it in understanding evidence presented during trial.<sup>130</sup>

51. The Chamber admitted written witness, expert and Civil Party statements, including transcripts from prior proceedings, in conjunction with or in place of oral evidence, in order to give the Parties an opportunity to confront these individuals with alleged discrepancies between their oral evidence and prior statements at trial.<sup>131</sup> In the interests of justice, the Chamber also admitted all prior statements of witnesses, experts and Civil Parties disclosed from Cases 003 and 004 when these individuals were heard at trial for the same purpose.<sup>132</sup>

<sup>126</sup> T. 23 June 2017, E1/528.1, p. 33.

<sup>127</sup> Internal Rule 23(4); Case 001 Trial Judgement, para. 52; T. 5 April 2011, p. 100; Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, E74, 8 April 2011, p. 1.

<sup>128</sup> Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure concerning Civil Parties' Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), E267/3, 25 July 2013; Case 002/01 Appeal Judgement, paras 314-315.

<sup>129</sup> All witnesses, however, testified under oath unless exempt by virtue of their age or special relationship with an Accused or Civil Party.

<sup>130</sup> Internal Rules 31, 80bis(2).

<sup>131</sup> Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 2, 26; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013; Decision on Objections to Documents Proposed to Be Put before the Chamber in Case 002/02, E305/17, 30 June 2015.

<sup>132</sup> Decision on Requests Regarding Internal Rule 87(4) Deadlines, E421/4, 21 September 2016, para. 12.



52. Beginning in June 2012, in the interests of expeditiousness, the Witness and Expert Support Unit was ordered to provide the individuals summonsed to be heard with a copy of their written records of interview, or to read such documents for those unable to read, in order to give them an opportunity to review statements previously made. Further, the President began asking witnesses and Civil Parties appearing in court to affirm the accuracy of their prior statements made to the Office of the Co-Investigating Judges, as reflected in the written records of interview. Upon affirmation, while noting that the Parties have the right to test a witness's credibility on areas within or beyond his prior statements, the Chamber invited the Parties to ask further questions only where there was a need for clarification relevant to matters that are insufficiently covered by these statements or not dealt with during questioning before the Co-Investigating Judges.<sup>133</sup> The Supreme Court Chamber upheld this approach in the Case 002/01 Appeal Judgement.<sup>134</sup>

53. In a related matter, the NUON Chea Defence takes issue with the practice used during some examinations of refreshing the recollection of witnesses and Civil Parties by quoting their prior statements during their testimony.<sup>135</sup> It appears to submit that this practice amounts to leading the witness or Civil Party, thus rendering the testimony of these individuals unreliable. The Chamber observes that these objections were rejected where open questions were first asked and when quotes were made with the view to confronting the author of the evidence with his or her own statements.<sup>136</sup> The Chamber further recalls that the credibility of testimony is assessed on a case-by-case basis, taking into consideration factors such as consistencies and inconsistencies in relation to material facts, corroboration and all the circumstances of the case.<sup>137</sup> The extent of

<sup>133</sup> Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 31; Notice to the Parties Regarding Revised Modalities of Questioning and Response to Co-Prosecutor's Request for Clarification Regarding Use of Documents during Witness Testimony (E201) (TC), E201/2, 12 June 2012, para. 1; Scheduling of Trial Management Meeting to Enable Planning of the Remaining Trial Phases in Case 002/01 and Implementation of Further Measures Designed to Promote Trial Efficiency, E218, 3 August 2012, para. 7 (in the interests of accessibility, the Chamber occasionally summarised these statements in court).

<sup>134</sup> Case 002/01 Appeal Judgement, para. 269.

<sup>135</sup> NUON Chea Closing Brief, paras 763, 807, 829, 832, 841-842, 847, 897, 919.

<sup>136</sup> See e.g., T. 2 February 2015, E1/255.1, pp. 43-45; T. 6 February 2015, E1/258.1, pp. 22-25 (the Chamber permitted the NUON Chea Defence to refresh the recollection of a witness with his DC-Cam statement).

<sup>137</sup> Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure concerning Civil Parties' Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), E267/3, 25 July 2013; Case 002/01 Appeal Judgement, paras 314-315.

leading questions, such as the use of prior statements to refresh the recollection of a witness or Civil Party, is also relevant to the credibility and reliability of testimony which the Chamber will take into consideration.

54. Over the course of Case 002/02, 185 individuals appeared before the Chamber concerning the substantive matters at issue including 114 witnesses, 63 Civil Parties and eight experts. Fifteen appeared by video-link.<sup>138</sup>

#### 2.4.4.3. Documentary evidence

55. On 8 April 2014, the Chamber directed all Parties to provide updated lists of documents previously filed and updated lists of intended exhibits for Case 002/02, including a description of their nature and contents as well as the relevant points of the Closing Order.<sup>139</sup> The Chamber subsequently granted the Parties the opportunity to submit, no later than 2 February 2015, written objections to documents on the other Parties' updated document lists and to rebut the presumption of relevance and reliability accorded to documents cited in the Closing Order.<sup>140</sup> These written submissions served as the basis for the Chamber's determination of the admissibility of documentary evidence, in lieu of holding document admissibility hearings as it did in Case 002/01.<sup>141</sup>

56. Following the opportunity for public, adversarial debate through these submissions, the Chamber admitted 4,980 pieces of documentary evidence in addition to the 5,824 pieces of evidence already admitted during the course of Case 002/01, including contemporaneous and analytical documents, audio and video recordings and

<sup>138</sup> Richard DUDMAN, KHOEM Boeun, UL Hoeun, PECH Sokha, LACH Kri, CHIN Kimthong, SAO Sarun, KHAM Phan, ROS Chuor Siy, TEP Poch, LONG Vun, HENG Lai Heang, NORNG Nim, THUCH Sithan, NHOEK Ly. Internal Rule 26(1) permits testimony by real-time audio or video link where it is not "seriously prejudicial to, or inconsistent with, defence rights". *See also*, Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013; Decision on Witnesses, Civil Parties and Experts Proposed to be heard during Case 002/02, E459, 18 July 2017 (setting forth the reasons for not hearing the remaining proposed witnesses, Civil Parties and experts).

<sup>139</sup> Order to File Updated Material in Preparation for Trial in Case 002/02, E305 ("Filing Order"), 8 April 2014, paras 11, 12.

<sup>140</sup> Scheduling of Objections to Documents Relevant to Case 002/02, E327 ("Order on Objections"), 11 December 2014, paras 4-6.

<sup>141</sup> Case 002/01 Trial Judgement, para. 66.

the written evidence of witnesses, experts and Civil Parties.<sup>142</sup> Some of these documents were admitted as new evidence requested pursuant to Internal Rule 87(4).<sup>143</sup>

57. Considering the significant time that has passed since the DK era, documents recorded contemporaneously with the charged events are some of the most important sources of evidence. The contemporaneous documents before the Chamber include records of meetings or communications upon which the Chamber did not hear any direct testimony. The vast majority of the contemporaneous documents on the Case File are electronically accessible with the original documents being available at the Documentation Center for Cambodia, the Tuol Sleng Museum, the Cambodian National Archives or the Bophana Center.<sup>144</sup> These documents were accessible to the Parties upon request to check the authenticity of the original and the accuracy of the electronic copies. Where the original document had been lost, only a copy of the document was available. This has been taken into account in the assessment of the probative value of the concerned material.

58. *Key Document Presentation Hearings* – The Chamber continued its practice, established in Case 002/01, of providing the Parties with an opportunity to present key documents they considered to be particularly relevant to each trial topic.<sup>145</sup> These hearings took into account that documentary evidence need not necessarily be tendered

<sup>142</sup> Decision on Objections to Documents Proposed to Be Put before the Chamber in Case 002/02, E305/17, 30 June 2015; Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors' Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012; Decision on Objections Proposed to be Put before the Chamber in Co-Prosecutors' Annexes A6-A11 and by the Other Parties, E185/1, 3 December 2012; Third Decision on Objections to Documents Proposed for Admission Before the Trial Chamber, E185/2, 12 August 2013; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013.

<sup>143</sup> See e.g., Decision on Lead Co-Lawyers' Rule 87(4) Request Regarding Expert Peg Levine (2-TCE-81), E433/4, 1 December 2016; Decision on the Request by the KHIEU Samphan Defence to Admit into Evidence Documents Relevant to the Testimony of 2-TCE-90, E406/1, 12 July 2016; Decision on Two Requests by the International Co-Prosecutor to Admit Documents Pursuant to Rule 87(3) and 87(4) (E319/51 and E319/52), E319/52/4, 23 November 2016; Decision on NUON Chea Defence Internal Rules 87(4) and 93 Request (E445/1), E445/2, 8 November 2016.

<sup>144</sup> T. 1 February 2012 (YOUK Chhang), E1/37.1, pp. 57-62, 65-67.

<sup>145</sup> Tram Kak Cooperatives: T. 27 April 2015, E1/293.1; 28 April 2015, E1/294.1; 30 April 2015, E1/295.1. Worksites: T. 26 August 2015, E1/337.1; T. 27 August 2015, E1/338.1; T. 3 September 2015, E1/341.1; T. 7 September 2015, E1/342.1. Treatment of Targeted Groups: T. 23 February 2016, E1/390.1; T. 24 February 2016, E1/391.1; T. 26 February 2016, E1/392.1. Security Centres and Internal Purges: T. 12 August 2016, E1/456.1; T. 16 August 2016, E1/458.1. Regulation of Marriage: T. 6 September 2016, E1/470.1; T. 8 September 2016, E1/471.1. Armed Conflict: T. 3 November 2016, E1/495.1; T. 7 November 2016, E1/496.1. Role of the Accused: T. 4 January 2017, E1/515.1; T. 5 January 2017, E1/516.1.

during the examination of individuals appearing before the Chamber and also served to ensure a greater measure of public accessibility to the documentary aspect of the trial.

59. The NUON Chea Defence presented documents at the hearings on the Tram Kak Cooperatives and Kraing Ta Chan.<sup>146</sup> After walking out of the second document hearing on worksites to protest a Trial Chamber decision, the NUON Chea Defence attended but chose not to actively participate in any further document hearings.<sup>147</sup> The KHIEU Samphan Defence presented documents at the hearings on four of the seven trial topics.<sup>148</sup> Defence Counsel for KHIEU Samphan also exercised the right to respond to documents presented by the other Parties at five of the hearings.<sup>149</sup> The Co-Prosecutors presented documents at each of the key document hearings. The Lead Co-Lawyers presented documents at three hearings.<sup>150</sup>

#### 2.4.5. *Evidence Outside the Temporal or Geographic Scope of the Closing Order*

60. The Chamber notes that it may rely on evidence that falls outside of the temporal or geographic scope of the Closing Order in three circumstances: (1) to clarify a given context; (2) to establish by inference the elements, in particular the *mens rea*, of criminal conduct occurring during the material period; or (3) to demonstrate a deliberate pattern of conduct.<sup>151</sup> The Chamber will therefore only rely on this evidence for these limited purposes and exclusively when the out-of-scope evidence is consistent with other evidence.

<sup>146</sup> T. 28 April 2015, E1/294.1 (Tram Kak Cooperatives).

<sup>147</sup> T. 26 August 2015, E1/337.1 (Worksites).

<sup>148</sup> T. 28 April 2015, E1/294.1 (Tram Kak Cooperatives); T. 24 February 2016, E1/391.1 (Treatment of Targeted Groups); T. 3 November 2016, E1/495.1 (Armed Conflict); T. 4 January 2017, E1/515.1 (Role of the Accused).

<sup>149</sup> T. 7 September 2015, E1/342.1 (Worksites); T. 26 February 2016, E1/392.1 (Treatment of Targeted groups); T. 16 August 2016, E1/458.1 (Security Centres and Internal Purges); T. 8 September 2016, E1/471.1 (Regulation of Marriage); T. 7 November 2016, E1/496.1 (Armed Conflict).

<sup>150</sup> T. 3 September 2015, E1/341.1 (Worksites); T. 12 August 2016, E1/456.1 (Security Centres and Internal Purges); T. 6 September 2016, E1/470.1 (Regulation of Marriage).

<sup>151</sup> *Nahimana et al.* Appeal Judgement, para. 315; *Prlić et al.*, Decision on Time Frame of Joint Criminal Enterprise, p. 9; *Taylor* Trial Judgement, paras 101 (with respect to temporal scope), 110 (with respect to geographic scope).

## 2.4.6. *Final Assessment of the Evidence*

### 2.4.6.1. General issues concerning evidence

61. The Chamber bases its findings on evidence put before it and subjected to adversarial debate.<sup>152</sup> In conjunction with final submissions, the Chamber considers submissions as to the probative value of evidence made at trial, particularly those that went beyond the *prima facie* relevance and reliability of proposed evidence.<sup>153</sup> Various factors are relevant to the probative value of evidence including the criteria set out in Internal Rule 87(3),<sup>154</sup> the circumstances surrounding the creation or recording of evidence, whether the document admitted was an original or a copy, legibility, discrepancies with other versions, deficiencies credibly alleged, whether the Parties had the opportunity to challenge the evidence, and other indicia of reliability including chain of custody and provenance.<sup>155</sup> The Chamber also considers the identification, examination, bias, source and motive – or lack thereof – of the authors and sources of the evidence.<sup>156</sup>

<sup>152</sup> Internal Rule 87(2). The Chamber notes that the English version of this rule requires that evidence be “subjected to examination” while the French version requires that it be “*débatues contradictoirement*”.

<sup>153</sup> Decision on Objections to Documents Proposed to Be Put before the Chamber in Case 002/02, E305/17, 30 June 2015, paras 32, 38, 41; Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, paras 21, 30; Decision on Objections Proposed to be Put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 3 December 2012, paras 13, 19; Third Decision on Objections to Documents Proposed for Admission before the Trial Chamber, E185/2, 12 August 2013, paras 20, 24, 26; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 21, 23, 26, 30, 32.

<sup>154</sup> The Chamber takes into account whether evidence is irrelevant or repetitious, impossible to obtain within a reasonable time, unsuitable to prove the facts it purports to prove, not allowed under the law or intended to prolong proceedings (Internal Rule 87(3)). *See above*, Section 2.4.3: Admissibility of Evidence.

<sup>155</sup> *See e.g.*, Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, paras 30, 34, fn. 49; Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012, paras 26, 28, 36; Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 17, 25-29. *See also*, Case 002/01 Appeal Judgement, paras 296, 328-329, 375.

<sup>156</sup> Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 24; Decision on Assignment of Experts, E215, 5 July 2012, para. 15; Decision on Objections to Documents Proposed to be Put Before the Chamber in the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, para. 14.

62. As to the assessment of witness testimony in particular, the Chamber considers that the reliability of a witness's testimony is contingent upon his or her ability to perceive, remember and articulate accurately and that this can be impacted by a number of factors. These include the time elapsed since the events, because of its impact on memory; the health, age and mental status of a witness at the time of the incident and the time of the testimony; and potential bias arising from issues such as a desire to avoid self-incrimination or public embarrassment, and attempts to protect another person. The Chamber also relies upon the guidance of its Cambodian members in the assessment of witness credibility in order to avoid cultural bias.

63. In assessing the probative value of hearsay evidence, the Chamber takes into account the fact that the source of the hearsay has not been cross-examined as well as "the infinitely variable circumstances which surround [the] hearsay evidence".<sup>157</sup> Hearsay evidence is therefore approached with caution.<sup>158</sup>

64. In order to convict, all reasonable inferences that may be drawn from the evidence must be consistent with the guilt of the accused.<sup>159</sup> As the Supreme Court Chamber has noted:

In cases involving alleged mass criminality, it [is] often impossible to call all witnesses that could testify to the set of events in question. In such situations, the fact finder may be called upon to make inferences from the evidence [heard from a limited number of individuals] as to the broader experience.<sup>160</sup>

Generalised inferences may be drawn from the specific evidence of a limited number of witnesses, but only where the generalised finding is established beyond reasonable doubt.<sup>161</sup>

65. Prior to drawing an adverse inference from evidence presented at trial, the Chamber must consider the plausibility of alternative explanations, including those that

<sup>157</sup> Case 002/01 Appeal Judgement, para. 302 *quoting* Karera Appeal Judgement, para. 39 *referring to* Aleksovski Decision on Evidence, para. 15; *Popović et al.* Appeal Judgement, para. 1307; *Kalimanzira* Appeal Judgement, para. 96.

<sup>158</sup> Case 002/01 Appeal Judgement, para. 302.

<sup>159</sup> Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, para. 16; Case 002/01 Trial Judgement, para. 35. *See also*, *Mugenzi and Mugiraneza* Appeal Judgement, para. 88; *Delalić et al.* Appeal Judgement, para. 458.

<sup>160</sup> Case 002/01 Appeal Judgement, para. 598.

<sup>161</sup> Case 002/01 Appeal Judgement, paras 598, 623, 631, 633, 637, 865.

may be favourable to the Accused.<sup>162</sup> For example, statements made for propagandistic purposes may diminish their reliability.<sup>163</sup> Furthermore, it is essential for the Chamber to identify and consider exculpatory evidence alongside evidence which may be inculpatory on any particular issue.<sup>164</sup>

66. With regard to evidence provided by experts, the Chamber must scrutinise carefully the sources relied upon by the experts in making their conclusions. Where factual findings rely upon an expert's work, precise indications must be made as to the specific and verifiable sources underpinning the expert's opinion. Where the sources are not fully accessible and verifiable, diminished weight is attributed to expert evidence derived from them.<sup>165</sup> These principles apply to each of the experts who testified at trial, namely Elizabeth BECKER, Henri LOCARD, YSA Osman, VOEUN Vuthy, Peg LEVINE, Kasumi NAKAGAWA, Alexander Laban HINTON and Stephen John MORRIS.

67. The NUON Chea Defence submits that Civil Party testimony is of lesser probative value than witness testimony because Civil Parties do not take an oath.<sup>166</sup> The Trial Chamber and Supreme Court Chamber have previously rejected this argument,<sup>167</sup> the latter unambiguously ruling that “the Trial Chamber may rely on the testimony of Civil Parties to make determinations of guilt, just as it may rely on the testimony of the accused person, should he or she decide to testify”, and that “[w]hile the status of a Civil Party may be of relevance to the probative value and/or credibility of the testimony, there is no reason to exclude it *per se*”.<sup>168</sup> The Supreme Court Chamber also held that although Civil Parties do not take an oath, the Trial Chamber may rely on their testimony, including evidence they provided when they were given the floor to make

<sup>162</sup> Case 002/01 Appeal Judgement, para. 970.

<sup>163</sup> Case 002/01 Appeal Judgement, para. 883.

<sup>164</sup> Case 002/01 Appeal Judgement, paras 354, 939, 1009.

<sup>165</sup> Case 002/01 Appeal Judgement, paras 329, 922.

<sup>166</sup> NUON Chea Closing Brief, paras 45, 92.

<sup>167</sup> T. 5 April 2011 (oral ruling), E1/2.1, p. 100; Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, E74, 8 April 2011; Decision on Request to Recall Civil Party TCCP-187, for Review of Procedure Concerning Civil Parties' Statements on Suffering and Related Motions and Responses (E240, E240/1, E250, E250/1, E267, E267/1 and E267/2), E267/3, 2 May 2013, paras 21-22; Case 001 Trial Judgement, paras 42, 53.

<sup>168</sup> Case 002/01 Appeal Judgement, paras 306, 313.

statements on their suffering.<sup>169</sup> The Chamber accordingly rejects the submission that Civil Party testimony is of inherently lesser probative value.

2.4.6.2. Written statements including WRIs, Civil Party Applications, DC-Cam statements, refugee reports and newspaper articles

68. The KHIEU Samphan and NUON Chea Defence submit that the Chamber must accord little probative value to written statements of witnesses, Civil Parties and experts absent the opportunity for confrontation. It further submits that such statements may not be used to prove the acts and conduct of the Accused.<sup>170</sup>

69. The Chamber reiterates that absent the opportunity to examine the source or author of evidence, less weight may be assigned to that evidence.<sup>171</sup> Further, statements taken outside the framework of a judicial process, such as statements recorded by DC-Cam, Civil Party Applications, reports, unsworn refugee accounts and newspaper articles are of inherently low probative value.<sup>172</sup> Where a finding relies in part on such statements, the reasons for the finding must be clearly explained, particularly if a conviction depends wholly or decisively on such evidence.<sup>173</sup> To test the accuracy of a witness statement, the Chamber may consider whether the statement is corroborated by other evidence and, if so, the nature of that evidence. The Chamber may also consider whether the prior statements of a witness are mutually consistent and whether inconsistencies are explained adequately.

70. The Chamber admitted a number of statements and transcripts of available witnesses in place of oral testimony where the statements fulfilled the *prima facie* requirements of relevance and reliability (including authenticity) and were proposed as proof of matters other than the acts and conduct of the Accused.

<sup>169</sup> Civil Party Lead Co-Lawyers' Closing Brief, paras 124, 126-131; Case 002/01 Appeal Judgement, paras 313.

<sup>170</sup> KHIEU Samphan Closing Brief, paras 525-535, 541-551; NUON Chea Closing Brief, paras 93-96, 933.

<sup>171</sup> Case 001 Trial Judgement, para. 43; Case 001 Appeal Judgement, paras 547, 557; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 21-22, 32-33; Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 19, 23, 29-30.

<sup>172</sup> Case 002/01 Appeal Judgement, paras 90, 296, 962.

<sup>173</sup> Case 002/01 Appeal Judgement, paras 90, 298, 550, 888, 970.



71. The Chamber further admitted statements of deceased or otherwise unavailable witnesses, including for the purpose of proving the acts and conduct of the Accused, noting however that they have limited probative value and that a conviction may not be based solely or decisively thereupon.<sup>174</sup> Although such statements have lower probative value than the testimony of witnesses appearing before the Chamber, they may still be an important source of evidence, particularly where the statement was obtained by a judicial entity.<sup>175</sup>

72. There are also limited exceptions to the rule that written statements may not be used to prove the acts and conduct of the Accused. The Chamber recalls that relevant rules and practice at the international level permit reliance on evidence of witnesses who have died subsequent to giving their statements, or who can no longer with reasonable diligence be traced, or who “by reason of bodily or mental condition are unable to testify orally”.<sup>176</sup> Written statements or transcripts of deceased or unavailable witnesses are admissible, and therefore relied upon, where the Chamber is satisfied that the witness is genuinely unavailable and that the proposed evidence is reliable,<sup>177</sup> and

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<sup>174</sup> Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers, E299, 15 August 2013, paras 28 (noting that the Chamber would not rely upon statements admitted in place of oral testimony in considering the acts and conduct of the accused as charged), 29. *See also*, Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 21; Response to the KHIEU Samphan Defence Request for Clarification in relation to the Trial Chamber Decision E319/52/4 (TC), E319/52/5, 6 December 2016.

<sup>175</sup> Case 002/01 Appeal Judgement, para. 296.

<sup>176</sup> Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Chamber, E96/7, 20 June 2012, para. 32; ICTY Rule 92*quater*(A) (“The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92*bis*, if the Trial Chamber: (i) is satisfied of the person’s unavailability as set out above; and (ii) finds from the circumstances in which the statement was made and recorded that it is reliable”). *See also*, ICTR Rule 92*bis*(C), where the Chamber may admit the statement of a person who has subsequently died, or who with reasonable diligence cannot be traced, where the circumstances in which the statement was made and recorded provide satisfactory indicia of its reliability (*see e.g.*, *Bagosora et al.* Decision on Admission of Statements of Deceased Witnesses, paras 15, 19, 21; *Bagosora et al.* Decision on Admission of Statement of Kabiligi Witness, paras 6-8).

<sup>177</sup> *Prosecutor v. Popović et al.*, Decision on Prosecution’s Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*, ICTY Trial Chamber II (IT-05-88-T), 12 September 2006, para. 31 *Tolimir* Decision on the Admission of Evidence, para. 29 (identifying the following factors as relevant to this assessment of the reliability of evidence proposed pursuant to Rule 92*quater*: (i) the circumstances in which the statement was made and recorded, including whether the statement was given under oath, whether the statement was signed by the witness with an accompanying acknowledgment that the statement is true to the best of his or her recollection; (ii) whether the statement was taken with the assistance of a duly qualified interpreter; (iii) whether the statement has been subject to cross-examination, and whether the statement relates to events about which there is other evidence; and (iv) other factors, such as the absence of manifest or obvious inconsistencies

where it considers that the probative value of this evidence is not substantially outweighed by the need to ensure a fair trial.<sup>178</sup> The fact that the evidence in question is relevant to the acts and conduct of the Accused as charged in the indictment is not as such a bar, but will impact upon the weight afforded to the evidence.<sup>179</sup>

73. Civil Party Applications are not created by a judicial entity and are accordingly not accorded a presumption of reliability and are accorded little, if any, probative value.<sup>180</sup>

#### 2.4.6.3. Torture-tainted evidence

74. The Chamber granted – with certain limitations – requests to admit hundreds of documents which may have been tainted by the use of torture, such as S-21 confessions and prison notebooks.<sup>181</sup> Article 15 of the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (“CAT”) prohibits the use of evidence obtained through torture except against a person accused of torture as evidence that the statement was made.<sup>182</sup> All Parties are bound by this provision.<sup>183</sup> As such, the Chamber has held that torture-tainted evidence cannot be used for the truth of its contents.<sup>184</sup> Where the Chamber determined there was a real risk that evidence was

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in the statements). *See also*, paras 27-28 (referring also to the need to satisfy the general admissibility requirements in Rule 89 concerning relevance, probative value and conformity with the requirements of a fair trial); *Popović* Decision, para. 30.

<sup>178</sup> *Karadžić* Decision Admission of Evidence of Milan Babić, para. 33; *Karadžić* Decision on Admission of Evidence of Milenko Lazić, paras 20-23 (rejecting statements of deceased witnesses going to the acts and conduct of the accused as such statements were not subject to cross-examination and as “the need to ensure a fair trial outweigh[ed] the probative value of this particular evidence”).

<sup>179</sup> Case 002/01 Appeal Judgement, paras 289, 296-299.

<sup>180</sup> Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, para. 29; Case 002/01 Appeal Judgement, paras 296, 457. It is for this reason that the Lead Co-Lawyers do not cite to Civil Party Applications in their own Closing Brief when seeking to prove the elements of crimes and criminal responsibility. *See* Civil Party Lead Co-Lawyers’ Closing Brief, para. 139.

<sup>181</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 30. *See above*, Section 2.4.3.2: Legal Framework, in reference to the admissibility of evidence not allowed under the law.

<sup>182</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016; Decision on Objections to Document Lists (Full Reasons) (SCC), F26/12, 31 December 2015; T. 5 April 2011, pp. 96-97; Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, E74, 8 April 2011, p. 3; Case 001, Decision on Parties’ Requests to Put Certain Materials before the Chamber pursuant to Internal Rule 87(2), E176, 28 October 2009, para. 8.

<sup>183</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 47.

<sup>184</sup> T. 28 May 2009, p. 9; T. 26 January 2012, p. 88. *See also*, Decision on Objections to Documents Proposed to be Put Before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/1, E185, 9 April 2012, para. 21(9); Case 002/01 Trial Judgement, para. 35; Decision on Evidence Obtained Through

obtained through the use of torture, such evidence was excluded from the proceedings unless: (1) a party rebutted this presumption by reference to other evidence; or (2) the use of the evidence fell within the exception noted in Article 15.<sup>185</sup>

75. Evidence derived from torture-tainted evidence is deemed permissible as long as the proposed use of the evidence does not circumvent the prohibition against invoking the contents of torture-tainted confessions to establish their truth.<sup>186</sup> In addition, evidence obtained by ill-treatment or coercion, although not prohibited by Article 15 of CAT, is not relied upon to support any factual findings in this Judgement pursuant to Cambodian law, especially Article 321 of the Cambodian Code of Criminal Procedure which provides that “[d]eclaration[s] given under physical or mental coercion shall have no evidentiary value”.<sup>187</sup>

76. The Chamber determined that there was a real risk that confessions obtained at security centres in Cambodia during Democratic Kampuchea were torture-tainted, but that certain objective information contained within confessions is not part of the statement and therefore not excluded. Such permissible information includes the recorded identity of the detainee subjected to interrogation and his or her date of arrest, incarceration and/or execution, which is recorded either during registration at the security centre or at the beginning of a document containing a confession, but not in the confession itself.<sup>188</sup> The Chamber also reaffirmed its consistent practice of allowing reference to annotations made on statements containing confessions by the interrogators or any other superiors as these annotations do not form part of the statement obtained by torture.<sup>189</sup>

77. Finally, pursuant to the exception in Article 15, the Chamber held, Judge FENZ dissenting, that information contained within torture-tainted evidence may be used to establish facts other than the truth of the statement, but only for the purpose of determining what action resulted based on the fact that a statement was made. This

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Torture, E350/8, 5 February 2016, para. 77. *See also*, Decision on Objections to Document Lists (Full Reasons) (SCC), F26/12, 31 December 2015, para. 47, Case 001, Decision on Parties’ Requests to Put Certain Materials before the Chamber pursuant to Internal Rule 87(2), E176, 28 October 2009, para. 8.

<sup>185</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, paras 33-35, 86.

<sup>186</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 70.

<sup>187</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 62.

<sup>188</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 49.

<sup>189</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 49.

permits the Chamber, for example, to consider whether arrests of certain individuals made subsequent to a confession in which these individuals are named may be proof of a governmental policy.<sup>190</sup>

78. The KHIEU Samphan Defence contests the Trial Chamber's decision without providing further argumentation. It nonetheless encourages the Chamber to limit its consideration of torture-tainted evidence to the principles set forth in its decision.<sup>191</sup> The NUON Chea Defence raises a number of challenges with respect to the Trial Chamber's decision on torture-tainted evidence, which are now addressed in turn.

79. The NUON Chea Defence submits that by adopting a presumption that statements taken at security centres were torture-tainted, the Chamber violated NUON Chea's presumption of innocence.<sup>192</sup> In this regard, the Chamber recalls that:

[It] considers that a preliminary finding that a real risk exists that torture was used, based on a *prima facie* assessment of the evidence at the time of the decision, does not impinge upon this right [to a presumption of innocence] as it does not pronounce on either the guilt of the Accused or the role they may have played in obtaining the statement at issue. It is a preliminary evidentiary ruling necessary to effectuate the obligatory provisions of the CAT.<sup>193</sup>

The Defence submission on this point is therefore rejected.

80. The NUON Chea Defence also submits that the Chamber unfairly limited the Defence's ability to present its case by refusing to allow the Defence to use "even a few statements" which it considered had been shown not to originate from torture, thereby violating NUON Chea's fair trial right to present a defence to the charges of torture.<sup>194</sup> The Chamber notes that in determining whether to permit the use of statements from security centres, notably when the purpose is to confront witnesses with such documents during examination, the controlling factor is whether there is a real risk that the declarant of the statement was tortured – thereby creating a presumption of torture

<sup>190</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 75; Reasons for Partially Dissenting Opinion of Judge FENZ, E350/8.1, 11 March 2016.

<sup>191</sup> KHIEU Samphan Closing Brief, para. 636.

<sup>192</sup> NUON Chea Closing Brief, para. 61.

<sup>193</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 40. *See also*, Decision on Objections to Document Lists (Full Reasons), F26/12, 31 December 2015, paras 49, 58.

<sup>194</sup> NUON Chea Closing Brief, para. 61.

– and whether any evidence presented by the party seeking to use the statement effectively rebutted that presumption.<sup>195</sup>

81. The Chamber recalls that the NUON Chea Defence filed a motion seeking to rebut the presumption of torture attaching to three statements obtained at S-21, in which it relied on annotations in those statements as well as the testimony of Duch to support its argument that torture was not used in obtaining the statements.<sup>196</sup> In its decision, the Chamber noted that certain annotations within one statement suggested that it had been taken by torture using “hot methods”. With respect to all of the statements, the Chamber found that, even in the absence of evidence of physical torture, there was a real risk that mental torture had been applied.<sup>197</sup> After considering the submissions and evidence identified by the Defence, the Chamber was not satisfied that the presumption that the statements had been taken through the use of torture at S-21 had been rebutted by the NUON Chea Defence.<sup>198</sup> Consequently the use of the statements is prohibited by law.<sup>199</sup>

82. Finally, the NUON Chea Defence asserts that it considers it valid to use torture-tainted evidence and does so within its Closing Brief.<sup>200</sup> The Chamber considers that particularly during the examination of witnesses, permitting the Defence to cite evidence presumptively obtained through torture, even where such evidence might be exculpatory, directly undermines the object and purpose of the prohibition against torture. In this regard, the Chamber has held that, “it is not in the interests of a fair trial to permit as a rule the use of unreliable evidence obtained through illegal means. The Accused should be permitted to adduce evidence that he asserts is exculpatory, but not at the expense of the integrity of the proceedings.”<sup>201</sup> Exceptionally, the Chamber allowed the Parties to refer during their closing speeches to statements made by prisoners in security centres.<sup>202</sup>

<sup>195</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, paras 33-36.

<sup>196</sup> NUON Chea’s Rule 92 Motion to use certain S-21 Statements, E399, 20 April 2016.

<sup>197</sup> Written Reasons for Decision on NUON Chea’s Rule 92 Motion to Use Certain S-21 Statements, E399/5, 26 January 2017, paras 23-26.

<sup>198</sup> Written Reasons for Decision on NUON Chea’s Rule 92 Motion to Use Certain S-21 Statements, E399/5, 26 January 2017, para. 27.

<sup>199</sup> Internal Rule 87(3)(d).

<sup>200</sup> NUON Chea Closing Brief, paras 61, 236, 249, 498.

<sup>201</sup> Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 47.

<sup>202</sup> Guidelines for Closing Statements in Case 002/02, E457/7, 7 June 2017, paras 5-9 (the Chamber noted: first that, as evidentiary proceedings had concluded, there was no longer a danger that *inter alia* witnesses and Civil Parties could improperly be influenced by evidence which was presumed tainted by torture; and second, as the Accused are charged with the crime of torture, the Chamber must ultimately

2.4.6.4. Spelling of names and locations

83. The spelling of certain names and locations on the Case File at times differs due to a number of factors ranging from a source's origins, pronunciation of a name or its subsequent interpretation. Such differences may also be the result of the absence of a standardised Romanisation of the Khmer language. The Chamber accepts that names and locations with similar, but not identical, spelling may refer to the same individuals or places. Further, given the Cambodian practice of adopting different names, as well as the prevalence of aliases and revolutionary names within the CPK, the Chamber notes that some individuals had various appellations.<sup>203</sup>

2.4.6.5. Interpretation, translation and transcription discrepancies

84. Even with the safeguards and levels of review employed at the ECCC, errors in interpretation, translation and transcription may occur. The Interpretation and Translation Unit (ITU) and various Judges and Chambers took measures throughout the proceedings in an effort to reduce the number of errors and provide for their correction upon identification.<sup>204</sup> Throughout the investigation and trial, the Defence had access to interpreters and translators. All Parties had capabilities in all three official working languages of the ECCC,<sup>205</sup> and therefore were well-positioned to identify errors in translation and transcription and request their correction.<sup>206</sup>

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determine, on the basis of the totality of evidence available at the judgement phase, whether such facts are proved to the required standard for conviction, which is a higher standard of proof than that relied upon during the evidentiary proceedings to determine the existence of a real risk of torture.).

<sup>203</sup> Case 001 Trial Judgement, para. 58. The Chamber has used in the main text of this Judgement the name of witnesses and Civil Parties as it appeared in their identification documents, where this was available. When citing to interview records or Civil Party Applications, however, the Chamber has retained the name as it appeared in those documents. The Chamber has listed in an annex to this Judgement all the known spellings of the names of witnesses and Civil Parties who were heard. See Annex III: Names of Witnesses and Civil Parties.

<sup>204</sup> Memorandum from Chief of Court Management Section to the President of the Trial Chamber, E195/2, 15 August 2012, paras 2-3; Decision on Defence Notification of Errors in Translations (PTC), No. 2, 17 December 2010, para. 10.

<sup>205</sup> Decision on Request by the Defence for KHIEU Samphan for Trilingual Notification of the Supreme Court Chamber's Decisions (SCC), E163/5/1/15, 30 April 2013, para. 4.

<sup>206</sup> See e.g., Decision on KHIEU Samphan's Request for Revision of Translations of Evidence on the Case-File concerning "870" (E296), E296/1, 15 August 2013; Decision on KHIEU Samphan's Appeal against Order on Translation Rights and Obligations of the Parties (PTC), A190/I/20, 20 February 2009, paras 46-49; KHIEU Samphan Defence Motion E195 and Envisaged Future Procedures for Correction of Transcripts, E195/1, 24 July 2012; Memorandum from Chief of Court Management Section to the President of the Trial Chamber, E195/2, 15 August 2012, para. 4; Review of Translation of Written Records of Witness Interview in Case File 002 (ITU), No. 3, 26 January 2011, p. 3; Decision on Defence Notification of Errors in Translations (PTC), No. 2, 17 December 2010, para. 11.

85. The Chamber recalls that it raised the issue of the accuracy of the transcripts of hearings early in Case 002/02. On 17 June 2015, the Chamber alerted the Administration to its concerns regarding substantive errors in certain hearing transcripts, originating from interpretation.<sup>207</sup> After further discussion, the Administration informed the Parties on 27 August 2015 of its proposal that the Transcription Unit be tasked with the responsibility to review and perform quality control of hearing transcripts in all three working languages.<sup>208</sup> None of the Parties objected to the proposed methodology.

86. Starting on 3 March 2016, the Transcription Unit, in conjunction with the Interpretation and Translation Unit, began a comprehensive review of draft transcripts of all Trial Chamber hearings to ensure that transcripts accurately reflected the “floor language” of what was said in court. The review first identified and corrected interpretation errors. Thereafter, the final transcripts for hearings prior to 3 March 2016 were reassessed and corrections made based on any identified interpretation errors. The agreed process to ensure quality control of transcripts, while thorough, does not eliminate the possibility of errors remaining in certain transcripts. Where such errors have been identified by the Chamber or the Parties, these have been taken into account in assessing probative value.

87. During the final Trial Management Meeting of Case 002/02, the Parties raised the possibility that the late filing of hearing transcripts would adversely impact upon their ability to file their Closing Briefs by the established 24 April 2017 deadline.<sup>209</sup> Upon inquiry, the Chamber was informed by the Administration that hearing transcripts would be finalised by the end of June 2017 or earlier.<sup>210</sup>

88. On 7 April 2017, the Co-Prosecutors requested a fifteen-day extension of the deadline for the Closing Briefs, from 24 April to 9 May, in view of the ongoing correction of numerous transcripts, which had created difficulties for the Parties in

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<sup>207</sup> Trial Chamber Memorandum to Office of Administration, 17 June 2015.

<sup>208</sup> Office of Administration Memorandum to Case 002 Parties, 27 August 2015.

<sup>209</sup> T. 8 December 2016, E1/509.1, pp. 7-8.

<sup>210</sup> Memorandum to Office of Administration regarding Case 002/02 Translation and Transcription Issues (TC), E449/2, 16 December 2016; Office of Administration Memorandum to Trial Chamber regarding Case 002/02 Translation and Transcription Issues, E449/2/1, 22 December 2016.

relying upon the court record in their briefs.<sup>211</sup> The KHIEU Samphan Defence agreed with the request as initially did the Civil Party Lead Co-Lawyers.<sup>212</sup> The NUON Chea Defence objected to the request as being illogical, given that even after the proposed extension of time, many transcripts would not have been corrected.<sup>213</sup> The NUON Chea Defence noted that the “logical solution” would be to either extend the deadline for Closing Briefs to one to two months after all transcripts are completely finalised or to maintain the current deadlines and permit the Parties to file corrigenda to the briefs. Although the NUON Chea Defence believed the first option was the ideal one, it believed the Chamber would be unlikely to grant it and accordingly requested the second option.<sup>214</sup> It requested that the Chamber reject the requested extension of time, authorise the Parties to file corrigenda to their Closing Briefs by the end of September 2017 and order the Administration to guarantee resources to complete the corrigenda.<sup>215</sup>

89. The Civil Party Lead Co-Lawyers subsequently changed their view due to the substantial impact that the transcript corrections had upon their Closing Brief. They sought the deferral of the Closing Briefs until 9 June 2017, when the transcripts containing the testimony of Civil Parties were projected to be finished.<sup>216</sup> The NUON Chea Defence urged the Chamber to reject this Lead Co-Lawyers’ request and reiterated its prior request to maintain the original deadlines for Closing Briefs, to authorise the filing of corrigenda to the Closing Briefs and to ensure adequate defence funding to this end.<sup>217</sup>

90. On 13 April 2017, the Chamber granted the Co-Prosecutors’ request in part by extending the deadline for Closing Briefs by one week until 2 May 2017. On 28 April

<sup>211</sup> Co-Prosecutors’ Request to Modify the Schedule of the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02, E457, 7 April 2017.

<sup>212</sup> *Soutien de la Défense de KHIEU Samphan à la demande de l’Accusation de modifier le calendrier des conclusions et plaidoiries finales*, E457/1, 7 April 2017; Civil Party Lead Co-Lawyers’ Response to Co-Prosecutors’ Request to Modify the Schedule for the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02, E457/2, 10 April 2017.

<sup>213</sup> NUON Chea’s Response to Co-Prosecutors’ Request to Modify the Schedule for the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02, E457/3, 11 April 2017, paras 6, 21(a).

<sup>214</sup> NUON Chea’s Response to Co-Prosecutors’ Request to Modify the Schedule for the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02, E457/3, 11 April 2017, para. 10.

<sup>215</sup> NUON Chea’s Response to Co-Prosecutors’ Request to Modify the Schedule for the Filing of Closing Briefs and the Delivery of Closing Statements in Case 002/02, E457/3, 11 April 2017, para. 21.

<sup>216</sup> Civil Party Lead Co-Lawyers’ Urgent Rule 92 Submission Regarding the Filing of Final Submissions, E457/4, 18 April 2017, paras 8-10, Part IV: Request.

<sup>217</sup> NUON Chea’s Response to Civil Party Lead Co-Lawyers’ Urgent Rule 92 Submission Regarding the Filing of Final Submissions in Case 002/02, E457/5, 20 April 2017.



2017, it issued the reasons for its decision, addressing the remaining issues raised by the Parties.<sup>218</sup> The Chamber held that a delay to the schedule caused by the one-week extension would be minimal and preserved the right of the Parties to a full adversarial debate of the evidence. It further noted that while the review process may affect the substance of the transcripts, its impact would likely be limited and it did not prevent Parties from filing meaningful briefs before all transcripts were finalised. The Chamber granted the request to file corrigenda, in the form of “Amended Closing Briefs”, as a satisfactory method for ensuring full adversarial debate of evidence heard at trial and the timely issuance of the Judgement. It further noted that it would consider requests to file limited responses to Amended Closing Briefs should it be necessary.<sup>219</sup>

91. From 7 April 2017 until the completion of the transcript review process on 24 July 2017, the Transcription Unit filed fortnightly updates on the status of transcript corrections.<sup>220</sup>

92. In view of its decision regarding Amended Closing Briefs and the related NUON Chea request for resources, the Chamber noted that it would provide the request and its decision to the Office of Administration for appropriate consideration.<sup>221</sup> The Defence Support Section subsequently granted the Defence teams’ request for additional resources from July to September 2017 for the purpose of preparing Amended Closing Briefs.<sup>222</sup> All of the Parties submitted amended Closing Briefs pursuant to the 30 September 2017 deadline.<sup>223</sup> While such opportunity was expressly offered to the Parties, no Party seised the Chamber with a request to file limited responses to

<sup>218</sup> Trial Chamber Senior Legal Officer email to Case 002 Parties, E457/5.1.2, 13 April 2017; Co-Prosecutors’ Request for extended deadline for Closing Briefs and delayed start of Closing Statements in Case 002/02, E457/6, 28 April 2017.

<sup>219</sup> Co-Prosecutors’ Request for extended deadline for Closing Briefs and delayed start of Closing Statements in Case 002/02, E457/6, 28 April 2017, paras 11-16.

<sup>220</sup> Fortnightly report of the Transcription Unit regarding the completion of the revision of trial transcripts, E449/3/6/1 *et seq.*, 7 April 2017; Final Report of the Transcription Unit regarding the Completion of the Revision of Trial Transcripts, E449/3/6/9, 24 July 2017.

<sup>221</sup> Co-Prosecutors’ Request for extended deadline for Closing Briefs and delayed start of Closing Statements in Case 002/02, E457/6, 28 April 2017, para. 20.

<sup>222</sup> Interoffice Memorandum from Defence Support Section to NUON Chea and KHIEU Samphan Defence Co-Lawyers entitled, “Joint Request for a Temporary Budget Increase for the Preparation of Amended Closing Briefs in Case 002/02”, 23 May 2017.

<sup>223</sup> Co-Prosecutors’ Closing Brief, E457/6/1/1, 2 October 2017; Civil Party Lead Co-Lawyers’ Closing Brief, E457/6/2/3, 2 October 2017; NUON Chea Closing Brief, E457/6/3, 2 October 2017; KHIEU Samphan Closing Brief, E457/6/4/1, 2 October 2017.

Amended Closing Briefs.<sup>224</sup> While all the Closing Briefs were translated into Khmer by March 2018, ITU informed the Trial Chamber that it would be unable to deliver the English translation of the KHIEU Samphan Closing Brief before the issuance of this Judgement. The Chamber has therefore relied on internal unofficial translations.

2.4.6.6. *NUON Chea Defence right to confront evidence and prepare his defence*

93. The NUON Chea Defence submits in its Closing Brief that the Chamber's decision not to delay the deadline for the filing of Closing Briefs until after the completion of the transcription correction exercise prejudiced NUON Chea's right to confront evidence and prepare his defence effectively.<sup>225</sup> It submits that during the hearings and the initial drafting period for the Closing Briefs, the Defence could not have been aware of missing information in English interpretation and, due to multiple corrections of transcripts, it was impossible to know when a transcript was final, depriving NUON Chea of an opportunity to submit his initial brief based on access to all of the evidence. It notes that it intends to file a corrected version of its brief and may seek to reopen the hearing after all transcripts are complete.<sup>226</sup> The Defence notes that it was compelled to expend several months of additional work preparing and filing its amended brief.<sup>227</sup>

94. The Chamber considers that this NUON Chea Defence argument is without merit. The Chamber notes that during trial the Defence took a different position, consistently opposing any delay of the Closing Brief deadline. The requests that the NUON Chea Defence made in relation to the transcript review were granted by the Chamber. In particular, the Defence was authorised to file an Amended Closing Brief following the completion of the transcript correction exercise and, eventually, to make limited challenges to the Amended Closing Briefs of other Parties. Requests for further information about the status of the correction exercise were acted upon by the Transcription Unit. Further, the Chamber forwarded the Defence request for additional resources to the Administration, which granted the request. The Chamber considers that

<sup>224</sup> Schedule for Amended Closing Briefs, E457/8, 28 June 2017; Trial Chamber Senior Legal Officer email to Case 002 Parties, E457/9, 13 October 2017.

<sup>225</sup> NUON Chea Closing Brief, para. 88.

<sup>226</sup> NUON Chea Closing Brief, paras 87-89.

<sup>227</sup> NUON Chea Closing Brief, para. 89.

these measures adequately protected NUON Chea's ability to examine the evidence and prepare his defence effectively.

95. The Chamber is cognisant of the difficulties raised by the correction of transcripts during the drafting of Closing Briefs and the preparation of Closing Statements. Nonetheless, the Chamber recalls that all Parties have staff available with the language capacity to read the transcripts in the floor language of the speaker.<sup>228</sup> The transcript of the floor language reflects *verbatim* what is said in court and is not affected by interpretation errors. Where questions exist as to the accuracy of transcripts, the Chamber has also relied upon the floor language transcript. Though potentially more time consuming, the Chamber considers that the availability of the floor language transcript and audio/video recordings, along with the capacity of each team in the official ECCC languages alleviates any fair trial concerns in this regard.

96. The Chamber therefore rejects the NUON Chea Defence's submission that the transcript review process prejudiced NUON Chea's right to confront evidence and prepare his defence effectively.

#### 2.4.7. *Considerations Regarding Specific Witnesses, Civil Parties and Experts*

##### 2.4.7.1. Civil Party SAR Sarin

97. The NUON Chea Defence and the KHIEU Samphan Defence submit that the testimony of Civil Party SAR Sarin must be disregarded because it relates to the acts and conduct of the Accused and the Defence did not have an opportunity to test his evidence through examination.<sup>229</sup> The Co-Prosecutors make no submission in this regard but do not rely on the testimony of this Civil Party in their Closing Brief. The Lead Co-Lawyers rely upon the evidence of SAR Sarin in their Closing Brief, but do not make submissions on the impact of the Defence's inability to cross-examine him, either in their Closing Brief or their Closing Statement.<sup>230</sup>

<sup>228</sup> Decision on Request by the Defence for KHIEU Samphan for Trilingual Notification of the Supreme Court Chamber's Decisions (SCC), E163/5/1/15, 30 April 2013, para. 4.

<sup>229</sup> NUON Chea Closing Brief, para. 546; KHIEU Samphan Closing Brief, paras 1546-1566.

<sup>230</sup> Civil Party Lead Co-Lawyers' Closing Brief, paras 1464-1466; T. 13 June 2017 (Closing Statements), E1/520.1.

98. The Chamber recalls that Civil Party SAR Sarin appeared before the Court on 8 November 2016 and was questioned by the Civil Party Lawyer and the Co-Prosecutor.<sup>231</sup> On 10 November 2016, when the Civil Party was due to resume questioning, he claimed to be feeling unwell and was taken to a medical clinic. While the results of the medical check-up did not evidence any medical issue, the Civil Party insisted that he needed to rest and was therefore taken back to his hotel. While unaccompanied, the Civil Party left the hotel to return to his home town. On 23 November 2016, WESU reported that SAR Sarin did not fear giving his in-court statement before the ECCC, but that he would return to finish his questioning only on condition that he be relocated to the United States or Australia.<sup>232</sup>

99. Due to a number of inconsistencies, notably between the concerns expressed by this Civil Party, his behaviour and his request to be relocated along with his family to a third country, WESU informed the Chamber that it was unable to identify any objective basis for a fear of giving evidence and did not recommend any protective measures.<sup>233</sup> The Chamber accordingly denied Civil Party SAR Sarin's request to be relocated to a third country.<sup>234</sup> However, considering that he was a Civil Party and therefore cannot be compelled to testify, the Chamber withdrew his name from the list of individuals to testify.

100. The Chamber further recalls that SAR Sarin was previously questioned as a Civil Party in Case 002/01. As in Case 002/02, the Civil Party requested, as a condition for continuing giving evidence, the provision of certain protective measures – in that case, protection for the duration of his life. The request was denied as unjustified by the Chamber and the Civil Party declined to complete his questioning. Therefore, he was not examined by either Accused.<sup>235</sup>

101. The Chamber considers that SAR Sarin's attempts to obtain personal advantage from his in-court statement cast doubt upon his credibility. Furthermore, it notes that the Accused were not provided any opportunity to question the Civil Party in Case

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<sup>231</sup> T. 8 November 2016 (SAR Sarin), E1/497.1 pp. 26-94.

<sup>232</sup> Witness and Expert Support Unit (WESU) Report on 2-TCCP-237, E29/501, 28 November 2016.

<sup>233</sup> Witness and Expert Support Unit (WESU) Report on 2-TCCP-237, E29/501, 28 November 2016.

<sup>234</sup> Decision Withdrawing 2-TCCP-237 from the list of Civil Parties heard in court, E29/501/1, 14 December 2016.

<sup>235</sup> T. 29 April 2013 (SAR Sarin), E1/185.1, pp. 37-39, 64.

002/02 after his initial questioning by the Civil Party Lawyers and Co-Prosecutors. The absence of an opportunity for all Parties to examine the Civil Party prevents the Chamber from using SAR Sarin's evidence to establish the acts and conduct of the Accused.<sup>236</sup>

#### 2.4.7.2. Expert Henri LOCARD

102. The KHIEU Samphan Defence and NUON Chea Defence submit that Henri LOCARD is not a reliable expert, noting in particular the alleged bias he demonstrated in comments to Defence counsel in and outside of the courtroom. The KHIEU Samphan Defence submit that none of Henri LOCARD's written or oral declarations about KHIEU Samphan can be used as evidence since they are marked by a lack of neutrality and objectivity.<sup>237</sup> It also submits that Henri LOCARD's statements are not in line with his sources, when they are available.<sup>238</sup> The NUON Chea Defence submits that the Chamber should ignore the totality of LOCARD's evidence, questioning his legitimacy and methodology as well as the lack of access to his sources.<sup>239</sup> The Co-Prosecutors rely on LOCARD's writings and testimony throughout their brief, but do not respond to the Defence submissions.<sup>240</sup> The Lead Co-Lawyers did not rely on LOCARD's evidence or respond to the Defence submissions.

103. The Chamber recalls that it qualified Henri LOCARD as an expert in Case 002/02 based in particular on his several decades of experience researching the DK era in Cambodia, and his presentations and publications on the same.<sup>241</sup> The Chamber also noted that while Mr. LOCARD was commissioned by the Office of the Co-Prosecutors to compile a series of reports on security centres during Democratic Kampuchea, any concern of potential bias would be taken up as matters related to the evaluation of his evidence.<sup>242</sup> The Chamber further recalls that experts are appointed to assist the court "honestly" and "to the best of their ability", and are expected to testify with the utmost neutrality and with scientific objectivity, barring which the reliability of their findings,

<sup>236</sup> KHIEU Samphan Closing Brief, para. 566. *See above*, fn. 174.

<sup>237</sup> KHIEU Samphan Closing Brief, paras 587-631.

<sup>238</sup> KHIEU Samphan Closing Brief, para. 591.

<sup>239</sup> NUON Chea Closing Brief, paras 478-482.

<sup>240</sup> *See e.g.*, Co-Prosecutors' Closing Brief, paras 411, 433, 458, 503. The Co-Prosecutors cite to Henri LOCARD's testimony in 115 footnotes. *See also*, T. 14 June 2017 (Closing Statements), E1/521.1, pp. 10-11.

<sup>241</sup> Decision on Designation of 2-TCE-90, E415, 16 June 2016, paras 9-11, 13.

<sup>242</sup> Decision on Designation of 2-TCE-90, E415, 16 June 2016, para. 12.

opinions, interpretations or conclusions is questionable as they can only be perceived as tainted by bias or the appearance of bias.<sup>243</sup>

104. In Case 002/02, Mr. LOCARD testified for four days in July and August 2016.<sup>244</sup> On the last day of his testimony, Mr. LOCARD responded to a question by counsel for KHIEU Samphan by stating that “it might be difficult for me to answer you because yesterday, you practiced cold torture on me, and now I know what that cold torture means”.<sup>245</sup> Approached for comment later by a local newspaper, Mr. LOCARD is reported to have said that “[t]hese people [counsel for the Accused] are criminal because they are making the tribunal waste hours and weeks, days and months” and “[i]t [the tribunal] should have been no more than three years, because of these completely perverse people who are what we call deniers, negationists – they deny reality”.<sup>246</sup>

105. The Chamber considers that, through these statements, Mr. LOCARD has unambiguously shown an inability to assist the court during his testimony in this case with the level of neutrality and objectivity expected from an expert. For this reason, the Chamber disregards the expert opinions provided by Mr. LOCARD to the Chamber during his testimony.

106. Mr. LOCARD is the author of numerous pieces of evidence appearing on the Case File, including two books, his PhD thesis, and eleven reports on the subject of regional security centres which were commissioned by the Co-Prosecutors.<sup>247</sup> The Chamber

<sup>243</sup> *Nahimana et al.* Appeal Judgement, para. 199; *Prosecutor v. Ntaganda*, ICC Trial Chamber (ICC-01/04-02/06), Public Redacted Version of the Submissions by the Common Legal Representative of the Victims of the Attacks on the Admissibility of the Appointed Expert’s Medical Report Regarding Witness P-0790, 23 May 2016, para. 16; *Popović et al.* Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, paras 20-21. *See also*, Internal Rule 31(2) (“An expert who agrees to be appointed shall take an oath or affirmation in accordance with his or her religion or beliefs to assist the Co-Investigating Judge or the Chambers *honestly, confidentially and to the best of his or her ability.*” (emphasis added).

<sup>244</sup> T. 28 July 2016 (Henri LOCARD), E1/450.1; T. 29 July 2016 (Henri LOCARD), E1/451.1; T. 1 August 2016 (Henri LOCARD), E1/452.1; T. 2 August 2016 (Henri LOCARD), E1/453.1.

<sup>245</sup> T. 2 August 2016 (Henri LOCARD), E1/453.1, p. 4.

<sup>246</sup> *French Historian Accuses Tribunal Lawyers of ‘Cold Torture’* (George Wright, The Cambodia Daily), E3/10649, 3 August 2016.

<sup>247</sup> PhD Thesis by H. Locard: *Aspects de l’extermination dans le Kampuchea démocratique et de l’idéologie khmère rouge (1975-1979)*, E3/10641, 21 January 2000; Report by H. Locard: *Characteristics of Repression in Democratic Kampuchea*, E3/10642, November 2006; Report by H. Locard: *The Khmer Rouge Gulag: 17 April 1975 – 7 January 1979*, E3/2811; Book by H. Locard, *Pol Pot’s Little Red Book: The Sayings of Angkar*, E3/2812; Report by H. Locard: *Bophea Region: Dambon 20 to 24*, E3/3209; Report by H. Locard: *S-21 and Phnom Penh under DK* E3/3215, 11 July 2007; Report by H. Locard: *Kompong Thom – Uddor Region: Sector or Zone 43*, E3/3218, 2 June 2007; Report by H.

observes that many of these works are based upon either anonymous sources or interviews of witnesses, a number of whom did not testify in Case 002/02 and whose statements are not always accessible or, when accessible, may show some discrepancies with certain assertions made by Mr LOCARD.<sup>248</sup> Therefore, except when clear and reliable underlying material is accessible and can corroborate his findings, the Chamber will attribute little, if any, probative value to the writings authored by Mr LOCARD.

2.4.7.3. Experts YSA Osman and Alexander HINTON

107. The KHIEU Samphan Defence challenges the reliability of the expert testimony of YSA Osman and Alexander HINTON.<sup>249</sup> The Chamber addresses these submissions below in the context of the trial topic during which each expert testified.

2.4.7.4. Witnesses SOY Sao (SUOY Sav) and SEM Om (SEM Am)

108. The NUON Chea Defence submits that there is reason to believe that there were attempts at tampering with witnesses SOY Sao (SUOY Sav) and SEM Om (SEM Am), which may constitute interference with the administration of justice.<sup>250</sup> It points to a “shift” in SOY Sao’s testimony starting after a lunchtime break during his testimony and the fact that the Chamber went into closed session to question the witness.<sup>251</sup> It also points to a contradiction between witness SEM Om’s DC-Cam statement (an audio recording of which was played in court) and his testimony. Following the approach of the ICTY, it is suggested that these witnesses’ DC-Cam interviews be admitted to the exclusion of certain parts of their testimony.<sup>252</sup> The Co-Prosecutors submit that the testimonies of these two witnesses are incoherent and contradictory but attribute these

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Locard: *Northeast: Eisan Region: Zone-Sector 105 Mondolkiri*, E3/3219, 27 June 2007; Report by H. Locard: *Niredey Region: The Southeast*, E3/3232, 11 July 2007; Report by H. Locard: *Democratic Kampuchea Prison Network in West Region: Pachoem*, E3/3237, May 2007; Report by H. Locard: *Preah Vihear: Sector or Zone 103*, E3/3244, 31 May 2007; Report by H. Locard: *Northeast: Eisan Region – Zones-Sector 101, 102, 104, 105, 107, 505: Provinces of Ratanakiri, Mondolkiri, Stung Treng and Kratieh*, E3/3255, 14 June 2007; Report by H. Locard: Report by H. Locard: *Stung Treng: Dambon 104 and 103*, E3/3265, 16 June 2007; Report by H. Locard: *Kratieh – 505: Special Zone*, E3/3274, 24 June 2007; Report by H. Locard: *Tramkak District in the Grip of the Khmer Rouge*, E3/8299, December 1996.

<sup>248</sup> See e.g., KHIEU Samphan Closing Brief, paras 621-625 (contrary to what Mr. LOCARD stated during his testimony, he has been unable to provide any transcript or audio recording of interview with SALOTH Ban that would support his assertion that at the beginning of the 1960s SALOTH Ban served as a messenger between his uncle, POL Pot, and KHIEU Samphan).

<sup>249</sup> KHIEU Samphan Closing Brief, paras 579-586.

<sup>250</sup> NUON Chea Closing Brief, paras 142-143.

<sup>251</sup> NUON Chea Closing Brief, paras 142-143; T. 18 August 2016 (SOY Sao), E1/460.1, pp. 53-54, 70-71 (CS) (the Chamber moved into Closed Session at the request of counsel for NUON Chea).

<sup>252</sup> NUON Chea Closing Brief, paras 142-143.

contradictions to efforts by the CPK to deceive soldiers during the DK era by playing the S-21 confession of their former commander to them.<sup>253</sup>

109. The Chamber notes that when questioned in closed session, witness SOY Sao testified that he was not approached to change his testimony during the lunch break and did not fear for his safety.<sup>254</sup> As to SEM Om, the NUON Chea Defence have not identified any evidence that would support an inference that there were attempts to change the witness's testimony. Therefore, there is no reason to substitute the live testimony of these witnesses with their prior DC-Cam statements. In addition, the NUON Chea Defence have failed to identify any precedent which would support selectively admitting portions of the witnesses' DC-Cam statements and portions of the witnesses' testimonies, depending on which portions suit the Defence. The request is therefore rejected.

## **2.5. Fair Trial Rights**

### ***2.5.1. Introduction***

110. Over the course of the proceedings in Case 002/02, NUON Chea and KHIEU Samphan alleged violations of their rights to a fair trial. The Chamber addressed these allegations on a case-by-case basis, providing relief where it was in the interests of justice. The Accused further developed these submissions in their Closing Briefs and Closing Statements, requesting the Chamber to disregard evidence concerning facts which are outside the scope of Case 002/02, reconsider decisions affecting their rights and consider alleged violations of their rights in the final assessment of the evidence.<sup>255</sup>

111. The Chamber addresses these submissions below, taking decisions as required to supplement those already taken during the course of the trial. The Chamber will also

<sup>253</sup> Co-Prosecutors' Closing Brief, paras 359-60.

<sup>254</sup> T. 18 August 2016 (SOY Sao), E1/460.1, pp. 3-8 (CS). The reason the Chamber entered into Closed Session was to ascertain whether there was any reason to order protective measures for the witness. Having determined that there were no reasons for such protection and noting that proceedings are presumptively public, the Chamber now decides to reclassify these transcripts as public.

<sup>255</sup> NUON Chea Closing Brief, paras 70-73; KHIEU Samphan Closing Brief, paras 154-299, 632-649.



examine whether procedural errors, if any, have a cumulative effect on the overall fairness of the trial.<sup>256</sup>

### 2.5.2. *Alleged Defects in the Judicial Investigation*

112. The NUON Chea Defence reiterates the claims, already made several times, that the Co-Investigating Judges were biased and violated the Defence rights by excluding them from the judicial investigations.<sup>257</sup> It further submits that the Case File was inherently biased as a result.<sup>258</sup> The Chamber recalls that it has previously addressed the assertions of procedural unfairness at the investigative phase. The Chamber has noted that the Accused made extensive use of the procedural safeguards existing in the ECCC legal framework to address alleged defects in the investigation either before the Co-Investigating Judges or on appeal to the Pre-Trial Chamber.<sup>259</sup> Appeals against these decisions were dismissed by the Supreme Court Chamber, which declined to revisit these issues in the context of the Case 002/01 Appeal Judgement.<sup>260</sup> The Accused allege no new facts or circumstances arising since these decisions were issued that would justify fresh consideration of these issues. Nevertheless, where defects in the investigation are alleged with sufficient particularity and have clear relevance to Case 002/02, the Chamber will consider them in its final assessment of the evidence.<sup>261</sup>

<sup>256</sup> Even if no individual error results in prejudice to the Accused, the Chamber must still assess the overall effect of harmless error to determine whether the Accused received a fair trial. *See Ntagerura et al.* Appeal Judgement, para. 114).

<sup>257</sup> NUON Chea Closing Brief, paras 4, 15, 32, 50-52, 63- 67, 252, 263-264.

<sup>258</sup> NUON Chea Closing Brief, paras 71, 102, 108.

<sup>259</sup> *See e.g.*, Decision on IENG Sary's Motion for a Hearing on the Conduct of the Judicial Investigations, E71/1, 8 April 2011; Decision on NUON Chea Motions regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), E116, 9 September 2011; Decision on NUON Chea's Request for a Rule 35 Investigation regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, E142/3, 13 March 2012; Decision on Defence Requests Concerning Irregularities Alleged to Have Occurred During the Judicial Investigation (E221, E223, E224, E224/2, E234, E234/2, E241 and E241/1), E251, 7 December 2012; Decision on Rule 35 Applications for Summary Action, E176/2, 11 May 2012; Decision on Application for Immediate Action Pursuant to Rule 35, E189/3, 22 November 2012.

<sup>260</sup> Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of the Investigation (SCC), E116/1/7, 27 April 2012; Decision on NUON Chea's "Immediate Appeal against Trial Chamber Decision on Application for Immediate Action pursuant to Rule 35" (SCC), E189/3/1/8, 25 March 2013; Decision on NUON Chea's Appeal against the Trial Chamber's Decision on Rule 35 Applications for Summary Action (SCC), E176/2/1/4, 14 September 2012; Case 002/01 Appeal Judgement, para. 118.

<sup>261</sup> Decision on NUON Chea Request for a Rule 35 Investigation regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, E142/3, 13 March 2012, paras 6-15.

### 2.5.3. *Impartiality of the Trial Chamber*

113. In an apparent attempt to support its submissions as to the existence of a “Manichean” narrative, the NUON Chea Defence submits that, for a number of reasons, the judges of the Trial Chamber lack impartiality.<sup>262</sup> The Chamber notes that Internal Rule 34 provides specific procedures to address alleged impartiality of judges. Judges may recuse themselves in cases of bias or perceived bias. Among the formal requirements is that the request be filed as soon as the party becomes aware of the grounds in question. Such requests must be adjudicated by a special panel, excluding the judges against whom the allegations have been raised. A formal application for disqualification is a precondition to consideration of such submissions. Therefore, the issue cannot be adjudicated by the Trial Chamber within this Judgement. Under the circumstances, it would be inappropriate to further address the NUON Chea Defence submissions concerning the alleged impartiality of Trial Chamber judges.

114. The KHIEU Samphan Defence takes issue with several Trial Chamber decisions which evidence, in its view, a presumption of good faith on the part of the Co-Prosecutors and of bad faith on the part of the Defence, including: (1) permitting the Prosecution to continue to disclose inculpatory evidence from Cases 003 and 004; (2) requiring the Defence to participate in the Case 002/02 hearings when it was fully occupied drafting KHIEU Samphan’s appeal of the Case 002/01 Trial Judgement; and (3) intervening during Defence examination of inculpatory witnesses while failing to intervene when witnesses were abusive towards defence counsel.<sup>263</sup>

115. The Chamber first notes that a number of these submissions were rejected by the Special Panel of the Trial Chamber in its decision on the disqualification requests.<sup>264</sup> As to the remaining issues, had the KHIEU Samphan Defence considered any of them to be sufficiently serious, it was incumbent upon them to file requests for disqualification of the Judges on that basis. At this late stage of the proceedings, it is unclear what relief is requested or could be granted. As to the substance of the complaints, the Chamber refers to the reasons provided when the criticised procedural

<sup>262</sup> NUON Chea Closing Brief, paras 18-19, 24, 56-58.

<sup>263</sup> KHIEU Samphan Closing Brief, paras 666-668, 670.

<sup>264</sup> Reasons for Decision on Applications for Disqualification (TC Special Panel), E314/12/1, 30 January 2015.

actions were taken.<sup>265</sup> Insofar as bias is alleged, the Chamber refers to its comments above.<sup>266</sup>

#### 2.5.4. *Equality of Arms*

116. The Accused submit that the Chamber violated the principle of equality of arms by favouring the Co-Prosecutors and disfavouring the Defence in decisions selecting the witnesses, Civil Parties and experts to testify at trial as well as in decisions ruling on the admissibility of evidence.

117. The Chamber recalls that the European Court of Human Rights in *Bulut v. Austria* held that “under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage vis-à-vis his opponent”.<sup>267</sup> Within the ECCC legal framework, Internal Rule 21 reflects the spirit of this principle when it states that “ECCC proceedings shall be fair and adversarial and preserve the balance between the rights of the parties”.<sup>268</sup>

##### 2.5.4.1. *Allegations based upon Witness Decisions*

118. The NUON Chea Defence submits that the failure of the Trial Chamber to call many of the witnesses it had requested to testify violated NUON Chea’s fair trial rights, particularly the principle of equality of arms and his right to present an effective

<sup>265</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, E363/3, 22 October 2015; Ruling following TMM of 28 October 2014 (TC), E320/1, 31 October 2014.

<sup>266</sup> See above, para. 113.

<sup>267</sup> *Bulut v. Austria*, Judgement, ECtHR Grand Chamber, Application No. 17358/90, 22 February 1996, para. 47.

<sup>268</sup> Internal Rule 21(a). See also, *Asch v. Austria*, Judgement, ECtHR, Application No. 12398/86, 26 April 1991, para. 26; *Barbera v. Spain*, Judgement, ECtHR, Application No. 10590/83, 6 December 1988, para. 78; Human Rights Committee, General Comment No. 32, UN Doc. No. CCPR/C/GC/32, Article 14 (right to equality before courts and tribunals and to a fair trial), para. 39 (“Paragraph 3(e) of article 14 guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or their counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings. Within these limits, and subject to the limitations on the use of statements, confessions and other evidence obtained in violation of article 7, 85 it is primarily for the domestic legislatures of States parties to determine the admissibility of evidence and how their courts assess it.”).

defence.<sup>269</sup> It submits that the Chamber's request for submissions on the relevance of additional witnesses proposed by the NUON Chea Defence violated NUON Chea's right to obtain witnesses for him under the same conditions as those against him, because the Chamber imposed requirements on the Defence but not on the Co-Prosecutors as a prerequisite to hearing its witnesses.<sup>270</sup> It submits that requesting these submissions was "outrageously unfair" because it "lent a further advantage to the Co-Prosecutors".<sup>271</sup> It further requests reconsideration of the Chamber's decisions rejecting 23 of the witnesses and experts proposed by them listed in Annex 2 of the NUON Chea Defence Closing Brief.

119. The Chamber recalls that the ICCPR and the ECCC Law guarantee all accused the right "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".<sup>272</sup> However, as recognised by the Supreme Court Chamber, it is well established that an accused does not have an absolute right to summons witnesses in his favour.<sup>273</sup> The Trial Chamber retains wide discretion in determining which defence witnesses are appropriate to be called.<sup>274</sup> What is essential is that the Trial Chamber preserves the balance between the rights of the Parties to ensure the principle of equality of arms is respected.

120. The submission that the Chamber violated NUON Chea's right to obtain witnesses for him under the same conditions as those against him stems from a series of five motions, filed starting in March 2016 by the NUON Chea Defence, to hear a total of 45 additional witnesses and one additional Civil Party.<sup>275</sup> Many of the witnesses had not

<sup>269</sup> NUON Chea Closing Brief, paras 64-67; Nuon Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility, E395/2, 10 June 2016, paras 43-44.

<sup>270</sup> NUON Chea Closing Brief, paras 64-65; Nuon Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility, E395/2, 10 June 2016, paras 43-44.

<sup>271</sup> NUON Chea Closing Brief, paras 64-65.

<sup>272</sup> ICCPR, Article 14(3)(e). *See also*, ECCC Law, Article 35 *new*.

<sup>273</sup> Case 002/01 Appeal Judgement, paras 133, 285-287; Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, E96/7, 20 June 2012, paras 18-19; Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01, E312, 7 August 2014, paras 24-25, 27; Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02, E459, 18 July 2017, paras 11, 211.

<sup>274</sup> *Turek v. Slovakia*, Judgement, ECtHR, Application No. 57986/00, 14 February 2006, para. 114; *Vidal v. Belgium*, Judgement, ECtHR, Application No. 12351/86, 22 April 1992, paras 64-65.

<sup>275</sup> Nuon Chea's First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in relation to the Case 002/02 Trial Segment on S-21 Security Centre and "Internal Purges", E391, 24 March 2016; Nuon Chea's Second Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (Leadership), E392, 1 April 2016; Nuon Chea's Third

previously been requested by the Accused and were therefore sought as new witnesses pursuant to Internal Rule 87(4). With respect to the other witnesses, requested by the Defence at the start of trial, the Defence either sought to expedite decisions to call them or requested reconsideration of decisions to not call them. Each of the five motions was premised upon an assertion that the testimony of the proposed individuals was “relevant to the heart of the defence case of Mr. NUON Chea, and in particular, the contention that the DK leadership was divided into conflicting factions, some of which were secretly supported by Vietnam”.<sup>276</sup> Prior to deciding whether to hear the 46 proposed individuals, and considering the advanced stage of the proceedings when the requests were made,<sup>277</sup> the Chamber provided the NUON Chea Defence an opportunity to further explain how the existence of conflicting factions could provide a defence to the charges in the Closing Order or could be considered to be a mitigating circumstance.<sup>278</sup> The NUON Chea Defence filed a response explaining his position “under protest”.<sup>279</sup>

121. In making decisions on whether to call witnesses or Civil Parties, the Chamber is guided by the fundamental consideration of relevance. Internal Rule 87(4) requires that the moving Party file a *reasoned* submission to hear new witnesses. In the absence of sufficient reasoning, the Chamber may decide either to reject the motion or to seek clarification. It is for this reason that in the instant case, the Chamber sought further information from the NUON Chea Defence on the basis that it could be of assistance in making the necessary determination regarding the relevance of certain proposed witnesses. Such an enquiry is wholly consistent with the Chamber’s function of witness selection.

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Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion), E395, 8 April 2016; Nuon Chea’s Fourth Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (S-21 Operations and Documentary Evidence), E412, 7 June 2016; Nuon Chea’s Fifth Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion, Alleged Arbitrariness of Arrest and S-21 Security Centre), E426, 29 July 2016.

<sup>276</sup> Nuon Chea’s First Rule 87(4) Request to Call Additional Witnesses and Rule 93 Request for Additional Investigations in relation to the Case 002/02 Trial Segment on S-21 Security Centre and “Internal Purges”, E391, 24 March 2016, para. 23. *See also*, Nuon Chea’s Second Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Leadership), E392, 1 April 2016, paras 4, 21; Nuon Chea’s Third Witness Request for the Case 002/02 Security Centres and “Internal Purges” Segment (Evidence of Treasonous Rebellion), E395, 8 April 2016, para. 4.

<sup>277</sup> The requests were filed from March through July 2016, well after the beginning of trial.

<sup>278</sup> Request for briefing on significance of conflicting factions within the DK leadership (TC), E395/1, 11 May 2016.

<sup>279</sup> Nuon Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility, E395/2, 10 June 2016, para. 15.

122. Furthermore, the Chamber has a duty to ensure that “ECCC proceedings [are] fair and adversarial and preserve a balance between the rights of the parties”.<sup>280</sup> In order to ensure that debates are adversarial, including on the question of whether or not a proposed witness shall be called, the Chamber and the Parties need to have a clear understanding of the reasoning underlying the request(s) for evidence. In this regard, the Chamber has the authority to direct parties to provide in a timely manner the necessary clarifications which would permit such adversarial discussion. The Chamber therefore considers that the request for briefing was appropriate and indeed helpful to assessing the nature of the NUON Chea Defence requests to hear additional witnesses.

123. The NUON Chea Defence appears mistakenly to equate the right to present an effective defence with an unconditional right to call all of the witnesses it has requested.<sup>281</sup> In this regard, the Chamber recalls the jurisprudence noted above and accordingly rejects the NUON Chea Defence’s submission.

124. Finally, NUON Chea places particular emphasis on the Trial Chamber’s failure to call HENG Samrin, OUK Bunchhoeun, CHEA Sim and POL Saroeun as witnesses in this case. NUON Chea made multiple requests to hear these witnesses and asserts that HENG Samrin in particular was the most important witness in Case 002.<sup>282</sup> The Chamber recalls that it took steps to ascertain the willingness of HENG Samrin, OUK Bunchhoeun, and POL Saroeun to testify (CHEA Sim had passed away at the time of the Chamber’s decision).<sup>283</sup> It further notes that lengthy interviews with HENG Samrin, CHEA Sim and OUK Bunchhoeun appear on the Case File.<sup>284</sup> Due to the absence of a supermajority to call HENG Samrin, OUK Bunchhoeun and POL Saroeun, summonses

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<sup>280</sup> Internal Rule 21(a).

<sup>281</sup> Nuon Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility, E395/2, 10 June 2016, para. 13 (“In the Defence’s view, the relevant issues in the Security Centres and “Internal Purges” segment – and in NUON Chea’s case overall – can only be sufficiently explored if all 35 witnesses (and the additional witnesses to be addressed in the forthcoming fifth request) appear before the Chamber. It is therefore in the interests of justice that they all be summonsed.”).

<sup>282</sup> NUON Chea Closing Brief, paras 11, 12, 14, 16-18, 24, 67, 111, 122, 165, 216, 323, 704, 744.

<sup>283</sup> Letter from the Trial Chamber to WESU, E29/504, 16 May 2016; Letter from Trial Chamber to WESU, E29/503, 16 May 2016; Letter to Trial Chamber to WESU, E29/502, 16 May 2016; WESU Report, E29/504/2, 2 September 2016; Letter from WESU to His Excellency Lieutenant General MAM Sam, E29/504/1, 6 June 2016; Letter from Army Headquarters, E29/504/2.1, 17 June 2016; Letter from WESU to His Excellency UM Sarith, E29/503/1, 22 June 2016; Letter from WESU to His Excellency LENG Peng Long, E29/502/1, 22 June 2016.

<sup>284</sup> Retyped Interview Notes by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651862-00651907.

were not issued and the witnesses were not heard at trial.<sup>285</sup> The Chamber will further consider the impact, if any, of the absence of the testimony of these three witnesses when assessing all available evidence.

125. As to the NUON Chea Defence's request to reconsider its decisions rejecting 23 of the Defence's proposed witnesses and experts, the Chamber recalls that reconsideration does not form part of the ECCC legal framework.<sup>286</sup> The Chamber will only consider a request anew where a "fresh application justified by new evidence or new circumstances is made".<sup>287</sup> The NUON Chea Defence have not put forward any new facts or circumstances that would justify a different decision regarding these 23 individuals, merely listing the names of the individuals in an annex and the relevant Trial Chamber decisions. The NUON Chea Defence request is therefore rejected.

126. The KHIEU Samphan Defence submits that the fact that only two of the individuals it proposed were heard, out of the 186 witnesses, Civil Parties and experts heard in Case 002/02, shows that the Co-Prosecutors were favoured by the Chamber.<sup>288</sup>

127. The Chamber recalls that the number of witnesses, Civil Parties and experts selected by the Chamber from those proposed by any Party depends on the relevance of those individuals. It further recalls its reasoning set out in paragraph 119, above. The Chamber does not consider that in the present case the Defence have established a

<sup>285</sup> The Chamber notes that at the time of the filing of the Closing Briefs, the Parties did not have access to the reasoning of the witness decision which was issued on 18 July 2017. *See* Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02, E459, 18 July 2017, paras 195-275.

<sup>286</sup> Decision on NUON Chea Request to Reconsider Admitting one Extract and to Admit two Additional Extracts from the Human Rights Watch Report '30 Years of HUN Sen', E347/4, 2 June 2016, para. 7; Decision on NUON Chea Request to Recall Witness PRAK Khan (2-TCW-931), E409/3, 11 July 2016, para. 6.

<sup>287</sup> Decision on NUON Chea Request to Reconsider Admitting one Extract and to Admit two Additional Extracts from the Human Rights Watch Report '30 Years of HUN Sen, E347/4, 2 June 2016, para. 7; Decision on NUON Chea Request to Recall Witness PRAK Khan (2-TCW-931), E409/3, 11 July 2016, para. 6; Decision on KHIEU Samphan's urgent request for reconsideration of scheduling order of the substance of case 002/02, E314/5/3, 16 October 2014, para. 2. *See also*, Decision on the Co-Prosecutor's Request for Reconsideration of the decision regarding Admission of Newly Available United States Diplomatic Cables (E282/2/1) and KHIEU Samphan's Response (E282/2/1/1) (TC), E282/2/1/2, 1 August 2013, para. 3; Decision on KHIEU Samphan's Urgent Request for Clarification of the Trial Chamber Decision of 15 August 2013 relating to the Admissibility of Statements and Transcripts (E299/1), E299/2, 10 September 2013, para. 5; Decision on IENG Sary's request for Reconsideration of the Trial Chamber decision on the Accused's Fitness to Stand Trial and Supplemental Request, E238/11/1, 19 December 2012, paras 7-8; Decision on NUON Chea's Request that the Chamber not provide prior statements to Tuol Po Chrey witnesses before testifying (E292/2), E292/2/1, 28 June 2013, para. 4.

<sup>288</sup> KHIEU Samphan Closing Brief, paras 663, 665.

violation of the principle of equality of arms. The Chamber has applied the same standard based on relevance to all requests, irrespective of the requesting Party.<sup>289</sup>

2.5.4.2. Allegations based upon decisions on the admission of evidence and decisions on reconsideration

128. The NUON Chea Defence submits that the Chamber violated NUON Chea’s right to present exculpatory evidence by deciding not to admit four transcripts of interviews conducted by THET Sambath and Robert LEMKIN, one Human Rights Watch report and “a handful of evidence” listed in Annex 1 to its Closing Brief. It considers that the Chamber’s decisions evince a “double standard” on the part of the Trial Chamber since it admitted evidence provided by experts Alexander HINTON and Henri LOCARD, including interviews of “unnamed or unlocatable sources”.<sup>290</sup> It seeks the Chamber’s reconsideration of these decisions. Alternatively, it seeks a reopening of the evidentiary hearings and reconsideration of the Chamber’s decisions rejecting NUON Chea Defence requests to hear additional witnesses and for further investigative action, stipulated in Annexes 1 and 3, respectively.<sup>291</sup> The NUON Chea Defence also notes that it has freely referenced in its brief materials not admitted by Chamber, particularly where they assist in substantiating NUON Chea’s core case.<sup>292</sup> Noting the request for reconsideration made by the NUON Chea Defence in its Closing Brief, the Chamber permitted the NUON Chea Defence, on an exceptional basis and without prejudice to the final decision, to make reference during Closing Statements to material which is part of the said request.<sup>293</sup>

129. As to the four transcripts of interviews (Annex 1), the Chamber notes that it admitted part of one of these transcripts as the Supreme Court Chamber was satisfied that the interview was that of TOAT Thoeun, who had testified in the Case 002/01

<sup>289</sup> Internal Rule 87(3)-(4); *Orić*, Interlocutory Decision on Length of Defence Case, para. 7. The Chamber notes that most of the KHIEU Samphan Defence requests to hear experts and a witness were in fact granted.

<sup>290</sup> NUON Chea Closing Brief, para. 69.

<sup>291</sup> NUON Chea Closing Brief, paras 68-73.

<sup>292</sup> NUON Chea Closing Brief, para. 73.

<sup>293</sup> Guidelines for Closing Statements in Case 002/02, E457/7, 7 June 2017, paras 3 (permitting the Parties to exceptionally refer to evidence that had been rejected but for which reconsideration was sought and requiring that Parties indicate the status of such evidence when referenced during Closing Statements in order to be clear to the other Parties as well as the public).



Appeal proceedings.<sup>294</sup> Of the three remaining transcripts, the Chamber found among other things that there was uncertainty as to the identities of the interviewees, which was compounded by the fact that Mr. LEMKIN chose not to assist the Chamber in identifying them.<sup>295</sup> Despite the lack of complete information as to the identity of these witnesses, the Chamber directed the Witness and Expert Unit to make efforts to identify and locate two of these individuals.<sup>296</sup> These efforts were unsuccessful. Further, as the interviews were conducted in Khmer and the transcripts were in English, the Chamber noted that it had no information as to “the accuracy or completeness of the translation or of the original material used in creating the English Transcripts” or “how long each interview was and how the interview excerpts making up the Transcripts were selected and or edited”.<sup>297</sup> Without knowing the identities of the speakers, and without any means to assess the completeness and the accuracy of the English translations, the Chamber held that the three remaining transcripts lacked the *prima facie* reliability required for their admission pursuant to Internal Rule 87(4). Although the NUON Chea Defence now submits that it is in possession of the audio files of the interviews and has verified that the substance of the interviews is correctly reflected in the transcripts, the identities of the three individuals remain uncertain and the Chamber is still left without any means to assess the completeness and the accuracy of the English translations.<sup>298</sup> Above all it must be emphasised that, with a deep disregard for the principle of adversarial procedure, the Defence has not provided the Chamber and other Parties with access to these audio files or sought their admission. As the Chamber can only make decisions based upon material which has been subjected to adversarial debate, and subsequently admitted into evidence,<sup>299</sup> the Chamber does not consider that these purported audio files constitute new facts or circumstances that would justify fresh consideration of the issue. The Chamber is also not convinced that calling Mr. LEMKIN

<sup>294</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 21.

<sup>295</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20.

<sup>296</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, paras 20, 26.

<sup>297</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 19.

<sup>298</sup> NUON Chea Closing Brief, para. 137.

<sup>299</sup> Internal Rule 87(2).

to testify, as suggested by the NUON Chea Defence, would have clarified the identities of these three individuals as Mr. LEMKIN repeatedly refused to provide this information to the Chamber.<sup>300</sup> The NUON Chea Defence's request is therefore rejected.

130. The NUON Chea Defence also seeks reconsideration, for the second time, of the Chamber's decision not to admit a Human Rights Watch report entitled "30 years of Hun Sen" based on its lack of reliability.<sup>301</sup> While the Defence relied on the publicly-available document in its brief and during Closing Statements,<sup>302</sup> no new facts or circumstances have been identified that would require the Chamber to consider this request anew.<sup>303</sup> As only admitted evidence can be considered by the Chamber, all references to the report in the NUON Chea Closing Brief or Closing Statements are disregarded in this Judgement.

131. As to the remaining "handful of evidence" which the NUON Chea Defence includes in Annex 1, the Defence have not presented any arguments or identified any new facts or circumstances that would require the Chamber to consider these requests anew. The Defence request is therefore rejected.

132. With respect to the alternative request to reopen the proceedings and to reconsider all of the Chamber's decisions which rejected the NUON Chea Defence requests for investigative action in Annex 3 and to hear the additional witnesses proposed by them as set out in Annex 2, the Chamber notes that this request for relief comes four months after the close of evidence and in some cases years after the decisions concerned. The

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<sup>300</sup> NUON Chea Closing Brief, para. 140; Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20.

<sup>301</sup> NUON Chea Closing Brief, para. 70.

<sup>302</sup> NUON Chea Closing Brief, paras 73, 702, 778.

<sup>303</sup> The Chamber previously found that the new facts or circumstances cited by the NUON Chea Defence, namely the death of CHEA Sim, the rescheduling of witnesses or a delay in rendering a decision on issues related to the treatment of the Cham, did not justify a new decision on the admissibility of portions of the report that had been sought for admission. Further, the substance of the additional portions of the report sought for admission for the first time were found to be irrelevant. Chapter III concerned the time period 1984-1989 and was therefore outside the temporal jurisdiction of the ECCC. While Chapter IX concerned allegations of government interference in Cases 003 and 004, it did not discuss such allegations in relation to Case 002/02. *See* Decision on NUON Chea Request to Reconsider Admitting one Extract and to Admit Two Additional Extracts from the Human Rights Watch Report '30 Years of HUN Sen', E347/4, 2 June 2016, paras 8, 11-12.

Defence have not identified any new facts or circumstances that would require the Chamber to consider this request anew and it is therefore rejected.

2.5.4.3. *Allegations based upon denial of Internal Rule 93 investigative requests and request for reconsideration*

133. The NUON Chea Defence submits that it was unfairly prevented from performing its own investigations by the Co-Investigating Judges which forced the Defence to operate at a disadvantage and resulted in an inequality of arms.<sup>304</sup> Based upon the Supreme Court Chamber's Case 002/01 Appeal Judgement, the Defence asserts that it should have been permitted to take investigative steps during the Case 002 investigation.<sup>305</sup> It further submits that the resulting inequality of arms can only be remedied before the Trial Chamber by granting the Defence requests for investigative action pursuant to Internal Rule 93 in order to identify exculpatory materials. It therefore requests reconsideration of the Chamber's decisions rejecting the NUON Chea Defence's investigative requests.<sup>306</sup>

134. The Chamber recalls that the Supreme Court Chamber addressed similar arguments by the NUON Chea Defence in the context of the Case 002/01 appeal. The Supreme Court Chamber ruled, consistent with the Trial Chamber's own jurisprudence, that "the ECCC's procedural framework does not envisage full-fledged party-driven investigations such as those common to adversarial systems. Rather, in line with the procedural tradition prevalent in Cambodia, investigations at the ECCC are conducted by the Co-Investigating Judges". It further noted that "the rules applicable to the ECCC do not envisage the delegation of these [investigative] powers to any of the Parties" and therefore "to the extent that NUON Chea sought to assume the investigative powers afforded to the Trial Chamber under Internal Rule 93, the Trial Chamber did not err in dismissing his request".<sup>307</sup>

135. The Supreme Court Chamber did allow that the Defence may undertake actions "aimed at discovering relevant evidence, as long as such conduct [did] not lead to witness tampering or any other distortion of evidence" and that the Defence should be

<sup>304</sup> NUON Chea Closing Brief, para. 50.

<sup>305</sup> NUON Chea Closing Brief, para. 52.

<sup>306</sup> NUON Chea Closing Brief, paras 32, 50-52, 63.

<sup>307</sup> Case 002/01 Appeal Judgement, paras 248-249.

allowed to carry out the limited actions to identify potential witnesses with sufficient precision.<sup>308</sup>

136. The Chamber notes that it has considered each of the investigative requests filed by the NUON Chea Defence and, where appropriate, taken actions that had been requested. The Chamber contacted Professor Walter HEYNOWSKI and obtained from him S-21 photographs and an orange logbook sought by the NUON Chea Defence.<sup>309</sup> It also sought to obtain evidence from foreign countries such as Vietnam and successfully obtained translations of Standing Committee Minutes through inquiries to Professor Christopher GOSCHA, an excerpt of which had been sought for admission by the NUON Chea Defence.<sup>310</sup>

137. Finally, according to their own submissions the evidence cited by the NUON Chea Defence allowed them “to corroborate Nuon Chea’s case, core case, in more detail than ever” and “actually proves Nuon Chea’s case and his account about what happened before, during and after the period of Democratic Kampuchea”.<sup>311</sup>

138. The Chamber therefore considers that the NUON Chea Defence were provided with the appropriate means to develop and present its case through its involvement in the pre-trial phase, the granting of additional witness requests, and the steps the Trial Chamber took in furtherance of NUON Chea Defence requests. The Defence has failed to identify any new facts or circumstances that would justify fresh consideration of the Chamber’s decisions regarding NUON Chea Defence Internal Rule 93 requests. The NUON Chea Defence’s request is therefore denied.

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

139. The KHIEU Samphan Defence submits that the disclosures of documents from Cases 003 and 004 in Case 002/02 starting in October 2014 violated the rights of the

<sup>308</sup> Case 002/01 Appeal Judgement, para. 249.

<sup>309</sup> Further Documents Obtained from Professor Walter Heynowski, E443/2/1, 5 January 2017; Order Closing Investigation Related to Documents Received from Prof. Walter Heynowski, E443/9, 27 January 2017; Order to Initiate Investigations of Documents Received from Prof. Walter Heynowski, E443/5, 8 December 2016.

<sup>310</sup> Decision on Requests Regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016.

<sup>311</sup> T. 16 June 2017 (Closing Statements), E1/523.1 pp. 23-24.

defence.<sup>312</sup> In particular, KHIEU Samphan contends that his right to an expeditious trial and the right to equality of arms were violated by the disclosures and that it favoured the Co-Prosecutors to the detriment of the Accused.<sup>313</sup>

140. The Chamber recalls that the proceedings in Case 002/02 took place concurrently with the ongoing investigations in Cases 003 and 004. There is significant overlap between the cases under investigation and Case 002, as the cases involve many of the same time frames, geographical areas and crime sites.

141. The Co-Prosecutors are party to Cases 003 and 004 as well as Case 002 and, in contrast to the Defence teams in Case 002, have access to materials arising from the Case 003 and 004 investigations. Consequently, the Co-Prosecutors sought authorisation from the International Co-Investigating Judge to disclose relevant documents arising from the investigations in Cases 003 and 004 to the Parties and the Chamber in Case 002/02.<sup>314</sup> These disclosures consisted mainly of Written Records of Interview, and attachments thereto, taken by the International Co-Investigating Judge in the context of the Cases 003 and 004 investigations. Recognising the need to permit disclosures of potentially exculpatory materials as well as other evidence that is conducive to ascertaining the truth in Case 002/02, while at the same time seeking to maintain the confidentiality of ongoing investigations in Cases 003 and 004, the International Co-Investigating Judge authorised the disclosure of Case 003 and 004 evidence to the Parties in Case 002/02 on condition that the evidence, and witnesses providing the evidence, were not made public.<sup>315</sup>

142. The Trial Chamber recognised, and the Supreme Court Chamber later confirmed,<sup>316</sup> the mandatory nature of disclosure obligations by the Co-Prosecutors. It found that Internal Rule 53(4):

<sup>312</sup> KHIEU Samphan Closing Brief, paras 660-665; *Conclusions de la Défense de M. KHIEU Samphan sur l'obligation de communication des co-Procureurs*, E363, 27 August 2015, para. 5.

<sup>313</sup> KHIEU Samphan Closing Brief, paras 660-665; *Conclusions de la Défense de M. KHIEU Samphan sur l'obligation de communication des co-Procureurs*, E363, 27 August 2015, paras 33-40.

<sup>314</sup> See International Co-Prosecutor's Disclosure of Statements from Case File 004, E319, 20 October 2014.

<sup>315</sup> Decision on Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1<sup>st</sup> Segment of Case 002/02 Trial (OCIJ), E319.2, 14 October 2014; Decision on Yim Tith's Request to Set a Timetable for Disclosure Requests from Case 004 (OCIJ), E319/62, 31 October 2016.

<sup>316</sup> Decision on Part of Nuon Chea's Third Request to Obtain and Consider Additional Evidence in Appeal Proceedings of Case 002/01 (SCC), F2/4/2, 16 March 2015, para. 17.

[I]mposes a continuing obligation on the Co-Prosecutors to disclose to the Trial Chamber [and parties] any material in its possession that may suggest the innocence or mitigate the guilt of the Accused or affect the reliability of the evidence. It is in the interests of ascertaining the truth that the Trial Chamber [and parties] ha[ve] access to these documents, not least because consideration of the prior statements will assist in evaluating the credibility of these witnesses.<sup>317</sup>

143. From October 2014 until August 2015, the KHIEU Samphan Defence did not respond to the Co-Prosecutors’ requests for leave to disclose Case 003 and 004 documents.<sup>318</sup> Instead, the disclosures were accepted, at times with a request for additional time to review the newly disclosed materials. In August 2015, however, KHIEU Samphan filed a motion challenging the overall process of disclosure, asserting the Co-Prosecutors were “burying” exculpatory evidence, which was appropriately disclosed, under a mountain of inculpatory material which should not have been added to the Case 002/02 Case File.<sup>319</sup>

144. The Chamber considers that the disclosure of a large amount of new material from Cases 003 and 004 does not by itself establish a violation of the rights of the Accused. The most important factor in assessing the potential impact on the fair trial rights of the Accused is a determination of whether the Accused were accorded a sufficient opportunity to review and respond to the disclosed material, thereby allowing a fair and adversarial discussion of the evidence.<sup>320</sup>

<sup>317</sup> Disclosure of witness statements for witnesses who may testify in Case 002, E127/4, 24 January 2012. The French version of the decision provided: “La Chambre considère que la règle 53 4) du Règlement intérieur impose aux co-procureurs une obligation à caractère permanent de lui communiquer tous les documents en leur possession qui permettraient de conclure à l’innocence des Accusés, atténuer leur culpabilité ou avoir des conséquences sur la fiabilité qu’il est possible d’accorder à des éléments de preuve”. The Khmer states: “វិធាន ៥៣(៤) នៃវិធានផ្ទៃក្នុង បង្គាប់ដល់សហព្រះរាជអាជ្ញាឱ្យជូនដំណឹងមកអង្គជំនុំជម្រះសាលាដំបូងពាក់ព័ន្ធនឹងសម្ភារៈទាំងឡាយដែលសហព្រះរាជអាជ្ញាមាន ហើយដែល សម្ភារៈទាំងនេះនឹងអាចនាំឱ្យគ្មានពិរុទ្ធភាព ឬ សម្រាលពិរុទ្ធភាពរបស់ជនជាប់ចោទ ឬ ដែលប៉ះពាល់ដល់ភាពអាចជឿជាក់បាននៃភស្តុតាងក្នុងការចោទប្រកាន់។”

<sup>318</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, E363/3, 22 October 2015, paras 18-19.

<sup>319</sup> *Conclusions de la Défense de M. KHIEU Samphan sur l’obligation de communication des co-Procureurs*, E363, 27 August 2015.

<sup>320</sup> See e.g., *Prosecutor v. Radovan Karadžić*, ICTY Trial Chamber, IT-95-5/18-T, Decision on Accused’s Motion for Fourth Suspension of Proceedings, 16 February 2011, para. 8; *Prosecutor v. Mladic*, No. IT-09-92-T, Decision on Urgent Defence Motion of 14 May 2012 and Reasons for Decision on Two Defence Requests for Adjournment of the start of the Trial (24 May 2012), paras 19, 25; *Prosecutor v. Karemera*, No. ICTR-98-44-T, Scheduling Order (30 March 2006), para. 5; *Prosecutor v. Bemba Gombo*, ICC Trial Chamber (ICC-01/05-01/08-767-RED), Decision on the Prosecution’s Second Application for Disclosure of Additional Evidence” (Public Redacted Version), 5 July 2010, para. 27.

145. The Chamber recalls that in its decision on the KHIEU Samphan Defence's motion, it identified the steps that it had already taken to address the potential impact of disclosures on the fair trial rights of the Accused.<sup>321</sup> It noted that it had adjourned proceedings to permit parties to review disclosures and indicated a willingness to grant further adjournments.<sup>322</sup> Where appropriate, it had delayed the hearing of particular witnesses or Civil Parties and informed the Parties that witnesses may be recalled if good reason were shown to do so.<sup>323</sup> It had also issued guidelines restricting the scope for disclosure to Parties in Case 002/02 of Civil Party Applications filed in Cases 003 and 004.<sup>324</sup> Furthermore, upon learning that the Defence were in need of additional resources, the Chamber contacted the Office of Administration, which pledged to identify additional financial resources as warranted by the disclosure process.<sup>325</sup> As a result, from January 2016 until the Closing Statements in June 2017, KHIEU Samphan and NUON Chea were each granted funding for two additional Defence consultants for the purpose of reviewing disclosures.<sup>326</sup>

146. In addition to these measures, the Chamber in its decision of October 2015, limited disclosures to material which in the actual knowledge of the Co-Prosecutors is exculpatory and to the prior statements of testifying witnesses, thereby granting in part the relief sought by the KHIEU Samphan Defence.<sup>327</sup> With regard to inculpatory or other material, the Chamber directed that all future requests made by the Co-Prosecutors "to adduce from Case 003 and 004 materials that are neither exculpatory nor the statements of individuals who have testified or are proposed to testify in Case 002/02 be notified to the Chamber and the Parties through reasoned applications

<sup>321</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015, para. 38.

<sup>322</sup> Email from Trial Chamber Senior Legal Officer to Parties, 16 October 2014, E363/3.1; Email from Trial Chamber Legal Officer to Parties, 17 February 2015, E363/3.2; T. 19 March 2015, E1/280.1, pp. 38-40; T. 27 July 2015, E1/323.1, pp. 30-32.

<sup>323</sup> See e.g., T. 27 July 2015 (oral ruling), E1/323.1, pp. 30-32.

<sup>324</sup> Trial Chamber Guidelines on the Disclosure of Cases 003 and 004 Civil Party Applications in Case 002/02, E319/14/2, 24 August 2015. Civil Party Applications must be distinguished from Written Records of Interview in that the latter are taken by a judicial entity, are presumed to be relevant and reliable, and may contain both exculpatory and inculpatory information.

<sup>325</sup> Request for clarification on additional resources for Defence teams in Case 002/02, E369, 23 September 2015; Response from the Office of Administration concerning the request for clarification on additional resources for Defence teams in Case 002/02, E369/1, 29 September 2015.

<sup>326</sup> T. 11 January 2017, E1/519.1, pp. 27-33.

<sup>327</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015, p. 18. The Chamber clarified that "it is the exclusive responsibility of the Co-Prosecutors to determine in good faith what information may be exculpatory".

pursuant to Internal Rule 87(4)".<sup>328</sup> It therefore required the Co-Prosecutors to satisfy the procedural hurdle for the admission of new evidence in order to file such evidence.<sup>329</sup> The Chamber further restricted the Co-Prosecutors' ability to submit Internal Rule 87(4) requests for the admission of any material from Cases 003 and 004 disclosed in Case 002/02 on the date of its October 2015 decision by imposing a deadline of 30 January 2016.<sup>330</sup> This was with a view to providing the Accused an opportunity to respond to such requests, and put forward rebuttal evidence, prior to the end of the evidentiary hearings.<sup>331</sup>

147. As to the submission that disclosure of new materials arising from ongoing investigations against other suspects is inappropriate after the completion of the investigation against the Accused, the Chamber does not consider the argument to be well founded. The Chamber recalls that the fact that additional relevant documents are admitted during the trial phase does not signify that the Case 002 investigation was deficient or failed to meet the required standard as contended by the Defence.<sup>332</sup> Rather, it recognises the practical reality that despite the issuance of a Closing Order, new evidence may become available that is conducive to ascertaining the truth. The Co-Prosecutors as well as both Defence teams have availed themselves of the opportunity to seek the admission of new evidence in Case 002/02 pursuant to Internal Rule 87(4) long after the close of the investigation.<sup>333</sup> The KHIEU Samphan Defence fails to establish how this caused the Accused unfair prejudice.

148. The Chamber considers that in view of the additional time and resources provided to the Defence, as well as the substantive and procedural limitations placed upon the

<sup>328</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015, disposition.

<sup>329</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015.

<sup>330</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015, disposition.

<sup>331</sup> Final Stages of Case 002/02 – Notice of Deadlines (TC), E421, 28 June 2016; Decision on Requests Regarding Internal Rule 87(4) Deadlines, E421/3, 26 August 2016; Decision on Requests Regarding Internal Rule 87(4) Deadlines (Full Reasons), E421/4, 21 September 2016.

<sup>332</sup> Decision on KHIEU Samphan Defence Motion Regarding Co-Prosecutors' Disclosure Obligations, E363/3, 22 October 2015, para. 28, 37.

<sup>333</sup> Decision on Khieu Samphan Rule 87(4) Request to Admit Documents in respect of Witness THET Sambath, E335/5, 15 June 2015 (granted); Decision on KHIEU Samphan's Request Pursuant to Internal Rule 87(4) to Admit New Documents to Case 002/02, E347/1, 30 June 2015 (granted in part); Decision on NUON Chea's Rule 87(4) Request for Admission of Six Statements and One Annex Relevant to Case 002/02, E319/30/1, 21 September 2015 (admitting seven documents disclosed by the Co-Prosecutors from Case 004).



Co-Prosecutors filings, the disclosure process did not violate the Accused's right to prepare an effective defence nor did it favour the Co-Prosecutors.

**2.5.6. *Notice of Charges, Scope of the Trial and Evidence in Case 002/02***

149. Both the KHIEU Samphan Defence and the NUON Chea Defence raise issues regarding notice of the charges and scope of the trial, and evidence in Case 002/02.

**2.5.6.1. Limitation of the scope of the trial to the facts in the Closing Order which are material and characterised as criminally implicating the Accused**

150. The KHIEU Samphan Defence submits that only facts in the Closing Order which are material and characterised as criminally implicating the Accused may be considered by the Chamber in its Judgement, citing in support Internal Rule 67(2) and French jurisprudence.<sup>334</sup> It suggests therefore that the assessment of the Accused's criminal liability must be limited to the material facts that have been set out in support of the characterisation of the crimes charged. Conversely, the Accused cannot be found liable for legally characterised crimes on the basis of material facts not referenced in respect thereof.<sup>335</sup>

151. The Chamber notes that Internal Rule 67(2) provides that a Closing Order must set out a description of material facts and their legal characterisation. This is an affirmative obligation to provide notice to the Accused of the nature of the charges against them.<sup>336</sup> The Defence also relies on French jurisprudence in support of the general legal principle that a Trial Chamber must limit its findings to those facts included within the indictment.<sup>337</sup> This general point of law is not in dispute. Where the Accused have particularised how the application of this principle requires a limitation of the alleged facts or charges under consideration, the Chamber will examine such arguments.

<sup>334</sup> KHIEU Samphan Closing Brief, paras 87-97.

<sup>335</sup> KHIEU Samphan Closing Brief, paras 87-97.

<sup>336</sup> Internal Rule 67(2) ("The Indictment shall be void for procedural defect unless it sets out the identity of the Accused, a description of the material facts and their legal characterisation by the Co-Investigation Judges, including the relevant criminal provisions and the nature of the criminal responsibility").

<sup>337</sup> KHIEU Samphan Closing Brief, para. 97.

2.5.6.2. Recharacterisation

152. The KHIEU Samphan Defence submits that the Chamber is seised of the facts set out in the Closing Order, not the legal characterisation.<sup>338</sup> No other Party makes any relevant submissions in this regard.

153. Internal Rule 98(2) states that “[t]he judgment shall be limited to the facts set out in the Indictment. The Chamber may, however, change the legal characterisation of the crime as set out in the Indictment, as long as no new constitutive elements are introduced.” Pursuant to this rule, and as established in the jurisprudence of this court, the Chamber is not bound by the legal characterisations adopted by the Co-Investigating Judges or the Pre-Trial Chamber in the Closing Order.<sup>339</sup> The Chamber may at any time change the legal characterisation of facts contained in the Closing Order to accord with any other applicable crime or form of criminal responsibility up to and including in the verdict.<sup>340</sup> This is subject only to the overriding requirements of a fair trial. In particular, this requires the Chamber to remain within the confines of the facts set out in the Closing Order,<sup>341</sup> and for the Accused to be put on notice of a possible re-characterisation.<sup>342</sup> Thus, a change in the legal characterisation of facts must be examined on the facts of the case to determine whether there is any breach of an accused’s right to a fair trial.

154. In the present case, the Chamber is seised of facts concerning deaths of individuals who allegedly died *en masse* at crime sites because of the living and/or working conditions imposed on them. These facts were legally characterised in the Closing Order only as extermination. The issue arises whether the Chamber may, evidence permitting, recharacterise such facts as murder, in particular with *dolus eventualis*. This would only be permissible if there were no breach of the fair trial rights of the Accused.

<sup>338</sup> T. 20 June 2017 (Closing Statements), E1/525.1.

<sup>339</sup> Case 001 Trial Judgement, paras 492-500; Case 002/01 Decision on the Applicability of Joint Criminal Enterprise (E100/6), paras 24-25; Case 002/01 SCC Judgement, para. 56.

<sup>340</sup> Case 002/01 Decision on the Applicability of Joint Criminal Enterprise (E100/6), para. 25. *See also*, Case 001 Trial Judgement, para. 493.

<sup>341</sup> Case 001 Trial Judgement, para. 494.

<sup>342</sup> Article 35 (new) of the ECCC Law provides that the Accused must be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them. *See also*, Article 14 of the ICCPR; Article 6(3) of the ECHR; Case 001 Trial Judgement, paras 497-498 and related footnotes.

155. The Chamber notes in this regard the interpretation of the application of Internal Rule 98(2) by Supreme Court Chamber in the Case 002/01 Appeal Judgement, which expressly addressed the possible recharacterisation of certain facts charged in the Closing Order as extermination to the crime of murder. The Supreme Court Chamber found that “it was open to the Trial Chamber – and it is now open to the Supreme Court Chamber on appeal – to recharacterise the factual allegations contained in the Closing Order (D427), which the Co-Investigating Judges had considered to amount to the crime of extermination, to the crime of murder”.<sup>343</sup> This finding was made in line with the fact that the Closing Order did not charge the Accused with the crime of murder in relation to Population Movement Phase Two, but only with extermination. Regarding the deaths that occurred due to the conditions and the circumstances of the transfer of population, the Supreme Court Chamber noted that while these facts did not fulfil the elements of the crime against humanity of extermination because the *mens rea* of extermination requires direct intent to kill (on a large scale), they fulfilled the elements of the crime against humanity of murder, notably the act of causing the death of another person with, at least, *dolus eventualis*. In so deciding, the Supreme Court Chamber did not address the issue of notice.

156. The Trial Chamber recalls that Cases 002/01 and 002/02 are based on the same Closing Order, with the latter case established pursuant to a decision on severance on 4 April 2014. Following severance, the Case File as well as the Parties and their representatives remained the same in both cases.

157. Given the specific relationship between the two cases and the fundamental similarity of the factual circumstances, the Trial Chamber considers that the Supreme Court Chamber’s ruling in Case 002/01, which involved the same Parties as the current case, effectively put the Parties on notice as of November 2016 that the Trial Chamber and the Supreme Court Chamber could change the legal characterisation of the facts in this case, specifically with regard to deaths that occurred due to the conditions and circumstances imposed to the victims, from the crime of extermination to that of murder including with *dolus eventualis*. The Parties were provided with the opportunity to make submissions during a Trial Management Meeting held in December 2016 on “the impact, if any, of the SCC judgement on the conclusion of evidentiary proceedings in

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<sup>343</sup> Case 002/01 Appeal Judgement, para. 562.

Case 002/02”, focusing in particular on issues that “may immediately affect evidentiary proceedings”.<sup>344</sup> No Party made submissions with respect to the Supreme Court Chamber’s ruling on this issue, contested its application in the current case, asked for further time to prepare related submissions or made such at a later stage. The Chamber accordingly finds that no violation of the Accused’s fair trial rights in Case 002/02 would result from the possible recharacterisation of facts charged in the Closing Order as extermination to the crime of murder. The Chamber will address this issue in the relevant sections of this Judgement where the issue arises on the facts.

2.5.6.3. Limitation of the scope of the trial to the facts contained in the Introductory Submission or Supplementary Submissions

2.5.6.3.1. *Parties’ submissions*

158. The KHIEU Samphan Defence submits that as the Co-Investigating Judges are themselves only seised with facts that are contained in the Introductory Submission or Supplementary Submissions, they cannot forward a case for trial on facts regarding which they had never been seised. Therefore, where the Closing Order exceeds the facts included within the Introductory Submission, the Chamber is prevented from considering such facts. These rules serve to protect the Accused’s right to have adequate notice of the nature and cause of the charges against him.<sup>345</sup> It further submits that the Defence did not have any opportunity to challenge the defects that affect the scope of the charges in the Closing Order before the Pre-Trial Chamber, because the Pre-Trial Chamber decided that the matter should be addressed by the Trial Chamber. It therefore submits that the Trial Chamber must rule on these matters, barring which the Accused would be deprived of effective recourse to challenge the alleged procedural defects.<sup>346</sup>

159. The KHIEU Samphan Defence contends on this basis that the Trial Chamber was improperly seised with the following facts:

- (a) deportation to Vietnam of Vietnamese living in Cambodia, as such facts were never mentioned in the Introductory Submission and the Chamber severed from Case 002/02 the charges of deportation at the Tram Kak Cooperatives;<sup>347</sup>

<sup>344</sup> Trial Chamber memorandum regarding Closing Briefs, SCC judgement in Case 002/01 and TMM, E449, 3 November 2016.

<sup>345</sup> KHIEU Samphan Closing Brief, paras 78-97.

<sup>346</sup> KHIEU Samphan Closing Brief, paras 294-299.

<sup>347</sup> KHIEU Samphan Closing Brief, paras 219-276.

(b) internal purges beyond the limited facts set forth in the Introductory Submission, namely those which occurred in the North Zone in 1976 and in the East Zone in 1978;<sup>348</sup>

(c) treatment of Buddhists in Tram Kak District (as this district is in Takeo province, which is not among the five provinces listed in the Introductory Submission); facts concerning a nationwide policy against Buddhists (as the Introductory Submission refers only to facts which occurred in seven pagodas. Other pagodas were mentioned later in Supplementary Submissions; not with regard to the treatment of Buddhists, but only because they were used as security centres);<sup>349</sup>

(d) genocide against Cham by killing, beyond the facts which occurred after 1977 in the district of Kang Meas (Central Zone) and Krouch Chhmar (East Zone) (as only this time period and these locations are mentioned in the Introductory Submission and in a Supplementary Submission, further noting that facts which occurred at Krouch Chhmar Security Centre were excluded of the scope of Case 002/02 in the Severance Decision);<sup>350</sup>

(e) death of detainees due to starvation, killings or extermination of Vietnamese, racial persecution, torture, other inhumane acts (offences against humane dignity and enforced disappearances) and enslavement at Kraing Ta Chan Security Centre (as no facts are mentioned in relation to these charges in the Introductory Submission or the relevant Supplementary Submission);<sup>351</sup>

(f) death of detainees due to starvation, racial persecution, wilfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial at Au Kanseng Security Centre (as no such facts are mentioned in relation to these charges in the Introductory Submission);<sup>352</sup> and

(g) enslavement (beyond facts of forced labour at K-11), torture and other inhumane acts insofar they rely on the use of torture at Phnom Kraol Security Centre and forced disappearances beyond those that occurred at the K-17 site.<sup>353</sup>

#### 2.5.6.3.2. *Admissibility of the Defence requests*

160. The Chamber recalls that according to Cambodian Law and Internal Rule 76(7): “Subject to any appeal, the Closing Order shall cure any procedural defects in the judicial investigation. No issues concerning such procedural defects may be raised

<sup>348</sup> KHIEU Samphan Closing Brief, paras 149-153, 277-293. *See also*, Requête urgente de la Défense de M. KHIEU Samphan aux fins de clarification de l'étendue de la saisine de la Chambre concernant les “purges internes”, E420, 24 June 2016, paras 38-40.

<sup>349</sup> KHIEU Samphan Closing Brief, paras 1492-1521.

<sup>350</sup> KHIEU Samphan Closing Brief, paras 1532-1539.

<sup>351</sup> KHIEU Samphan Closing Brief, paras 1230-1232, 1233-1234, 1241-1242, 1245-1246, 1249-1253, 1272-1273, 1275-1276, 1277-1283.

<sup>352</sup> KHIEU Samphan Closing Brief, paras 1309-1314, 1327-1329, 1336-1340.

<sup>353</sup> KHIEU Samphan Closing Brief, paras 1376-1379 and 1403, 1383-1385, 1392-1393, 1394-1399, 1407-1410.

before the Trial Chamber or the Supreme Court Chamber”.<sup>354</sup> The purpose of these provisions is to ensure that parties who have access to the case file during a judicial investigation and who should therefore be aware of procedural defects which may invalidate part of the investigation, act diligently in order to solve procedural matters at the pre-trial stage so that these matters do not impede the course of the trial. Therefore, when parties allege that there are procedural defects which affect a judicial investigation, including the Closing Order issued by the Co-Investigating Judges, the ordinary venue to seek remedy for such procedural defects is before the Pre-Trial Chamber. However, it is not entirely clear whether Internal Rule 76(7) also forecloses any challenge to a defect in the Closing Order at trial stage.

161. According to Internal Rule 89, when there is a matter concerning the jurisdiction of the Trial Chamber, or any issue which requires the termination of prosecution or the nullity of procedural acts made after the indictment is filed, this shall be raised as a preliminary objection “no later than 30 (thirty) days after the Closing Order becomes final, failing which it shall be inadmissible”.<sup>355</sup> The purpose of preliminary objections is to clarify the scope of the trial prior to the start of hearing evidence, *inter alia* by identifying issues which require the termination of proceedings. Article 323 of the Cambodian Procedural Code serves a similar purpose when it requires the parties to raise any challenge to the “regularity” of the charging instrument before the start of the debate on the merits.<sup>356</sup> Consequently, the Chamber finds that any request concerning the Trial Chamber’s authority to deal with parts of the Closing Order which is raised after the expiry of the time limit for the filing of preliminary objections shall be considered untimely and denied.

162. The KHIEU Samphan Defence contends that a number of facts addressed by the Closing Order were actually not within the scope of the judicial investigation and accordingly may not fall within the scope of the charges at trial. In other words, the

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<sup>354</sup> Internal Rule 76(7); Cambodian Code of Criminal Procedure, Article 256.

<sup>355</sup> Internal Rule 89.

<sup>356</sup> Cambodian Code of Criminal Procedure, Article 323 (“Challenges to the regularity of the citation, the written record of immediate appearance or the summons to the hearing shall be raised before questioning the Accused on the merits of the case begins”). *See also*, Cour de Cassation, Cass. Crim. 6 July 1993, No. 93-82133.

Defence contests the Trial Chamber's jurisdiction to adjudicate these facts, which, if granted, would lead to terminate the prosecution of the charges based thereupon.

163. Among the various requests made by the KHIEU Samphan Defence and listed above in paragraph 159, only the charge of deportation of Vietnamese as a crime against humanity was raised as a ground of appeal against the Closing Order, in this case by the IENG Sary Defence.<sup>357</sup> The Chamber notes that the Pre-Trial Chamber deferred to the Trial Chamber on this issue,<sup>358</sup> and the IENG Sary Defence consequently raised it in a preliminary objection before the opening of Case 002.<sup>359</sup> Following IENG Sary's death, the Chamber inquired as to whether any other Party adhered to the objection to the deportation charges, to which the KHIEU Samphan Defence responded affirmatively.<sup>360</sup> The Trial Chamber ruled on the request in its decision of 29 September 2014, rejecting the Defence objection to the inclusion of these charges.<sup>361</sup>

164. In its previous decision on this matter, the Trial Chamber did not take into account that the Pre-Trial Chamber had decided not to rule on this ground of appeal, deferring the matter to the trial stage. While the appropriateness of such deferral may be questioned, the Chamber notes that failure to consider the issue at trial under these circumstances could leave the Accused without effective recourse to challenge procedural defects in the Closing Order. Given that the matter was raised in a timely

<sup>357</sup> IENG Sary's Appeal Against the Closing Order, D427/1/6, 25 October 2010, para. 204.

<sup>358</sup> Decision on IENG Sary's Appeal against the Closing Order, D427/1/30, 11 April 2011, para. 51 (the Pre-Trial Chamber held that "the 'interests in acceleration of legal and procedural processes' are greater and outweigh the interests to be gained by considering these grounds of appeal at this stage as allegations of defects in the indictment may be raised by Ieng Sary at trial").

<sup>359</sup> IENG Sary's Motion to Strike Portions of the Closing Order due to Defects, E58, dated 24 January 2011, filed 24 February 2011.

<sup>360</sup> Further Information Regarding Remaining Preliminary Objections, E306, 25 April 2014, para. 5; Conclusions de la Défense de M. KHIEU Samphân sur les exceptions préliminaires sur lesquelles la Chambre n'a pas encore statué, E306/2, 20 May 2014.

<sup>361</sup> Decision on Defence Preliminary Objection Regarding Jurisdiction over the Crime Against Humanity of Deportation, E306/5, 29 September 2014, paras 7-10. The Chamber found that: from the beginning of the judicial investigation, the Introductory Submission authorised the Co-Investigating Judges to investigate deportation as a crime against humanity; the KHIEU Samphan Defence was informed at his initial appearance that the acts in the Introductory Submission were open to legal characterisation as the crime against humanity of deportation; that the Co-Prosecutors clearly referred in their final submission to the deportation of Vietnamese; and that the Closing Order shows that the Accused are charged with the crime against humanity of deportation in relation to Prey Veng, Svay Rieng and the Tram Kak Cooperatives. The Chamber concluded that the KHIEU Samphan Defence had an opportunity prior to the opening of the trial to identify the alleged irregularity in the Closing Order, and failed to demonstrate that any fair trial issue warranted the Trial Chamber's intervention.

fashion at trial as a preliminary objection pursuant to Internal Rule 89, the Chamber shall examine the merits of the objection against deportation.

165. With respect to the remaining objections,<sup>362</sup> the Chamber finds that they amount to challenges to its jurisdiction to adjudicate a number of facts. As such, they should have been filed within the time limit set by Internal Rule 89.<sup>363</sup> These requests have been raised outside of this time limit and are therefore rejected as belated.

#### 2.5.6.3.3. *The charge of deportation of Vietnamese*

166. At the outset, the Chamber notes that the degree of detail required in the Introductory Submission and the Closing Order for the presentation of the facts to be investigated or to be adjudicated is different. In this regard, the Pre-Trial Chamber has held that “while only a summary of facts and type of offence alleged are required at the stage of the Introductory Submission, a more complete ‘description of the material facts’ and their legal characterisation is required in the Closing Order”.<sup>364</sup>

167. To understand the precise scope of the facts of which the Co-Prosecutors intended to seise the Co-Investigating Judges, the Chamber shall consider the facts as characterised in the Introductory Submission in the light of all supporting documents which are either referenced in its footnotes or in its annexes. The Chamber notes that “[t]h[e] Introductory Submission includes Schedules 1-105 which contain excerpted evidence of the crimes alleged in this submission”, and an “Annex C [which] is a

<sup>362</sup> Concerning the claim that the scope of Case 002/02 concerning the Internal Purges trial topic should not be extended beyond the limits of the Introductory Submission as alleged by the Defence, the Chamber notes that this matter has never been raised before the Pre-Trial Chamber or before the opening of the trial in Case 002. Further, the Chamber notes that this argument was raised, among others, in a submission filed on 24 June 2016 requesting the Chamber to clarify the scope of the trial topic on Internal Purges. In decision E420/1, the Chamber ruled that the scope of Case 002/02 remains as set out in the Trial Chamber’s Severance Decision. *See* Decision on KHIEU Samphan Urgent Request for Clarification of the Scope of Case 002/02 concerning Internal Purges, E420/1, 1 July 2016.

<sup>363</sup> The allegations contained in these objections are based on a mere comparative reading of the Introductory Submission, Supplementary Submissions and the Closing Order. All the necessary information was available since 15 September 2010 when the Closing Order was issued. Since then the Accused have been on notice of the scope of the charges against them but have failed to avail themselves of the opportunity to raise the matter before the Pre-Trial Chamber or before this Chamber in a preliminary objection.

<sup>364</sup> Decision on the Appeals Against the Co-Investigating Judges Order on Joint Criminal Enterprise (JCE) (PTC), D97/14/15, 20 May 2010, para. 92.



document index of the other evidentiary material the Co Prosecutors have reasons to believe supports the allegations made in this submission”.<sup>365</sup>

168. According to paragraph 12 of the Introductory Submission, “[t]he CPK employed systematic discrimination against targeted groups including: [...] the Vietnamese” and “the extent of this systematic discrimination” is demonstrated by the “following criminal acts”, namely, “The CPK pursued a policy of discriminating against and killing ethnic Vietnamese”. Among the documents relied upon by the Co-Prosecutors, either in the footnotes of the Introductory Submission, or in the annexes included to provide evidence supporting the alleged facts subject to investigation, numerous references have been made to two documents. The first document is a book published by the Department of Press and Information of the Ministry of Foreign Affairs of Democratic Kampuchea entitled *The Black Paper Facts and Evidences of the Acts of Aggression and Annexation of Vietnam Against Kampuchea* (“Black Paper”).<sup>366</sup> The second document is a book written by Ben KIERNAN entitled “The Pol Pot Regime: Race Power and Genocide in Cambodia under the Khmer Rouge 1975-79”. Both documents have not only been annexed to the Introductory Submission but have also been analysed in document index D3/IV and presented as containing allegations which “assist in proving” a discriminatory intent against Vietnamese who were subjected to forced movement. More precisely, there is a clear reference to a policy to “expel” the Vietnamese minority living on Cambodian territory.<sup>367</sup> The Chamber finally observes that the Introductory Submission expressly lists “deportation” among the crimes subject

<sup>365</sup> Introductory Submission, D3, fn. 572. *See also*, Cass. Crim. 29 Sept 1992, Bull. Crim. N° 288 (« sa décision n’encourt pas, pour autant, la censure dès lors qu’il n’est pas contesté que les procès-verbaux d’enquête préliminaire ont été annexés au réquisitoire introductif et que le simple visa, dans ce réquisitoire, des pièces qui y étaient jointes équivaut à une analyse desdites pièces, analyse à laquelle la chambre d’accusation a procédé souverainement »); Cass. Crim. 4 août 1998, Bull. Crim. N° 222 (« Lorsque la chambre d’accusation, qui analyse souverainement les pièces annexées au réquisitoire introductif, constate que la saisine du magistrat instructeur, quant aux faits, est déterminée par ces pièces, le réquisitoire ne peut être annulé, s’il satisfait en la forme aux conditions essentielles de son existence légale »).

<sup>366</sup> Introductory Submission, D3, fns 37, 291; Schedules 1-105, D3/I, ERN 00146109; Annex C: Other Evidentiary Material, D3/IV, ERN 00141530.

<sup>367</sup> Schedules 1-105, D3/I, ERN 00146217-00146224 (Annex C: Other Evidentiary Material, D3/IV, ERN 00141530 (asserting relevance of the Black Book to “Forced Movement of ethnic Vietnamese and discriminatory intent”); Annex C: Other Evidentiary Material, D3/IV, ERN (En) 00141532; Annex C: Other Evidentiary Material, D3/IV, ERN (En) 00141533 (noting reference in Ben Kiernan’s book, “The Pol Pot Regime” to Interview with SIN Song.); Book by B. Kiernan, *The Pol Pot Regime*, E3/1593, p. 55, ERN (En) 01150024, fn. 108 (“Saloth Sar *alias* Pol Pot’s eight points articulated during the 20 May 1975, *Conference Point 7 was to expel the entire Vietnamese minority population*”, and “assist in proving” “Common criminal plan” and “Discriminatory intent against ethnic Vietnamese”) (emphasis added).

to investigation. The Chamber considers that the factual allegations provided adequate notice to the Accused that the Co-Investigating Judges were to investigate facts committed in furtherance of a CPK policy of discrimination against the Vietnamese, including by subjecting them to forced movement or deportation from Cambodia. Therefore, the Chamber rejects the KHIEU Samphan Defence's claim that facts constituting deportation were not included within the scope of the judicial investigation.

2.5.6.3.4. *Charges of deportation at the Tram Kak Cooperatives*

169. The KHIEU Samphan Defence also submits that the Chamber severed from Case 002/02 the charges of deportation as a crime against humanity at the Tram Kak Cooperatives. In support, it cites to a parenthetical statement within the French version of the Case 002 Additional Severance Decision Annex, which states that charges of deportation will be limited to Prey Veng and Svay Rieng (omitting a reference to the Tram Kak Cooperatives).<sup>368</sup> The Chamber notes that the English and Khmer versions of the same annex indicate that charges of deportation at Tram Kak Cooperatives are included within the scope of Case 002/02.<sup>369</sup> It is apparent from this that the French translation on this point is in error. Further, all language versions of the Annex include reference to paragraph 1397 of the Closing Order which includes charges of deportation at the Tram Kak Cooperatives. Noting that the KHIEU Samphan Defence could have raised this discrepancy at any time since the Chamber's Severance Decision in April 2014, the Chamber is not convinced that any unfairness was occasioned by the error in the French version of the Annex.<sup>370</sup>

2.5.6.4. *Notice of charges regarding persecution on political grounds*

170. According to the Closing Order, the CPK designed and implemented the policy to re-educate "bad-elements" and kill "enemies", both inside and outside the Party ranks.<sup>371</sup> Also, the Closing Order finds that the CPK identified several groups as "enemies" targeted for political persecution based on their real or perceived political beliefs or political opposition to the CPK. In this regard, the Closing Order refers to

<sup>368</sup> KHIEU Samphan Closing Brief, para. 228, *citing* Case 002 Additional Severance Decision Annex, p. 4.

<sup>369</sup> Case 002 Additional Severance Decision Annex, p. 3 (En), p. 5 (Kh).

<sup>370</sup> In this context, the Chamber recalls that translation support was provided to all Defence teams.

<sup>371</sup> Closing Order, para. 157.

three groups as examples, using non-exhaustive language (namely “such as”): (i) former ranking civilian and military personnel of the Khmer Republic; (ii) “New People” or “17 April People”; and (iii) intellectuals, students and diplomats who were living abroad and were recalled to Cambodia. The Closing Order adds that these categories continued to expand over time.<sup>372</sup> Accordingly, the three categories mentioned in the Closing Order are not meant to be exhaustive, and the KHIEU Samphan Defence’s submissions to the contrary are rejected.<sup>373</sup> Where necessary, the KHIEU Samphan Defence’s challenges to the specific categories of enemies identified by the Closing Order at each crime site will be addressed in the relevant Legal Findings sections of those crime sites.

171. The NUON Chea Defence submits that the charges regarding the crimes allegedly committed against former Khmer Republic soldiers and officials as well as the policy pursuant to which they were allegedly targeted are too vague, in violation of NUON Chea’s right to be promptly informed of the charges.<sup>374</sup> The NUON Chea Defence notes that while the alleged targeted groups of Vietnamese, Cham and Buddhists are discussed individually in section VIII-D (“Factual Findings of Crimes” under “Treatment of Specific Groups”), former Khmer Republic soldiers and officials are not separately discussed in this particular section of the Closing Order. The NUON Chea Defence adds that section VI-A of the Closing Order (“Findings of Responsibility under the Joint Criminal Enterprise”) does not include political persecution in relation to the targeting of former Khmer Republic officials. Despite noting that the Chamber made it clear in its Additional Severance Decision that political persecution was charged regarding the treatment of former Khmer Republic soldiers and officials in four crime sites (*i.e.* the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre),<sup>375</sup> the NUON Chea Defence contends that it is

<sup>372</sup> Closing Order, paras 1416-1418. *See also*, Closing Order, paras 1363-1364, 1424.

<sup>373</sup> KHIEU Samphan Closing Brief, paras 884-885, 1255 (Tram Kak Cooperatives), 1009, 1011 (Trapeang Thma Dam Worksite), 1063 (1<sup>st</sup> January Dam Worksite), 1121-1122 (Kampong Chhnang Airfield Construction Site), 1255 (Kraing Ta Chan Security Centre), 1324-1325 (Au Kanseng Security Centre), 1386-1389 (Phnom Kraol Security Centre).

<sup>374</sup> NUON Chea Closing Brief, para. 928.

<sup>375</sup> NUON Chea Closing Brief, para. 929 *referring to* Case 002 Additional Severance Decision, para. 44 (“The scope of Case 002/02 includes, *inter alia*, the Tram [Kak] Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre, and Kraing Ta Chan Security Centre. Factual allegations relevant to each of these crime sites are relevant to the policy of targeting of former Khmer Republic officials. Political persecution against former Khmer Republic officials is also charged in relation to each of these four crime sites. The Chamber has therefore included within the scope of Case 002/02 the policy

not clear which specific factual allegations are relevant to the treatment of former Khmer Republic officials, what the alleged policy was or what the legal qualification of such facts is.<sup>376</sup> No other Party made submissions in this regard.<sup>377</sup>

172. The Chamber recalls that Internal Rule 21(1)(d) provides, *inter alia*, that the Accused has the right to be informed of any charges brought against him. A charge must be understood as comprising both the underlying material facts and the legal qualification.<sup>378</sup>

173. The Closing Order must be examined holistically when determining the charges and the supporting material facts. Whether the charges regarding former ranking civilian and military personnel of the Khmer Republic are sufficiently specific so as not to impair NUON Chea's right to mount an effective defence thus depends in part on how these facts are charged in the locations relevant to Case 002/02: the Tram Kak Cooperatives, the 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre.<sup>379</sup> In the relevant parts of this Judgement, the Chamber has found that the facts are charged with sufficient specificity in relation to these locations.

174. Similarly, the Closing Order explicitly finds that a policy to target former ranking civilian and military personnel of the Khmer Republic existed in relation to these crime sites, and charges political persecution on such basis.<sup>380</sup> It finds that this policy came into existence before 1975 and continued until at least 6 January 1979, and that it involved the arrest or killing of members of this group in order to prevent them from staging "a counter-revolutionary comeback".<sup>381</sup> The policy formed part of the common

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concerning targeting of former Khmer Republic officials, limited to implementation at the Tram [Kak] Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre, and Kraing Ta Chan Security Centre.").

<sup>376</sup> NUON Chea Closing Brief, paras 930-931.

<sup>377</sup> The KHIEU Samphan Defence made submissions on the related issue of political persecution, which the Chamber addresses elsewhere. *See above*, para. 170.

<sup>378</sup> Case 002/01 Appeal Judgement, para. 562; *Ntagerura et al.* Trial Judgement, para. 29; *Pélissier and Sassi v. France*, Judgement, ECtHR, Application No. 25444/94, 25 March 1999, para. 52.

<sup>379</sup> For the relevant legal findings at these sites, *see* Sections 10.1.13.6 (Tram Kak Cooperatives); 11.2.24.3 (1<sup>st</sup> January Dam Worksite); 12.2.24.1.6 (S-21 Security Centre); 12.3.12.6 (Kraing Ta Chan Security Centre).

<sup>380</sup> Closing Order, paras 157, 1416-1418.

<sup>381</sup> Closing Order, para. 208.

purpose.<sup>382</sup> The Closing Order clearly states that this group was targeted “throughout Cambodia”, including in the four locations within the scope of Case 002/02.<sup>383</sup>

175. As submitted by the NUON Chea Defence, the Closing Order’s “Findings of Responsibility under the Joint Criminal Enterprise” does not include political persecution in relation to former Khmer Republic soldiers and officials. The Chamber notes, however, that the Closing Order clearly specifies that political persecution in relation to the treatment of former ranking civilian and military personnel of the Khmer Republic is charged at the four crime sites identified above.<sup>384</sup> The Chamber thus considers that it is properly seised of this charge, and moreover, that the Parties were on notice of this charge.

176. For these reasons, the Chamber rejects the NUON Chea Defence’s submissions regarding the lack of specificity of the charges related to the crimes allegedly committed against former Khmer Republic officials.

2.5.6.5. Notice of charges regarding the nationwide policy on the treatment of Buddhists

177. The NUON Chea Defence submits that the charges related to the targeting of Buddhists are limited to the Tram Kak Cooperatives and therefore any conviction for these charges must be based on evidence from this crime base. Although the Chamber admitted evidence on the treatment of Buddhists outside of Tram Kak due to its relevance to an alleged nationwide policy, the NUON Chea Defence submits that this evidence cannot be used to support a conviction because NUON Chea was not provided notice of the inclusion of other geographic locations in the Closing Order.<sup>385</sup>

178. The Chamber recalls that in severing Case 002/02, it found that “the inclusion of general allegations concerning the treatment of Buddhists and the Tram Kak Cooperative as one example crime site reasonably reflects the scale and nature of the alleged acts while maximising the efficient hearing of this topic”. It therefore declined to extend the treatment of Buddhists to a nationwide scope.<sup>386</sup> Consistently with this

<sup>382</sup> Closing Order, paras 157, 205-209.

<sup>383</sup> Closing Order, para. 209.

<sup>384</sup> Closing Order, paras 1416-1418.

<sup>385</sup> NUON Chea Closing Brief, para. 895.

<sup>386</sup> Case 002 Additional Severance Decision, para. 38; Case 002 Additional Severance Decision Annex, p. 2.

decision and with the notice of the charges provided to the Parties, the Chamber may not enter a conviction against the Accused for the treatment of Buddhists outside of the Tram Kak Cooperatives. However, this does not preclude the consideration of evidence that is relevant to the development of the CPK policy on the treatment of Buddhists, which may have originated outside of Tram Kak district.<sup>387</sup>

2.5.6.6. Exclusion from the scope of the trial of the charges contained in the Closing Order which were not supported by enough evidence for indictment

179. The KHIEU Samphan Defence submits that, in order to not deprive the Accused of their rights to effective recourse against all the procedural defects which affect the Closing Order, the Trial Chamber should consider its claims concerning the Co-Investigating Judges' failure to gather facts capable of supporting the charges at the level required for an indictment, and should nullify the parts of the Closing Order concerning the charges insufficiently proved to forward the case for trial.<sup>388</sup>

180. The Chamber notes that it is unclear to precisely which deficient charges the Defence refers, and whether the Pre-Trial Chamber was seised of any claims concerning the alleged defects. In the absence of any further substantiation these complaints are rejected.

2.5.6.7. Facts allegedly outside the scope of the indictment

2.5.6.7.1. *Khmer Krom*

181. The KHIEU Samphan Defence and NUON Chea Defence submit that the Chamber was never seised of facts pertaining to the treatment of the Khmer Krom minority group as such charges did not form part of the Closing Order, noting in particular decisions of the Co-Investigating Judges and the Pre-Trial Chamber regarding the scope of the Case 002 investigations.<sup>389</sup> The NUON Chea Defence also submits that the treatment of Khmer Krom cannot be considered as part of the charges related to the treatment of Vietnamese because they are not Vietnamese, either by nationality, ethnicity or racial group.<sup>390</sup>

<sup>387</sup> T. 19 May 2015, E1/301.1, p. 88.

<sup>388</sup> KHIEU Samphan Closing Brief, paras 294-299.

<sup>389</sup> KHIEU Samphan Closing Brief, para. 157; NUON Chea Closing Brief, paras 707-711.

<sup>390</sup> NUON Chea Closing Brief, paras 708- 711.

182. The Closing Order charges the Accused with genocide of “people who belonged to the Vietnamese group (an ethnic and national group, who may also have been considered as a racial group by the CPK)” throughout Cambodia.<sup>391</sup> It also charges the Accused with murder, extermination, deportation and racial persecution of Vietnamese in numerous locations throughout Cambodia.<sup>392</sup> Although evidence related to Khmer Krom is discussed several times in the Closing Order, particularly in relation to the treatment of Vietnamese, Khmer Krom do not form an independent basis for the charges in the legal findings of the Closing Order.<sup>393</sup>

183. Consequently, in response to a request to determine whether evidence of the treatment of Khmer Krom fell within the scope of Case 002/02,<sup>394</sup> the Chamber held:

1) Case 002/02 does not include charges relating to the targeting of the Khmer Krom as a specific group -- that is, persecution as a crime against humanity or genocide of the Khmer Krom. No Party has requested to re-characterise any factual allegations within the scope of Case 002/02 to include counts of persecution or genocide directed at the Khmer Krom as a distinct group.

2) The Chamber will continue to assess evidence on a case by case basis in accordance with the ECCC legal framework. As a general guideline where evidence is proposed or discussed in Court, which appears to relate solely to the targeting of the Khmer Krom, and to be exclusively relevant to the establishment of the elements of persecution as a crime against humanity or genocide against the Khmer Krom, it will be deemed not relevant and will not be allowed.

3) Evidence pertaining to the Khmer Krom may, nonetheless, be relevant to other issues in Case 002/02, such as the historical and political context of the case or to other crimes which are charged, and certain of the victims happen to be Khmer Krom, and as such may be admissible. However, the Chamber request that the Parties focus on leading evidence which most strongly pertains to the charges at issue in Case 002/02. While the Chamber will not exclude witness or civil party testimony which touches upon the fact that an individual is Khmer Krom insofar as it is relevant to other issues within the scope of Case 002/02, this should not be the focus of counsels’ questioning as the targeting of Khmer Krom is not charged in this case.<sup>395</sup>

184. Consistently with this decision, the Chamber later ruled that “evidence pertaining to the Khmer Krom may be relevant to this case [but] issues specific to their alleged persecution as a targeted group fall outside the scope of Case 002/02”, and that

<sup>391</sup> Closing Order, para. 1343.

<sup>392</sup> Closing Order, paras 1373, 1378, 1381, 1386, 1397-1401, 1422-1425.

<sup>393</sup> Closing Order, paras 111, 265, 320, 818, 1468, 1586.

<sup>394</sup> T. 12 February 2015, E1/262.1, pp. 17-21.

<sup>395</sup> T. 25 May 2015 (oral ruling), E1/304.1, pp. 62-64.

“evidence pertaining to the Khmer Krom may be relevant to issues other than persecution of the Khmer Krom as a distinct group and therefore admissible”.<sup>396</sup> The Chamber admitted written statements related to the treatment of Khmer Krom due to their relevance to the historical and political context “or to other crimes charged”.<sup>397</sup> It also heard testimony concerning the treatment of Khmer Krom.

185. The Chamber notes that all arguments put forward by the KHIEU Samphan Defence have been dealt with in its previous decision and reaffirms this decision. The Closing Order does not identify the Khmer Krom as a sub-group of the Vietnamese, and therefore the Defence have never been adequately notified that allegations concerning the Khmer Krom as a sub-group could be part of the charges.<sup>398</sup> Therefore the Chamber does not consider itself properly seised of the targeting of Khmer Krom either as a specific group or as sub-group of the Vietnamese.

#### 2.5.6.7.2. *Rape outside the context of forced marriage*

186. The KHIEU Samphan Defence submits that the Chamber was never seised of allegations of the crime of rape outside the context of forced marriage and therefore it cannot consider evidence of rape as relevant to any charges in the Closing Order.<sup>399</sup> The Defence takes particular issue with the Trial Chamber’s decision of 12 June 2015 in which the Chamber found that it could consider evidence of rape as long as the evidence was not considered for that particular crime.<sup>400</sup> It submits that considering acts of rape as evidence in support of other charges amounts to recharacterisation of facts of which the Chamber is not seised.<sup>401</sup>

<sup>396</sup> Decision on two Requests by the International Co-Prosecutor to Admit Documents Pursuant to Rule 87(3) and 87(4) (E319/51 and E319/52), E319/52/4, para. 18; Decision on International Co-Prosecutor’s Requests to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4), E319/47/3, para. 25.

<sup>397</sup> Decision on two Requests by the International Co-Prosecutor to Admit Documents Pursuant to Rule 87(3) and 87(4) (E319/51 and E319/52), E319/52/4; Decision on International Co-Prosecutor’s Requests to Admit Written Records of Interview Pursuant to Rules 87(3) and 87(4), E319/47/3.

<sup>398</sup> In light of this ruling, the Chamber need not determine whether the Khmer Krom were in fact racially, ethnically, or nationally Vietnamese. See NUON Chea Closing Brief, paras 708-709.

<sup>399</sup> KHIEU Samphan Closing Brief, para. 171.

<sup>400</sup> KHIEU Samphan Closing Brief, paras 198-199.

<sup>401</sup> KHIEU Samphan Closing Brief, para. 200.



187. The Chamber has consistently held that rape outside the context of forced marriage was not charged in Case 002/02.<sup>402</sup> At the outset of Case 002/02, the Chamber held that:

[T]here is no legal basis for the Lead Co-Lawyers for the Civil Parties' request to add charges of rape (outside the context of forced marriage) committed within Security Centres to the Closing Order (E99/1, paras 32-41, 43, 45). The Co-Investigating Judges specifically found that while rape did occur in security centres, these crimes could not be linked to the Accused as the evidence did not support a finding that the CPK leaders used rape as a policy in Security Centres (D427, paras 1426-1429). Although the Chamber may change the legal characterisation of a crime as set out in the Closing Order *as long as no new constitutive elements are introduced* (Internal Rule 98(2)), the Chamber has no authority to add new facts or charges to the Closing Order that were dismissed by the Co-Investigating Judges, a decision that was not disturbed by the Pre-Trial Chamber.<sup>403</sup>

188. The Chamber has noted that “the occurrence of rape may be relevant, among others, to the conditions in Kraing Ta Chan Security Centre” notwithstanding the fact that the Closing Order did not allege that the Accused bear criminal responsibility for rape at Kraing Ta Chan based on any mode of liability.<sup>404</sup> More recently, the Chamber rejected a request to recharacterise rape as the crime against humanity of rape, other inhumane acts of attacks against human dignity or torture.<sup>405</sup> The Chamber agrees with the KHIEU Samphan Defence that consideration of evidence of rape in support of other charges in the Closing Order would amount to recharacterisation of the facts, which the Chamber has held is impermissible in these circumstances. Therefore, evidence of rape in Security Centres (outside the context of forced marriage) will not be considered in

<sup>402</sup> Further information regarding remaining preliminary objections (TC), E306, 25 April 2014, para. 3; Decision on KHIEU Samphan's Request for Confrontation Among Witness Srey Than and Civil Parties Say Sen and Saut Saing and Disclosure of Audio Recordings of Interviews of Say Sen, E348/4, 12 June 2015, paras 14-15; Decision on Lead Co-Lawyers' Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage, E306/7/3, 30 August 2016. *See also*, Decision on Civil Parties' Immediate Appeal Against the Trial Chamber's Decision on the Scope of Case 002/02 in relation to the Charges of Rape (SCC), E306/7/3/1/4, 12 January 2017 (finding the appeal inadmissible).

<sup>403</sup> Further information regarding remaining preliminary objections (TC), E306, 25 April 2014, para. 3.

<sup>404</sup> Decision on KHIEU Samphan's Request for Confrontation Among Witness Srey Than and Civil Parties Say Sen and Saut Saing and Disclosure of Audio Recordings of Interviews of Say Sen, E348/4, 12 June 2015, para. 11.

<sup>405</sup> Decision on Lead Co-Lawyers' Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage, E306/7/3, 30 August 2016. *See also*, Decision on Civil Parties' Immediate Appeal Against the Trial Chamber's Decision on the Scope of Case 002/02 in relation to the Charges of Rape, E306/7/3/1/4, 12 January 2017 (dismissing an appeal of this decision as inadmissible).

support of the elements of any criminal charge in this case.<sup>406</sup> Nonetheless, such facts may be relevant to understanding the general context of the living conditions in Security Centres and to assessing the credibility of the authors of statements implicating perpetrators of such crimes or implicated by other declarants.

2.5.6.7.3. *Crimes committed by the Revolutionary Army of Kampuchea on Vietnamese territory*

189. The KHIEU Samphan Defence submits that crimes committed by the RAK on Vietnamese territory are not within the scope of Case 002/02 pursuant to the severance order of the Chamber and therefore any evidence of such criminality that was adduced at trial, such as the testimony of Stephen MORRIS on this point, must be excluded from the Chamber's deliberations.<sup>407</sup>

190. The Chamber recalls that, pursuant to its Case 002 Additional Severance Decision, these facts contained in paragraphs 832-840 of the Closing Order do not form part of Case 002/02.<sup>408</sup> Accordingly, the Chamber may not attribute criminal responsibility for crimes based on these facts.<sup>409</sup> Evidence regarding crimes committed by the RAK in Vietnam, including portions of Stephen MORRIS's testimony concerning those incursions into Vietnamese territory, will be disregarded by the Chamber in assessing the charges in this case. Such facts may be considered by the Chamber for other purposes, including assessing the credibility of witnesses, understanding the context of the international armed conflict, or the grave breaches charges related to civilians or soldiers *hors de combat* who were arrested during such skirmishes on Vietnamese territory and who were sent to S-21 thereafter.

<sup>406</sup> Any evidence of rape in Security Centres within the context of forced marriage will be discussed, where relevant, in Section 14: Regulation of Marriage.

<sup>407</sup> KHIEU Samphan Closing Brief, paras 204-212.

<sup>408</sup> Case 002 Additional Severance Decision, para. 32, Disposition.

<sup>409</sup> Case 002/01 Appeal Judgement, para. 227.

### 3. HISTORICAL BACKGROUND

191. The events that took place during the Democratic Kampuchea (“DK”) era must be understood within the context of developments that preceded its foundation.<sup>410</sup> The Chamber outlines in this section the historical context of events between 17 April 1975 and 6 January 1979.<sup>411</sup>

#### **3.1. Development of the CPK**

192. In setting out the development of the Communist Party of Kampuchea (“CPK”), the Chamber has predominantly relied upon the testimony and publications of the Accused and expert witnesses, who collectively provided a detailed survey of the period preceding 17 April 1975.

193. In particular, the Chamber has made extensive reference to NUON Chea’s writings and testimony on the history of the CPK, which the Chamber finds to be largely consistent, both internally and externally, and therefore a reliable basis for factual findings. In addition, the Chamber has relied upon an interview of NUON Chea by KHEM Ngun.<sup>412</sup> Although NUON Chea sought to discredit the interviewer when questioned in court,<sup>413</sup> the Chamber finds the answers he provided during the course of that interview to be consistent with other statements he made, including those in court. Indeed, NUON Chea acknowledged that he had “mostly” told the truth to KHEM Ngun, noting only that he had possibly withheld certain information from him.<sup>414</sup> As it is the truth of the contents of the interview and not the reliability of KHEM Ngun’s record thereof which is at issue, the Chamber is satisfied that the transcript of the interview constitutes a reliable basis for factual findings.

<sup>410</sup> The NUON Chea and KHIEU Samphan Defence teams both submit that Cambodia’s historical relationship with Vietnam is crucial to understanding the state of armed conflict that existed during the DK period. *See* NUON Chea Closing Brief, paras 107, 151-157, 164-178; KHIEU Samphan Closing Brief, paras 680-691. Regarding the armed conflict as of 17 April 1975, *see* Section 4: General Overview.

<sup>411</sup> This may include clarifying a given context, establishing by inference the elements of criminal conduct within the temporal jurisdiction of the ECCC, or demonstrating a deliberate pattern of conduct. *See Nahimana et al.* Appeal Judgement, para. 315.

<sup>412</sup> NUON Chea Interview by KHEM Ngun, E3/3, ERN (En) 00184652-00184679.

<sup>413</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 42-43.

<sup>414</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 45 (“And as for whether I was truthful or not, it depended on the situation at that time [...]. At some point, I talked truthfully, but at some other point, I refrained from saying things.”).

194. The Chamber found helpful KHIEU Samphan's testimony with regard to events preceding the DK era and has relied upon it subject to the appropriate caution and corroboration. The Chamber has nevertheless relied upon his publication, *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea* in a limited sense,<sup>415</sup> noting its extensive references to the works of Philip SHORT and other authors. The Chamber has referred to this publication only insofar as it proffers unique, unaccredited historical accounts by the Accused, or corroborates other reliable accounts before the Chamber.

195. In weighing the overall reliability of historical accounts, the Chamber has sought corroboration in contemporaneous materials and other evidence before it, attributing more weight to testimony heard in court and materials whose authors were either questioned during the trial on the relevant historical topics or were available for examination by the Parties. To that extent, the Chamber has particularly relied upon the works and testimony of Elizabeth BECKER (who was a war correspondent in Cambodia in the early 1970s and was able to provide an eyewitness account following her travels to DK in 1978), Philip SHORT and David CHANDLER. Consistently with its approach to the overall assessment of evidence,<sup>416</sup> the Chamber has further considered common narratives, biases, memory errors and motives when scrutinising the veracity of all historical evidence.

### 3.1.1. 1930 – 1970: *Nascence to Armed Struggle*

196. The origins of the Cambodian communist movement trace back to the founding of the Vietnamese Communist Party in January 1930 by HO Chi Minh.<sup>417</sup> The Party was renamed the Indochinese Communist Party ("ICP") later that year on the direction of the Communist International (Comintern), to reflect the movement's objective of promoting proletarian internationalism among the constituent Indochinese territories of modern-day Vietnam, Cambodia and Laos.<sup>418</sup> Despite its name, the ICP did not initially

<sup>415</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16.

<sup>416</sup> Section 2.4.6: Evidentiary and Procedural Principles: Final Assessment of the Evidence.

<sup>417</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 63; T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 31; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 10; T. 18 October 2016 (Stephen MORRIS), E1/485.1, pp. 88-89; T. 19 October 2016 (Stephen MORRIS), E1/486.1, p. 12.

<sup>418</sup> Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 29, 34, ERN (En) 01001696, 01001701; Book by N. Chanda: *Brother Enemy*, E3/2376, p. 118, ERN (En) 00192303 (inherent in this movement was also eschewing national chauvinism).

contain any Cambodian or Lao members and remained inactive in Cambodia for a number of years.<sup>419</sup>

197. In 1941, the Hanoi-based ICP directorate founded the Viet Minh, an anti-imperialist and nationalist front. While establishing bases in Cambodia, the Viet Minh progressively recruited ethnic Khmers with a view to infiltrating the amorphous networks of the Khmer Issarak (Freedom) resistance movement fighting against French colonial authorities. Issarak groups containing both non-communist and communist factions had been engaged in armed struggle against the French in Cambodia since the 1940s and counted among their number KE Pauk, SAO Phim, MOUL Sambath *alias* RUOS Nhim, CHHIT Choeun *alias* Ta Mok, NEY Sarann *alias* Ya, Achar SOK *alias* TOU Samouth and SIEU Heng.<sup>420</sup> In April 1950, the Viet Minh and Khmer Issarak mobilised themselves into a loosely-constituted Unified Issarak Front (“UIF”) at the “First National Congress of the Khmer Resistance”, with the predominantly Vietnamese-staffed Viet Minh dominating the Front.<sup>421</sup> By assimilating the Issarak movement, the ICP, which by now included CHOU Chet *alias* Sy and KEO Meas,<sup>422</sup> as well as former Thai Communist Party member NUON Chea,<sup>423</sup> had succeeded in

<sup>419</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 78, 81; T. 18 October 2016 (Stephen MORRIS), E1/485.1, pp. 88-89, 96-97; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 29, ERN (En) 01001696; T. 17 March 2016 (Alexander HINTON), E1/404.1, pp. 69-72.

<sup>420</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 45, 48; T. 19 October 2016 (Stephen MORRIS), E1/486.1, pp. 22-23 (referring to the Khmer Viet Minh as the Cambodians who had later retreated to Vietnam under the terms of the 1954 Geneva Accords); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 31, 33-34, ERN (En) 01001698, 01001700-01001701 (stating that in 1949-1950 Viet Minh forces in Cambodia were “overwhelmingly” staffed by Vietnamese); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 89-90, 164, 177, 281, ERN (En) 00396281-00396282, 00396364, 00396377, 00396489; Book by E. Becker: *When the War was Over*, E3/20, pp. 145, 178, 180, ERN (En) 00237850, 00237883, 00237885; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 35, 47-48, 111, ERN (En) 00193118, 00193130-00193131, 00193194; Vietnam and Cambodia: A Fragile Militant Solidarity (François PONCHAUD, Echange France-Asie), E3/7258, 26 February 1979, p. 3, ERN (En) 01200259 [ERN (Fr) 00281892] (referring to recruitment activities of the Viet Minh in Cambodia from 1947). The Khmer membership of the Viet Minh was established as the “Moutakeaha”. See T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 32.

<sup>421</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 45; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 31, 34, ERN (En) 01001698, 01001701; Book by E. Becker: *When the War was Over*, E3/20, p. 51, ERN (En) 00237756.

<sup>422</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 45; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 51-52; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 119, 140, ERN (En) 00396311, 00396340; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 214, ERN (En) 00422842; Book by E. Becker: *When the War was Over*, E3/20, pp. 145, 268, ERN (En) 00237850, 00237973.

<sup>423</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 44-45, 73 (identifying SIEU Heng as his uncle-in-law); T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 40; NUON Chea Interview by KHEM Ngun, E3/3, p. 13, ERN (En) 00184664 (stating that the Thai Communist Party had transferred him to the ICP). See also, Section 7: Roles and Functions – NUON Chea.

establishing a Cambodian presence in the form of a dualistic ICP-Khmer Issarak national resistance front headed by ICP member *Achar* MEAN *alias* SON Ngoc Minh.<sup>424</sup> SON Ngoc Minh further headed the People's Liberation Central Committee ("PLCC") along with three deputies, ICP members CHAN Samay, SIEU Heng and TOU Samouth. On 19 June 1950, SON Ngoc Minh formally declared Cambodia's independence in the name of the PLCC, claiming that the UIF controlled one third of the country.<sup>425</sup>

198. The ICP reorganised itself at a 1951 congress attended by NUON Chea,<sup>426</sup> reconstituting its national movements as proto-communist parties, with the Cambodian movement renamed the Khmer People's Revolutionary Party ("KPRP").<sup>427</sup> The clandestine KPRP nevertheless remained a carbon copy of the ICP; the Party statute was written in Vietnamese and the leadership structure of the UIF – SON Ngoc Minh, TOU Samouth and SIEU Heng – was retained. NUON Chea would later assert that the leaders' Kampuchea Krom origins underscored the KPRP's lack of independence from Vietnam.<sup>428</sup> The KPRP also maintained the ICP's ideological opposition to political

<sup>424</sup> Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 34, ERN (En) 01001701; Book by E. Becker: *When the War was Over*, E3/20, p. 70, ERN (En) 00237775. By the 1960s, former Issarak and Khmer Viet Minh members TOU Samouth, SAO Phim, NUON Chea, Ta Mok, VORN Vet, KE Pauk and RUOS Nhim would all be acquainted. See Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 57, ERN (En) 00498276; Book by R. Burgler: *The Eyes of the Pineapple Revolutionary Intellectuals and Terror in Democratic Kampuchea*, E3/7333, p. 15, ERN (En) 01002138.

<sup>425</sup> Book by E. Becker: *When the War was Over*, E3/20, p. 70, ERN (En) 00237775; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 47-50, ERN (En) 00193130-00193133; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 34, ERN (En) 01001701.

<sup>426</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 40-41.

<sup>427</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 78; T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 64; T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 34; T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 20; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 40-41; T. 18 October 2016 (Stephen MORRIS), E1/485.1, p. 96; T. 11 February 2015 (Elizabeth BECKER), E1/261.1, p. 96. The Vietnamese and Lao parties were renamed the Vietnam Workers' Party and Laotian Revolutionary People's Party, respectively.

<sup>428</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 78; T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 46 (naming SON Ngoc Minh, SIEU Heng and LAM Phai); T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 32; T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 11. See also, T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 58-59 ("The KPRP was founded -- the record indicates this very clearly -- was founded by and encouraged to exist by the Vietnamese. Its statutes were written in Vietnamese and translated into Khmer"); T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 22-24; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 18, 33, 35, ERN (En) 00193101, 00193116, 00193118. The Kampuchea Krom region, located in the Mekong Delta region in the southern part of present-day Vietnam, was administered by the French as Cochinchina.

rivals, including the Democratic Party and King NORODOM Sihanouk, deeming them “puppets of foreign masters”.<sup>429</sup>

199. In 1952, King NORODOM Sihanouk launched his “Royal Crusade for Independence” after dismissing the Democratic Party from government, and embarked upon a publicised world tour demanding the transfer of French colonial authority to the Cambodian monarchy. By late 1953, the initiative had succeeded and France had transferred judicial and military authority to NORODOM Sihanouk. Cambodia regained its sovereign autonomy after the Geneva Accords in May 1954; an agreement which ended the insurgency against the French in Indochina and called for free elections in Cambodia. Unlike their Vietnamese and Lao counterparts, the Cambodian communists were not permitted to participate in the negotiations in Geneva. Issarak units were required to reintegrate into the national community under the terms of the Accords, while foreign troops were obliged to withdraw from Cambodian territory.<sup>430</sup> As a result, the Issarak faction pledged allegiance to NORODOM Sihanouk and a number of the Cambodia-based communist and Viet Minh forces withdrew to Vietnamese territory along with SON Ngoc Minh and SIEU Heng,<sup>431</sup> almost dissolving the KPRP.<sup>432</sup> Although KHIEU Samphan would later assert that the Party had

<sup>429</sup> Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, pp. 26-27, ERN (En) 00393689-00393690 (Sihanouk was viewed by the KPRP as pandering to the imperialistic interests of the French and Japanese). *See also*, Book by E. Becker: *When the War was Over*, E3/20, pp. 52-53, ERN (En) 00237758-00237759 (the Democratic Party traditionally sought a peaceful and legal path to independence from the French); Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 182-184, ERN (En) 00422811-00422813 (the KPRP’s Marxist-Leninist struggle sought liberation from the French as an intermediate step to national revolution, while the Democrats attempted to thwart Sihanouk’s supposedly pro-Vietnamese and pro-communist independence movement).

<sup>430</sup> Book by W. Shawcross: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 48, ERN (En) 00429735; Book by E. Becker: *When the War was Over*, E3/20, pp. 76-79, ERN (En) 00237781-00237784; Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 184-186, ERN (En) 00422813-00422815.

<sup>431</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, p. 59; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 101, 115-116, ERN (En) 00396293, 00396307-00396308 (of the founding members of the KPRP, only TOU Samouth remained in Cambodia; SON Ngoc Minh and SIEU Heng relocated to Hanoi and Saigon, respectively). The Chamber notes the lack of agreement between authors as to the precise number of relocations to Vietnam at this time. *See e.g.*, Book by E. Becker: *When the War was Over*, E3/20, p. 79, ERN (En) 00237784 (estimating that approximately 1,000 Cambodian communists relocated to North Vietnam); Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 181, ERN (En) 00422810 (estimates that 2,000 members sought refuge in Vietnam); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 36, ERN (En) 01001703 (approximately 5,000 Khmer communist cadres, soldiers and their families withdrew to Vietnam).

<sup>432</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 82. *See also*, Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 37, ERN (En) 00393700.

“completely dissolved” at this point,<sup>433</sup> it is clear from the following that elements of the KPRP, including its members and structure, had remained after 1954.

200. In February 1955, NORODOM Sihanouk renounced the throne and called general elections pursuant to the terms of the Geneva Accords, seeking a popular mandate as Head of the Royal Government as a candidate of his new party, *Sangkum Reastr Niyum* (People’s Socialist Community). At around this time, the KPRP founded *Krom Pracheachon* (the People’s Group), a subordinate arm of the Party designed to engage in politics and serve as the public face of the clandestine revolutionary movement.<sup>434</sup> Headed by KEO Meas, Pracheachon was publicly operated by SAO Phim, NEY Sarann and CHOU Chet, among others.<sup>435</sup> Following an election campaign marked by police and military crackdowns on opposition parties, Pracheachon was defeated by Sangkum. The new government proceeded to implement a foreign policy of neutrality and refusal to join the US-dominated Southeast Asia Treaty Organisation after the elections.<sup>436</sup>

201. By late 1955, the KPRP had reorganised itself under a five-man Central Committee composed of SIEU Heng as secretary (in Saigon at the time), TOU Samouth as deputy secretary, SON Ngoc Minh (in Hanoi at the time), SAO Phim and RUOS Nhim.<sup>437</sup> Deputy TOU Samouth, the only member of the original KPRP leadership to remain in Phnom Penh,<sup>438</sup> was assisted in the Party’s City Committee by NUON Chea

<sup>433</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 58, ERN (En) 00498277 (the Vietnamese “still insisted on using 1951 as the year of the birth of the Kampuchean party, even though that party had been completely dissolved since 1954 when the Viet [Minh] forces withdrew from Kampuchea and returned to Vietnam”). See also, Revolutionary Flag, E3/10, September-October 1976, p. 5, ERN (En) 00450505.

<sup>434</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 50; T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 14; NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393; Book by E. Becker: *When the War was Over*, E3/20, p. 80, ERN (En) 00237785; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 36, ERN (En) 01001703; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 115, ERN (En) 00396307.

<sup>435</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 140, ERN (En) 00396340; Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*, E3/17, p. 60, ERN (En) 00392974.

<sup>436</sup> Book by E. Becker: *When the War was Over*, E3/20, pp. 80-83, ERN (En) 00237785-00237788. See also, T. 20 October 2016 (David CHANDLER), E1/487.1, pp. 8-9 (opining that Pracheachon did not enjoy largescale support at the time of the 1955 elections).

<sup>437</sup> SON Ngoc Minh would retain titular leadership of the Hanoi branch of the Cambodian Party and the Khmer affiliated with the Viet Minh until the late 1960s before dying in Beijing in 1972; SIEU Heng returned to Cambodia in 1956. See Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 6, ERN (En) 00498225; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 115, 158, 379, 457-458, ERN (En) 00396307, 00396358, 00396587, 00396673-00396674.

<sup>438</sup> See above, para. 198.



and SALOTH Sar *alias* POL Pot.<sup>439</sup> POL Pot had come to TOU Samouth's attention following his return from Paris and a brief stint in the *maquis* with the Viet Minh.<sup>440</sup> While the Party's activities were somewhat dormant over the following years, Pracheachon contested, and lost, the 1958 elections.<sup>441</sup> Despite its defeat, Pracheachon remained the only political alternative to Sangkum on the Cambodian political scene following the dissolution of the Democratic Party a year earlier.<sup>442</sup> At around this time, Sihanouk coined the term "Khmers Rouges" to refer to Pracheachon;<sup>443</sup> a name which was never used by members of the communist movement to describe themselves.<sup>444</sup>

202. In late 1959, the secret Party leadership in Phnom Penh began the process of creating an authentic Marxist-Leninist party devoid of Vietnamese influence. POL Pot and NUON Chea drafted the Party Statute and the Party's strategic and tactical lines either on orders from TOU Samouth – now the Party leader following SIEU Heng's defection to NORODOM Sihanouk<sup>445</sup> – or on their own initiative.<sup>446</sup> According to NUON Chea, the strategic line was based on a social analysis of Cambodian society,

<sup>439</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 43; NUON Chea Interview by KHEM Ngun, E3/3, pp. 7-8, ERN (En) 00184658-00184659; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 8, ERN (En) 00716416. The City Committee was chaired by KEO Meas until his appointment to Pracheachon. *See above*, para. 200. Other members included MEI Mann and CHAN Saman, who abandoned their work early on. *See Book by Khieu S.: Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 7, ERN (En) 00498226.

<sup>440</sup> Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*, E3/17, pp. 42-43, ERN (En) 00392956-00392957; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 66-67, ERN (En) 00193149-00193150.

<sup>441</sup> Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 58, ERN (En) 00393721.

<sup>442</sup> Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 192, ERN (En) 00422820; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, pp. 41, 57, ERN (En) 00393704, 00393720.

<sup>443</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 114-115, ERN (En) 00396306-00396307; Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 66, 214, ERN (En) 00422695, 00422842; Book by E. Becker: *When the War was Over*, E3/20, p. 100, ERN (En) 00237805.

<sup>444</sup> Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*, E3/17, pp. 66, 214, ERN (En) 00392980, 00393128.

<sup>445</sup> Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 84, ERN (En) 00393747.

<sup>446</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 13-14; Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 11-12, ERN (En) 00716419-00716420 (NUON Chea states that, "Ta TOU Samut[h] was not useful because he was old and not so knowledgeable. Therefore, there were only SALOTH Sa [*sic*] and me. IENG Sary was a leftist and stubborn person."); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498229-00498230. *See also*, T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 51 (clarifies that TOU Samouth "did not understand very much about [the situation in Phnom Penh]. That was why Saloth Sar was tasked to monitor the situation in Phnom Penh.").

which was deemed to be neo-colonial and semi-feudal.<sup>447</sup> The first task was to achieve national democratic revolution to eliminate feudalism, reactionaries, landowners, imperialists and their henchmen, and thereby liberate the country's worker peasants.<sup>448</sup> Only then could true socialist revolution ensue.<sup>449</sup>

203. From 30 September to 2 October 1960, the First Party Congress was secretly convened in Phnom Penh to adopt the statute and appoint a leadership committee.<sup>450</sup> TOU Samouth was appointed Party Secretary and NUON Chea was appointed Deputy Secretary. Both were also appointed to the Standing Committee along with POL Pot as a full-rights member and IENG Sary as a candidate member.<sup>451</sup> SON Sen, SAO Phim and *Ta Mok* also attended the Congress, with the former two having been appointed as candidate members of the Standing Committee.<sup>452</sup> KEO Meas, VORN Vet, MA Mang and Prasith *alias* Chong were appointed to the KPRP Central Committee along with SON Ngoc Minh (in his absence), in addition to TOU Samouth, NUON Chea, POL Pot,

<sup>447</sup> Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 15, ERN (En) 00716423; NUON Chea Interview by KHEM Ngun, E3/3, p. 15, ERN (En) 00184666; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, ERN (En) 00762391.

<sup>448</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 82-84; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 3-4; T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 19-23; NUON Chea Interview by KHEM Ngun, E3/3, p. 15, ERN (En) 00184666; Revolutionary Flag, E3/10, September-October 1976, p. 8, ERN (En) 00450508. *See also*, Statute of the Communist Party of Kampuchea, E3/214, p. 3, ERN (En) 00184024.

<sup>449</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 3-4; Statute of the Communist Party of Kampuchea, E3/214, p. 3, ERN (En) 00184024 ("After the Party led and totally achieved the national democratic revolution, the Party continues to lead the socialist revolution and construct socialism in an absolute monopoly in every sector").

<sup>450</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 33; NUON Chea Interview by KHEM Ngun, E3/3, p. 11, ERN (En) 00184662; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 12, ERN (En) 00716420; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 20, ERN (En) 00762392; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 12, ERN (En) 00498231; Revolutionary Flag, E3/10, September-October 1976, p. 6, ERN (En) 00450506. NUON Chea initially placed the First Congress between 28 and 30 September 1960. *See* T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 82.

<sup>451</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 82; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 74-75; NUON Chea Interview by KHEM Ngun, E3/3, p. 11, ERN (En) 00184662; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 12, ERN (En) 00716420; NUON Chea Interview by Japanese Journalist, E3/26, p. 4, ERN (En) 00329507; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 32-33, ERN (En) 00417631-00417632 (refers to himself as having been appointed as a "veteran" member). For the classes of CPK membership, *see* Section 5.1.2.2: Administrative Structures: Structure of the CPK: Standing Committee and Central Committee: Findings.

<sup>452</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 24; T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 15-16; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 138, ERN (En) 00396338. While NUON Chea's testimony is vague about the capacity in which SAO Phim was appointed at this congress, he clearly states that *Ta Mok* was appointed as a full-rights member in 1963. SON Sen and SAO Phim were also subsequently elevated at the Second Congress in 1963. *See below*, para. 206.

IENG Sary and SON Sen.<sup>453</sup> The Congress symbolised the joinder under the revolutionary movement’s hierarchy of former ICP members and Issarak with the “returned students” or “intellectuals” – POL Pot, IENG Sary and SON Sen – who had been acquainted since the 1950s through their involvement in the Marxist Circle in Paris.<sup>454</sup>

204. The Congress adopted the strategic line of independence, sovereignty and self-reliance, and decided to pursue political and armed struggle to achieve the Party’s revolutionary goals.<sup>455</sup> In an attempt to assert its independence and distance itself from the Vietnamese communists, the KPRP rebranded itself as the Workers’ Party of Kampuchea (“WPK”);<sup>456</sup> a decision that was not communicated to the Vietnamese party.<sup>457</sup> This symbolic event would subsequently be propagandised by the Khmer Rouge as the genesis of the communist movement in Cambodia.<sup>458</sup> Following the Congress, the WPK cadres returned to their respective provinces and zones in an effort to reinforce the Party’s rural bases: MA Mang and Prasith returned to the Southwest

<sup>453</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 82; T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 33; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 12, ERN (En) 00716420; NUON Chea Interview by KHEM Ngun, E3/3, p. 11, ERN (En) 00184662; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 138, ERN (En) 00396338; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 114, ERN (En) 00193197.

<sup>454</sup> After arriving in France in 1953, KHIEU Samphan was soon acquainted with IENG Sary, SON Sen and IENG Thirith née KHIEU Thirith, among others. Whereas IENG Thirith was never appointed to either the Central or Standing Committees, KHIEU Samphan was appointed as alternate member to the Central Committee in 1971. *See below*, para. 226. *See also*, Section 8: Roles and Functions – KHIEU Samphan.

<sup>455</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, ERN (En) 00762392; Revolutionary Flag, E3/10, September-October 1976, pp. 6-7, ERN (En) 00450506-00450507.

<sup>456</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 65; Book by E. Becker: *When the War was Over*, E3/20, p. 93, ERN (En) 00237798; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 135-136, ERN (En) 00396335-00396336; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 68, ERN (En) 00393731 (Stephen HEDER opines that this new name symbolised the fact that the people were not yet ready for communism, and that the term ‘Workers’ Party’ “facilitated propaganda among non-Communists by allaying their fears of communism”).

<sup>457</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 66; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 11-13, ERN (En) 00498230-00498232.

<sup>458</sup> Revolutionary Flag, E3/10, September-October 1976, p. 5, ERN (En) 00450505 (“In 1951 we set up a temporary organisation in order to prepare to create a Party [...] in 1954 after the Geneva Conference ended, we totally dissolved ourselves and returned back into a society with oppressor classes and continued the struggle.”); Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 2, ERN (En) 00182810 (On 30 March 1976, the Central Committee decided to “Designate the birth of the Party back to 1960, not using 1951, in order to not let it get attached to others – to be clearly separate”); Revolutionary Flag, E3/5, August 1975, p. 16, ERN (En) 00401491 (“The strategic and tactical lines of the CPK were clearly and fundamentally correctly drawn up in 1960 during the First Party General Assembly (even though it is true that our Party was created in 1951).”).

Zone, RUOS Nhim was sent to restore former Issarak networks in Battambang, while SAO Phim returned to the East Zone.<sup>459</sup>

205. Throughout 1960, NORODOM Sihanouk's forces engaged in a crackdown against remaining Vietnamese communists in Cambodia, privately blaming them for a parcel bomb attack on the Royal Palace in August 1959 and labelling them the "eternal and mortal danger for the Khmer nation".<sup>460</sup> The continued suppression of the Cambodian left resulted in the virtual disappearance of Pracheachon by the time of the 1962 elections.<sup>461</sup> Nevertheless, NORODOM Sihanouk sought to broaden his political base and appointed leftist intellectuals HU Nim, HOU Youn and KHIEU Samphan to the Sangkum government.<sup>462</sup>

206. The arrest and subsequent disappearance of TOU Samouth in 1962 necessitated the appointment of a new WPK Party Secretary during the Second Party Congress, held in February 1963 in Phnom Penh.<sup>463</sup> POL Pot was elevated to the role of Secretary, while NUON Chea remained Deputy Secretary.<sup>464</sup> IENG Sary and SAO Phim were

<sup>459</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 139, ERN (En) 00396339.

<sup>460</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 130-131, ERN (En) 00396330-00396331.

<sup>461</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 16, ERN (En) 00498235; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 197, ERN (En) 00422825.

<sup>462</sup> HU Nim and HOU Youn had been elected to the National Assembly on an independent platform in 1958. KHIEU Samphan was appointed Secretary of State for Commerce, while HOU Youn became Secretary of State for Planning. See T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 84; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 7, ERN (En) 00103726; Book by E. Becker: *When the War was Over*, E3/20, p. 96, ERN (En) 00237801; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 141, ERN (En) 00396341.

<sup>463</sup> NUON Chea states that TOU Samouth was arrested, detained and tortured by LON Nol supporters after he refused to confess his involvement in the clandestine movement. See T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 85; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 77, 81-82; NUON Chea Interview by Japanese Journalist, E3/26, p. 6, ERN (En) 00329509; Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 14, ERN (En) 00716422; NUON Chea Interview by KHEM Ngun, E3/3, p. 14, ERN (En) 00184665. See also, T. 20 July 2012 (David CHANDLER), E1/93.1, p. 60.

<sup>464</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 75 (testifying that he tendered his resignation but that the Congress refused his application, so he decided to remain); T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 14; T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 86; Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, pp. 14-15, ERN (En) 00716422-00716423; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 17, ERN (En) 00498236; NUON Chea Interview by KHEM Ngun, E3/3, pp. 15-16, ERN (En) 00184666-00184667; Book by E. Becker: *When the War was Over*, E3/20, p. 97, ERN (En) 00237802; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 142, ERN (En) 00396342. NUON Chea states that he was overlooked as a potential candidate for the role of Party Secretary as a result of his familial relationship with SIEU Heng, who had defected to NORODOM Sihanouk in 1958. See also, T. 20 July 2012 (David CHANDLER), E1/93.1, p. 64; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 84, ERN (En) 00393747.

elevated to full-rights members of the Standing Committee,<sup>465</sup> while VORN Vet, RUOS Nhim, SON Sen and *Ta* Mok were appointed to the Central Committee.<sup>466</sup> The Congress also reaffirmed the use of political and armed violence,<sup>467</sup> however the political realities of the period limited the Party's ability to wage the latter openly.<sup>468</sup> In order to maintain its clandestine operations, the Party did not permit standing Pracheachon members including KEO Meas to attend the Second Congress.<sup>469</sup> By this time, VORN Vet had been assigned to the Party's City Committee in Phnom Penh alongside NUON Chea.<sup>470</sup>

207. In early March 1963, NORODOM Sihanouk dissolved the government, accusing Sangkum of mishandling the civil unrest that had erupted in Siem Reap in late 1962 and led to the death of a young protester in police custody and reprisals against the authorities. Days later, NORODOM Sihanouk published a list of 34 known and suspected leftists, including KHIEU Samphan, POL Pot, HU Nim, HOU Youn, IENG Sary, SON Sen and CHOU Chet, challenging them to form a new government.<sup>471</sup>

<sup>465</sup> T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 15 (affirming that the Standing Committee at the Second Congress consisted of POL Pot and himself as Secretary and Deputy Secretary, respectively, and IENG Sary and SAO Phim as members of the Standing Committee); NUON Chea Interview by KHEM Ngun, E3/3, p. 16, ERN (En) 00184667; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 16, ERN (En) 00716424 (listing SAO Phim and IENG Sary as "permanent members"); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 17, ERN (En) 00498236 (stating that they became "full-rights members").

<sup>466</sup> T. 12 January 2011 (Accused NUON Chea), E1/26.1, pp. 15-16 (listing SON Sen, SAO Phim and *Ta* Mok as having generally been appointed at the Second Congress); Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, pp. 15-16, ERN (En) 00716423-24 (listing, inter alia, VORN Vet, ROS Nhim, SON Sen ("Ta"), MA Mang and SAO Phim as having been appointed); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 17, ERN (En) 00498236 citing Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 142, ERN (En) 00396342 (naming *Ta* Mok, ROS Nhim, VORN Vet and SON Sen as having been selected as members of the Central Committee).

<sup>467</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 12; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 85, ERN (En) 00393748.

<sup>468</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 27-28 (stating that Sihanouk allowed no room for opposition so that in a way, violence was the only option available to the Khmer Rouge).

<sup>469</sup> T. 17 January 2012 (Accused NUON Chea), E1/26.1, p. 14; NUON Chea Interview by KHEM Ngun, E3/3, p. 16, ERN (En) 00184667. See also, T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 24 ("Later on [after the 1960 Congress], however, Keo Meas was too open in -- among the mass, so he could not be trusted in dealing with secret or confidential matters of the Party. That's why he was asked to quit from the [Central] Committee.").

<sup>470</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 16-17, ERN (En) 00498235-00498236; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 198, ERN (En) 00422826; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 151, ERN (En) 00396351.

<sup>471</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 66-68, 70; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 142-143, ERN (En) 00396342-00396343; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 13, 17, ERN (En) 00498232, 00498236.

Fearing arrest, POL Pot, IENG Sary and SON Sen fled to the jungle by the Vietnamese border, leaving NUON Chea as the nominal head of the Party in Phnom Penh.<sup>472</sup> KHIEU Samphan and HOU Youn, among those who heeded NORODOM Sihanouk's summons, declined his offer and insisted that he himself take the reins of government.<sup>473</sup> Both men lost their ministerial portfolios as a result of the scandal but retained their seats in the National Assembly.<sup>474</sup> HU Nim lost his position as the editor of the Sangkum's official newspaper.<sup>475</sup>

208. The ongoing attacks on the political left prompted the WPK Central Committee to adopt "revolutionary violence" as part of the Party line in January 1965,<sup>476</sup> a line opposed by the Vietnamese Workers' Party.<sup>477</sup> On a visit to Hanoi in mid-1965, POL Pot was urged by the Vietnamese Workers' Party to postpone armed conflict until South Vietnam had been "liberated", upon which time the Vietnamese would liberate Cambodia.<sup>478</sup> Unbeknownst to POL Pot at the time, NORODOM Sihanouk had in the preceding months forged an alliance with the North Vietnamese, permitting the South

<sup>472</sup> Thesis by Khieu S.: *Cambodia's Economy and Industrial Development*, E3/123, p. 18, ERN (En) 00750551; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 18, ERN (En) 00498236; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 198, ERN (En) 00422826. See also, T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 10-14 (acknowledging that he was the Deputy Secretary at the time and residing in Phnom Penh but insisting that the Secretary [*i.e.* POL Pot] had "the overall management and leadership of the party").

<sup>473</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 142-143, ERN (En) 00396342-00396343; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 126-127, ERN (En) 00193209-00193210.

<sup>474</sup> Book by E. Becker: *When the War was Over*, E3/20, p. 101, ERN (En) 00237806; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 128-129, ERN (En) 00193211-00193212.

<sup>475</sup> Book by E. Becker: *When the War was Over*, E3/20, p. 101, ERN (En) 00237806.

<sup>476</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 26-28; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 147, ERN (En) 00396347; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 21, ERN (En) 00498240; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 92, ERN (En) 00393755. The Standing Committee rejected the Khrushchev notion of the "parliamentary road to socialism", espoused by the Soviet Union's 20th Party Congress in 1960. Stephen HEDER notes the accordance of armed struggle with Marxist-Leninist doctrine, a position likely recognised by the Chinese in their subsequent assent to the WPK's new policy. See Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, pp. 123-124, ERN (En) 00393786-00393787 ("By deviating from the violent path, Communists would allow the local lackeys of imperialism to 'exterminate the party of the proletariat and do away with the revolutionary organisation.' All Communists must understand that when political struggle developed to a certain level, not supporting it with armed struggle would cause heavy damage to the revolution.").

<sup>477</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 15; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 53; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 47. See above, para. 204.

<sup>478</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 22, ERN (En) 00498241; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 202, ERN (En) 00422830.

Vietnamese National Liberation Front (Viet Cong) to station troops on Cambodian territory and receive Chinese weapons transported through the port of Kompong Som (Sihanoukville).<sup>479</sup>

209. Notwithstanding the Vietnamese Workers' Party's preference for a peaceful transition to socialism in Cambodia, the WPK in September 1966 adopted a resolution instructing each zone to make preparations for armed struggle.<sup>480</sup> The Party also symbolically changed its name to the Communist Party of Kampuchea.<sup>481</sup> Neither the Party name nor its existence would be made public until 1977.<sup>482</sup>

210. In April 1967, clashes between soldiers and peasants erupted in the ex-Issarak stronghold of Samlaut village, Battambang, as a result of the Sangkum government's mandatory grain acquisition policy.<sup>483</sup> The spontaneous uprising resulted in the death of soldiers and the seizure of weapons by protesting peasants; however, the CPK

<sup>479</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 22, ERN (En) 00498241; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 18, ERN (En) 00103732; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 13; Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 90, ERN (En) 00393753; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 41, ERN (En) 01001708; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 194, ERN (En) 00422822.

<sup>480</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 162, ERN (En) 00396362; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 24, ERN (En) 00498243; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 47, ERN (En) 01001714 (Stephen MORRIS suggests that the Cambodians were inspired by MAO Tse Tung's defiance of the Soviet Union in taking this action).

<sup>481</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 162, ERN (En) 00396362; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 24, ERN (En) 00498243.

<sup>482</sup> Revolutionary Flag, E3/11, September 1977, pp. 3-6, ERN (En) 00486214-00486217; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 65, 69-70 (The CPK name was chosen since "Workers' Party" overlapped with the parties established in Vietnam and China, so it was not appropriate to maintain it); T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 84-86 (the change was kept a secret from Vietnam to prevent antagonisms and avoid revealing the advanced development of the CPK).

<sup>483</sup> Prime Minister LON Nol's "ramassage du paddy" grain collection system was the result of a concerted effort to stem the outflow of grain revenue to Chinese and Vietnamese middlemen actively undercutting official government rates. Elizabeth BECKER opines that the implementation of the ramassage campaign in the prosperous region was fortuitous for the CPK, given that peasants were largely at the mercy of large landholders. Indeed, Battambang had developed into the most prosperous region since the 1920s, providing the majority of Cambodia's rice exports and sheltering the greatest number of landlords and migrants. See Book by E. Becker: *When the War was Over*, E3/20, p. 103, ERN (En) 00237808; Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 150-151, ERN (En) 00422779-00422780. See Book by A. Hinton: *Why Did They Kill?*, E3/3346, p. 55, ERN (En) 00431497). See also, Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 20, ERN (En) 00103733; Thesis by Khieu S.: *Cambodia's Economy and Industrial Development*, E3/123, pp. 25-27, 38-41, ERN (En) 00750558-00750560, 00750571-00750574; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 165-167, ERN (En) 00396365-00396367.

leadership considered that the Party was not yet sufficiently prepared to initiate an armed revolution.<sup>484</sup>

211. NORODOM Sihanouk blamed the rebellion on “Khmer Viet Minh cells” which had remained after 1954, and publicly denounced KHIEU Samphan, HU Nim and HOU Youn as their leaders, threatening them with court martial.<sup>485</sup> The perilous situation caused NUON Chea to take the three into the *maquis*,<sup>486</sup> prompting rumours that the leftists had been executed by NORODOM Sihanouk or Prime Minister LON Nol’s forces.<sup>487</sup>

212. The events at Samlaut triggered further revolt and, on 17 January 1968, an armed attack in Bay Damram, Battambang, resulted in the seizure of more weapons from police posts by protesters.<sup>488</sup> Although it is unclear whether the CPK played a broader

<sup>484</sup> Revolutionary Flag, E3/11, September 1977, p. 28, ERN (En) 00486239 (“the Party decided that Battambang in the Northwest Zone had to temporarily suspend the armed struggle in Battambang so that the whole country could equally complete preparations to attack. If Battambang had attacked alone, the enemy could have concentrated all its forces there to smash the revolutionary forces in Battambang to bits.”); NUON Chea Interview by Japanese Journalist, E3/26, p. 6, ERN (En) 00329509 (“[T]he Samlaut movement made us see that we could not yet struggle because we were still unripe, so we stopped”); Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 113, ERN (En) 00393776 (“Nuon [Chea] maintained that the Communist movement was not yet mature enough to sustain a full-scale revolt”).

<sup>485</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 87-88; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 29, ERN (En) 00498248; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 167, ERN (En) 00396367; Book by E. Becker: *When the War was Over*, E3/20, p. 104, ERN (En) 00237809; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 166, ERN (En) 00193249.

<sup>486</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 87; T. 25 July 2012 (David CHANDLER), E1/96.1, pp. 40-41.

T. 9 May 2013 (Philip SHORT), E1/192.1, p. 54; T. 9 October 2012 (MEAS Voeun), E1/132.1, pp. 40, 44; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 21-22, 23, 25-26, ERN (En) 00103733-00103734, 00103735-00103736.

<sup>487</sup> 9 April 2013 (François PONCHAUD), E1/178.1, p. 9 (“I also read Chinese Embassy news articles saying that the three were dead and that *Samdech* Sihanouk had dumped their bodies into acid. All of that was before 1970.”); T. 10 April 2013 (François PONCHAUD), E1/179.1, pp. 78-79 (“The Chinese Embassy reported a statement from Prince Norodom Sihanouk that the dead bodies of these three individuals had been plunged in an acid-filled barrel so as to destroy all evidence. Since then, Mr Khieu Samphan, Hou Youn and Hu Nim were regarded as ghost ministers.”); T. 25 July 2012 (David CHANDLER), E1/96.1, p. 43 (“When people disappeared under Sihanouk [...] there was never any admission that they had been arrested, tried, convicted and executed; they disappeared”); T. 9 February 2015 (Elizabeth BECKER), E1/259.1, pp. 101, 107.

<sup>488</sup> Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 18, ERN (En) 00716426; NUON Chea Interview by KHEM Ngun, E3/3, p. 19, ERN (En) 00184670; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 10-16 (NUON Chea does not clearly recall the founding date or event; he states: “To the best of my recollection, the founding date of the Revolutionary Army of Kampuchea was on the 12th of January 1968”); Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 2, ERN (En) 00182810; Revolutionary Flag, E3/25, December 1976-January 1977, pp. 18-19, ERN (En) 00491411-00491412. *See also*, Revolutionary Flag,



role in the revolt,<sup>489</sup> the Party subsequently adopted this event as the start of the armed struggle and founding date of the Revolutionary Army of Kampuchea (“RAK”).<sup>490</sup> The predecessor to the RAK at that time – the secret defence units<sup>491</sup> – consisted of little more than autonomously organised security formations consisting of children who defended local cadres.<sup>492</sup>

213. Over the next two years, the CPK movement gained momentum in the provinces and, by 1970, occupied or controlled nearly one fifth of Cambodia’s territory.<sup>493</sup>

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E3/744, February 1978, pp. 3-7, ERN (En) 00464052-00464056 (POL Pot’s speech on the occasion of the 10th anniversary of the RAK, in which he recounts the creation of the RAK).

<sup>489</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 71-72 (“[T]he evidence is quite contradictory and the balance of the evidence suggests that this was a movement that had large components of spontaneity and little or no direction from the Communist Party leadership. [...] it was a local thing.”).

<sup>490</sup> Revolutionary Flag, E3/5, August 1975, p. 18, ERN (En) 00401493 (After the events at Samlaut “it was seen that we had the forces of the people to carry out political struggle and we had defence units that could carry out armed struggle”); Revolutionary Flag, E3/25, December 1976-January 1977, p. 18, ERN (En) 00491411 (“17 January 1968 was the first day that our Covert Guard Units transformed into individually organised guerrilla units. [...] They were organised into guerrilla units and equipped with weapons already in hand to go attack an enemy position for the first time throughout the country. They opened fire for the first time on 17 January 1968 to strike an enemy position at Bay Dunram village. [...] We took this historic day as the birth date of our Revolutionary Army.”); Revolutionary Flag, E3/11, September 1977, p. 29, ERN (En) 00486240 (“We launched the armed struggle in 1968.”); Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 17, ERN (En) 00716425 (“After the uprising in Samlaut, we agreed to mount an armed political struggle.”); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 29, ERN (En) 00103737 (“For the CPK the peasant rebellion in Samlaut made it clear that the situation of contradiction within society was ripe enough to begin implementing ‘a non-peaceful policy of struggle’ that had been on the agenda since 1964.”).

<sup>491</sup> Revolutionary Flag, E3/5, August 1975, p. 17, ERN (En) 00401492 (“The mission of the Secret Defence Unit was to defend the revolution’s base areas, the revolution’s people, defend cadres moving around working and to defend the assemblies and various meetings, covertly smash the enemy, government agents and the various reactionaries in order to defend the Party, the revolution and the people.”), 18, ERN (En) 00401493 (the Secret Defence Units had already transformed into armed guerrilla units and transformed into the initial revolutionary Army); Revolutionary Flag, E3/10, September-October 1976, p. 7, ERN (En) 00450507 (“We set up covert protection units in the villages to protect both our cadres and our villages in the countryside”); NUON Chea interview by Japanese Journalist, E3/26, p. 7, ERN (En) 00329510 (“In 1968 we armed ourselves with muskets, swords and hatchets, whatever, clubs, to defend our cadres.”).

<sup>492</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 8-9 (“[W]e needed to have the Secret Defence Unit recruited from the children of the peasants in order to defend and to escort the cadres who mobilised from one village to another. [...] This Secret Defence Unit did not have any weapons; they only had sticks. [...] Their tasks were to escort the cadres on mission and they were not yet the army, they were still the Defence Unit.”); T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 46 (“there were no arms, no weapons. They would be equipped with some [...] poles or other tools rather than weapons.”), 47 (“the Secret Defence Units were not organised by anyone; people did it on their own initiative. They did so to protect themselves, for their personal safety.”), 49-50 (“Organising the military unit was not a simple task. It would not be easy to gather people to form such an organisation. So it was the people themselves who organised into groups to protect themselves; no one organised it for them.”).

<sup>493</sup> Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 202-203, ERN (En) 00422830-00422831.

214. From March 1969, with the apparent acquiescence of NORODOM Sihanouk, the United States launched an aerial bombing campaign against North Vietnamese communists on Cambodian soil, effectively pulling Cambodia into the Vietnam War.<sup>494</sup> The presence of more than 20,000 North Vietnamese troops in Cambodia by the end of the year publicly signified the end of NORODOM Sihanouk's policy of neutrality,<sup>495</sup> which had ended in practice following the start of the Viet Cong's conveyance of Chinese weaponry through Cambodia in 1965.<sup>496</sup> Realising the risk that a unified, communist-ruled Vietnam posed to the country, NORODOM Sihanouk reinstated diplomatic relations with the United States and directed newly-reappointed Prime Minister LON Nol's pro-US government to take measures to end the growing domestic communist threat.<sup>497</sup>

215. Noting the latent conflict between NORODOM Sihanouk and his Prime Minister, and sensing the danger that a rightist, pro-US government policy posed to the Cambodian revolutionary movement, the CPK Standing Committee had by mid-1969 reconsidered the Party's targeting policy against NORODOM Sihanouk and instead redirected it at LON Nol.<sup>498</sup>

<sup>494</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 87; Book by E. Becker: *When the War was Over*, E3/20, p. 111, ERN (En) 00237816; Book by D. Chandler: *Brother Number One*, E3/17, p. 83, ERN (En) 00392997; Book by W. Shawcross: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, pp. 70, 92-95, ERN (En) 00429757, 00429779-004297782.

<sup>495</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 185, ERN (En) 00396385 (French estimates had 6,000 Vietnamese soldiers in Cambodia at any given time, whereas LON Nol estimated 32-35,000 soldiers in September 1969 and up to 40,000 by early 1970), 194, ERN (En) 00396394 (20,000 remained in Svay Rieng in March 1970), 202-203, ERN (En) 00396402-00396403 (40,000 Viet Cong and North Vietnamese combatants on Cambodian territory by April 1970); Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, p. 138, ERN (En) 00393801 (estimates 25,000 Vietnamese weapons in 1965). *See also*, Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 42-43, ERN (En) 01001709-01001710 (Sihanouk's government was favourable to North Vietnam as it permitted the Vietnamese communist armies to transit through Cambodia's territory to attack South Vietnam).

<sup>496</sup> *See above*, para. 208.

<sup>497</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 184-185, 187, ERN (En) 00396384-00396385, 00396387 (LON Nol was named as acting Prime Minister in December 1968 while concurrently serving as Defence Minister and Chief of the General Staff, and formally appointed in June 1969); Book by E. Becker: *When the War was Over*, E3/20, pp. 111-112, ERN (En) 00237816-00237817. Sihanouk's vacillating foreign policy was nothing new, however the diplomatic recognition in 1969 of the Provisional Revolutionary Government (whose forces were the object of US bombing on Cambodian territory) constituted a significant contradiction to Cambodia's policy of neutrality and influenced the events of 1970. *See also*, Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 44-46, ERN (En) 01001711-01001713.

<sup>498</sup> Book by S. Heder: *Cambodian Communism and the Vietnamese Model*, E3/22, pp. 150-151, ERN (En) 00393813-00393814 (the CPK concluded that a US-backed *coup d'état* against NORODOM Sihanouk would turn Cambodia into a US staging ground for attacks against Vietnam); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 185-186, ERN (En) 00396385-00396386 (noting that

3.1.2. ***1970: NORODOM Sihanouk's Overthrow and the Formation of  
FUNK/GRUNK***

216. By March 1970, growing social and political discontent about the presence of communist Vietnamese forces in eastern Cambodia led to protests in Svay Rieng and the storming of the North Vietnamese and Provisional Revolutionary Government of the Republic of South Vietnam diplomatic missions in Phnom Penh by demonstrators, civil servants and soldiers mobilised on NORODOM Sihanouk's orders.<sup>499</sup> LON Nol issued a statement on 12 March 1970 demanding the withdrawal of all Vietnamese communist troops from Cambodian territory and proceeded to broker an alliance with the US-supported South Vietnamese regime.<sup>500</sup>

217. The National Assembly and government had grown impatient with NORODOM Sihanouk's rule. Encouraged by Deputy Prime Minister SIRIK Matak, LON Nol signed a decree on 17 March 1970 supporting the overthrow of NORODOM Sihanouk, who was in Moscow at the time.<sup>501</sup> The next day, the National Assembly approved a vote of no confidence in NORODOM Sihanouk, removing him from office as Head of State.<sup>502</sup>

218. Confronted with these events, NORODOM Sihanouk on 23 March 1970 announced in a radio broadcast from Beijing the formation of a political movement, the National United Front of Kampuchea ("FUNK"), and called upon his compatriots to join the resistance to fight against those who instigated the coup, promising to provide

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Chinese leaders had foreshadowed a US-backed military coup in Cambodia); Book by R. Burgler: *The Eyes of the Pineapple Revolutionary Intellectuals and Terror in Democratic Kampuchea*, E3/7333, p. 24, ERN (En) 01002145 (the CPK estimated that a *coup d'état* by LON Nol would drive more people to their side and that it "was necessary to prepare to receive them").

<sup>499</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 194-195, ERN (En) 00396394-00396395; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 44, ERN (En) 01001711; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 194, ERN (En) 00193277.

<sup>500</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 195-196, ERN (En) 00396395-00396396; Report by the Indochina Refugee Authored Monograph Program: *The Khmer Republic at War and the Final Collapse*, E3/4534, p. 80, ERN (En) 00495670; Book by E. Becker: *When the War was Over*, E3/20, p. 115, ERN (En) 00237819; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 75 (The CPK's main advantage at this point was that Lon Nol had unofficially declared war on the Vietnamese by demanding their withdrawal. They did not leave and the CPK movement was subsequently able to join with them.).

<sup>501</sup> Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 204, ERN (En) 00422832; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 197, ERN (En) 00396397.

<sup>502</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 197, ERN (En) 00396397; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 204, ERN (En) 00422832.

them with military training and weapons.<sup>503</sup> The appeal was not entirely drafted by NORODOM Sihanouk. Unbeknownst to him, his initial proposal was handed by Chinese Premier ZHOU Enlai to POL Pot – in talks with the Chinese Communist Party in Beijing at the head of a CPK delegation at the time – who removed any reference to socialism, presumably to harness maximum national support for FUNK.<sup>504</sup>

219. An alliance between NORODOM Sihanouk and the Cambodian communists was now mutually beneficial. Without meeting with NORODOM Sihanouk in Beijing, POL Pot forwarded a letter in support of FUNK in the name of KHIEU Samphan, HU Nim and HOU Youn.<sup>505</sup> In this tactical move, POL Pot presented the “Three Ghosts” – still in hiding in the *maquis* and widely believed dead<sup>506</sup> – as the face of the Cambodian left, thereby capitalising upon their political credentials while preserving the secrecy of CPK’s existence.

220. On 5 May 1970, NORODOM Sihanouk formed a new government in exile, the Royal Government of the National Union of Kampuchea (“GRUNK”). NORODOM Sihanouk was proclaimed the Head of State and Chairman of FUNK, while KHIEU Samphan was appointed Deputy Prime Minister and Minister of National Defence.<sup>507</sup>

<sup>503</sup> Message and Solemn Declaration of Samdech Norodom Sihanouk, E3/1756, 23 March 1970, ERN (Fr) 01442926; Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, pp. 3-4, ERN (En) 00523987-00523988.

<sup>504</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 89; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 40, ERN (En) 00498259; T. 8 August 2012 (SUONG Sikoeun), E1/104.1, pp. 8-9 (Sihanouk “wanted a socialist revolution [...] [but] China opposed the word ‘socialism’ and, instead, requested to build a country which is neutral, independent and sovereign”). See also, DK Publication: *Black Paper*, E3/23, September 1978, pp. 35, 38, ERN (En) 00082530, 00082532 (“Through comrade Chinese leaders, [POL Pot] let Prince Norodom Sihanouk be informed that he should firstly, constantly [...] stand in the framework of [FUNK] in order to gather the national forces, for the democratic forces were already under the leadership of the [CPK].”).

<sup>505</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 94; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 40, ERN (En) 00498259; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 101-102 (The letter had all the hallmarks of POL Pot; it was written in such a skilful manner in order not to arouse any concerns or cause any fears); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 200, ERN (En) 00396400. See also, DK Publication: *Black Paper*, E3/23, September 1978, pp. 35, 38, ERN (En) 00082530, 00082532.

<sup>506</sup> All three were residing at Mok’s headquarters at Aural Mountain. See T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 89.

<sup>507</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 89-90; T. 8 August 2012 (SUONG Sikoeun), E1/104.1, pp. 8-11; T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 73-74; GRUNK Publication: *Cambodia’s Seat in the United Nations*, E3/28, 19 June 1973, pp. 27, 31, ERN (En) 00068117, 00068119; *Seven More Vice-Ministers for Cambodian Resistance Government* (Vietnam Courier), E3/3422, 28 September 1970, ERN (En) S00021041; FUNK Political Program, E3/1391, ERN (En) S00012636; Statement by NORODOM Sihanouk, E3/32, 5 October 1974, p. 2, ERN (En) 00282395. See also, Section 8: Roles and Functions – KHIEU Samphan, para. 576.

KHIEU Samphan was in fact appointed to that position by POL Pot without his knowledge.<sup>508</sup> He would subsequently serve as a liaison between NORODOM Sihanouk and POL Pot, having been inducted into the CPK the previous year by *Ta Mok*.<sup>509</sup> HU Nim became Minister of Information and Propaganda of GRUNK, HOU Youn was appointed Minister of the Interior, Communal Reforms and Cooperatives, while IENG Thirith, CHOU Chet and KOY Thuon received vice-ministerial portfolios in the exiled government.<sup>510</sup>

221. FUNK's official policy was to unite and mobilise the social classes and to "overthrow the fascist and racist dictatorship of the American imperialists' flunkies headed by Lon Nol-Sirik Matak".<sup>511</sup> FUNK promised to all Cambodians the freedom of religion and belief, assured the rights of land ownership and cultivation, and espoused a neutral foreign policy of co-operation with, *inter alia*, Vietnam.<sup>512</sup> GRUNK, and KHIEU Samphan in particular, officially supported this vision.<sup>513</sup> FUNK proceeded to establish a radio station in Hanoi under the supervision of IENG Thirith, which it used to recruit cadres, garner support for FUNK and disseminate propaganda inside and outside Cambodia.<sup>514</sup>

<sup>508</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 90-91 ("[I]t is clear that it was Pol Pot who appointed me to hold a position that I was not even aware of; that is, a Deputy Prime minister, a Prime Minister of Defence of nothing or the Military Commander of nothing"); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745 ("I was considered the Khmer Rouge leader since [1970]. But it was not the real situation of my position. The real leader was POL Pot."). *See also*, Section 8: Roles and Functions – KHIEU Samphan.

<sup>509</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 91; T. 8 February 2012 (Accused KHIEU Samphan), E1/40.1, p. 22; Open Letter by KHIEU S.: *Khieu Samphan Explains Role in Khmer Rouge*, E3/206, p. 3, ERN (En) 00002860.

<sup>510</sup> Statement by NORODOM Sihanouk, E3/32, 5 October 1974, p. 2, ERN (En) 00282395; GRUNK Publication: *Cambodia's Seat in the United Nations*, E3/28, 19 June 1973, pp. 28-33, ERN (En/Fr) 00068118-00068120 (IENG Thirith: Vice-Minister for People's Education and Youth; CHOU Chet: Vice-Minister of Public Health and Religious and Social Affairs; KOY Thuon: Vice-Minister of Economy and Finance).

<sup>511</sup> FUNK Political Program, E3/1391, ERN (En) S00012636.

<sup>512</sup> FUNK Political Program, E3/1391, ERN (En), pp. 11-13, 17-18, ERN (En) S00012638-S00012639, S00012641-S00012642.

<sup>513</sup> GRUNK Report: *Cambodia's Seat in the United Nations*, E3/28, 19 June 1973, pp. 25-26, ERN (En) 00068116-00068117; *KHIEU Samphan Issues Statement on Current Situation* (in FBIS collection), E3/118, 1 April 1975, ERN (En) 00166898 ("Now the seven traitors have already forsaken you; you must follow the path of honour and national solidarity by joining the [FUNK] [...] to build a prosperous nation in accordance with the policy of independence, peace, neutrality, sovereignty, democracy, territorial integrity and nonalignment.").

<sup>514</sup> T. 7 December 2011 (LONG Norin), E1/18.1, pp. 65-66, 69-70; T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 95-97 (IENG Thirith was the director; KHIEU Samphan and IENG Sary had no authority over the radio station).

222. North Vietnam and China immediately recognised GRUNK as the legitimate government of Cambodia.<sup>515</sup> In reality, the government-in-exile was a façade.<sup>516</sup> Nominally, NORODOM Sihanouk headed the administration from Beijing as a figure of national unity and political legitimacy.<sup>517</sup> In addition to attracting widespread support domestically from peasants faithful to the former King, NORODOM Sihanouk urged Cambodians to join FUNK (in reality, the CPK's cause) and sought international support and recognition of GRUNK. Autonomously issuing radio appeals from Beijing, NORODOM Sihanouk declared that GRUNK would grant amnesty to Khmer Republic officials who acknowledged their "fatal blunders against the country" and joined FUNK.<sup>518</sup> Upon the approval of POL Pot and NUON Chea, NORODOM Sihanouk visited Khmer Rouge-liberated areas in 1973 to provide support to the armed struggle against LON Nol's forces.<sup>519</sup> Domestically however, NORODOM Sihanouk was

<sup>515</sup> The Democratic People's Republic of Korea, Albania, Romania, Yugoslavia and Cuba also recognised GRUNK, which, by 1975, would be recognised by 45 liberation movements and countries including the USSR. See Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 19, ERN (En) 00524003.

<sup>516</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, p. 58 ("The operation in Beijing was the public face, it was the façade. It had absolutely no control over what was going on inside. They were two pretty separate things."); T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 48-49 ("Although the Front was established, it was symbolic and powerless. Sihanouk was used as a façade by the Khmer Rouge."); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 240, ERN (En) 00396440 ("Sihanouk had no contact with the Khmer Rouge leadership [...] There was no chain of command stretching back to GRUNK in Beijing"). See also, Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 16, ERN (En) 00524000.

<sup>517</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 90 ("The King [...] is above everyone else – [...] he had to be the leader of the United Front."); NUON Chea Interview by Japanese Journalist, E3/26, p. 7, ERN (En) 00329510 ("Samdech had influence because he appealed for the world to help and we had the forces inside the country, in particular the peasants"); T. 19 October 2016 (Stephen MORRIS), E1/486.1, p. 125 ("Sihanouk's role was vital in helping the Khmer Rouge gain popular support [...] it was his political legitimacy which helped the Khmer Rouge soften some of the opposition to the Khmer Rouge which would otherwise have existed"); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 49, 51, ERN (En) 01001716, 01001718; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 242, ERN (En) 00396442.

<sup>518</sup> French Ministry of Foreign Affairs Telex, *Ups and Downs of the Cambodian Issue*, E3/2680, 23 December 1974, p. 3, ERN (En) 00751828 (noting that NORODOM Sihanouk forged negotiations absent contact with the Cambodian resistance. "[O]ut of respect for the quest for peace", NORODOM Sihanouk declared that "GRUNK is prepared to make national reconciliation a reality by granting amnesty and giving a paternal welcome to all those traitors who have now realised that they have committed fatal blunders against the country and are prepared to mend their ways by [...] joining forces with the FUNK and GRUNK").

<sup>519</sup> T. 10 February 2015 (Elizabeth BECKER), E1/260.1, p. 18 (stating that appeals by NORODOM Sihanouk to the Cambodian population urging them to rise up against the Khmer Republic were initially very successful); T. 15 August 2012 (SUONG Sikoeun), E1/108.1, p. 62 (explaining that Sihanouk did not have to seek prior authorisation to make statements about the resistance); T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 87 ("There was a long discussion between Brother Pol and Brother Nuon. And finally there was a decision to invite Prince Norodom Sihanouk to visit a liberated zone in Cambodia."); Video of KHIEU Samphan entitled "Justice Delayed, Justice Denied", E3/3902R, ERN V00172605 (depicting KHIEU Samphan and NORODOM Sihanouk in the jungle during Sihanouk's 1973 visit to the liberated zones); Video of KHIEU Samphan entitled "Justice Delayed, Justice Denied", E3/3904R,

sidelined by the Party, complaining publicly that, “the day the Khmer Rouge no longer need me they will spit me out like a cherry pit”.<sup>520</sup> Indeed, the CPK actively downplayed NORODOM Sihanouk’s involvement and discouraged members from attributing significance to his role in the Front’s success.<sup>521</sup>

223. By mid-1970, the CPK had consolidated its control of FUNK/GRUNK.<sup>522</sup>

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ERN V00172605 (depicting KHIEU Samphan, HU Nim, HOU Youn and POL Pot with NORODOM Sihanouk, during Sihanouk’s 1973 visit to liberated zones); Video of NORODOM Sihanouk entitled “Pol Pot et les Khmers Rouges”, E3/3942R, ERN V00172512 (depicting NORODOM Sihanouk visiting CPK leaders in 1973 and saying: “Here I’m talking about my country with my collaborators, M. IENG Sary *alias* Van”); Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, pp. 14-16, ERN (En) 00523998-00524000.

<sup>520</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, p. 38; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 79; Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, pp. 36, ERN (En) 00524020, 16, ERN (En) 00524000 (while speaking to 150 Chinese and foreign reporters on 13 April 1973 Sihanouk indicated that, “[a]fter the war is over, Prince Sihanouk will only be a symbol of national unity; a head of state who will no longer have the powers he had before the events of 18 March 1970. In reality power will be in the hands of the Khmer Rouge, essentially.”), 20-21, ERN (En) 00524004-00524005 (“I have indicated that I find the Khmer Rouge Stalinists in terms of their daily instructions, language and methods [...] I am fighting for them to allow me to live in Cambodia with them [...] What do they have in store for me? I would like to know how their views regarding my status. Am I an ordinary employee or a head of state? [...] I have virtually no relations the Khmer Rouge now.”).

<sup>521</sup> A FUNK circular of 19 March 1971 exclaimed that “[Sihanouk] should be known as the Chairman of the National United Front of Cambodia. It is not necessary to display his picture [...] All achievements have been gained by our people’s armed forces, not by Sihanouk”, extracted in Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 52, ERN (En) 01001719; Doctoral Dissertation by S. Morris, *The Origins of the Soviet-Vietnamese Alliance*, E3/10699, 1987, ERN (En) 01335103; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 217, ERN (En) 00193300; T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 128-130 (“The Party wanted Sihanouk out of the way. Nobody is on record as supporting Sihanouk’s continuing presence.”); T. 19 October 2016 (Stephen MORRIS), E1/486.1, p. 126 (the Khmer Rouge “didn’t want too much credit for their successes attributed to Sihanouk”); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 67, ERN (En) 01001734 (stating that the Khmer Rouge was fearful of Sihanouk’s popularity and were psychologically incapable of taking a purely instrumental and exploitative attitude toward it); T. 9 April 2013 (François PONCHAUD), E1/178.1, pp. 64-65 (“*Angkar* tried its best to make sure that the soldiers could not see Samdech Sihanouk [during his return to Cambodia in 1973], because they were afraid that Sihanouk could incite them to protest against *Angkar*”).

<sup>522</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, p. 33, ERN (En) 00762405 (“We were masters of the situation [...] We even allowed King Sihanouk to become the chairman of the front. It meant nothing because *we* were the masters of the situation. Following the coup, Sihanouk was reduced from everything to nothing while for us it was the opposite – in the cities as well as in the countryside. Forces from the basic levels of society were essential for getting top-levels to join us [...] Sihanouk was scared to be alone; he kept asking if we were able to continue the struggle. He wanted to negotiate but we told him we would continue the struggle to the end [...] [W]e found we had to struggle inside the Front with Sihanouk at the same time that we united with him externally. Sihanouk asked for things; we let him have them as long as this did not contradict our strategic policy. We had to be very flexible towards him.”). See also, Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 25, ERN (En) 00524009 (noting that by mid-late January 1975, GRUNK consisted of only two “Sihanoukists”; namely, PENN Nouth and Prince NORODOM Phurissara. “By then, the Khmer Rouge held most of the ministries.”).

3.1.3. *1970 – 17 April 1975: The “National Democratic Revolution”*

224. The remainder of 1970 was characterised by escalating conflict in the newly-proclaimed Khmer Republic. Hanoi now shared with the CPK the short-term objective of toppling the LON Nol government and, looking to secure their Cambodian sanctuaries and maintain the flow of weapons to the Viet Cong, offered to arm the CPK.<sup>523</sup> By the end of April 1970, 35,000 to 40,000 North Vietnamese and Viet Cong troops had launched offensives against Khmer Republic forces in Cambodia’s eastern regions, and were soon confronted with US and South Vietnamese contingents of comparable strength.<sup>524</sup> Occupying large swathes of Cambodian territory, the Vietnamese communists implemented a “parallel state power” of administration, hospitals, military and political training schools in the country.<sup>525</sup>

225. The Khmer Republic publicly adopted an anti-imperialistic line toward its eastern neighbour.<sup>526</sup> Grounded in historical and cultural antagonisms,<sup>527</sup> this line of rhetoric

<sup>523</sup> Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 47-48, ERN (En) 01001714-01001715; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 199-203, ERN (En) 00396399-00396403. See also, DK Publication: Black Paper, E3/23, September 1978, p. 56, ERN (En) 00082541.

<sup>524</sup> Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 49, ERN (En) 01001716; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 202-204, ERN (En) 00396402-00396404.

<sup>525</sup> T. 10 February 2015 (Elizabeth BECKER), E1/260.1, p. 80 (“[T]he communist Vietnamese troops both from the north and from the south, who had been confined to the eastern zones, they spread across the country and the Vietnamese communist troops took the fight against the Lon Nol government.”); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 205, ERN (En) 00396405 (noting that by April 1970, Vietnamese communists occupied most of Ratanakiri and Mondulakiri, parts of Stung Treng and a large swathe of territory from Kompong Cham to Kampot, coming to within 15 miles of Phnom Penh); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 49, ERN (En) 01001716 (“In the first four months of fighting, the Vietnamese communists had seized control of half the territory of Cambodia.”). See also, DK Publication: Black Paper, E3/23, September 1978, pp. 56-57, ERN (En) 00082541.

<sup>526</sup> T. 11 April 2013 (François PONCHAUD), E1/180.1, p. 23 (“Lon Nol, in his [...] madness, in order to unite the Khmer people, resorted to the anti-Vietnamese weapon: the traditional hatred of Cambodians against Vietnam which, in large part, goes back in particular to the capture of Kampuchea Krom during the 19th century.”); T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 9-10 (regarding anti-Vietnamese rhetoric during the LON Nol regime: “you got the rhetoric of the evil outsider, someone who is subverting the country. There was very vehement rhetoric [...] it was omnipresent.”).

<sup>527</sup> T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 94-95 (“[W]ith regard to the ethnic Vietnamese, I think that the term there is more of a streak of racism that’s there from the very beginning that is a current that is running. [...] I expect that the sort of pre-existing animus that existed towards ethnic Vietnamese had its own sort of strong current that led toward their targeting and elimination”); T. 18 October 2016 (Stephen MORRIS), E1/485.1, pp. 89-90 (stating that the Vietnamese have a “condescending view of Cambodians. It’s not a hatred, but it is a condescending view regarding the Cambodians as being somehow inferior culturally and there is a history during the Vietnamese occupation of Cambodia in the 19th century where humiliation of the Cambodians was an important part of political life. [...] [T]he Vietnamese regard themselves as superior even if they don’t express that always explicitly and publicly.”); Book by D. Chandler: *A History of Cambodia*, E3/1686, pp. 113-114 (stating that from Vietnam’s point of view, it was “above” Cambodia just as China was “above”



would remain prevalent throughout the 1970s (and would later be pursued by the CPK<sup>528</sup>), resulting in the targeting and execution of a large number of Vietnamese civilians by LON Nol's government forces.<sup>529</sup>

226. In mid-1970 however, the CPK Central Committee adopted a pragmatic line of good relations with the Vietnamese communists, ostensibly as a result of the latter's promise to withdraw from liberated areas as soon as they could be replaced by Cambodians.<sup>530</sup> This was soon reversed at the Third CPK Congress in September 1971, where leaders resolved that Vietnam was the long-term "acute enemy" of Kampuchea.<sup>531</sup> The congress was for the first time attended by GRUNK Ministers HU Nim, HOU Youn and KHIEU Samphan, as well as a number of Cambodians allegedly affiliated with the Viet Minh who had returned to the country during the North

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Vietnam); Nuon Chea DC-Cam Interview, E3/52, 8 September 2001, pp. 4-5, ERN (En) 00078970-00078971 ("Vietnam look[s] down upon the whole region [...] Vietnam looks down on Cambodia"); United States Congressional Report: Vietnam-Cambodia Conflict, E3/2370, 4 October 1978, pp. 2-4, ERN (En) 00187381-00187383.

<sup>528</sup> See e.g., Revolutionary Flag, E3/193, August 1977, p. 22, ERN (En) 00399242; Revolutionary Flag, E3/170, October-November 1977, ERN (En) 00182548; Revolutionary Flag, E3/744, February 1978, pp. 4, 11-18, ERN (En) 00464053, 00464060-00464067; Revolutionary Flag, E3/4604, April 1978, pp. 4, 8, ERN (En) 00519832, 00519836; Revolutionary Flag, E3/215, September 1978, p. 13, ERN (En) 00488626; Revolutionary Flag, E3/746, July 1978, p. 1, ERN (En) 00428289. See also, Section 13.3: Treatment of the Vietnamese.

<sup>529</sup> T. 13 December 2012 (Denise AFFONÇO), E1/153.1, p. 82 (affirming assertions in her book about the massacre of Vietnamese returnees by LON Nol soldiers: "Absolutely. [...] They [LON Nol soldiers] were anti-Vietnamese and they said that in the Vietnamese community, there were refugee Vietcong elements, and that is why they brought them all together and massacred them."); Book by D. Affonço, *La digue des veuves: Rescapée de l'enfer des Khmers rouges*, E3/7242, p. 26, ERN (Fr) 00678322 ("Les Vietnamiens et les Cambodgiens d'origine vietnamienne subissent bientôt de véritables pogroms ordonnés par Lon Nol une opération de nettoyage radicale une vague de terreur barbare et sanglante de l'histoire du Cambodge entre 1970 et 1975 suivie par le raz-de-marée de sauvagerie khmer rouge"); T. 9 April 2013 (François PONCHAUD), E1/178.1, p. 72 ("Lon Nol government also executed innocent Vietnamese people [...] in 1970, when about 2,000 people were executed. The Lon Nol government soldiers killed unarmed and innocent Vietnamese civilians because [...] North Vietnam invaded Cambodia."); T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 23 ("[T]he Lon Nol Army killed many innocent Vietnamese"), 34 ("Lon Nol massacred the Vietnamese in early April 1975"), 37 (maintaining that murdered Vietnamese were singled out due to racial hatred); T. 20 July 2012 (David CHANDLER), E1/93.1, p. 77 ("Yes, there's ample evidence that the untrained and overstuffed, quickly recruited Lon Nol army perpetrated a lot of atrocities, particularly against local Vietnamese people"); T. 23 July 2012 (David CHANDLER), E1/94.1, p. 19 ("it's a question of an animosity that was already [...] exhibited by the Lon Nol regime, continued under the DK regime").

<sup>530</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 223-226, ERN (En) 00396423-00396426.

<sup>531</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 76, ERN (En) 00498295 ("The 1971 Congress (I attended) determined that 'Vietnam is a friend with whom there is a contradiction.' The determination was the determination of a clear political line toward Vietnam, meaning they were not comrades in arms, but neither were they enemies."); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 56, ERN (En) 01001723 (noting that CPK leaders resolved that Vietnam was the long term "acute enemy").

Vietnamese incursion a year earlier.<sup>532</sup> KHIEU Samphan was appointed to the Central Committee as an alternate member along with CHOU Chet, KE Pauk and KOY Thuon.<sup>533</sup> The Congress ratified the CPK name which had been adopted by the Central Committee six years earlier,<sup>534</sup> and approved a mostly unchanged Party Statute,<sup>535</sup> which continued to expound the Marxist-Leninist Party line of national democratic revolution, democratic centralism and the opposition to feudalists and imperialists.<sup>536</sup>

227. By the time the CPK Central Committee convened in May 1972, Khmer Rouge forces fighting under the banner of the Cambodian People's National Liberation Armed Forces ("CPNLA") were the dominant military force in Cambodia but remained ill-equipped to confront the Vietnamese.<sup>537</sup> The Committee issued an "urgent directive" calling on the Party to strengthen its "proletarian stance" and to intensify the struggle against the various oppressive classes seeking to conserve their rights under the new regime.<sup>538</sup>

<sup>532</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 44-46 (stating that the Khmer Viet Minh returnees and ex-Pracheachon members were similarly viewed with suspicion); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 49, ERN (En) 01001716 (approximately 1,000 Khmer Viet Minh were re-infiltrated back into Cambodia). *See also*, Photograph of Attendees of Third Party Congress, E3/1595, 1971, ERN (En) P00416590; Photograph of Attendees of Third Party Congress, E3/136, 1971, ERN (En) P00416593; Photograph of Attendees of Third Party Congress, E3/137, 1971, ERN (En) P00416592; T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 25-31 (identifying CPK leaders from aforementioned 1971 Congress photographs). *See also*, Section 16: Common Purpose, paras 3936-3937.

<sup>533</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 92-94 (KHIEU Samphan also claimed that he was not trusted as he was still considered a front person for the Party); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 76, ERN (En) 00498295; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 140, ERN (En) 00103793 ("I was admitted as a probationer member of the CPK's Central Committee in 1971"); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 227, 453, ERN (En) 00396427, 00396669. *See also*, T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 41 (admitting he was present); T. 25 July 2012 (David CHANDLER), E1/96.1, p. 50; T. 10 July 2013 (Stephen HEDER), E1/221.1, p. 76.

<sup>534</sup> *See above*, para. 209.

<sup>535</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 45; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 10-11 (stating that the changes between the 1960 and 1971 statutes were "very minimal – it was a slight difference").

<sup>536</sup> Draft CPK Statute, E3/8380, undated, pp. 2-3, ERN (En) 00940564-00940565 (handwritten copy 1972). *See also*, CPK Statute, E3/130, undated, pp. 3-5, ERN (En) 00184024-00184026.

<sup>537</sup> Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 207, ERN (En) 00422835; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 236, ERN (En) 00396436 (noting that there were approximately 35,000 Khmer Rouge soldiers at the beginning of 1972); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 61, ERN (En) 01001728 (noting that there were between 35,000 and 40,000 soldiers by May 1972); T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 13-14 (stating that archival materials from the Americans estimated that the Khmer Rouge controlled more than two thirds of Cambodia's territory in 1973); T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 46-47 (SHORT opines that the Khmer Rouge were not yet in a position to triumph over the Vietnamese).

<sup>538</sup> T. 7 May 2013 (Philip SHORT), E1.190.1, pp. 46-47; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 228, ERN (En) 00396428.

228. In January 1973, the Paris Peace Accords were negotiated between the governments of Vietnam and the US, removing the latter from the Vietnamese conflict and requiring the withdrawal of North Vietnamese forces from Cambodian territory. In pursuit of the Accords, North Vietnam also ceased provision of military supplies to the CPK, exacerbating a relationship which had been deteriorating since the early 1960s as a result of Hanoi's continued opposition to armed struggle in Cambodia.<sup>539</sup> By May 1973, the last vestiges of North Vietnamese command over Cambodian communist regiments had dissipated, with a number of North Vietnamese soldiers remaining to assist with and guard the flow of Chinese arms down the Ho Chi Minh Trail.<sup>540</sup> Although the Accords led to the demobilisation of Vietnamese military forces on Cambodian territory, the Khmer Rouge were enraged by North Vietnam's assent to the peace treaty, concluding that the regional peace initiative now compelled the CPK to commence negotiations with the Khmer Republic at risk of potential US military intervention.<sup>541</sup>

229. The CPK's suspicions were ultimately realised. Following the Paris Peace Accords, the US military diverted its bombing raids to Cambodian territory in an anti-communist campaign which lasted until August 1973.<sup>542</sup> During this time, the US

<sup>539</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 40-41 ("The reason why the Vietnamese did not [want] Kampuchea to engage in armed struggle [was] because they were afraid that they could not transport their weapons from Kampong Thom [*sic*] to Vietnam."); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 136-138, ERN (En) 00396336-00396338 (noting that the VWP Central Committee authorised armed struggle in South Vietnam in January 1959, with armed struggle resuming in Laos in about 1960), 157-159, ERN (En) 00396357-00396359 (no Vietnamese support was received for armed struggle in 1965); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, pp. 63-64, ERN (En) 01001730-01001731 (stating that the Khmer Rouge was "totally dependent" upon North Vietnam at this time and that the "Hanoi leaders had no other cards to deal against the Khmers Rouges" other than "the withholding of Chinese supplies"); Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 114-115, 141, ERN (En) 00193197-00193198, 00193224 (highlighting the apparently hegemonic failure to sanction armed struggle since 1960).

<sup>540</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 250, ERN (En) 00396450 ("By late summer [1973], only 2-3,000 Vietnamese combat troops and about 2,000 civilian cadres, plus the special units in the North-East guarding the Ho Chi Minh Trail, remained on Cambodian soil."); Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 64, ERN (En) 01001731 (North Vietnam provided military assistance and helped transport aid from China down the Ho Chi Minh Trail across Vietnamese and Cambodian territory in 1973).

<sup>541</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 18-21; Revolutionary Flag, E3/5, August 1975, p. 22, ERN (En) 00401497; Revolutionary Flag, E3/25, December 1976-January 1977, pp. 24-25, ERN (En) 00491417-00491418; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 58, ERN (En) 01001725.

<sup>542</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 94; Revolutionary Flag, E3/747, August 1978, p. 30, ERN (En) 00499785; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 59, ERN (En) 01001726; Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*,

dropped hundreds of thousands of tonnes of bombs on Cambodian territory causing civilian deaths in the tens of thousands, destroying crops and agricultural infrastructure, killing livestock and decimating the country's rural economy.<sup>543</sup> The bombing campaign led to the flight of rural populations to urban areas including, in particular, Phnom Penh, in search of food and refuge,<sup>544</sup> while attacks on CPK military forces delayed the Khmer Rouge's ability to take the capital by several years.<sup>545</sup> The CPK nevertheless took advantage of the devastation and human plight occasioned by the US bombings to engage in a successful recruitment campaign founded upon class struggle and the fear of Cambodia's ultimate annihilation by the US and the LON Nol regime.<sup>546</sup>

230. With the Vietnamese out of the way, the Khmer Rouge turned their focus to defeating remaining Khmer Republic strongholds. In June 1974, the CPK Central Committee met in Meak village, Prek Kok commune for more than a fortnight to discuss plans for the final assault, liberation and evacuation of Phnom Penh and other urban centres.<sup>547</sup> At the meeting, attended by NUON Chea, POL Pot, SAO Phim, KOY

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E3/17, pp. 95-97, ERN (En) 00393009-00393011; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 225, ERN (En) 00193308.

<sup>543</sup> T. 8 February 2012 (Accused NUON Chea), E1/40.1, p. 26; T. 23 July 2012 (David CHANDLER), E1/94.1, pp. 40-43; T. 24 July 2012 (David CHANDLER), E1/95.1, pp. 141-142; T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 31-32, 36; T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 27-28; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 50-51, 110, ERN (En) 00103748, 00103778; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 245, ERN (En) 00396445; Book by W. Shawcross: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 272, ERN (En) 00429959; Book by E. Becker: *When the War was Over*, E3/20, p. 17, ERN (En) 00237722.

<sup>544</sup> T. 23 July 2012 (David CHANDLER), E1/94.1, pp. 41, 47, 130; T. 9 April 2013 (François PONCHAUD), E1/178.1, p. 14; T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 5; T. 15 July 2013 (Stephen HEDER), E1/223.1, pp. 54-55; T. 10 February 2015 (Elizabeth BECKER), E1/260.1, pp. 16-17.

<sup>545</sup> T. 23 July 2012 (David CHANDLER), E1/94.1, p. 41; T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, p. 83; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 110, ERN (En) 00103778. *See also*, T. 21 August 2012 (KIM Vun), E1/111.1, pp. 53, 61.

<sup>546</sup> T. 14 March 2016 (Alexander HINTON), E1/401.1, p. 120 (“[I]t goes back to the civil war, even the US bombing, different sources to motivate anger and talk about things that had happened to people to make them angry.”); Book by A. Hinton: *Why Did They Kill?*, E3/3346, pp. 57-60, ERN (En) 00431499-00431502; T. 19 June 2013 (NOU Mao), E1/209.1, p. 62 (“The revolution was [...] initiated against the Lon Nol's [*sic*] regime because we were angry with them for bombing the country); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 218, ERN (En) 00396418. *See also*, *Radio Marks 15 Aug 73 'Victory' Over U.S. Air War* (in FBIS collection), E3/1358, 14 August 1977, ERN (En) 00168282 (“The sight of destruction made our people and revolutionary army seethe with national and class indignation at the U.S. imperialists, their lackeys and all traitors.”).

<sup>547</sup> Revolutionary Flag, E3/5, August 1975, p. 22, ERN (En) 00401497; Revolutionary Flag, E3/11, September 1977, p. 36, ERN (En) 00486247; Revolutionary Flag, E3/747, August 1978, p. 20, ERN (En) 00499785; T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 94-95; 103-104, 108, 110; T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 2; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 16, 23-25, 43-44; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 256, ERN (En) 00396456.

Thuon, *Ta Mok*, VORN Vet, RUOS Nhim and SON Sen,<sup>548</sup> the Committee decided to take the capital in the dry season of 1974-1975.<sup>549</sup> In line with the official CPK historical narrative,<sup>550</sup> NUON Chea and KHIEU Samphan would both later insist that it was necessary to liberate Phnom Penh ahead of North Vietnam's capture of Saigon in order to prevent their neighbour from taking control of Cambodia under the pretext of military assistance.<sup>551</sup> By this time, HOU Youn had become an outspoken critic of the CPK's decisions, including the decision to evacuate Phnom Penh.<sup>552</sup> Both he and HU Nim would be purged from the CPK's leading ranks in the coming years along with other Central Committee members including VORN Vet, KEO Meas and six Zone Secretaries: RUOS Nhim (Northwest Zone); SAO Phim (East Zone, committed suicide); NEY Sarann (Northeast Zone); CHOU Chet (West Zone); KOY Thuon (old North Zone); and KANG Chap (new North Zone).<sup>553</sup>

231. Following a radio announcement attributed to KHIEU Samphan on 31 December 1974,<sup>554</sup> the Khmer Rouge advanced upon Phnom Penh the next day, commencing a

<sup>548</sup> The Chamber has found no convincing evidence that either KHIEU Samphan or IENG Sary attended this meeting. See Section 8.1.3.1: Roles and Functions – KHIEU Samphan: Background Information and Pre-DK Period: 1970 – 17 April 1975: Attendance at June 1974 Central Committee meeting and April 1975 meeting of CPK Leaders.

<sup>549</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 25; Revolutionary Flag, E3/25, December 1976-January 1977, p. 29, ERN (En) 00491423; Revolutionary Flag, E3/11, September 1977, p. 36, ERN (En) 00486247; Revolutionary Flag, E3/746, July 1978, p. 5, ERN (En) 00428293; Revolutionary Flag, E3/747, August 1978, p. 20, ERN (En) 00499785.

<sup>550</sup> Revolutionary Flag, E3/5, August 1975, p. 14, ERN (En) 00401489; Revolutionary Flag, E3/4604, April 1978, p. 8, ERN (En) 00519836; Revolutionary Flag, E3/215, September 1978, p. 6, ERN (En) 00488619; DK Publication: Black Paper, E3/23, September 1978, p. 11, ERN (En) 00082518.

<sup>551</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 29 (“[I]f Vietnam liberated before us, they would deploy their soldiers under the guise of assisting us in Phnom Penh, and then control us.”); T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 68 (“In the past many Vietnamese leader [*sic*] did not want us to liberate Phnom Penh because they consistently told us that you, comrades, did not have to try to liberate Phnom Penh. Once [Saigon] was released then we would be able to liberate Phnom Penh within 24 hours [...] you simply act as the usher who find [*sic*] the pass for us to get into your country.”); T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 97 (“Vietnam did not want to believe this news because Phnom Penh being liberated before liberating [Saigon] first would ruin its hope to achieve its plan to conquer Cambodia.”); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 51, ERN (En) 00103748. See also, NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 24, ERN (En) 00762396. See above, para. 208.

<sup>552</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 45-46; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 258, ERN (En) 00396466.

<sup>553</sup> Section 12.1.6.3.7: Events at Akreiy Ksatr and SAO Phim's Suicide; Section 12.2.8.1.1: S-21 Security Centre: KEO Meas *alias* KEAV Meah; Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya; Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon; Section 12.2.8.3.1: S-21 Security Centre: HU Nim *alias* Phoas; Section 12.2.8.4.1: S-21 Security Centre: RUOS Nhim; Section 12.2.8.4.2: S-21 Security Centre: CHOU Chet *alias* Sy; Section 12.2.8.5.1: S-21 Security Centre: CHANN Sam *alias* KANG Chap *alias* Se (or Sae); Section 12.2.8.5.2: S-21 Security Centre: VORN Vet.

<sup>554</sup> *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, ERN (En) 00166659-00166661.

relentless assault that would last until mid-April. East and Special Zone troops under the overall command of General Staff Chairman SON Sen and North Zone Secretary KOY Thuon commenced shelling the city with rockets and other ordnances.<sup>555</sup> On 26 February 1975, FUNK/GRUNK issued a press communiqué attributed to KHIEU Samphan denouncing LON Nol as one of the “seven traitors” of the Khmer Republic – “ringleaders of the treacherous antinational *coup d’état* which overthrew the independence, peace and neutrality of Cambodia” – stating that the administration had declared it “absolutely necessary to kill these seven traitors for their treason against the nation”.<sup>556</sup> The Voice of FUNK and the FUNK information bureau repeated the call for the Khmer Republic leadership’s execution in the following weeks,<sup>557</sup> with KHIEU Samphan issuing similar appeals as Deputy Prime Minister of GRUNK.<sup>558</sup>

<sup>555</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 76-77, 79-81. T. 14 November 2012 (MEAS Saran), E1/144.1, pp. 91-92; T. 5 June 2013 (Sydney SCHANBERG), E1/201.1, p. 21; T. 23 October 2012 (LAY Bony), E1/137.1, pp. 82-83; *Minister LONG Boret Appeals to Kurt Waldheim* (in FBIS collection), E3/488, 10 February 1975, ERN (En) 00166744-00166745; A FUNK radio broadcast announced that the targets were enemy positions, military camps, military installations and the residences of the “seven traitors”. See *NUFC Radio Appeals to Foreigners to Evacuate Phnom Penh* (in FBIS collection), E3/488, 24 February 1975, ERN (En) 00166765.

<sup>556</sup> *KHIEU Samphan Chairs NUFC Congress Session: Communiqué Issued* (in FBIS collection), E3/117, 26 February 1975, ERN (En) 00166772-00166775 (naming the “seven traitors”: LON Nol, SIRIK Matak, SON Ngoc Than, CHENG Heng, IN Tam, LONG Boret and SOSTHÈNE Fernandez); US Embassy Khmer Report, E3/3334, 4 March 1975, ERN (En) 00413053. See also, Section 8: Roles and Functions – KHIEU Samphan, para. 581.

<sup>557</sup> *NUFC Radio Emphasises 26 Feb Congress Appeal* (in FBIS collection), E3/120, 3 March 1975, ERN (En) 00166791-00166792; *NUFC Editorial Hails Decisions of 2nd National Congress* (in FBIS collection), E3/120, 4 March 1975, ERN (En) 00166792-00166793; *Further Appeal Urges People to Join CPNLAF Struggle* (in FBIS collection), E3/120, 7 March 1975, ERN (En) 00166795-00166796; *Cambodians in Peking Laud Second NUFC Congress* (in FBIS collection), 11 March 1975, ERN (En) 00166816-00166817; *Civil Disturbances Urged* (in FBIS collection), E3/120, 15 March 1975, ERN (En) 00166838-00166840; *US Opposition Noted* (in FBIS collection), E3/120, 16 March 1975, ERN (En) 00166842-00166883; *17 March ‘Urgent Appeal’* (in FBIS collection), E3/120, 17 March 1975, ERN (En) 00166842-00166843; *RGNUC’s HOU Nim Issues Appeal to Monks on Current Situation* (in FBIS collection), E3/120, 22 March 1975, ERN (En) 00166869-00166872; *RGNUC 22 March Statement on NUFC-CPNLAF Anniversary* (in FBIS collection), E3/120, 25 March 1975, ERN (En) 00166875-00166876; *Demonstrations Against New LON Nol Cabinet Reported* (in FBIS collection), E3/120, 25 March 1975, ERN (En) 00166877; *RGNUC’s HOU Youn Issues Appeal to ‘Enemy-Controlled’ Areas* (in FBIS collection), E3/120, 29 March 1975, ERN (En) 00166885-00166887; T. 5 June 2013 (Sydney SCHANBERG), E1/201.1, p. 40.

<sup>558</sup> *KHIEU Samphan Appeals for Intensified Struggle 15 March* (in FBIS collection), E3/120, 15 March 1975, ERN (En) 00166826-00166828 (“You are asked to intensify your struggle against the traitors, attaching them from the inside. [...] The time has come for us to put an end to the existence of the traitors.”); *RGNUC Cabinet Issues 25 March Communiqué-Appeal* (in FBIS collection), E3/120, 26 March 1975, ERN (En) 00166874 (“The national congress decided that the existence of the fascist, rotten [seven] traitors must be ended at all costs because they have committed monstrous crimes unprecedented in Cambodia’s history.”).

232. On 1 April 1975, LON Nol resigned and fled into exile after his forces sustained significant military losses to the CPNLAF.<sup>559</sup> Two days later, KHIEU Samphan issued a statement announcing that the “seven traitors” of the LON Nol regime had fled the country and that “US imperialists” were attempting to prolong the war by resorting to negotiation.<sup>560</sup>

233. The plan for capturing Phnom Penh was finalised at a meeting attended by POL Pot, NUON Chea, KHIEU Samphan, SON Sen, VORN Vet, KOY Thuon, KE Pauk, SAO Phim and *Ta Mok* in early April 1975.<sup>561</sup> At the same time, CPNLAF divisions including those from the North Zone, now chaired by KE Pauk, *Ta Mok*’s Southwest Zone, VORN Vet’s Special Zone and SAO Phim’s East Zone gradually converged upon the capital.<sup>562</sup>

234. On 16 April 1975, the remaining Khmer Republic leadership sent a message to NORODOM Sihanouk in Beijing offering immediately to transfer power to GRUNK and asking for assurances that there would be no reprisals for government acts during the hostilities.<sup>563</sup> NORODOM Sihanouk rejected this offer outright, stating that only an unconditional surrender was acceptable and urging the “first rank traitors” to flee the country because as war criminals they “deserve nothing less than the gallows”.<sup>564</sup>

235. Two weeks before the North Vietnamese captured Saigon, the CPNLAF entered Phnom Penh on the morning of 17 April 1975.<sup>565</sup>

<sup>559</sup> *Lon Nol, Delegation Leave Phnom Penh for Indonesia, US* (in FBIS collection), E3/118, 1 April 1975, p. 1, ERN (En) 00166888; *Revolutionary Flag*, E3/11, September 1977, ERN (En) 00486248.

<sup>560</sup> *KHIEU Samphan Congratulates CPNLAF on Neak Luong Victories* (in FBIS collection), E3/118, 3 April 1975, ERN (En) 00166923-00166925; *KHIEU Samphan Issues Statement on Current Situation* (in FBIS collection), E3/118, 1 April 1975, ERN (En) 00166897.

<sup>561</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750 (stating that neither HU Nim nor HOU Youn were present); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 12-13, 16; MEAS Voeun Interview Record, E3/424, 16 December 2009, p. 3, ERN (En) 00421070; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 4, ERN (En) 00223581; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008, pp. 2-3, ERN (En) 00231409-00231410. *See also*, Section 8.1.3.1: Roles and Functions – KHIEU Samphan: Attendance at June 1974 Central Committee Meeting and April 1975 Meeting of CPK Leaders.

<sup>562</sup> Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 262-265, ERN (En) 00396470-00396473; Book by E. Becker: *When the War was Over*, E3/20, p. 160, ERN (En) 00237865.

<sup>563</sup> *Phnom Penh Leaders Request Cease-Fire, Transfer of Power* (in FBIS collection), E3/118, 16 April 1975, ERN (En) 00166970.

<sup>564</sup> *Sihanouk Rejects Offer* (in FBIS collection), E3/118, 16 April 1975, ERN (En) 00166971; Newsweek Article: *White Flags Over Phnom Penh*, E3/3721, 28 April 1975, ERN (En) S00002598.

<sup>565</sup> *See e.g.*, T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 96; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 8; *Revolutionary Flag*, E3/5, August 1975, p. 23, ERN (En) 00401498;

### **3.2. Establishment of Cooperatives and Security Centres between 1970 and 1975**

236. Following NORODOM Sihanouk's overthrow in 1970, CPK forces began to occupy and administer areas which they had "liberated" from Khmer Republic control under the banner of CPNLAF and FUNK/GRUNK. As part of their administration of these areas, the Khmer Rouge proceeded to establish agricultural cooperatives and security centres, some of which were still operational by the time of Democratic Kampuchea's foundation on 17 April 1975.

#### ***3.2.1. Establishment of Cooperatives before 1975***

237. In 1970, the Khmer Rouge seized control of parts of Tram Kak district in Takeo province and began to organise villagers of the newly "liberated" areas into mutual assistance teams or "solidarity" groups to harvest rice and increase agricultural production, while permitting some to retain private property and families to eat alone.<sup>566</sup> Collectivisation and communal eating was introduced in Tram Kak district later on and expanded progressively along with the conversion of solidarity groups into cooperatives.<sup>567</sup>

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Revolutionary Flag, E3/747, August 1978, p. 21, ERN (En) 00499786; *NUFC Radio: CPNLAF in Central Phnom Penh* (in FBIS collection), E3/118, 17 April 1975, ERN (En) 00166972; *'Nationalist Movement' Leader Asks Surrender over Phnom Penh Radio* (in FBIS collection), E3/118, 17 April 1975, ERN (En) 00166972-00166973.

<sup>566</sup> T. 17 February 2015 (SAO Han), E1/264.1, p. 90 (the Khmer Rouge arrived in 1970 to Trapeang Rumpeak village and implemented solidarity groups); SAO Han Interview Record, E3/5518, 21 November 2009, pp. 2-3, ERN (En) 00413896-00413897 (solidarity groups were established to harvest rice communally until 1975); T. 29 January 2015 (CHEANG Sreimom), E1/254.1, pp. 9, 11 (the Khmer Rouge entered and began to control Nhaeng Nhang commune in 1970, establishing communal eating and cooperatives at the time); CHEANG Sreimom Interview Record, E3/5832, 11 November 2009, pp. 2-3, ERN (En) 00410262-00410263; T. 12 March 2015 (NUT Nov), E1/276.1, pp. 39-40 (villagers in Angk Roneab were made to work in rice fields in a mutual exchange between 1970 to 1973); T. 16 March 2015 (NUT Nov), E1/277.1, pp. 82-83 (in mutual assistance teams, produce was shared according to strength and contribution). *See also*, NUT Von Interview Record, E3/5521, 1 December 2009, p. 3, ERN (En) 00422317.

<sup>567</sup> CPK Circular: Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, 20 May 1976, p. 1, ERN (En) 00636008 (the Party decided to organise peasant cooperatives on 20 May 1973, but during the initial phase "certain cadres did not fully understand what cooperatives were" and "did not believe in cooperatives"); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 12-14, 60-62 (describing the establishment of cooperatives in various communes from 1973-1974, and suggesting that communal eating began in Tram Kak district in 1973); T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 41 (in his village in Cheang Tong commune, communal eating started in 1974 for one month but was cancelled then started again in 1975 or 1976). Whereas Witness CHANG Srey Mom suggested that communal eating and cooperatives were established at Nhaeng Nhang commune, Tram Kak district, from around 1970, the Chamber finds the evidence of EK Hoeun and MEAS Sokha to be more reliable in this respect



238. In or around May 1970, the CPNLAF captured Kratie town and province. Unlike the situation in Tram Kak, there is no evidence that the Khmer Rouge administration proceeded to implement agricultural cooperatives immediately, with witness YUN Kim testifying that “people were still engaging in running their daily business”, and that “the market still existed” in Kratie at this time.<sup>568</sup> Lamenting the hitherto slow progress of the revolution in “liberated” areas and the population’s general apathy toward the revolutionary cause, the CPK identified continuing economic subjugation by the capitalist of the “old society” as the primary impediment to the revolution. Referencing the Kratie market as a case in point, the *Revolutionary Flag* would later explain that “this commerce could not serve the lives of the people and could not serve the war of national liberation”, noting that the CPK “could not gather up the people” since “[t]he businessmen were [still] the masters”.<sup>569</sup>

239. Meeting in May 1972, the CPK Central Committee decided to close markets and organise cooperatives.<sup>570</sup> The decision to close markets was soon implemented in Khmer Rouge-held areas, as was the end of the use of currency.<sup>571</sup> The Party reasoned that class struggle necessitated the elimination of private commerce in favour of collectivised work production.<sup>572</sup> A CPK circular would later describe the establishment of agricultural cooperatives as a direct attack on feudalists and a necessary measure to “harness the force of the base people and forge a strong alliance

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and notes that it is corroborated by documentary evidence. See T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 11. See also, Section 10.1.3: Tram Kak Cooperatives: Witness and Civil Party Evidence.

<sup>568</sup> T. 19 June 2012 (YUN Kim), E1/88.1, pp. 29-30.

<sup>569</sup> Revolutionary Flag, E3/5, August 1975, pp. 5-6, ERN (En) 00401480-00401481.

<sup>570</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 4-5 (stating that the decision to implement cooperatives “was the decision of the Standing Committee”).

<sup>571</sup> T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 100 (“prohibition of markets began by – if not before 1973 in at least some places”); T. 2 May 2013 (LIM Sat), E1/187.1, p. 11 (referring to Pursat, Koas Krala and Kuoy Chik Dei between 1971 and 1975: “[M]arkets were closed at that time [...] all markets were closed immediately after the Khmer Rouge captured those locations.”); T. 19 June 2012 (YUN Kim), E1/88.1, p. 32 (money was no longer circulated by around 1974); T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 100 (by around 1973, it was “the end of the use of the Khmer Republic currency”). See also, T. 12 December 2012 (Denise AFFONÇO), E1/152.1, p. 73.

<sup>572</sup> Revolutionary Flag, E3/10, September-October 1976, ERN (En) 00450510 (“The Party made an assessment [...] and decided to close the markets in the liberated zones in 1972”); Revolutionary Flag, E3/731, December 1975-January 1976, ERN (En) 00089752 (“During the war these organisational measures included ‘abolishing markets to prevent the capitalists from being able to grasp and make use of them’ and ‘setting up new relations of production by attacking and eliminating the old relations of production and building up new ones’, notably by setting up co-operatives”); Revolutionary Flag, E3/166, February-March 1976, p. 7, ERN (En) 00517819 (“[W]e began waging socialist revolution in 1972, in particular 1973, by dissolving private commerce and then the State conducted commerce by itself and dissolved the markets”); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 228, ERN (En) 00396428.

between workers and peasants”.<sup>573</sup> Clarifying in court the Party’s antagonism toward “feudalists”, NUON Chea explained that without cooperatives, “oppressive landlords [...] would impose high interest on [agricultural] loans and they would charge higher fees on the land rented as well”, allegedly benefitting by “as much as 50 percent of the princip[al] loan”.<sup>574</sup>

240. Beyond the official Party line, the Accused advanced further rationales for the implementation of cooperatives. Whereas NUON Chea suggested that the interests of economic efficiency required pooling of labour resources for increased rice production,<sup>575</sup> KHIEU Samphan opined that control over rice production and supply would prevent the concentration of Cambodia’s rice production in the hands of Vietnamese forces to the detriment of the Khmer Rouge and would thereby preserve the country’s independence.<sup>576</sup>

241. Both NUON Chea and KHIEU Samphan insisted that the implementation of a forced collectivisation program through cooperatives – which would result in the gradual abolition of private property and control of the economy in areas under Khmer Rouge control<sup>577</sup> – was required to ensure sufficient food and overcome the difficulties of the war against the Khmer Republic and the simultaneous US bombing campaign.<sup>578</sup> Indeed, the civil war led to inflationary pressures as a result of severe commodity

<sup>573</sup> CPK Circular: Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, 20 May 1976, p. 2, ERN (En) 00636009 (“[I]n 1972-73 the Party took measures to organise the people based on political consciousness in view of thwarting the economic power of land owners and capitalists, cut off private trading, control traders, dismantle the former means of production, establish new ones and organise cooperatives. Chief among the measures was the organisation of cooperatives. It consisted of attacking the power of the classes of feudalists land owners and capitalists. It was a measure to harness the force of the base people and forge a strong alliance between workers and peasants.”). *See also*, T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 5-6.

<sup>574</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 21.

<sup>575</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 3-6 (“The Party decided to form cooperatives [...] in order to gather the people to work collectively and not to work individually as it was a waste of time and force.”).

<sup>576</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 83, ERN (En) 00498302; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 57, 108-109, ERN (En) 00103751, 00103777. *See also*, Revolutionary Flag, E3/5, August 1975, p. 10, ERN (En) 00401485 (“the cooperatives control the economy to an extent”); T. 6 May 2013 (Philip SHORT), E1/189.1, p. 95; Report by USAID: Cambodia Termination Report Volume 1, E3/4178, pp. 2-3, ERN (En) 00291323-00291324.

<sup>577</sup> Section 10.1: Tram Kak Cooperatives; Section 16: Common Purpose.

<sup>578</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 91; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 29, 30; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 12, 14; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 31; T. 8 February 2012 (Accused NUON Chea), E1/40.1, p. 26; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 60-61, ERN (En) 00103751-00103753. *See above*, para. 229.

shortages. National rice harvests were reduced by between 50 and 80 percent between 1970 and 1975, with aid agencies struggling to ameliorate low rice stocks during this time as grain imports exceeded exports.<sup>579</sup>

242. While the decision to introduce cooperatives was not proclaimed until May 1973,<sup>580</sup> the Khmer Rouge had begun organising villagers of “liberated” areas as early as 1971 or 1972 into “mutual assistance” or “solidarity” groups – similar to the collectives organised in Tram Kak from 1970<sup>581</sup> – consisting of five to ten families, to work on their respective lands.<sup>582</sup> From about 1973, these groups were gradually expanded and transformed into fully-fledged “cooperatives”,<sup>583</sup> with villagers divested

<sup>579</sup> Report by USAID: *Cambodia Termination Report Volume 1*, E3/4178, pp. 3-6, ERN (En) 00291324-00291327; UNICEF Annual Report 1974, E3/4186, pp. 3-4, ERN (En) 00427652-00427653.

<sup>580</sup> CPK Circular: *Third Year Anniversary of the Organisation of Peasant Cooperatives*, E3/50, 20 May 1976, ERN (En) 00636008 (“On 20 May 1973, the Party decided to organise peasant cooperatives”); Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, ERN (En) 00182811 (stating that 20 May 1973 was the “Birth of the Peasant Cooperative Organisation”); Revolutionary Flag, E3/10, September-October 1976, ERN (En) 00450511 (“in mid-1973 the Party decided to organise cooperatives throughout the country”).

<sup>581</sup> See above, para. 237.

<sup>582</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 3 (In mid-1973 “cooperatives were not yet organised. In fact, the first time it was the association for rice production was established. There was also other associations to assist one another in the form of the associations that they were established.”); T. 19 June 2012 (YUN Kim), E1/88.1, p. 34 (“The mutual assistance group, lower level and higher level cooperatives are the three different groups. The mutual assistance group comprised of five to 10 families to mutually assist one another. The [...] production happened at each respective land of each individual.”); T. 6 June 2012 (SAO Sarun), E1/82.1, p. 59 (“Prior to 1975, the consolidarity [*sic*] groups were formed. It was a kind of mutual assistant [*sic*] group to assist each other in rice farming [...] the mutual assistant [*sic*] group was mainly focused on the work.”); T. 21 May 2013 (PRUM Sou), E1/194.1, p. 8 (“In Sector 103 of Preah Vihear province, they did not refer to ‘cooperative’. Rather, they referred to a ‘community’; they worked together; they did the rice farming together, but they ate individually.” The community “was established around 1971 or 1972”).

<sup>583</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 3-4 (describing the gradual introduction of “associations for rice production” and their transition to “cooperatives” from 1973); Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 65, ERN (En) 00498284 (“High level cooperatives were organised in 1973”); Svay Rieng Peasants Meeting Discusses Advanced Cooperatives (in FBIS collection), E3/295, 12 December 1978, ERN (En) 00169093 (“[I]n 1973 despite the fact that the US imperialists had escalated the air war in the most insane and ferocious manner our KCP [*i.e.* CPK] had succeeded in setting up low and high level production cooperatives”); Phnom Penh Transportation Workers Welcome Constitution (in FBIS collection), E3/273, 27 January 1976, ERN (En) 00167863 (“Under the leadership of the revolutionary organisation the people in the southwestern region organised themselves into production cooperatives. These cooperatives developed and expanded gradually and were able to stabilise the people’s living condition and support the revolutionary war until the complete and definite victory on 17 April 1975.”); Revolutionary Flag, E3/5, August 1975, p. 7, ERN (En) 00401482 (“We set up a process of gradual cooperativisation in [...] liberated zones [...] but we made progress in eliminating private ownership of land and means of production, and in general we put cooperative ownership in place”).

of their individual properties, required to farm collective land in common and obliged to comply with communal living and eating arrangements.<sup>584</sup>

243. The Chamber has before it evidence that by 1973, cooperatives had been set up in Takeo,<sup>585</sup> Kampot,<sup>586</sup> Preah Vihear,<sup>587</sup> Siem Reap<sup>588</sup> and Monduliri provinces.<sup>589</sup> The implementation of cooperatives prior to 1975 would variously be associated with the development of agricultural products and infrastructure projects including dams, canals, bridges and roads, as well as the relocation of populations within Khmer Rouge-controlled territory in order to distance them from LON Nol forces.<sup>590</sup>

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<sup>584</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 3 (“[W]hen those associations expanded, cooperatives were generally formed that they were called the ‘low-level cooperatives’”); T. 19 June 2012 (YUN Kim), E1/88.1, p. 34 (“[I]n the cooperative level, people had some lands of cattle and worked together. [...] With regard to the high level cooperative, everything had to be placed in the cooperative collectively and the division of work is only divided according to the labour force – or the labour itself”); T. 21 May 2013 (PRUM Sou), E1/194.1, p. 8 (“[A]t a later stage, then the community was transformed into a cooperative and by then people ate communally. [...] [the cooperative] was established in 1973.”); T. 12 March 2015 (NUT Von), E1/276.1, p. 37 (“The difference between mutual assistant team and the cooperative was that in the cooperative, we ate communally but in the mutual assistant teams, we ate privately”).

<sup>585</sup> See above, para. 237.

<sup>586</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 27-28 (“I was only informed that cooperatives would be created in our district and we had to follow”), 107 (“[T]here were cooperatives already in 1973, but the cooperatives were not yet well organised. It was organised in small cooperatives.”).

<sup>587</sup> T. 21 May 2013 (PRUM Sou), E1/194.1, p. 8 (the cooperative in Sector 103 of Preah Vihear province “was established in 1973”).

<sup>588</sup> T. 12 November 2012 (PECHUY Chipse), E1/143.1, p. 86 (“The cooperatives which were established by the Khmer Rouge in my district [Chi Kraeng] was in 1972”).

<sup>589</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 7-8 (In 1966 or 1967, “[t]he Sector Committee moved the people from other parts of the province [Monduliri] to do rice farming in Kaoh Nheak district [...] since they did not have the lands to farm near the border area [...] they were asked to engage in farming and rice farming”).

<sup>590</sup> T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 4-5 (cadres in mobile forces were engaged in rice farming); T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 91-93 (referring to population movements in Kratie and Oudong in 1974, and the establishment of collectives generally before 1975. Witness affirms that population movements of a smaller scale had occurred as early as 1968 which were designed to allow people to “escape government controls by transferring them further within liberated zones”). See also, POV Sinuon Interview Record, E3/5545, 29 September 2009, p. 3, ERN (En) 00387500 (witness and his family were evacuated by the Khmer Rouge in 1973 from Rumlech village to Kaoh Khcheay in Pursat province “to escape the attack of LON Nol’s soldiers”); KHUN Kim Interview Record, E3/360, 30 April 2008, p. 3, ERN (En) 00268854 (witness was assigned in late 1974 to a mobile unit in Touk Meas where he built bridges and roads); KHORN Brak Interview Record, E3/509, 8 January 2009, p. 2, ERN (En) 00282215 (witness was in a mobile unit in 1972); CHEA Phan Interview Record, E3/5143, 12 December 2007, p. 2, ERN (En) 00223618 (witness was assigned in late 1973 to a mobile unit in Svay Rieng where she worked on canals and dams); NORNG Nan Interview Record, E3/4640, 22 April 2008, p. 2, ERN (En) 00272322 (witness was assigned to a mobile unit digging canals “everywhere” in 1973).

### 3.2.2. *Establishment of Security Centres before 1975*

244. The Khmer Rouge also established security centres in areas it brought under its control between 1970 and 1975. Kraing Ta Chan is the only security centre within the scope of Case 002/02 that was operational prior to 1975, having been set up in Tram Kak district in 1973 or 1974. The limited evidence before the Chamber about the Security Centre's operations prior to 1975 shows that Kraing Ta Chan was used as both a re-education and detention facility.<sup>591</sup>

245. The Chamber also has before it evidence of the existence and operation of the M-13 security centre which was operational by July 1971, when KAING Guek Eav *alias* Duch was appointed as chairman of the facility.<sup>592</sup> Officially the Special Zone Police Office,<sup>593</sup> M-13 was divided into two operations. M-13A, initially located in Thma Kob, Amleang commune in Kampong Speu province and, from mid-1973, in Trapeang Chrab, Amleang commune,<sup>594</sup> was directly supervised by Duch and responsible for interrogating and executing individuals suspected of being spies.<sup>595</sup> M-13B, located in Sdok Srat, Ang Snuol district,<sup>596</sup> was supervised by Duch's deputy and tasked with temporarily detaining those who had committed minor offences.<sup>597</sup>

246. M-13's operations were directed by members of the CPK Central Committee;<sup>598</sup> initially VORN Vet from July 1971 until mid-1973 and subsequently SON Sen until January 1975.<sup>599</sup> Instructions were passed from this level to Duch to "put pressure" on

<sup>591</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 8-9 (Kraing Ta Chan was used "for the purpose of re-educating [...] bad people, so that they would become good people"); T. 2 February 2015 (KEV Chandara), E1/255.1, pp. 32-33 (arrested and detained at Kraing Ta Chan for 29 days from March to April 1975); T. 4 February 2015 (SAY Sen), E1/256.1, p. 44 (arrested and sent to Kraing Ta Chan in 1974). *See also*, Section 12.3: Kraing Ta Chan Security Centre, para. 2683.

<sup>592</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 19-20, ERN (En) 00314266-00314267.

<sup>593</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 70, ERN (En) 00314317.

<sup>594</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp 4-5; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 75-76, ERN (En) 00315649-00315650.

<sup>595</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, pp. 41, 49; Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 66, 70-71, 75, ERN (En) 00314313, 00314317-00314318, 00314322; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 49, ERN (En) 00315623.

<sup>596</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 75, ERN (En) 00314322.

<sup>597</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 41; Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 75, ERN (En) 00314322; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 65, ERN (En) 00315639.

<sup>598</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 65, ERN (En) 00314312.

<sup>599</sup> Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 25, ERN (En) 00315944; KAING Guek Eav Trial Judgement, para. 115.

certain detainees,<sup>600</sup> after which they would be subjected to verbal abuse,<sup>601</sup> beatings,<sup>602</sup> and other forms of torture and cruel treatment.<sup>603</sup> Although some detainees were released on Duch's intervention,<sup>604</sup> others, including children, died due to the conditions of detention, sickness and a "weak physical state".<sup>605</sup>

247. Detainees at M-13A were kept alive for the sole purpose of interrogation.<sup>606</sup> They were fed portions of bran and rice dust which were considerably smaller than portions distributed to security centre cadres.<sup>607</sup> While some M-13A detainees died from starvation, Duch admitted that, "in general, we did not leave these people until they faced such a situation because after interrogation, in principle, they were taken away and smashed".<sup>608</sup>

248. Ultimately, "smashing", or execution, "was the main principle" at M-13A.<sup>609</sup> Once Duch considered the interrogation of a detainee to be complete, he ordered their execution upon the direction of his superiors.<sup>610</sup> Detainees were executed in secret approximately 100 metres away from the M-13A complex,<sup>611</sup> typically by a blow to the

<sup>600</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 50; Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 26, ERN (En) 00315945.

<sup>601</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 15, ERN (En) 00315589.

<sup>602</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 12, 15, 63, ERN (En) 00315586, 00315589, 00315637.

<sup>603</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 49 (detainees "would be tortured when they were interrogated"); Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 15, ERN (En) 00315589 (a big stick, sword or hammer would be used to threaten detainees during interrogations); Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 16-19, ERN (En) 00315590-00315593 (detainees were burned with lit torches containing wax at least once, while others were tied to poles), 63, ERN (En) 00315637 (detainees were fastened to poles, or would be doused with cold water and forced to stand in front of a fan), 98, ERN (En) 00315672 (detainees would be forced to bathe in the river and stand in the wind).

<sup>604</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 67, ERN (En) 00314314 ("A female was sent from the children's unit to M-13. She was accused of stealing an earring. [...] Later on I asked Chhay Kum Hour to release her and it was successful").

<sup>605</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 87-88, ERN (En) 00314334-00314335 (affirming that three children and a teenager were detained at M-13); Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 74, ERN (En) 00315648 (the three children later "died of a disease"); Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 11, ERN (En) 00315585 (detainees died of sickness), 42, ERN (En) 00315616 (detainees died of weak physical state).

<sup>606</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 89-90, ERN (En) 00314336-00314337.

<sup>607</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 89, ERN (En) 00314336.

<sup>608</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 90, ERN (En) 00314337.

<sup>609</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 77, ERN (En) 00314324.

<sup>610</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 21-24, 80-82, ERN (En) 00315595-00315598, 00315654-00315656.

<sup>611</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 29, 49, ERN (En) 00315603, 00315623.

back of the neck with a bamboo club or stick.<sup>612</sup> Any detainee attempting to escape from the complex would be “smashed immediately”.<sup>613</sup>

249. Light offenders at M-13B were mostly confined to a timber shed approximately two-and-a-half by 10 metres in length, with some released during the day to grow vegetables.<sup>614</sup> The detainees were released after a directive was received from the “upper echelon”.<sup>615</sup>

250. Security offices were established gradually over time in Khmer Rouge-held areas, with the M-15 security office in Sector 32 of the Southwest Zone established long before M-13.<sup>616</sup> The Chamber has before it evidence of further security centres or offices in Kompong Speu (M-99),<sup>617</sup> Krouch Chhmar,<sup>618</sup> Kok Kduoch<sup>619</sup> and Pongro,<sup>620</sup> which were operated by the Khmer Rouge prior to 1975.

### **3.3. Cham in Cambodia before 1975**

251. The Cham in Cambodia trace their history to the originally Hindu people of the Kingdom of Champa, which was located in the central and southern regions of present-day Vietnam.<sup>621</sup> By the 16th century, the majority of this population had converted to Islam, which had spread to Champa by sea through a trade network stretching from the Middle East to Malaya and the Indonesian archipelago.<sup>622</sup> Centuries of warfare with

<sup>612</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 26, ERN (En) 00315600; Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 16, ERN (En) 00315935.

<sup>613</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 4, ERN (En) 00315578. Duch estimates that between 200 and 300 people were executed at M-13A. See T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 50; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 29-30, 38, ERN (En) 00315603-00315604, 00315612.

<sup>614</sup> Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 99-100, ERN (En) 00315673-00315674.

<sup>615</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 76-77, ERN (En) 00314323-00314324; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 99-100, ERN (En) 00315673-00315674.

<sup>616</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 28.

<sup>617</sup> HAM In DC-Cam Interview, E3/8618, 17 August 2001, p. 3, ERN (En) 00289744; Book by N. Dunlop: *The Lost Executioner*, E3/2817, pp. 83-84, ERN (En) 00370027-00370028.

<sup>618</sup> T. 10 February 2016 (YSA Osman), E1/389.1, p. 36 (Cham “were rounded up in 1973, in Krouch Chhmar district, these people were gathered up and detained in a district security centre near Krouch Chhmar market”).

<sup>619</sup> UON Rim Interview Record, E3/5176, 3 June 2008, p. 3, ERN (En) 00478731.

<sup>620</sup> T. 14 November 2012 (PECHUY Chip Se), E1/144.1, pp. 23-24 (“I worked at the Pongro Security Centre starting from 1973 [...] people there were accused of betrayal by the Khmer Rouge.”).

<sup>621</sup> Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 23, ERN (En) 01001690; Book by E. Becker: *When the War was Over*, E3/20, p. 251, ERN (En) 00237956.

<sup>622</sup> William Collins, “The Muslims of Cambodia”, in Hean Sokhom, ed., *Ethnic Groups in Cambodia* (Center for Advanced Study, 2009), E3/3555, pp. 22-23, ERN (En) 00489314-00489315; T. 9 February

Vietnamese dynasties culminated in the fall of the Kingdom of Champa and, following several waves of migration, the displacement of its population across nearby territories, including Cambodia.<sup>623</sup>

252. The Cham retained their distinct ethnic, cultural and religious identity throughout the centuries since arriving and settling in Cambodia. Prior to 1975, the group had their own language and script,<sup>624</sup> practiced Islam,<sup>625</sup> eschewed pork<sup>626</sup> and chose names based on the Koran.<sup>627</sup> The Cham wore distinct traditional clothes, different from other Cambodians.<sup>628</sup> Women wore bright headscarves (“*krama*”) and long robes, while men customarily wore hats, sarongs and draped robes.<sup>629</sup> Grooming habits also differed from ethnic Khmers; Cham women wore their hair long under their *kramas* and men grew beards.<sup>630</sup>

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2016 (YSA Osman), E1/388.1, p. 38 (stating that the population had converted to Islam without specifying a date).

<sup>623</sup> William Collins, “The Muslims of Cambodia”, in Hean Sokhom, ed., *Ethnic Groups in Cambodia* (Center for Advanced Study, 2009), E3/3555, p. 54, ERN (En) 00489346; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 23, ERN (En) 01001690; Book by E. Becker: *When the War was Over*, E3/20, p. 251, ERN (En) 00237956; Book by N. Chanda: *Brother Enemy*, E3/2376, p. 49, ERN (En) 00192234 (estimates that of the 11th century population of approximately 240,000-300,000 people only 65,000 Cham remain in Vietnam).

<sup>624</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 39, 48; T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 139-140 (the Cham language is related to Indonesian and Malay); T. 17 September 2015 (HIM Man), E1/349.1, pp. 57, 71; T. 11 January 2016 (MUY Vanny), E1/373.1, p. 18; T. 7 September 2015 (IT Sen), E1/342.1, p. 57.

<sup>625</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 39-41, 48; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 73; T. 10 February 2015 (Elizabeth BECKER), E1/260.1, p. 27 (stating that the Cham are a Muslim minority); T. 7 September 2015 (IT Sen), E1/342.1, p. 57 (stating that the Cham “practice the Koran” and have daily prayers and fasting).

<sup>626</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 53-54 (Muslims do not eat pork, dogs, frogs and snakes); Book by YSA O.: *Oukoubah*, E3/1822, p. 96, ERN (En) 00078544; T. 7 September 2015 (IT Sen), E1/342.1, p. 110 (the Koran forbids consumption pork and dog meat); T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 74-75.

<sup>627</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 53; Book by YSA O.: *Oukoubah*, E3/1822, p. 130, ERN (En) 00078578; T. 7 September 2015 (IT Sen), E1/342.1, p. 59; T. 11 January 2016 (MUY Vanny), E1/373.1, p. 19.

<sup>628</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 38-39, 48, 52; T. 17 September 2015 (HIM Man), E1/349.1, p. 72; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 74; T. 7 September 2015 (IT Sen), E1/342.1, pp. 57-58; T. 11 January 2016 (MUY Vanny), E1/373.1, p. 19.

<sup>629</sup> T. 10 February 2015 (Elizabeth BECKER), E1/260.1, p. 27; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 74; UY Sareth & YUSOS Sary, “The Muslim of Cambodia: Cultural Practice and Conflict Resolution”, in Hean Sokhom, ed., *Ethnic Groups in Cambodia* (Center for Advanced Study, 2009), E3/3555, p. 116, ERN (En) 00489408.

<sup>630</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 52; T. 10 February 2015 (Elizabeth BECKER), E1/260.1, p. 27; T. 9 September 2015 (SENG Kuy), E1/344.1 p. 74.



253. Concentrated around the riverbanks of the Mekong River in Kampong Cham,<sup>631</sup> the Cham were known for their skilful fishing abilities,<sup>632</sup> and lived together in their own villages, rarely commingling with Khmers.<sup>633</sup> Despite the lack of social interaction, the Cham enjoyed good relations with Cambodians before 1975, including in areas under Khmer Rouge control, and were able to speak their native language and practice their religion freely until 1972.<sup>634</sup>

254. Seeking to promote Khmer identity in the early 1960s, NORODOM Sihanouk coined the term “Khmer Islam” to refer to the Cham minority.<sup>635</sup> As with the contemporary demonym “Cham”, Khmer Islam collectively referred to those Islamic subgroups with ancestral heritage in Champa (the Cham and Jehad) and the Indonesian archipelago (Chvear).<sup>636</sup>

255. During the initial period of unrest following Sihanouk’s overthrow in 1970, Cham mostly enjoyed good relations with the Khmer Rouge in “liberated” zones.<sup>637</sup> In 1972 and 1973 however, prominent Cham religious leaders were arrested and detained in Krouch Chhmar district,<sup>638</sup> mosques were shut down and observers were pressured to stop practising Islam.<sup>639</sup> Some Cham communities were forced to work in

<sup>631</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 17, 42-44 (the Cham were nevertheless dispersed through almost all provinces of Cambodia before 1975); T. 7 September 2015 (IT Sen), E1/342.1, p. 59.

<sup>632</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 8-10; T. 14 January 2016 (2-TCW-894), E1/376.1, pp. 83-84; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 73.

<sup>633</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 38-39, 41; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 27-28; T. 7 September 2015 (IT Sen), E1/342.1, p. 59; T. 6 January 2016 (SOS Romly), E1/371.1, p. 94.

<sup>634</sup> T. 29 February 2016 (MEU Peou), E1/393.1, p. 19; T. 9 September 2015 (SOS Min), E1/344.1, pp. 5-6; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 73; T. 28 September 2015 (NO Sates), E1/350.1, p. 48; T. 17 September 2015 (HIM Man), E1/349.1, p. 34; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 3-4.

<sup>635</sup> William Collins, “The Muslims of Cambodia”, in Hean Sokhom, ed., *Ethnic Groups in Cambodia* (Center for Advanced Study, 2009), E3/3555, p. 40, ERN (En) 00489332.

<sup>636</sup> T. 10 February 2016 (YSA Osman), E1/389.1, pp. 41-42; UY Sareth & YUSOS Sary, “The Muslim of Cambodia: Cultural Practice and Conflict Resolution”, in Hean Sokhom, ed., *Ethnic Groups in Cambodia* (Center for Advanced Study, 2009), E3/3555, p. 115, ERN (En) 00489407.

<sup>637</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-49; T. 10 February 2016 (YSA Osman), E1/389.1, p. 92.

<sup>638</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-49; T. 10 February 2016 (YSA Osman), E1/389.1, p. 36; Book by YSA O.: *The Cham Rebellion*, E3/2653, p. 78, ERN (En) 00219139; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 54, 74; T. 28 September 2015 (NO Sates), E1/350.1, p. 82.

<sup>639</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-49; Book by YSA O.: *The Cham Rebellion*, E3/2653, p. 14, ERN (En) 00219075; T. 28 September 2015 (NO Sates), E1/350.1, p. 79; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 102; Book by E. Becker: *When the War was Over*, E3/20, p. 252, ERN (En) 00237957; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 230, ERN (En) 00396430.

cooperatives.<sup>640</sup> The resultant tension escalated in November 1973 when Khmer Rouge cadres attempted to arrest and shoot a Cham villager in Trea village, causing the Cham community to protest and burn down a building.<sup>641</sup> The Khmer Rouge responded to this rebellion – one of three Cham uprisings in Khmer Rouge-administered areas<sup>642</sup> – by returning in force and arresting the demonstrators.<sup>643</sup>

256. In 1974, arrests of Cham increased and extended beyond religious leaders to the general population.<sup>644</sup>

### **3.4. Buddhism in Cambodia before 1975**

257. Buddhism has been the dominant religion in Cambodia since at least the 13th century when the Theravada variant was introduced to the Khmer Empire.<sup>645</sup> Buddhism prospered throughout the centuries and was inscribed as the state religion in 1847.<sup>646</sup>

258. By this time, Buddhism was inextricably intertwined with Cambodian identity and affected most aspects of life, including the Khmer language and calendar, food, dance and art.<sup>647</sup> While the laity may not necessarily have been familiar with its complexities, Buddhism's omnipresence entrenched awareness of Dhammic values and moral precepts, and promoted pro-social behaviour among the people.<sup>648</sup>

<sup>640</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 79; Book by YSA O.: *The Cham Rebellion*, E3/2653, p. 8, ERN (En) 00219069.

<sup>641</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 59; Book by YSA O.: *The Cham Rebellion*, E3/2653, pp. 14-15, ERN (En) 00219075-00219076.

<sup>642</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 25; Book by YSA O.: *The Cham Rebellion*, E3/2653, pp. 53, ERN (En) 00219114 (the second uprising took place in Koh Phal village in Kroch Chhmar district, Kampong Cham in September 1975), pp. 78-79, ERN (En) 00219139-00219140 (the third uprising took place in Svay Khleang village in October 1975). *See also*, Section 13.2.7: The 1975 Rebellions in Kroch Chhmar District, Sector 21, East Zone.

<sup>643</sup> Book by YSA O.: *The Cham Rebellion*, E3/2653, p. 15, ERN (En) 00219076.

<sup>644</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 47; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 326, ERN (En) 00396534.

<sup>645</sup> Book by A. Hinton: *Why Did They Kill?*, E3/3346, p. 98, ERN (En) 00431540; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 68, ERN (En) 00422697.

<sup>646</sup> Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 134, ERN (En) 00422763.

<sup>647</sup> Book by E. Becker: *When the War was Over*, E3/20, pp. 189-190, ERN (En) 00237894-00237895.

<sup>648</sup> The five moral precepts are the injunction from lying, stealing, immoral sexual relations, drinking intoxicating liquor and killing of living creatures. *See* Book by A. Hinton: *Why Did They Kill?*, E3/3346, pp. 60-61, ERN (En) 00431502-00431503; T. 15 March 2016 (Alexander HINTON), E1/402.1, p. 57; Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 64, ERN (En) 00703927; *Agents of Death: Explaining the Cambodian Genocide in Terms of Psychological Dissonance* (Alex Hinton, DC-CAM Magazine: Searching for the Truth), E3/1918, ERN (En) 00081264.

259. The teachings of the Buddha (“*dhamma*”) were widely observed in Cambodia throughout the 20th century until 1975. Doctrinal tolerance in religion and social life encouraged a society of kindness, compassion and peaceful coexistence.<sup>649</sup> Pacifism and non-injury (“*ahimsa*”) underscored the importance of equanimity (“*upekkha*”) and the eternal quest for balance and harmony with one’s surrounds.<sup>650</sup>

260. The Buddhist monkhood (“*sangha*”) voluntarily submitted itself to a strict disciplinary code (“*vinaya*”) endorsing asceticism, celibacy and spirituality.<sup>651</sup> Spiritual balance was maintained in a circle of interdependence between the *sangha* and the laity; the community was encouraged to offer food, money and material supplies to monks who, in return, would give blessings and make offerings to the dead.<sup>652</sup> The *sangha* additionally played a pivotal role in the education of children at pagodas throughout Cambodia, particularly in rural areas, contributing significantly to the country’s literacy rate and general provision of basic educational and welfare facilities.<sup>653</sup>

261. Prior to 1975, monks were responsible for conducting various rituals including officiating at weddings and issuing funerary rites.<sup>654</sup> Along with the laity, they would worship at pagodas, which would frequently house religious artefacts and objects of

<sup>649</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 81-82; Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 56, ERN (En) 00703919; Book by K. Jackson: *The Ideology of Total Revolution*, E3/7320, p. 70, ERN (En) 00394013.

<sup>650</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 82; T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 60-61; Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 56, ERN (En) 00703919; Case 001 Transcript (KAING Guek Eav), E3/5806, 25 August 2009, p. 34, ERN (En) 00370986; Case 001 Transcript (KAING Guek Eav), E3/5808, 2 September 2009, p. 52, ERN (En) 00374545; Book by F. Ponchaud: *Cambodia: Year Zero*, E3/1820, p. 127, ERN (En) 00105812.

<sup>651</sup> Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 128, ERN (En) 00703991; Book by E. Becker: *When the War was Over*, E3/20, p. 190, ERN (En) 00237895.

<sup>652</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, p. 36, ERN (En) 00482468.

<sup>653</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 87-88; T. T. 10 February 2016 (YSA Osman), E1/389.1, p. 31 (“There were some parents who decided to get their children to study with monks at the pagoda and, of course, the monks were the teachers. So they sent their children to study the Khmer language with the monks at the pagoda, and the children, as a result, would also know about Buddhism.”); 14 March 2016 (Alexander HINTON), E1/401.1, p. 115 (“[M]any people in the countryside had been educated in pagodas”); T. 17 October 2016 (CHEAL Choeun), E1/484.1, p. 4; Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, pp. 13, 24, ERN (En) 00703876, 00703887; Book by E. Becker: *When the War was Over*, E3/20, p. 39, ERN (En) 00237744.

<sup>654</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 50; T. 19 August 2015 (TAK Boy), E1/333.1, p. 66; T. 17 October 2016 (CHEAL Choeun), E1/484.1, p. 7; T. 16 September 2016 (MOM Vun), E1/475.1, p. 73; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 105. *See also*, T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 45. *See below*, Section 3.5: Marriage in Cambodia Before 1975.

worship including statues of the Buddha,<sup>655</sup> sacred texts, manuscripts and paintings.<sup>656</sup> Of those who would later rise to prominence, POL Pot, *Ta Mok*, TOU Samouth and SON Ngoc Minh all pursued various degrees of monastic learnings prior to joining the Cambodian revolutionary movement.<sup>657</sup>

262. Voluntary renunciation of the monkhood was traditionally possible and drew its validity from the religious context in which it was performed. Monks who sought to disrobe were expected to perform a ceremony, in the presence of other monks of sound mind, in which they expressed their firm intention to leave the *sangha*.<sup>658</sup>

263. Following NORODOM Sihanouk's overthrow in 1970, FUNK proclaimed that "Buddhism is and will remain to be the state religion"<sup>659</sup> at a time when the *sangha* reportedly numbered over 61,000 monks.<sup>660</sup> Between 1970 and 1973, many pagodas were destroyed by US aerial bombing campaigns over Cambodia,<sup>661</sup> with an estimated 900 pagodas destroyed nationwide by June 1973.<sup>662</sup>

264. While CPK documents or pronouncements regarding religion prior to 1975 are scarce, the Chamber has evidence before it that between 1973 and the collapse of the Khmer Republic, Buddhist monks were variously pressured or persuaded to leave the monkhood in order to join the revolution, some at risk of being killed,<sup>663</sup> forced into

<sup>655</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 51-52; KAO Phan DC-Cam Interview, E3/9041, 18 June 2011, pp. 11-12, ERN (En) 01121984-01121985; MAO Kan DC-Cam Interview, E3/7484, 13 January 2005, p. 6, ERN (En) 00778885.

<sup>656</sup> Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, pp. 168-169, ERN (En) 00704031-00704032 (a magical and protective character was often ascribed to Buddhist writings, especially those inscribed on palm leaves); T. 16 February 2015 (EM Phoeung), E1/263.1, p. 68 (paintings). *See also*, T. 9 December 2015 (UM Suonn), E1/365.1, pp. 53-54 (sacred books were stored at Wat Khsach); T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 67-68 (Buddhist manuscripts made from palm tree leaves).

<sup>657</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 46; 11 January 2012 (Accused NUON Chea), E1/25.1, p. 11; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 142, 150, ERN (En) 00396342, 00396350; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 110, ERN (En) 00193193; Book by E. Becker: *When the War was Over*, E3/20, pp. 46-47, 177, ERN (En) 00237751-00237752, 00237882.

<sup>658</sup> Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 122, ERN (En) 00703985.

<sup>659</sup> FUNK Political Program E3/1391, p. 11, ERN (En) S00012638 ("Buddhism is and will remain to be the State religion"). *See also*, FUNK Publication, *Nouvelles du Cambodge* (No. 695), E3/1254, 3-5 April 1974, ERN (Fr) S00000083-S00000084.

<sup>660</sup> Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 24, ERN (En) 00703887 (in 1967 the monastic population was 61,014).

<sup>661</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 64-65 ("yes [many pagodas were destroyed by the bombs from the American planes], some pagodas were hit by the aerial bombardment, in particular in remote locations").

<sup>662</sup> Book by I. Harris: *Buddhism Under Pol Pot*, E3/2818, p. 152, ERN (En) 00704015.

<sup>663</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 69-71 (there were no more monks in the village after 1973; there were pressures at the time to leave the monkhood), 80 (after 1973, monks, including

manual labour including agricultural work to provide food to Khmer Rouge soldiers in the battlefield;<sup>664</sup> or conscripted or recruited to the armed forces in areas held by the Khmer Rouge.<sup>665</sup> The evidence before the Chamber demonstrates that, prior to 1975,

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the chief monk, were instructed to leave the monkhood); T. 1 October 2012 (KHIEV En), E1/127.1, pp. 79-80 (monks were ordered to defrock in Kampong Leaeng even before the LON Nol regime); T. 8 January 2013 (SA Vi), E1/156.1, p. 66 (monks were defrocked by 1973 or 1974); T. 11 November 2016 (OU Dav), E1/499.1, p. 21 (the militia group forced monks to disrobe and to join the revolutionary army in 1971); Paper by KAING, G. E.: *Lessons Learned From the Experiences of the Elders of Former Generations*, E3/9362, p. 43, ERN (En) 00792018 (monks started to leave the monkhood to join the revolution in 1973); PRUM Proeung Interview Record, E3/7777, 24 July 2009, p. 5, ERN (En) 00358620 (“All monks staying at the Ta Kaot pagoda were forced out of the monkhood before 17 April 1975; so, on the day Phnom Penh collapsed there was no monk staying there.”); LOEM Savon Interview Record, E3/5296, 18 July 2009, p. 3, ERN (En) 00358146 (the Khmer Rouge began defrocking monks at Wat Chambak Thom at around 1971 by saying that, “monks [...] must be defrocked to join the resistance to liberate the country.”); KEH Kan Interview Record, E3/9345, 4 June 2009, p. 2, ERN (En) 00340185 (the witness “disrobed in late 1971 because, at that time, the Khmer Rouge soldiers threatened all monks to disrobe in order to serve in the Khmer Rouge military.”). *See also*, NHEM Kim Teng DC-Cam Statement, E3/7570, 14 October 2004, pp. 13-14, ERN (En) 00823545-00823546 (monks in Svay Rieng were “encouraged” to leave the monkhood in 1972-1973); MAO Kan DC-Cam Statement, E3/7484, 13 January 2005, ERN (En) 00778882-00778883 (monks were “persuaded” and “forced” to leave the monkhood to join the fight against the Vietnamese); KE Korn DC-Cam Statement, E3/7579, 30 June 2005, p. 2, ERN (En) 00350803 (monks were forced to leave the monkhood in 1973; those who did not leave were killed); BAUV Bang DC-Cam Statement, E3/8690, 19 January 2005, pp. 1-2, ERN (En) 00416205-00416206 (at Mohaleaph village in 1974 monks were forced to disrobe by the Khmer Rouge); LIT Khun DC-Cam Statement, E3/7596, 29 June 2005, pp. 3-4, ERN (En) 00239574-00239575 (all monks were forced to disrobe in Samkuoy in 1973); LONG Chuop DC-Cam Statement, E3/7939, 18 January 2005, p. 2, ERN (En) 00416184 (monks were forced to disrobe from 1974 in Thmor Poun); POV Son DC-Cam Statement, E3/7508, 18 June 2002, p. 5, ERN (En) 00885172 (monks were disrobed at Wat Khlong Popok by the Khmer Rouge to help fight against LN soldiers); KHAT Khe DC-Cam Statement, E3/5598, 15 January 2005, p. 7, ERN (En) 00874722 (the complainant’s brother was “persuaded” to leave monkhood in 1973 to become soldier); MEAS Suon DC-Cam Statement, E3/7934, 21 January 2004, p. 4, ERN (En) 00791525 (monks were gradually defrocked in 1974); SOME Khan DC-Cam Statement, E3/8677, 23 January 2004, p. 6, ERN (En) 01182776 (monks were disrobed in 1973 and did not complain as they would have been killed).

<sup>664</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 16-17 (Defrocked monks came to work with the local population in 1974 and other monks were sent out to the battle front); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 29 (After 1973, monks were instructed to work in the field and they were also to build bridges at various worksites. All monks were defrocked in 1975); T. 19 May 2015 (OR Ho), E1/301.1, p. 87 (In 1973 and 1974, monks would do work in order to support the battlefields); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 16-17 (“In 1974, *Angkar* asked us to build dams and to dig canals”); T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 53 (monks were ordered to bring poultry to soldiers on the front in 1973 and 1974); HANG Thy Interview Record, E3/7977, 21 November 2007, p. 3, ERN (En) 00223530 (monks were forced to dig a canal at Koh Sla); NUT Nan DC-Cam Statement, E3/8684, 26 April 2004, p. 14, ERN (En) 01226795 (monks were ordered to farm, guard roads and grow corn, transport chickens for army); LONG Chuop DC-Cam Statement, E3/7939, 18 January 2005, p. 2, ERN (En) 00416184 (Khmer Rouge forced monks to cultivate food in 1974); BAUV Bang DC-Cam Statement, E3/8690, 19 January 2005, p. 2, ERN (En) 00416206 (monks were mobilised to dig channel); LIM Eng DC-Cam Statement, E3/8683, 26 April 2004, p. 11, ERN (En) 01226744 (monks were told to build bridges).

<sup>665</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 15 (all the former monks had to become soldiers); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 16-17 (monks were sent to the battle front); T. 11 November 2016 (Ou Dav), E1/499.1, p. 21 (during 1971, the militia group “forced us to disrobe and forced us to join the revolutionary army”); KEH Kan Interview Record, E3/9345, 4 June 2009, p. 3, ERN (En) 00340186 (the witness “disrobed in late 1971 because, at that time, the Khmer Rouge soldiers threatened all monks to disrobe in order to serve in the Khmer Rouge military”); POV Son DC-Cam Statement, E3/7508, 18 June 2002, p. 5, ERN (En) 00885172 (monks were defrocked by the Khmer Rouge to help fight against LON Nol soldiers); SREI Khloeng DC-Cam Statement, E3/8680, 21 May 2004, p. 6, ERN (En) 01308688 (monks over 18 were sent to serve in the army in 1973); DC-Cam Statement of KHAT

monks were pressured or persuaded to disrobe in Prey Veng, Kompong Chhnang, Koh Kong, Kandal, Svay Rieng, Stung Treng, Kompong Cham, Kompong Thom and Kratie provinces.<sup>666</sup>

### **3.5. Marriage in Cambodia before 1975**

265. While Cambodia has a history of marriage rituals varying across the country according to socio-economic, temporal, geographic and topographic conditions, it is possible to distil common practices prior to 1975 among the Khmer population.<sup>667</sup>

266. The arrangement of a marriage was predominantly a family affair, largely removed from the control of the future couple.<sup>668</sup> A union could be initiated by the future husband by suggesting marriage to his parents, who would either seek a suitable match or approach a prospective wife's parents.<sup>669</sup> Couples were matched according to similar social backgrounds,<sup>670</sup> and initial decisions about the match would be made along matrilineal lines.<sup>671</sup>

267. Children would traditionally not question their parents' decisions in this regard. While daughters were consulted about a prospective match and could refuse marriage,<sup>672</sup> sons enjoyed more freedom in selecting a wife.<sup>673</sup> The paramountcy of

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Khe, E3/5598, 15 January 2005, ERN (En) 00874722 (brother persuaded to leave monkhood in 1973 to become soldier).

<sup>666</sup> See above, fn. 663.

<sup>667</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, pp. 53-54; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 48, 55-56, ERN (En) 00482480, 00482487-00482488.

<sup>668</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 53; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 48, 50; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 35-36; T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 74.

<sup>669</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 39, 42; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 37; T. 25 August 2016 (YOS Phal), E1/464.1, p. 24.

<sup>670</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 28, 30-31.

<sup>671</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, p. 53, ERN (En) 00482485.

<sup>672</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 47; T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 62 ("if the girl agrees, the marriage would happen"); SREY Soeum Interview Record, E3/9826, ERN (En) 01067745 ("If the woman liked the man, they would get married. If the woman refused, she would not be forced like during the Khmer Rouge era" [...] If the woman did not love the man, "[t]here was no issue. They did not get married."); PENH Va Interview Record, E3/9669, pp. 2-3, ERN (En) 01111779-01111780 ("In some cases, if a woman did not love a man, she could refuse to get married to him. [...] Nothing would happen to [a woman who refused to agree to marriage] because she does not love him"; she could refuse to marry).

<sup>673</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 44 (Expert indicated that a prospective husband could decline a suitor but could not ground this response in her research); PENH Va Interview Record, E3/9669, p. 2, ERN (En) 01111779 ("Prior to the Khmer Rouge regime, without their son's consent, parents would not propose a marriage for him.").

familial reputation and parental deference nevertheless traditionally obliged an arranged couple to fulfil their parents' expectations.<sup>674</sup> Indeed, there was a general expectation, based on mutual trust, that parents would arrange their children's marriages.<sup>675</sup>

268. Once a couple had acquiesced to marriage, a fortune-teller ("Achar") was consulted to decide upon a wedding date based on the couple's birth dates.<sup>676</sup> A dowry would be concluded between the families and an engagement ceremony would be held, usually some months before the wedding ceremony.<sup>677</sup> Weddings would usually not be planned for, or held, during the monsoon season.<sup>678</sup>

269. The wedding day was traditionally characterised by lavish ceremony.<sup>679</sup> The wedding itself was considered a community affair,<sup>680</sup> with parents, siblings, relatives, neighbours, fellow villagers, monks and local authorities (such as the village chief) taking part in the ceremony.<sup>681</sup> The union would be "authorised", "blessed" or constituted by, and in the presence of, the community.<sup>682</sup>

<sup>674</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 108; T. 12 October 2016 (Peg LEVINE), E1/482.1, pp. 53-54; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 39, 42-44, 47, 102; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 21, 34, 36; T. 23 August 2016 (OM Yeourn), E1/462.1, pp. 26-27.

<sup>675</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 10 ("[T]he daughters were expecting the parents to decide on her marriage. So we would say that she [...] blindly agreed upon the proposal by the parents for a marriage because there was a mutual trust. The daughters trust that their parents would make the best possible selection or the best possible decision for her and for her family because marriages is [sic] not an individual matter.").

<sup>676</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 40; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 43, 46, 52-53, ERN (En) 00482475, 00482478, 00482484-00482485.

<sup>677</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 40; T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 70; SREY Soeum Interview Record, E3/9826, ERN (En) 01067745. Regarding the conclusion of a dowry, see T. 16 September 2016 (MOM Vun), E1/475.1, p. 73; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 38; KHUN Mon Interview Record, E3/7597, ERN (En) 00231744; EAR Pov Interview Record, E3/7954, ERN (En) 00834621.

<sup>678</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 71; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 27-29, 40, ERN (En) 00482459-00482461, 00482472.

<sup>679</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 40; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 38.

<sup>680</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 53; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 40, 51.

<sup>681</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 40-41, 51.

<sup>682</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 40, 51, 105; T. 25 August 2016 (YOS Phal), E1/464.1, p. 25; T. 16 September 2016 (MOM Vun), E1/475.1, p. 74; T. 30 August 2016 (CHEA Dieb), E1/466.1, p. 78.

270. The ceremony, historically held from between one to seven days,<sup>683</sup> typically took place near the home of the bride or at a central village location, possibly a pagoda.<sup>684</sup> Throughout the wedding, processional music would usher the bride and groom,<sup>685</sup> who would don colourful, intricately decorated and loose fitting garments of cotton or silk embellished in gold.<sup>686</sup> Guests would be treated to a feast and light-hearted theatrical plays symbolising the stages of marriage,<sup>687</sup> while traditions including the cutting of the couple's hair, tying of their hands and symbolic ingestion of betel nut, would be performed during the ceremony.<sup>688</sup>

271. Monks played a major role at weddings,<sup>689</sup> reading sermons, making offerings to ancestors, exorcising harmful spirits and providing counselling to couples.<sup>690</sup>

272. After the ceremony, the couple would retire to the home of one of the spouse's parents.<sup>691</sup> Discussion of sexual intercourse or consummation was considered taboo, and married couples were rarely instructed on how to behave on the wedding night.<sup>692</sup>

273. The evidence at trial indicates that limitations were placed on wedding festivities in areas "liberated" by the Khmer Rouge between 1970 and 1975. Between this time,

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<sup>683</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 40; T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 53; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 52-53, ERN (En) 00482484-00482485; KHUN Mon DC-Cam Interview, E3/5325 (E3/7597), ERN (En) 00824150 (00231749).

<sup>684</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, p. 5, ERN (En) 00482437 (pagodas were not traditional places for weddings).

<sup>685</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 58-59, ERN (En) 00482490-00482491.

<sup>686</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 32, 55, 59, ERN (En) 00482464, 00482487, 00482491 (cymbals (*cheung*), violin-like instruments (*chapei veng* and *tro khmer*); drums (*skor areak*); flutes (*pei*) and lutes (*ksae deav*) would traditionally be played); T. 25 August 2016 (YOS Phal), E1/464.1, p. 24; T. 16 September 2016 (MOM Vun), E1/475.1, p. 73; T. 19 May 2015 (OR Ho), E1/301.1, p. 68.

<sup>687</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 107; T. 16 September 2016 (MOM Vun), E1/475.1, p. 73; T. 19 May 2015 (OR Ho), E1/301.1, p. 68; KHUN Mon DC-Cam Interview, E3/5325, ERN (En) 00824150; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 59-60, ERN (En) 00482491-00482492.

<sup>688</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 54; Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 46, 50, 54, 58, ERN (En) 00482478, 00482482, 00482486, 00482490.

<sup>689</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 40; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 41; T. 16 September 2016 (MOM Vun), E1/475.1, p. 7.

<sup>690</sup> Doctoral Thesis by P. Levine: *A Contextual Study into the Wedding and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, pp. 46, 57, ERN (En) 00482478, 00482489; T. 25 June 2015 (KONG Uth), E1/322.1, p. 37.

<sup>691</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 86.

<sup>692</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 52, 54-55.



FUNK promoted a political program of equality to both sexes and sought to “wipe out backward traditions discriminating against women”, encouraging their “professional development” by emphasising the primacy of their training and education at all levels “to enable them fully to participate in the common struggle”. Polygamy was also nominally abolished.<sup>693</sup> Tram Kak district Secretary PECH Chim testified that “there was only a handful of marriages” in that district between 1971 and 1973. Those ceremonies that were held were conducted in secret, with PECH Chim explaining that vibrant ceremonies could “mentally affect” combatants and could prevent the Khmer Rouge from “convinc[ing] people to go to the battlefields”.<sup>694</sup> There is also evidence that marriages were arranged by “*Angkar*” prior to 1975.<sup>695</sup>

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<sup>693</sup> FUNK Political Program, E3/1391, ERN (En) S00012638.

<sup>694</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 4-5.

<sup>695</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 37-39. *See also*, MAOT Voeurn Interview Record, E3/5299, 16 February 2009, p. 3, ERN (En) 00285572. For “*Angkar*”, *see* Section 5.1.8: Administrative Structures: Structure of the CPK: *Angkar*.

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

274. The Chamber limited Case 002/02 to, and is thus seised of, the factual allegations described in the Closing Order, and characterised as crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide, relating to cooperatives and worksites (limited to Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site), security centres and execution sites (limited to S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre), the treatment of targeted groups (limited to (i) the treatment of Buddhists at the Tram Kak Cooperatives; (ii) the treatment of the Cham during movement of population phase two, implementation excluding the Kroch Chhmar Security Centre; (iii) the treatment of the Vietnamese, implementation excluding the crimes committed by the Revolutionary Army of Kampuchea on Vietnamese territory; and (iv) the treatment of former Khmer Republic officials (including civil servants and military personnel) and their families, implementation limited to Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre) and the regulation of marriage (nationwide).<sup>696</sup>

275. The Chamber notes that this section has a limited purpose: to analyse whether the chapeau requirements of crimes against humanity and grave breaches of the Geneva Conventions of 1949 have been established. The Chamber addresses this at this point in the Judgement, because these considerations have ramifications for all the crimes against humanity and all the grave breaches of the Geneva Conventions of 1949 charged in Case 002/02 and discussed in the remainder of the Judgement below. According to the Closing Order, the relevant crimes associated with the second phase of the movement of population, the operation of cooperatives and worksites, the network of security centres and execution sites, the targeting of specific groups and the regulation of marriage are crimes against humanity, thus allegedly forming part of a widespread and systematic attack against the civilian population carried out throughout the DK era and in all regions of Cambodia.<sup>697</sup> In addition, the Closing Order considers the crimes associated with the S-21 Security Centre and the Au Kanseng Security Centre,

<sup>696</sup> Case 002 Additional Severance Decision Annex.

<sup>697</sup> Closing Order, paras 1350-1372.

committed against Vietnamese detainees, to be grave breaches of the Geneva Conventions of 1949, thus allegedly committed in the course of, and closely related to, the international armed conflict with Vietnam.<sup>698</sup> The Chamber therefore considers it necessary to address briefly both the factual allegations charged as crimes against humanity and grave breaches of the Geneva Conventions of 1949 in Case 002/02 and the allegations concerning the larger context, including the existence of an international armed conflict, in which these crimes were allegedly committed.

#### **4.1. Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict)**

276. The Chamber finds that between 17 April 1975 and 6 January 1979, the temporal period at issue in Case 002/02, the CPK reinforced and consolidated power over DK and its population through the dismantling of the judiciary, the legislature and other organs of state of the previous regime and the parallel construction of institutions and structures under the CPK's exclusive control.<sup>699</sup> As a result of the Party's plans and policies aimed at building its version of socialism,<sup>700</sup> the Cambodian population's fate was in the hands of the CPK as they were forcibly moved, put to work and made to live their lives in accordance with the CPK's goals. In particular, during the DK period, the CPK forcibly transferred the population from cities and towns throughout Cambodia to rural areas and between these rural areas in order to neutralise enemies, both internal and external, and to avert the threat of rebellion; to eliminate and temper the capitalist and feudal classes; and to build and expand cooperatives.<sup>701</sup>

<sup>698</sup> Closing Order, paras 1480-1490.

<sup>699</sup> Section 3: Historical Background, paras 196-204, 206, 208-210, 212, 214-215, 220-223, 226-227, 229, 230, 233, 235; Section 16: Common Purpose, paras 3733-3743, 3944, 3957; Section 5: Administrative Structure, paras 416-417.

<sup>700</sup> Section 16: Common Purpose, para. 3738; Section 16.3: Real or Perceived Enemies, paras 3836, 3845.

<sup>701</sup> Section 16: Common Purpose, paras 3872-3929, 4042-4044. *See also*, Section 3.2.1: Establishment of Cooperatives Before 1975.

277. The Chamber is satisfied that on 17 April 1975, the CPK moved people from Phnom Penh on a large scale.<sup>702</sup> On and after 17 April 1975, people were also displaced from various provincial towns throughout Cambodia, including Kampong Speu,<sup>703</sup> Takeo,<sup>704</sup> Kampot,<sup>705</sup> Sihanoukville (previously Kampong Som),<sup>706</sup> Kampong Thom,<sup>707</sup> Pailin,<sup>708</sup> Kampong Cham,<sup>709</sup> Kampong Chhnang,<sup>710</sup> Siem Reap,<sup>711</sup> Poipet,<sup>712</sup> Battambang<sup>713</sup> and Pursat.<sup>714</sup>

<sup>702</sup> There are no precise figures as to the total number of people who were transferred from Phnom Penh to the countryside on an allegedly temporary basis from 17 April 1975. The Chamber recalls its finding that inherent uncertainty exists surrounding the use of demographic evidence in the absence of reliable statistical data (*see* Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, E459, 18 July 2017, para. 191; Decision on NUON Chea's Request to Summons Patrick Heuveline and to Admit Two Related Documents, E444/1, 6 December 2016, para. 22). Although inconclusive as to the number of evacuees who were finally moved, NUON Chea testified that prior to the evacuation of Phnom Penh the Zone Committee discussed how the Northwest Zone could receive 1.4 million evacuees, the Southwest Zone could take in more people, and the other zones could take in only limited numbers of Phnom Penh residents. *See* T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 30-31 (English), p. 19 (Khmer). The Chamber further considered the following to conclude that people were moved out of Phnom Penh on a large scale. *See* T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 58-60 (stating that as at 19 April there were only a handful of people remaining in Phnom Penh); French Ministry of Foreign Affairs Telegram: Subject Situation in Phnom Penh, E3/2703, 19 April 1975, ERN (En) 00488013 (reporting that the total evacuation of Phnom Penh appeared to be nearing completion); French Ministry of Foreign Affairs Telegram: Subject Request for Immediate General Evacuation, E3/2701, 20 April 1975, ERN (En) 00488012 (reporting that "the capital is now entirely empty of its inhabitants"); T. 5 November 2012 (SUM Chea), E1/140.1, pp. 16 ("It took us around five to six days, and the city was empty."), 29 ("It took us five days before the whole population of Phnom Penh was evacuated."), 57 ("After five days, the city was emptied"); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 35-37 ("it took us seven days before the whole population was removed from the city"); T. 25 October 2012 (KUNG Kim), E1/139.1, p. 11 (stating that after a week's time, the chaos lessened; in one month's time there were only pockets of remaining soldiers or civilians on upper-level floors of concrete houses); T. 20 May 2013 (IENG Phan), E1/193.1, pp. 41, 46-47 (stating that as a Khmer Rouge soldier, he was authorised to enter Phnom Penh about two to three weeks after the evacuation and he found the city quiet and only Khmer Rouge soldiers there); T. 9 April 2013 (François PONCHAUD), E1/178.1, pp. 21, 25 ("At around 6 p.m. [on 17 April 1975], I did not see any people in Phnom Penh."); T. 6 June 2013 (Sydney SCHANBERG), E1/202.1, pp. 21-22 *citing* Book by S. Schanberg: *Cambodia Diary 1975: A Journalist's Day-by-Day Notes on the Fall of Cambodia to the Khmer Rouge*, E3/9749, 2013, pp. 109, ERN (En) 00898317 (describing [as at 30 April], Monivong Boulevard in Phnom Penh as deserted and stating there were no civilians, only Khmer Rouge soldiers); Aerial Photograph of Central Market, E3/3002, 27 April 1975, ERN 00495444. From 1970-1975, there was an influx of refugees from the countryside into Phnom Penh, reportedly increasing the city's population from around 0.5 million in 1970-1971 to an estimated 2 to 2.5 million in April 1975. *See* T. 23 July 2012 (David CHANDLER), E1/94.1, pp. 45-47; T. 9 April 2013 (François PONCHAUD), E1/178.1, p. 16; T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 26-27, 40; T. 29 January 2013 (Al ROCKOFF), E1/166.1, pp. 6-7, 46-47; U.S. State Department Telegram, E3/4185, 10 July 1974, ERN (En) 00377045-00377047 (reporting on the displacement of 14,300 refugees from insurgent controlled areas to government positions along Route 1 and at Neak Loeung); T. 13 December 2012 (Denise AFFONÇO), E1/153.1, pp. 75-76 ("every day crowds of refugees arrived in Phnom Penh, and in the city then there were about 2 million inhabitants. And with all of these refugees who came in towards the end, before leaving the city, there were more than 3 million of us."); T. 22 November 2012 (MEAS Saran), E1/145.1, pp. 50-53 (stating that there was a great influx of people into Phnom Penh as the Khmer Rouge forces pushed closer to the city in the days before its evacuation; in fact, the population of Phnom Penh had possibly even tripled because of the newcomers. The increased population crowded the city and life was not easy); World Vision International Letter from S. Mooneyham to C. Friend, E3/4188, 3 May 1971, ERN (En) 00428096-00428097 (reporting in 1971 that the once crowded city of

750,000 had swelled to over 1.5 million); T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 17 (“We could say 2 to 3 million, but these are estimates.”), 40 (“estimates that were a bit, let’s say, easy and fast. There were no statistics.”); *Cambodia Can Hold Out With Essential Aid* (in FBIS collection), E3/118, 5 April 1975, ERN (En) 00166915 (reporting that Cambodian Foreign Minister KEUKY Lin said they had at least two million refugees in Phnom Penh area and they needed to be fed); Revolutionary Flag, E3/166, February-March 1976, p. 13, ERN (En) 00517825 (referring to “the more than two million people who had recently been evacuated from the various cities.”).

<sup>703</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 47-49.

<sup>704</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 47-49; BUN Thien Interview Record, E3/5498, 17 August 2009, p. 5, ERN (En) 00384400 (stating that all the people in Takeo town were evacuated to the West around 18 or 19 April 1975).

<sup>705</sup> SOKH Chhien Interview Record, E3/428, 19 August 2009, p. 5, ERN (En) 00374949; KHUN Kim Interview Record, E3/360, 30 April 2008, p. 3, ERN (En) 00268854.

<sup>706</sup> DANH Nhor Interview Record, E3/5197, 15 July 2008, pp. 2-3, ERN (En) 00275030-00275031 (stating that around 17 April 1975, people were evacuated from Sihanoukville (previously called Kampong Som) to Kampot); KHIM Khen Interview Record, E3/5190, 2 July 2008, p. 3, ERN (En) 00274658 (“After 17 April 1975, people were evacuated from Kampong Som to Prey Nob.”); LOEUNG Bunny Interview Record, E3/5543, 11 September 2009, p. 3, ERN (En) 00384778 (indicating that on 17 April 1975, Khmer Rouge soldiers evacuated people from Sihanoukville to the west).

<sup>707</sup> KROEM Samy Hors Civil Party Application, E3/4933, 3 August 2009, pp. 2-3, ERN (En) 00890979-00890980 (describing the evacuation of Kampong Thom in April 1975); VANN Theng Interview Record, E3/5249, 8 October 2008, ERN (En) 00231858.

<sup>708</sup> THACH Sokh Interview Record, E3/5230, 15 December 2008, p. 3, ERN (En) 00279242 (stating that on 17 April 1975 he was evacuated from Pailin to Battambang); Refugee Accounts, E3/4590, pp. 305-306, ERN (En) 00820623-00820624 (“On 26 April 1975, the Khmer Rouge ordered the entire population [of Pailin], by means of a radio car to leave the town and that each person should take only a few items.”); PRUM Sarun Interview Record, E3/5187, 18 June 2008, pp. 2, 4, ERN (En) 00274177, 00274179 (a former LON Nol soldier and a farmer living at Krapeu Cheung village, he noted that after 17 April 1975, the Khmer Rouge set up people’s units and teams to perform labour, building dams and digging canals, such as the Kamping Puoy Dam. There were 90 people in his group including evacuees from Pailin, Phnom Penh and Kampong Cham).

<sup>709</sup> TAY Kimhuon Interview Record, E3/5257, 24 November 2008, p. 3, ERN (En) 00251014 (stating that after the Khmer Rouge took control of Kampong Cham, the people were evacuated).

<sup>710</sup> T. 6 June 2013 (Sydney SCHANBERG), E1/202.1, pp. 22-26 *citing* Book by S. Schanberg: *Cambodia Diary 1975: A Journalist’s Day-by-Day Notes on the Fall of Cambodia to the Khmer Rouge*, E3/9749, 2013, pp. 114-115, ERN (En) 00898322-0089823 (Kampong Chhnang was “evacuated” by 23 April 1975); CHAN Loeu Interview Record, E3/5233, 23 December 2008, p. 2, ERN (En) 00279260 (on 17 April 1975, the witness, who lived at Taing Kruos Kaet village, saw people who had been evacuated including from Kampong Chhnang); LOEUNG Kimchhong Interview Record, E3/5272, 11 February 2009, pp. 2-3, ERN (En) 00290655-00290656 (stating that all the people of Kampong Chhnang Town were told by loudspeaker to leave).

<sup>711</sup> T. 12 November 2012 (PE CHUY Chip Se), E1/143.1, pp. 111-112 (indicating that after 17 April 1975, people were evacuated from Siem Reap at gunpoint); CHEA Thy Interview Record, E3/5184, 17 June 2008, p. 5, ERN (En) 00225529 (stating that all the people of Siem Reap were evacuated); MUY Moeun Interview Record, E3/5175, 3 June 2008, p. 2, ERN (En) 00272752 (stating that on 5 May 1975, people were still being evacuated from Siem Reap, others had already been evacuated); TEM Kimseng Interview Record, E3/5248, 7 October 2008, pp. 2-3, ERN (En) 00235142-00235143 (after 17 April 1975, people were evacuated from Siem Reap).

<sup>712</sup> Refugee Accounts, E3/4590, undated, p. 25, ERN (En) 00820343 (on 24 April, the Khmer Rouge ordered the evacuation of Poipet by microphone).

<sup>713</sup> T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 71-72 (stating that one week after the Khmer Rouge took control, Battambang was evacuated); MA Sa Em Interview Record, E3/5282, 28 March 2009, p. 3, ERN (En) 00322023 (indicating that after 17 April 1975, Khmer Rouge soldiers evacuated Battambang Town); PEN Loeut Interview Record, E3/5226, 18 November 2008, pp. 2-3, ERN (En) 00250277-00250278 (around 25 or 26 April 1975, armed CPK cadres evacuated people from Phnom Sampeou to rice fields outside the village); TES Heanh Interview Record, E3/505, 27 August 2008, pp. 2-3, ERN (En) 00275409-00275410 (armed CPK cadres evacuated all the people of Battambang town).

278. The Chamber is further satisfied that beginning in September 1975 and continuing throughout 1977, large numbers of civilians were forcibly transferred to Battambang and Pursat provinces, while others were forcibly relocated within regions depending on seasonal labour requirements and to advance class struggle.<sup>715</sup> The Chamber notes that the Closing Order also charges that forcible displacement continued throughout 1978.<sup>716</sup> However, the Chamber excluded this third phase of movement of population from Case 002/02,<sup>717</sup> and terminated the proceedings concerning all facts set out in the Closing Order not included in Case 002/01 or Case 002/02.<sup>718</sup>

279. The Chamber finds that during the DK period, markets were non-existent, the use of currency had been abandoned, private ownership had been eliminated, and cooperatives and worksites were operational throughout the country in order to control the population and wage class struggle.<sup>719</sup> People were forced to live and work communally at cooperatives and worksites, where they were subjected to mistreatment,

<sup>714</sup> T. 29 April 2013 (UNG Chhat), E1/185.1, pp. 70, 73-79 (stating that Pursat was evacuated on 20 April 1975); T. 2 May 2013 (LIM Sat), pp. 14-16 (“Following the liberation in 1975, people were all evacuated out of the [provincial town of Pursat] within three weeks or so.”).

<sup>715</sup> Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, pp. 5-6, ERN (En) 00850977-00850978 (noting the Standing Committee’s plan to send between 400,000 and 500,000 to the Northwest Zone); DK Document: *Examination of Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector*, E3/781, September 1975, p. 22, ERN (En) 00523590 (noting that an additional 20,000 were to be sent to Preah Vihear Province (Sector 103)); *Submission from the Government of Norway under Commission on Human Rights Decision 9 (XXXIV) (ECOSOC)*, E3/1805, 18 July 1978, pp. 15-16, ERN (En) 0087551-0087552 (indicating that around December 1975, 35,000 people previously evacuated from Phnom Penh were re-evacuated from Srok Koh Sotin, Kampong Cham province to Kampong Thom province); DK Telegram, E3/154, 30 November 1975, ERN (En) 00185064 (East Zone report to POL Pot concerning the transfer of 50,000 people to the Central (old North) Zone); Article by W. Shawcross, *The Khmer Rouge’s Iron Grip*, E3/4441, 2 January 1976, p. 1, ERN (En) S00005151 (according to refugees, during the last two months of 1975, 300,000 evacuees from Phnom Penh were again moved, partly by boat and train, to Battambang Province); Book by M. Vickery: *Cambodia 1975-1982*, E3/1757, 1984, p. 89, ERN (En) 00397004 (“PONCHAUD wrote of “hundreds of thousands”, a 1976 news story based on refugee accounts put forward a figure of three hundred thousand; [...] I suggested that four hundred thousand would have been the absolute maximum, which still seems consonant with the various impressionistic refugee accounts.”); *Revolutionary Flag*, E3/748, October-November 1975, p. 28, ERN (En) 00495827; *Report on Third Anniversary of the Organization of Peasant Cooperatives*, E3/50, 20 May 1976, pp. 5-6, ERN (En) 00636012-00636013. Given the incomplete record, the Chamber makes conservative estimates. *See also*, Section 13.2: Treatment of the Cham, paras 3261-3268; Section 16: Common Purpose, paras 3877, 3890; Case 002/01 Trial Judgement, paras 580-581.

<sup>716</sup> Closing Order, paras 283-300 (concerning the displacements identified in the Closing Order as population movement (phase three)).

<sup>717</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014 (hereinafter “Case 002 Additional Severance Decision”).

<sup>718</sup> Decision on Reduction of the Scope of Case 002, E439/5, 27 February 2017.

<sup>719</sup> Section 3.2.1: Historical Background: Establishment of Cooperatives before 1975; Section 16: Common Purpose, paras 3872-3918.

harsh conditions, disappearances and killings.<sup>720</sup> The CPK's collectivist approach aimed at waging class struggle also encompassed family matters such as marriage, as the CPK considered this crucial to building a new society which would accord with the ideological standards of its socialist revolution.<sup>721</sup> As explained in other parts of this Judgement, the Party's policy to regulate family-building and marriage in an attempt to control the people and increase DK's population resulted in a nationwide system, implemented by the CPK's entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK forces, which involved widespread forced marriage and rape.<sup>722</sup>

280. Meanwhile, according to the Closing Order, at all times between April 1975 and at least 7 January 1979, when the RAK was forced to flee Phnom Penh, a state of armed conflict existed between Democratic Kampuchea ("DK") and the Socialist Republic of Vietnam ("SRV" or "Vietnam").<sup>723</sup> The Closing Order states that, although the existence of the armed conflict was not officially recognised until 31 December 1977, on which day DK severed diplomatic ties with SRV, the two states were engaging in armed hostilities throughout the DK period.<sup>724</sup> The Closing Order further indicates that despite some lulls in the fighting, particularly prior to 1977, at no point had a general conclusion of peace been reached, such that the international armed conflict would cease to exist.<sup>725</sup>

281. The existence of an international armed conflict between DK and Vietnam from May 1975 to at least 6 January 1979 is uncontested by the Parties.<sup>726</sup>

282. Clashes between DK forces and Vietnamese forces around the islands, whose territory was in dispute between Cambodia and Vietnam, off the countries' coasts, as well as skirmishes in multiple areas of the border region, are reported to have occurred

<sup>720</sup> Section 10.1: Tram Kak Cooperatives, paras 1138-1204; Section 11.1: Trapeang Thma Dam Worksite, paras 1377-1429; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1664-1712; Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1794-1846. *See also*, Section 16: Common Purpose, paras 3919-3927.

<sup>721</sup> Section 14: Regulation of Marriage, para. 3539.

<sup>722</sup> Section 14: Regulation of Marriage, paras 3688-3694, 3696-3701; Section 16: Common Purpose, paras 4064-4067.

<sup>723</sup> Closing Order, paras 150, 154, 1480.

<sup>724</sup> Closing Order, paras 151-152.

<sup>725</sup> Closing Order, paras 152, 154.

<sup>726</sup> Co-Prosecutors' Closing Brief, paras 1210-1216; NUON Chea Closing Brief, paras 197, 652, 668, 673, 682; KHIEU Samphan Closing Brief, paras 692, 782-832.

shortly after 17 April 1975.<sup>727</sup> However, the evidence heard by the Chamber reveals conflicting accounts regarding these clashes in the second quarter of 1975. Vietnamese public sources state that DK forces seized the islands historically known as Koh Tral, currently Phu Quoc, and Koh Krachak Ses, currently Tho Chu, in May 1975, abducting over 500 Vietnamese inhabitants from the latter in the process, and claim that DK forces also made forays into Vietnam in the border region from Ha Tien to Tay Ninh.<sup>728</sup> Vietnam is then alleged to have retaliated by recapturing Phu Quoc and Tho Chu, taking around 300 prisoners, and subsequently seizing the Cambodian islands of Poulo Wai in early June 1975.<sup>729</sup> While this order of events is not supported by eyewitness testimony heard by this Chamber or contemporaneous internal DK documents,<sup>730</sup> it is subscribed

<sup>727</sup> It is relevant in this regard to note that Saigon fell two weeks after Phnom Penh was captured by the Khmer Rouge: North Vietnam captured Saigon on 30 April 1975. See e.g., *Sihanouk Congratulates DRV Leaders on Liberation of Saigon* (in FBIS collection), E3/1364, 1 May 1975, p. 1, ERN (En) 00167026; *News from Democratic Kampuchea* (Ministry for Foreign Affairs of the GDR), E3/541, ERN (En) 01223565, 01223577, 01223579, 01223582; Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, pp. 1-2, ERN (En) 00192186-00192187. The Chamber also notes that the Socialist Republic of Vietnam did not officially exist until 2 July 1976, when North and South Vietnam were formally reunified and the Provisional Revolutionary Government of the Republic of South Vietnam (PRG) and the Democratic Republic of Vietnam (DRV, i.e. North Vietnam) governments were renamed the “Socialist Republic of Vietnam”. See e.g., *NUON Chea Sends Message to Chairman Truong Chinh* (in FBIS collection), E3/278, 2 July 1976, ERN (En) 00167866; *Commentary on Friendship, Solidarity with SRV* (in FBIS collection), E3/278, 7 July 1976, ERN (En) 00167866-00167867; Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, p. 35, ERN (En) 00192220. The Closing Order’s reference to Vietnam’s ruling government as the “Socialist Republic of Vietnam” between 17 April 1975 and 2 July 1976 is thus formally incorrect. However, the Chamber finds the Closing Order’s apparent mistake to be a non-consequential one. Nevertheless, the Chamber will refer to the country as “Vietnam” and not as “SRV” when discussing events that occurred between 17 April 1975 and 2 July 1976.

<sup>728</sup> SRV Government Statement of 31 December 1977, Far Eastern Relations, E3/267, 3 January 1978, ERN (En) S00008731; SRV Ministry of Foreign Affairs, *Facts and Documents*, E3/3515, January 1978, pp. 10, 16, 20, ERN (En) 00196223, 00196229, 00196233; SRV Foreign Languages Publishing House Hanoi, E3/2371, 1979, p. 19, ERN (En) 00187338. KHIEU Samphan states this order of events as well. See Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 70, ERN (En) 00103758, fn. 58. See also, US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387 (noting both sides’ versions of events, without taking sides).

<sup>729</sup> Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, pp. 12-13, ERN (En) 00192197-00192198 (citing as his source a personal communication from an Australian foreign service officer who had interviewed a person named Tot in Malaysia on 5 April 1979); Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, p. 9, ERN (En) 00334092 (CHANDA, who testified as expert in Case 001, confirmed the statements he made in his book: E3/2376); Book by S. Morris: *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, E3/7338, 1999, p. 92, ERN (En) 01001759 (Stephen MORRIS was not questioned on this specific topic when he testified in Case 002/02 on 18, 19 and 20 October 2016).

<sup>730</sup> The Chamber notes, however, that shortly before DK established diplomatic relations with Italy in June 1976, the members of the Standing Committee discussed during their 17 May 1976 meeting whether they should send a correspondence letter to Italy, but they found that it would be better “to make oral responses with a short reference indicating that Koh Krachak Ses island, also known as Polo Pang Zang does not belong to us but to Viet Nam”. An oral response was found preferable because, according to the minutes the Standing Committee meeting, “[i]f we make a written response and if Italy attempts to instigate it would bring the letter to show Viet Nam making us trouble. Thus, make no writings.” See Standing Committee Minutes, E3/223, 17 May 1976, p. 6, ERN (En) 00182713; *Diplomatic Relations Established with Italy* (in FBIS collection), E3/277, 25 June 1976, ERN (En) 00167910.



to by a significant number of scholars.<sup>731</sup> Conversely, DK public sources state that the Vietnam attacked the islands of Poulo Wai immediately after 17 April 1975 or in May 1975, denying that DK forces had first seized Phu Quoc and Tho Chu, and accused Vietnam of making forays into Cambodia's Mondulhiri and Ratanakiri provinces in May 1975.<sup>732</sup> While the Chamber is cautious as to the weight to be attached to both DK and Vietnamese public propaganda sources,<sup>733</sup> it is satisfied that from the common elements of these conflicting narratives it follows that armed clashes commenced around the islands in the territorial waters of Cambodia and Vietnam as well as in various locations along the border in May 1975 at the earliest, and that Vietnamese troops occupied the Poulo Wai islands in early June 1975 at the latest.<sup>734</sup> The latter is

<sup>731</sup> See e.g., Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, pp. 104-105, ERN (En) 01150049 (stating that DK forces shelled Phu Quoc as early as 19 April, citing as source for this: Frank Snepp, *Decent Interval* (Penguin 1977), p. 299, which is not on the Case File); Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, pp. 12-13, ERN (En) 00192197-00192198 (providing no source for the assertion that DK troops launched "a seaborne ground assault" on Phu Quoc on 4 May 1975 and landed on Tho Chu six days later); Nayan CHANDA also stated this order of events when testifying in Case 001. See Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, p. 9, ERN (En) 00334092; Book by S. Morris: *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, E3/7338, 1999, p. 92, ERN (En) 01001759 (Stephen MORRIS was not questioned on this specific topic when he testified in Case 002/02 on 18, 19 and 20 October 2016); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 296, ERN (En) 00396504 (providing no source); Paper by F. Ponchaud: *Cambodia and Vietnam: A Fragile Militant Solidarity*, E3/7258, March 1979, p. 9, ERN (En) 01200265 (providing no source).

<sup>732</sup> DK Statement, E3/1393, 31 December 1977, p. 4, ERN (En) 00713104; DK Ministry of Foreign Affairs, *Black Paper*, E3/266, September 1978, p. 74, ERN (En) 00082550; *Revolutionary Flag*, E3/744, February 1978, pp. 11-12, ERN (En) 00464060-00464061; *Revolutionary Youth*, E3/726, January-February 1978, p. 5, ERN (En) 00278712; T. 27 April 2016, E1/423.1, p. 3 (speech by NUON Chea). See also, US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387 (noting both sides' versions of events, without taking sides). The testimony of PRUM Sarat supports this version of events to a certain degree, but the Chamber approaches this evidence with caution because it is hearsay evidence. See T. 27 January 2016 (PRUM Sarat), E1/383.1, pp. 58-59 (PRUM Sarat confirms the Vietnamese took the Poulo Wai islands, but his testimony on these matters is confused, and moreover, hearsay evidence. PRUM Sarat also states there was no fighting at Phu Quoc in 1975, but he concedes to never having been to Phu Quoc).

<sup>733</sup> See e.g., Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, p. 34, ERN (En) 00334117 ("[the Black Paper] is a mixture of facts and fantasy"). See also, Section 6: Communication Structures, paras 470-472, 479; Section 16.3: Real or Perceived Enemies, para. 3747.

<sup>734</sup> Australian Embassy Telegram, Subject: DRV-Cambodia, E3/9723, 20 August 1975, ERN (En) 01186943 (noting the existence of border skirmishes around the islands in mid-1975 in more general terms); Chinese Embassy Telegram, Subject: Report on the Situation in Indochina, E3/8172, 6 January 1978, p. 2, ERN (En) 00747128 ("Nonetheless questions could be raised as to why the protagonists in this conflict decided to wait until on 31 December to inform the public about a dispute which has been ongoing for eighteen months", thus also placing the start of armed hostilities in June 1975); Book by W. Shawcross: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, p. 489, ERN (En) 00430192 (the author claims, at ERN (En) 00430076, that he principally bases his version of events on Pentagon documents declassified under the Freedom of Information Act when he states that "[around] the island of Poulo Wai on May 12 a full scale island war was underway between the two new Communist governments of Vietnam and Cambodia."). The Chamber notes that on 12 May 1975, the DK Navy captured the US merchant vessel *Mayaguez*. While this event caused a military incident between the USA and DK, it does not seem to have any relation to the armed conflict between Vietnam and DK. See Report to US Department of Defense, E3/7842, pp. 3-4, ERN (En) 00387427-00387428; Book by W.

also supported by contemporaneous newspaper articles as well as the testimony of PAK Sok, who places the capture of the Poulo Wai islands by Vietnam sometime in June 1975.<sup>735</sup>

283. In June 1975, DK sent a delegation that included POL Pot and NUON Chea to Hanoi to discuss the border clashes with the Vietnamese leader NGUYEN Van Linh, apparently to no avail.<sup>736</sup> LE Duan, General Secretary of the Communist Party of Vietnam, subsequently led a delegation to visit Cambodia in early August 1975.<sup>737</sup> Vietnam then withdrew its troops from Poulo Wai later that August.<sup>738</sup> From 30 August 1975 to 4 September 1975, KHIEU Samphan and NORODOM Sihanouk both travelled to North Vietnam to attend the 30<sup>th</sup> anniversary celebrations of the commencement of the Vietnamese independence movement.<sup>739</sup> However, clashes around the islands continued until at least early 1976.<sup>740</sup>

284. On the mainland, border incidents occurred throughout the second half of 1975.<sup>741</sup>

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Shawcross: *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, E3/88, 1979, pp. 489-491, ERN (En) 00430192-00430194.

<sup>735</sup> T. 5 January 2016 (PAK Sok), E1/370.1, p. 40 (PAK Sok places the Vietnamese taking of Poulo Wai in about June 1975; he does not provide any evidence relating to Phu Quoc or Tho Chu). *See also*, Vietnam Said to Capture An Island Off Cambodia (New York Times), E3/8225, 14 June 1975, ERN (En) 00165960-00165961; Vietnam and Cambodia in fierce Clash (The Times of London), E3/8226, 14 June 1975, ERN (En) 00166202; Vietnamese, Thai Clash (Fact on File World News Digest), E3/8243, 26 July 1975, ERN (En) 00166196.

<sup>736</sup> DK Statement, E3/1393, 31 December 1977, pp. 5-6, ERN (En) 00713105-00713106; DK Ministry of Foreign Affairs, *Black Paper*, E3/266, September 1978, pp. 74-75, ERN (En) 00082550; SRV Foreign Languages Publishing House Hanoi, E3/2371, 1979, pp. 19-20, ERN (En) 00187338-00187339; US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; Australian Embassy Telegram, Subject: DRV-Cambodia, E3/9723, 20 August 1975, pp. 1-2, ERN (En) 01186943-01186944. *See also*, Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, pp. 1-2, ERN (En) 00182635-00182636 (referring in general terms to a meeting in June 1975 during which the attempt to discuss “the problem of the eastern border” was ignored by the Vietnamese).

<sup>737</sup> US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; Australian Embassy Telegram, Subject: DRV-Cambodia, E3/9723, 20 August 1975, p. 1, ERN (En) 01186943; *Communiqué Issued On Le Duan Friendship Visit* (in FBIS collection), E3/119, 4 August 1975, ERN (En) 00167354; T. 27 April 2016, E1/423.1, p. 3 (speech by NUON Chea). *See also*, Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, pp. 14-15, ERN (En) 00192199-00192200; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, 2004, p. 298, ERN (En) 00396506. *See also*, Section 13.3: Treatment of the Vietnamese, para. 3386.

<sup>738</sup> T. 5 January 2016 (PAK Sok), E1/370.1, pp. 38-39; Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, 1986, p. 15, ERN (En) 00192200.

<sup>739</sup> *Editorial Hails DRV Anniversaries* (in FBIS collection), E3/271, 3 September 1975, ERN (En) 00167422-001674223.

<sup>740</sup> Standing Committee Minutes, E3/227, 2 November 1975, ERN (En) 00183414; DK Report, E3/1016, 5 January 1976, ERN (En) 00231824.

<sup>741</sup> *See e.g.*, Standing Committee Minutes, E3/227, 2 November 1975, ERN (En) 00183413 (describing incidents in Steung Treng and Ratanakiri provinces in the second and third quarter of 1975); DK Telegram, E3/879, 11 November 1975, ERN (En) 00182596 (describing Vietnamese forays into a number of border areas of Sector 23 of the East Zone in November 1975); DK Telegram, E3/1150, 11 November 1975, ERN (En) 00539053-00539054 (discussing how to deal with the situation in Ratanakiri

In early 1976, there were attempts to resolve these problems through a series of negotiations between DK and Vietnamese delegations that were intended to serve as preparatory meetings for a summit in June 1976.<sup>742</sup> On two occasions, Northeast Zone Secretary NEY Sarann *alias* Ya comprehensively briefed the Standing Committee on these negotiations with Vietnam.<sup>743</sup> While “border liaison committees” were indeed set up,<sup>744</sup> a consensus was never reached and the June summit did not take place.<sup>745</sup> Despite there being some lulls in the fighting in 1976, border skirmishes continued to occur

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province around that same time). *See also*, US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387 (noting, without taking sides, Cambodian and Vietnamese claims of, respectively, an attempted *coup d'état* and skirmishes in the Vietnamese provinces of Kontum and Darlac (Đắk Lắk) in December 1975); SRV Ministry of Foreign Affairs, *Facts and Documents*, E3/3515, January 1978, p. 10, ERN (En) 00196223 (likely one of the sources of the aforementioned US Congressional Research Service document: “In December 1975 Kampuchean armed forces again attacked and occupied Vietnamese territory in the provinces of Gia Lai, Kantum and Darlac.”); SRV Government Statement of 31 December 1977, Far Eastern Relations, E3/267, 3 January 1978, ERN (En) S00008731 (likely another source of the aforementioned US Congressional Research Service document, stating in almost identical words: “In December 1975 Cambodian armed forces again attacked and occupied Vietnamese territory in the provinces of Gia Lai-Kontum and Darlac.”); T. 27 April 2016 (Accused NUON Chea), E1/423.1, p. 3, ERN (En) 01298567 (statement by NUON Chea, where the Accused notes that armed clashes between the DK and Vietnamese forces were reported in areas in the northeast provinces in December 1975).

<sup>742</sup> DK Telegram, E3/893, 26 January 1976, ERN (En) 00182620-00182622; DK Telegram, E3/1017, 7 January 1976, pp. 1-3, ERN (En) 00305242-00305244; DK Telegram, E3/866, 7 March 1976, ERN (En) 00183709-00183711; Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-7, ERN (En) 00182651-00182657; Standing Committee Minutes (copied by C.E. Goscha), E3/10694, 15 and 20-21 April 1976, ERN (En) 01323934; Standing Committee summary of decisions, E3/235, 19-21 April 1976, pp. 3, 4-5, ERN (En) 00183418, 00183419-00183420; Standing Committee Minutes, E3/221, 14 May 1976, pp. 1-13, ERN (En) 00182693-00182705. *See also*, DK Telex Message (Sweden-Kampuchea Friendship Association), E3/1149, 4 March 1978, p. 4, ERN (En) 00717587; US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; SRV Ministry of Foreign Affairs, *Facts and Documents*, E3/3515, January 1978, p. 11, ERN (En) 00196224; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, pp. 110-115, ERN (En) 01150052-01150054.

<sup>743</sup> Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-7, ERN (En) 00182651-00182657 (Ya reporting on the meeting with the Vietnamese that took place from 7 to 9 March 1976); Standing Committee Minutes, E3/221, 14 May 1976, pp. 1-13, ERN (En) 00182693-00182705 (Ya reporting on the fifth meeting that took place between DK and Vietnamese delegations).

<sup>744</sup> Standing Committee Minutes, E3/218, 26 March 1976, pp. 3-4, ERN (En) 00182653-00182654 (Ya reporting that the Vietnamese “proposed setting up a Liaison Committees at the zone and sector levels to contact one another to facilitate the situation so there would be no attacks and to facilitate the occupational travel of the people on both sides” and it was noted that the Cambodian delegation accepted this proposal).

<sup>745</sup> US Congressional Research Service, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, pp. 114-115, 122, ERN (En) 01150054, 01150058; Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 6, ERN (En) 00182814 (noting regarding “[g]oing to Vietnam: The measure is to avoid this. Comrade Secretary needed not to go. Reserve this for the Presidium of State or the Assembly Chairman to go.”). One source alleges that while the June 1976 summit did not take place, a personal meeting between POL Pot and LE Duan did take place earlier in 1976. *See* Article by D. Mosyakov, “The Khmer Rouge and the Vietnamese Communists: A history of their relations as told by the Soviet Archives”, E3/9644, undated, p. 27, ERN (En) 01085989.

throughout that year and into 1977.<sup>746</sup>

285. Various experts state that on 30 April 1977 DK forces made their first of two large-scale incursions into Vietnam.<sup>747</sup> This is corroborated by Vietnamese public sources,<sup>748</sup>

<sup>746</sup> See e.g., T. 27 October 2016 (SOV Maing), E1/491.1, pp. 20-22 (describing fighting along the border in the Dam Dak area in Monduliri province in 1976, adding that the fighting was not very intense in that year, but that it increasingly intensified throughout 1977 and 1978); T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 5-6 (stating that Vietnamese troops encroached on Kampuchean territory in Monduliri province when he was stationed there in 1976); T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 50-51 (stating that the border conflict in Takeo province started in 1976); DK Telegram, E3/887, 23 January 1976, ERN (En) 00185223 (reporting that on the night of 22 January 1976, Vietnamese forces attacked a camp near Pou Nhak Mountain in Svay Rieng province); Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 1, ERN (En) 00182625 (SON Sen reporting that Vietnamese incursions into DK in Ratanakiri, Svay Rieng and Prey Veng provinces in February 1976); Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, p. 2, ERN (En) 00182636 (discussing attacks by the Vietnamese in Ratanakiri, Takeo and Kratie provinces in March 1976); Standing Committee Minutes, E3/221, 14 May 1976, pp. 1, 4-5, ERN (En) 00182693, 00182696-00182697 (noting that the Vietnamese accused DK forces of attacking them twice in Monduliri province in May 1976, but denying these accusations and stating that any action by DK troops would have been in self-defence); Minutes of Plenary Meeting of the 920<sup>th</sup> Division, E3/799, 7 September 1976, pp. 3, ERN (En) 00184779 (reporting skirmishes at Dam Dak in Monduliri province in August 1976), 4, ERN (En) 00184780 (SON Sen saying that in September 1976: “[t]here have not yet been any major clashes, but small clashes happen continuously.”); Minutes of Meeting Division 920, E3/805, 16 December 1976, p. 1, ERN (En) 00923160 (mentioning activity along the border, including Monduliri province, in December 1976); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 2, ERN (En) 00933834 (CHHIN reported that DK troops attacked Vietnamese troops in the Dam Dak area on 13 January 1977), 11, ERN (En) 00933843 (during the same meeting the Secretaries and Deputy Secretaries of Divisions and Independent Regiments decided to strengthen the defence along the border with Vietnam); DK Telegram, E3/1061, 24 March 1977, ERN (En) 00538731 (reporting that DK troops captured seven Vietnamese while they were patrolling the border to the north of Sesan river on 12 March 1977); DK Telegram, E3/852, undated, ERN (En) 00183715-00183717 (reporting numerous clashes on the eastern border during the first four months of 1977). See also, T. 30 March 2016 (SUN Vuth), E1/411.1, p. 61 (the Civil Party was posted in Monduliri province, where he was asked to install spikes along the border in order to protect the border); T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 13-14 (testifying that fierce fighting took place along the border in Svay Rieng province in 1976).

<sup>747</sup> T. 19 October 2016 (Stephen MORRIS), E1/486.1, p. 43; Book by S. Morris: *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, E3/7338, p. 98, ERN (En) 01001765 (MORRIS bases the occurrence of the April 1977 incursion partly on CHANDA’s *Brother Enemy*, partly on an interview MORRIS conducted personally with Colonel Bui Tin, former editor of the Vietnamese communist army newspaper Quang Doi Nhan Dan, in Boston on 22 October 1991); Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, p. 87, ERN (En) 00192272 (citing as his source for the atrocities allegedly committed by DK troops during the April 1977 incursion into Vietnam interviews that CHANDA personally conducted with survivors when he visited the Vietnamese township of Tinh Bien one year later); Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, pp. 11-12, ERN (En) 00334095-00334095 (Expert CHANDA testifying in Case 001 that the account of this April 1977 incursion – as well as the September 1977 incursion – is admittedly based on sources found after the event); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. 360, ERN (En) 01150187 (KIERNAN bases the occurrence of the April 1977 incursion on an interview he conducted with an eye-witness at Kraing Ta Chan, Tram Kak district on 16 July 1980). The NUON Chea Defence contests that these two large-scale incursions took place. See NUON Chea Closing Brief, paras 177, 198-202. The KHIEU Samphan Defence contests more generally that DK forces made incursions into Vietnam. See KHIEU Samphan Closing Brief, paras 745-746, 751, 770, 786, 797, 799, 804.

<sup>748</sup> SRV Ministry of Foreign Affairs, *Facts and Documents*, E3/3515, January 1978, pp. 13-14, ERN (En) 00196226-00196227; SRV Foreign Languages Publishing House Hanoi, E3/2371, 1979, p. 21, ERN (En) 00187340.

as well as by Ben KIERNAN's interviews with HENG Samrin,<sup>749</sup> CHEA Sim<sup>750</sup> and OUK Bunchhoeun.<sup>751</sup> On 24 September 1977, DK troops allegedly made their second large-scale incursion into Vietnam, equally stated by experts and corroborated by Vietnamese public sources and Ben KIERNAN's interviews.<sup>752</sup> The assessment of the accuracy and the seriousness of the reported acts of aggression is hampered by a lack of transparent and independent sources of information.<sup>753</sup> The evidence concerning the occurrence of these incursions is often based on experts' and other academics' studies, which at times include public propaganda sources sometimes published years after the fact, and non-contemporaneous interviews, often constituting hearsay evidence.<sup>754</sup> The Chamber has not found contemporaneous internal DK documents, and especially military documents, which would support the occurrence of large-scale incursions into Vietnam specifically in April or September 1977. Moreover, the statements made by witnesses on these issues are contrasting. IENG Phan, a battalion commander from the Southwest Zone later relocated to the East Zone who was involved in the purge of the East Zone, denied that DK forces made any incursions into Vietnam in April 1977.<sup>755</sup>

<sup>749</sup> HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651886 (saying that before POL Pot gave the official order to attack Vietnam on 30 September 1977, DK had already attacked Vietnam in the southwest).

<sup>750</sup> CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651869 (saying that he personally saw the order that came late 1976 to attack Vietnam).

<sup>751</sup> OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 7, ERN (En) 00542178 (saying that DK attacks into Vietnam started in 1977 when all 11 divisions of the East Zone attacked Vietnam together in March, April, May and June 1977, setting up a front).

<sup>752</sup> T. 19 October 2016 (Stephen MORRIS), E1/486.1, p. 43; Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, pp. 11-12, ERN (En) 00334095-00334095 (Expert CHANDA testifying in Case 001 that the account in his book *Brother Enemy* of the September 1977 incursion is admittedly something he came to know about "much later" and was thus based on "sources found after the event"); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. 373, ERN (En) 01150193 (KIERNAN bases the occurrence of this second large-scale incursion on interviews he conducted at the alleged raid site on 27 October 1980). *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651886 (recounting that POL Pot gave the official order to attack Vietnam on 30 September 1977, not 24 September 1977); SRV Ministry of Foreign Affairs, *Facts and Documents*, E3/3515, January 1978, p. 25, ERN (En) 00196238.

<sup>753</sup> The Chamber further recalls that the Co-Investigating Judges received very little support from the Vietnamese authorities to investigate the events that occurred on Vietnamese territory (*see* Closing Order, paras 833-835). This obviously has an impact on the evidence discussed here.

<sup>754</sup> *See above*, fn. 747.

<sup>755</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 17-19 (describing a tug of war situation between DK and SRV troops, with heavy fighting mid-1977, adding that they could only push SRV troops back to the border), 98-100 (testifying that there were no large-scale attacks by DK in 1977 and DK did not make incursions into Vietnam – they were told by the upper echelon that as a small country they could not take on Vietnam). *See also*, T. 25 October 2016 (CHUON Thy), E1/489.1, pp. 87-88 (in relation to the situation in Svay Rieng in 1978, the witness testified that they would only attack Vietnamese forces when they crossed the border and entered Cambodian territory); T. 13 December 2016 (MAK Chhoeun), E1/512.1, p. 21 (stating in general terms that DK's policy, being a small country with a small population, was to not invade another country).

Other witnesses who were heard by OCIJ investigators stated that they were involved in fights on Vietnamese territory. When these fights occurred is not always clear, but it seems that at least part of them concerned the second half of 1978.<sup>756</sup>

286. Regarding the alleged large-scale incursions in April and September 1977, the Chamber also considers several telegrams which were sent by Chhean, the DK Ambassador in Hanoi, to the Party Centre, including POL Pot, NUON Chea, IENG Sary, VORN Vet and SON Sen. These telegrams report that Vietnam made serious complaints of acts of aggression committed by DK armed forces on Vietnamese territory.<sup>757</sup> These official complaints were addressed to DK authorities and were not meant to be disclosed to the public. Thus, there is no reason to believe that the events were described for propaganda purposes. However, considering only the facts denounced officially, not the rumours also reported in some telegrams, the events

<sup>756</sup> LAY Ean Interview Record, E3/376, 17 January 2009, pp. 3-4, ERN (En) 00278690-00278691 (stating that about seven months before 7 January 1979, his group of 200 combatants entered Vietnam about 15-20 kilometres beyond the border. They threw grenades, and burned houses, military hospitals, ammunition storages and saw mills. They also captured Vietnamese men and women who were sent to the rear battlefield in Cambodian territory); KUNG Kim Interview Record, E3/3959, 9 January 2009, p. 7, ERN (En) 00278686 (stating that in early 1977 he was sent into Vietnam and for about half month he was involved in fights at Phsar Kradas, a district town in Vietnam located adjacent to Kampuchea's Krek district. "During that time, I received successive orders to shoot and kill them right away, even if they raised their arms and to burn and destroy the houses and buildings both civilian and military. In that fighting a total of approximately 70 percent of the Khmer Rouge soldiers were killed as for the Vietnamese soldiers and people hundreds were probably killed and the houses of the Vietnamese people were burned."). See also, LAY Ien Interview Record, E3/470, 4 March 2008, pp. 4-5, ERN (En) 00205009-00205010.

<sup>757</sup> DK Telegram, E3/878, 17 June 1977, ERN (En) 01347938-01347939 (Chhean, DK Ambassador in Hanoi, reported that, according to Vietnamese authorities, "[o]n 14 June 1977 starting from 8 p.m., a company unit of our army invaded approximately 40 kilometers [*sic*] into their border from Sasie to Doem Chit in Ha Tien. They said our force armed with 105 mm attacked fiercely on their security posts, killed people, burn houses and caused a huge damage [...]. They said the situation was serious. More importantly, the incident took place after the Vietnamese Central Party and Government had issued an invitation letter to invite the Cambodian Party and Government for a meeting to discuss for a solution. They emphasized that the attack did not happen by accident."). DK Telegram, E3/880, 24 July 1977, ERN (En) 00182767 (Chhean reported to the Party Centre that, according to Vietnamese authorities, "on 16-17-18 July, Cambodia armed forces launched hundreds of mortar-105mm onto the area with crowd of people in An Yang [An Giang] Province. It destroyed mainly people as well as materials. From 16 to 17 July there were 30 people dead and 50 people injured, and a large number of houses burnt." The same telegram mentions that "[a]gain Vietnam requested Cambodia to cease such invasion otherwise Cambodia has to be responsible for this. Vietnam absolutely respects Cambodia's sovereignty and also defends lives of its [Vietnamese] people." Further the same telegram reports that "[o]nce again, Vietnam wants to clarify that Vietnam still wants to meet Cambodia to cease the bloodshed and maintain solidarity of both parties." There is also a reference to another "event in Ha Tieng (Ha Tien)" and a question raised concerning the fate of "An Yang province people who were arrested by [Cambodian] armed forces"). DK Telegram, E3/884, 30 August 1977, ERN (En) 00182762-00182765 (reporting that since early August 1977, the "Kampuchean Army has invaded such provinces as An Yang, Hien Yang, Long An and Tay Ninh, subsequently. Aircraft had been used to violate the airs, waters, and forces had been assigned to spy in Vietnamese territory." It also describes a battle on 21 August 1977 which included the killing of villagers and the burning of houses).

described, while serious, are not of the same level of gravity as the two large-scale incursions mentioned in propaganda-tainted documents.

287. The Chamber is convinced that both belligerents made several incursions in each other's territories, but it is not satisfied beyond reasonable doubt that DK made the large-scale incursions into the SRV in April and September 1977 as denounced in public official statements made by Vietnamese authorities. It notes in this regard that accusations back and forth regarding who invaded whose territory (first and/or when) – similar to the conflicting narratives clouding the establishment of the exact order of events around the islands in the months after 17 April 1975 – are commonplace between DK and Vietnam during the DK period.<sup>758</sup>

288. In any event, while discussions on the occurrence of these specific incursions may be relevant to understand the exact extent of the military operations in which both parties were engaged and how precisely the hostilities escalated, they are immaterial to any finding regarding the very existence of an armed conflict.<sup>759</sup> Regardless of the ambiguities surrounding the two alleged large-scale DK incursions in April and September 1977, numerous contemporaneous internal DK documents chronicle the constant fighting in the border provinces between DK and the SRV as well as smaller incursions back and forth throughout 1977.<sup>760</sup> The continuation of the armed conflict

<sup>758</sup> This is not only apparent from the public propaganda sources such as public statements and reports from the respective Ministries of Foreign Affairs referred to above, such back and forth allegations are also recorded in a number of DK telegrams. *See e.g.*, DK Fax, E3/878, 15 June 1977, ERN (En) 01347938-01347939 (Chhean reporting that Vietnamese commander Sun had called him to accuse DK of attacking on Vietnamese territory); DK Telegram, E3/880, 24 July 1977, ERN (En) 00182767-00182768 (reporting that the same Sun had sent Chhean a letter on 20 July 1977 containing similar allegations); DK Telegram, E3/882, 12 August 1977, ERN (En) 01313132-01313135 (noting that news was circulated among ambassadors in Hanoi that, *inter alia*, Cambodian troops had killed 1,000 Vietnamese in Ha Tien, Kien Giang province and that Cambodian troops had launched attacks to reclaim Cambodian islands owned and occupied by Vietnam. The telegram warned that Vietnam was using tricks to slander Cambodia and advancing its aggression towards Cambodia to gain power in the region and in general); DK Telegram, E3/884, 30 August 1977, ERN (En) 00182762-00182764 (CHHEAN reporting on more allegations made by Sun and a meeting the two men had to discuss these allegations, during which neither budged); DK Telegram, E3/981, undated, ERN (En) 00314585 (reporting that the Vietnamese reiterated that in September 1977 DK troops invaded into Tay Ninh, massacring and killing more than 1,000 people, and that troops were deployed five to six kilometre deep onto Vietnamese soil in Bien Hao, Ca Thum and Thanh Binh districts).

<sup>759</sup> The Chamber notes that the Closing Order also addresses crimes allegedly committed by the RAK during incursions into Vietnam (*see* Closing Order, paras 832-840), but these were subsequently excluded from the scope of Case 002/02. *See* Case 002 Additional Severance Decision Annex, paras 2(iv)(b), 3(xii).

<sup>760</sup> *See e.g.*, Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 2, ERN (En) 00933834 (Chhin reporting that DK troops attacked Vietnamese troops in the Dam Dak area on 13 January 1977. During the same meeting, the Secretaries and Deputy Secretaries decided to strengthen the defence along the border with Vietnam. *See* p. 11, ERN (En)

between DK and the SRV in 1977 is also supported by the eyewitness testimony of LONG Sat, describing heavy fighting on the border in Kampong Cham province late 1977 when DK troops attacked Barrack 27 on Vietnamese territory.<sup>761</sup>

00933843); DK Telegram, E3/1061, 24 March 1977, ERN (En) 00538731 (Roëun, Secretary of Division 801, reporting to SON Sen that DK troops captured seven Vietnamese while they were patrolling the border to the north of Sesan river on 12 March 1977); DK Telegram, E3/852, undated, ERN (En) 00183715-00183717 (report to Office 870 providing an overview of the numerous clashes on the eastern border during the first four months of 1977); DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714 (Leu, Deputy Secretary of Division 801, reporting to General Staff members Reun, SEAT Chhae *alias* Tum *alias* Brother 81 and SON Sen that three Vietnamese were captured and reportedly confessed to a plan by SRV to attack Cambodia in April or May 1977); Sector 23 DK Border Situation Report, E3/850, 21 May 1977, ERN (En) 00654824-00654826 (reporting numerous clashes that occurred between 14 and 21 May 1977 in Sector 23); DK Telegram, E3/853, 3 June 1977, ERN (En) 00185243 (the Southwest Zone reporting to *Angkar* that the Vietnamese had fired shells in Kampot province and had thrown grenades in Takeo province; it also reported back and forth fighting at the border near Kampot); DK Border Situation Report from Sector 21, E3/855, 26 June 1977, ERN (En) 00184003-00184004 (describing 11 separate incidents that took place between 20 and 24 June 1977); DK Telegram, E3/885, 24 September 1977, ERN (En) 00233793 (SAO Phim reporting to POL Pot – also sent to NUON Chea – two incidents, on 16 and 20 September 1977, in which DK troops were ambushed by Vietnamese troops); DK Telegram, E3/886, 26 September 1977, ERN (En) 00185252-00185253 (CHHUN reporting to POL Pot that at the battlefield north of Road No. 1, DK forces killed approximately 60 Vietnamese forces, burned 75 houses and military camps. In Phsar Daem Ampil spearhead, 30 Vietnamese forces were killed); DK Telegram, E3/978, 5 November 1977, ERN (En) 00324808 (Thuon reporting to Yi via Office 870 that on 1 October 1977 DK and SRV forces exchanged fire in Trapeang Chlounh, and on 26 October SRV soldiers fell into DK spike traps); DK Telegram, E3/8369, 26 October 1977, ERN (En) 00182815-00182816 (SAO Phim reporting to Office 870 that they shelled Troeung market and planned to “liberate Bavet Krom”); DK Telegram, E3/888, 26 October 1977, ERN (En) 00183615 (SAO Phim reporting to Office 870 that at the spearhead Trach Khaol and southern Kbal Damrei, DK forces recaptured the battlefield. Along Route 22 in the vicinity of Thmei and Chrak Mdeng villages, DK forces managed to capture Romdeng Krom village. However, this village was recaptured in the evening by the Vietnamese). *See also*, ‘Heavy’ Fighting Reported on SRV-Cambodian Border (in FBIS collection), E3/289, 24 July 1977, ERN (En) 00168502 (the report alleges that Cambodian soldiers killed 400 Vietnamese nationals, including women and children, in Kampong Cham, triggering a response from Vietnam, that mobilised its forces on the Cambodian border); *Refugees Cite Major SRV Cambodian Clashes, Reprisals* (in FBIS collection), E3/143, 1 September 1977, ERN (En) 00168725-00168726 (the Bangkok Post reported that small arms and mortar exchanges were occurring daily in early April. In addition, it reported that: “[i]n a carefully orchestrated military escalation, the Vietnamese mounted what was at first described as a training exercise in the swampy flatlands of the border area between Ha Tien and [...] Chau Doc. This exercise was well underway by about 20 April and continued into early May, when the manoeuvres were suddenly converted into a ‘limited incursion’ into Cambodia.” It further reported that the heaviest fighting occurred in May and June 1977. Vietnamese air strikes, some as deep as 15 nautical miles into Cambodian territory, allegedly retaliated in response to Khmer Rouge units conducting land-grabbing probes into Vietnam. The Bangkok Post also reported that in response to the Vietnamese incursion, Khmer Rouge units in Kampong Chhnang province executed some 420 ethnic Vietnamese. Cambodian counter-attacks allegedly began on 18 May 1977, in rocket attacks against Vietnamese artillery positions on the outskirts of Ha Tien. At the same time, at least one Cambodian squad reportedly infiltrated the Vietnamese township and knifed 13 unarmed civilians to death); US Congressional Research Service, E3/2370, 4 October 1978, ERN (En) 00187388 (reporting that Vietnamese attacks into Cambodia occurred in September and November 1977 and noting that DK claimed to have killed between 2,000 and 20,000 Vietnamese invaders); T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 40 (“Of course, during the course of the attack, sometimes the “*Yvon*” side incurred into our territory and sometimes, we went into their territory and that’s what happened.”).

<sup>761</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 76-77 and T. 2 November 2016 (LONG Sat), E1/494.1, pp. 40-41 (LONG Sat describing heavy fighting in December 1977 when DK forces attacked “barrack 27” on Vietnamese territory).



289. In October and November 1977, the border war escalated when Vietnamese forces launched an extensive attack into Svay Rieng province.<sup>762</sup> The SRV launched further attacks in December 1977, capturing the rubber plantation and factory in Memot, Kampong Cham province, in the process and causing significant defeats on the DK side in the East Zone.<sup>763</sup> This escalation of the conflict towards the end of 1977 led to DK cutting diplomatic ties with Vietnam on 31 December 1977.<sup>764</sup> The SRV issued a

<sup>762</sup> DK Telegram, E3/889, 26 October 1977, ERN (En) 00183616 (SAO Phim reporting to Office 870 that the Vietnamese fired a variety of cannons at five Cambodian spearheads at Daun Tei village, Sar Thngak village, Koh Bakan village, Ta Dev village and Chek village in Chantrea district in Svay Rieng province. SRV troops had managed to break through these five front lines and positioned themselves at Sar Thngak market); DK Telegram, E3/888, 26 October 1977, ERN (En) 00183615 (SAO Phim to Office 870, including the situation update from the abovementioned DK Telegram E3/889); DK Telegram, E3/554, 27 October 1977, ERN (En) 00183618 (SAO Phim to Office 870 describing the DK counterattack in response to the SRV attack at Sar Thngak market on 26 October 1977); DK Telegram, E3/890, 28 October 1977, ERN (En) 00185187 (SAO Phim reporting to Office 870 that the Vietnamese continuously shelled the area along the border in Sector 23, and on 28 October 1977, stormed the front line at Veal Ma-am village, Prey Voar village in Thmei sub-district, Keng Chey village in Banteay Kraing sub-district and Samraong sub-district); DK Telegram, E3/891, 29 October 1977, ERN (En) 00183617 (SAO Phim reporting to Office 870 that DK forces attacked SRV forces at Road 22 spearhead, recapturing their former defending lines); DK Telegram, E3/894, 6 November 1977, ERN (En) 00183619-00183620 (sent to Office 870: at the Trapeang Thalong spearhead east of Road 22, Vietnamese troops jointly attacked DK forces who counter-attacked and killed six Vietnamese, causing the Vietnamese troops to withdraw); DK Telegram, E3/896, 18 November 1977, ERN (En) 01347937 (SAO Phim reporting to Office 870 the counterattacks DK forces undertook on the north side of Route 13); T. 1 November 2016 (IENG Phan), E1/493.1, pp. 41-42 (IENG Phan testifying to a meeting with Ta MOK he attended late 1977, during which he was told the Vietnamese had already advanced close to Prasout, Svay Rieng province). *See also*, US Congressional Research Service, E3/2370, 4 October 1978, p. 9, ERN (En) 00187388; Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, p. 196, ERN (En) 00192381 (CHANDA heard about the Vietnamese attack starting in October 1977 through private conversations he had with three Vietnamese officials, including a colonel and non-communist diplomats in Hanoi in March 1978); Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, pp. 18-19, ERN (En) 00334101-00334102 (CHANDA confirming his account of the Vietnamese attack into Svay Rieng province in October 1977).

<sup>763</sup> DK Telegram, E3/983, 9 December 1977, ERN (En) 00289797 (SAO Phim reporting defeat in Svay Rieng province to Office 870); DK Telegram, E3/8372, 22 December 1977, ERN (En) 00183632 (SAO Phim reporting defeat, being surrounded by the enemy in Memot district, Kampong Cham province, to Office 870); DK Telegram, E3/906, 23 December 1977, ERN (En) 00183637 (Phuong reporting to Office 870 that, on 22 December 1977, the Vietnamese caught almost 100 people of the mobile brigade who were harvesting rice near National Road 7 in Ponhea Kraek district, Kampong Cham province, entered villages and burned down houses. Da village was reportedly completely burned down). The following four DK documents were sent from PHUONG to Office 870 and reported that the Vietnamese occupied the area around Memot village, including the rubber plantation and the factory, in late December 1977, likely into early January 1978: DK Telegram, E3/909, 24 December 1977, ERN (En) 00183636; DK Telegram, E3/908, 24 December 1977, ERN (En) 00183638; DK Telegram, E3/912, 27 December 1977, ERN (En) 00183640; DK Telegram, E3/913, 15 January 1978, ERN (En) 00183644-00183645.

<sup>764</sup> DK Statement, E3/1265, 31 December 1977, ERN (En) 00282392-00282393 (also included in: *Cambodia's Temporary Severance of Relations with Vietnam* (in SWB/FE/5703/A3 collection), E3/267, 3 January 1978, ERN (En) S00008724 and *Foreign Ministry Statement on Severing Ties with SRV* (in FBIS collection), E3/1359, 3 January 1978, ERN (En) 00169517); DK Statement, E3/1393, 31 December 1977, p. 7, ERN (En) 00713107 (indicating that the decision to cut diplomatic ties with Vietnam was made on 25 December 1977 during a special meeting of the Standing Committee); DK Telegram, E3/915, 31 December 1977, ERN (En) 00184995; US Congressional Research Service, E3/2370, 4 October 1978, ERN (En) 00187388; German Democratic Republic Ministry of Foreign Affairs Report, E3/1773, 1977-1978, ERN (En) 01246919. Numerous news outlets reported on the severance. *See e.g.*, *Cambodia Cuts*

response on the same day.<sup>765</sup>

290. Vietnamese troops voluntarily withdrew on 6 January 1978,<sup>766</sup> but border clashes, including incursions by both sides, continued throughout that month.<sup>767</sup> Shortly after 6

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*Diplomatic Ties with Vietnam* (Washington Post), E3/8182, 31 December 1977, ERN (En) 00166127; *Cambodia Accuses Vietnam of Invasion, Breaks Ties* (Associated Press, Los Angeles Times), E3/2291, 31 December 1977, ERN (En) 00166125-00166126; *Battles rage as Khmers sever ties with VN, Hanoi blamed for coup bid* (Bangkok Post), E3/2292, 1 January 1978, ERN (En) S00009032. *See also*, T. 27 October 2016 (SOV Maing), E1/491.1, pp. 20-22 (describing fighting along the border in the Dam Dak area in Monduliri province in 1976, adding that the fighting was not very intense that year, but increasingly intensified throughout 1977 and 1978); Chinese Embassy Telegram: *Report on the Situation in Indochina*, E3/8172, 6 January 1978, ERN (En) 00747128 (noting that: “Nonetheless questions could be raised as to why the protagonists in this conflict decided to wait until on 31 December to inform the public about a dispute which has been ongoing for eighteen months.”); *Revolutionary Flag*, E3/4604, April 1978, p. 8, ERN (En) 00519836 (POL Pot noting that attacks from the Vietnamese had occurred every year from 1975); *Vietnam Holds Cambodian Region After Bitter Fight U.S. Aides Say* (New York Times), E3/8190, 4 January 1978, ERN (En) 00166021-00166022 (noting the escalation of the conflict during the second half of 1977).

<sup>765</sup> SRV Government Statement of 31 December 1977, Far Eastern Relations, E3/267, 3 January 1978, ERN (En) S00008731-S00008733.

<sup>766</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 4, ERN (En) 00519832 (claiming a grand victory over the SRV); POL Pot Interview, E3/7950, April 1978, p. 7, ERN (En) 00419763 (claiming the Vietnamese’s total defeat); *Vietnamese Driven Out Cambodian Radio Says* (New York Times), E3/8199, 9 January 1978, ERN (En) 00166031; *Cambodian Success Claims Discounted* (Los Angeles Times), E3/8202, 10 January 1978, ERN (En) 00166150; Extracts from a number of documents from Pol Pot, Office 870, E3/10685, undated, ERN (En) 01320889 (claiming the 6 January 1978 victory over Vietnam). *See also*, Book by S. Morris: *Why Vietnam Invaded Cambodia: Political Culture and the Causes of War*, E3/7338, pp. 102-103, ERN (En) 01001769-01001769 (noting that the Khmer Rouge characterised the voluntary Vietnamese withdrawal of its troops on 6 January 1978 as grand victory, but pointing out the unlikeliness of this considering the vast difference in size of both sides’ armies); Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, pp. 212-213, ERN (En) 00192397-00192398 (CHANDA remarks that “[t]o hide its initial defeat the Khmer Rouge began an intense propaganda campaign to present the voluntary Vietnamese withdrawal as a ‘great historic victory’”); Information on further material concerning the military situation in the Kampuchea and SR Vietnam conflict (GDR), E3/9434, 23 February 1978, ERN (En) 01198228 (confirming SRV troops had withdrawn by the second half of January 1978); Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, pp. 28-29, ERN (En) 00334111-00334112 (confirming that Vietnamese troops withdrew from Cambodia, but strongly doubting the story of the great victory in January 1978. CHANDA stated that Khmer Rouge broadcasts of their alleged victory against Vietnamese forces were not taken seriously by any analyst who knew about the state of play between both armies).

<sup>767</sup> DK Telegram, E3/913, 15 January 1978, ERN (En) 00183644-00183645 (Phuong to Office 870, reporting once more, as he also did late 1977, that the Vietnamese invaded the rubber plantation, factory and hospital in Memot, and another rubber plantation in Chantung, destroying and looting the places); DK Telegram, E3/243, 19 January 1978, ERN (En) 00532795-00532796 (SAO Phim reporting to Office 870 that on 16 January 1978, DK forces continued to mobilise to infiltrate Vietnamese territory, smashing 15 Vietnamese and destroying five Vietnamese boats. DK troops also launched guerrilla attacks 2km from the border, smashing 30 military houses and burning down several civilian houses. Two enemy motorboats and the people on the boats were destroyed. In total, 30 enemies were killed on 18 January 1978. In addition, at 3 a.m. on 18 January 1978, DK troops continued firing “rocket 107” into Hok Ngi market); DK Telegram, E3/244, 23 January 1978, ERN (En) 00182755-00182756 (SAO Phim reporting to POL Pot about the clashes which took place at a number of spearheads in Koki Saom and Thmei sub-districts: Vietnamese forces shelled continuously into Cambodian territory; DK forces fought Vietnamese forces around Wat Chhkor and destroyed their position at Toul Phoum Prasat; five Vietnamese were killed and a significant number injured); DK Telegram, E3/921, 27 January 1978, ERN (En) 00183646-00183647 (SAO Phim reporting to POL Pot among others that on 20 January 1978 DK forces seized CHI Peay and Prek Sla, and that SRV forces withdrew to Sre Thlann); DK Telegram, E3/922, 29 January 1978, ERN (En) 00183648 (SAO Phim reporting to POL Pot on a number of border

January 1978, POL Pot visited the East Zone and held a public meeting at Wat Taung, Suong district, during which he outlined CPK policy that every Cambodian should kill at least 30 Vietnamese.<sup>768</sup> PRUM Sarat recalls hearing KHIEU Samphan making an announcement on the radio to soldiers to be alert after the Vietnamese attacks in 1977, and ready to fight the enemy who was to “invade our territory”.<sup>769</sup> Given that the border war had been particularly intense in Svay Rieng province in late 1977, both *Ta Mok* and POL Pot, on separate occasions, ordered troops to be relocated from Takeo province to Svay Rieng province to strengthen the border defence.<sup>770</sup> Two East Zone Field Command Posts had already been created sometime in the second half of 1977: one headed by SON Sen and located along National Road 1; one headed by SAO

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incidents); Standing Committee Minutes (copied by C.E. Goscha), E3/10696, 22 January 1978 (discussing the history and current status of the war with the SRV); *Border Fighting Continues as of 29 January* (in FBIS collection), E3/292, 31 January 1978, ERN (En) 00169173.

<sup>768</sup> DK Telegram, E3/920, 15 January 1978, ERN (En) 00301417 (SAO Phim reporting to POL Pot, writing “after leaving you”, indicating they SAO Phim and POL Pot just met); Revolutionary Flag, E3/4604, April 1978, ERN (En) 00519833-00519834 (speech by POL Pot on the occasion of the third anniversary of 17 April 1975, in which he reiterated the “one against 30” policy); *Past Year’s National Defense Efforts Reviewed* (in FBIS collection), E3/1362, 10 May 1978, ERN (En) 00170015 (radio broadcast reiterating the DK’s 1 against 30 target policy with respect to the Vietnamese: “If we have 2 million troops, there should be 60 million Vietnamese. For this reason, 2 million troops should be more than enough to fight the Vietnamese, because Vietnam only has 50 million inhabitants. We do not need 8 million people. We need only 2 million troops to crush the 50 million Vietnamese; and we still would have 6 million people left. We must formulate our combat line in this manner in order to achieve victory.”); *Cambodia’s Strategy of Defence against Vietnam* (in SWB/FE/5813/A3 collection), E3/8398, 15 May 1978, ERN (En) 00003960 (entry dated 10 May 1978) (which notes the same radio broadcast of 10 May 1978). *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651885-00651886 (describing the meeting with POL Pot, also attended by SON Sen, SAO Phim and KE Pauk, in which POL Pot outlined that every Cambodian should kill at least 30 Vietnamese); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. 387, ERN (En) 01150200 (KIERNAN bases this on an interview he personally conducted with HENG Samrin on 2 December 1991); Section 13.3: Treatment of the Vietnamese, para. 3397; Section 16.3: Real or Perceived Enemies, para. 3853.

<sup>769</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, pp. 76-77.

<sup>770</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 22-24, 39-41; T. 1 November 2016 (IENG Phan), E1/493.1, pp. 41-43 (IENG Phan was ordered by *Ta Mok* to relocate from Takeo province to Svay Rieng province late 1977. By the time he could mobilise forces from other regiments it was mid-1978); T. 25 October 2016 (CHUON Thy), E1/489.1, p. 73 and T. 26 October 2016 (CHUON Thy), E1/490.1, p. 15 (CHUON Thy testified he was told by POL Pot, whom he met in person, to gather soldiers and to protect the border in Svay Rieng in June 1978). The relocation of troops from the Southwest Zone (and from the Central Zone) to the East Zone had a twofold objective: to strengthen the border defence and to conduct the purges in the East Zone). *See* Section 12.1: NUON Chea Defence regarding the Threat of Vietnam, Internal Factions and Justification of the DK National Security Policy (henceforth “Internal Factions”), paras 2018-2019.

Phim<sup>771</sup> and located along National Road 7.<sup>772</sup>

291. On 5 February 1978, Vietnam proposed border negotiations again, but the proposal was never accepted.<sup>773</sup> China got involved in setting up talks by sending a delegation to DK and backing DK by sending it additional military specialist and volunteers.<sup>774</sup> However, fighting on the mainland's border, as well as in the territorial

<sup>771</sup> The Chamber finds that SAO Phim used the *alias* "Chhon". In this regard, it has considered the telegrams (in Khmer) on the Case File signed by "Chhon" that reported from the East Zone (e.g. E3/879 [E3/789]; E3/1680; E3/871; E3/1023; E3/855; E3/886; E3/888; E3/8369; E3/889; E3/554; E3/890; E3/891; E3/892; E3/977; E3/894; E3/895; E3/896; E3/980; E3/982; E3/987; E3/983; E3/8370; E3/899; E3/900; E3/901; E3/1015; E3/8372; E3/907; E3/920; E3/243; E3/244; E3/921; E3/922; E3/871) and compared them to the telegrams on the Case File signed by SAO Phim, "Phim", "Phoem" or "Peam" equally reporting from the East Zone (e.g. E3/1036; E3/999; E3/1064). All these telegrams were sent by someone at the highest level of the East Zone hierarchy and are similar in subject-matter. As the Chamber finds below in the relevant section of this Judgement, SAO Phim held such a position. Moreover, after SAO Phim's suicide in June 1978, there are no more telegrams signed by "Chhon". The Chamber thus finds that the only reasonable inference is that "Chhon" was an *alias* used by SAO Phim. *See also*, Book by S. Heder: *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, E3/48, March 2004, p. 36, ERN (En) 00393522 (footnote 119); Written Record of Analysis by Craig C. Etcheson, E3/494, 18 July 2007, pp. 11-12, 14-15, ERN (En) 00142836, 00142837, 00142839, 00142840. The Chamber is aware that Witness LONG Sat testified that SAO Phim was not known as "Chhon" (*see* T. 2 November 2016 (LONG Sat), E1/494.1, p. 97). However, considering the evidence supporting the conclusion that SAO Phim used the *alias* "Chhon", the Chamber disregards LONG Sat's evidence in this regard as not credible. For factual findings regarding SAO Phim's position and role, *see* Section 3: Historical Background, paras 206, 230, 233; Section 5: Administrative Structures, paras 357, 374, 378-379, 451. For related factual findings on SAO Phim's suicide, *see* Section 12.1: Internal Factions, paras 2051-2054.

<sup>772</sup> Section 5: Administrative Structures, para. 451.

<sup>773</sup> US Congressional Research Service, E3/2370, 4 October 1978, p. 15, ERN (En) 00187393 (Hanoi called for a three-point proposal in favour of settlement: (a) a cease-fire along the border with military forces on each side pulling back 5km from what they think is the border; (b) negotiations in Hanoi, Phnom Penh or on the border to write a new border treaty; (c) establishment of some sort of international inspection and guarantee apparatus. This declaration was subsequently officially forwarded to the United Nations Secretary-General, possibly indicating, according to this report, Vietnamese interest in United Nations mediation); German Democratic Republic Ministry of Foreign Affairs Report, E3/1773, 1977-1978, ERN (En) 01246930 (taking the Vietnamese side and doubting DK's intentions); Swedish Document Collection, E3/1583, 1 May 1978, p. 2, ERN (En) S00011306 (statement by IENG Sary, Minister of Foreign Affairs, on 17 March 1978 in Phnom Penh, claiming that on the day prior to Vietnam's demand for negotiations, Vietnam launched an artillery attack in Koh Thom, lower Tonlé Bassac river, south of Phnom Penh. This was allegedly followed by four regiments of Vietnamese infantry assisted by tanks, helicopters and fighter aircraft. The statement also claimed that Vietnam continued to launch its attacks in these areas as well as many other places in Svay Rieng province from 5 until 8 February 1978); Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, p. 216, ERN (En) 00192401 (Chanda stated that a Vietnamese official later admitted to him that "they knew [...] that the Khmer Rouge would never accept that proposal but at least the blame of rejection would be on them"). *See also*, Commentary enclosed in Report of Ministry of Foreign Affairs of German Democratic Republic, E3/540, 31 January 1978, p. 3, ERN (En) 01246939 (illustrating the ongoing disagreement between DK and the SRV regarding where the border was exactly); Information on further material concerning the military situation in the Kampuchea and SR Vietnam conflict (GDR), E3/9434, 23 February 1978, ERN (En) 01198228 (indicating that after SRV troops withdrew from DK territory in January 1978, a political solution to the conflict was sought by Vietnam).

<sup>774</sup> Information on further material concerning the military situation in the Kampuchea and SR Vietnam conflict (GDR), E3/9434, 23 February 1978, ERN (En) 01198229 (alleging that "[d]ue to Vietnam's military supremacy over Kampuchea and China's endeavours to sustain the Pol Pot regime, the leadership in Beijing is currently seeking to hold talks between the governments of Kampuchea and

waters,<sup>775</sup> continued during the months that followed with clashes in Kratie province,<sup>776</sup> Svay Rieng province,<sup>777</sup> Kampong Cham province,<sup>778</sup> and around the Mekong and Bassac rivers in Kandal and Prey Veng provinces.<sup>779</sup>

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Vietnam and is not, therefore, in a further military escalation of the current conflict. To such end, in late January 1978, among others, a Chinese delegation led by Deng Yingchao, the acting Chair of the Standing Committee of the National People's Congress of the People's Republic of China, became active in Kampuchea. As part of these efforts, China has allegedly also issued ultimatums to Vietnam as regards further military operations against Kampuchea.”).

<sup>775</sup> DK Telegram, E3/997, 20 March 1978, ERN (En) 00233649 (MEAS Muth reporting to POL Pot that clashes in the territorial waters occurred on 19 and 20 March 1978); DK Telegram, E3/928, 1 April 1978, ERN (En) 00143507 (MEAS Muth reporting to POL Pot, NUON Chea and others that from 27 to 30 March 1978 102 Vietnamese had been captured and killed).

<sup>776</sup> DK Telegram, E3/1012, 21 March 1978, p. 1, ERN (En) 00305369 (Vi reporting to POL Pot and NUON Chea, among others, that fighting occurred around Route 19 on 19 March 1978, and that 24 Vietnamese were killed); DK Telegram, E3/943, 25 April 1978, ERN (En) 00185204 (Vi reporting to POL Pot and NUON Chea, among others, that there were constant clashes in the Kratie region (Sector 505) between 17 and 25 April); DK Telegram, E3/157, 21 April 1978, ERN (En) 00348086 ([V]i reporting to POL Pot and NUON Chea, among others, that they continued to push SRV forces back at the border).

<sup>777</sup> DK Telegram, E3/181, 14 February 1978, p. 1, ERN (En) 00340537 (SON Sen to POL Pot and NUON Chea, reporting clashes in Svay Rieng province, finding a tunnel built by Vietnamese, spotting jets along the border and reporting that Comrade Tal (Secretary of Centre Division 290) had captured two Vietnamese who were sent to S-21); DK Telegram, E3/992, 2 March 1978, p. 1, ERN (En) 00795287 (Rom reporting that on 27 February 1978 a DK Division 117 unit cooperated with sector units to plan an attack on one position of the Vietnamese located on National Road 13, one kilometre away from DK territory. After a day and a night, the unit managed to smash the enemy. Ninety-eight Vietnamese died and six escaped. The unit continued to launch attacks to smash the enemy near the border); DK Telegram, E3/946, 26 April 1978, ERN (En) 00185205 (Vietnamese forces entered Preah Tonle and pushed up towards the border via Kakk, where they were ambushed by DK forces).

<sup>778</sup> DK Telegram, E3/932, 12 April 1978, ERN (En) 00185199 (KE Pauk reporting to Office 870 that clashes had occurred along Road 7 and Road 22); DK Telegram, E3/1009, 18 April 1978, p. 1, ERN (En) 00305346 (KE Pauk reporting to Office 870 that the Vietnamese had planted a white flag at the spearhead of Route 22 bordered with Trapeang Phlong, not knowing what to make of that, but that DK troops attacked Vietnamese forces in other areas); DK Telegram, E3/516, 4 May 1978, p. 1, ERN (En) 00321720 (KE Pauk reporting to Office 870 about several clashes along the border and requesting that more units be sent to Kampong Cham); DK Telegram, E3/246, 29 April 1978, p. 1, ERN (En) 00321722 (report to Office 870: in the west battlefield, DK forces attacked and liberated Trapeang Sralao and killing and injuring 50 Vietnamese forces). *See also*, US Congressional Research Service, E3/2370, 4 October 1978, p. 9, ERN (En) 00187388 (heavy fighting was reported again on the border mid-May 1978, chiefly in the Tay Ninh/Memot region).

<sup>779</sup> DK Telegram, E3/867, 20 March 1978, ERN (En) 00847034-00847035 (SON Sen reporting to POL Pot, NUON Chea and others that the Vietnamese had attacked the border on 20 March 1978); DK Telegram, E3/1062, 8 April 1978, p. 1, ERN (En) 00322059 (*Ta* Mok reporting to POL Pot that on 7 April Vietnamese forces attacked and entered the vicinity of Lork. Between 6 and 8 April, DK forces smashed more than 100 Vietnamese and seized hundreds of weapons. DK forces liberated six to seven kilometres along the banks of the Mekong and Bassac rivers); DK Telegram, E3/1076, 8 April 1978, p. 1, ERN (En) 00323164 (SON Sen reporting to Brother Van that DK troops attacked and entered the Dong Thap population centre, the market south of Trapeang Pring and Tan Chau, killing and wounding hundreds of people, burning hundreds of houses and firing 107s and DK75s into Tan Chau). *See also*, Revolutionary Flag, E3/727, May-June 1978, ERN (En) 00185325-00185326 (stating that the Vietnamese attacked from Ratanakiri down to Kampot in January 1978 and continued through April and May 1978); US Congressional Research Service, E3/2370, 4 October 1978, p. 9, ERN (En) 00187388 (noting that border clashes and incursions by both sides continued throughout the first and second quarters of 1978); *Buildups Seen in Viet Cambodia Conflict* (Los Angeles Times), E3/2301, 9 April 1978, ERN (En) 00166103; *Cambodia Reports Vietnam Attack* (New York Times), E3/2302, 13 April 1978, ERN (En) 00165997. *See also*, Information on further material concerning the military situation in the

292. Rumours of a *coup d'état* attempt peaked around 25 May 1978, with different sources pointing to different alleged culprits.<sup>780</sup> For instance, DK's "Black Paper", published by the Ministry of Foreign Affairs in September 1978, asserted that the *coup d'état* attempt in the East Zone in May 1978 was staged by the Vietnamese after several secret meetings had been held in Kampong Cham and Svay Rieng provinces with East Zone leaders earlier in 1978.<sup>781</sup> However, as detailed further in the section of this Judgement dealing with Internal Factions (Section 12.1), there is no reliable evidence which proves East Zone Secretary SAO Phim's involvement in the alleged meetings or a lack of loyalty of the majority of East Zone cadres. In fact, others accused POL Pot and/or SON Sen of attempting a *coup d'état* on 25 May 1978. For instance, LONG Sat, a distant relative of SAO Phim and a medic in Regiment 156, Division 4 commanded by HENG Samrin in the East Zone,<sup>782</sup> testified that he considered POL Pot to have been a traitor who had sent Central Zone forces to purge the East Zone.<sup>783</sup> HENG Samrin, CHEA Sim and OUK Bunchhoeun have echoed the same sentiment.<sup>784</sup> In any event,

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Kampuchea and SR Vietnam conflict (GDR), E3/9434, 23 February 1978, ERN (En) 01198230 (noting that despite the suggested negotiations, the military situation along the border remained tense); Information on further material concerning the military situation in the Kampuchea and SR Vietnam conflict (GDR), E3/9434, 22 March 1978, ERN (En) 01198232 (noting fighting also occurred in March 1978, as well as that the Vietnamese army was also increasing its manpower).

<sup>780</sup> Section 12.1: Internal Factions, para. 2049.

<sup>781</sup> DK Ministry of Foreign Affairs, Black Paper, E3/266, September 1978, pp. 79-82, ERN (En) 00082552-00082554 (claiming to have successfully annihilated a *coup d'état* plan by the SRV to overthrow DK). *See also*, US Embassy Telegram, Subject: Thai-Cambodian Relations, E3/9727, 9 February 1978, ERN (En) 01186962-01186963 (noting that IENG Sary stated that the eastern border problems were caused by Khmer secret traitors); Revolutionary Flag, E3/727, May-June 1978, ERN (En) 00185324, 00185327-00185328 (Special Issue devoted in part to internal enemies); Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, pp. 216-217, ERN (En) 00192401-00192402 (writing that, in mid-February 1978, the Vietnamese Politburo met in the outskirts of Ho Chi Minh City to "study the nuts and bolts of the plan for setting up a Cambodian Communist Party and a resistance organization". Shortly after the meeting, LE Duan and LE Duc Tho met separately with Cambodian party cadres who had lived in exile in Vietnam since 1954 and the ones who had escaped from POL Pot's purges to seek asylum in Vietnam. CHANDA bases this on an interview he conducted personally in January 1981 with a "well-placed Vietnamese official" who allegedly provided him with many of the details about Vietnamese preparation for military intervention in Cambodia "for the sake of history". The source wanted to remain anonymous, see p. 437, ERN (En) 00192622); US Congressional Research Service, E3/2370, 4 October 1978, p. 9, ERN (En) 00187388 (reporting that IENG Sary was at a Tokyo press conference, claiming that Vietnam collaborated with the CIA to overthrow the DK regime).

<sup>782</sup> Section 12.1: Internal Factions, paras 1969, 1992, 2024.

<sup>783</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 62-63, 86-87; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 3-4, 75-76 (LONG Sat also spoke of a fake meeting in Kreak district, during which many people were arrested, but he was not present there himself – he learned about it from a regiment commander named SOK, who had been shot in the hand trying to escape from this so-called meeting). *See also*, T. 29 June 2016 (MEAS Soeur), E1/446.1, pp. 74-76 (testifying to witnessing many arrests in the East Zone after the alleged *coup d'état* of 25 May 1978 that was staged by POL Pot and SON Sen, so the witness's chief Sor had told him).

<sup>784</sup> HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651887; CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872; OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 28-29, ERN (En) 00350227-00350228

internal purges of the East Zone increased significantly around 25 May 1978,<sup>785</sup> and subsequently, LONG Sat, HENG Samrin, OUK Bunchhoeun and CHEA Sim, among others, gathered troops, fled into the jungle and later defected to Vietnam.<sup>786</sup> At the same time, in addition to Central Zone forces combatting East Zone forces, clashes along the border increased throughout the second and third quarters of 1978.<sup>787</sup>

293. On 2 December 1978, the Kampuchean National United Front for National Salvation (“KNUFNS”), of which HENG Samrin was the President and CHEA Sim the Vice-President, was founded in Ho Chi Minh City.<sup>788</sup> The KNUFNS supported the Vietnamese army in the launch of a full-scale offensive against DK in late December

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(describing that shortly after 25 May 1978, it was not clear who had committed the *coup d'état*: POL Pot or SON Sen and KE Pauk. OUK discussed this at a meeting with HENG Samrin and POL Saroeun, among others, at the request of CHEA Sim in August 1978, and they came to the conclusion POL Pot was the traitor).

<sup>785</sup> Section 12.1: Internal Factions, paras 2049-2050.

<sup>786</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 63-65 and T. 2 November 2016 (LONG Sat), E1/494.1, pp. 4, 75-76 (LONG Sat went into the forest after the alleged May 1978 *coup*, saying he now had to fight two fronts: DK Central Zone forces and Vietnamese forces. He was first contacted by the Vietnamese in October 1978, and went to Vietnam in November 1978 to collect ammunition); HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651887 (HENG Samrin stated he crossed the border in September 1978 with approximately 1,000 troops); T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 103-104 (SIN Oeng, SAO Phim's guard, was in the room when SAO Phim told HENG Samrin to gather troops and head into the forest to form a resistance against POL Pot); CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872-00651873 (CHEA Sim stated that went into the forest on 24 or 25 May 1978, where he also saw HENG Samrin, and crossed the border into Vietnam in September 1978); OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 21, ERN (En) 00542192 (OUK also went into the forest post-*coup*); OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 4, 19-20, 23-24, 28-30, ERN (En) 00350203, 00350218-00350219, 00350222-00350223, 00350227-00350229 (stating he abandoned POL Pot's *Angkar* on 25 May 1978, after he had seen suspicious developments in the East Zone. Fighting with Central Zone forces continued the months thereafter. OUK met with HENG Samrin and POL Saroeun, among others, in August 1978, and concluded after a discussion that POL Pot was a traitor. OUK also stated that the decision to go to Vietnam was made at that same meeting, indicating that the plan to defect to Vietnam had not been in the making until August 1978).

<sup>787</sup> T. 25 October 2016 (CHUON Thy), E1/489.1, pp. 85-86 and T. 26 October 2016 (CHUON Thy), E1/490.1, pp. 33-34 (testifying to fighting in the Bavet area of Svay Rieng province in the second half of 1978); T. 31 October 2016 (IENG Phan), E1/492.1, pp. 59-61, 63 (testifying that fighting was intensified and that the Vietnamese used more planes in Svay Rieng province and a lot of artillery compared to what the witness experienced in Takeo province). *See also*, *Vietnam Claims Major Victories in Border Fighting With Cambodia* (Washington Post), E3/8234, 28 June 1978, ERN (En) 00166210; *Heavy Fighting Reported on Cambodia, Viet Border* (Los Angeles Times), E3/8242, 1 August 1978, ERN (En) 00166104; US Congressional Research Service, E3/2370, 4 October 1978, p. 9, ERN (En) 00187388 (noting that Hanoi reported a new series of border incidents on 24 June 1978).

<sup>788</sup> T. 2 November 2016 (LONG Sat), E1/494.1, pp. 92-94 (LONG Sat was asked to participate in the preparatory meetings in November 1978); SRV Foreign Languages Publishing House Hanoi, E3/2371, 1979, pp. 34, 39, ERN (En) 00187353, 00187357 (includes information on the inception, composition and objective of the KNUFNS); *Founding of Cambodian “National United Front”* (in SWB/FE/5986/A3 collection), E3/7310, 3 December 1978, ERN (En) S00013294-S00013295; Case 001 Transcript (Nayan CHANDA), E3/7449, 25 May 2009, p. 49, ERN (En) 00334132.

1978.<sup>789</sup> By 7 January 1979, the RAK had been forced to retreat from Phnom Penh and Vietnamese forces took effective control of the greater part of Cambodian territory.<sup>790</sup>

294. The Chamber finds that the existence of an armed conflict with Vietnam is also evident from the presence of Vietnamese prisoners at the S-21 Security Centre as early as March 1976.<sup>791</sup> S-21 was part of a nationwide network of security centres and execution sites, a vast system which the CPK had begun setting up prior to 17 April 1975 to identify and eliminate enemies of the Party, both outside and within its ranks.<sup>792</sup> As established elsewhere in this Judgement, during the indictment period, there existed at least 200 operating security centres and executions sites across DK.<sup>793</sup> The CPK constitutionally legitimised the system by which enemies were condemned to detention in security centres – and frequently to death at nearby execution sites – and implemented this system by official Party decree.<sup>794</sup> As demonstrated in other parts of this Judgement, at these locations, prisoners were subjected to inhumane treatment and torture, often followed by summary executions without due process of law.<sup>795</sup>

295. The Chamber finds that the CPK devoted much time and effort to identifying

<sup>789</sup> Telegram from IENG Sary to the President of the United Nations Security Council, E3/555, 31 December 1978, ERN (En) 00081489-00081490; Telegram from IENG Sary to the President of the United Nations Security Council, E3/568, 3 January 1979, ERN (En) 00081225; Office 870 Declaration of Constant and Absolute Fight against the Invading and Land Swallowing *Yuon*, E3/780, 1 January 1979, pp. 1-6, ERN (En) 00721189-00721193 (Office 870 calling for vigilance in fighting the invading Vietnamese forces); Statement by POL Pot, E3/5720, 5 January 1979, pp. 1-7, ERN (En) S00017560-S00017566; DK Circular entitled Advice from 870, E3/9373, 3 January 1979, ERN (En) 00182798-00182804 (Office 870 stating military measures in the face of Vietnamese invasion). *See also*, *Cambodian rebels fight near capital* (Reuter News Agency), E3/3752, 4 January 1979, ERN (En) 00114353.

<sup>790</sup> United Nations Security Council Official Records, Minutes of 2108<sup>th</sup> Meeting, E3/7335, 11 January 1979, ERN (En) 01001643 (Prince NORODOM Sihanouk seizing the UN Security Council of the Vietnamese invasion, and confirming that the SRV forces together with the KNUFNS had overthrown the DK regime and had taken full control of Cambodian territory on 7 January 1979); *Press Conference in Beijing* (Beijing Review), E3/10709, 12 January 1979, pp. 13-15, ERN (En) 01323954-01323955 (Prince NORODOM Sihanouk denouncing Vietnamese aggression); T. 27 October 2016 (SOV Maing), E1/491.1, pp. 46-47 (testifying to the Vietnamese entering Mondulhiri province in 1979, trying to fight back, but having to flee); T. 2 November 2016 (LONG Sat), E1/494.1, p. 29 (describing returning after liberation on 7 January 1979). *See also*, *Vietnam Takes Cambodian Capital, Port But Guerrilla War Is Seen as Continuing* (Wall Street Journal), E3/8265, 8 January 1979, ERN (En) 00166184.

<sup>791</sup> Section 12.2: S-21 Security Centre, para. 2461.

<sup>792</sup> Section 3: Historical Background, paras 244-250; Section 16: Common Purpose, paras 3934-3946. The Chamber recalls that Kraing Ta Chan is the only security centre within the scope of Case 002/02 that was operational prior to 1975, having been established in Tram Kak district in 1973 or 1974.

<sup>793</sup> Section 16: Common Purpose, para. 3954.

<sup>794</sup> Section 16: Common Purpose, para. 3955.

<sup>795</sup> Section 12.2.24: S-21 Security Centre: Legal Findings; Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings; Section 12.4.7: Au Kanseng Security Centre: Legal Findings; Section 12.5.8: Phnom Kraol Security Centre: Legal Findings; Section 16: Common Purpose, para. 4008.



enemies and enemy behaviour, both among the civilian population of Cambodia and within its own ranks.<sup>796</sup> To this end and throughout the temporal scope of Case 002/02, the CPK continuously stratified the DK population into classes and categorised different kinds of potential threats. Any person or entity not adhering to or threatening the CPK's Party line, *i.e.* the Marxist-Leninist notion of communist revolution through armed struggle, could be branded an enemy.<sup>797</sup> Such enemies were targeted for isolation and re-education, and those who could not be re-educated were targeted for elimination.<sup>798</sup> In addition, during the DK period, policies existed to target specific groups of enemies – the Cham; the Vietnamese; Buddhists; and former Khmer Republic officials – for arrest, detention, mistreatment and/or execution.<sup>799</sup>

296. The Chamber is satisfied that alongside the ongoing international armed conflict with Vietnam, throughout the DK period, the civilian population was subjected to widespread killings, torture, rape, physical violence, forced marriages, forced labour, disappearances and other types of inhumane treatment, some of which was carried out on discriminatory grounds. During the DK era, hundreds of thousands of Cambodians victimised by the CPK's regime sought refuge in Thailand and Vietnam.<sup>800</sup>

297. By 2008, the Documentation Center of Cambodia (“DC-Cam”) had identified an estimated 1.3 million human remains in 390 mass grave sites spread throughout Cambodia.<sup>801</sup> Numerous estimates of the casualties that occurred as a result of the

<sup>796</sup> See *e.g.*, Section 16.3: Real or Perceived Enemies.

<sup>797</sup> Section 16.3: Real or Perceived Enemies, para. 3839.

<sup>798</sup> Section 16: Common Purpose, paras 3966-3972; Section 16.3: Real or Perceived Enemies, para. 3857; Section 16: Common Purpose, paras 3934-3946.

<sup>799</sup> Section 13.1: Treatment of Buddhists; Section 13.2: Treatment of the Cham; Section 13.3: Treatment of the Vietnamese; Section 13.4: Treatment of Former Khmer Republic Officials; Section 10.1: Tram Kak Cooperatives, paras 1084-1125; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1654-1663; Section 12.2: S-21 Security Centre, paras 2460-2493; Section 12.3: Kraing Ta Chan Security Centre, paras 2791-2806; Section 16: Common Purpose, paras 3990, 4000, 4015-4017, 4026-4049.

<sup>800</sup> T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 59-60 (describing Thai refugee camps); Article by P. Heuveline: *‘Between One and Three Million’: Towards the Demographic Reconstruction of a Decade of Cambodian History (1970-79)*, E3/1799, 1998, p. 60, ERN (En) 00096735; French Ministry of Foreign Affairs Circular, Subject: Cambodian News, E3/2675, 1 December 1978, p. 12, ERN (En) 00752075. See also, *Refugees Say Khmer Rouge Executions Have Begun*, Paris AFP (in FBIS collection), E3/118, 26 April 1975, ERN (En) 00167019; *Refugees Cited on Continued Executions*, Hong Kong AFP (in FBIS collection), E3/276, 14 May 1976, ERN (En) 00168017; *Thai Paper: Religion Declared Enemy of New Cambodia*, Bangkok Morning Express (in FBIS collection), E3/284, 24 February 1977, ERN (En) 00168432; *Refugees: Corrupt ‘Organization’ Officials Executed*, Hong Kong AFP (in FBIS collection), E3/289, 7 July 1977, ERN (En) 00168485; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, 2004, pp. 371-372, ERN (En) 00396579-00396580.

<sup>801</sup> DC-Cam Document: *Burial*, E3/2763, 18 February 2008 (16 sites in Banteay Meanchey with the remains of between 50 and 25,000 people; 19 sites in Battambang with the remains of between 30 and 20,000 people; 75 sites in Kampong Cham with the remains of between 10 and 32,690; 40 sites in

CPK's policies and actions have been made. They range from 600,000 to three million. Experts accept estimates falling between 1.5 and two million excess deaths as the most probable.<sup>802</sup> The Chamber recalls, however, its finding that the absence of relevant and reliable statistical data for the purposes of assessing a precise number of deaths attributable to the CPK leads to inherent uncertainty surrounding the use of demographic evidence.<sup>803</sup> The Chamber notes in this regard that there are substantial uncertainties surrounding any death toll estimates of the DK era, as total population

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Kampong Chhnang with the remains of between 10 and 150,000 people; 24 sites in Kampong Speu with the remains of between 10 and more than 30,000; 17 sites in Kampong Thom with the remains of between one and 150,000 people; 14 sites in Kampot with the remains of between 40 and 32,047 people; 29 sites in Kandal with the remains of between 10 and 35,027 people; 10 sites in Kratie with the remains of between 50 and 7,000 people; one site in Mondulkiri with the remains of about 200 people; four sites in Phnom Penh with the remains of between 10 and 15,000 people; 36 sites in Prey Veng with the remains of between 30 and more than 17,200 people; 17 sites in Pursat with the remains of between 100 and 15,000 people; three sites in Ratanakiri with the remains of between 40 and more than 1,000 people; 24 sites in Siem Reap with the remains of between 12 and 36,000 people; eight sites in Kampong Som (Sihanoukville) with the remains of between 100 and 1,500 people; four sites in Stung Treng, one site containing the remains of 1,000 people; 18 sites in Svay Rieng with the remains of between 40 and 30,000 people; 31 in Takeo with the remains of between one and 40,000 people). *See also*, DC-Cam Document: *Mapping the Killing Fields of Cambodia, 1997: Khet Kampong Thom*, E3/2648, 1997.

<sup>802</sup> T. 25 July 2012 (David CHANDLER), E1/96.1, pp. 9-12 (indicating the consensus is that between 1.5 and 3 million people died under the Khmer Rouge); T. 10 April 2013 (François PONCHAUD), E1/179.1, pp. 75-76 (stating that in 1976, he estimated that 800,000 people were killed during the DK regime, the CIA were estimating that 1.4 million people were killed and embassies were estimating that 1 million people were killed); Article by P. Heuveline: *The Unbearable Certainty of Numbers: Estimating the Death Toll of the Khmer Rouge Period*, E3/1798, undated, p. 10, ERN (En) 00291624 (after reviewing various estimates, determining that the central interval, 1.5 to 2.5 million excess deaths, is most probable); Article by P. Heuveline: *'Between One and Three Million': Towards the Demographic Reconstruction of a Decade of Cambodian History (1970-79)*, E3/1799, 1998, p. 60, ERN (En) 00096735 (estimating that there were 1.5 to 2 million excess deaths in 1975-1978, and states that, in his reconstruction, at least 600,000, and possibly as many as 2 million, deaths, cannot be accounted for by either a general decline in life expectancy or by the mortality due to the war prior to 1975); Article by P. Heuveline: *The Boundaries of Genocide: Quantifying the Uncertainty of the Death Toll during the Pol Pot Regime in Cambodia (1975-79)*, E3/10764, 2015, p. 212, ERN (En) 01304762 (providing nuance to his previous findings, concluding that "the most plausible range is from 720,000 to 1.1 million violent deaths and from 1.0 to 2.1 million excess deaths", whilst noting that uncertainties remain regarding demographic trends and total population size in 1975); Article by B. Sharp: *Counting Hell*, E3/1801, undated, ERN (En) 00078265, 00078288 (after reviewing other experts' figures, he identifies a range of 1.747 million to 2.459 million deaths due to Khmer Rouge policies and actions, and considers that the midpoint of the range being 2.12 million "falls fairly close to the most likely figure"); Book by M. Vickery: *Cambodia 1975-1982*, E3/1757, 1984, pp. 200-201, ERN (En) 00397115-00397116 (estimating that 740,800 deaths were caused by the special conditions during the DK and stating it is indicated that more than half were caused by hunger, exhaustion and illness, leaving about 300,000 deaths that can be attributed to executions. He further suggested that more accurate estimates were impossible and that it was impossible to project a figure of 1-2 million executions based on the data available in 1984); CIA Report: *Kampuchea: A Demographic Catastrophe*, E3/10763, May 1980, pp. 2, ERN (En) 01329515 ("By our estimates, the savagery of [the Khmer Rouge] regime caused an actual [population] drop of between 1.2 million and 1.8 million people"), 5, ERN (En) 01329518.

<sup>803</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, E459, 18 July 2017, para. 191; Decision on NUON Chea's Request to Summons Patrick Heuveline and to Admit Two Related Documents, E444/1, 6 December 2016, para. 22. *See also*, Section 13.2: Treatment of the Cham, para. 3197.

size in 1975 and demographic trends remain the uncertain foundations for these numbers.<sup>804</sup>

#### **4.2. Chapeau Requirements for Crimes Against Humanity Listed in Article 5 of the ECCC Law**

298. As relevant to Case 002/02, the Closing Order charges the Accused pursuant to Article 5 of the ECCC Law with the following crimes against humanity “committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds”: (i) murder; (ii) extermination; (iii) enslavement; (iv) deportation; (v) imprisonment; (vi) torture; (vii) persecution on political, racial and religious grounds; and (viii) other inhumane acts through: (a) attacks against human dignity; and conduct characterised as (b) rape; (c) forced marriage; (d) forced transfer; and (e) enforced disappearances.<sup>805</sup>

##### **4.2.1. Law**

###### **4.2.1.1. Principle of legality**

299. The KHIEU Samphan Defence makes a number of submissions related to the approach taken by the Supreme Court Chamber in Case 002/01 with respect to the principle of legality. While many of these submissions are made in the context of crimes against humanity, they raise issues pertaining more generally to the principle of legality and accordingly are addressed above in the Preliminary Issues section.<sup>806</sup> Submissions pertaining to a specific crime are addressed in the applicable law section for that crime.

300. The Chamber reiterates its previous finding, affirmed by the Supreme Court Chamber, that crimes against humanity have been established international crimes since the Nuremberg Charter and formed part of customary international law during the period of the ECCC’s temporal jurisdiction.<sup>807</sup> This remains uncontested by the parties

<sup>804</sup> See e.g., Article by P. Heuveline: *The Boundaries of Genocide: Quantifying the Uncertainty of the Death Toll during the Pol Pot Regime in Cambodia (1975-79)*, E3/10764, 2015, pp. 212-214, ERN (En) 01304762-01304764.

<sup>805</sup> Closing Order, paras 1373-1380 (murder); 1381-1390 (extermination); 1391-1396 (enslavement); 1397-1401 (deportation); 1402-1407 (imprisonment); 1408-1414 (torture); 1415-1425 (persecution); 1426-1478 (other inhumane acts). See also, Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02, E301/9/1.1, 4 April 2014, pp. 3-4.

<sup>806</sup> Section 2.2: Preliminary Issues: The Principle of Legality.

<sup>807</sup> Case 002/01 Trial Judgement, para. 176; Case 001 Appeal Judgement, paras 101-104.

in this case. Therefore, charges of crimes against humanity pursuant to Article 5 of the ECCC Law generally accord with the principle of legality,<sup>808</sup> subject to an assessment of the precise definition of the various elements of these crimes and to an additional finding that charged offences or modes of responsibility were “sufficiently foreseeable and that the law providing for such liability [was] sufficiently accessible [...] at the relevant time”.<sup>809</sup>

#### 4.2.1.2. Chapeau elements of crimes against humanity

301. Offences listed in Article 5 of the ECCC Law constitute crimes against humanity only if the following contextual or *chapeau* requirements are established: (i) there is an attack; (ii) that is widespread or systematic; (iii) and directed against any civilian population; (iv) on national, political, ethnical, racial or religious grounds; (v) there is a nexus between the acts of the direct perpetrator and accused and the attack; and (vi) the accused has the requisite knowledge.<sup>810</sup> As previously held by this Chamber and affirmed by the Supreme Court Chamber, the definition of crimes against humanity under customary international law by 1975 did not require a nexus to an armed conflict.<sup>811</sup>

302. *Attack* – An attack is a course of conduct involving the commission of a series of acts of violence.<sup>812</sup> It is not limited to the use of armed force, encompassing any mistreatment of the civilian population including that reflected by the underlying offences in Article 5 of the ECCC law.<sup>813</sup> An attack on a civilian population is a separate concept from that of an armed conflict.<sup>814</sup> An attack may precede, outlast or continue

<sup>808</sup> Case 002/01 Trial Judgement, para. 176; Case 001 Appeal Judgement, paras 101-104.

<sup>809</sup> Case 002/01 Appeal Judgement, paras 761-762; Case 002/01 Trial Judgement, para. 176; Case 001 Appeal Judgement, para. 96, *citing Milutinović et al.*, Decision on Dragoljub Ojdanić’s Motion Challenging Jurisdiction – Joint Criminal Enterprise (AC), paras 21, 37.

<sup>810</sup> Case 002/01 Trial Judgement, para. 177; Case 001 Appeal Judgement, para. 106.

<sup>811</sup> Case 002/01, Appeal Judgement, para. 721; Case 002/01 Trial Judgement, para. 177; Case 001 Trial Judgement, paras 291-292; Decision on Co-Prosecutors’ Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/8, 26 October 2011, para. 33.

<sup>812</sup> Case 002/01 Trial Judgement, para. 178; Case 001 Trial Judgement, para. 298; *Nahimana et al.* Appeal Judgement, para. 918.

<sup>813</sup> Case 002/01 Trial Judgement, para. 178; Case 001 Trial Judgement, para. 298; *Kunarac et al.* Appeal Judgement, para. 86.

<sup>814</sup> Case 002/01 Trial Judgement, para. 178; Case 001 Trial Judgement, para. 299; *Tadić* Appeal Judgement, para. 251.

through an armed conflict, without necessarily being part of it.<sup>815</sup>

303. *Widespread or systematic* – The term “widespread” refers to the large-scale nature of the attack and the number of victims, while the term “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.<sup>816</sup> A systematic attack is commonly expressed as a pattern of crimes involving the non-accidental repetition of similar criminal conduct on a regular basis.<sup>817</sup> A widespread attack may refer either to the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”.<sup>818</sup> Proof that the attack was either “widespread” or “systematic” is sufficient to satisfy the chapeau requirement of crimes against humanity.<sup>819</sup> Only the attack, not the individual acts for which the accused is responsible, must be widespread or systematic.<sup>820</sup> A single act or a limited number of acts can qualify as a crime against humanity provided that they are not isolated or random and all other conditions are met.<sup>821</sup>

304. While the existence of a State or organisational plan or policy may evidentially be relevant in establishing the widespread or systematic nature of the attack, by 1975, the existence of such a plan or policy had not crystallised as an independent contextual element of the definition of crimes against humanity.<sup>822</sup>

305. *Directed against any civilian population* – The attack must be “directed against” any civilian population, meaning that such population must be the primary, as opposed to incidental, target of the attack.<sup>823</sup> It is not necessary to show that the entire population

<sup>815</sup> Case 002/01 Trial Judgement, para. 178; Case 001 Trial Judgement, para. 299; *Kunarac et al.* Appeal Judgement, para. 86.

<sup>816</sup> Case 002/01 Trial Judgement, para. 179; Case 001 Trial Judgement, para. 300; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>817</sup> Case 002/01 Trial Judgement, para. 179; *Blaškić* Appeal Judgement, para. 101; *Kunarac et al.* Appeal Judgement, para. 94.

<sup>818</sup> Case 002/01 Trial Judgement, para. 179; Case 001 Trial Judgement, para. 300; *Blaškić* Trial Judgement, para. 206.

<sup>819</sup> Case 002/01 Trial Judgement, para. 179; Case 001 Trial Judgement, para. 300; *Kunarac et al.* Appeal Judgement, para. 93.

<sup>820</sup> Case 002/01 Trial Judgement, para. 179; Case 001 Trial Judgement, para. 301; *Kordić and Čerkez* Appeal Judgement, para. 94.

<sup>821</sup> Case 002/01 Trial Judgement, para. 179; *Kordić and Čerkez* Appeal Judgement, para. 94.

<sup>822</sup> Case 002/01 Appeal Judgement, para. 732; Case 002/01 Trial Judgement, para. 181; Case 001 Trial Judgement, para. 301.

<sup>823</sup> Case 002/01 Trial Judgement, para. 182; Case 001 Trial Judgement, paras 305-311; *Kunarac et al.* Appeal Judgement, paras 91–92.

of the relevant geographical entity was subject to the attack.<sup>824</sup> It is sufficient that enough individuals were targeted in the course of the attack or that they were targeted in such a way as to satisfy the Chamber that the attack was in fact directed against a civilian “population”, rather than against a limited and randomly selected number of individuals.<sup>825</sup> Further, the reference to “any” civilian population does not require a demonstration that victims were linked to a particular group.<sup>826</sup> Crimes against humanity may include a state’s attack on its own population.<sup>827</sup>

306. In determining whether a population may be considered to be “civilian”, the Chamber notes that, while this concept existed at that time, there was no established definition of civilian under customary international law in April 1975. For the purposes of defining civilian population, the Chamber therefore refers to the ordinary meaning of the term “civilian” (in English) and “*civil*” (in French), which encompasses persons who are not members of the armed forces. On this basis, the Chamber holds that at the time relevant to the charges here at issue, the civilian population included all persons who were not members of the armed forces or otherwise recognised as combatants. While the Chamber does not here rely on the definition of “civilian” set out in Article 50 of Additional Protocol I to the 1949 Geneva Conventions, adopted by the *ad hoc* Tribunals as reflecting customary international law for the purposes of crimes against humanity post-1977,<sup>828</sup> it notes that this accords with the ordinary meaning of the term.<sup>829</sup>

307. Contrary to the position adopted by this Chamber and the Supreme Court Chamber, the Co-Prosecutors submit that the notion of “civilian”, in the context of a civilian population, includes members of the enemy armed forces who have laid down

<sup>824</sup> Case 002/01 Trial Judgement, para. 182; Case 001 Trial Judgement, para. 303; *Kunarac et al.* Appeal Judgement, para. 90.

<sup>825</sup> Case 002/01 Trial Judgement, para. 182; Case 001 Trial Judgement, paras 302-303, 305; *Kordić and Čerkez* Appeal Judgement, para. 95.

<sup>826</sup> Case 002/01 Trial Judgement, para. 187; Case 001 Trial Judgement, para. 312.

<sup>827</sup> Case 002/01 Trial Judgement, para. 187; Case 001 Trial Judgement, para. 312; *Mrkšić et al.* Trial Judgement, para. 441; *Kunarac et al.* Trial Judgement, para. 423.

<sup>828</sup> Case 002/01 Trial Judgement, para. 185; *Blaškić* Appeal Judgement, paras 110-113. Article 50 of Additional Protocol I also refers to Article 43 of Additional Protocol I and Article 4A of the Third Geneva Convention. Additional Protocol I was only adopted on 8 June 1977 and entered into force on 7 December 1978.

<sup>829</sup> Case 002/01 Trial Judgement, para. 185; *Martić* Appeal Judgement, para. 297.

their arms or been placed *hors de combat*.<sup>830</sup> In support of this proposition, the Co-Prosecutors refer to a line of jurisprudence from the *ad hoc* Tribunals that appears to stem from a finding originally set out in the *Akayesu* Trial Judgement. In that case, the Trial Chamber “assimilate[d] the definition of ‘civilian’ to the categories of person protected by Common Article 3 of the Geneva Conventions”,<sup>831</sup> effectively conflating the definition of “civilian population” for the purposes of crimes against humanity with that of “protected person” in non-international armed conflict; a concept applicable within the context of international humanitarian law. The Trial Chamber does not consider that this approach accurately reflects the state of customary international law with respect to the definition of “civilian population” by 1975. It recalls that in determining the civilian or non-civilian status of a person, the specific situation of the individual at the time of the crimes may not be determinative. A member of an armed organisation is not accorded civilian status by reason of the fact that he or she is not armed or in combat at the time of the commission of the crimes.<sup>832</sup> Accordingly, soldiers *hors de combat* do not qualify as “civilians” for the purposes of Article 5 of the ECCC Law,<sup>833</sup> and the Co-Prosecutors’ submission in this regard is rejected.

308. The Lead Co-Lawyers submit that, in case of an attack conducted by a State or an organisation against its own population, the meaning of “civilian population” in 1975 encompassed the state or organisation’s own armed forces, unless those forces were allied with or otherwise providing militarily relevant support to an opposing side in the conflict.<sup>834</sup> The Co-Prosecutors agree that a state or organisation’s own armed forces qualify as civilians for the purposes of crimes against humanity.<sup>835</sup> The NUON Chea Defence appears to agree that where members of a state’s own armed forces were allied with or providing militarily relevant support to an opposing side during an armed conflict, they did not fall within the definition of a “civilian population” for the purposes

<sup>830</sup> Co-Prosecutors’ Closing Brief, para. 126 referring to *Akayesu* Trial Judgement, para. 582; *Bisengimana* Trial Judgement, para. 48; *Tadić* Trial Judgement, para. 639; *Limaj* Trial Judgement, para. 186; *Blaškić* Trial Judgement; *Kordić* Appeal Judgement, para. 421.

<sup>831</sup> *Akayesu* Trial Judgement, fn. 146.

<sup>832</sup> Case 002/01 Trial Judgement, para. 186; Case 001 Trial Judgement, para. 304; *Blaškić* Appeal Judgement, para. 114.

<sup>833</sup> Case 002/01, Appeal Judgement, para. 738; Case 002/01 Trial Judgement, para. 186; Case 001 Trial Judgement, para. 304; *Mrkšić and Šljivančanin* Appeal Judgement, para. 35.

<sup>834</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 54-55.

<sup>835</sup> Co-Prosecutors’ Closing Brief, para. 127 and fn. 264 referring to International Co-Prosecutor’s Response to the International Co-Investigating Judge’s call for submissions regarding Crimes Against Humanity, D191/1, 19 May 2016.

of crimes against humanity.<sup>836</sup> The KHIEU Samphan Defence did not make any relevant submissions in this regard. These submissions rely on a decision of the International Co-Investigating Judge in Case 003 finding that an attack by a State or organisation against its own armed forces amounted to an attack against a civilian population where those forces were not in fact allied with or otherwise providing militarily relevant support to the opposing side.<sup>837</sup>

309. The Chamber is not persuaded that as of 1975 it was accepted under customary international law that an attack by a State or organisation against its own armed forces could amount to an attack against a civilian population. The Chamber has already determined above that a member of an armed organisation is not accorded civilian status by reason of the fact that he or she is not armed or in combat at the time of the commission of the crimes.<sup>838</sup> While this observation was made in the context of soldiers of an opposing party to the conflict, the Chamber considers this to be equally applicable to soldiers belonging to a state or organisation's own armed forces. Beyond reference to the decision of the International Co-Investigating Judge, none of the Parties' submissions in this regard have identified a sound basis under customary international law for a finding to the contrary. Further, while an interpretation of the protections afforded by crimes against humanity to include domestic armed forces may be considered desirable, it is not clear that a legal framework affording such protection was either foreseeable or accessible by 1975.

310. The Chamber considers that, in any event, a decision on this point of law does not necessarily impact the outcome of the case for the following reasons. The Chamber recalls that in order to qualify as a "civilian population" for the purposes of Article 5 of the ECCC Law, the target population must be of a predominantly civilian nature,<sup>839</sup> and the presence within the civilian population of individuals who do not come within the definition of civilian does not necessarily deprive the population of its civilian

<sup>836</sup> NUON Chea Closing Brief, para. 686.

<sup>837</sup> Notification on the Interpretation of 'Attack against the Civilian Population' in the context of Crimes Against Humanity with regard to a State's or Regime's own Armed Forces, Case 003, D191/18, 7 February 2017, para. 69.

<sup>838</sup> See above, para. 307.

<sup>839</sup> Case 002/01, Appeal Judgement, para. 738; Case 002/01 Trial Judgement, para. 183; Case 001 Trial Judgement, para. 305; *Dragomir Milošević* Appeal Judgement, paras 50-51.



character.<sup>840</sup> Where an attack is carried out in a geographical area that contains both civilians and soldiers, various factors may be relevant to determining whether the attack was directed at a “civilian population”. These include the means and method used in the course of the attack, the discriminatory nature of the attack, the nature of the crimes committed in its course, and the resistance to the assailants at the time and the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.<sup>841</sup> Further, the civilian status of the victims, the number of civilians, and the proportion of civilians within a population are factors relevant to the determination of whether the requirement that an attack be directed against a “civilian population” is fulfilled.<sup>842</sup>

311. Where it is found that the alleged attack is directed against the civilian population of an entire country, consideration of the nature of the population subject to the attack should encompass the country as a whole rather than be conducted for each crime site separately. In the current case, the Closing Order alleges that the policy implemented by the DK authorities consisted of a single, widespread and systematic attack “against the entire civilian population of Cambodia”.<sup>843</sup> Accordingly, if this allegation is found well grounded, the Chamber will consider it appropriate to make a single determination of the nature of the target population for the country as a whole, including on the proportion of DK’s own armed forces to the total population subject to any attack, and on whether this proportion is of such importance to deprive the population of its civilian status. This assessment is carried out below.<sup>844</sup> The NUON Chea Defence submits that for the purposes of crimes against humanity the victims of the underlying crimes must be civilians.<sup>845</sup> By way of example, it submits that S-21 and Au Kanseng were military

<sup>840</sup> Case 002/01, Appeal Judgement, para. 738-740; Case 002/01 Trial Judgement, para. 183; Case 001 Trial Judgement, paras 305-306, relying on Article 50(3) of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts; *Mrkšić and Šljivančanin* Appeal Judgement, para. 31. *See also*, *Galić* Appeal Judgement, paras 136-138. The Chamber notes that the NUON Chea Defence submits that “if an individual does not qualify as a civilian or protected person under the Geneva Conventions, this person cannot be considered as a civilian for the purposes of fulfilling the chapeau elements of crimes against humanity”: NUON Chea Closing Brief, para. 683.

<sup>841</sup> Case 002/01 Trial Judgement, para. 184; Case 001 Trial Judgement, para. 309; *Mrkšić and Šljivančanin* Appeal Judgement, para. 30.

<sup>842</sup> Case 002/01 Trial Judgement, para. 183; Case 001 Trial Judgement, para. 305; *Mrkšić and Šljivančanin* Appeal Judgement, paras 32-33, 36.

<sup>843</sup> Closing Order, paras 1350-1351.

<sup>844</sup> *See below*, Section 4.2.2.1: Widespread or Systematic Attack against a Civilian Population.

<sup>845</sup> NUON Chea Closing Brief, para. 683. The NUON Chea Defence also made further submissions based on its factual analysis of the status of individuals who allegedly took direct part in hostilities and

institutions in which the vast majority of the detainees were from the RAK and that therefore the detainees could not be victims of crimes against humanity.<sup>846</sup> The Co-Prosecutors submit that where it has been established that a widespread or systematic attack on a civilian population has taken place, it is not necessary to show that individual victims were themselves civilians.<sup>847</sup> No other Party made any relevant submissions in this regard.

312. The Chamber notes that the cases relied upon by the NUON Chea Defence do not support the view that victims of crimes against humanity must be civilians. Instead they appear to relate to identifying the protected status of victims for the purposes of the Geneva Conventions. Furthermore, this proposition is inconsistent with the state of customary international law as at 1975. The Chamber recalls that where the civilian population is the object of an attack, “there is no requirement nor is it an element of crimes against humanity that the *victims* of the underlying crimes be civilians”.<sup>848</sup> Thus, a soldier who is *hors de combat* may be the victim of an act amounting to a crime against humanity, provided that all other necessary conditions are met.<sup>849</sup>

313. *National, political, ethnical, racial or religious grounds* – Article 5 of the ECCC Law requires that the attack must have been carried out against the civilian population on a discriminatory basis, namely on national, political, ethnical, racial or religious grounds. This is a jurisdictional requirement that narrows the scope of the ECCC’s jurisdiction over crimes against humanity when compared with customary international law applying between 1975 and 1979.<sup>850</sup> The requirement qualifies the nature of the attack rather than the individual underlying offences, and consequently does not import a discriminatory intent as a legal ingredient for all underlying crimes against humanity,

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whether or not these individuals could be the victims of a crime against humanity: NUON Chea Closing Brief, para. 684. The Chamber will consider these submissions in its legal findings on each crime site.

<sup>846</sup> NUON Chea Closing Brief, para. 686.

<sup>847</sup> Co-Prosecutors’ Closing Brief, para. 129.

<sup>848</sup> Case 002/01, Appeal Judgement, para. 740; Case 002/01 Trial Judgement, para. 187; Case 001 Trial Judgement, para. 311 *referring to Mrkšić and Šljivančanin* Appeal Judgement, para. 32.

<sup>849</sup> Case 002/01 Trial Judgement, para. 187; Case 001 Trial Judgement, para. 311; *Martić* Appeal Judgement, paras 306-313.

<sup>850</sup> Case 002/01 Appeal Judgement, para. 744; Case 002/01 Trial Judgement, para. 188; Case 001 Trial Judgement, paras 313-314. Article 3 of the ICTR Statute provides for a similar discriminatory requirement, adjudged by that Tribunal to be a jurisdictional requirement and not one required by customary international law. *See Akayesu* Appeal Judgement, paras 464-465.

as this would otherwise render redundant the express reference to discrimination within the offence of persecution in Article 5 of the ECCC Law.<sup>851</sup>

314. Jurisprudence concerning the crime of persecution defines an act as discriminatory when a victim is targeted because of his or her membership, or imputed membership, in a political, racial or religious group defined by the perpetrator.<sup>852</sup> The targeted group “may be defined broadly by the perpetrator such that they are characterised in negative terms and include close affiliates or sympathisers”.<sup>853</sup> This approach is equally applicable to defining a discernible group targeted by an attack.<sup>854</sup>

315. *Nexus between the acts of the direct perpetrator/accused and the attack* – The acts of the direct perpetrator must be part of the attack, meaning that the acts in question must by their very nature or consequences be objectively part of the attack.<sup>855</sup> Furthermore, the acts of accused persons who are not direct perpetrators must also form part of the attack.<sup>856</sup> A crime that is committed before, after or away from the main attack on the civilian population could still, if sufficiently connected, be part of that attack. The crime must not, however, be an isolated act, *i.e.* so far removed from the attack that, having considered the context and circumstances in which it was committed, the acts cannot be said to have been part of the attack.<sup>857</sup>

316. *Knowledge* – The accused must have known that there is an attack on the civilian population and that his or her acts formed part of the attack.<sup>858</sup> He or she need not have known the details of the attack or have shared the purpose or goals of the attack.<sup>859</sup>

<sup>851</sup> Case 002/01 Trial Judgement, para. 188; Case 001 Appeal Judgement, para. 238.

<sup>852</sup> Case 002/01 Trial Judgement, para. 189; Case 001 Trial Judgement, para. 317; *Kordić and Čerkez* Appeal Judgement, para. 674.

<sup>853</sup> Case 002/01 Trial Judgement, para. 189; Case 001 Appeal Judgement, para. 272.

<sup>854</sup> Case 002/01 Trial Judgement, para. 189.

<sup>855</sup> Case 002/01 Appeal Judgement, para. 753; Case 002/01 Trial Judgement, para. 190; Case 001 Trial Judgement, para. 318; *Kunarac et al.* Appeal Judgement, paras 85, 99-100; *Šainović et al.* Appeal Judgement, para. 264.

<sup>856</sup> Case 002/01 Appeal Judgement, paras 753-754.

<sup>857</sup> Case 002/01 Trial Judgement, para. 190; Case 001 Trial Judgement, para. 318; *Kunarac et al.* Appeal Judgement, para. 100.

<sup>858</sup> Case 002/01 Trial Judgement, para. 191; Case 001 Trial Judgement, para. 319; *Kunarac et al.* Appeal Judgement, paras 85, 99, 102-103; *Blaškić* Appeal Judgement, para. 126; *Mrkšić* Appeal Judgement, para. 41. In light of the Supreme Court Chamber’s guidance that the acts of accused persons – even when they are not the direct perpetrators – must also form part of the attack, the Trial Chamber considers that the knowledge requirement should also focus on the knowledge of the accused.

<sup>859</sup> Case 002/01 Trial Judgement, para. 191; Case 001 Trial Judgement, para. 319; *Kunarac et al.* Appeal Judgement, paras 102-103.

Evidence of knowledge depends on the facts of a particular case; as a result, the manner in which this legal element may be proved may vary according to the circumstances.<sup>860</sup>

#### 4.2.2. *Legal Findings*

##### 4.2.2.1. *Widespread or systematic attack against a civilian population*

317. The Chamber is satisfied that, starting on 17 April 1975 and continuing until at least 6 January 1979, the temporal period at issue in Case 002/02, there was a widespread or systematic attack against the civilian population of Cambodia. The attacks took various forms, including enslavement, forced transfer, murder, extermination, enforced disappearance and persecution.<sup>861</sup> This attack victimised millions of civilians throughout Cambodia and resulted in a large number of refugees fleeing to neighbouring countries.<sup>862</sup> The attack was carried out in furtherance of, and pursuant to, Party policies and plans to build socialism and defend the country.<sup>863</sup> The Chamber is satisfied that the attack was widespread in both its geographical scope and number of victims. The Chamber also finds that the attack was systematic insofar as crimes of such scope and magnitude could not have been random and were carried out repeatedly throughout the indictment period and deliberately in furtherance of, and pursuant to, Party policies.

318. Although the attack on the Cambodian population occurred in parallel with an international armed conflict between Cambodia and Vietnam, the CPK primarily targeted its own nationals.<sup>864</sup> The Chamber thus finds that this attack was directed against the civilian population of Cambodia. After 17 April 1975, all Khmer Republic soldiers not taking a direct part in hostilities were civilians or, at minimum, *hors de combat*, thereby enjoying the same protections as civilians. The same applies to Vietnamese soldiers not taking a direct part in hostilities. In any event, former Khmer Republic and Vietnamese soldiers only formed part of the millions of civilians attacked.<sup>865</sup>

<sup>860</sup> Case 002/01 Trial Judgement, para. 191; Case 001 Trial Judgement, para. 319; *Blaškić* Appeal Judgement, para. 126.

<sup>861</sup> See above, paras 277-279, 294-296.

<sup>862</sup> See above, para. 296.

<sup>863</sup> See above, para. 276. See also, Section 16: Common Purpose, paras 3741, 3875.

<sup>864</sup> See above, paras 276-279, 294-296.

<sup>865</sup> See above, paras 276-279, 294-297.

4.2.2.2. Discriminatory basis

319. The Chamber further finds that the attack against the civilian population was carried out on political grounds, pursuant to the plans and policies of the Party to build socialism and defend the country against internal and external enemies. In order to accomplish this goal, the Party considered that all classes other than the worker-peasant class had to be eliminated.<sup>866</sup> Other economic and social classes, such as the petty-bourgeois, the capitalists and the feudalist classes, were perceived as political and social enemies of the revolution and the collective system.<sup>867</sup> Further, all Cambodians were to be part of the revolution and the collective system.<sup>868</sup> Anyone who opposed, or was perceived to oppose, the revolution and collective system was a target for mistreatment and acts of violence.<sup>869</sup> The Chamber is therefore satisfied that the attack was carried out on political grounds.

320. The attack also targeted Buddhists on the basis of their religion;<sup>870</sup> the Cham on the basis of their ethnicity and religion;<sup>871</sup> and the Vietnamese on the basis of their ethnicity, nationality and race.<sup>872</sup> The Chamber is therefore satisfied that the attack was also carried out on national, ethnical, racial and religious grounds.

4.2.2.3. Nexus between the acts and the attack

321. The Chamber is further satisfied that there is a nexus between the acts of the direct perpetrators and the Accused and the attack. The acts of the direct perpetrators as well as of both Accused committed between 17 April 1975 and 6 January 1979 were carried out pursuant to, and in furtherance of, the CPK's goal of rapidly implementing socialist revolution in Cambodia through a "great leap forward" designed to build the country, defend it from enemies and radically transform the population into an atheistic

<sup>866</sup> Section 3: Historical Background, paras 202, 239. *See above*, paras 276, 278-279, 295; Section 16.3: Real or Perceived Enemies, para. 3839.

<sup>867</sup> Section 3: Historical Background, paras 221, 227, 239. *See above*, para. 295; Section 16.3: Real or Perceived Enemies, para. 3839.

<sup>868</sup> Section 3: Historical Background, para. 242. *See above*, paras 276, 279; Section 16: Common Purpose, paras 3885-3886.

<sup>869</sup> *See above*, para. 295. *See also*, Section 10.1: Tram Kak Cooperatives, para. 1178; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1617, 1641; Section 16: Common Purpose, paras 3874, 3898, 3924; Section 16.3.2.1.2: Real or Perceived Enemies: Counter-Revolutionary Ideologies and Behaviour.

<sup>870</sup> Section 13.1: Treatment of Buddhists; Section 10.1: Tram Kak Cooperatives; Section 16: Common Purpose.

<sup>871</sup> Section 13.2: Treatment of the Cham; Section 16: Common Purpose.

<sup>872</sup> Section 13.3: Treatment of the Vietnamese; Section 16: Common Purpose.

and homogenous Khmer society of worker-peasants.<sup>873</sup> The CPK's policies in this regard – to establish and operate cooperatives and worksites throughout Cambodia;<sup>874</sup> to identify, arrest, isolate and “smash” the most serious category of enemy at security centres and execution sites, and to re-educate “bad elements”;<sup>875</sup> to target specific groups;<sup>876</sup> and to regulate marriage<sup>877</sup> – led to the systematic and widespread victimisation of Cambodians during the indictment period. Both NUON Chea and KHIEU Samphan played significant roles in designing and/or implementing these policies,<sup>878</sup> thus elucidating the nexus between the attack and committed acts.

#### 4.2.2.4. Knowledge of the Accused

322. Considering the scale and scope of the attack<sup>879</sup> and the fact that it was undertaken in furtherance of, and pursuant to, Party policies and plans,<sup>880</sup> the Chamber is satisfied that NUON Chea and KHIEU Samphan knew of the attack on the civilian population. The Chamber is also satisfied that NUON Chea and KHIEU Samphan, by virtue of their respective roles and functions during the DK period and their involvement in the plans and policies that comprised the attack,<sup>881</sup> knew that their acts formed part of this attack.

323. The Chamber is thus satisfied that all the chapeau requirements for the application of Article 5 of the ECCC Law are met.

<sup>873</sup> See above, paras 276-279, 294-296; Section 16.4.1.1: Implementation of the Common Purpose: “Control” and “Capture the People”: Movement of Population, Establishment of Cooperatives and Worksites (Regarding the existence of a policy, see Section 16.4.1.1. Regarding the criminality of the policy, see Section 16.4.1.2).

<sup>874</sup> Section 16: Common Purpose, paras 3873-3876.

<sup>875</sup> Section 16: Common Purpose, paras 3955-3972.

<sup>876</sup> Section 16.4.3: Common Purpose: Implementation of the Common Purpose: Targeting of Specific Groups.

<sup>877</sup> Section 16.4.4: Common Purpose: Implementation of the Common Purpose: Regulation of Marriage.

<sup>878</sup> Section 17: The Individual Criminal Responsibility of NUON Chea; Section 18: The Individual Criminal Responsibility of KHIEU Samphan.

<sup>879</sup> See above, paras 276-279, 294-297.

<sup>880</sup> See above, paras 276-279, 294-296; Section 16: Common Purpose, paras 3920, 3973.

<sup>881</sup> Section 7: Roles and Functions – NUON Chea; Section 17: The Individual Criminal Responsibility of NUON Chea; Section 8: Roles and Functions – KHIEU Samphan; Section 18: The Individual Criminal Responsibility of KHIEU Samphan.

**4.3. General Requirements for Grave Breaches of the Geneva Conventions of 1949 Listed in Article 6 of the ECCC Law**

324. As relevant to Case 002/02, the Closing Order charges the Accused pursuant to Article 6 of the ECCC Law with the following grave breaches of the Geneva Conventions of 1949: (i) wilful killing; (ii) torture; (iii) inhumane treatment; (iv) wilfully causing great suffering or serious injury to body or health; (v) wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial; (vi) unlawful deportation of a civilian and (vii) unlawful confinement of a civilian.<sup>882</sup>

**4.3.1. Law**

325. Grave breaches of the Geneva Conventions were established international crimes during the period over which the ECCC has jurisdiction.<sup>883</sup> The grave breaches provisions as well as the individual criminal responsibility attaching thereto were binding on Cambodia at the relevant time on the basis that Cambodia had ratified the four Geneva Conventions on 8 December 1958.<sup>884</sup> Further, these provisions were a codification of core principles of customary international law.<sup>885</sup> All four Geneva Conventions prohibit “grave breaches” committed against “protected” persons or property within the context of an armed conflict of an international character,<sup>886</sup> including wilful killing, torture or inhuman treatment, and wilfully causing great suffering or serious injury to body or health.<sup>887</sup> Geneva Convention III and Geneva Convention IV further prohibit the grave breaches of wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial.<sup>888</sup> Additionally, the unlawful

<sup>882</sup> Closing Order, paras 1491-1495 (wilful killing), 1498-1500 (torture), 1501-1503 (inhuman treatment), 1504-1506 (wilfully causing great suffering or serious injury to body or health), 1507-1514 (wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial), 1515-1517 (unlawful deportation of a civilian), 1518-1520 (unlawful confinement of a civilian). *See also*, Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02, E301/9/1.1, 4 April 2014, p. 4.

<sup>883</sup> Case 001 Trial Judgement, paras 403-408.

<sup>884</sup> ICRC, *State Parties / Signatories: Geneva Conventions of 12 August 1949*; Case 001 Trial Judgement, para. 403.

<sup>885</sup> Case 001 Trial Judgement, para. 405.

<sup>886</sup> Geneva Convention I, Article 50; Geneva Convention II, Article 51; Geneva Convention III, Article 130; Geneva Convention IV, Article 147. *See also*, Case 001 Trial Judgement, para. 403.

<sup>887</sup> Geneva Convention I, Article 50; Geneva Convention II, Article 51; Geneva Convention III, Article 130; Geneva Convention IV, Article 147.

<sup>888</sup> Geneva Convention III, Article 130; Geneva Convention IV, Article 147.

deportation and unlawful confinement of a civilian are listed as grave breaches under Geneva Convention IV.<sup>889</sup>

326. With respect to the foreseeability and accessibility of the grave breaches charged in this case and which none of parties has challenged, the Chamber takes into account their customary status, the fact that Cambodia ratified all four Geneva Conventions on 8 December 1958, the gravity of these crimes, and the positions held by the Accused as members of Cambodia's governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that (i) wilful killing; (ii) torture; (iii) inhumane treatment; (iv) wilfully causing great suffering or serious injury to body or health; (v) wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial; (vi) unlawful deportation of a civilian; and (vii) unlawful confinement of a civilian were punishable as grave breaches of the Geneva Conventions by 1975. Accordingly, charges of grave breaches of the Geneva Conventions of 1949 pursuant to Article 6 of the ECCC Law accord with the principle of legality.

327. Offences listed in Article 6 of the ECCC Law constitute grave breaches only if the following *chapeau* requirements are established: (i) there is an armed conflict; (ii) the armed conflict is of an international character; (iii) there exists a nexus with the armed conflict; (iv) the victims have "protected persons" status under the Geneva Conventions; and (v) the requisite knowledge.<sup>890</sup>

328. *Existence of an armed conflict* – Common Article 2 of the Geneva Conventions provides that the Conventions' provisions (including the grave breaches provisions), apply to "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them." An "armed conflict" exists whenever there is a resort to armed force between States (where the armed conflict is of an international nature) or

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<sup>889</sup> Geneva Convention IV, Article 147.

<sup>890</sup> Case 001 Trial Judgement, paras 409-410; *Naletilić and Martinović* Appeal Judgement, paras 110-121; *Tadić* Appeal Judgement, para. 80. In addition Article 6 of the ECCC Law requires that the acts be committed during the period of 17 April 1975 to 6 January 1979.



protracted armed violence between governmental authorities and organised armed groups or between such groups within a State (when it is of an internal nature).<sup>891</sup>

329. *International character of an armed conflict* – Common Article 2 of the Geneva Conventions requires further that the armed conflict be of an international character.<sup>892</sup> An armed conflict is of an international character if it takes place between two or more States.<sup>893</sup> An official recognition of a state of war is not required for the grave breaches provisions of the Geneva Conventions to apply. Rather, *de facto* hostilities between States may be sufficient to satisfy the internationality requirement, where these hostilities are conducted through the States' respective armed forces.<sup>894</sup> Once it is established that an international armed conflict existed at the place and time relevant to the charges against an accused, international humanitarian law will apply to the whole territory of the relevant States, whether or not actual combat takes place there, and will continue to apply beyond the cessation of hostilities until a general conclusion of peace is achieved.<sup>895</sup>

330. *Nexus between the acts of the accused and the armed conflict* – A sufficient nexus must exist between the acts of the accused and the armed conflict giving rise to the applicability of international humanitarian law. To satisfy this nexus, the acts of the accused must have been “closely related” to the armed conflict as a whole.<sup>896</sup> The crimes can be “temporally and geographically remote from the actual fighting” and it would be sufficient if the crimes are closely related to hostilities occurring in other parts of the territories controlled by the parties to the conflict.<sup>897</sup> While the nexus need not

<sup>891</sup> Case 001 Trial Judgement, para. 412; *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70.

<sup>892</sup> This is an indispensable requirement of Common Article 2. See Case 001 Trial Judgement, paras 411-413; *Tadić* Jurisdiction Decision on Interlocutory Appeal, paras 79, 84; *Naletilić and Martinović* Appeal Judgement, para. 117.

<sup>893</sup> Case 001 Trial Judgement, para. 414.

<sup>894</sup> Case 001 Trial Judgement, para. 414; *Kordić and Čerkez* Appeal Judgement, para. 373.

<sup>895</sup> Case 001 Trial Judgement, para. 415; *Tadić* Jurisdiction Decision on Interlocutory Appeal, paras 68-70; *Kordić* Appeal Judgement, paras 319-321; *Kunarac* Appeal Judgement, para. 57.

<sup>896</sup> Case 001 Trial Judgement, para. 416; *Naletilić and Martinović* Appeal Judgement, para. 118 (finding that there had to be nexus between the act of the accused and the international armed conflict), fn. 259 (finding that this requirement also applied to war crimes with the exception that conflict need not be international in the case of war crimes); *Stakić* Appeal Judgement, para. 342; *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70. See also, *Kordić* Trial Judgement, para. 32 (finding that “in order for a particular crime to qualify as a violation of international humanitarian law under Articles 2 and 3 of the Statute, the Prosecution must also establish a sufficient link between that crime and the armed conflict”).

<sup>897</sup> *Kunarac* Appeal Judgement, para. 57; *Tadić* Jurisdiction Decision on Interlocutory Appeal, para. 70.

be a causal link, the existence of an armed conflict must at a minimum have played a substantial part in the perpetrator's ability to commit the crime, their decision to commit it, the manner in which it was committed, or the purpose for which it was committed.<sup>898</sup>

331. *Victims have a "protected persons" status* – "Protected persons" are defined according to Articles 4 of Geneva Convention III (as regards prisoners of war) and Geneva Convention IV (as regards civilian persons).<sup>899</sup> Pursuant to Article 4 of Geneva Convention III, prisoners of war are persons, including "[m]embers of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces", who have "fallen into the power of the enemy". Article 4(1) of Geneva Convention IV (as regards civilian persons) defines protected persons as those who find themselves "in the hands of a Party to the conflict or Occupying Power of which they are not nationals".<sup>900</sup>

332. The Co-Prosecutors submit that the definition of protected persons encompasses ethnic Vietnamese who were Cambodian nationals but viewed as enemies allied with Vietnam by the DK authorities.<sup>901</sup> No other Party makes any relevant arguments in this regard. The Chamber notes that the Closing Order expressly limits the categories of "protected persons" in Case 002 to "[m]embers of the armed forces of the Socialist Republic of Vietnam" and "[c]ivilians who were nationals of the Socialist Republic of Vietnam" who had fallen into the power of the forces of Democratic Kampuchea.<sup>902</sup> Accordingly, there is no room to consider whether Vietnamese who were Cambodian nationals but owed allegiance to Vietnam could be considered protected persons. The Co-Prosecutors' submission is therefore moot.<sup>903</sup>

<sup>898</sup> *Stakić* Appeal Judgement, para. 342; *Kunarac et al.* Appeal Judgement, para. 58.

<sup>899</sup> Case 001 Trial Judgement, para. 417. Articles 13, 24, 25 and 26 of Geneva Convention I and Articles 13, 36, 37 of Geneva Convention II likewise define those protected under their provisions. In the instant case, however, the Chamber is primarily concerned with Geneva Conventions III and IV as they pertain to prisoners of war and civilians.

<sup>900</sup> Article 4 of Geneva Convention IV also identifies several categories of persons who are not protected by Geneva Convention IV including (i) nationals of a State which is not bound by the Convention; (ii) nationals of a neutral State who find themselves in the territory of a belligerent State; and (iii) persons protected by Geneva Conventions I, II or III.

<sup>901</sup> Co-Prosecutors' Closing Brief, para. 205.

<sup>902</sup> Closing Order, para. 1481.

<sup>903</sup> The Chamber does note, however, that the crucial consideration when analysing these substantive relations is the allegiance – or lack thereof – that an individual has to a party to the conflict: Case 001 Trial Judgement, para. 419; *Tadić* Appeals Judgement, paras 166, 168; *Blaškić* Appeal Judgement, paras 172-179. Civilians may thus be considered as "protected persons" for the purpose of Geneva Convention

333. The NUON Chea Defence submits that, pursuant to the First Additional Protocol to the Geneva Conventions, any member of the armed forces of a Party to the conflict who falls into the power of an adverse Party while engaging in espionage shall not have the right to the status of prisoner of war and may be treated as a spy, thus falling outside the scope of protected persons.<sup>904</sup> No other Party makes any relevant arguments in this regard. The Chamber notes that the First Additional Protocol entered into force on 7 December 1978 and that Cambodia only acceded to the protocol on 14 January 1998. Accordingly, the First Additional Protocol was not binding in Cambodia at the relevant time. Further, there is no indication that Article 46(1) of the First Additional Protocol reflected customary international law by 1975. However, given that the First Additional Protocol purports to afford greater protection to the Accused, pursuant to the principle of *lex mitior*, the Chamber will have regard to its provisions in this respect.<sup>905</sup>

334. The Chamber finds that the NUON Chea Defence misconstrues the meaning and import of Article 46(1) of the First Additional Protocol. While this provision establishes that persons who are engaging in espionage lose the status of prisoner of war and “may be treated as a spy”,<sup>906</sup> it does not exclude them from the protections of the Geneva Conventions. A person who loses his/her prisoner of war status would still enjoy the fundamental guarantees set out in Article 75 of the First Additional Protocol. The Commentary to the First Additional Protocol notes that the “deprivation of prisoner-of-war status already constitutes a punishment in itself and can therefore only take place following the tribunal’s decision” and that the “presumption of prisoner-of war status should prevail, at any rate whenever the person concerned has not been charged on the basis of *prima facie* evidence”.<sup>907</sup> The Chamber will assess on the evidence in this case

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IV where they are viewed by the State whose hands they are in “as belonging to the opposing party in an armed conflict and as posing a threat to [that] State”. See *Delalić Appeals Judgement*, para. 98.

<sup>904</sup> NUON Chea Closing Brief, para. 685 (referring to Article 46(1) of the 1977 First Additional Protocol to the Geneva Conventions).

<sup>905</sup> The Supreme Court Chamber found that “nothing prevents a court from drawing on subsequent legal developments consistent with the *lex mitior* principle to restrict the scope of established criminal law norms”: Case 002/01 Appeal Judgement, para. 579. See also, *Scoppola v. Italy (No. 2)*, ECtHR, Judgement, Application No. 10249/03, 17 September 2009, para. 109 (referring to the “principle of retrospectiveness of the more lenient criminal law” and finding that “where there are differences between the criminal law in force at the time of the commission of the offence and subsequent criminal laws enacted before a final judgement is rendered, the courts must apply the law whose provisions are most favourable to the defendant”).

<sup>906</sup> ICRC Commentary to Additional Protocol I, para. 1768. The Commentary notes that while espionage is not prohibited as a method of combat, “any a member of the armed forces who is caught while he is engaged in espionage may be deprived of his prisoner-of-war status and punished”.

<sup>907</sup> ICRC Commentary to Additional Protocol I, para. 1769.

whether there were any such proceedings which would deprive the individuals in question of their prisoner of war status.<sup>908</sup>

335. *Knowledge* – An accused must have sufficient knowledge of the international character of the armed conflict and of the protected status of the victims under the Geneva Conventions. Awareness by the accused that a foreign state was involved in the armed conflict and that a victim belonged to an adverse party to that armed conflict will suffice to establish this knowledge.<sup>909</sup> Furthermore the Accused must know that his conduct had a nexus to an international armed conflict, or at least have “knowledge of the factual circumstances later bringing the Judges to the conclusion that the armed conflict was an international one”.<sup>910</sup>

#### 4.3.2. *Legal Findings*

##### 4.3.2.1. *Existence of an international armed conflict*

336. Based on the evidence detailed above, the Chamber finds that an armed conflict existed between DK and Vietnam from May 1975 through 6 January 1979.<sup>911</sup> While the Closing Order finds that a state of armed conflict existed between DK and Vietnam throughout the entire DK period, thus from 17 April 1975 until 6 January 1979, the Chamber was unable to satisfy itself beyond reasonable doubt that an international armed conflict existed between DK and Vietnam at any time in April 1975 – *i.e.* before North Vietnam’s capture of Saigon on 30 April 1975.<sup>912</sup> The first clashes between DK and Vietnam took place in May 1975 off the coast involving the islands whose territory was in dispute between Cambodia and Vietnam.<sup>913</sup> Continuous clashes, involving border skirmishes and incursions into both Cambodian and Vietnamese territory, occurred from May 1975 throughout the DK period. For this finding, it is irrelevant that

<sup>908</sup> In this regard the Chamber notes that pursuant to Article 46(2) of Additional Protocol I “[a] member of the armed forces of a Party to the conflict who, on behalf of that Party and in territory controlled by an adverse Party, gathers or attempts to gather information shall not be considered as engaging in espionage if, *while so acting, he is in the uniform of his armed forces*” (emphasis added).

<sup>909</sup> Case 001 Trial Judgement, paras 421-422; *Kordić and Čerkez* Appeals Judgement, para. 311.

<sup>910</sup> Case 001 Trial Judgement, para. 420 citing *Naletilić and Martinović* Appeal Judgement, paras 118-119.

<sup>911</sup> See above, paras 282-293.

<sup>912</sup> See above, para. 282 (fn. 727). See also, Section 3: Historical Background, paras 230-235.

<sup>913</sup> See above, para. 282.

DK and Vietnam did not recognise this state of war until diplomatic ties between the two states were severed on 31 December 1977.<sup>914</sup>

4.3.2.2. Status as “protected persons” under the Geneva Conventions of 1949

337. For the crimes charged under Article 6 of the ECCC Law in relation to S-21 Security Centre and Au Kanseng Security Centre, the Chamber has examined the status of the alleged victims and made related findings where relevant in this Judgement.<sup>915</sup> The Chamber notes in this regard that in relation to the crimes charged at Au Kanseng Security Centre, the Chamber was unable to satisfy itself beyond reasonable doubt that the Jarai were “protected persons” within the meaning of the Geneva Conventions.<sup>916</sup> Conversely, in relation to the crimes charged at S-21 Security Centre, the Chamber is satisfied beyond reasonable doubt that the victims of the relevant charged crimes were Vietnamese civilians or prisoners of war and thus protected persons for the purposes of the Geneva Conventions.<sup>917</sup> Thus, the Chamber will consider the remaining requirements only in relation to S-21 Security Centre.

4.3.2.3. Nexus between the acts of the Accused and the armed conflict

338. The Chamber finds that the crimes committed against protected persons at S-21 Security Centre were closely related to the armed conflict between DK and Vietnam.<sup>918</sup> In this regard, the Chamber has considered the following: Vietnamese detainees constituted the largest group of foreign detainees at S-21 and their numbers increased with the escalation of the conflict,<sup>919</sup> surviving S-21 photographs depict prisoners in Vietnamese military uniforms;<sup>920</sup> Vietnamese prisoners were made to read prepared confessions, in which they confessed that they had entered Kampuchean territory in order to spy and to invade Cambodia, for the purpose of broadcasting the confessions

<sup>914</sup> See above, paras 289, 329.

<sup>915</sup> Section 12.2: S-21 Security Centre, paras 2622, 2624, 2626, 2628, 2630, 2635; Section 12.4: Au Kanseng Security Centre, para. 3012.

<sup>916</sup> Section 12.4: Au Kanseng Security Centre, paras 3013-3015.

<sup>917</sup> Section 12.2: S-21 Security Centre, paras 2622, 2624, 2626, 2628, 2630, 2635.

<sup>918</sup> See above, para. 336.

<sup>919</sup> Section 12.2: S-21 Security Centre, paras 2460-2484, 2624. See also, Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, p. 96, ERN (En) 00339404 (confirming the Case 001 agreed fact that the largest group of foreign detainees at S-21 was Vietnamese).

<sup>920</sup> Section 12.2: S-21 Security Centre, para. 2624 (fn. 8351); S-21 photographs, E3/8063.3, ERN P00000004-P00000021.

on the radio (the Phnom Penh Domestic Service);<sup>921</sup> these confessions were also used in DK publications, like the abovementioned Black Paper,<sup>922</sup> and government statements as evidence of Vietnamese aggression against Kampuchea, and included members of the Vietnamese armed forces such as commanders, colonels, lieutenants and soldiers;<sup>923</sup> and finally, photographs and a movie depicting Vietnamese prisoners in the military uniforms they were arrested in were shown to S-21 staff at a study session to celebrate the 17 April anniversary.<sup>924</sup>

#### 4.3.2.4. Knowledge of the Accused

339. The Chamber finds that both Accused were aware of the armed conflict with Vietnam. In this regard, the Chamber considered the fact that NUON Chea was part of the June 1975 DK delegation to Hanoi to discuss the border clashes with the Vietnamese leader NGUYEN Van Linh,<sup>925</sup> and was thus aware of the armed conflict with Vietnam from the outset. Regarding KHIEU Samphan's knowledge of the existence of the armed conflict with Vietnam, the Chamber considered the following: throughout 1975, KHIEU Samphan held the position of GRUNK Deputy Prime Minister and continued in that capacity to exercise diplomatic functions until NORODOM Sihanouk's resignation as Head of State in early April 1976 – as KHIEU Samphan later explained, he “had to be informed to be able to talk about [national defence and Vietnam] to diplomats”,<sup>926</sup> KHIEU Samphan was indeed carrying out such diplomatic functions: he not only visited Vietnam in August-September 1975 to attend the 30<sup>th</sup> anniversary celebrations of the commencement of the Vietnamese independence movement,<sup>927</sup> he also visited China and North Korea in 1975;<sup>928</sup> KHIEU Samphan was briefed on national defence matters: he attended Standing Committee meetings, among others, on 2 November 1975, 22 February 1976 and on 11 March

<sup>921</sup> Section 12.2: S-21 Security Centre, paras 2462, 2472-2473, 2556.

<sup>922</sup> DK Ministry of Foreign Affairs, *Black Paper*, E3/266, September 1978, p. 2, ERN (En) 00082511.

<sup>923</sup> Section 12.2: S-21 Security Centre, paras 2462, 2473-2474, 2477.

<sup>924</sup> Section 12.2: S-21 Security Centre, paras 2476, 2624. This film depicted the arrival of the Vietnamese soldiers at S-21 and showed their disembowelled bodies following their execution.

<sup>925</sup> *See above*, para. 283.

<sup>926</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 601 (fn. 1886). *See also*, Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 5, ERN (En) 00153270 (“It is true that I attended some broader meetings of the Standing Committee, during which only general issues were dealt with, such as national defence, national reconstruction, Vietnam or the resignation of Norodom Sihanouk. I had to be informed to be able to talk about these issues to diplomats.”).

<sup>927</sup> *See above*, para. 283.

<sup>928</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 592.

1976 during which the conflict with Vietnam, including attempted border negotiations, was discussed;<sup>929</sup> and finally, KHIEU Samphan acknowledged in later statements that the armed conflict with Vietnam had been ongoing in 1975.<sup>930</sup> The Chamber concludes that the only reasonable inference is that KHIEU Samphan could not have been oblivious to the fact that from May 1975 an armed conflict was ongoing with Vietnam. The Chamber is therefore satisfied that KHIEU Samphan was aware of the armed conflict with Vietnam from the outset.

340. The Chamber finds that NUON Chea was aware of the protected status of victims at S-21. In this regard, the Chamber considered the following: NUON Chea was a member of the Standing Committee, which exercised control over S-21;<sup>931</sup> NUON Chea was substantially involved in military matters;<sup>932</sup> and moreover, NUON Chea had an active role regarding S-21 as he provided instructions, decided who would be arrested, and from August 1977, acted as Duch's direct superior at S-21.<sup>933</sup> The Chamber finds that KHIEU Samphan, despite his limited involvement with respect to the oversight of security centres within the scope of Case 002/02, was also aware of the protected status of victims at S-21. In this regard, the Chamber considered the following: KHIEU Samphan was not only placed within a small group of well-informed CPK members as

<sup>929</sup> See above, para. 284; Standing Committee Minutes, E3/227, 2 November 1975, pp. 1, 4-6, ERN (En) 00183409, 00183412-00183414 (attended by NUON Chea and KHIEU Samphan, among others, during which Vietnam and "the situation at the border and on the sea" was discussed); Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 1, ERN (En) 00182625 (attended by NUON Chea and KHIEU Samphan, among others, and at which SON Sen reported that "Vietnam has acted strongly long our Eastern border"); Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, pp. 1-2, ERN (En) 00182635-00182636 (attended by NUON Chea and KHIEU Samphan, among others, and referring in general terms to a meeting in June 1975 during which the attempt to discuss "the problem of the eastern border" was ignored by the Vietnamese).

<sup>930</sup> *Foreign Ministry Statement on Severing Ties with SRV: Khieu Samphan Statement* (in FBIS collection), E3/1359, 30 December 1977, ERN (En) 00169520-00169521 (speaking about the clashes around the islands in 1975); Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 133, ERN (En) 00498265 ("[T]he disputes with Vietnam had begun in 1975. In actuality, the clashes between Vietnamese forces and the Khmer Rouge never abated after the day that the Vietnamese penetrated deeply into the country during 1970. In truth, after the liberation of the country, Kampuchea never knew peace."); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 70, ERN (En) 00103758 (recounting the dispute around the islands in May 1975).

<sup>931</sup> Section 7: Roles and Functions – NUON Chea, para. 532; Section 12.2: S-21 Security Centre, paras 2149, 2183-2191, 2208, 2217, 2233, 2282.

<sup>932</sup> Section 7.6: Role in the Military and Security Apparatus; Section 12.2.6: S-21 Security Centre: Oversight of S-21 Security Centre.

<sup>933</sup> Section 12.2: S-21 Security Centre, paras 2179, 2183, 2186, 2188-2189, 2191, 2193-2195, 2197, 2209-2215, 2217-2218, 2221-2222, 2225-2226, 2228-2230, 2234, 2243, 2261-2262, 2311-2312, 2316-2318, 2323, 2332, 2397, 2447-2448, 2457, 2462, 2473, 2491, 2494, 2497, 2509, 2527, 2554-2556, 2558-2559.

a result of his membership of the Central Committee and Office 870, but he was also in a position of unique standing within the Party by virtue of his attendance at numerous Standing Committee meetings;<sup>934</sup> on or about 6 January 1979, KHIEU Samphan briefly met with S-21 chief KAING Guek Eav *alias* Duch and instructed him that S-21 staff should not panic in the wake of Vietnamese advances into DK territory and that staff should continue working as usual;<sup>935</sup> and moreover, confessions, photographs and a movie of Vietnamese prisoners of war were amply used for propagandistic, educational purposes – this could not have possibly escaped the attention of a senior CPK leader such as KHIEU Samphan, who was present at many political study sessions and personally held speeches on vigilance regarding the Vietnamese enemy.<sup>936</sup>

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<sup>934</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 604.

<sup>935</sup> Section 12.2: S-21 Security Centre, paras 2557-2558.

<sup>936</sup> Section 8.3: Roles During the DK Period; Section 12.2: S-21 Security Centre, paras 2462, 2472-2474, 2477, 2556; Section 13.3: Treatment of the Vietnamese, paras 3390, 3393-3394, 3399-3401, 3406; Section 18: The Criminal Responsibility of Khieu Samphan. *See above*, para. 338.



## 5. ADMINISTRATIVE STRUCTURES

341. The foundational documents for the governance of Democratic Kampuchea were the DK Constitution and the various CPK Statutes.<sup>937</sup> The DK Constitution vested significant power in a legislative body called the People’s Representative Assembly, but it was never fully realised.<sup>938</sup> In contrast, the CPK Statute accorded decision-making authority to CPK Party members, limiting such membership by a multi-layered system of vetting.<sup>939</sup> As the only political party in DK, and with all decisions regarding governance and military force being made by Party members in the Central or Standing Committees, zone leadership, ministries and armed forces, the CPK was the predominating Cambodian administrative structure from 1975-1979.

### **5.1. Structure of the CPK**

342. From 1975-1979, the precise operational structure of the CPK was shrouded in secrecy.<sup>940</sup> In the early days of the Party, secrecy was essential to its survival as an underground revolutionary movement.<sup>941</sup> Even after the CPK rose to power in 1975, however, it continued to obfuscate and obscure its internal workings, largely to protect itself from perceived external enemies.<sup>942</sup> The existence of the CPK and its leadership was only disclosed to the Cambodian public (outside of the CPK membership) as well

<sup>937</sup> DK Constitution, E3/259, undated, Chapter Five, ERN (En) 00184835; 1976 CPK Statute, E3/130, undated, pp. 10-11, ERN (En) 00184031-00184032 (Article 2). The 1976 Statute was adopted at the Fourth Party Congress in January 1976. *See below*, para. 352.

<sup>938</sup> Section 7: Roles and Functions – NUON Chea, para. 537 (“[T]he PRA was more a façade designed to feign compliance with the Party Statute. The Chamber thus finds that the Assembly met rarely, possibly only once during the DK period, and did not pass any laws.”).

<sup>939</sup> 1976 CPK Statute, E3/130, undated, pp. 6-9, ERN (En) 00184027-00184031 (Article 1: “Many levels of Party organization must collectively examine, deliberate, and decide before permission to join can be granted”).

<sup>940</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, p. 27, ERN (En) 00762399; T. 30 May 2012 (NY Kan), E1/78.1, p. 60; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 7, ERN (En) 00156747; T. 14 August 2012 (SUONG Sikoeun), E1/107.1, pp. 85-86, 92; T. 26 March 2012 (KAING Guek Eav), pp. 39-40; 1976 CPK Statute, E3/130, undated, pp. 10-11, ERN (En) 00184031-00184032 (Article 2: “Every Party member has the following duties: [...] Always and absolutely strive to maintain Party secrecy with the high stance of revolutionary vigilance”); p. 12, ERN (En) 00184033 (Article 4: breaking of Party secrecy is a disciplinary violation punishable by warning, removal of duty or expulsion from the Party); pp. 14-15, ERN (En) 00184035-00184036 (Article 5: maintaining Party secrecy is a criterion for the selection of new Party members).

<sup>941</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 85-86.

<sup>942</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 88-89; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 95.

as the outside world at the 17<sup>th</sup> Anniversary of the Party in September 1977.<sup>943</sup> As such, limited, if any, information about the leadership structure was accessible to ordinary people, who were often simply required to obey without question decisions made by “*Angkar*” (literally “organisation”), an anonymous entity seen as having the power to control the whole of society.<sup>944</sup> Lower-ranking cadres sometimes had only a cursory understanding of the organisation of power in the CPK.<sup>945</sup> In its totality, however, the evidence put before the Chamber has enabled it to reconstruct the organisational lines of the CPK in the relevant period.

343. The administrative structure of the CPK was formalised for the first time in a statute passed by the First Party Congress of what was then called the Workers’ Party of Kampuchea in September-October 1960.<sup>946</sup> The second statute was adopted at the Third Party Congress in September 1971.<sup>947</sup> Another statute was enacted at the Fourth Party Congress in January 1976.<sup>948</sup> The 1971 and 1976 Statutes were put before the Chamber.<sup>949</sup> The various statutes were similar in content, at least insofar as they dealt with the internal structures and hierarchy of the CPK.<sup>950</sup>

<sup>943</sup> Revolutionary Flag, E3/11, September 1977, pp. 1-55, ERN (En) 00486212-00486266; 27 Sept Mass Meeting, POL Pot Speech Mark CPK Anniversary (in FBIS collection), E3/290, ERN (En) 00168717 (POL Pot begins: “On the occasion of the celebrations of the 17<sup>th</sup> anniversary of the founding of our Cambodia Communist Party, we have decided to proclaim openly and officially the existence of the Cambodian Communist Party to both the national and international public.”); Le 17<sup>ème</sup> congrès du PCK, E3/3029R (video recording of 17<sup>th</sup> Anniversary showing POL Pot seated on-stage with NUON Chea).

<sup>944</sup> T. 6 December 2011 (KLAN Fit), E1/17.1, p. 79; T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 97-98; DUCH Phleu Interview Record, E3/5213, 28 August 2008, p. 3, ERN (En) 00275433 (“Whatever *Angkar* had them do, they had to obey. I did not know who *Angkar* was.”); TAN Wardeny Interview Record, E3/102, 11 June 2009, p. 3, ERN (En) 00345537 (“everyone used to say that it was ‘*Angkar*’ who decided, but we did not know who ‘*Angkar*’ was.”). See below, para. 388.

<sup>945</sup> See e.g., T. 17 May 2012 (PEAN Khean), E1/73.1, pp. 103-104; T. 28 May 2012 (NY Kan), E1/76.1, p. 22; T. 6 August 2012 (SUONG Sikoeun), E1/102.1, p. 65.

<sup>946</sup> Revolutionary Flag, E3/10, September-October 1976, p. 6, ERN (En) 00450506; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 70; T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 25; Revolutionary Youth, E3/768, March 1977, p. 12, ERN (En) 00525948. See also, Section 3: Historical Background, para. 203. At the time the Party was known as the Workers’ Party of Kampuchea. It was not until 1966 that the Party changed its name to the Communist Party of Kampuchea. See Section 3: Historical Background, paras 204, 209.

<sup>947</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 70. See also, Section 3: Historical Background, para. 226.

<sup>948</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 19; T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 70-71, 73; Written Record of Analysis by Craig ETCHESON, E3/494, 18 July 2007, p. 3, ERN (En) 00142828.

<sup>949</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 1-29, ERN (En) 00940563-00940591; 1976 CPK Statute, E3/130, undated, pp. 1-26, ERN (En) 00184022-00184047.

<sup>950</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 1-29, ERN (En) 00940563-00940591; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 11; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 81-82. See also, Unattributed Article: *Brief History of Khmer Communist Party*, E3/2, undated, ERN (En) 00444352 (indicating that the 1960 statute “established an eight-man party central committee”); T. 10 January 2012

5.1.1. *Party Congress*

344. As a preliminary matter, the Chamber notes that it has before it the 1971 and 1976 CPK Statutes. The 1976 Statute on the Case File is a complete, typed version of the CPK founding document and was authenticated by several witnesses, including Duch and NUON Chea.<sup>951</sup> The 1971 Statute on the Case File appears in a handwritten set of notes with the indication that it is a “draft” and that the statute was copied in July 1972.<sup>952</sup> Although the 1976 Statute retained much of the language of the 1971 Statute, the author of the 1972 notes containing the 1971 draft statute, is unknown.<sup>953</sup> The Chamber therefore approaches the 1971 Statute with caution, but will rely on the content of these notes insofar as they are corroborated.

345. The 1971 and 1976 Statutes set out the lines along which the Party was officially organised. The “highest power rights throughout the country” were vested in the General Conference, or Party Congress.<sup>954</sup> However, the Party Congress only met once every four years and during the time between Party Congresses, the highest operational unit throughout the country was the Central Committee.<sup>955</sup> The role of the Congress was to “designate the political line and Statute” of the Party and select and appoint the members of the Central Committee.<sup>956</sup> In addition to the First, Second, Third and Fourth Party Congresses mentioned above, a Fifth Party Congress was convened in late 1978.<sup>957</sup> The 1976 and 1978 Congresses were attended by hundreds of people, including

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(Accused NUON Chea), E1/24.1, pp. 23-25 (acknowledging the existence of CPK central and standing committees from 1960 onwards).

<sup>951</sup> 1976 CPK Statute, E3/130, undated; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 23-24 (clarifying that E3/130 accorded with his recollection of the CPK Statute, bearing 30 articles and 8 Chapters). *See also*, T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 32-36 (commenting on the concept of “democratic centralism” contained in Article 6 of the 1976 CPK Statute); T. 28 May 2012 (NY Kan), E1/76.1, pp. 83-84 (confirming E3/130 to be the CPK Statute); T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 73 (identifying E3/130 as the 1976 Statute).

<sup>952</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 1, 29, ERN (En) 00940563, 00940591. *See also*, T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 70 (recalling that he studied the second version of the CPK statute in 1972).

<sup>953</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 70-72.

<sup>954</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 15, ERN (En) 00940577 (Article 13); 1976 CPK Statute, E3/130, undated, p. 17, ERN (En) 00184038 (Article 7); T. 6 May 2013 (Philip SHORT), E1/189.1, p. 60 (clarifying that “General Conference” and “Party Congress” are synonymous).

<sup>955</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 15, 21-22, ERN (En) 00940583-00940584 (Articles 13, 28); 1976 CPK Statute, E3/130, undated, p. 17, 23, ERN (En) 00184038, 00184044 (Articles 7, 21).

<sup>956</sup> 1976 CPK Statute, E3/130, undated, p. 23, ERN (En) 00184044 (Article 21).

<sup>957</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 17 (stating that the Fifth Party Congress took place in September 1978); Case 001 Transcript (KAING Guek Eav), E3/55, 21 May 2009, p. 13, ERN (En) 00330346 (describing one of the “principal activities” of the Fifth Congress was to appoint formal new zone secretariats to replace the numerous zone secretaries who had been purged in the series of purges that had been carried out over the previous two years); KAING Guek Eav Interview Record, E3/10608,

representatives from all sectors and military divisions, as well as the CPK Central Committee members.<sup>958</sup>

### 5.1.2. *Standing Committee and Central Committee*

346. As noted below, the Standing Committee was the highest decision-making body of the CPK which met frequently to decide upon all manner of practical and policy issues impacting upon Democratic Kampuchea, including civilian and military affairs.<sup>959</sup> The members of the Standing Committee were drawn from a larger body called the Central Committee which met less frequently.<sup>960</sup>

#### 5.1.2.1. *Preliminary issues regarding Standing Committee minutes*

347. The Chamber has before it a large number of records of Standing Committee meetings, consisting of 38 sets of Standing Committee minutes (including extracts), 26 of which were available prior to the start of Case 002/02 trial proceedings.<sup>961</sup> The Chamber previously held that 26 sets of Standing Committee minutes were entitled to a *prima facie* presumption of reliability (including authenticity) due to the way in which DC-Cam evaluated and maintained the documents and/or because they were cited by the Co-Investigating Judges in the Closing Order.<sup>962</sup> But the Chamber must now satisfy

2 February 2016, p. 6, ERN (En) 01213423 (describing the Fifth Party Congress as taking place on 2 November 1978); T. 6 May 2013 (Philip SHORT), E1/189.1, p. 60; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170749 (mentioning that the Fifth Congress took place around August 1978).

<sup>958</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 20-24; T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 56, 68-69.

<sup>959</sup> See below, para. 357.

<sup>960</sup> See below, para. 355.

<sup>961</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975; Standing Committee Minutes regarding Sihanouk's resignation, E3/197, 11 March 1976; Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975; Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976; Standing Committee Minutes, E3/218, 26 March 1976; Standing Committee Minutes, E3/219, 3 May 1976; Standing Committee Minutes, E3/220, 7 May 1976; Standing Committee Minutes, E3/221, 14 May 1976; Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/223, 17 May 1976; Standing Committee Minutes, E3/224, 30 May 1976; Standing Committee Minutes, E3/225, 1 June 1976; Standing Committee Minutes, E3/226, 10 June 1976; Standing Committee Minutes, E3/227, 2 November 1975; Standing Committee Minutes, E3/228, 9 January 1976; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976; Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976; Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976; Standing Committee Minutes regarding base work, E3/232, 8 March 1976; Standing Committee Minutes, E3/233, 13 March 1976; Standing Committee summary of decisions, E3/235, 19-21 April 1976 (overlapping with E3/10694); Standing Committee Minutes, E3/237, 10 March 1976; Standing Committee Minutes, E3/238, 28 February 1976.

<sup>962</sup> Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two

itself that these documents are sufficiently reliable (including authentic) to be the basis of judicial fact finding.

348. The Chamber recalls that when discussing the admissibility of documents provided to the court by DC-Cam in a digitised format, it ruled that “the Chamber is satisfied that the processes employed by DC-Cam [for collecting and storing the documents] provides no reasonable apprehension that documents originating from this source could have been subject to tampering, distortion or falsification”.<sup>963</sup> The Chamber notes that the DC-Cam archive contains a number of original, contemporaneous versions of Standing Committee minutes. Where there was any concern as to the accuracy of the copy contained on the Case File or as to the provenance or reliability of particular documents, the originals were available for examination at DC-Cam.<sup>964</sup> Having received no additional evidence or new arguments on this point, the Chamber finds that its previous analysis remains valid and adopts here the same reasoning concerning the documents’ reliability.

349. Fourteen sets of the minutes available prior to the start of Case 002/02<sup>965</sup> were obtained by Professor Ben KIERNAN from David CHANDLER and KHIEU

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Trial Segments in Case 002/01, E185, 9 April 2012, para. 28; Annex A – Documents Referred to in the Paragraphs of the Closing Order relevant to the Historical Background as well as the Administrative and Communication Structures, E185.1, 9 April 2012, pp. 1-8, ERN (En) 00798920-00798927; Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 3 December 2012, para. 9(a); Annex C – Documents Proposed by the Co-Prosecutors to Decision on Objections to Documents Proposed to be put Before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1.3, 3 December 2012, p. 29, ERN (En) 00884475 (document E3/2144 entitled “Table of Authorities 36”).

<sup>963</sup> Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments in Case 002/01, E185, 9 April 2012, para. 28 and fn. 70 (referencing T. 2 February 2012 (CHHANG Youk), E1/38.1, pp. 19, 21, 36; T. 6 February 2012 (CHHANG Youk), E1/39.1, pp. 107-108 (dismissing the possibility that documents in the DC-Cam archive could have been forged by others, noting that it would be a practical impossibility for someone to create over one million false documents, and excluding the possibility that Vietnamese experts could fabricate DK-era documentation, due to their volume and specialised character, including the fact that many documents were in the Khmer language).

<sup>964</sup> Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments in Case 002/01, E185, 9 April 2012, para. 28; T. 1 February 2012 (CHHANG Youk), E1/37.1, pp. 108-109 (stating that DC-Cam responds to all Defence team requests to produce documents), pp. 118-120 (identifying various documents that were examined by Defence teams at DC-Cam), pp. 122-123 (stating that no party had requested to view original documents).

<sup>965</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975; Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11 March 1976; Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976; Standing Committee Minutes, E3/219, 3 May 1976; Standing Committee Minutes, E3/220, 7 May 1976; Standing Committee Minutes, E3/221, 14 May 1976; Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/223, 17 May 1976; Standing Committee Minutes, E3/224, 30 May 1976; Standing Committee

Kanharith, the present Minister of Information of the Kingdom of Cambodia.<sup>966</sup> Minister KHIEU Kanharith indicates that he found them at the old Council of Ministers building and the homes of former Khmer Rouge government officials along Kampuchea Krom Boulevard.<sup>967</sup> Both defence teams cite to these documents in support of their submissions throughout their respective briefs and in certain key document presentation hearings.<sup>968</sup> They did not take issue with the authenticity or chain of custody of these documents in their Closing Briefs. The Chamber therefore considers these documents to be authentic and, as contemporaneous documents, to be of high probative value.

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Minutes, E3/227, 2 November 1975; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976; Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976; Standing Committee Minutes, E3/233, 13 March 1976; Standing Committee Minutes, E3/238, 28 February 1976.

<sup>966</sup> IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated, ERN (En) 00003239 (entry dated January 1997) (Professor Ben KIERNAN notes that these 14 sets of minutes appear to be the personal copies of IENG Sary); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 324, fn. 60, ERN (En) 01150169 (noting the following dates of Standing Committee Minutes: 9 October 1975, 2 November 1975, 9 January 1976, 22 February 1976 (two), 28 February 1976, 11 March 1976 (two), 13 March 1976, 3, 7, 14, 15, 17 and 30 May 1976); Letter from Ben Kiernan to Office of Co-Investigating Judges, D269/4, 18 March 2010, p. 3, ERN (En) 00486947; Letter from Minister of Information KHIEU Kanharith to Co-Investigating Judges, D269/6/1, 30 March 2010, ERN (En) 00495298; Letter from Office of Co-Investigating Judges to Ben KIERNAN, D269, 11 December 2009, p. 4, ERN (En) 00416753; Letter from Co-Investigating Judges to David CHANDLER, D270, 14 December 2009, pp. 2-3, ERN (En) 00416770-00416771; Letter from David CHANDLER to Co-Investigating Judges, D270/1, 10 January 2010, ERN (En) 00427602 (stating that he was loaned 11 Standing Committee minutes by KHIEU Kanharith and shared copies of them with other academics); T. 25 July 2012 (David CHANDLER), E1/96.1, pp. 27-28 (stating that KHIEU Kanharith loaned him some Standing Committee minutes in their original form and that CHANDLER had photocopied them for distribution). It is not clear how many original Standing Committee minutes were given to DC-Cam by KHIEU Kanharith. *See* T. 6 February 2012 (CHHANG Youk), E1/39.1, pp. 69-70 (stating that KHIEU Kanharith told him that original notes of Standing Committee meetings were given to Ben KIERNAN, but that CHHANG Youk does not know whether KHIEU Kanharith still has some original DK-era documents in his possession).

<sup>967</sup> Letter from Minister of Information KHIEU Kanharith to Co-Investigating Judges, D269/6/1, 30 March 2010, ERN (En) 00495298; Letter from Minister of Information KHIEU Kanharith to Co-Investigating Judges, D269/6/3, 26 April 2010, ERN (En) 00516436. In addition to Standing Committee minutes, the collection also included the Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976.

<sup>968</sup> The NUON Chea Defence cites to Standing Committee minutes at least 67 times in their Closing Brief. The KHIEU Samphan Defence cites to Standing Committee minutes at least 17 times in their Closing Brief; The NUON Chea Defence presented documents at the hearing on Tram Kok referring to the Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975. *See* T. 28 April 2015 (NUON Chea Defence), E1/294.1, p. 37. The KHIEU Samphan Defence referred to numerous Standing Committee minutes in their various key document presentations. *See* T. 4 January 2017, E1/515.1, pp. 51-52, 57-58; T. 3 November 2016 (KHIEU Samphan Defence), E1/495.1, pp. 66, 69, 71; T. 24 February 2016 (KHIEU Samphan Defence), E1/391.1, p. 60.

350. Another nine sets of Standing Committee minutes which were available prior to Case 002/02 appear to have been placed on the Case File from other sources.<sup>969</sup> When comparing the minutes sourced from Professor Ben KIERNAN and those originating from other sources, the Chamber notes that there are commonalities in the usage of terms (such as the use of revolutionary names) language, and format. For example, these meeting minutes record the attendance of Party Members by their aliases, including: Comrade Secretary (POL Pot), Comrade Deputy Secretary (NUON Chea), Khieu (*alias* SON Sen), Hem (*alias* KHIEU Samphan), Vorn (*alias* VORN Vet), and Van (IENG Sary).<sup>970</sup> These are the same aliases used in telegrams put before the Chamber.<sup>971</sup> Duch also confirmed that these were the aliases of the members of the Central and/or Standing Committees.<sup>972</sup> Standing Committee minutes on the issue of propaganda discuss building the country “in great leaps”.<sup>973</sup> This terminology is repeated in numerous *Revolutionary Flags* and propaganda spread by DK radio broadcasts as recorded in FBIS compilations.<sup>974</sup> Furthermore, the minutes are typed in

<sup>969</sup> Record of Standing Committee’s visit to Northwest Zone, E3/216, 20-24 August 1975, pp. 1-6, ERN (En) 00850973-00850978; Standing Committee Minutes, E3/228, 9 January 1976, pp. 1-6, ERN (En) 00182614-00182619; Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 1-7, ERN (En) 00182628-00182634; Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, pp. 1-3, ERN (En) 00183360-00183362; Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543729-00543731; Standing Committee summary of decisions, E3/235, 19-21 April 1976, pp. 1-7, ERN (En) 00183416-00183422 (overlapping with E3/10694); Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-7, ERN (En) 00182651-00182657; Standing Committee Minutes, E3/225, 1 June 1976, pp. 1-10, ERN (En) 00182715-00182724; Standing Committee Minutes, E3/226, 10 June 1976, pp. 1-11, ERN (En) 00183363-00183373. The Chamber previously found that these minutes were *prima facie* reliable (including authentic). See Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments in Case 002/01, E185, 9 April 2012, para. 28 and fn. 70.

<sup>970</sup> Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11 March 1976, pp. 1-5, ERN (En) 00182638-00182642; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394.

<sup>971</sup> See e.g., DK Telegram, E3/989, p. 2, ERN (En) 00337916 (Van, Vorn); DK Telegram, E3/915, ERN (En) 00184995 (Nuon, Van, Von, Khieu).

<sup>972</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 52 (Brother Hem was KHIEU Samphan); T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 12-13 (Standing Committee comprised Brother Pol, Brother Nuon, Brother Van, Brother Vorn, Brother Khieu, in addition to Brother Ung Choeun *alias* Mok, and SAO Phim).

<sup>973</sup> Standing Committee Minutes, E3/225, 1 June 1976, p. 10, ERN (En) 00182724. See also, Standing Committee Minutes, E3/224, 30 May 1976, p. 1, ERN (En) 00182667 (“with the speed of great leap forward”).

<sup>974</sup> Revolutionary Flag, E3/4, July 1976, p. 10, ERN (En) 00268922; Revolutionary Flag, E3/762, August 1976, p. 3, ERN (En) 00386744; *Provincial Reaction to 17 Apr Anniversary* (in FBIS collection), E3/275, 27 April 1976, ERN (En) 00167668; *Leaders Attend Meeting Celebrating Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168464. The Chamber further notes that the NUON Chea Defence and KHIEU Samphan Defence have cited many excerpts of these nine sets of minutes in their respective Closing Briefs or during trial proceedings in support of submissions. See e.g., T. 28 April 2015 (NUON Chea Defence), E1/294.1, p. 34, 37; T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 29, 93; T. 10 January 2017 (VOEUN Vuthy), E1/518.1, pp. 44-45; T. 8 July 2013 (NUON

the same manner as the minutes confirmed to have been sourced from Professor Ben KIERNAN. Therefore, based upon a holistic assessment of all available evidence pertaining to the source of these documents and their contents, the Chamber considers all 23 sets of Standing Committee minutes to be authentic, and given that they are contemporaneous documents, of significant probative value.

351. In addition to the 23 sets noted above, a number of excerpts of Standing Committee minutes were obtained separately by Helen JARVIS and John QUIGLEY, and had been presented as evidence at the 1979 People's Revolutionary Tribunal ("PRT").<sup>975</sup> The PRT Trial was conducted in Khmer, English and French and most of the excerpts obtained by Mr. QUIGLEY and Ms. JARVIS were obtained in all three languages.<sup>976</sup> These were not provided to the Chamber by Ms. JARVIS or Mr. QUIGLEY, but were available by virtue of their inclusion in the published records of the 1979 Trial.<sup>977</sup> Some of these minutes are corroborated by other sources of evidence. For example, the excerpt of the Standing Committee minutes from 11 April 1977 from the PRT are corroborated, at least in part, by the Standing Committee minutes of 10, 11 and 13 April 1977, obtained by Christopher GOSCHA as discussed below.<sup>978</sup> However, the context of these documents may be affected by the absence of a complete copy of the original minutes whose precise location is uncertain. The Chamber has been

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Chea Defence), E1/219.1, pp. 33, 106-107; T. 9 May 2013 (Philip SHORT), E1/192.1, p. 136; T. 16 August 2016 (KHIEU Samphan Defence), E1/458.1, p. 10; T. 7 November 2016 (KHIEU Samphan Defence), E1/496.1, p. 48; T. 6 June 2016 (SUOS Thy), E1/432.1, p. 13; T. 22 November 2016 (SUOS Thy), E1/501.1, p. 13; NUON Chea Defence Closing Brief, fns 386, 422, 450, 463 and 465 refer to Standing Committee Minutes, E3/228, 9 January 1976; fns 3420, 3422, 3438, 3509 refer to Standing Committee Minutes, E3/237, 10 March 1976; fns 451, 469, 3422, 3433, 3525, 3529 refer to Standing Committee summary of decisions, E3/235, 19-21 April 1976; fn. 442 refers to Standing Committee Minutes, E3/218, 26 March 1976; KHIEU Samphan Closing Brief, fns 1168, 1184, 1187, 1484, 1528 refer to Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975; fn. 1191 refers to Standing Committee Minutes regarding base work, E3/232, 8 March 1976; fn. 1155 refers to Standing Committee summary of decisions, E3/235, 19-21 April 1976 (overlapping with E3/10694). The inference therefore arises that the Parties also consider these minutes to have some probative value.

<sup>975</sup> Book by H. De Nike, J. Quigley, and K. Robinson: *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, E3/2144, p. ix, ERN (En) 00190146.

<sup>976</sup> Book by H. De Nike, J. Quigley, and K. Robinson: *Genocide in Cambodia: Documents from the Trial of Pol Pot and Ieng Sary*, E3/2144, pp. x, ERN (En) 00190146, xvi, ERN (En) 00190152, 392, ERN (En) 00190541 (Decision of the Standing Committee (Concluding Statement by POL Pot, August 2, 1978), Document 2.5.17 from PRT Trial), 397, ERN (En) 00190546 (Excerpts from Minutes of the April 11, 1977; Meeting of the Standing Committee of the Party Central Committee, Document 2.5.23 from PRT Trial), 412, ERN (En) 00190561 (Excerpt from the Proceedings of the Conference of Office 870 on August 5, 1978, Document 2.5.30 from PRT Trial).

<sup>977</sup> Book by H. De Nike, J. Quigley, and K. Robinson: *Genocide in Cambodia Documents from the Trial of Pol Pot and Ieng Sary*, E3/2144.

<sup>978</sup> See below, para. 352.



informed, however, that the full record of the PRT Trial is likely maintained in a Vietnamese government archive. Despite multiple attempts through diplomatic channels to have access to the original documents, the Chamber regrettably did not receive any response from the Vietnamese authorities in this regard. The Chamber therefore considers that in the absence of the original, full versions, of these Standing Committee minutes, it must approach these copies with caution and will only consider them as corroboration of minutes obtained from other sources.<sup>979</sup>

352. During the proceedings in Case 002/02, the Chamber obtained and admitted 13 new documents consisting of additional minutes of Standing Committee meetings (in some cases alternatively sourced copies of minutes already on the Case File) as well as minutes from other high-level meetings such as from Office 870 or military committees.<sup>980</sup> These 13 documents were Professor Christopher GOSCHA's handwritten transcriptions of entire Vietnamese-language documents held at the

<sup>979</sup> The Chamber recalls that in Case 002/01, it admitted the entire compilation of documents from the PRT Trial as the documents were established to have been presented during the 1979 Trial. *See* Annex C to Decision on Objections to Documents Proposed to be Put before the Chamber in Co-Prosecutors' Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1.3, 3 December 2012, p. 29, ERN (En) 00884475. The Chamber notes however that it has previously expressed reservations as to the reliability of the witness testimony given at the 1979 Trial, as some of the witnesses who testified appeared to be biased and were not cross-examined by defence counsel. *See* Decision on IENG Sary's Rule 89 Preliminary Objections (*Ne bis in idem* and Amnesty and Pardon), E51/15, 3 November 2011, paras 7, 23. *See also*, Pre-Trial Chamber Decision on IENG Sary Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 167-174. For these reasons, the Chamber does not consider the testimonies given in the 1979 Trial, which are also contained in this compilation, to have probative value. While acknowledging the flawed nature of the PRT testimonies, the Chamber notes that a number of contemporaneous documents were also presented during the Trial, including excerpts of communications between Khmer Rouge leaders and excerpts of three Standing Committee minutes. *See* Book by H. De Nike, J. Quigley, and K. Robinson: *Genocide in Cambodia Documents from the Trial of Pol Pot and Ieng Sary*, E3/2144, pp. 392, ERN (En) 00190541 (Decision of the Standing Committee (Concluding Statement by POL Pot, August 2, 1978), Document 2.5.17 from PRT Trial), 397, ERN (En) 00190546 (Excerpts from Minutes of the April 11, 1977; Meeting of the Standing Committee of the Party Central Committee, Document 2.5.23 from PRT Trial), 412, ERN (En) 00190561 (Excerpt from the Proceedings of the Conference of Office 870 on August 5, 1978, Document 2.5.30 from PRT Trial [E3/7328]). Unlike the testimonies from that Trial, the Chamber considers these contemporaneous documents to have probative value.

<sup>980</sup> Standing Committee Minutes (copied by C.E. Goscha), E3/10690, 4 February 1976, ERN (En) 01313109-01313110; Standing Committee Minutes (copied by C.E. Goscha), E3/10692, 19-21 July 1976, ERN (En) 01313113; Standing Committee Minutes and Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments (copied by C.E. Goscha), E3/10693, 10, 11, 13 April 1977, pp. 1-8, ERN (En) 01324075-01324082; Standing Committee Minutes (copied by C.E. Goscha), E3/10685, 3 and 9 January 1978, pp. 1-8, ERN (En) 01320887-01320894; Standing Committee Minutes (copied by C.E. Goscha), E3/10696, 22 January 1978, pp. 1-21, ERN (En) 01320895-01320915; Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 26 January 1978 and 2 February 1978, pp. 1-18, ERN (En) 01324057-01324074; Standing Committee Minutes (copied by C.E. Goscha), E3/10691, 30 March 1976, pp. 1-2, ERN (En) 01313105-01313106; Standing Committee Minutes (copied by C.E. Goscha), E3/10694, 15 and 20-21 April 1976, pp. 1-3, ERN (En) 01323932-01323934.

People’s Army Library in Hanoi and were subsequently translated into the three official languages of the Court.<sup>981</sup> The documents contained Standing Committee minutes, including a more complete version of the 11 April 1977 minutes, that were used in the PRT Trial.<sup>982</sup> Although the precise language is not coterminous, a comparison between the two documents shows that the same subject matter was under discussion, the meeting was attended by many of the same members of the Standing Committee and crucially, that a decision of substance regarding “internal enemies” was made.<sup>983</sup> The Chamber further notes that the contents of some of the GOSCHA-sourced minutes were corroborated by an issue of the *Revolutionary Flag*. One document sourced from GOSCHA notes that the meeting was “led by the Second Brother” and that “29,000 Vietnamese soldiers were killed and wounded”.<sup>984</sup> A *Revolutionary Flag* magazine from around the same time summarises the military failure of the *Yuon* and uses the same figure of “29,000 enemy were killed or wounded”.<sup>985</sup> This numerical consistency serves to buttress a finding of authenticity for the January 1978 GOSCHA document.

353. The Chamber is cognisant of the difficulties associated with accurately translating between multiple languages, particularly here where the documents are Vietnamese translations of documents originally drafted in Khmer which have now been translated

<sup>981</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 17, 25-26.

<sup>982</sup> Annex 1: Copies of Vietnamese Documents Obtained by Professor Goscha, E327/4/5.1, 24 August 2016 (“List of Documents”). Document 11 of E327/4/5.1 contains meeting minutes dated 11 April 1977. See Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11, 13 April 1977, pp. 5-6, ERN (En) 01324079-01324080 (overlapping with E3/7328). In addition, they record minutes from meetings held in 1977 and 1978, whereas the minutes previously on the Case File were from 1975 and 1976 only, underlining the significance of the documents.

<sup>983</sup> Standing Committee Minutes (Copied by C.E. Goscha), E3/10693, 10, 11, 13 April 1977, p. 6, ERN (En) 01324080 (overlapping with E3/7328) (“Pol [*alias* POL Pot], Noul [*alias* NUON Chea], Vahn [*alias* IENG Sary], Von [*alias* VORN Vet] and Khieu [*alias* SON Sen]” resolved that “[c]ontinuation of the fight against reactionaries and hunt for reactionaries inside our department and bases in order to promote and foster the mission in 1977”); Standing Committee excerpts (Document 21.5.23 from PRT Trial), E3/7328 [E3/2144], 11 April 1977, ERN (En) 01002086 (overlapping with E3/10693) (at a meeting attended by “Pol [*alias* POL Pot], Noul [*alias* NUON Chea], Phim [*alias* SAO Phim], Mok [*alias* Ta Mok], Won [*alias* VORN Vet], Van [*alias* IENG Sary], Nhim [*alias* RUOS Nhim], Ke [*alias* KE Pauk], [and] Khieu [*alias* SON Sen]”, resolved that “[e]very unit, service, and ministry should take the initiative, within its organization, to continue to purge and sweep away adversaries, and at the same time carry out normal activity.”). See also, T. 29 June 2016 (MEAS Soeur), E1/446.1, p. 46 (NUON Chea Defence counsel stating, based upon the attendance record of E3/7328 which is an excerpt of Standing Committee minutes from the PRT documents, that SAO Phim was a member of the Standing Committee as of 11 April 1977); NUON Chea Closing Brief, fns 284, 594 (citing to E3/7328 as well as E3/10693, which is a copy of a Standing Committee minutes made by C.E. GOSCHA, for the proposition that RUOS Nhim was a member of the Standing Committee).

<sup>984</sup> Standing Committee Minutes (copied by C.E. Goscha), E3/10685, 3 and 9 January 1978, p. 3, ERN (En) 01320889.

<sup>985</sup> Revolutionary Flag, E3/744, March 1978, p. 13, ERN (En) 00464062.

into the language of the Court.<sup>986</sup> It also notes that these documents were copied verbatim by Professor Christopher GOSCHA rather than photocopied, which may have led to some transposition errors.<sup>987</sup> The Chamber recalls that:

Professor Goscha informed the Chamber that he visited the Vietnamese People's Army Library and copied verbatim documents in Vietnamese. Philip Short whom the Chamber has qualified as an Expert, notes that "Professor Goscha, who is the authority on such matters tells me [...] and I'm sure he's right: the only place you will find those minutes is the Military Library in Hanoi if they wish to cooperate. To my knowledge, he's the only non-Vietnamese to have been permitted to work there [...]." These factors support the contention that the documents found and copied by Professor Goscha were methodical translations, conserved in a repository which was likely to maintain the integrity of the documents since the DK period. These documents were evidently catalogued by number and several bear the names of translators and dates of translation, suggesting a formalised processing of the documents.<sup>988</sup>

354. The Chamber recalls, however, that the chain of custody prior to the arrival of these documents at the People's Army Library cannot be traced and that the original Khmer documents have not been obtained.<sup>989</sup> Furthermore, it recalls that the Vietnamese translations and the completeness of the transcript have not been verified, potentially impacting on the reliability of the documents.<sup>990</sup> Again, the Chamber regrets the lack of cooperation of the Vietnamese authorities which prevented the Chamber from performing a more complete inquiry into records of the DK era in general, and Standing Committee meetings in particular. Therefore, the Chamber will only consider the GOSCHA-sourced Standing Committee minutes for corroboration.

#### 5.1.2.2. Findings

355. In principle, the Central Committee was responsible for implementing the Party line and Statute throughout the CPK; for instructing zone-level, sector-level and other Party organisations "to carry out activities according to the political line and [the

<sup>986</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 26.

<sup>987</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 26.

<sup>988</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 25 (original emphasis).

<sup>989</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 26.

<sup>990</sup> Decision on Requests regarding Copies of Vietnamese Documents Originating from Professor Christopher Goscha, E327/4/7, 25 November 2016, para. 26.

Party's] ideological and organizational principles"; for governing and arranging cadres and Party members; and for communicating with fraternal "Marxist-Leninist" parties.<sup>991</sup> The Central Committee met at least every six months, as required by the CPK Statute.<sup>992</sup> The identity and number of members changed repeatedly between 1960 and 1979, but at its peak in the 1970s the Central Committee comprised between 20 and 30 people.<sup>993</sup> Members included TOU Samouth, who served as CPK Secretary from 1960 until his disappearance in 1962;<sup>994</sup> POL Pot, who joined the Central Committee upon its formation in 1960 and took over the post of CPK Secretary in 1963;<sup>995</sup> and NUON Chea, who was elected to the Central Committee as CPK Deputy Secretary in 1960.<sup>996</sup> Further members included: MOUL Sambath *alias* RUOS Nhim, Northwest Zone Secretary; KOY Thuon, the initial Central (old North) Zone Secretary; CHOU Chet *alias* Sy, Secretary of the West Zone; KANG Chap *alias* Sae, Secretary of the new North Zone; HU Nim *alias* Phoas, Secretary of the Ministry of Propaganda; NEY Sarann *alias* Ya, Northeast Zone Secretary; SUA Vasi *alias* Doeun, Chairman of Office 870 and later Minister of Commerce; CHHIM Sam Aok *alias* Pang, Chief of Office S-71; VORN Vet and KEO Meas.<sup>997</sup> KHIEU Samphan joined the Central Committee as a candidate member in 1971 and became a full-rights member in 1976.<sup>998</sup> According to

<sup>991</sup> 1976 CPK Statute, E3/130, undated, p. 24, ERN (En) 00184045 (Article 23).

<sup>992</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750; 1976 CPK Statute, E3/130, undated, p. 24, ERN (En) 00184045 (Article 25).

<sup>993</sup> T. 26 April 2012 (SALOTH Ban), E1/69.1, p. 2; T. 24 July 2012 (David CHANDLER), E1/95.1, p. 138; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170750.

<sup>994</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 74; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 62.

<sup>995</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 22; T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 75.

<sup>996</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 73-74; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 77-78. *See also*, Section 7: Roles and Functions – NUON Chea, para. 530.

<sup>997</sup> Section 12.2.8.1.1: KEO Meas *alias* KAEV Meah; Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya; Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon; Section 12.2.8.2.2: S-21 Security Centre: SUA Vasi *alias* Doeun; Section 12.2.8.3.1: S-21 Security Centre: HU Nim *alias* Phoas; Section 12.2.8.4.1: S-21 Security Centre: RUOS Nhim; Section 12.2.8.4.2: S-21 Security Centre: CHOU Chet *alias* Sy; Section 12.2.8.4.3: S-21 Security Centre: CHHIM Sam Aok *alias* Pang; Section 12.2.8.5.1: S-21 Security Centre: CHANN Sam *alias* KANG Chap *alias* Se (or Sae); Section 12.2.8.5.2: VORN Vet; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 15; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 22; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751. The members of the Standing Committee were selected from the membership of the Central Committee. *See* 1971 CPK Statute, E3/8380, 3 July 1972, p. 23, ERN (En) 00940585 (Article 32); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 22. Therefore, all Standing Committee Member were also members of the Central Committee.

<sup>998</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 92; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 15 July 2013 (Stephen HEDER),

the CPK Statute, candidate members could “participate in Central Committee meetings, but [had] no decision rights”.<sup>999</sup>

356. Duch identified “assistants” as members of the Central Committee, a fourth category of individuals who attended Central Committee meetings, and estimated that including this group, the Central Committee constituted nearly 100 persons at its peak.<sup>1000</sup> There is no other evidence of a separate body of assistants to the Central Committee and the CPK Statute does not create such a body. The Chamber considers that there is insufficient evidence to determine the number of assistants to the Central Committee or their particular roles. The Chamber nonetheless finds based on all of the evidence before it that the number of Central Committee members and reserve members was between 20 and 30 during the DK regime.

357. Although the CPK Statute vested the highest level of operational authority in the Central Committee, effective control over the CPK was ultimately exercised by the Permanent Committee of the Central Committee (also known as the Standing Committee).<sup>1001</sup> The Standing Committee came into existence at the same time as the Central Committee in 1960.<sup>1002</sup> According to notes reflecting the content of the 1971 Statute, it provided that the Central Committee would appoint the members of the Standing Committee as well as a Secretary and Deputy Secretary.<sup>1003</sup> It met approximately every seven to 10 days, or more frequently if the circumstances so required, and was responsible for leading the daily work of the Party.<sup>1004</sup> It comprised

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E1/223.1, p. 43; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 73; T. 26 April 2012 (SALOTH Ban), E1/69.1, p. 3. *See also*, Section 8: Roles and Functions – KHIEU Samphan, para. 574.

<sup>999</sup> 1976 CPK Statute, E3/130, undated, p. 24, ERN (En) 00184045 (Article 24).

<sup>1000</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 72-73. Duch identified the Standing Committee as a separate entity, therefore concluding that there was a total of four bodies at the top of the CPK hierarchy. *See* KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 6, ERN (En) 00154911; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 22.

<sup>1001</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 23, ERN (En) 00940585 (Article 32); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750; T. 24 July 2012 (David CHANDLER), E1/95.1, pp. 127-128; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 61; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 22.

<sup>1002</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 82; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 74-75; T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 23-25; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 63.

<sup>1003</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 23, ERN (En) 00940585 (Article 32).

<sup>1004</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 23, ERN (En) 00940585 (Article 32); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750. *See also*, Standing Committee Minutes, E3/221, 14 May 1976; Standing Committee Minutes, E3/222, 15 May 1976; Standing Committee Minutes, E3/223, 17 May 1976 (indicating that meetings were sometimes held in close succession).

seven members, all of whom were drawn from the Central Committee, although some members were not located in Phnom Penh, including SAO Phim (East Zone) and *Ta Mok* (Southwest Zone).<sup>1005</sup> As with the Central Committee, membership of the Standing Committee was reshuffled from time to time.<sup>1006</sup> POL Pot, IENG Sary, SAO Phim and NUON Chea were members of the Standing Committee from its inception.<sup>1007</sup> *Ta Mok* joined in 1963.<sup>1008</sup> SON Sen *alias* Khieu was a candidate or alternate (as opposed to full-rights) member of the Standing Committee,<sup>1009</sup> and SOK Thuok *alias* VORN Vet was either a full-rights or a candidate member.<sup>1010</sup> SUA Vasi *alias* Doeun and KHIEU Samphan were never formally members of the Standing Committee, but they both attended a number of its meetings.<sup>1011</sup> Standing Committee meetings could

<sup>1005</sup> T. 24 July 2012 (David CHANDLER), E1/95.1, pp. 139-140; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 73; T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 49-50; KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 5, ERN (En) 00154910; KAING Guek Eav Interview Record, E3/10607, 1 February 2016, p. 9, ERN (En) 01213415; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 14-15; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 85; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170749.

<sup>1006</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 39.

<sup>1007</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 74-75; T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 22, 24; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 18 July 2012 (David CHANDLER), E1/91.1, p. 38; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 72-73.

<sup>1008</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 24.

<sup>1009</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 68; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 72-73; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170749.

<sup>1010</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 72; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170749. See also, Book by D. Chandler: *Voices From S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 21, ERN (En) 00192700 (giving VORN Vet's real name as SOK Thuok).

<sup>1011</sup> There were 38 Standing Committee meetings for which records were put before the Chamber. See above, para. 347. For 22 of the meetings, attendees were listed. Sixteen of these recorded KHIEU Samphan *alias* Hem as being present, and 12 recorded SUA Vasi *alias* Doeun as being present. See Standing Committee Minutes regarding Sihanouk's resignation, E3/197, 11 March 1976, p. 1, ERN (En) 00182638 (listing Hem and Doeun as in attendance); Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, p. 1, ERN (En) 00182635 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/218, 26 March 1976, p. 1, ERN (En) 00182651 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/219, 3 May 1976, p. 1, ERN (En) 00182663 (listing Hem as in attendance); Standing Committee Minutes, E3/220, 7 May 1976, p. 1, ERN (En) 00182706 (listing Doeun as in attendance); Standing Committee Minutes, E3/221, 14 May 1976, p. 1, ERN (En) 00182693 (listing Hem as in attendance); Standing Committee Minutes, E3/222, 15 May 1976, p. 1, ERN (En) 00182665 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/223, 17 May 1976, p. 1, ERN (En) 00182708 (listing Hem as in attendance); Standing Committee Minutes, E3/224, 30 May 1976, p. 1, ERN (En) 00182667 (listing Hem as in attendance); Standing Committee Minutes, E3/225, 1 June 1976, p. 1, ERN (En) 00182715; Standing Committee Minutes, E3/226, 10 June 1976, p. 1, ERN (En) 00183363 (listing Hem as in attendance); Standing Committee Minutes, E3/227, 2 November 1975, p. 1, ERN (En) 00183409 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/228, 9 January 1976, p. 1, ERN (En) 00182614 (listing Doeun as in attendance); Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 1, ERN

be (and often were) convened in the absence of one or more Committee members.<sup>1012</sup>

358. Numerous Central and Standing Committee members were purged from the Party after being identified as enemies in S-21 confessions. For example, KOY Thuon was transferred to Phnom Penh and placed under house arrest for eight months, before being sent to S-21 in January 1977.<sup>1013</sup> HU Nim *alias* Phoas was arrested on 10 April 1977.<sup>1014</sup> Around the same time, SUA Vasi *alias* Doeun was sent to S-21.<sup>1015</sup> CHHIM Sam Aok *alias* Pang was arrested around April 1978.<sup>1016</sup> KANG Chap *alias* Sae was arrested in October 1978.<sup>1017</sup> CHOU Chet *alias* Sy, HU Nim *alias* Phoas, NEY Sarann *alias* Ya, SUA Vasi *alias* Doeun, CHHIM Sam Aok *alias* Pang, RUOS Nhim, and KEO Meas were all taken to S-21 to be interrogated and killed.<sup>1018</sup> SAO Phim was identified for arrest and committed suicide before he could be captured in June 1978.<sup>1019</sup> Finally, VORN Vet was brought to S-21 in November 1978 where he was tortured and killed along with his family.<sup>1020</sup>

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(En) 00182625 (listing Hem and Doeun as in attendance); Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976, p. 1, ERN (En) 00182546 (listing Hem and Doeun as in attendance); Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 1, ERN (En) 00183360 (listing Hem and Doeun as in attendance); Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 1, ERN (En) 00182628 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/233, 13 March 1976, p. 1, ERN (En) 00182649 (listing Hem and Doeun as in attendance); Standing Committee Minutes, E3/238, 28 February 1976, p. 1, ERN (En) 00424112; Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, pp. 5-6, ERN (En) 01324079-01324080 (overlapping with E3/7328); Standing Committee excerpts (Document 21.5.23 from PRT Trial), E3/7328 [E3/2144], p. 397, ERN (En) 01002086 (overlapping with E3/10693). *See also*, Section 8: Roles and Functions – KHIEU Samphan, para. 564 confirming that KHIEU Samphan went by the *alias* “Hem”; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 73; T. 8 May 2013 (Philip SHORT), E1/189.1, p. 2; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170749.

<sup>1012</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751. *See above*, fn. 1011.

<sup>1013</sup> Section 12.2: S-21 Security Centre, paras 2285-2286.

<sup>1014</sup> Section 12.2: S-21 Security Centre, para. 2300.

<sup>1015</sup> Section 12.2: S-21 Security Centre, para. 2292.

<sup>1016</sup> Section 12.2: S-21 Security Centre, para. 2315.

<sup>1017</sup> Section 12.2: S-21 Security Centre, para. 2320.

<sup>1018</sup> Section 12.2.8.1.1: S-21 Security Centre: KEO Meas *alias* KAEV Meah; Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya; Section 12.2.8.2.2: S-21 Security Centre: SUA Vasi *alias* Doeun; Section 12.2.8.3.1: S-21 Security Centre: HU Nim *alias* Phoas; Section 12.2.8.4.1: S-21 Security Centre: RUOS Nhim; Section 12.2.8.4.2: S-21 Security Centre: CHOU Chet *alias* Sy; Section 12.2.8.4.3: S-21 Security Centre: CHHIM Sam Aok *alias* Pang.

<sup>1019</sup> Section 12.1.6.3.7: Internal Factions: Events at Akreiy Ksatr and SAO Phim’s Suicide.

<sup>1020</sup> Section 12.2.8.5.2: S-21 Security Centre: VORN Vet.

### 5.1.3. *Military Committee*

359. The Military Committee was an extra-statutory sub-committee of the Central Committee. However, at least according to notes reflecting the content of the 1971 Statute, the CPNLAF forces were subordinate to the Party and organisational leadership committees were to be created in accordance with Democratic Centralism.<sup>1021</sup> The Military Committee was chaired by POL Pot and was responsible for military and security affairs.<sup>1022</sup> SON Sen was also a member of the Military Committee.<sup>1023</sup> The Chamber is not satisfied on the available evidence that NUON Chea was a member of the Military Committee.<sup>1024</sup> Nonetheless, the Chamber has found that NUON Chea exerted considerable influence on DK military policy and its implementation.<sup>1025</sup>

### 5.1.4. *Party Centre*

360. Several of the witnesses and experts who testified before the Chamber used the phrase “Party Centre” to refer to the senior leadership tier of the CPK. However, as Witness Stephen HEDER pointed out, “Party Centre” was a nebulous term: sometimes it was used in a collective sense to describe an entire “level within the Party hierarchy”, and sometimes it was used to designate a specific entity or body within the upper echelon of the CPK (such as the Central Committee, the Standing Committee or one of its connected offices, or even POL Pot himself).<sup>1026</sup> The phrase “Party Centre” also

<sup>1021</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 25-26, ERN (En) 00940587-00940588 (Articles 39-40).

<sup>1022</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 34; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 8, ERN (En) 00417606; Article by T. Carney: *The Organization of Power, in Cambodia 1975-1978: Rendez-vous With Death*, E3/49, p. 88, ERN (En) 00105137. *See also*, Section 7: Roles and Functions – NUON Chea, paras 549-550 (noting that NUON Chea admitted to the existence of a military committee but consistently denied being a part of it).

<sup>1023</sup> IENG Sary Interview by ABC Television, E3/93, 28 August 1996, p. 6, ERN (En) 00078610; IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, ERN (En) 00342502; KAING Guek Eav Interview Record, E3/83, 20 October 2009, p. 6, ERN (En) 00398166; NUON Chea Initial Appearance Record, E3/54, 19 September 2007, p. 4, ERN (En) 00148817.

<sup>1024</sup> Section 7: Roles and Functions – NUON Chea, para. 551.

<sup>1025</sup> Section 7: Roles and Functions – NUON Chea, para. 559.

<sup>1026</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 15. *See e.g.*, T. 20 June 2012 (YUN Kim), E1/89.1, p. 6 (referring to the Party Centre as the “supreme leadership level of the CPK”); T. 21 August 2012 (SA Siek), E1/111.1, p. 23 (defining the Party Centre as the level above the zones and sectors). *See also*, T. 18 July 2012 (David CHANDLER), E1/91.1, p. 112 (suggesting that “Party Centre [...] referred particularly to the [...] Central Committee”); T. 7 August 2012 (SUONG Sikoeun), E1/103.1, p. 12 (describing “Office 870” as the “Party Centre Office”); NORNG Sophang Interview Record, E3/64, 18 February 2009, p. 6, ERN (En) 00334047 (equating the Party Centre with “Committee 870”); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 16, ERN (En) 00346160 (mentioning a “Party Centre Standing [committee]”); SONG Meng Interview Record, E3/5142, 12 December 2007, p. 4, ERN (En) 00223616 (suggesting that POL Pot was the Party Centre); SAR Sarin DC-Cam Interview, E3/4596, 5



appeared in a number of documents put before the Chamber, including both DK-era documents and subsequent academic commentaries, generally without definition but in a context which made clear that it was referring to the top levels of the CPK hierarchy (or some constituent element thereof).<sup>1027</sup>

361. In this Judgement, the Chamber uses the phrase “Party Centre” to refer collectively to the senior executive organs of the CPK based in Phnom Penh – namely, the Standing Committee, Central Committee, Military Committee, Office 870, Government Office (S-71) and sub-offices of the Government Office.

#### 5.1.5. *Office 870*

362. The code number “870” was used ambiguously in the DK period to refer to a variety of persons and entities connected with the Party Centre. Different witnesses had different understandings of “870” but generally agreed that it was used to identify organs belonging to the CPK leadership. According to Witness Stephen HEDER, “870” was in use as early as 1971 to designate “the centre echelon of the Party”.<sup>1028</sup> Witness NORNG Sophang testified that “870” “referred to the Centre”.<sup>1029</sup> Expert Philip SHORT stated that “870” was “the code name for the Standing Committee”.<sup>1030</sup> This uncertainty as to the precise meaning of “870” was consistent with the CPK’s general emphasis on secrecy and, as Expert David CHANDLER observed, intentional: the use of the code number served to conceal or obscure the true nature of the CPK leadership.<sup>1031</sup> KHIEU Samphan told the Co-Investigating Judges that Committee 870 referred to the Party, meaning POL Pot who signed documents as “870” or “87”.<sup>1032</sup>

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May 2009, p. 9, 22, ERN (En) 00739501, 00739514 (referring to the Centre as the “upper echelons” or the “upper *Angkar*”).

<sup>1027</sup> See e.g., Revolutionary Flag, E3/25, December 1976-January 1977, pp. 15, 18, ERN (En) 00491408, 00491411; Revolutionary Flag, E3/135, June 1977, pp. 13, 36, ERN (En) 00446858, 00446881; Revolutionary Flag, E3/170, October-November 1977, ERN (En) 00182553, 00182558, 00182569; KAING Guek Eav Letter, E3/1152, 14 September 1976, p. 1, ERN (En) 00583914; Book by D. Chandler: *Voices From S-21: Terror and History in Pol Pot’s Secret Prison*, E3/1684, p. 15, ERN (En) 00192694; Article by S. Heder, “Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective”, E3/4527, undated, pp. 12-13, ERN (En) 00661466-00661467.

<sup>1028</sup> T. 18 July 2013 (Stephen HEDER), E1/226.1, p. 14.

<sup>1029</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 20.

<sup>1030</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 64.

<sup>1031</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, pp. 99-100; T. 24 July 2012 (David CHANDLER), E1/95.1, p. 128. See also, T. 18 July 2013 (Stephen HEDER), E1/226.1, p. 19.

<sup>1032</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754. See also, T. 18 July 2012 (David CHANDLER), E1/91.1, p. 99 (stating that “870” was “generally [used] to refer to Pol Pot, and sometimes to Pol Pot and a small group of people around him.”).

Duch testified that he received instructions at S-21 from Office 870 and sent reports (including confessions) back to Office 870 through a number of messengers.<sup>1033</sup> SAO Sarun, Sector 105 Secretary, likewise testified that he reported on a daily basis to Office 870 and received instructions and information two or three times per month from Office 870.<sup>1034</sup> Civil Party SON Em, who was in charge of delivering documents to Office 870, stated that his zone leaders told him that Office 870 was the central office of the CPK.<sup>1035</sup>

363. Committee 870 and “Office 870” were two discrete entities, with the latter also known as “Political Office of 870”, “M-870” (the “M” standing for “*munt*”, the Khmer word for “office”) or “Office of the Standing Committee” (“Office 870”).<sup>1036</sup> In the words of Philip SHORT, Office 870 functioned as the “executive arm” of the Standing Committee.<sup>1037</sup> Its tasks were to implement, and to monitor implementation of, Standing Committee decisions, and to “[make] contacts back and forth with each section” of the CPK’s upper echelons on behalf of the Standing Committee.<sup>1038</sup> Both Philip SHORT and David CHANDLER used the phrase “nerve centre” to describe the critically important role of Office 870 in the transmission of information to and from the Standing Committee.<sup>1039</sup>

364. As discussed in more detail later, the Chamber has found that Office 870 oversaw the implementation of Standing Committee decisions and initially comprised at least two members: SUA Vasi *alias* Doeun, appointed in October 1975, and KHIEU

<sup>1033</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 10-12, 51; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 66-69, 71.

<sup>1034</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 98-99.

<sup>1035</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 11; T. 22 November 2016 (SON Em), E1/501.1, p. 39. *See also*, T. 28 July 2016 (MOENG Vet), E1/450.1, pp. 27-28 (Office 870 was the state office of the leadership); T. 29 November 2016 (KHIEV Neab), E1/503.1, pp. 80-82; T. 30 November 2016 (KHIEV Neab), E1/504.1, pp. 6-7 (Civil Party KHIEV Neab, who worked as a cook in the same premises as Office 870 near Phsar Thmei and whose husband was worked in the supply office connected to Office 870 prior to his disappearance, stated that Office 870 was responsible for distributing vegetables, meat and rice. In 1978, when Prey Veng evacuees were brought to Phsar Thmei, she saw KHIEU Samphan distributing food and clothes to them).

<sup>1036</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, p. 121; T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 88-89; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754.

<sup>1037</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 72-73.

<sup>1038</sup> Standing Committee Minutes, E3/1733, 9 October 1975, p. 4, ERN (En) 00183396. *See also*, T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 26-27; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 66, ERN (En) 00103756.

<sup>1039</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, p. 21; T. 9 May 2013 (Philip SHORT), E1/192.1, p. 94.

Samphan, who joined around the same time.<sup>1040</sup> KHIEU Samphan recalled that Doeun was frequently absent on travels, received reports from the zones, and was “in charge of political affairs”.<sup>1041</sup> After Doeun’s arrest in late January or February 1977, Office 870 continued to operate.<sup>1042</sup> Although KHIEU Samphan speculated that CHHIM Sam Aok *alias* Pang succeeded Doeun as chairman of Office 870, the Chamber is not satisfied by the available evidence that this was the case.<sup>1043</sup> Likewise, the Chamber is not convinced to the requisite standard that KHIEU Samphan succeeded Doeun as the chairman of Office 870.<sup>1044</sup>

365. One set of Standing Committee minutes mentions another, separate entity known as “Bureau 870” (in Khmer, “*karilayai* 870”, as opposed to “*munti* 870”).<sup>1045</sup> However, KHIEU Samphan told the Co-Investigating Judges that the two terms referred to the same office.<sup>1046</sup> Standing Committee minutes of October 1975, indicate that Bureau

<sup>1040</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 1, ERN (En) 00183393; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882 (stating that he was appointed to work in the office as an “ordinary member”); Standing Committee Minutes, E3/227, 2 November 1975, p. 3, ERN (En) 00183411 (at a Standing Committee Meeting attended by nine people, including POL Pot, NUON Chea and KHIEU Samphan, a notation indicates “Opinion of 870” on numerous issues, including relations with Thailand and Vietnam); Standing Committee Minutes (copied by C.E. Goscha), E3/10690, 4 February 1976, ERN (En) 01313109 (according responsibility for “Unit 870” to NUON Chea); Standing Committee summary of decisions, E3/235, 19-21 April 1976, pp. 1-2, ERN (En) 00183416-00183417 (listing a variety of committees to fall under 870); Standing Committee Minutes (copied by C.E. Goscha), E3/10694, 15 and 20-21 April 1976 (noting arrangement and reorganisation of departments for 870, including 12 committees: commerce, energy, road transportation, water transportation, warehouse, harbour, agriculture, industry, public works, railway, and textile industry); Standing Committee Minutes (copied by C.E. Goscha), E3/10685, 3 and 9 January 1978, p. 4, ERN (En) 01320890 (indicating “Guidance of 870”); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, ERN (En) 00103755-00103756. Regarding Doeun’s arrest and execution, see Section 12.2: S-21 Security Centre, para. 2292; Section 8.3.4.1: Roles and Functions – KHIEU Samphan: Membership of Office 870.

<sup>1041</sup> KHIEU Samphan Adversarial Hearing Record, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 61, fn. 193, ERN (En) 00498280.

<sup>1042</sup> See e.g., DK Telegram, E3/1200, 8 May 1977, ERN (En) 00590306 (addressed “To beloved and respected M-870”); DK Telegram, E3/890, 28 October 1977, ERN (En) 00185187 (“To respected and beloved M 870”); DK Telegram, E3/908, 24 December 1977, p. 1, ERN (En) 00183638 (“Greetings to respected and beloved M-870”); DK Telegram, E3/916, 1 January 1978, ERN (En) 00183642 (“Dear respected and beloved M870”); DK Telegram, E3/913, 16 January 1978, p. 1, ERN (En) 00183644 (“To beloved and respected M-870”); DK Telegram, E3/863, 16 May 1978, p. 1, ERN (En) 00321961 (“Respectfully submitted to *Angkar* 870”); DK Telegram, E3/873, 15 June 1978, ERN (En) 00185225 (“Dear beloved and missed *Angkar* 870”).

<sup>1043</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 611.

<sup>1044</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 612-616.

<sup>1045</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 2, ERN (En) 00183394. See T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 92-93.

<sup>1046</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754.

870 was headed by SIM Son *alias* Yem.<sup>1047</sup> However, Yem also held the role of Sector 505 Secretary in 1975 before he was appointed the DK ambassador to the DPRK in 1976.<sup>1048</sup> Therefore, the precise function of Bureau 870, if indeed it was a separate entity, remains unknown.<sup>1049</sup>

### 5.1.6. *Government Office (S-71) and Sub-Offices*

366. As well as Office 870, the Party Centre maintained an administrative office, which was referred to in CPK Standing Committee meeting minutes as the “Government Office”.<sup>1050</sup> As of October 1975, the Government Office was run by CHHIM Sam Aok *alias* Pang, a Central Committee member.<sup>1051</sup> Several witnesses referred to the unit headed by Pang as “S-71”, and a section or ministry designated “S-71” appears

<sup>1047</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 2, ERN (En) 00183394; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 23 (clarifying that “Yem” was SIM Son). Yem attended a number of Standing Committee meetings, but it is not clear in what capacity. Standing Committee Minutes, E3/227, 2 November 1975, p. 1, ERN (En) 00183409 (noting Comrade “Yem” in attendance); Standing Committee Minutes, E3/220, 7 May 1976, p. 1, ERN (En) 00182706 (noting Comrade Yem in attendance). *See also*, DK Telegram, E3/154, 30 November 1975, ERN (En) 00185065 (copying Brother Yaem in telegram from SAO Phim to POL Pot regarding the lack of cooperation of the Northern Zone concerning the removal of 150,000 Muslims from the East Zone).

<sup>1048</sup> HENG Lai Heang Interview Record, E3/436, 23 November 2009, p. 3, ERN (En) 00414563 (indicating Yem was the Sector Chairman in Sector 505 from 1970 [*sic*] until 1976 and was then sent to be a diplomat in Korea); YUN Kim Interview Record, E3/410, 12 November 2009, ERN (En) 00412200 (stating that *Ta Yem alias* Sun was the Sector 505 Secretary from 1971 to 1976); *Women’s Delegation Returns from DPRK Visit* (in FBIS compilation), E3/279, 26 August 1976, ERN (En) 00167712 (noting that Comrade SIM Son, the DK ambassador to DPRK, attended talks held on 23 August 1976 between the Women’s Delegation and Korean Authorities); *PRC Journalists Visit Cambodia in March [1975], meet KHIEU Samphan* (in FBIS compilation), E3/118, 22 April 1975, ERN (En) 00167004-00167005 (reporting that SIM Son, chairman of the NUFC Committee of Kratie Province, accompanied the PRC delegation throughout its visit in Cambodia in March 1975); *Cambodian National Day Hailed in North Korea* (in FBIS compilation), E3/1361, 24 April 1978, ERN (En) 00168871 (reporting a mass meeting organised in Pyongyang on 17 April 1978 and attended by SIM Son, the DK ambassador to DPRK); Book by Suong S.: *Itinéraire d’un intellectuel Khmer Rouge*, E3/9218, pp. 229-230, ERN (Fr) 00997746-00997747 (SIM Son *alias* Yem was in 1975 the Sector 505 Secretary in Kratie and in 1976 became the ambassador to North Korea. Yem’s wife was the KOY Thuon’s sister-in-law. Yem was killed by a falling tree near the Thai border on 25 April 1990).

<sup>1049</sup> While both “*munti*” and “*karilayai*” can be rendered in English as “office” or “bureau”, “*munti*” connotes a larger administrative structure whereas “*karilayai*” typically refers to a smaller unit or sub-division. A “*munti*” may contain more than one “*karilayai*”. *See* T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 92-93.

<sup>1050</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 2, ERN (En) 00183394; T. 18 July 2013 (Stephen HEDER), E1/226.1, p. 12.

<sup>1051</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 2, ERN (En) 00183394; T. 4 September 2012 (NORNG Sophang), E1/121.1, pp. 17-18; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 73, 80-81; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 68; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 23-24 (clarifying that “Pang” was CHHIM Sam Aok); T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 56.

repeatedly in the lists of prisoners brought to the S-21 Security Office, suggesting that “S-71” was the code name for the Government Office.<sup>1052</sup>

367. S-71 may have been a division of Office 870, or it may have been a separate entity. Although Standing Committee meeting minutes suggest that they were distinct,<sup>1053</sup> Witness Stephen HEDER recalled that many of the people he had interviewed conflated the two offices, and indeed several witnesses who testified before the Chamber referred to the unit run by CHHIM Sam Aok *alias* Pang using the code number “870”.<sup>1054</sup> According to a number of other witnesses, however, S-71 under Pang performed a different function from Office 870 under SUA Vasi *alias* Doeun. Whereas Doeun’s Office 870 was concerned with matters of policy implementation, Pang’s S-71 office dealt primarily with logistical, practical and administrative tasks.<sup>1055</sup>

368. In particular, S-71 oversaw a variety of sub-offices and units, which themselves performed support functions for the Party Centre and which were mostly identified by

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<sup>1052</sup> T. 4 September 2012 (NORNG Sophang), E1/121.1, pp. 17-18; T. 18 July 2013 (Stephen HEDER), E1/226.1, p. 12; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 109; NOEM Sem Interview Record, E3/43, 18 July 2009, ERN (En) 00365659; KONG Yeuang SOAS Interview, E3/5315, 27 July 2005, ERN (En) 00352021. *See also*, List of prisoners from Ministry S-71, E3/1737, undated, ERN (En) 00183681-00183682; List of Prisoners from Ministry S-71, E3/1738, 20 June 1978, p. 1, ERN (En) 00784602; List of People Who Entered on 24.05.78, E3/1955, 24 May 1978, ERN (En) 00183685-00183686 (all identifying S-21 detainees from “Ministry S.71”, most of whom are stated to have worked for one of the “K” offices. At an earlier time, “S-71” was also the code name for the base near the Chinit River to which the CPK leadership moved in 1970. *See* T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, p. 92; THA Sot Interview Record, E3/464, 19 January 2008, p. 7, ERN (En) 00226112. *See also*, T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 23 (describing the move to the Chinit River base).

<sup>1053</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394 (listing separately the “Political Office of 870” and the “Government Office”).

<sup>1054</sup> T. 3 May 2012 (PEAN Khean), E1/72.1, p. 22; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 92; T. 20 September 2012 (CHEA Say), E1/124.1, pp. 74-75; T. 13 June 2012 (OEUN Tan), E1/86.1, p. 17; T. 25 September 2012 (NOEM Sem), E1/126.1, p. 42; T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 89.

<sup>1055</sup> T. 18 July 2013 (Stephen HEDER), E1/226.1, pp. 12-13, 15-17 (describing S-71 as an administrative office, separate from Office 870); T. 3 May 2012 (PEAN Khean), E1/72.1, p. 22 (indicating that Pang “would manage day to day tasks in the office, including K-1, K-3, and K-7”); T. 13 June 2012 (OEUN Tan), E1/86.1, p. 39 (stating that Pang was in charge of the messengers and production section, and assigned tasks to the staff at K-1); PHY Phuon Interview Record, E3/24, 5 December 2007, p. 7, ERN (En) 00223584 (“Pang was in charge of 870 administration, and Doeun was in charge of policy.”); KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 5, ERN (En) 00154910 (describing a “Committee of the Working Group in charge of Office 870” led by Pang, with responsibility for security, welcoming guests, telecommunications, logistics, food and transport); NORNG Sophang Diagram, E3/1736, 28 March 2009, ERN (En) 00434365 (showing that Pang’s S-71 managed the “K” offices); Case 001 Trial Transcript (Craig ETCHESON), E3/55, 21 May 2009, p. 28, ERN (En) 00330361 (testifying that S-71 was the “secretariat” of Office 870, comprising a network of support offices serving the Party Centre). *See above*, fn. 1011 (showing that Doeun attended many of the Standing Committee meetings for which minutes survive, whereas Pang attended none).

code names beginning with the prefix “K”.<sup>1056</sup> K-1 was the compound in Phnom Penh within which POL Pot lived and worked.<sup>1057</sup> K-3 was another residential and office compound in Phnom Penh for the CPK senior leaders, including NUON Chea and KHIEU Samphan.<sup>1058</sup> K-6 was a CPK political school at Borei Keila in Phnom Penh.<sup>1059</sup> K-7 was the messenger unit.<sup>1060</sup> K-8 was responsible for growing vegetables.<sup>1061</sup> K-9 was a textile factory.<sup>1062</sup> K-11 was a medical facility.<sup>1063</sup> K-12 organised motor vehicles and drivers.<sup>1064</sup> K-15 was a political training school, principally (but not exclusively) for Cambodians returning from overseas.<sup>1065</sup> K-18 was a telegraph office.<sup>1066</sup>

369. S-71 was also empowered to make arrests and to transfer detainees to the S-21 Security Centre.<sup>1067</sup> In 1978, CHHIM Sam Aok *alias* Pang was himself arrested and taken to S-21, and his deputy KHAN Lin *alias* Ken took charge of S-71.<sup>1068</sup> Pang was

<sup>1056</sup> T. 3 May 2012 (PEAN Khean), E1/72.1, p. 22; T. 4 September 2012 (NORNG Sophang), E1/121.1, pp. 17-18; T. 18 July 2013 (Stephen HEDER), E1/226.1, pp. 12, 15, 21; THA Sot Interview Record, E3/464, 19 January 2008, p. 5, ERN (En) 00226110; NORNG Sophang Diagram, E3/1736, 28 March 2009, ERN (En) 00434365.

<sup>1057</sup> T. 3 May 2012 (PEAN Khean), E1/72.1, p. 18; T. 13 June 2012 (OEUN Tan), E1/86.1, p. 38; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 63-64; T. 8 January 2013 (SA Vi), E1/156.1, p. 12; T. 10 June 2013 (SO Socheat), E1/204.1, p. 67; T. 7 June 2013 (SOK Roeu), E1/203.1, p. 74.

<sup>1058</sup> T. 2 May 2012 (PEAN Khean), E1/72.1, p. 28; T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 47; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 63-64; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 88-89; T. 8 January 2013 (SA Vi), E1/156.1, p. 22; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 77; T. 10 June 2013 (SO Socheat), E1/204.1, pp. 70-71; T. 7 June 2013 (SOK Roeu), E1/203.1, p. 78; T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 9-14.

<sup>1059</sup> THA Sot Interview Record, E3/464, 19 January 2008, p. 6, ERN (En) 00226111; SA Sarin DC-Cam Interview, E3/4596, 5-6 May 2009, pp. 34, 63-64, ERN (En) 00735926, 00739555-00739556; UM Keo Interview Record, E3/5173, 8 May 2008, p. 3, ERN (En) 00272660; SENG Lytheng Interview Record, E3/462, 4 December 2007, p. 4, ERN (En) 00223565.

<sup>1060</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 15-16; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 28.

<sup>1061</sup> T. 25 September 2012 (NOEM Sem), E1/126.1, p. 34; T. 7 June 2013 (SOK Roeu), E1/203.1, p. 73; NORNG Sophang Interview by Chay CHANDARAVANN and Thomas KUEHNEL, E3/1739, 18 February 2009, p. 2, ERN (En) 00844057.

<sup>1062</sup> T. 3 July 2013 (EK Hen), E1/217.1, p. 26.

<sup>1063</sup> T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 37-38; CHEA Say Interview Record, E3/69, 11 December 2007, p. 3, ERN (En) 00233151.

<sup>1064</sup> THA Sot Interview Record, E3/464, 19 January 2008, pp. 3, 6, ERN (En) 00226108, 00226111; CHEA Say Interview Record, E3/69, 11 December 2007, p. 3, ERN (En) 00233151; YIM Laing Interview Record, E3/463, 18 January 2008, p. 5, ERN (En) 00204734.

<sup>1065</sup> T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 98, 99-100; SA Sarin DC-Cam Interview, E3/4596, 5-6 May 2009, pp. 32-33, ERN (En) 00739524-00739525.

<sup>1066</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 70; PHAN Van Interview Record, E3/447, 28 February 2010, ERN (En) 00486520.

<sup>1067</sup> T. 24 April 2012 (SALOTH Ban), E1/67.1, pp. 19-20, 25, 45; T. 25 April 2012 (SALOTH Ban), E1/68.1, p. 68; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 5, ERN (En) 00198883; KAING Guek Eav Interview Record, E3/107, 24 June 2008, p. 4, ERN (En) 00198220.

<sup>1068</sup> S-21 Confession – CHHIM Sam Aok, E3/1596, 28 May 1978, pp. 1-8, ERN (En) 00753743-00753750; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 68, 93; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 11; T. 13 June 2012 (OEUN Tan), E1/86.1, p. 102; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 5, 45, 47; T. 8 January 2013 (SA Vi), E1/156.1, p. 49; T. 25 April 2013 (RUOS

subject to extended interrogation under torture and ordered executed by Duch pursuant to NUON Chea's instructions.<sup>1069</sup>

### 5.1.7. *Zones, Sectors, Districts and Sub-District Entities*

370. Democratic Kampuchea was divided into a hierarchical series of administrative areas, including zones, sectors, districts and communes. Zones were originally devised by the CPK in the pre-1975 period of armed struggle.<sup>1070</sup> Initially, there were six zones: the North Zone (given the code number 304),<sup>1071</sup> the Northwest Zone (code number 560),<sup>1072</sup> the Northeast Zone (code number 108, later changed to 109),<sup>1073</sup> the Southwest Zone (405),<sup>1074</sup> the East Zone (203)<sup>1075</sup> and the Special Zone (which comprised the area around Phnom Penh).<sup>1076</sup>

371. After the capture of Phnom Penh in 1975, the zone boundaries were redrawn: a new West Zone (code number 401) was added, and the Special Zone around Phnom Penh was dissolved and absorbed into neighbouring Zones.<sup>1077</sup> The zones did not follow

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Suy), E1/184.1, pp. 55-56; T. 18 July 2013 (Stephen HEDER), E1/226.1, pp. 12-13; THA Sot Interview Record, E3/464, 19 January 2008, pp. 4, 5, ERN (En) 00226109, 00226110; OEUN Tan Interview Record, E3/33, 9 October 2008, p. 7, ERN (En) 00235131; LENG Chhoeung Interview Record, E3/385, 17 July 2009, p. 7, ERN (En) 00360131. *See also*, Section 12.2: S-21 Security Centre, para. 2213 (finding after Pang's arrest around April 1978, his role at S-71 was taken over by Lin).

<sup>1069</sup> Section 12.2.8.4.3: S-21 Security Centre: CHHIM Sam Aok *alias* Pang.

<sup>1070</sup> Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, pp. 11-12, ERN (En) 00814510-00814511.

<sup>1071</sup> T. 21 August 2012 (KIM Vun), E1/111.1, p. 96; T. 3 July 2013 (EK Hen), E1/217.1, p. 19.

<sup>1072</sup> Map of Democratic Kampuchea, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]. *See also*, DK Report, E3/179, 29 May 1977, ERN (En) 00183010-00183018 (Zone report from "Office 560"); Annex IV: Map of Democratic Kampuchea.

<sup>1073</sup> SA Sarin DC-Cam Interview, E3/4596, 5-6 May 2009, p. 58, ERN (En) 00739550; KHIEU Samphan Interview Transcript, E3/4005, undated, ERN (En) 00788909; Map of Democratic Kampuchea, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143].

<sup>1074</sup> Map of Democratic Kampuchea, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]. *See also*, Annex IV: Map of Democratic Kampuchea.

<sup>1075</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 33-34; T. 3 July 2013 (EK Hen), E1/217.1, p. 22.

<sup>1076</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 76-77; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170743; IENG Sary DC-Cam Interview, E3/89, 17 December 1996, p. 3, ERN (En) 00417601; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 86-87, ERN (En) 01150040; Book by E. Becker: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 173, ERN (En) 00237878.

<sup>1077</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 37; Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, p. 12, ERN (En) 00814511; Map of Democratic Kampuchea, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]; Book by E. Becker: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 175, ERN (En) 00237880; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 94, ERN (En) 01150044. *See also*, MEAS Voeun Interview Record, E3/73, 4 March 2010, ERN (En) 00491661 (stating that "M-401" was the office of *Ta Si* [*i.e.*

existing provincial boundaries precisely; for example, the East Zone encompassed Prey Veng and Svay Rieng as well as parts of Kratie, Kandal and Kampong Cham provinces.<sup>1078</sup>

372. Each zone was sub-divided into a number of sectors (also known as “regions”), which were generally known by their code numbers.<sup>1079</sup> Sectors were further divided into districts, which were in turn made up of communes.<sup>1080</sup> Within the communes, individual villages were gradually combined into cooperatives, in which people lived, worked, studied and ate communally.<sup>1081</sup> In some areas, cooperatives were treated as sub-units of the communes, and were subject to the authority of the commune leadership.<sup>1082</sup> In other areas, however, large cooperatives eventually replaced communes as the lowest administrative sub-regions in the CPK hierarchy.<sup>1083</sup>

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CHOU Chet *alias* Sy], Secretary of the West Zone. *See above*, Section 5.1.2.1: Preliminary Issues regarding Standing Committee Minutes; Annex IV: Map of Democratic Kampuchea.

<sup>1078</sup> Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, p. 12, ERN (En) 00814511; Democratic Kampuchea Map, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]. *See also*, Annex IV: Map of Democratic Kampuchea.

<sup>1079</sup> 1976 CPK Statute, E3/130, undated, p. 17, ERN (En) 00184038 (Article 7); Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 15-16; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 89, ERN (En) 01150041.

<sup>1080</sup> 1976 CPK Statute, E3/130, undated, p. 17, ERN (En) 00184038 (Article 7); Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, pp. 12-13, ERN (En) 00814511-00814512; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 15-16; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170694.

<sup>1081</sup> T. 6 December 2011 (KLAN Fit), E1/17.1, p. 89; T. 13 June 2012 (OEUN Tan), E1/86.1, p. 24; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 93; T. 21 May 2013 (PROM Sou), E1/194.1, p. 8; Book by DK Ministry of Education: *Political Geography of Democratic Kampuchea*, E3/1398, pp. 12-13, ERN (En) 00814511-00814512. *See also*, Section 10.1.7: Tram Kak Cooperatives: Economic Plans and Production Targets (outlining the role of cooperatives in DK).

<sup>1082</sup> T. 29 May 2012 (NY Kan), E1/77.1, pp. 74-75; T. 11 April 2013 (François PONCHAUD), E1/180.1, pp. 20-21; KHIM Pang Interview Record, E3/5510, 27 October 2009, ERN (En) 00411490; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410247-00410248. *See also*, T. 3 May 2013 (LIM Sat), E1/188.1, pp. 50-51; SAU Khon Interview Record, E3/5506, 25 October 2009, p. 3, ERN (En) 00398862; NUT Nouv Interview Record, E3/5521, 1 December 2009, pp. 10-11, ERN (En) 00422324-00422325 (confirming that the cooperative leadership was distinct from the commune leadership).

<sup>1083</sup> T. 20 June 2012 (YUN Kim), E1/89.1, pp. 6-7; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 16; YUN Kim Interview Record, E3/368, 12 June 2009, p. 4, ERN (En) 00345192. *See also*, T. 6 June 2012 (SAO Sarun), E1/82.1, p. 60 (stating that cooperatives received instructions directly from the district level); T. 24 January 2013 (Civil Party Lead Co-Lawyers), E1/164.1, p. 29 (citing TOEM Rithy Civil Party application, E3/4828, indicating that communes and cooperatives were “equivalent”); Chapter by T. Carney, “The Organization of Power”, in *The Organization of Power, in Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 85, ERN (En) 00105134.



373. All levels of the hierarchy – zones, sectors, districts, communes and cooperatives – were governed by Party committees.<sup>1084</sup> Committees typically comprised a secretary (or chairman), a deputy secretary (or deputy chairman) and at least one other member.<sup>1085</sup> Within each committee, particular areas of policy responsibility were often delegated to an individual committee member or sub-committee.<sup>1086</sup> The committee secretary in each echelon was usually appointed by the committee of the level immediately above.<sup>1087</sup> For example, commune secretaries were appointed by district committees,<sup>1088</sup> and district secretaries by sector committees.<sup>1089</sup> In principle, committees were required by the CPK Statute to convene conferences at regular intervals in order to select new members, but in practice committee members were (like secretaries) generally appointed by the committee of the level immediately above.<sup>1090</sup>

374. The committee secretary in each tier was also generally a member (or at least attended the meetings) of the committee of the echelon immediately above: thus,

<sup>1084</sup> 1976 CPK Statute, E3/130, undated, p. 17, ERN (En) 00184038 (Article 7); T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 92; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 15-17; T. 29 May 2012 (NY Kan), E1/77.1, pp. 74-75; T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 45, 60; T. 1 July 2013 (PECH Chim), E1/215.1, p. 38; SUON Kanil Interview Record, E3/411, 19 August 2009, p. 4, ERN (En) 00390076.

<sup>1085</sup> T. 6 December 2011 (KLAN Fit), E1/17.1, pp. 61-62; T. 7 December 2012 (HUN Chhunly), E1/150.1, p. 99; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 58, 66; T. 22 May 2013 (PROM Sou), E1/195.1, pp. 19-20; T. 18 July 2013 (Stephen HEDER), E1/226.1, p. 20; MEAS Voeun Interview Record, E3/80, 3 March 2010, ERN (En) 00491656; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 86-92, ERN (En) 01150040-01150043.

<sup>1086</sup> OUK Bunchhoeun DC-Cam Interview, E3/387, undated, p. 4, ERN (En) 00350203; BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 11, ERN (En) 00274104; Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 15, ERN (En) 00142840.

<sup>1087</sup> See e.g., T. 18 January 2016 (PRAK Yut), E1/377.1, p. 101; T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-22 (Witness was Kampong Siem District Secretary and member of the Sector 41 Committee. All district secretaries in Sector 41, Central (old) North Zone, including the Witness, attended sector level meetings convened by *Ta An* [*i.e.* AO An], the Sector Secretary). See below, para. 376 (KE Pauk, the Zone Secretary along with the Sector 41, 42 and 43 Secretaries composed the Central (old North) Zone Committee); Case 001 Trial Transcript (Craig ETCHESON), E3/345, 18 May 2009, p. 74, ERN (En) 00328518.

<sup>1088</sup> T. 6 December 2011 (KLAN Fit), E1/17.1, p. 56 (stating that he was appointed as commune chairman by the district chief and the zone committee); T. 7 December 2011 (ROMAM Yun), E1/18.1, p. 36; T. 20 June 2012 (YUN Kim), E1/89.1, p. 3; T. 25 January 2012 (PRAK Yut), E1/33.1, p. 92; T. 5 June 2012 (SAO Sarun), E1/81.1, p. 86; T. 20 May 2013 (IENG Phan), E1/193.1, pp. 90-91; Book by B. Kiernan: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, p. 377, ERN (En) 01150195.

<sup>1089</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 78, 85.

<sup>1090</sup> 1976 CPK Statute, E3/130, undated, pp. 19-22, ERN (En) 00184040-00184043 (Articles 11, 12, 15, 18); MEI Suon Interview Record, E3/1675, 21 October 2009, ERN (En) 00403031; TEP Poch Interview Record, E3/5293, 4 July 2009, pp. 3-4, ERN (En) 00351701-00351702; SOU Soeun Interview Record, E3/5294, 5 July 2009, p. 4, ERN (En) 00360112; BUN Thien Interview Record, E3/5498, 17 August 2009, p. 4, ERN (En) 00384398; T. 4 October 2012 (MEAS Voeun), E1/130.1, p. 20.

commune secretaries would attend meetings of the district committee,<sup>1091</sup> District secretaries attended meetings of the sector committee<sup>1092</sup> and sector secretaries attended meetings of the zone committee.<sup>1093</sup> Zone secretaries, such as MOUL Sambath *alias* RUOS Nhim (secretary of the Northwest Zone), were usually members of the Central Committee.<sup>1094</sup> Some, such as SAO Phim (secretary of the East Zone) and *Ta* Mok (secretary of the Southwest Zone), were also members of the Standing Committee.<sup>1095</sup>

375. There were changes in the leadership of the zones throughout the DK period corresponding with exigencies within the country and decisions to arrest Party members implicated in S-21 confessions.<sup>1096</sup> Leadership positions were often given to family members of Central Committee members.<sup>1097</sup>

<sup>1091</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 12; SARAY Hean Interview Record, E3/5608, 10 March 2010, p. 3, ERN (En) 00491734; T. 21 April 2015 (PECH Chim), E1/289.1, pp. 75-76 (District Secretary Khom often convened meetings of commune secretaries).

<sup>1092</sup> T. 28 May 2012 (NY Kan), E1/76.1, p. 43; T. 11 December 2012 (PHAN Van), E1/151.1, p. 83; T. 18 January 2016 (PRAK Yut), E1/377.1, p. 101; T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-22; T. 22 April 2015 (PECH Chim), E1/290.1, pp. 60-62 (PECH Chim, as a District Secretary, attended sector-level meetings).

<sup>1093</sup> CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 3, ERN (En) 00513313; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303.

<sup>1094</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 36-37; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 85; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 14-15; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February-March 1980, ERN (En) 00170750. *See also*, T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 93 (confirming that RUOS Nhim was Secretary of the Northwest Zone); T. 6 December 2012 (HUN Chhunly), E1/149.1, p. 89 (giving RUOS Nhim's real name). RUOS Nhim was also the second deputy chairman of the State Presidium until he was arrested and sent to S-21 in June 1978. *See* Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068; S-21 Confession – RUOS Nhim, E3/3989, 14 June 1978, ERN (En) 01554920.

<sup>1095</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 36-37; T. 20 June 2012 (KHIEV Neou), E1/89.1, p. 102; T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 56-57; T. 8 January 2013 (SA Vi), E1/156.1, pp. 73-74; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 10, ERN (En) 00156750. *See above*, para. 357 (fns 1007-1008). SAO Phim was also the first deputy chairman of the State Presidium until he died, by committing suicide, in mid-1978. *See* Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068; Case 001 Trial Transcript (KAING Guek Eav), E3/5797, 8 June 2009, p. 77, ERN (En) 00338594; Book by N. Chanda: *Brother Enemy: The War After The War*, E3/2376, p. 442, ERN (En) 00192627.

<sup>1096</sup> Section 12.2: S-21 Security Centre (regarding purging of cadres). *See also*, Section 12.1: Internal Factions, paras 2017-2072 (regarding purge of the East Zone), para. 2028 (SON Sen and KE Pauk were transferred to the East Zone to command troops fighting against Vietnam); Section 11.2.7: Purges of Cadres in the Central (old North) Zone (regarding purge of cadres in the Central (old North) Zone).

<sup>1097</sup> Section 11.2: 1<sup>st</sup> January Dam, paras 1441, 1457 (Central (old North) Zone Secretary KE Pauk's son, wife and brother-in-law all held important positions; Party members sent their children to the Russei Keo technical school to later take up important roles in dam construction); Section 11.1: Trapeang Thma Dam Worksite, para. 1235 (Northwest Zone Secretary RUOS Nhim's son held an important role in Sector 5); Section 10.1: Tram Kak Cooperatives, para. 908 (Southwest Zone Secretary *Ta* Mok's son-in-law Boran oversaw the Southwest Zone Office).

376. *Central (old North) Zone* – Prior to 1975, the Central (old North) Zone Secretary was KOY Thuon with KE Pauk the Deputy Secretary.<sup>1098</sup> After April 1975, KOY Thuon was transferred to Phnom Penh and charged with responsibility over commerce and KE Pauk became the Secretary of the Central (old North) Zone which he remained until the end of the DK period.<sup>1099</sup> The other members of the Central (old North) Zone committee were CHO Chhan *alias* Sreng (Sector 41 Secretary and Zone Deputy Secretary), CHAN Mon *alias* Tol (Sector 42 Secretary) and KOAM Chan *alias* Chorn (Sector 43 Secretary).<sup>1100</sup> In around February 1977, all of the sector secretaries in the Central (old North) Zone were arrested and taken to S-21.<sup>1101</sup> AO An *alias* Ta An, a Southwest Zone cadre, became Sector 41 Secretary;<sup>1102</sup> Oeun, the brother of KE Pauk's wife SOU Soeurn (and therefore KE Pauk's brother-in-law), became Sector 42 Secretary;<sup>1103</sup> and Phen *alias* Ta Ngin, another a Southwest Zone cadre, became the Sector 43 Secretary.<sup>1104</sup> KE Pauk remained the Zone Secretary throughout the DK period.<sup>1105</sup>

<sup>1098</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1455.

<sup>1099</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1456.

<sup>1100</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1456; Section 12.2: S-21 Security Centre, para. 2327. *See also*, S-21 Confession – KOAN Chan *alias* Chorn, E3/3654, 16 November-4 December 1977, ERN (En) 00768300-00768330; S-21 Confession – KOAN Chan *alias* Chorn, E3/4322, multiple dates, ERN (En) 00814203-00814280; S-21 Arrest and Interrogation List, E3/2165, ERN (En) 00755546 (entry 21, KOAM Chan *alias* Chan, Secretary of Sector 43, Central Zone, arrested 18 September 1977).

<sup>1101</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1462.

<sup>1102</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1465; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713-00089714; KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 6-7; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 3, ERN (En) 00403003; S-21 List of Persons Detained from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated, p. 3, ERN (En) 00222967 (entry no. 56, CHUN Chhum *alias* Taing, Secretary, Sector [sic] 31 entered on 18 February 1977); S-21 Confessions – CHUN Chhum *alias* Taing, E3/2464, multiple dates, ERN (En) 00786988-00787018; S-21 List of Prisoners 'Smashed' on 8 July 1977, North Zone, E3/3861, p. 7, ERN (En) 00657720 (Entry 103, CHUM Chhun *alias* Taing, Secretary of Sector 41). *See also*, Prisoner Biography of CHUN Chhum *alias* Taing, E3/9303, ERN (En) 01215103 (arrested on 18 February 1977).

<sup>1103</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1465; T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 19 (SOU Soeurn said that Oeun was her younger brother and in 1977 was appointed Sector 42 Secretary to replace Tol); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151; T. 5 October 2015 (BAN Seak), E1/353.1, pp. 20, 34 (BAN Seak was appointed Deputy Secretary of Chamkar Leu district by Oeun, after Oeun had been appointed Sector 42 Secretary around February or March 1977); T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 66-67. *See also*, S-21 Confession – CHAN Mon *alias* Tol, E3/3646, multiple dates, ERN (En) 00835119 (including notations dated 11 June 1977 and 27 July 1977); S-21 Confession – CHAN Mon *alias* Tol, E3/2462, multiple dates, ERN (En) 00767261 (including notations dated 6, 27 March 1977, 24-25 April 1977); PECH Sokha Interview Record, E3/403, 12 October 2009, p. 5, ERN (En) 00403005.

<sup>1104</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1465; KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 67 (stating that first Secretary of Sector 43 was Ta Chan and he was replaced by Ta Ngin).

<sup>1105</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1458.

377. *Autonomous Sectors 103 and 106 and the new North Zone* – In April 1975, the Party Centre took over direct control of Autonomous Sector 106 (comprising Siem Reap and Oddar Meanchey) and Autonomous Sector 103 (encompassing Preah Vihear).<sup>1106</sup> PA Phal *alias* Sot was Sector 106 Secretary until his arrest and imprisonment in S-21 in February 1977.<sup>1107</sup> Around February 1977, KANG Chap *alias* Sae was transferred from his position as Deputy Secretary of the Southwest Zone to assist KE Pauk with the administration of Sector 106.<sup>1108</sup> In mid-1977, Sectors 106 and 103 were combined to form a new North Zone (Zone 801).<sup>1109</sup> On 3 January 1978, BOU Phat *alias* Hang who had been the Secretary of Sector 103, was arrested.<sup>1110</sup> Around the same time, NUON Chea came to Preah Vihear and announced that KANG Chap

<sup>1106</sup> Case 002/01 Trial Judgement, para. 216; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711. KE Pauk also stated that Sector 106 was renamed Sector 35. *See* KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714 (referring to Region 35 as part of the Central Zone). However, Standing Committee minutes from March 1976 refer to Sector 106. *See* Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 1, 3-4, ERN (En) 00182628, 00182630-00182631 (referring to situation in 106 and Siem Reap). *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, pp. 6-7, ERN (En) 01324080-01324081.

<sup>1107</sup> S-21 Confession – PA Phal *alias* Sot, E3/1754, 25 February 1977, pp. 1-31, ERN (En) 00822328-00822358; S-21 List of prisoners admitted on 21 February 1977, E3/10266, 22 February 1977, p. 36, ERN (En) 01367733 (entry no. 13). *See also*, Section 12.1: Internal Factions, paras 1885-1887 (on the reasons for PA Phal’s arrest).

<sup>1108</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 9 (*Ta Mok rode by on a motorcycle to ask PECH Chim to travel to Takeo to meet KANG Chap alias Sae, from where they would be sent to the north of the country*); T. 24 April 2015 (PECH Chim), E1/292.1, p. 31 (KANG Chap *alias* Sae went to Siem Reap, the old North Zone, when PECH Chim went to the rubber plantation). *See also*, Section 10.1: Tram Kak Cooperatives, para. 906; PECH Chim Interview Record, E3/400, 25 August 2009, p. 7, ERN (En) 00379172; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303; IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474 (IEP Duch died so did not appear before the Chamber); DK Telegram, E3/239, 30 April 1977, ERN (En) 00069529 (noting that “Brother Se” had been assigned to “grasp the situation in Ampil district” after an incident when grenades had been thrown into the district office there); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714.

<sup>1109</sup> DK Telegram, E3/1091, 23 August 1977, ERN (En) 00143573-00143574 (signed Zone 801, Se); DK Telegram, E3/898, 11 December 1977, ERN (En) 00183626 (requesting that Siem Reap and Banteay Srey districts be merged); T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 7 (Preah Vihear was removed and named as Zone 801); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 13 (in mid-1977, a new North Zone (Zone 801) was created); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 (in 1977, when Hang was arrested, Autonomous Sector 103 was integrated into the New North Zone).

<sup>1110</sup> S-21 Confession – BOU Phat *alias* Hang, E3/2470, p. 38, ERN (En) 00768254 (indicating arrest on 3 January 1978); S-21 List of prisoners admitted on 4 January 1978, E3/10505, 5 January 1978, p. 4, ERN (En) 01398544 (entry no. 1); DK Telegram, E3/874, 18 July 1976, ERN (En) 00185060 (report from Hang to Brothers Nuon, Khiev and Van).

*alias* Sae would be the Secretary of the new North Zone.<sup>1111</sup> KANG Chap *alias* Sae was arrested around 22 August 1978 and killed at S-21 on 30 October 1978.<sup>1112</sup>

378. *East Zone* – East Zone Secretary SAO Phim was a member of the Standing Committee since the first Party Congress in 1960.<sup>1113</sup> He was also the Commander of the zone armed forces.<sup>1114</sup> The East Zone was composed of Sectors 20, 21, 22, 23 and 24, but it is not clear whether all of the sector secretaries were members of the East Zone Committee.<sup>1115</sup> Until approximately August 1976, the East Zone Deputy Secretary, and Sector 24 Secretary, was SUOS Neou *alias* Chhouk.<sup>1116</sup> The other sector secretaries in the East Zone were initially, KONG Chea Sin *alias* Sun (Sector 20); Phuong, replaced in 1976 by TAUCH Chaem *alias* Soth (Sector 21); SEAT Chhae *alias* Tum (Sector 22 and reserve member of the Central Committee, who later joined the General Staff in Phnom Penh); and UK Savan *alias* Sau (Sector 23).<sup>1117</sup>

379. In mid-1976, Chhouk was identified as a traitor and taken to S-21 where he was tortured and executed.<sup>1118</sup> The remaining East Zone sector secretaries were arrested and taken to S-21 in late 1977 and early 1978.<sup>1119</sup> SENG Hong *alias* Chan became the

<sup>1111</sup> T. 21 May 2013 (PRUM Sou), E1/194.1, pp. 33-34 (in late 1977, NUON Chea announced at a meeting in Sector 103, that KANG Chap *alias* Sae would be the Chairman of the new North Zone); PRUM Sou Interview Record, E3/420, 24 November 2009, ERN (En) 00422381 (less than one month after a meeting held by NUON Chea, Bang Hang (BOU Phat *alias* Hang) and other people in Sector 103 were arrested).

<sup>1112</sup> S-21 List of prisoners destroyed on 30 October 1978, E3/10456, 31 October 1978, p. 2, ERN (En) 01558314 (CHAN Sam *alias* Se, North Zone Secretary); S-21 confession – CHANN Sam *alias* Se, E3/2794, 25 October 1978, p. 15, ERN (En) 00789725. The confession includes an annotation that it had been “[a]lready reported”. See S-21 confession – CHANN Sam *alias* Se, E3/2794, 25 October 1978, p. 15, ERN (En) 00789725. See also, Section 12.2: S-21 Security Centre, para. 2320.

<sup>1113</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 74-75 (specifying when the first Party Congress was convened); T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 24, 30-31; T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 14-16; Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 21, ERN (En) 00184068; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751. See also, Section 12.1: Internal Factions, para. 2005.

<sup>1114</sup> Section 13.2: Treatment of the Cham, para. 3199.

<sup>1115</sup> Democratic Kampuchea Map, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]. See also, Annex IV: Map of Democratic Kampuchea.

<sup>1116</sup> Section 12.1: Internal Factions, para. 2012.

<sup>1117</sup> Section 13.3: Treatment of the Vietnamese, paras 3374-3375; Section 12.2: S-21 Security Centre, paras 2303, 2309, 2313.

<sup>1118</sup> Section 12.1: Internal Factions, paras 1995, 2013; Section 12.2.8.1.4: S-21 Security Centre: SUOS Neou *alias* Chhouk.

<sup>1119</sup> Section 12.1: Internal Factions, paras 2012, 2030-2038; Section 12.2: S-21 Security Centre, paras 2303-2305 (SEAT Chhae), 2309 (KONG Chea), 2313 (Phuong); Section 13.3: Treatment of the Vietnamese, para. 3372; T. 7 September 2015 (IT Sen), E1/342.1, p. 77; T. 29 September 2015 (NO Sates), E1/351.1, pp. 18-19; T. 10 February 2016 (YSA Osman), E1/389.1, p. 5; S-21 Confession – TAUCH Chaem *alias* Sot, E3/2803, 17 May 1978, p. 1, ERN (En) 00143856; S-21 Execution List, E3/2285, undated, pp. 159-160, ERN (En) 00873280-00873281 (executed in December 1977); T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 95-96; S-21 Confession – KONG Chea Sin *alias* Sun, E3/2997,

Deputy Secretary of the East Zone, and served as Secretary of both Sectors 23 and 24 after Chhouk was arrested.<sup>1120</sup> SAO Phim remained the East Zone Secretary until June 1978.<sup>1121</sup>

380. *West and Southwest Zones* – *Ta Mok* was the Secretary of the Southwest Zone for the entire DK period and was either the third or fourth in the hierarchy of the Standing Committee under POL Pot and NUON Chea.<sup>1122</sup> KANG Chap *alias* Sae was the Deputy Secretary of the Southwest Zone until he left for the Central (old North) Zone in February 1977 on his way to taking on duties in Autonomous Sector 106.<sup>1123</sup> CHOU Chet *alias* Sy was a member of the Southwest Zone Committee.<sup>1124</sup> After 17 April 1975, the Southwest Zone was split into a West Zone (composed of Sectors 11, 31, 32 and 37) and a Southwest Zone (composed of Sectors 13, 25, 33 and 35), with CHOU Chet *alias* Sy becoming the West Zone Secretary and *Ta Mok* remaining the Southwest Zone Secretary.<sup>1125</sup> SAM Bit also had a leadership role in the Southwest Zone having been

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24 June 1978, p. 7, ERN (En) 01348799; S-21 Confession – UK Savan *alias* SAU, E3/2481, 26 June 1978, p. 1, ERN (En) 00823399.

<sup>1120</sup> Section 13.3: Treatment of the Vietnamese, para. 3371; T. 29 June 2016 (MEAS Soeur), E1/446.1, pp. 26-28, 36-37, 55, 78, 95. MEAS Soeur also testified that SENG Hong *alias* Chan replaced the Sector 21 Secretary Phuong prior to passing this responsibility to TAUCH Chaem *alias* Soth. T. 29 June 2016 (MEAS Soeur), E1/446.1, pp. 36-37. *See also*, OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 14, ERN (En) 00542185; Book by B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. xxii, ERN (En) 01149990; Book by B. Kiernan: *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, E3/3304, ERN (En) 00430242 (Table 2).

<sup>1121</sup> Section 12.1: Internal Factions, para. 2071.

<sup>1122</sup> Section 10.1: Tram Kak Cooperatives, paras 904-905; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 86-88 (*Ta Mok* was the Secretary of the Southwest Zone).

<sup>1123</sup> Section 10.1: Tram Kak Cooperatives, para. 906; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 30-31; PECH Chim Interview Record, E3/400, 25 August 2009, p. 7, ERN (En) 00379172; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303; corroborated by IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 0023474 (IEP Duch died so did not appear before the Trial Chamber); DK Telegram, E3/239, 30 April 1977 (noting that “Brother Se” had been assigned to “grasp the situation in Ampil district” after an incident when grenades had been thrown into the District Office there).

<sup>1124</sup> Section 10.1: Tram Kak Cooperatives, para. 907; T. 22 April 2015 (PECH Chim), E1/290.1, pp. 64-65; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3. ERN (En) 00379303 (*Ta Mok* was Secretary of the Southwest Zone; CHOU Chet *alias* Sy was a member of the Zone Committee); T. 11 March 2015 (NEANG Ouch *alias* Ta San), E1/275.1, p. 56 (stating that *Ta Sy* and *Ta Mok* were in the Zone Committee).

<sup>1125</sup> Section 10.1: Tram Kak Cooperatives, para. 907; Democratic Kampuchea Map, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303 (*Ta Mok* was Secretary of the Southwest Zone; CHOU Chet *alias* Sy was a member of the Zone Committee); T. 23 April 2015 (PECH Chim), E1/291.1, p. 81; T. 21 June 2012 (KHIEV Nou), E1/90.1, pp. 50-51 (confirming CHOU Chet *alias* Sy’s transfer to the West Zone and stating he knew CHOU Chet *alias* Sy and “chit chatted” with him in their capacity as Buddhist monks). KHIEV Nou confirmed CHOU Chet *alias* Sy’s transfer to the West Zone); KHIEV Nou Interview Record, E3/9601, 23 January 2014, p. 5, ERN (En) 00980408 (stating that the West Zone Office also located near his Southwest Zone office).

Secretary of the Southwest Zone's Division 2. When *Ta Mok*, in addition to his previous position, replaced RUOS *Nhim* as Secretary of the Northwest Zone, SAM Bit took on a more prominent leadership function in the Southwest Zone.<sup>1126</sup> CHOU Chet *alias Sy* was arrested in April 1978 and taken to S-21.<sup>1127</sup> Finally, although the Kampong Chhnang Airfield was located in the West Zone, it was overseen by Division 502 Commander SOU Met, who was located in Phnom Penh and regularly visited the site.<sup>1128</sup>

381. *Northwest Zone* – MOUL Sambath *alias* RUOS *Nhim* was the Northwest Zone Secretary until around May-June 1978.<sup>1129</sup> KUNG Sophal *alias* Kue *alias* Kan was the Deputy Secretary from 1975 until late 1978.<sup>1130</sup> The Zone was divided into Sectors 1-7.<sup>1131</sup> RUOS Mao *alias* Say *alias* Peang *alias* Than was a member of the Northwest Zone Committee, Chief of Northwest Zone Office, the former Secretary and former Deputy Secretary of Sector 1, and was arrested and sent to S-21 on 26 June 1977 or 10 July 1977.<sup>1132</sup> He was preceded by CHEA Huon *alias* Vahn, who was the Secretary of

<sup>1126</sup> Section 10.1: Tram Kak Cooperatives, para. 906; T. 10 March 2015 (NEANG Ouch *alias* Ta San), E1/274.1, p. 66 (stating that he received instructions from SAM Bit); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 55, ERN (En) 01057729 (stating that SAM Bit took charge of the Southwest Zone when *Ta Mok* left).

<sup>1127</sup> S-21 List of prisoners, E3/10510, undated, p. 10, ERN (En) 00218030 (CHOU Chet *alias* Si, 21 April 1978).

<sup>1128</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1725-1727.

<sup>1129</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1236; Section 12.1: Internal Factions, para. 1937; *Chen Yung Kuei's Cambodia Visit Reported*, E3/1783, 23 December 1977, ERN (En) 00498181 (also reporting that Comrade *Nhim Ruos* was the "second vice-president of the Presidium of the State of Democratic Cambodia"); T. 13 August 2015 (CHHIT Yœuk), E1/330.1, pp. 47-48 (indicating that *Ruos Nhim* was the zone leader when *Ta Val* was arrested in 1977); T. 27 October 2015 (MUN Mut), E1/357.1, p. 16 (testifying that he knew that *Ta Nhim* was the chief of the Northwest Zone). *See also*, T. 28 July 2015 (MAM Soeum), E1/324.1, p. 88 (testifying that he did not know MOUL Sambath personally but that he heard he was chief of the zone.); S-21 Confession – MOUL Oun *alias* Sambath *alias* *Nhim*, E3/3989 [E3/10511], multiple dates.

<sup>1130</sup> Case 002/01 Trial Judgement, fn. 2082; T. 18 May 2009 (KAING Guek Eav), E1/20.1, pp. 70-71 (indicating that Kong Sophal was alternate members of the Standing Committee. He was arrested and executed in S-21 in 1978.); KAING Guek Eav Interview Record, E3/394, 22 October 2009, p. 7, ERN (En) 00398234 (stating that "I can further state that what Ke Pok says concerning the arrest of *Ta Keu* (Kung Sophal, Deputy Secretary of the Northwest Zone) and *Vorn Vet*, is all accurate."); KAING Guek Eav Interview Record, E3/526, p. 6, ERN (En) 00204287 (providing that "*Ros Nhim* and Kung Sophal *alias* *Keu*, respectively Secretary and Deputy Secretary of the Northwest Zone, were all arrested."); S-21 Confession – KUNG Sophal *alias* *Keu*, E3/3192, multiple dates.

<sup>1131</sup> Democratic Kampuchea Map, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]; T. 22 November 2016 (SON Em), E1/501.1, p. 9; DC-Cam Interview of LY Nhoek, E3/9084, p. 68, ERN (En) 01390348 (Hoeng was replaced by Vahn as Sector 1 Secretary). However, LY Nhoek did not recall this detail upon testifying. *See* T. 6 December 2016 (LY Nhoek), E1/507.1, pp. 39-40. *See also*, Annex IV: Map of Democratic Kampuchea.

<sup>1132</sup> T. 21 November 2016 (Son Em), E1/500.1, p. 24 (indicating that RUOS Mao *alias* Say *alias* Peang *alias* Than is his uncle and the Chief of Northwest Zone office.); T. 22 November 2016 (SON Em), E1/501.1, p. 9; S-21 List of Prisoners Smashed on 18 October 1977, E3/2285, ERN (En) 01565278 (entry no. 35, RUOS Mao *alias* Say, Northwest Zone, Chief of Zone Office, Entry Date 10 July 1977); List of

Sector 1 and who was arrested and sent to S-21 on 20 June 1977.<sup>1133</sup> MEN Chun *alias* Hoeng was the Secretary of Sector 5, the location of the Trapeang Thma Dam.<sup>1134</sup> Starting in mid-1977, all of the sector secretaries, and many district leaders, in the Northwest Zone were arrested and taken to S-21 for interrogation and execution, including Vanh and Hoeng.<sup>1135</sup> In June 1977, Cheal *alias* Chhnang, RUOS Nhim's son,

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Prisoner entered on 26 June 1977, E3/9646, ERN (Kh) 01017054 (entry no. 26, ROS Mao *alias* Than *alias* Peang, Northwest Zone, Chief of Zone Office); List of Prisoners Smashed in 1977, E3/2286, ERN (En) 01565278 (entry no. 35, RUOS Mao *alias* Say, Chief of the Zone Office, entry date 10 July 1977); Prisoner List from the Northwest Zone, E3/8572, ERN (En) 01529334 (RUOS Mao *alias* Peang *alias* Than *alias* Say, member of the Zone); Document Received in October 1977, E3/10089, ERN (En) 01399480 (RUOS Mao *alias* Say, the member of the Northwest Zone); List of Political Prisoners, E3/10422, ERN (En) 01528768 (entry no. 22, ROS Mao *alias* Say *alias* Than *alias* Peang, Northwest Zone, Chief of Zone Office); S-21 Prisoner List, E3/8445, ERN (En) 01565942 (entry no. 10, ROS Mao *alias* Say, member of Northwest Zone, entry date 27 June 1977); List of Prisoners from Northwest Zone Who Are Documented, E3/9900, ERN (Kh) 01011236 (entry no. 35, ROS Mao *alias* Say *alias* Than, former Secretary of Sector 1, entry date 26 June 1977); List of Prisoners Who Have Been Reported (Northwest Zone, Sector 1), E3/10406, 21 September 1977, ERN (En) 01462235 (RUOS Mao *alias* Say, Deputy Secretary of Sector 1, entry date 10 July 1977).

<sup>1133</sup> T. 22 November 2016 (SON Em), E1/501.1, p. 7, 9. *See also*, S-21 List of prisoners smashed on 18 October 1977, E3/2285, ERN (En) 01565285 (CHEA Huon *alias* Vanh, arrested on 20 June 1977); S-21 Prisoner List, E3/10406, ERN (En) 01462235 (CHEA Huon *alias* Vanh, Sector 1 Secretary, entered 20 June 1977); S-21 List of prisoners, undated, E3/8572, ERN (En) 01529333 (CHEA Huon *alias* Vanh, Secretary of Sector 1, CIA).

<sup>1134</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1235; S-21 List of prisoners [who] entered on 28 June 1977, E3/9646, ERN (Kh) 01017045 (MEN Chun *alias* Hoeng, Secretary of Sector 5); S-21 List of prisoners, E3/8572, undated, ERN (En) 01529333 (MEN Chun *alias* Hoeng, Secretary of Sector 5); MEN Chun S-21 Confession, E3/2474, 22 September 1977, ERN (En) 00766158-00766320.

<sup>1135</sup> In June 1977, all Northwest Zone cadres such as *Ta Val*, *Ta Maong*, and *Ta Hoeng*, were arrested by the Southwest Zone cadres and taken away, along with their family members. *See* T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 89-92, 94-96; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 7-9, 17; Report on Sector 5, Northwest Zone, E3/1181, 27 June 1977, ERN (En) 00223175 (Hoeng, Sector 5 Secretary); S-21 List of prisoners [who] entered on 28 June 1977, E3/9646, ERN (En) 01139861 (AN Maong, Preah Netr Preah District Secretary, 28 June 1977); People's Republic of Kampuchea List of "Important Culprits", E3/1993, undated, ERN (En) 00064831 ("Hung", 20 August 1977); S-21 Confession – MEN Chun *alias* Hoeng, E3/2474, 3 July 1979, ERN (En) 00766158-00766320; S-21 List of prisoners smashed on 18 October 1977, E3/2285, ERN (En) 01565277 (SUN Kun *alias* Suy, Deputy Secretary of Sector 4); S-21 List of prisoners, E3/1942, 28 May 1978, ERN (En) 00183855 (MINH Theum *alias* Heang, Secretary Sector 4); Excerpt of Confession of MEN Chun *alias* Hoeng, Secretary of Sector 5, E3/1558, 6 November 1977, ERN (En) 00224130; S-21 List of prisoners from December 1977, E3/9950, ERN (En) 01367590 (THIN Theum *alias* Hieang, Secretary of Sector 4, entered 18 December 1977); S-21 List of prisoners [who] entered in July 1977, E3/9954, 5 August 1977, ERN (En) 01563498 (KE Kim Huot *alias* Sot, Former Secretary of Sector 7, arrested July 1977); S-21 List of prisoners [who] entered on 28 June 1977, E3/9646, 29 June 1977, ERN (En) 01139862 (UCH Kauy, Secretary of Sector 7, entered on 28 June 1977); S-21 List of prisoners [who] entered June 1978, E3/10161, 2 July 1978, ERN (En) 01564037, 01368522 (PHOK Thom, Secretary of Sector 3, entered 30 June 1978, LOEK Soeut *alias* Vung, Sector Secretary, entered 28 June 1978); S-21 List of prisoners, E3/8572, undated, ERN (En) 01529334 (entry no. 12, UM Tauy, Secretary of Sector 7, confessed partially); S-21 Prisoner List, E3/10339, undated, ERN (En) 01462199 (LOEK Soeut *alias* Vong, Sector 4 Secretary).



held an important role in Sector 5 for a few months until HENG Rin *alias* Mei came from the Southwest Zone to become Sector 5 Secretary.<sup>1136</sup>

382. *Northeast Zone* – MEN San *alias* NEY Sarann *alias* Ya served as Northeast Zone Secretary until he was arrested in 1976 and killed at S-21.<sup>1137</sup> He was replaced by his deputy UM Neng *alias* Vi.<sup>1138</sup> Near the end of the DK era, in late 1978, there was a significant purge of Northeast Zone cadres.<sup>1139</sup>

383. Although the Au Kanseng Security Centre was located in the Northeast Zone, it was under military supervision.<sup>1140</sup> The Chief of the Au Kanseng Security Centre reported to Battalion 806 of Centre Division 801 and later to Division 801 Commander SAO Saroeun directly, who in turn reported to SON Sen at the General Staff headquarters in Phnom Penh who himself forwarded the report to the Standing Committee.<sup>1141</sup>

384. *Other Autonomous Sectors* – By 1975 there were a number of autonomous or “specially-assigned” sectors. In addition to Preah Vihear (code number 103) and Siem Reap/Oddar Meanchey (106) noted above, were Mondulkiri (105), Kratie (505) and the

<sup>1136</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1235; S-21 List of East Zone prisoners, E3/10211, undated, ERN (En) 01462161 (HENG Rin *alias* Mei, Secretary of Sector 5, 16 November 1978 date of entry).

<sup>1137</sup> T. 13 December 2012 (PHAN Van), E1/153.1, p. 3 (stating that “Ya” was the leader of the Northeast Zone); T. 10 January 2012 (ROMAM Yun), E1/24.1, pp. 75-76; T. 6 May 2013 (Philip SHORT), pp. 81-82 (clarifying that “Ya” was the *alias* of NEY Sarann); CHIN Kim Thong Interview Record, E3/406, 5 November 2009, p. 2, ERN (En) 00404076 (stating that “Ya” led the Northeast Zone until he was arrested); KAING Guek Eav Interview Record before the Military Court of the Kingdom of Cambodia, E3/530, 4 July 2002, p. 1, ERN (En) 00329133 (indicating that MEN San *alias* Ya was secretary of the Northeast Zone until his arrest); T. 23 July 2012 (David CHANDLER), E1/94.1, p. 28 (testifying that NEY Sarann *alias* Ya was the secretary of the Northeast Zone); The Chamber further notes that Witness KLAN Fit, District 21 Deputy Secretary in Sector 101, Northeast Zone, provided testimony as to the members of the Northeast Zone committee. But the Chamber considers that his testimony was unreliable in this regard. He testified that IENG Sary was the head of the Northeast Zone Committee, which is clearly erroneous. *See* T. 6 December 2011 (KLAN Fit), E1/17.1, p. 44.

<sup>1138</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897667-00897668 (appeal by Northeast Zone secretary Vy to *Angkar* for instruction following the arrest of 209 Vietnamese soldiers); Written Record of Analysis by Craig Etcheson, E3/494, 18 July 2007, p. 11, ERN (En) 00142836 (indicating that MEN San was executed in 1977 and replaced by UM Neng); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, pp. 90-91, ERN (En) 00678540-00678541 (stating that UM Neng replaced NEY Sarann as Northeast Zone secretary in 1975. *See also*, Section 12.4: Au Kanseng Security Centre, para. 2880.

<sup>1139</sup> T. 10 January 2012 (ROMAM Yun), E1/24.1, pp. 78-79 (secretaries of Districts 22 and 23, Chief of Northeast soldiers and three others taken to Tuol Sleng); S-21 Prisoner List, E3/10212, undated, ERN (En) 01397695 (MUOY Poy, Secretary of Veun Sai District, Sector 101), ERN (En) 01397696 (CHORN Yong, Secretary of Sector 104, THA Van, Deputy Secretary of Sector 105), ERN (En) 01397702 (SAO *alias* Phan, Member of Sector 102).

<sup>1140</sup> Section 12.4.2.3: Oversight of Au Kanseng Security Centre by Division 801.

<sup>1141</sup> Section 12.4: Au Kanseng Security Centre, paras 2869-2870.

city of Kampong Som – which did not fall within any zone and answered directly to the Party Centre.<sup>1142</sup>

385. The Sector 105 Secretary was Laing until late 1977 when he was summoned to Phnom Penh and died under suspicious circumstances.<sup>1143</sup> Deputy Secretary of Sector 105, KHAM Phoun, disappeared soon thereafter.<sup>1144</sup> Witness SAO Sarun then became Sector 105 Secretary.<sup>1145</sup> A purge of the Sector 105 Committee ensued and continued throughout 1978.<sup>1146</sup>

386. YONG Yem was Secretary of Sector 505 from 1971 to 1976.<sup>1147</sup> From 1976 until March 1978, BORN Nan *alias* Yi was Secretary.<sup>1148</sup> Sector 505 was initially under the control of the Northeast Zone, but later became an autonomous sector.<sup>1149</sup> BORN Nan *alias* Yi was arrested in March 1978 and the Sector 505 Secretary and Deputy Secretary were then MEAS Keth *alias* Moeun and CHHIM Khon, respectively.<sup>1150</sup> Division 117, which was based in Sector 505 to fight the Vietnamese army, reported directly to the General Staff.<sup>1151</sup> After Snuol district (Sector 505) was seized by the Vietnamese army in 1978, Division 117 came under suspicion.<sup>1152</sup> MEAS Muth came to the sector from

<sup>1142</sup> T. 19 June 2012 (YUN Kim), E1/88.1, p. 28; T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 59; T. 5 September 2012 (NORNG Sophang), E1/122.1, p. 12; T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 54-55; DK Ministry of Education Document: *Political Geography of Democratic Kampuchea*, E3/1398, 1977, p. 12, ERN (En) 00814511; Map of Democratic Kampuchea, E3/475 [E3/476], undated, ERN (En) 01577214 [ERN (En) 00295143]. *See also*, Annex IV: Map of Democratic Kampuchea.

<sup>1143</sup> Section 12.5: Phnom Kraol Security Centre, paras 3034, 3039, 3055.

<sup>1144</sup> Section 12.5: Phnom Kraol Security Centre, para. 3055.

<sup>1145</sup> Section 12.5: Phnom Kraol Security Centre, paras 3039.

<sup>1146</sup> Section 12.5: Phnom Kraol Security Centre, paras 3056.

<sup>1147</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 12, 62 (indicating that Yem was the Secretary of Sector 505. After Yem was assigned by the upper echelon to be an ambassador to Korea, his position was replaced by Yi); T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 17, 19 (indicating that YONG Yem was originally name “SIM Son”, the Secretary of Sector 505. Later, he was assigned to be an ambassador to Korea. He further indicated that he studied in high school with BORN Nan *alias* Yi who was in charge of Sector 505); T. 19 June 2012 (YUN Kim), E1/88.1, p. 25, ERN (En) 00819639 (indicating that Yem was the Secretary of Kratie and later Yi replaced him. The witness met them during the annual study sessions).

<sup>1148</sup> S-21 Prisoner List, E3/8463, 30 April 1978, ERN (En) 01302441, 01554519; S-21 Confession – BORN Nan *alias* Yi, E3/1670, 20 March 1978, ERN (En) 00763407.

<sup>1149</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, p. 91.

<sup>1150</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 6-8; T. 19 June 2012 (YUN Kim), E1/88.1, p. 27 (indicating that he heard from others that Moeun replaced Yi following the latter’s arrest); YUN Kim Interview Record, E3/410, ERN (En) 00412200 (“*Ta* Yem *alias* Sun was the sector Chief from 1971 to 1976 and later on *Ta* Yi became the Chief of the Sector and after *Ta* Yi; Moeun and Khon were in the Sector in 1978.”); S-21 List of prisoners, E3/9884, ERN (En) 01558264 (CHHIM Khon, Deputy Secretary, Sector 505, arrested 2 December 1978); S-21 Prisoner List, E3/8463, 30 April 1978, ERN (En) 01302441, 01554519.

<sup>1151</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 54-55.

<sup>1152</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 15-17.

Kampong Som to replace the sector and division leadership.<sup>1153</sup> Witness MOENG Vet, who was Deputy Chief of Office of Division 117, saw a letter from Office 870 ordering 11 cadres to come to Phnom Penh by airplane, including Division 117 Commander, KHUN Rum *alias* Rom,<sup>1154</sup> Sector 505 Secretary, MEAS Keth *alias* Moeun, and Snuol District Secretary, CHUM Chen *alias* Phoan. MOENG Vet subsequently heard that the cadres were arrested and accused of being traitors.<sup>1155</sup> KHUN Rum *alias* Rom and MEAS Keth *alias* Moeun, among others, were executed at S-21. Witness MOENG Vet heard that others among the 11 may have been sent to Kampong Chhnang.<sup>1156</sup> S-21 records indicate that these arrests occurred in December 1978.<sup>1157</sup>

387. MEAS Muth, as Centre Division 164 Commander, was responsible for protecting Kampong Som port.<sup>1158</sup> HANG Doeun *alias* Dim was MEAS Muth's deputy until he was sent to S-21 in April 1977.<sup>1159</sup> Division 164, consisting at least of Regiments 61, 62, and 63, with the divisional headquarters located at a roundabout near the theatre in Kampong Som city.<sup>1160</sup> THUCH Rin *alias* Krin, was the director of the Kampong Som Port until he was sent to Hong Kong to take control of the Ren Fung company in December 1978.<sup>1161</sup>

<sup>1153</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 15-16.

<sup>1154</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 97-98; T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 8-9, 57; S-21 Prisoner List, E3/8463, 30 April 1978, ERN (En) 01554752 (KHUN Rum, Secretary of Division 117, arrested 8 December 1978).

<sup>1155</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 93, 101 (these also included Deputy Division 117 Commander, ROAT Leang, and an assistant, Nim; as well as regiment leaders); T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 2-4, 12-13, 17-18, 75, 90. The purge of Sector 505 and Division 117 leadership was corroborated by Civil Party SENG Soueng. See T. 29 August 2016 (SENG Soueng), E1/465.1, pp. 61-63; S-21 List of prisoners, E3/1651, undated, ERN (En) 00789507 (entry no. 10, Huon Yeng, Secretary of Kratie district and No. 11, Chhum Chin *alias* Phoan, Secretary of Snuol District); S-21 List of prisoners, E3/8463, ERN (En) 01554519 (entry no. 51, Baun Nan *alias* Yee, Secretary of Sector 505, entered 21 March 1978; entry no. 52, Meas Keth *alias* Moeun, Secretary of Sector 505, entered 8 December 1978), ERN (En) 01554751 (entry no. 4, CHHIM Khon, Deputy Secretary of Sector 505, entered 2 December 1978), ERN (En) 01554752 (entry no. 20 KHUN Rum, Secretary of Division 117, entered 8 December 1978), ERN (Kh) 00016195 (ROAT Leang, Deputy Commander Division 117, arrested, 1 December 1978).

<sup>1156</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, p. 10.

<sup>1157</sup> S-21 List of prisoners, E3/9884, undated, ERN (En) 01558264; S-21 List of prisoners, E3/8463, ERN (Kh) 00016195; S-21 List of prisoners, E3/10455, undated, ERN (En) 01248072 (HUON Yeng, Secretary Kratie District, arrested 12 December 1978); S-21 List of prisoners, E3/1651, undated, ERN (En) 00789507 (entry no. 10, Huon Yeng, Secretary of Kratie District; entry no. 11, Chhum Chin *alias* Phoan, Secretary of Snuol District).

<sup>1158</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 20; T. 16 December 2015 (PAK Sok), E1/369.1, pp. 15-17, 42-43.

<sup>1159</sup> See below, para. 433. See also, Section 12.2: S-21 Security Centre, para. 2327.

<sup>1160</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 15, 52, 59.

<sup>1161</sup> T. 21 November 2016 (THUCH Sithan), E1/500.1, pp. 53-54; 4 June 2012 (SAR Kimlomouth), E1/80.1, pp. 105-106; T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 102-103; DK Telegram,

5.1.8. *Angkar*

388. The word “*Angkar*” was widely used from the early days of the Cambodian communist movement to refer to the party that became the CPK.<sup>1162</sup> Like the phrase “Party Centre”, however, it was a vague and obfuscatory term.<sup>1163</sup> For example, Civil Party ROMAM Yun described a committee appointed by the local commune as a manifestation of “*Angkar*”;<sup>1164</sup> but to others, “*Angkar*” was a code word for the higher echelons of the CPK.<sup>1165</sup> Duch stated that when he used the word “*Angkar*”, he was referring to “the Party Central Committee or any particular person representing Pol Pot or the Party Central Committee”, although he added that others used the term differently.<sup>1166</sup> A reference to “*Angkar*” in a document was sometimes a reference to a specific senior member of the CPK, such as SON Sen or POL Pot.<sup>1167</sup> Witness SAUT Toeung testified that, in his understanding, “*Angkar*” meant POL Pot and NUON Chea.<sup>1168</sup> The frequency with which individuals and “bad elements” held themselves out to be “*Angkar*” prompted Committee 870 to issue a directive in 1977 in the following terms:

1. The term “*Angkar*” or “Party” is used only for the organization. It shall not be used for any individual.
2. For individual [*sic*]: “comrade”, “this person’s name”, or “comrade in this or that position”, or “comrade representing *Angkar* at this or that level” shall be used.<sup>1169</sup>

389. However, it is not clear to what extent the directive was circulated amongst ordinary people. Although Witness PECH Chim, a former district secretary, recalled teaching people “*Angkar* did not refer to any individual person in particular”, it was

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E3/1904, 18 October 1978, ERN (En) 00234307; Personal History of Prisoner in Detention – Ing Sokh, E3/1532, undated, ERN (En) 00235659 (noting position as Former Chairman of Land Transport, Commerce Chairman stationed in Hong Kong, and detained on 29 December 1978).

<sup>1162</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 64.

<sup>1163</sup> T. 24 July 2012 (David CHANDLER), E1/95.1, p. 39. *See also*, T. 1 July 2013 (PECH Chim), E1/215.1, pp. 83-85 (describing different understandings of the word “*Angkar*”).

<sup>1164</sup> T. 7 December 2011 (ROMAM Yun), E1/18.1, p. 13. *See also*, TITH Sokhom Interview Record, E3/382, 18 May 2009, p. 3, ERN (En) 00345895 (referring to a district secretary as “*Angkar*”).

<sup>1165</sup> SAO Hean Interview Record, E3/5518, 21 November 2009, p. 4, ERN (En) 00413898 (“I just heard that *Angkar* was the upper-echelon that put in place the plans for us to carry out.”); SAO Phen Interview Record, E3/445, 5 April 2010, p. 3, ERN (En) 00508572 (describing *Angkar* as the “upper echelons of the Khmer Rouge”, including the district level).

<sup>1166</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 14-15.

<sup>1167</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 35; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 73.

<sup>1168</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 73.

<sup>1169</sup> Committee 870 Directive, E3/740, 24 July 1977.

uncertain whether this was a result of the directive or not; and it is obvious that many of those interviewed by the OCIJ never fully grasped the meaning of “*Angkar*”, either before or after 1977.<sup>1170</sup>

### 5.1.9. *Democratic Centralism*

390. The 1971 and 1976 Party Statutes provide that the Party had an absolute monopoly in every sector, that it was the highest organisation and the supreme commander governing and administering all revolutionary work, while remaining close to the popular masses.<sup>1171</sup> However, this principle had to be understood in conjunction with the principle of democratic centralism.<sup>1172</sup> Democratic centralism was the organisational foundation for the Party, requiring committees at all levels to exercise collective leadership, with individuals assuming separate responsibilities.<sup>1173</sup> Pursuant to this principle, all Party conferences had to follow the majority, the minority had to respect the majority and the lower echelon had to respect the upper echelon.<sup>1174</sup>

391. Democratic centralism had two dimensions. First, decisions would be made democratically, that is collectively rather than individually, at least in principle.<sup>1175</sup> Structurally, this was reflected in the ubiquity of committees within the CPK hierarchy. Second, decisions would be made centrally, by the upper echelons of the Party, to whom the lower echelons would report and from whom they would receive instructions.<sup>1176</sup> This was reflected in the pyramidal leadership structure of the Party, with power

<sup>1170</sup> T. 1 July 2013 (PECH Chim), E1/215.1, p. 85. See e.g., PEN Loeut Interview Record, E3/5226, 18 November 2008, p. 3, ERN (En) 00250278 (“I didn’t know who *Angkar* was”); MIECH Ponn Interview Record, E3/5523, 9 December 2009, p. 3, ERN (En) 00434651 (“At that time, I did not know who the *Angkar* or Central Committee was”); DUCH Phleu Interview Record, E3/5213, 28 August 2008, p. 3, ERN (En) 00275433 (“I did not know who *Angkar* was”); Interview with CHUM Manh by Co-Prosecutors, E3/5690, 17 August 2006, p. 2, ERN (En) 00146775 (“At first time I don’t know what *Angkar* is”); SUONG Sim Interview Record, E3/4657, 9 July 2009, p. 8, ERN (En) 00353705 (“I did not know at that time who *Angkar* was”); PECH Sokha Interview Record, E3/403, 12 October 2009, p. 4, ERN (En) 00403004 (discussing the period after 1977, and stating: “I did not know who *Angkar* was; I just heard *Angkar*.”); KEANG Vannary Interview Record, E3/5310, 7 July 2009, p. 10, ERN (En) 00353490 (“Q. What do you mean by *Angkar*? A. I do not know; I heard others say *Angkar*, so I said *Angkar*.”).

<sup>1171</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 2, ERN (En) 00940564 (Article 2); 1976 CPK Statute, E3/130, undated, p. 3, ERN (En) 00184024 (Article 2).

<sup>1172</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12); 1976 CPK Statute, E3/130, undated, p. 16, ERN (En) 00184037 (Article 6).

<sup>1173</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12); 1976 CPK Statute, E3/130, undated, p. 17, ERN (En) 00184037 (Article 6).

<sup>1174</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12).

<sup>1175</sup> 1976 CPK Statute, E3/130, undated, p. 16, ERN (En) 00184037 (Article 6).

<sup>1176</sup> 1976 CPK Statute, E3/130, undated, p. 16, ERN (En) 00184037 (Article 6).

concentrated in a small Standing Committee to which all other tiers reported and from which they received instructions.

392. NUON Chea stated that the principle of collective decision-making was implemented “at every stage, at all [...] times” in the CPK, and specifically at the meetings of the Central and Standing Committees which he attended.<sup>1177</sup> As NUON Chea explained to the Chamber:

“[C]ollective decision” means everybody would participate in a meeting to express the ideas in a centralized democracy. This applied to all meetings and not confined only to Central or Standing Committee meetings [*sic*]. And the Standing Committee Secretary or Central Committee Secretary would consolidate all those ideas and opinions, and if members of the Party were not satisfied, then all together would be able to express their objections or present proposals until they reached a consensus, then it would become official. Otherwise, if there is no consensus, discussion would go on.

Similarly, when asked in a 2006 interview whether POL Pot had a monopoly on power during the DK era, NUON Chea rejected this proposition and stated that decisions were made collectively.<sup>1178</sup>

393. KHIEU Samphan also indicated that key decisions were made collectively. In respect of the Standing Committee’s decision to evacuate Phnom Penh, he said that “if there had been a single voice against the evacuations, there could have been no evacuations”.<sup>1179</sup> However, IENG Sary claimed that his own individual dissent was not enough to stop the Standing Committee from proceeding with the abolition of currency in 1975.<sup>1180</sup>

394. Expert David CHANDLER testified that, although POL Pot would have had the “last word” in decision-making as CPK Secretary, there was no evidence that he had made decisions alone during the DK period.<sup>1181</sup>

<sup>1177</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 33-36.

<sup>1178</sup> NUON Chea Interview by Japanese Journalist, E3/26, undated, p. 8, ERN (En) 00329511. *See also*, Le 17ème congrès du PCK, E3/3029R, undated (video recording of 17<sup>th</sup> Anniversary Congress showing POL Pot seated on-stage with NUON Chea).

<sup>1179</sup> KHIEU Samphan Interview Transcript, E3/4051, undated, p. 1, ERN (En) 00788872.

<sup>1180</sup> IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 4, ERN (En) 00417602.

<sup>1181</sup> T. 24 July 2012 (David CHANDLER), E1/95.1, pp. 23-24.

395. Expert Philip SHORT cast the meetings of the Standing Committee in a slightly different light: in his opinion, POL Pot solicited the opinions of other members at Standing Committee meetings and incorporated their remarks in his conclusions, but “the policy that emerged was that which he had essentially decided himself before the meeting even began”.<sup>1182</sup>

396. The Chamber further notes several important differences between the 1971 and 1976 Statutes. The notes reflecting the content of the 1971 Statute indicate that lower echelons were permitted to request re-examination or review of decisions of the upper echelon.<sup>1183</sup> The 1971 Statute also required that all leadership positions be determined by election (unless it proved too difficult, in which case, the upper echelon could make the appointment).<sup>1184</sup> The 1971 Statute likewise provided that leadership organisations had the right to resolve affairs in their own framework according to the political line and principles of the Party as well as instructions of the upper echelon.<sup>1185</sup> The 1976 Statute does not contain any of these provisions.<sup>1186</sup> In fact, there was no evidence that CPK committees at any level – central, zone, sector or otherwise – were selected by election. Rather, committee leadership was appointed by the committee immediately above it in the hierarchy.<sup>1187</sup> The Standing Committee minutes of 9 October 1975 record the appointment of members of the Central and Standing Committee to take charge of various areas of policy responsibility in the government and the General Staff.<sup>1188</sup> The minutes indicate that all decisions and project proposals had to go through the Standing Committee.<sup>1189</sup> Therefore, the elimination of provisions in the 1971 Statute which required the election of certain positions, was consistent with the actual situation with decision-making being concentrated at the Standing Committee and the committee leadership appointment by it.

<sup>1182</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 75.

<sup>1183</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12).

<sup>1184</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12).

<sup>1185</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 14, ERN (En) 00940576 (Article 12).

<sup>1186</sup> 1976 CPK Statute, E3/130, undated, p. 16, ERN (En) 00184037 (Article 6).

<sup>1187</sup> Section 10.1: Tram Kak Cooperatives, para. 931 (district-level appointments were proposed by the district to the sector); Section 12.2: S-21 Security Centre, para. 2285 (KOY Thuon was appointed as Minister of Commerce in April 1976); Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, ERN (En) 00183393-00183394 (noting delegation of work and the operational process concerning members of the Standing Committee and Central Committee).

<sup>1188</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, ERN (En) 00183393-00183394, 00183402.

<sup>1189</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, ERN (En) 00183395.

397. In light of the evidence given by NUON Chea, KHIEU Samphan and IENG Sary – all of whom attended or participated in meetings of the Standing Committee – the Chamber is satisfied that key decisions of the Standing Committee were not simply made unilaterally by POL Pot, but rather were made collectively; that is to say, with the input of, and with a broad consensus from, the entire Committee. However, the Chamber is unable to conclude that unanimity was required in decision-making, and therefore leaves open the possibility that individual members may have disagreed with particular decisions from time to time.

#### 5.1.10. *Party Membership*

398. The 1971 and 1976 Party Statutes were substantially the same in their requirements for Party membership, which was a prerequisite to holding leadership roles.<sup>1190</sup> The 10 criteria listed in these statutes for selection to Party leadership did not appear in the 1960 Statute, but required a strong revolutionary stance in relation to: (1) the Party political line; (2) proletarian ideology; (3) internal Party solidarity and unity; (4) the lines of organisation, leadership, and work; (5) revolutionary vigilance, maintaining secrecy and defending revolutionary forces of the Party; (6) independence, mastery, self-reliance and self-mastery; (7) making and examining personal histories and revolutionary life views;<sup>1191</sup> (8) class;<sup>1192</sup> (9) clean life morals and political cleanliness; and (10) the capability to build oneself and be receptive to future leadership.<sup>1193</sup> The age of a person prior to becoming a Party member, which had been considered in the 1960 Statute, no longer played a role in Party membership in later

<sup>1190</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 11-13, ERN (En) 00940573-00940575 (Article 11); 1976 CPK Statute, E3/130, undated, pp. 13-16, ERN (En) 00184034-00184037 (Article 5); T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 74-75; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 79 (only Party members and Youth League members could hold leadership roles).

<sup>1191</sup> In this regard, the 1976 Statute provides that Party leaders: “Must have correct and strong principles and stances with a high spirit of responsibility in making and examining revolutionary one’s personal histories, revolutionary life views, at all times. Must be absolutely honest in examining one’s own personal history and revolutionary life views and in reforming one’s faults large and small, and in pushing building and consolidating one’s good qualities to prosper quickly, one after another.”

<sup>1192</sup> In this regard, the 1976 Statute provides that Party leaders: “Must have a good class as [the subject’s] original class, and especially have the Party’s workers class stance which the subject has successively strived to build while inside the revolutionary movement led by the Party.”

<sup>1193</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 11-13, ERN (En) 00940573-00940575 (Article 11); 1976 CPK Statute, E3/130, undated, pp. 13-16, ERN (En) 00184034-00184037 (Article 5). *See also*, Revolutionary Flag, E3/747, August 1978, pp. 4-15, ERN (En) 00499769-00499780 (re-emphasising the 10 criteria for Party membership); T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 75. *See also*, Revolutionary Youth, E3/765, October 1978, pp. 13-21, ERN (En) 00539988-00539996 (on the 12 Precepts of a Revolutionary).



Statutes. Duch testified that this made Party membership based on the subjective evaluation of the Party Secretary of a candidate's "solidarity" with the Party's political line.<sup>1194</sup>

399. Any full-rights Party member had significant rights that included the right to join decision-making pursuant to democratic centralism and to induct others into the Party.<sup>1195</sup> If Party members committed an infraction, disciplinary measures foreseen by the Party statutes included (1) criticism; (2) change of duties; and (3) expulsion from the Party.<sup>1196</sup> Indeed, KOY Thuon was subjected to a change of duties and expulsion from the Party, before he was executed at S-21.<sup>1197</sup>

400. The Chamber heard testimonial evidence regarding a number of inducted witnesses and Civil Parties.<sup>1198</sup> For example, SUONG Sikoeun was inducted by KEAT Chhon and THIOEUNN Prasith at IENG Sary's home in Beijing in 1971.<sup>1199</sup> PECH Chim was inducted by Saom, the Sector Secretary.<sup>1200</sup> NOEM Sem was inducted by HU Nim.<sup>1201</sup> In addition, KHIEU Samphan was inducted by *Ta* Mok.<sup>1202</sup>

401. Asked how many Party members there were, Duch initially testified that he did not know, before estimating that perhaps five percent of the population were Party

<sup>1194</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 75; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 11. Cf. 1971 CPK Statute, E3/8380, 3 July 1972, p. 9, ERN (En) 00940571 (Article 8: "the Party seniority of each Party member begins from the day when he has become a full rights member.").

<sup>1195</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 7, ERN (En) 00940569 (Article 3); 1976 CPK Statute, E3/130, undated, pp. 11-12, ERN (En) 00184032-00184033 (Article 3).

<sup>1196</sup> 1971 CPK Statute, E3/8380, 3 July 1972, pp. 26-27, ERN (En) 00940588-00940589 (Article 43); 1976 CPK Statute, E3/130, undated, p. 12, ERN (En) 00184033 (Article 3).

<sup>1197</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 12 (KOY Thuon was removed from the Party membership). See also, Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon.

<sup>1198</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 9 (NETH Savat became a member in 1970 after being inducted by KHAM Phoun and *Ta* Ham) NETH Savat Interview Record, E3/7695, 23 October 2008, p. 3, ERN (En) 00239484 (KHAM Phoun was Deputy Sector Secretary and Ham was the Sector Secretary); T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 23-25 (SAUT Toeung joined the Youth League around 1972 and had earlier been inducted into the Party by Ing, a Party leader in the Northeast Zone).

<sup>1199</sup> T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 70-71.

<sup>1200</sup> T. 21 April 2015 (PECH Chim), E1/289.1, pp. 70-71.

<sup>1201</sup> T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 9-10 (prior to 1975, NOEM Sem was inducted by HU Nim and admitted as a member of the CPK because she belonged to a poor peasant class. She had been a member of the Youth League).

<sup>1202</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 91 ("In -- up to 1969 and at the Phnom Aoral Mountain, I joined the Party with Hu Nim, Pok Deuskomar, where *Ta* Mok, on behalf of the CPK, introduced us"); T. 8 February 2012 (Accused KHIEU Samphan), E1/40.1, p. 22; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 19 (stating that he "had no choice but to join the [CPK]" after fleeing Phnom Penh); Book by Khieu S., Cambodia's Recent History and the Reasons behind the Decisions I Made, E3/18, p. 36, ERN (En) 00103741 (describing moving to Mount Oral in 1969, where *Ta* Mok had installed his headquarters).

members.<sup>1203</sup> The Chamber has not encountered a definitive list of Party membership. However, there was evidence that Party membership was quite limited at the outset and gradually increased.

402. Numerous *Revolutionary Flags* indicate that in mid-1974, the CPK Central Committee decided to close the door to Party membership (except for in the military ranks) in order to prevent spies from infiltrating its ranks.<sup>1204</sup> NUON Chea testified that the doors to Party membership were not shut in mid-1974, but acknowledged the underlying rationale put forward by these *Revolutionary Flags* that there were “huge numbers of enemies” among the ranks.<sup>1205</sup> The Chamber considers that Party membership likely dwindled as fears of internal enemies became more acute starting in mid-1974.

403. In 1977, however, the CPK initiated a Party building exercise to increase membership. The *Revolutionary Flag* of April 1977 informed its readership of a decision made during a February 1977 conference in Kampong Chhnang to build Party membership in the cooperatives in 1977 so that there would be 30 Party members for every 1,000 families.<sup>1206</sup> It cautioned that the selection of new members had to be meticulous and based upon the 10 criteria for selection.<sup>1207</sup> It further noted that the decision to induct new members rested with the zone committees and the Party Centre.<sup>1208</sup> Building the Party ranks remained a preoccupation of the June and July 1977

<sup>1203</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 83-84. According to CHEA Sim, Party membership grew from 100 Party members in the 1960s, to 150 in 1970, over 200 in 1975 and 350 Party members in 1978, including 50 candidate members. See CHEA Sim Interview by Ben KIERNAN, E3/1568, ERN (En) 00651863. If accurate, this would constitute an average of 50 Party members in each of the seven zones, including all administrative and military divisions. But the basis for his estimation is unclear.

<sup>1204</sup> *Revolutionary Flag*, E3/166, March 1976, pp. 32-33, ERN (En) 00517844-00517845; *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 33-34, ERN (En) 00491427-00491428 (“So then, we closed the door, and we took firm measures in mid 1974. Aside the Army [*sic*], we did not allow anyone to join.”); *Revolutionary Flag*, E3/745, March 1978, p. 20, ERN (En) 00504086 (“[D]uring the past several years we have kept the door closed and have not expanded membership. Furthermore, we did not just shut the door: we purged and cast off no-good elements too.”).

<sup>1205</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 21-23.

<sup>1206</sup> *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506; *Revolutionary Flag*, E3/193, August 1977, p. 3, ERN (En) 00399223. See also, Standing Committee Minutes, E3/226, 10 June 1976, ERN (En) 00183363 (noting significant shortfall of Party members and cadres, in Health and Social Affairs ministry).

<sup>1207</sup> *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506. See also, 1976 CPK Statute, E3/130, undated, pp. 10-11, ERN (En) 00184031-00184032 (Chapter 2).

<sup>1208</sup> *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506. Cf. *Revolutionary Flag*, E3/745, March 1978, p. 11, ERN (En) 00504077 (“because the Party Center cannot select very many Party members; it can select only 4-10 persons in the surrounding units. The zones can select

*Revolutionary Flags*, which urged the recruitment of new Party members, but cautioned against enemies embedded in core Party organisations.<sup>1209</sup>

404. The August 1977 *Revolutionary Flag* admitted difficulty in expanding Party membership because cadres, Party members and core Party organisations had been “cast off, overthrown and dissolved, and fell away from the movement”.<sup>1210</sup> The Chamber notes that this coincides with the wide-spread purges throughout the country in mid-1977.<sup>1211</sup> Therefore, arresting, torturing and killing Party members for betraying the revolution adversely impacted efforts to build the Party membership. A decision was made to recruit from locations where there were no traitors and to cease recruitment where traitors had been found.<sup>1212</sup> In the West Zone, Sectors 31, 32 and 37 were singled out as good sectors and a goal set to recruit 300 new Party members by the end of 1977.<sup>1213</sup>

405. This explains why in mid-1977, Southwest Zone cadres who had not been implicated in major purges were recruited to lead in other zones throughout the country, including the Central (old North), new North, Northwest and East Zones.<sup>1214</sup> A subsequent *Revolutionary Flag* in March 1978 reported that Party membership had indeed increased with “suitable numbers” from July 1977, announcing this as a major victory since it was accomplished amidst the purge of those who were disloyal to the Party.<sup>1215</sup>

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approximately 4-10 persons in surrounding units. As for very large numbers being selected, that is for the sectors, districts, cooperatives, the companies of the Army, and so on.”).

<sup>1209</sup> *Revolutionary Flag*, E3/135, June 1977, pp. 27, 33, ERN (En) 00446872, 00446878; *Revolutionary Flag*, E3/743, July 1977, ERN (En) 00476174 (stating that it must expand Party leadership “from the Center level down to the district level in the base areas, leadership echelon in the Army, leadership level in the ministries).

<sup>1210</sup> *Revolutionary Flag*, E3/193, August 1977, pp. 4-8, ERN (En) 00399224-00399228, 00399230 (“[I]t keeps getting choked-off and Party membership cannot expand. It seems as if we just see the traitors; we see the no-good elements. In truth, they are not all traitors; they are not all bad.”).

<sup>1211</sup> Section 12.1.5.2.4: Purge of the Northwest Zone; Section 12.1.6.3.4: Purge of the East Zone. *See also*, Section 11.2.7: 1<sup>st</sup> January Dam Worksite: Purges of Cadres in the Central (old North) Zone; Section 12.2: S-21 Security Centre, para. 2548 (Operations at S-21 peaked in 1977 as the CPK systematically purged the North and Northwest Zone cadres. From early January to 31 December 1977, an S-21 execution list indicates that approximately 5,282 prisoners were killed.).

<sup>1212</sup> *Revolutionary Flag*, E3/193, August 1977, pp. 8-9, ERN (En) 00399228-00399229.

<sup>1213</sup> *Revolutionary Flag*, E3/193, August 1977, pp. 10-11, ERN (En) 00399230-00399231.

<sup>1214</sup> Section 12.1.5.2.4: Purge of the Northwest Zone; Section 12.1.6.3.4: Purge of the East Zone. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1235; Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

<sup>1215</sup> *Revolutionary Flag*, E3/745, March 1978, p. 20, ERN (En) 00504086.

406. NUON Chea testified that from the creation of the First Party Congress in 1960, all zone leaders were Party members.<sup>1216</sup> In addition, there was credible testimonial evidence that sector and district secretaries and committee members as well as some security centre staff, were Party members or candidate members.<sup>1217</sup> Based on the available evidence, the Chamber is unable to determine the number of Party members of the CPK. It was clear however that Party membership was key to having a decision-making role in Democratic Kampuchea.

#### 5.1.11. *The Youth League*

407. The Communist Youth League of Kampuchea (the “Youth League”) was a core organisation of the Party subservient to the leadership of the CPK.<sup>1218</sup> It was the “right hand” of the CPK that assisted with all the Party’s tasks and an important source of “combatants”.<sup>1219</sup> The requirements for membership in the Youth League mirrored the 10 criteria for CPK membership.<sup>1220</sup> However, Youth League members had to be 17-30 years old.<sup>1221</sup> Youth League members were tasked with spreading Party propaganda, educating the masses and promoting the defence of Democratic Kampuchea.<sup>1222</sup>

408. According to Duch, the Youth League was an alliance of the CPK youth, tasked with selecting revolutionary individuals from the progressive youth. They were to

<sup>1216</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 10-11.

<sup>1217</sup> T. 25 March 2015 (SORY Sen), E1/282.1, p. 72 (indicating that *Ta An* and the other members of the District Committee, Duch and *Ta Penh* as well as *Ta Chheng*, Moeung and Sieng were Party members); T. 3 March 2015 (VAN Soan), pp. 34, 36 (there were six Party members at Kraing Ta Chan, including *Ta An*, *Penh*, *Chhen*, Moeun, *Chheang* and *Chhoeun*; only Party members undertook interrogations at Kraing Ta Chan); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 20-21 (stating that the succession of chiefs at the Tram Kak District Hospital was Met, Ya and Neary Neang, each of whom was a Party Member); T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 81-82 (indicating that the main purpose of S-21 was to detain Party members and revolutionary combatants, but the real practice diverged from that); T. 28 November 2016 (BEIT Boeurn), E1/502.1, pp. 29, 21, 31 (Witness, who worked at the Ministry of Commerce in Tuol Tompong, was a Party member from 1977); T. 1 October 2012 (KHIEV En), E1/127.1, pp. 85-86 (indicating that only Party members or members of the Youth League would attend congress or meetings). *See also*, Section 10.1: Tram Kak Cooperatives, para. 818.

<sup>1218</sup> 1971 CPK Statute, E3/8380, 3 July 1972, p. 23, ERN (En) 00940585 (Article 33); 1976 CPK Statute, E3/130, undated, p. 25, ERN (En) 00184046 (Article 26).

<sup>1219</sup> Statute of the Communist Youth League of Kampuchea, E3/1230, January 1976, p. 3, ERN (En) 01201894; 1971 CPK Statute, E3/8380, 3 July 1972, pp. 23-24, ERN (En) 00940585-00940586 (Articles 34-35).

<sup>1220</sup> Statute of the Communist Youth League of Kampuchea, E3/1230, January 1976, pp. 4-8, ERN (En) 01201895-01201899.

<sup>1221</sup> Statute of the Communist Youth League of Kampuchea, E3/1230, January 1976, p. 5, ERN (En) 01201896.

<sup>1222</sup> Statute of the Communist Youth League of Kampuchea, E3/1230, January 1976, p. 8, ERN (En) 01201899.

refashion themselves and to shoulder certain responsibilities prior to becoming Party members. It was the core organisation prior to being inducted into the Party.<sup>1223</sup>

## **5.2. Structure of Democratic Kampuchea**

409. In April 1975, as Phnom Penh fell to the military forces of the CPK and the LON Nol regime collapsed, foreign governments began to extend formal diplomatic recognition to the GRUNK.<sup>1224</sup> An invitation by the United States government to NORODOM Sihanouk to return immediately to Cambodia and take power went unheeded, and U.S. embassy personnel were evacuated from Phnom Penh on 12 April 1975 together with acting Prime Minister SAUKHAM Khoy.<sup>1225</sup> By 17 April 1975, most of the remaining senior leaders of the Khmer Republic had fled the country and the CPK/FUNK takeover was complete.<sup>1226</sup>

410. In reality, the GRUNK administration that took power in Cambodia was a façade, and it was the CPK that exercised actual control.<sup>1227</sup> NORODOM Sihanouk had foreseen this outcome two years earlier, telling an audience in China:

After the war is over, Prince Sihanouk will only be a symbol of national unity [...] In reality, power will be in the hands of the Khmer Rouge.<sup>1228</sup>

<sup>1223</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 12.

<sup>1224</sup> Book by F. Ponchaud: *Cambodia Year Zero*, E243.1, 1978, p. 12, ERN (En) 00862033; *Untitled article* (Washington Post), E3/3296, 16 April 1975, p. 1, ERN (En) 00418912 (“Sweden officially recognised Prince Norodom Sihanouk as head of the Cambodian government”).

<sup>1225</sup> *Sihanouk Silent as Insurgents Wait Outside Phnom Penh* (The Guardian), E3/4422, 14 April 1975, ERN (En) 00002624; Report by L. Trivière: *China and Cambodia*, E3/482, November 1975, p. 27, ERN (En) 00524011; *White Flags Over Phnom Penh* (Newsweek), E3/3721, 28 April 1975, p. 17, ERN (En) 00002598; *The Unknown Dimensions of the Cambodian Tragedy* (Washington Post), E3/4479, 19 February 1978, ERN (En) 00445460; Book by N. Chanda: *Brother Enemy: The War After The War*, E3/2376, p. 40, ERN (En) 00192225.

<sup>1226</sup> *White Flags Over Phnom Penh* (Newsweek), E3/3721, 28 April 1975, p. 19, ERN (En) 00002600; Book by N. Chanda: *Brother Enemy: The War After The War*, E3/2376, p. 38, ERN (En) 00192223.

<sup>1227</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 104-105; T. 9 May 2013 (Philip SHORT), E1/192.1, pp. 69-70; Book by G. Chon and T. Sambath: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, p. 13, ERN (En) 00757482. *See also*, Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975 (assigning specific areas of policy responsibility to senior CPK members). *See also*, Report by L. Trivière: *China and Cambodia*, E3/482, November 1975, p. 9, ERN (En) 00523993 (reporting earlier statements by NORODOM Sihanouk to the effect that “the Khmer Rouge hold the majority within the GRUNK [...] It is now a communist-oriented government [...] I am giving up everything to the Khmer Rouge”).

<sup>1228</sup> Report by L. Trivière: *China and Cambodia*, E3/482, November 1975, p. 16, ERN (En) 00524000.

411. One commentator in 1975 observed that the GRUNK cabinet was dominated by the Khmer Rouge, with “only two ‘Sihanoukists’” amongst its members.<sup>1229</sup> NORODOM Sihanouk himself, though ostensibly the head of state, did not arrive in Phnom Penh until September 1975, having spent the previous months in Beijing and Pyongyang.<sup>1230</sup>

412. In October 1975, the CPK Standing Committee assigned specific areas of policy responsibility to 13 senior Party members, including NUON Chea (given responsibility for “Party Affairs, Social Action, Culture, Propaganda and Education”) and KHIEU Samphan (given responsibility for “the Front and the Royal Government, and Commerce for accounting and pricing”).<sup>1231</sup> IENG Sary was assigned “Foreign Affairs work, both Party and State”, while POL Pot retained “general responsibility over the military and the economy”.<sup>1232</sup> KOY Thuon *alias* Thuch was assigned “Domestic and International Commerce”, SON Sen was to deal with the “General Staff and Security”, VORN Vet was given responsibility for “Industry, Railroads and Fisheries”, IENG Thirith *alias* Phea was to take charge of “Culture, Social Action and Foreign Affairs”, YUN Yat *alias* At was assigned “Propaganda and Re-education, both internal and external” and NON Suon *alias* Chey was to deal with “Agriculture”.<sup>1233</sup> According to official DK publications, on 14 December 1975 KHIEU Samphan chaired a National Congress in Phnom Penh during which he was reported to have presented the new constitution.<sup>1234</sup> On 5 January 1976, the constitution (“DK Constitution”) came into

<sup>1229</sup> Report by L. Trivière: *China and Cambodia*, E3/482, November 1975, p. 25, ERN (En) 00524009.

<sup>1230</sup> *Reception for Sihanouk: Speeches by Khieu Samphan and Sihanouk* (in SWB/FE/5006/B collection), E3/711, 11 September 1975, ERN (En) 00003732-00003732; *Sihanouk Pledges ‘Democratic’ Rule* (New York Times), E3/3296, 16 April 1975; Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodia Border*, E3/1714, February 29 1980, p. 8, ERN (En) 00170699; Book by N. Chanda: *Brother Enemy: The War After The War*, E3/2376, pp. 38-43, ERN (En) 00192223-00192228.

<sup>1231</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 22. *See also*, Section 7: Roles and Functions – NUON Chea, paras 546-547; Section 8: Roles and Functions – KHIEU Samphan, para. 617.

<sup>1232</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 1, ERN (En) 00183393; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 22-23.

<sup>1233</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, ERN (En) 00183393-00183394; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 22-23.

<sup>1234</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 581, 593 (finding the evidence before the Chamber did not conclusively establish that such a meeting took place); *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167810-00167817.

effect, and the state of Democratic Kampuchea was born.<sup>1235</sup> The DK Constitution vested legislative power in a People’s Representative Assembly (“PRA”), which was to comprise 250 elected members.<sup>1236</sup> The government was to be elected by, and answerable to, the members of the PRA.<sup>1237</sup> “People’s courts” were also to be appointed by the PRA.<sup>1238</sup> In place of the monarchy, the DK Constitution provided for a State Presidium – again, to be appointed by the PRA – to represent the state of DK at home and overseas.<sup>1239</sup>

413. All this, too, was a façade. Minutes of a meeting of the CPK Standing Committee reflect the Standing Committee’s view that the PRA was “worthless” and cautioned members not to “speak playfully about the Assembly in front of the people to let them see that we are deceptive”.<sup>1240</sup> Although the DK Constitution envisaged “direct and prompt general elections by secret ballot to be held throughout the country” to select the members of the PRA, no such nationwide elections were held; at best, voting took place at a limited number of locations, and it is not clear whether voters were presented with any actual choice of candidates.<sup>1241</sup> Witnesses PRAK Yut and UNG Ren did not know that they were candidates for the PRA until they were notified by their superiors that they had been appointed, and even after their appointments they remained uncertain as to the nature of their roles and responsibilities as PRA representatives.<sup>1242</sup> Neither of them recalled attending any meetings of the PRA or voting on any legislation.<sup>1243</sup> Mat LY, a member of the PRA, recalled the election of PRA members as a sham in which each centre had a single name on the ballot.<sup>1244</sup> After the election, PRA members were

<sup>1235</sup> *Radio Editorial Hails Promulgation of New Constitution* (in FBIS collection), E3/273, 8 January 1976, ERN (En) 00167822; DK Constitution, E3/259, undated, ERN (En) 00184833-00184838.

<sup>1236</sup> DK Constitution, E3/259, undated, Chapter Five, ERN (En) 00184835.

<sup>1237</sup> DK Constitution, E3/259, undated, Chapter Six, ERN (En) 00184835.

<sup>1238</sup> DK Constitution, E3/259, undated, Chapter Seven, ERN (En) 00184836.

<sup>1239</sup> DK Constitution, E3/259, undated, Chapter Eight, ERN (En) 00184836.

<sup>1240</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 3, ERN (En) 00182630. *See also*, T. 19 May 2015 (OR Ho), E1/301.1, pp. 92-93.

<sup>1241</sup> DK Constitution, E3/259, undated, Chapter Five, ERN (En) 00184835; T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 73-74; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 63; T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 110-111; T. 10 January 2013 (UNG Ren), E1/158.1, p. 28.

<sup>1242</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 73-74; T. 10 January 2013 (UNG Ren), E1/158.1, pp. 28, 30-31.

<sup>1243</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 73, 75; T. 10 January 2013 (UNG Ren), E1/158.1, pp. 28-29, 30-31.

<sup>1244</sup> MAT Ly Interview by Stephen HEDER, E3/390, undated, p. 28, ERN (En) 00436873.

called to a meeting where pre-approved documents were read-out and PRA members were expected to approve.<sup>1245</sup>

414. On 30 March 1976 – after the purported election of the PRA but prior to its inaugural session<sup>1246</sup> – the CPK Central Committee nominated NUON Chea as chairman of the PRA Standing Committee and named KHIEU Samphan chairman of the State Presidium (*i.e.* President of Democratic Kampuchea).<sup>1247</sup> The Central Committee also appointed several members of the government, including POL Pot (who was named Prime Minister), IENG Sary (named Deputy Prime Minister for Foreign Affairs), VORN Vet (named Deputy Prime Minister for Economics and Finance) and SON Sen (named Deputy Prime Minister for National Defence).<sup>1248</sup>

415. In April 1976, NORODOM Sihanouk announced his retirement as head of state.<sup>1249</sup> A few days later, all members of GRUNK resigned to make way for the new government.<sup>1250</sup> From 11 to 13 April 1976, the PRA met for its inaugural session, at which it ostensibly selected and appointed the members of the PRA Standing

<sup>1245</sup> MAT Ly Interview by Stephen HEDER, E3/390, undated, pp. 28-29, ERN (En) 00436873-00436874. *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1642, 1656 (neither New People nor Cham were permitted to vote in the elections).

<sup>1246</sup> Elections purportedly took place on 20 March 1976. *See e.g.*, *Results of National Assembly Elections Announced* (in FBIS collection), E3/274, 21 March 1976, ERN (En) 00167985. The PRA was first convened on 11 April 1976. *See* Document on Conference of Legislature, E3/165, 11-13 April 1976 (stating that the first plenary conference of the PRA was carried out from the 11<sup>th</sup> to the 13<sup>th</sup> of April 1976).

<sup>1247</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 5, ERN (En) 00182813. *See also*, Section 7: Roles and Functions – NUON Chea, para. 536; Section 8: Roles and Functions – KHIEU Samphan, paras 596-597.

<sup>1248</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 6, ERN (En) 00182814; T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 116-117.

<sup>1249</sup> DK Government Statement, E3/1371, 1 April 1976, ERN (En) 00816617; T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 58-59. *See also*, Standing Committee Minutes regarding Sihanouk's resignation, E3/197, 11 March 1976, ERN (En) 00182638-00182639; Standing Committee Minutes (copied by C.E. Goscha), E3/10691, 30 March 1976, ERN (En) 01313105 (stating that "If we continue to use him as Head of State, our work will be more complicated. Therefore, we should not use him further. So how to handle this? Propose a definitive resolution with Pen Nut. On the Sihanouk issue, let him resign but do not allow him to go overseas.").

<sup>1250</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, ERN (En) 00184067-00184068.



Committee, State Presidium and government.<sup>1251</sup> In reality, the PRA simply rubber-stamped the choices that had already been made by the CPK.<sup>1252</sup>

416. The government, too, was little more than an instrument of the CPK.<sup>1253</sup> It was, as Expert David CHANDLER described it, a “government by and for [the] ruling party”; there were no balancing elements to CPK rule.<sup>1254</sup> Government ministers and ministerial staff reported to and took directions from the CPK Standing Committee.<sup>1255</sup> Minutes of a CPK Central Committee meeting reflect the Central Committee’s view that the government “must be totally an organization of the Party”.<sup>1256</sup> Government ministers met with POL Pot – who by then served as both Prime Minister and CPK Secretary – at gatherings of the Council of Ministers.<sup>1257</sup> At the first such meeting, POL Pot made it clear that the primary function of the DK government was to implement the CPK line:

The true nature of our new government is that of a revolutionary government of the pure worker-peasants, of the pure Communist Party of Kampuchea [...]. [M]embers of the Government and members of the Committees in all sectors must grasp the true nature of our Government and our duties, and strive to fulfil their tasks well, following the Party line. Grasping the Party line means grasping the organizational stance of the Party and grasping the political objectives of the Party in every Sector in order to implement the policies of the Party well and correctly [...]. [I]n the frameworks of each of the individual ministries, it is likewise. That is, we must strive to fulfil our tasks along the Party line correctly, carefully, and completely [...].<sup>1258</sup>

<sup>1251</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, ERN (En) 00184048, 00184068; DK Press Release: *First Plenary Session of the First Legislature of the People’s Representative Assembly of Kampuchea*, E3/262, 14 April 1976, ERN (En) 005283890-005283891; T. 18 July 2012 (David CHANDLER), E1/91.1, p. 34. The PRA Standing Committee purportedly convened for a special session on 25 December 1977, but the evidence before the Chamber did not confirm whether this meeting ever actually took place. *See* DK Government Communiqué, E3/1393, 31 December 1977, p. 7, ERN (En) 00713107.

<sup>1252</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, p. 119; MAT Ly Interview by Stephen HEDER, E3/390, undated, pp. 28-29, ERN (En) 00436873-00436874.

<sup>1253</sup> *See e.g.*, T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 68-69 (describing the government as “a transmission belt with no authority.”).

<sup>1254</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, p. 33.

<sup>1255</sup> *See e.g.*, Standing Committee Minutes, E3/223, 17 May 1976, pp. 1-3, ERN (En) 00182708-00182710; Standing Committee Minutes, E3/225, 1 June 1976, pp. 1-4, 8, ERN (En) 00182715-00182718, 00182722; Standing Committee Minutes, E3/226, 10 June 1976.

<sup>1256</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 6, ERN (En) 00182814.

<sup>1257</sup> Meeting of the Council of Ministers, E3/817 [E3/818], 22 April 1976; Minutes of Meeting of the Council of Ministers, E3/794, 31 May 1976, p. 1, ERN (En) 00182671; IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 30, ERN (En) 00182327.

<sup>1258</sup> Meeting of the Council of Ministers, E3/817 [E3/818], 22 April 1976, pp. 1-2, ERN (En) 00143461-00143462.

417. As to the third branch of the state envisaged by the DK Constitution, the judiciary, the PRA professed to create (and appoint the chairman of) a “Judicial Committee” at its session in April 1976.<sup>1259</sup> However, no functioning judicial system was ever established under the DK regime.<sup>1260</sup>

418. The highest offices of state in DK – Prime Minister, President and chairman of the PRA – were occupied by senior CPK members. Other government leaders and ministers were appointed by, and reported to, the CPK. There was no functioning legislative or judicial branch. In short, DK was, in the words of KHIEU Samphan, a country where “the party leads the state”.<sup>1261</sup>

### 5.2.1. *DK Ministries and Committees*

419. As noted above, in April 1976, the PRA met to approve the government of DK, with the following appointments: POL Pot, Prime Minister; IENG Sary, Deputy Prime Minister responsible for foreign affairs; VORN Vet, Deputy Prime Minister responsible for economics; SON Sen, Deputy Prime Minister responsible for national defence; HU Nim, Minister responsible for information and propaganda; THIOEUNN Thioeunn, Minister, Ministry of Public Health; IENG Thirith, Minister, Ministry of Social Action; TAUCH Phoeun, Minister, Ministry of Public Works; and YUN Yat, Minister, Ministry of Culture, Training, and Education.<sup>1262</sup> This is the first evidence that areas of responsibility were now considered to be “ministries”,<sup>1263</sup> although it is possible that

<sup>1259</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 22, ERN (En) 00184069.

<sup>1260</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 68; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 57.

<sup>1261</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 9, ERN (En) 00156749. *See also*, T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 21 (describing the CPK as “the supreme body with the highest authority” and observing that “[e]ven the State Presidium, the People’s Representative Assembly [...] were all under the supervision [...] of Committee 870.”).

<sup>1262</sup> *See* Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 28, ERN (En) 00184075.

<sup>1263</sup> The various ministries created during the DK era formed a disparate set of entities which covered very different realities. *See* SUONG Sikoeun Interview Record, E3/377, 7 May 2009, p. 4, ERN (En) 00327245 (“The Foreign Ministry was the only one to be structured like a classic Ministry, which wasn’t the case for the others; some of the Ministries only existed on paper.”). There was also ambiguity as to what was considered to be a Ministry. For example, the daily controlling list from S-21 in 1977, the “Orange Logbook”, contains separate headings for prisoners brought to S-21 from various state ministries which do not distinguish between “Ministries” and “Committees”. *See* S-21 Orange Logbook, E3/10770, 30 November 1977, p. 326, ERN (En) 01460741 (listing under the heading “Various State Ministries” the following: State Commerce, Industry, Public Works, Energy, Foreign Affairs, Propaganda, Publishing House, Commerce Office, Garment, State Agriculture, Offices). Several miscellaneous categories are not listed under the heading for State Ministries. These include Transportation, Bandit, Spy, Train, Port, and State warehouse. There is insufficient evidence to determine

this occurred earlier. The DK Constitution makes no mention of ministries, with only one mention of the “executive body” which was elected by the PRA and responsible to it for all of its activities.<sup>1264</sup> However, there is no evidence that the PRA accomplished any legislative work and some of the ministries only existed on paper.<sup>1265</sup> Rather it was entirely dependent upon the decisions of the Standing Committee.

420. *Education and Propaganda Ministries* – In the PRA meeting of April 1976, YUN Yat was identified as being Minister of Education and HU Nim was identified as the Minister of Propaganda.<sup>1266</sup> However, based upon witness testimony and numerous documents, the Chamber has found that NUON Chea had significant responsibility in these areas including responsibility for the CPK’s internal educational magazine the *Revolutionary Flag*.<sup>1267</sup> A more complete analysis of NUON Chea’s responsibilities in this regard appears in the section of this Judgement on NUON Chea’s Roles and Functions.

421. *Economics* – In meetings from 19-21 April 1976, the Standing Committee decided to reorganise Office 870 by creating a series of committees charged with different areas of the economy, consisting of Commerce, Energy, Land Transport, Water Transport, Phnom Penh Warehouse, Public Works, Railway, Port, Agriculture, Industry and Textiles/Clothing Sewing.<sup>1268</sup> There is credible evidence that these committees fell within the authority of VORN Vet and KHIEU Samphan. First, records of the PRA meeting from the previous week note that certain economic committees (including industry, commerce and energy) fell under the authority of the Minister of Economics,

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whether, in 1978, there remained a significant administrative distinction between Ministries and Committees.

<sup>1264</sup> DK Constitution, E3/259, undated, ERN (En) 00184835.

<sup>1265</sup> SUONG Sikoeun told the Co-Investigating Judges that: “[t]here was only a Minister, who had no office. To give some examples, that was the case for VAN Rit (“chairman of the foreign trade committee”, who had the rank of Minister but did not have a ministry); PHUONG, chairman of the rubber tree plantations committee; THIOEUNN Thioeunn, “Health Minister”, but just a doctor in reality, who came under the control of the Ministry of Social Affairs.” See SUONG Sikoeun Interview Record, E3/377, 7 May 2009, p. 4, ERN (En) 00327245.

<sup>1266</sup> T. 22 August 2012 (KIM Vun), E1/112.1, pp. 69-70; T. 23 August 2012 (KIM Vun), E1/113.1, pp. 37, 39-40 (NUON Chea only replaced YUN Yat at the Ministry of Propaganda when the latter was absent); Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 28, ERN (En) 00184075.

<sup>1267</sup> Section 7: Roles and Functions – NUON Chea, paras 541, 545.

<sup>1268</sup> Standing Committee summary of decisions, E3/235, 19-21 April 1976, pp. 1-2, ERN (En) 00183416-00183417; Standing Committee Minutes (copied by C.E. Goscha), E3/10694, 15 and 20-21 April 1976, pp. 1-2, ERN (En) 01323932-01323933.

VORN Vet.<sup>1269</sup> Second, there were dozens of telegrams from the appointed Commerce Committee Chief, VAN Rith, reporting to VORN Vet and KHIEU Samphan.<sup>1270</sup> This led witness SAR Kimlomouth, Deputy Chief of the DK Commerce Bank, to conclude that VAN Rith was subordinate to the latter two.<sup>1271</sup> The Chamber therefore concludes that the committees named by the Standing Committee were created within VORN Vet's economics portfolio. The Chamber further finds that KHIEU Samphan and VORN Vet were thoroughly apprised of DK economic matters pertaining to these committees from 1976 until late 1978.<sup>1272</sup> Following the arrest of VORN Vet in late 1978, KHIEU Samphan continued to receive these reports.<sup>1273</sup>

422. With a significant influx of cash from China (140 million RMB), the Commerce Committee established a foreign commerce bank in 1976 in order to engage in trade with foreign countries.<sup>1274</sup> The Foreign Trade Company of Cambodia (FORTRA) and Hong Kong registered trade company (Ren Fung Company Ltd.) were also created in order to facilitate commercial transactions.<sup>1275</sup> Both were under the supervision of the Commerce Committee and reported to KHIEU Samphan, who reviewed communications to and from Ren Fung.<sup>1276</sup>

<sup>1269</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, pp. 28-29, ERN (En) 00184075-00184076 (this consisted of agriculture, industry, commerce, communications, energy and rubber plantations). Although these committees do not correspond precisely with those listed by the Standing Committee meeting, there is considerable overlap. *See also*, T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 13 (stating KOY Thuon had been removed from the Commerce Office by April 1976).

<sup>1270</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 618-621.

<sup>1271</sup> T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 44-45, 50, 81-82 (based on documents presented to the witness by the OCIJ investigators, the witness observed that all documents that had anything to do with commercial affairs were sent to VORN Vet and KHIEU Samphan); T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 103 (KHIEU Samphan was responsible for various committees surrounding Office 870, including external commerce, warehouse and logistics). The Chamber notes, however, that Duch's evidence appears to be based on his analysis of documents after the fact and not to be based upon contemporaneous knowledge ("as shown in various pieces of evidence."). *See also*, T. 12 June 2013 (SIM Hao), E1/206.1, p. 85.

<sup>1272</sup> Section 8: Roles of the Accused – KHIEU Samphan, para. 620.

<sup>1273</sup> Section 8: Roles of the Accused – KHIEU Samphan, para. 620.

<sup>1274</sup> T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 11-12, 67; Expenditure of 140 Million Yuan Credit as of 15 August 1977, E3/2508, 15 August 1977, p. 2, ERN (En) 00748390.

<sup>1275</sup> Letter from Commerce Committee to Sokh, E3/2082, 14 October 1977, ERN (En) 00509591; Letter from Commerce Committee to Sokh, E3/2081, October 1977, p. 2, ERN (En) 00681185; T. 31 May 2012 (SAR Kimlomouth), E1/79.1, p. 76.

<sup>1276</sup> T. 31 May 2012 (SAR Kimlomouth), E1/79.1, p. 76; List of various Ministries which have not yet submitted purchase orders for the year 1978, E3/3516, 9 March 1978, p. 1, ERN (En) 00642055 (annotation indicates sent to *Bang Hem* and *Vorn* and that *Yan* worked on this issue); DK Telegram, E3/323, 22 July 1977, p. 1, ERN (En) 00651562 (concerning the purchase of engine oil and grease from China, annotation indicates sent to *Bang Hem*); DK Telegram, E3/334, 3 February 1978, p. 1, ERN (En) 00647721 (regarding purchase of DDT, annotation sent to *Bang Hem* for comments).

423. From Ren Fung's creation in October 1976, until he was called back to Phnom Penh, Ren Fung's chairman was Sokh and was assisted by PHAL Va *alias* Nat.<sup>1277</sup> In December 1978, both were taken to S-21, and Krin, who had been the chief of the Port Committee, became the head of Ren Fung.<sup>1278</sup>

### **5.3. Structure of the CPK Military Forces**

#### **5.3.1. *Revolutionary Army of Kampuchea (RAK)***

##### **5.3.1.1. *Formation of the RAK***

424. When the CPK/FUNK took control of Phnom Penh on 17 April 1975, the CPK military forces – which had been fighting under the banner of the Cambodian People's National Liberation Armed Forces ("CPNLAF")<sup>1279</sup> – were under the direct control of the zones, not the Party Centre.<sup>1280</sup> On 22 July 1975, POL Pot announced the formation of a new Revolutionary Army of Kampuchea ("RAK"),<sup>1281</sup> bringing a number of zone military divisions under the control of the Central Committee – specifically, under the command of the General Staff, headed by SON Sen.<sup>1282</sup> A Standing Committee meeting that took place on 9 October 1975, attended by both NUON Chea and KHIEU Samphan, demonstrates that the reorganisation of the army and the creation of the

<sup>1277</sup> T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 102-103, 106; DK Telegram, E3/1907, 27 October 1978, p. 1, ERN (En) 00234309 (referencing transfer of authority from Nat to Krin); Prisoner Biography – PHAL Va *alias* Nat, E3/1533, undated, ERN (En) 00242035 (noting position as member of the committee of the state commerce stationed in Hong Kong).

<sup>1278</sup> DK Telegram, E3/1904, 18 October 1978, p. 1, ERN (En) 00234307; T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 102-106; Prisoner Biography – ING Sokh, E3/1532, p. 1, ERN (En) 00235659 (noting position as Former Chairman of Land Transport, Commerce Chairman stationed in Hong Kong, and detained on 29 December 1978).

<sup>1279</sup> See e.g., *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, p. 2, ERN (En) 00166659. See also, Section 3: Historical Background, para. 227, 236. Between May and August 1970, KHIEU Samphan was named GRUNK Deputy Prime Minister and Minister of National Defence. By September 1971, KHIEU Samphan was named Commander-in-Chief of CPNLAF, a position which he had nominally occupied since his appointment as Minister of National Defence. Further, according to his own statement, he was also named Deputy Chairman of FUNK. See Section 8: Roles and Functions – KHIEU Samphan, paras 576-577.

<sup>1280</sup> KHIEU Samphan Interview Transcript, E3/4045, undated, p. 1, ERN (En) 00790538; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 32-33.

<sup>1281</sup> Section 3: Historical Background, para. 212; *Revolutionary Flag*, E3/5, August 1975, p. 13, ERN (En) 00401488.

<sup>1282</sup> T. 24 October 2012 (KUNG Kim), E1/138.1, p. 110; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 32-33; LOHN Dos Interview Record, E3/426, 23 July 2009, pp. 2-3, ERN (En) 00364070-00364071; *Revolutionary Flag*, E3/5, August 1975, p. 13, ERN (En) 00401488; Article by T. Carney: *The Organization of Power, in Cambodia 1975-1978: Rendezvous With Death*, E3/49, p. 88, ERN (En) 00105137; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 94, ERN (En) 00678542.

General Staff were not completed overnight, and were still ongoing in the third quarter of 1975.<sup>1283</sup> The units eventually created under the General Staff (“centre divisions”) mid to late 1975 included Division 164, the navy; Division 170; Division 290; Division 310; Division 450; Division 502, the air force; Division 703; Division 801; and Division 920.<sup>1284</sup> Several “independent regiments” were also established under the General Staff, each tasked with a specific function. The independent regiments included Regiment 75 (sewing unit); Regiment 152 (naval unit); Regiment 377 (artillery unit); Regiment 488; Office 62 (logistics); Office 63 (logistics); and S-21 Security Centre.<sup>1285</sup> Divisions were re-organised and re-named throughout 1977 and 1978, when more troops were sent to the East Zone, where they were placed under the authority of one of the East Zone Field Command Posts, in light of the East Zone purges and the intensified armed conflict with Vietnam.<sup>1286</sup>

425. The role of the RAK was set out in Article 19 of the DK Constitution: its functions were to “defend the State power of the Kampuchean people and of [...] Kampuchea”, and to “help build a country growing more prosperous every day to improve and develop the people’s standard of living”.<sup>1287</sup> However, the RAK was very much an army of the CPK rather than the state institutions. The CPK Statute specified that the RAK “must be in very [*sic*] part under the absolute leadership monopoly of the Communist

<sup>1283</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 4-5, ERN (En) 00183396-00183397 (discussing the setting up of the General Staff under the responsibility of SON Sen and organising “the new Army, Navy, Air Force”), 10-11, ERN (En) 00183402-00183403 (POL Pot discussing setting up the General Staff, it needing assistants and noting that SON Sen will be in charge of providing political trainings).

<sup>1284</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 33; T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 64; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 52-53; T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 42; KOY Mon Interview Record, E3/369, 29 May 2008, p. 3, ERN (En) 00272715; LONH Dos Interview Record, E3/70, 20 November 2009, pp. 5-6, ERN (En) 00407789-00407790; SRENG Thi Interview Record, E3/5263, 6 January 2009, p. 3, ERN (En) 00282224; U.S. Department of Defense Report, E3/5700, June 2000, p. 3, ERN (En) 00387265; Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-Destruction*, E3/2116 [E3/2117], pp. 6-7, ERN (En) 00081291-00081292; Book by S. Colm and S. Sim: *Khmer Rouge Purges in the Mondul Kiri Highlands*, E3/1664, p. 45, ERN (En) 00397617.

<sup>1285</sup> See below, paras 442-450. See also, T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 27-28, 46; SOKH Chhay Interview Record, E3/5537, 27 October 2009, p. 4, ERN (En) 00404293.

<sup>1286</sup> See below, para. 451; Section 4: General Overview, paras 285-293.

<sup>1287</sup> DK Constitution, E3/259, undated, ERN (En) 00184837-00184838.

Party of Kampuchea”.<sup>1288</sup> The CPK magazine *Revolutionary Flag* similarly described the RAK as “pure” and “resolutely committed to the Party”.<sup>1289</sup>

#### 5.3.1.2. Structure of the RAK

426. Both the DK Constitution and the CPK Statute distinguished between three branches of the RAK:<sup>1290</sup> the regular forces (*i.e.* the centre divisions and independent regiments that were brought under the authority of the General Staff in mid to late 1975);<sup>1291</sup> the regional forces (*i.e.* the armies that remained directly under the authority of the zones, sectors and districts);<sup>1292</sup> and the local militias (*chhlop*) (*i.e.* forces at the sub-district level).<sup>1293</sup> Sectors and districts maintained their own military forces, separate from the centre divisions primarily for the purpose of territorial defence.<sup>1294</sup>

##### 5.3.1.2.1. *Regular forces: Centre Divisions and Independent Regiments under the General Staff*

427. As with the civilian administrative structures of the CPK, the RAK was arranged in a pyramidal hierarchy. At the top (albeit subject to the supervision of the Central Committee and the Military Committee) was the General Staff.<sup>1295</sup> The General Staff was in overall command of the centre divisions and dealt with military affairs such as supply, logistics, arms, personnel, communications and information.<sup>1296</sup> The General

<sup>1288</sup> CPK Statute, E3/130, undated, Article 27, ERN (En) 00184046.

<sup>1289</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 15, ERN (En) 00491408, ERN (Kh) 00063016-0063018. The Chamber relies on the original Khmer document. *See also*, DK Telegram, E3/915, 31 December 1977, ERN (En) 00184995, in which “we who have the duty to defend the maritime spearhead” – *i.e.* Division 164, the navy – vows to “fashion forces who are a tool absolutely to defend the Party” as well as the State.

<sup>1290</sup> DK Constitution, E3/259, undated, p. 5, Article 19, ERN (En) 00184837; CPK Statute, E3/130, undated, p. 25, Article 27, ERN (En) 00184046; IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 35, ERN (En) 00003271 (entry dated 14 July 1976) (“National defence: The armed forces are divided into three types, militia (*chhlop*), regional troops and front-line troops. The front-line troops comprise infantry, navy and air force”).

<sup>1291</sup> *See above*, para. 424. *See below*, paras 427-450.

<sup>1292</sup> *See below*, para. 452.

<sup>1293</sup> *See below*, paras 453-454.

<sup>1294</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 61-62, 67; T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 32-33; T. 20 June 2012 (YUN Kim), E1/89.1, pp. 19-20; T. 1 October 2012 (KHIEV En), E1/127.1, pp. 7-8; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 101-102; T. 8 January 2013 (SA Vi), E1/156.1, pp. 8, 29; CHEA Chinit Interview Record, E3/5534, 30 December 2009, p. 2, ERN (En) 00425879.

<sup>1295</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 81; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 27.

<sup>1296</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, p. 11; T. 10 January 2013 (UNG Ren), E1/158.1, p. 86; LOHN Dos Interview Record, E3/426, 23 July 2009, pp. 2-4, ERN (En) 00364070-00364072; KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 8, ERN (En) 00346152; KOY Mon Interview

Staff organised study sessions for the centre divisions and the independent regiments on at least two occasions.<sup>1297</sup> The Chamber further has before it the minutes of several meetings convened with the secretaries and deputy secretaries of the centre divisions and the independent regiments in 1976 and 1977.<sup>1298</sup>

428. The General Staff was headed by SON Sen *alias* Khieu *alias* Brother 89, who was also a member of the CPK's Military Committee and an alternate member of the CPK's Standing Committee.<sup>1299</sup> SON Sen's first deputy at the General Staff was briefly MEN San *alias* NEY Sarann *alias* Ya, before he became the Northeast Zone Secretary.<sup>1300</sup> SON Sen's second deputy at the General Staff was SEAT Chhae *alias* Tum *alias* Brother 81,<sup>1301</sup> until Tum's arrest in August 1977.<sup>1302</sup> PECH (PICH) Chhan (Chhorn) *alias* Sao(m) was an assistant at the General Staff tasked with administration.<sup>1303</sup> He was in charge of the RAK's logistics unit Office 62 until he was purged in early

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Record, E3/369, 29 May 2008, pp. 3-4, ERN (En) 00272715-00272716; RAK General Staff Logistics Committee Report, E3/1167, 29 March 1977; RAK General Staff Statistics, E3/1048, 7 April 1977.

<sup>1297</sup> See e.g., List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976; Second General Staff Study Course, E3/1142, 23 November 1976.

<sup>1298</sup> See e.g., Minutes of Meeting between Secretaries, Division's logistic unit and Regiment, E3/819, 27 June 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/797, 18 August 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800, 16 September 1976; Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809 [E3/810], 19 September 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/802, 11 November 1976; Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976; Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments (copied by C.E. Goscha), E3/10693, 3 April 1977.

<sup>1299</sup> See above, paras 350, 357, 359.

<sup>1300</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 29, 44-45; T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 100. See above, para. 382. See also, Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya.

<sup>1301</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 73; Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, p. 28, ERN (En) 00339336; Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, p. 52, ERN (En) 00322885; KAING Guek Eav Interview Record, E3/61, 2 June 2008, p. 3, ERN (En) 00195573; KAING Guek Eav Interview Record, E3/5773, 20 November 2008, p. 4, ERN (En) 00242189. See also, Standing Committee summary of decisions, E3/235, 19-21 April 1976, p. 4, ERN (En) 00183419 (assigning Tum to the General Staff).

<sup>1302</sup> SEAT Chhae *alias* Tum *alias* Brother 81 was arrested on or around 30 August 1977 and executed at S-21 Security Centre in December 1977. See Section 12.2: S-21 Security Centre, paras 2303-2306.

<sup>1303</sup> Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 47, ERN (En) 00328491; KAING Guek Eav Interview Record, E3/356, 28 November 2008, p. 6, ERN (En) 00242900; KAING Guek Eav Interview Record, E3/5762, 15 August 2013, p. 3, ERN (En) 00164329; KAING Guek Eav Interview Record, E3/429, 11 November 2009, p. 5, ERN (En) 00403920.



1977.<sup>1304</sup> The Chamber notes that these three persons were copied in on numerous minutes of meetings, listing them respectively as Brother 89, Brother 81 and Saom at the top or bottom of documents.<sup>1305</sup> Other members of the General Staff (who were also regularly copied in on documents) included MEAS Muth, in charge of the navy, and SOU Met, in charge of the air force.<sup>1306</sup> IN Lorn *alias* Nat(h) was an assistant at the General Staff after he was transferred there from S-21 Security Centre in March 1976.<sup>1307</sup> Comrade R(a)en was also an assistant at the General Staff.<sup>1308</sup>

429. The General Staff was located in a building next to the Ministry of Foreign Affairs, on what is now called Russian Boulevard in Phnom Penh. A number of witnesses

<sup>1304</sup> See below, para. 447.

<sup>1305</sup> See e.g., DK Telegram, E3/1024, 23 September 1976, ERN (En) 00185551; DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714; DK Telegram, E3/1212, 29 August 1976, ERN (En) 00782244; DK Telegram, E3/1151, 4 November 1976, ERN (En) 00233971; DK Telegram, E3/1107, 27 November 1976, ERN (En) 00574471.

<sup>1306</sup> Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, p. 28, ERN (En) 00339336; KAING Guek Eav Interview Record, E3/5724, 27 April 2011, p. 3, ERN (En) 00680797. See below, paras 433 (discussing Centre Division 164: the navy), 438 (discussing Centre Division 502: the air force).

<sup>1307</sup> See below, para. 439.

<sup>1308</sup> DK Military Report, E3/1161, 12 March 1977, ERN (En) 00876995-00876996 (a report from the “Revolutionary Army Office of the General Staff” signed by Raen); DK Military Report, E3/1109, 21 September 1976, ERN (En) 00574478 (report from the General Staff signed by Ren); DK Telegram, E3/1024, 23 September 1976, ERN (En) 00185551 (copying in Raen); DK Telegram, E3/1212, 29 August 1976, ERN (En) 00782244 (copying in “Brother Ren”); DK Telegram, E3/1151, 4 November 1976, ERN (En) 00233971 (copying in “Brother Ren”); DK Telegram, E3/1107, 27 November 1976, ERN (En) 00574471 (copying in “Brother Raen”); DK Telegram, E3/1079, 25 December 1976, ERN (En) 00143503 (copying in Raen). This Comrade R(a)en (sometimes spelled “Reun” in English) is not to be confused with Witness UNG Ren, who was a Regiment Commander from 1975 until early to mid-1977, after which he briefly became Division 801’s Deputy Commander. UNG Ren testified that thereafter he spent about one month at the General Staff when he was ill, without having an official role there. The Chamber finds his evidence credible and reliable, and concludes that the Comrade R(a)en referred to in this paragraph is not Witness UNG Ren. See below, para. 440; Section 12.4: Au Kanseng Security Centre, para. 2873 (fn. 9818). See also, T. 9 January 2013 (UNG Ren), E1/157.1, p. 74. The Chamber notes that it is likely that Comrade R(a)en of the General Staff is the same Comrade Ren who later became SON Sen’s deputy in the East Zone. See below, para. 451. Comrade Ren of the East Zone Command Post discussed below was one of *Ta Mok*’s sons-in-law who is no longer alive, allegedly killed by *Ta Mok* himself in 1979. See T. 1 November 2016 (IENG Phan), E1/493.1, p. 18 (confirming Ren was *Ta Mok*’s son-in-law); T. 28 July 2016 (MOENG Vet), E1/450.1, p. 8 (stating that Raen was *Ta Mok*’s son-in-law); T. 25 October 2016 (CHUON Thy (CHUON Thi) *alias* THI Ov), E1/489.1, p. 79 (testifying that Ren was *Ta Mok*’s son-in-law); T. 24 February 2015 (PHANN Chhen), E1/268.1, p. 95 (testifying that *Ta Mok* killed Ren after the DK period for engaging in moral misconduct); CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 5, ERN (En) 00766452 (stating that East Zone Commander Ren was *Ta Mok*’s son-in-law and died in Anlong Veng in 1979); SOKH Chhay Interview Record, E3/5537, 27 October 2009, p. 6, ERN (En) 00404295; CHHOUK Rin Interview record, E3/5721, 24 March 2011, p. 4, ERN (En) 00680145 (“The person who commanded the mission at the border was *Ta Mok*’s son in law named Ren who is deceased”); CHHOUK Rin Interview record, E3/10621, 16 June 2015, p. 6, ERN (En) 01118169 (stating that Ren already passed away). See also, Book by S. Heder: *Racism, Marxism, Labelling and Genocide in Ben Kiernan’s The Pol Pot Regime*, E3/3995, p. 43, ERN (En) 00773742, fn. 69.

testified that the “Ministry of Defence” was in the same location.<sup>1309</sup> The Chamber further notes that SON Sen was often referred to as the head of this ministry.<sup>1310</sup> Duch testified that despite the fact that SON Sen was given the title of Minister of National Defence, he maintained his role at the General Staff and nothing changed in relation to his position.<sup>1311</sup> Further evidence indicates that SON Sen’s title as Minister of Defence was synonymous with his functions at the General Staff.<sup>1312</sup> Moreover, Witness NORNG Sophang, who ran the telegram encryption and decryption unit at Sothearos School in Phnom Penh from 1975 onwards,<sup>1313</sup> testified that there were several divisions under SON Sen’s Ministry of Defence, including the army, the navy and the air force.<sup>1314</sup> As noted above, the General Staff had overall command over such military affairs.<sup>1315</sup> Accordingly, the Chamber finds that the Ministry of Defence was not a distinct ministry under the CPK. Rather, this title was at times used to refer to the military functions of the General Staff and SON Sen’s related role therein.

<sup>1309</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 88 (stating that the Ministry of Defence was adjacent to the Ministry of Foreign Affairs); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, p. 20 (“I went to the stadium through National Road Number 4. At that time, in between the current Ministry of Defense and the current Council of Ministers, there was a road leading to the stadium.”); T. 9 January 2013 (UNG Ren), E1/157.1, p. 74 (stating that the General Staff Office was located behind the Ministry of Defence). *See also*, Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 16, ERN (En) 00183408 (noting that “[t]he General Staff has decided to use the Ministry of National Defense”).

<sup>1310</sup> T. 1 February 2012 (CHANG Youk), E1/37.1, p. 49; T. 19 April 2016 (NHEM En), E1/418.1, p. 99; T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 29 (“The Ministry of National Defence was headed by His Excellency Son Sen, who was the Commander-in-Chief”); T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 99 (“The ministry of national defense was [...] charged by Son Sen.”). The Chamber notes it approaches NHEM En’s evidence with extreme caution, and will only rely on it for limited purposes and when sufficiently corroborated. *See* Section 12.2: S-21 Security Centre, para. 2252.

<sup>1311</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 55 (“[N]othing changed in relation to his position”); T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 87-88 (stating that SON Sen was appointed “Minister of Country Defense” and that he was in charge of the General Staff); T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 99-100 (“The ministry of national defense was [...] charged by Son Sen. At that time they called the national defense ministry however, Son Sen was the head of the general staff of the CPK’s army”).

<sup>1312</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 44 (according to CHHOUK Rin, a former South West and later East Zone regimental commander, “the person who directly commanded the soldiers would be no one else other than SON Sen [...] but we were introduced to the commanders of divisions, not the minister of Defence.”); T. 19 April 2016 (NHEM En), E1/418.1, p. 99 (NHEM En, a photographer at S-21, describing SON Sen as the Minister of Defence and Nat(h) as “in charge of the general staff of the army”); Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 42-43, ERN (En) 00081327-00081328 (stating that Nat(h) was promoted from S-21 to “military expert on the General Staff under Son Sen, the minister of defense”).

<sup>1313</sup> T. 6 September 2012 (NORNG Sophang), E1/123.1, p. 83; T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 55-56. *See also*, Section 6: Communication Structures, para. 459.

<sup>1314</sup> T. 4 September 2012 (NORNG Sophang), E1/121.1 pp. 19-20, 75-76.

<sup>1315</sup> *See above*, para. 427. *See also*, Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 4-5, ERN (En) 00183396-00183397 (assigning SON Sen to organise the army, navy and air force in the context of “[s]etting up the General Staff”).

430. Immediately below the General Staff were the centre divisions and independent regiments, each of which was led by a division commander assisted by a deputy, which were referred to as secretary and deputy secretary, respectively.<sup>1316</sup> The Centre Divisions were sub-divided into smaller units. Typically, there were three regiments to a division; three battalions to a regiment; three companies to a battalion; three platoons to a company; three squads to a platoon; and around 12 soldiers to a squad.<sup>1317</sup> At the level of the company and above, each echelon was headed by a commanding officer (also known as a “chairman” or “commissar”), usually assisted by two subordinates.<sup>1318</sup>

431. A number of witnesses indicated that there was an additional command level between the regiments and the divisions. Specifically, that three regiments made up a “brigade” and that each division comprised around three such brigades.<sup>1319</sup> Precise organisational structures may have varied between the divisions.<sup>1320</sup> The same conclusion may be reasonably drawn regarding regional forces.

432. While the evidence does not allow to make a finding on the definitive number of divisions and independent regiments, it suggests that there were at least nine centre divisions and seven independent regiments directly under the authority of the RAK’s General Staff, at least from the formation of the new RAK in mid to late 1975. A General Staff document listing the number of troops per division and independent

<sup>1316</sup> See above, paras 427-429. See below, paras 431-450.

<sup>1317</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 57 (UNG Ren was a former Division 14 regimental commander, who also briefly served as Division 801 Deputy Commander in early to mid-1977); T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 75, 77 (former Division 14 officer CHHAOM Se served as deputy commander of Regiment 82 of Division 801 until his appointment to the chairmanship of Au Kanseng Security Centre in late 1976 or early 1977); POL Nhan Interview Record, E3/5554, 31 August 2009, p. 5, ERN (En) 00377401 (POL Nhan was a cadre in District 105 reassigned in 1977 to accompany Comrade Vin of Division 603 to Phnom Penh, see below, fn. 1347); CHUM Cheat Interview Record, E3/5504, 8 October 2009, p. 3, ERN (En) 00398835 (former cadre of the Special Zone’s liberation army, later company commander within Division 801); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 3, ERN (En) 00403579 (CHIN Kimthong *alias* Chhang served as CHHAOM Se’s deputy at Au Kanseng Security Centre); Section 12.4: Au Kanseng Security Centre, para. 2868.

<sup>1318</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 42, 56; T. 24 April 2013 (CHUON Thy), E1/183.1, pp. 90-91; T. 2 May 2013 (LIM Sat), E1/187.1, p. 68; Chapter by T. Carney, “The Organization of Power”, in *Cambodia 1975-1978: Rendezvous with Death*, E3/49, p. 90, ERN (En) 00105139.

<sup>1319</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, pp. 85-86; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 43; T. 20 May 2013 (IENG Phan), E1/193.1, p. 10; SUOS Siyat Interview Record, E3/5145, 17 January 2008, p. 4, ERN (En) 00204707. See also, T. 3 May 2013 (LIM Sat), E1/188.1, p. 43 (describing brigades as sub-units of divisions, but omitting reference to regiments).

<sup>1320</sup> The Chamber notes that the ambiguity regarding whether brigades existed is in part a translation issue, as “division” and “brigade” are often used interchangeably. Moreover, the Chamber considers it likely that witnesses at times confused what was considered a “division” and what a “brigade”. See e.g., T. 1 November 2016 (IENG Phan), E1/493.1, p. 74 (using the words “division” and “brigade” interchangeably).

regiment in March 1977 shows that a centre division had around 5,000 troops on average, while the independent regiments varied in size from less than 1,000 to more than 3,000 people.<sup>1321</sup>

#### 5.3.1.2.1.1. Division 164 (navy)

433. Centre Division 164 was the RAK's navy, stationed in Kampong Som and operating along Cambodia's coast.<sup>1322</sup> With 8,568 troops as of March 1977, Division 164 was the largest entity of the RAK's regular forces.<sup>1323</sup> The commander of Division 164 was MEAS Muth,<sup>1324</sup> also a member of the General Staff.<sup>1325</sup> His Deputy was HOENG Doeun *alias* Dim [Dhoem] until he was sent to S-21 in April 1977.<sup>1326</sup>

#### 5.3.1.2.1.2. Division 170

434. Centre Division 170 was a former East Zone unit.<sup>1327</sup> It was located in the Phnom

<sup>1321</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1322</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 62-63; T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 10-11, 46-49. *See also*, DK Telegram, E3/1190, 2 June 1976, pp. 1-2, ERN (En) 01191727-01191728 (from Division 164, signed in Kampong Som).

<sup>1323</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1324</sup> Standing Committee Minutes, E3/823 [E3/824], 3 August 1976, ERN (En) 00234012 (entitled “Minutes of meeting of the military work in Kampong Som” and discussing the military situation in Division 164, both mainland and the islands, with Comrade Mut and Comrade Dim); Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 9, ERN (En) 00656384. *See also*, the following Division 164 telegrams, signed by Mut: DK Telegram, E3/1135, 19 October 1976, ERN (En) 00505040; DK Telegram, E3/1127, 29 May 1977, p. 1, ERN (En) 00983609; DK Telegram, E3/1082, 12 August 1977, ERN (En) 00233972; DK Telegram, E3/997, 20 March 1978, ERN (En) 00233649. MEAS Muth was also one of *Ta Mok's* sons-in-law. *See* T. 28 July 2016 (MOENG Vet), E1/450.1, pp. 8-9; KAING Guek Eav Interview Record, E3/10607, 1 February 2016, p. 7, ERN (En) 01213413; RUOS Suy Interview Record, E3/10620, 7 July 2015, p. 21, ERN (En) 01147814.

<sup>1325</sup> *See above*, para. 428.

<sup>1326</sup> *See e.g.*, DK Telegram, E3/1153, 26 November [year unknown], ERN (En) 00233926 (addressed to Comrade Dim, discussing the situation around the islands and noting that Comrade Dim “will be informed clearly when Comrade Mut comes back”); DK Telegram, E3/1190, 2 June 1976, p. 3, ERN (En) 01191729; DK Telegram, E3/1222, 24 September 1976, ERN (En) 00143522 (from Comrade Dim to Comrade Mut, discussing the situation in Division 164 on the mainland); DK Telegram, E3/1224, 6 October 1976, ERN (En) 00233661 (from Comrade Dim to Comrade Mut, discussing the situation in Division 164 at sea between the islands Koh Kong and Koh Rong); Minutes of Meeting of comrades 164, E3/813, 9 September 1976, pp. 1-3, ERN (En) 00657354-00657356; S-21 List of Prisoners, E3/8919, 28 October 1977, ERN (En) 01460903 (listing HOENG Doeun *alias* Dim with the entry date of 21 April 1977); S-21 List of Prisoners, E3/10083, undated, p. 1, ERN (En) 01548697 (entry no. 2, listing “HING Roewn *alias* Dim” with the entry date of 21 April 1977. The Chamber notes that HOENG Doeun *alias* Dim's name was misspelt due to the lack of quality of the original document); S-21 confession (HOENG Doeun *alias* Dim), E3/150, 11 November 1977. *See also*, Section 12.2: S-21 Security Centre, para. 2327.

<sup>1327</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 33. *See also*, Section 12.1.6.3.4: Purge of the East Zone.

Penh area.<sup>1328</sup> CHAN Chakrei *alias* Mean was the commander of Division 170 until his arrest in May 1976.<sup>1329</sup> He was replaced by KE Sok(h) *alias* Comrade Sok.<sup>1330</sup> Comrade Tat was the deputy commander.<sup>1331</sup> In March 1977, Division 170 had close to 6,000 troops.<sup>1332</sup>

### 5.3.1.2.1.3. Division 290

435. Centre Division 290 was commanded by SAM Hauy *alias* MEAS Tal *alias* Comrade Tal,<sup>1333</sup> at least until he entered S-21 Security Centre in May 1978.<sup>1334</sup> Division 290 had close to 5,000 troops in March 1977.<sup>1335</sup> Division 290 was stationed

<sup>1328</sup> Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, p. 3, ERN (En) 00233712 (discussing Boeng Cheung Ek); Minutes of Meeting of the Committees Attached to Divisions and Regiments, E3/796, 12 August 1976, p. 5, ERN (En) 00596997 (stating that “170 and S-21 have to devise a plan to make water flow from Sdok Bridge”, indicating the two geographically close to one another); Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, pp. 1-4, ERN (En) 00933846-00933849 (discussing enemy activities in Phnom Penh and possible Division 170 involvement). *See also*, Section 12.1.6.3.4: Purge of the East Zone.

<sup>1329</sup> Section 12.2.8.1.3: S-21 Security Centre: CHAN Chakrei *alias* Mean; Section 16.3: Real or Perceived Enemies, paras 3760, 3784, 3788-3789, 3793, 3851.

<sup>1330</sup> List of participants to 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 9, ERN (En) 00897657 (entry no. 153); Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 2, ERN (En) 00937115; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 51, 139, ERN (En) 00081336, 00081424. KE Sok(h) was brought into S-21 in March 1978 and executed in May 1978. *See* S-21 Execution List May 1978, E3/8463, undated, p. 237, ERN (En) 01554755. *See also*, Section 12.1: Internal Factions, para. 2017; Section 16.3: Real or Perceived Enemies, para. 3783.

<sup>1331</sup> Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535807; Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, p. 2, ERN (En) 00656570; Report of Meeting at Division 170, E3/820, 1 October 1976, p. 4, ERN (En) 00517918; Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 2, ERN (En) 00937115; KAING Guek Eav Interview Record, E3/5762, 18 February 2008, p. 3, ERN (En) 00164329; Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, p. 53, ERN (En) 00339361. Comrade Tat was brought into S-21 in May 1978. *See* Tuol Sleng Genocide Museum Prisoner List, E3/3189, undated, p. 12, ERN (En) 01489639 (entry no. 88).

<sup>1332</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956. Many soldiers of Division 170 were sent to the Kampong Chhnang Airfield Construction Site. *See below*, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1731.

<sup>1333</sup> List of participants to 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 14, ERN (En) 00897662 (entry no. 231); Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 1, ERN (En) 00937114; Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 7, ERN (En) 00656382. *See also*, DK Telegram, E3/181, 14 February 1978, p. 1, ERN (En) 00340537 (SON Sen reporting on the situation in the East Zone, mentioning Comrade Tal). The Chamber finds that SAM Hauy was an *alias* for Comrade Tal. *See* S-21 List of Prisoners of Division 170 and 290, E3/10350, undated, p. 2, ERN (En) 01556067 (entry 1 at “Section of Division 290” listing SAM Hauy with the revolutionary name MEAS Tal); S-21 List of Prisoners who entered on 24 May 1978, E3/10155, 24 May 1978, p. 4, ERN (En) 01555989 (entry no. 25, listing SAM Hauy with the revolutionary name MEAS Tal).

<sup>1334</sup> Tuol Sleng Genocide Museum Prisoner List, E3/3189, undated, p. 12, ERN (En) 01489639 (entry no. 87, SAM Hauy *alias* M is listed as the Secretary of Division 290).

<sup>1335</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

in the East Zone (Prey Veng province), around the Mekong river.<sup>1336</sup>

5.3.1.2.1.4. Division 310, subsequently  
Division 207

436. Centre Division 310 was stationed in the North Zone.<sup>1337</sup> SBAUV Him *alias* Oeun was the division's secretary;<sup>1338</sup> YIM Chhoeun *alias* Voeun(g) was his deputy.<sup>1339</sup> Both were arrested and sent to S-21 in February 1977.<sup>1340</sup> After the North Zone purges, Division 310 became Division 207, but the evidence before the Chamber does not show an exact date for this change.<sup>1341</sup> YIM Nha [Nhor], previously the deputy secretary of Centre Division 703,<sup>1342</sup> replaced Oeun as secretary of Division 310 (and thus at some point Division 207) after Oeun was purged.<sup>1343</sup> Division 310 still existed in June 1977;

<sup>1336</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 1, ERN (En) 00937114 (reporting on locations in Prey Veng Province along the Mekong river (Neak Loeung, Peam Chor and Kanhchriech district), allowing the Chamber to infer that Division 290 was stationed in this region of DK).

<sup>1337</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 33; Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1732.

<sup>1338</sup> List of participants to 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 2, ERN (En) 00897650; Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Oeun as Unit Chair of Unit 310); S-21 List of Prisoners admitted on 19 February 1977, E3/10266, 20 February 1977, p. 30, ERN (En) 01367727 (listing SIEV Him *alias* Oeun as Division 310 secretary); S-21 Confession – SBAUV Him *alias* Oeun, E3/1891, 20 February 1977; T. 5 December 2016 (NUON Trech), E1/506.1, p. 93 (indicating that Oeun was the commander of Division 310); T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (indicating that Oeun was the division commander); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 6 (stating that Oeun and Kim were the commanders of Division 310). *See also*, Section 12.1: Internal Factions, para. 1903.

<sup>1339</sup> List of participants to 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 2, ERN (En) 00897650 (entry no. 2); S-21 List of Prisoners admitted on 19 February 1977, E3/10266, February 1977, p. 24, ERN (En) 01367721 (entry 15: listing YIM Chhoeun *alias* Voeung, as Division 310 deputy secretary); T. 5 December 2016 (NUON Trech), E1/506.1, p. 93 (indicating that Voeun was Oeun's deputy); T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (indicating that Voeun was the deputy commander of the division); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 77.

<sup>1340</sup> Section 12.1: Internal Factions, para. 1903; Section 12.2.8.2.3: S-21 Security Centre: SBAUV Him *alias* Oeun.

<sup>1341</sup> T. 11 August 2016 (CHHAE Heap), E1/455.1, p. 28 (testifying that *Ta* Nhor told him that Division 310 became Division 207 after *Ta* Oeun disappeared and was replaced by *Ta* Nhor); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 67 (remembering that Division 310 became Division 207 in 1975, but not recalling the exact date). The Chamber finds it unlikely Division 310 became Division 207 as early as in 1975, and conversely, places this event sometime after June 1977. *See* RAK Division 310 Document: *Military Statistics Countrywide*, E3/1180, 13 June 1977, ERN (En) 00655683.

<sup>1342</sup> *See below*, para. 439 (Division 703).

<sup>1343</sup> T. 11 August 2016 (CHHAE Heap), E1/455.1, p. 28 (testifying that *Ta* Oeun was replaced by *Ta* Nhor); T. 6 December 2016 (NUON Trech), E1/507.1, pp. 79-81 (testifying that approximately two weeks after Oeun was arrested, a three-day meeting was held at a school to the north of Wat Phnom, and that this meeting was chaired by Nha, the new commander of Division 310). YIM Nha [Nhor] was later purged. *See* S-21 List of Prisoners, E3/8463, November to December 1978, p. 234, ERN (En) 01554752 (entry 19: listing YIM Nha as "Secretary of Division 310 or 207"); Section 12.2: S-21 Security Centre, para. 2326. The Chamber notes that Nha and Nhor are the same name in Khmer.

with 6,084 troops it was the second largest centre division after the navy.<sup>1344</sup>

#### 5.3.1.2.1.5. Division 450, subsequently Division 603

437. Centre Division 450 was also from the North Zone.<sup>1345</sup> Comrade Suong was the secretary of Division 450 until he was arrested and sent to S-21 in early 1977.<sup>1346</sup> Division 450 became Division 603 at some point after March 1977, when divisions were relocated to the East Zone.<sup>1347</sup> When stationed in the East Zone, Division 603 was commanded by Comrade Vin.<sup>1348</sup> However, the evidence put before the Chamber is not sufficient to establish where Division 603 was headquartered precisely. In March 1977, Division 450 still existed and had 5,259 troops.<sup>1349</sup>

<sup>1344</sup> RAK Division 310 Document: *Military Statistics Countrywide*, E3/1180, 13 June 1977, ERN (En) 00655683. *See also*, RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956 (noting Division 310 had 6,096 troops in March 1977). *See above*, para. 433 (Division 164, the navy).

<sup>1345</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1732. *See also*, T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 33.

<sup>1346</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 4, ERN (En) 00897652 (listing Comrade Suong as belonging to the Division Committee of Division 450); Report from Division 450, E3/1163, 14 November 1976, p. 3, ERN (En) 00877004 (indicating that Comrade Suong worked in Division 450); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Suong at the “Unit Chair” of Division 450). Comrade Suong was arrested and sent to S-21 early 1977. *See also*, S-21 Confession – CHEA Non *alias* Suong, E3/1892, 20 February 1977; Section 12.2: S-21 Security Centre, para. 2422.

<sup>1347</sup> *See e.g.*, S-21 List of Prisoners from Division 603, E3/1971, undated, ERN (En) 01305700 (demonstrating that Division 603 existed); POL Nhan Interview Record, E3/5554, 31 August 2009, p. 3, ERN (En) 00377399 (POL Nhan, a cadre in District 105 reassigned in 1977 to accompany Comrade Vin to Phnom Penh, confirming that at some point in 1977 an old division became Division 603); MAN Heang Interview Record, E3/5529, 10 December 2009, p. 4, ERN (En) 00421085 (stating that he joined Division 603, an East Zone Division, sometime after May 1977, and that Pin was the Division Chairman later replaced by Vin); RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956 (indicating, however, that Division 450 still existed in March 1977). *See below*, para. 451. *See also*, Section 4: General Overview, para. 285.

<sup>1348</sup> DK Telegram, E3/250, 6 May 1978, p. 1, ERN (En) 00322057 (Comrade Vin and “Unit 603” are both mentioned in this telegram from an East Zone battlefield, but the link between the two is unclear); MAN Heang Interview Record, E3/5529, 10 December 2009, p. 4, ERN (En) 00421085 (“I joined Division 603 of the 1<sup>st</sup> Special Forces Army. That division was the largest division in the East Zone. Pin was the division chairman. Vin subsequently rose to replace Pin after Pin was called away to study.”); POL Nhan Interview Record, E3/5554, 31 August 2009, pp. 3, ERN (En) 00377399 (“The Division 603 was created after *Ta Vin* unit was assigned to take control of the forces of an old division in Phnom Penh. The leaders of that old division had been removed excepted the troops and some of the platoon and company [leaders] remained. After that, they changed the number of that old division to number 603. It was at that time that the Division 603 was created.”), 4, ERN (En) 00377400 (“After the old division 450 was under control and the integration of forces [from other units] was done, it was renamed Division 603. Our Division 603 was redeployed to fight on the battlefields in Takeo province. After our forces were deployed in the Southwest Zone for about 1 or 2 months, we, altogether were about 650 troops, were removed from Takeo province and sent to the East Zone. The chairman of the division at that time was *Ta Vin*.”).

<sup>1349</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

## 5.3.1.2.1.6. Division 502 (air force)

438. Division 502, the air force, was initially part of the Southwest Zone,<sup>1350</sup> which was under the responsibility of *Ta Mok*.<sup>1351</sup> It subsequently became a centre division in July 1975.<sup>1352</sup> The commander of Division 502 was SOU Met, a member of the General Staff.<sup>1353</sup> Division 502 was responsible for the Kampong Chhnang Airfield Construction Site.<sup>1354</sup> In March 1977, it had 5,543 troops.<sup>1355</sup>

## 5.3.1.2.1.7. Division 703

439. Centre Division 703 was formerly the 12<sup>th</sup> Division of the Special Zone, which was dissolved after the capture of Phnom Penh in April 1975.<sup>1356</sup> In July 1975, the 12<sup>th</sup> Division became Centre Division 703.<sup>1357</sup> IN Lorn *alias* Nat(h), was Division 703's commander from its inception to either when he became chairman of S-21 or to when he was relocated to the General Staff in March 1976 – the evidence before the Chamber is unclear on this matter. Duch indicated that Nat(h) was no longer commander of Division 703 when Nat(h) became chairperson of S-21.<sup>1358</sup> However, a telegram sent to Nat(h) when he was already head of S-21 was addressed to him by Duch as “Brother 03”, according to Duch short for 703. The Chamber finds it equally plausible, however, that Nat(h) kept the alias “Brother 03” after he was no longer Division 703's commander. At the latest, Nat was no longer commander of Division 703 when he was

<sup>1350</sup> T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (explaining that she knew that Division 502, of which she was a member, was part of the Southwest Zone); T. 7 December 2016 (NUON Trech), E1/508.1, p. 24 (stating that Division 502 was from the Southwest).

<sup>1351</sup> Written Record of Analysis by Craig C. Etcheson, E3/494, 18 July 2007, p. 11, ERN (En) 00142836. *See also*, T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (discussing *Ta Mok* and stating that “[p]eople said that he was in charge of the Southwest”). *See above*, para. 380.

<sup>1352</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 32-33 (explaining that in July 1975 the army was reorganised and a number of divisions, including Division 502, came under the control of the General Staff).

<sup>1353</sup> Report from Division 502, E3/1133, 1 September 1977, ERN (En) 00505035-00505036 (signed by Met); Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Met as Unit Chair of Unit 502); Letter to Duch, E3/9381, 2 June 1977 (signed “[o]n behalf of the commander of Division 502 Met”); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 59, 66; T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 15, 25; T. 10 June 2015 (KEO Kin), E1/313.1, p. 92. *See also*, T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 51.

<sup>1354</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1725.

<sup>1355</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1356</sup> *See above*, para. 371.

<sup>1357</sup> Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-Destruction*, E3/2116 [E3/2117], 4 June 2003, p. 7, ERN (En) 00081292.

<sup>1358</sup> KAING Guek Eav Interview Record, E3/5771, 30 April 2008, p. 6, ERN (En) 00185502 (Duch stating that “S-21 took over from Division 703 and Nat, who was previously in charge of Division 703, applied the same rules to S-21”).



transferred to work as an assistant at the General Staff in March 1976.<sup>1359</sup> Comrade Pin of the Special Zone (*alias* KHOEM Pin) was Nat(h)'s successor as commander of Division 703.<sup>1360</sup> The division's deputy was YIM Nha [Nhor] until at least February 1977, when YIM Nha [Nhor] replaced Oeun as secretary of Centre Division 310.<sup>1361</sup> The division was headquartered in Boeung Trabaek, Phnom Penh,<sup>1362</sup> and had 5,369 troops in March 1977.<sup>1363</sup>

#### 5.3.1.2.1.8. Division 801

440. Centre Division 801 was formerly the 14<sup>th</sup> Division of the Special Zone, which was dissolved after the capture of Phnom Penh in April 1975.<sup>1364</sup> It was deployed to the Northeast Zone (Ratanakiri), and was briefly headquartered in Ban Lung district before relocating to Veun Sai district in November or December 1975.<sup>1365</sup> The division was headed throughout the DK period by former Division 14 Commander SAO Saroeun<sup>1366</sup>

<sup>1359</sup> Standing Committee summary of decisions, E3/235, 19-21 April 1976, p. 4, ERN (En) 00183419 (noting that Comrade Nat(h) was now only a General Staff cadre, "moving around to assist in the General Staff in combat operations, and will not be in personal command of forces"). *See also*, Section 12.2: S-21 Security Centre, paras 2208, 2324-2325.

<sup>1360</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 11, ERN (En) 00897659; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 6, 49-50, 171, ERN (En) 00081291, 00081334-00081335, 00081456; KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 9, ERN (En) 00242880.

<sup>1361</sup> KAING Guek Eav Interview Record, E3/9836, 3 February 2016, p. 6, ERN (En) 01213433; List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 11, ERN (En) 00897659. *See above*, para. 436.

<sup>1362</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897.

<sup>1363</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1364</sup> *See above*, para. 371. *See also*, T. 9 January 2013 (UNG Ren), E1/157.1, p. 52; T. 10 January 2013 (UNG Ren), E1/158.1, p. 71; T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 68; Section 12.4: Au Kanseng Security Centre, para. 2863-2864.

<sup>1365</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 29, 36-37; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 3-4, ERN (En) 00403579-00403580; CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 4, ERN (En) 00488706; T. 2 March 2016 (PHON Thol), E1/395.1, p. 46. *See also*, UNG Ren Interview Record, E3/402, 17 September 2009, p. 2, ERN (En) 00381032. The Chamber estimates the aerial distance between the Ban Lung and Veun Sai districts to be at least 30 kilometres. *See* Map of Ban Lung, Lumphat, Koun Mom, Ou Chum and Veun Sai districts, E3/9190, undated, ERN (En) 01045062; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 5-6, ERN (En) 00183397-00183398 (noting that Ratanakiri would have one division).

<sup>1366</sup> Not to be confused with Sector 105 Secretary SAO Sarun. For SAO Sarun, *see* Section 12.5: Phnom Kraol Security Centre, para. 3039.

*alias Ta 05 alias Roemun*.<sup>1367</sup> Deputy Commanders *Ta San alias Ta 06*<sup>1368</sup> and *Ta Leu*<sup>1369</sup> served in that capacity until mid-1977, whereupon they were reassigned to Division 920 in Sector 105 (Mondulkiri).<sup>1370</sup> Former Division 14 regimental commanders UNG Ren<sup>1371</sup> and KEO Saroeun<sup>1372</sup> also briefly served as Division 801 deputy commanders in early to mid-1977.<sup>1373</sup> No subsequent replacements or appointments were made to these positions.<sup>1374</sup>

#### 5.3.1.2.1.9. Division 920

441. Centre Division 920 maintained a presence in Sector 105 (Mondulkiri Region) from 1975,<sup>1375</sup> initially under the command of MEN Mang *alias Chhin* and Deputy Commander EA Chir *alias Say* (or Soy).<sup>1376</sup> Following their arrest and detention at S-

<sup>1367</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 42-43; T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 11; T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 28-29; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 5; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 57-58; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 47, 74. Although CHHAOM Se identified the signature of “Roemun” as that of Division 801 Deputy Commander KEO Saroeun, the evidence (in particular, telegrams bearing the signature “Roemun” communicated before KEO Saroeun’s brief tenure as deputy commander in 1977 and after his arrest and execution later that year) consistently contradicts this assertion. See T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 30 (referring to telegram E3/1168, the witness asserts that “[t]he signature of Roemun – “Roemun” here referred to Keo Saroeun; it was Keo Saroeun who signed this letter, it was not Sou Saroeun”); Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing “comrade Roemun” as Division 801 “chair”); DK Telegram, E3/1164, 25 November 1976 (signed “Roemun”); DK Telegram, E3/1079, 25 December 1976 (signed “Roemun”); DK Telegram, E3/870, 5 April 1978, ERN (En) 00516713 (signed “Roemun”); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 81-83; UNG Ren Interview Record, 23 October 2009, E3/84, p. 4, ERN (En) 00408396. The Chamber is accordingly satisfied that “Roemun” in contemporaneous evidence refers to SAO Saroeun, not KEO Saroeun.

<sup>1368</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 43; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 2, ERN (En) 00922117; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 5; CHIN Kimthong Interview Record, E3/9734, 9 May 2013, ERN (En) 00943563. See also, UNG Ren Interview Record, E3/402, 17 September 2009, p. 4, ERN (En) 00381034.

<sup>1369</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 87. See also, DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714 (telegram from “Leu” to SAO Saroeun).

<sup>1370</sup> See below, para. 441.

<sup>1371</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 73; T. 10 January 2013 (UNG Ren), E1/158.1, p. 83 (indicating that he remained for one month); UNG Ren Interview Record, 7 September 2009, E3/402, pp. 2-3, ERN (En) 00381032-00381033 (deposing that he was assigned to Phnom Penh in August 1977); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 90.

<sup>1372</sup> CHIN Kimthong Interview Record, E3/9734, 9 May 2013, ERN (En) 00943563. See also, CHHAOM Se and AN Sopheap DC-Cam Interview, E3/10569, 25 June 2012, pp. 89-90, 92, 94, ERN (En) 01079462-01079463, 01079465, 01079467.

<sup>1373</sup> It is unclear whether UNG Ren continued to occupy this position after being sent to Phnom Penh to attend study sessions in or about mid-1977. See T. 10 January 2013 (UNG Ren), E1/158.1, p. 83; UNG Ren Interview Record, 7 September 2009, E3/402, pp. 2-3, ERN (En) 00381032-00381033. KEO Saroeun was arrested in March or May 1977, detained at S-21 and executed in December 1977.

<sup>1374</sup> DC-Cam Interview with CHHAOM Se and AN Sopheap, 25 June 2012, E3/10569, p. 147, ERN (En) 01079520. See also, Section 12.4: Au Kanseng Security Centre, para. 2864.

<sup>1375</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 17; T. 11 December 2012 (KHAM Phan *alias PHAN Van*), E1/151.1, pp. 64-65. See also, Section 12.5: Phnom Kraol Security Centre, para. 3046.

<sup>1376</sup> T. 11 December 2012 (KHAM Phan *alias PHAN Van*), E1/151.1, p. 65; T. 13 December 2012 (KHAM Phan *alias PHAN Van*), E1/153.1, p. 5; T. 7 April 2016 (KHAM Phan *alias PHAN Van*),

21 in February and March 1977,<sup>1377</sup> the division came under the command of former Division 801 Deputy Commanders San *alias* Ta 06 and Ta Leu.<sup>1378</sup> CHAN Kung *alias* Kim [Koem] was Division 920's deputy chief, at least until he entered S-21 Security Centre in December 1978.<sup>1379</sup> Headquartered approximately seven kilometres south of Phnom Kraol,<sup>1380</sup> the division dispatched its three battalions (91, 92 and 93) across Sector 105 to patrol and defend the border with Vietnam.<sup>1381</sup> With 3,528 troops as of March 1977, Division 920 was the smallest centre division.<sup>1382</sup>

#### 5.3.1.2.1.10. Independent regiments

442. The Chamber finds that the following independent regiments falling under the direct authority of the General Staff existed during the DK period: Regiments 75, 152, 377 and 488; Offices 62 and 63; and S-21 Security Centre. The Chamber notes that these regiments were sometimes referred to as divisions.<sup>1383</sup> The Chamber further notes

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E1/416.1, pp. 30, 68; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 10; BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 4, ERN (En) 00274097; T. 30 March 2016 (SUN Vuth), E1/411.1, p. 60; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 65; T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 6. *See also*, Map of Koh Neak District, E3/9100, undated, ERN 00992852; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 3, ERN (En) 00239484; AUM Mol Interview Record, E3/7700, 29 October 2008, p. 2, ERN (En) 00239532; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 5-6, ERN (En) 00183397-00183398 (noting that Mondulkiri would have one division).

<sup>1377</sup> DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038 (showing that, by April 1977, "San" was reporting "To respected and beloved *Bang* 89"). *See also*, UNG Ren Interview Record, E3/402, 17 September 2009, p. 4, ERN (En) 00381034 (stating that San, the Division 801 Deputy Commander under SAO Saroeun, was sent to Mondulkiri in July 1977). *See also*, Section 12.5: Phnom Kraol Security Centre, para. 3057.

<sup>1378</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 82; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 12, 51; T. 13 December 2012 (KHAM Phan *alias* PHAN Van), E1/153.1, p. 8; T. 11 March 2016 (NETH Savat), E1/400.1, p. 30; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 73, 75. *See also*, PHAN Sovannhan Interview Record, E3/365, 26 November 2008, p. 3, ERN (En) 00251010; BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 8, ERN (En) 00274101. *See also*, Section 12.5: Phnom Kraol Security Centre, para. 2864.

<sup>1379</sup> S-21 List of Prisoners, E3/10631, undated, p. 2, ERN (En) 01335771 (entry 14); S-21 List of Prisoners, E3/2253, undated, p. 2, ERN (En) 00789492 (entry no. 16).

<sup>1380</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 63; T. 11 December 2012 (KHAM Phan *alias* PHAN Van), E1/151.1, p. 74; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 60, 85; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 42; T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 6.

<sup>1381</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 63-64; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 59-61; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 31-37. *See also*, Division 920 Plenary Meeting Minutes, E3/799, 7 September 1976, ERN (En) 00184780 (the direction of Brother 89 [Son Sen]: "The task received by the 920<sup>th</sup> Division is to absolutely defend the entire Mondulkiri border with Vietnam.").

<sup>1382</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1383</sup> *See e.g.*, Minutes of Divisions Meeting on production, E3/801, 30 September 1976, ERN (En) 00597953-00597954 (referring to "Division" 488, 152, 377 and 75); S-21 Prisoners' List, E3/8657, undated, pp. 2, 38-40, ERN (En) 01562056, 01562092-01562094 (using "Division 377" and "Regiment 377" interchangeably); S-21 Report, E3/8703, undated, ERN (En) 00609177 (referring to "Division" 488).

that its finding that these seven entities existed does not preclude the possibility that there were more independent regiments than the evidence on the Case File shows.

443. Independent Regiment 75 was a sewing unit.<sup>1384</sup> Comrade Vin was the secretary of Regiment 75.<sup>1385</sup> CHUM Kou was Comrade Vin's deputy until at the latest 28 August 1977, when CHUM Kou is recorded entering S-21.<sup>1386</sup>

444. Independent Regiment 152 was a naval unit.<sup>1387</sup> The secretary of Regiment 152 was Comrade Sim.<sup>1388</sup> The deputy secretary was HOK Tha.<sup>1389</sup> Regiment 152 was located in the southern Phnom Penh area along the Mekong River.<sup>1390</sup> In March 1977, it had 1,852 troops.<sup>1391</sup>

<sup>1384</sup> KAING Guek Eav Interview Record, E3/45, 15 July 2008, p. 6, ERN (En) 00205161 (“there were two garment factories: the “Independent Regiment 75” answering to SON Sen and O’Russey answering to either the Minister of Industry or Office 870.”). *See also*, S-21 Prisoners’ List, E3/8591, undated, ERN (En) 01236320, 01236323, 01236324, 01236330, 01236333 (listing a number of prisoners as coming from the General Staff’s “Sewing Unit 75” or “Sewing Platoon 75”).

<sup>1385</sup> Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Rin as the “unit chair” of “unit” 75); List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 16, ERN (En) 00897664 (entry no. 271, listing Comrade Rin as Secretary of Regiment 75); T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 41 (“the regiment of Brother Win (phonetic), that is, the clothes the garment factory”); Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, p. 8, ERN (En) 00233717 (Comrade “Rin” reporting enemy activity to *Angkar*, including scissors being damaged, and hats and clothing being thrown away); Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 11, ERN (En) 00656386 (Comrade Vin reporting on behalf of Regiment 75); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 6, ERN (En) 00933838 (Comrade “Rin” reporting that “no-goods have been rounded up and sent to the paddy fields and not allowed to remain at the tailoring place”). As to the reference in English to “Rin”, the Chamber notes that the original Khmer refers to “Vin”. *See also*, Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02 (TC), E459, 18 July 2017, para. 217, fn. 598.

<sup>1386</sup> S-21 Prisoners’ List, E3/8591, undated, ERN (En) 01236324 (entry number 89), 01236334 (entry number 113).

<sup>1387</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 9 (“So I dropped the barrel near the station of naval unit of 152 along Mekong River”); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/802, 11 November 1976, ERN (En) 00876993 (“Unit 152 must ready one battalion for naval intervention”, the location identified as Neak Loeng – a town on the Mekong River approx. 65 kilometres downstream from Phnom Penh).

<sup>1388</sup> Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535811; DK Telegram, E3/1214, 2 May 1976, ERN (En) 00531047; Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 10, ERN (En) 00656385.

<sup>1389</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 15, ERN (En) 00897663.

<sup>1390</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 9 (“So I dropped the barrel near the station of naval unit of 152 along Mekong River”); Minutes of Divisions Meeting on production, E3/801, 30 September 1976, ERN (En) 00597953 (152 reporting incidents on National Road 1, which follows the Mekong River, and at Pre Sar).

<sup>1391</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

445. Independent Regiment 377 was an artillery unit.<sup>1392</sup> Comrade Nay (or Nai) was the regiment's secretary.<sup>1393</sup> Comrade Hin was his deputy.<sup>1394</sup> It was a relatively small unit, with 791 troops recorded in March 1977.<sup>1395</sup>

446. Independent Regiment 488's specific function remains uncertain, yet the regiment is listed on numerous documents.<sup>1396</sup> Comrade Pheap was the regiment's secretary.<sup>1397</sup> It had 1,138 troops in March 1977.<sup>1398</sup>

447. Office 62 was an independent regiment.<sup>1399</sup> It was the logistics office of the General Staff.<sup>1400</sup> The chairman of Office 62 was PECH (PICH) Chhan (Chhorn) *alias* Comrade Sao(m).<sup>1401</sup> Sao(m) held this position until at least late December 1976.<sup>1402</sup> He was purged and sent to S-21 shortly thereafter.<sup>1403</sup> The evidence on the Case File

<sup>1392</sup> S-21 Prisoners' List, E3/9852, 26 May 1977, p. 46, ERN (En) 01367342 (listing "Division 377, tank"); Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535793 (listing "Regiment 377").

<sup>1393</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 16, ERN (En) 00897664 (spelled as "Nai" in the English translation); Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 8, ERN (En) 00656383.

<sup>1394</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 16, ERN (En) 00897664.

<sup>1395</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1396</sup> See e.g., List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, pp. 1, 16, ERN (En) 00897649, 00897664 (listing Regiment 488); Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535793 (listing "Regiment 488"); RAK General Staff Document: *Joint Statistics of Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956 (listing Regiment 488 as having 1,138 troops).

<sup>1397</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 16, ERN (En) 00897664; DK Telegram, E3/1215, 6 May 1976, ERN (En) 00531048; Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 9, ERN (En) 00656384.

<sup>1398</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1399</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1400</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 49, 51; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 74.

<sup>1401</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 49; DK Telegram, E3/1165, 22 December 1976, ERN (En) 00525766 (from Comrade Pin to "Comrade Saom, Office 62"); DK Telegram, E3/1107, 29 December 1976, ERN (En) 00574472 ("Comrade Saom of Office 62" requesting Office 63 to supply petroleum to Division 703); List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 16, ERN (En) 00897664 (listing "Comrade Sao" as Chief of Logistics of Office 62). See also, Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-Destruction*, E3/2116 [E3/2117], 4 June 2003, p. 53, ERN (En) 00081338.

<sup>1402</sup> DK Telegram, E3/1079, 25 December 1976, ERN (En) 00877020-00877021 (Saom is copied in on this telegram from Comrade Reuan, who is SAO Sareoun from Division 801, to SON Sen); DK Telegram, E3/1107, 29 December 1976, ERN (En) 00574472 (a telegram sent by Saom).

<sup>1403</sup> DK Telegram, E3/1140, 1 April 1977, ERN (En) 00178065 (Comrade Meth notifying Duch that the confession of "Saom of M-62" had been obtained, as a result of which a number of persons had been transferred to S-21); S-21 List of Prisoners, E3/10460, undated, p. 1, ERN (En) 01558109 (entry no. 4, indicating that PECH (PICH) Chhan (Chhorn) *alias* Comrade Sao(m) entered S-21 on 14 March 1977).

does not show who replaced him. In March 1977, 1,385 people are recorded as connected to Office 62.<sup>1404</sup>

448. Office 63 was also an independent regiment.<sup>1405</sup> HAT Heng *alias* Chhuon, was the chairman of Office 63 at least until he entered S-21 on 5 March 1977.<sup>1406</sup> The evidence on the Case File does not show who replaced him. Office 63 was a relatively large unit. In March 1977, 3,201 people are recorded as connected to Office 63.<sup>1407</sup>

449. The Chamber has before it a telegram sent by Comrade Saom of Office 62 on behalf of Centre Division 703 to Office 63 requesting Office 63 to supply petroleum to Division 703.<sup>1408</sup> Also, in his testimony Duch characterised both Office 62 and Office 63 as logistics units.<sup>1409</sup> Furthermore, Office 63 is copied in on documents listing statistics of the RAK.<sup>1410</sup> The Chamber therefore finds that Office 63 was part of the RAK's logistics system.

450. S-21 Security Centre was an independent regiment directly under the authority of the General Staff, yet only with regard to logistical matters.<sup>1411</sup> The Chamber will discuss the organisational and reporting structures regarding S-21 in the relevant section of this Judgement.<sup>1412</sup>

#### 5.3.1.2.1.11. East Zone field command posts

451. The CPK established two field command posts in the East Zone sometime in 1977 when internal purges increased and the armed hostilities with Vietnam intensified,

<sup>1404</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1405</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1406</sup> S-21 Prisoners' List, E3/8591, undated, ERN (En) 01236319 (entry number 26).

<sup>1407</sup> RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, p. 1, ERN (En) 00183956.

<sup>1408</sup> DK Telegram, E3/1107, 29 December 1976, ERN (En) 00574472.

<sup>1409</sup> Case 001 Transcript (KAING Guek Eav), E3/5804, 24 June 2009, p. 9, ERN (En) 00345003.

<sup>1410</sup> *See e.g.*, RAK General Staff Document: *Statistics of Total Armed Forces – March 1977*, E3/849, 7 April 1977, ERN (En) 00183956; RAK General Staff Logistics Committee Report, E3/1167, 29 March 1977; RAK General Staff Statistics, E3/1048, 7 April 1977, ERN (En) 00193064.

<sup>1411</sup> *See e.g.*, T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 87; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 21; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 27; KAING Guek Eav Interview Record, E3/5762, 18 February 2008, p. 2, ERN (En) 00164328; KAING Guek Eav Answers to Written Questions by Co-Investigating Judges, E3/15, 21 October 2008, ERN (En) 00251380. *See also*, Section 12.2: S-21 Security Centre, para. 2186.

<sup>1412</sup> Section 12.2.5: S-21 Security Centre: Structure and Personnel.

warranting the relocation of troops.<sup>1413</sup> Regarding the first post, the Chamber finds that POL Pot assigned SON Sen to command a battlefield front along National Road 1 (Svay Rieng province),<sup>1414</sup> with Comrade Ren as his deputy.<sup>1415</sup> Regarding the second post, the Chamber finds that KE Pauk was brought in from the North (Central) Zone and deployed along National Road 7 (at the time, Kampong Cham province),<sup>1416</sup> operating this battlefield out of a command centre in Suong.<sup>1417</sup> From this point up until his suicide, East Zone Secretary SAO Phim was chairman of this post and KE Pauk was his deputy.<sup>1418</sup> Centre divisions and zone divisions, mostly from the Southwest Zone and the Phnom Penh area, were relocated to these two posts throughout 1977 and 1978.<sup>1419</sup>

<sup>1413</sup> Section 4: General Overview, paras 285, 288-290.

<sup>1414</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 102-103; T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 62; Case 001 Transcript (Craig ETCHESON), E3/345, p. 88, ERN (En) 00328532 (“[I]n September 1977, Son Sen was assigned to go to the east to take direct command of the Revolutionary Army of Kampuchea”); HENG Samrin Interview by Ben KIERNAN (typed from handwritten notes), E3/5593, 7 December 1992, ERN (En) 00651894-00651895 (indicating that in early 1977 tanks were sent to the East under the direct command of SON Sen, who had a mobile command in Svay Rieng); OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977, POL Pot assigned his soldiers to go to Route 1, under SON Sen’s command).

<sup>1415</sup> T. 1 November 2016 (IENG Phan), E1/493.1, p. 37; T. 26 October 2016 (CHUON Thy), E1/490.1, pp. 32-33; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 6, ERN (En) 00766452 (stating that East Zone Commander Ren was *Ta Mok*’s son-in-law and died in Anlong Veng in 1979); SOKH Chhien Interview Record, E3/428, 19 August 2009, p. 4, ERN (En) 00374948 (stating that the divisions sent to the East Zone were under the overall command of Ren, with SON Sen as “the supreme commander of the Khmer Rouge army”); IENG Phan Interview Record, E3/419, 23 November 2009, p. 6, ERN (En) 00411007 (describing receiving orders from Ren, as well as directly from SON Sen). The Chamber finds it likely that Comrade Ren of the East Zone Command Post is the same person as the Comrade R(a)en previously at the General Staff. *See above*, para. 428 (fn. 1308).

<sup>1416</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 95 (stating that KE Pauk’s forces from the centre were sent in December ’77); T. 2 November 2016 (LONG Sat), E1/494.1, p. 20 (stating that KE Pauk from the Central Zone was sent to the East Zone on 25 May 1978); POL Nhan Interview Record, E3/5554, 31 August 2009, pp. 5, 7, ERN (En) 00377401, 00377403; HENG Samrin Interview by Ben KIERNAN (typed from handwritten notes), E3/5593, 7 December 1992, ERN (En) 00651895 (“On H7, there was So Phim first and then they sent Pauk there”); OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977, a battlefield was established along Route 7, under the chairmanship of SAO Phim and KE Pauk as deputy).

<sup>1417</sup> POL Nhan Interview Record, E3/5554, 31 August 2009, p. 5, ERN (En) 00377401.

<sup>1418</sup> T. 5 October 2015 (BAN Seak), E1/353.1, p. 81; T. 1 November 2016 (LONG Sat), E1/493.1, p. 95; T. 2 November 2016 (LONG Sat), E1/494.1, p. 69; OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977 a battlefield was established along Route 7, under the chairmanship of SAO Phim with KE Pauk as his deputy). *See also*, Section 12.1.6.3.4.4: KE Pauk and SON Sen go to the East Zone.

<sup>1419</sup> *See e.g.*, T. 22 April 2013 (CHHOUK Rin), E1/181.1, 66-67 (“We received the instruction from the upper authority to reinforce the force along the Cambodian-Vietnamese border, particularly in Svay Rieng province.”); T. 26 October 2016 (CHUON Thy (CHUON Thi) *alias* THI Ov), E1/490.1, p. 25 (CHUON Thy was the Deputy of the newly formed Division 340, of which the commander was THY Poussé from the Southwest, that was stationed at the first post in Svay Rieng); T. 31 October 2016 (IENG Phan), E1/492.1, p. 22 (testifying that he relocated from Takeo Province in the Southwest Zone to Svay Rieng Province in the East Zone in mid-1978); T. 1 November 2016 (LONG Sat), E1/493.1, pp. 80, 95-

5.3.1.2.2. *Regional forces*

452. Not all divisions and independent regiments were directly under the authority of the General Staff; some fell under the authority of the individual zones or autonomous sectors. The evidence before the Chamber is inconclusive as to the exact number of divisions that were under the direct authority of the respective zones or sectors. However, the Chamber is satisfied that Autonomous Sector 505, the Northwest Zone, the Southwest Zone, the West Zone and the East Zone all had their own regional forces in the form of zone divisions. For instance, Division 1 stationed in Koh Kong was under the command of the West Zone.<sup>1420</sup> The Northwest Zone had at a minimum a Division 1 and a Division 2.<sup>1421</sup> The Southwest Zone had, among others, a Division 2 (later renamed Division 210 and sent to the East Zone) commanded by SAM Bit,<sup>1422</sup> and a Division 3 commanded by MEAS Muth, yet soon after the restructuring of the RAK mid to late 1975 this zone division became part of Centre Division 164 (the navy).<sup>1423</sup> Division 117 was under the authority of Autonomous Sector 505 (Kratie).<sup>1424</sup> Divisions

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96; POL Nhan Interview Record, E3/5554, 31 August 2009, p. 4, ERN (En) 00377400; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 6, ERN (En) 00766452; IENG Phan Interview Record, E3/419, 23 November 2009, p. 4, ERN (En) 00411005. *See also*, Section 4: General Overview, paras 285, 288-290.

<sup>1420</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 57-59; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 14, ERN (En) 00183406 (noting Koh Kong reported to the Zone). *See also*, Section 6: Communication Structures, para. 512.

<sup>1421</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 36; SON Em Interview Record, E3/9477, 2 June 2014, pp. 6-7, ERN (En) 01034085-01034086.

<sup>1422</sup> T. 31 October 2016 (IENG Phan), E1/492.1, p. 9 (Division 2 Commander SAM Bit was the witness's direct superior); T. 20 May 2013 (IENG Phan), E1/193.1, p. 11, 17, 24; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 4, ERN (En) 00766450; IENG Phan, Interview Record, E3/419, 23 November 2009, p. 3, ERN (En) 00411004. Division 2 was later renamed Division 210 and sent to the East Zone in 1978. *See above*, para. 451; Section 12.3: Kraing Ta Chan Security Centre, para. 2709.

<sup>1423</sup> T. 25 January 2016 (PRUM Sarat), E1/381.1, pp. 78-79, 87-89; T. 20 May 2013 (IENG Phan), E1/193.1, pp. 17-18; T. 8 October 2012 (MEAS Voeun), E1/131.1, pp. 32-33; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 4, ERN (En) 00766450; IENG Phan, Interview Record, E3/419, 23 November 2009, p. 3, ERN (En) 00411004. *See above*, paras 424, 433.

<sup>1424</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 56-57; T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 90-91 (confirming he was the Deputy Chairman of the General Staff of Division 117 in Sector 505). *See also*, DK Telegram, E3/992, 2 March 1978, pp. 1-2, ERN (En) 00795287-00795288 (Comrade Rom, commander of Division 117, reporting on the enemy situation near the border with Vietnam); Section 6: Communication Structures, para. 512. IENG Phan testified that Division 117 was in the North Zone near Anlong Veng (*see* T. 1 November 2016 (IENG Phan), E1/493.1, pp. 28-29). However, the Chamber has before it a telegram sent from Division 117, which reports clashes on the border with Vietnam (*see* DK Telegram, E3/992, 2 March 1978, pp. 1-2, ERN (En) 00795287-00795288). The Chamber therefore finds that Division 117 could not have been located that far north near Anlong Veng, which borders Thailand, not Vietnam, and is also not in the North Zone. *See above*, para. 377.



3,<sup>1425</sup> 4<sup>1426</sup> and 5<sup>1427</sup> were zone divisions stationed in the East Zone.

#### 5.3.1.2.3. *Militia forces*

453. In addition to the zone, sector and district armies, there existed local militias called *chhlop*,<sup>1428</sup> which were under the control of the sub-district leaders, and that were responsible for security and discipline in the villages, communes and cooperatives.<sup>1429</sup>

454. There also existed special units at the sub-district level. An example of such a special unit is the “Long Sword Group”. The Long Sword Group was set up by the Southwest Zone cadres in the Central (old North) Zone in 1977, and reported to the head of Peam Chi Kang commune.<sup>1430</sup> The Long Sword Group operated in Kang Meas

<sup>1425</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 33 (testifying Division 3 was an East Zone Division); DK Telegram, E3/867, 20 March 1978, ERN (En) 00847035 (noting that Division 3 was stationed close to “Comrade Tal”, so close to Centre Division 290 stationed in the East Zone close to the Mekong river). *See above*, para. 435. *See also*, KAING Guek Eav Interview Record, E3/356, p. 11, ERN (En) 00242905; Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 8, ERN (En) 00184490 (entry dated 4 May 1978); T. 1 November 2016 (LONG Sat), E1/493.1, pp. 74-75.

<sup>1426</sup> DK Telegram, E3/250, 6 May 1978, p. 1, ERN (En) 00322057 (stating that Division 4 was an East Zone unit); DK Telegram, E3/914, 31 December 1977, ERN (En) 00183641 (Division 4’s Phuong asking *Angkar* for military intervention at “Tonle Kroch Chhmar and Chlong”, which was north along the Mekong river towards Memot, indicating Division 4 was stationed north from Division 3). *See also*, T. 1 November 2016 (LONG Sat), E1/493.1, pp. 74-75.

<sup>1427</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 74-75 (testifying that there were three divisions in the East Zone: Division 3, 4 and 5. Division 5 operated in the entire East Zone and was newly formed after December 1977 when the conflict with Vietnam intensified).

<sup>1428</sup> Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 85, ERN (En) 00328529 (“At the district level the Party committee also commanded armed units, but these units were often less formal and sometimes in the form of a militia known as the *chhlop*”); IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 35, ERN (En) 00003271 (entry dated 14 July 1976) (“National defence: The armed forces are divided into three types, militia (*chhlop*), regional troops and front-line troops”); *Pol Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 4 October 1977, ERN (En) 00168636. *See also*, Written Record of Analysis by Craig C. Etcheson, E3/494, 18 July 2007, p. 28, ERN (En) 00142853; DK Military Report, E3/865, 23 March 1976, p. 1, ERN (En) 00323475; Revolutionary Youth, E3/754, 8 August 1976, pp. 21-22, ERN (En) 00539869-00539870; Section 11.1: Trapeang Thma Dam, para. 1333; Section 11.2.13: 1<sup>st</sup> January Dam Worksite: Oversight of Workers by Soldiers and Militiamen.

<sup>1429</sup> T. 10 January 2012 (KLAN Fit), E1/24.1, p. 106; T. 5 June 2012 (SAO Sarun), E1/81.1, p. 84; T. 19 June 2012 (YUN Kim), E1/88.1, p. 23; SAO Phen Interview Record, E3/374, 21 May 2009, p. 4, ERN (En) 00336533; KHUN Kim Interview Record, E3/422, 30 November 2009, p. 5, ERN (En) 00414066; SENG Srun Interview Record, E3/1692, 11 August 2008, pp. 3-5, ERN (En) 00242086-00242088. *See also*, Section 11.1: Trapeang Thma Dam, paras 1333, 1339; Section 11.2.13: 1<sup>st</sup> January Dam Worksite: Oversight of Workers by Soldiers and Militiamen; Section 11.3.12.1: Kampong Chhnang Airfield Construction Site: Guards and Surveillance.

<sup>1430</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 37-38, 40; T. 14 September 2015 (SEN Srun), E1/346.1, p. 111; T. 15 September 2015 (SEN Srun), E1/347.1, pp. 9-10. *See also*, Section 13.2: Treatment of the Cham, paras 3282-3284.

district in connection to Wat Au Trakuon Security Centre.<sup>1431</sup> The Chamber discusses this group further below in the relevant section of this Judgement.<sup>1432</sup>

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<sup>1431</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 27-28, 75. *See also*, T. 10 September 2015 (SENG Kuy), E1/345.1, p. 16 (testifying he saw militiamen armed with long swords in Kang Meas district); Section 13.2.9.2: Treatment of the Cham, Central (old North) Zone: Wat Au Trakuon Security Centre.

<sup>1432</sup> Section 13.2.9: Killing and Detention of the Cham.

## 6. COMMUNICATION STRUCTURES

### 6.1. Methods of Communication

#### 6.1.1. Telegrams

455. As a preliminary matter, the Chamber notes that it has before it official correspondence in the form of telegrams between members of the CPK, including reports to superiors and directives to subordinates. Many of these documents were discovered by a team of Vietnamese experts in a villa located on Street 240 in Phnom Penh sometime between 1979 and 1983.<sup>1433</sup> This correspondence was transferred to the Documentation Office of the People's Republic of Kampuchea Ministry of Interior, which later became the Cambodian Ministry of Interior, before they were transferred to the Documentation Center of Cambodia (DC-Cam).<sup>1434</sup> DC-Cam maintains the originals of these documents. The Chamber finds them to have significant probative value.

456. Prior to 1975, the CPK used telegrams to communicate both within Cambodia and externally with contacts in foreign countries. For example, telegrams were used to send messages between the zones and the Party leaders in their headquarters, and also to make contact with FUNK and GRUNK representatives in Vietnam and China.<sup>1435</sup>

<sup>1433</sup> Chapter by J. Ciorciari with Y. Chhang: "Documenting the Crimes of Democratic Kampuchea", E3/161, p. 226, ERN (En) 00291509 (stating that the documents were found in 1979); T. 1 February 2012 (CHHANG Youk), E1/37.1, p. 46 (testifying that the documents were found "around the 1980s -- that is, around 1982 or '83"). CHHANG Youk suggests in one of his statements that the house may have belonged to SON Sen. *See* CHHANG Youk Interview Record, E3/5779, 19 August 2009, pp. 4-5, ERN (En) 00371398-00371399. However, he later testified that there was no clear information as to who resided there. *See* T. 1 February 2012 (CHHANG Youk), E1/37.1, p. 46.

<sup>1434</sup> Chapter by J. Ciorciari with Y. Chhang: "Documenting the Crimes of Democratic Kampuchea", E3/161, p. 226, ERN (En) 00291509; CHHANG Youk Interview Record, E3/5779, 19 August 2009, pp. 3-4, ERN (En) 00371397-00371398; T. 1 February 2012 (CHHANG Youk), E1/37.1, pp. 43, 50-52.

<sup>1435</sup> T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, p. 7 (stating that communications between IENG Sary, who was in China between 1971 and 1975, and the zone level went via telegram in that period); T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 99 (stating that he started decoding telegrams in Sector 105 before April 1975); T. 7 December 2011 (LONG Norin), E1/18.1, pp. 69-70 (stating that telegrams were used to communicate between a FUNK radio station in Hanoi and Khmer Rouge leaders in Cambodia, including for sending texts for broadcasts); T. 14 December 2012 (SUON Kanil), E1/154.1, p. 54 (stating that telegrams were used from early 1973 to report from battlefields within Cambodia); T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 44-45 (stating, in reference to the year 1974, that incoming telegrams were reports from the front lines sent to the rear – "from the base to the upper authority" – and outgoing telegrams were directives, including measures, instructions and circulars – from "the upper authority for the lower authority to implement"). From 1971 to 1975 IENG Sary acted as the FUNK/GRUNK "Special Envoy" in China, charged with

457. After the seizure of Phnom Penh on 17 April 1975, CPK telegraph offices were established in the city.<sup>1436</sup> Telegrams were transmitted and received at K-18, and were encrypted or decrypted as necessary either at K-1 or at an office within Sothea's School.<sup>1437</sup> Zones, autonomous sectors, sectors and divisions around the country also maintained their own telegraph units.<sup>1438</sup> The system remained in place until the arrival of the Vietnamese in Phnom Penh in 1979.<sup>1439</sup> Telegrams were primarily used for long-distance communication; the various offices of the Party Centre would not typically use telegrams to contact each other within Phnom Penh,<sup>1440</sup> instead using telephone or mail (delivered by messengers).<sup>1441</sup>

458. Most, but not all, CPK telegrams were encrypted before transmission.<sup>1442</sup> Unencrypted messages were sent in Morse code.<sup>1443</sup> Secret messages were encrypted using a substitution cipher.<sup>1444</sup> Additional layers of encryption were used for highly

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managing communications between the CPK and China, monitoring NORODOM Sihanouk on behalf of the CPK and recruiting FUNK/GRUNK intellectuals to the CPK. See T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phoun), E1/96.1, pp. 97-98; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 103-104; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 10-11, ERN (En) 00417608-00417609; Article by N. Chanda, "Cambodia – Fall of the High Flyer", E3/3443, 22 August 1996, p. 1, ERN (En) 00149280; *Samdech and Madame Sihanouk Arrive in Peking* (Peking Review), E3/3710, 9 June 1972, p. 1, ERN (En) S00023611; Book by N. Chanda: *Brother Enemy: The War After The War*, E3/2376, p. 70, ERN (En) 00192255; Book by E. Becker: *When the War was Over*, E3/20, 1986, p. 199, ERN (En) 00237904. See below, para. 464. See also, Section 3: Historical Background, paras 216-223.

<sup>1436</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 68-69.

<sup>1437</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 56, 70-71; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758.

<sup>1438</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 55 (stating that "each base, zone and sector, and every unit of a division" had communications and telegraph sections); T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 46, 95 (confirming that zones, sectors and battlefield commanders used telegrams); T. 7 June 2012 (SAO Sarun), E1/83.1, p. 16 (giving the location of the telegraph office in Autonomous Sector 105); PHAN Sovannhan Interview Record, E3/44, 11 March 2009, pp. 3-4, ERN (En) 00295161-00295162 (confirming the existence of the telegraph office in Autonomous Sector 105); T. 4 October 2012 (MEAS Voeun), E1/130.1, p. 22 (describing telegraph communication with a military division).

<sup>1439</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 77.

<sup>1440</sup> T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 37; T. 30 May 2012 (NY Kan), E1/78.1, p. 79; LONH Dos Interview Record, E3/70, 20 November 2009, p. 4, ERN (En) 00407788.

<sup>1441</sup> See below, paras 460-461.

<sup>1442</sup> T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, p. 12; T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 64; T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 25.

<sup>1443</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 64; T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 51-52.

<sup>1444</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 20-22 (describing the use of a "table of 100 squares" to encrypt text); Attachment to NORNG Sophang Interview Record, E3/1732, undated, ERN (En) 00771811-00771812 (example of a table of 100 squares for encryptions); T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 101 (referring to a "10-digit coding" system); KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 5, ERN (En) 00204757. A substitution cipher is a data encryption method by which ordinary text (single letters or pairs of letters) is replaced with one or more different symbol(s).

confidential messages, such as those pertaining to cadres' travel plans.<sup>1445</sup> Special code numbers were also used to refer to specific individuals, locations and offices.<sup>1446</sup>

459. Telegrams were generally encrypted (or decrypted) and transmitted (or received) by different people.<sup>1447</sup> Thus, outgoing telegrams were usually prepared in writing and delivered to an “encoder”; the encrypted messages were then sent to a separate telegraph operator for transmission.<sup>1448</sup> At the other end, the encrypted messages were received and transcribed by another telegraph operator, before being taken to a “decoder” for decryption.<sup>1449</sup> The decrypted messages were then delivered by messenger to the final recipients.<sup>1450</sup> Witness NORNG Sophang, who ran the telegram encryption and decryption unit at Sothearos School in Phnom Penh from 1975 onwards,<sup>1451</sup> confirmed that this separation of responsibilities was intended to “preserve the principle of secrecy” within the CPK.<sup>1452</sup>

<sup>1445</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 24-25; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 46-47; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 101.

<sup>1446</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 24; PHAN Van *alias* KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506. For example, POL Pot was referred to as “87”, SON Sen was referred to as “47”, “89” and “62”, and KE Pauk was referred to as “18”, “25” and “35”. *See e.g.*, KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754 (“Pol Pot signed documents by writing 870 or 87”); T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 83 (stating that “47” was a code number for SON Sen); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 87 (stating that “89” and “62” were code numbers for SON Sen); SUON Kanil Interview Record, E3/344, 18 August 2009, p. 9, ERN (En) 00384430 (stating that “18”, “25” and “35” were code numbers for KE Pauk). *See also*, Section 5: Administrative Structures, paras 362, 366-368; Section 12.2: S-21 Security Centre, para. 2198.

<sup>1447</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 101; T. 17 December 2012 (SUON Kanil), E1/155.1, p. 51.

<sup>1448</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 16-17; T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 39; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758.

<sup>1449</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 101; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 81-82; T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 39; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758; PON Ol Interview Record, E3/373, 7 May 2009, pp. 4-5, ERN (En) 00336527-00336528.

<sup>1450</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 63-64; T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 39.

<sup>1451</sup> T. 6 September 2012 (NORNG Sophang), E1/123.1, p. 83; T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 55-56.

<sup>1452</sup> T. 6 September 2012 (NORNG Sophang), E1/123.1, pp. 64-65. *See also*, Section 5: Administrative Structures, paras 342, 362, 398; Section 16: Common Purpose, paras 3927, 3938-3939, 3958, 3986; Section 16.3: Real or Perceived Enemies, paras 3789, 3793.

6.1.2. *Mail*

460. The various organs of the Party Centre and the zones, sectors, districts and sub-district entities also communicated with each other by letter.<sup>1453</sup> Although telegrams were generally preferred for long-distance communications, lengthier messages and reports were sent by mail, which was delivered by messengers.<sup>1454</sup> In Phnom Penh, incoming mail for the Party Centre was generally directed through K-7, the messenger unit.<sup>1455</sup> Zones, sectors and districts had their own messenger networks.<sup>1456</sup>

6.1.3. *Telephone and (Shortwave) Radio*

461. Evidence before the Chamber proves that some of the leaders, offices and units of the Party Centre and the DK government communicated with each other by telephone.<sup>1457</sup> However, not all of the offices in Phnom Penh were connected to each

<sup>1453</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, p. 62 (recalling carrying letters between K-1 and K-7); T. 6 December 2011 (KLAN Fit), E1/17.1, p. 61 (describing a letter being sent from the Party Centre to a sub-district, via the zone and sector levels); T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 89-90 (referring to a letter to SON Sen); SON Sen Letter to KAING Guek Eav, E3/1047, 5 October 1977, ERN (En) 00548892.

<sup>1454</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 29 (stating that messengers were used to send reports in the form of letters from the commune to the district office); T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 62 (stating that messengers were used for relaying messages between Kampong Cham and Phnom Penh unless *Angkar* explicitly instructed the use of telegrams or telephones); T. 14 December 2012 (SUON Kanil), E1/154.1, p. 68; U.S. Department of Defense Report, E3/391, January 2001, p. 3, ERN (En) 00387345. *See also*, T. 20 September 2016 (SEM Om), E1/477.1, pp. 32-33, 92, 94 (Civil Party SEM Om was HON Him's personal messenger); T. 21 September 2016 (CHHORN Vorn), E1/478.1, p. 58 (CHHORN Vorn was RUOS Nhim's personal messenger before 1975, and from sometime in 1976, RUOS Nhim's bodyguard). The position of bodyguard and messenger was often combined. *See e.g.*, T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 44 (SAUT Toeung was NUON Chea's bodyguard and also delivered letters for him to KAING Guek Eav *alias* Duch at S-21); T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 68-69 (stating that bodyguards were also called messengers).

<sup>1455</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 15-16.

<sup>1456</sup> *See e.g.*, U.S. Department of Defense Report, E3/391, January 2001, pp. 2-3, ERN (En) 00387344-00387345 (outlining the messenger system in the East Zone); T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 68-69 (noting how messengers were assigned at the district level in the Southwest Zone); T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 80 (confirming that the Kraing Ta Chan Security Centre would send reports to the sector via messenger). *See also*, Section 10.1: Tram Kak Cooperatives, para. 951.

<sup>1457</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 3, ERN (En) 00183362 (*Angkar* instructing the Ministry of Propaganda and Information to use the telephone for reporting important matters, so that timely measures could be taken); Minutes of Meeting (Deputy) Secretaries and Deputy Secretaries of Divisions and Regiments, E3/802, 11 November 1976, p. 3, ERN (En) 00876993 (SON Sen instructing to use telephones from the Military Staff to the individual divisions); T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 19-20 (testifying that he spoke on the telephone every day for one hour with SON Sen); T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 19 (testifying that these conversations were made on a special telephone using a different frequency which could not be listened to); T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 94 (describing telephone conversations between SON Sen and the witness about S-21); T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 37 (stating that a telephone connection was in place at the office near Borei Keila where the witness met SON Sen); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 91 (referring to a telephone

other through the telephone network.<sup>1458</sup>

462. The evidence before the Chamber is inconclusive as to whether officials at the zone or sector level also had access to telephone connections.<sup>1459</sup> Certain military units, including Division 164 (the navy), occasionally reported to the Party Centre by telephone.<sup>1460</sup> However, in a meeting with senior officers in December 1976, SON Sen cautioned military personnel to avoid “liberal use” of the telephone so as to prevent the interception of communications by “the enemy”.<sup>1461</sup>

463. Witness PRUM Sarat testified that in addition to a telephone line, a shortwave radio was used for communications in Regiment 140 of Division 164 (navy) when on

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at K-7); T. 24 April 2012 (SALOTH Ban), E1/67.1, pp. 10-11 (mentioning the receipt of telephone calls at the Ministry of Foreign Affairs); T. 16 August 2012 (SA Siek), E1/109.1, pp. 102-103 (describing a telephone call received at the Ministry of Propaganda and Information); T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 59-60 (stating that telephone calls were made to the telegram encryption and decryption unit at Sothearos School); T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 12-13 (confirming that KHIEU Samphan had a telephone in his office at K-3). *See also*, T. 5 September 2012 (NORNG Sophang), E1/122.1, p. 71; T. 10 June 2013 (SO Socheat), E1/204.1, p. 76. *See below*, fn. 1516. *See also*, Section 12.2: S-21 Security Centre, paras 2199, 2202, 2206, 2287, 2300, 2303.

<sup>1458</sup> *See e.g.*, T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 60 (indicating that the telegram decoding office at Sothearos School only had a telephone connection to three other Party Centre offices, and not to the zones).

<sup>1459</sup> *See e.g.*, Minutes of Meeting (Deputy) Secretaries and Deputy Secretaries of Divisions and Regiments, E3/802, 11 November 1976, p. 2, ERN (En) 00876992 (Comrade Nath stating that in one (unidentified) location there were no wires to set up telephones); T. 26 October 2016 (CHUON Thy), E1/490.1, p. 72 (stating that they deployed messengers to call military commanders for meetings as their military units did not have radios or telephones); T. 28 May 2012 (NY Kan), E1/76.1, p. 41 (stating that the Sector 32 committee did not have access to a telephone). *See also*, T. 22 November 2016 (SON Em), E1/501.1, p. 36 (stating that Chinese and Korean visitors came to help connect telephone lines); T. 21 November 2016 (SON Em), E1/500.1, p. 10 (stating that the Chinese and Koreans came to visit in 1976 to assist with their “local affairs” in the Northwest Zone, which he clarified the next day as including connecting telephone lines); Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 10, ERN (En) 00183402 (noting that the Chinese delegation had proposed setting up telephone lines along Highway 3); T. 23 October 2012 (SOKH Chhin), E1/137.1, pp. 30-31 (stating that telephones at Pursat Province station were used for train traffic control). In 1978, China assisted DK with establishing an international telecommunication connection between DK and China, *see Pol Pot 5 Aug Interview with Belgian Visitors Reported* (in FBIS collection), E3/76, 23 September 1978, ERN (En) 00170427 (POL Pot stating that “[w]e have established telecommunications links with China and through China with the rest of the world. We have Just begun direct contact with Singapore and we are working to establish contact with more countries”); Report on the Negotiation between Democratic Kampuchea’s Commercial Delegation and People Republic of China’s International Trade Delegation, E3/829 [E3/828], 3 December 1978, ERN (En) 00756520 (noting that “[i]n 1978, as the result of our recent establishment of the international telecommunication with the Chinese friend, our bilateral trade has been improved”).

<sup>1460</sup> T. 5 September 2012 (NORNG Sophang), E1/122.1, p. 45. *See e.g.*, DK Report, E3/928, 1 April 1978, ERN (En) 00183357 (summarising a “secret telephone” message from Division 164); DK Report, E3/859, 15 April 1978, ERN (En) 00185202 (referring to a “confidential phone conversation”); DK Military Report, E3/1082, 12 August 1977, ERN (En) 00233972 (containing a report from Division 164 made “via secret telephone”).

<sup>1461</sup> Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, p. 11, ERN (En) 00233720.

vessels.<sup>1462</sup> The Chamber also has before it evidence of communications via shortwave radios in other locations throughout DK,<sup>1463</sup> although radios were not available everywhere.<sup>1464</sup>

#### 6.1.4. *Radio Broadcasts*

464. Prior to 1975, a FUNK radio station in Hanoi – staffed mainly by CPK members, including IENG Thirith – broadcast revolutionary propaganda in Khmer to Cambodians in Cambodia and abroad.<sup>1465</sup> The CPK also maintained a mobile radio broadcast unit in Cambodia, which had a more limited transmission range, and which similarly broadcast news, propaganda and revolutionary messages.<sup>1466</sup>

465. After the fall of Phnom Penh in 1975, the CPK established a radio station in the capital at Stung Meanchey.<sup>1467</sup> The station broadcast news, propaganda, music, recordings of speeches by the CPK senior leaders (including NUON Chea and KHIEU

<sup>1462</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, pp. 14, 36, 74-75. *See also*, MAK Chhoeun Interview Record, E3/10573, 21 October 2014, pp. 7-8, ERN (En) 01040425-01040426 (MAK Chhoeun, Commander of a Battalion belonging to Division 164, stating that he used C-25 radios for reporting orally every day to Regiment 63 when stationed on Koh Thmei).

<sup>1463</sup> *See e.g.*, T. 5 December 2016 (SIN Oeng), E1/506.1, p. 21 (SAO Phim's bodyguard testified that radios for communication were installed in vehicles); LIM Seng Interview Record, E3/9511, 5 March 2013, p. 4, ERN (En) 00900989 (stating that between KE Pauk and Sector 41 and Sector 42 shortwave radios were used to communicate); LAY Ean DC-Cam Interview, E3/7592, 17 June 2003, pp. 9-10, ERN (En) 00686078-00686079 (stating that shortwave radios were available only for battalions). *See also*, T. 29 June 2016 (CHHUN Samorn), E1/446.1, pp. 10-12 (saying that they used radio mainly for communicating with the artillery unit); T. 27 July 2016 (MOENG Vet), E1/449.1, p. 85 (testifying that radio communications were encrypted); T. 20 September 2016 (SEM Om), E1/477.1, pp. 38-39 (stating that he was in charge of the radio communication system with an artillery unit in Trapeang Khlong, Kampong Cham Province, at the border and that he would report the situation at the front battlefield to the rear battlefield).

<sup>1464</sup> *See e.g.*, T. 25 October 2016 (CHUON Thy), E1/489.1, p. 93 (testifying that there were no radios in the actual battlefields at his location in Svay Rieng in the East Zone); T. 26 October 2016 (CHUON Thy), E1/490.1, p. 72 (testifying they did not use radio or telephone, only messengers).

<sup>1465</sup> T. 7 December 2011 (LONG Norin), E1/18.1, pp. 65-66; T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 91, 93-96; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 19, 21, 69; SA Siek Interview Record, E3/379, 24 March 2009, p. 9, ERN (En) 00323329. *See also*, T. 9 May 2013 (Philip SHORT), E1/192.1, pp. 3-6; Section 3: Historical Background, para. 221.

<sup>1466</sup> T. 15 August 2012 (SA Siek), E1/108.1, pp. 80-83, 85; US Department of Defense Report, E3/5702, January 2001, p. 2, ERN (En) 00387392; CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651871.

<sup>1467</sup> Standing Committee Minutes, E3/225, 1 June 1976, p. 2, ERN (En) 00182716; T. 24 April 2013 (CHUON Thy), E1/183.1, p. 80 (testifying that after 17 April 1975 the CPK indeed used the radio station at Stung Meanchey because it was still operational); T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 76 (confirming the location of the radio station as Stung Meanchey); SA Siek Interview Record, E3/379, 24 March 2009, p. 9, ERN (En) 00323329.



Samphan) and recordings of interviews with CPK leaders (including KHIEU Samphan).<sup>1468</sup>

466. The Ministry of Propaganda and Information was responsible for preparing material for broadcast, under the guidance and close scrutiny of the Standing Committee.<sup>1469</sup> Radio programs reported on matters such as agriculture, construction projects, arrests and perceived enemies, and exhorted listeners to work hard, defend the country and follow the Party line.<sup>1470</sup> One program was targeted in particular at Khmer listeners in Kampuchea Krom.<sup>1471</sup> Another program, broadcast at least partially in Vietnamese, consisted of recordings of the confessions of Vietnamese soldiers captured in Cambodia.<sup>1472</sup> In March 1976, the Standing Committee ordered frequent radio

<sup>1468</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, pp. 62-63, 76 (the witness testified that he had access to the daily radio broadcasts from Phnom Penh and that he recalled listening to speeches by KHIEU Samphan on the radio); T. 15 August 2012 (SA Siek), E1/108.1, p. 106 (mentioning a “news reading section” at the Ministry of Propaganda and Information); T. 20 August 2012 (SA Siek), E1/110.1, p. 75 (confirming that recordings of leaders’ speeches were played on the radio); T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 79 (recalling listening to speeches by NUON Chea on the radio); T. 20 September 2012 (CHEA Say), E1/124.1, p. 39 (recalling listening to speeches by KHIEU Samphan on the radio); T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 23-25 (referring to the broadcasting of news, songs and propaganda); CHAK Muli Interview Record, E3/5234, 13 January 2009, p. 9, ERN (En) 00288206 (mentioning an interview with KHIEU Samphan broadcast on the radio); Section 8: Roles and Functions – KHIEU Samphan, para. 581.

<sup>1469</sup> T. 22 August 2012 (KIM Vun), E1/112.1, pp. 38-39; KIM Vun Interview Record, E3/381, 28 July 2009, pp. 3-4, ERN (En) 00365528-00365529; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 23-24. *See also*, Standing Committee Minutes, E3/225, 1 June 1976, pp. 1-10, ERN (En) 00182715-00182724 (showing that the Standing Committee gave detailed instructions as to, among others, the content of broadcasts and the number and background of writers); Standing Committee Minutes, E3/228, 9 January 1976, p. 1, ERN (En) 00182614 (noting how radio, arts, magazines and newspapers have served propaganda purposes).

<sup>1470</sup> T. 31 October 2016 (IENG Phan), E1/492.1, p. 92 (testifying that he heard about Cambodian soldiers being captured by Vietnamese troops on the radio); T. 15 August 2012 (SA Siek), E1/108.1, pp. 80-81 (confirming that information was broadcast on the radio concerning the conflict with Vietnam, and stating that radio broadcasts were “meant to educate people to understand the aggressive neighbours” and that listeners “were told to devote themselves to defend, to fight, to protect the country and territory”); T. 16 August 2012 (SA Siek), E1/109.1, pp. 73-75 (confirming that radio broadcasts sought to encourage the people and addressed matters such as the Party line, the construction of canals and the defence of the country); T. 25 September 2012 (NOEM Sem), E1/126.1, p. 23 (referring to the reading of articles “encouraging the people to dig canals, [and] to build dams”, as well as articles on the defeat of LON Nol and the Americans, on the radio); CHUM Cheat Interview Record, E3/5504, 8 October 2009, p. 6, ERN (En) 00398838 (“I heard from radio broadcasting that *Ta Thuch*, HUO Nim and HUO Yun [*i.e.* HOU Youn] had been arrested”); PES Math Interview Record, E3/352, 18 March 2008, p. 4, ERN (En) 00195709 (“I heard there was a war and arrests of Vietnamese on the radio”). *See also*, Section 16.3: Real or Perceived Enemies, paras 3769, 3812, 3821, 3824, 3826, 3853, 3862.

<sup>1471</sup> T. 22 August 2012 (KIM Vun), E1/112.1, p. 39; KIM Vun Interview Record, E3/381, 28 July 2009, pp. 3-4, ERN (En) 00365528-00365529.

<sup>1472</sup> T. 22 August 2012 (KIM Vun), E1/112.1, pp. 38-39; T. 16 August 2012 (SA Siek), E1/109.1, p. 79 (stating that these broadcasts did not happen on a daily basis but only after fighting on a battlefield when prisoners were captured); CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 9, ERN (En) 00766455.

broadcasts on the topic of the forthcoming “elections”, observing that “if we do not broadcast they [enemies] will say we are dictators and there is no democracy”.<sup>1473</sup>

467. The Ministry of Foreign Affairs also prepared propaganda for foreign consumption: radio programs on the situation in DK were broadcast in Vietnamese, English, French and Chinese.<sup>1474</sup>

468. At some work sites in Cambodia, loudspeakers were installed so that local people could listen to the CPK radio station.<sup>1475</sup> Witness LENG Chhoeung testified that loudspeakers were also installed in front of each ministry in Phnom Penh.<sup>1476</sup> Witness CHEA Say recalled that he and his colleagues listened to a shared radio at K-12, but did not have personal radio sets.<sup>1477</sup> Ordinary people in Cambodia did not generally have free access to information through the radio in the DK period.<sup>1478</sup>

469. Public radio broadcasts emanating from Cambodia (and other countries in the region) were monitored, recorded and translated by United States government personnel in Thailand. Reports of the broadcasts were transmitted to U.S. embassies around the world by teletype as part of the Foreign Broadcast Information Service (“FBIS”).<sup>1479</sup> Forty-nine compilations of FBIS reports were put before the Chamber in the course of the trial.<sup>1480</sup>

470. While the Chamber is aware that FBIS reports are transcriptions translated into English of original broadcasts in Khmer of which the audio recordings are not available to the Chamber, it notes that many of the speeches contained within FBIS reports may

<sup>1473</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 1, ERN (En) 00183360.

<sup>1474</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 38-39; T. 22 August 2012 (KIM Vun), E1/112.1, pp. 70-71.

<sup>1475</sup> T. 24 April 2013 (CHUON Thy), E1/183.1, pp. 80-81.

<sup>1476</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, p. 83 (stating that this way he could listen to radio broadcasts when driving past the loudspeakers on the road).

<sup>1477</sup> T. 20 September 2012 (CHEA Say), E1/124.1, p. 39. *See also*, T. 7 December 2012 (HUN Chhunly), E1/150.1, pp. 114-115 (recalling an occasion on which he and his colleagues were convened to listen to a radio news broadcast).

<sup>1478</sup> T. 7 December 2012 (HUN Chhunly), E1/150.1, pp. 28-29 (stating that listening to a personal radio was a “risk”).

<sup>1479</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 70. *See also*, T. 19 July 2012 (David CHANDLER), E1/92.1, p. 132.

<sup>1480</sup> FBIS collections: E3/30, E3/75, E3/76, E3/77, E3/118, E3/119, E3/120, E3/143, E3/147, E3/271, E3/272, E3/273, E3/274, E3/275, E3/276, E3/277, E3/278, E3/279, E3/280, E3/281, E3/282, E3/283, E3/284, E3/285, E3/286, E3/287, E3/288, E3/289, E3/290, E3/291, E3/292, E3/293, E3/294, E3/295, E3/296, E3/488, E3/1339, E3/1355, E3/1356, E3/1357, E3/1358, E3/1359, E3/1360, E3/1361, E3/1362, E3/1363, E3/1364, E3/1365, E3/1366, January 1975-January 1979.

be compared with the same speeches that appear in DK contemporaneous publications.<sup>1481</sup> Furthermore, Stephen HEDER, who was familiar with the FBIS transcription and translation process, testified that the content was taken directly and contemporaneously from the radio broadcasts.<sup>1482</sup> The Chamber considers the FBIS compilations to be important evidence of the statements and propaganda of the CPK directed both at the population in Cambodia as well as the international community. Nonetheless, given the indirect nature of this evidence the Chamber will only rely on it when sufficiently corroborated by other evidence.

471. Summaries and transcriptions of DK radio broadcasts were also compiled, translated into English and published by the British Broadcasting Corporation (“BBC”) as part of its Summary of World Broadcasts (“SWB”) service.<sup>1483</sup> Forty-five collections of SWB reports were put before the Chamber in the course of the trial.<sup>1484</sup> These collections, while having similar shortcomings due to the Chamber not having access to the original audio recordings, are of similar importance as the FBIS collections noted above. They have the same significant probative value and the Chamber will rely on them under the same condition.

472. The Chamber is mindful of the fact that radio broadcasts, including those in FBIS and SWB collections, are external CPK materials intended for public dissemination – as opposed to internal, contemporaneous CPK documents such as meeting minutes, notebooks, policy documents and telegrams – and may contain propaganda. The Chamber will keep this in mind when assessing the evidence.

<sup>1481</sup> See e.g., Revolutionary Flag, E3/11, September 1977, pp. 1-54, ERN (En) 00486212-00486265 (POL Pot’s Speech); *Text of Pol Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 27 September 1977, ERN (En) 00168617-00168653 (entry dated 4 October 1977).

<sup>1482</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 69-71; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 29; T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 25-26.

<sup>1483</sup> Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. xviii, ERN (En) 01149988 (indicating that the SWB reports were compiled by the BBC). See also, *Statement Submitted by Amnesty International* (ECOSOC), E3/4198, August 1978, p. 2, ERN (En) 00271505.

<sup>1484</sup> SWB collections: E3/133, E3/298, E3/299, E3/301, E3/686, E3/1241, E3/1280, E3/1349, E3/1350, E3/1372, E3/1376, E3/1378, E3/1379, E3/1380, E3/1381, E3/1400, E3/1402, E3/1403, E3/1404, E3/1405, E3/1406, E3/1407, E3/1408, E3/1410, E3/1412, E3/1413, E3/1414, E3/1415, E3/1418, E3/1423, E3/1486, E3/1487, E3/1590, E3/1751, E3/2306, E3/2674, E3/2726, E3/2728, E3/2730, E3/3165, E3/3742, E3/3743, E3/3749, E3/5710.

6.1.5. *Magazines*

473. Beginning in the period before 1975, the CPK published Party magazines entitled *Revolutionary Flag* and *Revolutionary Youth* approximately on a monthly basis.<sup>1485</sup> Prior to 1975, *Revolutionary Flag* was prepared and circulated in secret: it was written by hand, and a small number of copies were made for distribution.<sup>1486</sup>

474. From 1975 onwards, *Revolutionary Flag* magazines were typewritten, and copies were produced by offset printing.<sup>1487</sup> Both *Revolutionary Flag* and *Revolutionary Youth* were printed at the K-25 and K-26 facilities, which came under the authority of the Ministry of Propaganda and Information, headed by HU Nim.<sup>1488</sup> Witness KIM Vun, who worked for the Ministry of Propaganda and Information, was unable to give a precise estimate of the number of copies printed. However, for each issue he recalled seeing “stacks of magazines” being prepared for delivery.<sup>1489</sup>

475. *Revolutionary Flag* and *Revolutionary Youth* magazines were distributed only to CPK members, although not every member was given his or her own copy.<sup>1490</sup> Copies

<sup>1485</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 111-112; T. 21 August 2012 (KIM Vun), E1/111.1, pp. 81-82; T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 63; T. 22 August 2012 (KIM Vun), E1/112.1, p. 72.

<sup>1486</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 7-8; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 42; T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 73; T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 111-112.

<sup>1487</sup> T. 23 August 2012 (KIM Vun), E1/113.1, p. 20. It is possible that only the cover pages were printed using the offset printing technique. See T. 21 August 2012 (KIM Vun), E1/111.1, p. 79; T. 23 August 2012 (KIM Vun), E1/113.1, p. 21.

<sup>1488</sup> T. 21 August 2012 (KIM Vun), E1/111.1, pp. 77-79; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 20; T. 15 August 2012 (SA Siek), E1/108.1, p. 78; T. 1 October 2012 (KHIEV En), E1/127.1, p. 15. After HU Nim’s arrest in 1977, the Ministry of Propaganda and Information merged with the Ministry of Education, and YUN Yat took control of the combined Ministry. See T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 20; T. 1 October 2012 (KHIEV En), E1/127.1, p. 28; T. 15 August 2012 (SA Siek), E1/108.1, p. 107. See also, S-21 Confession – HU Nim, E3/1550, 18 May 1977; Section 3: Historical Background, para. 219; Section 5: Administrative Structures, para. 420.

<sup>1489</sup> T. 21 August 2012 (KIM Vun), E1/111.1, pp. 95, 97.

<sup>1490</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 103-104 (testifying that those “who could refashion themselves, who could make themselves better, they would receive [the *Revolutionary Flag*]”). The witness was given a copy of the *Revolutionary Flag* for doing good work; T. 22 August 2012 (KIM Vun), E1/112.1, pp. 51-52 (testifying that the magazines were first and foremost intended for higher level CPK members, but that they did not contain anything secret); T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 47-48, 51 (testifying that the “upper authority” sent approximately 10 copies of the *Revolutionary Flag* to the printing house in Kampong Cham where he worked in late 1972 to early 1973, but that he was not allowed to read them because they were intended for Party members); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 55 (testifying that the *Revolutionary Flag* was intended for Party members only and that candidate party members would receive the *Revolutionary Youth*), 69 (confirming that the *Revolutionary Flag* was intended for Party members only). See also, T. 18 July 2012 (David CHANDLER), E1/91.1, p. 47; Article by T. Carney, “The Organization of Power, in Cambodia 1975-1978: Rendezvous With Death”, E3/49, p. 87, ERN (En) 00105136.

were expected to be shared amongst several members.<sup>1491</sup> Copies were delivered to DK ministries, military units and offices of the Party Centre, and to officials at the zone, sector, district and sub-district levels.<sup>1492</sup>

476. NUON Chea initially denied that he played any role in “establishing” the *Revolutionary Flag* publication.<sup>1493</sup> However, he subsequently admitted that *Revolutionary Flag* was written by members of the Standing Committee, principally himself and POL Pot.<sup>1494</sup> This was consistent with NUON Chea’s admitted role as “a candidate in charge of propaganda and writing articles for the news papers [*sic*]” for the Indochinese Communist Party and the Khmer People’s Revolutionary Party – forerunners of the CPK<sup>1495</sup> – in the 1950s.<sup>1496</sup> NUON Chea later changed his position again, denying that he was the author of any articles published in *Revolutionary Flag* and claiming that POL Pot had “his own personal assistants who were fully in charge of writing the articles”.<sup>1497</sup> Shortly thereafter, NUON Chea refused to submit to further cross-examination.<sup>1498</sup> In light of his previous admissions and the sporadic exercise of

<sup>1491</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 35.

<sup>1492</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 20-21 (stating that multiple copies of *Revolutionary Flag* were delivered to S-21); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phoun), E1/99.1, p. 30 (stating that copies of *Revolutionary Flag* and *Revolutionary Youth* “were distributed to all ministries”); CHUON Thy Interview Record, E3/4593, 2 March 2010, p. 5, ERN (En) 00513315 (recalling that magazines with two or five flags on the covers were distributed to the Youth League, and that he could read these magazines because they were sent to the units); T. 24 April 2013 (CHUON Thy), E1/183.1, p. 65 (“*Revolutionary Flag* magazines were distributed to soldiers for reading”); T. 21 August 2012 (KIM Vun), E1/111.1, pp. 95-97 (indicating that *Revolutionary Flag* magazines were distributed to people in the zones and sectors); T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 42-43 (recalling seeing *Revolutionary Flag* magazines at the Sector Office); T. 19 June 2012 (YUN Kim), E1/88.1, p. 18 (indicating that copies of *Revolutionary Flag* were passed on by the district committee to Witness YUN Kim, a commune chief); T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, p. 15 (stating that *Revolutionary Flag* and *Revolutionary Youth* were distributed to cooperatives); KIM Vun Interview Record, E3/380, 25 July 2009, p. 6, ERN (En) 00365645 (stating that *Revolutionary Flag* was distributed to the zone, sector and district levels); T. 1 October 2012 (KHIEV En), E1/127.1, p. 42 (confirming that *Revolutionary Flag* was sent to Witness KHIEV En’s section in the Ministry of Propaganda and Information); LONH Dos Interview Record, E3/70, 20 November 2009, p. 9, ERN (En) 00407793 (stating that *Revolutionary Flag* was distributed to “every office and ministry”).

<sup>1493</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 5. *See also*, Section 7: Roles and Functions – NUON Chea, para. 545.

<sup>1494</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 73-74.

<sup>1495</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 78; Article by Nuon C., “Past Struggle of Our Kampuchean Peasants From 1954 to 1970”, E3/131, undated, p. 6, ERN (En) 00716414; Article by L. Summers, “The CPK: Secret Vanguard of Pol Pot’s Revolution: A Comment on Nuon Chea’s Statement”, E3/53, March 1987, p. 6, ERN (En) S00045870. *See also*, Section 3: Historical Background, paras 196-202.

<sup>1496</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 8-9; Article by Nuon C., “Past Struggle of Our Kampuchean Peasants From 1954 to 1970”, E3/131, undated, pp. 9-10, ERN (En) 00716417-00716418.

<sup>1497</sup> T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 20.

<sup>1498</sup> T. 17 July 2013 (Accused NUON Chea), E1/225.1, p. 68.

his right to remain silent, the Chamber finds NUON Chea's denial implausible, and is satisfied that he was indeed one of the principal authors of the *Revolutionary Flag* magazine.<sup>1499</sup>

477. The CPK considered it important that its members read *Revolutionary Flag*.<sup>1500</sup> *Revolutionary Flag* was frequently used for educational purposes at CPK political study or training sessions.<sup>1501</sup> *Revolutionary Youth* was targeted in particular at members of the CPK Youth League.<sup>1502</sup> The magazines contained material such as speeches and presentations given by the CPK leaders;<sup>1503</sup> articles on the history of the CPK, the purported achievements of the DK regime and the Party line generally;<sup>1504</sup> details of plans for the future;<sup>1505</sup> instructions from the Party to its members;<sup>1506</sup> and, at least in *Revolutionary Youth*, poetry with revolutionary themes, some of which shows a clear attempt by the CPK to incite and indoctrinate young people.<sup>1507</sup>

478. Twenty-four issues of the *Revolutionary Flag* magazine and 28 issues of *Revolutionary Youth* were put before the Trial Chamber.<sup>1508</sup> In the course of the trial in

<sup>1499</sup> Section 7: Roles and Functions – NUON Chea, paras 528, 545.

<sup>1500</sup> T. 21 August 2012 (KIM Vun), E1/111.1, p. 94; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 12.

<sup>1501</sup> T. 28 November 2016 (BEIT Boeurn), E1/502.1, p. 23; 26 July 2016 (MOENG Vet), E1/448.1, pp. 43-44; 28 July 2016 (MOENG Vet), E1/450.1, p. 6 (confirming that *Revolutionary Flag* issues were used during study sessions, but that the attendees were not given copies); T. 22 August 2016 (TEP Poch), E1/461.1, p. 81; T. 28 May 2012 (NY Kan), E1/76.1, p. 16; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 20-21; T. 19 June 2012 (YUN Kim), E1/88.1, pp. 18, 26; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 66; T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 18.

<sup>1502</sup> T. 22 August 2012 (KIM Vun), E1/112.1, p. 73. See e.g., *Revolutionary Youth*, E3/729, October 1975, p. 2, ERN (En) 00357901 (referring specifically to the "Youth League").

<sup>1503</sup> See e.g., *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 13-44, ERN (En) 00491406-00491438; *Revolutionary Flag*, E3/10, September-October 1976, pp. 4-16, ERN (En) 00450504-00450516; *Revolutionary Flag*, E3/215, September 1978, pp. 3-26, ERN (En) 00488616-00488639.

<sup>1504</sup> See e.g., *Revolutionary Flag*, E3/747, August 1978, pp. 16-24, ERN (En) 00499781-00499789; *Revolutionary Flag*, E3/736, October-November 1977, pp. 1-41, ERN (En) 00182548-00182588; *Revolutionary Flag*, E3/746, July 1978, pp. 15-19, ERN (En) 00428303-00428307; *Revolutionary Youth*, E3/768, March 1977, pp. 10-18, ERN (En) 00525946-00525954.

<sup>1505</sup> See e.g., *Revolutionary Flag*, E3/748, October-November 1975, pp. 14-17, ERN (En) 00495813-00495816; *Revolutionary Flag*, E3/743, July 1977, pp. 3-7, ERN (En) 00476158-00476162.

<sup>1506</sup> See e.g., *Revolutionary Flag*, E3/135, June 1977, pp. 30-36, ERN (En) 00446875-00446881; *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506.

<sup>1507</sup> See e.g., *Revolutionary Youth*, E3/729, October 1975, pp. 30-31, ERN (En) 00357929-00357930; *Revolutionary Youth*, E3/734, July 1976, pp. 29-30, ERN (En) 00360804-00360805. See also, Section 16.3: Real or Perceived Enemies, paras 3860-3861; Section 12.4.4.3: Au Kanseng Security Centre: Re-Education.

<sup>1508</sup> *Revolutionary Flag*, E3/4, E3/5, E3/10, E3/11, E3/25, E3/135, E3/139, E3/166, E3/170, E3/193, E3/215, E3/736 [E3/737], E3/738 [E3/739], E3/742, E3/743, E3/744, E3/745, E3/746, E3/747, E3/748, E3/759, E3/760 [E3/761], E3/762 and E3/4604, August 1975-September 1978; *Revolutionary Youth*, E3/146, E3/726, E3/728, E3/729, E3/730, E3/732, E3/733, E3/734, E3/749, E3/750, E3/751, E3/752, E3/753, E3/754, E3/755, E3/756, E3/757, E3/758, E3/765, E3/766, E3/767, E3/768, E3/769, E3/770, E3/771, E3/772, E3/773 and E3/774, August 1974-November 1978.

Case 002/01, the NUON Chea Defence challenged the authenticity of the copies of these magazines on the Case File.<sup>1509</sup> Stephen HEDER subsequently testified as to the provenance and authenticity of copies of each publication,<sup>1510</sup> and Witness KIM Vun was similarly able to confirm that a copy of *Revolutionary Flag* on the Case File was genuine.<sup>1511</sup> The Chamber also heard evidence from Witnesses VANTHAN Dara Peou and CHHANG Youk of DC-Cam as to the circumstances in which the magazines were obtained, stored, digitised and authenticated before being placed on the Case File.<sup>1512</sup> The Chamber also notes that in spite of its challenges to their reliability in Case 002/01, the NUON Chea Defence has relied extensively on copies of *Revolutionary Flag* and *Revolutionary Youth* on the Case File as evidence in its closing briefs, both in Case 002/01<sup>1513</sup> and in Case 002/02.<sup>1514</sup> In Case 002/02, no Party raised new challenges to the authenticity of the copies of *Revolutionary Flag* and *Revolutionary Youth* on the Case File. The Chamber is satisfied that the 24 copies of *Revolutionary Flag* and 28 copies of *Revolutionary Youth* on the Case File are authentic copies of the original Party magazines.

479. The Chamber is mindful of the fact that these educational magazines, while contemporaneous evidence intended for CPK members, were disseminated more widely than other internal, contemporaneous CPK documents such as meeting minutes, notebooks, policy documents and telegrams. They may contain propaganda. The Chamber will keep this in mind when assessing such evidence.

#### 6.1.6. *Monitoring of Foreign News Reports*

480. The CPK Standing Committee ordered the DK Ministry of Propaganda and Information to “monitor news [...] closely at hours, every day” and send reports in

<sup>1509</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 76-79.

<sup>1510</sup> T. 15 July 2013 (Stephen HEDER), E1/223.1, pp. 12-19 (*referring to Revolutionary Youth*, E3/724, July 1975 and *Revolutionary Flag*, E3/731, December 1975-January 1976).

<sup>1511</sup> T. 22 August 2012 (KIM Vun), E1/112.1, pp. 7-8 (*referring to Revolutionary Flag*, E3/10, September-October 1976).

<sup>1512</sup> See e.g., T. 23 January 2012 (VANTHAN Dara Peou), E1/31.1, pp. 21-23, 92-94; T. 1 February 2012 (CHHANG Youk), E1/37.1, pp. 75-77.

<sup>1513</sup> See e.g., NUON Chea Defence Closing Submissions Case 002/01, E295/6/3, 26 September 2013, paras 156, 157, 158, 163, 281, 465, 474, 479.

<sup>1514</sup> See e.g., NUON Chea Closing Brief, paras 276, 410, 586, 658, 734, 736, 755, 757, 768, 898.

order to make sure that appropriate measures could be taken.<sup>1515</sup> Detailed procedures were established for the summarising and reporting of foreign news by the Ministry of Propaganda and Information to the Standing Committee.<sup>1516</sup> In accordance with the Standing Committee’s directive, staff at the Ministry of Propaganda and Information monitored foreign news broadcasts in English and French.<sup>1517</sup> Reports from overseas news agencies and wire services were received via teleprinter, then copied and translated into Khmer for further distribution.<sup>1518</sup>

481. Staff at the Ministry of Foreign Affairs carried out similar work, listening to foreign radio reports on DK and preparing summary bulletins for the DK/CPK leaders.<sup>1519</sup> Witness SUONG Sikoeun, who worked at the Ministry of Foreign Affairs from 1975 and became its Director of Information and Propaganda in 1977,<sup>1520</sup> stated that he and his colleagues were responsible for monitoring programs in French, English, Chinese and Vietnamese.<sup>1521</sup> They were instructed to report what they heard to IENG Sary without adding or omitting anything.<sup>1522</sup>

## **6.2. Lines of Communication**

482. The CPK Statute set out the general principle that the “lower echelon must report to upper echelon on the situation and on work done”, and the “upper echelon must

<sup>1515</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 3, ERN (En) 00183362 (recording a work session on propaganda attended by POL Pot, NUON Chea and KHIEU Samphan).

<sup>1516</sup> The Ministry received the following two directives: (i) to “[s]end news to *Angkar* every day as normal” in accordance with the established procedures, taking care to summarise and analyse important events about the regime so that the Standing Committee could properly understand the situation and take appropriate measures – news was to be collected from the Ministry by a messenger at 5.15 p.m. daily; (ii) in special circumstances, to “telephone and report to *Angkar* immediately” if something important happened. See Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 3, ERN (En) 00183362. See above, fn. 1457.

<sup>1517</sup> T. 1 October 2012 (KHIEV En), E1/127.1, pp. 19-20. See also, Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 1, ERN (En) 00183360 (discussing the *Agence France Press*).

<sup>1518</sup> T. 1 October 2012 (KHIEV En), E1/127.1, pp. 19-20; T. 16 August 2012 (SA Siek), E1/109.1, pp. 69-70; Standing Committee Minutes, E3/225, 1 June 1976, p. 2, ERN (En) 00182716.

<sup>1519</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 40-41; Laurence PICQ Interview Record, E3/98, 31 October 2008, p. 1, ERN (En) 00356359; HING Un Interview Record, E3/7324, 11 June 2009, ERN (En) 00362055.

<sup>1520</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, p. 33.

<sup>1521</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, p. 40. See also, CHAN Youran Interview Record, E3/46, 27 November 2009, p. 4, ERN (En) 00410255 (stating that part of his role at the Ministry of Foreign Affairs involved “listening to the news on foreign radio stations”).

<sup>1522</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 41-42.



report to lower echelons regarding the general situation and regarding instructions which they must carry out”<sup>1523</sup>.

483. In practice, each level in the CPK hierarchy communicated for the most part only with the levels immediately above and below it; outside the Party Centre, there was minimal lateral communication.<sup>1524</sup> Sectors (excluding autonomous sectors), districts and sub-district entities did not generally communicate with the Party Centre directly, but rather sent and received information only upwards or downwards through the chain of command.<sup>1525</sup>

### 6.2.1. *Within the Party Centre*

484. Surviving meeting minutes indicate that the Central Committee and the Standing Committee convened regularly to discuss CPK policy.<sup>1526</sup> In addition, the CPK senior members – including POL Pot, NUON Chea and KHIEU Samphan – met with each other in various combinations at K-1 and K-3.<sup>1527</sup>

485. CPK leaders also corresponded by letter; for example, Witness OEUN Tan (who worked at K-1 from 1975 to 1979)<sup>1528</sup> remembered delivering letters back and forth between POL Pot and NUON Chea, and between POL Pot and SON Sen.<sup>1529</sup> As

<sup>1523</sup> CPK Statute, E3/130, undated, p. 16, Article 6, ERN (En) 00184037. *See also*, Standing Committee Minutes, E3/228, 9 January 1976, p. 1, ERN (En) 00182615 (“Upper echelon solves, and lower echelon makes the contacts”).

<sup>1524</sup> T. 30 May 2012 (NY Kan), E1/78.1, p. 13; Case 001 Trial Transcript (Craig ETCHESON), E3/55, 21 May 2009, p. 51, ERN (En) 00330384; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 105-106; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, pp. 2-3.

<sup>1525</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 86; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 95; T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 16; T. 19 June 2012 (YUN Kim), E1/88.1, pp. 28-29; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 18-21. *See also*, T. 21 January 2016 (PRAK Yut), E1/380.1, p. 7.

<sup>1526</sup> Section 5: Administrative Structures, para. 357.

<sup>1527</sup> T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 20-22 (describing meetings between IENG Thirith and NUON Chea); T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 66-67 (stating that POL Pot, NUON Chea and KHIEU Samphan dined together at K-3); T. 8 January 2013 (SA Vi), E1/156.1, p. 85 (indicating that KHIEU Samphan visited K-1 more frequently than other senior leaders); T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 72 (confirming that IENG Sary, NUON Chea and KHIEU Samphan met with each other at K-1); T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 62-64 (suggesting that the senior leaders, including SON Sen, VORN Vet and NUON Chea, met with each other and ate together). *See* Section 7: Roles and Functions – NUON Chea, para. 534; Section 8: Roles and Functions – KHIEU Samphan, para. 589.

<sup>1528</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, p. 38.

<sup>1529</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, p. 98. *See also*, T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 44 (SAUT Toeung was NUON Chea’s bodyguard and also delivered letters for him to KAING Guek Eav *alias* Duch at S-21).

previously noted, offices of the Party Centre also occasionally exchanged orders, requests and information by telephone.<sup>1530</sup>

486. Telegrams received by the Party Centre from the lower echelons were usually taken to K-1, where they would be decoded (if necessary), sorted and redistributed as appropriate.<sup>1531</sup> Witness OEUN Tan told the Chamber that all of the telegrams he delivered to POL Pot were subsequently delivered to NUON Chea.<sup>1532</sup> Having reviewed the telegrams on the Case File, and having heard evidence to the effect that there were frequent meetings and consultations between NUON Chea and POL Pot and that they worked together closely, the Chamber is satisfied that most of the telegrams sent to POL Pot during the DK period were also seen by NUON Chea.<sup>1533</sup>

### 6.2.2. *Between the Party Centre and the Zones or Autonomous Sectors*

487. Zones and autonomous sectors reported directly to the Party Centre.<sup>1534</sup> At a meeting attended by several zone and autonomous sector representatives in March 1976, the Standing Committee issued the following instructions concerning the applicable procedure for writing reports:

It is proposed that a report on the status of dykes be sent to the Standing Committee every week. The report should either present a general description of the situation or, where necessary, provide details on each aspect. It is proposed that a brief report be sent by telegram to keep the Standing Committee informed of the situation and enable it to issue timely instructions.<sup>1535</sup>

488. This followed advice handed down in a 1972 edition of *Revolutionary Flag*, in which the Party – noting that “we are poor at reporting” – set out guidance on the preparation of reports in order to enable “the senior levels to take hold of a situation

<sup>1530</sup> See above, para. 461.

<sup>1531</sup> OEUN Tan Interview Record, E3/33, 9 October 2008, p. 9, ERN (En) 00235133; T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 72-73; KUNG Sokha Interview Record, E3/465, 21 January 2008, p. 6, ERN (En) 00204758. See also, T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 69-70; T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 31 (indicating that “Pon” and “Thé”, who worked at K-1, had the authority to decide to whom incoming telegrams would be copied).

<sup>1532</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, p. 64.

<sup>1533</sup> Section 7: Roles and Functions – NUON Chea, paras 542, 555-556.

<sup>1534</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 46; T. 11 June 2012 (SAO Sarun), E1/84.1, p. 13; T. 19 June 2012 (YUN Kim), E1/88.1, pp. 28-29; T. 4 September 2012 (NORNG Sophang), E1/121.1, pp. 16-17.

<sup>1535</sup> Standing Committee Minutes, E3/232, 8 March 1976, p. 7, ERN (En) 00182634.

clearly and to provide practical instructions”.<sup>1536</sup> This guidance recommended that precise and regular reports cover the topics of “the enemy”,<sup>1537</sup> “people”, “all working activities” and “resolutions and directions”.<sup>1538</sup>

489. Zones and autonomous sectors accordingly compiled reports for the Party Centre based on the information passed up to them from the lower echelons.<sup>1539</sup> The reports were sent frequently, sometimes daily, although some reports summarised events over longer periods of time.<sup>1540</sup> Reports were sent by telegraph and by letter.<sup>1541</sup> Representatives of the zones and autonomous sectors also occasionally reported to the Standing Committee in person.<sup>1542</sup>

490. Each zone had specific prearranged time slots during which it could transmit telegrams to the Party Centre; however, messages could also be sent outside the designated times if the circumstances justified it.<sup>1543</sup>

491. A number of reports to the Party Centre were put before the Chamber. They showed that the zones and autonomous sectors reported on issues such as production, agriculture and the rice harvest;<sup>1544</sup> activities of purported internal and external enemies;<sup>1545</sup> demographics including the number of newly married couples,<sup>1546</sup> and

<sup>1536</sup> *Revolutionary Flag*, E3/783, September-October 1972, pp. 25, 28, ERN (En) 00720226, 00720229.

<sup>1537</sup> *See e.g.*, Section 16.3: Real or Perceived Enemies.

<sup>1538</sup> *Revolutionary Flag*, E3/783, September-October 1972, p. 28, ERN (En) 00720229.

<sup>1539</sup> PHAN Van *alias* KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 101; T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 16.

<sup>1540</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, p. 19. *See e.g.*, Zone 560 Report, E3/179 [E3/180], 29 May 1977 (covering the period from 4 May 1977 to 29 May 1977); Zone 560 Report, E3/1179, 8 June 1977 (covering the period from 24 May 1977 to 7 June 1977); Zone 401 Report, E3/1094, 4 August 1978 (described as a “monthly report”).

<sup>1541</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 61, 91; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 67, 101-102; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 15-17, 19; OEUN Tan Interview Record, E3/33, 9 October 2008, p. 9, ERN (En) 00235133; YENG Lin Interview Record, E3/59, 17 January 2008, p. 3, ERN (En) 00226103.

<sup>1542</sup> *See e.g.*, Standing Committee Minutes, E3/232, 8 March 1976.

<sup>1543</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 79; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 90, 92.

<sup>1544</sup> *See e.g.*, DK Telegram, E3/1077, 10 April 1978; Southwest Zone Report, E3/853 [E3/180], 3 June 1977; Zone 560 Report, E3/863, 16-17 May 1978; Zone 560 Report, E3/179, 29 May 1977; DK Telegram, E3/1091, 23 August 1977. *See also*, SAO Sarun Interview Record, E3/383, 29 June 2009, p. 5, ERN (En) 00350264; Section 16: Common Purpose, para. 3899.

<sup>1545</sup> *See e.g.*, Zone 401 Report, E3/1092, undated; Zone 401 Report, E3/1094, 4 August 1978; DK Telegram, E3/1144, 5 September 1977; Zone 560 Report, E3/1179, 8 June 1977.

<sup>1546</sup> DK Report, E3/1094, 4 August 1978. *See also*, Section 14: Regulation of Marriage, para. 3562.

living conditions generally, including health problems and food shortages.<sup>1547</sup> Messages from the zones also contained requests for instructions, guidance on the same topics or material assistance from the Party Centre.<sup>1548</sup>

492. Telegrams from the zones and autonomous sectors to the Party Centre were generally addressed to “Committee 870” or “*Angkar*”, but also occasionally to “*Angkar* 870” or to POL Pot himself.<sup>1549</sup> As the Chamber has already observed,<sup>1550</sup> CPK cadres did not always understand the terms “*Angkar*” or “870” clearly.<sup>1551</sup> Lists of recipients on many of the telegrams indicate that copies were sent to various CPK leaders, including NUON Chea.<sup>1552</sup> Telegrams marked as having been copied to the “office” went to Office 870.<sup>1553</sup>

493. The Party Centre sent out general directives to the lower echelons by telegraph dealing with “all aspects of the country” and the “overall situation”.<sup>1554</sup> KHIEU Samphan sent regular telegrams regarding the distribution of materials at the base or local level.<sup>1555</sup> Officials at the zone or autonomous sector level also received letters

<sup>1547</sup> See e.g., DK Telegram, E3/948, 10 May 1978; DK Telegram, E3/511, 2 April 1976; Zone 560 Report, E3/179, 29 May 1977; Zone 401 Report, E3/1092, undated; DK Telegram, E3/1144, 5 September 1977.

<sup>1548</sup> See e.g., DK Telegram, E3/511, 2 April 1976; DK Telegram, E3/519, 29 March 1978; DK Telegram, E3/1036, undated; DK Telegram, E3/1196, 26 November 1976.

<sup>1549</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 47-48. See above, fns 1544-1548.

<sup>1550</sup> Section 5: Administrative Structures, paras 362, 388-389.

<sup>1551</sup> See e.g., T. 22 November 2016 (THUCH Sithan), E1/501.1, pp. 87-88 (according to the witness “*Angkar*” meant “the person who had higher responsibility and not just a group chief or a person who was at that level. *Angkar* was the one who made decisions on behalf of your parents”). T. 4 May 2016 (HIM Huy), E1/427.1, p. 10 (stating that people were told they were the children of *Angkar*, not the children of their parents); T. 7 June 2012 (SAO Sarun), E1/83.1, p. 21 (“People call it M-870, but I did not know what this office was all about”).

<sup>1552</sup> See e.g., DK Telegram, E3/511, 2 April 1976 (copied to SON Sen and NUON Chea); DK Telegram, E3/519, 29 March 1978 (copied to NUON Chea); DK Telegram, E3/948, 10 May 1978 (copied to “Uncle” [i.e. POL Pot – see T. 5 September 2012 (NORNG Sophang), E1/122.1, p. 57], NUON Chea, IENG Sary and VORN Vet); DK Telegram, E3/1077, 10 April 1978 (copied to “Grand Uncle”, i.e. POL Pot – see SENG Mon Interview Record, E3/71, 14 February 2009, p. 7, ERN (En) 00288625 – NUON Chea, IENG Sary and VORN Vet); DK Telegram, E3/1144, 5 September 1977 (copied to POL Pot, NUON Chea, IENG Sary, VORN Vet and SON Sen); DK Telegram, E3/1196, 26 November 1976 (copied to NUON Chea and SON Sen). See Section 7: Roles and Functions – NUON Chea, para. 529, 542, 546, 555-556.

<sup>1553</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 39; KAING Guek Eav Written Answers, E3/15, 21 October 2008, p. 6, ERN (En) 00251376.

<sup>1554</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 49-50. See e.g., DK Telegram, E3/254, 20 March 1978 (directing the recipient to monitor enemy activities in Muk Kampoul and “take any measure based on the reality by communicating with Muk Kampoul”). See also, T. 14 December 2012 (SUON Kanil), E1/154.1, p. 88; PON Ol Interview Record, E3/373, 7 May 2009, p. 5, ERN (En) 00336528.

<sup>1555</sup> T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 50.

from Office 870 and from individual CPK leaders, including NUON Chea and KHIEU Samphan.<sup>1556</sup>

### 6.2.3. *Between the Zones and the Sectors*

494. Just as there were specific times for the transmission of telegrams by zones to the Party Centre, there were separate schedules for communication between zones and sectors. These were designed in such a way as to ensure that communications between the various echelons did not overlap.<sup>1557</sup>

495. Witness SUON Kanil, who worked in the telegram decoding unit of the Central Zone, testified that the Central Zone authorities received telegrams from the sectors approximately once a day, and more often after 1978.<sup>1558</sup>

### 6.2.4. *Between the Sectors and the Districts*

496. Reports emanating from the districts were passed upwards through the sectors (and, if appropriate, zones) to the Party Centre.<sup>1559</sup>

497. Districts reported to sectors on matters such as the construction of dams and canals, agriculture, health and “good or bad elements”.<sup>1560</sup> As the secretary of Kampong Siem District, Witness PRAK Yut prepared monthly written reports for the sector committee on the implementation of plans and the situation within the district.<sup>1561</sup> Similarly, Witness SAO Sarun recalled sending reports on rice farming to the sector approximately once a week in his capacity as Pechreada District Secretary.<sup>1562</sup> District

<sup>1556</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 47-48 (stating that messages from 870, on which the witness usually saw the name NUON Chea, were about security matters and also particularly about how to build the dams and dykes. The witness further testified that security matters meant the situation at the borders); T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 97-98 (referring to communications from “870” and NUON Chea); THA Sot Interview Record, E3/464, 19 January 2008, pp. 7-8, ERN (En) 00226112-00226113 (describing the delivery of letters from POL Pot, IENG Sary and NUON Chea and KHIEU Samphan to the zones).

<sup>1557</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, p. 94.

<sup>1558</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 5, 95.

<sup>1559</sup> PHAN Van *alias* KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088.

<sup>1560</sup> PHAN Van *alias* KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088.

<sup>1561</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, p. 70.

<sup>1562</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 10. *See also*, T. 20 June 2012 (YUN Kim), E1/89.1, p. 17. The Chamber approaches SAO Sarun’s testimony with caution. *See* Section 12.5: Phnom Kraol Security Centre, para. 3039.

offices did not typically have telegraph capabilities, so written reports were sent to the sectors by messenger.<sup>1563</sup>

498. District and sector officials also met in person regularly. According to Witness SAO Sarun, district secretaries reported on the situations in their districts at meetings of the relevant sector committee.<sup>1564</sup>

499. Just as instructions handed down by the Party Centre to the zones were relayed by the zones to the sectors, sector authorities in turn passed these orders on to the districts.<sup>1565</sup>

### 6.2.5. *Between the Districts and Sub-District Entities*

500. District officials often met in person with the heads of communes or cooperatives to exchange information or communicate orders verbally.<sup>1566</sup> Witness YUN Kim, a commune chief during the DK period, told the Chamber that commune leaders met with district authorities weekly to report on production, health, culture and “the enemy situation” in the communes.<sup>1567</sup> If there was a pressing need to communicate between these meetings, the district sent messengers to the communes.<sup>1568</sup> Witness NEANG Ouch *alias* Ta San (*Ta* Mok’s brother-in-law, present in Tram Kak district from late 1977, then later District Secretary),<sup>1569</sup> testified that district officials similarly met with mobile unit chiefs to discuss work plans.<sup>1570</sup>

501. Surviving documentary evidence indicates that sub-district entities also submitted written requests and reports to the districts from time to time on issues such as arrests,

<sup>1563</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 53, 70; T. 6 June 2012 (SAO Sarun), E1/82.1, p. 10; T. 20 June 2012 (YUN Kim), E1/89.1, p. 17.

<sup>1564</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 11-12. *See also*, T. 25 January 2012 (PRAK Yut), E1/33.1, p. 85.

<sup>1565</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 94-95; T. 3 May 2013 (LIM Sat), E1/188.1, p. 50.

<sup>1566</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 30; T. 6 December 2011 (KLAN Fit), E1/17.1, p. 74; T. 3 May 2013 (LIM Sat), E1/188.1, p. 50; Written Record of Analysis by Craig ETCHESON, E3/494, 18 July 2007, p. 23, ERN (En) 00142848.

<sup>1567</sup> T. 19 June 2012 (YUN Kim), E1/88.1, pp. 41, 74-75; T. 20 June 2012 (YUN Kim), E1/89.1, p. 8. *See also*, T. 1 February 2016 (SAO Van), E1/385.1, p. 57 (testifying that such meetings took place on a monthly basis in Cheang Tong commune).

<sup>1568</sup> T. 20 June 2012 (YUN Kim), E1/89.1, p. 9.

<sup>1569</sup> Section 10.1: Tram Kak Cooperatives, para. 818.

<sup>1570</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 43-45.

suspicious behaviour and the situation in the communes and cooperatives.<sup>1571</sup> Witness PRAK Yut testified that the district committee on which she sat received monthly written reports from the communes on the subjects of agriculture, construction projects, achievement of targets, the “wrongdoings of some people”, food shortages and the number of sick people.<sup>1572</sup> As secretary of Pechreada district, Witness SAO Sarun also recalled receiving monthly reports from the communes on rice production, livestock and the management of the locality generally.<sup>1573</sup>

### 6.2.6. *Communications with Foreign Countries*

502. The DK state institutions sent telegrams to several foreign countries bearing greetings, expressions of solidarity and congratulations on significant occasions.<sup>1574</sup> Friendly socialist states sent similar messages in return.<sup>1575</sup>

503. DK state institutions and CPK leaders were also in contact through meetings and social gatherings with the ambassadors of a select few countries allowed a diplomatic presence in DK.<sup>1576</sup>

<sup>1571</sup> See e.g., Commune Reports, E3/2044, January-April 1977; Trapeang Thom Khang Cheung Sub-District Report, E3/4087, 9 October 1977; Ta Phem Sub-District Report, E3/4084, May 1977.

<sup>1572</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 56, 59, 61-62.

<sup>1573</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 12-13.

<sup>1574</sup> See e.g., *Khieu Samphan Greetings on Bulgarian National Day* (in FBIS collection), E3/280, 8 September 1976, ERN (En) 00168092-00168093; *Khieu Samphan Messages Mozambique on Rhodesian ‘Aggression’* (in FBIS collection), E3/288, 2 June 1977, ERN (En) 00168159; *Khieu Samphan Congratulates Tito on Yugoslav National Day* (in FBIS collection), E3/77, 29 November 1978, ERN (En) 00170160.

<sup>1575</sup> See e.g., *To the Youth Association of Democratic Cambodia, Phnom Penh* (in FBIS collection), E3/274, 10 March 1976, ERN (En) 00167969 (from North Korea); *6 March message from the Central Committee of the Korean Workers Union to the Cambodian Workers Union* (in FBIS collection), E3/274, 12 March 1976, ERN (En) 00167969 (from North Korea); *Kaysone Phomvihon to Pol Pot* (in FBIS collection), E3/275, 19 April 1976, ERN (En) 00167663 (from Laos); *Suharto Greetings to Khieu Samphan* (in FBIS collection), E3/275, 20 April 1976, ERN (En) 00167665 (from Indonesia); *Cuban Leaders Greet Army Victory Anniversary* (in FBIS collection), E3/276, 15 May 1976, ERN (En) 00168015 (from Cuba); French Embassy Letter, E3/487, 20 April 1977 (reporting on messages to the DK leaders from the Lao People’s Democratic Republic sent on the occasion of the second anniversary of the founding of Democratic Kampuchea); *More Congratulatory Messages on National Day* (in FBIS collection), E3/1361, 23 April 1978, ERN (En) 00168869-00168870 (from Malaysia, Mongolia, Bulgaria as well as several foreign communist parties).

<sup>1576</sup> See e.g., DK Telegram, E3/1614, 9 September 1977 (the Commerce Committee reported to KHIEU Samphan about a meeting with the Yugoslav ambassador that had taken place at the Ministry of Commerce); DK Telegram, E3/1616, 18 October 1977 (the Commerce Committee reported to KHIEU Samphan about another meeting with the Yugoslav ambassador that had taken place at the Ministry of Commerce one month later); DK Telegram, E3/3564, 1 November 1977 (the Commerce Committee reported to KHIEU Samphan about another follow-up meeting with the Yugoslav ambassador that had taken place at the Ministry of Commerce approximately two weeks later); DK Telegram, E3/1617, 22 November 1977 (the Commerce Committee reported to KHIEU Samphan about yet another follow-up

504. The DK government maintained communications with some states by sending and receiving official delegations to and from foreign countries, including Laos, China, North Korea and Japan.<sup>1577</sup> In particular, the DK regime sent and received delegations to and from Vietnam, primarily for the purpose of discussing border disputes,<sup>1578</sup> and to and from China.<sup>1579</sup> Journalists from Yugoslavia, Turkey, North Korea, Vietnam, Australia and the United States of America also visited Cambodia during the DK period, where they interviewed state officials and visited the countryside under the escort of state or Party officials.<sup>1580</sup>

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meeting with the Yugoslav ambassador that had taken place at the Ministry of Commerce approximately one month later); *DPRK Envoy's Banquet Marks Pol Pot October 1977 Visit* (in FBIS collection), E3/1514, 20 February 1978, ERN (En) 00169253 (on 18 February 1978, DPRK ambassador KIM Mun-Hwan and his wife hosted a "grand banquet" to commemorate POL Pot's visit to North Korea in October 1977); *Film Show Marks U.S. Evacuation, Vietnamese Invasion* (in FBIS collection), E3/1518, 13 April 1978, ERN (En) 00168805 (on 12 April 1978, the DK Ministry of Foreign Affairs hosted a film show, with footage from cooperatives and the battlefield, at the Mitapheap Theater "to honor all ambassadors and their wives, as well as personnel of all embassies to Democratic Cambodia"); *DPRK Ambassador Holds Banquet To Mark Korean Army Day* (in FBIS collection), E3/1515, 25 April 1978, ERN (En) 00168875 (on 24 April 1978, DPRK ambassador KIM Mun-Hwan and his wife hosted a banquet and film show that was attended by the same people who were present at the 12 April gathering at the Ministry of Foreign Affairs: IENG Sary, IENG Thirith, Minister of Public Health THIOEUNN Thioeunn, Minister of Propaganda YUN Yat, amongst others).

<sup>1577</sup> See e.g., *Visit of Japanese Friendship Association Delegation* (in FBIS collection), E3/294, 30 September 1978, ERN (En) 00170173-00170174; *Cambodian Deputy Premier in Japan* (in SWB/FE/5838/A3 collection), E3/666, 14 June 1978, p. 1, ERN (En) S00010668; *Chinese Ambassador to Cambodia Gives Reception for Nuon Chea* (in SWB/FE/5923/A3 collection), E3/1280, 22 September 1978, p. 7, ERN (En) S00013064; DK Government Film, E3/479R, undated, ERN (En) V00422570; *President of Laos in Cambodia* (in SWB/FE/5699/A3 collection), E3/1406, 22 December 1977, pp. 1-2, ERN (En) S00008360-S00008361; *At the End of his Mission in Democratic Kampuchea, Comrade Kim Eun Hwan, Ambassador of the [DPRK], Paid a Courtesy Visit to Comrade Secretary Pol Pot* (DK News Bulletin), E3/1420, 16 September 1978, pp. 4-5, ERN (En) S00702660-S00702661; Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 29 September 1977; *Cambodian Delegation's Visit to China* (in SWB/FE/5628/A3 collection), E3/1349, 28 September 1977, p. 1, ERN (En) 00390895.

<sup>1578</sup> See e.g., *SRV Foreign Ministry Press Conference* (in SWB/FE/5785/C collection), E3/2300, 7 April 1978, pp. 1-20, ERN (En) S00010498-S00010517. See also, Section 4: General Overview, para. 283-284, 291.

<sup>1579</sup> See e.g., Section 16.3: Real or Perceived Enemies, paras 3814-3815; Section 10.1: Tram Kak Cooperatives, paras 912, 1128-1129; Section 11.1: Trapeang Thma Dam Worksite, paras 1220, 1222, 1258, 1285, 1316; Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1445-1496. China also assisted DK with establishing telecommunication links between DK and China. See *PRC Telecommunications Delegation Arrives in Phnom Penh* (in FBIS collection), E3/290, 29 October 1977, ERN (En) 00168721; Minutes of Negotiation between Democratic Kampuchea's Commercial Delegation and People Republic of China's International Trade Delegation, E3/829 [E3/828], 3 December 1978, ERN (En) 00756520 (noting that "[t]he trade tie between our two countries has grown continuously. The amount of money from trade increases every year. The shipments have doubled in 1978, compared to the previous year. In 1978, as the result of our recent establishment of the international telecommunication with the Chinese friend, our bilateral trade has been improved.").

<sup>1580</sup> See e.g., T. 9 February 2015 (Elizabeth BECKER), E1/259.1, pp. 7, 11, 17-18 (explaining how she, Richard DUDMAN and Malcolm CALDWELL received invitations to visit DK in December 1978), 35-37 (describing exploring a deserted Phnom Penh); T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 21 (testifying about accompanying Swedish journalists at Leay Bour cooperative – Tram Kak – on one occasion); Speech by IENG Sary, E3/211, 22 April 1978, ERN (En) S00004780 (welcoming American



505. The DK Ministry of Commerce communicated with other countries for the purpose of international trade.<sup>1581</sup> Overseas trade delegations also visited Cambodia from time to time during the DK era.<sup>1582</sup> Meetings on trade also took place with ambassadors of foreign countries at the Ministry of Commerce.<sup>1583</sup>

506. Between 1976 and 1979, IENG Sary attended several meetings of the UN General Assembly in New York, where he put forward the DK regime's position on the situation in Cambodia and on certain international issues.<sup>1584</sup> As the Vietnamese approached

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journalist Daniel Leon BURSTEIN and his three colleagues from the Marxist-Leninist journal "The Call"); Article by D. Burstein, "How Kampuchea Made its Revolution: Interview with Ieng Sary", E3/652, 28 August 1978, pp. 1-2, ERN (En) S00011846-S00011847; Article by T. Hill, "Ted Hill on Modern Kampuchea", E3/1583, 1 May 1978, p. 5, ERN (En) S00011309 (Australian journalist Ted HILL about his December 1977 visit to DK); DK Telegram, E3/1113, 15 March 1978; DK Telegram, E3/1112, 15 March 1978; *Comrade Secretary Pol Pot Hosts the Delegation from the Turkish Newspaper Aydinlik* (DK News Bulletin), E3/1420, 16 September 1978, pp. 5-6, ERN (En) S00702661-S00702662; *IENG Sary Receives DRPK [sic] Press Delegation 30 Jan* (in FBIS collection), E3/284, 1 February 1977, ERN (En) 00168400; *Delegation from the Marxist-Leninist French Communist Party and Turkish Journalists Visit Siem Reap-Angkor and the Central Zone* (DK News Bulletin), E3/1420, 16 September 1978, pp. 6-8, ERN (En) S00702662-S00702664; *Friendly Visit to Democratic Kampuchea by a Delegation of Journalists from the Socialist Republic of Vietnam* (DK News Bulletin), E3/268, 31 July 1976, pp. 11-12, ERN (En) 00519788-00519789; *Activities of the Delegation of Journalists from the Socialist Republic of Vietnam during its Friendly Visit to Democratic Kampuchea* (DK News Bulletin), E3/268, 31 July 1976, pp. 12-14, ERN (En) 00519789-00519791. See also, Book by E. Becker: *When the War was Over*, E3/20, 1986, pp. 323, 399-431, ERN (En) 00238036, 00238112-00238144. See also, Section 10.1: Tram Kak Cooperatives, paras 937, 942, 1108, 1129; Section 11.1: Trapeang Thma Dam, paras 1216-1217, 1223, 1253, 1300, 1331.

<sup>1581</sup> See e.g., DK Foreign Trade Committee Letter, E3/3418, 15 July 1978; Commerce Committee Report, E3/2516, 27 November 1978.

<sup>1582</sup> See e.g., Minutes of Meeting between Ieng Sary and the Chinese commerce delegation, E3/827, 2 December 1978; SAKIM Lmut Interview Record, E3/439, 18 December 2009, pp. 5-7, ERN (En) 00425911-00425913; *Romanian Trade Delegation in Cambodia* (in SWB/FE/5778/A2 collection), E3/1517, 3 April 1978 (reports visit of Romanian delegation in March 1978).

<sup>1583</sup> See e.g., DK Telegram, E3/1614, 9 September 1977 (the Commerce Committee reported to KHIEU Samphan about a meeting with the Yugoslavian ambassador that had taken place at the Ministry of Commerce); DK Telegram, E3/1616, 18 October 1977 (the Commerce Committee reported to KHIEU Samphan about another meeting with the Yugoslavian ambassador that had taken place at the Ministry of Commerce one month later); DK Telegram, E3/3564, 1 November 1977 (the Commerce Committee reported to KHIEU Samphan about another follow-up meeting with the Yugoslavian ambassador that had taken place at the Ministry of Commerce approximately two weeks later); DK Telegram, E3/1617, 22 November 1977 (the Commerce Committee reported to KHIEU Samphan about yet another follow-up meeting with the Yugoslavian ambassador that had taken place at the Ministry of Commerce approximately one month later).

<sup>1584</sup> See e.g., T. 8 August 2012 (SUONG Sikoeun), E1/104.1, p. 23 (testifying that he accompanied IENG Sary to New York for a meeting of the United Nations General Assembly in 1975); T. 9 February 2015 (Elizabeth BECKER), E1/259.1, pp. 10-11 (stating that she talked to IENG Sary at press conferences or receptions at the United Nations General Assembly every year during the DK period); IENG Sary Speech at UN General Assembly, 10<sup>th</sup> Session, E3/547, 11 October 1977; UN General Assembly Official Records, E3/1586, 9 June 1978; UN General Assembly Official Records, E3/618, 9 October 1979; *Ieng Sary Returns 28 Oct from UN, Philippines, Indonesia* (in FBIS collection), E3/721, 29 October 1978, ERN (En) 00170323; IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976.

Phnom Penh in early 1979, IENG Sary sent a telegram of complaint to the UN Security Council.<sup>1585</sup>

### **6.3. Military Communications**

507. Lines of communication within the RAK mirrored the vertical reporting structure on the civilian side of the CPK: that is, orders were transmitted downwards from the General Staff through the divisions to the lower units; information was reported upwards through the chain of command; and individual commanders at each level usually made contact only with the levels immediately above and below them.<sup>1586</sup>

#### ***6.3.1. Communication within the Party Centre***

508. SON Sen, the chief of the General Staff,<sup>1587</sup> attended meetings of the Standing Committee and kept the Standing Committee informed of military affairs and matters of national defence.<sup>1588</sup> SON Sen also forwarded written messages and reports received from military commanders to other CPK leaders, including NUON Chea, with handwritten annotations and requests for instructions.<sup>1589</sup>

<sup>1585</sup> DK Telegram Addressed to the UN Secretary-General, E3/556, 3 January 1979. *See also*, Section 4: General Overview, para. 293 (fn. 789).

<sup>1586</sup> T. 25 October 2016 (CHUON Thy), E1/489.1, pp. 96-97; T. 27 January 2016 (PRUM Sarat), E1/383.1, pp. 12, 61; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 22-23, 37; T. 9 January 2013 (UNG Ren), E1/157.1, p. 39; T. 10 January 2013 (UNG Ren), E1/158.1, pp. 7, 26, 44-45; T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 43-44, 57-58; CHUON Thy Interview Record, E3/4593, 2 March 2010, p. 8, ERN (En) 00513318.

<sup>1587</sup> Standing Committee Minutes, E3/183, 9 October 1975, p. 1, ERN (En) 00183393; T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 37; T. 29 March 2012 (KAING Guek Eav), E1/59.1, pp. 17, 22; T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 81.

<sup>1588</sup> *See e.g.*, Standing Committee Minutes, E3/229, 22 February 1976; Standing Committee Minutes, E3/217, 11 March 1976; Standing Committee Minutes, E3/222, 15 May 1976.

<sup>1589</sup> *See e.g.*, DK Military Report, E3/1135, 19 October 1976; DK Military Report, E3/1082, 12 August 1977 (both referring to Division 164 and identifying the sender as “Mut”, *i.e.* MEAS Muth, commander of Division 164 [*see* SENG Soeun Interview Record, E3/409, 11 November 2009, p. 5, ERN (En) 00412180; MEAS Muth Interview by Christine CHAUMEAU and BOU Saroeun, E3/346, undated]. *See also*, DK Telegram, E3/1199, 6 April 1977 (referring to Division 920 and identifying the sender as “San”, *i.e.*, Ta San, commander of Division 920. *See* T. 6 June 2012 (SAO Sarun), E1/82.1, p. 82; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213). *See also*, Section 7: Roles and Functions – NUON Chea, paras 554-556.

### 6.3.2. *Communication between the General Staff and the Divisions*

509. Military divisions under the command of the Party Centre reported to the General Staff as often as two or three times a day.<sup>1590</sup> The divisions and the General Staff communicated by radio or, if confidentiality was required, by telegraph, telephone or letter sent via messenger.<sup>1591</sup>

510. The commanders and deputy commanders of divisions and independent regiments also met SON Sen in person from time to time.<sup>1592</sup> At these meetings, the military officers updated SON Sen on the situation within their units, and SON Sen issued instructions and political guidance.<sup>1593</sup> Witness PRUM Sarat, Commander of Regiment 140 belonging to Division 164, testified that large political study sessions were organised by the General Staff every year.<sup>1594</sup> At least one large political study session conducted by the General Staff and instructed by SON Sen was attended by soldiers at the division, regiment, battalion, company and platoon level.<sup>1595</sup> Military personnel also occasionally participated in large meetings or rallies in Phnom Penh, some of which

<sup>1590</sup> LONH Dos Interview Record, E3/70, 20 November 2009, p. 5, ERN (En) 00407789; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071. *See also*, Section 12.4.2.4: Oversight of Division 801 by the RAK General Staff; Section 12.5: Phnom Kraol Security Centre, paras 3047, 3076-3080.

<sup>1591</sup> T. 21 March 2016 (CHIN Kimthong *alias* Chhang), E1/405.1, pp. 34-36; T. 4 October 2012 (MEAS Voeun), E1/130.1, p. 23; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071; LONH Dos Interview Record, E3/70, 20 November 2009, p. 5, ERN (En) 00407789; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 5, ERN (En) 00414060; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 60, 65, 75. *See also*, DK Military Report, E3/997, 20 March 1978 (referring to a “confidential telephone communication”).

<sup>1592</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, p. 23; LONH Dos Interview Record, E3/426, 23 July 2009, p. 3, ERN (En) 00364071; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 60-61, 64-65.

<sup>1593</sup> *See e.g.*, Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976; Minutes of Meeting of the Committees Attached to Divisions and Regiments, E3/796, 12 August 1976; Minutes of Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977.

<sup>1594</sup> T. 27 January 2016 (PRUM Sarat), E1/383.1, p. 85.

<sup>1595</sup> List of Participants Second General Staff Study Session, E3/847, 23 November 1976 (listing everyone from platoon cadres to Secretaries of Divisions). *See also*, T. 27 January 2016 (PRUM Sarat), E1/383.1, pp. 84-85 (stating that SON Sen was the instructor at two large study sessions attended by the witness: the one in November 1976 and another one in 1977. The witness also testified that such study sessions took place every year and that the General Staff invited the level of the company and up: “that is, company, battalion, regiment and divisions”). PRUM Sarat is on the list of participants (number 203) in the November 1976 study session. *See* List of Participants Second General Staff Study Session, E3/847, 23 November 1976, ERN (En) 00195332.

were attended by DK/CPK senior leaders, including NUON Chea and KHIEU Samphan.<sup>1596</sup>

511. Written reports put before the Chamber demonstrate that the divisions regularly sent information to the General Staff on enemy activities;<sup>1597</sup> agriculture and the growing of rice; internal enemies and subversive activities within the units; and the progress of construction projects.<sup>1598</sup> Divisions also contacted the General Staff to seek orders.<sup>1599</sup>

### 6.3.3. *Communication between the Divisions and the Zones*

512. Some military divisions not under the command of the Party Centre reported to the zones. For instance, Witness MEAS Voeun, Deputy Commander of Division 1 (stationed in Koh Kong) testified that his division had to report to the West Zone.<sup>1600</sup> Conversely, Witness MOENG Vet of Division 117 of Sector 505 (Kratie) testified that his division reported to the General Staff (or to Centre Division 502 that would help them copy the message), and only directly to Office 870 under certain conditions.<sup>1601</sup> The Chamber thus finds that reporting lines differed per division and according to what the circumstances necessitated.

### 6.3.4. *Communication within the Divisions*

513. Having received orders from the General Staff, division commanders would relay these instructions to the lower units, often by meeting their officers or leaders in

<sup>1596</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 56, 68-69; T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 53-54, 84-86 (recalling a ceremony at the Olympic Stadium in Phnom Penh in 1975 attended by POL Pot, SON Sen, IENG Sary and NUON Chea and KHIEU Samphan, amongst others); PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 6, ERN (En) 00223338 (describing a ceremony in 1975 at the Olympic Stadium attended by NUON Chea and KHIEU Samphan); CHHOUK Rin Interview Record, E3/362, 29 July 2008, pp. 4-5, ERN (En) 00268896-00268897 (describing a meeting in 1977 in Phnom Penh attended by NUON Chea); KOY Mon Interview Record, E3/369, 29 May 2008, p. 3, ERN (En) 00272715 (describing a meeting at the Olympic Stadium in 1975 attended by POL Pot, IENG Sary and NUON Chea and KHIEU Samphan, amongst others).

<sup>1597</sup> See e.g., Section 16.3: Real or Perceived Enemies, paras 3768, 3779, 3809, 3811, 3831.

<sup>1598</sup> See e.g., DK Military Report, E3/1085, 4 November 1977; DK Military Report, E3/1202, undated; DK Military Report, E3/1162, 26 May 1976; DK Military Report, E3/997, 20 March 1978; DK Telegram, E3/1750, 13 August 1976; DK Military Report, E3/1213, 1 May 1976; DK Military Report, E3/1060, 25 March 1977; DK Military Report, E3/1160, 11 March 1976.

<sup>1599</sup> See e.g., DK Telegram, E3/1190, 11 June 1976; DK Military Report, E3/1168, 30 March 1977.

<sup>1600</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 58-59.

<sup>1601</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 56-57.

person.<sup>1602</sup> In turn, these orders would be passed down through the regiments and battalions.<sup>1603</sup>

514. The commanders and deputy commanders of divisions and subordinate levels communicated with each other by radio, by telegraph, by messenger and in person.<sup>1604</sup>

515. Company commanders reported to their superiors in writing and by radio.<sup>1605</sup> Battalion commanders submitted written reports to regiment commanders, which were delivered by messenger.<sup>1606</sup> The regiments in turn sent written reports to the division by telegraph and by messenger on at least a monthly basis.<sup>1607</sup>

### 6.3.5. *Communication between the Divisions*

516. The Chamber heard equivocal evidence regarding the degree and extent of communications between divisions. Witness MOENG Vet testified that Commander Roeun (*i.e.* SAO Saroeun) of Division 801 (a centre division) and Commander Rom of Division 117 (Kratie, Sector 505) did not communicate via the General Staff, but communicated directly with each other via radio or telegram.<sup>1608</sup> Witness MEAS Voeun also testified that lateral communication took place between divisions, at least in the West Zone at the regimental level, for the purpose of coordinating tasks.<sup>1609</sup> However, Witness CHUON Thy testified that no communications took place between the

<sup>1602</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 11-12; T. 24 April 2013 (CHUON Thy), E1/183.1, p. 35.

<sup>1603</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 60; T. 24 April 2013 (CHUON Thy), E1/183.1, pp. 35-36; T. 20 May 2013 (IENG Phan), E1/193.1, p. 12; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 11-12, 22, 24-25, 27; T. 10 January 2013 (UNG Ren), E1/158.1, p. 4.

<sup>1604</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 11-12, 22, 24-25, 27; T. 10 January 2013 (UNG Ren), E1/158.1, p. 4; T. 24 April 2013 (CHUON Thy), E1/183.1, pp. 34, 55; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 39-40; T. 20 May 2013 (IENG Phan), E1/193.1, pp. 12-13, 30-31; LOEK Sao Interview Record, E3/418, 12 November 2009, pp. 2-3, ERN (En) 00403588-00403589. *See e.g.*, DK Telegram, E3/1222, 24 September 1976; DK Telegram, E3/1223, 27 September 1976; DK Telegram, E3/1225, 6 October 1976 (identifying the sender as “Dim”, *i.e.* Kun Dim, Deputy Commander of a battalion within Division 164 [*see* List of Participants Second General Staff Study Session, E3/847, 23 November 1976, p. 11, ERN (En) 00195332]; Second General Staff Study Course E3/1143, 23 November 1976, p. 3, ERN (En) 00535795 – and the recipient as “Mut”, *i.e.* MEAS Muth, Commander of Division 164. *See above*, fn. 1589.

<sup>1605</sup> SUOS Siyat Interview Record, E3/5145, 17 January 2008, p. 4, ERN (En) 00204707.

<sup>1606</sup> T. 25 October 2016 (CHUON Thy), E1/489.1, pp. 77-78; T. 24 April 2013 (CHUON Thy), E1/183.1, pp. 34, 55.

<sup>1607</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 59; KHUN Kim Interview Record, E3/422, 30 November 2009, p. 5, ERN (En) 00414066.

<sup>1608</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, p. 83.

<sup>1609</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 60; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 24-25; T. 8 October 2012 (MEAS Voeun), E1/131.1, pp. 43, 50.

regiments where he was stationed in Svay Rieng, in the East Zone.<sup>1610</sup> The Chamber thus finds that lateral communication took place between some divisions when the circumstances required and allowed.

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<sup>1610</sup> T. 25 October 2016 (CHUON Thy), E1/489.1, p. 96.

## 7. ROLES AND FUNCTIONS – NUON CHEA

517. According to the Closing Order, before and during the DK period, NUON Chea was a prominent member of the Party Centre, his responsibilities including propaganda, training and discipline of cadres as well as internal and external security-related matters.<sup>1611</sup>

518. At the beginning of the substantive hearing in Case 002/01, NUON Chea made an opening statement.<sup>1612</sup> For a period thereafter, during the historical background segment of the first trial in Case 002/01, NUON Chea agreed to answer questions from the Judges and the Parties.<sup>1613</sup> He made several statements regarding his roles and functions with the CPK relevant to the DK period.<sup>1614</sup> As further noted below, NUON Chea

<sup>1611</sup> The Roles and Functions of NUON Chea are discussed in paras 869-894 of the Closing Order. In addition, paras 895-992 are relevant to NUON Chea's participation in the Joint Criminal Enterprise.

<sup>1612</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 76-112.

<sup>1613</sup> Section 2: Preliminary Issues, para. 47.

<sup>1614</sup> NUON Chea answered questions during the historical background segment of the trial in Case 002/01, *see*: T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 10, 37-54 (statement regarding his background and the pre-DK period), 62-84 (responding to Judge CARTWRIGHT's questions regarding his background and the pre-DK period); T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 4-25 (responding to Judge CARTWRIGHT's questions regarding his background and the pre-DK period); T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 2-34, 37-53 (responding to Judge CARTWRIGHT's and Judge LAVERGNE's questions regarding his background, the development of CPK strategy in the pre-DK period, the Secret Defence Units, the founding of the RAK and the development of the decision to evacuate Phnom Penh); T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 2-30 (responding to Judge LAVERGNE's questions regarding the decision to evacuate Phnom Penh, KHIEU Samphan's membership of the Standing and Central Committees, IENG Sary's trip to Beijing, CPK policy and the *coup d'état* of 18 March 1970), 31-51 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding Vietnam and THET Sambath's "Enemies of the People"); T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 29-55, 65-82, 95-100 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding his role within the CPK, the practice of requiring biographies, the CPK Statute, his time in Vietnam, his relationships with other CPK members and the Revolutionary Flag); T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 10-50 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding the Revolutionary Flag and the CPK's background, including the First Party Congress in 1960); T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 9-50 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding the First Party Congress in 1960, zone leaders, definitions of classes, CPK's political line pre-1975 and the Secret Defence Units); T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 8-50 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding the Secret Defence Units pre-1975, the Second Party Congress in 1963, Standing and Central Committee meetings that took place between 1963 and 1966 and between 1970 and 1975, the location of Office 100 and the Third Party Congress in 1971); T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 1-29, 31-54 (responding to International Deputy Co-Prosecutor Dale LYSAK's questions regarding the establishment of cooperatives, SON Sen's role in relation to the military from 1973 to April 1975, the liberation of Oudong in March 1974 and the decision to evacuate Phnom Penh; NUON Chea reacting to documents and questions presented by National Deputy Co-Prosecutor SENG Bunkheang's regarding, amongst others, Office 100, a zone secretaries' meeting in the Central Zone on 1 January 1968, the *coup d'état* to topple King Sihanouk of 18 March 1970, the roles and responsibilities of zone secretaries, the Revolutionary Flag, his education in Thailand and other personal background information, including names and *aliases*, the criteria for becoming a member of

confirmed his long and close association with the Party, including his role as Deputy Secretary and his membership in its Central and Standing Committees. While denying any formal role in military policy or the security apparatus, NUON Chea confirmed other roles and functions during the DK period, including his appointment as Chairman of the People's Representative Assembly ("PRA") and his responsibilities in connection with the training of cadres and with propaganda. NUON Chea later decided to exercise his right to remain silent and declined to respond to questions from the Judges and the Parties.<sup>1615</sup> On the last day of the trial in Case 002/01, NUON Chea made a final statement before the Chamber.<sup>1616</sup>

519. At the beginning of the substantive hearing in Case 002/02, NUON Chea made a new opening statement.<sup>1617</sup> He stated that he would exercise his right to remain silent and would not be responding to questioning.<sup>1618</sup> During the substantive hearing in Case 002/02, NUON Chea spoke on a few occasions: he posed two questions to Expert Elizabeth BECKER on 11 February 2015,<sup>1619</sup> he expressed his views on reliability of evidence on 27 August 2015;<sup>1620</sup> and he made a statement during the S-21 segment of

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the Party, the Central Committee or the Standing Committee, and his first meeting with KHIEU Samphan); T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 5-26, 29-41, 44-49 (responding to questions by Civil Party Co-Lawyers SIN Soworn and Barnabé NEKUIE and Defence Counsel Michiel PESTMAN regarding his background, the CPK's background, the characterisation of enemies, the abolition of currency, the establishment of cooperatives, the distinction between Base People and New People, allocation of tasks within the Party leadership, the armed struggle, and HENG Samrin's and CHEA Sim's childhoods); T. 8 February 2012 (Accused NUON Chea), E1/40.1, pp. 8-46 (responding to Judge LAVERGNE's questions and presented documents regarding the abolition of currency and private property, food and other shortages, military equipment from China, armed struggle, including surrounding Oudong in 1974 and the liberation of Phnom Penh, the CPK's political line and KOY Thuon); T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 39-50 (answering International Defence Counsel Michiel PESTMAN's questions regarding his personal background, including his early childhood, HENG Samrin and secret trips to Vietnam pre-1975). NUON Chea made statements on a few additional occasions during the Case 002/01 trial, *see*: T. 18 April 2012 (Accused NUON Chea), E1/63.1, pp. 3-4 (denying involvement in S-21); T. 6 June 2013 (Accused NUON Chea), E1/202.1, pp. 37-41 (statement on the evacuation of Phnom Penh); T. 9 July 2013 (Accused NUON Chea), E1/220.1, pp. 16-27 (denying involvement in the Military Committee and S-21, and his reaction to various documents presented by the Co-Prosecutors). *See also*, Notes Used by Accused NUON Chea during the Hearing of 5 December 2011, E148.

<sup>1615</sup> T. 19 March 2012 (Accused NUON Chea), E1/50.1, pp. 23-24; T. 18 April 2012 (Accused NUON Chea), E1/63.1, pp. 5-7; T. 17 July 2013 (Accused NUON Chea), E1/225.1, pp. 67-68. NUON Chea responded to certain questions put to him by Civil Parties who appeared at trial. *See* Notice of Intent Pursuant to Internal Rule 90, E287, 27 May 2013; T. 29 May 2013, E1/198.1, pp. 25-28, 55-56; T. 30 May 2013, E1/199.1, pp. 18-20, 83-85; T. 4 June 2013, E1/200.1, pp. 25-26, 70-71.

<sup>1616</sup> T. 31 October 2013 (Closing Statements), E1/237.1, pp. 1-34.

<sup>1617</sup> T. 17 October 2014 (Opening Statements), E1/242.1, pp. 64-73.

<sup>1618</sup> T. 17 October 2014 (Opening Statements), E1/242.1, p. 9.

<sup>1619</sup> T. 11 February 2015 (Elizabeth BECKER), E1/261.1, pp. 4-6 (NUON Chea asked two questions regarding bombardments by the United States in the early 1970s).

<sup>1620</sup> T. 27 August 2015 (Accused NUON Chea), E1/338.1, pp. 3-4.



the trial on 27 April 2016 to express his views on the armed conflict with (and the role of) Vietnam.<sup>1621</sup> On the last day of the trial in Case 002/02, NUON Chea declined to make a final statement before the Chamber.<sup>1622</sup>

### **7.1. Background Information and Pre-DK Period**

520. NUON Chea, whose birth name is LAO Kim Lorn, was born on 7 July 1926, in Voat Kor village, Sangkae district, Battambang province.<sup>1623</sup> NUON Chea studied initially in Battambang, continuing his secondary education in Thailand in 1941, and then at the Thammasat University in Bangkok where he started to study law under the name of RUNGLERT Laodi. During part of that period, he also worked in the Thai Ministry of Finance and in the Thai Ministry of Foreign Affairs.<sup>1624</sup> While in Thailand, NUON Chea joined the Youth for Democracy movement of Thailand and participated in discussions about the situation in Cambodia. In 1950, he joined the Communist Party of Thailand, later returning to Cambodia to join the Khmer Issarak, a resistance movement fighting against the French colonial authority.<sup>1625</sup>

521. Around the same time, NUON Chea joined the then Indochinese Communist Party,<sup>1626</sup> giving as his reasons his concern at the treatment of Cambodian peasants by French colonial officials and rich Cambodian landowners.<sup>1627</sup> From about 1950, NUON Chea's activism intensified as he engaged in propaganda and education activities,

<sup>1621</sup> T. 27 April 2016 (Accused NUON Chea), E1/423.1, pp. 2-6.

<sup>1622</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 4, 12.

<sup>1623</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 37; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 41-42. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148814-00148815.

<sup>1624</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 38-39, 43-44; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 5-6, 8, 46; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 42. *See also*, NUON Chea Interview by N. Thaitawat, E3/701, 8 September 2001, pp. 1-2, ERN (En) 00062412-00062413 (speaking specifically about his time in Thailand).

<sup>1625</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 44-45; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 8. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184664 (for an assessment of the probative value of this interview, *see* Section 3: Historical Background, para. 193); NUON Chea Interview by N. Thaitawat, E3/701, 8 September 2001, p. 3, ERN (En) 00062414.

<sup>1626</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 44-47, 62-64; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 10; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 39-40; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184664. *See also*, NUON Chea Interview by Japanese Journalist, E3/26, 7 October 2006, p. 4, ERN (En) 00329507 (According to NUON Chea, it was the Thai Communist Party, not SIEU Heng, that introduced him to the Indochina Communist Party); Section 3: Historical Background, paras 197-198, 201.

<sup>1627</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 39, 43; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 38-39; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 7-8. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817.

which included publishing newspapers and conducting training sessions for peasants in the rural areas.<sup>1628</sup>

522. Around 1951-54, NUON Chea was sent by the Party to study and receive political training in Vietnam. After the Geneva Accords of May 1954, he returned to Cambodia, and claimed that Party members were being arrested, imprisoned or had left the movement, and that peasants' farming activities were being obstructed by the harsh policies of the government.<sup>1629</sup> Before settling in Phnom Penh in 1955, NUON Chea moved among different locations in the countryside, such as in Boeng Lvea, along the Stung Chinit River, and in Samlaut, to disguise his active involvement in the revolutionary movement, and ensure his personal security.<sup>1630</sup>

523. In Phnom Penh, NUON Chea continued his underground work for the revolutionary movement through his involvement with the Party City Committee.<sup>1631</sup> NUON Chea was introduced to POL Pot in 1954-55, after NUON Chea had returned from Vietnam.<sup>1632</sup> POL Pot and NUON Chea, who were both members of the KPRP, initially worked together as assistants to TOU Samouth.<sup>1633</sup> Later, in 1960, NUON Chea

<sup>1628</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 4; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 8-9. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184659-00184660.

<sup>1629</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 47-48, 71, 81; T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 6; T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 36-38, 40-42. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 7, ERN (En) 00184658.

<sup>1630</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 5-7; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 11; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184658.

<sup>1631</sup> Notwithstanding NUON Chea's claim that he was not a member of this committee, it was clear that he had a role to play, even if it is accepted that he was not a founding member. *See* NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184658, 00184660 (claiming POL Pot, MEI Mann, Khmao [*sic*], and CHAN Saman set up the committee before NUON Chea joined); T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 28 (stating, regarding the 1966-1970 period: "the city committees were independent. I only assisted them with managing. I generally oversaw the committees, but people of respective committees would be managing the actual affairs of the committees) 29 (recalling VORN Vet was the chairman of the Phnom Penh city committee but not recalling any other members). *See also*, Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 16-17, ERN (En) 00498235-00498236; Book by D. Chandler: *A History of Cambodia*, E3/1686, p. 198, ERN (En) 00422826; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 151, ERN (En) 00396351.

<sup>1632</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 42-43 (stating he and POL Pot first met in 1954 or 1955, after the 1954 Geneva Accord and after he had returned from Vietnam); Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*, E3/17, p. 54, ERN (En) 00392968 (noting POL Pot "shared much of his secret life" with NUON Chea beginning in 1955). *See also*, Book by D. Chandler: *Brother Number One: A Political Biography of Pol Pot*, E3/17, pp. 6, 26, ERN (En) 00392920, 00392940 (noting that POL Pot left France in December 1952 and returned to Cambodia early 1953); Section 3: Historical Background, para. 201.

<sup>1633</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 42-43. *See also*, Section 3: Historical Background, para. 202.

met IENG Sary at the First Party Congress, during which TOU Samouth and NUON Chea were respectively nominated Secretary and Deputy Secretary and the Party was renamed the Workers' Party of Kampuchea.<sup>1634</sup>

524. In March 1963, POL Pot, IENG Sary, KHIEU Samphan and SON Sen, amongst the 34 persons listed by NORODOM Sihanouk as known and suspected "leftists",<sup>1635</sup> were summoned together with other individuals by NORODOM Sihanouk under the pretext of forming a new government.<sup>1636</sup> Fearing arrest, IENG Sary and POL Pot joined the underground near the Vietnamese border,<sup>1637</sup> while NUON Chea remained in Phnom Penh.<sup>1638</sup>

525. From 1963, NUON Chea travelled to the countryside to meet other leaders of the movement, including POL Pot, IENG Sary and SON Sen. He also met VORN Vet, KE Pauk, SAO Phim, KOY Thuon, RUOS Nhim,<sup>1639</sup> as the revolution progressed.<sup>1640</sup> On occasion, NUON Chea travelled clandestinely from Phnom Penh to the main Party offices, including Office 100, sited initially on the border area with Vietnam. From 1966-67, he travelled to the new Office 100 location in Ratanakiri province and, from 1970, to Office S-71, located along the Stung Chinit River. Later, as the Khmer Rouge

<sup>1634</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 33; NUON Chea Interview by KHEM Ngun, E3/3, p. 11, ERN (En) 00184662; Article by Nuon C.: Past Struggle of Our Kampuchean Peasants From 1954 to 1970, E3/131, p. 12, ERN (En) 00716420; T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 82, 84, 86; T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 44. *See also*, Section 3: Historical Background, para. 203.

<sup>1635</sup> Section 3: Historical Background, para. 207.

<sup>1636</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 66-68, 70; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 142-143, ERN (En) 00396342-00396343; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 16-17, ERN (En) 00498235-00498236. *See also*, Section 3: Historical Background, para. 207.

<sup>1637</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 64-67. *See also*, Section 8: Roles and Functions – KHIEU Samphan, para. 572; Section 3: Historical Background, para. 207.

<sup>1638</sup> Section 3: Historical Background, para. 207.

<sup>1639</sup> The Chamber adopts "RUOS Nhim" as the spelling of the *alias* of MOUL Sambath, the former Secretary of the Northwest Zone during the DK era, which it notes has inconsistently been spelled "RUOS Nheum", "RHOS Nhim" or "ROS Nhim".

<sup>1640</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 7-11; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 16-17; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 86-87. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184669-73 (also referring to a meeting NUON Chea held in late 1967 with the zone leaders, among which were TA Mok, RUOS Nhim and SAO Phim, where the participants were informed of a decision to initiate the armed and political struggle throughout the country in the East, the Northwest and the Southeast Zones); KHIEU Samphan Interview Transcript, E3/4017, ERN (En) 00793527 (indicating that, at the time of a rebellion in Samlaut NUON Chea travelled there and gave to RUOS Nhim instructions from the Central Committee to suspend the armed struggle).

closed in on Phnom Penh he also visited B-5<sup>1641</sup> and different provinces and zones controlled by the Khmer Rouge.<sup>1642</sup>

526. According to NUON Chea, he met with KHIEU Samphan for the first time near the Aoral Mountain, after KHIEU Samphan went to the *maquis*, but he does not remember when.<sup>1643</sup> As noted below in Section 8, KHIEU Samphan remembered this differently, and maintained that it was at S-71 that he first met NUON Chea and POL Pot.<sup>1644</sup> The Chamber is satisfied that KHIEU Samphan and NUON Chea were acquainted with each other as CPK members by September 1970.

527. In 1970, when NORODOM Sihanouk was overthrown, NUON Chea was visiting the East Zone and only managed to return to Phnom Penh after a few months. Once there, he continued to travel to meet POL Pot and IENG Sary to brief them on the situation in Phnom Penh and to receive instructions from POL Pot.<sup>1645</sup> As the revolution

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<sup>1641</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 9-12 (discussing his travels to Office 100); T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 18-21 (discussing his travels to Office 100), 36 (discussing his travels to the Stung Chinit area); T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 26 (discussing his travel to B-5); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 4, 28, 39 (discussing NUON Chea's presence at Office S-71); T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 23 (indicating that NUON Chea was at the Party office along the Chinit River); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 12-15 (discussing NUON Chea's presence at B-5, including during a 1975 planning meeting for the final attack and evacuation of Phnom Penh).

<sup>1642</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 5-6, 18 (discussing NUON Chea's travel to Samlaut to meet with several Zone leaders); T. 20 June 2012 (YUN Kim), E1/89.1, pp. 4-6, 79-80 (discussing a meeting held by NUON Chea in 1973 in Kratie Province). *See also*, T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, p. 35. In 1973, NUON Chea accompanied NORODOM Sihanouk to a visit to the liberated areas. *See* T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 92-94; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 22-25; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 35-37. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184660-61 (indicating that NUON Chea was in charge of all contacts with the rural areas since the early days of the Party), 00184668, 00184671.

<sup>1643</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 46. *See also*, T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 35. KHIEU Samphan confirmed that he joined the Party at the Aoral Mountain around the period before the *coup d'état* in 1970. *See* T. 8 February 2012 (Accused KHIEU Samphan), E1/40.1, p. 22; Section 8: Roles and Functions – KHIEU Samphan, para. 575; Section 3: Historical Background, para. 211.

<sup>1644</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 575.

<sup>1645</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 89 (“In February [1970], I went to join the conference for the inauguration of the training sessions in the East Zone in order to inspect the situation on the possibility of conducting the *coup d'état* by the Lon Nol group and to put a mechanism in place to prevent such *coup d'état*”); T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 9-11 (“I did not take refuge in the forest with Ieng Sary and Pol Pot. Once in a while, I went to meet them, probably once or -- once every one or two months, in order to report to them the situation in the city and also to receive instruction from Pol Pot as to how we are going to organize our party and the way forwards for our party. Sometime I went there once every month or twice -- once every two months, depending on the necessity of the situation of each circumstance at that time”).

developed further, however, NUON Chea left Phnom Penh and joined the other senior leaders of the Party at S-71.<sup>1646</sup>

528. In the early years of his political activism in Cambodia, NUON Chea's main areas of responsibility within the Party included working on the formulation of the Party policies and strategic and tactical lines, together with POL Pot.<sup>1647</sup> NUON Chea also continued to focus on propaganda, by travelling to and from the countryside to gather cadres and conduct training sessions with peasants and local leaders of the movement.<sup>1648</sup> He was also instrumental in issuing the *Revolutionary Flag*, which is elaborated upon below in relation to the DK period.<sup>1649</sup> Finally, while NUON Chea worked on developing the Party policy of full independence from the Communist Party of Vietnam he also assumed the role of liaison with that party, travelling to Vietnam on various occasions to meet with its leaders.<sup>1650</sup>

529. Throughout the CPK period, NUON Chea was referred to by his surname as “Brother [*bang*] Nuon”, “Uncle [*om*] Nuon” or “Grand Uncle [*om*] Nuon” as well as “Comrade Deputy Secretary”, or, more generally, “Brother [*bang*]”, “Respected

<sup>1646</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 7-10. *See also*, T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 4-5; T. 11 December 2012 (PHAN Van), E1/151.1, pp. 51-52 (indicating that NUON Chea was located at B-20, a sub-office of S-71).

<sup>1647</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 81-84; T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 12-22; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 52. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184661; Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, pp. 10-11, ERN (En) 00498229-00498230.

<sup>1648</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 52-54; T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 48; T. 26 July 2012 (ROCHOEM Tom), E1/97.1, pp. 9-10, 33-44 (referring to a study session in 1971 at the North Zone office that included sector and district cadres, chaired by POL Pot and NUON Chea. After this meeting, there was a meeting for the leaders of the Party Centre and the zone leaders, in which NUON Chea also participated); T. 19 June 2012 (YUN Kim), E1/88.1, pp. 10-11, 33-34, 37 (stating that, in 1973, NUON Chea convened a meeting in Phum Dar for the commune chiefs of Kratie Province. During the meeting NUON Chea provided instructions regarding the implementation and establishment of the cooperatives. The war against LON Nol regime was also briefly addressed by NUON Chea).

<sup>1649</sup> *See below*, para. 545. *See also*, Section 6: Communication Structures, para. 476; Section 16.3: Real or Perceived Enemies, para. 3746.

<sup>1650</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 65-71; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 27-28; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 18-19, 35-36; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 22-24, 31-33; T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 44-50; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 52-54; T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 22; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 001846662, 00184670-00184671. NUON Chea retained this role also during the DK period. *See* T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 26; T. 31 October 2013 (Accused NUON Chea), E1/237.1, pp. 6-7.

Brother” or “Beloved Brother”,<sup>1651</sup> and “Brother No. 2”. While he denied having used or being commonly referred to as “Brother No. 2”,<sup>1652</sup> the evidence to the contrary is convincing. Several witnesses confirmed that this alias was also used to refer to NUON Chea.<sup>1653</sup> These aliases are also referred to in several telegrams and reports relevant to the activities of the Party Centre<sup>1654</sup> as well as in annotations made by cadres on S-21 confessions, including by Witness Duch, addressed or copied to NUON Chea.<sup>1655</sup> Witness SUON Kanil, in particular, a telegram operator from the Central Zone who dealt with telegrams relevant to the Party Centre, indicated that the reference to “Uncle Nuon” on telegrams addressed to Office 870 “of course” refers to NUON Chea.<sup>1656</sup>

<sup>1651</sup> See e.g., T. 29 November 2016 (SENG Lytheng), E1/503.1, p. 68 (“Brother or *Bong*”, “*Bong* Nuon Chea”); T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 52 (“*Bong* Nuon or Brother Nuon”), 54 (“but for the document I mentioned this morning, it said, ‘To Brother Nuon’”), 62 (“Brother Nuon”); T. 20 July 2012 (David CHANDLER), E1/93.1, p. 39 (“Brother Nuon”); T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 68-70 (“Brother Nuon” as well as “Respected Brother” and “Beloved Brother”), 79 (“Brother Nuon” as well as “Beloved Brother”); T. 11 December 2012 (PHAN Van), E1/151.1, pp. 104-105 (“Brother” and “*Bong*”); T. 24 January 2012 (VANTHAN Dara Peou), E1/32.1, p. 35 (“Brother Nuon”); T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 32 (“Grand Uncle Nuon”), 34 (“Uncle Nuon”), 46 (Brother Nuon); T. 1 July 2013 (PECH Chim), E1/215.1, pp. 72-73 (“Uncle Nuon”); T. 7 May 2013 (Philip SHORT), E1/190.1, p. 131 (“Comrade Deputy Secretary”). See also, NORNG Sophang Interview Record, E3/64, 18 February 2009, pp. 16, 17-20, ERN (En) 00334057 (“Brother Nuon”), 00334058-61 (“Uncle Nuon”); SENG Mon Interview Record, E3/71, 14 February 2009, pp. 7, 13, 16, ERN (En) 00288625, 00288631, 00288634 (“Grand Uncle Nuon”).

<sup>1652</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 13-14. On appeal to the Supreme Court Chamber in Case 002/01, NUON Chea argued that the Trial Chamber had erred when finding that NUON Chea was referred to as “Brother No. 2”. The Supreme Court Chamber dismissed NUON Chea’s arguments in this regard. See respectively NUON Chea’s Appeal against the Judgement in Case 002/01, F16, 29 December 2014, para. 266; Case 002/01 Appeal Judgement, para. 995.

<sup>1653</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 56 (“Number 2, Uncle or Brother Nuon”); T. 5 May 2016 (HIM Huy), E1/428.1, p. 71 (“Duch referred to Number One and then, as for Nuon Chea, he referred to Brother Nuon; that is, Brother Number Two”); T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 21; T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 115 (indicating that KOY Thuon referred to NUON Chea as Brother No. 2); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 37-38; T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 100; T. 1 July 2013 (PECH Chim), E1/215.1, pp. 72-74. See also, T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 37, 39.

<sup>1654</sup> DK Telegram, E3/893, 26 January 1976, ERN (En) 00182622 (“Brother Nuon”); DK Telegram, E3/908, 24 December 1977, ERN (En) 00183639 (“Uncle Nuon”); DK Telegram, E3/943, 25 April 1978, ERN (En) 00185204 (“Grand Uncle Nuon”); DK Report, E3/860, 15 April 1978, ERN (En) 00185201 (“Grand Uncle Nuon”); *Reception to Mark the 51<sup>st</sup> Anniversary of the Founding of the Chinese People’s Revolutionary Liberation Army* (DK News Bulletin), 24 August 1978, E3/1417, ERN (En) 00712496, 00712498-99 (“Comrade Deputy Secretary”); *Speech by Comrade TENG Ying-Tchao, Member of the Central Committee of the Chinese Communist Party* (DK News Bulletin), E3/78, 6 February 1978, ERN (En) 00290287 (“Comrade Deputy Secretary”).

<sup>1655</sup> S-21 Confession – KUNG Kien *alias* Ing Vet, E3/1565, 23 May 1977, ERN (En) 00182748 (“Brother Nuon”); S-21 Confession – CHOUT Nhe, E3/1687, 11 November 1977, ERN (En) 00758196 (“*Bang* Nuon”); S-21 Confession – CHAB Met, E3/1688, ERN (En) 00284069 (“Brother N. 2”). See also, T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 7-9; T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 34-38. NUON Chea was also referred to as “Brother Nuon” in annotations contained in several other S-21 confessions. See e.g., S-21 Confession – TAING An *alias* En, E3/1826, 31 October 1977, ERN (En) 00821424; S-21 Confession – DI Leng *alias* Pheap, E3/1839, 25 October 1977, ERN (En) 00182820; S-21 Confession – LUN In, E3/3689, 21 October 1977, ERN (En) 00221784.

<sup>1656</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 98, 100-101. See also, DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841.

During a Standing Committee Meeting held on 1 June 1976, POL Pot, identified in the minutes as the comrade secretary of the (standing) committee, referred to NUON Chea simply as “[comrade] NUON”.<sup>1657</sup>

## **7.2. Status and Role within the Party**

530. Since the First Party Congress in 1960, NUON Chea was the Deputy Secretary of the Party, then named the Workers’ Party of Kampuchea (“WPK”).<sup>1658</sup> He retained this appointment during subsequent Party congresses as well as throughout the DK period.<sup>1659</sup> After TOU Samouth’s disappearance, POL Pot was appointed as Secretary of the Party in 1963. NUON Chea was the subject of suspicions because of the earlier defection of his uncle by marriage, SIEU Heng, to LON Nol during the Sangkum regime. At the time, SIEU Heng was the secretary of the Khmer People’s Revolutionary Party responsible for the party’s rural membership.<sup>1660</sup> Therefore, NUON Chea supported the election of POL Pot as Secretary of the party while he would remain the Deputy Secretary.<sup>1661</sup> However, he agreed with POL Pot that they would work together.<sup>1662</sup>

<sup>1657</sup> Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182719. Although the English translation of E3/225 omits “comrade”, the Chamber has relied on the original Khmer document. NUON Chea is usually referred to in minutes of the Standing Committee as “Comrade Deputy Secretary” or as “Comrade Nuon”. *See below*, fn. 1667.

<sup>1658</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 82, 85-86; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 72-76; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 13-14. *See also*, T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 69-70; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 24-25; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184662.

<sup>1659</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 86; T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 75; T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 15; T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 25. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184667.

<sup>1660</sup> NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184659 (“[in early 1956] Siv Heng was Party Secretary for the entire country, *Ta* TOU Samouth was Deputy and Son Ngoc Minh, in Hanoi, was a Member”), 001846566-001846567; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 74-76; T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 48-50; Article by Nuon C.: *Past Struggle of Our Kampuchean Peasants From 1954 to 1970*, E3/131, p. 12, ERN (En) 00716420.

<sup>1661</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 75-76; T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 10-12. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184666-00184667; T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 63-64.

<sup>1662</sup> Documentary by THET S. and R. LEMKIN: *Enemies of the People*, E3/4001R, ERN V00800935, Additional Footage – NUON Chea Interview with THET Sambath, 00:09:40-00:10:14 (“So I said to Pol Pot that in the current situation I wasn’t the right man to lead the Party [...] so I asked Pol Pot to be Secretary General. At that time we both agreed that whenever we had problems we would solve them together.”).

531. Witnesses BEIT Boeurn, SUONG Sikoeun and Duch, among others,<sup>1663</sup> as well as KHIEU Samphan,<sup>1664</sup> confirmed that NUON Chea held this position.

532. NUON Chea was a full-rights member of both the CPK Central Committee and its Standing Committee.<sup>1665</sup> He confirmed this. His membership in these organs was also confirmed by witnesses and experts who testified at trial.<sup>1666</sup>

533. The fact that these appointments occurred is reflected in contemporary DK documents. Numerous CPK Standing Committee meeting minutes from the DK period indicate that NUON Chea was present in his capacity as the Deputy Secretary of the Party.<sup>1667</sup> From late 1977, NUON Chea was also officially identified as the Deputy Secretary of the CPK Central Committee in speeches he gave to foreign dignitaries and delegations and in DK media reports concerning international travel and meetings.<sup>1668</sup>

<sup>1663</sup> T. 28 November 2016 (BEIT Boeurn), E1/502.1, p. 56 (stating that “Pol Pot was the chairman, Nuon Chea was his deputy and Khieu Samphan was the member”, as POL Pot had said this during a study session where NUON Chea and KHIEU Samphan were also present); T. 20 July 2012 (David CHANDLER), E1/93.1, p. 64; T. 16 August 2012 (SUONG Sikoeun), E1/109.1, p. 34; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 22. *See also*, T. 6 May 2013 (Philip SHORT), E1/189.1, p. 64.

<sup>1664</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 10-11, ERN (En) 00156750-00156751 (identifying NUON Chea as the Deputy Secretary of the Standing Committee of the CPK and with POL Pot as the most important persons within the Party); Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498236.

<sup>1665</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 22; T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 34-35; T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 36-39; T. 6 June 2013 (Accused NUON Chea), E1/202.1, p. 40. *See also*, NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184662, 00184667.

<sup>1666</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, pp. 32, 38; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 72-73; T. 8 December 2011 (LONG Norin), E1/19.1, p. 65; T. 26 April 2012 (SALOTH Ban), E1/69.1, p. 2. *See also*, T. 30 July 2012 (ROCHOEM Tom), E1/98.1, pp. 6-8; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 63-64; T. 1 October 2012 (KHIEU En), E1/127.1, p. 91; T. 10 January 2013 (UNG Ren), E1/158.1, p. 68.

<sup>1667</sup> *See e.g.*, Standing Committee Minutes, E3/227, 2 November 1975, ERN (En) 00183409; Standing Committee Minutes, E3/228, 9 January 1976, ERN (En) 00182614; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, ERN (En) 00182625; Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11-13 March 1976, ERN (En) 00182638; Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, ERN (En) 00182635; Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182651; Standing Committee Minutes, E3/220, 7 May 1976, ERN (En) 00182706; Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182693; Standing Committee Minutes, E3/222, 15 May 1976, ERN (En) 00182665; Standing Committee Minutes, E3/224, 30 May 1976, ERN (En) 00182667; Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182715.

<sup>1668</sup> *Cambodian CP Officially Unveiled on Founding Anniversary* (in FBIS collection), E3/2678, 6 October 1977, ERN (En) 00389470 (in which NUON Chea is officially recognised as the Central Committee Deputy Secretary); Speech by Comrade Nuon Chea, Deputy Secretary of the Central Committee of the Communist Party of Kampuchea at the Banquet of the Assembly of People in Peking, E3/199, 3 September 1978, ERN (En) 00065911-00065918 (in which NUON Chea expresses his appreciation to the Communist Party of China, the people and the government of the People’s Republic of China, for the aid, encouragements and supports which have reinforced Democratic Kampuchea’s



**7.3. Residence, Working and Travel Locations During the DK Period**

534. Upon returning to Phnom Penh after 17 April 1975, NUON Chea eventually took up his permanent residence at K-3, where he lived and worked with other CPK leaders, including POL Pot, IENG Sary, SON Sen, VORN Vet and KHIEU Samphan. From K-3, NUON Chea frequently travelled to K-1, POL Pot's residence located on the riverside, where important meetings of the Party Centre would also be held.<sup>1669</sup> During the DK period, NUON Chea continued to travel to the countryside, visiting construction and agricultural projects, meeting with zone leaders and holding education and propaganda meetings.<sup>1670</sup> On at least one occasion, NUON Chea travelled to China and North Korea on an official visit.<sup>1671</sup>

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independence and sovereignty); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, ERN (En) 00762391-00762408 (speech made by NUON Chea to representatives of the Communist Worker's Party of Denmark who visited Kampuchea; elaborating on the history, ideology, organisation and the concrete activities after the liberation of the Communist Party of Kampuchea); *Speech by Comrade Nuon Chea* (DK News Bulletin), E3/78, 6 February 1978, ERN (En) 00290282-00290286 (speech made by NUON Chea at a banquet held in TENG Ying-Tchao's honour – a member of the Chinese Communist Party Central Committee and Vice Chairman of the Standing Committee of the People's National Assembly of the People's Republic of China; elaborating on the militant solidarity and great revolutionary friendship between China and Kampuchea); *Souphanouvong Arrival Reported, Pol Pot Meets Delegation and Khieu Samphan Receives Souphanouvong* (DK News Bulletin), E3/1499, 19 December 1977, ERN (En) 00168360-00168363 (reporting on the arrival of a Lao party-government delegation in Kampuchea, welcomed, among others, by NUON Chea, and the subsequent meetings, which NUON Chea attended, between the Lao party-government delegation and representatives of the Communist Party of Kampuchea); *Nuon Chea Led Delegation Departs for PRC 2 September* (DK News Bulletin), E3/1526, 5 September 1978, ERN (En) 00170340 (reporting on visit by a Kampuchea People's Representative Assembly delegation led by NUON Chea to the People's Republic of China and the Democratic People's Republic of Korea).

<sup>1669</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 13-14, 75-76; T. 25 September 2012 (NOEM Sem), E1/126.1, pp. 63-64, 66-67; T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 38, 63-64; T. 3 May 2012 (PEAN Khean), E1/72.1, p. 27; T. 12 December 2012 (PHAN Van), E1/152.1, pp. 20-22; T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 51-52; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755. *See also*, T. 6 May 2013 (Philip SHORT), E1/189.1, p. 77; T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 28-29; Section 5: Administrative Structures, para. 368.

<sup>1670</sup> T. 31 October 2013 (Accused NUON Chea), E1/237.1, p. 27; T. 29 May 2012 (NY Kan), E1/77.1, pp. 3-5 (attending a Zone assembly in the West Zone in 1975 during which NUON Chea was present); T. 21 May 2013 (PROM Sou), E1/194.1, pp. 32-36 (describing a meeting held in the new North Zone during which NUON Chea introduced KANG Chap as the new Zone Chairman); T. 8 January 2013 (SA Vi), E1/156.1, pp. 34-35 (indicating that NUON Chea would travel to the countryside). *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1486-1488, 1490, 1634, 1637; Section 16: Common Purpose, para. 3739.

<sup>1671</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 50 (referring to NUON Chea's visit to China); T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 1, 3, 5, 13 (confirming that NUON Chea travelled to China and North Korea, in 1978). *See also*, Photograph of NUON Chea in Beijing, E3/3261, undated; *Speech by Comrade Nuon Chea, Deputy Secretary of the Central Committee of the Communist Party of Kampuchea at the Banquet of the Assembly of People in Peking*, E3/199, 3 September 1978; *NUON Chea-Led Delegation Departs for PRC 2 September* (in FBIS collection, E3/76, ERN (En) 00170340 (2 September 1978 entry); *Delegation's Arrival in Peking* (in FBIS collection), E3/76, ERN (En) 00170340-00170341 (3 September 1978 entry); *NUON Chea Delegation's Activities in Peking Reported* (in FBIS collection), E3/76, ERN (En) 00170344 (5 September 1978 entry); *Departs China for DPRK* (in FBIS

**7.4. Roles During the DK Period**

535. In addition to his roles within the Party, NUON Chea occupied other official roles during the DK period. According to the Closing Order, NUON Chea was the Chairman of the Standing Committee of the PRA and, in September 1976, he was formally appointed acting Prime Minister of DK, after POL Pot took a period of temporary leave allegedly due to some medical issues.<sup>1672</sup>

***7.4.1. Chairman of the People's Representative Assembly***

536. NUON Chea confirmed his role as the Chairman of the PRA during the DK period.<sup>1673</sup> Following a decision of the CPK Central Committee on 30 March 1976,<sup>1674</sup> he was also appointed Chairman of the Standing Committee of the PRA, a title which he retained after the fall of DK.<sup>1675</sup> Other contemporary DK documents, including various speeches he gave in that capacity to foreign dignitaries and delegations, identify NUON Chea as the Chairman of the Assembly's Standing Committee.<sup>1676</sup>

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collection), E3/76, ERN (En) 00170359 (8 September 1978 entry); NUON Chea Delegation Arrives in Pyongyang for National Day (in FBIS collection), E3/76, ERN (En) 00170359-00170360 (9 September 1978 entry); *Activities of NUON Chea Delegation in DPRK Reported* (in FBIS collection), E3/76, ERN (En) 00170379 (13 September 1978 entry).

<sup>1672</sup> Closing Order, paras 889-890, 888 (respectively).

<sup>1673</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 37; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 14; T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 26. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817; T. 18 July 2012 (David CHANDLER), E1/91.1, p. 33; T. 27 August 2012 (EM Oeun), E1/115.1, p. 27; T. 23 August 2012 (KIM Vun), E1/113.1, p. 22; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 50.

<sup>1674</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 5, ERN (En) 00182813. *See also*, Document on Conference of Legislature, E3/165, 11-13 April 1976, pp. 19-20, 26, 30, ERN (En) 00184066-00184067, 00184073, 00184077; DK Press Release: *First Plenary Session of the First Legislature of the People's Representative Assembly of Kampuchea*, E3/262, 14 April 1976, ERN (En) 00528391.

<sup>1675</sup> DK Government Statement, E3/1435, 18 December 1979, ERN (En) 00017987 ("the Congress has unanimously decided to maintain Mr. Nuon Chea in his function as Chairman of the Standing Committee of the Assembly of the Kampuchean People's Representatives"); DK Press Release, E3/1449, 20 November 1981, ERN (En) 00020359. *See also*, KRAM on the PRA, E3/260, 2 May 1976, ERN (En) 00002814-00002816.

<sup>1676</sup> *See e.g.*, *HU Nim Announces People's Assembly Press Communique* (in FBIS collection), E3/275, 14 April 1976, ERN (En) 00167623-00167626 (HU Nim announces Peoples' Assembly press communiqué detailing first session of the PRA on 20 March 1976. The Assembly appointed the PRA's Standing Committee, including NUON Chea as Chairman); *Congratulatory Message from DRV leaders to Newly Elected Cambodian Officials* (in FBIS collection), E3/275, 16 April 1976, ERN (En) 00167664; *Souphanouvong Arrival Reported, Pol Pot Meets Delegation and Khieu Samphan Receives Souphanouvong* (DK News Bulletin), E3/1499, 19 December 1977, ERN (En) 00168361-00168364; Speech by Comrade Nuon Chea, Deputy Secretary of the Central Committee of the Communist Party of Kampuchea at the Banquet of the Assembly of People in Peking, E3/199, 3 September 1978, ERN (En) 00065911; *Cambodian CP Officially Unveiled on Founding Anniversary* (in FBIS collection), E3/2678, 6 October 1977, ERN (En) 00389470. *See above*, fn. 1668.

537. NUON Chea stated that this was one of the roles he exercised during the DK period, leaving him in charge of ensuring that laws were adopted. He claimed that because of the situation in Cambodia, especially with regard to the ongoing conflict with Vietnam, time available for legislative work was not “sufficient” and it “was not a main priority”.<sup>1677</sup> However, the minutes of a Standing Committee Meeting held in March 1976 and attended by NUON Chea, indicate that the PRA was more a façade designed to feign compliance with the Party Statute.<sup>1678</sup> The Chamber thus finds that the Assembly met rarely, possibly only once during the DK period, and did not pass any laws.<sup>1679</sup>

#### 7.4.2. *Acting Prime Minister*

538. NUON Chea denied having ever been appointed as acting Prime Minister of DK. Although recognising that POL Pot took a period of leave of absence in 1976, he indicated that SON Sen was the person appointed to substitute for POL Pot.<sup>1680</sup>

539. Other evidence before the Chamber contradicts this testimony. Several documents report the official appointment of NUON Chea as acting Prime Minister of DK in September 1976 pending and during POL Pot’s absence.<sup>1681</sup> Other contemporary DK

<sup>1677</sup> T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 26 (“I was the President of the People Representative Assembly [...] in this role I was in charge of making sure that the laws [were] passed.”); T. 31 October 2013 (Accused NUON Chea), E1/237.1, p. 11 (“after the liberation on 17 April 1975, I was appointed as President of People’s Representative Assembly. Legally speaking, my position was to be in charge of legislation. At that time, the war in Cambodia had just ended and the war with Vietnam continued. We did not have sufficient time to legislate many laws in this short time. In addition, considering the situation Cambodia was in at the time, legislation was not a main priority.”). *See also*, T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 30 (“I was in the legislation”); T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 9 (“My role was to oversee the assembly affairs.”).

<sup>1678</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, ERN (En) 00182630 (among others POL Pot, KHIEU Samphan and NUON Chea attended this meeting where it was recommended to “not speak playfully about the Assembly in front of the people to let them see that we are deceptive, and our Assembly is worthless”).

<sup>1679</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 113-114; T. 9 May 2013 (Philip SHORT), E1/192.1, p. 70; T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 72-81 (indicating that while her and her husband were told that they had been elected, they did not know of any elections and they never went for any meeting of the Assembly); T. 10 January 2013 (UNG Ren), E1/158.1, pp. 27-28 (indicating that while he was informed about his election, he did not know of any elections being held and was never called for any meeting of the Assembly); T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 36 (indicating that he received only one message from NUON Chea convening members of the Assembly). *See* Section 5: Administrative Structures, paras 341, 412-413.

<sup>1680</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 33-37; T. 9 February 2012 (Accused NUON Chea), E3/41.1, pp. 27, 53-55; T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 27; T. 31 October 2013 (Accused NUON Chea), E1/237.1, pp. 12-13.

<sup>1681</sup> French Embassy Telegram, Subject: Invitation of Mr. Pol Pot to Peking, E3/486, 29 September 1977, ERN (En) 00658709 (official announcement on Radio Phnom Penh of the existence of CPK and POL Pot’s trip to China, also noting that NUON Chea had taken over “as acting prime minister” during POL

documents up to late 1977, including national and international news reports of meetings at the diplomatic level, confirm this appointment.<sup>1682</sup> These documents are corroborated by Witness Duch who heard a radio message announcing POL Pot's leave and NUON Chea's temporary appointment to the role of acting Prime Minister.<sup>1683</sup> Furthermore, in his interview with Stephen HEDER in 1996, IENG Sary stated that NUON Chea replaced POL Pot as DK Prime Minister in 1976.<sup>1684</sup> In addition, there is evidence that, in his capacity as acting Prime Minister, NUON Chea delivered a speech on the occasion of the 9<sup>th</sup> Anniversary of the RAK, in January 1977.<sup>1685</sup> The last reports referring to NUON Chea as acting Prime Minister of DK are dated September 1977, on

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Pot's extended absence since 26 September 1976); *Pol Pot's Temporary Sick Leave from Premiership* (in SWB/FE/5323/B collection), E3/192, 28 September 1976, ERN (En) 00003883 (statement by KHIEU Samphan, President of the State Presidium appointing NUON Chea to "replace comrade Pol Pot temporarily and assume the role of Acting Premier"). See also, *Pol Pot Takes 'Temporary' Leave from Post* (in FBIS collection), E3/280, 26 September 1976, ERN (En) 00168118; *President Nuon Chea Receives the Albanian Ambassador* (DK News Bulletin), E3/269, 11 November 1976, ERN (En) 00525825.

<sup>1682</sup> See e.g., French Ministry of Foreign Affairs Memorandum, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, ERN (En) 00525811 (referring to the temporary retirement of the Cambodian Prime Minister, POL Pot); *Nuon Chea Receives Albanian Ambassador* (in FBIS collection), E3/281, 17 October 1976, ERN (En) 00168071; French Embassy Telegram, Subject: Information and Personal Accounts on Cambodia, E3/485, 24 January 1977, ERN (En) 00519825; *Khieu Samphan, Nuon Chea Greet Pakistani National Day* (in FBIS collection), E3/285, 22 March 1977, ERN (En) 00168531; *Acting Premier Greets Burmese Counterpart on Election, Bulgarian Leaders' Message, Yugoslavia's Djuranovic and Bhutto's Message* (in FBIS collection), E3/286, 1-20 April 1977, ERN (En) 00168192 (1 April 1977 entry), 00168222 (17 April 1977 entry), 00168231 (20 April 1977 entry), 00168232 (18 April 1977 entry); *Cambodian Acting Premier's message to Burmese Premier* (in SWB/FE/5481/A3 collection), E3/263, 4-6 April 1977, ERN (En) S00004143 (4 April 1977 entry); *Leaders Greet Vietnamese on Victory Anniversary and Khieu Samphan, Nuon Chea Greet Sri Lanka Leaders* (in FBIS collection), E3/287, 3-31 May 1977, ERN (En) 00168121-00168122 (3 May 1977 entry), 00168151 (24 May 1977 entry); *Nuon Chea Greets Malaysia Leader on National Day, Cambodian Leaders Greet SRV Leaders on National Day, Burmese Foreign Minister Concludes Visit and Khieu Samphan – Nuon Chea Message* (in FBIS collection), E3/143, 22 August-8 September 1977, ERN (En) 00168724 (30 August 1977 entry), 00168727 (1 September 1977 entry), 00168729 (22 September 1977 entry), 00168738 (8 September 1977 entry).

<sup>1683</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 11. See also, T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 54-55.

<sup>1684</sup> IENG SARY Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417626 (stating that NUON Chea replaced POL Pot as Prime Minister, despite the fact that he held the position of First Deputy Prime Minister and was therefore next in line to replace POL Pot). See also, DC-Cam Article: *The True Fact About Pol Pot's Dictatorial Regime*, E3/86, 8 September 1996, ERN (En) 00081215 ("it was Nuon Chea, the personality No. 2 in the Party and then President of the National Assembly who was designated by Pol Pot to replace him as Prime Minister ad interim").

<sup>1685</sup> *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168465; *9<sup>th</sup> Anniversary of Founding of Revolutionary Army*, E3/544, 28 January 1977, ERN (En) 00005866; *Nuon Chea's speech at Army Anniversary meeting* (in SWB/FE/5417/C1 collection), E3/191, 20 January 1977, ERN (En) 00004073.

the occasion of the visit of a Burmese delegation and of the anniversary of the Democratic People's Republic of Korea.<sup>1686</sup>

540. The Chamber is therefore satisfied that from September 1976 on several occasions NUON Chea officially exercised the role of acting Prime Minister of DK, until 1977 when POL Pot resumed his duties.<sup>1687</sup>

### **7.5. Roles in Propaganda and Other Related Matters**

541. In several instances before the Chamber, NUON Chea reiterated that, within the Party Centre and throughout its existence, he had primary responsibility for propaganda-related matters as well as for education of peasants, cadres and other Party members, focusing in particular on the main principles and the economic policies of the Party.<sup>1688</sup>

542. Several witnesses testified that they attended meetings, training or study sessions at which NUON Chea appeared as the chairman, trainer or speaker. These events were held before and during the DK period at the sector, district, zone or centre levels throughout the country and in Phnom Penh, particularly at the Olympic Stadium and at Borei Keila.<sup>1689</sup> During the events, revolutionary policies were discussed, including

<sup>1686</sup> *Ieng Sary Hosts Banquet for Burmese Delegation* (in FBIS collection), E3/143, 31 August 1977, ERN (En) 00168722 (reported 1 September 1977); *Khieu Samphan-Nuon Chea Message* (in FBIS collection), E3/143, 8 September 1977, ERN (En) 00168738. *See above*, fn. 1682.

<sup>1687</sup> On appeal to the Supreme Court Chamber in Case 002/01, NUON Chea argued that the Trial Chamber had erred when finding that NUON Chea had ever exercised the role of acting Prime Minister of DK. The Supreme Court Chamber dismissed NUON Chea's arguments in this regard. *See respectively* NUON Chea's Appeal against the Judgement in Case 002/01, F16, 29 December 2014, para. 267; Case 002/01 Appeal Judgement, para. 995.

<sup>1688</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 95; T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 68-71; T. 6 December 2011 (Accused NUON Chea), E1/17.1, pp. 4-5; T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 26; T. 8 February 2012 (Accused NUON Chea), E1/40.1, p. 38. *See also*, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817.

<sup>1689</sup> T. 29 November 2016 (SENG Lytheng), E1/503.1, pp. 35-37 (stating that he guarded study sessions, taught by POL Pot and NUON Chea, at Borei Keila); T. 28 November 2016 (BEIT Boeurn), E1/502.1, pp. 21-23, 56, 66 (describing attending two major three-day study sessions, taught by POL Pot, NUON Chea and KHIEU Samphan); T. 10 November 2016 (OU Dav), E1/498.1, pp. 91-93 (describing a three-day study session at Borei Keila, where NUON Chea, "who was in charge of the military", SON Sen and Ta Mok were present "to encourage them", *i.e.* soldiers); T. 20 April 2016 (NHEM En), E1/419.1, p. 78 (describing big rallies he attended at the Olympic Stadium, where NUON Chea was also present alongside POL Pot and SON Sen); T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 45-47 (describing a study session at Borei Keila in September or October 1978, taught by NUON Chea); T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 1-3 (stating that, during the DK period, NUON Chea attended commemorative rallies on April of each year, held at the Olympic Stadium or at Borei Keila); T. 20 September 2012 (CHEA Say), E1/124.1, pp. 29-34, 37 (attending several political study sessions at the Technological Institute and at Borei Keila, taught by NUON Chea); T. 19 April 2012 (SAUT Toeung),

economic policies and cooperatives; the mobilisation of the forces through the liberated zones; self-reliance and mastery as well as vigilance against internal and external enemies; and self-criticism sessions.<sup>1690</sup> NUON Chea was also among the recipients of several telegrams from Party cadres in different areas of Cambodia. These telegrams provided situation reports on various matters, including not only the progress in the

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E1/64.1, pp. 25-29 (regularly escorting NUON Chea to host training sessions at Borei Keila); T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 34-39 (describing political trainings held by NUON Chea and POL Pot in Phnom Penh). *See also*, T. 21 November 2016 (SON Em), E1/500.1, pp. 8-9 (describing study sessions – for persons from seven sectors in the Northwest Zone – that were organised at the Party school, Battambang University, and which were chaired by NUON Chea); T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 61-62 (discussing a meeting in Kampong Thom Province in 1972, during which NUON Chea held a speech to “mobilize forces” and “build the economy”).

<sup>1690</sup> T. 29 November 2016 (SENG Lytheng), E1/503.1, pp. 35-37 (*citing* SENG Lytheng Interview Record, E3/462, p. 3, ERN (En) 00223564, where the Witness stated that at the study sessions they spoke about farming, espionage and plans for dealing with the enemy) (stating that when he guarded study sessions, taught by POL Pot and NUON Chea at Borei Keila, he could overhear their contents because they were conducted through loudspeakers); T. 28 November 2016 (BEIT Boeurn), E1/502.1, p. 23 (stating that they were taught about “the political organization”, “work leadership”, the “contents of the Revolutionary Flag magazines” and “enemy activities”, adding that POL Pot had said: “sometimes the enemies were our parents or our relatives and did we dare to smash those enemies if our parents were the enemies.”); T. 10 November 2016 (OU Dav), E1/498.1, pp. 93-94 (describing a speech of encouragement to soldiers at Borei Keila about the “American imperialist and its puppets” and stopping the “*Yuon*” from invading DK); T. 11 June 2012 (SAO Sarun), E1/84.1, p. 20 (confirming NUON Chea’s presence at the September 1978 Party Congress, where he gave presentations on the good management of people by providing housing and food); T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuong), E1/96.1, pp. 74-80 (stating that, after the liberation of Phnom Penh, NUON Chea attended meetings as an instructor and was teaching at the Vihear Preah Keo. During the study sessions, the main topic was the general situation within the country, including politics and the mass movement, the national democratic revolution and the international situation. People were also asked to criticise themselves during these meetings); T. 30 July 2012 (ROCHOEM Ton), E1/98.1, pp. 21-22 (confirming the attendance of NUON Chea in a one month Party training course in December 1976, which also included self-criticism sessions. The main topics of this course were the general situation inside and outside of the country, building the Party and the weaknesses in the implementation of the Movement); T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 74-75 (stating that NUON Chea was a speaker during a political education session for Party members at Borei Keila in June 1976. During this meeting, the evolution of the democratic revolution was discussed); T. 27 August 2012 (EM Oeun), E1/115.1, pp. 26-27 (confirming that NUON Chea spoke at a political education session; before the session started all the trainers, including NUON Chea, were introduced); T. 23 August 2012 (EM Oeun), E1/113.1, pp. 81-84 (referring to a political training session with participants from the districts at Borei Keila, during which NUON Chea spoke about the policy to strengthen the Communist and the need of identifying those who were infiltrating the internal Party. NUON Chea referred to soldiers from previous regimes, including NORODOM Sihanouk and LON Nol regimes, and intellectuals and students, particularly those who graduated abroad); T. 6 December 2011 (KLAN Fit), E1/17.1, pp. 58-59 (attending political education sessions for the Zone Committee in Phnom Penh in which NUON Chea was the lecturer or trainer. The topic of these sessions was the rebuilding of the structure of the country in order to ensure its independence); T. 29 May 2012 (NY Khan), E1/77.1, pp. 3-5 (attending a Zone assembly in the West Zone in 1975 during which NUON Chea was present. The assembly discussed the end of the war, the re-establishment of the economy as well as self-reliance and mastery); T. 21 May 2013 (PRUM Som), E1/194.1, pp. 32-36 (describing a meeting held in the North Zone during which NUON Chea introduced KANG Chap as the new Zone Chairman and spoke about rice production and the need to be vigilant against the enemies); T. 25 April 2013 (RUOS Suy), E1/184.1, pp. 52-58 (participating in study sessions during which NUON Chea said that SAO Phim and KOY Thuon were traitors). *See also*, T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 25 (“I educated people on how to strengthen security and safety against the enemy”).

implementation of the agricultural policies and the training of cadres, but also discipline and punishment of individuals.<sup>1691</sup>

543. On 9 October 1975, during a Standing Committee meeting, NUON Chea was entrusted with responsibility for “Party Affairs, Social Action, Culture, Propaganda and Education”.<sup>1692</sup> NUON Chea attended CPK Standing Committee meetings at which propaganda and education matters were discussed.<sup>1693</sup> During a meeting held on 1 June 1976 to discuss progress in propaganda-related matters, NUON Chea, identified as the Deputy Secretary of the Standing Committee, made several remarks about the performance of the Ministry of Propaganda and Information, identifying progress but also highlighting areas where improvement was needed. In particular, NUON Chea

<sup>1691</sup> See e.g., DK Telegram, E3/874, 18 July 1976, ERN (En) 00185060 (report regarding 10 sector soldiers deserting to Thailand who were linked to enemies and had criticised CPK, and requesting instructions regarding a commerce cadre who had been arrested); DK Telegram, E3/1209, May 1978, ERN (En) 00522888 (referring to “internal and external enemies”, the construction of dams and canals in the North Zone and shortage of medicine); DK Telegram, E3/1192, 12 October 1976, ERN (En) 00508560 (stating that a telegram has been received from NUON Chea, that a commerce group has been assigned for Phnom Penh); DK Telegram, E3/1222, 24 September 1976, ERN (En) 00143522 (describing the situation Kampong Som, including the arrests of people who had fled into the jungle and rice crop growing); DK Telegram, E3/1221, 25 June 1977, ERN (En) 00182769 (reporting about arrests of traitors in Kampong Cham Province); DK Telegram, E3/1200, 7 May 1977, ERN (En) 00590306 (telegram from the Agriculture Group of the Northwest Zone Secretary to the Chinese Embassy describing the request for agricultural tools for farming); DK Telegram, E3/1103, 7 November 1976, ERN (En) 00509692 (requesting approval for a comrade to travel to Phnom Penh to study radio communication coding); DK Telegram, E3/953, 2 April 1976, ERN (En) 00182658-00182660 (describing the enemy situation, health, crop production, and morale in the North Zone, including the tracking of “agents imbedded inside” and problems with fever and sickness due to “working and overheating”); DK Telegram, E3/1195, 25 November 1976, ERN (En) 00519519 (reporting on political education and technical training, and requesting permission for individuals to attend training); DK Telegram, E3/1097, 29 March 1978, ERN (En) 00377841 (reporting on the arrest of two combatants traveling without permit, and requesting guidance as to how to proceed); DK Telegram, E3/956, 25 June 1977, ERN (En) 00182769 (reporting on the arrest of 24 persons from Prey Chhor district, and request for guidance as to how to proceed); DK Telegram, E3/1189, 12 October 1976, ERN (En) 00590301 (asking for the information on the opening of a Party School); DK Telegram, E3/1663, 18 October 1976, ERN (En) 00548893 (acknowledging receipt of a telegram containing instructions regarding the four-year plans, and stating that the sector party has been informed); DK Telegram, E3/1118, 6 November 1976, ERN (En) 00436997 (requesting NUON Chea for water pumps and trucks to carry material for road construction); DK Telegram, E3/1144, 5 September 1977, ERN (En) 00517923-00517925 (discussing a number of matters including the enemy situation on the border with Thailand, the discovering of several internal enemies, including members of the LON Nol regime, farming, living conditions and re-education); DK Telegram, E3/156, 23 April 1978, ERN (En) 00296220 (reporting about the arrest and detention of a comrade for committing “immoral acts”).

<sup>1692</sup> Standing Committee Minutes, E3/183, 9 October 1975, ERN (En) 00183393.

<sup>1693</sup> Standing Committee Minutes, E3/228, 9 January 1976, ERN (En) 00182614; Standing Committee Minutes (copied by C.E. Goscha), E3/10690, 4 February 1976, ERN (En) 01313109; Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, ERN (En) 00183360; Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182715; Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324080 (13 April 1977 entry), 01324080-01324081 (10 April 1977 entry).

raised concerns about having “intellectuals” working as authors in the Ministry and stated that individuals from the base should be recruited.<sup>1694</sup>

544. Witness KHIEV En, a technician working in the Ministry of Propaganda and Information, confirmed that NUON Chea visited the Ministry and took over the responsibility for the Ministry from YUN Yat in mid-1978.<sup>1695</sup>

545. NUON Chea’s responsibility for propaganda and education-related matters included responsibility for the CPK’s internal educational magazine, the *Revolutionary Flag*.<sup>1696</sup> At trial in Case 002/01, NUON Chea made inconsistent statements concerning his participation in the publication of the *Revolutionary Flag*, first denying any involvement in its initial establishment,<sup>1697</sup> thereafter stating that the Standing Committee made the *Revolutionary Flag* and admitting that he and POL Pot were the ones who wrote it,<sup>1698</sup> and subsequently denying he authored any of the articles in the magazine or had a final say in the magazine’s publication.<sup>1699</sup> These initial and subsequent denials are unconvincing, however, in view of NUON Chea’s earlier involvement in the publication of several Party-related newspapers as well as his later description of the purposes and the resources implemented for the publication of the *Revolutionary Flag*.<sup>1700</sup>

546. According to the Closing Order, as part of his responsibility for Party affairs, propaganda and education, NUON Chea was in charge of the Organisation Committee

<sup>1694</sup> Standing Committee Minutes, E3/225, 1 June 1976, ERN (En) 00182718-00182719.

<sup>1695</sup> T. 1 October 2012 (KHIEV En), E1/127.1, pp. 32-36, 47-48, 58-59, 86-87; T. 2 October 2012 (KHIEV En), E1/128.1, pp. 6-7, 33-34, 49-50. *See also*, T. 22 August 2012 (KIM Vun), E1/112.1, pp. 37, 69-70; T. 23 August 2012 (KIM Vun), E1/113.1, pp. 29, 36-37 (stating that NUON Chea’s role at the Ministry related to agricultural education). Witness PHAN Van testified that IENG Thirith would often travel to K-3 to report to NUON Chea about matters relevant to the Ministry of Health and Social Affairs. *See* T. 12 December 2012 (PHAN Van), E1/152.1, pp. 20-21.

<sup>1696</sup> Section 6: Communication Structures, para. 476.

<sup>1697</sup> T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 5.

<sup>1698</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 73-74.

<sup>1699</sup> T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 20.

<sup>1700</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 11-12 (“But as I have said, during that time, we had nothing but to write on papers and to publish those writings and distribute them to everyone to read. The document was to be studied in order to build confidence amongst the nationalists and among the revolutionary [*sic*]. So we had, again, nothing to do but to come up with this ‘Revolutionary Flag’. So this is the rationale behind the ‘Revolutionary Flags’”); NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184663; T. 15 December 2011 (Accused NUON Chea), E1/23.1, pp. 73-74 (“The ones who made the ‘Revolutionary Flag’ were the Standing Committee, especially the Secretary of the Party. And me, myself, [*sic*] were the one who wrote it”). *See also*, T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 4; 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 8-9; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184659-00184660. *See also*, Section 6: Communication Structures, para. 476.



of the Party, responsible for organisational matters including monitoring of Party members and their induction in offices and ministries.<sup>1701</sup> In Case 002/01, the Trial Chamber found that, while there was no direct evidence of any formal appointment to this role, NUON Chea's formal responsibility for propaganda and education-related matters also extended to the discipline of cadres and other internal security matters.<sup>1702</sup> The Chamber based this finding on (i) the evidence given by Witness SALOTH Ban, POL Pot's nephew who worked at the Ministry of Foreign Affairs and had particular knowledge of the roles of POL Pot and NUON Chea and their relationship, and who testified that NUON Chea was in charge of the appointment and discipline of Party members;<sup>1703</sup> (ii) the evidence given by Witness NORNG Sophang, a CPK telegram operator who worked in several offices, and who stated that telegrams regarding the internal security situation and the violation of the Party moral code by cadres were directed to NUON Chea;<sup>1704</sup> and (iii) with regard to the responsibility for "Party Affairs, Social Action, Culture, Propaganda and Education",<sup>1705</sup> the evidence given by Duch who indicated that "Party Affairs" referred to the recruitment of new members as well as the monitoring and imposition of disciplinary actions on Party members.<sup>1706</sup> However, the Supreme Court Chamber found that this evidence was not sufficient to establish that NUON Chea had a *formal* role in these matters. Nevertheless, the Supreme Court Chamber concluded that "it is clear from the evidence before the Trial Chamber, that NUON Chea did have a role to play in that regard, although the precise contours of his involvement are not known".<sup>1707</sup>

<sup>1701</sup> Closing Order, para. 880, *citing*, among others, IENG SARY Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417611.

<sup>1702</sup> Case 002/01 Trial Judgement, paras 328-329.

<sup>1703</sup> T. 23 April 2012 (SALOTH Ban), E1/66.1, pp. 69-70; T. 30 April 2012 (SALOTH Ban), E1/70.1, p. 74.

<sup>1704</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 26-28 (indicating that matters concerning the internal security situation and the violation of moral codes was referred to NUON Chea because he was "in charge of the people"); T. 29 August 2012 (NORNG Sophang), E1/117.1, p. 50 ("But as for cultural affairs, for example if there was any moral issues among people in society, I believe it was Nuon Chea who was the person in charge"). *See also*, DK Telegram, E3/513, 23 April 1978 (reporting the "situation of the outside enemy" regarding Vietnam and the "situation inside the Party" regarding immoral acts committed by a person named Sot, then arrested and detained, to NUON Chea, amongst others).

<sup>1705</sup> *See above*, para. 543.

<sup>1706</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 98-99. *See also*, T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 74.

<sup>1707</sup> Case 002/01 Appeal Judgement, para. 997.

547. The Chamber accordingly finds that NUON Chea's responsibility for propaganda and education-related matters also extended, at least informally, to the discipline of cadres and other internal security matters.

### **7.6. Role in the Military and Security Apparatus**

548. NUON Chea denied having ever had any role or responsibility in matters concerning security, including military affairs and internal security, during DK or throughout the CPK period.<sup>1708</sup> In contrast to this testimony, the Chamber considered a great deal of evidence demonstrating that NUON Chea was involved in military and security matters both prior to and during the DK period.

#### ***7.6.1. Membership of the CPK Military Committee***

549. According to the Closing Order, during the period of Democratic Kampuchea NUON Chea was a member of the Military Committee of the CPK Central Committee and was responsible for security and military affairs.<sup>1709</sup> NUON Chea confirmed the existence of the Military Committee, but consistently denied being a member of it.<sup>1710</sup>

550. The evidence on this point in Case 002/02 was conflicting. In an interview with Stephen HEDER, IENG Sary indicated that the Military Committee existed and that NUON Chea was part of it, together with POL Pot and SON Sen, among others.<sup>1711</sup> Duch stated to the International Co-Investigating Judge in February 2016 that NUON Chea was a member of the Military Committee.<sup>1712</sup> At trial in Case 002/01, Witness SUONG Sikoeun clarified previous statements made before the Co-Investigating Judges and indicated that he heard of NUON Chea being a member of the Military

<sup>1708</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 26; T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 33; T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 12; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 35.

<sup>1709</sup> Closing Order, paras 873-879.

<sup>1710</sup> See e.g., T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 4; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 25-26; T. 12 January 2012 (Accused NUON Chea), E1/26.1, p. 40; T. 8 February 2012 (Accused NUON Chea), E1/40.1, p. 40; T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 22-24; T. 9 July 2013 (Accused NUON Chea), E1/220.1, p. 27. See also, NUON Chea Initial Appearance Record, E3/54, 19 September 2007, ERN (En) 00148817; NUON Chea Closing Brief, para. 1036.

<sup>1711</sup> IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, ERN (En) 00417606. See also, IENG Sary Interview by Elizabeth BECKER, E3/94, 22 July 1981, ERN (En) 00342501-00342502.

<sup>1712</sup> KAING Guek Eav Interview Record, E3/10607, 1 February 2016, pp. 9-10, ERN (En) 01213415-01213416.

Committee only after 1979, from articles and books he read and that he did not know personally whether NUON Chea was a member of the Military Committee of the Central Committee during the DK period.<sup>1713</sup> Expert Philip SHORT did not believe that NUON Chea was a member of the Military Committee, although he stated that through his political leadership within the Party, NUON Chea exercised control over the military.<sup>1714</sup> Similarly, discussing NUON Chea's role *vis-à-vis* the Military Committee, Expert David CHANDLER believed that, due to his position within the Party, NUON Chea exercised a prominent role in the Party policy and decision-making process, including those matters relevant to military affairs.<sup>1715</sup> During the substantive hearings in Case 002/02, the issue of whether or not NUON Chea was a member of the Military Committee was not revisited.

551. In light of the Accused's denial that he was a member of the CPK Military Committee and the inconsistencies in the evidence before the Chamber in Case 002/02, the Chamber cannot conclude beyond reasonable doubt that NUON Chea was a member of the Military Committee during the DK period.

#### 7.6.2. *Involvement in Other Military and Security-Related Matters*

552. NUON Chea was closely involved in the decision to include revolutionary violence in the Party policies and ultimately, in 1968, to initiate the armed struggle.<sup>1716</sup> There is also evidence that, during the GRUNK period, NUON Chea was appointed as the Vice-President of the High Military Command of the People's Armed Forces for

<sup>1713</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, p. 69. Witness SUONG Sikoeun previously told the OCIJ that NUON Chea was a member of the Military Committee. *See* SUONG Sikoeun Interview Record, E3/42, 6 May 2009, ERN (En) 00327218; SUONG Sikoeun Record of Interview, E3/1699, 19 December 2007, ERN (En) 00223642.

<sup>1714</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 82-84; T. 9 May 2013 (Philip SHORT), E1/192.1, pp. 37-38.

<sup>1715</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, pp. 36-37.

<sup>1716</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 86-87; T. 6 December 2011 (Accused NUON Chea), E1/17.1, p. 20; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 5, 47-49; T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 32-33; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184669-00184673. *See also*, T. 20 June 2012 (YUN Kim), E1/89.1, pp. 78-81 (stating that, in 1973, during a meeting in Phum Dar for the commune chiefs of Kratie Province, NUON Chea spoke about the enemy situation, distinguishing between American, Vietnamese and internal enemies). *See also*, Section 3: Historical Background, para. 212.

the Liberation of Kampuchea and the Chief of the Army Political Directorate, although appointments made in this context do not necessarily reflect actual authority.<sup>1717</sup>

553. NUON Chea was also involved in the procurement of arms and ammunitions for use by the movement, particularly from China, via Vietnam.<sup>1718</sup> In 1973, NUON Chea was additionally entrusted by POL Pot with the responsibility to provide security for the visit of NORODOM Sihanouk to the liberated areas in Cambodia.<sup>1719</sup> Finally, NUON Chea confirmed having participated in the planning and decision-making regarding the final attack on Phnom Penh, participating in several meetings during which the military advance of the CPNLA and the plans for the liberation of the capital in 1975 and moving to the forward command base of B-5 for the final assault of Phnom Penh were devised.<sup>1720</sup>

554. During the DK period, NUON Chea's involvement in external security matters primarily involved the escalating violence between Cambodia and Vietnam. In a meeting of the Standing Committee in March 1976, during which POL Pot was absent, NUON Chea made several comments and provided instructions concerning the border situation with Vietnam, indicating that both political and diplomatic measures were required, as well as military force.<sup>1721</sup> NUON Chea was also present and made

<sup>1717</sup> *NUFK and RGNUC Reinforced* (Vietnam Courier), E3/3709, 3 April 1972, ERN (En) S00023588. *See also, Cambodia: The Pieces Begin to Fit* (Far Eastern Economic Review), E3/1782, 21 October 1977, ERN (En) 00007521-00007522; Report by L. Trivière: *China and Cambodia*, E3/482, November 1975, E3/482, p. 12, ERN (En) 00523996.

<sup>1718</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 94-95; T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 18-20, 28-29 (indicating that he was instructed by the Central Committee to liaise with Vietnam to obtain arms and ammunition provided by China for use during the final attack on Phnom Penh); T. 8 February 2012 (Accused NUON Chea), E1/40.1, pp. 10, 13-17. *See also*, Section 3: Historical Background, para. 228.

<sup>1719</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 93-94; T. 5 December 2011 (Accused NUON Chea), E1/16.1, pp. 52-53; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 22-25; T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 35-37.

<sup>1720</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, pp. 26-30; T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 2-3; T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 14-17; T. 6 June 2013 (Accused NUON Chea), E1/202.1, pp. 37-41; NUON Chea Interview by KHEM Ngun, E3/3, undated, ERN (En) 00184673. *See also*, T. 3 October 2012 (MEAS Voeun), E1/129.1, p. 93; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 8-9; T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 44-45; T. 26 July 2012 (ROCHOEM Ton), E1/97.1, pp. 12-16, 24-25 (confirming the attendance of NUON Chea at a Central Committee meeting with zone leaders, regarding the preparation of the liberation of Phnom Penh, in June 1974 near Phum Meak village). *See also*, Section 3: Historical Background, para. 233.

<sup>1721</sup> Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182656-00182657.

comments in other Standing Committee meetings during which the border situation with Vietnam was discussed.<sup>1722</sup>

555. Numerous surviving telegrams concerning the situation on the battlefields as well as on the border with Vietnam were copied to NUON Chea.<sup>1723</sup> There is evidence that, in certain instances, NUON Chea provided comments and instructions on these matters.<sup>1724</sup>

556. NUON Chea was involved in matters relating to the activities of the military other than the conflict in Vietnam. He was present during a Standing Committee meeting held in May 1976, at which the construction of a covert weapons factory and Kampong Chhnang airfield were discussed,<sup>1725</sup> as well as at a prior meeting in February 1976, at

<sup>1722</sup> Standing Committee Minutes, E3/217, 11 March 1976; Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182695, 00182697-00182699, 00182705. *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324081-01324082 (10 April 1977 entry, noting that it is suggested that Comrade NUON should act on security and monitor “the situation in the Eastern area”).

<sup>1723</sup> DK Telegram, E3/893, 26 January 1976, ERN (En) 00182620-00182622 (reporting on a meeting with a Vietnamese delegation regarding several territory and border issues); DK Telegram, E3/871, 21 March 1976, ERN (En) 00185241 (informing Brother POL Pot on the border situation and of the capturing of Vietnamese); DK Telegram, E3/240, 15 June 1977, ERN (En) 00897667-00897668 (notifying *Angkar* of the arrest of 209 Vietnamese soldiers and requesting its comments/decision on how to proceed); DK Telegram, E3/882, 12 August 1977, ERN (En) 01313132-01313136 (notifying *Angkar* that “the Kampuchean army has committed mass killings of 1000 ordinary Vietnamese people at Ha Tien in Kien Giang province”); DK Telegram, E3/885, 24 September 1977, ERN (En) 00233793 (reporting on the situation in the battlefield); DK Telegram, E3/895, 12 November 1977, ERN (En) 00183611-00183612 (reporting on the situation along Road 22 where enemy troops were attacked); DK Telegram, E3/908, 24 December 1977, ERN (En) 00183638-00183639 (requesting *Angkar*’s instructions and decisions in accordance with the situation that arose when the *Yuon* confiscated the Memot rubber plantation and surroundings); DK Telegram, E3/243, 19 January 1978, ERN (En) 00532795-00532796 (notifying Brother Pol of the situation in Sector 23, Sector 24 and the battlefield at Road Number 22); DK Telegram, E3/1021, 3 March 1976, ERN (En) 00324803 (informing about the situation at the border on Road 19); DK Telegram, E3/976, 6 November 1977, ERN (En) 00305256 (informing that the instructions on the enemy invasion in the vicinity of Trapeang Phlong were successfully carried out with great victory and splendour); DK Telegram, E3/998, 23 March 1978, ERN (En) 00185585 (reporting on the task of smashing the enemy aggressor *Yuon* at Paung and Trapeang Phlong villages); DK Telegram, E3/155, 23 April 1978, ERN (En) 00296220 (reporting about the situation of the outside enemy and the enemies inside the Party); DK Telegram, E3/892, 29 October 1977, ERN (En) 00185189-00185190 (also reporting about the arrest of Vietnamese and inquiring whether these should be sent to Office 870); DK Telegram, E3/867, 20 March 1978, ERN (En) 00847034-00847035. Other telegrams refer to the enemy situation on the border with Thailand. *See e.g.*, DK Telegram, E3/1144, 5 September 1977, ERN (En) 00517923-00517925. *See also*, DK Telegram, E3/974, 9 March [year unavailable], ERN (En) 00003204; DK Telegram, E3/883, 27 August 1977, ERN (En) 00185185-00185186.

<sup>1724</sup> KHAM Phan Interview Record, E3/58, 21 November 2008, ERN (En) 00250089 (stating that typewritten records regarding security matters were sent to NUON Chea and that NUON Chea “regularly instructed on security matters such as to be vigilant of Vietnamese enemy or insider enemy, the ambition of Vietnam, and ideological tasks for education to the district level.”). *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324081-01324082.

<sup>1725</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1724, ft. 5838.

which several matters of national defence were debated.<sup>1726</sup> NUON Chea was present during another Standing Committee meeting held in May 1976, discussing the tasks of the army in defending and building the country, and its involvement in agricultural production.<sup>1727</sup> Finally, in addition to the telegrams concerning the battlefields and Vietnam, referred to above, NUON Chea was also the recipient of other telegrams concerning activities of the military, particularly Division 164 of the RAK.<sup>1728</sup>

557. The Special Issue of the *Revolutionary Flag* of December 1976-January 1977 reproduces a commemorative speech given on the occasion of the 9<sup>th</sup> anniversary of the RAK in Cambodia.<sup>1729</sup> At trial in Case 002/01, NUON Chea denied giving the speech and stated that SON Sen was the one who delivered it.<sup>1730</sup> Contemporaneous news reports, however, reproduce excerpts of the same speech and uniformly indicate that it was NUON Chea who delivered the speech on 16 January 1977 in his capacity as acting DK Prime Minister.<sup>1731</sup>

558. NUON Chea was also involved in the purges of cadres and military, particularly from the East Zone.<sup>1732</sup> In 1978, he participated in a meeting with other Party leaders,

<sup>1726</sup> Standing Committee Minutes, E3/222, 15 May 1976, ERN (En) 00182665-00182666; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, ERN (En) 00182625-00182627. *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324081-01324082 (10 April 1977 entry, noting that it is suggested that Comrade NUON should act on security and monitor “the situation in the Eastern area”).

<sup>1727</sup> Standing Committee Minutes, E3/224, 30 May 1976, ERN (En) 00182667-00182670.

<sup>1728</sup> DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841 (concerning the arrest of two combatants for travelling without a travel permit and identification and requesting that their commander be informed and confirm their identity); DK Telegram, E3/1135, 19 October [year unavailable], ERN (En) 00505040 (concerning the disappearance of the wife of a Division 164 cadre and bearing an annotation from SON Sen addressed to NUON Chea requesting him to take action against people suspected to be involved in this event); DK Telegram, E3/915, 31 December 1977, ERN (En) 00184995 (acknowledging receipt of instructions from the Party Centre concerning Vietnamese intruders and indicating Division 164 determination to be an absolute tool for the defence of the Party, the peasants and the country against all enemies); DK Report, E3/928, 1 April 1978, ERN (En) 00183357 (reporting on the testing of mines and requesting machine guns). *See also*, DK Telegram, E3/1222, 24 September 1976, ERN (En) 00143522; DK Telegram, E3/1223, 27 September 1976, ERN (En) 00897638; DK Telegram, E3/1224, 6 October 1976, ERN (En) 00233661; DK Telegram, E3/1225, 6 October 1976, ERN (En) 00233657; DK Telegram, E3/1226, 8 October 1976, ERN (En) 00233659. Each of these last five telegrams was copied to NUON Chea and SON Sen.

<sup>1729</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, ERN (En) 00491406-0491437.

<sup>1730</sup> T. 11 January 2012 (Accused NUON Chea), E1/25.1, pp. 33-34; T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 24-27.

<sup>1731</sup> *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168465; *9<sup>th</sup> Anniversary of Founding of Revolutionary Army*, E3/544, 28 January 1977, ERN (En) 00005866; *Nuon Chea’s speech at Army Anniversary Meeting* (in SWB/FE/5417/C1 collection), E3/191, 20 January 1977, ERN (En) 00004073.

<sup>1732</sup> Section 12.1: Internal Factions, paras 2022, 2031; Section 12.2.8: S-21 Security Centre, Prominent Prisoners and Internal Purges.

including POL Pot, SON Sen and *Ta Mok*, as well as several military commanders, during which members of the East Zone, particularly SAO Phim, were declared internal enemies of the Party to be purged. During the meeting, NUON Chea spoke of the arrest of several members of the East Zone.<sup>1733</sup>

559. Actual membership of the Military Committee was of little significance due to NUON Chea's very senior positions within the Party. The Chamber finds that NUON Chea received detailed information about and had considerable influence on DK military policy and its implementation.<sup>1734</sup>

### 7.6.3. *Supervision of S-21 Security Centre*

560. NUON Chea denied any involvement with the operation of S-21, subsequently availing himself of his right to remain silent regarding this topic.<sup>1735</sup> However, the Chamber heard considerable evidence to the contrary. As detailed in Section 12.2.6: Oversight of S-21 Security Centre, Witness Duch, who chaired the S-21 Security Office from 1976 to 1979, discussed at length NUON Chea's role in connection with internal security matters, particularly the operation of S-21. As the evidence discussed below in the relevant section demonstrates, Duch regularly reported to NUON Chea about his activities at S-21 and NUON Chea often gave him instructions with regard to confessions and the treatment of the detainees.<sup>1736</sup> More particularly, NUON Chea requested that Duch have the names of certain Party members removed from confessions accusing them of betraying the Party, including references to KHIEU

<sup>1733</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 27-28; 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 48-49, 95-96. *See also*, T. 25 April 2013 (RUOS Suy), E1/184.1, pp. 52-58 (participating in study sessions during which NUON Chea said that SAO Phim and KOY Thuon were traitors).

<sup>1734</sup> On appeal to the Supreme Court Chamber in Case 002/01, NUON Chea argued that the Trial Chamber had erred when finding that NUON Chea had considerable influence on DK military policy and its implementation. The Supreme Court Chamber dismissed NUON Chea's arguments in this regard. *See* respectively NUON Chea's Appeal against the Judgement in Case 002/01, F16, 29 December 2014, para. 251; Case 002/01 Appeal Judgement, para. 996.

<sup>1735</sup> *See e.g.*, T. 18 April 2012 (Accused NUON Chea), E1/63.1, pp. 3-4 (denying having ever been responsible for the operation of S-21, having ever received any documents from KAING Guek Eav or having ever been his supervisor), 6-7 (exercising his right to remain silent); T. 31 October 2013 (Accused NUON Chea), E1/237.1, p. 12 (indicating that he never met, supervised or gave any order to KAING Guek Eav); T. 27 April 2016 (Accused NUON Chea), E1/423.1, pp. 2-6 (when making a statement during the trial segment on the S-21 Security Centre in Case 002/02, NUON Chea only addressed Vietnam's role during and before the DK period). *See also*, NUON Chea Closing Brief, para. 417.

<sup>1736</sup> Section 12.2: S-21 Security Centre, paras 2210-2213.

Samphan.<sup>1737</sup> Duch testified that NUON Chea's involvement with the operation of S-21 intensified significantly in August 1977, after SON Sen was transferred to the border with Vietnam as the conflict with Cambodia escalated.<sup>1738</sup> A number of S-21 confessions placed on the Case File contain annotations indicating that these were forwarded to NUON Chea.<sup>1739</sup> Witness SAUT Toeung, NUON Chea's bodyguard and driver, also confirmed having delivered several documents from Duch to NUON Chea and vice versa.<sup>1740</sup> The Chamber is satisfied on this basis that NUON Chea was involved in the supervision of the operation of S-21.

### **7.7. Summary of Findings**

561. Based on the evidence cited in this Section, the Trial Chamber finds that as Deputy Secretary of the Party, and temporarily as acting Prime Minister, NUON Chea's control extended not only to political decisions, but also to the government and the administration of DK as well as to military matters. While it remains unclear whether he was a member of the Military Committee of the CPK, NUON Chea's involvement

<sup>1737</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 3-5, 39-40; T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 55-57; T. 29 March 2012 (KAING Guek Eav), E3/56.1, p. 80. *See also*, Section 12.2: S-21 Security Centre, para. 2228.

<sup>1738</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 53, 62; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 64-72; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 14, 38-39, 47; T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 110; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 92-93. *See also*, Section 4: General Overview, paras 290, 340; Section 12.2: S-21 Security Centre, para. 2209.

<sup>1739</sup> S-21 Confession – KUNG Kien alia EUNG Vet, E3/1565, 26 May 1977, ERN (En) 00182773; S-21 Confession – TIV Mei *alias* Santepheap, E3/1537, 18 September 1977, ERN (En) 00224639; S-21 Confession – CHAP Mit, E3/1688, ERN (En) 00284069; S-21 Confession – KHEK Bin *alias* Sou, E3/1706, 26 July 1977, ERN (En) 00224632; S-21 Confession – TEUT San, E3/1828, undated, ERN (En) 00767942; S-21 Confession – PHON Phal, E3/1879, 6 November 1977, ERN (En) 00182725; S-21 Confession – UM Tauy, E3/3697, 21 July 1977, ERN (En) 00822359; S-21 Confession – HEM Soth *alias* Sien, E3/1842, 18 October 1977, ERN (En) 00662317; S-21 Confession – PHENG Sun *alias* Chey, E3/3665, 13 October 1977, ERN (En) 00224634; S-21 Confession – CHUM Penh, E3/2129, 23 October 1977, ERN (En) 00769567; S-21 Confession – SAO Tong Ly, E3/1889, 18 October 1977, ERN (En) 00796688; S-21 Confession – PECH Chay, E3/1875, 9 November 1977, ERN (En) 00748373; S-21 Confession – SIENG Pauy *alias* SEAN, E3/1894, 28 October 1977, ERN (En) 00702082; S-21 Confession – CHAP Veuan, E3/1882, 18 October 1977, ERN (En) 00662308; S-21 Confession – CHEA Sreng *alias* Thal, E3/1831, 22 October 1977, ERN (En) 00831455; S-21 Confession – LUN In, E3/3689, 21 October 1977, ERN (En) 00221784; S-21 Confession – DI Leng *alias* Pheap, E/1839; S-21 Confession – EUM Chhea, E3/1841, 25 November 1977, ERN (En) 00662314; S-21 Confession – MAO Choeun *alias* Ly, E3/3645, ERN (En) 00223137; S-21 Confession – SIENG Phon *alias* Pha, E3/3648, 10 November 1977, ERN (En) 00221765; S-21 Confession – SAK Man *alias* Veuan, E3/1886, 11 November 1977, ERN (En) 00842788; S-21 Confession – CHOUT Nhe, E3/1687, ERN (En) 00758196; S-21 Confession – HANG Bau, E3/1843, 11 March 1977, ERN (En) 00746208; S-21 Confession – TAING An *alias* En, E3/1826, 31 October 1977, ERN (En) 00821424. *See also*, Section 12.2: S-21 Security Centre, paras 2217, 2229-2230.

<sup>1740</sup> T. 19 April 2016 (SAUT Toeung), E1/64.1, pp. 14-21; T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 44; T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 14-22; SAOT Toeung Interview Record, E3/423, pp. 13-14, ERN (En) 00414599-00414600. *See also*, Section 12.2: S-21 Security Centre, para. 2211.



in military and security matters was intrinsically linked with his long standing authority within the Party. NUON Chea actively participated in the decisions concerning RAK's operations, particularly concerning the war against Vietnam, and he received regular reports and gave instructions with regard to security matters, either directly or through decisions of the Party. NUON Chea's role in connection with propaganda and education also extended to and encompassed Party discipline and internal security matters, as well as more generally the enemy situation, advocating for the uncovering of enemies and their elimination. Due to his seniority within the leadership of the CPK, NUON Chea enjoyed oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period, and exercised, together with POL Pot, the ultimate decision-making power of the Party.<sup>1741</sup>

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<sup>1741</sup> On appeal to the Supreme Court Chamber in Case 002/01, NUON Chea argued that the Trial Chamber had erred when finding that NUON Chea had overseen all Party activities and exercised the ultimate decision-making authority of the Party, including in the administration of DK and military affairs. The Supreme Court Chamber dismissed NUON Chea's arguments in this regard, because they referred to a concluding paragraph that was also based on evidence cited elsewhere in the section, and was thus not based on evidence only cited in that paragraph. *See* respectively NUON Chea's Appeal against the Judgement in Case 002/01, F16, 29 December 2014, para. 260; Case 002/01 Trial Judgement, para. 348; Case 002/01 Appeal Judgement, para. 998.

## 8. ROLES AND FUNCTIONS – KHIEU SAMPHAN

562. According to the Closing Order, KHIEU Samphan was a prominent member of the Party Centre whose responsibilities included roles in Office 870, GRUNK, the DK State Presidium and the Commerce Ministry or Committee.<sup>1742</sup>

563. Upon commencement of substantive hearings in Case 002/01, KHIEU Samphan made an opening statement.<sup>1743</sup> He subsequently answered questions about his identity and personal background, and commented on certain paragraphs of the Closing Order by reading from a prepared statement.<sup>1744</sup> He also responded briefly to questions from the Chamber about specific documents on the Case File.<sup>1745</sup> Thereafter, KHIEU Samphan decided to exercise his right to remain silent and declined to respond to questions, indicating that he would do so after the presentation of all the evidence by the Co-Prosecutors.<sup>1746</sup> In May and June 2013 he answered a number of questions put to him by Civil Parties with regard to his position of responsibility during the DK period and his knowledge of crimes.<sup>1747</sup> He subsequently informed the Chamber that he was again exercising his right to remain silent.<sup>1748</sup> On 31 October 2013 KHIEU Samphan made his final statement in Case 002/01.<sup>1749</sup> Upon commencement of proceedings in Case 002/02, KHIEU Samphan did not make an opening statement but indicated that he had instructed his counsel not to participate in hearings until his appeal brief in Case 002/01 had been finalised.<sup>1750</sup> He exercised his right to remain silent during the entirety of the Case 002/02 proceedings, and made a final statement on 23 June 2017.<sup>1751</sup>

<sup>1742</sup> Closing Order, paras 1131-1152, 1536-1537.

<sup>1743</sup> T. 23 November 2011 (Accused KHIEU Samphan), E1/15.1, pp. 8-18.

<sup>1744</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 62-96.

<sup>1745</sup> T. 12 January 2012 (Accused KHIEU Samphan), E1/26.1, pp. 56, 61-62, 67-68, 71.

<sup>1746</sup> T. 12 January 2012 (Accused KHIEU Samphan), E1/26.1, p. 56; T. 16 January 2012 (Accused KHIEU Samphan), E1/27.1, pp. 77-79.

<sup>1747</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 18-24, 29, 54-55, 85-88; T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, pp. 16-18, 80-83; T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, pp. 24-25, 68-70, 109-110.

<sup>1748</sup> T. 9 July 2013 (Accused KHIEU Samphan), E1/220.1, pp. 41-43.

<sup>1749</sup> T. 31 October 2013 (Closing Statements), E1/237.1, pp. 68-73.

<sup>1750</sup> T. 17 October 2014 (Accused KHIEU Samphan), E1/242.1, pp. 74-79. *See also*, Section 2: Preliminary Issues, para. 13.

<sup>1751</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 33-38. *See also*, Section 2: Preliminary Issues, paras 47-48.

**8.1. Background Information and Pre-DK Period****8.1.1. Early Life and Career**

564. KHIEU Samphan *alias* “Haem”, “Hem” or “Nan” was born on 27 July 1931 in Chek or Rumchek commune, Rumduol district, Svay Rieng province.<sup>1752</sup> He attended primary school in Kampong Cham province, and went on to attend the Preah Sihanouk secondary or junior high school, also in Kampong Cham, where he first met SALOTH Sar (later known as POL Pot).<sup>1753</sup> After graduating from Preah Sihanouk School, KHIEU Samphan moved to Phnom Penh to attend Lycée Sisowath.<sup>1754</sup> Following his graduation in 1951, KHIEU Samphan worked as a teacher in a technical junior high school and commenced law studies in Phnom Penh.<sup>1755</sup> In 1953, he was awarded a scholarship by the Cambodian government and travelled to France to pursue further law studies.<sup>1756</sup>

565. A few months after his arrival in Paris, KHIEU Samphan joined the *Cercle Marxiste* (Marxist Circle), a discussion group founded and regularly attended by other Khmer students in France including IENG Sary, IENG Thirith, HOU Youn, OK Sakun and SON Sen.<sup>1757</sup> SALOTH Sar, who had also been involved in the Marxist Circle, had

<sup>1752</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 62-63 (acknowledging the *alias* “Hem” and clarifying that other than “Nan”, by which he went before 1975, he had no other *aliases*); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 1, ERN (En) 00156741 (giving KHIEU Samphan’s birthplace as Rom Chek); KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, p. 1, ERN (En) 00659091; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 52 (confirming that “Hem” was the revolutionary name of KHIEU Samphan); T. 9 October 2012 (MEAS Voeun), E1/132.1, pp. 94-95 (confirming that KHIEU Samphan was known as “Hem” since 1967); T. 18 July 2013 (Stephen HEDER), E1/226.1, pp. 45-46 (confirming that “Hem” was KHIEU Samphan’s *alias* between 1975 and 1979); KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089 (stating that KHIEU Samphan signed documents with the name “Hem”).

<sup>1753</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 65; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979. *See also*, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 31, ERN (En) 00396223.

<sup>1754</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 65. *See also*, Book by D. Chandler: *Brother Number One*, E3/17, p. 21, ERN (En) 00392935.

<sup>1755</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 65-66, 71.

<sup>1756</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 65, 72; KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, p. 1, ERN (En) 00659091.

<sup>1757</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 71-73; T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 66-67; T. 14 February 2012 (Key Document Hearing), E1/43.1, pp. 4-5 (playing Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414); IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, pp. 4-5, 9, ERN (En) 00182301-00182302, 00182306; Book by E. Becker: *When the War was Over*, E3/20, 1986, pp. 56-58, 62, ERN (En) 00237761-00237763, 00237767; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 120-121, ERN (En) 00396312-00396313.

returned to Cambodia in 1952 prior to KHIEU Samphan's arrival in Paris.<sup>1758</sup> Approximately two to three months after arriving, KHIEU Samphan left Paris for Montpellier, where he continued his law studies and took classes in economics.<sup>1759</sup> He continued to participate in the activities of the Marxist Circle, joining the other members of the Circle for an excursion during one summer vacation.<sup>1760</sup> In 1955, KHIEU Samphan joined the French Communist Party.<sup>1761</sup>

566. In 1956, KHIEU Samphan returned to Paris to pursue a doctorate in economics.<sup>1762</sup> He began to attend regular meetings of the Marxist Circle and, upon the departure of IENG Sary, became its leader.<sup>1763</sup> He also assumed the leadership of the *Union des Étudiants Khmers* (Union of Khmer Students or "UEK"),<sup>1764</sup> the successor to the Association of Khmer Students to which SALOTH Sar, IENG Sary, HOU Youn and THIOEUNN Mumm had belonged, and which was dissolved in 1953 by the French authorities.<sup>1765</sup>

567. In 1959, KHIEU Samphan presented his doctoral thesis entitled *L'Economie du Cambodge et ses Problèmes d'Industrialisation* (The Economy of Cambodia and its

<sup>1758</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 71; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979; Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 66, ERN (En) 00193149.

<sup>1759</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 72.

<sup>1760</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 72. *See also*, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 81, ERN (En) 00396273 (including IENG Sary and THIOEUNN Mumm).

<sup>1761</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 75; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 34, ERN (En) 00103740 (admitting that he joined the French Communist Party, but stating that he did not renew his membership card after 1957); T. 25 July 2012 (David CHANDLER), E1/96.1, pp. 46-47, 50; T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 46-47.

<sup>1762</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 72.

<sup>1763</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 72-73 (stating that he was given the leadership of the Circle as "there was no other choice" for IENG Sary, since "[t]hose who were strong believers and active, such as OK Sakun and SON Sen [had] all returned to Cambodia"); T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 66-67 (stating that KHIEU Samphan accepted him as a member of the Circle); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 120-121, ERN (En) 00396312-00396313.

<sup>1764</sup> T. 21 May 2013 (Philippe JULLIAN-GAUFRES), E1/194.1, p. 62; T. 2 August 2012 (SUONG Sikoeun), E1/101.1, p. 75.

<sup>1765</sup> T. 2 August 2012 (SUONG Sikoeun), E1/101.1, p. 70 ("The Khmer student's [*sic*] union was formed by the progressive students and the decision was made voluntarily. And we, [...] the youth who were patriotic, were very concerned [for] the fate of our country."). *See also*, THIOEUNN Mumm Interview Record, E3/5304, 4 June 2009, p. 2, ERN (En) 00345231; ONG Thong Hoeung Interview Record, E3/97, 22 November 2008, p. 4, ERN (En) 00287100; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 48-49, 51-52, ERN (En) 00396240-00396241, 00396243-00396244; Book by In S.: *Khieu Samphan: Agrandi et Réel*, E3/4602, p. 26, ERN (Fr) 00906762.

Problems of Industrialisation) at the University of Paris.<sup>1766</sup> In his thesis, KHIEU Samphan characterised the Cambodian economy as “backward” and underdeveloped, partly as a result of “international integration”, and proposed fundamental structural reforms (such as a state monopoly on foreign trade, the reduction of land rents and a new agrarian credit system) aimed at fostering a more self-sufficient nation.<sup>1767</sup> He wrote that it was necessary to drive “landlords, retailers and usurers” away from their “unproductive activities” and “encourage them to participate in production”, and to “transfer capital from the hyperactive commercial sector into more directly productive sectors”.<sup>1768</sup> He also suggested that “[m]ethodical organisation of the peasant force, into mutual aid teams and then into cooperatives, will magnify its effectiveness ten times over and make possible the clearing of new land, its irrigation, and its draining”.<sup>1769</sup>

568. The dissertation emphasised the importance of industrialisation and technology for Cambodia’s economic development, and did not advocate the abolition of currency or private property.<sup>1770</sup> The Chamber agrees with Expert Philip SHORT that while in some respects the ideas expressed in KHIEU Samphan’s thesis prefigured aspects of CPK ideology, it was not a “blueprint” for the policies that were ultimately enacted during the DK period.<sup>1771</sup>

569. Not long after his return to Cambodia in 1959, KHIEU Samphan founded *L’Observateur*, a French-language newspaper, publication of which was targeted at the upper stratum of Cambodian society and contained a critique of the political landscape under NORODOM Sihanouk while unequivocally supporting his policy of neutrality.<sup>1772</sup> KHIEU Samphan denied that the newspaper was communist publication,

<sup>1766</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 74; Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, March 1979, ERN (En) 00750554-00750664.

<sup>1767</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 74; Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, March 1979, pp. 44, 48, 58, 75-80, 100-102, ERN (En) 00750577, 00750581, 00750591, 00750608-00750613, 00750633-00750635.

<sup>1768</sup> Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, March 1979, pp. 74-75, ERN (En) 00750607-00750608.

<sup>1769</sup> Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, March 1979, p. 104, ERN (En) 00750637.

<sup>1770</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 74-75; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 54. *See generally*, Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, March 1979.

<sup>1771</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 51; T. 9 May 2013 (Philip SHORT), E1/192.1, pp. 51-53.

<sup>1772</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 76-77; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 6, ERN (En) 00103726. *See also*, T. 6 May 2013 (Philip SHORT), E1/189.1, p. 52 (stating that the publication “made

but conceded that some of its major material and financial backers (including IENG Thirith, HU Nim and HOU Youn) were indeed aligned with the communist movement in Cambodia.<sup>1773</sup> As a result, KHIEU Samphan was monitored, interrogated and repeatedly harassed by the authorities; in one instance being assaulted in the street outside his office by agents of the secret police.<sup>1774</sup> In 1960, KHIEU Samphan was arrested and detained without charge for over a month and *L'Observateur* was closed down along with other leftist newspapers.<sup>1775</sup>

570. In 1962, KHIEU Samphan was elected to the National Assembly as a member of Sangkum for the district of Saang in Kandal province and was appointed as Secretary of State for Commerce.<sup>1776</sup> KHIEU Samphan suggested that this endorsement and appointment was an attempt by NORODOM Sihanouk to win him over to the government's side in order to gain favour with communist states or take advantage of

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a serious impression on the intelligentsia of Phnom Penh"); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 51; T. 7 December 2012 (HUN Chunnly), E1/150.1, pp. 107-108.

<sup>1773</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 76-78 (stating that "my newspaper was not a Communist one, and it was not financed by the Communists", but naming HU Nim and HOU Youn (among others) as those "friends who[m] I kn[e]w while I was in France" who had recommended he "publish a newspaper as a voice for the intellectuals, the professors and the civil servants"); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 6, ERN (En) 00103726; T. 6 May 2013 (Philip SHORT), E1/189.1, p. 52. *See also*, IENG Thirith Interview by Elizabeth BECKER, E3/21, October-November 1980, p. 19, ERN (En) 00147639 ("It was Khieu Samphan [that was the] Chief Editor and it was with my money that they published [L'Observateur]"); Book by E. Becker: *When the War Was Over*, E3/20, 1986, pp. 87-88, ERN (En) 00237792-00237793. It is possible that KOY Thuon worked as a journalist at *L'Observateur* during this time. *See* Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, p. 291, ERN (En) 00193382; S-21 Confession – KOY Thuon, E3/3856, 3 March 1977, p. 4, ERN (En) 00829630.

<sup>1774</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 76, 78-80; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, pp. 2-3, ERN (En) 00659101-00659102; KHIEU Samphan Interview by Radio Free Asia, E3/582, 7 December 2007, p. 1, ERN (En) 00659104; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177968-00177972. *See also*, IENG Sary Interview by *Courrier du Vietnam*, E3/111, 31 January 1972, pp. 16-17, ERN (En) 00762420; Book by E. Becker: *When the War Was Over*, E3/20, 1986, p. 90, ERN (En) 00237795.

<sup>1775</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 80; IENG Sary Interview by *Courrier du Vietnam*, E3/111, 31 January 1972, p. 16, ERN (En) 00762420; Book by E. Becker: *When the War Was Over*, E3/20, 1986, p. 90, ERN (En) 00237795; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 134, ERN (En) 00396334.

<sup>1776</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 83-84; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 7, ERN (En) 00103726; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177970; KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, p. 1, ERN (En) 00659091. HU Nim and HOU Youn were also elected to the National Assembly as Sangkum members. *See also*, Section 3: Historical Background, para. 205.

his economic qualifications.<sup>1777</sup> In his new role, KHIEU Samphan began to draft and implement economic reforms aimed at curbing inflation and regulating trade.<sup>1778</sup>

571. In March 1963, KHIEU Samphan was among 34 known and suspected leftists denounced by NORODOM Sihanouk and challenged to form a new government.<sup>1779</sup> As a result of the political turmoil, KHIEU Samphan lost his ministerial portfolio but retained his seat in the National Assembly.<sup>1780</sup> In 1966, KHIEU Samphan was re-elected to the National Assembly for a second term.<sup>1781</sup>

### 8.1.2. CPK Membership

572. In April 1967, NORODOM Sihanouk publicly accused KHIEU Samphan, HU Nim and HOU Youn of fomenting a peasant uprising in the village of Samlaut, Battambang province, and threatened to have them court-martialled.<sup>1782</sup> Fearing for their safety, the three men fled Phnom Penh and, at the invitation of the CPK, took refuge in the countryside near Ang Tasom, Takeo province, under the protection of *Ta Mok*.<sup>1783</sup>

573. Between 1967 and 1970, KHIEU Samphan moved from village to village in and around Kampong Speu, Kampong Chhnang and Takeo provinces, aided by the

<sup>1777</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 84 (“[T]he exact intent of Samdech Sihanouk was to buy my heart”); KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103 (noting that NORODOM Sihanouk “tried to gain support from communist countries” at the time). *See also*, Book by E. Becker: *When the War Was Over*, E3/20, 1986, p. 96, ERN (En) 00237801.

<sup>1778</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 84-86; Book by E. Becker: *When the War Was Over*, E3/20, 1986, pp. 96-97, ERN (En) 00237801-00237802.

<sup>1779</sup> Section 3: Historical Background, para. 207.

<sup>1780</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 86-87; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 13-14, ERN (En) 00103729-00103730; Book by E. Becker: *When the War Was Over*, E3/20, 1986, p. 101, ERN (En) 00237806; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 151, ERN (En) 00396351.

<sup>1781</sup> KHIEU Samphan Interview by Radio Free Asia, E3/579, 12 December 2007, pp. 1-2, ERN (En) 00659091-00659092; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177964; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 16, ERN (En) 00762420; Book by E. BECKER: *When the War Was Over*, E3/20, 1986, pp. 101-102, ERN (En) 00237806-00237807.

<sup>1782</sup> Section 3: Historical Background, para. 211.

<sup>1783</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 87-88; Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 31, ERN (En) 00498250; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 21-23, 25-26, ERN (En) 00103733-00103734, 00103735-00103736; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177978-00177979; KHIEU Samphan Interview by Radio Free Asia, E3/581, 6 December 2007, p. 4, ERN (En) 00659103; T. 25 July 2012 (David CHANDLER), E1/96.1, pp. 40-41; T. 9 May 2013 (Philip SHORT), E1/192.1, p. 54; T. 9 October 2012 (MEAS Voeun), E1/132.1, pp. 40, 44.

clandestine CPK network.<sup>1784</sup> In 1969, he spent time with *Ta Mok* at the latter's headquarters near Aoral Mountain in Kampong Speu province.<sup>1785</sup> Although IENG Sary and NUON Chea suggested that KHIEU Samphan was already a member of the CPK before this time,<sup>1786</sup> their evidence was not consistent and did not give the Chamber sufficient reason to doubt KHIEU Samphan's testimony that he was inducted as a Party member by *Ta Mok* in 1969.<sup>1787</sup> Regardless of the precise date of his induction to the CPK, the Chamber is satisfied that by 1970, KHIEU Samphan was personally acquainted with returned students who would later occupy prominent positions in the CPK, including IENG Sary, IENG Thirith, SON Sen, HOU Youn, HU Nim, OK Sakun and THIOEUNN Mumm.

574. KHIEU Samphan became a candidate member of the CPK Central Committee in 1971 at the Party's Third Congress,<sup>1788</sup> and a full-rights member at the Fourth Congress in 1976.<sup>1789</sup>

<sup>1784</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 23, 27, ERN (En) 00103734, 00103736.

<sup>1785</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 89, 91; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 36, ERN (En) 00103741; KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 3-4, ERN (En) 00156743-00156744; T. 3 October 2012 (MEAS Voeun), E1/129.1, pp. 105-106.

<sup>1786</sup> IENG Sary interview by Stephen HEDER, E3/89, 17 December 1996, p. 32, ERN (En) 00417630 ("SH: What year did KHIEU Samphan join *the Party*? IS: In 1955" [emphasis added]); NUON Chea Interview by KHEM Ngun, E3/3, undated, p. 16, ERN (En) 00184667 (listing KHIEU Samphan as having been on the Central Committee in 1963). *See above*, para. 565 indicating that KHIEU Samphan joined the *French Communist Party* in 1955.

<sup>1787</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 91 ("In -- up to 1969 and at the Phnom Aoral Mountain, I joined the Party with Hu Nim, Pok Deuskomar, where *Ta Mok*, on behalf of the CPK, introduced us"); T. 8 February 2012 (Accused KHIEU Samphan), E1/40.1, p. 22; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 19 (stating that he "had no choice but to join the [CPK]" after fleeing Phnom Penh).

<sup>1788</sup> Section 3: Historical Background, para. 226.

<sup>1789</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 87; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 140, ERN (En) 00103793; Letter by Khieu Samphan: *To All My Compatriots*, E3/205, 16 August 2001, ERN (En) 00149526. *See also*, T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 43; IENG Sary Interview Notes by Stephen HEDER, E3/573, 4 January 1999, ERN (En) 00427599. KHIEU Samphan's membership of the Central Committee was confirmed by witnesses and experts who testified at trial. *See* T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 47-48; T. 10 July 2013 (Stephen HEDER), E1/221.1, p. 76; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 43; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 73; T. 26 April 2012 (SALOTH Ban), E1/69.1, p. 3. *See also*, T. 24 July 2012 (David CHANDLER), E1/95.1, pp. 113-115.



8.1.3. *1970 – 17 April 1975*

575. Following the overthrow of his government by LON Nol in 1970, NORODOM Sihanouk announced the formation of FUNK.<sup>1790</sup> POL Pot sent NORODOM Sihanouk a message of support in the names of KHIEU Samphan, HU Nim and HOU Youn,<sup>1791</sup> allegedly without their knowledge.<sup>1792</sup> While no further evidence sheds light on their exact involvement in this correspondence, the Chamber notes that KHIEU Samphan later neither denied his support for FUNK nor sought publicly to clarify his role. At some point between March and September 1970, KHIEU Samphan, HU Nim and HOU Youn moved from *Ta Mok*'s Aoral Mountain base to the CPK senior leaders' headquarters at S-71 near the Stung Chinit River.<sup>1793</sup> While NUON Chea testified that he met KHIEU Samphan at Mount Aoral,<sup>1794</sup> KHIEU Samphan has consistently maintained that it was at S-71 that he first met NUON Chea and POL Pot, revealed then to be his former classmate, SALOTH Sar.<sup>1795</sup> In the absence of further evidence, these competing accounts did not permit a definitive finding on the location of their first meeting. Nevertheless, the Chamber deems the precise location to be inconsequential and has no reason to doubt KHIEU Samphan's account concerning the timing of his introduction to NUON Chea. It is satisfied that KHIEU Samphan, NUON Chea and POL Pot were acquainted with each other as CPK members by September 1970, at latest.

<sup>1790</sup> Section 3: Historical Background, para. 218.

<sup>1791</sup> Section 3: Historical Background, para. 219.

<sup>1792</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 89 ("I was appointed by Saloth Sar as the Deputy Prime Minister and Minister of Defence. I only heard all this information only via the radio broadcast."), 94-95 (referring to the letter of support and his appointment: "I was not even aware of that myself. [...] I was seen from the outside that I was holding the senior position, but I did not participate in any decision-making processes."). See also, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 200, ERN (En) 00396400 (opining that the selection of the "Three Ghosts" as the face of the movement was an "astute move" considering the respect, probity and courage that the men engendered in society).

<sup>1793</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 39, ERN (En) 00103742 (indicating that they left Mount Aoral "immediately after the coup of March 1970"); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 4, ERN (En) 00156744 (stating that they went to the Chinit river area "around September 1970").

<sup>1794</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 46 ("I believe I met [KHIEU Samphan] in the forest. [...] [T]o my recollection, it was somewhere around Aoral Mountain").

<sup>1795</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 4, ERN (En) 00156744; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 39-40 (stating that IENG Sary was assumed to be the secretary of the CPK), ERN (En) 00103742-00103743; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177979-00177980. See above, para. 564.

576. Between May and August 1970, KHIEU Samphan was named GRUNK Deputy Prime Minister and Minister of National Defence.<sup>1796</sup> KHIEU Samphan conceded in a publication that he played “an important, if not an indispensable” role as a liaison between the CPK and NORODOM Sihanouk at this time,<sup>1797</sup> clarifying that he was the only person who could forge relations as NORODOM Sihanouk was not acquainted with POL Pot.<sup>1798</sup> Further, according to his own statement, he was also named Deputy Chairman of FUNK.<sup>1799</sup> KHIEU Samphan was not consulted prior these appointments.<sup>1800</sup> He claimed that despite his official positions, he never actually held any military or executive authority, and in particular that it was POL Pot who was in charge of the armed forces.<sup>1801</sup> He further stated that as an “intellectual” of the “feudal class”, he was neither trusted nor considered to be a true Party member at the time,

<sup>1796</sup> Section 3: Historical Background, para. 220.

<sup>1797</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 42, ERN (En) 00103744; T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 92-93.

<sup>1798</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745 (“And when [FUNK] was established after the *coup d'état* in 1970, Prince Norodom Sihanouk knew neither POL Pot nor Ta Mok. I was the only one who could establish relations with the prince.”).

<sup>1799</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745. While KHIEU Samphan refers to himself as having been appointed as “deputy chairman of [FUNK]” (emphasis added) after the 1970 *coup d'état*, the Chamber does not have before it evidence corroborating his appointment to such position but finds that he played an important role both as minister of GRUNK and a member of FUNK. See also, *Khieu Samphan Chairs NUFC Congress Session; Communiqué Issued* (in FBIS collection), E3/488, 26 February 1975, ERN (En) 00166772-00166775.

<sup>1800</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 103-105 (“I don’t believe that Mr. Khieu Samphan was consulted [upon the formation of GRUNK]. I don’t believe that his personal opinion was actually elicited. I don’t believe this. Pol Pot was in Peking at the time. [...] Khieu Samphan was in Kampong Thom, and any communication with Sihanouk would have gone through Ieng Sary, it would have gone through the Chinese.”).

<sup>1801</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 90-91; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 55, 85-87; T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, pp. 17, 82; T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, pp. 24-25; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177968. See also, T. 6 May 2013 (Philip SHORT), E1/189.1, p. 71 (“I think it’s absolutely not true that none of them [KHIEU Samphan, HU Nim and HOU Youn] had any military command responsibilities; their role in decision-making, likewise”); T. 25 April 2012 (SALOTH Ban), E1/68.1, p. 45 (“Q. Did Mr. Khieu Samphan have military responsibilities before the attack on Phnom Penh? A. No, he did not”); T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 54 (“The role of Khieu Samphan as the commander-in-chief, I saw that it was a mere symbolic role; it was merely nominal. Actually, the Party was the one who was in command of the army. All armies, all soldiers were under the control of Pol Pot, and it was under his exclusive control.”), 58 (Khieu Samphan’s “appointment as the deputy prime minister of GRUNK and the Commander-in-Chief [of the] Army was merely to build confidence among [the] international community that the leader of this position was a trustworthy person”); T. 22 April 2013 (CHHOUK Rin), E1/181.1, p. 45 (testifying that he heard from Ta Mok that Khieu Samphan was an “intellectual” and that “he was a nominal leader”); T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 88 (regarding Khieu Samphan’s authority to issue orders: “It was none. Mr Khieu Samphan was never heard to have ordered any military or I can say that he had no authority over the military because I worked as a soldier. I could have known if such [an] order was rendered from him.”); Book by E. Becker: *When the War was Over*, E3/20, 1986, p. 139, ERN (En) 00237844; THIOEUNN Prasith Interview Record, E3/96, 8 June 2009, p. 8, ERN (En) 00346945 (referring to the title of commander-in-chief as “a bogus title, because Pol Pot was the actual commander” prior to 1975).

explaining that unlike other Central Committee members, he was not given responsibility over an administrative zone or military unit.<sup>1802</sup> On the evidence before it and consistent with the following findings, the Chamber accepts KHIEU Samphan's assertions that his appointments to governmental positions and, in particular, military posts, were nominal and entailed no actual military authority or responsibility between 1970 and 1975.

577. By the early 1970s, KHIEU Samphan, HU Nim and HOU Youn – also GRUNK ministers at this time<sup>1803</sup> – collectively became the public face of the CPK-dominated resistance movement.<sup>1804</sup> By September 1971, KHIEU Samphan was named Commander-in-Chief of CPNLAF,<sup>1805</sup> a position which he had nominally occupied since his appointment as Minister of National Defence.<sup>1806</sup>

<sup>1802</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 92-93, 95; T. 12 January 2012 (Accused KHIEU Samphan), E1/26.1, p. 67 (“I was tolerated. I was [...] not supposed to be a member of the [Central Committee] because I was from the feudal class”); T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 19 (“I was considered useless”), 24, 87; T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, p. 17. *See also*, KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 4, ERN (En) 00156744; Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882; Letter by Khieu Samphan: *To All My Compatriots*, E3/205, 16 August 2001, ERN (En) 00149526.

<sup>1803</sup> Section 3: Historical Background, para. 220.

<sup>1804</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 8 May 2013 (Philip SHORT), E1/191.1, p. 35; T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 78-79; NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, p. 21, ERN (En) 00762393; New York Times (abstract), *Composition of Norodom Sihanouk's Govt in Exile*, E3/3705, 9 May 1970, ERN (En) 00122085; Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 16, ERN (En) 00524000; Article by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, p. 5, ERN (En) 00002750. *See also*, ROCHOEM Ton Interview Record, E3/24, 5 December 2007, p. 3, ERN (En) 00223580; IENG Sary Interview by Courrier du Vietnam, E3/111, 31 January 1972, p. 17, ERN (En) 00762420.

<sup>1805</sup> US Department of State Airgram, *New FUNK/GRUNK Personalities*, E3/1717, 30 September 1971, ERN (En) 00419034. *See also*, *Talks Concluded, Communique Signed* (in FBIS collection), E3/30, 2 January 1975, ERN (En) 00166670; GRUNK Publication, *Members of the G.R.U.N.K.*, E3/1239, 18 January 1975, ERN (En) 00280597.

<sup>1806</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 90 (referring to his initial appointment: “it was Pol Pot who appointed me to [...] Deputy Prime Minister, a Prime [*sic*] Minister of Defence of nothing or the *Military Commander* of nothing” [emphasis added]); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745 (referring to his appointments after the 1970 *coup d'état*: “My official title was [...] commander-in-chief of the People's Liberation Army of Kampuchea”); T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/100.1, p. 98 (“I knew that, after the *coup d'état* and after the organisation of the FUNK, [KHIEU Samphan] was the commander-in-chief of the military”). *See also*, T. 2 May 2013 (LIM Sat), E1/187.1, pp. 9-10 (“I believe that the senior leaders [between 1971 and 1975] [...] include[d] Mr. Khieu Samphan, who was in charge of the military in Cambodia”); T. 3 May 2013 (LIM Sat), E1/188.1, p. 41 (“I did not know [KHIEU Samphan's] specific role or function, but he was in charge of the military for the entire country [between 1971 and 1975]”).

578. From about this time, KHIEU Samphan assisted with the preparation of FUNK propaganda materials, helped to conduct political training sessions<sup>1807</sup> and issued press statements and radio appeals (sometimes jointly with HU Nim and HOU Youn) urging the population to join or support the resistance movement against LON Nol's republican regime.<sup>1808</sup>

579. KHIEU Samphan accompanied POL Pot and NUON Chea on tours of the countryside and CPK-“liberated” areas in 1971 and 1972.<sup>1809</sup> In February 1973, he received NORODOM Sihanouk upon the latter's visit to Cambodia and accompanied him during a two-month visit of Khmer Rouge-held areas in March and April.<sup>1810</sup>

580. Between March 1973 and May 1974, KHIEU Samphan headed FUNK and GRUNK delegations in his capacity as Deputy Prime Minister and partook in official visits to countries including North Vietnam,<sup>1811</sup> China,<sup>1812</sup> North Korea,<sup>1813</sup> Albania, Yugoslavia, Romania, Algeria, Mauritania, Cameroon, Egypt and Syria to seek support

<sup>1807</sup> T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, pp. 93-94, 96-97; T. 21 August 2012 (KIM Vun), E1/111.1, pp. 68-70; T. 22 August 2012 (KIM Vun), E1/112.1, pp. 85-86.

<sup>1808</sup> US Embassy Telegram, Subject: Cambodian Sitrep, E3/3292, 1 October 1970, p. 3, ERN (En) 00418909; US Embassy Telegram, Subject: Khmer Report, E3/3294, 8 November 1971, p. 4, ERN (En) 00418938; Statement by Khieu Samphan, Hu Nim and Hou Youn, E3/116, 9 September 1972; Statement by Khieu Samphan, Hu Nim and Hou Youn, E3/637, January 1973, ERN (En) 00740931-00740938. *See also*, Viet Nam-Cambodia Joint Communiqué (Peking Review), E3/1603, 3 November 1972.

<sup>1809</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 49, ERN (En) 00103747; *Special Report*, E3/637, undated, ERN (En) 00740939-00740943 (garnering support for GRUNK in “liberated” areas, supporting irrigation projects, dam construction and the cultivation of dry season paddy).

<sup>1810</sup> T. 10 June 2013 (SO Socheat), E1/204.1, pp. 60-61; Documentary by D. Aronowitsch and S. Lindberg: Facing Genocide—Khieu Samphan and Pol Pot, E3/4201R, ERN V00720414, 00:20:25-00:21:07 (depicting KHIEU Samphan meeting NORODOM Sihanouk). *See also*, T. 14 December 2011 (Accused NUON Chea), E1/22.1, p. 22; T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 80-81; Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 14, ERN (En) 00523998.

<sup>1811</sup> *AKI Hails DRV-RGNC Relations, Friendship Associations* (in FBIS collection), E3/488, 13 February 1975, ERN (En) 00166754 (referring to visit by KHIEU Samphan and IENG Sary in March 1973); FUNK Publication, *Nouvelles du Cambodge* (No. 691), E3/1238, 31 March-1 April 1974, ERN (En) 00278739-00278741; FUNK Publication, *Nouvelles du Cambodge* (No. 692), E3/1242, 1-2 April 1974, ERN (En) 00322962-00322967.

<sup>1812</sup> FUNK Publication, *Nouvelles du Cambodge* (No. 693), E3/113, 2-3 April 1974, ERN (En) 00280540-00280546; FUNK Publication, *Nouvelles du Cambodge* (No. 708), E3/115, 21 April 1974, ERN (En) 00280594; US Embassy Telegram, Khmer Report, E3/195, 9 April 1974, ERN (En) 00412705; US Embassy Telegram, Subject: Khieu Samphan Visit to the PRC, E3/2939, 28 May 1971, ERN (En) 00377049-00377052.

<sup>1813</sup> FUNK Publication, *Nouvelles du Cambodge* (No. 696), E3/114, 6-7 April 1974, ERN (En) 00280552-00280555; FUNK Publication, *Nouvelles du Cambodge* (No. 697), E3/1255, 9 April 1974, ERN (En) 00280564-00280570; FUNK Publication, *Nouvelles du Cambodge* (No. 698), E3/167, 10 April 1974, ERN (En) 00280572-00280578, 00280590; US Embassy Telegram, Khmer Report, E3/195, 9 April 1974, ERN (En) 00412705; US Embassy Telegram, Subject: April 30 EA Press Summary, E3/3312, 30 April 1974, ERN (En) 00412748.

for FUNK and diplomatic recognition of GRUNK.<sup>1814</sup> In December 1974, KHIEU Samphan also received a visiting delegation from the People's Revolutionary Government of the Republic of South Vietnam.<sup>1815</sup> In late January 1975, KHIEU Samphan was appointed as Chairman of the Cambodia-Vietnam Friendship Association.<sup>1816</sup>

581. As Khmer Rouge forces advanced on Phnom Penh, KHIEU Samphan issued press and radio statements extolling CPNLF victories, denouncing the “seven traitors” of the LON Nol republican government,<sup>1817</sup> impelling their overthrow and variously calling for their “annihilation” or execution.<sup>1818</sup> On 26 February 1975, a FUNK press release announced that a FUNK “National Congress”, purportedly held on 24 and 25 February and chaired by KHIEU Samphan, had declared it “absolutely necessary to kill [the] seven traitors”.<sup>1819</sup> Although the evidence before the Chamber did not

<sup>1814</sup> FUNK Publication, *Nouvelles du Cambodge* (No. 708), E3/115, 22 April 1974, ERN (En) 00280595-00280596; FUNK Publication, *Nouvelles du Cambodge* (No. 709), E3/792, 22-23 April 1974, ERN (En) 00290857-00290859; US Embassy Telegram, Subject: April 30 EA Press Summary, E3/3312, 30 April 1974, ERN (En) 00412748; US Embassy Telegram, Subject: French Reports Concerning Cambodia, E3/3318, 8 May 1974, ERN (En) 00412775; Monograph by L. Trivière: *China and Cambodia*, November 1975, E3/482, p. 23, ERN (En) 00524007; T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 87-89; T. 22 May 2013 (CHAU Sockon), E1/195.1, pp. 62-63.

<sup>1815</sup> *PRGRS-NFLSV Delegation Visits 25-29 Dec* (in FBIS collection), E3/30, 6 January 1975, ERN (En) 00166668-00166670.

<sup>1816</sup> *New Cambodia-Vietnam Friendship Association Committee Formed* (in FBIS collection), E3/30, 27 January 1975, ERN (En) 00166728-00166729.

<sup>1817</sup> Section 3: Historical Background, para. 231.

<sup>1818</sup> *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, ERN (En) 00166661 (urging “the most vigorous and most powerful offensive against the enemy” to “overturn the regime of the traitorous Phnom Penh clique”); *Khieu Samphan 14 Jan Message to CPNLF Fighters* (in FBIS collection), E3/30, 15 January 1975, ERN (En) 00166710 (“This clique cannot escape complete annihilation by our CPNLF and people in the near future”); *Khieu [sic] Samphan Issues Appeal to Compatriots, Monks* (in FBIS collection), E3/30, 24 January 1975, ERN (En) 00166722 (calling for an uprising and overthrow of the republican regime); *RGNUC's Khieu Samphan Greets PLAF Anniversary* (in FBIS collection), E3/488, 15 February 1975, ERN (En) 00166761 (urging the population to “annihilate” the “seven traitors”); *Khieu Samphan Appeals for Intensified Struggle 15 March* (in FBIS collection), E3/120, 15 March 1975, ERN (En) 00166828 (“You are asked [...] to put an end to the traitors' existence [...]. The time has come for us to put an end to the existence of the traitors.”); *RGNUC Cabinet Issues 25 March Communique – Appeal* (in FBIS collection), E3/120, 26 March 1975, ERN (En) 00166874 (“With regard to the seven traitors [...], the national congress decided that the existence of the fascist, rotten traitors must be ended at all costs because they have committed monstrous crimes”); *Khieu Samphan Appeals to Phnom Penh Citizens to Join NUFC 14 Apr* (in FBIS collection), E3/118, 14 April 1975, ERN (En) 00166948-00166949.

<sup>1819</sup> *Khieu Samphan Chairs NUFC Congress Session; Communique Issued* (in FBIS collection), E3/488, 26 February 1975, ERN (En) 00166772-00166775 (“On behalf of the [FUNK], [GRUNK] and CPNLF, the national congress declares it absolutely necessary to kill these seven traitors for their treason against the nation”), ERN (En) 00166773 (impelling the destruction of all republican administrative, civilian and military apparatuses and urging countrymen to turn “your guns against them”). See also, T. 30 July 2012 (ROCHOEM Ton alias PHY Phuon), E1/98.1, p. 66; *DK Telegram*, E3/189, 18 March 1975, ERN (En) 00894298-00894301 (telegram from GRUNK Minister for Foreign Affairs to United Nations Secretary-General).

conclusively establish that such a meeting took place,<sup>1820</sup> KHIEU Samphan referred to the 1975 Congress and the decisions reportedly reached there in a speech he delivered the following year.<sup>1821</sup> Shortly before the fall of Phnom Penh, KHIEU Samphan relocated to B-5 in Tang Poun village, Kampong Chhnang province, to “follow the last offensive against the capital more closely”.<sup>1822</sup>

582. The Chamber is satisfied that, as a longstanding political figure,<sup>1823</sup> KHIEU Samphan played an important role in winning support for the revolutionary movement between 1970 and 1975. His appointment to key posts in GRUNK including that of Deputy Prime Minister, role in reassuring the public about the CPK’s plans, performance of diplomatic duties, role in liaising with NORODOM Sihanouk, work in preparing and disseminating propaganda material and calls for violent struggle against the LON Nol regime in publicly-broadcasted speeches all served to lend and bolster the legitimacy of the CPK-dominated resistance movement.

8.1.3.1. Attendance at June 1974 Central Committee meeting and April 1975 meeting of CPK leaders

583. In June 1974, the CPK Central Committee met in Meak village, Prek Kok commune to discuss plans for the final assault, liberation and evacuation of Phnom Penh and other urban centres.<sup>1824</sup> The Chamber received conflicting accounts about KHIEU Samphan’s attendance at the meeting. Witness ROCHOEM Ton *alias* PHY Phuon testified that KHIEU Samphan was present at this meeting, along with POL Pot, NUON Chea, IENG Sary and other Zone Secretaries.<sup>1825</sup>

584. PHY Phuon did not provide an account of the impugned 1974 meeting in his interviews with OCIJ investigators.<sup>1826</sup> Instead, he clearly described senior Party

<sup>1820</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 104-106 (stating that no other evidence indicated that this congress took place, likening the broadcast to the letter of support issued to FUNK in the names of KHIEU Samphan, HU Nim and HOU Youn, and querying whether KHIEU Samphan had in fact drafted the broadcast).

<sup>1821</sup> *Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167810-00167817.

<sup>1822</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 3, ERN (En) 00156743; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, pp. 57-59.

<sup>1823</sup> *See above*, paras 570-571.

<sup>1824</sup> Section 3: Historical Background, para. 230.

<sup>1825</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 43-45.

<sup>1826</sup> *See e.g.*, ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008.

leaders including POL Pot, KHIEU Samphan, NUON Chea, IENG Sary and Zone Secretaries attending an April 1975 meeting at Office B-5 in Tang Poun village, Kampong Chhnang province.<sup>1827</sup> The witness stated that attendees including KHIEU Samphan and NUON Chea signalled their agreement with the plan to evacuate Phnom Penh and that both Accused individually expressed their opinions on the topic.<sup>1828</sup> Consistently with these statements, PHY Phuon in court recalled being posted to Office B-5 “[a]fter 1974”, testifying that “as early as April 1975” a meeting was held at which POL Pot, NUON Chea, KHIEU Samphan and other senior leaders discussed the evacuation of the capital.<sup>1829</sup> He confirmed that on this occasion, all members signalled their approval for the idea.<sup>1830</sup>

585. Both Accused confirmed that the April 1975 meeting took place. According to NUON Chea, POL Pot stayed at B-5 from early April 1975 in order “to command the [...] liberation of Phnom Penh”.<sup>1831</sup> KHIEU Samphan acknowledged that he had relocated to B-5 to “follow the last offensive against the capital more closely” and recalled POL Pot, NUON Chea and the Zone Secretaries as having been present.<sup>1832</sup> IENG Sary was also aware of the meeting, which he placed in late March or early April 1975, at which evacuation of Phnom Penh was discussed.<sup>1833</sup> The Chamber is satisfied that these accounts sufficiently corroborate the time, place and subject matter of the April 1975 meeting described by PHY Phuon.

586. In court, PHY Phuon was separately examined on the events of 1974 and recalled his posting at some point in that year to Office B-5, which he described as the “command centre to attack Phnom Penh”.<sup>1834</sup> He further recalled a “big meeting” whose subject matter was “not different from those at various other meetings” held at the time, namely the “general situation in and outside the country and the situation of the

<sup>1827</sup> Section 3: Historical Background, para. 233.

<sup>1828</sup> ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 4, ERN (En) 00223581; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/63, 21 September 2008, pp. 2-3, ERN (En) 00231409-00231410.

<sup>1829</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 12-14.

<sup>1830</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 15-16, 23-24.

<sup>1831</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 38.

<sup>1832</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 3, ERN (En) 00156743 (stating that POL Pot, NUON Chea, *Ta* Mok, KE Pauk, SAO Phim and SAO Sen may have been present but asserting that “[g]enerally, it was the people from his own zone [*sic*] who came” to the April 1975 meeting); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 54, ERN (En) 00103750. *See also*, Section 3: Historical Background, para. 233.

<sup>1833</sup> IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 5, ERN (En) 00417603.

<sup>1834</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 12.

resistance movement and the progress we had made so far concerning the liberated zones".<sup>1835</sup> In view of his otherwise clear recollections about the events of 1974 including a "big meeting" whose subject matter and location did not correspond to the June 1974 meeting regarding the evacuation of Phnom Penh, the Chamber is satisfied that the witness was here in fact not referring to the June 1974 meeting concerning the evacuation of Phnom Penh but to the April 1975 meeting.

587. NUON Chea testified that neither IENG Sary nor KHIEU Samphan were present at the June 1974 meeting.<sup>1836</sup> The evidence shows that IENG Sary and KHIEU Samphan travelled to Laos in early June 1974 before returning to the "liberated" zone in Cambodia along the Ho Chi Minh Trail.<sup>1837</sup> The precise timing of their return and movements thereafter are not clear. KHIEU Samphan's wife and Trial Chamber Witness SO Socheat testified that her husband was not with her when she gave birth to their child on 4 May 1974 but joined her approximately one month later for a period of between three to five months. She variously placed their location at Meak village after giving birth and/or shortly before the fall of Phnom Penh.<sup>1838</sup>

588. In light of his clear and consistent descriptions of the April 1975 meeting to the OCIJ investigators, the Chamber is of the view that PHY Phuon conflated the events of the 1974 and 1975 meetings when testifying in court. Accordingly, the Chamber is not satisfied that KHIEU Samphan was present at the June 1974 meeting.<sup>1839</sup>

## **8.2. Residence, Working and Travel Locations during the DK Period**

589. Following his return to Phnom Penh in the days after its "liberation" by the CPNLF,<sup>1840</sup> KHIEU Samphan stayed briefly with other CPK leaders at the city's railway station before moving to the former Ministry of Finance building for

<sup>1835</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 10-11.

<sup>1836</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 2-4.

<sup>1837</sup> T. 2 August 2012 (SUONG Sikoeun), E1/101.1, pp. 90-91; *Khieu Samphan greets LPLA on 26th Anniversary* (in FBIS collection), E3/30, 19 January 1975, ERN (En) 00166713 (referring to goodwill visit to the Lao liberated zone in June 1974).

<sup>1838</sup> T. 10 June 2013 (SO Socheat), E1/204.1, pp. 61-63, 69-70; T. 11 June 2013 (SO Socheat), E1/205.1, pp. 3-4, 80-81. The Chamber notes its finding in the Case 002/01 Trial Judgement that SO Socheat gave birth to her child on 6 June 1974. On review of the witness's testimony, the Chamber finds anew that it was in fact 4 May 1974. *See* Case 002/01 Trial Judgement, para. 139.

<sup>1839</sup> The Chamber notes the Supreme Court Chamber's findings with respect to the Trial Chamber's assessment in Case 002/01 of PHY Phuon's credibility and KHIEU Samphan's alleged attendance at the 1974 meeting. *See* Case 002/01 Appeal Judgement, para. 1009.

<sup>1840</sup> Section 3: Historical Background, para. 235.



approximately two weeks and then to the Silver Pagoda at the Royal Palace for a short time.<sup>1841</sup> He then spent several months living and working at K-1 before moving to K-3,<sup>1842</sup> again accompanied by other senior CPK leaders<sup>1843</sup> including NUON Chea, IENG Sary, SON Sen and VORN Vet.<sup>1844</sup> While living at K-3, KHIEU Samphan maintained his habit of staying close to POL Pot and NUON Chea (which he had done since 1970),<sup>1845</sup> frequently visiting K-1, where POL Pot continued to reside.<sup>1846</sup>

590. As part of his responsibilities, KHIEU Samphan travelled abroad on official visits in August and December 1975,<sup>1847</sup> and represented Democratic Kampuchea at a summit

<sup>1841</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; *White Flags Over Phnom Penh* (Newsweek), E3/3721, 28 April 1975, ERN (En) S00002599-S00002600; T. 10 June 2013 (SO Socheat), E1/204.1, pp. 64-66 (indicating that upon her return to Phnom Penh, she stayed first at the railway station, and then at the Silver Pagoda, but did not stay with KHIEU Samphan); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 61-65 (indicating that, *inter alios*, SAO Phim, VORN Vet, KOY Thuon, *Ta* Mok were variously joined at the railway station by POL Pot, NUON Chea, KHIEU Samphan and IENG Sary less than one week after 17 April 1975); ROCHOEM Ton Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582; T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 35-36.

<sup>1842</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755; T. 10 June 2013 (SO Socheat), E1/204.1, pp. 66-68. For the location of K-1, *see* Section 5: Administrative Structures, para. 368.

<sup>1843</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 4, ERN (En) 00156755; KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745. As to KHIEU Samphan's places of work and residence at K-1 and K-3 generally, *see* T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 40-41; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 88-89; T. 7 June 2013 (SOK Roeu), E1/203.1, p. 78; T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 9, 13-14. For the location of K-3, *see* Section 5: Administrative Structures, para. 368.

<sup>1844</sup> T. 2 May 2012 (PEAN Khean), E1/71.1, p. 48 (stating that K-3 was a joint office where POL Pot, KHIEU Samphan, IENG Sary and SON Sen worked); T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 13-14 (indicating that KHIEU Samphan, NUON Chea and IENG Sary had houses at K-3); T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 40-41 (stating that KHIEU Samphan and NUON Chea stayed at K-3 while POL Pot and IENG Sary lived at K-1 and B-1, respectively); T. 6 May 2013 (Philip SHORT), E1/189.1, p. 77 (stating that KHIEU Samphan, VORN Vet and NUON Chea lived together in the "bank buildings" near the river); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506 (giving K-3 as the name of KHIEU Samphan and NUON Chea's office). *Cf.* T. 10 June 2013 (SO Socheat), E1/204.1, pp. 74-75 (claiming that in the "four or five months that we stayed [at K-3], Nuon Chea, Pol Pot and others, namely Ieng Sary and his wife [Ieng Thirith], Son Sen and his wife, [and] Vorn Vet [...] had left K-3 and nobody else came. Only Nuon Chea, he, once in a while, came and only my husband remained there."). In light of consistent evidence indicating that other senior leaders resided and/or worked at K-3, the absence of a corroborative account, the witness's evasive demeanour in court and the internal inconsistencies evident in her testimony, the Chamber accords no weight to her assertion that KHIEU Samphan was the sole occupant of K-3. *See also*, DK Report of Offices K1-16, E3/858, undated, ERN (En) 00391725-00391726 (listing guards for "Uncle II", "Brother Van", "Hem" and "Vorn").

<sup>1845</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 5, ERN (En) 00156745; T. 10 June 2013 (SO Socheat), E1/204.1, p. 54; T. 11 June 2013 (SO Socheat), E1/205.1, p. 73; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 4; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, pp. 65-66; T. 13 June 2012 (OEUN Tan), E1/86.1, p. 29; T. 11 December 2012 (PHAN Van), E1/151.1, p. 55; T. 23 April 2012 (SALOTH Ban), E1/66.1, p. 53; T. 7 December 2011 (LONG Norin), E1/18.1, pp. 75-76.

<sup>1846</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, pp. 40-41, 43-45; T. 8 January 2013 (SA Vi), E1/156.1, pp. 12, 85; T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 18, 97.

<sup>1847</sup> *See below*, para. 592.

of the Non-Aligned Countries in Sri Lanka in August 1976.<sup>1848</sup> He also travelled to the Cambodian countryside to visit worksites during the DK era.<sup>1849</sup>

### **8.3. Roles During the DK Period**

591. According to the Closing Order, KHIEU Samphan continued to hold the titles of Deputy Prime Minister, Minister of National Defence and CPNLAF Commander-in-Chief after 17 April 1975, served as President of the State Presidium after the adoption of the DK Constitution, was a leading member of Office 870 and had responsibility for commerce.<sup>1850</sup> The Closing Order also alleges that KHIEU Samphan was a member of the CPK Central Committee and attended and participated in numerous meetings of the Standing Committee.<sup>1851</sup> In addition, the Closing Order suggests that KHIEU Samphan assumed responsibility of the Ministry of Foreign Affairs in IENG Sary's absence.<sup>1852</sup>

#### **8.3.1. Deputy Prime Minister, Minister of National Defence and CPNLAF Commander-in-Chief**

592. After the fall of Phnom Penh in April 1975, NORODOM Sihanouk's GRUNK formally took power in Cambodia, although Sihanouk himself did not return to the country until September 1975.<sup>1853</sup> KHIEU Samphan retained his role as Deputy Prime Minister and continued to exercise diplomatic functions in that capacity,<sup>1854</sup> including meeting foreign delegations<sup>1855</sup> and leading Cambodian delegations abroad to China,

<sup>1848</sup> See below, para. 597.

<sup>1849</sup> See below, para. 606.

<sup>1850</sup> Closing Order, paras 1135-1146.

<sup>1851</sup> Closing Order, paras 1131-1134.

<sup>1852</sup> Closing Order, para. 1147.

<sup>1853</sup> *Sihanouk Arrives in Phnom Penh* (in FBIS collection), E3/271, 9 September 1975, ERN (En) 00167433; *Banquet Held for Sihanouk, Penn Nouth* (in FBIS collection), E3/271, 9 September 1975, ERN (En) 00167438; *Reception for Sihanouk: Speeches by Khieu Samphan and Sihanouk* (in SWB/FE/5006/B collection), E3/711, 11 September 1975, ERN (En) S00003732-S00003733.

<sup>1854</sup> *AKI Reports RGNUC Foreign Ministry Communique on Representation* (in FBIS collection), E3/118, 25 April 1975, ERN (En) 00167020; *Norodom Sihanouk Telegram*, E3/1106, 17 May 1975. See also, *'Special National Congress' Retains Sihanouk, Penn Nouth* (in FBIS collection), E3/118, 27 April 1975, ERN (En) 00167012-00167013.

<sup>1855</sup> *Penn Nouth, Khieu Samphan Receive DRV Envoy* (in FBIS collection), E3/272, 9 October 1975, ERN (En) 00167504; *Khieu Samphan Holds Talks with PRGRSV, Albanian Envoys* (in FBIS collection), E3/1356, 11 December 1975, ERN (En) 00167572; *Talks Held with Visiting Lao Delegation 16 Dec* (in FBIS collection), E3/1356, 17 December 1975, ERN (En) 00167585; *Sihanouk Meets Foreign Visitors 25 Feb* (in FBIS collection), E3/1357, 27 February 1976, ERN (En) 00167796; *Reportage on Visit of PRC Trade Minister* (in FBIS collection), E3/274, 8 March 1976, ERN (En) 00167955; *Mauritanian Envoy Meets Leaders, Ends Visit* (in FBIS collection), E3/274, 9 March 1976, ERN (En) 00167957; *Senegal Ambassador Ends Friendship Visit* (in FBIS collection), E3/274, 20 March 1976, ERN (En) 00167992.

North Vietnam and North Korea in August and December 1975.<sup>1856</sup> He continued to issue public statements supporting the CPNLAF and the new regime, denouncing the previous LON Nol government and encouraging all Cambodians to work hard to rebuild the country.<sup>1857</sup>

593. International media reported that KHIEU Samphan chaired a “Special National Congress” from 25 to 27 April 1975.<sup>1858</sup> Media reports also placed KHIEU Samphan at the Third National Congress in December 1975, at which he reportedly announced the adoption of a new draft constitution for DK.<sup>1859</sup> Much like the purported FUNK Congress in February 1975, it is not clear to the Chamber whether the April and December 1975 congresses genuinely took place.<sup>1860</sup> The Chamber nevertheless recognises that the attribution of such events to KHIEU Samphan as GRUNK Deputy Prime Minister and FUNK representative, among others, served effectively to legitimise the CPK’s agenda internationally.

594. The Chamber is satisfied that KHIEU Samphan continued to hold the position of GRUNK Deputy Prime Minister after 17 April 1975 and continued in that capacity to exercise diplomatic functions until NORODOM Sihanouk’s resignation as Head of State in early April 1976.

595. KHIEU Samphan retained the titles of Minister of National Defence and CPNLAF Commander-in-Chief after 17 April 1975.<sup>1861</sup> However, the Chamber is unable to

<sup>1856</sup> *Khieu Samphan Delegation Leaves for PRC* (in FBIS collection), E3/119, 14 August 1975, ERN (En) 00167391; *Premier Chou Meets Khieu Samphan and Le Thanh Nghi* (International Media), E3/3724, 16 August 1975, ERN (En) S00003606; *Khmer Rouge Leader Signs Agreement with China* (The Times), E3/3725, 19 August 1975, ERN (En) S00003602; *Sihanouk, Samphan, Kim Il-Song Meeting Described* (in FBIS collection), E3/119, 20 August 1975, ERN (En) 00167402; FUNK Publication, *Nouvelles du Cambodge: Kampuchea-Korea Joint Statement* (No. 38), E3/1240, 28 August 1975, ERN (En) 00280600-00280602; *Editorial Hails DRV Anniversaries* (in FBIS collection), E3/271, 1 September 1975, ERN (En) 00167422-00167423.

<sup>1857</sup> *Khieu Samphan 21 Apr Victory Message on Phnom Penh Radio* (in FBIS collection), E3/118, 22 April 1975, ERN (En) 00166994-00166996; *Khieu Samphan Report* (in FBIS collection), E3/273, 6 January 1976, ERN (En) 00167810-00167817. *See also*, T. 20 September 2012 (CHEA Say), E1/124.1, p. 39; PRAK Yoeun Interview Record, E3/471, 4 March 2008, p. 6, ERN (En) 00223338; KOAM Kek Interview Record, E3/433, 14 August 2009, p. 3, ERN (En) 00365533.

<sup>1858</sup> *‘Special National Congress’ Retains Sihanouk, Penn Nouth* (in FBIS collection), E3/118, 28 April 1975, ERN (En) 00167012; *Long March from Phnom Penh* (Time), E3/4430, 19 May 1975, p. 3, ERN (En) 00445392; *Cambodia Holds Special Congress* (The Guardian), E3/3722, 21 May 1975, ERN (En) S00003467.

<sup>1859</sup> *National Congress Held; New Constitution Adopted* (in FBIS collection), E3/1356, 15 December 1975, ERN (En) 00167574-00167575. *See also*, Section 5: Administrative Structures, para. 412.

<sup>1860</sup> *See above*, para. 581.

<sup>1861</sup> *See above*, para. 592.

determine whether he maintained the title of Commander-in-Chief following the CPNLAF's reformation into the RAK in July 1975.<sup>1862</sup> While witnesses indicated that he met with leaders, military commanders and sector-level officials at which military matters were discussed,<sup>1863</sup> KHIEU Samphan's steadfast denial that he ever held real authority over the military was corroborated by other witnesses.<sup>1864</sup> The Chamber is satisfied on the totality of evidence before it that KHIEU Samphan did not have operational military authority during the DK period.

### 8.3.2. *President of the State Presidium*

596. In April 1976, NORODOM Sihanouk and all members of GRUNK resigned to make way for the new government established by the DK Constitution.<sup>1865</sup> The DK Constitution effectively abolished the monarchy and instituted a State Presidium consisting of a President and two Vice-Presidents responsible for "representing the State of Democratic Kampuchea inside and outside the country" in accordance with the laws and political lines of the DK's legislative arm, the Kampuchean People's Representative Assembly (PRA).<sup>1866</sup> In principle, candidates to State Presidium posts were to be elected by the PRA.<sup>1867</sup> In reality, however, KHIEU Samphan was appointed as Chairman of the State Presidium by the CPK Central Committee on 30 March 1976; days before NORODOM Sihanouk's resignation as Head of State and approximately

<sup>1862</sup> Section 5: Administrative Structures, para. 424-425.

<sup>1863</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 67-68; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 55-58.

<sup>1864</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 53, ERN (En) 00103749 (referring to 1975); T. 5 September 2012 (NORNG Sophang), E1/122.1, pp. 27-29 (KHIEU Samphan "did not have the authority to oversee the [...] Ministry of Defence or the military, as they had their own headquarters supervised by Son Sen. So, once again, I repeat, he did not have authority over the military or soldiers"); T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 88 (testifying that with respect to KHIEU Samphan's authority to issue orders or instructions in the CPK military: "It was none. Mr Khieu Samphan was never heard to have ordered any military or can I say that he had no authority over the military [...] I would have known [...], but we never heard that he had any power to order the military as such."); T. 10 January 2013 (UNG Ren), E1/158.1, pp. 43, 86 (stating that SON Sen and POL Pot were in charge of the military). *See also*, KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089 (stating that reports on "matters other than security" were sent to KHIEU Samphan).

<sup>1865</sup> Section 5: Administrative Structures, para. 415.

<sup>1866</sup> DK Constitution, E3/259, undated, ERN (En) 00184836, Chapter 8 ("DK Constitution").

<sup>1867</sup> DK Constitution, Chapter 8 (stating that the State Presidium is "chosen and appointed by the Kampuchean [PRA] once every five years").

two weeks before the PRA was first convened.<sup>1868</sup> His appointment was formally confirmed at the PRA's inaugural session, held between 11 and 13 April 1976.<sup>1869</sup>

597. During his tenure as Chairman (or President) of the State Presidium, KHIEU Samphan continued to perform diplomatic and ceremonial functions,<sup>1870</sup> including: receiving letters of credentials from diplomats,<sup>1871</sup> welcoming and meeting with foreign delegations;<sup>1872</sup> hosting and attending State receptions;<sup>1873</sup> sending and receiving

<sup>1868</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, ERN (En) 00182813 (PENN Nouth and RUOS Nhim were respectively appointed as First and Deputy Chairman of the State Presidium). SAO Phim was named First Deputy Chairman by the PRA in place of PENN Nouth. *See also*, Section 5: Administrative Structures, paras 413-415, 417-419.

<sup>1869</sup> Section 5: Administrative Structures, para. 415.

<sup>1870</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 71, ERN (En) 00103758.

<sup>1871</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 22, 89-92. *See e.g.*, *PRC Ambassador Presents Credentials* (in FBIS collection), E3/276, 12 May 1976, ERN (En) 00168011 (China), *Envoys Present Credentials to Khieu Samphan* (in FBIS collection), E3/276, 14-15 May 1975, ERN (En) 00168016 (South Vietnam, North Korea), *Khieu Samphan Receives Foreign Ambassadors* (in FBIS collection), E3/277, 14 June 1976, ERN (En) 00167900 (Cuba, Yugoslavia, Albania), *Lao Envoy Presents Credentials in Phnom Penh* (in FBIS collection), E3/278, 8 July 1976, ERN (En) 00167874 (Laos); *New Ambassadors Present Credentials* (in FBIS collection), E3/280, 5 September 1976, ERN (En) 00168093 (Egypt, Guinea, Senegal); *Khieu Samphan Receives New Ambassadors' Credentials* (in FBIS collection), E3/282, 31 October 1976, ERN (En) 00168027 (Tanzania, Mali); *PDY Ambassador Presents Credentials to Khieu Samphan* (in FBIS collection), E3/289, 11 July 1977, ERN (En) 00168489 (Yemen); *Khieu Samphan Receives Iraqi Ambassador's Credentials* (in FBIS collection), E3/1359, 10 January 1978, ERN (En) 00169573 (Iraq); *Credential Presentation Ceremony* (in FBIS collection), E3/76, 3 September 1978, ERN (En) 00170348 (Japan); *Ambassador Meets Khieu Samphan* (in FBIS collection), E3/294, 4 October 1978, ERN (En) 00170198 (Burma); *Khieu Samphan Accepts Credentials of New Ambassadors* (in FBIS collection), E3/295, December 1978, ERN (En) 00169050-00169051 (Pakistan, Nepal, Turkey, Switzerland).

<sup>1872</sup> *See e.g.*, *Leaders Receive SRV Journalists Delegation* (in FBIS collection), E3/278, 21 July 1976, ERN (En) 00167878; *Material on Activities of Visiting Cuban Delegation: Meeting with Khiev [sic] Samphan* (in FBIS collection), E3/147, 29 December 1976, ERN (En) 00168436; *Material on Activities of Visiting DPRK Journalists: Meeting with Khieu Samphan* (in FBIS collection), E3/284, 7 February 1977, ERN (En) 00168410; *Material on Activities of Ha Thi Que, SRV Delegation: 11 Feb Meeting with Khieu Samphan* (in FBIS collection), E3/284, 11 February 1977, ERN (En) 00168423; *Khieu Samphan Receives Visiting Lao Women's Delegation* (in FBIS collection), E3/286, 29 April 1977, ERN (En) 00168252; *Burmese Delegation Meets Khieu Samphan* (in FBIS collection), E3/143, 2 September 1977, ERN (En) 00168726-00168727; *Radio Reports Ne Win Trip to Siem Reap-Angkor Area* (in FBIS collection), E3/291, 28-29 November 1977, ERN (En) 00168603-00168606; *Pol Pot 28 May Banquet for Romania's Ceausescu Reported* (in FBIS collection), E3/1363, 29 May 1978, ERN (En) 00169785-00169796; *Khieu Samphan Holds Talks with Algerian Envoy 4 June* (in FBIS collection), E3/1363, 5 June 1978, ERN (En) 00169785.

<sup>1873</sup> *See e.g.*, *DPRK Envoy Hosts Banquet* (in FBIS collection), E3/280, 8 September 1976, ERN (En) 00168090-00168092; *Albanian Envoy Hosts Reception 11 Jan* (in FBIS collection), E3/147, 13 January 1977, ERN (En) 00168462; *Burma's Ne Win Begins State Visit 26 Nov: Khieu Samphan Hosts Banquet* (in FBIS collection), E3/291, 28 November 1977, ERN (En) 00168593-00168594; *President of Laos in Cambodia* (in SWB/FE/5700/A3 collection), E3/301, 23 December 1977, ERN (En) S00008362; *Ieng Sary, Sun Hao Speak at PRC National Day Reception* (in FBIS collection), E3/294, 3 October 1978, ERN (En) 00170199; *Yugoslav Envoy Hosts National Day Reception in Phnom Penh* (in FBIS collection), E3/295, 1 December 1978, ERN (En) 00169046.

diplomatic messages on behalf of the DK regime;<sup>1874</sup> and leading a delegation to the Fifth Summit Conference of the Non-Aligned Movement in Colombo, Sri Lanka.<sup>1875</sup>

598. Throughout the DK period, KHIEU Samphan also continued to make speeches praising the Cambodian people and revolutionary army for their role in the “liberation” of Phnom Penh;<sup>1876</sup> supporting the creation of the new DK state and its institutions;<sup>1877</sup> endorsing the CPK’s policies, such as the use of cooperatives, food rationing, child labour and worksites;<sup>1878</sup> celebrating purported achievements in nation-building and improvements in living conditions;<sup>1879</sup> and decrying Vietnamese “aggression”.<sup>1880</sup> KHIEU Samphan told the Co-Investigating Judges that the content of his speeches was “dictated” by POL Pot and that, although he generally agreed with what he said, he privately disagreed with some of the specifics, such as the abolition of currency.<sup>1881</sup>

<sup>1874</sup> *PRGRSV Officials Greeted on 30 April Victory* (in FBIS collection), E3/276, 5 May 1976, ERN (En) 00168008-00168009; *Further National Day Greetings from Foreign Leaders* (in FBIS collection), E3/286, 25 April 1977, ERN (En) 00168236; *Khieu Samphan Greets Libya’s Al-Qadhdhafi on National Day* (in FBIS collection), E3/143, 31 August 1977, ERN (En) 00168724.

<sup>1875</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, p. 74; *Officials Attend Colombo Nonaligned Meeting: Khieu Samphan Departs/Arrival Statement* (in FBIS collection), E3/279, 14-15 August 1976, ERN (En) 00167693; *Khieu Samphan Addresses Colombo Nonaligned Summit* (in FBIS collection), E3/279, 21 August 1976, ERN (En) 00167702-00167711; Speech by Khieu Samphan, E3/549, 16-19 August 1976, ERN (En) 00644925-00644944. See also, KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757.

<sup>1876</sup> *Anniversary of 17 Apr. Victory Celebrated* (in FBIS collection), E3/275, 15 April 1976, ERN (En) 00167630-00167632; Speech by Khieu Samphan, E3/169, 17 April 1978, ERN (En) 00280389-00280402.

<sup>1877</sup> DK People’s Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, ERN (En) 00184052-00184056.

<sup>1878</sup> *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167810-00167817; *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 15 April 1977, ERN (En) 00419512-00419518.

<sup>1879</sup> *Anniversary of 17 Apr. Victory Celebrated* (in FBIS collection), E3/275, 15 April 1976, ERN (En) 00167634; *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 15 April 1977, ERN (En) 00419512-00419518.

<sup>1880</sup> *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 15 April 1977, ERN (En) 00419512-00419518; *Foreign Ministry Statement on Severing Ties with SRV: Khieu Samphan Statement* (in FBIS collection), E3/1359, 30 December 1977, ERN (En) 00169517-00169525; *Statement by Khieu Samphan* (in SWB/FE/5703/A3 collection), E3/267, 3 January 1978, ERN (En) S00008729-S00008731; *Phnom Penh Rally Marks 17th April Anniversary* (in SWB/FE/5791/B collection), E3/562, 16 April 1978, ERN (En) S00010558-S00010569; *Government Statement Appeals for Aid to Combat SRV Aggression* (in FBIS collection), E3/296, 1 January 1979, ERN (En) 00169294-00169296. See also, LENG Chhoeung Interview Record, E3/385, 17 July 2009, p. 6, ERN (En) 00360130.

<sup>1881</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757 (“Generally I agreed with the content [of the speeches he made] [...]. But on certain points I disagreed with what was said in the speeches, for instance for the elimination of the currency which resulted in the absence of small industry or handicraft developments. I tried to let Pol Pot know about my disagreements on these points. [...] [T]hose speeches were not very important because the important statements were from Pol Pot and Nuon Chea when they were declaring the opening of education sessions. They were not the speeches I made on radio. My role was just protocol.”).

599. The Chamber is satisfied that KHIEU Samphan held the position of President of the State Presidium from late March or early April 1976 until the DK's collapse in early January 1979. In accordance with the largely symbolic nature of the role, the Chamber is satisfied that KHIEU Samphan's responsibilities as part of this role were mostly confined to diplomatic duties within DK and the general promotion of the CPK line.

### 8.3.3. *Membership of the Central and Standing Committees*

600. KHIEU Samphan became a full-rights member of the CPK Central Committee in 1976, having been a candidate member since 1971.<sup>1882</sup> He stated that the Central Committee was formally the "supreme organisation of the entire Party", but clarified that it "existed only on paper", convened twice yearly and was not an "executive organisation".<sup>1883</sup> Although he claimed that the Central Committee merely discussed the implementation of Standing Committee policies, he nevertheless acknowledged that the Central Committee issued directives intended to correct "abuses" and improve conditions in the countryside, particularly in the first year of the DK regime.<sup>1884</sup>

601. KHIEU Samphan was never formally a member of the CPK Standing Committee.<sup>1885</sup> He admitted that he attended what he described as "open" or "expanded" meetings of the Standing Committee where, among other matters, topics relevant to his diplomatic duties were discussed, but has consistently asserted that he did not voice opinions or participate in decision-making during those meetings.<sup>1886</sup> The

<sup>1882</sup> See above, para. 574. See also, T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 20, 87.

<sup>1883</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 87; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 58-59, ERN (En) 00103752.

<sup>1884</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 58-59, ERN (En) 00103752.

<sup>1885</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, p. 70; T. 8 May 2013 (Philip SHORT), E1/191.1, p. 2; T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, pp. 7-8; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 50. See also, KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; SALOTH Ban Interview Record, E3/446, 7 April 2010, ERN (En) 00503164.

<sup>1886</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 87-88 ("I did participate in the meeting in my capacity as the Head of State as I needed to liaise with friendly countries or the heads of states. And for that reason, I needed to know some matters concerning the development of the country."); Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 5, ERN (En) 00153270 ("It is true that I attended some broader meetings of the Standing Committee, during which only general issues were dealt with, such as national defence, national reconstructions, Vietnam or the resignation of Norodom Sihanouk. I had to be informed to be able to talk about these issues to diplomats."); KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 3, ERN (En) 00170883 ("[D]uring 'open' meetings of the Standing Committee [...] I never stated any opinions, because I know that it would have been useless. [...] I had no rights to participate with them in making decisions."); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751 (stating that the topics of national defence, national reconstruction and the conflict with Vietnam were discussed and

Co-Prosecutors allege that KHIEU Samphan was a *de facto* member of the Standing Committee and that his attendance at its meetings placed him within a small group of powerful and fully-informed members of the Party Centre.<sup>1887</sup>

602. Thirty-eight sets of Standing Committee meeting minutes were put before the Chamber, dating from August 1975 to June 1976. Of these, 22 contain attendee lists, with 16 recording “Comrade Hem” as having been present and overall the most frequent attendee behind Permanent Members NUON Chea and POL Pot.<sup>1888</sup> In a 2007 interview with the Co-Investigating Judges, KHIEU Samphan acknowledged attending approximately 14 of these meetings.<sup>1889</sup> The surviving minutes demonstrate that KHIEU Samphan indeed participated in some Standing Committee meetings. Although the minutes do not always attribute remarks to individual speakers, they indicate that KHIEU Samphan contributed on at least two occasions, reporting to the Committee on relations with NORODOM Sihanouk and on the PRA “election” of 20 March 1976.<sup>1890</sup>

603. Moreover, despite repeatedly stating that he was not kept well-informed during the DK era,<sup>1891</sup> and despite specifically denying knowledge of arrests,<sup>1892</sup> KHIEU Samphan was present at Standing Committee meetings during which arrests,<sup>1893</sup>

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that “[d]uring the expanded meetings of the standing committee, I never took the floor”); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 63, ERN (En) 00103754 (referring to “expanded sessions of the Permanent Bureau”); Letter by Khieu Samphan: *To All My Compatriots*, E3/205, 16 August 2001, ERN (En) 00149526-00149527; *Khieu Samphan Pleads Ignorance On Genocide* (Jean-Claude Pomonti, Le Monde), E3/4603, 24 January 2004, p. 5, ERN (En) 00716438.

<sup>1887</sup> Co-Prosecutors’ Closing Brief, paras 412-413.

<sup>1888</sup> Section 5: Administrative Structures, paras 347, 357.

<sup>1889</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751 (“The introductory submission has indicated that I had participated in 14 out of 19 meetings. I forget the exact number, but it’s around that, given that I am only aware of the meetings I attended.”).

<sup>1890</sup> Standing Committee Minutes, E3/197, 11-13 March 1976, pp. 1, 3-4, ERN (En) 00182638, 00182640-00182641 (discussing NORODOM Sihanouk’s desire to resign, and possible responses); Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 1, ERN (En) 00182628 (reporting on the principles, objectives and methods of the forthcoming PRA “election” and methods of education and propaganda).

<sup>1891</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 87-88; T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, pp. 17, 81-82; T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, pp. 25, 109; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 141, ERN (En) 00103793. See also, *Khieu Samphan Pleads Ignorance on Genocide* (Jean-Claude Pomonti, Le Monde), E3/4603, 24 January 2004, pp. 4-5, ERN (En) 00716437-00716438.

<sup>1892</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 88; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 128, 141, ERN (En) 00103787, 00103793.

<sup>1893</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 3-4, ERN (En) 00182630-00182631.



propaganda,<sup>1894</sup> living conditions in the countryside (including illnesses, deaths and food shortages),<sup>1895</sup> child labour,<sup>1896</sup> foreign affairs,<sup>1897</sup> national defence,<sup>1898</sup> armed conflict with Vietnam<sup>1899</sup> and commerce were discussed.<sup>1900</sup> Furthermore, in a 2001 publication KHIEU Samphan recounted the arrest and disappearance of Central and Standing Committee members, stating that such disappearances did not diminish either committee's confidence in POL Pot's leadership.<sup>1901</sup>

604. The Chamber is satisfied that KHIEU Samphan was not only placed within a small group of well-informed CPK members as a result of his membership of the Central Committee, but was also in a position of unique standing within the Party by virtue of his attendance at numerous Standing Committee meetings, where important matters were discussed and crucial decisions were made.<sup>1902</sup>

#### 8.3.4. *Residual Functions*

605. The Chamber has evidence of further functions performed by KHIEU Samphan during the DK period which did not apparently fall within the remit of his formal positions or which the Chamber was unable to attribute to a particular role.

606. In January and February 1976, KHIEU Samphan accompanied NORODOM Sihanouk on a tour of the Cambodian countryside, during which they visited agricultural projects and worksites including Trapeang Thma Dam.<sup>1903</sup>

<sup>1894</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976 (generally); Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 3, ERN (En) 00182630.

<sup>1895</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 3-6, ERN (En) 00182630-00182633; Standing Committee Minutes on health and social affairs, E3/226, 10 June 1976 (generally).

<sup>1896</sup> Standing Committee Minutes on health and social affairs, E3/226, 10 June 1976, pp. 2, 5, ERN (En) 00183364, 00183367; Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976, p. 2, ERN (En) 00182547.

<sup>1897</sup> Standing Committee Minutes, E3/219, 3 May 1976 (generally); Standing Committee Minutes, E3/223, 17 May 1976 (generally).

<sup>1898</sup> Standing Committee Minutes, E3/229, 22 February 1976 (generally); Standing Committee Minutes, E3/224, 30 May 1976, p. 1, ERN (En) 00182667.

<sup>1899</sup> Standing Committee Minutes, E3/218, 26 March 1976, pp. 1-4, 7, ERN (En) 00182651-00182654, 00182657.

<sup>1900</sup> Standing Committee Minutes, E3/233, 13 March 1976 (generally); Standing Committee Minutes, E3/220, 7 May 1976 (generally).

<sup>1901</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 64, ERN (En) 00103755.

<sup>1902</sup> See above, para. 603.

<sup>1903</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 114, ERN (En) 00103780; *Sihanouk Completes 3-Day Tour of North* (in FBIS collection), E3/273, 21

607. Between 17 April 1975 and 1978, KHIEU Samphan attended and lectured at political training sessions held at Borei Keila (K-6) and the Khmer-Soviet Friendship Institute of Technology (K-15), at times alongside NUON Chea and other CPK leaders. Participants ranging from combatants to CPK cadres and returnees from overseas, numbering in the tens to the thousands, were variously instructed on revolutionary principles, cooperatives, agricultural techniques and economic matters, with KHIEU Samphan lecturing on identifying “enemies” and uncovering “traitors”.<sup>1904</sup> Witness ONG Thong Hoeung allegedly stated in an extrajudicial interview on 6 February 2008 that KHIEU Samphan “would come to Boeung Trab[a]jek to hold political meetings”, supposedly adding that his wife “saw Khieu Samphan holding meetings there”.<sup>1905</sup> The

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January 1976, ERN (En) 00167844; THA Sot Interview Record, E3/464, 19 January 2008, p. 5, ERN (En) 00226110; Book by Norodom. S.: *War and Hope: The Case of Cambodia*, E3/1819, 1979, ERN (En) 00349589.

<sup>1904</sup> T. 17 May 2012 (PEAN Khean), E1/73.1, pp. 20-23 (stating that he saw “Uncle Hem” at Borei Keila administering “high-level political education” to cadres and discussed the development of the country and cooperatives, moral education and building a prosperous country); T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, pp. 77-79 (recalling a training session by KHIEU Samphan at the “Soviet Technical School” where the internal and external political situation and “common enemy” were discussed); T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/100.1, pp. 94-96 (recalling 40 participants having taken part at the training session at the Soviet Technical School, including future Office 870 and Ministry of Foreign Affairs staff, cadres and combatants); T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 97-99 (recalling being told by his wife that she attended a training session by KHIEU Samphan at the Institute of Technology (K-15) after their return to Cambodia); T. 23 August 2012 (EM Oeun), E1/113.1, pp. 79-87, 97-99 (recalling the “great leap forward” being discussed at Borei Keila, with POL Pot, NUON Chea and KHIEU Samphan, who was a guest speaker alongside HU Nim, addressing “approximately 2,000 attendees” including those ranked “at least” district secretaries or deputy secretaries); T. 27 August 2012 (EM Oeun), E1/115.1, pp. 25-33, 45-46 (clarifying that KHIEU Samphan was present during POL Pot’s introductory session about the “great leap forward”, that any detractors from the “great leap forward” were considered enemies and that KHIEU Samphan talked about “uncover[ing] the traitors of the Revolution and the infiltrated enemies”); T. 28 August 2012 (EM Oeun), E1/116.1, p. 4 (clarifying that he attended the Borei Keila training session in late 1977); T. 20 September 2012 (CHEA Say), E1/124.1, pp. 30-37, 71 (recalling a three or four-day training session at Borei Keila or the Technical Institute by NUON Chea and KHIEU Samphan about economisation and rebuilding the country); T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 74-75 (referring to political seminars by KHIEU Samphan and NUON Chea about a range of topics including military, economic, diplomatic and political matters); T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 17-19 *citing* Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 316-317, ERN (En) 00396524-00396525 (discussing political education of returnees); T. 3 July 2013 (EK Hen), E1/217.1, pp. 40-48, 63, 78-82, 87-88, 90-98 (recalling two lectures in 1976 or 1977, and 1978, at which KHIEU Samphan lectured between 400 to 500 participants about work quotas, including the production of three tonnes of rice per hectare, and Vietnamese collaborators). *See also*, T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 16-18 (recalling study sessions at Borei Keila and possibly the Technical Institute [“a location in between Borei Keila and Russian Confederation Boulevard”] at which he saw KHIEU Samphan’s name as one of the participants, but only recalling having seen NUON Chea); T. 30 August 2016 (CHEA Dieb), E1/466.1, pp. 87-90 (recalling two occasions where she saw Khieu Samphan, once at Wat Ounalom and once at Borei Keila); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 93 (stating that “instill[ing] political and ideological standpoints and leadership [...] was the portfolio of the politburo” [*i.e.* the Standing Committee]).

<sup>1905</sup> ONG Thong Hoeung Interview by Kheng H. H. and M. Sokhan, E3/5816, 6 February 2007, ERN (En) 00239987.

witness denied in his interview with OCIJ investigators that he made this statement and testified before the Chamber that neither he nor his wife saw KHIEU Samphan at this location.<sup>1906</sup> KHIEU Samphan's driver, Witness LENG Chhoeung, did not recall driving him to Boeng Trabaek.<sup>1907</sup> While the Chamber is unable to conclude that KHIEU Samphan held political training sessions at Boeung Trabaek, it is satisfied that he did in fact attend and hold political training sessions at Borei Keila and the Khmer-Soviet Friendship Institute of Technology.

#### 8.3.4.1. Membership of Office 870

608. Office 870, which oversaw the implementation of Standing Committee decisions,<sup>1908</sup> initially comprised at least two members: SUA Vasi *alias* Doeun, who was appointed as chairman of the Office in October 1975, and KHIEU Samphan, who joined at around the same time.<sup>1909</sup>

609. The Co-Prosecutors allege that KHIEU Samphan succeeded Doeun as the head of Office 870 after the latter's arrest in 1977.<sup>1910</sup> KHIEU Samphan has consistently denied ever having been appointed to the position of chairman of Office 870 or serving in that capacity, insisting that he was only responsible for maintaining relations with NORODOM Sihanouk, setting the price scales for products from cooperatives and

<sup>1906</sup> T. 14 August 2012 (ONG Thong Hoeung), E1/107.1, pp. 65-66 ("My wife and I never saw Khieu Samphan personally at Boeng Trabaek"); ONG Thong Hoeung Interview Record, E3/97, 22 November 2008, ERN (En) 00287109 (Q. Did any other Khmer Rouge leaders pay a visit to Boeng Trabaek? A. As far as I know, none did". Upon being shown interview E3/5816, the witness stated "I have never seen this document; this is the first time I have seen it").

<sup>1907</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, p. 93.

<sup>1908</sup> Section 5.1.5: Administrative Structures: Office 870.

<sup>1909</sup> Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882 (stating that he was appointed to work in the office as an "ordinary member"); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, ERN (En) 00103755-00103756. The Standing Committee minutes before the Chamber reveal that KHIEU Samphan and Doeun were respectively the third and fourth most common attendees and attended many of the same meetings. See e.g., Standing Committee Minutes, E3/227, 2 November 1975; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976; Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976; Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976; Standing Committee Minutes regarding base work, E3/232, 8 March 1976; Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976; Standing Committee Minutes regarding Sihanouk's resignation, E3/197, 11 March 1976; Standing Committee Minutes, E3/233, 13 March 1976; Standing Committee Minutes, E3/218, 26 March 1976; Standing Committee Minutes, E3/220, 7 May 1976; Standing Committee Minutes, E3/222, 15 May 1976. Regarding Doeun's arrest and execution, see Section 12.2.8.2.2: S-21 Security Centre: SUA Vasi *alias* Doeun.

<sup>1910</sup> Co-Prosecutors' Closing Brief, paras 417-419. See also, Closing Order, paras 1139-1141 (highlighting evidence demonstrating KHIEU Samphan's possible tenure as Chairman of Office 870 but stopping short of averring the same).

other economic units, implementing Standing Committee decisions regarding the distribution of products to the zones and working on the importation of goods with the “Department of Foreign Trade”.<sup>1911</sup> KHIEU Samphan conceded that while goods may or may not have been exchanged between cooperatives, his responsibility for the setting of prices was only ever theoretical.<sup>1912</sup> His functions with regard to trade and commerce are discussed below.<sup>1913</sup>

610. KHIEU Samphan acknowledged that he worked in Office 870 until 1978,<sup>1914</sup> but stated that he was unaware of Doeun’s precise role as chairman of Office 870. He recalled that Doeun was frequently absent on travels, received reports from the zones and was “in charge of political affairs”.<sup>1915</sup> Office 870 continued to operate after Doeun’s arrest in February 1977,<sup>1916</sup> with a number of telegrams put before the Chamber bearing dates in 1977 and 1978 addressed to “M-870”.<sup>1917</sup>

<sup>1911</sup> Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/37, 14 December 2007, pp. 3, 5, ERN (En) 00156754, 00156756; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, 141-142, ERN (En) 00103755-00103756, 00103793-00103794; Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 61, ERN (En) 00498280. *See below*, Section 8.3.4.2: Oversight of Commerce.

<sup>1912</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756 (“[T]here might have been exchanges of goods between cooperatives, [...] but in the practical terms it was something that was never implemented”); KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882 (“Inside Office 870, [...] I could not fulfil the task of preparing the price tables for the products of the cooperatives as there was no exchange of merchandise”).

<sup>1913</sup> *See below*, Section 8.3.4.2: Oversight of Commerce.

<sup>1914</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, ERN (En) 00103755-00103756 (“Around October 1975, I was assigned a position within an organization called ‘Office 870’ [...] I held this position from 1975 to 1978”). *See also*, T. 26 April 2012 (SALOTH Ban), E1/69.1, pp. 7-9 (“I did not know [Doeun’s] exact role, but I saw [that he] was working on the distribution of logistics in that office. [...] I assumed that Mr. Khieu Samphan [was] the head of Office 870, responsible for logistics as the successor of Sua Vasi *alias* Doeun, who had been arrested earlier.”), 11 (further clarifying that “[w]hen Doeun disappeared, Brother Khieu Samphan came to take Doeun’s place in charge of managing stuff.”).

<sup>1915</sup> Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; Book by Khieu S.: *Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 61, fn. 193, ERN (En) 00498280.

<sup>1916</sup> Section 12.2.8.2.2: SUA Vasi *alias* Doeun. *See above*, para. 364.

<sup>1917</sup> *See e.g.*, DK Telegram, E3/1200, 8 May 1977 (“To beloved and respected M-870”); DK Telegram, E3/890, 28 October 1977 (“To respected and beloved M 870”); DK Telegram, E3/908, 24 December 1977 (“Greetings to respected and beloved M-870”); DK Telegram, E3/916, 1 January 1978 (“Dear respected and beloved M870”); DK Telegram, E3/913, 16 January 1978 (“To beloved and respected M-870”); DK Telegram, E3/863, 16 May 1978 (“Respectfully submitted to *Angkar* 870”); DK Telegram, E3/873, 15 June 1978 (“Dear beloved and missed *Angkar* 870”).

611. KHIEU Samphan speculated that CHHIM Sam Aok *alias* Pang succeeded Doeun as chairman of Office 870.<sup>1918</sup> Witnesses SALOTH Ban, ROCHOEM Ton *alias* PHY Phuon, PEAN Khean and NOEM Sem also testified that Pang was the head of Office 870 at some point.<sup>1919</sup> SALOTH Ban recalled seeing Pang and Doeun working at K-1 or Office 870 at the same time, attributing the management of ministries and the “distribution of logistics” to their respective roles.<sup>1920</sup> PHY Phuon attributed different functions to the two men, stating that while Pang had been in charge of day-to-day “administration” (an assertion also made by Witness PEAN Khean<sup>1921</sup>), Doeun was responsible for “policy”, which included opening and conducting training sessions.<sup>1922</sup> The Chamber notes that while the versions are partially corroborated by the titular functions allegedly assigned at a 9 October 1975 meeting of the Standing Committee,<sup>1923</sup> they appear to conflate the functions of Offices 870 and S-71. The Chamber is therefore unable to satisfy itself that Pang served as the chairman of Office 870.

612. A number of witnesses and experts testified that it was KHIEU Samphan who replaced Doeun as head of Office 870. Witness KAING Guek Eav *alias* Duch testified that the office chaired by Doeun was known as the “Central Office”;<sup>1924</sup> an entity to which he referred as “Office 870” in previous interviews with the Co-Investigating Judges.<sup>1925</sup> While he also testified that KHIEU Samphan had held a more senior role in

<sup>1918</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 2, ERN (En) 00156753; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 154, ERN (En) 00103800.

<sup>1919</sup> T. 26 April 2012 (SALOTH Ban), E1/69.1, pp. 7-11; T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 92-93; T. 3 May 2012 (PEAN Khean), E1/72.1, p. 22; T. 25 September 2012 (NOEM Sem), E1/126.1, p. 42.

<sup>1920</sup> T. 26 April 2012 (SALOTH Ban), E1/69.1, pp. 7-11.

<sup>1921</sup> T. 3 May 2012 (PEAN Khean), E1/72.1, p. 22 (“Pang was the person in charge of the office [870] on a daily basis. For example, he would manage day-to-day tasks in the office, including K-1, K-3 and K-7”).

<sup>1922</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 92-93. The witness recalled that Doeun assumed Pang’s chairmanship of Office 870 after the latter had disappeared. The Chamber considers that he confused the dates and arrests of the two men. *See below*, fn. 1940.

<sup>1923</sup> Standing Committee Minutes, E3/182, 9 October 1975, ERN (En) 00183393-00183394 (“Delegation of work and the operational process. [...] Comrade Doeun: Chairman, Political Office of 870 [...] Comrade Pang: Government Office”). *See also*, Section 5.1.6: Administrative Structures: Structure of the CPK: Government Office (S-71) and Sub-Offices.

<sup>1924</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 98; T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 9.

<sup>1925</sup> *See e.g.*, KAING Guek Eav Interview Record, E3/107, 24 June 2008, p. 8, ERN (En) 00198224; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882; KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874.

Office 870 than Doeun, which he retained after Doeun's departure,<sup>1926</sup> Duch acknowledged before the Co-Investigating Judges that he knew little about the work of Office 870,<sup>1927</sup> and variously indicated that his statements about KHIEU Samphan's position within the Office were inferences drawn from KHIEU Samphan's position of seniority in the DK period,<sup>1928</sup> academic texts<sup>1929</sup> and hearsay accounts.<sup>1930</sup> The Chamber also notes that the witness enjoyed access to case file materials as an accused person in Case 001 and suspect in Case 002,<sup>1931</sup> which leads the Chamber to conclude that Duch's testimony does not provide a sufficiently independent basis for factual findings on this topic. The Chamber therefore accords no weight to his assertions regarding KHIEU Samphan's alleged chairmanship of Office 870.

613. Two out-of-court interviews conducted by Witness Stephen HEDER suggested that KHIEU Samphan became chairman of Office 870 after Doeun's arrest. The first was an interview with VAN Rith, a leading member of the Committee for Commerce during the DK period, who is now deceased.<sup>1932</sup> Although Stephen HEDER (whom the Chamber found to be generally credible) testified to the circumstances in which the interview was conducted,<sup>1933</sup> the Chamber is unable to accord his handwritten interview notes significant probative value.<sup>1934</sup>

614. The second was an interview with IENG Sary in 1999. According to Stephen HEDER's interview notes, IENG Sary confirmed KHIEU Samphan's "appointment to

<sup>1926</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 99-100; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 10-11, 13; KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882.

<sup>1927</sup> KAING Guek Eav Answers to CIJs' Written Questions, E3/15, 21 October 2008, ERN (En) 00251376.

<sup>1928</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 10-11 (suggesting that Doeun could not have been the head of Office 870 because he was "junior", "young" and "inferior" to KHIEU Samphan).

<sup>1929</sup> See e.g., KAING Guek Eav Interview Record, E3/456, 25 June 2008, p. 4, ERN (En) 00198882 (referring to the work of David CHANDLER); KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874 (referring to a book by David CHANDLER).

<sup>1930</sup> See e.g., KAING Guek Eav Interview Record, E3/107, 24 June 2008 p. 8, ERN (En) 00198224 ("I was told that [KHIEU Samphan] had been appointed head of Office 870"); KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 6, ERN (En) 00154911 (suggesting that he heard about KHIEU Samphan's role from Pang).

<sup>1931</sup> See e.g., T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 73-76. See also, Section 12.2: S-21 Security Centre, para. 2080.

<sup>1932</sup> VAN Rith Interview by Stephen HEDER, E3/5699, 21 March 2004, p. 1, ERN (En) 00567469, 00567471. See above, para. 421.

<sup>1933</sup> T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 7. The Chamber notes that this interview was conducted prior to Stephen HEDER's employment with the ECCC.

<sup>1934</sup> The Chamber has taken into account the fact that it was an out-of-court interview which was conducted informally and without any record signed by VAN Rith. Further, it was impossible to examine this witness in court and a full transcription or audio recording of the interview was not available.

the Chairmanship of Office 870".<sup>1935</sup> IENG Sary filed a signed declaration with the Co-Investigating Judges in 2009 affirming that he never made this allegation.<sup>1936</sup> However, Witness PHY Phuon separately testified that, following Doeun's disappearance, IENG Sary personally informed him that "Doeun will be replaced by Khieu Samphan" and instructed him to communicate with KHIEU Samphan directly.<sup>1937</sup> PHY Phuon's account was not explored further in court. IENG Sary, the alleged declarant of this assertion, was also unavailable at trial to clarify these competing accounts.<sup>1938</sup> Further, while PHY Phuon placed Doeun's disappearance in 1978,<sup>1939</sup> he appears to confuse Doeun's arrest (which, on the evidence before the Chamber took place in 1977) with that of Pang's.<sup>1940</sup> As a result of the foregoing, the Chamber is unable to accord significant weight to PHY Phuon's hearsay account. As regards Stephen HEDER's interview notes, the Chamber takes into account the informal setting in which the interview was conducted, IENG Sary's rejection of the alleged assertion, and the absence of a complete record, transcription or recording of the interview. It therefore declines to attribute significant weight to his interview notes.

615. In the course of their historical research, Experts Philip SHORT and David CHANDLER did not discover any document confirming that KHIEU Samphan replaced Doeun as the head of Office 870.<sup>1941</sup> However, Philip SHORT told the Chamber that, based on the materials he had seen, it was "reasonable to assume" that KHIEU Samphan "had an important role" in the Office after Doeun's arrest.<sup>1942</sup> David CHANDLER also presumed that KHIEU Samphan replaced Doeun.<sup>1943</sup> While the

<sup>1935</sup> IENG Sary Interview by Stephen HEDER E3/190, 4 January 1999, ERN (En) 00081572; IENG Sary Interview Notes by Stephen HEDER, E3/573, 4 January 1999, ERN (En) 00427599. *See also*, T. 15 July 2013 (Stephen HEDER), E1/223.1, pp. 3-4.

<sup>1936</sup> IENG Sary Declaration, E3/515, 1 September 2009, ERN (En) 00753570.

<sup>1937</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 94 ("Q. How did you learn that Doeun had disappeared and that Khieu Samphan had taken over from him? How did you become aware of that? A. I learned of it through *Om* Ieng Sary. He said Pang had been transferred and he had been replaced by Doeun, and after the disappearance of Doeun he said Doeun will be replaced by Khieu Samphan and Khieu Samphan was the one who I had to contact or communicate with.").

<sup>1938</sup> *See above*, para. 614. *See also*, Annex I: Procedural History, para. 17.

<sup>1939</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, p. 94 ("As I recall, [Doeun's disappearance] was in mid-1978. It was well into the second semester of 1978.").

<sup>1940</sup> Section 12.2.8.2.2: S-21 Security Centre: SUA Vasi *alias* Doeun; Section 12.2.8.4.3: S-21 Security Centre: CHHIM Sam Aok *alias* Pang.

<sup>1941</sup> T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 27-28; T. 18 July 2012 (David CHANDLER), E1/91.1, pp. 100-102.

<sup>1942</sup> T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 27-28; T. 9 May 2013 (Philip SHORT), E1/192.1, p. 97.

<sup>1943</sup> T. 18 July 2012 (David CHANDLER), E1/91.1, pp. 108-109, 120-121. It is possible that David CHANDLER based this presumption on research conducted by Stephen HEDER. *See Book by D.*

Chamber acknowledges the expert basis upon which these deductions were made – namely, the Experts’ extensive research into and knowledge of Democratic Kampuchea – it is unable to attribute significant weight to such speculation in light of the equivocal evidence before the Chamber regarding KHIEU Samphan’s precise function within Office 870.

616. The precise contours of KHIEU Samphan’s responsibilities within Office 870, as distinct from those of his predecessor or those appertaining to his other appointments, remain unclear. The Chamber heard limited evidence that KHIEU Samphan issued travel (*laissez-passer*) permits to zone cadres supervising visiting delegations and also signed travel permits more generally.<sup>1944</sup> The evidence demonstrates that KHIEU Samphan performed certain functions within Office 870 following Doeun’s arrest in early 1977, either pursuant to an appointment to that Office or as part of his residual responsibilities as a senior Party member. As a result of the paucity of evidence relating to his functions within Office 870, the Chamber is unable to conclude that KHIEU Samphan served as the chairman of Office 870 or was in fact a “leading cadre” thereof, as alleged by the Closing Order.

#### 8.3.4.2. Oversight of Commerce

617. In October 1975, the CPK Standing Committee assigned KHIEU Samphan responsibility for “[c]ommerce for accounting and pricing” in addition to his existing functions as Deputy Prime Minister and Minister of National Defence.<sup>1945</sup> In March 1976, the Standing Committee appointed KHIEU Samphan to a committee charged with “mak[ing] examinations and preparations for merchandise which must be purchased” from China alongside chairman KOY Thuon and members IENG Sary, VORN Vet and Doeun.<sup>1946</sup> At the same Standing Committee meeting, KHIEU

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Chandler: *Voices From S-21: Terror and History in Pol Pot’s Secret Prison*, E3/1684, pp. 64, 182, ERN (En) 00192743, 00192875.

<sup>1944</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 88-89, 93-95; T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 87-88; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 73.

<sup>1945</sup> Standing Committee Minutes, E3/182, 9 October 1975, p. 1, ERN (En) 00183393. *See above*, Section 8.3.1: Deputy Prime Minister, Minister of National Defence and CPNLF Commander-in-Chief.

<sup>1946</sup> Standing Committee Minutes, E3/233, 13 March 1976, p. 1, ERN (En) 00182649.



Samphan was assigned the chairmanship of a further committee designed to examine “the matter of banks” along with KOY Thuon, IENG Sary and Doeun.<sup>1947</sup>

618. At the inauguration of the People’s Representative Assembly between 11 and 13 April 1976, a new “Committee for Commerce” was announced and assigned to the Office of the Deputy Prime Minister for Economics, VORN Vet, along with five other committees.<sup>1948</sup> The Committee was described in Standing Committee minutes as a committee “surrounding 870” only one week later when VAN Rith, PRUM Nhem and “Chhoeun” were appointed as members.<sup>1949</sup> On 7 May 1976, NON Suon *alias* Chey was moved from the Committee for Agriculture to “control Commerce” along with Doeun, temporarily assigned to assist the Committee for three months in addition to his duties in Office 870.<sup>1950</sup> Reports before the Chamber indicate that by late October 1976, the Commerce Committee’s reporting lines had shifted from Doeun to KHIEU Samphan.<sup>1951</sup>

619. KHIEU Samphan acknowledged that, as part of his responsibilities in Office 870, he worked with DK and foreign ministries to import merchandise sanctioned by the Standing Committee and facilitated the distribution of equipment and products to the

<sup>1947</sup> Standing Committee Minutes, E3/233, 13 March 1976, p. 2, ERN (En) 00182650. The establishment of an international bank was necessary to facilitate international trade and the receipt of financial aid from China. *See* T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 11-12.

<sup>1948</sup> DK People’s Representative Assembly Meeting Minutes, E3/165, 11-13 April 1976, p. 22, ERN (En) 00184069. *See also*, Section 5.2.1: Administrative Structures: DK Ministries and Committees.

<sup>1949</sup> Standing Committee Minutes, E3/235, 19-21 April 1976, p. 1, ERN (En) 00183416 (assigning, under the heading “Preparations to organise various committees surrounding 870: 1. Commerce Committee” Rith, Nhem and Chhoeun as members).

<sup>1950</sup> Standing Committee Minutes, E3/220, 7 May 1976, p. 1, ERN (En) 00182706 (Chey was ordered “to come and control Commerce”, while Doeun was charged to “go down to Commerce for three months” until July 1976 for “one half day at the Office [870] and one half day at Commerce”). For reports of the Commerce Committee to Doeun, *see* Commerce Committee Report, E3/2036, August 1976, pp. 1-3, ERN (En) 00296187-00296190; Commerce Committee Report, E3/2037, 28 August 1976, pp. 1-3, ERN (En) 00323937-00323938; Commerce Committee Report, E3/3568, 7 September 1976, ERN (En) 00709612-00709613; Commerce Committee Report, E3/2038, 30 September 1976, pp. 1-3, ERN (En) 00337497-00337499. It is unclear to the Chamber whether Chey exercised any function within the Commerce Committee during this time.

<sup>1951</sup> *See e.g.*, Commerce Committee Report, E3/2040, 29 October 1976, ERN (En) 00332554-00332556; Commerce Committee Report, E3/2041, 1 November 1976, ERN (En) 00334993-00334994; Commerce Committee Report, E3/2042, 4 November 1976, ERN (En) 00323940-00323942; Commerce Committee Report, E3/3564, 1 November 1977, ERN (En) 00597007-00597008; Commerce Committee Report, E3/3457, 14 February 1978, ERN (En) 00647731-00647732; Commerce Committee Report, E3/3461, 28 April 1978, ERN (En) 00711449-00711450. For the last Commerce Committee report forwarded to Doeun, *see* Commerce Committee Report, E3/2038, 30 September 1976, ERN (En) 00337497-00337499.

zones.<sup>1952</sup> This apparent overlap with other functional responsibilities atop the opacity of the DK political administration does not allow the Chamber to delineate the precise capacity in which KHIEU Samphan exercised these functions.<sup>1953</sup> Nevertheless, it is evident from contemporaneous records that KHIEU Samphan exercised significant oversight of DK's commercial affairs. For example, the Commerce Committee frequently sought guidance from KHIEU Samphan on matters of trade,<sup>1954</sup> while the Committee's reports and other commerce-related documents addressed, copied or allegedly handed to KHIEU Samphan between October 1976 and December 1978 variously included: reports of discussions with foreign trade delegations and other communications relating to international trade;<sup>1955</sup> reports on the quantities of rice sent to state warehouses by the various zones, and on the export of rice and other goods;<sup>1956</sup>

<sup>1952</sup> KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882; Letter by Khieu Samphan: *To All My Compatriots*, E3/205, 16 August 2001, ERN (En) 00149527; Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 65-66, 154-155, ERN (En) 00103755-00103756, 00103793-00103794; T. 27 May 2013 (Accused KHIEU Samphan), E1/197.1, pp. 83-84 ("I was in the distribution responsibility. [...] I gathered all those resources for the distribution to the people, in hundreds of thousands of cars."). See also, T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 22 (referring to the export of excess rice to friendly countries in exchange for agricultural products); T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, p. 69 (referring to the exchange of surplus agricultural production in exchange for medicine); T. 21 June 2012 (KHIEU Neou), E1/90.1, pp. 48-49 (confirming that KHIEU Samphan authorised the use of certain tools); T. 29 August 2012 (NORNG Sophang), E1/117.1, pp. 49-50 (stating that KHIEU Samphan was responsible for handing materials to be distributed to the base level); T. 3 September 2012 (NORNG Sophang), E1/120.1, pp. 58-59, 91; T. 5 September 2012 (NORNG Sophang), E1/122.1, pp. 49-50; NORNG Sophang Interview Record, E3/64, 18 February 2009, ERN (En) 00334052; T. 11 December 2012 (PHAN Van), E1/151.1, pp. 108-109; T. 10 June 2013 (SO Socheat), E1/204.1, pp. 75-76.

<sup>1953</sup> See above, para. 342.

<sup>1954</sup> See e.g., Commerce Committee Report, E3/1615, 27 September 1977, ERN (En) 00234312; Commerce Committee Report, E3/3514, 1 December 1977, ERN (En) 00634425-00634427; Commerce Committee Report, E3/3455, 24 January 1978, ERN (En) 00634422-00634424; Commerce Committee Report, E3/334, 3 February 1978, ERN (En) 00647721-00647725 (bearing annotation "Sent to *Bang Hem* for comments"); Commerce Committee Report, E3/3461, 28 April 1978, ERN (En) 00711449-00711450; Commerce Committee Report, E3/1637, 12 November 1978, ERN (En) 00711512-00711513 (bearing annotation "Already sent to Brother Hem"). See also, T. 4 June 2012 (SAR Kimlouth), E1/80.1, pp. 10-12 (confirming that VAN Rith could not make certain decisions and had to defer to VORN Vet and KHIEU Samphan).

<sup>1955</sup> See e.g., Commerce Committee Report, E3/2040, 29 October 1976, pp. 1-3, ERN (En) 00332554-00332556 (addressed to "Brother Hem"); Commerce Committee Report, E3/304, 9 November 1976, pp. 1-2, ERN (En) 00323002-00323003 (addressed to "Brother Hem"); Commerce Committee Report, E3/3510, 22 February 1977, ERN (En) 00539057 (addressed to "Brother Hem"); Commerce Committee Report, E3/1616, 18 October 1977, ERN (En) 00590298-00590299 (addressed to "Brother Hem"); Commerce Committee Letter to the Embassy of Yugoslavia, E3/1640, 15 July 1978, pp. 1-3, ERN (En) 00767226-00767228 (bearing annotation "Submitted personally to Brother Hem").

<sup>1956</sup> See e.g., Commerce Committee Report, E3/3511, 8 March 1977, pp. 1-3, ERN (En) 00742408-00742410 (bearing annotation "Send a copy to Brother Hem today"); DK Document: *Import Statistics (from January to September)* and *Export Statistics in 1978 (from January to September)*, E3/2059, undated, ERN (En) 00583646-00583652; Commerce Committee Export Statistics, E3/3533, 4 June 1978, pp. 1, 9, ERN (En) 00770005, 00770013 (bearing annotation "This document was already sent to Brother Hem").

purchase requests from various Ministries and lists of materials imported from China;<sup>1957</sup> reports on the use of a line of credit extended to DK by China;<sup>1958</sup> and messages to, from and between FORTRA and Ren Fung.<sup>1959</sup>

620. It is clear that while KHIEU Samphan did not hold any ministerial portfolio relevant to commerce or international trade during the DK period, reports concerning these areas were nevertheless primarily forwarded to him, with Deputy Prime Minister for Economics VORN Vet frequently copied into reports as the second recipient behind KHIEU Samphan.<sup>1960</sup> Of the documents put before the Chamber relating to commercial

<sup>1957</sup> See e.g., List of Purchase Requests, E3/3516, February 1978, pp. 1-40, ERN (En) 00642055-00642094 (bearing annotation “Sent to *Bang Hem*”); Commerce Committee Report: *List of Materials Imported from China via Sieng San Vessel*, E3/3413, 20 May 1977, ERN (En) 00700321-00700323 (bearing annotation “Already sent to Brothers Hem and Vorn and Comrade Roeun”); Commerce Committee List of Materials Imported, E3/3518, 10 May 1978, ERN (En) 00687195-00687202 (bearing annotation “A copy has been sent to Brothers Hem, Vorn, comrades Roeun and Hok”); Commerce Committee List of Materials Imported, E3/3528, 25 August 1978, ERN (En) 00640332-00640351 (bearing annotation “Sent to *Bang Hem*”); Commerce Committee List of Materials Imported, E3/3534, 29 December 1978, ERN (En) 00642109-00642112.

<sup>1958</sup> See e.g., Commerce Committee Report, E3/325, 15 August 1977, ERN (En) 00685473-00685482 (addressed to “Brother Hem”); Commerce Committee Report, E3/329, 4 January 1978, ERN (En) 00234318 (bearing annotation “have already sent to Brother Hem and brother Vorn”); Commerce Committee Report, E3/311, 21 May 1978, ERN (En) 00685459 (bearing annotation “Already sent to Brother Hem and Brother Vorn”); Commerce Committee Report, E3/317, 2 September 1978, ERN (En) 00647459-00647463 (bearing annotation “Already sent to brothers Hem + Vorn”); Commerce Committee Report, E3/319, 4 November 1978, ERN (En) 00685472 (bearing annotation “Already sent to Brother Hem 2 copies”).

<sup>1959</sup> See e.g., Commerce Committee Letter to comrade Sokh, E3/324, 31 July 1977, ERN (En) 00742281; FORTRA Letter to Ren Fung, E3/2525, 9 June 1978, ERN (En) 00709504-00709505 (bearing annotation “a copy was made to Brother Hem”); FORTRA Letter to Ren Fung, E3/2524, 3 August 1978, ERN (En) 00700094 (bearing annotation “To Brother Hem [...] Copy to Brother in person”); FORTRA Letter to Ren Fung, E3/2521, 23 November 1978, ERN (En) 00742285 (bearing annotation “A copy has been made to Brother Hem.”); FORTRA Letter to Ren Fung, E3/2520, 7 December 1978, ERN (En) 00685581 (bearing annotation “One copy was sent to Brother Hem”). See above, para. 422.

<sup>1960</sup> See e.g., Commerce Committee Report, E3/2054, 1 March 1977, p. 3, ERN (En) 00234315; Commerce Committee Report: *List of Materials Imported from China via Sieng San Vessel*, E3/3413, 20 May 1977, ERN (En) 00700321; Commerce Committee Report, E3/1613, 12 August 1977, ERN (En) 00509699; Commerce Committee Report, E3/327, 31 October 1977, ERN (En) 00641831; Commerce Committee List of Purchase Requests, E3/3516, February 1978, pp. 1, 14, ERN (En) 00642055, 00642068; Report of Importation Committee to Commerce Committee, E3/3460, 25 February 1978, ERN (En) 0070032, 00700327; Commerce Committee Report, E3/3566, 3 July 1978, ERN (En) 00623982; Commerce Committee List of Materials Imported, E3/4548, 26 November 1978, ERN (En) 00768909. The Chamber notes that witnesses attributed economic and commercial affairs to VORN Vet. See T. 31 May 2012 (SAR Kimlomouth), E1/79.1, pp. 17 (“Vorn Vet was in charge of economy”), 37 (“Vorn Vet [...] oversaw both commerce and industry affairs. [...] [E]conomy encompassed the commerce and industry.”), 82 (“Q. [...] *Bong Hem* and *Bong Vorn* were the superiors of the Ministry of Commerce, hence the report was being submitted to them; is that correct? A. Yes, it is”); SAR Kimlomouth Interview Record, E3/439, 18 December 2009, p. 7, ERN (En) 00425913; T. 21 June 2012 (KHIEV Neou), E1/90.1, pp. 46-47, 57-58 (stating that he saw Khieu Samphan at the “Foreign Commerce Section” and concluded that he replaced VORN Vet, noting that no official information was disseminated about this), 75 (“I think the Ministry of Economy, perhaps, was under supervision of Mr Vorn Vet”); KHIEV Neou Interview Record, E3/507, 23 July 2009, p. 5, ERN (En) 00358143. See also, NORNG Sophang Interview Record, E3/67, 28 March 2009, p. 6, ERN (En) 00483968.

matters, very few bore VORN Vet as the sole recipient; *i.e.* to the exclusion of KHIEU Samphan.<sup>1961</sup> Following VORN Vet's arrest in late 1978,<sup>1962</sup> KHIEU Samphan continued to receive reports and letters on trade matters.<sup>1963</sup> In addition, KHIEU Samphan also visited state warehouses with VAN Rith, where he inspected products destined for export,<sup>1964</sup> and conducted meetings with workers and commerce cadres, instructing them on leadership, discipline and morality, and denouncing as enemies of the Party "those who were lazy to work".<sup>1965</sup>

621. The Chamber is satisfied that KHIEU Samphan exercised considerable oversight and was therefore thoroughly apprised of DK trade and commerce matters, both domestic and international, between October 1976 and early 1979.

#### 8.3.4.3. Responsibility for the Ministry of Foreign Affairs

622. The Closing Order points to the WRI of LONG Norin in stating that there is "evidence that when IENG Sary was outside the country, KHIEU Samphan took responsibility for the Ministry of Foreign Affairs".<sup>1966</sup> The witness deposed to OCIJ investigators that "[w]hen IENG Sary was absent, KHIEU Samphan came to take charge. He came twice as I recall, and probably VORN Veth [*sic*] came twice as well. No leadership level people came to replace him aside from KHIEU Samphan and VORN Veth [*sic*]." <sup>1967</sup>

623. The witness repeated this assertion at trial, testifying that "[s]ometimes KHIEU Samphan would come" to the Ministry of Foreign Affairs as "an acting head" in IENG Sary's stead, but provided no further information.<sup>1968</sup> The Chamber notes that while it

<sup>1961</sup> See *e.g.*, Commerce Committee Report, E3/3453, 6 December 1976, p. 3, ERN (En) 00725123; Commerce Committee Report, E3/3456, 2 November 1978, ERN (En) 00767251.

<sup>1962</sup> Section 12.2.8.5.2: S-21 Security Centre: VORN Vet.

<sup>1963</sup> See *e.g.*, Commerce Committee Report, E3/1636, 8 November 1978, ERN (En) 00700544 (bearing annotation "Already sent to Brother Hem"); Commerce Committee Minutes, E3/829, 3 December 1978, ERN (En) 00756522; FORTRA Letter, E3/2520, 7 December 1978, ERN (En) 00685581 (bearing annotation "One copy was sent to Brother Hem").

<sup>1964</sup> T. 25 April 2013 (RUOS Suy), E1/184.1, pp. 33-34, 36; RUOS Suy Interview Record, E3/469, 14 March 2008, p. 7, ERN (En) 00205113; T. 12 June 2013 (SIM Hao), E1/206.1, pp. 81-82. See also, YEN Kuch Interview Record, E3/437, 2 September 2009, pp. 2-3, ERN (En) 00375484-00375485.

<sup>1965</sup> T. 28 November 2016 (BEIT Boeurn *alias* BIT Na), E1/502.1, pp. 21-29, 31-33 (stating that meetings took place once every two or three months and that topics including the "psychological enemy" *i.e.* "those who were lazy to work", were discussed).

<sup>1966</sup> Closing Order, para. 1147.

<sup>1967</sup> LONG Norin Interview Record, E3/34, 4 December 2007, pp. 4-5, ERN (En) 00223556-00223557.

<sup>1968</sup> T. 8 December 2011 (LONG Norin), E1/19.1, pp. 57-58.

found LONG Norin to be a generally reliable witness, beyond the fact that KHIEU Samphan went to the Ministry of Foreign Affairs in the absence of IENG Sary, it does not have before it any further evidence that corroborates the witness's claim. Witness SALOTH Ban also saw KHIEU Samphan at the Ministry of Foreign Affairs when IENG Sary was not present discussing air tickets and holding meetings about foreigners.<sup>1969</sup> It was not clear to the Chamber whether such meetings were conducted pursuant to a formal or informal function within the Ministry. Witness SUONG Sikoeun also met KHIEU Samphan at the Ministry of Foreign Affairs on two occasions, where the two discussed the drafting of a news article.<sup>1970</sup> The Chamber recalls the general secrecy of the DK political administration and acknowledges the possibility that KHIEU Samphan may indeed have assisted in various areas of governmental administration from time to time as part of his residual functions.<sup>1971</sup> In this regard, the Chamber has already found that he performed a number of residual functions beyond his formal appointments. The paucity of evidence regarding KHIEU Samphan's alleged responsibility as acting Minister for Foreign Affairs, however, does not allow the Chamber to find that, in the absence of IENG Sary and beyond periodic and limited temporary assistance, he took responsibility for the Ministry of Foreign Affairs.

#### **8.4. Summary of Findings**

624. The Chamber finds that KHIEU Samphan's longstanding presence in the Cambodian political milieu publicly legitimised the resistance movement that would ultimately be revealed as the CPK. Following the CPNLAF victory on 17 April 1975, KHIEU Samphan continued to serve as the public face of the DK, first as GRUNK Deputy Prime Minister and, from early 1976, President of the State Presidium. During this time, KHIEU Samphan's responsibilities were largely limited to conducting

<sup>1969</sup> T. 23 April 2012 (SALOTH Ban), E1/66.1, pp. 75-76 ("Q. [...] did you see Khieu Samphan coming sometimes to the office of the Foreign Ministry? A. It seems that he came there sometimes and he talked about the air tickets. Q. Was that his sole interest or did he have, perhaps, other reasons as well for coming? A. He was not interested in anything else; it was only about the technical issues"); T. 25 April 2012 (SALOTH Ban), E1/68.1, pp. 41-42 ("Yes I met him [at the Ministry of Foreign Affairs]. However, I did not have a direct contact [*sic*] with him. He met with the intellectual groups regarding the foreigners. [...] It seems that Ieng Sary was not present when [KHIEU Samphan] came").

<sup>1970</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 73-74 ("And to my recollection, [KHIEU Samphan] came to [the] Ministry of Foreign Affairs on two occasions when I met him over there, but at that time he mentioned that he wanted me to write a news article at that time. But on those two occasions we talked, nothing actually materialised after that. No articles were published.").

<sup>1971</sup> See above, para. 620. See also, Section 5: Administrative Structures, para. 342; Section 16: Common Purpose, para. 3939.

diplomatic relations, issuing statements on behalf of Democratic Kampuchea and supporting the CPK line. Beyond his role as nominal head of state however, the evidence demonstrates that KHIEU Samphan's functional responsibility extended further into the core operations of the Party and State, including oversight over the country's trade and commercial affairs, and the conduct of political education and training. Furthermore, and notwithstanding his assertions that he did not exercise any function within the Party Centre, the Chamber found that KHIEU Samphan was not only placed within a small group of well-informed CPK members as a result of his membership of the Central Committee, but was also in a position of unique standing within the Party by virtue of his attendance at Standing Committee meetings, where important matters were discussed and crucial decisions were made.

## 9. APPLICABLE LAW: CRIMES

### 9.1. Crimes Against Humanity

#### 9.1.1. *Murder*

625. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of murder at Trapeang Thma Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres; and in connection with the treatment of Buddhists, Cham and Vietnamese.<sup>1972</sup>

626. This Chamber has previously found that murder was recognised as a crime against humanity under customary international law by 1975.<sup>1973</sup> The existence of murder as a crime against humanity as at 1975 is uncontested by the Parties to this case.

627. The *actus reus* of murder is an act or omission<sup>1974</sup> of the accused, or of one or more persons for whose acts or omissions the accused bears criminal responsibility, that caused the death of the victim.<sup>1975</sup> The act or omission must have contributed substantially to the death of the victim.<sup>1976</sup> The Chamber notes that none of the parties have contested that commission of murder as a crime against humanity through omission formed part of customary international law as at 1975.<sup>1977</sup> This Chamber has previously accepted the general principle applied consistently by the *ad hoc* tribunals that “a crime may be committed by culpable omission where there is a duty to act”.<sup>1978</sup> While this observation was made in the context of individual criminal responsibility, the Chamber finds that the general principle that there needs to be a duty to act, applies

<sup>1972</sup> Closing Order, paras 1373-1380. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>1973</sup> Case 002/01 Trial Judgement, para. 411; Case 001 Trial Judgement, para. 331. *See also*, Case 002/01 Appeal Judgement, para. 765.

<sup>1974</sup> For further discussion on the issue of omissions in the context of individual criminal responsibility and specifically with respect to aiding and abetting, *see* Section 15.6: Applicable Law: Individual Criminal Responsibility: Aiding and Abetting.

<sup>1975</sup> Case 002/01 Trial Judgement, para. 412; Case 001 Trial Judgement, para. 331; *Kvočka et al.* Appeal Judgement, para. 261. *See also*, Case 002/01 Appeal Judgement, para. 396 (the Supreme Court Chamber referred to murder being “generally understood as the unlawful and intentional (as opposed to negligent) killing of a human being”).

<sup>1976</sup> Case 001 Trial Judgement, para. 331 *citing* *Brđanin* Trial Judgement, para. 382.

<sup>1977</sup> NUON Chea Closing Brief, para. 674; KHIEU Samphan Closing Brief, para. 1457.

<sup>1978</sup> Case 002/01 Trial Judgement, fn. 2159.

to all culpable omissions. Accordingly, an omission will be culpable only where there is a duty to act.

628. The elements of murder can be satisfied whether or not it is shown that a victim's body has been recovered.<sup>1979</sup> The fact of a victim's death can be inferred circumstantially from all of the evidence presented. All that is required to be established from the evidence is that the only reasonable inference is that the victim is dead as a result of acts or omissions of the accused or of one or more persons for whom the accused is criminally responsible.<sup>1980</sup> A conviction for murder is not precluded because it is impossible to accurately establish the total number of deaths or to identify, case-by-case, the direct perpetrators and their victims.<sup>1981</sup> In order to sustain an overall finding that killings occurred beyond reasonable doubt, specific instances of killing must be proved beyond reasonable doubt.<sup>1982</sup>

629. The Co-Prosecutors submit that the suicide of a person may amount to murder where the perpetrator's acts or omissions "induced the victim to take action", which resulted in their death.<sup>1983</sup> The Chamber will address whether the suicide of a person could amount to murder as this arises on the facts of the case and to the extent that incidents of suicide are alleged to amount to murder in the Closing Order.

630. The Chamber has previously found that the *mens rea* of murder requires proof of intent of the accused or of the person or persons for whom he is criminally responsible to either kill or cause serious bodily harm in the reasonable knowledge that the act or omission would likely lead to death.<sup>1984</sup> Jurisprudence has clarified that murder as a crime against humanity does not require premeditation.<sup>1985</sup>

631. In dismissing a challenge to the Trial Chamber's definition of murder in Case 002/01, the Supreme Court Chamber found that the *mens rea* for murder as a crime

<sup>1979</sup> Case 002/01 Appeal Judgement, para. 420; Case 002/01 Trial Judgement, para. 413; Case 001 Trial Judgement, para. 332; *Kvočka et al.* Appeal Judgement, para. 260.

<sup>1980</sup> Case 002/01 Trial Judgement, para. 413; Case 001 Trial Judgement, para. 332; *Kvočka et al.* Appeal Judgement, para. 260.

<sup>1981</sup> Case 002/01 Appeal Judgement, para. 420.

<sup>1982</sup> Case 002/01 Appeal Judgement, paras 420-421.

<sup>1983</sup> Co-Prosecutors' Closing Brief, para. 135 citing *Krnjelac* Trial Judgement, para. 329.

<sup>1984</sup> Case 002/01 Trial Judgement, para. 412; Case 001 Trial Judgement, para. 333; *Kvočka et al.* Appeal Judgement, paras 259, 261; *Dragomir Milošević* Appeal Judgement, para. 108.

<sup>1985</sup> Case 002/01 Appeal Judgement, paras 392-394; Case 002/01 Trial Judgement, para. 412.



against humanity as it stood in 1975 “must be defined *largo sensu* to encompass *dolus eventualis*”,<sup>1986</sup> and adopted the following definition:

The technical definition of *dolus eventualis* is the following: if the actor engages in life-endangering behaviour, his killing becomes intentional if he “reconciles himself” or “makes peace” with the likelihood of death. Thus, if the killing is committed “with manifest indifference to the value of human life”, even conduct of minimal risk can qualify as intentional homicide. Large scale killings that would be classified as reckless murder in the United States would meet the continental criteria of *dolus eventualis*. [...] [T]he concept of *dolus eventualis* does not include a standard of negligence or gross negligence.<sup>1987</sup>

632. The KHIEU Samphan Defence submits that the definition accepted by this Chamber and by the Supreme Court Chamber of the constitutive elements of murder, breaches the principle of legality insofar as it applies a standard of *mens rea* lower than direct intent to kill, which was neither accessible nor foreseeable in 1975. It claims that the Trial Chamber relied upon a definition which stems from the later jurisprudence of the *ad hoc* tribunals, which was not consistently adopted by all Chambers at these tribunals. It asserts that the constitutive elements of murder as a crime against humanity in 1975 only envisaged an intention to kill and did not extend to intent to cause physical harm knowing that it would likely result in death.<sup>1988</sup> In support of this submission, the KHIEU Samphan Defence repeats arguments which had been raised and rejected by the Supreme Court Chamber on appeal.<sup>1989</sup> Further, it contends that the Supreme Court Chamber violated the principle of legality by incorrectly relying on post-1975 laws from various countries, and that laws anterior to 1975 relied upon by the Supreme Court Chamber neither demonstrate the existence of a prevalent and consistent legal practice among states, nor an *opinio juris* establishing a customary rule before 1975.<sup>1990</sup>

633. The KHIEU Samphan Defence then raises several arguments as to why, in its view, the Supreme Court Chamber erred in its analysis with respect to the *mens rea* standard for murder as a crime against humanity. The KHIEU Samphan Defence

<sup>1986</sup> Case 002/01 Appeal Judgement, para. 410.

<sup>1987</sup> Case 002/01 Appeal Judgement, para. 390 referring to *Stakić* Trial Judgement, para. 587.

<sup>1988</sup> KHIEU Samphan Closing Brief, 2 May 2017, paras 332-333, 395.

<sup>1989</sup> Case 002/01 Appeal Judgement, paras 388-410; KHIEU Samphan Closing Brief, paras 332-333, 395 (referring to *Memoire d'appel de la Défense de M. KHIEU Samphan contre le jugement rendu dans le procès* 002/01, 002/19-09-2007-ECCC/SC, 29 December 2014, paras 59-61).

<sup>1990</sup> KHIEU Samphan Closing Brief, paras 426-428.

particularly takes issue with the Supreme Court Chamber's interpretation of the *Medical Case* and its reliance on national legislation and case law.<sup>1991</sup>

634. The Trial Chamber recalls that in order to accord with the principle of legality, the definition of murder applicable in this case must reflect the state of customary international law as at 1975. Contrary to the KHIEU Samphan Defence submission, this does not preclude the Chamber from referring to later decisions which interpret or clarify that law.<sup>1992</sup>

635. The current jurisprudence of the *ad hoc* tribunals has now accepted that the *mens rea* for murder encompasses the concept of *dolus eventualis*.<sup>1993</sup> However, this jurisprudence was not completely consistent with respect to the precise wording used,<sup>1994</sup> and some decisions of the ICTR considered that premeditation was required for the purposes of murder.<sup>1995</sup> Accordingly, while the *ad hoc* jurisprudence does provide guidance, this Chamber and the Supreme Court Chamber have conducted their own assessments concerning the state of customary international law in 1975.

636. The Supreme Court Chamber has interpreted the post-World War II jurisprudence and in particular the *Medical Case* as including the notion of *dolus eventualis* in the definition of murder as a crime against humanity. The factual analysis of the case shows that while the Nazi doctors had a complete disregard for the life of the individuals subjected to their brutal experiments, or even considered the death of many of them as

<sup>1991</sup> KHIEU Samphan Closing Brief, paras 397-420 (referring to the Supreme Court Chamber's analysis of the *Medical Judgement*), 421-429 (referring to the Supreme Court Chamber's analysis of domestic law and jurisprudence).

<sup>1992</sup> Section 2.2: The Principle of Legality; Section 4.2.1.2: Chapeau Elements of Crimes Against Humanity.

<sup>1993</sup> *Kvočka et al.* Appeal Judgement, para. 261 (finding that the *mens rea* for murder includes intent to kill or intent to wilfully cause serious bodily harm which the perpetrator should reasonably have known might lead to death); *Stakić* Appeal Judgement, para. 239 (finding that the killings were foreseeable and the Appellant willingly accepted the risk that they would occur); *Dragomir Milošević* Appeal Judgement, para. 108. See also, *Karadžić* Trial Judgement, paras 447-448; *Stanišić and Župljanin* Trial Judgement, para. 39.

<sup>1994</sup> *Akayesu* Trial Judgement, para. 589 (referring to "intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues [*sic*] or not"); *Delalić et al.* Trial Judgement, para. 439 (referring to intention "to kill, or inflict serious injury in reckless disregard of human life"); *Blaškić* Trial Judgement, para. 217 (referring to "intent to kill the victim or to cause grievous bodily harm in the reasonable knowledge that the attack was likely to result in death"); *Blagojević and Jokić* Trial Judgement, para. 556 (referring to "intent either to kill or to cause serious bodily harm with the reasonable knowledge that it would likely lead to death").

<sup>1995</sup> *Kayishema and Ruzindana* Trial Judgement, paras 137-140. See also, *Kayishema and Ruzindana* Appeal Judgement, para. 151 (the Appeals Chamber observed that the prohibition under the ICTR Statute referred to "intentional but not necessarily premeditated murder").

an expected outcome, in some instances their objective was to assess if it was possible to survive extreme conditions or particularly severe disease. In such situations the intent involved taking the risk of endangering the life of those subjected to the experiments, with the knowledge that this would likely cause their death. Therefore, while the *Medical Case* made no explicit reference to the *mens rea* standard applied – a point acknowledged by the Supreme Court Chamber – the Trial Chamber is satisfied that the *Medical Case* can be considered as one of several authorities for attributing criminal responsibility for intentional killing even if the perpetrator acted with less than direct intent.

637. The Trial Chamber notes that the Supreme Court Chamber did not rely solely on the *Medical Case* but also found domestic practice that “further reinforced” its conclusion that murder as a crime against humanity included the notion of *dolus eventualis*.<sup>1996</sup>

638. As recognised by the Pre-Trial Chamber, having regard to general principles of law can assist when defining the elements of an international crime, where that crime has otherwise been recognised in customary international law. In assessing the existence of a general principle of law, “reference should not be made to one national legal system only, say that of common law or civil law’ to the exclusion of the other” and requires an assessment of principles “common to the major legal systems of the world”.<sup>1997</sup> Although the distillation of a general principle “does not require a comprehensive survey of all the legal systems of the world”,<sup>1998</sup> it is also important to

<sup>1996</sup> Case 002/01 Appeal Judgement, paras 395-396.

<sup>1997</sup> Decision on the Appeals Against the Co-Investigative Judges Order on Joint Criminal Enterprise (JCE) (PTC), 20 May 2010, D97/15/9, paras 53, 86 (referring to *Furundžija* Trial Judgement, para. 177-178). See also, *Kunarac et al.* Trial Judgement, para. 439; *Milutinović et al.* Decision on Ojdanić’s Motion Challenging Jurisdiction: Indirect Co-Perpetration Separate Opinion of Judge Bonomy, para. 27. Article 38(1)(c) of the Statute of the International Court of Justice recognises “the general principles of law recognised by civilised nations” as being a source of international law.

<sup>1998</sup> *Erdemović* Appeal Judgement, Separate Opinion of Judges McDonald and Vohrah, para. 57 (finding that a comprehensive survey of all legal systems of the world is not required as this would involve a practical impossibility and has never been the practice of the International Court of Justice or other international tribunals which have had recourse to Article 38(1)(c) of the ICJ Statute); *Erdemović* Appeal Judgement, Separate and Dissenting Opinion of Judge Stephen, para. 25 (finding that “no universal acceptance of a particular principle by every nation within the main systems of law is necessary before lacunae can be filled”).

avoid “mechanical importation or transposition from national law into international criminal proceedings”.<sup>1999</sup>

639. The Supreme Court Chamber surveyed the law applied in a number of common law and civil law systems and concluded that “in all of the domestic jurisdictions reviewed [...] the requisite mental element of intentional killing is satisfied even if the perpetrator acted with less than direct intent to kill”.<sup>2000</sup>

640. The Trial Chamber has conducted a further analysis including into legal systems where the Supreme Court Chamber referred to legislation or jurisprudence which post-dated 1975.

641. In addition to the pre-1975 sources surveyed by the Supreme Court Chamber, in Germany for example there is clear and consistent jurisprudence from as early as 1955 establishing *dolus eventualis* as sufficient for the purposes of the definition of murder.<sup>2001</sup> In Austria, by 1975 the Penal Code had attributed criminal responsibility for intentional conduct, which was defined to include *dolus eventualis*.<sup>2002</sup> Similarly, the concept of *dolus eventualis* was firmly entrenched for the intentional commission of crimes in Switzerland as early as 1943.<sup>2003</sup>

642. Since adopting its criminal code in 1881, the Netherlands has distinguished between manslaughter (“*doodslag*”) and murder (“*moord*”). In order for an offence to have been committed “intentionally” (“*opzettelijk*”), Dutch law recognised that any degree of intent, including *dolus eventualis* (“*voorwaardelijk opzet*”) would suffice. The concept of *dolus eventualis* has been accepted by the Dutch Supreme Court since 1911.<sup>2004</sup>

<sup>1999</sup> *Furundžija* Trial Judgement, para. 178; *Kunarac et al.* Trial Judgement, para. 439.

<sup>2000</sup> Case 002/01 Appeal Judgement, para. 396.

<sup>2001</sup> See e.g., *Lederriemenfall*, BGHSt 7, 363, 22 April 1955.

<sup>2002</sup> Austrian Penal Code 1975, paras 5, 75. Under the Austrian Penal Code *dolus eventualis* suffices for offences that do not specifically require another *dolus*, which is the case for murder.

<sup>2003</sup> See e.g., BGE 69 IV 75 E.5, p. 80 (Federal Supreme Court cassation judgement of 21 May 1943). The 1937 Swiss Penal Code did not identify a specific *dolus* for the purposes of murder. See 1937 Penal Code, Article 112-1. The concept of *dolus eventualis* which had its basis in jurisprudence far before 1975 has since been codified in the 1997 Swiss Penal Code which in Article 12 attributes criminal responsibility for wilful conduct, defined as follows: “A person acts wilfully as soon as he regards the realisation of the act as being possible and accepts this”.

<sup>2004</sup> *Hoornse Taart* case, HR 19 June 1911, W 9203. See also, *Cicero* case, HR 9 November 1954, NJ 1955, 55, which was the first case to provide a criterion for establishing *dolus eventualis* as follows: “he who willingly and knowingly exposes himself to a chance not negligible as imaginary”.

643. In Italy, the 1931 Criminal Code envisaged various categories of homicide (“*omicidio*”) to characterise conduct which caused the death of a victim, depending on the degree of *mens rea*: “*omicidio doloso*” (homicide with the intent to kill);<sup>2005</sup> “*omicidio preterintenzionale*” (homicide which results from violent conduct, where the perpetrator intended to injure the victim but did not intend the victim’s death);<sup>2006</sup> or “*omicidio colposo*” (homicide which results from the perpetrator’s imprudence or negligence).<sup>2007</sup> Italian jurisprudence established since 1970 that *dolus* for the purposes of “*omicidio doloso*” encompassed *dolus eventualis* (“*dolo eventuale*”).<sup>2008</sup>

644. While Belgian and French penal codes contain provisions which are very similar, Belgian law has for a long time recognised the concept of *dolus eventualis* as a form of intent sufficient to satisfy the mental element of murder.<sup>2009</sup>

645. It is also clear from the Supreme Court Chamber’s analysis of pre-1975 jurisprudence and legislation that the requisite *mens rea* for murder in common law systems including England, India and Australia was consistent with the notion of *dolus eventualis*.<sup>2010</sup>

646. Furthermore, going beyond the common law and continental European legal systems surveyed by the Supreme Court Chamber, the Trial Chamber has also observed that in Russia and Japan similar concepts of attributing criminal responsibility existed as at 1975.

647. Article 103 of the 1960 Criminal Code of the Russian Soviet Federative Socialist Republic addressed the crime of intentional killing which governed intentional acts

<sup>2005</sup> 1931 Italian Criminal Code, Article 575.

<sup>2006</sup> 1931 Italian Criminal Code, Article 584.

<sup>2007</sup> 1931 Italian Criminal Code, Article 589.

<sup>2008</sup> *Corte di Cassazione, Sez. 1, Sentenza n. 1206 del 20/11/1970 Ud. (dep. 09/02/1971 ) Rv. 116620.*

<sup>2009</sup> The “*exposé des motifs*” of the Belgian Penal Code adopted in 1867 already considered that “[if] the agent intended to implement his plan, despite his knowledge that such implementation could lead to the death of a person, he intended, at least possibly, to kill this person”. Haus, *Principes généraux du droit pénal belge, éd. 1879*, n° 314 et 315. Verhaegen, *Faute consciente ou intention coupable*, *Journal des Tribunaux*, 31 March 2001, n° 6006.

<sup>2010</sup> With respect to England and Wales, the Supreme Court Chamber made reference to *R v. Hyam* [1975] AC 55 at 75, in which the House of Lords held that for the purposes of murder it was sufficient to have “foreseen the prohibited result as one which is highly probable”. Article 300 of the Criminal Code of India 1860 referred to intent to cause death or “intention of causing such bodily injury as the offender knows to be likely to cause the death of the person” for the purposes of murder. With respect to Australia, the Supreme Court Chamber referred to a number of pre-1975 cases and legislation. For example, section 18(a) of the NSW Crimes Act 1900 referred to “reckless indifference to human life, or with intent to kill or inflict grievous bodily harm”.

occasioning death (“умышленное убийство”). Article 8 of the same code defined intentional commission as follows: “[a] crime shall be recognised to have been committed intentionally if the perpetrator was aware of the socially dangerous character of his action or inaction, foresaw its socially dangerous consequences and intended them or consciously allowed the onset of these consequences”.<sup>2011</sup> In Japan, the Supreme Court as early as 1949 ruled that homicide could be established if a perpetrator was aware that his or her conduct could kill a person but nevertheless decided to pursue such action.<sup>2012</sup> In both legal systems, legislation or case law clearly criminalised as intentional killing, conduct where the perpetrator was acting with less than direct intent.

648. A noticeable exception to this principle is the French and Cambodian law in force before 1975. A review of the history of the concept of murder in French law shows that its legal definition has varied. The Penal Code adopted in 1810 defined murder merely as wilful homicide, and the law did not require proof of specific intent to kill; it was sufficient to prove that the perpetrator acted intentionally in a violent manner and that the acts of violence caused the death of the victim.<sup>2013</sup> In 1832, French lawmakers introduced the distinction between “murder” and “wilful acts of violence causing an unintended death”. As a result, proof of a specific intent to kill became an element of murder, while “wilful acts of violence causing an unintended death” only required that the perpetrator intended to act with violence and that this violent conduct contributed to causing death. The intentional element is described as *dolus praeter intentionem*, as the perpetrator does not have the intent to kill, nor does he accept the risk of a fatal event. This distinction was transposed into Cambodian law and has existed since it was included under Article 503 of the 1956 Cambodian Criminal Code.

649. Both French and Cambodian law consider that the intent to kill may be inferred from circumstantial evidence. This is particularly the case when the conduct demonstrates a high likelihood that it may cause death, such that it can reasonably be

<sup>2011</sup> Article 8 of the 1960 Criminal Code of the Russian Soviet Federative Socialist Republic (unofficial translation).

<sup>2012</sup> Judgement of the Third Petty Bench of the Supreme Court dated 8 November 1949 (Shouwa 24 (Re) 1719), Shukei Vol. 14, p. 477. *See also*, Article 199 of the Japanese Penal Code (Act No. 45 of 24 April 1907, amended on 10 June 1968).

<sup>2013</sup> French Cour de Cassation, Cass. crim., 14 févr. 1812 : Bull. crim. 1812, n° 3 (« il n’est pas nécessaire, en effet, pour constituer [l]e crime [de meurtre], que l’auteur des coups qui ont donné la mort, ait eu le dessein de tuer, qu’il suffit que les coups aient été portés volontairement »); Cass. crim., 12 févr. 1812 : Bull. crim. 1812, n° 31.

inferred that the perpetrator acted with intent to kill.<sup>2014</sup> As noted by the Supreme Court Chamber, the 1956 Cambodian Criminal Code provided that “intent to kill was presumed to exist, *inter alia*, if a deadly weapon was used, if the attack was particularly violent, or if a particularly vulnerable part of the body of the victim was attacked”.<sup>2015</sup> This may amount to “indirect intent” in other systems, but still requires an intent to kill which does not equate with *dolus eventualis*.<sup>2016</sup>

650. Having examined how the aforementioned national systems, representative of the world’s major legal systems, define the crime of murder (understood as the unlawful and intentional killing of a human being), and disregarding the post-1975 legislation and case law referred to by the Supreme Court Chamber, the Trial Chamber finds that while the precise definition of this crime may vary, and while French and Cambodian law may differ from other approaches, the vast majority of these domestic systems recognise that a standard of *mens rea* lower than direct intent may apply in relation to murder, the lowest being *dolus eventualis*. This encompasses the case of an individual who willingly engages in conduct with the knowledge that his or her act or omission would likely lead to the death of the victim(s) and who, at a minimum, accepts or reconciles him or herself with the possibility of this fatal consequence. Therefore, the Chamber is satisfied that the review of pre-1975 international and national jurisprudence and legislation demonstrates a general principle of law that when an individual knowingly and willingly engaged in conduct which was likely to lead to death, that conduct would amount to murder or a crime of similar seriousness in each domestic legal system. This is consistent with the Supreme Court Chamber’s conclusion that “the *mens rea* of murder as a crime against humanity as it stood in 1975 must be defined *largo sensu* so as to encompass *dolus eventualis*”. The KHIEU Samphan Defence submissions to the contrary are accordingly dismissed.

<sup>2014</sup> French Cour de Cassation, Cass. crim., 5 févr. 1957 : Bull. crim. 1957, n° 110.

<sup>2015</sup> Case 002/01 Appeal Judgement, para. 397 referring to Cambodian Criminal Code 1956, Article 505.

<sup>2016</sup> Commentators of some post-1975 decisions of the French Cour de Cassation consider that proof of a specific intent to kill is no longer required, but rather that the perpetrator wilfully exercised violence with the knowledge that his conduct would normally cause the death of the victim. However, a closer consideration of the facts of these cases show that the reasoning remains based on inference of an intent to kill from circumstantial evidence. See French Cour de Cassation, Cass. crim., 9 janv. 1990 : Bull. crim. 1990, n° 15; Cass. crim., 6 janv. 1993 : Dr. pén. 1993, comm. 102 (note M. Véron, caractérise l’intention homicide le fait de porter à plusieurs reprises des coups de marteau sur le crâne de la victime, l’auteur ayant « nécessairement conscience de l’impossibilité de prévoir le résultat » de tels actes).

651. With respect to the foreseeability and accessibility of murder as a crime against humanity in the instant case, the Chamber recalls that what is important is to have regard to the purpose of the principle of legality, which is to ensure that an accused is not held responsible for conduct which he or she could not envisage was criminal when engaging in that conduct.<sup>2017</sup> Having taken into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia's governing authority, the Chamber concludes that it was both foreseeable and accessible in general that the conduct described as murder in customary international law was punishable as a crime against humanity by 1975. In this context the Chamber recalls its finding that for the purposes of foreseeability and accessibility it has to look beyond the technical definition of the crime and have regard to the purpose of the principle of legality.<sup>2018</sup> Article 503 of the 1956 Cambodian Criminal Code considers "acts wilfully committed with intent to assault another person, but without intent to cause death" as severely punishable felonies. The required *dolus (dolus praeter intentionem)*<sup>2019</sup> is of a standard lower than *dolus eventualis*. Accordingly, it is unquestionable that it was foreseeable in 1975 that killing an individual with *dolus eventualis* was criminal and entailed individual criminal responsibility.<sup>2020</sup>

652. The NUON Chea defence submits that some of the alleged killings in this case were the result of "a lawful process and grounded on both legal and factual bases" in connection with individuals who "had committed the most serious crimes of treason espionage collaborating with the enemy during wartime or sabotage".<sup>2021</sup> In a previous filing the NUON Chea Defence suggested that it may be questionable whether customary international law between 1975 and 1979 "prohibited the imposition of the capital punishment (including without affording full due process guarantees)", particularly in connection with "individuals actively involved in planning a serious

<sup>2017</sup> Case 002/01 Appeal Judgement, paras 761-762 (finding that the approach taken "accords with the purpose of principle of legality"). See also, Section 4.2.1.2: Chapeau Elements of Crimes Against Humanity.

<sup>2018</sup> Section 4: General Overview, paras 303, 309 (referring to Case 002/01 Appeal Judgement, paras 761-762). See also, Section 2.2: Preliminary Issues: The Principle of Legality.

<sup>2019</sup> The Chamber refers to its definition of this term in para. 648 above.

<sup>2020</sup> Under Article 503 of the 1956 Criminal Code, the homicide caused by wilful acts of violence but without intent to kill was punishable by an imprisonment with hard labour for a term comprising between five and twenty years. See also, 1956 Criminal Code, Articles 21, 32. The Supreme Court Chamber also referred to the principle of *homicide praeter intentionnel* which "covers situations in which the perpetrator intentionally commits acts of violence against the victims which, in turn, lead as an unintended result to the victim's death". See Case 002/01 Appeal Judgement, paras 396-400.

<sup>2021</sup> NUON Chea Closing Brief, paras 648, 675.



security threat to the State”.<sup>2022</sup> The Co-Prosecutors submit that, contrary to claims advanced by the NUON Chea Defence, execution without legal process or compliance with due process guarantees constitutes murder, not capital punishment.<sup>2023</sup> They further submit that the right not to be arbitrarily deprived of life may not be derogated from under any circumstances, including during national emergency.<sup>2024</sup> Both of these arguments contain factual and legal aspects relevant to the lawfulness of particular killings. The Chamber notes that murder is generally understood to refer to unlawful killings,<sup>2025</sup> and that the right to life, as protected in international instruments including the ICCPR, precludes carrying out executions arbitrarily.<sup>2026</sup> Capital punishment, when foreseen by domestic legislation, can only be imposed as the result of a judicial process affording fair trial guarantees to the accused.<sup>2027</sup> There can be no derogation from this fundamental right.<sup>2028</sup> The Chamber will address questions of lawfulness, and in particular the existence of a judicial process prior to execution, as they arise on the facts of the case.

### 9.1.2. *Extermination*

653. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of extermination during the second phase of population movement (as limited to the treatment of the Cham); at Tram Kak Cooperatives; Trapeang Thma

<sup>2022</sup> NUON Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Responsibility in Case 002/02, E395/2, 10 June 2016, paras 28-29.

<sup>2023</sup> Co-Prosecutors’ Closing Brief, para. 136.

<sup>2024</sup> Co-Prosecutors’ Closing Brief, para. 136.

<sup>2025</sup> Case 002/01 Appeal Judgement, para. 396.

<sup>2026</sup> ICCPR, Article 6(1) (which provides that “Every human being has the inherent right to life. This rights shall be protected by law. No one shall be arbitrarily deprived of his life”). *See also*, ECHR, Article 2(1); ACHPR, Article 4; ACHR, Article 4(1).

<sup>2027</sup> ICCPR, Article 6(2) (which provides that the sentence of death “may be imposed only for the most serious crimes” and “can only be carried out pursuant to a final judgement rendered by a competent court”); ECHR, Article 2(1) (which provides that no one “shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law”). *See also*, ACHR, Article 4(2). Common Article 3(1)(d) of the Geneva Conventions absolutely prohibits the “carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples”. The Human Rights Committee has held that executions carried out in breach of the fair trial guarantees contained in the ICCPR would breach the obligations under Article 6(2) of the ICCPR. *See Mbenge v. Zaire*, Human Rights Committee, Communication No. 16/1977, 25 March 1983, para. 17.

<sup>2028</sup> ICCPR, Article 4(2) which precludes any derogation from the obligations under Article 6 of the ICCPR which pertain to the right to life. *See also*, ECHR, Article 15(2) which precludes any derogation from the right to life “except in respect of deaths resulting from lawful acts of war”; ACHR, Article 27(2).

Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres; and through the treatment of the Cham and Vietnamese.<sup>2029</sup>

654. This Chamber has previously found that extermination was recognised as a crime against humanity under customary international law by 1975.<sup>2030</sup> With respect to the foreseeability and accessibility of extermination as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia's governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that extermination was punishable as a crime against humanity by 1975.<sup>2031</sup>

655. The *actus reus* of extermination consists of an act, omission or combination of each that results in the death of persons on a massive scale.<sup>2032</sup> There is no minimum number of victims required to establish extermination.<sup>2033</sup> The requirement of scale is to be assessed on a case-by-case basis, having regard to such factors as the time and place of the killings, the selection of the victims and the manner in which they were targeted, and whether the killings were aimed at the collective group rather than victims in their individual capacity.<sup>2034</sup>

656. It is possible for the scale element of extermination to be established on an aggregated basis by accumulating separate incidents.<sup>2035</sup> However, these incidents need to form part of the same murder operation.<sup>2036</sup> It is not sufficient to collectively consider distinct events committed in different locations, in different circumstances, by different

<sup>2029</sup> Closing Order, paras 1381-1390. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2030</sup> Case 002/01 Trial Judgement, para. 415; Case 001 Trial Judgement, para. 334. *See also*, Case 002/01 Appeal Judgement, para. 510.

<sup>2031</sup> *See also*, Case 002/01 Appeal Judgement, para. 765.

<sup>2032</sup> Case 002/01 Trial Judgement, para. 416; Case 001 Trial Judgement, para. 334; *Seromba* Appeal Judgement, para. 189.

<sup>2033</sup> Case 002/01 Trial Judgement, para. 416; Case 001 Trial Judgement, para. 336; *Stakić* Appeal Judgement, para. 260.

<sup>2034</sup> Case 002/01 Trial Judgement, para. 416; Case 001 Trial Judgement, para. 336; *Lukić and Lukić* Appeal Judgement, para. 538.

<sup>2035</sup> *Tolimir* Appeal Judgement, para. 147 referring to *Karemera et al.* Appeal Judgement, paras 661-662. *See also*, Case 002/01 Appeal Judgement, para. 551; *Karadžić* Trial Judgement, para. 484.

<sup>2036</sup> *Tolimir* Appeal Judgement, para. 147.

perpetrators, and over an extended period of time.<sup>2037</sup> None of the parties contested the definition above with respect to the *actus reus* of extermination.<sup>2038</sup>

657. The Supreme Court Chamber has held that the *mens rea* of extermination as a crime against humanity requires direct intent to kill on a large scale.<sup>2039</sup> As the aim of extermination is to eliminate individuals who are part of a group, the crime is incompatible with the notion of *dolus eventualis*.<sup>2040</sup> Knowledge of certain death is not required; it is sufficient to demonstrate that the killing of members of a group was desired by the perpetrator.<sup>2041</sup>

658. The Co-Prosecutors submit that the Supreme Court Chamber applied a standard of *mens rea* that includes the intention to create conditions of life calculated to bring about the death of a large number of people.<sup>2042</sup> The Chamber notes that the Supreme Court Chamber indeed referred with approval to jurisprudence which was consistent with the *mens rea* standard of intentionally subjecting a number of people “to conditions of living that would inevitably lead to death, and that the accused *intended by his acts or omissions this result*”.<sup>2043</sup> The Co-Prosecutors submit that there is no requirement that the victims “must have been subjected to conditions *inevitably leading to death*”.<sup>2044</sup> No other parties made any relevant submissions in this regard. As this Chamber has previously found, the cases which refer to the “inevitability” requirement never turned on or discussed this standard.<sup>2045</sup> Given that the *mens rea* for extermination requires direct intent to kill on a large scale, it is sufficient if the perpetrator intended to cause the death of a large number of people. It is not necessary to show that the

<sup>2037</sup> *Karemera* Appeal Judgement, para. 661; *Bagosora and Nsengiyumva* Appeal Judgement, para. 396; *Tolimir* Appeal Judgement, paras 147- 150. *See also*, Case 002/01 Appeal Judgement, para. 552.

<sup>2038</sup> Co-Prosecutors’ Closing Brief, paras 139-143; Lead Co-Lawyers’ Closing Brief, para. 65; NUON Chea Closing Brief, para. 868, KHIEU Samphan Closing Brief, para. 995.

<sup>2039</sup> Case 002/01 Appeal Judgement, paras 522, 525.

<sup>2040</sup> Case 002/01 Appeal Judgement, para. 520.

<sup>2041</sup> Case 002/01 Appeal Judgement, para. 520.

<sup>2042</sup> Co-Prosecutors’ Closing Brief, para. 144.

<sup>2043</sup> Case 002/01 Appeal Judgement, para. 521, citing *Ntakirutimana* Appeal Judgement, para. 522 and referring to *Krstić* Trial Judgement, para. 503 (which referred to victims being “subjected to conditions of life calculated to bring about the destruction of a numerically significant part of the population”) and *Gacumbitsi* Appeal Judgement, para. 86.

<sup>2044</sup> Co-Prosecutors’ Closing Brief, para. 139 (original emphasis).

<sup>2045</sup> Case 002/01 Trial Judgement, paras 421-424 referring to *Ntakirutimana* Appeal Judgement, para. 522.

conditions would inevitably lead to the death of all people, as long as it is established that the perpetrator intended to create conditions of life in order to kill on a large scale.

659. The Supreme Court Chamber confirmed the Trial Chamber's finding that the existence and knowledge of a vast murderous enterprise were not elements of extermination as a crime against humanity in 1975.<sup>2046</sup>

### 9.1.3. *Enslavement*

660. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of enslavement at the Tram Kak Cooperatives; Trapeang Thma Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>2047</sup>

661. The Chamber has previously found that enslavement was recognised as a crime against humanity under customary international law by 1975.<sup>2048</sup> No new arguments have been raised by the parties in this case which require the Chamber to consider this issue further. With respect to the foreseeability and accessibility of enslavement as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia's governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that enslavement was punishable as a crime against humanity by 1975. The Chamber notes that this finding is consistent with the Supreme Court Chamber's finding that it was both foreseeable and accessible to the accused in Case 001 that he could be charged with enslavement as a crime against humanity by 1975.<sup>2049</sup>

662. The definition of enslavement as a crime against humanity draws on the definition of slavery in the 1926 Slavery Convention.<sup>2050</sup> The *actus reus* of enslavement is characterised by the exercise over a person of any or all powers attaching to the right

<sup>2046</sup> Case 002/01 Appeal Judgement, paras 523-528; Case 002/01 Trial Judgement, paras 418-419.

<sup>2047</sup> Closing Order, paras 1391-1396. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2048</sup> Case 001 Trial Judgement, para. 342. This finding was affirmed by the Supreme Court Chamber. *See* Case 001 Appeal Judgement, paras 152-153, 160-162. Article 8(1) of the ICCPR prohibits slavery and the slave trade.

<sup>2049</sup> Case 001 Appeal Judgement, paras 161-162.

<sup>2050</sup> Case 001 Appeal Judgement, paras 131, 144, 152, 155.

of ownership.<sup>2051</sup> While the notion of enslavement centred on ownership is not the same as “chattel slavery”, which connotes outright ownership of a human being, it does imply “the presence of behavioural aspects of ownership”.<sup>2052</sup> In making that assessment, the Supreme Court Chamber has held that a Chamber must above all identify the indicia of ownership, namely those facts pointing to the victim being reduced to a commodity, used, economically exploited, “consumed” and “ultimately disposed of”.<sup>2053</sup> The exercise over a person of any powers attaching to ownership requires a substantial degree of control over the victim.<sup>2054</sup> There is no enslavement “where the control has an objective other than enabling the exercise of the powers attaching to ownership”.<sup>2055</sup> An “effort to accrue some gain”, while not an additional element of the crime, is the implicit purpose in the exercise of the powers attaching to ownership.<sup>2056</sup>

663. The following indicia of enslavement are consistent with the state of customary international law during 1975-1979: control of someone’s movement; control of physical environment; psychological control; measures taken to prevent or deter escape; force; threat of force or coercion; duration; assertion of exclusivity; subjection to cruel treatment and abuse; control of sexuality; and forced labour.<sup>2057</sup>

664. Proof of the lack of consent by the victim is not required, but may evidentially be relevant to establishing the exercise of the rights of ownership. The lack of consent may be presumed where the expression of consent is impossible.<sup>2058</sup>

665. In discussing the elements of enslavement, both the Supreme Court Chamber and the ICTY referred to the *Pohl* case, which found that: “[w]e might eliminate all proof of ill-treatment, overlook the starvation, beatings, and other barbarous acts, but the admitted fact of slavery – compulsory uncompensated labour – would still remain.

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<sup>2051</sup> Case 001 Appeal Judgement, paras 152-153, 158; Case 001 Trial Judgement, para. 342. *See also, Kunarac et al. Appeal Judgement, paras 116, 124; Sesay et al. Appeal Judgement, paras 94, 1082.*

<sup>2052</sup> Case 001 Appeal Judgement, paras 155-156; *Kunarac et al. Appeal Judgement, para. 117.*

<sup>2053</sup> Case 001 Appeal Judgement, paras 156-157.

<sup>2054</sup> Case 001 Appeal Judgement, paras 155-157; *Kunarac et al. Appeal Judgement, para. 117.*

<sup>2055</sup> Case 001 Appeal Judgement, para. 156.

<sup>2056</sup> Case 001 Appeal Judgement, para. 158.

<sup>2057</sup> Case 001 Appeal Judgement, para. 154; Case 001 Trial Judgement, para. 342; *Kunarac et al. Appeal Judgement, para. 119.*

<sup>2058</sup> Case 001 Trial Judgement, para. 343; *Kunarac et al. Appeal Judgement, para. 120.*

There is no such thing as benevolent slavery. Involuntary servitude, even if tempered by humane treatment, is still slavery.”<sup>2059</sup>

666. Where all the elements of that crime are met, forced labour may be sufficient on its own to establish enslavement as a crime against humanity. However, it is not a prerequisite for the crime to be established.<sup>2060</sup> With respect to forced labour as enslavement, the NUON Chea Defence submits that in establishing lack of consent, the “mere subjective opinion of the victims that they were forced to work is insufficient; instead it must be proved with objective evidence”.<sup>2061</sup> No other parties made any relevant submissions in this regard. The Chamber agrees that the subjective opinion of the victims alone is insufficient and ultimately there must be objective evidence establishing that there was no choice about whether the victim would work.<sup>2062</sup>

667. The NUON Chea Defence submits that the charges of enslavement with respect to security centres are limited to forced labour.<sup>2063</sup> No other parties made any relevant submissions in this regard. With respect to the allegations which are based on forced labour, the Chamber notes that the Closing Order specifies that it is not the forced labour alone, but the work, coupled with the constraints imposed on the victims which “stripped them of their free will, and amounts to enslavement”.<sup>2064</sup> Furthermore, the Closing Order sets out a broader *actus reus* in relation to the cooperatives, worksites and security centres which involved the exercise of “total control and all of the powers attaching to the right of ownership over the persons placed there, without them being given any real right to agree”.<sup>2065</sup> The Closing Order further alleges that the CPK set up a network of cooperatives, worksites and security centres where “virtually all decisions concerning the victims’ physical environment were taken by the local CPK authorities”.<sup>2066</sup>

<sup>2059</sup> Case 001 Appeal Judgement, paras 142-144; *Kunarac et al.* Appeal Judgement, para. 123, citing *Pohl* Judgement, p. 970.

<sup>2060</sup> Case 001 Appeal Judgement, paras 126-127, 129. Article 8(3)(a) of the ICCPR provides that no one shall be required to perform forced or compulsory labour.

<sup>2061</sup> NUON Chea Closing Brief, paras 669, 1121.

<sup>2062</sup> *Krnjelac* Appeal Judgement, para. 195; *Sesay et al.* Trial Judgement, para. 202.

<sup>2063</sup> NUON Chea Closing Brief, para. 669.

<sup>2064</sup> Closing Order, para. 1394.

<sup>2065</sup> Closing Order, para. 1392.

<sup>2066</sup> Closing Order, para. 1393.

668. With respect to charges based on forced labour, the NUON Chea Defence submits that in order to constitute enslavement, forced labour must be illegal and of certain gravity.<sup>2067</sup> It contends that the use of forced labour is not always unlawful and that requiring a person to work in the ordinary course of lawful detention does not amount to forced labour.<sup>2068</sup> Further, it submits that “any service exacted in cases of emergency or calamity threatening the life or well-being of the community” is not considered a human rights violation.<sup>2069</sup> In assessing the gravity of the alleged acts of forced labour, the NUON Chea Defence submits that this conduct should be put in perspective of the dire living and working conditions of farmers and other workers in Cambodia at the time.<sup>2070</sup> No other parties made any relevant submissions in this regard.

669. The Chamber notes that, pursuant to the ICCPR, forced or compulsory labour shall not include work or service “normally required of a person who is under detention in consequence of a lawful order of a court”.<sup>2071</sup> Such work would not be a consequence of an infringement of the right to liberty and security of the person.<sup>2072</sup> The ICCPR clarifies that the prohibition against forced or compulsory labour does not preclude the performance of hard labour in pursuance of a sentence by a competent court, in a country where imprisonment with hard labour may be imposed as punishment for a crime.<sup>2073</sup> The ICCPR further provides that forced or compulsory labour shall not preclude “any service exacted in cases of emergency or calamity threatening the life or well-being of the community”.<sup>2074</sup> If a person is required to work in cases of emergency or calamity, the nature and conditions of the work need to be balanced against the nature of the threat to the well-being of the community and the circumstances of the emergency. Furthermore, if the crisis or emergency situation is the result of the perpetrator’s own unlawful activity then such measures would not be justifiable.<sup>2075</sup> As

<sup>2067</sup> NUON Chea Closing Brief, para. 669.

<sup>2068</sup> NUON Chea Closing Brief, paras 669 *citing* *Krnojelac* Appeal Judgement, para. 200 *referring to* Article 4(3) of the ECHR), 670 (*referring to* Article 8(3)(c) of the ICCPR and Article 21 of the 1956 Criminal Code), 1119.

<sup>2069</sup> NUON Chea Closing Brief, paras 670 (*referring to* Article 8(3)(c)(iii) of the ICCPR), 1120.

<sup>2070</sup> NUON Chea Closing Brief, para. 671.

<sup>2071</sup> ICCPR, Article 8(3)(c)(i).

<sup>2072</sup> The right to liberty and security is defined for example by Article 5 of the ECHR and Article 9 of the ICCPR.

<sup>2073</sup> ICCPR, Article 8(3)(b).

<sup>2074</sup> ICCPR, Article 8(3)(c)(iii).

<sup>2075</sup> The ICTY has recognised this principle in the context of deportation and forced transfer and has found that while “forced displacement for humanitarian reasons is justifiable in certain situations”, it is not justified “where the humanitarian crisis that caused the displacement is itself the result of the accused’s own unlawful activity”. See *Stakić* Appeal Judgement, para. 287; *Karadžić* Trial Judgement,

discussed above, while jurisprudence has clarified that enslavement is broader than slavery (the prohibition of which is a norm of *jus cogens*), it shares the same origin. Accordingly, while there are limited situations in which people can be forced to work, if the conditions are such that this goes beyond lawfully required labour and encompasses the exercise over a person of any or all powers attaching to ownership, such conduct amounts to enslavement and is therefore not justifiable under any circumstance. However, the final assessment will be conducted below as required on the facts of the case.

670. The *mens rea* of enslavement is the intentional exercise over a person of “any or all of the powers attaching to the right of ownership”.<sup>2076</sup>

#### 9.1.4. *Deportation*

671. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of deportation at Tram Kak Cooperatives as well as in Prey Veng and Svay Rieng.<sup>2077</sup> It is alleged that Vietnamese living in Cambodia were forced to leave the places where they had been residing legally and to cross the Vietnamese border.<sup>2078</sup>

672. As a preliminary matter, the Chamber must determine whether the crime against humanity of deportation was established as a crime under customary international law before 17 April 1975. Deportation as a crime against humanity developed out of deportation as a war crime, which was recognised prior to World War II.<sup>2079</sup> Deportation as a crime against humanity was codified in the IMT Charter,<sup>2080</sup> IMTFE

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para. 492. The Chamber finds that it is a general principle that a perpetrator cannot rely on the conditions created by their own unlawful conduct to justify certain conduct. This principle is equally applicable in the context of enslavement.

<sup>2076</sup> Case 001 Appeal Judgement, para. 152; Case 001 Trial Judgement, para. 345; *Kunarac et al.* Appeal Judgement, para. 122.

<sup>2077</sup> Closing Order, paras 1397-1401. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2078</sup> Closing Order, para. 1398. For the Chamber’s discussion of the KHIEU Samphan Defence’s submission that the Co-Investigating Judges were not seized of the deportation of Vietnamese *see* Section 2.5.6.3.3: The Charge of Deportation of Vietnamese.

<sup>2079</sup> *See e.g.*, Article 23 of the 1863 Lieber Code; Article 49 of Geneva Convention IV. *See also*, *Stakić* Appeal Judgement, para. 289 (finding that the development of deportation as a crime against humanity from a war crime was a “way of extending the scope of the crime’s protection to civilians of the same nationality as the perpetrator”).

<sup>2080</sup> IMT Charter, Article 6(c) (“The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: [...] (c) CRIMES AGAINST HUMANITY: [...] deportation”).



Charter,<sup>2081</sup> Control Council Law No. 10<sup>2082</sup> and the Nuremberg Principles.<sup>2083</sup> Subsequently, a number of post-World War II tribunals entered convictions for the crime.<sup>2084</sup> In 1946, the UN General Assembly unanimously adopted Resolution 95(I), affirming that the IMT Charter and Judgement reflect principles of international law.<sup>2085</sup> The Supreme Court Chamber has noted that this Resolution evidences “*opinio juris* among UN Member States that the IMT Charter and Judgement reflected general principles of international law at the time”.<sup>2086</sup> Based upon its review of pre-1975 jurisprudence and instruments, the Chamber considers that deportation as a crime against humanity was established in customary international law by 1975.

673. With respect to the foreseeability and accessibility of deportation as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia’s governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that deportation was punishable as a crime against humanity by 1975.

674. The *actus reus* of deportation is the forced displacement of persons by expulsion or other coercive acts from the area in which they are lawfully present, across a border, without grounds permitted under international law.<sup>2087</sup> This definition is not contested by the parties.

<sup>2081</sup> Charter of the International Military Tribunal for the Far East, Article 5(c) (“The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility: [...] (c) Crimes Against Humanity: [...] deportation”).

<sup>2082</sup> Control Council Law No. 10, Article II(1)(c) (“Each of the following acts if recognized as a crime: [...] (c) Crimes against Humanity: [...] deportation”).

<sup>2083</sup> Nuremberg Principles, Principle VI(c) (“The crimes hereinafter set out are punishable as crimes under international law: [...] (c) Crimes against humanity: [...] deportation”).

<sup>2084</sup> See e.g., *Nuremberg* Judgement, pp. 226-227, 243-247; *Milch* Judgement, pp. 784-790; *Pohl* Judgement, pp. 968-970; *Ministries* Judgement, pp. 676-677; *Krupp* Judgement, pp. 144-145; *High Command* Judgement, pp. 607-609; *Hostage* Judgement, pp. 1304-1305; *Justice* Judgement, p. 1059; *Flick* Judgement, p. 1194; *Eichmann* Judgement, para. 210.

<sup>2085</sup> UN General Assembly Resolution 95(I), 11 December 1946. See also, Case 001 Appeal Judgement, para. 225.

<sup>2086</sup> Case 001 Appeal Judgement, para. 109.

<sup>2087</sup> *Stakić* Appeal Judgement, para. 278; *Krnjelac* Trial Judgement, para. 474; *Blaškić* Trial Judgement, para. 234; *Krupp* Judgement, pp. 144-145 adopting *Milch* Judgement, Concurring Opinion of Judge Philips, pp. 865-866 (finding that “[d]isplacement of groups of persons from one country to another is the proper concern of international law in as far as it affects the community of nations. International law has enunciated certain conditions under which the fact of deportation of civilians from one nation to another during times of war becomes a crime. [...] deportation of the population is criminal whenever there is no title in the deporting authority or wherever the purpose of the displacement is illegal or whenever the deportation is characterized by inhumane or illegal methods”); *Justice* Judgement, p. 1059;

675. The Co-Prosecutors submit that the requirement that the victims be “lawfully present” in area should not be equated to the concept of “lawful residence” and that legal residents include refugees and stateless persons.<sup>2088</sup> No other parties made any relevant submissions in this regard.

676. This issue was addressed before the ICTY by the *Popović* Trial Chamber, which stated:

The Trial Chamber is of the view that the words “lawfully present” should be given their common meaning and should not be equated to the legal concept of lawful residence. The clear intention of the prohibition against forcible transfer and deportation is to prevent civilians from being uprooted from their homes and to guard against the wholesale destruction of communities. In that respect, whether an individual has lived in a location for a sufficient period of time to meet the requirements for residency or whether he or she has been accorded such status under immigration laws is irrelevant. Rather, what is important is that the protection is provided to those who have, for whatever reason, come to “live” in the community – whether long term or temporarily.<sup>2089</sup>

677. The Trial Chamber considers this reasoning to be persuasive. It also notes that post-World War II jurisprudence found that deportation encompassed individuals who were stateless, refugees in occupied territories and others who were factually residing in particular states without reference to the legal status of their residency.<sup>2090</sup> Accordingly, the Chamber does not consider that evidence needs to be presented establishing the legal status of the victims.

678. The Chamber now turns to the cross-border requirement of deportation as a crime against humanity. ICTY jurisprudence has extensively considered the nature of the cross-border requirement and concluded that deportation as a crime against humanity required that individuals be transferred “across a state border or, in certain circumstances, a *de facto* border”.<sup>2091</sup> The alleged facts of Case 002/02 only include

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*Hostage* Judgement, p. 1304; *High Command* Judgement, pp. 607-609; *Nuremberg* Judgement, p. 227; *Pohl* Judgement, p. 970; *Eichmann* Judgement, para. 210.

<sup>2088</sup> Co-Prosecutors’ Closing Brief, para. 153 referring to *Popović* Trial Judgement, para. 900; *Ministries* Judgement, pp. 480, 496, 500; *High Command* Judgement, p. 572; *Eichmann* Judgement, paras 100, 111.

<sup>2089</sup> *Popović* Trial Judgement, para. 900. See also, *Tolimir* Trial Judgement, para. 797; *Karadžić* Trial Judgement, para. 491.

<sup>2090</sup> See *Ministries* Judgement, pp. 480, 496, 500, 654; *High Command* Judgement, pp. 572-573; *Eichmann* Judgement, paras 100, 111.

<sup>2091</sup> *Stakić* Appeal Judgement, para. 289; *Dorđević* Appeal Judgement, para. 535 (finding no support in customary international law for the proposition that a *de facto* border can be found within the confines of a sovereign state). See also, *Krajišnik* Appeal Judgement, para. 318; *Krnojelac* Trial Judgement, para.

transfers across the state border between Cambodia and Vietnam. Accordingly, the Chamber considers that it need only establish, by reference to pre-1975 jurisprudence and legal provisions, whether the law in 1975 encompassed such a cross-state-border transfer.

679. Numerous post-World War II cases make findings in law or fact that deportation encompasses the crossing of state borders. The *Krupp* Judgement, adopting the concurring opinion of Judge Phillips in the *Milch* Judgement, stated that the “[d]isplacement of groups of persons from *one country to another* is the proper concern of international law in as far as it affects the community of nations. International law has enunciated certain conditions under which the fact of deportation from *one nation to another* during times of war becomes a crime”.<sup>2092</sup> Similarly, in the *Nuremberg* Judgement, the International Military Tribunal found that “not only in defiance of the well-established dictates of international law, but in complete disregard of the elementary rules of humanity [...] [w]hole populations were deported to Germany for the purposes of slave labor”.<sup>2093</sup> The *Nuremberg* Judgement made findings with respect to the deportation of millions of people from occupied territories to Germany and also the deportation of Jews from “Axis satellites” to the East prior to their extermination.<sup>2094</sup> The *Flick* Judgement also made findings with respect to “deportation to slave labor [in German industry] on a gigantic scale of members of the civilian populations of countries under the belligerent occupation of or otherwise controlled by Germany”.<sup>2095</sup>

680. The Chamber also considers sources concerning deportation as a war crime to be “instructive because deportation as a crime against humanity developed out of deportation as a war crime”.<sup>2096</sup> Article 23 of the 1863 Lieber Code prohibited deportation during times of war, instructing that “[p]rivate citizens are no longer [to be]

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474; *Stakić* Trial Judgement, paras 680, 684; *Krnojelac* Appeal Judgement, Separate Opinion of Judge Schomburg, paras 14-15; *Nikolić*, Rule 61 Decision, para. 23. See also, *Request under Regulation 46(3) of the Regulations of the Court*, ICC Pre-Trial Chamber (ICC-RoC46(3)-01/18-37), Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, 6 September 2018, paras 55-60.

<sup>2092</sup> *Krupp* Judgement, p. 144 citing *Milch* Judgement, Concurring Opinion of Judge Philips, p. 865 (emphasis added).

<sup>2093</sup> *Nuremberg* Judgement, p. 227.

<sup>2094</sup> *Nuremberg* Judgement, pp. 243, 266, 271, 287, 293, 296-297, 319. See also, *Pohl* Judgement, p. 985.

<sup>2095</sup> *Flick* Judgement, pp. 1194-1195.

<sup>2096</sup> *Stakić* Appeal Judgement, para. 289; *Krnojelac* Trial Judgement, para. 473.

[...] carried off to *distant parts*".<sup>2097</sup> While the Lieber Code made no express reference to a cross-border requirement, it was a precursor to later prohibitions with respect to deportation that did include such a requirement.<sup>2098</sup> The Chamber further notes that Article 49 of Geneva Convention IV refers to "deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country", which is consistent with a definition of deportation that requires displacement across a national border.

681. The Chamber concludes following this review that in 1975 deportation required displacement across a national border.

682. The forced character of the displacement is determined by the absence of genuine choice and that the term "forced" may include physical force, as well as the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, abuse of power or the act of taking advantage of a coercive environment.<sup>2099</sup> It is the absence of genuine choice that makes displacement unlawful; where consent is given, it must be given voluntarily as a result of the individual's free will, assessed in light of the surrounding circumstances.<sup>2100</sup>

683. There are limited circumstances under international law that would permit the involuntary removal of persons, for example removal of people for their own security or for imperative military reasons.<sup>2101</sup> The Co-Prosecutors submit that given the drastic nature of forced displacement, justifications for evacuation "would only be lawful in the gravest of circumstances and only as measures of last resort".<sup>2102</sup> They further submit that to justify forcible displacement on the basis of military necessity, the military considerations must make it imperative, and mere military advantage would

<sup>2097</sup> Emphasis added.

<sup>2098</sup> ICRC Customary International Humanitarian Law, Rule 129 (noting that the "prohibition of the deportation or transfer of civilians goes back to the Lieber Code"). The ICRC database on international humanitarian law further notes in its introduction that the Lieber Code "strongly influenced the further codification of the laws of war and the adoption of similar regulations by other states".

<sup>2099</sup> *Stakić* Appeal Judgement, paras 279, 281; *Krajišnik* Appeal Judgement, paras 319; *Šainović* Appeal Judgement, para. 366. See also, Case 002/01 Appeal Judgement, para. 595.

<sup>2100</sup> *Stakić* Appeal Judgement, para. 279; *Krnjelac* Appeal Judgement, paras 229, 233.

<sup>2101</sup> *Stakić* Appeal Judgement, paras 284-285 (referring to Article 19 of Geneva Convention III, Article 49 of Geneva Convention IV and Article 17 of Additional Protocol II to the Geneva Conventions).

<sup>2102</sup> Co-Prosecutors' Closing Brief, para. 155 citing *Simić* Trial Judgement, para. 125, fn. 218 and *Commentary to the Geneva Conventions*, pp. 280-281.

not suffice.<sup>2103</sup> In this regard, the Co-Prosecutors submit that transfers for the purposes of “preventing espionage and depriving the enemy of manpower” would not be justified.<sup>2104</sup> The NUON Chea Defence submits that the Co-Prosecutors failed to discharge the burden of proof of establishing that the movement of people occurred in violation of international law.<sup>2105</sup> No other parties made any relevant submissions in this regard.

684. The Chamber notes that a determination of whether an act was permissible under international law requires an assessment of the relevant provisions of the applicable legal framework and of the factual context on a case-by-case basis.<sup>2106</sup> Where measures are taken to transfer individuals in the interests of civilian security or military necessity, they must be proportionate to the interest protected and must be “the least intrusive instrument amongst those which might achieve the desired result”.<sup>2107</sup> Consistently with the protections found under Article 49 of Geneva Convention IV, the Chamber finds that even if individuals are lawfully evacuated for their security or for imperative military reasons, those evacuated must be transferred back to their homes as soon as hostilities in the area in question have ceased.<sup>2108</sup> Additionally, those responsible for a transfer “shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated”.<sup>2109</sup> While displacement for humanitarian reasons is justifiable in certain situations, it is not justifiable where the humanitarian crisis that caused the displacement was itself the result of an accused’s own unlawful activity.<sup>2110</sup>

685. The NUON Chea Defence submits that the existence of a conflict between Vietnam and Cambodia constituted “a legitimate reason to suggest the return of

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<sup>2103</sup> Co-Prosecutors’ Closing Brief, para. 156 referring to *Blagojević* Trial Judgement, para. 598 and *Commentary to the Geneva Conventions*, p. 280.

<sup>2104</sup> Co-Prosecutors’ Closing Brief, para. 156 referring to *Krstić* Trial Judgement, para. 526.

<sup>2105</sup> NUON Chea Closing Brief, para. 820; T. 19 June 2017 (Closing Statements), E1/524.1, p. 34.

<sup>2106</sup> Case 002/01 Trial Judgement, para. 451.

<sup>2107</sup> Case 002/01 Trial Judgement, para. 450 citing *General Comment No. 27: Freedom of Movement (Art. 12)*, CCPR/C/21/Rev.1/Add.9, 1 November 1999, para. 14 and referring to ICCPR, Article 12. This finding was not disturbed by the Supreme Court Chamber. While the Trial Chamber made this finding in the context of forced transfer as an “other inhumane act”, the Trial Chamber finds that this is equally applicable to the crime of deportation as a crime against humanity.

<sup>2108</sup> Case 002/01 Trial Judgement, para. 450 referring to Geneva Convention (IV), Article 49.

<sup>2109</sup> Case 002/01 Trial Judgement, para. 450 citing Geneva Convention (IV), Article 49.

<sup>2110</sup> *Stakić* Appeal Judgement, para. 287. See also, Case 002/01 Trial Judgement, para. 450.

Vietnamese nationals to Vietnam”, a view supported by the fact that Cambodian and Vietnamese authorities co-operated in this regard.<sup>2111</sup> No other parties made any relevant submissions in this regard. The Chamber finds that the mere existence of an agreement between authorities representing parties to an armed conflict to exchange groups of persons displaced from each side, does not have an impact on the voluntary nature or lawfulness of that displacement. Contrary to the NUON Chea Defence submission, “[m]ilitary commanders or political leaders cannot consent on behalf of the individual”,<sup>2112</sup> “[a]n agreement as such does not in itself alter the conditions rendering a transfer lawful”<sup>2113</sup> and “what matters is the *personal* consent or wish of an individual, as opposed to collective consent as a group, or a consent expressed by official authorities, in relation to an individual person, or a group of persons”.<sup>2114</sup>

686. The *mens rea* of deportation requires the intent to forcibly displace the victim across a national border.<sup>2115</sup> There is no need to show intent to displace persons across the border on a permanent basis.<sup>2116</sup>

#### 9.1.5. *Imprisonment*

687. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of imprisonment at Tram Kak Cooperatives; S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres; and through the treatment of the Cham.<sup>2117</sup>

688. This Chamber has previously found that imprisonment was recognised under customary international law by 1975.<sup>2118</sup> The customary status of the prohibition against arbitrary imprisonment under international law initially developed from the

<sup>2111</sup> NUON Chea Closing Brief, para. 820.

<sup>2112</sup> *Naletilić and Martinović* Trial Judgement, para. 523; *Simić* Trial Judgement, para. 127.

<sup>2113</sup> *Naletilić and Martinović* Trial Judgement, para. 548; *Simić* Trial Judgement, para. 127. *See also*, *Krstić* Trial Judgement, para. 148.

<sup>2114</sup> *Simić* Trial Judgement, para. 128.

<sup>2115</sup> *Tolimir* Trial Judgement, para. 801; *Popović* Trial Judgement, para. 904. The pre-1975 jurisprudence and legal provisions relied upon by the Trial Chamber for the purpose of establishing the *actus reus* for deportation did not expressly address the required *mens rea* and whether or not this required intent to forcibly displace a victim across a national border. However, it is clear that given the cross-border requirement was an element of the crime, for that crime to be established “the *mens rea* for the offence must encompass this component of the crime”.

<sup>2116</sup> *Stakić* Appeal Judgement, paras 278, 306-307; *Krajišnik* Appeal Judgement, para. 304; *Brđanin* Appeal Judgement, para. 206.

<sup>2117</sup> Closing Order, paras 1402-1407. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2118</sup> Case 001 Trial Judgement, paras 293-296, 347.

laws of war and imprisonment was recognised as a crime against humanity since its inclusion in Control Council Law No. 10 in 1945.<sup>2119</sup> The prohibition of arbitrary imprisonment is further supported by a number of international and regional human rights instruments which predate 1975.<sup>2120</sup> With respect to the foreseeability and accessibility of imprisonment as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia’s governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that imprisonment was punishable as a crime against humanity by 1975.

689. The *actus reus* of imprisonment consists of the arbitrary deprivation of an individual’s liberty without due process of law.<sup>2121</sup> An initial deprivation of liberty will be arbitrary if no legal basis exists to justify it.<sup>2122</sup> If national law is relied upon as justification in this regard, it must be established that the relevant provisions do not violate international law.<sup>2123</sup> The legal basis for the initial deprivation of liberty must continue throughout the period of imprisonment. Where the lawful basis of imprisonment ceases, continued imprisonment may be considered arbitrary.<sup>2124</sup>

690. The NUON Chea Defence submits that “[t]he CPK’s policy sought to investigate and detain those suspected of unlawful activities endangering state security or threatening the society as such” and that this “was both lawful and legitimate”.<sup>2125</sup> The NUON Chea Defence submits that this policy was “akin to many security-related

<sup>2119</sup> Case 001 Trial Judgement, paras 293-296, 347; Control Council Law No. 10, Article II(1)(c) (“Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment”). See also, *Justice Judgement*, p. 23; *Einsatzgruppen Judgement*, p. 15 (in which the defendants were charged with Crimes Against Humanity which included imprisonment).

<sup>2120</sup> Article 9 of the Universal Declaration of Human Rights declares that “[n]o one shall be subjected to arbitrary arrest, detention or exile”. Article 9(1) of the ICCPR provides that “[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. Article II(a)(iii) of the Apartheid Convention includes “arbitrary arrest and illegal imprisonment of the members of a racial group or groups” as one of the acts constituting the crime of apartheid. Article 5 of the ECHR provides that no one shall be deprived of his liberty except in particular cases, as enumerated in the Convention and in accordance with a procedure prescribed by law. Article 7(3) of the ACHR provides that “[n]o one shall be subject to arbitrary arrest or imprisonment”.

<sup>2121</sup> Case 001 Trial Judgement, para. 347; *Kordić and Čerkez Appeal Judgement*, para. 116; *Krnjelac Trial Judgement*, paras 109-115.

<sup>2122</sup> Case 001 Trial Judgement, para. 348; *Krnjelac Trial Judgement*, paras 113-114.

<sup>2123</sup> Case 001 Trial Judgement, para. 348; *Krnjelac Trial Judgement*, para. 114; *Ntagerura et al. Trial Judgement*, para. 702.

<sup>2124</sup> Case 001 Trial Judgement, para. 348; *Krnjelac Trial Judgement*, para. 114.

<sup>2125</sup> NUON Chea Closing Brief, para. 386.

policies worldwide” and that the “CPK implemented a form of judicial system and a specific form of proceeding for dealing with suspected offenders” and for identifying a legal basis for their arrest.<sup>2126</sup> It asserts that the implementation of the DK policy should be assessed in the context of exceptional circumstances of public emergency which would allow some derogation from States’ obligations related to arrests of individuals and fair trial guarantees.<sup>2127</sup> It contends that there was an “elaborate process to monitor, investigate and interrogate people” and that one reasonable inference from the evidence is that the CPK was genuinely trying to identify individuals guilty of unlawful activities.<sup>2128</sup> No other parties made any relevant submissions in this regard.

691. The core question that the Chamber must assess is whether the deprivation of liberty had a legal basis or was arbitrary because it was carried out or perpetuated without due process of law.

692. The deprivation of an individual’s liberty is arbitrary if it is imposed without due process of law.<sup>2129</sup> In making that assessment, the Chamber considers that the ECHR is instructive as it sets out a list of cases in which deprivation of liberty “in accordance with a procedure prescribed by law” does not constitute a violation of the right to liberty and security.<sup>2130</sup> Accordingly, the deprivation of liberty will not be arbitrary if it resulted from: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; or (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or

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<sup>2126</sup> NUON Chea Closing Brief, paras 389, 403. Reference is made to Article 10 of the DK Constitution, which provided that activities “which are systematically organised and endanger the people’s State are punishable to the highest degree” while “[o]ther cases are subject to constructive re-education within the framework of the State’s or people’s organisations”. See DK Constitution, E3/259, p. 4, ERN (En) 00184836, Article 10.

<sup>2127</sup> NUON Chea Closing Brief, paras 656-657 (noting that Article 4(2) of the ICCPR, which sets out a list of its provisions from which there can be no derogation, includes neither Article 9 (prohibition of arbitrary arrest and detention), nor Article 14 (fair trial rights)).

<sup>2128</sup> NUON Chea Closing Brief, para. 386.

<sup>2129</sup> *Krnjelac* Trial Judgement, para. 113.

<sup>2130</sup> ECHR, Articles 5(1)(a)-(f). See also, *Krnjelac* Trial Judgement, paras 113-114 (which had regard to the European Convention of Human Rights as one of the factors in concluding that “a deprivation of an individual’s liberty will be arbitrary and, therefore, unlawful if no legal basis can be called upon to justify the initial deprivation of liberty”).



fleeing after having done so.<sup>2131</sup> In assessing whether the deprivation of liberty was “in accordance with a procedure prescribed by law” the Chamber will not only have regard to whether it complied with domestic law, but also whether the detention respected fundamental principles and protections under international law.<sup>2132</sup>

693. In this regard, an initially justified imprisonment may become arbitrary if the deprivation of physical liberty is administered with “serious disregard of fundamental procedural rights” under international law.<sup>2133</sup> In assessing whether detention was perpetuated without due process of law, the Chamber may have regard to the basic procedural guarantees found in the ICCPR and ECHR.<sup>2134</sup> These basic procedural guarantees include the right to promptly be brought before a judge or officer authorised to exercise judicial power,<sup>2135</sup> the right to trial within a reasonable time,<sup>2136</sup> and the right to take proceedings in order to decide on the lawfulness of the detention.<sup>2137</sup>

694. Furthermore, in assessing whether the deprivation of the liberty was perpetuated without due process of law, it is instructive to have regard to the procedural safeguards found in Article 43 of Geneva Convention IV.<sup>2138</sup> While this addresses the internment of civilians, it has been found that when the procedural safeguards set out in Geneva Convention IV are not complied with, this could be relevant to assessing whether there was unlawful imprisonment as a crime against humanity.<sup>2139</sup> The protections included in Article 43 of Geneva Convention IV include the right to have the internment reconsidered as soon as possible by an appropriate court or administrative board and the right to have the internment periodically considered.<sup>2140</sup>

695. The Chamber will have regard to these indicia in assessing whether the procedure and practice adopted in the DK with respect to the detention of individuals in each of

<sup>2131</sup> ECHR, Articles 5(1)(a)-(c).

<sup>2132</sup> See e.g., *Plesó v. Hungary*, ECtHR, Judgement, Application No. 41242/08, 2 October 2012, para. 59 (finding that the requirement of lawfulness set out in Article 5 of the ECHR “is not satisfied merely by compliance with the relevant domestic law; domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it [...] particularly the principle of the rule of law”).

<sup>2133</sup> *Krnjelac* Trial Judgement, fn. 347.

<sup>2134</sup> ICCPR, Articles 9, 14; ECHR, Article 5(3).

<sup>2135</sup> ICCPR, Article 9(3); ECHR, Article 5(3).

<sup>2136</sup> ICCPR, Article 9(3); ECHR, Article 5(3).

<sup>2137</sup> ICCPR, Article 9(4); ECHR, Article 5(4).

<sup>2138</sup> Geneva Convention IV, Articles 42-43.

<sup>2139</sup> *Krnjelac* Trial Judgement, paras 110-111, fn. 347.

<sup>2140</sup> Geneva Convention IV, Article 43.

the alleged crime sites resulted in the deprivation of liberty according to due process of law. To the extent that the NUON Chea Defence asserts that there was a domestic legal basis for the deprivation of liberty, the Chamber will assess whether this had a foundation in Cambodian national law. As set out above, if Cambodian law is relied upon as justification for the deprivation of liberty, these provisions must not violate international law.<sup>2141</sup> In making that assessment it is important that the “national law itself must not be arbitrary” and the enforcement of such a law is not arbitrary.<sup>2142</sup>

696. The NUON Chea Defence submits that under international human rights law, states may in certain circumstances derogate from some of their obligations related to arrests of individuals and fair trial guarantees in times of public emergency.<sup>2143</sup> No other parties made any relevant submissions in this regard. The ICCPR does make provision for a State to derogate from certain obligations, but it only allows for such derogation in very narrowly defined circumstances. Pursuant to Article 4(1) of the ICCPR, derogation is only possible in “time of public emergency which threatens the life of the nation” provided that this situation is officially proclaimed.<sup>2144</sup> Furthermore, derogation is only permissible “to the extent strictly required by the exigencies of the situation” and provided that such measures are not inconsistent with their obligations under international law.<sup>2145</sup> The ECHR similarly permits derogation by a contracting party from certain obligations in “time of war or other public emergency threatening the life of the nation” but only to “the extent strictly required by the exigencies of the situation” and provided that the measures are not inconsistent with the contracting party’s other obligations under international law.<sup>2146</sup> In addition, a State “availing itself of the right of derogation” is required to “immediately inform the other States Parties [to the ICCPR]” of “the provisions from which it has derogated and of the reasons by which it was actuated”.<sup>2147</sup> The Chamber will have regard to this guidance in assessing whether on the facts of the case any derogation with respect to the right against arbitrary

<sup>2141</sup> *Krnjelac* Trial Judgement, para. 114. For the Chamber’s findings in this regard, see Section 5: Administrative Structures, paras 415-418; Section 7: Roles and Functions – NUON Chea, para. 537.

<sup>2142</sup> *Krnjelac* Trial Judgement, fn. 346.

<sup>2143</sup> NUON Chea Closing Brief, paras 656-657.

<sup>2144</sup> ICCPR, Article 4(1).

<sup>2145</sup> ICCPR, Article 4(1).

<sup>2146</sup> ECHR, Article 15(1).

<sup>2147</sup> ICCPR, Article 4(3).

detention was lawful and consistent with obligations under international law during the relevant period.

697. The *mens rea* of imprisonment requires that the perpetrator intended to arbitrarily deprive the individual of liberty, or that the perpetrator acted in the reasonable knowledge that his or her actions were likely to cause the arbitrary deprivation of physical liberty.<sup>2148</sup>

698. The NUON Chea Defence submits that for the Chamber to assess whether an arrest was arbitrary, it must consider the reasonableness of the arresting officer's suspicion that the factual circumstances warrant an arrest.<sup>2149</sup> It further submits that the factual basis for this reasonable suspicion need not reach the level for bringing formal charges,<sup>2150</sup> and that what may be regarded as reasonable depends on the circumstances, in particular the "situation pre- and post-DK".<sup>2151</sup> The Co-Prosecutors instead submit that "mere 'suspicion' that a person may be involved in treason is insufficient as a legal basis to justify detaining individuals without due process; namely, without charges, with no judicial review of evidence, no defence counsel, and with no right to any trial".<sup>2152</sup> No other parties made any relevant submissions in this regard. The Chamber finds that even if the arresting officer had reasonable suspicion of circumstances warranting arrest, this does not absolve the officer of responsibility if the individual is detained without due process of law.

#### 9.1.6. *Torture*

699. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of torture at Tram Kak Cooperatives; S-21, Kraing Ta Chan and Phnom Kraol Security Centres; and through the treatment of the Cham.<sup>2153</sup>

700. The Chamber has previously found that torture was recognised as a crime against humanity under customary international law by 1975.<sup>2154</sup> No new arguments have been

<sup>2148</sup> Case 001 Trial Judgement, para. 350; *Krnjelac* Trial Judgement, para. 115.

<sup>2149</sup> NUON Chea Closing Brief, para. 654.

<sup>2150</sup> NUON Chea Closing Brief, para. 654.

<sup>2151</sup> NUON Chea Closing Brief, paras 654-656.

<sup>2152</sup> Co-Prosecutors' Closing Brief, para. 160.

<sup>2153</sup> Closing Order, paras 1408-1414. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2154</sup> Case 001 Trial Judgement, paras 352-353. This finding was affirmed by the Supreme Court Chamber. *See* Case 001 Appeal Judgement, paras 185-188, 211.

raised by the parties in this case which require the Chamber to consider the issue further. With respect to the foreseeability and accessibility of torture as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia's governing authority. Furthermore the Chamber notes that the Supreme Court Chamber referred to the "widespread recognition by the community of States of the gravity of torture" in concluding that criminal prosecution for torture was foreseeable by 1975.<sup>2155</sup> Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that torture was punishable as a crime against humanity by 1975.<sup>2156</sup>

701. The definition of torture contained in the 1975 Declaration on Torture was declaratory of customary international law during the period 1975-1979.<sup>2157</sup> Pursuant to that definition, the elements of torture are:

- (i) any act causing severe pain or suffering, whether physical or mental (*actus reus*);
- (ii) that is intentionally inflicted upon a person (*mens rea*);
- (iii) by or at the instigation of a public official;
- (iv) for such purposes as obtaining information or a confession, punishment or intimidation.<sup>2158</sup>

702. The Co-Prosecutors submit that the prohibition against torture was a norm of *jus cogens* and thus derogations were not permitted under any circumstance, including public emergency or in the name of national security.<sup>2159</sup> No other parties made any relevant submissions in this regard. The Chamber upholds its previous finding that the prohibition of torture has acquired the status of a peremptory or non-derogable principle of international law.<sup>2160</sup> The International Court of Justice has also recognised the status of the prohibition of torture as a norm of *jus cogens* which was "grounded in a widespread international practice and on the *opinio juris* of States".<sup>2161</sup> In reaching that

<sup>2155</sup> Case 001 Appeal Judgement, paras 211-212.

<sup>2156</sup> See also, 1956 Criminal Code, Article 500.

<sup>2157</sup> Case 001 Appeal Judgement, paras 196-205 citing Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UNGA Res. 3452 (XXX), 9 December 1975 ("1975 Declaration on Torture").

<sup>2158</sup> Case 001 Appeal Judgement, paras 195, 203 citing 1975 Declaration on Torture, Article 1.

<sup>2159</sup> Co-Prosecutors' Closing Brief, para. 163.

<sup>2160</sup> Case 001 Trial Judgement, para. 352.

<sup>2161</sup> *Belgium v. Senegal*, ICJ, Judgement, 20 July 2012 (ICJ Reports 2012), para. 99. See also, *Furundžija* Trial Judgement, paras 143-146.

conclusion, the International Court of Justice relied on international instruments such as the Universal Declaration of Human Rights, the Geneva Conventions and the ICCPR, which were concluded prior to 1975.<sup>2162</sup> The Chamber is therefore satisfied that as at 1975, the prohibition of torture was a norm of *jus cogens* from which no derogations were possible for any reason.

703. In assessing pain or suffering, this Chamber and the *ad hoc* tribunals have considered objective criteria, such as the severity of the harm inflicted and the nature, purpose and consistency of the acts committed, as well as subjective criteria, including the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim's age, sex, state of health and position of inferiority.<sup>2163</sup>

704. The Chamber observes that international jurisprudence has not specifically determined a threshold of suffering or pain required for the crime of torture to be established. The ICTY Appeal Chamber has noted that "some acts may be so obvious that [they] amount *per se* to torture".<sup>2164</sup> Drawing on the work of the United Nations Special Rapporteur for Torture, the *Delalić et al.* Trial Judgement provided "a detailed, although not exhaustive, catalogue of those acts which involve the infliction of suffering severe enough to constitute the offence of torture", including:

[B]eating, extraction of nails, teeth, etc.; burns; electric shocks, suspension, suffocation; exposure to excessive light or noise; sexual aggression; administration of drugs in detention or psychiatric institutions; prolonged denial of rest or sleep; prolonged denial of food; prolonged denial of sufficient hygiene; prolonged denial of medical assistance; total isolation and sensory deprivation; being kept in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment; and simulated executions.<sup>2165</sup>

<sup>2162</sup> *Belgium v. Senegal*, ICJ, Judgement, 20 July 2012 (ICJ Reports 2012), para. 99. The prohibition against torture can be found in Common Article 3 to the Geneva Conventions; Geneva Convention (I), Article 12; Geneva Convention (II), Article 12; Geneva Convention (III), Articles 17, 87; Geneva Convention (IV), Article 32; Universal Declaration of Human Rights, Article 5; ICCPR, Article 7. ICCPR, Article 4(2) and ECHR, Article 15 clarify that the respective prohibitions against torture, cruel (only in the case of the ICCPR), inhuman or degrading treatment or punishment, found in ICCPR, Article 7 and ECHR, Article 3 are non-derogable.

<sup>2163</sup> Case 001 Trial Judgement, para. 355; *Kvočka* Trial Judgement, para. 143; *Brdanin* Trial Judgement, para. 484. *See also, Ireland v. United Kingdom*, ECtHR, Judgement, Application No. 5310/71, 18 January 1978, para. 162.

<sup>2164</sup> *Brdanin* Appeal Judgement, para. 251 citing *Naletilić and Martinović* Appeal Judgement, para. 299.

<sup>2165</sup> *Delalić et al.* Trial Judgement, para. 467.

705. Acts falling short of the severity threshold of this category of treatment may constitute other offences.<sup>2166</sup> The crime against humanity of other inhumane acts and the grave breaches of inhuman treatment, as well as cruel treatment – all of which share the same legal elements<sup>2167</sup> – entail treatment that causes *serious* mental and physical suffering that falls short of the *severe* mental and physical suffering required for the offence of torture.<sup>2168</sup> Acts identified by trial chambers as being of insufficient seriousness on their own – in the particular circumstances – to qualify as torture include interrogation,<sup>2169</sup> minor contempt for the physical integrity of the victim,<sup>2170</sup> imprisonment<sup>2171</sup> and deprivation of food.<sup>2172</sup>

706. The Co-Prosecutors submit that the list of purposes set out in the 1975 Declaration on Torture is representative rather than exhaustive. On this basis, they submit that the absence of express reference in that Declaration does not preclude a finding of torture on discriminatory grounds.<sup>2173</sup> No other parties made any relevant submissions in this regard. The Chamber considers that the phrase “for such purposes as” in Article 1 of the 1975 Declaration on Torture clearly indicates that the list is indeed representative rather than exhaustive. However, this does not establish that discrimination was recognised as a prohibited purpose of torture by customary international law as at 1975. It was not until the 1984 Convention Against Torture that “discrimination of any kind” was listed as one of the prohibited purposes of torture.<sup>2174</sup>

707. The Supreme Court Chamber expressly noted that the 1975 Declaration on Torture, which was reflective of customary international law, was more restrictive and did not include “discrimination of any kind” in the list of prohibited purposes.<sup>2175</sup> The Co-Prosecutors have not identified any case law, legal provision, state practice and/or *opinio juris* to suggest that prior to 1975 customary international law envisaged that

<sup>2166</sup> *Delalić et al.* Trial Judgement, para. 468.

<sup>2167</sup> See e.g., *Simić et al.* Trial Judgement, para. 74; *Naletilić and Martinović* Trial Judgement, para. 246; *Vasiljević* Trial Judgement, para. 234; *Krnojelac* Trial Judgement, para. 130; *Kordić and Čerkez* Trial Judgement, para. 265; *Delalić et al.* Trial Judgement, para. 552.

<sup>2168</sup> *Delalić et al.* Trial Judgement, para. 542.

<sup>2169</sup> *Simić et al.* Trial Judgement, para. 80.

<sup>2170</sup> *Krnojelac* Trial Judgement, para. 181; *Simić et al.* Trial Judgement, para. 80.

<sup>2171</sup> *Mrkšić et al.* Trial Judgement, para. 524.

<sup>2172</sup> *Krnojelac* Trial Judgement, para. 183.

<sup>2173</sup> Co-Prosecutors’ Closing Brief, fn. 412 referring to *Delalić* Trial Judgement, paras 470-472.

<sup>2174</sup> Convention Against Torture, Article 1(1).

<sup>2175</sup> Case 001 Appeal Judgement, para. 192.

discrimination could be one of the prohibited purposes of torture. The Chamber rejects this submission accordingly.

708. The Chamber notes that the 1975 Declaration on Torture does not expressly encompass “omissions” which cause severe pain or suffering. This Chamber has previously accepted the general principle applied consistently by the *ad hoc* tribunals that “a crime may be committed by culpable omission where there is a duty to act”.<sup>2176</sup> While this observation was made in the context of individual criminal responsibility, the Chamber finds that the general principle, that there needs to be a duty to act, applies to all culpable omissions, including for the purposes of torture. In accordance with this principle the Chamber finds that, so long as there is a duty to act, an omission which is intentional and causes severe pain or suffering, constitutes torture, provided that the other elements of the offence are satisfied.<sup>2177</sup>

709. The Co-Prosecutors dispute as a matter of international criminal law the requirement that torture must be committed by or at the instigation of a public official, submitting that the ICTY and ICTR have correctly rejected this. At the same time, they submit that the issue is irrelevant to this trial “as all of the acts of torture alleged were committed by officials or foot soldiers of the regime”.<sup>2178</sup> No other parties made any relevant submissions in this regard. It has been confirmed that customary international law during the period 1975-1979 required that torture be committed by or at the instigation of a public official to constitute a crime.<sup>2179</sup> The Co-Prosecutors do not substantiate their submission on the law by specifying any pre-1975 case law, legal provision, state practice and/or *opinio juris* that may demonstrate any error on the part of the Supreme Court Chamber in its analysis of customary international law. Accordingly, the Chamber rejects the submission on this aspect of the law.

<sup>2176</sup> Case 002/01 Trial Judgement, fn. 2159 referring to *Blaškić* Appeal Judgement, para. 663, *Galić* Appeal Judgement, paras 168, 175 and *Ntagerura et al.* Appeal Judgement, para. 334. In concluding that there was a “general principle of criminal liability for omission”, the *Blaškić* Appeals Chamber made reference to a number of pre-1975 sources including the Geneva Conventions and the *Nuremberg* Judgement. See *Blaškić* Appeal Judgement, fns 1384-1385. For further discussion on the issue of omissions in the context of individual criminal responsibility and specifically with respect to aiding and abetting, see Section 15.6: Applicable Law: Individual Criminal Responsibility: Aiding and Abetting.

<sup>2177</sup> Case 001 Trial Judgement, paras 354-355 referring to *Kunarac* Appeal Judgement, para. 142 and *Ntagerura* Trial Judgement, para. 703. See also, *Delalić* Trial Judgement, para. 468. See above, para. 627.

<sup>2178</sup> Co-Prosecutors’ Closing Brief, fn. 410.

<sup>2179</sup> Case 001 Appeal Judgement, paras 195-196, 205.

9.1.7. *Persecution on Political, Racial or Religious Grounds*

710. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of persecution on the following grounds:

- (a) persecution on political grounds during the second phase of population movement (limited to the treatment of the Cham); at Tram Kak Cooperatives; at Trapeang Thma Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; and at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres;<sup>2180</sup>
- (b) persecution on religious grounds during the second phase of population movement (limited to the treatment of the Cham); at Tram Kak Cooperatives (limited to the treatment of Buddhists); at 1<sup>st</sup> January Dam Worksite (limited to the treatment of the Cham); and with respect to the treatment of the Cham;<sup>2181</sup> and
- (c) persecution on racial grounds of Vietnamese at Tram Kak Cooperatives; S-21, Kraing Ta Chan and Au Kanseng Security Centres; and with respect to the treatment of the Vietnamese in Prey Veng and Svay Rieng.<sup>2182</sup>

711. The charged conduct underlying persecution refers to a variety of conduct, as set out in the various crimes sites discussed in this Judgement dealing with persecution. When such conduct refers to executions, killings, imprisonment or the forced movement of people, the Chamber will have regard to the definitions of murder, imprisonment, deportation and other inhumane acts through conduct characterised as forced transfer which have been set out in this Judgement.<sup>2183</sup>

712. Persecution on racial, religious or political grounds existed as a crime against humanity under customary international law by 1975. An identical finding by the Trial

<sup>2180</sup> Closing Order, paras 1415-1418, 1423-1425. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2181</sup> Closing Order, paras 1415, 1419-1421, 1423, 1425. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2182</sup> Closing Order, paras 1415, 1422-1423, 1425. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2183</sup> *See above*, Section 9.1.1: Murder, Section 9.1.5: Imprisonment, Section 9.1.4: Deportation. *See below*, Section 9.1.8: Other Inhumane Acts.



Chamber in Case 001 was affirmed by the Supreme Court Chamber and remains uncontested by the parties to this case.<sup>2184</sup> With respect to the foreseeability and accessibility of persecution as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia's governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that persecution was punishable as a crime against humanity by 1975.<sup>2185</sup>

713. Persecution is defined as:

- (i) an act or omission which [...] discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (*actus reus*),<sup>2186</sup> and
- (ii) deliberate perpetration of an act or omission with the intent to discriminate on political, racial or religious grounds (*mens rea*).<sup>2187</sup>

This definition has been affirmed by the Supreme Court Chamber and is uncontested by the parties to this case.

714. The Chamber finds with respect to the discriminatory element of the *actus reus* that "discrimination in fact" occurs where a victim is targeted because of the victim's membership in a group defined by the perpetrator on specific grounds, namely on a political, racial or religious basis.<sup>2188</sup> The victims must in fact belong to a sufficiently discernible political, racial or religious group, such that the requisite persecutory consequences occur for the group.<sup>2189</sup> While the group that is the object of persecution must be discernible, it is the perpetrator who defines the group.<sup>2190</sup> This definition has been affirmed by the Supreme Court Chamber and is uncontested by the parties in this case.

<sup>2184</sup> Case 001 Appeal Judgement, paras 225, 280. *See also*, Case 001 Trial Judgement, para. 293.

<sup>2185</sup> Case 002/01 Trial Judgement, para. 426. The Trial Chamber's finding in this regard was not disturbed on appeal to the Supreme Court Chamber. *See* Case 002/01 Appeal Judgement, paras 661-680.

<sup>2186</sup> Case 001 Appeal Judgement, paras 257, 261-262, 271-278. *See also*, Case 001 Trial Judgement, para. 376; Case 002/01 Trial Judgement, para. 427.

<sup>2187</sup> Case 001 Appeal Judgement, paras 236-240. *See also*, Case 002/01 Trial Judgement, para. 427.

<sup>2188</sup> Case 001 Appeal Judgement, para. 272; Case 002/01 Appeal Judgement, para. 667. *See also*, Case 001 Trial Judgement, para. 377; Case 002/01 Trial Judgement, para. 428.

<sup>2189</sup> Case 001 Appeal Judgement, paras 274, 276; Case 002/01 Appeal Judgement, para. 667; Case 002/01 Trial Judgement, para. 428.

<sup>2190</sup> Case 002/01 Appeal Judgement, paras 669, 679; Case 001 Appeal Judgement, para. 272.

715. The Chamber now turns to the requisite *mens rea*. The crime of persecution requires the specific intent to discriminate on political, racial or religious grounds.<sup>2191</sup> As discussed in more detail below, with the exception of aiding and abetting and superior responsibility, it is essential for the accused to possess this specific intent in order to establish responsibility for persecution as a crime against humanity.<sup>2192</sup> Generally, while the specific intent may not be inferred merely by reference to the general discriminatory nature of an attack, it may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.<sup>2193</sup> Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a group and the general attitude of the alleged perpetrator as demonstrated by his behaviour.<sup>2194</sup> For the purpose of establishing discriminatory intent, behaviour shortly before and after the conduct in question may be taken into account as indicative of the perpetrator's state of mind at the time of the facts.<sup>2195</sup>

716. The particular acts amounting to persecution must be expressly charged.<sup>2196</sup> Persecutory acts may include the other underlying offences for crimes against humanity (such as murder, extermination, enslavement, imprisonment and torture), as well as other acts which rise to the same level of gravity or seriousness, including acts which are not necessarily crimes in and of themselves.<sup>2197</sup> In determining whether this threshold is met, acts should not be considered in isolation but rather should be examined in their context and with consideration of their cumulative effect.<sup>2198</sup> Although persecution often consists of a series of acts, a single act or omission may be grave or serious enough to amount to persecution where it results in the gross or blatant denial of a fundamental human right under treaty or customary international law.<sup>2199</sup>

<sup>2191</sup> Case 002/01 Appeal Judgement, paras 694-695; Case 001 Trial Judgement, para. 379; *Šainović et al.* Appeal Judgement, para. 579; *Krnojelac* Appeal Judgement, para. 184 (finding that the relevant acts had to be committed with the requisite discriminatory intent).

<sup>2192</sup> Section 15: Applicable Law: Individual Criminal Responsibility.

<sup>2193</sup> Case 002/01 Trial Judgement, para. 429; Case 001 Trial Judgement, para. 380; *Blaškić* Appeal Judgement, para. 164.

<sup>2194</sup> Case 002/01 Trial Judgement, para. 429; *Krnojelac* Appeal Judgement, para. 184.

<sup>2195</sup> Case 002/01 Appeal Judgement, para. 694.

<sup>2196</sup> Case 002/01 Trial Judgement, para. 431; *Blaškić* Appeal Judgement, para. 139.

<sup>2197</sup> Case 002/01 Trial Judgement, para. 433; Case 001 Trial Judgement, para. 378; Case 001 Appeal Judgement, paras 253-254, 261.

<sup>2198</sup> Case 001 Appeal Judgement, paras 256-259, 261.

<sup>2199</sup> Case 001 Appeal Judgement, para. 258. *See also*, *Blaškić* Appeal Judgement, para. 135.

717. The KHIEU Samphan Defence submits that where a targeted “group” is not clearly defined, there can be no crime of persecution.<sup>2200</sup> In this regard, it contends that only three groups are clearly identified in the Closing Order: former Khmer Republic officials, “New People” and Cambodians returning from abroad.<sup>2201</sup> It submits that the statement in the Closing Order that the “category of so-called ‘enemies’ continued to expand” is impermissibly vague, and further contends that defining the group as being composed of anyone who disagreed with the CPK ideology creates a situation in which victims of persecution do not belong to a group, and the group was not defined by the CPK authorities.<sup>2202</sup>

718. The Supreme Court Chamber has confirmed that persecution on political grounds may be committed against groups including categories of persons other than members of a political group or those holding political views.<sup>2203</sup> Persecution on political grounds may target groups which include various categories of persons, including perceived political opponents or obstacles to the implementation of the perpetrator’s political agenda.<sup>2204</sup> Accordingly, to the extent that the KHIEU Samphan Defence is raising an objection in principle to the alleged definition of the group as “opponents to the CPK ideology”, this submission is rejected. The assessment and analysis on whether the targeted groups alleged to have been defined by the perpetrators in the Closing Order were sufficiently discernible, or if, as suggested by the KHIEU Samphan Defence, limited to former Khmer Republic officials, “New People” and Cambodians returning from abroad, will be carried out in the legal findings of the relevant section on persecution on political grounds.

719. The NUON Chea Defence makes a number of submissions with respect to persecution on religious grounds. First, it submits that there is a clear distinction in international human rights law between freedom of religion and the freedom to manifest religion: while the former may never be curtailed, there was no state practice or *opinio juris* supporting an absolute right to manifest one’s religion from 1975 to 1979.<sup>2205</sup> The NUON Chea Defence submits that ritual ceremonies, building of places of worship or

<sup>2200</sup> KHIEU Samphan Closing Brief, paras 889-891.

<sup>2201</sup> KHIEU Samphan Closing Brief, paras 884-891.

<sup>2202</sup> KHIEU Samphan Closing Brief, paras 884-888 *referring to* Closing Order, para. 1417.

<sup>2203</sup> Case 002/01 Appeal Judgement, paras 669, 677-680. *See also*, Case 002/01 Trial Judgement, para. 430; *Kvočka et al.* Appeal Judgement, para. 456.

<sup>2204</sup> Case 002/01 Appeal Judgement, para. 669.

<sup>2205</sup> NUON Chea Closing Brief, para. 881.

the display of religious symbols are examples of the freedom to manifest one's religion.<sup>2206</sup> It contends that certain restrictions on manifesting one's religion were permitted under international law,<sup>2207</sup> including for reasons of public order and security,<sup>2208</sup> and that in this case derogations were justified as a result of the emergency situation in DK.<sup>2209</sup> It submits accordingly that NUON Chea may not be convicted for possible restrictions on religious freedom that were permissible.<sup>2210</sup> No other Parties made any relevant submissions in this regard.

720. The Chamber finds that freedom of thought, conscience and religion is recognised internationally as a fundamental right.<sup>2211</sup> This right shall “include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.<sup>2212</sup> The Chamber concurs with the NUON Chea Defence that the right to manifest one's religion may be subject to some restrictions. Such restrictions must be prescribed by law and necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>2213</sup>

721. The Chamber notes that at the time of the alleged crimes, the Constitution of Democratic Kampuchea provided that every citizen had the right to worship according to any religion or to not worship.<sup>2214</sup> The Constitution further provided that “[r]eactionary religions which are detrimental to Democratic Kampuchea and to Kampuchean people are absolutely forbidden”.<sup>2215</sup> The Chamber will assess any restrictions on freedom of religion or the manifestation of religion on the facts of the case in view of these provisions and customary international law between 1975 and 1979 in order to determine whether they constituted permissible restrictions or breaches

<sup>2206</sup> NUON Chea Closing Brief, para. 880.

<sup>2207</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 45-46, 19 June 2017; NUON Chea Closing Brief, paras 878, 880.

<sup>2208</sup> NUON Chea Closing Brief, para. 882 referring to *S.A.S. v. France*, ECtHR, Judgement, Application No. 43835/11, 1 July 2014, paras 140-142; *Osmanoğlu and Kocabaş v. Switzerland*, ECtHR, Judgement, Application No. 29086/12, 10 January 2017, paras 94-99, 105.

<sup>2209</sup> NUON Chea Closing Brief, para. 883.

<sup>2210</sup> NUON Chea Closing Brief, para. 883.

<sup>2211</sup> ICCPR, Article 18; ECHR, Article 9.

<sup>2212</sup> ICCPR, Article 18; ECHR, Article 9.

<sup>2213</sup> ICCPR, Article 18(3); ECHR, Article 9(2).

<sup>2214</sup> DK Constitution, Article 20.

<sup>2215</sup> DK Constitution, Article 20.

of the fundamental right of freedom of religion amounting to persecution on religious grounds.

#### 9.1.8. *Other Inhumane Acts*

722. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity and conduct characterised as forced marriage, rape, forced transfer and enforced disappearances.<sup>2216</sup>

723. “Other inhumane acts” was accepted as a residual category of crimes against humanity under customary international law by 1975.<sup>2217</sup> With respect to the foreseeability and accessibility of other inhumane acts as a crime against humanity, the Chamber takes into account the customary status and gravity of the crime and the positions held by the Accused as members of Cambodia’s governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that other inhumane acts was punishable as a crime against humanity by 1975.

724. Other inhumane acts functions as a residual category, criminalising conduct which meets the criteria of crimes against humanity, but does not fit within one of the other specific underlying crimes against humanity.<sup>2218</sup> The *actus reus* of other inhumane acts as a crime against humanity requires an act or omission that caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity.<sup>2219</sup> The

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<sup>2216</sup> Closing Order, paras 1426-1433 (rape), 1434-1441 (attacks against human dignity), 1442-1447 (forced marriage), 1448-1469 (forced transfer), 1470-1478 (enforced disappearances). *See also*, Case 002 Additional Severance Decision Annex, p. 4; Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 397. The Chamber recalls that the Pre-Trial Chamber found that, during the period 1975-1979, rape did not exist as a stand-alone crime against humanity and struck rape from the Closing Order. The Pre-Trial Chamber considered that facts characterised as the crime against humanity in the form of rape could be characterised as the crime against humanity of other inhumane acts. *See* Decision on IENG Thirith’s and NUON Chea’s Appeal against the Closing Order (PTC), D427/3/12, 13 January 2011, p. 6.

<sup>2217</sup> Case 002/01 Appeal Judgement, paras 576, 589. *See also*, Case 002/01 Trial Judgement, para. 435; Case 001 Trial Judgement, para. 367.

<sup>2218</sup> Case 001 Trial Judgement, paras 367-368. *See also*, Case 002/01 Appeal Judgement, paras 576, 578.

<sup>2219</sup> Case 002/01 Appeal Judgement, para. 580; Case 002/01 Trial Judgement, para. 437; Case 001 Trial Judgement, para. 368; *Dragomir Milošević* Appeal Judgement, para. 108.

*mens rea* of other inhumane acts as a crime against humanity requires that the act or omission was performed intentionally.<sup>2220</sup>

725. The specific conduct underlying the crime of other inhumane acts need not itself be expressly criminalised under international law.<sup>2221</sup> In order to amount to other inhumane acts, the acts or omissions must be of a nature and gravity similar to other enumerated crimes against humanity.<sup>2222</sup> This requires a case-specific analysis of the impact of the conduct on the victims and a determination whether the conduct is comparable to the enumerated crimes against humanity.<sup>2223</sup> Such assessment may take into consideration the nature of the act or omission, the context in which it occurred and the personal circumstances of the victim.<sup>2224</sup> This assessment of the conduct should be carried out on a holistic basis.<sup>2225</sup> There is no requirement that the suffering have long-term effects on the victim, although this may be relevant to the determination of the seriousness of the act or omission in question.<sup>2226</sup>

726. The Chamber notes that the Supreme Court Chamber concluded that assessing whether the conduct infringes “basic rights appertaining to human beings, as identified under international legal instruments” was one way of introducing a “requirement of formal international unlawfulness”.<sup>2227</sup> In the view of the Supreme Court Chamber, this assists in assessing both the requirement of foreseeability and whether the conduct reaches the level of gravity of other crimes against humanity.<sup>2228</sup>

727. The Chamber notes that the Closing Order identifies instances of rape, attacks against human dignity, forced marriage, forced transfer and enforced disappearances as

<sup>2220</sup> Case 002/01 Appeal Judgement, para. 580; Case 002/01 Trial Judgement, para. 437; Case 001 Trial Judgement, para. 371; *Dragomir Milošević* Appeal Judgement, para. 108.

<sup>2221</sup> Case 002/01 Appeal Judgement, para. 584; Case 002/01 Trial Judgement, para. 436. *See also*, Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 371, 378; Decision on Appeals by NUON Chea and IENG Thirith Against the Closing Order, D427/3/15, 15 February 2011, para. 156.

<sup>2222</sup> Case 002/01 Appeal Judgement, para. 586; Case 002/01 Trial Judgement, para. 438; Case 001 Trial Judgement, para. 367. *See also*, Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, paras 384-396.

<sup>2223</sup> Case 002/01 Appeal Judgement, para. 586. *See also*, Case 002/01 Trial Judgement, para. 438; Case 001 Trial Judgement, para. 369.

<sup>2224</sup> Case 002/01 Trial Judgement, para. 438; Case 001 Trial Judgement, para. 369. For a discussion on contextualising gravity, *see below*, paras 735-739.

<sup>2225</sup> Case 002/01 Appeal Judgement, para. 590.

<sup>2226</sup> Case 002/01 Trial Judgement, para. 439; Case 001 Trial Judgement, para. 369.

<sup>2227</sup> Case 002/01 Appeal Judgement, para. 584.

<sup>2228</sup> Case 002/01 Appeal Judgement, paras 584-586. *See also*, Case 002/01 Trial Judgement, para. 438; Case 001 Trial Judgement, para. 367.

conduct underlying the charged crime of other inhumane acts in Case 002/02. None of these categories of conduct had crystallised as independent crimes against humanity by 1975,<sup>2229</sup> and they are not charged here as such. The Chamber must accordingly assess all such conduct against the definition of other inhumane acts. In order to carry out such assessment, the Chamber's task is facilitated by setting out its understanding of the constituent elements of such conduct, where it is determined necessary to ensure proper analysis.<sup>2230</sup>

#### 9.1.8.1. Rape

728. As a preliminary matter, the KHIEU Samphan Defence submits that at the relevant time rape did not fall within the category of other inhumane acts.<sup>2231</sup> No other parties made any relevant submissions in this regard. The Chamber finds that this assertion misunderstands the nature of the offence. The Chamber stresses that there is no restrictive list of specific kinds of underlying conduct which would fall within the category of other inhumane acts. On the contrary, this crime encompasses a wide range of conduct, which does not fall within the enumerated crimes against humanity, so long as the chapeau elements for crimes against humanity are satisfied and the conduct rises to the same level of gravity as other crimes against humanity. It is the crime of other inhumane acts that is required to have existed under customary international law at the relevant time, an assessment which the Chamber has made above. There is no

<sup>2229</sup> Case 002/01 Appeal Judgement, para. 589; Decision on IENG Thirith's and NUON Chea's Appeal against the Closing Order (PTC), D427/3/12, 13 January 2011, p. 6.

<sup>2230</sup> This appears consistent with the approach taken with respect to charges of forcible transfer as other inhumane acts in some cases before other international courts. *See e.g., Prlić et al.* Trial Judgement, paras 47-59; *Blagojević* Trial Judgement, paras 595-602; *Stakić* Trial Judgement, paras 713-724, and *Stakić* Appeal Judgement, paras 313-317; *Krstić* Trial Judgement, paras 519-532; *Brđanin* Trial Judgement, paras 539-545. It also appears consistent with the approach taken in a number of cases concerning the crime of persecution, which similarly functions as an umbrella crime encompassing various forms of underlying conduct. The *Karadžić* Trial Judgement stated that "while it may not be necessary to look to the strict elements of the underlying acts to establish whether persecution has been committed, when those elements have been satisfied, this assessment is instructive in determining whether the underlying acts also amount to other crimes under Article 5 of the Statute or are of equal gravity to the other crimes listed under Article 5 of the Statute. For this purpose, the Chamber will set out how the underlying acts of persecution charges in the Indictment have been defined". *See Karadžić* Trial Judgement, fn. 1620. In ICTY cases in which "other acts of sexual violence" or "sexual assault" have been charged as an underlying act of persecution, the Chamber found that such conduct was established when it met the following defined elements: (1) the perpetrator commits an act of a sexual nature on another or requires the victim to perform such an act; (2) that act infringes on the victim's physical integrity or amounts to an outrage to the victim's personal dignity; and (3) the victim does not consent to the act. *See Karadžić* Trial Judgement, paras 512-513; *Dorđević* Trial Judgement, para. 1768; *Milutinović et al.* Trial Judgement, para. 201 (Volume I).

<sup>2231</sup> KHIEU Samphan Closing Brief, paras 2408-2427.

requirement that rape as a specific kind of underlying conduct had been expressly recognised as falling within this category of crime by 1975. This submission is accordingly dismissed.

729. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as rape in the context of forced marriage.<sup>2232</sup> Specifically, it alleges that “by imposing the consummation of forced marriages, the perpetrators committed a physical invasion of a sexual nature against a victim in coercive circumstances in which the consent of the victim was absent” and that “perpetrators intended the physical invasion of a sexual nature, with the knowledge that it occurred in coercive circumstances or otherwise without the consent of the victim”.<sup>2233</sup>

730. The Co-Prosecutors submit that the Chamber should adopt a more “inclusive and gender-neutral definition of rape” under which both women and men could be the subject of a “physical invasion” amounting to rape.<sup>2234</sup> They submit that “regardless of whether or not it fits prior legal definitions of the crime of rape, forcing any person or couple to engage in sexual relations without their consent is clearly a crime of equal seriousness to other crimes against humanity”.<sup>2235</sup> No other parties made any relevant submissions in this regard.

731. The Chamber finds that the definition of rape suggested by the Co-Prosecutors goes beyond the understanding of rape as at 1975, that is the sexual penetration, however slight, of: (a) the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim.<sup>2236</sup> The Chamber will apply this definition as a first step in assessing whether

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<sup>2232</sup> Closing Order, paras 1430-1433; Case 002 Additional Severance Decision Annex, p. 4. The Chamber has clarified that the crime of rape for which the Accused are charged, is to be interpreted as excluding rape committed in security centres and cooperatives outside the context of forced marriage. *See* Decision on Lead Co-Lawyers’ Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage, E306/7/3, 30 August 2016, paras 15-20. An appeal against this decision was dismissed as inadmissible by the Supreme Court Chamber. *See* Decision on Civil Parties’ Immediate Appeal against the Trial Chamber’s Decision on the Scope of Case 002/02 in Relation to the Charges of Rape, E306/7/3/1/4, 12 January 2017.

<sup>2233</sup> Closing Order, para. 1431.

<sup>2234</sup> Co-Prosecutors’ Closing Brief, paras 192, 194.

<sup>2235</sup> Co-Prosecutors’ Closing Brief, para. 194.

<sup>2236</sup> Case 001 Trial Judgement, para. 362.



rape as an other inhumane act was committed. When the conduct in question is characterised as rape in the context of forced marriage, not all alleged victims of forced marriage would be victims of rape. More specifically, having regard to the definition of rape above, the Chamber finds that men could not be the victims of rape in the context of forced marriage. The Chamber will nonetheless consider whether the conduct may possibly be characterised as another form of sexual violence of such serious gravity that it amounts to other inhumane acts.<sup>2237</sup> The Chamber recalls that the only relevant issue for it to assess is whether the conduct in question, in light of all the circumstances of the case at hand, fulfilled the definition of other inhumane acts.<sup>2238</sup>

732. In assessing whether underlying conduct of rape amounts to other inhumane acts, the Chamber must determine whether such conduct is of similar gravity to the enumerated crimes against humanity, whether it caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and whether it was performed intentionally.<sup>2239</sup> This assessment is to be made on the facts of the case.<sup>2240</sup>

#### 9.1.8.2. Attacks against human dignity

733. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity at Tram Kak Cooperatives; Trapeang Thma Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres; and through the treatment of the Cham during the second phase of population transfer.<sup>2241</sup>

<sup>2237</sup> The Closing Order notes that: “The facts characterised as crimes against humanity in the form of rape can additionally be categorised as crimes against humanity of other inhumane acts in the form of sexual violence”. See Closing Order, para. 1433.

<sup>2238</sup> Case 002/01 Appeal Judgement, paras 589-590, 609, 651-653.

<sup>2239</sup> Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 397. See also, Decision on Appeal by NUON Chea and IENG Thirith Against the Closing Order, D427/2/15, 15 February 2011, paras 61-62, 166.

<sup>2240</sup> The Chamber notes with respect to the assessment of gravity in particular that there is significant precedent indicating that conduct amounting to rape may be considered of the requisite gravity. See 1863 Lieber Code, Articles 44 and 47; Control Council Law No. 10, Article II(1)(c); Geneva Convention (IV), Article 27; *USA v. Araki et al.*, Judgement, pp. 49, 592 in Pritchard and Zaide, *The Tokyo War Crimes Trial*, Volume 22; Case 001 Appeal Judgement, paras 207-208; *Kunarac et al.* Appeal Judgement, paras 150-151; *Kunarac et al.* Trial Judgement, para. 655; *Akayesu* Trial Judgement, para. 731; *Sesay et al.* Trial Judgement, para. 1298; *Cyprus v. Turkey*, ECtHR, Application Nos. 6780/74 and 6950/75, Report of the European Commission of Human Rights, 10 July 1976, paras 358-374.

<sup>2241</sup> Closing Order, paras 1434-1441; Case 002 Additional Severance Decision Annex, p. 4.

734. The Closing Order alleges that attacks against human dignity resulted from “depriving the civilian population of adequate food, shelter, medical assistance, and minimum sanitary conditions”.<sup>2242</sup> In assessing whether this underlying conduct amounts to other inhumane acts, the Chamber must determine whether such conduct is of similar gravity to the enumerated crimes against humanity, whether it caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and whether it was performed intentionally.<sup>2243</sup> Such deprivations may be of similar gravity to the enumerated crimes against humanity, and thus, may fall within the ambit of other inhumane acts.<sup>2244</sup> A final assessment on the basis of this conduct is to be made on the facts of the case.

735. The assessment of the gravity of the relevant act or omission may take context into consideration. In this regard, the Chamber has considered the way in which other tribunals have taken context, and in particular the situation prevailing in the country or the area where the crimes occurred, into account in their assessment of the gravity of acts or omissions alleged to constitute other inhumane acts.

736. In the *Delalić* case, concerning the treatment of detainees at the Čelebići prison-camp, the Defence submitted that “if conditions at a detention facility are inadequate but are nonetheless all that could be provided in the circumstances prevailing at the relevant time”, they cannot be considered inhumane.<sup>2245</sup> In assessing whether such conditions constituted inhuman treatment pursuant to Article 2(b) ICTY Statute, the ICTY Trial Chamber held that:

[W]hen considering the factual allegation of inhumane conditions with respect to these legal offences, no reference should be made to the conditions prevailing in the area of detention in order to determine what the standard of treatment should have been. *The legal standard in each of the mistreatment offences discussed above delineates a minimum standard of treatment which also applies to conditions of detention.* During an armed conflict, persons should not be detained in conditions where this minimum standard cannot be met and maintained.<sup>2246</sup>

<sup>2242</sup> Closing Order, 1434-1441; Case 002 Additional Severance Decision Annex, p. 4.

<sup>2243</sup> Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 397. *See also*, Decision on Appeal by NUON Chea and IENG Thirith Against the Closing Order, D427/2/15, 15 February 2011, paras 61-62, 166.

<sup>2244</sup> Case 002/01 Trial Judgement, paras 457-458.

<sup>2245</sup> *Delalić et al.* Trial Judgement, para. 555.

<sup>2246</sup> *Delalić et al.* Trial Judgement, para. 557 (emphasis added).

737. The Chamber equated the notion of “inhuman treatment” pursuant to Article 2(b) ICTY Statute (a grave breach of the Geneva Conventions) with that of inhumane acts pursuant to Article 5(i) ICTY Statute (a crime against humanity)<sup>2247</sup> and defined “inhuman treatment” as “an intentional act or omission, [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity.”<sup>2248</sup> This Chamber notes that this definition is consistent with its own approach to other inhumane acts.<sup>2249</sup>

738. In *Krnojelac*, the ICTY Trial Chamber examined whether the implementation of brutal living conditions at the KP Dom detention centre constituted inhumane acts as a crime against humanity pursuant to Article 5(i) of the ICTY Statute. In that case, the Trial Chamber accepted that “the heating system at the KP Dom was broken and that there were some attempts made by the administration to repair it” but was equally satisfied that “no other available measures were taken to protect the non-Serb detainees from the cold”.<sup>2250</sup> The Trial Chamber also recognised that “there may have been a general shortage of food in the Foča region during the conflict” but it was satisfied that “there was a deliberate policy to feed the non-Serb detainees barely enough for their survival”.<sup>2251</sup> The Trial Chamber was satisfied that the brutal living conditions imposed on the non-Serb detainees constituted acts and omissions of a seriousness comparable to the other crimes against humanity and that they constituted inhumane acts under Article 5(i) of the ICTY Statute.<sup>2252</sup>

739. This Chamber agrees with this jurisprudence and finds that even when the circumstances at the time of the commission of the crimes are difficult due to shortages of resources, resources which are nonetheless available should be provided and counter-measures adopted to mitigate the impact of the circumstances on the victims. Furthermore, there is a minimum standard of treatment which should be guaranteed in any circumstance; if the authorities are unable to guarantee that minimum standard of

<sup>2247</sup> *Delalić et al.* Trial Judgement, para. 533 (“The foregoing discussion with regard to inhuman treatment is also consistent with the concept of ‘inhumane acts’, in the context of crimes against humanity.”).

<sup>2248</sup> *Delalić et al.* Trial Judgement, para. 543. This definition was cited with approval by the ICTY Appeals Chamber, see *Delalić et al.* Appeal Judgement, para. 426.

<sup>2249</sup> See above, paras 723-725.

<sup>2250</sup> *Krnojelac* Trial Judgement, para. 137.

<sup>2251</sup> *Krnojelac* Trial Judgement, para. 139.

<sup>2252</sup> *Krnojelac* Trial Judgement, para. 133.

treatment, they should not put the victims in a position which exposes them to the violation of their basic rights. The Chamber will have regard to the foregoing when assessing the facts.

### 9.1.8.3. *Forced marriage*

740. As a preliminary matter, both Defence teams make a number of submissions contesting the existence of forced marriage as a crime against humanity at the relevant time. The NUON Chea Defence submits that treating forced marriage as a separate crime against humanity does not respect the principle of legality.<sup>2253</sup> In addition, it notes a fundamental difference between forced marriage as defined by the SCSL and “arranged marriage” which was not an international crime between 1975 and 1979.<sup>2254</sup> The KHIEU Samphan Defence submits that at the relevant time, the 1948 Universal Declaration of Human Rights and other conventions only recognised the right to free consent to marriage, but a breach of this right was not punishable under international law.<sup>2255</sup> Accordingly it submits that it was not possible to consider forced marriage to be a crime against humanity before 1975 and further that forced marriage is still not criminalised in Cambodian law.<sup>2256</sup> In addition, the KHIEU Samphan Defence submits that the first prohibition against forced marriage appeared in Article 4 of the second Additional Protocol to the Geneva Conventions in 1977 and that no specific international legal norms or rules referred to it as a crime against humanity.<sup>2257</sup>

741. The Chamber finds that these submissions mistakenly address forced marriage as if it were charged here as a separate crime against humanity. This is not the case. The crime relevant to the underlying conduct of forced marriage is other inhumane acts. As set out above, the crime of other inhumane acts existed under customary international law at the relevant time and its definition is not restricted to a list of specific underlying conduct.<sup>2258</sup> There is no requirement that forced marriage was recognised as a specific category of crime against humanity or even as a specific kind of underlying conduct

<sup>2253</sup> NUON Chea Closing Brief, paras 1140, 1186.

<sup>2254</sup> NUON Chea Closing Brief, paras 1187-1192.

<sup>2255</sup> KHIEU Samphan Closing Brief, paras 2412-2413.

<sup>2256</sup> KHIEU Samphan Closing Brief, para. 2414.

<sup>2257</sup> KHIEU Samphan Closing Brief, paras 2413-2415.

<sup>2258</sup> See above, para. 723.

falling within the category of other inhumane acts by 1975. These submissions are accordingly dismissed.

742. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as forced marriage nationwide, as well as at the 1<sup>st</sup> January Dam, Tram Kak Cooperatives, Trapeang Thma Dam and in relation to the treatment of the Buddhists,<sup>2259</sup> alleging that victims were forced to enter into conjugal relationships in coercive circumstances.<sup>2260</sup> In addition, the Closing Order notes that in “the majority of cases of forced marriage death threats were made, violence was used and people were even executed if they refused to marry”.<sup>2261</sup> Furthermore, the Closing Order notes that the weddings “took place devoid of traditional involvement of the parents” with no respect of traditional rituals, and that marriages were performed at the same time involving between 20 and 60 couples.<sup>2262</sup> The Closing Order further refers to the “imposition of sexual relations aimed at enforced procreation”.<sup>2263</sup>

743. The right to enter into marriage freely is a fundamental right that was embedded in the Universal Declaration of Human Rights adopted by the UN General Assembly, which stated that “[m]arriage shall be entered into only with the free and full consent of the intending spouses”.<sup>2264</sup> The Chamber notes that the term “forced marriage” has been used in international jurisprudence to cover a range of different factual circumstances. The Chamber is not satisfied that there exists a common understanding of this label. Accordingly, the Chamber will determine whether the conduct which is alleged to amount to forced marriage in this case has been established and whether this conduct rises to the level of other inhumane acts.

744. The SCSL Appeals Chamber, in the *AFRC* case, described forced marriage as “a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as conjugal partner resulting in severe suffering, or physical or

<sup>2259</sup> Closing Order, paras 1442-1447; Case 002 Additional Severance Decision Annex, p. 4.

<sup>2260</sup> Closing Order, para. 1443.

<sup>2261</sup> Closing Order, para. 1447.

<sup>2262</sup> Closing Order, paras 1446-1447.

<sup>2263</sup> Closing Order, para. 1445.

<sup>2264</sup> Article 16(2), UDHR.

psychological injury”.<sup>2265</sup> This description of forced marriage was adopted in the *RUF* case.<sup>2266</sup> The SCSL Appeals Chamber further found that “unlike sexual slavery, forced marriage implies a relationship of exclusivity between the ‘husband’ and ‘wife’, which could lead to disciplinary consequences for breach of this exclusive arrangement. These distinctions imply that forced marriage is not predominantly a sexual crime”.<sup>2267</sup>

745. The Pre-Trial Chamber of the ICC recognised that forced marriage was not explicitly included within the jurisdiction of the ICC, but considered whether forcing women to serve as conjugal partners constituted an other inhumane act.<sup>2268</sup> The Pre-Trial Chamber found that the “central element of forced marriage is the imposition of ‘marriage’ on the victim, *i.e.* the imposition, regardless of the will of the victim, of duties that are associated with marriage [...] with the consequent social stigma”.<sup>2269</sup> It further found that the “element of exclusivity of this forced conjugal union imposed on the victim is the characteristic aspect of forced marriage” and that the victims of forced marriage “suffer separate and additional harm to those of the crime of sexual slavery”. The Pre-Trial Chamber held that forced marriage “violates the independently recognised basic right to consensually marry and establish a family”.<sup>2270</sup>

746. In assessing whether underlying conduct of forced marriage amounts to other inhumane acts, the Chamber must determine whether such conduct is of similar gravity to the enumerated crimes against humanity, whether it caused serious mental or physical suffering or injury or constituted a serious attack on human dignity, and whether it was performed intentionally.<sup>2271</sup> This assessment is to be made on the facts of the case.

<sup>2265</sup> *Brima et al.* Appeal Judgement, paras 195-196.

<sup>2266</sup> *Sesay et al.* Appeal Judgement, paras 735-736. The SCSL Appeals Chamber found that this included taking advantage of coercive circumstances to cause a person to serve as a conjugal partner and that a violent, hostile and coercive environment would vitiate any consent to the marriage. *See Sesay et al.* Appeal Judgement, para. 736.

<sup>2267</sup> *Brima et al.* Appeal Judgement, para. 195.

<sup>2268</sup> *Prosecutor v. Dominic Ongwen*, ICC Pre-Trial Chamber (ICC-02/04-01/15), Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, para. 88.

<sup>2269</sup> *Prosecutor v. Dominic Ongwen*, ICC Pre-Trial Chamber (ICC-02/04-01/15), Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, para. 93.

<sup>2270</sup> *Prosecutor v. Dominic Ongwen*, ICC Pre-Trial Chamber (ICC-02/04-01/15), Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, para. 94.

<sup>2271</sup> Decision on IENG Sary’s Appeal Against the Closing Order, D427/1/30, 11 April 2011, para. 397. *See also*, Decision on Appeal by NUON Chea and IENG Thirith Against the Closing Order, D427/2/15, 15 February 2011, paras 61-62, 166. The Chamber notes that an *amicus curiae* brief was filed in this case

747. In the *AFRC* case, the SCSL Appeals Chamber had regard to evidence which demonstrated the physical and psychological suffering of victims of forced marriage,<sup>2272</sup> and found that acts of forced marriage were of similar gravity to several enumerated crimes against humanity including enslavement, imprisonment, torture, rape, sexual slavery and sexual violence.<sup>2273</sup> The Pre-Trial Chamber of the ICC has also recognised that forced marriage may cause great suffering and could be of a similar character to enumerated crimes against humanity.<sup>2274</sup>

748. The NUON Chea Defence submits that the facts in this case with respect to “forced marriage” do not reach the requisite gravity threshold to qualify as an other inhumane act.<sup>2275</sup> Similarly the KHIEU Samphan Defence submits that at the relevant time, forced marriage did not fall within the category of other inhumane acts, given that the impact on the victims did not have the same nature and level of severity when compared with other crimes against humanity.<sup>2276</sup> It contends that consent to marriage was not a core value in Cambodian culture and society before the DK, that marriage arranged by parents was only replaced by marriage arranged by local authorities during the DK and that accordingly the prejudice entailed is not comparable with other crimes against humanity.<sup>2277</sup> In this regard it submits that the cases of forced marriage at the SCSL and the ICC involved specific situations where women were kidnapped and enslaved, which prevents any comparison.<sup>2278</sup> Finally, it submits that the acts relating to “forced marriage” and subsequent sexual intercourse were not committed with the requisite intent for other inhumane acts given that the aim was to create families.<sup>2279</sup>

749. As set out above, determining whether forced marriage could amount to an other inhumane act is a factual assessment. This will depend on whether the acts or omissions

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with respect to the legal characterisation and evolution of forced marriage. *See Amicus Curiae* Brief on Forced Marriage, E418/4, 29 September 2016.

<sup>2272</sup> *Brima et al.* Appeal Judgement, paras 192, 195.

<sup>2273</sup> *Brima et al.* Appeal Judgement, para. 200. The SCSL Appeals Chamber found that the Trial Chamber erred in restrictively interpreting the offence of “other inhumane acts” so as to exclude offences of a sexual nature. *See Brima et al.* Appeal Judgement, paras 182, 186.

<sup>2274</sup> *Prosecutor v. Dominic Ongwen*, ICC Pre-Trial Chamber (ICC-02/04-01/15), Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, paras 89-91 referring to *Brima et al.* Appeal Judgement, paras 196 and *Sesay et al.* Appeal Judgement, para. 736. *See also*, Closing Order, para. 1443.

<sup>2275</sup> NUON Chea Closing Brief, paras 1138, 1197-1198 citing *Kordić and Čerkez* Appeal Judgement, para. 102. *See also*, KHIEU Samphan Closing Brief, paras 2400-2406.

<sup>2276</sup> KHIEU Samphan Closing Brief, paras 2408-2427.

<sup>2277</sup> KHIEU Samphan Closing Brief, paras 2420-2423.

<sup>2278</sup> KHIEU Samphan Closing Brief, paras 2417-2419.

<sup>2279</sup> KHIEU Samphan Closing Brief, paras 2424-2426.

caused serious mental or physical suffering or injury or constituted a serious attack on human dignity. The Chamber will conduct this analysis accordingly on the facts of this case before setting out its legal findings. The Chamber notes at this stage, however, that the KHIEU Samphan Defence appears to confuse motive with intent.

#### 9.1.8.4. Forced transfer

750. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as forced transfer during movement of the population (phase two) as limited to the treatment of the Cham.<sup>2280</sup> The Closing Order alleges that victims were forced to leave places where they lawfully resided without grounds permitted by international law.<sup>2281</sup>

751. The elements of deportation and forced transfer as an other inhumane act are substantially similar and require the forced displacement of persons by expulsion or other forms of coercion, from an area in which they are lawfully present, without grounds permitted under international law.<sup>2282</sup> These elements have been discussed in more detail in the applicable law with respect to deportation.<sup>2283</sup> The only difference is that forced transfer encompasses the forced displacement of persons within national territory, while deportation is limited to cases where people are forced to cross international boundaries.<sup>2284</sup>

752. Conduct amounting to forced transfer has previously been found to be sufficiently serious as to amount to other inhumane acts by the Supreme Court Chamber in Case 002/01 as well as in the jurisprudence of the ICTY.<sup>2285</sup> The Chamber will conduct its own analysis on the facts of this case before setting out its legal findings.

<sup>2280</sup> Closing Order, paras 1448-1469; Case 002 Additional Severance Decision Annex, p. 4.

<sup>2281</sup> Closing Order, para. 1449.

<sup>2282</sup> *Karadžić* Trial Judgement, para. 488 referring to *Simić et al.* Trial Judgement, para. 123; *Popović et al.* Trial Judgement, para. 890; *Milutinović et al.* Trial Judgement, para. 163 (Volume I).

<sup>2283</sup> See above, Section 9.1.4: Crimes Against Humanity: Deportation.

<sup>2284</sup> *Stakić* Appeal Judgement, para. 317; *Karadžić* Trial Judgement, para. 488.

<sup>2285</sup> Case 002/01 Appeal Judgement, paras 589-590, 654-660; *Stakić* Appeal Judgement, para. 317; *Krajišnik* Appeal Judgement, para. 331; *Karadžić* Trial Judgement, para. 495; *Krstić* Trial Judgement, para. 523; *Kupreškić et al.* Trial Judgement, para. 566.



9.1.8.5. Enforced disappearances

753. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances during the Movement of Population (Phase Two) with respect to the treatment of the Cham; at the Tram Kak Cooperatives; at Trapeang Thma Dam, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Worksites; and at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>2286</sup> The Closing Order alleges that enforced disappearances involved the arrest, detention or abduction of victims in conditions which placed them outside the protection of the law and the refusal to provide access to, or convey information on the fate or whereabouts of such persons.<sup>2287</sup> It is alleged that measures were put in place to conceal the fate of individuals who had disappeared, and that in addition to withholding information, the authorities provided false reasons to justify the absence of those who disappeared.<sup>2288</sup>

754. Conduct recognised at the relevant time as enforced disappearances included the following elements: (i) an individual is deprived of his or her liberty; (ii) the deprivation of liberty is followed by the refusal to disclose information regarding the fate or whereabouts of the person concerned, or to acknowledge the deprivation of liberty, and thereby deny the individual recourse to the applicable legal remedies and procedural guarantees, and (iii) the first and second elements were carried out by state agents, or with the authorisation, support or acquiescence of a State or political organisation.<sup>2289</sup>

755. Conduct amounting to enforced disappearances has previously been found to be sufficiently serious as to amount to other inhumane acts by the Supreme Court Chamber in Case 002/01 as well as in the jurisprudence of other international courts.<sup>2290</sup> A final assessment on the basis of this conduct is to be made on the facts of the case.

<sup>2286</sup> Closing Order, paras 1470-1478; Case 002 Additional Severance Decision Annex, p. 4.

<sup>2287</sup> Closing Order, para. 1471.

<sup>2288</sup> Closing Order, paras 1472-1474.

<sup>2289</sup> Case 002/01 Trial Judgement, para. 448. *See also*, Justice Judgement, pp. 75, 1075; *Gotovina et al.* Trial Judgement, para. 1837; *Prosecutor v. Rašević and Todović*, Court of BiH, Case No. X-KR/06/275, First Instance Verdict, 28 February 2008, p. 98 (the elements of the offense of enforced disappearance as provided in Article 172(1)(i) of the CC of BiH). While the Supreme Court Chamber found that the Trial Chamber's approach disclosed confusion, it did not reverse the Trial Chamber's findings in relation to the elements of enforced disappearances. *See* Case 002/01 Appeal Judgement, paras 588-589.

<sup>2290</sup> Case 002/01 Appeal Judgement, paras 647-653. *See also*, Case 002/01 Trial Judgement, para. 447 referring to *Brima et al.* Appeal Judgement, para. 184; *Kupreškić et al.* Trial Judgement, para. 566; *Kvočka et al.* Trial Judgement, para. 208.

**9.2. Grave Breaches of the Geneva Conventions 1949****9.2.1. Wilful Killing**

756. As relevant to Case 002/02, the Closing Order charges the Accused with wilful killing at the S-21 Security Centre and Au Kanseng Security Centre as a grave breach of the Geneva Conventions.<sup>2291</sup>

757. The elements of the grave breach of wilful killing are, subject to the satisfaction of the chapeau requirements for grave breaches of the Geneva Conventions, the same as those of murder as a crime against humanity, as set out above.<sup>2292</sup>

**9.2.2. Torture**

758. As relevant to Case 002/02, the Closing Order charges the Accused with torture at the S-21 Security Centre as a grave breach of the Geneva Conventions.<sup>2293</sup>

759. The elements of the grave breach of torture are, subject to the satisfaction of the chapeau requirements for grave breaches of the Geneva Conventions, the same as those of torture as a crime against humanity, as set out above.<sup>2294</sup>

**9.2.3. Wilfully Causing Great Suffering or Serious Injury to Body or Health**

760. As relevant to Case 002/02, the Closing Order charges the Accused with wilfully causing great suffering or serious injury to body or health at the S-21 Security Centre as a grave breach of the Geneva Conventions.<sup>2295</sup>

761. This grave breach consists of an intentional act or omission causing great suffering or serious injury to body or health, including mental health.<sup>2296</sup> While physical or

<sup>2291</sup> Closing Order, paras 1491-1495. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2292</sup> Case 001 Trial Judgement, para. 431; *Brđanin* Trial Judgement, para. 380. *See above*, Section 9.1.1: Crimes Against Humanity: Murder.

<sup>2293</sup> Closing Order, paras 1498-1500. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2294</sup> Case 001 Trial Judgement, para. 439; *Krnjelac* Trial Judgement, para. 178; *Brđanin* Trial Judgement, para. 482. *See above*, Section 9.1.6: Crimes Against Humanity: Torture.

<sup>2295</sup> Closing Order, paras 1504-1506. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2296</sup> *Delalić et al.* Appeal Judgement, para. 424, citing *Blaškić* Trial Judgement, para. 156. *See also*, Case 001 Trial Judgement, para. 451; *Kordić and Čerkez* Trial Judgement, para. 245. With respect to commission by omission, *see above*, para. 627 where this Chamber found that it had previously accepted the general principle applied consistently by the *ad hoc* tribunals that “a crime may be committed by culpable omission where there is a duty to act”.

mental injury are encompassed by both this grave breach and inhumane treatment, wilfully causing great suffering or serious injury to body or health focuses on the seriousness of the suffering or of the injury and does not include acts where the resultant harm relates solely to an individual's human dignity.<sup>2297</sup> The physical or mental harm caused to the victim need not be irredeemable or permanent, but must extend beyond temporary unhappiness, embarrassment or humiliation.<sup>2298</sup>

762. With respect to *mens rea* for the purposes of grave breaches of the Geneva Conventions, the Chamber observes that the ICRC Commentary notes that the “Geneva Conventions are silent as to the requisite degree of *mens rea* attached to most grave breaches [...] but leave it to States Parties to determine the requisite mental element attached to them, unless specifically defined in Article 50”.<sup>2299</sup> The ICRC Commentary recognises that “for some grave breaches, the *mens rea* is specified in Article 50, when it lists ‘wilful’ killing, ‘wilfully’ causing great suffering, or extensive destruction carried out ‘wantonly’”.<sup>2300</sup> The ICRC Commentary further suggests that the “use of the term ‘wilful’ indicates, at least for the crimes of killing and causing great suffering or serious injury to body or health, that either intentional or reckless conduct will engage the responsibility of the perpetrator”.<sup>2301</sup> The Chamber notes that jurisprudence of the ICTY has also held that the *mens rea* for violations of the grave breaches provisions can include both intent and recklessness.<sup>2302</sup>

763. The Chamber considers that the requisite *mens rea* varies depending on which grave breach is concerned. At the very least the Chamber finds that the *mens rea* for each grave breach includes intent to perform the act or omission. The Chamber will consider whether recklessness is sufficient if and when it arises on the facts of the case.

<sup>2297</sup> Case 001 Trial Judgement, para. 453 citing *Kordić and Čerkez* Trial Judgement, para. 245.

<sup>2298</sup> Case 001 Trial Judgement, para. 454 citing *Krstić* Trial Judgement, paras 511-513.

<sup>2299</sup> Commentary to Geneva Convention I (2016), para. 2932.

<sup>2300</sup> Commentary to Geneva Convention I (2016), para. 2932, fn. 60.

<sup>2301</sup> Commentary to Geneva Convention I (2016), para. 2933.

<sup>2302</sup> *Blaškić* Trial Judgement, para. 152. See also, *Prlić et al.* Trial Judgement, para. 120 (referring to the requisite mental element with respect to inhuman treatment as a grave breach and citing *Aleksovski* Judgement, para. 56).

#### 9.2.4. *Inhumane Treatment*

764. As relevant to Case 002/02, the Closing Order charges the Accused with inhumane treatment at the S-21 Security Centre as a grave breach of the Geneva Conventions.<sup>2303</sup>

765. The Chamber finds that “inhuman treatment is intentional treatment which does not conform with the fundamental principle of humanity, and forms the umbrella under which the remainder of the listed ‘grave breaches’ in the Conventions fall”.<sup>2304</sup>

766. The *actus reus* of inhumane treatment as a grave breach consists of an intentional act or omission against a person protected under the Geneva Conventions, which causes serious mental harm or physical suffering or injury, or constitutes a serious attack on human dignity.<sup>2305</sup> In contrast to the crime of torture, conduct which amounts to inhumane treatment need not reach the threshold of causing *severe* mental or physical suffering, or be committed with a purpose prohibited by the Convention against Torture or with the involvement of any public official or any person acting in an official capacity.<sup>2306</sup>

767. Acts which constitute torture or wilfully causing great suffering or serious injury to body or health will simultaneously constitute inhumane treatment.<sup>2307</sup> The offence of inhumane treatment also encompasses other acts which violate the principle of humane treatment, in particular the respect for human dignity.<sup>2308</sup> The assessment of whether an act constitutes inhumane treatment is a question of fact to be judged in all the circumstances of the individual case.<sup>2309</sup> Examples of inhumane treatment include acts characterised in the Geneva Conventions and Commentaries to the Geneva

<sup>2303</sup> Closing Order, paras 1501-1503. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2304</sup> *Delalić et al.* Trial Judgement, para. 543.

<sup>2305</sup> Case 001 Trial Judgement, paras 440-441. *See also*, *Delalić et al.* Trial Judgement, paras 516-543; *Delalić et al.* Appeal Judgement, para. 426. With respect to commission by omission, *see above*, para. 627.

<sup>2306</sup> Case 001 Trial Judgement, para. 443; *Delalić et al.* Trial Judgement, para. 542.

<sup>2307</sup> Case 001 Trial Judgement, para. 442.

<sup>2308</sup> Case 001 Trial Judgement, para. 442.

<sup>2309</sup> Case 001 Trial Judgement, para. 442 *citing* *Delalić et al.* Trial Judgement, para. 544; *Blaškić* Trial Judgement, para. 155.

Conventions as inhuman,<sup>2310</sup> and acts which are inconsistent with the principle of humanity.<sup>2311</sup>

768. The *mens rea* for this grave breach includes intent to perform the act or omission which causes serious mental harm or physical suffering or injury, or results in a serious attack on the human dignity of the victim.<sup>2312</sup>

**9.2.5. Wilfully depriving a Prisoner of War or Civilian of the Rights of Fair and Regular Trial**

769. As relevant to Case 002/02, the Closing Order charges the Accused with wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial at the S-21 and Au Kanseng Security Centres as a grave breach of the Geneva Conventions.<sup>2313</sup>

770. The *actus reus* of this crime consists of an act or omission which deprives a prisoner of war or a civilian of the right to a fair and regular trial by denying judicial guarantees as defined, in particular, in Geneva Conventions III and IV.<sup>2314</sup> Such judicial guarantees include: the right to be judged by an independent and impartial court; to be promptly informed of the charges; the protection against collective penalty; protection under the principle of legality; the right not to be punished more than once for the same act or on the same count; to be informed of the right to an appeal; and the right not to

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<sup>2310</sup> *Delalić et al.* Trial Judgement, para. 543. Examples of conduct which are contrary to the obligation to treat protected persons humanely in the Geneva Conventions include: all acts causing physical suffering (*see e.g.*, Geneva Convention (IV), Article 32); corporal punishment (*see e.g.*, Geneva Convention (IV), Article 32); the creation of conditions which expose a person to contagion or infection (*see e.g.*, Geneva Convention (I), Article 12); enforced prostitution (*see e.g.*, Geneva Convention (IV), Article 27); exposure to insults and public curiosity (*see e.g.*, Geneva Convention (IV), Article 27); exposure of protected persons to violence and threats of violence (*see e.g.*, Geneva Convention (IV), Article 27); failure to supply prisoners of war with sufficient food, water and clothing (*see e.g.*, Geneva Convention (III), Article 20); indecent assault (*see e.g.*, Geneva Convention (IV), Article 27); medical or scientific experiments not necessitated by medical treatment (*see e.g.*, Geneva Convention (IV), Article 32); mutilation (*see e.g.*, Geneva Convention (IV), Article 32); rape (*see e.g.*, Geneva Convention (IV), Article 27); and wilfully leaving a person without medical assistance or care (*see e.g.*, Geneva Convention (I), Article 12). *See also*, *Delalić et al.* Trial Judgement, paras 519-533.

<sup>2311</sup> *Delalić et al.* Trial Judgement, para. 543; *Blaškić* Trial Judgement, paras 154-155.

<sup>2312</sup> Case 001 Trial Judgement, paras 440, 444; *Delalić et al.* Trial Judgement, para. 543. *See also*, *Blaškić* Trial Judgement, paras 152-156.

<sup>2313</sup> Closing Order, paras 1507-1514. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2314</sup> With respect to commission by omission, *see above*, para. 627.

be sentenced or executed without a previous judgement pronounced by a regularly constituted court.<sup>2315</sup>

771. The *mens rea* for this grave breach includes intent to perform the act or omission.<sup>2316</sup>

772. The NUON Chea Defence submits that under international human rights law, states can in certain circumstances, derogate from some of their fair trial obligations in times of public emergency.<sup>2317</sup> The Chamber has already addressed these arguments in connection with imprisonment as a crime against humanity.<sup>2318</sup> It will have regard to this guidance in assessing whether on the facts of the case any derogation with respect to the rights to fair and regular trial was lawful and consistent with obligations under international law during the relevant period.

773. The NUON Chea Defence contends that there is no evidence showing that “the physical perpetrators intended the victims to be arbitrarily detained or that their fair trial rights were violated, for there is no reasonable reason to believe that they were aware of the requisite fair trial standards”.<sup>2319</sup> The Chamber will assess the evidence with respect to each crime site to determine whether or not the physical perpetrators had the *mens rea*. In any event, if the evidence fails to establish the *mens rea* for the physical perpetrator, the Chamber will have regard to whether the Accused as alleged members of a joint criminal enterprise had the requisite intent and used the physical perpetrators as tools to achieve the common purpose.

#### 9.2.6. *Unlawful Deportation of a Civilian*

774. As relevant to Case 002/02, the Closing Order charges the Accused with unlawful deportation of civilians from Vietnam to the S-21 Security Centre in Democratic Kampuchea as a grave breach of the Geneva Conventions.<sup>2320</sup>

<sup>2315</sup> Case 001 Trial Judgement, para. 459 *citing* Geneva Convention (III), Articles 84, 86-87, 99, 100-107 and Geneva Convention (IV), Articles 33, 64-70, 71, 73-75, 117.

<sup>2316</sup> Case 001 Trial Judgement, para. 460 *citing* *Blaškić* Trial Judgement, para. 152.

<sup>2317</sup> NUON Chea Closing Brief, paras 656-657, 660, 662.

<sup>2318</sup> *See above*, Section 9.1.5: Crimes Against Humanity: Imprisonment.

<sup>2319</sup> NUON Chea Closing Brief, para. 661.

<sup>2320</sup> Closing Order, paras 1515-1517. *See also*, Case 002 Additional Severance Decision Annex, p. 4.

775. The elements of the grave breach of deportation are, subject to the satisfaction of the chapeau requirements for grave breaches of the Geneva Conventions, largely the same as deportation as a crime against humanity, as set out above.<sup>2321</sup> The only distinction is that the provisions of Geneva Convention IV and specifically Article 49(1) refer to “deportations of protected persons *from occupied territory* to the territory of the Occupying Power or to that of any other country”.<sup>2322</sup>

776. The Geneva Conventions do not define “occupied territory”. Article 42 of the Hague Regulations relevantly provides that “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.”<sup>2323</sup>

777. While displacement from occupied territory has been referred to in ICTY jurisprudence, there has been limited discussion about what that term means in the context of establishing unlawful deportation.<sup>2324</sup> The Trial Chamber agrees with the approach taken by the *Naletilić and Martinović* Trial Chamber, which found that “the application of the law of occupation as it [a]ffects ‘individuals’ as civilians protected under Geneva Convention IV does not require that the occupying power have actual authority”.<sup>2325</sup> Accordingly, when dealing with crimes that affect civilians, such conduct is “prohibited from the moment that they f[a]ll into the hands of the opposing power, regardless of the stage of the hostilities. There is no further need to establish that an actual state of occupation as defined under Article 42 of the Hague Regulations existed.”<sup>2326</sup> The Chamber concurs that this prevents civilians from having less

<sup>2321</sup> *Krnjelac* Trial Judgement, para. 473. See above, Section 9.1.4: Crimes Against Humanity: Deportation.

<sup>2322</sup> Geneva Convention IV, Article 49(1) (emphasis added). The Commentary to Geneva Convention IV clarifies that the grave breach of unlawful deportation refers to breaches of Article 49 of the Convention. See Commentary to Geneva Convention IV, p. 599.

<sup>2323</sup> Hague Regulations 1907, Article 42 cited in *Naletilić and Martinović* Trial Judgement, paras 215-216.

<sup>2324</sup> *Stakić* Appeal Judgement, paras 296, 300 (noting that customary international law recognises that displacement from “occupied territory” as expressly set out in Article 49 of Geneva Convention IV was “also sufficient to amount to deportation”). The ICTY Appeals Chamber did not set out a definition of “occupied territory”.

<sup>2325</sup> *Naletilić and Martinović* Trial Judgement, para. 221.

<sup>2326</sup> *Naletilić and Martinović* Trial Judgement, para. 222. In reaching this conclusion the *Naletilić and Martinović* Trial Chamber had regard to the Commentary to Geneva Convention IV which provided that “[s]o far as individuals are concerned, the application of the Fourth Geneva Convention does not depend upon the existence of a state of occupation [...] The relations between the civilian population of a territory and troops advancing into a territory, whether fighting or not, are governed by the present Convention. There is no intermediate period between what might be termed the invasion phase and inauguration of a

protection during an intermediate period than that attached to them once occupation is established.<sup>2327</sup> This approach is consistent with a declaration of the UN General Assembly in 1974 that “forcible eviction, committed by belligerents *in the course of military operations or in occupied territories shall be considered criminal*”.<sup>2328</sup>

778. The KHIEU Samphan Defence submits that the Trial Chamber is not seised of the facts concerning the unlawful deportation of civilians as a grave breach of the Geneva Conventions as these were excluded in the Annex delimiting the scope of Case 002/02.<sup>2329</sup> The Chamber recalls that while it has excluded the facts contained in paragraphs 832 to 840 of the Closing Order from the scope of Case 002/02, it may consider evidence of crimes committed by the RAK, including incursions in Vietnam, as long as it has relevance regarding the Grave Breaches charges related to civilians or soldiers *hors de combat* who were arrested during such fights on Vietnamese territory and who were sent to S-21 thereafter.<sup>2330</sup>

#### 9.2.7. *Unlawful Confinement of a Civilian*

779. As relevant to Case 002/02, the Closing Order charges the Accused with unlawful confinement of a civilian at the S-21 Security Centre as a grave breach of the Geneva Conventions.<sup>2331</sup>

780. The elements of the grave breach of unlawful confinement of a civilian are, subject to the satisfaction of the chapeau requirements for grave breaches of the Geneva Conventions, the same as those of imprisonment as a crime against humanity, as set out above.<sup>2332</sup>

781. The Chamber further notes that Article 42 of Geneva Convention IV provides that internment of a civilian may only be ordered if the security of the detaining power “makes it absolutely necessary”.<sup>2333</sup> This requires an assessment of whether there are

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stable regime of occupation.”; *Naletilić and Martinović* Trial Judgement, para. 220 referring to Commentary to Geneva Convention IV, p. 60.

<sup>2327</sup> *Naletilić and Martinović* Trial Judgement, para. 221.

<sup>2328</sup> Declaration on the Protection of Women and Children (emphasis added).

<sup>2329</sup> KHIEU Samphan Closing Brief, para. 1177; Case 002 Additional Severance Decision Annex.

<sup>2330</sup> Section 2.5.6.3.3: The charge of deportation of Vietnamese.

<sup>2331</sup> Closing Order, paras 1518-1520. See also, Case 002 Additional Severance Decision Annex, p. 4.

<sup>2332</sup> Case 001 Trial Judgement, para. 464; *Kordić and Čerkez* Trial Judgement, paras 292, 301. See above, Section 9.1.5: Crimes Against Humanity: Imprisonment.

<sup>2333</sup> Geneva Convention (IV), Article 42.



reasonable grounds to believe that the security of the State is at risk.<sup>2334</sup> The Chamber agrees with the Co-Prosecutors' submission that the mere fact that a person is a national, or aligned with the enemy cannot be considered as threatening the security of the country, nor can the fact that a person is of military age alone justify confinement of a civilian.<sup>2335</sup> No other parties made any relevant submissions in this regard. The Chamber refers to its analysis of the NUON Chea submissions pertaining to imprisonment as a crime against humanity which are also relevant with respect to unlawful confinement as a grave breach. As set out in the law on imprisonment as a crime against humanity, the Chamber must assess whether the deprivation of liberty had a legal basis or was arbitrary because it was carried out or perpetuated without due process of law.<sup>2336</sup>

### **9.3. Genocide**

782. As relevant to Case 002/02, the Closing Order charges the Accused with genocide through acts of killing in relation to the Cham and Vietnamese.<sup>2337</sup>

783. Article 4 of the ECCC Law provides that the Court has jurisdiction over “genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 (“Genocide Convention”), and which were committed during the period from 17 April 1975 to 6 January 1979”. Article 4 lists “killing members of the group” as one of the acts which may constitute genocide when “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

#### ***9.3.1. Principle of Legality***

784. As a preliminary matter, the Chamber must determine whether genocide was established as a crime under customary international law by 17 April 1975.

<sup>2334</sup> Case 001 Trial Judgement, para. 465.

<sup>2335</sup> Co-Prosecutors' Closing Brief, para. 214 citing *Kordić and Čerkez* Trial Judgement, para. 284; *Delalić et al.* Appeal Judgement, para. 327; *Prlić et al.* Trial Judgement, Volume 1, para. 134; Commentary to Geneva Convention IV, p. 258.

<sup>2336</sup> See above, Section 9.1.5: Crimes Against Humanity: Imprisonment.

<sup>2337</sup> Closing Order, paras 1335-1349. See also, Case 002 Additional Severance Decision Annex, p. 3.

785. In 1946, the UN General Assembly unanimously adopted a resolution affirming that “genocide is a crime under international law”.<sup>2338</sup> The Genocide Convention, to which Cambodia acceded without reservation in 1950, entered into force in 1951.<sup>2339</sup> The contracting parties to the Genocide Convention recognised that “genocide, whether committed in time of peace or time of war, is a crime under international law”.<sup>2340</sup>

786. The Genocide Convention calls on contracting parties to enact the necessary legislation to give effect to the provisions of the convention and to provide effective penalties for persons guilty of genocide.<sup>2341</sup> Consequently, and prior to 17 April 1975, there was extensive State practice recognising genocide as an international crime, based almost uniformly on the Genocide Convention definition.<sup>2342</sup>

787. In its answer to the UN General Assembly’s request for an advisory opinion on the impact of certain reservations to the Genocide Convention, the ICJ held in 1951 that:

[I]t was the intention of the United Nations to condemn and punish genocide as ‘a crime under international law’ involving a denial of the

<sup>2338</sup> UNGA Res. 96 (I), 11 December 1946. At its second session in 1947, the UN General Assembly declared genocide was “an international crime entailing national and international responsibility on the part of individuals and States” and requested the Economic and Social Council to continue its work on a draft convention on genocide. See UNGA Res. 180 (II), 21 November 1947.

<sup>2339</sup> The Chamber notes that 41 States signed the Convention and that 75 States were party to the Convention by 1975. See [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-1&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-1&chapter=4&clang=_en). The Chamber notes that the 1956 Cambodian Criminal Code did not expressly include the crime of genocide. Genocide is now expressly defined and criminalised under Article 183 of the 2009 Cambodian Criminal Code.

<sup>2340</sup> Genocide Convention, Article I.

<sup>2341</sup> Genocide Convention, Article V.

<sup>2342</sup> See e.g., Antigua and Barbuda: *The Genocide Act 1975*, s. 3; Austria: *Strafgesetzbuch 1974*, § 321; Bangladesh: *The International Crimes (Tribunals) Act, 1973*, s. 3(2)(c); Bolivia: *Código Penal de Bolivia*, Article 138; Brazil: *Law № 2.889 of 1 October 1956*, Article 1; Bulgaria: *Penal Code 1968*, Article 416; Denmark: *Lov nr. 132 af 29.04.1955 om straf for folkedrab*, § 1; Ethiopia: *Penal Code of 1957*, Article 281; Fiji: *Penal Code 1969*, s. 69; Finland: s. 6-8 of the Penal Code (as amended by Act No. 987 of 1974); Germany: *Deutsche Strafgesetze*, § 220a (genocide was included in the penal code in 1955); Guatemala: Decreto No. 17-73, 27 July 1973, Código Penal de Guatemala, Article 376; Republic of Ireland: *Genocide Act 1973*, s. 2; Israel: *The Crime of Genocide (Prevention and Punishment) Law (1950)*, s. 1; Italy: *Law on Genocide 1967*, Articles 1-5; Mexico: *Código Penal Federal 1931*, Article 149-bis (as amended in 1967); The Netherlands: *Genocide Convention Implementation Act 1964*, Article 1; Romania: *Penal Code 1969*, Article 356; Seychelles: *Genocide Act of 1969*, s. 1; Tonga: *An Act to Give Effect to the Convention on the Prevention and Punishment of the Crime of Genocide 1969*, s. 2; United Kingdom: *Genocide Act 1969*, s. 1; Justice Judgement (the United States Military Tribunal stated that the UN General Assembly’s recognition of genocide as an international crime in Resolution 96(I) was “persuasive evidence of the fact” and entered convictions for genocide. See pp. 983, 1156). Some states, such as Belgium, France and Greece, which were parties to the Genocide Convention considered that the legislation in force was deemed sufficient to ensure the prevention and punishment of the crime of genocide. See UN Doc. E/CN.4/Sub.2/416, Study of the Question of the Prevention and Punishment of the Crime of Genocide, 4 July 1978, paras 497-498.

right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations.<sup>2343</sup>

788. The ICJ accordingly found that the principles underlying the Genocide Convention are “recognized by civilized nations as binding on States, even without any conventional obligation”.<sup>2344</sup> The ICJ further found that the Genocide Convention is intended to be “definitely universal in scope”.<sup>2345</sup> Subsequently, in 1970 the ICJ clarified that the *erga omnes* obligation of States to protect against genocide had “entered into the body of general international law”.<sup>2346</sup> Further, in 1970 the General Assembly adopted a resolution noting that no statute of limitations shall apply to the crime of genocide “even if such acts do not constitute a violation of the domestic law of the country in which they were committed”.<sup>2347</sup> The Chamber accordingly finds that genocide was established as a crime under customary international law by 1975.<sup>2348</sup>

789. With respect to the foreseeability and accessibility of genocide, the Chamber takes into account the customary status and gravity of the crime, the fact that Cambodia acceded to the Genocide Convention without reservation in 1950 and the positions held by the Accused as members of Cambodia’s governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that genocide was punishable as a crime by 1975.

### 9.3.2. *Constitutive Elements of Genocide*

#### 9.3.2.1. *The targeted groups*

790. Article 4 of the ECCC Law and Article 2 of the Genocide Convention protect national, ethnical, racial and religious groups from acts committed with intent to destroy

<sup>2343</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

<sup>2344</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

<sup>2345</sup> *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, ICJ, Advisory Opinion, 28 May 1951 (ICJ Reports 1951), p. 12.

<sup>2346</sup> *Belgium v. Spain*, ICJ, Judgement, 5 February 1970 (ICJ Reports 1970), p. 32.

<sup>2347</sup> Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Preamble and Article 1 of 26 November 1968 (*entered into force* 11 November 1970).

<sup>2348</sup> The Chamber notes that this finding is supported by the recent analysis of the customary status of genocide by the European Court of Human Rights, which, found that “the crime of genocide was clearly recognised as a crime under international law” by 1953. See *Vasiliauskas v. Lithuania*, ECtHR, Judgement, Application No. 35343/05, 20 October 2015, paras 168, 172.

the group in whole or in part.<sup>2349</sup> In this case, the Closing Order identifies the Cham group as an “ethnic and religious group that distinguishes itself as such, and is identified as such by others” and the Vietnamese group as an “ethnic and national group, who may also have been considered as a racial group by the CPK”.<sup>2350</sup>

791. The Co-Prosecutors make detailed submissions on the definitions of national, ethnic, racial and religious groups respectively.<sup>2351</sup> They submit that attempting to differentiate each of the protected groups “on the basis of scientific criteria” would be inconsistent with the object and purpose of the Genocide Convention.<sup>2352</sup> The Co-Prosecutors further submit international courts have adopted a flexible approach to fitting targeted populations into four categories of protected groups.<sup>2353</sup> No other Parties made any relevant submissions with respect to the precise definition of the four protected groups.<sup>2354</sup>

792. The Chamber notes that the 1948 Genocide Convention does not specifically define the four protected groups.<sup>2355</sup> While some early jurisprudence of the *ad hoc* tribunals provided certain definitions of the specific features of each of the protected groups,<sup>2356</sup> most cases have since focused on the object and purpose of the Genocide Convention and favoured a case-by-case assessment of whether a specific group was

<sup>2349</sup> The Chamber notes that according to the *travaux préparatoires* there was discussion on including other groups such as political, linguistic and economic groups under Article II of the Genocide Convention. However, those groups were finally excluded from the protections found in the Genocide Convention. See UN Doc. E/447; UN Doc. A/C.6/214, 4 October 1948; UN Doc. A/C.6/SR.69; UN Doc. A/C.6/SR.75; UN Doc. A/C.6/SR.74; UN Doc. A/C.6/SR.128: The Genocide Convention – *The Travaux Préparatoires*, H. Abtahi and P. Webb, Martinus Nijhoff Publishers, 2008. See also, The UN Genocide Convention – A Commentary (Paola Gaeta ed., 2009), pp. 116-117.

<sup>2350</sup> Closing Order, paras 1336, 1343.

<sup>2351</sup> Co-Prosecutors’ Closing Brief, paras 91-95.

<sup>2352</sup> Co-Prosecutors’ Closing Brief, para. 88.

<sup>2353</sup> Co-Prosecutors’ Closing Brief, para. 91.

<sup>2354</sup> The NUON Chea Defence acknowledges that the “Vietnamese group” in accordance with the Closing Order should be interpreted as “encompassing the ethnic, national and racial group”. See NUON Chea Closing Brief, para. 696.

<sup>2355</sup> The Chamber notes that it is clear from the *travaux préparatoires* to the Genocide Convention, that as early as the Draft Convention on the Crime of Genocide in June 1947, racial, national and religious groups were intended to be included in the categories of protected groups without expressly defining the meaning of those terms. See Secretary General’s Draft Convention on the Crime of Genocide, UN Doc. E/447. These categories of protected persons were included in the final wording of the Genocide Convention. Furthermore, ethnic groups were also included following a vote without a clear definition of that term either. See UN Doc. A/C.6/SR.73; UN Doc. E/AC.25/SR.10; UN Doc. A/C.6/SR.74; UN Doc. A/C.6/SR.75; The Genocide Convention – *The Travaux Préparatoires*, H. Abtahi and P. Webb, Martinus Nijhoff Publishers, 2008. See also, The UN Genocide Convention – A Commentary (Paola Gaeta ed. 2009), pp. 114-116.

<sup>2356</sup> *Akayesu* Trial Judgement, paras 512-515; *Kayishema and Ruzindana* Trial Judgement, para. 98.

protected.<sup>2357</sup> In the absence of generally accepted and precise definitions of the protected groups, the *ad hoc* tribunals have concluded that “[e]ach of these concepts must be assessed in the light of a particular political, social and cultural context”.<sup>2358</sup> The Trial Chamber finds that this approach accords with the object and purpose of the Genocide Convention, which concerned “the destruction of a race, tribe, nation, or other group with a particular positive identity” and the “denial of the right of existence of entire human groups”.<sup>2359</sup> Accordingly, the Chamber will assess on the facts of the case whether the Cham and Vietnamese respectively fall within the four categories of protected groups under the Genocide Convention.

793. In the determination of what constitutes a protected group, the Chamber notes that the group must have a particular distinct identity and be defined “as such” by its common characteristics rather than a lack thereof. A protected group cannot be defined by negative criteria.<sup>2360</sup>

794. The NUON Chea Defence submits that there must be objectively verifiable elements to membership in a group and that a perpetrator’s subjective perception that an individual is a member of the protected group is insufficient on its own to establish membership of the group.<sup>2361</sup> The Co-Prosecutors similarly submit that both objective and subjective criteria are to be taken into account in determining what constitutes a protected group.<sup>2362</sup> The KHIEU Samphan Defence submits that the Chamber should adopt an objective approach to the determination of what constitutes a protected group,

<sup>2357</sup> *Krstić* Trial Judgement, paras 555-556 (finding that the “preparatory work of the Convention shows that setting out such a list was designed to describe a single phenomenon, roughly corresponding to what was recognised, before the second world war, as “national minorities”, rather than to refer to several distinct prototypes of human groups. To attempt to differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention”); *Brđanin* Trial Judgement, para. 682. See also, *Karadžić* Trial Judgement, para. 541; *Popović et al.* Trial Judgement, para. 809; *Tolimir* Trial Judgement, para. 735; *Jelisić* Trial Judgement, para. 70; *Semanza* Trial Judgement, para. 317; *Muvunyi* Trial Judgement, para. 484.

<sup>2358</sup> *Rutaganda* Trial Judgement, para. 56; *Krstić* Trial Judgement, para. 557 (finding that a “group’s cultural, religious, ethnical or national characteristics must be identified within the socio-historic context which it inhabits”).

<sup>2359</sup> *Stakić* Appeal Judgement, paras 21-22.

<sup>2360</sup> *Stakić* Appeal Judgement, paras 20-28; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), paras 191-194. The Chamber notes that the phrase “as such” does not appear in the Khmer version of the applicable law.

<sup>2361</sup> NUON Chea Closing Brief, para. 708.

<sup>2362</sup> Co-Prosecutors’ Closing Brief, paras 90.

based on objective criteria and interpreting the Genocide Convention through its *travaux préparatoires*.<sup>2363</sup>

795. The Chamber notes that, in determining what constitutes a protected group, the *ad hoc* tribunals have taken into account subjective factors including the way in which the perpetrator stigmatises the victims or the way in which the victims perceive themselves.<sup>2364</sup> The Trial Chamber finds that such factors are relevant and shall be taken into account. However, it considers that the subjective element alone is insufficient to establish membership of the protected group,<sup>2365</sup> and finds that both objective and subjective criteria may be taken into account. An analysis which focuses on the objective criteria is consistent with the purpose of the Genocide Convention which was to protect relatively stable and permanent groups.<sup>2366</sup>

#### 9.3.2.2. Actus reus

796. The *actus reus* of genocide, as relevant to the scope of the charges in Case 002/02, is limited to the killing members of the group.<sup>2367</sup> The requisite elements of “killing” are equivalent to the elements of murder,<sup>2368</sup> set out above.<sup>2369</sup> The Chamber finds that in order to establish the *actus reus* for genocide it is not required for there to be a “numerical assessment of the number of people killed” nor does it have a “numeric threshold”.<sup>2370</sup> The *actus reus* must in fact target a member or members of a group on the basis of their group membership.<sup>2371</sup>

<sup>2363</sup> KHIEU Samphan Closing Brief, paras 1825-1827.

<sup>2364</sup> *Stakić* Appeal Judgement, para. 25; *Rutaganda* Trial Judgement, para. 56.

<sup>2365</sup> *Stakić* Appeal Judgement, para. 25; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 191.

<sup>2366</sup> *Akayesu* Trial Judgement, para. 511; *Rutaganda* Trial Judgement, para. 57. The Chamber notes that these cases had regard to the *travaux préparatoires* of the Genocide Convention, which noted that certain groups such as political and economic groups were excluded from protection because they were considered to be “mobile” which were joined through “individual voluntary commitment”.

<sup>2367</sup> Closing Order, paras 1335-1349. *See also*, Case 002 Additional Severance Decision Annex, p. 3.

<sup>2368</sup> *Kayishema and Ruzindana* Appeal Judgement, paras 150-151; *Blagojević and Jokić* Trial Judgement, para. 642.

<sup>2369</sup> *See above*, Section 9.1.1: Crimes Against Humanity: Murder.

<sup>2370</sup> *Karadžić* Rule 98bis Appeal Judgement (AC), 11 July 2013, para. 23 *citing* *Karadžić* Trial Chamber Rule 98bis judgement of acquittal; *Karadžić* Trial Judgement, para. 542, fn. 1723 (noting that “the scale of atrocities is relevant to the assessment of the *mens rea* of genocide”).

<sup>2371</sup> Case 001 Appeal Judgement, para. 268. *See also*, *Kupreškić et al.* Trial Judgement, para. 636; *Jelisić* Trial Judgement, paras 67-68.

9.3.2.3. *Mens rea*

797. The *mens rea* of genocide is the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.<sup>2372</sup> Genocide requires not only proof of the intent to commit the underlying act, but also proof of the specific intent to destroy the group, in whole or in part.<sup>2373</sup> This has been referred to as genocidal intent, *dolus specialis*, special intent or specific intent.<sup>2374</sup> The Chamber shall refer to this as specific intent.

798. In accordance with the Genocide Convention definition, it must be established that the perpetrator had the intent to destroy a protected group “as such”.<sup>2375</sup> The Co-Prosecutors submit that this phrase denotes a requirement that the group be destroyed as a separate and distinct entity and that while some individuals may live on, the “group identity” is destroyed.<sup>2376</sup> No other parties made any relevant submissions in this regard. The Chamber finds that this is consistent with the object and purpose of the Genocide Convention, where the phrase “as such” emphasises that the victim of crime of genocide is not merely the person but the group itself,<sup>2377</sup> and subsequent jurisprudence stating that the relevant intent is “to destroy a collection of people who have a particular group identity”.<sup>2378</sup>

<sup>2372</sup> Genocide Convention, Article 2. *See also*, Article 4 of the ECCC Law (the Court has jurisdiction over “the crimes of genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide of 1948 [...] with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group”).

<sup>2373</sup> *Krstić* Appeal Judgement, para. 20; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), paras 186-187.

<sup>2374</sup> *Jelisić* Appeal Judgement, para. 45; *Karadžić* Trial Judgement, para. 549; *Karadžić*, Rule 98bis Appeal Judgement (AC), para. 22; *Akayesu* Trial Judgement, para. 498; *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 187.

<sup>2375</sup> The Chamber notes that the English and Khmer wording of Article 4 of the ECCC Law reads that “[t]he acts of genocide [...] mean any acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, *such as*: [...]”. The Chamber considers this to be a typographical error in the ECCC Law, given that Article II of the Genocide Convention refers to “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, *as such*” and that the French version of the ECCC reflects the precise wording of the French version of the Genocide Convention (« l’intention de détruire, en tout ou en partie, un groupe national, ethnique, racial ou religieux, *comme tel* »). *See* Genocide Convention, Article II. *See also*, Closing Order, para. 1311.

<sup>2376</sup> Co-Prosecutors’ Closing Brief, para. 100; T. 15 June 2017 (Closing Statements), E1/522.1, pp. 71-72, 93.

<sup>2377</sup> *Muvunyi* Trial Judgement, para. 485; *Niyitegeka* Trial Judgement, para. 410; *Akayesu* Trial Judgement, para. 521; *Brdanin* Trial Judgement, para. 698 *citing* *Sikirica et al.*, Rule 98bis Judgement, para. 89 (finding that “the ultimate victim of genocide is the group, although its destruction necessarily requires the commission of crimes against its members, that is, against individuals belonging to that group”); *Stakić* Trial Judgement, para. 521.

<sup>2378</sup> *Stakić* Appeal Judgement, para. 20.

799. The Co-Prosecutors submit that, contrary to some international jurisprudence, the intended destruction of a group need not be “physical or biological”.<sup>2379</sup> They contend that a “group can be deprived of its existence through the destruction of its specific traits, or dispersal of its members, leading to the dissolution of its unity and/or collective identity in a fundamental and irremediable manner”.<sup>2380</sup> By way of example, the Co-Prosecutors submit that forcibly transferring children to another group is an act of genocide that does not involve physical or biological destruction.<sup>2381</sup> Further, in connection with a religious group, they contend that if “you kill those who refuse to convert” and “[i]f you stop these people from practicing their religion the group [...] no longer exists”.<sup>2382</sup> In contrast, the KHIEU Samphan Defence submits that the Genocide Convention only envisages the physical and biological destruction of a group.<sup>2383</sup> No other parties made any relevant submissions in this regard.

800. The Chamber concurs with the finding of the ICJ, based in part on the *travaux préparatoires* of the Genocide Convention, that the scope of that Convention was limited to the physical or biological destruction of the group to the exclusion of cultural genocide.<sup>2384</sup> Even when underlying acts of genocide do not “directly concern the physical or biological destruction of members of the group [such as causing serious mental harm or forcible transfer of children]”, those acts must be carried out “with the intent of achieving the physical or biological destruction of the group, in whole or in part”.<sup>2385</sup>

801. While in the current case the *actus reus* of genocide is limited to killing members of the group, the possible combination of forced transfer and killings targeting members of the same group may be a relevant factor to take into account to assess the specific intent to destroy. In this regard the Chamber concurs with the approach taken by the ICTY “that the physical or biological destruction of a group is not necessarily the death of the group members” and “that the physical or biological destruction of the group is

<sup>2379</sup> Co-Prosecutors’ Closing Brief, para. 102 referring to *Krstić* Appeal Judgement, para. 25; *Karadžić* Trial Judgement, para. 553; *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136. See also, T. 15 June 2017 (Closing Statements), E1/522.1, pp. 93-94.

<sup>2380</sup> Co-Prosecutors’ Closing Brief, para. 102.

<sup>2381</sup> Co-Prosecutors’ Closing Brief, para. 103.

<sup>2382</sup> T. 15 June 2017 (Closing Statements), E1/522.1, pp. 70-71.

<sup>2383</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 18.

<sup>2384</sup> *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136.

<sup>2385</sup> *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136.



the likely outcome of a forcible transfer of the population when this transfer is conducted in such a way that the group can no longer reconstitute itself – particularly when it involves the separation of its members”, because “[i]n such cases [...] the forcible transfer of individuals could lead to the material destruction of the group, since the group ceases to exist as a group, or at least as the group it was”.<sup>2386</sup>

802. Where a conviction for genocide relies on the intent to destroy a protected group “in part”, the part must be a substantial part of the protected group, and the part targeted must be significant enough to have an impact on the group as a whole.<sup>2387</sup>

803. In order to infer specific intent, the Chamber needs to consider “whether all of the evidence, taken together, demonstrated a genocidal mental state”.<sup>2388</sup> Where an inference of specific intent is drawn, it must be the only reasonable inference available on the evidence.<sup>2389</sup> Factors relevant to this analysis may include the general context, the perpetration of other culpable acts systematically directed at the same group, the scale of atrocities committed, the systematic targeting of victims on account of their membership in a particular group, or the repetition of destructive and discriminatory acts.<sup>2390</sup> A Chamber can have regard to speeches made in public or in meetings to support a finding of specific intent.<sup>2391</sup> The existence of a plan or policy, while not a requirement of the crime of genocide, may support the inference that the perpetrator has the requisite specific intent.<sup>2392</sup>

<sup>2386</sup> *Blagojević and Jokić* Trial Judgement, para. 666. *See also*, UN Doc. S/1994/674, Final Report of the Commission of Experts, Established Pursuant to Security Council Resolution 780 (1992), 27 May 1994, para. 94 (finding that if a group has its leadership exterminated, and at the same time or in the wake of that, has a relatively large number of the members of the group killed or subjected to other heinous acts, for example *deported on a large scale or forced to flee*, the cluster of violations ought to be considered in its entirety in order to interpret the provisions of the Convention in a spirit consistent with its purpose) (emphasis added).

<sup>2387</sup> *Krstić* Appeal Judgement, paras 8, 12.

<sup>2388</sup> *Stakić* Appeal Judgement, para. 55; *Tolimir* Appeal Judgement, paras 246-247; *Karadžić*, Rule 98bis Appeal Judgement (AC), para. 56.

<sup>2389</sup> *Krstić* Appeal Judgement, para. 41; *Brđanin* Trial Judgement, para. 970.

<sup>2390</sup> *Jelisić* Appeal Judgement, paras 47-48; *Tolimir* Appeal Judgement, para. 246; *Popović et al.* Appeal Judgement, para. 468; *Hategikimana* Appeal Judgement, para. 133; *Brđanin* Trial Judgement, paras 971-989; *Karadžić*, Rule 98bis Appeal Judgement (AC), paras 80, 99.

<sup>2391</sup> *Gacumbitsi* Appeal Judgement, para. 43; *Kamuhanda* Appeal Judgement, paras 81-82; *Karadžić* Trial Judgement, para. 550.

<sup>2392</sup> *Krstić* Appeal Judgement, para. 225; *Jelisić* Appeal Judgement, para. 48. *See also*, *Popović et al.* Appeal Judgement, paras 430, 440.

804. The NUON Chea Defence submits that physical perpetrators must also possess the specific intent for the crime of genocide.<sup>2393</sup> The Co-Prosecutors submit that physical perpetrators need not possess the specific intent in situations where they are used by members of a joint criminal enterprise to commit genocide.<sup>2394</sup> No other parties made any relevant submissions in this regard. The Chamber notes that only one of the sources referenced by the NUON Chea Defence, the *Brđanin* Trial Judgement, supports its view that the person who physically carried out the crime must share the specific intent for genocide with the participants in a joint criminal enterprise.<sup>2395</sup> The Chamber further notes that the ICTY Appeals Chamber subsequently clarified that the focus is on the mental state of the accused and the other alleged members of the JCE and held that it is not the intent of the “physical perpetrators of the underlying alleged genocidal acts, that is determinative”.<sup>2396</sup> The Chamber concurs with this approach and finds that this is consistent with the object and purpose of the Genocide Convention.

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<sup>2393</sup> NUON Chea Closing Brief, paras 851, 854, 888.

<sup>2394</sup> T. 15 June 2017 (Closing Statements), E1/522.1, pp. 46-47.

<sup>2395</sup> NUON Chea Closing Brief, fn. 2909 referring to *Brđanin* Trial Judgement, para. 708. The NUON Chea Defence also refers to the *Kvočka et al.* Appeal Judgement, para. 110 where the Appeals Chamber found in general that the accused for the purposes of joint criminal enterprise needed to share the intent for the underlying crime.

<sup>2396</sup> *Karadžić* Rule 98bis Appeal Judgement (AC), para. 79. See also, *Karadžić* Trial Judgement, paras 549, 2591.

## 10.COOPERATIVES

### **10.1. Tram Kak Cooperatives**

#### 10.1.1. *Closing Order*

805. The Closing Order charges the Accused with the following crimes against humanity committed in the Tram Kak Cooperatives: (i) extermination; (ii) enslavement; (iii) imprisonment; (iv) torture; (v) persecution on political grounds; (vi) persecution on racial grounds (treatment of the Vietnamese); and (vii) persecution on religious grounds (treatment of Buddhists); (viii) deportation of Vietnamese to Vietnam; and other inhumane acts in the forms of (ix) enforced disappearances; and (x) attacks against human dignity through the deprivation of food, shelter, medical care and minimum sanitary conditions.<sup>2397</sup>

#### 10.1.2. *Scope of Case 002/02*

806. The KHIEU Samphan Defence submits that the judicial investigation was geographically restricted to eight particular communes namely: (1) Kus; (2) Samraong (3) Trapeang Thum South; (4) Tram Kak; (5) Trapeang Thum North; (6) Nhaeng Nhang; (7) Sre Ronoung; and (8) Ta Phem, because these places were the only ones mentioned in the Introductory Submission at paragraph 43,<sup>2398</sup> and because no Supplementary Submissions extended the scope of judicial investigation.<sup>2399</sup> It submits that while the Co-Investigating Judges correctly listed these communes at paragraph 302 of the Closing Order (with the caveat that they characterised them as “sub-districts” instead of “communes”), later references to evidence concerning Angk Ta Saom commune in paragraphs 320 and 812 of the Closing Order, or concerning places other

<sup>2397</sup> Closing Order, paras 1381-1383, 1388-1390 (extermination), 1391-1396 (enslavement), 1402-1407 (imprisonment), 1408-1414 (torture), 1414-1418, 1423-1425 (persecution on political grounds), 1414, 1422-1423, 1425 (persecution on racial grounds), 1415, 1419-1421, 1423, 1425 (persecution on religious grounds), 1397-1401 (deportation), 1434-1435, 1437, 1439-1441 (other inhumane acts in the form of attacks against human dignity), 1470-1478 (other inhumane acts in the form of enforced disappearances). The Closing Order also contains allegations of rape in the context of forced marriage, but these are addressed elsewhere in this Judgement. See Section 14.3.11.1: Regulation of Marriage: Tram Kak Cooperatives.

<sup>2398</sup> Introductory Submission, para. 43.

<sup>2399</sup> KHIEU Samphan Closing Brief, paras 848-852 (with reference to the eight communes specifically identified at Closing Order, para. 302); T. 20 June 2017 (Closing Statements), E1/525.1, pp. 112-113; T. 23 June 2017 (Closing Statements), E1/528.1, p. 25.

than the eight communes mentioned in the earlier list, should be disregarded as falling outside the scope of judicial investigation.<sup>2400</sup> In the furtherance of its reasoning the KHIEU Samphan Defence contends that the Chamber is bound by the same geographic restriction and all evidence relating to events in other communes should not be considered.<sup>2401</sup> This amounts to a challenge of the scope of the trial concerning crimes allegedly committed in Tram Kak district by limiting it to the eight listed communes.

807. On the same basis, it is also submitted that evidence relating to a detention site at Angk Roka should be excluded from consideration because it was in Cheang Tong commune – not one of the communes mentioned in paragraph 302 of the Closing Order or one of the security centres specifically identified in Case 002/02.<sup>2402</sup> The Lead Co-Lawyers respond that the detention site at Angk Roka was actually in Trapeang Thum North commune. They also rely on an oral decision during the evidentiary phase of Case 002/02, when the Chamber decided to hear evidence relating to Angk Roka.<sup>2403</sup> The Co-Prosecutors did not address these submissions directly, but they refer to 13 different communes as included within the “Tram Kak District Cooperatives”.<sup>2404</sup>

808. Addressing first the contention limited to the eight communes listed in paragraph 302 of the Closing Order, the Chamber considers that when read in a holistic way, it is clear that the facts charged in the Closing Order and forwarded for trial with regard to the Tram Kak district concern all the cooperatives in the whole of Tram Kak district, rather than a subset of just eight communes. The additional references to Angk Ta Saom in paragraphs 320 and 812 of the Closing Order indicate that the Co-Investigating Judges took into consideration evidence beyond the eight communes mentioned in paragraph 302. Further, paragraph 303 of the Closing Order refers to “all the subdistricts in Tram Kak district”. Evidence relied upon by the Co-Investigating Judges in paragraph 302 relates to additional communes, beyond the eight identified; for example MEAS Sokha’s Interview Record describes his arrest from Cheang Tong

<sup>2400</sup> KHIEU Samphan Closing Brief, paras 848-852, 879-882 *referring* to Closing Order, para. 320.

<sup>2401</sup> KHIEU Samphan Closing Brief, paras 949-993; T. 20 June 2017 (Closing Statements), E1/525.1, pp. 113-114 (identifying evidence as to events in other communes including Angk Ta Saom, Leay Bour, Popel, Cheang Tong, Khporp Trabaek communes).

<sup>2402</sup> KHIEU Samphan Closing Brief, para. 963; T. 20 June 2017 (Closing Statements), E1/525.1, p. 114; T. 23 June 2017 (Closing Statements), E1/528.1, p. 25.

<sup>2403</sup> T. 21 June 2017 (Closing Statements), E1/526.1, pp. 63-64.

<sup>2404</sup> Co-Prosecutors’ Closing Brief, para. 738 (referring to Angk Ta Saom, Cheang Tong, Kus, Leay Bour, Nhaeng Nhang, Popel, Samraong, Srae Ronoung, Ta Phem, Tram Kak, Trapeang Thum North, Trapeang Thum South and Khporp Trabaek communes).

commune; NUT Nov's Interview Record describes his roles on various commune committees, in Leay Bour commune among other places; and the documentary evidence cited refers to Angk Ta Saom, Popel and Khporp Trabaek communes. Elsewhere the Closing Order refers to arrests by commune militia all across Tram Kak district.<sup>2405</sup> It also found that Buddhism was banned "district-wide".<sup>2406</sup> The Chamber therefore rejects the KHIEU Samphan Defence's focus on, and interpretation of, paragraph 302.

809. The Chamber recalls that the Khieu Samphan Defence contention that a number of facts addressed by the Closing Order were actually not within the scope of the judicial investigation and accordingly may not fall within the scope of the trial or that evidence concerning these facts should be disregarded, amounts to challenge the Chamber's jurisdiction to adjudicate these facts, which, if granted, would terminate the prosecution of the charges based thereupon. The Chamber has already found that such challenges should have been filed within the time limit set by Internal Rule 89. The current claim to limit the scope of the trial to places listed in the Introductory Submission was neither raised before the Pre-Trial Chamber, nor as a preliminary objection. Therefore this request is untimely and is rejected as belated.

810. Turning to the detention site at Angk Roka which is not identified as a crime site in the Closing Order, the Chamber allowed the Parties to put questions to Civil Party THANN Thim about Angk Roka Security Office on the basis that it was part of the facts generally relevant to Tram Kak district and Kraing Ta Chan. However, the Chamber also invited the parties not to focus on this site in detail.<sup>2407</sup> The Chamber finds that while the Accused were not charged with crimes committed at Angk Roka Security Office, evidence as to the operation of this location remains, however, contextually relevant to the operation of the nearby District Office(s), to Kraing Ta Chan, and to the arrests of persons from cooperatives elsewhere in Tram Kak district.<sup>2408</sup> The Chamber limits its consideration of this site accordingly. This same logic applies to other detention sites about which the Chamber heard occasional evidence,

<sup>2405</sup> Closing Order, para. 499.

<sup>2406</sup> Closing Order, para. 321.

<sup>2407</sup> T. 21 April 2015 (THANN Thim), E1/289.1, pp. 35-36. By this point in evidentiary proceedings, MEAS Sokha had already appeared before the Chamber and described his arrest and transfer to Kraing Ta Chan via Angk Roka. See T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 62.

<sup>2408</sup> Section 2.4.5: Evidence Outside the Temporal or Geographic Scope of the Closing Order.

including Krabei Prey in Samraong commune, Office 160 and Office 204 – imprecisely described as being at Prey Kduoch, Trapeang Kaoh village in the north of Takeo province, and at Au Kantuout, Ou Saray commune, to the west of Trapeang Kranhung.<sup>2409</sup>

811. On the charge of extermination, the KHIEU Samphan Defence submits that the Chamber is only seised of limited charges of deaths due to hunger. It submits that the charges do not include deaths where causation is inadequately pleaded, or where deaths may have stemmed from additional factors such as health issues more broadly.<sup>2410</sup> The KHIEU Samphan Defence also submits that it only needs to respond to the allegation of extermination insofar as deaths stemmed from starvation in two particular communes: Samraong and Ta Phem.<sup>2411</sup> The Chamber rejects these submissions. The

<sup>2409</sup> T. 8 January 2015 (KEO Chandara), E1/247.1, pp. 28, 42, 53-54 (describing the locations of Krabei Prey, Office 160, 204); T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 34 (distance of 10km between Krabei Prey and Kraing Ta Chan), 56 (describing locations of 160 and 204), 73 (detained at Krabei Prey for five days – it was not a prison but an execution site or where people were sent on to Kraing Ta Chan for further interrogation), 105 (detained there for five days); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 34 (describing Office 204 to the west of Trapeang Kranhung as a detention centre for LON Nol officials who had been arrested from Angk Ta Saom, Sakeo or elsewhere, and the rich or capitalists were also detained there); T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 11-12 (describing Office 204 as the sector’s office, located in a valley between two mountains, Damrei Romeal to the west and Dach (phonetic) mountain to the west), 15 (appearing to say that Office 204 was in fact at Prey Kduoch); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 7 (his father was imprisoned at Office 204 in 1972 or 1973); T. 7 May 2015 (EK Hoeun), E1/298.1, p. 56 (describing detention persons from villages and cooperatives at Office 204 who had to fell trees in a location called “O Chaot” in Prey Kduoch located very far from villages), 66 (describing Ta Mok releasing his cousin from Office 160); T. 22 April 2015 (PECH Chim), E1/290.1, pp. 7-8 (describing Security Centre 160 located at the border of Kirivong and Treang districts and was Comrade Choeun’s office also called Tnaot Toul re-education centre – it was also known as the re-education school for soldiers and Ta Keav left Tram Kak district to work there with Choeun); T. 1 February 2016 (SAO Van), E1/385.1, pp. 35-40, 86-88, 92 (his brother SAO Sum was a former LON Nol official sent to Office 204, and further describing 204 as a re-education site for soldiers who committed moral offences); PHAN Chhen Interview Record, E3/5524, 9 December 2009, p. 2, ERN (En) 00426298 (Answer 1, describing his transfer from a position at Kraing Ta Chan to work at Prey Kduoch, but explaining that Office 204 had been dissolved by 1975), 8, ERN (En) 00426304 (Answer 48, CHHUONG Kit was the former Office 204 Chairman); T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 19-25 (describing a sector messenger unit at Office 160); MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 6, ERN (En) 00982703 (Answer 16, describing Office 160 as a sector office near Wat Angk Kriv in Angkor Chey district where Uncle Choeun was in charge of the Sector Youth); MOENG Vet DC-Cam Interview, E3/9647, 13 August 2013, ERN (En) 01562011 (describing “security centre 160” where Ta Chhoeun was promoted to the Sector Committee and led the Sector Youth, having been in charge of Angkor Chey district), 01562022-01562023 (describing Rum as being Ta Mut’s nephew and being in charge of Office 204); AN Sopheap DC-Cam Interview, E3/10569, p. 22, ERN (En) 01079395 (describing having received training at Office 160, the Youth Office for Sector 13, led by Choeun).

<sup>2410</sup> KHIEU Samphan Closing Brief, paras 853-870, 924-931; T. 23 June 2017 (Closing Statements), E1/528.1, p. 26 (submitting that the Trial Chamber is only seised of deaths due to hunger which were never the result of direct intent to kill).

<sup>2411</sup> KHIEU Samphan Closing Brief, paras 994-997.

Closing Order describes conflicting accounts of deaths from starvation.<sup>2412</sup> Contrary to the KHIEU Samphan Defence's submissions, the Closing Order also refers to deaths following inadequate medical treatment.<sup>2413</sup> The Closing Order describes a purge of enemies having been instructed at a meeting.<sup>2414</sup> It describes arrests, people disappearing, with workers "afraid of getting killed".<sup>2415</sup> It charges extermination by reference to the deprivation of food, accommodation, medical care and hygiene – together with the consequences of hard labour.<sup>2416</sup> This relates to Tram Kak district as a whole. The KHIEU Samphan Defence's submissions as to the scope of the charge of extermination are therefore rejected.

812. On the charge of political persecution as it pertains to the treatment of former Khmer Republic soldiers and officials, the KHIEU Samphan Defence submits that some of the allegations in the Closing Order, such as the description of persons being "closely monitored", do not amount to political persecution.<sup>2417</sup> While it concedes that charges of discrimination against former Khmer Republic soldiers and officials in Tram Kak district are found elsewhere in the Closing Order, it submits that the underlying evidence cited is either unclear, or relates to locations outside of the geographic scope of Case 002/02.<sup>2418</sup> The Chamber has already rejected submissions based on the internal geography of Tram Kak district. The Chamber further finds that the Closing Order expressly refers to purges of enemies including those "who had tendency for the LON Nol people".<sup>2419</sup> The section of the Closing Order on the Tram Kak Cooperatives must also be read together with the section on Kraing Ta Chan Security Centre, which was in Tram Kak district, and sets out detailed charges of the treatment of former Khmer Republic officials in Tram Kak district as a whole.<sup>2420</sup> The KHIEU Samphan Defence's submissions are therefore rejected.

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<sup>2412</sup> Closing Order, para. 312.

<sup>2413</sup> Closing Order, para. 313 (referring to health problems, particularly among the New People, and people dying without the family being informed).

<sup>2414</sup> Closing Order, para. 309 (referring to instructions on "the purges of enemies within and outside the ranks").

<sup>2415</sup> Closing Order, paras 311-312.

<sup>2416</sup> Closing Order, para. 1387 (referring to worksites which, in para. 1381 include the Tram Kak Cooperatives).

<sup>2417</sup> KHIEU Samphan Closing Brief, paras 2283-2387 *referring to* Closing Order, para. 319.

<sup>2418</sup> KHIEU Samphan Closing Brief, paras 2297-2298, 2305.

<sup>2419</sup> Closing Order, para. 309.

<sup>2420</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 1403.

813. On the charge of political persecution as it pertains to New People, the KHIEU Samphan Defence submits that the Closing Order shows that equal treatment applied to all the cooperatives' inhabitants; the only discrimination charged is said to relate to political rights via the inability of New People to become unit chiefs, but even this charge is said to be based upon weak evidence.<sup>2421</sup> Contrary to these submissions, the Closing Order expressly states that militia kept a close eye on evacuees and if "they said anything against the CPK they were arrested and taken away".<sup>2422</sup> The Closing Order describes "depositee" people being separated into different labour unit from full-rights or candidate members.<sup>2423</sup> It describes New People as suffering from health problems in particular because they were not used to living in rural areas.<sup>2424</sup> The KHIEU Samphan Defence's submissions also ignore the fact that New People could often include former LON Nol soldiers or officials, or relatives of those persons. The Closing Order expressly charges that real or perceived enemies of the CPK were subjected to harsher treatment and living conditions than the rest of the population in the cooperatives.<sup>2425</sup> The KHIEU Samphan Defence's submissions are therefore rejected.

814. On the charge of religious persecution of Buddhists, the NUON Chea Defence stresses the distinction between the specific crime site versus evidence related to any broader policy. The specific submission is that the Tram Kak Cooperatives is the only relevant crime site pursuant to this charge, and the policy evidence heard by the Chamber as to events in other locations outside of Tram Kak district violated NUON Chea's right to a fair trial.<sup>2426</sup> The Co-Prosecutors respond that the Chamber must consider evidence from a range of locations in order to decide whether the events in Tram Kak district are indicative of the implementation of a CPK policy to ban pagodas, prohibit the practice of Buddhism and disrobe monks. The Co-Prosecutors also identify the communication of this policy at high-level meetings in Phnom Penh and policy documents.<sup>2427</sup> The NUON Chea Defence respond by challenging the strength and

<sup>2421</sup> KHIEU Samphan Closing Brief, paras 942-948.

<sup>2422</sup> Closing Order, para. 319.

<sup>2423</sup> Closing Order, para. 306.

<sup>2424</sup> Closing Order, para. 313.

<sup>2425</sup> Closing Order, para. 1418.

<sup>2426</sup> NUON Chea Closing Brief, para. 895.

<sup>2427</sup> T. 14 June 2017 (Closing Statements), E1/521.1, pp. 58-63; Co-Prosecutors' Closing Brief, E457/6/1.2.14, Annex E – Buddhist Policy Chart of Witness Evidence from Each Zone.



interpretation of the evidence cited by the Co-Prosecutors, including in relation to events in diverse zones.<sup>2428</sup>

815. In its Case 002 Additional Severance Decision, the Chamber rejected the Co-Prosecutors' proposal to extend its consideration of the treatment of Buddhists to a nationwide scope.<sup>2429</sup> The Annex to the Chamber's decision included paragraphs 205-207 and 210 of the Closing Order in Case 002/02. These paragraphs contain references to events in various locations throughout the country. However, the Chamber stated that the "implementation" of the policy was to be "limited to Tram Kak Cooperatives".<sup>2430</sup> The issue is whether prejudice arises should the Chamber place weight on events in locations other than Tram Kak district, beyond those described in paragraphs 205-207 and 210, when determining the existence and nature of any policy then implemented in Tram Kak district. The Chamber has held that it may rely on evidence that falls outside of the geographic scope in specific circumstances, for example to evaluate any deliberate pattern of conduct.<sup>2431</sup> In this section, however, the Chamber focuses on events in Tram Kak district and evaluates the extent to which they can be attributed to clearly discernible policies emanating from the Party Centre. This analysis does not, at this stage, require the Chamber to compare or corroborate events in Tram Kak district with events in diverse locations elsewhere.

816. The NUON Chea Defence submits that evidence related to persons identified as Khmer Krom should not be considered in the context of charges related to the Treatment of the Vietnamese.<sup>2432</sup> It submits that any such evidence is only relevant to the general conditions in cooperatives and the Closing Order's reference to Khmer Krom "transferred from Tram Kak District to Vietnam" must be understood in the context that Khmer Krom are not charged as a targeted group in Case 002, and not to be subsumed as part of the broader Vietnamese group.<sup>2433</sup> The KHIEU Samphan Defence's submissions go further, suggesting that any evidence related to the Khmer Krom is not within the scope of Case 002/02 at all.<sup>2434</sup> No other Party made relevant

<sup>2428</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 42-43.

<sup>2429</sup> Case 002 Additional Severance Decision, para. 38.

<sup>2430</sup> Annex to Case 002 Additional Severance Decision, E301/9/1.1, p. 2.

<sup>2431</sup> Section 2.4.5: Evidence Outside the Temporal or Geographic Scope of the Closing Order.

<sup>2432</sup> NUON Chea Closing Brief, para. 707.

<sup>2433</sup> NUON Chea Closing Brief, para. 1016.

<sup>2434</sup> T. 20 June 2017 (Closing Statements), E1/525.1, p. 27; T. 21 June 2017 (Closing Statements), E1/526.1, pp. 21-27.

submissions in this regard. The Chamber has confirmed that the Closing Order did not identify the Khmer Krom as a targeted group in Case 002.<sup>2435</sup> The Chamber has also found that the Defence were not adequately notified of any charge that Khmer Krom were to be identified as a “sub-group” of the Vietnamese, such that the Chamber is not properly seised of the targeting of Khmer Krom, either as a specific group or as a sub-group of the Vietnamese.<sup>2436</sup> However on a different matter, the Closing Order charges that Vietnamese living in Tram Kak district were deported to Vietnam, particularly in 1975 and 1976.<sup>2437</sup> The Closing Order also refers to the registration of Khmer Krom in the context of families of mixed descent.<sup>2438</sup> Although there is no charge of racial persecution against the Khmer Krom, evidence relating to such persons may be relevant to other charges which do not depend upon their group identification.<sup>2439</sup> It may also be contextually relevant to the examination of the charge of deportation of Vietnamese (*i.e.* other than persons identified as Khmer Krom). The Chamber therefore rejects the submissions that evidence relating to Khmer Krom persons is either outside the scope of Case 002/02, or restricted to the general conditions in cooperatives only. Such evidence will therefore be considered by the Chamber for the limited purposes identified above.

### 10.1.3. *Witness and Civil Party Evidence*

817. The Chamber heard evidence from 17 witnesses, 14 Civil Parties and one expert during the trial segment nominally dedicated to the Tram Kak Cooperatives and Kraing Ta Chan.<sup>2440</sup> The Chamber heard one witness during the trial segment nominally dedicated to the treatment of former Khmer Republic soldiers and officials.<sup>2441</sup>

818. The Chamber heard from various persons with roles directly relevant to the oversight of the Tram Kak Cooperatives. Former teacher PECH Chim was a long-time

<sup>2435</sup> Section 2.5.6.7.1: Facts Allegedly Outside the Scope of the Indictment: Khmer Krom.

<sup>2436</sup> Section 2: Preliminary Issues, para. 185.

<sup>2437</sup> Closing Order, paras 213-214, 320, 1397-1398.

<sup>2438</sup> Closing Order, para. 320.

<sup>2439</sup> Section 2: Preliminary Issues, para. 184.

<sup>2440</sup> MEAS Sokha; OUM Suphany; CHOU Koemlan; CHANG Srey Mom; EM Phoeung; KEO Chandara; SORY Sen; Elizabeth BECKER; RY Pov; PHNEOU Yav; SAO Han; SREI Than; PHANN Chhen; VAN Soeun; NEANG Ouch; NUT Nov; RIEL Son; SAUT Saing; OEM Saroeun; Richard DUDMAN; PECH Chim; KHOEM Boeun; EK Hoeun; THANN Thim; VONG Sarun; TAK Sann; EAM Yen; BENG Boeun; YEM Khonny; BUN Saroeun; IM Vannak; LOEP Neang.

<sup>2441</sup> SAO Van.

member of the Tram Kak District Committee and full-rights member of the CPK.<sup>2442</sup> For reasons explained below, the Chamber finds that he was the District Secretary from mid-1976 until early 1977. NEANG Ouch *alias Ta San* was *Ta Mok*'s brother-in-law and had a prominent role in FUNK for Tram Kak district until 1975 when he left for Kaoh Andaet District.<sup>2443</sup> *Ta Mok* then brought him back to Tram Kak district in 1977 and the Chamber finds that he rose to become the District Secretary.<sup>2444</sup> KHOEM Boeun *alias Yeay Boeun* was the secretary of Cheang Tong commune from 1973 and she joined in the District Committee in 1978 alongside NEANG Ouch *alias Ta San*. She testified that she never became a full-rights member of the CPK, even when she joined the District Committee.<sup>2445</sup>

819. SAO Van *alias SAO Pok* was chief of FUNK in Cheang Tong commune, and also worked with KHOEM Boeun *alias Yeay Boeun* on the CPK's Cheang Tong Commune Committee. Some months after April 1975, he moved to lead a commune in Sector 25 (Kandal). He was a full-rights member of the CPK.<sup>2446</sup> NUT Nov worked in various communes during the relevant period: initially he was a member of the Nhaeng Nhang Commune Committee, then moved to the Leay Bour Commune Committee from mid-1976 until late 1977. He became the secretary of Sre Ronong commune in late 1977 or early 1978, then moved to become the secretary of Angk Ta Saom commune in 1978. He testified that he was a candidate member of the CPK.<sup>2447</sup> PHANN Chhen was the chief of Kus commune before 1975 and he attended CPK meetings in Tram Kak district.<sup>2448</sup>

820. RIEL Son worked in Trapeang Thum North commune and became Deputy Chief of the Tram Kak District Hospital from late 1976. He attended meetings with the District Committee in this capacity.<sup>2449</sup> EK Hoeun worked at the Tram Kak District Office until some time in 1976, then oversaw land survey work for the District before he left Tram Kak district to work in another zone.<sup>2450</sup> LONG Vonn, a former teacher,

<sup>2442</sup> PECH Chim testified before the Chamber on 1 July 2013 and 21, 22, 23 and 24 April 2015.

<sup>2443</sup> See below, para. 919.

<sup>2444</sup> NEANG Ouch *alias Ta San* gave evidence before the Chamber on 9, 10, 11 and 12 March 2015.

<sup>2445</sup> KHOEM Boeun *alias Yeay Boeun* testified via video link on 4 and 5 May 2015.

<sup>2446</sup> SAO Van testified before the Chamber on 1 and 2 February 2016. He also testified before the Supreme Court Chamber in Case 002/01 appeal proceedings on 2 July 2015.

<sup>2447</sup> NUT Nov testified before the Chamber on 12 and 16 March 2015.

<sup>2448</sup> PHANN Chhen testified before the Chamber on 24 and 25 February 2015.

<sup>2449</sup> RIEL Son testified before the Chamber on 16, 17, 18 and 19 March 2015.

<sup>2450</sup> EK Hoeun (UL Hoeun) testified before the Chamber on 7 and 8 May 2015.

was deputy chairman of the Tram Kak district's commerce office throughout 1977, before he moved to the Northwest Zone.<sup>2451</sup> SANN Lorn, both a brother-in-law and cousin of *Ta Mok*, worked as a messenger in Tram Kak district until he left to the Northwest Zone.<sup>2452</sup> KHIEV Neou, a former monk related to *Ta Mok* and SON Sen, managed the Southwest Zone's commercial transportation unit in Phnom Penh from 1976.<sup>2453</sup>

821. MOENG Vet, a former soldier, worked in the Sector 13 messenger unit until September 1975, then in another unit in Kirivong District before moving to Kratie (Sector 505) in March 1977.<sup>2454</sup> SREI Than *alias* Duch served as a soldier involved in the capture of Takeo town on 18 April 1975. He was later assigned to Kraing Ta Chan.<sup>2455</sup> SAUT Saing joined the District military and, in the period immediately after April 1975, worked on dam and canal projects before he was assigned to a role at Kraing Ta Chan Security Centre.<sup>2456</sup> VAN Soeun, who is SAUT Saing's cousin, was a commune militiaman in Leay Bour commune, then became a district soldier before moving to work at Kraing Ta Chan where his roles included delivering messages to the Tram Kak District Office at Angk Roka.<sup>2457</sup>

822. The Chamber also heard from various persons without official titles who lived and worked in the cooperatives. PHNEOU Yav was a Base Person who lived in Samrong commune in Tram Kak district, first in Paen Meas then in Angk Ponnareay – a location for Full-Rights People where he taught children who tended cows.<sup>2458</sup> MEAS Sokha *alias* Thang was a Base Person who worked in a children's unit in Cheang Tong commune until arrested with his family and taken to Kraing Ta Chan Security Centre from mid-1976. He was later released to Ta Reab cooperative in Cheang Tong commune in approximately August 1978.<sup>2459</sup> VONG Sarun was a medic in a Southwest

<sup>2451</sup> LONG Vonn testified via video link on 9 and 16 December 2016.

<sup>2452</sup> SANN Lorn testified before the Chamber on 28 January 2016. *See* T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 8-9, 11, 69-70. SANN Lorn's elder sister, SANN Khoem, married *Ta Mok*. *See* SANN Lorn Interview Record, E3/9487, pp. 9 (Answer 52), 23 (Answers 181-183), ERN (En) 01050342, 01050356 (SANN Lorn's mother was *Ta Mok*'s mother's sister), 114, ERN (En) 01050448 (confirming that he was *Ta Mok*'s cousin).

<sup>2453</sup> KHIEV Nou testified before the Chamber on 20 and 21 June 2012.

<sup>2454</sup> MOENG Vet testified before the Chamber on 26, 27 and 28 July 2016.

<sup>2455</sup> SREI Than *alias* Duch testified before the Chamber on 19, 23 and 24 February 2015.

<sup>2456</sup> SAUT Saing (SOTR Saing) testified before the Chamber on 24 and 25 March 2015.

<sup>2457</sup> VANN Soan testified before the Chamber on 3, 4 and 5 March 2015.

<sup>2458</sup> PHNEOU Yav gave evidence before the Chamber on 16 and 17 February 2015.

<sup>2459</sup> MEAS Sokha testified before the Chamber on 8, 21 and 22 January 2015.

Zone hospital then, following the arrest of her husband, worked in the widows' unit at Chan Teab cooperative in Trapeang Thum commune until she was arrested and taken to Kraing Ta Chan Security Centre.<sup>2460</sup> KEO Chandara was detained and released from Kraing Ta Chan relatively shortly after 17 April 1975. He witnessed the arrival of evacuees in Tram Kak district, before he was sent to Baray District.<sup>2461</sup>

823. CHANG Srey Mom described herself as ethnic Chinese but categorised as a candidate person.<sup>2462</sup> She worked in a women's unit for candidate persons in Nhaeng Nhang commune, and taught children for a period.<sup>2463</sup> SAO Han was from Trapeang Rumpeak village in Tram Kak commune, Tram Kak district and also categorised as a candidate person.<sup>2464</sup>

824. As to New People, the Chamber heard CHOU Koemlan who was evacuated from Phnom Penh to her native Leay Bour commune where she was assigned to the K-3 cooperative.<sup>2465</sup> OEM Saroeurn was evacuated to Tram Kak district from elsewhere in Takeo province, also settling in the K-3 Cooperative in Leay Bour commune, then assigned to a mobile unit.<sup>2466</sup> OUM Suphany was evacuated from Phnom Penh to her native Trapeang Thum South commune.<sup>2467</sup> EM Phoeung was a monk evacuated from Phnom Penh to Angk Roka Pagoda in Tram Kak district, where he was defrocked, categorised as a 17 April Person and sent to work in a youth group.<sup>2468</sup> THANN Thim was a New Person transferred from Kirivong district to Trapeang Thum North commune in Tram Kak district during the dry season of 1977. He was later arrested and detained at Angk Roka after his young daughter implicated him as a former Khmer Republic lieutenant.<sup>2469</sup> EAM Yen was friends with THANN Thim's daughter and likewise transferred from Kirivong district to Trapeang Thum North commune, where she worked in a children's unit with THANN Thim's daughter.<sup>2470</sup> IM Vannak was

<sup>2460</sup> VORNG Sarun testified before the Chamber on 18 May 2015.

<sup>2461</sup> KEO Chandara testified before the Chamber on 2 and 4 February 2015.

<sup>2462</sup> On the categorisation of "Candidate Persons", *see below*, Section 10.1.7.2.

<sup>2463</sup> CHANG Srey Mom gave evidence before the Chamber on 29 January and 2 February 2015.

<sup>2464</sup> SAO Han gave evidence before the Chamber on 17 and 18 February 2015.

<sup>2465</sup> CHOU Koemlan gave evidence before the Chamber on 26 and 27 January 2015.

<sup>2466</sup> OEM Saroeurn gave evidence before the Chamber on 26 March 2015.

<sup>2467</sup> OUM Suphany (OM Suphany) gave evidence before the Chamber on 22, 23 and 26 January 2015.

<sup>2468</sup> EM Phoeung gave evidence before the Chamber on 27 January and 16 February 2015.

<sup>2469</sup> THANN Thim gave evidence before the Chamber on 4 and 21 April 2015.

<sup>2470</sup> EAM Yen gave evidence before the Chamber on 1 and 2 April 2015 during the hearings on harm suffered by Civil Parties.

evacuated from Takeo town to work in a children's mobile unit for new children in Leay Bour commune.<sup>2471</sup>

825. RY Pov was part of an exchange programme from Vietnam in 1976, arriving in Tnoat Chrum Cooperative, Khporp Trabaek commune in Tram Kak district, where he laboured on various worksites.<sup>2472</sup> TAK Sann and her family were also part of the same kind of exchange programme whereby Khmer Krom persons were brought to Tram Kak district from Vietnam in 1976. She settled in Trapeang Thum North commune with New People and others brought from Vietnam.<sup>2473</sup> YEM Khonny also arrived in Tram Kak district from Kampuchea Krom and worked in a children's unit.<sup>2474</sup> LOEP Neang is Cham and lived in Tnaot Chnang village, working on canal worksites.<sup>2475</sup> BENG Boeun arrived in Thmar Kaev village, Nhaeng Nhang commune in around 1976 and worked in a mobile unit, including at the Ou Saray dam.<sup>2476</sup> BUN Saroeun was from Ta Phem commune and worked in a children's unit and various places in Tram Kak district.<sup>2477</sup>

#### 10.1.4. *Authenticity of the Tram Kak District Records*

##### 10.1.4.1. *Introduction*

826. The Tram Kak District Records were identified as a group of documents in Annex 8A to the Co-Prosecutors' updated Internal Rule 80(3)(d) document list.<sup>2478</sup> These are

<sup>2471</sup> IM Vannak gave evidence before the Chamber on 3 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2472</sup> RY Pov gave evidence before the Chamber on 12 February 2015.

<sup>2473</sup> TAK Sann gave evidence before the Chamber on 1 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2474</sup> YEM Khonny gave evidence before the Chamber on 2 and 3 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2475</sup> LOEP Neang gave evidence before the Chamber on 3 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2476</sup> BENG Boeun gave evidence before the Chamber on 2 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2477</sup> BUN Saroeun gave evidence before the Chamber on 3 April 2015 during the hearings on harm suffered by Civil Parties.

<sup>2478</sup> Co-Prosecutors' Rule 80(3) Trial Document List, E305/13, 13 June 2014. See E305/13.8, Annex 8A – Tram Kak District Records (identifying 138 documents: 106 of which were admitted during Case 002/01; leaving 32 documents proposed for admission in Case 002/02). On 5 September 2014, the Co-Prosecutors submitted Supplemental Rule 80(3) Document Lists, Annex D2 to which identified two further Tram Kak District Records on the Case 002 Case File. On 30 June 2015, the Chamber issued its Decision on objections to documents to be put before the Chamber in Case 002/02, E305/17, 30 June 2015. In relation to the Co-Prosecutors' Annex 8A, the Chamber found that seven of the proposed documents were already before it, admitted 23 of the proposed documents, and rejected two because they were illegible. The Chamber also admitted the two Tram Kak District Records identified in the Co-Prosecutors' Supplemental List. See E305/17.1, Annex A: Documents proposed by the Co-Prosecutors

mostly comprised of photocopied documents including notebooks, handwritten notes, typewritten reports and lists of persons with accompanying information. It is an unorganised collection, running to several hundreds of pages. In some instances, the reference for a single document identified on the Co-Prosecutors' list applies to several handwritten notes relating to different persons, locations, events or time periods. The NUON Chea Defence disputes the authenticity of this entire collection. The KHIEU Samphan Defence focuses its challenge on one particular note. In this section the Chamber will address the authenticity of the Tram Kak District Records. In doing so, it will assess whether these photocopies are of documents from Tram Kak district and Kraing Ta Chan Security Centre.

#### 10.1.4.2. Submissions

827. The NUON Chea Defence makes general submissions challenging the entire collection of Tram Kak District Records, and specific submissions in relation to some individual documents or particular pages within documents. Their more general submissions broadly make the following two points. First, the documentary evidence is “out-of-court” or “non-court” evidence which the Supreme Court Chamber has ruled to be of inherently low probative value.<sup>2479</sup> Second, the Tram Kak District Records are photocopies, or even copies of copies. The absence of originals, combined with a suggested absence of authentication and “complex chain of custody”, is submitted to undermine the authenticity of this collection.<sup>2480</sup>

828. As to specific documents, the NUON Chea Defence and KHIEU Samphan Defence submit that certain documents are forgeries. Both defence teams object to a handwritten page found in one of the notebooks which purports to record in relation to “Re-education Office 105” that: “Up until today we have smashed 15,000 enemies”.

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put before the Chamber, pp. 2-3; E305/17.6, Annex F: Documents Rejected by the Chamber. The Chamber therefore admitted 136 of the 138 documents proposed by the Co-Prosecutors in Annex 8A plus two further documents. As a matter of convenience the Chamber refers to these documents collectively as the “Tram Kak District Records”. For differentiation purposes, in footnotes the Chamber refers to the notebooks as “Kraing Ta Chan Notebooks”, these being a sub-category of the “Tram Kak District Records”. These categorisations neither presume nor determine the origin(s) of the various documents.

<sup>2479</sup> NUON Chea Closing Brief, paras 484-498; T. 16 June 2017 (Closing Statements), E1/523.1, p. 94.

<sup>2480</sup> NUON Chea Closing Brief, paras 483, 487 (although 138 documents were identified by the Co-Prosecutors, 65 of these are compiled copies of multiple documents, so the total number of documents is significantly higher – of the total number, only three of the documents have an original held at Tuol Sleng); T. 16 June 2017 (Closing Statements), E1/523.1, pp. 93-94 (of the documents used by the Co-Prosecutors, only one was an original, the rest are copies or copies of copies).

This document is signed “An” from “Reeducation Office, District 105”.<sup>2481</sup> The Closing Order relied on it to support the allegation that more than 15,000 people were killed at Kraing Ta Chan.<sup>2482</sup> The Co-Prosecutors maintain that this is perhaps “the best indicator” of the number killed at Kraing Ta Chan.<sup>2483</sup> In contrast, the NUON Chea Defence contends that this page is the prime example of a forgery, pointing to its placement in a notebook and to differences between the handwriting in the upper and lower portions of the page.<sup>2484</sup> The KHIEU Samphan Defence makes similar submissions and recalls their previous request for an expert to analyse the “smashed 15,000 enemies” document; a request which the Chamber rejected during the course of Case 002/02.<sup>2485</sup>

829. Also during the course of Case 002/02, the NUON Chea Defence pointed out that the front cover of another notebook has the following handwritten annotation: “Fifth Confession: Contemptible Traitors, Pol Pot and Ieng Sary”.<sup>2486</sup> It was claimed that “it is blatantly a notation added after the DK period” which reveals post-1979 interference with the documents.<sup>2487</sup>

830. Another alleged forgery is a handwritten and undated list of prisoners entitled: “Names of Prisoners from M-105 detained for years pending Party’s decision”.<sup>2488</sup> This list records five persons including the names KHUTH Sen, HUN Nha and MEAS Rat. The NUON Chea Defence contrasts this handwritten list with other lists, including lists bearing the names of HUN Kimseng *alias Yeay* Nha and MEAS Sarat *alias* Rat. They assert that the handwritten “M-105 list” was created by Civil Party SORY Sen, or somebody on his behalf, in order to manufacture, via the reference to KHUTH Sen, documentary support for his claim to have been a prisoner at Kraing Ta Chan.<sup>2489</sup> The NUON Chea Defence also questions the accuracy of the information in this list, and they stress that this is the only document which identifies Kraing Ta Chan as “M-105”.

<sup>2481</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290205.

<sup>2482</sup> Closing Order, para. 514.

<sup>2483</sup> Co-Prosecutors’ Closing Brief, para. 824.

<sup>2484</sup> NUON Chea Closing Brief, para. 489.

<sup>2485</sup> KHIEU Samphan Closing Brief, paras 1296-1299; T. 20 June 2017 (Closing Statements), E1/525.1, pp. 116-117, *referring to* Decision on KHIEU Samphan Request for a Forensic Analysis of Document E3/2107, E349/1, 17 November 2015.

<sup>2486</sup> Kraing Ta Chan Notebook, E3/4095, undated, ERN (En) 00747236.

<sup>2487</sup> T. 28 April 2015 (Documentary Hearings), E1/294.1, pp. 16-17, 28-29; T. 30 April 2015 (Documentary Hearings), E1/295.1, p. 37.

<sup>2488</sup> Tram Kak District Record, undated, E3/4145, ERN (En) 00762844.

<sup>2489</sup> NUON Chea Closing Brief, paras 492-493.



They dispute an explanation offered by the Co-Prosecutors that “M” is a shorthand for “*munti*” (a Khmer word for “office”).<sup>2490</sup>

831. An additional allegation of forgery is made in relation to notebook E3/4083.<sup>2491</sup> The NUON Chea Defence highlights perceived issues with aspects of the lists in this notebook, including their poor quality and some suggested execution dates of 8 January 1979 – which are said to be impossible in light of Vietnam’s earlier takeover of Cambodia.<sup>2492</sup> The Co-Prosecutors suggest that a delayed retreat from Kraing Ta Chan might explain these dates. Their Closing Brief contends that the original copy of this notebook must have been poorly copied in two segments, but that it is possible to line up some of the various tables that it contains in order to make better sense of the contents. They provide an analysis of their results in an annex to their Closing Brief.<sup>2493</sup>

832. Finally, the NUON Chea Defence highlights witnesses who disputed some of the Tram Kak District Records or particular pages in the collection. They assert that, when confronted in court with documents which were allegedly written, annotated or transcribed by them, some individuals made statements which cast doubt on the document’s authenticity.<sup>2494</sup> All of the aforementioned issues are said to undermine the authenticity and reliability of particular documents. The thrust of the argument is that, when particular issues are considered together, or alongside the more general submissions, the Chamber should not place weight on any of the Tram Kak District Records.

<sup>2490</sup> NUON Chea Closing Brief, para. 491. *See also*, Section 5: Administrative Structures, para. 363.

<sup>2491</sup> Kraing Ta Chan Notebook, E3/4083, undated.

<sup>2492</sup> NUON Chea Closing Brief, para. 493.

<sup>2493</sup> Co-Prosecutors’ Closing Brief, fn. 3179, Annex G.3.

<sup>2494</sup> NUON Chea Closing Brief, para. 494 (referring to: (1) T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 89-91 (denying that a notation on E3/2785 signed “San” is of his handwriting); 92-96 (same denegation concerning a notation signed “San” on E3/2423); (2) T. 12 March 2015 (NUT Nov), E1/276.1, pp. 50-51 (stating that he does not recognise a signature being “Nov” as his own signature and denying that a notation on E3/2452 is of his handwriting but clarifying that it was probably written by a clerk); (3) T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 71-72 (stating that she does not recognise *Ta An*’s handwriting on a letter sent by this last, nor remember the names of two individuals mentioned in the said letter E3/2012 and who were to be arrested, but clarifying that she had received this “kind of letter”); and (4) T. 23 February 2015 (SREI Than), E1/267.1, pp. 15-16 (stating that he does not recognise the handwriting on the notebook E3/4092, but clarifying that he saw notebooks with similar cover pages) 23-26 (with similar comments on E3/4083)).

10.1.4.2.1. *Chain of custody of the Tram Kak District Records*

833. The Co-Prosecutors' Annex 8A lists 138 documents, 136 of which were admitted by the Chamber. As noted above, the Chamber admitted two additional Tram Kak District Records identified in the Co-Prosecutors' Supplemental List Annex D2.<sup>2495</sup> The Chamber established during the evidentiary phase of Case 002/02 that, although the location of the original Tram Kak District Records is generally unknown, the chain of custody of the copies in evidence is, for the most-part, well-documented.<sup>2496</sup> The OCIJ gave Ben KIERNAN an annex of "128 'Kraing Ta Chan Documents'" (listed in Annex B to the OCIJ's letter).<sup>2497</sup> Ben KIERNAN responded that he visited Tram Kak district in July 1980, when a "local district official" provided to him, and SOK Sokhun of the Ministry of Information and Culture, a "set of original documents" from Kraing Ta Chan. Back in Phnom Penh over subsequent days, Ben KIERNAN "personally made two complete photocopies of that set". According to Ben KIERNAN, SOK Sokhun retained the originals on the understanding that they were to be returned to Tram Kak – it appears that they went missing thereafter. One set of photocopies was, however, deposited at the Tuol Sleng Museum. Some 15 years later, Ben KIERNAN found this same set of photocopies in a cupboard "evidently untouched" from which two further copies were made: one of which was delivered to Tram Kak, while the other was kept by DC-Cam.<sup>2498</sup>

834. The Chamber has examined the OCIJ's Annex B and the documents it identifies. The underlying documents bear intermittent sequential reference numbers, ranging from D00167 to D00170, then D00172 to D00246, then D00249 to D00252, then

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<sup>2495</sup> See above, fn. 2478.

<sup>2496</sup> Reasons following decision on the NUON Chea Defence's consolidated Rule 87(4) request to hear additional witnesses for the first Case 002/02 trial segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, para. 63.

<sup>2497</sup> Letter from OCIJ to Ben KIERNAN, D269, 11 December 2009, at D269.1, Annex B, pp. 2-11 entitled "128 'Kraing Ta Chan Documents'." The Chamber refers to this as the "OCIJ's Annex B", as distinct from the "Co-Prosecutors' Annex 8A", while recalling, as noted in fn. 2478 above, that the Co-Prosecutors proposed two supplemental Tram Kak District Records later on and these were also admitted by the Chamber.

<sup>2498</sup> Letter from Ben KIERNAN to OCIJ, D269/4, 5 March 2010, para. 9.

D00254 to D00298. The Chamber is satisfied that the prefix “D” is a coding system used by DC-Cam to indicate general or mixed documents.<sup>2499</sup>

835. Ben KIERNAN’s response to the OCIJ stated that he was unaware of any additional documents from Kraing Ta Chan not identified in the OCIJ’s Annex B.<sup>2500</sup> It is unclear, however, whether he conducted a page-by-page comparison of the documents identified by the OCIJ’s Annex B against those he collected from Trak Kak district nearly 30 years previously.

836. CHHANG Youk, the director of DC-Cam, substantially confirmed how DC-Cam came into possession of these documents around 1995. He visited the Tuol Sleng Museum with Ben KIERNAN and found a pile of documents under a “wooden cabinet”.<sup>2501</sup> The Chamber is satisfied that, taken together with Ben KIERNAN’s account, this explains the provenance of those Tram Kak District Records with DC-Cam reference numbers from D00167 to D00298. It does not, however, fully explain the provenance of all the 138 documents admitted by the Chamber as Tram Kak District Records identified by the Co-Prosecutors.

837. At least seven of the documents in the Co-Prosecutors’ Annex 8A are duplicates of other documents, or pages from within documents. Some duplicates were generated by investigators when attaching documents presented to witnesses during the course of the investigation.<sup>2502</sup> More significantly, during the course of Case 002/02 the Chamber observed that two documents on the Co-Prosecutors’ list did not appear to be on the OCIJ’s Annex B documents given to Ben KIERNAN.<sup>2503</sup> The first was E3/4164, a

<sup>2499</sup> T. 23 January 2012 (VANTHAN Dara Peou), E1/31.1, pp. 36-38 (explaining that “D” indicates DC-Cam’s coding for general or mixed documents); CHHANG Youk Interview Record, 28 May 2009, p. 2 (confirming that the letter D “also goes with DC-Cam”).

<sup>2500</sup> Letter from Ben KIERNAN to OCIJ, D269/4, 5 March 2010, para. 9.

<sup>2501</sup> CHHANG Youk Interview Record, E3/188, 28 May 2009, p. 4.

<sup>2502</sup> The duplicates within the Co-Prosecutors’ list are as follows: (1) E3/5858, ERN (En) 00809682 duplicates a page within E3/2107 at ERN (Kh) 0068046-00068082, and was annexed to one of PECH Chim’s WRIs; (2) E3/4141, ERN (En) 00711361 duplicates a page within E3/2048 at ERN (En) 01454945, and was annexed to one of PECH Chim’s WRIs; (3) E3/2917, ERN (En) 00079090 duplicates a page within E3/2048 at ERN (En) 01454946, and was annexed to one of PECH Chim’s WRIs; (4) E3/2924, ERN (En) 00583752-00583753 duplicates a page within E3/2012 at ERN (En) 00276595 and was annexed to one of PHAN Chhen’s WRIs; (5) E3/4142 duplicates the same page within E3/2012 at ERN (En) 00276595 and was annexed to one of PECH Chim’s WRIs; (6) E3/4143, ERN (En) 00742364 duplicates a page within E3/2012 at ERN (En) 00276597 and was annexed to one of PHANN Chhen’s WRIs; and (7) E3/2615, ERN (En) 00366665-00366675 duplicates E3/2438, ERN (En) 00366665-00366675.

<sup>2503</sup> Reasons following decision on the NUON Chea Defence’s consolidated Rule 87(4) request to hear additional witnesses for the first Case 002/02 trial segment on the Tram Kak Cooperatives and Kraing

handwritten list of 28 persons with various information and “Offences” listed under the heading “Brief Biographies of Prisoners at Tram Kak District Education Office”.<sup>2504</sup> The Khmer version of this document appears to include the DC-Cam reference number D07203.<sup>2505</sup> The second was E3/4166, a typed report signed “An” with the date 25 August 1977, concerning the confessions of three named persons under the heading “Education Office of District 105”.<sup>2506</sup> The Khmer version of this typed document appears to include the DC-Cam reference number D21928.<sup>2507</sup>

838. The Chamber has identified other documents listed on the Co-Prosecutors’ Annex 8A with no corresponding indication that Ben KIERNAN expressly confirmed its origin. One of those documents is specifically challenged by the NUON Chea Defence (E3/4145).<sup>2508</sup> It bears DC-Cam reference number D13781 – which deviates from the sequence of documents obtained by Ben KIERNAN. The Chamber also notes that the Tuol Sleng Museum represented that it retains the original of E3/4145 and two further documents, E3/2262 and E3/2281.<sup>2509</sup> Finally, the DC-Cam reference number for notebook E3/2107 containing the note “smashed 15,000 enemies” also deviates from the sequence of documents obtained by Ben KIERNAN, although it was included in the OCIJ’s Annex B. It has the DC-Cam reference D10840. Issues in relation to these documents are explored in more detail below, in particular because specific submissions were made in relation to notebook E3/2107 and E3/4145.<sup>2510</sup>

839. With the exception of notebook E3/2107 and documents E3/2262, E3/2281, E3/4145, E3/4164 and E3/4166, discussed above, the Chamber is satisfied that the chain of custody of nearly all of the copies which form the collection of the Tram Kak District Records can be traced to mid-1980 when Ben KIERNAN photocopied the original documents whose location is currently unknown. The Chamber is cognisant that Ben

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Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, fn. 111.

<sup>2504</sup> Tram Kak District Record, E3/4164, undated, ERN (En) 00793147-00973154.

<sup>2505</sup> Tram Kak District Record, E3/4164, undated, ERN (Kh) 00079337.

<sup>2506</sup> Tram Kak District Record, E3/4166, 25 August 1977, ERN (En) 00694355-00694356 (the three persons are YOUENG Kean, aged 28, UL Heang, aged 37, and VOIL Chea, aged 38, and are described as three former ranking officers who were against the cooperative). The document includes an annotation by “Kit” signed on 27 August 1977 stating: “The Party decided to have the five traitors smashed.”)

<sup>2507</sup> Tram Kak District Record, E3/4166, 25 August 1977, ERN (Kh) 00001929.

<sup>2508</sup> See above, para. 830.

<sup>2509</sup> See below, fn. 2632 (indicating that the Tuol Sleng Museum retains originals of E3/2262, E3/2281 and E3/4145).

<sup>2510</sup> See below, Section 10.1.4.2.4.1: The “Smashed 15,000 Enemies” Note in Notebook E3/2107 (D10840); Section 10.1.4.2.4.2: The “M-105” List within E3/4145 (D13781).

KIERNAN did not appear before it, and that YOUK Chhang was not examined on the Tram Kak District Records when he appeared before the Chamber in Case 002/01.<sup>2511</sup> With regard to the authenticity issue, the evidence concerning the chain of custody of the Tram Kak District Record alone can only be given limited weight. The Chamber will therefore consider in a holistic manner all other factors which may have relevance. Given that forensic examinations of photocopied documents are of limited interest in the absence of relevant original comparative elements, it will instead consider whether the documents were authenticated through witnesses' evidence, and whether an analysis of their content and layout shows a high degree of internal corroboration and consistency, including with evidence heard in court. The Chamber will also address the particular documents for which, according to the above analysis, the chain of custody differs and/or for which the Parties raise specific concerns.

#### 10.1.4.2.2. *Authentication*

840. Many documents in the Tram Kak District Records were specifically authenticated by witnesses with direct knowledge of the originals. The Chamber finds the following examples to be significant.

841. Among the Tram Kak District Records are eight notebooks. Seven of the notebooks are comprised mostly of short statements regarding more than 500 individuals. Of these notebooks, five (E3/2107, E3/2427, E3/4092, E3/4095 and E3/4122) include copies of the front and back cover pages; whereas two of the notebooks (E3/5827 and E3/5860) do not have cover pages.<sup>2512</sup> The eighth notebook (E3/4083) also has the front and back cover page; but its contents differ from the other seven in that it contains lists of persons with less information compared to the other notebooks.<sup>2513</sup>

<sup>2511</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02, E459, 18 July 2017, para. 190.

<sup>2512</sup> The five notebooks with the cover copied are: (1) Kraing Ta Chan Notebook, E3/2107, undated, ERN (Kh) 00068046; (2) Kraing Ta Chan Notebook, E3/2427, undated, ERN (Kh) 00271059; (3) Kraing Ta Chan Notebook, undated, E3/4092, ERN (Kh) 00271132; (4) Kraing Ta Chan Notebook, E3/4095, undated, ERN (Kh) 00271089; (5) Kraing Ta Chan Notebook, E3/4122, undated, ERN (Kh) 00271080. The two notebooks which do not include copies of the cover are: Kraing Ta Chan Notebook, E3/5827, undated, ERN (En) 00866424-00866463; Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064165-01064197.

<sup>2513</sup> Kraing Ta Chan Notebook, E3/4083, undated. The cover of this notebook (ERN (En) 00323943) includes a handwritten annotation: "Samraong, [illegible], done".

842. Focusing on the six notebooks with the aforementioned covers (E3/2107, E3/2427, E3/4083, E3/4092, E3/4095 and E3/4122), it is evident they were originally designed to be used by school children. The identical covers depict a boy and girl studying at a desk on the front with multiplication tables on the back cover. SREI Than *alias* Duch, a former guard at Kraing Ta Chan, confirmed that he saw notebooks like these when he worked at Kraing Ta Chan Security Centre.<sup>2514</sup> He also confirmed that one person identified in notebook E3/5827 was his cousin, MEAS Phoeun, who was detained at Kraing Ta Chan.<sup>2515</sup> MEAS Phoeun is also mentioned in a separate Tram Kak District Record.<sup>2516</sup>

843. Another example of authentication concerns a handwritten note addressed to “Beloved Comrade Chhoeun” bearing the date “7 August [1978]” and the signature “San”, which discusses prisoners from Cheang Tong commune.<sup>2517</sup> The note requests Chhoeun to “send any children that cannot be separated from their mothers”, then continues:

Any bigger children that have already gone to the mobile units or children’s units, [request to] let them stay there and take just the mothers. But if the children cannot be separated from their mothers, [request to] bring them in for interrogation and after everything is finished, to sweep them all clean.

844. This note continues to discuss a group of widows from Trapeang Thom North commune, who are stated to be currently at “the place of Comrade Meng”. A request is made to “sweep them all clean”.<sup>2518</sup>

845. This document was authenticated by NEANG Ouch *alias* Ta San. After initially denying any knowledge of it (and also other documents signed “San”), he consulted

<sup>2514</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 15-18 (shown Kraing Ta Chan Notebook, E3/4092, recalling that such notebooks were “full of names” but that confessions he typed were on loose pieces of paper rather than in the notebooks), 24 (shown Kraing Ta Chan Notebook, E3/4083, recalling that this was similar to the notebooks he saw).

<sup>2515</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 32-34 (identifying MEAS Phoeun as his cousin when shown Kraing Ta Chan Notebook, E3/5827, undated, ERN (En) 00866430).

<sup>2516</sup> Tram Kak District Record, E3/5854, 18 April 1977, ERN (En) 00322134 (recording the arrest of MEAS Phoeun, aged 26, on 17 April 1977).

<sup>2517</sup> Tram Kak District Record, E3/4093, 7 August [1978], ERN (En) 00831486. Although the year is not stated on the face of this document, the Chamber is satisfied that it is from 1978 because of the nature of San’s involvement and decision-making authority at the relevant time, the involvement of *Ta* Ran as Sector Secretary, clearly related documents which identify the year as 1978 and the evidence of THANN Thim who was detained at Angk Roka in mid-1978 and recalled the presence of the persons described in this document at Meng’s place. See T. 21 April 2015 (THANN Thim), E1/289.1, pp. 40-41.

<sup>2518</sup> Tram Kak District Record, E3/4093, 7 August [1978], ERN (En) 00831486.

with his duty counsel then admitted that he wrote it. He described its genesis. He explained that Chhoeun (the addressee) was the chief of the District Office.<sup>2519</sup> Even though the document is signed by “San”, NEANG Ouch *alias Ta San* claimed that the contents reflected direct instructions from then Sector Secretary, *Ta Rorn*, who was not fully literate so had dictated the contents. NEANG Ouch *alias Ta San* explained that references to “sweep” were instructions to execute people. He clarified that references to “children” were to children or infants who could walk and speak, rather than to babies.<sup>2520</sup> Whether or not NEANG Ouch *alias Ta San* was merely a scribe for the Sector Secretary is a matter for further examination. For present purposes, however, his evidence conclusively authenticated the content of this particular document and, in the Chamber’s assessment, undermined his earlier denials in relation to other documents signed by “San”.

846. A further handwritten note is dated the following day, 8 August 1978, and signed by “Meng”.<sup>2521</sup> It discusses five widows from Trapeang Thom North commune, identifying them by their name or alias. The Chamber is satisfied that the date and contents of this note follow on from NEANG Ouch *alias Ta San*’s note of the previous day, which likewise referred to widows from Trapeang Thom North commune, then at Meng’s place.<sup>2522</sup> NEANG Ouch *alias Ta San*’s authentication of the note dated 7 August [1978] satisfies the Chamber that note dated 8 August 1978 is likewise authentic. Civil Party THANN Thim was detained in Meng’s place in Angk Roka around this time in 1978, and he recalled this group of women shackled there for one or two nights, with one young child being breastfed by the mother.<sup>2523</sup> This further persuades the Chamber that this document is authentic.

<sup>2519</sup> In contrast, one of the guards at Kraing Ta Chan Security Centre, VAN Soeun (VANN Soan), identified Chhoeun as one of the six “party members” at Kraing Ta Chan Security Centre. *See* T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 23-24. Since NEANG Ouch wrote the letter in question, the Chamber relies upon his identification of the addressee, while accepting VAN Soeun’s evidence that there was indeed a staff member at Kraing Ta Chan known as Chhoeun.

<sup>2520</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 51, 63-64; T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 13-19, 26-27. *See also*, T. 17 March 2015 (RIEL San), E1/278.1, p. 61 (confirmation that there was a widows unit in Trapeang Thum North commune).

<sup>2521</sup> Tram Kak District Record, E3/4093, 8 August 1977, ERN (En) 00831487-00831488.

<sup>2522</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 16-17. The Chamber recognises that this document was not specifically authenticated, but addresses it here because it relates to the document discussed in the preceding paragraph.

<sup>2523</sup> T. 21 April 2015 (THANN Thim), E1/289.1, pp. 40-41.

847. The fate of the five widows from Trapeang Thom North commune is recorded and corroborated by another document. A handwritten table titled “Brief Biographies of Prisoners at Tram Kak District Education Office” includes corresponding entries for each woman, with the following annotation: “These widows committed betrayal, meeting on the sly and agreeing on the plan to run for Vietnam with HENG Muoy as the leader”. The five women are identified as: VUOCH Keav, aged 25; MUOY Kim Leng, aged 40; HENG Muoy, aged 30; BAV Sokun, aged 25; and KHUON Mao, aged 26. The “date of arrival” for each of these women is recorded as 9 August 1978 and they are identified as 17 April people.<sup>2524</sup> The names of all five women are also found in notebook E3/4083, this time with a cross next to each of their names.<sup>2525</sup>

848. An additional example of authentication is a handwritten note from Angk Ta Saom commune dated 18 October [1977] and addressed to Kit.<sup>2526</sup> This includes a further note signed by “San” advising Brother Kit that he had decided to have “Brother Chhaom” send two named individuals to the District 105 Police. NEANG Ouch *alias* Ta San also confirmed that he wrote and signed this note. He explained that the initial report was signed by Chhaom, whom he identified as being the chief of Angk Ta Saom commune at the relevant time.<sup>2527</sup>

849. Witnesses with relevant knowledge recognised and identified various reports within the collection of Tram Kak District Records. SREI Than *alias* Duch, who worked as a guard and typist at Kraing Ta Chan, described how he typed reports in the prison chief’s room.<sup>2528</sup> At times he recognised and identified the signature of An, the chief of Kraing Ta Chan, on a number of different reports.<sup>2529</sup> At other times, however,

<sup>2524</sup> Tram Kak District Record, E3/4164, undated, ERN (En) 00973152-00973153.

<sup>2525</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323950 (listed as VUOCH Keav, aged 25; BAV Sokun, aged 25; MUONG Kimleng, aged 40; Khun Mao, aged 26; and HENG Muoy, aged 30).

<sup>2526</sup> Tram Kak District Record, E3/2453, 18 October [1977], ERN (En) 00388577.

<sup>2527</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 53-55; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 77 (clarifying that the two persons discussed in this report had wanted to smash the cooperatives, which meant to destroy them).

<sup>2528</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 5 (“Little Duch” did the typing in the prison chief’s room); T. 23 February 2015 (SREI Than), E1/267.1, pp. 12-13 (“Little Duch” was called in to do the typing, describing typing from handwritten notebooks), 19 (he was told who to address reports to, namely “Respectfully report to the party”), 37, 46-47 (one typewriter in An’s room, and he had to type the list of prisoners who entered the security office per month), 50 (he was assigned to type once per week, or once per fortnight), 57 (An and Duch instructed him to type).

<sup>2529</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 20 (shown Tram Kak District Record E3/2421, 5 July 1978), 80 (shown Tram Kak District Record, E3/2421, ERN (Kh) 00271177, 00271180; Tram Kak District Record, E3/2425, ERN (Kh) 00270926); SREI Than Interview Record, E3/5834, 29 December



he expressed hesitation when identifying An's signatures, appearing simply to read the name as written, rather than be sure that he recognised the handwriting itself.<sup>2530</sup> Nonetheless, his description of the process involved matched documents that he was shown. Numerous typed documents before the Chamber are similar in format and bear the heading "District 105 Re-education Office" (or a translation to similar effect).<sup>2531</sup> SREI Than *alias* Duch's evidence was that this reflected the format of the documents he typed at Kraing Ta Chan.<sup>2532</sup> Likewise, three typed confession reports from July 1977 are entitled "Education Office of District Office 105" signed by An, and contain reports on specific individuals. Two of the three reports bear a further signature by Prak in the top left-hand corner with decisions to "smash".<sup>2533</sup> In each case, PECH Chim, the former Secretary of Tram Kak District, told the Chamber that he recognised the signature as belonging to Kraing Ta Chan Chief An. Although PECH Chim had left Tram Kak district by July 1977, he confirmed that Prak had replaced *Ta* Saom as Sector 13 Secretary – which explained the annotations bearing that name.<sup>2534</sup> Taken together,

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2009, Answers 42-43 (shown three typed reports E3/2012, ERN (Kh) 00082724-00082726, ERN (En) 00276593-00276595 then responding: "I remember that it was truly An's signature").

<sup>2530</sup> T. 24 February 2015 (SREI Than), E1/268.1, pp. 44-45 (continuing that he could not say the signatures were identical, but they looked similar and he always wrote his name An), 46 (unable to say whether he recognised An's signature on Kraing Ta Chan Notebook, E3/2107, undated, ERN (Kh) 00068049).

<sup>2531</sup> Tram Kak District Record, E3/2434, 10 March 1977, ERN (En) 00276600-00276601; Tram Kak District Record, E3/2434, 20 August 1977, ERN (En) 00276603; Tram Kak District Record, E3/4166, 25 August 1977, ERN (En) 00694355-00694356; Tram Kak District Record, E3/4101, August 1977, ERN (En) 00322129; Tram Kak District Record, E3/4101, September 1977, ERN (En) 00322128; Tram Kak District Record, E3/2434, September 1977, ERN (En) 00276602; Tram Kak District Record, E3/2434, July 1978, ERN (En) 00278598-00278599; Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322201-00322202; Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322203-00322204; Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322205. In comparing these documents, the Chamber finds that Tram Kak District Record, E3/4166, 25 August 1977, ERN (En) 00694355-00694356, which the Chamber noted at para. 837 above to bear DC-Cam reference number D21928, is similar in its appearance and format to many other typed documents from Kraing Ta Chan. In particular, the format is the same as another document dated a few days earlier (E3/2434, 20 August 1977, ERN (En) 00276603). Other indicia of authenticity include the name and signature "An", and the annotation by "Kit" who the Chamber finds to have been the Tram Kak District Secretary at that time.

<sup>2532</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 16-17 (shown a typed report dated 5 July 1978, E3/2421, ERN (En) 00322201-00322202 and responding that "the format and typing nature is true"), 18-21, 79 (recalling that the documents he typed bore the heading "Education Office, District 105"); SREI Than Interview Record, E3/5834, 29 December 2009 (Answers 70-71, shown Tram Kak District Record, E3/2421, ERN (Kh) 00271176-00271180, then responding: "I used to type these kind of the documents" and "This signature s truly An's").

<sup>2533</sup> Tram Kak District Record, E3/2012, 30 July 1977, reporting on UNG Ly with annotation by Prak dated 7 August 1977, ERN (En) 00276593; Tram Kak District Record, E3/2012, 30 July 1977, reporting on Chan Soeun, with annotation by Prak dated 7 August 1977, ERN (En) 00276594; Tram Kak District Record, E3/2012, 11 July 1977, ERN (En) 00276595 (reporting on SIN Yan with undated annotation). For the roles of Kit, *see below*, paras 914, 923-924. For the role of *Ta* An, *see* Section 12.3: Kraing Ta Chan Security Centre, paras 2693-2695, 2700-2701, 2712-2713, 2742.

<sup>2534</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 52-53.

the evidence of PECH Chim and SREI Than *alias* Duch authenticated numerous Tram Kak District Records.

850. Another document was authenticated by KHOEM Boeun, the former secretary of Cheang Tong commune who appeared before the Chamber by video link. A Tram Kak District Record dated 21 July 1977 is written from Boeun in Cheang Tong commune to the District Party, discussing a particular individual.<sup>2535</sup> KHOEM Boeun confirmed at first that the signature on this document was hers. Although she could not recall the specifics, and later sought to distance herself from this document, she explained that a reference to “Hou” in the document was to the chief of a unit and that she dictated documents for others to write on her behalf.<sup>2536</sup>

851. Two handwritten reports from Kus commune in 1977 were also shown to PHANN Chhen, who had roles in that commune in earlier years.<sup>2537</sup> Both reports are signed by “Saen”. During his testimony, PHANN Chhen recognised the handwriting in the report containing the instructions of Soeun or Saen, a member of the Kus Commune Committee, although he was unfamiliar with the contents because he had left Tram Kak district by 1977.<sup>2538</sup>

852. Finally, in relation to documents specifically authenticated, included in the Tram Kak District Records are two monthly reports: one for July 1977 and the other for November 1977.<sup>2539</sup> These contain summary information, including figures for prisoners who entered, died, were purged or “swept away”. SREI Than *alias* Duch, who worked at Kraing Ta Chan as a guard and typist, was shown the November 1977 report.<sup>2540</sup> He immediately recognised the handwriting, attributing it to Leng An’s

<sup>2535</sup> Tram Kak District Record, E3/5855, 21 July 1977, ERN (En) 00363655.

<sup>2536</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 7-8 (acknowledging her signature), 77-78 (appearing to then deny that the document bears her signature, although it is her name). However, KHOEM Boeun also explained that she dictated letters and/or that people working in the Cheang Tong Commune Office wrote reports for her. See T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 46-47, 71.

<sup>2537</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 6-7 (shown: Tram Kak District Record, E3/2441, [May 1977], ERN (En) 00369464; Tram Kak District Record, E3/2441, 9 September 1977, ERN (En) 00369480-00369481).

<sup>2538</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, p. 7.

<sup>2539</sup> Tram Kak District Record, E3/4085, ERN (En) 00276557-00276558 (July 1977 report); Tram Kak District Record, E3/2109, ERN (En) 00276555 (November 1977 report).

<sup>2540</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2700, 2711.

“deputy”, whom he identified as (a different) “Duch”.<sup>2541</sup> He was able to recognise the handwriting because he worked with Duch, and saw him signing documents among other things.<sup>2542</sup>

853. Although SREI Than *alias* Duch recognised the handwriting in the November 1977 report, his evidence was that monthly reports in this form were not actually prepared at Kraing Ta Chan Security Centre.<sup>2543</sup> In another context, however, PECH Chim’s evidence was that An indeed made monthly reports to Tram Kak district.<sup>2544</sup> On analysis, the Chamber considers that the contents of these two written monthly reports may go beyond matters specific to a single security centre. For example, the July 1977 report records that a study session had been held “both for the progressives and the masses”.<sup>2545</sup> The November 1977 records various expenditures, including 34 pails of husked rice.<sup>2546</sup> The Chamber is nevertheless satisfied that SREI Than *alias* Duch’s immediate recognition of Duch’s handwriting in the November 1977 report confirms that this is a copy of an authentic document.<sup>2547</sup>

#### 10.1.4.2.3. *Consistency within the Tram Kak District Records*

854. In addition to various instances of specific and credible authentication, there is a significant degree of corroboration and consistency between documents within the collection of Tram Kak District Records, including to authenticated documents discussed in the immediately preceding section. The example discussed above of the five women from Trapeang Thom North commune is one of the most striking. Yet there are other examples. The Chamber found the following instances of internal consistency to be particularly significant. They are set out in approximate chronological order.

<sup>2541</sup> T. 19 February 2015 (SREI Than), E1/266.1, pp. 19-20 (shown Handwritten Report, E3/2109, November 1977). On the role of SREI Than *alias* Duch, see Section 12.3: Kraing Ta Chan Security Centre, paras 2700, 2711.

<sup>2542</sup> T. 24 February 2015 (SREI Than), E1/268.1, p. 44. The handwriting in the July 1977 report is similar to the November 1977 report, although in the absence of expert evidence the Chamber places no weight on this similarity.

<sup>2543</sup> T. 19 February 2015 (SREI Than), E1/266.1, pp. 19-20.

<sup>2544</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 11; PECH Chim Interview Record, E3/5786, 6 December 2009, p. 8.

<sup>2545</sup> Tram Kak District Record, E3/4085, July 1977, ERN (En) 00276557-00276558.

<sup>2546</sup> Tram Kak District Record, E3/2109, November 1977, ERN (En) 00276555.

<sup>2547</sup> On the role of IEP Duch *alias* Big Duch, see Section 12.3: Kraing Ta Chan Security Centre, para. 2695.

855. A handwritten report dated 4 August 1976 from Kraing Ta Chan Chief An to the Party, summarises the statements of two prisoners (LAAY Chhi, aged 38; and TOAN Tean, aged 29) who were arrested from Tram Kak commune.<sup>2548</sup> This report and the information in it corresponds to entries with a description of these prisoners in notebook E3/4095.<sup>2549</sup>

856. A handwritten report dated 5 May 1977 from “Ka 105” to *Angkar* describes the arrest of HIM Chhun, aged 37, by commune militia in Leay Bour commune. It records his wife’s name as NHANH Sa Eng.<sup>2550</sup> This man is described in another report from the following day, this time from Yorn to “Comrade Brother”.<sup>2551</sup> The information in these reports corresponds to notes in notebook E3/5860, which likewise describes HIM Chhun, aged 37, as having been arrested by militiamen in Leay Bour and married to NUT Eng.<sup>2552</sup>

857. A handwritten report from Sre Ronaung commune on 7 June 1977 describes the activity of four Chinese persons. Among them is a person identified as SOK Nam, described as 24 years-old, who complained about the revolution and refused to “do his labour work”. Also mentioned is KIM An Huor, described as 29 years-old, a spy and a repeat “conflict maker”.<sup>2553</sup> This report corresponds to biographical information for these persons found in two separate notebooks, E3/5827 and E3/5860.<sup>2554</sup>

858. A typed document dated 12 June 1977 signed by Kraing Ta Chan Chief An, records the “self-criticism” of NHEP Yan and describes a plot in Hospital 22 to produce insufficient medicine, “oppose to the guideline of *Angkar*”, to provide negligent treatment and complain about having to farm rice. Named accomplices include Kang,

<sup>2548</sup> Tram Kak District Record, E3/4098, 4 August 1976, ERN (En) 00322114-00322115.

<sup>2549</sup> Kraing Ta Chan Notebook, E3/4095, undated, ERN (En) 00747274 (entries for LAY Chhi, aged 38, and TOAN Tean, aged 29). Contrary to submissions from the NUON Chea Defence summarised at para. 829 above, this further satisfies the Chamber of the authenticity of this notebook.

<sup>2550</sup> Tram Kak District Record, E3/2048, 5 May 1977, ERN (En) 01454950.

<sup>2551</sup> Tram Kak District Record, E3/2048, 6 May 1977, ERN (En) 01454952-01454953. *See below*, fn. 2820.

<sup>2552</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064171.

<sup>2553</sup> Tram Kak District Record, E3/2444, 7 June 1977, ERN (En) 00322150-0032151.

<sup>2554</sup> Kraing Ta Chan Notebook, E3/5827, ERN (En) 00866443 (short biographical information for KIM An Huor, aged 29 and SOK Nam, aged 24); Kraing Ta Chan Notebook, E3/5860, ERN (En) 01064182 (short biographical information for KIM An Huor, aged 29 and SOK Nam, aged 24), ERN (En) 001064183 (short biographical information on IENG Bunthan).

Saet and Duong.<sup>2555</sup> The contents of this document correspond in significant part to information in notebook E3/5860.<sup>2556</sup>

859. A handwritten report from Khporp Trabaek commune in June 1977 describes the arrest of 10 former military “New People” who were “lazy” and planning to flee to Thailand. The 10 persons identified are VAN Touch, BAN Chek, LOEUNG Ty, SUN Leng, SAO Nhan, KAN Nha, VANN Ken, CHEUNG Moeun, BUOR Sum and MAM Sim.<sup>2557</sup> There are entries for each of these persons in notebook E3/5827, with further biographical information given.<sup>2558</sup> These entries further correspond to a handwritten note dated 13 June [1977] from Kit, Tram Kak District Secretary, to Kraing Ta Chan Chief An, which describes the 10 traitors from Khporp Trabaek and proposes that they be interrogated “harshly and thoroughly” to find their network.<sup>2559</sup>

860. A typed report from Kraing Ta Chan Chief “Ann”, to the Party discusses the confession of SIN Yan, aged 50, born in Leay Bour commune and married to HA Lang. It is dated 11 July 1977 and reports that, while he was in hospital as a patient, he made comments to staff about the prospects of markets, money and private daily living and eating in the future.<sup>2560</sup> The information contained in this report corresponds to an entry in notebook E3/5860.<sup>2561</sup>

861. A typed report with the heading “Educational Office of District 105” is signed by Kraing Ta Chan Chief An, whose signature was noted above to have been identified by PECH Chim. It is dated 30 July 1977 and relates to a prisoner called UNG Ly, born in Angk Ta Saom commune and married to TOUCH Nat. The report records that he had been trained on air conditioning systems in the United States and had said he missed that country.<sup>2562</sup> This information on UNG Ly corresponds to an entry in notebook E3/5860.<sup>2563</sup>

<sup>2555</sup> Tram Kak District Record, E3/4101, 12 June 1977, ERN (En) 00322126.

<sup>2556</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064186.

<sup>2557</sup> Tram Kak District Record, E3/2052, 3 [sic] June 1977, ERN (En) 00276590.

<sup>2558</sup> Kraing Ta Chan Notebook, E3/5827, undated, ERN (En) 00866440-00866443.

<sup>2559</sup> Tram Kak District Record, E3/2052, 13 June [1977], ERN (En) 00276591. On Kit’s role, *see below*, paras 914, 923-924.

<sup>2560</sup> Tram Kak District Record, E3/2924, 11 July 1977, ERN (En) 00583752; Tram Kak District Record, E3/2012, 11 July 1977, ERN (En) 00276595.

<sup>2561</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064186.

<sup>2562</sup> Tram Kak District Record, E3/2012, 30 July 1977, ERN (En) 00276593.

<sup>2563</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064191.

862. A handwritten report dated 31 July [1977] from Kit, then Tram Kak District Secretary, to Kraing Ta Chan Chief An, states that all prisoners from Cheang Tong should be interrogated then smashed. It further requests An to contact the commune to arrest two individuals called “Len” and “Sou” living in Srae Krou.<sup>2564</sup> The contents and timing of this report are consistent with a handwritten note from “Ann” to “Comrade Boeun” on 1 August 1977 requesting that two militia men be assigned to arrest “Len” and “Sou”.<sup>2565</sup> The Chamber recalls that KHOEM Boeun was the Secretary of Cheang Tong commune at the relevant time.<sup>2566</sup>

863. A handwritten report from Meng to the Party reports on LAY Kiet, 27 years old from Kirivong but then living in Trapeang Thom North commune.<sup>2567</sup> The Chamber recalls that Meng was the head of a detention place at Angk Roka.<sup>2568</sup> This report corresponds to an entry in notebook E3/4083 for LAY Kiet, aged 27. There is a cross next to his name.<sup>2569</sup> This in turn corresponds with an entry in another list of persons.<sup>2570</sup> There is also a paragraph of corresponding information in notebook E3/4092.<sup>2571</sup>

864. A handwritten report from Chorn in Popel commune to Meng on 9 July 1978 requests to send over two traitors: “Ty” from District 109, described as a surgical doctor; and Ham *alias* CHAU Peuv Mony.<sup>2572</sup> The Chamber recalls that Chorn was KHOEM Boeun’s husband and the head of Popel commune.<sup>2573</sup> Chorn’s report records that he had “asked for an opinion from Comrade Elder Brother San already”. Another handwritten report, also dated 9 July 1978, asks the District Party to consider a person’s case, to which an annotation signed “San” directed Chorn to “send [him] over to the

<sup>2564</sup> Tram Kak District Record, E3/2924, 31 July [1977], ERN (En) 00583753; repeated at Tram Kak District Record, E3/2012, 31 July [1977], ERN (En) 00276596. On Kit’s role, *see below*, paras 914, 923-924.

<sup>2565</sup> Tram Kak District Record, E3/2012, undated, ERN (En) 00276597.

<sup>2566</sup> *See above*, para. 818.

<sup>2567</sup> Tram Kak District Record, E3/9255, illegible, ERN (En) 00322089.

<sup>2568</sup> *See above*, paras 864, 891, 935.

<sup>2569</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323947 (with further reference to Dei Kraham and Prey Rumdeng).

<sup>2570</sup> Tram Kak District Record, E3/2046, undated, ERN (En) 01565531 (LAY Kiet (Chinese), aged 27, appears at number 29, indicating that he was a taxi driver from Prey Rumdeng and had come from Trapeang Thom North commune).

<sup>2571</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834809-00834810 (entry for LAY Kiek, aged 27, who had worked as a taxi driver, was moved to District 109 after 17 April then relocated to Trapeang Thom commune). The note concludes that “According to his answers, he was the chief traitor who incited people to protest”.

<sup>2572</sup> Tram Kak District Record, E3/2424, 9 July [1978], ERN (En) 00032221.

<sup>2573</sup> *See above*, para. 868.

District, to the place of Comrade Meng, in Ang Rokar”.<sup>2574</sup> Another handwritten report from Meng to “Comrade Elder Brother” is dated 15 July 1978 and refers to the District Party’s decision to send over four persons, including Ham *alias* “CHAU Peou Muny” and “Any” from Popel commune.<sup>2575</sup> Entries for both these persons also appear in notebook E3/4092.<sup>2576</sup> They also appear in a handwritten table of “Brief Biographies of Prisoners at Tram Kak District Education Office”, with their date of entry recorded as 15 July 1978.<sup>2577</sup>

865. A handwritten report dated 13 July [1978] from Popel commune to “Comrade the District” requests that two traitors be received: Ngiv (a first lieutenant) and Mao (a second lieutenant).<sup>2578</sup> There is short narrative entry for CHHAN Ngiv in notebook E3/4092.<sup>2579</sup> There are further entries for CHAN Ngiv, aged 55, and MEN Mao, aged 49, in a handwritten table of prisoners, where it is noted that they resided in Popel commune and were first and second lieutenants who entered on 19 July 1978.<sup>2580</sup> There is a further entry for CHANN Ngiv, aged 55, in the tables inside notebook E3/4083, this time with a cross next to his name.<sup>2581</sup>

866. A handwritten report dated 18 July 1978 from Angk Ta Saom commune to “Comrade Elder Brother of Police of District 105” reports on the activities of KONG Vaet and EM Sambath and requests to send them over for “further interrogation”.<sup>2582</sup> This report records that KONG Vaet had been “stealing without stopping” and educated for three years: by the group, unit, collective meetings and finally by “individually educated” after which he “confessed”. There are narrative entries for both KONG Vet and EM Sambath in notebook E3/4092.<sup>2583</sup> This is corroborated by the handwritten list of “Brief Biographies of Prisoners at Tram Kak District Education Office”, which includes entries for KONG Vet and EM Sambath and records their date of entry as 23

<sup>2574</sup> Tram Kak District Record, E3/2424, 9 July [1978], ERN (En) 00322224.

<sup>2575</sup> Tram Kak District Record, E3/2424, 15 July 1978, ERN (En) 00322223.

<sup>2576</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834825-00834826 (entries for KUY Ni and VEN Ham *alias* POEU Mony).

<sup>2577</sup> Tram Kak District Record, E3/4164, ERN (En) 00973147-00973148.

<sup>2578</sup> Tram Kak District Record, E3/2424, ERN (En) 00322219.

<sup>2579</sup> Tram Kak District Record, E3/4092, ERN (En) 00834827 (recording CHHAN Ngiv as 55 years old).

<sup>2580</sup> Tram Kak District Record, E3/4164, ERN (En) 00973149.

<sup>2581</sup> Kraing Ta Chan Notebook, E3/4083, ERN (En) 00323948.

<sup>2582</sup> Tram Kak District Record, E3/2424, 18 July 1978, ERN (En) 00322220 (describing KONG Vaet as a relentless thief who had been educated for the past three years but was undeterred; and describing EM Sambath as having broken a plough among other faults).

<sup>2583</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834828-00834829.

July 1978.<sup>2584</sup> Finally, there are further entries for KONG Vet and EM Sambath in the tables contained in notebook E3/4083, with a cross next to each name.<sup>2585</sup>

867. A handwritten report from “Boeun” in Cheang Tong commune on 5 August 1978 requests “comrade” to track down the links of two women called “Naicha” and “Phana”. The Chamber recalls that KHOEM Boeun was the Secretary of Cheang Tong commune at the relevant time.<sup>2586</sup> The report states that “these two women cannot be kept because they have “so many contradictions”. In relation to Naicha, it is noted that she was the wife of Seng, “whom we ‘took’ in 1977”.<sup>2587</sup> There are narrative entries for both women in notebook E3/4092, where they are recorded as “PHAI Phanna”, aged 24, and “Pann [illegible]”, aged 48, married to BUOY Seng.<sup>2588</sup> There is an entry for BUOY Sam *alias* Seng, married to PAN Nai Chi, in a different notebook E3/5860.<sup>2589</sup> Both THAI Phanna, aged 24, and PAN Naichi, appear in the handwritten list of “Brief Biographies of Prisoners at Tram Kak District Education Office”, where they are identified as 17 April people who contradicted the line by refusing to work and who said “It is better to die than to live”. Their entry date is recorded as 9 August 1978.<sup>2590</sup> Finally, there are entries for THAI Phana, aged 24, and NAI Chy, aged 48, in the lists contained in another notebook (E3/4083), the latter with a cross next to her name.<sup>2591</sup>

868. The Chamber has identified further examples of internal coherence and corroboration between documents in the collection of Tram Kak District Records.<sup>2592</sup>

869. There were also examples of consistency and corroboration with evidence given by persons who appeared before the Chamber. For example, the Tram Kak District

<sup>2584</sup> Tram Kak District Record, E3/4164, undated, ERN (En) 00973149-00973150 (noting that KONG Vet stole “a great deal” and had been educated for three years, but “remained the same”).

<sup>2585</sup> Kraing Ta Chan Notebook, undated, E3/4083, ERN (En) 00323949.

<sup>2586</sup> *See above*, para. 818.

<sup>2587</sup> Tram Kak District Record, E3/4093, 5 August 1978, ERN (En) 00831489.

<sup>2588</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834831.

<sup>2589</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064188.

<sup>2590</sup> Tram Kak District Record, E3/4164, undated, ERN (En) 00973154 (PAN Naichi is identified as a widow).

<sup>2591</sup> Kraing Ta Chan Notebook, undated, E3/4083, ERN (En) 00323950-00323951.

<sup>2592</sup> *See e.g.*, Tram Kak District Record, E3/4102, 4 August 1977, ERN (En) 00369460 (handwritten report from Cheang Tong commune discussing person called MAK Ly who discussed with his family a plan to poison the cooperative, requesting *Angkar* to ask him about this; which corresponds closely to information contained in Kraing Ta Chan Notebook, E3/5827, undated, ERN (En) 00866451 (militia had grasped his plans, which is why he was arrested).



Records include handwritten reports signed by “Chun” in Popel commune.<sup>2593</sup> KHOEM Boeun was married to Chorn and she explained that he became the chief of Popel commune from mid-1977.<sup>2594</sup> NEANG Ouch *alias* Ta San likewise identified Chorn as the chief of Popel commune.<sup>2595</sup> The roles of other persons such as LENG An (also known as “An”, “Ann” or “Ta An” the chief of Kraing Ta Chan) and Prak (Secretary of Sector 13) all correspond to the form and contents of the Tram Kak District Records. The code references to District “105” and/or the Education Office for District “105” also point toward the authenticity of the documents. The contents of some of the Tram Kak District Records were also substantially corroborated by evidence given by two former prisoners who testified before the Chamber: VONG Sarun and MEAS Sokha.

870. VONG Sarun was a young hospital worker, arrested and transferred to Kraing Ta Chan around the same time as another medic called UCH Han.<sup>2596</sup> Within notebook E3/5827, which is without the cover identified by SREI Than *alias* Duch, are notes describing her as a 26 year-old female, and reporting events at Hospital 22.<sup>2597</sup> Before the Chamber, VONG Sarun confirmed that she was interrogated at Kraing Ta Chan, and that An took notes while sitting at the far end of the table.<sup>2598</sup> References to VONG Sarun are found in other documents, alongside pieces of information concerning another detainee named UCH Han who also worked at Hospital 22.<sup>2599</sup> This is further consistent with notes relating to a person identified as “Hun Hang”, who was a senior

<sup>2593</sup> Tram Kak District Record, E3/2433, 3 May 1977, ERN (En) 00322121; Tram Kak District Record, E3/2048, 3 May 1977, ERN (En) 01454944; Tram Kak District Record, E3/2439, 4 May 1977, ERN (En) 00322143; Tram Kak District Record, E3/2048, 8 May 1977, ERN (En) 01454946; Tram Kak District Record, E3/2048, 8 May 1977, ERN (En) 01454948; Tram Kak District Record, E3/2442, 18 May 1977, ERN (En) 00322146; Tram Kak District Record, E3/4084, 26 May 1977, ERN (En) 00290265; Tram Kak District Record, E3/2424, 9 July 1978, ERN (En) 00322224; Tram Kak District Record, E3/2424, 9 July [1978], ERN (En) 00322219.

<sup>2594</sup> KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 17-18, ERN (En) 01057691-01057692 (Answers 94-95).

<sup>2595</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 46-47.

<sup>2596</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 16-17, 59-62.

<sup>2597</sup> Kraing Ta Chan Notebook, E3/5827, undated, ERN (En) 00866434.

<sup>2598</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 45-46. Although the notes contain references to Kang, VONG Sarun’s evidence was that she was not asked about Kang specifically during her interrogation.

<sup>2599</sup> Tram Kak District Record, E3/4164, ERN (En) 00973147 (biographies of prisoners, identifying Sarun, aged 27, and UCH Han, aged 26, with arrival dates given of 23 May 1977 and the comment that “These two girls are implicated in the responses of Hang and Kang”). The detention of UCH Han at Kraing Ta Chan was further confirmed by the evidence of RIEL San, the former deputy chief of the district hospital, who visited Kraing Ta Chan and recognised Han from Hospital 22, cooking a small pot of rice. See T. 17 March 2015 (RIEL San), E1/278.1, p. 76; T. 18 March 2015 (RIEL San), E1/279.1, p. 81; T. 19 March 2015 (RIEL San), E1/280.1, p. 28.

person at Hospital 22 and who implicated 16 persons including “Run”.<sup>2600</sup> VONG Sarun confirmed that she was referred to as “Run” by some people.<sup>2601</sup>

871. MEAS Sokha’s evidence described the arrest of his father (MEAS Koeun) and brother-in-law (MOM Boeun) from a cooperative in Cheang Tong commune, following which he and his family were arrested (including his mother, HUN Kimseng *alias* Yeay Nha and his sister MEAS Sarat).<sup>2602</sup> A number of different documents corroborate MEAS Sokha’s first-hand account. There are entries for several of his family members in a notebook E3/4095.<sup>2603</sup> This is the notebook which the NUON Chea Defence challenges in part because of the annotation on the front cover referring to “Contemptible Traitors Pol Pot and IENG Sary”. Although the only reasonable conclusion which can be drawn from such an annotation, given the language used, is that it was made after January 1979, the contents and the cover of this notebook satisfy the Chamber that it is a copy of an authentic document. Further, the execution of MEAS Sokha’s father and brother-in-law at Kraing Ta Chan is recorded in an annotation in a list of prisoners referring to MEAS Sokha’s mother and sister: “The two women were the spouses of Kun and Boeun. We smashed their husbands because they incited people to affix their thumbprints for deposing a village chief”.<sup>2604</sup> The execution of MEAS Koeun and MOM Boeun was confirmed by former guards from Kraing Ta Chan.<sup>2605</sup>

872. The above analysis of the Tram Kak District Records reveals a substantial degree of coherence and consistency within the collection, and with the witness and Civil Party evidence heard by the Chamber.

<sup>2600</sup> Kraing Ta Chan Notebook, E3/5860, undated, ERN (En) 01064174-01064176 (identifying “Run” at number 13).

<sup>2601</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 22-23 (confirming that she was referred to as “Run” by some people).

<sup>2602</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2669.

<sup>2603</sup> Kraing Ta Chan Notebook, E3/4095, undated, ERN (En) 00074250 (entries for MEAS Kum and MOM Boeun, who were MEAS Sokha’s father and brother-in-law respectively), ERN (En) 00747252 (entry for HUN Seng, MEAS Sokha’s mother), ERN (En) 00747263 (entry for MEAS Sarat, MEAS Sokha’s elder sister), ERN (En) 0747254-00747257 (entry for THAO Sin, MEAS Sokha’s aunt).

<sup>2604</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762837.

<sup>2605</sup> T. 4 March 2015 (VAN Soan), E1/271.1, pp. 10, 65; T. 5 March 2015 (VAN Soan), E1/272.1, p. 9 (recalling that *Ta* Kun died first). *See also*, T. 24 March 2015 (SOTR Saing), E1/281.1, pp. 79-81 (recalling the detention of *Yeay* Nha and her children, and *Yeay* Rat’s husband).

10.1.4.2.4. *Challenges to particular documents*10.1.4.2.4.1. The “smashed 15,000 enemies”  
note in notebook E3/2107  
(D10840)

873. Turning first to the document which appears to record that 15,000 enemies had been “smashed” at Re-education Office 105. As presented to the Chamber, this handwritten note is found inside notebook E3/2107 – which has the identical front cover confirmed by SREI Than *alias* Duch as having been used at Kraing Ta Chan. This particular note has no date and no reference period is indicated for this figure. The notebook in which it is found has the DC-Cam reference number D10840, which deviates from the sequence of documents obtained by Ben KIERNAN.<sup>2606</sup> When asked about this reference number, CHHANG Youk explained to the OCIJ that he found this particular notebook in Tuol Sleng in 1996, that is after the 1995 visit with BEN Kiernan when they found copies of the Tram Kak District Records later given DC-Cam reference numbers D000167 to D000298.<sup>2607</sup> Notebook E3/2107 was, however, identified on the list of documents provided by the OCIJ to Ben KIERNAN (the Annex B) and then confirmed by him when describing his collection and copying of documents in 1980.<sup>2608</sup> Ben KIERNAN also refers to this note in one of his books, first published in 1985, wherein he describes a document from the archives of the Tram Kak district prison at Kraing Ta Chan and then quotes it as follows: “from when we began smashing the enemy to now, we have got rid of 1,500 people”.<sup>2609</sup> Besides the obvious discrepancy concerning the figure, and a slightly different English translation, the Chamber finds that this description in Ben KIERNAN’s book corresponds to the challenged “smashed 15,000 enemies” note.

874. The note in dispute looks like a separate sheet of paper photocopied together with the notebook. Whereas faint lines can be seen on the pages of the notebook, no such lines can be seen on the note containing the reference to “15,000”. The note contains two conspicuously different styles of handwriting: the upper portion recording the

<sup>2606</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (Kh) 00068048.

<sup>2607</sup> CHHANG Youk Interview Record, E3/188, 28 May 2009, ERN (En) 00342452 (explaining that he found it in 1996 when cleaning out rooms at Tuol Sleng and mentioning SAN Sok and TING Sokhai as other persons who were involved).

<sup>2608</sup> Letter from OCIJ to Ben KIERNAN, D269.1, ERN (En) 00416765, Annex B, entry 116 (referring to ERNs (Kh) 00068046-00068082).

<sup>2609</sup> Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 435, ERN (En) 01150224.

figure of 15,000 differs from the lower portion, signed “An”, and it has special features which are unique and entirely different of the other handwritings contained elsewhere in notebook E3/2107. PECH Chim’s evidence was that this, in itself, is unsurprising: it was *Angkar*’s practice and method for one person to write one part of a report then another to sign it.<sup>2610</sup> SREI Than *alias* Duch also appeared to confirm An’s signature on the lower part of this document, while questioning the handwriting on the upper part.<sup>2611</sup> Subsequently, however, his evidence was that he did not recognise the handwriting.<sup>2612</sup> In the Chamber’s assessment, the figure of 15,000 is oddly written: the last zero is noticeably smaller and more scrawled than the figures which precede it. The last zero appears to have been squeezed between the previous zeros and the Khmer word “*neak*” (“people”) which follows.<sup>2613</sup> Given these specific characteristics, and in light of the description made by Ben KIERNAN in one of his books,<sup>2614</sup> the Chamber finds that this particular note was altered and a further zero was added to the figure of 1,500 so as to inflate the number previously recorded. It is unclear when and how this happened, or to what purpose. Ben KIERNAN’s confirmation of the OCIJ’s Annex B and his use of a different figure in his book might suggest that it happened after he deposited this document at the Tuol Sleng Museum in 1980. Alternatively, CHHANG Youk’s account might suggest that it happened at some later time. In the circumstances, no weight shall be attributed to this particular note.

875. As to the impact of this finding upon the remainder of notebook E3/2107, the Chamber remains satisfied that this notebook is authentic. The cover page is identical to those authenticated by Witness SREI Than and an examination of the contents of this notebook confirms it to be so. It contains entries for approximately 88 different persons with paragraphs of varying lengths containing information in relation to each. In cover, form and layout, it is similar to other notebooks before the Chamber.

<sup>2610</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 11-13; PECH Chim Interview Record, E3/5786, 6 December 2009, p. 8.

<sup>2611</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 81-84 (shown E3/2107, ERN (Kh) 00068049) (agreeing that it was An’s signature and repeating “it is not difficult to read. I can recognise.”).

<sup>2612</sup> T. 24 February 2015 (SREI Than), E1/268.1, p. 46 (showing E3/2107, ERN (Kh) 00068049). VAN Soeun (VANN Soan) did not recognise the signature as being An’s. See T. 4 March 2015 (VANN Soan), E1/271.1, p. 5.

<sup>2613</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (Kh) 00068049.

<sup>2614</sup> Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 435, ERN (En) 01150224.

876. In addition, references to various persons identified in notebook E3/2107 are found in other Tram Kak District Records. For example, notebook E3/2107 includes summary entries for: UY Chanthan, aged 39, born in Kbal Koh, Kien Svay district, Kandal province;<sup>2615</sup> IE Lim Touch, aged 33, born in Peuk, Ang Snuol district, Kandal province;<sup>2616</sup> and TONG Sambour, aged 43, born in Soeng commune, Au Chriv district, Battambang province.<sup>2617</sup> These three entries correspond to a handwritten report from Nhaeng Nhang commune in 1977 addressed to “Comrade Saom, District 105 Re-education!” which describes three traitors to be sent in to the “Reeducation Office to make all the arrangements”.<sup>2618</sup> Further examples are entries in notebook E3/2107 for: CHEA Pheakdei, aged 19, whose father’s name is noted to have been CHEA Kim Eng, two stars in the military police;<sup>2619</sup> CHEA Sohphal, aged 29, a youth in Kus commune;<sup>2620</sup> and SENG Chan Mean, aged 24, from Kus commune.<sup>2621</sup> These entries correspond to a handwritten report from “Kus Youth” to *Angkar* on 19 December 1976.<sup>2622</sup> Another example is an entry for PECH Savath, aged 47, who came to Sre Ronoung commune where he was “alerted [...] about the ducks eating rice” – to which he “answered angrily [...] if I don’t feed rice [to the ducks], what should they be fed?”<sup>2623</sup> This corresponds to a report from Sre Ronoung commune dated 4 January 1977, which records that PICH Savann was “incorrigible” and being sent to “the police” for chasing ducks into rice fields.<sup>2624</sup>

<sup>2615</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290232.

<sup>2616</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290233.

<sup>2617</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290235.

<sup>2618</sup> Tram Kak District Record, E3/2052, 4 [June] 1977, ERN (En) 00276591-0027692 (reporting on UY Chanthan, TONG Sambour and IE Lim Touch). The three individuals are TONG Sambour in the Navy, born in Soeng commune, Battambang province; IE Lim Touch, a 1<sup>st</sup> Lieutenant born in Peuk commune, Ang Snuol district, Kandal province; and UY Chanthan, born in Kbal Koh, Kien Svay district, Kandal province. These correspond to Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290235-00290236 (describing TONG Sambour, born in Soeng commune, Au Chriv district, Battambang province, in the Navy since 1959), ERN (En) 00290233 (describing IE Lim Touch, born in Peuk, Ang Snuol district, Kandal province), ERN (En) 00290232-00290233 (describing UY Chanthan, born in Kbal Koh, Kien Svay district, Kandal province).

<sup>2619</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290253.

<sup>2620</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290256.

<sup>2621</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290237.

<sup>2622</sup> Tram Kak District Record, E3/2441, 19 December 1976, ERN (En) 00369471-00369472 (reporting on: CHEA Pheakdey, aged 18, his father’s name recorded as CHEA Kim Eng with “high rank in Military Police”; SENG Chan Horn, aged 23, and CHEA Sophal, aged 28).

<sup>2623</sup> Kraing Ta Chan Notebook, E3/2107, undated, ERN (En) 00290232.

<sup>2624</sup> Tram Kak District Record, E3/4120, 4 January 1977, ERN (En) 00322175.

877. In light of such substantial corroboration and the coherence of this evidence, the Chamber is satisfied that any tampering with one particular separate note does not mean that the rest of notebook E3/2107 should be excluded from consideration.

10.1.4.2.4.2. The “M-105” list within E3/4145 (D13781)

878. The Chamber now turns to a second contested document, the handwritten list of detainees at “M-105” detained for years “pending the Party’s decision”, and the submission that this was forged to substantiate Civil Party SORY Sen’s claim to have been imprisoned at Kraing Ta Chan. The page upon which the NUON Chea Defence focuses is found inside a nine-page document, which comprises a mixture of documents in the following order: (1) a typed list of five persons headed “List of prisoners detained for months or years” signed by An with the date given as 15 May 1978;<sup>2625</sup> (2) a typed list of prisoners “smashed” on 31 May 1978, listing eight persons from the East Zone;<sup>2626</sup> (3) a typed list of prisoners “smashed” on 27 May 1978, listing 15 persons from the East Zone;<sup>2627</sup> (4) a handwritten note dated 18 February 1977 from Sre Knong district to the chief of Tram Kak district regarding a girl named Voeun arrested in Nhaeng Nhang commune but who claimed to come from Sre Knong district;<sup>2628</sup> (5) the list of persons from “M-105”, upon which the NUON Chea Defence focuses its submissions;<sup>2629</sup> (6) a partial typed list of persons running from numbers 22 to 35, bearing a handwritten annotation with the date 22 May 1977;<sup>2630</sup> (7) and a typed list of nine persons said to be living in Po Preah Sang village, Angk Ta Saom commune, signed by An with the date given as 23 August 1977.<sup>2631</sup>

879. The DC-Cam reference number given for E3/4145 is D13781, which deviates from the sequence of documents obtained by Ben KIERNAN in 1980. This document was not included in the list of documents sent by the OCIJ (in the OCIJ’s Annex B) to Ben KIERNAN in 2009. An email from DC-Cam to the NUON Chea Defence during the course of evidentiary proceedings in Case 002/02 indicated that, unlike most of the

<sup>2625</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762837.

<sup>2626</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762838; duplicated at ERN (En) 00762839 and again at ERN (En) 00762842.

<sup>2627</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762840-00762841.

<sup>2628</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762843.

<sup>2629</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762844.

<sup>2630</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762845-00762846.

<sup>2631</sup> Tram Kak District Record, E3/4145, ERN (En) 00762847.

Tram Kak District Records, the original of D13781 is held at the Tuol Sleng Museum.<sup>2632</sup> The evidence is unclear, however, as to how and when it came in Tuol Sleng Museum's possession.

880. The particular handwritten "M-105 list" of five persons is rough in its form: some columns and rows are apparently incomplete, and further information appears scrawled along the right-hand side of the page.<sup>2633</sup> The NUON Chea Defence highlights the entry for KHUTH Sen.<sup>2634</sup> Civil Party SORY Sen tried to go by the name KHUTH San in order to conceal his relation to his father.<sup>2635</sup> His evidence was that he was arrested and sent to Kraing Ta Chan in 1974.<sup>2636</sup> His mother was called KHUTH San and his father, who was killed at Kraing Ta Chan, was called SOK Say or TIT Say.<sup>2637</sup> His father was a former district official during the (pre-1970) Sihanouk era, and his mother had worked for him. Civil Party SORY Sen elaborated that his father was not the "lawful husband" of his mother.<sup>2638</sup> Civil Party SORY Sen used the name "Khut San" (*i.e.* his mother's name) in order to hide his connection to his father.<sup>2639</sup>

881. The entry on the "M-105 list" for KHUTH San refers to Trapeang Lean village in Kus commune. SORY Sen confirmed that he used to live in "Tra Pang Lean" village in Kus commune.<sup>2640</sup> The entry for another detainee HUN Nha records her origin as Slaeng Kaong village in Nhaeng Nhang commune. In contrast, when interviewed by the OCIJ, HUN Kimseng *alias* Yeay Nha repeatedly confirmed that she was born in

<sup>2632</sup> Email from DC-Cam to Victor Koppe, E457/6/3.1.27, 30 October 2014, indicating that Tuol Sleng holds originals of three of the documents on the Co-Prosecutors' Annex 8A (namely: D07187 (which is Tram Kak District Record, E3/2262); D06880 (which is Tram Kak District Record, E3/2281); D13781 (which is Tram Kak District Record, E3/4145).

<sup>2633</sup> Tram Kak District Record, E3/4145, undated, ERN (Kh) 00068736.

<sup>2634</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762844. There are five rows on the list. The top entry for KHUTH Sen had previously been translated as "YUK Sen", but during the course of Case 002/02 it emerged that the entry had been mistranslated. The entry includes some biographical information such as Trapeang Lean village, Kus commune, farmer, and a comment that "In 1974 he was a youth who was sent to the front battlefield, but he escaped home".

<sup>2635</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 42.

<sup>2636</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 44 (arrested in 1974 but he could not recall the month).

<sup>2637</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 41-43; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 13-15.

<sup>2638</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 41-42, 55 (explaining that he learned this from relatives).

<sup>2639</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 41-43; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 13-15.

<sup>2640</sup> SORY Sen, DC-Cam Interview, E3/4846, ERN (En) 00527771. *See also*, T. 4 February 2015 (SORY Sen), E1/256.1, p. 38 (stating that he was born in Trapeang Pou village, Samraong commune). *Cf.* SORY Sen Interview Record, E3/9589, 31 October 2013, ERN (En) 00969618 (recording place of birth, Trapeang Pou, which was in Kus commune during the Khmer Rouge Regime).

Cheang Tong commune.<sup>2641</sup> The entry for MEAS Rat refers to Srae Kruo village in Cheang Tong commune.<sup>2642</sup> The Chamber has noted above other evidence demonstrating the presence of MEAS Rat and HUN Kimseng *alias* Yeay Nha at Kraing Ta Chan.

882. It should be noted that the “M-105 list” is one of many pages within the document designated as E3/4145. The Chamber finds that many of the other pages relate to S-21 rather than Tram Kak district – specifically those pages relating to prisoners from the East Zone.<sup>2643</sup> They include lists of some 23 persons from the East Zone, including persons “smashed” on 27 May 1978 and 31 May 1978.<sup>2644</sup> The Chamber does not consider that this inconsistent grouping or mixture of documents should affect the individualised evaluation of other pages in E3/4145 which do not appear to relate to S-21.

883. As to the typed list of five persons headed “List of prisoners detained for months or years” signed by An with a date of 15 May 1978,<sup>2645</sup> the Chamber has identified instances of corroboration of the names and information in this list, including: the reference to IET Chin, a long-time prisoner at Kraing Ta Chan; the references to MEAS Sokha’s family members HUN Seng, MEAS Sarat, Kun and Boeun; and the imprisonment of VONG Sarun and her former colleague “Han”.<sup>2646</sup>

<sup>2641</sup> HUN Kimseng Interview Record, E3/5826, 31 October 2007, ERN (En) 00223487; HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 2.

<sup>2642</sup> For the Chamber’s findings on the arrest of MEAS Sarat *alias* Rat and her family from Srae Kruo village in Cheang Tong commune, *see* Section 12.3: Kraing Ta Chan Security Centre, paras 2669-2672.

<sup>2643</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762838-00762842 (specifically ERN (En) 00762840-00762841 (a typed list of prisoners smashed on 27 May 1978, listing 15 persons from Sector 23 in the East Zone) is a duplicate of pages in S-21 List E3/8463, at ERN (En) 01032508. Further, E3/4145, ERN (En) 00762838-00762839, 00762842 (a typed list of prisoners smashed on 31 May 1978, listing eight persons from the 3<sup>rd</sup> Division) is a duplicate of pages within S-21 List E3/8463, at ERN (En) 01554813).

<sup>2644</sup> The lists are: Tram Kak District Record, E3/4145, undated, ERN (En) 00762840-00762841 (a typed list of prisoners smashed on 27 May 1978, listing 15 persons from Sector 23 in the East Zone), ERN (En) 00762838-00762839 (duplicates of a typed list of prisoners smashed on 31 May 1978, listing eight persons from the 3<sup>rd</sup> Division in the East Zone). Annex G.1 to the OCP’s Closing Brief is a “Kraing Ta Chan Security Prisoner List”, suggested that these 23 persons from the East Zone were detained at Kraing Ta Chan (at entries 70, 72, 90-111). The Chamber is not satisfied that these persons were ever detained at Kraing Ta Chan. It is unclear whether, when DC-Cam confirmed that Tuol Sleng held the original of D13781, this confirmation was limited to the particular documents relating to S-21.

<sup>2645</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762837.

<sup>2646</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2678 (IET Chin), fn. 8995 (HUN Seng and MEAS Sarat), fn. 9035 (IET Chin), paras 871-872, 2760 (Kun and Boeun), 870 (VONG Sarun), 2714 (VONG Sarun and Han).



884. With regard to the partial list of nine persons dated 23 August 1977, eight of these persons are found in another document in the Tram Kak District Records, where they are described as being part of the network of contemptible Tiv who attempted to flee to Vietnam.<sup>2647</sup> Other pages within E3/4145 contain a typewritten list of persons numbered from 22 to 35, and the annotation dated 22 May 1977 indicating that the persons on the list had been purged.<sup>2648</sup> When SREI Than *alias* Duch was shown this document he testified that its format matched the sorts of documents he used to type at Kraing Ta Chan.<sup>2649</sup> This list is further corroborated by other documentary evidence. The list includes a person identified as HOEM Chhun, aged 37.<sup>2650</sup> The biographical information and timing of this list corresponds to a report from K-105 dated 5 May 1977 following the arrest of HIM Chhun, aged 37.<sup>2651</sup> Also included is an individual identified as THACH Vanna, aged 29.<sup>2652</sup> This corresponds to an entry on a list of Khmer Krom people from Trapeang Thom North commune prepared on 4 May 1977.<sup>2653</sup>

885. The Chamber is therefore satisfied that, despite the lack of information concerning their chain of custody, the documents within E3/4145 identified in paragraph 878 above as numbers (1), (4), (6) and (7) are authentic documents from Tram Kak district. In relation to the “M-105 list” specifically, identified as document (5) in paragraph 878 above, the Chamber considers there to be no foundation for the speculative assertion that Civil Party SORY Sen (or somebody with some knowledge of his background) created this page to try to substantiate his detention at Kraing Ta Chan. SORY Sen is illiterate and explained that he had never heard of “M-105”.<sup>2654</sup> Nor does the Chamber consider that any significance should be given to the minor variations concerning the place of birth or the spellings of the name of other detainees on this list, such as HUN

<sup>2647</sup> Tram Kak District Record, E3/4094, undated, ERN (En) 00322101 (listing Chhaet, Hee, SAIM Kok Chheang, CHRAING Heng, Horl, Run, Try and Aim).

<sup>2648</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762845-00762846 (HOEM Chhun appears at number 35 on the list).

<sup>2649</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 32-37 (“As the form, it was the same as the document I do – I did the typing, and as for the document stating about the killing of these 30 or 40 people, I did not see it before, but the format, as I said, it was the same as the document I did the typing.”).

<sup>2650</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762845-00762846 (HOEM Chhun appears at number 35 on the list).

<sup>2651</sup> Tram Kak District Record, E3/2048, 5 May 1977, ERN (En) 01454950.

<sup>2652</sup> Tram Kak District Record, E3/4145, undated, ERN (En) 00762845-00762846 (THACH Vanna appears at number 33 on the list).

<sup>2653</sup> Tram Kak District Record, E3/2281, 4 May 1977, ERN (En) 00763031 (THACH Vanna, aged 29, appears at number 44 on the list).

<sup>2654</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 17.

Nha or MEAS Rat (who were relatives of MEAS Sokha). Those entries on this handwritten list are corroborated by other evidence.<sup>2655</sup> Although it is correct to point out that this is the only document in evidence bearing the heading “M-105”, the Chamber notes within the Tram Kak District Records there are other documents containing analogous abbreviations such as “K-105” and “Tor-13”.<sup>2656</sup> The Chamber is satisfied that this too is an authentic document.

886. The Chamber recalls the indication noted above that the Tuol Sleng Museum possesses originals of two further Tram Kak District Records.<sup>2657</sup> One is a partial list of Kampuchea Krom people in Popel commune (E3/2262). This document is consistent with other communal lists of Kampuchea Krom people including from Kus commune<sup>2658</sup> and Angk Ta Saom commune.<sup>2659</sup> Among the persons on this list is CHAO Ny, his wife Ny, with one child (a girl).<sup>2660</sup> This family is identified in a handwritten note dated 4 May 1977 from Chorn in Popel commune to District *Angkar*, where it is recorded that the husband CHAU Ny was “brought over (to your place)” on 3 April 1977, and that the wife “THAN Ny” has a child.<sup>2661</sup> Further, another handwritten note dated 8 May 1977 from Chun in Popel commune provides statistics on the number of Kampuchea Krom people in the commune at that time.<sup>2662</sup>

887. The last document for which an original is held at the Tuol Sleng Museum is a list of people from Trapeang Thom North commune (E3/2281) dated 4 May 1977, signed by Mon.<sup>2663</sup> Other reports from Trapeang Thom North commune are also signed by Mon.<sup>2664</sup> Witness RIEL San identified Mon as the commune chief of Trapeang Thom North commune.<sup>2665</sup> Included on this list is an entry for THACH Vanna, aged 29, a

<sup>2655</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2669-2671.

<sup>2656</sup> Examples of references to K-105 include: Tram Kak District Record, E3/8424, 31 August 1977, ERN (En) 00538729 (a report from K-105 to *Angkar*); Tram Kak District Record E3/4115, 5 September 1977, ERN (En) 00363656 (a report from On, K-105 to *Angkar*). Examples of references to Tor-13 are: Tram Kak District Record, E3/2109, 7 August 1977 (two separate annotations by Prak, “Tor-13”).

<sup>2657</sup> See above, fn. 2632.

<sup>2658</sup> Tram Kak District Record, E3/2615, 29 April 1977, ERN (En) 00366665-00366675.

<sup>2659</sup> Tram Kak District Record, E3/2049, 30 April 1977, ERN (En) 00290262-00290263.

<sup>2660</sup> Tram Kak District Record, E3/2262, undated, ERN (En) 00742627.

<sup>2661</sup> Tram Kak District Record, E3/2439, 4 May 1977, ERN (En) 00322143.

<sup>2662</sup> Tram Kak District Record, E3/2048, 8 May 1977, ERN (En) 01454946.

<sup>2663</sup> Tram Kak District Record, E3/2281, ERN (En) 00763028-00763034.

<sup>2664</sup> Tram Kak District Record, E3/2448, 9 September 1977, ERN (En) 00322157 (reporting on a youth named KEO Ray whose “father was smashed by *Angkar*”); Tram Kak District Record, E3/2457, 28 December 1977, ERN (En) 00322188 (reporting on the arrest of three people).

<sup>2665</sup> T. 17 March 2015 (RIEL San), E1/278.1, p. 51; RIEL Son Interview Record, E3/9602, 18 February 2014, p. 22, ERN (En) 00982654 (Answer 156).

motor-trailer worker in the male youth unit.<sup>2666</sup> The Chamber has already noted that this person is found in another Tram Kak District Record (E3/4145).<sup>2667</sup>

#### 10.1.4.2.4.3. Notebook E3/4083 (D00213)

888. The NUON Chea Defence correctly identifies that the format of notebook E3/4083 differs from the other notebooks. It contains various handwritten tables, or lists of persons, rather than the paragraphs of narrative information generally found in the other notebooks. Some of the lists include persons with crosses next to their names, or annotations such as “smashed”.<sup>2668</sup> There are several references to 8 January 1979. Further lists are entitled “Original List” (with 21 entries);<sup>2669</sup> Sre Ronoung (with 21 entries, then further entries from 22-37 found on subsequent pages);<sup>2670</sup> a partial list identified as prepared in Cheang Tong in April 1977 (with entries 19-28);<sup>2671</sup> and “people who have just come from Srok Yuon” (with 18 entries).<sup>2672</sup> One list without a heading details some 29 students, soldiers and teachers, 20 of whom are noted to have been part of the network of “A Try and A Tiv + A KUNG Narin”. Three of those implicated are noted to have provoked each other to break hoes in order to destroy the cooperative, and four are noted to have broken spoons in the cooperative to “make it become private again”.<sup>2673</sup> Entries on the different lists record positions and ranks, such as warrant officer, first Lieutenant and second Lieutenant.

889. This notebook E3/4083 bears the DC-Cam reference number D00213, indicating that it was copied by DC-Cam at the same time as the majority of the Tram Kak District Records obtained by Ben KIERNAN. The cover is the same as several other notebooks. It was plainly designed to be used as a children’s exercise notebook. Written in manuscript on the front cover of E3/4083, on the line entry for “School” is the following note: “Samraong [illegible], done”.<sup>2674</sup> The Chamber’s analysis of this notebook and its

<sup>2666</sup> Tram Kak District Record, E3/2281, ERN (En) 00763031 (THACH Vanna appears at entry 44).

<sup>2667</sup> See above, para. 884. See also, Tram Kak District Record, E3/4145, ERN (En) 00762846 (THACH Vanna appears at number 33 on the list).

<sup>2668</sup> Kraing Ta Chan Notebook, E3/4083, 4 May 1977, ERN (En) 00323944-00323963.

<sup>2669</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323964-00323966.

<sup>2670</sup> Kraing Ta Chan Notebook, E3/4083, ERN (En) 00323966-00323968 (for entries 1-20 and a further unnumbered entry), ERN (En) 00323970-00323972 (for entries 22-37, signed as having been prepared in Sre Ronoung on 27 April 1977).

<sup>2671</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323969.

<sup>2672</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323977-00323978.

<sup>2673</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323973-00323975.

<sup>2674</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323943.

contents reveal substantial corroboration with other evidence relating to Tram Kak district, including to other documents that were specifically authenticated.

890. As noted above, the Chamber considers it to be significant that the full names of the five widows from Trapeang Thom North commune, discussed above in relation to the content of a document authenticated by NEANG Ouch *alias* Ta San, are found in a table within this notebook, each with a cross next to their name.<sup>2675</sup> Former Tram Kak District Secretary, PECH Chim, described to the Chamber an earlier practice whereby Sector Secretary Saom put a cross beside names, and this represented the sector's decision that those persons were to be killed. The district then forwarded those names to Kraing Ta Chan to implement decisions.<sup>2676</sup> The evidence of this type of practice is consistent with the existence of markings against the names found inside this notebook.

891. The early pages of E3/4083 include entries for AOM Chanta, aged 26, from Angk Ta Saom commune, and POK Bunly, aged 27 from Rum Chan, each with a cross next to their names.<sup>2677</sup> Another notebook E3/4092 contains a paragraph on each person.<sup>2678</sup> A different list also records these two persons, identifying them as 17 April people who were arrested on 15 July 1978, with the comment that “[t]hese two contemptible persons were heads of thieves, who sensitised the youth units by saying, “We keep stealing, causing disturbances, which is difficult to be resolved”.<sup>2679</sup> A handwritten note from Meng to “Comrade Elder Brother” dated 15 July 1978 states that, according to decision of the District Party, four persons were to be brought over, among them “Om Chanta and PON Bunli” from Angk Ta Saom.<sup>2680</sup> Another handwritten note describes “OM Chanta” and “POK Bunly” in some detail, recording that they had previously been re-educated a commune offices.<sup>2681</sup> Further still, there is a typed report to the Party,

<sup>2675</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323950. See above, paras 846-847 in relation to the five widows from Trapeang Thom North commune. In the notebook they are listed as VUOCH Keav, aged 25; BAV Sokun, aged 25; MUONG Kimleng, aged 40; KHUN Mao, aged 26; HENG Muoy, aged 30.

<sup>2676</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 42, 50, 60-61. At other times in his evidence, PECH Chim claimed that names crossed in red had “no meaning” and that his earlier (more incriminating) answers were given because he was tired and bombarded with questions. See T. 22 April 2015 (PECH Chim), E1/290.1, pp. 31, 44. The Chamber rejects his attempts to explain away his earlier evidence.

<sup>2677</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323948.

<sup>2678</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834826 (for POK Bunly, 27 years old, from Angk Ta Saom), ERN (En) 00834827 (for AOM Chanta, 26 years old, from Angk Ta Saom).

<sup>2679</sup> Tram Kak District Record, E3/4164, undated, ERN (En) 00973148-00973149.

<sup>2680</sup> Tram Kak District Record, E3/2424, 15 July 1978, ERN (En) 00322223.

<sup>2681</sup> Tram Kak District Record, E3/2424, undated, ERN (En) 00322225.

dated 25 September 1978 and signed by An, which reports on the statements of “OM Chanta” and “Mok Bunly”.<sup>2682</sup>

892. Included in the early pages of E3/4083 are entries for POK San, aged 23, CHUNG Kim Chhai, aged 20, and CHUNG Chhorn, aged 24, with a cross next to each of their names.<sup>2683</sup> These entries and the identifying information all correspond to a typed report on seven prisoners’ confessions entitled “Office of Education District 105”, signed by An on 5 July 1978.<sup>2684</sup> These persons are also found in another list, with the annotation added alongside that:

These traitors had planned to destroy collective properties in Chamkar Sieng so that it would again become private ones. Moreover, every day they sleep waiting for *Yuon* to arrive so that they would join them and Din is their chairman.<sup>2685</sup>

893. This further corresponds to a document signed CHEN Din, aged 25, on 7 July 1978 which implicated various persons including POK San, PHONG Kimchhay and CHUNG Chhorn.<sup>2686</sup> There is also an entry for CHEN Din, aged 25, in another of the notebooks (E3/4092),<sup>2687</sup> and again in notebook E3/4083 – this time with a cross next to his name.<sup>2688</sup>

894. Another entry included in the early pages of E3/4083 is for TES Rom, a 23-year-old female.<sup>2689</sup> This corresponds to another list from the Tram Kak District Records, which likewise records TES Rom, a 23 year-old female.<sup>2690</sup> This further corresponds to a typed report from Kraing Ta Chan entitled “Office of Education District 105”, signed by An with the date 5 July 1978, which reports on the confession of TES Rum, aged 23.<sup>2691</sup>

895. In relation to the list of 20 persons noted as part of the network of “A Try and A Tiv + A KUNG Narin”, many of the entries in this list correspond to another

<sup>2682</sup> Tram Kak District Record, E3/2425, 25 September 1978, ERN (En) 00322226.

<sup>2683</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323960.

<sup>2684</sup> Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322201-00322202.

<sup>2685</sup> Tram Kak District Record, E3/2046, undated, ERN (En) 01565533-01565534 (entry no. 36 for POK San; entry no. 37 for CHUNG Kim Chhe; and entry no. 41 for CHUNG Chhorn).

<sup>2686</sup> Tram Kak District Records, 7 July 1978, E3/2422, ERN (En) 00355852.

<sup>2687</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834819.

<sup>2688</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323961.

<sup>2689</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323949.

<sup>2690</sup> Tram Kak District Record, E3/2046, ERN (En) 01565531-01565532.

<sup>2691</sup> Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322205.

handwritten list which identifies 26 persons not arrested yet, but who had been implicated in the “main plan of Contemptible Try [to] flee to Thailand along with a number of his henchmen who have not been arrested yet”.<sup>2692</sup> This list includes similar information for several persons, some with crosses next to their names.<sup>2693</sup>

896. The list of four persons who broke spoons in the cooperative identifies four women aged between 14 and 19, said to have been under the leadership of POL Touch.<sup>2694</sup> This information corresponds to a handwritten report from Sre Ronoung commune dated 1 September 1977, which records the same four female youths as having broken spoons. The report asks *Angkar* “to decide”.<sup>2695</sup>

897. In the early pages of E3/4083 is an entry for NGET Voeun, aged 23, from Chheu Teal, Samraong commune, with a cross next to the name.<sup>2696</sup> Another handwritten document appears to be a confession signed by NGET Voeun, dated 24 July 1978, which describes the activities of Lim and Comrade Tem among other persons.<sup>2697</sup> This corresponds to a typed report to the Party, signed by An in July 1978 “about the Statement of the contemptible Voeun” and which describes the activities of Vouen, Lim and Comrade Tem.<sup>2698</sup> This further corresponds to another typed report to the Party, signed by An on 5 July [1978], which reports on the confessions of Lim and Boeun regarding the “networks of the contemptible Voeun”.<sup>2699</sup>

898. Among names listed are the following women, each with crosses next to their names: KHIEU Touch, aged 31; DIM Vanny, aged 27; and PECH Sok, aged 41.<sup>2700</sup> These entries correspond to a report from Tram Kak commune to Comrade Brother

<sup>2692</sup> Tram Kak District Record, E3/2426, undated, ERN (En) 00322104-00322105.

<sup>2693</sup> Tram Kak District Record, E3/2426, undated, ERN (En) 00322104 ((1) PHAN Net (x) warrant officer, living in Po Preah Sang village; (2) KOL Bou (x), Water Supply, living in Po Preah Sang village; (3) KONG Narin (x), Bac I graduate, living in Moha Sena village; (10) TOUCH Vay, Junior High School graduate, living in Moha Sena village; (13) HOK Kim San, medical doctor, living in Ang Thnot village); compared with Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323973-00323975 ((3) PHANN Net, 2<sup>nd</sup> Lieutenant; (12) KOL Bo, warrant officer; (20) KUNG Narin, fine art student; (7) TOUCH Vey, student with diploma; (13) HOK Kim San, medical doctor).

<sup>2694</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323975 (identifying the group as POL Touch, Neang, YI Kung and SAM Roeun).

<sup>2695</sup> Tram Kak District Record, E3/4123, 1 September 1977, ERN (En) 00322176.

<sup>2696</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323949.

<sup>2697</sup> Tram Kak District Record, E3/8408, 24 July 1978, ERN (En) 00361771.

<sup>2698</sup> Tram Kak District Record, E3/2434, July 1978, ERN (En) 00276598-00276599.

<sup>2699</sup> Tram Kak District Record, E3/2421, 5 July [1978], ERN (En) 00322203-0032204.

<sup>2700</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323950.

Secretary of Re-education, Tram Kak district, dated 4 February 1978.<sup>2701</sup> This report on the situation inside the “Widow Concentration Unit” with information provided in relation to new women whose husbands *Angkar* had “smashed”, including KHIEUV Touch, the leader, DIM Van Ny and BICH Soch. A subsequent report dated 10 February 1978 from Tram Kak commune to Comrade Brother Secretary of the Re-education Office also refers to the “network links” of KHIEU Touch and BICH Sok “who were arrested and sent in the other day”, referring to three women by name.<sup>2702</sup>

899. Other persons who appear on the early pages of E3/4083 are KIM Siek, aged 45; PEN Nun, aged 47; PRUM Sam, aged 34; HIM Horn, aged 27; and LONG Man, aged 28 – each with a cross next to their name.<sup>2703</sup> There is an entry for each of these five persons in another of the notebooks (E3/4092).<sup>2704</sup>

900. The Chamber is not persuaded that the few references to 8 January 1979 raise any particular concerns, especially weighed against the substantial corroboration and consistency with other evidence. The Chamber does not consider this date to be inexplicable given the undoubtedly chaotic circumstances in different parts of the country at around that time. The challenge to the authenticity of notebook E3/4083 is therefore rejected.

#### 10.1.4.2.5. *Documents contested by witnesses*

901. According to the NUON Chea Defence, witnesses challenged or otherwise called into doubt a number of Tram Kak District Records.<sup>2705</sup> The Chamber finds that these challenges must generally be seen in the light of the possible witnesses’ attempt to minimise their role and the time elapsed since the time the documents were created and the day the witnesses were confronted. Having examined these challenges, the Chamber finds that they are unsubstantiated, for the following reasons. In relation to NEANG Ouch *alias* Ta San, the Chamber considers that his denials that particular documents bore his handwriting or signature must be considered not only in the light of a possible will to minimise his involvement, but also in light of his later admissions, as his evidence progressed, that other documents were copies of authentic documents – and

<sup>2701</sup> Tram Kak District Record, E3/2057, 4 February 1978, ERN (En) 00276586.

<sup>2702</sup> Tram Kak District Record, E3/2057, 10 February 1978, ERN (En) 00276581.

<sup>2703</sup> Kraing Ta Chan Notebook, E3/4083, undated, ERN (En) 00323947.

<sup>2704</sup> Kraing Ta Chan Notebook, E3/4092, undated, ERN (En) 00834822-00834823.

<sup>2705</sup> NUON Chea Closing Brief, para. 494. *See above*, fn. 2494.

were indeed written by him. Even his earlier denials of particular documents, upon which the NUON Chea Defence seeks to rely, contained noticeable caveats, such as that *Ta Rorn* (the Sector 13 Secretary) wanted to provide oral instructions without having his name on any documents.<sup>2706</sup> The NUON Chea Defence's reliance on NUT Nov's denial that a document bore his handwriting omits the explanation offered by this witness that it was probably a clerk who wrote it.<sup>2707</sup> Similarly, in relation to KHOEM Boeun, the NUON Chea Defence failed to address her evidence that she dictated letters and/or that people working in the Commune Office wrote reports for her.<sup>2708</sup> On inspection, other references to KHOEM Boeun and SREI Than *alias* Duch did not support the submission advanced – to the contrary, their evidence authenticated various documents and/or explained the manner in which they were prepared. The NUON Chea Defence submissions in this regard are therefore dismissed.

#### 10.1.4.3. *Summary*

902. Although most of the Tram Kak District Records are photocopies, or copies of copies, the Chamber has scrutinised the collection and found it to be authentic, including those for which the evidence of chain of custody is less clear, namely those with DC-Cam references numbers which deviate from the main set copied by Ben KIERNAN in 1980 (E3/2107, E3/4145, E3/4164 and E3/4166) and/or those with originals held at the Tuol Sleng Museum (E3/2262, E3/2281 and again E3/4145). The Chamber excludes from consideration the note inside notebook E3/2107 which refers to having “smashed 15,000 enemies”. The Chamber remains satisfied, however, that the rest of the collection is authentic. The documents collectively identified as the Tram Kak District Records will therefore be considered together with the evidence from witnesses and Civil Parties in relation to the Tram Kak Cooperatives and Kraing Ta Chan Security Centre. The weight and/or probative value to be given to particular documents will be addressed in later sections when the Chamber evaluates the relevant factual allegations.

<sup>2706</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 32-33 (denying Tram Kak District Record, E3/2785, 7 March [1978], ERN (En) 00322192. *See also*, T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 92; T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 52. It is notable that individuals mentioned in the report signed by San, but which *Ta San* denied was his signature, appear in Kraing Ta Chan Notebook, E3/4083 (list of persons dated 27 April 1977).

<sup>2707</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 51 (addressing Tram Kak District Record, E3/2452, 8 October 1977, ERN (En) 00843036 (a partial report from Sre Ronoung commune signed “Nov”).

<sup>2708</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 46-47, 71.



10.1.5. *Administrative Structures*

903. Using the CPK's numbering system, Tram Kak district was referred to as District 105, in Sector 13, of the Southwest Zone.<sup>2709</sup> The Chamber has examined the hierarchical structure of which Tram Kak district formed part.

10.1.5.1. *Southwest Zone*10.1.5.1.1. *Leadership*

904. The Southwest Zone included the following Sectors: 13 (Takeo), 25 (Kandal), Sector 33 (Kampong Speu) and Sector 35 (Kampot).<sup>2710</sup> CHHIT Choeun *alias* UNG Choeun *alias* Ta Mok was the Southwest Zone Secretary and a long-time member of the CPK's Standing Committee.<sup>2711</sup> Ta Mok came from Tram Kak district, specifically Prakheab village in what became Trapeang Thum South commune.<sup>2712</sup> He had been ordained as a monk at Trapeang Thum Pagoda.<sup>2713</sup> He left the monkhood in the 1940s

<sup>2709</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 16-17; T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 5 (referring to the District 105 Committee or the District 105); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 19-20, 89; T. 18 March 2015 (RIEL Son), E1/279.1, pp. 54, 90-91 (referring to the District 105 Hospital); T. 24 April 2015 (PECH Chim), E1/292.1, pp. 7, 13, 68, 79 (consistently referring to District 105). The Tram Kak District Records contain references to "District 105". See e.g., Tram Kak District Record, E3/4120, 4 January 1977, ERN (En) 00322175 (report to the "Party's Organisation of the District 105").

<sup>2710</sup> Four Year Plan 1977-1980, E3/8, June-July 1976, p. 64, ERN (En) 00104030 (Table 13 listing the sectors in the Southwest Zone); Book by Ea M.-T.: *The Chain of Terror: The Khmer Rouge Southwest Zone Security System*, E3/2121, pp. 33-34, ERN (En) 00182191-00182192.

<sup>2711</sup> T. 10 January 2012 (Accused NUON Chea), E1/24.1, p. 24 (Ta Mok was appointed to the CPK's Standing Committee in 1963); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751; T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 72-74; T. 20 May 2013 (IENG Phan), E1/193.1, pp. 27, 47, 63-65, 86-87 (describing a meeting in Takeo in late 1977 led by Ta Mok); T. 23 April 2015 (PECH Chim), E1/291.1, pp. 86-87. As noted below, CHOU Chet *alias* Sy also had a senior role at the pinnacle of the Southwest Zone. See e.g., CPK Report, E3/1108, 1 October 1974, p. 1, ERN (En) 00583819 (describing the Party's anniversary meeting attended by CHOU Chet, described as "Chief of Southwest Zone", and Ta Mok, described as "Commander of Southwest Zone"). For Ta Mok's names of CHHIT Chhoeun and UNG Chhoeun, see T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 14; Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, p. 57, ERN (En) 00406701; Case 001 Transcript (KAING Guek Eav), E3/5811, 27 November 2009, p. 34, ERN (En) 00407677.

<sup>2712</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 5; RIEL Son DC-Cam Interview, E3/5861, 21 October 2001, pp. 14-15, ERN (En) 00778952-00778953 (explaining that he lived in a nearby village and knew Ta Mok's wife, Khoeum); T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 38 (Ta Mok's home village in Trapeang Thum commune); EK Hoeun DC-Cam Interview, E3/9169, 16 August 2013, p. 62, ERN (En) 01050239 (Tram Kak was Ta Mok's main base); T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 4 (Ta Mok born in what became Trapeang Tboung South); PECH Chim Interview Record, E3/9461, 26 June 2013, p. 4, ERN (En) 00947189 (Answer 10, Ta Mok born in Trapeang Thum South commune).

<sup>2713</sup> T. 20 June 2012 (KHIEV Neou), E1/89.1, pp. 101-103 (Ta Mok continued to visit the pagoda after he left the monkhood in the 1940s in order to have a family); T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 84 (stating that he was born in the same village and was related to Ta Mok); PECH Chim Interview Record, E3/400, 25 August 2009, p. 3, ERN (En) 00379168 (Ta Mok a former monk and a distant relative of PECH Chim); T. 2 February 2015 (KEO Chandara), E1/255.1, p. 30 (Ta Mok was a monk who had

in order to have a family.<sup>2714</sup> He took part to Khmer Issarak (Freedom) resistance movement fighting against French colonial authorities and has been involved in CPK's activities since the earliest stage of its creation.<sup>2715</sup> He was appointed to the Central Committee during the Second Party Congress, held in February 1963.<sup>2716</sup> *Ta Mok* inducted KHIEU Samphan into the CPK in 1969.<sup>2717</sup> KHIEU Samphan felt a sense of pride that a man who he considered to be a peasant became one of the important representatives of the national resistance movement.<sup>2718</sup> *Ta Mok* occasionally used the code number “*Ta 15*” – for example when signing letters to officials in Tram Kak district.<sup>2719</sup> It is unclear whether the code number used to refer to Tram Kak district – 105 – bore any relation to *Ta Mok*'s code number of 15. NEANG Ouch *alias Ta San*, who married to *Ta Mok*'s youngest sister, understood *Ta Mok* to be the third-ranking person in the CPK.<sup>2720</sup> PECH Chim had the same understanding.<sup>2721</sup> According to KAING Guek Eav *alias DUCH*, however, *Ta Mok* was called Brother Number Four.<sup>2722</sup> Although these differing perceptions result from *Ta Mok*'s rise through the CPK over

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studied Buddhism in the Phali (phonetic) high school at Moha Montrey Pagoda. He was known as *Achar Ung Choeun*. His family name was Ung).

<sup>2714</sup> T. 20 June 2012 (KHIEU Neou), E1/89.1, pp. 101-103; T. 21 June 2012 (KHIEU Neou), E1/90.1, p. 84 (describing being born in the same village, being very closely related).

<sup>2715</sup> Section 3: Historical Background, para. 203.

<sup>2716</sup> Section 3: Historical Background, para. 206.

<sup>2717</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 91 (“In -- up to 1969 and at the Phnom Aoral Mountain, I joined the Party with Hu Nim, Pok Deuskomar, where *Ta Mok*, on behalf of the CPK, introduced us”); T. 8 February 2012 (Accused KHIEU Samphan), E1/40.1, p. 22; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 19 (stating that he “had no choice but to join the [CPK]” after fleeing Phnom Penh); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 36-37, ERN (En) 00103741 (describing moving to Mount Oral in 1969, where *Ta Mok* had installed his headquarters).

<sup>2718</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 31, ERN (En) 00103738.

<sup>2719</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 8-9 (*Ta Mok* married SANN Lorn's eldest sister, SAN Khoeum, and their mothers were also related); SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, pp. 9, 23, ERN (En) 01050342, 01050356 (Answers 52, 55, 183); T. 24 February 2015 (PHAN Chhen), E1/268.1, p. 92; PHAN Chhen Interview Record, E3/72, 2 March 2010, ERN (En) 00490544 (Answer 77, PHAN Chhen received letters from *Ta Mok* signed *Ta 15*).

<sup>2720</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 62 (*Ta Mok* was third in the party); T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 27-28; T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 67; NEANG Ouch Interview Record, E3/9608, 28 January 2014, p. 9, ERN (En) 00981154 (Answer 100, *Ta San* married *Ta Mok*'s youngest sister UNG Koeun in 1966).

<sup>2721</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 86-88 (based on PECH Chim's conversations with KE Pauk which, given the specificity and identity of the source, the Chamber considers to be reliable despite being hearsay).

<sup>2722</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 115.

time,<sup>2723</sup> the Chamber is satisfied that *Ta Mok* had a long-standing and prominent role in the CPK during the period over which the Chamber has temporal jurisdiction.

905. CHHOUK Rin testified that *Ta Mok*'s overall position of power in the Party was such that he was the only person who could interrupt POL Pot.<sup>2724</sup> NUON Chea gave evidence to the effect that *Ta Mok* was deputy chair of the CPK's Military Committee, which he described as the strongest group and included POL Pot (chairman), SON Sen (deputy), SAO Phim and KE Pauk.<sup>2725</sup> Witnesses recalled that *Ta Mok* visited the villages and cooperatives in Tram Kak district<sup>2726</sup> and that he had a reputation for being strict.<sup>2727</sup> NUT Nov, a member of the Leay Bour Commune Committee at the time, described how *Ta Mok* assigned him to build a huge cooperative hall which the Chinese delegation led by CHEN Yonggui visited in December 1977.<sup>2728</sup> The Chamber finds that this establishes *Ta Mok*'s ongoing involvement with events in Tram Kak district for much of the relevant period, although he also performed duties outside the Southwest Zone, which he left about one year before the arrival of the Vietnamese.<sup>2729</sup>

906. KANG Chap *alias* Sae was the deputy secretary of the Southwest Zone, and Secretary of Sector 35 (Kampot), until he left the Southwest Zone for the Central (old North) Zone in February 1977.<sup>2730</sup> In April 1976 he was appointed as chairman of the

<sup>2723</sup> Document on the 5th Pol Pot-Ieng Sary Congress, E3/816, 2 November 1978, p. 1, ERN (En) 00281339 (listing "Mok" as the third persons, with the role of deputy secretary in charge of rural and agricultural bases, and also placing Mok on the CPK's military committee and Economic Committee).

<sup>2724</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 94-95.

<sup>2725</sup> NUON Chea Written Record of Initial Appearance, E3/54, 19 September 2007, p. 4, ERN (En) 00148817.

<sup>2726</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 16 (recalling that *Ta Mok* asked people directly whether they had enough food).

<sup>2727</sup> T. 2 July 2015 (SAO Van), F1/1.1, p. 98 (*Ta Mok* said that if anyone did not follow instructions, they had to dig their own graves).

<sup>2728</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 70. *See* Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1445, 1496; Section 11.3: Kampong Chhnang Airfield Construction Site, fn. 6002.

<sup>2729</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 61.

<sup>2730</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 31; PECH Chim Interview Record, E3/400, 25 August 2009, p. 7, ERN (En) 00379172; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303 *corroborated by* IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474 (IEP Duch died and did not appear before the Chamber); DK Telegram, E3/239, 30 April 1977, ERN (En) 00069529 (noting that "Brother Se" had been assigned to "grasp the situation in Ampil district" after an incident when grenades had been thrown into the District Office there). *See also*, T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 44, 48, 84; T. 19 January 2016 (PRAK Yut), E1/378.1, p. 56 (describing receiving instructions from KANG Chap to go to Kampong Cham); AO An DC-Cam Interview, E3/8987, p. 20, ERN (En) 01128504 (describing KANG Chap as Secretary of Sector 35, Kampot); KHIEV Neou Neab Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answer 6, describing "Chab" as *Ta Mok*'s deputy until there were some changes in the Zone Committee).

Judicial Committee of the People’s Representative Assembly.<sup>2731</sup> He also represented the Southwest Zone in border negotiations with Vietnam in May 1976.<sup>2732</sup> PECH Chim, then Tram Kak District Secretary, described KANG Chap *alias* Sae’s departure from the Southwest Zone. PECH Chim was working at a dam in Khporp Trabaek commune when *Ta* Mok rode by on a motorcycle and told him to go to Takeo to meet with KANG Chap *alias* Sae, from where they went “to the north”.<sup>2733</sup> After KANG Chap *alias* Sae left the Southwest Zone, SAM Bit – who had commanded Southwest Zone military Brigade 2 – became the Southwest Zone’s Deputy Secretary and would sometimes take overall charge when *Ta* Mok travelled to other zones.<sup>2734</sup> SAM Bit was also an assistant to the Central Committee.<sup>2735</sup> Moreover, Duch later told OCIJ investigators that SAM Bit was *Ta* Mok’s nephew, but the Chamber is unable to ascertain whether this was the case.<sup>2736</sup>

907. CHOU Chet *alias* Sy was a member of the Southwest Zone Committee in the period immediately after 17 April 1975.<sup>2737</sup> However, the Southwest Zone was split up and CHOU Chet *alias* Sy became the CPK’s Secretary of the West Zone, while *Ta* Mok

<sup>2731</sup> People’s Representative Assembly, E3/165, 11-13 April 1976, pp. 22, 29, ERN (En) 00184069, 00184076.

<sup>2732</sup> Transcript of Recorded Interview with KHIEU Samphan, E3/4036, undated, ERN (En) 00790622 (describing representatives from the three zones adjacent to the Cambodia-Vietnam border); Standing Committee Minutes, E3/221, 14 May 1976, pp. 1-13, ERN (En) 00182693-00182705 (Comrade Ya reporting on meetings with Vietnamese, with various contributions made by Comrade Se).

<sup>2733</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 8-9. *See also*, Section 12.2.8.5.1: S-21 Security Centre: CHANN Sam *alias* KANG Chap *alias* Se (or Sae).

<sup>2734</sup> T. 21 June 2012 (KHIEU Neou), E1/90.1, pp. 40-42 (describing meetings chaired by Bit, “*Ta* Mok’s deputy”); T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 20 (describing SAM Bit as in the zone, and the superior of *Ta* Rorn, then Secretary of Sector 13); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 55, ERN (En) 01057729 (Answer 322); T. 23 April 2015 (PECH Chim), E1/291.1, pp. 86-87 (*Ta* Mok was the Secretary of the Southwest Zone); T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 93-94 (describing *Ta* Mok travelling to other Zones); T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 40-42 (describing *Ta* Mok travelling to Battambang in 1977), 63-64 (*Ta* San received instructions from SAM Bit via *Ta* Rorn); T. 31 October 2016 (IENG Phan), E1/492.1, pp. 7-9, 36-40; T. 1 November 2016 (IENG Phan), E1/493.1, pp. 41-42 (describing instructions issued by *Ta* Mok and SAM Bit in 1977); CHHOUK Rin Interview Record, E3/361, 21 May 2008, pp. 4-5, ERN (En) 00766450-007665451; AO An DC-Cam Interview, E3/8987, p. 21 (describing the Zone Committee as composed of *Ta* Mok, KANG Chap, *Ta* Bit and also including Soam and stating that KANG Chap was *Ta* Mok’s deputy). Duch told OCIJ investigators that SAM Bit was *Ta* Mok’s nephew. *See* KAING Guek Eav Interview Record, E3/10608, 2 February 2016, pp. 3-4, ERN (En) 01213420-01213421 (Answer 9).

<sup>2735</sup> KAING Guek Eav Interview Record, E3/5724, 27 April 2011, p. 3, ERN (En) 00680797; KAING Guek Eav Interview Record, E3/61, 2 June 2008, p. 7, ERN (En) 00195577; KAING Guek Eav Interview Record, E3/10607, 1 February 2016, p. 7, ERN (En) 001213413 (Answer 23).

<sup>2736</sup> KAING Guek Eav Interview Record, E3/10608, 2 February 2016, pp. 3-4, ERN (En) 001213420-01213421 (Answer 9).

<sup>2737</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 58; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303 (*Ta* Mok was Secretary of the Southwest Zone; CHOU Chet *alias* Sy was a member of the Zone Committee); T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 56.

retained oversight of the remaining sectors in the Southwest Zone: Sectors 13, 25, 33 and 35.<sup>2738</sup> After CHOU Chet *alias* Sy was purged in 1978, *Ta* Mok was appointed Secretary of the West Zone on top of his existing duties.<sup>2739</sup> PECH Chim told OCII investigators that the various sector secretaries were all members of the Southwest Zone Committee.<sup>2740</sup>

#### 10.1.5.1.2. *Locations*

908. The Southwest Zone's office was in the centre of Takeo town, which was to the east of Tram Kak district. The border with Tram Kak district was marked by the railway line running through the area.<sup>2741</sup> One of *Ta* Mok's sons-in-law, married to *Ta* Mok's daughter PRIEK Heanh, was identified as "Boran" and headed the Southwest Zone's office and oversaw logistics and transportation.<sup>2742</sup> *Ta* Mok had a house close to the

<sup>2738</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 58; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303 (there was a power struggle between the two "veterans"; *Ta* Mok was Secretary of the Southwest Zone; CHOU Chet *alias* Sy was a member of the Zone Committee); T. 23 April 2015 (PECH Chim), E1/291.1, p. 80; T. 21 June 2012 (KHIEV Neab), E1/90.1, pp. 50-51 (stating that he knew CHOU Chet *alias* Sy and "chit-chatted" with him in Phnom Penh and confirming CHOU Chet *alias* Sy's transfer to the West Zone); T. 19 June 2013 (NOU Mao), E1/209.1, pp. 18-19 (CHOU Chet in charge of political affairs for the Southwest Zone); T. 20 June 2013 (NOU Mao), E1/210.1, pp. 6-7, 22, 63 (*Ta* Mok and CHOU Chet were powerful in their own domains, *Ta* Mok powerful in the military and CHOU Chet more powerful over civilians); KHIEV Neou Interview Record, E3/9601, 23 January 2014, p. 5, ERN (En) 00980408 (Answer 21, West Zone Office was also located near KHIEV Neou's Southwest Zone office in Phnom Penh).

<sup>2739</sup> Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, p. 55, ERN (En) 00406699. For the Chamber's findings on the fate of CHOU Chet *alias* Sy, see Section 12.2: S-21 Security Centre, paras 2179, 2314.

<sup>2740</sup> PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303.

<sup>2741</sup> KHIEV Neou Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answer 9, Southwest Zone Office in Takeo town, near the theatre); KHIEV Neou Interview Record, E3/9601, 23 January 2014, p. 18, ERN (En) 00980421 (Answer 125, Southwest Zone Office located in middle of Takeo town); T. 3 March 2015 (VAN Soeun), E1/270.1, p. 10; *Worker Notes Repair Work on Takeo-Kampot Railroad* (in FBIS collection), E3/1366, 16 July 1975, ERN (En) 00167311 (announcing the re-opening of the Takeo-Kampot railroad).

<sup>2742</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 44; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 47 (Heang married Boran who was chief of the logistics and transportation unit); KHIEV Neou Interview Record, E3/9601, 23 January 2014, pp. 3, ERN (En) 00980406 (Answers 5-6, describing "Bauran" as KHIEV Neou's superior in the Southwest Zone and receiving orders from him on transport work), 8, ERN (En) 00980411 (Bauran was *Ta* Mok's "driver"), 9, ERN (En) 00980412 (Answer 47, Bauran held a "prominent role" responsible for the Southwest Zone Office, sharing responsibilities with Seng); EK Hoeun DC-Cam Interview, E3/9169, 16 August 2013, pp. 44-45, ERN (En) 01050221-01050222 (Boran married to PRIEK Heanh, *Ta* Mok's third daughter, and in charge of all sections including the transportation of ammunition and weapons; EK Hoeun also referred to Boran as Ran).

Southwest Zone's office.<sup>2743</sup> SAUT Toeung, who was NUON Chea's bodyguard and messenger, testified that NUON Chea travelled to meet with *Ta Mok* in Takeo.<sup>2744</sup>

909. The Southwest Zone also had an office in Phnom Penh, which included a commercial transportation unit to organise the transportation of materials from the State warehouses in Phnom Penh to the Southwest Zone.<sup>2745</sup> *Ta Mok* ordered KHIEV Neou to move to Phnom Penh to manage the commercial transportation unit at the Southwest Zone's Commerce Office near Central Market.<sup>2746</sup> Each zone had an economic section, the size of which was classified according to the zone's population. Permission letters had to be issued to transport materials to respective locations and both the State and the Zone had to agree before any such letter was issued.<sup>2747</sup> Persons who came from the Southwest Zone to Phnom Penh for meetings often stopped by this office, including when they came to meet POL Pot.<sup>2748</sup>

#### 10.1.5.2. Sector 13

##### 10.1.5.2.1. *Leadership*

910. Sector 13 was one of the sectors in the Southwest Zone and included five districts: Tram Kak (105); Angkor Chey (106); Treang; (107); Kaoh Andaet (108); and Kirivong (109).<sup>2749</sup> *Ta Saom alias* Than was the Secretary of Sector 13 for more than half of the

<sup>2743</sup> KHIEV Neou Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answer 9, Southwest Zone's Office was in Takeo town, near to the theatre and *Ta Mok*'s house was next to the Zone's Office); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 13, ERN (En) 01057687 (Answers 65-66, *Ta Mok*'s house in Takeo town).

<sup>2744</sup> T. 18 April 2012 (SAUT Toeun), E1/63.1, pp. 69 (NUON Chea frequently met *Ta Mok*), 71-72 (he travelled with NUON Chea once to Takeo where NUON Chea met with *Ta Mok*, and *Ta Mok* frequently came to Phnom Penh).

<sup>2745</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 33.

<sup>2746</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, pp. 29, 32 (late 1976), 32-33 (manager); KHIEV Neou Neab Interview Record, E3/507, 23 July 2009, p. 4, ERN (En) 00358142 (office located east of Central market, near the Capitol cinema); KHIEV Neou Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answer 9, describing the "Transportation Unit" or "Southwest Zone Commerce Office" as being a concrete house 100 metres east of Central Market).

<sup>2747</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 75.

<sup>2748</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 50 (visits by *Ta Saom*, the chief of Takeo province); KHIEV Neou Interview Record, E3/507, 23 July 2009, p. 4, ERN (En) 00358142 (visits by Saom, Sector 13 Committee); KHIEV Neou Interview Record, E3/9595, 23 November 2013, p. 5, ERN (En) 00979095 (Answer 14, anyone visiting Phnom Penh from the Southwest Zone to meet someone in the upper-echelon had to stop by KHIEV Neou's office, who then had younger messengers accompany the person to K-7); KHIEV Neou Interview Record, E3/9601, 23 January 2014, pp. 12, ERN (En) 00980415 (Answers 75-78, stating that everybody knew Saom, then confirming that he became sick and was replaced by Prak), 16, ERN (En) 00980419 (K-7 located by the riverside), 17, ERN (En) 00980420 (Answer 115, K-7 was a transit place to go to the Centre).

<sup>2749</sup> *Radio Hails Heroism of Takeo People* (in FBIS collection), E3/1359, 14 January 1978, ERN (En) 00169594-00169596 (describing Takeo sector as comprising Tram Kak, Angkor Chey, Treang,

relevant period, but he left this position due to an apparent respiratory illness.<sup>2750</sup> *Ta Saom* was known in the communes and villages of Tram Kak district to be strict and aggressive; PECH Chim further described him as an “effective” and “serious” person who taught sector-level study sessions.<sup>2751</sup> After *Ta Saom* was incapacitated, a succession of different persons took on the role of secretary of Sector 13.

911. SEK Sat *alias Ta Prak* was Sector Secretary for some months from mid-1977. He replaced *Ta Saom*, arriving from neighbouring Sector 25.<sup>2752</sup> NEANG Ouch *alias Ta San* recalled that *Ta Prak* was Sector Secretary for two or three months in 1977.<sup>2753</sup> NUT Nov gave varying estimates for Prak’s tenure of three months or five to six months.<sup>2754</sup> There are two contemporaneous, typed reports dated 30 July 1977, both with handwritten annotations by “Prak” of “Tor. 13” [Sector 13], which confirm that *Ta Prak* was the Secretary of Sector 13 at that time.<sup>2755</sup> A later report from Kit, District 105, contains annotations signed by “Prak”, which confirms that he remained Sector

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Kirivong, and Kaoh Andaet districts); *Takeo Peasants Determined to Defend, Build Country* (in FBIS collection), E3/1361, 11 April 1978, ERN (En) 00168811 (stating that Takeo sector is made of five districts: Kirivong, Kaoh Andaet, Treang, Tram Kak and Angkor Chey, the first three being adjacent to Vietnam); Book by Ea M.-T. M: *The Chain of Terror: The Khmer Rouge Southwest Zone Security System*, E3/2121, p. 35, ERN (En) 00182193. *See also*, DK Geography Textbook, E3/1398, 1977, p. 25, ERN (En) 00814524 (describing seven districts in Takeo province, including Treang, Prey Kabbas, Tram Kak, Samraong, Bati, Kaoh Andaet, and Kirivong); IM Chaem DC-Cam Interview, E3/9035, pp. 25-26, ERN (En) 00951849-00951850 (describing five districts: Kaoh Andaet, Tram Kak, Treang, Kirivong and Angkor Chey).

<sup>2750</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 52; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 76-79; PECH Chim Interview Record, E3/400, 25 August 2009, p. 5, ERN (En) 00379170; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 2, ERN (En) 00379302; PECH Chim Interview Record, E3/4626, 27 August 2009, p. 3, ERN (En) 00380133; PECH Chim Interview Record, E3/9461, 26 June 2013, p. 3, ERN (En) 00947188 (Answer 7, all to the effect that *Ta Saom* was still Sector Secretary when PECH Chim left Tram Kak district for the Central Zone); PECH Chim Interview Record, E3/9587, 19 June 2014, p. 20, ERN (En) 01000682 (Answer 126, *Ta Saom* admitted to hospital in Phnom Penh); T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 58, 65 (specifying that he was hospitalised in the same hospital in July or August 1977 and that *Ta Saom* had tuberculosis).

<sup>2751</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 77-78.

<sup>2752</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 10; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 4, ERN (En) 00379304.

<sup>2753</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 77; T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 25 (*Ta San* saw *Ta Prak* for a month or two).

<sup>2754</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 71 (three months); NUT Nov Interview Record, E3/9571, 17 March 2015, p. 3, ERN (En) 01087487 (Answer 14, five to six months. This statement post-dated the witness’s testimony before the Chamber).

<sup>2755</sup> Tram Kak District Record, E3/2012, 30 July 1977, p. 1, ERN (En) 00276593 (relating to prisoner UNG Ly, with Prak’s annotation dated 7 August 1977); Tram Kak District Record, E3/2012, 30 July 1977, p. 2, ERN (En) 00276594 (relating to prisoner CHAN Soeun, with Prak’s annotation dated 7 August 1977).

Secretary as at 6 October 1977.<sup>2756</sup> In 1978, while he was Secretary of Sector 25 in the Southwest Zone, SEK Sat *alias* Prak was purged and sent to S-21.<sup>2757</sup>

912. By the time the important Chinese delegation headed by CHEN Yonggui visited Leay Bour commune in Tram Kak district in December 1977, the Sector 13 Secretary was *Ta Rorn* which at times in the evidence before the Chamber was spelled “*Ta Ran*”.<sup>2758</sup> Several witnesses referred to this person and although the spellings in the English and French transcripts were inconsistent, the Khmer consistently identified “*រ៉ូន*”<sup>2759</sup>. The Chamber is satisfied that these references were to the same person, whom the Chamber will identify as *Ta Rorn*. NEANG Ouch *alias Ta San* testified that *Ta Rorn* remained Sector Secretary until December 1978 and described receiving direct instructions from him during meetings in Takeo town.<sup>2759</sup> This practice is confirmed by KHOEM Boeun, who testified that when she joined Tram Kak district from Cheang Tong commune, *Ta Rorn* ordered her to assist *Ta San* at Tram Kak district.<sup>2760</sup> She described *Ta Rorn* as being at the sector level and the person responsible for Tram Kak district.<sup>2761</sup>

913. At an undetermined point in time, *Ta Rorn* was injured in a car accident which affected the continuity of his leadership of Sector 13. NUT Nov recalled that *Ta Rorn* was injured in a car accident and this was announced during a meeting in Tram Kak district.<sup>2762</sup> NEANG Ouch also described *Ta Rorn*’s accident, although the precise details (including the location) differed from NUT Nov’s recollection.<sup>2763</sup> Although the

<sup>2756</sup> Tram Kak District Record, E3/2451, 6 October 1977, ERN (En) 00322172 (relating to female combatant Kap).

<sup>2757</sup> Section 12.2: S-21 Security Centre, para. 2327.

<sup>2758</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 20, 61. English and French transcripts of *Ta San*’s evidence appear to refer to “*Ta Ran*” being Sector Secretary. In Khmer, however, *Ta San* referred to “*រ៉ូន*” which, in Khmer, sounds closer to *Ta “Rorn”*.

<sup>2759</sup> T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 7.

<sup>2760</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 9; T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 65-66, 75-76; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 7, 12, 54, ERN (En) 01057681, 01057686, 01057728 (Answers 28, 59, 315).

<sup>2761</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 29.

<sup>2762</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 64-65, 71-72; T. 16 March 2015 (NUT Nov), E1/277.1, p. 35; NUT Nov Interview Record, E3/9571, 17 March 2015, pp. 2, 4, ERN (En) 01087487, 01087489 (Answers 1, 19, learned by word of mouth); NUT Nov Interview Record, E3/9600, 11 April 2013, ERN (En) 00911440 (Answers 5, 10, *Ta Rorn* had a car accident when struck by a train driving to Phnom Penh).

<sup>2763</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 77-78 (recalling *Ta Rorn* broke his leg in a car accident when returning from the Northwest); T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 20, 61; T. 12 March 2015 (NUT Nov), E1/276.1, pp. 71-72; T. 16 March 2015 (NUT Nov), E1/277.1, pp. 35-



Chamber is unable to ascertain the specifics of this incident, it is satisfied that *Ta Rorn*'s tenure as the secretary of Sector 13 was interrupted.

914. PREAB Kit was PECH Chim's younger brother and he rose from chief of Trapeang Thum South commune, to the Tram Kak district level, to become Secretary of Sector 13.<sup>2764</sup> Within the Tram Kak District Records is handwritten message to An at the "District Office of Education 105" from Kit "[f]or the Sector 13 Committee". This document bears a date of 15 December, but no year is indicated.<sup>2765</sup> Given the Chamber's finding that *Ta Rorn* was the Sector Secretary when the Chinese delegation visited Leay Bour in mid-December 1977, the Chamber finds that *Ta Kit* was the Sector 13 Secretary after *Ta Rorn*, and that he held this position in December 1978.

915. In addition to the aforementioned Sector Secretaries *Ta Saom*, *Ta Prak*, *Ta Rorn* and *Ta Kit*, the evidence reveals that other persons filled the position of Sector 13 Secretary at times, but the evidence on the particular timings involved often lacked precision. Numerous witnesses recalled *Ta Mok*'s brother-in-law YIM Tith *alias Ta Tith* being the Secretary of Sector 13 before he left the Southwest Zone for the Northwest Zone.<sup>2766</sup> In addition, MOENG Vet, a military messenger who delivered messages to *Ta Saom*, testified that *Ta Saom* fell sick before March 1977 and was succeeded by SAOM Chhoeun (*i.e.* a different Saom) as Sector Secretary, albeit for a

36; NUT Nov Interview Record, E3/9571, 17 March 2015, pp. 2, 4, ERN (En) 01087487-01087489 (Answers 1, 19, learned by word of mouth); NUT Nov Interview Record, E3/9600, 11 April 2013, ERN (En) 00911440 (Answer 5, *Ta Rorn* had a car accident when struck by a train driving to Phnom Penh).

<sup>2764</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 9, 11 (PREAB Kit replaced PECH Chim as Tram Kak District Secretary), 14 (explaining that he was in the Central Zone, but learned of Kit's appointment to Sector Secretary from persons travelling back and forth); T. 24 April 2015 (PECH Chim), E1/292.1, p. 66; PECH Chim Interview Record, E3/9461, 26 June 2013, p. 3, ERN (En) 00947188 (Answer 8); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 72-76 (suggesting that *Ta Kit* had left Sector 13 for Sector 25 by the end of 1977 because he met *Ta Kit* in Takhmau during giant shrimp season and he received three or four large baskets of giant shrimp – either EK Hoeun was confused as to the year, or *Ta Kit* left Tram Kak district but returned to head Sector 13).

<sup>2765</sup> Tram Kak District Record, E3/4124, ERN (En) 00789264 (requesting to send "me" another copy of Khan Khiev, stating that it is "very extremely urgent").

<sup>2766</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 17, 38 (recalling that *Ta Tith*, like SANN Lorn, was married to one of *Ta Mok*'s sisters and that *Ta Tith* travelled from district to district as sector secretary); T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 77 (*Ta Tith* married UNG Ken, *Ta Mok*'s younger sister); T. 16 March 2015 (NUT Nov), E1/277.1, p. 36; NUT Nov Interview Record, E3/9600, 11 April 2013, ERN (En) 00911440 (Answer 8); NUT Nov Interview Record, E3/9571, 17 March 2015, pp. 4-5, ERN (En) 01087488-01087489 (Answer 29, *Ta Tith* was part of Sector 13 for seven or eight months and became the Secretary for one or two months after *Ta Rorn* was injured and became disabled); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 70-72 (recalling that *Ta Tith* left for the Northwest Zone in March 1977 with *Yeay Chaem* among others); EK Hoeun Interview Record, E3/9594, 4 March 2014, p. 10, ERN (En) 00981818 (Answer 63, *Ta Tith* served as Secretary of Sector 13 in 1976); SANN Lorn Interview Record, E3/9487, 29 September 2014, p. 22, ERN (En) 01050355 (Answers 170-171, YIM Tith married *Ta Mok*'s younger sister Ken).

brief period of time.<sup>2767</sup> This level of SAOM Chhoeun's responsibility could not be determined by the Chamber. Towards the end of Democratic Kampuchea, he was purged and sent to S-21 (where he entered on 27 December 1978). S-21 materials pertaining to him record his biographical details as an "assistant" to Sector 13, or working in the Economic Section of Sector 13 or the Ministry of Agriculture.<sup>2768</sup> IEP Duch, the head of the youth in Tram Kak district with an oversight role at Kraing Ta Chan, told investigators that his direct superior was SAOM Chhoeun.<sup>2769</sup> He identified the sector level as having a Sector Youth Chairman, and that this was SAOM Chhoeun.<sup>2770</sup> The Chamber therefore finds that SAOM Chhoeun primarily headed the Sector 13 Youth, and this was perceived as a significant position.

916. The Deputy Secretary of Sector 13 was known as *Ta Phen* or *Ta Penh* and he would fill in for an absent or otherwise incapacitated Sector Secretary.<sup>2771</sup> MOENG Vet identified both Phen and Keav as deputies of Sector Secretary *Ta Saom*.<sup>2772</sup> NUT Nov confirmed that *Ta Phen* was a member of Sector 13 under *Ta Saom*.<sup>2773</sup> EK Hoeun suggested that *Ta Phen* replaced *Ta Saom* as Sector Secretary in approximately 1976 because *Ta Saom* could no longer work at the time.<sup>2774</sup> NEANG Ouch identified *Ta Phen* as Sector 13 Deputy Chairman, with MEAS Muth controlling the Sector Military

<sup>2767</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 25-27; MOUNG Vet DC-Cam Interview, E3/9647, 13 August 2013, ERN (En) 01562012 (Choeun put on sector committee in place of *Ta Saom* and released to go to Ministry of Industry under VORN Vet); MOENG Vet Interview Record, E3/10622, 1 September 2015, p. 11, ERN (En) 01170592 (*Ta Saom* fell sick *before* MOENG Vet left for Kratie). *See also*, MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 11, ERN (En) 00982731 (Answers 36-38); MOENG Vet Interview Record, E3/9835, 12 February 2014, p. 4, ERN (En) 00982713 (Answer 4, main duty was to deliver letters to soldiers, but sometimes delivered letters to *Ta Saom* at the sector).

<sup>2768</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 36-37; Prisoner Biography – SAOM Chhoeun, E3/10544, undated, ERN (En) 01462370 (arrest date 27 December 1978).

<sup>2769</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474.

<sup>2770</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474.

<sup>2771</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 59; NEANG Ouch Interview Record, E3/9608, 28 January 2014, p. 7, ERN (En) 00981141 (Answer 25); EK Hoeun Interview Record, E3/9594, 4 March 2014, pp. 7-8, ERN (En) 00981815-00981816; EK Hoeun Interview Record, E3/9464, 13 October 2014, p. 5, ERN (En) 01053571. *See also*, AO An DC-Cam Interview, E3/8987, 1 August 2011, p. 18, ERN (En) 001118161 (describing Phen as being from Sre Khnong village, Kampot province).

<sup>2772</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 23-26; MOENG Vet Interview Record, E3/10622, 1 September 2015, pp. 5, 8, ERN (En) 01170586, 01170589 (Answers 36, 60-62). In another interview, MOENG Vet identified *Ta Tith* as the Deputy Secretary of Sector 13 because he sat on *Ta Saom*'s right side, whereas *Ta Phen* sat his left side. *See* MOENG Vet Interview Record, E3/9835, 12 February 2014, p. 5, ERN (En) 00982714 (Answer 12).

<sup>2773</sup> NUT Nov Interview Record, E3/9571, 17 March 2015, p. 3, ERN (En) 01087487 (Answers 6-7).

<sup>2774</sup> EK Hoeun Interview Record, E3/9594, 4 March 2014, p. 7, ERN (En) 00981141 (Answer 40); EK Hoeun DC-Cam Interview, E3/9169, p. 35, ERN (En) 01050212 (*Ta Phen* was *Saom*'s deputy, but when *Ta Saom* left, *Ta Keav* took over followed by *Ta Nhev* and *Ta Muth*, suggesting that *Ta Phen* was removed for moral misconduct).

for a period of time.<sup>2775</sup> PECH Chim likewise told OCIJ investigators that *Ta Phen* was the deputy and MEAS Muth was a member of the sector.<sup>2776</sup> In February 1977, *Ta Phen* left Sector 13 to become the Secretary of Sector 43 in the Central (old North) Zone.<sup>2777</sup> Lastly, KHOEM Boeun testified that SAM Bit was on the Sector 13 Committee before he was appointed to the zone level.<sup>2778</sup>

917. According to PECH Chim, district secretaries were not members of the Sector Committee except in special cases when the Sector Assembly announced such an assignment. He gave the example of the Kaoh Andaet District Secretary, Sieng, being appointed in this way.<sup>2779</sup> According to sector messenger MOENG Vet, however, PECH Chim was a member of the Sector 13 Committee while he was the Tram Kak District Secretary.<sup>2780</sup> MOENG Vet also recalled that Sieng, the Kaoh Andaet District Secretary was a member of the Sector 13 “Standing Committee” as was *Ta Tom*, the Kirivong District Secretary.<sup>2781</sup> There is further corroborative evidence that district secretaries were indeed members of the Sector Committee.<sup>2782</sup> The October-November 1977 *Revolutionary Flag* included an article discussing the orientations of building up cadres, noting district cadres’ “bridge” status in that they had “one foot in the sectors and another in the cooperatives, and they are thus an important bridge linked to the cooperatives”.<sup>2783</sup> The Chamber is satisfied that when holding this position, the successive secretaries of Tram Kak district were also members of the broader Sector 13 Committee, but that a Sector 13 “standing committee” also existed.

<sup>2775</sup> NEANG Ouch Interview Record, E3/9608, 28 January 2014, p. 7, ERN (En) 00981141 (Answer 25).

<sup>2776</sup> PECH Chim Interview Record, E3/4626, 27 August 2009, p. 3, ERN (En) 00380133.

<sup>2777</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 28. *See also*, AO An DC-Cam Interview, E3/8987, pp. 18, ERN (En) 01118161 (describing Phen as from Sre Knong in Kampot, who became secretary of Sector 43); MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 8, ERN (En) 00982705 (Answer 24, describing Phen as a member of the Standing Committee for Sector 13 since 1973, and having his living quarters and office in Angkor Chey district until he moved to Sector 43). *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1463.

<sup>2778</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 4, 75 (although stating she did not know Sam Bit very well); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 12, ERN (En) 01057686 (Answer 59).

<sup>2779</sup> PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303.

<sup>2780</sup> MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 7, ERN (En) 00982704 (Answer 21).

<sup>2781</sup> MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 7, ERN (En) 00982704 (Answer 21); MOENG Vet Interview Record, E3/9835, 12 February 2014, p. 3, ERN (En) 00982712 (Answer 1, identifying *Ta Tom* as *Yeay Yut*’s cousin and the cousin of his mother NHIM Roeun).

<sup>2782</sup> IM Chaem DC-Cam Interview, E3/9035, pp. 24-25, ERN (En) 00951850-00951851 (describing being secretary of Kaoh Andaet district and a “member” of Sector 13).

<sup>2783</sup> *Revolutionary Flag*, E3/170, October-November 1977, ERN (En) 00182559.

10.1.5.2.2. *Locations*

918. The Sector 13 office was in Takeo town, to the east of Tram Kak district.<sup>2784</sup> NUT Nov also described sector-level general assemblies taking place in Takeo town.<sup>2785</sup> In addition, Sector 13 maintained a number of other offices or locations in various locations at different times. There was a Party school for the sector in Treang district, 3km south of Takeo town.<sup>2786</sup> Gatherings sometimes took place at Phnom Trel (near Tany).<sup>2787</sup> PECH Chim described at least one Sector Assembly held in Trapeang Thum South commune in Tram Kak district led by *Ta Saom* with *Ta Mok* in attendance.<sup>2788</sup> MOENG Vet's evidence establishes that Sector 13 had a messenger unit called Office 160 located at Angk Kriv Pagoda in Angkor Chey district, and this was also the location where the head of the Sector Youth, Chhoeun, worked and Sector 13 Secretary *Ta Saom* held meetings with district secretaries.<sup>2789</sup> The Chamber is also satisfied that meetings were held at Kantuot, which is now in Kandal Stueng district.<sup>2790</sup>

10.1.5.3. *Tram Kak district*10.1.5.3.1. *Leadership*

919. Prior to assessing the structure of the CPK leadership in Tram Kak district, the Chamber addresses on a preliminary basis some evidence it heard about the operation of FUNK in Tram Kak district, including after 17 April 1975. The evidence

<sup>2784</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 101-102; LONG Vun Interview Record, E3/9593, 26 November 2013, p. 5, ERN (En) 00978769 (Answer 12, Sector Office at the provincial hotel in Takeo town); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 13, ERN (En) 01057687 (Answers 65-66, KHEOM Boeun visited the Sector 13 Office often – it was in Takeo town near a lake); EK Hoeun Interview Record, E3/9594, 4 March 2014, p. 12, ERN (En) 00981820 (Answer 85, Sector Office in Takeo town). But see KHIEV Neou Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answer 10, describing the Sector 13 Office in a different location – west of National Road 3, north of Angk Ta Saom market near the pagoda).

<sup>2785</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 71; NUT Nov Interview Record, E3/9600, 11 April 2013, ERN (En) 00911440 (Answer 2).

<sup>2786</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 34 (school for the sector was in Phnum Klaeng); T. 8 May 2015 (EK Hoeun), E1/299.1, p. 71 (the building at Phnum Khlaeng collapsed soon after the liberation in 1975).

<sup>2787</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 7, ERN (En) 00223478 (the Party's 23<sup>rd</sup> Anniversary gathering held at Phnom Trel near Tany); MOENG Vet DC-Cam Interview, E3/9647, 13 August 2013, ERN (En) 01562017 (assemblies for the sector and district held at Phnum Trel). See below, para. 967 (SAO Van's description of a meeting at Phnom Trel).

<sup>2788</sup> PECH Chim Interview Record, E3/4626, 27 August 2009, p. 7, ERN (En) 00380137 (*Ta Saom* and *Ta Mok* discussed the reassignment of PHAN Chen from Kraing *Ta Chan*).

<sup>2789</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 19-23; MOENG Vet Interview Record, E3/9513, 11 February 2014, p. 6, ERN (En) 00982703 (Answers 16-18).

<sup>2790</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 86-90 (describing attending a study session led by *Ta Mok* when he emphasised agricultural production).

demonstrates that, like in the rest of Cambodia under the control of the Khmer Rouge, the Front in Tram Kak merely acted as a façade for the CPK and it played no significant role after 17 April 1975.<sup>2791</sup> However some senior cadres of the Front were then amalgamated into the CPK leadership and exercised important roles. Thus NEANG Ouch *alias Ta San*<sup>2792</sup> had a prominent role in the Front in Tram Kak district. He clarified that the mission of the Front was to struggle against the LON Nol regime to bring NORODOM Sihanouk back to Cambodia.<sup>2793</sup> PECH Chim described the Front as simply the “public face” of the revolutionary movement in Tram Kak district, and he was also deputy of the District Front from October 1970.<sup>2794</sup> PECH Chim<sup>2795</sup> described an announcement by *Ta Saom*, the Sector Secretary, that the Front “belonged” to the CPK and there was no separation between these two organisations<sup>2796</sup> SAO Van’s<sup>2797</sup> evidence was that he chaired the Front in Cheang Tong commune and he described the Front as acting under the leadership of the CPK.<sup>2798</sup> In light of this evidence, the Chamber focuses its analysis on the leadership of the CPK in Tram Kak district. Although there may have been intricacies to the relationship between the CPK and FUNK, the evidence is clear that these were immaterial to the overall leadership structures in Tram Kak district during the period after 17 April 1975.

920. As noted above, Tram Kak district was code-numbered District 105.<sup>2799</sup> PREAK Khom *alias Yeay* Khom was *Ta Mok*’s daughter and she was married to MEAS Muth.<sup>2800</sup> She remained Tram Kak District Secretary for approximately one year after 17 April 1975.<sup>2801</sup> PECH Chim described a general reaction among people to *Yeay*

<sup>2791</sup> Section 3: Historical Background, paras 222-223.

<sup>2792</sup> Concerning the role of NEANG Ouch *alias Ta San* in the CPK’s Leadership in Tram Kak district, *see below*, para. 925.

<sup>2793</sup> T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 14.

<sup>2794</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 6-7, 80; T. 21 April 2015 (PECH Chim), E1/289.1, pp. 67-68.

<sup>2795</sup> Concerning the role of PECH Chim in CPK Leadership in Tram Kak district, *see below*, para. 922.

<sup>2796</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 30-32, 41.

<sup>2797</sup> Concerning the role of SAO Van in CPK Leadership in Tram Kak district, *see above*, para. 819.

<sup>2798</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 53-54.

<sup>2799</sup> *See e.g.*, Tram Kak District Record, E3/2439, 4 May 1977, ERN (En) 00322143 (report from Popel commune to “of District 105”); Tram Kak District Record, E3/5855, 21 July 1977, p. 1, ERN (En) 00363655 (report from Cheang Tong commune to “Party of District 105”); Tram Kak District Record, E3/2441, 11 January 1978, p. 20, ERN (En) 00369482 (report from Kus commune referring to decision of *Angkar* of District 105).

<sup>2800</sup> On some of MEAS Muth’s roles, *see above*, para. 916. *See also*, Section 5: Administrative Structures, paras 386-387.

<sup>2801</sup> T. 21 April 2015 (PECH Chim), E1/289.1, pp. 68-70; PECH Chim Interview Record, E3/4626, 27 August 2009, pp. 5-6, ERN (En) 00380135-00380136 (specifying Khom remained District Secretary until early 1976, when she fell sick and *Ta Keav* took over for about two to three months); T. 7 May

Khom that she was perceived to be a hardliner and radical. As with Sector Secretary *Ta Saom*, the general reaction of people was to say they were “inflammable red”.<sup>2802</sup> Some evidence indicates that the relationship between *Ta Mok* and his daughter *PREAK Khom* was fractious. According to *EK Hoeun*, *Ta Mok* would yell at her, find her mistakes, and was not aware of most of her actions.<sup>2803</sup> The Chamber considers this evidence to be reliable.

921. *Ta Keav* was *Yeay Khom*’s deputy and succeeded her when she left *Tram Kak* district, with *PECH Chim* becoming the Deputy Secretary. *Ta Keav* was *Tram Kak* District Secretary for a relatively short period of time – a matter of a few months at most – and left this position in May or June 1976.<sup>2804</sup> A number of witnesses testified that *Ta Keav* was arrested, but the basis for their knowledge of this was insufficiently clear to the Chamber to establish such a finding.<sup>2805</sup> In any event, it is clear that when *Ta Keav* left *Tram Kak* district, *PECH Chim* became the District Secretary, with *Ta Chay* becoming his deputy.<sup>2806</sup>

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2015 (*EK Hoeun*), E1/298.1, p. 85; T. 8 May 2015 (*EK Hoeun*), E1/299.1, p. 53 (*Yeay Khom* left *Tram Kak* district in March 1976 to *Koh Kong*); T. 1 February 2016 (*SAO Van*), E1/385.1, p. 51; T. 2 July 2015 (*SAO Van*), F1/1.1, pp. 23, 51 (When *SAO Van* was transferred from *Cheang Tong* commune to *Kampong Svay* commune in approximately 1976, *Yeay Khom* was part of the *Kien Svay* District Committee there); *PECH Chim* Interview Record, E3/9587, 19 June 2014, p. 14, ERN (En) 01000676 (Answers 78-80).

<sup>2802</sup> T. 24 April 2015 (*PECH Chim*), E1/292.1, p. 7.

<sup>2803</sup> T. 8 May 2015 (*EK Hoeun*), E1/299.1, p. 59.

<sup>2804</sup> T. 22 April 2015 (*PECH Chim*), E1/290.1, pp. 6-7; *PECH Chim* Interview Record, E3/400, 25 August 2009, p. 5, ERN (En) 00379170; *PECH Chim* Interview Record, E3/4626, 27 August 2009, p. 6, ERN (En) 00380136 (*Ta Keav* left to assist at a re-education centre on the border of *Kirivong* and *Treang* districts); T. 17 March 2015 (*RIEL Son*), E1/278.1, p. 66 (*Ta Keav* was Secretary of *Tram Kak* district, but *RIEL Son* only saw him in this capacity for a few months); *MUT Mao* Interview Record, E3/9603, p. 12, ERN (En) 00983622 (Answer 39, having explained that she had lived with *Yeay Khom*, confirming that *Ta Keav* and *Ta Chim* were on the District Committee).

<sup>2805</sup> T. 16 March 2015 (*NUT Nov*), E1/277.1, p. 37 (*Ta Keav* removed as secretary of *Tram Kak* district, sent to work in a sector mobile unit then arrested); *NUT Nov* Interview Record, E3/9571, 17 March 2015, p. 5, ERN (En) 01087489 (Answer 35, clarifying that *Ta Keav* was transferred to the Sector 13 mobile unit working in District 108); T. 26 July 2016 (*MOENG Vet*), E1/448.1, p. 30; *KHOEM Boeun* Interview Record, E3/9480, 21 May 2014, p. 7, ERN (En) 01057681 (Answers 28-29, suggesting that *Ta Keav* was arrested); *MOENG Vet* Interview Record, E3/9513, 11 February 2014, p. 8, ERN (En) 00982705 (Answer 23, *Ta Keav* disappeared around the same time *Ta Saom* went to *Phnom Penh*); *EK Hoeun* Interview Record, E3/9464, 13 October 2014, pp. 5-6, ERN (En) 01053571-01053572 (Answers 10-11, *Ta Keav* pulled out of Sector 13 to work at a rock quarry site); *MOENG Vet* Interview Record, E3/10622, 1 September 2015, ERN (En) 01170590 (Answer 73, suggesting that *Ta Khev* did not speak Khmer clearly, which meant that he was Khmer Krom).

<sup>2806</sup> *PECH Chim* Interview Record, E3/4626, 27 August 2009, pp. 5-6, ERN (En) 00380135-00380136 (*Ta Keav* left to assist at a re-education centre on the border of *Kirivong* and *Treang* districts); T. 15 December 2016 (*LONG Vonn*), E1/514.1, pp. 87-88 (*Ta Chay* called him to go to *Battambang* with him).

922. PECH Chim was related to *Ta Mok*.<sup>2807</sup> He had worked as teacher in Takeo for 11 years from 1959-1970.<sup>2808</sup> He was a full-rights member of the CPK since 1 April 1971 and introduced to the Party by *Yeay Khom*.<sup>2809</sup> He remained District Secretary until February 1977, when he moved to oversee rubber plantations in the Central (old North) Zone.<sup>2810</sup>

923. PECH Chim's elder brother PREAB Kit replaced PECH Chim as District Secretary in approximately February 1977.<sup>2811</sup> PREAB Kit was previously the secretary of Trapeang Thum commune, before it split into Trapeang Thum North and Trapeang Thum South.<sup>2812</sup> Documentary evidence confirms PREAB Kit's ascent to District Secretary in early 1977. A handwritten note from Kit to "Comrade An", the chief of Kraing Ta Chan Security Centre, is dated 28 March 1977 and includes an instruction to

<sup>2807</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 28-29 (describing himself as a distant nephew of *Ta Mok*); PECH Chim Interview Record, E3/400, 25 August 2009, p. 3, ERN (En) 00379168 (describing *Ta Mok* as a distant relative of his).

<sup>2808</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 65-66.

<sup>2809</sup> T. 21 April 2015 (PECH Chim), E1/289.1, pp. 69-70; PECH Chim Interview Record, E3/9587, 19 June 2014, p. 14, ERN (En) 01000676 (Answers 78-80).

<sup>2810</sup> PECH Chim gave inconsistent accounts as to the date he left Tram Kak district. When reviewing the entirety of his evidence and considering it in context, however, the Chamber is convinced that he left Tram Kak district in February 1977. Firstly, the sequence of District Secretaries before and after him strongly suggests that he left in February 1977 rather than February 1976, as he claimed towards the end of his appearance before the Chamber. Secondly, he testified that he received the Honorary Red Flag awarded to Tram Kak district for the year 1976, which makes it implausible that he had left Tram Kak district in February 1976. Thirdly, he gave detailed evidence of the circumstances of his transfer to the Central Zone which demonstrate that this took place in early 1977 on the occasion of purges of local cadres decided by the Party Centre (*see* Section 12.1: Internal Factions, para. 2069). He described a meeting with POL Pot who said that there were traitors in the Central Zone and that KOY Thuon had betrayed the Party (*see* T. 22 April 2015 (PECH Chim), E1/290.1, pp. 79-80). The Chamber is satisfied that this could only have occurred in early 1977, following KOY Thuon's transfer to S-21. Fourthly, RIEL Son's evidence was that he was assigned to become the Deputy Chief of Trak Kak District Hospital in late 1976, by siblings *Ta Chim* and *Ta Kit* who were both on the District Committee at the time. *See* T. 17 March 2015 (RIEL Son), E1/278.1, pp. 18-19, 24, 33 (indicating he had meetings with PECH Chim). Fifth, within the Tram Kak District Records are further indications that PECH Chim was still District Secretary in late 1976. *See* Tram Kak District Record, E3/2048, 3 May 1977, ERN (En) 01454944 (a request for advice from Popel commune, referring to events in "late 1976" when the writer "proposed to District *Angkar* Comrade Chim" to place a particular person at Povoin). *See also*, AO An DC-Cam Interview, E3/8987a, pp. 46-47 (describing his transfer from Sector 35 to Kampong Cham in 1977); PRAK Yut Interview Record, E3/9496, 19 June 2013 (Answer 13, describing a meeting in Takeo called by *Ta Mok* in around January 1977 following which she was sent to Kampong Cham).

<sup>2811</sup> T. 21 April 2015 (PECH Chim), E1/289.1, p. 72; PECH Chim Interview Record, E3/400, 25 August 2009, p. 6, ERN (En) 00379173 (giving PREAB Kit's full name); T. 9 December 2016 (LONG Vonn), E1/510.1, p. 28; LONG Vun Interview Record, E3/9593, 26 November 2013, p. 4, ERN (En) 00978768 (Answer 5, Kit was chair of Tram Kak when LONG Vonn was deputy chair of Tram Kak's Commerce Committee); T. 16 March 2015 (NUT Nov), E1/277.1, pp. 4-5 (stating that Kit was the district Chairman and *Ta San* was a member when NUT Nov was appointed as chief of Srae Ronoung commune to replace *Ta Khun*. NUT Nov thought this happened "probably in March" 1978).

<sup>2812</sup> T. 21 April 2015 (PECH Chim), E1/289.1, p. 74.

“please interrogate this contemptible person”.<sup>2813</sup> A report to Tram Kak District *Angkar* dated 24 April 1977 bears an annotation from “Kit” requesting Comrade An to “find the network of Kie Kun”.<sup>2814</sup> The Chamber is satisfied that such instructions confirm PREAB Kit’s position as District Secretary by late March 1977 rather than a Commune Secretary. NEANG Ouch *alias Ta San* also confirmed that, when he arrived in Tram Kak district in mid-1977, Kit was District Secretary at the time.<sup>2815</sup>

924. Documentary evidence demonstrates that PREAB Kit remained District Secretary throughout much of 1977. A handwritten message from Kit to An on 31 July [1977] asked Kraing Ta Chan chief *Ta An* to contact Cheang Tong commune to arrest two individuals.<sup>2816</sup> A handwritten report from Sre Ronoung commune to the District on 1 September 1977 bears a note from Kit requesting An to examine the contents and directing that if they are true, arrest the people mentioned.<sup>2817</sup> A handwritten annotation on a note from San to An on 2 September 1977 is signed by Kit and dated 3 September 1977.<sup>2818</sup> A handwritten report to the Party from Leay Bour commune on 4 September 1977 bears a note to An from Kit dated 6 September 1977, requesting the interrogation of the person mentioned.<sup>2819</sup> A handwritten report from On at K-105 to *Angkar* on 16 September 1977, bears an annotation signed by Kit to “arrest Prak Nan” and “bring him over to our place”.<sup>2820</sup> A handwritten report from Kit “District 105” on 6 October 1977 reported to the Party on the movements of a woman named Kap.<sup>2821</sup> A handwritten report from Meng regarding a New Person, a youth called NGET Kun, bears an

<sup>2813</sup> Tram Kak District Record, E3/8417, 23 March 1977, ERN (En) 00363650-00363651. *See also*, Tram Kak District Record, E3/2048, 28 March 1977, ERN (En) 014544953.

<sup>2814</sup> Tram Kak District Record, E3/2048, 24 April 1977, ERN (En) 01454951.

<sup>2815</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 81-82, 89 (initially *Ta San* said that *Ta Chay* was District Secretary when he arrived, but he corrected this to *Ta Kit*).

<sup>2816</sup> Tram Kak District Record, E3/2924, 31 July [1977], ERN (En) 00583753. The Chamber is satisfied that this document is dated 31 July 1977 because a further note, from Boeun to An, is dated 1 August 1977 (*i.e.* the next day) relating to the same two individuals and their arrest. *See* Tram Kak District Record, E3/2012, [E3/4143], 1 August 1977, ERN (En) 00276597.

<sup>2817</sup> Tram Kak District Record, E3/4123, 1 September 1977, ERN (En) 00322177.

<sup>2818</sup> Tram Kak District Record, E3/4114, 2-3 September 1977, ERN (En) 00322156.

<sup>2819</sup> Tram Kak District Record, E3/2447, 4, 6 September 1977, ERN (En) 00355474.

<sup>2820</sup> Tram Kak District Record, E3/4116, 16 September 1977, ERN (En) 00322159-00322160. The documentary evidence establishes that K-105 was a site located to the east of Tram Kak District, to where people arrested from Leay Bour commune among other places could be sent in the first instance. *See* Tram Kak District Record, E3/5854, 18 April 1977, ERN (En) 00322134 (report from Yorn at K-105, describing the arrest of people from Leay Bour commune); Tram Kak District Record, E3/2048, 5 May 1977, ERN (En) 01454950 (report from Yorn detailing arrest by Leay Bour commune militia who sent Him Chhun); Tram Kak District Record, E3/5862, undated, ERN (En) 00773136 (report to Party by On, K-105, that Nhaeng Nhang commune had sent a youth “to our place”).

<sup>2821</sup> Tram Kak District Record, E3/2451, 6 October 1977, ERN (En) 00322172.



annotation by Kit dated 16 October [1977] instructing further interrogation to see if there is any connection with any network of the enemy.<sup>2822</sup> A handwritten note on 18 October 1977 sent from Angk Ta Saom commune to the district reported on events in the vicinity of “Canal 68”, including a further note from San to “Brother Kit” advising him that San had decided to have Angk Ta Saom commune send the two people mentioned in their report to the “District 105 Police”.<sup>2823</sup>

925. NEANG Ouch *alias Ta San* had arrived in Tram Kak district from Kaoh Andaet district, following an order from *Ta Mok*.<sup>2824</sup> He gave unclear evidence concerning the date and the purpose of his move. In an interview with OCIJ investigators, he stated that he left Kaoh Andet district in June 1977, and arrived in Leay Bour in late 1977.<sup>2825</sup> In court he asserted that he was probably transferred around October 1977 and that his role was to be an assistant to the District Committee, dealing with building dams, dykes and canals and working in the rice fields.<sup>2826</sup> He further indicated that shortly after his arrival, he sustained a knee injury while playing sport, which caused him to be hospitalised in Phnom Penh for some three months.<sup>2827</sup> Given the numerous references to “San” in the documentary evidence the Chamber views his statements as an attempt to minimise his involvement and is satisfied that, that NEANG Ouch *alias Ta San* had recovered from any injury and had assumed a prominent function in Tram Kak district

<sup>2822</sup> Tram Kak District Record, E3/4120, 11 October 1977, ERN (En) 00322174.

<sup>2823</sup> Tram Kak District Record, E3/2453, 18 October 1977, ERN (En) 00388577. The note refers to “Comrade Brother Chhaom” who NEANG Ouch *alias Ta San* and PECH Chim confirmed was the Secretary of Angk Ta Saom commune. *See* T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 88-89 (“Yes, I knew him. He was the Angk Ta Saom commune chief.”).

<sup>2824</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 17, 39-40 (clarifying this was not an arrest).

<sup>2825</sup> NEANG Ouch Interview Record, E3/9592, 29 January 2014, p. 5, ERN (En) 00980869 (Answer 17, stating he had left Kaoh Andaet district in June 1977); NEANG Ouch *alias Ta San* Interview Record, E3/9608, 28 January 2014, pp. 10, 15, ERN (En) 00981144, 00981149 (Answers 38, 70, stating he arrived in Leay Bour in late 1977, participated in farming dry season rice).

<sup>2826</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 54 (describing his role as an assistant to the District Committee dealing with rice fields, building dams and digging canals); 57 (stating that his transfer to Leay Bour was probably around October 1977); 71 (repeating that he was an assistant to the District Committee, dealing with building dams, dykes and canals and working in the rice fields); NEANG Ouch Interview Record, E3/9608, 28 January 2014, pp. 10, 15, ERN (En) 00981144, 00981149 (Answers 38, 70, stating that he arrived in Leay Bour in late 1977 and participated in farming dry season rice); NEANG Ouch Interview Record, E3/9592, 29 January 2014, E3/9592, 29 January 2014, p. 5, ERN (En) 00980869 (Answer 17, stating he had left Kaoh Andaet district in June 1977) *corroborated by* IM Chaem DC-Cam Interview, E3/9035, pp. 21-22, ERN (En) 00951845-00951846 (describing *Grandfather San*, *Ta Mok*’s younger brother-in-law, working in Kaoh Andaet with together with her in 1976).

<sup>2827</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 46-47; NEANG Ouch Interview Record, E3/9608, 28 January 2014, p. 11, ERN (En) 00981145 (Answer 47, referring to his injury as a result of football and the 17 April Hospital); NEANG Ouch Interview Record, E3/9592, 29 January 2014, p. 13, ERN (En) 00980877 (Answer 76, stating that he was hospitalised for three months).

by early September 1977.<sup>2828</sup> The messages discussed above reveal that he worked together with *Ta Kit* for some of this time.

926. Deputy Tram Kak District Secretary TY Chay *alias Ta Chay* replaced PREAB Kit as District Secretary until *Ta Chay* was later sent to the Northwest Zone.<sup>2829</sup> Documentary evidence indicates that Ty Chay was the District Secretary by early November 1977: for instance, a handwritten note to Angk Ta Saom commune bears the signature Chay with the date of 7 November 1977, recording that he “completely accepted” the commune’s report and asking the commune to “send to the Police”.<sup>2830</sup>

927. The position following TY Chay’s departure from Tram Kak district was contested by persons who appeared before the Chamber. Several witnesses in a position to know described NEANG Ouch *alias Ta San* becoming the District Secretary. RIEL Son, the deputy of Tram Kak District Hospital, was clear in his evidence that *Ta San* was the last secretary of Tram Kak district.<sup>2831</sup> Indeed, NUT Nov, who became a commune secretary, told OCIJ investigators that he reported to *Ta San* every month in this capacity.<sup>2832</sup> He described his appointment to become Secretary of Sre Ronoung commune in late 1977 or early 1978, and discussions with *Ta San* at that time.<sup>2833</sup> VAN Soeun, a messenger from Kraing Ta Chan, recalled meeting *Ta San* in Leay Bour commune in 1977 at which point *Ta San* was the district chief.<sup>2834</sup> IEP Duch likewise told OCIJ investigators that *Ta San* started to govern the District Committee in approximately 1977.<sup>2835</sup> KHOEM Boeun *alias Yeay Boeun* testified that she joined the Tram Kak District Committee in October 1978 from her previous position as the chief

<sup>2828</sup> Tram Kak District Record, E3/2453, 18 October 1977, ERN (En) 00388577.

<sup>2829</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 81; T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 74-75; T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 24; NEANG Ouch Interview Record, E3/9592, 29 January 2014, p. 10, ERN (En) 00980874 (Answers 57-58, describing monthly meetings with *Ta Chay*); RIEL Son DC-Cam Interview, E3/5861, 21 October 2001, pp. 11, 13-14, ERN (En) 00778949, 00778952-00778953 (stating that *Ta Chay* was his neighbour and District Secretary until he was promoted); LONG Vun Interview Record, E3/9593, 26 November 2013, pp. 3-4, ERN (En) 00978767-00978768 (Answers 3-5, stating that he left for Battambang on 1 January 1978 together with *Ta Chay*); EK Hoeun DC-Cam Interview, E3/9169, 16 August 2013, p. 10, ERN (En) 01050187 (stating that *Ta Chay*’s full name was Ty Chay).

<sup>2830</sup> Tram Kak District Record, E3/4123, 7 November 1977, ERN (En) 00322179.

<sup>2831</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 35.

<sup>2832</sup> Nut Nov Interview Record, E3/9600, 11 April 2013, ERN (En) 00911442 (Answer 31).

<sup>2833</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 4-5, 69 (*Ta San* told NUT Nov that the previous commune chief Khun had “committed cruelty” and disobeyed instructions).

<sup>2834</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 15-16; T. 5 March 2015 (VAN Soeun), E1/272.1, p. 32 (referring to meeting *Ta San* at the Kong Mouy cooperative in Leay Bour commune).

<sup>2835</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474.

of Cheang Tong commune, having been tasked by Sector Secretary *Ta Rorn* to assist *Ta San* at the district level.<sup>2836</sup> She described *Ta San* as the last District Secretary of Tram Kak District.<sup>2837</sup>

928. In contrast, NEANG Ouch *alias Ta San* repeatedly denied that he was the Tram Kak District Secretary. He maintained that he was only ever an “assistant” to the district and that it was *Ta Rorn*, the Sector Secretary, who really took personal charge of Tram Kak district.<sup>2838</sup> This account finds some corroboration from PECH Chim, who testified that *Ta San*’s background as a teacher meant that his class pedigree was insufficiently pure to join the CPK or to be appointed as a District Secretary.<sup>2839</sup> By his own admission, however, PECH Chim was not in Tram Kak district at the relevant time, having left for the Central Zone in February 1977.

929. Although the documentary evidence suggests some fluidity in the district hierarchy in late 1977 into 1978, the Chamber is satisfied by the overall weight of the evidence – both from witnesses and the documents – that NEANG Ouch *alias Ta San* indeed came to act as Tram Kak District Secretary, whether he was formally appointed or not. The Chamber finds it relevant in this regard that NEANG Ouch *alias Ta San* was *Ta Mok*’s brother-in-law.<sup>2840</sup> Telling documentary evidence includes a handwritten note to Kraing Ta Chan Chief *Ta An* signed by San on 26 December 1977 which requested that he take in four people;<sup>2841</sup> a handwritten note to Comrade Elder Brother An signed by San on 1 March [1978] requesting the interrogation of a person called SO Im and to be sent a copy of the confession;<sup>2842</sup> a handwritten note to comrade Brother

<sup>2836</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 1; T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 65-66; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 7, 54, ERN (En) 01057681, 01057728 (Answers 28, 315).

<sup>2837</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 28.

<sup>2838</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 81, 84 (claiming that *Ta Rorn* was assigned to take charge of Tram Kak district); T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 75 (there was no official announcement, so *Ta San* still considered himself to be an assistant to the district).

<sup>2839</sup> T. 21 April 2015 (PECH Chim), E1/289.1, p. 71 (stating that, in the case of Oeun, class background such as being a teacher was a barrier to being a Party member); T. 23 April 2015 (PECH Chim), E1/291.1, p. 33.

<sup>2840</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 27-28; NEANG Ouch *alias Ta San* Interview Record, E3/9608, 29 January 2014, p. 20, ERN (En) 00981154 (Answer 100); T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 66 (*Ta San* married to UNG Koeun, who was *Ta Mok*’s youngest sister); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 21, 70 (Koeun was married to *Ta San* and worked at the Zone hospital at Angk Ta Saom in the Sala Daum Chambak school).

<sup>2841</sup> Tram Kak District Record, E3/4126, 26 December 1977, ERN (En) 00366713-00366714.

<sup>2842</sup> Tram Kak District Record, E3/8426, 1 March [1978], ERN (En) 00322097-00322098. The Chamber is satisfied that the year is 1978 because this note is signed by “San”, who only assumed responsibilities in Tram Kak district in late 1977.

An signed by San on 7 March [1978] referred to persons having tried to escape to Vietnam,<sup>2843</sup> and a handwritten note to Comrade Chhoeun from San dated 7 August [1978].<sup>2844</sup>

930. On the basis of the foregoing evidence, the Chamber finds that the leadership of Tram Kak district passed from *Yeay Khom* to *Ta Keav* in approximately March 1976, followed by PECH Chim in around June 1976. PECH Chim remained District Secretary until February 1977 when he was replaced by his brother PREAB Kit. Later in 1977, TY Chay briefly took over until he left in late 1977 or early 1978, then NEANG Ouch *alias Ta San* performed the role of District Secretary for the remaining period.

931. As to other members of the Tram Kak District Committee, PECH Chim described five persons being members at any one time, with each performing different functions.<sup>2845</sup> For example, he identified “Phors” and also “Cheat” as being in charge of women’s affairs for the entire province, but “Phors” also served as a member of the District.<sup>2846</sup> PECH Chim explained that to be on the District Committee it was a prerequisite to be a full-rights member of the CPK, having been selected and receiving political education for a period of three or four years.<sup>2847</sup> Appointments to the District Committee were proposed by the district to Sector 13, and had to follow the Party’s line which meant to select poor peasants with pure class pedigrees.<sup>2848</sup> While the Chamber accepts this to have been the position when PECH Chim was in Tram Kak district, the evidence reveals that the rules loosened over time, as more senior CPK members from Tram Kak district were sent to other zones. The Chamber has already referred to NEANG Ouch *alias Ta San*’s ascent and the fluidity in personnel structures around that time. To similar effect, KHOEM Boeun insisted that she was not a full-rights member of the CPK, even when she joined the District Committee in October 1978, despite

<sup>2843</sup> Tram Kak District Record, E3/2785, 7 March [1978], ERN (En) 00322193. The Chamber is satisfied that the year is 1978 because this note is signed by “San”, who only assumed responsibilities in Tram Kak district in late 1977.

<sup>2844</sup> Tram Kak District Record, E3/4093, 7 August [1978], ERN (En) 00831486. The Chamber recalls that NEANG Ouch *alias Ta San* described the genesis of this report, and the Chamber has found elsewhere in this Judgement that the widows were taken to Kraing Ta Chan. Based on this surrounding evidence, and the date of NEANG Ouch *alias Ta San*’s arrival in Tram Kak district, the Chamber is satisfied that this particular report is from 1978.

<sup>2845</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 84.

<sup>2846</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 84-85.

<sup>2847</sup> PECH Chim Interview Record, E3/9587, 19 June 2014, pp. 14-15, ERN (En) 01000676-01000677 (Answers 77, 83).

<sup>2848</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 33-34.

earlier testifying that full-rights members were assigned to the district level and above.<sup>2849</sup> She explained that the higher authorities did not care whether she was a full-rights member by that time.<sup>2850</sup>

#### 10.1.5.3.2. *Locations*

932. Although the location of the Tram Kak District Office moved, and District Committee meetings could also take place in informal settings, the Chamber is satisfied that the primary location of the Tram Kak District Office was at Angk Roka and this is where the District Committee was based.<sup>2851</sup> Witnesses were not always clear when distinguishing different sites located in Angk Roka, with varying references made to the District Office and the District Commerce Office.<sup>2852</sup> EK Hoeun worked at the “District Office” until 1976 and identified his younger cousin, SAOM Dorn *alias* Dorn, as head of the District Office at that time.<sup>2853</sup> He explained that, when *Ta Mok* needed a certain number of people to work on something, SAOM Dorn *alias* Dorn would arrange it while also performing bookkeeping tasks for materials and logistics.<sup>2854</sup> KHOEM Boeun *alias* Yeay Boeun likewise identified Dorn as the head of the District Office and she recalled him supervising “economic” matters.<sup>2855</sup> PECH Chim also identified “Dan” as the chief of the District Office who remained there when PECH

<sup>2849</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 12; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 17, ERN (En) 01057691.

<sup>2850</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 14.

<sup>2851</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 32; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 31, ERN (En), 01057705 (Answer 165, stating that the District 105 Office was in Angk Roka, at Ta Saom Market in Cheang Tong commune); T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 47; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 7; NEANG Ouch Interview Record, E3/9592, 29 January 2014, pp. 9-10, ERN (En) 00980873-00980874 (Answer 52, stating that the District Office was located at what is currently Angk Roka market, to the west of Angk Roka pagoda); LONG Vun Interview Record, E3/9593, 26 November 2013, p. 7, ERN (En) 00978771 (Answers 22-25); T. 28 January 2016 (SANN Lorn), E1/384.1, p. 30 (stating that the district office was located in Angk Roka, but its location was not fixed); SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 70, ERN (En) 01050403 (Answers 561-567, SANN Lorn worked as a messenger for the district); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 20, 30 (RIEL Son as deputy chief of Tram Kak District Hospital came to Angk Roka for meetings; the District Office was located at Angk Roka market but the market and houses were empty); T. 21 April 2015 (PECH Chim), E1/289.1, p. 77 (noting other locations including Prey Mien, Prey Ta Dok, Krabei Prey and Trapeang Thma village, but economic supplies and messengers at Angk Roka).

<sup>2852</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 30 (there was a house nearby to the District Office where the “economics people” worked); T. 7 May 2015 (EK Hoeun), E1/298.1, p. 52 (the office was referred to as the “commerce office” but the District Secretary would regularly come there as well).

<sup>2853</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 15, 23-24; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 18, 48; EK Hoeun Interview Record, E3/9464, 13 October 2014, p. 4, ERN (En) 01053570 (Answer 5).

<sup>2854</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 23-24.

<sup>2855</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 31.

Chim left Tram Kak.<sup>2856</sup> As with the translation of *Ta Ran* and *Ta Rorn* discussed above, the Chamber is satisfied that witnesses who referred to *Ta Dan* and *Ta Dorn* at the District Office were, on analysis of the original evidence as given in Khmer, referring to the same person, whom the Chamber will identify as *Ta Dorn*.

933. LONG Vonn was the deputy chief of the commerce committee in Tram Kak district in 1977.<sup>2857</sup> When he was there, “Chhoeut (phonetic)” was in charge of the “commerce office”.<sup>2858</sup> NEANG Ouch *alias Ta San* likewise identified a person called Chhoeun, but referred to him as chief of the District Office in 1978.<sup>2859</sup> EK Hoeun described an incident in June or July 1978 when he was threatened at the “District Office” and he referred to Chhoeun as being the chief of the District Office at that time.<sup>2860</sup> In light of this evidence, the Chamber finds that SAOM Dorn *alias Dorn* was chief of the District Office in the early period, but Chhoeun assumed that role later on, some time after February 1977.

934. Also based in Angk Roka were persons with oversight of re-education and security matters. Several witnesses recalled an individual known as Phy, memorable for his cruelty and because he limped or struggled with his legs.<sup>2861</sup> The Tram Kak District Records include one message from “Phy” to Comrade An, regarding a child called

<sup>2856</sup> T. 21 April 2015 (PECH Chim), E1/289.1, p. 80. A former district messenger, TOEM Hy, told the OCIJ that he delivered messages from Dan to Kraing *Ta Chan* to An in person. See TOEM Hy Interview Record, E3/9605, 6 December 2013, p. 8, ERN (En) 00980269. A former district commerce worker, based at Angk Ta Saom, HAOM Tun, told the OCIJ that Dan worked at the District Office managing and distributing materials. See HAOM Tun Interview Record, E3/9486, 14 October 2014, pp. 6-7, ERN (En) 01050646-01050647 (Answers 27-28).

<sup>2857</sup> T. 9 December 2016 (LONG Vonn), E1/510.1, p. 27, LONG Vun Interview Record, E3/9593, 26 November 2013, p. 3, ERN (En) 00978767 (Answer 1).

<sup>2858</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 89-90.

<sup>2859</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 95; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 18. See above, para. 845.

<sup>2860</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 18, 62-63 (incident when *Ta Soeun* intimidated EK Hoeun regarding persons from Kaoh Andaet district), 75-77 (identifying *Ta Chhoeun* at the District Office during this later period).

<sup>2861</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 37; RIEL Son DC-Cam Interview, E3/5859, 22 January 2001, pp. 74-75, ERN (En) 00729095-00729096 (stating that Phy was cruel; he had a broken leg, and describing Phy as Dorn’s predecessor as chief of the District Office); T. 16 March 2015 (NUT Nov), E1/277.1, p. 31 (Phy was handicapped in the legs and worked at Tram Kak district until sent to another commune); T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 29, 65 (stating that Phy was responsible for the education office; he limped); T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 42, 50 (Phy handicapped in the legs since birth; his leg was not amputated but he could not walk well); T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 24-25 (stated that Phy treated people badly. He was based at a logistics office west of Ph’choek Chrum pagoda until he became Secretary of District 107); T. 21 April 2015 (PECH Chim), E1/289.1, pp. 81-82 (Phy was in charge of medical services and had a handicap in his legs; he would distribute medicines and medical supplies).

PHOEUNG Sao, aged 12, who was to be interrogated.<sup>2862</sup> IEP Duch *alias* Big Duch, the head of the District Youth, worked with Phy.<sup>2863</sup>

935. There was a re-education office at Angk Roka, a short distance west of the district offices described above.<sup>2864</sup> Meng oversaw this site and it was often referred to as “Meng’s place”.<sup>2865</sup> The existence and location of Meng’s place is confirmed by contemporaneous documents.<sup>2866</sup> THANN Thim was detained at Meng’s place for three months in 1978.<sup>2867</sup> The documentary evidence confirms that persons were arrested and sent from communes to “Meng’s place”, and sometimes onwards to Kraing Ta Chan. For instance, a report dated 9 January 1977 discusses the situation of SAU Phan, who had been received from Kbal Pau where he possessed money and a forged travel document. The report includes an annotation for “Comrade District Police, please examine and follow this up”.<sup>2868</sup> A follow-up report of the next day, 10 January 1977, signed by Meng requested to send SAU Phon, among other persons, to “your elder brother’s place”.<sup>2869</sup> This corresponds to an entry in Kraing Ta Chan notebook E3/2107, where SAO Phan is described as having worked at the dry season rice field at Kbal Po and having possessed 10,000 riels.<sup>2870</sup>

<sup>2862</sup> Tram Kak District Record, E3/2057, 6 February [year not specified], ERN (En) 00276584-00276585.

<sup>2863</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 25-26; T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 31-32 (confirming that she saw IEP Duch at the District Office). *See also*, Section 12.3: Kraing Ta Chan, paras 2695, 2697.

<sup>2864</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 52-53 (estimating that the re-education office was 300 metres west of Angk Roka market); T. 8 May 2015 (EK Hoeun), E1/299.1, p. 39 (estimating that the re-education office was 100 metres from the commerce office); T. 21 April 2015 (THANN Thim), E1/289.1, pp. 31-32, 37 (released from detention office to the west of Angk Roka market); T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 58-59 (re-education centre west of Angk Roka market).

<sup>2865</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 75 (Meng’s place was west of Angk Roka); T. 7 May 2015 (EK Hoeun), E1/298.1, p. 54 (Meng was in charge of the re-education office west of Angk Roka); T. 2 April 2015 (THANN Thim), E1/287.1, pp. 30, 33 (having described being detained at Angk Roka for three months, he learned that Meng was the prison chief).

<sup>2866</sup> Tram Kak District Record, E3/8424, 31 August 1977, ERN (En) 00538729 (handwritten report from On, K-105, recording that an individual had been sent to *Bong* Meng’s place in Angk Roka); Tram Kak District Record, E3/2424, 9 July 1978, ERN (En) 00322221 (handwritten report from Chorn in Popel commune); Tram Kak District Record, E3/4093, 7 August [1978] (discussing widows currently at Meng’s place).

<sup>2867</sup> T. 2 April 2015 (THANN Thim), E1/287.1, pp. 32-33.

<sup>2868</sup> Tram Kak District Record, E3/4099, 9 January 1977, ERN (En) 00322123.

<sup>2869</sup> Tram Kak District Record, E3/4099, 10 January 1977, ERN (En) 00322122.

<sup>2870</sup> Kraing Ta Chan Notebook, E3/2107, ERN (En) 00290225.

10.1.5.4. Overall population living in Tram Kak district

936. PECH Chim estimated that approximately 250,000 people lived in Tram Kak district in over a dozen communes and up to 100 villages.<sup>2871</sup> He further estimated that Tram Kak district covered an area of more than 25,000 hectares (*i.e.* 250 square kilometres).<sup>2872</sup> A DK textbook published in 1977 records Tram Kak district as comprising 10 communes, with the district's main town then being at Angk Ta Saom.<sup>2873</sup> While PECH Chim is well placed to have detailed knowledge of such matters, the Chamber is cautious about the precision of his population estimate. PHANN Chhen expressed difficulty in estimating the population of the entire district, but he appeared to accept an estimate of 80,000 people living there in 1979.<sup>2874</sup>

937. At the commune level, KHOEM Boeun told OCIJ investigators there were approximately 10 villages and 700 families in Cheang Tong commune, each comprising four to six members.<sup>2875</sup> This indicates a population of between 2,800 to 4,200 persons in that single commune. When Yugoslavian journalists visited a model cooperative in Leay Bour commune in early 1978, they were told it contained about 10,000 people divided into work brigades.<sup>2876</sup> Similarly, NEANG Ouch *alias* Ta San confirmed the accuracy of a radio broadcast describing Leay Bour cooperative comprising more than 9,000 people and 4,000 hectares of harvestable land, 3,000 hectares of rice paddies including 600 hectares which could achieve two harvests per year.<sup>2877</sup> This evidence suggests that PECH Chim overestimated the overall number of people in the communes and cooperatives of Tram Kak district.

<sup>2871</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 48-49.

<sup>2872</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 15, 53-54 (25,000 hectares of paddy fields plus cassava growing on 1,000 or 1,500 hectares), 41 (suggesting that there were 12 communes, each with its own militia unit).

<sup>2873</sup> DK Textbook, E3/1398, 1977, p. 25, ERN (En) 00814524.

<sup>2874</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 71-72.

<sup>2875</sup> KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 23, ERN (En) 01057697 (Answers 124-125).

<sup>2876</sup> *Kampuchea, Three Years Old* (in *New War in Southeast Asia: Documents on Democratic Kampuchea and the Current Struggle for National Independence*), E3/3290, 19 May 1978, p. 9, ERN (En) 00419213 (“We visited Leay Bo[ur] cooperative, not far from the dusty city of Takeo, in southern Kampuchea. It contains, we learned, about 10,000 people divided into work brigades”).

<sup>2877</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 84-85; *Chen Yung-Kuei visits Southwest Region* (in FBIS collection), E3/1339, 14 December 1977, ERN (En) 00168350-00168351. *See also, Far-Eastern Relations* (in SWB/FE/5695/A3 collection), E3/2730, 14 December 1977, ERN (En) 00390993 (also describing a Chinese broadcast which described Tram Kak as “one of the three pace-setter districts praised by the CPK Central Committee”).



938. Further, it is not clear to the Chamber whether PECH Chim's estimate represented the population of Tram Kak district before or after the arrival of evacuees from Phnom Penh and Takeo after 17 April 1975. He told OCIJ investigators, for example, that 3,500 to 4,000 families, primarily wives of soldiers, with each family including three to five children arrived in Tram Kak district following the evacuations.<sup>2878</sup> This would equate to the arrival of significantly more than 14,000 persons in Tram Kak district, and his estimate did not appear to include extended family members. NUT Nov, who worked in the commune office of Nhaeng Nhang commune when evacuees arrived, testified that "thousands" of New People arrived in this commune alone.<sup>2879</sup> PIN Yathay described the transfer of large numbers of persons from Tram Kak district in around September 1975, when people were assembled from various locations at Angk Roka.<sup>2880</sup> The evidence also establishes that thousands of Khmer Krom arrived in Tram Kak district from Vietnamese territory as part of an exchange programme.<sup>2881</sup> Further still, there is evidence of New People arriving in Tram Kak district from nearby districts, such as Kirivong district (109) in 1977, when people were moved away from the border with Vietnam.<sup>2882</sup> Even without assessing birth or deaths, it is clear that the population of Tram Kak district fluctuated to a significant extent during the period over which the Chamber has jurisdiction.

#### 10.1.5.5. Communes and cooperatives

939. Cooperatives were established in liberated areas from at least 1973 but with mixed results.<sup>2883</sup> Before cooperatives were established there had been "mutual assistance

<sup>2878</sup> PECH Chim Interview Record, E3/4628, 26 August 2009, p. 7, ERN (En) 00379307.

<sup>2879</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 41; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 5, ERN (En) 00422319 (Answer 26, 29).

<sup>2880</sup> T. 7 February 2013 (PIN Yathay), E1/170.1, pp. 40-41; Book by Pin Y.: *Stay Alive, My Son*, E3/3988, pp. 69-72, ERN (En) 00587605-00587608 (describing walking to "Watt Ang Recar pagoda" to wait for trucks; the pagoda had been ransacked and was "packed with refugees").

<sup>2881</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 45-46. In answers to the OCIJ, RY Pov indicated that he was part of a second batch of Khmer Krom to arrive in Cambodia, the first batch being sent to Kbpok Trabaek and Samrong communes but the second phase sent to Popel and Ta Phem communes. See RY Pov Interview Record, E3/9604, 30 October 2013, p. 13, ERN (En) 00970036 (Answers 81-82). This event and timing is consistent with the evidence of EK Hoeun, who described approximately 90 Khmer Krom "swapped" by Ta Mok and sent to work on the Khporp Trabaek canal in 1976. See T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 7, 24-25, 65; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 10, ERN (En) 00983575 (Answer 63).

<sup>2882</sup> T. 2 April 2015 (THANN Thim), E1/287.1, p. 28; T. 21 April 2015 (THANN Thim), E1/289.1, pp. 4, 20-21 (evacuated from Kirivong district in 1977 during the dry season, as part of a group of five trucks with 30-40 people on each truck).

<sup>2883</sup> Section 3.2.1: Establishment of Cooperatives before 1975. Resistance to the establishment of cooperatives is recognised in subsequent Khmer Rouge documentation. See e.g., Third Year Anniversary

teams” or “solidarity groups”. These involved joint production efforts and distribution, but allowed people to retain private property and eat in private with their family.<sup>2884</sup>

940. PECH Chim described a concerted effort to establish cooperatives in all of the communes in Tram Kak district from approximately June or July 1975 onwards.<sup>2885</sup> These cooperatives organised the population in a more centralised manner than before in order to try to maximise agricultural production, and the CPK expressly viewed cooperatives as enshrining the “profound nature of class struggle”.<sup>2886</sup> One component of this model was that only a few people would cook or take care of domestic matters, whereas the rest would work on construction of dykes, dams or in the rice fields with the purpose of rationalising the use of the workforce and increasing the production in the most efficient way.<sup>2887</sup> Other components of the policy included the collectivisation of all property, the categorisation of people and their assignment to various units, political education, and communal eating in dining halls (sometimes referred to as “*kusin bay*”).<sup>2888</sup> The documentary evidence records the CPK’s policy and belief that, as this collective regime progressed, the masses would come to realise that life held “more convenience with many things like eating and working, and raising their children”.<sup>2889</sup>

941. The evidence shows that the expansion of the collective regime over time was a process driven by the introduction of competition between locations. PECH Chim gave

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of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 1, ERN (En) 00636008 (cadres did not believe in cooperatives and only identified disadvantages and shortcomings). EK Hoeun described cooperative halls in Tram Kak district from 1973/1974, and Sector Secretary *Ta Saom* establishing associated structures in various communes such as Khporp Trabaek, Trapeang Thum South and Trapeang Thum North, Cheang Tong, Samraong and Nhaeng Nhang communes. *See* T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 14, 60-62; T. 22 April 2015 (PECH Chim), E1/290.1, pp. 14-15 (the earlier period was more difficult because people lived further away from each other, which made communal eating problematic); T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 41 (in his village in Cheang Tong commune, communal eating started in 1974 for one month but it was cancelled. It started again in 1975 or 1976). *See also*, Revolutionary Flag, E3/5, August 1975, ERN (En) 00040482 (referring to a “process of gradual cooperativisation” from mid-1973 to early 1975).

<sup>2884</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 39-40; T. 16 March 2015 (NUT Nov), E1/277.1, pp. 82-83, 85; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 3, ERN (En) 00422317 (Answers 5 and 6, in mutual assistance teams, produce shared according to strength of each person and age group; therefore, families with a larger number of weaker persons might have preferred a more uniform ration system).

<sup>2885</sup> PECH Chim Interview Record, E3/9587, 19 June 2014, p. 7, ERN (En) 01000669 (Answer 26).

<sup>2886</sup> *Editorial Marks Peasant Cooperatives Anniversary* (in FBIS collection), E3/1362, 20 May 1978, ERN (En) 00170054.

<sup>2887</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 14.

<sup>2888</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 80-81.

<sup>2889</sup> CPK Document, *Fundamental Introductory Document for Party Member*, E3/138, p. 19, ERN (En) 00743808.

the example of communal dining halls being set up in each village, which meant that 10 villages would have 10 communal dining halls. *Ta Mok* then instructed Tram Kak district to move towards one dining hall per commune, rather than one per village. Those communes which could achieve this were considered to be model communes; but others could not achieve this level of consolidation.<sup>2890</sup> This policy of expansion is confirmed by documentary evidence. A CPK Policy Document dated 19 September 1975 records the general plan that: “Later we will eliminate Villages. We will not permit them, and will organize collectives instead. So the Village and [Commune] Committees will be inside the cooperatives.”<sup>2891</sup> In late 1975, the *Revolutionary Flag* recorded the CPK’s plan to increase the size of cooperatives such that, by 1976, a “general cooperative” would take over any village structures, then expand from 300 to 400, 500, 700 to 1,000 families.<sup>2892</sup> On 21 January 1976, Khmer Rouge radio broadcast that cooperatives had been strengthened and expanded following the liberation and almost all of the villages in Takeo province had been organised into cooperatives.<sup>2893</sup> The April 1976 issue of *Revolutionary Flag* recorded that, whereas at the time of liberation, cooperatives had up to thirty families on average, they had expanded up to 300 families on average.<sup>2894</sup> A document dated 20 May 1976 celebrating the third year anniversary of peasant cooperatives likewise confirms the CPK’s direction to “strengthen and to extend the cooperatives step by step so that they become village cooperatives, integrating 1,000 families”, and further records the CPK’s intention to dismantle previous structures at village and commune levels so that “our people” could gain more rights in administering authority via cooperatives.<sup>2895</sup>

942. The August 1976 *Revolutionary Flag* records that cooperatives had “strengthened and expanded” to 100, 200, 300 families, some having 500 families with cooperatives generally organised in villages throughout the country. It noted that there was a “large amount of commune cooperative organization already” with commune cooperatives

<sup>2890</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 14.

<sup>2891</sup> Policy Document No. 3, E3/781, 19 September 1975, ERN (En) 00523588.

<sup>2892</sup> *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495827; DK Textbook, E3/1398, ERN (En) 00814564 (describing Peasant Cooperatives first established on 20 May 1973, at the beginning consisting of 10 to 30 families, but since early 1977 they had rapidly developed into village collectives with 1,000 families each and commune cooperatives with 1,000 families each).

<sup>2893</sup> *Southwest Region Production Cooperatives* (in FBIS collection), E3/273, 29 January 1976, ERN (En) 00167863.

<sup>2894</sup> *Revolutionary Flag*, E3/759, April 1976, pp. 16-17, ERN (En) 00517864-00517865.

<sup>2895</sup> DK Document, *Third Year Anniversary of the Organization of Peasant Cooperatives*, E3/50, 20 May 1976, p. 6, ERN (En) 00636013.

comprising 800, 900, up to 1,000 families.<sup>2896</sup> A further “document on consciousness” from 30 November 1976 records that, whereas before a cooperative had only 30 families, by then there were 1000 families to a cooperative and the CPK had expanded the communal system.<sup>2897</sup> In POL Pot’s major September 1977 speech, in which he publicly announcing the CPK’s existence, he summarised that cooperatives continued to increase in size: with 50 percent of cooperatives made up of 700 to 1,000 families; 30 percent made up of 400 to 600 families; and 20 percent of 100 to 300 families. This meant that in general “cooperatives are on the scale of communes” and “only a small number still remain the size of villages”.<sup>2898</sup> POL Pot told Yugoslavian journalists in early 1978 that 85 percent of the population were members of cooperatives.<sup>2899</sup> A radio broadcast on the morning of 14 March 1978 repeated some of these statistics: 50 percent of cooperatives comprised 700 to 1,000 families; 30 percent comprised 400 to 600 family units; and 20 per cent comprised 100 to 300 family units.<sup>2900</sup>

943. In relation to Tram Kak district specifically, the evidence before the Chamber is incomplete as to the number and scale of the cooperatives. The OCIJ Site Identification Report gives a partial snapshot of the structures in seven communes, without indicating when the relevant structures described were established and/or whether they changed over time.<sup>2901</sup>

944. In Ta Phem commune, whereas the Site Identification Report suggests that “one village represented one cooperative”, documentary evidence records the existence of a commune-level cooperative from April 1977 onwards.<sup>2902</sup> Other evidence, including evidence cited in the aforementioned Site Identification Report, indicates that each village was its own cooperative.<sup>2903</sup> The Chamber finds this evidence must relate to earlier periods. Similarly in Trapeang Thum North commune, whereas the Site

<sup>2896</sup> Revolutionary Flag, E3/762, August 1976, ERN (En) 00486756.

<sup>2897</sup> DK Document, E3/522, 30 November 1976, ERN (En) 00003285.

<sup>2898</sup> Revolutionary Flag, E3/11, September 1977, p. 45, ERN (En) 00486256.

<sup>2899</sup> Article by S. Stanić, *Kampuchea – Socialism Without a Model* (Socialist Thought and Practice), E3/2307, October 1978, p. 83, ERN (En) S00046710; *Final Instalment of Tanjug Report on Cambodia* (in FBIS collection), E3/1361, 24 April 1978, ERN (En) 00168877-00168879.

<sup>2900</sup> *Importance of Collective System Against Vietnamese* (in FBIS collection), E3/1360, 13 March 1978, ERN (En) 00169920.

<sup>2901</sup> Site Identification Report, E3/8051, 7 January 2010 (describing various structures at the village level, a combination of villages, and commune-wide cooperatives).

<sup>2902</sup> Tram Kak District Record, E3/2048, 28 April 1977, ERN (En) 01454947; Tram Kak District Record, E3/4084, 13 May 1977, ERN (En) 00290264; Tram Kak District Record, E3/4127, 17 January 1978, ERN (En) 00362230; Tram Kak District Record, E3/2057, 9 February 1978, ERN (En) 00276582.

<sup>2903</sup> SOK Sim Interview Record, E3/5519, 23 November 2009, ERN (En) 00414079 (Answers 57-58).

Identification Report suggests that each village formed a cooperative, documentary evidence records the existence of a commune-level cooperative from May 1977.<sup>2904</sup>

945. In Nhaeng Nhang commune, the Site Identification Report suggests cooperatives comprised two or three villages. The evidence before the Chamber confirms the existence of a cooperative comprising the villages of Kamsei, Ruessey Srok and Sach Tuek,<sup>2905</sup> and other cooperatives such as Chrey Tnaut, Kranhoung, Doun Tuot and Sra Ma.<sup>2906</sup> In Samraong commune, the Site Identification Report refers to 10 different cooperatives. The evidence before the Chamber confirms the existence of numerous village-level cooperatives in Samraong commune, including Paen Meas village cooperative,<sup>2907</sup> and Angk Ponnareay cooperative which was for Base People.<sup>2908</sup> In Tram Kak commune, the Site Identification Report refers to Kol Kaum village and “cooperative number 4”. The evidence before the Chamber reveals at least four different cooperatives, with many units in each cooperative.<sup>2909</sup> In Sre Ronoung commune, the Site Identification Report refers to seven cooperatives in seven different villages. This corresponds to evidence before the Chamber.<sup>2910</sup> In Trapeang Thum South commune, the Site Identification report refers to one village cooperative at

<sup>2904</sup> Tram Kak District Record, E3/2281, 4 May 1977, ERN (En) 00763028-00763034 (list of people from Trapeang Thum North commune, signed by Mon for the Cooperative Committee); Tram Kak District Record, E3/4087, 9 October 1977, ERN (En) 00276574; Tram Kak District Record, E3/2457, 28 December 1977, ERN (En) 00322188; Tram Kak District Record, E3/2423, 8 July 1978, ERN (En) 00322206-00322207.

<sup>2905</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 10, 14, 49, 71 (discussing one cooperative unit for the three villages and distinguishing the unit chief CHHOEM Thiem from the village chief); CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410263 (referring to village chiefs).

<sup>2906</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, ERN (En) 00422321 (Answer 38).

<sup>2907</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 5; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410246 (Answer 7, describing other villages such as *Ta Sman*, *Pong Tuek*, *Prey Kokir*, *Kraing Banteay*, *Praouth Thmei* and *Ta Saom*).

<sup>2908</sup> *See below*, para. 1001. *See also*, T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 11 (describing those from cities being sent to “Kong Bei” or “Third Unit” once it was formed and distinguishing *Ta Saom* village as being for them), 13-14 (describing early 1976 and being told to stay in Unit 1 in Angk Ponnareay), 80 (again distinguishing the evacuees from Phnom Penh as being in Unit 3); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410247 (Answer 12, identifying *Ta Saom* village as distinct from Angk Ponareay).

<sup>2909</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 14; SAO Han Interview Record, E3/5518, 21 November 2009 (Answer 26).

<sup>2910</sup> NUT Nov Interview Record E3/5521, 1 December 2009, p. 10, ERN (En) 00422324 (Answer 72, mentioning *Thmey* village, *Chen* village, *Trapeang Ronoung* village, *Trach* village, *Sre Thlork*, *Chheu Neang* village and *Angk Samret* village).

Trapeang Chrey village. The evidence before the Chamber identified Chan Teab cooperative<sup>2911</sup> and another cooperative in Ta Suon village.<sup>2912</sup>

946. In addition to these locations, the evidence before the Chamber reveals the existence of numerous other cooperatives in Tram Kak district. For example, in Kus commune, there was a cooperative at Pong Tuek.<sup>2913</sup> In Cheang Tong commune, there were cooperatives at Sre Kruo<sup>2914</sup> and Ta Reab villages.<sup>2915</sup> In Leay Bour commune, there were various cooperatives including a model cooperative for Base People known as K-1.<sup>2916</sup> The evidence does not enable the Chamber to find with any degree of precision the particular point in time when different cooperatives were created and/or expanded, but it is clear that cooperatives were expanded over time in Tram Kak district.

947. At the same time as expanding the scale of individual cooperatives, the CPK sought to establish and expand the number of Party branches in cooperatives. The CPK's 1976 Statute provided that each cooperative could organise a CPK branch, provided there were more than three Party members.<sup>2917</sup> Tasks of CPK branches included to “grasp and agitate” mass organisations, expand and screen Party membership, and maintain a system of reporting to the upper echelon.<sup>2918</sup> The July 1976 *Revolutionary Flag* records the CPK's plan to achieve Party branches in 40 to 50 percent of cooperatives during 1976.<sup>2919</sup> The Report of Activities of the Party Centre

<sup>2911</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 6-10.

<sup>2912</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 14.

<sup>2913</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 5, 73 (describing his return to Kus commune where he spent approximately one year working at the Pong Tuek cooperative before he was sent to Kampong Cham); PHAN Chhen Interview Record, E3/5524, 9 December 2009, p. 8, ERN (En) 00426304 (Answer 48, explaining that he was transferred from Prey Kduoch to Chambak partly because of an altercation with the commune secretary); PHAN Chhen Interview Record, E3/9585, 27 June 2013, p. 3, ERN (En) 00976640 (Answer 1, explaining that he moved to Samraong Yuong in Takeo in early 1976 to make fertilisers for 2-3 months, then moved back to his home village where he did rice farming in the cooperative). *See also*, YIN Teng Interview Record, E3/9472, 29 December 2014, pp. 11-12, ERN (En) 01067038-01067039 (Answer 60, describing two cooperatives in Kus commune called Trapeang Snael and Prey Svay).

<sup>2914</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 3, ERN (En) 00223495.

<sup>2915</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 42.

<sup>2916</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 10 (CHOU Koemlan was in K-3 cooperative for New People); T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 25-26 (K-1 cooperative was near the commune office, and different cooperatives had different dining halls and hospitals).

<sup>2917</sup> CPK Statute, E3/130, ERN (En) 00184039 (Article 9).

<sup>2918</sup> CPK Statute, E3/130, ERN (En) 00184039-00184040 (Articles 9-10).

<sup>2919</sup> *Revolutionary Flag*, E3/4, July 1976, ERN (En) 00268923 (under the heading “On Party building and building Party branches in the cooperatives” it is stated: “it is imperative to achieve the plan to build village cooperative branches from 40 percent to 50 percent, as designated during 1976 [...] only if by late 76 from 40 percent to 50 percent of the cooperatives throughout the country have plenary branches

dated 20 December 1976 confirms that the 1976 Plan was to establish Party branches in 50 percent of the collectives in the country.<sup>2920</sup>

948. In addition to reserving authority positions for those with acceptable class backgrounds, the CPK's plan for the first half of 1977 was to expand Party membership further: by another 40 per cent in the first six months, then the remaining 60 percent in the second half of 1977, such that by the end of 1977 there was to be a CPK branch in every cooperative in the country.<sup>2921</sup> The December 1976-January 1977 *Revolutionary Flag* confirmed the "core work" of 1977 was "strengthening and expanding the cooperatives and making them strong by building the cooperatives and by building the Party branches in cooperatives to 100 percent level during 1977, making the cooperatives into iron walls throughout the country".<sup>2922</sup>

949. The April 1977 *Revolutionary Flag* also records the CPK's direction to expand new Party membership in cooperatives whereby there should be three Party members, five "core organization members", and eight "progressive persons" per 100 families; such that for every 1,000 families there would be 30 Party members, 50 core organization members, and 80 progressive persons.<sup>2923</sup> The October-November 1977 *Revolutionary Flag* similarly refers to the need to have "many ranks of cadres outside the Party" by building up "progressives", so that it would be possible to have "cores" numbering in the hundreds within a 1,000 household cooperative.<sup>2924</sup> This issue of *Revolutionary Flag* goes on to explain that, for a 500-household cooperative, at least

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and proper leadership will we then have the fundamental conditions to build Party branches in every village cooperative throughout the country during the first semester of 1977"), ERN (En) 00268942 (regarding Party Branches, "The Party has designated that in 76 it is imperative to have cooperative Party branches in 40 to 50 percent of the base areas. It is imperative to figure out how to quickly build branches in the base areas. If we have branches in 50 percent of the cooperatives, that will make us strong, and we have the full potential. But now many of the cooperatives are village cooperatives. Where the villages cooperatives are in existence there is full potential to build Party branches in these cooperatives, because previously in cooperatives of 15 to 20 families there were 10 to 15 good people in the masses. Now in village cooperatives of 100 to 200 families, there are 20 or 30 or more good people in the masses.").

<sup>2920</sup> Chapter by D. Chandler, "Report of Activities of the Party Center According to the General Political Tasks of 1976", in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, undated, E3/8, p. 192, ERN (En) 00104093.

<sup>2921</sup> Chapter by D. Chandler, "Report of Activities of the Party Center According to the General Political Tasks of 1976", in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, undated, E3/8, p. 203, ERN (En) 00104098. On the categorisation of the population, see below, Section 10.1.7.2.1: High-level Policy Documents.

<sup>2922</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 31-32, ERN (En) 00491425-00491426.

<sup>2923</sup> *Revolutionary Flag*, E3/742, April 1977, p. 15, ERN (En) 00478506.

<sup>2924</sup> *Revolutionary Flag*, E3/170, October-November 1977, ERN (En) 00182561.

1,000 progressives would exist from which 100, 200 or 300 could “take charge of the oxen, compost, storehouse-defence and catering spearheads and child-care”.<sup>2925</sup> The evidence before the Chamber does not reveal with sufficient precision the results of this programme of Party expansion in the cooperatives of Tram Kak district.

#### 10.1.5.6. *Meetings and oversight*

950. Articles 12 to 14 of the CPK’s 1976 Statute stipulated the tasks and goals of the CPK’s district committees, including a provision that they had to hold monthly meetings to examine, monitor and deliberate on all work.<sup>2926</sup> The Tram Kak District Committee met regularly. KHOEM Boeun joined the District Committee in October 1978 and described “normal” meetings taking place on the 10<sup>th</sup>, 20<sup>th</sup> and 30<sup>th</sup> day of the month.<sup>2927</sup> The District Committee also met with the commune representatives on a monthly basis at least, usually in a meeting chaired by the District Secretary.<sup>2928</sup> The communes made written and oral reports to the district.<sup>2929</sup> The *Revolutionary Flag* was distributed to each commune in Tram Kak district.<sup>2930</sup>

951. The Tram Kak District Committee reported to Sector 13 at the end of every month in a report covering the leadership situation, the situation with the enemy, any conflicts within the district, economics and the harvest: the onus was on the district level to resolve issues rather than simply escalate matters.<sup>2931</sup> Between meetings, telegrams were not used to communicate between the district and sector levels – instead,

<sup>2925</sup> Revolutionary Flag, E3/170, October-November 1977, ERN (En) 00182561.

<sup>2926</sup> CPK Statute, E3/130, ERN (En) 00184041-00184042 (Articles 12-14).

<sup>2927</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 13, 32-33; T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 66; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 7, 28, 54, ERN (En) 01057681, 01057704, 01057728 (Answers 28, 159, 315).

<sup>2928</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 53-54 (commune chiefs reported to the District Committee); T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 24; NEANG Ouch Interview Record, E3/9592, 29 January 2014, p. 10, ERN (En) 00980875 (Answer 57, describing monthly meetings with *Ta Chay*); T. 12 March 2015 (NUT Nov), E1/276.1, pp. 63-64 (explaining that when he was merely a member of commune committees, he did not attend meetings at the district; but when he became chief of Srae Ronoung commune, he attended district, and also sector, meetings at least once per month); T. 24 February 2015 (PHAN Chhen), E1/268.1, pp. 81-82; T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 24-25 (as secretary of Kus commune before 1975, he had attended district meetings twice per month).

<sup>2929</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, ERN (En) 00422329-00422330 (Answers 117-118).

<sup>2930</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 57-58; T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 68 (claiming not to be fully aware of the contents but accepting that she perused issues of the *Revolutionary Flag*).

<sup>2931</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 26-27; PECH Chim Interview Record, E3/400, 25 August 2009, p. 6, ERN (En) 00379171 (describing monthly written reports to the sector).



communication was through notes and messengers.<sup>2932</sup> This is consistent with the documentary evidence showing notes flowing between Kraing Ta Chan, the communes, the district level, with annotations signed by the Sector Secretary.<sup>2933</sup> commune and district cadres also travelled to attend meetings in Takeo town. For instance, IEP Duch, the chair of the Tram Kak District Youth, described to OCIJ investigators meetings at the Sector Office when important circulars had been sent from Office 870. He described various districts attending these meetings, together with one person per commune: perhaps 100 participants in all, including the army.<sup>2934</sup> Even when she was chief of Cheang Tong commune, KHOEM Boeun regularly visited the Sector 13 office and she recalled meetings chaired by *Ta Rorn*, the Sector Secretary.<sup>2935</sup> On occasion, *Ta Mok* also attended education sessions at the sector level.<sup>2936</sup>

952. The Southwest Zone scheduled meetings with the sectors every three to six months to discuss the workplan.<sup>2937</sup> NEANG Ouch *alias Ta San* further described attending meetings at the zone level once per month or once every two months, when *Ta Mok* came to Takeo for study sessions.<sup>2938</sup> There were also criticism sessions at the zone level. NEANG Ouch *Ta San* testified that at such a session he was criticised for not being vehement enough on enemies.<sup>2939</sup> KHIEV Neou described Southwest Zone education sessions led by SAM Bit.<sup>2940</sup> Meetings focused on lines of the revolution and stressed, for example, that 85 percent of the population were now peasants.<sup>2941</sup> This is consistent with POL Pot's statement noted above, that 85 percent of the population

<sup>2932</sup> PECH Chim Interview Record, E3/400, 25 August 2009, p. 8, ERN (En) 00379173.

<sup>2933</sup> Section 12.3.5.1.3: Kraing Ta Chan Security Centre: Reporting to Tram Kak District. *See also*, Section 10.1: Tram Kak Cooperatives, para. 914; Section 12.3: Kraing Ta Chan Security Centre, para. 2717.

<sup>2934</sup> IEP Duch Interview Record, E3/430, 1 November 2007, pp. 4-5, ERN (En) 00223513-00223514; TIM Py Interview Record, E3/9588, 19 February 2013, pp. 5-6. ERN (En) 00967011-00967012 (Answers 22-25, as chairwoman of Kirivong district mobile youth unit she attended two sector level meetings in Takeo town because invitations were extended to commune committees and the chiefs of district mobile units to receive action plans).

<sup>2935</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 4, 62-63, 67; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 13-14, 16-17, ERN (En) 01057687-01057688, 01057690-01057691 (Answers 67-70, 87-90, recalling meetings at the sector level taking place two or three times per month).

<sup>2936</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 3-5.

<sup>2937</sup> PECH Chim Interview Record, E3/400, 25 August 2009, p. 5, ERN (En) 00379170.

<sup>2938</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 40-42 (he met *Ta Mok* less frequently in 1976 then subsequently *Ta Mok* left for Battambang).

<sup>2939</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 5-6.

<sup>2940</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 42; KHIEV Neou Neab Interview Record, E3/9595, 23 November 2013, p. 4, ERN (En) 00979094 (Answers 6-7, Bit worked in the military, but when Chab and Si were sent to other places, Bit came to replace them). The Chamber understands these references to "Chab" and "Si" to refer to KANG Chap *alias Sae* and CHOU Chet *alias Sy*. *See above*, paras 906-907.

<sup>2941</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 41.

were members of cooperatives.<sup>2942</sup> SAO Van described a meeting at the old market in Takeo town – the only meeting he ever attended in Takeo, which involved a three-day study session followed by two days of self-criticism for the attendees.<sup>2943</sup> SAO Van was unclear as to the date of this meeting. Before the Supreme Court Chamber, he suggested that the meeting took place in December 1976, but before the Trial Chamber he placed it some time after the Khmer New Year of 1976, perhaps in June or July 1976.<sup>2944</sup> In any event, he recalled that *Ta Mok* invited cadres and soldiers from each province, including Sector 13 and Sector 25.<sup>2945</sup> SAM Bit presided over the meeting and *Ta Saom* (*i.e.* the Sector 13 Secretary) also presented, with *Ta Mok* mainly there to listen. There were approximately 300 participants in total including military.<sup>2946</sup> The presentation concerned agriculture, mobilising the masses, moving from the phase of democratic revolution to socialist revolution.<sup>2947</sup> *Ta Mok* encouraged everyone to try to reach the production target of three tonnes per hectare.<sup>2948</sup> SAM Bit gave a presentation about diverting soldiers to build, defend the country, and strengthen the bases.<sup>2949</sup>

953. Representatives from Tram Kak district sometimes travelled to Phnom Penh to attend the Party school. PECH Chim attended a study session at the CPK's school (Borei Keila) in Phnom Penh when NUON Chea was the instructor.<sup>2950</sup> The session was for members of district committees and took place after a session for members of sector committees.<sup>2951</sup> It lasted around 20 days and was followed by a one-week visit throughout the country, before he returned to Tram Kak district.<sup>2952</sup> PECH Chim credibly identified NUON Chea, but gave somewhat inconsistent evidence as to the

<sup>2942</sup> See above, para. 942.

<sup>2943</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 29-32; T. 2 February 2016 (SAO Van), E1/386.1, pp. 8-10; T. 2 July 2015 (SAO Van), F1/1.1, pp. 117-120, 123-124.

<sup>2944</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 29-30; T. 2 February 2016 (SAO Van), E1/386.1, p. 7.

<sup>2945</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 28-31; T. 2 February 2016 (SAO Van), E1/386.1, p. 7.

<sup>2946</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 28-30; T. 2 July 2015 (SAO Van), F1/1.1, p. 42.

<sup>2947</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 28-31, 41; T. 2 July 2015 (SAO Van), F1/1.1, p. 41.

<sup>2948</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 30-32, 90; T. 2 July 2015 (SAO Van), F1/1.1, p. 41.

<sup>2949</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 61-62.

<sup>2950</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 9. On the role of NUON Chea in training CPK cadres, see Section 7: Roles and Functions – NUON Chea, paras 518, 521, 528, 542.

<sup>2951</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 38-40, 73 (describing the first session as having been led by POL Pot, whereas the session that PECH Chim attended was led by NUON Chea).

<sup>2952</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 39-40.

year this took place: sometimes he said it was December 1975;<sup>2953</sup> at other times he appeared to suggest that it was in late 1976.<sup>2954</sup> Although late 1976 would appear to be more plausible based on PECH Chim’s position as District Secretary at that time, the Chamber is unable to resolve this discrepancy. PECH Chim was clear, however, that NUON Chea covered the subject of enemies: if he had not done so “people would never know how to identify enemies from friends”.<sup>2955</sup> He could not remember whether instructions were given in relation to remnants of the former Khmer Republic regime, but he recalled that not everybody was considered to be the enemy because such an approach would cause the CPK to lose support. NUON Chea spoke of the class enemy and class struggle. But speeches also discussed those in high positions as being “not good” – according to PECH Chim the CPK was still afraid of LON Nol’s men.<sup>2956</sup> Although those who had been in areas under LON Nol were described to be enemies, NUON Chea, according to PECH Chim, also said that those who had been in the enemy’s zone but served those who were in the liberated zone were considered to be friends, and considering everybody to be enemies would be difficult as it would mean losing a lot of support. PECH Chim described the overall tone of this meeting as stressing the need to be vigilant regarding LON Nol’s people.<sup>2957</sup>

954. NEANG Ouch *alias Ta San* also attended two yearly study sessions: first in around September or October 1977 and again in 1978 at Borei Keila in Phnom Penh.<sup>2958</sup> He explained that the “provincial level” selected people to attend these sessions and there were people from the district levels and some assistants.<sup>2959</sup> NEANG Ouch could not recall the contents of these sessions, but he remembered criticism and self-criticism sessions taking place afterwards in order to evaluate what was learned. He recalled training on building the proletariat class, the worker and peasant class, class struggle, and getting rid of the capitalist class.<sup>2960</sup> Unlike PECH Chim’s evidence as to the earlier

<sup>2953</sup> T. 1 July 2013 (PECH Chim), E1/215.1, p. 39. *See also*, PECH Chim Interview Record, E3/9461, 26 June 2013, p. 4, ERN (En) 00947189 (Answers 14-16, describing a session with 800 persons in December 1975).

<sup>2954</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 74-75.

<sup>2955</sup> T. 1 July 2013 (PECH Chim), E1/215.1, p. 41.

<sup>2956</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 38-39.

<sup>2957</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 34-35, 39.

<sup>2958</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 39-40, 45-48 (at first *Ta San* appeared to indicate that he only met NUON Chea once, but he then continued to explain he met NUON Chea on a second occasion); T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 63-64 (stating that it was packed with around 100 people there).

<sup>2959</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 46.

<sup>2960</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 47-49.

meeting, NEANG Ouch could not remember whether NUON Chea discussed enemies, but he credibly identified NUON Chea as leading the sessions.<sup>2961</sup>

955. *Ta Mok* did not attend district meetings, but he regularly travelled to Tram Kak district.<sup>2962</sup> His “style” was that he went to most worksites, villages and communes. This is consistent with evidence that *Ta Mok* came to inspect various worksites in Tram Kak district.<sup>2963</sup> He “constantly” went to a dam worksite at Angkor Borei.<sup>2964</sup> He visited the cooperatives, “every site” and asked people directly whether they had enough to eat, taking food from other places to supplement areas with shortages.<sup>2965</sup> *Ta Mok* instructed NUT Nov to build a “huge” cooperative hall in Leay Bour commune, which foreign visitors were later brought to see.<sup>2966</sup> Sector Secretary *Ta Saom* visited the Tram Kak District Office.<sup>2967</sup> According to NEANG Ouch, *Ta Rorn* was the Sector 13 Secretary at the time of the Chinese visit to Leay Bour commune in December 1977 and was close to SAM Bit at the zone level, taking instructions from him which NEANG Ouch *alias Ta San* then wrote them down.<sup>2968</sup> PHNEOU Yav, who lived in Samraong commune, described *Ta Chim* the district leader regularly visiting different communes to supervise worksites and meet the commune and unit chiefs.<sup>2969</sup> The evidence therefore establishes that CPK leaders from the zone, sector and district levels regularly travelled throughout Tram Kak district to visit sites and supervise.

<sup>2961</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 45-49.

<sup>2962</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 3-5.

<sup>2963</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 44 (*Ta Mok* twice came to inspect worksites where RY Pov worked, accompanied by commune chiefs and unit chiefs); T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 11-14; T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 16-17, 61; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 11, ERN (En) 01057685 (Answer 56, *Ta Mok* visited every site, and asked about conditions).

<sup>2964</sup> T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 26.

<sup>2965</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 11-14; T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 16-17, 61; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 11, ERN (En) 01057685.

<sup>2966</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 70.

<sup>2967</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 17-19, 38-41 (*Ta Saom* was the Sector secretary *before Ta Tith* and would come to the District Office in Tram Kak).

<sup>2968</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 20, 60-61; T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 4.

<sup>2969</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 17-19; T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 30 (sometimes accompanied by his two messengers or an escort).

10.1.6. *Aftermath of the Evacuations*10.1.6.1. *Reception of evacuees*

956. Thousands of people expelled from Phnom Penh and Takeo, among other places, arrived in Tram Kak district in the weeks following 17 April 1975. The Chamber heard evidence of a process to screen, register, feed and disperse evacuees to locations around the District. PECH Chim, who was on the District Committee at the time, was in charge of preparing and organising villages to be ready to receive evacuees, which included building shelters and “mobilising forces” to farm.<sup>2970</sup> The number of evacuees assigned to each different locations in the district was decided upon by his superiors.<sup>2971</sup> PECH Chim also described holding meetings to “educate” the evacuees, the objective being to ensure that everyone lived in “peace, happiness and harmony”.<sup>2972</sup> KHOEM Boeun, chief of Cheang Tong commune at the time, described urgent meetings arranged by the district level before evacuees from Takeo and Phnom Penh arrived. She was told to arrange places for evacuees to settle and to prepare food for them.<sup>2973</sup> District Secretary Yeay Khom assigned SAO Van to “solve the food supplies” for people arriving in Cheang Tong and Trapeang Thum North.<sup>2974</sup>

957. SAOM Dorn, the chief of the District Office at the time, had an oversight role for receiving and distributing evacuees, working together with commune chiefs.<sup>2975</sup> EK Hoeun described meetings to explain how to draw up lists and register arrivals for redistribution throughout the district – he recalled dividing evacuees into groups of 15 people, registering their names with a view to sending them to villages, three or four groups at a time.<sup>2976</sup> He gave another illustrative example of a list with 100 people on it to be sent to a particular village.<sup>2977</sup> He worked intensely to organise food supplies for evacuees.<sup>2978</sup> Chorn, who was KHOEM Boeun’s husband, also had a significant role in the compilation of lists and resettlement of evacuees. PECH Chim characterised

<sup>2970</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 14, 24; PECH Chim Interview Record, E3/9587, 19 June 2014, pp. 7-8, ERN (En) 01000669-01000670 (Answer 29).

<sup>2971</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 24-25.

<sup>2972</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 28.

<sup>2973</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 36-37.

<sup>2974</sup> T. 1 February 2016 (SAO Van), E1/385.1, p. 78.

<sup>2975</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 100.

<sup>2976</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 34.

<sup>2977</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 40.

<sup>2978</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 20; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 12-14; EK Hoeun DC-Cam Interview, E3/9169, 16 August 2013, p. 5, ERN (En) 01050182.

Chorn as a “mobile floating cadre” who ran errands directly reporting to the sector level. He went around collecting information, with lists of people always in his hand which he sent to the district and the sector.<sup>2979</sup> The Chamber is satisfied that the CPK’s authority structures were fully mobilised to receive, register and screen the evacuees arriving in Tram Kak district and that efforts were made to feed and shelter the thousands of arrivals.

#### 10.1.6.2. Events at Champa Pagoda

958. Champa Pagoda was located to the west of Angk Ta Saom town, on the road from Takeo town to Angk Roka. It became a gathering point and staging post for tens of thousands of the evacuees who arrived in Tram Kak district from Takeo, Phnom Penh and elsewhere.<sup>2980</sup> KEO Chandara recalled having seen thousands of people in the area of Champa Pagoda at the end of April 1975.<sup>2981</sup> District Secretary Khom and Zone Secretary *Ta Mok* visited Champa pagoda at times during this process.<sup>2982</sup> SOK Sim, a former member of the Ta Phem Commune Committee, confirmed to OCIJ investigators

<sup>2979</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 25; PECH Chim Interview Record, E3/9461, 26 June 2013, ERN (En) 00947189 (Answers 12-13).

<sup>2980</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 37; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 19, ERN (En) 01057693 (Answer 101, people gathered at Champa pagoda first then divided out to villages depending on economic scale); T. 2 February 2015 (KEO Chandara), E1/255.1 pp. 53-54; T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 31-33 (streets flooded with people who came to stay in the middle of the pagoda; people from Takeo the first to arrive with others from Phnom Penh and Koh Kong also there; mentioning 20,000 people to be distributed and giving an example that if Leay Bour commune needed say 5,000 people, then the commune chief came to Champa pagoda to take them); T. 1 July 2013 (PECH Chim), E1/215.1, pp. 52, 56 (describing more generally a “great number” of evacuees).

<sup>2981</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 49-50 (stating that he was taken to hospital “22K”, a “Zone hospital” located north of Wat Put Dos to work on a radiography machine); 53-54 (he saw thousands of evacuees at Champa pagoda – KEO Chandara was released from Kraing Ta Chan security centre at the end of April 1975 or on 1 May 1975), 70-71 (released probably 11-12 days after the country fell), 90-91 (apparently agreeing that he was released on or around 1 May 1975), 105 (released more than 10 days after liberation because he saw evacuees arrive at Kraing Ta Chan), 104-105 (his relatives confirmed to him when he was released); T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 34-35 (*Ta Mok* dropped KEO Chandara off at the hospital to repair radiography machine); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 5, ERN (En) 00223454 (identifying being taken to Hospital 22C); KEO Chandara Interview Record, E3/5153, 12 March 2008, p. 3, ERN (En) 00205089 (referring to having lived at Hospital 22 until 73, then after April 1975 being called to the “Takeo Hospital”).

<sup>2982</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 28-31 (*Ta Mok* at Champa pagoda and Angk Ta Saom – he never stayed put); T. 2 February 2015 (KEO Chandara), pp. 53-54 (saw *Ta Mok* (whom he knew) at Champa pagoda from his house, which was 20 metres away. *Ta Mok* was gesturing and pointing, but KEO Chandara could not hear what he said); T. 1 February 2016 (SAO Van), E1/385.1, pp. 78-79 (*Ta Mok* was not there when SAO Van was at Champa Pagoda).

that he saw “many people” accommodated in the pagoda, and that later on they were sent to live in villages.<sup>2983</sup>

959. OEM Saroeurn described arriving at Champa Pagoda with her family, among large numbers of other people. She recalled persons going around registering names and taking notes of any previous roles. Those who disclosed they had high ranks or were senior officials were taken away under a pretext that they would return to their previous jobs, but they disappeared. Specifically, her uncle IM Chak was one of those taken away from Champa Pagoda at the same time as even former teachers, soldiers, police and custom officers. She never saw him again.<sup>2984</sup> After one week, she and her other family members were moved east, to Prey Chheu Teal village then onwards to Leay Bour commune.<sup>2985</sup>

960. OEM Saroeurn’s general account of the events at Champa Pagoda is corroborated by EK Hoeun, who worked with the Tram Kak District Office at the relevant time and, although evasive at times, described an intensive period of seven days when lists were drawn up and former soldiers or officials were invited to register on the premise that they would take on similar roles in the new regime.<sup>2986</sup> Although EK Hoeun did not see *Ta Mok*, he described SAOM Dorn overseeing this operation from Tram Kak district together with commune officials.<sup>2987</sup> He recalled that civilians, police officers and soldiers who had been in the barracks in (enemy-held) Takeo were among those assembled at Champa Pagoda.<sup>2988</sup> This is consistent with the testimony of SREI Than *alias* Duch, who was a soldier involved in the capture of Takeo town which fell on 18 April 1975. He described LON Nol soldiers leaving Takeo town and being sent west along Highway 22 toward Tram Kak district.<sup>2989</sup> EK Hoeun described to OCIJ

<sup>2983</sup> SOK Sim Interview Record, E3/5519, 23 November 2009, p. 3, ERN (En) 00414074 (Answer 8).

<sup>2984</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 24.

<sup>2985</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 5-6.

<sup>2986</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 31-32, 37 (seven day propaganda period during which people were rounded up and taken away: hundreds and thousands were taken); EK Hoeun Interview Record, E3/9582, 19 March 2014, pp. 16-17, ERN (En) 00983581-00983582 (Answers 113, 118, *Ta Mok* in charge of the propaganda operation); T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 39-40 (within a week, those on the lists sent south and the remaining persons were scattered into different villages). At times, EK Hoeun claimed that he never went to Champa pagoda, but he proceeded to describe events in the vicinity. See T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 37-38, 40 (then acknowledging that he was there for one hour).

<sup>2987</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 38-39; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 17, ERN (En) 00983582 (Answer 124).

<sup>2988</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 30 (describing killings of civilians, police officers and soldiers who were in the Takeo barracks).

<sup>2989</sup> T. 19 February 2015 (SREI Than *alias* Duch), E1/266.1, pp. 8-9.

investigators that once names were registered at Wat Champa, “they decimated hundreds of thousands of ranking officers until they were completely exterminated” and this took place at Wat Champa in Ta Phem commune, west of Angk Ta Saom.<sup>2990</sup> He went on to say that he was not close by at the time, but this information was “bandied about by word of mouth”.<sup>2991</sup> KEO Chandara, who was imprisoned at Kraing Ta Chan in around 17 April 1975, described speaking to newly arrived prisoners who told him that they were students from Phnom Penh, and arrived at Kraing Ta Chan from Champa Pagoda.<sup>2992</sup> The arrest of persons including former Khmer Republic soldiers and officials at Champa Pagoda in the aftermath of the liberation is confirmed by later documentary evidence. For example, a handwritten report dated 30 April 1977 describes arrests having taken place at Wat Champa “after the liberation”.<sup>2993</sup>

961. In contrast to such evidence, although SAO Van who was then the chief of the Front in Cheang Tong commune, agreed that former LON Nol soldiers were gathered up at Champa Pagoda, he testified that they were merely invited to settle in a particular location, near the foot of the mountain – he did not know exactly where.<sup>2994</sup> According to SAO Van, the CPK identified former soldiers through their family origins and some were sent to their home villages to live with their parents.<sup>2995</sup> When asked further about the events at Champa Pagoda, he stressed that his role was limited and pointed to others including “Phi” and the “district military” as responsible – for what precisely, SAO Van did not elaborate.<sup>2996</sup> The Chamber is satisfied that this evidence relates to Phy, who worked for Tram Kak district and the Chamber has found also performed functions related to Kraing Ta Chan.<sup>2997</sup> SAO Van described one particular day when he travelled to visit Takeo with “Bong Chim” – a reference to PECH Chim – but when he returned to Ta Phem commune, the people at Champa Pagoda had all gone, having been distributed to different communes.<sup>2998</sup> VAN Soeun, a district soldier at the time and

<sup>2990</sup> T. 7 May 2015 (EK Houen), E1/298.1, pp. 31-32.

<sup>2991</sup> T. 7 May 2015 (EK Houen), E1/298.1, p. 37.

<sup>2992</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 42-43.

<sup>2993</sup> Tram Kak District Record, E3/4141, 30 April 1977, ERN (En) 00711361 (handwritten report from Moem to *Angkar* in Tram Kak district, describing the arrest of KHIEV Sokha’s father – a person skilled at geometry – at Champa Pagoda after the liberation. *See also*, Tram Kak District Record, E3/2048, p. 2, ERN (En) 00145495 (the same document translated as KHIEU Sokha’s father having been a cartographer in Takeo: “After the liberation, our *Angkar* removed him when he arrived at Wat Champa.”).

<sup>2994</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 26-28, 79-81.

<sup>2995</sup> T. 1 February 2016 (SAO Van), E1/385.1, p. 82.

<sup>2996</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 78-81.

<sup>2997</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2697-2698, 2742.

<sup>2998</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 80-81.



later a guard and messenger at Kraing Ta Chan, gave evidence that after 17 April 1975 the instructions being given were to simply send LON Nol soldiers back to their hometowns.<sup>2999</sup> Notwithstanding this evidence, the Chamber is satisfied that the combination of evidence from OEM Saroeun concerning her uncle's disappearance, EK Hoeun and the documentary evidence establishes that evacuees were screened at Champa Pagoda and some were killed and/or disappeared as a result.<sup>3000</sup> The Chamber has also established elsewhere in this Judgement that some persons were sent from Champa Pagoda to Kraing Ta Chan Security Centre.<sup>3001</sup> The Chamber is satisfied that, as part of the registration and screening process described above, evacuees at Champa Pagoda were asked to divulge their previous occupations and that many did so. The evidence does not allow the Chamber to make a more precise finding as to the numbers involved.

962. The Chamber finds that the events at Champa Pagoda were restricted to a relatively short period: one week or slightly longer after the fall of Phnom Penh and Takeo town. CHOU Koemlan arrived in Tram Kak district approximately 22 days after the fall of Phnom Penh. She described being gathered with her family members for "checking" in Pou Ta Sab, 2km west of Angk Ta Saom market.<sup>3002</sup> Notably, they were not sent to Champa Pagoda which EK Hoeun confirmed was only 1km further to the west.<sup>3003</sup> On this basis, the Chamber finds that the activities at Champa Pagoda were over by mid-May 1975 at the latest.

#### 10.1.6.3. Instructions in relation to evacuees and former Khmer Republic officials

963. PECH Chim distinguished different instructions to proceed to review and report on persons in general.<sup>3004</sup> PECH Chim described a meeting where District Secretary Yeay Khom discussed the situation of enemy officers who had been gathered up, but he did not directly state that there were instructions to kill them. According to PECH Chim,

<sup>2999</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 75; T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 10, 41-42.

<sup>3000</sup> For the Chamber's findings on the instructions issued at the time, *see below*, paras 963-967.

<sup>3001</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2791, 2841.

<sup>3002</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 46-47.

<sup>3003</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 31-32 (Champa Pagoda was 3km west of Angk Ta Saom); EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 16, ERN (En) 00983581 (Answer 113, describing Champa pagoda as 3km west of Angk Ta Saom).

<sup>3004</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 35-36 (the plan was to review the number of people and report on them).

being gathered in this way meant those persons had no future: their fate was, in his words, “disaster”. According to PECH Chim, instructions came from the sector level and above.<sup>3005</sup> He also described the wives of former Khmer Republic officials arriving in Tram Kak district after the liberation, who told them that the military had taken their husbands during the journey.<sup>3006</sup> PECH Chim stated that he was “aware that there were executions” of former Khmer Republic soldiers and officials.<sup>3007</sup> EK Hoeun confirmed such executions, but additionally he described repeated instructions from District Secretary *Yeay* Khom to smash all capitalists, feudalists and reactionaries and kill them wherever they were, until not one remained. *Yeay* Khom repeated this in numerous meetings with militiamen who would repeat those statements back to her, and this instruction applied to former Khmer Republic soldiers and officials, including commune chiefs, village chiefs, teachers and those who had “political tendencies”.<sup>3008</sup>

964. PECH Chim also described a policy to refashion former LON Nol people in order for them to conform to the new society and rid them of their prior negative elements.<sup>3009</sup> NUT Nov described announcements that former soldiers, teachers and/or other professions would be able to return to their former jobs, but they were instead sent for re-education and disappeared. He described biographies being collected and those who were considered to oppose the revolution were sent for re-education.<sup>3010</sup> EK Hoeun, who was based at the District Office at the time, described a process whereby former Khmer Republic officers or civil servants were identified, sent to the District Office, then quickly sent to “the jungle”. He described a slogan being used at the time that feudalists, capitalists and reactionaries had to be destroyed to extinction, and people followed that direction.<sup>3011</sup> The Chamber is satisfied that instructions were issued to execute Khmer Republic soldiers and officials arriving in Tram Kak district and this explains the events described above at Champa Pagoda.

965. RIEL Son’s brother-in-law YA San was a former policeman in the Khmer Republic, who arrived in Tram Kak district among the large numbers of evacuees. RIEL

<sup>3005</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 36; T. 24 April 2015 (PECH Chim), E1/292.1, p. 96.

<sup>3006</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 30-33.

<sup>3007</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 76.

<sup>3008</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 44-45, 102-103.

<sup>3009</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 72-73 (stating that this was one meaning of the word “*komchat*”).

<sup>3010</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 42, 54-55, 60-61.

<sup>3011</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 57.

Son testified that as soon as his brother-in-law arrived, the village chief took him away to be killed. RIEL Son described a conversation he had with PREAB Kit, who was the commune secretary at the time, when he asked for help for his brother. The response was that he “died according to the plan”.<sup>3012</sup> This evidence satisfies the Chamber that there was a plan to kill former members of the LON Nol regime in Tram Kak district. SAO Han similarly recounted the arrest of his elder brother, LUON Han, a few days after the fall of Phnom Penh. He described the village chief coming to investigate his brother, following which militiamen came to take his brother away. SAO Han’s family was present at the time of his brother’s arrest, which is how he learned of it. His brother was taken away in a horse cart and he never saw him again.<sup>3013</sup> These examples satisfy the Chamber that the instructions described in the previous paragraphs were implemented in the immediate aftermath of the evacuations in locations in addition to Champa Pagoda.

966. The evidence further reveals a change in approach some time after late May 1975. District Secretary *Yeay* Khom attended the meeting in Phnom Penh from approximately 20 May 1975. Upon her return to Tram Kak district, she organised a morning session to pass on various instructions related to, among other things, the abolition of money, markets and the disrobing of monks.<sup>3014</sup> PECH Chim could not remember whether *Yeay* Khom relayed any particular instructions on former Khmer Republic soldiers at this point in time.<sup>3015</sup> He did recall, however, a circular disseminated by *Yeay* Khom at one time which targeted former LON Nol officers between the ranks of second lieutenant and colonel, a plan which he understood to emanate from the sector level and *Ta* Mok.<sup>3016</sup> PECH Chim’s testified that the plan was to review the number of people and report on them, but not to make any arrests or take further action.<sup>3017</sup> PECH Chim also described a different meeting in Takeo town, when *Ta* Mok announced that former LON Nol soldiers from the rank of second lieutenant up to colonel were not to be harmed. He was unclear as to the date and precise location,

<sup>3012</sup> RIEL Son Interview Record, E3/9602, 18 February 2014, pp. 6, 10, ERN (En) -00982638-00982642 (Answers 28-29, 57-58).

<sup>3013</sup> T. 17 February 2015 (SAO Han), E1/264.1, p. 96; T. 18 February 2015 (SAO Han), E1/265.1, p. 3 (the militia group).

<sup>3014</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 69-70.

<sup>3015</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 70-71.

<sup>3016</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 33; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 35-38; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 16-18, 92.

<sup>3017</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 35-36.

but remembered approximately 50-60 persons in attendance including various sector, district and military representatives.<sup>3018</sup> PECH Chim described it as “logical” to spare those persons with lower ranks.<sup>3019</sup> Not all communes attended this meeting.<sup>3020</sup> Despite PECH Chim’s recollection that KHOEM Boeun attended this meeting, she could not recall it or indeed any announcement by *Ta Mok* that particular ranks were not to be harmed.<sup>3021</sup> Although there were discrepancies in his account, the Chamber accepts the core point in PECH Chim’s evidence that some instructions were indeed issued not to harm former Khmer Republic soldiers including those above the rank of second lieutenant up to colonel.

967. SAO Van described a meeting at Phnom Trel in Angkor Chey district (District 106) some time after the evacuation of Phnom Penh.<sup>3022</sup> His evidence was unclear on the exact timing. He placed it at different points in time, from one month up to three months after the liberation.<sup>3023</sup> The Chamber is satisfied that this took place after the meeting which *Yeay Khom* had attended in Phnom Penh in late May 1975. The purpose of the meeting SAO Van attended was to instruct and advise attending cadres to deal with the situation of the people. SAO Van recalled that issue of former LON Nol soldiers was mentioned.<sup>3024</sup> Sector Secretary *Ta Saom* issued an instruction that former Khmer Republic soldiers and policemen with the rank of second lieutenant up to colonel should not to be harmed.<sup>3025</sup> Nothing was said about former civil servants.<sup>3026</sup> *Ta Saom* also issued instructions to find solutions for the population which was lacking food supply and medicine.<sup>3027</sup> According to SAO Van, this meeting was attended by representatives from throughout Sector 13, including soldiers. Hundreds of people were in attendance, including commune chiefs, units chiefs, and soldiers.<sup>3028</sup> The session

<sup>3018</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 16 (appearing to mention the Party School after a Sector Party Congress), 17 (appearing to mention a house in the northern part of Takeo town along the river edge).

<sup>3019</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 24-25.

<sup>3020</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 19-20.

<sup>3021</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 40-44.

<sup>3022</sup> T. 2 February 2016 (SAO Van), E1/386.1, pp. 10-12.

<sup>3023</sup> T. 2 February 2016 (SAO Van), E1/386.1, pp. 83-86.

<sup>3024</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 18-22, 59-60.

<sup>3025</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 25-26, 65-68, 71. SAO Van previously said that the instruction related to the rank of colonel and up, but before the Chamber he maintained that the instructions related to the rank of colonel and down. He further explained that no instructions were issued in relation to those above the rank of colonel. *See* T. 1 February 2016 (SAO Van), E1/385.1, p. 93.

<sup>3026</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 21-22.

<sup>3027</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 21-22.

<sup>3028</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 17-19, 62-65; T. 2 July 2015 (SAO Van), F1/1.1, p. 109.

lasted the full morning and part of the afternoon, after which the attendees had to return to their own locations on foot and disseminate these instructions more widely.<sup>3029</sup> The Chamber therefore finds that, following an initial period of arrests and executions in the aftermath of 17 April 1975, instructions were disseminated not to harm former Khmer Republic soldiers including those above the rank of second lieutenant up to colonel. The position in relation to later periods is addressed below.<sup>3030</sup>

### 10.1.7. *Life and Work in the Cooperatives*

#### 10.1.7.1. *Economic plans and production targets*

##### 10.1.7.1.1. *High-level policy documents*

968. The meeting in Phnom Penh from 20 May 1975 set out the Party's agricultural plan for the country.<sup>3031</sup> An orchestrated effort followed to collectivise property, organise and expand production cooperatives throughout Tram Kak district then expand them over time.<sup>3032</sup> The Chamber has already discussed the expansion of cooperatives over time. The evidence also reveals the nature of collectivisation entailed by cooperatives. The August 1975 issue of *Revolutionary Flag* recorded the CPK's decision to "take each village, to make it into a unit, and organise a cooperative".<sup>3033</sup> A

<sup>3029</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 18-21, 29.

<sup>3030</sup> See below, para. 1080.

<sup>3031</sup> This is confirmed by later documents. See e.g., Policy Document No. 3, E3/781, 19 September 1975, ERN (En) 00523571 (section entitled "The mass movement in implementing the agricultural line of the Party during the past 4-5 months, May 75").

<sup>3032</sup> *Revolutionary Flag*, E3/5, August 1975, pp. 32, ERN (En) 00401507 (stating that after the liberation, the Party decided to expand the cooperatives), 35, ERN (En) 00401510 (stating that village cooperatives should now be organised everywhere); T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 51 (although unable to remember the month, it was still 1975 when she was asked to eat communally); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 16 (communal eating started when asked to transplant rice in August 1975); T. 12 March 2015 (NUT Nov), E1/276.1, p. 45 (communal eating in cooperatives in Nhaeng Nhang started in 1976); T. 18 February 2015 (SAO Han), E1/265.1, p. 8 (communal eating started in 1976 in cooperatives, there was an announcement that all private property had to be gathered together and no more eating at home); T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 5-7, 42-43 (communal eating started after the liberation of Phnom Penh, collectivisation of property happened in 1975 – the unit chief collected the property); T. 23 January 2015 (OUM Suphany), E1/251.1, pp. 66-67 (appearing to say 3 June 1976 with reference to her contemporaneous diary, E3/9613, ERN (En) 01036463-01036464), 84 (clarifying to 9 February 1976, but noting that collective eating happened before then, but from that date it became "certain"); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 7-8, 11 (cooperatives established towards the end of 1975 and all belongings, cooking utensils and rice stocks were confiscated for common use); SOK Sim Interview Record, E3/5519, 23 November 2009, ERN (En) 00414074 (Answer 7, indicating that it was 1976 when "all resources were collected and placed under the control of the cooperative and people were eating collectively).

<sup>3033</sup> *Revolutionary Flag*, E3/5, August 1975, ERN (En) 00401507. The article goes on to set out the various advantages of village-level cooperatives over previous structures of 10-20-30 families working together. It continued (at ERN (En) 00401510) that "village cooperatives should be organized everywhere".

CPK Policy Document dated 19 September 1975 further evidences the plan to “eliminate villages” and “organise collectives instead” so that communes would not require any separate support from the State.<sup>3034</sup> It explained that, although part of the production of the cooperatives would be “kept at the base”, production would be “sent up so [the] upper echelon will have capital to exchange for machinery and other items”.<sup>3035</sup> Communes were to grow their own rice and raise their own livestock to satisfy their own needs and support their respective cooperatives.<sup>3036</sup> At the Standing Committee meeting of 30 May 1976, with NUON Chea and KHIEU Samphan both in attendance, POL Pot observed that 30 to 50 per cent of rice production had to be given to the State.<sup>3037</sup> The essential economic model entailed “exchange and barter” between the cooperatives, the district, sector and zone.<sup>3038</sup> The prices of goods were to be set by the State, but it is unclear whether a coherent price scale was ever implemented.<sup>3039</sup> A further CPK Policy Document dated 22 September 1975 recorded that the very economy was based on cooperatives, but stated that people joined them of their own wish and were not forced: “Those who do not want to do so, they can wait, observe and do it later”.<sup>3040</sup> The Chamber recalls here the evidence that approximately 85 percent of the population lived in cooperatives.<sup>3041</sup>

969. The CPK planned to develop the country rapidly through an agricultural phase then, after 10 to 15 years, turn Cambodia into an industrialised economy. The initial

<sup>3034</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523588.

<sup>3035</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523588-00523589.

<sup>3036</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 12-13.

<sup>3037</sup> Standing Committee Minutes, E3/224, 30 May 1976, p. 2, ERN (En) 00182668.

<sup>3038</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523589.

<sup>3039</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754 (“I was in charge of preparing the price list for the cooperatives and the distribution of goods to the zones under direction from the standing committee”), 5, ERN (En) 00156756 (“there might have been exchanges of goods between cooperatives, so the price could have been fixed, but in practical terms it was something that was never implemented”); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, July 2004, pp. 66-67, ERN (En) 00103756 (“I was charged with: Establishing a price scale for products from the cooperatives and other economic units [...] In the absence of any currency, I felt puzzled every time I looked into the problem of setting prices for products, but I hoped that one day some sort of exchange would be established among cooperatives and the various economic units, through a system of bank transfer”), 149, ERN (En) 00103794 (“Setting prices for cooperative products (obviously, since there were not any exchanges in products neither between cooperatives, nor between the cooperatives and the State, it was impossible for me to carry out this task”), 154, ERN (En) 00103800 (“The only thing that I was able to do was to implement directives of the ‘Permanent Bureau’ regarding the distribution of products collected in Phnom Penh”); *Kampuchea, Three Years Old*, E3/3290, 19 May 1978, ERN (En) 00419213 (Yugoslavian journalists explaining their understanding having visited Democratic Kampuchea in early 1978). See also, Section 8: Roles and Functions – KHIEU Samphan, para. 609.

<sup>3040</sup> Policy Document No. 6, E3/99, 22 September 1975, p. 1, ERN (En) 00244274.

<sup>3041</sup> See above, paras 942, 952.

phase involved ambitious plans to increase the area of land which could be cultivated, and increase the number of areas which could sustain two or more harvests per year – for instance by generating a harvest in the dry season.<sup>3042</sup> In addition to building cooperatives, this plan envisaged transforming the topography of the countryside by combining the existing small rice paddy fields together in order to create a checkerboard of dykes, larger rice paddies, with a system of dams and canals to store and control water, then irrigate the land when needed. The CPK’s Policy Document of 19 September 1975, for example, described the “major goal” of the year to make dykes and canals, with dykes to be “high, straight and level, done in a pattern like a chessboard”. This indicated a deadline of three years to complete the dykes in the lowlands of the country.<sup>3043</sup> One function of the dykes was to husband water in rice fields.<sup>3044</sup> Canals were to be built to hold water in and let it out whenever needed, and to “reach lakes and rivers which have sources of water which never dry up”.<sup>3045</sup>

970. The October 1975 issue of *Revolutionary Youth* described the dismantling of small paddy fields to integrate them by putting up big new paddy dykes in straight lines, cutting out a checkerboard to hold rainwater.<sup>3046</sup> A revolutionary poem printed in the November 1975 *Revolutionary Youth* described building “big, strong and high” dykes “like the chess squares” to keep water.<sup>3047</sup> A speech by KHIEU Samphan broadcast on the radio in January 1976 described the new tall and straight structures forming a great

<sup>3042</sup> Revolutionary Flag, E3/762, August 1976, pp. 5-6, ERN (En) 00486746-00486747 (the Party fundamentally relied upon agriculture to get the agricultural capital to strengthen and expand industry, advance to modern agriculture within 10-15 years and purchase machinery).

<sup>3043</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523572 (referring to “modern paddy dikes to maintain water”), ERN (En) 00523573 (“dikes must be high, straight and level, done in a pattern like a chessboard [...] Within three years we must make 100 percent of the dikes in the lowlands.”); ERN (En) 00523774 (“We dig these canals to hold water in advance and to let water in an out whenever it is needed [...] The major goal this year is making dikes and canals.”).

<sup>3044</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523572 (referring to dykes being used to “husband water”), ERN (En) 00523573 (referring to dykes and dams “holding back water at every location” but their function being “[n]ot just to hold water and conserve soil fertility” but to “transform the rural countryside” so they must be “high, straight, and level, done in a pattern like a chessboard.”).

<sup>3045</sup> CPK Policy Document, E3/781, 19 September 1975, ERN (En) 00523574.

<sup>3046</sup> Revolutionary Youth, E3/729, 10 October 1975, ERN (En) 00357926.

<sup>3047</sup> Revolutionary Youth, E3/750, 11 November 1975, p. 28, ERN (En) 00522478. The Chamber further finds that the DK’s official emblem depicted a grid of rice fields with a large canal running through the middle, sheaves of rice surrounding the landscape and a factory in the background. See Democratic Kampuchea News, Excerpts from “The Voice of Democratic Kampuchea Radio News Broadcasts from Phnom Penh”, E3/1411, 1978, ERN (Fr) 00009496; Speech of the President of the Presidium of the State of Democratic Kampuchea at the Fifth Summit of Non-Aligned Countries, E3/549, 16-19 August 1975, ERN (En) 00644925; IENG Sary Speech, E3/618, 9 October 1979.

chess board network throughout the country.<sup>3048</sup> The February 1976 issue of *Revolutionary Youth* noted the Party's goal to "build new paddy dikes and feeder canals crisscrossing in checkerboard squares filling all the rice fields and the lowlands of Kampuchea".<sup>3049</sup>

971. The CPK Central Committee's Decision of 30 March 1976 provided that the Party would mark 20 May 1976 as the third anniversary of the peasant cooperatives.<sup>3050</sup> The April 1976 issue of *Revolutionary Flag* reported that the cooperatives had achieved 30 percent of the CPK's objective of building new paddy dykes and feeder canals in the flatlands, with the countryside to be entirely transformed within three years.<sup>3051</sup> A radio broadcast also followed on 20 May 1976, celebrating this third anniversary of the cooperatives. It pronounced that "[w]ithout the cooperatives we would have no collective force of peasants, and without these forces we would have been simply unable to build such great networks of new embankments and irrigation canals".<sup>3052</sup> Such yearly anniversary broadcasts for the cooperatives were also made on 20 May 1977<sup>3053</sup> and 20 May 1978.<sup>3054</sup> The May 1976 issue of *Revolutionary Youth* likewise referred to the youth in cooperatives and worksites having put up new paddy dykes and feeder canals in order to ensure the achievement of the objective of putting up new paddy dykes and new feeders canals on 30 percent of Cambodia's flat plains rural land.<sup>3055</sup>

<sup>3048</sup> *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167816 (KHIEU Samphan describing the national "coat of arms" as having networks of field embankments and irrigation canals represented, with embankments measuring thousands of kilometres in length).

<sup>3049</sup> *Revolutionary Youth*, E3/751, February 1976, p. 27, ERN (En) 00583780.

<sup>3050</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, pp. 1-2, ERN (En) 00182809-00182810.

<sup>3051</sup> *Revolutionary Flag*, E3/759, April 1976, ERN (En) 00517849, 00517856. The Chamber understands this figure to relate to the earlier stated goal of completing the system of dykes within three years, so the reference to 30 percent meant that one-third of the target had already been reached, and the plan was on track in time for the population to turn from this work to the main rice planting season. *See also*, Speech Celebrating First Anniversary of CPK Victory, E3/789, 15 April 1976, pp. 6-7, ERN (En) 00742445-00742446 (speech broadcast on the anniversary of the liberation explained that the new chess square irrigation system and canals had started from January 1976 and again repeated that 30 percent of the Partly plan had been achieved).

<sup>3052</sup> *Founding of Peasant's Cooperatives Hailed* (in FBIS collection), E3/276, 19 May 1976, ERN (En) 00168018-00168020.

<sup>3053</sup> *4th Anniversary of Peasants Cooperatives Hailed* (in FBIS collection), E3/287, 20 May 1977, 00168147-00168150.

<sup>3054</sup> *Editorial Marks Peasant Cooperatives Anniversary* (in FBIS collection), E3/1362, 19 May 1978, ERN (En) 00170054-00170054.

<sup>3055</sup> *Revolutionary Youth*, E3/733, May 1976, ERN (En) 00357892.



972. According to the Four Year Economic Plan for 1977-1980, the population of the Southwest Zone was 1.5 million people – spread over approximately 466,200 hectares. The target for the Southwest Zone in 1977 was to have 300,000 hectares of “Ordinary Fields” producing one harvest of three tonnes per hectare, with a further 40,000 hectares of “1<sup>st</sup> Quality Fields” producing six tonnes.<sup>3056</sup> For subsequent years, the area to be harvested twice was projected to increase to 53,000 hectares in 1978, to 70,000 hectares in 1979, then to 90,000 hectares in 1980.<sup>3057</sup> Therefore, the projected harvest totals from the Southwest Zone were to be 1,140,000 tonnes in 1977, 1,210,000 tonnes in 1978, 1,320,000 tonnes in 1979 and 1,440,000 tonnes in 1980.<sup>3058</sup>

973. The Economic Plan included a capital expenditure table which factored in expenditure for the following items: people’s livelihoods (specified at 13 *thang* (312kg) of paddy per person per year); seed; and “reserves and welfare”.<sup>3059</sup> The Southwest Zone’s “expenditures” of rice were projected to be: 670,000 tonnes in 1977; 720,000 tonnes in 1978; 770,000 tonnes in 1979; and 820,000 tonnes in 1980 – *i.e.* increases of 50,000 tonnes each year.<sup>3060</sup> The Southwest Zone’s expenditure on rice for consumption was projected to remain constant at 470,000 tonnes per year, whereas seed, social work and “remaining paddy” was generally projected to increase year-on-year.<sup>3061</sup> The figures for remaining rice paddy were then divided by approximately 1.8 to calculate the remaining [milled] rice, then a further calculation was performed taking a nominal exchange rate of US\$200 per tonne, of which 80 per cent went towards “reconstruction of the Zone” with the remaining 20 per cent as a “Gift to the State”.<sup>3062</sup> The Economic Plan also specified how the Southwest Zone was to spend the amount allotted to it.<sup>3063</sup>

974. The only sector level figures provided in the Economic Plan relate to land to be cultivated twice per year, specifying that in Sector 13 the area harvested twice per year

<sup>3056</sup> Four Year Plan 1977-1980, E3/8, pp. 52-53, 65, ERN (En) 00104024, 00104030 (Tables 1-2, 14).

<sup>3057</sup> Four Year Plan 1977-1980, E3/8, pp. 52-53, ERN (En) 00104024 (Tables 1-2).

<sup>3058</sup> Four Year Plan 1977-1980, E3/8, p. 54, ERN (En) 00104025 (Table 3).

<sup>3059</sup> See below, para. 1008.

<sup>3060</sup> Four Year Plan 1977-1980, E3/8, p. 55, ERN (En) 00104025 (Table 4).

<sup>3061</sup> Four Year Plan 1977-1980, E3/8, p. 65, ERN (En) 00104030 (Table 14, recording figures for seed and social work increasing from 200,000 to 350,000 to 300,000 to 350,000; and figures for remaining paddy of 470,000 to 500,000, to 550,000 to 620,000 tonnes).

<sup>3062</sup> Four Year Plan 1977-1980, E3/8, p. 65, ERN (En) 00104030 (Table 14).

<sup>3063</sup> Four Year Plan 1977-1980, E3/8, p. 66, ERN (En) 00104031 (Table 15, providing figures for agriculture, industry, energy, communication, defence, medicine, clothing, household, hygiene and culture).

was to increase from 17,000 hectares, to 20,000 hectares, to 25,000 hectares to 30,000 hectares.<sup>3064</sup> No figures were provided for Tram Kak district in particular.

#### 10.1.7.1.2. *Implementation in Tram Kak*

975. Witnesses, Civil Parties and documents provide extensive evidence of the implementation of the above plans in Tram Kak district. Some of the evidence was provided in generalised terms, but the Chamber also heard extensive evidence about specific locations and worksites aimed at implementing the plan in the cooperatives. PECH Chim described large numbers of people working on the constructions of dykes, dams or cultivating rice fields.<sup>3065</sup> Larger scale irrigation projects required coordination across various communes and even neighbouring districts. These larger scale projects were overseen by both the district and Sector 13, following directions and guidance from the Southwest Zone particularly on the appropriate locations for dams.<sup>3066</sup> PECH Chim explained, however, that the plans were rudimentary and based on traditional ways to measure land or judge the appropriate irrigation system: there were no engineers, and only one soldier knew a bit about engineering and could assist and modify the plans. Injured soldiers who could read the terrain from maps sometimes helped to judge elevation and draining methods.<sup>3067</sup> PECH Chim testified that the main period of canal building took place after he left Tram Kak district, under the supervision of *Ta San*.<sup>3068</sup> However, he also mentioned some canal building taking place earlier on.<sup>3069</sup> KHOEM Boeun confirmed that the three tonnes per hectare target applied in Tram Kak district and she received instructions from the district level to her commune (*i.e.* Cheang Tong commune).<sup>3070</sup>

<sup>3064</sup> Four Year Plan 1977-1980, E3/8, p. 64, ERN (En) 00104030 (Table 13).

<sup>3065</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 13, 53.

<sup>3066</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 43-44; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 72-73.

<sup>3067</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 44-45.

<sup>3068</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 72-73.

<sup>3069</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 44-46 (describing the district receiving instructions on infrastructure projects through study sessions, and wherever they could build dams or dig canals they would make a proposal to the upper level to proceed then wait for the go ahead).

<sup>3070</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 63 (confirming that she received the instruction from the district).

976. EK Hoeun described all of Tram Kak district's inhabitants digging dykes and canals, day and night.<sup>3071</sup> He recalled instructions to build chequered plots of rice fields, with the period from 1975 to 1976 particularly busy in this regard, followed by a period surveying the land to build canals.<sup>3072</sup> One person from each of the 15 communes was included in a land survey group, joined by BUN Yen and EK Hoeun from the District Office plus "a teacher" to make 18 people in total. In this capacity, EK Hoeun attended surveys for dams and canals throughout Tram Kak district.<sup>3073</sup> PECH Chim explained that the district gathered adults to work in the fields or build dykes and to transplant rice twice per year.<sup>3074</sup> NEANG Ouch *alias* Ta San arrived in Tram Kak district in mid-1977, initially to assist the District Committee overseeing digging canals and building dams.<sup>3075</sup> SAO Han worked to put up "checkerboard-straight" paddy dykes, with feeder canals.<sup>3076</sup> OEM Saroeurn described having to carry earth and dig canals in a group of 12 women.<sup>3077</sup>

977. Notwithstanding that the evidence before the Chamber does not provide a comprehensive account, the evidence identifies numerous specific projects in various locations in Tram Kak district. The March-April 1978 issue of *Revolutionary Youth* described youths in mobile units working on three major canal projects in Tram Kak district: (1) exiting the Tuol Kruos dam and running to the Ou Saray dam at 5.4km long, 14 metres wide at the top and 6 metres deep; (2) exiting Mlech Popel and running to Trapeang Khnar village at 12km long, 10 metres wide at the top and between two to four metres deep; (3) exiting Champa and going west to the Neam River at 13km long. The article continued that 4,000 hectares of land was being worked to produce dry season rice.<sup>3078</sup> To similar effect, on 2 April 1978, a radio broadcast included an update on various dry season irrigation projects in Tram Kak district. It described the digging of a 13km canal from the Tuol Kruos dam to Khporp Trabaek; and an irrigation canal

<sup>3071</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 103; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 66 (EK Hoeun's generalised account of transporting food supplies to unspecified worksites of canals and dams, wherever PECH Chim would be).

<sup>3072</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 20-21; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 51, 54, 66-69 (EK Hoeun joined the land survey department in 1976 and worked there until August 1978).

<sup>3073</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 50-52.

<sup>3074</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 53-54.

<sup>3075</sup> *See above*, para. 925.

<sup>3076</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 9; SAO Han Interview Record, E3/5518, 21 November 2009, p. 6, ERN (En) 00413900 (Answer 27, referring to "checkerboard-straight" dykes).

<sup>3077</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 5-6.

<sup>3078</sup> *Revolutionary Youth*, E3/774, March-April 1978, p. 27, ERN (En) 00529444.

12km long from Molech Popei to Angk Ta Saom. It further described an “offensive” to grow rice on 4,000 hectares of land near the Angkor Borei dam and secondary crops on 70 hectares near Phnom Damrei Romiel.<sup>3079</sup>

978. In common with, or in addition to, the above-described projects, the Chamber heard evidence of: a dam at Khporp Trabaek commune in the west of the district, with a canal known as “Canal 02” which was 20 metres wide running from Khporp Trabaek to National Road 3, a distance of some 20km;<sup>3080</sup> another canal known as “Canal 01” running all the way to District 108 (Kaoh Andaet);<sup>3081</sup> a project to block the Slakou river around Tumnob Lauk and build a canal from there to Trapeang Andaeuk in Khporp Trabaek commune, a distance of 10km;<sup>3082</sup> a dam and canal from Mlech to the Slakou river, crossing Leay Bour commune – a distance of 30km which took over one year to complete;<sup>3083</sup> a major a dam and canals project at Tuol Kruos in Ou Saray commune, with people from all over the district sent to work there;<sup>3084</sup> a water pumping station at Ou Chambak in the east of the district to channel water from a lake north of Takeo town and feed water through a canal worksite into Leay Bour commune;<sup>3085</sup> and

<sup>3079</sup> *Tram Kak Irrigation Projects* (in FBIS collection), E3/1361, 2 April 1978, ERN (En) 00168800.

<sup>3080</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 45-46, 104; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 51-52; EK Hoeun Interview Record, E3/9594, 4 March 2014, p. 6, ERN (En) 00981814 (Answers 25, 29); T. 23 April 2105 (PECH Chim), E1/291.1, p. 45 (dam still being built when PECH Chim left Tram Kak district); T. 22 April 2015 (PECH Chim), E1/290.1, p. 9 (*Ta Mok* road by on a motorcycle to ask PECH Chim to travel to Takeo to meet Kang Chap *alias* Sy, from where they would be sent to the north of the country); T. 24 April 2015 (PECH Chim), E1/292.1, p. 73 (canal starting at Khporp Trabaek); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 7, 68-71 (involved in building the dam at Khporp Trabaek and a canal stretching from there to Trapeang Kul, recalling “tens of thousands” of workers sent to the Khporp Trabaek worksite from many districts of the province, although it appeared from his description that this construction may have started before 1975); T. 25 March 2015 (SAUT Saing), E1/282.1, p. 52 (suggesting he worked there in 1971 as part of a youth unit).

<sup>3081</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 51-52.

<sup>3082</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 75; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 6; T. 12 March 2015 (NEANG Ouch), E1/276.1, pp. 15-16.

<sup>3083</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 75; T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 6-7; Tram Kak District Record, E3/2453, 18 October 1977, ERN (En) 00388577 (from Angk Ta Saom commune referring to events in the vicinity of “Canal 68”).

<sup>3084</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 14, 73 (placing Tuol Kruos in Ou Saray commune, describing this project being under the control of the district office); T. 1 April 2015 (IEM Yen), E1/286.1, p. 57 (sent to dig earth at the Tuol Kruos dam); T. 1 April 2015 (TAK Sann), E1/286.1, p. 30 (a dam and/or canal at “Kouk Kruos”); T. 2 April 2015 (BENG Boeun), E1/287.1 pp. 70-73 (describing conditions at the Ou Saray dam site).

<sup>3085</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 62-66, 85 (300-400 people there digging and carrying soil); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 74; T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 32-33; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 7; T. 24 April 2015 (PECH Chim), E1/292.1, p. 72 (describing Ou Chambak as referring a creek or river to the west of the provincial town, but appearing to doubt whether such a river was there).

a dam at Dong Sap in Samraong commune.<sup>3086</sup> The Tram Kak District Records also include references to another dry season rice worksite at Kbal Pou.<sup>3087</sup>

979. The CPK's policy to expand cooperatives, build dykes, canals and dams, and focus on the most fertile land in order to achieve a rice production target of three tonnes of rice paddy per hectare applied to Tram Kak district.<sup>3088</sup> A report dated 20 April 1977 from Kbal Pau describes the dry season rice paddy having been received from various communes to the rice mill – a total of 1231 “sacks”.<sup>3089</sup> This documentary evidence confirms that Tram Kak district produced a dry season rice harvest in 1977. Although Tram Kak district increased the frequency of rice transplanting from once to twice per year in some locations, PECH Chim testified that the overall target of three tonnes per hectare could not be achieved. He thought 2.5 tonnes per hectare might have been more realistic.<sup>3090</sup> SAO Han, a farmer, similarly did not think the target of three tonnes per hectare was realistic.<sup>3091</sup> NUT Nov described meetings discussing the target, and competitions to achieve it.<sup>3092</sup> When he was in Sre Ronoung commune, however, they produced between 2.5 to three tonnes per hectare.<sup>3093</sup> KHOEM Boeun remembered the target and described receiving instructions from the district to achieve it, for example by using more fertiliser.<sup>3094</sup> According to NEANG Ouch, irrigation area 68 east of Angk Ta Saom could achieve three tonnes per hectare.<sup>3095</sup> A report from the Southwest Zone to “beloved *Angkar*” dated 3 June 1977 confirmed, among other things, that in Tram Kak seedlings were ready to be transplanted into an irrigated paddy-field of 2,500

<sup>3086</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 8.

<sup>3087</sup> Tram Kak District Record, E3/4112, 4 August [year not specified], ERN (En) 00322154; Kraing Ta Chan Notebook, E3/2107, p. 22, ERN (En) 00290225; Tram Kak District Record, E3/4093, 8 August 1978, p. 2, ERN (En) 00831487 (discussing Kbal Pou dry season rice paddy and activities of five persons in Trapeang Thum North commune and noting that the five widows from Trapeang Thum North commune had been at Kbal Pou where they had complained about the food).

<sup>3088</sup> Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495813 (describing a unanimous decision taken by the Party Congress for the average rice harvest across the country in 1976 to be three tonnes per hectare (equivalent to 120 *thangs*) and that “three tons per hectare” had become the “common resolution for the entire Party, the whole population and the whole Revolutionary Army”).

<sup>3089</sup> Tram Kak District Record, E3/8418, 20 April 1977, ERN (En) 00322136.

<sup>3090</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 64-65.

<sup>3091</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 12-14; SAO Han Interview Record, E3/5518, 21 November 2009, p. 6, ERN (En) 00413900 (Answer 31, stating that nothing happened if they did not achieve targets).

<sup>3092</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, p. 13, ERN (En) 00422327 (Answer 90).

<sup>3093</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 8-9; NUT Nov Interview Record, E3/5521, 1 December 2009 (Answer 90).

<sup>3094</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 63-64.

<sup>3095</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 15-16.

hectares near O Chambak in Leay Bour commune.<sup>3096</sup> It continued that in Tram Kak district, the plan for digging channels was partially completed.<sup>3097</sup> The evidence discussed in this section satisfies the Chamber that the population of Tram Kak district was put to work on extensive irrigation projects and these achieved some measure of the intended plans.

10.1.7.2. Categorisation of people: Full-Rights, Candidates and Depositees

10.1.7.2.1. *High-level policy documents*

980. The evidence reveals varying references to Base or Old People on the one hand, and New or 17 April People on the other hand. In discussions of the peasant class, the evidence frequently distinguishes different types of peasants, in particular old or new peasants; and a further tripartite classification of cooperative members as either Full-Rights, Candidates or Depositees. This section sets out the Chamber’s findings in relation to these categorisations and their intended meaning.

981. When the Standing Committee visited the Northwest Zone in August 1975, the resulting report recorded the CPK’s *national* policy in relation to cooperatives. In describing *Angkar*’s “guiding opinion” it noted that, since liberation, the function of cooperatives was “to absorb all the New People coming out of all the cities and towns, especially Phnom Penh city”. It described how New People “must be submissive to the cooperatives politically and economically. This is our orientation.”<sup>3098</sup> The Chamber finds that this reflected the Standing Committee’s policy that New People had to give in, or bow to, the cooperatives. This report contrasts the Northwest with Zone “405”, *i.e.* the Southwest Zone, which it described as having “little hope (little land, little water, no-good paddy”.<sup>3099</sup> In describing “Miscellaneous problems”, the report concludes that in production units “[w]e must split up new forces and not allow them to

<sup>3096</sup> Report from the Southwest Zone to Respected and Beloved *Angkar*, E3/853, p. 2, ERN (En) 00185244.

<sup>3097</sup> Report from the Southwest Zone to Respected and Beloved *Angkar*, E3/853, p. 4, ERN (En) 00185246 (stating that 50 to 60 percent of the plan was completed).

<sup>3098</sup> Report of Standing Committee’s Visit to the Northwest Zone, E3/216, 20-24 August 1976, p. 3, ERN (En) 00850975.

<sup>3099</sup> Report of Standing Committee’s Visit to the Northwest Zone, E3/216, 20-24 August 1976, p. 4, ERN (En) 00850976.

concentrate”.<sup>3100</sup> The August 1975 issue of *Revolutionary Youth* discusses the “feudalists and capitalists” who had gone down to the countryside and issues a warning to resist their views of private ownership and capitalist ideology.<sup>3101</sup>

982. A September 1975 Policy Document describes the division of the labour force throughout the country: “The labor force is to be divided into orderly teams working with plans, with team leaders, leading to atmosphere of happiness and solidarity [...]. Organizing forces like this also makes the new group from Phnom Penh able to work with the others.” It explains the need to “divide the people according to production requirements”.<sup>3102</sup> Another September 1975 Policy document records the CPK’s general view that some people had no material means any longer: “They depend on us for everything”.<sup>3103</sup> The only reasonable inference is that this referred to evacuees and reflected their subordination to the cooperatives.

983. The October 1975 issue of *Revolutionary Youth* includes a section on dealing with the New People. It describes how the cooperatives were managing “education and building of the more than two million people who have just been liberated from the rule of the contemptible traitors”.<sup>3104</sup> It continues that enemy agents and bad elements were “chaotically mixed” among the ranks of New People, so cooperatives had the duty to strengthen state authorities in villages and communes and maintain security.<sup>3105</sup> It describes the members of cooperatives as ideological mentors to the evacuees, in charge of administering their education and re-fashioning them.<sup>3106</sup> It further continues that living conditions, work and study were all to be communal, including through regularly held criticism meetings, political and cultural study meetings.<sup>3107</sup> The November 1975 issue of *Revolutionary Flag* describes the CPK’s resolution for “relentless enhancement and expansion of cooperatives” which meant not only increasing the number or size of cooperatives, but building their “stance, policy, ideology and organization”.<sup>3108</sup>

<sup>3100</sup> Report of Standing Committee’s Visit to the Northwest Zone, E3/216, 20-24 August 1976, p. 6, ERN (En) 00850978.

<sup>3101</sup> *Revolutionary Youth*, E3/749, August 1975, p. 4, ERN (En) 005232684.

<sup>3102</sup> Policy Document No. 3, E3/781, 19 September 1975, ERN (En) 00523579-00523590.

<sup>3103</sup> Policy Document No. 6, E3/99, 22 September 1975, p. 4, ERN (En) 00244277.

<sup>3104</sup> *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903.

<sup>3105</sup> *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903.

<sup>3106</sup> *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903.

<sup>3107</sup> *Revolutionary Youth*, E3/729, October 1975, p. 5, ERN (En) 00357904.

<sup>3108</sup> *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495814.

984. A Party Document produced to celebrate the 3<sup>rd</sup> Anniversary of the Peasant Cooperatives in 1976 records that it was:

[N]ecessary for the Party to control and lead the cooperatives in all fields, with Party members, youth leagues and core persons in the cooperatives. Thus the Party must have members who are cadres within its ranks and core organisation, in both quantity and calibre in order to assume leadership roles in production in every cooperative, otherwise middle-class, upper-middle-class and upper-class peasants and other classes will seize leadership role in the cooperatives and change revolutionary elements to serve the interests of their own classes. They can even turn political and economic forces of the cooperatives against the socialist revolution and socialist construction of our Party.<sup>3109</sup>

985. The August 1976 *Revolutionary Flag* refers to the expansion of cooperatives, and noted they were “organized by units, that is, units 1, 2, 3, 4 of the cooperatives”.<sup>3110</sup> It describes how the reorganisation into village cooperatives meant that “the poor peasants and the lower-middle level peasants who were members of the cooperative, consolidated their position as the true masters of the village, the masters of the communes”.<sup>3111</sup>

986. The Chamber finds the following sections of the September-October 1976 issue of *Revolutionary Flag* to be particularly significant in the context of the CPK’s categorisations of people:

Among the old peasants there are poor peasants, lower-middle peasants, mid-level peasants, upper-middle peasants, and wealthy peasants. Among the new peasants are the petty bourgeoisie, the capitalists, the feudalists, and other workers and labourer. Therefore there are contradictions within the old peasants from upper-middle peasants on up, in particular with the wealthy peasants, that are life-and-death contradictions. There are also contradictions within the new peasants, contradictions with capitalists and feudalists that are life-and-death contradictions. When individuals reform, they are not life-and-death contradictions, but they do not easily reform [...] Some elements may reform, but many elements do not reform. When they

<sup>3109</sup> Third Anniversary of the Organization of Peasant Cooperatives, E3/50, pp. 11-12, ERN (En) 00636018-00636019. *See also, Founding of Peasants’ Cooperatives Hailed* (in FBIS collection), E3/276, 20 May 1976, ERN (En) 00168018 (describing the peasants’ cooperatives as a “calming trusted mainstay for our people who left Phnom Penh and other cities” and claiming that the cooperatives have “wholeheartedly helped to solve the problems of providing food, shelter, land, cattle and all kinds of production means for these brothers”).

<sup>3110</sup> *Revolutionary Flag*, E3/762, August 1976, p. 15, ERN (En) 00486756.

<sup>3111</sup> *Revolutionary Flag*, E3/5, August 1975, p. 32, ERN (En) 00401507.



die, they instruct their children to struggle on against the communists.<sup>3112</sup>

[...]

As for the elements that are the capitalists, the feudalists, and the land-owners that have come to be the new peasants, we must educate them and build them into worker-peasants. We have the potential to reform a number of them. Some of them will not reform; they look for successive opportunities to oppose the revolution.<sup>3113</sup>

[...]

In selecting cadres for the cooperatives and factories, we do not select from the capitalist elements or the elements of any other class. This also goes to the proletarian dictatorship. If we were to select them, they would have the right to organize materials, and even more dangerously they would have the right to induct others of their kind to leader the cooperatives and factories.<sup>3114</sup>

987. The November 1976 issue of *Revolutionary Youth* records the CPK's aim that society should comprise a single peasant class, including new peasants who had left the cities following the liberation of the country.<sup>3115</sup> It explains that:

[O]ur present Kampuchean society has only two classes: the union worker class and the cooperative peasant class. However, among those peasants are the old peasants who worked the farm fields from the beginning and the new peasants who only departed the various cities after the liberation of the entire country to go increase production in the countryside in the rice fields and on the farms. But, both the new and old peasants are inside the single peasant class.<sup>3116</sup>

988. The December 1976-January 1977 issue of *Revolutionary Flag* records that the collective forces were "divided into regular forces, one, two, front and rear, at a high level".<sup>3117</sup> The December 1976 issue of *Revolutionary Youth* described similar sentiments:

[T]his new Kampuchea society, in the organizational forms, has two classes only, the worker class and the peasant class. As for the other classes such as the feudalist, capitalist, secondary capitalist, especially the feudalist capitalist, they have been basically overthrown politically and economically, and have gone to live and work in the countryside producing rice altogether with our cooperative peasants. So, in forms, the feudalist, the capitalist, and the secondary capitalist have been all eliminated; only the individuals remain, but they do not have any political influence anymore. They have no economic force, and must

<sup>3112</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529.

<sup>3113</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 33, ERN (En) 00450533.

<sup>3114</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 34, ERN (En) 00450534.

<sup>3115</sup> *Revolutionary Youth*, E3/757, November 1976, pp. 3-4, ERN (En) 00543694-00543695.

<sup>3116</sup> *Revolutionary Youth*, E3/757, November 1976, pp. 3-4, ERN (En) 00543694-00543695.

<sup>3117</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 7, ERN (En) 00491400.

live and work to produce rice in the countryside subordinated to our cooperative peasants entirely. So, in organizational forms, these types of persons have already become the peasants although they are the new peasants.<sup>3118</sup>

989. The first reference to the tripartite distinction between Full-Rights People, Candidates and Depositees is found in the April 1977 issue of *Revolutionary Flag*, which describes it as “imperative to clearly distinguish” the different elements in cooperatives “to not allow any further confusion”.<sup>3119</sup> It continues that the selection of cooperative committees had to follow the CPK’s class line.<sup>3120</sup>

990. The August 1977 issue of *Revolutionary Flag* further records the CPK’s decision to use the poor and lower-middle peasants to control the cooperatives and cooperative committees.<sup>3121</sup> It states in unequivocal terms: “Prepare the poor peasants and the lower-middle peasants to control the cooperatives, to attack and smash the state power of other classes who stole control from of [*sic*] our cooperatives and give it back to the poor peasants and the lower-middle peasants down below”.<sup>3122</sup> It continues: “Therefore, the poor and lower-middle peasants, speaking in general, are still clean. Speaking individually, some are not very clean; but generally speaking, they are still clean, politically clean. Politically clean, not indebted to or entangled with the enemy.”<sup>3123</sup> It stresses the need:

[T]o use the poor peasants and the lower-middle peasants to control the cooperatives, to control the cooperative committees, to control the water spearheads, to control the fertilizer spearheads, to control the cattle spearheads, to control the ovens, the salt, the fermented fish paste, and the paddy-rice storehouse spearheads, to control the cooperative hospitals, to control the children in the cooperatives studying in the cooperatives, to control every spearhead.<sup>3124</sup>

991. The September 1977 special issue of *Revolutionary Flag* records that each cooperative was a small collectivist society “freed from corrupt and depraved culture

<sup>3118</sup> Revolutionary Youth, E3/758, December 1976, p. 3, ERN (En) 00544859.

<sup>3119</sup> Revolutionary Flag, E3/742, April 1977, p. 14, ERN (En) 00478505.

<sup>3120</sup> Revolutionary Flag, E3/742, April 1977, pp. 14-15, ERN (En) 00478505-00478506.

<sup>3121</sup> Revolutionary Flag, E3/193, August 1977, p. 16, ERN (En) 00399236.

<sup>3122</sup> Revolutionary Flag, E3/193, August 1977, p. 16, ERN (En) 00399236 (Presentation of the Party Organization Representative to the West Zone Cadre Conference, 25 July 1977).

<sup>3123</sup> Revolutionary Flag, E3/193, August 1977, p. 13, ERN (En) 00399234.

<sup>3124</sup> Revolutionary Flag, E3/193, August 1977, p. 16, ERN (En) 00399236.

and traditions”.<sup>3125</sup> The October-November issue of *Revolutionary Flag* specifies that middle peasants and the rest of the petty bourgeoisie should only be used for “secondary battlefields and under the leadership of the proletariat, or, concretely, under the leadership of cadres emerging from the basic classes”.<sup>3126</sup>

992. The March 1978 *Revolutionary Flag* included an earlier speech by POL Pot to the 1977 Annual West Zone Conference. He gave the following example:

In a cooperative, the selection of members of the cooperative to the cooperative committee or members responsible for some spearhead, is also a fight. Sometimes the District Committee is in agreement. Sometimes there is agreement within the Cooperative Committee to take this comrade, and sometimes it goes according to the class line and the organizational line of the Party. But, sometimes the committee is not in agreement. The Cooperative Committee is not in agreement. One comrade says take this comrade. Another comrade says take that comrade. This is a struggle to defend the class line and the organizational line of the Party. Suppose that we get a no-good person in the Cooperative Committee: we lose to the enemy in organizational terms because we have let an improper element join. Therefore, this is why it is imperative to fight from the minor battlefields on up to see who gets control of the rice storehouse, who gets control of the kitchen, who gets control of the hospital, sewing, the cooperative, and so on. We raise this issue so that it can be seen in every aspect, very field, in order to fight and defeat the enemy. The West Zone has sorted out this issue comparatively well by fighting absolutely, by absolutely selecting the fundamental class for responsibility. It is imperative to continue to strengthen and expand this to make it better.<sup>3127</sup>

993. The March 1978 issue of *Revolutionary Flag* also describes how, once every six months, there might be a two-day school session for Full-Rights or Candidate Members of the cooperatives, then it continued:

[E]ven the depositee members come to try to study with the others to try to draw experience. Or the Full-Rights members might study separately first in order to be in unit, and then the Candidate members might join in and the depositee members might draw some experience back-and-forth with one another to improve [...]. We educate and build the full-rights members into progressives, and then build them into cores.<sup>3128</sup>

<sup>3125</sup> *Revolutionary Flag*, E3/11, September 1977, p. 45, ERN (En) 00486256 (continuing that it was a healthy new society, where equality and harmony prevail and living conditions are consolidated and developed).

<sup>3126</sup> *Revolutionary Flag*, E3/170, October-November 1977, ERN (En) 00182562.

<sup>3127</sup> *Revolutionary Flag*, E3/745, March 1978, pp. 8-9, ERN (En) 00504074-00504075.

<sup>3128</sup> *Revolutionary Flag*, E3/745, March 1978, p. 22, ERN (En) 00504088.

994. A further section in this March 1978 issue of *Revolutionary Flag* is headed “On Socialist Revolution” and explained that it was imperative to select the “fundamental class as the cores to act as the leadership” in cooperatives.<sup>3129</sup> It instructed cooperatives to rely on “poor peasants and the lower-middle peasants” because “No force is better than these forces”. The “second force” was the “middle peasants” who are “an ally of the poor peasants and the lower-middle peasants”. The “third force” was the petty bourgeoisie, the capitalists, the small land owners who could be gathered up “to the side of the revolution”. That left as a fourth force the “reactionaries” who were subdivided into three categories: (1) those who could be attracted to the revolution; (2) those who were neutral; (3) the “vicious” who cannot “be built”.<sup>3130</sup> The Chamber returns to these four “forces” later in this Judgement when discussing rations.

995. The July 1978 issue of *Revolutionary Flag* announced that, whereas previously there were three types of cooperative members: Full-Rights People, Candidates or Depositees; from then onward everybody was a cooperative member like everyone else. It maintained, however, strict criteria for the membership of cooperative committees.<sup>3131</sup> The Chamber finds that this demonstrates the CPK’s distinction between Full-Rights People, Candidates or Depositees persisted until July 1978 at least.

#### 10.1.7.2.2. *Implementation in Tram Kak*

996. The evidence establishes that the CPK’s categorisation of persons living in the cooperatives applied in Tram Kak district, with further divisions of the people into different production units, and any position of authority – such as group leaders or unit leaders – reserved for Full-Rights Persons. The Chamber is further satisfied that the distinction was ingrained and provided a primary basis upon which to report and assess a person’s conduct and attitude.

997. Following the registration and screening of arrivals in Tram Kak district after 17 April 1975, commune authorities maintained lists of the New People.<sup>3132</sup> There was

<sup>3129</sup> *Revolutionary Flag*, E3/745, March 1978, p. 11, ERN (En) 00504077.

<sup>3130</sup> *Revolutionary Flag*, E3/745, March 1978, pp. 24-25, ERN (En) 00504090-00504091.

<sup>3131</sup> *Revolutionary Flag*, E3/746, July 1978, p. 16, ERN (En) 00428304 (stating that there “is no longer any Candidate type or depositee type”).

<sup>3132</sup> T. 12 March 2015 (Nut Nov), E1/276.1, pp. 42, 52-53 (there was a register kept by the commune clerk in Nhaeng Nhang commune). At one point, NUT Nov appeared to say that this list had been drawn up by the District Committee, but he may have meant that it was drawn up on the District Committee’s

also a register of the population maintained at the District level. EK Hoeun explained that a succession of people performed this role of district clerk, including BUN Yen who maintained a list of people who came to the area from elsewhere, or whether forces were sent to other areas.<sup>3133</sup> Similarly, district messenger and *Ta Mok*'s relative, SANN Lorn, told OCIJ investigators that lists of people were produced by the district level every one or two months.<sup>3134</sup> These lists identified whether people were New People or Base People.<sup>3135</sup> NUT Nov who was a member of the Nhaeng Nhang Commune Committee until mid-1976, recalled the commune office keeping lists or a census of villagers in the commune.<sup>3136</sup> PHNEOU Yav likewise understood that the categorisation of persons was organised and maintained by the commune level.<sup>3137</sup>

998. Witnesses and Civil Parties from Tram Kak district readily recalled the distinction between Full-Rights, Candidate and Depositee Persons, and explained what these categories meant in reality. SAO Han testified that Full-Rights Persons were Base People with "good biographies"; candidate status was for Base People who had relatives with enemy inclinations; and Depositees were 17 April People who had been evacuated.<sup>3138</sup> NUT Nov described how, between 1975 and 1977, people were divided and lived separately until, in 1978, the division was abolished and there was an announcement that people were to be treated equally.<sup>3139</sup> He testified that cooperatives were structured on the basis of the classification of people as either: Full-Rights, Candidates or Depositees – and within those categories people were then placed into different work units.<sup>3140</sup> NUT Nov told OCIJ investigators that cooperatives were created as single units with people organised as either: Full-Rights, Candidates or

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instructions. *See* T. 16 March 2015 (NUT Nov), E1/277.1, pp. 18 (referring to a list or census of villagers in the commune), 23.

<sup>3133</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 27. It appears that this is the same BUN Yen who, at one time, led the land survey group in Tram Kak district.

<sup>3134</sup> SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 80, ERN (En) 01050413 (Answers 654-655).

<sup>3135</sup> SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, pp. 107-108, ERN (En) 01050440-01050441 (Answers 851-853).

<sup>3136</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 17-18.

<sup>3137</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 44 (done or decided by commune level).

<sup>3138</sup> T. 17 February 2015 (SAO Han), E1/264.1, pp. 92-95; SAO Han Interview Record, E3/5518, 21 November 2009, p. 7, ERN (En) 00413901 (Answers 34-35, SAO Han was a Candidate person because he had a relative who was a LON Nol soldier).

<sup>3139</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 55-58; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 8, ERN (En) 00422322 (Answer 44). For NUT Nov's roles, *see above*, para. 819.

<sup>3140</sup> T. 12 March 2015 (Nut Nov), E1/276.1, pp. 45-46, 79-80.

“parasitic” people.<sup>3141</sup> He also confirmed that Full-Rights People were Base People who were not involved with the previous regime; whereas “reserve” or Candidate People were Base People whose siblings were smashed, or they had family members with “tendency toward the old regimes, for example, they were senior officials or opposes the cooperatives”.<sup>3142</sup>

999. Several witnesses and Civil Parties confirmed that separate cooperatives existed for Base People and New People. NUT Nov testified that the 17 April group lived in a different group from Base People.<sup>3143</sup> MEAS Sokha testified that Old and New People were evacuated to different bases and divided into separate groups.<sup>3144</sup> CHOU Koemlan, a New Person evacuated to Leay Bour commune, described how New People were gathered to live in Chrea Chumrov village,<sup>3145</sup> whereas there was a model cooperative for Base People known as K-1.<sup>3146</sup> The Base People were in charge of the many New People in her village.<sup>3147</sup> OEM Saroeurn described the existence of different cooperatives in Leay Bour commune to similar effect.<sup>3148</sup> She described how 17 April People were gathered up and sent to Chrea Chumrov village.<sup>3149</sup> The K-3 cooperative for New People was located to the north, whereas K-1 model cooperative was located to the south.<sup>3150</sup> She described being sent to a mobile unit in 1977 comprising only 17 April People, and that New People and Base People worked separately.<sup>3151</sup>

1000. CHANG Srey Mom, a Candidate Person who lived in Nhaeng Nhang commune, recalled the arrival of New People in her cooperative and explained that they were organised into separate groups to work separately.<sup>3152</sup> She described Full-Rights People

<sup>3141</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, p. 7, ERN (En) 00422321 (Answers 39-40).

<sup>3142</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, p. 7, ERN (En) 00422321 (Answer 40).

<sup>3143</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 55-57.

<sup>3144</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 52.

<sup>3145</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 5-6.

<sup>3146</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 10.

<sup>3147</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 17.

<sup>3148</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 25-26 (the different cooperatives had different dining halls and hospitals).

<sup>3149</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 5-6.

<sup>3150</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 25-26.

<sup>3151</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 7-8.

<sup>3152</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 10-12, 70-71 (stating that the cooperative and common eating was already established in her location by 1975); CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410262-00410263; T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 71-72 (New People were put into her group); T. 2 February 2015 (CHANG Srey Mom), E1/255.1, pp. 20-21 (Base People were put into different cooperatives and did not mix).

and 17 April People kept in different cooperatives at separate locations, eating separately and not mixing with one another.<sup>3153</sup> At another point in her evidence, however, she suggested that some New People were put into her (Candidate) group.<sup>3154</sup> Full-Rights People would not, however, mix with Candidate People.<sup>3155</sup> CHANG Srey Mom distinguished a female unit of Candidate People from the female unit of Full-Rights People.<sup>3156</sup> She described a further separation between vigorous and weak workers.<sup>3157</sup>

1001. PHNEOU Yav graduated from a Candidate Person to become a Full-Rights Person in Samraong commune and described people divided into different cooperatives in early 1976: unit 1 for Base People in Angk Ponnareay village; Unit 2 was for Candidate People in Paen Meas village; unit 3 for New People in Ta Saom village.<sup>3158</sup> He explained that Units 1, 2 or 3 were also referred to as Full-Rights, Candidates and Depositees.<sup>3159</sup> It followed that Unit 1 was “more progressive” than Unit 3 and it could work faster and achieve higher productivity quotas.<sup>3160</sup> He thought that this division into three categories took place in early 1976.<sup>3161</sup> There were nuances in some parts of the district. For instance, OUM Suphany, a New Person evacuated to Trapeang Thum South commune, described how initially 17 April and Base People were kept separate, but in mid-1976 they started eating together.<sup>3162</sup> SAO Han explained that, following the evacuations and arrivals in Tram Kak district, there was a period of time before the units were formed and people assigned when some people could request to go to their

<sup>3153</sup> T. 2 February 2015 (CHANG Srey Mom), E1/255.1, pp. 20-21 (continuing that later on, Base People and 17 April People ate meals communally).

<sup>3154</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 72.

<sup>3155</sup> T. 2 February 2015 (CHANG Srey Mom), E1/255.1, p. 20.

<sup>3156</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 73-74.

<sup>3157</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 73-74.

<sup>3158</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 10-11 (describing those from cities being sent to “Kong Bei” or “Third Unit” once it was formed and referring to *Ta Saom* village), 13-14 (describing early 1976 and being told to stay in Unit 1 in Angk Ponnareay), 80 (evacuees from Phnom Penh in Unit 3); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410247 (Answer 12, identifying *Ta Saom* village).

<sup>3159</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 18 (referring to Full-Rights unit, Candidate unit people and depositee unit people).

<sup>3160</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 15 (varying strengths), 45 (productivity quotas), 54.

<sup>3161</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 13-14.

<sup>3162</sup> OUM Suphany’s Diary, E3/9613, ERN (En) 01036464 (entry for 3 June 1976 referring to “collective eating”); T. 23 January 2015 (OUM Suphany), E1/251.1, p. 67 (collective means both Base and New People eating in the communal dining hall), 69-70 (referring to a “new plan” from *Angkar* in 1976 to mix New People and Base People together in Prakeab Khang Tbound so that it was easier to control the New People).

home villages. But once the structure of units was settled upon, people could not leave their unit.<sup>3163</sup> In some cases, Base People were accused of being feudalists or wealthy and mixed with New People.<sup>3164</sup> KEO Chandara testified that *Ta Mok* explained to him that, because he was an intellectual, a “petit bourgeois” he had to temper himself, to get rid of his social status and become a poor peasant farmer.<sup>3165</sup> KEO Chandara described Base People being told to “cut off” any relationship with siblings or family relatives among those people.<sup>3166</sup>

1002. NUT Nov confirmed that generally people of the same category were kept together in work units: sometimes a village had five or six units, sometimes it had fewer units. The unit chief and group leaders of 17 April units and groups had to be Base People.<sup>3167</sup> The evidence confirms that any position of authority in Tram Kak district – such as chiefs of units, or chief of a group within a unit – could only be held by Full-Rights Persons.<sup>3168</sup> RY Pov confirmed that people were assigned to different units, including children units, production units, farmer and widower units, youth units, based on their categorisation. He testified that each unit was called a “50 member unit” and 17 April People and persons from Vietnam were assigned to the same unit, headed by Base People who controlled everything including moving, working, eating and sleeping.<sup>3169</sup>

1003. PHNEOU Yav explained that cooperatives were sub-divided into further units, including special units, ploughing units (males), canal digging units, seedling transplanting units (females), cart units (transporting stone/rocks to make bridges at canals), carpenter units, children units and units of young children aged between eight

<sup>3163</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 33-34.

<sup>3164</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 52.

<sup>3165</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 60; T. 4 February 2015 (KEO Chandara), E1/256.1, p. 35 (*Ta Mok* advised him that intellectualism and petty bourgeoisie were part of the target to be researched and monitored).

<sup>3166</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 55-56.

<sup>3167</sup> T. 12 March 2015 (Nut Nov), E1/276.1, p. 80.

<sup>3168</sup> T. 17 February 2015 (SAO Han), E1/264.1, pp. 93-95 (Full-Rights Persons enjoyed better conditions and supervised Candidate groups); T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 17-19 (there were only a few Base People in her village, and they were in charge of the New People, referring to “18 April People” being in charge of “17 April People”); T. 12 February 2015 (RY Pov), E1/262.1, pp. 15-16, 64-65 (did not work because they only monitored our work; 17 April People and those from Vietnam were assigned to the same unit, headed by Base People who controlled every activity including moving, working, eating and sleeping); T. 1 April 2015 (TAK Sann), E1/286.1, pp. 39-40 (TAK Sann, a New Person from Kampuchea Krom, said that four or five Base People led her cooperative unit and did not need to work as hard); T. 2 April 2015 (BENG Boeun), E1/287.1 p. 72 (group leaders were all Base People).

<sup>3169</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 16.



and 12 years old.<sup>3170</sup> Women of the same age were placed into one unit to transplant rice, with men of the same age being placed into a mobile unit to carry earth, with children in another unit, and elder women in a unit to look after children, and older men placed in a unit for growing vegetables.<sup>3171</sup> Widows' units comprised those whose husbands had died or whose fates were unknown. According to RIEL Son, both New and Base women worked together in a widows' unit.<sup>3172</sup> THANN Thim described an ox cart transportation unit in Trapeang Thum North commune.<sup>3173</sup> KHOEM Boeun described a women's unit, in which she educated women on rice production and morality.<sup>3174</sup> IM Vannak was evacuated from Takeo to Leay Bour commune and joined a children's mobile unit where she was assigned to carry earth for canal building.<sup>3175</sup> She explained there was a different unit for Base children.<sup>3176</sup> KEO Chandara referred to both 17 and 18 April People, and explained that the latter was an idiom used to refer to Base People who had been transferred into the area after 17 April 1975.<sup>3177</sup> The Chamber does not consider this evidence to have any significant bearing on the categorisation of people in Tram Kak district which clearly existed.

1004. The Chamber is therefore satisfied that the cooperatives in Tram Kak district generally distinguished between people as Full-Rights, Candidates or Depositees, with some cooperatives reserved for particular categories of persons. The Chamber is further satisfied that any position of power or oversight was reserved for Full-Rights members, *i.e.* Base People considered to have clean biographies.

1005. The express purpose of this division of people into different units in Tram Kak district was to exert control over the general population.<sup>3178</sup> SAO Han, a Candidate

<sup>3170</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 60, 62 (stating that there were around 40 members in the cart unit), 67-69 (worked in a cart unit for eight months, almost the whole of 1976); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410248 (Answer 15). The witness used the word "concentration" children's units to describe the units of younger children.

<sup>3171</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 67.

<sup>3172</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 61; T. 18 February 2015 (SAO Han), E1/265.1, pp. 27-28 (the widows unit in his village comprised women whose husbands had been taken away or died; women with younger children were placed in different groups from stronger ones who could work in the rice fields).

<sup>3173</sup> T. 2 April 2015 (THANN Thim), E1/287.1, pp. 28-29; T. 21 April 2015 (THANN Thim), E1/289.1, pp. 5-6 (referring to Paoh).

<sup>3174</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 92.

<sup>3175</sup> T. 3 April 2015 (IM Vannak), E1/288.1, p. 56.

<sup>3176</sup> T. 3 April 2015 (IM Vannak), E1/288.1, p. 91.

<sup>3177</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 68.

<sup>3178</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 16-17 (referring to "firm control" and "full grasp" based on division of the population into units); T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 88-89.

Person, described the “principle” that Full-Rights People worked as unit or group chiefs.<sup>3179</sup> OEM Saroeurn described how group chiefs recorded names and categorisations of the members of each group, and gave this information to the village chief.<sup>3180</sup> CHOU Koemlan, who was in the K-3 Unit for New People in Leay Bour commune, described how the unit chief (Oeun) led workers to the field and the village chief (Chim) would remain at the village to manage those left in the village during the day. But when everybody was needed in the fields, both the village chief and unit chief were together. She referred to there being three village chiefs per village.<sup>3181</sup> PHNEOU Yav identified the chief of Unit 3 in his commune as Nga/Nhor, who was assigned from a Base Person unit to control Unit 3 because he was so strict.<sup>3182</sup> EM Phoeung explained that after he was defrocked from the monkhood he was considered to be a “17 April” Person and that in the village people were divided between Base People and New People, and Base Persons supervised the 17 April groups.<sup>3183</sup>

1006. In addition to the units and groups operating in the vicinity of individual cooperatives, PECH Chim described a major district mobile unit consisting of some 8,000 persons who could be deployed to labour at worksites at different locations in the district. This was divided into two units: one for men and another for women. Each commune in Tram Kak district was obliged to provide workers for the district mobile unit and the district secretary liaised with the chief of the mobile unit to resolve logistical issues such as providing rice, clothes and medicine to those working at any particular worksite.<sup>3184</sup> Mobile youth units worked on projects or worksites as required and would generally stay there, unable to return to their home cooperative.<sup>3185</sup> NEANG Ouch *alias* Ta San explained that each commune provided a male youth mobile unit and a female youth unit, which he later oversaw at the district level.<sup>3186</sup> According to

<sup>3179</sup> T. 17 February 2015 (SAO Han), E1/264.1, p. 92; T. 18 February 2015 (SAO Han), E1/265.1, p. 34.

<sup>3180</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 49.

<sup>3181</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 7-8.

<sup>3182</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 27-29 (cooperative chief was a position for a Base Person only); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410247-00410248 (Answers 13-14).

<sup>3183</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 28-29 (some 17 April and Base People were together at the worksite, but Base People supervised 17 April People; for those who worked in villages, the Base People were not with the 17 April People).

<sup>3184</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 46-47.

<sup>3185</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 58-59 (mobile units would stay at the relevant worksite and not be allowed to return home).

<sup>3186</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 9-10; T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 26-27; T. 12 March 2015 (NEANG Ouch), E1/276.1, pp. 14-15 (*Ta* Kit and *Ta* Chay

him, these mobile units were not divided into Base and New People.<sup>3187</sup> This was consistent with NUT Nov's evidence who, when discussing a dry season farming worksite near Angk Roka, recalled that people at such worksites were not distinguished by category.<sup>3188</sup> There was a youth mobile unit chiefs and a female unit chief, with whom NEANG Ouch consulted when implementing the work plan.<sup>3189</sup> The evidence did not establish the basis on which persons were selected from different communes to join a mobile unit.

1007. Concerning the CPK's apparent change to the categorisations in mid-1978, as described in the July 1978 issue of *Revolutionary Flag*, NEANG Ouch *alias* Ta San recalled an announcement by the district that all people were to be treated equally.<sup>3190</sup> KHOEM Boeun's evidence, however, accepted that the district instructed the communes that New People were the enemy and not as valuable as Base People, who were instructed to watch over them.<sup>3191</sup> While KAING Guek Eav *alias* Duch has claimed that this supposed change in policy was a mere pretence,<sup>3192</sup> NUT Nov, a commune chief at the time, testified that there was indeed an official announcement in 1978 that 17 April People and Base People were to be treated equally from then onwards.<sup>3193</sup> PHNEOU Yav who lived in Samraong commune, Tram Kak district,<sup>3194</sup> testified that in 1978, only the units of Full-Rights and Candidate members merged, but not the Depositees.<sup>3195</sup> The Chamber is not satisfied that the policy proclaimed in mid-1978 was ever fully implemented in Tram Kak district. Rather, the distinction between

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assigned work to Ta San, and he coordinated work with chiefs of district mobile units and commune mobile units).

<sup>3187</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 7. According to NEANG Ouch, being part of the mobile unit meant there was enough food to eat.

<sup>3188</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 26.

<sup>3189</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 43-44.

<sup>3190</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 40-42.

<sup>3191</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 19-20.

<sup>3192</sup> Written Statement by KAING Guek Eav, "12th Response: About the Essence of Special Issue Magazine of 1978", E3/15, p. 18, ERN (En) 00251371 ("This document was not the tolerant policy; it was a trick to defuse the tension in the mind of the people who were being terrified of the arrests and manslaughter").

<sup>3193</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 58.

<sup>3194</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 5.

<sup>3195</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 13-14, 59.

the different categories of persons remained ingrained and this is confirmed by the documentary evidence.<sup>3196</sup>

### 10.1.7.3. Rations and communal eating

#### 10.1.7.3.1. *High-level policy documents*

1008. The Party Centre set a basic target ration of two cans of rice per person per day.<sup>3197</sup> The documentary evidence refers to the yearly ration being 13 *thang* of paddy (as opposed to milled rice) per person.<sup>3198</sup> The evidence also reveals, however, that different quantities of rice were to be provided to different categories of people. The First Nationwide Economic Congress mentioned four levels of rations per person and per year determined for the cooperatives: 15 *thangs* (132kg), 12 *thangs* (105kg), 10 *thangs* (88kg), 8 *thangs* (70kg).<sup>3199</sup> Speaking to the Council of Ministers on 31 May 1976, POL Pot stated: “In general, the ration was enough: two cans [per person] for front [line people] and one and a-half can for the back [line] people”.<sup>3200</sup> The Economic Plan for 1977-1980, produced in mid-1976, identified a nationwide ration system with four categories of forces numbered from one to four, who were to receive three cans, 2.5 cans, two cans or 1.5 cans of rice respectively.<sup>3201</sup>

1009. The results of the Second Nationwide Economics Conference published in the November 1976 issue of *Revolutionary Flag* again specified “four regimes: Number one forces, three cans; number two forces two and a half cans; number three forces, two

<sup>3196</sup> Tram Kak District Record, E3/4125, 30 December [year not specified], ERN (En) 00364290 (describing that a person called KONG Ha fell into the category of New People, 17 April People). In relation to the class composition of the staff at the Tram Kak District Hospital, *see below*, para. 1042.

<sup>3197</sup> CPK Standing Committee Minutes, E3/1733, 9 October 1975, p. 16, ERN (En) 00183408 (“Rice, two [condensed milk] cans [500 grams]”); CPK Standing Committee Minutes, E3/232, 8 March 1976, p. 6, ERN (En) 00182633 (“As for rice, it should be two cans or a little more”).

<sup>3198</sup> *Revolutionary Flag*, E3/760, June 1976, p. 16, ERN (En) 00509619 (Extract from the Instructions of Comrade Party Organisation Representative During a Zone Conference: “We must have enough to eat, 13 bushels per person per year”); Four Year Plan 1977-1980, E3/8, undated, p. 51, ERN (En) 00104023 (distinguishing paddy from milled rice and setting “Governing rations” from 1977 at the average of “13 *thang* or 312 kilograms of paddy per person per year throughout the country”); Chapter by B. Kiernan, “Summary of the Party’s 1976 Study Session”, in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8, p. 175, ERN (En) 00104084 (referring to 13 *thang* per person per annum); *Revolutionary Flag*, E3/139, November 1976, p. 7, ERN (En) 00455284 (Party’s Second Nationwide Economics Conference, Presentation of the Comrade Party Representative).

<sup>3199</sup> *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495808 (Excerpts from the First Nationwide Party Economic Congress).

<sup>3200</sup> Council of Ministers Minutes, E3/794, 31 May 1976, p. 8, ERN (En) 00182678.

<sup>3201</sup> Four Year Plan 1977-1980, E3/8, p. 110, ERN (En) 00104053.

cans; number four forces, one and a half cans”.<sup>3202</sup> Training given to the Foreign Ministry on revolutionary consciousness likewise recorded differing rations of the first, second, third or fourth forces: three cans, 2.5 cans, two cans or 1.5 cans respectively.<sup>3203</sup> The August 1977 *Revolutionary Flag* included a speech to the West Zone Conference on 25 July 1977 which, in discussing state power over food recorded that “poor peasants and the lower-middle peasants, are the number one force that is the most productive”.<sup>3204</sup> The Chamber is satisfied that the documentary evidence considered above demonstrates that the CPK set different rations for different categories of person based on their class background, with the largest quantities to go to the poor and lower-middle peasants, and the least to go to those considered to be reactionary.<sup>3205</sup>

#### 10.1.7.3.2. *Implementation in Tram Kak*

1010. Communes and cooperatives had the primary responsibility to feed their own residents and supply their units.<sup>3206</sup> NUT Nov supervised food distribution in Nhaeng Nhang commune at one time, and described how the commune chief set rations for villages and units.<sup>3207</sup> The district level gave the communes an overall allocation but it was up to the commune to distribute food to the various units therein.<sup>3208</sup> For example, each morning two representatives from PHNEOU Yav’s cooperative went to the commune office at Angk Ponnareay to collect the rice allocation for the cooperative.<sup>3209</sup> The District Committee monitored rice production in the communes and took rice from those communes with a surplus to supply those in deficit.<sup>3210</sup> The upper levels came to the communes to collect rice based on what they reported.<sup>3211</sup> One result of this model was that communes misreported rice yields to the district level – to try to retain more

<sup>3202</sup> *Revolutionary Flag*, E3/139, November 1976, p. 7, ERN (En) 00455284 (Party’s Second Nationwide Economics Conference, Presentation of the Comrade Party Representative).

<sup>3203</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 52, ERN (En) 00003288 (entry dated 30 November 1976).

<sup>3204</sup> *Revolutionary Flag*, E3/193, August 1977, p. 20, ERN (En) 00399240.

<sup>3205</sup> *See above*, para. 994.

<sup>3206</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 70.

<sup>3207</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 46; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 8, ERN (En) 00422322.

<sup>3208</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 46-47.

<sup>3209</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 19-20 (rice paddy stored at the commune, surplus sent to upper echelon, all units received meals from the commune office at Angk Ponnareay); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410248 (Answer 16, receiving rations from commune office).

<sup>3210</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 52; T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 13-14 (district meetings received reports on rice production from different villages), 23-24 (discussing provision from high-yield areas still might not be sufficient).

<sup>3211</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 89-90.

rice for themselves. For example, KHOEM Boeun, the Commune Chief of Cheang Tong commune, described hiding rice in a pagoda.<sup>3212</sup> When chief of Sre Ronoung commune in 1978, NUT Nov only reported a portion of the commune's rice yield.<sup>3213</sup>

1011. There were times of acute food shortage in Tram Kak district, particularly in the period before harvests. PECH Chim testified that, before 17 April 1975, the daily ration was one can of rice between three persons, but after liberation the ration dropped by half, to one can of rice between six persons.<sup>3214</sup> NUT Nov, a member of the Nhaeng Nhang Commune Committee in 1975 and 1976, recalled that food was insufficient at that time and they were reliant on aid collected from the District Office.<sup>3215</sup> SAO Van confirmed that the food ration was insufficient after 17 April 1975 when evacuees arrived.<sup>3216</sup> EK Hoeun explained that even though Chinese aid arrived in Tram Kak district between 1975-1976, there was still not enough food for everyone.<sup>3217</sup> CHOU Koemlan gave birth in 1975 after arriving in Tram Kak district, but her baby died because of insufficient food.<sup>3218</sup> EM Phoeung recalled from 1975 through 1976 food was scarce but later, they were sometimes provided with cooked rice instead of gruel.<sup>3219</sup> According to LONG Vonn, between 1975 and 1977 people only had rice for the first few months of the year, then had to switch to gruel.<sup>3220</sup>

1012. EK Hoeun confirmed that the district level received reports at the commerce office that communes were short of food. He recalled reports that in Leay Bour commune some 500 people died of hunger. Trapeang Thum commune was short of food supplies and had to ask for supplies from Nhaeng Nhang commune. But no matter

<sup>3212</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 10.

<sup>3213</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 8-9 (giving the example of reporting only 700kg when producing 1,000kg of rice), 88; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 12, ERN (En) 00422326 (Answer 80, giving the example of reporting only 700kg when producing 1,000 kg of rice).

<sup>3214</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 28; T. 23 April 2015 (PECH Chim), E1/291.1, p. 52.

<sup>3215</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 40-41.

<sup>3216</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 44-45.

<sup>3217</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 21-22, 101-102; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 12-13.

<sup>3218</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 51; T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 34-35 (stating that her daughter caught measles but the "original cause" of her death was insufficient food). The Chamber places no weight on the opinion that a lack of food caused measles or was the primary factor of her baby's death. Nonetheless, whether or not CHOU Koemlan had enough for her baby is a question of fact, and the Chamber accepts her evidence that sufficient food was not available.

<sup>3219</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 70.

<sup>3220</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, p. 80.

how hard they tried, Nhaeng Nhang commune could not supply.<sup>3221</sup> The account of 500 people dying from hunger in Leay Bour commune is insufficiently precise to make a finding to that effect. The Chamber is however satisfied that the evidence as a whole establishes periods of acute food shortages in various locations in Tram Kak district and that people died as a result.

1013. PECH Chim confirmed that food remained generally insufficient until the 1976-1977 harvest. For three to six months before the harvest, people had to eat less and work hard as they did not have adequate food supply for the population.<sup>3222</sup> After the 1976-1977 harvest, however, the food situation was “reasonable enough” and there could be a special feast once per month.<sup>3223</sup> NEANG Ouch *alias* Ta San, who arrived in Tram Kak district in 1977, also testified that the food situation was sufficient at that time.<sup>3224</sup> The evidence reveals, however, that further periods of acute food shortages followed. For example, a report to the district level from Khporp Trabaek commune dated 8 May 1977 that a “contemptible” youth named HANG Oeun had complained: “What is the use of doing socialist revolution when there is no food”.<sup>3225</sup> On 3 June 1977, the Southwest Zone similarly reported that some districts and communes had encountered shortages, but suggested that this could be addressed.<sup>3226</sup> RIEL Son worked at the District Hospital from late 1976, and testified that the death toll increased dramatically towards the latter part of the regime because people did not have anything to eat.<sup>3227</sup> The documentary evidence records food shortages in various communes across Tram Kak district, including after the 1976-1977 harvest.<sup>3228</sup> NEANG Ouch attributed such a

<sup>3221</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 17.

<sup>3222</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 62.

<sup>3223</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 55-56.

<sup>3224</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 11.

<sup>3225</sup> Tram Kak District Record, E3/4108, 8 May 1977, ERN (En) 00726245.

<sup>3226</sup> Report from the Southwest Zone to Respected and Beloved *Angkar*, E3/853, 3 June 1977, ERN (En) 00185246.

<sup>3227</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 39.

<sup>3228</sup> Tram Kak District Record, E3/2044, 9 January 1977, ERN (En) 00290261 (recording that a person in Angk Ta Saom commune had complained about the food situation); Tram Kak District Record, E3/8422, 7 April 1977, ERN (En) 00369462 (recording that a person in Leay Bour commune had complain about food); Tram Kak District Record, E3/4108, 8 May 1977, ERN (En) 00726245 (recording that one person in Khporp Trabaek commune was complaining about socialist revolution with no food and another was provoking people by suggesting that Trapeang Thum North commune had food); Tram Kak District Record, E3/4111, 1 August 1977, ERN (En) 00322153 (recording that people in Angk Ta Saom commune were complaining about gruel and planning to flee); Tram Kak District Record, E3/8424, 31 August 1977, ERN (En) 00538729 (recording a person in Leay Bour commune had complained of gruel and said he could not “live like this”); Tram Kak District Record, E3/2457, 16 January 1978 (recording that people in Trapeang Thum South commune complained about eating only gruel); Tram Kak District Record, E3/2784, 10 March 1978, ERN (En) 00143484 (recording complaints in Leay Bour

lack of food to failings by the heads of particular cooperatives, which meant that rations were not at the prescribed amount.<sup>3229</sup>

1014. The Chamber heard varying accounts of the specific rations received in different locations at different times. OEM Saroeurn recalled a ration of one can of rice for two people per day in Leay Bour commune in 1976, but she received less when she was transferred to a mobile unit.<sup>3230</sup> PHNEOU Yav described three cans of rice between 10 people in one cooperative, compared to half a can each in another.<sup>3231</sup> THANN Thim, who arrived in Tram Kak district in 1977, described a ration of three cans of rice between 10 people.<sup>3232</sup> A handwritten report from Kus commune in October [1977] noted that conditions were “rather bad” because “four cans of rice are given to 10 people a day”.<sup>3233</sup> RIEL Son described a ration at the District Hospital of 50 cans between 250 patients, with four cans being 1kg.<sup>3234</sup> According to RY Pov, 100 Khmer Krom people received only five cans of rice while Base Persons ate steamed rice and soup.<sup>3235</sup> Before the Chamber, he described 17 April and “the people from Vietnam” as having received 10 cans of “porridge” for 100 people, and if there was no porridge they were given potato instead.<sup>3236</sup> SAO Han described rations in Cooperative 1, Tram Kak commune, as gruel, sometimes a small amount of cooked rice between 10 persons per table.<sup>3237</sup> He testified that all units came together to eat and 17 April People received the same rations.<sup>3238</sup> People in his cooperative were emaciated and vulnerable to sickness or had

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commune of insufficient food, but leaders who visit Leay Bour commune are given abundant pork and beef); Tram Kak District Record, E3/2448, 16 June 1978, ERN (En) 00322158 (recording that persons in Leay Bour commune were complaining about food being worse than what pigs eat); Tram Kak District Record, E3/2441, 13 October 1977, p. 23, ERN (En) 00369485 (recording that four cans of rice are given to 10 people per day, so the situation is “rather bad”).

<sup>3229</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 13, 23-24 (discussing that provision from high-yield areas still might not be sufficient).

<sup>3230</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 12.

<sup>3231</sup> T. 17 February 2014 (PHNEOU Yav), E1/264.1, pp. 45-46, 21 (confirming Unit 1 received more than other units). This is corroborated by SIM Chheang Interview Record, E3/7980, 27 November 2007, pp. 2-3, ERN (En) 00231692-00231693 (describing the situation in Pen Meas village with 10 people receiving three tins of rice then, in 1976, 10 people received two-and-a-half tins of rice: “We were starving and could not protest. If I had protested, I would be gone”).

<sup>3232</sup> T. 21 April 2015 (THANN Thim), E1/289.1, p. 25.

<sup>3233</sup> Tram Kak District Record, E3/2441, 13 October 1977, p. 23, ERN (En) 00369485.

<sup>3234</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 32-33.

<sup>3235</sup> RY Pov Interview Record, E3/9604, 30 October 2013, ERN (En) 00970032 (Answer 55).

<sup>3236</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 15.

<sup>3237</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 36; SAO Han Interview Record, E3/5518, 21 November 2009, p. 6, ERN (En) 00413900 (Answer 32).

<sup>3238</sup> SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899 (Answer 26).



swollen bodies.<sup>3239</sup> MEAS Sokha, a Base Person, described lunch being brought to the children's unit where he worked until mid-1976, and the ration was not enough.<sup>3240</sup>

1015. Some witnesses – often those with some degree of authority – described more substantial rations. KHOEM Boeun, who was chief of Cheang Tong commune and later a member of the District Committee, maintained that the food shortages in Cheang Tong commune were not so serious and nobody died from hunger.<sup>3241</sup> LONG Vonn, who was deputy chief of the Commerce Office throughout 1977, described a ration of one can of rice per person per meal.<sup>3242</sup> On the other hand, he observed that people did not have enough to eat.<sup>3243</sup> He clarified that people in the mobile units did not have as much, sometimes because of transportation difficulties.<sup>3244</sup> NUT Nov testified that, when he was the Chief of Sre Ronoung commune in 1978, the ration was one can of rice per meal.<sup>3245</sup> The Chamber is satisfied that these examples were rare in Tram Kak district. For instance, PHNEOU Yav testified that the rations for Full-Rights People in Cooperative 1 in Tram Kak commune were gruel, sometimes a small amount of cooked rice.<sup>3246</sup> Some people who were dissatisfied secretly discussed it with people they trusted.<sup>3247</sup> CHANG Srey Mom testified that, although food was distributed equally, people died from malnutrition because the daily ration was insufficient.<sup>3248</sup> IM Vannak described having thick rice gruel in 1976, but over the years the gruel became very thin.<sup>3249</sup>

1016. Although some evidence suggests that the district level sought to impose broadly equal rations to different categories of person, the Chamber heard convincing accounts to the effect that, in practice, Deposittee Persons received much less food.

<sup>3239</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 15; SAO Han Interview Record, E3/5518, 21 November 2009, p. 7, ERN (En) 00413901 (Answer 39, stating that all people were emaciated and vulnerable to sickness).

<sup>3240</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 39, 42; T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 71.

<sup>3241</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 11.

<sup>3242</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, p. 35.

<sup>3243</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 35-36, 80.

<sup>3244</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 36, 81.

<sup>3245</sup> NUT Nov Interview Record, E3/5521, 1 December 2009, p. 11, ERN (En) 00422325 (Answer 100); T. 16 March 2015 (NUT Nov), E1/277.1, pp. 28, 44; NUT Nov Interview Record, E3/9571, 17 March 2015, p. 8, ERN (En) 01087492 (Answer 76).

<sup>3246</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 36; SAO Han Interview Record, E3/5518, 21 November 2009, p. 6, ERN (En) 00413900 (Answer 32).

<sup>3247</sup> SAO Han Interview Record, E3/5518, 21 November 2009, p. 7, ERN (En) 00413901 (Answer 33).

<sup>3248</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 11-12.

<sup>3249</sup> T. 3 April 2015 (IM Vannak), E1/288.1, p. 86.

PECH Chim at first said that everybody was in the same position when it came to food shortages.<sup>3250</sup> He acknowledged, however, that in practice he saw Base People receiving more rice than New People, and attributed this to “loopholes in the management” of the different cooperatives.<sup>3251</sup> He added that while he “observed that there was [a] distinction in the distribution of rice”, such discrimination did not lead to any blame or punishment; people were instead “gently informed that we [all Cambodian people] were just one blood in one nation”.<sup>3252</sup> NEANG Ouch accepted that chiefs did not coordinate well and some kitchen halls did not have enough food for people to eat.<sup>3253</sup> CHANG Srey Mom testified that everybody ate in the same place and there was no distinction when it came to rations.<sup>3254</sup> KEO Chandara testified that all people should have received the same amount of food, but in practice New People were less trusted and not in positions of authority – so they received less food.<sup>3255</sup> Civil Party TAK Sann described seeing different amounts given to Base People and New People in a dining hall.<sup>3256</sup> EK Hoeun, who worked at the Tram Kak District Office, attributed problems to cooks stealing rice, for example only cooking five cans of rice for 20 people instead of the allotted 10 milk cans.<sup>3257</sup> According to Civil Party CHOU Koemlan, rations were different because Base People had a reserve meal or food at their homes, whereas New People could only have meals as provided.<sup>3258</sup> Differences in access to food is further corroborated by RIEL Son who was the deputy head of the Tram Kak District Hospital and who told DC-Cam that 17 April People in particular died from malnutrition, whereas Base People were seldom malnourished.<sup>3259</sup> The Chamber recalls its finding that the CPK’s policy set different rations for different categories of persons.<sup>3260</sup> The Chamber therefore rejects the notion that the discriminatory distribution of food resulted from mere loopholes in the management of cooperatives. Moreover, the quantity of food generally available in Tram Kak district was far below two cans or

<sup>3250</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 68, 90.

<sup>3251</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 20-22, 54-56, 60.

<sup>3252</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 60.

<sup>3253</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 12.

<sup>3254</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 74.

<sup>3255</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 70-71 (testifying that 17 April People did not get a chance to be appointed as group chief or unit chief).

<sup>3256</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 45-46 (attributing this to the cook, *Yeay Thon*).

<sup>3257</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 16-17.

<sup>3258</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 81.

<sup>3259</sup> RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 40, ERN (En) 00729061. *See also*, para. 1047.

<sup>3260</sup> *See above*, para. 1009.

even 1.5 cans per person per day – the level which the CPK’s leaders expressly recognised as necessary to sustain the population.<sup>3261</sup>

#### 10.1.7.4. Working conditions

1017. The evidence before the Chamber reveals varying conditions depending on the location, the tasks, the time of year, the state of the land, the attitudes of supervisors and the category of person. The Chamber is satisfied, however, the conditions altered depending on the category of person.

1018. SAO Han testified that Full-Rights People enjoyed better conditions than the Candidates or 17 April People.<sup>3262</sup> BUN Saroeun described struggling to flatten termite mounds made of hard earth under the hot sun and with blisters on his hands.<sup>3263</sup> TAK Sann worked on the dam at Kouk Kruos, and nobody dared to rest even though the work was hard.<sup>3264</sup> They were threatened that if they did not finish their work they would not receive food rations.<sup>3265</sup> She was forced to taste excrement to check that it was not too salty before using it as fertiliser for rice seedlings.<sup>3266</sup> EAM Yen worked at the Tuol Kruos dam as a young child, and described targets for her unit of 10 youngsters of having to move 10 cubic metres of earth, failing which they were deprived of food.<sup>3267</sup>

1019. According to NEANG Ouch *alias* Ta San, mobile youth units worked from 6 a.m. or 7 a.m. to 11 a.m. in the morning, then 1 p.m. to 5 p.m. in the afternoon, with medics on hand at worksites for people who fell ill.<sup>3268</sup> The Tram Kak District Records undermine NEANG Ouch *alias* Ta San’s evidence. For instance, one report records complaints having been made by an “enemy” in September 1977 about the 3 a.m. starts for transplanting rice in Trapeang Thom South commune.<sup>3269</sup> Witnesses who worked in mobile units gave markedly different accounts to NEANG Ouch. EM Phoeung

<sup>3261</sup> See above, para. 1008.

<sup>3262</sup> T. 17 February 2015 (SAO Han), E1/264.1, pp. 93-94.

<sup>3263</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 34.

<sup>3264</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 30-31 (explaining that they received their rations, but they were not enough).

<sup>3265</sup> T. 1 April 2015 (TAK Sann), E1/286.1, p. 40.

<sup>3266</sup> T. 1 April 2015 (TAK Sann), E1/286.1, p. 40.

<sup>3267</sup> T. 1 April 2015 (EAM Yen), E1/286.1, p. 57.

<sup>3268</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 9; T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 18.

<sup>3269</sup> Tram Kak District Record, E3/2449, 15 September 1977, ERN (En) 00366709 (reporting on disputes in Trapeang Thum South commune and describing this as an attack against *Angkar*; signing off: “Obey duties, and destroy absolutely”).

recalled that in rainy season, his unit frequently had to work until 10 p.m. pulling rice seedlings for transplanting.<sup>3270</sup> SAO Han described starting work at 4 a.m., with work in the evening during transplanting season.<sup>3271</sup> CHANG Srey Mom described starting work at 4 a.m. during the harvest season, otherwise starting at 6 a.m. with a final shift from 6 p.m. to 10 p.m.<sup>3272</sup> Before his family was arrested, MEAS Sokha worked in a children's unit in Sre Kruo cooperative, Cheang Tong commune.<sup>3273</sup> He described working hours of 6 a.m. to 11 a.m., then 1 p.m. to 5 p.m., with some people doing an evening shift from 7 p.m. to 10 p.m.<sup>3274</sup> He clarified that only adults or the youth units would be assigned to work at night.<sup>3275</sup> PHNEOU Yav described shifts from 6 a.m. to 11 a.m., then 2 p.m. to 5 p.m. with occasional night work, although he continued that elder children could start working at 4 a.m. and younger children were assigned night labour.<sup>3276</sup>

1020. The Chamber is satisfied that the conditions in mobile youth units assigned to worksites were especially harsh. Civil Party RY Pov was assigned to a youth mobile unit working in Kbal Pou (a worksite to produce dry season rice). He was forced to work hard, day and night, digging canals, dams and spinning water wheels. He was deprived of food and not given sufficient clothing.<sup>3277</sup> He was separated from his family, who were assigned to different unit.<sup>3278</sup> In Nhaeng Nhang commune, for example, many New People were not used to working in the rice fields and for this reason they became sick more often than Base People.<sup>3279</sup> RIEL Son participated in building dams and digging canals before he was assigned to the District Hospital, and explained that although the plan was to have clean water, at the canal worksites, people relieved themselves where they could and when there were rains the water supply became dirty. Dysentery resulted and there was no effective treatment available.<sup>3280</sup> EK

<sup>3270</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 69.

<sup>3271</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 9-10.

<sup>3272</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 39 (also describing an evening shift, starting again at 6 a.m.).

<sup>3273</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 26-27; MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 2, ERN (En) 00223494.

<sup>3274</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 3.

<sup>3275</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 40.

<sup>3276</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 12-13, 70-71 (children in the concentration unit were small, about 10 or 12 years old). *See also*, Section 11.2.11: 1<sup>st</sup> January Dam Worksite: Work Hours.

<sup>3277</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 6.

<sup>3278</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 12-13.

<sup>3279</sup> T. 12 March 2015 (NUT Nov), E1/276.1, p. 47.

<sup>3280</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 53-54.

Hoeun confirmed that workers became sick or had problems feeding or died on the worksites in Tram Kak district.<sup>3281</sup> SIM Chheang likewise described to OCIJ investigators that the lack of food in his cooperative in Pen Meas was such that he saw at least one person die from starvation and “[m]any people died as a result of bad health”. This was known to those at the district and sector levels “because they controlled those levels and they inspected the areas”.<sup>3282</sup> Numerous Civil Party Applications also record detailed and specific accounts of persons dying from a combination of exhaustion, a lack of food and inadequate medical care.<sup>3283</sup> Although such Civil Party Applications are, on their own, entitled to little probative value, the Chamber finds that the number and specificity of the information contained in these particular Civil Party Applications provides substantial corroboration to the

<sup>3281</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 104.

<sup>3282</sup> SIM Chheang Interview Record, E3/7980, 27 November 2007, pp. 3-4, ERN (En) 00231693-00231694.

<sup>3283</sup> In particular, a significant number of Civil Party Applications describe starvation and deaths in Ta Phem and Leay Bour communes. *See* BUN Saroeun Civil Party Application, E3/5877, undated, pp. 2-3, ERN (En) 01067017-01067018 (describing people starving in Ta Phem commune, especially the elderly and children unable to work, so they were transported to the Champa Pagoda hospital and most were never seen again; further describing people who died from sickness and starvation in Chan Chab cooperative); MOUL Chan Bory Civil Party Application, E3/6405, undated, ERN (En) 01147984 (describing the situation in Ta Phem commune where his father MOUL Kheal fell sick because he did not have enough food; he was sent to hospital but received no medication and died. Further stating that in 1977 people died of exhaustion and inadequate food); CHHIN Chhem Civil Party Application, E3/6239, undated, pp. 1-2, ERN (En) 01088439-01088440 (describing insufficient food, forced labour and deaths from starvation in Ta Phem commune, then moving to Leay Bour commune in 1977 when she saw many people dying and two of her brothers and one younger sister died from starvation and illness); SAM Thach Civil Party Application, E3/6312, undated, p. 1, ERN (En) 01178947 (describing deaths from overwork in Ta Phem commune after September 1975 and in 1976, including her father); MAO Tol Civil Party Application, E3/6708, undated, ERN (En), pp. 3-4, 01144647-01144648 (describing how he and other depositors in Ta Phem commune were just skin and bones – many people died one after another and he was assigned to carry dead bodies, including the corpse of a child); CHUM Hor Civil Party Application, E3/7088c, undated, ERN (En) 00477423 (stating that her mother died of starvation in Ta Phem commune in 1976); SOK Yun Civil Party Application, E3/7089c, undated, ERN (En) 00477433 (stating that his father died of starvation when forced to work in Ta Phem commune); MEAS Sokhun Civil Party Application, E3/6186, undated, pp. 1-2, ERN (En) 01332315-01332316 (describing a ration of four or five cans of milled rice for 60 people, with many people hungry and dying from starvation, including her husband); SENG Sokunny Civil Party Application, E3/6238, undated, p. 1, ERN (En) 01330398 (stating that her younger sister was in the children’s unit in Leay Bour commune and died from starvation and overwork); KEO Sokhan Civil Party Application, E3/6236, undated, p. 1, ERN (En) 01306497 (stating that her daughter who was five years old died from starvation and sickness in Leay Bour commune); MAM Sophat Civil Party Application, E3/7075a, undated, ERN (En) 00829741 (stating that his younger sister died of starvation in Leay Bour commune in August 1976 and his elder brother also died of starvation during the rainy season of 1977); NUON Sary Civil Party Application, E3/6508, undated, ERN (En) 00871604 (stating that his three-year-old brother and grandparents died in Leay Bour commune because they did not have enough food); KHAT Han Civil Party Application, E3/5922, undated, p. 3, ERN (En) 00404501 (stating that people died from starvation and forced labour at a dam construction site at Kampong Ampil in Leay Bour commune); KHOEM Kean Civil Party Application, E3/6176, undated, p. 3, ERN (En) 01568816 (describing the death of her cousin and two nephews by May 1978 in Leay Bour commune).

aforementioned evidence that numerous deaths resulted in Tram Kak district. The overall evidence put before the Chamber therefore establishes that this was the general and well-known situation in Tram Kak district.

10.1.7.5. Control of the population

1021. A Policy Document from September 1975 recorded that “People become a member of the cooperative at their own wish. We do not force them. If they do want to enter the cooperative, they are welcome. Those who do not want to do so, they can wait, observe and do it later.”<sup>3284</sup> NEANG Ouch testified that youths working at the worksites in Tram Kak district did so of their own free will and none refused to work.<sup>3285</sup> KHIEU Samphan observed that “without the consent of the population, these arrangements could not claim to be called ‘cooperatives’”.<sup>3286</sup>

1022. The Chamber is not persuaded that any such evidence reflects the reality of how life developed in the cooperatives over time. In particular, the Chamber notes that in an interview KHIEU Samphan subsequently provided a very different and more realistic analysis, stating that:

[T]here had to be coercion for a while, coercion to join cooperatives, because nobody would voluntarily take part in cooperatives. Even poor peasants would not accept these high-level cooperatives, because there was no private harvest for themselves: they would still be getting issued rice from others. Therefore, there had to be coercion first. It was this coercion that would impact some innocent peasants. However, this had to be: it was unavoidable. But the important point was that there were no cadres to explain why the cooperatives were organized and why all privately owned land was held collectively like that! There were no cadres to give comprehensive and correct explanations so that the people could clearly understand our goals. There was not enough time to explain even to the cadres inside our Party. We did it at once, even faster than China. This led to fractures within the Party.<sup>3287</sup>

1023. According to NEANG Ouch *alias Ta San*, he never heard of anybody refuse to work.<sup>3288</sup> The Chamber finds that this evidence does not reflect the reality. The evidence establishes that food was withheld as punishment for transgressions or failing to meet

<sup>3284</sup> Policy Document No. 6, E3/99, 22 September 1975, p. 1, ERN (En) 00244274.

<sup>3285</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 52.

<sup>3286</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 61-62, ERN (En) 00103753-00103754.

<sup>3287</sup> KHIEU Samphan Interview, E3/4049, undated, p. 1, ERN (En) 00789058.

<sup>3288</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 10.

quotas. BUN Saroeun described being given half-rations if quotas were not achieved, and gave an example in Ta Phem commune when they spilled rice so were given one ration between two people.<sup>3289</sup> IM Vannak described being deprived of gruel if production targets for a group of 10 children, to which he belonged, were not met.<sup>3290</sup> TAK Sann described being threatened with not receiving rations if they did not finish work, but they still received food albeit not enough.<sup>3291</sup> YEM Khonny described increased workloads as a form of refashioning or re-education.<sup>3292</sup> RY Pov described how 17 April People were exposed to miserable treatment and treated like “worthless slaves” and Base People could curse and hit them.<sup>3293</sup> Similarly, IM Vannak described how base children were entitled to beat 17 April children.<sup>3294</sup> The Chamber has also found that lower rations were to be given to persons considered to be reactionary.<sup>3295</sup> The Chamber is therefore satisfied that food was used as a means to control the population. The Chamber has already found that the structure of the cooperatives, the sub-units and groups within each cooperative, and the mobile units operating further afield, were intentionally created in order to exert control the population.

#### 10.1.7.5.1. *Abolition of private belongings*

1024. The DK Constitution promulgated in January 1976 suggested that, whereas “important general means of production” were collective property, “[p]roperty for everyday use remains in private hands”.<sup>3296</sup> In reality, all property was collectivised in Tram Kak district.<sup>3297</sup> The only personal belonging was a plate and spoon, but even

<sup>3289</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 42.

<sup>3290</sup> T. 3 April 2015 (IM Vannak), E1/288.1, pp. 56-57.

<sup>3291</sup> T. 1 April 2015 (TAK Sann), E1/286.1, p. 40.

<sup>3292</sup> T. 3 April 2015 (YEM Khonny), E1/288.1, pp. 9-10.

<sup>3293</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 15.

<sup>3294</sup> T. 3 April 2015 (IM Vannak), E1/288.1, pp. 60, 70-71 (describing a beating and clarifying 20 out of 100 children in the unit conducted the beating), 76 (clarifying the date on which he was beaten up).

<sup>3295</sup> *See above*, para. 1009.

<sup>3296</sup> DK Constitution, E3/259, 14 December 1975, p. 2, ERN (En) 00184834.

<sup>3297</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 8 (describing a meeting when the village chief announced all private property had to be collected together); T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 6 (describing ending of private ownership in 1975), 43 (describing that the collection of private properties for common use was done by the unit chief); T. 1 April 2015 (TAK Sann), E1/286.1, p. 28; SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899; Revolutionary Flag, E3/5, 08 August 1975, p. 29, ERN (En) 00401504 (discussing the “struggle to eradicate the stance of individual private ownership and build and strengthen the stance of collective ownership”); Revolutionary Flag, E3/166, February-March 1976, p. 5, ERN (En) 00517817 (describing one meaning of the socialist revolution as “Attacking the private regime. Everything that is private is capitalist in its essential reality. For example: Private rice farming must not be allowed to exist any longer”). *See also*, Section 16: Common Purpose, paras 3736, 3874, 3876.

these were kept communally.<sup>3298</sup> LONG Vonn worked in one of the district offices at Angk Roka and described recording materials such as black clothes brought to Tram Kak district to be distributed to the cooperatives.<sup>3299</sup> PECH Chim confirmed that clothes were provided to the population by the Party.<sup>3300</sup> MEAS Sokha, a child at the time, only had one set of clothes that he wore all year round.<sup>3301</sup> VORNG Sarun worked for some time in a mobile unit in Trapeang Thum commune, and only had one set of worn clothes.<sup>3302</sup> PHNEOU Yav told OCIJ investigators that people in Unit 1 had two sets of black clothes per year.<sup>3303</sup> When EM Phoeung was disrobed from the monkhood, he was issued with black clothes, and a pair of shoes.<sup>3304</sup> YEM Khonny's clothes were confiscated and she received a black uniform in return.<sup>3305</sup>

1025. After 17 April 1975, everything that people had privately owned was gathered and put for communal use, thereby ending private ownership.<sup>3306</sup> SAO Han described collectivisation taking place after the fall of Phnom Penh, but people did not dare say anything for fear that they would be killed.<sup>3307</sup> The documentary evidence confirms that the slightest threat to this collective system was considered traitorous. For instance, the Chamber has traced documentary evidence which revealed that four women from Sre Ronoung commune were accused of having broken spoons in the cooperative to “make it become private again”.<sup>3308</sup>

#### 10.1.7.5.2. Meetings, education, biographies and criticism

1026. The September 1975 issue of *Revolutionary Youth* discussed re-fashioning the youth to “strengthen and expand production cooperatives” and referred to “lifestyle meetings, regularly held criticism/self-criticism meetings, constant political and cultural study meetings all the time”.<sup>3309</sup> The December 1975 issue of *Revolutionary*

<sup>3298</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 63.

<sup>3299</sup> T. 9 December 2016 (LONG Vonn), E1/510.1, pp. 27-28; LONG Vun Interview Record, E3/9593, 26 November 2013, p. 3, ERN (En) 00978767 (Answer 1).

<sup>3300</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 87.

<sup>3301</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 59.

<sup>3302</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 11.

<sup>3303</sup> PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410250 (Answer 31).

<sup>3304</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 20-21, 37, 71, 73-74.

<sup>3305</sup> T. 3 April 2015 (YEM Khonny), E1/288.1, pp. 3-4.

<sup>3306</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 6, 42-43.

<sup>3307</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 8-9; SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899 (Answer 24).

<sup>3308</sup> See above, paras 888, 892.

<sup>3309</sup> *Revolutionary Youth*, E3/729, October 1975, pp 2, 3, 5, ERN (En) 00357901, 00357902, 00357904.



*Youth* discussed “experiences in managing youth” and called it “imperative” to have regular criticism/self-criticism meetings and revolutionary outlook assessments “as designated”.<sup>3310</sup> The February-March 1976 *Revolutionary Flag* described how, since liberation, Party members and revolutionary cadres educated the popular masses, convened short study sessions, mass meetings, cooperative or production team conferences, to equip people with views on the new revolutionary situation. It emphasised the importance of seizing the noon rest times at worksites, or “idle time” at night after lifestyle meetings “to organize joint newspaper and magazine reading with short discussions immediately afterwards or to organize brief discussions on some issue that has been seen that the people do not yet understand”. It recommended holding morning or half-day meetings of the masses to “whip” them up, or hold two-day cooperative conferences or regular short study sessions.<sup>3311</sup>

1027. The April 1976 *Revolutionary Flag* described criticism and self-criticism as the “most important means of eradicating all the non-revolutionary elements within us”.<sup>3312</sup> It explained that there had to be a “criticism/self-criticism regime” in frequent and regular lifestyle meetings on work with the objective of “eradicating the disease and saving the patient”.<sup>3313</sup> It set out a prescriptive method of criticism and self-criticism, whereby people would criticise and be criticised in a collective setting in order to change.<sup>3314</sup> The June 1976 *Revolutionary Flag* stressed the need for the Party to “grasp the cooperatives” to counter the enemy, which involved grasping them organisationally, collectively, and grasping biographies so that the “forces of the masses in the cooperatives” could be used to “counter the enemy”.<sup>3315</sup> It continued that zone troops (*i.e.* military) “must go down to the cooperatives to disseminate the Party line”.<sup>3316</sup>

1028. The May 1976 issue of *Revolutionary Youth* described criticism/self-criticism as the “most important weapon to conduct revolutionary battles” – to be used instead of weapons like “guns, grenades, knives, scythes, or clubs to attack”.<sup>3317</sup> The July 1976

<sup>3310</sup> Revolutionary Youth, E3/730, December 1975, pp. 9, 12, ERN (En) 00363430, 00363433.

<sup>3311</sup> Revolutionary Flag, E3/166, February-March 1976, pp. 16-18, ERN (En) 00517828-00517830.

<sup>3312</sup> Revolutionary Flag, E3/759, April 1976, p. 25, ERN (En) 00517873.

<sup>3313</sup> Revolutionary Flag, E3/759, April 1976, p. 26, ERN (En) 00517874.

<sup>3314</sup> Revolutionary Flag, E3/759, April 1976, pp. 30-34, ERN (En) 00517878-00517882 (Section III headed “Methods of criticism/self-criticism”).

<sup>3315</sup> Revolutionary Flag, E3/760, June 1976, p. 12, ERN (En) 00509615.

<sup>3316</sup> Revolutionary Flag, E3/760, June 1976, p. 13, ERN (En) 00509616.

<sup>3317</sup> Revolutionary Youth, E3/733, May 1976, p. 10, ERN (En) 00357877.

issue of *Revolutionary Flag*, when discussing the CPK's Statute, described it as "imperative to rely upon the masses in the cooperatives" to "grasp the biographies" in order to "know clearly which person is good and which person is not good".<sup>3318</sup> The November 1976 issue of *Revolutionary Flag* emphasised the need for the masses to "understand the issues and understand the lines" so that "if anything is different from the lines, the masses will struggle against it".<sup>3319</sup> The March 1978 issue of *Revolutionary Flag* explained that educational methodology involved meetings, listening to the radio, studying short documents read aloud, using documents supplied by the zone or sectors.<sup>3320</sup>

1029. The evidence establishes that these approaches were implemented in Tram Kak district. CHANG Srey Mom described three main meetings per month, taking place every 10 days, with further meetings in smaller units when they also criticised each other. One per month there was a big meeting of the "whole unit" comprising 11 villages chaired by the commune chief. This meeting took place at the Samnap pagoda in Trapeang Snao village.<sup>3321</sup> SAO Han described meetings when the unit chief reiterated that people who broke spoons or ploughs were enemies of the cooperative.<sup>3322</sup> SAO Han distinguished major meetings chaired by the unit chief, from smaller meetings chaired by group chiefs. He explained that group chiefs received the work plan from the unit chief. He seldom attended meetings at the commune level.<sup>3323</sup> KHIEV Neou similarly described being called to self-criticism sessions every two weeks, presided over by the village chief or the commune chief.<sup>3324</sup> YEM Khonny explained that re-education could mean being criticised or punished with extra workloads, but everybody wanted to avoid this because they were already skinny and collapsed from exhaustion.<sup>3325</sup> EAM Yen described self-criticism sessions when she, as

<sup>3318</sup> *Revolutionary Flag*, E3/4, July 1976, p. 31, ERN (En) 00268943 (discussing Article 10 of the CPK Statute on the tasks of Party Branches).

<sup>3319</sup> *Revolutionary Flag*, E3/139, November 1976, p. 42, ERN (En) 00455319.

<sup>3320</sup> *Revolutionary Flag*, E3/745, March 1978, p. 22, ERN (En) 00504088.

<sup>3321</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 39; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410265 (describing being criticised during meetings and having to work hard).

<sup>3322</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 23-24.

<sup>3323</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 38.

<sup>3324</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 20.

<sup>3325</sup> T. 3 April 2015 (YEM Khonny), E1/288.1, p. 10 (describing an increase from say 20 trips per day).

a child, had to confess to having stolen a cassava to eat when she was hungry.<sup>3326</sup> CHANG Srey Mom likewise described meetings when people criticised each other.<sup>3327</sup>

1030. The Tram Kak District Records record various instances whereby the collectives judged the conduct of persons and imposed penalties, such as selecting people to live in separate groups with names such as “the thief group” or the “lazy and mischievous group”.<sup>3328</sup> A further example noted by the Chamber pertained to KONG Vaet from Angk Ta Saom commune who, as recorded in documentary evidence dated 18 July 1978, was successively educated by the group, the unit, in collective meetings and finally by “hot measures” before he was sent to Kraing Ta Chan.<sup>3329</sup> A report from Leay Bour commune dated 7 April 1977 records that, following many attempts to educate PHUON Li “collectively and personally”, he had not listened so he had been transferred to live in a “free group”, which entailed being sent to the dry-season rice field.<sup>3330</sup> A final example noted by the Chamber pertained to POK Bunly and AOM Chanta, also from Angk Ta Saom commune, who had been re-educated at the commune office but were then sent up to Meng’s place.<sup>3331</sup>

1031. SAO Han, a Candidate Person, explained that when people arrived in his area biographies were taken from them and a search for former soldiers and teachers followed.<sup>3332</sup> He identified *Ta Ek* and *Achar Neang* as going around the evacuees and those discovered to have been soldiers or teachers then disappeared.<sup>3333</sup> CHOU Koemlan arrived in Tram Kak district approximately 22 days after the fall of Phnom Penh. She settled in Pou Preah Sang, 2km west of Ang Ta Saom market when she and her family members were gathered for checking. She was pregnant at the time.<sup>3334</sup> They

<sup>3326</sup> T. 1 April 2015 (EAM Yen), E1/286.1, pp. 58-61.

<sup>3327</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 39; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410265 (Answer 9).

<sup>3328</sup> Tram Kak District Record, E3/4094, 25 August 1977, ERN (En) 00322103 (in relation to Kong Sokha and Vong Chantha in Angk Ta Saom commune). In relation to a third person, the recorded treatment was more severe in that the writer allowed youths in the group to wrap a third person’s face in a plastic sheet, shackle and interrogate him.

<sup>3329</sup> See above, para. 866.

<sup>3330</sup> Tram Kak District Records, E3/8422, 7 April 1977, ERN (En) 00369462. There is an entry for PHON Ly, aged 20, in Kraing Ta Chan Notebook, E3/5860, 6 May 2009, ERN (En) 01064187.

<sup>3331</sup> See above, para. 891.

<sup>3332</sup> T. 17 February 2015 (SAO Han), E1/264.1, pp. 92-95; T. 18 February 2015 (SAO Han), E1/265.1, pp. 3-4; SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899 (Answers 22-23, including his brother LUON Ham who was a soldier and TAUCH Chhan a teacher).

<sup>3333</sup> T. 17 February 2015 (SAO Han), E1/264.1, pp. 95-96; SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899 (Answer 22).

<sup>3334</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 46-47.

were twice asked to make biographies. The first time was on arrival in Pou Ta Sab. The second was after they were asked to live in huts.<sup>3335</sup> The village chief, deputy chief and another female noted down the information provided in order to produce a biography.<sup>3336</sup>

1032. Once people were dispersed to the communes, a sustained policy to take biographies was therefore implemented.<sup>3337</sup> NUT Nov described how thousands of individual New People who arrived in Nhaeng Nhang commune, but no biographies were screened at first.<sup>3338</sup> There were then meetings between commune chiefs and village chiefs about taking biographies.<sup>3339</sup> Villages sent completed biographies to the commune which could then be forwarded on to the “upper level”.<sup>3340</sup> KHOEM Boeun explained how, shortly after the evacuations, her commune commenced taking biographies from people who used to be teachers, policemen or civil servants following an order from the upper echelon. After the biographies were provided, the upper echelon then gave KHOEM Boeun names of people to arrest. She testified that those arrested were mostly former soldiers and policemen.<sup>3341</sup> EK Hoeun confirmed 17 April People had to give biographies on a regular basis in the cooperatives or communes in order to identify any political tendencies.<sup>3342</sup> LON Nol soldiers and officials were registered on communal lists “with a view to redistributing them to communes and villages”. They were then separated at the base. Commune chiefs screened and checked evacuees’ backgrounds to identify military ranks.<sup>3343</sup> According to CHANG Srey Mom, her unit chairman compiled biographies based on his own observations.<sup>3344</sup> Base People had to do biographies too, but they worked separately.<sup>3345</sup> Experiences could vary depending on the precise location. According to PHNEOU Yav evacuees in Samraong

<sup>3335</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 79.

<sup>3336</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 79-80 (“three of them noted down what we provided them. We did not have any books so they did for us.”).

<sup>3337</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 38.

<sup>3338</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 41-42; NUT Nov Interview Record, E3/5521, 1 December 2009, pp. 5-6, ERN (En) 00422319-00422320 (Answer 26, 29).

<sup>3339</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 24.

<sup>3340</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 40.

<sup>3341</sup> KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 46, ERN (En) 01057720 (Answer 255).

<sup>3342</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 43-44.

<sup>3343</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 34-35.

<sup>3344</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 10-11 (stating that her family was considered to be involved in the previous regime, had ethnic Chinese relatives, and that her parents were small vendors or traders); CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410263 (Answer 4).

<sup>3345</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 72.

commune were not obliged to give their biographies immediately upon arrival; but they were questioned later when sent to an old primary school in the village.<sup>3346</sup>

#### 10.1.7.5.3. *Dislocation of families*

1033. The September-October 1976 issue of *Revolutionary Flag* discussed the “bad characteristics and dangers of private ownership” by giving the example that “anyone who thinks a lot about family interest always deceives the revolution, renounces the revolution, and lives separately seeking family happiness, not seeking happiness inside the Party” which would lead people “not to work hard”.<sup>3347</sup> The division of people into different work groups dislocated families. Units building dams or canals were unable to return home from their worksite.<sup>3348</sup> RIEL Son testified that a unit chief in his commune, before he worked at the District Hospital, instructed inhabitants that if they went to visit their family members without permission they would be in trouble.<sup>3349</sup>

1034. Families were separated into male, female and children’s units to do work such as ploughing rice fields or transportation.<sup>3350</sup> Children were assigned labour and often responsible for tending to cows and collecting cow dung.<sup>3351</sup> MEAS Sokha testified that the children’s unit was for children aged 10-15 years. He had to tend the cows and could not refuse this work.<sup>3352</sup> There were two militiamen with the six children tending cows.<sup>3353</sup> In the children’s unit in Sre Kruo village, Cheang Tong commune, he was allowed to visit home every 10 days for about 20 minutes, but he sometimes ran off to try to find his parents.<sup>3354</sup> He explained that the 10-day visit was theoretical and did not happen in practice. Travelling back and forth between the worksite and home was impossible if they were still engaged in work on the tenth day.<sup>3355</sup>

<sup>3346</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 11 (describing the questioning taking place in a primary school building in the middle of the village).

<sup>3347</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 39, ERN (En) 00450539.

<sup>3348</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 59.

<sup>3349</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 13-14.

<sup>3350</sup> T. 21 April 2015 (THANN Thim), E1/289.1, p. 8.

<sup>3351</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 15 (describing 100 children tending 100 cattle), 75 (describing that each child had to collect a basket).

<sup>3352</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 38, 62, 68.

<sup>3353</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 68-69.

<sup>3354</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, pp. 2-3, ERN (En) 00223494-00223495.

<sup>3355</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 61.

1035. TAK Sann was a mother of two children who were taken away from her and who were only allowed to visit her on the tenth and twentieth day of the month.<sup>3356</sup> EAM Yen described how she was allowed to visit her parents on the tenth and twentieth of the month, but this reduced over time to once per month and she missed her parents terribly.<sup>3357</sup> She was around seven years old at the time and worked at the Tuol Kruos dam site in a unit of 50 youngsters divided into groups of 10.<sup>3358</sup> On one occasion she ran away to find her parents, but was caught, beaten and the unit chief “Rom” buried her up to the neck for two or three hours without food or water as punishment.<sup>3359</sup> When she was arrested a second time for stealing a cassava, she was sent to the Ta Suy dam to work there.<sup>3360</sup> BENG Boeun described an incident while he was ploughing and one of his children was in another unit carrying fertiliser. He saw his child being beaten for carrying the fertiliser too far, but he was unable to intervene.<sup>3361</sup> IM Vannak was a New Person evacuated from Takeo town and placed into a children’s mobile unit at Leay Bour pagoda in around 1976, by the chief of Angk Neareay village *Ta Veth*.<sup>3362</sup> She was only allowed to see her parents once per month, and was beaten by her unit chief (herself only 15 years old) for escaping to try to see them.<sup>3363</sup>

1036. PHNEOU Yav was assigned to teach boys aged 10 to 12 years old between their work. There were approximately 100 children of Base People placed in a unit located at Angk Ponnareay.<sup>3364</sup> He described how parents never visited their children, but children were allowed to visit their parents on the tenth and twentieth day of the month.<sup>3365</sup> YEM Khonny was at first separated then reunited with her mother Veth, who then wanted them to return to their native village. YEM Khonny decided not to go, instead following her aunt’s advice to just keep working. YEM Khonny’s family members including her mother were placed onto a truck and left with many other

<sup>3356</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 28-29.

<sup>3357</sup> T. 1 April 2015 (EAM Yen), E1/286.1, pp. 60-62.

<sup>3358</sup> T. 1 April 2015 (EAM Yen), E1/286.1, pp. 56-57.

<sup>3359</sup> T. 1 April 2015 (EAM Yen), E1/286.1, pp. 57-58, 62-63; T. 2 April 2015 (EAM Yen), E1/287.1, pp. 4-6.

<sup>3360</sup> T. 1 April 2015 (EAM Yen), E1/286.1, pp. 58-59; T. 2 April 2015 (EAM Yen), E1/287.1, pp. 3-7.

<sup>3361</sup> T. 2 April 2015 (BENG Boeun), E1/287.1, p. 68.

<sup>3362</sup> T. 3 April 2015 (IM Vannak), E1/288.1, pp. 53-56.

<sup>3363</sup> T. 3 April 2015 (IM Vannak), E1/288.1, pp. 58-59, 74-76.

<sup>3364</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 69-71 (describing being assigned to look after children and tend cows alone, until a teacher arrived in 1978, suggesting the children were 10-12 years old); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410248 (stating that the children were 8-12 years old).

<sup>3365</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 76 (stating that they only went to visit their mothers on the 10th or 20th).

people. She never saw them again.<sup>3366</sup> BUN Saroeun described being in a children's unit at Trapeang Chaeng cooperative, but in the evenings he was allowed to go home to see his mother.<sup>3367</sup> OEM Saroeun described how she was separated from her one year-old son because she was sent to a different unit while her son was put in the care of older women. Her son IM Rithy died of measles at this time.<sup>3368</sup>

1037. CHOU Koemlan was a New Person who arrived in Leay Bour commune. She described how her children were three, 10, 12 and 14 years of age, and the elder three were assigned to a children's unit east of *Ta Mok's* house.<sup>3369</sup> The youngest one died because of starvation, losing her hair beforehand and refusing to accept food.<sup>3370</sup> One of her elder sons called Vanara disappeared and she believes he was killed.<sup>3371</sup> THANN Thim was allowed to see his children (when in Trapeang Thum North commune) on the tenth, twentieth or thirtieth day of the month, in the evening after they had finished work that day. Sometimes he went to see his two children but usually he did not manage to see them because they were either asleep or scavenging for food.<sup>3372</sup> He described how he was arrested because his daughter was beaten and forced to confess that he was a former first lieutenant.<sup>3373</sup> RY Pov told the Chamber that persons in the youth mobile unit were allowed to see their parents on one occasion for three days during a CPK anniversary.<sup>3374</sup> CHANG Srey Mom's husband was at Leay Bour while she was in Nhaeng Nhang, and they only met every 10 days.<sup>3375</sup>

1038. NEANG Ouch *alias Ta San* testified that when he was in Tram Kak district there was a teaching program for children with various subjects.<sup>3376</sup> KHOEM Boeun testified that there was no distinction between Old and New children getting an

<sup>3366</sup> T. 2 April 2015 (YEM Khonny), E1/287.1, p. 94.

<sup>3367</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 33.

<sup>3368</sup> T. 26 March 2015 (OEM Saroeun), E1/283.1, pp. 6-8 (describing being sent to a "concentration" unit). *See also*, Victim Information Form, E3/5869, 8 January 2010, ERN (En) 01069307 (specifying that her son, IM Rithy died because of a lack of medicine in Angk Neareay village, Leay Bour commune).

<sup>3369</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 50-52.

<sup>3370</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 32-34 (describing how at first her daughter got measles, then lost her hair and was admitted to hospital where there was no medicine; but the original cause of death was having no food to eat and she had to scavenge for food in the dirt).

<sup>3371</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 52-53.

<sup>3372</sup> T. 21 April 2015 (THANN Thim), E1/289.1, p. 8.

<sup>3373</sup> T. 2 April 2015 (THANN Thim), E1/287.1, p. 41; T. 21 April 2015 (THANN Thim), E1/289.1, pp. 6-7, 46-47.

<sup>3374</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 13-14.

<sup>3375</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 39, 40, 67 (repeating that they met every 10 days, but not at the same house); T. 2 February 2015 (CHANG Srey Mom), E1/255.1, p. 23.

<sup>3376</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 83.

education.<sup>3377</sup> More detailed evidence from persons directly involved with teaching, revealed the limited nature of the schooling activities which came second to children's work commitments. CHANG Srey Mom was assigned to work in the mobile unit to help look after children, prepare food and teach them under the trees. She was removed as an assistant teacher in 1977 because her family had questionable links and her father was executed – teachers had to have good class backgrounds so she was no longer eligible.<sup>3378</sup> She described following printed books for teaching. There were also courses in arts, to sing and to dance and to perform labour work.<sup>3379</sup> She clarified, however, that her teaching was not based on actual hard copy documents or books. Rather she taught some letters and alphabets. There were no real textbooks, at least when she was teaching between 1975-1976.<sup>3380</sup> PHNEOU Yav confirmed that children were assigned labour, responsible for tending to and bringing back one cow and collecting cow dung.<sup>3381</sup> The children lived in a long building.<sup>3382</sup> If children got sick, he would send them to their parents or to a nearby hospital in Angk Ponnareay.<sup>3383</sup> Female children were looked after in a different unit, by another person to the east of where PHNEOU Yav was based.<sup>3384</sup> The commune level instructed PHNEOU Yav to teach the children for three hours per day: from 11 a.m. to 12 p.m., then lunch, then he continued until they were allowed to go to tend the cows.<sup>3385</sup>

1039. The Chamber is therefore satisfied that previously established family structures were dislocated pursuant to the reorganisation of people into work units, and that persons were punished for trying to see their family members outside of limited authorised times. Children were forcibly separated from their parents and made to perform labour. Parents lost contact with their children and still do not know what happened to them. Parents disappeared for reasons never explained to their children.

<sup>3377</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 14-15.

<sup>3378</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 74-75; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410263 (Answer 6); T. 2 February 2015 (CHANG Srey Mom), E1/255.1, pp. 13 (stating that she was a teaching assistant for perhaps a year), 14.

<sup>3379</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 76-77.

<sup>3380</sup> T. 2 February 2015 (CHANG Srey Mom), E1/255.1, p. 6.

<sup>3381</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 15 (describing 100 children tending 100 cattle), 75 (describing that each child had to collect a basket).

<sup>3382</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 76.

<sup>3383</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 76-77.

<sup>3384</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 71-72.

<sup>3385</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 73.



10.1.7.6. *Medical care*10.1.7.6.1. *District hospital*

1040. The Chamber has discussed elsewhere in this Judgement the CPK's policy towards health and medical care.<sup>3386</sup> For most of the relevant period, the Tram Kak District Hospital was based at the Trapeang Kul Mean Leakh Pagoda in Trapeang Svay village, Trapeang Thum North commune.<sup>3387</sup> Before moving there, it was located at Champa Pagoda in 1975 and some of 1976.<sup>3388</sup> Witness RIEL Son became the deputy chief of the District Hospital in 1976. He was not a Party member, but he was considered to be a "progressive person" and therefore of a suitable class background to hold such a position.<sup>3389</sup> He worked under "Met", *Neary* Neang who was the niece of brothers PECH Chim and PREAB Kit, and "Ya".<sup>3390</sup> The hospital chiefs had no medical knowledge and Met, the overall chief, did not even know how to read.<sup>3391</sup> They were considered to be qualified for their positions because they were members of the CPK.<sup>3392</sup> The overall hospital chief took charge of political training and discipline.<sup>3393</sup> This approach to the staffing of the hospital is consistent with the categorisation of the population discussed above, whereby any position of authority was reserved for Base People with suitable class backgrounds.<sup>3394</sup>

<sup>3386</sup> Section 11.1.8.5.1: Trapeang Thma Dam Worksite: CPK Approach to Health.

<sup>3387</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 81; T. 17 March 2015 (RIEL Son), E1/278.1, p. 20; T. 18 March 2015 (RIEL Son), E1/279.1, p. 15; RIEL Son Interview Record, E3/9602, 18 February 2014, p. 4, ERN (En) 00982636 (Answers 9, 123); RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, ERN (En) 00729032; OUM Suphany's Diary, E3/5839, undated, p. 8, ERN (En) 01037342 (referring to "the Trapeang Kul hospital"). *See also*, UK Lai-Im DC-Cam Interview, 23 April 2001, E3/8710, ERN (En) 01170736 (describing another district hospital in Prey Ta Khab, located approximately 200 metres east of Kraing Ta Chan).

<sup>3388</sup> RIEL Son DC-Cam Interview, E3/5861, 21 October 2001, p. 23, ERN (En) 00778961. *See also*, RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 56, ERN (En) 00729077 (referring to "Wat Champar pagoda [used as a health centre] in 1975-1976.").

<sup>3389</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 4, 77; RIEL Son Interview Record, E3/9602, 18 February 2014, p. 28, ERN (En) 00982660 (Answer 207).

<sup>3390</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 18-19, 20-21 (stating that only a Party member could be appointed chief of the hospital), 24 (noting that he was assigned to the hospital in late 1976 by *Ta* Chim and *Ta* Kit); RIEL Son Interview Record, E3/5511, 29 October 2009, ERN (En) 00412173 (Answer 14).

<sup>3391</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 21; T. 18 March 2015 (RIEL Son), E1/279.1, p. 25.

<sup>3392</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 35; RIEL Son Interview Record, E3/9602, 18 February 2014, p. 5, ERN (En) 00982637 (Answer 21).

<sup>3393</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 27, 38.

<sup>3394</sup> *See above*, Section 10.1.7.2.2: Categorisation of People: Full-Rights, Candidates and Depositees: Implementation in Tram Kak.

1041. RIEL Son did not have substantial medical training.<sup>3395</sup> The extent of his knowledge was that he knew how to administer injections and had sold medicines from his house in the previous regime.<sup>3396</sup> Once assigned, he received a first instalment of some 20 days' training delivered on and off over a period of three months.<sup>3397</sup> A second instalment of 15 days' training at the Sector Hospital in Trapeang Roneab followed, delivered on and off over a period of six months.<sup>3398</sup> In turn, RIEL Son convened sessions for staff at the District Hospital.<sup>3399</sup> There were staff meetings every week to discuss the code of conduct, rules and discipline in the hospital. Staff were instructed to be humble and gentle to patients when giving injections.<sup>3400</sup>

1042. More than 90 staff worked in the District Hospital. This figure included staff cooking, transporting and other non-medical tasks.<sup>3401</sup> There were two male medics in addition to RIEL Son and five female medics.<sup>3402</sup> In addition, eight or nine female staff worked with “modern medicines” and others used “traditional medicines”.<sup>3403</sup> There were five or six midwives.<sup>3404</sup> There were few medicines, and notably RIEL Son classified serum, calcium B11 or B12 vitamins as medicines.<sup>3405</sup> There were no “17 April” People working at the District Hospital, which again confirms the general approach to, and consequences of, the categorisation of the population in Tram Kak district<sup>3406</sup>

1043. The hospital was divided into five departments: general medicine; obstetrics; production of medicine (including modern and traditional); training and kitchens. RIEL Son supervised them all together with the overall chief.<sup>3407</sup> When recruiting staff, the district favoured peasant women who were not too educated – it was feared that others

<sup>3395</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 19; T. 18 March 2015 (RIEL Son), E1/279.1, p. 11.

<sup>3396</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 19; T. 18 March 2015 (RIEL Son), E1/279.1, pp. 11, 87.

<sup>3397</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 24; T. 18 March 2015 (RIEL Son), E1/279.1, p. 11.

<sup>3398</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 25; T. 18 March 2015 (RIEL Son), E1/279.1, p. 11.

<sup>3399</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 91.

<sup>3400</sup> T. 19 March 2015 (RIEL Son), E1/280.1, p. 4.

<sup>3401</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 20; RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 19, ERN (En) 00729040; RIEL Son DC-Cam Interview, E3/5861, 21 October 2001, ERN (En) 00778939, 00778943 (describing 96 staff).

<sup>3402</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 87.

<sup>3403</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 88.

<sup>3404</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 90-91.

<sup>3405</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 35.

<sup>3406</sup> RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 44, ERN (En) 00729065.

<sup>3407</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 26-27.

might betray the Party.<sup>3408</sup> Mostly the female staff were aged between 13 to 20 and did not know how to read.<sup>3409</sup> They were all from Takeo province except one.<sup>3410</sup> RIEL Son tried to train the illiterate staff by studying the alphabet with them. Many staff did not know how to administer injections.<sup>3411</sup>

1044. RIEL Son described three main buildings at the hospital at Trapeang Kul Mean Leakh Pagoda. One was a concrete (former) school building whereas the others were made from wood with roof tiles.<sup>3412</sup> There was a building for childbirth.<sup>3413</sup> RIEL Son described patients attending to ask for medicine then leaving, whereas other patients were hospitalised. His evidence was unclear as to the overall numbers of patients.<sup>3414</sup> Additionally, 10 to 20 children came per day seeking treatment for headaches or diarrhoea because they had been carrying cow dung.<sup>3415</sup>

1045. To be admitted to the Tram Kak District Hospital, a patient had to be sent by their respective communes with a letter.<sup>3416</sup> Most admissions were caused by diarrhoea, “swollen bodies” and malaria.<sup>3417</sup> In RIEL Son’s assessment, the majority of admissions were female because they were weaker, did not have enough food and were overworked.<sup>3418</sup> Both Base and New People were admitted to the District Hospital.<sup>3419</sup> They were admitted from communes all over the district.<sup>3420</sup> RIEL Son explained that both Base People and New People died in the hospital, but there was no discrimination as to whether patients should be moved for further treatment at the Sector Hospital or

<sup>3408</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 28.

<sup>3409</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 29-30.

<sup>3410</sup> T. 19 March 2015 (RIEL Son), E1/280.1, p. 6.

<sup>3411</sup> T. 19 March 2015 (RIEL Son), E1/280.1, p. 19.

<sup>3412</sup> RIEL Son Supplementary DC-Cam Interview, E3/5861, 21 October 2001, pp. 1-2, ERN (En) 00778939-00778940.

<sup>3413</sup> RIEL Son Supplementary DC-Cam Interview, E3/5861, 21 October 2001, p. 3, ERN (En) 00778941; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 19 (stating that his wife gave birth at the District Hospital).

<sup>3414</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 87.

<sup>3415</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 89.

<sup>3416</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 19-20; RIEL Son Interview Record, E3/9602, 18 February 2014, p. 21, ERN (En) 00982653 (Answers 152-154).

<sup>3417</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 26.

<sup>3418</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 28.

<sup>3419</sup> RIEL Son Interview Record, E3/9602, 18 February 2014, p. 21, ERN (En) 00982653.

<sup>3420</sup> RIEL Son Interview Record, E3/9602, 18 February 2014, p. 21, ERN (En) 00982653 (Answer 149).

treated with medicine.<sup>3421</sup> He told DC-Cam that 17 April People in particular died from malnutrition, whereas Base People were seldom malnourished.<sup>3422</sup>

1046. The District Office supplied food and other meals to the hospital.<sup>3423</sup> Before the end of each month, RIEL Son attended meetings with the District Chief at the District Office to deliver oral reports on the District Hospital.<sup>3424</sup> It was his function to report on patients, whereas the hospital chief reported on party activities.<sup>3425</sup> The hospital did not have sufficient medicine.<sup>3426</sup> RIEL Son recounted an incident when he reported to the district level that patients were suffering from swelling, diarrhoea and a lack of nutrition, but *Ta Chay* then District Chief, accused him of attacking the cooperatives.<sup>3427</sup> *Ta Chay* accused RIEL Son of being bourgeois and an intellectual.<sup>3428</sup> After this, RIEL Son did not dare raise issues with the District Chief because he was very afraid.<sup>3429</sup>

1047. The ration in the hospital was 50 cans of rice for 250 patients, with four cans per kilogram – significantly less than ordinary rations which the Chamber considers to be explained by the fact that patients were not working and therefore unproductive.<sup>3430</sup> The hospital initially had 25 to 50 cans of rice for more than 200 people, but in the later period they did not have rice so RIEL Son tried to collect rice from other sources, or asked relatives to take back patients.<sup>3431</sup> According to RIEL Son, the main cause of dysentery was the lack of food with overwork. There was an area for burying bodies located 1km from the hospital.<sup>3432</sup> The death toll at the hospital increased dramatically towards the end of the regime due to malnutrition and dysentery. RIEL Son described people arriving in large numbers. About one month from the end of the DK regime, approximately 10 to 20 patients were dying every day.<sup>3433</sup> RIEL Son estimated to DC-

<sup>3421</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 39; T. 18 March 2015 (RIEL Son), E1/279.1, pp. 16, 34.

<sup>3422</sup> RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 40, ERN (En) 00729061. *See also*, para. 1016.

<sup>3423</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 81-82.

<sup>3424</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 29-30.

<sup>3425</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 30-31.

<sup>3426</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 26.

<sup>3427</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 33; RIEL Son DC-Cam Interview, E3/5861, 21 October 2001, p. 20, ERN (En) 00778958.

<sup>3428</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 38.

<sup>3429</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 40.

<sup>3430</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 32-33.

<sup>3431</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 90.

<sup>3432</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 52-55.

<sup>3433</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 90.

Cam that some 2,000 patients were registered at the District Hospital during his tenure, and that just over 400 died.<sup>3434</sup> The Chamber finds as coherent, consistent and credible RIEL Son's first-hand description of the hospital facilities, including the food supply, as having been inadequate, and that people died from malnutrition and overwork.

1048. RIEL Son testified that he was ordered by the District Committee to identify enemies among the patients of Tram Kak District Hospital. He described this as a "general instruction".<sup>3435</sup> This is consistent with a typed report from Kraing Ta Chan, which records that hospital staff had reported a patient for saying that markets and money would be allowed by the regime soon.<sup>3436</sup>

#### 10.1.7.6.2. *Zone and sector hospitals*

1049. The military hospital (Hospital 22) headed by Kang was at Pou Doh village in Trapeang Thum North commune.<sup>3437</sup> Ordinary people were not allowed to go near the military hospital.<sup>3438</sup> The Chamber has made findings in relation to the purge of staff at Hospital 22 in its findings on Kraing Ta Chan.<sup>3439</sup> RIEL Son also described a general hospital at Angk Ta Saom at the Daeum Chambak school.<sup>3440</sup> He described sector health facilities including at Angk Roneab Pagoda, where he had received some training.<sup>3441</sup> RIEL Son testified that the sector's treatment methods were better and more effective than the District Hospital.<sup>3442</sup> In particular, Sei the sector hospital chief, was the only person who had been a doctor before 17 April 1975.<sup>3443</sup> The sector hospital had more medicines than the district hospital, so RIEL Son referred patients to there.<sup>3444</sup>

<sup>3434</sup> RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, pp. 41-42, ERN (En) 00729062-00729063.

<sup>3435</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 61-62.

<sup>3436</sup> Kraing Ta Chan Report, E3/4142, 11 July 1977, ERN (En) 00071136.

<sup>3437</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 70-71; T. 18 March 2015 (RIEL Son), E1/279.1, p. 15.

<sup>3438</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 15.

<sup>3439</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2715 (fn. 9220).

<sup>3440</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 21, 70-71; T. 18 March 2015 (RIEL Son), E1/279.1, p. 16.

<sup>3441</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 21, 70-71; T. 16 March 2015 (NUT Nov), E1/277.1, p. 27; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 8, ERN (En) 00422322; RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 12, ERN (En) 00729033 (referring to Trapeang Roneab).

<sup>3442</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 17.

<sup>3443</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 17.

<sup>3444</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 34.

10.1.7.6.3. *Medical facilities in communes*

1050. RIEL Son supervised 12 commune medical facilities which had approximately five to seven medics each. commune chiefs also had oversight of the facility in their respective communes.<sup>3445</sup> The Chamber heard limited evidence about commune medical care. At training attended by RIEL Son, there were medics present from communes also being trained by Sei from the Sector Hospital.<sup>3446</sup> The evidence reveals, however, that medical care in the communes was scarce. OEM Saroeurn identified the Leay Bour Hospital as “Hospital 17”. When she fell sick with malaria in 1976 she was given an injection made from coconut juice injected into her leg. She has not walked properly since.<sup>3447</sup> CHOU Koemlan described delivering her baby in Leay Bour commune: there was a rural midwife in the village, but no proper hospital or medicine.<sup>3448</sup> VONG Sarun testified that her baby daughter became seriously ill when she was just over one year old. She had just started to walk. She requested for her daughter to be sent to a hospital but the village chief denied the request.<sup>3449</sup> CHANG Srey Mom described people being afraid if they fell sick because they were accused of having mental problems.<sup>3450</sup> RY Pov explained that in his youth mobile unit there was no medical treatment and nobody was sent to a clinic: if people fell ill or died from starvation, it was viewed as the “will of history”.<sup>3451</sup> He explained that persons who fell sick were accused of being an “infiltrator or enemy”, describing in particular the site at Kbal Pou (a worksite to produce rice during the dry season) as being without medical facilities.<sup>3452</sup> He also gave a specific example of two members of his unit who died at Ou Krouch from starvation and wounds.<sup>3453</sup> RIEL Son confirmed that to be admitted to

<sup>3445</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 18. *See also*, RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 24, ERN (En) 00729045 (repeated at p. 41, ERN (En) 00729062 (referring to 12 to 15 staffers in each commune)).

<sup>3446</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 86-87.

<sup>3447</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 22 (also describing subsequent treatment recommended by a grandfather in the form of ants, ginger and liquor).

<sup>3448</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 49-50.

<sup>3449</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 16.

<sup>3450</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 12.

<sup>3451</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 34-35.

<sup>3452</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 34. *See also*, Tram Kak District Record, E3/4112, 4 August [year not specified], ERN (En) 00322154 (a message from “Kbal Paur” describing a dry season rice worksite where a dyke system is being built); Tram Kak District Record, E3/4093, 8 August 1978, pp. 2-3, ERN (En) 00831487-00831488 (referring to a message from Meng in relation to the five widows from Trapeang Thum North commune who, among other things, had complained about the conditions at Kbal Pou dry season rice field and had discussed fleeing to Vietnam).

<sup>3453</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 42-43.

the commune hospital required authorisation from the unit chief or village chief.<sup>3454</sup> EK Hoeun confirmed that unit chiefs could send people without seeking higher authorisation.<sup>3455</sup> KHOEM Boeun testified that she did not distinguish in who should be sent to hospital for medical care.<sup>3456</sup> The Chamber therefore finds that medical treatment required pre-authorisation, even within communes, but that conditions at worksites such as Kbal Pou and/or Ou Krouch could be particularly lacking in medical care.

1051. The Tram Kak District Records reveal commune medical staff reporting to the Party. For example, a report dated 23 May 1976 from Angk Ta Saom commune to Tram Kak district records that medics at the commune hospital had discovered that a person wanted to run away, following which the commune Committee had the militia bring him in for interrogation using cold methods. The report continued that the district should question him because his wife, who was in the rice transplanting unit, had suggested that district *Angkar* was “lenient”.<sup>3457</sup>

#### 10.1.8. *Security*

##### 10.1.8.1. *Militia and monitoring*

1052. The 1976 Statute of the CPK’s Youth League provided for “District, Commune, and Village Militias” with corresponding levels of CPK organisation to “collectively examine, deliberate and decide”.<sup>3458</sup> In the communes, the roles of militia included guarding the security of the commune or village and engaging in rice production as needed.<sup>3459</sup> Militia members were generally aged between 18 to 30 and wore black uniforms like ordinary people.<sup>3460</sup>

1053. At the district level, NEANG Ouch *alias* Ta San described a platoon of some 30 militia who could be deployed throughout the district.<sup>3461</sup> VAN Soeun, a former

<sup>3454</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 20.

<sup>3455</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 19.

<sup>3456</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 14-15.

<sup>3457</sup> Tram Kak District Record, E3/2447, 23 May 1976, ERN (En) 00355473.

<sup>3458</sup> DK Document, E3/1230, January 1976, p. 7, ERN (En) 01201898.

<sup>3459</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 15, 90; T. 12 March 2015 (NEANG Ouch), E1/276.1, p. 20.

<sup>3460</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 32; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 32, ERN (En) 01057706 (Answers 172-173).

<sup>3461</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 32.

commune militiaman then member of the District Military who also worked as a messenger from Kraing Ta Chan, described a district unit known as the “50 member unit” albeit comprised of between 10 to 12 members.<sup>3462</sup> VAN Soeun also referred to a “100-member unit” commanded by Chhoeun, which comprised 50 to 70 members.<sup>3463</sup> KHOEM Boeun identified Phy and Chorn as supervisors of the district militia.<sup>3464</sup> According to PECH Chim, Phy had a handicap in his legs was indeed at the District Office “at some point” but he was in charge of medical services and the only work he could do was distribute medicines and take care of the sick.<sup>3465</sup> The Chamber finds that this does not reflect Phy’s role at all times.<sup>3466</sup>

1054. Each commune had a militia unit of some 10 youths or more.<sup>3467</sup> VAN Soeun told OCIJ investigators in 2013 that there were about 10 different “50 member” units in Tram Kak district.<sup>3468</sup> The evidence is unclear whether the “50 member” units was another name for the commune militia, or whether there was a separate military unit. In any event, the evidence demonstrates that commune militia reported to the commune and to security at the district level.<sup>3469</sup> In addition to the district and commune militia, EK Hoeun identified “sector police” arresting people throughout the sector.<sup>3470</sup>

1055. Militia monitored people including in their houses at night.<sup>3471</sup> EK Hoeun confirmed that suspected enemies were listened to from underneath their homes,

<sup>3462</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 22, 23, 27; T. 4 March 2015 (VAN Soeun), E1/271.1, p. 46 (describing a 100-member unit or company chief as having 50-70 members; and the 50-member unit consisting of 10-12 members only).

<sup>3463</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 46-47, 68.

<sup>3464</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 31.

<sup>3465</sup> T. 21 April 2015 (PECH Chim), E1/289.1, pp. 81-82.

<sup>3466</sup> The Chamber has made findings as to Phy’s role on security matters in relation to Kraing Ta Chan. See Section 12.3: Kraing Ta Chan Security Centre, para. 2697.

<sup>3467</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 41 (describing 12 militia units for 12 communes); T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 90-91; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 25, ERN (En) 01057699 (Answer 131, stating that Cheang Tong commune had seven or eight to nine militiamen); T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 31-32 (estimating 10 militiamen per commune, but suggesting there might only be two or three rifles between them); NUT Nov Interview Record, E3/5521, 1 December 2009, p. 12, ERN (En) 00422326 (Answer 87, stating that Sre Ronoung commune had around 12 militia); T. 18 February 2015 (SAO Han), E1/265.1, pp. 42-43 (describing occasionally seeing militia carrying rifles in Tram Kak commune).

<sup>3468</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 11, ERN (En) 00980287 (Answer 76).

<sup>3469</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 86-87 (describing Tram Kak district as being in charge).

<sup>3470</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 77; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 5, ERN (En) 00983570 (Answers 21, 24).

<sup>3471</sup> T. 18 February 2015 (SAO Han), E1/265.1, pp. 41-42 (“The role of the militiamen, as I experienced, was to monitor the activity of the people at their houses”); Tram Kak District Record, E3/8428, 13 May [year not specified], ERN (En) 00322165 (report from Cheang Tong commune describing a family who



especially if they were suspected of speaking ill about their work or politics.<sup>3472</sup> THANN Thim, a New Person who arrived in Tram Kak district in 1977, was kept under surveillance by militia after his arrival until he was arrested a few months later.<sup>3473</sup> KHOEM Boeun's evidence was that both New and Old People were monitored.<sup>3474</sup> As she described it, "everyone" (*i.e.* not only militia) was engaged in monitoring activities.<sup>3475</sup> VONG Sarun described learning from the wife of the Chan Teab village chief that she and her husband had been monitored from underneath their house during the night, because they were considered to be a class below ordinary peasants.<sup>3476</sup> BUN Saroeun felt watched over by militia men to see if he stole cassavas when he left the plantation. He felt watched on a permanent basis.<sup>3477</sup> CHANG Srey Mom likewise told OCIJ investigators that militiamen would spy on the New People and if they "had arguments or said something affecting [the] regime, they would [be] arrest[ed] and taken away".<sup>3478</sup> CHANG Srey Mom further testified that, in order to find former soldiers or students, questions were asked in the units during break times, prying into biographies and employment backgrounds.<sup>3479</sup> The documentary evidence confirms that people monitored each other. A report from Popel commune to *Angkar* described how Base People had reported on a new inhabitant in the commune that he was "extremely debauched in the previous society" such that the commune asked whether to "send him out or not".<sup>3480</sup> A report from Saen dated 12 March (year unknown) describes how a former LON Nol soldier was "very brutal according to the information from New People who know him".<sup>3481</sup>

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do not go to bed early and keep talking without sleep "but [we] can not hear [what they said]"); Tram Kak District Record, E3/2441, 22 September 1977, p. 26, ERN (En) 00369488 (referring to a report from Kus commune on MEI Moch, a New Person, who "said in his sleep that in order to poison the children, the poison is mixed with cassava [...] He said in his sleep at night at 11: he repeated the same words for three times at that time [...]. The New People like him also got up and heard clearly about this.").

<sup>3472</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 83-84 (learned this from people assigned to spy).

<sup>3473</sup> T. 21 April 2015 (THANN Thim), E1/289.1, pp. 27-30.

<sup>3474</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 88-89.

<sup>3475</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 89.

<sup>3476</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 62-63.

<sup>3477</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 37.

<sup>3478</sup> CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410266 (Answer 13).

<sup>3479</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 48.

<sup>3480</sup> Tram Kak District Record, E3/2048, 3 May 1977, p. 1, ERN (En) 01454944.

<sup>3481</sup> Tram Kak District Record, E3/2441, 12 March [year not specified], p. 14, ERN (En) 00369476.

10.1.8.2. Offences

1056. The delineation between serious and light offences was not always clear in the evidence. As a fundamental matter, however, conduct which betrayed or undermined the CPK's lines and policies was one of the most serious offences a person could commit. For instance, Commune Secretary KHOEM Boeun explained that the most serious offence was to destroy the cooperative's property and anybody who stole collective property such as dishes or pots was considered to be the enemy.<sup>3482</sup> EK Hoeun agreed that stealing plates or pottery from the cooperative was a serious crime.<sup>3483</sup> This is confirmed by the documentary evidence. A report from Srae Ronoung commune on 1 September 1977 recounted that three female youths and one girl had broken spoons during dinner, then asked *Angkar* to decide what to do with them.<sup>3484</sup> The Chamber identified these persons, aged between 14 and 19, as having been described in notebook E3/4083, revealing that they were sent to Kraing Ta Chan.<sup>3485</sup>

1057. As for taking food, NEANG Ouch *alias* Ta San testified that this was a light offence, akin to laziness or moral misconduct.<sup>3486</sup> Persons were often re-educated at the cooperative level because the district understood that some people stole because they were hungry.<sup>3487</sup> KHOEM Boeun likewise testified that stealing food was a minor offence, for which the person would be detained and brought to the village or perhaps the commune level to be re-educated, which included explaining to them that everybody was in the situation so stealing was prohibited.<sup>3488</sup> EK Hoeun testified that stealing a cassava was not a "big deal" so the offender would not be punished to carry dirt.<sup>3489</sup> Persons who took tools to use, however, such as ploughs or a rake, were treated like moral offenders and had to carry dirt as a punishment.<sup>3490</sup> In PECH Chim's view, those who stole food such as potatoes or roots should not have been implicated as having been the enemy.<sup>3491</sup> According to PECH Chim, persons who committed "minor

<sup>3482</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 98-99.

<sup>3483</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 68.

<sup>3484</sup> Tram Kak District Record, E3/4123, 1 September 1977, ERN (En) 00322176.

<sup>3485</sup> *See above*, para. 896.

<sup>3486</sup> T. 11 March 2015 (NEANG Ouch), E1/275.1, pp. 74-75.

<sup>3487</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 20-23; T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 53.

<sup>3488</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 97; T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 17-19.

<sup>3489</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 80-82.

<sup>3490</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 80-81.

<sup>3491</sup> T. 1 July 2013 (PECH Chim), E1/215.1, p. 52.

offences” were not to be executed, but he caveated this by stating that practice varied from place to place.<sup>3492</sup> Despite these accounts, there is extensive evidence demonstrating that stealing food could be considered a serious offence, especially if perpetrated by New People or accompanied by other words or conduct deemed threatening to the revolution. IM Vannak described being beaten by a militiaman when trying to collect *sdau* leaves to drink their juices.<sup>3493</sup> If children of 17 April People stole, they could be threatened with execution by the unit chief.<sup>3494</sup> However, stealing by Base children was “tolerated” because they were the children of Base People.<sup>3495</sup> A report from Angk Ta Saom commune to Kraing Ta Chan described how a New Person had questioned the rations and said that the only way to eat enough was to steal.<sup>3496</sup> OEM Saroeun described how she was caught stealing and was sent for re-education, which involved being told that if she stole again she would be in danger but since it was her first offence she was released.<sup>3497</sup> The Chamber heard numerous, consistent and convincing accounts that inhabitants of the cooperatives in Tram Kak district went hungry because rations were insufficient, but they were too scared to take food growing on trees.<sup>3498</sup>

1058. NEANG Ouch *alias* Ta San explained that spying was a serious offence.<sup>3499</sup> According to SAN Lorn, however, treason was betraying the Party’s lines and policies, and traitorous crimes included activities of opposition or disobedience.<sup>3500</sup> EK Hoeun

<sup>3492</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 63-64.

<sup>3493</sup> T. 3 April 2015 (IM Vannak), E1/288.1, pp. 59, 70-71.

<sup>3494</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 27-28, 60-63, 78-79.

<sup>3495</sup> PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410249 (Answer 23).

<sup>3496</sup> Tram Kak District Record, E3/2044, 9 January 1977, ERN (En) 00290261.

<sup>3497</sup> T. 26 March 2015 (OEM Saroeun), E1/283.1, p. 12.

<sup>3498</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 60 (stating that nobody dared to complain about the lack of food for fear of being killed); T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 33-34 (explaining that people were not allowed to search for food and her daughter died in 1976); T. 18 February 2015 (SAO Han), E1/265.1, pp. 41-42 (describing how militiamen monitored whether people tried to steal food), 15-16, 39 (stating that people never complained about the lack of food because those who complained disappeared which made him afraid); T. 26 March 2015 (OEM Saroeun), E1/283.1, pp. 6 (describing the disappearance of two of her friends after they stole food), 20-21, 50 (explaining that she could not complain about the lack of food “otherwise, I would be killed. If we asked for more we – there would be a problem for all of us”); and describing witnessing the killing of a 15 year old who stole a package of rice and some fish); T. 1 April 2015 (TAK Sann), E1/286.1, p. 31 (stating that gruel was insufficient and she was hungry but dared not steal food because she was scared of being taken away to be killed); T. 1 April 2015 (EAM Yen), E1/286.1, pp. 58-59; T. 2 April 2015 (EAM Yen), E1/287.1, pp. 3-4; T. 1 April 2015 (EAM Yen), E1/286.1, pp. 61-62 (describing different instances of trying to steal a cassava because she did not have enough food and being punished); T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 21-22, 57-59 (stating that despite the lack of food, he never complained for fear of being sent to re-education).

<sup>3499</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 60.

<sup>3500</sup> SANN Lorn Interview Record, E3/9487, 29 September 2014, p. 107, ERN (En) 01050440.

explained that moral offenders would be released after they had corrected themselves and worked hard.<sup>3501</sup> Several witnesses recalled that light offences, including “moral offences”, resulted in varying lengths of detention and work at “Meng’s place” at Angk Roka.<sup>3502</sup> According to KHOEM Boeun, a rapist in Popel commune had his head shaved to leave a cross and he was walked from Popel to Cheang Tong.<sup>3503</sup>

1059. The detention place at Angk Roka operated as both a re-education office in its own right,<sup>3504</sup> and as a transit point for prisoners to be sent to other locations, including Kraing Ta Chan.<sup>3505</sup> For instance, the Chamber has traced in the documentary evidence the fate of five widows from Trapeang Thum North commune who were at Meng’s place as at 7-8 August 1978 but entered Kraing Ta Chan on 9 August 1978 following an instruction to execute them.<sup>3506</sup> The report from the commune to Meng described the five women as having complained that they worked “nearly to death both at daytime and night and eat no delicious good. You shout ‘Storming attack, storming attack’. What shit! I won’t do it.”<sup>3507</sup> A further example traced by the Chamber was two “traitors” from Popel commune sent to Meng’s place on or around 9 July 1978 then transferred to Kraing Ta Chan on or around 15 July 1978, following directions from District Secretary NEANG Ouch *alias* Ta San.<sup>3508</sup>

1060. The Chamber finds that the most serious offences, for which the punishment was death, included innocuous conduct and/or speech perceived as attacking the revolution and the collective system.

<sup>3501</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 81 (specifying that this related to the “era of *Ta Chim*”).

<sup>3502</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 51-55 (stating that Meng was in charge and re-education lasted for 3-6 months, or 1.5 months if “soft”); T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 74 (stating that re-education was from 2 weeks to 1 month for light offences).

<sup>3503</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 46.

<sup>3504</sup> T. 2 April 2015 (THANN Thim), E1/287.1, pp. 31-32, 42-43 (noting that THAAN Thim was detained at Angk Roka “day and night” for three months).

<sup>3505</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 56, 61-62 (describing 12 members of his family arrested and taken to Angk Roka); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 4 (referring to the fact that MEAS Sokha was taken to Angk Roka for one night, then sent to Kraing Ta Chan). *See also*, para. 935.

<sup>3506</sup> *See above*, paras 846-847.

<sup>3507</sup> Tram Kak District Record, E3/4093, 8 August 1978, p. 3, ERN (En) 00831488.

<sup>3508</sup> *See above*, para. 864.

10.1.8.3. Arrests and disappearances10.1.8.3.1. *Reports and authority*

1061. As noted in the above discussion of the aftermath of the evacuations, District Secretary *Yeay Khom* who was *Ta Mok*'s daughter, gave repeated instructions in meetings to smash all capitalists, feudalists or reactionaries and kill them all wherever they were until not one remained. She said this in the meetings in villages and at the district, and militiamen repeated her statements back to her.<sup>3509</sup> EK Hoeun understood this to apply to former teachers, village and commune chiefs, LON Nol soldiers, and those who had political tendencies.<sup>3510</sup> According to EK Hoeun, *Yeay Khom* was implementing a clear plan and large numbers of people were arrested pursuant to these orders.<sup>3511</sup> *Yeay Khom*'s orders were passed to *Ta Chim* and *Ta Chay*, then on down to Dorn, the District Office chief.<sup>3512</sup>

1062. SENG Soeun described a short political session he attended on an unspecified date after 17 April 1975. It was launched by Bao, the commander of his battalion, to educate the lower-ranking leaders about the policy of the CPK. The session last some three days and was convened in Takeo. It focused on cleansing and included an announcement that former soldiers and officials of the Khmer Republic would not be spared.<sup>3513</sup> RIEL Son described a large meeting near Angk Roka market when commune and village representatives were instructed to purge various groups including former LON Nol officials from the rank of first assistant to the level of chief of communes, and military and police from the rank of warrant officer or first adjutant and above.<sup>3514</sup> He identified PECH Chim as the District Secretary at the time, with *Ta Chay* in attendance.<sup>3515</sup> The Chamber is satisfied that this meeting took place in 1976 or later because RIEL Son had been assigned to work at the District Hospital at the time.<sup>3516</sup> Chiefs of communes and various villages were instructed to search for former soldiers

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<sup>3509</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 42.

<sup>3510</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 43-45, 102-103.

<sup>3511</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 27.

<sup>3512</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 22.

<sup>3513</sup> T. 30 August 2016 (SENG Soeun), E1/466.1, pp. 36-41.

<sup>3514</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 41-42 (meeting took place in a kitchen hall at Angk Roka), 43; T. 18 March 2015 (RIEL Son), E1/279.1, pp. 64-66 (contradicting SAO Van's evidence that second lieutenant and up were not to be harmed).

<sup>3515</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 49-50; T. 18 March 2015 (RIEL Son), E1/279.1, p. 70.

<sup>3516</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 42, 48; T. 18 March 2015 (RIEL Son), E1/279.1, p. 68.

with ranks from adjutant up, or former policemen from first deputy chief up then purge them.<sup>3517</sup> At times RIEL Son's evidence wavered on the precise timing of this meeting. At one point he seemed to suggest that such a meeting took place earlier because he referred to many evacuees from Phnom Penh and Takeo at the time.<sup>3518</sup> At another point, he suggested it may have taken place before the evacuation of Phnom Penh.<sup>3519</sup> He then corrected himself on the basis that he attended as the representative of the District Hospital.<sup>3520</sup> Indeed he recalled leaving the meeting and returning to the District Hospital.<sup>3521</sup> While it is possible that RIEL Son attended more than one meeting, the Chamber considers that his recollection of the capacity in which he attended the meeting is reliable, which therefore assists the Chamber in finding that it took place in 1976 or later. RIEL Son's evidence is corroborated by the contents of the September-October 1976 issue of *Revolutionary Flag*, which discussed "life-and-death contradictions" with government officials, policemen, soldiers and students who could not be reformed by education.<sup>3522</sup> It continued that:

[T]here are contradictions within the old peasants from upper-middle peasants on up, in particular with the wealthy peasants, that are life-and-death contradictions. There are also contradictions within the new peasants, contradictions with capitalists and feudalists that are life-and-death contradiction. When individuals reform, they are not life-and-death contradictions, but they do not easily reform.<sup>3523</sup>

1063. The Chamber therefore finds that, although instructions were issued not to harm former LON Nol soldiers and officials after May 1975, the position changed in 1976 and later on.<sup>3524</sup> KHOEM Boeun also recalled receiving successive instructions from the district to sweep clean "high ranking" soldiers or officers.<sup>3525</sup> This is corroborated by documentary evidence from Cheang Tong commune: a report dated 30 April 1977 which refers to the enemy situation in the base then states: "after having received

<sup>3517</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 72-75, 77-79, 92.

<sup>3518</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 42.

<sup>3519</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 66.

<sup>3520</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 68.

<sup>3521</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 75.

<sup>3522</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529 ("In the base areas, as for the characteristics of the contradictions that we can detect, most of them are government officials, policemen, soldiers, and students. This comes from the capitalists and the landowners not showing themselves. They are the instigators, but they do not show their faces").

<sup>3523</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529.

<sup>3524</sup> See above, Section 10.1.6.3: Instructions in relation to Evacuees and Former Khmer Republic Officials.

<sup>3525</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 47-48.

successive instructions from *Angkar* on vigilance against enemies and purges of ranking enemy soldiers” pursuant to which two persons were to be arrested.<sup>3526</sup> A report from To Phem commune dated 28 April 1977 likewise refers to having “examined and purged ranking enemies” specifying that “Upon instructions from the Party, we went to the field to examine them and found that there were still six more ranking persons who changed their names” proceeding to identify six former soldiers with the rank of first or second lieutenant.<sup>3527</sup> The Chamber has found that documentary evidence confirms there to have been a concerted effort to round up those suspected of being former Khmer Republic soldiers or officials from April 1977 in particular.<sup>3528</sup>

1064. The documentary evidence also confirms that New People who opposed the CPK were to be arrested: a report from Sre Ronoung commune dated 4 January 1977 recorded that “concerning the New People, there are still many others who are opposing *Angkar* (organization) and the Party, thus I will arrest them and send them up successively”.<sup>3529</sup>

1065. NEANG Ouch *alias* Ta San testified that, on security matters, the communes reported to the district, after which he relayed information to *Ta Rorn* (*i.e.* the Sector Secretary) or *Ta Bith* – a reference to SAM Bit at the Southwest Zone level.<sup>3530</sup> According to PECH Chim, it was the sector level which made all decisions, and the district only transmitted matters to let sector authorities decide if they wanted to arrest people.<sup>3531</sup> According to PECH Chim, district secretaries did not have authority over arrests – this lay with the sector, whereas district secretaries had authority over propaganda, education, livelihood, “getting rid of traitors” and mobilising forces to fight enemies.<sup>3532</sup> PECH Chim stated that “in principle” the sector then had to consult with the Southwest Zone before making decisions on arrests or executions, but he was unable to say whether this procedure was adhered to in every instance.<sup>3533</sup> He accepted that the communes sent names to the district requesting to make arrests.<sup>3534</sup>

<sup>3526</sup> Tram Kak District Record, E3/2048, 30 April 1977, p. 2, ERN (En) 01454945.

<sup>3527</sup> Tram Kak District Record, E3/2048, 28 April 1977, p. 4, ERN (En) 001454947.

<sup>3528</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2795-2796.

<sup>3529</sup> Tram Kak District Record, E3/4120, 4 January 1977, ERN (En) 00322174-00322175.

<sup>3530</sup> T. 12 March 2015 (NEANG Ouch), E1/276.1, pp. 20-21.

<sup>3531</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 28-29.

<sup>3532</sup> PECH Chim Interview Record, E3/9587, 19 June 2014, p. 15, ERN (En) 01000677 (Answer 86).

<sup>3533</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 54.

<sup>3534</sup> PECH Chim Interview Record, E3/9587, 19 June 2014, p. 36, ERN (En) 01000698 (Answer 266).

1066. Witnesses from the commune level testified that they did not possess independent authority to arrest. The procedure generally described by several witnesses in a position to know was that communes reported on suspects, either individually or in lists, then received instructions from the district to arrest. NUT Nov testified that only the sector or the zone level had authority to authorise arrests and smash.<sup>3535</sup> KHOEM Boeun's evidence was that the commune levels did not have the authority to eliminate or smash anybody or send anyone for re-education. Instead they forwarded matters to the district level.<sup>3536</sup> PHANN Chhen, a former secretary of Kus commune before 17 April 1975, similarly stated that he did not have the authority to arrest; only the "district level" had that authority.<sup>3537</sup> EK Hoeun also testified that only district units had the right to make arrests.<sup>3538</sup> NUT Nov also described an announcement that neither the village nor the commune level had the right to decide who was an enemy; the commune could only make reports.<sup>3539</sup> Even when he became a commune chief, he said he did not know what happened to people who were arrested because everything was so secretive.<sup>3540</sup> This is corroborated by the documentary evidence before the Chamber, which shows repeated examples of various communes seeking instructions from the district level on arrests.<sup>3541</sup>

1067. EK Hoeun gave a detailed account of some aspects of the arrests process. He confirmed that only district units had the right to make arrests, not the communes who simply reported lists of people and received instructions.<sup>3542</sup> However, he testified that

<sup>3535</sup> T. 12 March 2015 (NUT Nov), E1/276.1, pp. 63-64; T. 16 March 2015 (NUT Nov), E1/277.1, p. 6.

<sup>3536</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 48; T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 15.

<sup>3537</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 8-9.

<sup>3538</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 68; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 4, ERN (En) 00983569 (Answer 17).

<sup>3539</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 24-25; NUT Nov Interview Record, E3/5521, 1 December 2009, p. 6, ERN (En) 00422320.

<sup>3540</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 48.

<sup>3541</sup> See e.g., Tram Kak District Record, E3/4105, 19 April 1977, ERN (En) 00322135 (Tram Kak commune describing the arrest of ING Try and asking the district level where he should be sent); Tram Kak District Record, E3/2436, 28 April 1977, ERN (En) 00322142 (Report of Nhaeng Nhang commune, describing the laziness of MOU Phat, annotated by Kit stating that he should be arrested); Tram Kak District Record, E3/2441, 22 September 1977, p. 26, ERN (En) 00369488 (Kus commune regarding a New Person who does not work hard, bearing an annotation that "*Angkar* has already decided to take him"); Tram Kak District Record, E3/4123, 1 September 1977, ERN (En) 00322176 (Sre Ronoung commune reporting on individuals who broke spoons and planned to flee to Vietnam, asking *Angkar* to decide, with an annotation by Kit instructing *Ta An* to arrest them).

<sup>3542</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 50-51, 68, 73-74; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 10, 26; EK Hoeun Interview Record, E3/9582, 19 March 2014, pp. 4-5, ERN (En) 00983569-00983570 (Answers 17, 19-20).



this rule was not always respected and sometimes people who were considered to be strong opponents or serious offenders were arrested and disappeared without waiting for a decision from the sector level.<sup>3543</sup> Generally, the communes reported on people to the district, which considered the matter and consulted with the sector. Upon reception of sector's feedback, Dorn, the chief of the District Office, passed on instructions from the sector downwards.<sup>3544</sup> These instructions sometimes materialised through a list of names annotated in red or in blue. The district reported those names to the communes to implement the arrests,<sup>3545</sup> but in some cases district soldiers were ordered to go straight to apprehend the person(s) without the commune's involvement.<sup>3546</sup> EK Hoeun suggested that red annotations on lists of persons meant that person was to be arrested then executed.<sup>3547</sup> EK Hoeun contrasted red annotations from blue annotations. He described blue circles around a name indicating that the person would be brought to Angk Roka to be re-educated for more minor offences, without being beaten or tortured.<sup>3548</sup> EK Hoeun remembered seeing such lists with red and blue ink when looking for cigarette papers in the Tram Kak District Commerce Office, where he worked. The lists were put in the rubbish bin after it had been decided that district soldiers would make arrests.<sup>3549</sup> While the Chamber accepts that EK Hoeun saw the lists he described, the precise meanings he attributed to the red and blue markings appear to have been his own interpretation without independent verification.<sup>3550</sup>

1068. KHOEM Boeun, the Secretary of Cheang Tong commune, accepted that she received instructions from *Ta An*, the head of Kraing Ta Chan, following which she

<sup>3543</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 79.

<sup>3544</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 22.

<sup>3545</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 50; EK Hoeun Interview Record, E3/9464, 13 October 2014, p. 8, ERN (En) 01053574 (Answer 24).

<sup>3546</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 58, 74.

<sup>3547</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 50, 74 (stating that red ink indicated that the person had political tendencies, or a connection to the CIA, *Yvon* or KGB, so they could be taken to the forest to be killed); T. 8 May 2015 (EK Hoeun), E1/299.1, p. 26 (stating that red ink meant the case was "not negotiable").

<sup>3548</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 50-51, 73-74; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 10, 26; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 5, ERN (En) 00983570 (Answers 19-20).

<sup>3549</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 75.

<sup>3550</sup> EK Hoeun also gave potentially inconsistent interpretations of the meaning of blue annotations. *See* T. 7 May 2015 (EK Hoeun), E1/298.1, p. 75 (stating that blue brackets marked by communes to indicate KGB or CIA connections). The Chamber rejects this aspect of EK Hoeun's evidence as being his interpretation without a sufficiently reliable basis having been shown.

ordered the commune militia to search for and arrest the people identified.<sup>3551</sup> District soldiers and commune militia worked together to conduct arrests, but she said was not directly involved in this.<sup>3552</sup> She testified that she, as a commune secretary, did not have any rights to eliminate or smash anyone. Rather, the commune forwarded reports to the district.<sup>3553</sup> There is some support for this account in the Tram Kak District Records. For example, a report to the “Party of District 105” dated 21 July 1977 and sent by KHOEM Boeun passes on information from “Comrade Huo, Committee of Unit 4” regarding a conversation he had with NEANG Dam. During this conversation NEANG Dam, a former “policeman” of district 105, criticised the Party because among other things he saw it “much more unjust because it [*sic*] personally implemented many killings under their power”, including of people who were loyal to *Angkar*.<sup>3554</sup> There is a corresponding entry for NEANG Dam in one of the Kraing Ta Chan Notebooks.<sup>3555</sup>

1069. The Chamber is satisfied that the zone and sector levels retained extensive oversight of arrests in Tram Kak district, but the district level retained considerable discretion when responding to reports from communes. The Chamber further finds that the District Secretary frequently authorised arrests.

#### 10.1.8.3.2. *Implementation*

1070. There is extensive evidence of people being arrested and disappearing from Tram Kak district during the relevant period. The Chamber has evaluated generalised evidence and examples of specific individuals.

1071. PECH Chim testified that, when he was District Secretary, he was frequently approached by people asking for information about the fate of their relatives. In his

<sup>3551</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 60; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 37, ERN (En) 01057711 (Answers 207-208).

<sup>3552</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 75-76; Tram Kak District Record, E3/2051, 7 May 1977, p. 1, ERN (En) 00276575 (report to Kraing Ta Chan confirming that two district unit personnel and two subdistrict militiamen were sending in a prisoner); Tram Kak District Record, E3/2441, 21 January 1978, p. 27, ERN (En) 00369489 (report to Kraing Ta Chan confirming that district soldiers and militia would bring a person); Tram Kak District Record, E3/8423, 18 February 1977, ERN (En) 00322152 (referring to the militia unit of the commune and district bringing over persons); Tram Kak District Record, E3/2785, 3 March 1978, ERN (En) 00322196 (a report from Angk Ta Saom to police of Tram Kak district, discussing the arrest of Tim Y by “our militia + district unit”).

<sup>3553</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 48.

<sup>3554</sup> Tram Kak District Record, E3/5855, 21 July 1977, ERN (En) 00363655.

<sup>3555</sup> Kraing Ta Chan Notebook, E3/5860, pp. 24-25, ERN (En) 01064188-01064189. A person called NEANG Dam was interviewed by the Co-Investigating Judges and described his detention at Kraing Ta Chan in 1977. See NEANG Dam Interview Record, E3/7904, 5 October 2007.

view, people had been too scared to approach *Yeay Khom*, the previous District Secretary. PECH Chim continued that he listened and considered such requests, and would decide whether or not the person could be released.<sup>3556</sup> PECH Chim described a fluid authority structure in Tram Kak district whereby a person could be promoted, but then disappeared one or two months later, and people in the locality would not know what happened to that person.<sup>3557</sup> MOENG Vet, a military messenger who delivered messages to Sector 13 secretary, described how, when he returned to visit his village in Tram Kak district in late 1977 having left in March of that year, “many people” had disappeared.<sup>3558</sup> EK Hoeun testified that disappearances were a source of fear for everyone, and that everyone was afraid because there were so many arrests.<sup>3559</sup> NUT Nov confirmed that, when he was at the Tuol Kruos worksite digging canals, he knew that people disappeared and explained that it was the district and sector units in charge.<sup>3560</sup> EM Phoeung testified that former Khmer Republic officials were targeted, and a method was used whereby they were told that *Angkar* needed them for work which led many to reveal their past; only very few who hid their identity survived.<sup>3561</sup> KHOEM Boeun admitted to the OCIJ investigators that persons from Phnom Penh evacuated to Cheang Tong commune were killed, but before the Chamber claimed not to have been aware of it and could not give figures.<sup>3562</sup> The Chamber finds this evidence to be indicative of large numbers of people disappearing in Tram Kak district.

1072. The Chamber heard detailed accounts of specific individuals who disappeared. CHOU Koemlan’s husband was called SUOS Dim *alias* Nuon.<sup>3563</sup> He was a captain then later promoted to a major in the LON Nol military. He had been a military medic working at two hospitals in Phnom Penh.<sup>3564</sup> When they first arrived in Tram Kak

<sup>3556</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 17, 19, 63.

<sup>3557</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 65.

<sup>3558</sup> T. 26 July 2016 (MOENG Vet), E1/448.1, p. 71; the village was in Cheang Tong commune. *See e.g.*, MOENG Vet Interview Record, E3/9569, 10 February 2014, p. 2, ERN (En) 00982067; MOUNG Vet Interview Record, E3/9513, 11 February 2014, p. 2, ERN (En) 00982722; MOUNG Vet Interview Record, E3/9835, 12 February 2014, p. 2, ERN (En) 00982711.

<sup>3559</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 107 (recalling that “everyone shivered” because they were so afraid).

<sup>3560</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 73.

<sup>3561</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 32-33.

<sup>3562</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 83-84; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 43-44, ERN (En) 01057717-01057718.

<sup>3563</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 45.

<sup>3564</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 79 (referring to Borei Keila hospital and Ket Mealea military hospital north of Central Market); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 68 (referring to Preah Mealea Hospital and Borei Keila).

district, they were asked to prepare biographies but they did not reveal his former position.<sup>3565</sup> In around August 1975, however, after building huts to the north of Leay Bour commune office to house New People, he was arrested at around 9 p.m., after a meeting had ended at around 8 p.m.<sup>3566</sup> The arrest followed the discovery of photographs which identified him as a former soldier.<sup>3567</sup> His hands were tied behind his back then he was walked away by people with a gun.<sup>3568</sup> Around two hours later, CHOU Koemlan heard three gun shots, then the next day she was sent from the north of the commune office to another unit to the south.<sup>3569</sup> She never saw her husband again but subsequently heard from Base People that her husband was killed behind Leay Bour Pagoda, to the west in a forest.<sup>3570</sup> The Chamber finds that CHOU Koemlan's account is detailed, precise, consistent internally and with the evidence concerning the purge of Khmer Republic soldiers, therefore it is satisfied that SUOS Dim *alias* Nuon was killed.

1073. OEM Saroeurn was separated from her husband, OY Mut, a former LON Nol soldier, in 1976.<sup>3571</sup> She received confirmation of her husband's death as well as of the deaths of other family members, including her father (IM Phum), uncle (IM Chat) and elder brother (UNG Lim) who had asked for extra food from another former detainee at Kraing Ta Chan called Hou, who was also a former LON Nol soldier and escaped after the liberation.<sup>3572</sup> The Chamber is unable to establish whether these persons died at Kraing Ta Chan but, in light of the circumstances surrounding the disappearances of OEM Saroeurn's relatives, of the biographies of these last and of the purge directives in force in the district, the only reasonable inference is that they were killed.

<sup>3565</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 68-69. Cf. T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 50 ("He was sent to be clubbed to death"); T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 39-40 (subsequently learning from Base People that a hoe was used to force him to dig a pit before he was killed).

<sup>3566</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 47-48; T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 36.

<sup>3567</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 50-51 (describing a search of a pack of clothing and a t-shirt that had a photo or ID card with his rank), 78 ("They found the photo"), 79 (describing a search in her husband's clothes when photos were found); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 68 (describing a photo of her husband in uniform and insignia).

<sup>3568</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 37.

<sup>3569</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 49; T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 39 (describing shots and associating them with the armed persons who took her husband away).

<sup>3570</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 49.

<sup>3571</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 7.

<sup>3572</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 14-15, 18 (confirming that Chim, a guard at Angk Ta Saom prison, gave OEM Saroeurn this information in 1979).

1074. RIEL Son's testified that his uncle LONG Neak complained about the cooperative he lived in, which led to his disappearance. He described how people kept disappearing. People would come at night and then they would disappear.<sup>3573</sup> His wife told him how his uncle and brother-in-law were taken away from their house. The brother-in-law was taken at noon from RIEL Son's own house then his uncle, who lived next door, was taken at night.<sup>3574</sup> His elder brother, RIEL Oem who was a warrant officer in the police force who wanted his rank reinstated also disappeared.<sup>3575</sup> None of these people were seen again by their relatives.

1075. LONG Vonn worked at the Tram Kak District Office, but explained that he was terrified while in Tram Kak district and did whatever he was told to do. The father of one of his cousins had been a former soldier, and was assigned to a mobile unit but then disappeared and was never seen again by his relatives. Similarly, an uncle of his who had been a former teacher disappeared and also was never seen again by his relatives. These disappearances and other deaths left him terrified.<sup>3576</sup>

1076. MEAS Sokha recalled the arrest of his father and brother-in-law in June 1976. They had been involved in a request to replace the cooperative chief in order to improve living conditions. His brother-in-law was arrested on the day of a meeting he had called, whereas his father was arrested at midday or 1 p.m. the next day.<sup>3577</sup> MEAS Sokha witnessed the arrest of his father by three militiamen, including Chea, the chief of the commune's militia, and Roeum. His father left MEAS Sokha a plate and cutlery and told him to go home. He never saw his father again.<sup>3578</sup> The Chamber has made further findings in relation to these arrests elsewhere in this Judgement.<sup>3579</sup> In relation to the Tram Kak Cooperatives, these events further confirm that any conduct perceived as challenging the revolution was met with the severest consequences, with whole families swept up in the resultant arrests.

<sup>3573</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 8.

<sup>3574</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 78.

<sup>3575</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 78.

<sup>3576</sup> T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 85-87 ("I was so terrified because my relatives and siblings died without reason").

<sup>3577</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 34.

<sup>3578</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 61-64.

<sup>3579</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2670-2672.

1077. SAO Han described the disappearance of LUON Ham (his elder brother who was a LON Nol soldier) and TAUCH Chhan (a teacher). They were told that they were being sent away for re-education but they disappeared and were never seen again by their relatives. Their wives and children were not arrested.<sup>3580</sup> LUON Ham was arrested by militia men led by Pang, with *Ta* Ek and group chief *Ta* Lonya involved in the arrests. LUON Ham was taken away on a horse cart, but not tied up.<sup>3581</sup>

1078. TAK Sann arrived in Tram Kak district from Vietnam together with her husband and children, as part of an exchange of Vietnamese and Khmer Krom persons. She described how her husband was taken away on a cart and disappeared forever.<sup>3582</sup> IM Vannak's brother IM Mach also disappeared and was never seen again by his relatives. She asked a villager called SAU Vann what had happened to him. She was told that he was accused of moral misconduct, but she recalled him having been a former LON Nol soldier and saw him in uniform when she was young.<sup>3583</sup> LOEP Neang lived in Tnaot Chnang village. She described being told that her elder brother and sister (LOEP Lek and LOEP Meu) were taken to hospital with fever and dysentery, but they then disappeared.<sup>3584</sup> Two of her younger siblings (LOEP Leh and LOEP Vy) were taken away on a cart while she was digging a canal, and disappeared.<sup>3585</sup>

1079. THANN Thim, a New Person who arrived in Trapeang Thum North in late 1977, was evacuated with several hundred other New People from Kirivong district. He worked in Trapeang Trav village in the transportation or oxcart unit, whereas his wife was assigned to transplanting.<sup>3586</sup> He was arrested and accused of being a first lieutenant – having been implicated by his young daughter.<sup>3587</sup> THANN Thim explained that his family knew nothing of his arrest: they just noticed that he had disappeared and thought

<sup>3580</sup> SAO Han Interview Record, E3/5518, 21 November 2009, p. 5, ERN (En) 00413899 (Answer 23).

<sup>3581</sup> T. 17 February 2015 (SAO Han), E1/264.1, p. 96 (identifying Pang, *Ta* Ek and *Ta* Lonya); T. 17 February 2015 (SAO Han), E1/264.1, pp. 3-4 (explaining that the incident was witnessed by SAO Han's family members); SAO Han Interview Record, E3/5518, 21 November 2009, p. 8, ERN (En) 00413902.

<sup>3582</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 54, 61-63.

<sup>3583</sup> T. 3 April 2015 (OUM Vannak), E1/288.1, p. 79.

<sup>3584</sup> T. 3 April 2015 (LOEP Neang), E1/288.1, p. 94.

<sup>3585</sup> T. 3 April 2015 (LOEP Neang), E1/288.1, pp. 94-95.

<sup>3586</sup> T. 2 April 2015 (THANN Thim), E1/287.1, pp. 21, 27; T. 21 April 2015 (THANN Thim), E1/289.1, pp. 4-5, 21-22; THANN Thim Interview Record, E3/9468, 2 July 2014, p. 13, ERN (En) 01035014 (Answers 64-65).

<sup>3587</sup> THANN Thim Interview Record, E3/9468, 2 July 2014, p. 15, ERN (En) 010350156 (Answers 70-71).

that he had died.<sup>3588</sup> The Chamber finds that this is indicative of the general practice when persons were arrested and sent for re-education.

1080. The documentary evidence confirms that New People, former Khmer Republic soldiers and officials, and Khmer Krom persons were particularly susceptible to arrest for thoughts, speech or conduct considered contrary to the revolution. A report dated 3 May 1977 requests an opinion from “respected *Angkar*” on solving a problem with a New Person, then asks for *Angkar* to decide whether the person should be sent away.<sup>3589</sup> A report from Popel commune to the District Party dated 11 April notes that “For those people who hold a ranking position, we will send them out [to you] consecutively and for soldiers and some teachers who attempted to destroy [and] our revolution, could you please give us advice what to do or let us decide at some bases – so please gives us your advice. With high commitment to destroy/smash the spy of the enemy to its total extinction in order to serve the Socialist Revolution and Building Socialism for our Party and the people as required”.<sup>3590</sup> A note dated 24 April 1977 from Ta Phem commune includes an instruction annotated to “watch in advance on whether they are new or base people”.<sup>3591</sup> A report dated 6 May 1977 from Khporp Trabaek commune to *Angkar*, Tram Kak district, provided information on four persons “with former ranks and positions” who had been transferred up to the commune’s base the previous day.<sup>3592</sup> A report dated 8 May 1977 from Popel commune to District *Angkar* confirmed that “the number of military families smashed by the *Angkar* and died is 393 or 106 families [...] 892 persons or 231 military families remain”.<sup>3593</sup> This latter evidence reveals a killing operation underway from April 1977, when massive numbers of former military together with their families were being killed in Tram Kak district.

1081. A report from Angk Ta Saom dated 24 July 1977 records that a New Person who had arrived in the area in 1975, but it had now been discovered that he had studied abroad, including in the United States. The report asks whether he should be sent to the re-education office.<sup>3594</sup> A report from Ta Phem commune dated 12 October 1977

<sup>3588</sup> T. 2 April 2015 (THANN Thim), E1/287.1, p. 36.

<sup>3589</sup> Tram Kak District Record, E3/2048, 3 May 1977, p. 1, ERN (En) 01454944.

<sup>3590</sup> Tram Kak District Record, E3/4629, 11 April [1977], ERN (En) 00322133.

<sup>3591</sup> Tram Kak District Record, E3/4107, 24 April 1977, ERN (En) 00361772.

<sup>3592</sup> Tram Kak District Record, E3/2050, 6 May 1977, ERN (En) 00276576.

<sup>3593</sup> Tram Kak District Record, E3/2048, 8 May 1977, ERN (En) 01454946.

<sup>3594</sup> Tram Kak District Record, E3/2440, 24 July 1977, p. 2, ERN (En) 00322145 (identifying the individual as Penn).

recorded that three New People had been reported to the commune by a number of Base People for having made comments that they had been mistreated and would not survive.<sup>3595</sup> A report from Nhaeng Nhang commune dated 17 December 1977 reported that two New People had been making negative comments against the revolution, and noted the Party's decision for them to be arrested and sent to "comrade brother".<sup>3596</sup> A report from Trapeang Thum South commune dated 3 January 1978 to "Comrade Ann" described the "problems" of two New People who had been sent over, detailing negative comments that the persons had made.<sup>3597</sup> A report dated 1 March 1978 from Angk Ta Saom commune to the "Comrade Police of Tram Kak District" described comments made by VANN Em, a former teacher working in the Planting Unit, who predicted trouble ahead for *Angkar*.<sup>3598</sup> This corresponds to an entry for VAN Em in one of the Kraing Ta Chan Notebooks.<sup>3599</sup>

1082. The documentary evidence further establishes that arrested persons were mistreated during interrogations in the communes. A report from Trapeang Thum South commune to the Party in September 1977 describes how MOEUN Sun had confessed following both "cold and hot methods of interrogation".<sup>3600</sup> A report to the Party describing individuals in Angk Ta Saom commune recorded that youths in the youth mobile unit were allowed to wrap NEANG An's face with a plastic sheet, shackle and interrogate him.<sup>3601</sup> Further documentary evidence confirms that physical beatings were contemplated as an available method of interrogation. For instance, a report from K-105 to *Angkar* on 5 May 1977 described the interrogation of HIM Chhun, with the author stating "I took his confession peacefully and without beating him and because of this, I don't know the truth".<sup>3602</sup> A report from Angk Ta Saom commune to Kraing Ta Chan dated 18 August 1978 recorded that KONG Vet had already been "educated so far by the group, unit, and by the (collective meetings)" but it was only after he was

<sup>3595</sup> Tram Kak District Record, E3/4100, 12 October 1977, ERN (En) 00779261-00779262.

<sup>3596</sup> Tram Kak District Record, E3/4124, 17 December 1977, ERN (En) 00789265.

<sup>3597</sup> Tram Kak District Record, E3/2457, 3 January 1978, ERN (En) 00322182.

<sup>3598</sup> Tram Kak District Record, E3/2784, 1 March 1978, ERN (En) 00143480; Tram Kak District Record, E3/2785, 1 March 1978, ERN (En) 00322197 (both describing a Buddhist prophecy that the regime was in trouble).

<sup>3599</sup> Kraing Ta Chan Notebook, E3/4092, ERN (En) 00834797-00834798 (describing a Buddhist prophecy that the regime would not last long).

<sup>3600</sup> Tram Kak District Record, E3/2445, 17 [September] 1977, ERN (En) 00363653-00363654.

<sup>3601</sup> Tram Kak District Record, E3/4094, 25 August 1977, ERN (En) 00322102-00322103.

<sup>3602</sup> Tram Kak District Record, E3/2048, 5 May 1977, p. 7, ERN (En) 01454950.



“individually educated” that he confessed.<sup>3603</sup> The documentary evidence further records instances of killings at the commune level. A report from Saen to *Angkar* dated 24 April records the view that a woman named PUOT Kimpheng had pretended to be insane but was in fact lazy so “it is fine if she is taken away to be shot”. It further reports that her husband was SENG Hieng and that “we smashed two of their children”.<sup>3604</sup>

1083. According to NUT Nov, arrests generally happened at night, when the militia would come after receiving reports.<sup>3605</sup> EK Hoeun also testified that arrests were made in the evening and at night rather than openly.<sup>3606</sup> Consistent with these general remarks, THANN Thim described how he was arrested at approximately 7 p.m. or 8 p.m. one evening, after returning to his unit. He was told that he was being summoned for a meeting but was taken to a militia station where militiamen jumped out, beat him, and transported him to Angk Roka.<sup>3607</sup> CHOU Koemlan described the arrest of her father one night around 9 p.m. in Leay Bour commune in around August 1975.<sup>3608</sup> CHANG Srey Mom learned from her mother and sister that her father had been arrested at 7 p.m. one evening.<sup>3609</sup> She further recalled the arrest of 10 people at around 6 p.m. one evening in 1978.<sup>3610</sup> While the Chamber is satisfied that this represented a typical form of arrest in Tram Kak district, the evidence is not uniform. EK Hoeun described a militia force close to *Yeay Khom* which would, he said, take people away to the forests in broad daylight.<sup>3611</sup> MEAS Sokha described the arrest of his father at around 1 p.m., whereas his brother-in-law had been arrested the previous day.<sup>3612</sup>

<sup>3603</sup> Tram Kak District Record, E3/2424, 18 August 1978, ERN (En) 00322220.

<sup>3604</sup> Tram Kak District Record, E3/2441, 24 April [year not specified], p. 5, ERN (En) 00369467.

<sup>3605</sup> T. 16 March 2015 (NUT Nov), E1/277.1, pp. 51, 73.

<sup>3606</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 106.

<sup>3607</sup> T. 2 April 2015 (THANN Thim), E1/287.1, pp. 5, 30-32, 44 (confirming Se was the person who arrested him); T. 21 April 2015 (THANN Thim), E1/289.1, p. 5 (describing work that day); T. 21 April 2015 (THANN Thim), E1/289.1, p. 49 (stating not sure if Se was commune or village militia).

<sup>3608</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 50, 79 (arrest took place after a meeting had ended at 8pm).

<sup>3609</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 14, 16 (describing Ol, the unit chief), 24-25 (clarifying that it was Boeun who was the commune chief), 93; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, pp. 3-4, ERN (En) 00410263-00410264 (Answers 7-8).

<sup>3610</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 41; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, p. 6, ERN (En) 00410266 (Answer 12, they had their hands tied behind their backs and were policemen, soldiers and teachers from the previous regime).

<sup>3611</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 25.

<sup>3612</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 60-61.

10.1.9. *Treatment of Buddhists*

1084. The CPK had considered monks to be a “special class” from before 17 April 1975: although monks were similar to peasants in some respects, they depended upon peasants to support their livelihoods which set them apart in a different category.<sup>3613</sup> In contrast, the FUNK official political programme proclaimed that “Buddhism is and will remain to be the state religion”.<sup>3614</sup>

1085. On the morning of 17 April 1975, the supreme patriarchs of the two main Buddhist orders (Mohanikay and Thammayut) broadcast a call for the fighting to end.<sup>3615</sup> At around lunchtime on 17 April 1975, a further radio announcement explained that the liberating forces had met with the two supreme patriarchs together with Khmer Republic generals, and the surrender was finalised.<sup>3616</sup> Witnesses including EM Phoeung, a monk at Wat Sampeou Meas in Phnom Penh, recalled hearing the Supreme Patriarch HUOT Tat on the radio saying that he was pleased with the liberation and it was time for people to join hands to rebuild the country.<sup>3617</sup> EM Phoeung was then evacuated from Phnom Penh to Tram Kak district.<sup>3618</sup> He recalled that HUOT Tat stayed in Phnom Penh with around 20 monks, but they disappeared.<sup>3619</sup> This was partially corroborated by Duch, who told OCIJ investigators that he learned that the

<sup>3613</sup> Notebook, E3/8380, 24 March 1973, pp. 55-56, ERN (En) 00940617-00940619 (continuing that “in general” monks are mostly connected to peasants and have political characteristics similar to peasants, but high-ranking monks are connected to the “upper stratum”); Notebook, E3/1233, undated, p. 7, ERN (En) 00711617 (describing monks as a “particular class” with weak points and good points, noting that most monks support politics against “imperialists and their stooges”); Notebook, E3/8381, undated, pp. 26-27, ERN (En) 01369266-01369267 (the Party classifies the monks as a “special class” but “most monks are closely related to the peasants, so their political traits are similar to that of the peasants”), 40, ERN (En) 01369280 (stressing at that time respect for freedom of religion). *See also*, Section 3.4: Buddhism in Cambodia before 1975.

<sup>3614</sup> FUNK Political Program, E3/1391, p. 11, ERN (En) 00012638. *See also*, Section 3: Historical Background, para. 263.

<sup>3615</sup> *Patriarchs Appeal for Cease-Fire, Khmer Rouge to Attend Meeting* (in FBIS collection), E3/118, 17 April 1975, ERN (En) 00166973.

<sup>3616</sup> *Government, Armed Forces Surrender Reported 17 Apr* (in FBIS collection), E3/118, 17 April 1975, ERN (En) 00166974.

<sup>3617</sup> T. 9 April 2013 (François PONCHAUD), E1/178.1, pp. 23-24; EM Phoeung DC-Cam Interview, E3/5831, 14 January 2005, p. 5, ERN (En) 00350101.

<sup>3618</sup> EM Phoeung Interview Record, E3/5133, 19 November 2007, pp. 2-3, ERN (En) 00223198-00223199.

<sup>3619</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 24, 51 (“He was referred to as Patriarch Huot Tat”); T. 7 February 2013 (PIN Yathay), E1/170.1, pp. 5 (describing his uncle, HUOT Tat, as Samdech Supreme Patriarch at Ounalom Pagoda), 18 (explaining that he left Phnom Penh with other members of his family, but does not know what happened to Huot Tat), 22 (confirming that Huot Tat would not leave because of his advanced age – he was more than 80 years old), 58-59 (confirming that Huot Tat either died or disappeared).

Division 703's Security Centre killed the Venerable HUOT Tat shortly after 17 April 1975.<sup>3620</sup> While the evidence does not establish precisely what happened to HUOT Tat and other monks who remained in Phnom Penh, the Chamber is satisfied that they disappeared.

1086. In a radio broadcast on 21 April 1975, KHIEU Samphan, in his capacity as GRUNK Deputy Prime Minister, Minister of National Defence and CPNLAF Commander in Chief, paid homage to "every venerable Buddhist monk". He continued: "we would like to convey best wishes to all our Buddhist monks and brother countrymen for excellent health and great fighting will".<sup>3621</sup> Then a communiqué broadcast on 28 April 1975 described a Special National Congress having been convened in previous days, and claimed that 20 representatives of the Buddhist clergy had attended.<sup>3622</sup> The Chamber finds this to have been part of the FUNK façade – presenting Buddhism as the State religion at that time. It is unclear whether these were the 20 monks whom EM Phoeung described having remained in Phnom Penh. On 3 May 1975, NORODOM Sihanouk also referred to the National Congress in a message from China, congratulating KHIEU Samphan on the liberation. He noted the text of the resolutions adopted by the Special National Congress, describing it as a "special congress of Cambodian mass organizations, the three CPNLAF categories, monks, the NUFC and RGNUC".<sup>3623</sup>

1087. PRAK Yut travelled from Sector 13 to attend a three to five day meeting in Phnom Penh in late May 1975. PRAK Yut testified that one of the principles discussed was the re-establishment of pagodas because people needed to be able to practise their religion.<sup>3624</sup> She earlier testified, however that "[b]etween 1975 and 1979 there were no Buddhist monks and there were no pagodas".<sup>3625</sup> Her evidence was therefore fundamentally inconsistent. PECH Chim testified that District Secretary Yeay Khom attended a meeting in Phnom Penh in May 1975, and when she returned to Tram Kak

<sup>3620</sup> KAING Guek Eav Interview Record, E3/1580, 28 March 2008, p. 6, ERN (En) 00177590 (explaining that he learned this from You Peng Kry *alias* Mon).

<sup>3621</sup> *Khieu Samphan 21 Apr Victory Message on Phnom Penh Radio* (in FBIS collection), E3/118, 21 April 1975, ERN (En) 00166994-00166995.

<sup>3622</sup> *'Special National Congress' Retains Sihanouk, Penn Nouth* (in FBIS collection), E3/118, 28 April 1975, ERN (En) 00167012-00167013.

<sup>3623</sup> *Sihanouk Message to Khieu Samphan Hails Special Congress* (in FBIS collection), May 1975, E3/1364, ERN (En) 00167034.

<sup>3624</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 88-89.

<sup>3625</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 81.

district she organised a morning meeting in order to pass on instructions related to, among other things, the abolition of money, markets and the disrobing of Buddhist monks.<sup>3626</sup> PECH Chim testified that District Secretary *Yeay Khom* ordered the defrocking of monks and the destruction of Buddhist statues. He described a specific District Committee meeting when this instruction was issued to the communes to implement.<sup>3627</sup> At one point, PECH Chim claimed that he did not know about the provenance of any order to *Yeay Khom*.<sup>3628</sup> At another point, however, PECH Chim asserted that the same policy applied across multiple districts and suggested he read about it in *Revolutionary Flag*.<sup>3629</sup> PECH Chim suggested that he did not like this decision; he would have preferred a more gradual process whereby existing monks were allowed to remain but no new monks would be ordained.<sup>3630</sup> The Chamber is satisfied that a clear order was conveyed through Tram Kak district after the May 1975 meeting whereby monks were to be defrocked and Buddhist symbols destroyed.

1088. Later documentary evidence confirms PECH Chim's account over PRAK Yut's description of the May 1975 meeting. A CPK Policy Document from September 1975 assessed that, already by that time, 90 to 95 percent of monks had left the monkhood:

In addition most of the monks. from 90 to 95 percent of them, abandoned their monkhood. Pagodas which are the core foundations for the existence of the monkhood were abandoned. People have no longer gone to pagoda. They no longer offer alms [to the monks]. On the contrary, they are keen to build dams and dig canals etc. This [religious] practice has disappeared. The political, economic, cultural bases were dug up and destroyed. This is an unstoppable movement moving forwards. Monks abandoned pagodas to work in the rice field. *Based on this trend we assume that 90 to 95 percent of the monks and Buddhist practices will no longer exist. So this special layer [of the society] will no longer cause any worry.* Thus, significant change is observed in our society.<sup>3631</sup>

1089. Although this assessed the position nationwide, it is also pertinent to the position in Tram Kak district. Moreover, in October 1975 NORODOM Sihanouk gave an interview to *Le Monde* in his capacity as the recently returned Head of State. He

<sup>3626</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 69-70.

<sup>3627</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 16-17; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 93-94.

<sup>3628</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 16-17.

<sup>3629</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 91-92.

<sup>3630</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 14.

<sup>3631</sup> Policy Document No. 6, E3/99, 22 September 1975, p. 2, ERN (En) 00244275 (emphasis added).

explained that, whereas he had met the “patriotic monks”, the traitors had “left for Thailand” and others had had “given up their frocks and are rebuilding the country with other people”.<sup>3632</sup> This further confirms that the defrocking of monks had been deliberate, organised and widespread.

1090. The DK Constitution promulgated in January 1976 provided that every citizen had “the right to worship according to any religion and the right not to worship according to any religion”. It continued, however, that “Reactionary religions which are detrimental to Democratic Kampuchea and Kampuchean people are absolutely forbidden”.<sup>3633</sup> KHIEU Samphan summarised the motivation behind this provision as follows:

[O]ur stand is not to allow any foreign imperialists to use religion to subvert us. We are determined to fight them no matter what disguises they use. The imperialists continue to look for means to attack us, among which is the use of a religious cloak to infiltrate our country. We should oppose them at all costs.<sup>3634</sup>

1091. After late 1975 and early 1976, there is scant recorded evidence of official mention of Buddhism or monks in CPK publications, speeches or broadcasts. One exception is the June 1977 issue of *Revolutionary Flag* – the same issue which announced Tram Kak district as one of only three model districts. This referred to those who had given up the monkhood as “petty bourgeoisie” – and suggested they had been easy source to be “convinced by enemies”.<sup>3635</sup> A second exception is POL Pot’s speech of 27 September 1977 publicly announcing the existence of the CPK. POL Pot described the armed struggle before 17 April 1975 and how, at that time, the CPK had made efforts to mobilise “the Samdech Supreme Patriarch CHUON Nath of the Mohanikay Buddhist Order and the Samdech Supreme Patriarch of the Thammayutika Nikay Buddhist Order”.<sup>3636</sup> POL Pot did not expand upon the subsequent fates of these Buddhist Orders. It is notable that POL Pot did not mention HUOT Tat by name in this speech.

<sup>3632</sup> *Sihanouk Discusses Nation’s Policy, His Role* (in FBIS collection), E3/272, 17 October 1975, ERN (En) 00167511.

<sup>3633</sup> DK Constitution, E3/259, ERN (En) 00184838 (Chapter 15: “Worship and Religion”).

<sup>3634</sup> *Phnom Penh Reportage on Third National Congress: KHIEU Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167816.

<sup>3635</sup> *Revolutionary Flag*, E3/135, June 1977, pp. 6, 15, ERN (En) 00142907, 00446860.

<sup>3636</sup> Text of Pol Pot Speech at 27 Sep KCP Anniversary Meeting (in FBIS collection), E3/290, 27 September 1977, ERN (En) 00168631.

1092. According to Duch, who attended this event, during the CPK's anniversary meeting in September 1978, POL Pot further explained that the Party was trying to "eliminate" Buddhism and the way to do this was to make monks build dams and blend together with the popular masses.<sup>3637</sup>

1093. The Chamber finds that the CPK was intent on eliminating Buddhism from Cambodian society and that the defrocking of monks was a deliberate means to achieve this aim.<sup>3638</sup> The purported protection in the DK Constitution was clearly disregarded. The Chamber rejects NUON Chea's suggestion to the Chamber that the CPK "did not have any measure to ban Buddhism".<sup>3639</sup> NUON Chea also explained to the Chamber that, in his speeches during the DK era, he did not pay respect to monks because he did not want to mix religion with politics and no monks were "participating" at time.<sup>3640</sup> In light of *Yeay Khom's* instructions noted by the Chamber, this evidence is directly relevant to particular events in Tram Kak district, to which the Chamber now turns.

#### 10.1.9.1. Events at Angk Roka Pagoda

1094. The Closing Order charges that monks evacuated from Phnom Penh and Takeo were instructed to stay at Angk Roka pagoda then told to disrobe.<sup>3641</sup> For a monk to defrock ("*phsoek*" in Khmer) means to leave the statutes of Buddhist discipline and return to the status of an ordinary person.<sup>3642</sup> The Chamber finds that for several months after 17 April 1975, a sustained operation took place to gather a large number of monks at Angk Roka Pagoda, which was situated close to the District Office, and force them to leave the monkhood.<sup>3643</sup> PECH Chim confirmed that a "provincial committee" of monks oversaw matters in order to implement the defrocking of monks gathered at Angk Roka Pagoda.<sup>3644</sup> This suggests that attempts were made to placate the monks

<sup>3637</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 8-9 (stating that Duch attended this meeting and described POL Pot and NUON Chea alongside each other on the stage).

<sup>3638</sup> Section 3: Historical Background, para. 264; Section 16.4.3.3: Common Purpose: Targeting of Specific Groups: Buddhists, paras 4015-4017.

<sup>3639</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 89.

<sup>3640</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 81.

<sup>3641</sup> Closing Order, para. 321.

<sup>3642</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 80-81. *See also*, Section 3: Historical Background, para. 262.

<sup>3643</sup> T. 20 June 2012 (KHIEV Neou), E1/89.1, pp. 101-103; KHIEV Neou Interview Record, E3/507, 23 July 2009, p. 3, ERN (En) 00358141 (monks from Takeo and Phnom Penh were instructed to stay only in Angk Roka Pagoda); T. 21 June 2012 (KHIEV Neou), E1/90.1, pp. 5-8 (large number of monks arrived and instructed to leave the monkhood). *See above*, para. 932.

<sup>3644</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 14.

being defrocked. EM Phoeung was, as already noted, a monk evacuated from Phnom Penh and he arrived at Angk Roka Pagoda after one or two months.<sup>3645</sup> The phrase EM Phoeung used before the OCIJ was that all the monks from Takeo province were “gathered up” at Angk Roka pagoda.<sup>3646</sup>

1095. EM Phoeung described how younger monks left the monkhood first, then older monks followed until by 1976 no monks remained.<sup>3647</sup> EK Hoeun, who worked at the nearby District Office in the period immediately after 17 April 1975, likewise described a gradual process of disrobing monks, perhaps one or two monks at a time.<sup>3648</sup> In EM Phoeung’s assessment, the immediate period after 17 April 1975 was “not so strict” in that Base People even came to the Pagoda to meet the monks gathered there,<sup>3649</sup> and monks could attend Buddhist rituals for funerals. The position became stricter over time and by 1976 people were “on their own”.<sup>3650</sup> They were no longer allowed to hold any Buddhist rituals at Angk Roka Pagoda.<sup>3651</sup>

1096. RIEL Son described one particular event, the precise timing of which was unclear to the Chamber, when he visited the monks at Angk Roka Pagoda to take them food and offer alms, in particular his former Buddhist teacher from Wat Langka in Phnom Penh.<sup>3652</sup> This confirms EM Phoeung’s account that Base People were able to visit the monks at Angk Roka for a period of time after 17 April 1975. RIEL Son estimated there were more than 100 monks gathered at Angk Roka Pagoda when he visited.<sup>3653</sup>

1097. Eventually, however, the monks gathered at Angk Roka Pagoda were told that they could no longer stay at the pagoda – they had to go to work for *Angkar*.<sup>3654</sup> EM

<sup>3645</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 12; EM Phoeung Interview Record, E3/5133, 19 November 2007, p. 4, ERN (En) 00223200.

<sup>3646</sup> EM Phoeung Interview Record, E3/5133, 19 November 2007, p. 4, ERN (En) 00223200.

<sup>3647</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 21 (“we were told that we should leave the monkhood before the end of 1976”), 37-38 (“all the monks had to leave the monkhood by early 1976”); EM Phoeung Interview Record, E3/5133, 19 November 2007, p. 4, ERN (En) 00223200.

<sup>3648</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 109.

<sup>3649</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 19-20.

<sup>3650</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 52, 60-61.

<sup>3651</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 52, 59-61 (recalling one exception when a village chief invited him to lead a funeral ceremony).

<sup>3652</sup> T. 19 March 2015 (RIEL Son), E1/280.1, p. 13.

<sup>3653</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 16 (more than 100 monks); T. 19 March 2015 (RIEL Son), E1/280.1, pp. 13-14 (more than 100 monks; they had been evacuated from elsewhere).

<sup>3654</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 19-20.

Phoeung described a meeting called by an unspecified “commune committee” when the monks were instructed that they had to leave the monkhood in one month’s time and replacement clothes were issued.<sup>3655</sup> They were issued with black clothes: a pair of trousers, a shirt, a scarf, and a pair of tyre sandals.<sup>3656</sup> He recalled that the person who issued the instructions presented himself as a member of the commune in charge of youth. He was accompanied by armed militia.<sup>3657</sup>

1098. In any event, the instructions were clear and the monks did not dare to refuse to follow them.<sup>3658</sup> EM Phoeung elaborated to DC-Cam in 2005 that the monks wanted to resist, but there were whispers among them that if they did not defrock they would be dead immediately.<sup>3659</sup> Before the Chamber, EM Phoeung explained in more measured terms that the monks were afraid and if instructions were not followed that would be a “matter of concern”.<sup>3660</sup> When asked what this meant, EM Phoeung was clear that they were forced to leave the monkhood.<sup>3661</sup> It was, however, a relatively orderly process in that monks followed proper disciplines, with Buddhist statues remaining undisturbed in the Pagoda, which allowed them to leave the monkhood in front of the statues with a witness to formally acknowledge the moment. Indeed, EM Phoeung’s own teacher was his witness when he left the monkhood.<sup>3662</sup>

1099. EM Phoeung’s evidence is corroborated by KHIEV Neou who was also defrocked at Angk Roka Pagoda.<sup>3663</sup> KHIEV Neou was ordained as a monk in 1951 in Trapeang Thum Pagoda where *Ta* Mok, who was one of his relatives, was also a monk before he disrobed. Prior to the collapse of the LON Nol regime KHIEV Neou was required by *Angkar* to move and stay in the Angk Roka pagoda. After 17 April 1975, he saw monks who were among people coming from Phnom Penh, or from Takeo, crowdedly travelling on the roads. He testified that all monks were gathered and

<sup>3655</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 21.

<sup>3656</sup> EM Phoeung Interview Record, E3/5133, 19 November 2007, p. 4, ERN (En) 00223200.

<sup>3657</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 22.

<sup>3658</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 41.

<sup>3659</sup> EM Phoeung DC-Cam Interview, E3/5831, 14 January 2005, p. 3, ERN (En) 00350099 (“some of our people whispered to us that if we didn’t defrock, we would be dead immediately”).

<sup>3660</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 42.

<sup>3661</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 76-77 (“considered like a force because we were given a set of clothing and nothing else. And we were told the revolution had nothing for us, so I could consider this was a force”), 82-83 (“we engaged in the process by ourselves because he understood we could no longer stay in the monkhood.”).

<sup>3662</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 80.

<sup>3663</sup> T. 20 June 2012 (KHIEV Neou), E1/89.1, pp. 102-103; T. 21 June 2012 (KHIEV Neou), E1/90.1, pp. 4-6.



instructed to stay only in Angk Roka pagoda and shortly after a group of local militia came and ordered him and all the monks to leave the monkhood. He added that “When [they] were ordered to disrobe, [they] just did that so [they] could survive; [they] did not think much of the rest”.<sup>3664</sup> He further clarified that “actually the plan to defrock monks had been prepared a long time ago and it was generally known that the communism did not allow monk to exist, thus it took no monk by surprise”.<sup>3665</sup> The Chamber is satisfied that monks were collected at Angk Roka pagoda in an organised manner and were ordered to disrobe in a climate of fear and coercion.<sup>3666</sup>

1100. RIEL Son suggested that the head of Angk Roka Pagoda, *Ta Ech*, was beaten for protesting the defrocking taking place there. RIEL Son did not, however, witness this beating. He was told about it by others, including the monk himself, who described the beating as painful.<sup>3667</sup> EM Phoeung also mentioned *Ta Ech* as being the last monk to disrobe and described him as a Buddhist teacher at Angk Roka Pagoda. However, EM Phoeung did not mention the use of physical violence.<sup>3668</sup> The Chamber finds that the hearsay nature of RIEL Son’s account to be insufficient to establish whether physical violence was used against *Ta Ech*. Notwithstanding this finding, the combination of the presence of armed militia, the imperative nature of the instructions, and the combination of EM Phoeung and RIEL Son’s evidence, satisfy the Chamber that all of the monks at Angk Roka Pagoda had no choice but to defrock.

1101. RIEL Son further described seeing Khmer Rouge cadres – 10 or 20 people – demolishing sculptures, removing small Buddha statues and throwing them into water, while others dug a pit in front of the monk house and threw a small Buddha shrine into the pit and buried it.<sup>3669</sup> The Chamber finds this evidence credible and finds that these events must have taken place after the monks including EM Phoeung had defrocked.

1102. Angk Roka Pagoda was no longer used for religious purposes. When PIN Yathay and large numbers of other people were assembled at Angk Roka in

<sup>3664</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 9.

<sup>3665</sup> KHIEV Neou Interview Record, E3/507, 23 July 2009, p. 3, ERN (En) 00358141.

<sup>3666</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 17 (confirming that even though he disagreed with the policy to defrock monks, even he did not dare say that “loud enough to be heard. The state of life was like that.”).

<sup>3667</sup> T. 17 March 2015 (RIEL Son), E1/278.1, pp. 17-18; T. 19 March 2015 (RIEL Son), E1/280.1, pp. 12-13.

<sup>3668</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 39.

<sup>3669</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 17.

approximately September 1975 in order to be transferred to other locations on trucks, the pagoda had been ransacked.<sup>3670</sup> On this basis, the Chamber is satisfied that the monks gathered at Angk Roka Pagoda had been defrocked by approximately September 1975. The pagoda was subsequently used as a dining hall and a location for meetings.<sup>3671</sup> SAO Van also described it being used as a gathering point to send Vietnamese families from Cheang Tong commune, from where he understood they were to be sent back to Vietnam.<sup>3672</sup> NEANG Ouch *alias* Ta San, who arrived in Tram Kak district in late 1977, confirmed that Angk Roka Pagoda was not used as a place of worship.<sup>3673</sup>

#### 10.1.9.2. Other pagodas, Buddhist symbols and practices

1103. Although describing the period shortly after January 1979, KEO Chandara testified that there were 56 pagodas in Tram Kak district.<sup>3674</sup> Notwithstanding that the Chamber only heard evidence of events at portion of these pagodas, the evidence demonstrates that pagodas were systematically requisitioned for non-religious practices, that Buddhist symbols were attacked pursuant to the orders of Yeay Khom described above, and people were not allowed to practice Buddhism in Tram Kak district.

1104. CHANG Srey Mom, a Candidate Person who lived mainly in Nhaeng Nhang commune, described a big meeting at Angk Raleay Pagoda in Kus commune and another at Angk Roka pagoda, when it was said that religion and pagodas would no longer exist.<sup>3675</sup> The attendees were instructed not to believe in Buddhism because it was a merely superstition and the Buddha was “only concrete”.<sup>3676</sup> Her younger brother-in-law was among those forced to disrobe, and they were all teased that they had been tricked by Buddhism’s concrete stones. CHANG Srey Mom testified that, after the monks had defrocked, they were put to work in the youth unit.<sup>3677</sup> EM Phoeung

<sup>3670</sup> T. 7 February 2013 (PIN Yathay), E1/170.1, pp. 6-7; Book by Pin Y.: *Stay Alive, My Son*, E3/3988, undated, pp. 69-72, ERN (En) 00587605-00587608 (describing walking to “Watt Ang Recar pagoda” to wait for trucks; the pagoda had been ransacked and was “packed with refugees”).

<sup>3671</sup> RIEL Son Interview Record, E3/9602, 18 February 2014, p. 7, ERN (En) 00982639 (Answer 33).

<sup>3672</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 48-50.

<sup>3673</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 47.

<sup>3674</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 82.

<sup>3675</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 35; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, p. 5, ERN (En) 00410265 (Answer 10).

<sup>3676</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 35-36.

<sup>3677</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 35-36.

likewise recalled meetings at villages or commune level when monks were described as “worms” or “leeches”.<sup>3678</sup> SAO Han testified that in Tram Kak commune, people were prohibited from practising their religions.<sup>3679</sup> EK Hoeun confirmed that everyone had to work to construct canals with no distinction made for monks.<sup>3680</sup>

1105. KHIEV Neou described a limited practice of some Buddhism continuing after 17 April 1975 in that monks continued to stay at Pchek Chrum Pagoda and villagers were able to visit to offer food for a period of time, before all the monks were disrobed. KHIEV Neou thought the disrobing happened more than one year after April 1975.<sup>3681</sup> He confirmed, however, that nobody could practice Buddhism openly.<sup>3682</sup> EM Phoeung witnessed Buddhist manuscripts and paintings being destroyed and used as hats.<sup>3683</sup> SAO Han described Buddhist statues and books taken from a pagoda and monks’ dining halls turned into workshops in Tram Kak commune.<sup>3684</sup> PHNEOU Yav described the disrobing of monks in Samraong commune, at Tuek Chrum Pagoda (over 100 monks) and Angk Ponnareay Pagoda (around 30 monks). This started from 1975 and Buddhist statues were thrown into the water and monasteries were used as meeting places, dining halls and detention centres.<sup>3685</sup> He also described how, at Tuek Chrum Pagoda, villagers destroyed statues and threw them into water under the orders of the unit chief while the monks were being defrocked.<sup>3686</sup> SOK Sim, a member of the Ta Phem Commune Committee, told OCIJ investigators that Champa Pagoda was later used as a hospital.<sup>3687</sup> NUT Nov testified that Sre Ronaung Pagoda was used as the commune headquarters.<sup>3688</sup> MEAS Sokha testified that temples were used for various functions, including clinics, pigsties, or security centres, having referred in his OCIJ interview to the Moeang Char Pagoda being turned into a clinic and the Angk Baksei Pagoda turned

<sup>3678</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 36.

<sup>3679</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 26.

<sup>3680</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 104.

<sup>3681</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, pp. 11-12; KHIEV Neou Interview Record, E3/507, 23 July 2009, p. 3, ERN (En) 00358141 (referring to 10 monks left at Phchoek Chrum Pagoda in Samraong commune).

<sup>3682</sup> T. 21 June 2012 (KHIEV Neou), E1/90.1, p. 12.

<sup>3683</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 67-68.

<sup>3684</sup> T. 18 February 2015 (SAO Han), E1/265.1, p. 25 (Ayadom (phonetic) Pagoda in Tram Kak commune turned into a workshop; Thma Kaev Pagoda turned into a work place).

<sup>3685</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 38-39, 47, 64 (identifying two pagodas and numbers of monks and disrobing, destruction of statues and uses to which pagodas were put); PHNEOU Yav Interview Record, E3/5515, 12 November 2009, p. 7, ERN (En) 00410250 (Answer 33).

<sup>3686</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 64.

<sup>3687</sup> SOK Sim Interview Record, E3/5519, 23 November 2009, p. 7, ERN (En) 00414078 (Answer 44).

<sup>3688</sup> NUT Nov Interview Record, E3/9600, 11 April 2013, pp. 5-6, ERN (En) 00911442-00911443 (Answer 34).

into a cooperative with the temples dismantled and Buddhist statues buried.<sup>3689</sup> CHOU Koemlan explained that Leay Bour Pagoda was used both as a place where children stayed and as a prison.<sup>3690</sup> NEANG Ouch *alias Ta San*, a senior official in Tram Kak district from late 1977, confirmed that there were no pagodas or monks left in the district.<sup>3691</sup> Monks were no longer responsible for presiding over funeral rituals.<sup>3692</sup> The Chamber is therefore satisfied that the events at Angk Roka Pagoda were not an isolated incident, but were reflective of the general pattern across Tram Kak district.

1106. Some witnesses, in particular more senior CPK officials from Tram Kak district, suggested to the Chamber that people remained free to follow Buddhism. For instance, PECH Chim testified that people were free to follow Buddhism if they wished and suggested there was no order prohibiting or punishing Buddhist practices.<sup>3693</sup> PECH Chim accepted, however, that Buddhist monks were “classified differently”.<sup>3694</sup> SAO Van, who was a full-rights member of the CPK, asserted that he continued to practise Buddhism after 1975 and testified that Buddhism was not prohibited.<sup>3695</sup> EK Hoeun gave more nuanced evidence, explaining that the lack of offerings and the general regulations meant that monks had to defrock and go to work building dams and canals in order to have any food.<sup>3696</sup> CHANG Srey Mom described how she secretly went to a pagoda that still had a stone statute in order to pray.<sup>3697</sup>

1107. The Chamber accepts that some residents in Tram Kak district secretly maintained their Buddhist beliefs. This does not alter the Chamber’s conclusion that any outward practice of Buddhism was prohibited and important aspects of Buddhism were targeted for elimination. For instance, PECH Chim claimed that he sought to nail down the doors and windows at Ang Montreay Pagoda in Kus village in order to protect the Buddha statue there.<sup>3698</sup> Irrespective of the truth of his defensive efforts, the Chamber finds that this further demonstrates the widely known jeopardy in which

<sup>3689</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 8.

<sup>3690</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 15.

<sup>3691</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 47.

<sup>3692</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 47.

<sup>3693</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 92-93.

<sup>3694</sup> T. 1 July 2013 (PECH Chim), E1/215.1, p. 16.

<sup>3695</sup> T. 2 July 2015 (SAO Van), F1/1.1, pp. 77-78.

<sup>3696</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 21.

<sup>3697</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 36; T. 2 February 2015 (CHANG Srey Mom), E1/255.1, p. 16.

<sup>3698</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 17.

Buddhists symbols were placed in Tram Kak district. BUN Saroeun likewise described how pagodas were no longer sacred places and this left him feeling deprived of any psychological base.<sup>3699</sup> His elder brother, who had been a monk, also disappeared. He described seeing his monk's robe and being asked to retrieve objects he had with him by the militia chief.<sup>3700</sup> There had been 15 monks at BUN Saroeun's local pagoda, including his uncle and brother. The pagoda was empty and all of the monks were gone.<sup>3701</sup> Documentary evidence confirms that Buddhism was banned in Tram Kak district. A report to *Angkar* dated 31 August 1977 discusses events in Leay Bour commune reported on a person called POM Oeun who had complained that there was no Buddhism and no monks, and who suggested it might be better if *Angkar* allowed Buddhism. The report notes POM Oeun was sent to "Meng's place" in Angk Roka.<sup>3702</sup>

1108. When Elizabeth BECKER visited Leay Bour commune in December 1978, it was evident that "Buddhism had been entirely wiped out" because pagodas were used as granaries". Her guide THIOEUNN Prasith also explained to her that Buddhism was a "reactionary faith" which the people no longer respected, and the Leay Bour "cooperative leader repeated this formula".<sup>3703</sup> This is consistent with YUN Yat's statement to Yugoslavian journalists who visited Cambodia in March 1978 that Buddhism was considered to be incompatible with the revolution.<sup>3704</sup> The Yugoslavian journalists confirmed that, with the exception of some ancient Buddhist monuments in

<sup>3699</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 30-31.

<sup>3700</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 30-31.

<sup>3701</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 32.

<sup>3702</sup> Tram Kak District Record, E3/8424, 31 August 1977, p. 1, ERN (En) 00538729 (report from Leay Bour commune, also complaining about the lack of schools and other matters).

<sup>3703</sup> T. 9 February 2015 (Elizabeth BECKER), E1/259.1, p. 54 (the pagodas were empty, she saw a few being used as granaries, she did not see a single monk, and THIOEUNN Prasith described Buddhism as a reactionary faith which the people had given up); Book by E. Becker: *When the War Was Over, Cambodia and the Khmer Rouge Revolution*, E3/20, p. 421, ERN (En) 00238135; Article by E. Becker, *Cambodia Strives for Self-Sufficiency and Independence, at Great Human Cost* (The Washington Post), E3/3391, 29 December 1978, ERN (En) 00445257 ("the pagodas I saw were being used as granaries. The monks, I was told, have been sent out to work like other Cambodians in the fields").

<sup>3704</sup> *A Yugoslav Journalist's Impression of His Visit* (in SWB/FE/5801/B collection), E3/2306, 29 April 1978, ERN (En) 00010083; Article by S. Stanić, *Kampuchea – Socialism Without a Model* (Socialist Thought and Practice), E3/2307, October 1978, p. 74, ERN (En) 00046706. Both E3/2306 and E3/2307 incorrectly identify YUN Yat as wife of IENG Sary, but consistently quote her as telling journalists that "Buddhism is incompatible with the revolution" and that there were no more problems because it had been an instrument of exploitation. Buddhism is dead, and now the ground has been cleared from striking the foundations of a new revolutionary culture). See also, *Third Instalment in Tanjug Report on Cambodia* (in FBIS collection), E3/1361, ERN (En) 00168856 ("Cambodia, A Path Without a Model: Buddha is Dead! Long Live the Revolution!). The report continued: "One of the Buddhist priests who replaced the robes with a revolutionary uniform disagreed with Minister Yun Yat. He told us that both Buddhism and communism had the same humane goals and that there was no great antagonism between them").

Phnom Penh and at Angkor Wat, “the majority of pagodas have been transformed into storehouses for rice or have been abandoned to the elements”.<sup>3705</sup> The Chamber is satisfied that the practice of Buddhism was banned in Tram Kak district.

1109. The Chamber heard some evidence which suggested monks or former monks were killed in Tram Kak district. For example, CHOU Koemlan recounted the disembowelling of her nephew (the son of her elder brother) who was a former monk. However, her account of this incident was based on hearsay.<sup>3706</sup> Although the Chamber is satisfied that he died during relevant period, the Chamber is unable to establish the precise circumstances of his death. It has not been established that monks or disrobed monks were killed in Tram Kak district.

#### 10.1.10. *Treatment of Vietnamese*

1110. PECH Chim testified there were both Vietnamese soldiers and civilians “everywhere” in Tram Kak district and the CPK “facilitated” their return to Vietnam. He described a repatriation process over two nights to “empty the area” of Vietnamese soldiers and civilians, based on guidance or instructions from Zone Secretary *Ta Mok*, with Sector Secretary *Ta Saom* also involved.<sup>3707</sup> He described a process whereby District Secretary *Yeay Khom* worked with Chorn (*Yeay Boeun*’s husband and later the chief of Popel commune) on the “task” of the Vietnamese, who in turn reported to the district level on the number of people involved.<sup>3708</sup> So far as he knew, Vietnamese who had married Cambodians or had children with “mixed blood” were allowed to stay in Tram Kak district.<sup>3709</sup> According to PECH Chim, there were no executions of Vietnamese at this time – rather it was an exchange of persons to resolve issues, but he also mentioned that “shortcomings” existed without providing details of their nature or

<sup>3705</sup> Article by S. Stanić, *Kampuchea – Socialism Without a Model (Socialist Thought and Practice)*, E3/2307, October 1978, p. 74, ERN (En) 00046706.

<sup>3706</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 68-70 (stating she learned of the incident from her aunt); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 21 (stating the grandmother of the nephew saw the incident because she lived close to the commerce and social office, and she learned of it after 1979 when the grandmother told CHOU Koemlan’s mother).

<sup>3707</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 18-21; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 25-27, 59 (at one point in his evidence, PECH Chim appeared to say that a withdrawal of Vietnamese took place in 1972 rather than after 17 April 1975. However, the overall thrust of PECH Chim’s evidence described events after 17 April 1975 and the Chamber is satisfied that his description of events involving *Yeay Khom* and Chorn relates to this later period).

<sup>3708</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 21.

<sup>3709</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 22-23.

importance.<sup>3710</sup> The Chamber understands that the process described by PECH Chim took place during the period which *Yeay Khom* remained in Tram Kak district, so until approximately March 1976.

1111. EK Hoeun, who had worked in the District Office in the period immediately after 17 April 1975, gave a somewhat different account. He suggested the occurrence of both planned exchanges and also killings of Vietnamese persons. He testified that District Secretary *Yeay Khom*'s plan was to kill Vietnamese and dated this plan to approximately March 1976 – around the time *Yeay Khom* left Tram Kak district to move to Koh Kong province.<sup>3711</sup> He also described a 1976 meeting at the District Office when *Ta Chay* issued instructions to purge Vietnamese. EK Hoeun had served refreshments for a district meeting with commune chiefs, when he overheard discussion of a plan to arrest Vietnamese and send them back to Vietnam.<sup>3712</sup> According to EK Hoeun, *Ta Chay* (on behalf of the district) appointed Lorn *alias* Maunh to use a truck to round up the Vietnamese from some six communes in Tram Kak district, including Leay Bour, Popel, Ta Phem, Kus, Angk Ta Saom, Nhaeng Nhang and Srae Ronoung communes.<sup>3713</sup> According to EK Hoeun, the plan at the time was to kill Vietnamese – not merely to send them back to Vietnam. He explained that communes closer to the base of the mountain (*i.e.* mostly to the western parts Tram Kak district) such as Khporp Trabaek, Trapeang Thum North, Trapeang Thum South, Samrong, part of Kus and Nhaeng Nhang, were to carry out killings themselves, in the forest of Prey Kmaoch Kaun Khmeng, whereas other communes required the district's assistance.<sup>3714</sup> EK Hoeun also described an exchange of Vietnamese people with Khmer people living in Vietnam arranged by Zone Secretary *Ta Mok*, and instructions he issued to *Ta Chay* to gather these Vietnamese people for this purpose. But according to EK Hoeun, *Ta Mok* later cancelled the exchange programme because arrivals of Khmer Krom were

<sup>3710</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 25-27.

<sup>3711</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 85; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 29.

<sup>3712</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 29-30, 43.

<sup>3713</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 85-86, 94-95; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 42. EK Hoeun identified Lorn as *Ta Mok*'s brother-in-law. See T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 94-96; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 9, ERN (En) 00983574 (Answer 54, elsewhere in his evidence he identified Lorn as *Ta Mok*'s brother-in-law).

<sup>3714</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 85, 93; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 29; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 7, ERN (En) 00983572 (Answer 37, EK Hoen attributed this order to *Ta Chay*. According to EK Hoeun, Samrong Commune Chief *Ta Khem* did not follow the instruction so received hard labour as punishment).

“difficult to control”.<sup>3715</sup> The Chamber therefore understands EK Hoeun to have direct knowledge of both instructions to kill Vietnamese and instructions to move them to Vietnam as part of an exchange process. His evidence did not always distinguish one set of instructions from another.

1112. EK Hoeun testified that, soon after some of the instructions described above, he met SANN Lorn *alias* Maunh by the side of a road in Tram Kak district.<sup>3716</sup> SANN Lorn was driving a big truck which had a long trailer with some 18 wheels.<sup>3717</sup> EK Hoeun recalled performing land survey work at the time, and testified that he recognised there to be Vietnamese persons in the truck. So he asked SANN Lorn *alias* Maunh how many people he had transported. According to EK Hoeun, SANN Lorn *alias* Maunh replied that 9,000 had been gathered from various communes. EK Hoeun testified that he was unsure whether this figure referred to 9,000 individuals or 9,000 families. After they finished their conversation, the truck headed to the west – *i.e.* away from the Vietnamese border.<sup>3718</sup> EK Hoeun explained that he was alert to these events because his family was Vietnamese, but they were spared in the end because they did not speak Vietnamese on a daily basis.<sup>3719</sup> According to EK Hoeun, Vietnamese were told they were being taken for study sessions, but instead they were being taken to be executed. He mentioned specific examples of six or seven Vietnamese families in Trapeang Chrey and Trapeang Krambrae villages in Trapeang Thum South commune who were executed, but the precise basis for his knowledge of this was not explained to the Chamber.<sup>3720</sup> The Chamber understands that the events described by EK Hoeun took place in 1976.

1113. SANN Lorn *alias* Maunh was *Ta Mok*’s younger brother-in-law: *Ta Mok* had married SANN Lorn’s elder sister, SANN Khoem.<sup>3721</sup> SANN Lorn was the former village chief of Prakheab village, but he came to work as a messenger for the District

<sup>3715</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 86-87; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 45.

<sup>3716</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 29-30, 43 (referring to meeting Maunh “the next day” or “within a week”).

<sup>3717</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 86, 94-96; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 9, ERN (En) 00983574 (Answer 54).

<sup>3718</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 42.

<sup>3719</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 8, 13; T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 44-45.

<sup>3720</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 84-85; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 6, ERN (En) 00983571 (Answer 34).

<sup>3721</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 8, 77; SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, pp. 9, 12, ERN (En) 01050342, 01050345 (Answers 52, 55, 75, SANN Lorn’s eldest sister SANN Khoem was *Ta Mok*’s wife).



Office in Angk Roka for District Secretary *Yeay Khom*.<sup>3722</sup> Although he was evasive at times when interviewed by OCIJ investigators, before the Chamber he accepted that he was indeed involved in an operation to transport a “huge number” of Vietnamese in Tram Kak district. He suggested that this took place during the dry season (*i.e.* late) 1975.<sup>3723</sup> He testified that this operation lasted approximately four days.<sup>3724</sup> He drove a truck which could hold 50 or 60 people at a time, and collected Vietnamese from various commune then took them to the vicinity of the District Office. Sometimes he travelled back and forth to the same commune more than once.<sup>3725</sup> He recalled collecting Vietnamese from Ang Ta Saom, Leay Bour, Popel, Nhaeng Nhang and Kus communes, but he could not remember every commune involved.<sup>3726</sup> In the communes, the commune chiefs were present, calling Vietnamese people to board the truck. They were told they would be sent back to Vietnam and they were not handcuffed or tied up during this transportation exercise.<sup>3727</sup> When SANN Lorn later unloaded people from his truck, the Tram Kak district militia chief was at the District Office together with some 10 soldiers.<sup>3728</sup>

1114. At some points in his testimony before the Chamber, SANN Lorn appeared to accept that approximately 9,000 Vietnamese persons were transferred at this time (*i.e.* the figure which EK Hoeun testified that SANN Lorn had told him at the time).<sup>3729</sup> At other points, however, SANN Lorn questioned the accuracy of this figure.<sup>3730</sup> He even claimed not to recognise the name EK Hoeun or UL Hoeun, but then testified that he was not sure whether he did talk to EK Hoeun at the time and/or have such a discussion about numbers.<sup>3731</sup> The Chamber accepts EK Hoeun’s evidence to the extent that SANN Lorn indeed said this figure to him at the time. The Chamber is unable to accept,

<sup>3722</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 10, 25, 30; SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 70, ERN (En) 01050403 (Answer 563); HAOM Tun Interview Record, E3/9486, 14 October 2014, p. 13, ERN (En) 01050653 (Answer 73, confirming Lan *alias* Maunh, *Ta Mok*’s younger brother-in-law, a the chair of Prakheab village).

<sup>3723</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 17, 62, 71-72, 76-78.

<sup>3724</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 12, 17-18, 78-79; SANN Lorn Interview Record, E3/9487, 29 September – 1 October 2014, p. 63, ERN (En) 01050396 (Answer 499).

<sup>3725</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 17-18, 34-36 (describing a “huge truck”), 67.

<sup>3726</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 35, 79 (accepting that he could not remember every commune); SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 61, ERN (En) 01050394 (Answer 478, further recalling Cheang Tong commune).

<sup>3727</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 64-67.

<sup>3728</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 34-35, 50.

<sup>3729</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 62, 76-79.

<sup>3730</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, p. 77.

<sup>3731</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 74, 86.

however, that 9,000 is an accurate figure of those actually transported. On the basis of the evidence, it is improbable that a single truck holding 50-60 persons at a time could transport such a large number of people in such a short period of time, even allowing for the possibility of repeat journeys. That said, as SANN Lorn accepted, a “huge number” of Vietnamese were indeed transported from several communes to the vicinity of the District Office in Angk Roka.<sup>3732</sup> SANN Lorn testified that he does not know what happened to these people after he handed them over to the district militia. He never saw them again.<sup>3733</sup>

1115. Whereas EK Hoeun described instructions from KHOEM Boeun *alias* Yeay Boeun and/or Ta Chay,<sup>3734</sup> and PECH Chim described Yeay Khom working with Chhorn, SANN Lorn testified that he received oral instructions from Phy at the District Office, whom he knew to be in charge of various offices including the education office and “next in ranking after the district secretary”.<sup>3735</sup> However, SANN Lorn recalled that Yeay Khom was District Secretary at the time.<sup>3736</sup> The Chamber is satisfied that, although SANN Lorn’s direct orders came from Phy, they originated from the District Secretary. At times in his evidence, SANN Lorn stated that orders followed a visit to the District Office by Zone Secretary Ta Mok and Ta Tith from the sector level.<sup>3737</sup> At another point, however, he suggested that orders came via Ta Mok’s messenger, Touch, and it came from the sector to the district.<sup>3738</sup> It is unclear to the Chamber whether SANN Lorn attributed these visits and/or messages to the particular events involving the transportation of Vietnamese, or to more general observations of events at the District Office. Notwithstanding this lack of clarity, this does not raise any material discrepancy in the otherwise consistent account that instructions were issued from at least the district level to round up Vietnamese from various communes, and those instructions were implemented. The Chamber understands that, according to SANN Lorn, these transportations of Vietnamese took place when Yeay Khom was District Secretary, meaning in early 1976. Indeed, contained within notebook E3/5827 from

<sup>3732</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 16-17, 32.

<sup>3733</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 18, 56.

<sup>3734</sup> For the Chamber’s findings on Ta Chay’s position, *see above*, para. 926.

<sup>3735</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 27-29, 31-33, 87 (referring to Phi *alias* Thy); SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 62, ERN (En) 01050395.

<sup>3736</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, p. 28.

<sup>3737</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 38-41. For the Chamber’s finding on Ta Tith’s position, *see above*, para. 915.

<sup>3738</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 41-42.

Kraing Ta Chan is a narrative description that “In January 1976 *Angkar* rounded up the *Yvon* [Vietnamese] people and sent them back to Vietnam”.<sup>3739</sup>

1116. Turning to further evidence of the events in particular communes, CHANG Srey Mom testified that some Vietnamese – or persons who pretended to be Vietnamese in an attempt to leave Cambodia – were taken from Nhaeng Nhang commune when *Angkar* was searching for Vietnamese to be “sent back to their country”. She recalled people boarding “trucks” (in Khmer she did not specify whether there was more than one truck) with their hands tied behind their backs, after which they headed in the direction of the mountains rather than Vietnam.<sup>3740</sup> CHANG Srey Mom’s evidence suggests that these events took place in “late 1976” when the commune chief made the announcement.<sup>3741</sup> CHOU Koemlan also described an announcement made in 1976 in her village in Leay Bour commune, when they were told that Vietnamese “had to be gathered up and sent back to their country” via Tram Kak, Kampot, and/or via the river.<sup>3742</sup> She recalled one Vietnamese family and Kampuchea Krom people who spoke with an accent who fell for this “vicious trick”.<sup>3743</sup> However, neither CHANG Srey Mom, nor CHOU Koemlan described killings of Vietnamese people who resisted deportation when these 1976 events occurred.

1117. RIEL Son confirmed that Vietnamese disappeared at night time or during the time he was working in the field or at canal work sites: they were simply called out and taken away.<sup>3744</sup> He recalled that during meetings the situation of both the Vietnamese and Khmer Krom was discussed, so people disappeared: whole families and personal belongings simply vanished and nobody knew what happened to them.<sup>3745</sup> PHANN Chen, the former chief Kraing *Ta* Chan Security Centre before *Ta* An, knew about instructions from the District Committee, specifically Nhev, to “smash” Vietnamese. He was unsure whether this was targeted at troops or Vietnamese people, but “it was

<sup>3739</sup> Kraing Ta Chan Notebook, E3/5827, ERN (En) 00864429-00864430 (entry in relation to ING Try, further explaining that the individual had been transferred with his brother “by truck” to Phnom Den but the Vietnamese “did not take the Chinese-*Yvon*” so *Angkar* sent them back to Kirivong district).

<sup>3740</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 37-38, 81-83; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, p. 6, ERN (En) 00410266 (Answer 14, suggesting this took place in “late 1976” when the commune chief made the announcement).

<sup>3741</sup> CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, ERN (En) 00410266 (Answer 14).

<sup>3742</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 24-25.

<sup>3743</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 91-92.

<sup>3744</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 57.

<sup>3745</sup> T. 18 March 2015 (RIEL Son), E1/279.1, pp. 79, 83-84.

generally toward Vietnam”.<sup>3746</sup> He described hearing instructions to eliminate Vietnamese issued through broadcasts, but he never received such orders or instructions at his specific location (after he left Kraing Ta Chan) as there were no Vietnamese there at that time.<sup>3747</sup> He described this as the type of information which was “open” in that announcements were made at various meetings in the units, commune and at the district level.<sup>3748</sup> The Chamber accepts that RIEL Son and PHANN Chen’s accounts reflect the general tenor of the instructions issued and that such persons indeed vanished without people knowing their fate. The Chamber further finds that neither person witnessed killings of Vietnamese persons, nor personally received instructions related to killings.

1118. That a significant number of Vietnamese left Tram Kak district in 1975-1976 is consistent with the April 1976 issue of *Revolutionary Flag*, which discussed in general terms having swept clean “hundreds of thousands” of foreigners and having “expelled” them out the country.<sup>3749</sup> Despite the lack of an express reference, the only reasonable interpretation is that this reference to “foreigners” referred to Vietnamese previously present in Cambodia.<sup>3750</sup> This is also consistent with evidence before the Chamber concerning the nation-wide pattern of expulsion of Vietnamese from Cambodia in 1975 and 1976.<sup>3751</sup>

1119. In addition to the above events, the Chamber heard a number of in-court testimonies concerning sizeable exchanges of people between Vietnam and Cambodia in 1976, part of which included the arrival of large numbers of Khmer Krom persons in Tram Kak district. RY Pov arrived in Tnaot Chum village, Khporp Trabaek commune, in June 1976 as part of this process. He described between 1,000 to 1,500 families previously living in Vietnam who were divided into batches to be returned to Cambodia.<sup>3752</sup> RY Pov was part of a first phase of exchanges when Khmer Krom were

<sup>3746</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 92-94 (describing the policy as generally towards Vietnam, and expressing uncertainty as to whether it was towards troops or people generally, then describing educational material referring to Vietnamese as “White Khmer”).

<sup>3747</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 49-50, 91.

<sup>3748</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 91-92.

<sup>3749</sup> *Revolutionary Flag*, E3/759, April 1976, p. 5, ERN (En) 00517853-00517854.

<sup>3750</sup> Section 13.3: Treatment of the Vietnamese, para. 3416.

<sup>3751</sup> Section 13.3: Treatment of the Vietnamese, para. 3433.

<sup>3752</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 5, 9 (10 CMC trucks, five sent to one location, five to somewhere else); RY Pov Interview Record, E3/9604, 30 October 2013, p. 5, ERN (En) 00970028 (Answers 15-16, military CMC trucks), 21 (arrived at Khpob Trabaek when the Khmer Rouge seized all belongings); T. 12 February 2015 (RY Pov), E1/262.1, pp. 9, 13 (Tnaot Chum village, Khporp Trabaek commune).

sent to Khporp Trabaek and Samraong communes, whereas a second phase, which he thought took place approximately six weeks later, sent Khmer Krom to Popel and Ta Phem communes.<sup>3753</sup> Their identification documents were destroyed on arrival.<sup>3754</sup> They stayed put for about 10 days until they were sent to work in a mobile unit to the south, then returned to Prey Ta Khbab village in Samraong commune.<sup>3755</sup> RY Pov's unit chief and Khmer Rouge cadres referred to Khmer Krom as having "a Khmer body with a Vietnamese head".<sup>3756</sup> Before the Chamber, RY Pov said he did not know about further batches of exchanged persons, because he was "not allowed to move freely".<sup>3757</sup> However, this was in response to a question based on a document from 1977. The Chamber finds that this did not undermine his claim to know about subsequent exchanges in 1976.<sup>3758</sup>

1120. RY Pov's account of exchanges in 1976 whereby Vietnamese left Cambodia, and Khmer Krom arrived in Cambodia, was corroborated by Civil Party TAK Sann, who came with her husband and their two children and who described being part of a second exchange when she and hundreds of other people arrived in Trak Kak district from Vietnam and were sent to Trapeang Thum North commune, where all their belongings were confiscated.<sup>3759</sup> She travelled with her parents, children and husband.<sup>3760</sup> Later her husband was taken away on a cart and disappeared – she never saw him again.<sup>3761</sup> BENG Boeun also described events in Trapeang Ampeak (Thmar Kaev) village Nhang Nhang commune, when people were separated according to their ethnicity. At first people stayed with their own families, but then they were separated into Khmer, Chinese and Vietnamese groups. He was placed with a Chinese group and

<sup>3753</sup> RY Pov Interview Record, E3/9604, 30 October 2013, p. 13, ERN (En) 00970036 (Answer 82).

<sup>3754</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 11-12 (persons over 20 had a black ID card; anything like ID cards or documents were collected and burned out in front of us, including currency); RY Pov Interview Record, E3/9604, 30 October 2013, p. 5. ERN (En) 00970028 (Answer 22, "I did not have an identification card yet at the time. The Khmer Rouge seized my parents' identification cards and burnt it.").

<sup>3755</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 6, 12 (after 10 days, persons separated out and sent to work in a unit based on sex and age), 13 (located in the south of Takeo province), 33 (transferred to Kbal Pou, located to the south of Takeo province), 38 (referring to the Kbal Pou); RY Pov Interview Record, E3/9604, 30 October 2013, p. 12, ERN (En) 00970035 (Answer 75, Prey Ta Khbab village).

<sup>3756</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 57.

<sup>3757</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 46.

<sup>3758</sup> T. 12 February 2015 (RY Pov), E1/262.1, p. 45.

<sup>3759</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 27-28, 39.

<sup>3760</sup> T. 1 April 2015 (TAK Sann), E1/286.1, p. 27.

<sup>3761</sup> T. 1 April 2015 (TAK Sann), E1/286.1, pp. 29, 47-48.

Vietnamese group, whereas Khmer lived in a different village.<sup>3762</sup> The leaders of different groups were all Base People.<sup>3763</sup> BENG Boeun recalled the exchange of Vietnamese because a Vietnamese family left his village and said they were allowed to return back to their country.<sup>3764</sup> THANN Thim, a New Person who arrived in Trapeang Thum North commune from Kirivong district in 1977, also heard that exchanges of Vietnamese and Cambodian had occurred by the time he arrived.<sup>3765</sup>

1121. According to EK Hoeun, however, the exchanged Khmer Krom persons who arrived in Tram Kak district came to be viewed as “problematic” in that they (in generalised terms) were accused of stealing, which caused the exchange program to be cancelled and an escalation of the killing of Vietnamese persons left in Tram Kak.<sup>3766</sup> RIEL Son also recalled a specific instruction issued in relation to Khmer Krom persons in that those who came to Tram Kak district without children were considered to be Vietnamese spies.<sup>3767</sup> He further described how commune and village chiefs were instructed by the district level to prepare lists, including of former LON Nol officials, and send lists “upwards”.<sup>3768</sup> Contrary to this evidence, however, PECH Chim testified that the political line was to welcome the Khmer Krom to Tram Kak district and treat them well because they were “Khmer people by blood” and had suffered at the hands of Vietnamese.<sup>3769</sup> PECH Chim also denied EK Hoeun’s allegation, which was based upon hearsay, that he had arranged for the execution of 90 Khmer Krom persons whom *Ta Mok* had assigned to help construct the Khporp Trabaek canal.<sup>3770</sup>

1122. The documentary evidence sheds significant light on the events just described. For instance, NUT Nov accepted that in 1977 a census was established of people of Vietnamese or Khmer Krom descent, with these lists kept at the commune offices.<sup>3771</sup> Consistent with NUT Nov’s evidence, before the Chamber are lists of Khmer Krom

<sup>3762</sup> T. 2 April 2015 (BENG Boeun), E1/287.1 pp. 70-71, 79-81, 83 (BENG Boeun was placed in the Chinese-Khmer group. Even though his mother-in-law and father-in-law were Base People, they were half-Chinese and had sold Chinese noodles. His father-in-law spoke Khmer with an accent).

<sup>3763</sup> T. 2 April 2015 (BENG Boeun), E1/287.1 p. 72.

<sup>3764</sup> T. 2 April 2015 (BENG Boeun), E1/287.1 pp. 72-73.

<sup>3765</sup> T. 21 April 2015 (THANN Thim), E1/289.1, pp. 11-15.

<sup>3766</sup> EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 10, ERN (En) 00983576 (Answer 62).

<sup>3767</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 56.

<sup>3768</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 57; T. 18 March 2015 (RIEL Son), E1/279.1, p. 79.

<sup>3769</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 38-39.

<sup>3770</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, pp. 7, 25, 64-65; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 10, ERN (En) 00983576 (describing that he learned from cooks that *Ta Mok* was angry with PECH Chim over this incident).

<sup>3771</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 21.

people living in Kus commune dated 29 April 1977;<sup>3772</sup> Angk Ta Saom commune dated 30 April 1977;<sup>3773</sup> and an undated list of Khmer Krom people from Popel commune.<sup>3774</sup> The genesis of these lists is explained by a report from Angk Ta Saom commune to “District *Angkar*” dated 26 April 1977, which sought clarification concerning “the registration in the list of Kampuchea Krom people”. Angk Ta Saom commune asked the district level whether to distinguish (i) Cambodian husbands with Vietnamese wives; from (ii) Vietnamese husbands with Cambodian wives. It explained that now the registration had taken place, people had started to request to leave Cambodia for Vietnam. The report concludes: “If all of them were *Yuon* (Vietnamese), we would send on to the *Angkar* (Organization) [Incomprehensible]. If it was like this, what would the *Angkar* decide then?”<sup>3775</sup> This report reveals a clear understanding as to what to do with “pure Vietnamese” families – they would be sent up to the district level. There was, however, uncertainty over what to do with mixed families: “If it was like this, what would *Angkar* decide then?”. The documentary evidence does not reveal a specific answer to the question posed. It is evident, however, that Vietnamese people were being identified based on their perceived race or ethnicity and this is consistent with EK Hoeun’s evidence that, as Khmer Krom persons fell under suspicion, there was an escalation of killing persons perceived as Vietnamese who were left in Tram Kak at that time.<sup>3776</sup>

1123. The documentary evidence confirms the focus on Vietnamese persons in Tram Kak district. A report from a cornfield dated 2 May 1977 discusses PHON Ly, described as a “half breed Khmer-Vietnamese” with a Khmer father and Vietnamese mother.<sup>3777</sup> A report from Popel commune dated 2 May 1977 records the number of Kampuchea Krom and Vietnamese who came to live in the area as being 64 families, totalling 228 persons – describing this group of people as those “exchanged against *Yuon*”.<sup>3778</sup> This directly corresponds to a partial list of Kampuchea Krom people in Popel commune

<sup>3772</sup> Tram Kak District Record, E3/2615, 29 April 1977, ERN (En) 00366665-00366675 (approximately 13 husbands, 43 wives, 23 male youth, 7 female youth, 28 boys, 35 girls).

<sup>3773</sup> Tram Kak District Record, E3/2049, 30 April 1977, ERN (En) 00290262-00290263 (identifying eight families and indicating that the husband of one resident was “smashed since he was first arrived [here]”).

<sup>3774</sup> Tram Kak District Record, E3/2262, undated, ERN (En) 00742626-00742628.

<sup>3775</sup> Tram Kak District Record, E3/2435, 26 April 1977, ERN (En) 00322141.

<sup>3776</sup> EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 10, ERN (En) 00983575. *See above*, para. 1121.

<sup>3777</sup> Tram Kak District Record, E3/4098, 4 May 1977, ERN (En) 00322116.

<sup>3778</sup> Tram Kak District Record, E3/2048 [E3/2917], 8 May 1977, ERN (En) 00145496.

which provides detailed information on identified families numbered from 36 up to 64 – with the names of husbands, wives and the number of children in each family provided.<sup>3779</sup> This further confirms the evidence of exchanges discussed above and provides substantial corroboration to RY Pov’s account that Khmer Krom had been sent to Popel commune, among other places, as part of an exchange process. Another report from Popel commune dated 4 May 1977 refers to a Khmer Krom called CHAU Ny “who was brought over (to your place), on 3/4/77”.<sup>3780</sup> An undated list identifies more than 54 people as Khmer Krom, mentioning various locations such as Angk Ta Ngel, Trapeang Pring, Trapeang Pou, Trapeang Leang, Trapeang Thma, Ta Sman, Paen Meas, Ta Saom, Prey Kokir.<sup>3781</sup> The Chamber finds that some places mentioned in this list relates to locations in Samraong, Kus and Cheang Tong communes.<sup>3782</sup>

1124. One of the Tram Kak District Records dated 5 June 1977 reports to the district on three people living in different communes who “came from Vietnam” to live there.<sup>3783</sup> A report from Kbal Pour dated 4 August describes Hiek, a New Person, described as “a half-breed Vietnamese”.<sup>3784</sup> A report from Leay Bour commune to the Party dated 4 September 1977 reported on Hi Di, a youth in Leay Bour commune who had said that it would be better to die. The report includes a postscript stating: “This person is a *Yuon*”. There follows an annotation dated 6 September 1977 addressed to Comrade An from Kit stating: “Request that a thorough interrogation be conducted, because this person is an organised string of the CIA”.<sup>3785</sup> The Chamber finds that contents of the report bear no relation whatsoever to anything to do with a foreign intelligence service. A report from Khporp Trabaek commune dated 29 December 1977 records that the Party had ordered for MECH Seng, a lieutenant, and his “*Yuon* wife” to be sent to the Party.<sup>3786</sup> A report from Trapeang Thum Thbaung dated 16 January 1978 to “comrade An” reports on the activities of an enemy sent in by the writer

<sup>3779</sup> Tram Kak District Record, E3/2262, undated, ERN (En) 00742626-00742628.

<sup>3780</sup> Tram Kak District Record, E3/2439, 4 May 1977, ERN (En) 002322143.

<sup>3781</sup> Tram Kak District Record, E3/2428, undated, ERN (En) 0036699-00366705.

<sup>3782</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 5; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410246 (villages in Samraong commune including Paen Meas, Ta Sman, Pong Tuek, Prey Kokir, Kraing Banteay, Praouth Thmei and Ta Saom).

<sup>3783</sup> Tram Kak District Record, E3/2443, 5 June 1977, ERN (En) 00322147.

<sup>3784</sup> Tram Kak District Record, E3/4112, 4 August [year not specified], ERN (En) 00322154.

<sup>3785</sup> Tram Kak District Record, E3/2447, 4 September 1977, ERN (En) 00355474.

<sup>3786</sup> Tram Kak District Record, E3/4126, 29 December 1977, ERN (En) 00366713.



(Chhoem) and notes, among other things, that: “This contemptible Nam is a pure *Yuon*”.<sup>3787</sup>

1125. The Chamber finds that the foregoing evidence establishes that large numbers of Vietnamese were gathered up in Tram Kak district from late 1975 into early 1976, with many expelled and/or disappearing. There followed an exchange process whereby a large number of Khmer Krom arrived in Tram Kak district in mid-1976 and were distributed to various communes.<sup>3788</sup> From approximately April 1977 onwards, however, these arrivals fell under increasing suspicion and many were arrested. In addition, the evidence established that persons identified as Vietnamese were being targeted on the basis that they were Vietnamese and instructions to kill Vietnamese were issued at various times, specifically in March 1976.

#### 10.1.11. *Tram Kak as a Model District*

1126. On 30 March 1976, the CPK Central Committee settled upon a plan to select “model districts” which may be presented with the “Great Leap” Flag.<sup>3789</sup> The June 1977 issue of *Revolutionary Flag* announced that the Central Committee had decided to award the 1976 “Honorary Red Flag of the Central Committee” to Tram Kak district (together with Prasaut district in the East Zone, and Kompong Tralach Leu district in the West Zone).<sup>3790</sup> The *Letter Presenting the Honorary Red Flag of the Central Committee of the CPK* published in *Revolutionary Flag* was dated 30 June 1977 and it described the Red Flag as the CPK’s highest honour.<sup>3791</sup> The text of the letter was broadcast on the radio on the morning of 24 July 1977.<sup>3792</sup> The announcement identified

<sup>3787</sup> Tram Kak District Record, E3/4127, 16 January 1978, ERN (En) 00362232.

<sup>3788</sup> For the Chamber’s findings on the policy towards Vietnamese, see Section 13.3: Treatment of the Vietnamese, paras 3386, 3416.

<sup>3789</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, ERN (En) 00182809-00182810 (identifying criteria for districts who are models in producing three tonnes per hectare, and being models in political, ideological and organisational stances).

<sup>3790</sup> *Revolutionary Flag*, E3/135, June 1977, pp. 4-7, ERN (En) 00446849-00446852 (“The Letter Presenting the Honorary Red Flag of the Central Committee of the Communist Party of Kampuchea to All Cadres Combatants and Peasant People in the Cooperatives in Prasaut District (East Zone) Kampong Tralach Leu District (West Zone) and Tram Kak District (Southwest Zone)”). In addition to Tram Kak district, two further districts received the Honorary Red Flag: Prasaut district in the East Zone and Kampong Tralach Leu district in the West Zone.

<sup>3791</sup> *Revolutionary Flag*, E3/135, June 1977, p. 6, ERN (En) 00446851.

<sup>3792</sup> *Phnom Penh Domestic Radio: Revolutionary Organisation Gives Awards to Three Districts* (in FBIS collection), 23 July 1977 at 2300 GMT, ERN (En) 00168509-00168511. It is clear from the structure and content of the broadcast that it corresponds to the letter printed in *Revolutionary Flag*. However, there are differences in FBIS’s translation of the radio broadcast. In light of this, the Chamber

various factors as meriting the award, including increased production, improvements to living standards, independence and self-reliance, revolutionary stance, waging class struggle and a spirit of self-sacrifice and solidarity.<sup>3793</sup>

1127. PECH Chim, the former secretary of Tram Kak district, recalled receiving this award. He described receiving it personally from *Ta Mok* during a Sector 13 study session. He could not remember the month, and his evidence was inconsistent as to the year, but he remembered it taking place after the harvest season.<sup>3794</sup> *Ta Mok* said to him that Tram Kak had “scored number 1” and he explained that the honorary red flag was equivalent to a gold medal.<sup>3795</sup> According to PECH Chim, there were three reasons for the award: the district had good forces which had contributed to the revolutionary movement; the majority of the people in the district were middle or lower class and loyal to the revolution; and while the district was poor and the soil of low quality, production was better than other districts and they produced two yields per year.<sup>3796</sup> NUON Chea does not remember the Red Flag or “whatever flag” being given to Tram Kak district specifically.<sup>3797</sup> There is evidence to indicate that news of this award percolated downwards. CHOU Koemlan’s evidence was that the chief of a unit told her that Tram Kak district had been recognised as a model district in terms of its productivity.<sup>3798</sup>

1128. Tram Kak district’s model status was also referred to later occasions. There was a further reference to the award in a radio broadcast on 28 August 1977, which encouraged cooperative peasants throughout the country to cultivate rainy season rice by the end of September 1977.<sup>3799</sup> In September 1977, the Party issued a Special Issue of *Revolutionary Flag* to celebrate the 17<sup>th</sup> Anniversary of the Party and POL Pot’s official domestic and international announcement of the existence of the CPK. The first photograph in the issue depicted “Peasants in a cooperative in Tram Kak district” who

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has placed greater weight on the letter as printed in *Revolutionary Flag* ahead of the translation recorded in the FBIS collection.

<sup>3793</sup> *Revolutionary Flag*, E3/135, June 1976, ERN (En) 00446850-00446851.

<sup>3794</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 34-36; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 48-49; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 67-69. According to PECH Chim, Khom kept the award and he suggested that the award was given in 1975 or 1976.

<sup>3795</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 68-69.

<sup>3796</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 51-52.

<sup>3797</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 66.

<sup>3798</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 86-87.

<sup>3799</sup> *Peasants Show Confidence in Revolutionary Organization* (in FBIS collection), E3/1358, 28 August 1977, ERN (En) 00168305-00168306.

were said to be “on the offensive spreading fertilizer to care for the wet season rice so it will grow well”.<sup>3800</sup> When the Chinese delegation visited Leay Bour commune in December 1977, they were told that Tram Kak was “one of the three pace-setter districts praised by the CPK Central Committee”.<sup>3801</sup> At a mass meeting on 15 April 1978 to mark the third anniversary of the liberation of Phnom Penh, a resolution was broadcast that, in the field of socialist construction, everybody should solemnly pledge to learn from the progressive production corps including those in Tram Kak district.<sup>3802</sup>

1129. In addition to Tram Kak being a model district, there was a model cooperative in Leay Bour commune which was exhibited to visiting foreigners. NEANG Ouch *alias* Ta San recalled showing the Chinese delegation around in December 1977.<sup>3803</sup> The Chinese delegation visited on 14 December 1977.<sup>3804</sup> They were accompanied by officials of the Ministry of Foreign Affairs<sup>3805</sup> and, according to the Phnom Penh Domestic Service, accompanied on the trip by *inter alia* IENG Sary, VORN Vet and THIOEUNN Thioeunn.<sup>3806</sup> NEANG Ouch, however, did not see any Khmer Rouge leaders accompanying the Chinese delegation.<sup>3807</sup> According to Ta San, no special arrangements were made for the Chinese delegation. They were received in a “casual manner” and there was no big ceremony.<sup>3808</sup> This was contradicted by RIEL Son, who told OCIJ investigators that he had been ordered to organise Leay Bour hospital in preparation for a visit by a “very senior” Chinese delegation.<sup>3809</sup> Upon the delegation’s

<sup>3800</sup> Revolutionary Flag, E3/11, September 1977, p. 13, ERN (En) 00486224.

<sup>3801</sup> *Phnom Penh Home Service* (in SWB/FE/5695/A3 collection), E3/2730, 17 December 1977, S00390993.

<sup>3802</sup> *Phnom Penh Rally Marks 17th April Anniversary* (in SWB/FE/5791/B collection), E3/562, 18 April 1978, ERN (En) S00010558, S00010564; *Resolution Adopted* (in FBIS collection), E3/1361, 17 April 1978, ERN (En) 00168819-00168820 (“In the field of socialist construction, we resolve: [...] To learn from the example of progressive production corps, such as the salt fields, the new eastern rubber plantation worksites, and Prasot, Kampong Tralach Leu and Tram Kak districts, so that all the production corps throughout the country will become great revolutionary movements advancing by leaps and bounds. [applause]”). Both broadcasts referred to the meeting having taken place the previous day on 15 April 1978.

<sup>3803</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 18, 20-24, 54-55.

<sup>3804</sup> *Chen Yung-Kuei Visits Southwest Regions* (in FBIS collection), E3/1339, 14 December 1977, p. 45, ERN (En) 00168351; T. 16 March 2015 (NUT Nov), E1/277.1, p. 70 (recalling the visit by the Chinese delegation, Chen Yonggui, and Ta San being in charge of receiving the delegation).

<sup>3805</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 21.

<sup>3806</sup> *PRC Delegation Led by Chen Yung-Kuei Arrives 3 Dec: Meets Pol Pot* (in FBIS collection), E3/1339, 3 December 1977, ERN (En) 00168315.

<sup>3807</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 83-84.

<sup>3808</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, p. 66.

<sup>3809</sup> RIEL Son Interview Record, E3/9602, 18 February 2014, p. 27, ERN (En) 00982659 (Answer 202).

return to Phnom Penh that evening, CHEN Yonggui hosted a farewell banquet.<sup>3810</sup> A Romanian delegation visited Leay Bour cooperative on 29 March 1978.<sup>3811</sup> They were given a presentation of the cooperative's history and development, visited the communal kitchen, workshops for producing farm tools and the local school.<sup>3812</sup> The Yugoslavian press delegation led by Nikola VITOROVIĆ visited Leay Bour cooperative on 7 March 1978.<sup>3813</sup> The delegation visited the communal kitchen, the farm tool workshop, the school and rice milling machine, they took pictures and filmed the cooperative and its surroundings.<sup>3814</sup> A Marxist-Leninist American delegation visited a nearby cooperative in late April 1978.<sup>3815</sup> Representatives from the Italian Communist Party visited on 10 July 1978.<sup>3816</sup> Representatives from the Swedish-Kampuchea friendship association visited a Leay Bour cooperative during their two-week visit in August 1978, and were shown around by NEANG Ouch *alias Ta San*.<sup>3817</sup> Elizabeth BECKER visited together with Richard DUDMAN and Malcolm CALDWELL on 20 December 1978.<sup>3818</sup> Elizabeth BECKER later described visiting the “most impeccable model cooperative” in Leay Bour commune, Takeo, where

<sup>3810</sup> *Chen Yung-Kuei Visits Southwest Regions: Hosts Farewell Banquet* (in FBIS collection), E3/1339, 14 December 1977, ERN (En) 00168351.

<sup>3811</sup> *Romanian Delegation Tours Kompong Saom, Southwest* (in FBIS collection), E3/1360, 29 March 1978, ERN (En) 00169968.

<sup>3812</sup> *Romanian Delegation Tours Kompong Saom, Southwest* (in FBIS collection), E3/1360, 29 March 1978, ERN (En) 00169968.

<sup>3813</sup> *Yugoslav Press Delegation Arrives 4 March* (in FBIS collection), E3/1360, 4 March 1978, ERN (En) 00169886; *Continuing Courage of Yugoslav Delegation's Visit: Takeo, Kompong Soam Toured* (in FBIS collection), E3/1360, 9 March 1978, ERN (En) 00169908.

<sup>3814</sup> *Continuing Courage of Yugoslav Delegation's Visit: Takeo, Kompong Soam Toured* (in FBIS collection), E3/1360, 9 March 1978, p. 39, ERN (En) 00169908.

<sup>3815</sup> *Kampuchea Today, An eyewitness report from Cambodia*, E3/707, December 1978, pp. 11-15, ERN (En) 00049307-0049309 (describing the visit of Daniel Burstein and colleagues to “Ang Tasom Cooperative in Takeo province”; *US Marxist-Leninist Delegation Concludes Visit* (in FBIS collection), E3/1362, 29 April 1978, ERN (En) 0016972-00169973; *Further Reportage on Observations of US Marxist-Leninist Delegation* (in FBIS collection), E3/1363, 14 June 1978, ERN (En) 00169822 (describing visit to Ang Ta Saom cooperative, describing a population of 1,300, 3,300 hectares of rice fields, and 500 hectares of orchards). It therefore appears that the US delegation visited a cooperative other than Leay Bour.

<sup>3816</sup> *Reportage on Italian Unified CP Delegation's Visit: 15 July Departure* (in FBIS collection), E3/293, 15 July 1978, ERN (En) 00169730.

<sup>3817</sup> T. 9 March 2015 (NEANG Ouch), E1/273.1, pp. 20-21; Book by G. Bergström: *Living Hell – Democratic Kampuchea*, E3/2415, undated, p. 83, ERN (En) 00504237 (Photo of Gunnar Bergström and Witness NEANG Ouch *alias Ta San*, as identified by the witness himself. See T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 7-8).

<sup>3818</sup> *Report by Richard Dudman on His December 1978 Visit to Kampuchea* (in *New War in Southeast Asia: Documents on Democratic Kampuchea and the Current Struggle for National Independence*), E3/3290, 15 January 1979, p. 4, ERN (En) 00419208; *Radio Report on Continuing Tour by UK Professor, U.S. Journalists* (in FBIS collection), E3/295, 22 December 1978, ERN (En) 00169145.

“[e]verything was immaculate”.<sup>3819</sup> The Chamber is satisfied that the model cooperative generally shown to foreign visitors was primarily for Base People and known as K-1, whereas another cooperative known as K-3 was for New People.<sup>3820</sup>

#### 10.1.12. *Visits by the Accused during the Relevant Period*

1130. Civil Parties CHOU Koemlan and OEM Saroeurn worked in Leay Bour commune and described a visit by NUON Chea and KHIEU Samphan to the Ou Chambak canal worksite in 1977. CHOU Koemlan described the visit when interviewed by OCIJ investigators in 2011.<sup>3821</sup> OEM Saroeurn’s failure to mention this visit when interviewed by OCIJ investigators was challenged by the KHIEU Samphan Defence.<sup>3822</sup> CHOU Koemlan and OEM Saroeurn now live in the same village and see each other often.<sup>3823</sup> The Chamber sets out below its approach to these identifications.

##### 10.1.12.1. CHOU Koemlan’s identification evidence

1131. When interviewed by OCIJ investigators in 2011, CHOU Koemlan described a visit by NUON Chea, KHIEU Samphan, POL Pot and *Ta* Mok to her worksite at around 8.30 a.m. one morning in February 1977.<sup>3824</sup> She referred to an irrigation canal in Prey Leu, where she worked with 200 other workers and explained that she recognised KHIEU Samphan as soon as he stepped out the car because she had seen pictures of him before.<sup>3825</sup> The day before the visit, her mobile team chief told her that the leaders were going to visit and explained who they were. She elaborated that, when the leaders arrived she had a clear view of them for at least one minute, before she was told to look down and get back to work.<sup>3826</sup> *Ta* Mok then ordered CHOU Koemlan’s group leader to give the workers sweetened water.<sup>3827</sup> The leaders only spoke with the chiefs and a

<sup>3819</sup> Book by E. Becker: *When the War was Over: Cambodia and The Khmer Rouge Revolution*, undated, E3/20, p. 422, ERN (En) 00238135.

<sup>3820</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 10-11 (she lived in K-3), 59 (leaders went to visit the K-1 cooperative); T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 25 (describing the K-3 cooperative to the north, whereas the K-1 cooperative was to the south).

<sup>3821</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, pp. 4-5, ERN (En) 00678306-00678307 (“the four leaders arrived by car, around 0830am”).

<sup>3822</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 59.

<sup>3823</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 61.

<sup>3824</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, pp. 4-5, ERN (En) 00678306-00678307 (“the four leaders arrived by car, around 0830am”).

<sup>3825</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, p. 4, ERN (En) 00678305.

<sup>3826</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, p. 5, ERN (En) 00678306.

<sup>3827</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, p. 5, ERN (En) 00678306.

group of mobile chiefs and commune chiefs followed them around.<sup>3828</sup> She mentioned various others as present in the group including persons she identified as *Ta San*, *Ta Hounh*, *Ta Nouv* and *Ta Oeun*.<sup>3829</sup>

1132. Before the Chamber, CHOU Koemlan made some corrections to the above account. She clarified that she was not sure of the month: it could have been slightly later in 1977 but it was still the dry season.<sup>3830</sup> She clarified that the visit took place at the Ou Chambak canal worksite rather than Prey Leu (where she also worked).<sup>3831</sup> She corrected that it was the day of the visit itself that she learned the leaders were coming, not the day before.<sup>3832</sup> She estimated there to have been 300 to 400 people digging and carrying soil at the worksite at the time.<sup>3833</sup> She described two vehicles: the leaders were in a black vehicle whereas *Ta Mok* was in a jeep.<sup>3834</sup> Both vehicles arrived from the north and parked on the roadside around the bend of National Road 2, facing west towards Leay Bour commune, initially at a distance of approximately 100 metres from where CHOU Koemlan was working.<sup>3835</sup> She then saw the four leaders for about 15 minutes when they were standing nearby: they were drinking sugar palm juice and she heard *Ta Mok* say that if it could not be made, then wine should be added. CHOU Koemlan described the leaders pointing for workers to dig the canal deeper in order to hold more water.<sup>3836</sup> She described the distance between her and the leaders as “pretty close”.<sup>3837</sup> CHOU Koemlan remembered that they walked past to the west of the canal and that she smiled at them while working hard.<sup>3838</sup> They were accompanied by unit chiefs, group chiefs and the commune representatives.<sup>3839</sup> She understood that the

<sup>3828</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, p. 5, ERN (En) 00678306.

<sup>3829</sup> CHOU Koemlan Interview Record, E3/5635, 28 February 2011, pp. 5-6, ERN (En) 00678306-00678307.

<sup>3830</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 53-54.

<sup>3831</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 4 (describing the area as west of the railway station to Veal Charong and to Leay Bour), 53.

<sup>3832</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 54-55.

<sup>3833</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 65-66 (describing the plan for the worksite was to achieve three harvests per year), 85; T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 74 (digging and carrying soil).

<sup>3834</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 56.

<sup>3835</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 71-72.

<sup>3836</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 85 (*Ta Mok*'s instructions regarding the sugar palm juice); T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 57-58.

<sup>3837</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 3-4 (estimating it as about the same distance as from the witness box to where the judges were sitting in the courtroom, and counsel suggested this was about nine metres).

<sup>3838</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 66.

<sup>3839</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 66.

leaders came to inspect “the model work site” because Leay Bour was a “model cooperative and we produced good rice product”.<sup>3840</sup>

1133. CHOU Koemlan further explained that she knew *Ta Mok* from a long time ago because she saw him frequently when he went around inspecting places in 1977.<sup>3841</sup> CHOU Koemlan confirmed that she recognised KHIEU Samphan because his photo had been published in newspapers before the Khmer Rouge came to power, and she had also heard his name during the DK regime.<sup>3842</sup> Her unit chief also identified KHIEU Samphan to her and said they had come to inspect the worksite.<sup>3843</sup> The unit chief also identified NUON Chea to her, apparently having been told his identity by the district chief and commune committee.<sup>3844</sup> After the leaders left, a lunchtime meeting followed where different units of about 30 workers each gathered.<sup>3845</sup> They were told that the leaders had the rank or status equivalent to king in the previous regime.<sup>3846</sup> *Ta Oeun*, the unit chief, told CHOU Koemlan about the visit.<sup>3847</sup> He described the leaders and specifically identified NUON Chea.<sup>3848</sup> There followed a meeting when the unit chiefs called upon all people, including 17 April and Base People, and instructed them to strengthen their stance in order to follow the “leap forward”.<sup>3849</sup> After lunch they were all called for a meeting by the group and unit chiefs. Her group and unit chiefs recounted having had a meeting under a mango tree with the leaders.<sup>3850</sup>

#### 10.1.12.2. OEM Saroeurn’s identification evidence

1134. OEM Saroeurn also described a visit by *Ta Mok*, *Ta San*, NUON Chea, KHIEU Samphan and POL Pot to Ou Chambak in 1977, while she and others were digging a canal to build Ou Chambak “railway station”. She explained that *Ta Mok* arrived in a

<sup>3840</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 74.

<sup>3841</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 55.

<sup>3842</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 66; T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 5-6 (KHIEU Samphan’s picture seen when working as a people’s representative at the National Assembly during the Sangkum Reastr Niyum regime; and she saw him again in 1992 when his facial features remained the same).

<sup>3843</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 7.

<sup>3844</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 67; T. 27 January 2015 (CHOU Koemlan), E1/253.1, pp. 7-8 (stating she did not recognise NUON Chea but the village chief *and* unit chief told her).

<sup>3845</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 8.

<sup>3846</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 9.

<sup>3847</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 54.

<sup>3848</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 67.

<sup>3849</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 58.

<sup>3850</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 59.

jeep from the west, and “Yoeun” told her the names of those persons she had not seen before.<sup>3851</sup> She identified Yoeun as the chief of unit number 3 and a Base Person.<sup>3852</sup> They were standing on the National Road, on her right about five or six metres away.<sup>3853</sup> She saw the leaders for a “brief moment”.<sup>3854</sup> She also mentioned *Ta Mok*, *Ta San*, *Ta Nouv* and *Ta Hounh* as present at the time, suggesting that they had leadership positions.<sup>3855</sup> OEM Saroeurn explained that she only had a “quick look” at KHIEU Samphan but the leaders’ names were “whispered” to her after they left.<sup>3856</sup>

### 10.1.12.3. *Findings*

1135. The Chamber is not satisfied that the identification evidence is sufficiently reliable to establish that NUON Chea and KHIEU Samphan visited the Ou Chambak canal worksite in 1977. For instance, the Chamber notes that the Civil Parties identified significant other persons present at the time, such as: *Ta Nouv*, which the Chamber finds to be a reference to NUT Nov, a member of the Leay Bour Commune Committee until late 1977 and later chief of neighbouring Sre Ronoung commune;<sup>3857</sup> and *Ta San*, which may refer to NEANG Ouch *alias Ta San*. Yet NUT Nov testified that he never met KHIEU Samphan and never saw him at Leay Bour or anywhere else.<sup>3858</sup> When CHOU Koemlan’s account was put to NEANG Ouch *alias Ta San*, he pointed out that he only arrived in Tram Kak district in about June 1977.<sup>3859</sup> He maintained that he never met KHIEU Samphan, and the only time he met NUON Chea was at an annual study session.<sup>3860</sup>

1136. The Chamber further weighs the inconsistencies within and between CHOU Koemlan’s and OEM Saroeurn’s accounts. While the Chamber is satisfied that they both witnessed a visit by some senior leaders to a location where they worked, and it is entirely plausible that NUON Chea and KHIEU Samphan indeed visited Leay Bour

<sup>3851</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 9.

<sup>3852</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 41.

<sup>3853</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 32.

<sup>3854</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 33.

<sup>3855</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, p. 33.

<sup>3856</sup> T. 26 March 2015 (OEM Saroeurn), E1/283.1, pp. 53-54.

<sup>3857</sup> See above, para. 819. See also, Map of Tram Kak District, E3/4542, undated, ERN (En) 00283385.

<sup>3858</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 79.

<sup>3859</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 26.

<sup>3860</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, pp. 39-40.



commune and other locations within Tram Kak district,<sup>3861</sup> in these circumstances their purported identifications of the Accused, made decades later, are insufficiently secure to be relied upon by the Chamber.<sup>3862</sup>

1137. PECH Chim confirmed, however, that both NUON Chea and KHIEU Samphan visited Tram Kak district.<sup>3863</sup> He suggested that a person called HOU Sen escorted KHIEU Samphan, but he could not remember when this took place. He then appeared to suggest that this visit took place after PECH Chim had moved to the Central (old North) Zone, but he learned this information on a return visit to Tram Kak district.<sup>3864</sup> In the final analysis, although it is likely that NUON Chea and KHIEU Samphan visited Tram Kak district during the relevant period, and although the Chamber has found above that NUON Chea visited *Ta Mok* in nearby Takeo town,<sup>3865</sup> the evidence does not establish the circumstances of any particular visit of these leaders to Tram Kak district with sufficient specificity.

### 10.1.13. *Legal Findings*

#### 10.1.13.1. *Murder and extermination*

1138. As limited to Case 002/02, the Closing Order charges the Accused with the crime against humanity of murder in relation to Buddhists at the Tram Kak Cooperatives.<sup>3866</sup> The Chamber recalls that the evidence did not establish that monks were killed in Tram Kak district.<sup>3867</sup> The Closing order further charges the Accused with the crime against humanity of extermination in relation to people who were killed or died *en masse*, including in the Tram Kak Cooperatives.<sup>3868</sup> It finds in general terms

<sup>3861</sup> Tram Kak District Record, E3/4127, 16 January 1978, ERN (En) 00362232 (report from Trapeang Thum South commune to Kraing Ta Chan noting that an enemy had suggested that “KHIEU Samphan used to boast that he served people. But what service? In reality, he travelled by car, ate good foods as he wished while I worked very hard but only had gruel to eat.”).

<sup>3862</sup> The Chamber notes that, although the first recorded identification was by CHOU Koemlan in her 2011 Interview Record, she referred therein to having discussed the visit with her sister “after 1979” who worked in another cooperative 1km away who told her that the leaders also visited that location. *See* CHOU Koemlan, Interview Record, E3/5635, 28 February 2011, p. 6, ERN (En) 00678307. This imprecise reference does not alter the Chamber’s conclusion.

<sup>3863</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 49-50.

<sup>3864</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 74-75.

<sup>3865</sup> *See above*, para. 908.

<sup>3866</sup> Closing Order, paras 1373, 1378; Case 002 Additional Severance Decision Annex, paras 3(x), 5(ii)(b)(1).

<sup>3867</sup> *See above*, para. 1109.

<sup>3868</sup> Closing Order, para. 1381.

that perpetrators' acts and omissions caused the deaths of a very large number of people "including through the creation of conditions that were calculated to bring about the destruction of part of the population".<sup>3869</sup> In particular, the Closing Order finds that deaths resulted from the deprivation of food, accommodation, medical care and hygiene, as well as from forced labour.<sup>3870</sup> It clarifies that the "direct perpetrators acted with the knowledge that such [living] conditions would result in a large number of deaths" and "[d]espite being informed of the number deaths resulting from those conditions, they still persisted in imposing them".<sup>3871</sup>

1139. The KHIEU Samphan Defence submits that the charge of extermination is limited to deaths from starvation, health issues and executions of Vietnamese. It further submits that the Closing Order does not establish a link between any lack of food and subsequent diseases.<sup>3872</sup> The KHIEU Samphan Defence also submits that the charge is restricted to deaths from hunger in two communes only, concerning which the evidence is weak and, on its own, fails to establish deaths on sufficient a scale to satisfy a necessary element of the crime of extermination.<sup>3873</sup> The NUON Chea Defence submits that the evidence does not establish large scale deaths by killings and, in relation to any deaths which resulted from the conditions, it was not proved they were imposed deliberately in order to cause deaths on any scale.<sup>3874</sup> No other Party responded to the Defence submissions.

1140. The Chamber accepts the KHIEU Samphan Defence's submission that the section of the Closing Order on the Tram Kak Cooperatives does not charge killings (in the sense of executions or other conduct involving direct intent) in general as a basis for the charge of extermination. Although the Closing Order refers to fears of killings, it does not articulate actual killings other than in relation to Kraing Ta Chan or the execution of an unquantified number of Vietnamese.<sup>3875</sup> Although the Closing Order

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<sup>3869</sup> Closing Order, para. 1382.

<sup>3870</sup> Closing Order, paras 312 (finding varied evidence on deaths resulting from starvation), 1381 (referring to "worksites" then listing Tram Kak Cooperatives).

<sup>3871</sup> Closing Order, para. 1389.

<sup>3872</sup> KHIEU Samphan Closing Brief, paras 858-863, 924-931.

<sup>3873</sup> KHIEU Samphan Closing Brief, paras 974-993.

<sup>3874</sup> NUON Chea Closing Brief, para. 1122.

<sup>3875</sup> Closing Order, paras 311 (referring to a witness who was afraid of getting killed), 312 (referring to witnesses who were afraid to complain because they "could have been punished or killed"), 320 (referring to the execution of Vietnamese).

refers to cooperative residents “[continuing] to disappear”,<sup>3876</sup> or people who were “arrested and taken away”,<sup>3877</sup> it does not find that those persons were killed. The Chamber therefore accepts the submission that the charge of extermination is restricted to deaths caused by the conditions imposed in the Tram Kak Cooperatives. It is therefore unnecessary to consider the further submissions on the scale of any further killings indicated in the evidence.

1141. The Chamber rejects the distinction drawn by the KHIEU Samphan Defence between starvation on the one hand, and disease or medical conditions, on the other. The Closing Order expressly refers to deaths from starvation in the Tram Kak Cooperatives,<sup>3878</sup> and it also refers to people dying following inadequate medical treatment.<sup>3879</sup> The Chamber is satisfied that the Closing Order charges extermination in the Tram Kak Cooperatives on the basis of the overall conditions which the Co-Investigating Judges found were imposed.

1142. The Chamber has found that there were periods of acute food shortages in Tram Kak district and that people died as a result.<sup>3880</sup> Food remained generally insufficient until the 1976-1977 harvest, and the period immediately before harvests were particularly inadequate.<sup>3881</sup> The Chamber has established that various people died from malnutrition, overwork and sickness including in later periods and that New People in particular were affected.<sup>3882</sup> Those working at worksites in Tram Kak district had particular problems obtaining food and some died as a result.<sup>3883</sup> Further, people died in the District Hospital among other locations because of inadequate medical treatment, malnutrition and overwork.<sup>3884</sup>

1143. The evidence often failed to establish to the requisite standard, however, whether such deaths occurred on a massive scale in Tram Kak district. Although there are some indications of large-scale deaths, including a suggestion that 500 people may

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<sup>3876</sup> Closing Order, para. 318.

<sup>3877</sup> Closing Order, para. 319.

<sup>3878</sup> Closing Order, para. 312.

<sup>3879</sup> Closing Order, para. 313 (describing inadequate medical treatment then continuing: “When people died they were buried without the family being informed”).

<sup>3880</sup> *See above*, paras 1011-1016.

<sup>3881</sup> *See above*, para. 1013.

<sup>3882</sup> *See above*, paras 1016, 1020, 1037.

<sup>3883</sup> *See above*, para. 1020.

<sup>3884</sup> *See above*, para. 1047.

have died in Leay Bour commune alone at one stage,<sup>3885</sup> and some 400 people died at the District Hospital, with larger numbers seemingly dying towards the end of the regime,<sup>3886</sup> the evidence was insufficiently precise in relation to any calculation to bring about the destruction of such large numbers of people. The Chamber is unable to make findings in this regard. The evidence in relation to the intent of the perpetrators was mixed, with local authorities sometimes claiming that they sought to withhold rice for the population in their particular communes.<sup>3887</sup> While the Chamber considers it likely that the overall economic policies implemented by the CPK contributed to large-scale deaths from starvation and overwork in Tram Kak district, the charge of extermination has not been established in relation to the Tram Kak Cooperatives.

1144. However, as set out above, Internal Rule 98(2) provides that the Chamber may change the legal characterisation of the facts set out in the Closing Order, provided that no new constitutive elements are introduced.<sup>3888</sup> In the present case, the Chamber does not introduce new constitutive elements to those in the Closing Order and finds that the above facts satisfy the elements of murder. In particular, the Chamber finds that the *actus reus* of murder, namely an act or omission of the perpetrator that caused the death of the victim,<sup>3889</sup> is established with respect to the deaths resulting from the working and living conditions described above. The relevant acts and omissions are constituted by the imposition on the inhabitants of the Tram Kak Cooperatives of conditions that caused their death, by the absence of appropriate measures to change or alleviate such conditions and, in particular, the extreme levels of control exerted over the population which left them with no option other than to accept their fate, including when the result was foreseeably going to be fatal.

1145. The Chamber allows for the possibility that some factors beyond the will of the authorities in Tram Kak district may have partly contributed to the lack of food and/or medical facilities at times. The Chamber finds however, that the evaluation of all the evidence clearly establishes that people were deliberately forced to work in a climate of control, threats, fear, hunger and discrimination, with the most extreme consequences

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<sup>3885</sup> See above, para. 1012.

<sup>3886</sup> See above, para. 1047.

<sup>3887</sup> See above, para. 1010.

<sup>3888</sup> Section 2: Preliminary Issues, para. 153; Internal Rule 98(2). See also, Case 002/01 Appeal Judgement, para. 562.

<sup>3889</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 627.

for those who protested. The Chamber finds that the maintenance of these conditions for an extended period of time, including after the effects became apparent on workers and also on the weakest inhabitants, including the elderly, the infants and the sick, demonstrates that the authorities in Tram Kak district willingly imposed such conditions with the knowledge that they would likely lead to deaths or in the acceptance of the possibility of this fatal consequence. This satisfies the *mens rea* of murder in the form of *dolus eventualis*. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of murder are established. Accordingly, the Chamber finds that the crime against humanity of murder is established at the Tram Kak Cooperatives.

1146. Finally, the Chamber recalls that the scope of the charges regarding the treatment of Vietnamese, as set out in the Closing Order and restricted by the Severance Decision, encompasses facts notably related to the following: genocide by killing (nationwide from April 1977 to 6 January 1979); murder as a crime against humanity (Vietnamese who resisted deportation in 1975-1976, and nationwide from April 1977 to 6 January 1979); and extermination as a crime against humanity (nationwide from April 1977 to 6 January 1979). With regard to the facts relevant to Tram Kak district, the evidence did not establish to the requisite standard that Vietnamese who “resisted deportation in 1975-1976” were killed. Further, allegations of executions of Vietnamese mainly related to events in 1976, but the available evidence failed to establish to the requisite standard any particular killings. Therefore, the Chamber will not enter any findings based on the charges of genocide, murder or extermination of Vietnamese in Tram Kak district. Other findings concerning the treatment of Vietnamese in relation to the charges of deportation, persecution on racial grounds, and other inhumane acts in the form of enforced disappearances, are addressed below.

#### 10.1.13.2. Enslavement

1147. The Closing Order charges the Accused with the crime against humanity of enslavement on the basis that personnel in the cooperatives deliberately exercised total control and all powers attaching to the right of ownership over inhabitants.<sup>3890</sup> It finds that personnel controlled victims’ physical environment, their access to food and medical care, and subjected them to constant surveillance.<sup>3891</sup> Decisions were taken by

<sup>3890</sup> Closing Order, paras 1392-1393.

<sup>3891</sup> Closing Order, para. 1393.

local CPK authorities to achieve Party goals, starting with the expropriation of all individual property and imposition of residence in cooperatives.<sup>3892</sup> The Closing Order finds various relevant indicia of enslavement, including: the separation of families; the abolition of religious practices and cultural traditions; the lack of freedom of speech and thought; total control being exercised by the CPK over food, accommodation, access to medical care and movement; constant surveillance by local militia; criticism and self-criticism meetings; enforced disappearances; severe punishment for attempted escapes; the daily use of force; cruel treatment and abuse; and various forms of threats and coercion – all in order to impose compliance.<sup>3893</sup> It further finds that there was forced labour, with work venues and schedules imposed without consent such that people were entirely stripped of their free will in that they dared not refuse for fear of being killed.<sup>3894</sup> It specifies some particular features of the Tram Kak Cooperatives as relevant in this regard, including their creation, progressive collectivisation, forced and difficult labour, a system of surveillance and control over the population, the denial of freedoms, and punishments for those who complained.<sup>3895</sup>

1148. The NUON Chea Defence submits that this charge is based on ignorance or bias against socialism, which is in fact an ideology driven by the people's interests and their standard of living.<sup>3896</sup> It contends that cooperatives were designed to improve people's livelihoods, albeit acknowledging that conditions might have varied in different locations.<sup>3897</sup> Any hardships or shortages must be viewed in context and, properly understood, there was no intention either to mistreat or enslave the population.<sup>3898</sup> The NUON Chea Defence further submits that it was the duty and right of DK citizens to build their country, including through a peasant alliance organised in cooperatives.<sup>3899</sup> It submits that work assigned to able-bodied citizens did not enslave them: rather, it was a legitimate communist system, organising the workforce to create the most value to be distributed equally.<sup>3900</sup> Production targets were a legitimate means to pool limited

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<sup>3892</sup> Closing Order, para. 1393.

<sup>3893</sup> Closing Order, paras 1393, 307 (criticism meetings), 310 (no freedom to travel, restricted visits to family, people unable to speak freely with one another).

<sup>3894</sup> Closing Order, paras 1394, 308 (working hours, production targets, re-education or disappearance of those who resisted), 311 (disappearances and fear of being killed).

<sup>3895</sup> Closing Order, paras 310-314.

<sup>3896</sup> NUON Chea Closing Brief, para. 974.

<sup>3897</sup> NUON Chea Closing Brief, para. 978.

<sup>3898</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 77-78.

<sup>3899</sup> NUON Chea Closing Brief, para. 996.

<sup>3900</sup> NUON Chea Closing Brief, paras 994-996.

resources.<sup>3901</sup> The submission made is that, in these circumstances, the work in the cooperatives cannot be characterised as forced. Setting rations and organising the labour force was to ensure the survival of the population in challenging circumstances.<sup>3902</sup> No other Party addressed the particular way in which these submissions were formulated.

1149. As a preliminary point, the Chamber notes that the merits of socialism are not at issue in this case. The only issue to be determined is whether crimes were committed, in this particular context enslavement as a crime against humanity. The pursuit of an ideology or political system, be it socialism or indeed any other, does not change whether the evidence establishes the requisite elements of the crimes charged. The NUON Chea Defence's theoretical submissions are rejected accordingly.

1150. The Chamber has found that all individual property in Tram Kak district was collectivised and the only personal belongings allowed were a plate and spoon, but even those were kept communally.<sup>3903</sup> To break property such as a spoon was considered an extremely serious offence, with offenders considered "enemies of the cooperative".<sup>3904</sup> The population generally had one set of black clothes to last the entire year.<sup>3905</sup> Regular meetings were held when people had to criticise each other, or undergo self-criticism sessions.<sup>3906</sup> Those who arrived in Tram Kak district had to produce biographies.<sup>3907</sup> Food was tightly controlled by the communes and the cooperatives.<sup>3908</sup> People were dependent on their cooperative and commune for rations, with periods of acute shortages and malnutrition resulting.<sup>3909</sup> Lists of people were maintained and these were updated regularly.<sup>3910</sup> Over time the population was categorised and people of the same category were kept together in distinct work units.<sup>3911</sup> Positions of power, however, were reserved for Base People who controlled all matters of daily life including movement, working, eating and sleeping arrangements.<sup>3912</sup> The Chamber has found that

<sup>3901</sup> NUON Chea Closing Brief, para. 1047.

<sup>3902</sup> NUON Chea Closing Brief, para. 1123.

<sup>3903</sup> *See above*, para. 1024.

<sup>3904</sup> *See above*, paras 1025, 1029.

<sup>3905</sup> *See above*, paras 1024, 1097.

<sup>3906</sup> *See above*, para. 1029.

<sup>3907</sup> *See above*, paras 964, 998, 1028-1032.

<sup>3908</sup> *See above*, paras 1010-1016.

<sup>3909</sup> *See above*, paras 1013-1016.

<sup>3910</sup> *See above*, paras 997, 1067, 1122.

<sup>3911</sup> *See above*, para. 1002.

<sup>3912</sup> *See above*, para. 1002.

the express purpose of the division of the population into different units was to exert control over the population.<sup>3913</sup>

1151. The Chamber has found that the population of Tram Kak district was put to work on extensive irrigation projects.<sup>3914</sup> The Chamber has found objective evidence that people were compelled to work against their will in a situation of extreme fear, and perceived laziness was a ground for re-education, arrest and/or even being sent to Kraing Ta Chan.<sup>3915</sup> Communes were obliged to provide workers for the district mobile forces, which consisted of some 8,000 persons.<sup>3916</sup> The Chamber has found that food could be withheld as a punishment for transgressions or failing to meet quotas.<sup>3917</sup> The division of the population into work units caused significant dislocation to families: an apparent rule that family members were supposed to see each other every 10 days was often not observed in practice.<sup>3918</sup> Children who sought to see their parents could be severely punished.<sup>3919</sup> Access to family members also revolved around days deemed significant by the CPK, such as Party anniversaries.<sup>3920</sup>

1152. The Chamber has established that access to medical treatment was controlled and decided by the local authorities, for example access to the District Hospital required permission from the relevant commune (*i.e.* the CPK).<sup>3921</sup> Patients were monitored by hospital staff and reported if they said anything considered to challenge the revolution.<sup>3922</sup> Extensive monitoring of people took place in the cooperatives: people reported on each other and militia listened into conversations in houses to see if anything said was contrary to the revolution.<sup>3923</sup> Wholly innocuous conduct and/or speech could be perceived as an attack upon the revolution and/or the collective system, which could result in arrest and death.<sup>3924</sup> Mere perceived opposition to the CPK was a sufficient reason for arrest and people lived in extreme fear.<sup>3925</sup> The Chamber has found

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<sup>3913</sup> See above, para. 1005.

<sup>3914</sup> See above, paras 975, 977.

<sup>3915</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2717.

<sup>3916</sup> See above, para. 1006.

<sup>3917</sup> See above, para. 1023.

<sup>3918</sup> See above, paras 1033-1039.

<sup>3919</sup> See above, para. 1035.

<sup>3920</sup> See above, para. 1037.

<sup>3921</sup> See above, paras 1033, 1050.

<sup>3922</sup> See above, para. 1048.

<sup>3923</sup> See above, para. 1055.

<sup>3924</sup> See above, para. 1060.

<sup>3925</sup> See above, paras 1064, 1068, 1069, 1071.



that large numbers of people disappeared in Tram Kak district and this contributed to the continuous atmosphere of fear and uncertainty.<sup>3926</sup> The Chamber has further found that religious practices and cultural traditions were forcibly abolished in Tram Kak district.<sup>3927</sup> The Chamber is satisfied that an extreme level of control was exercised over the population of Tram Kak district.

1153. While the degree of control exerted over Base People, in particular Full-Rights People, was less than that exerted over Depositees or New People,<sup>3928</sup> the Chamber is satisfied that Base People were also forced to work, including young children such as MEAS Sokha.<sup>3929</sup> They too were susceptible to arrest and punishment for deeds or thoughts considered contrary to the CPK.<sup>3930</sup>

1154. The Chamber is satisfied that, in the circumstances of this case, the cumulative effect of all these factors amounted to the exercise of all powers attaching to the right of ownership over individuals, reducing them to commodities in pursuit of the CPK's goals. The Chamber recalls that there is no enslavement where the exercise of control has an objective other than enabling the exercise of powers attaching to ownership.<sup>3931</sup> Notwithstanding this, the Chamber is satisfied that numerous indicia of enslavement are established on the facts of this case, including: control over the population's physical environment and freedom of movement; psychological control through criticism and self-criticism sessions, monitoring, reporting and the dislocation of existing family structures; threats of being sent for re-education; subservience to the cooperatives including forced labour; threats, arrests and disappearances. Rations and access to food was a further means by which people were controlled. The Chamber finds that the prevailing regime of mandatory work imposed upon people in the cooperatives entailed their physical and economic exploitation to their physical and psychological detriment. All of these indicia amounted to a highly regimented mixture of indoctrination, threats, restricted movement, forced labour, fear and violence.

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<sup>3926</sup> See above, para. 1071.

<sup>3927</sup> See above, paras 1084-1109, 1183.

<sup>3928</sup> See above, paras 983, 998-1004, 1023.

<sup>3929</sup> See above, paras 822, 1014, 1019.

<sup>3930</sup> See above, para. 1076.

<sup>3931</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

1155. The Chamber rejects any notion that these features were justified by the context, or the situation of purported calamity or a national emergency. The Chamber recalls that if a person is required to work in cases of emergency or calamity, the nature and conditions of the work need to be balanced against the nature of the threat to the wellbeing of the community and the circumstances of the emergency. Furthermore, if the crisis or emergency situation is the result of the perpetrator's own unlawful activity then such measures would not be justifiable. However, the nature of the ownership and control over the population bore no relation to the nature of any threat to the wellbeing of the community or the circumstances of any emergency, including the armed conflict and ongoing threat from Vietnam or any other source.<sup>3932</sup> The Chamber is further satisfied that the CPK authorities in Tram Kak district intended to exercise total control over the people and this equated to the powers attaching to the right of ownership over all those persons. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of enslavement are established. Accordingly, the Chamber finds that the crime against humanity of enslavement is established at the Tram Kak Cooperatives.

#### 10.1.13.3. Deportation

1156. The Closing Order charges the Accused with the crime against humanity of deportation with respect to the removal of a large number of Vietnamese from Tram Kak district.<sup>3933</sup> The KHIEU Samphan Defence submits that there are defects in the Closing Order which cannot be cured, repeating submissions that the Co-Investigating Judges had no jurisdiction over deportation from Tram Kak Cooperatives.<sup>3934</sup> The Chamber has rejected these challenges.<sup>3935</sup> The NUON Chea Defence submits that any return of Vietnamese to Vietnam was voluntary and/or that certain elements of the crime are not established, namely their lawful presence on Cambodian territory and the absence of a legitimate justification for their removal.<sup>3936</sup> No other Party addressed these submissions directly.

<sup>3932</sup> Section 4: General Overview, paras 281-293.

<sup>3933</sup> Closing Order, paras 320. The Closing Order further finds there is no evidence to suggest that persons thus displaced were not entitled or authorised to reside in the places from which they were displaced, and there is no indication that "cleansing" Cambodia of Vietnamese was conducted for any legitimate reason such as ensuring the security of the population or military necessity. *See* Closing Order, paras 1397-1399.

<sup>3934</sup> T. 20 June 2017 (Closing Statements), E1/525.1, pp. 40-45.

<sup>3935</sup> Section 2.5.6.3.4: Charges of Deportation at the Tram Kak Cooperatives.

<sup>3936</sup> T. 19 June 2017 (Closing Statements), E1/524.1, p. 34.

1157. The Chamber has found that large numbers of Vietnamese were gathered up in Tram Kak district from late 1975 into early 1976.<sup>3937</sup> In particular, a “huge number” were gathered up from various communes over a four day period in early 1976.<sup>3938</sup> The evidence indicated that people from some communes volunteered to leave and were not, for example, handcuffed during the process.<sup>3939</sup> Other evidence revealed, however, that people from Nhaeng Nhang commune had their hands tied behind their backs.<sup>3940</sup> The evidence revealed another possible explanation for these different events in that certain communes, including Nhaeng Nhang commune, were instructed to organise killings themselves, whereas others involved more direct assistance from the district level.<sup>3941</sup> The Chamber has accepted the generalised evidence that Vietnamese persons vanished and disappeared from Tram Kak district.<sup>3942</sup> The Chamber is satisfied that the overall environment surrounding these events was coercive. The Vietnamese people involved lacked any genuine choice. The Chamber has found that instructions were being issued by the district level to kill and purge Vietnamese persons during the period when they were expelled.<sup>3943</sup> The involvement of Phy and the district militia when SANN Lorn delivered Vietnamese to the District Office confirms this conclusion.<sup>3944</sup> The coordinated and coercive nature of the exercise to gather up such a large number of Vietnamese persons also satisfies the Chamber that they had been lawfully present in Tram Kak district at the time.

1158. The evidence established clear instructions to kill Vietnamese from the district level and the gathering of large numbers of Vietnamese over the course of a few days in 1975 or early 1976. However, the available evidence failed to demonstrate specific instances of particular executions of Vietnamese during this period. Nor did the evidence allow the Chamber to track with specificity the fate of particular Vietnamese persons gathered up at this time. Notwithstanding these evidential gaps, the Chamber is satisfied that the only reasonable inference to be drawn from the overall evidence is that – at a bare minimum – significant numbers of them were expelled to Vietnam, as confirmed by the Chamber’s assessment of the April 1976 issue of *Revolutionary Flag*

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<sup>3937</sup> See above, para. 1113.

<sup>3938</sup> See above, para. 1113.

<sup>3939</sup> See above, para. 1113.

<sup>3940</sup> See above, para. 1116.

<sup>3941</sup> See above, para. 1111.

<sup>3942</sup> See above, paras 1111, 1121.

<sup>3943</sup> See above, para. 1125.

<sup>3944</sup> See above, para. 1115.

and Chamber's findings as to the exchange whereby Khmer Krom arrived in Tram Kak district in return for Vietnamese people who left.<sup>3945</sup> This satisfies the Chamber that some Vietnamese persons gathered up in Tram Kak district indeed crossed the international border and were sent to Vietnam and that there existed an overarching intention to displace these persons across a national border.

1159. Even though this process appears to have taken place as part of an organised and intentional exchange – and was therefore part of an agreement – between DK and Vietnamese authorities, this does not establish that the displacement occurred on a ground permitted under international law – either for the security of the civilian population or for imperative military reasons.<sup>3946</sup> Although the Chamber has found that a state of armed conflict existed between Cambodia and Vietnam from at least May 1975, this does not provide a lawful basis upon which to coercively transfer civilians across the border. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of deportation are established in relation to the large number of Vietnamese expelled from Tram Kak district and sent to Vietnam without their consent in 1975 and 1976. Accordingly, the Chamber finds that the crime against humanity of deportation is established at the Tram Kak Cooperatives.

#### 10.1.13.4. Imprisonment

1160. The Closing Order charges the Accused with the crime against humanity of imprisonment on the basis of commune militiamen arresting, holding and interrogating people in “a detention centre which was operated by the commune militia”.<sup>3947</sup> It finds that people were arrested after complaining about work or living conditions,<sup>3948</sup> or after being identified for re-education: in the latter case, persons were subsequently sent to Kraing Ta Chan.<sup>3949</sup> The Chamber has held that detention sites such as “Meng's place” at Angk Roka were not charged in the Closing Order, and accordingly does not consider such locations in its evaluation of the charge of imprisonment.<sup>3950</sup>

<sup>3945</sup> See above, paras 1118-1119, 1125.

<sup>3946</sup> Section 9.1.4: Applicable Law: Crimes Against Humanity: Deportation, paras 684-685.

<sup>3947</sup> Closing Order, paras 317, 1402, 1405.

<sup>3948</sup> Closing Order, para. 312.

<sup>3949</sup> Closing Order, para. 315.

<sup>3950</sup> See above, para. 810.

1161. The KHIEU Samphan Defence submits that the Closing Order purports to charge imprisonment based upon illegal detention at a detention centre in Samrong commune, but that the evidence relied upon relates to another location, outside Tram Kak district.<sup>3951</sup> No other Party made relevant submissions in this regard. The Closing Order refers to “a detention facility run by the subdistrict militia” based on interviews with two persons.<sup>3952</sup> The first interview, with PIL Kheang refers to Paen Meas cooperative in Samraong commune, Tram Kak district. He explained that, although he was sent to Treang district, he returned to the Paen Meas cooperative when the conflict with Vietnam escalated. He described a meeting when he saw males and females who had committed misconduct had their hair shaved in “x” shapes, after which they were paraded then placed in the detention facility.<sup>3953</sup> The second interview, with BUN Thien, is more confusing: it refers to various events in Sector 13 and makes an apparently generalised statement that: “In communes there were no security office; there was only a detention place for militiamen”.<sup>3954</sup> The Chamber accepts that BUN Thien referred to districts other than Tram Kak.

1162. Notwithstanding this apparent error in the Closing Order, the Chamber is satisfied that the Closing Order specifically charges imprisonment with respect to the detention of persons by commune militia. The Closing Order must also be read holistically, and the Chamber notes a related charge of torture committed by commune militia during such detention.<sup>3955</sup>

1163. The available evidence does not establish to the requisite standard the locations and circumstances of any detention sites in the various communes of Tram Kak district. This is understandable given the Closing Order’s focus on Kraing Ta Chan – *i.e.* the district re-education office. In the circumstances, however, the Chamber is not satisfied that the *actus reus* of imprisonment is established in relation to events elsewhere in Tram Kak district.

<sup>3951</sup> KHIEU Samphan Closing Brief, paras 871-875; 932-938 (with reference to Closing Order, paras 317, 1405).

<sup>3952</sup> Closing Order, para. 317, fn. 1309.

<sup>3953</sup> PIL Kheang Interview Record, E3/5135, 27 November 2007, p. 4, ERN (En) 00233134.

<sup>3954</sup> BUN Thien Interview Record, 17 August 2009, E3/5498, p. 7, ERN (En) 00384401.

<sup>3955</sup> See above, para. 1164.

10.1.13.5. *Torture*

1164. The Closing Order charges the Accused with the crime against humanity of torture on the basis of mistreatment during interrogations, aimed at obtaining information and extracting confessions from the victims.<sup>3956</sup> In relation to Tram Kak district, it describes arrests, detention and interrogation performed by commune militia using undefined “hot” and “cold” methods.<sup>3957</sup> More specifically, it describes commune militia arresting, detaining and interrogating people and youths wrapping a person’s face with a plastic sheet.<sup>3958</sup>

1165. The Chamber has held that detention sites such as “Meng’s place” at Angk Roka were not identified in the Closing Order. Therefore the Chamber does not consider such locations in its evaluation of this charge.

1166. The Chamber’s findings on the conduct of interrogations in the communes, outside the context of the provision of biographies and self-criticism meetings, are primarily based on the documentary evidence.<sup>3959</sup> These documents variously refer to the use of “hot measures”, covering a detainees face with a plastic sheet, and contemplate beatings as a possible method of interrogation. The only reasonable interpretation of these documents is that physical violence was indeed used in the communes to extract confessions from arrested persons. The Chamber also accepted THANN Thim’s account that his arrest had followed his young daughter being beaten which caused her to implicate him.<sup>3960</sup>

1167. The Chamber is satisfied that commune militia acted on behalf of the CPK and that the documentary evidence in particular demonstrates that the purpose of acts during such interrogations was to obtain information or a confession. The Chamber concludes, however, that the available evidence is insufficiently precise to allow the Chamber to be satisfied that commune militia inflicted acts which caused severe physical and/or mental pain. There is insufficient detail on the conduct of particular interrogations or any general practice at the commune level. In all the circumstances, the evidence is insufficient to establish specific incidents when torture as a crime against humanity was

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<sup>3956</sup> Closing Order, paras 1408-1410.

<sup>3957</sup> Closing Order, para. 317.

<sup>3958</sup> Closing Order, para. 317.

<sup>3959</sup> See above, para. 1082.

<sup>3960</sup> See above, para. 1037.

committed by commune militia in the Tram Kak Cooperatives. The Chamber is therefore not satisfied that the *actus reus* and the *mens rea* of torture are established.

10.1.13.6. Persecution on political grounds

1168. The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to three categories of enemy expressly mentioned in the Closing Order under the heading of “Legal Findings” (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>3961</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>3962</sup>

1169. The KHIEU Samphan Defence further submits that the Closing Order does not charge any discrimination against New People because it describes the same treatment applied to all inhabitants.<sup>3963</sup> It submits that the only discrimination charged is a denial of certain political rights, the underlying evidence for which is said to be too weak.<sup>3964</sup> In relation to former Khmer Republic officials and soldiers, the KHIEU Samphan Defence submits that a reference to “surveillance” in the Closing Order is insufficient to amount to persecution, and any other information is too unclear.<sup>3965</sup> No other Party addressed this point directly. The Chamber addresses these submissions in its analysis below.

1170. The Closing Order charges the Accused with persecution on political grounds of “real or perceived enemies of the CPK”, which it defines as those whose real or perceived political beliefs were contrary to the CPK.<sup>3966</sup> The particular acts amounting to persecution must be expressly charged.<sup>3967</sup> According to the Closing Order, such people “were subjected to harsher treatment and living conditions” than the remainder of the population and they were “arrested *en masse* for re-education and elimination”. Contrary to the submission of the KHIEU Samphan Defence, the Closing Order specifically finds that New People were subjected to harsher treatment than Old People

<sup>3961</sup> KHIEU Samphan Closing Brief, paras 884-885, 1255.

<sup>3962</sup> Section 2: Preliminary Issues, para. 170.

<sup>3963</sup> KHIEU Samphan Closing Brief, paras 898-905.

<sup>3964</sup> KHIEU Samphan Closing Brief, paras 907-910; 942-948.

<sup>3965</sup> KHIEU Samphan Closing Brief, paras 2263-2269, 2283-2287.

<sup>3966</sup> Closing Order, paras 1417-1418.

<sup>3967</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 716.

with a view to re-educating them and/or identifying enemies among them.<sup>3968</sup> It further states that “‘enemy’ groups, such as the New People and personnel of the Khmer Republic, were treated differently”.<sup>3969</sup>

1171. The Closing Order finds that the population in the Tram Kak district was divided into three categories, Full-Rights, Candidates and Depositees, with people separated further into various work units.<sup>3970</sup> It finds that there were fewer rights for the Depositees, who were also called New People or 17 April People, and whose units were controlled by Base People.<sup>3971</sup> It states that New People lacked political rights, could not be unit chiefs, and were controlled by Full-Rights or Candidate Persons.<sup>3972</sup> It also finds that New People suffered from particular health problems because they were not used to living in rural areas.<sup>3973</sup> It outlines a process implemented against those persons identified as enemies whereby they would be re-educated by the village and/or commune then, if they continued to disobey, the commune would seek the opinion of the district committee.<sup>3974</sup> The Chamber therefore rejects the KHIEU Samphan Defence’s submissions that the discrimination described in the Closing Order is limited to the mere exercise of certain political rights.

1172. In relation to former Khmer Republic armed forces and police officers, the KHIEU Samphan Defence correctly identifies the Closing Order’s reference to them being “closely monitored”.<sup>3975</sup> However, the Closing Order also refers to a “purge of enemies within and outside the ranks, who had tendency for the LON Nol people”.<sup>3976</sup> It describes how commune militia kept a close eye on arrivals from Phnom Penh and if they said anything against the CPK, they were arrested and taken away.<sup>3977</sup> A later section of the Closing Order on Kraing Ta Chan includes findings relevant to the Tram Kak Cooperatives. It describes the process of arrest before prisoners reached Kraing Ta Chan. It describes of a purge of evacuees and former LON Nol soldiers and officials, with a finding that while many were sent to Kraing Ta Chan, others simply disappeared

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<sup>3968</sup> Closing Order, para. 1418.

<sup>3969</sup> Closing Order, para. 1424.

<sup>3970</sup> Closing Order, paras 305-306.

<sup>3971</sup> Closing Order, paras 305-306.

<sup>3972</sup> Closing Order, paras 305-306.

<sup>3973</sup> Closing Order, para. 313.

<sup>3974</sup> Closing Order, para. 315.

<sup>3975</sup> Closing Order, para. 319. *See above*, para. 812. *See also*, NUON Chea Closing Brief, paras 928-931.

<sup>3976</sup> Closing Order, para. 309.

<sup>3977</sup> Closing Order, para. 319.



from the cooperatives.<sup>3978</sup> The Chamber therefore rejects the KHIEU Samphan Defence's submission that the Closing Order only alleges "surveillance" in relation to former Khmer Republic soldiers and officials.

1173. The NUON Chea Defence makes various submissions on the strength or meaning of the evidence relevant to political persecution. It submits that any policy towards former LON Nol soldiers was legitimate and the CPK's focus was on activities which threatened security.<sup>3979</sup> It further submits that New People were members of cooperatives which meant being treated equally.<sup>3980</sup> It contends that there is no evidence of any policy to deliberately subject New People to harsher treatment.<sup>3981</sup> The NUON Chea Defence submits that the CPK's real aim was to integrate everybody.<sup>3982</sup> It submits that any "temporary formal categories" were introduced only for "administrative purposes" and/or to "address more accurately everyone's needs".<sup>3983</sup> It contends that, once the cooperatives had reached the objective of integrating all people, the categorisations became irrelevant and were abandoned accordingly.<sup>3984</sup> It further submits that, to the extent that categories were even implemented in Tram Kak district, it is not established that any discrimination followed in fact.<sup>3985</sup> No other Party addressed these submissions directly, but the Co-Prosecutors contend that the evidence establishes persecution on political grounds.<sup>3986</sup>

1174. The discernibility of the targeted group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. The Chamber finds elsewhere in this Judgement that the targeted group of "real or perceived enemies of the CPK" was sufficiently discernible to determine whether consequences occurred for this group.<sup>3987</sup> In relation to New People, the documentary evidence is clear that the CPK continually referred to the New People as a distinct category of persons.<sup>3988</sup> The Chamber is therefore satisfied that this group was

<sup>3978</sup> Closing Order, paras 490-496 (structure and personnel relevant to Kraing Ta Chan and Tram Kak district), 498 (purge of evacuees and former LON Nol soldiers and officials).

<sup>3979</sup> T. 19 June 2017 (Closing Statements), E1/524.1, p. 55.

<sup>3980</sup> NUON Chea Closing Brief, para. 997.

<sup>3981</sup> NUON Chea Closing Brief, para. 1009.

<sup>3982</sup> NUON Chea Closing Brief, para. 1048.

<sup>3983</sup> NUON Chea Closing Brief, para. 1049.

<sup>3984</sup> NUON Chea Closing Brief, para. 1049.

<sup>3985</sup> NUON Chea Closing Brief, para. 1050.

<sup>3986</sup> Co-Prosecutors' Closing Brief, paras 773-779.

<sup>3987</sup> Section 16.3: Real or Perceived Enemies.

<sup>3988</sup> *See above*, paras 1064, 1080-1081.

sufficiently discernible. The Chamber similarly finds that former Khmer Republic soldiers and officials were identified by the Party leadership, and sufficiently discernible as a group of persons.

1175. The Chamber has found that, in the period immediately after 17 April 1975, members of the former Khmer Republic military and police were screened at Champa Pagoda and, having identified themselves, many were taken away and disappeared never to be seen again.<sup>3989</sup> This included OEM Saroeurn's uncle IM Chak who was taken away and never seen again.<sup>3990</sup> The Chamber has found that the same process took place at other locations in Tram Kak district and victims included RIEL Son's brother-in-law, YA San, and SAO Han's elder brother, LUON Ham.<sup>3991</sup> The Chamber has established that different instructions were disseminated at later points in time. Whereas there was clear plan to purge and kill former Khmer Republic soldiers in Tram Kak district in the aftermath of 17 April 1975,<sup>3992</sup> on at least one occasion thereafter instructions were disseminated not to harm former military officers between the ranks of second lieutenant and colonel.<sup>3993</sup> The Chamber has found that in later periods, however, in particular from April and May 1977, former Khmer Republic soldiers and officials were again targeted for arrest and killed.<sup>3994</sup> A large number of former military families were smashed in Popel commune in May 1977, and the Chamber has established that an organised killing operation was underway in Tram Kak district from April 1977 with large numbers of persons taken to Kraing Ta Chan and "successive instructions" issued to sweep clean former soldiers in particular.<sup>3995</sup> The Chamber is satisfied these persons were targeted on the basis of their former role(s).

1176. In relation to New People more broadly, the Chamber has found that they were classified as Depositees or "parasitic" people in the Tram Kak Cooperatives.<sup>3996</sup> New People were treated as subordinate and had to "bow" to the cooperatives under the control of Base People.<sup>3997</sup> At times and in some locations, there existed entirely

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<sup>3989</sup> See above, paras 958-961.

<sup>3990</sup> See above, para. 959.

<sup>3991</sup> See above, paras 965, 1077.

<sup>3992</sup> See above, paras 963-965.

<sup>3993</sup> See above, paras 966-967.

<sup>3994</sup> See above, paras 1062-1063, 1080-1081. See also, Section 12.3: Kraing Ta Chan Security Centre, para. 2813.

<sup>3995</sup> See above, para. 1080.

<sup>3996</sup> See above, para. 998.

<sup>3997</sup> See above, para. 981.

separate cooperatives for New People.<sup>3998</sup> At other times and in other locations, the situation was more mixed, but people were still organised into separate groups to work with people of the same categorisation.<sup>3999</sup> Although no such distinction appears to have existed consistently across all mobile units, the evidence did not address the basis on which persons were selected to join these units.<sup>4000</sup> The Chamber has found there was an announcement in mid-1978 that Base and New People were to be treated equally from then onwards.<sup>4001</sup> Whether or not this was entirely implemented is unclear, but the Chamber is satisfied that this announcement confirms there to have been systematic, and widely known, discrimination against New People before mid-1978. The Chamber has further found that the distinction between New and Base People persisted after this announcement.<sup>4002</sup>

1177. The Chamber has found that convincing evidence established that New People received less food than Base People, even after communal dining was imposed and people ate together.<sup>4003</sup> The largest rations were expressly for poor and lower-middle class peasants, whereas persons considered to be “reactionary” received the least.<sup>4004</sup> The Chamber has found that New People in particular suffered and died from malnutrition, whereas Base People were less likely to be malnourished.<sup>4005</sup> The Chamber has further found that working conditions varied depending on a person’s categorisation, with Full-Rights Persons generally enjoying better conditions.<sup>4006</sup> The Chamber has accepted evidence that New People were exposed to miserable treatment and treated as “worthless slaves”, with particular cadres exclusively selected from Base People cursing them or hitting them, including the children of New People.<sup>4007</sup> The Chamber is satisfied that the differentiation between categories of people was deeply ingrained, widely known and implemented throughout Tram Kak district.<sup>4008</sup> Indeed, one of the features in the award of the Red Flag model district award to Tram Kak district in mid-1977 was that the majority of the population were middle or lower class

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<sup>3998</sup> See above, paras 999-1000.

<sup>3999</sup> See above, para. 1001.

<sup>4000</sup> See above, paras 999, 1006-1007.

<sup>4001</sup> See above, para. 1007.

<sup>4002</sup> Section 12.3: Kraing Ta Chan Security Centre, paras 2792, 2794.

<sup>4003</sup> See above, para. 1016.

<sup>4004</sup> See above, para. 1009.

<sup>4005</sup> See above, para. 1016.

<sup>4006</sup> See above, paras 1017-1020.

<sup>4007</sup> See above, para. 1023.

<sup>4008</sup> See above, paras 1004, 1007.

and considered to be loyal to the revolution.<sup>4009</sup> The Chamber is satisfied that the discrimination against New People went much further than matters of political rights or their ability to participate in decisions in the cooperatives or work units. The Chamber has found that New People, Khmer Republic soldiers and officials, and other perceived threats to the CPK were targeted for arrest for innocuous thoughts, speech or conduct considered to be contrary to the revolution.<sup>4010</sup>

1178. The Chamber finds that all these acts were deliberately committed with the intent to discriminate on political grounds, namely against anybody considered to be opposed to the CPK. Having found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that all the foregoing acts were discriminatory in fact. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>4011</sup> personal dignity,<sup>4012</sup> life, liberty and security,<sup>4013</sup> freedom from arbitrary or unlawful arrest,<sup>4014</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>4015</sup>

1179. The Chamber has found that some of the conduct established above amounts to the independent crimes against humanity of enslavement and other inhumane acts. These crimes, considered in the surrounding context and together with the extensive evidence of arrests and killings of New People and former Khmer Republic soldiers and officials in Tram Kak district established above, cumulatively rise to the requisite level of severity such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* and the *mens rea* of persecution on political grounds are established. Accordingly, the Chamber finds that the crime against humanity of persecution on political grounds is established at the Tram Kak Cooperatives.

<sup>4009</sup> See above, para. 1127.

<sup>4010</sup> See above, paras 1055, 1080.

<sup>4011</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>4012</sup> As evidence of the state of customary international law, see UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>4013</sup> As evidence of the state of customary international law, see UDHR, Art. 3; ICCPR, Arts 6, 9(1); ECHR, Arts 2, 5; ACHR, Arts 4, 7.

<sup>4014</sup> As evidence of the state of customary international law, see UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>4015</sup> As evidence of the state of customary international law, see UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

10.1.13.7. Persecution on religious grounds

1180. The Closing Order charges the Accused with the crime against humanity of persecution on religious grounds against Buddhists on the basis that Buddhism was prohibited, pagodas and sanctuaries were destroyed or converted for other purposes, and images of Buddha were also destroyed. It further charges that Buddhist monks and nuns were defrocked and some monks were threatened with death or killed if they did not comply.<sup>4016</sup> In relation to Tram Kak district specifically, the Closing Order charges that religion and associated practices were banned district-wide, and particular reference is made to the forcible defrocking of monks at Angk Roka Pagoda.<sup>4017</sup> The Closing Order also refers to the destruction of statues and the conversion of monasteries variously into meeting halls, detentions centres, dining halls, pig farms and warehouses, with people no longer allowed to perform religious practices such as burning incense, cremating bodies or holding funeral ceremonies.<sup>4018</sup>

1181. The KHIEU Samphan Defence submits that any reference to the murder of Buddhists is outside the scope of Case 002/02.<sup>4019</sup> No other Party addressed this submission directly, but the Co-Prosecutors referred to evidence that some Buddhist monks were executed, apparently in locations other than Tram Kak district.<sup>4020</sup> The Chamber accepts that the Closing Order does not describe the killing of any monks in Tram Kak district specifically and therefore agrees with the KHIEU Samphan Defence's submission. In any event, the available evidence did not establish that any monks were killed in Tram Kak district.<sup>4021</sup>

1182. The Chamber has already noted various submissions made by the NUON Chea Defence with respect to religious persecution.<sup>4022</sup> The Chamber has found that freedom of thought, conscience and religion is recognised as a fundamental right, and explained that it would assess any restrictions on freedom or manifestation of religion on the facts

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<sup>4016</sup> Closing Order, para. 1421.

<sup>4017</sup> Closing Order, para. 321.

<sup>4018</sup> Closing Order, para. 321.

<sup>4019</sup> KHIEU Samphan Closing Brief, paras 1487-1521; T. 20 June 2017 (Closing Statements), E1/525.1, p. 115.

<sup>4020</sup> Co-Prosecutors' Closing Brief, para. 379.

<sup>4021</sup> See above, para. 1109.

<sup>4022</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 719.

of the case.<sup>4023</sup> The NUON Chea Defence further submits that there was no prohibition of religion, the CPK did not consider Buddhism to be reactionary, pagodas may have been destroyed during the civil war or by US bombings, and/or the use of pagodas for non-religious purposes was justified in the circumstances.<sup>4024</sup> It submits that the restriction of religious rituals did not violate any fundamental right and accordingly did not amount to the crime of persecution.<sup>4025</sup> The NUON Chea Defence further submits that asking monks to disrobe and work, using pagodas for non-religious purposes and/or the absence of religious rituals, did not constitute discrimination on the basis of religion amounting to persecution.<sup>4026</sup> In essence, the NUON Chea Defence submits that Buddhists were “treated like everyone else in DK” therefore there was nothing persecutory about their treatment.<sup>4027</sup> No other Party addressed these submissions directly.

1183. The Chamber has found that over 100 monks were deliberately gathered at Angk Roka Pagoda and forced to defrock.<sup>4028</sup> The Chamber is satisfied that monks were deliberately gathered up from surrounding areas and sent to Angk Roka Pagoda, including monks such as EM Phoeung who arrived in Tram Kak district from Phnom Penh.<sup>4029</sup> This in turn satisfies the Chamber that those involved in this process identified monks on the basis of their religious identity and targeted them because they were monks. There is no other explanation for the events at Angk Roka Pagoda, particularly noting that the Chamber has found that this followed direct instructions from then District Secretary *Yeay Khom*.<sup>4030</sup> The Chamber has also found that monks were forcibly disrobed at other pagodas and this reflected the general pattern across Tram Kak district.<sup>4031</sup> While the evidence does not allow the Chamber to make a precise finding as to the total number of monks defrocked in Tram Kak district, the Chamber’s findings demonstrate that hundreds of monks were disrobed across various communes.<sup>4032</sup> The discriminatory intention behind the process is confirmed by

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<sup>4023</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 720.

<sup>4024</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 37-45.

<sup>4025</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 45-46.

<sup>4026</sup> NUON Chea Closing Brief, para. 922.

<sup>4027</sup> NUON Chea Closing Brief, paras 900, 905, 913.

<sup>4028</sup> *See above*, paras 1094-1096.

<sup>4029</sup> *See above*, para. 1094.

<sup>4030</sup> *See above*, para. 1087.

<sup>4031</sup> *See above*, para. 1105.

<sup>4032</sup> *See above*, para. 1105.

references to monks as “worms” or “leeches” and announcements dismissing Buddhism as a mere superstition and the Buddha as “only concrete”.<sup>4033</sup> The Chamber is also satisfied that this group was thus sufficiently discernible.

1184. The Chamber has found that Buddhist symbols were destroyed, and pagodas were no longer allowed to be used for religious purposes, and instead used for a range of other purposes across Tram Kak district.<sup>4034</sup> The Chamber resultantly found that Buddhism was banned.<sup>4035</sup> The Chamber is satisfied that all of these events infringed the fundamental freedom to practise or manifest religion. Contrary to NUON Chea’s submissions, the evidence reveals the complete abolition of Buddhist practices, not a mere restriction on certain manifestations of Buddhism. This was an organised sustained attack against religion because it was considered to be incompatible with the implementation of the revolution.<sup>4036</sup>

1185. The Chamber rejects as misconceived the notion that forcing monks to leave the monkhood did not discriminate against them. The NUON Chea Defence fails to address the importance of religious beliefs and practices to those monks, and their place in Cambodian society at the time. The prior significance of monks was recognised by KHIEU Samphan and POL Pot, among others.<sup>4037</sup> The Chamber rejects the NUON Chea Defence’s submission that monks were “treated like everyone else”. The findings set out above clearly demonstrate that the conduct established in this case intentionally discriminated against Buddhist monks, because they were monks. Further, as the victims of this conduct were members of the targeted religious group (Buddhist monks), the conduct was discriminatory in fact. The NUON Chea Defence fails to address the differing impact which absolute physical equality inevitably has depending on people’s differing backgrounds. To force Buddhist monks to renounce their faith discriminates against Buddhist monks in fact. The result is not equal in fact because the submission ignores the overall gravity of the treatment, in particular what the monks were forced to give up. NUON Chea’s submissions to the contrary are rejected and the Chamber is

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<sup>4033</sup> See above, para. 1104.

<sup>4034</sup> See above, para. 1105.

<sup>4035</sup> See above, paras 1107-1108.

<sup>4036</sup> See above, para. 1108.

<sup>4037</sup> See above, paras 1084-1085, 1092.

satisfied that the forcible defrocking of hundreds of monks in Tram Kak district amounted to persecution on religious grounds as a crime against humanity.

1186. The Chamber further finds that the elements of religious persecution are established in relation to the destruction of Buddhist symbols, the disappearance of former monks, the requisition of places of worship, and the banning of outward expression of religious practice or belief. This discriminated against all those who believed in Buddhism and infringed upon the fundamental right to freedom of religion. The NUON Chea Defence's submissions bear no relation to the evidence, which established a district-wide ban on the practice of Buddhism and its manifestation, with no pagodas left to be used for religious purposes.<sup>4038</sup> The Chamber found that the abolition of religious practices, symbolism, and the inability of residents to make offerings to monks, deprived people of their "psychological base".<sup>4039</sup> The evidence did not establish any instances of monks or former monks being forcibly married in Tram Kak district. The Chamber has found elsewhere in this Judgement, however, in general wedding ceremonies were not conducted according to Cambodian tradition.<sup>4040</sup> The Chamber also gives weight to this general finding in assessing the charge of persecution on religious grounds. The Chamber is satisfied that the physical and mental impact of these events infringed fundamental rights to a degree of gravity similar to that of other crimes against humanity. It discriminated in fact because it targeted those with Buddhist beliefs and backgrounds, based entirely on what these places, symbols and practices meant to those persons. Irrespective of whether equality of outcome was the ultimate goal, this discriminated in fact and amounts to the crime against humanity of persecution on religious grounds.

1187. Acts committed against Buddhist monks denied and infringed upon the fundamental right of freedom of thought, conscience and religion.<sup>4041</sup> Further, there was no convincing evidence presented that these restrictions were necessary to protect the public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>4042</sup> The Chamber further finds that the discriminatory acts committed against Buddhist

<sup>4038</sup> See above, paras 1105, 1108.

<sup>4039</sup> See above, para. 1107.

<sup>4040</sup> Section 14: Regulation of Marriage, para. 3638.

<sup>4041</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 18; ICCPR, Art. 18; ECHR, Art. 9.

<sup>4042</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, paras 719-720.



monks in Tram Kak district cumulatively rise to the requisite level of severity such as to constitute persecution. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of persecution on religious grounds are established. Accordingly, the Chamber finds that the crime against humanity of persecution on religious grounds is established at the Tram Kak Cooperatives.

10.1.13.8. Persecution on racial grounds

1188. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds on the basis that Vietnamese people were “deliberately and systematically identified and targeted due to their perceived race” as they were perceived by the CPK to be “racially distinct from Cambodian people”.<sup>4043</sup> It refers to the expulsion of Vietnamese people and, in some cases, that they were arrested, detained or killed.<sup>4044</sup> It describes examples of disappearances of Vietnamese from a village (Prey Ta Lei village, Trapeang Thom North commune) and an announcement in Nhaeng Nhang commune that persons of Vietnamese ethnicity would be sent back to Vietnam, with two phases whereby some were “sent home” at first, but others were executed later on.<sup>4045</sup>

1189. The Chamber has found that significant numbers of Vietnamese were deported to Vietnam in the period around 1975 to 1976. The Chamber is satisfied that the persons were targeted for deportation on the discriminatory basis that they were Vietnamese and that the Vietnamese living in Cambodia were sufficiently discernible as a racial group to determine whether consequences occurred for this group. The Chamber is further satisfied that those deported were in fact Vietnamese and that the acts were therefore discriminatory in fact.

1190. The deportations committed against this group variously denied and infringed upon fundamental rights and freedoms pertaining to movement,<sup>4046</sup> personal dignity,<sup>4047</sup>

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<sup>4043</sup> Closing Order, para. 1422.

<sup>4044</sup> Closing Order, para. 1422.

<sup>4045</sup> Closing Order, para. 320.

<sup>4046</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>4047</sup> As evidence of the state of customary international law, *see* UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. *See also*, *Kordić and Čerkez Appeal Judgement*, para. 106.

liberty and security,<sup>4048</sup> freedom from arbitrary or unlawful arrest,<sup>4049</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>4050</sup> The Chamber has considered this conduct, which amounts to the crime against humanity of deportation, in its surrounding context and finds that it cumulatively rises to the requisite level of severity such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* of persecution on racial grounds is established in relation to these events in 1975 and 1976.

1191. With respect to the *mens rea*, the Chamber notes the systematic targeting of Vietnamese individuals due to their perceived race, as evidenced by the instructions and orders given regarding the transportation of Vietnamese, contemporaneous reports, as well as contemporaneous publications in the *Revolutionary Flag* targeting the Vietnamese. The Chamber is satisfied on this basis that Vietnamese were intentionally targeted in Tram Kak district in relation to the events in 1975 and 1976 on the basis of their race. The Chamber is therefore satisfied that the *mens rea* of persecution on racial grounds is established.

1192. The Chamber has also found that discriminatory animus against the Vietnamese continued later, after mid-1976. Persons continued to be identified on a discriminatory basis, as revealed by the repeated references in the documentary evidence to persons as “half-breed” or “pure *Yuon*”.<sup>4051</sup> The fate of families was understood by the commune level to turn on whether the entire family was Vietnamese, or whether they were mixed Vietnamese and Cambodian.<sup>4052</sup> However, the evidence is not conclusive as to particular acts being carried out on this basis. Further, the evidence frequently conflated Khmer Krom (not subject to the charge of persecution on racial grounds)<sup>4053</sup> with Vietnamese, meaning that based on the available evidence the Chamber is unable to establish with any certainty whether any conduct was discriminatory in fact for the targeted group. Although the Chamber found that, in general terms, Khmer Krom who

<sup>4048</sup> As evidence of the state of customary international law, *see* UDHR, Art. 3; ICCPR, Arts 6, 9(1); ECHR, Arts 2, 5; ACHR, Arts 4, 7.

<sup>4049</sup> As evidence of the state of customary international law, *see* UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>4050</sup> As evidence of the state of customary international law, *see* UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

<sup>4051</sup> *See above*, para. 1124.

<sup>4052</sup> *See above*, para. 1122.

<sup>4053</sup> Section 2: Preliminary Issues, paras 183-184.

arrived in Tram Kak district fell under increasing suspicion and, parallel to this, remaining Vietnamese were also targeted,<sup>4054</sup> the evidence did not establish with sufficient specificity the fate of any particular Vietnamese persons in Tram Kak district during the period after mid-1976. The Chamber's findings in relation to the persecution of Vietnamese on racial grounds are therefore limited to the circumstances surrounding their deportation to Vietnam in the period before mid-1976 in Tram Kak district. Accordingly, the Chamber finds that the crime against humanity of persecution on racial grounds is established at the Tram Kak Cooperatives within this context only.

10.1.13.9. Other inhumane acts through attacks against human dignity

1193. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity for depriving the civilian population of food, shelter, medical assistance, and minimum sanitary conditions, which inflicted serious mental and physical suffering and injury.<sup>4055</sup> It finds that there was a general "lack of food in the cooperatives" with people either afraid to complain, or arrested in the event they did complain.<sup>4056</sup> It finds that many people had health problems, particularly New People who were not used to living in rural areas. It further finds that only rudimentary medical treatment was available, delivered by persons without medical training, and that when people died families were not informed.<sup>4057</sup>

1194. The NUON Chea Defence submits that serious food and health problems arose because of other causes, and the CPK had a legitimate and lawful policy to establish cooperatives.<sup>4058</sup> The NUON Chea Defence highlights the context in which the CPK took over a "country in ruins".<sup>4059</sup> It submits that people's standard of living was central to the CPK's system of governance.<sup>4060</sup> No other Party made specific submissions in response.

1195. The Chamber has found that the period after the arrival of large numbers of evacuees in Tram Kak district involved severe food shortages.<sup>4061</sup> People died as a

<sup>4054</sup> See above, paras 1111-1113.

<sup>4055</sup> Closing Order, para. 1435.

<sup>4056</sup> Closing Order, para. 312.

<sup>4057</sup> Closing Order, para. 313.

<sup>4058</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 59, 68-69, 78.

<sup>4059</sup> NUON Chea Closing Brief, paras 980-981.

<sup>4060</sup> NUON Chea Closing Brief, para. 985.

<sup>4061</sup> See above, para. 1011.

result, including CHOU Koemlan's baby.<sup>4062</sup> The Chamber has found that there were further times of acute food shortages, in particular in the months before harvests.<sup>4063</sup> Although the general situation improved at the time of the 1976-1977 harvest, further periods of severe food shortages followed.<sup>4064</sup> New People in particular suffered from malnutrition.<sup>4065</sup>

1196. The Chamber has found that the population of Tram Kak district was put to work on extensive irrigation projects, remodelling the rice fields and digging canals and reservoirs.<sup>4066</sup> Conditions at canal worksites in Tram Kak district deteriorated as people had nowhere to relieve themselves so the water supply became polluted and dysentery resulted with no effective treatment available.<sup>4067</sup> The Chamber has established that, although working conditions and hours varied depending on the location and time of year, there were periods of extremely hard work for the population with 3 a.m. starts and night labour.<sup>4068</sup> The tasks performed such as carrying cow dung caused children to seek medical treatment at the District Hospital.<sup>4069</sup>

1197. The Chamber has established that medical facilities available in Tram Kak district, in particular at the District Hospital, were completely inadequate. To complain was considered to be an attack against the cooperatives.<sup>4070</sup> The food available in the hospital was also inadequate.<sup>4071</sup> The medical staff did not have any real medical training.<sup>4072</sup> Instead, persons with medical experience such as KEO Chandara were sent to perform manual labour in order to temper themselves.<sup>4073</sup> Although the Chamber accepts that shortages of medicines and other supplies may have resulted from a variety of factors, there is no rational justification for staffing medical facilities in this way. The Chamber has further found that access to medical treatment was restricted and

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<sup>4062</sup> See above, paras 1011, 1037.

<sup>4063</sup> See above, para. 1011.

<sup>4064</sup> See above, para. 1013.

<sup>4065</sup> See above, paras 1016, 1020, 1037.

<sup>4066</sup> See above, para. 979.

<sup>4067</sup> See above, para. 1020.

<sup>4068</sup> See above, para. 1019.

<sup>4069</sup> See above, para. 1044.

<sup>4070</sup> See above, para. 1046.

<sup>4071</sup> See above, para. 1047.

<sup>4072</sup> See above, para. 1041.

<sup>4073</sup> Section 12: Kraing Ta Chan Security Centre, para. 2739.

depended upon prior authorisation from local authorities.<sup>4074</sup> People died from malnutrition and overwork.<sup>4075</sup>

1198. The conditions in the Tram Kak Cooperatives were such that some people tried to escape, or expressed secret plans to escape, which was considered to be a reason for arrest.<sup>4076</sup> The Chamber has found that there existed a pervasive atmosphere of fear because there were so many arrests and disappearances, with people unwilling to say anything which might be considered to challenge the CPK.<sup>4077</sup> People were also afraid that falling sick and being unable to work would lead them to be accused of having mental problems.<sup>4078</sup> The Chamber has found elsewhere in this Judgement that large numbers of persons were arrested and taken to Kraing Ta Chan Security Centre, often for wholly innocuous “offences”.<sup>4079</sup> The Chamber has found that the imposition of work units on the population caused extreme dislocation to existing family structures, with people losing track of their relatives and unaware of their ultimate fate to this day.<sup>4080</sup>

1199. The Chamber finds that the nature of the conditions in the Tram Kak Cooperatives, in particular the circumstances of forced work in conditions of extreme hunger, fear, with wholly inadequate medical care, constituted serious attacks against human dignity that were of a nature and gravity similar to other enumerated crimes against humanity. The Chamber is therefore satisfied that the *actus reus* of other inhumane acts is established in light of the continuous subjection of people to serious mental and physical suffering or injury. The Chamber is also satisfied that the *mens rea* of other inhumane acts is established in light of the widespread and repeated nature of this conduct pursuant to the mass irrigation projects being undertaken in Tram Kak district. The Chamber allows for the possibility that other factors may also have contributed to a lack of food and/or medical facilities at times. Notwithstanding this possibility, the Chamber finds that the evaluation of all the evidence before it clearly establishes the existence of intentional attacks against humanity in this case by very deliberately forcing people to work in a climate of control, threats, fear, hunger and

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<sup>4074</sup> See above, para. 1050.

<sup>4075</sup> See above, paras 1015-1016, 1020, 1037, 1047.

<sup>4076</sup> See above, para. 929. See also, Section 12.3: Kraing Ta Chan Security Centre, para. 2729.

<sup>4077</sup> See above, paras 1046, 1060. See also, Section 12.3: Kraing Ta Chan Security Centre, para. 2857.

<sup>4078</sup> See above, para. 1050.

<sup>4079</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2717.

<sup>4080</sup> See above, paras 1039, 1151, 1154.

discrimination, with the most extreme consequences hanging over individuals should they complain or question the CPK's policies. The Chamber therefore finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at the Tram Kak Cooperatives.

10.1.13.10. Other inhumane acts through conduct characterised as enforced disappearances

1200. The Closing Order charges the Accused with other inhumane acts through conduct characterised as enforced disappearances on the basis of the arrest, detention or abduction of loved ones in conditions which placed them outside the protection of the law and the refusal to provide access to, or convey information, on the fate or whereabouts of such persons.<sup>4081</sup> It describes a *modus operandi* which concealed the fate of individuals with authorities providing false reasons to justify disappearances.<sup>4082</sup> It refers to a climate of “uncertainty and terror” that disappearances generated.<sup>4083</sup> In relation to Tram Kak district, it describes the arrest of persons by militia – with residents of the cooperatives continuing to disappear during the regime, often taken away at night.<sup>4084</sup>

1201. The Chamber has found that a number of specific persons were detained and disappeared in Tram Kak district, including from Champa Pagoda in the immediate aftermath of 17 April 1975, for example OEM Saroeurn's uncle IM Chak, among other persons.<sup>4085</sup> Others persons who disappeared following actions by the CPK authorities included RIEL Son's brother YA San,<sup>4086</sup> his uncle LONG Neak<sup>4087</sup> and his brother RIEL Oem,<sup>4088</sup> SAO Han's elder brother LUON Han,<sup>4089</sup> IM Vannak's brother IM Mach,<sup>4090</sup> various relatives of LOEP Neang,<sup>4091</sup> TAK Sann's husband<sup>4092</sup> and people from Angk Roka Pagoda (other than monks).<sup>4093</sup> After evacuees started to settle into

<sup>4081</sup> Closing Order, para. 1471.

<sup>4082</sup> Closing Order, paras 1472-1474.

<sup>4083</sup> Closing Order, para. 1476.

<sup>4084</sup> Closing Order, para. 318.

<sup>4085</sup> See above, paras 959-960, 964.

<sup>4086</sup> See above, para. 965.

<sup>4087</sup> See above, para. 1074.

<sup>4088</sup> See above, para. 1074.

<sup>4089</sup> See above, para. 965, 1077.

<sup>4090</sup> See above, para. 1078.

<sup>4091</sup> See above, para. 1078.

<sup>4092</sup> See above, para. 1120.

<sup>4093</sup> See above, para. 965.

cooperatives, biographies were taken and former soldiers and teachers continued to simply disappear.<sup>4094</sup> Political opponents and/or serious offenders could be arrested and disappeared.<sup>4095</sup> Vietnamese persons were rounded in 1975 and 1976, following which they were deported and/or disappeared from Tram Kak district.<sup>4096</sup> The Chamber has accepted evidence that whole families of Khmer Krom disappeared.<sup>4097</sup> This is consistent with the Chamber's findings in relation to Kraing Ta Chan that lists of Khmer Krom were prepared in various communes in late April 1977.<sup>4098</sup> This further satisfies the Chamber that Khmer Krom were targeted for arrest and they disappeared. OEM Sarouern's husband OY Mut and various other family members disappeared, and the Chamber found that the only reasonable inference was that they were killed.<sup>4099</sup> YEM Khonny's family members were placed on a truck and left, after which she never saw them again.<sup>4100</sup>

1202. The Chamber finds the arrest of THANN Thim to be instructive because, although he survived despite having been implicated by his younger daughter, his family had no idea what became of him during the three months he was detained.<sup>4101</sup> Weighing also the Chamber's finding in relation to Kraing Ta Chan, the Chamber is satisfied that disappearances from the Tram Kak Cooperatives were widespread, with people taken from villages and worksites, never to return.<sup>4102</sup> These incidents also demonstrate that disappearances occurred in circumstances where persons were deprived of their liberty, and that widespread arrests were performed by agents on behalf of the CPK.

1203. The Chamber has found that District Secretary PECH Chim was regularly approached by people enquiring about the fate of their relatives. PECH Chim juxtaposed this with *Yeay Khom's* tenure as District Secretary when people were too scared to approach her.<sup>4103</sup> The Chamber finds that this evidence demonstrates the total

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<sup>4094</sup> See above, para. 1031.

<sup>4095</sup> See above, para. 1067.

<sup>4096</sup> See above, para. 1125.

<sup>4097</sup> See above, paras 1123-1125. See also, Section 12.3: Kraing Ta Chan Security Centre, paras 2802-2803, 2806.

<sup>4098</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2804.

<sup>4099</sup> See above, para. 1073.

<sup>4100</sup> See above, para. 1036.

<sup>4101</sup> See above, para. 1079.

<sup>4102</sup> See above, para. 1071.

<sup>4103</sup> See above, para. 1071.

absence of any lawful process whereby persons could properly seek and obtain information about the fate of their relatives. At most this indicates that the District Secretary could, if he or she chose, provide some information or take steps in relation to a person who had been arrested. But this was not a measure generally available to people throughout the Tram Kak district because it depended upon access to the District Secretary and it depended entirely on the perceived personality of the District Secretary rather than any lawful process. This finding applies throughout the relevant period. The Chamber is satisfied that this climate amounted to a generalised refusal to provide information about the fate of disappeared persons. The Chamber is further satisfied that enforced disappearances were much more widespread than the specific instances identified above, and recalls in this regards its findings in relation to persons taken to Kraing Ta Chan Security Centre.

1204. The Chamber accordingly finds that enforced disappearances occurred in the Tram Kak Cooperatives. These enforced disappearances constituted attacks on human dignity against those who disappeared, and caused serious mental or physical suffering to those left behind without any information as to their fate. In this context, the Chamber recalls it accepted EK Hoeun's evidence that people shivered with fear because of the widespread arrests.<sup>4104</sup> Considered holistically in the atmosphere of fear that permeated the worksite, the disappearances were of a nature and gravity similar to other enumerated crimes against humanity. The *actus reus* of the crime against humanity of other inhumane acts is therefore established. The *mens rea* of the crime against humanity of other inhumane acts is also established in light of the widespread and repeated nature of this conduct, establishing that it was performed intentionally. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at the Tram Kak Cooperatives.

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<sup>4104</sup> See above, para. 1071.



## 11. WORKSITES

### 11.1. Trapeang Thma Dam Worksite

#### 11.1.1. *Closing Order*

1205. The Closing Order charges the Accused with the crimes against humanity of (i) murder; (ii) extermination; (iii) enslavement; (iv) persecution on political grounds; and other inhumane acts through (v) attacks against human dignity; (vi) conduct characterised as forced marriage; (vii) conduct characterised as rape within the context of forced marriage and (viii) conduct characterised as enforced disappearances at the Trapeang Thma Dam.<sup>4105</sup> The Chamber notes that the charges of other inhumane acts through conduct characterised as forced marriage and conduct characterised as rape within the context of forced marriage related to this crime site are dealt with in the section on Regulation of Marriage.<sup>4106</sup>

#### 11.1.2. *Preliminary Issues*

1206. The KHIEU Samphan Defence submits that the Closing Order mistakenly charges other inhumane acts through conduct characterised as enforced disappearances at the Trapeang Thma Dam on the basis of facts that were not mentioned in the Introductory Submission. It contends in particular that paragraph 46 of the Co-Prosecutors' Introductory Submission does not mention the disappearance of workers at the worksite.<sup>4107</sup> As a consequence, in its view, KHIEU Samphan does not have to answer to charges of other inhumane acts through conduct characterised as enforced disappearances.<sup>4108</sup> In this respect, the Chamber notes that the KHIEU Samphan Defence did not raise these issues as part of its preliminary objections.<sup>4109</sup> Therefore,

<sup>4105</sup> Closing Order, paras 1373-1374, 1377, 1379-1380 (murder); 1381-1383, 1387-1390 (extermination); 1391-1396 (enslavement); 1416, 1418 (persecution on political grounds); 1434-1435, 1437, 1439-1440 (other inhumane acts through attacks against human dignity); 1442-1447 (other inhumane acts through conduct characterised as forced marriage); 1430-1433 (other inhumane acts through conduct characterised as rape within the context of forced marriage); 1470-1478 (other inhumane acts through conduct characterised as enforced disappearances).

<sup>4106</sup> Section 14: Regulation of Marriage, paras 3675-3676, 3694, 3700.

<sup>4107</sup> KHIEU Samphan Closing Brief, para. 1019.

<sup>4108</sup> KHIEU Samphan Closing Brief, para. 1021.

<sup>4109</sup> Conclusions de la Défense de KHIEU Samphan sur les exceptions préliminaires sur lesquelles la Chambre n'a pas encore statué, E306/2, 20 May 2014; Further Information Regarding Remaining Preliminary Objections, E306, 25 April 2014.

the Chamber finds that these arguments have been raised outside of the time limit set by Internal Rule 89 and rejects them as belated.<sup>4110</sup>

1207. The KHIEU Samphan Defence further submits that the residual category of other inhumane acts constituting a crime against humanity “did not tally with the subdivisions of the Closing Order and then of the 002/01 Judgment” at the time of the facts.<sup>4111</sup> The Civil Party Lead Co-Lawyers refer to the Supreme Court Chamber’s determination that enforced disappearances, forced transfer and attacks on human dignity did not exist as separate categories of crimes against humanity in 1975.<sup>4112</sup> No other Party makes relevant submissions in this regard. The Chamber recalls that none of the categories of conduct underlying the charged crime of other inhumane acts, including attacks against human dignity, had crystallised as independent crimes against humanity by 1975,<sup>4113</sup> and therefore it will assess all relevant facts against the definition of other inhumane acts.

### 11.1.3. *General Considerations on Evidence*

1208. In reaching the findings below, the Chamber has relied primarily on the live testimony of 11 witnesses and four Civil Parties who testified on the topic of the Trapeang Thma Dam.<sup>4114</sup> One other Civil Party heard during another trial topic provided information relevant to the administrative structures of the Northwest Zone.<sup>4115</sup> The Chamber has taken into account previous statements of these witnesses and Civil Parties with a view to determining their overall credibility and assessing any inconsistencies in their evidence. The Chamber also relied on the statements provided by one witness before the Supreme Court Chamber.<sup>4116</sup> The Chamber has further considered a number of other statements from individuals who did not appear before it. The Chamber has made use of these statements in accordance with the principles outlined in the Preliminary Issues section of this Judgement.<sup>4117</sup> With respect to IM

<sup>4110</sup> Section 2: Preliminary Issues, para. 165.

<sup>4111</sup> KHIEU Samphan Closing Brief, para. 1037.

<sup>4112</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 86-89.

<sup>4113</sup> Section 9.1.8: Applicable Law: Crimes Against Humanity: Other Inhumane Acts, para. 727.

<sup>4114</sup> CHHIT Yoeuk, CHHUM Seng, CHHUY Huy, MAM Soeum, KAN Thorl, LAT Suoy, MUN Mot, PAN Chhuong, SOT Sophal, TAK Boy, LING Lrysov, SEN Sophon, SAM Sak, MEAN Loeuy and NHIP Horl.

<sup>4115</sup> SON Em, called on the topic of Role of the Accused.

<sup>4116</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1.

<sup>4117</sup> Section 2: Preliminary Issues, paras 69-72.

Chaem, the Chamber recalls its decision not to call her to testify as, during the proceedings in Case 002/02, she was a charged person in a judicial investigation partly related to facts relevant to the Trapeang Thma Dam Worksite.<sup>4118</sup> However, the Chamber has considered a statement she made to DC-Cam which was admitted into evidence.<sup>4119</sup> Some general considerations on the evidence are set out below.

1209. The Chamber finds the testimony of Witness CHHUM Seng, a company chief within one of the mobile units operating at the Trapeang Thma Dam, and the evidence provided by Civil Party SEN Sophon, a New Person<sup>4120</sup> and a worker at the construction site, particularly relevant to many aspects of the structure and functioning of the Trapeang Thma Dam.<sup>4121</sup> Their in-court statements were consistent with previous statements provided during the investigative phase or to DC-Cam, and the Chamber thus relies extensively on their recollection of the events.

1210. The Chamber finds that Witness LING Lrysov, who was a member of a mobile unit and worked at the Trapeang Thma Dam construction site, had memory problems,

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<sup>4118</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be heard during Case 002/02, E459, 18 July 2017, para. 54.

<sup>4119</sup> IM Chaem DC-Cam Interview, E3/5657, 4 March 2007.

<sup>4120</sup> The people evacuated from Phnom Penh and other cities were referred to as “17 April People” or “New People”, whereas those coming from the villages were called “Base People” or “Old People”. See T. 27 July 2015 (SEN Sophon), E1/323.1, p. 76; T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 60; Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 2, ERN (En) 00342709 (reporting activities of “the 17 April elements from Phnom Penh”). See also, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 47 (explaining that her understanding was that “the New People came from Phnom Penh”). The Chamber heard evidence that the term “17 April People” was used to refer to both the New People and the Old People. See T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 59-60 (testifying that both New People and Old People were called “17 April People”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 46 (“Q. Could you tell the Court whether there were any differences regarding work conditions between the 17 April People and the Base People? A. Regarding this matter, I could tell you that, in fact, they were all the 17 April People, and the difference was that one group of people had been living in the city, and the other one had been living in the villages.”); T. 27 October 2015 (MUN Mot), E1/357.1, p. 31; T. 11 August 2015 (KAN Thorl), E1/328.1, p. 29. The Chamber will hereinafter only use the terms “New People” and “Old People” to distinguish between people evacuated from the cities and those coming from villages, respectively. The Chamber also notes that it refers to New Person or Old Person to indicate an individual who was identified as being part of the New People or the Old People, respectively.

<sup>4121</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1; T. 18 August 2015 (CHHUM Seng), E1/332.1; T. 19 August 2015 (CHHUM Seng), E1/333.1; T. 27 July 2015 (SEN Sophon), E1/323.1; T. 28 July 2015 (SEN Sophon), E1/324.1. The Chamber notes that while CHHUM Seng himself testified that he was a company chief (T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 51-52), Witness MUN Mot, who knew CHUUM Seng and was himself a company chief at the Trapeang Thma Dam, said that CHHUM Seng was a platoon chief within his company (and not a company chief) and that later he was reassigned to a different unit (T. 27 October 2015 (MUN Mot), E1/357.1, pp. 11-12). The Chamber considers CHHUM Seng to be a credible witness and finds that he was in a better position to know what his role was at the time, being the person concerned. The Chamber therefore prefers his testimony on this point to that of MUN Mot.

which she admitted, and could not recall many of the events she experienced.<sup>4122</sup> She had to be reminded frequently of specific information provided in her written record of interview and at times she provided contradictory statements or denied the accuracy of information previously given to OCIJ investigators. For example, while in court she said that she got malaria when working at the Trapeang Thma Dam and was taken to hospital, in her written record of interview she had stated that she got malaria while farming at Kampong Thom.<sup>4123</sup> When confronted with this inconsistency, the witness said that her statement to OCIJ investigators was not correct.<sup>4124</sup> After initially indicating in court that she had never seen any killings at the worksite, she was reminded that she stated to OCIJ investigators that she saw a pregnant woman being tied, beaten and dropped by three “Khmer Rouge [...] killers [...] in black uniform[s]” into the pit of the first bridge’s edge of Trapeang Thma Dam.<sup>4125</sup> Following this reminder she amended her testimony to say that she had witnessed this killing.<sup>4126</sup> Furthermore, in court she stated that she had only seen one incident where 15 to 20 people were arrested and tied up one behind the other.<sup>4127</sup> She added that she heard these people crying and begging for their release, and being beaten with sticks, after which “they were silent”.<sup>4128</sup> However, she was “so afraid that [she] did not dare look at this execution scene”.<sup>4129</sup> When reminded that in her written record of interview she had indicated that she saw people being arrested three times at the worksite, she said she did not remember this.<sup>4130</sup> In light of these issues, the Chamber has decided to rely on this witness’s testimony only where it is consistent with other evidence.

1211. The Chamber finds the evidence of Witness CHHUY Huy, who stated in court that he was a company chief in the Sector 5 mobile unit at the Trapeang Thma Dam

<sup>4122</sup> The Chamber notes that Witness LING Lrysov was referred to in Court as YI Laisov. See T. 20 August 2015 (LING Lrysov), E1/334.1, p. 25.

<sup>4123</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 41; LING Lrysov Interview Record, E3/9338, p. 3, ERN (En), 00288640.

<sup>4124</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 75.

<sup>4125</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 52-53; LING Lrysov Interview Record, E3/9338, p. 4, ERN (En), 00288641.

<sup>4126</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 53.

<sup>4127</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 48-50.

<sup>4128</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 49.

<sup>4129</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 48-50.

<sup>4130</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 50-51; LING Lrysov Interview Record, E3/9338, p. 4, ERN (En), 00288641 (“No one from my group was arrested for killing, but lines of people from other groups were arrested, tied and taken for killings. I know that many people from *Ta Val* mobile units died. Sometimes people fell down and died while carrying the soil at the dam. When I guarded at night, I saw lines of people were walked with both hands tied to the backs and in each line there were about 15 to 20 men and women. I saw such events three times.”).

construction site,<sup>4131</sup> at times inconsistent with the previous statements he provided to OCIJ investigators. For example, during his interview with the OCIJ investigators he stated that he saw a man being shot at the construction site.<sup>4132</sup> Conversely, in court he stated that this event occurred at night time, and that he did not see it, but only heard the gunshot and “assumed that the man was killed”.<sup>4133</sup> Moreover, the witness could not recall many aspects of his experience during the DK period.<sup>4134</sup> The Chamber notes that six years passed between CHHUY Huy’s interview with the OCIJ investigators and his in-court testimony, which makes memory loss likely. The Chamber approaches his evidence with caution and relies on it only where it is corroborated by other evidence.

1212. With respect to Witness TAK Boy, a platoon chief within one of the mobile units operating at Trapeang Thma Dam,<sup>4135</sup> the Chamber does not find any inconsistency in his testimony about his role as a LON Nol soldier. In fact, the witness stated at the beginning of his testimony that he was a “private, a rank-and-file soldier” and that he “did not hold any position” at that time.<sup>4136</sup> TAK Boy affirmed this later in his testimony when asked by the NUON Chea Defence.<sup>4137</sup> The Chamber also finds credible the witness’s explanation as to why he was not killed despite his background as a LON Nol soldier. In particular, TAK Boy testified that he wrote several biographies where he indicated that he was a soldier for only a short period of time in order to conceal his membership in the LON Nol army, and finally, when asked by the new cadres coming from the Southwest Zone, claimed that he had always been an ordinary citizen.<sup>4138</sup> He also explained that as a private he was sent to be re-educated.<sup>4139</sup> The

<sup>4131</sup> T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 11-12. The Chamber notes that the witness initially stated that he was the chief of “a 55-member squad”. See T. 24 August 2015 (CHHUY Huy), E1/335.1, p. 11. However, on further questioning, he confirmed he was a company chief.

<sup>4132</sup> CHHUY Huy Interview Record, E3/5283, 31 March 2009, pp. 4-5, ERN (En) 00321198-00321199 (“they came to arrest him while we were working at that night. [...] The shooting site was about three hundred meters from my shelter. That person was not tied up when he was being walked away. I saw they shot him with my own eyes.”).

<sup>4133</sup> T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 39-40.

<sup>4134</sup> T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 10 (testifying that he did not recall the date on which he started to work at the Trapeang Thma Dam), 12 (testifying that he was a company chief but could not recall which company that was).

<sup>4135</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 42, 45.

<sup>4136</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 41.

<sup>4137</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 91 (“Before 1975 – in 1972, I may say, I was not a corporal but a buck private.”).

<sup>4138</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 47, 93-94; TAK Boy DC-Cam Interview, E3/7968, p. 2, ERN (En) 00726111.

<sup>4139</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 6.

witness further said that he was placed under the command of people from the Northwest Zone who, in fact, were people from his area, village or commune.<sup>4140</sup> The Chamber finds this explanation consistent with his previous statements to DC-Cam.<sup>4141</sup> This explanation is also consistent with the evidence provided by CHHUM Seng, a company chief at the Dam, who indicated that at the beginning of the DK period there was a certain degree of tolerance towards former LON Nol soldiers as the militiamen in the villages had personal links with some of them.<sup>4142</sup> The Chamber notes that there appears to be an inconsistency in the witness's testimony about his position within the mobile unit while working at the Trapeang Thma Dam. While in his statement to OCIJ investigators he said that he was an "ordinary member in a company of 100 men", in court he consistently stated that he was a platoon chief.<sup>4143</sup> As his former statement was not confirmed in court, the Chamber relies on his live testimony that he was a platoon chief.

1213. The Chamber finds Witness CHHIT Yoeuk, one of *Ta Val*'s assistants and later a worker at the Dam who had also worked in the administrative section of Preah Netr Preah district and as a member of a militia group reporting to Sector 5 army chief, to be credible and consistent in his recollection of the events, both in his previous statements and during his in-court testimony. The witness was at times unable to remember clearly the dates on which certain events occurred. The Chamber has therefore always sought corroboration from other sources of evidence when relying on his statements about specific dates.

1214. With respect to Witness PAN Chhuong, who was a cadre assigned to the Trapeang Thma Dam, the Chamber notes that there are numerous inconsistencies in his evidence. In court he denied being the deputy chief of the Sector 5 mobile unit, contrary to what he had stated in one of his OCIJ interviews and in his DC-Cam statement.<sup>4144</sup>

<sup>4140</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 93-94.

<sup>4141</sup> TAK Boy DC-Cam Interview, E3/7968, p. 2, ERN (En) 00726111.

<sup>4142</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 67-69.

<sup>4143</sup> TAK Boy Interview Record, E3/9489, 3 April 2012, ERN (En) 00842064; T. 19 August 2015 (TAK Boy), E1/333.1, pp. 45-46 (explaining that there were 30 members in his platoon); T. 20 August 2015 (TAK Boy), E1/334.1, p. 7.

<sup>4144</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 22-23 ("No one appointed me to be the deputy chief. [...] Perhaps the people who interviewed me may have misunderstood me. I was not the deputy chief."); PAN Chhuong Interview Record, E3/9483, 14 March 2013, p. 3, ERN (En) 00937033 ("I'd like to state that I was deputy chief of Sector 5 mobile unit which was under the supervision of sector committee chief named *Ta Hing*. [...] I received no official appointment as deputy chief of sector mobile

However, the witness admitted that he reported to *Ta Val* and was in charge of the Dam when the latter was absent, stating that he was called the “commander of the battlefield”, which meant that he had “to go around all places where our workers were performing their tasks on dam construction”.<sup>4145</sup> Regarding work quotas, he initially said that there was none, but later stated that at Trapeang Thma Dam there was a three-cubic-metre work quota.<sup>4146</sup> He also stated that the three-cubic-metre work quota was not implemented while he was working at Trapeang Thma Dam and that such quota might have been imposed at the worksite only after he was reassigned to the fishing unit. Moreover, while the witness indicated in his DC-Cam statement that the work quota was imposed by the Sector committee and *Ta Hoeng* in particular, in court he initially denied that the Sector committee decided on the work quota and stated that the work quota was imposed by the regiment commanders, and later indicated that he did not know who actually set the quota.<sup>4147</sup> Furthermore, while in his DC-Cam statement PAN Chhuong stated that he attended a meeting called by *Ta Rin* and IM Chaem at the time the Vietnamese attacked Svay Rieng, in court he denied having attended such a meeting.<sup>4148</sup> The witness explained this inconsistency by saying that the minute-taker from DC-Cam recorded his statement incorrectly. He subsequently stated that he heard of this meeting from others who attended the meeting.<sup>4149</sup> The Chamber finds that, due to his position in the Sector 5 mobile unit and the fact that he worked closely with *Ta Val*, PAN Chhuong had access to relevant information about the functioning and reporting structure of the Trapeang Thma Dam and Sector 5. However, the inconsistencies described above indicate that the witness tried to downplay his role. Additionally, even taking into consideration the impact of the time passed since the events and between the statements, some of the discrepancies are too significant to be

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unit, however *Ta Val* called me to assist him in doing works in the sector mobile unit. *Ta Val* was chief of sector mobile unit.”); PAN Chhuong DC-Cam Interview, E3/9094, p. 14, ERN (En) 00728654.

<sup>4145</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 24-25. With respect to PAN Chhuong’s role, the Chamber notes that CHHAY Phan, a member of the Sector 5 mobile unit, stated in her written record of interview that PAN Chhuong “was the chairman tasked with controlling youths at mobile units of Sector 5 that had hundreds of people working in companies and platoons. Mobile units of Sector 5 consisted of about three to four companies and about five to six platoons (each company consisted of 100 people and each platoon consisted of 30 people).” See CHHAY Phan Interview Record, E3/9497, 19 May 2013, p. 5, ERN (En) 00950737.

<sup>4146</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 65-66.

<sup>4147</sup> PAN Chhuong DC-Cam Interview, E3/9094, p. 30, ERN (En) 00728670; T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 65-66; T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 42-43.

<sup>4148</sup> PAN Chhuong DC-Cam Interview, E3/9094, p. 59, ERN (En) 00728699; T. 2 December 2015 (PAN Chhuong), E1/361.1, pp. 5-6.

<sup>4149</sup> T. 2 December 2015 (PAN Chhuong), E1/361.1, p. 35.

explained by the passage of time. In light of this, the Chamber approaches this witness's testimony with particular caution and assesses whether it may be relied upon on a case-by-case basis.

1215. The Chamber has also considered a number of contemporaneous documents which were tendered into evidence by the Parties in this trial. These documents have been relied on in particular to reach conclusions as to the exact dates in which the alleged events took place.<sup>4150</sup>

1216. The Chamber has received documentary evidence of a visit of Yugoslavian journalists to the Northwest Zone and the Trapeang Thma Dam. An undated telegram reporting on this visit was sent by Kan and copied to Uncle, Uncle Nuon, Brother Van, Brother Vorn, Office and Documentation and received on 15 March 1978.<sup>4151</sup> It appears from the report that the CPK cadres provided the journalists with information on the construction project, the number of workers involved in it, the food provided to workers, the regulation of marriage among workers at the Dam, work conditions and other related matters. The Chamber notes that some of the comments made by the CPK cadres as reported in this telegram appear to minimise the problems experienced by workers at the site and give a better picture of conditions than these were in reality. In this regard, it was reported that the cadres stated: “[i]t is not difficult here. There is a three-day break per month and one morning or one or two hours are spent for education.”<sup>4152</sup>

1217. The visit to DK and Trapeang Thma Dam is also described in a report prepared by the Yugoslavian journalists dated 31 March 1978.<sup>4153</sup> The Chamber finds that the Party Centre wanted to strictly control the information accessible to the visitors, as illustrated by the fact that the Khmer Rouge did not allow them to talk to the workers “at any great length” or visit the kitchens at the locations visited.<sup>4154</sup> Further, it appears that the information provided to the journalists did not accurately reflect the situation

<sup>4150</sup> Section 2: Preliminary Issues, para. 57.

<sup>4151</sup> DK Telegram, E3/1113, undated, pp. 1-3, ERN (En) 00434864-00434866.

<sup>4152</sup> DK Telegram, E3/1113, undated, p. 1, ERN (En) 00434864.

<sup>4153</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, pp. 7-10, ERN (En) 00525837-00525840.

<sup>4154</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 8, ERN (En) 00525838 (“The programme drawn up by our hosts did not allow us to talk with those people at any great length”), 9, ERN (En) 00525839 (“We did not visit the kitchens where food was prepared for they are not ‘in order’”).



in the country, but was rather intended to give a picture of the working and living conditions which accorded to the CPK official discourse and propaganda. This is illustrated by the fact that the journalists reported being told that the workers were given three portions of rice a day and always enough meat and fish to eat,<sup>4155</sup> and that they could communicate with their cousins and friends through local couriers who conveyed letters.<sup>4156</sup>

1218. In light of the above, the Chamber approaches these documents with caution and assesses on a case-by-case basis whether it can rely on their content.

#### 11.1.4. *Location and Establishment*

1219. The Trapeang Thma Dam construction site was located in the Paoy Char commune, Phnom Srok district, Battambang province (present-day Banteay Meanchey province).<sup>4157</sup> Pursuant to the CPK administrative division of Democratic Kampuchea, Trapeang Thma Dam was located in Sector 5 of the Northwest Zone.<sup>4158</sup> The Dam had two dykes: one that was approximately nine kilometres long running east-west along the south side of the reservoir, and one that was approximately 13 kilometres long running north-south along the east side of the reservoir.<sup>4159</sup> Bridge 1 was situated west

<sup>4155</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 9, ERN (En) 00525839 (report of the visit of the journalists dated 25 March 1978).

<sup>4156</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 9, ERN (En) 00525839.

<sup>4157</sup> Site Identification Report, E3/8050, 6 January 2010, p. 2, ERN (En) 00428005; Cambodia with DK Zones and Autonomous Regions with Crime Sites, E3/2766, 13 January 2010, ERN (En) 00429170; T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 48 (testifying that “Trapeang Thma construction site was in the Trapeang Thma village, Paoy Char, Phnum Srok district, Banteay Meanchey province.”); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 47 (“It was situated in Trapeang Thma village, Paoy Char sub-district, Phnum Srok district, Battambang province in Sector 5, Northwest Zone.”). *See also*, Revolutionary Youth, E3/771, July-August 1977, p. 26, ERN (En) 00509685 (indicating that “the biggest worksite is the water management system reservoir on the field of Trapeang Thma in Phnom Srok district”); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 43 (stating that Trapeang Thma construction site was in Phnom Srok district, Sector 5); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 44 (testifying that Trapeang Thma Dam extended from Paoy Char commune through the border of Ponley commune in Phnum Srok district). The Chamber notes that during the DK era, Phnom Srok district was part of the Battambang province but was subsequently placed within Banteay Meanchey after a boundary change. *See* Site Identification Report, E3/8050, 6 January 2010, p. 2, ERN (En) 00428005.

<sup>4158</sup> Site Identification Report, E3/8050, 6 January 2010, p. 1, ERN (En) 00428004; *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498180 (reporting on a visit of Chinese Vice-Premier CHEN Yonggui and POL Pot to Trapeang Thma Reservoir “in the fifth region of the northwest zone”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 41 (“Trapeang Thma reservoir was situated in Trapeang Thma village, Sector 5, Northwest Zone.”); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 47. *See also*, T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 43 (stating that Trapeang Thma construction site was in Phnom Srok district, Sector 5) and 74 (confirming that Sector 5 was in the Northwest Zone).

<sup>4159</sup> Site Identification Report, E3/8050, 6 January 2010, p. 2, ERN (En) 00428005; Revolutionary Youth, E3/771, July-August 1977, p. 27, ERN (En) 00509686.

of the nexus of the two dykes. Bridge 2 was 3.2 kilometres west of Bridge 1. Bridge 3 was a further 3.5 kilometres west of Bridge 2.<sup>4160</sup> The Trapeang Thma Dam has been “rehabilitated” in 2004 to harden its structure, and it still exists today with the same main features and the same size.<sup>4161</sup>

1220. The Chamber received evidence placing the start of the Dam’s construction between early 1976 and early 1977.<sup>4162</sup> However, the evidence shows that there was a peak of activity during the year 1977, which coincided with the visit of a Chinese delegation accompanied by POL Pot and other senior CPK leaders in December 1977.

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<sup>4160</sup> Site Identification Report, E3/8050, 6 January 2010, p. 5, ERN (En) 00428008. *See also*, T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 41 (testifying that, according to his estimation having moved around to work from one bridge to another, the distance between one bridge and another was at least two kilometres, and that the Dam ran all the way from the north, made a turn and continued from that point towards the west).

<sup>4161</sup> Site Identification Report, E3/8050, 6 January 2010, pp. 2-5, ERN (En) 00428005-00428008; T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 36 (testifying as follows: “[n]owadays, the dam had been renovated so that we could have water to irrigate the fields for farming during the dry season. In the last few years, the dam was broken, and they are planning the renovation again. The reservoir has been emptied. Some parts of the dam were destroyed by the flood. Again, they are planning another renovation.” The witness currently lives in Phum Srok district).

<sup>4162</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 37-38 (testifying that when he arrived at the construction site in April or May 1976 the project was already underway and people were surveying the site. The witness also indicated that in his recollection the construction started in early 1976); T. 26 October 2015 (MUN Mot), E1/356.1, p. 54 (testifying that the Trapeang Thma Dam construction started in early 1976 and continued to mid-1976); PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 5, ERN (En) 00975046 (“The construction of the Trapeang Thma reservoir dam started in 1976”); *Revolutionary Youth*, E3/771, July-August 1977, p. 27, ERN (En) 00509686 (indicating that “[b]rothers begin this worksite on 16 February 1977”); *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (describing a visit of Chinese Vice-Premier CHEN Yonggui and POL Pot to Trapeang Thma Dam in December 1977, and reporting RUOS Nhim as saying that “the reservoir was built in less than two months this year”); *Radio Discusses Youth Contributions* (in FBIS collection), E3/290, 19 October 1977, ERN (En) 00168691 (reporting that during 1977 Cambodian male and female youths engaged in the construction of a number of reservoirs and dug irrigation canals including the Trapeang Thma reservoir in Srok Phnom Srok, Battambang sector, northwest region); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 47-48 (testifying that the construction started on 14 February 1977, which was the same day on which the witness started to work at the worksite); T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 56-57 (testifying that the Dam’s construction started in January or February 1977); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 49 (testifying that the construction had started before he arrived at the site in mid-1977); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 48 (testifying that the construction commenced in early January 1977, and that everyone at that time carried soil to build the embankment of the Dam).

1221. Workers were told that the construction had to be completed in a short period of time.<sup>4163</sup> The Dam was largely completed by the end of 1977 or mid-1978, with some workers remaining on site until the arrival of the Vietnamese troops.<sup>4164</sup>

<sup>4163</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 78 (testifying that as far as he knew at the time, the project had to be completed within a year); T. 27 October 2015 (MUN Mot), E1/357.1, pp. 16 (testifying that *Ta Val* advised him and the other unit chiefs to complete the work at Trapeang Thma Dam by 1977 so that they “could achieve the great leap forward project”), 30 (“We were told to complete the project by 1977”); T. 28 July 2015 (SEN Sophon), E1/324.1, p. 14 (stating that the cooperative chief who assigned him to work at Trapeang Thma Dam told him that the Dam construction had to be completed as soon as possible to avoid possible future floods); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 59 (testifying that he heard from others that workers had to complete the Dam before Khmer New Year and that it was *Ta Val* who gave this instruction); T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 84-85 (testifying that workers were told that the Dam construction project had to be completed in three months). *See also*, Text of recorded speech by KHIEU Samphan at 15<sup>th</sup> April Anniversary Meeting in Phnom Penh, 19 April 1977, E3/201, ERN (En) 00419514 (reporting KHIEU Samphan as saying that dams and construction sites projects were advancing rapidly and that “[a]cross the nation, all construction sites will fulfil the 1977 plan by the end of May.”); Revolutionary Flag, E3/4604, April 1978, p. 15, ERN (En) 00519843 (reporting that Trapeang Thma was built in “just one year”); *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting RUOS Nhim as having said that the reservoir was built in less than two months in 1977); Far Eastern Economic Review, Asia 1979 Yearbook, in “New War in Southeast Asia”, E3/3290, p. 29, ERN (En) 00419233 (indicating that the Dam was “reportedly completed in one year”). The Chamber notes that Witness PAN Chhuong testified that no timeline was set for the completion of the Trapeang Thma Dam and that they “could complete the dam worksite whenever we were able to”. *See* T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 69. The Chamber notes that PAN Chhuong provided a different statement to DC-Cam in this respect, explaining that *Ta Hoeng* instructed that the plan had to be completed as soon as possible and that workers had to finish three cubic metres per day. *See* PAN Chhuong DC-Cam Interview, E3/9094, p. 30, ERN (En) 00728670. In light of this inconsistency, the Chamber does not consider that this evidence undermines the other witnesses’ evidence that there was a specific timeline for the completion of the Dam and that workers were instructed to complete their tasks as soon as possible.

<sup>4164</sup> Revolutionary Youth, E3/771, July-August 1977, ERN (En) 00509687 (reporting that the plan was completed and the Trapeang Thma Dam was successfully constructed in the dry season of 1977); *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (describing a visit of Chinese Vice-Premier CHEN Yonggui and POL Pot to Trapeang Thma Dam in December 1977 and reporting RUOS Nhim as saying that “the reservoir was built in less than two months this year”); Democratic Kampuchea News, Excerpts from “The Voice of Democratic Kampuchea” News Broadcast from Phnom Penh, E3/300, December 1977, p. 6, ERN (En) 00702870 (reporting that in the Northwest Zone farmers in the cooperatives had built the Trapeang Thma reservoir); DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183017 (reporting that in April 1977 “[t]he building of the three sluice gates of Yuttasass [strategic] water basin at Trapeang Thmar is underway and is expected to finish in May.”); Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 12, ERN (En) 00342719 (reporting that the construction of the water gates for the three major directions continued, that the construction of the lower part would be finished in May and the construction of the upper part would be finished later); DK Report, E3/950, 11 May 1978, ERN (En) 00185217 (reporting that “[the work at] Trapeang Thmar has further been strengthened”); T. 29 July 2015 (MAM Soeurm), E1/325.1, pp. 49-50 (testifying that the Dam was almost completed when he left the worksite in late 1977); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 49 (testifying that Trapeang Thma construction site ended in 1977), 59 (testifying that the Dam was completed in April 1977, “just a little before the Khmer New Year”); T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 6-7 (explaining that after working at Trapeang Thma Dam, he spent about five or six months working at the cotton plantation before the Vietnamese arrived and that by the time he left, the Dam was “completed about 95 per cent; however, several bridges including Bridge 1, Bridge 2, and Bridge 3 needed to be constructed.”); T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 61-62 (stating that when he arrived at the Dam in May 1977 the construction of the Dam was about to finish and that when he left a couple of months later, the Dam construction had not been completed yet). *See also*, IM Chaem DC-Cam Interview,

1222. The Closing Order finds that an inauguration ceremony was held at the Dam in December 1977 which was presided over by POL Pot accompanied by a Chinese delegation and attended by senior CPK cadres.<sup>4165</sup> The Chamber heard conflicting statements on this event and finds that the available evidence does not establish beyond reasonable doubt when, if ever, the Trapeang Thma Dam was “inaugurated”.<sup>4166</sup> However, the evidence is clear in showing that on 8 December 1977, when the construction of the Dam was almost completed, the Chinese Vice-Premier CHEN Yonggui visited the Trapeang Thma Dam together with CPK Secretary POL Pot, Northwest Zone Secretary RUOS Nhim and VORN Vet.<sup>4167</sup> This visit followed a trip

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E3/5657, 4 March 2007, pp. 1-2, ERN (En) 00089771-00089772 (stating that when she arrived at the Dam in December 1977, the Dam was built and people were assigned to work in the summer rice field); SAM Sak Interview Record, E319/19.3.10, 23 April 2014, p. 19, ERN (En) 01057751 (explaining that when the Khmer Rouge regime collapsed the Dam was completed except for the bridges); T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 78-79 (“And it was not fully completed, but the majority of the construction was complete. But then they were broken up. It was not totally completed.”); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 17 (testifying that when *Ta* Maong and *Ta* Hat were arrested, Trapeang Thma Dam was completed already except the bridges); T. 2 September 2015 (SAM Sak), E1/340.1, p. 38 (“I worked in the mobile unit at the Trapeang Thma Dam work site in 1977 and I remained there until the fall of the Khmer Rouge regime.”); PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 5, ERN (En) 00975046 (“when I brought the delegations there in 1978, construction was not yet completed. In fact, I noted that the Trapeang Thma reservoir dam was not completed yet because there was only one water gate to the south and it had no water gate in the east.”).

<sup>4165</sup> Closing Order, para. 325.

<sup>4166</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 48 (testifying that an assembly chaired by *Ta* Nhim was held during the inauguration of the Dam); T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 29-30, 39, 44-49 (testifying that an inauguration ceremony was held in 1978 which was attended by a Chinese delegate called Chen Yonggui and by *Ta* Hoeng. The witness also indicated that at that time the Dam construction was not fully completed and that *Ta* Val spoke at the inauguration ceremony and reported on the progress made on the construction of the Dam); PAN Chhuong Interview Record, E3/9483, 14 March 2013, p. 6, ERN (En) 00937036 (“Q. When was Trapeang Thma dam completed? A. In fact, the dam was almost completed, however it was not yet officially inaugurated as when the Vietnamese arrived in 1979 we had to flee.”).

<sup>4167</sup> *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498180-00498181 (reporting that the Chinese Vice-Premier visited the Dam); *Chen Yung-Kuei, Delegation continue visit to countryside* (in FBIS collection), E3/1339, 9 December 1977, ERN (En) 00168341 (reporting that Comrade CHEN Yonggui, member of the Political Bureau of the CCP Central Committee and Vice Premier of the State Council, visited the Northwestern region on the morning of 8 December 1977 together with other Chinese guests, POL Pot and VORN Vet and that “[a]t the boundary between the northern and northwestern regions, Comrade Chen Yung-kuei and other Chinese comrades were warmly greeted by Comrade (Ros Nim), secretary of the KCP northwestern region committee and chairman of the northwestern region serve-the-people committee”); Democratic Kampuchea News, Excerpts from “The Voice of Democratic Kampuchea” News Broadcast from Phnom Penh, E3/300, December 1977, pp. 13-14, ERN (En) 00702877-00702878 (reporting that on 3 December 1977 Comrade Tchen Yong-Kouei, Vice Prime Minister of the Council of State Affairs of the PR of China, “arrived in Phnom Penh for a friendly visit to DK at the invitation of the CPK and the government of Democratic Kampuchea”). See also, T. 19 August 2015 (TAK Boy), E1/333.1, p. 67 (testifying that he once attended a meeting to welcome a Chinese delegate who visited the Dam, on which occasion around 20 vehicles came to the site. The witness was told that the delegate was called Chen Yonggui. At night a film about the work conducted in China was projected for everyone to see); KAN Thorl Interview Record, E3/7803, 20 December 2008, p. 5, ERN (En) 00277823 (indicating that a group of Chinese led by Chhing Yingkuy came to inspect the Trapeang Thma Dam along with *Ta* Nhim and others, and that he knew that the visitor was Chhing Yingkuy because the workers had written “[w]arm welcome to Comrade CHHING

to China made by POL Pot with a delegation of senior CPK members from 28 September to 22 October 1977, during which POL Pot and his delegation visited the Chinese model cooperative of Tachai with CHEN Yonggui.<sup>4168</sup>

1223. The Chamber also notes that other ceremonies and visits by CPK leaders, foreign diplomats and journalists took place at the Dam construction site.<sup>4169</sup>

1224. The Dam was built pursuant to the decision of the CPK Central Committee to build water conservancy projects in order to enable dry season farming, an objective envisaged in the CPK 1977 economic plan.<sup>4170</sup> A meeting was held in Svay Sisophon

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Yingkuy” on a banner); T. 2 September 2015 (SAM Sak), E1/340.1, p. 30 (stating that a Chinese delegation came to visit the worksite); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 92 (testifying that he saw Chinese delegates visit the Dam and taking photos of the reservoir); T. 11 August 2015 (KAN Thorl), E1/328.1, pp. 13-14 (testifying that he once saw the Chinese leaders visiting the site, that the Chinese delegation was accompanied by *Ta* Nhim and that a film was screened on that occasion). The Chamber notes that the name of the Chinese Vice-Premier has been spelled in different ways: Chen Yung-kuei, Tchen Yong-Kouei, CHHING Yingkuy, Chen Yonggui and Chhoeng Yoengkuy.

<sup>4168</sup> VORN Vet’s speech, E3/1495, 3 December 1977, ERN (En) 00168316-00168317.

<sup>4169</sup> *Activities of SFRY Press Group 12-15 March 1978* (in FBIS collection), E3/1360, 17 March 1977, ERN (En) 00169927 (reporting a visit of a Yugoslavian press delegation to the Trapeang Thma Dam); DK Telegram, E3/1113, undated, ERN (En) 00434864; T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 30-31 (stating that he attended a big meeting or rally around June 1977, which he said was not an inauguration ceremony and during which “the ideology [...] to strive to work” was “instilled”); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 87-88; T. 29 July 2015 (MAM Soeurm), E1/325.1, pp. 23-25 (testifying that he attended an assembly chaired by *Ta* Cheal and the slogans “Long Live” or “Great Leap Forward” were repeated at the assembly); TAK Boy DC-Cam Interview, E3/7968, 5 March 2007, p. 11, ERN (En) 00726120 (talking about a meeting which combined celebrations for the Khmer New Year and the 17 April Anniversary, and was attended by foreign senior leaders and Chinese engineers, during which musicians and dancers performed and a movie shot in China was screened. While TAK Boy referred to the movie shot in China being screened during the meeting in both his DC-Cam Interview and in court, the witness did not indicate in court that the meeting took place on the occasion of the 17 April Anniversary (which he indicated in his DC-Cam Interview), and he did not state in his DC-Cam Interview that the visitor was Chen Yonggui (which he did in court). The Chamber is therefore unable to conclude that the meeting this witness testified about in court is the same as the one he discussed in his DC-Cam Interview and thus occurred around April 1977). *See also*, PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 5, ERN (En) 00975046 (“In mid-1977, I came to visit Trapeang Thma reservoir dam with the delegations of diplomatic corps from countries such as Romania, Yugoslavia, Cuba, Vietnam, Laos etc.”). *See above*, paras 1216-1217. *See below*, paras 1253, 1254-1259.

<sup>4170</sup> *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting RUOS Nhim as saying that the Dam “was built [...] in response to the call of the Party Central Committee to build water conservancy projects” during a visit to Trapeang Thma Dam by the Chinese Vice-Premier CHEN Yonggui and POL Pot); Revolutionary Youth, E3/771, July-August 1977, ERN (En) 00509685-00509686 (reporting that “Trapeang Thma water reservoir has two important roles. First, it will receive and keep the rain water flowing down from Dangrek mountain range, and then distribute it to tens thousands hectares of rice paddies in the entire sector where rice will be farmed twice a year. Second, the reservoir will weaken and deter the direction of the water current, preventing the rice plants and paddies of the people from being flooded.” (emphasis added)); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 37 (testifying that he heard that the Trapeang Thma Dam was built in order to provide irrigation); T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 40, 78 (testifying that he heard from others that “the construction of the dam was not the decision at the sector level. It was the decision from the Zone and the higher level. So that was not actually the decision of the sector. This is to my knowledge.”). The Chamber notes that in his DC-Cam Interview, the witness indicated that “the irrigation project” came from the “Central Party” from Phnom Penh and that they asked the local authority to conduct a study on

among zone, sector, district and mobile unit chiefs to discuss the construction project.<sup>4171</sup> CHHIT Yoeuk indicated that he was told that “Central Party members” also

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the site. *See* CHHIT Yoeuk DC-Cam Interview, E3/9008, 19 June 2011, p. 23, ERN (En) 00731127. *See also*, Four Year Plan 1977-1980, E3/8 [E3/213], p. 89, ERN (En) 00104042; Document Number 3, E3/1765, September 1975, p. 6, ERN (En) 00523574 (stating as follows: “Dams are important to husband water for times of draught. [...] The major goal this year is making dikes and canals. Once we have the dikes and canals in combination with the use of fertilizers and other technologies we will have big harvests. In 1977 we must ensure three tons per hectare.”); Revolutionary Flag, Issue 11, November 1976, E3/139, p. 12, ERN (En) 00455289 (reporting that in 1976 “a number of low lying areas in the flatlands were flooded. The Northwest was flooded the most, tens of thousands of hectares, in particular Preah Netr Preah District and Phnom Srok District in Sector 5.” The proposed solution was to “[b]uild reservoirs up above, and when the water comes we can hold it back.”); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 35 (testifying that “[i]t was explained that the dam was being built so it was possible to do farming during the dry season as well.”); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 16 (testifying that the water reservoir was made for people to do farming during the dry season); *Radio Discusses Youth Contributions* (in FBIS collection), E3/290, 19 October 1977, ERN (En) 00168691 (reporting that the Trapeang Thma Dam was built by Cambodian male and female youths in accomplishing “their respective tasks in order to overfulfill the 1977 plan of our KCP”); Text of recorded speech by KHIEU Samphan at 15<sup>th</sup> April Anniversary Meeting in Phnom Penh, 19 April 1977, E3/201, ERN (En) 00419514 (reporting KHIEU Samphan as saying that dams and construction sites projects were advancing rapidly and that “[a]cross the nation, all construction sites will fulfil the 1977 plan by the end of May.”); Chapter by B. Kiernan, “Summary of the Results of the 1976 Study Session”, in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, 1988, E3/8 [E3/213], p. 175, ERN (En) 00104084 (stating that among the activities aimed at realising the 1977 plan there was the “[p]reparation, improvement and strengthening of the construction of the irrigation network to make it suitable and appropriate, so that we obtain mastery by means of reservoirs, canals, and dams.”). *See also*, *Peking Banquet for Pol Pot's Delegation, Full text of Pol Pot's speech at the banquet*, E3/1246, 28 September 1977, ERN (En) S00007956; PAN Chhuong DC-Cam Interview, E3/9094, p. 27, ERN (En) 00728667, where the witness stated that there was a plan to build the Dam from the “Central Party” and that the purpose of the Dam was to “reserve water to produce dry-season rice.” In this regard, however, the Chamber notes that PAN Chhuong testified in Court that he never came across the plan and that while working with *Ta Val*, the latter never mentioned the work plan from the Centre. However, the witness also indicated that “all the tasks could not be only decided by *Ta Val* and *Ta Hoeng*. Without the instructions from the upper echelon, the lower level could not do the work as they wanted. *See* T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 71; Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721 (talking about fulfilling “the 77 duty”); Section 10.1.7.1: Tram Kak Cooperatives: Economic Plans and Production Targets.

<sup>4171</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 51-52 (testifying that he attended a meeting at Svay Sisophon to discuss the plan and work assignments for the construction of the Trapeang Thma Dam. The witness also testified that *Ta Val* and *Ta Hoeng*, his two direct supervisors and the only people he personally knew among the participants, took part in this meeting); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 42-43 (testifying that he was told that a meeting was held in Svay and a subsequent meeting was held at Trapeang Thma Dam, and that information was disseminated on the Dam construction work plan). The Chamber notes that in his DC-Cam Interview, CHHIT Yoeuk indicated that the meeting in Svay Sisophon was held one or two months before the construction of the Dam began in order to conduct a study on the site before making the decision and forming a committee. *See* CHHIT Yoeuk DC-Cam Interview, E3/9008, p. 23, ERN (En) 00731127. The witness also indicated that *Ta Val*, *Ta Nhim*, members of the Sector Committee and people from the “Central Party” were present at the meeting. However, in court the witness only confirmed that they were told that “tomorrow there will be a meeting with Central Party members, district committee, chief of zone and region” and that he did not know the details of the names of those people. *See* T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 42-43. With respect to this meeting in Svay Sisophon, the Chamber also notes that PAN Chhuong testified that the meeting was held once the preparatory works for the Dam had been completed. *See* T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 52. Despite a discrepancy between the two witnesses’ recollection of the timing of this meeting, the Chamber finds that they testified about the same event. The Chamber thus concludes that a meeting was held to discuss the work at the Trapeang Thma Dam, and that cadres from the zone, sector, district and mobile unit levels participated in it.

participated in this meeting.<sup>4172</sup> The Chamber notes, however, that this witness did not attend the meeting. Given that PAN Chhuong, who was present at the meeting in Svay, provided no evidence regarding the presence of “Central Party members” at that meeting, the Chamber is not able to conclude that “Central Party members” participated in the meeting regarding the construction of the Dam.<sup>4173</sup> CHHIT Yoeuk also testified that people from the Sector came often to support, consult and discuss the issues related to the Dam’s construction.<sup>4174</sup>

### 11.1.5. *Authority and Reporting Structure*

#### 11.1.5.1. *At the worksite*

1225. AOK Haun *alias* Val was Sector 5’s mobile unit chief and was the person all the mobile units operating at the Trapeang Thma Dam Worksite reported to.<sup>4175</sup> *Ta* Val

<sup>4172</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 40-44.

<sup>4173</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 51-52.

<sup>4174</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 79 (explaining that people from the sector level came to the Dam two or three times per month). The Chamber notes that CHHIT Yoeuk knew very well the structure of the Preah Netr Preah district and who was who in Sector 5 (*see* CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 in particular, where he talks about *Ta* Hoeng, *Ta* Cheal and Rin), because he worked in the administrative section of Preah Netr Preah district (CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 3, ERN (En) 00923945) and as a member of militia reporting to Sector 5 army chief (CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046). It therefore seems reasonable that he knew who the people from the Sector level who came to the Dam were.

<sup>4175</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 70 (explaining that he knew the principal head in charge of the sector’s mobile brigades, *Ta* Val), 71 (explaining that *Ta* Val had overall supervision over the battalion and that he directly supervised all forces in the mobile brigades of Sector 5), 88 (explaining that he was quite close to *Ta* Val and received orders from him); T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 3 (testifying that *Ta* Val was in charge of three battalions involved in the construction of Trapeang Thma Dam); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 47 (stating that *Ta* Val had overall supervision over Sector 5); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 56, 61; T. 26 October 2015 (MUN Mot), E1/356.1, p. 57 (testifying that *Ta* Val was the Sector 5 mobile unit chief); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 64 (testifying that *Ta* Val led his mobile forces to build the Dam construction project); T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 38 (“*Ta* Val was the commander over there so all mobile units subordinate to Sector 5 had to report to *Ta* Val. They had to prepare all the reports about work quota and work achievement from all mobile units to *Ta* Val.”), 51. *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, pp. 63-64, 74-75 (testifying about the hierarchical structure of Trapeang Thma Dam and stating that “above the battalion, it was *Ta* Val who had overall supervision over the dam worksite”); CHHUM Seng DC-Cam Interview, E3/9010, 18 June 2011, p. 14, ERN (En) 00728621. The Chamber notes that the document S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 3, ERN (En) 01139860, entry no. 29 lists *Ta* Val as “Assistant for Dam Construction and Fertiliser Production, Sector 5.” The Chamber finds that this does not call into question *Ta* Val’s role as Sector 5 mobile unit chief and person responsible for the Dam construction in light of the consistent oral and documentary evidence on this point. The Chamber notes the following statements to OCIJ investigators indicating that, as Sector 5 mobile unit chief, *Ta* Val was also in charge of supervising the construction of other dams and canals in Sector 5, as the mobile unit was involved in all these construction sites. *See* CHEAM Kin Interview Record, E3/9524, 13 March 2014, p. 6, ERN (En) 00985176 (stating that *Ta* Val led forces to build Spean Sraeng Dam, Ang Trapeang Thma Dam and other dam sites); CHHAY Phan Interview Record, E3/9497, 19 May 2013, pp. 3-4, ERN (En) 00950735-

was in charge of supervising the construction of Trapeang Thma Dam.<sup>4176</sup> He visited the worksite frequently, with witnesses indicating that he visited once fortnightly, every two or three days or every day.<sup>4177</sup> He would go in the morning to the Dam to oversee the work being done by the mobile units or to inspect workers working in the paddy fields.<sup>4178</sup>

1226. According to PAN Chhuong, *Ta Val* assigned the work at Trapeang Thma Dam pursuant to instructions received from *Ta Hoeng*.<sup>4179</sup> Witness MUN Mot, a company chief, testified that *Ta Val* set the three cubic metres of soil per day work quota based on orders from his superiors. He also testified that *Ta Val* summoned unit chiefs to meetings on the work plan, the progress of the work and the workers who were present, absent, sick and who fled from the worksite.<sup>4180</sup> According to CHHUM Seng, a

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00950736 (explaining that when she worked in the Sector 5 mobile unit she was sent to build Kambao Dam, Trapeang Thma Dam and Spean Sraeng Dam, and that *Ta Val* controlled the Spean Sraeng worksite); KRET Ret Interview Record, E3/9492, 20 May 2013, p. 5, ERN (En) 00950743 (stating that *Ta Moug* and *Ta Val* “took charge of Kambao and Sreh dams”).

<sup>4176</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 59 (testifying that “*Ta Val* had the authority to supervise all the forces, I meant the sector mobile forces as well as the district mobile forces. Although for each district mobile unit, they had their respective chiefs. However, those chiefs were under the instructions of *Ta Val* as well.”); T. 2 September 2015 (SAM Sak), E1/340.1, p. 29 (“What I knew at the time is that *Ta Val* had the overall supervision at the worksite.”); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 79 (stating that the instruction to carry out the construction of the Dam was from the upper echelon and that *Ta Val* was the commander who supervised the construction); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 46 (answering the question whether he recalled the name of the leader who was in charge of Trapeang Thma worksite by saying that his name was *Ta Val*); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 61 (testifying that from his observation, *Ta Val* supervised the worksite); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 52 (testifying that Trapeang Thma Dam was also referred to as *Ta Val*’s Dam as he was the one who led the forces to build the Dam). *See also*, T. 2 September 2015 (MEAN Loey), E1/340.1, p. 64 (answering the question who was in charge of the Trapeang Thma Dam Worksite by explaining that he heard people call the individual by the name *Ta Val*); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 74-75 (“*Ta Val* had overall supervision over Trapeang Thma Dam worksite.”); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 59; T. 20 August 2015 (LING Lrysov), E1/334.1, p. 33 (explaining that she heard that *Ta Val* was the person in charge of the Dam’s construction); CHHUM Seng Interview Record, E3/9568, 18 February 2014, p. 7, ERN (En) 00982308 (stating that when he saw *Ta Val* draw a sketch of the Trapeang Thma Dam he thought that the construction site was *Ta Val*’s idea).

<sup>4177</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 87 (explaining that *Ta Val* visited once fortnightly or every two or three days); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 66 (*Ta Val* visited the worksite every two or three days or sometimes every day); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 19 (*Ta Val* visited every day). *See also*, BOU Mao Interview Record, E3/9551, 21 February 2014, p. 4, ERN (En) 00982756 (explaining that “*Ta Val* did not stay at the Trapeang Thma Dam worksite. [...] Usually he stayed in his office in Svay Sisophon.” The witness also stated that, as far as he knew, “the Sector office was in Svay Sisophon. *Ta Val* worked at the Sector Committee echelon.”).

<sup>4178</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 66 (testifying that he saw *Ta Val* doing these activities).

<sup>4179</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 59, 71-72 (explaining that *Ta Val* relayed the instructions to PAN Chhuong and other five people and that the instructions were provided orally).

<sup>4180</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 78; T. 27 October 2015 (MUN Mot), E1/357.1, p. 36 (testifying that *Ta Val* himself set the three cubic metres quota and that he had received orders to do so from his superiors). The Chamber notes that in his DC-Cam interview, PAN Chhuong stated that *Ta Val* received instructions on the work plan at meetings held with *Ta Hoeng* and other mobile unit chiefs at



company chief who reported to *Ta Val*, the latter held meetings with all chiefs of companies and battalions in order to discuss “a new plan or a specific plan”.<sup>4181</sup> At times he also met with the workers to provide them with instructions.<sup>4182</sup> SOT Sophal, a member of the children unit, testified that his unit chief indicated that the work assignments came from *Ta Val*.<sup>4183</sup> KAN Thorl, an Old Person who held the role of platoon deputy chief within a mobile unit operating at the worksite, explained that he and the other members of his platoon received orders from the “upper echelon”, by which term the witness referred to a company or regiment.<sup>4184</sup> Based on these testimonies, the Chamber concludes that, pursuant to instructions from his superiors, *Ta Val* summoned company and battalion chiefs to meetings during which he gave orders related to the work plan. The company and battalion chiefs in turn disseminated these instructions to their subordinates.<sup>4185</sup>

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the sector level. *See* PAN Chhuong DC-Cam Interview, E3/9094, 18 June 2011, pp. 15-18. Further, CHHIT Yoeuk, when discussing his assignment as *Ta Val*’s assistant, testified that there was a Committee that passed tasks down the line, so the tasks were not given at the discretion of *Ta Val*’s alone. *See* T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 73. However, the witness did not clarify which Committee this was and who its members were. While the Chamber understands that *Ta Val* received instructions from his superiors, including in particular *Ta Hoeng*, and that therefore he did not determine the work plan on his own initiative, it is not in a position to determine precisely which Committee level was the one CHHIT Yoeuk discussed.

<sup>4181</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 88 (“During that time, *Ta Val* told me to go and work. You can say I was quite close to him, because he was my immediate supervisor. He could call me to do the job as long as he wanted. He ordered me to do the job here and there.”). With respect to CHHUM Seng’s position *vis-à-vis Ta Val*, the Chamber notes that in another part of his testimony, CHHUM Seng indicated that his immediate supervisors were *Ta Khauv* and *Ta Vorn* (T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 70) and that he received orders from *Ta Khauv*, who received them from *Ta Val* (T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 72). The Chamber finds that these different statements may possibly be explained by the fact that the witness worked with all three superiors: as a company chief his immediate superiors were the battalion chiefs *Ta Khauv* and *Ta Vorn*, but he possibly also received orders directly from *Ta Val*, as he testified that he received assignments and instructions from him and attended meetings held by *Ta Val*.

<sup>4182</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 88 (explaining that he, as a member of the children unit, attended meetings where *Ta Val* was present “two or three times, and it varied. Sometimes it happened every fortnight or every month. It’s up to them to call us to meetings.”).

<sup>4183</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 52 (“every time my chief told us about the work assignment, he always mentioned his chief, *Ta Val*, that the instructions came from *Ta Val*, that’s when we had to build a dam or dig a canal, or that later on we had to dig a pond”).

<sup>4184</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 53 (testifying that the three cubic metres quota was decided upon by the “upper echelon”); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 31 (explaining that by “upper echelon” he meant the company and regiment, so the units above his in the structure of the Dam).

<sup>4185</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 71-73 (explaining that *Ta Val* relayed the instructions to PAN Chhuong and other five people); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 67 (explaining that the battalion chief, during meetings, said that the information disseminated came from the headquarters, which the witness understood to mean the commander in charge of Trapeang Thma Dam, *Ta Val*); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 58-59 (testifying that *Nhav*, the company chief, received instructions from the upper echelon and relayed them to the workers. The witness also

1227. At the worksite everyone was afraid of *Ta Val*.<sup>4186</sup> Witness LAT Suoy, a soldier from the Phnom Srok district military who was assigned to work at the Dam as a guard tasked to report the existence of damage, testified that *Ta Val* was firm, strict and strong and generally a very mean person.<sup>4187</sup> PAN Chhuong, who was close to *Ta Val*, testified that the latter was an agitated and cruel person, quick-tempered and irritated; however, the witness thought that “he was agitated only in words but he had a good heart”.<sup>4188</sup> PAN Chhuong also stated that when *Ta Val* was angry he would call those who made mistakes to be refashioned.<sup>4189</sup> CHHUM Seng testified that *Ta Val* sometimes disguised himself as a worker and went to oversee the workers; if someone was not working he would beat that person with a wooden stick he was carrying.<sup>4190</sup>

1228. When *Ta Val* was not present at the worksite, *Ta San*, a regiment chief, was in charge.<sup>4191</sup>

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stated that he and his co-workers were told by Nhav that he was about to attend a meeting and later he relayed the instructions on the work plan to them).

<sup>4186</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 51-52, 79 (explaining that whenever they heard the name of or saw *Ta Val* at the construction site, the workers tried to work as hard as possible and that the witness himself tried to do his best when *Ta Val* was around); T. 2 September 2015 (SAM Sak), E1/340.1, p. 49 (“I did not dare to look at his face. I heard of the name, I have never seen him.”); T. 17 August 2015 (CHHIT Yoek), E1/331.1, p. 4 (“From his speech I could say that he was a mean person and we were afraid of him”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 78 (testifying that when he spoke, *Ta Val*’s looks were very frightening and that he was cruel. The witness explained that he would stand next to *Ta Val* and watch him talking in a loud and aggressive voice when he was supervising workers); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 67 (testifying that every time *Ta Val* arrived everybody was afraid and they had to try to work harder, adding that he himself was so afraid of *Ta Val* that he did not dare look at this face); T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 52-53 (testifying that if *Ta Val* found out that a person had committed an offence, he would send that person to be executed; for that reason people feared him). *See also*, T. 28 July 2015 (SEN Sophon), E1/324.1, p. 20 (stating that he heard people say that *Ta Val* was aggressive). The Chamber notes MUN Mot’s evidence that he never saw *Ta Val* lay out any threat to the workers. *See* T. 26 October 2015 (MUN Mot), E1/356.1, p. 79. However, the Chamber does not find this statement to contradict the other witnesses’ consistent evidence that workers were afraid of *Ta Val* due to his cruel personality. The Chamber notes that witness CHHUM Seng worked directly with *Ta Val* as *Ta Val* was his immediate supervisor (T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 88), and it therefore finds his testimony particularly relevant due to the particular position of contact he had with *Ta Val*.

<sup>4187</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 66-67; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 28, 52. The Chamber notes that the witness explained that when he was transferred to work at the Dam, he was part of the Phnom Srok district military unit (T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 36-37).

<sup>4188</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 81.

<sup>4189</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 81-82.

<sup>4190</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 51-52.

<sup>4191</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 10-11.

1229. The Northwest Zone cadres were replaced by the Southwest Zone cadres during the second half of 1977.<sup>4192</sup> Cadres arrived also from the East and the West Zones.<sup>4193</sup> When the Southwest Zone cadres arrived, the Northwest Zone cadres were arrested and disappeared one after another.<sup>4194</sup> The Southwest Zone cadres accused the Northwest Zone cadres of being traitors.<sup>4195</sup>

<sup>4192</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 63 (testifying that the first Southwest Zone cadres arrived in the Northwest Zone in early 1977); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 59-60 (indicating that in late 1977, Southwest Zone cadres came to supervise the work and most leaders disappeared and people fled everywhere); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 72 (testifying that Trapeang Thma Dam came under the control of the Southwest zone cadres from late 1977 onwards); T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 19 (testifying that the Southwest group arrived in July or August 1977); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 9 (testifying that the Southwest Zone cadres arrived to the worksite in mid-1977). *See also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 1, ERN (En) 00089771 (stating that in 1977 she left Takeo province for Trapeang Thma, and that she arrived at the Dam in December 1977); CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 (confirming that *Yeay* Chaem arrived in Preah Netr Preah district and became a district chief in late 1977 or early 1978). The Chamber notes SEN Sophon's statement that he could recall that it was in 1978 that the Southwest Zone people came to take control of the Northwest Zone and that IM Chaem was the one who came to arrest *Ta Val's* network (T. 27 July 2015 (SEN Sophon), E1/323.1, p. 74). The Chamber finds that this statement does not call into question the consistent evidence of other witnesses that cadres from the Southwest arrived around the second half of 1977, particularly in light of SEN Sophon's admission that he did not recall well when it was that the Southwest Zone had taken control of the Northwest Zone.

<sup>4193</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 8 (explaining that cadres arrived from the East Zone); T. 20 August 2015 (TAK Boy), E1/334.1, p. 14 (DC-Cam Interview indicating that the West Zone cadres came from Kampong Chhnang, to supervise the Northwest Zone cadres); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 22 (testifying that he saw a person named *Ta Sorn* who was in charge of the mobile unit in 1978 and who said he came from the West Zone); T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 19 (testifying that before the arrival of the Southwest group in July or August 1977 there was another group of cadres from the West Zone, and that the West Zone group was integrated into the communes and cooperatives mobile units and were not involved with the unit at the sector level). *See also*, T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 7-8 (testifying that a group arrived from Kampong Chhnang).

<sup>4194</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 56 (explaining that he did not know why they disappeared); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 72 (testifying that the Northwest Zone cadres "disappeared, they were no longer there"); T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 87-88 (testifying that he learnt from his chief *Ta Nak* that the Northwest cadres were arrested and that they were summoned to attend a meeting or study session, and they disappeared ever since); T. 27 October 2015 (MUN Mot), E1/357.1, pp. 23-24 (testifying that he saw *Ta San* being arrested at the first bridge on the crest of the Dam but that he did not witness his execution and that rumours spread that he was buried alive in a place so-called *Kuok Khlong*); MUN Mot Interview Record, E3/9564, 25 July 2014, p. 16, ERN (En) 01044806 (stating that when *Ta San* was arrested, *Ta Val* and *Ta Cheal* had already been arrested). *See also*, PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 4, ERN (En) 00975045 (stating that "[a]t the end of 1977, *Ta Mok* was sent to be responsible for the Northwest Zone. I noticed that, after the arrival of the southwest people in the Northwest Zone, almost all cadres of Northwest Zone were removed.").

<sup>4195</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 22 (testifying that the Southwest cadres told workers at the Dam that *Angkar* had arrested the traitors, namely *Hoeng*, *Val* and *Cheal*). *See also*, T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 7-9 (testifying that he learnt from his chief that *Ta Nhim* stated at a meeting that the Northwest Zone cadres were accused of being traitors and would be arrested by the Southwest Zone cadres. The witness also stated that a few days after this meeting *Ta Nhim* was arrested), 75 (testifying that he heard this being said by his colleagues).

1230. In June 1977, *Ta Val* was arrested and taken to S-21.<sup>4196</sup> The NUON Chea Defence submits that *Ta Val* was lawfully arrested because he was cruel and encouraged unit chiefs at the Trapeang Thma Dam to implement harsh punishments on the workers.<sup>4197</sup> It also contends that *Ta Val* was arrested because he was involved in preparing a rebellion against the Khmer Rouge and that after his arrest the construction site leadership was replaced by the Southwest Zone cadres, who were appointed to “redress the situation”.<sup>4198</sup> The Co-Prosecutors respond that the Defence’s allegation that *Ta Val* and other Northwest Zone cadres were involved in a rebellion is not supported by the evidence.<sup>4199</sup> In particular, they submit that the only evidence on the existence of secret plans, which was provided by MUN Mot, was inconsistent and unpersuasive.<sup>4200</sup> They further submit that, for two reasons, there is no merit in the NUON Chea Defence’s submission that the Party Centre carried out its purge of the Northwest Zone cadres because the latter had mistreated the workers at the Trapeang Thma Dam.<sup>4201</sup> First, the workers were told that the purge had occurred because the Northwest Zone cadres were traitors to the revolution; second, in the Co-Prosecutors’ view, if the purge had been carried out to improve conditions at the worksite, the evidence would show that the conditions in fact improved. However, things not only did not improve but worsened.<sup>4202</sup> Neither the KHIEU Samphan Defence nor the Civil Party Lead Co-Lawyers made any relevant submissions in this regard.

1231. The Chamber does not find the NUON Chea Defence’s submissions to be persuasive. There is no evidence that *Ta Val* was arrested because of his cruelty. Several

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<sup>4196</sup> S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 3, ERN (En) 01139860 (entry no. 29); S-21 list of prisoners, E3/10324, undated, p. 2, ERN (En) 01528688 (entry no. 4, indicating 29 June 1977 as entry date); S-21 list of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [*sic*], ERN (En) 00193556 (entry no. 12, listing Aok Horn *alias* Val, Assistant Sector 5, as entered on 29 June 1977); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 47 (testifying that *Ta Val* was summoned to a “study session”); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 6 (answering the question when *Ta Val* and *Ta Hoeng* were arrested by saying that from his recollection the arrests could have happened in late 1977 or early 1978); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 16 (testifying that *Ta Val* disappeared in 1977). *See also*, T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 81 (explaining that he heard a man called Sreh say that *Ta Val* was summoned by *Angkar* for the education session); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 75 (explaining that people in the mobile units said that *Ta Val* was taken away and killed); T. 19 August 2015 (TAK Boy), E1/333.1, p. 63 (testifying that he heard from battalion chiefs that *Ta Val* had been arrested); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 91 (testifying that he learnt from his chief *Ta Nak* that *Ta Val* was called to a meeting and was arrested).

<sup>4197</sup> NUON Chea Closing Brief, paras 1096-1100.

<sup>4198</sup> NUON Chea Closing Brief, para. 1100.

<sup>4199</sup> Co-Prosecutors’ Closing Brief, para. 1120.

<sup>4200</sup> Co-Prosecutors’ Closing Brief, para. 1120.

<sup>4201</sup> Co-Prosecutors’ Closing Brief, para. 1121.

<sup>4202</sup> Co-Prosecutors’ Closing Brief, para. 1121.

witnesses testified that they were told that the Northwest Zone cadres, including *Ta Val*, were arrested because they were considered to be traitors to the revolution.<sup>4203</sup> There is no indication that *Ta Val* was informed of the reasons of his arrest or that he had an opportunity to challenge the legality of his arrest. The Chamber is not satisfied that *Ta Val* was arrested by the Southwest Zone cadres in order to “redress the situation”, as the working and living conditions at the worksite did not substantially change upon their arrival. Some witnesses indicated that the conditions in fact deteriorated, that some of the Southwest Zone cadres were “crueller” than *Ta Val*, and that many more people were killed and died of starvation after the Southwest Zone cadres took control of the worksite.<sup>4204</sup> With regard to *Ta Val*’s involvement in a rebellion against the Khmer Rouge, the Chamber did not find evidence of a planned rebellion in the Northwest Zone, aside from that organised by TOAT Thoeun.<sup>4205</sup> According to his own testimony, TOAT Thoeun initiated the rebellion only because attempts had been made on his life by the Party Centre.<sup>4206</sup> This rebellion had no

<sup>4203</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 22 (testifying that the Southwest cadres told workers at the Dam that *Angkar* had arrested the traitors, namely Hoeng, Val and Cheal); T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 7-9 (testifying that he learnt from his chief that *Ta Nhim* stated at a meeting that the Northwest Zone cadres were accused of being traitors and would be arrested by the Southwest Zone cadres. The witness also stated that a few days after this meeting *Ta Nhim* was arrested), 75 (testifying that he heard this being said by his colleagues); PAN Chhuong DC-Cam Interview, E3/9094, 18 June 2011, p. 43, ERN (En) 00728683 (“they arrested *Ta Val* and people in the same cluster. Q. What did they accuse *Ta Val* of when the Southwest arrested him? A. They said he was a traitor. Q. They said traitor? A. That’s right. Q. At that time did you know any traitorous acts? A. No, I didn’t know. Q. You didn’t know? A. No. Q. Was he really a traitor or were they just accusing him? A. As far as I knew they did not get along with each other.”). See also, TANN Than Interview Record, E3/508, 18 December 2008, p. 2, ERN (En) 00277840 (“*Ta Val* was arrested and killed in mid-1977 after they accused him of being a traitor.”).

<sup>4204</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 40; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 75; T. 12 August 2015 (LAT Suoy), E1/329.1, p. 7. See also, HANG Horn Interview Record, E3/9518, 11 February 2015, p. 8, ERN (En) 01077004 (“Before the Southwest cadres arrived, they had us dig two to three cubic metres of soil per day. When the Southwest cadres arrived, they had us carry three cubic metres of soil. As for the food rations, it was the same for those who worked in mobile units; there was not enough food to eat. They had us carry soil both day and night before and after the Southwest cadres arrived. Q. Were the situation and the arrests and killings the same as before the Southwest people arrived? A. Actually, before the Southwest cadres arrived arrests and killings were not frequent but after the Southwest cadres arrived the arrests and killing of people became more frequent.”); KOR Len Interview Record, E3/9523, 11 March 2014, p. 6, ERN (En) 00985186 (“The living and working conditions under the control of the Northwest group were better than those under the control of the Southwest group because we had sufficient food. By contrast under the control of the Southwest group things were extremely difficult because we did not have sufficient food.”); LORT Bandet Interview Record, E3/9494, 24 January 2014, p. 7, ERN (En) 00983722; IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, pp. 1-4, ERN (En) 00089771-00089774; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 58 (testifying that IM Chaem was from the Southwest Zone); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 27.

<sup>4205</sup> Section 12.1: Internal Factions, paras 1957-1959.

<sup>4206</sup> Section 12.1: Internal Factions, para. 1958.

connection or support from Vietnam.<sup>4207</sup> Further, TOAT Thoeun fled to the forest upon his return from China around mid-1977 or November 1977 and engaged in fighting the Southwest forces led by *Ta Mok* around August 1978, at which time *Ta Val* had already been taken to S-21.<sup>4208</sup> The Chamber does not find, therefore, that *Ta Val* was involved in preparing a rebellion against the Khmer Rouge. In light of the above, the NUON Chea Defence's submission is rejected.

1232. The Chamber heard conflicting evidence about the replacement of *Ta Val* once he was arrested. According to CHHUM Seng, *Ta Poal* from the Southwest Zone replaced *Ta Val*.<sup>4209</sup> On the contrary, TAK Boy stated that *Ta Yun* replaced him.<sup>4210</sup> CHHIT Yoeuk provided contradictory statements on this issue, initially stating that *Ta Pheng* from the Phnom Srok district committee of the Northwest Zone replaced *Ta Val*, and then indicating that Brother Yoan was in charge of Sector 5 mobile unit "under the supervision of *Ta Pheng*".<sup>4211</sup> Therefore, the Chamber cannot conclude with certainty who replaced *Ta Val* in the supervision of the Trapeang Thma Dam once he was arrested, but finds that such responsibility was then transferred to cadres from the Southwest Zone.

<sup>4207</sup> Section 12.1: Internal Factions, para. 1958.

<sup>4208</sup> Section 12.1: Internal Factions, para. 1957.

<sup>4209</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 82, *affirming* CHHUM Seng Interview Record, E3/9568, 18 February 2014, p. 9, ERN (En) 00982310 (stating that "[o]ne morning there was a meeting and *Ta Nin* announced that from that time forward, *Ta Poal* would be in charge instead of *Ta Val*, because *Ta Val* had been called away to study by *Angkar*." CHHUM Seng also explained that "[i]n that era, [being called away to study] meant being taken away and killed."). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 15, ERN (En) 01059949 ("Q. You said previously that *Ta Val* was the highest-ranking leader at Trapeang Thma Dam. After he was arrested, who came to replace him? A. *Ta Poal* came from the Southwest Zone to replace him."); THUN Thy DC-Cam interview, E3/9157, 17 June 2011, p. 20, ERN (En) 01172883 (stating that *Ta Poal* took *Ta Val*'s place as the sector mobile unit chief and that "[t]here was *Ta Poal*, *Ta Sim* and *Ta Yun*. *Ta Yun* was the chief and *Ta Poal* was the deputy. *Ta Sim* was a member. The three of them were from the Southwest Zone.").

<sup>4210</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 98. *See also*, LIM Hong Interview Record, E3/9554, 13 June 2013, p. 5, ERN (En) 00966716; CHIEP Chhean Interview Record, E3/7805, 20 December 2008, p. 4, ERN (En) 00277817 (stating that "*Ta Yun* came from the Southwest to supervise the Trapeang Thma Dam. He arrested and killed many people."); CHIEP Chhean Interview Record, E3/9512, 23 May 2013, p. 4, ERN (En) 00945839.

<sup>4211</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 48 ("Q. Who actually replaced *Ta Val* in his job? A. After his arrest, *Ta Pheng*, the former Phnum Srok district committee, replaced him."), 49 ("I reported to Brother Yoan, who was actually in charge of the mobile unit, under the supervision of *Ta Pheng*. Q. And this was -- would it be correct that this mobile unit was the mobile unit for Sector 5? Is that correct or no? A. Yes, that is correct. It was the Sector 5 mobile unit."). *See also*, CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 5, ERN (En) 00923047 ("At that time, a Southwest cadre, Yoan, replaced *Ta Val* and he became my chief.").

11.1.5.2. Above the worksite

1233. While the Dam was under construction, Hat was Phnom Srok district secretary and Maong was the Preah Netr Preah district secretary.<sup>4212</sup> *Ta Pheng* was Phnom Srok district deputy secretary and Sam At was *Ta Maong's* deputy.<sup>4213</sup> *Ta Hat* was arrested and transferred to S-21 in September 1977 and executed on 25 March 1978.<sup>4214</sup> *Ta Maong* was arrested and sent to S-21 in June 1977.<sup>4215</sup> After Maong's arrest, he was replaced by Phon from the East Zone, and by late 1977 IM Chaem became the Preah Netr Preah district secretary.<sup>4216</sup>

<sup>4212</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 79 (“At that time, to my recollections, in Phnom Srok district, *Ta Hat* was the chair of the district committee, and at Preah Netr Preah district, *Ta Maong* was in charge.”); T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 29 (explaining that when he was sent to work at the Preah Netr Preah district office close to the beginning of the rainy season in 1975, Loeum was the head of the district and that Loeum was later replaced by *Ta Maong*), 62 (explaining that his understanding was that *Ta Hat* was a former Phum Srok district chief *affirming* CHHIT Yoek Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 (stating that in late 1975 *Ta Maong* replaced Loeum in Preah Netr Preah district); T. 27 October 2015 (MUN Mot), E1/357.1, p. 16 (testifying that *Ta Maong* was the chief of the Preah Netr Preah district); General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, ERN (En) 00223175 (listing Hatt under Phnom Srok and Maong under Preah Net Preah); S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 4, ERN (En) 01139861 (entry no. 34, listing AN Maong as Secretary of Preah Netr Preah district, Sector 5). *See also*, S-21 Excerpt of Confession – NGAN Yem *alias* Hatt, E3/7433, 18 October 1977, p. 1, ERN (En) 00223913 (containing annotation reporting as follows: “[a]n excerpt from the confession [Ngan Yem *alias* Hatt was the secretary of Phnom Srok District, Sector 5, the North-west]”); S-21 Confession – AN Meng, E3/7421, 26 September 1977, p. 1, ERN (En) 01451687 (containing annotation indicating that AN Meng was the secretary of Preah Netr Preah district, Sector 5 and that two copies of the confession were sent to *Angkar* and submitted to the Northwest Zone).

<sup>4213</sup> T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 60-62 (stating that *Ta Pheng* was from Phum Srok district and that he was arrested and explaining that also Sam At was subsequently arrested and disappeared); General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, ERN (En) 00223175 (listing “Phen” below Hatt under Phnom Srok and Sam At below Maong under Preah Net Preah) *See also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 3, ERN (En) 00089773 (stating that before her arrival at Trapeang Thma, *Ta Maong* and At were in control of Preah Net Preah district); S-21 list of prisoners, E3/9906, undated, p. 68, ERN (En) 01367552 (entry no. 129, listing MAKK Ling *alias* Sam At as Chief of Preah Netr Preah district mobile unit, and 4 August 1977 as date of entry); S-21 Confession – MAK Leung *alias* Sam At, E3/7432, 8 August 1977, pp. 1-4, ERN (En) 00782187-00782190.

<sup>4214</sup> S-21 list of prisoners who entered on 4 September 1977, E3/10275, 5 September 1977, p. 3, ERN (En) 01368829 (entry no. 4, listing NGAN Yem *alias* Hat as Secretary of Phnom Srok district, Sector 5); S-21 list of prisoners, E3/8463, 22 September 1978, p. 303, ERN (En) 01554821 (entry no. 2: Hat's name was grouped under the subsection “Name of prisoners who were destroyed from 22 March 1978 to 30 March 1978”); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 79 (testifying that *Ta Hat* and *Ta Maong* were summoned to attend education sessions, which meant that they were taken for execution). *See also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 3, ERN (En) 00089773 (“Upon my arrival, *Ta Maong* and *Ta At* still survived. But after I got list, both of them were taken away.”).

<sup>4215</sup> S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 4, ERN (En) 01139861 (entry no. 34); T. 13 August 2015 (CHHIT Yoek), E1/330.1, p. 59 (testifying that Maong was arrested and subsequently disappeared probably in early 1977); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 90 (testifying that when the Southwest Zone cadres arrived, Maong was called to a meeting and arrested).

<sup>4216</sup> IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, ERN (En) 00089771 (“I went to work in Preah Net Preah district.”), 00089773 (“I took responsibility for the forces of Preah Net Preah district.”); T. 17 August 2015 (CHHIT Yoek), E1/331.1, p. 41 (“As I told you already, I heard people say in 1977

1234. Within the worksite structure, issues concerning the Dam itself, such as when parts of it were broken, were reported to *Ta Val*.<sup>4217</sup> In contrast, military matters were reported to *Ta Hat* who was in the Phnom Srok district committee.<sup>4218</sup> Militia and soldiers had distinct tasks: the militia was responsible for the work in the commune and the village, whereas the soldiers were in charge of monitoring people who fled into the jungle or left the military unit.<sup>4219</sup>

1235. Hoeng was the Sector 5 secretary.<sup>4220</sup> On 20 June 1977, upon the arrival of the Southwest Zone cadres in the Northwest Zone, Hoeng was taken to S-21.<sup>4221</sup> *Ta Cheal* was RUOS Nhim's son and the son-in-law of SAO Phim.<sup>4222</sup> *Ta Cheal* was a member

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– in mid-1977 or late 1977, that *Yeay Chaem* became the district committee at Preah Netr Preah.”); CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 (stating that IM Chaem became a district chief in late 1977 or early 1978).

<sup>4217</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 38.

<sup>4218</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 38.

<sup>4219</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 40. *See also*, Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 1, ERN (En) 00342708 (stating that people “run away” from the mobile unit and hid in the forest and were subsequently arrested).

<sup>4220</sup> General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, ERN (En) 00223175 (indicating Hoeng as Secretary of Sector 5); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 80 (explaining that *Ta Val* convened a meeting and announced that *Ta Hoeng* was in charge of Sector 5); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 89 (testifying that *Ta Hoeng* was the chief of Sector 5); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 60; CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 (answering a question on the management structure in the commune and district of Preah Netr Preah in Sector 5 during April 1975 by saying that “*Ta Hoeng* was Sector 5 chief”); CHHIT Yoeuk DC-Cam Interview, E3/9008, 19 June 2011, p. 8, ERN (En) 00731112 (stating that *Ta Hoeng* was the chief of region 5 since 1973 but that at some point he was “sent to grind rice [...] until 1975.” CHHIT Yoeuk also stated that “then” he was chief of the region and army commander.”) *See also*, T. 26 October 2015 (MUN Mot), E1/356.1, p. 58 (testifying that he heard that *Ta Hoeng* was part of the committee of Sector 5); T. 27 October 2015 (MUN Mot), E1/357.1, p. 16 (testifying that he knew that *Ta Hoeng* was the chief of the sector). The Chamber notes that PAN Chhuong stated that *Ta Hoeng* was referred to as Brother 07 and his car was also labelled 07. *See* T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 83.

<sup>4221</sup> Communication from Chan, E3/10426, 22 June 1977, p. 1, ERN (En) 01462248 (reporting that MEN Chun *alias* Hoeng Sector 5 secretary entered S-21 on 20 June 1977); General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, p. 1, ERN (En) 00223175 (reporting Hoeng as “arrested”); T. 26 October 2015 (MUN Mot), E1/356.1, p. 59; T. 11 August 2015 (LAT Suoy), E1/328.1, p. 89. *See also*, T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 80 (testifying that he heard that when the Southwest Zone cadres arrived, *Ta Hoeng* and other cadres were summoned to attend a study session); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 60 (explaining that he did not know the situation at the time but that he heard from others that Hoeng was arrested and disappeared); S-21 Confession – MEN Chun *alias* Hoeng, E3/2325, 20 September 1977, ERN (En) 00178195-00178196.

<sup>4222</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 12; T. 26 October 2015 (MUN Mot), E1/356.1, p. 58; T. 2 December 2015 (PAN Chhuong), E1/361.1, p. 34 (testifying that he thought that *Ta Cheal* was appointed to a senior position because he was the son of *Ta Nhim*); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 20 (testifying that he heard people saying that Cheal was the son of *Ta Nhim* and that he was chief of the youth in Sector 5). *See also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 4, ERN (En) 00089774 (“Chiel was the son of *Ta Nhim*, chief of zone.”); PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 6, ERN (En) 00975047 (“I just knew RUOS Nhim and SAO Phim got along well and they were in-laws. *Ta Chiel* is SAO Phim’s son-in-law.”).



of the Sector 5 Committee.<sup>4223</sup> However, the Chamber received conflicting evidence about the exact role he played. The Co-Prosecutors rely on PAN Chhuong's statements in submitting that *Ta Cheal* was Hoeng's deputy.<sup>4224</sup> However, the witness himself stated in court that he heard of this from others and was not sure if it was true.<sup>4225</sup> The Chamber notes a 27 June 1977 document and S-21 Prisoners' lists indicating that Cheal was an "assistant" in Sector 5.<sup>4226</sup> The Chamber also notes the evidence of CHHIT Yoeuk, who knew the structure of the Preah Netr Preah district and Sector 5 very well because he worked in the administrative section of Preah Netr Preah district and as a member of militia reporting to Sector 5 army chief.<sup>4227</sup> In his statement to OCIJ investigators, while mentioning that *Ta Cheal* replaced Hoeng for a few months when the latter was arrested, he did not say that Cheal was his deputy, instead indicating that he did not know who Hoeng's deputy was at the time.<sup>4228</sup> Based on this evidence, the Chamber is unable to reach a conclusion as to *Ta Cheal*'s exact role within Sector 5. However, it finds that when Hoeng was arrested, *Ta Cheal* replaced him for a few months, after which *Ta Rin alias Mey* (or Mei) from the Southwest Zone became the

<sup>4223</sup> General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, p. 1, ERN (En) 00223175; T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 88 (describing *Ta Cheal* as a cadre from the Sector 5 level). See also, HANG Horn Interview Record, E3/9518, 11 February 2015, p. 5, ERN (En) 01077001 (stating that *Ta Cheal* "was Sector 5 Committee."); CHIEP Chhean Interview Record, E3/9512, 23 May 2013, p. 3, ERN (En) 00945838 ("At that time *Ta Cheal* was the Sector committeeman."); CHHOENG Choeun Interview Record, E3/9550, 4 September 2014, p. 8, ERN (En) 01044845; CHHUM Ruom Interview Record, E3/5271, 1 February 2009, p. 3, ERN (En) 00289927; PHI Phuon Interview Record, E3/9536, 28 November 2013, p. 5, ERN (En) 00975046; KHOEM Vai Interview Record, E3/10750, 21 December 2015, p. 15, ERN (En) 01207676 (stating that when he arrived to Sector 5 he lived in Svay Sisophon and was in charge of the Commerce Section and that his chief was a Northwest Zone cadre called Cheal who was on the Sector Committee and whose father was RUOS Nhim).

<sup>4224</sup> Co-Prosecutors' Closing Brief, para. 1116; PAN Chhuong Interview Record, E3/9483, 14 March 2013, pp. 4, 6, ERN (En) 00937034, 00937036; PAN Chhuong DC-Cam Interview, E3/9094, 18 June 2011, p. 44, ERN (En) 00728684.

<sup>4225</sup> T. 2 December 2015 (PAN Chhuong), E1/361.1, p. 34 ("While *Ta Val* was in his duty, I heard people say that the deputy of *Ta Hoeng* was *Ta Cheal*, but I was not quite sure at that time. I heard people say that the deputy of Hoeng was Cheal. I did not know at that time whether it was true or not. Many people talked about that.").

<sup>4226</sup> General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, p. 1, ERN (En) 00223175 (reporting Cheal as "assistant" in Sector 5 and Vuth as "deputy secretary"); S-21 list of prisoners who entered on 14 June 1978, E3/10190, 15 June 1978, p. 1, ERN (En) 01548761 (listing NHIM Chhnang *alias* Cheal as "[a]ssistant in Sector 5"); S-21 list of prisoners, E3/9905, undated, p. 49, ERN (En) 01398919.

<sup>4227</sup> CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, pp. 3-4, ERN (En) 00923045-00923046.

<sup>4228</sup> CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 ("*Ta Hoeung* was Sector 5 chief but I am not sure who served as a deputy chief and a member in the Sector Committee. [...] In Sector 5, after *Ta Hoeung* was arrested, *Ta Cheal* replaced him for a few months and later Rin (from the Southwest Zone) replaced *Ta Chiel* in either March or April 1978.").

secretary of Sector 5.<sup>4229</sup> Rin was taken to S-21 on 16 November 1978 and was “smashed” on 15 December 1978.<sup>4230</sup>

1236. MOUL Sambath *alias* RUOS Nhim was the secretary of the Northwest Zone.<sup>4231</sup> KUNG Sophal (KONG Sophal) *alias* Kue (Koe) *alias* Kan was the Deputy Secretary of the Northwest Zone from 1975 until late 1978.<sup>4232</sup> The Chamber has reviewed a number of contemporaneous documents relevant to RUOS Nhim’s position and the time-frame of his appointment as Northwest Zone Secretary: a report sent by RUOS Nhim to the Party Centre on 11 May 1978 covering the situation in the zone and reporting on the progress of the work at the Trapeang Thma Dam which indicates that at that time he was still in charge of the Northwest Zone;<sup>4233</sup> a subsequent report sent to *Angkar* 870 on 17 May 1978;<sup>4234</sup> and his S-21 confession dated 14 June 1978.<sup>4235</sup> In light of these documents, the Chamber concludes that RUOS Nhim was arrested after 17 May and before 14 June 1978. The Chamber does not place weight on MUN Mot’s

<sup>4229</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 56-58; T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, pp. 11-12 (testifying that before Rin assumed power, *Ta* Cheal was appointed as Sector 5 leader on a provisional basis), 29 (explaining that Brother Rin was sector leader when the witness was assigned to distributing rice, which occurred in either December 1977 or January 1978); CHHIT Yoeuk Interview Record, E3/9456, 26 April 2013, p. 4, ERN (En) 00923046 (stating that Rin replaced *Ta* Chiel in either March or April 1978); S-21 list of prisoners, E3/2254, undated, p. 5, ERN (En) 00789707 (entry no. 1: HENG Rin *alias* Mey, Secretary of Sector 5); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 80.

<sup>4230</sup> S-21 list of prisoners, E3/10454, 15 December 1978, p. 4, ERN (En) 01544178 (entry no. 2, listing HENG Ren *alias* Me as secretary of Sector 5); S-21 list of prisoners, E3/2254, undated, p. 5, ERN (En) 00789707 (listing under the heading “Northwest Zone” HENG Rin *alias* Mey, secretary of Sector 5. In correspondence to Rin’s name, the table indicates a date of 16 November 1978 and the word “Finished”); S-21 list of prisoners, E3/10211, undated, p. 2, ERN (En) 01462161; S-21 Confession – Heng Rin *alias* Mei, E3/7403, 19-24 November 1978, ERN (En) 00217732-00217738. *See also*, T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 59 (testifying that Rin disappeared in early 1978).

<sup>4231</sup> *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting that RUOS Nhim was the “second vice-president of the Presidium of the State of democratic Cambodia”); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 47-48 (indicating that RUOS Nhim was the zone leader when *Ta* Val was arrested in 1977); T. 27 October 2015 (MUN Mot), E1/357.1, p. 16 (testifying that he knew that *Ta* Nhim was the chief of the Northwest Zone). *See also*, T. 28 July 2015 (MAM Soeum), E1/324.1, p. 88 (testifying that he did not know MUOL Sambath personally but that he heard he was chief of the zone).

<sup>4232</sup> KAING Guek Eav Interview Record, E3/394, 22 October 2009, p. 7, ERN (En) 00398234 (stating that “I can further state that what Ke Pork says concerning the arrest of *Ta* Keu (KUNG Sophal, Deputy Secretary of the Northwest Zone) and VORN Vet, is all accurate.”); KAING Guek Eav Interview Record, E3/526, 5 May 2008, p. 6, ERN (En) 00204287 (stating that “[i]n April 1978 [...] Ros Nhim and Kung Sophal *alias* Keu, respectively Secretary and Deputy Secretary of the Northwest Zone, were all arrested.”); S-21 Confession – KEU, E3/3192, multiple dates, pp. 1-23, ERN (En) 00797070-00797092.

<sup>4233</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185215-00185218.

<sup>4234</sup> DK Report, E3/9368, 17 May 1978, p. 1, ERN (En) 00183653.

<sup>4235</sup> S-21 Confession – MOUL Oun *alias* Sambath *alias* Nhim, E3/3989, 14 June 1978, ERN (En) 01554902-01554935.

statement that *Ta Nhim* was arrested in mid-1977 given that it is uncorroborated hearsay evidence which is inconsistent with the contemporaneous documents.<sup>4236</sup>

1237. The NUON Chea Defence submits that the Trapeang Thma Dam, as an irrigation project, was “[l]ike other infrastructures [...] under the joint authority of the ministries of public works and of industry, both supervised by Vorn Vet, Deputy Prime Minister in charge of economics” and that, as such, it was not under the authority of NUON Chea.<sup>4237</sup> The Chamber finds that the evidence relied upon by the NUON Chea Defence does not support its submission. In particular, the Chamber finds that this evidence only establishes that the Public Works Committee was attached to the Ministry of Industry, whose chief was VORN Vet,<sup>4238</sup> that in April 1976 the Standing Committee decided that TOUCH Phoeun *alias* Phin would be the secretary of the Public Works Committee,<sup>4239</sup> and that the Public Works Committee “controlled the construction, the rock breaking at Trapeang Kraloeng in Kampong Speu province, and electricity and hydroelectricity at Kirirum Stoeng Chral” as well as the construction and renovation of houses, building and roads.<sup>4240</sup> The Chamber cannot conclude from these documents that Trapeang Thma Dam was under the authority of the Ministries of Industry and Public Works.

#### 11.1.5.3. Communications

1238. Information on the progress of the Trapeang Thma Dam’s construction and, more generally, on the security and the “people situation” (that is, people’s livelihood, food and health conditions) in Phnom Srok district and the other districts of Sector 5 was shared with the superior levels of the DK administrative structure. This information was transmitted to the zone level through weekly reports of the Sector 5 Committee and to the Party Centre through reports and telegrams sent by the zone office to Office 870.

<sup>4236</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 22 (testifying that he learnt that *Ta Nhim* had been arrested and indicating this happened in mid-1977).

<sup>4237</sup> NUON Chea Closing Brief, para. 1037.

<sup>4238</sup> Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543730; NAM Che Interview Record, E3/427, 24 July 2009, p. 5, ERN (En) 00365652 (stating that the Public Works was not a ministry but it was under the Ministry of Industry whose Minister was VORN Vet and CHENG An was his deputy); NAM Che Interview Record, E3/36, 28 October 2009, ERN (En) 00403082.

<sup>4239</sup> Standing Committee summary of decisions, E3/235, 19-21 April 1976, ERN (En) 00183417; NAM Che Interview Record, E3/36, 28 October 2009, ERN (En) 00403082.

<sup>4240</sup> NAM Che Interview Record, E3/427, 24 July 2009, p. 5, ERN (En) 00365652.

1239. This is illustrated by a weekly report of the Sector 5 Committee dated 21 May 1977, summarising the progress made in the construction of the Dam and the situation of the food rations in Sector 5. This report was sent to the zone secretary, “M-560” (the Northwest Zone office) and “Documentation”.<sup>4241</sup> It states that, at Phnom Srok district, “food was gone since mid-April” and that there may not have been enough rice until September or October.<sup>4242</sup> The proposed solution was to plant more food crops and to mix the remaining rice with other vegetables such as cassavas, sweet potatoes, vegetables, maize or beans.<sup>4243</sup> Additionally, the ration on the “front line” was reduced to two tins of rice from three.<sup>4244</sup> This allowed for the third tin to be given to the “deficient districts”.<sup>4245</sup> This report also addresses the “dry situation” which was “different from the normal one” and mentions the possibility of requesting *Angkar* to block the major river and dig canals in order to get water.<sup>4246</sup>

1240. Communications were sent from the zone to the Party Centre as illustrated by several reports from the Northwest Zone to Office 870. In particular, a report from Office 560 dated 29 May 1977 reviews the situation in the Northwest Zone and reports that the construction of the three sluice gates of Trapeang Thma was underway and expected to finish in May.<sup>4247</sup> With respect to the “people situation” it is stated:

<sup>4241</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 12, ERN (En) 00342719 (reporting that “[t]he strategic water reservoir in Trapeang Thma, the construction of the water gates for the three major directions are being continued, that is, the construction of the lower part will be finished in this May; the construction of the upper part will be finished later. The water dam and water gates at Cheung Kruos were completed.”). The terms “Zone Office 560”, “Office 560” and “M-560” are used refer to the Northwest Zone office. *See* Political Map of Democratic Kampuchea, E3/475, undated, ERN P01577214; SON Em Interview Record, E3/9477, 2 June 2014, p. 4, ERN (En) 01034083 (indicating that he worked in Battambang province as a messenger, in which capacity he received reports from various sectors in the zone, and that he worked at the Zone Office 560 in Battambang city which was the zone office. The Civil Party Applicant also indicated that once he received messages from all sectors in the zone he sent reports to the central level, Office 870 in Phnom Penh); T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 126-127 (testifying that Office 560 “was under zone authority” and Office 870 was under Pang’s responsibility and was located in Phnom Penh); T. 22 November 2016 (SON Em), E1/501.1, p. 9, ERN (En) 01390620 (referring to “Zone Office 560” and “Office 560” when speaking about the Northwest Zone office).

<sup>4242</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721.

<sup>4243</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721.

<sup>4244</sup> The Chamber understands the term “front line” as referring to those workers who were tasked with harvesting the early rice in the relevant districts. *See* Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721 (the entire sentence reads: “[a]bout the ration in the *front line* in charge of carrying out *storm attack* on the *strategic early rice* currently only two tins of rice are provided because if a ration of three tins continues taking [place] it will affect the districts of deficiency if a ration of two tins is set the remaining one tin can be given to the deficient districts.” (emphasis added)).

<sup>4245</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721.

<sup>4246</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 13, ERN (En) 00342720.

<sup>4247</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183017.

We have strengthened the collectivity to a better extent than before. People's living standard is a shortage in many regions. Now people in Regions 1, 2, 4, 6 and 7 are the most needy. Most people at support bases eat thin rice soup [gruel] while those at front battles have in some regions [a ration of] 2 cans of rice per day and eat in some other regions either of alternative rice and gruel twice a day.

People lack clothes though clothing has been managed to provide to the people as advised by *Angkar*. The salt supplied by *Angkar* is sufficient in all places. Important shelters for people have been built. There have now been no people without lodging and sleeping on the ground as there were in 1975 and 1976.<sup>4248</sup>

1241. The same report indicates that people were given injections and that anti-malaria sprays were applied throughout the zone. It also indicates that some people were infected with malaria and suffered symptoms such as fainting spells, diarrhoea and fever.<sup>4249</sup> The report also states that in Sector 5 the drought had destroyed much of the crops.<sup>4250</sup>

1242. The Chamber notes that the recipients of this report are not indicated in the document itself. However, the Chamber considers the evidence provided by SON Em in this regard. In his statement to OCIJ investigators, SON Em explained that from 1975 to June or July 1977 he worked as a messenger and receptionist at Office 560 in Battambang, the Northwest Zone office.<sup>4251</sup> In that capacity, he received and compiled reports from the different sectors of the zone and transmitted them to the central level.<sup>4252</sup> He also clarified that “[t]he sector level reports were written manually each time when the zone committees invited sector committees to attend meetings. After the meeting, I typed those reports with a typewriter and sent those reports to the central level, Office 870.”<sup>4253</sup> SON Em also explained that when he sent a report to the Party Centre, he put the report in “an envelope on which it was addressed ‘[f]rom the Northwest Zone to the Standing Committee of Office 870’”.<sup>4254</sup>

1243. In court, SON Em stated that during the time he worked as a messenger for the Northwest Zone office, he received sector-level cadres who went to attend meetings

<sup>4248</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183013. The Chamber considers that the word “region” or “regions” in this document is equivalent to the word “sector” or “sectors”.

<sup>4249</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183013.

<sup>4250</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183016.

<sup>4251</sup> SON Em Interview Record, E3/9477, 2 June 2014, pp. 3-4, ERN (En) 01034082-01034083.

<sup>4252</sup> SON Em Interview Record, E3/9477, 2 June 2014, p. 4, ERN (En) 01034083.

<sup>4253</sup> SON Em Interview Record, E3/9477, 2 June 2014, p. 5, ERN (En) 01034084.

<sup>4254</sup> SON Em Interview Record, E3/9477, 2 June 2014, pp. 5-6, ERN (En) 01034084-01034085.

with the zone committee members, including RUOS Nhim.<sup>4255</sup> The Civil Party explained that the frequency of those meetings varied, as they were held “sometimes once every one month or once every three months or once every six months”.<sup>4256</sup> During those meetings, issues like “building of the country and the defending of the country” were discussed, including the construction of irrigation systems and rice production.<sup>4257</sup> The Civil Party also confirmed in court that once he had prepared the report on the situation in the different sectors of the zone, he was instructed to “insert the message into the envelope and then I had to write on the envelope that, ‘[i]t is with respect to be sent to 870 Committee.’ It was my own handwriting on that envelope”.<sup>4258</sup> The Civil Party explained that office “870 was the central office of the Communist Party of Kampuchea”.<sup>4259</sup>

1244. The Chamber notes that the report from Office 560 dated 29 May 1977<sup>4260</sup> is typewritten and that its content is consistent with the issues discussed at meetings of the sector-level cadres and the zone committee, as described by SON Em. The content of this report is also consistent with that of another report sent by RUOS Nhim to *Angkar* 870 on 11 May 1978 and discussed below.<sup>4261</sup> While the recipients are not indicated in the report, the Chamber finds it reasonable to conclude that, in accordance with SON Em’s explanation, the indication of the recipients is missing from the document because it was put on the envelope by the Civil Party. The Chamber therefore concludes that this report was sent from the Northwest Zone office to Office 870.<sup>4262</sup>

1245. On 10 May 1978, a communication was sent from the Northwest Zone office to the Party Centre indicating that “[t]he Region, which faces famine the most, is Region 5”.<sup>4263</sup> In correspondence addressed to *Angkar* 870 dated 11 May 1978, RUOS Nhim,

<sup>4255</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 11.

<sup>4256</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 12.

<sup>4257</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 12.

<sup>4258</sup> T. 22 November 2016 (SON Em), E1/501.1, p. 39.

<sup>4259</sup> T. 21 November 2016 (SON Em), E1/500.1, p. 11.

<sup>4260</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, ERN (En) 00183010-00183018.

<sup>4261</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185215-00185218.

<sup>4262</sup> Section 6.2.2: Communication Structures: Lines of Communication: Between the Party Centre and the Zones or Autonomous Sectors.

<sup>4263</sup> Document E3/948, 10 May 1978, ERN (En) 00003534. The Chamber considers that the word “region” or “regions” in this document is equivalent to the word “sector” or “sectors”. The Chamber notes that this document appears to be cut-off as it does not have a letterhead indicating the addressee and the nature of the communication (report or telegram). However, the Chamber has examined its content and format and it is satisfied that it is similar to that of other reports sent by the Northwest Zone office to the Party Centre. In particular, the document covers the same topics consistently included in

the secretary of the Northwest Zone, stated that there were food shortages in Sectors 1, 4 and 5. In particular, the report states that all the four districts of Sector 5 faced shortages and that RUOS Nhim had met with Comrade Rin to find a solution. The report states that:

As for ration, in the long future, there will [have to] be one and a half cans [empty condensed-milk can] of rice [to be provided to one person], but for the immediate future, there will [have to] be [only] one can of rice [to be provided to one person]. [We found out that] the given rice [by *Angkar*] would be running out by May 10 [1978] and [people] were eating some rive [*sic*] seeds.<sup>4264</sup>

1246. Additionally, in Sectors 1 and 4, only one and a half cans of rice per person were to be provided “in the immediate future”, with the rice supplies running out in June 1978.<sup>4265</sup> It is also reported that it was necessary to also have enough meat and fish and that issues such as malaria, clothing and dwelling “must be gradually addressed”.<sup>4266</sup> The work at Trapeang Thma Dam was further “strengthened”.<sup>4267</sup>

1247. Further communications were transmitted by the zone level to the Party Centre via telegrams. For example, on 6 November 1977, a telegram sent by San to Brother Nhim and copied to Uncle, Uncle Nuon, Brother Van, Brother Vorn, Brother Khiev, Brother Nhim, Office and Documentation states that the people’s “rations are increased step by step [...]. Comrade Toeun of [Sector] 32 constantly asks about the rice issue.”<sup>4268</sup>

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these communications (the “internal and external enemy situation”, the “people situation” and “building socialism”). Its content is also similar to that of a report sent just the day after, on 11 May 1978 [E3/950], by RUOS Nhim indicating that there were food shortages in Sectors 1, 4 and 5 of the Northwest Zone. Finally, this document’s format is similar to that of the other reports in that it is typed and includes numerals dividing the different sections. Despite the absence of clear indications as to the addressee and the nature of this document, the Chamber therefore concludes that this communication was sent by the Northwest Zone to the Party Centre with a view to informing it on the situation in the Zone.

<sup>4264</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185216.

<sup>4265</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185216.

<sup>4266</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185216.

<sup>4267</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185217.

<sup>4268</sup> DK Telegram, E3/1120, 6 November 1977, ERN (En) 00441627. According to the original Khmer version of this document, the Chamber finds that the number “32” refers to district 32 rather than sector 32. With respect to aliases, *see* Section 7: Roles and Functions – NUON Chea, para. 529. The Chamber finds that the sender of this telegram, San, was a cadre who worked in the Northwest Zone office. *See* T. 21 November 2016 (SON Em), E1/500.1, p. 36 (explaining that San was in charge of Division 2 and later went to work close to the Civil Party in Zone Office 560); SON Em Interview Record, E3/9477, 2 June 2014, pp. 6-7, ERN (En) 01034085-01034086.

1248. On 17 May 1978, a telegram addressed to *Angkar* 870 from RUOS Nhim states that “[p]eople have already made written reports [on their poor living conditions]”,<sup>4269</sup> and that Sector 5 “is the most difficult”.<sup>4270</sup> RUOS Nhim reported that despite having “provided 10,000 sacks of rice to Region 5, Comrade Rin reported that it still faces more difficulties”.<sup>4271</sup>

1249. The Chamber also heard oral evidence about the exchange of work-related instructions, plans and information between the lower and the superior administrative levels of the DK. The Chamber notes that many witnesses referred to the “upper echelon” or the “upper level” without being able to clarify which administrative level of the CPK hierarchy they were referring to. CHHIT Yoeuk provided information on the relationship between the “upper echelon” and *Ta Val*, *Ta Maong*, *Ta Sam At* and *Ta Rin*, which the witness characterised as “low-level officials”.<sup>4272</sup> The Chamber interprets the witness’ statements as indicating that these cadres were not part of the “upper echelon”.<sup>4273</sup> The witness explained that, in his opinion, “whatever the low-level officials did came to the attention of the upper echelon. If they did not receive 100 percent information they would know about 30% or 40% of the work.”<sup>4274</sup> PAN Chhuong testified that it was his personal conclusion that the instructions related to the construction of Trapeang Thma Dam were given to *Ta Val* by the “upper level” because “[w]ithout the instruction from the upper echelons, they [*Ta Val* and *Ta Hoeng*] would not have the authority to do so”.<sup>4275</sup> The Chamber notes that in his DC-Cam statement, PAN Chhuong indicated that the “upper one” was the Party’s Central Committee and that it was the Party’s Central Committee that ordered *Ta Hoeng* to change the plan from building a road to building the Dam.<sup>4276</sup> However, the witness could not recall this in court.<sup>4277</sup> The Chamber also notes IM Chaem’s statement to DC-Cam that the working plan between 1977 and 1978 “was made from Zone, province and down” to the lower levels.<sup>4278</sup> IM Chaem further stated that when making plans on how to

<sup>4269</sup> DK Telegram, E3/9368, 17 May 1978, p. 1, ERN (En) 00183653.

<sup>4270</sup> DK Telegram, E3/9368, 17 May 1978, p. 1, ERN (En) 00183653.

<sup>4271</sup> DK Telegram, E3/9368, 17 May 1978, p. 1, ERN (En) 00183653. The Chamber considers that the word “region” or “regions” in this document is equivalent to the word “sector” or “sectors”.

<sup>4272</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 87-88.

<sup>4273</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 87-88.

<sup>4274</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 87-88.

<sup>4275</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 54-56.

<sup>4276</sup> PAN Chhuong DC-Cam Interview, E3/9094, 18 June 2011, ERN (En) 00728666.

<sup>4277</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 55.

<sup>4278</sup> IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 3, ERN (En) 00089773.



organise the work of her forces in Preah Netr Preah, she would submit her plan to the zone for approval and that “all the reports were sent to the highest level of the central committee”<sup>4279</sup>.

1250. Based on the evidence analysed above, the Chamber concludes that there was communication between the local levels (district and sector) and the superior levels (zone and Party Centre) of the DK administrative structure with respect to work-related plans and instructions, and people’s living conditions including food and health. In particular, the Chamber finds that Office 870 was constantly informed through reports and telegrams about the situation at the local level and that, conversely, instructions were provided and disseminated down to the local echelon.

1251. The Chamber has also considered SON Em’s evidence that reports prepared at the sector level containing information about the situation in the cooperatives and districts indicated that “the people received food rations of three times a day as the plan set by the Party. Yet in reality the people did not receive the food rations as outlined in those reports.”<sup>4280</sup> The Civil Party confirmed in court that “in reality, the practice could not achieve the result as planned because the rice yield could not be as the same as what was on the piece of paper. People lacked food, and for that reason, it could not conform to the policy and that was what I saw.”<sup>4281</sup> SON Em also stated that:

[Those] reports were deceitful because they were afraid that if they could not achieve the work quota as planned by the Party, as I knew then they would disappear, as they did not meet the quota. And the disappearance here means that they could not achieve the work quota as determined by the Party and for that reason, they would be considered as weak people or people who were inattentive to the work assigned by the Party.<sup>4282</sup>

1252. The Chamber accepts SON Em’s evidence that some reports transmitted to the zone and Party Centre were deceitful, in particular with regard to information on the food shortages and the amount of food provided to people, as well as the progress made on the completion of work projects. The Chamber also accepts the Civil Party’s explanation that these reports provided a better picture of the local situation in order to

<sup>4279</sup> IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 7, ERN (En) 00089777.

<sup>4280</sup> SON Em Interview Record, E3/9477, 2 June 2014, p. 5, ERN (En) 01034084. *See also*, T. 22 November 2016 (SON Em), E1/501.1, p. 37.

<sup>4281</sup> T. 22 November 2016 (SON Em), E1/501.1, pp. 37-38.

<sup>4282</sup> T. 22 November 2016 (SON Em), E1/501.1, p. 38.

show that local cadres were complying with the Centre's policies and directions on food and work plans. However, as discussed above, the Chamber has also found that information on people's living conditions, including food shortages, was shared with the zone and the Centre through regular reports and telegrams. Further, as explained below, the Centre had an opportunity to get to know the real situation at the local level also through visits of the CPK leaders to the Northwest Zone. Therefore, while accepting that the local cadres concealed some information in order to avoid punishment or other negative consequences, the Chamber finds that the zone and Centre were informed about the problematic situation in the zone. Any further conclusion as to the impact of SON Em's evidence on the knowledge of the Accused is made in other sections of this Judgement.<sup>4283</sup>

1253. The Party Centre was also informed of the local situation via telegrams sent by Minister for Foreign Affairs (MFA) representatives who accompanied foreign delegations. A telegram reporting on the visit paid by Yugoslavian journalists to the Northwest Zone was sent by Kan and copied to Uncle, Uncle Nuon, Brother Van, Brother Vorn, Office and Documentation, and received on 15 March 1978.<sup>4284</sup> The report indicates that the journalists visited, among other places, Trapeang Thma Dam.<sup>4285</sup>

#### 11.1.5.4. Visits by CPK leaders

1254. KHIEU Samphan visited the Northwest Zone and Trapeang Thma Dam in particular during the DK period.<sup>4286</sup> During Case 002 hearings, he stated:

<sup>4283</sup> Section 16: Common Purpose, paras 3913, 4071; Section 17: The Criminal Responsibility of NUON Chea, paras 4086-4088, 4146; Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4213-4214, 4218, 4281-4282.

<sup>4284</sup> DK Telegram, E3/1113, undated, ERN (En) 00434864-00434866.

<sup>4285</sup> DK Telegram, E3/1113, undated, ERN (En) 00434864.

<sup>4286</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 21-22 (stating: "And I, myself, witnessed that in 1976. When I had the opportunity to leave Phnom Penh, I saw canals and dams, including Trapeang Thma dam, and the one to the west of Battambang, whose name I cannot recall; it was of huge size. As for the Trapeang Thma dam, it looked like a sea in the middle of the field where there used to be dry land. And as a result, those dry lands transformed into chequered rice fields to the horizon, and that excited me."); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, March 2000, p. 114, ERN (En) 00103780 ("I saw with my own eyes some of the achievement I had wished for, especially irrigation in the countryside. Thanks to reservoirs in Trapeang Thmar (in Phnom Srok, Banteay Meanchey) and in Kampong Puoy (west of Battambang), there were rice fields as far as the eye could see."). See also, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, ERN (En) 00089778 ("Chinese and uncle Khieu Samphan also came and visited there. [...] Pol Pot visited occasionally but Khieu Samphan did often."). IM Chaem also stated that when KHIEU

I was excited when I saw those large-scale dams. But during the course of the proceedings before this Chamber, when I have heard the testimonies of the witnesses, I was so shocked, as I was not aware that the dams, the canals were constructed in exchange of such great loss. I did not know that. And I was also extremely shocked whenever I heard the testimony of any witness or Civil Party.<sup>4287</sup>

1255. POL Pot also visited the Trapeang Thma Dam.<sup>4288</sup>

1256. The Standing Committee visited the Northwest Zone from 20 to 24 August 1975 and reported that the “new people are experiencing shortages, shortages of food supplies as well as shortages of medications”.<sup>4289</sup> The summary of decisions taken by the Standing Committee during a meeting on 19-20-21 April 1976 indicates an intention on the part of the Standing Committee to visit the Northwest Zone in May 1976 to “[p]ush early season rice”.<sup>4290</sup>

1257. RUOS Nhim often visited Trapeang Thma Dam.<sup>4291</sup> *Ta Khleung, Ta Hoeng* and

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Samphan visited the Dam “he urged [us] to continue to work hard”. See IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, ERN (En) 00089778.

<sup>4287</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 22.

<sup>4288</sup> *Chen Yung-Kuei, Delegation continue visit to countryside* (in FBIS collection), E3/1339, 9 December 1977, ERN (En) 00168341 (reporting that the Chinese Vice Premier, CHEN Yonggui, visited the Trapeang Thma Dam together with POL Pot, VORN Vet and RUOS Nhim); *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498180-00498181 (reporting on a visit by Chinese Vice-Premier CHEN Yonggui and Secretary POL Pot to Trapeang Thma reservoir). See also, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, ERN (En) 00089778 (“Pol Pot visited occasionally but Khieu Samphan did often.”); DK Telegram, E3/1113, undated, ERN (En) 00434865 (reporting that the answer to the question whether “Brother Pol ever visited Trapeang Thmar dam” was “very often”).

<sup>4289</sup> Record of the Standing Committee’s visit to the Northwest Zone, 20-24 August 1975, E3/216, p. 1, ERN (En) 00850973. The Chamber notes that the report concerning the Standing Committee’s visit to the Northwest Zone does not indicate who participated in this visit. It notes that KHIEU Samphan was travelling to China, Vietnam and North Korea in late August 1975 when the Standing Committee visited the Northwest Zone (see Section 8: Roles and Functions – KHIEU Samphan, paras 590, 592). Concerning NUON Chea, while the Chamber notes that the Accused was present in Cambodia in late August 1975, it finds that there is insufficient evidence to establish to the required standard that he participated in the visit to the Northwest Zone. However, the Chamber is satisfied that, by virtue of their positions of seniority within the Party, both Accused were aware of the report and participated in the development of plans and policies reflected therein. See Section 16: Common Purpose, para. 3888.

<sup>4290</sup> Summary of the Decisions of the Standing Committee in the Meeting of 19-20-21 April 1976, E3/235, p. 6, ERN (En) 00183421 (reporting that “[t]he Standing Committee will go down to the bases in May [...] Push early season rice especially in the large zones like the Northwest, North, Southwest, and Siem Reap.”). The Chamber is not in a position to establish who, among the Standing Committee members, was present at the April 1976 meeting in which a new visit to the Northwest Zone was decided.

<sup>4291</sup> *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting that RUOS Nhim participated in the visit of the Chinese Vice-Premier to Trapeang Thma Dam in December 1977); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 69 (testifying that he saw *Ta Nhim*, the secretary of the Northwest Zone, visit the worksite three times); 71 (explaining that RUOS Nhim drove the car and visited the workers and asked them how many cubic metres of earth they carried per day); T. 27 October 2015 (MUN Mot), E1/357.1, pp. 12-13 (testifying to seeing *Ta Nhim* very often at the worksite and that he never got close to the workers but simply went into the office of the senior people, that is *Ta Val*’s office).

*Ta Cheal* also visited the worksite.<sup>4292</sup>

1258. Several witnesses and Civil Parties testified that they saw delegations visiting the worksite. Civil Party NHIP Horl, a worker at Trapeang Thma Dam and member of a 100-person youth unit, gave evidence about a visit of a delegation of guests, although he could not remember the date of the event.<sup>4293</sup> On that occasion, young workers were asked to line up on the two sides of the road that stretched from Trapeang Thma village to the first bridge of Trapeang Thma Dam to welcome the guests. The Civil Party did not know who the guests were but saw black coloured cars drive along the road. The Civil Party also indicated that at that time only the healthy people were allowed to welcome the guests.<sup>4294</sup> MUN Mot testified that around 1976 he saw a convoy of between 20 to 30 4x4 white-and-egg-shell coloured vehicles. While the witness did not know who the guests were as they remained in the vehicles while visiting the Dam, word spread among the workers that perhaps IENG Sary was accompanying a Chinese delegation.<sup>4295</sup> LAT Suoy testified that *Angkar* visited the worksite but that he was not able to identify anyone.<sup>4296</sup> While the guards were instructed to stand with their backs turned to the visitors and “not to look at the *Angkar*’s face”, the witness explained that he took a glance at the visitors and only saw people wearing short-sleeve white shirts.<sup>4297</sup> The witness also explained that by “*Angkar*” he meant “the upper echelon, the higher upper echelon. *Angkar* were the ones who introduced the law for the civilians in the countryside”.<sup>4298</sup> The witness stated that when *Angkar* visited, the delegation would come in a long fleet of vehicles and that soldiers and civilians were instructed not to look at the visitors’ faces.<sup>4299</sup> SAM Sak, a New Person and a worker in the Sector 5 mobile unit at Trapeang Thma Dam, stated that the Khmer Rouge leadership paid visits to the worksite and a Chinese delegation came to the site; the Chinese were in black clothes and had a fair complexion.<sup>4300</sup> SEN Sophon indicated that he never

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<sup>4292</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 70-71 (testifying about *Ta Khleung*’s visit to the worksite and that Hoeng came to the site often); T. 27 October 2015 (MUN Mot), E1/357.1, pp. 13-14 (testifying that he noticed *Ta Nhim*, *Ta Hoeng* and *Ta Cheal* going in and out of *Ta Val*’s place and that he could see Cheal everywhere among the workforce).

<sup>4293</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 32-33, 35.

<sup>4294</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 32-33, 35.

<sup>4295</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 45-46, 58.

<sup>4296</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 18.

<sup>4297</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 18.

<sup>4298</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 18.

<sup>4299</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 19.

<sup>4300</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 30 (clarifying that he was away working so he could not see clearly who the people visiting were).

witnessed anyone visiting the Trapeang Thma Dam construction site.<sup>4301</sup> However, the Civil Party's testimony remains isolated and thus the fact that he did not see anyone visiting the Dam does not detract from the other witnesses' and Civil Parties' evidence about visits by delegations.

1259. Based on the evidence reviewed above, the Chamber concludes that a number of delegations visited the Trapeang Thma Dam.<sup>4302</sup> As set out above, the Chamber can reasonably conclude that KHIEU Samphan and POL Pot visited the Trapeang Thma Dam. It can also conclude that zone and sector leaders visited the worksite, including RUOS Nhim, *Ta Khleng*, *Ta Hoeng* and *Ta Cheal*. It is not in a position to establish who else among the CPK leaders visited the worksite as part of these delegations.

1260. With respect to these visits, the Chamber notes that attempts were made by local authorities to hide certain aspects of the real situation faced by workers on the ground, as explained by several witnesses who testified that only the healthy-looking workers were allowed to stand in line close to the guests.<sup>4303</sup>

1261. The NUON Chea Defence contends that "the generally-fleeting visits of high-ranking leaders to crime sites are completely irrelevant unless it can be shown that during the visit, the leaders learned specific knowledge of charged crimes allegedly committed there".<sup>4304</sup> The Co-Prosecutors contend that KHIEU Samphan acknowledged visiting Trapeang Thma Dam and that, while there, he "personally observed the workers carrying out their tasks and urged them to keep working hard".<sup>4305</sup> No other Party makes relevant submissions in this regard. The Chamber notes that, for the purposes of assessing any knowledge relevant to the crimes charged on the part of the Accused, it will assess all of the information before it, including the visits of CPK leaders to specific crime sites.<sup>4306</sup>

<sup>4301</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 47.

<sup>4302</sup> *See above*, para. 1223.

<sup>4303</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 32-33, 35; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 39 (testifying that when the Dam was inaugurated *Ta Val* ordered that the "well-built and healthy people" be invited to stand in the front line to welcome the Chinese delegation).

<sup>4304</sup> NUON Chea Closing Brief, para. 1042.

<sup>4305</sup> Co-Prosecutors' Closing Brief, para. 1114.

<sup>4306</sup> Section 17: The Criminal Responsibility of NUON Chea, paras 4086-4088, 4146; Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4213-4214, 4218, 4281-4282.

11.1.6. *Workforce*11.1.6.1. *Workforce composition*

1262. The Chamber finds that the number of workers at the Dam construction site may have varied over time. In giving particular weight to the contemporaneous documents and official DK publications which provide information on the number of workers, the Chamber considers that between 10 and 20 thousand were assigned to this worksite during the time of its construction and in particular in 1977 during a peak of activity.<sup>4307</sup> Workers were recruited to work at the Dam from the different districts of Sector 5, namely Preah Netr Preah, Serei Saophoan, Thma Puok and Phnom Srok.<sup>4308</sup> The workers were members of the Sector 5 mobile unit or the district and commune mobile units.<sup>4309</sup> Evacuees from Phnom Penh also formed part of the workforce and worked

<sup>4307</sup> Revolutionary Youth, E3/771, July-August 1977, pp. 27-28, ERN (En) 00509686-00509687 (reporting that there were tens of thousands people working at the Trapeang Thma water reservoir); *Chen Yung Kuei's Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting the number of people engaged in the construction in December 1977 to be 20,000); DK Telegram, E3/1113, undated, ERN (En) 00434864 (reporting the answers provided to Yugoslavian journalists visiting Trapeang Thma Dam and indicating that the people working at the worksite were 20,000); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 49 (stating that from his observation there were probably 10,000 workers at the construction site); T. 2 September 2015 (SAM Sak), E1/340.1, p. 24 (explaining that there were “thousands, or even millions of workers at the dam site.”); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 63 (stating that there were thousands of workers on site at the Trapeang Thma Dam Worksite). *See also*, T. 10 August 2015 (KAN Thorl), E1/327.1, p. 48 (testifying that during an assembly *Ta Nhim* stated that there were about 15,000 workers at Trapeang Thma Worksite); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 38 (stating that there were “hundred thousand, tens of thousands of workers. Perhaps it reached up to a million workers.”); Text of recorded speech by KHIEU Samphan at 15<sup>th</sup> April Anniversary Meeting in Phnom Penh, 19 April 1977, E3/201, ERN (En) 00419514 (reporting KHIEU Samphan as saying that across the country each construction site of a reservoir, canal or Dam is manned by as many as 10,000, 20,000 or even 30,000 workers).

<sup>4308</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 50 (testifying that the workers were gathered from Sector 5, “in which there were four districts including Preah Netr Preah, Serei Saophoan, Thma Puok, and Phnum Srok districts.”); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 80 (stating that the workers were recruited from the districts); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 11-12 (explaining that the workers in his unit were from different villages and districts of Sector 5); T. 19 August 2015 (TAK Boy), E1/333.1, p. 45 (testifying that workers were from Thma Puok, Mongkol Borei, Sisophon, Preah Netr Preah, Phnom Srok, and from the sector’s mobile units); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 50 (mentioning in particular Preah Netr Preah district and Thma Puok districts); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 21 (testifying that both male and female youth from all villages within Sector 5 were mobilised to build the Dam); T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 58 (testifying that four districts, namely Phnom Srok, Preah Netr Preah, Serei Saophoan, and Thma Puok also sent their district mobile units). *See also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, pp. 8-9, ERN (En) 00089778-00090779 (stating that she sent 800 people from the Preah Net Preah district to work at Trapeang Thma Dam); Revolutionary Flag, November 1976, E3/139, pp. 18-19, ERN (En) 00455295-00455296 (discussing how to build “upland reservoirs” and stating: “[u]se district or Sector manpower; there is no need to use other forces.”).

<sup>4309</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 59-61; T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 58 (testifying that the number of workers from the sector mobile unit was 6,500).

together with the Old People.<sup>4310</sup> New People and Old People were distinguished by their accent.<sup>4311</sup>

1263. The Chamber is satisfied that the workers could not refuse to go to work at the Trapeang Thma Dam when called to do so for fear they would face serious repercussions.<sup>4312</sup>

1264. Workers ranged in age from 14 to 40 years old.<sup>4313</sup> There were units of children

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<sup>4310</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 38-43 (explaining that he was evacuated from Phnom Penh when the Khmer Rouge captured the city, he moved first to Kandal province and then to Battambang province and that in 1977 was assigned to work at Trapeang Thma Dam), 77 (explaining that at Trapeang Thma Dam there were thousands of New People); T. 19 August 2015 (TAK Boy), E1/333.1, p. 46 (testifying that within the platoon he was in charge of, there were people evacuated from Phnom Penh); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 80 (specifying that there were more people from Phnom Penh than Base People); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 12 (explaining that 17 April People from Phnom Penh also were part of his mobile unit); T. 2 September 2015 (SAM Sak), E1/340.1, pp. 21, 23-24 (explaining that at Trapeang Thma Dam Worksite most of the members within the mobile units consisted of 17 April People); T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 60 (testifying that within the mobile units the number of New People and Old People was about the same, whereas among the workers from the cooperatives or commune, there were more people coming from Phnom Penh than Base People; the ratio being one-third Base People and two-thirds New People); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 78 (testifying that in the children unit there were people referred to as New People while others were called Base People); General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, p. 2, ERN (En) 00223176; Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 5, ERN (En) 00342712 (reporting that “the 17 April elements are overpopulated in Sector 5”); “Kampuchea, Three Years Old”, in “New War in Southeast Asia”, E3/3290, undated, p. 10, ERN (En) 00419214 (indicating that at the Dam “former city-dwellers make up about 30 percent of the workforce.”); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 80. *See below*, paras 1340-1351.

<sup>4311</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 76 (explaining that people knew who was a New Person versus a Base Person because of their accent and that it was the cooperative chief who referred to them as one or the other); T. 2 September 2015 (SAM Sak), E1/340.1, p. 48.

<sup>4312</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 55 (explaining that he was assigned by the cooperative chief to work at Trapeang Thma Dam and that he could not refuse to go for fear of being accused of being an enemy and killed); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 53-54 (testifying as follows: “I was sent to the worksite. It was their decision to send me to work there. In fact, I did not have the rights to choose where I wanted to work.” The witness also explained that he had to go wherever he was assigned because if he refused to do so, “they would say that I was stubborn or against *Angkar* and the rule.”); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 46-47 (testifying that he was required to be part of a mobile unit and that he did not dare to refuse the assignment because he was afraid of being taken away and killed), 49 (explaining that members of his mobile unit were later relocated from the district to the cooperative and then required to build Trapeang Thma Dam); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 42 (testifying that male and female youths were placed in the sector’s mobile unit and were forced to work at the worksite. The witness also explained that no one could refuse the assignment as otherwise they would disappear), 73 (testifying that the work was not voluntary and that male and female youth were separated from their parents and selected to go to work in mobile units).

<sup>4313</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 76 (discussing the age of the people who composed his company [18-30]); T. 2 September 2015 (SAM Sak), E1/340.1, pp. 23-24 (explaining that the age range was from 16 to early 40s); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 63 (stating that the workers were between 18 years old to 30 years plus); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 50 (testifying that there were middle-age workers, youth, male, female and also adolescents and that the adolescents’ age ranged from 15 to 18 years old); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 38 (testifying that the age range was from 13 to 15 or 16); Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 9, ERN (En) 00525839 (reporting that at Trapeang Thma Dam the majority of the workforce

operating at the worksite.<sup>4314</sup> In the NUON Chea Defence's view, the fact that children units operated at Trapeang Thma Dam clearly shows another violation of the CPK policies on the part of the Dam's leadership, which ultimately is connected with the fact that RUOS Nhim was a traitor.<sup>4315</sup>

1265. In this regard, the Chamber notes that many witnesses talked about "children" units but in fact at least some of them referred to adolescents from 13 or 14 years of age and above, as explained by Witness CHHIT Yoeuk who stated that "[r]egarding the children who were working at Trapeang Thma worksite, they were not actually small children, they were adolescents or teenagers. But, they were referred to as children. That's why I said they were children. [...] I think the age range was from 13 to 15 or 16."<sup>4316</sup> Based on the evidence, the Chamber cannot establish that there were children below the age of 14 working at the Trapeang Thma Dam. Furthermore, the Chamber notes that in its submission, the NUON Chea Defence does not identify any official CPK policy prohibiting children from being used as workers<sup>4317</sup> and that, on the contrary, Standing Committee Minutes indicate that the use of children or adolescents

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"are organized in mobile brigades composed of youngsters aged between 19 and 29 years, and volunteers from villages. The mobile brigades consist of between 900 and 1,200 persons."). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 29 (explaining that she must have been 15 or 16 years old when she joined a 100-people unit tasked with farming, transporting fertilisers and working at Trapeang Thma Dam, and that people in her unit were between the ages of 14, 15 and 16).

<sup>4314</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 78 (testifying that he was part of the special children's unit which was made of boys who were almost teenagers); T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 32-33 (explaining that the members of his unit were 14 to 18 years old); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 88 (explaining that because of his assignment in the rice distribution, he knew that the food rations of adults and children were different; in particular, adults received three cans of rice while children received only two cans of rice), 89 (explaining that in his estimation there may have been 600 to 1,000 children in the mobile brigade and that their age range was from seven to 16 years old).

<sup>4315</sup> NUON Chea Closing Brief, paras 1081-1082.

<sup>4316</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, pp. 37-38. *See also*, T. 30 September 2015 (SOT Sophal), E1/352.1, p. 33 ("They recruited children from the age of 14 to 15, 17, 16, 17, 18, and then there was another special children group or unit. This special unit would be tasked to carry dirt to the – to build the dam."); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 38 (indicating that they were between the age of 15 and 16 years old). This is further corroborated by CHHUM Seng who testified that the "small children were required to cut "*kantreang khef*" plants at Ta Sokh village, bigger children who were well built, would be required to carry soil or dirt; for example, some of them would be required to finish half a cubic metre or one cubic metre of soil according to those individual children and the management of their respective unit chiefs." *See* T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 26.

<sup>4317</sup> The NUON Chea Defence only refers to statements made by IENG Thirith in an interview with Elizabeth BECKER. *See* IENG Thirith Interview by Elizabeth BECKER, E3/659, October November 1980, p. 25, ERN (En) 00182322.



to work was encouraged.<sup>4318</sup> The NUON Chea Defence's submission is accordingly rejected.

1266. There were both male and female workers at the worksite.<sup>4319</sup> The mobile unit was made up of young single men and women.<sup>4320</sup>

#### 11.1.6.2. *Workforce organisation*

1267. While retaining their status as civilians, the workers operating at the Trapeang Thma Dam were organised in squads, working units, platoons, companies, battalions and regiments.<sup>4321</sup> *Angkar* was responsible for organising the workforce in military fashion with a chain of command.<sup>4322</sup> Three members made up a squad and three squads made up a unit or group.<sup>4323</sup> A unit or group consisted of 10 members, namely the squad

<sup>4318</sup> See e.g., Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976, p. 2, ERN (En) 00182547 (proposing to use “additional adolescent children from the base areas and handing them over to Industry for management”); Standing Committee Minutes, E3/226, 10 June 1976, p. 10, ERN (En) 00183372 (POL Pot directing that the whole nation “faced [a] shortfall of work force” and that some “were still young children” but that “in a little while they would become adults. [...] If the request was for young children it would be easier. But now, they did not want to provide us with [even] young children, because young children could make striking assault without having repellent [mood] in making fertilizer [compost].”).

<sup>4319</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 63, 67 (clarifying that everyone, man or woman, had to engage in the three cubic metres work quota on a daily basis); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 23 (testifying that there were male and female units).

<sup>4320</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 89-90. See also, T. 27 July 2015 (SEN Sophon), E1/323.1, p. 63 (explaining that “[t]here were male and female youth workers; that’s what they used to call at that time.”).

<sup>4321</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 38 (talking about *Ta Val*’s subordinates in the mobile unit and stating that “[t]hat was a civilian mobile unit.”); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 72; T. 20 August 2015 (TAK Boy), E1/334.1, pp. 7-8 (testifying that the command structure within the mobile unit “was like the army structure” and was similar to that of the LON Nol army. The witness also stated that they were “marching in an organized manner like those soldiers marching to the battlefield until we got to our destination”); SOT Sophal Interview Record, E3/7755, 4 February 2009, p. 3, ERN (En) 00293003 (describing the structure of his children unit).

<sup>4322</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 72-73 (“It was the *Angkar* that organized working groups into regiment, battalion, company, and platoon. The names came down from the *Angkar*.”); Chapter by B. Kiernan, “Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a Zone Assembly” (*Tung Padevat* June 1976), in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, 1988, E3/8 [E3/213], pp. 20-23, ERN (En) 00104008-00104009 (“All battlefield committees must cooperate with one another meticulously. There is already committee for each battlefield; there must also be common committee. We must further strengthen and expand cooperation in the sense of meeting one another to draw experiences and solve problems. For example, if we think only of the front areas and leave the rear areas to weaken, the rear areas would cease to be the backbone of the front areas, and we would get nowhere. [...] The important thing is to have common command committee which must meet to draw experiences and resolve problems. If our Assembly is strong, the Party will be strong throughout the Zone. So we go out to make it strong.”).

<sup>4323</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 78; T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 3; T. 27 October 2015 (MUN Mot), E1/357.1, p. 11 (testifying that each group consisted of three squads or teams).

members and a chief.<sup>4324</sup> Three units or groups formed a platoon, which had 30 members.<sup>4325</sup> Three platoons formed a company.<sup>4326</sup> A company was in charge of 100 members and three companies formed a battalion.<sup>4327</sup> A battalion consisted of 300 members, with three battalions making up a regiment.<sup>4328</sup> The platoon chiefs reported to the company chiefs on the accomplishment of the work quota.<sup>4329</sup> The company chiefs reported to the battalion chiefs and received instructions from them on the work to be carried out.<sup>4330</sup>

<sup>4324</sup> T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 3; T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 58 (explaining that under the small unit there were three groups and each group consisted of about 10 to 12 workers) and 62 (explaining that 10 workers comprised his group).

<sup>4325</sup> T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 3; T. 27 October 2015 (MUN Mot), E1/357.1, p. 11 (testifying that each platoon consisted of three groups); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 51 (testifying that his 30-member platoon was divided into three different groups); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 45-46 (testifying that he was chief of a platoon and that there were 30 members in his platoon); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 15-16 (confirming the structure of 10-member squad, 30-member unit and 100-member units).

<sup>4326</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 52 (explaining that he was the chief of a company in charge of three platoons, and that each platoon consisted of 30 members); T. 19 August 2015 (CHHUM Seng), E1/333.1, pp. 3-4; T. 27 October 2015 (MUN Mot), E1/357.1, p. 11 (testifying that he was a company chief and that in his company there were three platoons); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 57 (testifying that *Ta Nhav* supervised a big unit and the big unit consisted of three small units and each small unit consisted of 30 workers), 58 (stating that “[t]hree small units formed one big unit or a battalion.”). The Chamber notes that the term “battalion” was used by MAM Soeurm to refer to the unit consisting of three 30-member units, whereas it was used by CHHUM Seng to refer to the 300-member unit which consisted of three 100-member units (also called “companies” by him). The Chamber relies on CHHUM Seng’s account in light of the fact that he was in a more senior position (company chairman) compared to MAM Soeurm’s (platoon member) and had a better understanding of the overall structure of the workforce at Trapeang Thma Dam. Additionally, MAM Soeurm by his own admission did not have a full picture. *See* T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 58 (“that is my understanding because I was not sure about big units or small units, I just knew that I belonged to a small unit and there were 30 workers in the unit”). Furthermore, the Chamber does not find MAM Soeurm’s evidence to contradict CHHUM Seng’s evidence, but on the contrary, deems it corroborative of the finding that three 30-member units formed a bigger 100-member unit (when additional people like the cooks and fishermen were added on top of the workers’ numbers). *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, p. 74 (testifying that above the platoon there was the company).

<sup>4327</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 78; T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 4. *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, p. 74 (explaining that above a company there was the battalion).

<sup>4328</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 70; T. 19 August 2015 (CHHUM Seng), E1/333.1, pp. 3-4 (testifying that he did not know who was the chief of the regiment but that he knew that at Trapeang Thma the three battalions were under the command of *Ta Val*.) *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, pp. 74-75 (testifying that “above the battalion, it was *Ta Val* who had overall supervision over the dam worksite.”).

<sup>4329</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 52 (explaining that he received reports from chiefs of platoons about whether or not workers could accomplish the work quota); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 75 (testifying that when they finished work at 5 p.m., he, as a platoon chief, had to report to the company chief on the output of his unit and that he calculated the work that his platoon had completed by the end of the day and report it to the company chief), 82 (clarifying that he reported on the work results to either the company chief or the battalion chief).

<sup>4330</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 76-77 (explaining that he met his superior *Ta Khauv* in person and report to him orally and explaining that the deputy battalion chief ordered that they had to carry the earth and work hard to complete the task).

1268. Those people who were considered as not hard-working were punished by being put in a “case unit” and were made to work harder compared to workers in normal units.<sup>4331</sup> PAN Chhuong testified in court that a “case unit” was made up of people who were sent to the hospital for a check-up.<sup>4332</sup> However, in his previous statements to OCIJ investigators he stated that the “case unit” was composed of people who had made mistakes.<sup>4333</sup> Given these contradictory accounts, the Chamber’s cautious approach to this witness’s evidence, and the consistent evidence indicating that the “case unit” was made up of people considered as not hard-working, the Chamber does not rely on this particular aspect of PAN Chhuong’s testimony.

1269. The NUON Chea Defence submits that, contrary to the Closing Order’s findings, a special unit was not “a place of punishment, rather, special units gathered exceptionally productive workers who were ‘an exemplary model for the mobile units’”.<sup>4334</sup> As illustrated below, the Chamber has established that at the worksite there existed a distinction between more productive and less productive units on the basis of which a differentiated food regime was applied.<sup>4335</sup> In this regard, the Chamber concurs that there existed units of exceptionally performing workers. In this regard, it interprets LAT Suoy’s testimony concerning a “special unit” consisting of people who worked faster and whose workers received a privileged food treatment of two cans of rice per person per day, as supporting the evidence showing that this distinction existed.<sup>4336</sup> However, in the Chamber’s analysis, the units which accomplished more work, which

<sup>4331</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 85-86 (explaining that those who were considered stubborn, inactive or made mistakes would be put in the case unit “for being tempered” and work harder than in the normal units); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 9 (answering in the positive to Judge LAVERGNE’s question whether people appointed to the case unit were people “who had disciplinary issues because they didn’t work hard enough or they did not follow the rules.”). *See also*, T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 11-12 (confirming that he heard of the existence of a unit of people who were less hardworking than others and that those who complained that they were forced to work intensively and that they were not given enough food were put in a special unit whose chief was Sres); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 43 (testifying that the case unit was made up of people who were said to exploit other peoples’ work); CHIEP Chhean Interview Record, E3/7805, 20 December 2008, p. 3, ERN (En) 00277816.

<sup>4332</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 74.

<sup>4333</sup> PAN Chhuong Interview Record, E3/9504, 19 August 2011, p. 4, ERN (En) 00738313 (“The people at Trapeang Thmar Dam who had made mistakes were sent to the ‘case unit.’”); PAN Chhuong Interview Record, E3/9567, 22 July 2014, p. 15, ERN (En) 01044773 (“I would like to clarify that wrongdoers in the Trapeang Thma mobile unit were sent to the Case Unit at the Trapeang Thma Dam but the people who made mistakes at the cooperatives were sent to the Phnum Troyoung Mountain Security Office.”).

<sup>4334</sup> NUON Chea Closing Brief, para. 1117.

<sup>4335</sup> *See below*, para. 1304.

<sup>4336</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 83-85; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 8 (testifying about the existence of a unit made of hardworking workers); SAM Sak Interview Record, E3/9574, 23 April 2014, p. 10, ERN (En) 01057742.

some witnesses define as “special”, and the “case unit”, which was made up of workers who were considered less hard-working, were two distinct realities at the worksite. Accordingly, the Chamber rejects the NUON Chea Defence’s submission.

#### 11.1.7. *Working Conditions*

1270. Workers were required to work regardless of the weather conditions.<sup>4337</sup> If rain was not heavy, workers would be told to work; however, when there was heavy rain, workers were allowed to rest.<sup>4338</sup>

1271. The Chamber is satisfied that working conditions at the worksite were very difficult and affected the workers both physically and mentally. SAM Sak explained that his life at the construction site “could be regarded as the life of an animal, and that applies to all the workers. As for the benefit, we knew nothing about the benefit of what the purpose of building the dam.”<sup>4339</sup> MUN Mot explained that they did not know for sure when they would stop working as they kept working on one assignment after the other; he described the situation as being treated like cattle.<sup>4340</sup> Civil Party MEAN Loeuy, a Base Person and member of a 100-person unit, stated that “[m]entally and physically the work was hard for me because at Trapeang Thma worksite I had to carry dirt in extremely huge work quota. My back was almost bent because of the hard work so in terms of mentally and physically situation [*sic*] it was very hard.”<sup>4341</sup> NHIP Horl stated that workers suffered from pain in their chest because of overwork.<sup>4342</sup>

1272. While SEN Sophon attested to the occurrence of work-related accidents at the worksite, NHIP Horl indicated that he never got injured while working at Trapeang

<sup>4337</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 11 (explaining that he was engaged in work regardless of rain, hot sun and thunder); Revolutionary Youth, E3/771, July-August 1977, ERN (En) 00509686 (reporting that “[b]rothers fought to dig up and carry the earth, all day and night, under the burning sun, for the entire dry season without any complaining.”); T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 16-17 (stating that the Revolutionary Youth’s statement that the working atmosphere was joyful among the workers was not true).

<sup>4338</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 24-25.

<sup>4339</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 20.

<sup>4340</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 41.

<sup>4341</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 64, 82.

<sup>4342</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 20. *See also*, THUN Thy DC-Cam interview, E3/9157, 17 June 2011, p. 1, ERN (En) 01172864 (THUN Thy was born in 1960, he was the chief of a children units. Concerning his experience at Trapeang Thma Dam he stated to DC-Cam: “[m]y life during that time was miserable. All my limbs were swollen. I carried earth and wept at the same time, but I didn’t dare to stop working because I was afraid that I would be killed. I suffer from night blindness, and I walked into tree trunks when I worked.”).

Thma Dam.<sup>4343</sup> MAM Soeurm, a member of the Sector 5 mobile unit under the supervision of *Ta Nhav*, and TAK Boy testified that they never saw work-related accidents.<sup>4344</sup> MEAN Loeuy indicated that he never saw anybody get hurt or wounded as a result of being involved in an accident.<sup>4345</sup> In light of this evidence, the Chamber concludes that there were some work-related accidents at the worksite but that not all workers witnessed them.<sup>4346</sup>

1273. The working conditions did not change substantially once the Southwest Zone cadres took control of the worksite.<sup>4347</sup> MUN Mot explained that the work quota of three cubic metres remained the same but that more tasks were added, among which repair work to specific parts of the Dam.<sup>4348</sup> In SEN Sophon's view, things stayed the same with respect to work assignments and work quota.<sup>4349</sup> CHHIT Yoeuk indicated that while under *Ta Val*'s supervision workers used to work at night, this did not happen after the Southwest Zone cadres came to the worksite.<sup>4350</sup>

1274. However, the Southwest Zone cadres imposed stricter control over the workers and more deaths occurred after their arrival.<sup>4351</sup> MUN Mot testified that when the Southwest Zone cadres arrived, he was under the "closest monitoring".<sup>4352</sup> CHHUM Seng testified that the Southwest Zone cadres intensified their surveillance of the Northwest Zone cadres and they started to arrest an increasing number of people.<sup>4353</sup>

<sup>4343</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 72 (describing an incident where a person who was working nearby was hit in the head by the hoe of another worker and was bleeding profusely); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 50. *See also*, CHIEP Chhean Interview Record, E3/7805, 20 December 2008, p. 3, ERN (En) 00277816.

<sup>4344</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 91 (stating that in his unit there were no work-related accidents); T. 19 August 2015 (TAK Boy), E1/333.1, p. 62.

<sup>4345</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 83.

<sup>4346</sup> The Chamber notes that this does not take into account cases where workers collapsed at work because of exhaustion. *See below*, para. 1320.

<sup>4347</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, pp. 15-16; T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 17 (testifying that the amount of work remained the same).

<sup>4348</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 42-43.

<sup>4349</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 75 (stating that he was still assigned three cubic metres of soil per day).

<sup>4350</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 16.

<sup>4351</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 7 ("Upon on the arrival of the southwest, they started arresting the northwest group as they accused them of being traitors and they limited the food supply to one can of rice per 100 people. For that reason, people who lived in Sector 5 resisted. Some people became bony and their knees got swollen and were unable to walk due to insufficient food and the work at night started from 5 p.m. to 11 p.m. and also the morning shift started at 6 a.m. and ended at 11 a.m."). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, pp. 13-14, ERN (En) 01059947-01059948. *See above*, para. 1231.

<sup>4352</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 43.

<sup>4353</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 82-83.

SEN Sophon explained that many more people were killed and died of starvation when IM Chaem, a Southwest Zone cadre who in 1977 became the Preah Netr Preah district secretary, came to replace the previous cadres in the Northwest Zone.<sup>4354</sup>

#### 11.1.7.1. Work assignments

1275. Work entailed digging the soil, placing it on earth-carrying baskets and carrying it to the top of the Dam.<sup>4355</sup> Workers were rotated to perform these different tasks.<sup>4356</sup> The workers had to carry the soil uphill between 10 to 50 metres from where they dug it to where they dumped it.<sup>4357</sup> Evidence varied with respect to the weight workers had to carry, with some witnesses estimating that they had to carry up to 30 to 40 kilograms per trip.<sup>4358</sup>

1276. Trapeang Thma Dam was referred to as a “hot battlefield” due to the hard work workers had to perform there.<sup>4359</sup> MUN Mot explained that the workplace where

<sup>4354</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 58 (testifying that IM Chaem was from the Southwest Zone); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 27; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 75; IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, pp. 1-4, ERN (En) 00089771-00089774.

<sup>4355</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 78 (testifying that within his group, he was the digger and there were two carriers); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 81 (“Was your work -- were you primarily involved in digging earth or carrying earth or did you do both?” “I was the one who carried the dirt.”); T. 28 July 2015 (SEN Sophon), E1/324.1, p. 41 (“Some dug the soil, some carried the earth while some others placed the soil in the baskets.”).

<sup>4356</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 36.

<sup>4357</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 78 (testifying that he had to carry the earth 10 metres away, that is from the ground to the embankment of the Dam, whose height was about four to seven metres up); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 45 (stating that the place where he dumped the earth was 15 metres away from the place where he carried the earth); T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 78-79; T. 25 August 2015 (NHIP Horl), E1/336.1, p. 30 (explaining that they had to move up as the Dam got higher and that workers had to run in order to take some speed and go uphill); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 81 (stating that he heard from his chief that “[i]t was about 100 metres from the middle of the road to Bridge Number 1, and it was 200 metres from the base when we dumped the dirt [...]. Other areas were not as far as this place.”). *See also*, T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 39-40 (testifying that Trapeang Thma Dam was huge in scale and distance and that it took longer to transport the earth from the place where it was dug to the place where it was deposited, compared with Kambaor and Kouk Rumchek Dams).

<sup>4358</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 67 (answering the question “how many kilos of earth you put on each basket that you carried?” by saying that “[t]he weight was about 30 to 40 kilograms”); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 14-15 (explaining that if the earth was dry it was rather light, but if it was wet it was heavier and that “it could be around 20 kilogrammes per one side of the earth baskets.”).

<sup>4359</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 10-11 (explaining that he had to work very hard); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 76-77 (testifying that it was frequently mentioned that Trapeang Thma Dam was a hot battlefield “where dynamic workforce was working”. The witness also explained that to his understanding the term was used to motivate the workers to work hard and to do their best. If someone was not working hard enough, he would be accused of having a different political tendency); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 58-59 (testifying that people said to one another that Trapeang Thma Dam was a hot battlefield and that this was word of mouth); T. 27 October 2015 (MUN Mot), E1/357.1, p. 30 (testifying that Trapeang Thma Dam was the “hottest battlefield in

workers had to dig their quota of soil was called the “defence line” as if the workers were in a military structure.<sup>4360</sup> Witness SOT Sophal explained that the expression “storm attack” signified that workers had to work harder to complete the work plan.<sup>4361</sup> The word “offensive” referred to periods of time during which workers had to do their best to accomplish a specific plan or target.<sup>4362</sup>

#### 11.1.7.2. *Working hours*

##### 11.1.7.2.1. *Government policy regarding work hours*

1277. The Chamber recalls its findings that (1) the Party Centre issued instructions concerning working hours; (2) the Party Centre had knowledge that the instructions were not followed locally with workers exposed to extremely hard conditions; (3) the Party Centre envisaged “special cases” where working outside of normal hours was required; and (4) “no-good elements” were allegedly blamed and found responsible for disregarding the working hours instructions.<sup>4363</sup>

##### 11.1.7.2.2. *Experience of workers at the Trapeang Thma Dam*

1278. While evidence regarding working hours varied, it appears that the typical working day entailed three shifts: morning, afternoon and evening.<sup>4364</sup> However, according to MEAN Loey, evening shifts were not the rule and workers worked in the evening from 6 or 7 p.m. to 10 p.m. only occasionally when an “offensive” was needed.<sup>4365</sup> Similarly, MAM Soeurm testified that the evening shift from 6 to 9 p.m. was not a regular one and was only done “during the time when the situation was

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Sector 5”). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 44. The Chamber notes PAN Chhuong’s testimony that Trapeang Thma Dam was not a hot battlefield (T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 69) but does not consider this statement to undermine the consistent evidence of the other witnesses.

<sup>4360</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 34.

<sup>4361</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 84.

<sup>4362</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 53 (explaining the meaning of the word). *See above*, para. 1267.

<sup>4363</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1509.

<sup>4364</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 28; T. 19 August 2015 (TAK Boy), E1/333.1, p. 49 (testifying that they were also required to work at night); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 77 (testifying that the working hours varied and that there were typical three shifts per day but also indicating that the evening shift was not a regular one). The Chamber notes that NHIP Horl stated that in his unit working hours were not actually determined, and that workers simply had to work to complete the quota for the day. They got up around 3 a.m., or sometimes at 4 or 5 a.m. and then went to work and work until 5 p.m. to complete the work quota. *See* T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 16, 37.

<sup>4365</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 85.

demanding or when there was an emergency to patch the dam or to actually complete the remaining workload for the particular segment of the worksite”.<sup>4366</sup> MUN Mot testified that in his unit they did not work in the evening as usually every worker had to complete their work by 5 p.m.<sup>4367</sup> PAN Chhuong testified that he never saw anyone working in the evening, while acknowledging that it might have happened in other units.<sup>4368</sup> The Chamber does not find the evidence concerning the evening shift to be contradictory as working hours varied from one unit to another, and it is therefore possible that night shifts were the rule for some units and the exception for others.

1279. Some witnesses stated that they had to commence work at 4 or 5 a.m., others at 7 a.m. and they worked until 11 or 11:30 a.m., at which time they were allowed to have a break.<sup>4369</sup> Work resumed at 1 p.m. and continued until 5 or 6 p.m.<sup>4370</sup> After dinner and a short break, they worked from 6 or 7 p.m. to 10 or 11 p.m.<sup>4371</sup> MUN Mot testified that

<sup>4366</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 77; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 75 (explaining that at the beginning of the Dam construction, workers had to work during the evening from 7 p.m. to 10 p.m. and that in his personal understanding this happened when workers had to complete a task within a specific timeframe).

<sup>4367</sup> T. 26 October 2015 (MUN Mot), E1/356.1, pp. 54-55 (testifying that his unit started going to work at 7 a.m., had a break for lunch at 11 a.m. or noon, and finished at around 3:30 or 4 p.m., although the time varied. The witness also indicated that some workers in his unit could finish their quota by 3:30 p.m. or 4 p.m. and they could go to their resting quarters or would go find supplementary food including crab and rice field mice. However those who could not complete the quota had to continue until their quota was met).

<sup>4368</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 62. In this regard, *see also*, IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 2, ERN (En) 00089772 (stating that there was no work at night at the worksite). With respect to the Chamber’s approach to PAN Chhuong’s evidence, *see above*, para. 1214.

<sup>4369</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 11 (stating that every morning at 4 or 5 a.m. they were woken up to work), 28 (stating that they started to work at 4 or 5 a.m. at which time it was still dark); T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 81, 89 (testifying that workers in his unit woke up at 3 a.m.); T. 2 September 2015 (MEAN Loey), E1/340.1, pp. 81-82 (explaining that in the morning, they had to arrive at the worksite to dig earth when the sun rose); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 82; T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 44, 66 (stating that the unit chief woke the workers up at 4 a.m. and they started working “whenever it was clear enough that we could see other workers” meaning at around 5 or 5.30 a.m.; they worked until 11.30 a.m., at which time they were allowed to eat gruel. They then resumed work at 1 p.m. and worked until 9 or 10 p.m. The Civil Party also stated that when the bell rung at 4 a.m., if anyone did not get up by that time they would be whipped); T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 14-15 (explaining that he did not have any watch and had to resort to the sun to assess what day or what time it was. When asked by the NUON Chea Defence what time was it when it was “clear enough to see other workers”, the Civil Party replied that in his estimation, it was around 5 or 5:30 a.m.); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 56 (stating that he had to commence work at 7 a.m.).

<sup>4370</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 49 (indicating that at the beginning they were only required to work during the day but that later they also worked at night); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 81; T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 53.

<sup>4371</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 11; 2 September 2015 (MEAN Loey), E1/340.1, p. 82; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 56 (testifying that sometimes they were required to work at night too, from 7 p.m. to 10 p.m.); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 82 (testifying that work started at 6 p.m. until 10 p.m.); T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 81-82, 89-



there was no set time for workers to start working and that each unit could decide the time when it started to work.<sup>4372</sup> The witness stated that “[t]hey did not care when we started work as long as our daily work quota could be met”.<sup>4373</sup> The Chamber finds that MUN Mot’s statement does not call into question other evidence that in some units working hours were set, as different regulations applied to different working units.

1280. During “offensives” and when workers had to complete a specific work plan, they were required to work around the clock, taking minimal time to rest.<sup>4374</sup> Workers took a two-hour break for lunch, a two-hour break for dinner and then kept on working during the night.<sup>4375</sup> Once the project was completed on schedule, the workers could rest as usual.<sup>4376</sup>

1281. According to CHHUY Huy, some unit chiefs allowed workers to take a short break when they were tired while others did not.<sup>4377</sup> The Chamber accepts that some

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90 (testifying that the night shifts happened every day and that lights were provided for workers to work through the night). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 40-41, 84 (explaining that they had to work every single evening). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, pp. 17, 19, ERN (En) 01059951, 01059953 “[t]hey had us work from 7 a.m. to 11 a.m. and we had lunch between 11 a.m. and 1 p.m. We resumed work from 1 p.m. to 5 p.m., after which we rested to have dinner and then continued working from 7 p.m. to 11 p.m. [...] The group chairman walked around measuring. If any workers did not finish, they had to continue working until it was completed.”); CHUON Pheap Interview Record, E3/9527, 18 February 2014, p. 5, ERN (En) 00982316 (“At the worksite in Ang Trapeang Thma Dam, I had to wake up at 3 a.m. and work until 11 a.m. and then had a lunch in which we had only rice and fermented fish sauce. We started working again at 1 p.m. and continued until 5 p.m. After dinner we had to work again from 6 p.m. to 10 p.m. before we were allowed to rest.”).

<sup>4372</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 35.

<sup>4373</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 35.

<sup>4374</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 57-59; T. 2 September 2015 (MEAN Loey), E1/340.1, p. 82 (stating that they had to be on an offensive to fix and repair the Dam day and night); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 56-57 (testifying that when they were “about to be on an offensive and to finish the project” they had to work 24 hours around the clock. The witness also indicated that there were “four shifts; from 7 p.m. to 10 p.m. and then from 10 p.m. to 1 a.m., from 1 a.m. to 3 a.m. and from 3:00 to 5:00 early in the morning.” The witness stated that this particular task took five days to complete, during which workers worked both day and night, and that some workers fell asleep in the pit at the worksite); T. 11 August 2015 (KAN Thorl), E1/328.1, pp. 25-26 (testifying that, during the period in which he worked at the worksite, these intense periods of work in which they had to work at night happened two or three times and that happened during the waxing moon, when they could see because of the moonlight), 35 (clarifying that the workers were divided in different groups which worked in the different shifts, taking over from each other when their shift ended); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 85 (testifying that during a period of about two months they worked non-stop both day and night and that they had to “attack the work until the project was completed on time.”).

<sup>4375</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 57-58.

<sup>4376</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 59.

<sup>4377</sup> T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 64-65 (testifying that unit chiefs allowed workers to take a break); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 47 (stating that there was “no resting time” for the workers).

unit chiefs were more liberal than others, but it considers that permissions to take a break were exceptional. Workers were not allowed to have any rest days.<sup>4378</sup>

1282. The NUON Chea Defence submits that pursuant to *Ta Val*'s instructions, local cadres and unit chiefs at the Trapeang Thma Dam "enjoyed wide discretion to set working and living conditions of their respective teams".<sup>4379</sup> The Defence submits that, as a consequence, the working and living conditions greatly varied from one unit to another and any crimes that may have been committed were the result of the local cadres acting in deviation from the CPK official policy and directives on working hours and resting time.<sup>4380</sup> No other Party makes relevant submissions in this regard.

1283. The Chamber has established that working hours and conditions at the Trapeang Thma Dam varied from one unit to another, with workers performing work at night in some units and not in others, and some workers being allowed to take breaks while others not.<sup>4381</sup> Further, the Chamber has established that CPK official policy and instructions related to work hours and conditions were not consistently followed locally.<sup>4382</sup> In this regard, the Chamber finds that sick workers at the Dam were allowed to rest, although they were still monitored to ensure they were not feigning their sickness.<sup>4383</sup> This is consistent with a report from the Sector 5 Committee to the zone secretary dated 21 May 1977, indicating that the movement was encouraged to use "as many forces as possible except the sick, the pregnant, the persons who just gave birth to the child, the elders that cannot work but receive the leave ration as set out by the *Angkar*".<sup>4384</sup> However, the Chamber has found that, contrary to the CPK official policy, workers at the Dam who were not sick were not allowed to have any rest days.<sup>4385</sup>

<sup>4378</sup> T. 28 July 2015 (MAM Soeum), E1/324.1, p. 90 ("Q. Thank you. I would like to ask about workers at Trapeang Thma Dam including you. Were you allowed to rest on monthly basis or yearly? A. I did not have any resting time within my unit. After the dam had been built, we were required to patch the broken parts of the dam. And some people who completed their work, they could go back to villages. As for me, who was assigned to build the dam, after the construction work was completed, we had to go and fix damaged areas and construct bridges. Therefore, I could not go anywhere. I was assigned to remain at the worksite." (emphasis added)); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 47.

<sup>4379</sup> NUON Chea Closing Brief, para. 1080.

<sup>4380</sup> NUON Chea Closing Brief, paras 1041,1080.

<sup>4381</sup> See above, paras 1278-1281.

<sup>4382</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1509.

<sup>4383</sup> See below, para. 1325.

<sup>4384</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721.

<sup>4385</sup> See above, para. 1281.

1284. Further evidence that workers were required to work hard in very difficult conditions which were not in line with CPK instructions is provided by PAN Chhuong. While discussing the different Sector 5 dam construction projects he was involved in, the witness testified that regiment chiefs determined on their own initiative the time frame for the completion of a specific project, which often differed from the timeline set by *Angkar*.<sup>4386</sup> With reference to the construction of Kambaor Dam, the witness explained that if the upper echelon established a timeline of four or five months to complete the project, *Ta Val* would convene a meeting with the unit chiefs asking them whether they were “courageous enough” to “make a commitment” to the construction project.<sup>4387</sup> In response, the regiment chiefs would say that they could complete the work before the set deadline in order, according to the witness, “to be promoted or gain favour”.<sup>4388</sup> The witness explained that completing the project before the deadline “was not the original plan issued by the upper echelon, but by the local chiefs and the regimental chiefs who decided to execute their own plan”.<sup>4389</sup> Completing the project before the deadline had “negative consequences on workers” as the workers needed to work harder.<sup>4390</sup> According to PAN Chhuong, had they instead followed *Angkar*’s original plan, they would not have exhausted themselves.<sup>4391</sup> Recalling its assessment of this witness, the Chamber treats this testimony with particular caution.<sup>4392</sup> While accepting PAN Chhuong’s evidence that workers were subjected to particularly hard working conditions, the Chamber finds that the witness sought to shift responsibility when blaming the lower-level cadres exclusively for such treatment. Further, as discussed below, the Chamber has established that the Party Centre had knowledge of the hard working conditions imposed on the workers and did not take effective measures to improve them.

1285. The Chamber has also found that the Party Centre had knowledge that official policy and instructions related to work hours and conditions were not consistently followed locally, with workers exposed to extremely hard conditions.<sup>4393</sup> In this regard, the Chamber notes that the July-August 1977 issue of *Revolutionary Youth* reported

<sup>4386</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 27-29.

<sup>4387</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 28.

<sup>4388</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 28.

<sup>4389</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 28.

<sup>4390</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 28-29.

<sup>4391</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 31.

<sup>4392</sup> See above, para. 1214.

<sup>4393</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1509.

with respect to the Trapeang Thma Dam construction that “[b]rothers fought to dig up and carry the earth all day and night under the burning sun for the entire dry season without any complaining”.<sup>4394</sup> This *Revolutionary Youth* issue also noted that workers were facing a problem of water shortage, as “the carts and trucks were not able to deliver water to the worksite on time and as needed”, but that the workers “had fought to endure all kinds of hardships until they completed the plan and successfully constructed the Trapeang Thma water reservoir”.<sup>4395</sup> Similarly, a New China News Agency article describing the December 1977 visit to the Trapeang Thma Dam construction site where POL Pot and other CPK senior cadres accompanied Chinese Vice-Premier CHEN Yonggui, reports that RUOS Nhim said that “[d]rought set in when we started to build the reservoir and the 20,000 people engaged in construction even had not enough drinking water”.<sup>4396</sup>

1286. Despite being aware that the workers were exposed to extremely hard conditions, the Party Centre did not take effective measures to minimise their impact on the workers, let alone ensure the implementation of satisfactory living and working conditions. The only response provided by the Party Centre was to send Southwest Zone cadres to “redress the situation” by purging local cadres in the Northwest Zone. However, the evidence has established that the working and living conditions at the worksite did not substantially change upon the Southwest Zone cadre’s arrival. Some witnesses indicated that the conditions in fact deteriorated, that some of the Southwest Zone cadres were “crueller” than *Ta Val* and that many more people were killed and died of starvation after the Southwest Zone cadres took control of the worksite.<sup>4397</sup>

1287. The Chamber therefore concludes that the Party Centre knew about the difficult regime imposed on the workers and did nothing to change or address the situation. The NUON Chea Defence’s submission is accordingly dismissed.

#### 11.1.7.3. Work quotas

1288. Many witnesses testified that each worker was assigned to dig on average three cubic metres of soil per day, while others recalled that they were asked to carry two or

<sup>4394</sup> *Revolutionary Youth*, E3/771, July-August 1977, p. 27, ERN (En) 00509686.

<sup>4395</sup> *Revolutionary Youth*, E3/771, July-August 1977, p. 28, ERN (En) 00509687.

<sup>4396</sup> *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181.

<sup>4397</sup> *See above*, para. 1231.

possibly three cubic metres of dirt, if they could complete such work by daytime.<sup>4398</sup> The work quota further varied depending on the units at the Trapeang Thma Dam. SEN Sophon stated that those who were in the so-called “front battlefield” were required to dig four cubic metres of soil per day.<sup>4399</sup> NHIP Horl explained that in his unit they were initially assigned three cubic metres of soil to dig per day but that if by 1 or 2 p.m. they had completed that quota, their workload would be increased to 5 cubic metres.<sup>4400</sup> The children units received a smaller work quota.<sup>4401</sup> SOT Sophal, a member of the children

<sup>4398</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 51; T. 2 September 2015 (SAM Sak), E1/340.1, p. 24 (explaining that within his mobile unit they received about two or three cubic metres of soil to work on a daily basis); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 81 (talking about two cubic metres of soil for one person per day to carry); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 44 (stating that they were required “to finish three cubic metres of soil per day. [...] And for me, I was asked only to complete three cubic metres of soil per day”); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 70 (speaking of a work quota of two or three cubic metres of soil to complete per day), 78 (testifying that their work quota was two cubic metres per day and that if workers could complete this work quota by daytime, an additional cubic metre would be given for the evening shift); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 46 (testifying that everyone, including the unit and group leaders, had to meet the daily work quota of three cubic metres of dirt), 48 (explaining that at the beginning they were assigned two cubic metres of soil per day and that if they were able to accomplish that work quota, their work quota would be increased up to three cubic metres of soil per day); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 53 (testifying that in his platoon, workers had to accomplish three cubic metres of earth per person within a day); T. 26 October 2015 (MUN Mot), E1/356.1, p. 78 (testifying that the quota of three cubic metres was imposed to him as a company chief in the same way as to the workers under his supervision); T. 2 September 2015 (MEAN Loey), E1/340.1, p. 64 (explaining that they had to complete three cubic metres of soil per day). With respect to MEAN Loey, the Chamber notes that in his Civil Party application (MEAN Loey Civil Party Application, E3/4889, p. 2, ERN (En) 01061251), the Civil Party indicated that the quota was five-cubic-metres per day. However, when asked to clarify this discrepancy between his application and his in-court statement by the KHIEU Samphan Defence, the Civil Party stood by his in-court statement that the work quota was three cubic metres per day. The Chamber notes the following statements: T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 40-43 (explaining that a plot of 30 cubic metres was assigned to his 10-people group per day but that often they could not meet their daily work quota); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 83 (testifying that there was no individual work quota but there was a group quota of 15 metres high with 10 metres width). The Chamber does not find SEN Sophon’s and LAT Suoy’s statements that there was a group quota to contradict the consistent evidence of the other witnesses and Civil Parties indicating that the work quota was assigned to each individual worker as different units may have assigned the work differently. *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 39.

<sup>4399</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 44-45 (stating that “[t]he work quota was different from one another. Some were required to complete three cubic metres per day, some 3.5 cubic metres, some four cubic metres. The people who were in the so-called front battlefield were required to complete four cubic metres of soil per day. And for me, I was asked only to complete three cubic metres of soil per day [...] [b]ecause I was in the so-called rear battlefield.”), 64 (explaining that he was in a group with less than regular manpower and that “[t]hose from the rear battlefield were considered weaker than those in the front battlefield.”).

<sup>4400</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 12-13 (explaining that each worker was assigned a plot of five cubic metres which had to be completed within the day. This was measured using a pole sign. The witness added that “they would plan a signpost for us on a daily basis, five cubic metres for a person. They would measure it on a daily basis for individual worker.”), 37 (explaining that the five-cubic metres quota was a special requirement to complete the construction of the first bridge).

<sup>4401</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 85 (explaining that on the first day they were assigned one cubic metre and that if they could complete that quota, the day after they would be assigned 1.5 metres); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 26 (talking about half a cubic metre or one cubic metre). *See also*, T. 10 August 2015 (KAN Thorl), E1/327.1, p. 79.

unit, testified that in the beginning no work quota was imposed, only working hours. Later they were given a plot of one metre on the first day and if they were able to complete that, the work quota would be increased the following day to 1.5 metres.<sup>4402</sup>

1289. Once they returned from meetings with *Ta Val*, company and battalion chiefs met with chiefs at the lower level to disseminate information about the work plan. Chiefs at the lower level in turn disseminated the information to the people under their supervision.<sup>4403</sup> In particular, they set the work quota for the workers, held meetings at different levels to instruct them on the work plan and asked them to reiterate their commitment to complete the tasks allocated according with *Angkar*'s instructions.<sup>4404</sup> Unit chiefs supervised the workers, measured the quotas and reported to their superiors.<sup>4405</sup>

<sup>4402</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 83-84 (explaining that the work quota was imposed at some point because the work did not proceed fast enough).

<sup>4403</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 66 (“Q. Did you ever attend any meetings while you were working at the Trapeang Thma worksite? A. Yes, I did, but I only attended the lower level meetings. Q. And what do you mean when you say, lower level meetings; who would participate in these meetings? A. Only the battalion chief down to the lower level.”), 67 (explaining that upon returning from a meeting with the battalion chief, the witness called the members under his supervision to attend information dissemination sessions); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 43 (explaining that the unit chiefs received instructions from their superiors but that it was difficult to know who the upper echelon was).

<sup>4404</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 64 (stating that it was the 100-person unit chief who assigned the work quota); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 58-59 (explaining that Nhav, chief of the big unit, instructed the workers on their assignments and imposed the work plan on them); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 84 (testifying that the work quota and the food reduction ensuing if the work quota was not met were imposed by the group chief and the unit chief); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 77 (stating that he sometimes attended big meetings where the workers were asked “to make a commitment that we had to meet three cubic metres of soil per day” and that unit chiefs, big unit chiefs, chief of 100-member units, and chief of 1000-member units spoke at these meetings); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 30-31 (indicating that meetings were held for squad members, group members or members of the 30-member unit); T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 34-35 (testifying that he attended meetings with his unit members where workers were asked to reiterate their determination to achieve *Angkar*'s plan); T. 2 September 2015 (SAM Sak), E1/340.1, p. 56 (stating that he attended a meeting where workers were told that they had “to try to accomplish the work plan set forth by *Angkar*.”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 46 (explaining that they were told not to be lazy). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 34-36 (testifying that workers were asked to work hard to finish the Dam as soon as possible and “launch offensives.”); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 41; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 67 (testifying that during meetings with his platoon members he discussed the vision of *Angkar*, the management of tasks and the issue of discipline, which meant that workers had to respect working hours and be on time to come to and leave the worksite).

<sup>4405</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 67 (stating that it was his unit chief Va who conducted the inspection in order to ensure that workers completed the daily work quota); T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 34-35 (explaining that “[t]he stick or branch of the tree was used as a measurement and then the stick was used to measure the earth; the length of the stick was up to our waist, which was equal to one metre”); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 86 (testifying that it was his group chief who measured the land for them to dig); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 52 (testifying that in his role as a deputy chief of a platoon, he was tasked with supervising the workers and notice how many of them were sick); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 15; T. 2

1290. In order to complete their daily quota, workers did sometimes help each other or were asked to continue working at night time.<sup>4406</sup>

1291. The Chamber heard different accounts as to what happened to workers who could not complete their work quota. Some witnesses testified that such workers would be called to attend criticism and self-criticism sessions.<sup>4407</sup> In particular, SAM Sak

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September 2015 (SAM Sak), E1/340.1, pp. 49-50 (explaining that unit chiefs verified the work quota and make a report); T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 72-73 (testifying that regiment commanders went to see *Ta Val* every evening, and submitted to him a report about the daily completion of work quotas).

<sup>4406</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 15 (explaining that if he could complete five cubic metres by 5 p.m., he had to help his co-workers to complete their task, while some other days when he could not complete his quota, others in his unit helped him); T. 28 July 2015 (MAM Soeum), E1/324.1, p. 81 (testifying that sometimes his co-workers helped him to reach the quota); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 80 (testifying that if one could not accomplish the work quota, the platoon chief or deputy chief or a member of the platoon could help that person); T. 26 October 2015 (MUN Mot), E1/356.1, p. 55 (testifying that if a worker could not complete the quota, he or she was assisted by others); T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 81-82; T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 65 (explaining that if he could not complete the three-cubic-metre work quota he would have to continue working until 10 p.m. before he would be allowed to stop working and eat), 67 (stating that they were given food to eat at 10 p.m. even if the quota was not completed). The Chamber notes that, during the 28 July 2015 hearing, in response to the NUON Chea Defence's questioning, the Civil Party stated that he "could not meet the three cubic metre quota. From the time I started working, I could not meet it. I had to work hard, until 10 p.m., that was when I was told to stop and then I could rest. And as I said, I could not meet the three cubic metres quota." (T. 28 July 2015 (SEN Sophon), E1/324.1, p. 16). In reaction to this answer, the NUON Chea Defence reminded the Civil Party that "[y]esterday, you said that people who didn't finish their quota would be either deprived of food, or whipped. Were you deprived of food or whipped 60 times? Or is that not correct, what I'm saying?" The Civil Party answered that he never experienced that. The Defence went further asking him if he had ever witnessed anyone being deprived of food or whipped for not meeting their work quota, to which the Civil Party answered in the negative (T. 28 July 2015 (SEN Sophon), E1/324.1, p. 17). The Chamber finds that the Defence has mischaracterised the Civil Party's original testimony. SEN Sophon, in fact, only stated that if he did not meet his work quota he would be deprived of food until such time he finished working in the evening at around 10 p.m. This explanation was consistently provided by the Civil Party during both days of his in-court testimony. The Chamber also notes that the Defence has conflated another statement of the Civil Party, that if a worker was lazy the unit chief would come and whip him and then chase him to go to work (T. 27 July 2015 (SEN Sophon), E1/323.1, p. 68), with the questions related to the failure to meet the work quota and thus erroneously concluded that the whipping was another form of punishment for not meeting the work quota. The Chamber notes that the Civil Party's statement as to the treatment of lazy workers was separate from his statements on the work quotas and that the two punishments were not associated in the Civil Party's account. Furthermore, the Chamber finds that the Civil Party provided a recollection of what happened to those who were whipped during the 28 July hearing which is consistent with what said on 27 July ("These people were whipped in the morning when they did not wake up after the bell rang. And they were whipped to leave the hall to work." See T. 28 July 2015 (SEN Sophon), E1/324.1, p. 17). See also, T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 39-40 (explaining that sometimes she had to work at night to complete the quota and that if she could not complete the quota by night-time, she would receive a new quota the day after which she had to complete together with the uncompleted one).

<sup>4407</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 65; T. 28 July 2015 (MAM Soeum), E1/324.1, pp. 78, 81 (testifying that when he could not complete the quota he was criticised). See also, T. 10 August 2015 (KAN Thorl), E1/327.1, p. 55 (testifying that those who could not achieve the work quota would be called to "self-criticize session or refashion"); LING Lrysov Interview Record, E3/9338, p. 3, ERN (En), 00288640. See also, THIM Sovany Interview Record, E3/9544, 11 November 2014, p. 9, ERN (En) 01053881 ("Q. According to the answers of other witnesses, every evening at Trapeang Thma

indicated that he attended a criticism and self-criticism session and was criticised for not having fulfilled his daily work quota. After being criticised by someone in the group, he admitted the mistake and committed to completing the work quota.<sup>4408</sup> In this regard, the Chamber notes a difference between the Civil Party's statements provided in court and those given to OCIJ investigators. In court, SAM Sak stated first that those who did not meet the work quota had their food reduced and given to those groups who had completed the work quota, and later, that they were called to participate in criticism and self-criticism meetings.<sup>4409</sup> In contrast, he previously told the OCIJ investigators that those who did not complete their work quota were summoned for re-education, which meant that they would be killed.<sup>4410</sup> The Chamber notes that none of the Parties raised this inconsistency in court. However, in light of the evidence provided by the other witnesses on this issue described below, the Chamber understands the statements provided by SAM Sak as evidencing a common pattern of treatment of workers who did not meet the work quota.<sup>4411</sup> The available evidence shows that individuals who did not meet the expected quota were called to attend criticism and self-criticism meetings, where they were asked to commit to completing their work in accordance with the imposed standard, or were re-educated. In addition, as indicated below, their daily food ration was reduced and in case of repeated failure to meet the work quota imposed, they were taken away and disappeared.

1292. Some witnesses indicated that workers who did not meet their work quotas were taken for re-education.<sup>4412</sup> LAT Suoy testified that workers in units which could not

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Reservoir, there was a self-criticism meeting. Did you ever attend such meetings? A. No, I did not. They only called us to attend such meetings if we did not complete the assigned work.”).

<sup>4408</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 25-26.

<sup>4409</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 12, 14, 25-26.

<sup>4410</sup> SAM Sak Interview Record, E3/9574, 23 April 2014, p. 20 (“During that period, the Khmer Rouge did not use the phrase ‘to take to be killed.’ They used the phrase ‘to take to reeducation’ instead.”).

<sup>4411</sup> *See below*, paras 1292-1294.

<sup>4412</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 82 (explaining that those who could not complete the work quota would be invited to attend “education sessions”). The Chamber notes that this witness also said that those who could not complete their daily task would continue working in the evening (T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 82). The Chamber does not find these two statements to be contradictory as both things seemed to have happened at different times to different workers. *See also*, DK Telegram, E3/1113, undated, p. 1, ERN (En) 00434864 (stating that bad or lazy people were “trained with politics and consciousness.”); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 80 (explaining that those who pretended to have night-blindness were taken to re-education; the re-education process was the duty of the unit chiefs or group chiefs of the mobile units and the workers who needed to be re-educated would be criticised as “they had to be refashioned and they had to change their behaviours”. He further clarified that “if after re-education, the person did not learn the lesson or not change, then the unit chief would have to deal with that issue” and “the only solution was to kill that worker”). The Chamber notes that LAT Suoy also indicated that workers who failed to meet the work quota had their



meet the assigned work quota were considered traitors and “were taken care of”.<sup>4413</sup> He clarified that being “taken care of” meant being taken away for execution.<sup>4414</sup> The Chamber notes that LAT Suoy’s testimony is consistent with other evidence, in particular that of MEAN Loeuy who indicated that if workers were criticised a few times and still failed to meet the work quota, they would be “in trouble”, meaning that they would disappear or be taken away for re-education or be killed.<sup>4415</sup> However, the Civil Party indicated that he “did not witness the disappearances but there was disappearance”, that he never saw anyone being arrested or killed while at the Dam and that he never witnessed any beatings or any other form of physical violence at the worksite.<sup>4416</sup>

1293. Other witnesses testified that if workers could not fulfil their work quota, they would be whipped by the unit chief and asked to go to work,<sup>4417</sup> deprived of food,<sup>4418</sup> their food ration would be reduced,<sup>4419</sup> or the food ration for the working group would be reduced and given to other groups who had completed the work quota.<sup>4420</sup> SOT Sophal testified that if workers failed to meet their work quota, their food ration would be reduced.<sup>4421</sup> In addition, he clarified that while failure once or twice was met with a

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food ration reduced from a can of rice per day to gruel. *See* T. 11 August 2015 (LAT Suoy), E1/328.1, p. 83.

<sup>4413</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 24.

<sup>4414</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 24.

<sup>4415</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 65.

<sup>4416</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 66, 80-83.

<sup>4417</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 67-68. *See also*, THUN Thy DC-Cam Interview, E3/9157, 17 June 2011, p. 19, ERN (En) 01172882.

<sup>4418</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 52, 62 (stating that sometimes “they starved those who did not meet the quota. At that stage, that was one of the forms of punishment.”); T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 67-68 (explaining that the workers who were accused of being lazy were deprived of gruel). *See also*, ORM Huon Interview Record, E3/9516, 27 May 2014, p. 15, ERN (En) 01075215 (“Q. What happened to the women in the women’s unit who could not complete the work quota as required? A. They forced the women to finish their work as planned; otherwise they would not give food to those women.”); THUN Thy DC-Cam Interview, E3/9157, 17 June 2011, p. 19, ERN (En) 01172882.

<sup>4419</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 79 (explaining that the reduction of the food ration was one kind of punishment imposed on the workers); T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 83-84; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 3 (testifying that the normal food ration was three ladles of gruel, which was reduced to two when workers failed to meet their work quota).

<sup>4420</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 14.

<sup>4421</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 85. *See also*, MAM Soeurm *alias* HENG Samuoth Interview Record, E3/7323, 31 January 2009, p. 3, ERN (En) 00289999 (“Our food ration was cut when they thought we were lazy.”); LORT Bandet Interview Record, E3/9494, 24 January 2014, p. 5, ERN (En) 00983720 (“Q. As chairman of a unit of 100, what did they instruct you to do? A. I received instructions from my direct chairperson Sister Voeun (female, deceased) that each member of the unit had to carry three and a half cubic metres of soil per day, and if they could not finish their work, they would not get food to eat. I always told my chairwoman that they had completed carrying soil as assigned. So, we all had food to eat.”).

reprimand, if it happened a third time the worker would be tied and hanged upside down to a rope connected to a wooden frame and pulled up and down, after which the person would be let go.<sup>4422</sup> The witness explained that this happened to one of his co-workers who told him that he had been subjected to that treatment at night and warned that if he did not change his behaviour, he would be killed next time.<sup>4423</sup> The witness also indicated that the militiamen who had weapons and swords were responsible for this treatment and that they sometimes let the other workers see it. The witness testified that his co-worker was later “taken away and killed”.<sup>4424</sup>

1294. Based on the evidence analysed above, the Chamber concludes that workers who did not meet the work quota assigned to them were progressively punished by first being called to attend criticism and self-criticism meetings, being called to re-education sessions and by then being deprived of food or having their food reduced.<sup>4425</sup> In case the workers continued to fail to meet the work quota, they were subjected to physical punishment, and finally taken away and disappeared.<sup>4426</sup> Findings on the ultimate fate of workers who were taken away and disappeared in these circumstances are made further below.<sup>4427</sup>

#### 11.1.7.4. Criticism and self-criticism meetings

1295. Criticism and self-criticism meetings were held to criticise those who did not work hard and to require workers to commit themselves to completing the work plan for *Angkar*.<sup>4428</sup> The unit chief called the workers to the meetings and chaired them.<sup>4429</sup>

<sup>4422</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 86-87.

<sup>4423</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 86-87; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 6.

<sup>4424</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 87.

<sup>4425</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 25-26; T. 2 September 2015 (MEAN Loey), E1/340.1, p. 65; T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 78, 81 (punishment by being called to attend criticism and self-criticism meetings); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 52, 62; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 79; T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 83-84; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 3 (punishment by food reduction or deprivation).

<sup>4426</sup> See above, paras 1291-1293. See below, paras 1354-1355.

<sup>4427</sup> See below, paras 1354-1355, 1367.

<sup>4428</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 12; T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 70 (testifying that “self-criticism would be held to criticise each other whether there were groups were inactive or whether there were other groups were more active”); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 87 (testifying that this type of meeting was held every month or two).

<sup>4429</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 79 (“[I]f we could not complete the work quota that day we, as a group, would be called to attend such as meeting and we were criticized for being not self-mastery or self-reliance, or for abusing other’s labour and that we have to strive harder to be more active. And they warned us that if you keep doing that then you should be mindful of the *Angkar*’s phrase,

The workers were criticised and criticised one another in particular for not completing the work quota.<sup>4430</sup> After a worker was criticised, he or she had to admit his or her mistake.<sup>4431</sup> While MAM Soeurn indicated that such meetings were held when needed, usually when the work plan was imposed and once it was completed, other witnesses indicated that they were held almost every day, every month or every other month.<sup>4432</sup> Based on this evidence, the Chamber finds that criticism and self-criticism meetings were a common practice at the construction site, but that the frequency of the said meetings varied depending on the units. Such meetings were aimed at maintaining strong pressure on workers and urging them to work hard, either through encouragement or through threats, which contributed to create a climate of fear.

#### 11.1.7.5. Manual versus mechanical work

1296. While it appears that at the beginning machines were used to clear the bushes from the area where the Dam was going to be built, manual labour was exclusively employed in the construction of the Dam.<sup>4433</sup> However, trucks and tractors were used

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that is, ‘to keep is no gain and to kill is no loss’. And upon hearing that we were so afraid”); T. 28 July 2015 (MAM Soeurn), E1/324.1, p. 84 (clarifying that “[i]t was the unit chief who actually chaired the meeting, and after that the group chief would reinforce the message from the unit chief. And that’s how the reinforcement was processed, that is from the unit chief to the group chief and to the members of the group in order to strengthen their group.”); CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 19, ERN (En) 01059953 (“meetings were chaired by Phun a battalion chairman who told the workers that they had to work hard and that ‘the wheel of history keeps on turning forward, not backward”); MAM Soeurn *alias* HENG Samuoth Interview Record, E3/7323, 31 January 2009, p. 3, ERN (En) 00289999 (“If a worker could not finish an assignment, the Khmer Rouge punished him or her by a warning and criticism to reinforce his or her ideological belief.”).

<sup>4430</sup> T. 28 July 2015 (MAM Soeurn), E1/324.1, pp. 83-85; T. 2 September 2015 (SAM Sak), E1/340.1, p. 26 (explaining that “[s]omeone in the group said that he wished to criticise Comrade Sam Sak and I was advised to complete the equal work quota received by others”).

<sup>4431</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 25-27 (stating that he attended one criticism and self-criticism session and was criticised for not having fulfilled the work quota by the end of the day. The Civil Party also indicated that after being criticised by someone in the group, he had to admit the mistake and state that later he would try to complete the work quota. He explained that “the meeting was meant to reflect ourselves, our performance.”).

<sup>4432</sup> T. 28 July 2015 (MAM Soeurn), E1/324.1, pp. 83-85; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 79 (testifying that self-criticism and criticism sessions were held almost every day); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 87 (testifying that this type of meeting was held every month or two).

<sup>4433</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 53; T. 29 July 2015 (MAM Soeurn), E1/325.1, pp. 39-40 (testifying that when he worked at Trapeang Thma Dam in late 1976 and 1977 he did not see any heavy machinery being employed and stating as follows: “[f]rom my observation as a worker, we had only earth-carrying baskets and hoes as tools to work. No heavy machinery including an excavator or a bulldozer was spotted. They could have engaged some pieces of machinery in the early stage, while pure manual labour was used in the later stages. So by the time I was working there, not a single excavator or bulldozer was spotted. The tasks including digging and carrying the earth were all done by human labour.”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 62 (testifying that at the worksite there was no machinery and that all the work was done manually); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 80 (testifying that when he was working at the construction site there was no machinery, only human labour); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 14; T. 27 July 2015 (SEN Sophon), E1/323.1, p.

to transport rocks and sand, or to carry food or rice for the workers, and a vehicle was used to transport laterite.<sup>4434</sup> Each individual worker was provided with a hoe, carrying poles and earth-carrying baskets to work.<sup>4435</sup> The workers used the hoe to dig the soil and sometimes had to use their hands to put the soil onto the basket and carry the basket to dump the soil at the Dam.<sup>4436</sup>

### 11.1.8. *Living Conditions*

#### 11.1.8.1. *Water*

1297. The Chamber heard different accounts as to the quantity of water provided to the workers. While SEN Sophon and CHHIT Yoeuk stated that there was not enough water to drink, KAN Thorl testified that there was enough water and that it came from a stream nearby.<sup>4437</sup> CHHUM Seng testified that enough water was provided for the workers to drink during mealtimes, but that no water was provided when they rested.<sup>4438</sup> SOT Sophal testified that when they worked close to the lake they could take water from it. When they worked far away from a water source, the water was transported by truck and the workers received enough water to fill their bottle for that day.<sup>4439</sup>

1298. Irrespective of the amount of water the workers had access to, the Chamber finds that it is clear from the evidence that the water was not clean and that workers

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65 (answering the question whether were heavy machines used to aid the work by saying that no, the only things they had were the hoes). *See also*, Text of recorded speech by KHIEU Samphan at 15<sup>th</sup> April Anniversary Meeting in Phnom Penh, 19 April 1977, E3/201, ERN (En) 00419514 (reporting KHIEU Samphan as saying, with respect to the construction of canals and dams, that none of those achievements had been made with machines but only through “the strength of our people.”); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 24; IM Chaem DC-Cam Interview, E3/5657, 4 March 2007, p. 2, ERN (En) 00089772 (stating that “[n]o mechanism, but human forces” were used at the Dam); Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 8, ERN (En) 00525838 (reporting that “[s]ome of the big dams are major public works although we were told that they were built by the peasants themselves using spades and relying on their own resourcefulness.”).

<sup>4434</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 40-41; T. 12 August 2015 (LAT Suoy), E1/329.1, p. 24.

<sup>4435</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 10, 12; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 64; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 52 (testifying that he provided the workers in his platoon with a hoe and the earth-carrying basket); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 78 (explaining that he used to dig with a “pick axe”). *See also*, CHHUM Seng DC-Cam Interview, E3/9010, 18 June 2011, p. 14, ERN (En) 00728621 (indicating that hooked hoes were used to cut down trees).

<sup>4436</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 65 (“we had to use the hoe to dig the soil and some time we had to use our hands to put the soil onto the basket and carry the basket to dump the soil at the dam.”).

<sup>4437</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 46; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 39; T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 63-64.

<sup>4438</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 63.

<sup>4439</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 5.

developed diarrhoea as a result of drinking it.<sup>4440</sup> Depending on the place they were assigned to, the workers took water directly from the pond,<sup>4441</sup> the lake,<sup>4442</sup> the stream<sup>4443</sup> or drank rainwater.<sup>4444</sup> KAN Thorl explained that before 1975 or after 1979, it was common for villagers in the area where he lived to drink water directly from the pond.<sup>4445</sup> When there was a shortage of water or when workers worked far from the water source, the water was taken from nearby streams and ponds, transported by truck to the worksite and distributed to each unit.<sup>4446</sup> The Chamber finds that workers faced shortages of water. The Northwest Zone faced a serious drought during the time the Dam was built.<sup>4447</sup>

### 11.1.8.2. Food ration and type

#### 11.1.8.2.1. *CPK policy on food rations*

1299. The Chamber recalls its findings regarding the CPK policy on rice production

<sup>4440</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 63 (explaining that he saw that the water was not transparent and that sometimes there was some weed mixed with it); T. 2 September 2015 (SAM Sak), E1/340.1, p. 29; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71 (the water “was rather muddy but we had to drink it”); T. 27 October 2015 (MUN Mot), E1/357.1, p. 42; T. 19 August 2015 (TAK Boy), E1/333.1, p. 61 (“Regarding what I was able to observe, some people had diarrhoea, it was hot and people drank dirty water, and so they fell sick and were sent to hospitals.”); T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 69-70 (“Yes there were, workers were sick from dysentery for example or fever. But they were not starved of food. There was a problem with drinking water and for that sometimes they had problem with their bowel and that’s what I saw on site.”).

<sup>4441</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 63; T. 25 August 2015 (NHIP Horl), E1/336.1, p. 21 (explaining that they had to drink water from the ponds where the buffaloes were bathing and that it was fine because their immune systems got stronger after years of hardship); T. 27 October 2015 (MUN Mot), E1/357.1, p. 42; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71. *See also*, T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 85-86 (testifying that water was carried for people to drink and was also taken from streams and nearby ponds).

<sup>4442</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 5.

<sup>4443</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71; T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 63-64.

<sup>4444</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 42.

<sup>4445</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 26.

<sup>4446</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 14 (testifying that workers had to dig wells to find water but as the water they found was at times insufficient, water was brought in by trucks and distributed to each unit); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 5; T. 13 August 2015 (CHHIT Yoek), E1/330.1, p. 39 (explaining that those who were far from the lake received the water from the trucks carrying water for them but the trucks were not on time).

<sup>4447</sup> Revolutionary Youth, E3/771, July-August 1977, ERN (En) 00509687 (reporting that the male and female youths working at the Dam had to face the problem of water shortage due to the fact that the carts and trucks were not able to deliver water to the worksite on time and as needed); *Chen Yung Kuei’s Cambodia Visit Reported* (in FBIS collection), E3/1783, 23 December 1977, ERN (En) 00498181 (reporting RUOS Nhim as saying that “[d]rought set in when we started to build the reservoir, and the 20,000 people engaged in construction even had not enough drinking water.”); T. 13 August 2015 (CHHIT Yoek), E1/330.1, p. 39 (confirming the statement reported as having been made by RUOS Nhim and explaining that there were trucks carrying water to supply the workers).

and food rations made in the Tram Kak Cooperatives section of this Judgement.<sup>4448</sup>

#### 11.1.8.2.2. *Food rations at Trapeang Thma Dam*

1300. During the initial stages of construction of the Dam, workers had three meals per day; subsequently, they only had two meals per day.<sup>4449</sup> The Chamber notes that visiting Yugoslavian journalists mentioned in a report dated 25 March 1978 that workers were given three portions of rice a day and always enough meat and fish to eat.<sup>4450</sup> The Chamber disregards this document in this respect, as it appears that the information provided to these visitors did not accurately reflect the situation at the worksite, but was rather intended to give a picture of the working and living conditions at Trapeang Thma Dam which accorded to the CPK official discourse on living conditions of the workers.<sup>4451</sup>

1301. The majority of the witnesses and Civil Parties stated that the food received was generally insufficient and that it did not provide workers with enough energy to complete the quota of three cubic metres of dirt per day.<sup>4452</sup> In contrast, TAK Boy, a

<sup>4448</sup> Section 10.1: Tram Kak Cooperatives, paras 1008-1009.

<sup>4449</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 75-76 (stating that in the beginning they were allowed to eat three times a day and that later, when the rice started to run out, they were allowed to have two meals a day: rice at lunch time and another meal in the evening); T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 39 (testifying that the sector mobile unit had three meals per day, each meal consisting of one can of rice per person), 80-81 (explaining that at some point they decided to only have two meals per day due to the limited amount of water and firewood used to cook the rice); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 76-77 (testifying that in the beginning, one person received three cans of rice per day but later the food ration was reduced to two or one and a half cans per day); KAN Thorl Interview Record, E3/7803, 20 December 2008, p. 4, ERN (En) 00277822 (“During the initial construction of the dam they let us eat until we were full: three meals equivalent to three cans of rice. They issued dried fish, fermented fish paste, soup with boiled cabbage, or sour soup. There was no beef or pork. They had us eat communally, by team.”); T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 27-28 (talking about lunch and dinner); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79 (testifying that they were given two meals per day: in the morning and in the evening). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 65 (explaining that she received one small bowl of rice per meal and two meals per day).

<sup>4450</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 9, ERN (En) 00525839 (report of the visit of the journalists dated 25 March 1978).

<sup>4451</sup> *See above*, paras 1216-1218.

<sup>4452</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 59-60; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 37 (indicating that “people below or people other than cadres, they did not have enough food to eat. They were starving.”); T. 2 September 2015 (SAM Sak), E1/340.1, pp. 11 (“I could not eat my fill; it was not enough for me. I would not eat the thick gruel right away. I had to go and collect edible leaves to mix with the thick gruel to fill my stomach.”), 19-20 (“Sometimes we were so hungry and we spoke to one another. As long as I could be given just a plate full of rice and a cooked chicken, I would change it for my life as my last meal. Some other would say just a bowl of noodle and a glass of icy water would be sufficient for them to feel satisfied and they could rest in peace. You can imagine how terrible the situation was. When we were too hungry, and we would exchange our life with one last meal.”); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 66 (“While I was working at Trapeang Thma Dam worksite, I did not have enough food to eat.”); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 18 (stating that the food was not proportionate to the work conditions imposed), 19, 39 (stating that they

platoon chief, testified that there was sufficient food for everyone and that they ate ordinary steamed rice.<sup>4453</sup> MUN Mot testified that the rice was sufficient as they were given one milk can of rice for lunch and another one for dinner, so they received two milk cans of rice per day, but they did not have enough soup.<sup>4454</sup> CHHUM Seng testified that cadres received a little bit more food than workers below that rank.<sup>4455</sup> The Chamber finds that there existed a differentiated treatment between cadres and workers with respect to food rations which explains TAK Boy's and MUN Mot's statements that the food was sufficient as both witnesses held leadership positions at the worksite. The Chamber also notes RUOS Nhim's 11 May 1978 report indicating that there were food shortages in Sectors 1, 4 and 5.<sup>4456</sup> In light of the above, the Chamber finds that TAK Boy's and MUN Mot's statements do not undermine the other consistent evidence about the insufficiency of food.

1302. The rice was prepared for the workers by the economic section.<sup>4457</sup> However, during busy periods, the food was prepared at the worksite to save time.<sup>4458</sup> The workers ate their meals in the pits they dug; they did not go anywhere else to eat.<sup>4459</sup>

1303. Workers received different types of food. In this regard, SAM Sak indicated that workers were given thick gruel in a small bowl and that during the dry season they were given rice.<sup>4460</sup> NHIP Horl stated that the food ration consisted of a bowl of porridge

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looked for other food once they had completed their daily work and that in particular they dug in secret for the root of wild plants which they ate at night before going to sleep); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79 ("Of course the food was not enough"); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 80 (testifying that the food was not sufficient as one bowl of rice and one bowl of soup were provided for four workers); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 65 ("I did not have enough food to eat."); SAM Sak Interview Record, E3/9574, 23 April 2014, p. 10, ERN (En) 01057742 (explaining that despite his young age he asked to join the special mobile unit, because only watery rice porridge was given to the children's unit and he wanted to eat solid rice); SORM Seila Interview Record, E3/9528, 14 October 2014, p. 10, ERN (En) 01053589 (stating that there was not enough food as they got only one small plate of rice at each meal, with two meals a day, but once they completed the work target they could hunt for crabs or snails for their food).

<sup>4453</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 59-60.

<sup>4454</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 39 (testifying that sometimes they only had soup with morning glory, water lily or stalk of banana).

<sup>4455</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 37 (indicating that "people below or people other than cadres, they did not have enough food to eat. They were starving.").

<sup>4456</sup> DK Report, E3/950, 11 May 1978, p. 2, ERN (En) 00185216.

<sup>4457</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 39; T. 19 August 2015 (TAK Boy), E1/333.1, p. 60 (testifying that there were cooks who prepared and distributed the food to the workers); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79 (explaining that the food was organised and distributed by the economic section).

<sup>4458</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79.

<sup>4459</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 13.

<sup>4460</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 11, 37.

with morning glory or lily plant, and that sometimes sour soup with smoked fish was given.<sup>4461</sup> MEAN Loey indicated that initially they had cooked rice once in a while and that later they had thick gruel.<sup>4462</sup> MAM Soeurm explained that sometimes they did not receive cooked rice but gruel.<sup>4463</sup> Sometimes the food ration included prahok or dry fish.<sup>4464</sup> CHHUM Seng indicated that if the food was supplied on time, workers would receive “better rations”; however, when the supply was not on time, they only had access to watery gruel.<sup>4465</sup>

1304. The Chamber is satisfied that a differentiated food regime based on workers’ productivity existed at the worksite, whereby those who accomplished more work received more food, and those who accomplished less were given reduced food rations.<sup>4466</sup> In particular, CHHUM Seng explained that the members of the mobile units were divided into three different units: the special unit, whose members dug four or five cubic metres per day, and received two or three cans of rice each; units which could complete two or three cubic metres, whose members received a maximum of two cans of rice each; and the invalid unit, composed of night-blind, myopic or handicapped people, whose members usually received half a can of rice or maximum one can of rice

<sup>4461</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 17-18.

<sup>4462</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 66.

<sup>4463</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79.

<sup>4464</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 60; DK Telegram, E3/1113, undated, p. 1, ERN (En) 00434864 (reporting that the food supplied included “beef, pork, fish, fish paste (*prohok*), Pa’ok”).

<sup>4465</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 59-60.

<sup>4466</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 60-61; T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 81 (explaining that the workers in the sector mobile unit received three cans of rice per day, because they were considered to work harder than the workers from the commune or cooperatives); T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 83-84 (testifying about the existence of a special unit which worked faster than other units and whose workers thus received two cans of rice per person per day. The witness also indicated that members of this special unit had better clothing and “were an exemplary model for the mobile units”), 85 (testifying that “for ordinary barefoot mobile unit members, we each got half a can of rice.”). *See also*, T. 30 September 2015 (SOT Sophal), E1/352.1, p. 8 (testifying about the existence of a special unit made of hardworking workers); Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 14, ERN (En) 00342721 (stating that “[a]bout the ration in the front line in charge of carrying out storm attack on the strategic early rice currently only two tins of rice are provided because if a ration of three tins continues taking [place] it will affect the districts of deficiency.”); Four Year Plan 1977-1980, E3/8 [E3/213], p. 111, ERN (En) 00104053 (outlining a plan of the ration system throughout the country for the years 1977-1980 whereby there were four systems for work forces distributed as follows: Force No. 1: 3 cans; Force No. 2: 2.5 cans; Force No. 3: 2 cans; Force No. 4: 1.5 cans. It was foreseen that two side dishes, namely soup and dried food, would also be provided and dessert would be provided once every three days in 1977, once every two days in 1978 and daily in 1979 and 1980. The plan also provided for fresh fish and meat to be given two times per week whereas dried fish and preserved fish were to be given three times. Warm rice and side dishes and fresh vegetables were set to be the basic ration. The Chamber notes, however, that it is not clear from the Four-Years Plan on which basis Force No. 1, 2, 3 and 4 were divided).



per day each.<sup>4467</sup> PAN Chhuong testified that Sector mobile units had three cans of rice per person per day as they were considered to work harder than the workers from the commune or cooperatives.<sup>4468</sup> CHHIT Yoeuk stated that they received three cans of rice per person per day in busy periods, whereas in normal periods the ration was reduced to one and a half cans and sometimes it was reduced further to such a level that they “had not food to eat”.<sup>4469</sup> MAM Soeurm testified that in his unit one can of rice was given for two people.<sup>4470</sup> MEAN Loeuy stated that they received a “small bowl of food ration”.<sup>4471</sup> The children’s unit received a smaller food ration compared to that of adults.<sup>4472</sup>

1305. The food ration for the sector mobile workers was provided by the sector, whereas workers from the cooperatives and communes had their own ration provided by their respective communes or cooperatives.<sup>4473</sup> The sector mobile unit had a storage warehouse for the food supply and that is where the supplies came from.<sup>4474</sup>

1306. The Chamber heard conflicting evidence with respect to the food rations provided at the worksite after the arrival of the Southwest Zone cadres. MUN Mot testified that after the arrival of the Southwest Zone cadres, food rations were reduced to one milk can of rice per person per day, as opposed to the two milk cans of rice they

<sup>4467</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 60-61.

<sup>4468</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 80-81.

<sup>4469</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 44 (explaining also that the rations were the same across all units), 74 (clarifying that the three cans of rice per day per person ration was distributed to workers of the mobile unit forces “when they wanted to achieve something in a short time.” The witness also indicated that when the construction work was less intensive, workers would have one can and a half per day and at other times they would have only one or half of a can, or nothing at all and that he himself sometimes did not receive the rice in certain days); T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 15 (explaining that whenever they were on the offensive they had access to three cans of rice but that during rainy seasons they only received one and a half cans of rice per day).

<sup>4470</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79.

<sup>4471</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 66.

<sup>4472</sup> SOT Sophal Interview Record, E3/7755, 4 February 2009, p. 4, ERN (En) 00293004 (“The people in my group were re-educated, and our ration was reduced many times. At that time, we were very hungry; we picked up the burned part of the yam that the chiefs threw away to eat. We would have been smashed if we were seen.”); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 88 (explaining that because of his assignment in the rice distribution, he knew that adults and children food rations were different; in particular, adults got three cans of rice while children got only two cans of rice); SAM Sak Interview Record, E3/9574, 23 April 2014, p. 10, ERN (En) 01057742 (explaining that despite his young age he asked to join the special mobile unit, because only watery rice porridge was given to the children’s unit and he wanted to eat solid rice).

<sup>4473</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 80. *See also*, T. 11 August 2015 (KAN Thorl), E1/328.1, p. 35 (testifying that while initially the food was distributed to the workers by the district, later the food supply was provided by the sector).

<sup>4474</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 35.

received before.<sup>4475</sup> This is corroborated by a report dated 11 May 1978 sent by RUOS Nhim to *Angkar* 870, reporting food shortages across sectors 1, 4 and 5 of the Northwest Zone, and stating that “for the immediate future, there will [have to] be [only] one can of rice [to be provided to one person]”.<sup>4476</sup> The fact that the food ration was reduced also seems to be corroborated by LAT Suoy, who testified that when the Southwest Zone cadres arrived, “they limited the food supply to one can of rice per 100 people”.<sup>4477</sup> SEN Sophon gave evidence that when *Ta Val* was in charge not many people died, and those who did mostly died of starvation. However, when IM Chaem was in charge more people died, both of starvation and because they were taken away to be killed.<sup>4478</sup> However, the Chamber notes that CHHIT Yoeuk and MAM Soeurm testified that the food remained the same.<sup>4479</sup> In light of this, the Chamber finds that at a minimum the food rations were not increased after the arrival of the Southwest Zone cadres to the Trapeang Thma Dam.

#### 11.1.8.2.3. *Response from the Party Centre*

1307. In mid-1976, IENG Thirith visited the Northwest Zone and noted the poor conditions, including malaria, diarrhoea and homelessness, and the fact that young children, pregnant women and old people were working in the fields in the heat.<sup>4480</sup> During an interview with Elizabeth BECKER, IENG Thirith stated that she reported those conditions to POL Pot and that, on the basis of her report, POL Pot launched an inquiry that concluded that the poor conditions in the Northwest Zone were the result of Vietnamese “agents” having infiltrated the Northwest Zone CPK branch.<sup>4481</sup> These claims remain unsupported.

<sup>4475</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 39-40 (testifying that before the Southwest Zone cadre’s arrival, each person received one can of rice for lunch and one can of rice for dinner every day).

<sup>4476</sup> DK Report, E3/950, 11 May 1978, ERN (En) 00185216.

<sup>4477</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 7.

<sup>4478</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 75. *See also*, CHIM Chanthoeun Interview Record, E3/9559, 27 May 2013, p. 6, ERN (En) 00950708 (“[U]pon their arrival the [Southwest group] made an announcement at the kitchen hall that people would be given rice to eat and indeed they gave a bowl of rice to each person. However, it lasted for about ten to fifteen days only and the food ration was immediately reduced.”).

<sup>4479</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 15; T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 17.

<sup>4480</sup> Book by B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, p. 236, ERN (En) 01150115; IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 25, ERN (En) 00182322.

<sup>4481</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 25, ERN (En) 00182322; Stephen HEDER Notes of IENG Thirith Interview by Elizabeth BECKER, E3/109, pp. 1-2, ERN (En) 00149533-00149534. In this regard, *see* Section 12.1: Internal Factions, para. 1972.

11.1.8.3. Accommodation and shelter

1308. Workers slept in long communal halls with a thatch roof.<sup>4482</sup> Each hall could house at least 100 people.<sup>4483</sup> When it rained, workers could not sleep due to water seeping through the roof, but they still had to start working in the early morning the next day.<sup>4484</sup>

1309. Workers slept on the ground and did not have pillows or beds.<sup>4485</sup> Some people built hammocks to sleep in.<sup>4486</sup> The majority of witnesses testified they were not provided with mosquito nets.<sup>4487</sup> However, KAN Thorl indicated that he provided a mosquito net to the workers in his platoon.<sup>4488</sup> No blankets were provided to the

<sup>4482</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 11; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 45 (speaking about a long hall); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 35. *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 31.

<sup>4483</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 11. The Chamber notes SOT Sophal's statement that the sleeping shelter could accommodate 300 to 400 people. *See* T. 30 September 2015 (SOT Sophal), E1/352.1, p. 35. However, the Chamber also notes that the witness indicated that he is able to only count "up to 20, 30 [...]. But too many numbers, I cannot count." *See* T. 30 September 2015 (SOT Sophal), E1/352.1, p. 38. The Chamber therefore does not rely on his testimony about the number of people who were hosted in a shelter.

<sup>4484</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70.

<sup>4485</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 12 (explaining that they used the carrying baskets as pillows and the hoes as bolsters, and that they were sleeping directly on the ground); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22; T. 25 August 2015 (NHIP Horl), E1/336.1, p. 36 (stating that they slept on "bamboo beds" which were just bamboo under which the workers placed logs to lift the bamboo off the ground); T. 19 August 2015 (TAK Boy), E1/333.1, p. 44 (explaining that there were no sleeping mats so some people chopped the bamboo and put it on the floor to sleep on it); T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 80 (stating that the sleeping area was not a proper one and that some dug the soil and put bamboo to sleep on it); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70 (stating they had no pillow and that they had to find means to sleep by themselves, such as finding a piece of mat). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 67 (explaining that they had no pillow or bed); SOEU Saut DC-Cam Interview, E3/9131, ERN (En) 00982792 ("No shelter was built [...] We used leaves to cover ourselves. When it was raining, we slept in the rain. When the rain was heavy, and we looked miserable to them, they cut palm leaves for us to cover ourselves. Nevertheless, the palm leaves could not cover us completely. Because we were so exhausted we fell asleep and we were completely soaked by the rain.").

<sup>4486</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 44; T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 80 (testifying that in his group, they erected two wooden poles to hang the hammock to sleep on).

<sup>4487</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 35; T. 11 August 2015 (LAT Suoy), E1/328.1, p. 87; T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22 (stating that *Angkar* did not provide pillows or mosquito nets – some people brought these items from their house – but, for example, those who had no mat slept directly on the ground); T. 19 August 2015 (TAK Boy), E1/333.1, p. 44; T. 20 August 2015 (TAK Boy), E1/334.1, p. 17 (stating that no mosquito nets were distributed to them but that they brought mosquito nets along from where they came from). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 67; CHIEP Chhean Interview Record, E3/7805, 20 December 2008, E3/7805, p. 4, ERN (En) 00277817 ("No mosquito nets or blankets were issued. As long as they gave us something to eat, we considered ourselves lucky. There were no sleeping mats or pillows; we used our clothing bags for pillows.").

<sup>4488</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 52.

workers.<sup>4489</sup>

1310. The workers did not get enough sleep.<sup>4490</sup> In this regard, SOT Sophal testified that every day he fell asleep after digging the soil while waiting for his co-workers to return from carrying the soil to the top of the Dam.<sup>4491</sup>

#### 11.1.8.4. *Clothing*

1311. Workers at the Dam were provided with one set of black clothes.<sup>4492</sup>

#### 11.1.8.5. *Health*

##### 11.1.8.5.1. *CPK approach to health*

1312. The CPK approach to healthcare must be assessed in its historical context. The Cambodian population was seriously affected by years of war preceding the fall of Phnom Penh, including the heavy US bombing campaigns.<sup>4493</sup> The CPK revolutionary ideology in this regard established a plan for a radical change of society, the development of agriculture as the highest priority for economic development and the forced movement of city dwellers to the countryside in order to participate as new peasants or new workers to farming work within cooperatives, as well as the realisation of irrigation projects in areas devoid of sanitary installations and public health institutions (e.g. hospitals). In this regard, the June 1976 issue of the *Revolutionary Flag* stressed that the CPK “stand[s] on agriculture to expand other sectors”, including public health and social affairs.<sup>4494</sup> “The hospitals are for looking after the sick. The medicine,

<sup>4489</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70; T. 2 September 2015 (SAM Sak), E1/340.1, p. 13; T. 19 August 2015 (TAK Boy), E1/333.1, p. 44; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 35.

<sup>4490</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 66 (stating that because he went to sleep at 10 p.m. and woke up at 4 a.m., he did not have enough sleep and as a result he did not have the strength to work the next day but he forced himself to do so); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 35 (testifying that he went to bed at around 11 p.m. and woke up at 3 a.m., and therefore, did not have enough energy to continue working the next day); T. 19 August 2015 (TAK Boy), E1/333.1, p. 60 (testifying that they did not sleep enough); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 87.

<sup>4491</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 81; T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 35-36.

<sup>4492</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 48 (indicating that only one set of clothes was given to each worker in addition to one scarf or karma); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 35-36; T. 19 August 2015 (TAK Boy), E1/333.1, p. 43 (testifying that shortly after he arrived at the worksite, he was given a pair of black trousers and a shirt); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 67 (stating that she was given a black skirt).

<sup>4493</sup> Section 3: Historical Background, paras 229-230.

<sup>4494</sup> *Revolutionary Flag*, E3/760, June 1976, p. 26, ERN (En) 00509629.

especially the preventive medicine is food. When there is enough to eat, few get sick.”<sup>4495</sup>

1313. The CPK approach to healthcare was also impacted by the related ideological stance of self-reliance considered as the founding principle for ensuring DK independence and sovereignty. This led the new Cambodian authorities to consider that DK had to rely on its own resources and refuse not only food, but also medical aid from foreign countries out of fear that such aid would be provided under specific and unacceptable conditions, with the limited exception of China.<sup>4496</sup> In this regard, the Chamber notes a Ministry of Commerce document related to the period 1 to 14 August 1976 reporting that Chlorokin and Primakin tablets were distributed in the Northwest Zone.<sup>4497</sup> These medicines appear to have been brought from China.<sup>4498</sup>

1314. Therefore, beyond ensuring sufficient national rice production, a September 1975 document outlining the “policy line on restoring the economy and preparations to build the country in every sector” highlights the need to produce more traditional medicines, and to exchange rice and rubber for medicines from foreign countries.<sup>4499</sup> It states that China was helping with medicines and reports that: “[t]his matter of purchasing is transitional. The important thing is to make it ourselves.”<sup>4500</sup> The Four-Year Plan similarly sets out the intention to produce medicine throughout the country during the period from 1977 to 1980.<sup>4501</sup> There was also a plan for malaria eradication and for establishing general hygiene practices.<sup>4502</sup>

1315. This political line is also illustrated in an article of a magazine published in December 1977 in France by “le Comité des Patriotes du Kampuchéa Démocratique”, reporting excerpts of radio broadcasts from the Voice of Democratic Kampuchea which indicate that the “revolutionary doctors” must strictly adhere to the CPK stance on collectivism and be “determined to debunk the notion that only foreign medicines are

<sup>4495</sup> Revolutionary Flag, E3/760, June 1976, p. 26, ERN (En) 00509629.

<sup>4496</sup> Document number 3, E3/1765, September 1975, p. 23, ERN (En) 00523591.

<sup>4497</sup> Ministry of Commerce, Medicines, E3/9648, 1-14 August 1976, pp. 1-2, ERN (En) 00233530-00233531.

<sup>4498</sup> Ministry of Commerce, Medicines, E3/9648, 1-14 August 1976, pp. 1-2, ERN (En) 00233530-00233531.

<sup>4499</sup> Document number 3, E3/1765, September 1975, p. 23, ERN (En) 00523591.

<sup>4500</sup> Document number 3, E3/1765, September 1975, p. 23, ERN (En) 00523591.

<sup>4501</sup> Four Year Plan 1977-1980, E3/8 [E3/213], pp. 108-109, ERN (En) 00104052.

<sup>4502</sup> Four Year Plan 1977-1980, E3/8 [E3/213], pp. 110, 157, ERN (En) 00104053, 00104075.

reliable, and they are doing a great deal of research into the manufacture of medicines from local plants, while adhering firmly to the position of independence, sovereignty and self-reliance”.<sup>4503</sup>

1316. In their speeches, the CPK leaders never expressed doubts concerning the accuracy of their policy, highlighting the progress realised by the DK health system, in particular in the treatment of malaria. In a speech delivered on 15 April 1977, KHIEU Samphan stated that people’s health was generally good, that malaria was less of a problem than in previous years since workers enjoyed adequate rest hours, that medicines had become increasingly available and that anti-malaria programmes had been implemented.<sup>4504</sup> In a speech made during a reception organised on the occasion of a visit of CPK leaders to China, POL Pot stated as follows:

We have been able to solve satisfactorily the problems of the livelihood of the people. It is continuing to improve as the supply of grain is fully assured for everyone and the health conditions of the people become better and better. In 1977, the first year of the four-year plan for the eradication of Malaria, we have already realized 70 to 80% of our objectives.<sup>4505</sup>

1317. However, the information provided by the zones to the Party Centre was more nuanced. For example, a report from Office 560, the Northwest Zone, dated 29 May 1977, states:

People are also given injections and anti-malaria sprays are applied throughout the zone. As of today, malaria has been much lessened although there have been some people affected with the disease. In all regions such disease as fainting spell, diarrhoea and fever are most prominent.<sup>4506</sup>

1318. In a telegram dated 12 August 1977 and addressed to *Angkar* 870, the Northwest Zone Secretary RUOS Nhim stated that the ready-made intravenous fluid being provided to patients was causing reactions, which made the patients tremble or hiccup,

<sup>4503</sup> Excerpts from the Voice of Democratic Kampuchea, News Broadcasts from Phnom Penh, E3/300, December 1977, p. 9, ERN (En) 00702873.

<sup>4504</sup> Text of recorded speech by KHIEU Samphan at 15<sup>th</sup> April Anniversary Meeting in Phnom Penh, 19 April 1977, E3/201, ERN (En) 00419515.

<sup>4505</sup> *Peking Banquet for Pol Pot’s Delegation, Full text of Pol Pot’s speech at the banquet*, E3/1246, 28 September 1977, ERN (En) 00007956.

<sup>4506</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, p. 4, ERN (En) 00183013.

but were “not dangerous”.<sup>4507</sup> A report on the meeting with Chinese delegates on 15 January 1978 states that China had agreed to provide a number of different medicines at Cambodia’s request and that the handover would happen in January or February.<sup>4508</sup>

1319. Furthermore, the organisation of the health system was influenced by CPK policy towards the enemies and the necessity to solve social antagonisms through class struggle. This and the disregard for the practitioners linked to the previous regime is also illustrated in the article published in December 1977 by “le Comité des Patriotes du Kampuchéa Démocratique”, which suggests that the new or revolutionary doctors had a correct social background as all were “the offspring of poor people”, and adds that “[u]nder the just and farsighted leadership of the Communist Party of Kampuchea, our revolutionary men and women combatant doctors nationwide are highly determined to eradicate all the ideas promoted by the doctors from the old society, who exploited disliked and despised the poor”.<sup>4509</sup> Finally, it is important to note that the purges of the medical staff conducted in Phnom Penh and in the zones negatively affected the proper functioning of the health system and the possibility to deliver effective medical care during the DK period.<sup>4510</sup> In light of this, the Chamber finds that those tasked with attending to the workers’ health situation at the Trapeang Thma Dam and other worksites were not professionally trained doctors but laypersons who were not qualified to provide the necessary assistance. Therefore, the Chamber refers to these individuals as “medics”, as opposed to “doctors”.

#### 11.1.8.5.2. *Health conditions at Trapeang Thma Dam*

1320. The Chamber is satisfied that workers frequently fell sick due to malnutrition

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<sup>4507</sup> DK Telegram, E3/570, 12 August 1977, p. 1, ERN (En) 00335204. The Chamber notes that no additional information concerning the making of the ready-made intravenous fluid and if it was produced locally was presented in court or is part of the Case File.

<sup>4508</sup> Commerce Committee document, E3/2941, 15 January 1978, ERN (En) 00583816.

<sup>4509</sup> Excerpts from the Voice of Democratic Kampuchea, News Broadcasts from Phnom Penh, E3/300, December 1977, p. 9, ERN (En) 00702873.

<sup>4510</sup> Section 12.2: S-21 Security Centre, paras 2239, 2439.

and overwork.<sup>4511</sup> Workers got fever,<sup>4512</sup> malaria,<sup>4513</sup> dysentery,<sup>4514</sup> and some suffered from diarrhoea,<sup>4515</sup> swollen limbs<sup>4516</sup> or poor night vision.<sup>4517</sup> Workers were very skinny, pale and weak, and some of them collapsed while working.<sup>4518</sup>

<sup>4511</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 18 (explaining that in his company people got swelling in the body due to the lack of food); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 60 (testifying that in his platoon two to five people got sick per day); T. 2 September 2015 (SAM Sak), E1/340.1, pp. 10 (explaining that he became sick due to overwork and had a fever), 27 (stating that people fell sick due to lack of food, lack of sleep and fatigue); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 20 (explaining that those who were sick mostly had pain in their chest due to overwork); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22 (testifying that he saw many people die of overwork).

<sup>4512</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71 (stating that he contracted fever twice); T. 2 September 2015 (SAM Sak), E1/340.1, p. 27; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 60; T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 69.

<sup>4513</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 27; T. 26 October 2015 (MUN Mot), E1/356.1, p. 51 (testifying that in his group not many people contracted malaria); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22 (testifying that no mosquito nets were provided to the workers and that he saw many people dying of malaria). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 41 (testifying that she got malaria at Trapeang Thma Dam Worksite, and when after one week she was unable to walk because she had a fever and was trembling, she was referred to a hospital at Paoy Char commune).

<sup>4514</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 79; T. 26 October 2015 (MUN Mot), E1/356.1, p. 51; T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 69.

<sup>4515</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 61 (testifying that from what he was able to observe, some people had diarrhoea as it was hot and people drank dirty water); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 60 (testifying to seeing sick people at the worksite and explaining that this was due to the fact that they worked under direct sunlight and ate food “without proper hygiene”). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 71 (testifying about other members of her unit, who were given rabbit dropping like tablets).

<sup>4516</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 16 (explaining that during the Khmer Rouge period he contracted a fever and a swollen disease, and that the latter caused his legs and feet to swell and he could barely walk); T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 62 (testifying that when his unit chief *Ta Nhav* was arrested, he returned home because he was sick and his body became swollen), 79 (testifying about the diseases they contracted); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 86 and T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22.

<sup>4517</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 70 (stating that in his company there were workers with poor night vision).

<sup>4518</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 27 (“my knee caps were as big as my head”); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 86; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 94 (testifying that from his personal observation some of the workers in the mobile units were emaciated due to the reduction of food rations and the inadequate sleep, and specifying that about half of the workers became emaciated for these reasons); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 66; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 83 (testifying that he saw workers collapse while they were working); T. 29 September 2015 (SOT Sophal), E1/351.1, p. 81 (testifying that he saw workers who fell unconscious while they were carrying dirt); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 16 (testifying that all the workers were weak and became sick but they did not dare to stop working); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 26 (stating that he observed this happen and that this happened also within his company). *See also*, T. 26 October 2015 (MUN Mot), E1/356.1, p. 56 (testifying that he heard from other comrades that some workers fainted and collapsed but stating that he never saw any worker collapse in his unit or in other units); KHOR Mean DC-Cam Interview, E3/9050, 17 June 2011, pp. 17-18, ERN (En) 01155775-01155776 (“A great number of cases of sickness and death occurred and people died every day. They suffered from fever and ague without medicine save the rabbit dropping medicine. When they had chills, they were accused of having a consciousness sickness, but actually they were really sick. They carried earth until they dropped dead. They suddenly fainted whilst they were carrying earth and they were carried to hospital. They were accused of having consciousness sickness”).



1321. There were medics on duty at the worksite but they did not have any professional qualifications.<sup>4519</sup> When workers were sick, they reported the situation to their unit chief, who verified if the person was really sick and, if necessary, either called the medic or delivered medicinal pellets for the workers to take.<sup>4520</sup> The medical staff determined if someone was really sick or only pretending to be sick by checking on the workers in their respective sleeping quarters.<sup>4521</sup> Accounts of what happened to those who were accused of having “imaginary sickness”<sup>4522</sup> vary, including: workers had their food reduced or were deprived of food;<sup>4523</sup> they were called to attend criticism and self-criticism meetings so that they could correct themselves;<sup>4524</sup> they were called for re-education and requested to work despite their illness by completing the work quota the next day with that day’s quota;<sup>4525</sup> or they would disappear or be taken for

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<sup>4519</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 69 (testifying that there were medics on site and any worker who was unwell could go there by himself to ask for medicine); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 72 (stating that the medical staff was aged between 22 and 23 years old and they were female medical staff); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 51 (testifying that the workers who fell sick were checked by medical staff on site); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 64 (testifying that a medic was attached to a unit); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 32 (explaining that “[t]hose medics were all illiterate, they were not educated. They did not even know how to read.”); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 61-63 (testifying that there was a medic within each mobile unit); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 61-62 (testifying that the healthcare workers had not undergone any studies). *See also*, KAN Thorl Interview Record, E3/7803, 20 December 2008, p. 4, ERN (En) 00277822 (stating that the medic Thmaol who was stationed at the company to treat people “could not read a single letter of the alphabet”). The Chamber notes SOT Sophal’s statement that he never saw a medical worker at the worksite (T. 30 September 2015 (SOT Sophal), E1/352.1, p. 46). The Chamber finds that the fact that this witness did not see medics at the worksite does not call into question the fact that medics were in fact present at the worksite, as consistently indicated by the other witnesses and Civil Parties. The Chamber further notes that SOT Sophal indicated that he never knew how medics dressed during the DK as every person wore black clothes (T. 30 September 2015 (SOT Sophal), E1/352.1, p. 80).

<sup>4520</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 67, 84; T. 27 October 2015 (MUN Mot), E1/357.1, p. 36; T. 30 September 2015 (SOT Sophal), E1/352.1, p. 46.

<sup>4521</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 32 (“The medic was the one who decided whether or not one particular worker was really sick”); T. 11 August 2015 (KAN Thorl), E1/328.1, pp. 10, 45 (testifying that the medical staff considered that someone was pretending to be ill if they were playing with one another in the sleeping quarters while the others went to work).

<sup>4522</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 10 (explaining that people accused of having an imaginary sickness were told was that if someone could eat, he or she could also work and his or her sickness was thus imaginary).

<sup>4523</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 69 (explaining that he knew someone who had their food ration reduced because they were accused of “being conscious illness”), 79; T. 11 August 2015 (KAN Thorl), E1/328.1, p. 11 (testifying that if people continued to pretend to be sick after being called to a criticism and self-criticism meeting, their food ration would be reduced; however if after the criticism the person changed, he or she would be engaged in a normal work routine). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 33, ERN (En) 01059967 (“They reduced the amount of gruel for sick people; only one ladle of gruel was provided.”).

<sup>4524</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 11; T. 20 August 2015 (LING Lrysov), E1/334.1, p. 43.

<sup>4525</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 86.

execution.<sup>4526</sup> Tests were carried out to ascertain if those who said they had night blindness were really sick.<sup>4527</sup>

1322. Workers were usually given ineffective traditional medicines in the shape of rabbit dropping pellets for whatever illness they had.<sup>4528</sup> However, some modern medicines were provided to sick people at the mobile unit hospital.<sup>4529</sup>

1323. The NUON Chea Defence contends that medicines were used to fight malaria and that DK authorities fought malaria by all means.<sup>4530</sup> In this regard, MUN Mot, confronted with a report on the situation in the Northwest Zone covering the period from 4 to 29 May 1977 which states that people were given injections and that anti-malaria sprays were applied throughout the Zone, testified that he did not see anti-malaria pills being distributed and that only those who were sick were given the medicines, which were inadequate.<sup>4531</sup> The Chamber is satisfied that the DK authorities

<sup>4526</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 66; T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 62. *See also*, THUN Thy DC-Cam Interview, E3/9157, 17 June 2011, p. 14, ERN (En) 01172877 (stating that he saw three men who were sick, including Ath and Sim, resisting to their arrest. Eventually they were taken away and he never heard from them again).

<sup>4527</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 92-93; T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 75-76 (testifying about a specific incident he personally witnessed in which a test was carried out to determine if people suffered from night blindness by making them walk through a place with hot embers in order to verify if they would avoid them); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 12; T. 2 September 2015 (SAM Sak), E1/340.1, pp. 15-16. *See below*, paras 1368-1371; CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 20, ERN (En) 01059954 (“If those who were night blind could not complete their work, they would test those people by having those people walk toward a toilet pit at night. If those people were in fact night blind, they would continue walking and fall into the pit of excrement, and those people would be spared. But if anyone undergoing this test avoided the toilet pit, they would be accused of pretending to be night blind and would be arrested and taken to be killed.”).

<sup>4528</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 64; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 33 (explaining that medics administered herbal medicines and from his observation usually the sick person remained sick); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 46 (testifying that sick workers were given round pellets to take and that there was no guarantee that the pellets actually worked); T. 2 September 2015 (SAM Sak), E1/340.1, p. 17 (explaining that rabbit dropping pellets were given for any kind of diseases); T. 2 September 2015 (MEAN Loey), E1/340.1, p. 67; T. 19 August 2015 (TAK Boy), E1/333.1, p. 61 (testifying that whenever someone had diarrhoea or fever, healthcare workers gave traditional medicine made from tree roots which would be pounded and turned into tablets of a brownish colour, which looked like rabbit pellets); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 61 (testifying that when people got sick they were given traditional medicines); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 51 (testifying that the medical staff only had traditional medicine which was made from herbs); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 72 (explaining that he was given rabbit drop pellets and that there were no proper medicines on site). *See also*, T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 90-92 (testifying that his wife worked at the Phnom Srok medical unit and that the treatment administered to the patients there was based on traditional treatment as herbs were moulded to make pellets. The witness also indicated that patients at that hospital subsequently recovered).

<sup>4529</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 48 (affirming his DC-Cam Interview, E3/9076, 16 June 2011, ERN (En) 00731170).

<sup>4530</sup> NUON Chea Closing Brief, para. 1092.

<sup>4531</sup> DK Report from 4 May 1977 to 29 May 1977, E3/179, 29 May 1977, p. 4, ERN (En) 00183013; T. 26 October 2015 (MUN Mot), E1/356.1, pp. 50, 53. The Chamber notes that in Court, the NUON Chea

were aware of persistent issues concerning malaria and made some efforts to prevent it.<sup>4532</sup> However, the efforts made were insufficient given the scarcity of modern medicines, the use of ineffective traditional medicines, and the living conditions imposed to the workers at Trapeang Thma Dam site, in particular the absence of hygiene and mosquito nets.<sup>4533</sup>

1324. The Co-Prosecutors submit that sick workers were treated with “ineffective ‘rabbit dropping pellets’ regardless of the disease they were suffering from”.<sup>4534</sup> The Civil Party Lead Co-Lawyers refer to the Civil Parties’ evidence on the lack of adequate medical care and the fact that “rabbit drop-like pellets” were given for any type of disease.<sup>4535</sup> The NUON Chea Defence indicates that “sick people were treated with traditional medicines”.<sup>4536</sup> The KHIEU Samphan Defence submits that Michael VICKERY indicated in his book that peasants had a preference for traditional medicine which “had a few notable successes”.<sup>4537</sup> The Chamber notes that, in the same book, Michael VICKERY also indicated that “[t]he DK general theory then that there should be no privileged professions and that everyone should first learn to live like poor peasants delayed the full development of health care and undoubtedly caused the death of many people who could otherwise have been saved”.<sup>4538</sup> Furthermore, the Chamber places more weight on the evidence provided by the eyewitnesses and Civil Parties who were present at the worksite and had a better, first-hand understanding of whether the medicines they were provided with were effective or not.

1325. Workers who were sick were allowed to rest but they were still monitored to ensure they were not feigning their sickness.<sup>4539</sup> When workers were seriously sick they

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Defence made reference to this document with identification number E3/160. However, the Chamber has revised both documents and is satisfied that E3/160 and E3/179 are the same document. Therefore, hereinafter, the Chamber refers to E3/179.

<sup>4532</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October November 1980, p. 25, ERN (En) 00182322.

<sup>4533</sup> See above, para. 1309. See below, paras 1327-1329.

<sup>4534</sup> Co-Prosecutors’ Closing Brief, para. 1129.

<sup>4535</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 480-485.

<sup>4536</sup> NUON Chea Closing Brief, para. 1091.

<sup>4537</sup> KHIEU Samphan Closing Brief, para. 1041, citing Book by Michael VICKERY, *Cambodia, 1975-1982*, E3/1757, pp. 181-183, ERN (En) 00397096-00397098.

<sup>4538</sup> Book by Michael VICKERY, *Cambodia, 1975-1982*, E3/1757, pp. 182-183, ERN (En) 00397097-00397098.

<sup>4539</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 84 (explaining that whenever he fell sick, he would tell his unit chief and would be allowed to rest); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 46 (explaining that anyone who fell sick had to rest in the hall); T. 27 October 2015 (MUN Mot), E1/357.1, p. 36 (testifying that those who were really sick as confirmed by the actual inspection could sleep in the

were taken to the hospital, which was located at Trapeang Thma pagoda.<sup>4540</sup> The Chamber notes that some witnesses stated that the hospital was located in Paoy Ta Ong and was the hospital for Paoy Char commune, also called the Sangkat hospital.<sup>4541</sup> PAN Chhuong told the OCIJ investigators that he went to “a hospital in Trapeang Thma pagoda in Paoy Char commune, Phnom Srok district”.<sup>4542</sup> Based on these statements, the Chamber concludes that the place described as being Trapeang Thma pagoda hospital and the Paoy Char commune hospital were in fact the same, as usually during the DK period every commune had a hospital, which was commonly located in the pagoda. When there were many patients, they were taken to the hospital in Anlong Sar, in the Preah Netr Preah district, which was meant to receive members of the mobile units.<sup>4543</sup> Patients at the Anlong Sar hospital suffered from diarrhoea, dysentery and the so-called swollen illness.<sup>4544</sup> Few people recovered after being admitted to the hospital; those who did were sent back to their respective units.<sup>4545</sup> The majority of those

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sleeping quarters); T. 27 October 2015 (MUN Mot), E1/357.1, p. 69 (testifying that when his workers were weak, he allowed them to rest); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 43 (explaining that when she had one trembling per day she had to go to work, but that later when she got worse, she stayed at the worksite and later was referred to the hospital); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 19.

<sup>4540</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 64; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 19 (testifying that only those who got seriously ill, such as those who could not sit up or whose body was swelling, were referred to the hospital); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 21 (not specifying that the hospital was located at Trapeang Thma pagoda), 31 (indicating that they never knew where the hospital was at Trapeang Thma Dam); T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 86-87 (explaining that when he was assigned to work on rice distribution, he noticed at some point that more rice was sent to the hospital because more people were hospitalised and the workforce shrunk as a consequence). *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, p. 61 (testifying that he heard that those who fell sick were sent to the hospital but that he did not know where exactly they were sent); T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 73 (testifying that the weak workers were sent to the hospital for rehabilitation until they got better, and then they were returned to the worksite). The Chamber notes that SOT Sophal testified in Court that there was no hospital at Trapeang Thma Dam (T. 30 September 2015 (SOT Sophal), E1/352.1, p. 79). Similarly, MEAN Loeuy stated that he did not witness any incidents whereby workers were taken to the hospital (T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 84). The Chamber does not consider that these in-court statements undermine the other witnesses’ evidence and is thus satisfied that there was a hospital close to the worksite where seriously sick workers were taken.

<sup>4541</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 12 (testifying that if the sick people remained sick for longer than five days, they would be taken to the hospital); T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 41 (testifying that when she got malaria, she was taken to the hospital at Paoy Char commune), 75 (explaining that the hospital was located to the north of Paoy Snuol, in Paoy Char commune and it was south of Trapeang Thma Dam, close to the Dam).

<sup>4542</sup> PAN Chhuong Interview Record, E3/9483, 14 March 2013, p. 5, ERN (En) 00937035.

<sup>4543</sup> T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 17; T. 27 October 2015 (MUN Mot), E1/357.1, pp. 46-48 (testifying that, to his understanding, patients of the Anlong Sar hospital came from mobile units under *Ta Val* or from other units. The witness was transferred to work at that hospital to cook rice after working at Trapeang Thma Dam. MUN Mot also testified that there were about 40 to 50 patients there and that there were four medics at the hospital, two men and two women).

<sup>4544</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 48.

<sup>4545</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 21; T. 11 August 2015 (KAN Thorl), E1/328.1, p. 13 (testifying that some admitted to the hospital recovered).

admitted died there or were not seen returning to the worksite.<sup>4546</sup>

1326. Sick people were given gruel to eat, had their food ration reduced or, at times, were not provided food at all.<sup>4547</sup>

#### 11.1.8.6. *Hygiene and sanitation*

1327. There were many flies around the food all the time.<sup>4548</sup>

1328. Workers had to wash themselves in the nearby stream after they finished working, but if they did not meet their quota, they were not allowed to wash themselves as they had to keep working.<sup>4549</sup> No soap or detergent was given to the workers to wash their clothes, which smelled foul as a result.<sup>4550</sup>

1329. Some workers relieved themselves in the latrines,<sup>4551</sup> while others relieved

<sup>4546</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 48 (testifying that he saw patients die at the Anlong hospital and that to his understanding those patients came from mobile units under *Ta Val* or other units); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 64; T. 11 August 2015 (KAN Thorl), E1/328.1, p. 13 (testifying that others died in the hospital); KAN Thorl Interview Record, E3/7803, 20 December 2008, p. 4, ERN (En) 00277822 (explaining that one day he went to the hospital to inquire about a subordinate in his unit called Dau and that he was told that the person had died). *See also*, T. 2 September 2015 (SAM Sak), E1/340.1, p. 41 (stating that due to the lack of food people became sick, emaciated, swollen and eventually they died. However, the Civil Party stated: “I did not see them die in the hospital. As I said earlier I did not know the whereabouts of the Phnum Srok hospital.”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 62 (testifying that after the workers were sent to the hospital they would just disappear but that the witness did not know whether they were being treated, they died or they went back to their respective cooperatives).

<sup>4547</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 20 (explaining that while ordinary workers received a full bowl of porridge, sick people received a smaller portion); T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 46 (“Anyone who fell sick had to rest in the hall. And even the rice, sometimes we were not given any rice to eat as for the sick.”), 67. *Cf.* T. 10 August 2015 (KAN Thorl), E1/327.1, p. 79 (testifying that the people who were really sick received enough food). The Chamber does not consider that KAN Thorl’s statement undermines the consistent evidence that the food ration for sick people was reduced, which is in line with its finding that a differentiated food regime existed at the worksite based on the workers’ productivity.

<sup>4548</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 62; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70 (explaining that “there were swarms of flies and that you could actually see the darkness of flies on your bowl of gruel”); T. 19 August 2015 (TAK Boy), E1/333.1, p. 60; T. 2 September 2015 (SAM Sak), E1/340.1, p. 38 (“There were flies coming all over the rice.”).

<sup>4549</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71; T. 2 September 2015 (SAM Sak), E1/340.1, p. 12 (explaining that they did not have time to wash themselves); SOT Sophal Interview Record, E3/7755, 4 February 2009, p. 4, ERN (En) 00293004 (“We did not have time to take a bath; we did not take a bath even when we slept. We slept soon after we completed our work because we were exhausted and sleepy. We were very dirty; we took a bath once a week.”).

<sup>4550</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 12 (stating also that his clothes, shirts and trousers were full of lice).

<sup>4551</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 44 (testifying that the workers dug half a square metre deep pits, put two sticks on the pit and squatted down to relieve themselves. They also used panels of thatch to prevent others from seeing them); T. 11 August 2015 (LAT Suoy), E1/328.1, p. 87 (testifying that the upper echelon built the latrines for the workers); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 67. *See also*, KHOR Mean DC-Cam Interview, E3/9050, 17 June 2011, pp. 17-18, ERN (En)

themselves in the bushes,<sup>4552</sup> in the field<sup>4553</sup> or around the sleeping quarters.<sup>4554</sup> Workers had to collect their urine so that it could be used as fertilizer.<sup>4555</sup> They had to put the urine in a bidon and during breaks from work, poured the urine from the bidon into a jumbo jar.<sup>4556</sup>

#### 11.1.8.7. Control

1330. The workers could not refuse their assignments as they were afraid of being killed,<sup>4557</sup> arrested<sup>4558</sup> or disappearing<sup>4559</sup> as a consequence.<sup>4560</sup> Workers were also afraid of being killed for any mistake they might make or for any accusations levelled against them.<sup>4561</sup>

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01155775-01155776 (“We did not take bath for month. We had lice all over our bodies. We took white cloth and dyed it with *Bak Khleou* and *Trah*, dried it and wore it. Therefore, lice appeared at the trouser waistline.”); PORT Kimleang DC-Cam Interview, E3/9107, 16 June 2011, p. 4, ERN (En) 01157129 (“There was medicine, but it was called rabbit dropping medicine. It was traditional medicine. At that time life was miserable. There were lice all over my body because did not have bath as there was no water. There was only little water for us to drink. There was no water for me to take a bath; there was only water for cooking rice. There were lice all over my body and inside my bra.”); HUON Chanrin DC-Cam Interview, E3/9031, 15 June 2011, p. 24, ERN (En) 00969721.

<sup>4552</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 70; T. 19 August 2015 (TAK Boy), E1/333.1, p. 44; T. 27 October 2015 (MUN Mot), E1/357.1, p. 42.

<sup>4553</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 42.

<sup>4554</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 87 (explaining that, as a consequence, diseases spread among workers).

<sup>4555</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 16.

<sup>4556</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 16.

<sup>4557</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 17 (“We had to work because we were afraid of being killed by *Angkar*”); T. 13 August 2015 (CHHIT Yoek), E1/330.1, pp. 45-46 (explaining that he did not dare refusing his reassignment as he was afraid he may be arrested and sent to be killed); T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 18, 38 (explaining that they were working out of fear of death); T. 2 September 2015 (MEAN Loey), E1/340.1, p. 67 (explaining that he and his co-workers were not happy with the work assigned to them but they had to follow the line of *Angkar*, as otherwise they would be killed).

<sup>4558</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 63.

<sup>4559</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 75-76 (testifying that he was instructed by the battalion chief to be hard-working and that no one in his unit should avoid working, otherwise they would disappear).

<sup>4560</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 17 (testifying that no one dared to refuse the assignments as that meant opposing *Angkar*, which sooner or later would have led to the person being killed); T. 13 August 2015 (CHHIT Yoek), E1/330.1, p. 45 (explaining that he did not dare to refuse the assignment given to him as “[d]uring the regime, you could not refuse it”); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 63 (stating that workers did not have any choice with respect to the work they were assigned to do and that he did not know of anyone who dared to refuse); T. 25 August 2015 (NHIP Horl), E1/336.1, p. 31; T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 92 (testifying that he was not happy to work at Trapeang Thma Dam and saying “regardless the fact that I was satisfied with the assignment or not, I had to do it anyway”); T. 2 September 2015 (MEAN Loey), E1/340.1, p. 67 (explaining that he and his co-workers were not happy with the work assigned to them but they had to follow the line of *Angkar*, as otherwise they would be killed).

<sup>4561</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 77 (“During the time that I stayed at the Trapeang Thma Dam worksite I could not ever imagine that I could survive. Every morning when I opened my eyes I knew that I lived for another day and I could not possibly know what would happen the next day.

1331. The Chamber is satisfied that the workers were not free to do what they wanted.<sup>4562</sup> Workers could not move freely around the worksite.<sup>4563</sup> They had to request permission to be able to visit home, but such requests could be denied without explanation.<sup>4564</sup> Workers did not have time to visit their family or friends and they did not even have time to rest or talk to each other, as they had to focus on their work.<sup>4565</sup> Workers did not dare complain about the working hours or the lack of food as they were afraid of being taken to be killed.<sup>4566</sup> The Chamber notes a report of Yugoslavian journalists visiting Trapeang Thma Dam. The visitors were told that workers communicated with their cousins and friends through local couriers who conveyed letters.<sup>4567</sup> The Chamber finds, however, that there is no indication in the evidence of

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At night, we were afraid of being killed for fear that we committed any mistake during the day time. We kept saying to one another that if we lived through the day we might not survive during the night and we only looked forward to one day at a time.”); T. 13 August 2015 (CHHIT Yoek), E1/330.1, p. 46.

<sup>4562</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 80 (testifying that they ate what was given to them to fill their stomach and that they “had no other choice, and we had to struggle in that life”).

<sup>4563</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 56-57 (testifying that they had to remain stationed at their own work station and could not go and mingle with other workers); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 19 (“And as I said we could not move freely. Free movement was absolutely prohibited.”); T. 27 October 2015 (MUN Mot), E1/357.1, p. 41; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 17 (testifying that during the “offensive period” workers could not even move from one unit to another); T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 69-70 (explaining that she was not allowed to walk freely and that nobody would move freely as everyone was “afraid of being taken away and shot”).

<sup>4564</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 17 (responding to a question related to the “offensive period” and explaining that during that time, they had no rights to make a request to visit home); T. 2 September 2015 (SAM Sak), E1/340.1, p. 15 (explaining that once he had permission to visit his elder sibling in the evening and that the day after in the morning he returned to the worksite); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 47 (stating that he made a request to visit his parents but the request was rejected and he was not given reasons for the rejection); T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 50 (testifying that he requested leave from his unit chief to leave the worksite and that because he did not obtain it, he fled from his unit); T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 33-34 (testifying that if workers were to cross to other sections of the worksite or go visit their parents in the village, they had to obtain a letter of authorization or *laissez passer* from their group chiefs or units chiefs first. The witness also indicated that there were no guards at checkpoints but that if a person, for instance, had to travel from one village to another, the chief of the village at the destination would check that the person had the *laissez passer*); T. 10 August 2015 (KAN Thorl), E1/327.1, p. 57 (answering the question whether he had the freedom to go anywhere he wished by answering that he was not allowed to do so); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 31 (testifying that workers were not authorised to go off the site); T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 69 (explaining that at that time she did not have the right to go visit her family), 79 (explaining that if she wanted to visit home, she had to make a request to the unit chief and that once she received the permission, she was able to visit home, but also that sometimes the request was rejected). In contrast, see T. 12 August 2015 (LAT Suoy), E1/329.1, p. 31 (testifying that people at Trapeang Thma Dam were not authorised to go off the site and that “there was no regulation” for workers to visit their family or parents. The witness also stated that workers were considered “absolute” and had “to forfeit all the personal belongings or possessions”). The Chamber does not find LAT Suoy’s statement to undermine the consistent evidence of the other witnesses indicating that workers had to request permission in order to be able to visit home.

<sup>4565</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 31.

<sup>4566</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 59; T. 12 August 2015 (LAT Suoy), E1/329.1, p. 25.

<sup>4567</sup> Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, p. 9, ERN (En) 00525839.

the existence of local couriers and that the information provided by the Khmer Rouge to these visitors misrepresented the reality.<sup>4568</sup> It thus relies on the testimony of the witnesses and Civil Parties who lived and worked at the Dam in this regard.

1332. SOT Sophal testified that militiamen beat the workers and pushed them with long swords when they were working slowly to force them to work hard.<sup>4569</sup> He saw two incidents in which people were beaten to death at the bottom of the Dam; after the execution, the militiamen told bystanders that they would suffer the same fate if they failed to work hard or follow instructions.<sup>4570</sup> SEN Sophon stated that the unit chiefs went around and chased workers to go to work.<sup>4571</sup> TAK Boy testified that his battalion chief told him that no one should avoid work as otherwise they would disappear.<sup>4572</sup> According to KAN Thorl, at meetings workers were told that their food ration would be reduced if they failed to abide by the disciplinary rules, which included respecting working hours and coming to and leaving the worksite on time.<sup>4573</sup> Some witnesses stated that the slogan “to keep you is no gain, to lose you is no loss” was repeated to the workers at meetings by the unit chiefs or by the militia also outside of meetings.<sup>4574</sup> MEAN Loey understood this to mean that those who did not follow the guidelines of *Angkar* would be taken away and killed.<sup>4575</sup> For SOT Sophal this meant that they were considered useless workers and that “it was no gain to keep us, and it was no loss to

<sup>4568</sup> See above, paras 1216-1218.

<sup>4569</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 7. See also, CHUON Pheap Interview Record, E3/9527, 18 February 2014, p. 5, ERN (En) 00982316 (“There were militiamen watching over us. They were not armed with guns but with swords”).

<sup>4570</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 13-14 and 59 (“After they killed that person, they warned to other workers that everyone had to continue to work hard otherwise our fate would eventually be like the person who was just killed.”). The Chamber notes the written record of interview of NOU Choung who stated that he witnessed a similar scene. See NOU Choung Interview Record, E3/9508, p. 5, ERN (En) 00980542 (“I saw sick people beaten to death at the bottom of the dam. The Khmer Rouge accused them of having mental illnesses. People with night blindness still had to work at night. Q. Did you see the Khmer Rouge killing people first-hand? A. Yes, I did. They killed people right in front of us for us to watch. I saw them kill many people. Sometimes, there were 20 to 30 in one pit. In total, I saw them kill more than 100 people. Q. Who killed those people? A. The killers were Northwest Zone cadres, not soldiers.”).

<sup>4571</sup> T. 28 July 2015 (SEN Sophon), E1/324.1, p. 15 (stating that “they went around and forced us to go to work, like cattle”).

<sup>4572</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 75-76.

<sup>4573</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 67-68.

<sup>4574</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 88 (testifying that those words were said to the workers both inside and outside of meetings by the militia and by “the big chief, and from my recollection, his name was Val, *Ta Val*”); T. 2 September 2015 (MEAN Loey), E1/340.1, pp. 78-79, 85 (explaining that the unit chiefs repeated that slogan at criticism and self-criticism meetings and that “upon hearing that we were so afraid”).

<sup>4575</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, p. 85.



remove us”.<sup>4576</sup>

1333. Workers who attempted to flee from the worksite were arrested.<sup>4577</sup> In this regard, LAT Suoy testified that if workers escaped from the worksite and returned to their village or commune, the local village or commune militiamen, referred to as *chhlop*, would arrest them and send the workers back to the worksite or to their base.<sup>4578</sup> While arrests were not its primary function, LAT Suoy’s guard unit sometimes received orders from *Ta Nak* to arrest workers who tried to flee and return them to their respective units so that the chief of the mobile unit or the chief of the regiment could deal with them.<sup>4579</sup> SEN Sophon indicated that after his request to visit home was rejected, he did not dare to disregard the decision as he had heard from his unit chief at meetings that those who disobeyed instructions were killed.<sup>4580</sup>

1334. Based on this evidence, the Chamber is satisfied that workers had no freedom to move; they were under constant control and were threatened with being killed, disappearing or having their food reduced if they engaged in any behaviour considered to be against *Angkar*. Such behaviour included refusing work assignments, not respecting working hours or disobeying instructions, such as going home despite having been denied permission. Workers were chased to go to work and those who attempted to flee the worksite were arrested. This constitutes objective evidence that the workers were compelled to work and to follow the disciplinary rules imposed at the worksite.

### 11.1.9. *Discipline*

#### 11.1.9.1. *Biographies*

1335. Biographies were collected at the construction site in order to gather information on a person’s background and to know if the person in question had

<sup>4576</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, p. 88 (explaining that “[w]hen they approached us, they would use such a phrase. They said that we were useless workers, and it was no gain to keep us, and it was no loss to remove us.”).

<sup>4577</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 69. *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, pp. 18-19, ERN (En) 01059952-01059953 (“If workers who wanted to escape were arrested, they were taken to be killed”).

<sup>4578</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 71.

<sup>4579</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 63, 73-74 (explaining that by “upper echelon” he meant *Ta Nak*, who was the person to whom his 10-men unit chief reported to).

<sup>4580</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 68.

received any education or if he or she was from a rich or poor family.<sup>4581</sup> TAK Boy testified that, as a platoon chief, he never asked for his platoon members' biographies as he himself was a former LON Nol soldier and did not want his background to be known.<sup>4582</sup> SOT Sophal testified that during the regime, he did not prepare any biography or see anyone else do so.<sup>4583</sup> The Chamber does not consider the statements made by TAK Boy and SOT Sophal to undermine the other evidence and finds that in some units biographies were collected while in others they were not. In particular, the Chamber notes that SOT Sophal was a member of the children unit and that his young age can explain why he was not asked to provide a biography.

### 11.1.9.2. Surveillance

1336. Company and battalion chiefs were instructed by *Ta Val* to monitor the members of their units to find out whether they had a "bad background",<sup>4584</sup> were engaged in activities against *Angkar*,<sup>4585</sup> or were LON Nol soldiers,<sup>4586</sup> "*Yuon*", CIA

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<sup>4581</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 46-47 (explaining that they were asked to make their biography and that it was up to them to say the truth), 83-84 (explaining that to his knowledge, biographies were taken only when "they had to recruit people or any person had any problems" but that "[t]hey did not have all the workers make their biographies in the mobile units because there were tens of thousands of workers."). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 20, ERN (En) 01059954 ("The Khmer Rouge researched those people's biographies, and when they discovered that people were former soldiers, teachers or civil servants, they arrested those people. They were arrested one after another"); MOM Chak Interview Record, E3/9501, 17 June 2013, p. 5, ERN (En) 00966759 ("I noticed that some members of my unit disappeared after their biographies had been checked. [...] The persons who had disappeared were known to have connections with the LON Nol regime").

<sup>4582</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 47.

<sup>4583</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 9-10.

<sup>4584</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 78, 88-89; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 20 (testifying that he and the other company and battalion chiefs were required to attend a meeting during which *Ta Val* instructed them to monitor at least one unit member every day) *affirming* CHHUM Seng Interview Record, E3/9568, 18 February 2014, p. 8, ERN (En) 00982309 ("All company chairmen were called to attend a secret meeting. In that meeting, they told us that as company chairmen every day we had to track down former LON Nol soldiers or intellectuals."); T. 27 October 2015 (MUN Mot), E1/357.1, p. 20 ("The upper echelon directed -- instructed all of us to look for the intellectual and to find those who had high education including the pilots and merchants."). *See also*, T. 20 August 2015 (TAK Boy), E1/334.1, p. 15 (testifying that the regiment chief summoned the battalion and company chiefs to a meeting where they were ordered to identify the intellectuals in each unit. The witness also testified that he told the regiment chief that there were no intellectuals in his unit); MOM Chak Interview Record, E3/9501, 17 June 2013, p. 5, ERN (En) 00966759 ("Who ordered biographies to be checked? Comrade Vall, who was responsible for buildings dams and canals. The search for persons affiliated with the LON Nol regime started at the village level to [order the] arrest of people in Mobile Units.").

<sup>4585</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 20-21 (explaining that were considered activities against *Angkar*: whispering to each other at night time; complaining about intensive workload, overwork or insufficient food; not carrying out work; talking behind the back of *Angkar*; feigning illness).

<sup>4586</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 8 (testifying that LON Nol officials were tracked down and called to study sessions).

agents,<sup>4587</sup> students<sup>4588</sup> or intellectuals.<sup>4589</sup> People who lost their basket or broke their carrying stick were also considered enemies.<sup>4590</sup> In some units a special force was tasked with overseeing this surveillance activity;<sup>4591</sup> its members were assigned as monitors in each unit or company.<sup>4592</sup>

1337. The Chamber notes that *Ta Val* played an important role at the sector level and that his instructions, as noted above, are in accordance with the content of a weekly report sent to the Northwest Zone, dated 21 May 1977, in which the Sector 5 Committee described the measures it implemented as follows:

[The sector] continue to encourage the great movement to defend the cooperative, the union *by continuing sweeping clean the treacherous, embedded elements – C.I.A., K.G.B. or Vietnam networks*. As for the sector, the district army, female militia that are tools of the Party, they have been strengthened [*sic*] by having led the implementing process of proletarian class dictatorship against the absolute opponents of the collective regime [...] by going down with the cooperative to *encourage the great mass movement for searching the enemy*.<sup>4593</sup>

<sup>4587</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 28. *See also*, T. 19 August 2015 (TAK Boy), E1/333.1, p. 74 (testifying that he was constantly afraid that his background as a LON Nol soldier would be discovered because in that case he would be “taken away and killed”).

<sup>4588</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 88.

<sup>4589</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 15 (testifying that the regiment chief summoned the battalion and company chiefs to a meeting where they were ordered to identify the intellectuals in each unit. The witness also testified that he told him that there were no intellectuals in his unit and stated “[a]ll I could say is that they were working diligently. I am referring to people who came from Phnom Penh back then. Because they asked us to spot intellectuals in our units.”); T. 26 October 2015 (MUN Mot), E1/356.1, p. 78 (testifying that once in a while there were people coming to investigate and search for intellectuals and students and that, since he was afraid that people in his unit would be linked to the target group, he sometimes warned them of this); T. 27 October 2015 (MUN Mot), E1/357.1, p. 20 (explaining that the upper echelon instructed to look for intellectuals and for those who had high education, including pilots and merchants).

<sup>4590</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 79-80; T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 83 (testifying that he heard from acquaintances that they would be accused of being enemies when their soil-carrying baskets broke).

<sup>4591</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 78.

<sup>4592</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 8 (stating that a monitor was designated to his company who went to work like other workers at the construction site, asking questions about the company members’ biographies and what they did during the LON Nol regime); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 5 (affirming his statement to OCIJ investigators indicating that in his group there were monitors who slept with them at night in order to listen to them). *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 33, ERN (En) 01059967 (“two members of the ‘Mobilization Unit’ were attached to each work unit”).

<sup>4593</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 3, ERN (En) 00342710 (emphasis added).

1338. A monitoring system existed whereby workers were constantly checked to see how much work they produced.<sup>4594</sup> The people tasked with monitoring the workers wore black clothing and some of them were known by the workers.<sup>4595</sup>

1339. Armed guards moved around the worksite and watched over the workers.<sup>4596</sup> At night time, military people walked around to monitor the workers.<sup>4597</sup> Militiamen eavesdropped when workers went to rest in the sleeping halls, to hear if they were complaining about the working conditions or had plans to escape.<sup>4598</sup> Surveillance was intensified once the Southwest Zone cadres took over the construction site and more and more people were arrested.<sup>4599</sup>

#### 11.1.10. *Treatment of New People*

1340. On the occasion of its visit to the Northwest Zone from 20 to 24 August 1975, the Standing Committee made clear that it intended to have the New People, recently

<sup>4594</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 71-72; T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 70 (testifying that they were monitored to see if they were active in their work and that their work activities “never went unnoticed.” The witness also explained that “[t]hey had their own network, but we did not know whom. For example, in my group, I did not know who was spy”).

<sup>4595</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 71.

<sup>4596</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 27, 32 (stating that he and his fellow members of the guarding unit carried CKC rifles with 10 bullets when they were on patrol at the worksite); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 69; T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 5-9, 76-77 (explaining that he heard people refer to these 3-people groups as militia but he was not sure if they were soldiers or militia. SOT Sophal also indicated that they were armed with a folded butt rifle and swords and watched over the workers. They were also the ones who arrested the workers). *See also*, “Kampuchea, Three Years Old”, in “New War in Southeast Asia”, E3/3290, undated, p. 10, ERN (En) 00419214 (reporting that “[s]ome supervisors of the work groups were armed, although that was not striking phenomenon.”); THOEUY Thang Interview Record, E3/9575, 16 June 2014, p. 19, ERN (En) 01025304 (stating that there were approximately 10 guards patrolling at Trapeang Thma Dam, they were armed with carbines, and they were Sector 5 militia); CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 18, ERN (En) 01059952 (“There were no guards at the worksite. Only the Unit Chairman monitored us, and he reported to the military. When someone made a mistake, he would order the soldiers to arrest the offenders. Q: Were soldiers there too? A: yes, there were. There were also militiamen.” Q: Were they armed? A: Yes, they were. Q: Who was in charge of these soldiers? A: The District Committee controlled them”). *See also*, Politika Correspondent Reports on Cambodia, E3/2670, 31 March 1978, ERN (En) 00525840 (reporting that some work group leaders were armed).

<sup>4597</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 50; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 58 (indicating that some were armed and some were not). *See also*, THIM Sovany Interview Record, E3/9544, 11 November 2014, p. 8, ERN (En) 01053880.

<sup>4598</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 21-22; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 24-25 (testifying that workers were under constant surveillance); CHUON Pheap Interview Record, E3/9527, 18 February 2014, p. 5, ERN (En) 00982316 (“There were militiamen watching over us. They were not armed with guns but with swords.”).

<sup>4599</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 82-83 (explaining that to his understanding the Southwest cadres did not trust the Northwest cadres and for that reason they put them under constant surveillance).

evacuated from the cities, “absorbed” by the cooperatives.<sup>4600</sup> However, as there was mistrust towards the New People, the Standing Committee specified that the latter had to be “submissive to the cooperatives politically and economically” and that it was necessary to “be vigilant against no-good elements among the new people”.<sup>4601</sup> These guidelines were implemented strictly by the local cadres of the Northwest Zone, not only in the cooperatives, but also in the worksites created in order to build dams, which were characterised as “hot battlefields”, including in Sector 5 where the Trapeang Thma Dam was located.

1341. In a weekly report dated 21 May 1977 addressed to the Northwest Zone secretary, the Sector 5 Committee explained the approach it followed concerning the appointment of cadres.<sup>4602</sup> This report shows that, in accordance with the CPK ideological stance, there existed a policy aimed at “purifying” the Party cadres of “a number of elements that are not warm” and at taking “an absolute measure against those elements who cause destruction to the collective regime and socialism, by decreasing and sweeping clean by means of implementing the proletarian class dictatorship”.<sup>4603</sup> In this regard it was necessary to “increase the ability and be readily for preparing the forces of all sectors which are the strategic forces to ensure the continuity of the socialist revolution based on the poor peasants, lower middle-class peasants. The cause of action [being] carried out step by step according to the Party’s plan.”<sup>4604</sup>

1342. However, it was also noted that there was a “shortage of the core organization, progressive masses given that the 17 April elements are overpopulated in Sector 5”, and that “the appointment [of cadres] has been still mixed up which is not suitable to continue to work the socialist revolution”.<sup>4605</sup> The report further clarifies that “the good mass cannot still be found because we have appointed all 17 April mass to perform the

<sup>4600</sup> Record of the Standing Committee’s visit to the Northwest Zone, 20-24 August 1975, E3/216, p. 3, ERN (En) 00850975.

<sup>4601</sup> Record of the Standing Committee’s visit to the Northwest Zone, 20-24 August 1975, E3/216, pp. 3-4, ERN (En) 00850975-00850976.

<sup>4602</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, pp. 4-5, ERN (En) 00342711-00342712.

<sup>4603</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 4, ERN (En) 00342711.

<sup>4604</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 5, ERN (En) 00342712.

<sup>4605</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 5, ERN (En) 00342712.

work”.<sup>4606</sup> It concludes that “the measure [is] taken [...] to gather and search for the pre-17 April elements of ours both men, mostly women”.<sup>4607</sup>

1343. The same report also:

[O]bserved that advantageously we have tried to gather the forces of the poor peasants, lower middle-class peasants to the maximum to prepare the qualification, in the manoeuvre and strategic period, which is the force to build the socialism one leve[l] further; actually, have prepared to divide the cadres, the coordinators, the progressive masses to go down to the cooperatives, the hot battlefields, all spearheads to lead the movement, to be the core that promotes and controls the movement in order to guarantee and achieve the socialism plan; prepare, build up all parts of strategic forces to be ready in the forthcoming period to change the 17 April elements that are in the army, the offices, the ministries, other locations, all sections that we have continuously used because we lacked our core, progressive masses. Have integrated the youth and the children that are our strategic forces and that are the children of the poor peasants, lower middle-class peasants who are our base people to grasp all parts of techniques; in the future it will lead to the decrease of all old technicians.<sup>4608</sup>

1344. The line adopted in this report accords fully with the standards adopted by the CPK in order to remove the New People whose loyalty could not be trusted and to ensure that its ideological stance was fully implemented by the cadres, as required in the Statute of the CPK.<sup>4609</sup>

1345. Concerning the situation at the Trapeang Thma Dam, the Chamber notes that, in the working units, all of the witnesses who had a leadership role within the workforce structure were Old People.<sup>4610</sup> CHHUM Seng stated that Old People cadres were

<sup>4606</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 5, ERN (En) 00342712.

<sup>4607</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 5, ERN (En) 00342712.

<sup>4608</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 9, ERN (En) 00342716.

<sup>4609</sup> CPK Statute, E3/130, 17 April 1975, pp. 4, ERN (En) 00184025 (“The Party arms itself with and holds correct and strong proletarian world views and life views, absolutely struggles against non-proletarian world views and life views and opposes the revolutions of the petty bourgeoisie, the capitalists, the feudalists, the imperialists and all reactionaries.”), 11-12, ERN (En) 00184032-00184033. Another illustration of the mistrust towards New People is shown in the same report which explained that it was decided to change “the teachers who were not the poor peasants, lower middle-class peasants because in some locations teachers from former regime have been used to teach the children”. See Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 6, ERN (En) 00342713.

<sup>4610</sup> CHHUM Seng (company chief, Old Person. See T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 44, 51); TAK Boy (platoon chief, Old Person. See T. 19 August 2015 (TAK Boy), E1/333.1, pp. 36, 45); KAN Thorl (deputy platoon chief, Old Person. See KAN Thorl Interview Record, 20 December 2008, E3/7803, p. 3, ERN (En) 00277821; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 44); MUN Mot (company chief. See T. 26 October 2015 (MUN Mot), E1/356.1, p. 53; T. 27 October 2015 (MUN Mot), E1/357.1, pp. 17 (stating that he had little education), 66 (“I was a 17 April person because I lived under the administration of the Lon Nol regime, which was considered the enemy area, and for that reason, I

appointed to be unit or squad chiefs and MUN Mot indicated that within his company, the platoon chiefs were Old People.<sup>4611</sup> As illustrated above, unit chiefs disseminated the information on the work plan received from their superiors to the workers under their supervision, they set and measured the work quota, supervised the workers and reported to their superiors.<sup>4612</sup> SAM Sak gave evidence that the Old People played a different role at the worksite. For example, they monitored the New People's activities and words.<sup>4613</sup> SEN Sophon stated that while the New People were assigned to do the work, the Old People just observed and were assigned to be group leaders.<sup>4614</sup> Based on this evidence, the Chamber is satisfied that Old People were normally assigned to leadership roles and designated to monitor workers in their units.

1346. TAK Boy and MUN Mot testified that there was no difference in work quotas between New People and Old People.<sup>4615</sup> KAN Thorl testified that, as the deputy chief of his platoon, he did not set different working conditions for the New People and that he did not receive instructions from his commander or the unit chief to treat the New People differently.<sup>4616</sup> While noting that many among the New People had difficulties adapting to the extreme work conditions imposed at Trapeang Thma Dam because they were former city dwellers, already exhausted by their forced displacement and because they had no experience of hard physical work, the Chamber is not satisfied that larger work quotas or harsher working conditions were imposed on the New People. Further, the evidence indicates that unit chiefs also had to work and comply with the same work quota imposed on the workers.<sup>4617</sup> Therefore, the Chamber cannot establish that there

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was labelled as a 17 April person or a New Person"). The Chamber also notes that those who had connections considered as unsuitable explained that they survived because they were able to hide the negative parts of their biographies. *See* T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 67-69; T. 19 August 2015 (TAK Boy), E1/333.1, pp. 93-94.

<sup>4611</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 78-79; T. 19 August 2015 (CHHUM Seng), E1/333.1, pp. 20 ("The unit chiefs were Base People."), 26 (explaining that those appointed to have roles of responsibility were uneducated people); T. 27 October 2015 (MUN Mot), E1/357.1, p. 31.

<sup>4612</sup> *See above*, para. 1289.

<sup>4613</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 21, 48 (stating that the chief in his unit was a man and that he was a Base Person. The Civil Party also explained that Base People and 17 April People had different accents and that is how they distinguished them).

<sup>4614</sup> T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 22-23 (explaining also that "Base People were in charge of New People, so Base People knew very well from an accent that these particular groups of people were from Phnom Penh or Battambang or they were New People.").

<sup>4615</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 46; T. 26 October 2015 (MUN Mot), E1/356.1, p. 78 (testifying that people received the same work quota of three cubic metres per day).

<sup>4616</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 29.

<sup>4617</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 46 (testifying that everyone including the unit and group leaders had to meet the daily work quota, so all unit members had the same work quota); T. 27

existed a differentiated treatment between the workers and the chiefs whereby the former had to work and the latter did not have to work.

1347. With respect to workers, KAN Thorl and MUN Mot testified that New People and Old People received the same food ration.<sup>4618</sup> The Chamber observes that all units comprised both Old People and New People, and that eating was organised communally. It further notes that while some witnesses indicated that the workers in the Sector 5 mobile unit led by *Ta Val* had different food rations compared to workers in the mobile units at the district, cooperative and commune levels which had a majority of New People,<sup>4619</sup> this was because their workers were supposed to work harder.<sup>4620</sup> The Chamber does not find that there existed a differentiated treatment between Old People and New People workers with respect to food rations.

1348. The same weekly report of the Sector 5 Committee discussed above also indicates that the “17 April elements from Phnom Penh” were constantly “searched for and found”.<sup>4621</sup> Several witnesses also testified that company and battalion chiefs were instructed by *Ta Val* to identify students and intellectuals in their units and that, if these were reported to him, they would be taken away and killed.<sup>4622</sup> MAM Soeurm testified about the arrest of some members of his unit who were from Phnom Penh.<sup>4623</sup> Based on this evidence, the Chamber finds that New People were the target of arrests and

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October 2015 (MUN Mot), E1/357.1, p. 63 (testifying that the quota of three cubic metres was imposed to him as a company chief in the same way as it was imposed to the workers under his supervision).

<sup>4618</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 29; T. 26 October 2015 (MUN Mot), E1/356.1, p. 78.

<sup>4619</sup> T. 27 October 2015 (MUN Mot), E1/357.1, pp. 32-33; T. 13 August 2013 (CHHIT Yoeuk), E1/330.1, pp. 33-34; T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 13-14; T. 30 November 2015 (PAN Chhuong), E1/359.1, p. 60.

<sup>4620</sup> T. 30 November 2015 (PAN Chhuong), E1/359.1, pp. 80-81 (testifying that sector mobile units workers had three cans of rice per person per day as they were considered to work harder than the workers from the commune or cooperatives).

<sup>4621</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 2, ERN (En) 00342709.

<sup>4622</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 88-89; T. 20 August 2015 (TAK Boy), E1/334.1, p. 15 (testifying that the regiment chief summoned the battalion and company chiefs to a meeting where they were ordered to identify the intellectuals in each unit. The witness also testified that he told him that there were no intellectuals in his unit and stated “[a]ll I could say is that they were working diligently. I am referring to people who came from Phnom Penh back then. Because they asked us to spot intellectuals in our units.”); T. 26 October 2015 (MUN Mot), E1/356.1, p. 78 (testifying that once in a while there were people coming to investigate and search for intellectuals and students and that, since he was afraid that people in his unit would be linked to the target group, he sometimes advised them of the matter); T. 27 October 2015 (MUN Mot), E1/357.1, p. 20 (explaining that the upper echelon instructed to look for intellectuals and for those who had a high education, including pilots and merchants). *See below*, para. 1362.

<sup>4623</sup> T. 28 July 2015 (MAM Souern), E1/324.1, pp. 71-73.



executions and were therefore subjected to discriminatory treatment compared to Old People.

1349. CHHUM Seng testified that the workers who were subjected to the test to establish if they were night-blind were people from Phnom Penh.<sup>4624</sup> However, the Chamber finds that this statement alone is insufficient to establish that workers were subjected to this test because they were New People.

1350. Finally, the Sector 5 Committee indicated in its report the need to “eliminate the culture of the imperialists, feudalists, capitalists, and other oppressive classes”.<sup>4625</sup> This was to be achieved through the elimination of the

imaginative consciousness of the 17 April elements from Phnom Penh that have disseminated the living pattern of the old regime like having disseminated or recalled the photographs from the old society, living in the old society, talking in the old society, dressing old style, knowledge of the old society to prevent and destroy the effect of the foreign country as some elements have secretly tuned on and listened to the Thai treacherous radio etc.<sup>4626</sup>

1351. This report shows that behaviours such as listening to songs on the radio, and other demeanours that recalled the old society were considered not in line with the socialist revolution.<sup>4627</sup> The Chamber finds that there were general instructions for the entire Sector 5 which discriminated against New People on the basis of conduct perceived as incompatible with the socialist revolution. However, while these instructions show a clear discriminatory intent, the Chamber has not heard evidence concerning their implementation at Trapeang Thma Dam and will not rely on them to make factual findings.

1352. The KHIEU Samphan Defence submits that the evidence relied on in the Closing Order to charge the crime of persecution on political grounds is insufficient to substantiate the charges.<sup>4628</sup> In particular, it contends that the three WRIs relied on in the Closing Order to charge that New People were subjected to harsher working conditions do not reveal any discriminatory treatment imposed on the New People.<sup>4629</sup>

<sup>4624</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 75-76.

<sup>4625</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 6, ERN (En) 00342713.

<sup>4626</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 6, ERN (En) 00342713.

<sup>4627</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 6, ERN (En) 00342713.

<sup>4628</sup> KHIEU Samphan Closing Brief, paras 1023-1028.

<sup>4629</sup> KHIEU Samphan Closing Brief, paras 1023-1028.

As the Chamber has not relied on this evidence to reach its conclusions, the KHIEU Samphan Defence's submission is rejected.

### 11.1.11. *Deaths, Killings and Disappearances*

#### 11.1.11.1. Arrests and disappearances

1353. The Chamber heard evidence regarding arrests and disappearances of workers at the construction site. According to some of the evidence, workers simply vanished with no notice and were never seen again at the worksite; other evidence indicates that some workers were seen being arrested, following which they disappeared. The evidence also indicates that upon the arrival of the Southwest Zone cadres, the Northwest Zone cadres were arrested at the construction site and transferred to S-21. The Chamber assesses the evidence concerning these arrests and disappearances in turn below.

1354. Numerous workers “went missing” and were never seen again at the worksite by their fellow workers. In particular, SEN Sophon stated that he noticed members of his unit disappeared one after another from time to time and explained that Oeun, a member of his unit, “disappeared; he was taken away and killed”.<sup>4630</sup> However, the Civil Party clarified that he did not witness Oeun being taken away but he assumed he had disappeared because he did not see him anymore.<sup>4631</sup> CHHIT Yoeuk testified that at the worksite people disappeared for no reason and no one dared to ask questions about this issue.<sup>4632</sup> MEAN Loeuy stated that those who were accused of having an imaginary sickness disappeared and that no information was provided concerning their disappearance.<sup>4633</sup> He also indicated that if workers were criticised a few times and still failed to meet the work quota, they would be “in trouble”, meaning that they would disappear.<sup>4634</sup> In some instances, workers were told that a person was reassigned to another unit but in fact, the person disappeared. In this regard, TAK Boy explained that after Comrade Bo was transferred to a new unit, he just disappeared completely which

<sup>4630</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 46, 78.

<sup>4631</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 46, 78.

<sup>4632</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 46 (indicating that people disappeared without any reason and that nobody dared to ask anything about this issue), 85 (stating that he did not know where the people who disappeared were taken and how they were treated).

<sup>4633</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 66.

<sup>4634</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 65. *See above*, para. 1292.

led the witness to assume that he may have died because he never saw him again.<sup>4635</sup> The witness also indicated that most of the people who disappeared were former soldiers or civil servants of the LON Nol regime from his village.<sup>4636</sup> TAK Boy also stated that people disappeared, were killed and buried at night time on the Dam.<sup>4637</sup> The Chamber notes that some of the witnesses indicated in court that they assumed that those who had disappeared were killed.<sup>4638</sup> However, the Chamber considers that the evidence is unclear as to the fate of the people who disappeared in these circumstances, but is satisfied that numerous disappearances took place and that they contributed to a general climate of fear, which affected the workers emotionally. The Chamber also notes the evidence indicating that seriously sick workers were sent to the hospital,<sup>4639</sup> and that some workers fled from the worksite.<sup>4640</sup> The Chamber further notes that mobile units could be deployed to labour at different locations, depending on the needs of the worksite.<sup>4641</sup> The movement of these units, even in the absence of information or notice to the co-workers, was thus perceived as a routine movement of the workforce, which did not have an impact on the atmosphere of fear otherwise permeating the worksite.

1355. In other cases, workers were seen being arrested following which they disappeared. CHHUM Seng testified that two members of his unit, Phon and Rom, were

<sup>4635</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 89.

<sup>4636</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 48.

<sup>4637</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 64. *See also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 22, ERN (En) 01059956 (“Two or three people disappeared from my units every two or three nights.”).

<sup>4638</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 78-79 (explaining that Oeun, a member of his unit, “disappeared; he was taken away and killed.” The Civil Party explained that he concluded that Oeun was killed after disappearing because the Civil Party was once threatened with being killed himself).

<sup>4639</sup> *See above*, para. 1325.

<sup>4640</sup> T. 29 July 2015 (MAM Soeurm), E1/325.1, p. 50 (testifying that he requested permission from his unit chief to leave the worksite and that because he did not obtain it, he fled from his unit).

<sup>4641</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 46 (stating that after working at Trapeang Thma Dam for two months, he was transferred to work at Spean Sraeng site); T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 21 (testifying that in June 1977 he was reassigned from the Trapeang Thma Dam Worksite to the fishing unit to provide the supply to the workers at the reservoir); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 89 (testifying that “members were removed from one particular unit and placed in another unit. For example, Comrade Bo (phonetic), my battalion chief, was removed and reassigned to live in another unit”), 90 (testifying about Mam who left their hall and told the witness that “he had been removed, and relocated elsewhere and he left by himself with his backpack.”); T. 2 September 2015 (SAM Sak), E1/340.1, p. 39 (stating that he worked at Trapeang Thma Dam in three phases: “[f]or the first phase, I worked near the base of the dam; the second stage, I was in the first bridge; and the third stage, I worked at the water sloughs near the bottleneck connecting to the small dam”); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 64 (explaining that his group worked initially close to the Bridge Number 1 and later was rotated to the north of Bridge 1 to work on another segment of the length).

arrested by Khmer Rouge soldiers and taken away.<sup>4642</sup> From that moment, “they just disappeared from the company” and never returned.<sup>4643</sup> CHHUM Seng indicated that the two workers possibly disappeared because they failed to conceal their backgrounds, as Phon was a former LON Nol soldier and Rom came from a capitalist family of the previous regime.<sup>4644</sup> SOT Sophal testified that every two or three days he saw people from another children’s unit working nearby being arrested by the young militiamen tasked with watching over the workers.<sup>4645</sup> The witness explained that he knew that those arrested never returned because he could see that they were missing and that sometimes the missing people were replaced by other workers.<sup>4646</sup> SOT Sophal could not estimate the exact number of workers who were taken away as arrests happened randomly and while one day only one worker was taken away, on another day two or three were arrested.<sup>4647</sup> The witness did not know whether there were prisons or re-education centres near the worksite.<sup>4648</sup> KAN Thorl testified that he saw people being tied up and arrested at night by people he assumed were soldiers.<sup>4649</sup> SAM Sak indicated that at Trapeang Thma Dam people were taken away, which made him afraid.<sup>4650</sup> PAN Chhuong witnessed the arrest of a number of people who were taken away on a vehicle.<sup>4651</sup> The names of these people were on a list that the witness thought was given by *Ta Cheal* to *Ta Rin* once the Southwest Zone cadres arrived to the Trapeang Thma Dam.<sup>4652</sup> LING Lrysov testified that she saw 15 to 20 people being tied up, arrested and

<sup>4642</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 8.

<sup>4643</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 8.

<sup>4644</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 8 (testifying that Phon had allegedly been a lieutenant in the Lon Nol army and Rom was from a rich family during the previous regime).

<sup>4645</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 8-10 (testifying that they said that they were taken to the chief’s house and that he only knew that his chief was *Ta Val*).

<sup>4646</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 10.

<sup>4647</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 11.

<sup>4648</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 12.

<sup>4649</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 74 (affirming, after being reminded of his statement to OCIJ investigators, that he saw people being arrested and tied up at night by what he assumed were soldiers because they dressed in black and had guns slung on their shoulders). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 48-49 (describing an incident in which she saw between 15 and 20 people arrested while she was standing guard at her workplace and heard them cry, scream and being beaten with sticks).

<sup>4650</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 16 (explaining that “[i]n that period, it was a terrible situation. I was terrified. People were taken away. And I was afraid of my life.”). *See also*, CHUON Pheap Interview Record, E3/9527, 18 February 2014, p. 5, ERN (En) 00982316 (“While I was working at the Ang Trapeang Thma Dam, one night I saw six night-blind and sick people taken away, and I never saw them ever again.”); BOU Mao Interview Record, E3/9551, 21 February 2014, p. 7, ERN (En) 00982759.

<sup>4651</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 64-65.

<sup>4652</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 64-65 (*affirming* PAN Chhuong Interview Record, E3/9483, 14 March 2013, pp. 4-5, ERN (En) 00937034-00937035 and PAN Chhuong Interview Record, E3/9567, 22 July 2014, p. 12, ERN (En) 01044770).

taken away. Later she heard them being beaten and crying, and after that, silence.<sup>4653</sup> When she asked her unit chief why those people were arrested, she was told to mind her business and her unit chief said: “don’t be curious about other’s business. Do you want to die?”, as a result of which the witness was frightened and could not sleep at night.<sup>4654</sup> The Chamber finds her evidence to be consistent with that of other witnesses on this issue. Before the OCIJ investigators, MAM Soeurm *alias* HENG Samuoth, a worker of a mobile unit assigned to the Trapeang Thma Dam construction, stated that one evening he saw members of his group, who were 17 April People, arrested and trucked away. He clarified that the arrests were made secretly and that “[n]o one would dare ask anything when their relatives were under arrest”.<sup>4655</sup> In court, he also testified about the arrest of some members of his unit who were from Phnom Penh.<sup>4656</sup>

1356. The NUON Chea Defence contends that the evidence on arrests and disappearances at the worksite was vague, contradictory and unreliable, with many witnesses providing only hearsay evidence.<sup>4657</sup> The Civil Party Lead Co-Lawyers recall the evidence of the Civil Parties who described the disappearance of their unit chiefs or co-workers.<sup>4658</sup> No other Party makes relevant submissions in this regard. The Chamber rejects the NUON Chea Defence’s submission as it heard direct and detailed evidence of arrests and disappearances from several witnesses who testified about the treatment of workers in their units.

1357. Some of the people arrested at the Trapeang Thma Dam were Northwest Zone cadres who were transferred to S-21. In this regard, CHHIT Yoeuk testified about the arrest and disappearance of *Ta* Hat, the Secretary of Phum Srok district, who, according to S-21 records, entered S-21 on 4 September 1977.<sup>4659</sup> The workers were afraid of being arrested with the start of the purge of the Northwest Zone cadres by the Southwest Zone cadres. In particular, MAM Soeurm testified that when the Southwest Zone cadres

<sup>4653</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 48-52.

<sup>4654</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 48-52.

<sup>4655</sup> MAM Soeurm *alias* HENG Samuoth Interview Record, E3/7323, 31 January 2009, p. 3, ERN (En) 00289999.

<sup>4656</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 71-73.

<sup>4657</sup> NUON Chea Closing Brief, paras 1107-1108.

<sup>4658</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 486-489.

<sup>4659</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 62 (testifying about the arrest or disappearance of *Ta* Hat and stating “[h]owever, when people disappeared, we all presumed that they had been arrested.”); S-21 list of prisoners who entered on 4 September 1977, E3/10275, 5 September 1977, p. 3, ERN (En) 01368829 (entry no. 4).

came to supervise the work at the construction site, the leaders of the Northwest Zone were arrested and workers were afraid of being arrested too because they were their subordinates.<sup>4660</sup> MUN Mot was shocked and scared when he saw his superior *Ta San* being arrested and taken away.<sup>4661</sup> PAN Chhuong was frightened even though he was loyal to *Angkar* because he saw that loyal cadres were not spared from the arrests.<sup>4662</sup>

1358. S-21 confessions from arrested Northwest Zone cadres were regularly sent to *Angkar* and the Northwest Zone with a view to have the local authorities deal with the “network” revealed by the “traitors”.<sup>4663</sup>

1359. When asked whether workers disappeared at the Dam during the time he worked there, PAN Chhuong replied that “nothing happened”.<sup>4664</sup> The Chamber has previously noted a number of inconsistencies in his evidence, and considers that the witness sought to minimise his role, which makes it necessary to approach his testimony with particular caution.<sup>4665</sup> The Chamber notes that this close collaborator of *Ta Val* provided clear evidence concerning the arrest of other Northwest Zone cadres, but has always tried to lessen the conditions experienced by the workers who were under his authority. In this regard his testimony frequently contradicts consistent evidence provided by other witnesses. Therefore, the Chamber accords no weight to his assertion that “nothing happened” to the workers.

<sup>4660</sup> T. 28 July 2015 (MAM Soeurm), E1/324.1, p. 60.

<sup>4661</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 24.

<sup>4662</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 25.

<sup>4663</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 2, ERN (En) 00342709 (reporting: “[w]e have successively searched for and found those who bore insignias and the traitors who were the 17 April elements from Phnom Penh. The examination of their activities are based on the confessions of their network and based on the photographs for which the *Angkar* has asked to search.”); S-21 Confession – AN Meng, E3/7421, 26 September 1977, p. 1, ERN (En) 01451687 (reporting an annotation in red in the centre of page ERN (Kh) 00174888 indicating “[t]wo copies for *Angkar* to deliver to the Northwest 1/10/77”). See also, S-21 Confession – IV Eang, E3/7408, 19 September 1977, ERN (En) 00221768 (containing an annotation indicating as follows: “[s]ubmit to Brother for information. Already submitted to the Northwest Zone. 14 November 1977.”); S-21 Confession – KUNG Sambok *alias* An, E3/3647, 16 October 1977, p. 1, ERN (En) 00785188 (containing annotations that two copies were sent to the Northwest Zone); S-21 Confession – SIENG Pauty *alias* Sean, E3/1894, 9 November 1977, p. 1, ERN (En) 00702082 (containing annotations indicating that two Copies were sent to Brother Nuon on 9 November 1977 and the Northwest); S-21 Confession – UM Taury, E3/3667, 1 January 1977, p. 1, ERN (En) 00771355 (containing an annotation indicating “sent to the Northwest. 2<sup>nd</sup> August 1977”); S-21 Confession – YIM Chan, E3/7409, ERN (En) 00224629 (containing annotation indicating that “[t]wo copies have been submitted to the *Angkar*. Two more copies have already been submitted to the Northwest. 18 August 1977”).

<sup>4664</sup> T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 67.

<sup>4665</sup> See above, para. 1214.

1360. TAK Boy testified that in his unit no one was arrested but that he did not know what happened in other units.<sup>4666</sup> However, as noted below,<sup>4667</sup> he later clarified that educated intellectuals would be identified in their units, arrested and taken to be killed.<sup>4668</sup> The Chamber further notes that TAK Boy was a platoon chief and, due to his position, he may also have tended to deny any arrest concerning workers under his own authority.

1361. NHIP Horl indicated that he did not know about any disappearances or arrest in his unit.<sup>4669</sup> MEAN Loeuy indicated that at the worksite he did not witness any arrest or disappearances, “but there was disappearance”.<sup>4670</sup> SEN Sophon stated that he never witnessed any arrests at the worksite but he witnessed disappearances.<sup>4671</sup> However, the Chamber finds that this evidence does not undermine the evidence provided by the other witnesses and Civil Parties that arrests and disappearances occurred at the Dam. In particular, the Chamber notes that some of the arrests were conducted secretly at night, and it further finds it reasonable to conclude that the size of the worksite and the fact that workers were operating in different areas of the Dam, may have prevented some workers from witnessing scenes that occurred in other parts of the construction site.

#### 11.1.11.2. *Killings*

##### 11.1.11.2.1. *Killings of identified enemies*

1362. The Chamber heard from a number of witnesses that workers considered to be enemies were taken away to be killed. CHHUM Seng testified that as a company chief he attended a meeting held by *Ta Val* where chiefs of companies and battalions were instructed to monitor one person a day and to find out who was a student, an intellectual or a LON Nol soldier.<sup>4672</sup> CHHUM Seng further clarified that if after being monitored and identified by their unit chief a specific person was reported to *Ta Val*, he or she

<sup>4666</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 63.

<sup>4667</sup> *See below*, para. 1364.

<sup>4668</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 15.

<sup>4669</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 43.

<sup>4670</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 66 (stating that there were people who disappeared at the worksite, especially those who were accused of having an imaginary disease or sickness, and at night those persons were called to be re-educated and then disappeared), 83 (he never saw anybody arrested while he was working at the Dam).

<sup>4671</sup> T. 27 July 2015 (SEN Sophon), E1/323.1, p. 46 (explaining that he did not know about arrests and torture at the worksite, but that he noticed that people disappeared from the unit one after another from time to time).

<sup>4672</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 78, 88-89. *See above*, para. 1336.

would be taken away and killed by armed soldiers who were tasked with arresting and killing those considered to be enemies.<sup>4673</sup> Before the arrival of the Southwest Zone cadres at Trapeang Thma Dam, soldiers from the Northwest Zone were in charge of taking people away and killing them; later, the Southwest Zone cadres replaced the latter in arresting and killing the workers.<sup>4674</sup>

1363. According to CHHUM Seng, company or unit chiefs reported that a specific person was opposed to *Angkar*, was a former LON Nol soldier, a student, an intellectual, a capitalist or feudalism or came from a rich family in the event that person protested against their work assignment,<sup>4675</sup> the unit chief hated them<sup>4676</sup> or even when the chief had a little argument with them.<sup>4677</sup> Unit chiefs were not punished for arbitrarily reporting these people as enemies; on the contrary, *Angkar* praised these as good reports.<sup>4678</sup> CHHUM Seng stated that, pursuant to *Ta Val*'s order, unit chiefs had the right to execute those people who were opposed to *Angkar*, were former LON Nol

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<sup>4673</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 89, 92 *affirming* CHHUM Seng Interview Record, E3/9568, 18 February 2014, p. 8, ERN (En) 00982309 (“All company chairmen were called to attend a secret meeting. In that meeting, they told us that as company chairmen every day we had to track down former LON Nol soldiers or intellectuals. In case we found those people, the company chairmen could report to upper echelon to have them removed, or the company chairmen themselves could make the decision to kill those persons.”). The Chamber notes that the killings of the workers identified as enemies accords broadly with the general description given by Sector 5 of the progress made by the socialist revolution. In its weekly report dated 21 May 1977, Sector 5 authorities emphasised that: “the socialist revolution movement has been advancing rapidly one level forward as it has proceeded very well, progressively, destroying the enemy that opposed the socialism, strengthening and expanding the regime, the collective regime and socialist locations, and sweeping clean and uprooting further the remains of the capitalist class and other oppressive class”. See Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 3, ERN (En) 00342710. See also, THUN Thy DC-Cam Interview, E3/9157, 17 June 2011, p. 22, ERN (En) 01172885 (stating that one time a man working in a unit close to his and who was resting, said that he was so tired because he was working too hard, nights and days, and he didn't have enough sleep. *Ta Val* heard this man, took a hoe or a pole and hit him, yelling that he was a feudalism and a capitalist, not a worker and peasant. After that *Ta Val* ordered the unit chief to take the man to be killed. Then the unit chiefs told him and the other group chiefs to tell the workers of their groups that they should never say anything negative about work, and not be lazy and jealous).

<sup>4674</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 92.

<sup>4675</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 89, 95.

<sup>4676</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 89.

<sup>4677</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 95.

<sup>4678</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 95. See also, CHHUM Seng DC-Cam Interview, E3/9010, 18 June 2011, p. 16, ERN (En) 00728623 (explaining that not every decision with respect to killings was made by *Ta Val* but that “[s]ome were made by him, while others by others. The chief of the big unit could decide to kill those who were disliked” and indicating in relation to the people who were killed because disliked by the unit chiefs: “[a]fter the killing, we simply informed the chief of battalion in the morning that Brother! I smashed that person. He bargained by resisting orders and not working. That person said moving earth was not the business of his/her mother. There was not enough food. *In fact, that person did not say anything. By just saying [things] like this, they were free [to kill].*” (emphasis added)).



soldiers, “*Yuon*” and CIA.<sup>4679</sup> However, the witness stated that he never witnessed the physical killings, and in court he was neither asked about nor provided any other information about the fate of the victims, their identities or the identity of the perpetrators.<sup>4680</sup> CHHUM Seng also stated that “[f]or the upper echelon, they only made it clear that if anybody betrayed *Angkar* or disobeyed the instructions of *Angkar*, they were subject to be executed”.<sup>4681</sup>

1364. KAN Thorl indicated that in his unit there were no people of Vietnamese origin, but that he heard through “word of mouth” that any Vietnamese who were found would be “sent away to be executed”.<sup>4682</sup> TAK Boy indicated that educated intellectuals were identified in their units, arrested and taken to be killed.<sup>4683</sup> While he claimed to know that intellectuals from Phnom Penh were taken to be killed because the battalion and company chiefs were summoned to a meeting where they were instructed to identify intellectuals, he did not provide evidence of specific incidents of such killings.<sup>4684</sup>

1365. The Chamber has found that many workers disappeared from the worksite without explanation and that many others were seen being arrested following which they disappeared.<sup>4685</sup> The Chamber has also established a number of specific incidents

<sup>4679</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 52 (testifying that no executions could have been carried out without *Ta Val*’s permission), 73-74 (explaining that the right to kill was bestowed upon the chiefs by *Ta Val* and that, as a company chief himself, the witness had the right to execute people and that “[a] unit chief had the right to kill anyone that fell into the said categories”), 76 (answering a question as to who gave the order for the execution of 11 people who pretended to be night blind, CHHUM Seng indicated that *Ta Val* was the one who gave orders to kill people); T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 24 (explaining that “[s]ince *Ta Val* was the person issuing orders directly during that period, it was *Ta Val* who issued orders for people to be executed. [...] I was only trying to convey the message from *Ta Val* when I said that the unit leaders had *the powers of life and death over the members*.” (emphasis added)), 25 (explaining that *Ta Val* gave the order to eliminate any traitors to the Revolution, the “*Yuon*” enemies, the CIA agents and people opposing the Party); T. 19 August 2015 (TAK Boy), E1/333.1, pp. 79-80 (testifying that all of the deaths at the worksite were under *Ta Val*’s responsibility as he was the one issuing instructions to soldiers working there to carry out executions and that nobody would have dared to carry out any execution if *Ta Val* had not issued such an order). *See also*, T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 67-69 (explaining that he heard that unit chiefs made decisions to arrest and kill people, and afterwards they reported to *Ta Val*).

<sup>4680</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 77 (“Q. Do you know who did the actual physical killing? A. I have no idea. I have never seen them doing the actual physical killings.”).

<sup>4681</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 11.

<sup>4682</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, pp. 8-9. *See also*, CHHAO Chat Interview Record, E3/9562, 8 December 2014, p. 21, ERN (En) 01059955 (“At that time, they were searching out Vietnamese to arrest. When they found any Vietnamese, they took them away and killed them.”).

<sup>4683</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 15. *See also*, CHIEP Chhean Interview Record, E3/7805, 20 December 2008, E3/7805, p. 4, ERN (En) 00277817.

<sup>4684</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 15.

<sup>4685</sup> *See above*, paras 1354-1355.

of killings, some of which were carried out in public, that show that the execution of workers at the construction site was a reality, as described by many witnesses.<sup>4686</sup>

1366. Dead bodies were found at the worksite. KAN Thorl saw a pit containing three corpses in the eastern part of Trapeang Thma Dam near the roadside.<sup>4687</sup> TAK Boy, while never seeing the dead bodies, once stepped on soft soil while carrying dirt and he thought that there were bodies covered with dirt below as the bodies were actually not deeply buried.<sup>4688</sup> The witness also testified that he came across pits at the base of as well as on the Dam.<sup>4689</sup> The witness came across many bodies half-buried in the pits and concluded that they were corpses of people killed the night before, because members of the mobile units would be normally killed and buried at night, and because the soil would normally be hard and it was only soft when the workers dumped it on specific places.<sup>4690</sup> In the open fields between 200 and 300 metres away from the base of the Dam where they worked, he could smell the stench when he went to relieve himself.<sup>4691</sup> TAK Boy also provided evidence on Veal Ta Kuy, which was the paddy field located beyond the reservoir and close to the base of Trapeang Thma Dam Worksite, where corpses of members from mobile units were buried individually, not in one big pit.<sup>4692</sup> The witness explained that he knew that corpses were buried there because on one occasion when he went to relieve himself there, he saw the cracking pits and smelt the odour coming out of them.<sup>4693</sup> While he never personally saw anyone being killed at Veal Ta Kuy or elsewhere, the witness concluded that those corpses must

<sup>4686</sup> See below, paras 1368-1372.

<sup>4687</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, p. 14.

<sup>4688</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 69-70.

<sup>4689</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 64-65, 69-70 (explaining that there were pits on the crest of the Dam, at the base of the Dam and on the reservoir itself, and stating that “[t]here were countless bodies. There were bodies at the bottom of the dam and also on the crest of the dam and also in the open fields. And the bodies were covered with soil and dirt. While people were ploughing, they would find skulls in the field. Thus, I do not know how many bodies were there at the worksite.”). See also, CHHAO Chat Interview Record, E3/9562, pp. 18, 21, ERN (En) 01059952, 01059955 (“Many [workers] died, the majority new people. Some died of malaria. Former teachers were taken to be killed. I could not know the number of deaths: many died, because there were graves nearby [...] Q: did you personally see them kill people? A: No, I did not. I saw their packs of clothing, and I knew that they had already disappeared.”).

<sup>4690</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 64-70 (“Those people were killed and buried during the night time; and we don’t know why exactly. Those people just disappeared. And when we carried dirt in order to build the dyke, we came across bodies roughly buried on the crest of the dam; and only then could I draw a conclusion that those bodies must have been killed the previous night.” (emphasis added)).

<sup>4691</sup> T. 19 August 2015 (TAK Boy), E1/333.1, pp. 70-71 (clarifying that there were open fields both inside and outside the perimeter of the reservoir and in particular open fields were located to the south of the reservoir).

<sup>4692</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 86.

<sup>4693</sup> T. 19 August 2015 (TAK Boy), E1/333.1, p. 87.

have belonged to mobile units' members because "over there, there were only mobile units and there were no villagers nearby [...]".<sup>4694</sup>

1367. The Chamber is satisfied that an order to identify and kill enemies was given by *Ta Val* to company and battalion chiefs and that this order was consistent with the general measures implemented at the sector level to achieve the socialist revolution by "destroying the enemy".<sup>4695</sup> The Chamber has considered the evidence provided by CHHUM Seng, KAN Thorl and TAK Boy that those identified as enemies, including those who were considered as betraying or disobeying the instructions of *Angkar*, were targeted, taken away and killed together with the evidence that dead bodies were found at the worksite. Further, it has taken into account the evidence regarding the large number of workers who disappeared from the worksite, as well as that indicating that some executions were carried out in public. The Chamber finds it impossible to establish with certainty whether the corpses found around the Dam were those of people who died of illness or accidentally, or those of workers who were executed. It also cannot determine the exact number of people who died in these circumstances. However, the Chamber finds that the only reasonable inference to draw from the existence of a clear order to kill enemies, the evidence of the three witnesses, the disappearances, the public executions and the discovery of dead bodies at the worksite, is that some of the workers, who were identified as enemies, were killed pursuant to *Ta Val*'s orders.

#### 11.1.11.2.2. *Night blindness-related killings*

1368. The Chamber also heard evidence that workers were killed if it was determined that they were feigning night blindness.

<sup>4694</sup> T. 20 August 2015 (TAK Boy), E1/334.1, p. 13 (testifying that he did not see anyone being executed with his own eyes at Trapeang Thma Dam but that he was told by another mobile unit member about the killings); T. 19 August 2015 (TAK Boy), E1/333.1, p. 87. The Chamber notes that TAK Boy indicated in his Case 004 Civil Party Application that he witnessed militiamen taking groups of people to be killed at the south of Trapeang Thma Dam in the area called Veal Ta Kuy. See TAK Boy Civil Party Application, E3/9442, 17 March 2013, p. 7, ERN (En) 01001614. However, when asked to explain this inconsistency, TAK Boy stated that he stood by his statement in court that he did not witness or know of the taking of those people by militiamen. T. 20 August 2015 (TAK Boy), E1/334.1, p. 13 (testifying that it was not possible that those were corpses of soldiers who had died in combat because during the war with the LON Nol army, there were no dead bodies over there, adding that he knew that because he grew up in that area and there were only rice fields over there).

<sup>4695</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 3, ERN (En) 00342710.

1369. CHHUM Seng personally witnessed a test carried out to determine whether people suffered from night blindness by making them walk through a place with hot embers in order to check if they would walk on or if they would avoid them.<sup>4696</sup> As a result of the test, 11 out of 12 workers were determined to be feigning night blindness, were tied up and taken away by soldiers, never returning to their workplace.<sup>4697</sup> The witness did not see their execution but was assigned to flatten the earth the day after and, while doing so, found and saw the dead bodies.<sup>4698</sup> The witness concluded that those were the bodies of the workers who had avoided the hot embers while undertaking the test because the dead bodies were without shirts and the people wore no shirts while walking on the embers.<sup>4699</sup> The Chamber finds that the only reasonable conclusion to be drawn from the evidence is that those 11 workers were killed, based on the fact that the witness saw the test being carried out, saw the 11 people being arrested and taken away, and the next day found dead bodies without shirts. The Chamber therefore concludes that those 11 people were executed by staff of the worksite as a result of the test.

1370. The evidence provided by CHHUM Seng is corroborated by other evidence of the treatment inflicted on those who claimed they were night-blind. In this regard, KAN Thorl explained that those who had poor night vision were tested to see if they were feigning. They were led to walk over a hole on the ground and if the person avoided the hole, he or she was not considered sick but if the person fell into it, it was established that the person had night vision problems.<sup>4700</sup> Similarly, SAM Sak and LAT Suoy stated that people claiming to be night-blind were tested by being guided towards the

<sup>4696</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 92-93; T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 75-76 (indicating that those people were people evacuated from Phnom Penh, and that *Ta Val* was the person who gave the order to carry out the test and execute them).

<sup>4697</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 93; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 75; T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 32 (explaining that he saw soldiers tying the 11 people and leading them in a northern direction).

<sup>4698</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 93-96; T. 19 August 2015 (CHHUM Seng), E1/333.1, pp. 31-33 (explaining that the morning after seeing the people walking through the place with the embers, when he arrived at the location where he was assigned to work, which was Bridge 1, he saw the dead bodies placed on the crest of the Dam and their task was to pour earth on the Dam. The witness placed this incident as happening in 1978 by explaining that at that time they had to “raise the dam between the first bridge and Pongro village and it would continue from Pongro village to Trapeang Suong”).

<sup>4699</sup> T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 16; T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 78-79 (clarifying that he came to the conclusion that those bodies were of the people who avoided walking on the ember the day before because the dead bodies were without shirts and the people wore no shirts while walking on the embers).

<sup>4700</sup> T. 11 August 2015 (KAN Thorl), E1/328.1, pp. 11-12.

latrines.<sup>4701</sup> Those who were pretending to be night-blind managed to avoid the latrine pit, but those who were in fact night-blind either fell into it or were prevented from falling by people at the pit.<sup>4702</sup> While those who were actually night-blind survived, those who were pretending disappeared one after another,<sup>4703</sup> were re-educated<sup>4704</sup> or reprimanded,<sup>4705</sup> and if they continued pretending to be sick would be taken away and killed.<sup>4706</sup>

1371. Based on the evidence discussed above, the Chamber is satisfied that tests were carried out to determine if workers suffered from night blindness and these resulted in the death of those who were considered to be feigning.<sup>4707</sup>

#### 11.1.11.2.3. *Public executions*

1372. Additional executions were carried out in public. SOT Sophal testified that he saw two incidents in which people were beaten to death with sticks at the bottom of the Dam and that he was asked together with his co-workers to bury the dead bodies.<sup>4708</sup> The witness clarified that the militiamen who carried out the executions were not the same as the ones who went around the construction site watching over the workers and poking them with swords.<sup>4709</sup> After the victim had been killed, the militiamen told the other workers that they would eventually suffer the same fate if they failed to work hard or follow instructions, a threat which, in the witness's view, was made to terrify the

<sup>4701</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 15-16; T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 75-80; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 41-43.

<sup>4702</sup> T. 2 September 2015 (SAM Sak), E1/340.1, pp. 15-16; T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 79-80.

<sup>4703</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 16.

<sup>4704</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 79-80.

<sup>4705</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 77.

<sup>4706</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, p. 79.

<sup>4707</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 92-93; T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 75-76; T. 2 September 2015 (SAM Sak), E1/340.1, pp. 15-16; T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 75-80; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 41-42.

<sup>4708</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 12-15, 36, 59-60 (clarifying that in each incident of killing, one person was executed and explaining first that he was 40-50 metres and later 100 to 200 metres away from the place where the person was killed and that the victim was a man). The witness clarified that his previous statement to OCIJ investigators that he saw the Khmer Rouge kill hundreds of people (SOT Sophal Interview Record, E3/7755, 4 February 2009, p. 4, ERN (En) 00293004) did not refer to killings that occurred at the Dam but elsewhere. The witness confirmed in court that at the Trapeang Thma Dam Worksite he only saw two people being killed on two separate occasions (T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 63-64).

<sup>4709</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 64-65.

other workers.<sup>4710</sup> The killings were witnessed by around 50 to 100 people.<sup>4711</sup> This evidence is corroborated by that of witness LING Lrysov who, eventually, affirmed her previous statement to OCIJ investigators that she saw a pregnant woman being beaten with sticks by three men wearing black clothes who, after she fell into a pit close to the first bridge, dropped a stone on her to crush her. The witness clarified that she was 20 to 30 metres away from the location of the incident.<sup>4712</sup>

#### 11.1.11.2.4. *Exculpatory evidence*

1373. NHIP Horl stated that he never witnessed any killing or maltreatment of workers while he was working at Trapeang Thma Dam.<sup>4713</sup> NHIP Horl and MEAN Loeuy stated that while working at Trapeang Thma Dam they were never disciplined by their superiors and were never beaten by anyone.<sup>4714</sup> MUN Mot testified that he never saw killings at the worksite but that he heard rumours.<sup>4715</sup> He also stated that he did not know whether there was a prison or a security centre at *Ta Val*'s location.<sup>4716</sup> MUN Mot also testified that he never hit or used physical violence against his workers because they finished the work before the time set.<sup>4717</sup> The Chamber finds that the fact that these witnesses and Civil Parties did not witness any killings or violence perpetrated against other workers does not undermine the evidence provided by the ones who witnessed those incidents. In this regard, it considers it possible that NHIP Horl and MEAN Loeuy who were both mere workers, simply did not witness any scenes of violence at the Dam construction site. In this regard, the Chamber notes that the size of the worksite and the fact that workers were operating in different areas of the Dam, may have prevented some workers from witnessing scenes that occurred in other parts of the construction site. Concerning MUN Mot, the Chamber notes that he

<sup>4710</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 13-14, 59.

<sup>4711</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, p. 14 (indicating that the location of the killing was about 100 or 200 metres away from the northwest corner of the Dam).

<sup>4712</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 53-55, 76-77. Regarding executions in public, *see also*, CHHAO Chat Interview Record, E3/9562, 18 December 2014, pp. 22-23, ERN (En) 01059956-01059957 (stating that he knew that a pregnant woman who lived in Paoy Chhuol village disappeared at night. He heard that this woman was killed and her body was buried under the bridge before starting the construction, because it was believed that her soul would protect the bridge).

<sup>4713</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 51.

<sup>4714</sup> T. 25 August 2015 (NHIP Horl), E1/336.1, p. 50. The Civil Party also explained that he never saw anyone being punished in front of him. *See* T. 25 August 2015 (NHIP Horl), E1/336.1, p. 38. T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 83.

<sup>4715</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 56.

<sup>4716</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 81.

<sup>4717</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 56.

was a company chief and that, due to his position of authority, his evidence must be considered with caution, as he may tend to minimise the severity of the conditions experienced by the workers at the Dam.<sup>4718</sup>

1374. The Chamber is satisfied that some of the workers who were identified as enemies were killed pursuant to *Ta Val*'s orders, that tests were carried out to determine if workers suffered from night blindness which resulted in the death of those who were considered to be faking and that executions were carried out in public at the worksite.

11.1.11.3. *Deaths resulting from working and living conditions*

1375. At the worksite, workers frequently died after collapsing to the ground while working.<sup>4719</sup> SOT Sophal testified that he and his co-workers watched a person convulse and draw his last breath, after which the body was taken away.<sup>4720</sup> Some workers died of illness.<sup>4721</sup> In this regard, CHHUM Seng testified about a man in his company who fell ill and disappeared for three days. When the witness went to find out about him, he saw him die in his bed from sickness as he had a fever.<sup>4722</sup>

1376. Some witnesses and Civil Parties did not see anyone die due to overwork,

<sup>4718</sup> T. 27 October 2015 (MUN Mot), E1/357.1, p. 11 (testifying that he was a company chief and that in his company there were three platoons).

<sup>4719</sup> T. 29 September 2015 (SOT Sophal), E1/351.1, pp. 81-83 (testifying that he saw people collapse and die, attributing that to the lack of food); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 43 (testifying that incidents in which people collapsed and died happened more than 10 times "because it happened almost every day"). *See also*, T. 20 August 2015 (LING Lrysov), E1/334.1, p. 41 (explaining that she heard that people did not have enough cooked rice to eat and thus collapsed and died at the worksite as a result). Other witnesses testified that they saw people collapse but they did not indicate that they died. *See* T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 26 (stating that he observed this happen and that this also happened within his company); T. 26 October 2015 (MUN Mot), E1/356.1, p. 56 (testifying that he heard from other comrades that some workers fainted and collapsed but stating that he never saw any worker collapse in his unit or in other units).

<sup>4720</sup> T. 30 September 2015 (SOT Sophal), E1/352.1, pp. 42, 45.

<sup>4721</sup> T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 64; T. 12 August 2015 (LAT Suoy), E1/329.1, p. 22 (testifying that he saw many people die of malaria); T. 27 October 2015 (MUN Mot), E1/357.1, p. 48 (testifying that he saw patients die at the Anlong hospital and that to his understanding those patients came from mobile units under *Ta Val* or other units); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 13 (testifying that others died in the hospital); KAN Thorl Interview Record, E3/7803, 20 December 2008, p. 4, ERN (En) 00277822 (explaining that one day he went to the hospital to inquire about a subordinate in his unit called Dau and that he was told that the person had died). *See also*, T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 80-81 (testifying that he knew at least one person who died of dysentery but not clarifying the details of the death or how he knew about it); T. 30 September 2015 (SOT Sophal), E1/352.1, p. 45 (testifying that "due to sickness, people collapsed while they were working. In spite of severe illness, they were ordered to carry out the work. So, they were so exhausted that they collapsed.").

<sup>4722</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 10-11.

exhaustion or other ill health at the worksite.<sup>4723</sup> The Chamber finds that the fact that these witnesses and Civil Parties did not witness any death resulting from the working and living conditions does not undermine the evidence indicating that such deaths occurred. Conditions varied from one unit to another at the construction site, which resulted in some witnesses having different experiences at the Dam. Given the size of the construction project and the number of workers employed in it, facts that occurred at one location of the worksite were not necessarily known to people working at another location. Furthermore, the Chamber notes that workers who were seriously sick were sent to the hospital where, in case they died, their deaths would not have been witnessed by their co-workers at the worksite.

### 11.1.12. *Legal Findings*

#### 11.1.12.1. *Murder and extermination*

##### 11.1.12.1.1. *Executions*

1377. The Closing Order charges the Accused with the crime against humanity of murder in relation to the surveillance of individuals at worksites, which was aimed at identifying enemies, notably those who refused to be transferred or those unable to perform work, who were then executed *in situ*.<sup>4724</sup> With respect to Trapeang Thma Dam in particular, the Closing Order charges the Accused with the crime against humanity of murder on the basis of the execution of those who were accused of being CIA agents or “*Yuon*” who would be tied and escorted to the execution place,<sup>4725</sup> workers who failed to meet their work quota,<sup>4726</sup> groups of up to 20 people on a nightly basis,<sup>4727</sup> those who failed to seek permission to marry from unit chairmen.<sup>4728</sup> It also finds that workers were killed by being beaten and thrown into the reservoir basin.<sup>4729</sup> The Closing Order also charges the Accused with the crime against humanity of extermination in relation to the people who were killed or died *en masse* at Trapeang

<sup>4723</sup> T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, p. 83 (testifying that he never saw anybody die while working at Trapeang Thma Dam); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 84 (stating that he never saw anybody die due to exhaustion at the worksite); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 69 (stating that he never saw any worker die from overwork); T. 11 August 2015 (KAN Thorl), E1/328.1, p. 12 (testifying that nobody died of fever or diarrhoea at the worksite).

<sup>4724</sup> Closing Order, para. 1377.

<sup>4725</sup> Closing Order, para. 346.

<sup>4726</sup> Closing Order, para. 347.

<sup>4727</sup> Closing Order, para. 348.

<sup>4728</sup> Closing Order, para. 344.

<sup>4729</sup> Closing Order, para. 349.



Thma Dam.<sup>4730</sup> It finds that the perpetrators, through their acts or omissions, caused the death of a very large number of people.<sup>4731</sup>

1378. The Chamber is satisfied that some workers who were identified as enemies were killed pursuant to *Ta Val*'s orders.<sup>4732</sup> Having considered that battalion and company chiefs were instructed to identify and kill enemies, that witnesses testified that those who were considered enemies were taken away and killed, that many workers disappeared from the worksite and that dead bodies were found at the worksite, the Chamber infers that the victims died as a result of the acts of the perpetrators. The *actus reus* of murder is established. The specific instruction to identify and kill enemies indicates that the killings were intentional. The *mens rea* of murder is therefore established. The Chamber concludes that the crime against humanity of murder is established in relation to these incidents.

1379. The Chamber has established that tests were carried out to determine if workers suffered from night-blindness, which resulted in the death of those who were considered to be faking.<sup>4733</sup> While these killings were not witnessed, bodies of the victims were seen and identified as those who had failed the night-blindness test. While the Chamber was not able to identify the exact perpetrators of these killings, it can reasonably infer that the perpetrators were the soldiers who took the workers away after the test.<sup>4734</sup> The *actus reus* of murder is therefore established. Considering the context in which these killings took place and in particular the fact that the workers who claimed they were night-blind were subjected to the test, were identified, tied and taken away, the Chamber concludes that the perpetrators intended to kill the victims. It is therefore satisfied that the *mens rea* of murder is established. Accordingly, the Chamber finds that the crime against humanity of murder is established in relation to these incidents.

1380. The Chamber has also found that at least two executions were carried out in public whereby workers were beaten to death with sticks.<sup>4735</sup> The NUON Chea Defence

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<sup>4730</sup> Closing Order, para. 1381.

<sup>4731</sup> Closing Order, para. 1382.

<sup>4732</sup> See above, paras 1367, 1374.

<sup>4733</sup> See above, paras 1371, 1374.

<sup>4734</sup> The Chamber recalls that a conviction for murder is not precluded because it is impossible to identify the direct perpetrators and their victims. See Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 628.

<sup>4735</sup> See above, paras 1372, 1374.

submits in this regard that SOT Sophal was unable to provide any details on the exact identity of the victims or the perpetrators and that his evidence is not corroborated by any other testimony.<sup>4736</sup> The Chamber recalls that a conviction for murder is not precluded because it is impossible to establish the identity of the direct perpetrators or their victims.<sup>4737</sup> Furthermore, it recalls that SOT Sophal's evidence on this issue is corroborated by that of LING Lrysov.<sup>4738</sup> The Chamber finds that the deaths of the victims were caused by beatings inflicted by unidentified militiamen at the Dam, and is therefore satisfied that the *actus reus* of murder is established. The manner of execution, the fact that the perpetrators executed their victims in public and warned the bystanders they could face the same treatment indicates that the perpetrators intended to cause the death of the victims. The *mens rea* of murder is therefore satisfied. The Chamber finds that the crime against humanity of murder is established in relation to these incidents.

1381. The Chamber did not receive evidence on the remaining instances of killing charged in the Closing Order and is therefore not satisfied that those killings occurred.

1382. Regarding the charges of extermination based on the execution of large numbers of people at the worksite, the Chamber recalls that there is no minimum number of victims required to establish extermination and that the requirement of scale is to be assessed on a case-by-case basis.<sup>4739</sup> It is possible for the scale element of extermination to be established on an aggregated basis by accumulating separate incidents; however, these incidents need to form part of the same murder operation.<sup>4740</sup> In this regard, the Chamber has found that tests were carried out to determine if workers suffered from night-blindness, which resulted in the killing of those who were considered to be feigning, and that at least two executions were carried out in public whereby workers were beaten to death with sticks.<sup>4741</sup> The Chamber has further found that some workers who were identified as enemies, were killed pursuant to *Ta Val*'s orders.<sup>4742</sup> However, it is unable to quantify with sufficient precision the number of those who were killed in these latter circumstances. The Chamber is satisfied that all of these deaths were the

<sup>4736</sup> NUON Chea Closing Brief, para. 1110.

<sup>4737</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 628.

<sup>4738</sup> *See above*, para. 1372.

<sup>4739</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 655.

<sup>4740</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 656.

<sup>4741</sup> *See above*, paras 1368-1372.

<sup>4742</sup> *See above*, paras 1367, 1374.

result of the same murder operation which targeted individuals who were considered enemies or non-compliant with the disciplinary rules imposed at the worksite. However, even considering these incidents in aggregate, the Chamber does not find that the scale element of extermination is established to the required standard of proof in the circumstances. The *actus reus* of extermination is therefore not established and no findings of extermination can be made with respect to deaths resulting from killings and executions.

11.1.12.1.2. *Deaths resulting from working and living conditions*

1383. The Closing Order further charges the Accused with the crime against humanity of extermination based on the large-scale deaths resulting from the conditions imposed at worksites, including the deprivation of food, accommodation, medical care, hygiene and hard labour, that were calculated to bring about the destruction of part of the population.<sup>4743</sup> The Closing Order also charges that at Trapeang Thma Dam workers died of starvation, exhaustion and illness.<sup>4744</sup>

1384. The Chamber has found that the food provided at the worksite was generally insufficient, that the accessible water was not drinkable and that workers developed diarrhoea as a result of drinking it.<sup>4745</sup> It has also established that workers slept in inadequate accommodation,<sup>4746</sup> frequently fell ill<sup>4747</sup> and that some died of illness.<sup>4748</sup> Workers were required to work regardless of the weather conditions.<sup>4749</sup> Incidents involving workers who died after collapsing to the ground happened frequently, with one witness indicating that this “happened almost every day”.<sup>4750</sup> The working conditions were very demanding: workers had to dig two or three cubic metres of soil per day;<sup>4751</sup> the Dam was constructed exclusively using manual labour;<sup>4752</sup> workers were required to work long hours<sup>4753</sup> and at times they had to work day and night

<sup>4743</sup> Closing Order, paras 1382, 1387.

<sup>4744</sup> Closing Order, paras 341-342.

<sup>4745</sup> See above, paras 1298, 1301.

<sup>4746</sup> See above, para. 1308.

<sup>4747</sup> See above, para. 1320.

<sup>4748</sup> See above, para. 1375.

<sup>4749</sup> See above, para. 1270.

<sup>4750</sup> See above, para. 1375.

<sup>4751</sup> See above, para. 1288.

<sup>4752</sup> See above, para. 1296.

<sup>4753</sup> See above, paras 1278-1280.

continuously.<sup>4754</sup> Furthermore, those who fell ill were frequently accused of imaginary sickness,<sup>4755</sup> they were usually provided with ineffective medicines<sup>4756</sup> and had only access to medics who were incompetent.<sup>4757</sup> Taking into account all of these findings, the Chamber is satisfied that the death of those who collapsed at the worksite was due to the overwork, exhaustion and lack of food. Workers died of illnesses developed as a result of the hard work and the unhealthy living conditions, which was further aggravated by the lack of appropriate basic medical care. The Chamber is satisfied that the imposition of these conditions caused the death of the workers at the construction site.

1385. The NUON Chea Defence submits that there is no credible evidence of large-scale deaths due to the conditions.<sup>4758</sup> Contrary to this submission, the Chamber has found that workers died almost every day after collapsing<sup>4759</sup> and that people died of illness.<sup>4760</sup> The Chamber recalls that the Trapeang Thma Dam was a huge project in which between 10 and 20 thousand workers were employed,<sup>4761</sup> all of whom were affected by the working and living conditions described above.<sup>4762</sup> Although the Chamber is not able to establish with precision the number of deaths resulting from these conditions, it finds that the scale element of extermination is satisfied and that the *actus reus* of extermination is established.

1386. With respect to the requisite *mens rea*, the NUON Chea Defence submits that in order to prove extermination based on the imposition of conditions of life, it is necessary to show that those conditions were deliberately inflicted to cause death on a large scale; conditions beyond anyone's control cannot be used as evidence of extermination.<sup>4763</sup> In this regard, it submits that NUON Chea did not have direct intent to cause large-scale deaths or knowingly create conditions of life that would lead to large number of deaths.<sup>4764</sup> The KHIEU Samphan Defence contends that the evidence

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<sup>4754</sup> See above, para. 1280.

<sup>4755</sup> See above, para. 1321.

<sup>4756</sup> See above, para. 1322.

<sup>4757</sup> See above, para. 1321.

<sup>4758</sup> NUON Chea Closing Brief, para. 1122.

<sup>4759</sup> See above, para. 1375.

<sup>4760</sup> See above, para. 1375.

<sup>4761</sup> See above, para. 1262.

<sup>4762</sup> See above, paras 1270-1274, 1297-1334.

<sup>4763</sup> NUON Chea Closing Brief, para. 1122.

<sup>4764</sup> NUON Chea Closing Brief, para. 1123.

showing that sick people were hospitalised, traditional medicines were manufactured to cure the sick and modern medicines were administered, indicates that the Trapeang Thma Dam staff were not driven by an intent to kill the workers by imposing working conditions upon them calculated to lead to their deaths.<sup>4765</sup> The Co-Prosecutors submit that the Party Centre's acceptance of the risk that deaths due to the conditions would occur "follows not only from its knowledge of the conditions at the site (as reflected in the *Revolutionary Youth* article and leaders' frequent visits to the worksite) but also from its use of the language of armed struggle, describing the worksite as a 'hot battlefield' and the work projects as 'offensives'".<sup>4766</sup>

1387. The Chamber has found that sick workers were treated with traditional medicines and were allowed to rest.<sup>4767</sup> When their condition was particularly serious, they were taken to the hospital for treatment.<sup>4768</sup> Further, while insufficient, food was provided to the workers<sup>4769</sup> and a differentiated food regime based on the workers' productivity was used as an incentive for workers to accomplish their tasks.<sup>4770</sup> When there was a shortage of water or when the workers were assigned to work far from a water source, water was transported by trucks to the worksite and distributed to each unit.<sup>4771</sup> Although the conditions were clearly difficult and resulted in deaths, the Chamber is not satisfied that the conditions were imposed with the intention of killing workers. Instead, the authorities appear to have intended to exploit the workers for their working capacity by providing them with the minimum conditions that allowed them to keep working, while being indifferent to their well-being and accepting the risk of their death in order to achieve their objective. Contrary to the submission of the Co-Prosecutors, the Chamber recalls that the crime of extermination is incompatible with the notion of *dolus eventualis*.<sup>4772</sup> Accordingly, the Chamber finds that the requisite *mens rea* of extermination is not satisfied and it is therefore unable to conclude that the crime against humanity of extermination is established at the Trapeang Thma Dam.

<sup>4765</sup> KHIEU Samphan Closing Brief, paras 1040-1043, 1045.

<sup>4766</sup> Co-Prosecutors' Closing Brief, para. 1135.

<sup>4767</sup> *See above*, paras 1322, 1325.

<sup>4768</sup> *See above*, para. 1325.

<sup>4769</sup> *See above*, paras 1301-1303.

<sup>4770</sup> *See above*, para. 1304.

<sup>4771</sup> *See above*, para. 1298.

<sup>4772</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 657.

1388. However, as set out above, Internal Rule 98(2) provides that the Chamber may change the legal characterisation of the crime as set out in the closing order, provided that no new constitutive elements are introduced.<sup>4773</sup> In the present case, the Chamber, without introducing new constitutive elements to the ones set out in the Closing Order, finds that the above facts satisfy the elements of murder. In particular, the Chamber finds that the *actus reus* of murder, namely an act or omission that caused the death of the victim, is established with respect to the deaths resulting from the working and living conditions described above.<sup>4774</sup> In this respect, the relevant act or omission is constituted by the imposition on the workers of conditions described above that caused their death. This includes the unwillingness to adapt working hours and working or living conditions to the workers' needs, and to provide basic appropriate medical care.

1389. The maintenance of these conditions for an extended period of time, including after their effects on the workers became apparent to the worksite authorities, shows that the worksite authorities willingly imposed such conditions with the knowledge that they would likely lead to the death of the victims or in the acceptance of the possibility of this fatal consequence. This satisfies the *mens rea* of murder in the form of *dolus eventualis*.

1390. The Chamber accordingly finds that the crime against humanity of murder is established at the Trapeang Thma Dam.

#### 11.1.12.2. Enslavement

1391. The Closing Order charges the Accused with the crime against humanity of enslavement with respect to the intentional exercise of total control and all the powers attaching to the right of ownership over people by the personnel of worksites.<sup>4775</sup> In particular, the personnel controlled the victims' physical environment, their access to food and medical care and subjected them to constant surveillance.<sup>4776</sup> In addition, the victims were forced to perform work without their consent.<sup>4777</sup>

<sup>4773</sup> Section 2: Preliminary Issues, para. 153; Internal Rule 98(2). *See also*, Case 002/01 Appeal Judgement, para. 562.

<sup>4774</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 627.

<sup>4775</sup> Closing Order, para. 1392.

<sup>4776</sup> Closing Order, para. 1393.

<sup>4777</sup> Closing Order, para. 1394.

1392. The NUON Chea Defence makes a number of submissions regarding the charges of enslavement. It contends that the work carried out at the Trapeang Thma Dam cannot be considered forced labour because the requisition of labour is lawful in cases of “emergency or calamity threatening the life or well-being of the community”.<sup>4778</sup> It further submits that there was no exercise of ownership over people; that no control was exercised over the workers; that any restriction of movement was justified and lawful as freedom of movement as a human right is not absolute; and that any restriction on access to food and medicine was justified to ensure that “everyone had a fair share of the limited resources available, rather than a measure of control”.<sup>4779</sup> Finally, it contends that there is no credible evidence of cruel treatment or abuse at the worksites.<sup>4780</sup> The Co-Prosecutors submit that it was “the fear of death or other punishment that motivated workers to do what they were instructed to do” and that the workers were considered as expendable assets by *Angkar*.<sup>4781</sup> The Civil Party Lead Co-Lawyers and the KHIEU Samphan Defence do not make any relevant submissions in this regard.

1393. The Chamber recalls that the crime against humanity of enslavement is characterised by the intentional exercise over a person of any or all powers attaching to the right of ownership.<sup>4782</sup> While not a prerequisite for the crime to be established, forced labour may be sufficient on its own to establish enslavement as a crime against humanity where all the elements of that crime are met.<sup>4783</sup>

1394. The Chamber is satisfied that the workers could not refuse to go to work at the Trapeang Thma Dam for fear they would face serious repercussions.<sup>4784</sup> Furthermore, the workers could not refuse their assignments as they were afraid of being killed, arrested or disappeared as a consequence.<sup>4785</sup> Consistent with this belief, the Chamber has found evidence of such repercussions. Workers were threatened with being killed, disappearing or with having their food ration reduced should they engage in any behaviour considered to be against *Angkar* or should they not carry out their

<sup>4778</sup> NUON Chea Closing Brief, para. 1120.

<sup>4779</sup> NUON Chea Closing Brief, para. 1121.

<sup>4780</sup> NUON Chea Closing Brief, para. 1121.

<sup>4781</sup> Co-Prosecutors’ Closing Brief, para. 1133.

<sup>4782</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

<sup>4783</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 666.

<sup>4784</sup> See above, para. 1263.

<sup>4785</sup> See above, para. 1330.

assignments.<sup>4786</sup> Witnesses saw workers killed in front of them and were threatened with being killed too if they did not work hard or follow the discipline.<sup>4787</sup> The Chamber has also established that workers were punished if they did not complete the work quota assigned to them.<sup>4788</sup> The Chamber has found that this constitutes objective evidence that workers did not have a choice regarding working at the Dam and completing their assigned tasks.<sup>4789</sup> The Chamber will now consider the NUON Chea Defence's submissions that the Chamber is nonetheless precluded from concluding that this amounts to forced labour.

1395. The Chamber recalls that Article 8(3)(c)(iii) of the ICCPR provides that forced labour does not include *inter alia* any service exacted in cases of emergency and calamity threatening the life or well-being of the community.<sup>4790</sup> In this regard, the Chamber recalls that the nature and conditions of the work need to be balanced against the nature of the threat to the well-being of the community and the circumstances of the emergency.<sup>4791</sup> Furthermore, if the crisis or emergency situation is the result of the perpetrator's own unlawful activity then such measures would not be justifiable.<sup>4792</sup> In this case, the Chamber has found that the Dam was built as an irrigation project with a view to enable dry season farming.<sup>4793</sup> In pursuing this project, the worksite cadres should have taken into account the conditions imposed on the workers to achieve their objective. In contrast to this requirement, the Chamber has established that workers were required to work regardless of the weather conditions,<sup>4794</sup> had to perform hard work<sup>4795</sup> for very long hours,<sup>4796</sup> were not allowed to have any rest days,<sup>4797</sup> were constantly monitored by their unit chiefs to see how much work they produced,<sup>4798</sup> and were criticised if they did not complete the work quota.<sup>4799</sup> The Chamber has also found that the work conditions were directly responsible for the deaths of some workers.<sup>4800</sup>

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<sup>4786</sup> See above, para. 1332.

<sup>4787</sup> See above, paras 1332, 1334.

<sup>4788</sup> See above, para. 1294.

<sup>4789</sup> See above, para. 1334.

<sup>4790</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 669.

<sup>4791</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 669.

<sup>4792</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 669.

<sup>4793</sup> See above, para. 1224.

<sup>4794</sup> See above, para. 1270.

<sup>4795</sup> See above, paras 1275-1276.

<sup>4796</sup> See above, paras 1278-1280.

<sup>4797</sup> See above, para. 1281.

<sup>4798</sup> See above, para. 1338.

<sup>4799</sup> See above, para. 1295.

<sup>4800</sup> See above, para. 1375.



These findings clearly demonstrate that the authorities went far beyond simply requiring people to contribute their work in a situation of emergency; instead, they had complete disregard for the conditions imposed and their impact on the workers. Some of the related conduct on the part of the authorities has been determined elsewhere to have been unlawful.<sup>4801</sup> The Chamber accordingly rejects the NUON Chea Defence's submissions on this point and finds that forced labour occurred at the Trapeang Thma Dam. In any event, the Chamber observes that the crime charged in this case is not forced labour but enslavement, which encompasses a broader *actus reus* than that of forced labour.<sup>4802</sup> The Chamber notes that Article 8(1) of the ICCPR provides that nobody shall be held in slavery and that no exception or derogation is provided to this provision, which is part of customary international law.<sup>4803</sup> The Chamber therefore assesses the facts against the elements of the crime of enslavement.

1396. The Chamber considers the following factual findings as indicia of enslavement: the findings made at paragraph 1394 above; the workers were not free to move around the worksite or to leave it at their will to visit home;<sup>4804</sup> at the worksite, the workers were organised in groups according to a military structure;<sup>4805</sup> if the workers did not complete the work quota they could not go to wash themselves;<sup>4806</sup> and workers had to sleep in communal shelters.<sup>4807</sup> Additionally, the findings on the manner and conditions in which forced labour was implemented at the worksite are taken into consideration.

1397. Contrary to the NUON Chea Defence's submission, the Chamber has established that worksite leaders and cadres had a substantial degree of control over the workers. In particular, it found that workers were monitored by armed guards and those who attempted to flee the worksite were arrested.<sup>4808</sup> The Chamber has also established that unit chiefs and medical staff checked if workers who claimed to be sick were in fact ill and punished those who were considered to be faking.<sup>4809</sup> Workers were

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<sup>4801</sup> See below, paras 1415, 1421.

<sup>4802</sup> Section 9.1.3: Applicable Law, Crimes Against Humanity: Enslavement, para. 662.

<sup>4803</sup> Case 001 Trial Judgement, para. 342; *Krnjelac* Trial Judgement, para. 353.

<sup>4804</sup> See above, para. 1331.

<sup>4805</sup> See above, para. 1267.

<sup>4806</sup> See above, para. 1328.

<sup>4807</sup> See above, para. 1308.

<sup>4808</sup> See above, paras 1333, 1339.

<sup>4809</sup> See above, para. 1321.

provided with insufficient food but did not dare complain about it.<sup>4810</sup> With regard to food in particular, the Chamber rejects the NUON Chea Defence's submission that any restriction on the access to food and medicines was justified to ensure that everyone had a fair share of the limited resources available, in light of the evidence showing that while the workers received insufficient food, cadres received bigger rations<sup>4811</sup> and that the distribution of food was used as a reward and punishment system for the amount of work accomplished by the workers.<sup>4812</sup> With respect to medicines, the Chamber notes that the traditional medicines given to sick workers were ineffective.<sup>4813</sup> With regard to modern medicines, the Chamber has found that the reason why access to medicine was restricted had more to do with the DK authorities' ideological stance that Cambodia had to be "self-reliant" and rely on its own resources, than with the intent to guarantee that everyone had a fair share of the limited resources available.<sup>4814</sup>

1398. With respect to freedom of movement, the Chamber recognises that this is not an absolute right. However, it finds that the prohibition of movement at the Dam construction site was unnecessary and excessively prohibitive and that the workers were threatened with being killed should they violate the discipline.<sup>4815</sup> The workers were constantly watched over by armed guards.<sup>4816</sup> The Chamber accordingly rejects the NUON Chea Defence's submission on this point and finds that the restrictions on the freedom of movement imposed on the workers were not lawful.

1399. Finally, the Chamber has found ample evidence of cruel treatment and abuse inflicted on the workers by the Dam personnel. This included: threats,<sup>4817</sup> beatings,<sup>4818</sup> punishments,<sup>4819</sup> arrests<sup>4820</sup> and executions.<sup>4821</sup> The Chamber has also established that workers were made to work irrespective of the weather conditions,<sup>4822</sup> they were subjected to working and living conditions that affected them physically and

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<sup>4810</sup> See above, paras 1301, 1331.

<sup>4811</sup> See above, para. 1301.

<sup>4812</sup> See above, para. 1304.

<sup>4813</sup> See above, para. 1322.

<sup>4814</sup> See above, para. 1313.

<sup>4815</sup> See above, paras 1331-1332.

<sup>4816</sup> See above, para. 1339.

<sup>4817</sup> See above, para. 1332.

<sup>4818</sup> See above, para. 1293.

<sup>4819</sup> See above, para. 1268.

<sup>4820</sup> See above, para. 1355.

<sup>4821</sup> See above, para. 1372.

<sup>4822</sup> See above, para. 1270.

mentally,<sup>4823</sup> and they had to work long working hours with insufficient food.<sup>4824</sup> Workers who did not complete their work quota were deprived of food or had their food ration reduced.<sup>4825</sup> Sick workers also had their food ration reduced.<sup>4826</sup> The NUON Chea Defence's submission that there is no credible evidence of cruel treatment or abuse at the worksite is also accordingly dismissed.

1400. The Chamber is satisfied that all of these measures taken together demonstrate that the physical perpetrators exercised any or all powers attaching to the right of ownership over workers at the Dam.<sup>4827</sup> The *actus reus* of enslavement is thus established.

1401. The fact that workers were monitored, criticised and threatened for any behaviour considered being against *Angkar*, the duration of the treatment and the systematic way in which it was organised, reveal that the exercise of any or all of the powers attaching to the right of ownership was performed intentionally.<sup>4828</sup> The *mens rea* of enslavement is also established.

1402. Accordingly, the Chamber finds that the crime against humanity of enslavement is established at the Trapeang Thma Dam.

#### 11.1.12.3. Persecution on political grounds

1403. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds at worksites of "real or perceived enemies of the CPK" who "were subjected to harsher treatment and living conditions" than the rest of the population.<sup>4829</sup> It further charges that "the identification of people as targets for persecution, on the basis that anyone who disagreed with the CPK ideology was excluded, amounts to persecution on political grounds".<sup>4830</sup> Specifically with respect to Trapeang Thma Dam, the Closing Order charges that "'New People' were subjected to harsher working conditions, such as larger working quotas or unjustified punishments"

<sup>4823</sup> See above, para. 1271.

<sup>4824</sup> See above, paras 1278-1279, 1300-1301.

<sup>4825</sup> See above, paras 1291-1293.

<sup>4826</sup> See above, para. 1326.

<sup>4827</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

<sup>4828</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 670.

<sup>4829</sup> Closing Order, para. 1418.

<sup>4830</sup> Closing Order, para. 1417.

and that some workers, especially New People, would be arrested by CPK cadres for re-education meetings and subsequently disappear.<sup>4831</sup> CPK soldiers and cadres collected biographies of workers at the site in order to identify those to be later arrested or killed.<sup>4832</sup> Informants were placed in the work units to identify individuals for arrest, who were subsequently accused of being an “American CIA agent” or linked to the “*Yuon*”, arrested and taken to an execution place.<sup>4833</sup> Those who were considered not hard-working were labelled as traitors and placed in case units, where they were subjected to observation and re-education and had to meet the highest work quotas.<sup>4834</sup> Any worker failing to meet these quotas would be taken away and killed.<sup>4835</sup> Those who did not complete their work quotas were considered to have “ideological problems” and were labelled as traitors, punished physically, with the reduction of food or by being placed in the case unit.<sup>4836</sup>

1404. The KHIEU Samphan Defence submits that the Closing Order identifies only three targeted groups for the purposes of the crime of persecution on political grounds: former Khmer Republic officials, New People and Cambodians returning from abroad.<sup>4837</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>4838</sup>

1405. The KHIEU Samphan Defence contends that the sections of the Closing Order related to the Trapeang Thma Dam Worksite only make mention of one of the above groups, namely New People.<sup>4839</sup> It further submits that the only relevant alleged discriminatory conduct against New People is described at paragraph 343 of the Closing Order as harsher working conditions, notably bigger work quotas and unjustified punishments.<sup>4840</sup> The Closing Order clearly indicates with respect to cooperatives and worksites that “real or perceived enemies of the CPK were subjected to harsher treatment and living conditions than the rest of the population”.<sup>4841</sup> It further charges

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<sup>4831</sup> Closing Order, paras 343, 346.

<sup>4832</sup> Closing Order, para. 343.

<sup>4833</sup> Closing Order, para. 346.

<sup>4834</sup> Closing Order, paras 336, 347.

<sup>4835</sup> Closing Order, para. 347.

<sup>4836</sup> Closing Order, paras 347, 338.

<sup>4837</sup> KHIEU Samphan Closing Brief, para. 1009, *citing* Closing Order, para. 1417.

<sup>4838</sup> Section 2: Preliminary Issues, para. 170.

<sup>4839</sup> KHIEU Samphan Closing Brief, para. 1011.

<sup>4840</sup> KHIEU Samphan Closing Brief, paras 1013-1016.

<sup>4841</sup> Closing Order, para. 1418.

that “the identification of people as targets for persecution, on the basis that anyone who disagreed with the CPK ideology was excluded, amounts to persecution on political grounds”.<sup>4842</sup> For these reasons and having considered the entirety of the charges of persecution on political grounds in the Closing Order as set out above, the KHIEU Samphan Defence’s submission is rejected.

1406. The NUON Chea Defence contends in this regard that the alleged victims of persecution were not members of a discernible political group.<sup>4843</sup> The Civil Party Lead Co-Lawyers submit that Civil Party evidence “indicates that the imposition of harsher living and working conditions upon New People amounted to persecutory acts against that group”.<sup>4844</sup> No other Party makes relevant submissions in this regard.

1407. The Chamber must satisfy itself that the targeted group of “real or perceived enemies of the CPK” referred to in the Closing Order was sufficiently discernible, such that it is able to establish that the requisite persecutory consequences occur for the group.<sup>4845</sup> The discernibility of this group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. In this regard, the Chamber has established that, compliant with the measures implemented at the sector level, *Ta Val* instructed company and battalions chiefs to identify people with “bad background”, LON Nol soldiers, “*Yvon*”, CIA agents, students, intellectuals and those who were considered to have engaged in activities against *Angkar* in their units.<sup>4846</sup> Pursuant to these instructions, battalion and company chiefs identified these individuals for arrest. Workers were also monitored to see how much work they produced<sup>4847</sup> and those who were considered not hard-working were placed in “case units”.<sup>4848</sup> Furthermore, some official DK documents made reference to the New People as a category of individuals who could not be trusted or who needed to be screened because of the presence of traitors among this group.<sup>4849</sup> Witnesses and Civil Parties

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<sup>4842</sup> Closing Order, para. 1417.

<sup>4843</sup> NUON Chea Closing Brief, para. 1124.

<sup>4844</sup> Civil Party Lead Co-Lawyers’ Closing Brief, para. 493.

<sup>4845</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 714.

<sup>4846</sup> *See above*, paras 1336, 1363.

<sup>4847</sup> *See above*, para. 1338.

<sup>4848</sup> *See above*, para. 1268.

<sup>4849</sup> Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 3, ERN (En) 00850975; Revolutionary Youth, October 1975, E3/729, p. 4, ERN (En) 00357903; General View of Sector 5, Northwest Zone, E3/1181, 27 June 1977, pp. 1-3, ERN (En) 00223175-00223177.

indicated that they knew the New People as those who were evacuated from the cities and that they could tell who the New People were by their accent.<sup>4850</sup> The Chamber is satisfied that the “real or perceived enemies of the CPK” was a clearly discernible group.

1408. The NUON Chea Defence submits that there is no evidence of discrimination at the Trapeang Thma Dam as all workers were subjected to the same conditions and any differentiation depended on peoples’ skills and abilities.<sup>4851</sup> The Co-Prosecutors contend that Khmer Rouge cadres at Trapeang Thma Dam singled out members of certain groups for additional mistreatment, including New People and the “*Yuon*”.<sup>4852</sup> No other Party makes relevant submissions in this regard.

1409. Contrary to the NUON Chea Defence’s submission, the Chamber has found numerous instances in which workers considered to be enemies of the CPK were subjected to harsher treatment and living conditions. New People were excluded from having any leadership positions which were instead attributed to Old People with the task of monitoring the New People in their units.<sup>4853</sup> Those who were considered not hard-working were put in a “case unit” where they were made to work harder compared to workers in normal units.<sup>4854</sup> Company and battalions chiefs were instructed to identify and kill those who were found to have a “bad background”, LON Nol soldiers, “*Yuon*”, CIA agents, students, intellectuals and those who were considered to have engaged in activities against *Angkar* in their units.<sup>4855</sup> As illustrated above, the Chamber is satisfied that some of the workers who were identified as enemies were killed pursuant to *Ta Val*’s orders.<sup>4856</sup> Based on the analysis above, the Chamber concludes that these acts were discriminatory in fact as it is clear that the consequences occurred because workers were perceived as part of a targeted group of enemies.

1410. The Chamber finds that the instruction to identify the categories of enemies indicated above, including those with a “bad background”, LON Nol soldiers, “*Yuon*”, CIA agents, students, intellectuals and those who were considered to have engaged in

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<sup>4850</sup> See above, para. 1262.

<sup>4851</sup> NUON Chea Closing Brief, para. 1124.

<sup>4852</sup> Co-Prosecutors’ Closing Brief, paras 1140-1141.

<sup>4853</sup> See above, para. 1345.

<sup>4854</sup> See above, para. 1268.

<sup>4855</sup> See above, paras 1362-1363.

<sup>4856</sup> See above, para. 1367.

activities against *Angkar*, the fact that the “17 April elements from Phnom Penh” were constantly “searched for and found” and the appointment of Old People to leadership positions and to monitor the behaviour of their subordinates, were carried out with a specific intent to discriminate against the targeted group.

1411. Acts committed against these groups of workers infringed upon and violated their fundamental rights pertaining to life,<sup>4857</sup> personal dignity,<sup>4858</sup> liberty and security<sup>4859</sup> and freedom from arbitrary or unlawful arrest<sup>4860</sup> as enshrined in customary international law.

1412. The acts charged as persecution include acts found to amount to independent crimes against humanity (including murders and other inhumane acts through attacks against human dignity) as well as acts which, on their own, do not necessarily amount to crimes (in particular, being punished for not achieving the work quota, being subjected to monitoring by unit chiefs). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution on political grounds.

1413. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of the crime are established. Accordingly, it finds that the crime against humanity of persecution on political grounds is established at the Trapeang Thma Dam.

#### 11.1.12.4. Other inhumane acts through attacks against human dignity

1414. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity on the basis of the serious mental and physical suffering and injury as well as the serious attacks on human dignity inflicted by the CPK authorities on victims by depriving the civilian population of adequate food, shelter, medical assistance and minimum sanitary conditions at the

<sup>4857</sup> As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(a); Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 6; ECHR, Art. 2; ACHPR, Art. 4; ACHR, Art. 4.

<sup>4858</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHPR, Art. 5; ACHR, Arts 5-6. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>4859</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7.

<sup>4860</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7(3).

Trapeang Thma Dam.<sup>4861</sup>

1415. The Chamber has established that the following conditions were imposed on the workers at the Trapeang Thma Dam: workers were provided with insufficient food for the amount of work they had to perform,<sup>4862</sup> with some witnesses indicating that they were given gruel or porridge.<sup>4863</sup> They did not have access to clean drinking water.<sup>4864</sup> Workers slept in communal halls without beds or pillows and did not get enough sleep.<sup>4865</sup> Workers did not have access to proper sanitation facilities and the hygienic conditions were inadequate.<sup>4866</sup> They were made to work against their will.<sup>4867</sup> They had to work for very long hours,<sup>4868</sup> were not allowed to have any rest days<sup>4869</sup> and were required to work regardless of the weather conditions.<sup>4870</sup>

1416. The Chamber is satisfied that these conditions caused serious mental and physical suffering for the workers at the construction site. It has established that the working conditions affected the workers physically and mentally, with some witnesses testifying that at the construction site they were treated like animals.<sup>4871</sup> Workers were constantly afraid of being killed for any mistake they may have made or for any accusations made against them.<sup>4872</sup> They were threatened with being killed should they disobey instructions.<sup>4873</sup> Some executions were carried out in public to terrify the workers.<sup>4874</sup> Recurrent disappearances of workers at the worksite created a general climate of fear which affected the workers mentally.<sup>4875</sup> Workers developed a number of diseases as a result of the conditions at the worksite, and were very skinny and pale.<sup>4876</sup> Medicines provided to the workers were ineffective.<sup>4877</sup>

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<sup>4861</sup> Closing Order, para. 1435.

<sup>4862</sup> See above, para. 1301.

<sup>4863</sup> See above, para. 1303.

<sup>4864</sup> See above, para. 1298.

<sup>4865</sup> See above, paras 1308-1310.

<sup>4866</sup> See above, paras 1327-1328.

<sup>4867</sup> See above, para. 1334.

<sup>4868</sup> See above, paras 1278-1280.

<sup>4869</sup> See above, para. 1281.

<sup>4870</sup> See above, para. 1270.

<sup>4871</sup> See above, para. 1271.

<sup>4872</sup> See above, para. 1331.

<sup>4873</sup> See above, para. 1332.

<sup>4874</sup> See above, para. 1372.

<sup>4875</sup> See above, para. 1354.

<sup>4876</sup> See above, para. 1320.

<sup>4877</sup> See above, para. 1322.



1417. The NUON Chea Defence submits that the gravity assessment to be made in respect of the crime of other inhumane acts through attacks against human dignity must take into account the context in which the crimes occurred.<sup>4878</sup> It contends that, “given the dire circumstances that Cambodia was in at the time”, the working and living conditions alleged to constitute attacks against human dignity are not of a comparable gravity to other crimes against humanity.<sup>4879</sup> No other Party makes relevant submissions in this regard.

1418. The Chamber recalls that the gravity assessment may take context into consideration.<sup>4880</sup> In this case, the Chamber has established that conditions in Cambodia during the DK period were difficult due to years of civil war and the damaging US bombing campaign.<sup>4881</sup> However, even if resources including food and medical assistance might have been scarce at the worksite and in the entire country, it was within the power of the site authorities to take measures to alleviate the impact of the scarcity of resources and not impose on the population extremely harsh working and living conditions. On the contrary, instead of adapting the work schedule or improving safety and living conditions, the authorities deliberately continued subjecting the workers to working and living conditions that caused severe mental or physical suffering or injury despite being aware of their impact on the workers.<sup>4882</sup>

1419. The Chamber finds that this constituted a serious attack on the human dignity of the workers. The evidence shows the serious and lasting impact of the working and living conditions on the victims and the scale on which these affected the population. In light of the above, the Chamber is satisfied that these acts, considered holistically, are of similar gravity to the enumerated crimes against humanity, and accordingly rejects the NUON Chea Defence’s submission in this respect. The Chamber is satisfied that the *actus reus* of the crime is therefore established.

1420. The prolonged duration of the imposition of these conditions on the workers, and particularly their continuation when the results of these conditions had already

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<sup>4878</sup> NUON Chea Closing Brief, para. 1125.

<sup>4879</sup> NUON Chea Closing Brief, para. 1125.

<sup>4880</sup> Section 9.1.8.2: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Attacks Against Human Dignity, para. 735.

<sup>4881</sup> Section 3: Historical Background, paras 229-230.

<sup>4882</sup> See above, para. 1286.

become evident, shows that they were imposed intentionally. The Chamber is satisfied that the *mens rea* of the crime is also established.

1421. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at the Trapeang Thma Dam.

11.1.12.5. *Other inhumane acts through conduct characterised as enforced disappearances*

1422. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances in respect of the great suffering experienced by victims because of the arrest, detention or abduction of loved ones and others in conditions that placed them outside the protection of the law and the subsequent refusal to provide information on their whereabouts.<sup>4883</sup> With respect to Trapeang Thma Dam in particular, the Closing Order charges that some workers, especially New People, were arrested by CPK cadres for “re-education meetings” and subsequently disappeared.<sup>4884</sup>

1423. The NUON Chea Defence submits that “the fact that certain workers were no longer seen at their previous workplace does not establish beyond reasonable doubt that enforced ‘disappearances’ or arbitrary arrests occurred”.<sup>4885</sup> In the NUON Chea Defence’s contention, workers at the Trapeang Thma Dam were rotated or reassigned to other sites, which may explain why some people were not seen again at their previous workplace.<sup>4886</sup> The Co-Prosecutors submit that “[w]orkers simply vanished on a regular basis, without any explanation to their fellow workers of where they had been taken or why” and that “[t]hese unexplained disappearances caused terror in the other workers, who wondered whether they would be next”.<sup>4887</sup> The Civil Party Lead Co-Lawyers recall the evidence of the Civil Parties who described the disappearance of their unit chiefs or co-workers.<sup>4888</sup> The KHIEU Samphan Defence does not make any specific submission in this regard.

<sup>4883</sup> Closing Order, paras 1470-1478.

<sup>4884</sup> Closing Order, para. 346.

<sup>4885</sup> NUON Chea Closing Brief, para. 1109.

<sup>4886</sup> NUON Chea Closing Brief, para. 1109.

<sup>4887</sup> Co-Prosecutors’ Closing Brief, para. 1139.

<sup>4888</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 486-489.

1424. The Chamber has established that some workers vanished with no notice from the worksite and were never seen again by their co-workers.<sup>4889</sup> The Chamber has found that some workers were hospitalised and that some escaped.<sup>4890</sup> It recalls that mobile units could be deployed to work at different locations.<sup>4891</sup> However, the Chamber finds that these explanations do not account for the totality of the disappearances from the worksite. In this regard, the Chamber notes the particular context of these disappearances, including the fact that some of those who disappeared had been accused of having an imaginary sickness or were former LON Nol soldiers and civil servants.<sup>4892</sup> The Chamber also notes the frequency and the large numbers of workers concerned.<sup>4893</sup> The Chamber has also established that company and battalion chiefs were instructed by *Ta Val* to monitor the members of their units to identify those who had a “bad background” or were considered enemies.<sup>4894</sup> The Chamber further recalls that a general policy to eliminate enemies existed during the period in which the Trapeang Thma Dam was being constructed.<sup>4895</sup> Furthermore, there is evidence of workers seen being arrested by soldiers or militiamen prior to disappearing and it is reasonable to believe under the circumstances that this may have happened also on some other occasions that were not witnessed by anyone who appeared before the Chamber in this case.<sup>4896</sup> In this regard the Chamber recalls that there is evidence that some arrests were made during night-time and were kept secret.<sup>4897</sup> Workers at the Dam were under constant control and surveillance by the worksite authorities.<sup>4898</sup> They had no freedom to move.<sup>4899</sup> The leadership at the Dam exercised powers attaching to the right of ownership over the workers.<sup>4900</sup> Workers had no access to a court system or to any mechanism where they could file a complaint concerning their treatment.<sup>4901</sup> Also, there is no evidence of any system of recording or registering the personal details of the persons who disappeared from the worksite that would have been accessible to the

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<sup>4889</sup> See above, para. 1354.

<sup>4890</sup> See above, para. 1354.

<sup>4891</sup> See above, para. 1354.

<sup>4892</sup> See above, para. 1354.

<sup>4893</sup> See above, para. 1354.

<sup>4894</sup> See above, para. 1336.

<sup>4895</sup> Section 16.3: Real or Perceived Enemies, paras 3857-3859.

<sup>4896</sup> See above, para. 1355.

<sup>4897</sup> See above, para. 1355.

<sup>4898</sup> See above, paras 1334, 1336-1339.

<sup>4899</sup> See above, paras 1331, 1334.

<sup>4900</sup> See above, para. 1400.

<sup>4901</sup> Section 5: Administrative Structures, paras 417-418.

public, or any other procedural protection during the time workers were assigned to the worksite.<sup>4902</sup> On the contrary, the key standard to be applied by CPK members was, as always during the DK period, to maintain secrecy. The authorities in charge of the Dam construction provided no information concerning the fate of workers who disappeared or they gave false or unverifiable information, stating for example that workers had been reassigned to another location.<sup>4903</sup>

1425. Having considered all of the above, the Chamber does not consider it to be a reasonable possibility that all of the workers who were not seen any more at the worksite were hospitalised, escaped, or were re-assigned to labour at different locations as members of mobile units. It therefore finds that the only reasonable inference that can be drawn from the evidence is that a significant number of workers who disappeared and were never seen again at the worksite were in fact deprived of their liberty by the worksite authorities and disappeared in the absence of any information provided to their co-workers or their family members as to their fate or whereabouts.

1426. Regarding arrests, the Chamber finds that militiamen or soldiers deprived the workers of their liberty.<sup>4904</sup> Workers were afraid to ask about their fate as they feared being arrested as well,<sup>4905</sup> and some workers were discouraged from inquiring about their colleagues' whereabouts.<sup>4906</sup> These arrests and subsequent disappearances created fear and anxiety in the workers who were left behind.

1427. The Chamber finds that the acts described above caused serious mental suffering to the victims, namely those who disappeared and those who were left behind at the worksite, and constituted a serious attack on their human dignity. These disappearances made workers at the construction site live in constant fear of being arrested and disappeared, and made them wonder when their day would come. The Chamber considers all of these acts holistically and in the context of the general atmosphere at the worksite and finds that the widespread and systematic nature of these acts and their lasting impact on the victims show that they are of similar gravity to the

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<sup>4902</sup> Section 5: Administrative Structures, paras 417-418.

<sup>4903</sup> *See above*, para. 1354.

<sup>4904</sup> Section 9.1.8.5: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Enforced Disappearances, para. 754.

<sup>4905</sup> *See above*, para. 1355.

<sup>4906</sup> *See above*, para. 1355.

other enumerated crimes against humanity. The Chamber is satisfied that the *actus reus* of other inhumane acts through conduct characterised as enforced disappearances is established.

1428. The systematic and organised nature of these arrests and disappearances and the fact that they occurred over a prolonged period of time demonstrate that these acts were performed intentionally. The Chamber is satisfied that the *mens rea* of the crime is established.

1429. Accordingly, the Chamber finds that the crimes against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at the Trapeang Thma Dam.

## **11.2. 1<sup>st</sup> January Dam Worksite**

### **11.2.1. *Closing Order***

1430. The Closing Order charges the Accused with the crimes against humanity of (i) murder; (ii) extermination; (iii) enslavement; (iv) persecution on political grounds; (v) persecution of the Cham on religious grounds; and other inhumane acts through (vi) attacks against human dignity, and conduct characterised as (vii) forced marriage and (viii) enforced disappearances, in connection with the construction of the 1<sup>st</sup> January Dam Worksite.<sup>4907</sup> According to the Closing Order, between late 1976 or early 1977 and early 1978, the 1<sup>st</sup> January Dam was built in Sectors 42 and 43 of the Central (old North) Zone, damming the Steung Chinit River to create a reservoir for the irrigation of rice fields in the area.<sup>4908</sup> Tens of thousands of people participated in the construction of the 1<sup>st</sup> January Dam, including New People, Cham, Vietnamese and Chinese.<sup>4909</sup> The charge of forced marriage in relation to the 1<sup>st</sup> January Dam Worksite will be addressed in the chapter on Regulation of Marriage.<sup>4910</sup>

<sup>4907</sup> Closing Order, paras 1373, 1377 (murder), 1381, 1387, 1389 (extermination), 1391-1392 (enslavement), 1416 (political persecution), 1420 (religious persecution), 1434, 1437 (other inhuman acts comprising attacks against human dignity), 1442 (other inhumane acts through conduct characterised as forced marriage), 1470 (other inhumane acts through conduct characterised as enforced disappearances).

<sup>4908</sup> Closing Order, paras 351-352.

<sup>4909</sup> Closing Order, para. 358, 360.

<sup>4910</sup> Section 14: Regulation of Marriage.

11.2.2. *Preliminary Issues*

1431. The KHIEU Samphan Defence raises several preliminary objections concerning the charges pertaining to the 1<sup>st</sup> January Dam Worksite.<sup>4911</sup> First, it submits that the charges of murder at this worksite are limited to killings that occurred at the worksite itself and exclude killings at other locations, including the Baray Choan Dek Pagoda. As facts concerning other locations were not contained in the Introductory Submission, the Co-Investigating Judges were not properly seised thereof, and the facts are therefore outside the scope of the trial.<sup>4912</sup> The KHIEU Samphan Defence further submits that charges of political persecution contained in the Closing Order are “illegal” because the Introductory Submission did not make any reference to discriminatory treatment or the categorisation of workers.<sup>4913</sup> Similarly, the Co-Investigating Judges were not seised of facts concerning religious persecution of the Cham because it was not mentioned in the Introductory Submission.<sup>4914</sup> Finally, it submits that facts supporting the charge of enforced disappearances were not contained in the Introductory Submission and are also outside the scope of the trial.<sup>4915</sup>

1432. The NUON Chea Defence submits that certain adduced evidence is outside the scope of charges in Case 002/02, including events related to the 6<sup>th</sup> January Dam or any canals connecting to the 1<sup>st</sup> January Dam.<sup>4916</sup> It also submits that any evidence about local villages, communes or other locations “unrelated to the construction of the 1<sup>st</sup> January Dam”, such as the Baray Choan Dek Pagoda, are outside the scope of the charges.<sup>4917</sup>

1433. The Co-Prosecutors submit that the Closing Order charges the Accused with the killing of persons taken from the 1<sup>st</sup> January Dam to the Baray Choan Dek Pagoda.<sup>4918</sup> The Lead Co-Lawyers made no submissions on this point.

1434. The Chamber recalls its ruling that the Closing Order’s reference to the Baray Choan Dek Pagoda in connection with the 1<sup>st</sup> January Dam together with specific

<sup>4911</sup> KHIEU Samphan Closing Brief, paras 1046-1074.

<sup>4912</sup> KHIEU Samphan Closing Brief, paras 1049-1055, 1079.

<sup>4913</sup> KHIEU Samphan Closing Brief, paras 1066.

<sup>4914</sup> KHIEU Samphan Closing Brief, paras 1069-1070.

<sup>4915</sup> KHIEU Samphan Closing Brief, paras 1072-1074, 1078.

<sup>4916</sup> NUON Chea Closing Brief, para. 1018.

<sup>4917</sup> NUON Chea Closing Brief, para. 1019.

<sup>4918</sup> T. 25 May 2015, E1/304.1, pp. 99-100, 105-106.

reference to this paragraph in the annex to the Case 002 First Severance Decision provided notice to the Accused that it formed part of Case 002/02.<sup>4919</sup> The Chamber further recalls its ruling that the 6<sup>th</sup> January Dam and the canal network of the 1<sup>st</sup> and 6<sup>th</sup> January Dams form part of the Closing Order, rejecting the KHIEU Samphan Defence's objections to the contrary.<sup>4920</sup> The Defence teams have provided no new arguments to justify revisiting these issues and the Chamber accordingly rejects their respective submissions in this regard. However, it notes that evidence was presented at trial of killings that occurred in villages which had supplied workers to the 1<sup>st</sup> January Dam.<sup>4921</sup> These villages cannot be considered as part of the Case 002/02 as they were not identified in the Closing Order and the Chamber therefore declines to make factual findings on such events.

1435. The Chamber rejects the KHIEU Samphan Defence's challenges to the inclusion of charges related to political persecution, religious persecution and enforced disappearances, recalling its prior ruling that "any request concerning the Trial Chamber's authority to deal with parts of the Closing Order which is raised after the expiry of the time limit for the filing of preliminary objections shall be considered untimely and denied".<sup>4922</sup>

1436. Finally, the NUON Chea Defence submits that the Closing Order lacks clarity, particularly in relation to any underlying factual allegations pertaining to the treatment

<sup>4919</sup> T. 25 May 2015, E1/304.1, pp. 95-96, 99-103, 107 (Judge Lavergne: "The objection made by the Defence teams is denied. The Chamber notes that in the annex to the severance decision regarding the 1<sup>st</sup> January Dam, a number of paragraphs are referred to, including paragraph 367 of the Closing Order which expressly refers to that site indicating that some witnesses witnessed arrests and heard that people working at the 1<sup>st</sup> January Dam Worksite were sent to those locations. So the Chamber is of the view that these questions are relevant and should be asked and the witness should answer them."); T. 30 July 2015, E1/326.1, pp. 60-61. *See also*, Closing Order, para. 367.

<sup>4920</sup> T. 30 July 2015, E1/326.1, pp. 38-40 ("The objection by the defence counsel is overruled as this fact is related to the 1<sup>st</sup> January Dam Worksite and is part of the Closing Order as indicated by the International Deputy Co-Prosecutor.")

<sup>4921</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 50, 53, 94 (SENG Sovida's parents and elder sisters were taken from their village and killed); HUN Sethany Supplementary Civil Party Application, E3/4790, pp. 5-6, ERN (En) 00940142-00940143; T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 76-77 (at other locations where she worked, such as Rolum Pnov, Kouk Mlu, Veal Suong and Kaoh Sor, people disappeared and she knew that some of these people were killed); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 31-32 (HUN Sethany's father was arrested in the village, taken to the Baray Chohan Dek Pagoda and killed); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 18-19, 21 (her younger brother later died); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 36-39 (HUN Sethany's mother and siblings were killed at Chamkar Andoung); T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 56-57; YEAN Lun Interview Record, E3/7322, p. 3, ERN (En) 00330719; T. 17 June 2015 (YEAN Lon), E1/318.1, p. 11 (YEAN Lon was ordered by the commune militia chief, Thlang, to arrest people named in a list who were taken to the commune office, and taken away to be killed).

<sup>4922</sup> Section 2: Preliminary Issues, para. 161.

of former Khmer Republic soldiers and officials.<sup>4923</sup> No other Party made relevant submissions on this issue. The Chamber notes that the Closing Order specifically finds that CPK authorities identified several groups as “enemies” based on their real or perceived political beliefs, including former Khmer Republic officials and “New People”.<sup>4924</sup>

1437. As regards the 1<sup>st</sup> January Dam, the Chamber notes that the Closing Order specifically found that people knew they would be arrested if they did anything wrong. It further found that workers disappeared, mostly at night. The Closing Order found that many of those who disappeared had perceived links to the former Khmer Republic regime.<sup>4925</sup> The Chamber is therefore satisfied that the Closing Order clearly sets out a number of findings with respect to the treatment of former Khmer Republic soldiers and officials, such that related charges are properly before the Chamber. The NUON Chea Defence’s submission is therefore rejected.

### 11.2.3. *General Considerations on Evidence*

1438. The Chamber heard seven witnesses and five Civil Parties on the topic of the 1<sup>st</sup> January Dam.<sup>4926</sup> Six other witnesses were heard during Case 002/01 or during other trial topics who also provided information on the 1<sup>st</sup> January Dam Worksite and/or Central (old North) Zone administrative and communication structures.<sup>4927</sup> During the judicial investigation, OCIJ investigators interviewed several witnesses who did not appear in court but whose statements were admitted.<sup>4928</sup> The Chamber will rely on this evidence in accordance with the principles set out in the section on preliminary issues for the purposes of corroboration.<sup>4929</sup>

1439. The Chamber first notes the testimony of Witness SAUT Toeung, who was

<sup>4923</sup> NUON Chea Closing Brief, paras 928-931; T. 19 June 2017 (Closing Statements), E1/524.1, p. 47.

<sup>4924</sup> Closing Order, para. 1417.

<sup>4925</sup> Closing Order, para. 365.

<sup>4926</sup> Witnesses OR Ho, PECH Sokha, MEAS Laihour, UTH Seng, YEAN Lon, OM Chy, SOU Soeurn and Civil Parties HUN Sethany, UN Rann, SEANG Sovida, NUON Narom and CHAO Lang.

<sup>4927</sup> Witnesses PECH Chim, BAN Siek, PRAK Yut, SUON Kanil, KAING Guek Eav *alias* Duch, and SAUT Toeung.

<sup>4928</sup> See e.g., VAN Sorn Interview Record, E3/9350, 19 November 2008; CHUOP Non Interview Record, E3/9349, 17 November 2008; POUK Pon Interview Record, E3/5247, 7 October 2008; CHHUN Sakan Interview Record, E3/7763, 21 April 2009, CHHUN Sakan Interview Record, E3/7770, 7 October 2008; CHOEU Saing Interview Record, E3/7785, 21 November 2008; VANN Theng Interview Record, E3/5249, 8 October 2008.

<sup>4929</sup> Section 2: Preliminary Issues, paras 69-72.



NUON Chea's bodyguard and messenger from the middle of 1975 until 1978.<sup>4930</sup> He testified that he provided security outside the locations where the Standing and Central Committees met.<sup>4931</sup> When KOY Thuon was the Central (old North) Zone Secretary, SAUT Toeung observed him entering meetings with POL Pot, NUON Chea, SON Sen, KHIEU Samphan, IENG Sary, VORN Vet at K-3, *Angkar*'s office near Phsar Thmei in Phnom Penh.<sup>4932</sup> SAUT Toeung's testimony contained some internal inconsistencies as well as some inconsistencies with his prior statements.<sup>4933</sup> Further, he was close to the Khmer Rouge senior leadership and may have had an incentive to minimise his own responsibility.<sup>4934</sup> However, SAUT Toeung explained that he had not told the full truth in his first Written Record of Interview because he had been afraid and that after being informed about the law and procedures he decided to tell the truth.<sup>4935</sup> Considering this background, the Chamber approaches his testimony with due caution.

1440. The Chamber also relies on the testimony of Witness BAN Seak *alias* HANG Phos, who was appointed Deputy Secretary of Chamkar Leu district in Sector 42 around February or March 1977.<sup>4936</sup> Although BAN Seak sought to limit his personal responsibility for his involvement in the treatment of the Cham, the Chamber has found that he was otherwise cooperative and forthcoming, including when providing evidence concerning administration, structure and hierarchy, and therefore considers him to be a credible witness on these topics.<sup>4937</sup>

1441. The Chamber further notes that among those who were enlisted by KE Pauk, the Central (old North) Zone Secretary, in the construction of the 1<sup>st</sup> January Dam were Witness PECH Sokha, a member of the technical group overseeing the work on the Dam, IENG Chham, KE Pauk's messenger and later chief of public works, and KE Pich Vannak, KE Pauk's son, all of whom trained together at the Russei Keo technical school

<sup>4930</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 43-44; T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 49.

<sup>4931</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 40.

<sup>4932</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 47, 51-52.

<sup>4933</sup> *See e.g.*, T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 27, 29; T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 64-65 (regarding whether he received any military training), 78 (regarding his whereabouts on 17 April 1975); T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 16, 19-22; SAUT Toeung Interview Record E3/423, 2 December 2009, p. 16, ERN (En) 00041602 (regarding whether he had conversations with Duch); T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 72-73 (stating that "*Angkar*" referred to POL Pot and NUON Chea, but that these two men were not appropriately identified as "senior leaders").

<sup>4934</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 43-44.

<sup>4935</sup> T. 19 April 2012 (SAUT Toeung), E1/63.1, p. 41.

<sup>4936</sup> T. 5 October 2015 (BAN Seak), E1/353.1, p. 20, 34.

<sup>4937</sup> *See below*, Section 11.2.22: Treatment of Cham.

in Phnom Penh.<sup>4938</sup> PECH Sokha testified in Case 002/02. IENG Chham and KE Pich Vannak each provided statements to OCIJ investigators but died before trial. While it was not possible to hear in Court the authors of these last statements, the Chamber, as indicated above, will rely on this evidence in accordance with the principles set out in the section on preliminary issues. Further, in order to assess the probative value of these two WRIs, the Chamber considers that, the following factors are relevant. IENG Chham was identified by several witnesses as KE Pauk's messenger and the chief of public works responsible for the plans and construction of the 1<sup>st</sup> January Dam.<sup>4939</sup> As such, he was in a position to have significant information about the construction of the 1<sup>st</sup> January Dam and the related administrative structures, although he appears to minimise his own responsibility. Where sufficiently corroborated, the Chamber therefore relies on his WRI.

1442. KE Pich Vannak, son of KE Pauk and of Witness SOU Soeurn, the Chamkar Leu District Secretary in Sector 42, also provided a WRI to the Co-Investigating Judges prior to his death.<sup>4940</sup> He worked as KE Pauk's driver and sometime bodyguard, providing significant information concerning administrative structures and purges within the Central Zone.<sup>4941</sup>

1443. The Chamber did not have the opportunity to hear KE Pauk's testimony due to

<sup>4938</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 72-74; T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 20-21 (SOU Soeurn identified Chham as a man who worked closely with her husband, KE Pauk, throughout the Khmer Rouge regime. Chham and KE Pauk were together all of the time); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 5, ERN (En) 00346149; IENG Chham Interview Record, E3/5513, 8 November 2009, p. 7, ERN (En) 00410234; T. 5 October 2015 (BAN Seak), E1/353.1, p. 22 (Chham, who was KE Pauk's messenger, was the chief of public works in the District, involved in construction, such as building dams); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150 (IENG Chham was the commander of the group and chairman of the public works office while PECH Sokha was a technician).

<sup>4939</sup> T. 5 October 2015 (BAN Seak), E1/353.1, p. 22; T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 63; T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 72-73; IENG Chham Interview Record, E3/5513, 8 November 2009, pp. 9, 12-14, ERN (En) 00410236, 00410240-00410241 (IENG Chham explained that after the head of public works at the dam, Sao, used insufficient cement on a portion of the spillway in order to conserve materials, a portion of the Dam collapsed, and Sao disappeared. KE Pauk then appointed IENG Chham to be in charge of the continuation of construction of the Dam (though not the connecting canals)).

<sup>4940</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, ERN (En) 00346146; T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 10-11.

<sup>4941</sup> See e.g., KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 12, ERN (En) 00346156 (discussing a directive issued by M-870 to release medium and light offenders from detention [CPK Circular, E3/763, 20 June 1978, ERN (En) 00275217-00275220]). The Chamber further notes that the Parties often rely upon this Interview Record in their Closing Briefs. See e.g., NUON Chea Closing Brief, paras 294, 298, 376, 409, 1033, 1044, 1103; KHIEU Samphan Closing Brief, paras 687, 816, 1172, 1711, 1849; Co-Prosecutors' Closing Brief, paras 303, 341-342, 367-368, 386, 408, 479, 1151.

his death in 2002,<sup>4942</sup> it relies however upon his autobiography.<sup>4943</sup> Stephen HEDER testified in Case 002/01 that this document was given by KHEM Ngun to a number of people, including a journalist who in turn provided it to him. Mr. HEDER stated that to his knowledge either KE Pauk wrote himself his autobiography, or it was taken down by KHEM Ngun as a result of an interview he did with KE Pauk.<sup>4944</sup> KHEM Ngun was a CPK soldier, 3<sup>rd</sup> Division (later Division 164), who became *Ta Mok*'s chief of staff after the DK period, until KHEM's defection in 1998 or 1999.<sup>4945</sup> The Chamber has no indication that KE Pauk was ever detained or under duress at any time, including when the autobiography was written. Therefore, there is no reason to consider that this document may have been tainted by any form of coercion. To the contrary, the recitation of events was given by one Khmer Rouge cadre to another in apparent defence of his actions during the DK period. Taking into consideration the potential for self-serving assertions in the autography and the uncertainty surrounding its provenance, the Chamber approaches the document with due caution and will rely on it only for corroboration.

1444. Finally, the Chamber notes that many of the witnesses who testified were in positions of authority at the 1<sup>st</sup> January Dam and had an incentive to minimise their own culpability for alleged crimes at the site. Notably, Witness OR Ho, who was the Prey Srangae village chief, supervised 100 people in a work unit at the 1<sup>st</sup> January Dam.<sup>4946</sup> PECH Sokha was also in privileged position at the 1<sup>st</sup> January Dam Worksite as part of the technical team guiding its construction.<sup>4947</sup> Witness YEAN Lon admitted that he was a militiaman in Kang Sau village and was identified by UTH Seng as riding

<sup>4942</sup> Book by N. Dunlop: *The Lost Executioner*, E3/2817, p. 294, ERN (En) 00370236; Book by Ea M.-T.: *The Chain of Terror: The Khmer Rouge Southwest Zone Security System*, E3/2121, p. vii, ERN (En) 00416311; Book by B. Kiernan: *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. xxii, ERN (En) 01149990.

<sup>4943</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711.

<sup>4944</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 54-55, In his study "Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes" Stephen HEDER relied on KE Pauk's autobiography which was entitled "History of the Struggle". See Report by S. HEDER: *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective*, E3/4527, p. 11, ERN (En) 00661465.

<sup>4945</sup> Top Khmer Rouge Leaders to Defect, E3/3819, 25 December 1998, ERN (En) 00132427; U.S. Defence Department Cable, E3/5700, ERN (En) 00387264-00387266; The Chamber notes that it has admitted and found to be reliable, an interview of NUON Chea also conducted by KHEM Ngun. See also, Section 3: Historical Background, para. 193 (NUON Chea Interview by KHEM Ngun, E3/3, p. 13, ERN (En) 00184664).

<sup>4946</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 7-8, 19-21, 29, 32; OR Ho Interview Record, E3/5255, 18 November 2008, p. 3, ERN (En) 00250044.

<sup>4947</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 81, 91.

his bicycle around the village with knives and swords covered in dried blood.<sup>4948</sup> YEAN Lon denied being a militiaman at the 1<sup>st</sup> January Dam, but agreed that he had supervised 50 workers there.<sup>4949</sup> The Chamber finds that OR Ho and YEAN Lon minimised their own role in the events at the 1<sup>st</sup> January Dam and takes this into consideration in assessing their evidence. Similar considerations apply to the testimonies of PECH Sokha and SOU Soeurn, which are noted in the credibility assessments below.

#### 11.2.4. *Location and Establishment*

1445. OCIJ investigators determined that the original 1<sup>st</sup> January Dam on the Steung Chinit River was made of compressed earth construction forming an embankment approximately 66 kilometres long, 7 metres wide at the top and 20 metres wide at the base with a mean height of two to three metres with a canal 20 metres wide running along the entire length of the dam.<sup>4950</sup> The Dam is currently located in Kampong Thom province and extends over current-day Baray and Santuk districts, which at the time of the construction were respectively located in Sectors 42 and 43 in the Central (old North) Zone.<sup>4951</sup> The closest town is Kampong Thma which is approximately 130 km from Phnom Penh along National Road Number 6.<sup>4952</sup> The Chamber also has before it video of construction of the 1<sup>st</sup> January Dam as well as the completed spillway likely recorded during the visit of China's Deputy Premier and member of the Politburo, CHEN Yonggui, to commemorate the inauguration of the dam in December 1977.<sup>4953</sup>

1446. Testimonial evidence before the Chamber confirmed the size and location of the Dam. Witness OR Ho, who was Prey Srangae village chief, in Ballang commune, Baray

<sup>4948</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 52; T. 17 June 2015 (YEAN Lon), E1/318.1, p. 18; T. 3 June 2015 (UTH Seng), E1/309.1, p. 12.

<sup>4949</sup> T. 17 June 2015 (YEAN Lon), E1/318.1, p. 18, 23; YEAN Lon Interview Record, E3/7322, 23 April 2009, ERN (En) 00330719.

<sup>4950</sup> Site Identification Report. E3/8026, 22 February 2009, p. 2, ERN (En) 00290634; UT Seng Interview Record, E3/8303 13 January 2007, p. 2, ERN (En) 00491747.

<sup>4951</sup> Site Identification Report. E3/8026, 22 February 2009, p. 2, ERN (En) 00290634; UT Seng Interview Record, E3/5267, 14 January 2009, p. 5, ERN (En) 00282354 (noting 1<sup>st</sup> January Dam was in Boeng Lovea and Kampong Thma [communes], Santuk and Baray districts); UT Seng Interview Record, E3/8303 13 January 2007, p. 2, ERN (En) 00491747 (noting it was built in Kampong Thma [commune]).

<sup>4952</sup> Site Identification Report, E3/8026, 22 February 2009, p. 2, ERN (En) 00290634.

<sup>4953</sup> Inauguration of a new dam and damage from the fighting between the Khmers Rouges and the Vietnamese, E3/3049R, ERN V00422553, 00:00:36-00:02:06; T. 26 May 2015 (MEAS Laihour), pp. 5-10 (identifying the main spillway of the 1<sup>st</sup> January Dam as well as the worksite). *See below*, para. 1496. *See also*, Khmers Rouges: Collective Labour at the Dam Building Sites, E3/3014R, ERN V00422520, 00:00:00-00:00:34, 00:02:06-00:02:23; T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 61-62 (identifying 1<sup>st</sup> January Dam Worksite where she had worked during the regime).

district, Kampong Thom province (within Sector 42) from 1975,<sup>4954</sup> testified that the 1<sup>st</sup> January Dam started from Prey Srangae village and continued about 3 kilometres until it joined the 6<sup>th</sup> January Dam, with the total distance of both dams being 10 kilometres.<sup>4955</sup> PECH Sokha testified that, when the entire length of the canal systems was also considered, the combined length of the 1<sup>st</sup> and 6<sup>th</sup> January Dams and canals was 60 kilometres.<sup>4956</sup> The Chamber finds that all parts of this structure were related to the 1<sup>st</sup> January Dam Worksite and considers evidence pertaining to all of it.<sup>4957</sup>

1447. During construction, small logs and plants closely laid were used for reinforcement before leaves and earth were deposited into the structure to complete the Dam.<sup>4958</sup> Based on the consistent evidence of IENG Chham and PECH Sokha, the Chamber finds that the construction of the 1<sup>st</sup> January Dam began in late 1976 or early 1977 and continued until the beginning of 1978.<sup>4959</sup> There was a temporary break in construction work, at least for some workers, during the rainy season around June 1977.<sup>4960</sup> Although PECH Sokha testified that the work was never fully completed, both he and IENG Chham stated that the Dam was put into use starting at the end of 1977 or

<sup>4954</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 6, 23, 34; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 26.

<sup>4955</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 86; T. 20 May 2015 (OR Ho), E1/302.1, p. 51.

<sup>4956</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 80; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 51-52.

<sup>4957</sup> T. 30 July 2015, E1/326.1, pp. 38-40 (“The objection by the defence counsel is overruled as this fact is related to the 1<sup>st</sup> January Dam Worksite and is part of the Closing Order as indicated by the International Deputy Co-Prosecutor.”).

<sup>4958</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 14.

<sup>4959</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 29-30, 84; OR Ho Interview Record, E3/5255, 18 November 2008, p. 3, ERN (En) 00250044 (it was named the 1<sup>st</sup> January Dam because it was inaugurated by POL Pot on that day in 1977 although construction actually began in October 1976); IENG Chham Interview Record, E3/5513, 8 November 2009, p. 9, ERN (En) 00410236 (KE Pauk provided a work plan to Sao (Baray District Secretary) and IENG Chham which was a simple picture, not drawn to technical specifications); T. 21 May 2015 (PECH Sokha), E1/303.1, p. 13 (PECH Sokha stated that the Dam was constructed in 1977, but was never fully completed); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 8, 10, 13 (SEANG Sovida was transferred to the 1<sup>st</sup> January Dam around January 1977); T. 20 May 2015 (PECH Sokha), E1/302.1, p. 64 (PECH Sokha worked at the 1<sup>st</sup> January for about one year starting in 1977); T. 26 May 2015 (HUN Sethany), E1/305.1, p. 97 (HUN Sethany testified that she commenced working at the 1<sup>st</sup> January Dam in December 1976 and returned to the village in around June 1977 when people were already planting rice); T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 8, 13, 82 (She arrived there in late January [1977], when workers were already present, and stayed at the worksite for three months, returning around Khmer New Year, when work remained to be completed); T. 2 June 2015 (UTH Seng), E1/308.1, pp. 99-100 (in late 1976, he was assigned to a youth unit in Kampong Thma to build a canal at Stueng Chinit and later the 1<sup>st</sup> January Dam).

<sup>4960</sup> IENG Chham Interview Record, E3/5513, 8 November 2009, p. 9, ERN (En) 00410236 (according to IENG Chham, the 1<sup>st</sup> January Dam Worksite opened in late 1976 and early 1977 with an order to finish the lower foundation before the 1977 rainy season); T. 28 May 2015 (UN Rann), E1/307.1, pp. 15-16, 75-76 (during the wet season, UN Rann was sent to Ballangk to plough the fields. Others were assigned to carry salt and minerals at the Kampong Thom stream. She returned to the Dam site when it was the dry season.).

the beginning of 1978.<sup>4961</sup> In 1978, work continued on the 6<sup>th</sup> January Dam, which connected to the 1<sup>st</sup> January Dam, as well as on canals connected to the dams which fed water to the rice fields in Baray and Santuck districts, in Sectors 42 and 43, respectively.<sup>4962</sup>

#### 11.2.5. *Purpose of the 1<sup>st</sup> January Dam*

1448. The primary purpose of the 1<sup>st</sup> January Dam was to provide agricultural irrigation to nearby rice fields and thus help attain the three-tonnes-per-hectare crop yield set by the Party.<sup>4963</sup> This purpose was understood by district secretaries and work unit supervisors at the 1<sup>st</sup> January Dam, although it may not have been effectively communicated to the workers themselves.<sup>4964</sup>

<sup>4961</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 13; T. 19 May 2015 (OR Ho), E1/301.1, p. 34 (the Dam was 90 percent completed at the end of the DK regime); IENG Chham Interview Record, E3/5513, ERN (En) 00410240.

<sup>4962</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 80-81; T. 20 May 2015 (OR Ho), E1/302.1, pp. 48-49, 52-53 (OR Ho testified that the 1<sup>st</sup> January Dam started from Prey Srangae, his village, and continued until it joined the 6<sup>th</sup> January Dam with the total distance of both dams being 10 kilometres); T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 79-80; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 51-52 (PECH Sokha testified that the combined length of the 1<sup>st</sup> and 6<sup>th</sup> January Dams was 60 kilometres, including the canal system); T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 81-82 (MEAS Laihour testified that she started working on the 6<sup>th</sup> January Dam towards the end of the dry season [April/May 1978] and continued working on it through the rainy season); T. 20 May 2015 (OR Ho), E1/302.1, pp. 46-47 (people from Sector 42 or Chamkar Leu District worked on other sections of the canal or dam and people from Sector 43 worked on the 6<sup>th</sup> January Dam construction site); T. 30 July 2015 (OM Chy), E1/326.1, pp. 36-37, 97 (OM Chy was chief of a mobile unit assigned in 1978 to build a canal connecting to the 1<sup>st</sup> January Dam); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 37-38 (The 1<sup>st</sup> January Dam served to provide water to Santuk and Baray districts and Kampong Thma Subdistrict in Kampong Thom province); T. 19 May 2015 (OR Ho), E1/301.1, p. 79; T. 20 May 2015 (OR Ho), E1/302.1, p. 32 (in January 1978, OR Ho returned to the worksite to complete a canal before June 1978); *Irrigation Network Expands Despite 'Invasion'* (in FBIS collection), E3/1361, 6 April 1978, ERN (En) 00168789 (“In the central region our cooperative peasants have been concentrating on digging the canal from the ‘1 January’ reservoir dam on the Chinit River to the Tang Krasang River to bring water to the Tang Krasang for year-round irrigation of the nearby ricefields. They have built water gates on the Tang Krasang River in order to impound water for the irrigation of 10,000 hectares of riceland in Santuk district.”).

<sup>4963</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 79; T. 20 May 2015 (OR Ho), E1/302.1, pp. 43-44, 49; T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 63-64; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 54-55; T. 30 July 2015 (OM Chy), E1/326.1, p. 54. *See also*, Section 10.1.7.1: Tram Kak Cooperatives: Economic Plans and Production Targets.

<sup>4964</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 29; T. 20 May 2015 (OR Ho), E1/302.1, pp. 36-37, 43-44 (OR Ho stated that the reason *Angkar* built the Dam was to provide water for farming, although some people said it was to make electricity); T. 20 May 2015 (PECH Sokha), E1/302.1, p. 79 (PECH Sokha testified that the primary purpose of the 1<sup>st</sup> January Dam was for agricultural irrigation to nearby rice fields); T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 63-64; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 54-55 (SOU Soeurn said that the 1<sup>st</sup> January Dam was organised for the purpose of blocking water for irrigation by the people living in the area through to Baray district, to improve people’s livelihood); T. 30 July 2015 (OM Chy), E1/326.1, p. 54 (OM Chy stated that the policy of the Khmer Rouge was that the 1<sup>st</sup> January Dam and its canals were constructed to gain access to water to irrigate rice fields and to obtain three rice harvests per year); T. 3 June 2015 (UTH Seng), E1/309.1, p. 64 (the unit chiefs did not explain the reason for the construction of the dam).

1449. POL Pot explained the rationale for the policy of constructing dams in a 27 September 1977 speech:

In the field of agriculture, our Party has focused on solving the key problem of water conservation in order to maximize rice production, which is the fundamental staple food. In the past dry season of 1977, the people of our cooperatives built many large water reservoirs in every village and region [...] In total, in 1977 our cooperative peasants built all sorts of water projects, which solved the water problem during all seasons, dry as well as rainy, for 400,000 hectares of farmland.<sup>4965</sup>

1450. The Dam was eventually put to use and permitted the farming of rice in the dry season as well as the wet season.<sup>4966</sup> However, much of this rice was shipped outside of the workers' communes even when there was a shortage of food. Witness OM Chy, a commune level work unit chief who supervised 500 workers at a canal worksite connected to the 1<sup>st</sup> January Dam, testified that after the harvest in 1978 trucks came to take the harvested rice, but he did not know where they went.<sup>4967</sup> He was told that it was in order to help the military.<sup>4968</sup> BAN Seak testified that both prior to and after the internal purges in the Central Zone (in 1977), people did not have rice to eat despite the extra water coming from the canals and that he did not know where the rice yield had been sent.<sup>4969</sup> Witness SOU Soeurn testified, based upon her membership in the Chamkar Leu District Committee throughout the DK period,<sup>4970</sup> that she had no idea where the rice produced in the district was sent.<sup>4971</sup> However, she noted that a certain amount of rice was sent to the sector and that commune chiefs told her that some of the rice was for the cooperatives, some was for feeding soldiers and none was for export abroad.<sup>4972</sup>

1451. Witness HUN Sethany testified that when she returned to her village in the rainy season of 1977,<sup>4973</sup> from August through November, there was a food shortage in her

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<sup>4965</sup> Revolutionary Flag, E3/11, September 1977, pp. 49-50, ERN (En) 00486260-00486261; *Text of POL Pot Speech at 27 September KCP Anniversary Meeting* (in FBIS collection), E3/290, ERN (En) 00168650.

<sup>4966</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 58-59; T. 3 June 2015 (UTH Seng), E1/309.1, pp. 37-39, 70-71; T. 20 May 2015 (OR Ho), E1/302.1, pp. 36, 50-51.

<sup>4967</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 36, 55.

<sup>4968</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 55.

<sup>4969</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 78-79. *See below*, paras 1586-1595.

<sup>4970</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 18-19.

<sup>4971</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 95-96.

<sup>4972</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 97-98.

<sup>4973</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 97.

village and they ate only gruel with morning glory soup.<sup>4974</sup> It was said that food supplies were being given to militiamen and soldiers on the front line.<sup>4975</sup> Base People blamed New People for the shortage of food.<sup>4976</sup> After the harvest, HUN Sethany saw that rice was transported to the commune warehouse.<sup>4977</sup>

1452. While the situation may have varied over the years, the food shortages described above contrast significantly from the situation presented in some official public statements of CPK leaders. For example, on 16 January 1977, during a mass meeting in Phnom Penh celebrating the ninth anniversary of the Kampuchean Revolutionary Army, NUON Chea proudly announced that:

[E]ach Cambodian has 312 kilograms of rice to eat per year. This is a very large quantity of rice. The living conditions of our people have gradually improved. In other words, our people have enough to eat. We have reserved two bushels of paddy for each person in 1977. At the same time we have a surplus of more than 150.000 tons of rice for export. This means that we have totally achieved the 1976 plan.<sup>4978</sup>

1453. In April 1978, POL Pot declared that the water issue had been solved, allowing rice yield quotas to be met.<sup>4979</sup> Setting forth the CPK vision of modernising agriculture in Democratic Kampuchea in ten to fifteen years by increasing rice yields to eight tons per hectare,<sup>4980</sup> he stated, “If in terms of rice yields we can achieve the food supply plans and *we could export more than last year*, this will lead to our strongest

<sup>4974</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 70-71.

<sup>4975</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 70. *See also*, Revolutionary Flag, E3/11, September 1977, ERN (En) 00486256.

<sup>4976</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 70.

<sup>4977</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 71-72.

<sup>4978</sup> *NUON Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 19 January 1977, ERN (En) 00168469. Similarly, the September 1977 Revolutionary Flag reported that “[d]uring 1976, we collected about 80% of the rice crop, in accordance with our plan. This provided us with enough food for our people, an average of 312 kilograms per capita, and also enabled us in 1977 to begin exporting tens of thousands of tons of rice, in order to accumulate capital for our national defence and construction efforts.”. *See* Revolutionary Flag, E3/11, September 1977, ERN (En) 00486256. *See also*, Section 10.1.7.3: *Tram Kak Cooperatives: Rations and Communal Eating*.

<sup>4979</sup> Revolutionary Flag, E3/4604, April 1978, p. 15, ERN (En) 00519843 (“[O]n the agriculture issue, on rice paddies and rice this year, we nearly 100 percent achieved [yields of] three tons and six tons. The reason we achieved this is [that] we sorted out the water issue according to the plans and exceeded the plans. Farming rice requires water, and growing other crops requires water. We were able to fundamentally resolve water during this past year following our plans. [...] We built many reservoirs from 100 to 200 million cubic meters: Zone units built them. Every Zone built reservoirs. As for intermediate ones of 20-30-40-60 million cubic meters, we built many of them. As for small reservoirs, we built many. We also build many dams along tributaries. [...] Two were built on the Steung Chinit.”).

<sup>4980</sup> Revolutionary Flag, E3/4604, April 1978, p. 16, ERN (En) 00519844.



influence”.<sup>4981</sup>

1454. The Chamber finds that the 1<sup>st</sup> January Dam was constructed to permit the irrigation of surrounding rice fields in an effort to boost rice production and to develop its exportation. While it was also part of a plan aimed at improving living conditions of local population, evidence shows that food shortages were experienced.<sup>4982</sup>

#### 11.2.6. *Administrative Structures – Central (old North) Zone and (new) North Zone*

1455. Prior to 17 April 1975, KOY Thuon *alias* Thuch *alias* Khuon was the old North Zone (Zone 304) Secretary.<sup>4983</sup> KE Pauk was the Deputy Secretary of the North Zone and commander of the North Zone military.<sup>4984</sup>

1456. After April 1975, KOY Thuon was transferred to Phnom Penh to become Minister of Commerce and KE Pauk became the Secretary of the Central (old North) Zone (re-designated Zone 303)<sup>4985</sup> which consisted of parts of Kampong Cham, Kampong Thom and Western Kratie (Sectors 41, 42 and 43).<sup>4986</sup> Sector 41

<sup>4981</sup> Revolutionary Flag, E3/4604, April 1978, p. 17, ERN (En) 00519845 (emphasis added). *See below*, para. 1594 (regarding rice exports).

<sup>4982</sup> *See below*, Section 11.2.17.1: Living Conditions: Food.

<sup>4983</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 96; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 57.

<sup>4984</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711; Thing Leap Interview Record, E3/5224, p. 2, ERN (En) 00239072; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-59 (testifying that after 17 April 1975, the old North Zone was transformed to be the Central Zone. KE Pauk was sent to be in charge of the area surrounding Kampong Cham and brought security guards with him. KE Pauk was promoted from deputy secretary to secretary of the Zone. The structure was reorganised three to five months after 17 April 1975).

<sup>4985</sup> KE Pauk states that the North Zone was renamed the Central Zone shortly after April 1975. *See* KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711-00089712. *See also*, T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-59 (testifying that after 17 April 1975, the old North Zone was transformed to be the Central Zone). However, in a telegram from April 1976, KE Pauk reports to POL Pot on the situation in the entire North Zone. *See* DK Telegram, E3/952, ERN (En) 00182658-00182660. In addition, lists of prisoners sent to S-21 arriving from Sectors 41, 42, 43 and Division 117 up until May 1977 are noted as arriving from the North Zone, whereas those arriving from those sectors after May 1977 are noted as arriving from the Central Zone. *See* S-21 Prisoner List, E3/2285, various dates, ERN (En) 00873216, 00873255, 00873433.

<sup>4986</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-57 (following 17 April 1975, the old North Zone became the Central Zone); PRUM Sou Interview Record, E3/420, 24 November 2009, pp. 4, 6, ERN (En) 00422380, 00422382 (in late 1977, NUON Chea announced the establishment of a new North Zone and appointed KANG Chap *alias* Sae the secretary and Ta Khim as Secretary of Sector 103); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 12, 61; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 36-37; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089709 (KE Pauk states that KOY Thuon *alias* Thuch was the Central (old North) Zone secretary from 1967), ERN (En) 00089711 (After the capture of Phnom Penh, the Central Committee reassigned KOY Thuon to be the Minister of Commerce and KE Pauk was

encompassed Prey Chhor, Cheung Prey, Kang Meas, Batheay and Kampong Siem districts; Sector 42 encompassed Tang Kok, Baray, Stueng Trang, Chamkar Leu, and Preaek Prasap districts; and Sector 43 encompassed Santuk, Kampong, Svay and Stung districts.<sup>4987</sup> The members of the Zone Committee under KE Pauk were initially CHO Chhan *alias* Sreng (Sector 41 Secretary and Central (old North) Zone Deputy Secretary), CHAN Mon *alias* Tol (Sector 42 Secretary) and KOAM Chan *alias* Chorn (Sector 43 Secretary), all of whom were later purged.<sup>4988</sup>

1457. A number of KE Pauk's relatives also held important positions within the administrative hierarchy of the Central (old North) Zone. KE Pauk's wife, SOU Soeurn, was Chamkar Leu District Secretary, in Sector 42.<sup>4989</sup> In addition, KE Pauk's brother-in-law, Oeun, became the Sector 42 Secretary following a purge of the zone.<sup>4990</sup>

1458. KE Pauk remained the Secretary of the Central (old North) Zone throughout the DK period.<sup>4991</sup> He was openly described by IENG Sary, the DK Minister of Foreign Affairs, as the chief engineer of the 1<sup>st</sup> January Dam.<sup>4992</sup>

1459. The Chamber further notes that a number of contemporaneous documents point to the important position that KE Pauk held within the DK hierarchy. KE Pauk attended

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made secretary of the newly designated Central Zone, with Sreng as his deputy, Tol and Chan as members); T. 19 May 2015 (OR Ho), E1/301.1, p. 10; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-59; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 33 (KE Pauk was the head of the worksite). *See also*, S-21 Prisoner List, E3/10090, 22 January [year illegible], p. 55, ERN (En) 01399061.

<sup>4987</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; T. 18 January 2016 (PRAK Yut), E1/377.1, p. 94; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 42-43, 46-47; SOU Soeurn Interview Record, E3/5294, p. 3, ERN (En) 00360111; NHEM Chen Interview Record, E3/10758, 15 March 2016, ERN (En) 01224111 (naming Sector 41 Districts).

<sup>4988</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 5-7; PECH Sokha Interview Record, E3/403, p. 3, ERN (En) 00403003; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711; KE Pich Vannak Interview Record, E3/35, pp. 5-6, ERN (En) 00346149-00346150 (the Central (old North) Zone committee, composed of KE Pauk (Zone Secretary), Sreng (Sector 41), Tol (Sector 42) and Chan (Sector 43) was responsible for the Dam project); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 222-23 (UTH Seng testified that the 1<sup>st</sup> January Dam was under the responsibility of the zone based on the fact that there were workers from Sectors 42 and 43 present and the content of announcements on the loudspeakers); T. 30 July 2015 (OM Chy), E1/326.1, p. 70. *See below*, para. 1465.

<sup>4989</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 39; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 76-77.

<sup>4990</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 19 (SOU Soeurn said that Oeun was her younger brother and in 1977 was appointed Sector 42 Secretary to replace Tol); KE Pich Vannak Interview Record, E3/35, p. 7, ERN (En) 00346151; T. 5 October 2015 (BAN Seak), E1/353.1, pp. 20, 34, 59 (BAN Seak was appointed Deputy Secretary of Chamkar Leu District by Oeun, after Oeun had been appointed Sector 42 Secretary around February or March 1977).

<sup>4991</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714.

<sup>4992</sup> *Statement by IENG Sary, Minister of Foreign Affairs* (News from Kampuchea), E3/1583, 1 May 1978, ERN (En) S00011314 (chief engineer of the January 1 Dam is comrade Pok, secretary of the Central regional committee).

an important Standing Committee Meeting on 11 April 1977 during which a decision was made to purge certain cadres.<sup>4993</sup> In addition, between 1975 and 1979, KE Pauk was in regular contact with Office 870 through telegrams discussing matters of rice production and personnel matters.<sup>4994</sup> The Chamber also has before it eight telegrams from KE Pauk to Office 870, dated between March and May 1978, when KE Pauk was sent to the East Zone to assist SAO Phim in the armed conflict against Vietnam.<sup>4995</sup>

1460. The Chamber accepts this evidence and finds that as Central (old North) Zone Secretary, KE Pauk was responsible for the completion of the 1<sup>st</sup> January Dam and reported to Office 870.

### 11.2.7. *Purges of Cadres in the Central (old North) Zone*

1461. There was a significant change in the leadership of the sectors and districts within the Central (old North) Zone in late 1976 and early 1977 which coincided with the construction of the 1<sup>st</sup> January Dam.<sup>4996</sup> As this may impact the criminal responsibility for the actions of individuals following orders within the administrative hierarchy, the Chamber sets forth the relevant events below.

1462. After KOY Thuon's transfer to Phnom Penh around June 1975, he was implicated in several confessions, leading POL Pot to order his arrest and detention at S-21 where he was interrogated by Witness KAING Guek Eav *alias* Duch personally.<sup>4997</sup> Duch testified that after KOY Thuon's confessions in which he implicated cadres, hundreds of people were arrested from the North Zone starting in early 1977.<sup>4998</sup> KE Pauk stated in his autobiography that the first wave of Central (old

<sup>4993</sup> Standing Committee excerpts (Document 21.5.23 from PRT Trial), E3/7328, 11 April 1977, ERN (En) 01002086. *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324080.

<sup>4994</sup> *See below*, para. 1474.

<sup>4995</sup> DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841; DK Telegram, E3/258, 12 April 1978, ERN (En) 00522911; DK Telegram, E3/932, 12 April 1978, ERN (En) 00185199-00185200; DK Telegram, E3/1009, 18 April 1978, ERN (En) 00305346-00305647; DK Telegram, E3/245, 29 April 1978, ERN (En) 00182759; DK Telegram, E3/516, 4 May 1978, ERN (En) 00321720-00321721; DK Telegram, E3/250, 6 May 1978, ERN (En) 00322057-00322058; DK Telegram, E3/253, 9 May 1978, ERN (En) 00321718-00321719; DK Telegram, E3/948, 9 May 1978, ERN (En) 00003530-00003535.

<sup>4996</sup> *See below*, Section 11.2.22: Treatment of Cham.

<sup>4997</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 96-98; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 72-75; T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 61-63; T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 10-12, 16-20.

<sup>4998</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 73; T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 20-21. *See also*, Revolutionary Flag, E3/170 [E3/736], October-November 1977, ERN (En) 001892553 (reflecting on the situation in the old North Zone, writing "[i]t is our virtue that we saw the

North) Zone purges started in February 1977 when Phnom Penh sent security trucks to arrest the chiefs of the ministries of agriculture, industry, commerce and public works in the Central (old North) Zone.<sup>4999</sup> The security trucks returned to arrest Sector 41, 42 and 43 chiefs (around 50-60 cadres and ministries in total) and around May 1977 returned again to arrest the heads of districts and some sub-districts.<sup>5000</sup> According to KE Pauk, the “upper brothers” decided to transfer about 200 cadres from the Southwest Zone to fill the unoccupied positions.<sup>5001</sup> This account was corroborated by documents from S-21 recording the arrests of hundreds of cadres from the Central (old North) Zone and the testimonies of OR Ho and Witness YEAN Lon regarding the transfer of Southwest Zone cadres.<sup>5002</sup> These Southwest Zone cadres reported to KE Pauk who remained the Zone Secretary.<sup>5003</sup> The Chamber accepts this evidence.

1463. Witness PECH Chim, Tram Kak District Secretary in the Southwest Zone, testified that he was transferred to the Central (old North) Zone in February 1977 along with KANG Chap *alias* CHAN Sam *alias* Sae, PRAK Yut, AO An *alias* Ta An, Phen and Sim.<sup>5004</sup> They were all sent to Phnom Penh by the Party to meet KE Pauk who

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quantitative changes that were taking place and we took successive building-up measures. The struggle was a strong one alright, but it was an internal struggle. We did not yet see it as an antagonistic contradiction. Then once the contemptible Thuch [*alias* KOY Thuon] was out, he just did things according to his own stance. After a period, enemies were swarming all over Zone 304 [old North Zone].”).

<sup>4999</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713. *See also*, IENG Chham Interview Record, E3/5513, p. 15, ERN (En) 00410242 (after Sao disappeared, IENG Chham took over the chairmanship of criticism meetings); S-21 List of Prisoners ‘Smashed’ on 8 July 1977, North Zone, E3/3861, p. 3, ERN (En) 00657716 (entry no. 44, HIN Hor *alias* Sao, Chief of Baray District, 2 March 1977).

<sup>5000</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; T. 19 May 2015 (OR Ho), E1/301.1, pp. 55-56 (OR Ho also testified that Sector 42 Chairman Tol (CHAN Mon *alias* Tol), Sector 43 Chairman Chan (KOAM Chan *alias* Chorn (Sector 43 Secretary), Baray District Committee members Sim and Ka had all been put in the security office and killed); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 49 (Khy, Lim, Khoen and Mom replaced the arrested commune chiefs); T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 75, 85-86; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 6, ERN (En) 00403006 (PECH Sokha testified that his co-technicians Long and Hao disappeared. They were summoned by handwritten letter from *Angkar* which they showed to PECH Sokha and said goodbye. Because PECH Sokha never heard from LONG and Hao, he presumed that both had been arrested and killed); T. 14 December 2012 (SUON Kani), E1/154.1, pp. 80-82 (SUON Kani, the chief telegraph operator for the Central (old North) Zone, testified that “re-education” meant to arrest and that cadres would be summoned by telegram or letter).

<sup>5001</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713-00089714; T. 30 July 2015 (OM Chy), E1/326.1, pp. 100, 113 (everyone trembled in fear when they saw the Southwest group due to the events in 1977); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 112 (Base people and New People were both afraid of the Southwest Zone cadres).

<sup>5002</sup> *See above*, fns 5000-5001.

<sup>5003</sup> *See below*, para. 1463.

<sup>5004</sup> PECH Chim Interview Record, E3/9462, ERN (En) 00903203; PECH Chim Interview Record, E3/9587, pp. 12-13, ERN (En) 01000674-01000675 (wherein PECH Chim describes a meeting in Phnom Penh between 10 cadres from the Southwest Zone).

subsequently took them to Kampong Cham in the Central (old North) Zone.<sup>5005</sup>

1464. Witness PRAK Yut testified that she was aware of a meeting in Phnom Penh between POL Pot, NUON Chea and 10 Southwest Zone cadres.<sup>5006</sup> Although she was with these persons, she testified that she did not attend the meetings and was not aware of the subject matters discussed.<sup>5007</sup> The Chamber considers that PRAK Yut's poor recollection of these details may be attributed to evasiveness due to a wish to diminish her personal responsibility, or to the long passage of time. The Chamber notes that, according to KE Pich Vannak, the purging in the districts of the Central (old North) Zone started with the arrival of the Southwest Zone cadres.<sup>5008</sup> It further notes that the Zone Committee, the General Staff and the committees surrounding the Party Centre made decisions on arrests and that S-21 was used by the Standing Committee of the Central Committee to detain prisoners who had been arrested from across Cambodia.<sup>5009</sup>

1465. After the meeting in Phnom Penh, the Southwest cadres took over leadership roles in the Central (old North) and new North Zones. KANG Chap first became the Deputy Secretary of the Central Zone, then became the new North Zone Secretary in

<sup>5005</sup> PECH Chim Interview Record, E3/9462, ERN (En) 00903203; PECH Chim Interview Record, E3/9587, ERN (En) 01000674-01000675 (wherein PECH Chim describes a meeting in Phnom Penh between 10 cadres from the Southwest Zone).

<sup>5006</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 65. *See also*, S-21 List of Prisoners 'Smashed' on 8 July 1977, North Zone, E3/3861, ERN (En) 00657716 (entry no. 36, NOU Yan *alias* Sao, Secretary of Kampong Siem District, entry on 26 February 1977; entry no. 37, EL Tim *alias* Suy, Secretary of Kampong Siem District, entry on 26 February 1977).

<sup>5007</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 65. *See also*, S-21 List of Prisoners 'Smashed' on 8 July 1977, North Zone, E3/3861, ERN (En) 00657716 (entry no. 36, NOU Yan *alias* Sao, Secretary of Kampong Siem District, entry on 26 February 1977; entry no. 37, EL Tim *alias* Suy, Secretary of Kampong Siem District, entry on 26 February 1977).

<sup>5008</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346152.

<sup>5009</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 67, 102-103; Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, pp. 75-77, ERN (En) 00326214-0032616. Duch testified that the decision to arrest was made by the Central Committee, but that in a practical sense it was POL Pot and in some cases NUON Chea who decided who was to be arrested. *See* T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 33. However, it is unclear on what basis Duch testified that it was POL Pot who decided who was to be arrested. The Chamber therefore does not rely on his evidence in this regard. However, the Chamber is satisfied that NUON Chea as Duch's direct superior did provide information to Duch on who was to be arrested and sent to S-21. *See* T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 27. *See also*, S-21 Confession – CHEY Suon, E3/1870, p. 15, ERN (En) 00096849 (which contains a note that a prisoner who was being interrogated was informed that his detention had been decided on by the Standing Committee of the Party); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; THET/LEMKIN Transcript of TOIT Thoeurn Interview, E3/10665, undated, ERN (En) 01156815 (the *Santebal* and SON Sen made decisions as to who was to be killed in the Northwest Zone); Section 12.2: S-21 Security Centre, paras 2149, 2183, 2350.

late 1977.<sup>5010</sup> AO An *alias* Ta An replaced CHUN Chhum *alias* Taing as Sector 41 Secretary.<sup>5011</sup> Oeun, SOU Soeurn's brother (KE Pauk's brother-in-law), replaced CHAN Mon *alias* Tol as Sector 42 Secretary.<sup>5012</sup> Phen *alias* Ta Ngin replaced KOAM Chan *alias* Chorn as the Sector 43 Secretary.<sup>5013</sup> Sim became Prey Chhor District

<sup>5010</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 30-31 (Sae *alias* KANG Chap went to Siem Reap, the old North Zone, when PECH Chim went to the rubber plantation at Chamkar Andoung in sector 42). *See also*, Section 10.1: Tram Kak Cooperatives, para. 922 (Trial Chamber finding that PECH Chim went to rubber plantations in February 1977); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714; DK Telegram, E3/239, 30 April 1977, ERN (En) 00069529 (report to Office 870 informing the CPK Party Centre of KE Pauk's efforts to investigate enemies and deserting forces and assigning KANG Chap *alias* Sae to certain duties); DK Telegram, E3/1091, 23 August 1977, ERN (En) 00143573-00143574 (signed Zone 801, Sae); DK Telegram, E3/898, 11 December 1977, ERN (En) 00183626 (requesting that Siem Reap and Banteay Srey Districts be merged); T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 7 (Preah Vihear was removed and named as Zone 801); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 13 (in mid-1977, a new North Zone (Zone 801) was created); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 (in 1977, when Hang was arrested, Autonomous Sector 103 was integrated into the new North Zone); T. 21 May 2013 (PRUM Sou), E1/194.1, p. 32 (in late 1977, NUON Chea announced at a meeting in Sector 103, that KANG Chap *alias* Sae would be the Chairman of the new North Zone); DK Telegram 313, 19 March 1978, ERN (En) 00185583 (KANG Chap *alias* Sae reports to Office 870 on the enemy situation in Preah Vihear); DK Telegram, E3/1073, 10 April 1978, ERN (En) 00293358-00293361 (KANG Chap *alias* Sae reports to Office 870 on the enemy situation in Laos (which borders Sector 103, but not Sector 106)); KE Pauk Autobiography, undated, E3/2782, undated, ERN (En) 00089714 (a line of cadres under KANG Chap had been arrested). KANG Chap himself was arrested in August 1978 and sent to S-21. *See* Section 12.2.8: Prominent Prisoners and Internal Purges. *See also*, T. 24 April 2015 (PECH Chim), E1/292.1, pp. 30-31; PECH Chim Interview Record, E3/400, 25 August 2009, p. 7, ERN (En) 00379172; PECH Chim Interview Record, E3/4628, 26 August 2009, p. 3, ERN (En) 00379303 *corroborated by* IEP Duch Interview Record, E3/4627, 30 October 2007, p. 3, ERN (En) 00223474 (IEP Duch died so did not appear before the Chamber); S-21 Confession – KANG Chap *alias* Sae, E3/2794, p. 24, ERN (En) 00789734 (annotation noting date of arrest).

<sup>5011</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713-00089714; KE Pich Vannak Interview Record, E3/35, ERN (En) 00346151; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 5-8; PECH Sokha Interview Record, E3/403, pp. 3, 9, ERN (En) 00403005, 00403009; NHEM Chen Interview Record, E3/10758, 15 March 2016, ERN (En) 01224103 (stating that prior to his arrival in Sector 41, Taing, Sreng and Seng were arrested); S-21 List of Persons Detained from the North Zone from 1 February 1977 to 27 March 1977, E3/2956, p. 3, ERN (En) 00222967 (entry no. 56, CHUN Chhum *alias* Taing, Secretary, Sector [sic] 31 "*alias* 41", entry on 18 February 1977); S-21 Confessions – CHUN Chhum *alias* Taing, E3/2464, 24 February 1977, 1-18 March 1977, ERN (En) 00786988-00787018; S-21 List of Prisoners 'Smashed' on 8 July 1977, North Zone, E3/3861, p. 7, ERN (En) 00657720 (entry no. 103, CHUM Chhun *alias* Taing, Secretary of Sector 41). *See also*, Prisoner Biography – CHUN Chhum *alias* Taing, E3/9303, ERN (En) 01215103 (arrested on 18 February 1977).

<sup>5012</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 19 (SOU Soeurn said that Oeun was her younger brother and in 1977 was appointed Sector 42 Secretary to replace Tol); KE Pich Vannak Interview Record, E3/35, ERN (En) 00346151; T. 5 October 2015 (BAN Seak), E1/353.1, pp. 20, 34 (BAN Seak was appointed Deputy Secretary of Chamkar Leu District by Oeun, after Oeun had been appointed Sector 42 Secretary around February or March 1977); T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 66-67. *See also*, S-21 Confession – CHAN Mon *alias* Tol, E3/3646, 11 June 1977, 27 July 1977, ERN (En) 00835117-00835138; S-21 Confession – CHAN Mon *alias* Tol, E3/2462, March-May 1977, ERN (En) 00767256-00767292; PECH Sokha Interview Record, E3/403, ERN (En) 00403005.

<sup>5013</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346151; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 67. *See also*, S-21 Confession – KOAN Chan *alias* Chorn, E3/3654, 16 November 1977-4 December 1977, ERN (En) 00768300-00768330; S-21 Confession – KOAN Chan *alias* Chorn, E3/4322, ERN (En) 00814203-00814280; S-21 Arrest and Interrogation List, E3/2165, p. 2, ERN (En) 00755546 (entry no. 21, KOAM Chan *alias* Chan, Secretary of Sector 43, Central Zone, arrested 18 September 1977).

Secretary and was in charge of internal security in Sector 41.<sup>5014</sup> Deputy Central (old North) Zone Secretary CHO Chhan *alias* Sreng was also arrested and taken to S-21.<sup>5015</sup> Witness PRAK Yut, a former district cadre in the Southwest Zone, became the Secretary of Kampong Siem district (Sector 41).<sup>5016</sup> An execution list from S-21 indicates that 173 prisoners from the Central (old North) Zone were killed at S-21 on a single day, 8 July 1977, including Taing, the former Sector 41 Secretary.<sup>5017</sup>

1466. In early 1977, Sreng (CHO Chhan *alias* Sreng, Sector 41 Secretary), CHAN Mon *alias* Tol (Sector 42 Secretary), and Sey were arrested.<sup>5018</sup> Although KE Pauk trusted many of the Central (old North) Zone cadres implicated at S-21, he nonetheless sent them to Phnom Penh as instructed where they were killed.<sup>5019</sup> During this time frame, KE Pauk was also reporting to Office 870 on his investigations of enemies and traitors in the Central (old North) Zone.<sup>5020</sup> The Chamber accepts the numerous consistent accounts that the purges in the Central (old North) Zone had been ordered by NUON Chea, SON Sen and the Standing Committee.<sup>5021</sup>

<sup>5014</sup> AO An DC-Cam Interview, E3/8987, 1 August 2011, pp. 3-4, ERN (En) 01118146-01118147. Sim was later implicated as an enemy. *See* S-21 list of “North Zone people who are implicated by the enemies’ confessions”, E3/8871, p. 1, ERN (En) 01400080.

<sup>5015</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346151; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 5-7; PECH Sokha Interview Record, E3/403, ERN (En) 00403003; S-21 List of Persons Detained from the North Zone from 1 February 1977 to 27 March 1977, E3/2956, p. 1, ERN (En) 00222965 (entry no. 1, Cho Chhan *alias* Sreng, Zone Standing Committee, entry 18 February 1977); S-21 Confession – CHOR Chhan *alias* Sreng, E3/3857, February-April 1977, p. 46, ERN (En) 00825306 (notation: “1. Sreng has not yet confessed 2. The grounds for having him beaten”); S-21 Confession – CHO Chhan *alias* Sreng, E3/2797, 23-24 February 1977, ERN (En) 00143676-00143687; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 60-61; SUON Kanil Interview Record, E3/411, 19 August 2009, p. 4, ERN (En) 00390076. The Chamber notes that although SUON Kanil testified that Sreng was the Secretary of Sector 41, he told OCIJ investigators that Sreng was the Deputy Zone Secretary. Further, the S-21 lists only indicate that Sreng was a member of the Zone Committee and that Taing was the Sector 41 Secretary. The Chamber therefore considers that Taing was the Sector 41 Secretary until his removal and that Sreng was a member of the Central (old North) Zone committee.

<sup>5016</sup> T. 30 January 2012 (PRAK Yut), E1/35.1, p. 60; T. 19 January 2016 (PRAK Yut), E1/378.1, p. 65; AO An DC-Cam Interview, E3/8987, 1 August 2011, p. 3, ERN (En) 01118146. *See also*, Section 13.2: Treatment of the Cham, para. 3190.

<sup>5017</sup> S-21 List of Prisoners ‘Smashed’ on 8 July 1977, North Zone, E3/3861, ERN (En) 00657714-00657726.

<sup>5018</sup> *See above*, para. 1465. *See also*, KE Pauk Autobiography, E3/2782, pp. 6-7, ERN (En) 00089712-00089713.

<sup>5019</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; NHEM Chen Interview Record, E3/10758, 15 March 2016, ERN (En) 01224106 (stating that listening outside a meeting in Kampong Cham he heard KE Pauk order *Ta An* to order the arrests of enemies, to dig up grass “roots and all.”), 01224109 (stating the orders to kill originated from POL Pot and were given first to KE Pauk who communicated them to AO An), 01224112. *See below*, paras 1467-1468.

<sup>5020</sup> DK Telegram, E3/511, 2 April 1976, ERN (En) 00182658-00182660; DK Telegram, E3/239, 30 April 1977, ERN (En) 00069529.

<sup>5021</sup> Section 12.2.6: Oversight of S-21 Security Centre. *See also*, Section 13.2: Treatment of the Cham, para. 3202; T. 5 October 2015 (BAN Seak), E1/353.1, p. 59; KE Pich Vannak Interview Record, E3/35,

1467. KE Pich Vannak saw cadres identified for arrest and execution on a list of names sent from S-21, with the names of some leaders crossed out in red ink, including Yean (chairman of the logistics division) and Lorn (chairman of the Zone office).<sup>5022</sup> He testified that the Central (old North) Zone sent those persons to Phnom Penh to be purged.<sup>5023</sup> Even relatives of the Zone cadres could not be saved as the orders from the Party Centre were non-negotiable.<sup>5024</sup> Lists from S-21 show a stream of prisoners arriving from the Central (old North) Zone throughout 1977.<sup>5025</sup>

1468. Witness SUON Kanil, chief telegraph operator for the Central (old North) Zone, corroborated this account. He testified that KE Pauk never used his authority to arrest people on his own. In his view, KE Pauk was a pure peasant who followed instructions.<sup>5026</sup> Normally arrests made in the Central (old North) Zone would be decided by the Central Committee. There always had to be a decision before an arrest was made and KE Pauk only acted on orders. SUON Kanil knew this because he received messages from the messengers who brought in such orders. KE Pauk told SUON Kanil that whenever a decision was made by the Central Committee, the arrest

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ERN (En) 00346161; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 67, 102-103; Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, pp. 75-77, ERN (En) 00326214-0032616. Duch testified that the decision to arrest was made by the Central Committee, but that in a practical sense it was POL Pot and in some cases NUON Chea who decided who was to be arrested. *See* T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 33. However, it is unclear on what basis Duch testified that it was POL Pot who decided who was to be arrested. The Chamber therefore does not rely on his evidence in this regard. However, the Chamber is satisfied that NUON Chea as Duch's direct superior did provide information to Duch on who was to be arrested and sent to S-21. *See* T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 27. *See also*, S-21 Confession – CHEY Suon, E3/1870, p. 15, ERN (En) 00096849 (which contains a note that a prisoner who was being interrogated was informed that his detention had been decided on by the Standing Committee of the Party); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; THET/LEMKIN Transcript of TOAT Thoeun Interview, E3/10665, undated, ERN (En) 01156815 (the *Santebal* and Son Sen made decisions as to who was to be killed in the Northwest Zone).

<sup>5022</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346161; S-21 Execution List, E3/2285, 29 December 1977, p. 135, ERN (En) 01564895 (entry no. 66, KHOL Khin *alias* Yien, Military deputy chief [in charge of] logistics of division, Central Zone, entered 14 November 1977; entry no. 71, AU Lorn, Chief of Central Zone warehouse and state commerce, entered 14 November 1977); S-21 List of Central (old North) Zone Prisoners, E3/2926, ERN (En) 00333785 (entry no. 134 KHUL Khin *alias* Yean, deputy chief of division military logistics); SUON Kanil Interview Record, E3/411, p. 8, ERN (En) 00390080 (noting KHUL Khin *alias* Yean was KE Pauk's brother-in-law because his wife was KE Pauk's sibling).

<sup>5023</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346161. *See also*, Section 10.1: Tram Kak Cooperatives, para. 1067.

<sup>5024</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346161.

<sup>5025</sup> S-21 Arrest and Interrogation List, E3/2165, p. 2, ERN (En) 00755546; S-21 Names of Prisoners from Central Zone, E3/2166, S-21 List of Persons Detained from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, p. 3, ERN (En) 00222967; S-21 Daily Prisoner Record, E3/10770, ERN (En) 01460416-01460750; List of S-21 Prisoners, E3/2285, various dates, ERN (En) 00873216.

<sup>5026</sup> SUON Kanil Interview Record, E3/344, ERN (En) 00384428.



had to be made. By contrast, if the decision (to arrest) was made by the zone, KE Pauk would have some reservations.<sup>5027</sup> KE Pauk stated that by June 1977, the first stage of the arrests was completed and only he remained of the original leadership in the Central (old North) Zone.<sup>5028</sup> Further purges occurred later in 1977.<sup>5029</sup> In June 1978, a directive was issued by the Party, via Office 870, indicating that those who were alleged to be in CIA and KGB networks were pardoned and would be given equal status to other ordinary people.<sup>5030</sup> KE Pich Vannak explained that people in the Central (old North) Zone were afraid of being purged and fled into the jungle and that the Upper Echelon later distributed leaflets to announce a pardon.<sup>5031</sup> Office 870 directed that medium and light offenders should be released from detention.<sup>5032</sup> Sector 42 Secretary Oeun, KE Pauk's brother-in-law, informed the districts in Sector 42 of the Central Committee directive and ordered that executions should cease.<sup>5033</sup> OM Chy, a commune level work unit chief who supervised 500 workers at a canal worksite connected to the 1<sup>st</sup> January Dam, testified that after the circular was issued, anyone who violated the guidelines remained subject to arrest. People were given more freedoms after the circular issued, though OM Chy heard (but did not personally see) that people were still arrested after the circular was issued.<sup>5034</sup> Prisoner lists from S-21 confirm that arrests continued throughout the country, and particularly in the Central (old North) Zone, after June 1978 until the end of the regime.<sup>5035</sup>

<sup>5027</sup> T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 34-35. *See above*, para. 1466.

<sup>5028</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713-00089714; KE Pich Vannak Interview Record, E3/35, ERN (En) 00346154-00346155 (KE Pauk survived the purging of the East Zone, later being assigned to take charge of both the Central and new North Zones).

<sup>5029</sup> S-21 Arrest and Interrogation List, E3/2165, undated, ERN (En) 00755545-00755548.

<sup>5030</sup> Section 16.3: Real or Perceived Enemies, para. 3828; T. 30 July 2015 (OM Chy), E1/326.1, pp. 71-72; Guidance of the Central Committee of the Communist Party of Kampuchea On the Party's Policy towards Mised Persons who have joined the CIA, served as *Yuon* Agents or joined the KGB and opposed the Party, Revolution, People and Democratic Kampuchea, E3/763, 20 June 1978, ERN (En) 00275217-00275220. *See also*, NHEM Chen Interview Record, E3/10758, 15 March 2016, ERN (En) 01224108 (estimating that the killing of enemies and soldiers brought to the Central (old) North Zone from the East Zone ended in around March 1978).

<sup>5031</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346156.

<sup>5032</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346156.

<sup>5033</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 51-54 (Oeun discussed the circular at a meeting, stating that anyone left alive, including teachers, should remain so). *See also*, TEP Poch Interview Record, E3/5293, ERN (En) 00351701-00351703 (after TEP Poch became Baray District Secretary in August 1978, he attended a Sector meeting at which Oeun informed him of the directive "to forgive the 17 April people and to stop the distinction between the new people and the base people.").

<sup>5034</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 76. *See also*, Section 16: Common Purpose, para. 3971.

<sup>5035</sup> S-21 List of Prisoners who Entered in July 1978, E3/10120, ERN (En) 01399063-01399100; S-21 Prisoner List: Names of Prisoners who were destroyed on 30 October 1978, E3/10456, ERN (En) 01558314 (CHAN Sam *alias* Se, North Zone Secretary entering on 22 August 1978); List of Prisoners who entered on 16 August 1978, E3/10191, ERN (En) 01548764 (KHOEM Chhum, Stoung District

1469. The Chamber finds that in 1977 Southwest Zone cadres were sent to the Central (old North) Zone by the Standing Committee, including POL Pot and NUON Chea to conduct purges which were orchestrated by the Party Centre based upon lists of implicated persons from S-21. Under the direction of KE Pauk, the Southwest Zone cadres took over leadership positions and executed the arrests of dozens of cadres who were sent to S-21.

1470. The Chamber notes that there is some evidence of a possible breakdown in the administrative hierarchy. KE Pich Vannak recounted how KE Pauk told him that Poch (Baray District Committee from the Southwest Zone) had ordered that 200 families be arrested and taken to Krava Baksna village to be killed. At that time, AO An, a trusted Southwest Zone cadre, was acting Central (old North) Zone Secretary because KE Pauk was leading a military unit to the East. KE Pauk summoned Poch to explain the situation, but the latter did not present himself.<sup>5036</sup> KE Pich Vannak claimed that his father, KE Pauk, then ordered that the killings not go forward, however there is no documentary evidence to corroborate this assertion, nor is there any evidence that sanctions were imposed to “Poch”.<sup>5037</sup> While this alleged incident might suggest that the Baray District Committee was insubordinate and thus not subject to KE Pauk’s orders, it occurred at a time when AO An was acting as the head of the Central Zone.<sup>5038</sup> Further, there was no apparent connection between the incident and the 1<sup>st</sup> January Dam. While the possibility of insubordination cannot be entirely excluded, the Chamber considers that this incident does not create doubt as to the overall control of the Party Centre over the administrative hierarchy of the Central Zone and the 1<sup>st</sup> January Dam Worksite.

#### 11.2.8. *Communication Structures*

1471. Communication between the Party Centre, the Central (old North) Zone, sectors and districts was effected through a variety of means, including telegrams, circulars,

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Secretary, Sector 43, Central Zone; MAK Sorn *alias* Meas, Secretary of Kampong Svay District, Sector 43, Central Zone; CHAN Sorn, Secretary of Santuk District, Sector 43, Central Zone); List of Prisoners smashed on 31 December 1978, E3/10455, ERN (En) 01248070 (CHAP Hoeun, Secretary Regiment 81, Division 117, Central Zone; BY Ry, Secretary, Regiment 82, Division 117, Central Zone; CHHIM Son, Logistics Chief, Central Zone Army).

<sup>5036</sup> KE Pich Vannak Interview Record, E3/35, p. 13, ERN (En) 00346157. *See also*, KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714.

<sup>5037</sup> KE Pich Vannak Interview Record, E3/35, pp. 13-14, ERN (En) 00346157-00346158.

<sup>5038</sup> KE Pich Vannak Interview Record, E3/35, ERN (En) 00346156.

and direct visits.<sup>5039</sup>

#### 11.2.8.1. Telegrams

1472. SUON Kanil was the head of the telegraph unit for the Central (old North) Zone from several weeks after the evacuation of Phnom Penh in April 1975 until the arrival of Vietnamese forces in 1979.<sup>5040</sup> He testified that KE Pauk worked with people in the Telegraph Section, reporting to the Zone Secretary KOY Thuon, who relayed messages to the upper authority.<sup>5041</sup>

1473. Telegrams were meant for military communication and for communication between people in the zones and sectors.<sup>5042</sup> Most of the telegrams from the Party Centre to the Central (old North) Zone were directives to pass on to the sectors for dissemination.<sup>5043</sup> SUON Kanil authenticated in court numerous telegrams from KE Pauk to POL Pot originating between 1975 and 1978.<sup>5044</sup> KE Pauk's reports to the Party Centre included reports on rice production and other activities of the people.<sup>5045</sup>

1474. All incoming and outgoing telegrams were registered and KE Pauk was always informed.<sup>5046</sup> Office 870 decided to whom the telegram would then be copied.<sup>5047</sup> SUON Kanil confirmed that at the zone level nothing could be done without approval from the Upper Echelon as the subordinate had to respect the order of the superior.<sup>5048</sup>

1475. SOU Soeurn, wife of KE Pauk and the Chamkar Leu District Secretary in Sector

<sup>5039</sup> Section 6: Communication Structures.

<sup>5040</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 57-59; T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 18-19 (SUON Kanil refers to a Vietnamese invasion in April 1975, but he was clearly referring to the end of the DK regime in 1979).

<sup>5041</sup> T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 19-20; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 67 ("Telegrams are more or less like the blood vessels in the whole body of a human being, and that means that if there was no telegram, there was no blood flowed to different parts of the body; it means the whole body will [malfunction].").

<sup>5042</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 45-46.

<sup>5043</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, p. 88.

<sup>5044</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 96-108; T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 9-17. These are: DK Telegram, E3/1679, 30 November 1975, ERN (En) 00766762-00766763; DK Telegram, E3/511, 2 April 1976, ERN (En) 00182658-00182660; DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841; DK Telegram, E3/932, 12 April 1978, ERN (En) 00185199-00185200; DK Telegram, E3/516, 4 May 1978, ERN (En) 00321720-00321721; DK Telegram, E3/254, 20 March 1978, ERN (En) 00377840.

<sup>5045</sup> T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 23-24; DK Telegram, E3/511, 2 April 1976, pp. 1-2, ERN (En) 00182658-00182659.

<sup>5046</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, p. 96. *See also*, PON OI Interview Record, E3/373, 7 May 2009, p. 4, ERN (En) 00336527.

<sup>5047</sup> T. 17 December 2012 (SUON Kanil), E1/155.1, p. 11.

<sup>5048</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, p. 106.

42, testified that telegrams were only used upon explicit instructions from “upper *Angkar*”.<sup>5049</sup> She said that messengers were the preferred method of communication and that they travelled between Kampong Cham and Phnom Penh by car or motorbike to bring written letters and reports.<sup>5050</sup> The Chamber considers that her testimony does not necessarily contradict that of SUON Kanil, but complements it, and finds that both telegrams and written correspondence exchanged through messengers were used to communicate between the Party Centre and the Central (old North) Zone as well as within the zone to the sectors.

#### 11.2.8.2. Zone, sector and district meetings

1476. At the zone, sector and district levels, meetings were utilised to disseminate the Party line and to communicate work plans.<sup>5051</sup> PRAK Yut, the Kampong Siem District Secretary working under AO An in Sector 41, testified that KE Pauk disseminated the Central Committee’s work plans at meetings held at the Zone Office in Kampong Cham.<sup>5052</sup> Zone-level meetings were held every three months at the office of KE Pauk in Kampong Cham and were attended by the sector committees and the Zone Committee.<sup>5053</sup> The meeting reviewed the work plans, including rice production or the building of dykes.<sup>5054</sup> IENG Chham, corroborated the fact that such meetings were held in Kampong Cham.<sup>5055</sup>

1477. Information and directives were then conveyed to districts and work units. BAN Seak attended Sector Committee meetings chaired by Oeun, the Sector 42 Secretary, at which instructions and work plans were distributed with a view to further dissemination to lower levels.<sup>5056</sup> OR Ho, a work unit chief, attended fortnightly or monthly commune meetings at which he was given instructions by the commune chief.<sup>5057</sup> These work plans were then conveyed to work units.<sup>5058</sup> At times, senior cadres from the district or

<sup>5049</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 62.

<sup>5050</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 62.

<sup>5051</sup> T. 5 June 2015 (SOU Soeurn), E1/311.1, p. 82 (SOU Soeurn testified that senior leaders attended meetings at the Zone level during which information was relayed).

<sup>5052</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-20.

<sup>5053</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-20.

<sup>5054</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-20.

<sup>5055</sup> IENG Chham Interview Record, E3/5513, 8 November 2009, p. 3, ERN (En) 00410230.

<sup>5056</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 50-51.

<sup>5057</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 23.

<sup>5058</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 45, 54 (testifying that his superiors, Born and Vut received plans from the district and sector levels which were then conveyed to him).

sector level attended these meetings.<sup>5059</sup>

1478. SOU Soeurn, the Chamkar Leu District Secretary in Sector 42, had meetings with commune chiefs who reported to her on the progress of their respective cooperatives and important issues regarding the building of dams, canals or rice production.<sup>5060</sup> She relayed the work plans, including the goal of three harvests per year, discussed the work on the Dam and the food supply, and assigned forces to work at worksites.<sup>5061</sup>

1479. Several witnesses gave consistent evidence that NUON Chea held study sessions for district secretaries and heads of cooperatives concerning the cultivation of rice and how to dig canals, build dams and organise workforces among cooperatives.<sup>5062</sup> SOU Soeurn further testified that NUON Chea came to her district to organise workforces to send them to worksites.<sup>5063</sup> There were also mass meetings to discuss rice production and encourage workers to meet *Angkar*'s plan to be prosperous in the following years.<sup>5064</sup>

1480. The Chamber finds that the Central Committee's workplans were disseminated at the zone, sector and district levels through regular meetings as well as training sessions, Party celebrations and meetings organised in Phnom Penh. The Chamber is also satisfied that NUON Chea presided over study sessions on how to engage in work at the worksites and cooperatives and was actively engaged in coordinating the gathering of workforces to some worksites.

#### 11.2.8.3. Direct supervision of the 1<sup>st</sup> January Dam

1481. KE Pauk monitored the status of the 1<sup>st</sup> January Dam Worksite and conveyed plans to cadres tasked with technical matters. KE Pauk worked at Office 71 located in Ta Prok commune, Chamkar Leu district, Kampong Cham province about six to seven

<sup>5059</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 23.

<sup>5060</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 39; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 76-77.

<sup>5061</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 39; T. 5 June 2015 (SOU Soeurn), E1/311.1, p. 77.

<sup>5062</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 57-58; T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 69; T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 93.

<sup>5063</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 93.

<sup>5064</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 31; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 84 (testifying that meetings were only held when upper *Angkar* came and recalled attending four or five such meetings during the DK period).

kilometres from the 1<sup>st</sup> January Dam, which he visited daily.<sup>5065</sup> PECH Sokha who was a member of the technical group in charge of overseeing the Dam's construction, confirmed that KE Pauk visited the 1<sup>st</sup> January Dam almost every day by jeep with his two or three bodyguards, obviating a need to make written reports. KE Pauk met with the technical group, including PECH Sokha and IENG Chham, advising them not to deviate from the construction plan.<sup>5066</sup> The technical group would in turn provide updates on the progress of work.<sup>5067</sup> OR Ho reported daily to KE Pauk about the number of workers in his work unit who became ill and what work had been completed.<sup>5068</sup>

1482. While IENG Chham stated that KE Pauk visited the 1<sup>st</sup> January Dam only once or twice a month,<sup>5069</sup> the Chamber notes that evidence tested in court consistently indicated that KE Pauk's visits were more frequent. The Chamber therefore finds that KE Pauk visited the worksite nearly every day throughout its construction and was familiar with the conditions at the site.<sup>5070</sup>

#### 11.2.9. *Inauguration of the 1<sup>st</sup> January Dam and Visits of Senior Cadres and Foreign Delegations*

1483. According to the Closing Order, POL Pot and KHIEU Samphan visited the 1<sup>st</sup> January Dam with foreign visitors, and NUON Chea went to the worksite to encourage people to preserve water for planting rice.<sup>5071</sup>

<sup>5065</sup> KE Un Interview Record, E3/5264, 13 January 2009, pp. 3-6, ERN (En) 00283341-00283344 (KE Un was KE Pauk's driver and testified that KE Pauk visited the dam on a daily basis, returning to Office 71 to eat lunch alone); T. 4 June 2015 (SOU Soeum), E1/310.1, pp. 37-38; T. 19 May 2015 (OR Ho), E1/301.1, p. 35 (OR Ho a chief of a work unit of 100 workers stated that KE Pauk visited the worksite on almost a daily basis. KE Pauk was assigned by the Upper Echelon to be in charge of the workforce of the districts at the worksite and visited the worksite on almost a daily basis); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 74-75 (stating that KE Pauk had a house at the worksite and he often came to the worksite. The witness however stated that he only heard his name often, but did not see him physically).

<sup>5066</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 74-75; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 7, ERN (En) 00403007; IENG Chham Interview Record, E3/5513, 8 November 2009, p. 7, ERN (En) 00410234 (stating that Chham and Sokha met during their training at Ruessey Keo Technical School).

<sup>5067</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 75.

<sup>5068</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 6-8.

<sup>5069</sup> IENG Chham Interview Record, E3/5513, 8 November 2009, pp. 12-13, ERN (En) 00410239-00410240.

<sup>5070</sup> KE Pauk Autobiography, E3/2782, p. 8, ERN (En) 00089714 (noting that "From 1975, when we practiced the new policy, people starved, foreign aids were not accepted, and cooperative tasks effected too much labor". See below, Section 11.2.20: Knowledge of KE Pauk and the Upper Echelon of Living and Working Conditions at the 1<sup>st</sup> January Dam.

<sup>5071</sup> Closing Order, para. 357.

1484. The Chamber heard clear and consistent evidence that on 1 January 1977, KE Pauk presided over the inauguration of the Dam in the presence of other senior leaders (including POL Pot and IENG Sary), district level leaders (including SOU Soeurn) and workers from Sectors 41, 42 and 43.<sup>5072</sup> The 1<sup>st</sup> January Dam was named for the day work began, although at least some work began earlier.<sup>5073</sup>

1485. YEAN Lon, a worker at the 1<sup>st</sup> January Dam and a militiaman in Kang Sau village, heard that KHIEU Samphan also attended the inauguration, although he had never seen KHIEU Samphan before and his account was uncorroborated.<sup>5074</sup> On that occasion all of the workers were encouraged to work hard.<sup>5075</sup>

1486. In addition, SAUT Toeung, who was NUON Chea's bodyguard and messenger from the middle of 1975 until 1978,<sup>5076</sup> testified that he sometimes accompanied NUON Chea who travelled to the provinces, every two to three months, often visiting dams or other worksites.<sup>5077</sup> He said that NUON Chea visited the 1<sup>st</sup> January Dam, on the Chinit River on two occasions meeting with the leaders responsible for its construction.<sup>5078</sup> NUON Chea reviewed the status of the Dam's construction as well as the rice cultivation and the performance of cooperatives in the area.<sup>5079</sup> SAUT Toeung did not specify when NUON Chea visited the 1<sup>st</sup> January Dam, but stated that it was during the construction of the Dam when he observed people carrying dirt,<sup>5080</sup> which the Chamber has found took place between October 1976 and 1978. SAUT Toeung did not

<sup>5072</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 30; T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 83-84; IENG Chham Interview Record, E3/5513, 8 November 2009, p. 9, ERN (En) 00410236; T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 64; T. 26 May 2015 (HUN Sethany), E1/305.1, p. 97; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 82 (YEAN Lon's work unit arrived on the day of the inauguration of the worksite in the presence of the senior leaders); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151 (KE Pich Vannak stated that POL Pot and IENG Sary attended the inauguration of the 1<sup>st</sup> January Dam).

<sup>5073</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 29, 83-85; OR Ho Interview Record, E3/5255, 18 November 2008, p. 3, ERN (En) 00250044 (it was named the 1<sup>st</sup> January Dam because it was inaugurated by POL Pot on that day in 1977 although construction actually began in December 1976).

<sup>5074</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 44-46; T. 3 June 2015 (UTH Seng), E1/309.1, pp. 10-16, 64-65, 71-72; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 21-22 (KHIEU Samphan claimed that he visited canals and dams when he had the opportunity to leave Phnom Penh, but he did not specifically mention visiting the 1<sup>st</sup> January Dam). *See also*, Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 114, ERN (En) 00103780.

<sup>5075</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 84; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 46; T. 3 June 2015 (UTH Seng), E1/309.1, p. 60.

<sup>5076</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 43-44; T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 49.

<sup>5077</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 67-71.

<sup>5078</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 68-71.

<sup>5079</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, p. 70.

<sup>5080</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 53-54.

specifically recall that NUON Chea met with KE Pauk.<sup>5081</sup>

1487. SAUT Toeung recalled that when NUON Chea observed that the Dam was not constructed well, he summoned others who were responsible for the projects to advise him.<sup>5082</sup> NUON Chea sometimes summoned the head of the cooperatives to address them. At other times, he spoke to the masses.<sup>5083</sup>

1488. SOU Soeurn, Chamkar Leu District Secretary, was also informed that NUON Chea had come to the 1<sup>st</sup> January Dam, although she did not observe it herself.<sup>5084</sup> She knew NUON Chea from study sessions she had attended in Phnom Penh on ways to lead cooperatives to increase production per hectare and increase the number of harvests per year.<sup>5085</sup> NUON Chea also came to Chamkar Leu district within Sector 42 to organise workforces in order to send them to worksites.<sup>5086</sup> He instructed people on how to dig canals, build dams, and organise workforces among cooperatives.<sup>5087</sup> The Chamber notes that Sector 42 sent 10,000 workers to the 1<sup>st</sup> January Dam.<sup>5088</sup>

1489. KE Pich Vannak stated that POL Pot made two official visits to the 1<sup>st</sup> January Dam and many unofficial visits, recalling that the latter once carried soil himself.<sup>5089</sup> Civil Party UN Rann, a worker at the 1<sup>st</sup> January Dam, witnessed the visit of four senior leaders to the 1<sup>st</sup> January Dam, one of whom with a large belly was identified by her colleagues as POL Pot. The senior leaders wore dark green clothes and arrived by military vehicle to examine the dam.<sup>5090</sup> Civil Party CHAO Lang, a mobile unit worker, saw, whom others told her was POL Pot visiting the 1<sup>st</sup> January Dam on about three occasions.<sup>5091</sup> Although none of the witnesses specified the exact dates of POL Pot's visits, the Chamber finds that these visits occurred during the construction of the Dam between late 1976 and 1978.

1490. Based on the above, the Chamber is satisfied that POL Pot and NUON Chea

<sup>5081</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 39-40, 53.

<sup>5082</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 56.

<sup>5083</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 57.

<sup>5084</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 43.

<sup>5085</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 23.

<sup>5086</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 93.

<sup>5087</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 93.

<sup>5088</sup> See below, para. 1499.

<sup>5089</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151.

<sup>5090</sup> T. 27 May 2015 (UN Rann), E1/306.1, p. 87; T. 28 May 2015 (UN Rann), E1/307.1, p. 15.

<sup>5091</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 60, 88-89.



both visited the 1<sup>st</sup> January Dam on multiple occasions, personally observing the conditions at the site. Given that there is only uncorroborated hearsay evidence from YEAN Lon, it is not proved to the requisite standard that KHIEU Samphan visited the Dam Worksite.

1491. A number of foreign delegations visited the 1<sup>st</sup> January Dam accompanied by senior DK leaders. The construction of the Dam was used by the CPK to show the self-reliance of the Cambodian people and their ability to achieve a Great Leap Forward,<sup>5092</sup> and thus had propagandistic value. These visits also served to apprise the CPK leadership of the living and working conditions at the worksite.

1492. In April 1977, a Laotian women's delegation visited the 1<sup>st</sup> January Dam along with IENG Thirith.<sup>5093</sup> Workers were told that KE Pauk was also present.<sup>5094</sup> They were instructed to line up along the Dam's walkway to greet the visitors.<sup>5095</sup> Unit chiefs told them to run for the benefit of the delegation.<sup>5096</sup> The delegation of Laotian women also visited Chamkar Leu district to see the dams and canals, to observe how people in the cooperatives worked, how many tonnes of rice were achieved per year, and how canals and dams were built.<sup>5097</sup>

1493. THIOEUNN Prasith, a DK cadre in the Ministry of Foreign Affairs, explained that the purpose of the foreign delegation visits was to show that everything in

<sup>5092</sup> See e.g., Revolutionary Flag, E3/10, September-October 1976, pp. 7-8, ERN (En) 00450507-00450508 ("Now too, our building of socialism is an active movement with the strong momentum of the great leap. We have been able to restore our economy; we have been able to sort out the livelihood of our people; and we have been able to defend our country with Independence-mastery without asking anyone for aid. Going into 1977, the livelihood of our people will be well-off, and we will carry out the regime designated by the Party. According to estimates of the 1976 rice harvest, we will achieve the quotas with a high level stance of independence-mastery, with a spirit of profound patriotism, and with solid ideological stances. The world sees this clearly."); IENG Thirith Interview by Elizabeth BECKER, E3/659, 1980, pp. 36-37, ERN (En) 00182333-00182334 (acknowledging in 1980 that it was a mistake for the CPK not to accept international aid).

<sup>5093</sup> Lao Women's Union Delegation Arrives for Visit (in FBIS collection), E3/286, 22 April 1977, ERN (En) 00168234; Delegation Concludes Visit (in FBIS collection), E3/286, 29 April 1977, ERN (En) 00168253 ("In the northern region, the fraternal guests visited the construction site of '1 January' dam on Stung Chinit stream following a stopover at the Chamkar Andoung rubber plantation. Tens of thousands of worker-peasants struggling to build dams and dig canals in the construction site gave a warm welcome and greeting to the delegation."); IENG Thirith Interview by Elizabeth BECKER, E3/659, 1980, p. 36, ERN (En) 00182333; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 16.

<sup>5094</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 15.

<sup>5095</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 4-5.

<sup>5096</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 10.

<sup>5097</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 40.

Cambodia was fine.<sup>5098</sup> He said that delegations always travelled to the same places from Phnom Penh to Kampong Thom and Siem Reap.<sup>5099</sup> The Yugoslav delegation also visited the 1<sup>st</sup> January Dam.<sup>5100</sup>

1494. KE Pich Vannak drove IENG Thirith and the Laotian delegation during their April 1977 visit to the 1<sup>st</sup> January Dam and Siem Reap.<sup>5101</sup> During this trip, IENG Thirith told him that there was a lack of medicine in Cambodia, but said that they were researching traditional medicines to treat patients.<sup>5102</sup> He was also the driver for several other foreign delegations to the Dam.<sup>5103</sup>

1495. KHIEU Samphan received the Laotian delegation in Phnom Penh on 27 April 1977, along with IENG Thirith and IENG Sary.<sup>5104</sup> IENG Thirith gave a speech noting that the Laotian delegation had visited “the sites where dams and embankments are being built and ditches and reservoirs being dug”, and “highly valued the independent and self-reliant efforts made by our women and people to fulfil their tasks of defending

<sup>5098</sup> THIOEUNN Prasith Interview Record, E3/96, 8 June 2009, p. 7, ERN (En) 00346944. The CPK closely followed the progress of these visits. See Report on Visit by British Professor and American Journalists, E3/9616, 18 December 1978, p. 2, ERN (En) 01054089.

<sup>5099</sup> THIOEUNN Prasith Interview Record, E3/96, 8 June 2009, p. 7, ERN (En) 00346944.

<sup>5100</sup> Politika Magazine Reports on Cambodia in Embassy of France in Yugoslavia Cable, E3/2670, 31 March 1978, ERN (En) 00525843-00525844 (“the canals and regulating the water current over this huge [1<sup>st</sup> January] dam used for irrigating some 30 000 hectares of rice fields”); *A Yugoslav Journalist’s Impressions of His Visit* (in SWB/FE/5801/B collection), E3/2306, 29 April 1978, ERN (En) 00010087 (“The only signs of mechanization that we saw on all those work sites were a few dump trucks and dredgers left over from the former regime and a few dozen tractors and lorries which the new authorities have bought from Yugoslavia.”); Elizabeth BECKER Notes, E3/1171, 13-14 December 1978, ERN (En) 00087870-00087871 (noting that 6<sup>th</sup> January Dam is 20 kilometres long, holds 300 million cubic metres, irrigates 8,000 hectares to the north, 10,000 hectares to the south; required 2,000 people to build water gate, and 20,000 people to build dikes and canals with very few machines); Book by D. Burstein: *Kampuchea Today: An Eyewitness Report from Cambodia*, E3/707, December 1978, S00049304-S00049305 (the January 5 (sic) dam was built in five months by 10,000 peasants who did all of the work without machines, noting “Even in [very hot] weather, we saw peasants racing each other to remove more buckets of earth”, and also claiming that there were no signs of coercion). See also, *U.S. Marxist-Leninist Delegation Concludes Visit* (in FBIS collection), E3/1362, 1 May 1978, ERN (En) 00169972; Voice of Democratic Kampuchea Report, French Marxist-Leninist party and Turkish Journalists, E3/1420, 16 September 1978, pp. 6-7, ERN (En) 00702662-63 (1<sup>st</sup> and 6<sup>th</sup> January Dams nearing completion by thousands of peasants from cooperatives); Statement by IENG Sary, Minister of Foreign Affairs, News from Kampuchea, E3/1583, 1 May 1978, p. 10, ERN (En) 00011314 (the chief engineer of the January 1 Dam is comrade Pok, secretary of the Central regional committee; a canal was dug 7 kilometres from the dam to Santuk District and branch ditches totalled 20 kilometres in length running to join the Taing Krasaing River. There is also a five kilometre long canal towards Baray District bringing 10,000 hectares under irrigation.).

<sup>5101</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150.

<sup>5102</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150.

<sup>5103</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346151 (he also recalled a visit by North Koreans to the dam); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 7, ERN (En) 00346150 (recalling a visit from the Chairman of Agriculture from China to the 1<sup>st</sup> January Dam).

<sup>5104</sup> *KHIEU Samphan Receives Visiting Lao Women’s Delegation* (in FBIS collection), E3/286, 29 April 1977, ERN (En) 00168252.

and building the country in the new stage of our Cambodian revolution under the correct and clear-sighted leadership of our Cambodian Revolutionary Organization”.<sup>5105</sup> IENG Thirith later reported to her “leaders” including “the Prime Minister”, on the conditions she observed in her visits to the provinces.<sup>5106</sup> The Chamber considers that IENG Thirith reported to the CPK Standing Committee about the conditions at work sites and cooperatives throughout the country. Although it is likely that IENG Thirith also noted the conditions faced at the 1<sup>st</sup> January Dam, there is no direct proof that IENG Thirith notified the Standing Committee of the adverse working conditions at the 1<sup>st</sup> January Dam specifically.<sup>5107</sup> Other visits by NUON Chea nonetheless provided such notice to the CPK Standing Committee.<sup>5108</sup>

1496. In December 1977, a Chinese delegation including CHEN Yonggui and a Cambodian delegation including POL Pot, VORN Vet, THIOEUNN Thioeunn, KE Pauk, and AO An, visited the 1<sup>st</sup> January Dam to commemorate the closing ceremony.<sup>5109</sup> Witness MEAS Laihour was among thousands of other workers who were instructed to greet important people as the spillway was opened.<sup>5110</sup> The workers were told to run to appear very active for the Chinese delegation and to shout “hooray”

<sup>5105</sup> *IENG Thirith Speaks at Banquet for Lao Women’s Group* (in FBIS collection), E3/287, 4 May 1977, ERN (En) 00168122. *See also, Reception Held for Visiting Lao Women’s Union Delegation: IENG Thirith Speech* (in FBIS collection), E3/286, 26 April 1977, ERN (En) 00168241 (“At present, our Cambodian women are enthusiastically participating in the great movement to build field embankment networks, dams, irrigation canals and reservoirs in order to gain greater control over irrigation in support of our farming efforts, Due to this, our people have been able to solve their food problem and produce sufficient rice for their own needs. Our people’s living conditions have been gradually improved”).

<sup>5106</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 25, ERN (En) 00182322 (“Yes, I was travelling in order to see the conditions of the people and at the time when I came back in Phnom Penh I reported to our leaders that there was something queer in some provinces, for example in Battambang, I saw something very clear, that they make people, all people going to the rice fields, very far from the village and they have no home; and I saw they have no home and they are all ill. I reported to my leaders that”).

<sup>5107</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, 1980, ERN (En) 00182322, 00182333-00182334.

<sup>5108</sup> *See above*, paras 1487-1490.

<sup>5109</sup> T. 4 June 2015 (SOU Soeur), E1/310.1, pp. 44-45; *Chen Yung-Kuei visits Central Region* (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168335 (“in the afternoon [of 6 December 1977] our fraternal Chinese guests visited ricefields in the Baray area and at the Muy Makara [1<sup>st</sup> January] Dam. Thousands of cadres and people, filled with profound revolutionary brotherhood, were also on hand to warmly welcome the visitors.”); KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150 (recalling a visit from the Chairman of Agriculture from China to the 1<sup>st</sup> January Dam).

<sup>5110</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 7. *See also*, T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 83-84; PECH Sokha Interview Record E3/403, 12 October 2009, p. 8, ERN (En) 00403008 (testifying that Chinese and Korean guests visited the 1<sup>st</sup> January Dam, accompanied by the Zone Committee [Ke Pauk] and taking photographs); T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 34-35.

for CHEN Yonggui.<sup>5111</sup> The events were filmed.<sup>5112</sup> In Phnom Penh, the Chinese delegation was bid farewell at a ceremony attended by POL Pot, NUON Chea, IENG Sary, IENG Thirith and others.<sup>5113</sup>

1497. The Chamber finds that the CPK Standing Committee hosted visiting dignitaries with the aim of demonstrating Democratic Kampuchea's independence and self-reliance. These visits apprised the CPK Standing Committee of the prevailing conditions at worksites, including the 1<sup>st</sup> January Dam.

#### 11.2.10. *Gathering the Workforce*

1498. According to KE Pich Vannak, the secretaries of Sector 41, 42 and 43 were in charge of gathering the forces to build the Dam, each of which was to send ten thousand workers.<sup>5114</sup> In October 1976, OR Ho, a chief of a unit of 100 workers, was instructed by the Sangkat Commune Committee, who had received instructions from the Upper Echelon, as to the number of people from each village to send to work at the Dam construction worksite during the dry season.<sup>5115</sup> Likewise, SOU Soeurn selected people from cooperatives of her district and sent them to work on dams and canals while the district office maintained the lists of workers.<sup>5116</sup> She said that each commune had its own chief who was responsible for bringing his or her own people to the worksite.<sup>5117</sup>

<sup>5111</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 80-81 (stating that when dignitaries visited, the workers were instructed to appear very active during the visit and to greet them); T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 56 (stating that they were instructed to shout "hooray", including for Chen Yonggui); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 8, 14 (testifying that she did not know the chief of the zone, but when superiors would arrive, the workers were encouraged to work even harder); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 35 (declaring that on that day, they were told to run while carrying earth); *Chen Yung-Kuei visits Central Region* (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168336 ("in Kampong Thom town thousands of cadres and people lined the streets and waved bouquets and the two countries' flags. They applauded and shouted welcoming slogans – Long live the revolutionary friendship and militant solidarity between Cambodia and China!; Warm welcome to Comrade Chen Yung-kuei – greeting with profound revolutionary brotherhood our Comrade Chen Yung-kuei and other Chinese guests, who bring our Cambodian people the warm greetings and revolutionary friendship of the fraternal Chinese people").

<sup>5112</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 16; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 8-10 (MEAS Laihour identified E3/3049R and E3/3014R (00:00:00-00:00:34; 00:02:06-00:02:23) as the 1<sup>st</sup> January Dam); T. 19 May 2015 (OR Ho), E1/301.1, pp. 46, 70; T. 20 May 2015 (OR Ho), E1/302.1, pp. 21-22 (OR Ho recalled that on the day the Dam was inaugurated, a film was shot of people carrying earth at the worksite and that the workers were happy to have the film shot); Cf. T. 28 May 2015 (UN Rann), E1/307.1, pp. 41, 59 (UN Rann recalled observing the screening of a film in which workers were running at a worksite, but did not recognise the worksite as her own).

<sup>5113</sup> *Hosts Farewell Banquet* (in FBIS collection), E3/1339, 14 December 1977, ERN (En) 00168351.

<sup>5114</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150.

<sup>5115</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 50, 61; T. 20 May 2015 (OR Ho), E1/302.1, pp. 3, 48-49.

<sup>5116</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 26.

<sup>5117</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 26.

In general, the strongest people were selected to work at the 1<sup>st</sup> January Dam Worksite.<sup>5118</sup>

1499. An announcement was made at the inauguration of the Dam indicating that over 20,000 people were working on the Dam, including 10,000 from Sector 42, 10,000 from Sector 43 and 1,000 additional workers from mobile units and Sector 41.<sup>5119</sup> SOU Soeurn estimated that there were between 20,000 and 30,000 workers at the 1<sup>st</sup> January Dam Worksite or perhaps as many as 40,000.<sup>5120</sup> Although it is difficult to verify the precise number of workers as none of witnesses observed all of the workers at the same time and no lists of 1<sup>st</sup> January Dam workers were presented in evidence,<sup>5121</sup> all of those who worked at the Dam were convinced that there were tens of thousands of workers present.<sup>5122</sup> The Chamber notes that the size of the worksite and the fact that workers were not allowed to move about freely made it difficult for workers to have a complete overview of the project and total number of people engaged in construction.<sup>5123</sup> However, the estimates and announcements made all mentioned tens of thousands of workers.

1500. There was also credible evidence that some workers were rotated between the 1<sup>st</sup> January Dam Worksite and other locations depending on work requirements so that the number of those present was not static.<sup>5124</sup> The Chamber is satisfied that over the span of its construction, the number of workers at the 1<sup>st</sup> January Dam was in the tens of thousands, ranging between 20,000 and 40,000 during peak construction periods.

1501. Workers were organised in units based upon their village of origin. Within each

<sup>5118</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 4-5.

<sup>5119</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150; T. 19 May 2015 (OR Ho), E1/301.1, pp. 33-34; T. 20 May 2015 (OR Ho), E1/302.1, p. 5; AU Hau Interview Record, E3/5255, 18 November 2008, p. 4, ERN (En) 00250045; T. 20 May 2015 (PECH Sokha), E1/302.1, p. 92.

<sup>5120</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 65.

<sup>5121</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 17.

<sup>5122</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 56, 76; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 23; T. 28 May 2015 (UN Rann), E1/307.1, p. 18; T. 2 June 2015 (UTH Seng), E1/308.1, pp. 100-101 (stating that workers came from Sectors 42 and 43). *See also*, CHOEU Saing Interview Record E3/7785, 21 November 2008, p. 2, ERN (En) 00244149 (stating that there was a crowd wherever you looked along the length of the dam).

<sup>5123</sup> *See above*, paras 1445-1447.

<sup>5124</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 23-24; KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 5-6, ERN (En) 00346149-00346150; T. 19 May 2015 (OR Ho), E1/301.1, pp. 29 (his work consisted of digging the irrigation canals in the dry season and working in the fields in the rainy season).

unit, twelve workers comprised a group.<sup>5125</sup> Witness OM Chy's 500 workers were divided into groups according to their respective villages with a chief for each village unit.<sup>5126</sup> OR Ho similarly testified that about 30 workers were selected from each village to work on the mobile units to clear the land and the bushes.<sup>5127</sup> Subsequently, a larger force was requested.<sup>5128</sup> Eventually, a total of 70-80 people were selected to work in mobile units and 100 were selected to work in the middle-age force.<sup>5129</sup> MEAS Laihour testified that there were 50 workers from each village who were grouped together into a special mobile unit.<sup>5130</sup>

1502. In other cases, mobile units were composed of people from different villages. Civil Party UN Rann stated in court that her unit of 100 workers were from different villages, including people from Santuk, Sandan and Stoung districts in Sector 43.<sup>5131</sup> Witness UTH Seng testified that young people from various villages were grouped together in the mobile units, but men and women stayed in separate quarters to prevent moral offences.<sup>5132</sup>

1503. The Chamber finds that the workforce for the 1<sup>st</sup> January Dam was organised based upon orders handed down from the Upper Echelon. These orders were implemented by sectors, districts, and villages/cooperatives which selected workers to be sent to the worksite.

<sup>5125</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 57; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 68.

<sup>5126</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 90.

<sup>5127</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 3.

<sup>5128</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 3.

<sup>5129</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 4.

<sup>5130</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 57; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 68.

<sup>5131</sup> T. 27 May 2015 (UN Rann), E1/306.1, p. 87 (stating that she was UN Rann born in Ta Ream village, Tbaeng commune, Kampong Svay District, Kampong Thom province, was evacuated to Tang Krasang on 17 April 1975. Tang Krasang or Taing Krasaing was in Santuk district); T. 28 May 2015 (UN Rann), E1/307.1, p. 48.

<sup>5132</sup> T. 3 June 2015 (UTH Seng), E1/308.1, pp. 99-100 (stating that he was a former Student in Phnom Penh and that after April 1975 he moved to his birth place in Kang Sau village, Kampong Thma commune, Santuk district, he worked in the youth unit in Kampong Thma sub-district to dig the canal and build the 1<sup>st</sup> January Dam with many workers from sectors 42 and 43. In 1980, he became a public servant at the water resources and meteorology office and still hold this position); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 23-24.

11.2.11. *Work Hours*11.2.11.1. *Hot battlefield*

1504. Numerous witnesses testified that the 1<sup>st</sup> January Dam was considered a “hot battlefield” which meant that there was a strict timetable and deadlines to be respected, to complete the Dam as scheduled.<sup>5133</sup> This required working at night.<sup>5134</sup> In contrast, according to one witness the 6<sup>th</sup> January Dam was not considered a hot battlefield. Therefore the working hours were reduced and the dirt did not have to be carried as far.<sup>5135</sup> However, the conditions remained difficult.<sup>5136</sup>

11.2.11.2. *Government policy regarding work hours*

1505. The surviving documentary evidence on governmental policy regarding work hours at worksites shows that the CPK made assertions as to the establishment of limited working hours, but the policy established by the CPK foresaw exceptions and therefore the policy was not implemented consistently. The October-November 1977 *Revolutionary Flag* makes general reference to a five o'clock bell ringing to stop work at the end of the afternoon.<sup>5137</sup> However, the same edition of the *Revolutionary Flag* in reference to the Steung Chinit tributary refers to “attacking it now, attacking it after the harvest, without waiting for early next year” because “[t]his would be a big waste of water”.<sup>5138</sup> The Four-Year Plan establishes a “Working and Resting Regime” entailing three rest days per month (one rest day in every ten), between 10 and 15 days for “rest, visiting, and study each year” and two months’ rest for pregnancy and confinement.<sup>5139</sup> It also provides that resting time for hospitalised people would be considered according

<sup>5133</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 55, 58-59, 72, 77, 83 (MEAS Laihour was a special mobile unit during the DK period stated that she was sent to work on the 1<sup>st</sup> January worksite in Ballangk commune in 1977. She testified that mobile units were all considered special as they were working on the 1<sup>st</sup> January Dam which was considered a hot battlefield.); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 69 (she also heard over the loudspeakers discussion of the 1<sup>st</sup> January Dam Worksite as a hot battlefield); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 6-10, 13, 45-47 (KONG Uth testified that the worksite was called a hot battlefield because of the intensity of the work. The workers worked hard and with few breaks to finish the work as quickly as possible).

<sup>5134</sup> See below, Section 11.2.11.3: Experience of workers at the 1<sup>st</sup> January Dam.

<sup>5135</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 78-79; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 8, 61-62.

<sup>5136</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 78-79; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 8, 61-62.

<sup>5137</sup> *Revolutionary Flag*, E3/170, October-November 1977, p. 10, ERN (En) 00182557 (The Current Situation of the Kampuchean Revolution and the Building Up of Every Level of the Party Cadres).

<sup>5138</sup> *Revolutionary Flag*, E3/170, October-November 1977, p. 29, ERN (En) 00182576 (The Current Situation of the Kampuchean Revolution and the Building Up of Every Level of the Party Cadres).

<sup>5139</sup> Four Year Plan 1977-1980, E3/8 [E3/213], p. 112, ERN (En) 00104054.

to the concrete situation.<sup>5140</sup>

1506. A 1975 document concerning “Economy, Finance, Culture and Social Action” states: “[o]ur people are striving and working hard, fifteen hours a day. This is having an impact on the health of our people.”<sup>5141</sup> Further, a commentary broadcast by the CPK in May 1977 described the situation as follows:

Our cooperative peasants’ key task in the current dry season is to build more waterworks than in 1976. Fully grasping the significance of this new orientation, our fraternal cooperative peasants throughout the country have become deeply involved in *building irrigation projects day and night in a most vigorous, seething and active manner*.

[...]

Whatever construction is still underway, the brothers are plunging deeper into the battle to complete the work quickly, *working day and night*.

[...]

[O]ur cooperative peasant masses pledge to further develop a great momentum to successfully fulfil and even overfulfill the task of solving the water conservancy problem during the current dry season in order to increase rice production to the maximum, contributing to further improving our people’s living standard and defending and making our country prosper at a “great leap forward” speed”.<sup>5142</sup>

1507. Another *Revolutionary Flag* issue from April 1978 reports a speech by POL Pot on occasion of the third anniversary of the 17 April victory, in which he makes general reference to work hours at cooperatives being from 6 am to 10:30 am and from 3:30 pm to 6 pm, stating “the Party does not let the cooperatives work the rice fields at night”. However, these hours appear to have been limited to work in the rice fields and not relevant to worksites.<sup>5143</sup> Furthermore, this same speech very clearly referred to the CPK policy towards work hours:

The second task is to continue to push building work. It is necessary to build the entire country, [including] the countryside. The workers of every unit in the factories, ministries, offices must launch a storming attack [on the construction] in an organised manner. *With regard to launching the storming attack, it is noted that some leadership committees give work instructions without considering working hours. The Party did not give such instructions. There are working hours. We launch a special storming attack outside the normal working hours*

<sup>5140</sup> Four Year Plan 1977-1980, E3/8 [E3/213], p. 112, ERN (En) 00104054.

<sup>5141</sup> Document number 3, E3/1765, September 1975, p. 8, ERN (En) 00523576.

<sup>5142</sup> *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168139-00168140 (emphasis added).

<sup>5143</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 19, ERN (En) 00519847.



*only when it comes to special cases.* Normally we have working hours. But some no-good elements have them [workers] work all over the place all the time, without working hours, night and day, with no rest, with no results but with more diseases.<sup>5144</sup>

1508. KHIEU Samphan stated in relation to the work at dams and worksites:

On this, I recall the mobilisation of the people to build dams and dig feeder canals. The wake-up gong was sounded at 3 or 4 a.m. The communal meal started in the evening and was not even finished by midnight. Due to a shortage of plates, they had to eat in turns. In the morning, the gong was sounded again to wake the people at 3 or 4 a.m. to get them into formation. By the time they were in formation, it was daybreak.<sup>5145</sup>

1509. Based on these documents, the Chamber considers that (1) the Party Centre issued instructions concerning working hours; (2) the Party Centre had knowledge that the instructions were not followed locally with workers exposed to extremely hard conditions; (3) the Party Centre envisaged “special cases” where working outside of normal hours was required; and (4) “no-good elements” were allegedly blamed and found responsible for disregarding the working hours instructions.<sup>5146</sup>

1510. When asked about working hours at the 1<sup>st</sup> January Dam, SOU Soeurn gave evidence that in meetings in Chamkar Leu district, NUON Chea said that workers did not have to work at night.<sup>5147</sup> As noted below, the Chamber considers her testimony to have limited probative value on the work conditions imposed at the 1<sup>st</sup> January Dam

<sup>5144</sup> Revolutionary Flag, E3/4604, April 1978, p. 31, ERN (En) 00519859 (emphasis added). *See also, Collection of Reports for February 1978* (in FBIS collection), E3/292, 2 February 1978, ERN (En) 00169180 (“We must perform our tasks expeditiously by augmenting manpower or extending working hours. We must do this because the forefront has been working day and night. Neither the army nor the people at the front think of time or schedules.”); *Collection of Reports for May 1978* (in FBIS collection), E3/1362, 17 May 1978, ERN (En) 00170037 (“All of our brothers and sisters joined hands in the offensive to overfulfill the plan of the party and the Democratic Kampuchean Government. They increased their working hours and assigned some of their labor power to help harvest and gather the rice crop of our revolutionary armed forces which were engaged in battles against the Vietnamese enemy at the time.”).

<sup>5145</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, November 2007, p. 85, ERN (En) 00498304.

<sup>5146</sup> The purging of Central (old North) Zone personnel did not improve working hours. *See below*, para. 1519. *See also, Collection of Reports for July 1978* (in FBIS collection), E3/293, 13 July 1978, ERN (En) 00169720-00169722 (“We would like to admit that some leading committees have directed this drive at irregular hours. The party has not given such advice. We have regular working hours. It is only due to some special cases that we have launched special offensive drives at irregular hours. Usually the people work at regular hours. But, some bad personnel have ordered the people to work at irregular hours, day and night, without rest. What do we get from straining ourselves so? By so doing, we might even fall ill.”).

<sup>5147</sup> T. 5 June 2015 (SOU Soeurn), E1/311.1, p. 61.

due to her leadership position at the time.<sup>5148</sup>

### 11.2.11.3. Experience of workers at the 1<sup>st</sup> January Dam

1511. The numerous testifying witnesses and Civil Parties who worked or served in supervisory roles at the 1<sup>st</sup> January Dam Worksite overwhelmingly gave evidence that work hours were long and arduous.<sup>5149</sup> Workers awoke before sunrise in order to walk to their respective work stations and begin work at the break of dawn.<sup>5150</sup> Workers were not permitted adequate sleep.<sup>5151</sup> Work hours were set by the chief of the worksite for

<sup>5148</sup> See below, Section 11.2.17: Living Conditions.

<sup>5149</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 36-37, 39 (stating that the work was extremely difficult, particularly during the hotter months when there was no rain and the workers were under the direct sunlight); T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 60-61 (MEAS Laihour testified that work hours throughout her time at the 1<sup>st</sup> January Dam were from 3am until noon; 1 pm until 5pm and again from 6pm until midnight); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 6, 28, 47-49, 54, 58, 73-78 (HUN Sethany testified that when she worked at Trapeang Chrey, the whistle sounded at 4 a.m. and work started at 5 a.m. Lunch was at 11 a.m. and work continued at 1 p.m. until 5 p.m. At 6 p.m. work recommenced until 10 p.m. But when she worked near the national road, the whistle sounded at 3 a.m. in order to permit them to walk about 3 kilometres to the worksite, starting at 4 a.m.); T. 27 May 2015 (UN Rann), E1/306.1, pp. 93-94 (UN Rann estimated that the whistle woke up the workers at around 4.30 a.m., the workers queued up and there was a headcount. They continued to the worksite and worked until 11 a.m.); T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 19-20 (SEANG Sovida testified that she woke up at the crack of dawn, around 4.30 to 5 a.m., to walk the long distance to the worksite for about one hour and arriving at the worksite before sunrise); T. 30 July 2015 (OM Chy), E1/326.1, pp. 44, 46 (OM Chy, who supervised a group of 500 workers on a canal connecting to the 1<sup>st</sup> January Dam in 1978, stated that work hours started at 4am with the blow of a whistle and continued until 11am with a 15 minute morning break. The afternoon started at 1pm and continued until 5pm with another 15-minute afternoon break.); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 8, 14 (KONG Uth testified that they started work at 4am with a break of 15 min. She later clarified that they left for their workstations at 4am.); T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 34-35 (YEAN Lon was at the worksite during the dry season and worked day and night and workers suffered greatly under the hard labour); T. 1 September 2015 (NUON Narom), E1/339.1, p. 13 (stating that very little rest was permitted and the skin on her shoulders peeled from carrying the heavy loads); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 4-5 (explaining that they were not permitted to be idle and there was competition with other villagers; they were overworked. HUN Sethany declared that sometimes fainted while working and was given support by other workers who would massage her or pull her hair to wake her up). See also, VAN Sorn Interview Record, E3/9350, 19 November 2008, p. 3, ERN (En) 00244169 (“Q: As for working hours what time did the work start and what time did it stop? A: They worked during 7-11a.m, 1-5 p.m., and 6-9 p.m. There were lights during the night work, but they were not very bright. We were not allowed to rest during work hours. We could talk and contact one another within our team but we kept on working while doing so”); CHOEU Saing Interview Record, E3/7785, 21 November 2008, p. 3, ERN (En) 00244150 (“At 4 a.m. they walked around blowing whistles to assemble, and at 5 a.m. we arrived at worksite and worked until 12 noon. We continued from 1 until 5 p.m. and in the evening from 6 until 10 p.m. They let us stop 15 minutes during each shift”); CHHUN Sakan Interview Record, E3/7770, 7 October 2008, pp. 2-3, ERN (En) 00233266-00233267 (“6 a.m. was the starting time. We would then work until 11 a.m. when we had a lunch break. Work resumed after lunch and continued until 6 p.m. For the groups that had not completed the assigned task would then have to work at night too”).

<sup>5150</sup> See above, fn. 5149. See also, T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 86 (stating that the work was hard, the workers were tired and hungry).

<sup>5151</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 72; T. 25 June 2015 (KONG Uth), E1/322.1, p. 8, 14. See above, fn. 5149.

the sector of which the worksite chiefs were informed to implement.<sup>5152</sup> Despite the long and tiring hours, none of the workers dared to protest even as they struggled to complete the work.<sup>5153</sup> There was pressure to complete the canal construction before the rainy season as the rain would make it more difficult for the workers to build.<sup>5154</sup>

1512. The evidence was inconsistent with respect to whether work hours regularly extended into the night time hours. A number of witnesses indicated that night shifts (after sunset) occurred on a regular basis. Civil Party UY Samna *alias* NUON Narom, a worker in a mobile unit, stated that work groups included New and Base People and were both instructed to work day and night without rest. She further explained that at night, there were light posts on the dam, but she had to guide the people who had night blindness because of the dark before reaching the worksite.<sup>5155</sup> PECH Sokha also stated that work at night was facilitated by the use of lights.<sup>5156</sup> KONG Uth, a worker in a mobile unit, also said that work continued after dinner starting at 7 p.m., adding that sometimes they also had to attend meetings after work hours.<sup>5157</sup> She was categorical that work had to be done regularly at night.<sup>5158</sup> MEAS Laihour testified while working on the 1<sup>st</sup> January Dam that if one could not complete the work within the work hours, they were required to until the quota was filled even if it meant to work until midnight.<sup>5159</sup> There was also credible and consistent evidence that even those who

<sup>5152</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 45. *See also*, T. 20 May 2015 (PECH Sokha), E1/302.1, p. 89; T. 21 May 2015 (PECH Sokha), E1/303.1, p. 38 (PECH Sokha testified that the work quota was announced over the loudspeaker); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 58 (testifying that people had to work into the night to finish their quota if they did not finish during the day); T. 3 June 2015 (UTH Seng), E1/309.1, p. 49.

<sup>5153</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 45.

<sup>5154</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 89.

<sup>5155</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 10-12 (stating that in the aftermath of 17<sup>th</sup> April 1975, this Civil Party moved from Phnom Penh and after several months she was sent to Bei village in Chamkar Leu district. In January 1977 she had to join a mobile unit and was sent to work at the construction of the 1<sup>st</sup> January Dam), 27 (“I was on an offensive for the daily work. I had to work intensively both day and night. It was tiring and exhausting. I had to do my best to survive”), 28.

<sup>5156</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 43.

<sup>5157</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 8, 14 (KONG Uth was a villager living in the village of Tras, Ballangk commune, Baray district, she joined a mobile unit with people from her village. Concerning working hours she stated as follows: “We were instructed to work starting from 4 o’clock in the morning, and for the morning session we only had a 15-minute break. We had lunch at 11.00. We rested a little bit, and we resumed working again at 1.00 p.m., and continued working until 5.00. And after dinner, we had to return to work at 7.00 p.m., and only after we finished the night work, we would be allowed to rest. And sometimes there were meetings at night time. And if there was any meeting on that night, we could only go to sleep by 12.00 p.m.”).

<sup>5158</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 49-51.

<sup>5159</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 57-58; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 52. *See also*, T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 33 (she later clarified that she was required to work on the Dam itself both day and night, whereas work on the connecting canals was only during the day). *See below*, Section 11.2.12: Work Conditions and Quotas.

suffered from night blindness had to work at night.<sup>5160</sup>

1513. A number of witnesses testified that night shifts were not regular or that they did not occur. OM Chy, who was a commune-level supervisor of 500 workers, testified that when the work plan was demanding there was also a night shift from 6 p.m. until 11 p.m.<sup>5161</sup> He was aware of the guideline to limit night work,<sup>5162</sup> but he said that the guideline was not fully implemented and it depended upon who led the work group.<sup>5163</sup> YEAN Lon, who was in charge of a group of 50 workers, corroborated this account, stating that there were strict instructions from the higher echelon as to working hours and that they were forced to work until 10 p.m. at times.<sup>5164</sup>

1514. Civil Party UN Rann said that workers only worked at night when the moon was bright.<sup>5165</sup> UN Rann clarified that fluorescent lamps were installed on the crest of the Dam to work in the dark, but that work was not possible at the base of the Dam without the light of the moon.<sup>5166</sup> On those days, the worker quota was increased to 12 cubic metres for a two-person team without any further food rations.<sup>5167</sup> The English translation of her testimony incorrectly reflected that work only continued during the “waxing moon”, when she actually stated that work was required when the moon was bright. UTH Seng also testified that there were night shifts and lights were used in special cases, but it was not clear how often that occurred.<sup>5168</sup>

<sup>5160</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 6; T. 1 September 2015 (NUON Narom), E1/339.1, pp. 14, 27, 68 (she recalled that four or five of her co-workers had night blindness and she had to lead them to work at night); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 14-15 (KONG Uth also said that one of the cooks in her unit suffered from night blindness and would fall off the road at night sometimes). Cf. T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 68, 90 (stating that one of these workers, Khoem Pho, was permitted to not work at night when NUON Narom informed three senior leaders wearing Krama that Khoem Pho could not see at night).

<sup>5161</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 44.

<sup>5162</sup> See above, para. 1505.

<sup>5163</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 89-90. See also, POUK Pon Interview Record, 7 October 2008, p. 3, E3/5247, ERN (En) 00232821 (stating that he was the leader of the food supply transport team for the workers at the 1<sup>st</sup> January Dam Worksite located in Boeng commune, Santuk district. He stated that: “Work started from 4 a.m. until 11 a.m. when there would be a break for about two hours. By 1 p.m. work was resumed until 5 p.m. There were no more work at night”).

<sup>5164</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 35, 37; T. 17 June 2015 (YEAN Lon), E1/318.1, p. 9.

<sup>5165</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 23; T. 28 May 2015 (UN Rann), E1/307.1 (KHMER), pp. 18-19.

<sup>5166</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 56.

<sup>5167</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 24-25.

<sup>5168</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 53-54. See also, IENG Chham Interview Record, 8 November 2009, pp. 10-11, E3/5513, ERN (En) 00410237-00410237 (IENG Chham stated that his group of 30 or more workers, sometime worked at night to finish quickly).

1515. SOU Soeurn testified that workers finished work around 5 p.m.<sup>5169</sup> However, there were numerous inconsistencies in her testimony. She initially testified that she visited her husband, KE Pauk, at the 1<sup>st</sup> January Dam Worksite many times.<sup>5170</sup> Later she claimed that she only visited once every month or every other month.<sup>5171</sup> Finally, she stated that it was only once every two to three months.<sup>5172</sup> She also testified that she did not discuss work matters with her husband, which would have prevented her from knowing about the working hours at the Dam.<sup>5173</sup> Therefore, the Chamber does not consider her testimony on this point to be credible or reliable.

1516. PECH Sokha testified that workers were occasionally asked to strive to work hard but that they mainly worked during the daytime.<sup>5174</sup> The Chamber considers that PECH Sokha minimised the harshness of conditions when he asserted that daytime work was the norm.<sup>5175</sup> He did not suffer under the same conditions due to his privileged role as a technician and had an incentive to deflect blame for harsh conditions suffered by other workers.<sup>5176</sup> OR Ho, who was a work unit chief, explained that as the deadline for the completion of the Dam approached, the work hours increased in order to meet the one-year deadline.<sup>5177</sup> OR Ho also testified that workers wanted to work at night as they could find fish in the water to eat.<sup>5178</sup> The Chamber does not find this assertion to be credible in view of the harsh working conditions at the site. Although some workers may have sought to obtain additional food at night, it is not consistent with the evidence that workers would voluntarily seek to return to the Dam at night to complete additional

<sup>5169</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 70.

<sup>5170</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 28.

<sup>5171</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 28, 57.

<sup>5172</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 88.

<sup>5173</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 53 (stating that she was not aware of the arrests or purges as her husband, KE Pauk, attended to his own affairs); T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 19-20 (testifying that after the birth of her child in the year of the snake she was often sick and not able to work. She stopped working in around 1977 and 1978. After her child was born, she visited her husband, but did not visit the worksite); T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 12-13 (stating that she asked her husband about his appointment and KE Pauk told her to mind her own business); T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 80-81 (explaining that the Sector Secretary indicated that they had the right to be aware of their own work and manage themselves, but did not have the right to ask about the affairs of other people).

<sup>5174</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 98.

<sup>5175</sup> *See e.g.*, T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 96-97; T. 21 May 2015 (PECH Sokha), E1/303.1, p. 37 (stating that he did not know whether workers could achieve the quota since his main work was surveying).

<sup>5176</sup> *See below*, para. 1587.

<sup>5177</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 55; T. 21 May 2015 (PECH Sokha), E1/303.1, p. 24. *See also*, T. 28 May 2015 (UN Rann), E1/307.1, p. 8 (explaining that during the rainy season, workloads were increased).

<sup>5178</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 90.

hard labour. There was no dispute that the workers did not receive any pay for their efforts.<sup>5179</sup>

1517. The pressure to complete the project as scheduled was illustrated by a speech given by KHIEU Samphan marking the second anniversary of the 17 April 1975 victory.<sup>5180</sup> He said that all construction of dams, reservoirs and ditches would be completed pursuant to the 1977 plan, including the Dam to block the Chinit Stream (*i.e.* the 1<sup>st</sup> January Dam). He noted that each project is manned by as many as 10,000, 20,000 or 30,000 people without the assistance of machines and urged “[t]he production corps, which are already progressive, should struggle even harder to overfulfil the [rice planting] plan to their fullest capacity”.<sup>5181</sup> He further stated that:

We must continue the struggle on the basis of the principles of independence and self reliance and implement and carry out our revolutionary organization’s 1977 plan 100% and even more. We must fulfil or overfulfil production plans both within the framework of the overall 1977 plan and within the framework of each production battlefield, front, unit or base.<sup>5182</sup>

1518. The Chamber finds that as the deadline set up by the CPK leaders approached, work hours increased and night shifts were commonplace.<sup>5183</sup>

1519. Based on the overwhelming evidence from workers at the 1<sup>st</sup> January Dam, the Chamber finds that in addition to the long working hours imposed during the day, workers were also required to work at night on a regular basis. Southwest Zone cadres who were appointed by the Party Centre, including POL Pot and NUON Chea, to replace former Central (old North) Zone cadres, did not improve working conditions at

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<sup>5179</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 113 (MEAS Laihour stating that she was not paid, that there was no salary and that the workers were merely happy to have meals to eat); T. 28 May 2015 (UN Rann), E1/307.1, pp. 25-26 (UN Rann testifying that she was not paid for her work nor asked whether she wanted to do the work at the 1<sup>st</sup> January Dam Worksite. She was afraid that if she refused she would be taken away to be killed); T. 19 May 2015 (OR Ho), E1/301.1, p. 37 (stating that workers were not paid and did not have enough gruel to eat).

<sup>5180</sup> *KHIEU Samphan Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 19 April 1977, ERN (En) 0419514, 00419517.

<sup>5181</sup> *KHIEU Samphan Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 19 April 1977, ERN (En) 0419514, 00419517.

<sup>5182</sup> *KHIEU Samphan Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/201, 19 April 1977, ERN (En) 0419514, 00419517.

<sup>5183</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 55; T. 21 May 2015 (PECH Sokha), E1/303.1, p. 24. *See also*, T. 28 May 2015 (UN Rann), E1/307.1, p. 8 (during the rainy season, workloads were increased).

the 1<sup>st</sup> January Dam and were considered by many to be harsher than the former cadres.<sup>5184</sup>

#### 11.2.11.4. *Rest days*

1520. Generally, workers were given one rest day every tenth day. OR Ho testified that every 10 days the workers were permitted to visit home.<sup>5185</sup> Workers in MEAS Laihour's mobile unit were permitted to rest every 10 days and dessert was served.<sup>5186</sup> According to her, it was a happy day when workers rested, talked amongst themselves, sang and danced.<sup>5187</sup> At times, she was granted permission to visit her home village where her mother lived.<sup>5188</sup>

1521. Other witnesses spoke of eating meat or being given dessert on this tenth day of rest.<sup>5189</sup> Certain workers had diarrhoea on those days because of the richness of the food that they were infrequently permitted.<sup>5190</sup> Criticism and self-criticism meetings were also held on these days.<sup>5191</sup> Although UN Rann testified that she did not have a day of rest every tenth day, this does not appear to accord with the experience of most witnesses.<sup>5192</sup> The Chamber is satisfied that the workers were usually granted a day of rest every 10 days.

<sup>5184</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 100, 113 (testifying that everyone trembled in fear when they heard the Southwest group due to the events in 1977); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713 (stating that some of the Southwest cadres, those whom the Central Committee had installed, "added salt" and mistreated the people in their districts, arresting or killing innocent people in Baray and Sandann Districts in particular; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 112 (stating that people and New People were both afraid of the Southwest Zone cadres). *See above*, Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

<sup>5185</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 35-36, 80; T. 20 May 2015 (OR Ho), E1/302.1, pp. 55-56.

<sup>5186</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 85.

<sup>5187</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 66.

<sup>5188</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 70. *See also*, CHOEU Saing Interview Record, E3/7785, 21 November 2008, p. 3, ERN (En) 00244150 (stating that permission to visit home were only granted when parents were sick).

<sup>5189</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 47 (explaining that sometimes she had a day off and received a dessert every tenth day); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 53 (stating that they ate pork and beef only every tenth day); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 25 (testifying that they had dessert on every tenth day, consisting of sticky rice and brown sugar).

<sup>5190</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 53.

<sup>5191</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 50, 86-87; T. 30 July 2015 (OM Chy), E1/326.1, p. 108 (stating that on the day off, the workers attended a morning meeting to reinforce their work commitment, and to receive an update on progress and management issues and could seek authorisation from their unit chief to do what they wished). *See below*, Section 11.2.14: Criticism and Self-Criticism Meetings.

<sup>5192</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 49.

11.2.11.5. Rotation of workers

1522. SOU Soeurn, Chamkar Leu District Secretary and KE Pauk's wife, testified that there was a system of rotations whereby tired workers would stay at the 1<sup>st</sup> January Dam Worksite for a limited number of months before being replaced by another, fresh group.<sup>5193</sup> For example, a group of middle-aged workers were replaced by a group of teenagers who were 17 or 18 years old. She said that at other times, workers were transferred from the 1<sup>st</sup> January Dam to work at dam or canal worksites at the district level.<sup>5194</sup> Before a rotation of workers, new workers were recruited and those who were removed from the 1<sup>st</sup> January Dam were sent to build dams and canals in Chamkar Leu district.<sup>5195</sup>

1523. OR Ho, a chief of a unit of 100 workers, testified that some workers who became tired were permitted to return home and were replaced by other workers from the village.<sup>5196</sup> He added that some people who did not achieve their quotas were replaced, and that those who returned to the village were still required to work.<sup>5197</sup> OR Ho further stated that some workers were replaced while others were not replaced because they were able to achieve their work quotas.<sup>5198</sup>

1524. However, this description differs from those made by many witnesses and Civil Parties who, unlike OR Ho, were not in a position of authority and who testified that they did not witness any rotations of workers. MEAS Laihour testified that workers were not rotated between her unit and village.<sup>5199</sup> UN Rann stated that there was no rotation of workers in her unit.<sup>5200</sup> Civil Party SEANG Sovida<sup>5201</sup> stated that during her three months at the 1<sup>st</sup> January Dam, there was no rotation of workers who were sick or tired.<sup>5202</sup> KONG Uth said there was no system of rotating workers; once assigned to an

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<sup>5193</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 68, 87.

<sup>5194</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 68.

<sup>5195</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 72.

<sup>5196</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 33.

<sup>5197</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 33-35. *See above*, paras 1498-1499. *See below*, para. 1593.

<sup>5198</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 33-35.

<sup>5199</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 76-77.

<sup>5200</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 54.

<sup>5201</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 6-8 (Civil Party LY Singuon *alias* SEANG Sovida, stated that she was born in 1964. After 17th April 1975, she and her family had to move from Phnom Penh, she arrived at Ruessei Keo village, in Prak Prasab district, Kratie province, despite her young age she joined a mobile unit and worked in different locations, including the 1<sup>st</sup> January Dam where she stayed for 3 months).

<sup>5202</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 69.



area, a worker remained until the end, although workers who were married were rotated to do rice farming.<sup>5203</sup>

1525. OM Chy also testified that the 500 workers he supervised at the 1<sup>st</sup> January Dam diminished in number as the work progressed. Some workers were recruited to the army, others got married and a few (five to 10) very sick persons were sent to hospital.<sup>5204</sup> Additional sick people were constantly staying in their sleeping quarters at the worksite.<sup>5205</sup> By the end of the project only about 300 workers remained.<sup>5206</sup>

1526. The Chamber finds that some rotation of workers did occur, but that there was no uniform and generalised practice, and that both SOU Soern and OR Ho, who were in supervisory roles, had an incentive to place work conditions in the best possible light by exaggerating the benefits of such a practice. There was overwhelming evidence that conditions at the 1<sup>st</sup> January Dam were debilitating despite such measures. The Chamber therefore finds that the rotation of workers, when applied, did not measurably decrease the difficulty of working conditions of the large proportion of workers who remained at the 1<sup>st</sup> January Dam.

#### 11.2.12. *Work Conditions and Quotas*

1527. Working conditions at the 1<sup>st</sup> January Dam were difficult. The vast majority of the work done was by hand with the assistance only of hand tools.<sup>5207</sup> Tractors were used at the outset to clear the land for dam construction.<sup>5208</sup> Two witnesses further

<sup>5203</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 45-47.

<sup>5204</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 85-86.

<sup>5205</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 86.

<sup>5206</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 86.

<sup>5207</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 78-79 (testifying that the commune provided hoes in exchanged for unhusked rice (paddy). OR Ho recalled that for each hoe, the worker groups had to give 15-20 kilogrammes of paddy. The same system applied to clothing. The exchanges were recorded in a list kept at the commerce office. But the work group provided its own baskets to carry earth); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 89 (MEAS Laihour testified that the unit chief brought replacement tools for those that were damaged). *See also, KHIEU Samphan's Speech at Anniversary Meeting* (in SWB FE/5490/C collection), E3/201, 15 April 1977, ERN (En) 0419514, 00419517. *See above*, para. 1517.

<sup>5208</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 85-86 (Three heavy machines, a bulldozer, a tractor and another machine, were the only machines to be used in the entire construction of the 1<sup>st</sup> January Dam. The tractor was used to level the ground only. Apart from that the workers used their bare hands to construct the dam). T. 21 May 2015 (PECH Sokha), E1/303.1, p. 35 (testifying also saw a bulldozer and excavators at the worksite); T. 19 May 2015 (OR Ho), E1/301.1, p. 89 (stating that when he asked for dyke metal and shovels to assist in the work, *Angkar* provided the materials to assist his group in completing it by the New Year of 1978).

claimed that tractors were available later in the dam construction process,<sup>5209</sup> but the evidence showed that mechanical devices present on site were exceptional, as the former workers heard in court testified that they had to carry out the hard work of carrying dirt by hand over and over.<sup>5210</sup> There was evidence that explosives were used to break rocks.<sup>5211</sup>

1528. The rocky nature of the soil in some locations created difficulties for the workers. While breaking rock for use in the Dam, young men from HUN Sethany's village were hit in the legs with rock fragments and had wounds all over their legs for which they did not receive any treatment. They used tree leaves to cover their wounds.<sup>5212</sup> KONG Uth recalled that one worker who was breaking rocks, was crushed to death when a rock was dislodged from a bridge and fell upon him or her.<sup>5213</sup>

1529. Working conditions for supervisors and technicians were not as difficult. For example, PECH Sokha, a technician, testified that on the rare occasion that he dug earth, he was to carry it about 50 metres to put it on the dam.<sup>5214</sup> When working hours ended, he did not need to carry on.<sup>5215</sup> MEAS Laihour testified that unit chiefs did not carry

<sup>5209</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 69; T. 5 June 2015 (SOU Soeurn), E1/311.1, p. 71 (saying that initially there were no machines available to assist the workers, but that some units of heavy machinery became available later on in the construction after the Dam already had its proper shape); IENG Chham Interview Record, E3/5513, 8 November 2013, ERN (En) 00410237 (stating that excavators, concrete mixers and cranes were used at his location).

<sup>5210</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 14 (stating that he never saw any machinery at the worksite); T. 2 June 2015 (SENG Bunkheang), E1/308.1, p. 109; T. 3 June 2015 (UTH Seng), E1/309.1, p. 54 (testifying that there was no heavy machinery, although after 1979, he saw bulldozers and tractors in the forest near the dam); T. 17 June 2015 (YEAN Lon), E1/318.1, p. 5 (stating that he did not see any machines being used at the 1<sup>st</sup> January Dam). *See also*, Revolutionary Flag, E3/11, ERN (En) 00486261 ("All of these [water projects] have been built by our workers and peasants relying entirely on their own efforts, with their own bare hands and their hoes"); POUK Pon Interview Record, E3/5247, 11 September 2018, ERN (En) 00232820 ("Pure human labor force was used"); *A Yugoslav Journalist's Impressions of His Visit* (in SWB FE/5801/B/3 collection), E3/2306, 29 April 1978, ERN (En) S00010087 ("The only signs of mechanization that we saw on all those work sites were a few dump trucks and dredgers left over from the former regime and a few dozen tractors and lorries which the new authorities have bought from Yugoslavia."); *Khmers Rouges: Collective Labour at the Dam Building Sites*, E3/3014R, ERN V00422520, 00:00:10-00:00:14.

<sup>5211</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 47 (stating that explosives were used to break stones and that prior to the explosions a broadcast was made on the loudspeaker); T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 73-74 (testifying that when explosives were used to break rocks, guards would not permit workers in the area so as to avoid being hit by rock fragments); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 26 (testifying that when explosives were used, the workers normally were not told in advance).

<sup>5212</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 12.

<sup>5213</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 17.

<sup>5214</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 93-94.

<sup>5215</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 97-98, 91 (testifying that the workers were occasionally asked to strive to work at night but that they mainly worked during the daytime).

earth; they only supervised.<sup>5216</sup> This was corroborated by Civil Party NUON Narom who said that unit chiefs did not suffer as much because they did not dig or carry dirt.<sup>5217</sup> HUN Sethany said that unit chiefs did not work hard and at times would disappear somewhere to rest.<sup>5218</sup>

1530. Work quotas originated from the Upper Echelon.<sup>5219</sup> UN Rann testified that quotas were checked by the big unit chief at the end of the day by using a tree branch to measure what had been completed.<sup>5220</sup> HUN Sethany testified that her unit chief attended meetings at the commune or district level after which they relayed the instructions they received to the workers. Workers were encouraged to work as quickly as possible.<sup>5221</sup> According to SEANG Sovida, the land to be dug was measured for the workers of the whole mobile unit and was divided between the smaller groups, and the quota was set for workers in each of these groups to be completed in a particular period of time.<sup>5222</sup> HUN Sethany testified that the group and unit chiefs, rather than the Upper Echelon, determined the work, but she was not in a position to know whether those higher in the administrative chain had conveyed the quotas.<sup>5223</sup> YEAN Lon, the chief of a group of 50 workers, said that his entire group was given a quota which they subdivided amongst smaller work groups.<sup>5224</sup> MEAS Laihour, a mobile unit member from Ballangk commune, testified that everyone had the same quota, including New People and Base People.<sup>5225</sup> OR Ho explained that his group of 100 workers was given a set distance of canal where it had to dig and this constituted the basis for the work quota to be completed, including the length, depth and width of the canal.<sup>5226</sup>

<sup>5216</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 55.

<sup>5217</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 26.

<sup>5218</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 6. *Cf.* T. 28 May 2015 (UN Rann), E1/307.1, p. 6 (stating that unit chiefs worked like other members, but the big unit chiefs did not).

<sup>5219</sup> T. 28 May 2015 (PECH Sokha), E1/302.1, p. 89; T. 21 May 2015 (PECH Sokha), E1/303.1, p. 37 (testifying that the work quota was announced on the loudspeaker). The Chamber considers that as a technician who worked in a privileged role with KE Pauk, PECH Sokha would have been aware of work quotas and was therefore not credible in his assertion that he only knew of work quotas based on announcements). *See also*, T. 30 July 2015 (OM Chy), E1/326.1, p. 50 (the “Chief of the construction site at the district level instructed all the unit chiefs to set such a [work] quota”).

<sup>5220</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 23, 62-64.

<sup>5221</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 27.

<sup>5222</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 18, 44.

<sup>5223</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 23, 26.

<sup>5224</sup> T. 17 June 2015 (YEAN Lon), E1/318.1, pp. 23-24.

<sup>5225</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 62; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 35.

<sup>5226</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 45.

1531. Reports on progress and the completion of work quotas were sent back to the Upper Echelon. OM Chy testified that he was required to report daily to his supervisor at the district level concerning work quotas.<sup>5227</sup>

1532. The worksite chiefs sought to urge workers to meet the work quota through competition and by instilling a constant fear of repercussions for violating CPK regulations.

1533. In the first instance, workers were called upon to achieve the highest work output in competition with other work units. To this end, the uncontradicted evidence at trial was that daily work quotas were imposed.<sup>5228</sup> Work units normally worked in mixed-gender teams with men digging earth and women carrying it.<sup>5229</sup> Three women estimated that the baskets they carried weighed 30-40 kilograms.<sup>5230</sup> If the daily output was not achieved, workers were ordered to continue at night, during breaks, or early

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<sup>5227</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 49-50. *See also*, CHUOP Non Interview Record, 17 November 2008, E3/9349, ERN (En) 00244155 (explaining that he was deputy chief of a mobile unit of Ballangk commune, Baray district and later was at the head of a team of 13 guards at the bridge of the 1<sup>st</sup> January Dam. He stated that “All the work was done at the order of the village Chief. Whatever they had us do, we did it as they ordered, but if we did not meet the quotas set by the village chief, they would take us for refashioning, instruction and punishment”), ERN (En) 00244157 (stating that he was told by the village chief that he had to monitor and report).

<sup>5228</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 38, 63-64 (stating that workers were given a quota of three cubic metres per day, but not everyone could meet the quota. Depending on the soil conditions and the strength of individuals, some days workers could move one cubic metre or dirt and on other days two cubic metres.); T. 20 May 2015 (PECH Sokha), E1/302.1, p. 97 (testifying that his work quota was different from other workers, who had to carry two cubic metres); T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 55-56, 62, 75; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 7-8, 57, 82 (explaining that as a mobile unit member from Ballangk commune, he had a quota of one cubic metre of earth per day assigned and measured by her mobile unit chief, NEARY Me); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 23, 26 (testifying that the group and unit chiefs determined the work quotas at about 1.5 to two cubic metres per day); T. 27 May 2015 (UN Rann), E1/306.1, p. 92; T. 28 May 2015 (UN Rann), E1/307.1, pp. 5, 21 (each group of two workers was assigned four cubic metres to complete; two cubic metres per worker); T. 2 June 2015 (UTH Seng), E1/308.1, pp. 108-109 (explaining that at the 1<sup>st</sup> January Dam, the quota was 1.5 cubic metres per day per person); T. 17 June 2015 (YEAN Lon), E1/318.1, pp. 23-24 (explaining that normally the quota was 1.5 or two cubic metres per person coming from the upper level); T. 30 July 2015 (OM Chy), E1/326.1, pp. 48, 78 (testifying that his workers had a work quota of 3 cubic metres of soil per day – half in the morning and half in the afternoon – when they were working at the crest of the dam); T. 1 September 2015 (NUON Narom), E1/339.1, p. 25 (saying that work quotas for women and men were 1.5 and 2 cubic metres, respectively); T. 1 September 2015 (CHAO Lang), E1/339.1, p. 75 (saying the work quota varied but it was normally two cubic metres per worker and that they worked in teams of three); T. 1 September 2015 (NUON Narom), E1/339.1, p. 29 (stating that she was given two cubic metres of soil to complete using big baskets and told that if she did not complete the work she would not eat).

<sup>5229</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 26.

<sup>5230</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 22-23; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 84. *Cf.* T. 1 September 2015 (NUON Narom), E1/339.1, p. 26 (stating that she had to carry two baskets of about 20 kilograms each 20 or 30 metres).

the next morning to reach the quota.<sup>5231</sup>

1534. According to NUON Narom and CHAO Lang, some workers showed solidarity with some of their fellow workers whereby they assisted sick or weak members in meeting their quota.<sup>5232</sup> In addition, some reported that their units were normally able to meet the work quota.<sup>5233</sup> But this was not the case in many units.<sup>5234</sup> YEAN Lon who was himself at the head of a group of 50 workers, testified that those who were unable to meet their quota were punished and that the unit chief applied constant pressure to meet the quotas.<sup>5235</sup>

1535. There were also multiple reports about landslides occurring at the 1<sup>st</sup> January Dam Worksite, injuring or killing several workers.<sup>5236</sup> The evidence was that these events were precipitated by an atmosphere of intense, forced competition.<sup>5237</sup> UN Rann said that the small unit chiefs were in charge and were trying to impress their

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<sup>5231</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 44 (explaining that if workers did not meet their quota, they were sometimes asked to complete it at night); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 67-68 (testifying that if they did not meet the work quota, they would continue the next day, adding the unmet quota to the next day's work); T. 28 May 2015 (UN Rann), E1/307.1, p. 71; T. 27 May 2015 (UN Rann), E1/306.1, p. 93 (stating that if they failed to meet the quota, they had to start work early to try to meet the prior days quota. If they again failed to reach the quota, they were criticised).

<sup>5232</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 25 (indicating that she was unable to meet the quota, her colleagues helped her to finish it); T. 1 September 2015 (CHAO Lang), E1/339.1, p. 75 (explaining that if a peer did not finish, the other members assisted them in meeting the quota).

<sup>5233</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 24 (“we, as a group, had to help each other to complete the work assignment. So when we received the work quota, we had to complete it within our own unit. We divided the work among ourselves in the unit and helped each other to complete it.”).

<sup>5234</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 38, 63-64 (testifying that not everyone could achieve the work quotas); T. 30 July 2015 (OM Chy), E1/326.1, p. 48 (testifying that about 60 or 70 percent were able to meet the quota; others were not). *Cf.* OM Chy Interview Record, E3/5265, 14 January 2009, ERN (En) 00282347; T. 30 July 2015 (OM Chy), E1/326.1, p. 49 (however, he indicated in his WRI that only 30 percent of workers could meet the quota, but testified that his prior statement was not truthful).

<sup>5235</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 36.

<sup>5236</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 63; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 17, 30 (as a mobile unit worker, he witnessed a landslide on people who worked in another commune area, who were digging soil, killing them before they could be unburied); T. 26 May 2015 (HUN Sethany), E1/305.1, p. 95 (stating that she had shingles on the day of the landslide, but she was told that someone had died from the incident); T. 28 May 2015 (UN Rann), E1/307.1, pp. 14, 80 (describing that she also heard about the landslide which covered three workers, killing one on the spot. But she did not observe the incident as it happened far away from her place of work and sleeping quarters); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 54-55 (stating that he heard there was a fatal accident due to a landslide caused by earth which was dug very deep); T. 1 September 2015 (NUON Narom), E1/339.1, p. 38 (testifying that she saw soil collapse around a hole in the ground that some youth were digging).

<sup>5237</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 95 (explaining that there was competition amongst the villagers to complete work more quickly than others which led to the landslide); T. 19 May 2015 (OR Ho), E1/301.1, p. 72; T. 20 May 2015 (OR Ho), E1/302.1, pp. 24-25 (testifying that workers were working day and night, competing against each other and that three workers died).

superiors.<sup>5238</sup>

1536. Overall, fear was the predominant motivating force to meet work quotas. OR Ho, who was a work unit chief himself, testified that if unit chiefs had ill intentions and reported to the Upper Echelon that the work quota was not met, there would be problems.<sup>5239</sup> He agreed that the workers were afraid that if they did not do what they were told, something bad would happen to them.<sup>5240</sup> Those who did not meet work quotas were considered to be infiltrated enemies, obstructing the progress of work or the worker's movement.<sup>5241</sup> For example, if others achieved the work quota and OR Ho's team did not, in some cases workers or the chief of a unit would be taken away.<sup>5242</sup> Others were spared if their work unit chief covered for them.<sup>5243</sup> Also, if the chief was able to explain the reasons for missing the quota, the group would not suffer consequences.<sup>5244</sup> HUN Sethany testified that killing of people would take place continuously for failing to meet the work quotas.<sup>5245</sup> SAUT Toeung, who was NUON Chea's bodyguard and messenger from the middle of 1975 until 1978 and who accompanied NUON Chea at the 1<sup>st</sup> January Dam Worksite, answered affirmatively that he saw "torture" inflicted on the people if they failed to meet work quotas. However no clarification was given on what he may have seen and no detail was provided concerning the alleged torture. In addition, these statements appear to be inconsistent with a previous answer provided by the same witness as he characterised the situation at the dam as "normal" noting merely that many people carried dirt.<sup>5246</sup> However, UN Rann testified that food rations were reduced if one did not make the work quota.<sup>5247</sup>

1537. There was a practice of warning workers not to fall sick, lest they be sent for refashioning.<sup>5248</sup> According to UN Rann, refashioning, re-education or tempering all

<sup>5238</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 17.

<sup>5239</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 38-39.

<sup>5240</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 36.

<sup>5241</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 41.

<sup>5242</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 41.

<sup>5243</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 45.

<sup>5244</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 39.

<sup>5245</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 27.

<sup>5246</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 54.

<sup>5247</sup> T. 27 May 2015 (UN Rann), E1/306.1, p. 92; T. 28 May 2015 (UN Rann), E1/307.1, p. 5.

<sup>5248</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 3 (testifying that the workers were also told at meetings that they would be sent for refashioning if they were to fall sick often). *See also*, CHHUN Sakan Interview Record E3/7770, 7 October 2008, p. 3, ERN (En) 00233267 ("[workers] were afraid to complain that they were sick as they heard that some people were killed because of this").

meant to kill a person.<sup>5249</sup> The Chamber considers, however, that there were punishment measures imposed on workers that fell short of killing. These may have been characterised as “re-fashioning” or “re-education”. For example, one sick co-worker told UN Rann that she had been ordered to collect human waste with her bare hands as a punishment, to serve as a lesson for others who claimed to be sick.<sup>5250</sup> When four or five workers were sick, the unit chief warned the workers and asked them whether they wanted to die.<sup>5251</sup> Upon hearing this threat, those who were sick due to a lack of food or malnutrition would force themselves to work out of fear.<sup>5252</sup> Although UN Rann never saw anyone being taken for refashioning for not working enough days, the threats contributed to creating a charged atmosphere.<sup>5253</sup>

1538. MEAS Laihour testified that those who did not work were considered to be enemies opposed to *Angkar*.<sup>5254</sup> New People were monitored, and if they were considered to be lazy, they were educated to reform. If such warnings were unsuccessful, they were taken away and killed.<sup>5255</sup> In addition, YEAN Lon gave evidence that the unit chief, Yi, walked around to assess whether workers met their work quota. Those who met their quota could rest, while those who did not had to work harder.<sup>5256</sup> He also said that none of the workers in his unit was ever under disciplinary action.<sup>5257</sup>

1539. Some of NUON Narom’s colleagues were beaten although they were resting only because they were sick.<sup>5258</sup> For example, a woman named Eng fell sick and requested to rest. Her request was rejected and she was beaten by the female unit chief

<sup>5249</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 13; T. 28 May 2015 (UN Rann), E1/307.1, pp. 35-36 (refashioning, re-education or tempering all meant, to kill a person).

<sup>5250</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 50-51.

<sup>5251</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 37-38.

<sup>5252</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 39.

<sup>5253</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 49-50, 52.

<sup>5254</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 88.

<sup>5255</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 88; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 36-37.

<sup>5256</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 36. *See also*, CHOEU Saing Interview Record E3/7785, 21 November 2008, p. 3, ERN (En) 00244150 (stating as follows: “The team chiefs walked around inspecting so that we would not stop, for fear the quota would not be met”).

<sup>5257</sup> T. 17 June 2015 (YEAN Lon), E1/318.1, p. 27.

<sup>5258</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 14-15 (testifying the following: “I witnessed that some of my colleagues were mistreated although they were really sick and these colleagues were not allowed to take rest”).

with a pole.<sup>5259</sup> One day, NUON Narom was sick and went to her sleeping quarters with another sick colleague named Vorn. Vorn was criticised and beaten with her hands tied behind her back, being warned that she was not to go anywhere besides the worksite.<sup>5260</sup> NUON Narom did not know why she herself was not beaten.<sup>5261</sup>

1540. There were some accounts that threats were not used in certain units. SEANG Sovida testified that her unit chief, Sieng, did not threaten the workers but encouraged them to work hard.<sup>5262</sup> OM Chy stated that although some group leaders requested that corporal punishment be permitted, he did not allow it.<sup>5263</sup> The Chamber notes with respect to this evidence that having supervised 500 workers, OM Chy had an incentive to create a positive impression of the work environment he oversaw. Furthermore, these impressions were not shared by most.

1541. The Chamber finds that threats and punishment were used by work unit chiefs in order to urge the work force to meet quotas.

#### 11.2.13. *Oversight of Workers by Soldiers and Militiamen*

1542. The harshness of living and working conditions at the Dam was exacerbated by the presence of sometimes-armed soldiers and militiamen watching over the workers in order to ensure they kept working as much as possible.

1543. HUN Sethany testified that Khmer Rouge guards watched over the workers to prevent them from escaping the worksite and to deter them from staying too long in the forest to relieve themselves.<sup>5264</sup> If workers went too far, cadres would shout at them to return.<sup>5265</sup> Militiamen and soldiers stood guard near where she was working and told

<sup>5259</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 30 (stating as follows: “One of them fell sick at that time. She had a stomach-ache and diarrhoea and that person requested to take rest for one day. But the request was rejected by the unit chief. She replied back saying she was really sick and asked why she was not allowed to rest. Then, the unit chief yelled at her and the shoulder pole was used to beat that person. They beat her in front of me. [...] She was a New Person and half-Chinese”).

<sup>5260</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 30-31 (stating as follows: “She was beaten, and her hands were tied to her back. She was beaten. I witnessed the incident in front of me. I was very frightened. I said nothing”).

<sup>5261</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 37.

<sup>5262</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 68.

<sup>5263</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 102.

<sup>5264</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 10.

<sup>5265</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 10.



the workers that if they were discovered speaking they would be arrested.<sup>5266</sup> She recalled that two siblings who were talking to one another were forced to separate.<sup>5267</sup> She was told by her sister that their father, who also worked at the Dam Worksite, was once called by militiamen and taken away purportedly to carry logs, but disappeared thereafter.<sup>5268</sup>

1544. MEAS Laihour corroborated the testimony of HUN Sethany, stating that there were many Baray district soldiers armed with AK-47s, who watched over the workers when they relieved themselves in the bushes.<sup>5269</sup> If the workers rested too long or stayed too long in the forest during a toilet break, the soldiers would order them to get back to work.<sup>5270</sup> She said that two or three commune soldiers were assigned to guard the workers from each commune and would be stationed 100 to 150 metres apart.<sup>5271</sup> Those who tried to avoid work were brought back to the worksite by militia.<sup>5272</sup> However, MEAS Laihour also testified that the soldiers were not allowed to fire their rifles freely and they were told to be armed to protect the mobile units.<sup>5273</sup> Soldiers slept in their own camp and did not watch over mobile unit workers at night.<sup>5274</sup>

1545. KONG Uth confirmed that armed militiamen and guards, some of whom came from her commune, were at the 1<sup>st</sup> January Dam watching the workers. They were on patrol, carrying weapons and watching over the workers.<sup>5275</sup> She was not able to say why they were present.<sup>5276</sup> SEANG Sovida also testified that the sub-group chiefs watched over the workers. Once in a while she saw a militiaman or soldiers watching over workers as they walked past the Dam Worksite dressed in black and armed with

<sup>5266</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 14. *See also*, T. 1 September 2015 (NUON Narom), E1/339.1, p. 28 (testifying that there were few militiamen watching all the workers, to see those who were active and inactive at work).

<sup>5267</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 15.

<sup>5268</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 18.

<sup>5269</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 85, 90; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 37, 41-42, 45.

<sup>5270</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 82; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 41-42, 63.

<sup>5271</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 42.

<sup>5272</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 90; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 63.

<sup>5273</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 16.

<sup>5274</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 16.

<sup>5275</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 23.

<sup>5276</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 52-53.

rifles.<sup>5277</sup>

1546. YEAN Lon, who at some point became a militiaman himself,<sup>5278</sup> testified that there were many militiamen from Kampong Thma commune at the 1<sup>st</sup> January Dam Worksite, with UN Chheng as their chief.<sup>5279</sup> The militiamen were armed with Chinese-made rifles and guarded the workers at the 1<sup>st</sup> January Dam.<sup>5280</sup> YEAN Lon stated that he was in constant fear of making a mistake.<sup>5281</sup> His testimony further supports the evidence on the presence of militiamen at the 1<sup>st</sup> January Dam and the charged atmosphere that this created. Mindful of YEAN Lon's attempts to minimise his own culpability, the Chamber approaches this evidence with caution.

1547. Elizabeth BECKER also saw armed soldiers at the 1<sup>st</sup> January Dam Worksite during her visit in 1978.<sup>5282</sup>

1548. One Civil Party gave evidence that there were no armed soldiers or militia. UN Rann stated that she never saw any militiamen, soldiers, or anyone armed at the 1<sup>st</sup> January Dam.<sup>5283</sup> She said that workers were not prohibited from relieving themselves in the bushes near her work area.<sup>5284</sup> UTH Seng testified that it was difficult to know whether militia were always present at the worksite as everyone wore black uniforms, but he did not see soldiers with firearms.<sup>5285</sup> The Chamber notes that UN Rann was not in the same work unit as HUN Sethany and MEAS Laihour as they originated from different villages and communes.<sup>5286</sup>

<sup>5277</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 32.

<sup>5278</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 81; T. 17 June 2015 (YEAN Lon), E1/318.1, p. 11 (testifying that he joined the militia sometime in 1976, being recruited by the commune militia chief, Thlang); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 84 (but later testifying that he only became a militiaman after he had worked at the 1<sup>st</sup> January Dam).

<sup>5279</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 52.

<sup>5280</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 52.

<sup>5281</sup> T. 17 June 2015 (YEAN Lon), E1/318.1, p. 18.

<sup>5282</sup> Elizabeth BECKER Notes, E3/1171, 13-14 December 1978, ERN (En) 00087871.

<sup>5283</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 28, 41.

<sup>5284</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 69-71.

<sup>5285</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 10. *See also*, VAN Sorn, Interview Record, E3/9350, 19 November 2008, p. 3, ERN (En) 00244169 ("At the work site there were people who walked around inspecting while the people were working and in case someone did not meet the quota or was lazy they would report to upper level to have the unit chiefs call them to instruction and refashioning meetings. [...] The Khmer Rouge assigned the people they trusted to spy and report them").

<sup>5286</sup> As set out above, work units were organised by villages and communes. *See above*, para. 1501. *See also*, T. 26 May 2015 (HUN Sethany), E1/305.1, pp. 91-94 (born in Tuol Thma village, Sambuor Meas commune, Kampong Cham district, Kampong Cham province, testified that she was forcibly transferred with her family from her village in Kampong Cham town to Baray pagoda in Baray District, Kampong Thom province); T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 53, 84 (Witness MEAS Laihour, who

1549. Other witnesses gave evidence that militiamen were there to protect the Dam from enemies or external threats. PECH Sokha, a technician with a privileged position of authority at the worksite, testified that zone soldiers were there to ensure that the enemy did not destroy the Dam. They patrolled on foot armed with AK-47 rifles, guarding the workers.<sup>5287</sup> The Chamber finds that this testimony is not inconsistent with that of the other witnesses – it is possible that the militiamen were indeed guarding against external threats while at the same time monitoring the workers.

1550. OR Ho, who also had a privileged position as chief of a 100 workers unit, gave similar evidence that militiamen were there to protect the Dam against external threats and were not concerned with the workers.<sup>5288</sup> The Chamber notes, however, OR Ho's other evidence that he told soldiers not to report mistakes by his workers to the commune.<sup>5289</sup> The Chamber considers that this presupposes that soldiers were in fact monitoring what actions were taken by the workers. In addition, the Chamber considers that OR Ho, as a work unit chief, had an incentive to minimise his culpability or complacency for mistreatment of workers.

1551. The Chamber does not consider that the evidence given by OR Ho, UN Rann or UTH Seng undermines the testimony of numerous other witnesses that the presence of armed soldiers and militiamen monitoring the workers heightened the fearful

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originated from Ballangk commune, Baray district, Kampong Thom province, was assigned to a special mobile unit during the DK period and was sent to work on the 1<sup>st</sup> January worksite in Ballangk commune in 1977); T. 27 May 2015 (UN Rann), E1/306.1, p. 87 (Civil Party UN Rann, born in Ta Ream village, Tbaeng commune, Kampong Svay District, Kampong Thom province, was evacuated to Tang Krasang on 17 April 1975. Tang Krasang or Taing Krasaing was in Santuk district); T. 27 May 2015 (UN Rann), E1/306.1, p. 87 (she was assigned to transplant rice seedlings and when the flooding came to a mobile unit at Kdei Saen Pagoda to work on the 1<sup>st</sup> January Dam).

<sup>5287</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 27-28. *See also*, CHUOP Non Interview Record, E3/9349, pp. 2-5, ERN (En) 00244155-00244158 (CHUOP Non was a deputy chief of a mobile unit and later was at the head of a team of 13 guards at the bridge of the 1<sup>st</sup> January Dam. He stated that he was responsible for watching the 1<sup>st</sup> January bridge in case the Khmer Sa came to cut it).

<sup>5288</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 20 (Militia men did not come to watch the workers; actually they came to secure the external security).

<sup>5289</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 91 ("If there were enemies, militiamen would report about the enemies to *sangkat* and I was also informed about that information. And if I told militiamen not to report about enemies, they did not dare to make any report. Everyone committed mistakes but we forgave them for their mistakes and it would be progressive. I had my own way or modality of leadership different from other villages in Ballangk *sangkat*."); T. 20 May 2015 (OR Ho), E1/302.1, pp. 19-20 ("As for the four group chiefs and I, we never sent our own workers for disciplinary measure or actions and if the work could not be done, we would try to resolve the work issue in our groups and would agree with one another so that we could finish the work faster together.").

atmosphere at the 1<sup>st</sup> January Dam.<sup>5290</sup>

#### 11.2.14. *Criticism and Self-Criticism Meetings*

1552. Criticism and self-criticism meetings were generally held every tenth day and were an additional way to convey the urgency of building the Dam and the consequences for failing to work hard. Workers were sometimes beaten at the meetings.

1553. OM Chy, a Base Person who supervised about 500 workers, testified that study sessions were held every tenth day for criticism and self-criticism.<sup>5291</sup> During these sessions, they were told to meet targets for the worksite and to adhere to the work plan determined by the Party.<sup>5292</sup> Meetings were held to identify those who were committing “acts of sabotage” and if the Upper Echelon identified those people they could be taken away for “torture” or “re-education.”<sup>5293</sup>

1554. OR Ho, a work unit supervisor, testified that the meetings were chaired by people from the commune, and workers were encouraged to complete the Dam quickly to improve farming.<sup>5294</sup> If there were new plans from the Upper Echelon, the commune leaders would pass these along.<sup>5295</sup> The leaders at the meetings also said that enemies had to be “removed”.<sup>5296</sup> OR Ho stated that these were not criticism meetings, but that they were held “to encourage” workers to do their work.<sup>5297</sup>

1555. CHAO Lang, a mobile unit worker, confirmed attending criticism and self-criticism meetings at which workers were encouraged to fulfil the work plan and to support the “great leap forward”.<sup>5298</sup> After such meetings, workers would routinely disappear. They were told that lazy workers were sent for re-education, but the workers

<sup>5290</sup> UN Rann was in a different work unit from HUN Sethany and MEAS Laihour and would have therefore had a different experience. OR Ho had an incentive to minimise the harshness of conditions and the possibility of ill-treatment as he was a supervisor at the site. UTH Seng’s testimony was ambivalent, as he also testified that he was generally fearful throughout his time at the site and also saw people arrested by soldiers. See T. 2 June 2015 (UTH Seng), E1/308.1, p. 111; T. 3 June 2015 (UTH Seng), E1/309.1, pp. 8-9, 54-55.

<sup>5291</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 80.

<sup>5292</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 80.

<sup>5293</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 92.

<sup>5294</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 48-50.

<sup>5295</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 87.

<sup>5296</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 51 (it was said that “the worm needs to be removed one by one”).

<sup>5297</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 87.

<sup>5298</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 61-62, 68-69.

never saw again those who disappeared.<sup>5299</sup> Similarly, UN Rann was told to work hard and not to fall sick too often, or risk being sent for refashioning.<sup>5300</sup>

1556. SEANG Sovida said the purpose of the meetings was to push workers to work as hard as possible to finish work before other villages.<sup>5301</sup> Self-criticism was encouraged whereby workers would observe their colleagues to catch mistakes and to criticise them during the meetings.<sup>5302</sup> Slogans were disseminated such as “[*Angkar*] had many eyes as pineapple [*sic*]” and “if you interfere with your leg or your arm, it [will] crush you” and “to keep [you] is no gain; to lose [you] is also not a loss”.<sup>5303</sup> The meetings discussed increasing the agricultural production to three tonnes per hectare.<sup>5304</sup>

1557. UTH Seng said that workers were urged to work harder to achieve the work plan, but that no one dared criticise another for fear of retribution, so the youth merely listened to the instructions from the unit chief.<sup>5305</sup> Workers were told that they should not “obstruct the wheel of history” by skipping work due to sickness.<sup>5306</sup> Others were told to work harder without explanation as to why.<sup>5307</sup>

1558. Workers were also beaten if they did not work hard enough. UTH Seng’s unit chief warned his unit that if they did not work hard, they would be placed in a special unit in which they would have to do more work on fewer food rations than other units.<sup>5308</sup> Those in the special unit would be lined up at night for self-criticism sessions and the special unit chief would beat them with a whip under their knees in front of other units working nearby.<sup>5309</sup> The beatings did not cause severe injuries,<sup>5310</sup> but were

<sup>5299</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 80 (after such meetings, workers would disappear continuously; they were told that lazy workers were sent for re-education, but the workers never saw again those who disappeared).

<sup>5300</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 32, 34; T. 27 May 2015 (UN Rann), E1/306.1, p. 93 (if they failed to meet the quota, they had to start work early to try to meet the prior days quota; if they again failed to reach the quota, they were criticised).

<sup>5301</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 29.

<sup>5302</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 29.

<sup>5303</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 29-30.

<sup>5304</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 30.

<sup>5305</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 6.

<sup>5306</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 14.

<sup>5307</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 14.

<sup>5308</sup> T. 2 June 2015 (UTH Seng), E1/308.1, p. 101; T. 3 June 2015 (UTH Seng), E1/309.1, pp. 5-6.

<sup>5309</sup> T. 2 June 2015 (UTH Seng), E1/308.1, pp. 102, 113-115.

<sup>5310</sup> T. 2 June 2015 (UTH Seng), E1/308.1, p. 115.

used to deter other young workers from becoming lazy.<sup>5311</sup>

1559. NUON Narom stated that they were told at meetings that the work had to be completed before the rainy season, and in fact she had to work day and night carrying earth, regardless of whether they were sick to achieve that goal.<sup>5312</sup>

1560. The Chamber is satisfied that workers were required to attend criticism and self-criticism meetings on a regular basis, during which they were told to work hard in order to meet the construction goal of the worksite and to help the revolution make a “great leap forward”. The meetings were also used to warn the workers of the consequences for failing to perform the required work, which could include public beatings.<sup>5313</sup>

#### 11.2.15. *Arrests and Disappearances*

1561. The evidence shows that there were a number of unexplained disappearances from the Dam construction site. UTH Seng saw soldiers arrest two or three workers and concluded that they had been killed based upon what militia members later said.<sup>5314</sup> He explained that people would be called out with the excuse that they had to work at night, as in the dark it was easier to tie them up.<sup>5315</sup>

1562. NUON Narom and CHAO Lang also gave evidence that many workers who were considered inactive or lazy disappeared, with many of the disappearances occurring after self-criticism meetings.<sup>5316</sup> While they were told that lazy workers were sent for re-education, CHAO Lang testified that he never saw those workers again.<sup>5317</sup> When people disappeared, the same pretence was used in the villages and at the Dam

<sup>5311</sup> T. 2 June 2015 (UTH Seng), E1/308.1, p. 115; T. 3 June 2015 (UTH Seng), E1/309.1, p. 4. Although one unit supervisor testified that he did not permit corporal punishments, the Chamber rejected this evidence as self-interested. *See* T. 30 July 2015 (OM Chy), E1/326.1, pp. 101-102. *See above*, para. 1540.

<sup>5312</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 12, 26. *See also*, VAN Soeun Interview Record, E3/9350, 19 November 2008, ERN (En) 00244169 (“If the daily quota was not met they took me to instruction and refashioning meetings. The meetings were mostly held when we rested after work, and mostly they called only those people who had not met the quota. [...] As for me, I was called to refashioning meetings twice. In the refashioning meetings they said, ‘Comrade if you don’t meet the quota you better be careful.’”).

<sup>5313</sup> *See above*, para. 1558.

<sup>5314</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 8-9.

<sup>5315</sup> T. 2 June 2015 (UTH Seng), E1/308.1, pp. 110-111.

<sup>5316</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 12; T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 79-80.

<sup>5317</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 80 (stating that after such meetings, workers would disappear continuously. They were told that lazy workers were sent for re-education, but the workers never saw again those who disappeared).

construction site: when workers disappeared from the village, other villagers were told that the workers had been sent to other places where the work was more demanding.<sup>5318</sup> Some of SEANG Sovida's male colleagues, who were 17 April People, disappeared and she was told that they were sent to work at other worksites.<sup>5319</sup> The disappearances began to occur frequently later in 1977.<sup>5320</sup> These witnesses did not clearly articulate who arrested these individuals.

1563. OM Chy, the supervisor of 500 workers at a connecting canal worksite, saw an 18 or 19-year-old worker from another unit being publicly arrested by district security forces. He surmised that this was in order to deter other workers from following his example, although he conceded that he did not know the real reason for the arrest.<sup>5321</sup> Unit chiefs were able to reclaim arrested workers on certain occasions. But if workers were accused of serious wrongdoing, they could not be reclaimed.<sup>5322</sup>

1564. NUON Narom testified that after their work at the 1<sup>st</sup> January Dam was just finished, a New Person named Danich, known as the daughter of a former lawyer, disappeared.<sup>5323</sup> CHOEU Saing, a worker in a mobile unit, stated before OCIJ investigators that, one afternoon, he personally saw two soldiers "shoot and kill Hieng, who had escaped and fled from the security site", adding that "then they dragged him along a feeder canal". He also indicated that one day while he was walking to dig bamboo shoots he saw two pits full of bodies. He claimed that: "At that time the unit chiefs and team chiefs, both male and female, resolved that if anyone did anything wrong they would be taken away and killed, without any need for soldiers or security personnel".<sup>5324</sup> The Chamber notes that this evidence was not tested in court and is not sufficiently corroborated. The Chamber will not rely on it to support finding on the killings of workers.

1565. Some former supervisors gave evidence that workers who disappeared were not sent to their deaths. YEAN Lon, the chief of a group of 50 workers and a militiaman in

<sup>5318</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 44-45.

<sup>5319</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 59.

<sup>5320</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 60.

<sup>5321</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 57, 87-88.

<sup>5322</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 87.

<sup>5323</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 31.

<sup>5324</sup> CHOEU Saing, Interview Record, E3/7785, 21 November 2008, pp. 4-5, ERN (En) 00244151-00244152.

Kang Sau village, testified that he was instructed to arrest people at the 1<sup>st</sup> January Dam Worksite who had committed moral offences.<sup>5325</sup> He said that these people were re-educated at Tbeng Kaong and later allowed to return to the worksite.<sup>5326</sup> However, he acknowledged that some of these persons were arrested at the Tbeng Kaong office by the commune militia, and he did not know whether they had been killed.<sup>5327</sup> As noted previously, the Chamber considers that YEAN Lon minimised his role in arrests and killings. In view of the testimony recounted above, the Chamber has no doubt that at least some, if not all, of those arrested were killed.<sup>5328</sup>

1566. SOU Soeurn testified that commune chiefs informed her that workers were taken from the 1<sup>st</sup> January Dam Worksite, both 17 April and Base People, when they were sent to study sessions,<sup>5329</sup> though she did not know where.<sup>5330</sup> Some of these workers later returned and others were said to have been sent to live in other districts.<sup>5331</sup> KE Pich Vannak, KE Pauk's son, stated in his WRI that he never heard about arrests or killings at the 1<sup>st</sup> January Dam.<sup>5332</sup> The Chamber finds that both SOU Soeurn and KE Pich Vannak, respectively the wife and the son of KE Pauk, tried to minimise the incidents of disappearances due to their positions and possible responsibility related to those events. The Chamber does not find it credible that all of the workers who were taken from the 1<sup>st</sup> January Dam for not working hard enough were re-educated and returned to their units. The evidence was clear that there were repercussions for failing to adhere to the orders, work quotas and schedules imposed by supervisors.<sup>5333</sup> Some of these individuals were likely killed. However, the Chamber finds that the evidence does not support a finding to the requisite standard that those who disappeared were killed, apart from those who were transferred to Baray Choan Dek. The Chamber therefore rejects the suggestion that all workers who were arrested were reassigned to work in their villages or at other worksites and finds that a significant number of workers were forcibly removed from the worksite, never to be found again.

<sup>5325</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 82-83 (also testifying that he was instructed to arrest people at the 1<sup>st</sup> January Dam Worksite who had committed moral offences).

<sup>5326</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 82-83.

<sup>5327</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 82-83.

<sup>5328</sup> See above, paras 1561-1564.

<sup>5329</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 27, 68.

<sup>5330</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 27-28, 68.

<sup>5331</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 68.

<sup>5332</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150.

<sup>5333</sup> See above, para. 1541.



### 11.2.16. *Killings at Baray Choan Dek Pagoda*

1567. Workers at the 1<sup>st</sup> January Dam worked under the constant fear that if they made a mistake, they would disappear, be arrested, tortured and/or killed.<sup>5334</sup> There is credible evidence that these fears were well-founded: workers disappeared from the site, some of whom were taken to the Baray Choan Dek Pagoda Security Centre and were killed.<sup>5335</sup>

1568. According to the Closing Order, the Baray Choan Dek Pagoda, located near the 1<sup>st</sup> January Dam, was known as a place where people were taken to be killed, although people were killed at other locations too.<sup>5336</sup> The Chamber notes that, in support of the charges of murder at the 1<sup>st</sup> January Dam, the Co-Investigating Judges rely on the interviews of several individuals, including a guard, a villager and one former prisoner, who had direct experience of the Baray Choan Dek Pagoda Security Centre.<sup>5337</sup> None of these individuals testified at trial and the Chamber accordingly relies upon their evidence only in corroboration.<sup>5338</sup>

1569. The Baray Choan Dek Pagoda was located in Tras village, Ballangk commune, Baray district, Sector 42, within one to two kilometres of the 1<sup>st</sup> January Dam.<sup>5339</sup> Prior to March 1977, the Security Office Chairman was EM Min *alias* Sen.<sup>5340</sup> Leadership from that point until the end of the DK regime changed frequently, but the evidence was not entirely consistent as to the chain of succession.<sup>5341</sup> Nonetheless, the Baray Choan Dek Pagoda was under the control of the Baray District Secretary as seen below.

<sup>5334</sup> See above, paras 1552-1565.

<sup>5335</sup> See below, paras 1567-1580.

<sup>5336</sup> Closing Order, para. 367.

<sup>5337</sup> MEN Le Interview Record, E3/5287, 22 April 2009; YIN Leng Interview Record, E3/7765, 25 April 2009. See also, CHUOP Non Interview Record, E3/9349, 17 November 2009, p. 5, ERN (En) 00244158.

<sup>5338</sup> Neither individual was proposed by the Parties nor sought by the Chamber as witness.

<sup>5339</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 100 (noting that she could also see the pagoda clearly from the 1<sup>st</sup> January Dam Worksite); T. 25 June 2015 (KONG Uth), E1/322.1, p. 25 (stating that Baray Choan Dek Pagoda is in Tras village about 1.5 kilometres from the 1<sup>st</sup> January Dam); T. 30 July 2015 (OM Chy), E1/326.1, p. 59; Site Identification Report, E3/8028, 1 May 2009, p. 2, ERN (En) 00342224.

<sup>5340</sup> S-21 list of prisoners admitted from 17 February 1977 to 17 April 1977, E3/10506, undated, p. 85, ERN (En) 01369063 (Baray District Security Chairperson). See also, S-21 list of prisoners smashed on 8 July 1977, E3/2285, 9 July 1977, p. 313, ERN (En) 01565073 (“EM Din *alias* Sem” arrival on 30 March 1977); KIN Heng Interview Record, E3/7764, 22 April 2009, p. 4, ERN (En) 00326808 (noting that Sen was security office chairman until he was arrested by Zone soldiers); YIN Daut Interview Record, E3/7765, 25 April 2009, p. 3, ERN (En) 00333351.

<sup>5341</sup> YIN Daut Interview Record, E3/7765, 25 April 2009, p. 3, ERN (En) 00333351 (stating that after Sen, there was Mang, Mao and finally Souen); KIN Heng Interview Record, E3/7764, 22 April 2009, p. 4, ERN (En) 00326808 (noting that after Sen, there was Mao, Mei and finally Chen).

1570. The Chamber considers that the Secretary of Baray District was initially TOEM Sreoung *alias* Aun until his arrest on 19 March 1977.<sup>5342</sup> Moul took over as Secretary for a short time and was replaced by TEP Poch prior to September 1977 until the fall of the DK regime.<sup>5343</sup> TEP Poch visited the Baray Choan Dek Pagoda at least once a month or sent a subordinate to go there on his behalf and was aware of arrests that had been made.<sup>5344</sup> There was credible evidence that Poch also visited the 1<sup>st</sup> January Dam and its surrounding canal worksites.<sup>5345</sup> Further, OM Chy testified that Poch, the prior Baray District Secretary Moul, and the Sector 42 Secretary Oeun told him that anyone who did not follow regulations was blocking the progress of construction, was an enemy and should be smashed.<sup>5346</sup> Poch was notorious for having ordered that 70 families in the district be killed and the Southwest Zone had a reputation for treating the people in Baray district harshly.<sup>5347</sup>

1571. In his statement to OCIJ investigators in 2009, TEP Poch attempted to deflect

<sup>5342</sup> S-21 list of prisoners smashed on 8 July 1977, E3/2285, 9 July 1977, ERN (En) 01565075 (TOEM Sreoung *alias* Aun arrested on 19 March 1977).

<sup>5343</sup> BAN Seak Interview Record, E3/375, 6 July 2009, p. 13, ERN (En) 00360761; T. 5 October 2015 (BAN Seak), E1/353.1, p. 26; TEP Pauch Interview Record, E3/9149, 19 June 2008, pp. 4-5, ERN (En) 01116146-01116147 (stating in July 1976 he came to Taing Kauk (or Kork) District in the Central Zone and after seven months moved to Baray District where he was made Secretary). The former Baray District Secretary, TOEM Sreoung *alias* Aun was arrested on 19 March 1977 and killed at S-21. *See* S-21 list of prisoners smashed on 8 July 1977, E3/2285, 9 July 1977, p. 315, ERN (En) 00873433. TEP Poch told the OCIJ investigators that he only arrived in Baray District in 1978 and that he was never the District Secretary. *See* TEP Poch Interview Record, E3/5293, 4 July 2009, ERN (En) 00351701-00351702. The Chamber considers that TEP Pauch *alias* Poch was not forthcoming with the OCIJ investigators and was attempting to minimise his culpability for events in Baray District. He contradicted his prior statement to DC-Cam, claiming he was not the Baray District Secretary when multiple witnesses identified him as such. The Chamber therefore accepts the evidence that TEP Poch was the Baray District Secretary from around March 1977. *See below*, para. 1571.

<sup>5344</sup> BAN Seak Interview Record, E3/375, 6 July 2009, p. 13, ERN (En) 00360761; T. 5 October 2015 (BAN Seak), E1/353.1, p. 26.

<sup>5345</sup> CHUOP Non Interview Record, E3/9349, 17 November 2008, p. 6, ERN (En) 00244159 (“I saw [Baray] District Committee Pauch [Poch] come down to inspect the dam construction site once in a while”); TEP Pauch Poch Interview Record, E3/9149, 19 June 2008, p. 8, ERN (En) 01116150 (“I went to the canal worksite in Kampoeury in Baray. I went along with the unit that had thousands of people in it.”).

<sup>5346</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 70, 78 (referring to “Pauch”, by which the Chamber understood him to mean the Baray District Secretary “Poch”). *See also*, CHUOP Non, Interview Record, E3/9349, 17 November 2008, p. 6, ERN (En) 00244159 (“I saw [Baray] District Committee Pauch [Poch] come down to inspect the dam construction site once in a while.”); T. 30 July 2015 (OM Chy), E1/326.1, pp. 70, 78 (stating that the Baray District Secretary was Moul, who was transferred to Tang Kouk and replaced by Pauch [Poch] who remained there until the canal was completed in August 1978). *See also*, T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 82-83 (testifying that he was instructed to arrest people at the 1<sup>st</sup> January Dam Worksite who had committed moral offences to be sent for re-education). In this context re-education meant to kill; T. 28 May 2015 (UN Rann), pp. 35-36 (noting that re-fashioning, re-education or tempering all meant, to kill a person).

<sup>5347</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714. *See also*, KE Pich Vannak Interview Record, E3/35, p. 13, ERN (En) 00346157. *See above*, para. 1470.

responsibility for events at Baray Choan Dek Pagoda by claiming that he did not arrive in Baray district until 1978, that he was never the District Secretary and that Moul was in charge.<sup>5348</sup> OM Chy also places TEP Poch in Baray district in 1978.<sup>5349</sup> However, this timing was not consistent with the evidence of BAN Seak who stated that Poch was in charge of the Baray district and the Baray Choan Dek Pagoda killing site from early 1977.<sup>5350</sup> The Chamber also notes that in a subsequent interview with the OCIJ investigators in 2013, TEP Poch admitted that he was sent to Baray district to take over as District Secretary from Moul.<sup>5351</sup> He also stated that the Sector 43 Secretary was named Chan.<sup>5352</sup> The Chamber notes that KOAM Chann *alias* Chan, the Sector 43 Secretary, was arrested in September 1977.<sup>5353</sup> The Chamber therefore considers that for Poch to have known Chan, he must have taken over from Moul as Baray District Secretary prior to September 1977.

1572. The Chamber is also convinced that workers from the 1<sup>st</sup> January Dam were sent to the Baray Choan Dek Pagoda. OR Ho, who was the chief of Prey Srangae village, Ballangk commune, Sector 42, and later a work unit chief at the worksite, described the purpose of the Baray Choan Dek Pagoda during the construction of the 1<sup>st</sup> January Dam.<sup>5354</sup> He testified that if work at the Dam did not go to plan, the upper level would accuse the lower, village level of betrayal and kill them.<sup>5355</sup> At times, the middle, commune level also arrested and killed the lower level.<sup>5356</sup> OR Ho did not know who carried out the killings, but victims were arrested and sent to be detained at the

<sup>5348</sup> TEP Poch Interview Record, E3/5293, 4 July 2009, pp. 3-4, ERN (En) 00351701-00351702.

<sup>5349</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 70, 78, 93 (noting that Moul was at the worksite for a short time and was sent to Tang Kouk and replaced by Poch who remained until the canal was completed); T. 30 July 2015 (OM Chy), E1/326.1, pp. 36, 93 (estimating that he started work on the feeder canal in February 1978 and that Poch took over Baray District three to four months later, near the end of the regime).

<sup>5350</sup> BAN Seak Interview Record, E3/375, 6 July 2009, p. 13, ERN (En) 00360761; BAN Seak Interview Record, E3/9517, 24 March 2014, pp. 9-10, 15, ERN (En) 00984876-00984877, 00984882.

<sup>5351</sup> TEP Pauch Interview Record, E3/9570, 4 March 2013, ERN (En) 00901044.

<sup>5352</sup> TEP Pauch Interview Record, E3/9570, 4 March 2013, ERN (En) 00901045.

<sup>5353</sup> S-21 list of prisoners entered on 20 September 1977, E3/10275, 21 September 1977, p. 41, ERN (En) 01368867 (KOAM Chan *alias* Chan, North Zone, Secretary of Sector 43, entered on 20 or 21 September 1977). TEP Poch also identified Sim as one of KE Pauk's deputies. *See* TEP Poch Interview Record, E3/9570, 4 March 2013, ERN (En) 00901045.

<sup>5354</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 7-8, 19-21, 29, 32; T. 20 May 2015 (OR Ho), E1/302.1, p. 32; OR Ho Interview Record, E3/5255, 18 November 2008, p. 3, ERN (En) 00250044. *See also*, Map of 1<sup>st</sup> January Dam, E3/8026, p. 12, ERN (En) 00290644 (indicating location of Prey Srange [*sic*] village and bridge at the beginning of the 1<sup>st</sup> January Dam).

<sup>5355</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 42; AU Hau Interview Record, E3/5255, 18 November 2008, p. 4, ERN (En) 00250045.

<sup>5356</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 40; AU Hau Interview Record, E3/5255, 18 November 2008, p. 4, ERN (En) 00250045.

Baray Choan Dek Pagoda, which had been converted to a security office after the monks had been disrobed.<sup>5357</sup> Some workers were taken from the 1<sup>st</sup> January Dam to the Baray Choan Dek Pagoda for re-education.<sup>5358</sup> Most of them would not return to the worksite.<sup>5359</sup> He placed the responsibility for arrests on the security forces.<sup>5360</sup>

1573. While a majority of the unit chiefs reported and arrested their own team members, accusing them of being enemies, OR Ho testified that none of his workers was taken away, as he and his fellow group chiefs tried to resolve any work issues within the group.<sup>5361</sup>

1574. OR Ho admitted however that he saw many people arrested and taken away, though he did not remember all their names. He recalled that Born and Vut, members of the Ballangk Commune Committee, were arrested, taken to the Baray Choan Dek Pagoda and never returned.<sup>5362</sup> Previously, Vut had an important role as he was tasked with reporting to the higher levels on a daily basis concerning workers who proved to be lazy.<sup>5363</sup> OR Ho also recognised a security officer named Mao, who worked at the Baray Choan Dek Pagoda, as the person who arrested Born and Vut.<sup>5364</sup> Although OR Ho stated he never witnessed any executions,<sup>5365</sup> the disappearance and transfer of arrested workers to the Pagoda was corroborated by several witnesses.<sup>5366</sup> The Chamber considers that OR Ho was minimising his role in arrests of workers, but accepts his evidence that workers at the 1<sup>st</sup> January Dam were sent to the Baray Choan Dek Pagoda.

1575. In particular, several witnesses from Tras village, where the Baray Choan Dek

<sup>5357</sup> OR Ho Interview Record, E3/5255, 18 November 2008, pp. 5-7, ERN (En), 00250046-00250048; T. 19 May 2015 (OR Ho), E1/301.1, p. 42.

<sup>5358</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 74-75.

<sup>5359</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 42.

<sup>5360</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 38-39.

<sup>5361</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 40-41; T. 20 May 2015 (OR Ho), E1/302.1, pp. 19-20, 39.

<sup>5362</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 8, 43-55.

<sup>5363</sup> OR Ho Interview Record, E3/5255, 18 November 2008, p. 4, ERN (En) 00250045. *See also*, VAN Soeun Interview Record, 19 November 2008, E3/9350, p. 5, ERN (En) 00244171 “Ta Born [was] the chief of Ballangk Subdistrict before Ta Seng.”)

<sup>5364</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 55, 56; OR Ho Interview Record, E3/5255, 18 November 2008, p. 5, ERN (En) 00250046; YIN Daut Interview Record, E3/7765, 25 April 2009, pp. 4-5, ERN (En) 00333352-00333353 (“Choeun and Mao were the people who received the case files from the district level and they ordered others to smash the prisoners.”); YIN Daut Interview Record, E3/7765, 25 April 2009, p. 3, ERN (En) 00333351 (noting that Mao was the chief of the Baray Choan Dek pagoda for a time); KIN Heng Interview Record, E3/7764, 22 April 2009, p. 4, ERN (En) 00326808 (also noting that Mao was the chief of Baray Choan Dek pagoda).

<sup>5365</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 90.

<sup>5366</sup> *See below*, paras 1575-1579.

Pagoda was located, gave evidence that a boy of 14 to 15 years of age named Try was arrested and killed at the Baray Choan Dek Pagoda. MEAS Laihour testified that she saw that Try, a Base Person, was held in a cage for re-education because he was considered lazy, and later disappeared.<sup>5367</sup> KONG Uth was also from Tras village and testified that she knew Try, who carried soil at the 1<sup>st</sup> January Dam Worksite, and corroborated the fact that he disappeared. She heard that Try was taken and killed.<sup>5368</sup> The Chamber finds that Try was punished because he did not work hard enough. However, this second hand account is not sufficient to buttress a finding beyond reasonable doubt that Try was killed. MEAS Laihour further stated that she saw multiple cages and that “for each commune there were soldiers who were assigned to guard in that area”. She clarified that another person named NEARY Leap was placed in a cage for re-education, because she did not go to work. However it is not clear whether MEAS Laihour herself saw NEARY Leap in a cage or if this was only hearsay.<sup>5369</sup> Without corroborating testimony, or any further evidence of a generalised practice, the Chamber cannot conclude that there was a practice of putting workers in cages.

1576. There is circumstantial evidence to support the conclusion that after workers from the 1<sup>st</sup> January Dam were sent to Baray Choan Dek Pagoda, they were killed. MEAS Laihour testified that Baray Choan Dek Pagoda was located in her village.<sup>5370</sup> She passed by the pagoda every tenth day when visiting her village. On one such occasion, she was confronted by two soldiers who came out pointing rifles at her and threatening her life.<sup>5371</sup> Her unit chief informed her that people were being killed inside.<sup>5372</sup> Her village chief also told her that three or four people from her work unit,

<sup>5367</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 95; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 37, 47, 49-50. *See also*, T. 1 September 2015 (NUON Narom), E1/339.1, p. 12 (noting that many workers in NUON Narom’s area disappeared as they were considered inactive or lazy).

<sup>5368</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 30-31. *See also*, KANG Ut Interview Record, E3/7775, 8 October 2008, ERN (En) 00233533 (“people of Kompong Cham were evacuated to the Baray Choan Dek pagoda and were executed there. I did not see the killings as we were not allowed to get in the pagoda, but we noticed the very unpleasant smell outside it.”).

<sup>5369</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 96-97. *See also*, T. 28 May 2015 (UN Rann), E1/307.1, p. 42 (explaining that she did not see any cages around the worksite); CHOEU Saing Interview Record, E3/7785, ERN (En) 00244150 (explaining that she never saw any cage at the work site).

<sup>5370</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 97.

<sup>5371</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 97-98; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 59-60.

<sup>5372</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 98; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 60; MEN Le Interview Record, E3/5287, 21 April 2009, p. 4, ERN (En) 00330775 (stating that In 1976 and 1977, many people sent to be killed at Baray Choan Dek Pagoda); YIN Daut Interview Record, E3/7765, 25 April 2009, pp. 4-5, ERN (En) 00333352-00333353 (“Choeun and Mao were the people

in addition to Try, were put in Baray Choan Dek and never came out.<sup>5373</sup> She did not know their names as they were New People and she was a Base Person and she did not have personal knowledge of their fates.<sup>5374</sup>

1577. Many others heard that people were killed at the Baray Choan Dek Pagoda.<sup>5375</sup> SEANG Sovida was transferred to the 1<sup>st</sup> January Dam around January 1977 and was staying near the Baray Choan Dek Pagoda.<sup>5376</sup> She was warned by some older girls not to approach the Pagoda.<sup>5377</sup> People told her that they had seen a group of five or 10 people chained to one another and chopping wood. Some said they had seen bleeding women's breasts hanging on doors.<sup>5378</sup> UTH Seng was in the Santuk area tending cattle when he heard music over the loudspeakers at the Pagoda. Those he was with told UTH Seng that there would be killings when such loud music was played as they heard screaming.<sup>5379</sup>

1578. OM Chy attended meetings at the Baray Choan Dek Pagoda after it had been given back to the cooperative when it was no longer being used as a security office.<sup>5380</sup> He noticed blood stains on the walls of the main hall and eating hall along with piles of

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who received the case files from the district level and they ordered others to smash the prisoners. The prisoners were taken out of the detention building and walked in the vicinity of the security center. Their hands were tied up, but they were blindfolded. The prisoners were smashed when it was dark. Usually the guards dug the pits a half-day before smashing the prisoners. The prisoners were told to sit down on the ground four to five meters from the pits. They hit the prisoners on the head with a bamboo stick or a hoe. Then they dragged the bodies to be buried in the pits.”)

<sup>5373</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 101; MEAS Laihour Interview Record E3/9351, 20 November 2008, p. 3, ERN (En) 00244163.

<sup>5374</sup> MEAS Laihour Interview Record, E3/9351, 20 November 2008, ERN (En) 00244163; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 101.

<sup>5375</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 17-18, 33 (noting that during the LON Nol regime her father was a teacher in a college in Kompong Cham. He was sent to work at the construction of the 1<sup>st</sup> January Dam. HUN Sethany was informed by her younger sibling that he witnessed the arrest of their father by militiamen who asked him to come and carry logs. Since then he disappeared and was never seen again. They were told that their father was sent and killed at Baray Choan Dek pagoda. After the end of the Khmer Rouge regime, she went to this place where she saw many pits and graves, skeletal remains, skulls and bones.) *See also*, CHHUN Sakan Interview Record, E3/7763, 21 April 2009, p. 3, ERN (En) 00326804 (stating that after the collapse of the Khmer Rouge regime, he went to the Baray Choan Dek pagoda and saw a room two by two metres full of skulls that had been placed there as well as pieces of clothing scattered and smelled the odour of dead bodies. He also helped to collect the bones of the dead).

<sup>5376</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 8, 10, 14 (SEANG Sovida was transferred to the 1<sup>st</sup> January Dam around January 1977).

<sup>5377</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 41.

<sup>5378</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 41.

<sup>5379</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 18; YIN Daut Interview Record, E3/7765, 25 April 2009, p. 5, ERN (En) 00333353 (“A: They played something on the loudspeaker, but it was not that they played to cover the noise when they smashed prisoners.”).

<sup>5380</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 61.

clothing remnants on the ground and there was a bad odour that lingered in the air.<sup>5381</sup> After 1979, several witnesses observed human remains being disinterred from the Baray Choan Dek Pagoda. UTH Seng testified that people dug up large graves to find valuables.<sup>5382</sup> KONG Uth also saw four or five large pits which, when exhumed, were seen to contain skeletal remains, including skulls.<sup>5383</sup> Not all of the prisoners came from the 1<sup>st</sup> January Dam; some had been evacuated from Kampong Cham province and killed at the Pagoda.<sup>5384</sup> However, the number of incoming prisoners increased when construction of the 1<sup>st</sup> January Dam began.<sup>5385</sup>

1579. The Chamber also has before it photographic evidence of skulls and human bones excavated in a pit near the Baray Choan Dek Pagoda in 1980.<sup>5386</sup> Based upon the trial record, it is not possible to determine the exact number of human remains or how many of these remains are the result of killings of workers from the 1<sup>st</sup> January Dam Worksite. However, MEN Le, who was involved in the excavation of the remains at the Baray Choan Dek Pagoda in 1980, and who had been detained in the Pagoda during the regime, estimated that five thousand people were killed there in 1978.<sup>5387</sup> YIN Daut, a guard and executioner at the Baray Choan Dek Pagoda, who had an incentive to minimise the numbers killed, estimated that less than 1000 people were killed at the site.<sup>5388</sup>

1580. The Chamber finds that workers who were considered to oppose the revolution and to be enemies, including those who did not work hard enough, were arrested at the

<sup>5381</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 61-62 (“Q. During this meeting, were you able to see any signs indicating that this centre had been used as an execution site? A. I did. When I attended meetings inside the Buddhist main hall and the eating hall, I actually saw bloodstains on the walls of the main hall and the eating hall. I also saw remnants of clothes in heaps scattered on the ground. Q. And was there still an odour of decaying corpses remaining when you were there? A. Yes, the bad odour was still lingering in the air when I was there.”).

<sup>5382</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 18.

<sup>5383</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 43.

<sup>5384</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 25-26.

<sup>5385</sup> MEN Le Interview Record, E3/5287, 22 April 2009, p. 5, ERN (En) 00330776.

<sup>5386</sup> Photograph showing crania and bones, E3/8096.20, undated, ERN P00323444; Photograph showing graves, E3/8096.18, undated, ERN P00323442; Photograph from Wat Baray Choan Dek showing blunt force trauma on cranium, E3/3217, 30 January 2007, ERN P 00005446; Photograph showing Wat Baray Choan Dek view from memorial, E3/3216, 30 January 2007, ERN P00005435; Photograph showing Wat Baray Choan Dek skeletal remains, E3/8135, 30 January 2007, ERN P00005441. *See also*, Site Identification Report, E3/8028, 1 May 2009, p. 2, ERN (En) 00342224 (stating that in 1980 he helped collect the bones of victims).

<sup>5387</sup> MEN Le Interview Record, E3/5287, 22 April 2009, p. 4, ERN (En) (00330775).

<sup>5388</sup> YIN Daut Interview Record, E3/7765, 25 April 2009, p. 6, ERN (En) 00333354; KIN Heng Interview Record, E3/7764, ERN (En) 00326807 (referring to Daut as a killer at the Baray Choan Dek Pagoda).

1<sup>st</sup> January Dam and taken to the Baray Choan Dek Pagoda. This included cadres named Born, Vut and workers such as Try. Some of these workers, and Born and Vut who were cadres involved in monitoring the workers, were killed there. There is insufficient evidence to make a conclusion on the number of those killed.

#### 11.2.17. *Living Conditions*

1581. As a preliminary issue, the Chamber notes that it heard evidence regarding conditions at the worksite from SOU Soeurn, KE Pauk's wife and the Chamkar Leu District Secretary. This evidence differed significantly from the majority of the rest of the evidence heard by the Chamber, in that it painted a much more positive picture of those conditions.

1582. SOU Soeurn testified that sleeping and living conditions at the 1<sup>st</sup> January Dam were proper, and that the food provided was adequate.<sup>5389</sup> The food supply was provided by *Angkar* and there was a sufficient supply of food and rice for the workers.<sup>5390</sup> Workers were neither skinny nor fat; they ate steamed rice and gruel along with plenty of fish from the Tonlé Sap; they did not have fruit, but they were given some sugar, rice and dried fish.<sup>5391</sup> There were proper sleeping and eating halls.<sup>5392</sup> Some workers had blankets and mosquito nets. No one was ever forced to sleep directly on the ground.<sup>5393</sup> SOU Soeurn testified that the state distributed clothes and that each worker was given at least one or two sets of black clothes to wear.<sup>5394</sup> This was *Angkar*'s responsibility.<sup>5395</sup> SOU Soeurn said there were some flies, but not many,<sup>5396</sup> and that flies increased when workers failed to attend to their hygiene.<sup>5397</sup> SOU Soeurn acknowledged that there were sometimes shortages of food and medicine at the 1<sup>st</sup> January Dam, but she did not observe it herself since she was not always there and when she visited, *Angkar* had provided adequate food and medicine.<sup>5398</sup>

<sup>5389</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 29-30.

<sup>5390</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 29-30. *See below*, para. 1593.

<sup>5391</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 69.

<sup>5392</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 29-30.

<sup>5393</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 30.

<sup>5394</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 67.

<sup>5395</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 67.

<sup>5396</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 31.

<sup>5397</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 31, 35.

<sup>5398</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 32.



1583. SOU Soeurn also acknowledged that some workers were ill due to sanitation issues and the large number of flies.<sup>5399</sup> On this last issue her statement was inconsistent with a previous one where she claimed that there were not so many flies. She claimed that medical staff took care of the sick and that seriously ill workers were taken to the hospital in Kampong Cham for treatment.<sup>5400</sup>

1584. The Chamber does not consider SOU Soeurn's description of the 1<sup>st</sup> January Dam Worksite to be credible. Given SOU Soeurn's position, and her responsibility as a District Secretary for selecting workers to be sent to the 1<sup>st</sup> January Dam, she has an incentive to minimise the extent of harsh conditions at the worksite.<sup>5401</sup> Further, she claimed to have only visited the worksite on rare occasions and her testimony was contradicted by multiple witnesses on each of these points. Although SOU Soeurn acknowledged some of the difficulties of the dam, her testimony significantly minimised the brutality of the conditions and the hardships faced by the workers. The Chamber therefore accords minimal weight to her testimony on these points.

1585. There was extensive and generally consistent evidence presented on the living conditions at the 1<sup>st</sup> January Dam Worksite, including with respect to food, water and hygiene, sleeping conditions, medical care and children. The Chamber briefly summarises this evidence below.<sup>5402</sup>

#### 11.2.17.1. Food

1586. The amount and quality of food was inadequate with the result that workers grew malnourished and emaciated.<sup>5403</sup> They were fed gruel, rice or watery soup

<sup>5399</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 66 ("From my observation, there were some people who were ill due to the [...] excessive number of workers at the worksite and due to the sanitary issues and large number of flies.").

<sup>5400</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 66.

<sup>5401</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 26 (noting that SOU Soeurn selected people from cooperatives and sent them to work on dams and canals. The District Secretary maintained the lists of workers).

<sup>5402</sup> The Chamber addresses the contrary evidence of SOU Soeurn, below. *See below*, para. 1605.

<sup>5403</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 61-62, 67 (noting that CHAO Lang became emaciated from the hard work and lack of food); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 5; T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 57; T. 1 September 2015 (NUON Narom), E1/339.1, pp. 12, 15; T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 67-69 (noting that despite getting her fill she was getting skinnier due to undernourishment and overwork); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 94 (stating that she said they were given only enough ration to continue to work); T. 19 May 2015 (OR Ho), E1/301.1, pp. 38-39, 62-65 (stating that the gruel was thick, rather than water and workers did not have their fill; in general, it was merely enough); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 40 (stating that the food was insufficient, amounting to almost nothing. But the workers dared not to protest).

communally, usually twice a day.<sup>5404</sup> Due to the unhygienic conditions at the worksite, flies covered soup like a swarm of bees and workers had to pick them out one by one.<sup>5405</sup> UTH Seng testified that the workers grew weaker by the day because they did not have enough food to eat.<sup>5406</sup> NUON Narom stated that everyone was sick and they felt hunger pangs at night.<sup>5407</sup> HUN Sethany testified that between August and November 1977, most women from her village did not have a menstrual cycle because they did not have enough food to eat.<sup>5408</sup> UTH Seng testified that about three or four workers in his group had swollen bodies due to a lack of food.<sup>5409</sup> OM Chy concluded that “[o]ur hard work was bartered for our daily survival”.<sup>5410</sup> KE Pauk knew that people starved.<sup>5411</sup>

1587. As with work quotas and work hours, unit chiefs and technicians fared better

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the lack of food); T. 30 July 2015 (OM Chy), E1/326.1, p. 80 (stating that food was insufficient and people were emaciated); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 17-18; IENG Chham Interview Record, E3/5513, 8 November 2009, ERN (En) 00410238 (noting that meals were twice a day; one meal of gruel and one meal of rice. There was not enough food to eat); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 53 (noting that at times, they did not eat their fill, eating meat only on the 10<sup>th</sup> day). *See also*, VAN Sorn Interview Record, E3/9350, 19 November 2008, p. 3, ERN (En) 00244169 (“Q: What was the food ration? A: They provided two meals per day at 12 noon and at 6 p.m. Sometimes they had us eat rice, sometimes gruel. The women ate their fill but the males did not, since men eat more than women. At that time the men picked *reang* leaves and *ampuoh* shoots to mix with the gruel. There was water lily or morning glory soup with small fish.”).

<sup>5404</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 39, 65-66; T. 28 May 2015 (UN Rann), E1/307.1, p. 5 (noting that work unit members ate only gruel); IENG Chham Interview Record, E3/5513, 8 November 2008, ERN (En) 00410238 (stating that meals were twice a day; one meal of gruel and one meal of rice. There was not enough food to eat); T. 27 May 2015 (UN Rann), E1/306.1, p. 93 (stating that workers returned to the sleeping quarters to eat gruel, returning to work until 5:30 pm); T. 1 September 2015 (NUON Narom), E1/339.1, p. 13 (noting that the soup was terrible with very little vegetables or meat).

<sup>5405</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 7; T. 1 September 2015 (NUON Narom), E1/339.1, p. 13; T. 19 May 2015 (OR Ho), E1/301.1, p. 48; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 77 (stating that when they ate, flies would surround them and tried to eat far from the kitchen to avoid the swarms); T. 28 May 2015 (UN Rann), E1/307.1, pp. 67-68; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 42 (noting that there were vast numbers of flies hanging onto their food and many contracted cholera and diarrhoea because of the flies); KE Un Interview Record, E3/5264, ERN, 13 January 2009, p. 5, ERN (En) 00283343.

<sup>5406</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 25.

<sup>5407</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 14, 65.

<sup>5408</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 71 (stating that during August through November 1977 most women from her village did not have a menstrual cycle because they did not have enough food to eat). *See also*, T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 14 (stating that some women only had their menstrual cycle every two or three months).

<sup>5409</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 32-33.

<sup>5410</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 113.

<sup>5411</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714; KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 6, ERN (En) 00346150 (“Obviously there were food shortages. I saw sick persons in each shelter and asked about their condition. They said that they did not have any medicines to take. I told those facts to my father, who then ordered the Sectors to assign medics to help with the treatment of patients in each shelter. But the Sectors said they did not have “medicines”. During the Dam construction, I knew that there were patients dying because [of] the lack of medicines.”), 12-13, ERN (En) 00346156-00346157 (during the East zone evacuations executed by Southwest Zone cadres, everyone suffered food shortages and some people died of starvation). *See below*, para. 1633.

than regular members.<sup>5412</sup> UN Rann testified that the unit chiefs and medics ate steamed rice, while work unit members ate only gruel.<sup>5413</sup> KE Pauk's nephew acknowledged that when he drove KE Pauk to the 1<sup>st</sup> January Dam site, he ate well, as did KE Pauk, who dined alone.<sup>5414</sup> PECH Sokha, a technician, testified that he ate only cooked rice with cassava and banana stems.<sup>5415</sup>

1588. The Chamber heard evidence from PECH Sokha that appeared to minimise the difference between the food given to the workers and that given to the unit chiefs and technicians. PECH Sokha testified that the workers were in normal shape, he did not see anyone collapse,<sup>5416</sup> and he never observed anyone die of starvation.<sup>5417</sup> However, he acknowledged in his prior statement that people's health was weak,<sup>5418</sup> gave evidence that the food was insufficient,<sup>5419</sup> and stated that it was surprising that workers (including himself) had survived their experience at the 1<sup>st</sup> January Dam, working day and night without adequate food.<sup>5420</sup> Similarly, while acknowledging that workers were not in the best of health,<sup>5421</sup> OR Ho stressed that no one in his group died of starvation even though one or two may have died of illness.<sup>5422</sup> The Chamber finds that PECH Sokha's evidence was internally inconsistent, and that both of these witnesses had an interest in minimising their responsibility with respect to the conditions of the workers. The Chamber accordingly disregards their evidence with respect to the workers' food conditions.

1589. Some workers risked scrounging for food to supplement their diets. MEAS Laihour secretly collected tree leaves, mixing them with salt.<sup>5423</sup> But she said that those

<sup>5412</sup> See above, para. 1529.

<sup>5413</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 4 (noting that work unit members ate only gruel).

<sup>5414</sup> KE Un Interview Record, E3/5264, 13 January 2009, p. 6, ERN (En) 00283344.

<sup>5415</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 98.

<sup>5416</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 18-19.

<sup>5417</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 98.

<sup>5418</sup> PECH Sokha Interview Record, E3/403, 12 October 2009, p. 5, ERN (En) 00403005.

<sup>5419</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 87.

<sup>5420</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 87; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 8, ERN (En) 00403008.

<sup>5421</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 30-40.

<sup>5422</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 76-80. See also, OR Ho Interview Record, E3/5255, 18 November 2008, p. 5, ERN (En) 00250046 (indicating that there was not enough food, people were emaciated and fell ill).

<sup>5423</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 72. See also, T. 3 June 2015 (UTH Seng), E1/309.1, p. 34 (noting that workers would eat tree leaves, palm fruits or herbs to try to supplement their diet); T. 1 September 2015 (NUON Narom), E1/339.1, p. 14 (noting that one day, NUON Narom supplemented her diet by searching for frogs and ants in the forest).

who stole food were arrested for refashioning and no one dared complain about the food for fear of being arrested and killed.<sup>5424</sup> UN Rann testified that a cook sometimes left uneaten rice crusts for her to eat.<sup>5425</sup> She ate the rice but feared being accused of betraying *Angkar* and being killed for doing so.<sup>5426</sup> OR Ho contended that those with a little food were permitted to bring it to the worksite and that workers were permitted to catch fish in the stream after work,<sup>5427</sup> but agreed that private food supplies were not generally permitted.<sup>5428</sup> The Chamber considers that OR Ho, as a unit chief, was trying to minimise his responsibility for the suffering of his workers. The Chamber therefore finds that workers feared retribution for seeking additional food.

1590. OM Chy gave evidence that work unit chiefs did not permit workers to fish to supplement their diet, because the commune would have accused them of treachery if they were discovered.<sup>5429</sup> In contrast, OR Ho testified that village chiefs assigned some workers to find dry fish (*kantoro*) to accompany the rice.<sup>5430</sup> The Chamber finds that even if such efforts were permitted, the long work hours and gruelling conditions did not make such an approach sustainable and it did not counteract the insufficient rations that workers received.

1591. OR Ho gave evidence of a special work force which received fish sauce and more delicious meals including fish.<sup>5431</sup> However, he noted that in 1976 and early 1977 there was a drought during which everyone suffered because food and fish were not abundant.<sup>5432</sup> During 1976, the drought occurred during the Pchum Ben traditional festival [October 1976] affecting the 1976 harvest which was to be consumed in 1977. The drought hit hard and not much rice was produced for 1977.<sup>5433</sup> The Chamber accepts that a special work force may have been favoured over others, but finds that

<sup>5424</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 67.

<sup>5425</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 5.

<sup>5426</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 5.

<sup>5427</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 13; T. 20 May 2015 (OR Ho), E1/302.1, pp. 18, 62-63.

<sup>5428</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 17-18.

<sup>5429</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 104.

<sup>5430</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 65.

<sup>5431</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 87-88; T. 19 May 2015 (OR Ho), E1/301.1, pp. 38-39, 65 (stating that he gruel was thick, rather than water and workers did have not their fill; in general, it was merely enough); T. 20 May 2015 (OR Ho), E1/302.1, p. 48 (testifying that the drought hit hard and not much rice was produced for 1977).

<sup>5432</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 62.

<sup>5433</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 48.

everyone suffered food shortages.<sup>5434</sup>

1592. SEANG Sovida testified that food rations were relatively good in her village of Ruessei Keo in Kratie and that she sometimes brought vegetables from her village to the worksite.<sup>5435</sup> In her village, there was both gruel and steamed rice with pumpkin or gourd soup for every meal.<sup>5436</sup> In contrast, this witness said that the food at the 1<sup>st</sup> January Dam was insufficient and described the living conditions there as “like [...] living in hell”.<sup>5437</sup> Therefore, the Chamber does not consider that her testimony about food in her village creates doubt as to the meagre rations provided to workers at the Dam and the fact that they became malnourished as a result.

1593. The food supply at the 1<sup>st</sup> January Dam was centrally controlled by villages or cooperatives. According to OM Chy, who supervised 500 workers at a canal connecting to the 1<sup>st</sup> January Dam, food was brought from Ta Prok village to Ballangk commune and was distributed by the economic section of the commune which was responsible for supplying the work units.<sup>5438</sup> Individual work units would then request to be supplied by their respective villages.<sup>5439</sup> Food was brought from the village to the worksite by the person in charge of the economy every four to 10 days.<sup>5440</sup> SOU Soeurn similarly testified that the State and the zone were responsible for providing rice to the workers at the 1<sup>st</sup> January Dam, and that cooperatives only provided rice to cooperative members.<sup>5441</sup>

1594. The Chamber is also satisfied that rice taken from the zones was exported. As

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<sup>5434</sup> See also, Section 10.1.7.3: Tram Kak Cooperatives: Rations and Communal Eating (noting that different quantities of rice were to be provided to different categories of people. The First Nationwide Economic Congress mentioned four levels of rations determined for the cooperatives: 15 *thangs* (132 kg), 12 *thangs* (105 kg), 10 *thangs* (88 kg), 8 *thangs* (70 kg). Further noting that POL Pot stated that these rations were adequate and that the November 1976 issue of *Revolutionary Flag* again specified “four regimes: Number one forces, three cans; number two forces two and a half cans; number three forces, two cans; number four forces, one and a half cans”).

<sup>5435</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 24-25.

<sup>5436</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 24-25.

<sup>5437</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 25, 36, 57.

<sup>5438</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 100, 103-106.

<sup>5439</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 28-29; T. 17 June 2015 (YEAN Lon), E1/318.1, pp. 6-8.

<sup>5440</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 69. See also, POUK Pon Interview Record, E3/5247, 7 October 2008, ERN (En) 00232820 (stating that he was the leader of the food supply transport team for the workers at 1<sup>st</sup> January dyke worksite located in Boeng commune, Santuk district. He stated that: “Food was not sufficient. After two meals of gruel (rice soup) for two consecutive days we would be given a meal of cooked rice. The rice would be then mixed with banana and cassava. Two meals were offered a day [...] During each meal we were closely watched. They did this to make sure that we did not eat extra meal other than those offered.”).

<sup>5441</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 29, 96-99.

noted above, it was the CPK's policy to finance the modernisation of agriculture in Cambodia by exporting rice.<sup>5442</sup> Documentary evidence from the Commerce Ministry shows that substantial amounts of rice were in fact exported from Cambodia.<sup>5443</sup>

1595. The Chamber is accordingly satisfied that the amount of food provided to workers was insufficient, and that workers were afraid to look for supplementary food for fear of being accused of being enemies. Finally, the Chamber is satisfied that the food supply was centrally controlled by villages and cooperatives and that significant amounts of rice were exported despite the insufficient supply of food for workers.<sup>5444</sup>

#### 11.2.17.2. Water and hygiene

1596. The movement of tens of thousands of workers to the 1<sup>st</sup> January Dam site without adequate provision of clean water, soap, latrines, or pest treatment created a dangerously unhygienic environment.

1597. Drinking water at the Dam was muddy and unsanitary.<sup>5445</sup> Work units were directed to boil water before drinking to prevent disease,<sup>5446</sup> but due to time and resource constraints this practice was limited and workers were left to drink unboiled

<sup>5442</sup> See above, paras 1452-1453.

<sup>5443</sup> Commerce Committee Report, E3/325, 15 August 1977, ERN (En) 00685482 (reporting on commercial transactions with other countries besides China, Korea and Hong Kong listing rice export to Madagascar until May 1977 in the amount of 5,250 tonnes); Commerce Committee Report, E3/2043, 11 June 1977, ERN (En) 00583637 (reporting on 5,250 tonnes of rice exported to Madagascar by ship on 10 May 1977); DK Telegram, E3/2080, 15 September 1977, ERN (En) 00531912 (informing Krin, then head of the Port Committee, that 5,000 tonnes of husked rice would be transported to Madagascar); Export Statistics 1978, E3/2059, undated, ERN (En) 00583647 (total amount from January to September 1978: 29,758.145 tonnes); Commerce Committee Report, E3/313, undated, p. 10, ERN (En) 00680114 (reporting on Balance of Trade with Countries other than China and Korea as of 15 June 1978, giving the export number of 14,623,145 tonnes of rice to Madagascar, valued \$1,901,008.85); Commerce Committee Report, E3/2506, 2 September 1978, p. 7, ERN (En) 00748387 (reporting on Balance of Trade with Countries other than China and Korea as of 18 August 1978, amounting the total value of rice export to Madagascar until August to \$3,073,318.85). See also, Report on the Negotiation between Democratic Kampuchea's Commercial Delegation and People Republic of China's International Trade Delegation, E3/1643, 3 December 1978, ERN (En) 00002714 ("The commercial relationship between our countries has been developing gradually and the trade volume has been increasing every year. Transportation in 1978 doubled comparing to 1977.").

<sup>5444</sup> See above, paras 1454, 1593.

<sup>5445</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 13-14; T. 30 July 2015 (OM Chy), E1/326.1, p. 64 (testifying that drinking water was taken from the canal which was unsanitary); T. 28 May 2015 (UN Rann), E1/307.1, pp. 29-30 (stating that the water was dirty and there were no latrines).

<sup>5446</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 19; T. 28 May 2015 (UN Rann), E1/307.1, p. 68 (the big unit chief told them to boil the water, but this could not be sustained because there were so many workers).

water.<sup>5447</sup> Many workers contracted dysentery from drinking untreated water and some died.<sup>5448</sup> Workers bathed in the Steung Chinit River, but had no soap to wash their bodies.<sup>5449</sup>

1598. Some workers dug latrines, but these were insufficient for the thousands of workers at the worksite and they were eventually forced to defecate in the bushes.<sup>5450</sup> The pit latrines that did exist were surrounded by flies.<sup>5451</sup>

<sup>5447</sup> T. 17 June 2015 (YEAN Lon), E1/318.1, p. 7; T. 25 June 2015 (KONG Uth), E1/322.1, p. 19; T. 28 May 2015 (UN Rann), E1/307.1, p. 29 (stating that initially, water was boiled for drinking, but later on workers had to find their own water); T. 30 July 2015 (OM Chy), E1/326.1, p. 107 (noting that he did not order that the water be boiled for lack of resources); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 8 (noting that there was no time, nor implements to boil the water); T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 36, 42-43 (stating that she normally drank water that was boiled at the worksite for fear of sickness). *Cf.* T. 5 June 2015 (SOU Soeurn), E1/311.1, p. 73 (testifying that water was boiled in every cooperative for workers to drink, but she did not know whether water was boiled at the 1<sup>st</sup> January Dam).

<sup>5448</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 68, 69, 71, 75; T. 28 May 2015 (UN Rann), E1/307.1, pp. 67-68; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 58 (noting that she later found out from the unit chief about people dying of diarrhoea). *See also*, VANN Theng Interview Record E3/5249, 8 October 2008, ERN (En) 00231859 (“A lot of people got sick with various deceases including cholera (diarrhoea) because of the lack of hygiene, the high number of flies. Holes in the ground were dug to make toilets. There was no sanitation.”).

<sup>5449</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 48; T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 19-21 (noting that he bathed in a nearby village as there was no water near their sleeping quarters), 36 (noting that there was no soap; they washed with plain water, used bark to clean their teeth and dry gourds to clean their bodies); T. 28 May 2015 (UN Rann), E1/307.1, p. 30.

<sup>5450</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 71, 76-77 (stating that people relieved themselves in the forest and there many flies which appeared like a dark cloud); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 7 (stating that workers relieved themselves everywhere); T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 31 (stating that there were no toilets, so everyone had to relieve themselves in the bushes); T. 30 July 2015 (OM Chy), E1/326.1, p. 79 (stating that workers dug a pit in the rice field to defecate, but it flooded in the rain, and the workers then went to the bushes); T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 65 (noting that there were two or three toilets, but this was insufficient for the hundreds of mobile unit workers); T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 7-8 (stating that at the end of April [1977], a mobile wooden toilet was brought in from the village to gather human waste as fertiliser. It was mixed with ashes and dried up before being transported to villages for use in rice fields.); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 36 (stating that there was an improvised toilet at the sleeping quarters, but at the worksite there was a fuel barrel was used to collect human faeces to be used as fertiliser); T. 3 June 2015 (UTH Seng), E1/309.1, p. 25 (testifying that there were many flies as workers relieved themselves everywhere); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 41 (stating that some small latrines were built on site for each sleeping quarter. Some workers used it and others relieved themselves in the forest.); KE Un Interview Record, E3/5264, 13 January 2009, p. 5, ERN (En) 00283343. *See also*, VAN Soeun Interview Record, E3/9350, 19 November 2008, ERN (En) 00244170 (“There was no hygiene at the work site. There were no latrines. When we had to relieve ourselves we went to the forest. There were many flies in the living quarters, all blue headed flies. There were many sick people. The diseases were mostly dysentery, fevers, cholera, etc. There was a medic stationed at each building, and when someone was sick, they issued round rabbit pellet medicine tablets. Sometimes this medicine helped and sometimes it did not, but whatever the disease was, they gave them the same rabbit pellet medicine. There were some inject[a]ble medicines; the bottles were shaped like soft drink bottles. I personally saw one person die of illness at the work site, but that person was not in my team, and I don’t remember the name of that person. Since they were under fed and over worked most of the people at the work site were emaciated.”).

<sup>5451</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 48.

1599. OR Ho testified that pesticide was used to kill many of the flies.<sup>5452</sup> However, MEAS Laihour testified that was only done every few months.<sup>5453</sup> UN Rann and HUN Sethany also testified that they did not see anyone spraying pesticide.<sup>5454</sup> Based on the multiple and vivid accounts of an overwhelming proliferation of flies at the 1<sup>st</sup> January Dam Worksite, the Chamber concludes that any efforts to control the fly population were ineffective.

1600. In most cases, workers had only one or two sets of clothes.<sup>5455</sup> They all wore black clothes, they were given new clothes one time every year and the clothes needed to be patched regularly.<sup>5456</sup> Workers sewed hats from palm leaves to wear.<sup>5457</sup> Most workers were barefoot.<sup>5458</sup> SEANG Sovida also stated that workers were not given shoes, but her mother gave her rubber sandals and a hat before she went to the worksite.<sup>5459</sup> OR Ho testified that people were given sandals made from car tyres.<sup>5460</sup> The Chamber finds that some of the workers were given shoes, but a majority of workers were barefoot.

1601. There were multiple adverse impacts of the lack of proper clothing. UN Rann suffered from abdominal pain, heat rashes and lice because she had to wear the damp clothes and had no access to shampoo or detergent.<sup>5461</sup> There was no soap and workers

<sup>5452</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 48.

<sup>5453</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 66.

<sup>5454</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 68, 69; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 65.

<sup>5455</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 6; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 34; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 12 (stating that workers only had one set of clothing; those who were lucky had two pairs of pants); T. 30 July 2015 (OM Chy), E1/326.1, p. 63 (stating that there was a severe shortage of clothing during the Khmer Rouge regime. There was only one pair of clothes for each worker. The clothes were torn and in all colours. Heavy duty cloth in grey and black was distributed to workers); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 36 (stating that she received one pair of black clothes on arrival at the worksite).

<sup>5456</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 72. *See also*, VANN Theng Interview Record E3/5249, ERN (En) 00231859 (“Everyone wore black clothes. No other color was allowed. When someone wore any clothe [*sic*] of different color, they would be criticized and re-educated.”); VAN Soeun Interview Record, E3/9350, 19 November 2008, p. 4, ERN (En) 00244170 (“They had us wear black clothing, and each year they issued one set of clothing. Most of the clothing was torn, ragged, and patched.”); POUK Pon Interview Record, E3/5247, 7 October 2008, ERN (En) 00232821 (“People wore black clothes some of which were in rags.”).

<sup>5457</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 59-60.

<sup>5458</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 43; T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 60. *See also*, Inauguration of a new dam and damage from the fighting between the Khmers Rouges and the Vietnamese, E3/3049R, ERN V00422553.

<sup>5459</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 60.

<sup>5460</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 48.

<sup>5461</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 7.



used ashes to wash clothes, so lice were abundant.<sup>5462</sup>

1602. Furthermore, there were no sanitary pads so the women's menstrual blood would mix with rain water and turn the pit they were working red.<sup>5463</sup> Women used a piece of cloth to absorb their menstruation and washed the blood away in the river water.<sup>5464</sup> If they worked away from the river, women worked with stained trousers.<sup>5465</sup>

1603. In light of the above, the Chamber finds that the hygiene conditions were extremely poor and inadequate to sustain the workers in the assignments they had to undertake. Workers were given a bare minimum of clothing and no means to wash which contributed to an unhygienic environment, led to disease, and exacerbated the suffering of the workers at the 1<sup>st</sup> January Dam Worksite.

### 11.2.17.3. Sleeping quarters

1604. Temporary sleeping quarters were built by the 1<sup>st</sup> January Dam Worksite with each quarters sleeping about 100 workers.<sup>5466</sup> Men and women were separated.<sup>5467</sup> In some cases, sleeping quarters were very distant from the worksite, forcing workers to wake early and walk each day.<sup>5468</sup> Workers slept on palm leaf mats or the bare floor and most did not have mosquito nets.<sup>5469</sup> The sleeping quarters leaked when it

<sup>5462</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 30.

<sup>5463</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 9-10; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 76; T. 19 May 2015 (OR Ho), E1/301.1, p. 70; KE Un Interview Record, E3/5264, 13 January 2009, p. 5, ERN (En) 00283343.

<sup>5464</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 76; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 13.

<sup>5465</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 14.

<sup>5466</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 37; T. 17 June 2015 (YEAN Lon), E1/318.1, p. 8 (noting that YEAN Lon was responsible for building the shelters built along the shoulder of the Dam in which the workers slept); T. 19 May 2015 (OR Ho), E1/301.1, p. 64 (stating that they cut trees near the worksite to build the huts and covered them with straw to protect against the sun, although the roofs were not waterproof); T. 20 May 2015 (PECH Sokha), E1/302.1, p. 99; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 69; (MEAS Laihour testifying that huts were made from sticks and the roof from thatch); T. 27 May 2015 (UN Rann), E1/306.1, p. 90.

<sup>5467</sup> CHOEU Saing Interview Record, E3/7785, 21 November 2008, p. 5, ERN (En) 00244152 ("they built long buildings for us to live in; the men and the women lived separately. One company of about 50 to 60 persons lived in one building"); CHUOP Non Interview Record, E3/9349, 17 November 2008, p. 4, ERN (En) 00244157 ("Men and women lived separately. They also ate at separate locations, but during the day, the men and the women worked together."); KONG Uth Interview Record, E3/7775, 8 October 2008, ERN (En) 00233534 ("We ate collectively though men lived separately from women.").

<sup>5468</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 42-44 (stating that her unit, as well as others, including those from Stueng Trang district, slept in quarters built within the Trapeang Chrey Pagoda throughout the time they worked on the Dam and had to walk to the worksite).

<sup>5469</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 16 (stating that there were mats to sleep on made of palm leaves, but he accommodation was not a proper place to sleep); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 69 (stating that the workers were told to sleep in the open air with no mosquito nets); T. 27

rained.<sup>5470</sup>

1605. Although SOU Soeurn testified that NUON Chea organised materials such as mosquito nets, blankets, and pillows at the zone levels which would in turn organise for the districts, there is no evidence that these blankets and mosquito nets arrived at the 1<sup>st</sup> January Dam Worksite.<sup>5471</sup>

#### 11.2.17.4. *Medical care*

1606. The Chamber has made findings about the CPK approach to healthcare during the DK period in the section of this Judgement pertaining to Trapeang Thma Dam Worksite.<sup>5472</sup> With respect to the situation at the 1<sup>st</sup> January Dam Worksite in particular, as noted above, workers were discouraged from claiming an inability to work due to illness.<sup>5473</sup> Some workers, such as MEAS Laihour, fell sick at times, but continued to carry earth in order to avoid refashioning.<sup>5474</sup> YEAN Lon also testified that many workers got sick and were forced to continue working if the illness was not serious.<sup>5475</sup>

1607. The Chamber finds that when workers were too sick to continue, there were efforts to treat them in the sleeping quarters, at local clinics or at hospitals.<sup>5476</sup> In most

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May 2015 (HUN Sethany), E1/306.1, p. 43 (stating that they were no sleeping mats; the floor was covered with woven twigs which were very hard); T. 27 May 2015 (UN Rann), E1/306.1, p. 90 (stating that there were no mosquito nets or blankets); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 23-24 (stating that they were to find their own mats or mosquito nets); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 23-24 (stating that workers slept on the floor made of small trees); T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 37-38 (stating that they slept on the ground without sleeping mats or mosquito nets, using tree leaves to lie upon); T. 30 July 2015 (OM Chy), E1/326.1, p. 63 (stating that the shelters were made of young wood and workers slept on mats if they had them. Some made hammocks and others made pillows.); T. 1 September 2015 (NUON Narom), E1/339.1, p. 16 (stating that they used clothes as sleeping mats).

<sup>5470</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 69 (stating that if there were heavy rains, everyone became soaked); T. 27 May 2015 (UN Rann), E1/306.1, p. 90 (noting that when it rained, the workers heads got wet since there were no walls); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 43 (noting that the roof was made of thatched leaves and leaked when it rained). Cf. T. 3 June 2015 (UTH Seng), E1/309.1, pp. 25-26 (noting that there was a full roof); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 39 (noting that the roof was patchy and the workers got wet if it rained); T. 30 July 2015 (OM Chy), E1/326.1, p. 63 (the roof leaked during heavy rains); T. 1 September 2015 (NUON Narom), E1/339.1, pp. 12, 15-16 (testifying that the sleeping quarters were roofed with hay and they leaked when it rained).

<sup>5471</sup> T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 56-57.

<sup>5472</sup> Section 11.1.8.5.1: CPK Approach to Health.

<sup>5473</sup> See above, Section 11.2.14: Criticism and Self-Criticism Meetings.

<sup>5474</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 70. See also, T. 28 May 2015 (UN Rann), E1/307.1, p. 12 (testifying that those who were sick had their food rations reduced. But there was not sufficient corroborating evidence to make this finding). See also, VANN Theng Interview Record, E3/5249, 8 October 2008, ERN (En) 00231858 (“Those, who pretended to be sick, were given punishment. People were scared of execution that they had to work without taking a rest.”).

<sup>5475</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 40.

<sup>5476</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 19 (stating that when workers were sick they would stay in the sleeping hall and a medic would come to treat them); T. 20 May 2015 (PECH Sokha), E1/302.1,

cases, medical treatment was limited to “rabbit drop” pellets and Vitamin B1 and B12 serum.<sup>5477</sup> Medics provided rabbit drop pills as medicine irrespective of the illness.<sup>5478</sup> There were also efforts to use traditional medicine such as Kapok leaves.<sup>5479</sup> Medics were young, inexperienced and lacking in training.<sup>5480</sup> In some cases workers recovered,<sup>5481</sup> but often people did not recover well or were sent to the sector

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p. 98 (stating that the sick were sent to be treated at the hospital); T. 20 May 2015 (OR Ho), E1/302.1, pp. 11 (stating that if someone did not get well, there was a mobile hospital at the work site where they could seek further treatment), 12 (testifying that *Angkar* had organised and established medical units at the sector and zone level where patients could also be sent); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 42 (noting that many workers fell sick and were sent to the hospital for treatment). *See also*, CHOEU Saing Interview Record, E3/7785, 21 November 2008, p. 5, ERN (En) 00244152 (“the seriously ill people were sent to the district hospital. The medics had no knowledge.”). *See also*, Section 11.1.8.5.1: CPK Approach to Health.

<sup>5477</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 75; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 24-25 (stating that there were some medical staff from the village who would provide tablets or injections such as B vitamins or rabbit drop pellets but there was no proper medical unit); T. 28 May 2015 (UN Rann), E1/307.1, pp. 11-13, 30-32, 65-67 (stating that for those who were sick with dysentery, there was rabbit drop pellets and a red liquid to drink); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 33-34 (stating that medics gave out rabbit drop pellets or B12 injections as medicine). *Cf.* T. 20 May 2015 (OR Ho), E1/302.1, p. 12 (stating that sick persons were treated at a mobile hospital at the work site which had abundant medicines for treatment. This claim was contradicted by the testimony of numerous witnesses). *See also*, CHUOP Non Interview Record, E3/9349, 17 November 2008, pp. 2, 4, ERN (En) 00244155, 00244155 (noting that CHUOP Non was a deputy chief of a mobile unit of Ballangk commune, Baray district and later was a guard at the bridge of the 1<sup>st</sup> January Dam. He stated that “There were sick people, and when they were, a medic came to give them medicine to swallow, but the medicine was ineffective. It was like rabbit-pellets, and there were liquids in soft drink bottles.”). *See also*, POUK Pon Interview Record, E3/5247, 7 October 2008, ERN (En) 00232820-00232821 (stating that he was the leader of the food supply transport team for the workers at 1<sup>st</sup> January Dam Worksite located in Boeng commune, Santuk district. He stated that: “A number of people were sick. Most of them got malaria and other diseases resulted from insufficient food and lack of hygiene. There were some medicines (a kind of medicine that was similar to rabbit’s droppings). But they were of neither quality nor effects.”).

<sup>5478</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 53-54; T. 30 July 2015 (OM Chy), E1/326.1, pp. 64-65, 79 (stating that they used rabbit dropping pellets, herbs, and B12 liquid to treat workers).

<sup>5479</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 40 (stating that at times, traditional medicine was used to treat illnesses); T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 66, 73 (noting that tree or plant roots were put in the water to prevent malaria and to treat diarrhoea).

<sup>5480</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 25 (stating that village medics only had four or five days of training, so those with serious illnesses were sent to big hospitals); T. 30 July 2015 (OM Chy), E1/326.1, p. 64 (stating that medical staff were not qualified and only had 10-15 days of training); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 21-22 (stating that the medics only received a brief training and could not treat serious illnesses); T. 28 May 2015 (UN Rann), E1/307.1, p. 66 (stating that she injured her ankle and was given two injections which gave her a fever. She could only dig dirt thereafter); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 41 (stating that child medics gave injections to the sick in the sleeping quarters. But there was very little medicine.); T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 70-71 (stating that the medics were the children of Base People. They were not well trained or educated. They did not check a sick person’s temperature or take any blood tests. They simply gave rabbit droppings medicine).

<sup>5481</sup> T. 20 May 2015 (OR Ho), E1/302.1, pp. 10-11 (stating that a woman of about 35 years was injured when there was a landslide under her. She was rushed to the mobile clinic for treatment and recovered after four months); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 20-21 (stating that some of her work group got sick from overwork, but recovered and started working again); T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 79 (noting that in some cases people’s lives were saved, in other cases, people were sent to the provincial hospital).

hospital.<sup>5482</sup>

1608. MEAS Laihour testified that treatment at larger district hospitals was equally ineffective. At the Wat Chambak District Hospital, there were only traditional healers, named *Ta Voar* and *Ta Sorn*, who boiled herbs for the sick. There was nothing more sophisticated except for an orange liquid that was sometimes given.<sup>5483</sup> New and Old People were given the same treatment, but it was ineffective.<sup>5484</sup>

1609. CHAO Lang testified that she became ill with fever and was sent to a hospital. A colleague visited her at the hospital to give her traditional medicine and, upon begging the medic, was given one tablet of aspirin.<sup>5485</sup> CHAO Lang, who had been a trained medic, said that there was no effective medicine available and it appeared the medics were not properly trained.<sup>5486</sup> Only rabbit drop pellets were available as medicine at that time. She tried to use Kapok leaves to help her illness, although she was not convinced of their effectiveness.<sup>5487</sup>

1610. The Chamber finds that proper medical care was not provided to the workers at the 1<sup>st</sup> January Dam. Medicines were in short supply and medical workers received very little training. Workers were nonetheless forced to continue working while ill and some workers who were sent to clinics or district hospitals died of illness. Living conditions, including food, hygiene and medical care, were extremely poor and inadequate to sustain the workers in the assignments they had to undertake.

#### 11.2.17.5. Children

1611. Most of the workers building the Dam were eighteen years old or older.<sup>5488</sup> Young children were instead told to collect cow dung.<sup>5489</sup> Parents would be allowed to

<sup>5482</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 75 (noting that some workers recovered while others did not and died); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 21-22 (stating that those who left due to serious illness did not return to work again).

<sup>5483</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 71.

<sup>5484</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 72.

<sup>5485</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 64.

<sup>5486</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 79-80.

<sup>5487</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 97.

<sup>5488</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 34; T. 25 June 2015 (KONG Uth), E1/322.1, p. 12 (testifying that no children were working at the site and that the average age of workers was 20 years old); T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 66-67 (stating that they were between 20 and 30 years old and some were around 18 years old. Older persons remained in the cooperatives.); T. 28 May 2015 (UN Rann), E1/307.1, p. 19 (UN Rann testified that workers were between 20 and 40 years old).

<sup>5489</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 36; T. 3 June 2015 (UTH Seng), E1/309.1, p. 27.

visit their children at night if they were in nearby villages. But parents who worked far from their village were not allowed to visit their children.<sup>5490</sup>

1612. On occasion, children below the age of 18 worked at the 1<sup>st</sup> January Dam. HUN Sethany's younger sister HUN Kol Thida was 16 years old when they were sent together to work on the 1<sup>st</sup> January Dam.<sup>5491</sup> Some witnesses and Civil Parties recalled a boy named Try was put in a cage to frighten people who were lazy as being 14 or 15 years old.<sup>5492</sup>

1613. SEANG Sovida was 11 or 12 years old when she was sent to work at the dam, but she appears to have been an exceptional case due to her young age and the tasks assigned. She was not given a work quota, though she was tasked with assisting others and fetching water for older workers from the kitchen which was kept in canteens.<sup>5493</sup> She testified that most of the workers in her unit were under twenty years old and that she was the youngest and one of the smallest in stature.<sup>5494</sup>

1614. The only evidence of a general policy of forcing children to work at the 1<sup>st</sup> January Dam came from HUN Sethany. She testified that one mobile unit, whose chief was named An, consisted mostly of children aged 9 to 13 from the surrounding villages who worked apart from their parents.<sup>5495</sup> These children were instructed to do the same work as adults, such as carrying dirt, and received the same food ration. There was no empathy or sympathy for children.<sup>5496</sup> They had been appointed to work by the village chief, a very tall man named Ol.<sup>5497</sup> She testified that the children's health suffered as a result of the hard work and when they fell sick no one came to visit them.<sup>5498</sup>

1615. Apart from this one mobile unit (consisting of 12 to 30 workers),<sup>5499</sup> the Chamber finds that there was no evidence of a consistent practice of forcing children under 18 years old to work at the 1<sup>st</sup> January Dam, although there were clearly

<sup>5490</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 38.

<sup>5491</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 94.

<sup>5492</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 37, 78; T. 25 June 2015 (KONG Uth), E1/322.1, pp. 30-31 (stating that most workers were older than Try).

<sup>5493</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 10, 15, 17-18.

<sup>5494</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 16, 57-58.

<sup>5495</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, pp. 98-99; T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 62-63.

<sup>5496</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 3, 62-63.

<sup>5497</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 63.

<sup>5498</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 3-4.

<sup>5499</sup> See above, para. 1501.

individual instances of children working there.

### 11.2.18. *Forced Labour and Freedom of Movement*

1616. The consensus among workers at the 1<sup>st</sup> January Dam was that they had no choice but to complete the hard labour required of them. HUN Sethany testified that she had no choice but to work at the 1<sup>st</sup> January Dam. Workers could not complain or refuse to work.<sup>5500</sup> SEANG Sovida testified simply that she was forced to work and was not permitted to speak to other New People.<sup>5501</sup> There was no right to challenge the working conditions.<sup>5502</sup> UTH Seng agreed that he was forced to work hard.<sup>5503</sup> The situation was no different for Base People such as MEAS Laihour. She was instructed to constantly engage in the work until quotas were met.<sup>5504</sup> She stated that she never thought of escaping as she could not go very far and stated that no one was free at that time.<sup>5505</sup>

1617. OM Chy, a mobile unit supervisor of 500 workers at a canal connected to the 1<sup>st</sup> January Dam, testified that none of the workers under his supervision at the worksite in 1978 had volunteered.<sup>5506</sup> The workers were required to work.<sup>5507</sup> If anyone disobeyed, they would be accused of opposing the society under the Khmer Rouge leadership<sup>5508</sup> and put themselves at risk of being arrested, and sent for re-education at a detention centre or commune office.<sup>5509</sup> He therefore instructed his unit chiefs to keep workers under control and not to let them wander around.<sup>5510</sup>

1618. PECH Sokha who was a technician with a privileged position of authority at the worksite, asserted that he did not know if other workers were there voluntarily or were

<sup>5500</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 31; T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 80-81 (CHAO Lang attempted to flee the worksite by making a fake letter of authorisation to visit the cooperative, as she saw that this is how travel was authorised).

<sup>5501</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 18, 55. *See also*, VANN Theng Interview Record, E3/5249, 8 October 2008, ERN (En) 00231859 (“Verbal communication among workers during their work was not allowed. When people found to have communicated with one another, they would be questioned and accused of being the enemies or CIA agents.”).

<sup>5502</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 54-55.

<sup>5503</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 48-49.

<sup>5504</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 61; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 52.

<sup>5505</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 93-94, 113.

<sup>5506</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 40, 97.

<sup>5507</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 40.

<sup>5508</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 41-42.

<sup>5509</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 42.

<sup>5510</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 111.

forced to work.<sup>5511</sup> He recalled however that revolutionary songs were played everywhere to lend an air of happiness, but in reality, everything was horrible. PECH Sokha testified that it was impossible to complain and that he merely worked hard to survive.<sup>5512</sup>

1619. OR Ho, a unit supervisor, testified that his group prepared enthusiastically to commence digging the canal since the 1976 drought had hit them hard.<sup>5513</sup> However, the Chamber considers that as a unit supervisor, OR Ho had an incentive to minimise his own responsibility. Furthermore, the overwhelming bulk of evidence contradicted OR Ho's testimony that workers came voluntarily.

1620. In addition, SOU Soeurn said that none of those selected by the commune chiefs to work at the 1<sup>st</sup> January Dam refused. The workers were willing to go.<sup>5514</sup> She said that workers were not threatened with punishment but merely informed that they had to respect discipline and working hours.<sup>5515</sup> No one dared to refuse because they had been instructed to work hard together so that everyone would have enough to eat. Workers went to work voluntarily.<sup>5516</sup> The Chamber rejects this testimony due to SOU Soeurn's self-interest in minimising her own responsibility, particularly as she was involved in gathering the workforce for the 1<sup>st</sup> January Dam.<sup>5517</sup>

1621. The evidence also showed that workers' freedom of movement was highly restricted. They had no rights and could only travel back to their cooperatives with authorisation, which would often be accorded on every tenth day.<sup>5518</sup> UN Rann testified that she was not permitted to move about freely and was told that if she refused to do the work she would be taken away and killed.<sup>5519</sup> UTH Seng testified that workers were not permitted to visit their sick parents.<sup>5520</sup>

<sup>5511</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, p. 19.

<sup>5512</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 86-88 (confirming PECH Sokha Interview Record, E3/403, 12 October 2009, p. 8, ERN (En) 00403008); T. 21 May 2015 (PECH Sokha), E1/303.1, p. 50.

<sup>5513</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 45.

<sup>5514</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 88-89.

<sup>5515</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 89.

<sup>5516</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 89.

<sup>5517</sup> *See above*, para. 1498.

<sup>5518</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 31; T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 80-81 (CHAO Lang attempted to flee the worksite by making a fake letter of authorisation to visit the cooperative, as she saw that this is how travel was authorised).

<sup>5519</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 25-27.

<sup>5520</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 28.

1622. SOU Soeurn testified that no one tried to flee the worksite.<sup>5521</sup> They remained at work although they were exhausted and hungry.<sup>5522</sup> However, her testimony was squarely rejected by multiple witnesses. Notably, PECH Sokha, despite the fact that he had a better position as a technician than many workers, testified that he was afraid but he did not know where to escape.<sup>5523</sup> The Chamber therefore rejects SOU Soeurn's testimony on this point.

1623. The Chamber concludes that workers at the 1<sup>st</sup> January Dam were forced to undertake hard labour against their will. They continued to work under extremely inhumane conditions as they feared for their lives. The Chamber further concludes that movement was heavily restricted, with authorisation required to leave the worksite to visit family.

#### 11.2.19. *Deaths Resulting from Working and Living Conditions*

1624. KE Pich Vannak stated to OCIJ investigators that he knew that patients at the worksite were dying because of a lack of medicine and informed KE Pauk,<sup>5524</sup> but he did not specify how many had died.

1625. Civil Party NUON Narom stated that when she fell sick with a high fever she was hospitalised for two weeks in a makeshift hospital in a pagoda, where she recovered.<sup>5525</sup> She then stayed in a village with her mother for one month after which she was sent back to her mobile unit which was engaged in farming.<sup>5526</sup> She grew skinny and became weaker by the day.<sup>5527</sup> She gave evidence of people fainting or collapsing who were then carried by young men in hammocks back to the sleeping quarters.<sup>5528</sup>

<sup>5521</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 90.

<sup>5522</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 90.

<sup>5523</sup> T. 20 May 2015 (PECH Sokha), E1/302.1, p. 91.

<sup>5524</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150 ("I visited the long halls in which the mobile unit was staying [...] I saw sick persons in each shelter and asked about their condition. They said that they did not have any medicines to take. I told those facts to my father, who then ordered the Sectors to assign medics to help with the treatment of patients in each shelter. But the Sectors said they did not have 'medicines'. During the Dam construction, I knew that there were patients dying because the lack of medicines").

<sup>5525</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 16, 35-37.

<sup>5526</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 16-17.

<sup>5527</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 27.

<sup>5528</sup> T. 1 September 2015 (NUON Narom), E1/339.1, pp. 31, 45.



1626. HUN Sethany testified that a Base Person named Ry died from overwork. Ry was unmarried and did whatever was assigned to him, including breaking rocks manually.<sup>5529</sup> He fell sick at the worksite and returned to the village of origin during the rainy season. During this period of rest, he received rabbit drop pellets as treatment until he died a fortnight later.<sup>5530</sup> HUN Sethany lived six houses away from Ry and was present in the village when he died.<sup>5531</sup> There were no funeral rites for him.<sup>5532</sup> UTH Seng also testified that of the five people in his work group who he knew well, two died of illness – though he did not specify where they died.<sup>5533</sup>

1627. As noted above, there were also multiple reports of landslides occurring at the 1<sup>st</sup> January Dam Worksite, injuring or killing several workers.<sup>5534</sup> These events were precipitated by an atmosphere of intense competition.<sup>5535</sup> UN Rann said that the small unit chiefs were in charge and were trying to impress their superiors.<sup>5536</sup> KONG Uth also recalled that one person was crushed by a rock that fell off a bridge that was under construction.<sup>5537</sup>

1628. MEAS Laihour, a mobile unit worker, witnessed a landslide on people who worked in another commune area digging soil, killing them before they could be unburied.<sup>5538</sup> Hearsay evidence corroborates that such accidents took place. HUN Sethany heard that someone had died from an incident.<sup>5539</sup> UTH Seng likewise heard there was a fatal accident due to a landslide caused by earth which was dug very deep.<sup>5540</sup> UN Rann also heard about a landslide which covered three workers, killing

<sup>5529</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 9, 60, 61. *See also*, VANN Theng Interview Record, E3/5249, ERN (En) 00231859 (“some people died of exhaustion, insufficient food and medicines of no-quality and no effects”).

<sup>5530</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 61-62.

<sup>5531</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 61.

<sup>5532</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 9.

<sup>5533</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 44.

<sup>5534</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 64-65; T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 17, 30.

<sup>5535</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, pp. 17 (stating that soil collapsed on the worker who was digging soil at the bottom of the canal), 95 (stating that there was competition amongst the villagers to complete work more quickly than others which led to the landslide); T. 19 May 2015 (OR Ho), E1/301.1, pp. 43-44; T. 20 May 2015 (OR Ho), E1/302.1, p. 26 (OR Ho testified that workers were working day and night, competing against each other and that some workers died).

<sup>5536</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 17.

<sup>5537</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 17.

<sup>5538</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 63; T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 17, 30.

<sup>5539</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 95.

<sup>5540</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 54-55.

one on the spot.<sup>5541</sup> NUON Narom gave evidence that she saw soil collapse around a hole in the ground that some youth were digging.<sup>5542</sup> The Chamber is not able to ascertain whether these witnesses were referring to the same or different incidents. However, it finds that they were credible in describing the deaths of at least several workers due to landslides precipitated by the expedited pace of work at the worksite and the lack of appropriate precautionary measures.

1629. The available evidence before the Chamber shows that few people died of illness or injury at the 1<sup>st</sup> January Dam, but usually individuals who were seriously sick were sent back to their villages or to local clinics where they died when treatments failed.<sup>5543</sup> The Chamber therefore finds that it was proved that workers died due to work-related accidents or due to conditions imposed at the 1<sup>st</sup> January Dam.

#### **11.2.20. Knowledge of KE Pauk and the Upper Echelon of Living and Working Conditions at the 1<sup>st</sup> January Dam**

1630. Although almost all of the Central (old North) Zone cadres were purged in 1977, KE Pauk and his family (e.g. KE Pich Vannak, SOU Soeurn, Oeun) remained untouched or, in the case of Oeun, who became Sector 42 Secretary after the purge, benefitted from higher appointments.<sup>5544</sup> KE Pauk was entrusted with executing arrests in furtherance of the Central (old North) Zone purge and with pursuing security concerns in the new North Zone.<sup>5545</sup> Furthermore, KE Pauk disseminated the political stance of the party in Kampong Cham, set up cooperatives in groups of 100 families,

<sup>5541</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 14, 80.

<sup>5542</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 40.

<sup>5543</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 14, 22-24 (MEAS Laihour later clarified that when someone was seriously ill, they were sent to the Baray District hospital 10 kilometres away and that “[m]obile unit workers were not left dead at the worksite.”), 58 (stating she was told by her unit chief when a particular worker died of dysentery after he was removed from the worksite); KONG Uth Interview Record, E3/7775, 8 October 2008, ERN (En) 00233534; T. 28 May 2015 (UN Rann), E1/307.1, pp. 13, 66-67 (UN Rann testified that two people in her group were sent to the District Hospital with dysentery and never returned); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 70 (stating that sick persons were transported back to the village); T. 30 July 2015 (OM Chy), E1/326.1, p. 65 (stating that very sick people were taken to the District Hospital where some recovered and some died); IENG Chham Interview Record, E3/5513, 8 November 2009, ERN (En) 00410238 (stating there were many sick people and not enough medicine for treatment, most of which were home-made. Medics did not have proper training, there was not enough food to eat and the hygiene was poor. As a result, patients died); T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 66, 73-74 (sick people at the 1<sup>st</sup> January Dam were returned to their respective cooperatives after they had been hospitalised at the Kampong Cham hospital); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 27 (stating that if someone was seriously ill, they would be taken back to their village as there were no proper hospitals at the worksite).

<sup>5544</sup> See above, Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

<sup>5545</sup> See above, Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

organised military forces to defend the country and labour forces to construct dams and irrigation systems.<sup>5546</sup> The Chamber therefore finds that KE Pauk was a trusted member of the Party.

1631. KE Pauk was apprised of the conditions at the 1<sup>st</sup> January Dam Worksite from personal supervision.<sup>5547</sup> He knew that people starved, that foreign aid was not accepted, and that people in cooperatives were forced to work very hard.<sup>5548</sup> In addition, KE Pich Vannak reported to his father KE Pauk complaints about food shortages and that the sick did not have medicine.<sup>5549</sup> The latter ordered the sectors to assign medics to help the patients, but the sectors did not have medicine. KE Pich Vannak also knew that patients were dying because of a lack of medicine.<sup>5550</sup> Due to the close personal connection between KE Pich Vannak and KE Pauk, and due to his personal supervision of the worksite, the Chamber finds that KE Pauk was also aware of the lack of medicine at the 1<sup>st</sup> January Dam Worksite.

1632. KE Pauk attempts to displace blame for some of the activities of Southwest Zone cadres in the Central (old North) Zone. He states that some of the Southwest cadres “added salt” by mistreating the people in their districts, arresting or killing innocent people in Baray and Sandann districts in particular.<sup>5551</sup> KE Pauk concludes that “evil cadres from Southwestern Zone cause a lot [of] troubles to my zone”.<sup>5552</sup> The Chamber notes that in writing his autobiography, KE Pauk had an incentive to burnish his own reputation and may have attempted to displace blame on others for arrests he facilitated or to which he acquiesced. In fact, the evidence above shows that KE Pauk cooperated with the Party Centre in sending Central (old North) Zone cadres to S-21.<sup>5553</sup> Furthermore, KE Pauk remained the Zone Secretary even after the Southwest Zone cadres took over positions in the Central (old North) Zone. There is no evidence to

<sup>5546</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089712. *See above*, paras 1463, 1476, 1481. *See also*, Section 12.1.6.3.4: Purge of the East Zone.

<sup>5547</sup> *See above*, Section 11.2.8.3: Direct Supervision of the 1<sup>st</sup> January Dam.

<sup>5548</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714; KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 6, ERN (En) 00346150. *See above*, para. 1481 (KE Pauk visited the 1<sup>st</sup> January Dam daily).

<sup>5549</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, ERN (En) 00346150.

<sup>5550</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, ERN (En) 00346150.

<sup>5551</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714; T. 30 July 2015 (OM Chy), E1/326.1, p. 70 (stating that the Baray District Secretary was Moul, who was transferred to Tang Kouk and replaced by Pauch [Poch] who remained there until the canal was completed in August 1978).

<sup>5552</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714.

<sup>5553</sup> *See above*, para. 1466.

show that he actively took measures to sanction or restrain cadres in his zone in order to avoid excess in the implementation of the purge policy. The Chamber therefore considers that not only did KE Pauk know that workers were being mistreated at the 1<sup>st</sup> January Dam, but he acquiesced to this conduct, as he supported the implementation of the purge policy in his zone.

1633. KE Pauk communicated to the Upper Echelon that there was a lack of food and medicine. He sent a telegram to POL Pot on 2 April 1976, describing the situation in the Central (old North) Zone, noting that among the entire population in the zone “there has been much fever and diarrhea”. He attributed this to working and overheating, indicating that hot water should be drunk and that measures would be taken to reduce working hours.<sup>5554</sup> On 10 May 1978, KE Pauk sent another telegram to Office 870, noting with regard to “People’s Lives” that “some places have two rice meals [a day], some places have only one rice meal and one porridge meal [a day] and some places have two porridge meals [a day]”.<sup>5555</sup> Given that the 1<sup>st</sup> January Dam was a project that was prioritised by the Party Centre,<sup>5556</sup> and that KE Pauk was a trusted Party member, the Chamber considers the only reasonable inference is that KE Pauk also informed the Party Centre about the specific difficulties encountered on the 1<sup>st</sup> January Dam Worksite.

1634. NUON Chea also knew from personal experience about the food scarcity. SAUT Toeung, who accompanied NUON Chea as his bodyguard on two visits to the 1<sup>st</sup> January Dam, testified that the leaders must have known that people were punished for failing to meeting work quotas and that they were overworked and dying of starvation.<sup>5557</sup> NUON Chea visited the cooperatives.<sup>5558</sup> He ordered the cooperative and sector committees to hold criticism meetings and said they must produce three tonnes of rice per hectare.<sup>5559</sup> It was SAUT Toeung’s view, however, that NUON Chea had planned to provide people with enough meals and that the Sector Committees failed to

<sup>5554</sup> DK Telegram, E3/952, 2 April 1976, ERN (En) 00182658-00182659.

<sup>5555</sup> DK Telegram, E3/948, 10 May 1978, ERN (En) 00003534.

<sup>5556</sup> *See above*, para. 1504.

<sup>5557</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 53-54, 70.

<sup>5558</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 53-54, 68, 70; SAUT Toeung Interview Record, E3/423, 2 December 2009, p. 9, ERN (En) 00414595.

<sup>5559</sup> SAUT Toeung Interview Record, E3/423, 2 December 2009, p. 9, ERN (En) 00414595.

follow it by forcing people to work very hard.<sup>5560</sup> The Chamber finds that NUON Chea knew of the lack of food and medicine at the worksite. His participation in the Party Centre's decision to push forward on the expedited timeframe for the 1<sup>st</sup> January Dam despite this knowledge was inconsistent with an aspiration that people should eat enough.

1635. IENG Thirith visited the 1<sup>st</sup> January Dam in April of 1977, following which she reported to her leaders about the lack of food and medicine in the provinces.<sup>5561</sup> However, there is no record that she reported to the Party Centre specifically about the conditions at the 1<sup>st</sup> January Dam.<sup>5562</sup>

1636. SOU Soeurn's testimony as to what she told the Upper Echelon was somewhat ambiguous. She stated that when she met with NUON Chea, either in her district or in Phnom Penh, he inquired as to how well the cooperatives were being run and whether the livelihood of the people had improved.<sup>5563</sup> It is not clear what type of message she conveyed to NUON Chea and whether she conveyed that some people did not have enough food to eat. SOU Soeurn believed that the Upper Echelon was under the impression that her district was producing abundant food and she concluded that there was likely rice stock available in each cooperative.<sup>5564</sup> On the other hand, she also testified that people did not have three meals a day in some communes even though they were achieving high yields,<sup>5565</sup> that the rice was being sent outside the district,<sup>5566</sup> and that Dam workers complained they did not have enough to eat.<sup>5567</sup> She testified that these reports were forwarded to the sector, but there were no replies.<sup>5568</sup> The Chamber notes that the sector secretary was his youngest brother Oeun and the zone secretary was her husband and that it was easy to follow up on this matter. However, it is not clear from her testimony what reports were provided to NUON Chea.

<sup>5560</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 68; SAUT Toeung Interview Record, E3/423, 2 December 2009, p. 9, ERN (En) 00414595.

<sup>5561</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, ERN (En) 00182322.

<sup>5562</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, ERN (En) 00182298-00182342.

<sup>5563</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 94.

<sup>5564</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 96, 98.

<sup>5565</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 95-96, 98.

<sup>5566</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 96.

<sup>5567</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 95-96, 98.

<sup>5568</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 95.

1637. There is reason to doubt that SOU Soeurn provided a positive impression of the food situation to NUON Chea. She testified that a lot of rice was produced and the food situation in Chamkar Leu district, Sector 42 in the Central (old North) Zone was comparatively good.<sup>5569</sup> In contrast, BAN Seak, who was SOU Soeurn's deputy, testified that in the communes they planted a lot of corn in order to supplement their diet and despite the extra water coming from the canals, people did not have rice to eat.<sup>5570</sup> This corroborates the evidence of workers at the 1<sup>st</sup> January Dam about the scarcity of food which the Chamber has accepted. The Chamber therefore considers that SOU Soeurn's testimony as to the abundance of food in Chamkar Leu is not credible. However, even if she had provided a nuanced report to the Party Centre about the food situation, the Party Centre had direct information from KE Pauk and NUON Chea's own visits to apprise them of the lack of food and medicine at the 1<sup>st</sup> January Dam.

1638. The Special *Revolutionary Flag* issue of October-November 1976 notes:

We said it was normal for the people to suffer shortages in 1975 and 1976, that it is normal for them to suffer shortages in 1977, and that it will be normal when they suffer shortages in 1978. Enduring shortages is normal in making revolution. It is, however, to pass through them and leave them behind quickly. If that's not happening, it means that we are no yet imbued with the Party's line. It will be necessary in 1978 to put the Party's systems completely into practice. The solution is more bananas, tubers, sakou [...] and corn.<sup>5571</sup>

1639. It further acknowledges that:

Some places, the problem of meals and drink has not yet been achieved according to the ration. In examining this aspect, it would continue to sink further. [...] Where there are shortages in terms of meals and drink, there must be resolution. Resolve things by helping to provide food is one thing. However, it is necessary to resolve the responsible cadres.<sup>5572</sup>

“Bad class elements” are later blamed for the lack of rice to eat in contrast to “good classes” who “produce enough to eat and to have a large surplus for provision to the state”.<sup>5573</sup> But the problems are left without a resolution as the document concludes,

<sup>5569</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 95, 96.

<sup>5570</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 84.

<sup>5571</sup> Revolutionary Flag, E3/170, September-October 1977, ERN (En) 00182558.

<sup>5572</sup> Revolutionary Flag, E3/170, September-October 1977, ERN (En) 00182560.

<sup>5573</sup> Revolutionary Flag, E3/170, September-October 1977, ERN (En) 00182562.

“Solutions are needed wherever there are shortages of good [*sic*] to eat and water to drink”.<sup>5574</sup> The Upper Echelon nonetheless continued to push the workers at the Dam to complete all of the dry season work as quickly as possible working night and day.<sup>5575</sup>

1640. The Chamber therefore finds that the Party Centre, including NUON Chea, knew that there was a lack of sufficient food and medicine at the 1<sup>st</sup> January Dam Worksite, and yet maintained the deadline for the Dam which risked the lives of the workers.

#### 11.2.21. *Treatment of New People compared to Old People*

1641. As a preliminary matter, the Chamber notes that the treatment of New People at the 1<sup>st</sup> January Dam Worksite must be viewed in the broader context of how such people were treated in the communities from which they were selected, as well as the overall CPK policy towards New People.<sup>5576</sup> The 1<sup>st</sup> January worksite was not an “isolated bubble”; on the contrary, it was geographically and operationally interlinked with the sectors, districts and communes around it. In this regard, the Chamber notes its findings that anyone who opposed the revolution was considered an enemy and that New People were at particular risk of being accused of making mistakes.<sup>5577</sup> The Chamber therefore recalls that it may rely on evidence that falls outside of the temporal or geographic scope of the Closing Order in three circumstances: (1) to clarify a given context; (2) to establish by inference the elements, in particular the *mens rea*, of criminal conduct occurring during the material period; or (3) to demonstrate a deliberate pattern of conduct. The Chamber will therefore only rely on this evidence for these limited purposes and exclusively when the out-of-scope evidence is consistent with other evidence.<sup>5578</sup>

<sup>5574</sup> Revolutionary Flag, E3/170, September-October 1977, ERN (En) 00182564.

<sup>5575</sup> *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168139-00168140. *See above*, para. 1504. *See also*, Section 10.1.7.4: Tram Kak Cooperatives: Working Conditions.

<sup>5576</sup> Section 10.1.7.2: Categorisation of People: Full-Rights, Candidates and Depositees.

<sup>5577</sup> Section 16.3: Real or Perceived Enemies, paras 3839, 3845-3846, 3848 (New People were generally distrusted and therefore at risk of being branded enemies more quickly than “old people” or “base people, Although officially eradicated, class origin thus remained at the centre of the CPK’s analyses of contradictions and real or perceived enemies in DK society.). *See also*, T. 27 May 2015 (HUN Sethany), E1/306.1, p. 11 (Old People could justify minor mistakes but New People were under tremendous pressure and would merely accept criticism without speaking in order to survive).

<sup>5578</sup> Section 2.5.6: Notice of the Charges, Scope of the Trial and Evidence in Case 002/02.

1642. OR Ho, who was the chief of Prey Srangae village in Ballangk commune, in Baray district, Sector 42, and later the chief of a work unit of 100 workers, testified that 300 families of New People arrived in Baray district after 17 April 1975.<sup>5579</sup> Their biographies were taken and they were divided up into different villages and communes.<sup>5580</sup> If former Khmer Republic officials or soldiers were discovered by the security personnel in the commune, these people would be arrested, taken to the security office, and killed.<sup>5581</sup> Guards (militiamen), disguised as 17 April People, spied on the New People to identify those who had held a certain rank.<sup>5582</sup> They tricked people by saying that they were captains and that they lost their wives.<sup>5583</sup> There was also a former teacher who was indoctrinated and who received new clothes from Chab, the commune chief, to incentivise the search for New People or anyone who had ranks in the former regime.<sup>5584</sup> OR Ho claimed that he once received a list of fifteen families of former civil servants and policeman in his village who were selected by the upper level, and that he helped to conceal eight of the families.<sup>5585</sup> However, the other seven families were taken on the pretext that they would go to live with relatives.<sup>5586</sup> In actuality, they were killed.<sup>5587</sup> OR Ho further noted that New People were not allowed to cast their votes for the elections which took place during DK regime, in contrast to Base People.<sup>5588</sup>

1643. OR Ho's evidence as to the treatment of New People in Baray and Santuk districts is corroborated by multiple other witnesses. HUN Sethany testified that during the LON Nol regime her father was a teacher in a college in Kompong Cham and was sent to work on the construction of the 1<sup>st</sup> January Dam.<sup>5589</sup> HUN Sethany was informed by her younger sibling that he witnessed the arrest of their father by militiamen who asked him to come and carry logs.<sup>5590</sup> Since then he disappeared and was never seen again.<sup>5591</sup> She heard that he had been killed at the Baray Choan Dek pagoda.<sup>5592</sup> Around

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<sup>5579</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 11, 32-33.

<sup>5580</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 11, 16-17.

<sup>5581</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 16, 27.

<sup>5582</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 18-19, 27.

<sup>5583</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 18.

<sup>5584</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 18, 19, 26-27.

<sup>5585</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 19-20, 26.

<sup>5586</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 18-20, 25-27.

<sup>5587</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 18-20, 25-28.

<sup>5588</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 92-93.

<sup>5589</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 17, 33.

<sup>5590</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 17-18, 33.

<sup>5591</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 33.

<sup>5592</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 17, 32.



the same time her mother and five siblings who were in a village were taken away with other families.<sup>5593</sup> They disappeared, but some of their clothes were returned and recognised by HUN Sethany.<sup>5594</sup> This last witness heard that her mother and siblings were dropped into wells in Chamkar-Andoung.<sup>5595</sup>

1644. UTH Seng testified that in Kang Sau village, Kampong Thma commune, Santuk district, where he had been transferred, there were covert militiamen who monitored activities of the villagers as they were eavesdropping under the house, in particular, the New People were the target.<sup>5596</sup> They monitored the conversation and all of the activities of New People.<sup>5597</sup> UTH Seng also recalled seeing the local militia calling away a few workers who were working close to his unit.<sup>5598</sup> These workers came from a new village and were known as having connection with the former LON Nol soldiers.<sup>5599</sup> The workers disappeared and afterwards, he overheard the chief of the youth battalion making light of the fact that these workers had been put in a well the previous night.<sup>5600</sup>

1645. Finally, UTH Seng testified that the chief of the local militia, Witness YEAN Lon, rode his bicycle around the village with dried blood on his sword, and watched over the New People.<sup>5601</sup> He also saw YEAN Lon at the 1<sup>st</sup> January Dam Worksite.<sup>5602</sup>

1646. YEAN Lon admitted that he was a militiaman and had witnessed the arrest of New People accused of being policemen, soldiers or spies.<sup>5603</sup> He corroborated OR Ho's testimony that when New People arrived, chief of communes and villages went around and gathered personal biographies.<sup>5604</sup> In his statement to the OCIJ investigators

<sup>5593</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 36.

<sup>5594</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 38.

<sup>5595</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 36-39; PECH Chim Interview Record, E3/9587, 19 June 2014, ERN (En) 01000691 (Chamkar Andoung was a re-education centre in sector 42, close to a rubber plantation). *See also*, VAN Soeun Interview Record, E3/9350, 19 November 2008, pp. 4-5, ERN (En) 00244170-00244171 (VAN Soeun was a villager of Daing village, Ballangk commune, Baray District).

<sup>5596</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 11.

<sup>5597</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 11.

<sup>5598</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 8.

<sup>5599</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 8.

<sup>5600</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 8-9.

<sup>5601</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 12-13, 17.

<sup>5602</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 13.

<sup>5603</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 53 *confirming* YEAN Lon Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719.

<sup>5604</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 53.

he was more precise, stating the orders to arrest about 50 people who had been policemen, soldiers or spies, including Base People and New People, were given from the district and provincial levels.<sup>5605</sup> A letter was sent to Thlang who conveyed the order to arrest people.<sup>5606</sup> Those to be arrested were called to attend a meeting at the commune; they were tied up, put loaded onto trucks and taken to be killed.<sup>5607</sup>

1647. YEAN Lon, also testified that those accused of being former soldiers and policemen from the LON Nol era were arrested, but YEAN Lon did not know where they were taken.<sup>5608</sup> Based upon his personal experience, the Chamber considers that the witness was in a position to know the identities of individuals who were arrested. His testimony to the contrary is therefore not credible. The Chamber considers that when former LON Nol soldiers and policemen were arrested, it was with very few exceptions for the purpose of executing them. The Chamber therefore considers that YEAN Lon's limited admission further buttresses its findings as to the arrest and execution of former officials and soldiers of the Khmer Republic.

1648. Finally, the Chamber notes the evidence of BAN Seak, who was the Deputy Secretary of Chamkar Leu District in Sector 42. He told the OCIJ investigators that New People were considered to be bad elements. Those who talked too much or complained were purged.<sup>5609</sup>

1649. The picture that emerges from this evidence is the segregation and mistreatment of New People, in line with the CPK policy on the treatment of enemies of the regime. Therefore, the evidence arising from the 1<sup>st</sup> January Dam and discrimination faced by the workers at the worksite must be viewed in this context.

1650. In a number of ways, both New People and Old People were subjected to the same difficult conditions. KONG Uth, a worker at the 1<sup>st</sup> January Dam, whom the Chamber found to be generally credible, testified that all people, Old Persons, New Persons, and Cham were treated the same at the 1<sup>st</sup> January Dam.<sup>5610</sup> MEAS Laihour,

<sup>5605</sup> YEAN Lon Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719.

<sup>5606</sup> YEAN Lon Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719.

<sup>5607</sup> YEAN Lon Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719.

<sup>5608</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 54; YEAN Lon Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719.

<sup>5609</sup> BAN Seak Interview Record, E3/375, 6 July 2009, p. 8, ERN (En) 00360756.

<sup>5610</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 23.

an Old Person, also testified that her mobile unit was made up of Old and New People working together.<sup>5611</sup> The New People had arrived after the evacuation of the cities and were immediately assigned to worksites.<sup>5612</sup>

1651. OM Chy testified that New People and Old People worked together without discrimination.<sup>5613</sup> OR Ho further explained that even if people were divided into three different groups, namely full rights members, candidate people and deposites, all three groups conducted the same work in the fields.<sup>5614</sup> Full-rights people were very poor. Those who had enough to eat in the year were candidate or preparatory people, while those transferred from Phnom Penh or Cham people were deposites.<sup>5615</sup> The Chamber recalls however that OM Chy and OR Ho were both supervisors who had an incentive to minimise their culpability for the mistreatment of workers or discrimination against particular groups.<sup>5616</sup>

1652. In contrast to the testimony noted above, there were also reports of discrimination against New People. For example, senior positions such as unit chief, battalion chief were only held by Old People.<sup>5617</sup> New People were perceived as enemies so workers did not dare to be friends with Old People.<sup>5618</sup> New People could not request to work in a specific place.<sup>5619</sup> There was testimony that New People were not entitled to any new clothes or sandals.<sup>5620</sup> OR Ho also testified that New People were reprimanded for minor offences and if they committed serious wrongdoings, the commune chief could not guarantee their safety.<sup>5621</sup> Civil Party HUN Sethany confirmed this and testified that Old People could justify minor mistakes but New

<sup>5611</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 84.

<sup>5612</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 84.

<sup>5613</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 101. *See also*, T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 77-78 (stating that Base People and 17 April People were treated the same as they all ate from the same kitchen. The two groups were not differentiated and there was no instruction to commune chiefs to treat Base People and 17 April people differently. The 17 April People were not mistreated as they were all Khmer people, according to the witness.); T. 17 December 2012 (SUON Kanil), E1/155.1, p. 27 (stating that both New and Base people worked at the Dam; there was no discrimination).

<sup>5614</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 11-12. *See also*, Section 10.1.7.2: Categorisation of People: Full-Rights, Candidates and Deposites.

<sup>5615</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 60.

<sup>5616</sup> *See above*, paras 1526, 1540.

<sup>5617</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 25.

<sup>5618</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 44.

<sup>5619</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 98.

<sup>5620</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 26, 44. Some Old People also suffered from a lack of clothing. *See above*, para. 1600.

<sup>5621</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 13-14.

People were under tremendous pressure and would merely accept criticism without speaking in order to survive.<sup>5622</sup> She further stated that while Old People and New People all had to do the same work,<sup>5623</sup> Old People were a bit more privileged.<sup>5624</sup> For example, she stated that New People were not allowed to attend the inauguration ceremony as only Old People were permitted to attend.<sup>5625</sup> She said that New People grew weaker and weaker due to their mistreatment.<sup>5626</sup> UN Rann stated that as she “was a 17 April person, [she] could not come and rest at the sleeping quarters as often as those Base people”.<sup>5627</sup> Sometimes an Old Person would receive two ladles of food, when a New Person would only receive one ladle, based upon the instructions of the chief of the economic section or the chief of the youth battalion.<sup>5628</sup> SEANG Sovida testified that both Old and New People worked under the same conditions, but, as New People were considered as enemies, only Old People had the position to control them and had more rights.<sup>5629</sup>

1653. In sum, while conditions at the 1<sup>st</sup> January Dam were harsh for both New People and Old People, the evidence shows that New People whose biographies had been sought in the villages where they were assigned to stay, and whose families were recorded upon their arrival after their forced transfer, were not considered as sufficiently trustworthy to participate in elections or attend official ceremonies and were more readily reprimanded for offences or mistakes. They were also prevented from taking leadership positions which further exacerbated their precarious situation. Workers who were New People hid their affiliations because they were in constant fear of being arrested or refashioned due to the presence of some militiamen tasked with spying on them and because those identified as New People at the Dam, as well as their relatives in the villages, had disappeared. With regard to food in particular, while UTH Seng and UN Rann complained that New People experienced less favourable access to food and had less time to rest than other workers, the available evidence does not

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<sup>5622</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 11.

<sup>5623</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 67.

<sup>5624</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 67.

<sup>5625</sup> T. 26 May 2015 (HUN Sethany), E1/305.1, p. 97.

<sup>5626</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, p. 71.

<sup>5627</sup> T. 28 May 2015 (UN Rann), E1/307.1, pp. 18-19 (adding that because New People were afraid for their lives, unlike Base People, they did not dare asking questions to co-workers on their origin).

<sup>5628</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 72-73.

<sup>5629</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 37, 53 (she added that nonetheless some workers of the Old People shown solidarity for example they would sometimes loan things, such as thread, to New People with whom they worked).

provide corroboration and is not sufficient to reach a finding that there was a general practice of discrimination beyond reasonable doubt in this regard.

### 11.2.22. *Treatment of Cham*

1654. The Chamber notes its findings in Section 13.2: Treatment of the Cham that the CPK imposed restrictions on Cham religious and cultural practices in various locations within the Central (old North) Zone and in other locations in Cambodia throughout the DK period. This included the prohibition of daily prayers; forcing Cham to eat pork, wear the same dress and haircuts as Khmer people and speak the Khmer language; the burning of Korans and dismantlement of mosques or their use for purposes other than prayer.<sup>5630</sup> The Chamber considers that the treatment of the Cham at the 1<sup>st</sup> January Dam must also be viewed in the context of how they were treated in the villages from which they were selected in Sectors 41, 42 and 43.

1655. UTH Seng testified that in Kang Sau village, there were about ten Cham families. One day all of the Cham disappeared and their scarves and Cham sarongs were distributed amongst the households in the village.<sup>5631</sup> After 1979, a Cham woman from that group returned to the village looking for her parents. But UTH Seng never saw any of the other Cham after they disappeared.<sup>5632</sup> YEAN Lon, the chief militiaman from Kang Sau village, testified that the commune chief had received instructions from the sector or provincial level to arrest those Cham people.<sup>5633</sup>

1656. With this backdrop, the Chamber now considers the treatment of the Cham people at the 1<sup>st</sup> January Dam. There is credible evidence that Cham who were transferred to the 1<sup>st</sup> January Dam to work in its construction suffered discrimination.<sup>5634</sup> OR Ho testified that they were even lower than 17 April People and

<sup>5630</sup> Section 13.2.6: Restrictions on Cham Religious and Cultural Practices.

<sup>5631</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 19-20.

<sup>5632</sup> T. 3 June 2015 (UTH Seng), E1/309.1, p. 20.

<sup>5633</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, p. 58.

<sup>5634</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 13 (KONG Uth testified that there were Cham who came to work with KONG Uth and her groups. Cham were brought to the worksite to work from elsewhere); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 84 (MEAS Laihour said that Cham also worked together in the mobile units and had come from Prey Srangae Pagoda which was overcrowded. The Cham were sent to various villages and assigned to work in various mobile units); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 45 (SEANG Sovida testified that there were a few Cham in her village that were assigned to work in her unit at the 1<sup>st</sup> January Dam); T. 28 May 2015 (UN Rann), E1/307.1, p. 44 (there were no Cham in UN Rann's unit). *See also*, CHUOP Non Interview Record, E3/9349, 17 November 2007, p. 5, ERN (En) 00244158 (Q: Do you know about killings of the Cham people? A: The Cham in my team

neither group was permitted to vote in the elections for the National Assembly.<sup>5635</sup> Cham were not permitted to worship or to speak their language.<sup>5636</sup> Multiple witnesses testified that the Cham were forced to eat pork when it was served (though this was infrequent<sup>5637</sup>) or to forego eating.<sup>5638</sup> Cham were not permitted to marry Khmer people.<sup>5639</sup> MEAS Laihour said that Cham normally adhered to these prohibitions and therefore did not suffer any consequences for violating orders.<sup>5640</sup> A mid-level *Angkar* representative told OR Ho that in Kampuchea there would be a single population of Khmer; there were to be no Cham.<sup>5641</sup> However, OR Ho stated that he accommodated the Cham in his village, by ordering the slaughter of a cow every year.<sup>5642</sup>

1657. Many Cham people transferred from the East Zone were transported to Prey Sraeng Pagoda (Preaek Sandaek), which was overcrowded, and were split up into various villages and assigned to work in various mobile units.<sup>5643</sup> However, not all work units had Cham members.<sup>5644</sup>

1658. KONG Uth testified about the disappearance of a Cham woman, named Roen or Yat, from her mobile unit.<sup>5645</sup> But she provided few details about the disappearance and did not clarify whether the woman disappeared because she was Cham.

1659. The Chamber finds that Cham suffered discrimination as they were forced to eat pork and they were prevented from worshipping and speaking their native tongue.

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were not arrested or killed, but I don't know about [what happened to them] after they left my location. They did not let them speak the Cham language. As for their food it was the same as that of the ethnic Khmer. When there was pork in the soup, if they did not eat it, they had nothing to eat. As for observing their traditions, that was forbidden. In particular the women could not cover their heads with scarves").

<sup>5635</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 20, 92-93.

<sup>5636</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 20, 93; T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 109.

<sup>5637</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 64; T. 27 May 2015 (HUN Sethany), E1/306.1, p. 53 (stating that they ate pork and beef only every tenth day).

<sup>5638</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, pp. 45-46; T. 30 July 2015 (OM Chy), E1/326.1, p. 64 (stating that the strict Cham Muslims would not eat soup containing pork and would eat salt instead); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 110.

<sup>5639</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 14; T. 30 July 2015 (OM Chy), E1/326.1, pp. 81-82.

<sup>5640</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 67.

<sup>5641</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 55.

<sup>5642</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 20; T. 20 May 2015 (OR Ho), E1/302.1, pp. 55-56.

<sup>5643</sup> T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 84; T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 45 (there were Khmer Islam or Cham people who had been evacuated who worked with the Khmer people and some of them were assigned to work at the 1<sup>st</sup> January Dam Worksite).

<sup>5644</sup> T. 28 May 2015 (UN Rann), E1/307.1, p. 44.

<sup>5645</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 27-28.

**11.2.23. Treatment of Former Khmer Republic Officials**

1660. The Chamber recalls its finding that former Khmer Republic officials and soldiers were considered to be enemies and would be targeted for arrest and often disappeared.<sup>5646</sup> In the areas surrounding the 1<sup>st</sup> January Dam, the Chamber notes particularly the testimony of OR Ho, who was the chief of Prey Srangae village in Ballangk commune, Baray district, Sector 42, and later the chief of a work unit of 100 workers. As noted above, he testified that biographies were taken and if former Khmer Republic officials or soldiers were discovered by the security personnel in the commune, these people would be arrested and taken to the security office.<sup>5647</sup> Guards (militiamen) attempted to identify those who had held a certain rank. Further, OR Ho recalled how families of former civil servants and policeman in his village were identified to be arrested.<sup>5648</sup>

1661. PRAK Yut also testified that the district secretaries, including herself, made lists of former LON Nol soldiers, including their respective ranks and reported this information to the Sector 41 Secretary (in the Central (old North) Zone), AO An.<sup>5649</sup> She examined their biographies to determine who was good and, conversely, who needed re-education.<sup>5650</sup> If she was unable to re-educate them, PRAK Yut would refer them to AO An.<sup>5651</sup> But she claimed not to know what would happen to them if referred to the upper echelon.<sup>5652</sup> YOU Vann testified that PRAK Yut ordered her to compile a list of Cham, Vietnamese, and LON Nol soldiers.<sup>5653</sup> She said that PRAK Yut indicated that those on the list should be “cleaned up” or “purged”, although YOU Vann claimed that she did not know what that meant.<sup>5654</sup> The Chamber considers that there was a practice of identifying LON Nol soldiers of high rank through the compilation of lists at the district and sector levels for the purposes of arresting them.

1662. HUN Sethany testified that her father, who had been a teacher during the LON

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<sup>5646</sup> Section 16.3: Real or Perceived Enemies, paras 3840, 3847 (the former regime was regarded an enemy throughout the DK era).

<sup>5647</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 16-17, 20.

<sup>5648</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 18-20, 26.

<sup>5649</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 34-37.

<sup>5650</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 34-37.

<sup>5651</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 34-37.

<sup>5652</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 34-37.

<sup>5653</sup> T. 18 January 2016 (YOU Vann), E1/377.1, pp. 14, 16-19.

<sup>5654</sup> T. 18 January 2016 (YOU Vann), E1/377.1, p. 21.

Nol regime, was arrested at the 1<sup>st</sup> January Dam and presumed killed at Baray Choan Pagoda. Around the same time, her mother and five siblings disappeared from a village nearby and they were presumed killed in Chamkar-Andoung.<sup>5655</sup>

1663. At the 1<sup>st</sup> January Dam, UTH Seng said that his unit was working near a group of 17 April people with connections to former LON Nol soldiers. One night, militia asked two or three of those people to go with them and the workers were killed.<sup>5656</sup> UTH Seng overheard youth militia members say that the workers had been put into a well and that keeping them was no gain, removing them was no loss.<sup>5657</sup> The Chamber notes that this testimony was consistent with the general practice of the CPK to identify former officials and soldiers of the Khmer Republic. The Chamber further notes that UTH Seng's testimony was internally consistent and convincing. It therefore accepts his evidence that these individuals had been targeted for arrest and disappeared due to their association with former members of the Khmer Republic.

#### 11.2.24. *Legal Findings*

1664. With respect to the 1<sup>st</sup> January Dam Worksite, the Closing Order charges the Accused with the crimes against humanity of (i) murder; (ii) extermination; (iii) enslavement; (iv) persecution on political grounds; (v) persecution of the Cham on religious grounds; and other inhumane acts (vi) through attacks against human dignity, and conduct characterised as (vii) forced marriage and (viii) enforced disappearances.<sup>5658</sup> The charge of other inhumane acts through conduct characterised as forced marriage in relation to the 1<sup>st</sup> January Dam Worksite is addressed in Section 14: Regulation of Marriage.

<sup>5655</sup> T. 27 May 2015 (HUN Sethany), E1/306.1, pp. 17-18, 36-39; PECH Chim Interview Record, E3/9587, 19 June 2014, p. 29, ERN (En) 01000691 (describing Chamkar Andoung as a re-education centre in Sector 42, close to a rubber plantation). *See also*, VAN Sorn Interview Record, E3/9350, 19 November 2008, pp. 2, 4-5, ERN (En) 00244168, 00244170-0024417071 (stating that he was a villager of Daing village, Ballangk commune, Baray District).

<sup>5656</sup> T. 2 June 2015 (UTH Seng), E1/308.1, p. 111; T. 3 June 2015 (UTH Seng), E1/309.1, pp. 8-9.

<sup>5657</sup> T. 3 June 2015 (UTH Seng), E1/309.1, pp. 8-9, 58-59.

<sup>5658</sup> *See above*, para. 1430.



11.2.24.1. Murder and extermination11.2.24.1.1. *Deaths as a result of killings and executions*

1665. The Closing Order charges the Accused with the crimes against humanity of murder and extermination in relation to people arrested at the 1<sup>st</sup> January Dam and taken away to be killed nearby.<sup>5659</sup> It specifies that the surveillance of individuals at the 1<sup>st</sup> January Dam was aimed at identifying “enemies”, that many workers disappeared from the worksite at night and that the Baray Choan Dek Pagoda, near the 1<sup>st</sup> January Dam, was known as a place where people were taken to be killed.<sup>5660</sup>

1666. The Chamber has found that the Baray Choan Dek Pagoda was a detention facility and a killing site under the control of the Baray District Secretary.<sup>5661</sup> In addition to people from the villages and the cooperatives of the district a number of workers were transferred from the 1<sup>st</sup> January Dam to Baray Choan Dek Pagoda and killed. Consistent testimonies show that killings at the pagoda occurred on a very regular basis during the entire duration of the construction of the 1<sup>st</sup> January Dam.<sup>5662</sup> The Chamber recalls that a large amount of human remains and clothing were found on site after the collapse of DK.<sup>5663</sup> People killed in this location included people from Baray district including from the villages and the cooperatives around and workers of the district mobile units arrested at the Dam construction site and cadres involved in the monitoring of the work force. Specific victims included cadres such as Born and Vut, a 14-15-year-old boy named Try, and four to five New People observed by MEAS Laihour.<sup>5664</sup> Therefore, the *actus reus* of murder is satisfied. The pagoda was controlled by the successive Baray District Secretaries including Poch, who kept the sector and zone level secretaries apprised of arrests and the activities of the security centre.<sup>5665</sup> The Chamber finds that these individuals were intentionally killed thereby satisfying the *mens rea* of murder.<sup>5666</sup> Therefore, the crime against humanity of murder has been established.

<sup>5659</sup> Closing Order, paras 362-363, 367, 1377, 1381. The allegation related to suicide appears to relate to another worksite. See Closing Order, fn. 1559 (citing to KHIEV Sokh Interview Record, E3/7812, 15 January 2009).

<sup>5660</sup> Closing Order, paras 366-367, 1377.

<sup>5661</sup> See above, paras 1567-1580.

<sup>5662</sup> See above, paras 1567-1580.

<sup>5663</sup> See above, paras 1578-1580.

<sup>5664</sup> See above, paras 1573-1575.

<sup>5665</sup> See above, para. 1569.

<sup>5666</sup> See above, paras 1538, 1554, 1572.

1667. The Chamber notes that for the purposes here, the main distinction between murder and extermination is the scale of the killing. Although there is no minimum number of victims required to establish extermination, the Chamber is unable to establish the number of workers killed at the 1<sup>st</sup> January Dam or the Baray Choan Dek Pagoda, particularly with regard to what proportion of people imprisoned and killed at the Baray Choan Dek Pagoda had been workers at the 1<sup>st</sup> January Dam. These uncertainties preclude a finding beyond reasonable doubt that the crime of extermination is established at the 1<sup>st</sup> January Dam Worksite as the *actus reus* is not satisfied.

11.2.24.1.2. *Deaths resulting from working and living conditions*

1668. The Closing Order also charges the Accused with the crime against humanity of extermination on the basis of the many people that died as a result of the conditions imposed at the 1<sup>st</sup> January Dam Worksite, including the deprivation of food, accommodation, medical care and hygiene as well as exhaustion due to hard labour and the unsafe working conditions.<sup>5667</sup>

1669. The NUON Chea Defence submits that workers at the 1<sup>st</sup> January Dam were not deprived of necessities and that food, shelter, and medicine were provided as much as possible given the scarcity of resources. It further submits that there is insufficient credible evidence to prove that there were deaths on a large scale due to adverse living conditions.<sup>5668</sup> The KHIEU Samphan Defence submits that the crime of extermination was not established because it was not proved that personnel at the 1<sup>st</sup> January Dam intended to kill the workers.<sup>5669</sup> The Co-Prosecutors submit that the Accused knew that extreme work quotas would bring suffering to the people and difficult and inhumane conditions, resulting in some cases in death.<sup>5670</sup> The Civil Party Lead Co-Lawyers submit that evidence provided by Civil Parties support a finding of extermination at the 1<sup>st</sup> January Dam.<sup>5671</sup>

<sup>5667</sup> Closing Order, paras 359, 363, 1381, 1387, 1389.

<sup>5668</sup> NUON Chea Closing Brief, para. 1122.

<sup>5669</sup> KHIEU Samphan Closing Brief, paras 1086-1087.

<sup>5670</sup> T. 14 June 2017 (Closing Statements), E1/521.1, p. 12.

<sup>5671</sup> Civil Party Lead Co-Lawyers' Closing Brief, para. 586.

1670. With regard to the *actus reus*, the Chamber has found that at least six to ten workers at the 1<sup>st</sup> January Dam died due to the imposition of hard labour, starvation rations, and inhospitable conditions, including an unhygienic environment and insufficient and ineffective medicine.<sup>5672</sup> Workers were forced to exceed their human limits while being deprived of food and adequate treatment when they became ill.<sup>5673</sup> Others suffered the same fate at clinics and hospitals after enduring the harsh conditions at the 1<sup>st</sup> January Dam Worksite.<sup>5674</sup> The Chamber has also found that several accidents precipitated by competition between workers occurred at the worksite wherein embankments of dirt fell upon and buried workers, killing a number of them.<sup>5675</sup> The Chamber further notes the sheer number of workers at the site, about 20,000, who were not afforded proper hygiene, food and medical treatment. The only reasonable inference is that a large number of workers died as a result of these conditions. The Chamber is therefore satisfied that all of these deaths were the result of the same murder operation and finds that in aggregate the scale element of extermination is established in the circumstances, thereby satisfying the *actus reus* of extermination.

1671. With respect to the *mens rea* of extermination, the Chamber has found that both the leadership at the worksite level and the Party Centre, including NUON Chea, knew that there was a lack of sufficient food and medicine at the 1<sup>st</sup> January Dam Worksite, but nonetheless continued to push the workers at the Dam to complete all of the dry season work as quickly as possible working night and day.<sup>5676</sup> The Chamber has also found that workers were pushed to compete against each other, which contributed to fatal incidents at the Dam. Further, with regard to deaths resulting from overwork and starvation, the Chamber has found that while inadequate, food was provided. The Chamber has further found that while inadequate and inefficient, some form of medical treatment was made available. This evidence does not show direct intent to create conditions in order to kill the workers. Rather, it shows that the workers were provided with the minimum necessary to survive and accomplish the goal of building the Dam and that the leadership was prepared to accept the risk that workers would die in the process. Recalling that the crime of extermination is incompatible with the notion of

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<sup>5672</sup> See above, para. 1629.

<sup>5673</sup> See above, para. 1626.

<sup>5674</sup> See above, Section 11.2.17.4: Medical care.

<sup>5675</sup> See above, para. 1535.

<sup>5676</sup> See above, paras 1504, 1639-1640.

*dolus eventualis*,<sup>5677</sup> the Chamber finds that the requisite *mens rea* of extermination is not satisfied with respect to these facts. The Chamber is therefore not satisfied that the crime against humanity of extermination is established with respect to the conditions imposed at the 1<sup>st</sup> January Dam.

1672. However, as held by the Supreme Court Chamber,<sup>5678</sup> Internal Rule 98(2) provides that the Trial Chamber may change the legal characterisation of the crime as set out in the Closing Order, provided that no new constitutive elements are introduced.<sup>5679</sup> In the present case, the Chamber finds it appropriate to recharacterise the facts charged in the Closing Order concerning working and living conditions from extermination to murder. In particular, the Chamber finds that the *actus reus* of murder, namely an act or omission of the perpetrator that caused the death of the victim,<sup>5680</sup> is established with respect to the deaths resulting from the working and living conditions described above. In this respect, the relevant act or omission is constituted by the imposition on the workers of conditions that caused their death and by the absence of appropriate measures to change or alleviate such conditions. The acceptance of the risk of the workers' death as a result of the poor and unsafe working and living conditions satisfies the *mens rea* of murder in the form of *dolus eventualis*.

1673. The Chamber therefore concludes that the crime against humanity of murder is established in this case with respect to deaths resulting from the conditions imposed at the 1<sup>st</sup> January Dam Worksite.

#### 11.2.24.2. Enslavement

1674. The Closing Order charges the Accused with the crime against humanity of enslavement with respect to the intentional exercise of total control and all of the powers attaching to the right of ownership over the people by the personnel of worksites, including the 1<sup>st</sup> January Dam.<sup>5681</sup> In particular, the personnel controlled the victims' physical environment, their access to food and medical care and subjected

<sup>5677</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 657.

<sup>5678</sup> Case 002/01 Appeal Judgement, para. 562.

<sup>5679</sup> Internal Rule 98(2).

<sup>5680</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder.

<sup>5681</sup> Closing Order, paras 1391-1392, 1395-1396.

them to constant surveillance.<sup>5682</sup> In addition, the victims were forced to perform work without their consent.<sup>5683</sup>

1675. The KHIEU Samphan Defence concedes that evidence presented at trial could support the charges of slavery at the 1<sup>st</sup> January Dam.<sup>5684</sup> The NUON Chea Defence submits that people were mobilised to participate in the Dam's construction in conformity with every citizen's duty to participate in building the country, particularly in a state of emergency.<sup>5685</sup> It contends that the labour carried out there cannot be characterised as forced, and that "the requisition of labour from both civilians and soldiers is lawful 'in cases of emergency or calamity threatening the life or well-being of the community'".<sup>5686</sup> It further submits that in the instant case the working conditions fail to demonstrate a lack of consent, exercise of ownership over people, or unlawful restrictions on freedom of movement.<sup>5687</sup>

1676. The Co-Prosecutors submit that the CPK authorities controlled every aspect of the lives of the workers at the worksite and treated them as expendable assets. They were subject to high work quotas and appalling living and working conditions. The CPK maintained a climate of fear at the worksite in order to facilitate the ownership and domination of the CPK cadres over the dam workers. Workers were deprived of their physical liberty as unauthorised movement was punished. Workers were not entitled to any salary for the hard labour performed and were deprived of all other fundamental rights.<sup>5688</sup> The Lead Co-Lawyers submit that Civil Party evidence adduced at trial establishes that workers at the 1<sup>st</sup> January Dam Worksite were subject to the exercise of any or all powers attaching to the right of ownership over a person.<sup>5689</sup>

1677. The Chamber has found objective evidence that civilian workers were compelled to work against their will.<sup>5690</sup> In particular, it has found that workers at the 1<sup>st</sup> January Dam lacked all freedom and had no choice but to undertake hard labour

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<sup>5682</sup> Closing Order, para. 1393.

<sup>5683</sup> Closing Order, para. 1394.

<sup>5684</sup> KHIEU Samphan Closing Brief, paras 1080-1081.

<sup>5685</sup> NUON Chea Closing Brief, paras 1010, 1120-1121.

<sup>5686</sup> NUON Chea Closing Brief, para. 1120.

<sup>5687</sup> NUON Chea Closing Brief, paras 1119, 1121.

<sup>5688</sup> Co-Prosecutors' Closing Brief, para. 1161.

<sup>5689</sup> Civil Party Lead Co-Lawyers' Closing Brief, para. 520.

<sup>5690</sup> *See above*, paras 1616-1620.

without any payment.<sup>5691</sup> They were forced to work under extremely hard conditions as they feared for their lives.<sup>5692</sup> The work was arduous and required them to work in dangerous conditions.<sup>5693</sup> Even after normal work hours, workers were often required to work at night.<sup>5694</sup> Workers were overseen by armed soldiers and militiamen.<sup>5695</sup> They were warned at criticism and self-criticism meetings to finish the work or to face consequences.<sup>5696</sup> Workers feared for their lives as their cohorts disappeared without explanation, some of whom were known to have been sent to Baray Choan Dek Pagoda to be killed.<sup>5697</sup> Those who tried to avoid work were brought back to the worksite by militia.<sup>5698</sup> The circumstances can only be described as coercive. The Chamber will now consider in turn the NUON Chea Defence's submissions that the Chamber is nonetheless precluded from concluding that this amounts to forced labour.

1678. The Chamber recalls that if a person is required to work in cases of emergency or calamity, the nature and conditions of the work need to be balanced against the nature of the threat to the well-being of the community and the circumstances of the emergency.<sup>5699</sup> Furthermore, if the crisis or emergency situation is the result of the perpetrator's own unlawful activity then such measures would not be justifiable.<sup>5700</sup> In this case, the Chamber accepts that the 1<sup>st</sup> January Dam was built as an irrigation project meant to increase yields of rice.<sup>5701</sup> It was also a means of creating capital through the export of rice that could have been used to reinvest in and develop the country's economy.<sup>5702</sup> However, in assessing the need to pursue this project, the Central (old North) Zone leadership should have taken into account the conditions imposed on the workers to achieve their objective. The fact that the workers were made to work very long hours without appropriate food and appropriate living conditions clearly shows that the Central (old North) Zone leadership went far beyond simply requesting people to contribute their work in a situation of emergency, having complete disregard for the

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<sup>5691</sup> See above, paras 1516, 1623.

<sup>5692</sup> See above, para. 1623.

<sup>5693</sup> See above, para. 1519.

<sup>5694</sup> See above, para. 1519.

<sup>5695</sup> See above, para. 1542.

<sup>5696</sup> See above, para. 1560.

<sup>5697</sup> See above, paras 1561, 1567.

<sup>5698</sup> See above, para. 1544.

<sup>5699</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement.

<sup>5700</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 669.

<sup>5701</sup> See above, para. 1448.

<sup>5702</sup> See above, paras 1452-1454.

conditions imposed and their impact on the workers. The Chamber accordingly rejects the NUON Chea Defence's submissions on this point and finds that forced labour occurred at the 1<sup>st</sup> January Dam.

1679. With respect to freedom of movement, the Chamber recognises that this is not an absolute right. However, it finds that the prohibition of movement at the 1<sup>st</sup> January Dam Worksite was unnecessary and excessively prohibitive. Witnesses could not speak with family members and were not permitted to visit ill parents.<sup>5703</sup> No movement from the worksite was permitted without permission.<sup>5704</sup> Militia brought back to the site any workers who left without permission.<sup>5705</sup> The Chamber accordingly rejects the NUON Chea Defence's submission and finds that the restrictions on the freedom of movement imposed on the workers at the Dam were not lawful.

1680. All aspects of the workers' lives were tightly controlled by the CPK, including shelter, food, and medical care, all of which were of limited and poor quality.<sup>5706</sup> Workers grew malnourished and emaciated as the food provided to them was inadequate, which was exacerbated by the demanding work requirements.<sup>5707</sup> They were not permitted to seek out their own sources of nourishment lest they be imprisoned or killed.<sup>5708</sup> Temporary shelters lacked bedding and mosquito nets and leaked in the rain.<sup>5709</sup> Medics were poorly trained and did not dispense effective medicines.<sup>5710</sup> The workers' sexual relations were also controlled as men and women were separated and those accused of moral offences were arrested for refashioning.<sup>5711</sup>

1681. Workers were not paid and did not receive any direct benefit from their work.<sup>5712</sup> Although the Dam eventually provided water for irrigating certain districts in the Central (old North) Zone which would permit increased crop yields,<sup>5713</sup> cultivated rice was centrally controlled and some of it was exported in order to raise capital pursuant

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<sup>5703</sup> See above, paras 1543, 1611, 1621.

<sup>5704</sup> See above, paras 1621, 1623.

<sup>5705</sup> See above, para. 1544.

<sup>5706</sup> See above, para. 1586.

<sup>5707</sup> See above, para. 1586.

<sup>5708</sup> See above, paras 1589-1590.

<sup>5709</sup> See above, para. 1604.

<sup>5710</sup> See above, para. 1607.

<sup>5711</sup> See above, paras 1502, 1565.

<sup>5712</sup> See above, para. 1516.

<sup>5713</sup> See above, paras 1445-1448.

to the CPK's plan to modernise and industrialise Democratic Kampuchea.<sup>5714</sup> The CPK leadership hosted banquets for foreign delegations and work unit supervisors ensured that they ate rice instead of porridge, all while workers were starving.<sup>5715</sup> Therefore, it cannot be said that workers were forced to labour at the 1<sup>st</sup> January Dam for their own benefit. The NUON Chea Defence submission that the farmers would have experienced dire living and working conditions in any event following decades of civil war and the US bombing provides no defence to the later treatment of the workers at the 1<sup>st</sup> January Dam.<sup>5716</sup>

1682. In addition to the finding of forced labour, the Chamber considers the following factual findings as indicia of the exercise of powers attaching to the right of ownership: workers were overseen by armed militia and soldiers;<sup>5717</sup> workers were not allowed to move freely around the worksite or leave it without permission;<sup>5718</sup> the location was isolated and workers had no hope of escape;<sup>5719</sup> workers were not allowed to speak freely with one another;<sup>5720</sup> those who were accused of being enemies for engaging in any behaviour considered against the Revolution were arrested;<sup>5721</sup> workers were used to engage in dangerous tasks without protective equipment such as when they had to burn explosives which resulted in injuries and deaths;<sup>5722</sup> no compensation was paid;<sup>5723</sup> workers were assigned to sleep with their respective units and eat communally;<sup>5724</sup> and workers were required to attend criticism and self-criticism meetings.<sup>5725</sup>

1683. The Chamber is satisfied that all of these indicia considered together demonstrate that the leadership at the Dam exercised powers attaching to the right of ownership over the workers.<sup>5726</sup> Furthermore, the fact that workers did not get any payment for the work done and did not receive direct benefit from their work, indicates

<sup>5714</sup> See above, paras 1454, 1593-1595.

<sup>5715</sup> See above, para. 1587, fn. 5093.

<sup>5716</sup> NUON Chea Closing Brief, para. 671.

<sup>5717</sup> See above, paras 1542-1551.

<sup>5718</sup> See above, paras 1543, 1611, 1616.

<sup>5719</sup> See above, para. 1622.

<sup>5720</sup> See above, para. 1543.

<sup>5721</sup> See above, paras 1543, 1561-1566, 1570.

<sup>5722</sup> See above, paras 1527, 1627-1629.

<sup>5723</sup> See above, para. 1516.

<sup>5724</sup> See above, paras 1586, 1604.

<sup>5725</sup> See above, para. 1560.

<sup>5726</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 664.



that the workers were used to “accrue some gain”.<sup>5727</sup> The Chamber is therefore satisfied that the *actus reus* of enslavement is established. Furthermore, the actions of the unit supervisors, district, sector and zone leadership, the degree of control and the prolonged duration of this treatment showed an intent to treat the workers as commodities without any consideration of their willingness to be involved at the worksite. Workers were selected by district and commune leaders, upon orders from the upper levels, to work at the 1<sup>st</sup> January Dam without any opportunity to refuse.<sup>5728</sup> The Chamber finds that the perpetrators intentionally exercised “any or all of the powers attaching to the right of ownership” over the workers at the 1<sup>st</sup> January Dam. The Chamber therefore rejects the NUON Chea Defence submission that the CPK intended to act benevolently.<sup>5729</sup> The *mens rea* of enslavement is therefore satisfied.

1684. The Chamber finds that the crime against humanity of enslavement of about at least 20,000 people at the 1<sup>st</sup> January Dam Worksite is established beyond reasonable doubt.

#### 11.2.24.3. Persecution on political grounds

1685. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds at worksites, including the 1<sup>st</sup> January Dam, of “real or perceived enemies of the CPK”.<sup>5730</sup> The particular acts amounting to persecution must be expressly charged.<sup>5731</sup> According to the Closing Order, such enemies were subjected to harsher treatment and living conditions than the rest of the population.

1686. The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemy particularised in the Closing Order under the heading of “legal findings” (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>5732</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>5733</sup>

<sup>5727</sup> See above, para. 1681. See also, Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

<sup>5728</sup> See above, paras 1498, 1616.

<sup>5729</sup> NUON Chea Closing Brief, para. 1033.

<sup>5730</sup> Closing Order, para. 1418.

<sup>5731</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 716.

<sup>5732</sup> KHIEU Samphan Closing Brief, para. 1063.

<sup>5733</sup> Section 2: Preliminary Issues, para. 170.

1687. The Chamber must satisfy itself that the targeted group of “real or perceived enemies of the CPK” referred to in the Closing Order is sufficiently discernible.<sup>5734</sup> The discernibility of this group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership.<sup>5735</sup> The Chamber finds that New People were clearly identified as enemies due to their real or perceived political beliefs or opposition to the CPK. The Chamber further recalls that former Khmer Republic officials or soldiers were identified through biographies, arrested and taken to the security office.<sup>5736</sup> Guards (militiamen) attempted to identify those who had held a certain rank and families of former civil servants and policeman were identified to be arrested.<sup>5737</sup> The Chamber is satisfied accordingly that concerning New People as well as former Khmer Republic officials and soldiers, as targeted groups of “real or perceived enemies of the CPK”, were sufficiently discernible.

1688. While conditions were harsh for most workers at the 1<sup>st</sup> January Dam, the Chamber has identified a number of ways in which New People were discriminated against at the worksite, particularly in comparison to Old People. New People were more readily reprimanded for offences or mistakes, and prevented from taking leadership positions, which further exacerbated their precarious situation.<sup>5738</sup> As the consequences of these acts were suffered by New People, the Chamber is satisfied that the acts were discriminatory in fact. With respect to *mens rea*, the Chamber has found that New People were under heightened scrutiny. They were reprimanded for minor offences and risked adverse consequences, such as arrest.<sup>5739</sup> Based on the treatment of New People, the message was clear to all of the workers that the reason for the discriminatory treatment of New People was because of their membership in that group.<sup>5740</sup>

1689. The CPK treatment of New People at the 1<sup>st</sup> January Dam infringed upon and violated their fundamental right to equal treatment.<sup>5741</sup> They were not considered as

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<sup>5734</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds.

<sup>5735</sup> Section 16.3: Real or Perceived Enemies.

<sup>5736</sup> See above, para. 1660.

<sup>5737</sup> See above, para. 1660.

<sup>5738</sup> See above, paras 1641-1653.

<sup>5739</sup> See above, paras 1641, 1652.

<sup>5740</sup> See above, paras 1649, 1652.

<sup>5741</sup> See above, para. 1653.

sufficiently trustworthy to participate in elections or attend official ceremonies at the worksite and were more readily reprimanded for offences or mistakes. Workers who were New People had to hide their affiliation, as they were in constant fear of being arrested or refashioned, because of the presence of militiamen tasked to spy on them, because of the disappearances at the Dam site of workers known as New People and because of the disappearances of their relatives who remained in the villages.<sup>5742</sup> Although the acts found above to have been discriminatory against New People do not on their own amount to independent crimes, the *actus reus* of persecution is nevertheless established with regard to New People.

1690. The Chamber has also found that there was a practice of identifying former LON Nol soldiers of high rank through the compilation of lists at the district and sector levels for the purposes of arresting them.<sup>5743</sup> It has found that the father of HUN Sethany was arrested and disappeared and further found credible UTH Seng's evidence that a group of workers who were former LON Nol soldiers were arrested and disappeared.<sup>5744</sup> The Chamber therefore finds that there was a specific intent to discriminate against former Khmer Republic soldiers and officials and that they suffered discrimination in fact.

1691. Acts committed against these groups of workers infringed upon and violated their fundamental rights pertaining to life,<sup>5745</sup> personal dignity,<sup>5746</sup> liberty and security<sup>5747</sup> and freedom from arbitrary or unlawful arrest<sup>5748</sup> as enshrined in customary international law. Considered together and in particular within the already harsh context in these acts were committed, the Chamber is satisfied that these acts cumulatively rise to a similar level of gravity as enumerated crimes against humanity. The Chamber therefore finds that the *actus reus* and *mens rea* of the crime to have been established.

<sup>5742</sup> See above, paras 1643, 1644, 1653.

<sup>5743</sup> See above, paras 1660, 1662-1663.

<sup>5744</sup> See above, paras 1662-1663.

<sup>5745</sup> As evidence of the state of customary international law, see Geneva Convention (IV), Art. 3(1)(a); Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 6; ECHR, Art. 2; ACHPR, Art. 4; ACHR, Art. 4.

<sup>5746</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHPR, Art. 5; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>5747</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7.

<sup>5748</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7(3).

1692. Therefore, the Chamber finds that the crime against humanity of persecution on political grounds is established at the 1<sup>st</sup> January Dam Worksite.

11.2.24.4. Persecution on religious grounds

1693. The Closing Order charges the Accused with the crime against humanity of persecution on religious grounds on the basis that there was a countrywide suppression of the Cham, including at the 1<sup>st</sup> January Dam. The practice of Islam was forbidden and Cham people were forced to eat pork. Religious leaders and learned Islamic scholars were arrested and killed.<sup>5749</sup>

1694. The Chamber recalls that several witnesses associated with the 1<sup>st</sup> January Dam testified as to the disappearance or killing of Cham families in villages in the Central (old North) Zone.<sup>5750</sup> These facts were not charged with regard to the 1<sup>st</sup> January Dam and therefore the Accused were not on notice of these charges.<sup>5751</sup> The Chamber will not enter findings in relation to these incidents.<sup>5752</sup>

1695. The Chamber has found that Cham workers at the 1<sup>st</sup> January Dam suffered discrimination as they were forced to eat pork, they were prevented from worshipping and speaking their native tongue.<sup>5753</sup> In light of the above, the Chamber is satisfied that these restrictions were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the Cham because of their religious and cultural practices.<sup>5754</sup> Therefore, the *mens rea* of the crime is established.

1696. Acts committed against these groups of workers infringed upon and violated their fundamental rights pertaining to freedom of religion as enshrined in customary international law.<sup>5755</sup> Furthermore, there was no evidence presented that these restrictions were necessary to protect the public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>5756</sup> The above-noted acts at the 1<sup>st</sup> January

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<sup>5749</sup> Closing Order, para. 1420.

<sup>5750</sup> See above, paras 1655, 1658.

<sup>5751</sup> See above, para. 1434.

<sup>5752</sup> The Chamber notes that it has made findings regarding treatment of the Cham in other villages in the old (North) Zone that were not associated with the 1<sup>st</sup> January Dam. See Section 13.2.6.2: Restrictions on Cham Religious and Cultural Practices in the Central (old North) Zone.

<sup>5753</sup> See above, para. 1658.

<sup>5754</sup> Section 13.2: Treatment of the Cham, para. 3329.

<sup>5755</sup> ICCPR, Article 18; ECHR, Article 9.

<sup>5756</sup> Section 9.1.7: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 720.

Dam which were discriminatory against Cham people do not amount to independent crimes. Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution. Therefore, the *actus reus* of the crime is established. Accordingly, the Chamber is satisfied that the restrictions on religious and cultural Cham practices at the 1<sup>st</sup> January Dam constituted persecution on religious grounds.<sup>5757</sup>

1697. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on religious grounds against the Cham is established at the 1<sup>st</sup> January Dam Worksite beyond reasonable doubt.

11.2.24.5. Other inhumane acts through attacks against human dignity

1698. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity on the basis that workers at the 1<sup>st</sup> January Dam Worksite were deprived by CPK authorities of adequate food, shelter, medical attention and sanitation, which inflicted on victims serious mental and physical suffering and injury as well as serious attacks on human dignity.<sup>5758</sup>

1699. The KHIEU Samphan Defence concedes that there is evidence that could support the conclusion that conditions of life at the 1<sup>st</sup> January Dam, including hunger, sickness, and overwork led to deaths at the worksite.<sup>5759</sup> It emphasises however that certain measures were taken to place sick persons in hospitals, to treat them with traditional and modern medicines, and notes that other measures were taken to improve the hygienic conditions at the site (such as spraying insecticide).<sup>5760</sup>

1700. The NUON Chea Defence submits that “to the extent that living and working conditions may have been difficult, they were not deliberately imposed on the people, but a regrettable reality of the general situation of the country [...] despite the undertaking of all feasible efforts to ensure reasonable conditions”.<sup>5761</sup> It submits that the accounts of upper and middle-class Cambodian refugees are unreliable because these people were “unused to life outside the cities”, noting that the poverty in which

<sup>5757</sup> Section 13.2: Treatment of the Cham, para. 3331.

<sup>5758</sup> Closing Order, paras 1434-1435, 1437, 1439.

<sup>5759</sup> KHIEU Samphan Closing Brief, para. 1083.

<sup>5760</sup> KHIEU Samphan Closing Brief, paras 1084-1085.

<sup>5761</sup> NUON Chea Closing Brief, paras 1006-1007, 1070-1073, 1131.

many Cambodians lived and the large number who still do not have piped water.<sup>5762</sup> It is submitted that the 1<sup>st</sup> January Dam was a legitimate and fully functioning project and that living and working conditions were much like those in Cambodia prior to 1975.<sup>5763</sup> The NUON Chea Defence further submits that the evidence was insufficient to establish a general practice of physical punishment.<sup>5764</sup>

1701. The NUON Chea Defence submits that unit chiefs exerted wide discretion in determining what breaks to give workers, how to care for the sick, how to organise food, discipline and punishment.<sup>5765</sup> Conditions varied based upon the individual unit chief and generalisations cannot be made based upon the evidence of individual witnesses.<sup>5766</sup> However, the NUON Chea Defence contends that “the CPK had clear guidelines on working hours, none of which came even close to enslavement or mistreatment”.<sup>5767</sup>

1702. The Co-Prosecutors submit that the Accused knew that there were food and medicine shortages and nonetheless pushed a famished population to work even harder to build more and bigger dams.<sup>5768</sup> The Accused ensured the implementation of the three-tonnes-per-hectare policy and the building of dams and canals at the pace expected by the Party.<sup>5769</sup> The 1<sup>st</sup> January Dam was designated as a “hot battlefield” where a number of workers had to work through the night carrying earth.<sup>5770</sup>

1703. The Chamber has found that workers at the 1<sup>st</sup> January Dam suffered from malnourishment and became emaciated because they were deprived of adequate food.<sup>5771</sup> Seeking out supplemental food sources was forbidden upon pain of imprisonment or death.<sup>5772</sup> Workers suffered pangs of hunger through the night and grew weak.<sup>5773</sup> Some women ceased menstruating or suffered irregular menstruation due to the lack of food.<sup>5774</sup> Shelters lacked bedding and mosquito nets and leaked in the

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<sup>5762</sup> NUON Chea Closing Brief, paras 1006-1007.

<sup>5763</sup> NUON Chea Closing Brief, paras 1010, 1046, 1052-1055, 1086-1089.

<sup>5764</sup> NUON Chea Closing Brief, paras 1114-1115.

<sup>5765</sup> NUON Chea Closing Brief, para. 1039.

<sup>5766</sup> NUON Chea Closing Brief, para. 1039.

<sup>5767</sup> NUON Chea Closing Brief, para. 1071.

<sup>5768</sup> T. 14 June 2017 (Closing Statements), E1/521.1, p. 13.

<sup>5769</sup> T. 14 June 2017 (Closing Statements), E1/521.1, pp. 13-16.

<sup>5770</sup> T. 14 June 2017 (Closing Statements), E1/521.1, p. 38.

<sup>5771</sup> *See above*, para. 1586.

<sup>5772</sup> *See above*, paras 1589-1590.

<sup>5773</sup> *See above*, para. 1586.

<sup>5774</sup> *See above*, para. 1586.

rain, rendering workers cold, wet and miserable.<sup>5775</sup> The drinking water was muddy and unsanitary and many workers contracted dysentery, leading some to die.<sup>5776</sup> Numerous witnesses spoke of swarms of black flies throughout the worksite which contaminated food and spread illness.<sup>5777</sup> Due to these harsh conditions, many workers suffered from debilitating illnesses and pain throughout their bodies as their health deteriorated.<sup>5778</sup> Medics were ill equipped to deal with disease as they were poorly trained and did not dispense effective medicines.<sup>5779</sup> Some workers fainted from the overexertion and lack of nutrition.<sup>5780</sup> Others grew night blind and were forced to continue working.<sup>5781</sup> Shoes and clothing were not provided in sufficient quantities to satisfy the workers basic needs.<sup>5782</sup> The Chamber finds that these conditions caused serious mental or physical suffering or injury to the victims and further constituted a serious attack on their human dignity. The Chamber also finds that evidence shows the serious and lasting impact of the working and living conditions on the victims and finds that the relevant conduct is of similar gravity to the enumerated crimes against humanity. The Chamber finds that the *actus reus* of the crime is therefore satisfied.

1704. The manifest inadequacy of medical treatment and pest mitigation only highlight the inhumane and inhospitable living conditions that persisted at the 1<sup>st</sup> January Dam. The KHIEU Samphan Defence submissions in this regard are therefore rejected.<sup>5783</sup>

1705. Life at the 1<sup>st</sup> January Dam Worksite imposed hardships on all people. The Chamber heard numerous accounts of farmers and Base People who uniformly agreed that conditions at the worksite were inhumane, regardless of whether they were accustomed to rural living conditions. The fact that the 1<sup>st</sup> January Dam in the end was used for irrigation does not legally justify the means used to complete the project. Further, responsibility for the mistreatment of workers cannot be blamed upon the work unit supervisors alone. As discussed above, the Party Centre was aware of the living

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<sup>5775</sup> See above, para. 1604.

<sup>5776</sup> See above, para. 1597.

<sup>5777</sup> See above, paras 1586, 1598-1599.

<sup>5778</sup> See above, paras 1624-1625.

<sup>5779</sup> See above, para. 1607.

<sup>5780</sup> See above, paras 1587, 1624.

<sup>5781</sup> See above, para. 1512.

<sup>5782</sup> See above, para. 1600.

<sup>5783</sup> KHIEU Samphan Closing Brief, paras 1084-1085.

and working conditions at the worksite and yet imposed strict and demanding timelines for the completion of the 1<sup>st</sup> January Dam. CPK guidelines limiting workhours did not clearly apply to “hot battlefields” and were routinely disregarded in order to achieve these deadlines.<sup>5784</sup> Despite the trust the CPK Party Centre placed in KE Pauk, there was no evidence that the Party Centre had ordered KE Pauk to limit work hours or to remediate working conditions at the 1<sup>st</sup> January site. Therefore, the Chamber rejects the NUON Chea Defence submissions.<sup>5785</sup>

1706. These conditions were imposed for a prolonged period of time and communicated upward through the chain of command through regular reports to district and sector leaders as well as to the Zone Secretary KE Pauk.<sup>5786</sup> KE Pauk in turn informed the CPK Standing Committee through at least one telegram.<sup>5787</sup> By continuing to insist upon the deadline for the completion of the 1<sup>st</sup> January Dam and by taking no meaningful or effective measures to remediate the inhumane conditions at the worksite, the CPK Upper Echelon intentionally imposed such conditions upon thousands of workers at the worksite.<sup>5788</sup> The *mens rea* of the crime is accordingly also established.

1707. The Chamber is therefore satisfied that the crime against humanity of other inhumane acts through attacks against human dignity is established at the 1<sup>st</sup> January Dam Worksite.

11.2.24.6. Other inhumane acts through conduct characterised as enforced disappearances

1708. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances at the 1<sup>st</sup> January Dam. DK authorities concealed the fate of individuals who had disappeared by ensuring that witnesses did not reveal information about them. The authorities provided false reasons to justify the absence of those who disappeared. The disappearance of these persons caused victims to endure “great suffering, or serious mental suffering or injury or a serious attack on human dignity” due both to the arrest,

<sup>5784</sup> See above, Section 11.2.11.3: Experience of Workers at the 1<sup>st</sup> January Dam.

<sup>5785</sup> NUON Chea Closing Brief, paras 1006-1007, 1010, 1114-1115, 1039, 1046, 1052-1055, 1071, 1086-1089.

<sup>5786</sup> See above, paras 1481, 1531.

<sup>5787</sup> See above, para. 1633.

<sup>5788</sup> See above, paras 1504, 1517-1519.



detention or abduction of loved ones which placed them outside the protection of the law and to the refusal to provide access to or convey information about their fate.<sup>5789</sup>

1709. The NUON Chea Defence asserts that there is no credible evidence of illegal deprivation of liberty or concealing of information in this regard by the DK authorities at the 1<sup>st</sup> January Dam.<sup>5790</sup> The KHIEU Samphan Defence does not make particular submissions regarding the charges of other inhumane acts of enforced disappearances at the 1<sup>st</sup> January Dam, although it concedes that other inhumane acts, understood as an all-encompassing category, may have occurred at that crime site.<sup>5791</sup> The Co-Prosecutors submit that workers were called to attend meetings or to study, or were tied up and taken away into trucks or oxcarts, in effect disappearing. They submit that disappearance applied notably to people who did not obey orders and that many of them were New People.<sup>5792</sup> The Lead Co-Lawyers identify the evidence of one Civil Party who testified as to enforced disappearances at the 1<sup>st</sup> January Dam.<sup>5793</sup>

1710. The Chamber has found that dozens of individuals disappeared from the 1<sup>st</sup> January Dam Worksite, many of whom were sent to the Baray Choan Dek Pagoda.<sup>5794</sup> There was also evidence of workers being arrested by soldiers and militia and disappearing from the 1<sup>st</sup> January Dam.<sup>5795</sup> Some unit supervisors suggested that these individuals had been sent to other locations such as other districts or worksites.<sup>5796</sup> However, those who were arrested, amounting to a large number of individuals, were never heard from again.<sup>5797</sup> The Chamber is accordingly satisfied that these individuals were deprived of their liberty. Workers were forced to rely on what they overheard to try to ascertain the fate of those arrested as their unit supervisors did not provide concrete information.<sup>5798</sup> When information was provided, the Chamber has found that supervisors, including work unit chiefs working under the auspices of the CPK, disingenuously told those who inquired that the arrested workers had been sent to other

<sup>5789</sup> Closing Order, paras 1470-1475.

<sup>5790</sup> NUON Chea Closing Brief, para. 1102.

<sup>5791</sup> KHIEU Samphan Closing Brief, para. 1081.

<sup>5792</sup> Co-Prosecutors' Closing Brief, para. 1166.

<sup>5793</sup> Lead Co-Lawyers' Closing Brief, para. 585.

<sup>5794</sup> *See above*, paras 1580, 1677.

<sup>5795</sup> *See above*, paras 1561, 1643-1644.

<sup>5796</sup> *See above*, paras 1565-1566.

<sup>5797</sup> *See above*, paras 1565-1566.

<sup>5798</sup> *See above*, para. 1561.

worksites or districts.<sup>5799</sup> As set out above,<sup>5800</sup> the fact that many workers were no longer seen by their co-workers generated in them extreme anxiety and contributed to the creation of a general climate of fear which affected the workers emotionally. Witnessing the arrests and disappearances at the worksite made the workers fear that they would also be accused of being enemies and taken away, particularly to the Baray Choan Dek Pagoda, where workers feared others were taken to be killed. The Chamber is accordingly satisfied that these enforced disappearances caused serious mental suffering. The Chamber considers all of these acts holistically and in the context of the general atmosphere at the worksite, together with the impact of these acts on the victims, to conclude that the relevant acts are of the similar gravity as the other crimes against humanity. The *actus reus* of the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is therefore established.

1711. The manner in which the arrests were made, often in the context of criticism meetings, shows that these acts were performed intentionally with at least the goal of perpetuating an atmosphere of fear amongst the other workers. Having considered the widespread, consistent and repeated occurrence of these disappearances, the Chamber concludes that the conduct which caused great suffering to the victims was performed intentionally. The *mens rea* of the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is therefore satisfied.

1712. The Chamber therefore finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at 1<sup>st</sup> January Dam Worksite.

### **11.3. Kampong Chhnang Airfield Construction Site**

#### **11.3.1. Closing Order**

1713. The Closing Order charges the Accused with the crimes against humanity of (i) murder; (ii) extermination; (iii) enslavement; (iv) persecution on political grounds; and other inhumane acts through (v) attacks against human dignity and (vi) conduct

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<sup>5799</sup> See above, para. 1566.

<sup>5800</sup> See above, paras 1567, 1572, 1575 -1577.

characterised as enforced disappearances at the Kampong Chhnang Airfield.<sup>5801</sup> The Closing Order finds that the Airfield was under the control of RAK Centre Division 502, and that it was used to purge and temper RAK members, from Division 502 and other divisions, considered to be “bad elements”.<sup>5802</sup>

### 11.3.2. *Preliminary Issues*

1714. The KHIEU Samphan Defence makes a number of general submissions concerning the facts and the crimes charged in connection with Kampong Chhnang Airfield which the Chamber finds appropriate to address at the outset. In particular, the KHIEU Samphan Defence submits that the Closing Order mistakenly charges a number of crimes on the basis of facts that were not mentioned in the Introductory Submission. These include the killing of workers from the East Zone at Mongol Khan Pagoda in Tuol Kpos village after 6 January 1979 charged as murder;<sup>5803</sup> the deaths caused by work-related accidents, illness or exhaustion charged as extermination;<sup>5804</sup> and the lack of medical care at the worksite which formed part of the conditions of life charged as other inhumane acts through attacks against human dignity.<sup>5805</sup> The Chamber notes that the KHIEU Samphan Defence did not raise these issues as part of its preliminary objections.<sup>5806</sup> Therefore, the Chamber finds that these arguments have been raised outside of the time limit set by Internal Rule 89 and rejects them as belated.<sup>5807</sup> While the facts that occurred after 6 January 1979 are beyond the temporal jurisdiction of the ECCC, the Chamber recalls that it may rely on evidence that falls outside of the

<sup>5801</sup> Closing Order, paras 1373-1374, 1377, 1379-1380 (murder), 1381-1383, 1387-1390 (extermination), 1391-1396 (enslavement), 1416, 1418 (political persecution), 1434-1435, 1437, 1439-1440 (other inhumane acts through attacks against human dignity), 1470-1478 (other inhumane acts through conduct characterised as enforced disappearances). The Chamber notes that the Closing Order, despite using the word “airport”, indicates that Kampong Chhnang Construction Site “was a military construction site and almost all the workers, men and women, had been RAK members” (*see* Closing Order, para. 389). The Chamber notes that the NUON Chea Defence indicates in its Closing Brief that: “Despite the Closing Order’s use of ‘airport’, the Defence will use ‘airfield’ instead as it considers this description more factually accurate in light of the military nature of the site” (*see* NUON Chea Closing Brief, para. 973, fn. 3237). The Co-Prosecutors also use consistently the term “airfield” in their Closing Briefs (*see* Co-Prosecutors’ Closing Brief, paras 1168-1209). The Chamber, based on the Parties’ arguments and its own analysis of the nature of this construction site illustrated below, also uses the term “Airfield” to describe the worksite at Kampong Chhnang.

<sup>5802</sup> Closing Order, paras 386-387.

<sup>5803</sup> KHIEU Samphan Closing Brief, para. 1095 *referring to* Closing Order, para. 398.

<sup>5804</sup> KHIEU Samphan Closing Brief, paras 1113-1115.

<sup>5805</sup> KHIEU Samphan Closing Brief, paras 1124-1126.

<sup>5806</sup> Conclusions de la Défense de KHIEU Samphan sur les exceptions préliminaires sur lesquelles la Chambre n’a pas encore statué, E306/2, 20 May 2014; Further Information Regarding Remaining Preliminary Objections (TC), E306, 25 April 2014.

<sup>5807</sup> Section 2: Preliminary Issues, para. 165.

temporal or geographic scope of the Closing Order for certain purposes.<sup>5808</sup> The Chamber will therefore deal with the evidence related to the execution of workers from the East Zone at Mongol Khan Pagoda in Tuol Kpos village in accordance with such principles.<sup>5809</sup>

1715. With respect to the KHIEU Samphan Defence's submissions regarding other inhumane acts,<sup>5810</sup> the Chamber has recognised that none of the categories of conduct underlying the charged crime of other inhumane acts, including attacks against human dignity and enforced disappearances, had crystallised as independent crimes against humanity by 1975.<sup>5811</sup> For this reason, as illustrated below, it has proceeded to assess all relevant facts against the definition of other inhumane acts and not of the underlying conduct as an independent crime.<sup>5812</sup>

1716. Finally, the KHIEU Samphan Defence submits that the facts related to the transfer of workers from the Kampong Chhnang Airfield to S-21 are not relevant with respect to the charges of murder, as the death of those transferred is not alleged in the relevant parts of the Closing Order.<sup>5813</sup> The Chamber agrees that the killing of workers transferred to S-21 is not alleged in the specific section of the Closing Order which supports the charges of murder at Kampong Chhnang Airfield.<sup>5814</sup> The Chamber clarifies that the fate of workers sent to S-21 may have some relevance concerning the existence of a general policy to purge enemies including with regard to events which occurred at Kampong Chhnang Airfield, but any findings related to the killing of workers at S-21 are made in the relevant section on Security Centres.<sup>5815</sup> The Chamber therefore limits its analysis with respect to this crime site to whether the facts related to the arrest and transfer of workers to S-21 amount to the crime of other inhumane acts through conduct characterised as enforced disappearances.

<sup>5808</sup> Section 2: Preliminary Issues, para. 60.

<sup>5809</sup> See below, paras 1784-1785, 1824.

<sup>5810</sup> KHIEU Samphan Closing Brief, paras 1137-1138.

<sup>5811</sup> Section 9.1.8: Applicable Law: Other Inhumane Acts, para. 727.

<sup>5812</sup> See below, paras 1829-1837 (other inhumane acts through attacks against human dignity), 1838-1846 (other inhumane acts through conduct characterised as enforced disappearances).

<sup>5813</sup> KHIEU Samphan Closing Brief, paras 1093-1094.

<sup>5814</sup> Closing Order, para. 396 (“Other witnesses corroborate that some workers from Kampong Chhnang Airport Construction Site were sent to S-21 [...] It appears that Yim Sam Ol *alias* Nha, mentioned as one of the people who disappeared from Kampong Chhnang Airport Construction Site, was sent to S-21 in late 1978. Duch also explained during his trial that his brother in law, a cadre at Kampong Chhnang Airport Construction Site, was transferred to S-21”. [emphasis added]).

<sup>5815</sup> Section 12.2: S-21 Security Centre, paras 2241, 2507-2512.

### 11.3.3. *General Considerations on Evidence*

1717. The Chamber heard seven witnesses<sup>5816</sup> and two Civil Parties<sup>5817</sup> on the topic of the Kampong Chhnang Airfield construction site.

1718. The Chamber finds certain parts of Witness CHAN Morn's evidence to be inconsistent with the preponderance of the evidence in this trial. This concerns specifically his purported escape from S-21. In particular, the Chamber notes that the description he provides of S-21 is inconsistent with the other evidence heard by the Chamber on this security centre. Consequently, the Chamber approaches his evidence with particular caution and relies on it only where it is corroborated by other evidence.

1719. The Chamber finds the evidence provided by Civil Party CHUM Samoeurn unconvincing due to the numerous inconsistencies between her Civil Party application and her live testimony.<sup>5818</sup> The Chamber recalls its position on the limited probative value attributable to Civil Party Applications,<sup>5819</sup> and notes that CHUM Samoeurn indicated that she did not read the content of the statements reported in her application before signing it.<sup>5820</sup> While in similar situations the Chamber has given more weight to the statements made in court,<sup>5821</sup> it notes that the Civil Party at times contradicted herself and was unable to provide a satisfactory explanation for the discrepancies in her in-court statements.<sup>5822</sup> Further, the Civil Party was often confused in her recollection

<sup>5816</sup> CHAN Morn (2-TCW-975), KEO Kin (2-TCW-910), HIM Han (2-TCW-901), KEO Loeur (2-TCW-932), SEM Hoern (2-TCW-943), KHIN Vat (2-TCW-866) and NUON Trech (2-TCW-1060).

<sup>5817</sup> KONG Siek (2-TCCP-261) and CHUM Samoeurn (2-TCCP-247).

<sup>5818</sup> The Chamber noted the following inconsistencies in CHUM Samoeurn's statements: first, in her Civil Party application, the Civil Party said that her brothers were killed by Comrade Pet because they were considered enemy agents (E3/6160, at ERN (En) 00842140). Conversely, in court she stated first that she did not know who killed her brothers and denied having given a statement related to their death (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 72), and later that her older brothers were not killed by Pet (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 73). Second, in her Civil Party application, she indicated that prior to 17 April 1975 she was a medic in Division 502 (E3/6160, at ERN (En) 00842140), while in court she stated that she was never a medic or a nurse (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 74, 84). Third, in her Civil Party application, she said she was ordered by *Angkar* to investigate the background of all the soldiers (E3/6160 at ERN (En) 00842140), whereas in court she stated that she was never instructed to do so as she did not have the authority to perform such an action (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 84). Confronted with her contradictory statements as to her re-education, the Civil Party's response was evasive and unclear (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 83-84). Finally, it appears that the Civil Party did not read her statement before signing it (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 84-85).

<sup>5819</sup> Section 2: Preliminary Issues, para. 69.

<sup>5820</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 84-85.

<sup>5821</sup> Section 12.5: Phnom Kraol Security Centre, para. 3067.

<sup>5822</sup> The Chamber notes that in court the Civil Party indicated that when she was transferred to Kampong Chhnang Airfield she was considered a prisoner due to her bad biography (*see* T. 24 June 2015 (CHUM

of the events, many of which concerned her personally.<sup>5823</sup> The Chamber has, therefore, approached this Civil Party's testimony with caution and only relies on it for corroboration when it is largely consistent with that of other witnesses.

1720. Three other witnesses and one other Civil Party heard during other trial topics also provided information on the Kampong Chhnang Airfield construction site.<sup>5824</sup> The Chamber has also considered a number of other out-of-court statements and written records of interview of witnesses who were heard by OCIJ investigators, but did not subsequently testify in court. The probative value of these statements has been assessed in accordance with the principles set out above in the sections of this Judgement addressing the assessment of the evidence.<sup>5825</sup>

#### 11.3.4. *Location and Establishment*

1721. Kampong Chhnang Airfield was located in Bat Lang village, Kraing Leav commune, Rolea Baer district, Kampong Chhnang province.<sup>5826</sup> Pursuant to the CPK administrative division of Democratic Kampuchea (DK), the Airfield was located within District 20, Sector 31 of the West Zone (Zone 401).<sup>5827</sup>

1722. The Airfield consisted of one 2,400-metre-long runway,<sup>5828</sup> a control tower and

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Samoeurn), E1/321.1, p. 69), while later on she indicated that she did not know that she was sent to the worksite because of her affiliations with the former regime, and she only knew she was sent there to work (see T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 81).

<sup>5823</sup> In her Civil Party application, the Civil Party indicated that prior to 17 April 1975 she was a medic in Division 502 (E3/6160, at ERN (En) 00842140), while in court she stated that she was never a medic or a nurse (see T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 74, 84). Also, in her Civil Party application, she said she was ordered by *Angkar* to investigate the background of all the soldiers (E3/6160 at ERN (En) 00842140), whereas in court she stated that she was never instructed to do so as she did not have the authority to perform such an action (see T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 84).

<sup>5824</sup> MOENG Vet (called on the topic of internal purges), 2-TCW-859 (called on the topic of the nature of the armed conflict), BEIT Boeurn (2-TCW-953) (called on the topic of the role of the Accused) and Civil Party CHHAE Heap (2-TCCP-275), respectively.

<sup>5825</sup> Section 2.4.6.2: Written Statements including WRIs, Civil Party Applications, DC-Cam Statements, Refugee Reports and Newspaper Articles.

<sup>5826</sup> Site Identification Report, E3/8041, 21 April 2009, p. 2, ERN (En) 00378432; Site Identification Report, E3/8043, 2 January 2010, p. 1, ERN (En) 00436943. See also, CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 4, ERN (En) 00292822; SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 3, ERN (En) 00422366.

<sup>5827</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 38; Site Identification Report, E3/8043, 2 January 2010, p. 1, ERN (En) 00436943.

<sup>5828</sup> Site Identification Report, E3/8041, 21 April 2009, p. 7, ERN (En) 00378437 ("Lt. Col. HING CHAN DARA of the Royal Cambodian Airforce, who now looks after the Airport, informed the investigators that the runway is 2400 metres long"); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 26 (indicating that the runway was 1,800 metres long). The Chamber has decided to place more weight on the measurements provided by Lt. Col. HING CHAN DARA of the Royal Cambodian Airforce as opposed to those provided by KEO Loeur in light of the former's knowledge of the Airfield and expertise

an administration building.<sup>5829</sup> There was also a house or office of the site supervisor,<sup>5830</sup> and an office of the transportation unit.<sup>5831</sup> There was a large stone quarry where stones for the Airfield construction were collected.<sup>5832</sup> A tunnel was dug in the nearby mountain to hide airplanes.<sup>5833</sup>

1723. The Standing Committee considered building military airfields, including one in Kampong Chhnang, as early as October 1975,<sup>5834</sup> and continued discussing the matter in 1976.<sup>5835</sup> A decision to set up operations in Kampong Chhnang was made in April 1976.<sup>5836</sup> The Airfield was built in close cooperation with China as a key component of the DK military strategy.<sup>5837</sup>

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in the field of aviation. The Chamber also notes that the evidence refers at times to “two runways” (*see e.g.*, Site Identification Report, E3/8041, 21 April 2009, p. 2, ERN (En) 00378432 (“He also showed the investigators the sleeping area where the workers used to sleep. It is the grassy area between the *two runways*” [emphasis added])) and at other times to *the* runway (*see e.g.*, T. 15 June 2015 (KEO Loeur), E1/316.1, p. 26). Based on the description and images of the Airfield in the Site Identification Report, the Chamber understands that the Airfield had one runway which was made of two strips.

<sup>5829</sup> Site Identification Report, E3/8041, 21 April 2009, p. 6, ERN (En) 00378436.

<sup>5830</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 20 (talking about Lvey’s office); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 4, ERN (En) 00426309 (stating that the petrol station was located to the southwest of the Airfield, “approximately 20 meters from La-vey’s house”).

<sup>5831</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 43-44.

<sup>5832</sup> Site Identification Report, E3/8041, 21 April 2009, p. 14, ERN (En) 00378444 (reporting that “[t]he rock face would be blasted with dynamite and then the resulting rocks would be taken for construction”); T. 6 December 2016 (NUON Trech), E1/507.1, p. 101 (testifying about being assigned to “burn the explosives in the mountains”); T. 7 December 2016 (NUON Trech), E1/508.1, p. 6 (explaining that after the rocks were blasted with explosives they were transported to the Airfield which was less than one kilometre away).

<sup>5833</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 26 (stating that there was a group to dig the cave); T. 16 June 2015 (KEO Loeur), E1/317.1, p. 26 (explaining that he saw the tunnels “when it was about time the regime fell” on 7 January 1979); T. 6 December 2016 (NUON Trech), E1/507.1, pp. 105-108 (explaining that the tunnel was about 10 metres deep and that it was said that a tunnel was built to allow the airplanes to land in it); Site Identification Report, E3/8055, 8 April 2010, p. 2, ERN (En) 00519582; T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 51-52 (testifying that he saw the caves to the south of the Airfield and that he was told that the caves were used to hide airplanes).

<sup>5834</sup> Standing Committee Minutes, E3/182 [E3/1733, E3/1612 and E3/183], 9 October 1975, p. 15, ERN (En) 00183407. The Chamber notes that both NUON Chea *alias* Comrade Deputy Secretary and KHIEU Samphan *alias* Comrade Hem attended this meeting. *See* Section 7: Roles and Functions – NUON Chea, para. 529; Section 8: Roles and Functions – KHIEU Samphan, paras 564, 602.

<sup>5835</sup> Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 3, ERN (En) 00182627. The Chamber notes that both NUON Chea *alias* Comrade Deputy Secretary and KHIEU Samphan *alias* Comrade Hem attended this meeting. *See* Section 7: Roles and Functions – NUON Chea, para. 529; Section 8: Roles and Functions – KHIEU Samphan, paras 564, 602. *See also*, Standing Committee Minutes (copied by C.E. Goscha), E3/10692, 19-21 July 1976, ERN (En) 01313113.

<sup>5836</sup> Standing Committee summary of decisions, E3/235, 19-21 April 1976, p. 4, ERN (En) 00183419 and Standing Committee Minutes (copied by C.E. Goscha), E3/10694, 15 and 20-21 April 1976, p. 2, ERN (En) 01323933.

<sup>5837</sup> Standing Committee summary of decisions, E3/235, 19-21 April 1976, p. 4, ERN (En) 00183419 (reporting under the item “Military airfields” as follows: “We will set up operations in Kampong Chhnang. We must defend the country effectively. We will do whatever they give. We will buy some more if it is not enough.”); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 64 (testifying that he heard SOU Met say that the Airfield was meant for military operation); T. 7 December 2016 (NUON Trech),

1724. While it is impossible to establish the exact date on which the Airfield construction began, the Chamber can reasonably conclude that while preliminary works may have been carried out earlier, construction activities started in mid-1976.<sup>5838</sup> The Airfield construction had not yet been fully completed when the Vietnamese troops attacked in January 1979.<sup>5839</sup>

### 11.3.5. *Authority and Reporting Structure*

#### 11.3.5.1. *Hierarchal structure above the worksite*

1725. Division 502 of the RAK, the air force division, was tasked with defending the

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E1/508.1, p. 21 (explaining that he was urged by his supervisors to work hard because the Airfield was used for the war planes and big airplanes to land); T. 23 June 2015 (SEM Hoern), E1/320.1, p. 38 (stating that he believed that the Airfield was built with the intention to defend the country in an effective way); T. 6 December 2016 (NUON Trech), E1/507.1, p. 101 (testifying that “[t]he airport was built to house war planes ready to fight against the enemies”). *See also*, T. 26 Oct 2016 (CHUON Thy), E1/490.1, p. 70 (“I heard that there was a plan to build a new military airfield in Kampong Chhnang. I heard of it, but I did not go there and see it myself.”); Chapter by D. Chandler, “Preliminary Explanation Before Reading the Plan by the Party”, in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8, p. 143, ERN (En) 00104068 (stating that “[t]he defense of the country must be assured. Runways must be built and piers and fortifications”). *See below*, paras 1762-1766.

<sup>5838</sup> Standing Committee Minutes, E3/222, 15 May 1976, p. 2, ERN (En) 00182666 (indicating that the drilling group had arrived). The Chamber notes that both NUON Chea *alias* Comrade Deputy Secretary and KHIEU Samphan *alias* Comrade Hem attended this meeting. *See* Section 7: Roles and Functions – NUON Chea, para. 522; Section 8: Roles and Functions – KHIEU Samphan, paras 564, 602. T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 17, 30-31; CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 4, ERN (En) 00292822 (indicating that when he was first assigned to work at Kampong Chhnang Airfield in the rainy season in mid-1976, the place was still covered by sparse forest and no construction had yet been built at the worksite); KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (stating that he was transferred by Ta Lvey to work at Kraing Leav Airfield in February 1976 and that at that time he only saw forest; the construction started in March 1976); T. 10 June 2015 (KEO Kin), E1/313.1, p. 93 (testifying that he was among “one of the very first group of about 12 people who arrived at the worksite” and that at that time, it was full of palm trees, and coconut trees). The Chamber notes that in his Interview Record, KEO Kin indicated that he was sent to Kampong Chhnang in February 1976, whereas during his in-court testimony the witness said he started to work there in 1975. When confronted with this discrepancy by the Co-Prosecutors, the witness said that he was not sure about the month but that perhaps it was in February after the harvest. *See* T. 10 June 2015 (KEO Kin), E1/313.1, p. 95. *See also*, SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 3, ERN (En) 00422366 (stating that the first time he tended cattle at the site where they built the Airfield in early 1976 he saw hundreds of Khmer Rouge soldiers cutting down the forest at various locations at the Airfield construction worksite).

<sup>5839</sup> Site Identification Report, E3/8055, 8 April 2010, p. 2, ERN (En) 00519582 (describing a “secret tunnel” on the side of Ta Reach hill and whose construction was left incomplete); HIM Han Interview Record, E3/5532, 18 December 2009, p. 6, ERN (En) 00425236 (explaining that when the Vietnamese arrived the Airfield construction was not yet completed); KEO Kin Interview record, E3/5273, 12 February 2009, p. 6, ERN (En) 00290502; Interviews with Kampuchean Refugees at Thai-Cambodia Border, Prepared for Ishiyama Committee Annual Report, 1980 February March 1980, E3/1714, p. 61, ERN (En) 00170752 (reporting information from LONH aka LORN, member of the Kampong Som city Standing Committee to the extent that the Airfield was “70% [...] completed at the time of Vietnamese attack”).



airspace of Cambodia.<sup>5840</sup> In addition to other tasks, such as guarding the Pochentong airport,<sup>5841</sup> Division 502 led the construction of the Kampong Chhnang Airfield.<sup>5842</sup> Division 502 was initially part of the Southwest Zone,<sup>5843</sup> which was under the responsibility of *Ta Mok*,<sup>5844</sup> and subsequently became a Centre Division in July 1975.<sup>5845</sup>

1726. As the Commander of Division 502,<sup>5846</sup> SOU Met had a range of responsibilities, including the construction of the Kampong Chhnang Airfield.<sup>5847</sup>

<sup>5840</sup> DK Military Minutes regarding air force recruitment, E3/8366, 3 March 1976, ERN (En) 00234008 (concerning a meeting on air force recruitment attended by Met, Tat, Saom and SON Sen *alias* Brother 89). SON Sen's final decision was for Met to "select [people] for the air force from within Division 502 from today on."); T. 10 June 2015 (CHAN Morn), E1/313.1, p. 28 (explaining that Division 502 was the air force division and its main duty was to defend the airspace of Democratic Kampuchea. The witness belonged to Division 502).

<sup>5841</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 27-28 (testifying that "[i]ndeed, Division 502 is an air force division and soldiers attached to the division were assigned to work on the construction of that airfield. So part of the forces were assigned to work at the airfield site while other soldiers were assigned to guard at the Pochentong Airport, and the others were under training."); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 59 (explaining that she was under Division 502 and that in 1975 she was assigned to work at Pochentong airport); CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 4, ERN (En) 00513314 ("In early 1976 SOU Samet was promoted as the commander of the Division 502 in charge of air force for Pochentong in Phnom Penh").

<sup>5842</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 27-28 (explaining that Division 502 soldiers were assigned to work on the construction of the Airfield); T. 30 July 2015 (KHIN Vat), E1/326.1, pp. 15-16 (confirming that Division 502 led the working forces at the Airfield because Division 502 was the air force). *See also*, T. 11 Aug 2016 (CHHAE Heap), E1/455.1, p. 34 ("So there were 60 of us who were gathered there and there were two Chinese-made trucks which transported us. They said that our force would be transferred to Division 502. From the time onwards, I worked in Kampong Chhnang.").

<sup>5843</sup> T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (explaining that she knew that Division 502, of which she was a member, was part of the Southwest Zone); T. 7 December 2016 (NUON Trech), E1/508.1, p. 24 (stating that Division 502 was from the Southwest).

<sup>5844</sup> Written Record of Analysis by Craig C. Etcheson, E3/494, 18 July 2007, p. 11, ERN (En) 00142836. *See also*, T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (discussing *Ta Mok* and stating that "[p]eople said that he was in charge of the Southwest").

<sup>5845</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 32-33 (explaining that in July 1975 the army was reorganised and a number of divisions, including Division 502, came under the control of the General Staff). *See* Section 5: Administrative Structures, paras 431-438.

<sup>5846</sup> Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Met as Unit Chair of Unit 502); Letter to Duch, E3/9381, 2 June 1977 (signed "[o]n behalf of the commander of Division 502 Met"); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 59, 66; T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 15, 25; T. 10 June 2015 (KEO Kin), E1/313.1, p. 92. *See also*, T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 51; CHUON Thi Interview Record, E3/4593, 2 March 2010, p. 4, ERN (En) 00513314 ("In early 1976 SOU Samet was promoted as the commander of the Division 502 in charge of air force for Pochentong in Phnom Penh").

<sup>5847</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, p. 1, ERN (En) 00183970 (where Met discussed activities of "bad elements" at the Zone Army defending airport in Battambang); Standing Committee Minutes, E3/224, 30 May 1976, p. 3, ERN (En) 00182669 (reporting that the Southwest and southern parts of Phnom Penh were under the responsibility of Comrade Met and Comrade Pin.) The evidence indicates that Comrade Pin was the Chief of Division 703. *See* Rice Consumption Plan in 1976, E3/1136, 4 January 1976, ERN (En) 00543743 (listing comrade Pin as "Unit Chair" of Division 703); Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, ERN (En) 00933846-00933849; List of Participants to the 1<sup>st</sup> General Staff Meeting, E3/1585, 20 October 1976, ERN (En) 00897659 (listing "Comrade KHOEM Pin")

Evidence put before the Chamber indicates that SOU Met was based in Phnom Penh,<sup>5848</sup> but visited the worksite on a regular basis.<sup>5849</sup> SOU Met regularly attended meetings of division secretaries during which he received instructions from and reported to SON Sen *alias* Brother 89 *alias* Khieu on a number of matters including the enemy situation, cultivation, health conditions and food supply in his areas of responsibility.<sup>5850</sup> Furthermore, SOU Met had regular contact with Duch via SON Sen in relation to the transfer of people to S-21.<sup>5851</sup>

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as Chief of Division 703); Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, p. 3, ERN (En) 00656378 (listing Comrade Pin next to the indication of “Brigade/Division 703”); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 5, ERN (En) 00933837. The Chamber notes a telegram dated 8 April 1978 stating that “Comrade Pin has been injured again by the internal enemy. His vehicle ran over an anti-tank mine laid by the enemy and was completely destroyed while he was coming out for a meeting. [...] Comrade Pin himself was lightly wounded and is able to talk by field telephone.” See DK Telegram, E3/1117, 8 April 1978, ERN (En) 00434870. It also notes IENG Phan’s statement that when he arrived in Svay Rieng province in mid-1978, Division 703 was commanded by Dy. See IENG Phan Interview Record, E3/419, 23 November 2009, p. 4, ERN (En) 00411005. See also, HUY Vannak’s book indicating that “Pin was shot and killed on the Eastern Zone battlefield in December 1978, while leading troops fighting the Kampuchean National Salvation Front and the Vietnamese.” See Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116, June 2003, p. 55, ERN (En) 00081340. Based on the above, the Chamber concludes that Comrade Pin was the Chief of Division 703 until approximately mid or late 1978.

<sup>5848</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 104 (testifying that he was taken to Met’s place which was “located behind Pochentong pagoda”); Letter from Met to Duch, E3/1049, 1 June 1977, ERN (En) 00226100 (letter sent from Phnom Penh by Met to Duch, informing him of the arrest of Sour, Song and Lay and of the intention to transfer them to him); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 68-69, 77-78 (testifying about Lvey’s trips to Phnom Penh and stating that in her opinion Lvey went to Phnom Penh probably to receive his work plan and work assignment from his superior Met).

<sup>5849</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 26 (explaining that he had regular meetings with Met); CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 6, ERN (En) 00292824; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 66 (explaining that she used to attend meetings chaired by Met where he reported on the progress of the work within the division); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 20; KEO Kin Interview record, E3/5273, 12 February 2009, p. 5, ERN (En) 00290501 (explaining that he saw Met come to visit the construction site two or three times).

<sup>5850</sup> DK Military Minutes regarding air force recruitment, E3/8366, 3 March 1976, ERN (En) 00234008; Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183970-00183981 (reporting, among other things, on the security situation in Phnom Penh and Battambang); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 15, ERN (En) 00940350.

<sup>5851</sup> Letter from Met to Duch, E3/1140, 1 April 1977, ERN (En) 00178065 (Duch confirmed the authenticity of this letter and indicated that with this communication Met was sending a number of individuals to S-21 and was requesting *Angkar*’s advice on further action. Duch confirmed in court that “[t]he word ‘*Angkar*’ mentioned in Comrade Met’s letter referred to Pol Pot.” See T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 54. The Chamber notes that Duch also indicated that both Met and he “reported to the supreme – superior through Son Sen.”); Letter from Met to Duch, E3/971 [E3/970], 30 May 1977, ERN (En) 00178066 (informing that 27 traitors from the networks of Divisions 310 and 450 were transferred in the night of 29 May 1977). During court proceedings Duch confirmed the authenticity of this letter and explained that “this letter was Comrade Met’s. He sent it to me following the instruction of the superior. It was actually sent from my superior; it was not sent directly from Comrade Met. The date of this document is 30th May 1977.” See T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 56-57; Letter from Met to Duch, E3/1043, 10 August 1977, ERN (En) 00224319.

1727. In addition, the Office of the General Staff was updated on and monitored the progress of the Airfield construction.<sup>5852</sup> Reports on the situation in the West Zone which also concerned the Airfield were also sent to the upper levels of *Angkar* by the Committee of the West Zone.<sup>5853</sup> The evidence shows that at least at one Standing Committee meeting, SON Sen reported to the Standing Committee on the progress of the Airfield construction.<sup>5854</sup>

#### 11.3.5.2. Organisational structure at the worksite

1728. Lvey was a member of the Division 502 Committee<sup>5855</sup> and SOU Met's subordinate.<sup>5856</sup> Lvey supervised the construction of Kampong Chhnang Airfield.<sup>5857</sup> According to Witness KEO Kin, a worker from Division 502 who had worked as a messenger and bodyguard for Lvey from 1974 to 1975,<sup>5858</sup> Lvey was always stationed at the worksite.<sup>5859</sup> Yeng was a member of Division 502 who worked with Lvey in the Airfield construction.<sup>5860</sup> Unit chiefs attended regular meetings at Lvey's office.<sup>5861</sup>

<sup>5852</sup> Report on Division 170, E3/1182, 6 July 1977, p. 1, ERN (En) 00598173 (reporting as follows: “[I] examined the good points for accomplishing the core tasks in the past, especially the construction of the airport; our brothers and sisters have been working very hard, strongly fulfilling the tasks”).

<sup>5853</sup> Zone M-401 Report, E3/1094, 4 August 1978, pp. 1-2, ERN (En) 00315368-00315369 (reporting on individuals' attempts to escape from the Airfield as well as on a number of other issues related to security, cooperatives, purges, educational sessions and agricultural production in the different sectors and districts of the West Zone).

<sup>5854</sup> Standing Committee Minutes, E3/222, 15 May 1976, p. 2, ERN (En) 00182666 (Comrade Khieu being SON Sen). The Chamber notes that both NUON Chea *alias* Comrade Deputy Secretary and KHIEU Samphan *alias* Comrade Hem attended this meeting. See Section 7: Roles and Functions – NUON Chea, para. 529; Section 8: Roles and Functions – KHIEU Samphan, paras 564, 602.

<sup>5855</sup> List of participants to 1<sup>st</sup> General Staff Training, E3/1585, 20 October 1976, p. 12, ERN (En) 00897660, entry no. 207 (listing Comrade Lvey as “Member of Division” of Division 502); Monthly Troop Strength List – May 1976, E3/1138, 27 February 1976, ERN (En) 00602523; Military Committee Division 502, E3/1139, 22 January 1976, ERN (En) 00602524 (bearing Lvey's signature “For Committee of Division 502”).

<sup>5856</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 68-69, 77-79 (explaining that she believed that Lvey went to Phnom Penh to receive his work plan and work assignment from his superior Met); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 65 (testifying that Met would assign task to the various cadres, who would lead their respective members to engage in their tasks).

<sup>5857</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 20 (testifying that Lvey was in charge of Kampong Chhnang Airfield); SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 5, ERN (En) 00422368 (“Lvey [*sic*] was the commander of Division 502 that directly supervised the Kampong Chhnang Airfield construction site”); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 3, ERN (En) 00426308 (“La-vey [*sic*] was 502<sup>nd</sup> Division commander who was overall in charge of the Kampong Chhnang airport worksite.”).

<sup>5858</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 90-91.

<sup>5859</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 85 (testifying that while Lvey was always stationed at the worksite, *Ta Met* only came once in a while).

<sup>5860</sup> Annex 02: Notebook No 092, name of Cadres and soldiers of Division 502, E3/1045, 3 June 1977, p. 18, ERN (En) 00335264.

<sup>5861</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 106-107 (testifying that he saw senior cadres going to meetings at Lvey's place once a week but he did not know what was discussed at those meetings. The

1729. Thuok was Chairman of Office of Division 502 in Kampong Chhnang.<sup>5862</sup> According to Witness KHIN Vat, a worker at the Airfield from Division 502, Thuok was Lvey's assistant and was usually in charge when Lvey was away, for example when Lvey had to go to Phnom Penh.<sup>5863</sup>

1730. The Chamber is satisfied that instructions related to the work plan were passed through the chain of command by SOU Met to Lvey and were then relayed to the unit chiefs at the worksite who, in turn, instructed the workers in their units and led them in their assignments.

### 11.3.6. *Workforce*

1731. The workers at the Airfield construction site were all soldiers from different divisions and units of the RAK,<sup>5864</sup> such as Divisions 310, 170, 450 and 502.<sup>5865</sup> The

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witness also stated that soldiers and workers did not attend those meetings); CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 7, ERN (En) 00292825.

<sup>5862</sup> Annex 02: Notebook No 092, name of Cadres and soldiers of Division 502, E3/1045, 3 June 1977, p. 18, ERN (En) 00335264 (listing Thuok as "Chairman" under "Office of Division 502 in Kampong Chhnang"); KONG Kim Interview Record, E3/10726, 12 November 2015, p. 10, ERN (En) 01184778 (stating that *Ta* Thuok was from Division 502 and was *Ta* Lvey's deputy). *See also*, SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 3, ERN (En) 00426308 (stating that he heard people saying that Thuok was regiment commander subordinate to 502<sup>nd</sup> division).

<sup>5863</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 68-69, 77 -78 (testifying that this happened sometimes three times in a month, sometimes only once in a month. The witness believed that Lvey went to Phnom Penh probably to receive his work plan and work assignment from his superior Met). *See also*, KHIN Vat Interview Record, E3/5284, 6 April 2009, p. 3, ERN (En) 00315914 (calling him Lvey's secretary).

<sup>5864</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 22-23 (stating that at the worksite there were no ordinary workers but they were all soldiers from different units); T. 17 June 2015 (KONG Siek), E1/318.1, p. 35 (explaining that her Regiment 53, which belonged to Division 450, was sent to Kampong Chhnang Airfield); T. 22 June 2015 (SEM Hoern), E1/319.1, p. 39 (testifying that "only soldiers were on site"); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 55 (explaining that the people assigned to work at the Airfield were all soldiers and that she knew that because "[t]hey wore black attire with cap.") *See also*, T. 29 July 2015 (KHIN Vat), E1/325.1, p. 61 (stating that when she walked by the worksite she saw soldiers working at the construction site); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 3, ERN (En) 00426308 ("I heard people saying that those people were from this division or that division which meant they were not civilians. I heard that the Kampong Chhnang airport was intended for military use therefore soldiers were required for its construction.").

<sup>5865</sup> The Chamber notes that all of the witnesses who testified on the Kampong Chhnang Airfield construction site came from Divisions 502, 310 and 450. From Division 502: CHAN Morn (*see* T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 26-27); KEO Kin (*see* T. 10 June 2015 (KEO Kin), E1/313.1, pp. 90-91); KHIN Vat (*see* T. 29 July 2015 (KHIN Vat), E1/325.1, p. 59) and CHUM Samoeurn (*see* T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 51-52). From Division 310: KEO Loeur (*see* T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 6-9); NUON Trech (*see* T. 5 December 2016 (NUON Trech), E1/506.1, p. 95); HIM Han (*see* T. 23 June 2015 (HIM Han), E1/320.1, pp. 47-48) and SEM Hoern (*see* T. 17 June 2015 (SEM Hoern), E1/318.1, p. 100). From Division 450: KONG Siek (*see* T. 17 June 2015 (KONG Siek), E1/318.1, p. 32). The Chamber notes that the evidence regarding the presence of East Zone soldiers at the Airfield is all indirect evidence as no witness from this area came to testify in court regarding this crime site. Regarding the presence of Divisions 502, 310, 450 and 170 at the Airfield, *see* T. 9 June 2015 (CHAN Morn), E1/312.1, p. 23 (stating that at the Airfield there "were mixtures of various workers from various units"); T. 10 June 2015 (CHAN Morn), E1/313.1, p. 3 (explaining that he

Chamber is satisfied that some soldiers from Division 703 were also sent to the Airfield.<sup>5866</sup> Numerous soldiers from the East Zone were also sent to work at the Airfield, but the Chamber is not in a position to determine from which divisions they came.<sup>5867</sup> Members of Division 502 were generally entrusted with roles of particular

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belonged to Division 502); T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 7-9 (explaining that he was a member of Division 310, Battalion 317 and that in January 1975, due to an injury, he joined unit K-4 which was an handicapped unit under Division 310); T. 7 December 2016 (NUON Trech), E1/508.1, p. 5 (the witness was a doctor within Division 310 and explained that there was a mix of different units at the worksite. The witness also indicated that some of the workers said they came from the East Zone while others said they were from the North Zone army). *See* T. 17 June 2015 (KONG Siek), E1/318.1, p. 35 (explaining that not the entire Division 450 but only her Regiment 53, which belonged to it, was sent to Kampong Chhnang Airfield); T. 23 June 2015 (HIM Han), E1/320.1, pp. 47-48; T. 24 June 2015 (HIM Han), E1/321.1, pp. 41-42 (HIM Han was a member of Company 2, Regiment 12, Division 310 and was subsequently reintegrated in Unit 17, which was newly-constituted after the leaders of Division 310 were arrested in 1977. The witness also indicated that upon arrival at Kampong Chhnang Airfield his unit members were dispersed, and were assigned to different work stations and sleeping quarters). *See* T. 17 June 2015 (SEM Hoeurn), E1/318.1, p. 100 (SEM Hoeurn was a member of Company 5, Battalion 123, Regiment 12, Division 310); Report on Division 170, E3/1182, 6 July 1977, pp. 1-2, ERN (En) 00598173-00598174 (reporting on the activities of Division 170 at the Airfield); Report of the Committee of Division 170, E3/1202, 4 June 1977, ERN (En) 00828144-00828147; Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, p. 58, ERN (En) 00406702 (“Regarding other divisions, for example Division 310, 450, 170, 290, was disarmed and the combatants and cadres were used to work at the Kampong Chhnang airfields and later on, from what I heard, they were gathered and smashed en masse before the 6th of January 1978.”); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 33 (explaining that the soldiers working at the worksite were from different zones, including the “North Zone, East Zone and other zones”); SRUN Chey Interview Record, E3/5526, 11 December 2009, pp. 3-5, ERN (En) 00426308-00426310 (explaining that the divisions whose workers were sent to Kampong Chhnang included Divisions 703, 170, 310 and 450); KOY Mon Interview Record, E3/369, 29 May 2008, pp. 4-5, ERN (En) 00272716-00272717 (KOY Mon was a member of Division 170 who was sent to Prey Sar for tempering together with his unit, and from there was sent to Kampong Chhnang Airfield in late 1977).

<sup>5866</sup> SRUN Chey Interview Record, E3/5526, 11 December 2009, pp. 3-5, ERN (En) 00426308-00426310 (explaining that the divisions whose workers were sent to Kampong Chhnang included Divisions 703, 170, 310, 450 and 502); SAOM Met DC-Cam Statement, E3/7520, 25 January 2003, pp. 84-87, ERN (En) 00337700-00337703.

<sup>5867</sup> SRENG Thi Interview Record, E3/5279, 7 March 2009, p. 3, ERN (En) 00293009 (“The people from Prey Veng and Svay Rieng provinces were separated to live with me, and they personally told me that they were from the East Zone. All of them were soldiers who did not know why they were sent to Kampong Chhnang; they just knew their leaders were accused of being traitors”); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 35 (testifying that military workers were brought to the Airfield from the East Zone and assigned to work with him to cut trees); T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 26, 27; T. 10 June 2015 (KEO Kin), E1/313.1, p. 94 and KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (indicating that most of the people were from the East Zone); T. 11 June 2015 (KEO Kin), E1/314.1, p. 65; CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-7, ERN (En) 00766452-00766453 (explaining that he was sent by SON Sen to the East Zone in late 1977 to arrest all the cadres who were traitors and that the division commanders were sent to Phnom Penh while the soldiers were sent to the Airfield construction site in Kampong Chhnang province), 11, ERN (En) 00766457 (stating that it was SON Sen, who received orders from the Centre, who ordered to use the East Zone cadres to build the Airfield at Kampong Chhnang). *See also*, T. 30 July 2015 (KHIN Vat), E1/326.1, p. 13 (indicating that she heard her colleagues say that some divisions were from the East and confirming her previous statement that at Kampong Chhnang Airfield there were “two divisions from the east, one division from the north, and two divisions from the southwest.”); Section 12.1: Internal Factions, para. 2030.

responsibility and with supervising the workers.<sup>5868</sup> The Chamber notes in this respect that many witnesses testified that their chiefs and supervisors were from the Southwest Zone.<sup>5869</sup> Based on the testimonies of KHIN Vat and NUON Trech, the Chamber concludes that the cadres from the Southwest Zone referred to by the witnesses when they testified about their supervisors were in fact cadres from Division 502.<sup>5870</sup> However, those members of Division 502 who were considered “bad elements” were sent to the Airfield as part of the workforce. For example, the Chamber heard evidence from KEO Kin that, after having worked as a messenger and a bodyguard for Lvey from 1972 to 1975,<sup>5871</sup> he was alleged to have a connection to the previous regime because his father had been a former deputy of a village. Lvey thus lost trust in the witness and KEO Kin was prohibited from working closely with him. He was first assigned to clear the land and guard a food supply warehouse at the Pochentong market and subsequently, in February 1976, was sent to Kampong Chhnang Airfield to work at the garage.<sup>5872</sup> KHIN Vat testified that she believed that she was sent to the Airfield because her husband was alleged to have had affiliations with the Vietnamese and had been “removed”.<sup>5873</sup> Similarly, CHUM Samoeurn indicated that she was sent to work

<sup>5868</sup> Witness CHAN Morn was assigned to accompany the Chinese engineers and technicians to survey the worksite (see T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 30-31), and later assigned to collect equipment at Kampong Som and take it to the worksite (see T. 9 June 2015 (CHAN Morn), E1/312.1, p. 32); T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 66-67 (talking about *Ta Kuot*, a member of Division 502 known by the witness who was assigned to provide protection for the Chinese delegation); T. 11 June 2015 (KEO Kin), E1/314.1, p. 24 (talking about the time he was in Division 502 and stating that guards from the protection unit were tasked with providing security for the Chinese delegation); T. 30 July 2015 (KHIN Vat), E1/326.1, p. 15 (testifying that soldiers from Division 502 “were assigned to be in charge of other working men. Division 502 led the working forces, and they received instruction from the Chinese”); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 35 (testifying that he, who was a member of Division 502, was assigned to lead a unit of workers from the East Zone to cut and transport trees); T. 10 June 2015 (CHAN Morn), E1/313.1, p. 41 (“Actually, the East Zone sent its workers to work under Division 502”).

<sup>5869</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 9 (explaining that his chief was a person from the Southwest); T. 23 June 2015 (HIM Han), E1/320.1, p. 85 (stating that his supervisor was from the Southwest zone); T. 24 June 2015 (HIM Han), E1/321.1, pp. 18-19 (explaining that those who supervised his unit as well as the East Zone people were from the Southwest Zone).

<sup>5870</sup> T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (explaining that she knew that Division 502, of which she was a member, was part of the Southwest Zone); T. 7 December 2016 (NUON Trech), E1/508.1, p. 24 (stating that Division 502 was from the Southwest).

<sup>5871</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 90-91.

<sup>5872</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 91-93 (stating, about the fact that Lvey did not allow him to work closer to him: “I was not physically punished, but I was asked to engage in hard labour works including digging canals or working in a garage dealing with heavy machinery such as tractors and rollers.”) *confirming* KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500.

<sup>5873</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 57 (“It was a colleague of mine who whispered to me that my husband had been removed for having affiliated with the *Yuon*. And then I was removed from the Pochentong airport, and sent to work in paddy fields at Kampong Chhnang airport. [...] *From my own analysis and perspective, they could have lost their trust in me. For this reason, I was no longer entrusted to work with the Chinese. Instead, I was reassigned to do farming in order to support their*

at the Airfield as she was considered affiliated with the previous regime because her father was a former policeman and her stepfather was a former soldier in the previous regime.<sup>5874</sup>

1732. A number of soldiers from Division 310 were sent to Kampong Chhnang Airfield after the arrest of the leaders of Division 310 in February 1977, which occurred as part of the purges of the North Zone.<sup>5875</sup> Soldiers from Division 450 were also sent to the Airfield as part of the purges once their leaders were arrested.<sup>5876</sup> East Zone

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*units*. They said it was the task of the low-ranking” [emphasis added], 64 (testifying that at Kampong Chhnang she experienced “being tempered and hard-working”).

<sup>5874</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 52-54 (explaining that around mid-1976 her whole unit was reassigned to Kampong Chhnang Airfield where she was assigned to carry soil and rocks and build roads). The Chamber notes that the Civil Party stated with respect to her transfer to the Airfield: “I did not know that I was sent to that place because I had been connected with the former regime. I knew only that I was sent to work there. Q. So you were sent there in the normal duty of you as a soldier within Division 502? Is -- is that how I have to understand your testimony? A. Yes, that is correct.”. See T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 81.

<sup>5875</sup> In this regard, the Chamber has heard directly from these Division 310 soldiers about their experience at the Airfield. See T. 23 June 2015 (HIM Han), E1/320.1, p. 74 (HIM Han arrived at the Airfield in early 1977, after Oeun was arrested); T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 31-34 (SEM Hoeurn was sent to the Kampong Chhnang Airfield around early 1977 because he and his unit were considered to be linked to their superiors who had been arrested); T. 6 December 2016 (NUON Trech), E1/507.1, p. 101 (NUON Trech was transferred to Kampong Chhnang to refashion in 1978); T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 9-12 (KEO Loeur was arrested in 1976 and taken to Khmuonh-Kab Srov for tempering because he was accused of being an enemy as members of his regiment and division were arrested; after being tempered at Khmuonh-Kab Srov for five months he was sent to Kampong Chhnang on 15 January 1978 and stayed there for a full year until the Vietnamese arrived); Joint Statistics of Armed Forces – March 1977, E3/849, ERN (En) 00183956 (illustrating that 1,127 forces from Unit 310 were in Kampong Chhnang). See also, KONG Kim Interview Record, E3/10726, 12 November 2015, pp. 7-8, ERN (En) 01184775-01184776 (explaining that he was a soldier from Division 310 and that “[f]rom January 1976 onwards senior military commanders from company level upward were arrested and sent elsewhere. *Ta Oeun, Ta Song, Ta Yim and Ta Chet* were among those arrested”. The witness also explained that he was told that his commanders were traitors and that his platoon was “sent to work at an airport in Kampong Chhnang province”). See also, Section 12.1: Internal Factions, paras 1929-1930.

<sup>5876</sup> T. 17 June 2015 (KONG Siek), E1/318.1, pp. 34 (explaining that she was transferred to the Airfield in 1977), 53 (stating that a meeting was held in 1977 in which they were told that because their superiors were arrested, the followers were also alleged to be involved with the leaders), 55 (explaining that the transfer to the Airfield was a form of punishment because she “had some tendency with Division 450”). *Confirming* Supplementary Civil Party Application, E3/6511a, 5 April 2010, ERN (En) 01069308 (“In 1977 the Khmer Rouge sent me to work at Kampong Chhnang airport because I was related to the military soldiers in Division 450 who had been arrested and detained at Tuol Sleng.”). With respect to KONG Siek, the Chamber notes that in another part of her statements, the Civil Party indicated that she did not know why she was sent to work at the Airfield. See T. 17 June 2015 (KONG Siek), E1/318.1, p. 35. See also, Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, pp. 82-84, ERN (En) 00377741-00377743 (explaining that his brother-in-law Pich was a commander of a battalion within Division 450 and was sent to Kampong Chhnang Airfield when Division 450 leaders and cadres were arrested); T. 10 June 2015 (CHAN Morn), E1/313.1, p. 25 (explaining that Division 450 was taken from Phnom Penh and merged with the workforce at Kampong Chhnang Worksite); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 3, ERN (En) 00426308 (explaining that the divisions whose workers were sent to Kampong Chhnang included Division 703, 170, 310, 450 and 502); Joint Statistics of Armed Forces – March 1977, E3/849, ERN (En) 00183956 (illustrating that 1,522 forces from Unit 450 were in Kampong Chhnang).

soldiers started arriving at the worksite in early 1977.<sup>5877</sup> By 1977, thousands of people had joined the workforce from the East Zone, the West Zone and the Southwest Zone, the majority of the newly-arrived coming from the East Zone.<sup>5878</sup> These soldiers from Divisions 310, 450 and from the East Zone were brought to work at the Kampong Chhnang Airfield to be tempered because they were the subordinates of arrested division leaders, and they were thus perceived as having affiliations with the enemy.<sup>5879</sup>

<sup>5877</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 35 (testifying that military workers were brought to the Airfield from the East Zone and assigned to work with him to cut trees); T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 26-27; T. 11 June 2015 (KEO Kin), E1/314.1, p. 65 (indicating early or mid-1977 as the date of East Zone soldiers' arrival to the Airfield); CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-7, ERN (En) 00766452-00766453 (explaining that he was sent by SON Sen to the East Zone in late 1977 to arrest all the cadres who were traitors and that the division commanders were sent to Phnom Penh while the soldiers were sent to the Airfield construction site in Kampong Chhnang province), 11, ERN (En) 00766457 (stating that it was SON Sen, who received orders from the Centre, who ordered to use the East Zone cadres to build the Airfield at Kampong Chhnang). *See also*, Section 12.1: Internal Factions, paras 2017, 2021-2022, 2028-2030, 2038.

<sup>5878</sup> T. 10 June 2015 (KEO Kin), E1/313.1, p. 94; KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (indicating that most of the people were from the East Zone). *See also*, T. 30 July 2015 (KHIN Vat), E1/326.1, p. 13 (indicating that she heard her colleagues say that some divisions were from the East and confirming her previous statement that at Kampong Chhnang Airfield there were "two divisions from the east, one division from the north, and two divisions from the southwest."); KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, pp. 6-7, ERN (En) 00293367-00293368 (stating that when he arrived at the worksite of Kampong Chhnang he saw "tens of thousands of people working", adding that he heard that there were 120,000 men and women mostly from the East Zone); KONG Kim DC-Cam statement, E3/3960, 9 July 2002, pp. 40-41, ERN (En) 00633896-00633897 (stating that there were thousands of workers at the Airfield, "most of whom were the East Zone people").

<sup>5879</sup> T. 5 December 2016 (NUON Trech), E1/506.1, p. 106 (indicating that he was accused of having links to the enemy's network and was thus transferred to do manual work in Kampong Chhnang to build an airfield); T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 9-12 (testifying that in 1976 he was sent to Khmuonh-Kab Srov for tempering because members of regiment and division he belonged to were arrested, and he was accused of being part of the enemy unit; after being tempered at Khmuonh-Kab Srov for five months he was sent to Kampong Chhnang on 15 January 1978 and stayed there for a full year until he fled on 7 January 1979); T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 31-34 (testifying that in early 1977 he was sent to the Kampong Chhnang Airfield because he and his unit were considered to be affiliated to their superiors who had been arrested because they were considered to be enemies); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 36 (explaining that East Zone soldiers were sent to the Airfield because they had affiliated with the enemies and their chiefs in the East Zone who betrayed *Angkar* had fled to Vietnam); T. 11 June 2015 (KEO Kin), E1/314.1, p. 10 (testifying that he heard the group chief and the unit chief say that the soldiers from the East Zone were accused of being traitors) (*confirming* KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (indicating that the soldiers from the East Zone were taken to the Airfield to be tempered because they were accused of being traitors by being CIA or KGB spies)); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 33 (explaining that the workers who were sent to Kampong Chhnang Airfield had been linked to bad elements); T. 28 November 2016 (BEIT Boeurn), E1/502.1, p. 46 (explaining that the people who were sent to the Airfield together with the witness "were implicated in the accusations that they were disloyal to the Khmer Rouge. [...] What I mean is that they were treated or considered as enemies"); CHHOUK Rin Interview Record, E3/421, 26 November 2009, pp. 3-4, ERN (En) 00414058-00414059 ("SON Sen went to Svay Rieng and conducted a meeting for all commanders including IENG Phan and SOKH Chhean. SON Sen announced that: 'all soldiers removed from the East must be sent to build the airport in Kampong Chhnang, while their commanders must be arrested and sent to S-21.' I personally heard of all SON Sen's words" [original emphasis]); KOY Mon Interview Record, E3/369, 29 May 2008, p. 5, ERN (En) 00272717 (stating that after working at Kampong Chhnang Airfield for about half a month, he met a friend named Poen from Division 502 who told him that they "were affiliated with political tendency. If



Several witnesses testified that at the worksite they were tempered through the hard work and that the worksite was for refashioning and tempering.<sup>5880</sup> Workers who were considered refashioned were sent to other assignments, such as fighting the Vietnamese.<sup>5881</sup> Workers were told that if they could not refashion they would be arrested.<sup>5882</sup>

1733. While there was no official demotion, the soldiers sent to the Airfield construction site were treated as simple labourers<sup>5883</sup> and had their weapons

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Sao Phim was arrested, all East Zone soldiers would be arrested and they will arrest people cooperatives.” KOY Mon was also told by Poen to flee to Vietnam or Thailand or he “would certainly be killed.”). For a more detailed analysis of the concept of “enemy”, see Section 16.3.2.1: Real or Perceived Enemies: The Stratification of the Population and the Categorisation of Enemies.

<sup>5880</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 70-71 (explaining that when he was sent to the Airfield in 1978, “it seems that we were no longer connected to that division because that place or worksite was for refashioning us”), 100; T. 7 December 2016 (NUON Trech), E1/508.1, pp. 8-9 (stating that they were told they were traitors and they had to work there to refashion themselves); T. 22 June 2015 (SEM Hoern), E1/319.1, p. 53 (“I was sent to Kampong Chhnang airfield and I was one prisoner among all others. I was relocated to that place for tempering and rebuilding ourselves because we were prisoners and we were there to re-correct ourselves and if we could be able to do hard work under the sun and did not fall sick or avoid the work, we would be okay. But if we could not correct ourselves, we would remain as prisoners ever”); T. 23 June 2015 (SEM Hoern), E1/320.1, p. 34; T. 24 June 2015 (HIM Han), E1/321.1, p. 39; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 33 (indicating that the fact that soldiers were removed from the East Zone and sent to Kampong Chhnang Airfield to collect logs in the forest “could be referred to as a form of refashion”); T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 13-14 (explaining that upon his arrival at the worksite, a meeting was held at which it was explained that they had to be refashioned because their chiefs were traitors as they were affiliated with the former regime). See also, T. 27 July 2016 (MOENG Vet), E1/449.1, p. 96 (“Kampong Chhnang airfield was a tempering centre and those who had to be tempered were sent to Kampong Chhnang to break the rock. The cadres who had been removed from their duties were sent to Kampong Chhnang airfield to break rock”).

<sup>5881</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 100-101 (explaining that he was told that the workers had been “refashioned enough” and they were thus provided with weapons and sent to fight against the Vietnamese); T. 7 December 2016 (NUON Trech), E1/508.1, p. 27 (stating that they were told that “all prisoners at the airfield who had refashioned were no longer considered offenders” and were thus sent to fight the Vietnamese). See also, T. 24 June 2015 (HIM Han), E1/321.1, p. 20 (stating that if people could refashion, they would survive, if not, they would die).

<sup>5882</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 15 (affirming his previous statement that at meetings they were told that if they were not tempered they would be arrested like their leaders who had been traitors); T. 11 June 2015 (KEO Kin), E1/314.1, p. 11 (“They were sent to the airport worksite to be tempered and refashioned. Those who were refashioned would not be arrested, and those who were not would be arrested, although I did not know the real reasons for their arrest”). See also, T. 22 June 2015 (SEM Hoern), E1/319.1, p. 53 (explaining that if they did not refashion they would retain their status as workers).

<sup>5883</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 4 (explaining that when he was transferred to Kampong Chhnang “I did not have any right to be a medic since I was considered a prisoner engaging in breaking rock or digging dirt. At the time, I was removed from being a medic”); T. 23 June 2015 (HIM Han), E1/320.1, p. 76 (explaining his previous statement to DC-Cam that he was “no longer attached to the army” by stating that when his group was sent to the Kampong Chhnang Airfield, he was relieved of his duty and he was no longer a soldier but a labourer working at the Airfield); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 39-40 (explaining that people at the Airfield “no longer held any position. They were considered ordinary civilians, working as normal. In the morning they had to wake up, carry their basket and hoe, going to the worksite. They went to do their assigned work. They were no longer considered soldiers”); T. 30 July 2015 (KHIN Vat), E1/326.1, p. 19 (indicating that when she was

confiscated.<sup>5884</sup> They wore the same black clothes,<sup>5885</sup> whereas the supervising soldiers and guards wore different uniforms.<sup>5886</sup> East Zone soldiers wore khaki-coloured uniforms.<sup>5887</sup> With regard to the workers' clothing, the Chamber notes that while some witnesses indicated that those working at the Kampong Chhnang Airfield had military

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reassigned to do rice farming at Kampong Chhnang, she thought that she was “deprived of the status of a soldier” because she was required to work as an ordinary worker. However, there was no official or formal letter from the commander regarding her reassignment). *Cf.* T. 30 July 2015 (KHIN Vat), E1/326.1, p. 23 (indicating that when she escaped the Vietnamese, she “was still attached to Division 502”). The Chamber does not consider KHIN Vat’s statement that she was still “attached to Division 502” when she escaped the Vietnamese to be in contradiction with the other statements by the same witness and the evidence provided by other witnesses on this point. The Chamber considers that those sent to Kampong Chhnang Airfield were all soldiers who were in fact treated as laborers once assigned to work there. However, as there was no formal demotion, it appears possible that some of the workers/soldiers considered themselves still attached to the RAK, which would explain KHIN Vat’s statement. *See also*, Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, p. 83, ERN (En) 00377742 (“Let me state again that the people who were transferred into the unit at the airfield was already decided as partly a prison already so their status was like the status of those who were sent to Prey Sar”); T. 27 July 2016 (MOENG Vet), E1/449.1, p. 96 (“The cadres who had been removed from their duties were sent to Kampong Chhnang airfield to break rock”).

<sup>5884</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 14 (“At Kampong Chhnang, none of us was allowed to carry any weapon. [...] The only thing that we had was an earth-carrying pole and an earth-carrying basket”); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 41 (explaining that the East Zone soldiers who were sent to the worksite were not allowed to take any weapons with them as their weapons had been confiscated); T. 10 June 2015 (KEO Kin), E1/313.1, p. 101; KONG Kim Interview Record, E3/10726, 12 November 2015, pp. 12-13, ERN (En) 01184780-01184781 (“Prior to arresting our commanders they disarmed us. They said that they needed to return the weapons and store them in the warehouse”); Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, p. 58, ERN (En) 00406702.

<sup>5885</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 37 (explaining that he wore black attire); T. 10 June 2015 (KEO Kin), E1/313.1, p. 106 (“We were all wearing black clothes with a cap”); T. 12 June 2015 (KEO Loeur), E1/315.1, p. 18 (indicating that the black clothing they wore at the Airfield was not a military uniform); T. 16 June 2015 (KEO Loeur), E1/317.1, p. 24 (indicating that workers’ attire was a plain black shirt and shorts). *See also*, T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 38 (testifying that after the liberation of Phnom Penh workers wore black clothing, khaki pants or some coloured clothing leftover from the previous regime); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 55 (stating that the soldiers wore black attire with cap).

<sup>5886</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 24 (testifying that the guards wore a military uniform); T. 16 June 2015 (KEO Loeur), E1/317.1, p. 24 (explaining that soldiers and security guards wore military uniforms which were khaki); T. 24 June 2015 (HIM Han), E1/321.1, p. 37 (explaining that only the Southwest Zone cadres supervising him were in military uniform); T. 30 July 2015 (KHIN Vat), E1/326.1, p. 14 (“Soldiers had the same uniform. However, people who were working with the Chinese wore different uniforms.”); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 38 (testifying that unit chiefs were cadres and wore a black attire, namely a “black shirt with four pockets and a black cap as well as a scarf around their neck. And that’s what we noticed of their position as unit chiefs.”) The Chamber notes that, in their statements, both SOM Chhom and KHVAE Ni indicated that soldiers from the East Zone wore khaki-coloured uniforms. *See* SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 4, ERN (En) 00422367; KHVAE Ni Interview Record, E3/7894, 24 December 2009, p. 2, ERN (En) 00426039.

<sup>5887</sup> SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 4, ERN (En) 00422367 (indicating that one group of people he saw at the Airfield wore khaki uniforms and that they were soldiers from the East Zone, and that the other group wore black uniforms and was from the West Zone. The number of those wearing black was bigger than that of those wearing khaki); KHVAE Ni Interview Record, E3/7894, 24 December 2009, p. 2, ERN (En) 00426039 (stating that after the workers fled Kampong Chhnang Airfield in January 1979, when the Vietnamese troops were advancing, he saw “thousands of KR soldiers in Kaki uniform and some of them were in black uniform armed with rifles and they were from Kampong Chhnang airport”). KHVAE Ni was told by the soldiers in khaki uniforms that they were “SAO Phim’s armed forces from the East Zone”).

uniforms,<sup>5888</sup> others testified either that black clothing was not a military uniform or that during the DK period everyone, including ordinary villagers, militiamen and soldiers, wore black.<sup>5889</sup> The Chamber notes that workers at Kampong Chhnang Airfield wore various clothes, and it is unable to conclusively establish whether the black clothing worn by some of the workers was considered a military uniform. However, it is satisfied that the evidence consistently demonstrates that the workers at the construction site were all soldiers who were reassigned from their respective units to perform manual work at the Airfield where they were considered as simple labourers until a decision was made, if any, that they were sufficiently refashioned to be trusted again and able to be reintegrated within the armed forces fighting against Vietnam.<sup>5890</sup>

1734. The Closing Order indicates that “Kampong Chhnang Airport Construction Site functioned as one of the means of implementation of the purge process of RAK members as it was used as a tempering site for RAK members considered as ‘bad elements’ from Division 502 itself or from other divisions or military units”.<sup>5891</sup> The NUON Chea Defence submits that the witnesses who claimed they were sent to the Airfield to be tempered “failed to identify any DK authority or document explicitly stating that their transfer to the Airfield was punishment”,<sup>5892</sup> and that their assertions of being sent to labour as a form of punishment are “personal conclusion[s]” not based on any objective source.<sup>5893</sup> The Chamber rejects the NUON Chea Defence’s

<sup>5888</sup> T. 30 July 2015 (KHIN Vat), E1/326.1, p. 15; T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 75-76. *See also*, SOM Chhom Interview Record, E3/7892, 10 December 2009, p. 4, ERN (En) 00422367 (indicating that he used to walk across the Airfield every day and see many people wearing military uniforms; that one group wore khaki uniforms and that they were soldiers from the East Zone, and that the other group wore black uniforms and was from the West Zone. The number of those wearing black was bigger than that of those wearing khaki); KHVAE Ni Interview Record, E3/7894, 24 December 2009, p. 2, ERN (En) 00426039 (stating that after the workers fled Kampong Chhnang Airfield in January 1979, when the Vietnamese troops were advancing, he saw “thousands of KR soldiers in Kaki uniform and some of them were in black uniform armed with rifles and they were from Kampong Chhnang airport.” KHVAE Ni was told by the soldiers in khaki uniforms that they were “SAO Phim’s armed forces from the East Zone”).

<sup>5889</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 18 (“In Kampong Chhnang airfield, we mostly wore black clothing. Q. And was that black clothing considered to be military uniform? A. No, it was not a military uniform, but every one of us was instructed to wear black clothes. Only soldiers at the front battlefield wore military uniforms.”); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 66.

<sup>5890</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 3 (explaining that he belonged to Division 502); T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 7-9 (explaining that he was a member of Division 310); T. 17 June 2015 (KONG Siek), E1/318.1, p. 35 (explaining that not the entire Division 450 but only her Regiment 53 was sent to Kampong Chhnang Airfield); Joint Statistics of Armed Forces – March 1977, E3/849, ERN (En) 00183956 (illustrating that 1,127 forces from Unit 310, 1,522 forces from Unit 450 and six guests were in Kampong Chhnang).

<sup>5891</sup> Closing Order, para. 387.

<sup>5892</sup> NUON Chea Closing Brief, para. 1060.

<sup>5893</sup> NUON Chea Closing Brief, para. 1060.

submissions on this point as the evidence clearly shows that the workers were told by Khmer Rouge cadres they had to work to refashion themselves because they were traitors or their former chiefs were traitors and that in fact they were made to work hard.<sup>5894</sup> Witness NUON Trech in particular testified that at the Airfield his chief held a meeting and said that the workers “were the offenders and that we had to strive to work hard to temper ourselves. And if we cannot catch up with the history, then we might be punished further.”<sup>5895</sup> This consistent evidence is sufficient to establish that soldiers were sent to the Airfield to be punished for their alleged enemy affiliations.

1735. The Chamber finds that, as indicated by the NUON Chea Defence,<sup>5896</sup> the Airfield was intended as a military project and its construction was assigned to Division 502 at a time in which the purges had not started yet.<sup>5897</sup> At the beginning of its construction in early 1976, only a small group of Division 502 soldiers and Chinese technicians were assigned to the worksite.<sup>5898</sup> Trusted people from Division 502 were assigned roles of responsibility,<sup>5899</sup> whereas those considered “bad elements” were assigned to be part of the workforce.<sup>5900</sup> The Chamber heard consistent evidence that once the purges of the North and East Zones started in 1977 and 1978, the worksite was filled with people considered enemies who were deprived of their status and sent to labour to be tempered and refashioned. In this regard, KEO Kin explained that to his understanding, “some soldiers were sent to work there as part of their military duties while others were there when they were being disciplined and they were sent there for refashioning”.<sup>5901</sup> The Chamber finds, therefore, that at the Airfield a distinction existed

<sup>5894</sup> T. 7 December 2016 (NUON Trech), E1/508.1, pp. 8-9; T. 15 June 2015 (KEO Loeur), E1/316.1, p. 14; KONG Kim Interview Record, E3/10726, 12 November 2015, p. 12, ERN (En) 01184780 (“Division 310 was disbanded and it no longer existed. Soldiers were arrested from their platoons and put to work as labourers. We no longer had any commanders. [...] I only know that they arrested those people. They said that those people were traitors. I did not know what kinds of traitorous activities they had committed”).

<sup>5895</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 9.

<sup>5896</sup> NUON Chea Closing Brief, paras 1057-1058 (“At the time that the Kampong Chhnang Airfield Construction Site project had begun, the full extent of Vietnam’s web of collaborators throughout DK and their plans to effect *coups d’état* were not yet known.”).

<sup>5897</sup> Section 12.1: Internal Factions, paras 2069, 2072.

<sup>5898</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 93-94 (testifying that when he was sent to the Airfield in February 1976 he was part of one of the first groups of about 12 people who arrived at the worksite, and that later about 10 Chinese arrived to do soil testing and terrain measurement); T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 15 and 30-31 (testifying that he arrived to the construction site in early 1976).

<sup>5899</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 24; T. 30 July 2015 (KHIN Vat), E1/326.1, p. 15; T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 30-32.

<sup>5900</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 56-57.

<sup>5901</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 64.

between the position and status of Division 502 soldiers entrusted with roles of responsibility and that of soldiers who were sent to the worksite to be tempered and refashioned.

1736. The number of people working at the Airfield construction site increased over time with fewer workers at the beginning and up to thousands of workers at its peak.<sup>5902</sup>

### 11.3.7. *Working Conditions*

1737. Workers were engaged in a number of different tasks including breaking rocks,<sup>5903</sup> pulling grass and digging pits,<sup>5904</sup> carrying earth and cement,<sup>5905</sup> cutting trees and uprooting them.<sup>5906</sup> Manual labour was mostly employed to transport rocks from the mountain to the worksite, which was less than one kilometre away.<sup>5907</sup>

<sup>5902</sup> Joint Statistics of Armed Forces – March 1977, E3/849, 7 April 1977, ERN (En) 00183956 (indicating that more than 2,500 soldiers were at the Airfield); KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (explaining that “[t]he construction continued until 1977, and thousands of people joined in”); T. 23 June 2015 (HIM Han), E1/320.1, pp. 89-90 (“When I first arrived at the airfield, there were not so many people. There were around 100 workers. But in late 1976 and in early 1977, the number of workers grew. There were about – over 1,000 workers. And in early 1978, there were even more workers. I could see a worker everywhere. The number grew more and I could see only the heads at the airfield”); T. 24 June 2015 (HIM Han), E1/321.1, p. 24; T. 10 June 2015 (KEO Kin), E1/313.1, pp. 93-94; KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500 (indicating that by 1976 thousands of people arrived at the worksite from the East Zone, the West Zone and the Southwest Zone); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 23 (stating that “[t]here were many, many hundreds of people. It could be up to a thousand workers if members from all the units were combined”); T. 17 June 2015 (KONG Siek), E1/318.1, p. 56 (explaining that according to what she saw “there were up to thousands of workers.”); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 38 (explaining that from his observation there were tens of thousands of workers); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 3, ERN (En) 00426308 (“From my estimation there were approximately more than one thousand soldiers working at the Kampong Chhnang airport worksite”); KHOEM Samhuon Interview Record, E3/3962, pp. 6-7, 6 March 2009, ERN (En) 00293367-00293368 (stating that when he arrived at the worksite of Kampong Chhnang he saw “tens of thousands of people working”, adding that he heard that there were 120,000 men and women mostly from the East Zone); KONG Kim DC-Cam statement, E3/3960, 9 July 2002, pp. 40-41, ERN (En) 00633896-00633897 (stating that there were thousands of workers at the Airfield, “most of whom were the East Zone people”).

<sup>5903</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 101-102 (explaining that he was assigned to cut rocks in order to install the explosive in the hole, with another comrade being specialised in burning the explosive); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 66 (talking about a rock-breaking unit); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 39.

<sup>5904</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 28 (explaining that this was his assignment).

<sup>5905</sup> T. 17 June 2015 (KONG Siek), E1/318.1, pp. 40-42 (describing this activity as extremely difficult and as putting a lot of strain on her body, to the point that she had chest pain and some women did not have a regular period due to the heavy nature of the task); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 60 (explaining that her job was to carry earth to build the road at the worksite so that the road could later be compressed).

<sup>5906</sup> T. 10 June 2015 (KEO Kin), E1/313.1, p. 94 (testifying about his assignment); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 66 (explaining that there was a group in charge of digging the roots of all kinds of trees, including palm trees).

<sup>5907</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 6.

1738. Workers were assigned to different units performing different tasks on rotation.<sup>5908</sup> Each unit was headed by a unit chief who gave the workers assignments based on the instructions received from their superiors.<sup>5909</sup> Some workers received their work assignments during morning meetings held before starting the work,<sup>5910</sup> while others would simply be called to work.<sup>5911</sup>

1739. Witnesses' accounts differ with regard to their working hours. Some witnesses testified that in the morning each unit would depart to their respective workstation at around 6:30 a.m. and the work would start at 7:00 a.m. The workers then rested at 11:00 a.m. and had lunch at 11:30 a.m. Work started again at 1:00 or 1:30 p.m. and stopped at 5:00 or 5:30 p.m.<sup>5912</sup> Witness KEO Loeur, a worker from Division 310, testified that during the period in which he was tempered, he worked from 4:00 a.m. until 11:00 a.m. and from 1:00 p.m. until 6:00 or 7:00 p.m.<sup>5913</sup> In some instances he had to continue working until 9:00 or 10:00 p.m.<sup>5914</sup> After he came back from training in Phnom Penh his work was a bit less difficult and lighter than before.<sup>5915</sup> NUON Trech, a worker from Division 310 who was sent to Kampong Chhnang Airfield for refashioning, worked

<sup>5908</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 26 (stating that sometimes they were assigned to the dirt-digging group and some other times to the rock-breaking group, so they did not do any particular work all the time); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 45 (explaining that in his unit there was a rotation in the workers' tasks and that there was variation in the nature of the work as they were asked to dig the ground, or to flatten the soil or to dig a canal); T. 24 June 2015 (HIM Han), E1/321.1, p. 35 (explaining that they received their work assignments on a daily basis).

<sup>5909</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 69-70 (testifying that *Bong Maly* would chair the meetings and she would relay the work plan and instructions she received from her superiors); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 65 (explaining that Met would assign tasks to the various cadres and then the units would lead their members to engage in their tasks); T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 35, 45 (explaining that his immediate supervisor received the instructions from the upper echelon and relayed the instructions to him and his colleagues).

<sup>5910</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 102 (explaining that he had to wake up at 3:00 a.m. for a meeting); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 69-70 (testifying that she would receive her work assignments during the morning meetings which were held at 5:00 a.m.); SRUN Chey Interview Record, E3/5526, 11 December 2009, pp. 4-5, ERN (En) 00426309-00426310 (explaining that he attended the livelihood meetings on a daily basis and that each group chief initiated the session by talking about the daily work and the assignments).

<sup>5911</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 37 (testifying that he did not attend meetings but that when they were required to work, a bell would be rung and they would be called to line up. There was a bell in each unit and each hall).

<sup>5912</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 20 (explaining that he had "regular working hours starting from 7.00 until 11 a.m. in the morning, and I would resume work from 1 p.m. to 5 p.m."); T. 24 June 2015 (HIM Han), E1/321.1, p. 21 (testifying that his unit would start work at 9:00 a.m., take a break after 11:00 a.m. and start working again at 2:00 p.m. until 5:00 p.m.); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 90 (stating that "[f]or the morning time, we usually left around 6.30 a.m. and the work started at 7.00 a.m., and we stopped at 5.30 in the afternoon.")

<sup>5913</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 19 and T. 15 June 2015 (KEO Loeur), E1/316.1, p. 73.

<sup>5914</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 73.

<sup>5915</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 19-20, 23.

from 4:00 a.m. until 11:00 a.m. or 12:00 p.m. and then from 12:00 p.m. or 1:00 p.m. until 8:00 p.m. or 10:00 p.m., in the latter case with a short break between 5:00 and 6:00 p.m.<sup>5916</sup> Civil Party KONG Siek, a worker from Regiment 53 within Division 450, stated that her unit started work at 5:00 a.m., stopped at 11:00 a.m., started again at 1:00 p.m. and continued until 5:00 p.m. or, at times, until 9:00 p.m.<sup>5917</sup> In some units, workers continued working at night,<sup>5918</sup> whereas in others there were night shifts covered by different workers.<sup>5919</sup> KEO Kin testified that trucks and other machinery were used during the night time.<sup>5920</sup> Some units were allowed a short break.<sup>5921</sup> However, workers with harsh chiefs were not allowed to take even a short rest.<sup>5922</sup>

1740. The NUON Chea Defence submits that “the lowest level authorities – unit or group chiefs – had a lot of discretion on the living and working conditions, which varied widely from unit to unit”.<sup>5923</sup> The Chamber concurs that there were differences among units with respect to working hours, rest times and food rations. At the same time, the Chamber has established that instructions related to the work plan were passed through the chain of command by SOU Met to Lvey, and were then relayed to the unit chiefs who, in turn, instructed the workers in their units.<sup>5924</sup> This finding is corroborated by the evidence of CHAN Morn, a unit chief who testified that instructions relating to the tasks to be completed, their location and the number of people to be assigned to them,

<sup>5916</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 67, 71; T. 7 December 2016 (NUON Trech), E1/508.1, pp. 7-8 (stating he worked from around 4:00 a.m. until 11:00 a.m., rested for one hour and then started to work again from 12:00 p.m. to 5:00 p.m., and then again from 6:00 to 10:00 p.m.) The Chamber notes the two different accounts of this witness and finds it reasonable to conclude that NUON Trech’s working hours may have varied slightly at different times and during different periods and that he worked at times until 8:00 p.m. and other times until 10:00 p.m.

<sup>5917</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 38.

<sup>5918</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 42 (testifying that he worked at night usually from 7:00 p.m. to 10:30 p.m.), 95-96 (explaining that in his unit those who worked during the day would also work during the night); T. 24 June 2015 (HIM Han), E1/321.1, pp. 20, 22 (stating that whenever they were needed, they worked extra four hours from 6:00 p.m. to 10:00 p.m.); T. 7 December 2016 (NUON Trech), E1/508.1, pp. 7-8 (stating his unit had to work every night from 6:00 to 10:00 p.m.); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 56.

<sup>5919</sup> SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 4, ERN (En) 00426309 (stating that there were night shifts and that “those who worked during the day did not have to work at night.”).

<sup>5920</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 42 (explaining that machineries like bulldozers, compression rollers and others were used during the night).

<sup>5921</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 95 (explaining that “when workers were too exhausted or tired, they would be allowed by their group chief to take a short rest for water or a cigarette. The situation varied depending on those group or unit chiefs.”); T. 17 June 2015 (KONG Siek), E1/318.1, p. 38 (indicating that they had a 15-minute break).

<sup>5922</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 95; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 58.

<sup>5923</sup> NUON Chea Closing Brief, para. 1074.

<sup>5924</sup> See above, para. 1730.

as well as to the amount of food and medicines to be provided to the workers, were relayed by Lvey to him orally.<sup>5925</sup> In light of the above, the Chamber concludes that while general instructions on work assignments, food and health were provided by the worksite leadership to the unit chiefs, the latter also enjoyed a margin of discretion in determining how to meet the working targets and regulate the workers' working and living conditions at the Airfield.

1741. The NUON Chea Defence also contends that, contrary to what is stated in the Closing Order,<sup>5926</sup> there is no evidence that different working and living conditions were imposed on the workers "depending on 'how much of a traitor' they were perceived to be".<sup>5927</sup> While there is no direct evidence of orders or directives explicitly aimed at implementing differentiated treatment among the workers on the basis of such perception, the Chamber finds that the available evidence concerning the working conditions indicates that those workers considered "bad elements" or enemies were subjected to harsher treatment than the loyal Division 502 soldiers and cadres. In this sense, the Chamber recognises, as pointed out by the NUON Chea Defence,<sup>5928</sup> that CHAN Morn, a trusted member of Division 502, worked alongside East Zone workers to cut and collect trees in the forest. The Chamber notes, however, that he did so in a supervisory position.<sup>5929</sup> Furthermore, CHAN Morn testified that when he was initially assigned to accompany the Chinese to survey and take measurements at the Airfield, he would stay with them at the Chan Sari barracks where the workers' supervisors also stayed, whereas the workers would sleep inside the worksite "where they were dropped to work".<sup>5930</sup>

1742. Workers from Divisions 310 and 450 were subjected to longer working hours.<sup>5931</sup> Some witnesses have also indicated that the units assigned to the dangerous

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<sup>5925</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 42 ("When I went to collect the rice he didn't give me any letter of authorisation, he only instructed me that I should go and collect 20 or 30 sacks of rice and the amount of food including salt. And when I arrived at the location I just relayed the instruction from him to the people there. And the same thing applied when I went to collect medicine, and he never issued me any letter of authorisation at all. He only gave me his instructions verbatim and there was nothing else. The same rule applied when I was assigned to lead workers to complete tasks in various locations. He just told me what tasks to be completed, how many people would go with me and where to go.").

<sup>5926</sup> Closing Order, para. 390.

<sup>5927</sup> NUON Chea Closing Brief, para. 1077.

<sup>5928</sup> NUON Chea Closing Brief, para. 1077.

<sup>5929</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 35.

<sup>5930</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 31-34.

<sup>5931</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 73 (testifying that during the period in which he was being tempered, he had to work from 4:00 a.m. until 11:00 a.m. and from 1:00 p.m. until 6:00 or 7:00



task of breaking rocks were the ones from the East Zone, suggesting that the worksite authorities did not care if those workers died while carrying out the assignment.<sup>5932</sup> As discussed in more detail below, workers from Divisions 310, 450 and from the East Zone were arrested following allegations of treason within their ranks. The Chamber concludes that they were subjected to longer working hours as punishment for their association with Divisions considered as traitorous.

1743. The Chamber rejects the NUON Chea Defence's submission that Division 310 workers were assigned to work closely with the Chinese experts on technical tasks in the same way as Division 502 members.<sup>5933</sup> The Chamber notes that, of the witnesses referred to by the NUON Chea Defence,<sup>5934</sup> CHAN Morn and KEO Kin belonged to Division 502.<sup>5935</sup> KEO Loeur, who belonged to Division 310,<sup>5936</sup> was assigned to work on the terrain surveying section after having completed a training in Phnom Penh. However, it is not clear from the evidence that the terrain surveying section was composed of Chinese technicians at the time the witness was assigned to work there, as terrain surveying was undertaken by the Chinese when the construction of the Airfield began.<sup>5937</sup> The witness was sent there only after having been re-educated, which indicates that he may not have been considered an enemy or a bad element anymore, despite his provenance from the allegedly traitorous Division 310.<sup>5938</sup> In fact, the testimony of SEM Hoeurn, the only member of Division 310 referred to by the NUON Chea Defence, only indicates that Chinese experts were placed within working units to supervise the workers and provide them with advice on how to best clear the land and

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p.m., and in some instances he had to continue working until 9:00 or 10:00 p.m.); T. 7 December 2016 (NUON Trech), E1/508.1, pp. 7-8 (stating he worked from around 4:00 a.m. until 11:00 a.m., rested for one hour and then started to work again from 12:00 p.m. to 5:00 p.m., and then again from 6:00 to 10:00 p.m.); T. 17 June 2015 (KONG Siek), E1/318.1, p. 38.

<sup>5932</sup> See below, para. 1756. See also, T. 24 June 2015 (HIM Han), E1/321.1, pp. 16-19 (testifying that soldiers from the East Zone, whom he recognised by their accent, were assigned to use explosives to break the rocks as this was a particularly dangerous activity which often caused the death of the people assigned to do it. Therefore it was, in the witness's opinion, a "method of execution"); SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 5, ERN (En) 00426310; T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 41-42.

<sup>5933</sup> NUON Chea Closing Brief, para. 1077.

<sup>5934</sup> NUON Chea Closing Brief, para. 1077, fn. 3617.

<sup>5935</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 26-27 and T. 10 June 2015 (KEO Kin), E1/313.1, pp. 90-91 respectively.

<sup>5936</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 6-9.

<sup>5937</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 30-31.

<sup>5938</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 23.

compact the soil, which cannot be considered tasks of a particularly technical nature.<sup>5939</sup> The Chamber finds that the NUON Chea Defence misrepresents the evidence of SEM Hoern.

1744. Workers could not refuse to work, otherwise they would be accused of being an enemy, would disappear or would be threatened.<sup>5940</sup> Specifically, they were told that those who disobeyed instructions would be removed or killed.<sup>5941</sup> Workers were afraid of being killed if they did not work hard.<sup>5942</sup> On the basis of this evidence, the Chamber finds that the workers were forced to work.

1745. Workers did not get any payment for the work done.<sup>5943</sup> They worked every single day of the month without the possibility of taking any day off.<sup>5944</sup> The working conditions were very demanding.<sup>5945</sup> The workers also had to work when it was

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<sup>5939</sup> T. 23 June 2015 (SEM Hoern), E1/320.1, p. 27 (“I did not know about the figure or the number of Chinese people and in my unit there was one Chinese who was there to work with us and he supervised us how to clear the land and compact the soil.”).

<sup>5940</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 17 (regarding accusations of being an enemy); T. 24 June 2015 (HIM Han), E1/321.1, pp. 43-44 (regarding disappearances); T. 24 June 2015 (HIM Han), E1/321.1, p. 44 (testifying that their unit chiefs would ask them “[d]o you want to live or to die? And if you want to die, you tell us. And if you want to live, just keep on working, and working hard.”).

<sup>5941</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 57 (testifying that workers were told at meetings that they would die if they betrayed the revolution); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 82 (explaining that she was very vigilant as she heard at meetings that workers who disobeyed instructions would be “removed”). *See also*, T. 11 Aug 2016 (CHHAE Heap), E1/455.1, p. 34 (testifying “[a]nd they told us that if we worked hard, *Angkar* would keep us. For those who were lazy, they would be taken out. And that was the time that I realized what would happen if I was lazy.”).

<sup>5942</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 34 (explaining that workers did not have guns pointed at them in order to make them work, but they encouraged each other to work to meet the quota on time. “We were just focusing on our work because we were afraid that we were killed. Everyone was thinking that we had nowhere to go besides working hard for them.”); T. 17 June 2015 (KONG Siek), E1/318.1, p. 38; T. 24 June 2015 (HIM Han), E1/321.1, p. 44.

<sup>5943</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 17 (“Q. Did you get paid for the work? A. No. Of course, you didn’t get any wage from the work there.”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 63 (explaining that there was no “benefit” given to her for her hard work).

<sup>5944</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 17 (explaining that “[t]here was no Thursday or no Sunday or no weekends.”); T. 11 June 2015 (KEO Kin), E1/314.1, p. 14 (explaining that they had to do their work always); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 58 (explaining that there was no time to rest unless someone was sick or had their period).

<sup>5945</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 63; T. 17 June 2015 (KONG Siek), E1/318.1, p. 36 (explaining that “the working conditions were very, very tough at that time. But I dared not say no. I had to do what I was assigned.”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 87 (explaining that under the regime she was “forced to work as an animal”); Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, p. 83, ERN (En) 00377742 (stating that “[i]t was the same as the other concentration camps throughout the country and the work at the airfield was intensive and pure labour. Therefore life there was extremely difficult.”).

raining.<sup>5946</sup> Furthermore, they were urged to complete the work quickly in order for the Airfield to be operational in a short period of time.<sup>5947</sup>

1746. There were no work quotas imposed on individual workers, but each unit was assigned a specific overall quota that it needed to achieve.<sup>5948</sup> If they could not achieve their quota by the end of the day, the workers had to work extra hours.<sup>5949</sup>

### 11.3.8. *Living Conditions*

1747. Workers had two meals per day.<sup>5950</sup> While accounts of the type and quantity of food varied, the Chamber finds that the food was not sufficient for the hard work that had to be carried out.<sup>5951</sup>

1748. Workers were very skinny.<sup>5952</sup> They would cook and eat within their group.<sup>5953</sup>

<sup>5946</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 20; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 61.

<sup>5947</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 67 (explaining that at meetings she heard Met speaking about completing the project quickly in the presence of the Chinese). *See also*, T. 29 July 2015 (KHIN Vat), E1/325.1, p. 63 (explaining that the word had spread that the workers tasked with building the Airfield were “constantly forced to expedite their work in order to have the airport completed and put into operation as soon as possible.”).

<sup>5948</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 44 (explaining that if they did not complete their work during daytime, they would work during the night to complete the work quota); T. 17 June 2015 (KONG Siek), E1/318.1, p. 38 (explaining that “[w]e had to accomplish the target”).

<sup>5949</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 46.

<sup>5950</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 6; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 56 (indicating that no breakfast was given to her and her co-workers).

<sup>5951</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 72 (testifying that they had rice, gruel and fish from the Great Lake); T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 82-83; T. 7 December 2016 (NUON Trech), E1/508.1, p. 6 (testifying that the food ration was one bowl of rice mixed with banana and that the amount of cooked rice was less than the banana); T. 23 June 2015 (HIM Han), E1/320.1, pp. 80-81 (testifying that “the amount of the actual rice was very little. And if you put all those rice grains together, it amounted to about only two ladles.”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 56-57 (stating that the daily food ration for her 11-member group was two cans of rice mixed with 10 cans of corn, which covered both lunch and dinner); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 70-71 (indicating that those with a big appetite would not be satisfied and that sometimes she had to drink more water to fill up her stomach); T. 17 June 2015 (KONG Siek), E1/318.1, p. 39; T. 23 June 2015 (HIM Han), E1/320.1, p. 80 (stating that “[t]he food was insufficient”); T. 24 June 2015 (HIM Han), E1/321.1, p. 30; T. 12 June 2015 (KEO Loeur), E1/315.1, p. 21 (stating that they had rice and sour soup in the morning, and in the afternoon a little bit of meat and fish); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 56-57. *See also*, SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 4, ERN (En) 00426309 (explaining that while initially the food was sufficient, by late 1977 there was insufficient food and the ration was reduced); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 22.

<sup>5952</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 7; T. 17 June 2015 (KONG Siek), E1/318.1, p. 44 (explaining that all workers at the Airfield were “rather bony, and the only big thing that you could see was the head and the two knees – kneecaps.”); T. 23 June 2015 (HIM Han), E1/320.1, p. 90 (explaining that everyone, including him, was skinny and bony because they were suffering from exhaustion); T. 28 November 2016 (BEIT Boern), E1/502.1, p. 44.

<sup>5953</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 21; T. 7 December 2016 (NUON Trech), E1/508.1, p. 26; T. 11 June 2015 (KEO Kin), E1/314.1, p. 67 (testifying “we cooked and ate communally together in the group.”).

They did not have access to clear drinking water.<sup>5954</sup>

1749. With regard to hygiene, workers did not have soap to wash their hands or bodies.<sup>5955</sup> There was neither a toilet nor a proper bathroom and people had to relieve themselves in the nearby forest.<sup>5956</sup> The area where workers lived and worked was not regularly cleaned.<sup>5957</sup>

1750. Workers developed a number of diseases, including malaria,<sup>5958</sup> and suffered from symptoms such as swollen limbs, high temperature and fever.<sup>5959</sup> A number of witnesses believed that workers became sick due to the hot weather and the exhaustion.<sup>5960</sup> KONG Siek explained that the cement she had to carry was too heavy for her and stated:

I walked in lower and bent posture like a duck, but they had to make me do it, that's why it affects my body. I had suffered, and now I am still suffering from that overwork. My chest and waist have been in pain. I am on regular medication, such as high blood pressure and blood vessel, that's why I can live until today.<sup>5961</sup>

1751. Similarly, CHUM Samoeurn explained that when her menstruation was interrupted she was accused of being pregnant and that she had abdominal pain, which affected her physically and emotionally.<sup>5962</sup> The Chamber is satisfied that the hard work had a serious negative impact on the physical and psychological condition of the workers at the Airfield.

1752. Severely sick people were transported to the hospital in the provincial town of

<sup>5954</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 43; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 57-58 (explaining that the water they drank was unhygienic as they had to drink water from the stream).

<sup>5955</sup> T. 17 June 2015 (KONG Siek), E1/318.1, pp. 39-40 (explaining that when women had their periods they were not provided with soap or anything to clean or wash their clothes which smelled terribly as a result); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 59 (stating that sometimes the workers had to use the dry bark from luffa gourds to clean their skin and many of them were infected by lice).

<sup>5956</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 43.

<sup>5957</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 71 (stating that as a consequence of the lack of hygiene and the fact that the place was not regularly cleaned, workers developed symptoms such as fever and numbness in the hands and legs).

<sup>5958</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 77; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 72; T. 11 June 2015 (KEO Kin), E1/314.1, p. 43.

<sup>5959</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 43; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 71.

<sup>5960</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 71-72 (explaining that five to 10 workers would become sick out of 90 workers); T. 11 June 2015 (KEO Kin), E1/314.1, p. 30 (stating that people would become sick due to insufficient food or overwork).

<sup>5961</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 92.

<sup>5962</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 87.

Kampong Chhnang.<sup>5963</sup> When they recovered from illness they returned to the worksite.<sup>5964</sup> Sick workers who could walk would still be required to work.<sup>5965</sup> They were treated with pills.<sup>5966</sup> They were treated by medics present at the worksite.<sup>5967</sup> NUON Trech explained that when they were not seriously sick, although exhausted, workers would still try to go to work.<sup>5968</sup>

1753. Workers were assigned to sleep with their respective units,<sup>5969</sup> close to their

<sup>5963</sup> T. 7 December 2016 (NUON Trech), E1/508.1, pp. 17 (explaining that “serious patients” were taken to Kampong Chhnang hospital), 24-25 (testifying that Kampong Chhnang hospital was a military hospital managed by Division 502 and was dedicated to the treatment of Kampong Chhnang Airfield workers. It was located in Kampong Chhnang provincial town. The witness stated that he was once taken there because he was suffering from malaria); T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 17-18 (answering the question whether he knew that there was a hospital in Kampong Chhnang by replying that “[t]here was in town” and stating that when his colleagues fell seriously sick the truck would come to pick them up and send them to the city); T. 11 June 2015 (KEO Kin), E1/314.1, p. 31 (explaining that “[s]everely-sick people were sent to the hospital”); T. 23 June 2015 (HIM Han), E1/320.1, p. 86 (testifying that injured people would be referred to the hospital in Kampong Chhnang). The Chamber notes that while CHAN Morn testified that sick people were transported to the hospital by ambulance (*see* T. 9 June 2015 (CHAN Morn), E1/312.1, p. 77), NUON Trech indicated that a vehicle, the “Korean-made one”, was used to truck people to the hospital (*see* 7 December 2016 (NUON Trech), E1/508.1, p. 25). KEO Kin said that sick people were transported in earth-carrying trucks (*see* T. 11 June 2015 (KEO Kin), E1/314.1, p. 30).

<sup>5964</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 18; T. 11 June 2015 (KEO Kin), E1/314.1, p. 31 (stating that the majority of the sick returned to the worksite).

<sup>5965</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 72 (stating that they would be assigned to engage in lighter tasks, such as producing fertiliser, caring for the children or helping the people working in the kitchen); T. 7 December 2016 (NUON Trech), E1/508.1, p. 18 (testifying that if they had a fever they would be prescribed paracetamol and would be allowed to rest for a brief moment; if they had a temperature but could still work, they would be made to go to work); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 62-63 (explaining that she had an infection in one hand and was given rabbit drop pellets; she was not allowed to rest as she was told she could work with the other hand).

<sup>5966</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 18 (explaining that those who had a fever would be given paracetamol); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 17 (testifying that “[t]hey were locally made pellets; they were not imported”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 62-63 (explaining that she was given rabbit drop pellets). The Chamber notes that some workers were treated with modern medicines and others with traditional medicines.

<sup>5967</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 17; T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 55. *See also*, SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 4, ERN (En) 00426309 (stating that each unit had a medic). The Chamber does not place relevance on KEO Kin’s statement that there were no medics at the Airfield (*see* T. 11 June 2015 (KEO Kin), E1/314.1, p. 31). While KEO Kin’s testimony may be an accurate representation of the witness’ personal experience at the worksite, this does not reflect the overall situation as described by the consistent evidence of the other witnesses who testified that medics were in fact present at the Airfield.

<sup>5968</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 18. The Chamber has made general findings about the medical treatment provided during the DK period in the Trapeang Thma Dam section of this Judgement. *See* Section 11.1.8.5.1: Trapeang Thma Dam Worksite: CPK Approach to Health.

<sup>5969</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 26; T. 10 June 2015 (KEO Kin), E1/313.1, p. 102 (explaining that the workers stayed within their own squads and that they lived and worked in their respective teams); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 88 (stating that while she was working at the worksite, she stayed at an old existing house to the north of Preah Theat pagoda, and all workers in the rice field stayed in that house, some sleeping in the house and some others on the ground nearby); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 50.

workplace,<sup>5970</sup> in halls or shelters.<sup>5971</sup> Mats and mosquito nets were not provided in some units,<sup>5972</sup> but were in others.<sup>5973</sup> Workers normally slept on the floor.<sup>5974</sup>

1754. In light of the above, the Chamber finds that the living conditions, including insufficient nutrition, lack of hygiene and extremely poor sanitary conditions, were inadequate to sustain the workers in the assignments they had to undertake.

### 11.3.9. *Injuries and Deaths resulting from Working and Living Conditions*

1755. Those who worked at the rock breaking unit sometimes got injured because rock fragments hit them after an explosion, despite the fact that a wall was built in order to protect them.<sup>5975</sup> KEO Kin testified that he saw workers who were hit by rock fragments and died on the spot.<sup>5976</sup> NUON Trech, who was assigned to cut rocks in order to install the explosive in the hole,<sup>5977</sup> testified that he personally saw wounded workers who were taken away to the hospital. However, he did not know whether they subsequently

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<sup>5970</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 31-32 (testifying that he worked in the transportation unit and would sleep in hammocks in the building where the vehicles were parked); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 34 (explaining that the workers stayed where they worked within the Airfield construction site, “[t]hey just slept where they were dropped to work.”).

<sup>5971</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 16 (stating that workers were allowed to stay in long halls with thatch roof); T. 24 June 2015 (HIM Han), E1/321.1, p. 21 (testifying that the sleeping quarter was in an old and broken shelter and that they did not have time or materials to fix it).

<sup>5972</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 39 (indicating that they did not have mosquito nets and they did not have mats to sleep); T. 24 June 2015 (HIM Han), E1/321.1, p. 21 (stating that they did not have mosquito nets or sleeping mats).

<sup>5973</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 89 (testifying that white mosquito nets were distributed).

<sup>5974</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 17 (testifying that they stayed in a “small house with a thatched roof and walls but there were no mosquito nets, hammocks or blankets in it”; 15 people stayed in each house); T. 7 December 2016 (NUON Trech), E1/508.1, pp. 16-17 (testifying that in the long halls there were sheets on the floor for the workers to sleep on); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 58-59 (explaining that they slept on the floor or on a rack in a long building where there was no sleeping mat or mosquito net).

<sup>5975</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 102-106 (testifying about his own experience as a member of the rock blasting unit); T. 7 December 2016 (NUON Trech), E1/508.1, p. 3 (confirming the content of the transcript of the audio recording of his OCIJ interview, where he indicated that those who got injured from the fast-flying rocks following an explosion would be taken to hospital); T. 11 June 2015 (KEO Kin), E1/314.1, p. 44 (testifying that he witnessed workers who were hit by rock fragments from the explosion); T. 23 June 2015 (HIM Han), E1/320.1, p. 79 (stating that “breaking the rocks caused injuries.”); T. 24 June 2015 (HIM Han), E1/321.1, pp. 17-19; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 62 (explaining that “[t]he wall was built at the base of the mountain. However, despite the wall being built for the protection, workers there still got injured from fragments of rock blasts through explosions as the fragments flew past the wall.”). *See also*, KOY Mon Interview Record, E3/369, 29 May 2008, p. 5, ERN (En) 00272717 (stating that at Kampong Chhnang Airfield soldiers were made to break stones to build the Airfield and that “[a]s they used mines to break the stones, some prisoners got eye injured (blind), broken arm/leg from a collapse of big piece of stones.”).

<sup>5976</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 44.

<sup>5977</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 101.

died or survived.<sup>5978</sup> Witness HIM Han, a worker from Division 310 who was assigned to transport rocks, testified that there were no protection kits for workers engaged in breaking rocks and that people were killed by the rock fragments.<sup>5979</sup> He also explained that the lighting wire of the explosive was short, so the person tasked with igniting it would not have time to find shelter from the explosion in time.<sup>5980</sup> The witness also testified that a worker injured by the rock fragments would be carried to the ambulance if it came on time. Otherwise, “that individual would be left alone like animal”.<sup>5981</sup> HIM Han indicated that “people died from the fragments of the rock almost every day” showing that a large number of people were involved in this type of accident.<sup>5982</sup> Based on this evidence, the Chamber concludes that many people died as a result of the explosions and insufficient safety precautions, including the lack of protective gear.

1756. Witnesses also indicated that these forms of hard labour were used as a “method of execution” against people considered “bad elements”.<sup>5983</sup> In his statement to the OCIJ investigators, SRUN Chey clarified that the task of breaking rocks was given to people with bad backgrounds, namely those from the East Zone.<sup>5984</sup> HIM Han testified that workers from the East Zone were assigned to use explosives to break the rocks as this was a particularly dangerous activity which often caused the death of the people assigned to do it.<sup>5985</sup> The Chamber finds that the breaking of rocks was highly risky for the workers involved. In addition, the lack of protective gear and the manner in which the explosions were triggered allows the Chamber to conclude that the lives and physical security of those involved in these activities were at the very least considered

<sup>5978</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 3.

<sup>5979</sup> T. 23 June 2015 (HIM Han), E1/320.1, p. 86; T. 24 June 2015 (HIM Han), E1/321.1, pp. 17-18.

<sup>5980</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 18.

<sup>5981</sup> T. 23 June 2015 (HIM Han), E1/320.1, p. 87.

<sup>5982</sup> T. 23 June 2015 (HIM Han), E1/320.1, p. 86.

<sup>5983</sup> T. 24 June 2015 (HIM Han), E1/321.1, pp. 16-19 (testifying that workers from the East Zone, whom he recognised by their accent, were assigned to use explosives to break the rocks as this was a particularly dangerous activity which often caused the death of the people assigned to do it. Therefore it was, in the witness’s opinion, a “method of execution”). *See also*, T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 41-42.

<sup>5984</sup> SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 5, ERN (En) 00426310 (explaining that the people from the East Zone were considered “bad elements”, because they had “bad backgrounds”, and people with “bad backgrounds” were sent to break rock at Ta Baing mountain. The rock was used as airfield foundation). *See also*, KOY Mon Interview Record, E3/369, 29 May 2008, p. 5, ERN (En) 00272717 (stating that at Kampong Chhnang Airfield his unit, which belonged to Division 170, was made to break stones to build the Airfield).

<sup>5985</sup> T. 24 June 2015 (HIM Han), E1/321.1, pp. 16-19 (the witness recognised they were from the East Zone because of their accents).

as expendable.

1757. In addition to accidents connected with the rock breaking, many workers at the Airfield were injured or died as a result of other accidents.<sup>5986</sup> The injured workers were taken to the Kampong Chhnang hospital.<sup>5987</sup>

1758. Some workers died from overwork and starvation.<sup>5988</sup> There was no ritual ceremony for the deceased;<sup>5989</sup> the dead body would simply be buried.<sup>5990</sup>

1759. The Chamber notes that the Closing Order charges that suicides of workers occurred on a weekly basis, based on the evidence of CHAN Morn.<sup>5991</sup> The Chamber heard evidence by CHAN Morn and KHIN Vat on this issue and notes that both of them provided hearsay evidence.<sup>5992</sup> The Chamber notes that the conditions at the worksite were so appalling that the occurrence of suicides would have been unsurprising. However, the available evidence is not sufficient to support a finding beyond reasonable doubt that suicides occurred.

1760. During Closing Statements, the NUON Chea Defence contended that the Co-

<sup>5986</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 68; T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 58 (testifying that “[w]hen people were assigned to drill the rock, they had to climb up the mountain and some fell down and died, for example, when they climbed up, the rocks slipped away or they did not hold the rock firmly and they fell off that mountain. They died because of this.”); SEM Hoeurn Interview Record, E3/5280, 10 March 2009, p. 5, ERN (En) 00290516 (“I was assigned to drill rock there and I noticed people were falling off the crags. These incidents occurred every day. In just one night, two to three people died.”).

<sup>5987</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 17 and 24-25 (testifying that Kampong Chhnang hospital was a military hospital managed by Division 502 and was dedicated to the treatment of Kampong Chhnang Airfield workers. It was located in Kampong Chhnang provincial town. The witness stated that he was once taken there because he was suffering from malaria); T. 23 June 2015 (HIM Han), E1/320.1, p. 86 (testifying that injured people would be referred to the hospital in Kampong Chhnang).

<sup>5988</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 15 (confirming his previous statement to the investigators that at the worksite he saw people die from overwork and starvation), 21 (stating that “some people who were carrying earth and who were digging the earth fell and became unconscious. And many of them died because of their work and because of the fact that they were too fatigued”), 26 (stating that he did not see any guards die from overwork or starvation and that “the only people who died from overwork or starvation were those workers.”); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 57.

<sup>5989</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 24.

<sup>5990</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 24; T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 55.

<sup>5991</sup> See Closing Order, para. 392, footnote 1717 referring to CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 5, ERN (En) 00292823.

<sup>5992</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 71; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 63 (explaining that in one instance he saw the dead body of a woman who was crushed by a roller being lifted and placed onto an ambulance. The witness did not see the woman walking into the roller but he was told by a colleague that that was what had happened); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 80-81 (explaining that she heard of a young worker who ran into a truck and was thus killed. The witness heard about this accident from a rock transportation driver who told his mates that a young worker suddenly ran into his truck and that he could not press the brake in time so the person was killed. KHIN Vat also heard of another person working at the truck garage who hung himself).



Prosecutors had failed to prove any causal link between alleged deaths and the working or living conditions at cooperatives and worksites.<sup>5993</sup> The Chamber rejects this contention considering that the evidence reviewed above clearly shows that at Kampong Chhnang Airfield workers died as a direct result of those conditions, including from explosions, fatal accidents, overwork and lack of food.

### 11.3.10. *Meetings*

1761. Meetings were held regularly in each unit.<sup>5994</sup> They were chaired by the unit chiefs.<sup>5995</sup> The nature of the meetings varied, and included criticism and self-criticism meetings,<sup>5996</sup> as well as meetings where workers were instructed to work hard and complete their tasks under threat that they would be killed or refashioned if they did not.<sup>5997</sup> At meetings workers were told that they had to be tempered because their

<sup>5993</sup> T. 19 June 2017, E1/524.1, p. 96.

<sup>5994</sup> Witnesses' accounts differ as to the frequency of these meetings, ranging from every day (SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 5, ERN (En) 00426310) to once every three days (see T. 7 December 2016 (NUON Trech), E1/508.1, p. 19). The Chamber notes in particular a report made by Ren on the activities of Division 170 in Kampong Chhnang Airfield, where it is indicated that "[a] number of combatants pretend to be lazy to perform their work, and some were lazy to attend the meetings. They say there is no point holding a meeting every day and they are so lazy; they do not care wherever they will be taken to". See Report on Division 170, E3/1182, 6 July 1977, ERN (En) 00598174 (emphasis added). The Chamber does not consider HIM Han's statement that there were no meetings at the Airfield (see T. 23 June 2015 (HIM Han), E1/320.1, p. 89) to undermine the consistent evidence provided by the other witnesses that meetings were held regularly at the worksite. The Chamber considers it possible that HIM Han's unit did not hold any meetings, and that therefore, while the witness' statement reflects his personal experience, it is not indicative of the overall situation at the worksite.

<sup>5995</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 84; KEO Kin Interview Record, E3/5273, 12 February 2009, p. 6, ERN (En) 00290502; SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 5, ERN (En) 00426310.

<sup>5996</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 13-14 (explaining that criticism meetings would be held to see if workers could implement the work. After the criticism meeting and if the person did not deter, he or she would disappear. Another meeting would be called later to warn others not to follow the steps of the individual who disappeared); T. 17 June 2015 (KONG Siek), E1/318.1, p. 84 (explaining that her unit chief would convene self-criticism sessions in the evening where she would criticise the people who did not accomplish their work). See also, SRUN Chey Interview Record, E3/5526, 11 December 2009, p. 5, ERN (En) 00426310 ("I attended the livelihood meetings on a daily basis. The meetings were held by each group and unit. Each group chief initiated the session by talking about the daily work and who did what. He also talked about criticism targeting those who were lazy who criticized or talked badly about the party who ate freely or stole food etc. They would be criticized and they had to re fashion themselves by promising not to do it again.").

<sup>5997</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 62 (testifying that "[t]he meetings were held and the main gists [*sic*] of the meetings were for us to strive work harder to achieve the work quota and nothing else was the main focus besides this one."); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 57 (stating that "[i]n the meetings, we were told that the upper echelon wanted us to refashion well and to stick to only the lines of the Revolution. That was what people at the lower level were instructed; and that if we were to betray the revolution, we would be dead."); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 82 (explaining that she was very vigilant as she heard at meetings that workers who disobeyed instructions would be "removed"). See also, T. 11 Aug 2016 (CHHAE Heap), E1/455.1, p. 34 (testifying "[a]nd they told us that if we worked hard, *Angkar* would keep us. For those who were lazy, they would be taken out. And that was the time that I realized what would happen if I was lazy.").

leaders had been traitors and that if they were not tempered they would also be arrested.<sup>5998</sup>

### 11.3.11. *Chinese Support and Presence*

1762. China and Cambodia had a strong relationship during the DK period and China provided extensive support and assistance to Cambodia.<sup>5999</sup> In the context of official visits and meetings between the two countries' leaders, both China and Cambodia described their relationship as one between "comrades-in-arms"<sup>6000</sup> or "brothers in arms".<sup>6001</sup> Chinese leaders paid visits to Cambodia on several occasions.<sup>6002</sup> CPK leaders similarly travelled to China to attend meetings.<sup>6003</sup>

1763. China provided Cambodia with assistance in the military field.<sup>6004</sup> In particular,

<sup>5998</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 15 (confirming his previous statement to the OCIJ).

<sup>5999</sup> *Vorn Vet Speech* (in FBIS collection), E3/283, 24 December 1976, ERN (En) 00167746 ("All these satisfactory victories scored by our people cannot be separated from the all out support accorded us by the CCP the Chinese Government and the Chinese people – our brothers – during the revolutionary war for liberating the nation and people as well as during our new revolutionary phase."); *PRC Party-Government Delegation Welcomed 5 Nov* (in FBIS collection), E3/77, 4 November 1978, ERN (En) 00170079-00170080 (indicating that China provided Cambodia with "vigorous and unconditional moral and material aid").

<sup>6000</sup> See e.g., *MU Ching Speech* (in FBIS collection), E3/283, 10 December 1976, ERN (En) 00167735-00167737; *PRC Minister Speaks at Phnom Penh Banquet 2 Jan* (in FBIS collection), E3/147, 2 January 1977, ERN (En) 00168447-00168448; *PRC Attaché Praises Ties with Cambodia at Reception* (in FBIS collection), E3/1358, 31 July 1977, ERN (En) 00168263-0016265.

<sup>6001</sup> See e.g., *PPDS, VORN Vet Speech* (in FBIS collection), E3/283, 24 December 1976, ERN (En) 00167745-00167746; *SON Sen's Speech* (in FBIS collection), E3/290, 30 September 1977, ERN (En) 00168614-00168616.

<sup>6002</sup> See e.g., *Reportage on Visit of PRC Trade Minister* (in FBIS collection), E3/274, 5 March 1976, ERN (En) 00167947-00167948 (describing a PRC economic and trade delegation headed by LI Chiang which arrived in Phnom Penh for an official visit at the invitation of the Cambodian government); *Fang I Friendship Delegation Arrives 24 December* (in FBIS collection), E3/283, 24 December 1976, ERN (En) 00167744 (describing a delegation of the PRC led by FANG I, Minister of Economic Relations with Foreign Countries, which arrived in Phnom Penh and was welcomed by VORN Vet, MEY Prang, CHHOEUR Doeun (Commerce Committee Chairman), CHEAT Chhe (Cambodian Revolutionary Army General Staff member) and CHENG An); *PRC Delegation Led by CHEN Yung-Khiei Arrives 3 Dec: Meets POL Pot* (in FBIS collection), E3/1339, 3 December 1977, ERN (En) 001678315 (describing a visit by a PRC delegation led by CHEN Yung-Kuei, member of the Politburo of the CCP Central Committee and vice premier of the PRC State, to DK in December 1977).

<sup>6003</sup> See e.g., *Economic Delegation Back from Europe DPRK, PRC* (in FBIS collection), E3/282, 29 October 1976, ERN (En) 00168024; *Visit to PRC* (in FBIS collection), E3/282, 29 October 1976, ERN (En) 00168024-00168025; *IENG Sary Delegation Visits Burma, PRC: Depart for Burma, 4-7 March PRC Visit* (in FBIS collection), E3/147, 4 March 1977, ERN (En) 00168515 (describing a DK delegation led by IENG Sary which paid a visit to the PRC from 4 to 7 March 1977).

<sup>6004</sup> Geng Biao's Report on the Situation of the Indochinese Peninsula, E3/7325, 16 January 1979 (published in January 1981), ERN (En) 01001626 ("Although we cannot send our troops directly into Cambodia, we do not deny many of our men are working in Cambodia. Some of them engage in construction work and some others are helping the Cambodians to fight on the battlefields. They number more than 1,500.").

China provided substantial support in building the Airfield at Kampong Chhnang.<sup>6005</sup> Heavy machinery was brought from China, including bulldozers, trucks, vehicles, earth-carrying baskets, steel and other materials which arrived at Kampong Som and were sent to the Kampong Chhnang Airfield worksite.<sup>6006</sup> Advisers and technicians also came from China and assisted in the construction of the Airfield.<sup>6007</sup>

1764. At the inception of the Airfield construction, a group of Chinese came to test the soil and measure the terrain.<sup>6008</sup> Lvey usually accompanied the Chinese visitors at the worksite.<sup>6009</sup>

1765. Chinese technicians and engineers were present at the construction site.<sup>6010</sup> They worked together with the Khmer people and would sometimes give instructions directly to the workers,<sup>6011</sup> or show them how to do a task while the workers observed.<sup>6012</sup> KHIN Vat testified that Chinese technicians together with cadres from Division 502 surveyed the construction of the runways, the water routes, the installation of electrical wires and

<sup>6005</sup> Book by P. Short: *Pol Pot, The History of a Nightmare*, E3/9, p. 302, ERN (En) 00396510. *See also, China Reported Sending Jets to Cambodia* (George McArthur, Los Angeles Times), E3/8251, 14 October 1978, ERN (En) 00166281; Standing Committee Minutes (copied by C.E. Goscha), E3/10686, 26 January and 2 February 1978, p. 18, ERN (En) 01324074 (stating that “China has agreed to fully construct five new projects: one naval base, *one airport*, one ammunition store and to expand one military equipment repairing factory and one tension cable factory.” [emphasis added]).

<sup>6006</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 13-14 and 34 (testifying that he saw and went to collect those machineries and materials); T. 22 June 2015 (SEM Hoern), E1/319.1, p. 54 (testifying that heavy machineries such as tractors and soil compactors were brought from China). *See also, China Reported Sending Jets to Cambodia* (George McArthur, Los Angeles Times), E3/8251, 14 October 1978 (reporting that Chinese aircraft were aboard ships arriving at the Cambodian port of Kampong Som and that China also sent to Cambodia jet fighter aircraft).

<sup>6007</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 34; T. 11 June 2015 (KEO Kin), E1/314.1, p. 69 (mentioning the presence of Chinese advisers who came to do terrain measurement and make a sketch of the Airfield project). *See also, China Reported Sending Jets to Cambodia* (George McArthur, Los Angeles Times), E3/8251, 14 October 1978.

<sup>6008</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 93-94, 97; T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 16-18.

<sup>6009</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 68; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 56 (explaining that sometimes he would see Met and Lvey meet the Chinese).

<sup>6010</sup> T. 24 June 2015 (HIM Han), E1/321.1, pp. 35 (explaining that they would communicate with the Chinese technicians through an interpreter), 23-24 (testifying that at the worksite he could see Chinese engineers everywhere and that they integrated different units, including the blasting unit and the soil compacting and land clearing unit); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 45 (explaining that he used to work with the Chinese airplane technicians), 52 (stating that at the worksite there were engineers from China).

<sup>6011</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 5 (stating that the Chinese only came to give them brief instructions, for example, how deep to dig the dirt); T. 23 June 2015 (SEM Hoern), E1/320.1, p. 28 (testifying that there was one Chinese in his unit who gave direct instructions to him and his colleagues and who always advised them on how to do the work); T. 24 June 2015 (HIM Han), E1/321.1, p. 24 and 36 (testifying that once in a while he and his colleagues would receive direct orders from the Chinese).

<sup>6012</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 35 (explaining that “[t]he interpreter would interpret what was said by the Chinese technicians, and sometimes they showed us how to do the task, and we observed”).

the construction of a five-storey building.<sup>6013</sup> According to HIM Han, they informed the Southwest Zone cadres of the work plan, which was subsequently relayed by the Southwest Zone cadres to the workers every day.<sup>6014</sup> They communicated with the workers through Chinese-Khmer interpreters.<sup>6015</sup> They did not work during the weekends or at night time.<sup>6016</sup>

1766. The Chinese had guards, belonging to the protection unit, looking after their security.<sup>6017</sup> The Chinese technicians did not sleep at the worksite but stayed in Kampong Chhnang provincial town.<sup>6018</sup>

### 11.3.12. *Security*

#### 11.3.12.1. *Guards and surveillance*

1767. Ordinary villagers or civilians and those without authorisation were not allowed to enter the premises of the worksite because the construction of the Airfield was a secret project.<sup>6019</sup> Guards patrolled the outer perimeter of the worksite.<sup>6020</sup> These guards were all forces from the Southwest.<sup>6021</sup> Additionally, West Zone sector troops captured and arrested individuals who attempted to escape from the Airfield.<sup>6022</sup> While KHIN

<sup>6013</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 61-62 (explaining that upon her arrival she saw the Chinese surveying the runway and engaging in other activities).

<sup>6014</sup> T. 24 June 2015 (HIM Han), E1/321.1, p. 36.

<sup>6015</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 87 and T. 10 June 2015 (CHAN Morn), E1/313.1, p. 55 (indicating that the interpreter was from Met's unit and that he would accompany the Chinese to various places); T. 24 June 2015 (HIM Han), E1/321.1, p. 35; T. 23 June 2015 (SEM Hoeurn), E1/320.1, p. 28.

<sup>6016</sup> T. 24 June 2015 (HIM Han), E1/321.1, pp. 24, 35.

<sup>6017</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 24; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 66.

<sup>6018</sup> KEO Kin Interview Record, E3/5273, 12 February 2009, p. 4, ERN (En) 00290500; T. 9 June 2015 (CHAN Morn), E1/312.1, p. 33 (testifying that he stayed with the Chinese at the Chan Sari barracks).

<sup>6019</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 26; T. 23 June 2015 (SEM Hoeurn), E1/320.1, p. 37; T. 11 June 2015 (KEO Kin), E1/314.1, pp. 70-71 (explaining that because ordinary civilians and non-authorised people could not enter the premises of the worksite, the witness concluded that it was a secretive project); T. 23 June 2015 (SEM Hoeurn), E1/320.1, p. 37; *China Reported Sending Jets to Cambodia* (George McArthur, Los Angeles Times), E3/8251, 14 October 1978, ERN (En) 00166282 ("The reports concerning Chinese jets recalled an unusual broadcast from Radio Hanoi early this year reporting that China was helping the Cambodians build a secret air base at Kompong Chhnang a provincial capital 50 miles northwest of Phnom Penh").

<sup>6020</sup> T. 10 June 2015 (KEO Kin), E1/313.1, pp. 101-102 (testifying that the guards were armed); T. 23 June 2015 (HIM Han), E1/320.1, pp. 78-79 (explaining that the guards were on patrol "surrounding the area that people were working in" and were far away from the workers).

<sup>6021</sup> T. 23 June 2015 (HIM Han), E1/320.1, p. 78.

<sup>6022</sup> Zone M-401 Report, E3/1094, 4 August 1978, ERN (En) 00315368 (reporting that the "defense unit" captured and arrested individuals who attempted to escape from the Airfield).

Vat<sup>6023</sup> and KEO Kin<sup>6024</sup> testified that there were no guards at the worksite, the Chamber finds that their statements can be explained by the fact that they mostly conducted their work outside of the Airfield perimeter.<sup>6025</sup> In this respect, the Chamber places more weight on the evidence of witnesses who worked inside the worksite perimeter and were more likely to have observed the presence of guards.

1768. Within the worksite, workers were under constant surveillance by guards or their unit chiefs.<sup>6026</sup> In this regard, KEO Loeur testified that unarmed guards wearing a military uniform were assigned to watch over a group of 30 or 40 workers.<sup>6027</sup> The witness also explained that he saw the security guards on patrol only at night time at around 8 or 9 p.m. and that they wore khaki uniforms.<sup>6028</sup> SEM Hoern testified that unit chiefs would constantly watch over the workers to check if they were engaged in the work or if anyone was absent from work.<sup>6029</sup> While the Chamber approaches SEM Hoern's evidence with caution, it accepts his evidence on this point as it is corroborated by that of Civil Party CHHAE Heap.<sup>6030</sup>

1769. Workers were not allowed to move freely around the worksite.<sup>6031</sup> They had to

<sup>6023</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 80 (“No, there was no guard at that time. There were only people who worked in their respective units but there were no guards.”).

<sup>6024</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 27.

<sup>6025</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 60; T. 11 June 2015 (KEO Kin), E1/314.1, p. 25.

<sup>6026</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 78; T. 23 June 2015 (HIM Han), E1/320.1, p. 91 (“and if the guard saw us trespassing into other units’ location, he or she would come to arrest us immediately”).

<sup>6027</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 24-25 (explaining that there were guards watching over them and that if a worker walked away from the unit, that worker would be accused of being an enemy. The witness said that these guards did not carry any weapon, that they were always on patrol and that they did not remain stationed in one place).

<sup>6028</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 25, 29; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 25-26.

<sup>6029</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, p. 37.

<sup>6030</sup> T. 11 Aug 2016 (CHHAE Heap), E1/455.1, p. 34 (explaining that when he arrived at Kampong Chhnang Airfield he was assigned to be a group chief and that at some point all group chiefs were called to a meeting where they were asked to report if anyone within their groups was lazy and not hardworking).

<sup>6031</sup> Report on Division 170, E3/1182, 6 July 1977, p. 1, ERN (En) 00598173 (“They are further indoctrinated politically and ideologically so that they can understand themselves. The situation is good now. They are not allowed to travel freely or communicate with others.”); T. 12 June 2015 (KEO Loeur), E1/315.1, p. 17; T. 17 June 2015 (KONG Siek), E1/318.1, p. 50; T. 11 June 2015 (KEO Kin), E1/314.1, pp. 15-16 (“As I stated earlier, I did not have freedom to walk freely”) and 24; T. 23 June 2015 (HIM Han), E1/320.1, p. 77 (stating that “you could also say that we were imprisoned, in a prison without walls.”); Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, p. 83, ERN (En) 00377742 (“the airfield in Kampong Chhnang was a location that we could refer to it as a prison without walls. Nobody could walk freely.”) See also, T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 40-41 (testifying that walking freely “without respecting the discipline of *Angkar*” was considered an offence).

remain in the location where they were assigned;<sup>6032</sup> they could not even cross into an area where a nearby unit was stationed as that was prohibited,<sup>6033</sup> and they would be arrested if they did.<sup>6034</sup> Workers were not allowed to leave the worksite without permission.<sup>6035</sup> Workers were not allowed to speak freely to one another,<sup>6036</sup> and they were afraid to do so.<sup>6037</sup> If workers violated these rules they would be arrested and imprisoned.<sup>6038</sup>

1770. Biographies were taken in order to screen workers and know their family background.<sup>6039</sup> Checks were made to verify the accuracy of the biographies.<sup>6040</sup>

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<sup>6032</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 17; T. 23 June 2015 (HIM Han), E1/320.1, pp. 90-91 (testifying that the unit which was assigned to work in one particular location had to stay in that location and that they would be arrested if they dared to trespass into other units' locations). *See also*, T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 60 (explaining that the only movement workers could make was from where they stayed to their workplace).

<sup>6033</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 24.

<sup>6034</sup> T. 23 June 2015 (HIM Han), E1/320.1, pp. 90-91 (testifying that "if the guard saw us trespassing into other units' location, he or she would come to arrest us immediately"); T. 24 June 2015 (HIM Han), E1/321.1, p. 45 (testifying that he was told by a peer that a worker from a unit went to a nearby unit and was thus arrested. The witness also indicated that "by having seen such an example, we warned our peer workers not to move freely or to go to another nearby unit. And we stayed wherever we were assigned to work. We didn't even dare to take shelter under a tree nearby"); T. 17 June 2015 (KONG Siek), E1/318.1, p. 50.

<sup>6035</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 14-15 (explaining that he never made a request to visit his family because they were warned "not to walk freely"), 81 ("I only stayed within the premises of the airport worksite, and if one were to go outside, the person needed to seek authorization first.").

<sup>6036</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 19 (indicating that while they were working they were not allowed to speak to one another); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 60 (saying that they were prohibited from speaking to one another and they had to concentrate on working). KONG Siek explained that workers were allowed to speak to members of their unit but were not allowed to speak to members of other units. *See* T. 17 June 2015 (KONG Siek), E1/318.1, p. 45 (explaining that "[e]ven if one was related by blood, as a brother or sister, they did not dare to speak to one another if they were in different units"). The Chamber finds that possibly different rules were applied in different units and that this can explain the Civil Party's statement. In the Chamber's view, this statement does not affect the finding that workers were not allowed to speak freely.

<sup>6037</sup> T. 10 June 2015 (KEO Kin), E1/313.1, p. 99.

<sup>6038</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 50.

<sup>6039</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 36 (stating that she was asked to provide her biography sometime after she had started to work at the construction site); T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 95-96 (testifying that they had to submit to the office chief a sheet of their brief biography every week, and they were asked for their determination, commitment and allegiance); T. 11 June 2015 (KEO Kin), E1/314.1, p. 46 (explaining that it was the unit chief who would prepare their biography); T. 24 June 2015 (HIM Han), E1/321.1, p. 14 (indicating that his biography was taken upon arrival at the construction site).

<sup>6040</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 37 (stating that if "certain things" would come out, the workers would be taken somewhere else unknown and explaining that for her biography "they conducted surveillance" to know her family background); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 97 (explaining that after the biography was submitted, they (the Khmer Rouge) would go from one village to the other to verify it); T. 11 June 2015 (KEO Kin), E1/314.1, pp. 46-47 (explaining that in his case they (the Khmer Rouge) asked information about him and learnt that he "had a tendency with the former regime").

11.3.12.2. Arrests and disappearances

1771. The Chamber heard evidence regarding arrests and disappearances of workers. In certain cases, workers simply disappeared with no notice and were never seen again at the worksite; in others, the workers were seen to be arrested following which they disappeared or were transferred to S-21. The Chamber assesses these in turn below.

1772. Numerous workers disappeared and were never seen again at the worksite by their fellow workers.<sup>6041</sup> HIM Han testified that he knew that people disappeared from other units, and noticed that those workers who stood and watched the people injured by the rock explosions being transported into the ambulance would disappear.<sup>6042</sup> NUON Trech testified that people were “removed” at daytime and the next morning or evening the co-workers were told that those people were reassigned to another location.<sup>6043</sup> KEO Kin testified that if a worker, after being criticised, did not “deter”, he or she would disappear and that the Airfield authorities told the other workers “not to follow the steps of the individual that disappear[ed]”.<sup>6044</sup> CHHAE Heap stated that while he did not personally see arrests at the worksite, he heard that some units assigned to work did not return in the evening.<sup>6045</sup> Several witnesses testified that not seeing their co-workers anymore caused them to fear they would also vanish should they do something against *Angkar*’s prescriptions.<sup>6046</sup> While the evidence is unclear as to the fate of the people who disappeared in these circumstances, the Chamber is satisfied that

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<sup>6041</sup> The Chamber finds that the statements made by CHAN Morn regarding the disappearance of workers corroborate the evidence provided by Witnesses HIM Han, NUON Trech, KEO Kin and CHHAE Heap analysed below. CHAN Morn testified that on occasion he was asked by people coming from outside the worksite about certain names on a list. The witness noticed that some of the people he was asked about later in the evening would “just [have] disappeared” (see T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 40, 80; CHAN Morn Interview Record, E3/5278, 4 March 2009, p. 6, ERN (En) 00292824 (“When a list of names of workers was forwarded one person came to the construction site to tell victims that they have to go to the meeting. Then the victims were arrested, tied and transported to the direction of Phnom Penh. There were at least three victims in each arrest and the arrest occurred everyday. As far as I know, the persons who made an arrest were not from the construction site and those orders were not made by Lvey or Song.”).

<sup>6042</sup> T. 23 June 2015 (HIM Han), E1/320.1, pp. 78, 87.

<sup>6043</sup> T. 7 December 2016 (NUON Trech), E1/508.1, p. 20.

<sup>6044</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 13-14.

<sup>6045</sup> T. 11 Aug 2016 (CHHAE Heap), E1/455.1, p. 35.

<sup>6046</sup> T. 23 June 2015 (HIM Han), E1/320.1, p. 87 (“No one dared to stand and look at that injured person or do anything about [h]it because I noticed that those who stood and looked at the injured would disappear”); T. 11 June 2015 (KEO Kin), E1/314.1, pp. 13-14 (“After the criticism and if the person did not deter, he or she would disappear. And the meeting would be called later to advise and warn others not to follow the steps of the individual that disappear. If we did not follow the order by the leadership, we would disappear.”). See also, T. 9 June 2015 (CHAN Morn), E1/312.1, p. 58 (testifying that due to the general atmosphere at the Airfield “everyone was afraid and terrified”).

these disappearances took place and finds that they contributed to a general climate of fear which affected the workers emotionally.

1773. Arrests of workers, carried out in some instances by way of tying their hands behind their back and taking them away,<sup>6047</sup> took place after they were called into a meeting or during the night.<sup>6048</sup> KEO Loeur in particular confirmed his statement to the investigators that trucks would come to arrest people every night, arresting about 20 people each time.<sup>6049</sup> There were different reasons for the arrests. Successive arrests were made of those people who were accused of being enemies, CIA or KGB agents.<sup>6050</sup> In this regard, KEO Kin explained that the accusation of being CIA or KGB agents came from the “upper level” and that those who were accused did not even know what the CIA or the KGB was.<sup>6051</sup> Similarly, arrests were made of those workers accused of being enemies for engaging in any behaviour considered to be against *Angkar*,<sup>6052</sup> such as picking tobacco leaves for personal use,<sup>6053</sup> walking away from their unit,<sup>6054</sup> committing moral misconduct,<sup>6055</sup> complaining about the food or the working conditions.<sup>6056</sup> In this regard, the Chamber recalls its findings made in the section of

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<sup>6047</sup> SEM Hoern confirmed that he saw two co-workers being arrested and indicated that their hands were tied behind their back as they were led away. T. 22 June 2015 (SEM Hoern), E1/319.1, p. 46 *affirming* SEM Hoern Interview Record, E3/5280, 10 March 2009, p. 6, ERN (En) 00290517.

<sup>6048</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 15, 32 (explaining that from what he saw “the person who would be arrested would be called into a meeting during which roll calls were taken of the individuals who would be arrested”); T. 22 June 2015 (SEM Hoern), E1/319.1, p. 46 (confirming his previous statement to the investigators and testifying that he saw two co-workers, Pheap and Soeun, being called to attend a meeting and subsequently being arrested).

<sup>6049</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 15 and KEO Loeur Interview Record, E3/467, 6 March 2008, p. 4, ERN (En) 00205074 (“Trucks came to arrest people every night arresting about twenty each time. At meetings they called out names for people to leave the meeting and to be arrested at once.”).

<sup>6050</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 45-46; T. 12 June 2015 (KEO Loeur), E1/315.1, p. 16.

<sup>6051</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 45-46 (explaining that those who were accused of being KGB or CIA agents would be arrested but they did not work for any of those organisations and in fact they did not even know what a CIA or KGB agent was).

<sup>6052</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, pp. 16 and 31 (explaining that he saw the arrests of “those soldiers who were accused of being enemies”); T. 9 June 2015 (CHAN Morn), E1/312.1, p. 61 (testifying that once a person was accused of being an enemy, no matter what type of enemy, the person would be arrested immediately).

<sup>6053</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, p. 46 (testifying about the arrest of two co-workers, Pheap and Soeun, who were said to be enemies and traitors because they had planted and collected some tobacco leaves). The Chamber accepts SEM Hoern’s evidence on this point as it finds it precise, detailed and credible.

<sup>6054</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 24.

<sup>6055</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 80 (testifying that he saw people being arrested for having engaged in moral misconduct. While the witness did not explicitly indicate that these workers were accused of being enemies, the Chamber considers that the fact that they were considered offenders and were arrested for engaging in this behaviour renders this treatment similar to that of enemies and can therefore be considered in the same context).

<sup>6056</sup> T. 12 June 2015 (KEO Loeur), E1/315.1, p. 27 (explaining that they just had to focus on working so that they could “survive that time”).



this Judgement related to Real or Perceived Enemies.<sup>6057</sup>

1774. While the fate of many people arrested at the Kampong Chhnang Airfield is unknown, the Chamber is convinced on the basis of the available evidence that some were sent to S-21.<sup>6058</sup>

1775. Eyewitnesses saw trucks of arrested people leaving the Airfield in the direction of Phnom Penh. In this regard, KEO Kin testified having seen East Zone workers called to a meeting, tied, arrested and put onto trucks and transported in the direction of Phnom Penh on National Road 5.<sup>6059</sup> The witness also explained that “most of the people who were arrested were from the East Zone, as they were alleged or accused of betraying *Angkar*, and they were accused of being KGB or CIA agents”.<sup>6060</sup> KHIN Vat testified that she learned from people who worked with her husband that he was arrested by the “upper echelon” and was transported by truck to Phnom Penh.<sup>6061</sup> While the Chamber cannot conclude with certainty that all of the trucks directed to Phnom Penh took those arrested to S-21, it has established that at least some of the workers at the Airfield were taken to this security centre.

1776. KHIN Vat also stated that the “upper echelon” did not provide her with the reasons of her husband’s disappearance and she did not dare ask about him for fear of her life.<sup>6062</sup> SEM Hoeurn explained that he was extremely afraid when he saw the arrest

<sup>6057</sup> Section 16.3.2.1: Real or Perceived Enemies: The Stratification of the Population and the Categorisation of Enemies.

<sup>6058</sup> Prisoner Biography (S-21) – YIM Sam-Ol *alias* Nhor, E3/10547, 19 February 1978, ERN (En) 01462372 (indicating Kampong Chhnang Airfield as the “[p]lace of arrest”); Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, p. 82, ERN (En) 00377741 (explaining that his brother-in-law Pich, a battalion commander within Division 450, was sent to work at the Kampong Chhnang Airfield and from there was subsequently sent to S-21, where Duch was instructed not to give him any assignment or work); T. 11 August 2009 (SAOM Met), E3/7471, pp. 6-7 and T. 10 August 2009 (SAOM Met), E3/7470, pp. 95-96 (explaining that he believed he was sent to Prey Sar because his brother, who worked at the Kampong Chhnang Airfield, had been arrested and detained at S-21) *confirming* SAOM Met Interview Record, E3/7669, 28 November 2007, p. 8, ERN (En) 00163665; Report of the Committee of Division 170, E3/1202, 4 June 1977, ERN (En) 00828147.

<sup>6059</sup> T. 11 June 2015 (KEO Kin), E1/314.1, pp. 8-11 (testifying seeing the trucks leaving in the direction of Phnom Penh along National Road 5 and stating that he could observe the scene from a far distance) *affirming* KEO Kin Interview Record, E3/5273, 12 February 2009, pp. 4, 6, ERN (En) 00290500-00290502 (explaining that he saw 30 workers from the East Zone being tied up, put on a Chinese truck and being transported to Phnom Penh as they were driven along National Road 5 to Phnom Penh).

<sup>6060</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 8.

<sup>6061</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 57-58.

<sup>6062</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 57.

of two co-workers.<sup>6063</sup>

1777. The evidence indicates that the arrests were carried out by the worksite security personnel.<sup>6064</sup> The arrest of the workers was always supervised by the worksite leadership; Lvey would always be present when there were arrests at the worksite.<sup>6065</sup>

1778. Having considered the evidence above, the Chamber has found that many people were arrested and taken away from the Kampong Chhnang Airfield. In some cases, the fate of those arrested is unknown, while in others the evidence shows that some workers were transported to Phnom Penh and others were taken to S-21. No information was provided to the other workers with regard to the fate or whereabouts of those who were arrested. Workers were afraid to ask any information for fear of facing the same treatment. The arrests were carried out under the oversight and with the approval of the worksite leadership.

#### 11.3.12.3. Killings

1779. The Chamber heard evidence about killings at and in the proximity of the worksite. CHAN Morn testified that one night in 1977, he saw a military truck coming from the direction of the mountains or the head of the Airfield and going past the transportation unit where he used to stay when working at the construction site.<sup>6066</sup> The truck was carrying troops to an area in the northwest of the Airfield about three kilometres from the runway and located between 200 to 400 metres from the

<sup>6063</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 46-47 (explaining that out of fear he did not even dare to respond to Pheap's request to bring a message to his family upon being arrested). The Chamber accepts SEM Hoern's evidence on this point as it is consistent with the testimony of many other witnesses about the generalised atmosphere of fear at the worksite.

<sup>6064</sup> T. 23 June 2015 (HIM Han), E1/320.1, pp. 90-91 (testifying that the guards would arrest workers who trespassed into other units).

<sup>6065</sup> T. 11 June 2015 (KEO Kin), E1/314.1, p. 8 (*confirming* KEO Kin Interview Record, E3/5273, 12 February 2009, p. 5, ERN (En) 00290501).

<sup>6066</sup> Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946; T. 9 June 2015 (CHAN Morn), E1/312.1, p. 47; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 35. CHAN Morn explained that during the time he worked at the Airfield, he stayed in two different places: at Chan Sari barracks in Kampong Chhnang provincial town during the time he did terrain measurements and accompanied the Chinese, and at the transportation unit within the worksite, when he was assigned to cut and transport wood in mid-1977. *See* T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 43-44; CHAN Morn Interview Record, E3/5278, 14 March 2009, p. 5, ERN (En) 00292823. The witness also explained that this incident happened when he had already been assigned to transport wood and was therefore staying at the transportation unit. *See* T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 43-44: ("It happened only after I went to transport wood, and while I was undertaking the terrain measurement, I stayed at the Chan Sari barracks. And only later on, when I transported wood to the saw mill, I stayed at that building you mentioned.").

transportation unit;<sup>6067</sup> in that area there was a big tree and a stream located near Steung Pagoda.<sup>6068</sup> After a while CHAN Morn heard screams coming from that area.<sup>6069</sup> The screaming lasted for about two to four minutes, then the witness heard the sound of the truck returning.<sup>6070</sup> Several days later, when he passed by the area to collect plants near the big tree, he smelt a strong odour,<sup>6071</sup> and saw the tracks of the vehicle on the spot.<sup>6072</sup> He saw a few pits at that location where the truck left.<sup>6073</sup> The witness indicated that when he heard the screaming he thought that the screams were from people hunting wild animals but that later he understood what had happened by connecting the stench to the screaming.<sup>6074</sup> The witness said that the screams he heard “could be the screaming of people who were being killed there”.<sup>6075</sup> However, the witness did not see corpses,<sup>6076</sup> and no remainders belonging to human skeletons were subsequently found at the place.<sup>6077</sup> During the site inspection, the investigator did not find any signs of grave pits but saw circular marks in the location identified by CHAN Morn.<sup>6078</sup> The witness testified of hearing screams from that area almost every night while he was staying at the transportation unit but could not estimate how many times he witnessed these incidents.<sup>6079</sup>

1780. With respect to this evidence, the Chamber considers that the witness did not see the dead bodies and that no human remains have subsequently been found at the

<sup>6067</sup> Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946; T. 9 June 2015 (CHAN Morn), E1/312.1, p. 44 (testifying the place was 300 to 400 metres away); T. 10 June 2015 (CHAN Morn), E1/313.1, p. 35 (stating that the place was about 200 or 300 metres away from his sleeping quarters.) The Chamber notes that the Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946 indicates that the distance from the area to the transportation unit where the witness lived was 180 metres and not 200, 300 or 400 as indicated in the witness in-court testimony. The Chamber accords more authority to the statements made by the witness in court.

<sup>6068</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 44. *See also*, Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946 (summarising CHAN Morn’s statement and indicating that “[t]he witness still recognizes that tree today, which is now still in its original state.”).

<sup>6069</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 35; Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946.

<sup>6070</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 47.

<sup>6071</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 44, 48; T. 10 June 2015 (CHAN Morn), E1/313.1, p. 35; Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946 (stating that CHAN Morn “smelled the odor of decomposing corpses coming from that site.”).

<sup>6072</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 36.

<sup>6073</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, pp. 37-38.

<sup>6074</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 35.

<sup>6075</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 37.

<sup>6076</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 44.

<sup>6077</sup> T. 10 June 2015 (CHAN Morn), E1/313.1, p. 37.

<sup>6078</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, p. 45; Site Identification Report, E3/8043, 2 January 2010, p. 4, ERN (En) 00436946 (indicating that “[a]t that site the investigator was unable to see any signs of grave pits but he is suspicious about circular marks at two or three locations near the tree.”).

<sup>6079</sup> T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 45-46.

location where the people were allegedly killed. The Chamber also notes that CHAN Morn is the only witness who testified about killings at this particular location and recalls the need to approach this witness's evidence with particular caution.<sup>6080</sup> In light of the above, the Chamber finds the available evidence insufficient to establish beyond reasonable doubt that workers from the Airfield construction site were killed at that location.

1781. SEM Hoeurn testified that there was a killing site located to the west of the Kampong Chhnang Airfield, 500 metres to one kilometre away,<sup>6081</sup> and that those who were arrested from the worksite were sent there to be killed.<sup>6082</sup> According to the same witness, people were killed with hoes or wooden sticks as the Khmer Rouge did not use bullets to avoid being heard by the workers at the construction site.<sup>6083</sup> The Chamber heard contradictory evidence about the source of SEM Hoeurn's knowledge. His statement to DC-Cam indicates that he learned about the existence of the killing site from "the people working in the Special Unit of Troops which was sent there to protect the site",<sup>6084</sup> whereas his in-court testimony suggests that he deduced that the location was a killing site because the workers at the construction site were prohibited from trespassing that area.<sup>6085</sup> As SEM Hoeurn did not confirm the former view when confronted in court, the Chamber is satisfied that his evidence on the existence of the killing site is based on a conclusion that he drew from the fact that workers were forbidden to access the area to the west of the Airfield. On this basis, it is unclear how the witness could have known that people were executed with hoes or wooden sticks, considering that based on his account he never personally witnessed any of the killings and never went to the site.<sup>6086</sup> It is reasonable to conclude, therefore, that he either deduced this from the fact that workers at the worksite did not hear any bullets being

<sup>6080</sup> See above, para. 1718.

<sup>6081</sup> T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 42-43 *affirming* SEM Hoeurn DC-Cam Statement, E3/7516, 28 February 2005, p. 37, ERN (En) 00876513.

<sup>6082</sup> T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 43.

<sup>6083</sup> T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 43.

<sup>6084</sup> SEM Hoeurn DC-Cam Statement, E3/7516, 28 February 2005, pp. 37-39, ERN (En) 00876513-00876515 (the witness also indicated more specifically that it was a person called Ri from Anlong Thma village who told him once about the killing site he was assigned to guard).

<sup>6085</sup> T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 43 ("We were prohibited from trespassing that area, as they told us it was a forbidden area. And of course, we concluded that we were prohibited from trespassing that area since it was a killing site, and they did not want us to see what happened because they were afraid that their secret would be revealed. And that's how I came to know about the site.").

<sup>6086</sup> T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 43 ("Q. Did you know about it? And did you actually go to that location and see it personally? A. I knew about it, but I did not go to that location.").

fired or he heard it from someone else. The Chamber cannot exclude that there might have been another reasonable explanation as to why workers were forbidden from accessing the area to the west of the Airfield. The Chamber also expressed reservations on the credibility of this witness and, in the absence of any corroboration of this account, cannot conclude beyond reasonable doubt that a killing site existed west of the Airfield or that people were killed there.

1782. The Chamber notes SRENG Thi's statement before OCIJ investigators that he saw many dead bodies in pits at Piem Lok mountain approximately five kilometres from the Airfield.<sup>6087</sup> He presumed that those bodies were of people from the Airfield construction site as a number of people in his unit disappeared.<sup>6088</sup> However, this statement constitutes the only account concerning this burial site and there is no available evidence to establish that all or any of the corpses were those of workers from the Kampong Chhnang Airfield.

1783. The Closing Order charges that when the Vietnamese reached Kampong Chhnang province in early 1979, workers were moved from the Airfield construction site, most of them to a location 20 kilometres south, the Romeas train station in Teuk Phos district.<sup>6089</sup> Exceptionally, workers from the East Zone were separated from the rest and executed at Mongol Khan Pagoda in Tuol Kpos village and at the former French fort in Kbal Lan village.<sup>6090</sup> The NUON Chea Defence submits that facts related to the killing of East Zone workers occurred after 6 January 1979 fall outside of the temporal jurisdiction of the Court and therefore are outside the scope of Case 002/02.<sup>6091</sup> It further submits that there is no detailed or credible evidence on the specific circumstances of these alleged killings and that in any case they "are irrelevant to how East Zone soldiers were previously treated at the construction site".<sup>6092</sup> With regard to the same facts, the KHIEU Samphan Defence submits that the executions at Mongol Khan Pagoda occurred outside Kampong Chhnang Airfield and have no relation to the operation of the worksite.<sup>6093</sup> The Co-Prosecutors contend that, while these killings occurred outside of the temporal jurisdiction of the court, "they

<sup>6087</sup> SRENG Thi Interview Record, E3/5279, 7 March 2009, p. 4, ERN (En) 00293010.

<sup>6088</sup> SRENG Thi Interview Record, E3/5279, 7 March 2009, p. 4, ERN (En) 00293010.

<sup>6089</sup> Closing Order, para. 398.

<sup>6090</sup> Closing Order, para. 398.

<sup>6091</sup> NUON Chea Closing Brief, para. 1020.

<sup>6092</sup> NUON Chea Closing Brief, para. 1020.

<sup>6093</sup> KHIEU Samphan Closing Brief, para. 1095 *referring to* Closing Order, paras 393, 398.

demonstrate that the CPK viewed the workers as expendable, and ‘enemies’, better dead than alive”.<sup>6094</sup>

1784. The Chamber did not hear oral testimony on these events. However, written records of interview indicate that East Zone workers who had left the construction site when the Vietnamese troops had reached Kampong Chhnang province in January 1979 were separated and executed at the Pagoda in Tuol Kpos village and at the former French fort in Kbal Lan village.<sup>6095</sup> The Chamber notes that these statements are detailed and consistent and therefore finds them credible. As noted by the Parties, these events fall outside the scope of the Court’s temporal and geographic jurisdiction.

1785. The Chamber recalls however that it may rely on evidence that falls outside of the temporal or geographic scope of the Closing Order for certain purposes.<sup>6096</sup> The Chamber will therefore deal with the evidence related to the execution of workers from the East Zone at Mongkol Khan Pagoda in Tuol Kpos village and at the former French

<sup>6094</sup> Co-Prosecutors’ Closing Brief, para. 1205.

<sup>6095</sup> KHVAE Ni Interview Record, E3/7894, 24 December 2009, pp. 2-4, ERN (En) 00426039-00426041 (stating that in early January 1979, while he was guarding the rice barn at Kbal Lan village next to the former French fort he saw the Khmer Rouge transporting many truckloads of soldiers in khaki uniform into the fort located approximately 20 metres from Road No. 53. When the trucks left, those soldiers were tied up with their hands to the backs, blindfolded and marched by the armed men to be executed at the old fort which is about 200 metres from the fort. KHVAE Ni also explained that he knew that the soldiers wearing khaki uniforms were from the East Zone because he was told by them that they were “in SAO Phim’s armed forces from the East Zone”); KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, pp. 7-8, ERN (En) 00293368-00293369 (stating that 10 days after the workers left Kampong Chhnang Airfield because the Vietnamese arrived in Kampong Chhnang in 1979, a gathering was held in Tuol Khpuos village; the East Zone soldiers were asked by the Khmer Rouge to raise their hands to identify themselves in order to be armed to go fight the Vietnamese. On the same day, those who raised their hands saying they were from the East Zone were taken towards the south of Tuol Khpuos Pagoda where pits had been dug. Five days later, when KHOEM Samhuon and other people were removed to other villages about one kilometre from Tuol Khpuos, he saw many piles of clothes. He was told by an individual that the owners of those clothes had been killed within the compound of the pagoda in Tuol Khpuos. While riding on a truck passing by the pagoda of Tuol Khpuos village, KHOEM Samhuon “smelled the decomposed corpses from near the Tuol Khpuos pagoda” so he “assumed that the people who had been escorted there were all killed and put into the pit that I saw them dig.”); UM Man Interview Record, E3/7893, 23 December 2009, pp. 2-3, ERN (En) 00455251-004552524 (stating that he became aware of the construction of the Kampong Chhnang Airfield in early January 1979 when thousands of people were transferred from there to Wat village, Tuol Khpuos commune, where UM Man lived. Approximately half a month later, he “saw big military trucks loading people in karki [*sic*] military uniforms whom I met at the stream. Two trucks moved at a time into Mongkol Khan Pagoda in Wat village, Tuol Kpos village, Toek Phos district. About fifteen minutes later the trucks arrived at the Pagoda from which I could hear a few shootings. Approximately five minutes later I saw those two trucks returning. However I did not see even a single one return I wish to tell you that such incidents happened twice a day. Those two trucks would come at about 8 in the morning and then at about 3 in the afternoon. These incidents lasted for about five days in a row.”); Site Identification Report, E3/8043, 2 January 2010, p. 3, ERN (En) 00436945. *See also*, SUM Sokhan Interview Record, E3/5274, 13 February 2009, p. 6, ERN (En) 00292866.

<sup>6096</sup> Section 2: Preliminary Issues, para. 60.

fort in Kbal Lan village in accordance with such principles.<sup>6097</sup> In particular, the Chamber will rely on this evidence for the sole purposes of assessing the *mens rea* of persecution of East Zone soldiers assigned to the Airfield construction site during the indictment period.<sup>6098</sup>

1786. The Chamber has established that numerous workers disappeared from the worksite: some vanished,<sup>6099</sup> and others were seen being arrested.<sup>6100</sup> In both cases, workers were never seen again. While the evidence is unclear as to the fate of the people who disappeared in these circumstances, the Chamber notes that these disappearances took place frequently and concerned large numbers of workers. The Chamber recalls its findings that a general policy to purge RAK members existed during the period in which the Kampong Chhnang Airfield was being constructed.<sup>6101</sup> It has also established that SOU Met took active part in the purge of Division 502,<sup>6102</sup> and that workers, especially from Division 310 and 450, were sent to the Airfield to temper and refashion because they were considered traitors.<sup>6103</sup> The Chamber has established that East Zone soldiers were regarded as particularly expendable.<sup>6104</sup> The Chamber notes Duch's evidence that the soldiers from Division 310, 450, 170 and 290 were sent to work at the Kampong Chhnang Airfield and later on from what he heard "they were gathered and smashed en masse".<sup>6105</sup> The evidence demonstrates a significant likelihood that at least some of the large number of people who disappeared from the worksite were killed there. However, as no human remains were found at the Airfield and the evidence on the existence of burial sites is inconclusive, the Chamber cannot conclude beyond reasonable doubt that killings took place at the worksite following these disappearances.

#### 11.3.12.4. Visits by CPK leaders

1787. The Chamber heard evidence that DK senior leaders, including both Accused,

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<sup>6097</sup> See below, para. 1824.

<sup>6098</sup> See below, para. 1824.

<sup>6099</sup> See above, para. 1772.

<sup>6100</sup> See above, para. 1773.

<sup>6101</sup> Section 12.1: Internal Factions, paras 2069, 2072.

<sup>6102</sup> See above, para. 1726.

<sup>6103</sup> See above, para. 1732.

<sup>6104</sup> See above, para. 1742.

<sup>6105</sup> Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, p. 58, ERN (En) 00406702.

visited the Kampong Chhnang Airfield construction site.

1788. While the Chamber is satisfied that a number of delegations of senior leaders visited the worksite, it is not in a position to determine precisely who was part of these delegations.<sup>6106</sup>

1789. More specifically, SEM Hoern provided evidence about a visit to the Airfield by KHIEU Samphan.<sup>6107</sup> In particular, he testified that in late 1977 he saw a helicopter about to land at Kampong Chhnang Airfield and he was told that KHIEU Samphan was coming to inspect the worksite.<sup>6108</sup> Once the helicopter landed, he and his co-workers watched KHIEU Samphan walk around and inspect the worksite.<sup>6109</sup> While in his second statement to the OCIJ he explained that he recognised the visitor on the helicopter as KHIEU Samphan because in mid-1973 he went to welcome him while he was visiting Angkor Wat Temple,<sup>6110</sup> in court the witness explained that he knew that the person was KHIEU Samphan because he was told so by his colleagues and recognised him in the courtroom.<sup>6111</sup> During his testimony the witness also stated that he had once seen KHIEU Samphan in Phnom Penh in 1975 and was *told* that was KHIEU Samphan.<sup>6112</sup> However, in his first OCIJ statement of 2008,<sup>6113</sup> SEM Hoern did not mention any such visit of the Accused to the Airfield and only indicated that he saw KHIEU Samphan in 1973 at Angkor Wat and that he never saw him again. While the Chamber does not find the lack of mention of this visit in his first OCIJ statement

<sup>6106</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 84 (testifying about a convoy or vehicle coming to the worksite from the direction of Phnom Penh but indicating that she did not know who those people were.) *See also*, T. 9 June 2015 (CHAN Morn), E1/312.1, pp. 50-52 (testifying that in early 1977 or early 1978, he saw a convoy coming to the Airfield and he was told by others that senior cadres came to visit the construction site to attend the test run of the aeroplanes). The witness also testified that during the time he spent at Kampong Chhnang Airfield, he saw three visits by important people; while he knew that they were important people, he did not know who they were or their actual position. *See* T. 10 June 2015 (CHAN Morn), E1/313.1, p. 69.

<sup>6107</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 44-45 and T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 14-15; SEM Hoern DC-Cam statement, E3/7516, 28 February 2005, p. 39, ERN (En) 00876515; SEM Hoern Interview Record, E3/5280, 10 March 2009, pp. 5-6, ERN (En) 00290516-00290517.

<sup>6108</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 44-45 (affirming his statement to OCIJ where he indicated that this happened in late 1977).

<sup>6109</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, p. 45.

<sup>6110</sup> SEM Hoern Interview Record, E3/5280, 10 March 2009, p. 6, ERN (En) 00290517.

<sup>6111</sup> T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 14-15 (explaining that he did not know KHIEU Samphan before this particular visit); T. 22 June 2015 (SEM Hoern), E1/319.1, p. 64 (“I was at a distance. Now KHIEU Samphan he looks much older. I almost cannot recognize him. When he was young, I could recognize him. Now he is so old that I almost cannot recognize him.”).

<sup>6112</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 44 and 64 (stating that his colleague told him that “this was the car of KHIEU Samphan and this was the car of IENG Sary”).

<sup>6113</sup> SEM Hoern Interview Record, E3/5152, 7 March 2008, p. 3, ERN (En) 00205081.



as an indication that this event did not occur, the Chamber is unable to conclude whether the witness had personal knowledge of who KHIEU Samphan was at the time of the alleged visit, as the in-court evidence on this point allows only the conclusion that his knowledge was based on hearsay.

1790. KHIN Vat, a worker from Division 502, also testified on this matter. While in her OCIJ statement KHIN Vat stated that she saw KHIEU Samphan visiting the worksite in late 1977,<sup>6114</sup> in court she clarified that in fact she was told by a friend who was at the worksite at that time,<sup>6115</sup> that KHIEU Samphan came to inspect the Airfield construction, “during the later part of the year when the airport site was almost completed”.<sup>6116</sup> He came together with the leadership of Division 502, consisting of Lvey and Thuok,<sup>6117</sup> and with *Ta Mok*.<sup>6118</sup>

1791. LENG Chhoeung, KHIEU Samphan’s driver from 1978 to 1979,<sup>6119</sup> stated to the investigators that the Accused never went to visit the Kampong Chhnang Airfield during the time he was his driver.<sup>6120</sup> While he was not asked specifically about any visit to the Airfield, LENG Chhoeung testified in court that he only accompanied KHIEU Samphan outside Phnom Penh on two occasions: once on a trip to Takeo and once on a trip to Kandal.<sup>6121</sup> The Chamber finds this witness’s statements credible and consistent. However, this evidence does not preclude visits to the Airfield by car before the time LENG Chhoeung became the Accused’s driver in 1978 or by any other transportation means at any given time.

1792. Examining all the evidence together and specifically taking into consideration that KHIN Vat’s evidence is hearsay, that SEM Hoeurn’s account is not corroborated

<sup>6114</sup> KHIN Vat Interview Record, E3/5284, 6 April 2009, p. 4, ERN (En) 00315915.

<sup>6115</sup> T. 30 July 2015 (KHIN Vat), E1/326.1, pp. 27-28 (explaining that her friend was called Sokun, was a soldier of Division 502 and accompanied the Chinese while surveying the runways).

<sup>6116</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 83 and p. 92 (explaining that she learnt from her unit chiefs that KHIEU Samphan was “the second *Om* or second Uncle” or “*Om Ti Pi*” but she did not know his role and responsibilities). *See also*, T. 30 July 2015 (KHIN Vat), E1/326.1, p. 29 (explaining that she heard people refer to KHIEU Samphan as “Uncle Number Two”).

<sup>6117</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 83-84.

<sup>6118</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 84-85 and 92 (explaining that *Ta Mok* was in charge of the army in the Southwest Zone but that she never saw him personally, she only heard of his name).

<sup>6119</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 8-9 (testifying that he was assigned to be KHIEU Samphan’s driver from August 1978 until the time the Vietnamese arrived in Cambodia in 1979) *confirming* LENG Chhoeung Interview Record, E3/385, 17 July 2009, pp. 3, 8, ERN (En) 00360127, 00360132 (stating that he was KHIEU Samphan’s driver until April 1979).

<sup>6120</sup> LENG Chhoeung Interview Record, E3/385, p. 6, ERN (En) 00360130.

<sup>6121</sup> T. 17 June 2013 (LENG Chhoeung), E1/208.1, pp. 19-20.

by any other evidence and that this witness's evidence has to be treated with caution, the Chamber finds that a visit of KHIEU Samphan at the Kampong Chhnang Airfield cannot be established beyond reasonable doubt.

1793. With respect to NUON Chea, the Chamber notes that while the Closing Order finds, based on KEO Loeur's statements to the investigators,<sup>6122</sup> that he visited the worksite, in court KEO Loeur could not confirm his statements on this issue.<sup>6123</sup> The Chamber is not satisfied that NUON Chea ever visited the Airfield. The Chamber also notes that the Co-Prosecutors Closing Brief does not make any reference to NUON Chea's visit to the worksite.<sup>6124</sup>

### 11.3.13. *Legal Findings*

#### 11.3.13.1. *Murder and extermination*

##### 11.3.13.1.1. *Executions*

1794. The Closing Order charges the Accused with the crime against humanity of murder in relation to victims who "were arrested and taken away to be killed nearby" the Kampong Chhnang Airfield;<sup>6125</sup> workers, particularly those from the East Zone, who had disappeared and had been killed;<sup>6126</sup> the killing of people west of the Airfield;<sup>6127</sup> the discovery of dead bodies presumably of workers from the Airfield in pits approximately five kilometres from the construction site;<sup>6128</sup> and the transportation of people by trucks to a pit site from where a former cadre heard screams.<sup>6129</sup> The Closing Order further charges that when the Vietnamese reached Kampong Chhnang province in early 1979, workers from the East Zone were separated from the rest and executed at Mongol Khan Pagoda in Tuol Kpos village and at the former French fort in Kbal Lan village.<sup>6130</sup> The Closing Order also indicates that none of the witnesses personally observed the execution of workers and that there is no evidence of any

<sup>6122</sup> Closing Order, para. 388, fn. 1681 referring to KEO Loeur Interview Record, E3/467, 6 March 2008, p. 4, ERN (En) 00205074 (stating that he saw NUON Chea together with IENG Sary and KE Pauk, who had come to inspect the Airfield).

<sup>6123</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 10.

<sup>6124</sup> Co-Prosecutors' Closing Brief, para. 1174.

<sup>6125</sup> Closing Order, para. 1377.

<sup>6126</sup> Closing Order, para. 395.

<sup>6127</sup> Closing Order, para. 395.

<sup>6128</sup> Closing Order, para. 395.

<sup>6129</sup> Closing Order, para. 395.

<sup>6130</sup> Closing Order, para. 398.

executions taking place at the construction site itself.<sup>6131</sup> The Closing Order charges the Accused with the crime against humanity of extermination in relation to the deaths of a large number of people.<sup>6132</sup>

1795. As noted above, the Chamber was not satisfied that killings of Airfield workers occurred at the location near the transportation unit<sup>6133</sup> and west of the Airfield.<sup>6134</sup> Further, based on the available evidence, the Chamber is not in a position to determine the fate of the many people who were arrested at the worksite and disappeared after.<sup>6135</sup> Similarly, the Chamber is not satisfied that the only inference that can be reasonably drawn from the circumstances surrounding the disappearance of workers from the Kampong Chhnang Airfield Construction Site without being seen arrested is that these workers were killed.<sup>6136</sup>

1796. As explained above, the Chamber recalls that any findings related to the killing at S-21 of those workers who were transferred to the security centre after their arrest at the worksite, are made in the relevant section on security centres.<sup>6137</sup>

1797. Regarding the execution of former East Zone soldiers at Mongol Khan Pagoda in Tuol Kpos village and at the former French fort in Kbal Lan village in early 1979, the Chamber recalls that these events are beyond its temporal and geographic jurisdiction, but that evidence related to these events will be used in accordance with its findings on the permissible use of out-of-scope evidence.<sup>6138</sup>

1798. As to the remaining instances of killings found in the Closing Order, the Chamber is not satisfied that those killings occurred.<sup>6139</sup>

#### 11.3.13.1.2. *Deaths resulting from working and living conditions*

1799. The Closing Order charges the Accused with the crime against humanity of extermination on the basis of the many people who died as a result of the conditions

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<sup>6131</sup> Closing Order, para. 395.

<sup>6132</sup> Closing Order, paras 1381-1382.

<sup>6133</sup> *See above*, paras 1779-1780.

<sup>6134</sup> *See above*, para. 1781.

<sup>6135</sup> *See above*, paras 1773, 1786.

<sup>6136</sup> *See above*, paras 1772, 1786.

<sup>6137</sup> *See above*, para. 1716.

<sup>6138</sup> *See above*, paras 1783-1785.

<sup>6139</sup> *See above*, para. 1782.

imposed at the worksite, including the deprivation of food, poor accommodation, insufficient medical care and hygiene as well as the exhaustion due to the hard labour and the unsafe working conditions.<sup>6140</sup> The Closing Order also indicates that the suicide of workers occurred on a weekly basis.<sup>6141</sup> For the purposes of establishing whether extermination was committed at Kampong Chhnang Airfield, the Chamber has therefore considered all of the deaths resulting from the working and living conditions at the worksite.

1800. With respect to the *actus reus* of extermination, the Chamber has found that conditions were imposed which resulted in the death of many people, including by placing people in unsafe working conditions, and forcing them to work extended hours without sufficient food.<sup>6142</sup> The Chamber is satisfied that all of these deaths were the result of the same murder operation and finds that in aggregate the scale element of extermination is established in the circumstances.

1801. With respect to the *mens rea* of extermination, the Chamber has found that workers were expected to work in extremely poor and unsafe working and living conditions, and they had to work intensively to complete the Airfield construction as soon as possible. In particular, with respect to the deaths resulting from the rock blasting, the Chamber has found that workers were not provided with any protective kit and that despite the repeated occurrence of these accidents, they were still required to engage in this dangerous activity.<sup>6143</sup> However, a small wall had been built for the workers' protection and injured workers were often taken to the hospital after this type of accident.<sup>6144</sup> The Chamber finds that there is insufficient evidence to prove an intention to kill the workers through the imposition of unsafe working conditions as such. Rather, it shows the direct perpetrators' indifference as to the fate of those workers or their acceptance of the likelihood of their death.

1802. With regard to deaths resulting from overwork and starvation, the Chamber has found that food was provided to the workers, even though it was insufficient given the

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<sup>6140</sup> Closing Order, paras 391, 1387.

<sup>6141</sup> Closing Order, para. 392.

<sup>6142</sup> See above, paras 1755-1758.

<sup>6143</sup> See above, paras 1755-1756.

<sup>6144</sup> See above, para. 1755.

type and quantity of labour they were forced to perform.<sup>6145</sup> This evidence does not show intent to create conditions in order to kill the workers. Rather, it shows that the workers were provided with the minimum necessary to survive and accomplish the goal of building the Airfield, and that the leadership was prepared to accept the risk that workers would die in the process in order to achieve their goal.

1803. Recalling that the crime of extermination is incompatible with the notion of *dolus eventualis*,<sup>6146</sup> the Chamber finds that the requisite *mens rea* of extermination is not satisfied with respect to these facts. The Chamber is therefore unable to conclude that the crime against humanity of extermination is established at the Kampong Chhnang Airfield Construction Site.

1804. However, as set out above, Internal Rule 98(2) provides that the Chamber may change the legal characterisation of the facts set out in the closing order, provided that no new constitutive elements are introduced.<sup>6147</sup> In the present case, the Chamber does not introduce new constitutive elements to the ones set out in the Closing Order and finds that the above facts satisfy the elements of murder. In particular, the Chamber finds that the *actus reus* of murder, namely an act or omission that caused the death of the victim,<sup>6148</sup> is established with respect to the deaths resulting from the working and living conditions described above. In this respect, the relevant act or omission is constituted by the imposition on the workers of conditions that caused their death and by the absence of appropriate measures to change or alleviate such conditions.

1805. The Chamber finds that the maintenance of these conditions for an extended period of time including after their negative effects on the workers became apparent, shows that the worksite authorities willingly imposed such conditions with the knowledge that they would likely lead to the death of the victims or in the acceptance of the possibility of this fatal consequence. This satisfies the *mens rea* of murder in the form of *dolus eventualis*.

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<sup>6145</sup> See above, para. 1747.

<sup>6146</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 657.

<sup>6147</sup> Section 2: Preliminary Issues, para. 153; Internal Rule 98(2). See also, Case 002/01 Appeal Judgement, para. 562.

<sup>6148</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 627.

1806. The Chamber therefore concludes that the crime against humanity of murder is established at the Kampong Chhnang Airfield Construction Site.

#### 11.3.13.2. *Enslavement*

1807. The Closing Order charges the Accused with the crime against humanity of enslavement with respect to the intentional exercise of total control and all the powers attaching to the right of ownership over people by the personnel of worksites without them being given any real right to agree.<sup>6149</sup> In particular, the personnel in charge of supervising the workers controlled the victims' physical environment, their access to food and medical care, and subjected them to constant surveillance.<sup>6150</sup> In addition, the victims were forced to perform work without their consent, unpaid and without the opportunity to reap the direct benefit thereof.<sup>6151</sup>

1808. The NUON Chea Defence makes a number of submissions with regard to the charges of enslavement. It contends that forced labour does not in itself constitute enslavement, and that in order to amount to enslavement, forced labour must be accompanied by the exercise of property rights or other similar deprivation of liberties over the victim.<sup>6152</sup> It submits that the work carried out at Kampong Chhnang Airfield cannot be considered forced labour because this work was of a military nature and required of military personnel as part of their military duties,<sup>6153</sup> and that the requisition of labour from civilians and soldiers is lawful in cases of "emergency or calamity threatening the life or well-being of the community".<sup>6154</sup>

1809. The Chamber recalls that the crime against humanity of enslavement is characterised by the intentional exercise over a person of any or all powers attaching to the right of ownership.<sup>6155</sup> While not a prerequisite for the crime to be established, forced labour may be sufficient on its own to establish enslavement as a crime against humanity where all the elements of that crime are met.<sup>6156</sup>

<sup>6149</sup> Closing Order, paras 1391-1392.

<sup>6150</sup> Closing Order, para. 1393.

<sup>6151</sup> Closing Order, para. 1394.

<sup>6152</sup> NUON Chea Closing Brief, para. 1119.

<sup>6153</sup> NUON Chea Closing Brief, para. 1120.

<sup>6154</sup> NUON Chea Closing Brief, para. 1120.

<sup>6155</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, paras 662, 670.

<sup>6156</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 666.

1810. In the present case, the Chamber has established that the workers were forced to work against their will.<sup>6157</sup> In particular, the Chamber has established that workers could not refuse to work otherwise they would be accused of being enemies, threatened and in some cases disappeared. Further, they were told that those who disobeyed instructions would be removed or killed.<sup>6158</sup>

1811. The Chamber notes that the workers at Kampong Chhnang Airfield were all soldiers from various RAK divisions, and the work they were carrying out at the time was for military purposes. Therefore, the Chamber concurs that the work they performed was “service of a military character”. Article 8(3)(c) of the ICCPR provides that forced labour does not include any service of a military character or any service exacted in cases of emergency and calamity threatening the life or well-being of the community.

1812. However, the Chamber observes that the crime charged in this case is not forced labour but enslavement, which encompasses a broader *actus reus* than that of forced labour.<sup>6159</sup> The Chamber notes that Article 8(1) of the ICCPR provides that nobody shall be held in slavery. This provision is part of customary international law.<sup>6160</sup> No exception or derogation to this prohibition is provided.<sup>6161</sup> The crime of enslavement can be perpetrated against both civilians and members of the military as “there is no requirement nor is it an element of crimes against humanity that the *victims* of the underlying crimes be civilians”.<sup>6162</sup> The Chamber further notes that while enslavement may encompass forced labour, this is not a necessary requirement for the establishment

<sup>6157</sup> See above, paras 1744-1745.

<sup>6158</sup> See above, para. 1744.

<sup>6159</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

<sup>6160</sup> Case 001 Trial Judgement, para. 342; *Krnjelac* Trial Judgement, para. 353.

<sup>6161</sup> *Rantsev v. Cyprus and Russia*, ECtHR, Judgement, Application No. 25965/04, 7 January 2010, para. 283 (“The Court reiterates that, together with Articles 2 and 3, Article 4 enshrines one of the basic values of the democratic societies making up the Council of Europe [...] Unlike most of the substantive clauses of the Convention, Article 4 makes no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation.”). The Chamber notes that Article 4 ECHR prohibits slavery in the same way as Article 8 ICCPR. The Chamber further notes that according to Article 5 ICCPR: “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or *at their limitation to a greater extent than is provided for in the present Covenant*.” [emphasis added]). Therefore, the limitation of the definition of forced labour by the exclusion of “service of a military character” shall be understood narrowly and cannot be interpreted as limiting the scope of the prohibition of slavery by excluding from this prohibition any situation where people are asked to perform “service of a military character”.

<sup>6162</sup> Section 4: General Overview, para. 312.

of the crime. The Chamber therefore rejects the NUON Chea Defence's submission concerning the exceptions of Article (8)(c) to forced labour as irrelevant in this case.

1813. The Chamber will accordingly assess the facts against the elements of the crime of enslavement. Summarising its findings, the Chamber recalls that the workers were forced to work, their contacts and movements were restricted and controlled, their living conditions were inadequate and threats were used habitually.<sup>6163</sup>

1814. The NUON Chea Defence further submits that any restriction of movement at the Airfield was justified and lawful as "freedom of movement as a human right is not absolute".<sup>6164</sup> With respect to freedom of movement, the Chamber recognises that this is not an absolute right. However, it finds that the prohibition of movement at the Airfield was unnecessary and excessive, as the Chamber has established that workers had to remain in the location where they were assigned to work, they could not cross into an area where a nearby unit was stationed as they would be arrested if they did and were not allowed to leave the worksite without permission.<sup>6165</sup> Further, the violation of these restrictions was met with harsh punishments including arrest and being labelled as an enemy. The Chamber accordingly rejects the NUON Chea Defence's submission on this point and finds that the restrictions on the freedom of movement imposed on the Airfield workers were not lawful.

1815. The Chamber is satisfied that all of these *indicia* considered together demonstrate that the leadership at the Airfield exercised powers attaching to the right of ownership over the workers.<sup>6166</sup> Furthermore, the fact that workers did not get any payment for the work done, indicates that the workers were used to "accrue some gain".<sup>6167</sup> The Chamber is therefore satisfied that the *actus reus* of enslavement is established.

1816. The degree of control imposed on the workers, the prolonged duration of these treatments and their nature, as well as the severity of the punishment meted out to those who did not follow the instructions, show that the perpetrators intentionally exercised

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<sup>6163</sup> See above, paras 1744-1745, 1768-1769.

<sup>6164</sup> NUON Chea Closing Brief, para. 1121.

<sup>6165</sup> See above, para. 1769.

<sup>6166</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, paras 662-663.

<sup>6167</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.



“any or all of the powers attaching to the right of ownership” over the Airfield workers. The *mens rea* of enslavement is therefore satisfied.

1817. Accordingly, the Chamber concludes that the crime against humanity of enslavement is established at Kampong Chhnang Airfield Construction Site.

11.3.13.3. Persecution on political grounds

1818. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds at worksites against “real or perceived enemies of the CPK”.<sup>6168</sup> The particular acts amounting to persecution must be expressly charged.<sup>6169</sup> According to the Closing Order, such people “were subjected to harsher treatment and living conditions” than the rest of the population.<sup>6170</sup>

1819. The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemies particularised in the Closing Order under the heading of “Legal Findings” (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>6171</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>6172</sup>

1820. The KHIEU Samphan Defence contends that none of the above three groups are mentioned in the context of the Kampong Chhnang Airfield construction site,<sup>6173</sup> and that therefore KHIEU Samphan must not answer charges of persecution on political grounds with respect to this crime site.<sup>6174</sup> With respect to Kampong Chhnang Airfield, the Chamber finds that the targeted group of enemies included all people perceived as traitors or “bad elements” who were transferred to the worksite to labour in very hard conditions in order to be tempered, as their conduct was considered as contravening the Party line, or punished for their alleged traitorous affiliations, as described in the

<sup>6168</sup> Closing Order, paras 1415-1418.

<sup>6169</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 716.

<sup>6170</sup> Closing Order, para. 1418.

<sup>6171</sup> KHIEU Samphan Closing Brief, para. 1121 *citing* Closing Order, para. 1417.

<sup>6172</sup> Section 2: Preliminary Issues, para. 170.

<sup>6173</sup> KHIEU Samphan Closing Brief, paras 1121-1122.

<sup>6174</sup> KHIEU Samphan Closing Brief, para. 1123.

sections of the Closing Order related to the Airfield construction site.<sup>6175</sup> For these reasons, the KHIEU Samphan Defence's submission is rejected.

1821. The Chamber must satisfy itself that the targeted group of "real or perceived enemies of the CPK" referred to in the Closing Order was sufficiently discernible.<sup>6176</sup> The Chamber finds that those soldiers who were sent to Kampong Chhnang Airfield to work were clearly identified as enemies due to their real or perceived political beliefs or opposition to the CPK. As discussed above, the Chamber found that Divisions 310 and 450 and East Zone division soldiers were sent to the Airfield because they had been accused of having links to the enemy's network or because they were considered affiliated with their superiors who had been arrested and purged.<sup>6177</sup> Members of Division 502 who were considered "bad elements" were also sent to the Airfield to engage in hard labour.<sup>6178</sup> At meetings, workers were told that they had to be tempered because they were traitors and enemies, and because their leaders had been traitors.<sup>6179</sup> Accordingly, the Chamber is satisfied that the targeted group of "real or perceived enemies of the CPK" was sufficiently discernible.

1822. The Chamber finds that the transfer of soldiers considered traitors to the Airfield to work in poor and inadequate conditions, and the treatment they were subjected to at the worksite, in itself constitutes harsher treatment than that inflicted on the rest of the population. Furthermore, the Chamber has found numerous instances in which the workers considered as enemies were subjected to harsher treatment compared to that of loyal Division 502 soldiers and cadres at the Airfield.<sup>6180</sup> Members of Division 310 and 450 in particular worked longer hours.<sup>6181</sup> The Chamber has also found that some of the workers, especially those coming from the East Zone, were involved in particularly dangerous activities such as the blasting of rocks which placed at risk their life and physical security.<sup>6182</sup> The Chamber further found that workers were required to attend

<sup>6175</sup> Closing Order, paras 389-392.

<sup>6176</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 714.

<sup>6177</sup> *See above*, para. 1732.

<sup>6178</sup> *See above*, para. 1731.

<sup>6179</sup> *See above*, para. 1761.

<sup>6180</sup> *See above*, paras 1741-1743.

<sup>6181</sup> *See above*, para. 1742.

<sup>6182</sup> *See above*, para. 1756.

criticism and self-criticism meetings during which their unit chiefs would criticise them for their performance.<sup>6183</sup>

1823. The Chamber has found that workers were specifically informed that they needed to temper themselves by working hard,<sup>6184</sup> and that they were offenders who had to strive to work hard.<sup>6185</sup> In other instances, such as when workers from Divisions 310 and 450 were subjected to longer working hours and workers from the East Zone were assigned to the dangerous task of breaking rocks, it is clear from the facts that harsher treatment was imposed on certain workers because they were considered to be enemies.<sup>6186</sup>

1824. Furthermore, the evidence regarding the execution of East Zone workers at the Pagoda in Tuol Kpos village and at the former French fort in Kbal Lan village is consistent with other evidence regarding the targeting of these workers and can be used to infer the *mens rea* of persecution targeting these individuals because of their alleged affiliation with enemies.<sup>6187</sup> The Chamber has established that East Zone soldiers were taken to the Airfield because they were considered affiliated with the leaders of the East Zone who had been purged. The fact that when the workers had left the construction site in January 1979 the East Zone soldiers were identified, separated from the rest of the workers and executed at Tuol Khpuos pagoda and at the former French fort in Kbal Lan village is consistent with the evidence indicating that they were subjected to a persecutory treatment as they were considered members of the targeted group of the enemies. This supports the finding that these acts were carried out with the specific intent to discriminate against workers targeted because of their perceived enemy status.

1825. Having found that the victims as described in the preceding paragraphs were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that their treatment was discriminatory in fact.

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<sup>6183</sup> See above, para. 1761.

<sup>6184</sup> See above, para. 1761.

<sup>6185</sup> See above, para. 1734.

<sup>6186</sup> See above, para. 1742.

<sup>6187</sup> See above, para. 1785.

1826. Acts committed against these groups of workers infringed upon and violated their fundamental rights pertaining to life,<sup>6188</sup> personal dignity,<sup>6189</sup> liberty and security<sup>6190</sup> and freedom from arbitrary or unlawful arrest,<sup>6191</sup> as enshrined in customary international law.

1827. The acts charged as persecution include acts found to amount to independent crimes against humanity (including other inhumane acts through attacks against human dignity) as well as acts which rise to the same level of gravity or seriousness, including acts which do not necessarily amount to crimes (in particular, arrests, subjection to longer working hours, working without protective gear, attending criticism and self-criticism meetings). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution on political grounds.

1828. The Chamber is satisfied that both the *actus reus* and the *mens rea* of the crime are established. Accordingly, the Chamber finds that the crime against humanity of persecution on political grounds is established at the Kampong Chhnang Airfield Construction Site.

11.3.13.4. Other inhumane acts through attacks against human dignity

1829. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity on the basis of serious mental and physical suffering and injury as well as serious attacks on human dignity inflicted by the CPK authorities on victims by depriving the civilian population of adequate food, shelter, medical assistance and minimum sanitary conditions.<sup>6192</sup>

1830. The NUON Chea Defence submits that the gravity assessment to be made in respect of the crime of other inhumane acts through attacks against human dignity must

<sup>6188</sup> As evidence of the state of customary international law, *see* Geneva Convention (IV), Art. 3(1)(a); Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 6; ECHR, Art. 2; ACHPR, Art. 4; ACHR, Art. 4. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>6189</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHPR, Art. 5; ACHR, Arts. 5-6.

<sup>6190</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7.

<sup>6191</sup> As evidence of the state of customary international law, *see* Universal Declaration of Human Rights, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHPR, Art. 6; ACHR, Art. 7(3).

<sup>6192</sup> Closing Order, para. 1435.

take into account the context in which the crimes occurred.<sup>6193</sup> It contends that “given the dire circumstances that Cambodia was in at the time” the working and living conditions alleged to constitute attacks against human dignity are not of a comparable gravity to other crimes against humanity.<sup>6194</sup>

1831. The Chamber recalls that the assessment of the gravity of the relevant act or omission may take context into consideration.<sup>6195</sup> In the present case, the Chamber has established that the food workers received at the Kampong Chhnang Airfield was not sufficient;<sup>6196</sup> that working conditions were very demanding and that workers worked every single day of the month;<sup>6197</sup> that the hard work had a detrimental physical and psychological impact on them;<sup>6198</sup> that some workers died of overwork and starvation;<sup>6199</sup> that the living conditions were poor and inadequate;<sup>6200</sup> and that workers did not have facilities to bathe and relieve themselves.<sup>6201</sup>

1832. The Chamber acknowledges that conditions in Cambodia during the DK period were difficult due to years of civil war and the damaging US bombing campaign. However, even if resources including those concerning food and medical assistance might have been scarce at the worksite and in the entire country, it was within the power of the site authorities to mitigate and/or avoid the devastating effects of the lack of resources on the workers by adapting working hours and at least to some degree working conditions accordingly. On the contrary, instead of adapting the work schedule or improving safety and living conditions, the authorities deliberately continued subjecting the workers to work and living conditions that caused severe mental or physical suffering or injury.

1833. With regard to the specific situation of soldiers, the Chamber also recalls the consistent jurisprudence of human rights tribunals regarding the duty of care that state

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<sup>6193</sup> NUON Chea Closing Brief, para. 1125.

<sup>6194</sup> NUON Chea Closing Brief, para. 1125.

<sup>6195</sup> Section 9.1.8.2: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Attacks Against Human Dignity, paras 735-739.

<sup>6196</sup> *See above*, para. 1747.

<sup>6197</sup> *See above*, para. 1745.

<sup>6198</sup> *See above*, paras 1750-1751.

<sup>6199</sup> *See above*, para. 1758.

<sup>6200</sup> *See above*, paras 1748, 1753-1754.

<sup>6201</sup> *See above*, para. 1749.

authorities have towards military recruits. The European Court of Human Rights held that:

[T]he State has a duty to ensure that a person performs military service in conditions which are *compatible with respect for his human dignity*, that the procedures and methods of military training do not subject him to distress or *suffering of an intensity exceeding the unavoidable level of hardship inherent in military discipline and that, given the practical demands of such service, his health and well-being are adequately secured by, among other things, providing him with the medical assistance he requires.*<sup>6202</sup>

1834. The Inter-American Court of Human Rights has held that army recruits are in a special position of subjection to the state authorities which is comparable to that of detainees. This situation puts the state in a position of guarantor, whereby it has an obligation to guarantee the wellbeing of soldiers, ensures that their work and discipline do not exceed the level of suffering inherent to their function and provide a satisfactory explanation when their right to health is affected.<sup>6203</sup>

1835. The Chamber finds that the conditions to which workers at the Kampong Chhnang Airfield were subjected constituted a serious attack on the human dignity of the workers. The evidence shows the serious and lasting impact of the working and living conditions on the victims and the scale on which these affected them. The Chamber is satisfied that these acts, when considered holistically, are of similar gravity to the other enumerated crimes against humanity and that the *actus reus* of the crime is therefore established.

1836. The prolonged duration of the imposition of those conditions on the workers, and particularly their continuation when the results of these conditions had already become evident, shows that they were imposed intentionally. The Chamber is satisfied that the *mens rea* of the crime is also established.

1837. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at the Kampong Chhnang Airfield Construction Site.

<sup>6202</sup> *Chember v. Russia*, ECtHR, Judgement, Application No. 7188/03, 1 December 2008, para. 50 (emphasis added); *Placi v. Italy*, ECtHR, Judgement, Application No. 48754/11, 21 April 2014, para. 51.

<sup>6203</sup> *Quispialaya Vilcapoma v. Peru*, Inter-Am. Ct.H.R., Judgement, 23 November 2015 (Series C No. 308), para. 124 (unofficial translation).

11.3.13.5. Other inhumane acts through conduct characterised as enforced disappearances

1838. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances in respect of the great suffering experienced by victims as a result of the arrest, detention or abduction of loved ones and others in conditions that placed them outside the protection of the law and the subsequent refusal to provide information on their whereabouts.<sup>6204</sup> At Kampong Chhnang Airfield witnesses observed the disappearance of numerous workers and noted a correlation between criticism and self-criticism meetings and the disappearances.<sup>6205</sup> Many witnesses also saw trucks transporting workers outside the Airfield who never came back and indicated “they could not be sure about the real fate of the disappeared persons”.<sup>6206</sup>

1839. The Chamber has established that in some instances workers were seen being arrested after being called into a meeting or during the night and that no information was provided to the other workers with regard to the fate or whereabouts of those who were arrested;<sup>6207</sup> workers had no available means to know about the outcome of the arrests and were afraid to ask any information for fear of facing the same treatment;<sup>6208</sup> and the arrests were carried out under the oversight and with the approval of the worksite leadership.<sup>6209</sup> The Chamber has established that in other instances workers simply vanished while under the control of the Airfield authorities and were never seen again at the worksite by their fellow workers.<sup>6210</sup>

1840. With regard to the arrests of workers followed by their disappearance or their transfer to S-21 described above,<sup>6211</sup> the NUON Chea Defence contends that the evidence does not establish that any of the alleged disappearances constituted an illegal deprivation of liberty, that the DK authorities were involved in them or that they intentionally concealed information on the whereabouts of those allegedly

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<sup>6204</sup> Closing Order, paras 1470-1478.

<sup>6205</sup> Closing Order, para. 393.

<sup>6206</sup> Closing Order, para. 393.

<sup>6207</sup> See above, paras 1773-1776.

<sup>6208</sup> See above, para. 1776.

<sup>6209</sup> See above, para. 1777.

<sup>6210</sup> See above, para. 1772.

<sup>6211</sup> See above, paras 1773-1775.

disappeared.<sup>6212</sup> The Chamber rejects these arguments. The evidence clearly indicates that arrests at the worksite were arbitrary in nature, considering that workers were arrested on the basis of unfounded accusations, sometimes without explanation, always without due process.<sup>6213</sup> Furthermore, the DK authorities either refused to provide information on what happened to those arrested or made people so afraid that they would not dare to ask for fear of being arrested themselves.<sup>6214</sup> Finally, the evidence shows that the security personnel conducted the arrests with the approval and knowledge of the Airfield leadership.<sup>6215</sup>

1841. With respect to the instances described above in which workers simply disappeared with no notice and were never seen again at the worksite,<sup>6216</sup> the NUON Chea Defence submits that it cannot be established beyond reasonable doubt that the alleged disappearances occurred at the worksite as the witnesses did not provide detailed evidence on the circumstances of such disappearances.<sup>6217</sup> The Chamber concurs that the evidence indicating that workers vanished from the worksite and were never seen again is not sufficient on its own to establish the occurrence of enforced disappearances. Furthermore, in certain instances explanations exist for the disappearance of these workers. For example, the Chamber has found that one worker was sent from the Airfield to attend trainings in Phnom Penh and was subsequently returned to the worksite.<sup>6218</sup> In another instance, the Chamber has established that West Zone sector troops captured and arrested individuals who attempted to escape from the Airfield,<sup>6219</sup> and the Chamber considers it possible that some workers may have succeeded in escaping. However, the Chamber finds that these explanations do not account for the totality of the disappearances from the worksite. In this regard, the Chamber takes into consideration the context of the disappearances at the Worksite, their frequency and the large numbers of workers concerned.<sup>6220</sup>

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<sup>6212</sup> NUON Chea Closing Brief, para. 1104.

<sup>6213</sup> *See above*, para. 1773.

<sup>6214</sup> *See above*, para. 1776.

<sup>6215</sup> *See above*, para. 1777.

<sup>6216</sup> *See above*, para. 1772.

<sup>6217</sup> NUON Chea Closing Brief, paras 1104-1105.

<sup>6218</sup> *See above*, paras 1739, 1743.

<sup>6219</sup> *See above*, para. 1767.

<sup>6220</sup> *See above*, para. 1772.



1842. As set out above, there is evidence of workers being arrested prior to disappearing and it is reasonable to believe under the circumstances that this also happened on occasions that were not witnessed by anyone who appeared before the Chamber in this case. The Chamber further recalls that a general policy to purge RAK members existed during the period in which the Kampong Chhnang Airfield was being constructed,<sup>6221</sup> and that soldiers were transferred to work at the Airfield because they were considered “bad elements” and because they were the subordinates of arrested division leaders and were thus perceived as having affiliations with the enemy.<sup>6222</sup> Workers at the Airfield were under constant control and surveillance by the Airfield authorities.<sup>6223</sup> They had no freedom to move.<sup>6224</sup> The leadership at the Airfield exercised total control and the powers attaching to the right of ownership over the workers.<sup>6225</sup> Workers had no access to a court system or to any mechanism where they could file a complaint concerning their treatment. Also, there is no evidence of any system of recording or registering the personal details of the persons who disappeared from the worksite that would have been accessible to the public, or any other procedural protection during the time workers were assigned to the Airfield worksite.<sup>6226</sup> On the contrary the key standard to be applied by CPK members was, as always during the DK period, to maintain secrecy. The authorities in charge of the Airfield provided no information concerning the fate of workers who disappeared or they gave false or unverifiable information, stating for example that workers had been reassigned to another location.<sup>6227</sup>

1843. Having considered all of the above, the Chamber finds that the only reasonable inference that can be drawn from the evidence is that a significant number of workers who disappeared and were never seen again at the worksite were in fact deprived of their liberty by the Airfield authorities and disappeared in the absence of any information provided to their co-workers or their family members as to their fate or whereabouts.

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<sup>6221</sup> Section 12.1: Internal Factions, paras 2069, 2072.

<sup>6222</sup> *See above*, paras 1731-1732.

<sup>6223</sup> *See above*, paras 1767-1768.

<sup>6224</sup> *See above*, para. 1769.

<sup>6225</sup> *See above*, para. 1815.

<sup>6226</sup> Section 9: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Enforced Disappearances, para. 754.

<sup>6227</sup> *See above*, para. 1772.

1844. The Chamber finds that the acts described above caused serious mental suffering to the victims, namely those who disappeared and those who were left behind at the worksite. As set out above, the fact that many workers were no longer seen by their co-workers generated in them extreme anxiety and contributed to the creation of a general climate of fear which affected the workers emotionally.<sup>6228</sup> Witnessing the numerous and widespread disappearances at the worksite, in the circumstances described above, made the workers fear that they would also be taken away. The Chamber considers all of these acts holistically and in the context of the general atmosphere at the worksite, together with the impact of these acts on the victims, to conclude that the relevant acts are of the similar gravity as the other crimes against humanity. The Chamber is therefore satisfied that the *actus reus* of other inhumane acts through conduct characterised as enforced disappearances is established.

1845. Having considered the widespread, consistent and repeated occurrence of these particular disappearances, the Chamber concludes that this pattern of conduct which caused great suffering to the victims was performed intentionally. The Chamber is therefore satisfied that the *mens rea* of other inhumane acts through conduct characterised as enforced disappearances is established.

1846. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at the Kampong Chhnang Airfield Construction Site.

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<sup>6228</sup> See above, paras 1772, 1776.

## 12. SECURITY CENTRES, EXECUTION SITES AND INTERNAL PURGES

### 12.1. NUON Chea Defence regarding the Threat of Vietnam, Internal Factions and Justification of the DK National Security Policy

#### 12.1.1. *Preliminary Issues*

1847. The Chamber notes that the NUON Chea Defence in the submissions regarding its central defence,<sup>6229</sup> cites to confessions from S-21, particularly that of KOY Thuon, YIM Sambath, HU Nim, VORN Vet and NEY Sarann *alias* Ya.<sup>6230</sup> The Chamber has previously found that a real risk exists that torture was used at S-21 and other security centres to obtain confessions.<sup>6231</sup> As a consequence the Chamber ruled that it “will not permit the invocation of such evidence, unless a Party proposing to use such evidence establishes that a real risk does not exist that it was obtained through torture, or it falls within the exception to Article 15 [of the CAT]”.<sup>6232</sup> The Supreme Court Chamber clarified that “the effect of the exclusionary rule is that statements falling under it may not be used to prove the truth of its content or even to imply that it might be truthful, for instance by confronting a witness with it”.<sup>6233</sup>

1848. The Chamber recalls that it has previously denied a request filed by the NUON Chea Defence during proceedings in order to be allowed to use, for the truth of their contents, statements made at S-21 by KOY Thuon, YIM Sambath and CHEA Non *alias* Suong.<sup>6234</sup> The Chamber was not satisfied that the evidence before it demonstrated the

<sup>6229</sup> The NUON Chea Defence refers to this as “the heart of its case”. See NUON Chea Closing Brief, para. 107; NUON Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, para. 5.

<sup>6230</sup> See e.g., NUON Chea Closing Brief, paras 215, 231, 234, 236, 248.

<sup>6231</sup> Section 2.4.6.3: Torture-Tainted Evidence. See also, Decision on Evidence Obtained through Torture (TC), E350/8, 5 February 2016, para. 79.

<sup>6232</sup> Decision on Evidence Obtained through Torture, E350/8, 5 February 2016, para. 79.

<sup>6233</sup> Decision on Objections to Document Lists (Full Reasons) (SCC), F26/12, 31 December 2015, para. 47.

<sup>6234</sup> NUON Chea’s Rule 92 Motion to use certain S-21 Statements, E399, 20 April 2016; Written Reasons for Decision on NUON Chea’s Rule 92 Motion to Use Certain S-21 Statements, E399/5, 26 January 2017, paras 17-27.

existence of specific circumstances sufficient to rebut the preliminary determination that there is a real risk that torture was used to obtain the said statements.<sup>6235</sup>

1849. The Chamber notes that the Accused are charged with torture, including with regard to the authors of the S-21 statements cited in the NUON Chea Defence Closing Brief.<sup>6236</sup> In the section of this Judgement relevant to the charges concerning S-21, the Chamber finds that the S-21 confessions of KOY Thuon, YIM Sambath, HU Nim, VORN Vet and NEY Sarann *alias* Ya were obtained under torture.<sup>6237</sup> Therefore, Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment mandates the exclusion of these statements which will only be used within the exception and limitations defined in the Chamber's decision on the use of evidence obtained through torture.<sup>6238</sup>

1850. In addition, the NUON Chea Defence relies upon transcripts of interviews taken by THET Sambath and Robert LEMKIN which were not admitted as evidence because the authorship and reliability of the statements could not be established.<sup>6239</sup> This evidence is not considered in this Judgement, as these sources of evidence are unreliable.

1851. Finally, the Chamber notes the NUON Chea Defence's contention that the evidence it cites in support of these submissions "proves" its theory of the case.<sup>6240</sup> The Chamber recalls that the Accused are presumed innocent until proved guilty and that they bear no burden of proof to establish facts.<sup>6241</sup>

<sup>6235</sup> Written Reasons for Decision on NUON Chea's Rule 92 Motion to Use Certain S-21 Statements, E399/5, 26 January 2017, para. 27.

<sup>6236</sup> See *e.g.*, Closing Order, paras 180, 197, 450, 943, 1068, 1183, 1277, 1408-1414, 1548.

<sup>6237</sup> Section 12.2: S-21 Security Centre (*see* Sections 12.2.8.1.2: YIM Sambath; 12.2.8.1.6: NEY Sarann *alias* MEN San *alias* Ya; 12.2.8.2.1: KOY Thuon; 12.2.8.3.1: HU Nim *alias* Phoas; 12.2.8.5.2: VORN Vet).

<sup>6238</sup> Decision on Evidence Obtained through Torture, E350/8, 5 February 2016, paras 49, 71-78, 81-88.

<sup>6239</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20. The Defence also relies upon the transcript of an interview with TOAT Thoeun which was admitted into evidence. *See* Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 21. The Chamber notes that there are discrepancies in the spelling of the name of this witness and that while the THET Sambath-Robert LEMKIN transcripts use the spelling "TOIT Thoeun", the Chamber has decided, for ease of reading and sake of clarity, to spell it uniformly as "TOAT Thoeun".

<sup>6240</sup> T. 16 June 2017 (Closing Statements), E1/523.1, p. 24.

<sup>6241</sup> Section 2: Preliminary Issues, para. 38.

12.1.2. *Overview of Party Submissions*

1852. The Chamber outlines the NUON Chea submissions and the Parties' generalised responses before addressing the major events put forward by the Defence and the submissions based on particularised evidentiary materials.

12.1.2.1. *NUON Chea Defence submissions*

1853. The NUON Chea Defence submits that the case presented by the Co-Prosecutors is Manichean in that it is oversimplified and in some cases totally false.<sup>6242</sup> It presents the CPK as monsters and Vietnam's invasion as humanitarian based on Vietnamese propaganda, stories of middle and upper-class Cambodian refugees, the media, and academics.<sup>6243</sup> The NUON Chea Defence therefore seeks to "rewrite history" by countering the Manichean narrative and submits that the evidence that it has compiled proves NUON Chea's account.<sup>6244</sup>

1854. The NUON Chea Defence submits that there were a series of attempted *coups d'état* throughout the Khmer Rouge era, some of which were fomented by Vietnam. It submits that the existence of these *coups* undercuts and raises reasonable doubt as to NUON Chea's responsibility for crimes charged in the Closing Order because members of the charged criminal enterprise were pursuing goals that were diametrically opposed to CPK policy as they sought to overthrow the legitimate DK government.<sup>6245</sup>

1855. The NUON Chea Defence submits that Vietnam posed a formidable, existential threat to DK, endangering its national security, territorial integrity and sovereignty,<sup>6246</sup> and that owing to this threat, during the entire DK period, there existed a constant state of emergency.<sup>6247</sup> The Vietnamese threat was the paramount consideration in all CPK policy decisions,<sup>6248</sup> which the Defence submit were "logical, rational, proportionate, and lawful responses to the existential threat of treason from within and annihilation from without".<sup>6249</sup> The NUON Chea Defence submits that it was therefore lawful for

<sup>6242</sup> T. 16 June 2017 (Closing Statements), E1/523.1, p. 8.

<sup>6243</sup> T. 16 June 2017 (Closing Statements), E1/523.1, pp. 8-10, 20-21.

<sup>6244</sup> T. 16 June 2017 (Closing Statements), E1/523.1, p. 24.

<sup>6245</sup> T. 16 June 2017 (Closing Statements), E1/523.1, p. 73; NUON Chea Closing Brief, para. 359.

<sup>6246</sup> NUON Chea Closing Brief, para. 145.

<sup>6247</sup> NUON Chea Closing Brief, paras 3, 347, 364, 384, 391, 401, 405, 412, 533, 540, 656-657, 670, 866, 882-883, 950, 1010, 1069, 1081, 1120.

<sup>6248</sup> NUON Chea Closing Brief, para. 145; T. 16 June 2017 (Closing Statements), E1/523.1, p. 35.

<sup>6249</sup> NUON Chea Closing Brief, para. 145.

the CPK to identify, arrest, detain and, in most circumstances, execute internal and external enemies due to legitimate suspicions and convictions of unlawful activities such as treason, subversion, collaborating with the enemy and espionage.<sup>6250</sup> The NUON Chea Defence submits that “a significant proportion of [CPK’s] top leaders” were traitors to the CPK who sought to overthrow the DK government and install a new regime loyal to Vietnam.<sup>6251</sup>

1856. The NUON Chea Defence submits that prior to the DK era, (North) Vietnam long threatened Cambodia’s survival as a nation-state, planning to create an Indochinese Federation composed of Vietnam, Laos, and Cambodia with the latter two states being subjugated to Vietnam.<sup>6252</sup> During the DK era, Vietnam sought to influence events in Cambodia by cultivating new leadership that was loyal to Vietnam, most prominently Northwest Zone Secretary RUOS Nhim and East Zone Secretary SAO Phim,<sup>6253</sup> and seeking to take control of the country first in 1975 by attempting to assassinate POL Pot and later, between 1976-1978, staging three attempted *coups d’état* (referred to collectively as “Plan A”).<sup>6254</sup> In order to deplete the CPK’s ability to fend off these attacks, it is alleged that traitors within the CPK were siphoning off supplies necessary to the CPK’s survival, such as military materiel and food, destroying these supplies if necessary and disrupting working productivity.<sup>6255</sup> Vietnam also sought to foment discontent to make people resent the CPK and make them more amenable to treason.<sup>6256</sup> When these attempts failed, the NUON Chea Defence submits that Vietnam launched an illegal military invasion of DK supported by the Soviet Union and other Warsaw Pact allies to take control of Cambodia (referred to as “Plan B”).<sup>6257</sup>

1857. The NUON Chea Defence submits that throughout the DK era, many Standing and Central Committee members, DK ministers, zone secretaries and RAK leaders (apart from those in the Southwest Zone) were collaborating with Vietnam in defiance

<sup>6250</sup> NUON Chea Closing Brief, paras 308, 365; NUON Chea’s Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, paras 17, 19-24; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 4-5.

<sup>6251</sup> NUON Chea Closing Brief, paras 214, 231-232, 238; T. 16 June 2017 (Closing Statements), E1/523.1, p. 41.

<sup>6252</sup> NUON Chea Closing Brief, para. 121; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 4, 31.

<sup>6253</sup> NUON Chea Closing Brief, para. 122.

<sup>6254</sup> NUON Chea Closing Brief, paras 122-123.

<sup>6255</sup> NUON Chea Closing Brief, para. 278.

<sup>6256</sup> NUON Chea Closing Brief, para. 278.

<sup>6257</sup> NUON Chea Closing Brief, para. 124; T. 16 June 2017 (Closing Statements), E1/523.1, p. 4.

of the lawful instructions of the legitimate DK government.<sup>6258</sup> Citing to a number of S-21 confessions, including those of HU Nim, KOY Thuon and VORN Vet, the NUON Chea Defence submits that the CPK leadership was riddled with Vietnam's collaborators.<sup>6259</sup> It submits that NUON Chea did not have effective control over cadres belonging to most zonal, autonomous sectors, and centre military division forces,<sup>6260</sup> and did not have effective control over the collaborators with Vietnam. Further, even if he did, it submits that he took concerted efforts to investigate and punish acts of sabotage and subversion.<sup>6261</sup> However, the NUON Chea Defence submits that the Accused could not have prevented or punished such cadres as they were often acting autonomously, secretly and independently of him,<sup>6262</sup> and without his, POL Pot's or other DK leaders' direction, knowledge or approval.<sup>6263</sup>

1858. The NUON Chea Defence therefore submits that it was the leaders of treasonous rebellions who were responsible for the deaths and other criminal acts that occurred in areas under the control of Vietnam's collaborators.<sup>6264</sup> It submits that where NUON Chea may have been acting in concert with loyal members of the CPK forces, such as POL Pot, *Ta Mok*, SON Sen and KE Pauk, it was with the aim of achieving a more equitable communist society and abuses that took place were the sole responsibility of brutal lower-level leaders acting outside the lawful framework of CPK policies and instructions.<sup>6265</sup> It further submits that the existence of these treasonous rebellions created a permanent state of emergency throughout the DK period, owing to the existential threat posed by Vietnam and the decimated conditions in Cambodia at the

<sup>6258</sup> NUON Chea Closing Brief, para. 383; T. 16 June 2017 (Closing Statements), E1/523.1, p. 45.

<sup>6259</sup> NUON Chea Closing Brief, paras 231-232; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 33-34, 42.

<sup>6260</sup> NUON Chea Closing Brief, paras 377-379. It is submitted that the traitors included SAO Phim, HU Nim, HOU Youn, RUOS Nhim, CHHIM Sam Aok *alias* Pang, VORN Vet, KOY Thuon, NON Suon, Soth, Oeun, SEOU Vasi *alias* Doeun, CHAN Chakrei, SUOS Neou *alias* Chhouk, KEO Meas, TOUCH Phoeun, and NEY Sarann *alias* Ya. *See* NUON Chea Closing Brief, para. 235 (many of these names are repeated two or three times within this allegation).

<sup>6261</sup> NUON Chea Closing Brief, para. 383.

<sup>6262</sup> NUON Chea Closing Brief, para. 379; NUON Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, para. 40; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 66, 74.

<sup>6263</sup> T. 16 June 2017 (Closing Statements), E1/523.1, pp. 73-74.

<sup>6264</sup> NUON Chea Closing Brief, para. 374; NUON Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, para. 39.

<sup>6265</sup> NUON Chea Closing Brief, para. 376.

time the CPK took power, and that this rendered the alleged CPK policies to be “not only entirely rational and perfectly legitimate but absolutely lawful”.<sup>6266</sup>

1859. In describing the alleged treasonous rebellions and members thereof, the NUON Chea Defence points to evidence from before, during, and after the DK era – what it refers to as the head, body and tail of the crocodile.<sup>6267</sup> The NUON Chea Defence uses the term *coup d'état* to describe a variety of different factual allegations, including: an attack on a radio station in Phnom Penh; the explosion of a grenade; attempts to assassinate POL Pot; the storage of food, clothing, and weapons in preparation for an eventual attack; and meetings to plan the overthrow of the CPK Party Centre.<sup>6268</sup>

#### 12.1.2.2. Co-Prosecutors' submissions

1860. The Co-Prosecutors submit that there is no credible evidence that thousands of victims detained, tortured and killed at DK security centres, many of whom were children, were planning a rebellion. Rather, they were detained and executed based only on the fact that they had been implicated in confessions obtained by torture.<sup>6269</sup> There was no possibility of due process because the DK abolished the courts.<sup>6270</sup> Contrary to what is argued by the NUON Chea Defence, there is no right to extrajudicial killings under international law.<sup>6271</sup> Even the DK Constitution cited by the NUON Chea Defence does not provide for a punishment of death.<sup>6272</sup>

1861. The Co-Prosecutors acknowledge that there were groups and individuals who resisted POL Pot's rule, including Cham rebellions and former Khmer Rouge soldiers who fought in the forests in mid-1978 to escape mass executions of East Zone

<sup>6266</sup> NUON Chea Closing Brief, para. 384. *See also*, NUON Chea's Submissions on the Relevance of Evidence of Treasonous Rebellion to his Individual Criminal Responsibility in Case 002/02, E395/2, 10 June 2016, para. 30 (“Accordingly, the existence of a threat of such magnitude absolves Nuon Chea of criminal responsibility for the charges of the crimes against humanity of murder, torture and extermination (insofar as the latter charge relates to deaths by execution) at the various security centres within the scope of Case 002/02”); T. 16 June 2017 (Closing Statements), E1/523.1, p. 75.

<sup>6267</sup> NUON Chea Closing Brief, paras 107-125; T. 16 June 2017 (Closing Statements), E1/523.1, p. 4.

<sup>6268</sup> NUON Chea Closing Brief, paras 238-239, 243-245, 247, 252, 255, 257-258, 259-264, 275, 278-279, 282, 284-285, 297-298, 304, 309-313, 315-316, 319-326.

<sup>6269</sup> Co-Prosecutors' Closing Brief, para. 73.

<sup>6270</sup> Co-Prosecutors' Closing Brief, para. 74; T. 21 June 2017 (Closing Statements), E1/526.1, pp. 105-106, 110; T. 22 June 2017 (Closing Statements), E1/527.1, p. 27.

<sup>6271</sup> T. 21 June 2017 (Closing Statements), E1/526.1, pp. 108-110.

<sup>6272</sup> T. 21 June 2017 (Closing Statements), E1/526.1, p. 110.



forces.<sup>6273</sup> They also acknowledge that some individuals went to Vietnam and cooperated with the Vietnamese invasion that brought an end to the Democratic Kampuchea regime. However, they note that many top-level leaders who were purged commanded significant armed forces, and yet none of them led any military operation against POL Pot. They submit that instead, SAO Phim and his East Zone forces led DK's resistance to the Vietnamese incursion.<sup>6274</sup> They further note that none of the zone leaders resisted arrest or attempted to escape, noting particularly the case of SAO Phim.<sup>6275</sup>

1862. The Co-Prosecutors submit that NUON Chea's fake version of history is the same fake history that the Khmer Rouge tried to sell to the world at the time of the crimes.<sup>6276</sup> The Defence submissions are based on illogical speculation and, in many cases, on confessions obtained by torturing people.<sup>6277</sup>

1863. As to evidence from S-21 confessions, the Co-Prosecutors submit that every person in S-21 and at other security centres was subjected to torture.<sup>6278</sup> They submit that S-21 confessions do not support the NUON Chea Defence case and point to the statement by Stephen HEDER that "the idea that there was a pro-Vietnamese faction within the DK is a fiction that was being circulated by both the Khmer Rouge and the Vietnamese as it served both of their interests".<sup>6279</sup>

1864. The Co-Prosecutors point to evidence that S-21 confessions were obtained through torture and included evidence that was untrue, particularly as it falsely implicated prisoners as being CIA agents.<sup>6280</sup>

### 12.1.2.3. Lead Co-Lawyers' submissions

1865. The Lead Co-Lawyers submit that the counternarrative presented by the NUON Chea Defence is just as Manichean as the one they condemn as well as being

<sup>6273</sup> Co-Prosecutors' Closing Brief, para. 76; T. 21 June 2017 (Closing Statements), E1/526.1, pp. 117-118.

<sup>6274</sup> Co-Prosecutors' Closing Brief, paras 77-78.

<sup>6275</sup> Co-Prosecutors' Closing Brief, para. 79.

<sup>6276</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 3.

<sup>6277</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 3.

<sup>6278</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 27, 40-41, 45.

<sup>6279</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 31.

<sup>6280</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 31-37.

disconnected from the trial.<sup>6281</sup> They note that the Defence has cited to about 100 documents in its closing brief that were not admitted at trial, creating confusion as to what elements the Chamber will consider in its deliberations.<sup>6282</sup>

1866. The Lead Co-Lawyers submit that the NUON Chea Defence narrative does not explain the responsibility for crimes in the Southwest Zone, nor what happened at Trapeang Thma Dam or at Wat Au Trakuon at a time when, on NUON Chea's telling, all of the traitors had been legitimately executed.<sup>6283</sup>

#### 12.1.2.4. *KHIEU Samphan Defence submissions*

1867. The KHIEU Samphan Defence does not directly confront the NUON Chea Defence narrative of internal factions and rebellions. It does however agree that Vietnam was the aggressor in the armed conflict with the DK regime.<sup>6284</sup> The DK sought to avoid conflict because it was not in its interest to fight a war against a stronger army.<sup>6285</sup> In addition, the KHIEU Samphan Defence does not contest the facts at S-21, which it concedes can be qualified as murder, extermination, enslavement, imprisonment, torture, political persecution, and other inhumane acts – although it contests whether racial persecution was proved.<sup>6286</sup>

1868. The Chamber will only consider the NUON Chea Defence submission insofar as they are based on identified evidence. Likewise, the Chamber will only address submissions concerning events outside the temporal jurisdiction of the ECCC if and insofar as they directly impact upon the criminal responsibility of the Accused. The Chamber will disregard submissions that are based improperly on torture-tainted evidence.

#### 12.1.2.5. *Trial Chamber observations*

1869. The core of the NUON Chea Defence revolves around Vietnam's existential threat to Cambodia and its Plan A and Plan B to take control over the country. According to the NUON Chea Defence, Plan A consisted of assassination attempts

<sup>6281</sup> T. 21 June 2017 (Closing Statements), E1/526.1, p. 56.

<sup>6282</sup> T. 21 June 2017 (Closing Statements), E1/526.1, pp. 56-57.

<sup>6283</sup> T. 21 June 2017 (Closing Statements), E1/526.1, p. 79.

<sup>6284</sup> T. 20 June 2017 (Closing Statements), E1/525.1, pp. 96-97.

<sup>6285</sup> T. 20 June 2017 (Closing Statements), E1/525.1, p. 97.

<sup>6286</sup> KHIEU Samphan Defence Closing Brief, paras 1196-1219.

against POL Pot in 1975 and three attempted *coups d'état* in 1976, 1977 and 1978. Specifically, the 1976 *coup d'état* consisted of explosions in Siem Reap and Phnom Penh, with KOY Thuon and CHAN Chakrei at the centre of these attempts.<sup>6287</sup> According to the NUON Chea Defence, the 1977 *coup d'état* was to entail the capture of Phnom Penh and taking control over much of the DK territory. The leading forces of this second *coup d'état* were the North Zone-affiliated Centre Division 310 and its leader SBAUV Him *alias* Oeun (takeover of Phnom Penh) and the Secretary of the Northwest Zone, RUOS Nhim (seizing control of the territory).<sup>6288</sup> The third *coup d'état* consisted of the East Zone forces' attempted *coup d'état* under the leadership of Zone Secretary SAO Phim, in collusion with Vietnam, beginning in May 1978 and ending with SAO Phim's suicide in June 1978.<sup>6289</sup> Following the failure of these three *coups d'état* Vietnam shifted its focus to directly invading Cambodia and implemented Plan B.<sup>6290</sup>

1870. The Chamber addresses the arguments related to the 1975-1976 assassination attempts, the three attempted *coups d'état* in 1976, 1977 and 1978 before turning to the implementation of Plan B.

### 12.1.3. 1975-1976 Assassination Attempts

1871. The NUON Chea Defence submits that there was an assassination attempt on POL Pot at the Olympic Stadium in 1975 that was the doing of SAO Phim.<sup>6291</sup> The Chamber notes that the evidence in support of this submission is likely torture-tainted. CHHAOM Se told DC-Cam that the reason they suspected that SAO Phim was behind the attempt was because he was from the East Zone and AN Sopheap *alias* Pheap stated that when people from the East Zone had been interrogated, they confessed.<sup>6292</sup> CHHAOM Se told the DC-Cam interviewers, during the same interview, that no shots had been fired in the assassination attempt.<sup>6293</sup> Therefore, it appears that this was a suspected plot that was purportedly uncovered in torture-tainted confessions. The

<sup>6287</sup> NUON Chea Closing Brief, paras 123, 244-259.

<sup>6288</sup> NUON Chea Closing Brief, paras 259-310.

<sup>6289</sup> NUON Chea Closing Brief, paras 311-326.

<sup>6290</sup> NUON Chea Closing Brief, paras 327-347.

<sup>6291</sup> NUON Chea Closing Brief, para. 241.

<sup>6292</sup> AN Sopheap and CHHAOM Se DC-Cam Interview, E3/10569, 25 June 2012, pp. 153-154, ERN (En) 01079526-01079527.

<sup>6293</sup> AN Sopheap and CHHAOM Se DC-Cam Interview, E3/10569, 25 June 2012, p. 153, ERN (En) 01079526.

Chamber therefore considers that the assertion that SAO Phim was responsible for this plot is not well-founded. Even if the evidence of the plot originated from a source of knowledge that was not torture-tainted, at the time of the purported assassination attempt in 1975, SAO Phim was a trusted member of the CPK, who received numerous visits from NUON Chea and POL Pot himself in the East Zone. Therefore, taking into account the apparently good relations between these individuals,<sup>6294</sup> and noting the absence of any reliable evidence to the contrary, the Chamber is not convinced that SAO Phim sought to assassinate POL Pot in Phnom Penh.

1872. The NUON Chea Defence submits there were further plots to kill POL Pot in 1975 at a meeting (no location was indicated) and also when one of his flights landed at Pochentong Airport, which were averted when POL Pot changed his plans.<sup>6295</sup> These assertions are based on the transcript of an interview with Witness 1 by Robert LEMKIN and THET Sambath which was rejected by the Chamber as unreliable.<sup>6296</sup> As they lack any basis on the admitted evidence, the Chamber does not find these submissions to be substantiated.

1873. The NUON Chea Defence also submits there was an attempt to poison POL Pot in mid-1976 which was planned by CHAN Chakrei.<sup>6297</sup> In support of this submission, it cites to a book by Nayan CHANDA, who in turn bases his assertion on a dissertation by Kenneth QUINN which does not appear on the Case File.<sup>6298</sup> The Chamber is unable to assess the original source of this information. However, the evidence as to plots of CHAN Chakrei and SAO Phim against the CPK, noted below, is founded upon torture-tainted evidence which is not permissible.

1874. Finally, the NUON Chea Defence points to a DK official statement made in 1978, cited by Ben KIERNAN, to the effect that Phnom Penh radio was attacked in September 1975 by East Zone forces in an attempted *coup d'état*, although the plot

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<sup>6294</sup> See below, para. 2015.

<sup>6295</sup> NUON Chea Closing Brief, para. 242.

<sup>6296</sup> Decision on the NUON Chea Internal 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20. The Chamber recalls that it has found that the identity of Witness 1 was uncertain. Contrary to the Defence submission, the Supreme Court Chamber has never “confirmed” the identity of Witness 1 and while the Defence claimed that IN Thoeun was very likely Witness 1, Robert LEMKIN indicated that this was not the real name of Witness 1 and that he was not “free to divulge his real name”.

<sup>6297</sup> NUON Chea Closing Brief, para. 242.

<sup>6298</sup> NUON Chea Closing Brief, para. 242; Book by N. Chanda: *Brother Enemy*, E3/2376, 1986, pp. 81, 416, 422, ERN (En) 00192266, 00192601, 00192607.

failed because the assailants did not know the identities of the CPK leadership.<sup>6299</sup> The Chamber notes that by 1978, hundreds of East Zone forces had been purged at S-21, and considers that a DK official statement at that time is best explained as an attempt to justify CPK actions against the East Zone cadres. There was no further substantiation for this submission.

1875. The evidence of specific instances of assassination attempts against POL Pot put forward by the NUON Chea Defence is scarce, speculative, tainted by torture or otherwise unreliable. In any case, the Chamber considers that even if there may have been attempts to kill POL Pot in 1975 and 1976, this cannot excuse or justify the actions of the CPK in purging all those suspected of this activity or their family members, particularly without due process.<sup>6300</sup> Nor can it provide justification for the criminal conduct allegedly resulting from CPK policies implemented at worksites and cooperatives.<sup>6301</sup>

#### 12.1.4. 1976 Events – Explosions in Siem Reap and Phnom Penh

##### 12.1.4.1. *The Siem Reap explosions (February 1976)*

##### 12.1.4.1.1. *Submissions*

1876. The NUON Chea Defence submits that an explosion on 25 February 1976 in Siem Reap which destroyed a munitions depot was likely an effort by Sector 106 Secretary PA Phal *alias* Soth to set in motion a *coup d'état* working together with KOY Thuon.<sup>6302</sup> After the explosion, CPK defectors reported to a publication<sup>6303</sup> that there

<sup>6299</sup> NUON Chea Closing Brief, para. 243; T. 16 June 2017 (Closing Statements), E1/523.1, p. 47. *See also*, Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 96, ERN (En) 01150045.

<sup>6300</sup> Section 16.4.2.2: Common Purpose: Establishment and Operation of Security Centres and Execution Sites: Criminality of Policy.

<sup>6301</sup> Section 16.4.1.2: Common Purpose: “Control” and “Capture the People”: Movement of Population, Establishment of Cooperatives and Worksites: Criminality of Policy.

<sup>6302</sup> NUON Chea Closing Brief, paras 244-247, 253-254; T. 16 June 2017 (Closing Statements), E1/523.1, p. 54.

<sup>6303</sup> NUON Chea Closing Brief, para. 244. The Chamber notes that this publication was rejected by the Trial Chamber. *See* Decision on NUON Chea Defence Internal Rule 87(4) Requests E434 and E435, E434/2, 3 November 2016, para. 9 (“Documents 6 and 7 are articles written by a journalist Anthony PAUL which contain information relating to internal divisions and possible rebellions in the DK Regime. In the absence of Anthony PAUL’s testimony as to his sources and the basis for his conclusions, the Chamber does not consider it to be in the interests of justice for these articles authored by him to be admitted at this late stage of the proceedings.”).

was a meeting in May 1976 with instructions to get men, weapons and ammunition ready, although they were not told for what purpose.<sup>6304</sup>

1877. The Co-Prosecutors submit that DK radio at the time blamed the Siem Reap explosion on American bombings and that other experts have blamed it on Thai or Vietnamese airplanes. They also submit that the allegation that KOY Thuon would attempt to overthrow the government in Phnom Penh by blowing up his own store of ammunition does not make any sense.<sup>6305</sup>

#### 12.1.4.1.2. Findings

1878. On 25 February 1976, a series of explosions occurred in Siem Reap town, and there were numerous competing accounts as to their cause. The CPK's version of events, which it maintained throughout the DK period, was announced in a 26 February 1976 statement, accusing the United States of dropping bombs over the centre of Siem Reap town, killing 15 people, including combatants and children, and wounding more than 40 before flying back in the direction of Thailand.<sup>6306</sup> The CPK said that the bombing caused heavy damage to Siem Reap town, especially the hospital, the child care centre and schools.<sup>6307</sup> The statement provided that three bombs were dropped by an F-[111] at 8.30 a.m. and that two additional F-[111]s returned at 2 p.m. to drop bombs at the same location.<sup>6308</sup> On 27 February 1976, Office 870 sent out a communiqué blaming the events on the American government and urging vigilance and the protection of the secret locations of ammunition and food warehouses.<sup>6309</sup>

1879. In the days that followed, the CPK held a series of rallies throughout the country, reiterating these accusations, condemning American aggression and justification for attacking "U.S. imperialists and their lackeys".<sup>6310</sup> On 29 February 1976, a small group

<sup>6304</sup> NUON Chea Closing Brief, paras 244-247; T. 16 June 2017 (Closing Statements), E1/523.1, p. 47.

<sup>6305</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 9-10.

<sup>6306</sup> *26 Feb Statement Charges U.S. 'Bombing'* (in FBIS collection), E3/1357, 26 February 1976, ERN (En) 00167795.

<sup>6307</sup> *26 Feb Statement Charges U.S. 'Bombing'* (in FBIS collection), E3/1357, 26 February 1976, ERN (En) 00167795.

<sup>6308</sup> *26 Feb Statement Charges U.S. 'Bombing'* (in FBIS collection), E3/1357, 26 February 1976, ERN (En) 00167795.

<sup>6309</sup> Instructions from 870, E3/1173, 27 February 1976, pp. 1-2, ERN (En) 00525781-00525782.

<sup>6310</sup> *Army Rally Condemns 'U.S. Bombing' of Siem Reap* (in FBIS collection), E3/274, 1 March 1976, ERN (En) 00167914-00167918; *Worker-Peasant Rally Denounces Siem Reap Incident* (in FBIS collection), E3/274, 1 March 1976, ERN (En) 00167918-00167923; *Siem Reap Meeting Condemns 'U.S. Bombing Raids'* (in FBIS collection), E3/274, 1 March 1976, ERN (En) 00167926; *Province Meeting Condemns U.S. 'Bombing' Incident, AFP: Khmer Rouge Dissidents Join 'Black Cobras'* (in FBIS

of diplomats based in Cambodia, as well as several diplomats visiting the country, were invited to tour the location of the explosions.<sup>6311</sup> A 4 March 1976 radio announcement about the tour expanded upon the official CPK narrative, indicating that a jet dropped two bombs on a kindergarten at 8.30 a.m. and that while “citizens and combatants” were fighting the fire from the morning raid, at 2.00 p.m. two other jets bombed the same location.<sup>6312</sup> It noted that all of the kindergarten buildings and the children’s park were completely destroyed, all trees around the school were stripped, and the bombs had left three different sized craters which were shown to the diplomats present.<sup>6313</sup> The radio announcement included the voice of IENG Sary, blaming the events on U.S. imperialists.<sup>6314</sup> Allies of Democratic Kampuchea, reportedly issued statements supporting DK and condemning American aggression for bombing Siem Reap.<sup>6315</sup>

1880. On 5 March 1976, the CPK provided a purported rationale for the bombing: the U.S. resorted to the act of bombing and killing civilians, combatants and children in Siem Reap because it was humiliated by the defeat of the Khmer Republic it had supported,<sup>6316</sup> by the liberation of 17 April 1975, and because the CIA had failed in its attempts to set up reactionary forces and agents to commit subversion and sabotage against the Cambodian revolution.<sup>6317</sup> The explosions were also attributed to American bombing during a meeting in June or July 1976 in the Southwest Zone, presided over

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collection), E3/274, 2 March 1976, ERN (En) 00167928; *Meetings in Northwest Condemn ‘U.S.’ Bombing* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167941; *Southwest Region Condemns U.S. ‘Bombing’*, E3/274, 7 March 1976, ERN (En) 00167950; *Preach [sic] Vihear People Condemn U.S. Bombing* (in FBIS collection), E3/274, 8 March 1976, ERN (En) 00167959; *Western Region Denounces Siem Reap Bombing* (in FBIS collection), E3/274, 9 March 1976, ERN (En) 00167966; *Northwest Cambodians Protest Siem Reap Incident* (in FBIS collection), E3/274, 18 March 1976, ERN (En) 00167983.

<sup>6311</sup> *Diplomatic Corps Tours Siem Reap Destruction* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167930-00167935; *Swedish Envoy on Siem Reap Visit* (in FBIS collection), E3/274, 6 March 1976, ERN (En) 00167945-00167946.

<sup>6312</sup> *Diplomatic Corps Tours Siem Reap Destruction* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167930.

<sup>6313</sup> *Diplomatic Corps Tours Siem Reap Destruction* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167931.

<sup>6314</sup> *Diplomatic Corps Tours Siem Reap Destruction* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167931, 00167933-00167934.

<sup>6315</sup> *Li Chiang Address* (in FBIS collection), E3/274, 6 March 1976, ERN (En) 00167953-00167955; *PLO Envoy’s Remarks at 4 Mar Diplomatic Soiree* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167939-00167940; *Radio Notes Saigon Protests over ‘U.S. Bombing’* (in FBIS collection), E3/274, 4 March 1976, ERN (En) 00167940.

<sup>6316</sup> *Radio Praises Link with Anti-U.S. Nonaligned [sic] States* (in FBIS collection), E3/274, 5 March 1976, ERN (En) 00167937-00167938.

<sup>6317</sup> *Radio Praises Link with Anti-U.S. Nonaligned [sic] States* (in FBIS collection), E3/274, 5 March 1976, ERN (En) 00167938; *Southwest Region Condemns U.S. ‘Bombing’* (in FBIS collection), E3/274, 7 March 1976, ERN (En) 00167950.

by the Sector 25 secretary.<sup>6318</sup> The CPK maintained its position that Americans were responsible for the bombing (at least publicly) until at least November 1977.<sup>6319</sup>

1881. Several documents also support the conclusion that the highest echelons of the CPK were not merely spreading propaganda, and actually believed at the time that the Americans were responsible for the Siem Reap bombing.<sup>6320</sup> An entry from IENG Sary's Diary records a meeting held at the DK Ministry of Foreign Affairs between May and July of 1976, during which the Americans were described as desperate in their tactics as evidenced by the Mayaguez incident and the bombing in Siem Reap.<sup>6321</sup> Likewise, a military committee meeting on 3 August 1976, attended by POL Pot, VORN Vet, SON Sen, MEAS Muth, Nget, Dim and Touch (notetaker), made apparent reference to the bombing in Siem Reap and notes "Comrade Secretary's advice" that the Americans may continue to pose a threat to Siem Reap, seeking to perpetrate an air raid against military targets.<sup>6322</sup>

1882. There is reason to doubt the veracity of the CPK's version of the event. A Swedish diplomat was quoted in a then confidential US State Department cable, indicating that the Swedish intelligence evaluators had concluded that the damage caused by the explosion was not recent and probably caused by internal conflict and not an aircraft bombing.<sup>6323</sup> The Swedish envoy reported having seen one large crater and some destruction to houses but could not determine what had happened and when.<sup>6324</sup> American, French and Soviet diplomats were also apparently "in the dark" as to who was responsible for the explosion.<sup>6325</sup> The fact that US government cables

<sup>6318</sup> T. 1 February 2016 (SAO Van), E1/385.1, pp. 15, 36-37.

<sup>6319</sup> *Communique on 17 Apr Liberation Anniversary* (in FBIS collection), E3/274, 30 March 1976, ERN (En) 00168002; *Revolutionary Army Activities Described: Srot Sot Nikom* (in FBIS collection), E3/291, 5 November 1977, ERN (En) 00168563. Citing Malcolm CALDWELL's diary, Ben KIERNAN notes that: "As late as December 1978, Democratic Kampuchea officials in Siemreap told Western visitors: 'We have evidence that it was not Vietnam but was done by the CIA, by agents in Thailand.'" See Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, ERN (En) 01150165 (fn. 21).

<sup>6320</sup> IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated, ERN (En) 00003240, 00003253; Standing Committee Minutes, E3/823, 3 August 1976, ERN (En) 0023412-00234013.

<sup>6321</sup> IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated, ERN (En) 00003240, 00003253.

<sup>6322</sup> Standing Committee Minutes, E3/823, 3 August 1976, ERN (En) 0023412-00234013.

<sup>6323</sup> US State Department Cable, Subject: Swedish Report Concerning Cambodia ND Vietnam, E3/9731, 16 March 1976, ERN (En) 0118638-0118639.

<sup>6324</sup> *Swedish Envoy on Siem Reap Visit* (in FBIS collection), E3/274, 6 March 1976, ERN (En) 00167945-00167946.

<sup>6325</sup> US State Department Cable, Subject: Incident at Siem Reap: Soviet Line, E3/9730, 16 March 1976, ERN (En) 01186982 ("March 1 at a social occasion and discussed the alleged bombing at Siem Reap. [...] The Soviets were as much in the dark about what happened as all of us."); US State Department



disclaiming any US responsibility for the explosion were at the time confidential internal communications, suggests that the information contained within them was an honest appraisal of the situation.

1883. There was no shortage of alternative explanations. The AFP reported on 1-2 March 1976, based on a “reliable source”, that a group of 300-400 former Khmer Republic soldiers, called the Black Cobra commandos, had “swept down from their highland bases near the Thai border on Siem Reap”, and were responsible for the attack which caused an ammunition dump to explode.<sup>6326</sup>

1884. Ben KIERNAN has written that “[n]o fewer than four possible culprits have been identified” for the Siem Reap explosions.<sup>6327</sup> In addition to the theory of American bombing, other hypotheses attribute the explosions to: (1) Thai air force jets; (2) Vietnamese MiGs; or (3) Chinese-built MiGs from Phnom Penh attacking counter-revolutionary forces in Siem Reap after a conspiracy had been uncovered.<sup>6328</sup> Ben KIERNAN does not find any of the four theories to be convincing and determines that these theories lack substantial evidentiary support.<sup>6329</sup> For his part, KHIEU Samphan has written that the reason for the Siem Reap explosion is not yet understood.<sup>6330</sup>

1885. The purported evidence that PA Phal *alias* Sot, the Secretary of autonomous Sector 106, was responsible for the attack is either based on documents not admitted into evidence or contained within S-21 confessions that were taken through the use of torture and are therefore inadmissible.<sup>6331</sup> The Chamber will therefore disregard these submissions.

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Cable, Subject: Foreign Diplomats’ Observations of Alleged U.S. Bombing of Siem Reap, E3/9729, 5 March 1976, ERN (En) 00118678-01186980.

<sup>6326</sup> AFP: *Commando Group Responsible for Siem Reap Bombing* (in FBIS collection), E3/274, 1 March 1976, ERN (En) 00167923-00167924; AFP: *Khmer Rouge Dissidents Join ‘Black Cobras’* (in FBIS collection), E3/274, 2 March 1976, ERN (En) 00167928.

<sup>6327</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 316, ERN (En) 01150165.

<sup>6328</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 316-317, ERN (En) 01150165-01150166.

<sup>6329</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 318-319, ERN (En) 01150166. The Chamber recalls however that absent the opportunity to question Ben KIERNAN, who did not testify, it approaches any opinions of this expert with due caution. See Section 2: Preliminary Issues, para. 63.

<sup>6330</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 52, ERN (En) 00498271.

<sup>6331</sup> NUON Chea Closing Brief, paras 234, 244, 277 citing S-21 Confession – KOY Thuon, E3/1604. See above, paras 1847-1849. The Chamber notes that PA Phal *alias* Sot was arrested and imprisoned at S-21 in February 1977. See S-21 Confession – PA Phal *alias* Sot, E3/1754, 25 February 1977, 19 March 1977, p. 29, ERN (En) 00822357; S-21 list of prisoners entering in February 1977, E3/10266, multiple

1886. The Chamber further notes that the NUON Chea Defence submissions are logically contradictory. It would be inconsistent for PA Phal *alias* Sot (in conjunction with KOY Thuon) to cache weapons within his area of control (Siem Reap) to assist in the attack on Phnom Penh,<sup>6332</sup> only to self-sabotage that same effort by destroying his own weapons and killing his own troops in a Siem Reap attack. The submissions are also contradictory in suggesting that PA Phal *alias* Sot held effective and nominal power in Autonomous Sector 106, while at the same time was plotting to initiate a rebellion within that same sector.<sup>6333</sup> The assertion that PA Phal *alias* Sot was planning a rebellion amounts to speculation. However, presuming the Party Centre accepted this speculation as truthful, it also explains why the Party Centre purged high-ranking cadres believing that it was surrounded by traitors.

1887. In sum, the Chamber is not convinced that the cause of the 25 February 1976 explosions in Siem Reap were part of a plan to rebel against POL Pot. Even if there were such a plan, or even if the CPK leaders were personally convinced that it existed, the Chamber does not consider that the existence of such a plan or the mere belief that such plan existed would justify the wholesale execution at S-21 of cadres and civilians, allegedly involved in its preparation or implementation, without due process.

#### 12.1.4.2. The Royal Palace grenade explosions (April 1976)

##### 12.1.4.2.1. *Submissions*

1888. The NUON Chea Defence submits, based upon the S-21 Confession of YIM Sambath (who answered to CHAN Chakrei), that six weeks after the Siem Reap attacks, a second attack in April 1976 was carried out when a grenade exploded at the Royal Palace in Phnom Penh. According to the NUON Chea Defence, this was part of attempted 1976 *coup d'état* along with plans to fire on the School of Fine Arts.<sup>6334</sup> It is submitted that CHAN Chakrei, Secretary of Division 170, was also responsible for stirring up discontent by ordering his troops to raise banners with slogans such as “long live Buddhism” and “long live the White Khmer Front of Liberation from Rice by the

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dates, pp. 35-36, ERN (En) 01367732-01367733 (noting arrest on 21 February 1977). *See also*, Section 5: Administrative Structures, para. 377; Section 12.2: S-21 Security Centre, para. 2327.

<sup>6332</sup> NUON Chea Closing Brief, paras 275-277.

<sup>6333</sup> NUON Chea Closing Brief, paras 253, 379.

<sup>6334</sup> NUON Chea Closing Brief, paras 248-249; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 47-48. *See also*, NUON Chea Closing Brief, paras 253-254 (assigning blame to KOY Thuon and Soth as well).

Can”.<sup>6335</sup> CHAN Chakrei was also responsible for troops that raised tracts near the Wat Botum which stated, “small fry eats little, big shot eats a lot”.<sup>6336</sup> Therefore, the NUON Chea Defence submits that CHAN Chakrei was behind the Phnom Penh bombing and the 1976 *coup d'état* attempt.<sup>6337</sup>

1889. The Co-Prosecutors submit that the grenade explosion at the Royal Palace in April 1976 injured no one and apparently had not target. They further submit that the claim that this was a *coup* attempt distorts history to spread paranoia in an effort to justify killings.<sup>6338</sup>

#### 12.1.4.2.2. Findings

1890. In the early morning hours of 2 April 1976, a hand grenade exploded behind the Royal Palace in Phnom Penh.<sup>6339</sup> Soldiers from Division 170, some of whom were stationed nearby,<sup>6340</sup> were rounded up and taken to S-21 for interrogation and execution.<sup>6341</sup> Among those arrested during the first week of April 1976 was YIM Sambath who confessed under torture that he had thrown the grenade on the orders of CHAKK Yun, another member of Division 170.<sup>6342</sup> According to KAING Guek Eav *alias* Duch, YIM Sambath's aim was not to kill anyone, but rather to cause a slight disturbance.<sup>6343</sup> Duch's prefatory notes to YIM Sambath's confession indicate that

<sup>6335</sup> NUON Chea Closing Brief, para. 250. The Chamber notes that Division 170 was a Centre Division, created at the beginning of DK. Its forces were composed of soldiers from the East Zone and were under the command of CHAN Chakrei who was appointed Deputy Chief of the General Staff of the Revolutionary Army of Kampuchea and remained commander of the 170<sup>th</sup> Centre Division. CHAN Chakrei was discussed at a Standing Committee Meeting on 9 October 1975, arrested in May 1976 and interrogated between June and October 1976. *See* Section 12.2: S-21 Security Centre, paras 2271-2273.

<sup>6336</sup> NUON Chea Closing Brief, paras 250-251.

<sup>6337</sup> NUON Chea Closing Brief, para. 255.

<sup>6338</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 11.

<sup>6339</sup> Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284003; Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 6-7, ERN (En) 00940341-00940342.

<sup>6340</sup> Summary of the Previous Events prepared by Duch, E3/7397, 12 April 1976, ERN (En) 00769672 (“The five persons [in Unit 170] who were staying at the house behind the Royal Palace were: UK Khunni, MEI Sarun, NUCH Sarit, SREI Kit and KHEM Sam At, who were all members of their group.”).

<sup>6341</sup> S-21 list of prisoners, E3/8445, undated, p. 368, ERN (En) 01565959 (entry of SUOS Neou *alias* Chhouk on 28 August 1976); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 3, ERN (En) 01367131 (entry no. 1, YIM Sambath, entered on 8 April 1976); S-21 Confession – YIM Sambath, E3/7397, 12 April 1976; S-21 list of prisoners executed on 19 July 1976, E3/3187, undated, ERN (En) 00874512-0087451 (listing 25 Division 170 cadres executed on 29 July 1976); Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, ERN (En) 00940341 (“We arrested the traitorous links in Division 170”).

<sup>6342</sup> S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1976, p. 3, ERN (En) 01367131 (entry of YIM Sambath on 8 April 1976); S-21 Confession – YIM Sambath, E3/7397, 12 April 1976, ERN (En) 00769665, 00769670. *See* Section 12.2: S-21 Security Centre, para. 2266.

<sup>6343</sup> Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284003.

there had been gunfire at the Fine Arts School in Phnom Penh in October 1975 which was also initiated by CHAKK Yun.<sup>6344</sup> CHAKK Yun was arrested in May 1976 and, in his confession, implicated CHAN Chakrei, Secretary of Division 170,<sup>6345</sup> for subversive activities. CHAN Chakrei was then arrested on 20 May 1976.<sup>6346</sup>

1891. Based upon Duch's reports, SON Sen believed that CHAN Chakrei was responsible for the gunfire at the Fine Arts School, the grenade explosion(s) at the Royal Palace, and the distribution of leaflets critical of the CPK leadership.<sup>6347</sup>

1892. The distribution of critical leaflets (or tracts) had occurred in a number of locations and was the subject of a meeting between SON Sen and the staff of S-21, which had conducted interrogations to determine the source of the leaflets.<sup>6348</sup> During this meeting SON Sen reported that on 26 August 1976, there was unrest at Ang Prouch on the border between Kandal Steung district and Sector 33 and that prior to these events people in Sector 25 raised a white banner proclaiming "Long Live Buddhism" and "Long Live the White Khmer Front of Liberation from Rice by the Can".<sup>6349</sup> SON Sen reported to the Divisions and Regiment Secretaries that 160 persons were arrested and that "responses", which were obtained through torture, implicated CHAN Chakrei in the organisation of the dissent.<sup>6350</sup> Leaflets were also distributed in June, July and September 1976 stating: "Small fry eats a little, big shot eats a lot" and proclaiming the existence of a "Pure, New Revolutionary Organization" were found near the Wat

<sup>6344</sup> Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284003.

<sup>6345</sup> S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, ERN (En) 01367131 (noting CHAKK Yun's arrest on 8 May 1976); Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284005 (stating that CHAKK Yun implicated CHAN Chakrei); S-21 list of prisoners from Division 170, E3/10085, undated, ERN (En) 01461729 (listing CHAN Chakrei, Secretary of Division 170); S-21 list of prisoners executed on 29 July 1976, E3/3187, undated, ERN (En) 00874512 (CHAKK Yun executed).

<sup>6346</sup> Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284005.

<sup>6347</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 6-7, ERN (En) 00940341-00940342; KAING Guek Eav Interview Record, E3/356, 25 November 2008, p. 6, ERN (En) 00242900.

<sup>6348</sup> Minutes of the Meeting of Office 703 and S-21, E3/811, 9 September 1976, pp. 1-4, ERN (En) 00933846-00933849. *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284008.

<sup>6349</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183966.

<sup>6350</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183966. *See also*, Section 12.2.8.1: S-21 Security Centre: Prominent Prisoners and Internal Purges: 1976 – First Wave of East Zone Purges and the Start of the North Zone Purges.

Botum, the Chinese Embassy and the Royal Palace.<sup>6351</sup> Duch reported to SON Sen on the responses of Division 170 cadres who had been arrested and interrogated at S-21 under torture regarding these events.<sup>6352</sup> Duch concluded that no one had paid heed to the leaflets but he identified whom he deemed most responsible: [ROS] Phuon, who was a Division 170 committee member.<sup>6353</sup> SON Sen agreed that the leaflets did not pose a danger, but were an attempt to divide CPK forces. He cautioned that enemies of the regime might try to assassinate *Angkar* and ordered that Division 170 forces, who were likely involved, be round up.<sup>6354</sup>

1893. The notebook of S-21 interrogator POU Phally, in an entry likely from September 1976, identifies a number of cadres suspected of being traitors, including ROS Phuon.<sup>6355</sup> The Notebook provides lists of questions and torture techniques to be used in questioning dozens of prisoners regarding the Free Khmer movement, the origins of leaflets, propaganda, and sabotage from July to September 1976.<sup>6356</sup> CHAKK Yun was executed at S-21 on 29 July 1976.<sup>6357</sup> From 13 to 19 September 1976, an additional 45 cadres from Division 170 were arrested and taken to S-21.<sup>6358</sup> Between 1-15 October 1976, an additional 114 men from Division 170 were executed.<sup>6359</sup> ROS Phuon and SUOS Neou *alias* Chhouk were also interrogated, tortured and killed at S-

<sup>6351</sup> Minutes of the Meeting of Office 703 and S-21, E3/811, 9 September 1976, pp. 1-4, ERN (En) 00933846-00933849. *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284003, 00284008.

<sup>6352</sup> Minutes of the Meeting of Office 703 and S-21, E3/811, 9 September 1976, p. 2, ERN (En) 00933847; T. 28 March 2012 (KAING Guek Eav *alias* Duch), E1/55.1, pp. 66-68. *See also*, Section 12.2.8.1: S-21 Security Centre: Prominent Prisoners and Internal Purges: 1976 – First Wave of East Zone Purges and the Start of the North Zone Purges.

<sup>6353</sup> Minutes of the Meeting of Office 703 and S-21, E3/811, 9 September 1976, p. 2, ERN (En) 00933847; S-21 list of prisoners, E3/10510, undated, ERN (En) 00218143 (entry no. 8).

<sup>6354</sup> Minutes of the Meeting of Office 703 and S-21, E3/811, 9 September 1976, pp. 3-4, ERN (En) 00933848-00933848.

<sup>6355</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 3, ERN (En) 00225381; Statistics List for State Security Organisations S-21, E3/8972, undated, p. 2, ERN (En) 01367073.

<sup>6356</sup> Statistics List for State Security Organisations S-21, E3/8972, undated, pp. 1-31, ERN (En) 01367072-01367102.

<sup>6357</sup> S-21 list of prisoners, E3/3187, undated, ERN (En) 00874512 (entry no. 5).

<sup>6358</sup> Section 12.2: S-21 Security Centre, paras 2546-2547. *See also*, Section 12.2.8.1: S-21 Security Centre: Prominent Prisoners and Internal Purges: 1976 – First Wave of East Zone Purges and the Start of the North Zone Purges.

<sup>6359</sup> S-21 list of prisoners, E3/3187, undated, ERN (En) 00874315-00874451; S-21 list of confessions, E3/10510, undated, ERN (En) 00218143.

21.<sup>6360</sup> By the end of the DK regime, a total of 437 Division 170 soldiers were killed at S-21.<sup>6361</sup>

1894. CHAN Chakrei was arrested after he was implicated in these subversive activities by several torture-tainted confessions arising from S-21 which, as discussed earlier, cannot be relied on for the truth of their content.<sup>6362</sup> Witness CHHOUK Rin also told OCIJ investigators that CHAN Chakrei tried to overthrow POL Pot in 1976, but the source of his information is not clear and he makes reference to S-21 confessions being broadcast on DK radio.<sup>6363</sup> For his part, OUK Bunchhoeun told Stephen HEDER that he thought that CHAN Chakrei was arrested for impregnating a woman and not for attempting a *coup* against the government.<sup>6364</sup> However, SON Sen and the Standing Committee were suspicious of CHAN Chakrei for reasons independent of the confessions. SON Sen notes that *Angkar* had ordered CHAN Chakrei to investigate Sophan,<sup>6365</sup> but that CHAN Chakrei had instead informed Sophan that *Angkar* suspected him of being an enemy.<sup>6366</sup> One year earlier, the Standing Committee also noted that prior to 17 April 1975, CHAN Chakrei had abandoned his post.<sup>6367</sup> On this basis, the Standing Committee assumed that there was reason to question CHAN Chakrei's loyalty to the Party.

1895. SON Sen's conclusion that the gunfire at the Fine Arts School, the grenade explosion at the Royal Palace and the distribution of critical leaflets were linked appears to arise from torture-tainted confessions, what renders this conclusion to be suspect.

<sup>6360</sup> S-21 list of prisoners, E3/3187, undated, ERN (En) 00874315 (entry no. 103, RUOS Phan); S-21 list of prisoners, E3/10510, undated, ERN (En) 00218143 (entry no. 8).

<sup>6361</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1731; Section 12.2.8.1: S-21 Security Centre: Prominent Prisoners and Internal Purges: 1976 – First Wave of East Zone Purges and the Start of the North Zone Purges.

<sup>6362</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, ERN (En) 00183984-00183985. *See above*, paras 1847-1849. *See also*, Decision on Evidence Obtained Through Torture, E350/8, 5 February 2016, para. 30.

<sup>6363</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 9, ERN (En) 00766455. Further, as discussed in more detail below, the Chamber approaches this witness's testimony with caution. *See below*, para. 1976.

<sup>6364</sup> OUK Bunchhoeun Interview by Stephen HEDER, E3/387, undated, p. 13, ERN (En) 00350212.

<sup>6365</sup> This is likely a reference to SUO Sophan, who is listed as a Commander of Division 170, executed in July 1976. *See* S-21 list of prisoners, E3/3187, undated, ERN (En) 00874514 (entry no. 38).

<sup>6366</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, ERN (En) 00183984. *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284005.

<sup>6367</sup> Standing Committee Minutes, E3/1733 [E3/182, E3/183], 9 October 1975, p. 11, ERN (En) 0183403; Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, ERN (En) 00183984. *See also*, OUK Bunchhoeun Interview by Stephen HEDER, E3/387, undated, p. 12, ERN (En) 00350211.

Nevertheless, the evidence is clear that individuals from Division 170, including CHAN Chakrei, were arrested and executed at S-21 as suspected traitors in connection to these events.<sup>6368</sup>

1896. However, the Chamber does not consider that the gunfire at the Fine Arts School, the grenade explosions at the Royal Palace and the distribution of leaflets critical of the CPK leadership are accurately characterised as an attempted *coup d'état*. The distribution of materials critical of the regime does not evince an attempt to overthrow it. Even SON Sen and Duch, who were suspicious of the activity, did not consider it to pose a danger to the regime. Nonetheless, they reacted with extreme prejudice by arresting hundreds of Division 170 soldiers, extracting torture-tainted confessions, killing them without due process and sending others either to Prey Sar or to the Kampong Chhnang Airfield Construction Site for tempering.<sup>6369</sup>

1897. Further, the grenade explosion(s) at the Royal Palace did not target any senior CPK officials, as they were located elsewhere in Phnom Penh. Although former King NORODOM Sihanouk may have been present in the compound, he did not form part of the senior CPK leadership, and there was no suggestion by SON Sen or Duch that he was the target of an attack. Even if the Chamber accepts Duch's conclusion that the grenade explosion was meant to cause mischief, it does not support the claim that this was an attempted *coup*. Finally, although there is limited evidence on the gunfire at the Fine Arts School, there is no evidence that it targeted the senior CPK leadership or that it resulted in any casualties or injuries.<sup>6370</sup>

1898. The Chamber accepts that some within the divisions and regiments of the Kampuchean Revolutionary Army were dissatisfied with the regime and sought to express this by distributing critical leaflets. However, these attempts did little to cause disruption to the CPK senior leadership and were met by the mass killing of a large number of Division 170 soldiers on the basis of confessions obtained through torture.

<sup>6368</sup> Section 12.2.8.1: S-21 Security Centre: Prominent Prisoners and Internal Purges: 1976 – First Wave of East Zone Purges and the Start of the North Zone Purges.

<sup>6369</sup> See below, Section 12.1.6.3.4.5: Mass Arrest and Executions of East Zone Cadres. See also, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1731; Section 12.2: S-21 Security Centre, para. 3547; KOY Mon Interview Record, E3/369, 29 May 2008, pp. 3-5, ERN (En) 00272715-00272717 (Commander in Battalion 11, Division 170 under CHAN Chakrey [*sic*] in the East Zone, whose unit was sent to Prey Sar for tempering in late 1976 or early 1977 (after the arrest of CHAN Chakrey [*sic*])). In late 1977, witness was sent to Kampong Chhnang airfield worksite).

<sup>6370</sup> See above, para. 1896.

If this were a *coup* attempt, it was a feeble one that was crushed by the CPK. It cannot be said that these incidents undermined the authority or power structure in Democratic Kampuchea in a way that would impact the criminal responsibility of the Accused. Furthermore, the extraction of torture-tainted confessions can neither be considered due process nor would it in any way justify the imposition of capital punishment on Division 170 soldiers.<sup>6371</sup>

1899. The Chamber notes that Duch's reports to SON Sen as well as the Standing Committee minutes recording discussions of CHAN Chakrei make no mention of any difficulties in securing arrests of Division 170 soldiers.<sup>6372</sup> Once arrests were ordered by the Standing Committee they were in most cases, if not all, executed.<sup>6373</sup> The Chamber therefore considers that the purge of Division 170 soldiers shows the degree of control exercised by the CPK in its ability to identify suspects and secure their immediate arrest without resistance.

#### 12.1.5. 1977 Events – Division 310 and the Northwest Zone (RUOS Nhim)

##### 12.1.5.1. Division 310's planned capture of Phnom Penh

##### 12.1.5.1.1. *Submissions*

1900. The NUON Chea Defence submits that a second *coup d'état* attempt occurred in 1977. This was led principally by Central (old North) Zone Division 310, with SBAUV Him *alias* Oeun at its head, seeking to capture Phnom Penh from the CPK.<sup>6374</sup> Although it submits that evidence suggests the involvement of other divisions as well, the Defence does not cite any additional evidence, submitting that this is due to the Chamber's denial of its motions for new investigations.<sup>6375</sup> Further, it submits the *coup* leaders would have sought the assistance of Vietnam if necessary.<sup>6376</sup>

<sup>6371</sup> Section 12.2.12.1: S-21 Security Centre: Interrogation and Mistreatment of Detainees; Section 12.2.12.2: S-21 Security Centre: "Cold", "Hot" and "Chewing" Units; Section 12.2.12.3: S-21 Security Centre: Interrogation Methods and Mistreatment.

<sup>6372</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 6-8, ERN (En) 00940341-00940343. *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284005.

<sup>6373</sup> *See below*, Section 12.1.5.2.4: Purge of the Northwest Zone; Section 12.1.6.3.4: Purge of the East Zone.

<sup>6374</sup> NUON Chea Closing Brief, para. 264; T. 16 June 2017 (Closing Statements), E1/523.1, p. 58.

<sup>6375</sup> NUON Chea Closing Brief, para. 263.

<sup>6376</sup> NUON Chea Closing Brief, paras 264, 310.



1901. Based on the testimony of nine witnesses, in particular SEM Hoern, a soldier in Division 310, and DC-Cam statements, the NUON Chea Defence submits that Oeun formulated a plan to attack Phnom Penh militarily to topple the DK regime.<sup>6377</sup> The plan was to cut off Phnom Penh's access to the outside world, cripple the capital's defences and directly target POL Pot.<sup>6378</sup> His troops were therefore to seize the Phnom Penh radio station and airport as well as the Ministry of Defence, in coordination with East Zone forces.<sup>6379</sup> Further, POL Pot was to be attacked.<sup>6380</sup>

1902. The Co-Prosecutors submit that the testimony of SEM Hoern was not credible. Although he claimed in his DC-Cam statement that he was a battalion commander, SEM Hoern testified that he was only a platoon commander. He further told DC-Cam that he burned down civilians' homes and arrested civilians in Vietnam, but later testified that he had not even been to Vietnam.<sup>6381</sup> SEM Hoern also testified that HUN Sen was the Deputy Commander of Division 310, which was part of the Northern Zone, when the evidence indicates that HUN Sen was actually based in the East Zone.<sup>6382</sup> As to his statements concerning Oeun's alleged plan to commit a *coup d'état*, SEM Hoern testified that he had no knowledge of this and had never received any orders from Oeun – although Oeun's S-21 confession had been broadcast to all of the troops.<sup>6383</sup> The Co-Prosecutors further submit that the fact that Division 310 troops may have placed slogans protesting the regime does not justify the summary detention and execution of the entire division.<sup>6384</sup>

#### 12.1.5.1.2. Findings

1903. Division 310 was mainly composed of soldiers from Kampong Thom in the Central (old North) Zone.<sup>6385</sup> After the liberation of Phnom Penh, Division 310 became a Centre Division.<sup>6386</sup> SBAUV Him *alias* Oeun, the Division 310 Commander said to

<sup>6377</sup> NUON Chea Closing Brief, paras 267-272; T. 16 June 2017 (Closing Statements), E1/523.1, p. 59.

<sup>6378</sup> NUON Chea Closing Brief, para. 266.

<sup>6379</sup> NUON Chea Closing Brief, paras 267-272; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 59-60.

<sup>6380</sup> NUON Chea Closing Brief, paras 273-274; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 59-60.

<sup>6381</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 12-13.

<sup>6382</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 13-14.

<sup>6383</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 15-16.

<sup>6384</sup> T. 21 June 2017 (Closing Statements), E1/526.1, pp. 110-112.

<sup>6385</sup> T. 17 June 2015 (SEM Hoern), E1/318.1, p. 103.

<sup>6386</sup> Section 5.3.1.1: Formation of the RAK. *See also*, T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 65-66; SEM Hoern Interview Record, E3/5152, 7 March 2008, p. 3, ERN (En) 00205081.

be the head of the plot to overthrow POL Pot, was arrested on 19 February 1977 and brought to S-21.<sup>6387</sup> His deputy, Voeung,<sup>6388</sup> was also arrested and taken to S-21.<sup>6389</sup>

1904. The evidence before the Chamber shows that a few days or weeks before the arrest of Oeun, a meeting was held at Wat Phnom in Phnom Penh, where Oeun addressed a number of Regiments of Division 310. During the meeting Oeun announced a planned attack on Phnom Penh. The attack, however, never occurred.<sup>6390</sup> Approximately two weeks after Oeun was arrested, his arrest was announced at meetings in Phnom Penh where both his and KOY Thuon's audio-recorded confessions were broadcast.<sup>6391</sup>

1905. As noted above, the NUON Chea Defence identifies nine witnesses it submits are relevant to the alleged plot by SBAUV Him *alias* Oeun and Division 310 to execute a *coup d'état*.<sup>6392</sup> The Chamber notes that the statements of four of these witnesses were

<sup>6387</sup> Statistical List of Participants to 1<sup>st</sup> General Staff Training, E3/1585, 20 October 1976, p. 2, ERN (En) 00897650 (entry no. 1); Rice Consumption Plan, E3/1136, 4 January 1976, ERN (En) 00543743 (entry no. 4, listing comrade Oeun as Unit Chair of Unit 310); S-21 list of prisoners brought in on 19 February 1977, E3/10266, 20 February 1977, p. 30, ERN (En) 01367727 (entry no. 4, listing SIEV Him *alias* Oeun as Division 310 secretary); S-21 Confession – SBAUV Him *alias* Euan [*sic*], E3/1891, 20-22 February 1977, ERN (En) 00096817-00096834; T. 5 December 2016 (NUON Trech), E1/506.1, p. 93 (indicating that Oeun was the commander of Division 310); T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (indicating that Oeun was the division commander); T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 6 (stating that Oeun and Kim were the commanders of Division 310), 31-32 (stating that it was announced that their supervisors had been sent to S-21), 78 (testifying that *Ta* Oeun was arrested in 1977). SEM Hoeurn testified that Kim took over from Oeun after the latter's arrest. *See* T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 80. *See also*, S-21 list of prisoners smashed on 19 September 1977, E3/2286, 20 September 1977, p. 50, ERN (En) 00873171 (entry no. 68, noting SAO Khun *alias* Kim as "Member in Office of division 117"). *Cf.* T. 23 June 2015 (HIM Han), E1/320.1, pp. 64-66 (confirming previous statement that people from the Southwest Zone arrested the commanders of Division 310, but placing these events toward the end of 1975). The Chamber does not find that HIM Han's evidence on this point contradicts the consistent evidence that places these arrests in 1977.

<sup>6388</sup> Statistical List of Participants to 1<sup>st</sup> General Staff Training, E3/1585, 20 October 1976, p. 2, ERN (En) 00897650; S-21 list of prisoners brought in on 17 February 1977, E3/10266, February 1977, p. 24, ERN (En) 01367721 (entry no. 15, listing YIM Chhoeun *alias* Voeung as Division 310 deputy Secretary); T. 5 December 2016 (NUON Trech), E1/506.1, p. 93 (indicating that Voeun was Oeun's deputy); T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (indicating that Voeun was the deputy commander of the division); T. 22 June 2015 (SEM Hoeurn), E1/319.1, p. 77.

<sup>6389</sup> S-21 list of prisoners brought in on 17 February 1977, E3/10266, February 1977, p. 24, ERN (En) 01367721 (entry no. 15, listing YIM Chhoeun *alias* Voeung).

<sup>6390</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 34-35, 37; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 8-10; KHORN Prak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217; KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 72-73, ERN (En) 00183549-00183550.

<sup>6391</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 31-32; T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (referring to KOY Thuon, Oeun and Voeung); T. 22 June 2015 (SEM Hoeurn), E1/319.1, pp. 20, 60 (confirming that a tape recording of Oeun was played and that "it was his voice, I could hear some of the contents and I also stated this morning that he did not say very clearly in the recording perhaps he was tortured at that time and the voice was very low and to my belief perhaps it was his voice. But as I stated I did not know the contents of the recording.").

<sup>6392</sup> NUON Chea Closing Brief, paras 263-264.

recorded by DC-Cam, were not interviewed by OCIJ investigators and did not testify at trial.<sup>6393</sup> The Chamber accords little weight to such statements in the absence of their testimony.

1906. Of the remaining witnesses, four testified at trial and are considered below. The final witness, KHORN Prak, was interviewed by OCIJ investigators, but did not testify in court.<sup>6394</sup> Without the opportunity for cross-examination, the Chamber approaches this witness's testimony with due caution.

1907. Four witnesses heard in court testified to a plan by SBAUV Him *alias* Oeun, the commander of Division 310, to overthrow the DK regime. In addition to the four witnesses identified by the NUON Chea Defence, the Chamber notes that NUON Trech, another member of Division 310 sent to Kampong Chhnang Airfield, also gave evidence on an alleged plan to attack Phnom Penh.<sup>6395</sup> The Chamber will therefore also consider his testimony in its assessment of the evidence.

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<sup>6393</sup> THACH Siek DC-Cam Interview, E3/7540, 25 November 2002, pp. 6-8, ERN (En) 00337712-00337714 (stating that she was part of a women's unit in Division 1 under *Ta* Oeun. When Oeun was arrested in 1976, her unit would have "erupted" but they were too far away. The East Zone was ready to fight, but it was exposed. SAO Phim, HU Nim and HOU Youn also had plans to rebel, and had prepared artillery and small arms, but the plan was exposed. Witness was sent to Prey Sar for tempering); VUNG Vei DC-Cam Interview, E3/5686, 18 January 2005, pp. 21-22, ERN (En) 00874668-00874669 (stating he was a soldier in Division 310 and that *Ta* Oeun and Thuch were planning a rebellion. But Oeun was not arrested and Thuch stayed at another location; the latter was going to rebel but he did not. Witness did not know why the two planned to rebel. He was sent to Kampong Chhnang airfield worksite in 1977); KHOEM Samhuon DC-Cam Interview, E3/7583, 9 March 2003, pp. 20, 26, 29-32, 40-41, ERN (En) 00876547, 00876553, 00876556-00876559, 008765567-008765568 (stating that he was a Company Chief in Division 310 under Oeun. Witness knew KOY Thuon when the latter worked as Minister of National Commerce in Phnom Penh. In 1977, KOY Thuon and *Ta* Oeun were accused of being CIA agents and arrested. The two were planning to attack POL Pot's garrison, but failed because *Ta* Oeun was arrested. Some of his unit was sent to Prey Sar. In late 1977, the entire division was sent to the Kampong Chhnang airfield worksite); NOB Hat DC-Cam Interview, E3/5641, 20 January 2003, pp. 20-23, ERN (En) 00881779-00881782 (stating that he was a soldier in a village unit in Division 310 stationed at Voat Phnum in Tuol Kouk when Phnom Penh was taken in 1975. Witness was told by members of the Communist Youth League that the unit had to topple the Khmer Rouge. The unit had cached a very small number of weapons in warehouses, but the weapons were seized at the Defence Ministry. *Ta* Oeun was initially arrested because he had raped a woman and later a recording of his confession was played).

<sup>6394</sup> KHORN Brak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217; KHORN Prak DC-Cam Interview, E3/7584, pp. 64-65, ERN (En) 00183541-00183542. KHORN Prak, born 1 September 1952 in Kampong Thom Province (*see* KHORN Brak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217), is not to be confused with Witness PRAK Khorn, born 7 January 1951 in Takeo Province (*see* PRAK Khan Interview Record, E3/5156, 21 September 2007, p. 2, ERN (En) 00161569).

<sup>6395</sup> T. 5 December 2016 (NUON Trech), E1/506.1, p. 73; T. 6 December 2016 (NUON Trech), E1/507.1, pp. 72-74.

1908. The evidence is consistent in relation to SBAUV Him *alias* Oeun’s arrest, which is known to have taken place in February 1977 and to which many witnesses referred.<sup>6396</sup> His confession was broadcast several weeks later.<sup>6397</sup>

12.1.5.1.2.1. Evidence of a planned “*coup d’état*”

1909. First, SEM Hoern was a soldier in Division 310 and fought in numerous battles under Oeun starting in 1970, and entered Phnom Penh in 1975 with his battalion.<sup>6398</sup> He testified that about one month prior to SBAUV Him *alias* Oeun’s arrest, he and his battalion of 36 men transported six truckloads of weapons from the Division 310 warehouse at Wat Phnom in Phnom Penh to a village in Kampong Cham, where the Sector Secretary CHAN Mon *alias* Tol accepted them.<sup>6399</sup> SEM Hoern said that the transportation of weapons was in preparation of an attack on Pochentong Airport.<sup>6400</sup>

1910. Concerning SEM Hoern’s reliability, the Chamber notes that he initially testified that he did not know about Oeun’s acts of treason, but was told that he was affiliated with a traitorous network.<sup>6401</sup> Nonetheless, he said that he thought that Oeun wanted to create a movement to fight against DK because the regime was killing people.<sup>6402</sup> During the second day of his testimony, SEM Hoern provided more concrete details about Oeun’s plan. He testified that Oeun hatched a plan for Division 310 to occupy the national radio station in Steung Mean Chey and Pochentong Airport, and ultimately to commit a *coup d’état* sometime in 1977.<sup>6403</sup> SEM Hoern also testified that he transported weapons one month prior to Oeun’s arrest (in February 1977) but also stated that Oeun had been disarmed in August 1976 and never received

<sup>6396</sup> S-21 Confession – SBAUV Him *alias* Euan [sic], E3/1891, 20-22 February 1977, ERN (En) 00096819-00096820; S-21 list of prisoners brought in on 19 February 1977, E3/10266, 20 February 1977, p. 30, ERN (En) 01367727 (entry no. 4, listing SIEV Him *alias* Oeun as Division 310 secretary).

<sup>6397</sup> See below, para. 1918.

<sup>6398</sup> T. 17 June 2015 (SEM Hoern), E1/318.1, pp. 100-102, 107; T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 5-6. Around 24 August 1976, SEM Hoern was accused of being liberal because he moved about freely and spoke with soldiers from another unit in Phnom Penh. He subsequently was forced to write a biography on 24 August 1976. See Prisoner Biography – SEM Hoern, E3/7516, 24 August 1976, pp. 1-6, ERN (En) 00885201-00885206.

<sup>6399</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 84-86; T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 16, 18-19.

<sup>6400</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 84-86; SEM Hoern DC-Cam Interview, E3/7516, 28 February 2005, pp. 43-45, ERN (En) 00876519-00876521.

<sup>6401</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, p. 59.

<sup>6402</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 60, 87; T. 25 June 2015 (SEM Hoern), E1/320.1, p. 17.

<sup>6403</sup> T. 25 June 2015 (SEM Hoern), E1/320.1, pp. 4-5, 12-13, 17-18.

weapons thereafter.<sup>6404</sup> Although SEM Hoern may have confused certain dates, the contradiction here raises doubt as to the reliability of his evidence.

1911. After Oeun was arrested in 1977, SEM Hoern learned that the latter had created the Khmer Sar or “White Khmer” to overthrow the DK regime.<sup>6405</sup> He said that Khmer Sar was established after 1975, but upon further questioning he said that he did not know when it was established.<sup>6406</sup> BAN Seak and TOAT Thoeun also provided testimony as to the use of the term “White Khmer” in the Northwest and Central (old North) Zones. However, the Chamber finds this evidence to be based on unreliable hearsay.<sup>6407</sup>

1912. SEM Hoern initially stated that he did not know who would be poised to replace the DK leadership and indicated to be unaware of whether SAO Phim or RUOS Nhim was to be involved.<sup>6408</sup> In response to leading questions from the NUON Chea Defence, however, SEM Hoern testified that it was SAO Phim and KOY Thuon who were involved in the planned rebellion; with the centre army (Division 310) to attack Phnom Penh and the sector forces to attack at the sector level.<sup>6409</sup> The source of SEM Hoern’s knowledge was hearsay and the inferences he made based thereon.<sup>6410</sup> These factors, as well as the fact that SEM Hoern was unable to remember important details, raise doubts as to the reliability of his evidence.

1913. Further, SEM Hoern testified that HUN Sen had a military position in Division 310, though admitted not knowing what it was.<sup>6411</sup> In his DC-Cam interview, he stated that HUN Sen was the Deputy Chief of Division 310 and that SEM Hoern joined HUN

<sup>6404</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 11-12, 31, 76, 84-86; T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 16, 18-19.

<sup>6405</sup> T. 25 June 2015 (SEM Hoern), E1/320.1, pp. 8-9.

<sup>6406</sup> T. 25 June 2015 (SEM Hoern), E1/320.1, pp. 9-10.

<sup>6407</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 28 (CS); BAN Seak Interview Record, E3/375, p. 9, ERN (En) 00360757; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 40, ERN (En) 00974050. *See below*, para. 1957.

<sup>6408</sup> T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 5-6.

<sup>6409</sup> T. 23 June 2015 (SEM Hoern), E1/320.1, pp. 6-7.

<sup>6410</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 23 (asked about Oeun’s arrest, witness responded: “I did not know the reason he was arrested. But as I stated, I was in a meeting and I heard they said my chief betrayed them. I was told that, ‘your division chief was a traitor, betrayed the Party and *Angkar*’ and after that time, I was asked whether I wanted to hear the recording.”), 89 (asked about KOY Thuon’s role in a rebellion, witness responded, “The reason that I knew there was a plan was because he was the head of the North Zone. [...] I never saw the two individual[s] [KOY Thuon and Oeun] had a discussion together but I knew the two individuals and as for how they communicated or discussed the matter, I have no idea.”).

<sup>6411</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, p. 81.

Sen in battle when the latter suffered an injury to his eye.<sup>6412</sup> This is not consistent with HUN Sen's version of these events. In 1980, the latter told Ben KIERNAN in an interview that he had lost his eye on 16 April 1975, in the battle for Phnom Penh.<sup>6413</sup> Moreover, there is no evidence in the Case File that corroborates SEM Hoern's account that HUN Sen served in the Central (old North) Zone.<sup>6414</sup> These inconsistencies raise further doubts as to SEM Hoern's credibility as a witness.

1914. Second, KEO Loeur was a member (and for one to two weeks, the chief) of Battalion K-4 which consisted of injured and disabled soldiers forming part of Division 310.<sup>6415</sup> He testified that prior to Oeun's arrest he saw a truck in front of Calmette Hospital in Phnom Penh which was transporting weapons from the north toward Phnom Penh.<sup>6416</sup> He asked where it was going and was told to mind his own business.<sup>6417</sup> KEO Loeur also testified that prior to the arrest of Oeun, food was brought to Battalion K-4 to be cooked and packaged in support of the rebellion.<sup>6418</sup> He also testified that a few days before Oeun was arrested, he attended a meeting north of Wat Phnom in Phnom Penh whereat Oeun spoke to four Regiments of Division 310 discussing a "plan to overthrow the DK regime".<sup>6419</sup> Oeun said that Battalion K-4 was to assist the rebellion by cooking and packaging food.<sup>6420</sup> Oeun stated that soldiers should receive wages, live comfortably and be authorised to visit their parents.<sup>6421</sup> Oeun was arrested the next day.<sup>6422</sup> The Chamber found KEO Loeur's testimony to be reliable and to support the notion that Oeun was planning an attack on the CPK leadership.

<sup>6412</sup> SEM Hoern DC-Cam Interview, E3/7516, 28 February 2005, pp. 12-13, ERN (En) 00876488-00876489.

<sup>6413</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 266, ERN (En) 01150140.

<sup>6414</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 266, ERN (En) 01150140 (rather, he served in Sector 21 of the East Zone); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 91-92 (SEM Hoern testified that a meeting of regiment and battalion chiefs was held in Phnom Penh with around 500 people listening to Oeun, but HUN Sen did not attend because he was not a Division Chief. It would appear that a Deputy Chief of Division 310 would attend such a meeting).

<sup>6415</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 5-6, 46, 51-52, 64-65.

<sup>6416</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 32-33; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 10-11.

<sup>6417</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 6-7; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 10-11.

<sup>6418</sup> T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 11-12.

<sup>6419</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 34-35; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 8-10.

<sup>6420</sup> T. 16 June 2015 (KEO Loeur), E1/317.1, p. 11.

<sup>6421</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 37.

<sup>6422</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, p. 37.

1915. Third, SEM Om, who was a soldier in Battalion 502 of Division 1 which became Division 310 and later worked as the messenger for HIM Hon, chairman of Regiment 13 in Division 310,<sup>6423</sup> testified that about two weeks before SBAUV Him *alias* Oeun's arrest that he saw camouflaged uniforms, boots and weapons stored at a Regiment 13 (Division 310) warehouse "opposite the Ministry of Propaganda" near the Central Market.<sup>6424</sup> The uniforms were of poor quality, perhaps war spoils, and SEM Om was told they were for use by soldiers.<sup>6425</sup> The weapons were a mix of war spoils and others originating from the U.S., China, the Soviet Union and Cuba.<sup>6426</sup> The witness did not know about a plan to attack Pochentong Airport and only later, after hearing Oeun's confession, concluded that the uniforms and weapons were for use in preparation of an attack on Phnom Penh.<sup>6427</sup> The Chamber is not convinced that the mere fact that weapons had been stored leads to the conclusion that there was a plot to overthrow POL Pot. SEM Om's inference that the weapons and uniforms were for an attack on Phnom Penh was not supported by any direct evidence.

1916. SEM Om also testified that Oeun's messenger told him about a document indicating that within 24 hours of the initiation of a plan, the United States would come in to help.<sup>6428</sup> The Chamber is not convinced that the U.S. planned to assist Division 310 in an attack on POL Pot as there is no credible documentary or testimonial evidence to support SEM Om on this point.

1917. SEM Om also testified that in mid-August or early September 1978 he was operating a radio near the border with Vietnam where he heard Khmer language broadcasts containing entreaties to Cambodians to lay down their weapons and join the movement to overthrow the POL Pot regime because it was killing Khmer people.<sup>6429</sup>

<sup>6423</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 37, 92-97.

<sup>6424</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 48-49, 63, 74; T. 21 September 2016 (SEM Om), E1/478.1, pp. 11-13. *See also*, Section 2.4.7.4: Considerations Regarding Specific Witnesses: Witnesses SOY Sao (SUOY Sav) and SEM Om (SEM Am) (rejecting the NUON Chea Defence request to substitute witness's DC-Cam statement for his testimony based on the allegation that his testimony was subject to undue influence).

<sup>6425</sup> T. 21 September 2016 (SEM Om), E1/478.1, p. 14.

<sup>6426</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 49-50.

<sup>6427</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 72-74; T. 21 September 2016 (SEM Om), E1/478.1, pp. 14-15.

<sup>6428</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 51-53, 81; T. 21 September 2016 (SEM Om), E1/478.1, pp. 8-10.

<sup>6429</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 74-80, 82, 108-110.

The Chamber considers this evidence, while credible, unrelated to the attempted 1977 *coup* by Oeun.

1918. There were multiple accounts from witnesses, some of whom were credible, that Oeun's arrest was announced at a meeting or meetings. NUON Trech testified that approximately two weeks after Oeun was arrested, a three-day meeting was held at a school to the north of Wat Phnom.<sup>6430</sup> The meeting was chaired by Nha, the new commander of Division 310, who came from the Southwest Zone,<sup>6431</sup> and was attended by all cadres and soldiers from Division 310.<sup>6432</sup> The new commander of Division 310 announced that Oeun and those in the Central and the North Zones had planned to attack Phnom Penh,<sup>6433</sup> that they were traitors and had therefore been arrested.<sup>6434</sup> During the meeting, a tape recording of Oeun's confession was played through a loudspeaker in which he admitted to planning to attack Phnom Penh.<sup>6435</sup> Some witnesses testified that other confessions were also played including those of KOY Thuon, Voeng and Kim (a deputy commander of Division 310).<sup>6436</sup> Therefore, there may have been more than one meeting shortly after Oeun's arrest in February 1977 at which a suspected plot to attack the CPK in Phnom Penh was discussed.

1919. SEM Hoern testified that at a study session at Wat Phnom during which Southwest Zone people took over the North Zone, SEM Hoern was told that KOY Thuon and Oeun were arrested because they were part of a traitorous network.<sup>6437</sup> SEM Hoern testified that a recording of Oeun's confession was played at the session and

<sup>6430</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 80-81.

<sup>6431</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 79-80.

<sup>6432</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 102-103; T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (indicating that all battalion members came and that he knew the members of Battalion 314, the logistics battalion); T. 23 June 2015 (HIM Han), E1/320.1, pp. 65-66.

<sup>6433</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 73.

<sup>6434</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 102-103; T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 6, 31-32; T. 22 June 2015 (SEM Hoern), E1/319.1, p. 20.

<sup>6435</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 102-103 (referring to the confession of Oeun); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 20, 60 (confirming that a tape recording of Oeun was played and that "it was his voice, I could hear some of the contents and I also stated this morning that he did not say very clearly in the recording perhaps he was tortured at that time and the voice was very low and to my belief perhaps it was his voice. But as I stated I did not know the contents of the recording.>").

<sup>6436</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (referring to KOY Thuon, Oeun and Voeng); T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 6 (stating that Oeun and Kim were the commanders of Division 310), 31-33 (stating the confessions of *Ta* Kim and *Ta* Oeun were played); T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 80 (indicating that Kim took over from Oeun after the latter's arrest).

<sup>6437</sup> T. 17 June 2015 (SEM Hoern), E1/318.1, p. 106; T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 19-20.



that Oeun's recorded voice was hoarse probably because he had been tortured.<sup>6438</sup> SEM Om also attended a meeting of 1,000 people at the hospital behind Wat Phnom during which SON Sen announced the arrest of Oeun and played a recording of his confession in which SEM Om distinguished the sound of chains.<sup>6439</sup> While NUON Trech did not recall hearing the voice of SON Sen, the witness also admitted he did not know what SON Sen looked like.<sup>6440</sup> KEO Loeur attended a meeting at a school during which the recordings of Oeun and Kim's S-21 confessions were played.<sup>6441</sup> SUOY Sao was a soldier in Division 310 under *Ta* Oeun,<sup>6442</sup> who when questioned about these same events during his testimony was unable to recall them.<sup>6443</sup>

<sup>6438</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 20-21, 23-24, 60.

<sup>6439</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 59, 66, 101-102, 105-106. *See also*, YOEUN Sambau Interview Record, E3/5497, 23 June 2009, pp. 4-5, ERN (En) 00345959-00345960 (stating that SON Sen *alias* Khieu chaired a three-day training held at Division 310 near Wat Phnom in early 1977 during which he explained that two division commanders, Oeun and Sambo, had betrayed *Angkar* and were arrested by KE Pauk in 1974 [*sic*]).

<sup>6440</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 84.

<sup>6441</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 5-6, 31-32, 77-78; KEO Loeur DC-Cam Interview, E3/5658, 16 February 2005, ERN (En) 00863304.

<sup>6442</sup> T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 3, 5.

<sup>6443</sup> T. 18 August 2016 (SUOY Sav), E1/460.1, p. 57. In assessing SUOY Sao's reliability, the Chamber notes that he told DC-Cam that he attended a meeting before the arrest of Oeun, held south of Phsar Thmei (Central Market). When he testified in court, however, he could neither recall this meeting nor many other details. *See also*, SUOY Sav DC-Cam Interview, E3/7535, 20 January 2005, p. 22, ERN (En) 00324176. More precisely, SUOY Sao told DC-Cam that he attended a meeting at which Oeun called for an attack on Phnom Penh and that the latter had established a special squad of 100 combatants who were shipped weapons for the attack. *See* SUOY Sav DC-Cam Interview, E3/7535, 20 January 2005, pp. 14, 17-18, ERN (En) 00324168, 00324171-00324172. Upon testifying, he stated that he never attended such a meeting and never received a shipment of weapons, and only heard about these events from others (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 14, 52-53, 69). He further testified that he only learned about Oeun's planned attack after Oeun was arrested (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, p. 32). SUOY Sao did not recall fellow Division 310 soldiers being arrested despite the fact that more than 1,000 had been round up, predominantly after the arrest of Oeun (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 46-47). SUOY Sao did not explain why his DC-Cam statement and testimony varied to such a significant degree. The NUON Chea Defence asserted during the day-long hearing of SUOY Sao's testimony that something must have happened during a lunch break in the proceedings that was affecting the witnesses' answers (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 54, 70). Upon careful review of the transcripts of this hearing, the Chamber does not find there to be support for Defence's submission. *See* Section 2.4.7.4: Considerations Regarding Specific Witnesses: Witnesses SOY Sao (SUOY Sav) and SEM Om (SEM Am). First, the witness denied that he had been approached by anyone seeking to alter his testimony (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, p. 75). The Chamber notes that SUOY Sao was confused and forgetful throughout his testimony. He could not recall important events from the outset, including when or how he participated in the liberation of Phnom Penh from the LON Nol regime (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 7, 44). He was likewise unable to recall large parts of his DC-Cam interview, and when he did, it was only after lengthy tracts thereof were read out in court (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 15-17, 18, 20). This despite the fact that his DC-Cam interview had been read back to him prior to his testimony (*see* T. 18 August 2016 (SUOY Sav), E1/460.1, pp. 4-5). Even on its own, SUOY Sao's DC-Cam interview contained inconsistent statements, which were confusing and imprecise. *See* SUOY Sav DC-Cam Interview, E3/7535, 20 January 2005, pp. 9, 12, ERN (En) 00324163, 00324166 (stating at various times in the interview that he was in Regiment 14 or Regiment 12). Therefore, the Chamber considers SUOY Sao's evidence to be of limited reliability.

1920. After the meeting during which Oeun was condemned, both SEM Hoern's battalion commander, Et, and his company commander, Eng (to whom SEM Hoern was related), were arrested and taken to Prey Sar.<sup>6444</sup> In early 1977, SEM Hoern was disarmed and sent to work at the Kampong Chhnang Airfield worksite.<sup>6445</sup> He was aware that people from Division 310 were being arrested around 4 April 1977 as people from his unit were disappearing.<sup>6446</sup> Despite the Chamber's concerns with SEM Hoern's credibility, the Chamber finds that these details were consistent with other evidence of the purge of East Zone cadres.

1921. NUON Trech was also sent to be refashioned at the Kampong Chhnang Airfield worksite about two weeks after the meeting.<sup>6447</sup> SEM Om testified that after Oeun was arrested, things became chaotic and people in the battalion and regiment shot themselves.<sup>6448</sup> SEM Om's former chief, HIM Hon, committed suicide by riding his motorcycle into a parked car, breaking his neck.<sup>6449</sup> Division 310 soldiers were sent to work the fields in Boeng Prayab, Kab Srov and at the Kampong Chhnang Airfield worksite.<sup>6450</sup>

1922. One further witness cited by the NUON Chea Defence, KHORN Prak, did not testify at trial, although he was twice interviewed by DC-Cam and once by the Co-Investigating Judges.<sup>6451</sup> KHORN Prak stated that he had worked directly under commander Oeun in the 306<sup>th</sup> Special Forces Battalion (before the evacuation of Phnom Penh) and later within Division 310 (since its creation after the evacuation).<sup>6452</sup> Oeun had administered KHORN Prak's oath to become a full-rights member of the Party.<sup>6453</sup>

<sup>6444</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 15, 18-19.

<sup>6445</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 11-12, 30-31, 34, 76.

<sup>6446</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 30, 46-47, 71, 79-80, 11, 13 (stating that, in April 1975, when he was stationed at Tang Kouk after Phnom Penh was liberated, units that were unable to achieve 5 tonnes of rice yield per hectare were accused of being linked to the CIA or KGB).

<sup>6447</sup> T. 5 December 2016 (NUON Trech), E1/506.1, p. 104.

<sup>6448</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 97-98.

<sup>6449</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 97-101.

<sup>6450</sup> T. 20 September 2016 (SEM Om), E1/477.1, pp. 106-107. *See also*, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1732.

<sup>6451</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 1-80, ERN (En) 00183478-00183557; KHORN Prak Interview Record, E3/509, 8 January 2009, pp. 1-5, ERN (En) 00282214-00282218.

<sup>6452</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 42-43, ERN (En) 00183519-00183520.

<sup>6453</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 44-45, ERN (En) 00183521-00183522.

1923. KHORN Prak stated that several weeks before Oeun was arrested, KHORN Prak attended a meeting at Wat Phnom at which his battalion commander, Yim, spoke to about 300 combatants and told them to prepare their weapons for an attack on Phnom Penh.<sup>6454</sup> They were to attack the radio station near Wat Phnom to make a special announcement – the content of which was unknown to him.<sup>6455</sup> Hak and Pin, both from Division 310, had distributed tanks and were prepared to open fire at about 3 o'clock, but when the appointed time arrived, none of the regiments were reachable by radio as they had been called into meetings to be arrested.<sup>6456</sup>

1924. KHORN Prak told DC-Cam that he was subsequently called to a meeting near Wat Phnom where the taped confessions of Oeun, Sinuon (Ministry of Commerce), and all the regimental/battalion commanders were played.<sup>6457</sup> KHORN Prak later told the Co-Investigating Judges that he only heard the voice of Sinuon on the recording.<sup>6458</sup> The bulk of evidence however supports KHORN Prak's earlier statement that Oeun's taped confession was also played. The Chamber considers that the change between the accounts KHORN Prak provided to DC-Cam and the OCIJ investigators can be attributed to the passage of time and does not impact the overall reliability of his statements. His statements were otherwise credible and support other accounts that Oeun had plans to attack POL Pot's forces.

1925. Apart from the testimonies heard at trial, the Chamber has before it certain documentary evidence regarding Oeun's activities. In March and May 1976, Oeun reported to SON Sen on measures to capture enemies within the CPK and RAK ranks.<sup>6459</sup> Oeun reported that he had tracked down and arrested those accused of stealing food or seeking to flee the CPK.<sup>6460</sup> In May and August 1976, Oeun participated in meetings of military commanders during which he reported to SON Sen on a variety of

<sup>6454</sup> KHORN Prak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217; KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 72-73, ERN (En) 00183549-00183550.

<sup>6455</sup> KHORN Prak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217.

<sup>6456</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 64-65, ERN (En) 00183541-00183542.

<sup>6457</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, pp. 30, 72-73, ERN (En) 00183507, 00183549-00183550.

<sup>6458</sup> KHORN Prak Interview Record, E3/509, 8 January 2009, p. 4, ERN (En) 00282217.

<sup>6459</sup> DK Report, E3/1176, 16 March 1976, ERN (En) 00539055-00539056; DK Telegram, E3/1100, 16 May 1976, ERN (En) 00517911-00517913; DK Division 310 Report, E3/1162, 26 May 1976, ERN (En) 00525763-00525765.

<sup>6460</sup> DK Division 310 Report, E3/1162, 26 May 1976, ERN (En) 00525763; DK Telegram, E3/1100, 16 May 1976, ERN (En) 00517912.

issues, including rice production by Division 310 and the identification of enemy elements.<sup>6461</sup> Finally, there is a report from Ren to the General Staff Office indicating that Oeun was cooperating in the identification and investigation of suspected traitors.<sup>6462</sup> The Chamber notes that this documentary evidence shows that Oeun was working to achieve CPK policies by increasing rice yields and identifying enemy elements. Furthermore, in one meeting, Oeun voiced his opposition to collectivisation, stating that mobilising forces from one place to another would waste time and energy adversely impacting the health of workers.<sup>6463</sup> Rather than attempting to hide his disagreement with CPK policy, Oeun told his superior, SON Sen, in a meeting with other military commanders that other means would be necessary to obtain CPK objectives in rice production. Nonetheless, neither does this obviate the possibility that Oeun later became discontented nor that he sought to displace the CPK leadership.

#### 12.1.5.1.2.2. Conclusion

1926. In addition to the credibility issues noted above, the Chamber notes that each of the witnesses who testified at trial regarding Oeun's plans were exposed to his torture-tainted confession which was played at a meeting announcing his arrest.<sup>6464</sup> Torture-tainted confessions are inherently unreliable.<sup>6465</sup> In addition, the Chamber recalls it has already found SEM Hoern's evidence problematic and treated it with caution.<sup>6466</sup>

1927. The Chamber considers that the movement of weapons, as described by KEO Loeur, may have been implemented for various reasons and in itself this does not lead to the conclusion that these weapons were to be used in an attempted *coup*. The fact that they were being sent from Phnom Penh towards Kampong Cham (in the direction of Vietnam) can also be considered consistent with the fact that hostilities with Vietnam were on the rise throughout 1977.<sup>6467</sup> Similarly the storage of camouflaged uniforms

<sup>6461</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, pp. 3-4, ERN (En) 00656571-00656572; Minutes of the Meeting of the Committees Attached to Divisions and Regiments, E3/796, 12 August 1976, pp. 8-9, ERN (En) 00597000-00597001.

<sup>6462</sup> DK General Staff Office Report, E3/1131, 25 November 1976, ERN (En) 00505039.

<sup>6463</sup> Minutes of the Meeting of Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, p. 4, ERN (En) 00656572.

<sup>6464</sup> T. 22 June 2015 (SEM Hoern), E1/319.1, pp. 20-21, 23-24, 60; T. 20 September 2016 (SEM Om), E1/477.1, pp. 65-66, 101-102, 105-106; T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 5-6, 31-32, 77-78; KEO Loeur DC-Cam Interview, E3/5658, ERN (En) 00863304; T. 18 August 2016 (SUOY Sav), E1/460.1, p. 57; SUOY Sav DC-Cam Interview, E3/7535, p. 22, ERN (En) 00324176.

<sup>6465</sup> Decision on Evidence Obtained through Torture, E350/8, 5 February 2016, paras 71-88.

<sup>6466</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1768, 1781, 1789, 1792.

<sup>6467</sup> Section 4: General Overview, paras 284-289.

and boots in Division 310 warehouses, as described by SEM Om, does not establish in itself the existence of a planned coup and the same can be said of the preparation of food for soldiers. The Chamber acknowledges however, the evidence provided by several witnesses that the food and other supplies were for use in an attempted coup and that uniforms and weapons were available to Division 310 soldiers.

1928. The Chamber considers that, as described above, the evidence provided by the witnesses who testified as to preparations for a coup raises a number of reliability issues due to: variations in the accounts given by a particular witness; the lack of clarity of the evidence provided; equivocal factual descriptions; the fact that evidence was tainted by torture, marred by a common narrative or based on hearsay and impossible to test. Nonetheless, the Chamber considers that, based on an overall assessment there is enough credible evidence, not tainted by torture, that Oeun was planning to lead Division 310, or members thereof, to attack the DK government in Phnom Penh. The Chamber notes in particular SEM Hoern's testimony that Oeun wanted to create a movement to fight against DK because the regime was killing people based upon a meeting he attended wherein Oeun announced an intent to take over Phnom Penh.<sup>6468</sup> Although the Chamber has doubts concerning the reliability of SEM Hoern's evidence, this account was corroborated by KHORN Prak's statements that his battalion commander Yim, who was Oeun's subordinate, had told his troops to prepare to attack Phnom Penh. The evidence was further corroborated by KEO Loeur who attended a meeting north of Wat Phnom in Phnom Penh whereat Oeun told four Regiments in Division 310 his plans to overthrow the DK regime.<sup>6469</sup> The Chamber is also convinced that Oeun sought to obtain better conditions for his soldiers, the right to visit their parents and to receive wages.<sup>6470</sup> There was no evidence however that Oeun was acting on behalf of any foreign power.

1929. Before any attack unfolded, Oeun and the leadership of Division 310 were arrested.<sup>6471</sup> Audio-recordings of their confessions were played to Division 310 soldiers

<sup>6468</sup> T. 25 June 2015 (SEM Hoern), E1/320.1, pp. 4-5, 12, 17-18, 60; T. 22 June 2015 (SEM Hoern), E1/319.1, p. 17.

<sup>6469</sup> T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 34-35; T. 16 June 2015 (KEO Loeur), E1/317.1, pp. 8-10.

<sup>6470</sup> See above, para. 1914.

<sup>6471</sup> See above, fn. 6387.

and Southwest Zone cadres took over all of the leadership positions in Division 310.<sup>6472</sup> After Oeun's arrest in February 1977, hundreds of members of Division 310 were arrested and between March and August 1977, about 600 individuals from Division 310 were killed,<sup>6473</sup> including at least nine wives and children of Division 310 members.<sup>6474</sup>

<sup>6472</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, p. 46, ERN (En) 00183523; T. 5 December 2016 (NUON Trech), E1/506.1, pp. 102-103; T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 31-32; T. 6 December 2016 (NUON Trech), E1/507.1, p. 72 (referring to Koy Thuon, Oeun and Voeng).

<sup>6473</sup> T. 21 September 2016 (SEM Om), E1/478.1, pp. 5-6; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates, pp. 8-16, 22, 31, 53-55, 57, 60-62, 74, 76, 78-79, 82, 85, 88-94, 102, 118-120, 123-125, 138, 140-141, 143-144, 153, 155-160, 168-172, 205-206, 216-217, 219-226, 228-229, 237-238, 254, 256-259, 263-267, 269, 271-274, 277-281, 283-285, 288-299, 302-304, 310-313, 327, 332-341, 344-345, 367-372, 374, 377-378, 384, 402-410, 413-417, 419-420, 446-447, 460-461, 472-474, 496-501, 530, 534, 536-537, 543, ERN (En) 01564768-01564776, 01564782, 01564791, 01564813-01564815, 01564817, 01564820-01564822, 01564834, 01564836, 01564838-01564839, 01564842, 01564845, 01564848-01564854, 01564862, 01564878-01564880, 01564883-01564885, 01564898, 01564900-01564901, 01564903-01564904, 01564913, 01564915-01564921, 01564928-01564932, 01564965-01564966, 01564976-01564977, 01564979-01564986, 01564988-01564989, 01564997-01564998, 01565014, 01565016-01565019, 01565023-01565027, 01565029, 01565031-01565034, 01565037-01565041, 01565043-01565045, 01565048-01565059, 01565062-01565064, 01565070-01565073, 01565087, 01565092-01565101, 01565104-01565105, 01565127-01565132, 01565134, 01565137-01565138, 01565144, 01565162-01565170, 01565173-01565177, 01565179-01565180, 01565206-01565207, 01565220-01565221, 01565232-01565234, 01565256-01565261, 01565290, 01565294, 01565296-01565297, 01565303; S-21 list of prisoners executed or died of disease from 1 to 15 August 1976, E3/8454, undated, pp. 1-2, ERN (En) 00749401-00749402; S-21 list of prisoners who died of disease on 17 September 1977, E3/8460, 6 October 1977 and 10 February 1978, ERN (En) 00843438, 00843442, 00843447-00843449; S-21 list of prisoners, E3/3187, undated, ERN (En) 00874186, 00874346-00874347, 00874349, 00874353, 00874357, 00874411, 00874414, 00874418, 00874451, 00874454, 00874490, 00874494, 00874526, 00874528; S-21 list of prisoners whose interrogations were completed during February 1977, E3/2001, 4 March 1977, pp. 3-6, 8-10, 12-13, 15-16, ERN (En) 00233726-00233729, 00233731-00233733, 00233735-00233736, 00233738-00233739; S-21 list of prisoners executed on 12 May 1977, E3/3858, 13 May 1977, ERN (En) 00837615-00837616, 00837618-00837622, 00837624-00837625; S-21 list of prisoners entering in May 1977, E3/2590, 3 June 1977, pp. 10-15, 98-103, ERN (En) 01191265-01191270, 01191353-01191358; S-21 list of prisoners from Division 310, E3/2592, 5 June 1977, ERN (En) 00887709-00887712; S-21 list of prisoners killed on 10 June 1977, E3/2131, 11 June 1977, pp. 1-4, ERN (En) 00182876-00182879; S-21 list of prisoners killed on 25 June 1977, E3/3186, 26 June 1977, pp. 2-3, ERN (En) 00784594-00784595; S-21 list of prisoners killed on 3 July 1977, E3/3859, 4 June 1977, ERN (En) 00634838-00634839; S-21 list of prisoners under Brother HUY Sre's authority to be eliminated, E3/2133, 23 July 1977, p. 1, ERN (En) 00242285; S-21 Prisoner List, E3/8466, 7 July 1977 and 23 July 1977, pp. 95, 97, 99, 101, 115, 119, ERN (En) 00087467, 00087469, 00087471, 00087473, 00087487, 00087491; S-21 list of prisoners in House D and G, E3/1999, pp. 4, 6, 9-13, 15, ERN (En) 00233678, 00233680, 00233683-00233687; List of prisoners who were executed from 15 January 1977 to 31 January 1977, E3/3185, ERN (En) 00837627, 00837632-00837633, 00837635, 00837637, 00837639-00837640.

<sup>6474</sup> S-21 prisoner list, E3/9842, 1976, p. 37, ERN (En) 01367165 (entry no. 510, listing NGUON Chheng, Medic of Division, wife of UM Than); S-21 prisoner list, E3/9842, 1976, p. 37, ERN (En) 01367165 (entry no. 511, listing KE Orn, wife of AN Chun); S-21 prisoner list, E3/9842, 1976, p. 37, ERN (En) 01367165 (entry no. 512, listing PEN Tuon, wife of MEAS Sami); S-21 prisoner list, E3/9842, 1976, p. 37, ERN (En) 01367165 (entry no. 517, listing CHAN Koeun, wife of EM Kiem); S-21 prisoner list, E3/9842, 1976, p. 37, ERN (En) 01367165 (entry no. 866, listing CHAN Srin, wife of UK Nan); S-21 list of prisoners, E3/2285, multiple dates, p. 228, ERN (En) 01564988 (entry no. 6961, listing PROM Nha, wife of Voeng); S-21 list of prisoners entering in November 1977, E3/9953, p. 10, ERN (En) 01367669 (entry no. 6770, listing PRUM Phat, cousin of Oeun); S-21 list of prisoners from 17 February 1977 to 17 April 1977, E3/10506, p. 23, ERN (En) 01369001 (entry no. 2542, listing SBAUV Ket, father of Oeun); S-21 list of prisoners from 17 February 1977 to 17 April 1977, E3/10506, p. 23, ERN (En) 01369002 (entry no. 2543, listing PRIM Keok, wife of Voeng); SEM Om also testified that he saw two pregnant women, who were the wives of soldiers who had been arrested at the Suong pagoda hospital in

Other members of Division 310 were first sent to work at the Kampong Chhnang Airfield worksite, where some of them were arrested and killed.<sup>6475</sup> Ultimately, at least 1,268 Division 310 members were killed at S-21 without any due process.<sup>6476</sup> As KHORN Prak told his interviewers,

[If you opposed the leaders], then you die. But no matter how good you were, it was death, there were no courts to try you in time, it was pure dictatorship. Like I said, there were no courts or justice of any kind, none. If they thought they hated us, they killed us.<sup>6477</sup>

1930. The soldiers within Division 310 were stripped of their weapons. Many were sent to be tempered through farming or to the Kampong Chhnang Airfield worksite.<sup>6478</sup>

1931. The Chamber concludes Oeun initiated a plan to fight against the CPK leadership because he disagreed with its policies. It is not clear that this posed any threat to the DK regime because soon after the plot was discovered, Oeun and his deputy and subordinates were arrested without any reported fight. The Chamber does not consider the existence of this planned coup deprived the CPK Standing Committee of control over the locations of crimes alleged in Case 002/02. There was no evidence that Oeun was involved in any of the alleged crimes in Case 002/02. Any connections he may have had with East Zone leadership are addressed below. Furthermore, the mass arrest and execution of hundreds of Division 310 soldiers without due process or any indication, apart from torture-tainted confessions, that they were fighting against the CPK leadership, cannot legally be excused or justified.<sup>6479</sup> Even if some of these soldiers had planned to follow Oeun's orders to attempt a *coup d'état*, when these soldiers were disarmed and arrested, they were entitled to due process. The Chamber

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Kampong Cham province in the East Zone. The wives were arrested and he saw medical experimentation on them (see T. 21 September 2016 (SEM Om), E1/478.1, pp. 35-47). However, there was no corroboration of this testimony.

<sup>6475</sup> See above, paras 1920-1921. See also, Statistics of Total Armed Forces, E3/849, March 1977, p. 1, ERN (En) 00183956 (out of a total number of Division 310 soldiers, there were about 1,127 in Kampong Chhnang).

<sup>6476</sup> See above, fn. 6473.

<sup>6477</sup> KHORN Prak DC-Cam Interview, E3/7584, 20 June 2003, ERN (En) 00183503.

<sup>6478</sup> Khorn Brak Interview Record, E3/509, ERN (En) 00282217-00282218 (weapons were returned to him in 1978 after he had been arrested in 1977); T. 6 December 2016 (NUON Trech), E1/507.1, pp. 100-101 (explaining that he was told that the workers had been "refashioned enough" and they were thus provided with weapons and sent to fight against the Vietnamese); T. 7 December 2016 (NUON Trech), E1/508.1, p. 27 (stating that they were told that "all prisoners at the airfield who had refashioned were no longer considered offenders" and were thus sent to fight the Vietnamese). See also, T. 24 June 2015 (HIM Han), E1/321.1, p. 20 (stating that if people could be refashioned, they would survive, if not they would die). See also, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1733.

<sup>6479</sup> Section 9.1: Applicable Law: Crimes Against Humanity.

rejects the submission that the above events eradicated soldiers' rights and justified torturing, killing or otherwise persecuting hundreds of Division 310 soldiers at S-21.

12.1.5.2. Northwest Zone and RUOS Nhim

12.1.5.2.1. *Submissions*

1932. The NUON Chea Defence submits that as part of the *coup d'état*, Vietnamese collaborators were to “break the CPK’s spine by seizing control of the country” simultaneously with the take-over of Phnom Penh by Division 310 discussed above. It further suggests that the East Zone would also participate in executing the plot.<sup>6480</sup> The Defence identified ten witnesses to trace this aspect of the plot to the Northwest Zone and RUOS Nhim.<sup>6481</sup> According to the NUON Chea Defence, in order to achieve this, the Northwest Zone Secretary RUOS Nhim was attempting to deplete the CPK’s capacity by siphoning off supplies, such as military materiel and food and disrupting working productivity generally.<sup>6482</sup> Citing to transcripts of a conversation recorded by THET Sambath and Robert LEMKIN which it attributes to CHAN Savuth,<sup>6483</sup> the Defence submits that the Northwest Zone was stockpiling rice, hiding it from POL Pot or destroying it.<sup>6484</sup> The NUON Chea Defence submits that RUOS Nhim also sought to subvert the CPK by distributing money to pay salaries and refusing to engage militarily with Vietnam.<sup>6485</sup> It is submitted that RUOS Nhim ordered arrests to create chaos, foment discontent, and prevent work from being completed.<sup>6486</sup> It is also submitted that a series of meetings were held around Phnom Penh from May 1975 and in the Northwest Zone in late 1976 to organise the rebellion.<sup>6487</sup> However, the NUON Chea Defence submits, the plan was gradually thwarted and the leaders of the rebellion arrested.<sup>6488</sup>

<sup>6480</sup> NUON Chea Closing Brief, paras 275, 277.

<sup>6481</sup> NUON Chea Closing Brief, para. 275.

<sup>6482</sup> NUON Chea Closing Brief, paras 277-278, 289-291, 294.

<sup>6483</sup> See Decision on the NUON Chea Internal 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20 (denying the motion to admit the transcripts of W3 (which the Defence proposes to be of CHAN Savuth) because it cannot establish with certainty the identity of the interviewee). The Chamber therefore does not take into account the submissions based upon these unadmitted transcripts alone.

<sup>6484</sup> NUON Chea Closing Brief, paras 278-279.

<sup>6485</sup> NUON Chea Closing Brief, paras 295-296; T. 16 June 2017 (Closing Statements), E1/523.1, p. 63.

<sup>6486</sup> NUON Chea Closing Brief, paras 280, 287; T. 16 June 2017 (Closing Statements), E1/523.1, p. 60.

<sup>6487</sup> NUON Chea Closing Brief, paras 304-307; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 65-66.

<sup>6488</sup> NUON Chea Closing Brief, paras 308-310.



1933. The Co-Prosecutors respond that the fact that POL Pot travelled frequently to the Northwest and East Zones and was received by RUOS Nhim and SAO Phim respectively shows that the latter two did not intend to overthrow and kill POL Pot.<sup>6489</sup> They ask how the Khmer Rouge could have won the war and maintained power if six of the seven zone secretaries, and five of nine army divisions, were traitors as alleged by the NUON Chea Defence.<sup>6490</sup> RUOS Nhim and SAO Phim even cooperated with *Angkar* in arresting their own soldiers, which contradicts the Defence submission that they were plotting against the Party Centre.<sup>6491</sup>

#### 12.1.5.2.2. *Preliminary issues*

1934. In the section of its Closing Brief regarding RUOS Nhim's alleged participation in an attempted rebellion, the NUON Chea Defence relies heavily on the transcript of a witness (W3) interviewed by THET Sambath and Robert LEMKIN, whom it asserts is CHAN Savuth, a former Northwest Zone hospital director.<sup>6492</sup> The Chamber denied the NUON Chea Defence request to admit this transcript into evidence and therefore does not take these submissions into account.<sup>6493</sup>

1935. In addition to TOAT Thoeun's testimony before the Supreme Court Chamber during appeal proceedings in Case 002/01,<sup>6494</sup> the Trial Chamber admitted TOAT Thoeun's Written Record of Interview and the transcript of an interview of TOAT Thoeun conducted by THET Sambath and Robert LEMKIN sometime between 2006 and 2009.<sup>6495</sup> As to this last document, the Chamber noted that issues regarding challenges to the transcript's reliability would be considered by the Chamber when assessing the document's probative value.<sup>6496</sup> The Chamber finds that TOAT Thoeun's testimony, his OCIJ Written Record of Interview and THET-LEMKIN transcript were

<sup>6489</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 20.

<sup>6490</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 21-22.

<sup>6491</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 23.

<sup>6492</sup> NUON Chea Closing Brief, paras 275-283, 289, 294-295, 302-303, 306-307.

<sup>6493</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 20.

<sup>6494</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 7, 14, 19.

<sup>6495</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 21; Robert LEMKIN Written Interview Record, F2/4/3/1, 18 May 2015, pp. 3-6, ERN (En) 01097180-01097183.

<sup>6496</sup> Decision on the NUON Chea Internal Rule 87(4) Request to Admit Documents Related to Robert Lemkin (2-TCW-877) and on Two Related Internal Rule 93 Requests, E416/4, 28 December 2016, para. 21.

largely consistent and that his testimony was credible. Although the Parties did not have an opportunity to question the witness in the context of Case 002/02 as he died prior to his scheduled testimony,<sup>6497</sup> all Parties were permitted to question him in the Case 002/01 appeal hearings. In addition, the Chamber admitted the THET-LEMKIN transcript of TOAT Thoeun's interview, which may assist in determining the consistency of his testimony. The Chamber therefore finds that it may rely upon the testimony of TOAT Thoeun before the Supreme Court Chamber, as well as his Written Record of Interview and THET-LEMKIN transcript in this Judgement, particularly as the NUON Chea Defence places so much emphasis on them.

1936. TOAT Thoeun testified that he was a messenger and occasional bodyguard of RUOS Nhim from 1970 until 1975.<sup>6498</sup> In late 1975, he became deputy chief of the General Staff for the Northwest Zone.<sup>6499</sup> The Chamber notes that TOAT Thoeun's evidence pertains to events from 1975 until early 1976 when he was sent by his foster father, RUOS Nhim, to study in China.<sup>6500</sup> Upon TOAT Thoeun's return to DK in the latter part of 1977, and after two attempts were made to arrest him, he fled into the forest, seeking to steal rice to eat.<sup>6501</sup> In February 1978, *Ta Mok* stationed a battalion (around 480 soldiers) in the forest and TOAT Thoeun started a rebellion.<sup>6502</sup> He testified that he met RUOS Nhim prior to the latter's arrest which occurred in May or June 1978.<sup>6503</sup> The Chamber discusses each of these aspects of TOAT Thoeun's evidence as they arise below.

<sup>6497</sup> Decision on Witnesses, Civil Parties and Experts Proposed to Heard during Case 002/02, E459, 18 July 2018, para. 104; TOAT Thoeun Death Certificate, E29/511, 31 May 2018, ERN (Kh) 01570093.

<sup>6498</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 71-72.

<sup>6499</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 21-24, 80.

<sup>6500</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 93-94, 98; TOAT Thoeun Interview Record, E3/9610, pp. 5, 38, ERN (En) 00974015, 00974048.

<sup>6501</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 51-52, 127-128.

<sup>6502</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156801.

<sup>6503</sup> The Chamber notes that TOAT Thoeun did not provide a precise date when he met with RUOS Nhim. TOAT Thoeun did state however that he met with RUOS Nhim prior to the latter's arrest when it was clear to RUOS Nhim that his own arrest was imminent. *See* TOAT Thoeun Interview Record, E3/9610, p. 13, ERN (En) 00974023 (stating that prior to RUOS Nhim's arrest in August 1978, he came to meet with the witness). *See also*, T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 85-87 (stating that when RUOS Nhim suspected that his own arrest was imminent, he met with the witness); TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01151759 (stating that *Ta Mok*'s forces came to the Northwest Zone around February 1978, after which RUOS Nhim met with the Witness). As noted below, RUOS Nhim was arrested in June 1978. *See below*, para. 1944.

12.1.5.2.3. *RUOS Nhim's opposition to CPK policies*

1937. RUOS Nhim was the Secretary of the Northwest Zone until he was arrested and sent to S-21 in May or June 1978.<sup>6504</sup> TOAT Thoeun testified that prior to a CPK conference in Phnom Penh in May 1975, RUOS Nhim met with Northwest Zone sector secretaries, discussed the CPK policies, and decided to advocate to the Party Centre that the circulation of money be permitted and former Khmer Republic soldiers be allowed to return back to their homes.<sup>6505</sup> After the May 1975 Phnom Penh conference, TOAT Thoeun said there was a meeting at Borei Keila in Phnom Penh, in which the participants said that the Party Centre should allow people to return to their respective homes and villages, that money should be printed and put into circulation and that international assistance should be accepted for the war-ravaged country.<sup>6506</sup> Around the same time, RUOS Nhim also complained about these issues to his subordinates Keu, Paet, Tom and Mai.<sup>6507</sup> However, according to TOAT Thoeun, there was no plan to rebel at that time.<sup>6508</sup>

1938. According to the THET-LEMKIN transcript of TOAT Thoeun's interview, in mid to late 1977, RUOS Nhim told TOAT Thoeun that he had left POL Pot's Party and that he and SAO Phim were organising forces to resist.<sup>6509</sup> In the same transcript, TOAT Thoeun clarified that RUOS Nhim had the idea of resisting but he did not do so.<sup>6510</sup> TOAT Thoeun was angry with RUOS Nhim because the latter had arrested their fellow soldiers in the Northwest Zone on the orders of the Security Office (*Santebal*) and SON Sen.<sup>6511</sup>

<sup>6504</sup> See DK Report, E3/9368, 17 May 1978, p. 1, ERN (En) 00183654; S-21 Confession – MOUL Sambath *alias* RUOS Nhim, E3/3989, 14 June 1978, ERN (En) 01554902-01554904.

<sup>6505</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 125-126.

<sup>6506</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 36-37; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156807.

<sup>6507</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 73-74; TOAT Thoeun Interview Record, E3/9610, pp. 29-30, ERN (En) 00974039-00974040 (RUOS Nhim complained in private that he was disappointed with the evacuation of the cities, the elimination of markets and currency).

<sup>6508</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 37-38.

<sup>6509</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156800-01156801, 01156809 (the conversation likely occurred after TOAT Thoeun's return from China around mid to late 1977). *See below*, para. 1938.

<sup>6510</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156819 (“He [RUOS Nhim] was not absolutely firm to stand up and resist at that time. If he stood up at that time, the people would be hopeful”) 01156823 (“He had the idea to resist, but he did not do [so].”).

<sup>6511</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156805, 01156807, 01156814, 01156821-01156822.

1939. TOAT Thoeun stated that the Party Centre was to blame for the poor living conditions and, particularly for the lack of rice.<sup>6512</sup> He said that the people doing the hard labour only ate porridge while the rice harvest was taken by *Angkar* based on designated quotas.<sup>6513</sup> People in the Northwest Zone starved because there was nothing to eat and there were no medicines.<sup>6514</sup> He said this was all caused by the evacuation of cities as teachers, and other people who had never worked the earth, were forced to labour with insufficient food.<sup>6515</sup> TOAT Thoeun said it was the Party Centre's decisions that caused these deaths and because his foster father, RUOS Nhim, was a member of the Party Centre, he too was to blame.<sup>6516</sup> Further to this, on 11 May 1978, a report indicated that cadres in Region 5 of the Northwest Zone hid rice without giving it away to people and stated that this problem had already been solved.<sup>6517</sup> By this time, the Southwest Zone cadres led by *Ta Mok* were in control of the Northwest Zone. It was TOAT Thoeun's view that if RUOS Nhim had resisted POL Pot, as he himself did, many lives would have been saved.<sup>6518</sup>

1940. The Chamber considers that TOAT Thoeun's account of RUOS Nhim's motivations and actions is internally consistent and accepts TOAT Thoeun's evidence that RUOS Nhim did not plan or initiate steps to rebel against the CPK Standing Committee from the outset of the DK era in 1975.

#### 12.1.5.2.4. *Purge of the Northwest Zone*

1941. Witness LAT Suoy, a guard at the Trapeang Thma Dam,<sup>6519</sup> testified that when the Southwest Zone cadres first arrived in June 1977 in the Northwest Zone, RUOS Nhim convened a meeting of the big chiefs to tell them that they had been accused of

<sup>6512</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156810, 01156817, 01156820.

<sup>6513</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156810, 01156817, 01156820.

<sup>6514</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, p. 7, ERN (En) 01156817.

<sup>6515</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, p. 7, ERN (En) 01156817.

<sup>6516</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, p. 7, ERN (En) 01156816-01156817.

<sup>6517</sup> DK Telegram, E3/950, 11 May 1978, ERN (En) 00185215.

<sup>6518</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156815-01156816.

<sup>6519</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 15. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1227.

being traitors and that they should be careful of being arrested.<sup>6520</sup> While LAT Suoy was not present at that meeting, he testified that he learned this from his chief, *Ta Nak*, who then convened a meeting to inform his group of what transpired.<sup>6521</sup> LAT Suoy did not understand what treachery was being referred to, although he heard from sector soldiers that it may have been because a Chinese diplomat was killed by zone soldiers.<sup>6522</sup> A few days later, in June 1977, all Northwest Zone cadres such as *Ta Val*, *Ta Maong*, and *Ta Hoeng*, were arrested by the Southwest Zone cadres and taken away, along with their family members.<sup>6523</sup> LAT Suoy became fearful as more and more cadres down the rank were arrested.<sup>6524</sup> LAT Suoy's guard unit was instructed to lay down their arms and were reassigned to a mobile unit to collect cow dung.<sup>6525</sup>

1942. According to TOAT Thoeun and as illustrated in a telegram from RUOS Nhim to Office 870 (copied to "Uncle", "Uncle Nuon", "Brother Vann" and "Brother Vorn"), RUOS Nhim was cooperating with the Party Centre in the arrests ordered by SON Sen.<sup>6526</sup> RUOS Nhim was therefore acceding to the orders of the Party Centre when he sent his cadres to meetings in Phnom Penh.<sup>6527</sup> Other evidence on the Case File shows that until his arrest, RUOS Nhim was reporting to the Party Centre and implementing the Party Centre's orders.<sup>6528</sup>

<sup>6520</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 8-9.

<sup>6521</sup> T. 13 August 2015 (LAT Suoy), E1/330.1, pp. 5-6.

<sup>6522</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 74-78.

<sup>6523</sup> T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 89-92, 95-96; T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 7-9, 17, 58-59, 74-75; General View of Sector 5, E3/1181, 27 June 1977, p. 1, ERN (En) 00223175 (Hoeng, Sector 5 Secretary); People's Revolutionary Tribunal Held in Phnom Penh for the Trial of the Genocide Crime of the Pol Pot and Ieng Sary Clique – Important Culprits, E3/1993, August 1979, ERN (En) 00064831 (Men Chun *alias* Hung, Party Secretary of Region V, 20 August 1977); S-21 Confession – MEN Chun *alias* Hoeng, E3/2474, 1 December 1977.

<sup>6524</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 62-63.

<sup>6525</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 46.

<sup>6526</sup> DK Telegram, E3/1208, 21 December 1977, ERN (En) 00539059; T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 102-104 (testifying that NUON Chea and RUOS Nhim were close and it was the witness who informed RUOS Nhim that NUON Chea had betrayed them by arresting Northwest Zone cadre), 127 (Witness transported telegrams between RUOS Nhim and Pang in Office 870); TOAT Thoeun Interview Record, E3/9610, ERN (En) 00974018; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, pp. 5, 11-12, ERN (En) 01156805, 01156807, 01156814-01156815.

<sup>6527</sup> See above, paras 1938-1940.

<sup>6528</sup> See DK Telegram, E3/570, 12 August 1977, ERN (En) 00335204; DK Telegram, E3/883, 27 August 1977, ERN (En) 00185185; DK Telegram, E3/1119, 20 October 1977, ERN (En) 00434858; DK Telegram, E3/1208, 21 December 1977, ERN (En) 00539059; DK Telegram, E3/910, 24 December 1977, ERN (En) 00182781; DK Telegram, E3/950, 11 May 1978, ERN (En) 00185215-00185218.

1943. TOAT Thoeun testified that before RUOS Nhim's arrest in May to June 1978, he fled to the forest in order to fight against POL Pot.<sup>6529</sup> Two attempts had been made to arrest TOAT Thoeun and he confronted his foster father, RUOS Nhim, who asserted that it was the Party Centre, Office 870, that had ordered TOAT Thoeun's arrest.<sup>6530</sup>

1944. TOAT Thoeun testified that he was approached by RUOS Nhim in the forest around prior to the latter's arrest which occurred in May or June 1978.<sup>6531</sup> TOAT Thoeun's testimony before the Supreme Court Chamber, OCIJ Written Record of Interview and interview with THET Sambath and Richard LEMKIN were largely consistent as to what was expressed during that meeting. TOAT Thoeun testified that he told RUOS Nhim that perhaps NUON Chea had betrayed them and that is why the Northwest Zone cadres were killed.<sup>6532</sup> RUOS Nhim requested 300 troops from TOAT Thoeun for his own protection because his troops had been arrested.<sup>6533</sup> TOAT Thoeun agreed (at least to lend 150 soldiers) on condition that the troops not be sent to *Angkar* in Phnom Penh as they would be killed.<sup>6534</sup> RUOS Nhim understood that he and TOAT Thoeun would eventually be arrested by the Party Centre, but he did not accept TOAT Thoeun's invitation to join his resistance group.<sup>6535</sup> TOAT Thoeun stated that RUOS Nhim voiced support for his resistance movement, but that could not protect him anymore, as he knew that he himself would be arrested.<sup>6536</sup> About 10-14 days later, RUOS Nhim was indeed arrested and taken to S-21 where he was killed.<sup>6537</sup>

1945. Based on its own review of the evidence on the Case File, the Chamber finds that the contemporaneous S-21 documentation allows the identification of at least 1,423

<sup>6529</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 34-36, 127-128; TOAT Thoeun Interview Record, E3/9610, pp. 8-10, ERN (En) 00974018-00974020 (estimating that he fled in April 1978).

<sup>6530</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 34-36, 49-51; TOAT Thoeun Interview Record, E3/9610, pp. 8-9, ERN (En) 00974018-00974019.

<sup>6531</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 85-86; TOAT Thoeun Interview Record, E3/9610, p. 13, ERN (En) 00974023; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156802.

<sup>6532</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 102-104.

<sup>6533</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 87 (agreed to send 300 troops), 129-130; TOAT Thoeun Interview Record, E3/9610, p. 10, ERN (En) 00974020; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156804 (agreed to send 150 troops only).

<sup>6534</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 87 (agreed to send 300 troops); TOAT Thoeun Interview Record, E3/9610, p. 10, ERN (En) 00974020; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156804.

<sup>6535</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 85-86, 130.

<sup>6536</sup> TOAT Thoeun Interview Record, E3/9610, p. 13, ERN (En) 00974023.

<sup>6537</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 130; S-21 Confession – MOUL Sambath *alias* RUOS Nhim, E3/3989, 14 June 1978; TOAT Thoeun Interview Record, E3/9610, p. 10, ERN (En) 00974020.

persons associated with the Northwest Zone who were arrested and taken to S-21 to be killed from January 1976 until December 1978.<sup>6538</sup> Cadres were called progressively to attend education sessions in Phnom Penh never to return, with Southwest Zone cadres taking up the vacant positions.<sup>6539</sup> RUOS Nhim and his Deputy Secretaries were arrested between May and June 1978.<sup>6540</sup>

#### 12.1.5.2.5. *Weapons, hammocks, uniforms, rice and sandals*

1946. The Chamber also heard evidence regarding the caching of weapons, the distribution of hammocks, uniforms and “East Zone” sandals which the NUON Chea Defence asserts were to be used in an attempted *coup*.<sup>6541</sup>

1947. After RUOS Nhim returned from a May 1975 meeting in Phnom Penh, he ordered TOAT Thoeun to gather the war spoils of LON Nol weapons and ammunition which he cleaned and stored in a bamboo forest outside of Battambang town in Thma

<sup>6538</sup> S-21 list of prisoners, E3/3973, undated, ERN (En) 00837527-00837530, 00837532-00837535, 00837537, 00837539, 00837557, 00837575, 00837578, 00837581; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates, pp. 48-51, 63-72, 95, 106, 108-110, 112-113, 120-121, 129-134, 137-138, 146-153, 161, 181-185, 208-213, 215, 439-440, 452, 492-495, 506-509, 512-513, 517-518, 522, 524-530, 532-533, 546-547, 550-552, ERN (En) 01564808-01564811, 01564823-01564832, 01564855, 01564866, 01564868-01564870, 01564872-01564873, 01564880-01564881, 01564889-01564894, 01564897-01564898, 01564906-01564913, 01564921, 01564941-01564945, 01564968-01564973, 01564975, 01565199-01565200, 01565212, 01565252-01565255, 01565266-01565269, 01565272-01565273, 01565277-01565278, 01565282, 01565284-01565290, 01565292-01565293, 01565306-01565307, 01565310-01565312; S-21 Execution List, E3/3187, undated, ERN (En) 00874182, 00874378, 00874414, 00874422, 00874506, 00874516, 00874518, 00874542, 00874563; S-21 list of prisoners taken out in May 1978, E3/8463, 27, 29 May 1978, ERN (En) 01032524-01032527, 01032532; S-21 list of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [*sic*], ERN (En) 00193556; S-21 Prisoner List, E3/3181, 13 October 1977, p. 3, ERN (En) 00784613; S-21 list of prisoners smashed on 20.6.77, E3/2011, 22 May 1977, ERN (En) 00290179; S-21 list of prisoners killed in 1977, E3/8455, undated, pp. 1, 4, ERN (En) 00784449, 00784452; S-21 list of prisoners executed on 9.12.77, E3/7210 [E3/2655], 9 December 1977, pp. 2-3, ERN (En) 00328269; S-21 list of monks and Royal Family relatives, E3/8462, undated, ERN (En) 00786215-00786216; S-21 list of prisoners who died of disease on 17 September 1977, E3/8460, multiple dates, ERN (En) 00843444; S-21 list of prisoners, E3/2102, 2 February 1978, pp. 1-3, 6-8, ERN (En) 00784623-00784625, 00784628-00784630; DK Telegram, E3/8707.16, 8 October 1977, pp. 311-313, ERN (En) 00143347-00143349; S-21 list of prisoners, E3/8571, undated, p. 1, ERN (En) 00181792; DK Telegram, E3/8707.3, 29 August 1977, pp. 255-257, ERN (En) 00143291-00143293; DK Telegram, E3/8707.13, 28 September 1977, p. 300, ERN (En) 00143336; S-21 list of prisoners, E3/1938, undated, pp. 1-7, ERN (En) 00233703-00233709; S-21 Prisoner List, E3/8560, undated, p. 1, ERN (En) 00181775; list of prisoners executed or died of disease from 1 to 15 August 1976, E3/8454, undated, p. 1, ERN (En) 00749401.

<sup>6539</sup> TOAT Thoeun Interview Record, E3/9610, pp. 8-9, ERN (En) 00974018-00974019; T. 26 October 2015 (MUN Mot), E1/356.1, p. 63 (Southwest Zone cadres started arriving in early 1977).

<sup>6540</sup> S-21 Confession – MOUL Sambath *alias* RUOS Nhim, E3/3989, 14 June 1978; TOAT Thoeun Interview Record, E3/9610, p. 11, ERN (En) 00974021. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1236; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 71 (*Ta* Nhim’s deputy was *Ta* Khleng). *See* S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978, pp. 75-81, ERN (En) 01564031-01564037 (listing cadres arrested from the Northwest Zone in June 1978).

<sup>6541</sup> NUON Chea Closing Brief, paras 300-302.

Prus village near Veay Chab Mountain.<sup>6542</sup> He later clarified that there were three warehouses: one at Office 410; a second in Moung district; and a third at Office 20.<sup>6543</sup> On these issues, TOAT Thoeun reported directly to RUOS Nhim.<sup>6544</sup> He testified that the weapons were cached to keep them away from LON Nol armed forces and only three older men, or grandfathers, knew where the weapons were stored.<sup>6545</sup> Although TOAT Thoeun much later used these weapons (in August 1978) to fight against POL Pot, he testified that was not the original rationale for their storage.<sup>6546</sup> They were not stored secretly to start a rebellion against POL Pot.<sup>6547</sup> TOAT Thoeun's statements and testimony were consistent in this respect and the Chamber accepts his evidence.

1948. MUN Mot, a company chief who worked at Trapeang Thma Dam, stated in court that he saw supplies, including sandals, scarves, cigarette lighters and white shirts which were distributed to the unit chiefs.<sup>6548</sup> Although he told DC-Cam that weapons were brought from the East Zone, in court he testified that he did not see any weapons.<sup>6549</sup> MUN Mot also testified that the sandals were named "bopea" or "East" sandals.<sup>6550</sup> MUN Mot indicated that the materials were stored at *Ta Val's* location, which was the Trapeang Thma Dam worksite.<sup>6551</sup>

1949. Witness CHHIT Yoeuk, who was a militiaman, and later a chief of a youth mobile brigade assigned to work at Trapeang Thma Dam, testified that he saw sandals from the East Zone being distributed to members of mobile units at the Dam.<sup>6552</sup> But the witness never heard about allegations of enemies within the Northwest Zone

<sup>6542</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 23-25; TOAT Thoeun Interview Record, E3/9610, p. 11, ERN (En) 00974021.

<sup>6543</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 89.

<sup>6544</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 23.

<sup>6545</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 25-27, 29, 82.

<sup>6546</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 25-26, 31.

<sup>6547</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 34.

<sup>6548</sup> T. 26 October 2015 (MUN Mot), E1/356.1, pp. 72-73. *See also*, Section 11.1: Trapeang Thma Dam Worksite, paras 1230-1231.

<sup>6549</sup> T. 26 October 2015 (MUN Mot), E1/356.1, pp. 59-60; MUN Mut DC-Cam Interview, E3/9076, 16 June 2011, p. 22, ERN (En) 00731172.

<sup>6550</sup> T. 26 October 2015 (MUN Mot), E1/356.1, pp. 70-71. However, the witness also testified that the sandals did not come from the East Zone. The Chamber considers this element of his testimony to be ambiguous.

<sup>6551</sup> T. 26 October 2015 (MUN Mot), E1/356.1, p. 64.

<sup>6552</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 24. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1213.



stealing and hiding rice and was not aware of any secret plan.<sup>6553</sup> LAT Suoy also indicated that he saw workers in a mobile unit wearing sandals from the East Zone.<sup>6554</sup>

1950. Witness CHHORN Vorn testified that he accompanied RUOS Nhim to the border with Vietnam in order to obtain uniforms at Phnum Den.<sup>6555</sup> However, his testimony was inconsistent with his statements to the Co-Investigating Judges. CHHORN Vorn told investigators that he was RUOS Nhim's bodyguard and that he was always with *Ta* Nhim.<sup>6556</sup> He further told OCIJ investigators that in 1977, he used to escort RUOS Nhim to Phnum Den Mountain on the Vietnamese border so that *Ta* Nhim could transport military uniforms, which the latter said originated from Vietnam, to his home in Ampil Prahaong.<sup>6557</sup> But in a prior interview with OCIJ investigators, CHHORN Vorn said that as RUOS Nhim's driver, he always stayed in the car and never went to Sectors 3, 4, and 5 in Northwest Zone with RUOS Nhim.<sup>6558</sup> He added that RUOS Nhim went to Phnum Den only "once in a long while".<sup>6559</sup>

1951. In his testimony, CHHORN Vorn initially denied that he had driven RUOS Nhim to Phnum Den, saying it was another driver.<sup>6560</sup> He later recalled that he went there on one occasion at night with other guards.<sup>6561</sup> Although he did not know who actually brought the uniforms and he never heard people speaking Vietnamese, he assumed that the uniforms he transported were Vietnamese.<sup>6562</sup> He further stated that the uniforms were given to RUOS Nhim's bodyguards.<sup>6563</sup> The Chamber considers that the inconsistencies in this witness's testimony about the nature of his relationship with RUOS Nhim, the description of his assignment, the frequency of the trips to Phnum Den and the origins of the uniforms render his testimony unreliable. The Chamber further notes that Phnum Den was located in Southwest Zone under the supervision of

<sup>6553</sup> T. 17 August 2015 (CHHIT Yoeuk), E1/331.1, p. 31.

<sup>6554</sup> T. 13 August 2015 (LAT Suoy), E1/330.1, pp. 10-11.

<sup>6555</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, pp. 72-78.

<sup>6556</sup> CHHORN Vorn Interview Record, E3/9581, 21 October 2013, pp. 3-4, ERN (En) 00970079-00970080.

<sup>6557</sup> CHHORN Vorn Interview Record, E3/9581, 21 October 2013, pp. 3-4, ERN (En) 00970079-00970080.

<sup>6558</sup> CHHORN Vorn Interview Record, E3/10672, pp. 3, 5, ERN (En) 01154852, 01154854.

<sup>6559</sup> CHHORN Vorn Interview Record, E3/10672, p. 4, ERN (En) 01154853.

<sup>6560</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, pp. 72-73.

<sup>6561</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, pp. 74-75.

<sup>6562</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, p. 84; T. 22 September 2016 (CHHORN Vorn), E1/479.1, pp. 13-14.

<sup>6563</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, p. 76.

*Ta Mok*, which would have been an unusual location to try and evade the Party Centre.<sup>6564</sup>

1952. The Chamber considers that the distribution of sandals, uniforms and hammocks to workers at the Trapeang Thma Dam is unremarkable and not indicative of a plot to overthrow the DK regime. The Chamber further accepts TOAT Thoeun's evidence that the caching of weapons was not for the purpose of fighting the CPK. TOAT Thoeun left Cambodia for nearly two years and after his return retrieved the weapons that he had stored.<sup>6565</sup> It was only when he decided to take up arms against the Party Centre that the weapons were put to use.

1953. The Chamber also notes the Written Record of Interview of KHOEM Vai, a Sector 13 messenger in the Southwest Zone who was sent to the Northwest Zone in early 1977 to work in the Commerce Committee.<sup>6566</sup> *Ta Mok* sent a large contingent of Southwest Zone cadres and soldiers with IM Chaem at the lead to replace Northwest Zone cadres who had been purged or who were later to be removed.<sup>6567</sup> The group stopped in Phnom Penh on the way to the Northwest Zone and attended a meeting during which NUON Chea said there were traitors in the Northwest Zone.<sup>6568</sup> KHOEM Vai stated that clothing and rice, both of which should have been distributed to the people, were maintained in Northwest Zone warehouses until they were old or spoiled.<sup>6569</sup> He added: "There was plentiful of rice in the Northwest Zone. There was no reason why people were given only rice gruel to eat".<sup>6570</sup> The Chamber notes that KHOEM Vai's arrival in the Northwest Zone coincided with the purge in that location and that his protestations of ignorance of the purge are not credible given the extent of the purges and his assignment to work as a cadre in a key position at Sector 5. There is

<sup>6564</sup> T. 21 September 2016 (CHHORN Vorn), E1/478.1, p. 74, 82.

<sup>6565</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 94, 98; TOAT Thoeun Interview Record, E3/9610, pp. 4-5, ERN (En) 00974014-00974015. *See above*, para. 1947.

<sup>6566</sup> KHOEM Vai Interview Record, E3/10750, 21 December 2015, pp. 8-9, 11-12, ERN (En) 01207669-01207670, 01207672-01207673. Although KHOEM Vai's estimate as to when he arrived in the Northwest Zone with IM Chaem varied between 1976 and 1977, other witness accounts place the arrival of the Southwest group led by IM Chaem in 1977. *See* KHUN Sevinn Interview Record, E3/9478, 17 September 2014, p. 12, ERN (En) 01047894; MOM Chhouk Interview Record, E3/9501, 17 June 2013, p. 9, ERN (En) 00966763; BUTH Svoeuy Interview Record, E3/9547, 19 March 2013, p. 4, ERN (En) 00935607.

<sup>6567</sup> KHOEM Vai Interview Record, E3/10750, 21 December 2015, p. 16, ERN (En) 01207677.

<sup>6568</sup> KHOEM Vai Interview Record, E3/10750, 21 December 2015, pp. 16-17, ERN (En) 01207677-001207678.

<sup>6569</sup> KHOEM Vai Interview Record, E3/10750, 21 December 2015, p. 16, ERN (En) 01207677.

<sup>6570</sup> KHOEM Vai Interview Record, E3/10750, 21 December 2015, ERN (En) 01207677.

also reason to doubt the witness's claim that there was plentiful rice to feed the Northwest Zone but for the acts of traitorous cadres. The evidence at trial was that workers at the Trapeang Thma Dam continued to suffer shortages of food after the arrival of Southwest Zone cadres.<sup>6571</sup> Even if the latter required time to remedy the situation, food shortages continued in 1977 and were exacerbated by the purge of Northwest Zone cadres.<sup>6572</sup>

12.1.5.2.6. *Forces sent to Phnom Kaun Khlaeng (June 1977)*

1954. The NUON Chea Defence makes reference to Northwest Zone forces fleeing with weapons to the forest, in Phnom Kaun Khlaeng, to fight the arriving Southwest Zone forces.<sup>6573</sup> Witness CHHUM Seng, a company chief within one of the mobile units operating at the Trapeang Thma Dam, testified of having heard from *Ta Val*, mobile unit chief of Sector 5 in charge of Trapeang Thma Dam, that RUOS Nhim sent reinforcement forces of around 200 or 300 people to Phnom Kaun Khlaeng and that later he withdrew them.<sup>6574</sup> However, CHHUM Seng clarified that, according to *Ta Val*, the forces were unarmed, carrying only farming tools.<sup>6575</sup> While the witness did not indicate in court when this event occurred, considering that CHHUM Seng testified to having received the assignment from *Ta Val* and that S-21 records indicate that *Ta Val* was arrested and taken to S-21 in June 1977,<sup>6576</sup> this event must have occurred sometime before that date. However, there is an apparent contradiction in his version of events since he indicated in his DC-Cam statement that this happened “[w]hen we were almost done with Trapeang Thma reservoir”,<sup>6577</sup> and the Chamber has found that

<sup>6571</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1306.

<sup>6572</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1301, 1306.

<sup>6573</sup> NUON Chea Closing Brief, paras 300, 307.

<sup>6574</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 66; T. 26 October 2015 (MUN Mot), E1/356.1, p. 57. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1209.

<sup>6575</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 66 (explaining that the people did not carry weapons but only hoes).

<sup>6576</sup> S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 3, ERN (En) 01139860 (entry no. 29); S-21 Prisoner List, E3/10324, undated, p. 2, ERN (En) 01528688 (entry no. 4, indicating 29 June 1977 as entry date); List of prisoners smashed on 6 March 1978, E3/1900, 7 March 1977 [*sic*], ERN (En) 00193556 (entry no. 12, listing AOK Horn *alias* Val, Assistant Sector 5, as entered on 29 June 1977).

<sup>6577</sup> CHHUM Seng DC-Cam Interview, E3/9010, 18 June 2011, p. 25, ERN (En) 00728632 (“When we were almost done with Trapeang Thmar reservoir, from bridge 1 to Peam Ro village, *Ta Val* asked us to send 100 workers to Kaun Kleng Mountain.”).

the Dam was largely completed by the end of 1977 or mid-1978.<sup>6578</sup> Therefore, the date of this event is not clear.

1955. LAT Suoy heard sector soldiers speak about their plan of transporting weapons to the Phnom Kaun Khlaeng<sup>6579</sup> forest in order to counter the attack of Southwest Zone cadres and to prevent them from taking control of Sector 5.<sup>6580</sup> It is not clear that CHHUM Sen was discussing the same events as LAT Suoy given the differences in timing of the events. LAT Suoy's evidence was that soldiers fled to the forest with their weapons when they learned that RUOS Nhim was about to be arrested and stayed for about a fortnight, later withdrawing to Svay.<sup>6581</sup> Given that RUOS Nhim was arrested around June 1978,<sup>6582</sup> LAT Suoy's evidence would place this event in the first half of 1978. By this time, hundreds of Northwest Zone cadres had been arrested and executed at S-21.<sup>6583</sup> After the arrival of the Southwest Zone cadres, the soldiers were arrested by the Southwest Zone cadres.<sup>6584</sup> LAT Suoy's testimony was not corroborated. In any event, the Chamber finds that the movement of soldiers to Phnom Kaun Khlaeng would not signify an aggressive plan to attack the Party Centre in Phnom Penh but instead amounted to a response of several hundred soldiers seeking to protect the Northwest Zone from an imminent takeover by the Southwest Zone cadres and from subsequent purges.

1956. Witness MUN Mut, a company commander, testified that he heard information about a plan and that he, together with other unit chiefs, was invited to a meeting at Phnom Kaun Khlaeng during which it was said that all of the unit chiefs would become captains.<sup>6585</sup> But he did not understand what was meant.<sup>6586</sup> Ten to fifteen chiefs of companies and battalions participated in the secret meeting (or meetings), including

<sup>6578</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1221.

<sup>6579</sup> T. 13 August 2015 (LAT Suoy), E1/330.1, p. 7; MUN Mut DC-Cam Interview, E3/9076, 16 June 2011, ERN (En) 00731172.

<sup>6580</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 11.

<sup>6581</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 62-63, 65; T. 13 August 2015 (LAT Suoy), E1/330.1, p. 7.

<sup>6582</sup> S-21 Confession – MOUL Sambath *alias* RUOS Nhim, E3/3989, 14 June 1978, ERN (En) 01554902-01554904.

<sup>6583</sup> S-21 list of prisoners smashed on 19 and 20 October 1977, E3/2285 [E3/2286], ERN (En) 01565274, 01565282, 01565284-01565290, 01565306-01565307, 01565310-01565312.

<sup>6584</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 10, 65.

<sup>6585</sup> T. 26 October 2015 (MUN Mut), E1/356.1, pp. 59-60; T. 27 October 2015 (MUN Mut), E1/357.1, p. 11; MUN Mut DC-Cam Interview, E3/9076, 16 June 2011, ERN (En) 00731172.

<sup>6586</sup> T. 26 October 2015 (MUN Mut), E1/356.1, p. 59.

PAN Chhuong (who had an important role in Sector 5),<sup>6587</sup> Mao (a female cadre from Doun Chaeng), Phoan and San.<sup>6588</sup> It seemed that there were no serious plans and those present made a joke of it during the meeting.<sup>6589</sup> There was no evidence that RUOS Nhim was present at, or had knowledge of, the secret meeting and the secret plan was never executed.<sup>6590</sup> Therefore, the Chamber does not consider that this evidence clearly implicates RUOS Nhim in a plot to overthrow POL Pot.

#### 12.1.5.2.7. *TOAT Thoeun's rebellion*

1957. In around January 1976, RUOS Nhim sent TOAT Thoeun to China to study and he returned in around mid-1977 or November 1977.<sup>6591</sup> Upon his return and after two attempts were made to arrest him, TOAT Thoeun fled into the forest with nine others, seeking to steal rice to eat.<sup>6592</sup> In February 1978, *Ta Mok* sent a battalion to take control of the forest and TOAT Thoeun took his men to fight them, destroying most of the opposing forces but for 40 men who were able to escape.<sup>6593</sup> Mobile units started to join TOAT Thoeun in the forest, and later, non-combatants, fearing for their lives, also joined in hundreds and thousands.<sup>6594</sup> TOAT Thoeun took the weapons from the cache to fight against the Southwest Zone forces led by *Ta Mok*, known as the Army of the Centre, around August 1978.<sup>6595</sup> The Party Centre started calling TOAT's forces the Khmer Sar (White Khmer) although he never coined that term.<sup>6596</sup>

<sup>6587</sup> However, Witness PAN Chhuong testified that he never heard of any secret meeting being held. See T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 32. PAN Chhuong also testified that there was no plan to rebel contemplated by *Ta Val* and *Ta Prum*. See T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 93.

<sup>6588</sup> T. 26 October 2015 (MUN Mut), E1/356.1, p. 65.

<sup>6589</sup> T. 26 October 2015 (MUN Mut), E1/356.1, p. 68.

<sup>6590</sup> T. 26 October 2015 (MUN Mut), E1/356.1, p. 68.

<sup>6591</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 93-94, 98; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, pp. 5, 38, ERN (En) 00974015, 00974048.

<sup>6592</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 51-52, 127-128; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156801.

<sup>6593</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156801-01156802. TOAT Thoeun explained that the Southwest Zone forces were newcomers and did not know the zone which explained how his small force was able to destroy them. However, there was no corroboration for the numbers put forward by TOAT Thoeun in this interview and he was not questioned on this point by the Co-Investigating Judges or the Supreme Court Chamber.

<sup>6594</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 51-52, 120 (2,000 joined the rebellion, 1,000 people joined per day); TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 40, ERN (En) 00974050 (every day, 40 to 100 families joined his movement); TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 00156803 (sometimes 1,000 people joined in a single day; in two months, their armed forces reached 4,000 in number).

<sup>6595</sup> TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 14, ERN (En) 00974024; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 00156804.

<sup>6596</sup> TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 40, ERN (En) 00974050.

1958. TOAT Thoeun gave evidence that his rebellion had no connection or support from Vietnam as he was based along the Thai border.<sup>6597</sup> He had contact with Vietnamese in 1970, but by 1972 or 1973, the Vietnamese had left and TOAT Thoeun no longer had any contact with them.<sup>6598</sup> He was not aware whether RUOS Nhim had any such contact.<sup>6599</sup> TOAT Thoeun initiated the rebellion only because attempts had been made on his life by the Party Centre.<sup>6600</sup>

1959. The United Front of Cambodia forces, including those of PEN Sovann, HENG Samrin, and CHEA Sim arrived in Battambang around April or May of 1979.<sup>6601</sup> According to TOAT Thoeun, his forces initially fought against them as he believed they were Chinese supporters of the Khmer Rouge, but after capturing some of the opposing forces he discovered who they were and they coordinated attacks together against *Ta Mok's* forces.<sup>6602</sup>

#### 12.1.5.2.8. *Distribution of currency*

1960. LAT Suoy also testified that about two months before the arrival of the Vietnamese,<sup>6603</sup> he saw a 10 Riel note of currency, reddish in colour, printed in Phnom Penh with a picture of a woman with a scarf on her head harvesting rice in the field and a man digging a field with a hoe.<sup>6604</sup> Although he told DC-Cam that he also saw two 20 Riel notes, he clarified that he was told that he would receive 20 Riels as payment, but he never examined the 20 Riel note.<sup>6605</sup> When presented with a picture of DK currency printed in 1975, the witness said it was of the same reddish colour, but that the currency he saw had fewer people in it.<sup>6606</sup> He said that the money was organised by the Southwest Zone to pay a salary to combatants.<sup>6607</sup> The witness explained that when he

<sup>6597</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 38.

<sup>6598</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 47-48; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 00156806-00156807. *See also*, Historical Background, para. 228.

<sup>6599</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 47-48; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156807.

<sup>6600</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 47-48.

<sup>6601</sup> T. 6 July 2015, F1/3.1 (TOAT Thoeun), pp. 52-53; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 12, ERN (En) 00974022.

<sup>6602</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 52-53, 90; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 12, ERN (En) 00974022.

<sup>6603</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 43.

<sup>6604</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 12, 66, 82, 86.

<sup>6605</sup> T. 13 August 2015 (LAT Suoy), E1/330.1, pp. 15-16.

<sup>6606</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 83, 87; Book by M. Slocomb: *An Economic History of Cambodia in the Twentieth Century*, E3/4535, ERN (En) 00685868.

<sup>6607</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 43-44.

saw the notes, the Northwest Zone cadres had already been arrested by the Southwest Zone cadres and the money was organised by the latter group.<sup>6608</sup> However, he later estimated that he saw the notes in late 1977 and that RUOS Nhim, as well as those in Phnom Penh, were preparing to circulate currency and to reopen the markets.<sup>6609</sup> The Chamber finds this evidence is inconclusive as the currency could have been DK currency from 1975 or some other currency. The witness also testified that the money was organised by the Southwest Zone, which is unsubstantiated. Although several sources indicate that RUOS Nhim and SAO Phim sought to reopen markets and distribute currency, there is no credible evidence that currency was actually distributed before they were arrested and killed.

#### 12.1.5.2.9. *Collaboration with the East Zone*

1961. TOAT Thoeun told THET Sambath that RUOS Nhim and SAO Phim had started a dialogue in August 1975 when RUOS Nhim's son, Cheal *alias* Chhnang (Sector 5 Deputy Secretary or at least a member of the Sector 5 Committee), became engaged to SAO Phim's daughter, KANH Chrenh.<sup>6610</sup> SAO Phim came to visit his son-in-law in the Northwest Zone every four to five months.<sup>6611</sup> NONG Nim, SAO Phim's driver, and SIN Oeng, one of SAO Phim's bodyguards, confirmed that the two married, with the former testifying that it was some time in 1976.<sup>6612</sup> There was some disagreement as to which of SAO Phim's daughter's married Cheal.<sup>6613</sup> For the purposes of assessing any links between SAO Phim and RUOS Nhim, the Chamber accepts that a daughter of SAO Phim married RUOS Nhim's son Cheal in 1975 or 1976.

<sup>6608</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 44.

<sup>6609</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 67.

<sup>6610</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156803-01156805; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 7, ERN (En) 00974017. *See also*, T. 6 July 2015 (TOAT Thoeun), F1/3.1, p. 9; S-21 list of prisoners who entered on 14 June 1978, E3/10190, 15 June 1978, p. 1, ERN (En) 01548761 (listing NHIM Chhnang *alias* Cheal as "Assistant in Sector 5"); S-21 Prisoners List, The Northwest Zone, E3/9905, undated, p. 49, ERN (En) 01398919.

<sup>6611</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156821.

<sup>6612</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 16-17 (confirming Si was SAO Phim's daughter and Cheal was her husband).

<sup>6613</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 89-90 (confirming that RUOS Nhim's son married SAO Phim's daughter, but stating that SAO Phim's daughter was named "Si"); T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 71-72, 76-77 (referring to SAO Phim's daughter as "Si" who married RUOS Nhim's son, not to be confused with his other daughter, Ta Dev, who had disappeared).

1962. NONG Nim also testified that RUOS Nhim and SAO Phim visited one another in Battambang, although he did not know what they discussed as he remained outside during the visits.<sup>6614</sup> He said that SAO Phim also visited Cheal at the Sector 5 office during these visits.<sup>6615</sup> SAO Phim also informed the Party Centre that he visited RUOS Nhim in the Northwest Zone, as the latter had requested 10 cadres to work at the district and subdistrict levels with which SAO Phim was willing to assist.<sup>6616</sup> RUOS Nhim also visited SAO Phim at the Samraong worksite in the East Zone.<sup>6617</sup> NONG Nim did not recognise SAO Phim in the video played for him, although he did recognise a photograph of SAO Phim.<sup>6618</sup>

1963. SIN Oeng, SAO Phim's bodyguard, testified that RUOS Nhim visited SAO Phim three times at the East Zone guard in Suong village, sometimes accompanied by his grandson.<sup>6619</sup> Visits would last only one or two hours, but he never heard the content of their conversations.<sup>6620</sup> SIN Oeng never went to the Northwest zone with SAO Phim.<sup>6621</sup> However, later in his testimony, SIN Oeng expressed doubt as to the number, duration, and location of the visits saying his memory was not good.<sup>6622</sup> Nonetheless, the Chamber accepts that RUOS Nhim visited SAO Phim in the East Zone.

1964. In response to a leading question, TOAT agreed that Chhnang *alias* Cheal may also have served as a messenger between RUOS Nhim and SAO Phim.<sup>6623</sup> MUN Mut also heard a rumour circulating in the mobile units that Cheal sent some information to his father-in-law SAO Phim in the East Zone. But Cheal was arrested by Southwest Zone forces and MUN Mut inferred that it was for that reason that the plan was not

<sup>6614</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 18-20.

<sup>6615</sup> T. 12 December 2016 (NONG Nim), E1/511.1, p. 20.

<sup>6616</sup> Telegram 32, E3/1036, 15 September 1977, p. 1, ERN (En) 00335206.

<sup>6617</sup> T. 12 December 2016 (NONG Nim), E1/511.1, p. 23.

<sup>6618</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 33-34; Video showing POL Pot visiting a rubber tree plantation and Khmer Rouge soldiers preparing for war, E3/3015R, ERN V00422521, 00:00:00-00:02:19; Photograph, E3/3259, undated, ERN P00416559.

<sup>6619</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 80-82.

<sup>6620</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 82, 85-86.

<sup>6621</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 83-84.

<sup>6622</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 10-11. The Chamber notes that NORNG Nim told DC-Cam interviewers that RUOS Nhim only visited Tuol Preab and Samraong in the East Zone because Yeay Karo's office was there. See NORNG Nim DC-Cam Interview, E3/10717, ERN (En) 01355812. However, SIN Oeng's testimony that RUOS Nhim also visited Suong village was corroborated by several witnesses.

<sup>6623</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156808.



carried out and arrests started to take place.<sup>6624</sup> Speculating as to why a secret meeting had been held with *Ta Val* and 10-15 regiment, battalion and platoon commanders, the witness testified that at that time he thought that “perhaps they were armed, and they would become soldiers in the future”.<sup>6625</sup> The Chamber considers these statements to be unverifiable hearsay and that MUN Muth’s conclusions amount to speculation.

1965. LAT Suoy testified that after the Southwest Zone accused the Northwest Zone of treachery, the East Zone came to discuss the matter with the Northwest Zone.<sup>6626</sup> LAT Suoy heard that Northwest Zone soldiers were accused of the alleged killing a Chinese diplomat, after which the Northwest and East Zones joined forces against the Southwest Zone forces.<sup>6627</sup> LAT Suoy also testified that the Northwest Zone wanted to re-establish business at the cooperative level with a bartering system or a system of exchanges.<sup>6628</sup> When this matter came to the awareness of the Southwest Zone, they came to take control of the Northwest Zone and arrested the Northwest Zone cadres as they accused them of being traitors.<sup>6629</sup>

1966. PAN Chhuong, who held an important leadership role in Sector 5,<sup>6630</sup> testified that he heard about cadres from the East Zone who betrayed *Angkar*, including HENG Samrin and SAO Phim.<sup>6631</sup> He also heard from other people that SAO Phim had a daughter and MOUL Sambath *alias* RUOS Nhim had a son and they wanted their children to get married.<sup>6632</sup> However, he testified that he did not know about a secret meeting or of any plan to overthrow the Khmer Rouge regime.<sup>6633</sup>

1967. The Chamber accepts the consistent evidence of family connections between RUOS Nhim and SAO Phim, and that RUOS Nhim met with SAO Phim. However, the Chamber also notes that RUOS Nhim also met with members of the Standing

<sup>6624</sup> T. 26 October 2015 (MUN Mut), E1/356.1, pp. 68-69, 71; MUN Mut Interview Record, E3/9564, 25 July 2014, p. 14, ERN (En) 01044804-01044805.

<sup>6625</sup> T. 26 October 2015 (MUN Mut), E1/356.1, pp. 73, 76.

<sup>6626</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 76.

<sup>6627</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 75-76; T. 13 August 2015 (LAT Suoy), E1/330.1, p. 3.

<sup>6628</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, pp. 77, 79.

<sup>6629</sup> T. 12 August 2015 (LAT Suoy), E1/329.1, p. 79.

<sup>6630</sup> T. 26 October 2015 (MUN Mut), E1/356.1, p. 77; T. 27 October 2015 (MUN Mut), E1/357.1, pp. 55-57. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1214.

<sup>6631</sup> T. 2 December 2015 (PAN Chhuong), E1/361.1, pp. 7-8.

<sup>6632</sup> T. 2 December 2015 (PAN Chhuong), E1/361.1, p. 8.

<sup>6633</sup> T. 2 December 2015 (PAN Chhuong), E1/361.1, pp. 16-18.

Committee in Battambang two or three times in around August 1975<sup>6634</sup> and was in regular communication with the Standing Committee by telegram and courier.<sup>6635</sup> The Chamber also accepts TOAT Thoeun's evidence that the two Zone leaders discussed CPK policies and disagreed with some of them, such as the decision to close markets and to evacuate the cities as his evidence was consistent with other accounts of continuing discussions between the two zone secretaries. This does not establish however that RUOS Nhim was actively working against the CPK policies in effect at the time. In fact, the evidence from the Trapeang Thma Dam Worksite and other locations shows that RUOS Nhim was executing CPK policy, despite any reservations.<sup>6636</sup>

#### 12.1.5.2.10. *Support from Vietnam*

1968. Speaking to Elizabeth BECKER in 1980, IENG Thirith recounted a visit to the Northwest Zone in mid-1976 and blamed RUOS Nhim for the poor living conditions in the zone including malaria, diarrhoea and homelessness, and the fact that young children, pregnant women and old people were working in the fields in the heat.<sup>6637</sup> IENG Thirith also indicated that RUOS Nhim and SAO Phim were in collusion with the Vietnamese in order to sabotage the CPK.<sup>6638</sup> According to her, POL Pot launched an inquiry that concluded that the illness and homelessness in the Northwest Zone were the result of Vietnamese "agents" having infiltrated the Northwest Zone CPK branch.<sup>6639</sup> However, the only evidence of an inquiry into the Northwest Zone arises

<sup>6634</sup> T. 6 July 2015, F1/3.1 (TOAT Thoeun), pp. 101-102, 108.

<sup>6635</sup> T. 6 July 2015, F1/3.1 (TOAT Thoeun), pp. 111, 127; DK Telegram, E3/1208, 21 December 1977, ERN (En) 00539059; DK Telegram, E3/242, 22 December 1977, ERN (En) 00183629; TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 37, ERN (En) 00974047 (indicates that E3/242 is signed by RUOS Nhim).

<sup>6636</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1236, 1238, 1240-1241, 1245-1248, 1250 (noting that RUOS Nhim facilitated the work at the Trapeang Thma Dam and reported to the Party Centre about food shortages as well as the theft of rice by certain cadres.). The Chamber notes that although RUOS Nhim opposed the evacuation of the cities, he led the final attack of Pursat, Battambang and other cities in the Northwest and complied with the decision of the CPK Party Centre to evacuate these cities. See T. 6 July 2015, F1/3.1 (TOAT Thoeun), pp. 56-59, 74.

<sup>6637</sup> Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 236, ERN (En) 01150115; IENG Thirith Interview by Elizabeth BECKER, E3/659, October November 1980, p. 25, ERN (En) 00182322. See also, Section 11.1: Trapeang Thma Dam Worksite, para. 1307.

<sup>6638</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October November 1980, p. 25, ERN (En) 00182322.

<sup>6639</sup> Stephen HEDER Notes of IENG Thirith Interview by Elizabeth BECKER, E3/109, undated, ERN (En) 00149534. See also, Section 11.1: Trapeang Thma Dam Worksite, para. 1307. The NUON Chea Defence also relies on the interview record of KHOEM Vai as a basis for its claim that NUON Chea was personally involved in the investigation. Having reviewed the interview record in question, the Chamber finds that the NUON Chea Defence mischaracterises the evidence. KHOEM Vai simply stated that

from the arrest and interrogation of Northwest Zone cadres at S-21 and the imposition of torture. As discussed in detail below, the Chamber does not have before it evidence of active Vietnamese support to Cambodian rebels or factions in the Northwest zone in order to overthrow the CPK leadership following 1973.

1969. TOAT Thoeun testified that by 1972 or 1973, Vietnamese advisors, including one named HAY Sau, had left Cambodia and he no longer had any contact with them.<sup>6640</sup> In response to leading questions and based upon information from S-21 confessions that were put to him, TOAT Thoeun said it was possible that RUOS Nhim maintained contact with HAY Sau.<sup>6641</sup> The Chamber does not find this to be convincing as it was based upon highly suggestive questioning, torture-tainted confessions and was speculative.<sup>6642</sup> LONG Sat, who was a medic in Regiment 156, Division 4 commanded by HENG Samrin in the East Zone, testified that by 1973, a decision was made to stop cross-border collaboration and all Vietnamese experts should return to Vietnam.<sup>6643</sup> OUK Bunchhoeun corroborated TOAT Thoeun's account in an interview with Stephen HEDER, stating that there was no Vietnamese support provided to CPK forces working against POL Pot.<sup>6644</sup>

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around mid-1976, while he was with other cadres from the Southwest Zone on the way to the Northwest, he stopped in Phnom Penh where NUON Chea stated that they had to go to the Northwest where "most of the traitors were among the 17 April People" and they had to be the leaders and give a good example. Indeed, NUON Chea reportedly stated that there were traitors in the Northwest Zone, but this does not support the submission that he was personally involved in initiating an investigation which allegedly took place after the 1976 meeting. *See* NUON Chea Closing Brief, para. 291; KHOEM Vai Interview Record, E3/10750, 21 December 2015, p. 14, ERN (En) 01207675. As noted above, the Chamber has found that KHOEM Vai likely travelled to the Northwest Zone in 1977, not 1976. *See above*, fn. 6566.

<sup>6640</sup> T. 6 July 2015, F1/3.1 (TOAT Thoeun), pp. 47-48; TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156806-01156807. *See also*, Section 3: Historical Background, para. 228.

<sup>6641</sup> TOAT Thoeun Interview by THET Sambath and Robert LEMKIN, E3/10665, undated, ERN (En) 01156803-011568070.

<sup>6642</sup> NUON Chea Closing Brief, paras 170, 336 (the NUON Chea Defence cites in support of its submission, an interview by Stephen HEDER of OUK Bunchhoeun when in fact OUK Bunchhoeun denies that RAK forces maintained contact with HAY Sau).

<sup>6643</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 71. *See also*, Section 3: Historical Background, paras 224-226 (in fact the CPK Party Centre had resolved at the Third Party Congress in 1971 that Vietnam was the long-term "acute enemy" of Kampuchea). *See also*, Section 13.3: Treatment of the Vietnamese, paras 3382-3384.

<sup>6644</sup> OUK Bunchhoeun Interview by Stephen HEDER, E3/387, undated, pp. 17-18, ERN (En) 00350216-00350217 ("At that time [October 1977], Pol Pot alleged that the reason for the Vietnamese attacks and penetration deep into Cambodian territory was because our commanders and the sectors close to the border colluded with Vietnam and made way for the Vietnamese forces. But in reality, honestly speaking, I had my own division, about ten thousand soldiers, but did not make any contact with Vietnam whatsoever. But we were still accused of doing so. That was why the secretary of Sector 23, comrade Sau, was accused of having two Vietnamese advisors, HAY Sau and BA Hay, who allegedly were in Svay Rieng to let the Vietnamese forces enter Cambodian territory. At that time, comrade Sau was

1970. BAN Seak was questioned about Vietnam's influence in Cambodia, but his testimony was influenced by torture-tainted confessions and was replete with contradictions. He said that KE Pauk had been a member of the Workers' Party (*i.e.* the Workers' Party of Vietnam) while fighting in the jungle in 1963 or 1964.<sup>6645</sup> KE Pauk told BAN Seak that he subsequently joined the Communist Party of Kampuchea, which was risky for him to do in the Central Zone.<sup>6646</sup> BAN Seak also heard that SAO Phim was a prominent member of the Workers' Party, which contained KGB members who had joined with the Vietnamese.<sup>6647</sup> CHEA Sim was said to be a part the Workers' Party in relation to the Indochinese Federation, but he was also said to be part of the CIA.<sup>6648</sup> The source of BAN Seak's knowledge was unclear on this point. Further, BAN Seak's evidence concerning SAO Phim's suicide and membership in the Workers' Party in 1978 is based upon torture-tainted sources. His evidence as to CHEA Sim was contradictory in suggesting that CHEA Sim was supported by the U.S. as well as Vietnam. Therefore, the Chamber does not consider this to be reliable because it is based upon hearsay and because it is based on impermissible torture-tainted sources.

1971. In sum, the Chamber does not find any support on the Case File for the submission that Vietnamese agents were active in the Northwest Zone, or that they supported a continuing Indochinese Worker's Party in Cambodia.

#### 12.1.5.2.11. Conclusion

1972. The Chamber accepts TOAT Thoeun's evidence that RUOS Nhim had not initiated a rebellion against the Party Centre although he may have taken steps to store rice and other goods as a precautionary measure. The Chamber also notes that even if he expressed disagreement with some of the some policies of the Party Centre at the start of the regime, through his tenure as zone secretary, RUOS Nhim continued to fully implement the policies of the Party Centre until he was arrested.<sup>6649</sup> The Chamber also finds that the organised manner in which the Southwest Zone cadres were deployed to

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arrested and taken away. At that time, they broadcast on radio, and I knew the two persons, HAY Sau and BA Hay. They were the Cambodia-Vietnam liaison committees since 1970, and friends of SAO Phim. Their accusation was actually not true; it was a complete slander.”)

<sup>6645</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 12. For the Workers' Party of Vietnam, *see* Section 3: Historical Background, para. 208.

<sup>6646</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 12.

<sup>6647</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 12.

<sup>6648</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 21-23.

<sup>6649</sup> *See above*, paras 1938, 1967.

the Northwest Zone, the number of arrests and the manner in which these arrests were carried out, shows the degree of control exercised by the CPK in its ability to identify alleged suspects and secure their immediate arrest.

#### 12.1.6. 1978 Events – East Zone and SAO Phim

##### 12.1.6.1. Submissions

1973. The NUON Chea Defence submits that a third *coup d'état* was attempted beginning on 25 May 1978 in the East Zone. It submits that there is a false Manichean narrative that “the 1978 *coup* was the admirable but futile final stand of a band of freedom fighters against a monstrous regime, [rather] it was in fact a calculated plan by central collaborators of Vietnam that had overt sponsorship from Vietnam from the start”.<sup>6650</sup> Citing publications by Nayan CHANDA and William DUIKER, the Defence submits that Vietnam decided in February 1978 to back a *coup d'état* to be led by East Zone Secretary SAO Phim.<sup>6651</sup> It submits that SAO Phim met secretly with Vietnamese guests to seek their assistance in overthrowing POL Pot.<sup>6652</sup> Dissident Khmer Rouge cadres in the East Zone stockpiled guns and food from the end of 1977 or early 1978 and began recruiting forces.<sup>6653</sup> However, the plot was uncovered by the CPK and crushed which the NUON Chea Defence submits was an entirely proportionate and lawful response.<sup>6654</sup>

1974. The Co-Prosecutors submit that SAO Phim remained naively loyal to POL Pot and fought the Vietnamese on the border.<sup>6655</sup> The Co-Prosecutors submit that SAO Phim cooperated with POL Pot on everything and that he executed the arrest of key East Zone leaders ordered by POL Pot and NUON Chea until about March 1978. They submit this simply is not the behaviour of a man plotting a rebellion.<sup>6656</sup>

<sup>6650</sup> NUON Chea Closing Brief, para. 312; T. 16 June 2017 (Closing Statements), E1/523.1, p. 67.

<sup>6651</sup> NUON Chea Closing Brief, paras 315-316, 325; T. 16 June 2017 (Closing Statements), E1/523.1, p. 67.

<sup>6652</sup> NUON Chea Closing Brief, paras 320-321.

<sup>6653</sup> NUON Chea Closing Brief, para. 322; T. 16 June 2017 (Closing Statements), E1/523.1, p. 67. *See above*, paras 1946-1953.

<sup>6654</sup> NUON Chea Closing Brief, paras 324, 326.

<sup>6655</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 18-19.

<sup>6656</sup> Co-Prosecutors' Closing Brief, paras 367-369.

12.1.6.2. Preliminary issues

1975. The evidence cited by the NUON Chea Defence in support of its submission that SAO Phim had plans to commit a *coup d'état* since May 1975 includes the evidence of an unnamed witness (W1), whose transcript of interview conducted by THET Sambath and Robert LEMKIN was rejected by the Chamber due to its unreliability, and multiple S-21 confessions which were extracted through the use of torture.<sup>6657</sup> The Chamber therefore disregards these submissions, insofar as they rely solely on such sources.

1976. In addition, other witnesses who testified on these events include CHHOUK Rin and LONG Sat. The Chamber notes that CHHOUK Rin, a relatively high-ranking military commander who testified extensively as to administrative structures in Case 002/01, was initially reticent to testify during those proceedings. CHHOUK Rin was questioned by OCIJ investigators at Prey Sar prison where he continued to be detained at the time of his testimony in Case 002/01.<sup>6658</sup> During his in court testimony in Case 002/01, CHHOUK Rin said that he was too unwell to respond to questions in detail.<sup>6659</sup> He requested that his food ration at Prey Sar be increased and that he be given glasses to read.<sup>6660</sup> Therefore, he appeared to seek better conditions at Prey Sar prison in exchange for his testimony. Nonetheless, the witness responded to questions without any recompense offered by the court. Further, he generally adhered to his prior statements during his testimony and later stated that he would endeavour to tell the court whatever he recalled.<sup>6661</sup> The Chamber considers that CHHOUK Rin was more forthcoming with OCIJ investigators than during his testimony. However, much of the content of his Case 002 Written Records of Interview was put to him during his testimony and the Parties were afforded an opportunity to test the evidence. The Chamber therefore considers that CHHOUK Rin was a credible witness and that his Case 002 Written Records of Interview, where not contradicted or disavowed by his testimony, are reliable sources of evidence. CHHOUK Rin was also interviewed by the

<sup>6657</sup> NUON Chea Closing Brief, paras 215, 225-229, 237, 304-305; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 41-43, 46.

<sup>6658</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, ERN (En) 00766451; CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 2, ERN (En) 00268894; T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 5-7, 13.

<sup>6659</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 13, 44-45.

<sup>6660</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 5-7.

<sup>6661</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 27-29, 49, 51, 69; T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 102-103.

OCIJ investigator in Case 004 and the Chamber has admitted this Written Record of Interview as evidence.<sup>6662</sup> Although the Parties in Case 002 did not have an opportunity to question the witness regarding this last Written Record of Interview Record, the Chamber will consider the Case 004 Written Record of Interview to assess the internal consistency of CHHOUK Rin's account of events.

1977. LONG Sat testified that SAO Phim was a distant uncle and that the two met three to four times a year.<sup>6663</sup> Although LONG Sat did not recognise SAO Phim in a 1978 video played during his testimony, the witness noted that the picture quality was not good.<sup>6664</sup> The Chamber considers that the failure to recognise SAO Phim does not undermine the witness's credibility, particularly in light of the detailed nature of the witness's testimony and the fact that many essential details of LONG Sat's testimony concerning the death of SAO Phim were corroborated.<sup>6665</sup> The Chamber therefore finds LONG Sat's testimony to be credible.

#### 12.1.6.3. *Findings*

1978. As discussed in more detail below, the Chamber notes evidence that POL Pot sent forces to purge the East Zone, which culminated in May 1978.<sup>6666</sup> It has found that on 2 December 1978, the Kampuchean National United Front for National Salvation ("KNUFNS") was formed in Vietnam and that in late December 1978, the Vietnamese army launched a full-scale offensive against DK with the KNUFNS.<sup>6667</sup>

1979. Relying on Nayan CHANDA's and William DUIKER's publications, the NUON Chea Defence claims that Vietnam's decision to invade Cambodia came in February 1978, when it decided to support SAO Phim in an attempted *coup d'état*, and that this justifies the arrest and killing of East Zone cadres that occurred in May

<sup>6662</sup> CHHOUK Rin Interview Record, E3/10621, 16 June 2015, pp. 1-13, ERN (En) 01118164-01118176.

<sup>6663</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 81-82, 85-86; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 70-72; T. 8 November 2016 (LONG Sat), E1/497.1, p. 6.

<sup>6664</sup> T. 7 November 2016 (LONG Sat), E1/496.1, pp. 90-95; Video showing POL Pot visiting a rubber tree plantation and Khmer Rouge soldiers preparing for war, E3/3015R, V00422521, 00:00:00-00:02:19. *See also*, Written Record of Hearing, E1/496, 7 November 2016, p. 8 (noting time stamp played in court).

<sup>6665</sup> *See below*, paras 2039-2046.

<sup>6666</sup> *See below*, Section 12.1.6.3.4: Purge of the East Zone. *See also*, Section 4: General Overview, para. 292.

<sup>6667</sup> Section 4: General Overview, para. 293.

1978.<sup>6668</sup> The NUON Chea Defence also submits that SAO Phim's interactions with Vietnam is evidence of his collusion against the CPK.<sup>6669</sup> The Chamber therefore analyses first evidence as to contacts with Vietnam below, it then assesses the evidence as to when Vietnam started to provide support to forces opposed to POL Pot as this may be relevant to the question of whether those arrested and killed were legitimate military targets. The Chamber addresses whether SAO Phim had organised a resistance prior to May 1978 to determine whether the actions of the CPK may have been justified in self-defence. The Chamber then examines the facts around the East Zone purge before analysing whether support from Vietnam provides legal justification for the purge of the East Zone. Finally, the Chamber analyses the evidence as to SAO Phim's journey to Phnom Penh, his suicide and acts of rebellion in the East Zone thereafter.

#### 12.1.6.3.1. *Contact with Vietnam*

1980. The Chamber has found that the CPK was engaged in negotiations with the Socialist Republic of Vietnam up through 31 December 1977 when diplomatic ties were cut.<sup>6670</sup> It further notes the evidence below that the CPK maintained official contact with Vietnam up to December 1977.

1981. NUON Chea testified in Case 002/01 as to his personal interactions with the Vietnamese Workers' Party leadership between 1959 and 1975. He testified that around 1959, he travelled to Kandaol Chrum near the Vietnam border, to meet with Vietnamese including NGUYEN Van Linh and PHAM Hung.<sup>6671</sup> NUON Chea was escorted by HENG Samrin who had been assigned as his bodyguard by SAO Phim.<sup>6672</sup> NUON Chea was designated as responsible for the CPK's relationship with Vietnam and would meet with the Vietnamese every two months in order to negotiate border disputes.<sup>6673</sup> From the 1960s, Vietnamese revolutionaries, including LE Duan and NGUYEN Van Linh, stayed in Cambodia in areas controlled by the communist *maquis*.<sup>6674</sup>

<sup>6668</sup> NUON Chea Closing Brief, paras 315-316, 325; T. 16 June 2017 (Closing Statements), E1/523.1, p. 67.

<sup>6669</sup> NUON Chea Closing Brief, paras 122, 231-236, 315-316, 320-321, 325; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 45-46, 67.

<sup>6670</sup> Section 4: General Overview, para. 289.

<sup>6671</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 31; T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 44-46. *See also*, Section 7: Roles and Functions – NUON Chea, para. 528.

<sup>6672</sup> T. 9 February 2012 (Accused NUON Chea), E1/41.1, pp. 44-46.

<sup>6673</sup> T. 9 February 2012 (Accused NUON Chea), E1/41.1, p. 46.

<sup>6674</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 25.



1982. In addition, NUON Chea testified that since its founding in 12 January 1968, the RAK received arms from China through Vietnam; the Vietnamese would transport the arms but looted one third of them.<sup>6675</sup> In late 1970, there were negotiations between POL Pot and his Vietnamese counterpart, NGUYEN Van Linh, to facilitate cooperation.<sup>6676</sup> Despite tensions between the CPK and the Vietnam Workers' Party, or because of them, NUON Chea held discussions with NGUYEN Van Linh to make compromises regarding the presence of Vietnamese in Cambodian territory and to form a friendship with them.<sup>6677</sup> NUON Chea estimated that the last time he travelled to the Vietnam border with HENG Samrin was in 1975.<sup>6678</sup>

1983. As noted previously, in June 1975, DK sent a delegation that included POL Pot and NUON Chea to Hanoi to discuss the border clashes with the SRV's leader NGUYEN Van Linh.<sup>6679</sup> In early 1976 there were also attempts to negotiate between DK and SRV delegations with a view to a June 1976 summit that never materialised.<sup>6680</sup> For example, in March 1976, NUON Chea presided over a Standing Committee Meeting directing that political and diplomatic measures, as well as military force, were required to resolve the border situation with Vietnam.<sup>6681</sup> Around the same time, Northeast Zone Secretary NEY Sarann *alias* Ya led border negotiations with Vietnam, although he was arrested and taken to S-21 in September 1976.<sup>6682</sup> Therefore, the question is whether SAO Phim maintained parallel contacts with the Vietnamese in

<sup>6675</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 19; T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 17. *See also*, Section 7: Roles and Functions – NUON Chea, para. 553.

<sup>6676</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, pp. 36-37.

<sup>6677</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 23.

<sup>6678</sup> T. 9 February 2012 (Accused NUON Chea), E1/41.1, p. 48.

<sup>6679</sup> Section 4: General Overview, para. 283. *See also*, Section 13.3: Treatment of the Vietnamese, para. 3434.

<sup>6680</sup> Section 4: General Overview, para. 284. *See also*, Standing Committee Minutes, E3/218, 26 March 1976 (generally discussing the military situation between DK and SRV), pp. 4-5, ERN (En) 00182654-00182655 (discussing the desire for solidarity with Vietnam and the agreement “to set up the [*sic*] Zone/Region and Sector Liaison Committees [...] [a]t the three border Sectors”. “Comrade Sophea” and “Comrade Phon” were appointed as Division and Sector “representatives” of the Mondulkiri Liaison Committee); Standing Committee Minutes, E3/221, 14 May 1976 (generally discussing the situation concerning Vietnam), p. 1, ERN (En) 00182693 (discussing Vietnam’s complaint that DK had attacked Vietnamese forces).

<sup>6681</sup> Section 7: Roles and Functions – NUON Chea, para. 554.

<sup>6682</sup> Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN Sen *alias* Ya; S-21 Confession – MEN San *alias* Ya, E3/1868, 29-30 September 1976, ERN (En) 00769572-00769577 (inscriptions from Ya dated 29 and 30 September 1976); S-21 Detention Log, E3/10090, 22 January [1977], p. 24, ERN (En) 01399030 (entry no. 167, Ya, Secretary of the Northeast Zone). *See also*, Section 12.4: Au Kanseng Security Centre, paras 2867, 2886; Section 12.5: Phnom Kraol Security Centre, para. 3057.

order to circumvent and to later attack POL Pot and the other members of the CPK Standing Committee.

1984. Expert Nayan CHANDA wrote that “an official Vietnamese account reveals that preparations for the most important coup attempt against the Pol Pot regime began in November 1977” when East Zone cadres started building secret food reserves in the jungle.<sup>6683</sup> The Chamber notes however, that this assertion is supported only by a reference to “Kampuchean Dossier” the provenance of which is unexplained and therefore unverifiable. Nayan CHANDA also wrote that in mid-February 1978, the Vietnamese Politburo met to discuss how to set up a Cambodian communist party and resistance organisation.<sup>6684</sup> This second point is supported only by a reference to an anonymous and unverifiable source.<sup>6685</sup> Nayan CHANDA nonetheless questions whether Vietnam provided backing for an attempted coup against the CPK, noting the lack of any evidence of direct Hanoi involvement in plots against POL Pot.<sup>6686</sup>

1985. The Chamber does not have access to Nayan CHANDA’s sources, nor does it have records of a purported February 1978 meeting of the Vietnamese Politburo. Therefore, it is difficult to substantiate the claims made in these writings. However, Nayan CHANDA does not subscribe to the view that Vietnam was providing overt support to a rebellion against the CPK in Cambodia from 1977.

1986. The Chamber does have before it several contemporaneous documents obtained from East German intelligence reports and SRV intelligence obtained by East Germany. A January 1978 report from East Germany provides, “Confidential reports state that the SRV [Socialist Republic of Vietnam] side is striving for a solution of the kind that would enable the remaining Patriotic Forces of Kampuchea to seize the initiative and wrest power from Pol Pot and his followers”. This report is unspecific as to what efforts were being made. It goes on to state however, that: “Of the current group of five in Phnom Penh, PB [Politburo] member Nuon Chea alone has yet to compromise himself

<sup>6683</sup> Book by N. Chanda: *Brother Enemy*, E3/2376, 1986, pp. 196, 432, ERN (En) 00192381, 00192617 (fn. 5). See also, NUON Chea Closing Brief, para. 315.

<sup>6684</sup> Book by N. Chanda: *Brother Enemy*, E3/2376, 1986, pp. 216-217, ERN (En) 00192401-00192402.

<sup>6685</sup> Book by N. Chanda: *Brother Enemy*, E3/2376, 1986, pp. 216-217, 437, ERN (En) 00192401-00192402, 00192622 (fn. 49).

<sup>6686</sup> Book by N. Chanda: *Brother Enemy*, E3/2376, 1986, pp. 196-197, ERN (En) 00192381-00192382.

directly vis à vis the SRV”.<sup>6687</sup> Therefore, the SRV believed that NUON Chea with whom it had a longstanding relationship, was possibly sympathetic to Vietnamese communism whereas the other members of the CPK Standing Committee (referred to as the Politburo), including SAO Phim, were not trusted. The Chamber considers that this report reveals a misapprehension of the situation in DK, in particular concerning NUON Chea’s position toward Vietnam and further notes that nothing suggests that SAO Phim was seen as a favoured ally for Vietnam in its efforts to remove POL Pot from power, either politically or militarily.

1987. Further East German Intelligence reports from January to March 1978 discuss the existence of internal resistance in DK supported by the SRV. A January 1978 report indicates that the SRV is deploying forces to foster internal resistance and to bolster forces working against POL Pot which would be capable of political leadership, albeit noting the SRV prefers a political solution.<sup>6688</sup> A February 1978 report reiterates that the SRV is seeking a political solution to the conflict, but notes that there are no serious indications of internal conflict in DK that would lead to the downfall of POL Pot.<sup>6689</sup> It further opines that “the Pol Pot group has hitherto succeeded in controlling the situation in the country after getting rid of the leading opposition forces”.<sup>6690</sup> Finally, a March 1978 report indicates the SRV has begun stationing special forces from the Vietnamese army (consisting of four regiments and ten independent battalions) for deployment to DK which were “requested by legitimate progressive Kampuchean forces”.<sup>6691</sup> The report does not indicate the names of the Kampuchean progressives, but indicates that “armed units of Kampuchean nationality” consist of refugees and prisoners of war.<sup>6692</sup> It further notes that the SRV leadership is directing Vietnamese combat units and their collaboration with “representatives of the Kampuchean resistance movement”.<sup>6693</sup> The

<sup>6687</sup> East German Reports on Cambodia-Vietnam Conflict, E3/540, 31 January 1978, p. 3, ERN (En) 01246939; NUON Chea Closing Brief, para. 314.

<sup>6688</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 13 January 1978, ERN (En) 01198226.

<sup>6689</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 23 February 1978, ERN (En) 01198228-001198229.

<sup>6690</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 23 February 1978, ERN (En) 01198228.

<sup>6691</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 22 March 1978, ERN (En) 01198232.

<sup>6692</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 22 March 1978, ERN (En) 01198232.

<sup>6693</sup> German Democratic Republic Ministry for National Defence Information Note, E3/9434, 22 March 1978, ERN (En) 01198232-01198233.

Chamber notes that these intelligence reports are based upon information obtained by East German sources in Vietnam and, as hearsay evidence, merit a degree of caution. Nonetheless, the Chamber notes that SAO Phim is not referenced in these reports. Further, the Chamber considers the intelligence reports are ambiguous as to whether the forces being supported by the SRV were located in DK or in Vietnam. As noted below, however, there is credible evidence that the requests for Vietnamese military assistance came from CPK cadres who had fled DK.

1988. East German Intelligence obtained SRV intelligence reports (in Vietnamese) evaluating the biographies of numerous CPK cadres who fled DK between 1977 and 1979 to determine their suitability for leadership in the post-DK government in Cambodia.<sup>6694</sup> Within these documents, the biography of HUN Sen indicates that he “defected to Vietnam” in June 1977, establishing contact with the SRV and seeking permission “to help put together combat forces that would crush POL Pot” which he did in Long Khanh, Vietnam.<sup>6695</sup> The biography further notes that in December 1977, HUN Sen advanced to his home region with the SRV army where he was informed that his family had been killed.<sup>6696</sup> Therefore, at least part of the Kampuchean forces opposed to the CPK were being prepared outside in Vietnam.

1989. As noted below, within the biographies there is further credible evidence that the remaining East Zone leadership was not organising opposition against the CPK until SAO Phim had been targeted to be purged in May 1978. In the biography of HENG Samrin he laments that “when a pack of traitors caused a split I made no attempt to figure out who were friends and who were enemies.”<sup>6697</sup> It indicates that he finally “left the ranks of the enemy [CPK] and took to the forests” on 25 May 1978.<sup>6698</sup>

1990. The biography of CHEA Sim provides that he “took to the forests and led the population in resistance against POL Pot/IENG Sary” on 24 June 1978 and that he only

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<sup>6694</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206277.

<sup>6695</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206275.

<sup>6696</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206276.

<sup>6697</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206273.

<sup>6698</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206273; HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651887 (stating that in September 1978, he crossed the border to establish contact with Vietnam).

approached Vietnam as a leader of a delegation from Sector 20 to seek Vietnam's assistance on 15 October 1978.<sup>6699</sup> The biography faults CHEA Sim because he continued to put trust in POL Pot/IENG Sary from 1975-1978, even though he previously harboured suspicions.<sup>6700</sup> It notes in particular that SAO Phim warned CHEA Sim in late May 1978, "If we want to successfully resist the reactionaries, we must rely on Vietnam. Although the Pol Pot/IENG Sary mob has been [*sic*] incited national hatred in the past, I (Muoi Xu) [very likely an alias of SAO Phim] still believe that Vietnamese comrades understand us".<sup>6701</sup> The biography concludes that CHEA Sim then understood "the reactionary nature of POL Pot and IENG Sary".<sup>6702</sup> There was no indication that HENG Samrin or CHEA Sim engaged Vietnam to assist in overthrowing POL Pot prior to their fleeing into the forests and contacting the SRV in late 1978. Further, the East German documents do not indicate that SAO Phim sought support from Vietnam to overthrow POL Pot. In fact, it transpires from these documents that the SRV was under the impression that NUON Chea was the only member of the CPK Standing Committee to be possibly sympathetic to the SRV.

1991. The Chamber also heard from members of SAO Phim's bodyguard unit who observed SAO Phim's activities during the DK era and were in a position to know with whom SAO Phim was meeting at the relevant time.

<sup>6699</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206277. This is consistent with CHEA Sim's later account to Ben KIERNAN. See CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651873-00651874 (CHEA Sim states that in September 1978 he fled with a group of thousands of troops from the East Zone to Vietnam).

<sup>6700</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206278-01206279.

<sup>6701</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206278-01206279; *Final Showdown Battle with Rebels Reportedly Underway* (in FBIS collection) (Jean-Pierre Gallois, AFP), E3/294, 24 October 1978, ERN (En) 00170308 (The Chamber approaches this article with due caution. It is dated October 1978, is replete with speculation and clearly notes that "it is impossible to form an idea of the current state of the rebellion [in Cambodia] and of the intensity of border fighting in the absence of unbiased information". It provides however, the following description of SAO Phim: "So Phim is generally regarded as pro-Vietnamese. He lived in Vietnam during the war against the Americans where he made close enough ties to merit being called Muoi Xu, the affectionate South Vietnamese way of addressing a friend by his first name followed by his family rank (in this case tenth child in the family)". Further the author sets out various hypotheses concerning the outcome of the conflict, the first one of which being "a rebel victory [...] followed by the overthrow of Mr. Pol Pot who would be replaced by So Phim". The journalist did not seem to be aware of the death of SAO Phim since May 1978, several months before he wrote this article. However, the Chamber finds that it supports the possible identification of SAO Phim as Muoi Xu). See also, HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651900 (stating SAO Phim said that if there was to be a resistance, it must rely on the support of their friends, meaning Vietnam. This advice SAO Phim gave to HENG Samrin echoes the information found in CHEA Sim's biography).

<sup>6702</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206278.

1992. NONG Nim, who was one of SAO Phim's bodyguards and his driver between 1970 and 1978, testified that he accompanied SAO Phim wherever he went, although he did not attend SAO Phim's meetings.<sup>6703</sup> He provided contradictory accounts, initially testifying that he never saw SAO Phim meet with Vietnamese.<sup>6704</sup> When confronted with a prior statement to DC-Cam, NONG Nim recalled that Vietnamese guests came to Cambodia to meet SAO Phim, but he did not recall the date, saying only that it was before or during the war against Vietnam.<sup>6705</sup> These contradictions were not explained. Due to his uncertainty as to when this meeting occurred, and the contradictions in his testimony, the Chamber does not consider that it shows collusion between Vietnam and SAO Phim against POL Pot. SIN Oeng, another of SAO Phim's bodyguards, stated that he never heard SAO Phim say anything against the Party or appear opposed to the Party's plans.<sup>6706</sup> LONG Sat, a distant relative of SAO Phim and a medic in Regiment 156, Division 4 in the East Zone who had close relationship with him, testified he was not aware of any contact between SAO Phim, or anyone from the East Zone, and Vietnamese authorities nor was LONG Sat aware of any plans by SAO Phim to overthrow POL Pot.<sup>6707</sup>

1993. The Chamber concludes that there is no credible evidence that SAO Phim maintained contact with the SRV in order to overthrow POL Pot. It was only in May 1978, when he was to be purged, that SAO Phim suggested to his troops that they should seek help from Vietnam and even then, as noted below, SAO Phim maintained faith in POL Pot, considering that SON Sen was to blame for the unjustified purges of East Zone cadres.

12.1.6.3.2. *SAO Phim's interactions and communications with the CPK Standing Committee*

1994. East Zone Secretary SAO Phim was a member of the Standing Committee since the first Party Congress in 1960.<sup>6708</sup>

<sup>6703</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 9-10.

<sup>6704</sup> T. 12 December 2016 (NONG Nim), E1/511.1, p. 11.

<sup>6705</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 12-14.

<sup>6706</sup> T. 5 December 2016 (SIN Oeng), E1/506.1 p. 76.

<sup>6707</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 79, 81, 82, 91; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 23, 72-73, 97; T. 7 November 2016 (LONG Sat), E1/496.1, pp. 67-68, 77, 83-84.

<sup>6708</sup> Section 3: Historical Background, para. 203. *See also*, T. 10 January 2012 (Accused NUON Chea), E1/24.1, pp. 30-31 (SAO Phim was a senior revolutionary who worked for the Party even before NUON Chea) 33 (only the heads of zones attended the 1960 Congress), 35 (the zones nominated people to be

1995. Duch testified that SAO Phim attended Standing Committee meetings in Phnom Penh.<sup>6709</sup> Although many of the Standing Committee minutes before the Chamber do not record the names of attendees,<sup>6710</sup> the excerpt of the 11 April 1977 minutes indicates that SAO Phim was present.<sup>6711</sup> According to Duch, SAO Phim also attended a meeting with SON Sen and POL Pot during which it was decided to arrest SUOS Neou *alias* Chhouk, SAO Phim's deputy and Secretary of Sector 24, in 1976.<sup>6712</sup>

1996. Furthermore, SAO Phim was in regular communication with the Standing Committee members in Phnom Penh as evidenced by telegrams sent to Office 870 from November 1975 to April 1978.<sup>6713</sup> These telegrams demonstrate that SAO Phim was executing directives arising from the CPK Standing Committee meetings. For example, on 30 November 1975, SAO Phim reported to POL Pot that the East Zone was to remove 50,000 Cham people from along the Mekong River in order to send them to the North and Northwest Zones, in accordance with POL Pot's views and as stipulated at the Standing Committee Meeting.<sup>6714</sup> SAO Phim complained that KE Pauk would not accept the Cham people and therefore sought further guidance from POL Pot.<sup>6715</sup> On 21 March 1976, SAO Phim informed POL Pot that a number of Vietnamese who had been hiding in the forest near the border had been captured.<sup>6716</sup> He further reported that he had captured a person who had thrown a grenade and, that upon beating him, the man named 20 more individuals in Preah Sdech district with organisational links to South Vietnam.<sup>6717</sup>

1997. Starting in September 1977 as the armed conflict with Vietnam increased in intensity, the subject-matter of telegrams focused on the border situation, requests for supplies and troop requirements. On 15 September 1976, SAO Phim reported to Office 870 about its medical supplies and requested mechanics to repair two ships on the

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appointed to the Central and Standing Committee and the Congress appointed them collectively); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 11, ERN (En) 00156751 (SAO Phim was one of seven members of the Standing Committee).

<sup>6709</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 83-84.

<sup>6710</sup> Section 5: Administrative Structures, para. 602.

<sup>6711</sup> Standing Committee Minutes, E3/7328, 11 April 1977, ERN (En) 01002086.

<sup>6712</sup> *See below*, paras 2012-2014. *See also*, Section 12.2: S-21 Security Centre, paras 2203-2204.

<sup>6713</sup> *See below*, fn. 6718.

<sup>6714</sup> DK Telegram, E3/154 [E3/1680], 30 November 1975, ERN (En) 00185064-00185065 (signed "Chhon" *alias* SAO Phim).

<sup>6715</sup> DK Telegram, E3/154 [E3/1680], 30 November 1975, ERN (En) 00185064.

<sup>6716</sup> DK Telegram, E3/871, 21 March 1976, ERN (En) 00185241 (signed "Chhon" *alias* SAO Phim).

<sup>6717</sup> DK Telegram, E3/871, 21 March 1976, ERN (En) 00185241.

Mekong River that had been damaged.<sup>6718</sup> SAO Phim also informed Office 870 that when he visited RUOS Nhim in the Northwest Zone, the latter requested the assistance of a number of cadres.<sup>6719</sup> Rather than try to hide any discussions with RUOS Nhim, SAO Phim openly discusses the topic with Office 870.

1998. Telegrams become more frequent from September 1977 to January 1978 discussing in great detail the conflict with Vietnam and specific problems encountered by the RAK.<sup>6720</sup> For example, a telegram from SAO Phim *alias* Chhon to Office 870 reports on the situation on the border battlefields along national roads noting that on 25 October 1977 DK special troops completely destroyed the enemy's headquarters at the Samrong battlefield and had killed the "contemptible commander" along with his bodyguards.<sup>6721</sup> Another telegram from SAO Phim *alias* Chhon to Office 870 on 29 October 1977, reports that along Road 22, "we fiercely fought, defeating the enemies and chasing them beyond Trapeang Phlong", which is near the Vietnamese border.<sup>6722</sup>

1999. On 19 January 1978, SAO Phim reported to Brother Pa [POL Pot] about the progress of the conflict with Vietnam in Sectors 23 and 24 and along Road 22.<sup>6723</sup> He notes that "we retrieved a large number of people who were herded by the *Yuon* [Vietnamese] enemy to be under their temporary control and those who believed the *Yuon*" and informs POL Pot that these people have been sent to the rear to be screened and re-educated.<sup>6724</sup> On 23 January 1978, SAO Phim again refers to "elements of the *Yuon* enemy network" and preventing them from mixing with "good people".<sup>6725</sup> SAO Phim continued to report to POL Pot that Vietnamese enemy forces were being killed until the end of January 1978.<sup>6726</sup> In total, the Chamber has before it 31 telegrams from September 1977 to January 1978, sent from SAO Phim to the Party Centre, providing updates on the military situation in the fight against the Vietnamese.<sup>6727</sup>

<sup>6718</sup> DK Telegram, E3/1036, 15 September 1977, ERN (En) 00335206.

<sup>6719</sup> DK Telegram, E3/1036, 15 September 1977, ERN (En) 00335206.

<sup>6720</sup> See below, fn. 6726.

<sup>6721</sup> DK Telegram, E3/8369, 26 October 1977, ERN (En) 00182815-00182816.

<sup>6722</sup> DK Telegram, E3/891, 29 October 1977, ERN (En) 00183617.

<sup>6723</sup> DK Telegram, E3/243, 19 January 1978, ERN (En) 00532795.

<sup>6724</sup> DK Telegram, E3/243, 19 January 1978, ERN (En) 00532796.

<sup>6725</sup> DK Telegram, E3/244, 23 January 1978, ERN (En) 00182755.

<sup>6726</sup> DK Telegram, E3/921, 27 January 1978, ERN (En) 00183646-00183647; DK Telegram, E3/922, 29 January 1978, ERN (En) 00183648.

<sup>6727</sup> DK Telegram, E3/1023, 10 September 1976, ERN (En) 00305247; DK Telegram, E3/1036, 15 September 1977, ERN (En) 00335206; DK Telegram, E3/885, 24 September 1977, ERN (En) 00233793; DK Telegram, E3/886, 26 September 1977, ERN (En) 00185252-00185253; DK Telegram, E3/8369, 26



2000. Despite the Vietnamese agreement to withdraw troops on 6 January 1978, SAO Phim reported on continued armed clashes in March 1978. Telegrams from SAO Phim (here translated as Peam) to “Brother Representative of *Angkar*” report on fighting at Paung and Trapeang Phong villages on the Vietnamese border, stating that the Party’s objective was to destroy those at Paung and that 47 enemies were killed and 42 were injured.<sup>6728</sup> The Chamber finds that the quantity of these telegrams illustrates that SAO Phim had kept the Party Centre well informed of his activities in the East Zone. The substance of these telegrams further indicates that SAO Phim was executing the directives of the Party Centre, killing Vietnamese troops and attempting to identify Cambodians who were sympathetic to Vietnamese ideology for re-education until at least March 1978.

2001. The Chamber further notes contemporaneous radio reports concerning important delegations visiting the East Zone, accompanied by CPK Standing Committee members. A Phnom Penh radio report on 4 January 1977 indicates that a Chinese Economic delegation, after being greeted in Phnom Penh by NUON Chea, KHIEU Samphan, IENG Sary, VORN Vet and SON Sen, made a tour of the Cambodian countryside, including the East Zone where it visited a cooperative.<sup>6729</sup> Soon after, a delegation of DPRK journalists made a similar tour, which included the East Zone.<sup>6730</sup>

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October 1977[7], ERN (En) 00182815; DK Telegram, E3/888, 26 October [1977], ERN (En) 00183615-00183616; DK Telegram, E3/889, 26 October 1977, ERN (En) 00183616; DK Telegram, E3/554, 27 October 1977, ERN (En) 00183618; DK Telegram, E3/890, 28 October 1977, ERN (En) 00185187-00185188; DK Telegram, E3/891, 29 October 1977, ERN (En) 00183617; DK Telegram, E3/892, 29 October 1977, ERN (En) 00185189; DK Telegram, E3/976, 6 November 1977, ERN (En) 00305256; DK Telegram, E3/977, 6 November 1977, ERN (En) 00305256; DK Telegram, E3/894, 6 November 1977, ERN (En) 00183619-00183620; DK Telegram, E3/895, 12 November 1977, ERN (En) 00183611-00183612; DK Telegram, E3/896, 18 November 1977, ERN (En) 01347937; DK Telegram, E3/980, 19 November 1977, ERN (En) 00434856-00434857; DK Telegram, E3/982, 6 December 1977, ERN (En) 00305257; DK Telegram, E3/897, 7 December 1977, ERN (En) 00183613-00183614; DK Telegram, E3/983, 9 December 1977, ERN (En) 00289797; DK Telegram, E3/8370, 10 December 1977, ERN (En) 00183621; DK Telegram, E3/899, 12 December 1977, ERN (En) 00183622; DK Telegram, E3/900, 13 December 1977, ERN (En) 00185191-00185192; DK Telegram, E3/901, 13 December 1977, ERN (En) 00183623-00183624; DK Telegram, E3/1015, 17 December 1977, ERN (En) 00305390-00305391; DK Telegram, E3/988, 22 December 1977, ERN (En) 00305260; DK Telegram, E3/8372, 22 December 1977, ERN (En) 00183632; DK Telegram, E3/907, 24 December 1977, ERN (En) 00183634-00183635; DK Telegram, E3/920, 15 January 1978, ERN (En) 00301417-00301418; DK Telegram, E3/999, 24 March 1978, ERN (En) 00185586 (signed “Peam” *alias* SAO Phim); DK Telegram, E3/998, 23 March 1978, ERN (En) 00185585.

<sup>6728</sup> DK Telegram, E3/999, 24 March 1978, ERN (En) 00185586; DK Telegram, E3/998, 23 March 1978, ERN (En) 00185585.

<sup>6729</sup> *Provincial Tours, 4 Jan Departure* (in FBIS collection), E3/147, 4 January 1977, ERN (En) 00168456-00168457.

<sup>6730</sup> *HU Nim Banquet Speech* (in FBIS collection), E3/284, 8 February 1977, ERN (En) 00168411-00168412.

In December 1977, the Chinese delegation of CHEN Yonggui visited the East Zone with POL Pot, VORN Vet, and THIOEUNN Thioeunn, meeting SAO Phim at Tonlé Bot.<sup>6731</sup> The delegation visited the East Zone headquarters of Suong where SAO Phim hosted a banquet for CHEN Yonggui, exchanging toasts to revolutionary friendship.<sup>6732</sup> The delegation then visited the Chup rubber plantation in the East Zone, accompanied by POL Pot, VORN Vet, SAO Phim, other members of the East Zone Committee, regional and sector cadres.<sup>6733</sup> The Chamber considers that the CPK exhibited confidence in its control over the East Zone by organising a visit of a prominent member of the Chinese Central Committee to the East Region and SAO Phim's locus of activity in Suong in December 1977. Although the CPK Party Centre had purged a large number of East Zone cadres in June 1977, it chose to visit SAO Phim's area, spending several days in the East Zone.

2002. After SAO Phim was identified to be purged and he committed suicide in June 1978, the journalists Malcolm CALDWELL, Richard DUDMAN and Elizabeth BECKER visited the East Zone in December 1978, arriving in Suong where they were briefed by "local responsible cadre".<sup>6734</sup> Despite the purge of East Zone cadres<sup>6735</sup> and SAO Phim's absence, the CPK Party Centre considered it to be in its interest to send a delegation of foreign journalists to the zone. This suggests that the CPK Party Centre judged that it had sufficient control of the East Zone.

2003. Several witnesses testified that Standing Committee members visited SAO Phim in the East Zone. NONG Nim testified that POL Pot, NUON Chea, KHIEU Samphan and IENG Sary visited the East Zone multiple times, travelling with five to 10 bodyguards.<sup>6736</sup> During his own visits, NUON Chea would sometimes meet with SAO Phim alone.<sup>6737</sup> OU Dav was Deputy Commander of Company 1, in Battalion

<sup>6731</sup> CHEN Yung-kuei Visits Eastern Region (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168322-00168323.

<sup>6732</sup> CHEN Yung-kuei Visits Eastern Region (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168323.

<sup>6733</sup> CHEN Yung-kuei Leaves Eastern for Central Region (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168329-00168330.

<sup>6734</sup> British Professor, American Journalists Visit Eastern Region (in FBIS collection), E3/295, 13 December 1978, ERN (En) 00169097. See below, para. 2053.

<sup>6735</sup> See below, paras 2012-2029.

<sup>6736</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 47-49, 66.

<sup>6737</sup> T. 12 December 2016 (NONG Nim), E1/511.1, p. 67.

180, Regiment 16, Division 1 (commanded by SOU Met) from 1971-1975.<sup>6738</sup> He was removed from the army in 1975 to do hard labour in Koh Kong and in 1977 was sent to the Vietnamese border near Memot in the East Zone to join the fighting there.<sup>6739</sup> According to OU Dav, SON Sen frequently travelled between the East Zone and Phnom Penh, escorted by bodyguards and Chinese advisors in a convoy of three to four cars.<sup>6740</sup>

2004. SIN Oeng, one of SAO Phim's bodyguards, testified that POL Pot visited the East Zone and SAO Phim received him.<sup>6741</sup> NUON Chea also visited the East Zone and would sleep in SAO Phim's bodyguard unit headquarters in Suong during his stays.<sup>6742</sup> According to SIN Oeng, between 1976 and early 1978, SAO Phim travelled to Phnom Penh with one or more of his bodyguards twice monthly.<sup>6743</sup> The frequency of these visits and the fact that NUON Chea saw fit to sleep in the same quarters as SAO Phim's bodyguards is indicative of mutual trust between them.

2005. Based on all of the above, the Chamber finds that SAO Phim maintained constant communication and frequent contact with the other members of the Standing Committee until his final trip to Phnom Penh in May 1978 and that the other members of the Standing Committee frequently visited him in the East Zone. The Chamber considers that this is indicative of SAO Phim's cooperation with the Standing Committee of which he formed a part. It does not eliminate the possibility that SAO Phim could have maintained secret plans against his fellow Standing Committee members, as they did against him. But it shows the difficulty of moving against them when it was clear that his activities were being monitored.

#### 12.1.6.3.3. *SAO Phim and the conflict with Vietnam (December 1977)*

2006. Standing Committee Minutes from April 1977, indicate that the conflict with Vietnam was deep and that "all are for frontline fighting against Vietnam".<sup>6744</sup>

<sup>6738</sup> T. 10 November 2016 (OU Dav), E1/498.1, pp. 78, 97; T. 11 November 2016 (OU Dav), E1/499.1, pp. 4-6.

<sup>6739</sup> T. 11 November 2016 (OU Dav), E1/499.1, pp. 5, 21-22.

<sup>6740</sup> T. 11 November 2016 (OU Dav), E1/499.1, pp. 7-8.

<sup>6741</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 51-52.

<sup>6742</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, p. 11, 65-66; SIN Oeng DC-Cam Interview, E3/10716, 10 June 2015, ERN (En) 01353381.

<sup>6743</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 28-29; SIN Oeng DC-Cam Interview, E3/10716, 10 June 2015, ERN (En) 01353348.

<sup>6744</sup> Standing Committee Minutes (copied by C. E. Goscha), E3/10685, 3 and 9 January 1978, ERN (En) 1320889.

According to HENG Samrin, on 30 September 1977, POL Pot gave the order to attack Vietnam.<sup>6745</sup> He received an order from KE Pauk and SAO Phim to attack Vietnam.<sup>6746</sup> Although KE Pauk and SAO Phim had disagreements as to how to fight the Vietnamese, there are multiple accounts that forces under SAO Phim executed attacks on Vietnam pursuant to POL Pot's orders.

2007. In December 1977, when the fighting started on the Vietnamese border, LONG Sat was sent to the frontline with Division 4.<sup>6747</sup> LONG Sat was present when the Regiment 156 Commanders, SAM Niet and Choeun, on the orders of the division and zone, directed their forces to attack the Vietnamese to force recognition of the demarcated border.<sup>6748</sup> At the time there were attacks and counterattacks.<sup>6749</sup> Due to their superior strength, Vietnamese troops penetrated territory held by Regiment 155 and they were able to attack Regiment 156 from behind.<sup>6750</sup> Both DK forces and Vietnamese forces suffered many casualties at the time.<sup>6751</sup>

2008. On 22 December 1977, SAO Phim sent a telegram to POL Pot, informing him of the fighting between Vietnam and DK forces in the East Zone, noting that his forces were attacking and launching defensive strikes.<sup>6752</sup> A few days later, a telegram from Phuong *alias* SOTH Saphon, the Secretary of the East Zone Rubber plantation in Memot, near the Vietnam border, informed Office 870 that Vietnamese had attacked the rubber plantation and that SAO Phim directed that the plantation organise a combat force.<sup>6753</sup> Although LONG Sat did not observe the attacks in Regiment 154's area of

<sup>6745</sup> HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651886.

<sup>6746</sup> HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651897.

<sup>6747</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 68-69; T. 2 November 2016 (LONG Sat), E1/494.1, p. 5; T. 8 November 2016 (LONG Sat), E1/497.1, pp. 3-5.

<sup>6748</sup> T. 2 November 2016 (LONG Sat), E1/494.1, pp. 4, 8-9.

<sup>6749</sup> T. 7 November 2016 (LONG Sat), E1/496.1, p. 100.

<sup>6750</sup> T. 7 November 2016 (LONG Sat), E1/496.1, pp. 88-89; T. 8 November 2016 (LONG Sat), E1/497.1, p. 17.

<sup>6751</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 104; T. 2 November 2016 (LONG Sat), E1/494.1, p. 67.

<sup>6752</sup> DK Telegram, E3/988, 22 December 1977, ERN (En) 00305260.

<sup>6753</sup> DK Telegram, E3/908, 24 December 1977, ERN (En) 00183638-00183639. *See also*, DK Telegram, E3/909, 24 December 1977, ERN (En) 00183636 (noting that the rubber plantation has only militiamen to guard it as all troops had been sent to the border and proposing that the information as to the attacks be conveyed to SAO Phim).

control, such as Memot, as he was with Regiment 156, he testified that these telegraphed reports accurately reflected the events at the time.<sup>6754</sup>

2009. KE Pauk also reported to Office 870 that SAO Phim was attacking the Vietnamese. In a telegram on 4 May 1978, he indicated that SAO Phim had taken action by withdrawing and redeploying one battalion of Sector 20 forces and some forces of Comrade Kim to attack the enemy at Sa-Am where Vietnamese and DK forces were engaged in combat.<sup>6755</sup>

2010. As noted below, many witnesses testified that the reason the DK forces were losing ground was because the Vietnamese possessed superior firepower and greatly outnumbered them. According to LONG Sat, DK forces were unable to push back the Vietnamese due to the “internal rift” in DK and the internal purge of East Zone cadres that had weakened DK’s defences.<sup>6756</sup> CHUON Thy, who would become the Regiment 15 Deputy Commander in new Division 340, also met with SON Sen to discuss plans to fight the Vietnamese, during which SON Sen said the Khmer Rouge forces were outnumbered.<sup>6757</sup> SIN Oeng clarified that the clashes occurred while arrests were going on.<sup>6758</sup> KE Pich Vannak said that after the arrests of East Zone commanders, there was chaos at the frontline as there were no division commanders.<sup>6759</sup> Meeting Minutes of 870 from early 1978 acknowledged the inequality of the respective force contingents of the DK and Vietnam, noting that after the 1975 war, it had purged some soldiers due to bad backgrounds and it had 70,000 soldiers, whereas Vietnam had 600,000 to 1,000,000 soldiers.<sup>6760</sup> The meeting had nonetheless agreed that Vietnam did not have

<sup>6754</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 103; T. 8 November 2016 (LONG Sat), E1/497.1, p. 18. *See also*, CHEA Sim interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872 (stating that SAO Phim had ordered some attacks on Vietnam, although he was not angry with Vietnam).

<sup>6755</sup> DK Telegram, E3/516, 4 May 1978, ERN (En) 00321720.

<sup>6756</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 79-80; T. 2 November 2016 (LONG Sat), E1/494.1, p. 68.

<sup>6757</sup> T. 24 April 2013 (CHUON Thy), E1/183.1, p. 25; T. 25 October 2016 (CHUON Thy), E1/489.1, p. 85; T. 26 October 2016 (CHUON Thy), E1/490.1, pp. 98-100.

<sup>6758</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 22-23.

<sup>6759</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 9-10, ERN (En) 00346153-00346154 (KE Pich Vannak was at the joint Central and East Zone headquarters in Steung village east of Suong. He notes that after the purges: “Each division made phone calls to the Zone headquarter asking for their leaders. But they were told by the headquarter that their leaders had already returned. At that time each unit was trying to contact their leaders via the radio [...] which was installed in their leader cars, but there was no answer. Later on, when they found out that their leaders had been arrested, the soldiers at the front line became turmoil.”).

<sup>6760</sup> Standing Committee Minutes (copied by C. E. Goscha), E3/10686, 26 January and 2 February 1978, E3/10686, 26 January 1978 and 2 February 1978, ERN (En) 01324070, 01324072. *See also*, German

adequate military forces to fight DK because Vietnamese forces were divided between its northern border, its occupational force in Laos and the interior of the country.<sup>6761</sup> The Chamber is therefore not convinced that Vietnam required assistance from SAO Phim to enter into Cambodian territory. To the contrary, the Chamber finds that DK was militarily at a disadvantage to Vietnam as it had depleted its own ranks with the internal purges.

2011. The Chamber also finds that SAO Phim was ordering attacks against the Vietnamese pursuant to the orders of POL Pot while at the same time purges were ongoing in the East Zone.<sup>6762</sup> This shows that SAO Phim was following the orders of his superiors at a time when the Party was already ordering and executing purges of the East Zone forces.

#### 12.1.6.3.4. *Purge of the East Zone*

2012. The Closing Order indicates that the purges in the East Zone started in 1976 and unfolded in several stages. The first, in 1976, saw the arrests of SUOS Neou *alias* Chhouk, the Secretary of sector 24 and Deputy Secretary of the East Zone, CHAN Chakrei, Secretary of Division 170 as well as the purge of Division 170 (see above). This spilled into 1977, when Central and Southwest Zone cadres were sent to the East Zone between mid-1977 and 1978 to arrest East Zone cadres. As noted below, commanders were invited to meetings with KE Pauk or the Party Centre and were arrested. Thereafter, other East Zone cadres were arrested *en masse* and sent either to the Kampong Chhnang Airfield Construction Site, Prey Sar or to S-21.<sup>6763</sup>

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Democratic Republic Ministry for National Defence Information Note, E3/9434, 11 January 1978, ERN (En) 01198226 (“It is considered that the VPA [Vietnamese People’s Army] is capable of taking Phnom Penh and solving the Kampuchea problem militarily. Until now it has refrained from doing so, first and foremost, out of political considerations and because the Chinese response has hitherto been impossible to fully gauge.”); DK Telegram, E3/889, 26 October 1977, ERN (En) 00183616 (“The contemptible enemies managed to break through these five front lines [...] We failed as a consequence of our fewer forces.”).

<sup>6761</sup> Standing Committee Minutes (copied by C. E. Goscha), E3/10686, 26 January and 2 February 1978, ERN (En) 01324072.

<sup>6762</sup> See e.g., DK Telegram, E3/516, 4 May 1978, ERN (En) 00321720; DK Telegram, E3/9372, 4 May 1978, ERN (En) 00185254 (indicating that SAO Phim will withdraw a battalion of forces from Region 20 to help fight the enemy in Sa-am).

<sup>6763</sup> See above, para. 1896.

12.1.6.3.4.1. 1976 Standing Committee  
decision to purge the East Zone

2013. KAING Guek Eav *alias* Duch testified that in 1976 or 1977, SON Sen telephoned him to say that the Upper Echelon was about to decide the fate of Sector 24 Secretary, SUOS Neou *alias* Chhouk and that Duch should prepare documents for them.<sup>6764</sup> The Chamber has before it consistent evidence indicating that SUOS Neou *alias* Chhouk was arrested in August 1976, and therefore finds that Duch received the phone call from SON Sen in 1976.<sup>6765</sup> Duch recalled spending three days and three nights preparing files of confessions for use in the meeting.<sup>6766</sup> After the meeting, SON Sen recounted to Duch what happened. SON Sen said that POL Pot had asked how certain it was that Chhouk was an enemy, to which SAO Phim responded that it was 100 percent certain.<sup>6767</sup> KHIEU Samphan corroborates the fact that Chhouk was implicated by two Division 170 soldiers who were arrested and that after “a period of inquiry”, Chhouk was arrested.<sup>6768</sup> The Chamber notes that KHIEU Samphan’s statements were influenced by torture-tainted confessions as Chhouk was implicated in S-21 confessions of the Division 170 soldiers.<sup>6769</sup> Nonetheless, notes taken by a guard at S-21 corroborate Duch’s evidence that SAO Phim agreed with and encouraged the purge of his Sector 24 Secretary, Chhouk, in the East Zone.<sup>6770</sup>

2014. The Chamber further notes that an S-21 Report from 8 August 1976 signed by Duch summarises the contents of confessions from Division 170 soldiers, including CHAN Chakrei, who were accused of the grenade explosion at the Royal Palace and notes that all of them were under the orders of SUOS Neou *alias* Chhouk.<sup>6771</sup> The notebook of S-21 interrogator POU Phally, likely from September 1976, identifies a number of cadres who are suspected of being traitors, and concludes that Chhouk is the

<sup>6764</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 73-74, 82.

<sup>6765</sup> See above, paras 1890-1899. See also, Section 12.2.8.1.4: S-21 Security Centre: SUOS Neou *alias* Chhouk.

<sup>6766</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 74.

<sup>6767</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 83-84.

<sup>6768</sup> KHIEU Samphan Interview Record, E3/4035, undated, ERN (En) 00789052.

<sup>6769</sup> See above, paras 1890-1891.

<sup>6770</sup> PON Tuy Notebook, E3/834, 18 June 1978, ERN (En) 00184499. The Chamber notes that a June 1978 entry in the PON Tuy S-21 Notebook indicates that SAO Phim “split” from Chhouk and attacked him in 1976 and 1977, suggesting however that SAO Phim was part of the same network as LON Nol and the CIA. The Chamber considers this was an attempt to rationalise why SAO Phim would accuse someone with whom he was colluding against POL Pot. But it corroborates the fact that SAO Phim had agreed to purge Chhouk.

<sup>6771</sup> Summary of S-21 Confessions – YIM Sambath, SOK Sarin, Thi Thoeun, SOAM Thann, E3/7397, 8 August 1976, ERN (En) 00284004.

chief of networks in Sector 24.<sup>6772</sup> It also concludes that Chhouk was responsible for Sector 24 traitorous activities and was the person who had created the leaflets fomenting discontent against the CPK.<sup>6773</sup> According to S-21 records, Chhouk was interrogated starting on 28 July 1976.<sup>6774</sup> Records also indicate that he was killed at S-21, although no date is included in the record of his execution.<sup>6775</sup> The Chamber concludes that these reports, which are based on torture-tainted confessions, led the Standing Committee to consider Chhouk a traitor and order his execution.

2015. There is credible evidence that other members of the Standing Committee maintained faith in SAO Phim at the time of Chhouk's confession in mid to late 1976. In the confession, Duch wrote a letter refuting Chhouk's assertion that SAO Phim was a traitor because, in *Angkar's* analysis, SAO Phim was a good and loyal member of the Party.<sup>6776</sup> Duch went on to note in his annotation that SAO Phim had reported all of Chhouk's secret contacts in Vietnam.<sup>6777</sup> It is possible that Duch suggested to Chhouk that he had been denounced by SAO Phim, not because this was true, but in order to test his confession. However, the Chamber considers the fact that SAO Phim maintained his role as East Zone Secretary and was actively engaged in the beginning of the East Zone purges means that SAO Phim remained a trusted member of the Standing Committee at this time.

2016. By 1978, documentation emanating from the CPK Party Centre (not including SAO Phim) reveals suspicions against the leadership in the East Zone. The Central Committee Special Meeting Minutes of 22 January 1978, remarks on Vietnamese spy networks within the RAK and in Svay Rieng before concluding that it can rely on the service of SAO Phim in the East Zone.<sup>6778</sup> It notes however that the Party must still pay

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<sup>6772</sup> Statistics List for State Security Organisations S-21, E3/8972, undated, ERN (En) 01367073, 01367076.

<sup>6773</sup> Statistics List for State Security Organisations S-21, E3/8972, undated, ERN (En) 01367074-01367075.

<sup>6774</sup> S-21 Confession – SUOS Neou *alias* Chhouk, E3/2494, undated, ERN (En) 00347478.

<sup>6775</sup> S-21 list of prisoners, E3/10090, ERN (En) 01399062.

<sup>6776</sup> S-21 Confession – SUOS Neou *alias* Chhouk, E3/2494, undated, ERN (En) 00796092.

<sup>6777</sup> S-21 Confession – SUOS Neou *alias* Chhouk, E3/2494, undated, ERN (En) 00796092.

<sup>6778</sup> Standing Committee Minutes (copied by C. E. Goscha), E3/10696, 22 January 1978, ERN (En) 01320902, 01320903, 01320908-01320910.



attention to events in the East Zone and subordinates in Sector 21, suggesting that they had some suspicions of SAO Phim at that time.<sup>6779</sup>

2017. As noted above, the arrests of CHAN Chakrei in May 1976 and Chhouk in August 1976 triggered a continuing cycle of arrests, torture, confessions and executions of East Zone cadres. As the purge continued, Duch was instructed to remove the names of important East Zone cadres who were implicated in confessions. Duch testified that on 25 February 1978, NUON Chea instructed him to remove the names of certain people implicated in the confession of CHAP Mit from 31 January 1978.<sup>6780</sup> As seen in Duch's annotation on the confession, those implicated included Chhien from Sector 22, Mon from General Staff 203 in Sector 21, Soe from Sector 23, Tat, Sok (Comrade Sok *alias* KE Sok(h), CHAN Chakrei's successor as Secretary of Division 170),<sup>6781</sup> and Tal (Division 290).<sup>6782</sup> Duch testified that the names were removed in order to prevent the named individuals from discovering that they had been implicated when the confession was sent to SAO Phim.<sup>6783</sup> This is consistent with the testimony of SIN Oeng, who stated that when the Party Centre conducted arrests in the East Zone, people were not aware of the plans.<sup>6784</sup> The Chamber considers that this indicates that the remaining members of the CPK Standing Committee doubted the loyalty of SAO Phim and other high-level cadres in the East Zone, despite SAO Phim's earlier cooperation with the execution of East Zone purges.

#### 12.1.6.3.4.2. Meeting of military commanders at *Ta Mok's* home in late 1977 to early 1978

2018. In mid-1977, CHHOUK Rin attended a meeting at *Ta Mok's* home in Takeo where he learned that the Standing Committee had made the decision to purge the East Zone.<sup>6785</sup> CHHOUK Rin stated that the meeting was for "military commanders", and

<sup>6779</sup> Standing Committee Minutes (copied by C. E. Goscha), E3/10696, 22 January 1978, ERN (En) 01320910.

<sup>6780</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 26-28, 30-31.

<sup>6781</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, ERN (En) 00897657; Book by HUY V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116, pp. 51, 139, ERN (En) 00081336, 00081424.

<sup>6782</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 26-31.

<sup>6783</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 31.

<sup>6784</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 99-100.

<sup>6785</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, ERN (En) 00766453; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 97; CHHOUK Rin Interview Record, E3/362, 29 July 2008, ERN (En) 00268896.

those present at the meeting included Southwest Zone commanders Sauy, Ren,<sup>6786</sup> THY Poussé and IENG Phan.<sup>6787</sup> Also in attendance were 700 soldiers from Kampot, 1,000 from Takeo and 700-800 from Kandal.<sup>6788</sup> *Ta Mok* presided over the meeting and told those in attendance that they would be sent to “cleanse” those in the East Zone who had collaborated with the Vietnamese.<sup>6789</sup> They stayed overnight at Division 703 headquarters in Boeung Trabaek and soon after attended a meeting during which SON Sen reiterated the purpose of the mission and ordered commanders to prepare a comprehensive plan.<sup>6790</sup> The next day, the commanders were sent to the East Zone and later to Neak Loeng where they held many division-level meetings to prepare for the purge.<sup>6791</sup>

2019. Witness IENG Phan corroborated CHHOUK Rin’s account of a meeting with *Ta Mok* about arranging forces to send to Svay Rieng, testifying that it was in late 1977.<sup>6792</sup> He stated that *Ta Mok* spoke of first preparing forces to be sent to the East Zone to counter the Vietnamese who were invading Cambodia and second preparing additional forces to be inserted to fill out the former forces that had previously been pulled out.<sup>6793</sup> The witness also said that he frequently met with Ren, the new Division 340 Commander, who was responsible for executing the orders given by *Ta Mok*, his father-in-law, in Svay Rieng.<sup>6794</sup> IENG Phan also testified that when he arrived in Svay

<sup>6786</sup> The Chamber notes that Ren was *Ta Mok*’s son-in-law and later became the commander of new Division 340 sent to Svay Rieng in 1978 to fight the Vietnamese. See KE Pich Vannak Interview Record, E3/35, 4 June 2009, ERN (En) 00346152; T. 25 October 2016 (CHUON Thy), E1/489.1, pp. 80-85; T. 26 October 2016 (CHUON Thy), E1/490.1, pp. 46, 59.

<sup>6787</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 73-75, 97; CHHOUK Rin Interview Record, E3/361, 9 April 2008, ERN (En) 00766452 (The positions of the attendees were as follows: Sauy was commander of the Southwest Zone; THY Poussé who was Division 210 Commander; Witness IENG Phan who was a Commander from Takeo; SOK Chhean who was a Commander from Kampot; and Ren, who was *Ta Mok*’s son-in-law and the commander of a Centre Division encompassing four brigades 340, 221, 703, and 460. He may also have been Chief of the Kampot General Staff. See CHHOUK Rin Interview Record, E3/362, 29 July 2008, ERN (En) 00268896; CHHOUK Rin Interview Record, E3/421, 26 November 2009, ERN (En) 00414058; SAM Bit, Division 2 Commander, also attended. See IENG Phan Interview Record, E3/419, 23 November 2009, p. 4, ERN (En) 00411005; T. 20 May 2013 (IENG Phan), E1/193.1, p. 27.

<sup>6788</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, pp. 4-5, ERN (En) 00268896-00268897.

<sup>6789</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897; CHHOUK Rin Interview Record, E3/421, 26 November 2009, ERN (En) 00414058.

<sup>6790</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897.

<sup>6791</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, p. 36 *correcting* CHHOUK Rin Interview Record, E3/362, 29 July 2008, pp. 4-5, ERN (En) 00268896-00268897.

<sup>6792</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 40-41; T. 1 November 2016 (IENG Phan), E1/493.1, pp. 34-35, 41-42, 47.

<sup>6793</sup> IENG Phan Interview Record, E3/419, 23 November 2009 p. 4, ERN (En) 00411005. See also, T. 20 May 2013 (IENG Phan), E1/193.1, p. 27; T. 31 October 2016 (IENG Phan), E1/492.1, p. 41.

<sup>6794</sup> T. 1 November 2016 (IENG Phan), E1/493.1, pp. 34-35, 42.

Rieng in mid-1978, Ren announced that SAO Phim's troops had committed treason and had joined forces with the Vietnamese army to overthrow the Khmer Rouge.<sup>6795</sup>

2020. CHHOUK Rin testified that there was absolute adherence to the military hierarchy within the army of the CPK.<sup>6796</sup> Any orders of the Standing Committee had to be implemented, otherwise cadres would have been arrested and killed; there was no choice.<sup>6797</sup> IENG Phan also testified that instructions from the upper echelon were absolute and there was no compromise.<sup>6798</sup>

2021. The Chamber accepts the consistent evidence of CHHOUK Rin and IENG Phan concerning these meetings and the orders that were given by *Ta Mok* and SON Sen, and finds that in late 1977 the Southwest Zone forces were sent to the East Zone both to counter the Vietnamese forces and to "cleanse" those who had allegedly collaborated with the Vietnamese.

12.1.6.3.4.3. Meeting of military commanders  
and Standing Committee in  
Boeng Trabaek in late 1977 to  
early 1978

2022. In late 1977 or early 1978, Ren, who commanded a Centre Division and who was the Chairman of the Office of the General Staff, sent a telegram requesting CHHOUK Rin to return to Phnom Penh to attend a meeting to be held at the military headquarters near Boeng Trabaek and which was attended by the top leaders, MEAS Muth, IENG Phan, Thy, POL Pot, *Ta Mok*, NUON Chea and SON Sen.<sup>6799</sup> SON Sen announced the plan to arrest and remove East Zone cadres because they had cooperated

<sup>6795</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 82-83.

<sup>6796</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 58.

<sup>6797</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 8, ERN (En) 00766454; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 89; CHHOUK Rin Interview Record, E3/10621, 16 June 2015, p. 4, ERN (En) 01118167.

<sup>6798</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 51-52.

<sup>6799</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897; CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-7, ERN (En) 00766452-00766453; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 3, ERN (En) 00414058; T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 49, 96-97; CHHOUK Rin Interview Record, E3/10621, 16 June 2015, p. 3, ERN (En) 01118166.

with Vietnam and betrayed the Party.<sup>6800</sup> CHHOUK Rin concluded by NUON Chea's presence at the meeting that he agreed with SON Sen's orders.<sup>6801</sup>

#### 12.1.6.3.4.4. KE Pauk and SON Sen go to the East Zone

2023. CHHOUK Rin also testified that in late 1977 or early 1978, SON Sen sent over 10,000 soldiers, including Centre Division 703, to arrest cadres in the East Zone and to protect the border against the Vietnamese incursion.<sup>6802</sup>

2024. Witness LONG Sat was a medic in Regiment 156, Division 4 commanded by HENG Samrin, in the East Zone.<sup>6803</sup> He testified that prior to 1977, there was no Centre Army in the East Zone; there was only East Zone divisions.<sup>6804</sup> However, towards the end of 1977, Division 2 of the Centre Army was sent to contain the Vietnamese behind the East Zone forces who were at the battlefield.<sup>6805</sup> In 1978, Central Zone forces under KE Pauk also came to the East Zone.<sup>6806</sup> While they were supposed to help in the fight against Vietnam, they began to arrest East Zone cadres and attacked LONG Sat's regiment.<sup>6807</sup>

2025. KE Pich Vannak, KE Pauk's son, who was transporting food every two days to Svay Rieng from Phnom Penh, told OCIJ investigators that SON Sen was also stationed in Svay Rieng, in the East Zone around late 1977 to mid-1978.<sup>6808</sup> This is corroborated by Duch, who testified that in August 1977, SON Sen was transferred to the battlefield.<sup>6809</sup>

<sup>6800</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 6, ERN (En) 00766452; CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 5, ERN (En) 00268897; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 3, ERN (En) 00414058.

<sup>6801</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 72-74.

<sup>6802</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-8, 11, ERN (En) 00766452-00766454, 00766457. *See also*, Section 12.2: S-21 Security Centre, para. 2552; Section 12.2.8.4: S-21 Security Centre: Prominent Prisoners and Internal Purges: January to June 1978 – Second Wave of East Zone Purges and the Arrest of RUOS Nhim.

<sup>6803</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 61-62.

<sup>6804</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 75.

<sup>6805</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 79-80, 95; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 23-24.

<sup>6806</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 96; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 24, 69-70.

<sup>6807</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 96; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 24, 69-70.

<sup>6808</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 9, ERN (En) 00346153.

<sup>6809</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 102-103; T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 62 (explaining that on 15 August 1977, Comrade Pang called him to a meeting in the

2026. SIN Oeng, one of SAO Phim's guards, testified that KE Pauk came to the East Zone to stay once the attacks with Vietnam started.<sup>6810</sup> CHEA Sim also said that when KE Pauk came to the East Zone, SAO Phim resisted attacking Vietnam and the two had strong disagreements.<sup>6811</sup> Nonetheless, SAO Phim did order attacks on Vietnam at the time.<sup>6812</sup>

2027. Civil Party OU Dav, Commander of Company 150 under SON Sen, gave evidence that in 1977 he was sent from Kampong Som to the East Zone battlefield stopping in Phnom Penh to attend a study session at which NUON Chea spoke about the need to eliminate the "Yvon" Vietnamese, while SON Sen and Ta Mok were also present.<sup>6813</sup> From Phnom Penh, OU Dav was sent to Tonlé Bet, Kampong Cham province. SON Sen arrived soon thereafter with two Chinese advisors and several bodyguards. Soldiers were divided into units and armed with Chinese AKs and U.S.-made AR-15s.<sup>6814</sup>

2028. The Chamber finds that KE Pauk came to the East Zone around October 1977 and was joined by Central Zone forces, including many Southwest Zone cadres. At around the same time, SON Sen was sent to Svay Rieng and joined by forces from the Party Centre. These were the forces who executed the East Zone purges as found below.

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Suramarit Buddhist School, where he met NUON Chea. On this occasion NUON Chea told Duch that brother Khieu (*i.e.* SON Sen) had gone to the battlefield and that Duch was to work with him (NUON Chea). *See* Section 12.2: S-21 Security Centre, para. 2193. *See also*, OUK Bunchhoeun Interview with Stephen HEDER, E3/387, ERN (En) 00350216-00350217 (OUK Bunchhoeun states that POL Pot assigned SON Sen to be the head of the battlefield committee in Svay Rieng as tensions rose with Vietnam; Along National Road 7, SAO Phim and KE Pauk were appointed as chairman and deputy, respectively, of a separate battlefield committee); HENG Samrin Interview by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651886, 00651894-00651895.

<sup>6810</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 22-23. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651895. According to HENG Samrin, SON Sen also had Chinese tanks which had been sent by the Centre to the East Zone in early 1977. Chinese aid to CPK troops fighting in the East Zone is also documented in Meeting Minutes of Office 870 from the beginning of 1978. *See* Regular Meeting Minutes of 870, E3/10686, 26 January 1978, 2 February 1978, ERN (En) 01324071, 01324073.

<sup>6811</sup> CHEA Sim interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872.

<sup>6812</sup> CHEA Sim interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872; DK Telegram, E3/516 [E3/9372], 4 May 1978, ERN (En) 00321720-00321721 (KE Pauk indicates that SAO Phim will withdraw a battalion of forces from Region 20 to help fight the enemy in Sa-am). *See above*, paras 1996-2000.

<sup>6813</sup> T. 10 November 2016 (OU Dav), E1/498.1, pp. 95-96; T. 11 November 2016 (OU Dav), E1/499.1, pp. 4-7; OU Dav Interview Record, E3/9772, ERN (En) 01093013, 01093019 (in 1977, witness saw Ta Mok only once while he was in Phnom Penh en route to the East Zone).

<sup>6814</sup> T. 11 November 2016 (OU Dav), E1/499.1, pp. 4-5.

2029. As noted in the General Overview of this Judgement, in October and November 1977, the border war escalated when Vietnamese forces launched an extensive attack into Svay Rieng province. Further attacks by the SRV in December 1977 captured the rubber plantation and factory in Memot, Kampong Cham province, causing significant defeats on the DK side in the East Zone. This escalation of the conflict towards the end of 1977 led to DK cutting diplomatic ties with Vietnam on 31 December 1977. Vietnamese troops voluntarily withdrew on 6 January 1978, but border clashes, including incursions by both sides, continued throughout that month. On 5 February 1978, Vietnam proposed border negotiations again, but the proposal, the sincerity of which may be questioned, was never accepted and border skirmishes continued.<sup>6815</sup>

#### 12.1.6.3.4.5. Mass arrest and executions of East Zone cadres

2030. Starting in April and May 1978, thousands of cadres were arrested throughout the East Zone by Southwest and Centre forces commanded by SON Sen and KE Pauk.<sup>6816</sup> As found below, the evidence was that some of the cadres were killed on the spot or nearby, some were sent to the Kampong Chhnang Airfield worksite, and others were sent to S-21 to be killed.

2031. Lists of S-21 prisoners show that hundreds of cadres from Sector 23 were arrested in April-May 1978.<sup>6817</sup> Duch also testified that during a wave of East Zone purges in 1978, NUON Chea ordered Duch to have large groups of East Zone prisoners arriving at S-21 be sent out for execution the very same day without interrogation.<sup>6818</sup>

<sup>6815</sup> Section 4: General Overview, paras 289-291.

<sup>6816</sup> S-21 list of prisoners smashed on 27 May 1978, E3/8463, ERN (En) 01554519-01554525, 01554541-01554548, 01554559-01554561, 01554563, 01554565-01554566, 01554568-01554581, 01554588-01554601, 01554604, 01554611-01554613, 01554619-01554620, 01554627-01554631, 01554684-01554685, 01554694, 01554703-01554716, 01554719-01554721, 01554726-01554735, 01554767-01554778, 01554796-01554801, 01554804-01554806, 01554809-01554813, 01554827-01554829, 01554831-01554835, 01554845-01554850, 01554854, 01032507-01032524, 01032534-01032536; S-21 list of prisoners who were sent to prison in June 1978, E3/10161, 2 July 1978, ERN (En) 01563997-01564031.

<sup>6817</sup> S-21 list of prisoners smashed on 27 May 1978, E3/8463, ERN (En) 01032507-01032536 (listing over 300 people from Sector 23, East Zone, arrested in April and May 1978, including UK Ngatt *alias* Savann or So, Secretary of Sector 23, arrested on 17 March 1978); S-21 list of prisoners who entered in April 1978, E3/10354, undated, ERN (En) 01507557-01507598 (listing about 500 individuals arrested from the East Zone). *See also*, Section 12.2: S-21 Security Centre, paras 2308-2311, 2552.

<sup>6818</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 44.

2032. CHHUN Samorn, a member of a reconnaissance group consisting of about 300 soldiers, in a special unit of Regiment 112, Sector 23, East Zone,<sup>6819</sup> testified that in late 1977 or early 1978,<sup>6820</sup> he was called to a meeting in Angk Prasrae village, where 20-30 armed Southwest Zone soldiers from the Centre Division 703 confiscated their weapons on the pretext that the weapons were too old.<sup>6821</sup> After CHHUN Samorn showed the centre forces the location of their land mines, the disarmed soldiers were transported to Veal Taprunh where they were instructed to work in the rice fields.<sup>6822</sup> CHHUN Samorn also saw many district and provincial-level military and civilian cadres arrested.<sup>6823</sup>

2033. In addition, CHHUN Samorn heard, from soldiers and villagers who observed the events, that the senior commanders had their weapons confiscated before they were boarded onto military trucks and taken away.<sup>6824</sup> He heard from others that they were called to “study sessions” before being killed and their bodies thrown into the Mekong River at Neak Loeng.<sup>6825</sup> He did not know where they were taken and estimated that the arrests took place in late 1977 and early 1978.<sup>6826</sup> However, documentary evidence from S-21 reflects that CHHUN Samorn’s commander of Sector 23, Regiment 112, CHIN Kim Huor *alias* Vuon, and the group chief of Regiment 112, CHANN Savoeung were sent to S-21 in April 1978 and executed on April and May 1978, respectively.<sup>6827</sup>

2034. KE Pich Vannak told OCIJ investigators that he observed the first arrests of East Zone cadres with his own eyes. He said that the purge was carried out on the direct orders of SON Sen, who came from the headquarters (in Svay Rieng) with two truckloads of about 60 security guards in black uniforms, as well as two tanks.<sup>6828</sup> KE

<sup>6819</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 11-12.

<sup>6820</sup> CHHUN Samorn testified that this occurred about one month after the arrests of senior commanders at the end of 1977 or early 1978. *See* T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 16-20, 33-34, 66-68. S-21 Prisoner lists indicate that the senior leaders in Sector 23 were arrested in March and April of 1978. *See* S-21 list of prisoners smashed on 27 May 1978, E3/8463, ERN (En) 01032507-01032536 (listing over 300 people from Sector 23, East Zone, arrested in April and May 1978, including UK Ngatt *alias* Savann or So, Secretary of Sector 23, arrested on 17 March 1978).

<sup>6821</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 16-20, 33-34, 66-68.

<sup>6822</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 18-21, 32.

<sup>6823</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, p. 38.

<sup>6824</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, p. 33.

<sup>6825</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 25-28.

<sup>6826</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 16-18, 32.

<sup>6827</sup> S-21 list of prisoners admitted in April 1978, E3/10361, 6 April 1978, ERN (En) 01368921 (entry no. 35, CHIN Kim Huo *alias* Vuon, Sector 22, “Chairperson of spying company, Regiment 112, Sector 23”); T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 44-48.

<sup>6828</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 9-10, ERN (En) 00346153-00346154.

Pich Vannak recalled that 42 leaders were arrested including Soth, Prey Veng Sector Committee, Chan *alias* Toeu *alias* La-et, the Sector Committee and Deputy Zone Secretary, and Kim, Chairman of the East Zone military division.<sup>6829</sup> He saw with his own eyes that these people were told to remove their clothes and were forced to dig their own graves.<sup>6830</sup> The people were clubbed and dragged into the graves only 50 metres from where SON Sen was staying.<sup>6831</sup>

2035. LONG Sat testified that on May 25, 1978, Division 4 commanders and soldiers, who had been fighting the Vietnamese since 1977, were called to a meeting in the Central Zone where they were all arrested by KE Pauk's soldiers.<sup>6832</sup> This is confirmed by S-21 lists of prisoners who entered in June 1978.<sup>6833</sup> One regiment commander named Sok escaped and told LONG Sat, who had stayed at the front, what had occurred.<sup>6834</sup> At around the same time, on 26 May 1978, the head of SAO Phim's bodyguard unit, PRAK Choeuk, whom SAO Phim trusted, was arrested in Suong, the East Zone headquarters.<sup>6835</sup>

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<sup>6829</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 9-10, ERN (En) 00346153-00346154. Concerning Chan *alias* Toeu *alias* La-et, the Chamber notes that KE Pich Vannak also refers to another individual named Chan described as "the chairman of Granduncle Phim's office" and who came two days after these arrests in order to see KE Pauk. The Chamber considers the person arrested and identified as Chan *alias* Toeu *alias* La-et is not to be confused with MEAS Senghong *alias* Chan who was Deputy Secretary of the East Zone and, at various times, Sectors 21, 23 and 24 Secretary. *See below*, para. 2049. Finally, the precise identity of "Kim", chairman of the East Zone military division, is unclear, but the Chamber notes that Meas MON *alias* Kev Samnang, described as the Chairperson of the Army staff of the East zone, was arrested on 23 May 1978 and sent to S-21. *See S-21 Prisoner List*, E3/8445, p. 218, ERN (En) 01565809; S-21 Prisoner List, E3/10155, p. 2, ERN (En) 01555987.

<sup>6830</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 9, ERN (En) 00346153.

<sup>6831</sup> KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 9, ERN (En) 00346153.

<sup>6832</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 62-63, 69; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 20, 67-68, 75-76; T. 7 November 2016 (LONG Sat), E1/496.1, p. 75 (HENG Samrin was saved by being transferred to Prey Veng). KE Pich Vannak says that KE Pauk informed SAO Phim that the upper echelon had ordered that HENG Samrin be arrested and that HENG Samrin then disappeared. *See KE Pich Vannak Interview Record*, E3/35, 4 June 2009, p. 9, ERN (En) 00346153. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651889, 00651898-00651899 (stating that he was transferred by SAO Phim to Prey Veng on 18 May 1978 and that KE Pauk called a meeting of all military commanders where they all disappeared).

<sup>6833</sup> S-21 list of prisoners who were sent to prison in June 1978, E3/10161, 2 July 1978, ERN (En) 01564009-01564010 (listing 13 cadres from Division 4 including KOY Chhoeun, Division 4 Secretary, 5 June 1978; SUOS Khorn, Deputy Division Commander, 22 June 1978).

<sup>6834</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 62-63; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 78-80 (upon his return to Tboung Khmum district, LONG Sat saw grave pits at a district security office which had been filled with human remains and he was told that his wife and children were transferred by POL Pot to Pursat province and killed). *See above*, paras 1896, 1907, 1920-1921, 1929-1930. *See below*, paras 2037-2038.

<sup>6835</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 87-88; S-21 list of prisoners, E3/2014, ERN (En) 01305698; S-21 list of prisoners who were sent to prison in June 1978, E3/10161, 2 July 1978, ERN (En) 01564020 (PRAK Choeuk, Zone office guard, arrested 5 June 1978, removed 21 June 1978).



2036. Further corroborating evidence as to these arrests was provided by several other witnesses. NONG Nim, who was one of two drivers for SAO Phim, recalled that all of the East Zone leadership disappeared, although he did not recall when.<sup>6836</sup> NONG Nim also recalled seeing people from different units arrested in many places in the East Zone and loaded onto trucks heading westward, prior to SAO Phim's arrest.<sup>6837</sup> He said that people were arrested in waves.<sup>6838</sup> SIN Oeng, one of SAO Phim's bodyguards, testified that Khmer soldiers were arrested despite the fact that they had been fighting against Vietnam at the time.<sup>6839</sup>

2037. CHHOUK Rin said that SON Sen was executing the orders of POL Pot, NUON Chea and *Ta Mok*.<sup>6840</sup> SON Sen ordered that commanders be sent to S-21 while about 5,000 subordinate soldiers be sent to work at the Kampong Chhnang Airfield worksite.<sup>6841</sup> Others were taken to the Kampot Security Office.<sup>6842</sup> The arrests were made on the order of the zone above SAM Bit, Division 2 Commander who became "Kampot Province Sector" [*i.e.* Sector 35] Secretary.<sup>6843</sup> In his Case 004 Written Record of Interview in 2015, CHHOUK Rin claimed that he did not execute any of these arrests, but merely replaced the arrested soldiers at the border to fight the Vietnamese.<sup>6844</sup> The Chamber does not find this to be convincing as it contradicts CHHOUK Rin's earlier accounts of the events and followed a line of answers in which he attempted to minimise his responsibility and that of other low-level commanders.<sup>6845</sup>

<sup>6836</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 51-52, 65.

<sup>6837</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 36, 62-63.

<sup>6838</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 49-50.

<sup>6839</sup> T. 5 December 2016 (SIN Oeung), E1/506.1, pp. 22-23.

<sup>6840</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 7, ERN (En) 00766453; T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 96-97.

<sup>6841</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-8, 11, ERN (En) 00766452-00766454, 00766457; CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 3, ERN (En) 00268895; CHHOUK Rin Interview Record, E3/421, 26 November 2009, pp. 3-4, ERN (En) 00414058-00414059; CHHOUK Rin Interview Record, E3/10621, 16 June 2015, pp. 4-5, 10, ERN (En) 01118167-01118168, 01118173. *See also*, THUCH Rin Interview Record E3/361, ERN (En) 00766453 (stating that the Party Centre sent him and others to the East Zone to arrest all cadres in all nine brigades and sent them to the airfield construction project). *See also*, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1732 (East Zone soldiers started arriving at the worksite in early 1977, to be tempered because they were subordinates of arrested division leaders and were perceived to have affiliations with the enemy).

<sup>6842</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 3, ERN (En) 00268895.

<sup>6843</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 5, ERN (En) 00766451; CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 3, ERN (En) 00268895; T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 59-60.

<sup>6844</sup> CHHOUK Rin Interview Record, E3/10621, 16 June 2015, p. 9, ERN (En) 01118172.

<sup>6845</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6-8, 11, ERN (En) 00766452-00766454, 00766457; CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 3, ERN (En) 00268895; CHHOUK Rin Interview Record, E3/421, 26 November 2009, pp. 3-4, ERN (En) 00414058-00414059; CHHOUK Rin Interview Record, E3/10621, 16 June 2015, pp. 8-9, ERN (En) 01118171-01118172.

However, CHHOUK Rin's account of the internal purge was internally consistent and the Chamber therefore accepts his account of the meetings and the orders issued by SON Sen.

2038. The Chamber notes that the Co-Prosecutors in their Closing Brief include Annex F.41 which lists 2,200 prisoners at S-21 who were recorded as former East Zone cadres.<sup>6846</sup> In accordance with its approach of relying only on original lists for its findings, the Chamber does not rely on this Annex. The Chamber recalls its finding that the highest number of detainees arrested and detained at S-21 originated from the East and Northwest Zones.<sup>6847</sup> The Chamber further notes that it has independently reviewed the prisoner lists that fall into the seven categories of reliable court-tested documents as identified for the purposes of assessing S-21 related documents and confirms that there were indeed many S-21 prisoners who were arrested from the East Zone. According to the evidence, 112 cadres arrived in S-21 from the East Zone in March 1978.<sup>6848</sup> The number of arrests peaked in April 1978, with 480 East Zone cadres arriving to S-21 during this month.<sup>6849</sup> In May 1978, executions of East Zone prisoners at S-21 also reached maximum levels. According to execution logs, approximately 370 East Zone cadres were smashed in May,<sup>6850</sup> with approximately 364 executions occurring in one day, 27 May 1978.<sup>6851</sup> Large numbers of arrests in the East Zone continued throughout June and July 1978.<sup>6852</sup> More than 330 East Zone cadres arrived at S-21 throughout the month of June.<sup>6853</sup> Over 150 of these cadres were subsequently

<sup>6846</sup> Co-Prosecutors' Closing Brief, Annex F.41, E457/6/1.2.15.40.

<sup>6847</sup> Section 12.2: S-21 Security Centre, para. 2457 (in 1976, more than 248 prisoners were arrested from Division 170 alone corresponding with the arrest of CHAN Chakrei in April 1976.).

<sup>6848</sup> S-21 list of prisoners admitted in March 1978, E3/8655, March 1978, ERN (En) 01460841, 01460842, 01460843, 01460845, 01460846, 01460849, 01460851, 01460854, 01460856, 01460862, 01460863, 01460864, 01460866, 01460871, 01460873-01460874, 01460876-01460877, 01460879, 01460882-01460884.

<sup>6849</sup> S-21 list of prisoners admitted on 5 April 1978, E3/10378, 5 April 1978, pp. 6, 9, 11-13, ERN (En) 01398030, 01398032, 01398034-01398036; S-21 list of prisoners admitted on 12 April 1978, E3/10379, 12 April 1978, pp. 1-4, 9, 15, 19-20, ERN (En) 01398040-01398043, 01398048, 01398054, 01398058-01398059; S-21 list of prisoners admitted on 16 April 1978, E3/10362, 16 April 1978, pp. 1, 4, ERN (En) 01528730, 01528733.

<sup>6850</sup> S-21 list of prisoners smashed on 27 May 1978, E3/8463, 27 May 1978, ERN (En) 01032508-01032524.

<sup>6851</sup> S-21 list of prisoners smashed on 27 May 1978, E3/8463, 27 May 1978, ERN (En) 01032508-01032524.

<sup>6852</sup> S-21 list of prisoners admitted on 22 June 1978, E3/10193, 22 June 1978, pp. 1-16, ERN (En) 01397649-01397664 (for instance, a group of approximately 100 prisoners arrived on the 22 June 1978).

<sup>6853</sup> S-21 list of prisoners admitted in June 1978, E3/10161, 2 July 1978, pp. 41-75, ERN (En) 01563997-01564031.

“removed” in the same month.<sup>6854</sup> In July, approximately 98 cadres arrived from the East Zone.<sup>6855</sup> In August, the number of arrests of East Zone cadres decreased.<sup>6856</sup> An unspecified number of East Zone cadres were also removed and sent to Kampong Chhnang Airfield worksite for re-education or tempering. As noted above, these East Zone cadres were removed pursuant to orders from SON Sen and KE Pauk.

#### 12.1.6.3.5. SAO Phim’s plans to attack POL Pot

2039. The Chamber heard evidence from several Southwest and Central Zone cadres who were involved in the East Zone purge. It also heard from several East Zone cadres who escaped the purge. None of these witnesses provided reliable evidence of plans by SAO Phim to rise up against POL Pot until he suspected attempts to remove him from power in May 1978.<sup>6857</sup>

2040. Witness IENG Phan, a regiment commander in Takeo who was sent to Svay Rieng in the East Zone in mid-1978<sup>6858</sup> testified that he did not have any knowledge of plans of SAO Phim or CHAN Chakrei to overthrow the CPK leadership.<sup>6859</sup> After 1979, he heard from some Cambodian generals that they had fled to Vietnam in early to mid-1978 and received training there.<sup>6860</sup> However, he did not have any way to confirm whether SAO Phim joined the Vietnamese forces and was not aware of the acts for

<sup>6854</sup> S-21 list of prisoners admitted in June 1978, E3/10161, 2 July 1978, pp. 41-75, ERN (En) 01563997-01564031.

<sup>6855</sup> S-21 list of prisoners admitted in July 1978, E3/10120, undated, pp. 13-25, ERN (En) 01399075-01399087; S-21 list of prisoners admitted on 1-7 July 1978, E3/10199, 7 July 1978, pp. 5-8, ERN (En) 01397669-01397672; S-21 list of prisoners admitted on 3 July 1978, E3/10099, 3 July 1978, p. 1, ERN (En) 01548701; S-21 list of prisoners admitted on 17 and 15 July 1978, E3/10039, 1978, pp. 3, 9, 10, 15, 21, ERN (En) 01368417, 01368423-01368424, 01368429, 01368435.

<sup>6856</sup> S-21 list of prisoners admitted between June and August 1978, E3/10359, 1978, pp. 2, 4-10, ERN (En) 01395681, 01395683-01395689; S-21 list of prisoners admitted on 2-4 August 1978, E3/10124, 4 August 1978, pp. 1-2, ERN (En) 01556327-01556328; S-21 list of prisoners admitted on 1-5 August 1978, E3/10126, 5 August 1978, pp. 1-2, ERN (En) 01556333-0155634; S-21 list of prisoners admitted on 5-6 August 1978, E3/10127, 5-6 August 1978, p. 1, ERN (En) 01568194; S-21 list of prisoners admitted in October 1978, E3/10205, 1978, p. 6, ERN (En) 01397681; S-21 list of prisoners destroyed on 30 October 1978, E3/10456, 31 October 1978, p. 1, ERN (En) 01558313; S-21 list of prisoners admitted in October 1978, E3/10509, October 1978, pp. 6, 15, ERN (En) 01398616, 01398625; S-21 list of prisoners admitted on 2, 3 and 6 November 1978, E3/10212, 1978, pp. 2, 4, ERN (En) 01397691, 01397693; S-21 list of prisoners admitted in November-December 1978, E3/1972, December 1978, pp. 1-5, ERN (En) 01305712-01305717.

<sup>6857</sup> See above, paras 2012-2038.

<sup>6858</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 7, 19-21, 37, 39; T. 1 November 2016 (IENG Phan), E1/493.1, pp. 41-42.

<sup>6859</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 85-87.

<sup>6860</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 94-95; T. 1 November 2016 (IENG Phan), E1/493.1, pp. 3-5.

which SAO Phim was accused of treason.<sup>6861</sup> IENG Phan also testified that he heard voices of Khmer cadres on the radio who called for an uprising.<sup>6862</sup> IENG Phan did not indicate when this occurred. But the Chamber recalls that SEM Om overheard similar radio broadcasts in August or September 1978.<sup>6863</sup> IENG Phan did not know who the Vietnamese troops cooperated with and did not know about their plans.<sup>6864</sup>

2041. CHHOUK Rin, a Southwest Zone military cadre who, in 1977, was sent to the East Zone becoming the Regiment 402 Commander,<sup>6865</sup> testified that he learned by reading CPK documents that there were attempts to overthrow POL Pot by CHAN Chakrei in 1976 and Vietnamese commandos in 1977-1978.<sup>6866</sup> He said there were suspicions that East Zone cadres had opened the way for Vietnamese to enter the country in Svay Rieng and Prey Veng provinces.<sup>6867</sup> SAO Phim was targeted because he was considered a hidden enemy due to his relationship with Vietnam.<sup>6868</sup> The Chamber considers that these views were influenced by torture-tainted confessions as the evidence implicating CHAN Chakrei arose from S-21 confessions.<sup>6869</sup> But CHHOUK Rin also testified that he was not sure why soldiers and senior military leaders were arrested. He testified that they were terrified and accused one another when they were arrested.<sup>6870</sup> CHHOUK Rin further testified that “Pol Pot was like an old and very hungry tiger. I said this because during the three-year period, he only attacked his own subordinates; those who were fierce fighters were killed.”<sup>6871</sup> The CPK took the wrong leadership line in his view.<sup>6872</sup>

2042. CHHUN Samorn, a soldier in Sector 23 of the East Zone, testified that he was not aware of the plans to rise up against the centre forces by East Zone forces and that

<sup>6861</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 82-86.

<sup>6862</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 95-96.

<sup>6863</sup> *See above*, para. 1917.

<sup>6864</sup> T. 31 October 2016 (IENG Phan), E1/492.1, pp. 95-96; T. 1 November 2016 (IENG Phan), E1/493.1, p. 5.

<sup>6865</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 5, 8, ERN (En) 00766451, 00766454; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 3, ERN (En) 00414058; T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 37, 39.

<sup>6866</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, p. 110; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 9, ERN (En) 00766455. *See above*, para. 1894.

<sup>6867</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 6, ERN (En) 00766452; CHHOUK Rin Interview Record, E3/10621, 16 June 2015, p. 4, ERN (En) 01118167.

<sup>6868</sup> CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 6, ERN (En) 00268898.

<sup>6869</sup> *See above*, para. 1894.

<sup>6870</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 57-58.

<sup>6871</sup> T. 22 April 2013 (CHHOUK Rin), E1/181.1, p. 68.

<sup>6872</sup> CHHOUK Rin Interview Record, E3/10621, 16 June 2015, p. 4, ERN (En) 01118167.

when he joined the revolutionary forces in 1975, there was no tension between any of the zone forces. However, CHHUN Samorn did hear about fighting between the East Zone secretary SAO Phim's forces and the centre forces which occurred around the time of his own arrest in August 1978.<sup>6873</sup>

2043. SAO Phim's bodyguards were of the view that POL Pot initiated a *coup* against SAO Phim and not the other way around. NONG Nim said that POL Pot had executed a *coup d'état* against the East Zone to depose SAO Phim whom he accused of being a traitor. He did not think that SON Sen had staged the coup.<sup>6874</sup> SIN Oeng also testified that when the purge of the East Zone happened there was only one party in Cambodia, the CPK, and when the Party Centre and people from the Southwest Zone arrested people in the East Zone, it was a *coup d'état*.<sup>6875</sup> LONG Sat was also of the view that POL Pot initiated the *coup d'état* against SAO Phim.<sup>6876</sup> He denied that it was SAO Phim and HENG Samrin who initiated a *coup* against POL Pot.<sup>6877</sup>

2044. Therefore, apart from torture-tainted evidence, there was little to suggest that SAO Phim was making plans to overthrow POL Pot and the remaining members of the Standing Committee. To the contrary, as noted above, SAO Phim had regular communication with the other members of the Standing Committee by telegram and frequent visits, in furtherance of CPK policy.

2045. As the evidence discussed above shows, even when informed of the danger of purges in the East Zone, SAO Phim took no steps to fight against the Central Zone and Southwest Zone cadres who were executing such arrests.

2046. SIN Oeng, one of SAO Phim's bodyguards, stated that he never heard SAO Phim say anything against the Party or appear opposed to the Party's plans.<sup>6878</sup> SAO

<sup>6873</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 9-12, 16-17, 62-69.

<sup>6874</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 37-40.

<sup>6875</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 100-103.

<sup>6876</sup> T. 2 November 2016 (LONG Sat), E1/494.1, pp. 16-17; T. 7 November 2016 (LONG Sat), E1/496.1, pp. 72-73, 103-104.

<sup>6877</sup> T. 7 November 2016 (LONG Sat), E1/496.1, p. 75.

<sup>6878</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 75-76. The Chamber notes that HENG Samrin's statement corroborates this account. See HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651896-00651897 ("He [SAO Phim] said we shouldn't attack friends, but should follow orders 'for a period' [...] "So Phim didn't ever protest. I never saw him protest. But at that time, it was hard to say. He was accused of having plans to stage a coup against Pol Pot. But in fact he had no important problems (with Pol Pot). But he said [...]: 'Our country will have to struggle again'. That's all he said. With me personally and other close aides whom he knew were and who worked with

Phim's obedient attitude is corroborated by HENG Samrin who stated in an interview that SAO Phim told him that they "should not attack friends but should follow orders for a time".<sup>6879</sup> The NUON Chea Defence takes this as an admission that SAO Phim was reluctant to attack Vietnam and was planning an attack on POL Pot. The Chamber considers however, that this statement indicates that, despite some hesitancy to fight Vietnamese forces, SAO Phim ordered attacks against these last. Further, there was no evidence that SAO Phim was making preparations to fight against POL Pot prior to May 1978.

12.1.6.3.6. *SAO Phim seeks a meeting with POL Pot*

2047. In late 1977, SAO Phim told LONG Sat that POL Pot had not betrayed the people in the East Zone and that it was SON Sen who had initiated attacks on the East Zone cadres.<sup>6880</sup> SAO Phim was however unsure of who was responsible for the attacks and travelled to Phnom Penh to seek clarification from POL Pot as to why Central Zone soldiers were sent to kill East Zone cadres.<sup>6881</sup> For this reason, according to NONG Nim, SAO Phim travelled to Phnom Penh in 1978 with only his bodyguards.<sup>6882</sup> He testified that had SAO Phim decided to flee, he could have. But SAO Phim was an honest person who was loyal to POL Pot.<sup>6883</sup> This is corroborated by LONG Sat who testified in court that he understood from previous conversations he had with his uncle SAO Phim, that this last went to Akreiy Ksatr because he wanted "his messengers to ask why Pol Pot sent the soldiers, armies from the Central Zone to kill the cadre[s] and kill the people of the East Zone", but the messengers he sent with a letter to the Party Centre were arrested on their way and disappeared.<sup>6884</sup>

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him. He just raised the point that, 'Our country, if things continue like this, we will have a war, and another struggle.'").

<sup>6879</sup> HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651897. *See above*, para. 1990.

<sup>6880</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 81-82, 85-86; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 70-72; T. 8 November 2016 (LONG Sat), E1/497.1, p. 6.

<sup>6881</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 87.

<sup>6882</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 56-59.

<sup>6883</sup> T. 12 December 2016 (NONG Nim), E1/511.1, p. 62.

<sup>6884</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 81-82, 87-89; The Witness also identified Ung in a photograph shown to him. *See* T. 2 November 2016 (LONG Sat), E1/494.1, pp. 52-53. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651889, 00651907 (stating that SAO Phim wanted to meet with POL Pot because he believed in the Party, that POL Pot was faithful and that the attacks against East Zone cadres were the work of SON Sen).

2048. Prior to his departure to Phnom Penh, SAO Phim alerted some of the remaining East Zone cadres that they should be prepared to fight POL Pot's forces if necessary. SIN Oeng, one of SAO Phim's bodyguards, testified that prior to leaving for Phnom Penh, SAO Phim met HENG Samrin in Prey Veng town.<sup>6885</sup> SAO Phim told HENG Samrin that he was going to Phnom Penh to sort things out.<sup>6886</sup> But if he should not return in one week, HENG Samrin should gather up all the remaining soldiers to fight against POL Pot.<sup>6887</sup> SIN Oeng then accompanied SAO Phim from Prey Veng towards Phnom Penh with a group of nine persons.<sup>6888</sup>

2049. MEAS Soeun was a craftsman and son of MEAS Senghong *alias* Chan,<sup>6889</sup> who was Deputy Secretary of the East Zone.<sup>6890</sup> MEAS Senghong *alias* Chan was initially the Sector 21 Secretary, before he took over as Sectors 23 and 24 Secretary after the arrest of SUOS Neou *alias* Chhouk.<sup>6891</sup> MEAS Soeun told OCIJ investigators that he received a letter from SAO Phim on 25 May 1978 alerting him to a possible military *coup* led by SON Sen to topple POL Pot and NUON Chea.<sup>6892</sup> That night, MEAS Soeun sent the men from his workshop to defend the East Zone office in Suong against centre army troops.<sup>6893</sup> They later received a letter from SAO Phim ordering that forces temporarily stand down because he was going to Phnom Penh.<sup>6894</sup> This is also consistent with the evidence of SIN Oeng, that when SAO Phim travelled to Phnom Penh, he was unsure of whether to fight POL Pot.<sup>6895</sup>

2050. The NUON Chea Defence claims that SAO Phim had cultivated a relationship with Vietnam to intervene and was only biding time before he took power from POL Pot. However, as noted above, the CPK had a long relationship with Vietnam. SAO

<sup>6885</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 103-105; SIN Oeng DC-Cam Interview, E3/10716, ERN (En) 01353387-01353388.

<sup>6886</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, p. 30.

<sup>6887</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 103-105; SIN Oeng DC-Cam Interview, E3/10716, ERN (En) 01353387-01353388.

<sup>6888</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 31-32.

<sup>6889</sup> The Chamber notes that KE Pich Vannak refers to two different individuals named Chan. *See above*, para. 2034.

<sup>6890</sup> MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425885, 00425892-00425894.

<sup>6891</sup> MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425894.

<sup>6892</sup> MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425892-00425894.

<sup>6893</sup> MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425892-00425894.

<sup>6894</sup> MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425892-00425894.

<sup>6895</sup> *See above*, para. 2047. *See also*, OUK Bunchhoeun Interview with Stephen HEDER, E3/387, p. 26, ERN (En) 00350225 (stating that SAO Phim did not give orders to fight against POL Pot until East Zone cadres were already under attack).

Phim had cut off ties with Vietnamese couriers in September 1977 when POL Pot ordered that Vietnam be attacked. Further, there is no evidence that SAO Phim had prepared for an attack on POL Pot. The Chamber considers that it was only after the East Zone purge had escalated in May 1978, that SAO Phim decided to meet POL Pot and prepare the possibility of fighting with POL Pot's forces. Rather, as discussed above, the evidence shows their surprise and confusion as to why the Central and Southwest Zones came in to purge the East Zone and that SAO Phim remained faithful to POL Pot, not wanting to believe he was behind the killings. His statements to HENG Samrin are best understood as advice to re-engage with Vietnam if talks with POL Pot should fail as SAO Phim's East Zone cadres had been decimated by the East Zone purge and would not have the resources, absent such assistance, to wage a fight.

12.1.6.3.7. *Events at Akreiy Ksatr and SAO Phim's suicide*

2051. SAO Phim never arrived in Phnom Penh, reaching only Akreiy Ksatr (in Sector 22), on the opposite side of the Mekong River from the Royal Palace in Phnom Penh.<sup>6896</sup> SIN Oeng stated that upon arriving at Akreiy Ksatr,<sup>6897</sup> SAO Phim twice sent messages to POL Pot in Phnom Penh, asking that he be escorted into the city, but that on each occasion there was no response.<sup>6898</sup>

2052. As SAO Phim was attempting to reach POL Pot, leaflets were distributed in the East Zone that accused SAO Phim of being a traitor.<sup>6899</sup> According to KE Pich Vannak, who saw one of the leaflets, they were signed by POL Pot and said that SAO Phim was selling land to Vietnam and that DK armed forces should not obey SAO Phim's orders.<sup>6900</sup> Soon after, SAO Phim and his entourage were surrounded and fired upon by soldiers.<sup>6901</sup>

<sup>6896</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 35, 38.

<sup>6897</sup> This place is also commonly known as Arey Ksat.

<sup>6898</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 39-40; SIN Oeng DC-Cam Interview, E3/10716, ERN (En) 01353393.

<sup>6899</sup> T. 1 December 2016 (SIN Oeng), E1/505.1, pp. 86-87; HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651889; KE Pich Vannak Interview Record, E3/35, p. 10, ERN (En) 00346154; OUK Bunchhoeun Interview with Stephen HEDER, E3/387, p. 27, ERN (En) 00350226.

<sup>6900</sup> KE Pich Vannak Interview Record, E3/35, p. 10, ERN (En) 00346154.

<sup>6901</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 34-35. The Chamber notes that HEM Moeun, *Ta Mok's* nephew, and a Regiment 14 soldier, under Division 310 Commander Saroeun, testified that he accompanied others in his regiment in the operation to arrest SAO Phim, though he did not partake in the arrest himself. *See* T. 2 August 2016 (HEM Moeun), E1/453.1, pp. 42, 71-73. However, the witness contradicted his earlier statement which indicated he was part of Division 14 and that he personally took part in the attempted arrest. The Chamber therefore considers the limited value of this evidence in that it



2053. NUON Chea testified that SAO Phim committed suicide before he could be captured.<sup>6902</sup> But before killing himself, SAO Phim told others nearby to stand up and fight.<sup>6903</sup> The MAM Nai Notebook and Combined Notebook indicate that SAO Phim shot himself and died on 2 or 3 June 1978.<sup>6904</sup> The Combined Notebook further notes that on 23 June 1978, SAO Phim's connection to the base was "swept away", including Lin, Sun, Sot, Mon and Tal.<sup>6905</sup>

2054. SAO Phim's body was paraded around to show that he was dead and that the accusations that he was a traitor were true.<sup>6906</sup> SAO Phim's family members, including his wife *Yeay Kirou* were also killed.<sup>6907</sup>

#### 12.1.6.3.8. *Events following SAO Phim's death*

2055. BAN Seak, who was Krouch Chhmar district Secretary in Sector 21 at the time, testified that several months after SAO Phim's suicide, SON Sen became commander-in-chief of the East Zone forces and East Zone Secretary.<sup>6908</sup> After SAO Phim's suicide and cadres were arrested in the East Zone, some of the cadres fled to Vietnam.<sup>6909</sup>

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may indicate the particular regiment that attacked SAO Phim, but it does so with only limited reliability. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651889, 00651901, 00651907 (stating that the Deputy Secretary of Srei Santhor District ordered his troops to attack and kill SAO Phim).

<sup>6902</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 39.

<sup>6903</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 87-88; HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651900.

<sup>6904</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 35, ERN (En) 00184613 (entry dated 4 July 1978: "We defeated A-Phim (captured dead) 3 June"); Combined S-21 Notebook, E3/834, 14, 18 June 1978, pp. 16-17, ERN (En) 00184498-00184499 (entry dated 14 June 1978: "A-Phim died on the 2-6-78 by shooting himself"; entry dated 18 June 1978: "On 3-6-78, A-Phim died"). *See also*, Section 12.2.3.2.4: S-21 Notebooks.

<sup>6905</sup> Combined S-21 Notebook, E3/834, 18 June 1978, ERN (En) 00184499; S-21 list of prisoners who were sent to prison, E3/2187, pp. 1, ERN (En) 00833791 (Lin is SOK Khnol *alias* Lin or Peam, Member of the (East) Zone committee and Chief of Zone Office, arrested on 5 June 1978), 7, ERN (En) 00833797 (Sun is CHEA Sin *alias* SUN, Secretary of Sector 20, arrested on 5 June 1978, Sot is TAUCH Chem *alias* SOT, Secretary of Sector 21, arrested on 5 June 1978); S-21 Prisoners List, E3/10330, p. 1, ERN (En) 01528706 (Tal is SAM Huoy *alias* Meas TAL, Secretary of Division 290, arrested on 24 May 1978); S-21 Prisoners List, E3/8445, p. 218, ERN (En) 01565809 (Mon could be MEAS Mon *alias* KEV Samnang, Chairperson of the Army staff of the East Zone, arrested on 23 May 1978). *See also*, S-21 Prisoners List, E3/10155, p. 2, ERN (En) 01555987.

<sup>6906</sup> T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 43-44; HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651889; KE Pich Vannak Interview Record, E3/35, p. 10, ERN (En) 00346154.

<sup>6907</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 90. *See also*, T. 12 December 2016 (NONG Nim), E1/511.1, p. 64 (NORN Nim also heard that SAO Phim's family was killed); T. 5 December 2016 (SIN Oeng), E1/506.1, p. 56.

<sup>6908</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 29-30; T. 1 November 2016 (IENG Phan), E1/493.1, p. 55 (SON Sen was in charge of all of the East Zone forces).

<sup>6909</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 10-12.

2056. CHHUN Samorn testified that he was arrested in August 1978.<sup>6910</sup> He explained that Centre Army soldiers from the Southwest Zone told him to return to his village and that his unit would be given further instructions once *Angkar* had purged the bad elements (*i.e.* those with *Yuon* heads and Khmer bodies).<sup>6911</sup> Upon CHHUN Samorn's return to his village, cooperative leaders were instructed to identify those who had returned from the battlefield.<sup>6912</sup> Subsequently, Southwest Zone cadres arrested a group of 29 soldiers, including CHHUN Samorn, who were from various units in Sector 23.<sup>6913</sup> He was warned by a woman who cooked for the Southwest Zone troops, that at least two other groups of soldiers from the East Zone were executed.<sup>6914</sup> Despite the fact that they had no intention to fight the CPK, these soldiers were accused of being traitors, tied up, stripped to their shorts, and taken for execution.<sup>6915</sup> While some of the 29 were being executed, CHHUN Samorn managed to untie himself and escape with two others to Vietnam.<sup>6916</sup>

2057. As set out below, the Chamber heard substantial evidence as to rebellions arising after the East Zone purge and when these forces first made contact with Vietnam.

#### 12.1.6.3.9. *Forces against POL Pot*

2058. Witnesses stated that starting from the arrest of East Zone cadres in May 1978, various groups started to organise themselves to resist POL Pot. LONG Sat testified that he took command of the remaining soldiers in Division 4 (around 340 men) north of National Road 7 (Sector 21), telling them that POL Pot was a traitor and they needed to fight against two fronts to survive: POL Pot's forces on the one hand, and Vietnamese forces on the other.<sup>6917</sup> They had very little food and attacked POL Pot's forces in guerrilla attacks in Suong district and Memot to obtain medicine, rice, food, weapons

<sup>6910</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 9-12, 15-16, 39.

<sup>6911</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, p. 22.

<sup>6912</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 22-23, 72.

<sup>6913</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 23-24, 27, 35-36, 62-64.

<sup>6914</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, p. 72.

<sup>6915</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 23, 35-36, 62-64, 67, 101; T. 29 June 2016 (CHHUN Samorn), E1/446.1, pp. 12-13.

<sup>6916</sup> T. 28 June 2016 (CHHUN Samorn), E1/445.1, pp. 23-25, 71, 75-76, 78-82.

<sup>6917</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 63-64; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 3-4, 25, 68-69, 75-78; T. 7 November 2016 (LONG Sat), E1/496.1, pp. 80-82.

and ammunition.<sup>6918</sup> His group, Regiment 156, did not have any contact with the Vietnamese or share any intelligence with them, until October 1978, as they were engaged in fighting one another.<sup>6919</sup> Similarly, CHEA Sim said that various groups of East Zone military raised forces to fight against POL Pot, starting with 500 men.<sup>6920</sup> CHEA Sim suggests that the uprising was spontaneous and in reaction to POL Pot's purge of the East Zone.<sup>6921</sup> CHEA Sim said that the East Zone forces realised that everyone was being killed, not just a select group, and if they did not rise up, they would also be killed.<sup>6922</sup> The SRV biography of CHEA Sim indicates that on 24 June 1978, he fled to the forest and led the population in resistance against POL Pot.<sup>6923</sup> CHEA Sim then travelled to Vietnam on 15 October 1978 as the leader of a delegation from Sector 20 to establish relations with Vietnam and to seek Vietnam's assistance.<sup>6924</sup>

2059. LONG Sat testified that in October 1978, a group of Vietnamese and Khmer established contact with LONG Sat's forces along with other Khmers, including HENG Samrin, HENG Samkai, OUK Bunchhoeun and POL Saroeun.<sup>6925</sup> They all fled to the forest together.<sup>6926</sup> In November, they met in Kantuot village, in Memot and after lengthy discussions, LONG Sat went to Vietnam to obtain military material and equipment.<sup>6927</sup> He was taken to Ho Chi Minh City by helicopter for the establishment of the Front of National Salvation.<sup>6928</sup> There was also a meeting of hundreds of soldiers and civilians at Snuol, near a rubber plantation to inform the public about the purpose of the Front.<sup>6929</sup> Upon returning to Cambodia, he cooperated with Vietnamese forces to

<sup>6918</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 63-64; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 77-78; T. 7 November 2016 (LONG Sat), E1/496.1, pp. 79-82.

<sup>6919</sup> T. 7 November 2016 (LONG Sat), E1/496.1, p. 95.

<sup>6920</sup> CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651872.

<sup>6921</sup> CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651873.

<sup>6922</sup> CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651874.

<sup>6923</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206277.

<sup>6924</sup> Biographies of CPK Cadres prepared by Vietnamese Intelligence, E3/9720, 1978, ERN (En) 01206277.

<sup>6925</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 64-65; T. 2 November 2016 (LONG Sat), E1/494.1, pp. 25-27, 81-82, 84, 87-88; T. 8 November 2016 (LONG Sat), E1/497.1, pp. 20-22.

<sup>6926</sup> T. 2 November 2016 (LONG Sat), E1/494.1, p. 84.

<sup>6927</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 65; T. 2 November 2016 (LONG Sat), E1/494.1, p. 26.

<sup>6928</sup> T. 2 November 2016 (LONG Sat), E1/494.1, pp. 92-94.

<sup>6929</sup> T. 2 November 2016 (LONG Sat), E1/494.1, p. 94.

attack POL Pot's forces.<sup>6930</sup> LONG Sat said that to defeat POL Pot's forces, they needed to cooperate with Vietnamese troops who had forces and weapons.<sup>6931</sup>

2060. While the dates of the meetings, contact with Vietnam or timing of the creation of the Front of National Salvation differ slightly in the evidence, the Chamber is satisfied that the account of the events following SAO Phim's death and leading to the contact with Vietnam is consistent. The Chamber further relies upon the East German Intelligence documents noted above in finding that there was no support from Vietnam for attacks on POL Pot until late in 1978.

2061. In addition to the above evidence, the Chamber heard evidence of other organised resistance. NONG Nim, SAO Phim's driver, said that after SAO Phim's death, a force of 200-300 was created by SAO Phim's bodyguard unit leader, Cheng, to protect the people from being killed by POL Pot.<sup>6932</sup> The Chamber considers that this was also in Sector 21 near the East Zone headquarters in Suong where the bodyguard unit had been based.

2062. The Chamber finds that beginning after the death of SAO Phim's death, East Zone cadres began to fight against POL Pot's forces. Although some cadres made preparations by storing food and supplies, there is no evidence that these efforts were coordinated with SAO Phim and involved aggressive actions against POL Pot's forces. Furthermore, Vietnam did not provide material support for a rebellion in Cambodia against POL Pot's forces until late in 1978. As noted above, however, the SRV made preparations inside of Vietnam, starting in January 1978 with former CPK cadres who had fled to Vietnam, refugees and prisoners of war.<sup>6933</sup> There was no evidence to suggest that SAO Phim requested or received military support from Vietnam to overthrow POL Pot.<sup>6934</sup>

#### 12.1.6.4. Conclusion

2063. The Chamber has found that SAO Phim's contact with Vietnam ceased in 1977 when armed attacks against Vietnam had been ordered by POL Pot. SAO Phim

<sup>6930</sup> T. 1 November 2016 (LONG Sat), E1/493.1, pp. 64-66.

<sup>6931</sup> T. 2 November 2016 (LONG Sat), E1/494.1, pp. 81-82, 88.

<sup>6932</sup> T. 12 December 2016 (NONG Nim), E1/511.1, pp. 42-43.

<sup>6933</sup> See above, paras 1986-1990.

<sup>6934</sup> See above, paras 1986-1990.

maintained constant contact with the other members of the CPK Standing Committee and executed CPK decisions until his final confrontation in May 1978. It has further found that KE Pauk and SON Sen were sent to the East Zone in 1977 to reinforce East Zone forces against Vietnam and, in parallel, to execute the purge of perceived enemies within the ranks of East Zone cadres. Although SAO Phim and KE Pauk had strong disagreements, SAO Phim nonetheless ordered attacks against the Vietnamese. In addition, SAO Phim did not fight against CPK forces executing arrests in the East Zone up until May 1978. In May 1978, SAO Phim sought an audience with POL Pot to clear up any misunderstandings, thinking that SON Sen was behind the unjustified arrests of East Zone cadres. It was SAO Phim's faith in POL Pot that ultimately proved to be his undoing. As he waited for an escort into Phnom Penh, SAO Phim was attacked by POL Pot's forces and committed suicide. In conclusion, and based upon these facts, the Chamber is not convinced that Vietnam provided SAO Phim unofficial assistance, particularly after 1977 or that SAO Phim had orchestrated a plot to unseat POL Pot from power.

#### 12.1.7. *Vietnam Invasion Argument*

2064. The NUON Chea Defence submits that due to the failure of the attempts to overthrow POL Pot which were supported by Vietnam, it decided to begin a large-scale invasion of DK,<sup>6935</sup> seeking the assistance of the Soviet Union in order to dissuade China from interfering.<sup>6936</sup> To legitimise the invasion, Vietnam recruited Cambodian forces (including HENG Samrin), setting up guerrilla training camps and broadcasting calls for Cambodians to rise up against POL Pot.<sup>6937</sup> It is submitted that Vietnam sought to manipulate public opinion by accusing the CPK of atrocities and acts of aggression.<sup>6938</sup> Vietnam then entered Cambodia in "an unprovoked invasion of a sovereign state in flagrant violation of international law" which was condemned by the international community.<sup>6939</sup>

<sup>6935</sup> NUON Chea Closing Brief, para. 327; T. 16 June 2017 (Closing Statements), E1/523.1, p. 69.

<sup>6936</sup> NUON Chea Closing Brief, para. 328-334; T. 16 June 2017 (Closing Statements), E1/523.1, p. 69.

<sup>6937</sup> NUON Chea Closing Brief, para. 335-336; T. 16 June 2017 (Closing Statements), E1/523.1, p. 70.

<sup>6938</sup> NUON Chea Closing Brief, para. 337-338; T. 16 June 2017 (Closing Statements), E1/523.1, p. 35.

<sup>6939</sup> NUON Chea Closing Brief, para. 340-345; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 71-72.

2065. The Chamber has already rejected the submission that Vietnam instigated or supported internal factions within the Northwest Zone in 1977 and/or the East Zone in 1978. As to Vietnam's invasion and occupation of Cambodia starting in 1979, the Chamber notes that these events relate to events outside the temporal jurisdiction of the ECCC. It further notes that the 1979 invasion cannot retroactively justify alleged criminality occurring between 1975 and 1979, regardless of its legal characterisation as a matter of *jus ad bellum*. The Chamber therefore rejects the submission that CPK policy between 1975 and 1979 was justified on the basis of the existential threat posed by Vietnam.

#### 12.1.8. *Summary of Findings on Internal Purges*

2066. The Closing Order charges two specific purge phenomena which occurred during the CPK regime: the purge of the Old and New North Zones; and the purge of the East Zone.<sup>6940</sup>

2067. The Chamber notes that it did not include the North Zone Security Centre (paras 572-587) or the Steung Tauch Execution Site, East Zone (paras 715-738) within the scope of Case 002/02.<sup>6941</sup> Therefore it does not make findings on these paragraphs of the Closing Order.

##### 12.1.8.1. Central (old North) Zone purge

2068. With regard to the Central (old North) Zone purge, the Closing Order states that following the decision of 30 March 1976 to conduct "smashings" inside the revolutionary ranks, mass killings of Party members in the North Zone and in Sector 106, occurred from the end of 1976, escalating dramatically in early 1977 until the end of that year under the control of KE Pauk.<sup>6942</sup> Within days of the 30 March 1976 Central Committee decision, KE Pauk, notified POL Pot and NUON Chea of his willingness to take measures against alleged traitors within the revolutionary ranks.<sup>6943</sup> Inside the North Zone, the implementation of this 30 March 1976 decision led to the arrest of a high-level cadres in late 1976 and around the same time, S-21 cadres arrested cadres

<sup>6940</sup> Closing Order, paras 192-193.

<sup>6941</sup> Case 002 Additional Severance Decision Annex, p. 1.

<sup>6942</sup> Closing Order, paras 193-194.

<sup>6943</sup> Closing Order, para. 195.

closely associated with KOY Thuon who began confessing under torture around November 1976.<sup>6944</sup> As a result of being implicated in these initial confessions, KOY Thuon was deemed to be a traitor, and sent to S-21. KOY Thuon confessed to having been a member of a massive network of traitors, encompassing a large number of administrative and military cadres in the North Zone, triggering a massive purge of North Zone cadres supervised by KE Pauk while reporting to Committee 870.<sup>6945</sup> Lower-ranking victims of the purge were executed locally and replaced by Southwest Zone cadres that had been sent to assist in the purge by relatives of KE Pauk.<sup>6946</sup> The purges of the North Zone continued until 1978.<sup>6947</sup>

2069. The Chamber recalls its findings in the 1<sup>st</sup> January Dam section of this Judgement as follows. After KOY Thuon was transferred to Phnom Penh after April 1975, he was implicated in several confessions, leading POL Pot to order his arrest and detention at S-21.<sup>6948</sup> A first wave of Central (old North) Zone purges started in February 1977 when “Phnom Penh sent security trucks to arrest the chiefs of the ministries”.<sup>6949</sup> The security trucks returned to arrest Sector 41, 42 and 43 chiefs and in around May 1977 returned again to arrest the heads of districts and some sub-districts. Southwest Zone cadres were sent to the Central (old North) Zone by the Standing Committee, including POL Pot and NUON Chea. Under the direction of KE Pauk, the Southwest Zone cadres took over leadership positions and executed the arrests of dozens of cadres who were sent to S-21. Purges in the Central (old North) Zone had been ordered by NUON Chea, SON Sen and the Standing Committee. Prisoner lists from S-21 confirm that arrests continued throughout the country, and particularly in the Central (old North) Zone, after June 1978 until the end of the regime.<sup>6950</sup>

#### 12.1.8.2. East Zone purge

2070. The Closing Order charges that the purges of the East Zone started from mid-1976 with the arrests of SUOS Neou *alias* Chhouk, former secretary of Sector 24, and CHAN Chakrei *alias* NOV Mean, Secretary of East Zone Division 170.<sup>6951</sup> Both were

<sup>6944</sup> Closing Order, para. 196.

<sup>6945</sup> Closing Order, para. 197.

<sup>6946</sup> Closing Order, para. 197.

<sup>6947</sup> Closing Order, para. 198.

<sup>6948</sup> Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon.

<sup>6949</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713.

<sup>6950</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1468 (fn. 5035).

<sup>6951</sup> Closing Order, para. 199.

arrested pursuant to a decision of the Standing Committee, interrogated and tortured, and produced confessions in which they implicated a number of cadres from Sector 24. These confessions were analysed and by mid-September 1976, SON Sen and S-21 staff had intensified their pursuit of alleged traitors with regard to cadres and former cadres of the East Zone supposedly implicated as CIA, KGB or Vietnamese agents. This launched a series of arrests of East Zone cadres, many of whom were sent to S-21 through 1977.<sup>6952</sup>

2071. The Closing Order further charges that from mid-August 1977, arrests and transfers in the East Zone were orchestrated by SON Sen and KE Pauk using regular forces from the Party Centre, Central Zone units and former Southwest Zone troops placed under Party Centre command.<sup>6953</sup> In March 1978, it charges that a massive escalation of purges of East Zone cadres and combatants occurred in Svay Rieng in Sector 23. This was followed by even more arrests and executions in May-June 1978 in other parts of the East Zone. During this time SAO Phim, East Zone Secretary, committed suicide to avoid arrest. Purges of remaining East Zone cadres, and of cadres who, although operating outside the East Zone were originally from the East Zone continued through to the end of the CPK regime. Some of these cadres were sent from the East Zone to S-21 while others were killed on the spot or moved to other parts of the country. Many other East Zone or ex-East Zone cadres and combatants were sent for “re-education” at worksites such as the Kampong Chhnang Airfield construction site.<sup>6954</sup>

2072. In regard to these charges, the Chamber has made extensive findings above. In sum, it has found that the arrests of CHAN Chakrei in May 1976 and SUOS Neou *alias* Chhouk in August 1976 triggered a continuing cycle of arrests, torture, confessions and executions of East Zone cadres at the hands on Central and Southwest Zone cadres.<sup>6955</sup> In late 1977, *Ta Mok* and SON Sen ordered Southwest Zone forces sent to the East Zone both to counter the Vietnamese forces and to “cleanse” those who collaborated with Vietnamese, *i.e.* to execute the purge of East Zone cadres.<sup>6956</sup> Starting in April and May 1978, thousands of cadres were arrested throughout the East Zone by Southwest

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<sup>6952</sup> Closing Order, para. 199.

<sup>6953</sup> Closing Order, para. 200.

<sup>6954</sup> Closing Order, paras 200-201.

<sup>6955</sup> *See above*, para. 2017.

<sup>6956</sup> *See above*, para. 2021.



Zone and Party Centre forces commanded by SON Sen and KE Pauk.<sup>6957</sup> Some of the cadres were killed on the spot or nearby, some were sent to the Kampong Chhnang Airfield worksite, and others were sent to S-21 to be killed.<sup>6958</sup> SAO Phim attempted to speak with POL Pot, but was physically attacked and committed suicide before he could be arrested.<sup>6959</sup>

## **12.2. S-21 Security Centre (S-21)**

### **12.2.1. Closing Order**

2073. The Closing Order charges the Accused with the crimes against humanity of: (i) murder; (ii) extermination; (iii) enslavement; (iv) imprisonment; (v) torture; (vi) persecution on political grounds; (vii) persecution on racial grounds; and (viii) other inhumane acts through attacks against human dignity at S-21.<sup>6960</sup> The Closing Order further charges the Accused with the grave breaches of the Geneva Conventions of: (i) wilful killing; (ii) torture; (iii) inhumane treatment; (iv) wilfully causing great suffering or serious injury to body or health; (v) wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial; (vi) unlawful deportation of a civilian; and (vii) unlawful confinement of a civilian at S-21.<sup>6961</sup>

2074. According to the Closing Order, the S-21 Security Centre was composed of a detention centre in Phnom Penh and an execution site named Choeung Ek, which was 15 kilometres to the south-west of Phnom Penh.<sup>6962</sup> It was a very important security centre in DK which conducted activities on a national scale, was considered to be an organ of the CPK and held senior-level and important prisoners.<sup>6963</sup> S-21 was under the

<sup>6957</sup> See above, para. 2030.

<sup>6958</sup> See above, paras 2030-2038.

<sup>6959</sup> See above, paras 2047-2054.

<sup>6960</sup> Closing Order, paras 1373, 1381, 1391, 1402, 1408, 1415-1417, 1422, 1434. See also, Annex: List of Paragraphs and Portions of the Closing Order Relevant to Case 002/02, E301/9/1.1, 4 April 2014, pp. 3-4, ERN (En) 00981689-00981690. The Chamber has clarified that the crime of rape for which the Accused are charged is to be interpreted as excluding rape committed in security centres and cooperatives outside the context of forced marriage. See Decision on Lead Co-Lawyers' Rule 92 Submission on the Confirmation of the Scope of Case 002/02 Concerning the Charges of Rape Outside the Context of Forced Marriage, E306/7/3, 30 August 2016, paras 15-20. An appeal against this decision was dismissed as inadmissible by the Supreme Court Chamber. See Decision on Civil Parties' Immediate Appeal against the Trial Chamber's Decision on the Scope of Case 002/02 in Relation to the Charges of Rape, E306/7/3/1/4, 12 January 2017.

<sup>6961</sup> Closing Order, paras 1479, 1491-1493, 1498-1500, 1501-1503, 1504-1506, 1507-1510, 1515-1517, 1518-1520.

<sup>6962</sup> Closing Order, para. 415.

<sup>6963</sup> Closing Order, para. 422.

control of the Standing Committee for its duties in regard to security but under the control of the General Staff with respect to administrative functions, such as food production, personnel and training.<sup>6964</sup>

2075. The Closing Order found that the Military and Security Committee decided on military and security matters, including the operation of S-21,<sup>6965</sup> and that given their positions on the Military Committee, POL Pot, NUON Chea and SON Sen were in charge of S-21.<sup>6966</sup>

2076. According to the Closing Order, individuals that the Party Centre saw as political opponents and who were sent to S-21 were labelled as enemies.<sup>6967</sup> Thousands of prisoners who were mostly Cambodian, including men, women and children were detained at S-21.<sup>6968</sup> The prisoners included: former RAK members; CPK cadres;<sup>6969</sup> former soldiers and cadres of the Khmer Republic or of FUNK; teachers; professors; professionals and foreigners including some Western detainees;<sup>6970</sup> and Vietnamese civilians and soldiers who were generally arrested from or near the main conflict zone along the border with Vietnam.<sup>6971</sup> Prisoners came from all zones and autonomous sectors of Cambodia and the numbers of those who were arrested increased in waves with the internal purges.<sup>6972</sup> Prisoners were forced to work and were detained in poor hygienic conditions with insufficient food and inadequate medical care.<sup>6973</sup> Most prisoners were systematically interrogated and were frequently mistreated, humiliated and tortured by interrogators in order to extract confessions.<sup>6974</sup> The Closing Order established that in or within the vicinity of the S-21 complex and at the Choeng Ek execution site, as many as 12,273 detainees were killed or died as a result of the conditions of detention.<sup>6975</sup>

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<sup>6964</sup> Closing Order, para. 421.

<sup>6965</sup> Closing Order, para. 122.

<sup>6966</sup> Closing Order, para. 123.

<sup>6967</sup> Closing Order, paras 1424-1425.

<sup>6968</sup> Closing Order, paras 423-424.

<sup>6969</sup> Closing Order, paras 424-426.

<sup>6970</sup> Closing Order, paras 432-433.

<sup>6971</sup> Closing Order, paras 433, 437-438, 1484, 1488.

<sup>6972</sup> Closing Order, paras 428-431.

<sup>6973</sup> Closing Order, paras 441-447.

<sup>6974</sup> Closing Order, paras 448-456.

<sup>6975</sup> Closing Order, paras 460-472, 1373, 1381, 1385. The Chamber refers to the discussion in below in section 12.2.22: Prisoner List Data and Analysis.

2077. The Closing Order further found that during military incursions into Vietnam, Vietnamese civilians were captured by CPK forces and unlawfully deported from Vietnam to DK where they were detained at S-21.<sup>6976</sup>

### 12.2.2. *Preliminary Issues*

2078. In addition to specific submissions which are addressed in the factual findings below, the Chamber addresses some of the more general defence submissions raised with respect to S-21.

2079. The NUON Chea Defence submits that as a result of propaganda, a “collective memory” emerged in connection with locations such as S-21, and that, accordingly, witness and Civil Party evidence needs to be approached cautiously “with the spectre of propaganda firmly in mind”.<sup>6977</sup> The Lead Co-Lawyers in their closing statements submitted that the Trial Chamber must consider Civil Party evidence in their cultural context and on a case-by-case basis in order to combat the effects of collective memory.<sup>6978</sup> No other Party made submissions regarding the collective memory of Civil Parties or witnesses in connection with S-21. The Chamber has tested all evidence carefully, and has relied primarily on the testimony of witnesses and Civil Parties who were either insiders or direct victims of the crimes committed at S-21. These individuals testified about their personal experiences and there was no indication or suggestion that their evidence was influenced in any way by a “collective memory” or propaganda about what happened at S-21. As indicated below, the Chamber has further considered the abundant contemporaneous documentary evidence, which it finds reliable and corroborative of much of the testimony, statements and other evidence put before it. Accordingly, the NUON Chea Defence’s submissions in this regard are dismissed as baseless.

2080. The NUON Chea Defence submits that KAING Guek Eav *alias* Duch has limited credibility as a witness, had a limited role at S-21 and enhanced his “knowledge” of events through his review of the Case File and adjusted his testimony accordingly.<sup>6979</sup> The Chamber is fully aware of this observation and approached Duch’s

<sup>6976</sup> Closing Order, paras 1515-1517.

<sup>6977</sup> NUON Chea Closing Brief, paras 430, 434-435.

<sup>6978</sup> T. 13 June 2017 (Closing Statements), E1/294.1, pp. 49-51.

<sup>6979</sup> NUON Chea Closing Brief, paras 438-449.

evidence with particular care to ensure that his testimony was not altered in any way by subsequent access and studying of the Case File. With respect to the factual findings at S-21, the Chamber has been careful to rely on Duch only to the extent that he had contemporaneous knowledge of the facts about which he testified.

2081. As with any witness, where Duch's evidence was clearly based or coloured by speculation, opinion, assumptions, secondary sources or non-contemporaneous information, the Chamber has accorded it no, or very limited, weight. Where Duch was unable to provide evidence based on his direct knowledge about specific details, the Chamber has relied primarily on other first-hand witnesses or documentary evidence. While there were shortcomings in Duch's knowledge and testimony with respect to specific issues, which are addressed in the factual findings below, this did not affect the Chamber's conclusion that in general Duch was a credible witness who testified with candour. He testified multiple times for an extended period of time and gave several interviews. His evidence stood the test of cross-examination and proved to be consistent, detailed and reliable with respect to key issues surrounding the creation, operation and oversight of S-21.

2082. Furthermore, Duch's evidence on a number of issues was corroborated by other witnesses who testified with respect to S-21. In approaching Duch's evidence the Chamber also had regard to any attempts by Duch to shift responsibility away from himself and discounted any part of his testimony which reflected such attempts.<sup>6980</sup> However, the bulk of Duch's evidence bore no indication of bias or attempts to shift responsibility. As a witness, Duch was willing to acknowledge and testify about the nature of the operations at S-21 and did not generally attempt to excuse or deny his own role. The Chamber was therefore satisfied that Duch's evidence could be relied upon with the appropriate caution. The Chamber finds that the blanket assertion by the NUON Chea Defence that the testimony of Duch had limited credibility and that he was "completely clueless in respect of almost the entire S-21 operation", is rejected as baseless.

2083. The NUON Chea Defence calls into question whether CHUM Mey was ever detained at S-21 and suggests that his evidence is "riddled with inconsistencies".

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<sup>6980</sup> See Case 002/01 Appeal Judgement, para. 349.

Particularly, the NUON Chea defence notes that while CHUM Mey asserted he escaped from S-21 with UNG Pech, the latter did not name CHUM Mey when listing the people with whom he escaped.<sup>6981</sup> The Chamber notes that indeed CHUM Mey was not listed by UNG Pech when he spoke in the 1979 in absentia trial of POL Pot and IENG Sary about those who survived S-21.<sup>6982</sup> In addition, CHUM Mey was not in photographs taken of S-21 survivors or interviewed by an East German film crew.<sup>6983</sup> However, the Chamber finds that there is nothing to indicate that UNG Pech exhaustively listed or could recollect the names of all survivors. Similarly, there is nothing to suggest that the photographs taken or the East German documentary purported to include all those who survived S-21. To the contrary, the Chamber is aware that some photographic evidence was removed from S-21 in 1980.<sup>6984</sup> The Chamber therefore finds that the absence of a photograph of CHUM Mey among the S-21 detainees is not conclusive, given that some photographs may have been destroyed before Vietnamese forces entered the facility or were removed from the premises thereafter.<sup>6985</sup>

2084. Contrary to the NUON Chea Defence's submission, the Chamber has carefully considered CHUM Mey's evidence and minor inconsistencies in its factual findings below and concludes that these do not undermine the credible testimony of CHUM Mey that he was detained at S-21 and survived.<sup>6986</sup> This testimony is further corroborated by S-21 prisoner lists which confirm his detention at S-21,<sup>6987</sup> and a written confession which establishes that he was interrogated following his arrest.<sup>6988</sup> The Chamber has

<sup>6981</sup> NUON Chea Closing Brief, para. 465.

<sup>6982</sup> Book by H. J. de Nike, J. Quigley, and K. J. Robinson, *Genocide in Cambodia: Documents from the Trial of POL Pot and IENG Sary*, E3/2144, p. 82, ERN (En) 00190231.

<sup>6983</sup> Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, ERN (En) 00198064. See also, Documentary, *The Angkar*, E3/3095R, ERN V00172442.

<sup>6984</sup> Book by D. Chandler: *Voices from S-21 – Terror and History in Pol Pot's Secret Prison*, E3/1684, 1999, p. 162, ERN (En) 00192855.

<sup>6985</sup> For example, on 26 December 2016, Professor HEYNOWSKI provided the Chamber with some 500 photographs of S-21 prisoners that had been in his possession. See Decision on the Requests by the Co-Prosecutors and the KHIEU Samphan Defence to admit photographs related to the documentation provided by Professor Walter HEYNOWSKI (2-TCW-946), E443/6, 12 January 2017, paras 1-2, 5, ERN (En) 01376059-01376060; Scanned S-21 Photographs, E3/10785, E3/10786, E3/10787, E3/10788, E3/10789, undated.

<sup>6986</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 75-92, 95-100; T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 17-18, 39-41, 44.

<sup>6987</sup> S-21 list of prisoners who entered on 28.10.78, E3/8551, 28 October 1978, ERN (En) 00181755 (recording the entry of CHUM Mei who was described as a member of a sewing unit on 28 October 1978); S-21 list of prisoners, E3/9898, undated, p. 10, ERN (En) 01369197; S-21 list of prisoners who entered in October 1978, E3/10205, undated, p. 8, ERN (En) 01397683.

<sup>6988</sup> S-21 Confession – CHUM Manh *alias* Mei, E3/9253, 8 November 1978, p. 1, ERN (En) 00175536 (noting that he was arrested on 28 October 1978).

also had regard to the involvement of CHUM Mey in a crime-scene re-enactment and Duch's acknowledgement of the harm suffered by CHUM Mey.<sup>6989</sup> Other witnesses including BOU Meng, PRAK Khorn and Duch himself testified that CHUM Mey was detained at S-21.<sup>6990</sup> The Chamber also finds CHUM Mey's explanation as to why he did not know the names of other individuals who were brought to S-21 from his unit to be credible, given that his unit consisted of hundreds or thousands of individuals and given the difference in the dates of arrest.<sup>6991</sup>

2085. The Chamber finds that CHUM Mey's evidence was delivered in a frank and forthright manner and his account of events remained consistent when tested during cross-examination. There was no indication that the suffering which he experienced and witnessed was fabricated in any way. Furthermore, his evidence was consistent with and was corroborated by the testimony received from other credible witnesses. The Chamber thus concludes that CHUM Mey was a credible and reliable Civil Party whose evidence could be relied upon. The NUON Chea Defence's submissions to the contrary are therefore dismissed.

### 12.2.3. *General Considerations on Evidence*

2086. In reaching its factual findings with respect to S-21, the Chamber has primarily relied on both the abundant contemporaneous written evidence recording the activities of S-21 and on the testimony of witnesses and evidence of Civil Parties who appeared in Case 002/02 or Case 002/01. The Chamber also had regard to the prior statements or interviews given by these individuals as support for their live testimony, to assess any contradictions and to consider the manner in which this evidence was discussed during live testimony.<sup>6992</sup>

2087. If a witness or Civil Party testified in Case 002/02 or Case 002/01 and Case 001, the Chamber has primarily referred to the Case 002 testimony, because while the evidence provided in previous proceedings was available to them, only during hearings

<sup>6989</sup> Report on Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 6, ERN (En) 00198003.

<sup>6990</sup> Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 36, ERN (En) 00346694; Case 001 Transcript (PRAK Khan), E3/7463, 21 July 2009, p. 53, ERN (En) 00355161; Case 001 Transcript (KAING Guek Eav), E3/5795, 29 April 2009, p. 91, ERN (En) 00325941; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 13, ERN (En) 00315587.

<sup>6991</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 18-19, 41, 94-97.

<sup>6992</sup> Section 2.4.4.2: Evidence of Civil Parties, Witnesses, and Experts.

in Case 002 did the Parties have the opportunity to fully explore and cross-examine the witnesses on matters relevant to the present case. As the Chamber did not expect each witness to reiterate all of the evidence that they provided in previous hearings and witness statements, it thus views the testimony from each witness in Case 002 holistically, and considers it alongside their previous interviews and statements.

2088. There were several witnesses, such as MAM Nai and BOU Meng, who testified in Case 001 but did not testify in Case 002 for various reasons, and whose transcripts of testimony were admitted in this case.<sup>6993</sup> As the Accused in Case 002 did not have the opportunity to cross-examine these witnesses, the Chamber relies on the Case 001 testimony of these witnesses within the limits set out in this Judgement, especially with regard to the evidence on the acts and conduct of the Accused.<sup>6994</sup> The Chamber has generally had regard to the testimony from Case 001 for the purpose of corroborating testimony received in Case 002 and authenticating documentary evidence.

2089. The Chamber accepts the NUON Chea Defence's submission that the findings made in Case 002 should be based on evidence heard and submissions made in this trial and not on the findings made in Case 001 with respect to S-21.<sup>6995</sup> Contrary to the NUON Chea Defence's submissions regarding Case 001,<sup>6996</sup> the Chamber has not given precedence to findings reached in Case 001 but has reached its factual and legal conclusions based on the evidence admitted and heard in Case 002.

#### 12.2.3.1. Witness and Civil Party evidence

2090. The key witnesses and Civil Parties who testified in this case with respect to S-21 were KAING Guek Eav *alias* Duch, who was the Chairman of S-21 from mid-March 1976 to 7 January 1979;<sup>6997</sup> HIM Huy, who was a guard and later head of a "Special Unit" at S-21 from 1976 to mid-1978;<sup>6998</sup> CHUM Mey, a Civil Party who was detained

<sup>6993</sup> See e.g., Case 001 Transcript (MAM Nai), E3/7458, 13 July 2009; Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009; Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009.

<sup>6994</sup> Section 2.4: Evidentiary and Procedural Principles.

<sup>6995</sup> NUON Chea Closing Brief, para. 427.

<sup>6996</sup> NUON Chea Closing Brief, para. 436.

<sup>6997</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 91-93; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 91-92.

<sup>6998</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; T. 3 May 2016 (HIM Huy), E1/426.1, p. 82; T. 5 May 2016 (HIM Huy), E1/428.1, p. 7. See below, paras 2152, 2158.

at S-21 from October 1978 to 7 January 1979;<sup>6999</sup> TAY Teng, who was a guard at S-21 and Choeng Ek from approximately the end of 1977 or the beginning of 1978, and was transferred to Prey Sar for tempering until the liberation in 1979;<sup>7000</sup> PRAK Khorn, who was a guard and interrogator at S-21 from late 1975 or early 1976 to 7 January 1979;<sup>7001</sup> MAK Thim, who worked in the medical unit at S-21 from about late 1977 or early 1978 until the Vietnamese arrived;<sup>7002</sup> LACH Mean, who was a guard at S-21 from late 1975 or early 1976 to 7 January 1979;<sup>7003</sup> SUOS Thy, who was the record-keeper at S-21 from late 1975 until the Vietnamese liberation, and was responsible for most documentation;<sup>7004</sup> and NOEM Oem *alias* NIM Kim Sreang, who was the head of the photography unit at S-21 from 1976 to 1979.<sup>7005</sup> The Chamber will discuss below in more detail the respective positions and functions of these individuals.

#### 12.2.3.2. Documentary evidence

2091. With respect to S-21 prisoner lists, S-21 photographs and S-21 documents including prisoner biographies, the Chamber has primarily had regard to documentary evidence which has been authenticated by witnesses or which bore sufficient similarity to authenticated documents such that they could be relied upon. The Chamber addresses its approach in more detail below.<sup>7006</sup> As regards the evidence contained in the notebooks kept by S-21 staff and confessions of S-21 prisoners, the Chamber refers to its approach on torture tainted evidence.<sup>7007</sup>

<sup>6999</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 20-21, 37, 41.

<sup>7000</sup> TAY Teng did not remember the exact dates that he began to work at S-21 and Choeng Ek and gave conflicting evidence in this regard. *See* T. 25 April 2016 (TAY Teng), E1/421.1, pp. 13-16 (stating first that he started working at S-21 in the beginning of 1978, then saying that he was sent to S-21 before the arrest of his cousins, whose documents show that they were sent to S-21 in September 1977. TAY Teng ultimately stated that he does not remember the correct date), 17-18 (confirming that he worked at Prey Sar until liberation).

<sup>7001</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 12; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 9-11.

<sup>7002</sup> Like TAY Teng, MAK Thim was also unsure about the date he began to work at S-21, but indicated that he was there for about one year until the arrival of the Vietnamese. *See* T. 2 May 2016 (MAK Thim), E1/425.1, p. 88; T. 3 May 2016 (MAK Thim), E1/426.1, p. 48.

<sup>7003</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 65; T. 26 April 2016 (LACH Mean), E1/422.1, p. 72.

<sup>7004</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 13-14; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 44, 46-47.

<sup>7005</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 23-24; T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 16-17; NIM Kimsreang Interview Record, E3/7639, 22 October 2007, p. 5, ERN (En) 00162733; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198.

<sup>7006</sup> *See below*, Section 12.2.3.2.2: Contemporaneous S-21 Prisoner Lists.

<sup>7007</sup> Section 2.4.6.3: Torture-Tainted Evidence.



12.2.3.2.1. *OCIJ and OCP Prisoner Lists*

2092. During the course of Cases 001 and 002, the OCP and OCIJ attempted to compile their own S-21 prisoner lists based on original documents from S-21, DC-Cam documents, and other contemporaneous sources.<sup>7008</sup> To start, on 16 January 2008 and 6 February 2008, the Co-Prosecutors requested the inclusion of two S-21 prisoner lists compiled and produced by DC-Cam staff into the OCIJ Case File, and their request was granted.<sup>7009</sup>

2093. The first DC-Cam list (hereinafter “DC-Cam Prisoner List I”) was compiled by DC-Cam staff over a period of one year and included the names of 9,805 people.<sup>7010</sup> The second DC-Cam list (hereinafter “DC-Cam Prisoner List II”) was produced by DC-Cam staff in 2006 and contained the name, alias, age, sex, nationality, “function” and date of arrest of 4,186 people detained in S-21.<sup>7011</sup> The Co-Prosecutors submitted that the second list was created by typing information contained in two black handwritten S-21 ledgers – created in 1980 – by employees of the S-21 Museum.<sup>7012</sup> Eight of these employees were heard by OCIJ investigators and corroborated this submission in their WRIs, in which they explained their methodology and role in creating the lists. The employees submitted, *inter alia*, that they gathered the original documents from S-21 itself and surrounding houses, they never witnessed removal of these documents from

<sup>7008</sup> See e.g., Co-Prosecutors’ Request to Include S-21 Prisoner List Documents in Case File Numbers 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D108/17, 5 February 2008; Annex A: Co-Prosecutors’ Request to Include S-21 Prisoner List Documents in Case File Numbers 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D70-Annex A, 21 August 2008; OCP Prisoner List I, E3/1662, undated; Co-Prosecutors’ Request to admit S-21 Prisoner Lists relevant to proving the number and type of victims killed at the S-21, D108/26, 20 March 2008; Co-Prosecutors’ Rule 92 Motion to Disclose Analysis of the Revised S-21 Prisoner List, D288/6.68, 19 May 2009; OCP Prisoner List II, E3/342, 19 May 2009; Annex 2: OCIJ Prisoner List, E3/10604, 3 May 2016; OCP Prisoner List III, E457/6/1.2.15, 2 May 2017; Co-Prosecutors’ Correction of Revised OCIJ S-21 Prisoner List with Annexes A, B, and C, E393/5, 8 June 2017.

<sup>7009</sup> Co-Prosecutors’ Request to Include Documents in Case File No. 002/14-08-2006/ECCC/OCP, Investigation Nos. 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D66, 16 January 2008, paras 1-3, 5; Co-Prosecutors’ Request to Include S-21 Prisoner List Documents in Case File Numbers 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D108/17, 5 February 2008, paras 1-3, 7; Order Concerning Requests for Investigative Actions, D108/46, 22 June 2009, p. 2.

<sup>7010</sup> DC-Cam Prisoner List I, E3/8301, undated; Co-Prosecutors’ Request to Include Documents in Case File No. 02/14-08-2006/ECCC/OCP, Investigation Nos. 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D66, 18 January 2008, para. 2.

<sup>7011</sup> DC-Cam Prisoner List II, D70-Annex A, 21 August 2008; Co-Prosecutors’ Request to Include S-21 Prisoner List Documents in Case File Numbers 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D108/17, 5 February 2008, para. 3.

<sup>7012</sup> Co-Prosecutors’ Request to Include S-21 Prisoner List Documents in Case File Numbers 001/18-07-2007/ECCC/OCIJ & 002/19-09-2007/ECCC/OCIJ, D108/17, 5 February 2008, paras 3-4.

the site, and in creating the lists each entry was made without error; no information was added or omitted.<sup>7013</sup>

2094. On 20 March 2008, the Co-Prosecutors sought admission of their own S-21 prisoner list (hereinafter “OCP Prisoner List I”) during pre-trial investigations into Case Files 001 and 002, in which they combined the DC-Cam Prisoner Lists I and II into a single document, eliminating duplicate entries.<sup>7014</sup> The combined list consists of 370 pages, 12,380 entries and includes, where available, the prisoners’ age, sex, name, alias, position, location of arrest, date of entry, date of execution and remarks.<sup>7015</sup>

2095. On 19 May 2009, the OCP filed a Rule 92 submission in Case 001 proceedings seeking disclosure of a revised version of their previous OCP Prisoner List I (hereinafter “OCP Prisoner List II”), and analysis of the data therein, which includes graphs and charts. The analysis of the OCP Prisoner List II consists of 51 Annexes and groups prisoners by origin and biographical information. Based on the elimination of duplicates following the new analysis, the new number of S-21 detainees was calculated as 12,273.<sup>7016</sup>

2096. The Chamber issued its Judgement in Case 001 on 3 August 2010. It found, *inter alia*, that while the OCP Prisoner List II was incomplete, it established a minimum number of S-21 victims. Moreover, the Chamber found that the actual number of victims was likely to be considerably greater than the 12,273 listed.<sup>7017</sup>

2097. On 16 September 2010, the OCIJ issued the Case 002 Closing Order, in which it cited to the OCP Prisoner List II totalling 12,273 prisoners. The Closing Order,

<sup>7013</sup> CHEY Sopheara Interview Record, E3/4641, 25 March 2008, pp. 2-4, ERN (En) 0018802-0018804; KHOUY Visalmony Interview Record, E3/7648, 10 April 2008, p. 2, ERN (En) 00251293; KHIT Serey Interview Record, E3/7647, 10 April 2008, p. 2, ERN (En) 00285185; LACH Vorleak Kolyan Interview Record, E3/502, 26 March 2008, pp. 2-4, ERN (En) 00186675-00186677; OUCH Pon Interview Record, E3/7650, 24 April 2008, p. 2, ERN (En) 00212281; TAT Leakhena Interview Record, E3/7651, 24 April 2008, p. 2, ERN (En) 00212289; VANTHAN Povdara Interview Record, E3/7649, 23 April 2008, pp. 2-3, ERN (En) 00194956-00194957; YIN Nean Interview Record, E3/7645, 19 March 2008, pp. 2-4, ERN (En) 00269910-00269912 (YIN Nean was involved in the compilation of both DC-Cam lists).

<sup>7014</sup> Co-Prosecutors’ Request to Admit a Compilation List of S-21 Prisoners, D81, 20 March 2008, paras 1-3. *See e.g.*, DC-Cam Prisoner List I, E3/8301, undated; DC-Cam Prisoner List II, D70-Annex A, 21 August 2008; OCP Prisoner List I, E3/1662, undated.

<sup>7015</sup> *See e.g.*, OCP Prisoner List I, E3/1662, undated; Response to Requests to Place Documents on Case File (OCIJ), D108, 28 October 2008.

<sup>7016</sup> *See e.g.*, Co-Prosecutors’ Rule 92 Motion to Disclose Analysis of the Revised S-21 Prisoner List, D288/6.68, 19 May 2009; Annex 1: OCP Prisoner List II, E3/342, 19 May 2009.

<sup>7017</sup> Case 001 Trial Judgement, E188, 26 July 2010, paras 141-143.

echoing the Case 001 Judgement, found that this prisoner list established a minimum number of prisoners detained at S-21 during its operation. The Co-Investigating Judges in their findings also directly relied on many of the OCP Annexes' analyses of prisoner data, such as the number of men, women, and children detained, prisoner origin patterns and the date of purges of important figures.<sup>7018</sup> In 2014, the OCIJ notified the Parties of its discovery of additional DC-Cam documents related to S-21.<sup>7019</sup>

2098. On 30 March 2016, the OCIJ forwarded to the Trial Chamber and the Supreme Court Chamber a new list of S-21 prisoners.<sup>7020</sup> The OCIJ explained that this list was the product of a 24-month project of OCIJ office analyst HIN Sotheany, who reviewed 13,383 contemporaneous S-21 documents, listed in the accompanying submission, and relied on 871 of these documents to produce the list. This OCIJ List indicated a total of 15,101 detainees.<sup>7021</sup> On 5 April 2016, the Trial Chamber admitted the OCIJ's S-21 Prisoner List (hereinafter "OCIJ Prisoner List") along with its list of underlying documents.<sup>7022</sup> All underlying documents that the OCIJ Prisoner list relied on were later admitted into evidence by the Chamber.<sup>7023</sup>

2099. On 8 August 2016, the Co-Prosecutors submitted a supplemental list, compiled based on contemporaneous documents in the 002 Case File, of individuals who were allegedly prisoners at S-21 but were not included in the above OCIJ Prisoner List. The Co-Prosecutors submitted that this information added 1,592 new entries to the S-21 prisoner total.<sup>7024</sup> On 31 August 2016, the Co-Prosecutors requested admission of this

<sup>7018</sup> Closing Order, paras 423-433.

<sup>7019</sup> Notification Concerning Additional Evidentiary Material, E308/4, 30 July 2014 (the OCIJ notified the Trial Chamber of 2,402 additional DC-Cam documents not previously included in the ECCC Case Files, many of which were files related to S-21 such as entry logs, confessions, prisoner biographies, and interviews. The OCIJ noted that these documents would be progressively placed on the Shared Materials Drive for access by all Parties).

<sup>7020</sup> The OCIJ S-21 Prisoner List and explanation of the applied methodology (OCIJ), E393.1, 30 March 2016.

<sup>7021</sup> The OCIJ S-21 Prisoner List and explanation of the applied methodology (OCIJ), E393.1, 30 March 2016, paras 2-4, 7; OCIJ Prisoner List, E3/10604, 30 March 2016. *See also*, Annex 3: List of Documents for OCIJ S-21 Prisoners, E393.3, 5 April 2016 (generally); T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 11-12, 31-32, 36.

<sup>7022</sup> Decision admitting new OCIJ Prisoner List, E393, 5 April 2016, paras 1-2. *See also*, Annex 2: OCIJ Prisoner List 31 March 2016, E3/10604, 5 April 2016 (generally); Annex 3: List of Documents for OCIJ S-21 Prisoners, E393.3, 5 April 2016.

<sup>7023</sup> Decision on NUON Chea Defence Request for Adjournment (E402), E402/1, 12 May 2016, para. 8.

<sup>7024</sup> The original figure put forth by the OCP was 1,606, which was corrected to 1,592 eight months later. Because of this, the subsequent memorandum by the Trial Chamber refers to the 1,606 figure, as it was issued before the correction was made by OCP the following year. *See* Co-Prosecutors' Submission Regarding Office of the Co-Investigating Judges' Combined S-21 Prisoner List with Annexes A & B, E393/2, 8 August 2016, paras 1, 4, 9; Decision on the Co-Prosecutors' Request to admit S-21 List of

list, along with four contemporaneous documents.<sup>7025</sup> On 16 December 2016, the Chamber admitted the Co-Prosecutors' list of additional prisoners.<sup>7026</sup>

2100. On 2 May 2017, the Co-Prosecutors filed their Closing Brief for Case 002/02, which included an annex entitled "Revised OCIJ S-21 Prisoners List" (hereinafter "OCP Prisoner List III").<sup>7027</sup> The Co-Prosecutors explain in their brief that in the course of their review of the OCIJ Prisoner List alongside execution lists and prisoner photographs, they found there to be an additional 1,440 prisoners detained at S-21. The Co-Prosecutors combined the recent additions of 1,440 and 1,592 names into the OCP Prisoner List III found in their annex, creating a new total of 18,133 prisoner entries.<sup>7028</sup> The supporting documents for these additions were admitted into evidence and form part of the Case 002/02 Case File, and are referenced in a variety of columns on the right side of the revised list.<sup>7029</sup>

2101. On 8 June 2017, the Co-Prosecutors filed a correction of their OCP Prisoner List III, stating that they had conducted a final review of the prisoner entries, and in doing so identified 70 entries which they considered to be duplicates. As such, the Co-Prosecutors submit that the new total number of prisoners should be reduced from 18,133 to 18,063.<sup>7030</sup>

#### 12.2.3.2.1.1. Party submissions and Trial Chamber findings regarding OCIJ Prisoner List

2102. At trial, the Defence teams contested the accuracy of the OCP and OCIJ prisoner lists throughout proceedings and in their Closing Briefs.<sup>7031</sup> In particular, the NUON

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Prisoners and four S-21 documents (E393/3), E393/4, 16 December 2016, paras 1, 8; Request for Correction (OCP), E393/2/Corr-1, 13 April 2017, pp. 1-2.

<sup>7025</sup> Co-Prosecutors' Request to Admit S-21 Lists Pursuant to Rules 87(3) and 87(4), E393/3, 31 August 2016, paras 1, 10.

<sup>7026</sup> Decision on the Co-Prosecutors' Request to admit S-21 List of Prisoners and four S-21 documents (E393/3) (TC), E393/4, 16 December 2016, paras 1, 8 (the Chamber found that the four contemporaneous documents were already admitted and that therefore the request in that regard was moot).

<sup>7027</sup> See e.g., OCP Closing Brief, OCP Prisoner List III, E457/6/1.2.15, 2 May 2017.

<sup>7028</sup> OCP Closing Brief, paras 652-654.

<sup>7029</sup> OCP Closing Brief, para. 654. *see also*, OCP Prisoner List III, E457/6/1.2.15, 2 May 2017 (generally).

<sup>7030</sup> Co-Prosecutors' Correction of Revised OCIJ S-21 Prisoner List with Annexes A, B, and C, E393/5, 8 June 2017, paras 1-4.

<sup>7031</sup> See e.g., NUON Chea's Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in Order to Safeguard his Fundamental Fair Trial Rights, E402, 28 April 2016, paras 2, 13; T. 2 May 2015, E1/425.1, p. 63; NUON Chea's Fourth Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (S-21 Operations and Documentary Evidence),

Chea Defence challenged the veracity and reliability of the OCIJ Prisoner List, citing to an example of a listed prisoner with an execution date, for whom it alleged that there were no supporting documents for the said date.<sup>7032</sup> In June 2016, the NUON Chea Defence made several requests to the Trial Chamber, including a request to call witnesses HIN Sotheany and Hiroto FUJIWARA, both of whom were involved in preparation of the S-21 OCIJ Prisoner List. The NUON Chea Defence pointed out that many of the underlying documents had unusual formats or were illegible. Thus, it submitted that the testimony of Ms. HIN and Mr. FUJIWARA was necessary to examine the methodology used in creating the list. In addition, the NUON Chea Defence submitted that the majority of the individuals who appear on all the lists were only registered at S-21 before being sent to Prey Sar, Kampong Chhnang, other re-education centres, or were released and therefore not actually detained within the S-21 premises. The NUON Chea Defence stated that evidence on the Case File demonstrates that a maximum of approximately 5,000 individuals were executed at S-21, supported by the approximate 4,300 biographies found by David CHANDLER, and the 5,512 individuals with execution dates on the OCIJ Prisoner List. The NUON Chea Defence also noted that there were 406 individuals on the OCIJ Prisoner List for whom there was no date of entry, date of arrest or date of execution.<sup>7033</sup>

2103. The Chamber finds that Ms. HIN worked for DC-Cam from 2004-2012, after which she began her work as an analyst consultant for the Office of the Co-Investigating Judges, a position she held from 2014 to 2016.<sup>7034</sup> In her capacity as analyst at the ECCC, Ms. HIN's central function was to review contemporaneous S-21 documents from the DC-Cam and Tuol Sleng Archives, and create a spreadsheet of incoming prisoners arrested and detained at S-21.<sup>7035</sup> Ms. HIN spent the duration of 24 months on this project, and out of the 13,383 documents that she reviewed, she relied on 871

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E412, 7 June 2016, paras 3-4, 33, 37; Reponse de la Defense de M. KHIEU Samphan a la demande de l'Accusation d'admettre en prevue des listes de prisonniers S-21 (E393/3), E393/3/1, 3 October 2016, paras 10-14; KHIEU Samphan Closing Brief, paras 1182-1193; NUON Chea Closing Brief, paras 499-504.

<sup>7032</sup> NUON Chea's Urgent Request for Additional Time to Prepare for the Examination of the Remaining S-21 Witnesses in Order to Safeguard his Fundamental Fair Trial Rights, E402, 28 April 2016, paras 2, 13.

<sup>7033</sup> NUON Chea's Fourth Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (S-21 Operations and Documentary Evidence), E412, 7 June 2016, paras 3-4, 33, 37.

<sup>7034</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 8-9.

<sup>7035</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 9, 11-12.

key documents in creating the list.<sup>7036</sup> She focused mainly on prisoner entry lists, and her review did not encompass prisoner photographs or S-21 staff statements.<sup>7037</sup> The Chamber heard Ms. HIN for one full day on 9 January 2017 as to her qualifications and her methodology in creating the OCIJ Prisoner List.<sup>7038</sup>

2104. During her testimony, Ms. HIN admitted that while she included 5,512 execution dates, she did not have time to review all the available data on the number of deaths; thus, this number stems from an incomplete analysis of the available information.<sup>7039</sup> Ms. HIN admitted that while she reviewed lists of incoming prisoners from 1976 to 1979, she did not complete a full review of execution lists from this time period, and stated that “[f]rankly speaking, there may have [been] errors”.<sup>7040</sup>

2105. The NUON Chea Defence submits that due to Ms. HIN’s partial review of underlying documents, failure to establish their chain of custody and misrepresentation of their meaning, the analyst’s methodology was seriously flawed.<sup>7041</sup> The Co-Prosecutors noted the incomplete nature of the OCIJ Prisoner List and offered their updated list, which they further amended after the end of proceedings.<sup>7042</sup>

2106. The Chamber acknowledges the enormity of available S-21 data and the ensuing difficulty to precisely determine the number of people detained and executed at S-21. The Chamber notes that Ms. HIN speaks and reads Khmer, and is satisfied that, although there were limitations to her analysis, she adopted a reasonable and readily understandable methodology to create a generally reliable list of incoming numbers of S-21 prisoners, based on the information and time available to her. Ms. HIN spent two years analysing and reviewing the data, and her findings were used by the International Co-Investigating Judge for the purpose of his analysis of S-21 numbers.<sup>7043</sup> She appears to have testified truthfully as to both her methodology and experience, and her candour

<sup>7036</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 11-12, 31-32, 36.

<sup>7037</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 39-40, 84-85.

<sup>7038</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1.

<sup>7039</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 42-43, 71, 87-88.

<sup>7040</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 90-91.

<sup>7041</sup> NUON Chea Closing Brief, paras 502-504.

<sup>7042</sup> Co-Prosecutors’ Closing Brief, paras 653-654; OCP Prisoner List III, E457/6/1.2.15, 2 May 2017; Co-Prosecutors’ Correction of Revised OCIJ S-21 Prisoner List with Annexes A, B, and C, E393/5, 8 June 2017, paras 1-4. *See above*, para. 2101.

<sup>7043</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 8-9; Annex 1: The OCIJ Prisoner List and explanation of applied methodology, E393.1, 30 March 2016, pp. 1-2, ERN (En) 01221294-01221295 (paras 1-7).

in admitting minor flaws in the study supports this finding.<sup>7044</sup> The Chamber also notes that HIN Sotheany and the Co-Prosecutors agree that the OCIJ Prisoner List is lacking in regard to information on executions, and was not based on a full review of the evidence.<sup>7045</sup> As such, the Chamber recognises that Ms. HIN's analysis of executions was only partial, and regards the 5,512 executions listed in the OCIJ Prisoner List as a minimum figure.

2107. In any event, the Chamber finds that the OCIJ Prisoner List is an analytical tool rather than independent evidence; as such, the Chamber accords it limited weight in light of the Parties' submissions, witness testimony and contemporaneous documents. The Chamber makes its findings as to minimum ranges of S-21 prisoners arrested and executed below.<sup>7046</sup>

12.2.3.2.1.2. Party submissions and Trial Chamber findings regarding subsequent OCP Lists and amendments

2108. As outlined above, the Co-Prosecutors filed various amendments and new lists subsequent to the OCIJ Prisoner List.<sup>7047</sup> In August 2016, they highlighted the fact that 1,592 prisoner names from their 2009 OCP Prisoner List II were not included in the OCIJ Prisoner List.<sup>7048</sup> The last updated list, the OCP Prisoner List III, calculates the new total of prisoners to above 18,000.<sup>7049</sup>

<sup>7044</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 90-91.

<sup>7045</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 43, 71, 87-88; Co-Prosecutors' Closing Brief, paras 653-654. Additional documents relevant to prisoner totals were made available only after the OCIJ list was created. For example, Professor Walter HEYNOWSKI provided the Court with the Orange Logbook and additional S-21 photographs in December 2016 and January 2017. See Documents Obtained from Professor Walter Heynowski (TC), E443/2, 7 December 2016; Decision on Request to Admit Logbook and to Recall Two Witnesses Regarding S-21, E443/3, 27 December 2016, para. 3; Further Documents Obtained from Professor Walter Heynowski (TC), E443/2/1, 5 January 2017; Decision on the Requests by the Co-Prosecutors and the KHIEU Samphan Defence to Admit Photographs Related to the Documentation Provided by Professor Walter HEYNOWSKI (2-TCW-946), E443/6, 12 January 2017, para. 5.

<sup>7046</sup> See below, para. 2542.

<sup>7047</sup> Co-Prosecutors' Submission Regarding Office of the Co-Investigating Judges' Combined S-21 Prisoner List with Annexes A & B, E393/2, 8 August 2016; Decision on the Co-Prosecutors' Request to admit S-21 List of Prisoners and four S-21 documents (E393/3), E393/4, 16 December 2016; OCP Prisoner List III, E457/6/1.2.15, 2 May 2017; Co-Prosecutors' Correction of Revised OCIJ S-21 Prisoner List with Annexes A, B, and C, E393/5, 8 June 2017.

<sup>7048</sup> Co-Prosecutors' Submission Regarding Office of the Co-Investigating Judges Combined S-21 Prisoner List with Annexes A & B, E393/2, 8 August 2016, paras 1, 5-6; Co Prosecutors' Request to Admit S-21 Lists Pursuant to Rules 87(3) and 87(4), E393/3, 31 August 2016, paras 1, 10.

<sup>7049</sup> Co-Prosecutors' Closing Brief, paras 652-654; OCP Prisoner List III, E457/6/1.2.15, 2 May 2017.

2109. The NUON Chea Defence submits that the Case File is incomplete regarding S-21, and that many of the documents that the OCP and OCIJ rely on in the creation of their lists lack indicia of reliability. As such, the NUON Chea Defence submits that the lists are inaccurate, and posits that the Chamber cannot use the prisoner lists to make any findings other than those related to the number of people registered at S-21.<sup>7050</sup> The KHIEU Samphan Defence reiterates its submission that the Parties' lists are work products that serve as tools, not evidence, and therefore the Chamber must base its conclusions on the underlying record.<sup>7051</sup> In their Closing Statements in Case 002/02, the Co-Prosecutors called attention to Duch's assertion in Case 001 that the more than 12,000 prisoner names in the OCP Prisoner List II constituted a minimum number of detainees. They further elaborated that in creating their updated list, they went through both entry and execution lists, finishing what analyst Ms. HIN started when creating the OCIJ Prisoner List, and confirmed over 18,000 arrests and 11,000 executions.<sup>7052</sup> The NUON Chea Defence disputes the reliability of the S-21 lists and submits that they have no probative value.<sup>7053</sup>

2110. At the outset, the Chamber recalls that the OCP Prisoner List III is merely annexed to the Co-Prosecutors' Closing Brief and constitutes an assessment by the Co-Prosecutors of S-21 documentation already admitted in the Case File. The Chamber considers this Annex to be part of the final submissions of the Co-Prosecutors as opposed to evidence, and accordingly the Chamber will not rely on it as such. The Chamber agrees with the KHIEU Samphan Defence that the list can only be used as a tool and that it is appropriate for the Chamber to only rely on the underlying documents in reaching its conclusions. In this regard, the Chamber notes that the Co-Prosecutors' lists are based on documents already admitted to the Case File, some of which have been authenticated by their authors or have had details confirmed by witnesses or Civil Parties.<sup>7054</sup> The OCP Prisoner List III includes columns to the right side of the document

<sup>7050</sup> NUON Chea's Closing Brief, paras 483, 499-501, 504.

<sup>7051</sup> KHIEU Samphan Closing Brief, paras 1182-1193.

<sup>7052</sup> T. 15 June 2017 (Closing Statements), E1/522.1, pp. 32-34.

<sup>7053</sup> T. 19 June 2017 (Closing Statements), E1/524.1, p. 49.

<sup>7054</sup> *See below*, para. 2115. *See above*, paras 2092-2094. *See e.g.*, Annex A: List of S-21 Prisoners Not included in OCIJ List but for whom contemporaneous S-21 Records Exist on the Case 002 Case File (OCP), E393, undated, ERN (En) 01312114 (listing prisoner names from the contemporaneous S-21 lists of prisoners E3/2285 and E3/3187. Both of these collections were addressed during court hearings. *See below*, para. 2128).



specifying which contemporaneous lists support each entry.<sup>7055</sup> Additionally, evidence on the Case File describes the process that S-21 Museum employees went through in finding and organising the documents found at S-21 shortly after the fall of the regime, shedding light on their chain of custody and reliability.<sup>7056</sup>

2111. The NUON Chea Defence contention that the Case File is incomplete as regards S-21 is accurate and uncontested. Many records from S-21 have disappeared. In addition to documentation initially found in Tuol Sleng, DC-Cam received further documents relevant to S-21 from other sources over time, such as the archives of the DK Ministry of Defence, the Cambodian Ministry of the Interior, and Sweden. There are also collections of documents in Hanoi that were taken from Cambodia, to which researchers do not have access.<sup>7057</sup> DC-Cam's collection of documents alone numbers around one million pages from various sources.<sup>7058</sup> DC-Cam provided documents to Parties upon their request, and as of February 2012, it had disclosed approximately 500,000 pages of documentation, only half of its collection.<sup>7059</sup> When HIN Sotheany created the OCIJ Prisoner List, she reviewed 13,383 documents from the archives of Tuol Sleng and DC-Cam and relied on 871 of these documents; only the latter were admitted to the Case File.<sup>7060</sup>

2112. However, as discussed above, numerous contemporaneous documents have been authenticated and confirmed in Court by witnesses such as Duch and SUOS Thy.

<sup>7055</sup> OCP Prisoner List III, E457/6/1.2.15, 2 May 2017 (columns labelled "DC-Cam Doc No." and "S-21 List E3 Number").

<sup>7056</sup> CHEY Sopheara Interview Record, E3/4641, 9 May 2008, pp. 2-4, ERN (En) 0018802-0018804; KHOUY Visalmony Interview Record, E3/7648, 17 December 2008, p. 2, ERN (En) 00251293; KHIT Serey Interview Record, E3/7647, 10 April 2008, pp. 2-3, ERN (En) 00285185-00285186; LACH Vorleak Kolyan Interview Record, E3/502, 26 March 2008, pp. 2-4, ERN (En) 00186675-00186677; OUCH Pon Interview Record, E3/7650, 24 April 2008, pp. 2-3, ERN (En) 00212281-00212282; TAT Leakhena Interview Record, E3/7651, 24 April 2008, pp. 2-3, ERN (En) 00212289-00212290; VANTHAN Povdara Interview Record, E3/7649, 23 April 2008, pp. 2-3, ERN (En) 00194956-00194957; YIN Nean Interview Record, E3/7645, 19 March 2008, pp. 2-4, ERN (En) 00269910-00269912.

<sup>7057</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 140-142 (discussing the number of confessions); Case 001 Transcript (David CHANDLER), E3/1691, 6 August 2009, p. 23, ERN (En) 00361361 (discussing the S-21 archives at the Ministry of Defence); T. 6 February 2012 (CHHANG Youk), E1/39.1, pp. 8 (discussing DC-Cam receiving documents from the Ministry of the Interior), 67, 90-91; Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684, p. 12, ERN (En) 00182367 (discussing the S-21 archive at the Ministry of the Interior given to DC-Cam); T. 23 July 2012 (David CHANDLER), E1/94.1, pp. 27-30 (discussing the culling of confessions and the existence of documents from S-21 in Hanoi, Vietnam), 36-37 (discussing the destruction of documents).

<sup>7058</sup> T. 1 February 2012 (CHHANG Youk), E1/37.1, pp. 40-41; T. 6 February 2012 (CHHANG Youk), E1/39.1, p. 67.

<sup>7059</sup> T. 24 January 2012 (VANTHAN Dara Peou), E1/32.1, p. 43.

<sup>7060</sup> T. 9 January 2017 (HIN Sotheany), E1/517.1, pp. 30-35.

Further, many of the contemporaneous documents are of similar format and are corroborated by other documents, testimony and WRIs. The Chamber finds this to be an additional indication of their reliability. These lists, while not complete, constitute the foundation for the OCP lists, the OCIJ list, and the Chamber's own analysis of prisoner totals. As discussed in further detail below, they are reliable and probative.<sup>7061</sup> The Chamber therefore dismisses the NUON Chea Defence's submission that the incompleteness of the Case File renders the OCP and OCIJ S-21 Prisoner lists inherently unreliable.

2113. The Chamber reiterates that the various OCP prisoner lists and Closing Brief Annexes, like the OCIJ Prisoner List, are work products and serve as analytical tools created by the Parties to guide the Chamber through S-21 evidence, as opposed to constituting evidence in their own right.<sup>7062</sup>

#### 12.2.3.2.2. *Contemporaneous S-21 prisoner lists*

2114. The Chamber recalls that unless provided otherwise, all evidence is admissible.<sup>7063</sup> It considers various factors relevant to the probative value of evidence before it, such as the circumstances surrounding the creation or recording of evidence, whether the admitted document was an original or a copy, legibility, discrepancies with other versions, deficiencies credibly alleged and other indicia of reliability including chain of custody and provenance. The Chamber also considers the identification, examination, bias, source and motive – or lack thereof – of the authors and sources of the evidence.<sup>7064</sup>

2115. The Case 002/02 Case File contains over 1,000 contemporaneous S-21 lists that vary in scope, frequency, detail and length. As discussed in detail in the following sections, many of these lists were produced by S-21 cadres and staff. The Chamber accords the most weight to the contemporaneous S-21 lists that were authenticated in

<sup>7061</sup> See below, Section 12.2.3.2.2: Contemporaneous S-21 Prisoner Lists.

<sup>7062</sup> See above, para. 2107.

<sup>7063</sup> Internal Rule 87(1). See also, Section 2: Preliminary Issues, para. 42.

<sup>7064</sup> Section 2: Preliminary Issues, para. 61. Recognising the importance of documentary evidence in this trial, the Chamber recalls that it has afforded the Parties ample opportunity to highlight, challenge and respond to documentary evidence, including but not limited to during specifically designated hearings on documents.

court.<sup>7065</sup> The Chamber has also had regard to the numerous S-21 lists that had details within them confirmed by witnesses in court.<sup>7066</sup> These documents were either

<sup>7065</sup> S-21 list of prisoners from the Ministry of Foreign Affairs, E3/1534, undated *authenticated in T.* 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 6-7; S-21 list of prisoners from *Angkar* Hospitals, E3/1536, undated *authenticated in T.* 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 7-9; S-21 list of prisoners who entered on 28 April 1978, E3/2209, 28 April 1978 *authenticated in Case 001 Transcript* (SUOS Thy), E3/7466, 28 July 2009, pp. 8-9, ERN (En) 00356794-00356795; S-21 list of prisoners who entered on 24.5.78, E3/1955, 24 May 1978 *authenticated in Case 001 Transcript* (SUOS Thy), E3/7466, 28 July 2009, p. 9, ERN (En) 00356795; S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978 *verified in T.* 2 June 2016 (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of prisoners entered on 11 July 1978, E3/2242, 11 July 1978 *authenticated in T.* 2 June 2016 (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of prisoners, E3/10062, undated *authenticated in T.* 6 June 2016 (SUOS Thy), E1/432.1, pp. 41-42; S-21 list prisoners postponed in January 1977, E3/1542, 1 February 1977 *authenticated in T.* 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 17-19 and Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 27-28, ERN (En) 00344134-00344135; S-21 Daily Controlling List, E3/8493, 11 April 1976 *authenticated in T.* 2 June 2016 (SUOS Thy), E1/430.1, pp. 24-25; S-21 Daily Controlling List, E3/9955, 8 January 1977 *authenticated in T.* 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 Daily Controlling List, E3/9960, 23 February 1977 *authenticated in T.* 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 Daily Controlling List, E3/9967, 5 March 1977 *authenticated in T.* 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 list of prisoners smashed on 22.3.7X, E3/1538, undated *authenticated in T.* 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 15-16; S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated *authenticated in* (1) T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 16 and (2) T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 88-94; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates *authenticated in* (1) T. 21 November 2016 (SON Em), E1/500.1, pp. 23-25 (referring to S-21 list of prisoners smashed on 18 October 1977, E3/2285 [E3/2286], 19 October 1977, p. 518, ERN (En) 01565278), (2) T. 11 August 2016 (ROS CHUOR Siy), E1/455.1, pp. 96-97 (referring to S-21 list of prisoners who were smashed on 17 March 1977, E3/2285 [E3/2286], 18 March 1977, pp. 216-225, ERN (En) 01564976-01564985), (3) T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 15-16 (referring to S-21 list of prisoners smashed on 21 May 1977, E3/2285 [E3/2286], 7 May 1977, pp. 312-313, ERN (En) 01565072-01565073) and (4) T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 100-101 (referring to S-21 list of prisoners smashed on 9 December 1977, E3/2285 [E3/2286], undated, pp. 486-514, ERN (En) 01565246-01565274; S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977 *authenticated in Case 001 Transcript* (KAING Guek Eav), E1/32.1, 15 June 2009, pp. 11-12, ERN (En) 00341696-00341697.

<sup>7066</sup> S-21 list of prisoners, E3/2178, undated *verified in T.* 30 November 2016 (KHIEV Neab), E1/504.1, pp. 29-30; S-21 list of prisoners from France, E3/9853, undated *verified in T.* 11 August 2016 (ROS CHUOR Siy), E1/455.1, pp. 91-92; S-21 list of prisoners from General Staff, E3/2026, undated *verified in T.* 21 April 2016 (TAY Teng), E1/420.1, pp. 115-116; S-21 list of prisoners from State Commerce, E3/2276, undated *verified in T.* 21 November 2016 (THUCH Sithan), E1/500.1, pp. 56-58; S-21 list of prisoners from Divisions 310 and 920, E3/2592, 5 June 1977 *verified in T.* 6 December 2016 (NUON Trech), E1/507.1, pp. 87-89 and T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 49-54; S-21 list of prisoners from Section: Office S-21, E3/10376, 1 April 1978 *verified in T.* 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 27-28; S-21 list of prisoners who entered on 23 November 1977, E3/1645, 24 November 1977 *verified in* (1) T. 10 March 2016 (CHAN Toi), E1/399.1, pp. 45-48 and (2) T. 28 March 2016 (BUN Leong Chauy), E1/409.1, pp. 40-46; S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977 *verified in T.* 21 November 2016 (SON Em), E1/500.1, pp. 18-25; S-21 list or prisoners entering on 12 February 1978, E3/10450, 12 February 1978 *verified in T.* 23 August 2016 (OM Yeourn), E1/462.1, pp. 19-20; S-21 list of prisoners of Social Affairs, E3/2088, undated *verified in T.* 22 November 2016 (THUCH Sithan), E1/501.1, pp. 54-56; S-21 list of prisoners who entered in March 1977, E3/9845, undated *verified in T.* 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 63-66; S-21 list of prisoners from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated *verified in* (1) T. 14 September 2015 (SEN Srun), E1/346.1, pp. 20-22 and (2) T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 49-50; S-21 list of prisoners from the Public Work, E3/8555, undated *verified in T.* 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 54-55, 63-64; S-21 list of prisoners who entered from 1 November 1976 to 15 November 1976, E3/10061, undated *verified in T.* 15 August 2016 (KAU Sunthara), E1/457.1, pp. 53-56; S-21 list of prisoners from 17 February 1977 to 17 April 1977, E3/10506, 29 April 1977 *verified*

confirmed in form by their authors or users, or aspects of their contents were confirmed by live witnesses, affording all parties the opportunity to confront the witnesses regarding the lists as they testified in court. The Chamber considers the S-21 lists discussed in live proceedings to be representative samples of certain categories of lists, as discussed below, and imputes reliability to the lists on the Case File falling into those categories, with careful comparison and thorough regard to their format, similarities and content.

2116. The reliable lists can be generally grouped, with a few exceptions,<sup>7067</sup> as follows:

1) daily entry lists;<sup>7068</sup>

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*in* (1) T. 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 56, 64 and (2) T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 55-60; S-21 Daily Controlling List, E3/9996, 31 July 1977 *verified in* T. 21 November 2016 (SON Em), E1/500.1, pp. 18-25; S-21 Daily Controlling List, E3/10008, 15 October 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 77-81; S-21 Daily Controlling List, E3/10009, 24 October 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 77-81; S-21 Daily Controlling List of Prisoners, E3/10035, 31 December 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 77-81; S-21 Orange Logbook, E3/10770, multiple dates *verified in* T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 74-48; S-21 list of prisoners, E3/2100, undated *verified in* T. 27 October 2016 (SOV Maing), E1/491.1, pp. 31-33; S-21 list of prisoners, E3/9905, undated *verified in* T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 28-32; S-21 list of prisoners, E3/1651, undated *verified in* (1) T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 61-63 and (2) T. 28 March 2016 (BUN Leong Chauy), E1/409.1, pp. 52-53; S-21 list of prisoners, E3/1949, undated *verified in* T. 29 June 2016 (MEAS Soeurn), E1/446.1, p. 44; S-21 list of prisoners from the East Zone, E3/2229, 2 July 1978 *verified in* T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 38-43; S-21 list of prisoners to be fattened, E3/10087, undated *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 63-68; S-21 list of prisoners from the Ministry of Foreign Affairs, E3/8539, undated *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 47-51; S-21 list of prisoners from the East Zone, E3/2187, undated *verified in* T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 82-84; S-21 list of prisoners, E3/2254, undated *verified in* T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 56-60; S-21 list of prisoners, E3/8463, multiple dates *verified in* T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 41-42; S-21 list of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [*sic*] *verified in* T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 91-95; S-21 list of prisoners, E3/3187, multiple dates *verified in* T. 15 August 2016 (KAU Sunthara), E1/457.1, pp. 64-65; S-21 list of prisoners, E3/10454, multiple dates *verified in* T. 29 November 2016 (KHIEV Neab), E1/503.1, pp. 84-85; S-21 list of prisoners to be taken from Ta Khmao Electricity Station, E3/8607, 20 February 1976 *verified in* T. 15 August 2016 (KAU Sunthara), E1/457.1, p. 63; S-21 list of prisoners from *Yvon* espionage section, E3/8436, undated *verified in* T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 11-12; S-21 list of prisoners of Social Affairs Section, E3/2168, undated *verified in* T. 22 November 2016 (THUCH Sithan), E1/501.1, pp. 53-54.

<sup>7067</sup> See e.g., S-21 list of people released on 26-11-77/Division 920, E3/8648, 2 December 1977; S-21 list of prisoners to be taken from Ta Khmao Electricity Station, E3/8607, 20 February 1976; S-21 list of prisoners from *Yvon* espionage section, E3/8436, undated; S-21 list of seriously ill prisoners, E3/8461, 6 May 1976; S-21 list of prisoners who were assigned to work, E3/1997, 22 August 1978; S-21 list of prisoners “kept”, E3/2231, undated.

<sup>7068</sup> See e.g., S-21 list of prisoners who entered on 28 April 1978, E3/2209, 28 April 1978; S-21 list of people who entered on 24.5.78, E3/1955, 24 May 1978; S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978; S-21 list of prisoners entered on 11 July 1978, E3/2242, 11 July 1978; S-21 list of prisoners who entered on 23 November 1977, E3/1645, 24 November 1977; S-21 list of prisoners entering on 12 February 1978, E3/10450, multiple dates.

- 2) daily controlling lists;<sup>7069</sup>
- 3) monthly entry lists;<sup>7070</sup>
- 4) periodical entry lists;<sup>7071</sup>
- 5) entry lists by origin;<sup>7072</sup>
- 6) interrogation lists;<sup>7073</sup> and
- 7) execution lists.<sup>7074</sup>

2117. These lists were among the contemporaneous documents gathered, processed, and organised by S-21 museum employees, who gave testimony regarding this process.<sup>7075</sup> SUOS Thy, Duch and others gave evidence as to many aspects of the lists such as handwriting, format and the practices of S-21 cadres and staff in keeping these records during its regular course of business.<sup>7076</sup>

<sup>7069</sup> See e.g., S-21 Daily Controlling List, E3/8493, 11 April 1976; S-21 Daily Controlling List, E3/9955, 8 January 1977; S-21 Daily Controlling List, E3/9960, 23 February 1977; S-21 Daily Controlling List, E3/9967, 5 March 1977; S-21 Daily Controlling List, E3/9996, 31 July 1977; S-21 Daily Controlling List, E3/10008, 15 October 1977; S-21 Daily Controlling List, E3/10009, 24 October 1977; S-21 Daily Controlling List, E3/10035, 31 December 1977; S-21 Orange Logbook, E3/10770, multiple dates.

<sup>7070</sup> See e.g., S-21 list of prisoners of Social Affairs, E3/2088, undated; S-21 list of prisoners who entered in March 1977, E3/9845, undated.

<sup>7071</sup> See e.g., S-21 list of prisoners, E3/10062, undated; S-21 list of prisoners from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated; S-21 list of prisoners from the Public Work, E3/8555, undated; S-21 list of prisoners who entered from 1 November 1976 to 15 November 1976, E3/10061, undated; S-21 list of prisoners from 17 February 1977 to 17 April 1977, E3/10506, 29 April 1977.

<sup>7072</sup> See e.g., S-21 list of prisoners, from the Ministry of Foreign Affairs, E3/1534, undated; S-21 list of prisoners from *Angkar* Hospitals, E3/1536, undated; S-21 list of prisoners from France, E3/9853, undated; S-21 list of prisoners from General Staff, E3/2026, undated; S-21 list of prisoners from State Commerce, E3/2276, undated; S-21 list of prisoners from Divisions 310 and 920, E3/2592, 5 June 1977; S-21 list of prisoners from Section: Office S-21, E3/10376, 1 April 1978.

<sup>7073</sup> See e.g., S-21 list of prisoners postponed in January 1977, E3/1542, 1 February 1977; S-21 list of prisoners, E3/2100, undated; S-21 list of prisoners, E3/9905, undated; S-21 list of prisoners, E3/1651, undated; S-21 list of prisoners, E3/1949, undated; S-21 list of prisoners from the East Zone, E3/2229, 2 July 1978; S-21 list of prisoners to be fattened, E3/10087, undated; S-21 list of prisoners from the Ministry of Foreign Affairs, E3/8539, undated; S-21 list of prisoners from the East Zone, E3/2187, undated; S-21 list of prisoners, E3/2254, undated.

<sup>7074</sup> See e.g., S-21 list of prisoners smashed on 22.3.7X, E3/1538, undated; S-21 list of prisoners who died at Office "S-21 Kor (C)", E3/1539 [E3/1540], undated [for S-21C, see below, para. 2153]; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates; S-21 list of prisoners, E3/8463, multiple dates; S-21 list of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [*sic*]; S-21 list of prisoners, E3/3187, undated; S-21 list of prisoners, E3/10454, multiple dates.

<sup>7075</sup> See above, para. 2093.

<sup>7076</sup> S-21 list of prisoners from the Ministry of Foreign Affairs, E3/1534, undated *authenticated in T. 27 March 2012* (KAING Guek Eav), E1/54.1, pp. 6-7; S-21 list of prisoners from *Angkar* Hospitals, E3/1536, undated *authenticated in T. 27 March 2012* (KAING Guek Eav), E1/54.1, pp. 7-9; S-21 list of people who entered on 28 April 1978, E3/2209, 28 April 1978 *verified in Case 001 Transcript* (SUOS Thy), E3/7466, 28 July 2009, pp. 8-9, ERN (En) 00356794-00356795; S-21 list of prisoners who entered on 24.5.78, E3/1955, 24 May 1978 *verified in Case 001 Transcript* (SUOS Thy), E3/7466, 28 July 2009, p. 9, ERN (En) 00356795; S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978 *verified in T. 2 June 2016* (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of prisoners entered on 11 July 1978, E3/2242, 11 July 1978 *verified in T. 2 June 2016* (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of

2118. Many of the lists in the above categories overlap in time and refer to the same individuals, which further supports their veracity.<sup>7077</sup> For example, many daily entry lists from a given year contain names of prisoners who were then also found on monthly or yearly entry lists and execution lists.<sup>7078</sup> There are many other types of lists on the Case File that fall outside the seven above-mentioned categories, such as alleged “release lists”,<sup>7079</sup> lists of prisoners assigned to work, lists of prisoners with illnesses and their condition, and others.<sup>7080</sup> For some lists, it is not clear whether they were created at S-21, or whether they indeed refer to S-21 detainees. Accordingly, the

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prisoners, E3/10062, undated *verified in* T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 41-42; S-21 list of prisoners postponed in January 1977, E3/1542, 1 February 1977 *verified in* (1) T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 17-19 and (2) Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 27-28, ERN (En) 00344134-00344135; S-21 Daily Prisoner Control List, E3/8493, 11 April 1976 *verified in* T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 24-25; S-21 Daily Controlling List, E3/9955, 8 January 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 Daily Controlling List, E3/9960, 23 February 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 Daily Controlling List, E3/9967, 5 March 1977 *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-73; S-21 list of prisoners smashed on 22.3.7X, E3/1538, undated *verified in* T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 15-16; S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated *verified in* (1) T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 16 and (2) T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 88-94. *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, pp. 67-68; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 19-21; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 35-36.

<sup>7077</sup> *See e.g.*, S-21 list of prisoners smashed on 22.03.7X, E3/1538, undated, p. 1, ERN (En) 00233904 *partially duplicates* S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated, p. 1, ERN (En) 00182892; S-21 list of prisoners arrived in February 1977, E3/9844, 2 March 1977, p. 2, ERN (En) 01368609 *partially duplicates* S-21 list of prisoners entering on February 1977, E3/10266, multiple dates, p. 5, ERN (En) 01367702; S-21 list of prisoners entering on 16 March 1978, E3/10230, 16 March 1978, p. 3, ERN (En) 01397780 *partially duplicates* S-21 list of prisoners admitted on 15-16 March 1978, E3/10229, multiple dates, p. 27, ERN (En) 01397774; S-21 list of prisoners who entered on 27 May 1978, E3/10158, 27 May 1978, p. 1, ERN (En) 01462147 *partially duplicates* S-21 list of prisoners, E3/8523, 30 May 1978, p. 7, ERN (En) 01320569.

<sup>7078</sup> S-21 list of prisoners who entered on 4 April 1976, E3/10051, undated, p. 1, ERN (En) 01462095 *partially duplicates* (1) S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 77, ERN (En) 01367205 and (2) S-21 list of prisoners executed from 15 October 1976 to 30 October 1976, E3/3187, undated, ERN (En) 00874331; S-21 list of prisoners who entered on 13 October 1978, E3/10206, undated, p. 1, ERN (En) 01462156 *partially duplicates* S-21 list of prisoners who entered in October 1978, E3/10509, undated, p. 11, ERN (En) 01398621.

<sup>7079</sup> *See below*, Section 12.2.11: NUON Chea Defence’s “Release” Submission.

<sup>7080</sup> *See e.g.*, S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977 (Duch discussed this document in court, noting that these are not actual releases. *See* Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, pp. 11-12, ERN (En) 00341696-00341697); S-21 list of prisoners to be taken from Ta Khmao Electricity Station, E3/8607, 20 February 1976 (Civil Party KAU Sunthara first confirmed that her brother was arrested and later found out that he and other family members were sent to S-21, and was then shown this list with her brother’s name. *See* T. 15 August 2016 (KAU Sunthara), E1/457.1, pp. 62-64); S-21 list prisoners from *Yuon* espionage section, E3/8436, undated (Duch confirmed in court that he knew a prisoner on this list during the regime. *See* T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 11-12); S-21 list of seriously ill prisoners, E3/8461, 6 May 1976; S-21 list of prisoners who were assigned to work, E3/1997, 22 August 1978; S-21 list of prisoners “kept”, E3/2231, undated.

Chamber only relies on the above categories or similarly corroborated lists in its calculations.

2119. The Chamber considers the verified documents to be representative samples from the above-listed categories. Accordingly, other lists which fall within the seven verified list categories and which bear sufficient similarity to the authenticated documents are also found to be reliable by the Chamber. Based on the foregoing, the Chamber is satisfied that the above-listed categories of documents demonstrate sufficient indicia of reliability to serve as a basis for findings regarding the number of prisoners arrested and detained, the number of prisoners executed, and general biographical information such as gender, age and origin. The Chamber addresses each category of lists in more detail in the following sections.

#### 12.2.3.2.2.1. Daily entry lists

2120. As discussed in more detail below, SUOS Thy kept daily entry lists of incoming prisoners at S-21, usually containing the name, alias, gender, origin and age of each detainee.<sup>7081</sup> Sometimes a daily entry list enumerates all prisoners that entered that day, but many times there are multiple lists separately denoting rounds or batches of prisoners that entered in a single day. As such, the daily entry lists are not always comprehensive totals, but discrete groupings of prisoners.<sup>7082</sup> Most were signed by SUOS Thy and he authenticated several representative examples during his testimony in court.<sup>7083</sup> Having regard to the evidence discussed below establishing the temporal scope of the use of the S-21 facility, the Chamber finds that the daily entry lists admitted into evidence reflect only a limited portion of S-21's operations.<sup>7084</sup>

<sup>7081</sup> See below, paras 2155, 2246.

<sup>7082</sup> See e.g., S-21 list of prisoners entering on 5 June 1978, E3/8524, 5 June 1978; S-21 list of prisoners who entered on 18 March 1978, E3/10232, 18 March 1978.

<sup>7083</sup> See e.g., S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978 verified in T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of prisoners entered on 11 July 1978, E3/2242, 11 July 1978 verified in T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 97-98; S-21 list of prisoners who entered on 28 April 1978, E3/2209, 28 April 1978 verified in Case File 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 7-9, ERN (En) 00356793-00356795; S-21 list of people who entered on 24 May 1978, E3/1955, 24 May 1978 verified in Case File 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, p. 9, ERN (En) 00356795.

<sup>7084</sup> See e.g., S-21 daily entry lists: E3/10051; E3/10054; E3/9850; E3/9962; E3/8597; E3/2284; E3/9646; E3/9928; E3/9915; E3/9914; E3/10278; E3/9918; E3/1645; E3/10286; E3/10215; E3/10214; E3/10287; E3/10288; E3/10291; E3/10289; E3/10216; E3/10292; E3/2167; E3/10431; E3/2020; E3/10432; E3/10433; E3/10434; E3/8923; E3/10435; E3/10436; E3/10504; E3/8494; E3/2181; E3/10437; E3/10438; E3/10305; E3/2184; E3/10440; E3/10442; E3/10441; E3/10444; E3/10179;

2121. SUOS Thy described how he received and compiled daily lists of incoming prisoners as part of his position at S-21.<sup>7085</sup> The earliest dated daily entry list that the Chamber considered in its calculations is from 4 April 1976<sup>7086</sup> and the most comprehensive set of daily entry lists cover much of 1978.<sup>7087</sup> Because daily entry lists were authenticated in court by their author, the Chamber finds them to be generally reliable, keeping in mind that they are not necessarily comprehensive for the entire day indicated.

#### 12.2.3.2.2.2. Daily controlling lists

2122. Daily controlling lists differ from other S-21 lists in that they compile prisoner numbers rather than names. Daily controlling lists track the total numbers of prisoners

E3/10445; E3/10446; E3/10448; E3/10450; E3/10451; E3/10452; E3/9847; E3/10245; E3/10246; E3/10219; E3/10221; E3/10222; E3/10224; E3/10225; E3/10226; E3/10227; E3/10228; E3/10230; E3/10232; E3/10233; E3/10234; E3/10235; E3/10236; E3/10237; E3/10240; E3/10241; E3/10242; E3/10243; E3/10244; E3/10234; E3/10239; E3/10378; E3/10379; E3/10380; E3/10362; E3/10382; E3/10364; E3/10367; E3/10383; E3/10384; E3/10385; E3/10386; E3/10370; E3/10371; E3/10238; E3/2210; E3/10368; E3/10387; E3/10372; E3/10373; E3/2209; E3/9883; E3/10374; E3/10390; E3/10138; E3/10137; E3/10391; E3/10139; E3/10140; E3/10392; E3/10141; E3/10142; E3/10144; E3/10145; E3/10393; E3/10146; E3/10395; E3/10152; E3/10153; E3/8519; E3/10154; E3/10156; E3/10157; E3/10158; E3/10396; E3/10397; E3/1955; E3/10160; E3/8706; E3/1962; E3/10177; E3/8524; E3/10187; E3/2234; E3/8525; E3/10188; E3/10180; E3/10181; E3/10182; E3/10040; E3/10190; E3/10191; E3/10184; E3/10192; E3/10193; E3/10196; E3/10197; E3/10199; E3/10099; E3/10101; E3/2242; E3/10121; E3/2243; E3/10108; E3/10109; E3/9903; E3/10111; E3/10213; E3/10114; E3/10118; E3/10119; E3/10360; E3/10421; E3/10359; E3/10133; E3/10132; E3/2248; E3/10130; E3/10201; E3/8540; E3/8541; E3/2249; E3/8472; E3/10202; E3/10203; E3/8543; E3/9882; E3/2250; E3/8546; E3/10206; E3/10207; E3/8548; E3/8549; E3/8547; E3/10208; E3/8551; E3/8654; E3/10212; E3/8553; E3/10171; E3/10296; E3/10290.

<sup>7085</sup> Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 7-9, ERN (En) 00356793-00356795; T. 02 June 2016 (SUOS Thy), E1/430.1, pp. 97-98.

<sup>7086</sup> S-21 list of prisoners who entered on 4 April 1976, E3/10051, undated.

<sup>7087</sup> See e.g., S-21 daily entry lists: E3/10431; E3/2020; E3/10432; E3/10433; E3/10434; E3/8923; E3/10435; E3/10436; E3/10504; E3/8494; E3/2181; E3/10437; E3/10438; E3/10305; E3/2184; E3/10440; E3/10442; E3/10441; E3/10444; E3/10179; E3/10445; E3/10446; E3/10448; E3/10450; E3/10451; E3/10452; E3/9847; E3/10245; E3/10246; E3/10219; E3/10221; E3/10222; E3/10224; E3/10225; E3/10226; E3/10227; E3/10228; E3/10230; E3/10232; E3/10233; E3/10234; E3/10235; E3/10236; E3/10237; E3/10240; E3/10241; E3/10242; E3/10243; E3/10244; E3/10234; E3/10239; E3/10378; E3/10379; E3/10380; E3/10362; E3/2203; E3/10382; E3/10364; E3/10367; E3/10383; E3/10384; E3/10385; E3/10386; E3/10370; E3/10371; E3/10238; E3/2210; E3/8512; E3/10368; E3/10387; E3/10372; E3/10373; E3/2209; E3/9883; E3/10374; E3/10390; E3/10138; E3/10137; E3/10391; E3/10139; E3/10140; E3/10392; E3/10141; E3/10142; E3/10144; E3/10145; E3/10393; E3/10146; E3/10395; E3/10152; E3/2226; E3/10153; E3/8519; E3/10154; E3/10156; E3/10157; E3/10158; E3/10396; E3/10397; E3/2224; E3/1955; E3/10160; E3/8706; E3/1962; E3/10177; E3/8524; E3/10187; E3/2234; E3/2240; E3/8525; E3/10188; E3/10180; E3/10181; E3/10182; E3/10040; E3/10190; E3/10191; E3/10184; E3/10192; E3/10193; E3/10196; E3/10197; E3/10199; E3/10099; E3/10101; E3/2242; E3/10121; E3/2243; E3/10108; E3/10109; E3/9903; E3/10111; E3/10213; E3/10114; E3/10118; E3/10119; E3/10360; E3/10421; E3/10359; E3/10133; E3/10132; E3/2248; E3/10130; E3/10201; E3/8540; E3/8541; E3/2249; E3/8472; E3/10202; E3/10203; E3/8543; E3/9882; E3/2250; E3/8546; E3/10206; E3/10207; E3/8548; E3/8549; E3/8547; E3/10208; E3/8551; E3/8654; E3/10212; E3/8553; E3/10171; 1; E3/10296; E3/10290.



arrested and “taken out” or “subtracted” from S-21 in any given day, tallying the total number of prisoners in the facility at the start and end of each day. The lists consist of a grid dividing prisoners by origin (*e.g.* military section, zones and autonomous sectors and various ministries), and often include annotations at the bottom of the document giving the name and cause of death of certain prisoners. The controlling lists usually reflect data from the previous day, thus the date listed at the bottom of the document is the date the list was created rather than the date to which the figures correspond.<sup>7088</sup>

2123. During the testimony of SUOS Thy on 6 June 2016, the NUON Chea Defence played a clip from a German documentary, “*Die Angkar*”, filmed circa 1980 or 1981, after S-21 had been abandoned. The documentary footage displays a logbook (hereinafter “S-21 Orange Logbook”), which SUOS Thy recognised on screen during the hearing.<sup>7089</sup> In his testimony, SUOS Thy admitted to having the logbook in his custody and control and using it to tally a daily total prisoner count.<sup>7090</sup> Each page in the logbook is a daily controlling list displaying statistical information on total prisoners entering and exiting S-21, and the compilation covers much of 1977.<sup>7091</sup> Other duplicated daily controlling lists identical to those compiled in the S-21 Orange Logbook were already included as part of the 002 Case File before the logbook compilation was discovered.<sup>7092</sup> The daily controlling lists within the S-21 Orange Logbook date from approximately 30 March 1977 to 3 December 1977, and independent controlling lists are found on the Case File that fill in gaps from January

<sup>7088</sup> See *e.g.*, S-21 Daily Controlling List, E3/10008, 15 October 1977, pp. 1-2, ERN (En) 01461723-01461724; S-21 Orange Logbook, E3/10770, multiple dates, p. 326, ERN (En) 01460741. Based on the S-21 daily controlling lists containing two different dates as well as an evaluation of the numbers therein, the Chamber infers that daily controlling lists generally represent the Security Centre’s statistics from day prior to the creation date written at the bottom of the document.

<sup>7089</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 73-75, 78; Documentary, *The Angkar*, E3/3095R, ERN V00172442, 00:23:58-00:25:15. Professor HEYNOWSKI subsequently provided the logbook to the Chamber along with other documentation and photographs. The documentation that was still in good condition was admitted to the Case File. See Decision on Request to Admit Logbook and to Recall two witnesses regarding S-21, E443/3, 27 December 2016, paras 1, 3, p. 1, ERN (En) 01369537. See *above*, para. 2083 (fn. 6985).

<sup>7090</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 73-75, 78; Documentary, *The Angkar*, E3/3095R, ERN V00172442, 00:23:58-00:25:15.

<sup>7091</sup> S-21 Orange Logbook, E3/10770, multiple dates.

<sup>7092</sup> See *e.g.*, S-21 Daily Controlling Lists: E3/9968, E3/9969, E3/9970, E3/9971, E3/9972, E3/9973, E3/9974, E3/9975, E3/10000, E3/10001, E3/10002, E3/10003, E3/10004, E3/10005, E3/10006, E3/10007, E3/10008, E3/10009, E3/10010, E3/10019, E3/10020, E3/10021, E3/10022, E3/10023, E3/10024, E3/10025, E3/10026, E3/10027, E3/10028, E3/10029, E3/10030, E3/10031, E3/10032, E3/10033, E3/10034.

to March and late December 1977.<sup>7093</sup> As with the daily entry lists, the Chamber finds these daily controlling lists to be generally reliable based on in-court authentication by their custodian, SUOS Thy.

#### 12.2.3.2.2.3. Monthly entry lists

2124. The evidence contains monthly entry lists recording the total number of prisoners detained at S-21 over the course of one month.<sup>7094</sup> The lists are usually either organised chronologically by date of entry or grouped by prisoner origin (either by geographical origin or by office and division).<sup>7095</sup> The Chamber has relied on these monthly lists to calculate total entries in preference to the daily entry lists, which were often repetitive or not comprehensive. While giving evidence, Civil Party PHOUNG Yat confirmed the content of a monthly entry list by identifying the name of his brother, who was detained in S-21.<sup>7096</sup> Moreover, part of the information contained in this monthly list is corroborated by another periodical entry list, the content of which was confirmed by other witnesses.<sup>7097</sup> Many other monthly entry lists are corroborated by

<sup>7093</sup> S-21 Orange Logbook, E3/10770, multiple dates. *See also*, S-21 Daily Controlling List, E3/9955, 8 January 1977, ERN (En) 01249682; S-21 Daily Controlling List, E3/9959, 17 February 1977, p. 1, ERN (En) 01461993; Daily Controlling List, E3/9965, 9 March 1977, p. 1, ERN (En) 01461998. The Chamber notes what seems to be an exceptionally early daily controlling list from 11 April 1976. *See* S-21 Daily Prisoner Control List, E3/8493, 11 April 1976, p. 1, ERN (En) 00181623.

<sup>7094</sup> *See e.g.*, S-21 list of prisoners who entered in June 1976 (except for Division 170), E3/10173, undated; S-21 list of prisoners who entered in January 1977, E3/10265, 1 February 1977; S-21 list of prisoners arrived in January 1977, E3/9843, 31 January 1977; S-21 list of prisoners arrived in February 1977, E3/9844, 2 March 1977; S-21 list of prisoners arrived in February 1977, E3/10266, multiple dates; S-21 list of prisoners who entered in March 1977, E3/9845, undated; S-21 list of prisoners entering in May 1977, E3/2590, 3 June 1977; S-21 list of prisoners arrived in May 1977, E3/8660, multiple dates; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977; S-21 list of prisoners August 1977, E3/10274, 1 November 1977; S-21 list of prisoners who entered in September 1977, E3/10275, multiple dates; S-21 list of prisoners from Northwest Zone and West Zone for September 1977, E3/3972, multiple dates; S-21 list of prisoners entering in October 1977, E3/9951, 2 November 1977; S-21 list of prisoners entering in November 1977, E3/9953, 2 December 1977; S-21 list of prisoners December 1977, E3/9950, 7 January 1978; S-21 list of prisoners entered in January 1978, E3/10430, undated; S-21 list of prisoners who entered in January 1978, E3/10505, multiple dates; S-21 list of prisoners, E3/10439, undated; S-21 list of prisoners, E3/8655, multiple dates; S-21 list of prisoners who entered in April 1978, E3/10354, undated; S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978; S-21 list of prisoners who entered in July 1978 (Ministerial Section), E3/10120, undated; S-21 list of prisoners who entered in October 1978, E3/10205, undated; S-21 list of prisoners who entered in October 1978, E3/10509, undated.

<sup>7095</sup> *See e.g.*, S-21 list of prisoners who entered in March 1977, E3/9845, undated; S-21 list of prisoners [who] arrived in January 1977, E3/9843, multiple dates.

<sup>7096</sup> S-21 list of prisoners who entered in March 1977, E3/9845, undated *verified in* T. 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 63-65.

<sup>7097</sup> S-21 list of prisoners who entered in March 1977, E3/9845, undated *partially duplicates* S-21 list of prisoners from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated (*see e.g.*, E3/9845, ERN (En) 01332002 entries 352, 355-362, 364; E3/2956, ERN (En) 00222965 entries 6, 12-18, 21-22) *verified in* (1) T. 14 September 2015 (SEN Srun), E1/346.1, pp. 20-21 and (2) T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 49-50.

smaller lists from within the same month.<sup>7098</sup> Thus, the Chamber finds that monthly entry lists have sufficient indicia of reliability and relies on them accordingly in its calculations.

#### 12.2.3.2.2.4. Periodical entry lists (entry lists by origin)

2125. Many of the S-21 prisoner lists in evidence group the prisoners listed therein by origin, with entry dates spanning random time periods across the duration of S-21's existence. Often the lists do not encompass set increments of time, making them difficult to verify against other, time-bound lists or to count the listed prisoners toward total arrests or deaths without risk of repetition. These lists are labelled by the Chamber as either "periodical entry lists" or "entry lists by origin". Like the other prisoner lists in evidence, these documents often contain information on the identity of the prisoners such as their names, including their alias, gender, origin and age.<sup>7099</sup> Many of these types of lists were authenticated and had their contents affirmed in court.<sup>7100</sup> Due to the abovementioned issues with corroboration and potential repetition, the Chamber

<sup>7098</sup> See e.g., S-21 list of prisoners who entered on 5 February 1977, E3/9962, 6 January 1977 [*sic*], p. 1, ERN (En) 01461995 *partially duplicates* S-21 list of prisoners [who] arrived in February 1977, E3/9844, 2 March 1977, p. 36, ERN (En) 01368643; S-21 list of prisoners who entered on 3 November 1977, E3/9918, 4 November 1977, p. 1, ERN (En) 01461958 *partially duplicates* S-21 list of prisoners admitted in November 1977, E3/9953, 2 December 1977, pp. 9-10, ERN (En) 01367668-01367669; S-21 list of prisoners who entered on 26 and 27 October 1978, E3/10208, ERN (En) 01531397 *partially duplicates* S-21 list of prisoners admitted in October 1978, E3/10205, undated, p. 5, ERN (En) 01397680.

<sup>7099</sup> See e.g., S-21 list of prisoners from the Ministry of Foreign Affairs, E3/1534, undated; S-21 list of prisoners who were Professors and Teachers, E3/3973, undated; S-21 list of prisoners to be exterminated, E3/9908, undated; S-21 list of prisoners, E3/2277, undated; S-21 list of prisoners, E3/9910, undated; S-21 list of prisoners from *Yuon* espionage section, E3/8436, undated; S-21 list of prisoners from Sector 23 of the East Zone, E3/10250, undated; S-21 list of prisoners of Propaganda and Education Section, E3/10253, 8 May 1978; S-21 list of prisoners from the Northwest, E3/10260, 9 March 1978; S-21 list of prisoners, E3/10262, undated; S-21 list of prisoners, E3/10299, undated; S-21 list of prisoners from Sector 105, E3/10302, undated; S-21 list of prisoners, E3/10303, undated.

<sup>7100</sup> See e.g., S-21 list of prisoners from the Ministry of Foreign Affairs, E3/1534, undated *verified in* T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 6-7; S-21 list of prisoners from *Angkar* Hospitals, E3/1536, undated *verified in* T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 7-9; S-21 list of prisoners from General Staff, E3/2026, undated *verified in* T. 21 April 2016 (TAY Teng), E1/420.1, pp. 115-116; S-21 list of prisoners from State Commerce, E3/2276, undated *verified in* T. 21 November 2016 (THUCH Sithan), E1/500.1, pp. 56-58; S-21 list of prisoners from Divisions 310 and 920, E3/2592, 5 June 1977 *verified in* (1) T. 6 December 2016 (NUON Trech), E1/507.1, pp. 87-89 and (2) T. 15 June 2015 (KEO Loeur), E1/316.1, pp. 49-54; S-21 list of prisoners from Section: Office S-21, E3/10376, 1 April 1978 *verified in* T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 27-28; S-21 list of prisoners from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated *verified in* (1) T. 14 September 2015 (SEN Srun), E1/346.1, pp. 20-22 and (2) T. 4 June 2015 (SOU Soeur), E1/310.1, pp. 49-50; S-21 list of prisoners from the Public Work, E3/8555, undated *verified in* T. 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 54-55, 63-64; S-21 list of prisoners, E3/10062, undated *verified in* T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 41-42; S-21 list of prisoners entering on 17 February 1977 to 17 April 1977, E3/10506, 29 April 1977 *verified in* (1) T. 11 August 2016 (PHOUNG Yat), E1/455.1, pp. 56, 64 and (2) T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 55-60.

typically did not rely on these types of lists to calculate the total number of prisoners arrested or killed, but did have regard to these lists to collect biographical information and to corroborate other S-21 prisoner lists.

#### 12.2.3.2.2.5. Interrogation lists

2126. Interrogation lists contain similar prisoner data to the abovementioned documents, but they additionally note the stage that prisoners were in at a given time during their detention at S-21, such as “confessed”, “making record”, “suspended”, “finished”, and/or the name of their interrogator. The formats of interrogation lists vary, and they occasionally note when a prisoner had died.<sup>7101</sup> There are several lists falling into this category that were verified and/or discussed in court.<sup>7102</sup>

2127. Because interrogation lists display the status of a set of prisoners at any given time at S-21, they present the same difficulties in calculating total prisoner numbers as the periodical entry lists or entry lists by origin. Interrogation lists provide a glimpse of a moment in time in the interrogation process at S-21, but the prisoners listed therein were arrested or killed on different, random dates. Thus, the Chamber relies on interrogation lists for biographical information, insight into the interrogation process and in relation to the functioning of the security centre, but it does not use these lists to calculate the total number of prisoners arrested or killed.

#### 12.2.3.2.2.6. Execution lists

2128. Lastly, the Case File contains S-21 execution lists. These lists record deaths over

<sup>7101</sup> See e.g., S-21 list of prisoners interrogated on 7 April 1978, E3/2200, 7 April 1977; S-21 list of prisoners, E3/2197, 3 April 1977; S-21 list of prisoners, E3/2192, undated; S-21 list of prisoners, E3/1949, undated; S-21 list prisoners postponed in January 1977, E3/1542, 1 February 1977, p. 9, ERN (En) 00233981 (a notation reads “decided on 17 February 1977 to: 1) Smash: 115”); S-21 list of prisoners, E3/2178, undated, pp. 1-2, ERN (En) 00631977-00631978 (noting execution dates for 23 of the 66 prisoners on the interrogation list).

<sup>7102</sup> See e.g., S-21 list of prisoners postponed in January 1977, E3/1542, 1 February 1977 *verified in* (1) T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 17-19 and (2) Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 27-28; S-21 list of prisoners, E3/1651, undated *verified in* (1) T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 61-63 and (2) T. 28 March 2016 (BUN Leong Chauy), E1/409.1, pp. 52-53; S-21 list of prisoners, E3/1949, undated *verified in* T. 29 June 2016 (MEAS Souen), E1/446.1, p. 44; S-21 list of prisoners, E3/2229, 2 July 1978 *verified in* T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 38-43; S-21 list of prisoners, E3/2254, undated *verified in* T. 13 August 2015 (CHHIT Yoeuk), E1/330.1, pp. 56-60; S-21 list of prisoners, E3/8539, undated *verified in* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 47-51; S-21 list of prisoners, E3/9905, undated *verified in* T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 28-32.

different periods of time, ranging from one day to over one year.<sup>7103</sup> Execution lists are sometimes grouped by prisoner origin, for example by vocation or geographic origin.<sup>7104</sup> Often the term “smashed” is used to indicate execution. These lists indicate that prisoners were typically killed in bigger groups and with more irregularity than the steady stream of prisoner entries into S-21.<sup>7105</sup> The Case File contains three lengthy execution lists that span each year from 1976 to 1978. These execution lists are compilations that contain many discrete lists within them and are generally comprehensive over the year in question.<sup>7106</sup> Portions of each of these three lists were testified to in court,<sup>7107</sup> and the Chamber has primarily relied on these yearly compilations when calculating the total number of deaths at S-21. The Chamber has also relied on these lists to draw conclusions as to purges across different zones.<sup>7108</sup> Many other iterations of S-21 execution lists were authenticated and confirmed by witnesses in court,<sup>7109</sup> and as such the Chamber considers execution lists to be generally

<sup>7103</sup> See e.g., S-21 list of prisoners, E3/3973, undated, ERN (En) 00837530, 00837535. See also, S-21 list of prisoners smashed on 20-6-77, E3/2011, 22 May 1977 [sic]; S-21 list of prisoners who were destroyed on 30-31 October 1978, E3/10456, 31 October 1978; S-21 list of prisoners smashed on 31-12-1978, E3/10455, undated.

<sup>7104</sup> See e.g., S-21 list of prisoners who were Professors and Teachers, E3/3973, undated; S-21 list of prisoners to be exterminated, E3/9908, undated; S-21 list of prisoners, E3/3187, multiple dates; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates; S-21 list of prisoners, E3/8463, multiple dates.

<sup>7105</sup> See e.g., S-21 list of prisoners who were Professors and Teachers, E3/3973, undated; S-21 list of prisoners to be exterminated, E3/9908, undated; S-21 list of prisoners smashed on 22.03.7X, E3/1538, undated; S-21 list of prisoners who were destroyed on 30-31 October 1978, E3/10456, 31 October 1978; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates; S-21 list of prisoners, E3/8452, undated; S-21 list of prisoners who already died, E3/8513, undated; S-21 list of prisoners executed in 1976, E3/3187, multiple dates; S-21 list of prisoners, E3/8463, multiple dates; S-21 list of prisoners smashed on 20-6-77, E3/2011, 22 May 1977 [sic]; S-21 list of prisoners smashed on 31-12-1978, E3/10455, undated. For the meaning of “smashed” in the context of S-21 documentation, see below, para. 2351.

<sup>7106</sup> S-21 list of prisoners, E3/3187, multiple dates; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates; S-21 list of prisoners, E3/8463, multiple dates.

<sup>7107</sup> S-21 list of prisoners, E3/3187, multiple dates verified in T. 15 August 2016 (KAU Sunthra), E1/457.1, pp. 64-65; S-21 list of prisoners, E3/2285 [E3/2286], multiple dates verified in (1) T. 21 November 2016 (SON Em), E1/500.1, pp. 23-25 (referring to S-21 list of prisoners smashed on 18 October 1977, E3/2285 [E3/2286], 19 October 1977, p. 518, ERN (En) 01565278), (2) T. 11 August 2016 (ROS CHUOR Siy), E1/455.1, pp. 96-97 (referring to S-21 list of prisoners who were smashed on 17 March 1977, E3/2285 [E3/2286], 18 March 1977, pp. 216-225, ERN (En) 01564976-01564985), (3) T. 03 June 2016 (SOUS Thy), E1/431.1, pp. 15-16 (referring to S-21 list of prisoners smashed on 21 May 1977, E3/2285 [E3/2286], 7 May 1977, pp. 312-313, ERN (En) 01565072-01565073) and (4) T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 100-101 (referring to S-21 list of prisoners smashed on 9 December 1977, E3/2285 [E3/2286], undated, pp. 486-514, ERN (En) 01565246-01565274; S-21 list of prisoners, E3/8463, multiple dates verified in T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 41-42.

<sup>7108</sup> See below, paras 2542-2543, 2547-2548, 2550, 2552.

<sup>7109</sup> S-21 list of prisoners smashed on 22.03.7X, E3/1538, undated verified in T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 15-16; S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated verified in (1) T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 16 and (2) T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 88-94; S-21 list of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [sic] verified in T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 91-95; S-21 list of prisoners, E3/10454, multiple dates verified in T. 29 November 2016 (KHIEV Neab), E1/503.1, pp. 84-85.

reliable. The Chamber notes that, while not common, at times there are inconsistencies or lack of clarity in execution lists as to whether prisoners were killed, or died of disease or due to conditions of detention.<sup>7110</sup> This constitutes one of the reasons why the numbers the Chamber has calculated based on the S-21 prisoner lists are approximate figures rather than precise findings.

#### 12.2.3.2.3. *S-21 confessions*

2129. YOUK Chhang, the director of DC-Cam, indicated in 2009 that DC-Cam had collected 5,017 confessions from several different locations.<sup>7111</sup> A large number of confessions were obtained from the Tuol Sleng archives, which were left at S-21, recovered in 1979, and preserved *in situ* upon the establishment of the Tuol Sleng Genocide Museum in 1980.<sup>7112</sup> The Chamber admitted at least 479 of these confessions, which were presumptively obtained through the use of torture, some of which also contain annotations by Duch.<sup>7113</sup> An additional number of original confessions were obtained from the house of a former Khmer Rouge cadre on Street 240.<sup>7114</sup> Some of these latter confessions contain annotations that Duch has identified as belonging to SON Sen and NUON Chea, although this point is contested.<sup>7115</sup> In assessing confessions, including any annotations, the Chamber scrupulously adheres to its decision on the use of torture-tainted evidence.<sup>7116</sup>

<sup>7110</sup> See e.g., S-21 list of prisoners who died from 1.7.76 to 15.6[sic].76, E3/8452, undated, ERN (En) 00843420 (the document heading states “prisoners who died” but a right-hand column indicates an “Execution Date”); S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated, pp. 10-12, ERN (En) 00182901-00182903 (eight prisoners are listed as having been smashed on 30 March 1976, but also have the label “by illness”; additionally, the bottom of the list states that nine prisoners died of sickness); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837640-00837641 (the list title indicates execution, but four prisoners with execution dates are listed as having died “of illness”).

<sup>7111</sup> YOUK Chhang Interview Record, E3/5779, 19 August 2009, pp. 4-5, ERN (En) 00371398-00371399.

<sup>7112</sup> Book by J. Ciorciari and YOUK C.: *Documenting the Crimes of Democratic Kampuchea*, E3/161, p. 227, ERN (En) 00291510; YOUK Chhang Interview Record, E3/5779, 19 August 2009, pp. 4-5, ERN (En) 00371398-00371399.

<sup>7113</sup> T. 1 February 2012 (YOUK Chhang), E1/37.1, pp. 47-49; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 13-14, 48. See also, Section 2.4.6.3: Torture-Tainted Evidence.

<sup>7114</sup> T. 1 February 2016 (YOUK Chhang), E1/37.1, pp. 44-46. See also, Section 5: Administrative Structures, paras 347-349; Section 6: Communication Structures, para. 455.

<sup>7115</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 2-15. In addition, two or three of these confessions contained more pages than the same confession obtained at Tuol Sleng. YOUK Chhang therefore preserved these pages by labelling them as “At Risk Documents” and gave them to a UN official in 1998 upon request. See YOUK Chhang Interview Record, E3/5779, 19 August 2009, pp. 4-5, ERN (En) 00371398-00371399. See also, DC-Cam “At Risk” Documents, E3/8468, multiple dates.

<sup>7116</sup> Decision on Evidence Obtained Through Torture (TC), E350/8, 5 February 2016.

2130. Although confessions may only be used for legally permissible purposes, annotations made upon the confession by someone other than the confessor do not form part of the torture-tainted statement and may be used as evidence.<sup>7117</sup> With respect to S-21 confessions, the Chamber has had regard to annotations and notes included in these confessions which tended to corroborate the arrest, mistreatment or killing of prisoners or the way in which these confessions were prepared and communicated. The Chamber has primarily relied on annotations which have been authenticated by a witness or discussed during live testimony. The Chamber has also had regard to annotations made by individuals who, according to other evidence, were S-21 cadres involved in interrogations. The Chamber is satisfied that these annotations and notes, which were made by S-21 staff or CPK officials who received the confessions, do not form part of the underlying confession. Accordingly, even if the underlying confession was tainted by torture, the Chamber is satisfied that it may safely rely on these annotations to determine the approach taken to obtaining confessions, how these confessions were used, who was involved in the interrogation process and to whom the confessions were passed. The Chamber refers to its general considerations on evidence with respect to torture-tainted evidence in Section 2: Preliminary Issues.<sup>7118</sup>

#### 12.2.3.2.4. *S-21 notebooks*

2131. The Chamber also has before it three notebooks of former S-21 personnel or interrogators that record events and reflect political trainings that they received, with entries from approximately July and August 1976, January to July 1978, and April to December 1978.<sup>7119</sup> These S-21 notebooks include the notes of S-21 cadres or interrogators and include discussions of interrogation techniques.<sup>7120</sup> They also include evidence relevant to internal purges, the identification of enemies of the regime and the subject matter of self-criticism meetings.<sup>7121</sup> While some of the contents of these

<sup>7117</sup> Decision on Evidence Obtained Through Torture (TC), E350/8, 5 February 2016, para. 49. *See also*, Section 2.4.6.3: Torture-Tainted Evidence.

<sup>7118</sup> Section 2.4.6.3: Torture-Tainted Evidence.

<sup>7119</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates; S-21 Notebook of POU Phally, E3/8368, multiple dates; Combined S-21 Notebook, E3/834, multiple dates.

<sup>7120</sup> *See e.g.*, S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 1, 10, ERN (En) 00184579, 00184588; S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 4-7, ERN (En) 00182948-00182951; Combined S-21 Notebook, E3/834, multiple dates, pp. 5-6, 14, ERN (En) 00184487-00184488, 00184496.

<sup>7121</sup> *See e.g.*, S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 12-14, 16-18, ERN (En) 00184590-00184592, 00184594-00184596; S-21 Notebook of POU Phally, E3/8368, multiple dates, pp.

notebooks may be tainted by reference to the content of torture-derived confessions, the notebooks also contain relevant information, reliance on which is not prohibited by the Convention Against Torture.<sup>7122</sup>

2132. One of those notebooks belonged to MAM Nai *alias* Chan who was an interrogator and Duch's assistant at S-21 ("MAM Nai's Notebook").<sup>7123</sup> MAM Nai had worked with Duch in Amleang Commune in M-13 as an interrogator<sup>7124</sup> and followed Duch to S-21, where, after a brief involvement in logistical matters, he was assigned as chief of the interrogators.<sup>7125</sup> MAM Nai himself confirmed that this notebook contained his handwriting and notes he took while transcribing lectures given by Duch.<sup>7126</sup> Duch authenticated a second notebook as belonging to one of his interrogators named POU Phally ("the POU Phally Notebook"),<sup>7127</sup> and confirmed that he gave instructions consistent with those found in the notebook with respect to methods of interrogation.<sup>7128</sup>

2133. A third notebook was described as the "Pon-Tuy" notebook.<sup>7129</sup> When presented with this notebook in Case 002, Duch testified that it did not belong to Comrade Tuy, an interrogator at S-21,<sup>7130</sup> but that he had been presented with a document in Case 001 in which he identified the handwriting of TORNG Seng Hoeung *alias* Pon, another S-21 interrogator.<sup>7131</sup> However, in the former document he could only recognise the first

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1-6, 7-8, ERN (En) 00182945-00182950, 00182951-00182952; Combined S-21 Notebook, E3/834, multiple dates, pp. 4-5, 9, ERN (En) 00184486-00184487, 00184491.

<sup>7122</sup> See Section 2.4.6.3: Torture-Tainted Evidence.

<sup>7123</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154192.

<sup>7124</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 14-15, ERN (En) 00351097-00351098.

<sup>7125</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 10, 19, ERN (En) 00351093, 00351102; Khmer Rouge Black Journal, E3/1170, undated, p. 48, ERN (En) 00602590; T. 29 April 2009 (KAING Guek Eav), E3/5795, p. 93, ERN (En) 00325943.

<sup>7126</sup> Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009, pp. 19-20, 23, ERN (En) 00351805-00351806, 00351809. The Chamber was unable to summon MAM Nai as a witness in Case 002/02 because he passed away on 10 May 2012. MAM Nai Death Certificate, E29/508, 17 August 2016.

<sup>7127</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates; S-21 list of prisoners interrogated on 02 April 1978, E3/2196, multiple dates, p. 3, ERN (En) 01210351 (listing "POUL Phali" as an interrogator); DC-Cam list of Interrogators at Tuol Sleng Prison (S-21): 1975-79, E3/8465, undated, pp. 191-195, ERN (En) 01185265-01185269. See below, para. 2156.

<sup>7128</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 56-57.

<sup>7129</sup> Combined S-21 Notebook, E3/834, multiple dates.

<sup>7130</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, ERN (En) 00866371, 00866374 (containing annotations signed by Tuy); DC-Cam List of Interrogators at Tuol Sleng Prison (S-21): 1975-79, E3/8465, undated, pp. 125-131, ERN (En) 01185199-01185205. See below, para. 2156.

<sup>7131</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 92-93; S-21 Confession – LENG Sim Hak *alias* Sei, E3/1853, multiple dates, p. 6, ERN (En) 00346986 (comment on interrogation and signature of Pon); Letter to Pon, E3/927, 1 October 1976, ERN (En) 00172213 (instructing Pon regarding interrogation); DC-Cam list of Interrogators at Tuol Sleng Prison (S-21): 1975-79, E3/8465, undated, pp. 153-159, ERN (En) 01185227-01185233. See below, para. 2156.



two pages and testified that it belonged to Comrade Oeun,<sup>7132</sup> yet another interrogator at S-21.<sup>7133</sup> The Chamber notes that Duch's testimony in Case 002/02 somewhat contradicts a clarification he provided to the Co-Investigating Judges in Case 001, where he noted that the first portion of the book belonged to Tuy and proceeded to identify the signature of Tuy.<sup>7134</sup> The Chamber confirms that there are portions of this notebook which include the signature of Tuy and other portions which refer to the opinions provided by Pon. Having regard to the different handwriting in the original Khmer, the Chamber finds that this notebook is a compilation of notes made by several different S-21 cadres rather than Tuy alone.<sup>7135</sup> The Chamber will thus refer to this as the "Combined S-21 Notebook". While the Chamber cannot identify the author of each page in the Combined S-21 Notebook, the Chamber is satisfied that the notebook has been sufficiently authenticated and therefore considers it appropriate to have regard to its contents. In reaching this conclusion, the Chamber observes that the Combined S-21 Notebook makes reference to S-21 cadres, prisoners at S-21 and speeches or training sessions which have been corroborated.<sup>7136</sup>

2134. As a general observation, the Chamber notes that these notebooks refer to individuals who were arrested and detained at S-21 according to other S-21 records such as prisoner and execution lists.<sup>7137</sup> The content of the notebooks were also discussed with witnesses who testified in this case and referred to S-21 staff and training sessions.<sup>7138</sup> These factors add further weight to the authenticity and reliability of this

<sup>7132</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 93.

<sup>7133</sup> See e.g., S-21 list of prisoners interrogated on 02 April 1978, E3/2196, multiple dates, pp. 1, 7, 11, 20, ERN (En) 01210349, 01210355, 01210359, 01210368 (noting that Comrade Oeun was the interrogator for a number of S-21 prisoners); DC-Cam list of Interrogators at Tuol Sleng Prison (S-21): 1975-79, E3/8465, undated, pp. 347-362, ERN (En) 01185421-01185436.

<sup>7134</sup> Note from Duch to Co-Investigating Judges in Case 001, E3/5751, p. 1, ERN (En) 00197734.

<sup>7135</sup> The Chamber notes that second part of this document from ERN (Kh) 00077534 until the end appears to be the diary of an individual. The Chamber does not consider this to be a part of the S-21 Combined Notebook.

<sup>7136</sup> See below, para. 2170.

<sup>7137</sup> See e.g., S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 5, ERN (En) 00225383. Cf. (1) S-21 list of prisoners who were inside *Angkar*, E3/10050, undated, pp. 2, 4, ERN (En) 01556263, 01556265 (both listing OUCH Chan Tol and SOK Sarin), (2) S-21 list of prisoners who entered Office S-21 in 1976, E3/9852, 26 May 1977, p. 44, ERN (En) 01367340 (both listing OUCH Chan Tol and YIM Savuth), (3) S-21 list of prisoners died of disease or executed from 1-8-76 to 15-8-76, E3/8451, undated, p. 2, ERN (En) 00784448 (both listing KAING Hel) and (4) S-21 list of prisoners killed in 1978, E3/8463, multiple dates, pp. 1-2, ERN (En) 01554519-01554520 (both listing CHAN Chakrey/Chakrei and Chhouk); S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 27, ERN (En) 00184605. Cf. (1) S-21 list of prisoners from the East Zone, E3/10251, undated, p. 1, ERN (En) 01395618 (both listing LENG Bunsean) and (2) S-21 list of prisoners killed in 1978, E3/8463, multiple dates, p. 2, ERN (En) 01554520 (both listing Chan Chakrey/Chakrei).

<sup>7138</sup> See above, paras 2132, 2133, 2165.

documentary evidence. The Chamber is therefore satisfied that it can rely on the contents of these notebooks with respect to the content of training sessions and the approach taken to interrogations and obtaining confessions.

#### 12.2.4. *Locations and Establishment*

2135. As discussed above, the M-13 Security Centre was the precursor to S-21 and it was operational by July 1971.<sup>7139</sup> From July 1971 until mid-1973, M-13, which was officially known as the Special Zone Police Office, was directed by VORN Vet and subsequently by SON Sen until January 1975.<sup>7140</sup> M-13 had two operations: M-13A, directly supervised by Duch and tasked with detaining and interrogating individuals suspected of being spies,<sup>7141</sup> and M-13B, supervised by Duch's deputy and tasked with temporarily detaining those who had committed minor offences.<sup>7142</sup> M-13 ceased operating on 30 April 1975.<sup>7143</sup> Duch continued to reside in Amleang Commune, where M-13A had been located from mid-1973, until 20 June 1975 when SON Sen called on him to attend a training in Phnom Penh, after which he was transferred to work in IN Lon *alias* Nat's office.<sup>7144</sup>

2136. On 15 August 1975, SON Sen met with Nat and Duch and informed them that “*Angkar*” had decided to create a new *Santebal*<sup>7145</sup> office and that they would be responsible for its creation, initially with Nat as chief and Duch as deputy. This facility

<sup>7139</sup> Section 3: Historical Background, paras 245-246. *See also*, KAING Guek Eav Interview Record, E3/65, 7 August 2007, pp. 2, 9, ERN (En) 00147518, 00147525.

<sup>7140</sup> Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 25, ERN (En) 00315944; Case 001 Trial Judgement, para. 115. *See also*, Section 3: Historical Background, para. 246.

<sup>7141</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, pp. 41, 49; Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 20, 66, 71, 75, ERN (En) 00314267, 00314313, 00314318, 00314322; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 49, ERN (En) 00315623. *See also*, Section 3: Historical Background, paras 247-248.

<sup>7142</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 41; T. 6 April 2009 (KAING Guek Eav), E3/62, p. 75, ERN (En) 00314322; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, p. 65, ERN (En) 00315639. *See also*, Section 3: Historical Background, para. 249. The Chamber enters no findings with respect to M-13, which falls outside the scope of the Closing Order.

<sup>7143</sup> Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 29, ERN (En) 00315948.

<sup>7144</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 15-16; T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 64.

<sup>7145</sup> *Santebal*, is a neologism encompassing the notions of *Norkorbal* (the police force under the NORODOM Sihanouk and Khmer Republic eras) and *Santesok* (“security”) – which became synonymous with the DK detention and execution apparatus. *See* Section 16: Common Purpose, para. 3944. *See also*, Case 001 Transcript (KAING Guek Eav), E3/524, 22 April 2009, p. 78, ERN (En) 00322622.

was later named S-21.<sup>7146</sup> S-21 was created pursuant to Article 8 of the CPK Statute and was under the authority and leadership of the CPK.<sup>7147</sup>

2137. After the creation of S-21, Duch was first assigned to collect documents in Phnom Penh from locations including LON Nol's house, the Khmer Republic party headquarters, military headquarters, the homes of senior officials of the Khmer Republic and the National Police Commissariat. These documents were to be kept at S-21 to be used as sources for further investigation.<sup>7148</sup> Former Khmer Republic officials and soldiers had already been arrested at this point, and Duch was involved in the interrogation of workers of a former paper factory, K-5 or K-10.<sup>7149</sup> One of the objectives during interrogations was to find information regarding the location of former Khmer Republic officials.<sup>7150</sup> The Chamber received evidence of Duch writing to "Brother 03", *i.e.* Nat, in November 1976 seeking advice and a decision on the arrest of three named individuals who were civil servants from the Khmer Republic administration.<sup>7151</sup>

2138. S-21 had started operations by at least October 1975 and was initially located at the corner of Streets 163 and 360 where prisoners were interrogated.<sup>7152</sup> At that time, the prisoners were detained in surrounding houses.<sup>7153</sup> The Chamber received confessions which demonstrate that prisoners were detained, interrogated and

<sup>7146</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 7-8; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16. *See also*, KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 2, ERN (En) 00147518; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 64, 69.

<sup>7147</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 49. Article 8 of the CPK Statute provided that: "Any Sector or unit which has special characteristics, be they political, military, economic or culture-social affairs related, may be organized separately, with the Central Committee being responsible, directly or indirectly, along a specific organizational line". *See* CPK Statute, E3/130, undated, p. 18, ERN (En) 00184039.

<sup>7148</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 64, 71-72; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 30; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 94; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 36-37; Case 001 Transcript (KAING Guek Eav), E3/5810, 25 November 2009, pp. 65-66, ERN (En) 00406709-00406710; Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, pp. 52-53, ERN (En) 00339360-00339361; Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 7-8, ERN (En) 00325555-00325556; Case 001 Transcript (KAING Guek Eav), E3/524, 22 April 2009, p. 75, ERN (En) 00322619.

<sup>7149</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 64, 85.

<sup>7150</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 82.

<sup>7151</sup> Letter from Duch to Brother 03, E3/1052, 27 November 1975, pp. 1-2, ERN (En) 00289848-00289849; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 75-83 (testifying that he was not sure whether these individuals ended up at S-21); T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 76.

<sup>7152</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 5; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 14, ERN (En) 00322757; KAING Guek Eav Interview Record, E3/5748, 30 May 2008, pp. 3, 11, ERN (En) 00153567, 00153575; KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 2, ERN (En) 00147518.

<sup>7153</sup> KAING Guek Eav Interview Record, E3/5748, 30 May 2008, p. 3, ERN (En) 00153567.

confessed at S-21 as early as August and September 1975.<sup>7154</sup> The Chamber finds that this documentary evidence corroborates the live testimony that S-21 was operational by at least October 1975. In around November 1975, S-21 was transferred to the “PJ” office which was the former General Directorate of the National Police and the former premises of the judicial police, *Police Judiciaire*.<sup>7155</sup> Prisoners were also detained at the former Takhmau psychiatry hospital, which was used as prison that initially formed part of Division 703 and was later used by S-21.<sup>7156</sup> Some prisoners were brought from Takhmau for interrogation at S-21.<sup>7157</sup> Takhmau prison was supervised by Hor and Nat, and several S-21 guards had previously worked at Takhmau.<sup>7158</sup>

2139. In January 1976, the prisoners were returned to the original location of S-21 near the corner of Streets 163 and 360.<sup>7159</sup> Nat had been told by his superior that S-21 could not remain at the PJ location because of Chinese visitors.<sup>7160</sup>

<sup>7154</sup> S-21 Confession – UM Soeun, E3/3841, p. 1, ERN (En) 00223142. The Chamber notes that based on the Khmer original, this annotation appeared on the confession between late August 1975 and early September 1975 and appears similar to the handwriting of Duch. The Chamber notes that UM Soeun’s name also appears on an S-21 prisoner list: S-21 list of prisoners, E3/10090, 22 January [illegible], p. 24, ERN (En) 01399030. *See also*, S-21 Confession – LANG Pring, E3/3652, p. 16, ERN (En) 00780855 (indicating that LANG Pring confessed in September 1975).

<sup>7155</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 65; KAING Guek Eav Interview Record, E3/5748, 30 May 2008, p. 3, ERN (En) 00153567; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 12-17, 28 (testifying that when he arrived at this facility in December 1975, there were approximately 100 detainees and that they were mostly former factory workers and that no detainees were transferred out from this facility); Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, p. 60, ERN (En) 00356650.

<sup>7156</sup> Case 001 Transcript (KAING Guek Eav), E3/5795, 29 April 2009, p. 84, ERN (En) 00325934; Case 001 Transcript (KAING Guek Eav), E3/524, 22 April 2009, p. 76, ERN (En) 00322620; Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, p. 66, ERN (En) 00322899; KAING Guek Eav Statement, E3/5759, undated, p. 1, ERN (En) 00197748. *See below*, paras 2145, 2150, 2507. There is evidence that “S-21 C” could have been a reference to Takhmau. *See below*, para. 2153.

<sup>7157</sup> Case 001 Transcript (KAING Guek Eav), E3/524, 22 April 2009, pp. 76, 84-85, ERN (En) 00322620, 00322628-00322629.

<sup>7158</sup> Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 12-13, ERN (En) 00325560-00325561; Case 001 Transcript (LACH Mean), E3/7467, 3 August 2009, pp. 58-59, ERN (En) 00358909-00358910; PEN Heng Interview Record, E3/7671, 29 November 2007, p. 3, ERN (En) 00163694; KORK Sras Interview Record, E3/7653, 3 April 2008, p. 3, ERN (En) 00705428; PES Math Interview Record, E3/352, 18 March 2008, p. 3, ERN (En) 00195708.

<sup>7159</sup> KAING Guek Eav Interview Record, E3/5748, 30 May 2008, p. 3, ERN (En) 00153567; T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 5 (confirming that S-21 was initially located behind the Ponhea Yat High School next to Street 163, then moved to the PJ location before being moved back to the original location).

<sup>7160</sup> Case 001 Transcript (KAING Guek Eav), E3/524, 22 April 2009, p. 77, ERN (En) 00322621; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 14, ERN (En) 00322757. *See also*, *Sihanouk hosts Banquet for Chinese Envoy* (in FBIS collection), E3/273, 22 January 1976, ERN (En) 00167849.

2140. In April 1976, S-21 moved to the location at the Ponhea Yat High School in Phnom Penh.<sup>7161</sup> Duch, as newly appointed chairman of S-21, proposed the use of the high school for security reasons and this proposal was approved by SON Sen.<sup>7162</sup> At this location there were two layers of fences: one surrounding the prison compound, which was a wall mounted by barbed wire; and a zinc outer fence.<sup>7163</sup> The zinc outer fence extended approximately 50 metres from the school and there was a gate at the current location of the fire department which had previously been the Beehive radio station. There was a gate which was only opened to allow vehicles to access S-21.<sup>7164</sup> The fence was designed to prevent prisoners from escaping but also to stop unauthorised persons from entering the S-21 compound.<sup>7165</sup>

2141. Within the S-21 school compound there were four main buildings (A, B, C and D).<sup>7166</sup> Building A was the southernmost building in the school compound, Buildings B and C were situated on the west side of the inner compound, while Building D was the northernmost building.<sup>7167</sup> A smaller building known as Building E was located in the centre of the compound and was where the registrations of prisoners took place.<sup>7168</sup>

<sup>7161</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 64-67; KAING Guek Eav Interview Record, E3/5748, 30 May 2008, pp. 3, 11, ERN (En) 00153567, 00153575; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 28-29 (testifying that he was reassigned to work at the Ponhea Yat high school after working for a short while at the PJ and that Hor remained his superior); SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 65, 67.

<sup>7162</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 5; T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 91; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 64-69 (testifying that after Nat left in March 1976, he was assigned to be chief of S-21 and was transferred S-21 to the Ponhea Yat High School at some point between April and 19 May 1976).

<sup>7163</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 36. *See also*, T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 32; T. 21 April 2016 (TAY Teng), E1/420.1, p. 79; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 6-8; T. 25 April 2016 (LACH Mean), E1/422.1, p. 54.

<sup>7164</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 32; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 6-10; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 40; T. 25 April 2016 (LACH Mean), E1/422.1, p. 54. *See also*, KAING Guek Eav Interview Record, E3/5748, 22 November 2007, p. 11, ERN (En) 00153575 (a marked map indicating the geographical boundaries of S-21).

<sup>7165</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 10-11.

<sup>7166</sup> Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, ERN (En) 00198029; S-21 Map, E3/10603, 5 June 2016.

<sup>7167</sup> S-21 Map, E3/10603, 5 June 2016. It should be noted that there is no correlation between the names of these buildings and the operational units at S-21 (S-21A, S-21B, S-21C and S-21D). *See below*, para. 2152.

<sup>7168</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, ERN (En) 00198029, 00198043. *See also*, Case 001 Transcript (VANN Nath), 29 June 2009, E3/7450, p. 74, ERN (En) 00345732 (testifying that the place where he worked and lived was labelled as Building E on a map he was provided).

2142. The prisoners were held in these school buildings within the compound and the interrogations mainly took place in houses to the east and outside the perimeter of the school compound.<sup>7169</sup> The number of prisoners detained at S-21 on any given date could exceed 1,000.<sup>7170</sup> S-21 was at its highest capacity on 14 October 1977, with 1,729 prisoners held at one time.<sup>7171</sup>

2143. S-21 also included two satellite locations to the southwest called S-21D, or Prey Sar, also known as S-24, S-21 Khor (or Kho), a complex used for tempering and re-education; and Choeung Ek, a site where prisoners were sent, killed *en masse* and buried in pits.<sup>7172</sup>

2144. The NUON Chea Defence submits that little evidence exists regarding the period before S-21 was moved to the Tuol Sleng location in April or May 1976 and no evidence exists regarding the detention conditions prior to that date.<sup>7173</sup> The NUON Chea Defence thus concludes that any conviction deriving from the detention conditions at S-21 must be limited to the period from April/May 1976 to 7 January 1979.<sup>7174</sup> The Chamber finds that this is a matter of evidence and notes that the Closing Order does not limit the scope of the charges to the period after S-21 was relocated to the Ponhea Yat High School. The Chamber recalls the Closing Order's finding that S-21 was operational from October 1975.<sup>7175</sup> To the extent that the NUON Chea Defence suggests that the Chamber is precluded from considering such evidence, its submission is rejected. The evidence discussed above demonstrates the existence of S-21 prior to when the facility was moved to the Ponhea Yat High School. Whether it demonstrates the commission of crimes prior to April 1976 will be addressed in the factual and legal findings below.

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<sup>7169</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 83, 85-86.

<sup>7170</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 6-7. *See e.g.*, S-21 list of prisoners of "Blood Taking Section" 25 October 1977, E3/2164, 26 October 1977, p. 3, ERN (En) 00181694 (noting that there were 980 prisoners remaining at S-21 on 25 October 1977).

<sup>7171</sup> *See below*, para. 2551.

<sup>7172</sup> *See below*, para. 2152. *See below*, paras 2513-2514.

<sup>7173</sup> NUON Chea Closing Brief, para. 429.

<sup>7174</sup> NUON Chea Closing Brief, para. 429.

<sup>7175</sup> Closing Order, para. 415.

12.2.5. *Structure and Personnel*

2145. IN Lorn *alias* Nat, who was the commander of Division 703 (which previously was the 12<sup>th</sup> Division) was the first chairman of S-21.<sup>7176</sup> Nat had previously supervised Takhmau prison<sup>7177</sup> and was removed from S-21 and reassigned to the General Staff in mid-March 1976.<sup>7178</sup> While Nat was entitled to enter S-21 after this date in order to finish his remaining work, he finally stopped his S-21 activities by approximately June 1976.<sup>7179</sup>

2146. Duch was initially Nat's deputy at S-21.<sup>7180</sup> Duch was first introduced to the CPK on 25 December 1967 and became a full-rights member of the CPK on 20 July 1969.<sup>7181</sup> Duch was a long-standing member of the CPK and secretary of a regiment but was not a member of the Central Committee.<sup>7182</sup> When Duch was deputy at S-21 he was in charge of interrogations and training interrogators.<sup>7183</sup>

2147. Under the leadership of Nat the majority of the staff selected to work at S-21 came from Division 703. Additionally, SON Sen ordered Duch to bring his colleagues from M-13 to work at S-21 under Duch's supervision.<sup>7184</sup> When Duch recruited staff to work at S-21 he often selected young cadres who had not previously been trained or

<sup>7176</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16; T. 6 June 2016 (SUOS Thy), E1/432.1, p. 38; T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83. *See also*, Section 5: Administrative Structures, para. 439.

<sup>7177</sup> Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 12-13, ERN (En) 00325560-00325561.

<sup>7178</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 16-17; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 36; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 91-92, 95-96; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-87; T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 40-42; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611. *See also*, Section 5: Administrative Structures, paras 428, 439.

<sup>7179</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-87. Nat was later arrested, interrogated and killed at S-21 in 1978. *See below*, Section 12.2.8.5.3: IN Lorn *alias* Nat.

<sup>7180</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16.

<sup>7181</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, pp. 35-36, ERN (En) 00314282-00314283; Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, p. 40, ERN (Kh) 00325811. The Chamber relies on the Khmer transcript of E3/5794 because the English translation mistakenly refers to 20 July 1976.

<sup>7182</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 31-38; T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 4; Duch Record of Interview, E3/10607, 1 February 2016, p. 4, ERN (En) 01213410. *See also*, T. 4 May 2016 (HIM Huy), E1/427.1, p. 99.

<sup>7183</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 36.

<sup>7184</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 34-35; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 36; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16.

educated by anybody else so that he could train them psychologically and politically.<sup>7185</sup> While staff numbers fluctuated over time, the Chamber finds that there were approximately 300 people working under Duch at the S-21 Security Centre, with the youngest guards being about 15 years old.<sup>7186</sup> Further documentation from the General Staff provides figures concerning the number of people to be fed, including those in “Office S-21”. However, the number of people specified in these lists, in particular the figure concerning “Office S-21”, is unclear as to whether it includes staff and their families and which units were considered as part of the headcount.<sup>7187</sup> Due to this lack of clarity, the Chamber will not rely on these statistics to draw a conclusion. The Chamber instead finds that the information provided in document E3/8386, showing that the S-21 Security Centre in Phnom Penh had 327 staff members, is more reliable than the General Staff document because it is an internal S-21 document with a clear and detailed breakdown of the staff in each unit.<sup>7188</sup>

2148. Following Nat’s transfer to the General Staff in mid-March 1976, Duch became chairman of S-21 and secretary of the S-21 Committee until the close of S-21 in January 1979.<sup>7189</sup> Duch was appointed to the position of chairman of S-21 by SON Sen.<sup>7190</sup> The handover of responsibility for S-21 to Duch is corroborated by documentary evidence

<sup>7185</sup> Case 001 Transcript (KAING Guek Eav), E3/7470, 11 August 2009, p. 64, ERN (En) 00361907.

<sup>7186</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 16-18; T. 4 May 2016 (HIM Huy), E1/427.1, p. 94. *See also*, S-21 Circular, E3/8386, 15 August 1975, ERN (En) 00521634 (indicating that there were 143 persons in the guarding unit, 46 persons in the economic unit and 62 persons in the messenger unit).

<sup>7187</sup> General Staff List, E3/1048, 7 April 1977, p. 1, ERN (En) 00193064 (listing #10 Office S-21: 2,327 and #13 Office S-21 members to be fed 1,300); General Staff Statistics of total Armed Forces – March 1977, E3/849, 7 April 1977, p. 1, ERN (En) 00183956 (listing #13 Office S-21: 2,327 (not including elements)); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (“#11 Mo-21 Comrade Sem: Actual amount 2,048, Reservation Amount 1,000”). When shown E3/1048, Duch commented that the number of staff members at S-21 in Phnom Penh and in the field was 1,300 and the figure of 2,760 also included the prisoners. *See* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 54-55.

<sup>7188</sup> S-21 Circular, E3/8386, undated, ERN (En) 00521634. With respect to E3/8386, Duch testified that this list was prepared by Hor, and the number of staff reflected the cadres within Phnom Penh and not the S-21 staff in the field. However, he was not sure whether it represented the exact number. *See* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 57-58.

<sup>7189</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 16-17, 21; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 36; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 91-92, 95-96; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-87 (testifying that Nat was entitled to enter S-21 after he was removed in order to finish his remaining work but finally stopped his S-21 activities by approximately June 1976); T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 40-42; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611. *See also*, General Staff study session S-21 list of names, E3/8365, 20 October 1976, ERN (En) 00182793.

<sup>7190</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 21; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 90-92, 95-96; T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 40-42.



which shows he signed instructions on behalf of the S-21 Committee by April 1976.<sup>7191</sup>  
At S-21, Duch was also known as “East Brother”.<sup>7192</sup>

2149. The S-21 Committee was tasked with detaining, interrogating to obtain confessions and “smashing” those who had been sent to S-21 by the Standing Committee.<sup>7193</sup> The S-21 Committee assigned staff to perform specific duties in order to achieve these objectives.<sup>7194</sup> The S-21 Committee consisted of Duch, KHIM Vak *alias* Hor and NUN Huy *alias* HUY Sre.<sup>7195</sup> As Chairman and Secretary, Duch had full authority over all S-21 staff, including Hor and HUY Sre.<sup>7196</sup> Those assigned to work at S-21 received their placement from the upper level and were obliged to perform their duties under the supervision of the S-21 Committee.<sup>7197</sup>

2150. KHIM Vak *alias* Hor was Duch’s deputy at S-21.<sup>7198</sup> Hor was a member of the CPK,<sup>7199</sup> was previously a member of Division 703 and supervised Takhmau prison

<sup>7191</sup> S-21 Confession – TROENG Yaing Lak, E3/7396, multiple dates, pp. 2-3, ERN (En) 00336294-00336295.

<sup>7192</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 107.

<sup>7193</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 20-21, ERN (En) 00342851-00342852.

<sup>7194</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 21, ERN (En) 00342852.

<sup>7195</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 95-96; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 20-21, ERN (En) 00342851-00342852; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 32, ERN (En) 00322775; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 52; T. 18 April 2016 (CHUM Mey), E1/417.1, p. 47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 60, ERN (En) 00346518; T. 3 May 2016 (HIM Huy), E1/426.1, p. 99; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 5, ERN (En) 00162612; T. 2 June 2016 (SUOS Thy), E1/430.1, p. 25; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 34; T. 21 April 2016 (TAY Teng), E1/420.1, p. 79. *See below*, Section 12.2.8.4.4: NUN Huy *alias* HUY Sre.

<sup>7196</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 38-40; T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 38 (testifying that he ordered Hor to implement instructions and Hor assisted him with tasks); Case 001 Transcript (KAING Guek Eav), E3/5799, p. 66, ERN (En) 00341751; Case 001 Transcript (KAING Guek Eav), E3/5800, pp. 42-43, 76, ERN (En) 00341999-00342000, 00342033; Case 001 Transcript (KAING Guek Eav), E3/5801, pp. 21-22, 65, ERN (En) 00342852-00342853, 00342896.

<sup>7197</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 13-14, 29; Autobiography – SUOS Thy, E3/10570, 6 June 1977, p. 4, ERN (En) 01247580 (clarifying that in December 1975 *Angkar* assigned him to work in Office S-21, under the supervision of the S-21 Committee).

<sup>7198</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 95-96; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 20-21, ERN (En) 00342851-00342852; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 32, ERN (En) 00322775; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 52; T. 18 April 2016 (CHUM Mey), E1/417.1, p. 47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 60, ERN (En) 00346518; T. 3 May 2016 (HIM Huy), E1/426.1, p. 99; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 5, ERN (En) 00162612; T. 2 June 2016 (SUOS Thy), E1/430.1, p. 25; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 34; T. 21 April 2016 (TAY Teng), E1/420.1, p. 79. *See also*, General Staff study session S-21 list of names, E3/8365, 20 October 1976, ERN (En) 00182793.

<sup>7199</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 99.

along with Nat before working at S-21.<sup>7200</sup> Hor was known as “West Brother”.<sup>7201</sup> As a superior at S-21 since its creation,<sup>7202</sup> Hor was responsible for supervising and giving orders to S-21 security guards and guard units.<sup>7203</sup>

2151. NUN Huy *alias* HUY Sre *alias* “Comrade Huy” was a member of the S-21 Committee and was responsible for Prey Sar, a satellite of S-21 located to the south of Phnom Penh which was used for rice farming and re-education.<sup>7204</sup> Huy Sre was previously a cadre from Division 703<sup>7205</sup> and was also a member of the CPK.<sup>7206</sup> In the second half of 1978, following reports of “mistakes”, HUY Sre was arrested, detained and subsequently executed at S-21.<sup>7207</sup> As the head of Prey Sar, HUY Sre was replaced by Phal, who was also a member of the CPK and became a member of the S-21 Committee.<sup>7208</sup> Previously, Phal was Hor’s deputy at S-21 and was both the head of the military unit and was in charge of the security guards outside the compound.<sup>7209</sup>

2152. Under Duch’s leadership as Chairman, S-21 was roughly divided into operational units known as S-21A, S-21B, and S-21D (Prey Sar).<sup>7210</sup> S-21A encompassed the interrogation, economics, photography, and initially medical sections.

<sup>7200</sup> Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 12-13, ERN (En) 00325560-00325561.

<sup>7201</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 107.

<sup>7202</sup> SUOS Thy Interview Record, E3/7643, p. 5, ERN (En) 00162612 (“While at PJ, *Ta Nath* was chairman, Hor was deputy, and Huy was member”).

<sup>7203</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 40-41, 43; T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 35.

<sup>7204</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 95-97; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 20-21, ERN (En) 00342851-00342852; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 32, ERN (En) 00322775; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198; T. 3 May 2016 (HIM Huy), E1/426.1, p. 99; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 5, ERN (En) 00162612; T. 2 June 2016 (SUOS Thy), E1/430.1, p. 44.

<sup>7205</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, p. 38. *See also*, T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83 (discussing how cadres were “borrowed” from Division 703 to guard S-21).

<sup>7206</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 99.

<sup>7207</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 55-56. *See also*, S-21 prisoner list names of prisoners special prison section, E3/8463, November-December 1978, p. 234, ERN (En) 01554752 (referring to the arrest of NUN Huy on 5 December 1978); T. 3 June 2016 (SUOS Thy), E1/431.1, p. 48; T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83.

<sup>7208</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 5, 11, ERN (En) 00154193, 00154199; T. 4 May 2016 (HIM Huy), E1/427.1, p. 99; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 38-39.

<sup>7209</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 52; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 24 (testifying that the guards outside the compound were fully armed but those inside S-21 were not); T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 35; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198.

<sup>7210</sup> Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, pp. 63-64, ERN (En) 00356653-003566534.

S-21B consisted of the Guard Unit, the kitchen, and the “Special Unit” – a term initially used for a unit in Division 703. The same term was carried over to refer to the same cadres once they were transferred to S-21.<sup>7211</sup> The guard unit watched over the inside of the compound at S-21.<sup>7212</sup> Each of the buildings at S-21 had three guard teams, with each team consisting of between seven to ten members, who rotated guard duty among themselves.<sup>7213</sup> The Special Unit was responsible for guarding the outside of S-21, preventing prisoners from escaping, and dealing with the special prison for important prisoners.<sup>7214</sup> The Special Unit received prisoners from the reception point outside of S-21 and brought them inside the premises, was responsible for internal and external defence of S-21 personnel, transporting prisoners to Choeung Ek, executing and burying them, and sometimes making arrests.<sup>7215</sup> There was a strict separation between the guard units and the Special Unit, with guards inside the compound having no contact with the Special Unit members within and outside the perimeter of S-21.<sup>7216</sup> There were

<sup>7211</sup> Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, pp. 63-66, ERN (En) 00356653-00356656; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199. Hor was in charge of the Special Unit even before 17 April 1975 and this group of more than 30 people were in Duch’s words “the most important unit. They fought directly with the enemy.” The Special Unit was transferred from Division 703 to S-21 and were skilled at executions: Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 69-71, ERN (En) 00342900-00342902.

<sup>7212</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 17, 22. The Chamber notes that the Special Unit tasked with guarding the outside of the compound was also often referred to as “guards”, even though they were not part of the smaller “guard unit”. See KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 52 (“Phal was in charge of guards at the outside of the compound, but Peng was in charge of [...] guards [...] inside the compound”); T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 24 (testifying that security guards on the outside of the compound were fully armed, but that security guards within the compound of S-21 were not armed); T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 35 (noting that there were guards on the outside of the compound).

<sup>7213</sup> T. 26 April 2016 (LACH Mean), E1/422.1, pp. 60-61. Duch testified that the person who appeared and testified in Case 001 was not the real LACH Mean. See T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 12-13; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 43; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 29-30. However, the Chamber notes that when confronted with Duch’s doubts, LACH Mean stated that he was a new interrogator and Duch may not have known him well; Duch had later acknowledged in Case 001 that there was an interrogator named LACH Mean after originally questioning whether there was an interrogator by that name at all. See T. 26 April 2016 (LACH Mean), E1/422.1, pp. 51-52. The Chamber does not find there to be any basis for Duch’s doubt as to whether the person who testified was really LACH Mean.

<sup>7214</sup> See below, para. 2256.

<sup>7215</sup> Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, pp. 23-25, ERN (En) 00322856-00322858; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 11-12, 34, 42-43, 68, ERN (En) 00342842-00342843, 00342866, 00342873-00342874, 00342899; KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 3, ERN (En) 00147519; T. 5 May 2016 (HIM Huy), E1/428.1, p. 18; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 52; T. 21 April 2016 (TAY Teng), E1/420.1, pp. 79-82, 85 (testifying that there were eight people in this group and that they resided in a house outside the S-21 compound and did not mix with other groups, but denying HIM Huy’s statement that TAY Teng was chief of the group of guards at the special prison [see HIM Huy Interview Record, E3/5158, 18 January 2008, p. 3, ERN (En) 00164451]).

<sup>7216</sup> T. 26 April 2016 (LACH Mean), E1/422.1, p. 53.

approximately 30 people in the Special Unit and more than 100 people in the Guard Unit.<sup>7217</sup> The Guard Unit and the Special Unit were collectively known as the Military Unit.<sup>7218</sup>

2153. The evidence is not entirely clear regarding what S-21C stood for, but the Chamber finds that it was a reference to the Takhmau prison. At times Duch stated that he was not aware of S-21C, and at others he indicated that he believed it was connected to Division 703 and Takhmau. SUOS Thy was unsure but speculated in his statement to the military tribunal that S-21C stood for Takhmau prison or the forces that guarded Takhmau. He further testified before the Chamber that there was someone at Takhmau who administered prisoner lists.<sup>7219</sup> One list before the Chamber refers to prisoners killed in March 1976 at “S-21C”, some of whom were former LON Nol soldiers or officers and their family members.<sup>7220</sup> When Duch was confronted with this list in court, he identified the prisoners as such and clarified that this list was prepared by Nat, who was involved in the Takhmau prison before the latter began his work at S-21.<sup>7221</sup> He later confirmed again that this list was “about [the] office at Takhmau”.<sup>7222</sup>

2154. The Guard Unit was initially under the authority of Peng and later HIM Huy and also included drivers, cooks and a medical unit, supervised by Try. Hor supervised the Interrogation Unit, S-21A,<sup>7223</sup> which, as noted above, included the interrogators,

<sup>7217</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154193.

<sup>7218</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199.

<sup>7219</sup> Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, pp. 62, 64, ERN (En) 00356654; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 23-26; SUOS Thy Interview Record, E3/10568, 28 June 1999, p. 2, ERN (En) 00326773; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 69-70, ERN (En) 00356855-00356856; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 88-92 (indicating that he was confused but in reference to E3/1539 stated that “the document I have seen is about [*sic*] office at Takhmao”). See S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated, p. 1, ERN (En) 00182892.

<sup>7220</sup> See e.g., S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated. See also, S-21 list of prisoners smashed on 22.03.7X, E3/1538, undated (list duplicating content from E3/1539 [E3/1540]); T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 16-17. The Chamber notes that although the date is not clear from the title of E3/1538, the same content is found in E3/1539, which contains “smash dates” in March 1976. Thus, the Chamber finds that the date of 22.03.7X can be interpreted to mean 22 March 1976.

<sup>7221</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 16-17; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-87; T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 8.

<sup>7222</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 89.

<sup>7223</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 41-44; Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, pp. 25-28, ERN (En) 00322858-00322861 (Duch explained that Comrades Chhen and Sam were in charge of the typist unit. As regards the photography unit, he explained that Comrade Sreang was the chief of the group, that Comrade Song was in charge of taking photos of those who were sent for re-education at Prey Sar. He then added that Comrade Sry, Deputy Secretary of the Special Unit, was in charge of taking photos in secret when requested to do so by “Uncle Nuon”). See

typist unit (in charge of typing confessions and other documents) and photography unit under NOEM Oem *alias* NIM Kimsreang.<sup>7224</sup> There was also a messenger unit which was in charge of delivering letters and messages between S-21 and the upper level,<sup>7225</sup> a logistics unit under the responsibility of Than that dealt with supplies, including food needed at S-21,<sup>7226</sup> a telephone unit and a mapping unit.<sup>7227</sup> S-21 staff were not allowed to make contact with people outside the S-21 compound.<sup>7228</sup>

2155. SUOS Thy was responsible for maintaining daily entry lists of prisoners, daily controlling lists and certain execution lists at S-21.<sup>7229</sup> Meng was in charge of the lists for all the interrogation units and the master lists of prisoners and S-21 cadres.<sup>7230</sup> He worked closely with Duch and had an office near Duch's house.<sup>7231</sup> MENG was previously a cadre from Division 703.<sup>7232</sup> He was later arrested and the interrogation unit was then separated into various entities.<sup>7233</sup>

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*also*, Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, p. 66, ERN (En) 00356656 (testifying that the medical unit was also initially under S-21A but after the medics were arrested, the replacement medics were placed under the supervision of the guard unit). NOEM Oem confirmed that there were three people in the photography unit at S-21, SRUN Song, KANG Nit and himself. *See* T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 16-17; NOEM Oem Interview Record, E3/7639, 22 October 2007, p. 5, ERN (En) 00162733; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; PRAK Khan Interview Record, E3/79, 25 September 2007, pp. 8-9, ERN (En) 00161559-00161560; PRUM Sokh Interview Record, E3/7667, 17 January 2008, p. 3, ERN (En) 00163830; MAKK Sithim Interview Record, E3/7673, 13 November 2007, pp. 3-7, ERN (En) 00401870-00401874 (Try was later arrested and killed at 21).

<sup>7224</sup> NOEM Oem was assisted in the photography unit by Song and Nith *See* T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 48, 50.

<sup>7225</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 55. *See also*, T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83 (testifying that he was also a member of the messenger unit which had been formed at S-21).

<sup>7226</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 51-53; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198. *See also*, General Staff study session S-21 list of names, E3/8365, 20 October 1976, p. 1, ERN (En) 00182793 (which lists Than as a member of S-21).

<sup>7227</sup> Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, pp. 25-27, ERN (En) 00322858-00322860.

<sup>7228</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 11.

<sup>7229</sup> Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 8-9, ERN (En) 00356794-00356795; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 97-98; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 74-75, 78; Documentary, *The Angkar*, E3/3095R, ERN V00172442, 00:23:58-00:25:15; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 10, ERN (En) 00154198.

<sup>7230</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 70, 72; T. 7 June 2016 (SUOS Thy), E1/433.1, p. 8. *See also*, SUOS Thy Interview Record, E3/7837, 14 August 2002, p. 3, ERN (En) 00276844 (describing Meng as the "Interrogation Registrar"); General Staff study session S-21 list of names, E3/8365, 20 October 1976, p. 1, ERN (En) 00182793.

<sup>7231</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 37; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 56-57.

<sup>7232</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, p. 38. *See also*, T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83.

<sup>7233</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 42.

2156. There were multiple cadres who were assigned to interrogate detainees, some of whom were MAM Nai, TORNG Seng Hoeung *alias* Pon,<sup>7234</sup> Nan, On, Sieng (or Seng), Tith, Hor, Tuy, Bou, HIM Huy, Peng, Trov and PRAK Khorn.<sup>7235</sup> S-21 prisoner lists also refer to the names of interrogators who were assigned to specific prisoners.<sup>7236</sup> Interrogators were split into 11 groups, which fell under the supervision of Snguon, Man and Pon.<sup>7237</sup> At times, Duch conducted interrogations personally.<sup>7238</sup>

#### 12.2.5.1. Structure from March 1976 until mid-1978

2157. During the time period from Duch's promotion to Chairman of S-21 in March 1976 until mid-1978, the second tier of leadership consisted of Hor, who supervised overall activity,<sup>7239</sup> and HUY Sre, who supervised Prey Sar, subject to the guidance of Hor, his superior.<sup>7240</sup> Almost all communication passed through Hor at this time. Phal, Hor's deputy, supervised the military unit but still ultimately reported to and received orders from Hor.<sup>7241</sup> At times, due to internal arrests, personnel had to be shifted between units. For example, PRAK Khorn was originally in the Special Unit, but was transferred to the interrogation unit in 1977.<sup>7242</sup>

<sup>7234</sup> Khmer Rouge Black Journal, E3/1170, undated, p. 48, ERN (En) 00602590.

<sup>7235</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154191, 00154198-00154199; T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 47-48; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 12, 53-54, 67, 73-74, ERN (En) 00346470, 00346511-00346512, 00346525, 00346531-00346532; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 72-73. The Chamber notes that there were many more interrogators at S-21 in addition to those listed above. *See* DC-Cam list of Interrogators at Tuol Sleng Prison (S-21): 1975-79, E3/8465, undated.

<sup>7236</sup> *See e.g.*, S-21 list of prisoners, interrogated on 2 April 1978, E3/2196, 2 April 1978 (referring to the following interrogators: Comrade Phau, Comrade Lat, Comrade Oeun, Comrade Chhun, SIEK Khan, DUK Hong, CHEA Vuth, KHIEV Oeun, VEN Khoeun, POUL Phali, PUT Srim, SAM Chen, PHAN Khon, SOU Ham, TAING Pau, PRAK Uon, TAING Pau and MUT Heng).

<sup>7237</sup> Three Month Plan in 1977, E3/1040, 1 January 1977. *See also*, Transcript Case 001 (MAM Nai), E3/7460, 15 July 2009, p. 17, ERN (En) 00351803.

<sup>7238</sup> *See below*, paras 2286-2287.

<sup>7239</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 31, 41; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 34.

<sup>7240</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 5, ERN (En) 00162612.

<sup>7241</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154198-00154199; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 82; T. 2 June 2016 (SUOS Thy), E1/430.1, p. 31 (SUOS stating that he only received orders from Hor); T. 5 May 2016 (HIM Huy), E1/428.1, p. 40, 43 ("My unit was under Peng's. However, in terms of duties and work that I had to do, I received orders from Hor.").

<sup>7242</sup> Case 001 Transcript (KAING Guek Eav), E3/7464, 22 July 2009, p. 33, ERN (En) 00355996; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 102-103.

12.2.5.2. Structure from mid-1978 until January 1979

2158. After HUY Sre's arrest in mid-1978, Phal was transferred to fill HUY Sre's position and supervise Prey Sar, and Peng took Phal's place as chief of the Military Unit, supervising both the Guard Unit and the Special Unit. While Peng directly supervised the guard unit, HIM Huy acted for Peng as an intermediate supervisor over the Special Unit.<sup>7243</sup> Like Phal before him, Peng reported directly to his superior Hor.<sup>7244</sup> Hor remained Duch's deputy in charge of all units, but after mid-1978, Duch had less direct involvement with the Interrogation Unit than before. For example, confessions went through Hor as opposed to directly to Duch.<sup>7245</sup>

2159. The NUON Chea Defence submits that it was Duch's deputy, Hor who "most likely answered directly to Nat and Son Sen" regarding operations at S-21 and that Hor was "effectively in charge of the whole S-21 operation".<sup>7246</sup> While the Chamber has discussed Hor's role and his importance to the operations of S-21,<sup>7247</sup> the weight of evidence establishes Duch's central role in commanding the S-21 operation, particularly in relation to interrogations and most significantly in reporting on the functioning of the security centre and relaying instructions he received from his immediate superiors. The speculation that it was Hor who "most likely" directly answered to Nat and SON Sen has no basis. Accordingly, the NUON Chea Defence's submissions in this regard are rejected.

2160. Hor had extensive duties at S-21 managing daily activities, including receiving prisoners, facilitating their imprisonment, noting the details of interrogations and executions and deciding whether a prisoner should be kept to work at S-21 or executed immediately. However, Duch testified that he took personal charge of important detainees, interrogated certain prisoners personally, and was Hor's immediate

<sup>7243</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154193, 00154198-00154199; T. 3 May 2016 (HIM Huy), E1/426.1, p. 87.

<sup>7244</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 82; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 40-41.

<sup>7245</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 10-11, ERN (En) 00154193, 00154198-00154199; SUOS Thy Interview Record, E3/7643, 18 October 2007, pp. 5, ERN (En) 00162612 ("The interrogation unit, S-21 Ka was under the direct supervision of Duch and the guard unit was under the supervision of Hor"), 9, ERN (En) 00162616 ("because Duch controlled interrogation [...] he was in general charge"), 14, ERN (En) 00162621 ("the interrogation office [...] reported to Duch").

<sup>7246</sup> NUON Chea Closing Brief, para. 447.

<sup>7247</sup> See above, paras 2149-2150, 2157- 2158. See below, paras 2181-2182, 2242, 2249, 2258, 2378, 2389, 2451-2452, 2457, 2503, 2516.

supervisor.<sup>7248</sup> The Chamber finds that the evidence discussed above shows that Duch was heavily involved in overseeing the entire S-21 operation. This included keeping track of prisoner numbers, monitoring interrogations, approving executions, reporting to the upper echelon and communicating instructions. Duch had the ultimate authority and oversight over the operation of S-21. The Chamber accordingly does not accept that it was Hor as opposed to Duch who had a central role in making decisions concerning the interrogation or execution of prisoners.

### 12.2.5.3. *Political training and Party discipline*

2161. Staff at S-21 attended education or political sessions which were conducted by Duch. Large education or political sessions were notably held on occasions such as 17 April anniversaries, with smaller training sessions occurring more frequently. According to Duch, SON Sen conducted yearly trainings at S-21 before he was transferred to the battlefield.<sup>7249</sup> At one of the larger meetings that SON Sen attended, S-21 staff were taught about the victory of the revolution and told that each worker had to perform their duties and tasks.<sup>7250</sup> Duch and SON Sen also spoke about the importance of S-21 to the country and stated that S-21 staff had to work hard to search for enemy networks based on the answers of the prisoners.<sup>7251</sup> At study sessions, cadres

<sup>7248</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 31-37; Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 30, ERN (En) 00322773; KAING Guek Eav Interview Record, E3/5748, 22 November 2007, p. 4, ERN (En) 00153568; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 5, ERN (En) 00154193; KAING Guek Eav Interview Record, E3/5772, 6 May 2008, p. 2, ERN (En) 00209169; KAING Guek Eav Interview Record, E3/5770, 31 March 2008, p. 3, ERN (En) 00177609; KAING Guek Eav Interview Record, E3/452, 23 August 2007, p. 5, ERN (En) 00147567; KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 10, ERN (En) 00147526. *See above*, paras 2149-2150, 2157-2159. *See below*, paras 2181-2182, 2242, 2249, 2258, 2260, 2266, 2275, 2286, 2378, 2389, 2451-2452, 2457, 2503, 2516.

<sup>7249</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 31-33; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 84 (testifying that he did not spend a long time at training sessions since he had to return to his job); T. 6 June 2016 (SUOS Thy), E1/432.1, p. 52; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 87.

<sup>7250</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 32-35 (testifying that there was no explanation at these meetings about the role of S-21 and that he could not recall whether in these speeches there was discussion about purging the enemies of the regime); T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 48-49, 52; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 39, 43, 46; SUOS Thy Interview Record E3/7603, 2 October 2006, p. 3, ERN (En) 00146799; SUOS Thy Interview Record, E3/9140, 24 April 2015, pp. 50-51, ERN (En) 00181082-00181083. *See also*, T. 4 May 2016 (HIM Huy), E1/427.1, pp. 11, 56 (testifying that SON Sen attended this study session some time in 1977).

<sup>7251</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 39-41. *See also*, Documentary, *The Angkar*, E3/2330R, V00172442, 00:35.52-00:36.14; S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 5, ERN (En) 00242263 (entry dated 25 July 1978). LACH Mean testified that to his recollection SON Sen frequently conducted political training sessions at S-21 including in 1978 when he was an interrogator. *See* T. 26 April 2016 (LACH Mean), E1/422.1, pp. 67-69. The Chamber notes that this is inconsistent with other credible evidence, particularly the evidence of Duch that SON Sen had been transferred to the battlefield in the second half of 1977, and that while SON Sen completed some of his S-21 related work, Duch did not see him in person again at S-21. The Chamber therefore does not rely on LACH Mean's



were told about the situation on the battlefield and how to prepare themselves to carry out the Party's policies.<sup>7252</sup>

2162. Duch was in charge of S-21 study sessions which were also attended and sometimes taught by Hor.<sup>7253</sup> There were political study sessions specifically for interrogators at S-21, where they were taught interrogation techniques and Party values. These study sessions were arranged by Duch and occurred at varying intervals, sometimes every weekly, fortnightly or monthly.<sup>7254</sup> There were also study sessions held for all S-21 staff, during which Party ideology was discussed and staff were taught how to identify enemies and prevent escapes.<sup>7255</sup> Training sessions were also called in response to certain occurrences, such as matters of discipline.<sup>7256</sup>

2163. When Duch taught S-21 staff at study sessions he passed on, among other things, the instruction from SON Sen that “to keep is no gain and to remove is no loss”.<sup>7257</sup> At political study sessions, all S-21 staff were taught to recognise and be “absolute” in their approach to the “enemy”, and to acknowledge that all people arrested by *Angkar* were enemies.<sup>7258</sup> This idea was further evidenced at S-21 throughout the internal purges, as discussed below, as traitors and enemies of the regime were first identified and labelled, then targeted, arrested and killed at S-21.<sup>7259</sup> In training sessions, interrogators were told to feel no pity for the “enemy” even if they were their

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evidence in this regard. However, the Chamber does not find that this contradiction calls into question the otherwise general veracity of LACH Mean's evidence.

<sup>7252</sup> T. 19 March 2012 (KAING Guek Eav), E1/50.1, p. 52.

<sup>7253</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 4, 12-13; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 16 (stating that Duch and Hor both spoke at a study session); SOAM Met Interview Record, E3/7520, p. 1, ERN (En) 00337617 (stating that he attended an S-21 study session in which Hor taught how to guard prisoners, and also indicates that Hor also conducted study sessions).

<sup>7254</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 94; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 38, 70.

<sup>7255</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 3; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, p. 72, ERN (En) 00356858; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 31-32 (noting that he attended one political study session presided over by Duch, but “the others” met him frequently).

<sup>7256</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 31-32 (noting that on one occasion, there was a study session during the “anniversary of the victory”); T. 5 May 2016 (HIM Huy), E1/428.1, p. 66 (describing a study session held in response to the alleged rape of a female prisoner, where they were told that if anyone did such a thing they would be “arrested and detained as well”).

<sup>7257</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 68. *See also*, T. 4 May 2016 (HIM Huy), E1/427.1, p. 9 (stating that Duch taught that “it's better to arrest 10 people rather than by mistake to release one guilty individual”).

<sup>7258</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 3-5 (testifying that taking an “absolute” stance to the enemy required the guards to monitor the activities of others, to attend daily meetings and to make reports to *Angkar* if something strange happened). *See also*, T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 78-79; S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 17, ERN (En) 00182961; T. 25 April 2016 (LACH Mean), E1/421.1, pp. 97-98.

<sup>7259</sup> Section 12.2.8: Prominent Prisoners and Internal Purges.

parents. They were instructed by Duch to be pitiless with enemies, “absolute” in striking them down and loyal to the Party.<sup>7260</sup> S-21 staff performed their duties in fear that if they committed any wrongdoings or mistakes they themselves would be considered “enemies” who would be arrested, imprisoned and killed.<sup>7261</sup> Given that those arrested by the Party had been deemed “enemies”, S-21 functioned to ensure that prisoners acknowledged their “mistakes” and guilt.<sup>7262</sup>

2164. Staff at S-21 were taught to have vengeance and “harbour anger against the enemy”.<sup>7263</sup> Duch gave instructions that: “This is class stance. Eliminate the view that attacking the enemy is cruel. This is absolutely a wrong concept because we have to fight for the cause of our nation, class” and that feelings of despair and sympathy for the enemy had to be eliminated.<sup>7264</sup> At this same meeting, Duch stated that the “army has to smash all CIA agents without sparing even a single person”.<sup>7265</sup> At study sessions, Duch referred to Brother Number One, Brother Number Two and Office 870,<sup>7266</sup> and told interrogators about reports he sent to Brother Number One and Two regarding prisoners’ confessions and whether those reports were accepted or rejected.<sup>7267</sup>

2165. Duch diligently read and distributed the *Revolutionary Flag* magazine, copies of which were given to him by the Central Committee and had to be read by all Party members at S-21.<sup>7268</sup> This is corroborated by notes from the Combined S-21 notebook which indicate that on 10 July 1978 there was a study session regarding a special issue of the *Revolutionary Flag*.<sup>7269</sup> A further study session is noted on 13 September 1978,

<sup>7260</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 81-84. *See also*, Documentary, *The Angkar*, E3/2330R, V00172442, 00:42.46-00:43.33 (PRAK Khorn stating that they viewed the prisoners as animals).

<sup>7261</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 29-31, 51-54 (testifying that Hor repeatedly emphasised that he should not mix up those detainees who had already been interrogated with those yet to be interrogated); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 32-33, 36. *See below*, Section 12.2.16: Arrest of S-21 Staff.

<sup>7262</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 5.

<sup>7263</sup> T. 20 April 2012 (KAING Guek Eav), E1/51.1, p. 36. *See also*, Section 16.3: Real or Perceived Enemies for CPK’s notion of enemies.

<sup>7264</sup> Minutes of Meeting, E3/8384, 18 February 1976, pp. 3-4, ERN (En) 00543734-00543735.

<sup>7265</sup> Minutes of Meeting, E3/8384, 18 February 1976, p. 3, ERN (En) 00543734.

<sup>7266</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 59-60, 62-63 (testifying that Duch mentioned Office 870 at every training session but did not explain where Office 870 was or who supervised the office).

<sup>7267</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 43.

<sup>7268</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 12, 54-55; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 20-21.

<sup>7269</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 19, ERN (En) 00184501 (entry dated 10 July 1978).

which emphasised that the Party had suppressed the enemy and that all people had the task of “training themselves in the Party line [and to] [a]bsolutely defend the political line of the Party”.<sup>7270</sup> The central importance of the Party was also reflected in an instruction given at the same study session to “[a]bsolutely eliminate attacks on the Party and on our fellow comrades”.<sup>7271</sup> This training session also reiterated the need to make clear distinctions to identify who was a comrade and who was an enemy.<sup>7272</sup> There was discussion about internal enemies and the need to seek them out, especially in Phnom Penh, and identify what they were doing and where they were “intertwined”.<sup>7273</sup> At the same training session, an instruction was given to set up an additional unit with an absolute political and ideological stance to “examine, summarize, and analyze documents carefully”.<sup>7274</sup>

2166. POU Phally’s notebook, as discussed above, outlines politics and ideology from the early days of S-21 in 1976, including the first wave of purges in the East Zone triggered by the April 1976 hand grenade incident behind the Royal Palace, as discussed in further detail below and in Section 12.1.<sup>7275</sup> The notes in the POU Phally Notebook instruct cadres to “resolve to absolutely go on the offensive to interrogate and get confessions for the Party” and contain names of suspected traitors and their networks, as well as names of those to “pound” to get their histories.<sup>7276</sup> The notebook goes on to document a meeting held on 27 July 1976 with feedback and instructions on improving interrogations, as well as a discussion of the statutes of the Youth League.<sup>7277</sup> It further instructs cadres extensively on interrogations, torture, confessions, and contains—one

<sup>7270</sup> Combined S-21 Notebook, E3/834, April-December 1978, pp. 30-31, ERN (En) 00184512-00184513 (entry dated 13 September 1978).

<sup>7271</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 31, ERN (En) 00184513 (entry dated 13 September 1978).

<sup>7272</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 31, ERN (En) 00184513 (entry dated 13 September 1978).

<sup>7273</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 33, ERN (En) 00184515 (entry dated 13 September 1978).

<sup>7274</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 34, ERN (En) 00184516 (entry dated 13 September 1978).

<sup>7275</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 4-5, ERN (En) 00225382-00225383. *See below*, para. 2266. LACH Mean remembers Duch discussing these events during a study session. *See T. 26 April 2016 (LACH Mean), E1/422.1, pp. 88-89.*

<sup>7276</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 2-3, ERN (En) 00225380-00225381. *See above*, Section 12.2.3.2.4: S-21 Notebooks; Section 12.1: Internal Factions, para. 1893.

<sup>7277</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 9-11, ERN (En) 00225387-00225389.

page labelled “torture manual”. POU Phally’s notebook records other similar meetings in 1976, with the exception of a note from a meeting at Office K-10 in April 1978.<sup>7278</sup>

2167. As recalled above, Duch’s assistant MAM Nai confirmed that he took notes during these study sessions.<sup>7279</sup> The compilation of notes from his notebook contains entries from approximately January to July 1978.<sup>7280</sup> Notes found in the MAM Nai Notebook confirm that S-21 cadres who attended political training sessions were instructed to respect the Party and the Revolutionary Army of Kampuchea, which was described as the “absolute instrument of the Party”.<sup>7281</sup> The MAM Nai Notebook confirms that CPK leaders including POL Pot addressed cadres at these political meetings and instructed them to follow the Party line.<sup>7282</sup> The notes record a summary of a speech given by POL Pot in January 1978 on the occasion of the tenth anniversary of the RAK’s creation, which referred to the importance of liberating the nation and eliminating “the land-grabbing *Yuon*”.<sup>7283</sup> S-21 staff were also told that the problem of the “*Yuon*” in Kampuchea was that they were hiding everywhere.<sup>7284</sup>

2168. The notes taken on the same day, 16 January 1978, refer to statements made at a political study session highlighting the mistakes made during the previous selection of “bad elements” in the army, which led to research into “personal histories” so that the “Revolutionary Army would have purity”.<sup>7285</sup> In reference to the armed conflict with Vietnam, cadres were encouraged to “raise the revolutionary spirit of vigilance

<sup>7278</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 1, 11-37, ERN (En) 00182945, 00225389-00225415.

<sup>7279</sup> Section 12.2.3.2.4: S-21 Notebooks.

<sup>7280</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates. Exceptionally, one of the partial translations contains a chapter entitled “Party Line on National Defense Policy” that is dated 25 June 1975. *See* S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 5, ERN (En) 00814578.

<sup>7281</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 1, ERN (En) 00184579 (entry dated 16 January 1978); KAING Guek Eav Interview Record, E3/429, 11 November 2009, pp. 9-10, ERN (En) 00403924-00403925.

<sup>7282</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 1-2, ERN (En) 00184579-00184580 (entry dated 16 January 1978).

<sup>7283</sup> Revolutionary Flag, E3/744, January 1978, pp. 2-7, ERN (En) 00464051-00464056 (article entitled “The Revolutionary Army of Kampuchea: Brave, Mighty, Skilled, and Marvellous Under the Leadership of the Communist Party of Kampuchea”); S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 1-2, ERN (En) 00184579-00184580 (entry dated 16 January 1978).

<sup>7284</sup> Combined S-21 Notebook, E3/834, April-December 1978, p. 16, ERN (En) 00184498 (entry dated 18 June 1978).

<sup>7285</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 3, ERN (En) 00184581 (entry dated 16 January 1978).

another notch” in order to attack the enemy in the front and “in the rear”.<sup>7286</sup> The summary encouraged interrogation of the enemy in order for them to speak about their contacts before 17 April 1975 and acknowledged that the detainees were beaten during interrogations.<sup>7287</sup>

2169. Further on in the notebook, notes from 21 January 1978 on the “matter of interrogating the enemy” record instructions to prevent the enemy from grasping the intention of the interrogation or from knowing that the interrogator wanted to find a particular person, and that “[w]hatever the organisation wants you to ask, ask that, and do not get in the way”.<sup>7288</sup> The MAM Nai Notebook shows that cadres were instructed to be on the offensive and to “[s]earch out all enemy connections”.<sup>7289</sup> This is in line with the instructions interrogators received in the early days of S-21’s operation, when they were instructed to not hesitate in interrogating enemies and to obtain confessions for the Party.<sup>7290</sup>

2170. The Combined S-21 Notebook is very similar to the MAM Nai Notebook. Both notebooks contain entries of the same dates and similar summary notes, although each notebook contains extraneous entries and information that the other does not.<sup>7291</sup> For example, both the MAM Nai Notebook and the S-21 Combined Notebook contain: an entry dated 12 April 1978 summarising POL Pot’s 17 April anniversary speech; a 20 April 1978 entry calling for the implementation of the socialist revolution; and an entry warning against enemy tricks of “buying favors”.<sup>7292</sup> The Chamber finds that these similarities serve to corroborate the information in each of these documents, bolster

<sup>7286</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 4, ERN (En) 00184582 (entry dated 16 January 1978). *See also*, Section 16.3.1.5: Real or Perceived Enemies: Chronological Overview of the CPK’s Notion of Enemies: 1978.

<sup>7287</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 10, ERN (En) 00184588 (entry dated 21 January 1978) (“When questioning, the enemy cannot understand, so must [*sic*] think about how to question so they can answer. They do not understand and then the beatings start. When the beatings start, we get personal. Do whatever to prevent the enemy front grasping your intention”). *See also*, Section 16.3.1.5: Real or Perceived Enemies: Chronological Overview of the CPK’s Notion of Enemies: 1978.

<sup>7288</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 10, ERN (En) 00184588 (entry dated 21 January 1978).

<sup>7289</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 11, ERN (En) 00184589 (entry dated 21 January 1978).

<sup>7290</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 2, ERN (En) 00225380.

<sup>7291</sup> *See* S-21 Notebook of POU Phally, E3/8368, multiple dates; Combined S-21 Notebook, E3/834, multiple dates.

<sup>7292</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 1-4, 7-8, ERN (En) 00184483-00184486, 00184489-00184490; S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 20-21, 23-24, 26, 28-29, ERN (En) 00184598-00184599, 00184601-00184602, 00184604, 00184606-00184607.

their reliability and likely indicate that they were recorded at the same event or study session, by different authors. Additionally, the fact that the content of speeches was relayed at political study sessions at S-21 demonstrates that the Party line was systematically disseminated from upper to lower levels.

2171. The matter of secrecy was also addressed, particularly in relation to important perceived enemies. In a speech delivered at a political meeting in May 1978 recorded in the S-21 Combined Notebook, cadres were given an instruction from the upper level with respect to interrogations “to question separately for secrecy”.<sup>7293</sup> Those arrested by the Party had to be clearly designated as spies.<sup>7294</sup> Similarly, at a political meeting in June 1978, the instruction was that: “For the important enemies who have been brought in, we must be most secret. Regardless of what level we know, we must be absolutely secret in everything with the highest responsibility.”<sup>7295</sup>

2172. Other meeting notes show the importance given to political training sessions, as they made “comrades aware they are responsible directly to the Party” and stressed that it was also important to set aside time to study Party documents and to know the Party line.<sup>7296</sup> There were further references to training sessions where cadres were instructed to respect “the requirements of the Party, its directives, its line, all of its principles, meaning respect the people, through the *Angkar*”.<sup>7297</sup>

2173. In notes from 12 April 1978 regarding POL Pot’s speech to celebrate the creation of DK,<sup>7298</sup> it was stated that “[w]hen the Party arrests the contemptible traitors and solves them, the people are pleased and happy with our Party” and there was an instruction to “[s]creen out the enemies no matter what” and “[s]weep clean all the

<sup>7293</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 10, ERN (En) 00184492 (entry dated 19 May 1978). *See above*, 12.2.3.2.4: S-21 Notebooks.

<sup>7294</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 11, ERN (En) 00184493 (entry dated 19 May 1978).

<sup>7295</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 16, ERN (En) 00184498 (entry dated 5 June 1978).

<sup>7296</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 11, 32, ERN (En) 00184589, 00184610 (entries dated 21 January and 20 May 1978).

<sup>7297</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 43-44, ERN (En) 00184525-00184526 (entry dated 20 November 1978).

<sup>7298</sup> Text within the 12 April 1978 entry of the S-21 Combined Notebook calls the reader to “come and listen to speech by the Brother Head of State” which the Chamber finds to be POL Pot referencing a future speech of KHIEU Samphan. *See* Combined S-21 Notebook, E3/834, multiple dates, p. 1, ERN (En) 00184483 (entry dated 12 April 1978). *See also*, S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 20, ERN (En) 00184598.

enemies”.<sup>7299</sup> POL Pot also stated that only one enemy per thousand remained, that the internal problem of traitors had been solved completely and that the purity of the Party had been defended.<sup>7300</sup> In a subsequent speech celebrating the third anniversary of the 17 April victory, KHIEU Samphan spoke about the importance of the victory of the revolution and the need to take over and ardently accomplish “the noble revolutionary tasks the Party has entrusted to each one of us”.<sup>7301</sup> Other notes in the Combined S-21 Notebook from later that year state that “[w]e have screened out internal enemies in detail and to the maximum” and instruct cadres to “have a hot and quick anger for the enemy”.<sup>7302</sup>

2174. In accordance with the CPK policy set out by Office 870, enemies were divided into three categories: (1) the dangerous or destructive category where it was imperative to have them purged; (2) the normal liberal category who had to be re-educated; and (3) those who had believed in enemy incitement and had to be “refashioned”.<sup>7303</sup> This division of enemies into different categories was part of the policy of Office 870 and had to be implemented at each level.<sup>7304</sup> CIA, KGB and “*Yuon*” agents were identified by the Party as “life and death enemies” of the CPK.<sup>7305</sup> Duch helped to implement the Party policy which was to “smash the enemies both within the military ranks and in the Party”, which involved eliminating people who were seen as affiliated with America or Vietnam and smashing anybody who committed a “wrongdoing”.<sup>7306</sup>

2175. On the 17 April and 30 September anniversaries, placards were displayed which stated “Long live the glorious and wonderful Communist Party of Kampuchea” and which spoke about “absolute opposition” to the CIA, KGB and “*Yuon*” agents.<sup>7307</sup>

<sup>7299</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 24-25, ERN (En) 00184602-00184603 (entry dated 12 April 1978).

<sup>7300</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 2, ERN (En) 00184484.

<sup>7301</sup> KHIEU Samphan Speech, E3/169, 17 April 1978, pp. 1-2, ERN (En) 00280389-00280390.

<sup>7302</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 28, 34-35, ERN (En) 00184510, 00184517 (entry dated 11 August 1978). *See also*, Section 16.3: Real or Perceived Enemies.

<sup>7303</sup> Minutes of Meeting of Secretaries of Divisions and Independent Regiments, E3/13, 9 October 1976, pp. 19-20, ERN (En) 00940354-00940355; T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 58-60 (testifying that this had been defined in the Party policy since its creation in 1960). *See also*, Section 16.3: Real or Perceived Enemies, para. 3793.

<sup>7304</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 60.

<sup>7305</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 72-74. *See also*, Revolutionary Flag, E3/727, May-June 1978, ERN (En) 00185328.

<sup>7306</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 41-42.

<sup>7307</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 48.

2176. Staff were also instructed that they were the children of *Angkar*, that they had to respect and implement any instruction given by *Angkar* and that those who did not abide by the regulations were considered an enemy and would be arrested and detained.<sup>7308</sup>

2177. The Party promoted the dissolution of family ties, instructing that such “entanglements” hindered “the work of serving the nation”.<sup>7309</sup> NUON Chea was held out as an example of this principle. Duch stated that NUON Chea did not “claim anything or anyone to be his”, because NUON Chea’s two nieces, LACH Dara *alias* Than and LACH Vary *alias* Nan were both arrested and detained at S-21. LACH Dara and LACH Vary were both doctors, and their husbands were arrested and detained at S-21 as well.<sup>7310</sup> The arrest, detention and interrogation of NUON Chea’s family members is corroborated by S-21 confessions and S-21 prisoner lists which record their entry into S-21.<sup>7311</sup> The confessions of both LACH Dara and LACH Vary were sent to the upper echelon.<sup>7312</sup> LACH Vary and her husband were both “smashed” at S-21.<sup>7313</sup> LACH Dara, who was selected by Duch to be used as a medic, died while fleeing the Vietnamese forces in 1979.<sup>7314</sup>

<sup>7308</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 10-11 *confirming* Case 001 Transcript (HIM Huy), E3/7462, 20 July 2009, p. 51, ERN (En) 00354642.

<sup>7309</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 30, ERN (En) 00184608 (entry dated 3 May 1978). *See also*, Combined S-21 Notebook, E3/834, April-December 1978, p. 5, ERN (En) 00184487 (entry dated 20 April 1978) (noting that they should “maintain a clear attitude: mother, father, wife and child are different. The important thing is we are with the Party line.”). Concerning the CPK perception of role of the family, *see* Section 14: Regulation of Marriage, paras 3544-3545.

<sup>7310</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 47-50 (testifying that Nan was “smashed” along with her husband); T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 52; S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 30, ERN (En) 00184608 (entry dated 3 May 1978); S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 30, ERN (En) 00184608 (entry dated 3 May 1978). *See also*, Combined S-21 Notebook, E3/834, multiple dates, p. 5, ERN (En) 00184487 (entry dated 20 April 1978) (noting that they should “maintain a clear attitude: mother, father, wife and child are different. The important thing is we are with the Party line.”). LACH Dara’s husband was MEN Tol *alias* Sat.

<sup>7311</sup> S-21 Confession – LACH Dara, E3/1851, undated; S-21 Confession – LACH Vary, E3/1557, 13 July 1978; S-21 Confession – MAEN Tol *alias* Sat, E3/1857, 26 August 1978; S-21 list of prisoners [who] came in on 1 May 1978, E3/10390, 1 May 1978, p. 22, ERN (En) 01398286 (referring to the entry of MEN Tol and LACH Dara); S-21 list of prisoners of Division 703, E3/9886, undated, p. 19, ERN (En) 01398727 (noting that LACH Dara was “being interrogated”); S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978, p. 90, ERN (En) 01564046 (referring to the entry of LACH Vary); S-21 list of prisoners, E3/9905, undated, p. 55, ERN (En) 01398925.

<sup>7312</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 52-53.

<sup>7313</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 48-50. *See also*, S-21 list of prisoners from the Ministry of Foreign Affairs, E3/2272, undated, p. 1, ERN (En) 00181644 (noting that the interrogation of LACH Vary had finished and that she had been “removed”).

<sup>7314</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 49-51; T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 52-53; S-21 list of prisoners who were assigned to work outside, E3/10326, 31 August 1978,



2178. The general principle conveyed during the meetings, speeches and political sessions was that anyone arrested was an “enemy” who had to be “smashed” and the Party’s position had to be implemented and was not open to discussion.<sup>7315</sup> It was the policy of the Party to smash all who were arrested and sent to S-21 after their interrogations concluded. In describing this principle, SUOS Thy stated that “prisoners who came into S-21 were already considered dead”.<sup>7316</sup> The guards received instructions from the trainers, and in particular Duch, that anyone who was brought to S-21 would not have a chance of release and would be killed.<sup>7317</sup>

2179. Some prisoners begged Duch to ask the Party to pardon them. On 10 September 1976, HUOT Sambath wrote to KHIEU Samphan, the President of the State Presidium, and confessed his mistakes, expressed his regret and requested the “Organization to forgive me and spare my life” or if he could not be forgiven he asked that his wife and children be taken care of.<sup>7318</sup> There is no indication as to whether this letter was ever delivered or received by KHIEU Samphan. In the case of KANG Chap *alias* Sae, Secretary of the new North Zone, Duch passed KANG Chap’s request to NUON Chea, who laughed and said he would not allow that to happen.<sup>7319</sup> CHOU Chet, Secretary of the West Zone, was arrested on 26 March 1978, and Duch interrogated him personally. In his confession, CHOU Chet begged the CPK to forgive him for his mistakes and to spare his life. CHOU Chet was later killed.<sup>7320</sup>

p. 2, ERN (En) 01528695 (noting that she was a medic who among the prisoners who were assigned to work); PRUM Sokh Interview Record, E3/7667, 17 January 2008, p. 3, ERN (En) 00163830.

<sup>7315</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 76; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 26.

<sup>7316</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 54-58 (testifying that he was aware of the slogan that it was better to arrest 10 persons in error than to liberate one person in error but he did not know whether this was really what was meant); Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, p. 98, ERN (En) 00356688; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 18; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 70; “S-21: The Khmer Rouge Killing Machine”, E3/2330R, ERN V00172620, 01:29:55-01:30:39; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 80, ERN (En) 00346538. *See also*, T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 78-79; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 50-51, 58 (testifying that if people were brought to S-21 they would never be released and nobody he interrogated was released or sent to the rice fields).

<sup>7317</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 5-6 *confirming* Case 001 Transcript (HIM Huy), E3/7451, 16 July 2009, pp. 45-46, ERN (En) 00353925-00353926.

<sup>7318</sup> S-21 Confession – HUOT Sambath, E3/1845, multiple dates, pp. 8-9, ERN (En) 00835929-00835930.

<sup>7319</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 89. KANG Chap was later executed. *See below*, Section 12.2.8.5.1: CHANN Sam *alias* KANG Chap *alias* Se (or Sae).

<sup>7320</sup> S-21 Confession – CHOU Chet, E3/1682, multiple dates, ERN (En) 00185086, 00818956, 00819082; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 11; KAING Guek Eav Interview Record, E3/1560, 9 June 1999, p. 2, ERN (En) 00327326; KAING Guek Eav Interview Record, E3/455, 3 October 2007, p. 10, ERN (En) 00149916. *See below*, Section 2313: CHOU Chet *alias* Sy. HU Nim,

2180. The Chamber finds that this evidence establishes the central role which the CPK had in disseminating policies and insisting on a common ideology to guide the work of cadres at S-21. Through study sessions and publications, the CPK entrenched a common understanding about the importance of taking an absolute stance toward the “enemy” and the imperative to identify internal enemies. Duch played a central role in communicating these instructions to S-21 cadres and insisting that CPK policy was absolutely followed through the work of S-21, which was tasked with interrogating those identified as enemies and obtaining confessions for the Party. The Chamber finds that this indoctrination and incitement of hate instilled absolute respect for the Party hierarchy and the principles to be followed at S-21, including the identification and killing of perceived enemies.

#### 12.2.5.4. Internal reporting structure

2181. Hor received his orders and instructions directly from Duch, and then passed these instructions on to members of the guard unit.<sup>7321</sup> As a member of the guard unit, SUOS Thy was directly supervised by and received instructions from Hor.<sup>7322</sup> SUOS Thy shared an office with Hor, who signed and approved the documents prepared by SUOS Thy, which were then passed on to Duch.<sup>7323</sup>

2182. All communication from below passed through Hor on its way to Duch. Orders, reports and communication sometimes skipped intermediary supervisors and went directly to and from Hor. For example, while HIM Huy’s direct superior was Pang, HIM Huy at times also received orders from Hor.<sup>7324</sup>

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SUA Vasi *alias* Doeun and prisoner SON Ty *alias* Teanh all wrote similar letters, pleading for their lives, to no avail. *See below*, paras 2301, 2293; S-21 Confession – YOU Peng Kry *alias* Mon, E3/7342, 21 January 1978 (containing a message from SON Ty *alias* Teanh requesting Duch and the Party to spare his life).

<sup>7321</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 31, 42.

<sup>7322</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 29.

<sup>7323</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 55-56, 58 (testifying that Hor organised the format of the list which SUOS Thy completed); SUOS Thy Interview Record, E3/9140, 24 April 2015, pp. 64, 66-67, ERN (En) 00181096, 00181098-0018099.

<sup>7324</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 31 (stating that he only received orders from Hor); T. 5 May 2016 (HIM Huy), E1/428.1, p. 40 (“My unit was under Peng’s. However, in terms of duties and work that I had to do, I received orders from Hor.”). *See above*, para. 2157.

12.2.5.5. External reporting structure

2183. S-21 was used as an “absolute instrument” of the CPK and the Party Centre. The zone standing committees, the General Staff<sup>7325</sup> and the committees surrounding the Party Centre implemented decisions on arrests.<sup>7326</sup> Duch testified that the decision to arrest was made by the Central Committee, but that in a practical sense it was POL Pot, and in some cases, NUON Chea who decided who was to be arrested.<sup>7327</sup> When

<sup>7325</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 102-103 (“[Y]ou had no authority to make arrests unless a decision was made by the Party Centre for those in Phnom Penh and by the general staff for those at S-21. In this case, that is Son Sen before he was sent to the front battlefield, and, later on, it was Brother Nuon who had such authority. And, besides [*sic*], no one could make decisions on the arrest.”). As found above, the Chamber interprets Duch’s testimony in a manner consistent with his other statements regarding SON Sen ordering and instructing at S-21 while he was assigned to the General Staff, as opposed to the General Staff itself.

<sup>7326</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 67, 102-103; Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, pp. 75-76, ERN (En) 00326214-0032615. *See below*, paras 2237, 2410. *See also*, Section 11.2.7: 1<sup>st</sup> January Dam Worksite: Purges of Cadres in the Central (old North) Zone; Section 11.3.5.1: Kampong Chhnang Airfield Construction Site: Hierarchal Structure above the Worksite; Section 12.1: Internal Factions, paras 1899, 1925, 1941, 1978, 1996, 1999, 2028, 2030; Section 12.3.5: Kraing Ta Chan Security Centre: Authority Structure; Section 12.3.6: Kraing Ta Chan Security Centre: Arrests; Section 12.4.2.4: Au Kanseng Security Centre: Oversight of Division 801 by the RAK General Staff; Section 12.4.4.1: Au Kanseng Security Centre: Living Working and Detention Conditions: Arrest and Transfer; Section 12.5.3: Phnom Kraol Security Centre: Reporting Structure; Section 12.5.4: Phnom Kraol Security Centre: Arrest and Detention.

<sup>7327</sup> Standing Committee Minutes, E3/218, 26 March 1976, p. 7, ERN (En) 00182657 (“Comrade Deputy Secretary” reporting that “we have ordered them arrested already”, referring to a group of five or six Vietnamese people at Peam Chor); T. 21 March 2012 (KAING Guek Eav), E1/57.1, p. 33 (“The decision [*sic*] to arrest were made by the Central Committee in broader sense [*sic*], but in a more practical sense, it was Brother Pol who made the decision and in some cases, Brother Nuon was the one who made such decisions.”); KAING Guek Eav Interview Record, E3/5748, 22 November 2007, p. 7, ERN (En) 00153571; KAING Guek Eav Interview Record, E3/1578, 27 March 2008, p. 4, ERN (En) 00194548 (“Huy was arrested upon Nuon Chea’s order”); KAING Guek Eav Interview Record, E3/450, 2 April 2008, p. 3, ERN (En) 00178060 (“[A]ll prisoners were sent further to a decision of the Standing Committee: in practice, initially upon SON Sen’s decision and then NUON Chea.”); KAING Guek Eav Interview Record, E3/5771, 13 April 2008, p. 7, ERN (En) 00185503 (stating that Huy was arrested upon NUON Chea’s orders); KAING Guek Eav Interview Record, 3 June 2008, E3/60, pp. 6-7, ERN (En) 00195604-00195605 (“Nuon Chea made certain decisions alone, but sometimes he had to raise it with Pol Pot. I noticed for instance that he decided on certain arrests immediately, in my presence [...]. At other times, he did not decide immediately and asked Pol Pot beforehand.”); KAING Guek Eav Interview Record, E3/107, 24 June 2008, p. 3, ERN (En) 00198219 (discussing orders to arrest those in the Ministry of Foreign Affairs and stating that POL Pot or NUON Chea would have made the orders and IENG Sary would have been notified); KAING Guek Eav Interview Record, E3/356, 25 November 2008, p. 4, ERN (En) 00242898 (stating that the arrest of PUOK Chay was decided by POL Pot, NUON Chea and SON Sen); KAING Guek Eav Interview Record, E3/5762, 18 February 2008, p. 9, ERN (En) 00164335 (“[T]he arrest of Ri from Industry was decided by Nuon Chea pursuant to reporting by Vom Vet.”); KAING Guek Eav Interview Record, E3/394, 22 October 2009, p. 5, ERN (En) 00398232 (“[I]t was probably NUON Chea who made the decision for the arrests in Division 703, only making a summary report to POL Pot.”); Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, p. 31, ERN (En) 00344138 (the decision to arrest Ya came from SON Sen); T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 41 (stating that NUON Chea ordered the arrest of NGET You *alias* Hong); DK Telegram, E3/1202, 4 June [year illegible], ERN (En) 00828147 (telegram from Comrade Sok of the Division Committee to Brother 89 reporting on enemies and stating that: “The committee agreed to request sending them to S-21. [...] I request Brother’s opinion in this regard”); HIM Huy Interview Record, E3/10580, 21 July 2015, p. 11, ERN (En) 01134925 (“I think that after Duch received confessions from the prisoners, he prepared all the documents and sent those documents to SON Sen at the General Staff.

questioned about the lack of documentary evidence regarding decisions on arrest, Duch explained that this was a tactic used by the Party to promote secrecy.<sup>7328</sup> The Chamber is satisfied that as Duch's direct superior, NUON Chea provided information to Duch on who was to be arrested and sent to S-21.

2184. S-21 was used by the Standing Committee of the Central Committee to detain prisoners who had been arrested from across Cambodia.<sup>7329</sup> S-21 was geographically located no more than five kilometres away from the Standing Committee's location.<sup>7330</sup> While Duch never attended a meeting of the Central Committee or Standing Committee, he was informed about what was discussed at these meetings by his superior.<sup>7331</sup>

2185. The NUON Chea Defence submits that S-21 was an independent military regiment "under direct control of the General Staff and its commander, SON Sen". It contends that, unlike Duch's allegations that S-21 was controlled by the Standing Committee in regard to security, the General Staff was at all relevant times in charge not only of logistics and administration of S-21, but of security-related matters as well. The Defence submits that no evidence exists other than Duch's "unreliable testimony", that any member of the Standing Committee other than SON Sen was directly or indirectly involved in the daily security matters or operation of S-21. The NUON Chea

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Then SON Sen would issue orders to the division level and the division level would issue orders to the lower levels for implementation."); T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 27; KAING Guek Eav Interview Record, 15 September 2007, E3/453 [E3/9395], p. 4, ERN (En) 00147582 ("A person named Sophea who was a Committee Member of Kratie sector was to be arrested by the order of Nuon Chea"); Report of the Co-Investigating Judges, E3/8313, 13 November 2007, p. 5, ERN (En) 00162969 (Witness Mam Nai: "S-21 was subordinate to the Central Committee, which at that time was composed of Pol Pot, Nuon Chea and Khieu Samphan. [...] "Duch reported to the upper echelon to arrest cadres inside and outside S-21."); Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 73-74, ERN (En) 00351156-00351157 (describing how Duch told him he had reported to the upper echelon about him and the upper echelon replied that he was an intellectual and should be trustworthy). Witnesses testified that "Office 870" decided on arrests. See T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 45; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 82; TOIT Thoeun Interview Record, E3/9610, 10 September 2013, p. 9, ERN (En) 00974020; CHHOUK Rin Interview Record, E3/361, 9 April 2008, p. 5, ERN (En) 00766451. See also, S-21 Confession – NON Suon *alias* CHEY Suon *alias* Saeng *alias* Chey *alias* XII, E3/1870, undated, ERN (En) 00096849 (which contains a note that a prisoner who was being interrogated was informed that his detention had been decided on by the Standing Committee of the Party); Section 16: Common Purpose, para. 3955. See below, paras 2197, 2210, 2203, 2211, 2215, 2282. For further discussion of communication between the Party Centre and outside organs, see Section 6.2.2: Communication Structures: Lines of Communication: Between the Party Centre and the Zones or Autonomous Sectors.

<sup>7328</sup> KAING Guek Eav Interview Record, E3/450, 2 April 2008, p. 3, ERN (En) 00178060.

<sup>7329</sup> Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, pp. 76-77, ERN (En) 00326215-00326216. See also, Section 5.1.2: Central Committee and Standing Committee.

<sup>7330</sup> Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, p. 75, ERN (En) 00326214.

<sup>7331</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 67, 71.

Defence cites to the Case 002/01 Appeal Judgement to support its submission that “NUON Chea was unrelated to the military”. Based on the foregoing, the Defence submits that NUON Chea cannot be criminally liable for alleged crimes at S-21.<sup>7332</sup> The KHIEU Samphan Defence submits that S-21, along with Au Kanseng and Phnom Kraol Security Centres, was predominantly administered by the military staff of Division of 703, which itself was supervised by the General Staff.<sup>7333</sup> To the contrary, the Co-Prosecutors submit that S-21 operated “directly under the supervision of, and reported to, the senior leaders of the CPK and members of the Standing Committee”.<sup>7334</sup> The Civil Party Lead Co-Lawyers make no direct submissions on this matter.

2186. The Chamber finds that S-21 was an independent regiment which fell under the military structure and was subordinate to the General Staff, which was responsible for providing food, fuel and other logistical supplies to S-21 and also gave invitations for study sessions.<sup>7335</sup> S-21 cadres including Duch were present at high-level military meetings.<sup>7336</sup> This finding is consistent with the NUON Chea Defence’s submission that S-21 was an independent military regiment which was subordinated to the General Staff.<sup>7337</sup> However, while formally under the military structure, S-21 did not receive security-related instructions from the zones or the General Staff, nor did S-21 send reports to the same. S-21 received instructions regarding security exclusively from the Standing Committee through individuals such as SON Sen, NUON Chea and *Ta Mok*.<sup>7338</sup>

<sup>7332</sup> NUON Chea Closing Brief, paras 528-529.

<sup>7333</sup> KHIEU Samphan Closing Brief, para. 1481.

<sup>7334</sup> Co-Prosecutors’ Closing Brief, paras 631, 639.

<sup>7335</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 40-42, 45-46, 51; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 87; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 21. *See also*, General Staff List, E3/1048, 7 April 1977, p. 1, ERN (En) 00193064 (listing S-21 as a unit for the purposes of food requirements); General Staff Statistics, E3/849, 7 April 1977, p. 1, ERN (En) 00183956 (listing S-21 on the Joint Statistics for Armed Forces in March 1977). *See also*, Section 6.3.2: Communication between the General Staff and the Divisions.

<sup>7336</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 22; Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, pp. 2-3, ERN (En) 00937115-00937116 (attended by Duch); Minutes of Divisions Meeting on Production, E3/801, 30 September 1976, p. 3, ERN (En) 00597954; Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 2, ERN (En) 00933847; Minutes of Plenary Meeting of Divisions, E3/803, 21 November 1976, pp. 16-17, ERN (En) 00656391-00656392; General Staff study session S-21 list of names, E3/8365, 20 October 1976, p. 1, ERN (En) 00182793.

<sup>7337</sup> NUON Chea Closing Brief, paras 446, 528-529.

<sup>7338</sup> Standing Committee Minutes, E3/218, 26 March 1976, p. 7, ERN (En) 00182657 (“Comrade Deputy Secretary” reporting that “we have ordered them arrested already” referring to a group of five to six Vietnamese people at Peam Chor); T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 13. *See also*, Case 001 Transcript (KAING Guek Eav), E3/5796, 30 June 2009, pp. 76-77, ERN (En) 00326215-00326216; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 41; T. 14 June 2016 (KAING Guek Eav), E1/437.1,

2187. The NUON Chea Defence cites to one of Duch's WRIs in which he states that "S-21 followed the instructions of the General Staff accordingly with their respective responsibilities". However, Duch clarifies in the very next sentence that: "For example, regarding the logistics and weaponry affairs, [we] listened to SUN Ty *alias* Teanh".<sup>7339</sup> The Chamber finds that this is consistent with Duch's insistence on multiple occasions that S-21 took orders from the Standing Committee, with the exception of those regarding logistical and support issues as noted here. As found above, the General Staff was only responsible for ensuring that all necessary means for operation were provided to S-21 and its staff, including food, fuel and other logistical supplies. The General Staff also issued invitations for study sessions.<sup>7340</sup>

2188. In support of its submission that the General Staff office regularly sent specific instructions to S-21, the NUON Chea Defence cites to a 5 October 1977 letter from SON Sen instructing Duch on interrogations.<sup>7341</sup> Although SON Sen was the Chief of the General Staff,<sup>7342</sup> Duch on numerous occasions testified that "SON Sen always told me that – when he talked to me, he was not in his capacity as the chief of the General Staff. He was talking in the capacity as *Angkar*. That means in the capacity of 870. Whatever his instruction was, we noted it down."<sup>7343</sup> When SON Sen was transferred in 1977, Duch began to report directly to NUON Chea, a member of the Standing Committee, and continued to do so until the liberation of Phnom Penh.<sup>7344</sup> The Chamber

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p. 51; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 26 (both describing how VORN Vet's arrest was ordered by *Ta Mok*). For the role of SON Sen and NUON Chea in connection with S-21, *see below*, Section 12.2.6: Oversight of S-21 Security Centre.

<sup>7339</sup> NUON Chea Closing Brief, para. 446. *See* KAING Guek Eav Interview Record, E3/5724, p. 4, ERN (En) 00670698.

<sup>7340</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 45-46, 51; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 87; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 22; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 22-23.

<sup>7341</sup> NUON Chea Closing Brief, para. 529; Letter from SON Sen to Duch, E3/1047, 5 October 1977, ERN (En) 00548892.

<sup>7342</sup> Standing Committee Minutes, E3/183 [E3/1733, E3/1612, E3/182], 9 October 1975, p. 1, ERN (En) 00183393; T. 11 January 2012 (Accused NUON Chea), E1/25.1, p. 37; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 17, 22; T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 81; *NUFK and RGNUC Reinforced* (Vietnam Courier), E3/3709, 3 April 1972, ERN (En) 00023588; Book by B. Kiernan: *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 100, ERN (En) 01150047. *See also*, T. 22 October 2013 (Closing Statements), E1/232.1, p. 98; T. 21 October 2013 (Closing Statements), E1/231.1, p. 53. *See below*, para. 2198.

<sup>7343</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 23-24; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 90-91 ("SON Sen came to S-21 in his capacity as Office 870 not in his capacity as general staff"); T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 13 ("S-21 received instructions exclusively from the Standing Committee. The general staff did not contact S-21 in relation to *Santebal*").

<sup>7344</sup> *See below*, para. 2192. *See also*, Section 17: The Criminal Responsibility of the NUON Chea, paras 4082, 4089-4093.

finds Duch's testimony to be reliable in this regard. The Defence additionally cites to a letter from Ren<sup>7345</sup> to Duch to bolster its submission that the General Staff controlled S-21. In this letter from 30 October 1977, Ren lists names and requests the "removal of bad elements", seeking that Duch "please be informed, and please comment on this".<sup>7346</sup> The Chamber notes that this letter seeks instruction rather than ordering Duch to take action, and is not satisfied that the evidence supports NUON Chea's submission that the General Staff office, not the Standing Committee, exercised control over S-21 regarding security matters. As such, the Chamber rejects the NUON Chea Defence's submission that S-21 was under the control of the General Staff. The Chamber previously found, as confirmed by the Supreme Court Chamber, that while NUON Chea was not a member of the military committee, he was substantially involved in military affairs.<sup>7347</sup> Thus, the NUON Chea Defence's claim that NUON Chea himself was "unrelated to the military" is rejected.

2189. According to Duch, S-21 was under the authority of "870", or *Angkar*, which received confessions directly from S-21.<sup>7348</sup> There was no direct communication at a horizontal level between different security centres and S-21 only received orders from and sent reports to "870".<sup>7349</sup> However, the evidence does establish that documentation produced by other zones or sectors was received by S-21 and was used during the course of preparing confessions.<sup>7350</sup> Duch clarified this issue when he referenced three letters addressed to him from Division 502 dated in 1977 regarding the arrest of prisoners. Duch stated that:

<sup>7345</sup> Section 5: Administrative Structures, para. 428.

<sup>7346</sup> NUON Chea Closing Brief, para. 529; Request from RAK General Office, E3/1044, 30 October 1977, ERN (En) 00875624.

<sup>7347</sup> Section 17: The Criminal Responsibility of NUON Chea, para. 4187; Case 002/01 Appeal Judgement, para. 996.

<sup>7348</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 51, 57-58 (testifying that SON Sen told him that he had led S-21 on behalf of "*Angkar*" and not the General Staff). *See also*, Section 5.1.5: Office 870.

<sup>7349</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 65-67; The Chamber interprets Duch's testimony to be referring to "Office 870", also known as, *inter alia*, M-870, Office of the Standing Committee, or Political Office of 870. *See* T. 18 July 2012 (David CHANDLER), E1/91.1, p. 121; T. 17 July 2013 (Stephen HEDER), E1/225.1, pp. 88-89; Standing Committee Minutes, E3/182 [E3/1733, E3/1612, E3/183], 9 October 1975, p. 1, ERN (En) 00183393; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 3, ERN (En) 00156754; T. 8 May 2013 (Philip SHORT), E1/191.1, p. 26 ("The political office of 870 [...] gives implementation to the decisions reached by the Standing Committee. It's the transmission belt").

<sup>7350</sup> *See e.g.*, S-21 confession – LI Phen, E3/3837, 12 June 1976, pp. 1-17, ERN (En) 00807161-00807177 (which attaches a record of interrogation conducted by the Ministry of Security of Sector 21 to the S-21 confession).

Everything went through SON Sen or, subsequently, NUON Chea [...] to avoid revealing their names. The letter was supposed to be addressed to me directly by SOU Meth, SON Sen had asked him to draft it this way. Yet SON Sen sent it to me and I had to pass on the confessions to SON Sen.<sup>7351</sup>

2190. Similarly, Duch stated during another interview that:

It was at that time that SON Sen showed me the letters and requests that SOU Meth had sent to me. Thanks to those six or seven letters SOU Meth was alleged to have ordered me to do things. But that was not correct. Actually, it was SON Sen who had ordered SOU Meth to write those letters to me.<sup>7352</sup>

2191. In sum, the Chamber finds that S-21 was an independent regiment that, while supported logistically by the General Staff, was linked directly to the Standing Committee and CPK leaders, usually through orders and reports from SON Sen and NUON Chea. All information and communication coming in and out of S-21 passed through Duch's supervisors.

#### 12.2.6. *Oversight of S-21 Security Centre*

2192. According to the Closing Order, between 15 August 1975 and 15 August 1977, SON Sen was the direct superior of Duch,<sup>7353</sup> and after SON Sen's transfer to the front lines of the conflict with Vietnam in 1977, NUON Chea became Duch's direct supervisor.<sup>7354</sup>

2193. The Chamber finds that the evidence shows that indeed, SON Sen was Duch's direct superior until 15 August 1977, when NUON Chea took over as Duch's direct superior, due to SON Sen's imminent transfer to the battlefields against Vietnam in the second half of 1977. Duch's evidence regarding SON Sen's transfer is supported by other witnesses, interview records and contemporaneous evidence.<sup>7355</sup> Duch described

<sup>7351</sup> KAING Guek Eav Interview Record, E3/450, 2 April 2008, pp. 2-3, ERN (En) 00178059-00178060, referencing: Letter from Met of Division 502 to Duch, E3/4177, 1 June 1977, ERN (En) 00178187; Letter from Met of Division 502 to Duch, E3/9381, 2 June 1977, ERN (En) 00002409; Letter from Met of Division 502 to Duch, E3/1043, 10 August 1977, ERN (En) 00224319 (asking Duch to "reply through *Angkar* as soon as possible").

<sup>7352</sup> KAING Guek Eav Interview Record, E3/10608, 2 February 2016, p. 7, ERN (En) 01213424.

<sup>7353</sup> Closing Order, para. 878.

<sup>7354</sup> Closing Order, para. 879.

<sup>7355</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 102-103; T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 62-63 (explaining that on 15 August 1977, Comrade Pang called him to a meeting in the Suramarit Buddhist School, where he met NUON Chea. On this occasion, NUON Chea told Duch that brother Khieu (*i.e.* SON Sen) had gone to the battlefield and that Duch was to work with him (NUON



being called to a meeting at Suramarit Buddhist School, where NUON Chea informed Duch that SON Sen was to be sent to the battlefield and that from that time onwards Duch would be working with NUON Chea.<sup>7356</sup> Duch's movements were restricted and he had to inform his superior before leaving the S-21 compound.<sup>7357</sup>

2194. The NUON Chea Defence submits that Duch is not credible in this regard and particularly challenges the date when NUON Chea became his direct superior.<sup>7358</sup> Duch was challenged about the date when he first met NUON Chea by reference to a prior interview with Nate THAYER which suggested that he was transferred to the supervision of NUON Chea in July 1978.<sup>7359</sup> The Chamber notes that Duch was

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Chea) from then on), 51 (testifying that before this he had not met NUON Chea in person, even though SON Sen had repeatedly mentioned POL Pot and other members of the Standing Committee); T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 64-65; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 39; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 55-58. *See also*, T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 43. Regarding SON Sen's transfer to the battlefield, *see* OUK Bunchhoeun Interview, E3/387, undated, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977, POL Pot assigned his soldiers to go to Route 1, under SON Sen's command); Section 4: General Overview, paras 286, 290; Section 5: Administrative Structures, para. 451. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, multiple dates, ERN (En) 00651886, 00651894-00651895 (noting that the attack against the Vietnamese happened in September 1977, that divisions from the Centre were sent there, and that SON Sen was on Highway 1 with command in Svay Rieng); SOKH Chhien Interview Record, E3/428, 19 August 2009, p. 4, ERN (En) 00374948 (stating that the divisions sent to the East Zone were under the overall command of Ren, with SON Sen as "the supreme commander of the Khmer Rouge army"); IENG Phan Interview Record, E3/419, 23 November 2009, p. 6, ERN (En) 00411007 (describing receiving orders from Ren, as well as directly from SON Sen); DK Telegram, E3/181, 14 February 1978 (from Brother 47 (*i.e.* SON Sen), regarding Road Number 1); DK Telegram, E3/1075, 8 April 1978 (from 47, reporting from Sector 24 of the East Zone).

<sup>7356</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 62-63; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 64-65, 71-72; T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 110. *See also*, IENG Sary DC-Cam Interview, E3/89, 17 December 1996, p. 29, ERN (En) 00417627; T. 24 February 2009 (Accused IENG Thirith) (PTC), E3/39, p. 51, ERN (En) 00293075. The Chamber notes that the NUON Chea Defence presented evidence which suggested that SON Sen was present in Phnom Penh to meet various overseas delegations after Duch testified that he had been transferred to the battlefields. *See Party Leadership Turnout at POL Pot's Departure* (in FBIS collection), E3/143, 28 September 1977, ERN (En) 00168769; *Radio Continues Coverage of Ne Win Visit* (in FBIS collection), E3/291, E3/291, 29 November 1977, ERN (En) 00168600; *29 November Departure* (in FBIS collection), E3/291, 29 November 1977, ERN (En) 00168605. The Chamber is satisfied with the explanation provided by Duch that SON Sen could easily return to Phnom Penh when required by the DK leadership to do so. The Chamber does not consider that this undermines Duch's unequivocal evidence that he started to report to NUON Chea on 15 August 1977 and that SON Sen was transferred to the battlefield. *See* T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 16-21, 55-56. The Chamber also received independent evidence that SON Sen was present at the Eastern battlefield in the second half of 1977. *See* T. 10 November 2016 (OU Dav), E1/498.1, p. 104. *See also*, Section 4: General Overview, paras 286, 290; Section 5: Administrative Structures, para. 451.

<sup>7357</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 17-19.

<sup>7358</sup> NUON Chea Closing Brief, paras 440, 529. The NUON Chea Defence does not appear to challenge that the meeting occurred.

<sup>7359</sup> NUON Chea Closing Brief, para. 440; *'I Am in Danger' Duch talks of the risks to his life, even as he provides further details of Khmer Rouge death machine* (Nate Thayer, Far Eastern Economic Review), E3/1567, 13 May 1999, ERN (En) 00002622.

confronted with this inconsistency and with the extract of this article in court.<sup>7360</sup> Duch explained that he remembered the date 15 August 1977 very clearly because other significant events in his life had occurred on 15 August in different years. In particular it was on 15 August 1975 that SON Sen asked him and Nat to establish S-21. Duch further testified that he could never forget that date given the significance of meeting NUON Chea.<sup>7361</sup> Duch also explained that he had not been given a copy of Nate THAYER's "book",<sup>7362</sup> that he had not been interviewed by THAYER personally, and that some of the dates may have been misquoted – but maintained that he was never mistaken about 15 August 1977.<sup>7363</sup> The Chamber also notes that Duch has been consistent over time in providing 15 August 1977 as the date of the transition of supervision from SON Sen to NUON Chea.<sup>7364</sup> The Chamber is satisfied with the veracity of Duch's consistent testimony that he accurately recalled that he was transferred to the authority of NUON Chea on 15 August 1977 and therefore finds Duch's evidence to be credible in this regard.

2195. The Chamber also accepts Duch's clarification that SON Sen still signed some documents until 25 November 1977 in order to finish his work following his transfer, and that he also had some radio contact with SON Sen after his departure on non-S-21-

<sup>7360</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 77-78.

<sup>7361</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 74-77.

<sup>7362</sup> It appears that the relevant text, as mentioned above, is an extract of an article written by Nate THAYER, not a book. See Article by Nate THAYER: *I Am in Danger* (Far Eastern Economic Review), E3/1567, 13 May 1999, ERN (En) 00002621. See also, T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 33.

<sup>7363</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 70, 72; T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 21-26; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 77.

<sup>7364</sup> See e.g., T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 50-51; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 64-65, 67; T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 74-79; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 8, 14, 18; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 21, 23; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 14, 39, 47-48; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 79; T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 13-14, 72; T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 16, 21-22, 25-26; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 14, 84, 87, 92; Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, p. 68, ERN (En) 00322901; Case 001 Transcript (KAING Guek Eav), E3/2983, 27 May 2009, p. 11, ERN (En) 00334509; Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, p. 88, ERN (En) 00339396; Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, pp. 31, 59, ERN (En) 00339626, 00339654; KAING Guek Eav Interview Record, E3/65, 10 August 2007, p. 6, ERN (En) 00147522; KAING Guek Eav Interview Record, E3/1579, 21 October 2009, p. 2, ERN (En) 00398205; KAING Guek Eav Interview Record, E3/1564, 10 November 2009, p. 6, ERN (En) 00403889; KAING Guek Eav Interview Record, E3/83, 20 October 2009, pp. 3-4, ERN (En) 00398163-00398164; KAING Guek Eav Interview Record, E3/60, 3 June 2008, p. 2, ERN (En) 00195600; KAING Guek Eav Interview Record, E3/5763, 19 February 2008, p. 2, ERN (En) 00164361; KAING Guek Eav Interview Record, E3/10608, 2 February 2016, p. 6, ERN (En) 01213423; KAING Guek Eav Interview Record, E3/9836, 3 February 2016, p. 3, ERN (En) 01213430; Written Statement by KAING Guek Eav, E3/9362, 2012, p. 52, ERN (En) 00792027.

related matters.<sup>7365</sup> The Chamber finds that while SON Sen left for the battlefield some time in the second half of 1977, he still worked on some remaining documents at S-21 and worked together with NUON Chea.<sup>7366</sup> For example, in October and November 1977, SON Sen instructed that copies of certain confessions from S-21 be given to NUON Chea.<sup>7367</sup> The extent of SON Sen's continued involvement is demonstrated in a note he sent to Duch on 5 October 1977 in which he gave instructions on ensuring that confessions were "thorough and responsible" and that for important prisoners the confessions had to be written by the prisoner or taped and transcribed.<sup>7368</sup> When challenged about the date of this letter, Duch testified that SON Sen was responding to a letter which Duch had sent while he was still under his supervision, but SON Sen only replied much later.<sup>7369</sup> The Chamber finds Duch's testimony in this regard to be consistent and supports the conclusion that SON Sen left for the battlefield some time during the second half of 1977 and continued to have some contact and involvement with S-21 from the time he left until at least November 1977.

#### 12.2.6.1. Oversight of S-21 under SON Sen

2196. The NUON Chea Defence asserts that S-21 was "under the ultimate command of SON Sen from its establishment until the very end of the DK regime" and that Nat "most likely kept playing an important role after he had left S-21".<sup>7370</sup> Regarding Nat, the NUON Chea Defence cites a handwritten report of Duch dated 16 November 1976,

<sup>7365</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 76-79; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 17-19; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 67-70; T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 68-71; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 84-85.

<sup>7366</sup> S-21 Confession – LUN En, E3/3689, undated, ERN (En) 00221784; S-21 Confession – SAO Tong Li, E3/1889, 18 October 1977, p. 1, ERN (En) 00796688; S-21 Confession – PHEN Sun, E3/3665, undated, p. 1, ERN (En) 00224634; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 3-10 (identifying the handwriting of SON Sen in the annotation on each of these confessions and testifying that even though SON Sen left for the battlefield on 15 August 1977 he still worked on some remaining documents at S-21 and worked together with NUON Chea); S-21 Confession – DI Leng, E3/1839, 23 October 1977, p. 1, ERN (En) 00835986.

<sup>7367</sup> S-21 Confession – LUN En, E3/3689, undated, ERN (En) 0021784; S-21 Confession – SAO Tong Li, E3/1889, 18 October 1977, p. 1, ERN (En) 00796688; S-21 Confession – PHEN Sun, E3/3665, undated, p. 1, ERN (En) 00224634; S-21 Confession – DI Leng, E3/1839, 23 October 1977, p. 1, ERN (En) 00835986; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 3-10.

<sup>7368</sup> Letter from SON Sen to Duch, E3/1047, 5 October 1977, ERN (En) 00548892.

<sup>7369</sup> T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 88-91. In a previous interview Duch had stated that he had written to SON Sen at the end of 1977. See KAING Guek Eav Interview Record, E3/449, 21 January 2008, p. 7, ERN (En) 00159558. The Chamber does not consider that this potential inconsistency casts doubt on the otherwise consistent live testimony of Duch on this issue.

<sup>7370</sup> NUON Chea Closing Brief, para. 446. See below, Section 12.2.8.5.3: IN Lorn *alias* Nat.

detailing a stolen weapon, and mentioning Nat as a “leader”, submitting that this shows his continued involvement in S-21.<sup>7371</sup>

2197. Duch consistently testified that when he was under SON Sen’s supervision, he received instructions from SON Sen to report all S-21 documents to him personally, as SON Sen represented “*Angkar*”.<sup>7372</sup> Duch further clarified that SON Sen told him that it was NUON Chea who instructed SON Sen on what had to be done.<sup>7373</sup> On another occasion, SON Sen informed Duch of NUON Chea’s order that he personally interrogate specific prisoners.<sup>7374</sup> SON Sen sometimes asked Duch whether a certain prisoner had been sent out, and if not, instructed him to have the prisoner sent out and “smashed”.<sup>7375</sup> SON Sen also relayed NUON Chea’s order to exhume and photograph the bodies of certain prisoners who had been smashed.<sup>7376</sup>

2198. When SON Sen was his superior, Duch would send documents through messengers to SON Sen with the annotation “To Brother 62”, which was SON Sen’s code when he worked with S-21.<sup>7377</sup> SON Sen had several aliases. In the army SON Sen was referred to as “Brother 89” and was also known generally by the alias “Khieu”. SON Sen signed travel passes with the name “Khim”,<sup>7378</sup> and also signed telegrams with the number 47, which was his secret code.<sup>7379</sup> SON Sen used two messengers for S-21 – Comrade Phan and Comrade Noeun.<sup>7380</sup>

2199. SON Sen and Duch spoke almost every evening for at least one hour by telephone.<sup>7381</sup> During these conversations SON Sen asked about the confessions of

<sup>7371</sup> Written Report of Duch, E3/1038, 16 November 1976, ERN (En) 00008147.

<sup>7372</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 88; T. 9 April 2012 (KAING Guek Eav), E1/61.1, pp. 104-105.

<sup>7373</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 92. The Chamber does not rely on Duch’s personal assessment that this showed that “above SON Sen was Brother NUON and then Brother POL, and that was commonly known”.

<sup>7374</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 52.

<sup>7375</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 23-24 (testifying however, that they did not ask him about the number of prisoners at S-21).

<sup>7376</sup> KAING Guek Eav Interview Record, E3/455, 3 October 2007, p. 4, ERN (En) 00149910.

<sup>7377</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 11; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 87. The Chamber notes its finding above that S-21 was also sometimes referred to as Office 62. *See also*, T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 48-49; List of Participants – 1st General Staff Training, E3/1585, 20 October 1976, pp. 16-18, ERN (En) 00897664-00897666.

<sup>7378</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 87-88.

<sup>7379</sup> T. 3 September 2012 (NORNG Sophang), E1/120.1, p. 83. *See below*, para. 2463.

<sup>7380</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 60-61.

<sup>7381</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 19-20; T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 19; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 94-95.

prisoners he was interested in and gave Duch instructions which Duch, in turn, relayed to his subordinates.<sup>7382</sup> Duch also met SON Sen at his office once every three to four days for a brief meeting during which he provided information concerning confessions, reported on the situation at S-21 and received instructions in return.<sup>7383</sup> SON Sen also visited S-21 in person on a few occasions.<sup>7384</sup>

2200. On one occasion, Duch and Nat met with SON Sen, who asked why they could not find any CIA agents at S-21 given that agents had been found in other sectors. SON Sen instructed Duch and Nat to work harder to find CIA agents and to obtain their confessions.<sup>7385</sup>

2201. Duch discussed with SON Sen the types of physical and mental abuse used at S-21, which Duch characterised as “torture”.<sup>7386</sup> The methods of physical violence discussed included beating detainees with sticks, the use of electroshocks, suffocation of detainees with a plastic bag, and covering detainees’ mouths and noses with a towel while pouring cold water from a kettle on them.<sup>7387</sup> SON Sen agreed to these methods.<sup>7388</sup> One time when Duch reported to SON Sen about interrogators using physical violence, SON Sen replied and instructed Duch that the interrogators “should not inflict too severe physical torture” and “should not rely too much on physical torture”.<sup>7389</sup>

<sup>7382</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 19 (testifying that these conversations were made on a special telephone using a different frequency which could not be intercepted); T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 22-23.

<sup>7383</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 23; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 94; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 38; KAING Guek Eav Interview Record, E3/5748, 22 November 2007, ERN (En) 00153570, 00153576.

<sup>7384</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 21 (testifying that NUON Chea never visited S-21); KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 5, ERN (En) 00147521 (stating that SON Sen once came to the front gate of S-21 and then went to Duch’s house).

<sup>7385</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 101; T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 91.

<sup>7386</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 11-12 (testifying that the methods used included beating detainees with a stick; the use of electroshocks; covering detainees’ head with a plastic bag to suffocate them; covering detainees’ mouths and noses with a towel and pouring cold water from a kettle; further adding that he had used these methods since he was at M-13); KAING Guek Eav Interview Record, E3/454, 2 October 2007, p. 5, ERN (En) 00147604 (KAING Guek Eav). *See also*, T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 56-58.

<sup>7387</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 11-12.

<sup>7388</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 11-12.

<sup>7389</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 22. *See also*, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 10, ERN (En) 00198007. *See below*, Section 12.2.12.3: Interrogation Methods and Mistreatment.

2202. Duch made annotations on confessions in accordance with the instructions he received from SON Sen over the phone.<sup>7390</sup> On one occasion, SON Sen informed Duch that the brothers in the upper echelon were about to meet and asked him to tally all the confessions, after which Duch prepared folders containing these confessions.<sup>7391</sup> SON Sen told Duch that POL Pot had asked him to read an S-21 document and asked how certain Duch was that SUOS Neou *alias* Chhouk, the Secretary of Sector 24 of the East Zone, was an enemy.<sup>7392</sup> On another occasion, POL Pot called Duch to ask whether or not Mon, who was a high ranking cadre in the East Zone, had been sent to S-21.<sup>7393</sup>

2203. Duch and other S-21 cadres also attended formal meetings with important military leaders in Phnom Penh, which were convened by the General Staff. For example, Duch and other S-21 staff attended meetings with division leaders and SON Sen in September 1976 at which it was determined that the associates of CHAN Chakrei, the former Secretary of Division 170, should be rounded up with others in Division 170.<sup>7394</sup> At another such meeting there was a discussion about the distribution of counter-revolutionary leaflets. Duch reported that they had arrested and questioned three individuals and that one of them confirmed that the leaflets had come from Division 170.<sup>7395</sup> At the 16 September 1976 meeting, SON Sen asked Duch to provide a list of those who had been implicated in confessions.<sup>7396</sup> SON Sen requested that Pang contact various ministries and instructed that those from Division 170 should be rounded up.<sup>7397</sup>

2204. At one such meeting SON Sen (identified as Brother 89) observed that: “After his arrest, Chakrey implicated a number of people of Sector 24 [...] Now we have

<sup>7390</sup> KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 4, ERN (En) 00147520; KAING Guek Eav Interview Record, E3/452, 23 August 2007, p. 7, ERN (En) 00147569.

<sup>7391</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 73-74.

<sup>7392</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 83.

<sup>7393</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 39.

<sup>7394</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 2-3; Minutes of Meeting Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, pp. 1-2, ERN (En) 00937114-00937115; Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 4, ERN (En) 00933849. *See also*, 12.2.8.1.3: CHAN Chakrei *alias* Mean. For a detailed description of purge of Division 170, *see* Section 12.1.4.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976).

<sup>7395</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 1, ERN (En) 00933846.

<sup>7396</sup> Minutes of the Meeting Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, ERN (En) 00182791-00182792.

<sup>7397</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 4, ERN (En) 00933849.

arrested Chhouk, the Secretary of Sector 24 and his cronies.<sup>7398</sup> SON Sen then proceeded to order an examination of Sector 24 links in Division 290 and listed the names of individuals that had to be obtained from this process.<sup>7399</sup> The notes from this meeting indicate Duch's proposal of an additional 29 names to be obtained, which was approved.<sup>7400</sup> There was a further decision to "take out" two more women including CHAN Chakrei's wife and niece.<sup>7401</sup> The level of cooperation is evident from Duch's observation that S-21 and Division 290 had already met and decided on the proposed names and that 11 of the names had already been agreed upon at an even earlier meeting.<sup>7402</sup> At the conclusion of this meeting, Division 290 and Division 170 were instructed to cooperate with S-21 in order to facilitate the arrest of those individuals identified and to keep their removal a secret to prevent any disruption in their units.<sup>7403</sup>

2205. HUY Sre, the head of Prey Sar and a member of the S-21 committee, was present at a meeting in August 1976 attended by Secretaries and Deputy Secretaries of Divisions and Regiments at which there was discussion of "fending off the enemy that is boring from within" and purging "no good elements completely from the Party".<sup>7404</sup>

2206. If a prisoner implicated many people including, for example, the secretary of a zone, Duch sought permission from his superior to interrogate further.<sup>7405</sup> SON Sen provided feedback to Duch on confessions through phone calls.<sup>7406</sup> If confessions implicated people in a specific zone, copies were sent to the zone level.<sup>7407</sup> For example,

<sup>7398</sup> Minutes of Meeting with Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, pp. 1-2, ERN (En) 00937114-00937115. *See below*, Sections 12.2.8.1.2 (YIM Sambath), 12.2.8.1.3 (CHAN Chakrei *alias* Mean), 2273 (SUOS Neou *alias* Chhouk).

<sup>7399</sup> Minutes of Meeting with Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, pp. 1-2, ERN (En) 00937114-00937115.

<sup>7400</sup> Minutes of Meeting with Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, pp. 2-3, ERN (En) 00937115-00937116.

<sup>7401</sup> Minutes of Meeting with Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, p. 3, ERN (En) 00937116.

<sup>7402</sup> Minutes of Meeting with Divisions 290 and 170, E3/822 [E3/4175], 16 September 1976, pp. 2-3, ERN (En) 00937115-00937116.

<sup>7403</sup> Minutes of Meeting with Divisions, 290 and 170, E3/822 [E3/4175], 16 September 1976, p. 3, ERN (En) 00937116.

<sup>7404</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, ERN (En) 00183961.

<sup>7405</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 97-98. Duch also testified that once the Party Centre has received confessions they would meet among themselves and that the confession of LONG Muy *alias* Chuon was sent to POL Pot to make a decision. *See* T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 80. However, it is unclear on what basis Duch formed this conclusion. Therefore the Chamber does not rely on his evidence in this regard.

<sup>7406</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 22.

<sup>7407</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 93-94.

CHHAOM Se, the head of Au Kanseng Security Centre, received confessions from Phnom Penh sent to him by SAO Saroeun of Division 801 which included the names of individuals who had been implicated.<sup>7408</sup> For further discussion of the way in which this information was used, the Chamber refers to its factual findings in Section 12.4: Au Kanseng Security Centre.<sup>7409</sup>

2207. SON Sen conducted study sessions attended by S-21 staff during which there was discussion about building the country, agricultural production, military strategies and the importance of the *Revolutionary Flag* magazine.<sup>7410</sup> SON Sen warned that staff had to be vigilant and careful of infiltrated enemies.<sup>7411</sup>

2208. As stated above, the Chamber has found that Nat was removed from S-21 and reassigned to the General Staff in mid-March 1976, and that he continued to participate in S-21 activities until approximately June 1976, not November, as the NUON Chea Defence asserts. The Chamber's finding is supported by Duch's live testimony, SUOS Thy's evidence and a Standing Committee decision.<sup>7412</sup> The Chamber finds that the sole source put forth by NUON Chea to the contrary, Duch's handwritten note from November 1976 which labels Nat as a "leader", neither clearly supports NUON Chea's contention nor constitutes convincing evidence in the face of the contradictory documentation.

2209. As for SON Sen's supervision, in this section and those that follow, the Chamber discusses the manner in which operations at S-21 were only initially supervised by SON Sen and later by NUON Chea. Furthermore, even when SON Sen initially supervised S-21, he was still subject to NUON Chea's authority.<sup>7413</sup> The Chamber finds that there is sufficient evidence to show that NUON Chea acquired direct responsibility of S-21 on 15 August 1977 due to SON Sen's impending transfer

<sup>7408</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 96-99 (testifying that these confessions were passed on to him by SOU Saroeun); CHHAOM Se Interview Record, E3/407, 8 November 2009, pp. 4-5, ERN (En) 00406223-00406224; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 93-94.

<sup>7409</sup> Section 12.4: Au Kanseng Security Centre, paras 2870-2871, 2873.

<sup>7410</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 97-98. *See also*, T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 58.

<sup>7411</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 98.

<sup>7412</sup> *See above*, para. 2145.

<sup>7413</sup> Section 12.2.6.1: Oversight of S-21 under SON Sen; 12.2.6.2: Oversight of S-21 under NUON Chea; Section 12.2.5.5: External Reporting Structure. *See above*, para. 2197.



to the East Zone battlefield.<sup>7414</sup> The Chamber thus rejects the NUON Chea Defence's submissions regarding Nat and SON Sen.

#### 12.2.6.2. Oversight of S-21 under NUON Chea

2210. Duch met with NUON Chea at his office in the Suramarit Buddhist School every three to five days for short one-on-one meetings, which generally lasted no longer than 10 minutes, and during which Duch reported on confessions of "enemies" and sometimes on the overall situation at S-21.<sup>7415</sup> On two or three occasions Duch also met NUON Chea at Borei Keila.<sup>7416</sup> Duch discussed the confessions of prisoners at S-21 and, in particular, those prisoners identified by the upper echelon as important.<sup>7417</sup> After receiving these reports, NUON Chea provided Duch with instructions and guidance, which Duch passed on to his subordinates.<sup>7418</sup> Duch's meetings with NUON Chea became less frequent after NUON Chea returned from his visit to China in September 1978.<sup>7419</sup>

2211. While SON Sen generally communicated with Duch by telephone, NUON Chea preferred to communicate through short notes, letters or in person.<sup>7420</sup> NUON Chea's messengers collected documents from Duch and delivered them to NUON Chea.<sup>7421</sup>

<sup>7414</sup> See above, paras 2193, 2195.

<sup>7415</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 69; T. 7 June 2016 (KAING Guek Eav), E1/433.1, p. 63; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 79; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 94; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 48-51. The Chamber received evidence that *Ta Mok* had told NUON Chea to get rid of Duch, and that NUON Chea had spoken to SON Sen three times about this. See Book by G. Chon and Thet S.: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, p. 119, ERN (En) 00757538. However, the Chamber does not find this evidence to be reliable as it appears to be based on information provided by NUON Chea in the context of trying to minimise his knowledge of what Duch was doing. The Chamber also notes Duch's own evidence on this issue which undermines Gina CHON and THET Sambath's conclusion in this regard. See T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 61-64. The Chamber does accept however, that there was animosity between *Ta Mok* and Duch. See T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 60-61; KAING Guek Eav Interview Record, E3/1564, 10 November 2009, p. 9; ERN (En) 00403892.

<sup>7416</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 79.

<sup>7417</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 51.

<sup>7418</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 52; KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 6, ERN (En) 00147522.

<sup>7419</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 50. For the date of NUON Chea's visit to China, see *NUON Chea-Led Delegation Departs for PRC 2 September* (in FBIS collection), E3/76, 2 September 1978, ERN (En) 00170340.

<sup>7420</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 19-20; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 14-15; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 94; KAING Guek Eav Interview Record, E3/61, 2 June 2008, p. 3, ERN (En) 00195573; KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 4, ERN (En) 00147520.

<sup>7421</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 11-13; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 41 (identifying Comrade Toeung as NUON Chea's messenger and testifying that if Toeung

NUON Chea's messengers were SAUT Toeung and Sot *alias* Chiv, who were later both replaced by Lin. Lin also took over Pang's role as spokesperson for POL Pot.<sup>7422</sup> This evidence is corroborated by SAUT Toeung, who testified that he collected thick envelopes from Duch's house and delivered them to NUON Chea, and also delivered letters from NUON Chea to Duch.<sup>7423</sup>

2212. CHHIM Sam Aok *alias* Pang was a member of the Central Committee and was the spokesperson for POL Pot.<sup>7424</sup> Pang was assigned by NUON Chea to work with and receive reports from Duch. Pang came to S-21 to receive documents in addition to the messengers noted above, at times replacing Toeung, his subordinate, when Toeung was unavailable.<sup>7425</sup> While Pang received documentation from S-21, he was not just a messenger, but a "basic authority" for POL Pot.<sup>7426</sup> NUON Chea instructed Duch to also make reports to Pang regarding his activities.<sup>7427</sup> Pang conveyed instructions from Office 870, and when Duch wanted to send a report back to Office 870 he had to do so through Pang, –as Duch did not speak to NUON Chea directly by telephone.<sup>7428</sup>

2213. Pang also delivered sealed confessions from Duch to NUON Chea, and if NUON Chea wanted further information he asked Pang to return the confessions and

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was unavailable Pang would take the documents). *See also*, T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 14-19 (confirming that documents were delivered directly from Duch to NUON Chea).

<sup>7422</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 61. *See above*, paras 2212-2213.

<sup>7423</sup> T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 14-21; SOUTR Toeung Interview Record, E3/423, 2 December 2009, pp. 13-14, ERN (En) 00414599-00414600.

<sup>7424</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 73, 80-81. *See also*, Section 12.2.8.4.3: CHHIM Sam Aok *alias* Pang.

<sup>7425</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 12, 56; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 41; T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 23; T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 45, 81. Duch was presented with his prior statement wherein he stated that SON Sen still considered himself to be his superior and continued to deal with security issues, and that a document in April 1978 was drafted following the orders of SON Sen. However, Duch clarified that SON Sen had given instructions to prepare this report and work plan before he left for the battlefield, and that it was drafted over several months. Duch also refuted the testimony of LACH Mean, who suggested that SON Sen was seen three or four times when he was at S-21 in 1978. *See* T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 23-26, 29-30; KAING Guek Eav Interview Record, E3/1579, 21 October 2009, p. 3, ERN (En) 00398206. Having regard to the detailed and credible evidence of Duch on this issue, the Chamber does not consider that this draws into question Duch's evidence on the date when NUON Chea replaced SON Sen as his direct supervisor. For the Chamber's analysis of SON Sen's continued contact with Duch after he was sent to the battlefield, *see above*, para. 2195.

<sup>7426</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 69.

<sup>7427</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 106; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 20-23, 68.

<sup>7428</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 68-69; Section 5.1.5: Office 870.

seek clarification.<sup>7429</sup> Pang also brought messages from POL Pot to Duch.<sup>7430</sup> Pang sought the opinion of the upper echelon with respect to certain questions asked by Duch.<sup>7431</sup> When NUON Chea was out of the country, Pang collected documents from S-21 and gave instructions as spokesperson for POL Pot.<sup>7432</sup> Pang also brought people to S-21 to be arrested by Duch.<sup>7433</sup> After Pang's arrest around April 1978, his role at S-21 was taken over by Lin,<sup>7434</sup> and at that time NUON Chea sent VORN Vet to Duch bearing letter indicating that Duch should now work with VORN Vet as well.<sup>7435</sup>

2214. Comrade Ky, the Chairman of the messenger office K-7,<sup>7436</sup> also came to S-21 with letters directly from POL Pot.<sup>7437</sup> Duch, however, did not have the authority to send anyone to obtain letters from *Angkar* directly.<sup>7438</sup>

2215. The Chamber notes that in a prior interview, NUON Chea acknowledged that S-21 was “established to search for the enemy of the country” but claimed that the name “Tuol Sleng” was created by the “*Yuon*” to “blame us for killing our own people”.<sup>7439</sup> He also acknowledged that S-21 found enemies, but claimed that “S-21 comrades went too far” and sometimes did not follow the plan.<sup>7440</sup> While the Chamber notes that there are clear attempts in this interview by NUON Chea to downplay his involvement and distance himself from any mistreatment at S-21, it is satisfied that it can rely on the interview as corroboration that NUON Chea was indeed aware of both the existence

<sup>7429</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 70-72.

<sup>7430</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 77 (testifying that Pang never delivered messages from KHIEU Samphan or NUON Chea).

<sup>7431</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 69.

<sup>7432</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 18-19.

<sup>7433</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 99-101.

<sup>7434</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 23; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 93; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 11. *See also*, T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 101-102; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 13 (testifying that he was informed by NUON Chea that Pang was arrested after he read and provided confessions which implicated him to the Standing Committee), 23 (“So at first, Pang and Lin came and after Pang’s arrest, Lin became my immediate supervisor”); PEAN Khean SOAS Interview, E3/5728, 25 July 2005, ERN (En) 00089701 (“Pang was replaced by Lin, who died on the border of heart disease”).

<sup>7435</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 50-51, 78-79. The Chamber does not accord any weight to Duch’s unsubstantiated belief that this was based on a decision of POL Pot. Lin later conducted VORN Vet’s arrest. *See below*, para. 2321.

<sup>7436</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 61. K-7 was the messenger unit that handled communications with Committee 870. *See* T. 30 July 2012 (ROCHOEM Ton), E1/98.1, p. 6. *See also*, Section 5: Administrative Structures, para. 368.

<sup>7437</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 61.

<sup>7438</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 61.

<sup>7439</sup> NUON Chea Interview by EA Meng-Try and Sopheak Loeung, E3/108, 10 June 2006, ERN (En) 00000934.

<sup>7440</sup> NUON Chea Interview by EA Meng-Try and Sopheak Loeung, E3/108, 10 June 2006, ERN (En) 00000934.

and purpose of S-21. In another interview, NUON Chea described the revolution in Cambodia as a just one “because it smashed and eliminated enemies, [and] maintained an independent Kampuchea [...]”.<sup>7441</sup> The Chamber finds that NUON Chea’s *post facto* statements do not accord with the weight of evidence which the Chamber has discussed in this Judgement.<sup>7442</sup> This evidence demonstrates not only that NUON Chea was aware of the killings, but that he specifically ordered the execution of individuals or groups of individuals. Furthermore, the confessions forwarded to NUON Chea demonstrate that he was aware of those arrested, detained and interrogated at S-21 – from low level to high level cadres – and that he at no time ordered the release of those considered “not guilty”. The Chamber will weigh the totality of the evidence in the legal findings on responsibility with respect to S-21.

#### 12.2.6.3. Circulation of S-21 confessions and documentation

2216. According to the Closing Order, S-21 confessions reached the CPK Party Centre and were redistributed to POL Pot, NUON Chea and SON Sen.<sup>7443</sup> NUON Chea decided on the arrests of certain individuals, including S-21 personnel, and also possessed the discretion to decide what should or should not appear in confessions.<sup>7444</sup>

2217. S-21 operated with high secrecy and Duch was not allowed to send reports on its work to the Committee of the General Staff.<sup>7445</sup> The principle of secrecy at S-21 was absolute and only Duch had the authority to report confessions to his immediate supervisors: SON Sen and subsequently NUON Chea.<sup>7446</sup> While S-21 confessions implicating others for arrest were not sent directly to any ministries, the confessions were passed through the Standing Committee to zones, divisions and ministries in the DK in order to facilitate further arrests.<sup>7447</sup> For example, it is clear that a copy of a

<sup>7441</sup> NUON Chea Interview by a Japanese journalist, E3/26, undated, p. 12, ERN (En) 00329515.

<sup>7442</sup> See above, Section 12.2.6.2: Oversight of S-21 under NUON Chea; Section 12.2.5.5: External Reporting Structure; Section 12.2.6.3: Circulation of S-21 Confessions and Documentation.

<sup>7443</sup> Closing Order, paras 964-965.

<sup>7444</sup> Closing Order, paras 933, 958-962.

<sup>7445</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 41-42.

<sup>7446</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 12-13; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 93-94; T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 8; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 12-13. See also, S-21 Confession – SIENG Pauy, E3/1894, 25 October 1977, p. 1, ERN (En) 00702082 (bearing annotation: “Sent to Brother Nuon 2 copies”). Duch testified that this annotation was from SON Sen which required two copies to be sent to NUON Chea. See T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 17-22. See also, S-21 Confession – NHEUM Sim, E3/1869, 26 October 1977, ERN (En) 00837416 (bearing annotation: “Central Zone One copy for Brother NUON”).

<sup>7447</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 45, 47; S-21 Confession – ENG Meng Heang alias Chhon, E3/1549, multiple dates, p. 1, ERN (En) 00769683. Duch authenticated this document and

confession was sent to NUON Chea in order that he then send the confession on to the Central Zone. The confession contains an annotation dated 11 November 1977 which reads: “Send Brother Nuon 1 copy for [...] Sending to Central Zone”.<sup>7448</sup>

2218. The Chamber has before it a document dated April 1978 which shows that confessions were passed from the zone level to the 870 Committee in order to help search “for the string of traitors who burrow from within”.<sup>7449</sup> The letter contains the annotation: “Follow a trail”, which Duch testified was written by NUON Chea.<sup>7450</sup> However, the Chamber notes that Duch’s evidence on how he recognised this handwriting is somewhat equivocal and appears to be based on information he gathered and documents he studied after the events. Duch himself testified that he had not seen

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identified the handwriting of SON Sen. *See* T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 101-103 (further testifying that this annotation was addressed to the Ministry of Energy); S-21 Confession – KUNG Kien, E3/1565, 16 May 1977, p. 1, ERN (En) 00822048 (annotation reads: “Send directly to Brother Nuon [...] Extract sent to Comrade Mok”); S-21 Confession – SIENG Phon, E3/3648, undated, ERN (En) 00221765 (annotation reads: “One copy for *Brother* Nuon to deliver to the Central Zone”); S-21 Confession – SREI Saroeun, E3/3171, 19 October 1977, ERN (En) 00824789 (annotation reads: “One copy sent to Comrade Met”); S-21 Confession – SOUR Tuon, E3/3655, multiple dates, ERN (En) 00224628 (annotation is addressed to “Comrade Roeun” from “Khieu” (*i.e.* SON Sen), instructing him to read the confession and “pick out the relevant names” in connection with Unit 802 and to keep it confidential); S-21 Confession – MOK Sam Ol *alias* Hong, E3/1546, 8 January 1978, ERN (En) 00224630 (annotation reads: “It has already been submitted to Comrade Chan”); S-21 Confession – KUNG Sambok *alias* An, E3/3647, multiple dates, ERN (En) 00224627 (bearing annotations on 16 October and 15 November 1977 indicating that copies were to be sent to the Northwest zone); Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 2, ERN (En) 00342709 (reporting: “We have successively searched for and found those who bore insignias and the traitors who were the 17 April elements from Phnom Penh. The examination of their activities are *based on the confessions of their network and based on the photographs for which the Angkar has asked to search.*” [emphasis added]); S-21 Confession – AN Meng, E3/7421, 26 September 1977, p. 1, ERN (En) 01451687 (bearing an annotation in red in the centre of the page indicating: “Two copies for *Angkar* to deliver to the Northwest 1/10/77”). *See also*, S-21 Confession – IV Eang, E3/7408, 19 September 1977, p. 1, ERN (En) 00769678 (containing an annotation: “Submit to Brother for information. Already submitted to the Northwest Zone. 14 November 1977.”); S-21 Confession – KUNG Sambok, E3/3647, 22 September 1977, ERN (En) 00785188 (containing annotations that two copies were sent to the Northwest Zone); S-21 Confession – SIENG Pauy, E3/1894, 25 October 1977, p. 1, ERN (En) 00702082 (containing annotations indicating that two copies were sent to “Brother Nuon” in on 9 November 1977 and the Northwest); S-21 Confession – UM Taury, E3/3667, 27 July 1977, p. 1, ERN (En) 00771355 (containing annotation: “The confession has already been sent to the North-west”); S-21 Confession – YIM Chan, E3/7409, undated, p. 1, ERN (En) 00224629 (containing annotation: “Two copies have been submitted to the *Angkar*. Two more copies have already been submitted to the North-west. 18 August 1977”). *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1358.

<sup>7448</sup> S-21 Confession – SIENG Phon *alias* Pha, E3/1895, 28 October 1977, ERN (En) 00842803 (corroborating the principle that direct communication was not allowed between S-21 and the zones). *See above*, para. 2189.

<sup>7449</sup> S-21 Confession – SAN Eap, E3/175, 17 April 1978, ERN (En) 00583931. *See also*, T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 2-6.

<sup>7450</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 2-6. *See also*, T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 40-41 (a similar example in which Duch identified an annotation in a confession as having been written by NUON Chea).

NUON Chea's handwriting often prior to 7 January 1979.<sup>7451</sup> As such, Chamber has doubts about Duch's deductions that certain annotations had to have been made by NUON Chea and therefore does not rely on his opinion in this regard.

2219. Some S-21 confessions were also sent to the Ministry of Foreign Affairs. For example, the confessions of KOY Thuon were compiled and read out by IENG Sary at a meeting of upper and mid-level cadre.<sup>7452</sup> With respect to the confession of SAM Hauy *alias* MEAS Tal, the Secretary of Division 290 stationed in the East Zone, there is an annotation instructing the interrogator to check the content of the document and questioning whether parts of the confession implicating a certain individual had been deleted.<sup>7453</sup> Another annotation indicates that his confession had been "reported".<sup>7454</sup>

2220. Many confessions of high-profile prisoners contain annotations which support the conclusion that the content of the confessions had been "reported". For example, these annotations appear on the confessions of UK Savann *alias* So,<sup>7455</sup> who was the Secretary of Sector 23; MOUL Sambath *alias* RUOS Nhim,<sup>7456</sup> who was the Secretary of the Northwest Zone; NEY Sarann *alias* MEN San *alias* Ya,<sup>7457</sup> who was the Secretary of the Northeast Zone; and BAUN Na *alias* Yi, who was the Secretary of Sector 505.<sup>7458</sup> These annotations corroborate the testimony of witnesses that the interrogation of important prisoners was closely monitored by Duch and that he forwarded reports of these confessions to his superiors.<sup>7459</sup>

<sup>7451</sup> T. 5 April 2012 (KAING Guek Eav), E1/60.1, pp. 5-6, 8.

<sup>7452</sup> T. 24 April 2012 (SALOTH Ban), E1/67.1, pp. 50-52. *See also*, T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, pp. 45-47; T. 7 August 2012 (SUONG Sikoeun), E1/103.1, pp. 10-11 (testifying that in the Ministry of Foreign Affairs he was provided with the confession of KOY Thuon); T. 11 June 2012 (KHOEM Ngorn), E1/84.1, pp. 66-67.

<sup>7453</sup> *See below*, paras 2226-2229.

<sup>7454</sup> S-21 Confession – SAM Huoy, E3/1887, p. 1, ERN (En) 00796020.

<sup>7455</sup> S-21 Confession – UK Savan, E3/2481, pp. 1, 9, ERN (En) 00823399, 00823407.

<sup>7456</sup> S-21 Confession – MUOL Sambat *alias* RUOS Nhim, E3/3989, p. 4, ERN (En) 01554905. For a further discussion on RUOS Nhim *see* Section 12.1.5.2: Internal Factions: Northwest Zone and RUOS Nhim.

<sup>7457</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, ERN (En) 00290103, 00769572-00769573 (where Duch noted that he had sent three versions to *Angkar*).

<sup>7458</sup> S-21 Confession – BAUN Na *alias* Yi, E3/1670, p. 13, ERN (En) 00766968.

<sup>7459</sup> *See below*, paras 2221-2227. Annotations also reveal that at times SON Sen, after reviewing confessions, sent them to Nat, instructing him to review the documents. *See* Case 001 Transcript (KAING Guek Eav), E3/2983, 27 May 2009, pp. 2-3, ERN (En) 00334500-00334501. *See also*, KAING Guek Eav Interview Record, E3/450, 2 April 2008, p. 3, ERN (En) 00178060.

2221. Duch read, summarised and briefed his superiors on the confessions he annotated.<sup>7460</sup> Duch forwarded S-21 documents, including confessions, to the upper echelon.<sup>7461</sup> These annotated confessions were not returned to Duch.<sup>7462</sup> Generally, his superiors were provided with the full original confessions, but on a few occasions when many people had been arrested and sent to S-21, Duch was asked to summarise the documents.<sup>7463</sup> While Duch sent NUON Chea information about confessions with short annotations, he did not send prisoner lists to NUON Chea.<sup>7464</sup> NUON Chea once asked Duch why he allowed prisoners to speak at length about their backgrounds, to which Duch replied that this was the method he used.<sup>7465</sup> NUON Chea preferred to read rather than listen to recordings of confessions.<sup>7466</sup> Duch denied that NUON Chea ever instructed him to release prisoners after he had read their confessions.<sup>7467</sup>

2222. Once Duch had reviewed the content of a confession he highlighted it and identified confessions which would be of significant interest to his superiors.<sup>7468</sup> Sometimes in response to a confession, SON Sen requested that a prisoner be re-interrogated, whereas NUON Chea instead sought clarification about a word or phrase in the confession.<sup>7469</sup> Duch received reports on the internal functioning of S-21 from Hor, who summarised the information that he received from his subordinates.<sup>7470</sup>

<sup>7460</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 21-22; T. 4 April 2012 (KAING Guek Eav), E1/59.1, p. 82; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 105-106. *See e.g.*, S-21 Confession – TIV Mei, 18 September 1977, E3/1537, p. 1, ERN (En) 00224639; S-21 Report, E3/8626, 11 November 1976, ERN (En) 00283961-00283962 (in which Duch reported to *Angkar* his conclusions in the case of Nhem); T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 68-71 (testifying that the second annotation was written by him to NUON Chea and that the first annotation was from SON Sen indicating that a copy had been submitted to NUON Chea).

<sup>7461</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 21.

<sup>7462</sup> T. 4 April 2012 (KAING Guek Eav), E1/59.1, p. 82; T. 9 April 2012 (KAING Guek Eav), E1/61.1, pp. 105-106 (testifying that he was personally only aware of one case where a confession was discussed prior to the arrest of a prisoner based on what SON Sen had told him).

<sup>7463</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 54.

<sup>7464</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 78.

<sup>7465</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 92.

<sup>7466</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 11.

<sup>7467</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 75-77; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 57-58; Book by G. Chon and Thet S.: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, p. 67, ERN (En) 00757537.

<sup>7468</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 96-97. While Duch recognised the writing of SON Sen on a confession which Duch had sent him, the Chamber does not rely on Duch's evidence that this was meant for POL Pot. The basis for his conclusion in this regard is unclear. *See* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 9-11; S-21 Confession – HENG Pech, E3/1581, 15 January 1977, pp. 1-2, ERN (En) 00822293-00822294.

<sup>7469</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 8.

<sup>7470</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 105.

2223. In April 1977, under instruction from SON Sen, SOU Met, the Commander of Division 502 and member of the General Staff, wrote Duch to inform him that four individuals were being transferred to S-21 on the basis of confessions. SOU Met indicated that he would “request *Angkar*’s advice on the remainder in order to take further action”.<sup>7471</sup> In a further letter to Duch from May 1977, SOU Met, on behalf of the Military Committee of Division 502, identified groups of “traitors” to be sent to S-21.<sup>7472</sup> In this letter, SOU Met said that “if *Angkar* allows, I would like to have [the confession of Mao] in order to search for more enemies”.<sup>7473</sup> In another letter dated August 1977, SOU Met asked Duch to provide through *Angkar* the confession of a specific prisoner who had been sent to S-21.<sup>7474</sup> A further letter from SOU Met dated 2 September 1977 asked Duch to receive an individual who worked in a mining unit who was “causing political problems”.<sup>7475</sup> The Chamber finds that these are exemplary of the manner in which confessions were made, distributed, analysed and used in order to identify perceived enemies who were subsequently arrested.

2224. The annotations on confessions further support the Chamber’s conclusion that S-21 confessions were passed from the upper echelon on to zones, divisions and ministries in DK.<sup>7476</sup> For example, there are extensive annotations on confessions

<sup>7471</sup> Letter to Duch, E3/1140, 1 April 1977, p. 1, ERN (En) 00178065; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 53-55 (testifying that the reference in this letter to *Angkar* referred to POL Pot and that they sought advice on whether the other people were to be sent to S-21 or not). *See above*, para. 2189 (noting that even communications addressed directly to Duch, as seen here, passed through his superior SON Sen first).

<sup>7472</sup> Letter to Duch, E3/971, 30 May 1977, p. 1, ERN (En) 00178066.

<sup>7473</sup> Letter to Duch, E3/971, 30 May 1977, p. 1, ERN (En) 00178066; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 55-57 (testifying that he recognised the handwriting of Comrade Met, that this document was sent to him by SON Sen and that *Angkar* referred to POL Pot).

<sup>7474</sup> Letter to Duch, E3/1043, 10 August 1977, p. 1, ERN (En) 00224319; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 57-59.

<sup>7475</sup> Letter to Duch, E3/8715, 2 September 1977, p. 1, ERN (En) 01339066.

<sup>7476</sup> S-21 Confession – KUNG Kien, E3/1565, 23 May 1977, p. 1, ERN (En) 00822048 (annotation reads: “Send directly to Brother Nuon [...] Extract sent to Comrade Mok”. Annotations within this confession also indicate that the people implicated in KUNG Kien’s confession had been arrested and/or smashed, *see* S-21 Confession – KUNG Kien, E3/1565, 23 May 1977, pp. 9, 11, 14, 47, 49-54, ERN (En) 00822056, 00822058, 0822061, 00822094, 00822096-00822101); S-21 Confession – SIENG Phon, E3/3648, 28 October 1977, ERN (En) 00221765 (annotation reads: “One copy for Brother Nuon to deliver to the Central Zone”); S-21 Confession – SREI Saroeun, E3/3171, 19 October 1977, ERN (En) 00824789 (annotation reads: “One copy sent to Comrade Met”); S-21 Confession – SOUR Tuon, E3/3655, 15 May 1977, ERN (En) 00224628 (annotation is addressed to “Comrade Roen” from “Khieu” (*i.e.* SON Sen), instructing him to read the confession and “pick out the relevant names” in connection with Unit 802 and to keep it confidential). Evidence shows that some of the persons implicated in this confession were later arrested. *See e.g.*, S-21 Confession – SOUR Tuon, E3/3655, 15 May 1977, p. 11, ERN (En) 00759815 (implicating KEV Saroeun from Division 801). *Cf.* S-21 list of prisoners receiving food, E3/10422, undated, pp. 1, ERN (En) 01528766 (entry no. 2, listing KEV Saroeun from Division 801), 11, ERN (En) 00759815 (implicating SAM On from Division 801). *See also*, Section 12.4: Au



relating to East Zone cadre which demonstrate the manner in which confessions were passed on to the zone level for further action. The documents regarding PEN Chhe *alias* CHHAM Sarat (or Savat), the Secretary of Chhloung District of Sector 21, contain a note indicating that his confession taken on 16 July 1977 was “no different from that of MAI Phau, who has been arrested by Brother Phuong and who talked about Brother Phuong constantly”.<sup>7477</sup> In the confession of BIN Ban *alias* Bo (or Bau), the Secretary of Peam Chilaing District in Sector 21, a note dated 7 September 1977 records persons implicated and questions whether matters could be sent to “Brother Phim” secretly.<sup>7478</sup> An additional note records that some names were removed from the list before it was sent to “Bang Phim” (*i.e.* SAO Phim), after which “Khieu” (*i.e.* SON Sen) queries whether the whole document should be sent to “Bang Phim” and “[kept] silent”.<sup>7479</sup> Another note within confession materials states that “Brother Phim has requested clarification” on the content of the confession of Bin.<sup>7480</sup> In relation to TUY Pheng *alias* Phe, the Secretary of Kaoh Sautin, a cover page dated 12 November 1977 states that his confession was submitted to the East Zone via MEAS Senghong *alias* Chan, Sector 21 Secretary and Deputy Secretary of the East Zone.<sup>7481</sup>

2225. Duch spoke to NUON Chea about confessions that were “spreading out of control”, but was told to focus on his own work because “they knew how to do their work” and could identify which confessions were true.<sup>7482</sup> On one occasion, Duch

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Kanseng Security Centre, paras 2864-2865, 2886. *Cf.* S-21 list of prisoners, E3/8445, undated, p. 239, ERN (En) 01565830 (entry no. 202, listing SAM On from Division 801); S-21 Confession – MOK Sam Ol, E3/1546, 9 January 1978, p. 1, ERN (En) 00224630 (annotation reads: “It has already been submitted to Comrade Chan”); S-21 Confession – MAO Saroeun, E3/1862, 13 October 1977, p. 1, ERN (En) 00662322 (annotation noting that one copy of the confession was sent to the Northwest on 18 October 1977 and one copy to “Brother” for information on 14 November 1977). *See also*, S-21 Confession – MOK Sam Ol, E3/1546, 9 January 1978, p. 5, ERN (En) 00753709 (implicating UY Sat from the East Zone), *cf.* S-21 list of prisoners destroyed on 10 May 1978, E3/8463, undated, p. 279, ERN (En) 01554797 (entry no. 32, listing UY Sat from the East Zone).

<sup>7477</sup> S-21 Confession – CHHAOM Savat, E3/2484, 15 September 1977, pp. 18, 27, 36, ERN (En) 00823924, 00823933, 00823942.

<sup>7478</sup> S-21 Confession – BIN Ban *alias* Bau, E3/3668, 4 August 1977, ERN (En) 00777935, ERN (En) 00777951.

<sup>7479</sup> DC-Cam Report on “At Risk” Documents, E3/8468, 1997, ERN (En) 01320345. *See below*, para. 2226.

<sup>7480</sup> The note sought clarification regarding meetings at Zone 203 Agriculture, which Bin mentioned in his confession. *See also*, S-21 Confession – PECH Phan *alias* MAI Phau, E3/1563, 27 July 1977, ERN (En) 00827936.

<sup>7481</sup> DC-Cam Report on “At Risk” Documents, E3/8468, 1997, ERN (En) 01320428. *See* S-21 Confession – TUY Pheng *alias* Phe, E3/3693, 2 October 1977, pp. 1-8, ERN (En) 00768201-00768208; DC-Cam Case Summary of TUY Pheng *alias* Phe, E3/4518, 21 September 1977, ERN (En) 00660932. *See also*, Section 12.1: Internal Factions, para. 2049.

<sup>7482</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 61-62.

spoke to NUON Chea and raised concerns about sending “entire, non-annotated confessions to the base”, but NUON Chea instructed Duch that the base knew how to work.<sup>7483</sup>

2226. Duch occasionally received short letters or notes from SON Sen and NUON Chea.<sup>7484</sup> NUON Chea instructed Duch to temporarily remove the names and suspicious activities of certain individuals if they appeared in a confession.<sup>7485</sup> As mentioned above, on some occasions Duch was also told to not to include names or to record detainees under different names in order to protect certain individuals or to keep suspicions against them confidential.<sup>7486</sup> In response to NUON Chea’s order to remove certain names, Duch instructed Pon to retype the document before the confession was forwarded to the relevant zone.<sup>7487</sup> Names were temporarily removed from the confessions so that individuals would remain unaware that they had been implicated prior to their arrest.<sup>7488</sup> For example, in February 1978, there was a discussion concerning the removal of names from confessions related to the East Zone in order to allow NUON Chea to send documents to SAO Phim for further implementation and arrests.<sup>7489</sup> A specific example of a name which NUON Chea ordered removed from a confession was TAUCH Chaem *alias* Soth, the Secretary of Sector 21, who was

<sup>7483</sup> KAING Guek Eav Interview Record, E3/60, 3 June 2008, p. 4, ERN (En) 00195602. *See also*, T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 80 (testifying that when individuals were implicated at the zone level, the upper echelon would send those confessions to the zone for review).

<sup>7484</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 14-15 (describing receiving notes from NUON Chea); KAING Guek Eav Interview Record, E3/61, 2 June 2008, p. 3, ERN (En) 00195573 (stating that SON Sen did not like to send instructions by letter and preferred to use the telephone); Duch Written Responses, E3/359, 20 November 2009, p. 16, ERN (En) 00434349 (stating that he received letters from SON Sen and NUON Chea).

<sup>7485</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 33-34; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 28, 31-32.

<sup>7486</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 62-63; Case 001 Transcript (KAING Guek Eav), E3/5797, 8 June 2009, pp. 94-95, ERN (En) 00338611-00338612; Duch Written Responses, E3/359, 20 November 2009, pp. 11, 15, ERN (En) 00434344, 00434348; S-21 Confession – BIN Ban *alias* Bau, E3/3668, multiple dates, ERN (En) 00777935-00777936; KAING Guek Eav Interview Record, E3/450, 2 April 2008, p. 6, ERN (En) 00178063; KAING Guek Eav Interview Record, E3/60, 3 June 2008, p. 7, ERN (En) 00195605.

<sup>7487</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 34; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 12; S-21 Confession – CHAP Mit, E3/1688, 25 February 1978, p. 1, ERN (En) 00284069.

<sup>7488</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 34-35; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 30-31.

<sup>7489</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 30-31 *referring to* S-21 Confession – CHAP Mit, E3/1688, 25 February 1978, p. 1, ERN (En) 00284069 (bearing a note from Duch to Pon to remove the name of Chhien, Sector 22, brother Mon and brother Soe, and further stating that “Brother II” advised on 25 February 1978 that the names of Soe, Mon, Soth (Sector 21), Chien (Sector 22) Tat and Sokh (Division 170) and Tal (Division 290) “must be withdrawn, if they appear in this confession”). *See above*, para. 2219. *See below*, para. 2308. *See also*, Section 12.1.6.3.4.5: Internal Factions: Mass Arrest and Executions of East Zone Cadres.

arrested in May 1978 during the East Zone purges and subsequently detained at S-21.<sup>7490</sup>

2227. Duch sought advice from the upper echelon when an important person was implicated and removed the name of any person that his superiors did not want included.<sup>7491</sup> For example, in one of CHAN Chakrei's confessions that implicated KEV Samnang, there are several annotations which make it clear that some portions of his confession were to be used in full or extracted, while other portions were not to be used at all.<sup>7492</sup>

2228. When IENG Sary's son-in-law Poeun was implicated in a confession, Duch reported this to NUON Chea, who told Duch to instruct the interrogators to ignore or delete any responses which implicated Poeun.<sup>7493</sup> Similarly, when KHIEU Samphan was implicated in a confession, Duch spoke to NUON Chea. NUON Chea scolded Duch and told him to carry out his work properly and to remove KHIEU Samphan's name from any confessions.<sup>7494</sup> When SON Sen was implicated in a confession, Duch likewise sought the opinion of NUON Chea, who told him to write it down for him to look at.<sup>7495</sup>

2229. If a high-ranking person was implicated in a confession, there needed to be an instruction from the upper echelon as to whether or not to heed the accusations contained therein.<sup>7496</sup> Moreover, the Party was careful to time the arrests of high-ranking individuals such as "Phim and Nhim" so as to avoid an adverse reaction from the public.<sup>7497</sup> Important individuals such as SAO Phim were placed under lengthy

<sup>7490</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 30-31 *referring to* S-21 Confession – CHAP Mit, E3/1688, 25 February 1978, p. 1, ERN (En) 00284069; S-21 Confession – TAUCH Chaem *alias* Sot, E3/2803, multiple dates, p. 1, ERN (En) 00143856.

<sup>7491</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 4, 39-41 (discussing the withdrawal of the name "Brother Hem" (*i.e.* KHIEU Samphan) from confessions).

<sup>7492</sup> S-21 Confession – CHAN Chakrei, E3/2791, 18 July 1976, pp. 14-25, ERN (En) 00827776-00827787.

<sup>7493</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 3-4. *See also*, Combined S-21 Notebook, E3/834, multiple dates, p. 6, ERN (En) 00184488 (entry dated 20 April 1978 noting that if the "enemy implicates someone too important must immediate report to Brother Lech [Brother to the West] for measures, to assist in guidance.").

<sup>7494</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 39-41. *See also*, T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 84; T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 55-57.

<sup>7495</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 69-70. *See also*, KAING Guek Eav Interview Transcript, E3/347, multiple dates, p. 55, ERN (En) 00185050.

<sup>7496</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 94.

<sup>7497</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 97-98, 99-100. Upon his attempted arrest, SAO Phim shot himself. *See* Section 12.1: Internal Factions, paras 2052-2054.

surveillance until there was a sufficient confession to justify their arrest.<sup>7498</sup> Every few days Duch called his superior to arrange for the collection of confessions which he had reviewed and annotated.<sup>7499</sup> The Chamber notes the existence of annotations which corroborate Duch's evidence that confessions were indeed passed on in this manner. There were a number of confessions with similar annotations showing that copies were sent to NUON Chea.<sup>7500</sup> These include confessions from the period prior to NUON

<sup>7498</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 93-94, 99-101 (testifying that for a high profile cadre like Brother Phim, one confession could not be justification for his arrest).

<sup>7499</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 9.

<sup>7500</sup> S-21 Confession – TIT Sean, E3/1828, undated, ERN (En) 00662328, 00767942 (annotation reads: "Report from the North [...] Send to Brother Nuon"); S-21 Confession – KUNG Kien *alias* ING Vet, E3/1565, multiple dates, p. 1, ERN (En) 00822048 (annotation of May 1977 reads: "Send directly to Brother Nuon"); S-21 Confession – KUN Dim, E3/3697, undated, ERN (En) 00822359 (annotation reads: "One copy sent to Brother Nuon on 10 September 1977"); S-21 Confession – HEM Sut *alias* Xien, E3/1842, 18 October 1977, p. 1, ERN (En) 00662317 (annotation of 10 September 1977 reads: "Send Brother Nuon one copy"); S-21 Confession – PHENG Sun *alias* Chey, E3/3665, undated, p. 1, ERN (En) 00224634 (annotation of 25 October 1977 states that a copy "has already been submitted to Brother Nuon" and that "[t]wo copies have already been submitted to the *Angkar*"); S-21 Confession – CHAP Voeun *alias* Srean, E3/1882, 18 October 1977, p. 1, ERN (En) 00662308; S-21 Confession – LUN En, E3/3689, undated, ERN (En) 00221784 (annotation reads: "One copy for Brother Nuon"); S-21 Confession – CHEA Sreng *alias* Thai, E3/1831, multiple dates, p. 1, ERN (En) 00831455 (annotation of 22 October 1977 reads: "One copy for Brother Nuon"); S-21 Confession – DI Leng *alias* Pheap, E3/1839, multiple dates, ERN (En) 00835986, 00182820 (annotation of 25 October 1977 reads: "Send Brother Nuon 1 copy"); S-21 Confession – SIENG Phon, E3/3648, undated, ERN (En) 00221765 (annotation reads: "One copy for Brother Nuon to deliver to the Central Zone"); S-21 Confession – MAO Choenu *alias* Ly, E3/3645, undated, ERN (En) 00223137 (annotations reads: "For *Angkar* 2 copies 1 October 1977" and "To Brother Nuon [...] 10 November 1977"); S-21 Confession – CHUM Penh, E3/2129, multiple dates, p. 1, ERN (En) 00769567 (annotation of 9 November 1977 reads: "Sent two copies to Brother Nuon [...] (Not yet read)"); S-21 Confession – SAO Tong Li, E3/1889, multiple dates, p. 1, ERN (En) 00796688 (annotation of 9 November 1977 reads: "Sent two copies to Brother Nuon"); S-21 Confession – PECH Choy, E3/1875, 23 October 1975, p. 1, ERN (En) 00748373 (annotation of 9 November 1977 reads: "Two copies to Brother Nuon"); S-21 Confession – SIENG Pauy *alias* Sean, E3/1894, multiple dates, p. 1, ERN (En) 00702082 (annotation of 9 November 1977 reads: "Sent to Brother Nuon 2 copies"); S-21 Confession – PHORN Phal, E3/1879, multiple dates, p. 1, ERN (En) 00182725 (annotation of 11 November 1977 reads: "Send Brother Nuon 1 copy"); S-21 Confession – TIV Mei *alias* Santepheap, E3/1537, undated, p. 1, ERN (En) 00224639 (annotation of 11 November 1977 reads: "One copy has been submitted to Brother Nuon"); S-21 Confession – CHOUT Nhe, E3/1687, 19 October 1977, ERN (En) 00185061, 00758196 (annotations of 11 November 1977 reads: "To brother Nuon, 1 copy" and "1 copy for *Bang* Nuon"); S-21 Confession – HANG Bau, E3/1843, 3 November 1977, p. 1, ERN (En) 00746208 (annotation of 11 November 1977 reads: "Two copies have been submitted to Brother Nuon"); S-21 Confession – NHIM Sim *alias* Saut, E3/1869, multiple dates, p. 1, ERN (En) 00837416 (annotation of 11 November 1977 reads: "Central Zone One copy for Brother Nuon"); S-21 Confession – SAK Man *alias* Voeun, E3/1886, multiple dates, p. 1, ERN (En) 00842788 (annotation of 11 November 1977 reads: "One copy for Brother Nuon"); S-21 Confession – TAING An *alias* En, E3/1826, 31 October 1977, p. 1, ERN (En) 00821424 (annotation of 11 November 1977 reads: "Send to Brother Nuon, 1 copy"); S-21 Confession – IM Chhea *alias* Chhean, E3/1841, multiple dates, ERN (En) 00769813, 00662314 (annotation reads: "Central Zone [...] Send Brother Nuon 1 copy"); S-21 Confession – KUNG Kien *alias* Eung Vet, E3/1565, multiple dates, ERN (En) 00182773 (annotation reads: "Presented to Brother Nuon (Personally)"). The Chamber notes that the translation of DC-Cam "at risk" documents bearing signatures and notes of the Khmer Rouge leaders. See S-21 Confession – DY Leng *alias* Pheap, E3/8468, 25 October 1977, ERN (En) 00105204 (annotation reads: "sent a copy to Brother Nuon") and S-21 Confession – ING Chhea *alias* Chhean, undated, E3/8468, ERN (En) 00105208 (annotation reads: "sent a copy to Brother Nuon").

Chea taking over as Duch's direct supervisor in August 1977.<sup>7501</sup> For example, one annotation dated May 1977 says: "Send directly to Brother Nuon" and also: "Extract sent to Comrade Mok".<sup>7502</sup>

2230. Duch continued to send confessions to NUON Chea after August 1977. The confessions that Duch reported to NUON Chea related to a variety of prisoners, including, for example: battalion commanders;<sup>7503</sup> the Chairman of Industry of the Central (old North) Zone;<sup>7504</sup> the Head of the Ministry of Commerce of the Central (old North) Zone;<sup>7505</sup> individuals identified as New People;<sup>7506</sup> a worker in a district mobile unit;<sup>7507</sup> the chief of a handicraft team;<sup>7508</sup> a company secretary of a battalion;<sup>7509</sup> a chairman of a brick factory;<sup>7510</sup> the chief of a hospital;<sup>7511</sup> and members of the Central (old North) Zone, Division 174.<sup>7512</sup> The Chamber finds that this demonstrates that while

<sup>7501</sup> See e. g., S-21 Confession – KUNG Kien *alias* ING Vet, E3/1565, multiple dates, p. 1, ERN (En) 00822048; S-21 Confession – KHEK Bin *alias* Sou, E3/1706, undated, ERN (En) 00224632; S-21 Confession – AN Kan *alias* Kol, E3/1764, multiple dates, p. 1, ERN (En) 00759672 (annotation of 11 November 1977 reads: "One copy has been submitted to *Bang Nuon*"); S-21 Confession – TIT Sean, E3/1828, undated, ERN (En) 00662328, 00767942 (noting the confession date of 14 December 1976).

<sup>7502</sup> S-21 Confession – KUNG Kien *alias* ING Vet, E3/1565, multiple dates, p. 1, ERN (En) 00822048.

<sup>7503</sup> S-21 Confession – KUNG Kien *alias* ING Vet, E3/1565, multiple dates, p. 1, ERN (En) 00822048; S-21 Confession – AN Kan *alias* Kol, E3/1764, multiple dates, p. 1, ERN (En) 00759672; S-21 Confession – SAK Man *alias* Voeun, E3/1886, multiple dates p. 1, ERN (En) 00842788; S-21 Confession – KUN Dim, E3/3697, undated, ERN (En) 00822359 (identifying the position of the prisoner prior to his arrest); S-21 Confession – LUN En, E3/3689, undated, ERN (En) 00221784 (identifying the position of the prisoner prior to his arrest).

<sup>7504</sup> S-21 Confession – HEM Soth *alias* Sien, E3/1842, 18 October 1977, p. 1, ERN (En) 00662317. See also, Section 5.1.7: Zones, Sectors, Districts and Sub-District Entities.

<sup>7505</sup> S-21 Confession – PHENG Sun *alias* Chey, E3/3665, undated, p. 1, ERN (En) 00224634 (identifying the position of the prisoner prior to his arrest).

<sup>7506</sup> S-21 Confession – CHUM Penh, E3/2129, multiple dates, p. 1, ERN (En) 00769567 (identifying the position of the prisoner prior to his arrest); S-21 Confession – SAO Tong Li, E3/1889, multiple dates, p. 1, ERN (En) 00796688.

<sup>7507</sup> S-21 Confession – TIT Sean, E3/1828, undated, ERN (En) 00662328, 00767942 (identifying the position of the prisoner prior to his arrest).

<sup>7508</sup> S-21 Confession – PECH Choy, E3/1875, 23 October 1975, p. 1, ERN (En) 00748373.

<sup>7509</sup> S-21 Confession – SIENG Pauy *alias* Sean, E3/1894, multiple dates, p. 1, ERN (En) 00702082.

<sup>7510</sup> S-21 Confession – PHORN Phal, E3/1879, multiple dates, p. 1, ERN (En) 00182725.

<sup>7511</sup> S-21 Confession – HANG Bau, E3/1843, 3 November 1977, p. 1, ERN (En) 00746208.

<sup>7512</sup> S-21 Confession – CHAP Voeun *alias* Srean, E3/1882, 18 October 1977, p. 1, ERN (En) 00662308; S-21 Confession – CHEA Sreng *alias* Thai, E3/1831, multiple dates, p. 1, ERN (En) 00831455; S-21 Confession – DI Leng *alias* Pheap, E3/1839, multiple dates, ERN (En) 00835986; S-21 Confession – IM Chhea *alias* Chhean, E3/1841, 25 October 1977, p. 1, ERN (En) 00662314; S-21 Confession – CHOUT Nhe, E3/1687, 19 October 1977, ERN (En) 00185061; S-21 Confession – NHIM Sim *alias* Saut, E3/1869, multiple dates, p. 1, ERN (En) 00837416; S-21 Confession – TAING An *alias* En, E3/1826, 31 October 1977, p. 1, ERN (En) 00821424; S-21 Confession – MAO Choeun *alias* Ly, E3/3645, undated, ERN (En) 00223137 (identifying the position of the prisoner prior to his arrest); S-21 Confession – SIENG Phon, E3/3648, undated, p. 1, ERN (En) 00221765 (identifying the position of the prisoner prior to his arrest).

NUON Chea followed the confessions of high-ranking individuals more closely, he was also informed about the confessions of lower-level cadres.

2231. While Duch sent reports to NUON Chea that described the use of what Duch characterised as “torture”, Duch stated that he never received any instruction from NUON Chea chastising him or requiring him to stop the practice described.<sup>7513</sup> For example, in one summary of a confession which was sent to NUON Chea, the interrogator noted that the prisoner “did not confess to being a traitor until he had been tortured [...] he did not provide clear information; thus he was tortured. After being tortured, he provided clear information about his systematic networks and activities.”<sup>7514</sup>

2232. In a note from Pon to Duch concerning the interrogation of another prisoner, Pon reports that they had received the “instruction from *Angkar* to torture” and that he subsequently “tortured” the prisoner with 20 to 30 rattan lashes, followed by 20 to 30 wire lashes. The confession documents contain a letter from Duch to Pon stating that “I informed *Angkar* about the case of Ya [...] *Angkar* has decided that if this fool Ya continues to beat around the bush [...] he can be killed”.<sup>7515</sup> Another interrogation report contained the annotation: “Sent to Brother Nuon 2 copies”, and later reported that the prisoner did not initially confess but when they started “torturing” him, he agreed to “confess” about his connections, activities and the “plan in the network from the beginning until his arrest by *Angkar*”.<sup>7516</sup>

2233. Once an S-21 document was submitted, the Standing Committee contacted the unit or department whose staff member was implicated and had to be arrested.<sup>7517</sup> When confessions were received by Office 870, the office identified where individuals who had been implicated were located and gave instructions to conduct the arrests.<sup>7518</sup> For

<sup>7513</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 57-58.

<sup>7514</sup> S-21 Confession – CHOUT Nhe, E3/1687, 19 October 1977, pp. 1, ERN (En) 00758196 (annotation of 11 November 1977 reads: “1 copy for *Bang Nuon*”), 5, 00758200 (noting the use of “torture”).

<sup>7515</sup> DK Telegram, E3/8374, 25 September 1976, ERN (En) 00184021 (from Pon to Duch). *See below*, Section 12.2.8.1.6: NEY Sarann *alias* MEN San *alias* Ya; S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, multiple dates, pp. 12, 15, ERN (En) 00290114, 00290117.

<sup>7516</sup> S-21 Confession – SIENG Pauy *alias* Sean, E3/1894, multiple dates, pp. 1, 4, ERN (En) 00702082, 00702085. *See also*, S-21 Confession – NHIM Sim, E3/1869, multiple dates, pp. 1-2, ERN (En) 00837416-00837417 (noting that the prisoner was tortured until he confessed that he was a spy). This confession also contains an annotation dated 11 November 1977 which reads: “Central Zone – One copy for Brother Nuon”.

<sup>7517</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 45, 47.

<sup>7518</sup> T. 30 Jul 2012 (ROCHOEM Ton), E1/98.1, pp. 47-50.

example, after receiving the confession of ENG Mean Heng *alias* Chhon, who worked in the Ministry of Energy, SON Sen wrote an annotation proposing that “the ministry review this document urgently in order to remove all of them and take control of the Ministry of Commerce”.<sup>7519</sup>

2234. Before someone could be arrested after having been implicated, SON Sen and NUON Chea first consulted with the unit head and sent them a copy of the confession.<sup>7520</sup> NUON Chea sometimes asked Duch whether a certain prisoner had already been sent out, and if not, instructed him to have them sent out and “smashed”.<sup>7521</sup>

2235. The May-June 1978 issue of *Revolutionary Flag* referred to high-profile individuals who had been arrested and detained at S-21, describing them as “despicable” and having associations with the CIA and the “*Yuon*”.<sup>7522</sup> This demonstrates the flow of information from S-21 to the Party which in turn disseminated this information through the ranks through the *Revolutionary Flag*.

#### 12.2.7. *Arrests, Arrival, Registration and Prisoner Photographs at S-21*

2236. The main function of S-21 was to detain prisoners who were Party members and revolutionary combatants suspected of being enemies. The focus on this purpose intensified with time, as evidenced by increasing numbers of CPK and RAK cadres among the incoming prisoner population.<sup>7523</sup> Prisoners who were brought to S-21 were already considered to be traitors.<sup>7524</sup> All those arrested and brought to S-21 were labelled “enemies” and had to be interrogated and “smashed”.<sup>7525</sup>

<sup>7519</sup> S-21 Confession – ENG Meng Heang *alias* Chhon, E3/1549, 7 March 1977, p. 1, ERN (En) 00769683. Duch authenticated this document and identified the handwriting of SON Sen. *See* T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 101-104 (further testifying that this annotation was addressed to the Ministry of Energy).

<sup>7520</sup> KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 9, ERN (En) 00242880.

<sup>7521</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 23 (testifying however, that they did not ask him about the number of prisoners at S-21).

<sup>7522</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333.

<sup>7523</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 81-82. *See below*, paras 2372, 2543, 2548, 2550, 2552. *See also*, Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>7524</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 46-47. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47. Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 16, ERN (En) 00345674. *See above*, paras 2163, 2178, 2236.

<sup>7525</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 58; T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 64-65.

2237. Detainees were arrested and transferred to S-21 from a number of locations and zones across Cambodia.<sup>7526</sup> While most prisoners at S-21 were arrested and brought to the Security Centre by their respective units, people were at times arrested personally by S-21 staff in locations such as Battambang, Svay Rieng and other provinces, and from warehouses of state institutions in Phnom Penh.<sup>7527</sup> Guards were given strict instructions to not harm prisoners during their transfer, as they needed to arrive safely at S-21 for interrogation.<sup>7528</sup> Detainees were transported to S-21 in vehicles belonging to Divisions 310, 170 and 703.<sup>7529</sup> However, only S-21 vehicles were allowed to enter the compound.<sup>7530</sup> Some prisoners were delivered directly to S-21, while others were first brought to the messenger office K-7 and then transferred to S-21.<sup>7531</sup> The Chamber considers this to be significant evidence, demonstrative of coordination and collaboration between different military divisions.

2238. Duch's superiors informed him when a group of prisoners was to be sent to S-21, and he would pass this information to Hor, who, in turn assigned HIM Huy to receive the prisoners.<sup>7532</sup> When prisoners were brought to S-21 they were not provided with any information on their rights, what they were accused of or provided with counsel; they were often instructed not to speak and were transported in a state of fear.<sup>7533</sup> Some detainees were transferred to S-21 under the false pretence that they

<sup>7526</sup> Case 001 Transcript (KAING Guek Eav), E3/5796, 30 April 2009, pp. 75-76, ERN (En) 00326214-0032615; T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 18, 20-21 (testifying that he was brought to S-21 from the sewing unit at Ou Russei market in Phnom Penh); T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 81-82 (testifying that a large number of prisoners were brought from the East Zone); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 50-51. SUOS Thy refuted Duch's suggestion, made in a prior interview, that prisoners who came to S-21 only came from within the Party and not from the "popular masses". See T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 69-70; KAING Guek Eav Interview Record, E3/5772, 6 May 2008, p. 3, ERN (En) 00209170.

<sup>7527</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 89; T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 45; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 67-68. Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009, p. 46, ERN (En) 00351832.

<sup>7528</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 71.

<sup>7529</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 66. See also, Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1773-1778.

<sup>7530</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 33.

<sup>7531</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 90 (Duch describes going to K-7 to receive Chhouk).

<sup>7532</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 24-25.

<sup>7533</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 29-30; T. 25 April 2016 (LACH Mean), E1/421.1, pp. 71-72; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 70-71, 73 (stating that since prisoners were accused of being "enemies" their rights were forfeited). See also, Case 001 Transcript (BOU Meng), 1 July 2009, E3/7452, p. 17, ERN (En) 00346675.



would be sent elsewhere for work.<sup>7534</sup> Family members were not informed that their relatives had been sent to S-21 and the detainees were given no news about their families.<sup>7535</sup> Prisoners were not allowed to bring any items with them into S-21 other than the clothes they were wearing.<sup>7536</sup>

2239. The first prisoners brought to S-21 from October 1975 included those who had been arrested from Sector 25, which was the old base of Division 12 in the “Special Zone” surrounding Phnom Penh before it was reassigned to the Southwest Zone.<sup>7537</sup> Those first arrested included individuals who had held technical positions in the former regime, including engineers, paper mill workers and workers from an electricity factory.<sup>7538</sup> Intellectuals were also among those first arrested and sent to S-21 when Nat was chairman.<sup>7539</sup> SOU Nam *alias* SOU Saut *alias* SOU Nem, the brother-in-law of Civil Party OUM Suphany, was a doctor from Battambang who entered S-21 on 1 October 1975 and was killed on 23 April 1976.<sup>7540</sup> SOU Saut was one of 56 persons identified as doctors, medical students and medical staff who were executed between 1976 and 1977.<sup>7541</sup> Having regard to the date of entry and date of execution, the

<sup>7534</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 20-21, 41-42, 57 (testifying that he was taken to S-21 at the end of October 1978 with two others from his unit by a female comrade he indicates was “Vann” and an individual named Lin); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 20-21, 30, ERN (En) 00346478-00346479, 00346488 (testifying that Comrade Wan and Comrade Lin made the decision to arrest and send him to S-21). *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 45-46. Case 001 Transcript (BOU Meng), 1 July 2009, E3/7452, pp. 10-11, 96, ERN (En) 00346668-00346669, 00346754. While the NUON Chea Defence tried to suggest that CHUM Mey was a member of the military, the Chamber is satisfied that CHUM Mey was never a soldier and was in fact a civilian at the time of his arrest and transfer to S-21, and that his relationship with Prince CHAN Raingsey was professional rather than personal. *See* T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 70-71. *See also*, Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 3-4, ERN (En) 00346461-00346462.

<sup>7535</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 64; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 49, ERN (En) 00346507.

<sup>7536</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 62; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, p. 29, ERN (En) 00356815.

<sup>7537</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-88; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 5-6; Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 7, ERN (En) 00341692; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 31 (testifying also that people from Divisions including 310, 540 and 520 were arrested and sent to S-21). *See also*, Book by V. Huy: *The Khmer Rouge Division 703: From Victory to Self Destruction*, E3/2116, pp. 5-6, ERN (En) 00081290-0081291.

<sup>7538</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 86-88; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 5-6; Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 7, ERN (En) 00341692; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 31. This is consistent with Duch’s statements that he was first involved in the interrogation of workers of a former factory paper K-5, or K-10. *See above*, para. 2137.

<sup>7539</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 18.

<sup>7540</sup> T. 22 January 2015 (OUM Suphany), E1/250.1, pp. 76-77; S-21 list of executed prisoners from [the] health section, E3/3973, undated, p. 11, ERN (En) 00837537.

<sup>7541</sup> S-21 list of prisoners, E3/3973, undated, pp. 11-14, ERN (En) 00837537-00837540.

Chamber finds that SOU Nam was among the prisoners transferred between the at least two of the different locations of S-21 during the initial months of its operation.<sup>7542</sup>

2240. Members of various ministries were also arrested and sent to S-21 for interrogation.<sup>7543</sup> Those arrested included people who had just returned to Cambodia from overseas.<sup>7544</sup> Diplomats or ambassadors who had been appointed by GRUNK were also called back to Cambodia in late 1975 and gradually arrested and sent to S-21, including HUOT Sambath.<sup>7545</sup> HUOT Sambath was the former Ambassador to Yugoslavia, who confessed at S-21 in September 1976.<sup>7546</sup> SUONG Sikoeun identified some individuals from a group of diplomats and intellectuals who were called back to Cambodia, including: SARIN Chhak, the FUNK Minister of Foreign Affairs; Mr. SAN, the Ambassador to Soviet Union; ISOUP Ganthly, the *chargé d'affaires* to Banlung; Prince SISOWATH Metheavy, the *chargé d'affaires* of the Cambodian Embassy in Germany; NOU Pech *alias* Sin, the ambassador to China; and IN Sophann, former GRUNK *chargé d'affaires* of Cambodia to Albania.<sup>7547</sup> Of these individuals, the Chamber can confirm that NOU Pech was arrested and interrogated at S-21;<sup>7548</sup> CHEA San was executed at S-21;<sup>7549</sup> and IN Sophann was imprisoned at S-21 and died of illness.<sup>7550</sup> Similarly, the S-21 confession of ISOUP Ganthly confirms that he was also arrested and detained at S-21, and subsequently killed.<sup>7551</sup> Other intellectuals who volunteered to return to Cambodia were sent to S-21, sometimes immediately upon their return. Among these returnees were Professor PHUNG Ton, former Dean of the

<sup>7542</sup> See above, paras 2138-2140.

<sup>7543</sup> See below, para. 2544.

<sup>7544</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 103-104. See also, T. 11 August 2016 (ROS Chuor Siy), E1/455.1, p. 103; S-21 list of prisoners who were smashed on 18 March 1977, E3/2285, 22 multiple dates, p. 242, ERN (En) 015650021 (referring to RUOS Saren *alias* Mao who had returned from France and entered S-21 on 12 December 1976).

<sup>7545</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 17-18; T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 87-92, 100-102 (testifying that while he did not know what happened to these diplomats upon their return he subsequently learnt that they had disappeared and more recently recognised the names of his friends during a visit to S-21).

<sup>7546</sup> S-21 Confession – HUOT Sambath, E3/1845, multiple dates, p. 8, ERN (En) 00835929. The Chamber notes that HUOT Sambath appeared on a list of prisoners from France who died. See S-21 list of prisoners from France (not yet interrogated), E3/9853, undated, p. 4, ERN (En) 01568222.

<sup>7547</sup> T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 89-90.

<sup>7548</sup> S-21 Confession – NOU Pech *alias* Sin, E3/1872, multiple dates, pp. 1-9, ERN (En) 00753734-00753742.

<sup>7549</sup> S-21 list of prisoners smashed on 27 May 1978, E3/8463, 29 May 1978, p. 27, ERN (En) 01032533.

<sup>7550</sup> S-21 Daily Controlling List, E3/9963, 3 March 1977, ERN (En) 01461996.

<sup>7551</sup> S-21 Confession – ISOUP Ganthly, E3/3570, multiple dates, pp. 1, 11, ERN (En) 00770014 (including an annotation that he was arrested on 9 September and “smashed” on 6 December 1976 and a further note from Duch of 29 September 1976 stating that three copies of the confession were to be sent to *Angkar*).

University of Phnom Penh, and OUK Ket, a former diplomat in Senegal whose relatives were heard during Case 001 proceedings.<sup>7552</sup> The S-21 documentation shows that other diplomats who returned to Cambodia were also killed.<sup>7553</sup>

2241. Some prisoners were also transferred to S-21 from other crime sites within the scope of Case 002/02, including the Kampong Chhnang Airfield Construction Site and Au Kanseng Security Centre.<sup>7554</sup> Further, some Northwest Zone cadres were targeted as part of nationwide purges were arrested at the Trapeang Thma Dam Worksite and sent to S-21.<sup>7555</sup>

2242. If S-21 staff, as opposed to the relevant local units, were tasked with arresting people, Duch provided the names of those to be arrested to Hor, who forwarded this list to HIM Huy. HIM Huy, in turn, was responsible for collecting those individuals.<sup>7556</sup> While the decision on arrests had already been made by the Party Centre in principle, cadres including Hor had the ability to decide on arrests at the S-21 level, including those who had been sent to Prey Sar. However, Hor still reported to the upper echelon before any such arrests were made.<sup>7557</sup>

2243. In the early days of its operation, prisoners were brought to S-21 every one or two weeks, but between 1977 and 1978 the number of prisoners increased following the start of internal purges.<sup>7558</sup> When large quantities of prisoners were arrested from specific zones and brought to S-21, Duch was instructed to remove big groups of

<sup>7552</sup> Case 001 Transcript (IM Sunthy), 19 August 2009, E3/1552, pp. 2-25, ERN (En) 00367436-00367459; Case 001 Transcript (PHUNG Guth Sunthary), 19 August 2009, E3/1552, pp. 25-75, ERN (En) 00367459-00367509; Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009, pp. 37-40, ERN (En) 00351823-00351826 (confirming that PHUNG Ton entered S-21 and that he interrogated him); Case 001 Transcript (Martine LEFEUVRE), 17 August 2009, E3/5582, pp. 13-47, ERN (En) 00365798-00365832; Case 001 Transcript (OUK Neary), 17 August 2009, E3/5582, pp. 47-72, ERN (En) 00365832-00365857; S-21 list of prisoners executed on 9-12-77, E3/7210, undated, ERN (En) 00328268. *See also*, Case 001 Trial Judgement, para. 650.

<sup>7553</sup> *See e.g.*, S-21 list of prisoners executed from [the] health section, E3/3973, undated, ERN (En) 00837559-00387560.

<sup>7554</sup> Section 12.4: Au Kanseng Security Centre, para. 2886.

<sup>7555</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1230, 1353, 1357; Section 12.3: Kampong Chhnang Airfield Construction Site, paras 1773-1778.

<sup>7556</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000. HIM Huy was told by Hor in 1976 that he would be transferred to S-21. *See* T. 3 May 2016 (HIM Huy), E1/426.1, pp. 79-80.

<sup>7557</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 33-35; KAING Guek Eav Interview Record, E3/1578, 27 March 2008, p. 5, ERN (En) 00194549; Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 44, ERN (En) 00328488.

<sup>7558</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 27-28.

prisoners to ensure that there was enough space for the new detainees.<sup>7559</sup> Further, during a wave of East Zone purges in 1978, NUON Chea ordered Duch to have large groups of East Zone prisoners arriving at S-21 sent out for execution that very same day, without interrogation.<sup>7560</sup>

2244. Prisoners arrived at S-21 in trucks that could transport up to 50 or 60 prisoners at a time.<sup>7561</sup> Prisoners were usually brought to S-21 in batches of about 30, but during spikes in arrests – as seen during the second wave of East Zone purges in 1978 – large numbers of prisoners in groups exceeding 100 arrived at S-21.<sup>7562</sup> As arrests increased throughout 1977-1978, trucks brought prisoners to S-21 daily from the Northeast, North, East and other zones, which resulted in some trucks driving prisoners directly to Choeung Ek due to the lack of space at S-21.<sup>7563</sup> When large groups of prisoners were brought to S-21, HIM Huy had to closely monitor the situation as they were afraid that there were not enough guards to secure the detention of the prisoners.<sup>7564</sup>

2245. Detainees usually arrived at S-21 in trucks with their hands tied and eyes blindfolded, and were received by HIM Huy and his unit at the entrance of the compound.<sup>7565</sup> If detainees had not already been handcuffed, they were handcuffed and blindfolded by armed guards before being taken to a cell and forced to strip to their underwear. Prisoners then had their heights measured and were sent to another room to

<sup>7559</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 80-81; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 37-38. *See below*, para. 2527.

<sup>7560</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 44.

<sup>7561</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 16-17. *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, p. 67.

<sup>7562</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 81-84 (testifying that when large groups of prisoners arrived they would be taken directly to the cells and that SUOS Thy would take brief biographies in the cells); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 28. *See also*, T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 38; T. 25 April 2016 (LACH Mean), E1/421.1, p. 86 (testifying that while he did not know which zone prisoners came from, he noticed a large influx of prisoners in 1978). *See below*, 12.2.8.4: January to June 1978 – Second Wave East Zone Purges and the arrest of RUOS Nhim.

<sup>7563</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 104. *See also*, S-21 list of daily counting of prisoners 25 October 1977, E3/2164, 25 October 1977, p. 2, ERN (En) 00181693 (demonstrating that groups of prisoners entered S-21 from multiple zones).

<sup>7564</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 14-15.

<sup>7565</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 84, 102; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 21-22 (testifying that as a rule, vehicles were not allowed inside the compound for fear of revealing the secret about S-21); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 17, 21; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000. *See also*, T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 47; T. 25 April 2016 (LACH Mean), E1/421.1, pp. 67-68; T. 21 April 2016 (TAY Teng), E1/420.1, pp. 86-87 (testifying that prisoners arrived in trucks and that these trucks arrived once or twice a month).

be photographed.<sup>7566</sup> When CHUM Mey arrived at S-21, he was pulled by the ear and forced to walk. When CHUM Mey asked the guards to look after his family, he was kicked and fell face-down on the ground.<sup>7567</sup> He was then pulled up by his hair, cursed at and asked if he had any last wishes, because *Angkar* would smash all those who were considered to be traitors.<sup>7568</sup>

2246. Once received by HIM Huy, detainees were sent to SUOS Thy for registration in what was described as Building E, and were then taken to their cells by Peng.<sup>7569</sup> The prisoners brought for registration had their hands tied and eyes blindfolded. Many had been stripped of their clothes by the Special Unit and wore only shorts.<sup>7570</sup> SUOS Thy was not told in advance when groups of prisoners would be brought to the facility.<sup>7571</sup>

2247. During the registration process, SUOS Thy wrote a brief biography containing each detainee's personal details, including their date and place of birth, the names of their family members, occupation, domicile and which division or zone the person came

<sup>7566</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 22-24; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 9-10, 43, ERN (En) 00346467-00346468, 00346501; T. 3 June 2016 (SUOS Thy), E1/431.1, p. 61; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 21-22; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 24; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 3-4, ERN (En) 00198000-00198001. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 45-46; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, pp. 17-20, ERN (En) 00198044-00198047; Case 001 Transcript (BOU Meng), 1 July 2009, E3/7452, p. 11, ERN (En) 00346669; Case 001 Transcript (VANN Nath), 29 June 2009, E3/7450, pp. 19-20, ERN (En) 00345677-00345678.

<sup>7567</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 23. Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 9, ERN (En) 00346467. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46.

<sup>7568</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 23, 42; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 9-10, ERN (En) 00346467-00346468. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46.

<sup>7569</sup> T. 3 May 2016 (HIM Huy), E1/426.1, p. 102; T. 5 May 2016 (HIM Huy), E1/428.1, p. 21; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 6, ERN (En) 00162613; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 15-16. *See also*, T. 2 June 2016 (SUOS Thy), E1/430.1, p. 98; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 3-4, 58-59, 65, 67 (testifying that guards who were part of the special unit received prisoners from K-7 or S-71 and then handed them over to him (in this regard, *see* Section 5: Administrative Structures, paras 366-369 noting that K-7 was a sub-office of S-71, which supported and was supervised by the Party Centre); Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, pp. 2, 16, ERN (En) 00198029, 00198043.

<sup>7570</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 61-63 (testifying that he was not sure whether the interrogation unit allowed people to wear their clothes again after they were registered and that when prisoners appeared before him some had clothes on while others wore shorts and were shirtless); SUOS Thy Interview Record, E3/7643, 18 October 2007, pp. 6-7, ERN (En) 00162613-00162614 (stating that when questioned for their biographies, the detainees were still blindfolded); T. 26 April 2016 (LACH Mean), E1/422.1, pp. 57-59. The Chamber does not rely on LACH Mean's speculation that prisoners had their clothes removed given the concern that they may hang themselves. *See* S-21 Circular, E3/8386, 15 August 1975, p. 2, ERN (En) 00521632 (which provided that "enemies" at S-21 were not allowed to take off their clothes without permission, or else those clothes would be confiscated).

<sup>7571</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 60.

from.<sup>7572</sup> There was a pre-printed form that SUOS Thy used to fill in the details of each prisoner's biography.<sup>7573</sup> The date of a detainee's entry at S-21 was recorded immediately.<sup>7574</sup> If the guards delivering the detainees had any accompanying documents, including letters, those documents would be delivered to Duch or whoever was named on the envelope.<sup>7575</sup>

2248. Pursuant to Hor's orders, SUOS Thy completed the registration form, and later attached the prisoner's photograph.<sup>7576</sup> NOEM Oem *alias* NIM Kimsreang arranged for the photographs to be taken,<sup>7577</sup> and then provided the developed photographs to SUOS Thy.<sup>7578</sup> The biographies of the prisoners were stored in a big register, but SUOS Thy did not maintain a dossier for individual prisoners apart from the biographical information and attached photographs.<sup>7579</sup> The biographies of prisoners establish that those recorded and detained at S-21 included men, women and children. Those detained

<sup>7572</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 14, 38, 49, 84, 98 (testifying that he was the only person responsible for registering the names of incoming and outgoing prisoners but he was later assisted in the registration of prisoners by a boy named Lann/Lan); T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 30, 32-33, 77 (stating that Lan's main task was to record the cell numbers of the prisoners); SUOS Thy Interview Record, E3/7643, 18 October 2007, pp. 5-6, ERN (En) 00162612-00162613; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 21; T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 27; T. 18 April 2016 (CHUM Mey), E1/417.1, p. 92 (stating he initially gave his biography to SENG); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 10, ERN (En) 00346468; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 3. *See also*, Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 16, ERN (En) 00198043; SUOS Thy DC-Cam Interview, E3/9320, 25 August 2003, p. 18, ERN (En) 00909153.

<sup>7573</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 14, 61, 85-88. *See e.g.*, Prisoner Biography – BAK Khna *alias* Kim, E3/3466, 3 February 1978, ERN (En) 00702698; Prisoner Biography – PHAL Va *alias* Nat, E3/1533, 30 December 1978, ERN (En) 00242035; Prisoner Biography – ING Sok, E3/1532, 29 December 1978, ERN (En) 00235659; Prisoner Biography – PEOU Sophan *alias* SAM Ean, E3/10538, 23 July 1978, ERN (En) 01462365. The Chamber received a number of similar prisoner biographies which corroborate this practice of registration at S-21.

<sup>7574</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 110.

<sup>7575</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 60; T. 3 May 2016 (HIM Huy), E1/426.1, p. 103.

<sup>7576</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 65-66 (testifying that he occasionally made a duplicate of these forms when he had free time).

<sup>7577</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 39, 84-85, 101-103 (testifying that when bigger groups of prisoners were brought in, he would also take photographs otherwise he would assign Song or Nit to do so given that he was busy developing the negatives); NOEM Oem Interview Record, E3/7639, 22 October 2007, p. 10, ERN (En) 00162738. For a discussion of the Parties' submissions and the Chamber's finding regarding Nhem EN, another photographer at S-21, *see below*, para. 2252.

<sup>7578</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 40-41, 85 (testifying that he did not write information on the back of photographs and any information was probably written by SUOS Thy).

<sup>7579</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 68-69 (testifying that the biographies usually only included photographs of incoming prisoners and not the photos of their executions). SUOS Thy was unsure whether biographies were filed according to the zones or sectors which the prisoners were from or according to the date of entry at S-21. *See* T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 76-77.

included soldiers, military commanders, district and commune level officials, medics, art performers, railway workers, factory workers, ministry workers and officials.<sup>7580</sup>

2249. SUOS Thy made a report on the list of incoming and outgoing prisoners to Meng, who drew up the master list.<sup>7581</sup> On occasion, Duch monitored the incoming prisoners and asked to be brought daily lists which allowed him to calculate the total number of prisoners on a given day or to focus on prisoners of interest.<sup>7582</sup> The practice of preparing prisoner lists was initiated by Hor to ensure that the work of S-21 was precise and to facilitate reporting to superiors.<sup>7583</sup>

2250. With regard to the photographs taken upon arrival, some were taken in front of the building where prisoners were registered by SUOS Thy, while some photographs were taken where women and children were detained.<sup>7584</sup> Other photographs were taken which showed the front and side of a prisoner's head, using an instrument to hold the head steady.<sup>7585</sup> If prisoners were brought to S-21 at night, they were photographed the next morning in their cells where they were shackled by their legs.<sup>7586</sup> Most prisoners were blindfolded before their photograph was taken, while some prisoners were handcuffed.<sup>7587</sup> Elderly prisoners were also detained and photographed at S-21.<sup>7588</sup>

<sup>7580</sup> See e.g., S-21 Prisoner Biographies E3/10537, ERN (En) 01462364; E3/10548, ERN (En) 01462373; E3/10538, ERN (En) 01462365; E3/10540, ERN (En) 01462367; E3/10541, ERN (En) 01462368; E3/10544, ERN (En) 01462370; E3/10545, ERN (En) 01462371; E3/10547, ERN (En) 01462372; E3/10552, ERN (En) 01462394; E3/10553, ERN (En) 01462395; E3/10563, ERN (En) 01461733, 01461735, 01461737, 01461739, 01461743, 01461749, 01461767.

<sup>7581</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 43. See also, T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 24; Documentary, *The Angkar*, E3/3095R, 00:23:58-00:25:15; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 74-78 (identifying the master list of prisoners from the video footage).

<sup>7582</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 25, 92; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 107.

<sup>7583</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 7.

<sup>7584</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 88-90. See e.g., S-21 Photographs, E3/8639.4427; E3/8639.5089; E3/8639.4926; E3/8639.4724; E3/8639.5184.

<sup>7585</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 91-92 (testifying that for a few days they measured the height of the prisoners but stopped the practice as it was too hard). See e.g., S-21 photographs, E3/8639.193; E3/8639.196; E3/8639.4149; E3/8639.4192.

<sup>7586</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 93-95. See e.g., S-21 Photographs, E3/8639.3299; E3/8639.3303; E3/8639.3795; E3/8639.3859.

<sup>7587</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 95-98 (testifying that the blindfolds were only removed before the photograph was taken). See e.g., S-21 Photographs, E3/8639.3319; E3/8639.3321; E3/8639.3813.

<sup>7588</sup> T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 5-7. See e.g., S-21 photographs, E3/8639.5110; E3/8639.2484, E3/8639.1975; E3/8639.3668; E3/8639.4034.

Some mothers were photographed with their babies in their arms. Children arrested and brought in with their parents were not always photographed or even registered.<sup>7589</sup>

2251. The photographer assigned a number to each prisoner.<sup>7590</sup> The numbering would restart depending on how many prisoners arrived in a given period.<sup>7591</sup> In late 1978, following the instructions of Duch, the prisoners were photographed from the front and side, and their name and date of entry was included in the photograph.<sup>7592</sup> NOEM Oem estimated that between 4,000 and 5,000 photographs were taken by his unit, and this estimate did not encompass photographs taken by others, including those under the responsibility of Sry, who photographed important prisoners.<sup>7593</sup> On occasion, photographs were taken of prisoners who had died or who had been beaten to death at S-21, and of bodies which had been exhumed from graves.<sup>7594</sup> Duch received instructions to photograph the dead bodies of important prisoners<sup>7595</sup> and those prisoners considered to have close relations to staff at S-21.<sup>7596</sup> Sry's special unit was responsible for photographs of dead prisoners.<sup>7597</sup>

<sup>7589</sup> See below, para. 2334.

<sup>7590</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 90-92 (testifying that if a person was designated a number in a photograph this would also be included in the prisoner's biography); T. 16 September 2016 (NOEM Oem), E1/475.1, p. 8 (testifying that the numbering was for the photographer's identification and could be used to take the photograph again if it was damaged and that there was no fixed system of numbering); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 23, ERN (En) 00198050.

<sup>7591</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 92-93.

<sup>7592</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, p. 44. NOEM Oem further testified that photographs of people with caps were S-21 staff and that in the initial photographs of prisoners brought to S-21 they did not have a numbering system. See T. 15 September 2016 (NOEM Oem), E1/474.1, p. 46; T. 16 September 2016 (NOEM Oem), E1/475.1, p. 29.

<sup>7593</sup> T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 15-20 (testifying that he based this estimate on the photographs he stored but he never recorded the number himself). Other evidence suggests that over 6,000 photographs of prisoners had survived. See Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684 [E3/1693], pp. 27, 166, ERN (En) 00192706, 00192859.

<sup>7594</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 61, 103-107 (testifying that Duch told him to come and take these photographs of dead prisoners); T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 33-34. See e.g., Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684 [E3/1693], p. 44, ERN (En) 00192764; S-21 photograph, E3/8063.49.

<sup>7595</sup> LY Phen was one of the first such people the Duch remembers being ordered to photograph after their death. KAING Guek Eav Interview Record, E3/455, ERN (En) 00149910 (Duch explained that "[t]hree days after this person was smashed, the body was exhumed and photographed pursuant to the orders of Nuon Chea to Son Sen and Son Sen in turn gave the orders to me." Duch clarified that this was the first time he received such order and that similar photography was later done, but only "after receiving orders from upper echelon especially, Nuon Chea out of [their] fear of the release of some victims whom we knew"). These statements are consistent previous declarations he made before the UNHCR representative in April 1999. See KAING Guek Eav Interview Transcript, E3/347, multiple dates, p. 1, ERN (En) 00160885.

<sup>7596</sup> KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 10, ERN (En) 00147526.

<sup>7597</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 50.



2252. The NUON Chea Defence submits that NHEM En, a photographer at S-21 who testified in Case 002/02, was an “imposter” and “charlatan” whose evidence was wholly lacking credibility and that his evidence should be disregarded in totality.<sup>7598</sup> NOEM Oem confirmed that NHEM En was sent to S-21 as a child by Duch, and he (NOEM Oem) trained NHEM En to take photographs but did not teach him “all the skills”. He refuted the suggestion that NHEM En possessed previous photography skills or that NHEM En was the chief of the photography unit. He also testified that NHEM En simply came to learn photography and that he stayed outside the compound.<sup>7599</sup> The Chamber heard NHEM En’s testimony over the course of two days and concludes that the evidence provided by this witness was marked by extensive contradictions, inconsistencies, speculation and lack of clarity.<sup>7600</sup> The Chamber also found that based on other credible evidence, NHEM En’s role at S-21 was very limited. The Chamber thus approaches his evidence with extreme caution, and does not rely on NHEM En’s evidence with respect to facts in issue, particularly in connection with S-21 and the role of NUON Chea and KHIEU Samphan. Accordingly, the Chamber accepts the NUON Chea Defence’s submissions in this regard.

2253. After registration, SUOS Thy then recorded the cell numbers for each detainee and provided that information to the interrogators.<sup>7601</sup> The newly-arrived detainees were then imprisoned immediately and there was no judicial process of any description.<sup>7602</sup> Comrade Lim was among the guards who took custody of detainees upon their arrival at S-21.<sup>7603</sup> Detainees were issued identification tags.<sup>7604</sup> There were

<sup>7598</sup> NUON Chea Closing Brief, paras 452-454.

<sup>7599</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 17-24, 108-110; T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 3-5. *See* NHEM En Interview by Doug NIVEN and Peter MAGUIRE, E3/7495, 12 March 1997, p. 10, ERN (En) 00078251-00078252.

<sup>7600</sup> *See e.g.*, T. 21 April 2016 (NHEM En), E420.1, pp. 19-22 (witness retracts previous statement that he was in charge of photographers at S-21 with subordinates, saying that he merely considered himself to be the chief due to his having had the most expertise) 45-48 (stating that his participation in proceedings is based on his desire to make money); T. 20 April 2016 (NHEM En), E1/419.1, pp. 6 (contradicting multiple other S-21 staff testimony regarding the year that he began to work at S-21), 81-85 (discussing an arranged marriage and being reminded by the President of the Trial Chamber not to speculate or make personal conclusions).

<sup>7601</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 67 (testifying that after the guards had taken the prisoners to their cells, he would go around and note down the cell number); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000.

<sup>7602</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 53; T. 25 April 2016 (LACH Mean), E1/421.1, pp. 71-72. *See also*, Case 001 Transcript (BOU Meng), 1 July 2009, E3/7452, pp. 30-31, ERN (En) 00346688-00346689.

<sup>7603</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 23.

<sup>7604</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, ERN (En) 00198047.

no explicit instructions as to which cell a prisoner should be kept in, and this was decided by the guards depending on the available space.<sup>7605</sup> Most prisoners were detained in three buildings within the S-21 compound: Buildings B, C and D.<sup>7606</sup>

### 12.2.8. *Prominent Prisoners and Internal Purges*

2254. According to the Closing Order, the Co-Investigating Judges were seised of two specific purges: the purge of the old and new North Zones, and the purge of the East Zone.<sup>7607</sup> The Closing Order finds that NUON Chea, as a member of the Standing Committee, participated in the decision to carry out purges within the military ranks.<sup>7608</sup> The Closing Order also found that KHIEU Samphan knew of and was involved in the purges of senior leaders of the CPK.<sup>7609</sup>

2255. The Chamber finds that the numbers of prisoners flowing in and out of S-21 mirrored the various internal purges of the CPK, and that these purges triggered several large waves of incoming prisoners and further arrest of cadres during the DK period.<sup>7610</sup>

2256. The Special Prison was used for the detention of more senior or important prisoners.<sup>7611</sup> S-21 prisoner lists, including a list noting 24 individuals who were detained in the Special Prison between November and December 1978, confirm this finding.<sup>7612</sup> This list refers to Committee Members of the Northeast Zone, secretaries and deputy secretaries of sectors and divisions.<sup>7613</sup> Another S-21 prisoner list notes that in December 1978 there were 25 prisoners detained in the Special Prison.<sup>7614</sup> The

<sup>7605</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 67.

<sup>7606</sup> Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, pp. 25-26, ERN (En) 00322768-00322769 (stating that the special prison was to the south of Building A); Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 2, ERN (En) 00198029.

<sup>7607</sup> Closing Order, para. 192.

<sup>7608</sup> Closing Order, para. 149.

<sup>7609</sup> Closing Order, paras 1184-1185.

<sup>7610</sup> *See below*, paras 2543, 2547-2548, 2550, 2552.

<sup>7611</sup> T. 5 May 2016 (HIM Huy), E1/428.1, p. 29; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 38-40 (testifying that he did not have a full grasp of who was detained in the special prison given that he did not have the authority to go this prison and that he only became aware of who was detained at the special prison after they were brought to the main prison); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 31; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 5, ERN (En) 00198002. *See also*, Case 001 Transcript (SAOM Met), E3/7470, 10 August 2009, pp. 77-78, ERN (En) 00361920-00361921.

<sup>7612</sup> S-21 list of prisoners in special prison section, E3/8463, undated, pp. 233-234, ERN (En) 01554751-01554752. *See also*, S-21 list of important prisoners, E3/9869, 17 October 1977, ERN (En) 01299716-01299717 (referring to important prisoners imprisoned from January to August 1977).

<sup>7613</sup> S-21 list of prisoners in special prison section, E3/8463, undated, pp. 233-234, ERN (En) 01554751-01554752.

<sup>7614</sup> S-21 list of prisoners from East Zone's Divisions, E3/2255, undated, p. 1, ERN (En) 00789494.

Special Prison was initially located outside the main compound, but was later moved inside the main compound of S-21 to Building A.<sup>7615</sup> Other guards and interrogators at S-21 were not allowed to approach the Special Prison, and as a general rule only the Special Unit dealt with important prisoners.<sup>7616</sup> Duch notes that about five to six months after he became Chairman of S-21 in mid to late 1976, SON Sen ordered Hor removed from all assignments relating to the interrogation of important prisoners due to his disclosure of confidential information relating to a confession. After this, Pon was assigned to interrogate important prisoners.<sup>7617</sup>

2257. There was additional secrecy with respect to the detention of “important enemies” in prisoner records.<sup>7618</sup> Duch testified that he was instructed to use “IX” for Ya and “VIII” for KEO Meas.<sup>7619</sup> The confession of SUOS Neou *alias* Chhouk suggests that he was also referred to by Roman numeral “VIII”.<sup>7620</sup> This practice is reflected in S-21 lists of prisoners interrogated in January 1977 where some detainees are simply listed as “XX”, “XV” and “XVII”, with no further identifying information.<sup>7621</sup> Further, confessions use Roman numeral aliases as well; Pon states in a note to Duch contained in KOY Thuon’s confession that the name “Lai” was “also mentioned by XII”.<sup>7622</sup> In the confession texts of NON Suon *alias* Seng *alias* Chey, the Secretary of the

<sup>7615</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 26-32; T. 2 June 2016 (SUOS Thy), E1/430.1, p. 40; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 11-12. *See also*, SUOS Thy Military Tribunal Interview, E3/10568, 28 June 1999, pp. 2-3, ERN (En) 00326773-00326774. CHUM Mey testified that he was interrogated and beaten in Cell 4 in Building A. While the Chamber finds that Building A was typically reserved for the interrogation of important or foreign prisoners, this does not undermine CHUM Mey’s credible testimony that he was interrogated and beaten in Building A and was later detained in Building C. *See* T. 18 April 2016 (CHUM Mey), E1/417.1, p. 27; T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 24-27; KAING Guek Eav Interview Record, E3/5769, 29 February 2008, p. 3, ERN (En) 00166563. The Chamber also notes Duch’s observation that it must have been a mistake to carry out interrogations in this building, but this does not undermine CHUM Mey’s testimony. *See* Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 5-6, ERN (En) 00198002-00198003. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 11, ERN (En) 00346469.

<sup>7616</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 73. *See above*, para. 2152.

<sup>7617</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154191. As mentioned below, Duch was assigned to interrogate KOY Thuon personally. *See below*, para. 2287.

<sup>7618</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 16, ERN (En) 00184498 (entry dated 14 June 1977). The Chamber notes that from the sequence of entries this should be 14 June 1978 even though the original text reads 1977.

<sup>7619</sup> KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 15, ERN (En) 00154203.

<sup>7620</sup> *See e.g.*, S-21 Confession – SUOs Neou *alias* Chhouk *alias* Men *alias* VIII, E3/2990, multiple dates, p. 2, ERN (En) 00284021.

<sup>7621</sup> S-21 list of prisoners to be interrogated in January 1977, 1 February 1977, E3/10084, p. 2, ERN (En) 01399457.

<sup>7622</sup> S-21 list of prisoners to be interrogated in January 1977, 1 February 1977, E3/10084, p. 2, ERN (En) 01399457; S-21 Confession – KOY Thuon, E3/1604, multiple dates, ERN (En) 00776989.

Agriculture Committee,<sup>7623</sup> a handwritten note indicates “XII’s first response: not yet confessed, speaks only of his virtues”.<sup>7624</sup>

2258. Before the arrival of important prisoners, Duch was notified by his superior. For example, SON Sen briefed Duch prior to the arrival of KOY Thuon.<sup>7625</sup> While Duch asserted that those detained in the Special Prison had better living conditions than the other detainees and were treated when sick,<sup>7626</sup> the Chamber notes that there is no evidence that clearly corroborates this assertion. Even if prisoners detained in the Special Prison experienced conditions less difficult than other S-21 detainees, the Chamber is satisfied that those who were detained there Special Prison were set apart and considered extremely important. The purpose of the location of the Special Prison was to maintain secrecy regarding the presence of special detainees at S-21, to strictly monitor them in order to prevent them from committing suicide and to house them in conditions only sufficient to keep them alive long enough to provide exhaustive confessions before their unavoidable execution.<sup>7627</sup> Sry’s group was responsible for guarding these important prisoners, and Duch and Hor also had the authority to enter the Special Prison.<sup>7628</sup>

2259. Important prisoners did not usually go through SUOS Thy’s office and were taken straight to the Special Prison for detention. Other important prisoners had previously been taken to Duch’s house, where they were arrested before being brought into the compound.<sup>7629</sup> Accordingly, the entry date of important prisoners was not

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<sup>7623</sup> See below, para. 2282.

<sup>7624</sup> S-21 Confession – NON Suon *alias* CHEY Suon *alias* Seng *alias* Chey, E3/1870, undated, ERN (En) 00096835.

<sup>7625</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 5.

<sup>7626</sup> Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, pp. 23-24, 46, 54, ERN (En) 00341608-00341709, 00341731, 00341739.

<sup>7627</sup> Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, pp. 46, 54, ERN (En) 00341731, 00341739. See above, paras 2256, 2257. See below, paras 2259, 2260.

<sup>7628</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 28, 32. The Chamber notes that Hor was discharged from his duties regarding the interrogation of important prisoners by mid to late 1976. See above, para. 2256.

<sup>7629</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 88-90; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 7-8 (clarifying that sector or zone chairmen were considered important people who would be received at the outer gate by the Special Unit, but that office chairmen were not considered important and could be registered by him); T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 44-46; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 24-25, 35-36; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 33-34, 90 (testifying that important prisoners were driven directly into the compound whereas other drivers were not allowed to drive vehicles into the compound). See also, S-21 list of prisoners who entered on 24.5.78, E3/1955, 24 May 1978, ERN (En) 00183685-00183686 (recording the entry of the heads of K-6, K-8, K-12, K-13 and K-17).

always recorded accurately.<sup>7630</sup> Furthermore, sometimes the important prisoners did not have their photograph taken as they were handled by special guards in order to maintain secrecy.<sup>7631</sup>

2260. Duch assigned Pon or Tuy to interrogate important prisoners in whom the upper level expressed an interest and from whom they wanted a statement.<sup>7632</sup> Pon interrogated only the most important prisoners.<sup>7633</sup> Duch also entered the Special Prison to interrogate some of the important detainees.<sup>7634</sup> Pon had been trained by Duch at M-13 with respect to interrogation techniques and he never beat a detainee to the point where a confession ended prematurely.<sup>7635</sup> By contrast, there was a danger that Tuy would resort to torturing the important prisoners more severely than instructions from the Party Centre allowed.<sup>7636</sup>

2261. SON Sen and NUON Chea directly intervened in the arrest and interrogation of important prisoners. For example, prior to the arrival of NEY Sarann *alias* MEN San *alias* Ya, Duch was briefed by SON Sen, who followed his interrogation closely and asked for “torture” to be postponed.<sup>7637</sup>

2262. In another instance, NUON Chea spoke to Duch about the arrest of CHAU Seng and warned Duch not to say anything about this arrest to anyone from the Ministry of

<sup>7630</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 110.

<sup>7631</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 4-5.

<sup>7632</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 85-86, 90; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 86; T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 83.

<sup>7633</sup> Case 001 Transcript (KAING Guek Eav), E3/5792, 23 April 2009, p. 34, ERN (En) 00322777; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, pp. 9-11, ERN (En) 00154197-00154199. This is corroborated by a letter written by Pon to prominent prisoner SUA Vasi *alias* Doeun, contained within the latter’s confession. *See* S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, 12 April 1977, p. 11, ERN (En) 00768021.

<sup>7634</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 5, ERN (En) 00198002; T. 5 May 2016 (HIM Huy), E1/428.1, p. 28.

<sup>7635</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, pp. 57-58, ERN (En) 00342014-00342015; KAING Guek Eav Interview Record, E3/1569, 29 April 2008, p. 4, ERN (En) 00185476; Case 001 Transcript (KAING Guek Eav), E3/5791, 7 April 2009, pp. 26-27, 60, 65-66, 96, ERN (En) 00315600-00315601, 00315634, 00315639-00315640, 00315670; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 86; Interrogators were instructed to not torture prisoners to death during an interrogation prior to obtaining a full confession. *See below*, para. 2397.

<sup>7636</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 85-86, 90; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 96.

<sup>7637</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 36-37.

Foreign Affairs.<sup>7638</sup> Many staff members at the Ministry of Foreign Affairs were arrested and detained at S-21.<sup>7639</sup>

2263. The Chamber will now separately analyse the detention and treatment of several prominent or important prisoners by way of example. The Chamber has not identified each prominent prisoner detained at S-21, but has focused on individuals whose detention was discussed in live evidence and/or was the subject of submissions by the Parties.

12.2.8.1. 1976 – First wave of East Zone purges and the start of the North Zone purges

2264. The Closing Order describes how many alleged traitors were arrested and brought to S-21 following internal purges of the East Zone, and how major purges resulted from further confessions.<sup>7640</sup> The number of arrests and incoming prisoners at S-21 first surged in response to the explosion of a hand grenade behind the Royal Palace in Phnom Penh in April 1976 that triggered the first East Zone purge, centring on Division 170.<sup>7641</sup>

12.2.8.1.1. *KEO Meas alias KAEV Meah*

2265. KEO Meas was a former member of the Central Committee of the Workers' Party of Kampuchea who had travelled with POL Pot. However, he fell out of favour and was placed under house arrest after April 1975, in part due to his perceived traitorous connections with Vietnam.<sup>7642</sup> KEO Meas was later arrested and detained at

<sup>7638</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 92-93.

<sup>7639</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 94. *See also*, T. 7 August 2012 (SUONG Sikoeun), E1/103.1, pp. 10-13.

<sup>7640</sup> The Closing Order refers to the arrests of SUOS Nov *alias* Chhouk, former secretary of Sector 24 and CHAN Chakrei *alias* NOV Mean, former cadres from Division 170 who were both arrested pursuant to a decision of the Standing Committee. The Closing Order further refers to SEAT Chhae *alias* Tum, the former Secretary of Sector 22 and the major purge of Sector 22 which followed his confession. *See* Closing Order, paras 199, 201.

<sup>7641</sup> KAING Guek Eav Interview Record, E3/451, 5 May 2008, pp. 6, 18, ERN (En) 00204343, 00204355; T. 30 March 2012 (KAING Guek Eav), E1/51.1, p. 20. *See below*, paras 2543, 2547; Section 12.1.4.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976); Section 12.1.6.3.4.1: 1976 Standing Committee Decision to Purge the East Zone.

<sup>7642</sup> T. 10 July 2013 (Stephen HEDER), E1/221.1, pp. 55-56; Book by E. Becker: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, pp. 268-269, ERN (En) 00237973-00237974; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 8, ERN (En) 00940343 (during which SON Sen states that “the enemy from the East: Vietnam and Soviet were behind the important plan which was to attack from the inside through the traitorous forces of Ya, KEO Meas, Chhouk and Chakrei.”).

S-21.<sup>7643</sup> He was referred to as “the despicable Kaev Meah” in a *Revolutionary Flag* issue along with other “despicable” individuals including CHAN Chakrei, SUOS Neou *alias* Chhouk, KOY Thuon *alias* Thuch, SUA Vasi *alias* Doeun, SAO Phim and CHOU Chet *alias* Sy, all of whom the magazine alleged had associations with the CIA and the “*Yuon*”.<sup>7644</sup>

#### 12.2.8.1.2. *YIM Sambath*

2266. Duch stated on several occasions that the internal purge of the first network started with YIM Sambath, a Platoon Deputy of a 50-man Unit of Division 170. YIM Sambath was arrested on 4 April 1976 and detained at S-21 on 8 April 1976.<sup>7645</sup> Pang arrested him and brought him to S-21 because Division 170, headed by CHAN Chakrei, was in charge of a location behind the Royal Palace where a grenade had been thrown.<sup>7646</sup> Annotations on YIM Sambath’s confession establish that Duch followed and monitored the content of his confession.<sup>7647</sup>

2267. Large-scale internal purges followed this incident, including that of SON Sary *alias* Prev, a suspected traitor who “gave answers” on 13 May 1976 and was smashed outside the S-21 premises. SON Sary was killed prematurely by Hor, who was reprimanded by SON Sen personally after committing the act. Hor was instructed that from that point forward, Duch had to grant him permission to take detainees outside the

<sup>7643</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16; T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 21, 58 (the witness, KEO Meas’s cousin, states she heard that KEO Meas was arrested and killed). *See also*, S-21 list of prisoners extracted from various ministries, E3/10090, undated, p. 56, ERN (En) 01399062.

<sup>7644</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333 (adding: “The only difference among them was that some of these CIAs were more on the American side while others were more on the *Yuon* side.”).

<sup>7645</sup> KAING Guek Eav Interview Record, E3/451 [E3/526], 5 May 2008, pp. 6, 18, ERN (En) 00204343, 00204355; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 20; S-21 list of prisoners who entered Office S-21 in 1976, E3/9852, undated, p. 2, ERN (En) 01367298; S-21 list of prisoners executed on 29 July 1976, E3/3187, undated, pp. 338-339, ERN (En) 00874511-00874512. *See also*, Section 12.1.4.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976). At the time, S-21 was still situated at the National Police Headquarters (the “PJ”). *See* T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 65.

<sup>7646</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 76-79 (testifying that the date of the arrest and the grenade throwing incident were not close to one another). *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, p. 1, ERN (En) 00284003.

<sup>7647</sup> S-21 Confession – YIM Sambath, E3/7397, 12 April 1976, ERN (En) 00769665. *See also*, Summary of the Previous Events prepared by Duch, E3/7397, 6 August 1976, ERN (En) 00284008.

prison. Duch noted that Hor “did not understand the case well” and that Hor could have been executed for his actions.<sup>7648</sup>

2268. Duch was initially instructed not to beat YIM Sambath, and Duch ordered Hor to conduct the interrogation, but later YIM Sambath was subjected to what Duch described as physical “torture”.<sup>7649</sup> Following the instructions of SON Sen, Duch ordered Hor to make an audio recording of YIM Sambath’s confession which was sent to the upper echelon. After this, YIM Sambath was sent to another unit for further interrogation.<sup>7650</sup> Duch wrote to his superior that he wanted to send a tape recording of the confession, that they “have not yet hit him at all” and that while this was a report on the preliminary situation, YIM Sambath would answer further.<sup>7651</sup> Following this incident, YIM Sambath’s father, YIM Chhoeun, was also arrested and detained at S-21 in May 1976, at around the same time as CHAN Chakrei.<sup>7652</sup> The Chamber notes that the confession of YIM Sambath is dated 12 April 1976 and it is unclear whether this is the written version of the recorded confession discussed above.<sup>7653</sup> While it is possible that YIM Sambath’s 12 April confession was obtained following the physical mistreatment described by Duch as torture, the Chamber finds that the confession alone is insufficient to make that finding to the relevant standard in this specific instance. The Chamber is, however, satisfied that considering the conditions he experienced during his detention, YIM Sambath was subjected to severe physical abuse and psychological mistreatment.

<sup>7648</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 22. *See also*, Section 12.1.4.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976); Section 12.1.6.3.4: Internal Factions: Purge of the East Zone; Last Joint Plan, E3/527, undated, pp. 7, 13-14, ERN (En) 00069037, 00069043-00069044; T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 105-106; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 29.

<sup>7649</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 77, 80; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 85-86; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 10. Contrary to this finding, the NUON Chea Defence submits that YIM Sambath was not maltreated at S-21 and that they should be allowed to use his statements as well as the statements of KOY Thuon. *See* T. 16 June 2017 (Closing Statements), pp. 48-53.

<sup>7650</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 96.

<sup>7651</sup> Duch cover letter to S-21 Confession – YIM Sambath, E3/8766, undated, p. 1, ERN (En) 00183359.

<sup>7652</sup> S-21 list of prisoners, E3/9842, undated, p. 142, ERN (En) 01367270. *See below*, para. 2271.

<sup>7653</sup> S-21 Confession – YIM Sambath, E3/7397, 12 April 1976, ERN (En) 00769665-00769675.



2269. In this regard, the Chamber also notes that when using the word “torture”, Duch generally referred to physical mistreatment: he first instructed Hor not to *beat* YIM Sambath, but later clarified that YIM Sambath was also “tortured”.<sup>7654</sup>

2270. YIM Sambath was executed on 29 July 1976.<sup>7655</sup> Others who had links to Division 170 and who were mentioned in confessions were gradually arrested – including CHAN Chakrei *alias* Comrade Mean and Chhouk, both discussed below – who were implicated by two other military officers arrested for throwing the grenade behind the Royal Palace in April 1976.<sup>7656</sup> The decision to arrest YIM Sambath and CHAN Chakrei came from the upper echelon.<sup>7657</sup> S-21 prisoner lists and confessions confirm the arrest, detention and execution of several other members of Division 170 in mid-1976.<sup>7658</sup>

#### 12.2.8.1.3. CHAN Chakrei *alias* Mean

2271. CHAN Chakrei *alias* Mean, who was Secretary of Division 170, was arrested in May 1976 and interrogated at S-21 over an extended period of time between June and October 1976. CHAN Chakrei’s confessions implicated a large number of people and networks.<sup>7659</sup> In a later *Revolutionary Flag* issue, he was described as the “despicable Chakrei” and listed with other individuals who had associations with the CIA and the “*Yuon*”.<sup>7660</sup>

<sup>7654</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 77, 80; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 85-86; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 10.

<sup>7655</sup> S-21 list of prisoners executed on 29 July 1976, E3/3187, multiple dates, pp. 338-339, ERN (En) 00874511-00874512.

<sup>7656</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 85-87; KHIEU Samphan Interview Transcript, E3/4035, undated, ERN (En) 00789052.

<sup>7657</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 79-80 (testifying that SON Sen instructed that YIM Sambath should not be beaten); T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 6.

<sup>7658</sup> See e.g., S-21 list of prisoners to Office S-21 in 1976, E3/9842, undated, pp. 3-29, ERN (En) 01367131-01367157; S-21 Confession – POL Pisith, E3/1885, 5 September 1976, ERN (En) 00775867-00775884; S-21 Confession – YI Luy, E3/3656, 4 June 1976, ERN (En) 00783135-00783144.

<sup>7659</sup> S-21 Confession – CHAN Chakrei, E3/2791, multiple dates, ERN (En) (constituting over 100 pages); S-21 list of prisoners, E3/10085, undated, p. 1, ERN (En) 01461729; S-21 list of prisoners extracted from various ministries, E3/10090, 22 January [year illegible], p. 5, ERN (En) 01399011; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16; Summary of Previous Events prepared by Duch, E3/7397, 6 August 1976, p. 3, ERN (En) 00284005. See also, Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, ERN (En) 00183403-00183404 (CHAN Chakrei was discussed and it was decided that he had fled to the enemy. It was also observed that CHAN Chakrei was close to Chhouk). See below, Section 2273: SUOS Neou *alias* Chhouk.

<sup>7660</sup> Revolutionary Flag, E3/727, May-June 1978, p. 12, ERN (En) 00185333.

2272. The NUON Chea Defence submits that given that CHAN Chakrei remained in a senior position for “six months” after the 9 October 1975 Standing Committee meeting where his loyalty was discussed, this indicates the Standing Committee showed “considerable restraint in the face of possible treason” and a “desire to act on the basis of concrete evidence rather than rumour, intrigue, and paranoia”.<sup>7661</sup> The Chamber finds that the evidence demonstrates that CHAN Chakrei was under observation for some time prior to his arrest and the question of his loyalty was discussed by the Standing Committee. The Chamber deems this consistent with its findings that with respect to some high-level individuals: the CPK leadership did indeed act with caution before ordering their arrest and often waited for a high-level person to be implicated in numerous confessions. However, contrary to the NUON Chea Defence’s submissions, this does not indicate that individuals such as CHAN Chakrei or his associates were arrested on the basis of concrete evidence, particularly given that the confessions which formed the basis for these arrests were often tainted by torture. The Chamber will address the lawfulness of these arrests and detention in the legal findings on the crimes below.<sup>7662</sup>

2273. Following the arrest of CHAN Chakrei, Duch attended a meeting with SON Sen in September 1976 where it was decided that associates of CHAN Chakrei should be rounded up with other “strings” in Division 170.<sup>7663</sup> In one of CHAN Chakrei’s confessions, Duch addressed an annotation to “Respected Brother” and observed that in his opinion CHAN Chakrei had fabricated responses during the interrogation to implicate several people.<sup>7664</sup> There is a further annotation that “Brother 21 [Duch] reported to *Angkar* on 2 October 1976”.<sup>7665</sup>

<sup>7661</sup> NUON Chea Closing Brief, para. 257. See Standing Committee Minutes, E3/1733 [E3/1612, E3/182, E3/183], 9 October 1975, pp. 11-12, ERN (En) 00183403-00183404.

<sup>7662</sup> See below, Section 12.2.24.1.4: Imprisonment; Section 12.2.24.2.7: Unlawful Confinement of a Civilian.

<sup>7663</sup> T. 29 March 2012 (KAINING Guek Eav), E1/56.1, pp. 2-3; Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, pp. 1-2, ERN (En) 00937114-00937115; Minutes of Meetings with Office 703 and S-21, E3/811, 9 September 1976. See also, Section 12.1: Internal Factions, paras 2014-2015; Section 16.3: Real or Perceived Enemies, paras 3786, 3788, 3789.

<sup>7664</sup> S-21 Confession – CHAN Chakrei, E3/2791, multiple dates, pp. 3-4, 110, ERN (En) 00827765-00827766, 00827872.

<sup>7665</sup> S-21 Confession – CHAN Chakrei, E3/2791, multiple dates, p. 78, ERN (En) 00827840, 00827845.

12.2.8.1.4. *SUOS Neou alias Chhouk*

2274. SUOS Neou *alias* Chhouk, the Secretary of Sector 24 of the East Zone, was arrested in August 1976 and subsequently interrogated through September 1976.<sup>7666</sup> Chhouk was implicated in the confessions of two Division 170 soldiers and by CHAN Chakrei, all of whom claimed that they acted under Chhouk's orders in connection with the grenade incident at the Royal Palace.<sup>7667</sup> Other S-21 documentation concluded that Chhouk was the chief of networks in Sector 24 and was also the author of the anti-CPK leaflets disseminated in the area.<sup>7668</sup> Chhouk's confession included annotations that indicated that his confessions were reported to *Angkar*, in full or in part.<sup>7669</sup> He was referenced in a *Revolutionary Flag* issue as "despicable Chhouk" and referred to with other individuals who had associations with the CIA and the "*Yuon*".<sup>7670</sup>

2275. Further annotations indicated that the confession had been reported to Brother 62 (*i.e.* SON Sen).<sup>7671</sup> Duch penned an annotation on Chhouk's confession which indicated that it was "not yet detailed and specific", and that while the confession was partially correct, it was "not yet deep, not yet complete", and proposed further clarification.<sup>7672</sup> Duch also wrote an annotation that a decision had been made to temporarily halt reporting because Chhouk "keeps on indirectly pointing at Brother Pho [SAO Phim]".<sup>7673</sup> Duch further wrote a series of letters to Chhouk in which he asked

<sup>7666</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, multiple dates, E3/2494, ERN (En) 00796081-00796101. *See also*, T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 15; Section 16.3: Real or Perceived Enemies, para. 3789; Section 12.1: Internal Factions, para. 2013 (after Chhouk was implicated in 1976, SON Sen called Duch and instructed him to prepare documents for the upper echelon, after which Duch spent three days and three nights preparing files of confessions to use in their meeting); Section 12.1: Internal Factions, para. 1995 (according to Duch, SAO Phim, SON Sen and POL Pot were all present at a meeting during which it was decided to arrest Chhouk); S-21 list of prisoners, E3/8445, undated, p. 368, ERN (En) 01565959 (entry of SUOS Neou *alias* Chhouk on 28 August 1976).

<sup>7667</sup> Section 12.1.4: Internal Factions: 1976 Events – Explosions in Siem Reap and Phnom Penh; Section 12.1: Internal Factions, paras 2013-2014 (referring to an S-21 report signed by Duch and noting CHAN Chakrei and Division 170 soldiers were acting under orders of Chhouk); Section 16.3: Real or Perceived Enemies, para. 3789.

<sup>7668</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 2-4, ERN (En) 00225380-00225382. *See also*, Section 12.1: Internal Factions, paras 2013-2014.

<sup>7669</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, E3/2494, multiple dates, pp. 1, 8, ERN (En) 00347478, 00347485 (noting that one original and one copy was sent to *Angkar* on 2 September 1976; a further note on 2 October 1976 indicates that the confession was reported to *Angkar* but the first two pages had been cut).

<sup>7670</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333.

<sup>7671</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, E3/2494, multiple dates, pp. 5, 7-8, ERN (En) 00347482, 00347484-00347485.

<sup>7672</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, E3/2494, multiple dates, pp. 4-5, ERN (En) 00347481-00347482.

<sup>7673</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, E3/2494, multiple dates, pp. 5, 8, ERN (En) 00347482, 00347485 (containing further annotations signed by Duch including one which

him for clarification, additional information with respect to specific individuals and requested that he rewrite his confession.<sup>7674</sup> As discussed below, in 1976 Duch was ordered by SON Sen to watch as Chhouk was killed by a stab wound to the neck.<sup>7675</sup>

2276. S-21 documentation from June 1977 identifies the way in which “traitor groups” in the East Zone were monitored and recorded.<sup>7676</sup> This document notes that of the recently arrested prisoners from the East Zone, 12 were alive but that there remained a number of traitors at the zone, sector and district level who had yet to be arrested.<sup>7677</sup> Those on this list included East Zone Military Chairman KEO Samnang.<sup>7678</sup> S-21 records indicate that he was detained at S-21 on 23 May 1978.<sup>7679</sup> KEO Samnang had already been implicated by the confessions of other S-21 prisoners in June and September 1976, including the confession of LY Phen.<sup>7680</sup>

#### 12.2.8.1.5. *LY Phen alias LI Phel alias LI Phen alias Samrit*

2277. At some time around June or July 1976 after Chhouk was arrested, LY Phen, the chief of the East Zone armed forces, was arrested and sent to S-21.<sup>7681</sup> LY Phen was suspected of colluding with CHAN Chakrei, Chhouk and Ya in the Division 170 plot to attack Phnom Penh and planning to send the 3<sup>rd</sup> and 4<sup>th</sup> Divisions to attack Prey Veng

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indicates that there was no “need to report. Not yet useful: Just a basis to poke at him further”). *See also*, Section 12.1: Internal Factions, para. 2015.

<sup>7674</sup> S-21 Confession – SUOS Neou *alias* Men *alias* VIII *alias* Chhouk, E3/2494, multiple dates, pp. 33-34, 38-39, 42-43, ERN (En) 00347510-00347511, 00347515-00347516, 00347519-00347520.

<sup>7675</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 9, ERN (En) 00342840; KAING Guek Eav Interview Record, E3/5790, 3 December 2009, p. 9, ERN (En) 00414346. *See below*, para. 2508.

<sup>7676</sup> S-21 list of traitor groups in the East, E3/2097, 24 June 1977, p. 1, ERN (En) 00182904.

<sup>7677</sup> S-21 list of traitor groups in the East, E3/2097, 24 June 1977, p. 1, ERN (En) 00182904.

<sup>7678</sup> S-21 list of traitor groups in the East, E3/2097, 24 June 1977, p. 2, ERN (En) 00182905.

<sup>7679</sup> S-21 list of prisoners, E3/8445, undated, p. 218, ERN (En) 01565809 (listing MEAS Mon *alias* KEV Samnang, Chairperson of the army staff of the East Zone, entered on 23 May 1978).

<sup>7680</sup> S-21 Confession – BUN Sani, E3/3837, 27 September 1976, p. 18, ERN (En) 00807178 (including a note from Duch that KEO Samnang was in charge of troops); S-21 Confession – LI Phen, E3/3837, June 1976, p. 20, ERN (En) 00807180.

<sup>7681</sup> TENG Sarim Interview Record, E3/9834, 22 May 2014, p. 4, ERN (En) 01074497; LOEK Sao Interview Record, E3/517, 4 September 2009, p. 3, ERN (En) 00375880; Chapter by C. Boua, “Planning the Past: The Forced Confessions of Hu Nim”, in *Pol Pot Plans the Future: Confidential Leadership Documents from the Democratic Kampuchea 1976-77*, E3/8, 1988, pp. 284, 345, ERN (En) 00104139, 00104169; OUK Bunchhoeun Interview Transcript, E3/432, 30 September 1980, p. 11, 20, ERN (En) 00542182, 00542191; Paper by B. Kiernan: ‘*Khmer Bodies with Vietnamese Minds*’: *Kampuchea’s Eastern Zone, 1975-1978*, E3/2310, undated, p. 29, ERN (En) 00048096; Chapter by B. Kiernan, “Introduction”, in *Genocide and Democracy in Cambodia*, E3/3304, p. 15, ERN (En) 00430242; S-21 list of prisoners, E3/8445, undated, p. 196, ERN (En) 01565787; Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot’s Secret Prison*, E3/1684 [E3/1693], 1999, p. 53, ERN (En) 00192732; Book by A. Hinton: *Why Did they Kill?*, E3/3346, 2005, p. 139, ERN (En) 00431581. *See also*, S-21 Confession – LI Phen, E3/3837, June 1976, ERN (En) 00807161-00807247.

and Svay Rieng provinces.<sup>7682</sup> LY Phen had been labelled as an enemy by POL Pot at a study session in 1976 and was implicated in the confessions of YIM Sambath, Chhouk and CHAN Chakrei.<sup>7683</sup> LY Phen's confession seems to indicate that at one point five deputy interrogators, a head interrogator, two guards and a note-taker were present.<sup>7684</sup> In one instance, LY Phen lost consciousness and vomited during an interrogation, and in another he was hit in the head with a lock until he bled.<sup>7685</sup> LY Phen was interrogated over a period of months, and was executed in 1976. The Combined S-21 Notebook refers to LY Phen, noting that he was "broken" in 1976.<sup>7686</sup> One of LY Phen's subordinates, BUN Sani, the Director of the East Zone rubber plantations at that time, was presumed responsible for the traitorous network within the plantations and was arrested on 10 July 1976.<sup>7687</sup> He was executed several weeks later on 29 July 1976.<sup>7688</sup>

2278. At around the same time that the CPK was cleansing the East Zone as described above, the Central Committee made a decision on 30 March 1976 regarding "[t]he right to smash, inside and outside the ranks".<sup>7689</sup> Right after this decision was made, KE Pauk, the Secretary of the Central (old North) Zone, informed POL Pot in April 1976

<sup>7682</sup> Letter from Duch to Chhouk, E3/2494, 30 September 1976, p. 38, ERN (En) 00347515 (contained in Chhouk's confession materials); Paper by B. Kiernan: *'Khmer Bodies with Vietnamese Minds': Kampuchea's Eastern Zone, 1975-1978*, E3/2310, undated, p. 29, ERN (En) 00048096; Chapter by C. Boua, "Planning the Past: The Forced Confessions of Hu Nim", in *Pol Pot Plans the Future: Confidential Leadership Documents from the Democratic Kampuchea 1976-77*, E3/8, 1988, pp. 302-303, ERN (En) 00104148.

<sup>7683</sup> Chapter by C. Boua, "Planning the Past: The Forced Confessions of Hu Nim", in *Pol Pot Plans the Future: Confidential Leadership Documents from the Democratic Kampuchea 1976-77*, E3/8, 1988, pp. 302-303, ERN (En) 00104148; S-21 Confession – CHAN Chakrei, E3/2791, multiple dates, pp. 3, 20, ERN (En) 00827765, 00827782; S-21 Confession – YIM Sambath, E3/7397, 6 August 1976, ERN (En) 00284006; S-21 Confession – Suos Neou *alias* Chhouk *alias* Men *alias* VIII, E3/2990, multiple dates, pp. 1, 21, 38, ERN (En) 00325187, 00325207, 00325224; Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684 [E3/1693], 1999, p. 53, ERN (En) 00192732.

<sup>7684</sup> S-21 Confession – LI Phen, E3/3837, multiple dates, p. 1, ERN (En) 00807161.

<sup>7685</sup> S-21 Confession – LI Phen, E3/3837, multiple dates, p. 10, ERN (En) 00807193 (in a note dated 20 June 1976, the interrogator notes: "1- He refused to speak up about his traitorous activities. 2- We tortured him and now he cannot get up and has constant nausea"). Book by D. Chandler: *Voices from S-21: Terror and History in Pol Pot's Secret Prison*, E3/1684 [E3/1693], 1999, p. 132, ERN (En) 00192825. *See below*, para. 2416.

<sup>7686</sup> S-21 Confession – LI Phen, E3/3837, multiple dates, ERN (En) 00223140, 00807197, 00172738; Book by B. Kiernan: *Genocide and Democracy in Cambodia*, E3/3304, 1993, p. 15, ERN (En) 00430242; Combined S-21 Notebook, E3/834, multiple dates, p. 17, ERN (En) 00184499.

<sup>7687</sup> S-21 Confession – LI Phen, E3/3837, multiple dates, pp. 19, 37, ERN (En) 00807179, 00807197; Book by B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, 1996, E3/1593, p. 324, ERN (En) 01150169; Paper by B. Kiernan: *'Khmer Bodies with Vietnamese Minds': Kampuchea's Eastern Zone, 1975-1978*, E3/2310, undated, p. 27, ERN (En) 00048094.

<sup>7688</sup> S-21 list of prisoners executed on 29 July 1976, E3/3187, multiple dates, p. 341, ERN (En) 00874514.

<sup>7689</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976. *See also*, Section 16: Common Purpose, paras 3955-3956.

about measures taken to track down enemy activities and expressed his willingness to take additional measures against “agents imbedded inside”.<sup>7690</sup>

#### 12.2.8.1.6. *NEY Sarann alias MEN San alias Ya*

2279. NEY Sarann *alias* MEN San *alias* Ya was former Secretary of the Northeast Zone and, before that, SON Sen’s deputy in the General Staff. Ya had also been a member of the Central Committee.<sup>7691</sup> Ya was denounced as a Vietnamese collaborator, arrested and detained in S-21.<sup>7692</sup> The precise date of Ya’s arrest is unknown, but Duch explained that he was briefed by his superior SON Sen, and “when Ya arrived [SON Sen] followed up this [*sic*] closely”. SON Sen asked Duch whether “tortures” were used, if they could be postponed and to be “very careful with Ya”.<sup>7693</sup> Ya was arrested after a number of cadres from the East Zone implicated him and were purged, such as YIM Sambath in April 1976, CHAN Chakrei in May 1976, Chhouk in July 1976 and LY Phen in June or July 1976. Ya was interrogated over the course of weeks and many methods were used to pressure him to confess in a way that fit the Party’s expectations.<sup>7694</sup> This included the “cold and the hot methods”, which ranged from

<sup>7690</sup> DK Telegram, E3/511, 2 April 1976, p. 1, ERN (En) 00182658. *See below*, Section 12.2.8.5.1: CHANN Sam *alias* KANG Chap *alias* Se (or Sae).

<sup>7691</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 11, ERN (En) 00290113; T. 27 March 2012 (KAING Guek Eav), E1/55.1, pp. 45-46.

<sup>7692</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, pp. 3-4 (“[A]fter his disappearance there was a public announcement concerning this. He [*Ta Ya*] was said to have betrayed us. [...] We heard that he had been affiliated with the Vietnamese.”); T. 11 March 2016 (NETH Savat), E1/400.1, pp. 17 (“I did not witness [what happened to Ya during the Khmer Rouge regime]. I learned from others that he was tied up and killed.”), 58 (“Ya’s arrest may have happened in 1977”); S-21 list of prisoners extracted from various ministries, E3/10090, 22 January [year illegible], ERN (En) 01399030 (entry no. 167, Ya, Secretary of the Northeast Zone). *See also*, Section 12.1: Internal Factions, para. 1983 (NEY Sarann was arrested at some time in September 1976).

<sup>7693</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 36.

<sup>7694</sup> S-21 Document Collection, E3/8466, multiple dates, p. 37, ERN (En) 00087409 (Chronologically, the first note relevant to Ya’s confession is a report from Pon to Duch concerning the first confessions he made on 26 September 1976. This report shows that Duch instructed Pon to threaten Ya with regard to “the medicines for which he has personal need” and regarding “the welfare of his wife and children”. In particular, Pon had to ask him whether he knew “that his wife and children have been detained, now that he’s here? Does he know what’s become of his wife?” The report adds: “[W]e put pressure on him: ‘Your face is going black with terror, just as if you were marking yourself clearly for the Organization to see.’ The threat was made there’s no avoiding torture if you don’t confess. In the afternoon: we proposed to Brother Duch that he give permission for us to use both hot and cold techniques; after having received authorization, towards the early evening we went to intimidate him, telling him to prepare himself at eight or nine p.m. for the torture to be continued. At about almost ten p.m. we went in to get ready to carry out torture with our bare hands; IX started to confess by asking us to clarify what all he was to report; we clarified as follows: ‘Please write a systematic account of your treasonous activities from beginning to end.’”). *See also*, T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 36. The Chamber notes that the evidence discussed above is part of the David HAWK collection of documents (E3/8466), the authenticity of which is supported by the fact that portions of documents within the collection are found independently on the Case File in the same original format. *See e.g.*, S-21 Document Collection,

threatening him in relation to his medical treatment, threatening the welfare of his family who were also detained, threatening physical assault and finally inflicting severe physical violence upon him.<sup>7695</sup>

2280. Ya's confession contains a note from him indicating that his responses "were made after I was severely and strongly tortured".<sup>7696</sup> This part of his note was struck through and Duch wrote a note stating: "Do not write the sentences struck through in red. You have no right to report that matter to *Angkar*. I have the right. I have reported it already. I have reported clearly. Do not play tricks, wanting to deny. You cannot".<sup>7697</sup>

2281. In a further note, Duch wrote to Pon that he had informed *Angkar* about Ya and that "*Angkar* has decided that if this fool Ya continues to beat around the bush aiming to hide his traitorous links and activities, *Angkar* has decided that he can be killed. Do not let him play games with us anymore".<sup>7698</sup> Duch then proceeded to instruct Pon that he could "use hot methods [against Ya] strongly and for a long time; even if you make a misstep and he dies, you will have done nothing wrong in terms of organizational discipline".<sup>7699</sup> Duch subsequently wrote to Pon indicating that he had examined "Brother Ya's reporting" and had decided not to send it to *Angkar*, noting that "from experience, only hot methods will work with this Ya. We cannot play friendly with him. Impose them on him."<sup>7700</sup> Ya was one of the several members of the General Staff,

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E3/8466, multiple dates, ERN (En) 00087385-0087391 *cf.* S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 13-17, ERN (En) 00225391-00225392; S-21 Document Collection, E3/8466, multiple dates, ERN (En) 00087411 *cf.* S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, multiple dates, ERN (En) 00290103. The Chamber further notes that because two separate translations were conducted on the same Khmer originals appearing in different places on the Case File, the two English translations differ slightly. However, the content sufficiently corresponds to satisfy the Chamber that the David HAWK collection is authentic.

<sup>7695</sup> S-21 Document Collection, multiple dates, E3/8466, p. 39, ERN (En) 00087411 ("On 23 September 1976, we received instructions from the Organization to use torture. We started using torture in the morning with about 20 whippings with fine rattan; in the afternoon there were about 20-30 whippings with electrical wire instead."); S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, multiple dates, p. 11, ERN (En) 00290113 (in a note dated 23 September 1976 and signed "*Santebal*", Ya received an explanation concerning "the objectives of the Party in this temporary detention" and was asked to: "1. Write a report detailing the traitorous activities to establish a new party to serve Vietnam with Keo Meas and Suos Neou *alias* Chhouk. 2. The letters to Chhouk? What was their meaning, one after another, and through whom were they sent?" The note adds, "Finally, you Brother said that 'When you forced me to respond, coerced me by torture, I had to respond.'" NEY Sarann was asked to provide responses on the two matters so that a report could be sent to the Party). For a description of cold and hot methods generally, *see below*, Section 12.2.12.2: "Cold", "Hot" and "Chewing" Units.

<sup>7696</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 1, ERN (En) 00290103.

<sup>7697</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 1, ERN (En) 00290103.

<sup>7698</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 12, ERN (En) 00290114.

<sup>7699</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 12, ERN (En) 00290114.

<sup>7700</sup> S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, p. 13, ERN (En) 00290115.

including Tum and General Staff assistants, who were arrested, detained and killed at S-21.<sup>7701</sup> He was referred to in the *Revolutionary Flag* as the “despicable Ya”.<sup>7702</sup>

12.2.8.1.7. *NON Suon alias CHEY Suon alias Chey alias Sen*

2282. NON Suon was the Secretary of the Agriculture Committee.<sup>7703</sup> NON Suon was arrested at the airport after returning from abroad and detained at S-21 around September 1976.<sup>7704</sup> NON Suon was referred to as “the despicable Chey” in a *Revolutionary Flag* issue along with other individuals deemed to have associations with the CIA and the “*Yvon*”.<sup>7705</sup> In September 1976, Duch wrote an annotation to NON Suon instructing him to provide “clear, detailed and concrete reports on the dates, venues [...] and other secret activities” as well as how “KEV Meas and SOUS Neou contacted each other in secret and officially in order to plot against the party and the Kampuchean revolution”.<sup>7706</sup> Interrogator Pon wrote a note to NON Suon in his confession materials on 15 November 1976, informing him that “your detention was decided on by the Standing Committee of the Party Centre”.<sup>7707</sup> In 1976, Duch was ordered by SON Sen to watch NON Suon’s death by stabbing to the neck.<sup>7708</sup>

2283. At the end of 1976, prisoner lists also indicate a purge of the Ministry of Industry. From April to November 1976, 89 members of the Ministry were arrested and sent to S-21.<sup>7709</sup>

<sup>7701</sup> T. 27 March 2012 (KAING Guek Eav), E1/55.1, pp. 45-46.

<sup>7702</sup> *Revolutionary Flag*, E3/727, May-June 1978, ERN (En) 00185330 (article entitled “Learning from Important Experiences in the Fulfilment of the Party’s First Semester 1978 Political Tasks”, stating, “we are rid of the despicable Thuch, the despicable Ya”).

<sup>7703</sup> S-21 Confession – NON Suon *alias* CHEY Suon *alias* Seng *alias* Chey, E3/1870, p. 4, ERN (En) 00096838.

<sup>7704</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16; Book by B. Kiernan: *How Pol Pot Came to Power: A History of Communism in Kampuchea, 1930-1975*, E3/1815, 1985, p. 420, ERN (En) 00487540.

<sup>7705</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333.

<sup>7706</sup> S-21 Confession – NON Suon *alias* CHEY Suon *alias* Seng *alias* Chey, E3/1870, p. 3, ERN (En) 00756526.

<sup>7707</sup> S-21 Confession – NON Suon *alias* CHEY Suon *alias* Seng *alias* Chey, E3/1870, ERN (En) 00096849.

<sup>7708</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 9, ERN (En) 00342840; KAING Guek Eav Interview Record, E3/5790, 3 December 2009, p. 9, ERN (En) 00414346.

<sup>7709</sup> S-21 list of prisoners to Office S-21 in 1976, E3/9842, 26 May 1977, pp. 105-114, ERN (En) 01367233-01367242.



12.2.8.2. January 1977 to 17 April 1977 – Purges of the North Zone and beyond

2284. After the 30 March 1976 decision of the Central Committee, purges continued from late 1976 into 1977, focusing on Division 310 and radiating outwards.<sup>7710</sup> While perceived enemies were arrested from Office 870,<sup>7711</sup> the Ministries of Commerce,<sup>7712</sup> Agriculture,<sup>7713</sup> Energy<sup>7714</sup> and Propaganda,<sup>7715</sup> the next targets for the purges would be the (new) North Zone, the Northwest Zone, the Central (old North) Zone, and finally the East Zone for the second time.<sup>7716</sup>

<sup>7710</sup> Section 12.1.5: Internal Factions: 1977 Events – Division 310 and the Northwest Zone (RUOS Nhim). *See above*, para. 2278.

<sup>7711</sup> *See e.g.*, Standing Committee Minutes, E3/1733 [E3/182, E3/183, and E3/1612], 9 October 1975, p. 1, ERN (En) 00183393; Book by P. Short: *Pol Pot: History of a Nightmare*, E3/9, p. 355, ERN (En) 00396563; S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, p. 1, ERN (En) 00183220; S-21 list of prisoners, E3/8507, 10 April 1978, p. 6, ERN (En) 01321419; S-21 list of prisoners, E3/1923, 9 April 1978, p. 9, ERN (En) 01226588; S-21 list of prisoners, E3/2179 [E3/2178], undated, p. 5, ERN (En) 00631981; S-21 list of prisoners smashed on 6 July 1977, E3/2285 [E3/2286], 7 July 1977, p. 340, ERN (En) 00873461; S-21 list of prisoners from General Staff, E3/2026, undated, p. 2, ERN (En) 00183676.

<sup>7712</sup> *See e.g.*, S-21 list of prisoners arrested from Ministry of Commerce up to 26 March 1977, E3/2005, undated, ERN (En) 00858486-00858506; S-21 list of prisoners arrested from Ministry of Commerce, E3/835, undated, ERN (En) 00766730-00766736; S-21 list of prisoners from Ministry of State Commerce, undated, p. 1, ERN (En) 01398651; S-21 list of prisoners arrived in February 1977, E3/9844, 2 March 1977, pp. 29-33, ERN (En) 01368636-01368640; S-21 list of prisoners executed on 12 May 1977, E3/3858, undated, ERN (En) 00837618-00837620.

<sup>7713</sup> *See e.g.*, S-21 Confession – NON Suon *alias* CHEY Suon *alias* Seng *alias* Chey, E3/1870, multiple dates, ERN (En) 00096835-00096914; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, p. 46, ERN (En) 01563502; S-21 list of prisoners smashed on 3-7-77, E3/3859, 4 June 1977 [*sic*], p. 5, ERN (En) 00634839; S-21 list of prisoners smashed on 8-7-77, North Zone, E3/3861, 9 July 1977, pp. 3-4, 9, ERN (En) 00657716-00657717, 00657722; S-21 list of prisoners who entered on 12 September 1977, E3/10275, 13 September 1977, p. 22, ERN (En) 01368848; S-21 list of prisoners who entered on 24 September 1977, E3/10275, 25 September 1977, p. 47, ERN (En) 01368873.

<sup>7714</sup> *See e.g.*, S-21 list of prisoners from the Ministry of Commerce and Energy from 17 February to March 1977, E3/2000, undated, ERN (En) 00184707-0084711; S-21 Daily Controlling List, E3/10008, 15 October 1977, p. 1, ERN (En) 01461723; S-21 list of prisoners list of insignificant enemies, E3/10073, 18 October 1977, pp. 11-12, ERN (En) 01397555-01397556; S-21 list of prisoners who entered in November 1977, E3/9953, 2 December 1977, pp. 32-33, ERN (En) 01367691-01367692.

<sup>7715</sup> *See e.g.*, S-21 Confession – HOU Nim *alias* Phoas, E3/1550, multiple dates, ERN (En) 00182805-00182808, 00249844-00249845, 00759691-00759696, 00819912-00819920, 00831472-00831473 (Minister of Propaganda); S-21 Confession – TAUCH Phoeun *alias* Phin, E3/1827, multiple dates, ERN (En) 00746270-00746293 (Deputy Minister of Propaganda); S-21 Daily Controlling List, E3/10280, 2 November 1977, ERN (En) 01373846; S-21 list of prisoners, E3/10418, 23 November 1977, pp. 25, 54-55, ERN (En) 01398360, 01398389-01398390; S-21 list of prisoners who entered on 18 December 1977, E3/10288, 19 December 1977, p. 3, ERN (En) 01528634; S-21 list of prisoners who entered in January 1978, E3/10430, undated, p. 3, ERN (En) 01366845.

<sup>7716</sup> Case 001 Transcript (KAING Guek Eav), E3/5796, 30 April 2009, p. 38, ERN (En) 00326177; Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 51, ERN (En) 00328495; KAING Guek Eav Interview Record, E3/455, 3 October 2007, pp. 10-11, ERN (En) 00149916-00149917. *See also*, Section 12.1.5: Internal Factions: 1977 Events – Division 310 and the Northwest Zone (RUOS Nhim); Section 12.1.6.3: Internal Factions: 1978 Events – East Zone and SAO Phim: Findings; Section 12.1.8.2: Internal Factions: East Zone Purge.

12.2.8.2.1. *KOY Thuon*

2285. The Closing Order found that following the confession of KOY Thuon, there was a sharp increase in the number of those arrested and sent to S-21 from the North Zone.<sup>7717</sup> KOY Thuon had been a full member of the Central Committee, the ninth person in the hierarchy of the CPK and Secretary of the (old) North Zone until he was transferred to Phnom Penh to become Minister of Commerce following April 1975.<sup>7718</sup> KOY Thuon was arrested on apparent allegations that he had killed the husband of a woman, but he had no opportunity to defend himself against the charges.<sup>7719</sup>

2286. When KOY Thuon was first placed under house arrest, he was replaced by SUA Vasi *alias* Doeun as Minister of Commerce.<sup>7720</sup> KOY Thuon was under house arrest for about eight months when, after he was implicated in more confessions, he was arrested by S-21 staff at Duch's house and brought to S-21 in January 1977.<sup>7721</sup> Six or seven cadres from the guard unit were involved in his arrest, including HIM Huy and Hor.<sup>7722</sup> KOY Thuon was one of the detainees held in the Special Prison and was personally interrogated by Duch following strict instructions from the upper echelon.<sup>7723</sup>

2287. TIT Son *alias* Nhem was one of the early individuals arrested from the Commerce Ministry whose S-21 confession implicated KOY Thuon in December 1976.<sup>7724</sup> TIT Son's confession was reviewed by Duch and forwarded to "Angkar".<sup>7725</sup> The confession of TIT Son *alias* Nhem contained a note from the interrogator which indicated that "Nhem was tortured on 12 and 13 December 1976. We then began to

<sup>7717</sup> Closing Order, paras 196-197. The Closing Order refers to KE Pork (*i.e.* KE Pauk) who supervised the purges of Sector 106 and who reported on the situation to Committee 870, after which large numbers of alleged traitors from Sector 106 arrived at S-21 in early 1977.

<sup>7718</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 96; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 57. *See also*, S-21 list of prisoners, E3/10090, p. 55, ERN (En) 01399061.

<sup>7719</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 57. *See also*, Section 12.1: Internal Factions, para. 1919 (noting that SEM Hoeurn was told that KOY Thuon was arrested because he was part of a traitorous network).

<sup>7720</sup> KAING Guek Eav Interview Record, E3/355, 19 November 2008, p. 3, ERN (En) 00242874.

<sup>7721</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 23-26; KAING Guek Eav Interview Record, 19 November 2008, E3/355, p. 3, ERN (En) 00242874; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 34, ERN (En) 00198061; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 73.

<sup>7722</sup> T. 5 May 2016 (HIM Huy), E1/428.1, p. 24.

<sup>7723</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 85; T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 86. Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 6, ERN (En) 00198003; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 34, ERN (En) 00198061.

<sup>7724</sup> S-21 Confession – TIT Son *alias* Nhem, E3/3849, multiple dates, pp. 3, 7, ERN (En) 00835997, 00836001 (referring to his contacts with the "string" of KOY Thuon).

<sup>7725</sup> S-21 Report from Duch, E3/8626, 11 November 1976, ERN (En) 00283961-00283962.

both persuade and threaten him, but there was no torture. We pushed him by annotating the reasons on the text that he had written, and then had him write again.”<sup>7726</sup> Duch wrote an annotation on Nhem’s confession with a proposal that three copies be made including “one copy to *Angkar*”.<sup>7727</sup> SON Sen told Duch that the decision to arrest KOY Thuon had been made by POL Pot and instructed Duch to be very careful during the interrogation as Duch had previously been under KOY Thuon’s supervision.<sup>7728</sup> Upon KOY Thuon’s arrest, Duch did not give him any information and only told KOY Thuon that he no longer had the right to meet *Angkar* and could only report to *Angkar* through him.<sup>7729</sup> SON Sen intervened directly by telephone and instructed Duch to personally conduct the interrogation.<sup>7730</sup> Following the instruction of the upper echelon, KOY Thuon was interrogated several times. His confessions are hundreds of pages long.<sup>7731</sup>

2288. After SON Sen received KOY Thuon’s confessions, he called Duch and told him that only the third confession reflected the truth and that the fourth confession “implicated people all over the place”.<sup>7732</sup> After having spoken to SON Sen, Duch told KOY Thuon that his confession would not be accepted because he had implicated revolutionary forces and that it must be re-written.<sup>7733</sup> SON Sen instructed Duch to record audio of KOY Thuon’s confession and when Duch asked KOY Thuon to write his confession, KOY Thuon tore the paper and broke the pen.<sup>7734</sup> Duch then told KOY Thuon that he would not be beaten to death before he provided a complete answer and promised to personally send his confession to *Angkar*.<sup>7735</sup>

2289. Given KOY Thuon’s importance as a member of the Central Committee, Duch ordered two special guards to watch over him to ensure that he did not commit suicide,

<sup>7726</sup> S-21 Confession – TIT Son *alias* Nhem, E3/3849, multiple dates, p. 1, ERN (En) 00835995.

<sup>7727</sup> S-21 Confession – TIT Son *alias* Nhem, E3/3849, multiple dates, p. 6, ERN (En) 00836000.

<sup>7728</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 72-73; T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 14.

<sup>7729</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 30; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 97-98.

<sup>7730</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 14; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 61; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 97-98.

<sup>7731</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 3; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 11. *See also*, S-21 Confession – KOY Thuon, E3/1604, multiple dates, ERN (En) 00096779-00096813, 00759697-00759708, 00769830-00769831, 00773088-00773135, 00776989-00776994, 01380656-01380662, 01380814-01380829 (partial translations).

<sup>7732</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 22.

<sup>7733</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 61-63.

<sup>7734</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 97-98.

<sup>7735</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 98.

which would prevent them from securing a full confession.<sup>7736</sup> Duch also had orders to not “torture” KOY Thuon and Duch in turn instructed the guards to refrain from the same.<sup>7737</sup> Duch applied psychological pressure on KOY Thuon during his interrogation.<sup>7738</sup> In his confessions of March 1977, KOY Thuon provided a list of several members of the leading committee of a “new party” that was to carry out the resistance against the CPK.<sup>7739</sup> The list included individuals who had already been arrested and some who were not.<sup>7740</sup> Of those listed, HU Nim and TIV Ol were arrested and detained at S-21 shortly thereafter.<sup>7741</sup> After his fourth confession, Duch received orders to keep KOY Thuon and delay his execution until Office 870 decided that he should be killed.<sup>7742</sup> Following KOY Thuon’s confessions, hundreds of people were arrested, detained and killed from the North Zone in early 1977,<sup>7743</sup> including those from former North Zone Divisions 310, 174, 450, and the North Zone generally.<sup>7744</sup> S-

<sup>7736</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 61-63; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 97-98.

<sup>7737</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 16-18 (testifying that KOY Thuon was an exceptional case given that he was not subjected to torture); T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 10.

<sup>7738</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 19. Duch was shown an annotation on KOY Thuon’s confession which indicated that it was only “after we made a hole in one side, did he answer”. See S-21 Confession – KOY Thuon, E3/1604, multiple dates, p. 2, ERN (En) 00769831. Duch identified this as the handwriting of SON Sen and suggested that this meant they had removed any part of his confession that implicated his own forces. See T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 60-62. The Chamber is not satisfied that Duch’s interpretation of this annotation is accurate. Nevertheless, the Chamber notes that KOY Thuon was handcuffed for between 10 to 15 days because it was alleged he had fabricated stories with respect to the Party’s forces. See S-21 Confession – KOY Thuon, E3/1604, 6 March 1977, p. 1, ERN (En) 00773088. Duch maintained that he only applied political means and the cold method to interrogate KOY Thuon and not “torture”. See T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 59-62, 66. However, in a previous statement Duch submitted that hot methods were used to torture KOY Thuon because the latter had reacted. See KAING Guek Eav Interview Transcript, E3/347, 4 April 2012, pp. 29-30, ERN (En) 00185024-00185025.

<sup>7739</sup> S-21 Confession – KOY Thuon, E3/3856, 4 March 1977, ERN (En) 00829639, 00829641-00829642; S-21 Confession – KOY Thuon, E3/1604, multiple dates, ERN (En) 00769831.

<sup>7740</sup> S-21 Confession – KOY Thuon, E3/3856, 4 March 1977, ERN (En) 00829641-00829642; S-21 Confession – KOY Thuon, E3/1604, multiple dates, ERN (En) 00769831.

<sup>7741</sup> See below, Section 12.2.8.3.1: Hu Nim *alias* Phoas.

<sup>7742</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 19-20; KAING Guek Eav Interview Record, E3/1570, 29 November 2007, p. 6, ERN (En) 00154194; T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 14.

<sup>7743</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 73; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 20. See also, Section 12.1: Internal Factions, para. 2068.

<sup>7744</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 2-121, 132, ERN (En) 01460417-01460536, 01460547 (Covering approximately 7 May 1977-17 July 1977). Note that on or around 9 July 1977, 162 prisoners from the North Zone were taken out to be executed. See S-21 Orange Logbook, E3/10770, multiple dates, p. 124, ERN (En) 01460539.

21 records demonstrate that lists were maintained of people from the North Zone whose names were found in the confessions of those labelled as “enemies”.<sup>7745</sup>

2290. At around this time, Witness MOENG Vet, the Deputy Chief of Office of Division 117, saw a letter from Office 870 ordering 11 cadres, some of whom were from Division 117 and Sector 505, to come to Phnom Penh by airplane. He later heard that they had been accused of being traitors and were arrested.<sup>7746</sup>

#### 12.2.8.2.2. *SUA Vasi alias Doeun*

2291. Prior to considering the situation of SUA Vasi *alias* Doeun, the Chamber notes that CHOR Chhan *alias* Sreng, Deputy Secretary of the Central (old North) Zone, was arrested and sent to S-21 in mid-February 1977.<sup>7747</sup> His confession materials, stretching from February 1977 to at least March 1977, contain annotations indicating that he was “tortured”. CHOR Chhan speaks about Ya’s arrest and implicates many others, including Doeun.<sup>7748</sup>

2292. SUA Vasi *alias* Doeun was the Chairman of the Political Office of 870.<sup>7749</sup> As discussed above, Doeun replaced KOY Thuon as Minister of Commerce in April 1976 when KOY Thuon was placed under house arrest.<sup>7750</sup> After rumours of misconduct and after KOY Thuon implicated Doeun in his confession, Doeun was arrested and brought to S-21 in late January or February 1977, at around the same time as CHOR Chhan.<sup>7751</sup> Duch wrote an annotation to Doeun in the confession, telling him to stop hiding, to review his confessions and to tell the truth.<sup>7752</sup> Pon, who interrogated Doeun, wrote to

<sup>7745</sup> See e.g., S-21 list of names in enemies’ confessions, E3/8842, 29 April 1977, p. 1, ERN (En) 01367069; S-21 list of names of North Zone people implicated by enemies’ confessions, E3/8843, 30 April 1977, ERN (En) 01461876-01461878.

<sup>7746</sup> Section 5: Administrative Structures, para. 386.

<sup>7747</sup> S-21 Confession – CHOR Chhan *alias* Sreng, E3/3857, multiple dates, p. 46, ERN (En) 00825306; S-21 list of prisoners from the North Zone, E3/2956, undated, ERN (En) 00222965; The Last Joint Plan, E3/527, 12 July 1978, ERN (En) 00238909.

<sup>7748</sup> S-21 Confession – CHOR Chhan *alias* Sreng, E3/3857, multiple dates, pp. 1, 52, 78, ERN (En) 00825261, 00825312, 00825339; S-21 Confession – CHOR Chhan *alias* Sreng, E3/2797, multiple dates, ERN (En) 00143677, 00143687.

<sup>7749</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182, E3/183], 9 October 1975, p. 1, ERN (En) 00183393. See also, Section 5: Administrative Structures, para. 355.

<sup>7750</sup> KAING Guek Eav Interview Record, E3/355, p. 3, ERN (En) 00242874. See above, para. 2286.

<sup>7751</sup> KAING Guek Eav Interview Record, E3/355, p. 3, ERN (En) 00242874; S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, ERN (En) 00096915 (entry dated 18 February 1977); KAING Guek Eav Interview Record, E3/456, p. 7, ERN (En) 0019885; T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 103.

<sup>7752</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 82-84; S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, p. 10, ERN (En) 00768020 (in which Duch wrote “I think

him noting that Doeun did not reveal anything about his own involvement. Pon threatened that if Doeun continued to hide this information, he would have his ankle tendons and eyes pierced and warned that it would “become a real ordeal if you continue to be headstrong”.<sup>7753</sup> A further annotation in Doeun’s confession notes that “[h]e started to play down his connection again. Thus we tortured him again.”<sup>7754</sup> In a *Revolutionary Flag* issue, Doeun was described as the “despicable Deuan ” and was listed with other individuals who had associations with the CIA and the “*Yuon*”.<sup>7755</sup>

2293. Doeun wrote a letter to Duch in May 1977 in which he stated:

I could not find any words to describe [the condition] of my detention from the beginning until today. All kinds of punishment and torture were inflicted against me [...] During each incident of torture, I would ask myself why a genuine revolutionary like me has been exposed to this torture.<sup>7756</sup>

2294. Doeun begged the CPK and Duch to pardon and release him from “detention and torture”.<sup>7757</sup> Although there is no direct evidence about what happened to Doeun, the Chamber considers that the only reasonable inference to be drawn under the circumstances is that he died at S-21.

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that you are a cat hiding its claws [a hypocrite] or in another word, you are a cat burying your shit [...] If you can do me a favour, kindly take some time out of your dreams to revisit this text and write a narrative of true fact based on the contextual aspect of the issues in question”. Duch also wrote an annotation on the confession to “[h]ave the writer reconsider and rewrite this”. See S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, pp. 10-11, ERN (En) 00183220-00183221. See also, S-21 Confession – CHOR Chhan *alias* Sreng, E3/3857, 17 February 1977, p. 30, ERN (En) 00825290 (which contains the annotation: “Have him write it once again”). Duch also wrote on this confession that its contents were “unusable” because the content was the same or of less detail than other texts. See S-21 Confession – CHOR Chhan *alias* Sreng, E3/3857, 17 February 1977, p. 44, ERN (En) 00825304.

<sup>7753</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 84-85 (testifying that to his knowledge this was a threat and not something which was carried out on anyone and this threat was made by Pon); S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, p. 11, ERN (En) 00768021.

<sup>7754</sup> S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, 12 April 1977, p. 3, ERN (En) 00759711.

<sup>7755</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333. See also, T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16.

<sup>7756</sup> S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, p. 13, ERN (En) 00768023.

<sup>7757</sup> S-21 Confession – SEUA Vasi *alias* CHHOEUR Doeun, E3/1625, multiple dates, p. 13, ERN (En) 00768023.

12.2.8.2.3. *SBAUV Him alias Oeun*

2295. SBAUV Him *alias* Oeun was the Secretary of Division 310 in the North Zone<sup>7758</sup> and was accused of heading a plot to overthrow POL Pot. He was arrested on 19 February 1977 and sent to S-21. After Oeun's arrest, Southwest Zone cadres took over all leadership positions in Division 310 while hundreds of members of Division 310 were arrested and killed between March and August 1977.<sup>7759</sup>

2296. In April 1977, S-21 shifted large groups of prisoners from various locations out of S-21 for execution. For example, on 5 April 1977, 124 prisoners from Division 310 were "subtracted" from S-21, approximately one week later 46 more from Division 310 were "subtracted", and on 28 April 1977, 60 prisoners from Division 310 and 54 prisoners from Division 450 were "subtracted".<sup>7760</sup>

12.2.8.3. *April to late 1977 – Purges continue within Ministries and the East, North and Northwest Zones*

2297. The first week of April shows a large purge of prisoners from the Ministry of Public Works; over 155 prisoners were arrested from the Ministry one month prior in March, and in the first week of April, 120 of them were "subtracted".<sup>7761</sup> Other prisoner lists corroborate similar figures from the Ministry of Public Works at this time.<sup>7762</sup> Shortly after, the months of May and June at S-21 show an increased removal and execution of prisoners from the State Ministry of Commerce.<sup>7763</sup>

2298. Further, Division 920 was purged from April 1977 at the hands of Division 801 cadres previously stationed in Ratanakiri. When *Ta San* arrived in Sector 105 that same month, he reported to SON Sen that "more than 90%" of Division 920 cadre were traitors. The purges in this region stretched on, and S-21 logs demonstrate that from

<sup>7758</sup> Section 5: Administrative Structures, para. 436.

<sup>7759</sup> Section 12.1.5.1.2: Internal Factions: Division 310's Planned Capture of Phnom Penh: Findings; S-21 Confession – SBAUV Him *alias* Oeun, E3/1891, multiple dates, ERN (En) 00828043-00828064.

<sup>7760</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 9-10 16, ERN (En) 01460424-01460425, 01460431. *See also*, Section 12.1: Internal Factions, paras 1920, 1929.

<sup>7761</sup> S-21 Orange Logbook, E3/10770, multiple dates, p. 30, ERN (En) 01460445.

<sup>7762</sup> S-21 list of prisoners from Ministry of Public Works, E3/10273, undated, ERN (En) 01397974-01397993 (showing 155 prisoners from Public Works arrested in March 1977, and 93 of them killed the first week of April 1977).

<sup>7763</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 47, 99, ERN (En) 01460462, 01460514 (showing 27 prisoners from the Ministry of Commerce "subtracted" on 12 May 1977, and 66 more on 21 June 1977).

February 1977 to December 1978, over 420 Division 920 prisoners were detained and/or executed at S-21.<sup>7764</sup>

2299. Civil Party SON Em, a messenger in the Northwest Zone who delivered documents from the zone to Office 870, testified that purges of the Northwest Zone cadres took place in two phases. First, from February or March 1977, lower-level cadres were removed, and then in 1978, zone level cadres were purged and replaced.<sup>7765</sup> As a result, spikes of incoming prisoners from the Northwest Zone began to manifest sporadically from mid to late 1977. For example, on 3 June 1977, 163 prisoners were brought to S-21 from the Northwest Zone. Another 52 arrived on 29 August and 1 September 1977, and another 29 prisoners entered on 21 September 1977. By 16 October 1977, S-21 housed 425 prisoners from the Northwest Zone.<sup>7766</sup>

#### 12.2.8.3.1. *HU Nim alias Phoas*

2300. HU Nim *alias* Phoas, the Secretary of the Ministry of Propaganda, was arrested on 10 April 1977.<sup>7767</sup> HU Nim previously worked closely with KHIEU Samphan, and they were seen together at training sessions and receiving diplomats at the airport.<sup>7768</sup> HU Nim was implicated by KOY Thuon in several of his confessions.<sup>7769</sup> SA Siek, who worked in radio broadcasting for the Ministry of Propaganda, witnessed the events surrounding HU Nim's arrest; she recalls attending a morning meeting at the Ministry led by HU Nim, at which point HU Nim received a phone call and answered "Yes, yes

<sup>7764</sup> Section 12.1: Internal Factions, paras 3048, 3057-3058.

<sup>7765</sup> T. 21 November 2016 (SON Em), E1/500.1, pp. 31-32; SON Em Interview Record, E3/9477, 2 June 2014, pp. 6, 7-8, ERN (En) 01034085, 01034086-01034087; SON Em Civil Party Application, E3/5000, 29 July 2009, p. 3, ERN (En) 00793363.

<sup>7766</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 69, 182, 187, 210, 250, ERN (En) 01460484, 01460597, 01460602, 01460625, 01460665.

<sup>7767</sup> Prisoner Biography – HU Nim, E3/9306, undated, ERN (En) 01215101. *See also*, SA Siek Interview Record, E3/379, 24 March 2009, pp. 13, 15, ERN (En) 00323333, 00323335.

<sup>7768</sup> PRAK Khorn DC-Cam Interview, E3/7584, 16 March 2005, pp. 20-21, 60-61, ERN (En) 00183497-00183498, 00183537-00183538; EK Sophal DC-Cam Interview, E3/9025, 23 May 2011, pp. 10, 12, ERN (En) 01192264, 01192266; SAU Ren DC-Cam Interview, E3/2073, 24 January 2003, p. 20, ERN (En) 00876398; SA Siek Interview Record, E3/379, 24 March 2009, pp. 3-4, 7, ERN (En) 00323323-00323324, 00323327; KIM Porn Interview Record, E3/521, 23 October 2007, pp. 7-8, ERN (En) 00163317-00163318.

<sup>7769</sup> S-21 Confession – KOY Thuon, E3/3856, 4 March 1977, p. 16, ERN (En) 00829642; S-21 Confession – KOY Thuon, E3/1604, undated, ERN (En) 00096780; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 350, ERN (En) 01150182.



brother I will go right away”. He left the meeting and at 3:00 p.m. that same day, a military truck came and took his wife away.<sup>7770</sup>

2301. After his arrival at S-21, HU Nim wrote a note addressed to “Respected and Beloved Brother POL, Brother NUON, Brother VAN, Brother VORN, Comrade KHIEU and Comrade Hem” expressing his respect to the CPK and explaining his faithfulness to the Party and his fear that he may have been falsely implicated.<sup>7771</sup> HU Nim unequivocally maintained that he had neither betrayed the Party nor worked as an agent of the CIA, “even though the Party may kill me”.<sup>7772</sup> He also promised not to escape and requested that the Party not chain his legs because he had insomnia and hepatitis.<sup>7773</sup>

2302. A note in HU Nim’s confession from Pon to Duch indicates that the interrogators “whipped him 4-5 times to break his stances before taking him for waterboarding”.<sup>7774</sup> A few days later, Pon reported to Duch that HU Nim was trying to conceal treacherous forces in his confession and that Pon had “tortured him to have him write again”.<sup>7775</sup> HU Nim subsequently confessed and requested to be pardoned by the Party.<sup>7776</sup> HU Nim was arrested on 10 April 1977 and “smashed” on 6 July 1977.<sup>7777</sup> HU Nim’s wife was also arrested, interrogated and “smashed”.<sup>7778</sup> The Deputy Minister of Propaganda, TIV Ol *alias* Penh, was also arrested and interrogated at S-21.<sup>7779</sup>

#### 12.2.8.3.2. SEAT Chhae *alias* Tum

2303. SEAT Chhae *alias* Tum was the former Secretary of Sector 22 of the East Zone, and had previously replaced Ya as Deputy Secretary to SON Sen in the General Staff.

<sup>7770</sup> T. 16 August 2012 (SA Siek), E1/109.1, pp. 102-103; SA Siek Interview Record, E3/379, 24 March 2009, pp. 8, 13, ERN (En) 00323328, 00323333.

<sup>7771</sup> S-21 Confession – HOU Nim, E3/1550, 10 April 1977, p. 1, ERN (En) 00819912.

<sup>7772</sup> S-21 Confession – HOU Nim, E3/1550, undated, p. 1, ERN (En) 00759691.

<sup>7773</sup> S-21 Confession – HOU Nim, E3/1550, undated, p. 2, ERN (En) 00759692.

<sup>7774</sup> S-21 Confession – HU Nim *alias* Phoas, E3/1550, 10 April 1977, ERN (En) 00819913. *See also*, Combined S-21 Notebook, E3/834, multiple dates, p. 29, ERN (En) 00184511 (entry dated 18 August 1978 noting that the interrogators got carried away when using torture and were “overjoyed with pouring water” onto prisoners).

<sup>7775</sup> S-21 Confession – HU Nim *alias* Phoas, E3/1550, 10 April 1977, ERN (En) 00819914. *See also*, New Statesman Article, E3/2329, 2 May 1980, p. 1, ERN (En) 00172380.

<sup>7776</sup> S-21 Confession – HOU Nim, E3/1550, 18 May 1977, pp. 1-4, ERN (En) 00182805-00182808.

<sup>7777</sup> S-21 Confession – HOU Nim, E3/1550, undated, ERN (En) 00249844; S-21 list of prisoners smashed on 6 July 1977, E3/8466, 7 July 1977, ERN (En) 00087473.

<sup>7778</sup> S-21 Confession – HOU Nim, E3/1550, 11 April 1977, ERN (En) 00819916-00819920.

<sup>7779</sup> S-21 Confession – TIV Ol *alias* Penh, E3/1832, undated, ERN (En) 00183806-00183819; S-21 Confession – TIV Ol *alias* Penh, E3/3582, undated, ERN (En) 00744582.

SEAT Chhae was a reserve candidate of the Central Committee and was known as “Brother 81”, often mentioned as such in meeting minutes and copied on telegrams.<sup>7780</sup> SEAT Chhae was arrested from the East Zone on or around 30 April 1977 and detained at S-21 prior to his execution in December 1977.<sup>7781</sup> SEAT Chhae’s arrest preceded the “second wave” of the East Zone purges that reached a crescendo in early to mid-1978. This increase in purges was implemented by over 10,000 soldiers sent to the East Zone by SON Sen, including soldiers from the Southwest Zone, the Central (old North) Zone and from Centre Division 703.<sup>7782</sup>

2304. SEAT Chhae’s S-21 confession indicates that he was interrogated at S-21 in August and September 1977.<sup>7783</sup> He was first interrogated by Pon, who was given instructions by SON Sen about the strategy for interrogation.<sup>7784</sup> However, when Pon could not produce the desired answer, Duch assigned Tuy to use the “hot” method to interrogate SEAT Chhae.<sup>7785</sup> SEAT Chea’s wife, PRUM Sothea *alias* Thea, was also arrested in the Southwest Zone and detained at S-21 from 1 February 1978 until her execution on 10 May 1978.<sup>7786</sup>

2305. Duch wrote a series of letters to SEAT Chhae *alias* Tum.<sup>7787</sup> In one of these letters Duch noted that “*Angkar* has defined this period of time as a life view period” and requested SEAT Chhae to report his overt and covert contacts with Regiment 152,

<sup>7780</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 45; KAING Guek Eav Interview Record, E3/5724, 27 April 2011, p. 3, ERN (En) 00680797; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 95-96. *See e.g.*, Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 2, ERN (En) 00937115; Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809 [E3/810], 19 September 1976, ERN (En) 00183977; Meeting Minutes, E3/1212, undated, p. 2, ERN (En) 00782244; DK Telegram, E3/1213, 1 May 1976, ERN (En) 00531046; DK Telegram, E3/1214, 2 May 1976, ERN (En) 00531047; DK Telegram, E3/1215, 6 May 1976, ERN (En) 00531048.

<sup>7781</sup> S-21 list of prisoners who were smashed and photographed on 8.12.77, E3/2285, 1977, p. 161, ERN (En) 01564921; S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, 3 November 1977, ERN (En) 00182870; S-21 Last Joint Plan, E3/527, undated, ERN (En) 00069056.

<sup>7782</sup> *See below*, para. 2552. *See also*, Section 12.1.6.3.4.4: Internal Factions: KE Pauk and SON Sen go to the East Zone.

<sup>7783</sup> S-21 Confession – Tum, E3/7441, 24 September 1977, p. 10, ERN (En) 00757975.

<sup>7784</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 95-96.

<sup>7785</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 95-96; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 9.

<sup>7786</sup> S-21 list of prisoners, E3/10440, February 1978, p. 6, ERN (En) 01395748; S-21 list of prisoners who were removed from 8 May to 15 May 1978, Southwest Zone, E3/8463, May 1978, p. 245, ERN (En) 01554763.

<sup>7787</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, pp. 12-13, 37, 40-41, 48, 51-52, 60-61, ERN (En) 00866318-00866319, 00866343, 00866346-00866347, 00866354, 00866357-00866358, 00866366-00866367.

an independent regiment that was a naval unit.<sup>7788</sup> Duch further observed: “Examining your first report, I have found that it is not yet well done. I have not presented it to *Angkar* because it is very difficult to listen to: it is too thickly covered with aberrations – reduce this”. Duch further instructed SEAT Chhae that he should “re-examine this and report realistically to *Angkar*”.<sup>7789</sup> SEAT Chhae pleaded his innocence and asked, through Duch, for *Angkar*’s help in rescuing him.<sup>7790</sup>

2306. A further annotation on SEAT Chhae’s confession includes a note from Duch to “Respected Brother” which indicated that the confession was not finished yet, that the first document was “still mostly mixed up” and that the prisoner “exaggerated the situation”.<sup>7791</sup> Duch in an annotation observed that “[t]here is still much difficulty. Only when the squeeze was put on him constantly were some substances gained.”<sup>7792</sup>

#### 12.2.8.3.3. *Other significant arrests*

2307. Other high profile prisoners who were purged during this period included BUN Kung *alias* Sambok, the Deputy Secretary of Sector 22 of the East Zone, who was arrested on 2 June 1977, and PORT Un *alias* Neouchey, who was the Deputy Secretary of Sector 24 of the East Zone until his arrest on 12 July 1977.<sup>7793</sup>

#### 12.2.8.4. *January to June 1978 – Second wave of East Zone purges and the arrest of RUOS Nhim*

2308. In early 1978, a meeting was held at Boeng Trabaek with top CPK leaders, including POL Pot, NUON Chea and SON Sen. At this meeting, SON Sen announced the plan to arrest and remove East Zone cadres because they had cooperated with

<sup>7788</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, pp. 12-13, ERN (En) 00866318-00866319. *See also*, Section 5: Administrative Structures, para. 424.

<sup>7789</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, p. 13, ERN (En) 00866319.

<sup>7790</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, p. 36, ERN (En) 00866342.

<sup>7791</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, p. 2, ERN (En) 00283972 (entry dated 26 July 1977).

<sup>7792</sup> S-21 Confession – SEAT Chhae *alias* Tum, E3/1893, multiple dates, p. 77, ERN (En) 00866383 (entry dated 20 July 1977).

<sup>7793</sup> S-21 list of prisoners to be fattened, E3/10087, undated, ERN (En) 01245975; Book by D. Chandler: *Brother Number One*, E3/17, p. 244, ERN (En) 00393158; S-21 Confession – BUN Kung *alias* Sambok, E3/3682, undated, pp. 1-2, ERN (En) 00224279-00224280; S-21 Confession – SEAT Chhae *alias* Tum, E3/2490, multiple dates, p. 3, ERN (En) 00797048; S-21 Confession – BUN Kung, E3/3690, undated, pp. 1-10, ERN (En) 00874990-00874999; S-21 list of prisoners, E3/10090, undated, p. 6, ERN (En) 01399012; S-21 list of enemies interrogated, E3/9260, undated, p. 356, ERN (En) 00143392; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, p. 53, ERN (En) 01563509.

Vietnam and betrayed the Party.<sup>7794</sup> This meeting marked the beginning of the final stage of the East Zone purges, which would continue throughout 1978 and peak around June of that same year.<sup>7795</sup>

2309. During the first half of 1978, especially in May and June, there were massive purges of high-level East Zone officials such as KONG Chea Sin *alias* Sun, the Secretary of Sector 20 of the East Zone;<sup>7796</sup> UK Savan *alias* SAU (So), the Secretary of Sector 23 of the East Zone;<sup>7797</sup> PAEN Cheuan, the Secretary of Division 3 of the East Zone;<sup>7798</sup> SAM Huoy *alias* MEAS Tal, the Secretary of Division 290;<sup>7799</sup> CHAN Kung *alias* Kim, the Deputy Secretary of Division 290;<sup>7800</sup> MEAS Chhuon *alias* Chhean *alias* Ta Chhien, also at one time the Secretary of Sector 22;<sup>7801</sup> and TOUCH Chem, the Secretary of Sector 21.<sup>7802</sup>

2310. SAO Phim, the Secretary of the East Zone, aided in the purges until he himself was implicated. In June 1978, as forces were sent to arrest him, SAO Phim committed suicide before he could be captured. The purges of the East Zone continued through 1978.<sup>7803</sup>

2311. After the decision to arrest “Brother Phim” was made, people were sent *en masse* to S-21, with groups of 20 to 30 people arriving each morning.<sup>7804</sup> Duch informed S-21 staff that the prisoners brought in from the East Zone were traitors who had betrayed the nation and collaborated with the “*Yuon*”, and that the chief of the zone,

<sup>7794</sup> Section 12.1.6.3.4.3: Internal Factions: Meeting of Military Commanders and Standing Committee in Boeng Trabaek in late 1977 to early 1978.

<sup>7795</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 11. *See below*, para. 2552.

<sup>7796</sup> S-21 Confession – KONG Chea Sin *alias* Sun, E3/2997, 5 June 1978, ERN (En) 00284077.

<sup>7797</sup> S-21 Confession – UK Savan *alias* Sau, E3/2481, undated, pp. 1-9, ERN (En) 00823399-00823407 (noting that a typewritten copy had already been reported); S-21 list of prisoners from Sector 23, East Zone, E3/10388, undated, p. 5, ERN (En) 01398102.

<sup>7798</sup> S-21 Confession – PAEN Cheuan, E3/7390, 29 May 1978, ERN (En) 0014375200143775.

<sup>7799</sup> S-21 Confession – SAM Huoy *alias* MEAS Tal, E3/1887, multiple dates, pp. 1-17, ERN (En) 00796020-00796036.

<sup>7800</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 233, ERN (En) 01554751.

<sup>7801</sup> S-21 list of prisoners, E3/10181, 12 June 1978, p. 1, ERN (En) 01397620; S-21 list of prisoners, E3/2187, undated, p. 7, ERN (En) 00837597; HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651898-00651900 (HENG Samrin talks about a meeting that took place on 27 May 1978 in Prey Veng town, in which “*Ta Chhien* the secretary of Region 22” participated).

<sup>7802</sup> S-21 list of prisoners, E3/8463, undated, p. 1, ERN (En) 01554519.

<sup>7803</sup> Section 12.1.6.3.2: Internal Factions: SAO Phim’s Interactions and Communications with the CPK Standing Committee; Section 12.1.6.3.7: Internal Factions: Events at Akreiy Ksotr and SAO Phim’s Suicide; Section 12.1.6.3.8: Events following SAO Phim’s Death.

<sup>7804</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 38.

SAO Phim, was the “chief traitor”.<sup>7805</sup> When SAO Phim died and members of the East Zone Committee were arrested, Duch had already received instructions from NUON Chea that a “maximum amount of prisoners had to be withdrawn” to ensure adequate space for the new prisoners from the East Zone.<sup>7806</sup> As a result, a large number of prisoners were sent to Choeung Ek for execution in this period.<sup>7807</sup> On one occasion, between 200 to 300 prisoners from the East Zone were brought to S-21 and placed in cells, but were not interrogated and were put back on trucks and taken for execution.<sup>7808</sup> NUON Chea ordered Duch to send these people to Choeung Ek immediately for execution without interrogation.<sup>7809</sup> Only those prisoners who the upper echelon needed for interrogation were kept.<sup>7810</sup>

#### 12.2.8.4.1. *RUOS Nhim*

2312. RUOS Nhim, the Secretary of the Northwest Zone, was arrested at around the same time that the purges in the East Zone were unfolding and SAO Phim committed suicide. RUOS Nhim was arrested and sent to S-21 in May or June 1978.<sup>7811</sup> Before his arrest, RUOS Nhim convened a meeting of the chiefs of the Zone to tell them they had been accused of being traitors. Until his arrest, RUOS Nhim was reporting to and cooperating with the Party Centre in the purges of his own zone, as ordered by SON Sen. His arrest, ordered by NUON Chea, came toward the end of a series of purges in the Northwest Zone, implemented by the Southwest Zone cadre who first arrived in June 1977.<sup>7812</sup>

<sup>7805</sup> T. 25 April 2016 (LACH Mean), E1/421.1, pp. 88-89.

<sup>7806</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 41-42; KAING Guek Eav Interview Record, E3/1576, 24 January 2008, p. 6, ERN (En) 00160724 (stating that pursuant to NUON Chea’s order, in around December 1978 about 300 prisoners were executed without interrogation as soon as they arrived at S-21).

<sup>7807</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 42. *See above*, para. 2244. *See below*, para. 2552.

<sup>7808</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 44.

<sup>7809</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 44.

<sup>7810</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 25.

<sup>7811</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 69 (testifying that he was arrested after being implicated); DK Report, E3/9368, 17 May 1978, p. 1, ERN (En) 00183654; S-21 Confession – MOUL Sambath *alias* RUOS Nhim, E3/3989, 14 June 1978, ERN (En) 01554902-01554904. *See also*, Section 12.1: Internal Factions, para. 1937.

<sup>7812</sup> KAING Guek Eav Interview Record, E3/429, 11 November 2009, p. 10, ERN (En) 00403925. *See also*, Section 12.1.5.2.4: Internal Factions: Purge of the Northwest Zone.

2313. In his confession, RUOS Nhim implicates “Phim”, “comrade KEO Samnang”, “comrade Phuong” of the East Zone,<sup>7813</sup> and others.<sup>7814</sup> A notation on the confession indicates that it was “reported”.<sup>7815</sup> In his book, KHIEU Samphan discusses an example of his connection to the East Zone purges in mid-1978 regarding the arrest of Phuong. KHIEU Samphan confirms that he hosted a dinner in a community kitchen at Office 870 with Phuong and other Central Committee members who were about to be purged, under the pretext that they had been brought together to discuss the reorganisation of the East Zone.<sup>7816</sup>

<sup>7813</sup> Phuong was a Central Committee member who was in charge of DK rubber production. See Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I made*, E3/18, March 2000, pp. 131-132, ERN (En) 00103788-00103789; Book by R. Bugler: *The Eyes of the Pineapple*, E3/7333, p. 101, ERN (En) 01002222. Telegrams show that Phuong kept the Party Centre informed about the impact the Vietnamese troop movement was having on the production process at the East Zone Rubber Plantations through 1977 and 1978. See DK Telegram, E3/863 [E3/908], 24 December 1977, p. 1, ERN (En) 00183638; DK Telegram, E3/905, 23 December 1977, ERN (En) 00183633 (copied to POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870); DK Telegram, E3/863 [E3/908], 24 December 1977, p. 1, ERN (En) 00183638; DK Telegram, E3/909, 24 December 1977, ERN (En) 00183636 (copied to POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870); DK Telegram, E3/916, 1 January 1978, ERN (En) 00183642. See also, SUONG Sikoeun Interview Record, E3/377, 7 May 2009, p. 4, ERN (En) 00327245; Chen Yung-Kuet Leaves Eastern for Central Region (in FBIS collection), E3/1339, 6 December 1977, ERN (En) 00168329; Written Record of Analysis by Craig ETCHESON, E3/494 [E3/32], undated, pp. 25, 33, ERN (En) 00142850, 00142858; S-21 Confession – SEAT Chhae, E3/1893, 3 November 1977, ERN (En) 00182854.

<sup>7814</sup> S-21 Confession – MOUL Oeun *alias* Sambath *alias* Nhim, E3/3989, 14 June 1978, ERN (En) 01554902.

<sup>7815</sup> S-21 Confession – MOUL Oeun *alias* Sambath *alias* Nhim, E3/3989, 14 June 1978, ERN (En) 01554905.

<sup>7816</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I made*, E3/18, March 2000, pp. 131-132, ERN (En) 00103788-00103789. Contemporaneous evidence indicates that Phuong had been implicated in treacherous activity well before this summons. See e.g., S-21 Confession – KOY Thuon, E3/1604, 8 April 1977, p. 48, ERN (En) 00773135; S-21 Confession – OU Pin *alias* Tep Hay *alias* Ham, E3/1873, 1 May 1977, ERN (En) 00183747; S-21 Confession – CHHAOM Savat, E3/2484, 20 August 1977, p. 7, ERN (En) 00823913; S-21 Confession – NEOU Sali *alias* Saliv, E3/2477, 23 May 1978, p. 8, ERN (En) 00829286; S-21 Confession – SAN Bun Hy *alias* Kuon, E3/1669, 4 June 1978, p. 11, ERN (En) 00786227; S-21 Confession – KONG Chea Sin *alias* Sun, E3/2997, 5 June 1978, ERN (En) 00284076. Phuong was arrested on 6 June 1978 and executed at S-21. His bodyguards and associates were also executed in the days following his arrest. See S-21 list of prisoners, E3/10510, undated, ERN (En) 00218139 (entry 322). See also, Book by B. Kiernan: *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. 396, ERN (En) 01150205; Book by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, pp. 20-21, ERN (En) 00002765-00002766; S-21 list of prisoners, E3/1961, 9 June 1978, ERN (En) 01305644 (entries 10-12); S-21 list of prisoners, E3/1959, 13 June 1978, ERN (En) 01303792 (entries 8-10); S-21 list of prisoners from the Rubber Plantation of East Zone, E3/2188, undated, p. 1, ERN (En) 00800883 (entries 7-10); S-21 list of prisoners from the East Zone, E3/2187, undated, p. 1, ERN (En) 00837591 (entries 5-6, 10-11); S-21 list of prisoners from the Rubber Plantation, East Zone, E3/2229, 2 July 1978, pp. 1-2, ERN (En) 00784616-00784617 (entries 8-11); S-21 list of prisoners, E3/10510, undated, pp. 29, 39, 149, ERN (En) 00218049, 00218059, 00218169 (entries 73, 138, 499).

12.2.8.4.2. *CHOU Chet alias Sy*

2314. CHOU Chet *alias* Sy was the Secretary of the West Zone and was arrested in April 1978.<sup>7817</sup> At that time, most of his subordinates had already been arrested.<sup>7818</sup> Duch annotated CHOU Chet's confession, mentioning that it had been reported on 14 April 1978. CHOU Chet was referred to as "despicable Sy" and in the Party's view was grouped with other individuals who had associations with the CIA and the "Yuon".<sup>7819</sup> CHOU Chet's wife was also sent to S-21.<sup>7820</sup>

12.2.8.4.3. *CHHIM Sam Aok alias Pang*

2315. As discussed above, CHHIM Sam Aok *alias* Pang was a member of the Central Committee and was the spokesperson for POL Pot who was assigned by NUON Chea to work with and receive reports from Duch at S-21.<sup>7821</sup> He was also the Chief of Office S-71.<sup>7822</sup> Pang was arrested around April 1978, detained, interrogated and tortured at S-21.<sup>7823</sup> Prior to Pang's arrest, SON Sen had asked Duch why Pang had not been implicated in a confession of a specific prisoner who was detained at S-21.<sup>7824</sup> SON Sen wanted to listen to a confession that implicated Pang.<sup>7825</sup>

2316. Prior to his arrest, Pang continued to work and issue instructions at S-21. Staff were not permitted to inform Pang about the upper echelon's suspicion against him.<sup>7826</sup> After his arrest, Pang's confessions were confusing and NUON Chea gave Duch a series of questions to ask Pang in order to clarify the meaning of parts of his confessions.<sup>7827</sup> According to Duch, it took a long time to obtain Pang's confession, and he was subjected to extended interrogation including the hot method.<sup>7828</sup> Duch

<sup>7817</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 11.

<sup>7818</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 42-43.

<sup>7819</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16; S-21 Confession – CHOU Chet *alias* Sy, E3/1682, 20 May 1978, p. 1, ERN (En) 00818951; Revolutionary Flag, E3/727, May-June 1978, ERN (En) 00185333.

<sup>7820</sup> Letter from Pal to *Angkar*, E3/1098, 26 March 1978, ERN (En) 00524161.

<sup>7821</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 73, 80-81; T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 56.

<sup>7822</sup> S-21 Confession – CHHIM Sam Aok *alias* Pang, E3/1596, 15 June 1978, pp. 7-8, ERN (En) 00753749-00753750; Section 5: Administrative Structures, para. 355.

<sup>7823</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 80-83; T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 93. *See also*, S-21 Confession – CHHIM Sam Aok *alias* Pang, E3/1596, 15 June 1978, pp. 7-8, ERN (En) 00753749-00753750.

<sup>7824</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 14-15.

<sup>7825</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 14-15.

<sup>7826</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 16-17.

<sup>7827</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 81, 83.

<sup>7828</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 83.

subsequently ordered the execution of Pang in accordance with NUON Chea's instructions.<sup>7829</sup>

#### 12.2.8.4.4. *NUN Huy alias HUY Sre*

2317. Following the instructions of NUON Chea, Duch and Hor planned the arrest of HUY Sre, the head of the Prey Sar worksite and member of the S-21 Committee.<sup>7830</sup> HUY Sre was arrested on 5 December 1978 for making "repeated mistakes" and breaching Party discipline.<sup>7831</sup> Shortly thereafter, HUY Sre's wife and one-year-old child were also arrested and "smashed".<sup>7832</sup>

#### 12.2.8.4.5. *CHAU Seng*

2318. CHAU Seng, formerly with the Ministry of Education and internationally recognised Cambodian politician was arrested and detained at S-21 in November 1977 under the name CHEN Suon.<sup>7833</sup> CHAU Seng was born in Kampuchea Krom and held various high-level ministry positions during the 1960s. After spending time in exile in France due to his criticism of LON Nol, he returned to Cambodia in 1975 to "rebuild the country".<sup>7834</sup> CHAU Seng and KHIEU Samphan were close friends who studied together in France and had both worked with the Ministry of Commerce. CHAU Seng was also close to HU Nim.<sup>7835</sup> CHAU Seng was later sent to K-16 at Boeng Trabaek under the supervision of the Ministry of Foreign Affairs, where he was eventually arrested.<sup>7836</sup> Duch had been informed in 1977 by SON Sen that the Party had decided to arrest CHAU Seng and that an alias, Suo, should be used.<sup>7837</sup> Duch instructed MAM Nai to interrogate CHAU Seng and his confession was hundreds of pages long.<sup>7838</sup>

<sup>7829</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 82.

<sup>7830</sup> See above, para. 2149. See below, para. 2457.

<sup>7831</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 21-22; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 55-56. See also, S-21 list of prisoners in special prison section, E3/8463, undated, p. 234, ERN (En) 01554752. See below, para.2457.

<sup>7832</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 22.

<sup>7833</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 71-72; T. 15 August 2016 (CHAU Khim), E1/457.1, pp. 70-71.

<sup>7834</sup> T. 15 August 2016 (CHAU Khim), E1/457.1, pp. 72-73.

<sup>7835</sup> T. 15 August 2016 (CHAU Khim), E1/457.1, pp. 91-93.

<sup>7836</sup> T. 15 August 2016 (CHAU Khim), E1/457.1, pp. 70-71, 73; Stephen HEDER Interview with IENG Sary, E3/89, 17 December 1996, pp. 19-20, ERN (En) 00417617-00417618.

<sup>7837</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 101.

<sup>7838</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 72-73; T. 15 August 2016 (CHAU Khim), E1/457.1, pp. 87-88 (Civil Party CHAU Khim authenticates his brother, CHAU Seng's handwriting in his confession). See S-21 Confession – CHEN Suon *alias* San, E3/10609, undated, p. 1, ERN (En) 01555760.



When NUON Chea asked Duch what happened to CHAU Seng, Duch said that he had kept him alive, at which point NUON Chea ordered Duch to “smash him”.<sup>7839</sup>

12.2.8.5. July 1978 to 7 January 1979 – The last of the internal purges

12.2.8.5.1. *CHANN Sam alias KANG Chap alias Se (or Sae)*

2319. CHANN Sam *alias* KANG Chap *alias* Se (or Sae), formerly in Sector 35 of the Southwest Zone, arrived in Siem Reap in late March or early April 1977 and was thereafter appointed Secretary of the new North Zone.<sup>7840</sup> KANG Chap brought with him a large group of Southwest Zone cadres and continued the purge of the new North Zone that had already begun under the supervision of KE Pauk, reporting directly to the Party Centre including NUON Chea. The purges of the new North Zone were extensive and continued through 1977 and into 1978.<sup>7841</sup>

<sup>7839</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 73-74.

<sup>7840</sup> T. 26 January 2012 (PRAK Yut), E1/34.1, p. 43; T. 14 January 2016 (YOU Vann), E1/376.1, pp. 46-47; PRAK Yut Interview Record, E3/163, 21 July 2009, pp. 2-3, ERN (En) 00364078-00364079; PRAK Yut Interview Record, E3/164, 18 November 2009, p. 3, ERN (En) 00407797; PECH Chim Interview Record, E3/400, 25 August 2009, p. 7, ERN (En) 00379172; DK Telegram, E3/239, 30 April 1977, ERN (En) 00069529 (report to Office 870 informing the CPK Party Centre of KE Pauk’s efforts to investigate enemies and deserting forces, and assigning KANG Chap *alias* Sae to certain duties); SENG Mon Interview Record, E3/71, 14 February 2009, p. 18, ERN (En) 00288636. KANG Chap was also appointed Chairman of the Judicial Committee of the People’s Representative Assembly in April 1976. See Section 10.1: Tram Kak Cooperatives, para. 906. Since April 1975, the Party Centre had taken over direct control of Autonomous Sector 106 (comprising Siem Reap and Oddar Meanchey) and Autonomous Sector 103 (encompassing Preah Vihear). In February 1977, KANG Chap replaced PA Phal *alias* Sot, the secretary of Sector 106, who had been arrested that same month. From the time KANG Chap arrived in February 1977 until mid-1977, KE Pauk was responsible for the old North Zone as well as Sector 106. However, in mid-1977, Sectors 106 and 103 were combined to form the new North Zone (Zone 801). See Prisoner Biography – KE Pauk, E3/2782, undated, ERN (En) 00089714; DK Telegram, E3/1091, 23 August 1977, ERN (En) 00143573-00143574 (signed: “Zone 801, Se”); DK Telegram, E3/898, 11 December 1977, ERN (En) 00183626 (requesting that Siem Reap and Banteay Srey Districts be merged); T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 7 (Preah Vihear was removed and named as Zone 801); T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 13 (in mid-1977, a new North Zone (Zone 801) was created); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 (in 1977, when Hang was arrested, Autonomous Sector 103 was integrated into the New North Zone); T. 21 May 2013 (PRUM Sou), E1/194.1, pp. 33-34 (in late 1977, NUON Chea announced at a meeting in Sector 103, that KANG Chap *alias* Sae would be the Chairman of the new North Zone); PRUM Sou Interview Record, E3/420, 24 November 2009, ERN (En) 00422380-00422381 (less than one month after a meeting held by NUON Chea, *Bang* Hang *alias* BOU Phat and other people in Sector 103 were arrested); DK Telegram, E3/995, 19 March 1978, ERN (En) 00185583-00185584 (KANG Chap *alias* Sae reports to Office 870 on the enemy situation in Preah Vihear); Prisoner Biography – KE Pauk, E3/2782, undated, ERN (En) 00089714; S-21 Confession – CHANN Sam *alias* Se, E3/2794, 10 September 1978, p. 24, ERN (En) 00789734 (annotation noting date of arrest).

<sup>7841</sup> DK Telegram, E3/241, 23 August 1977, ERN (En) 00183627-00183628 (Se reports to Committee 870 that they “managed to find and arrest hidden enemies” and “continue sweeping out and paying attention to hidden enemies burrowing from within”); DK Telegram, E3/1091, 23 August 1977, ERN (En) 00143573-00143574 (Se reports to Committee 870 that measures must be taken to sweep up enemies); DK Telegram, E3/1144, 5 September 1977, ERN (En) 00517924-00517925 (Se reported to

2320. On 17 April 1978, KANG Chap travelled to Phnom Penh to deliver two officials from Sector 103 and their documents to POL Pot. Duch points to KANG Chap in this instance as an example of a zone secretary using his authority to carry out an arrest. However, it was KANG Chap's exercise of the same power that later resulted in him being punished by POL Pot after the former arrested the relatives of KHIEU Samphan.<sup>7842</sup> KANG Chap was arrested and interrogated at S-21, and addressed his confession to the "respected Central Committee".<sup>7843</sup> A record was kept of over 170 "traitors" who were implicated in the confessions of KANG Chap.<sup>7844</sup> Following his confession, KANG Chap was executed on 31 October 1978.<sup>7845</sup>

#### 12.2.8.5.2. *VORN Vet*

2321. VORN Vet, who had been Duch's superior at M-13 and was a member of the Standing Committee, was arrested at the Party Centre's Office by the guard unit of the Party Centre and brought to S-21 in November 1978.<sup>7846</sup> VORN Vet's arrest occurred at the end of the two-day Fifth Party Congress held in Phnom Penh from 1-2 November

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Committee 870, includes CC to Uncle NUON that "there are a few remaining accessories of undercover enemies."); DK Telegram, E3/918, 10 January 1978, pp. 1-2, ERN (En) 00182757-00182758 (Se reports to Committee 870 that the enemy along the border was "[h]elping bad elements to escape for them to collect forces" and that measures were taken to cut down "contact between the enemy outside and the enemy in our base." The telegram is copied to "Uncle Nuon"); DK Telegram, E3/995, 19 March 1978, ERN (En) 00185583-00185584 (Se reports to Committee 870 on the "situation of undercover enemies burrowing from within" noting that "we systematically swept them cleanly away. [...] A number of soldiers, police, and civil servants fled after we had swept approximately 20 head of them cleanly away. We are continuing to take further measures to find and arrest them." The telegram is copied to "Uncle Nuon"). For further details on purge of new North Zone and Division 310, see Section 12.1.5.1: Internal Factions: Division 310's planned capture of Phnom Penh. See above, para. 2278.

<sup>7842</sup> S-21 Confession – CHANN Sam *alias* Chap *alias* Se, E3/2794, 10 September 1978, p. 15, ERN (En) 00789725; DC-Cam "At Risk" Documents, E3/8468, 17 April 1978, p. 1, ERN (En) 01298394; T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 27-29; KANG Guek Eav Interview Record, E3/355, 19 November 2008, pp. 5, 9, ERN (En) 00242876, 00242880; KANG Guek Eav Interview Record, E3/1579, 21 October 2009, p. 5, ERN (En) 00398208; T. 5 April 2012 (KAING Guek Eav), E1/60.1, p. 107. See also, Section 18: The Individual Criminal Responsibility of Khieu Samphan, paras 4234, 4277.

<sup>7843</sup> S-21 Confession – CHANN Sam *alias* Chap *alias* Se, E3/2794, 10 September 1978, p. 16, ERN (En) 00789726. The confession includes an annotation that it had been "[a]lready reported". See S-21 Confession – CHANN Sam *alias* Chap *alias* Se, E3/2794, 10 September 1978, p. 15, ERN (En) 00789725.

<sup>7844</sup> S-21 Confession – CHANN Sam *alias* Chap *alias* Se, E3/2794, 10 September 1978, pp. 51-58, ERN (En) 00789761-00789768.

<sup>7845</sup> S-21 list of prisoners who were destroyed on 30 October 1978, E3/10456, 31 October 1978, p. 2, ERN (En) 01558314.

<sup>7846</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 50-52; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 26-27; S-21 Confession – VORN Vet, E3/1876, multiple dates, p. 1, ERN (En) 00767746.

1978, which NUON Chea, KHIEU Samphan and other CPK leaders attended.<sup>7847</sup> The arrest was conducted by Lin, following the orders of *Ta Mok*.<sup>7848</sup>

2322. Duch assigned Pon to conduct the interrogation of VORN Vet.<sup>7849</sup> During the interrogation VORN Vet was sprayed with cold water and had a fan turned on him, which made him shiver.<sup>7850</sup> In VORN Vet's lengthy confession, he reported on his "traitorous activities serving the CIA and *Yuon*", implicated his wife and children as having joined the CIA and named hundreds of individuals who were in his "network".<sup>7851</sup>

2323. Duch made regular reports to NUON Chea on the progress of VORN Vet's interrogation and provided NUON Chea with his full confession when it was completed.<sup>7852</sup> NUON Chea ultimately decided that VORN Vet should be executed,<sup>7853</sup> and he was accordingly "smashed" along with his family.<sup>7854</sup>

#### 12.2.8.5.3. *IN Lorn alias Nat*

2324. Nat, who was the first chairman of S-21,<sup>7855</sup> was arrested, detained and tortured at S-21 in late 1978 and was "smashed" shortly before the arrival of the Vietnamese at

<sup>7847</sup> Prisoner Biography – KE Pauk, E3/2782, undated, ERN (En) 00089715 ("In 1978 [...] when we were conducting the fifth general assembly in the national assembly building [...] the assembly was closed [...] To my amazement, at one in the morning, they captured *Ta Keu* and *Vorn Vet*."); KAING Guek Eav Interview Record, E3/394, 22 October 2009, p. 7, ERN (En) 00398234 (stating that KE Pauk told him "that after a Central Committee meeting, POL Pot had asked the participants to stay and watch a film projection, and that *Ta Mok* had ordered the arrest of *Ta Keu* and *VORN Vet*"). *See also*, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 392, ERN (En) 00396600 (stating that VORN Vet was sent to S-21 a day after the Congress); Section 16: Common Purpose, para. 3742.

<sup>7848</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 51; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 26.

<sup>7849</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 52-53. *See also*, S-21 Confession – VORN Vet, E3/1876, multiple dates, pp. 1-148, ERN (En) 00767746-00767893.

<sup>7850</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 53-54; KAING Guek Eav Interview Transcript, E3/347, multiple dates, p. 31, ERN (En) 00185026. *See also*, Case 001 Transcript (SAOM Met), E3/7471, 11 August 2009, p. 4, ERN (En) 00363696.

<sup>7851</sup> S-21 Confession – VORN Vet, E3/1876, multiple dates, pp. 17-18, 37-39, ERN (En) 00767762-00767763, 00767782-00767784.

<sup>7852</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 56-59 (testifying that he could not recall whether NUON Chea gave instructions to have VORN Vet tortured); T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 90 (testifying that he reviewed VORN Vet's confessions before they were sent to NUON Chea).

<sup>7853</sup> KAING Guek Eav Interview Record, E3/106, 1 April 2008, p. 7, ERN (En) 00177637.

<sup>7854</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, pp. 84, 87-88; T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 53. *See also*, KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154194.

<sup>7855</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 67; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 4, ERN (En) 00162611; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 16; T. 6

S-21.<sup>7856</sup> Before his arrest, Nat was first transferred from his post at S-21 to work at the General Staff Office.<sup>7857</sup> Shortly before late 1978, Nat was again reassigned from General Staff to the Ministry of Foreign Affairs in order to isolate him because he was no longer trusted by the Party.<sup>7858</sup> Duch sent Nat's confession to NUON Chea, but Nat was not detained long enough to obtain a "sufficient confession".<sup>7859</sup>

2325. The case of Nat is an example of the practice of CPK leaders of assigning cadres who were no longer trusted to work at the Ministry of Foreign Affairs before they were purged. Another example is the case of KE Kim Huot *alias Ta Sot*, who had known Duch for a long time and was his mentor. KE Kim Huot was the Secretary of Sector 7 in the Northwest Zone. KE Kim Huot was detained for several months,<sup>7860</sup> was subjected to severe beatings and was forced to eat his own excrement.<sup>7861</sup> Prior to his purge at S-21, he was assigned to the Ministry of Foreign Affairs and, according to SUONG Sikoeun, KE Kim Huot was to be appointed Ambassador of DK in Yugoslavia.<sup>7862</sup> CHHAY Kim Hor *alias Hok*, the former Minister of Energy,<sup>7863</sup> SON

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June 2016 (SUOS Thy), E1/432.1, p. 38; T. 3 May 2016 (HIM Huy), E1/426.1, pp. 82-83. *See above*, para. 2145.

<sup>7856</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 94-95 (testifying that he was sent away to be "smashed" with two other individuals named Brother Hok and Brother Vorn); T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 103.

<sup>7857</sup> Section 5: Administrative Structures, para. 428.

<sup>7858</sup> T. 9 April 2012 (KAING Guek Eav), E1/61.1, p. 109; T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 93 (stating that a long while after Nat ceased involvement with S-21, he was transferred from the General Staff to the Ministry of Foreign Affairs); T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 80-81. Duch testified that Nat's implication did not originate from S-21 and that it was the sole decision of POL Pot. *See* T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 18. However, it is not clear on what basis Duch reached this conclusion and therefore the Chamber does not rely on his evidence in this regard.

<sup>7859</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 94-95. *See also*, S-21 Confession – IN Lon *alias* Nat, E3/1710, undated, pp. 1-5, ERN (En) 00195413-00195417.

<sup>7860</sup> S-21 list of prisoners, E3/8463, undated, p. 1, ERN (En) 01554519 (S-21 documentation shows that KE Kim Huot entered S-21 on 13 July 1977 and was executed on 10 May 1978).

<sup>7861</sup> S-21 Confession – KE Kim Huot *alias Sot*, E3/1705, 22 July 1977, pp. 9-10, ERN (En) 00183289-00183290. Regarding the consumption of excrement, *see below*, paras 2366, 2392.

<sup>7862</sup> SUONG Sikoeun Interview Record, E3/42, 6 May 2009, p. 8, ERN (En) 00327219.

<sup>7863</sup> CHHAY Kim Hor was initially in charge of the Ministry of Energy. Later he was assigned to be a diplomat intelligence officer and was ultimately sent to S-21 and killed. *See* S-21 Confession – CHHAY Kim Hor *alias Hok*, E3/1838, pp. 1-33, ERN (En) 00807541-00807573; Prisoner Biography – CHHAY Kimhor *alias Hok*, undated, E3/10563, p. 11, ERN (En) 01461743; S-21 list of prisoners, E3/8445, undated, p. 63, ERN (En) 01565654 (entry no. 383, "answered" on 28 December 1978); KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154194 (stating that CHHAY Kim Hor was, along with Nat and VORN Vet, killed near the intersection of Mao Tse Toung Boulevard and Street 163).

Ty *alias* Teanh,<sup>7864</sup> OU Pin,<sup>7865</sup> MAB Chhoeun *alias* Duch<sup>7866</sup> and TI Srun *alias* Mort<sup>7867</sup> all suffered the same fate and were likewise assigned to the Ministry of Foreign Affairs before being purged.

#### 12.2.8.5.4. *Other significant arrests*

2326. Other high-level officials who were arrested and sent to S-21 in the second half of 1978 included: YIM Nha, the Secretary of Division 310;<sup>7868</sup> CHENG An, the Chairman of Minister of Industry;<sup>7869</sup> BORN Nan *alias* Yi, the Secretary of Sector 505;<sup>7870</sup> and CHHIM Khon, the Deputy Secretary of Sector 505.<sup>7871</sup>

2327. Other important prisoners who were arrested and detained at S-21 included: KUNG Sophal *alias* Keu, the Deputy Secretary of the Northwest Zone;<sup>7872</sup> MEAS Ket *alias* Moeun, yet another Secretary of Sector 505;<sup>7873</sup> SEK Sat *alias* Rak, the Secretary of Sector 25 of the Southwest Zone, who was also Secretary of Sector 13 for a few months in 1977;<sup>7874</sup> BOU Phat *alias* Hang, the Secretary of autonomous Sector 103

<sup>7864</sup> S-21 list of prisoners in Special Prison, E3/2253, p. 2, ERN (En) 00789492 (entry no. 21, listing SON Ty *alias* Teanh, “organizing diplomats to set up an embassy abroad” arrested on 10 December 1978); S-21 list of prisoners in Special Prison, E3/2252, p. 2, ERN (En) 00758337 (entry no. 19, listing SON Ty *alias* Teanh, “Preparing to be a diplomat abroad”); SUONG Sikoeun Interview Record, E3/42, 6 May 2009, p. 8, ERN (En) 00327219 (SUONG Sikoeun stated that “SUN Teanh” was to named ambassador to Thailand). *See also*, SRENG Thi Interview Record, E3/5263, 6 January 2009, p. 3, ERN (En) 00282224 (stating that before being assigned to be a diplomat, *Ta* Teanh was the commander of Division 11 in the East Zone).

<sup>7865</sup> S-21 Confession – OU Pin *alias* TEP Hai *alias* Ham, E3/1873, 27 May 1977, pp. 13-14, ERN (En) 00796003-00796004 (OU Pin was the former deputy Secretary of Sector 15 in the West Zone. Later he was assigned to work at the Ministry of Foreign Affairs and was then arrested and sent to S-21). *See also*, S-21 list of prisoners from the Ministry of Foreign Affairs, E3/1534, ERN (En) 00181668 (entry no. 19, listing TEP Hai *alias* Ham, with date of entry as 15 April 1978).

<sup>7866</sup> S-21 list of prisoners destroyed on 16 September 1978, E3/8463, 16 September 1978, p. 44, ERN (En) 01554562 (entry no. 7, listing MAB Chhoeun *alias* Duch, former deputy secretary of Sector 103, with date of entry as 22 April 1978).

<sup>7867</sup> S-21 list of prisoners destroyed on 23 February 1978, E3/8463, 15 February 1978 [*sic*], p. 141, ERN (En) 01554659 (entry no. 83, listing TI Srun *alias* Mort, former secretary of Sector 22, East Zone, with date of entry as 1 June 1977).

<sup>7868</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 234, ERN (En) 01554752.

<sup>7869</sup> S-21 Confession – CHENG An, E3/1681, November 1978, ERN (En) 00183236.

<sup>7870</sup> S-21 Confession – BORN Nan *alias* Yi, E3/1670, multiple dates, pp. 1-13, ERN (En) 00766956-00766968. *See also*, T. 26 July 2016 (MOENG Vet), E1/448.1, pp. 93-95 (testifying that cadres from Sector 505 were subject to a “sweeping clean” operation in which old cadres were sent by plane to Phnom Penh). *See also*, Section 5: Administrative Structures, para. 386.

<sup>7871</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 233, ERN (En) 01554751.

<sup>7872</sup> S-21 Confession – KONG Sophal *alias* Keu, E3/3192, multiple dates, pp. 1-23, ERN (En) 00797070-00797092.

<sup>7873</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 234, ERN (En) 01554752; Section 5: Administrative Structures, para. 386.

<sup>7874</sup> S-21 Confession – SEK Sat *alias* Nin *alias* Prak, E3/7376, multiple dates, pp. 1-49, ERN (En) 00825143-00825143. The confession includes an annotation that it had already been reported on 7 July

until its incorporation into the North Zone;<sup>7875</sup> KHEANG Chhuon, a Committee Member of the Northeast Zone;<sup>7876</sup> PA Phal *alias* Suong *alias* Sot, the Secretary of Sector 106;<sup>7877</sup> CHAN Mon *alias* Tol, the Secretary of Sector 42;<sup>7878</sup> LIM Chhuom *alias* Khleng, the Deputy Secretary of Division 2;<sup>7879</sup> HOENG Doeun *alias* Dim, the Deputy Secretary of Division 164;<sup>7880</sup> CHUN Chhum *alias* Taing, the Chairman of Sector 41;<sup>7881</sup> PRAK Oeun *alias* Prang, the Secretary of the Ministry of Railways;<sup>7882</sup> SOUR Sophan, a senior Khmer Rouge official;<sup>7883</sup> KHVEN Ngok *alias* Leng, a Battalion Secretary from Sector 105<sup>7884</sup> who was responsible for Phnom Kraol Security Centre;<sup>7885</sup> IM Li, the Secretary of Udong District;<sup>7886</sup> MEAK Touch *alias* Keam, the former Ambassador to Laos;<sup>7887</sup> and SUN Hoeun *alias* Im, the Chairman of Security of the Central Zone.<sup>7888</sup> The confessions of these prisoners reveal admissions to involvement with the CIA, “*Yuon*” or other enemy networks and include extensive lists sometimes implicating hundreds of other “traitors” who were part of their alleged networks.

1978. See S-21 Confession – SEK Sat *alias* Nin *alias* Prak, E3/7376, 28 June 1978, p. 1, ERN (En) 00825143. See also, Section 10.1: Tram Kak Cooperatives, para. 911.

<sup>7875</sup> S-21 Confession – BOU Phat *alias* Hang, E3/2470, multiple dates, pp. 1-55, ERN (En) 00768217-00768271. The confession includes a note from Pon as the interrogator requesting *Angkar* to examine some of the issues raised in BOU Phat’s confession and a further annotation that the confession has already been reported to *Angkar* on 19 April 1978. See S-21 Confession – BOU Phat *alias* Hang, E3/2470, multiple dates, pp. 35, 44, ERN (En) 00768251, 00768260; T. 22 May 2013 (PROM Sou), E1/195.1, pp. 2-3; T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 6; PRUM Son Interview Record, E3/4606, 20 November 2009, ERN (En) 00414070.

<sup>7876</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 233, ERN (En) 01554751.

<sup>7877</sup> S-21 Confession – PA Phal *alias* Sot, E3/1754, multiple dates, pp. 1-31, ERN (En) 00822328-00822358.

<sup>7878</sup> S-21 Confession – CHAN Mon *alias* Tol, E3/2462, multiple dates, pp. 1-37, ERN (En) 00767256-00767292. This confession includes an annotation that the “document has already been submitted” and a note from Duch that it has been reported. See S-21 Confession – CHAN Mon *alias* Tol, E3/2462, multiple dates, pp. 15, 37, ERN (En) 00767270, 00767292. See also, S-21 Confession – CHAN Mon *alias* Tol, E3/3646, 11 June 1977, ERN (En) 00835117-00835138 (which includes annotations analysing the veracity of the confession).

<sup>7879</sup> S-21 list of prisoners, E3/9950, 7 January 1978, p. 27, ERN (En) 01367589.

<sup>7880</sup> S-21 Confession – HANG Doeun *alias* Dim, E3/150, multiple dates, ERN (En) 00823631-00823643.

<sup>7881</sup> S-21 Confession – CHUN Chhum *alias* Taing, E3/2464, multiple dates, ERN (En) 00786988-00787018; Prisoner Biography – CHUN Chhum, E3/9303, undated, ERN (En) 01215103.

<sup>7882</sup> S-21 list of prisoners in special prison section, E3/8463, undated, p. 234, ERN (En) 01554752.

<sup>7883</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 20.

<sup>7884</sup> S-21 Confession – KHVEN Ngok *alias* Leng, E3/1653, multiple dates, p. 1, ERN (En) 00834677.

<sup>7885</sup> Section 12.5: Phnom Kraol Security Centre, para. 3044.

<sup>7886</sup> S-21 Confession – IM Li, E3/2467, 17 April 1978, p. 1, ERN (En) 00749676 (including an annotation that the confession had been submitted to *Angkar* on 22 April 1978).

<sup>7887</sup> S-21 Confession – MEAK Touch *alias* Kem, E3/1709, multiple dates, pp. 1-59, ERN (En) 00767952-00768010.

<sup>7888</sup> S-21 Confession – SUN Hoeun *alias* Im, E3/2650, 26 August 1978, p. 1, ERN (En) 00796698 (including an annotation from Duch that reads: “These responses could spread out of control”).

2328. The Chamber is satisfied that it was S-21 policy to subject detainees to physical and mental pressure as a tool during interrogations.<sup>7889</sup> This is supported by, among other things, evidence that also proves specific examples of when physical and mental abuse was inflicted on prisoners at S-21. The Chamber finds that CHUM Mey,<sup>7890</sup> TIT Son *alias* Nhem,<sup>7891</sup> YIM Sambath,<sup>7892</sup> SEAT Chhae *alias* Tum,<sup>7893</sup> CHHIM Sam Aok *alias* Pang,<sup>7894</sup> HU Nim,<sup>7895</sup> NEY Sarann *alias* Ya,<sup>7896</sup> LY Phen,<sup>7897</sup> and VORN Vet<sup>7898</sup> are a few specific examples of the multitude of prisoners that the evidence proves were subjected to physical and psychological pressure or mistreatment to secure confessions about their supposed traitorous networks.<sup>7899</sup>

### 12.2.9. *Detention of Family Members and Children*

2329. Duch instructed S-21 staff that “if you dig the grass, you have to dig the root as well”, which meant that if someone was arrested, those connected to their “network” had to be arrested as well due to their connection to the suspected traitor. This included all family members such as husbands, wives, children and parents.<sup>7900</sup>

2330. Some prisoners were brought to S-21 along with their spouses and children.<sup>7901</sup> If a person was arrested, his or her spouse and children were arrested and “smashed” if

<sup>7889</sup> See below, para. 2372. See also, Section 12.2.12.2: “Cold”, “Hot”, and “Chewing” Units; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>7890</sup> See below, paras 2388, 2392, 2395, 2396.

<sup>7891</sup> See above, para. 2287.

<sup>7892</sup> See above, Section 12.2.8.1.2: YIM Sambath.

<sup>7893</sup> See above, Section 12.2.8.3.2: SEAT Chhae *alias* Tum.

<sup>7894</sup> See above, Section 12.2.8.4.3: CHHIM Sam Aok *alias* Pang.

<sup>7895</sup> See above, Section 12.2.8.3.1: Hu Nim *alias* Phoas.

<sup>7896</sup> See above, Section 12.2.8.1.6: NEY Sarann *alias* MEN San *alias* Ya.

<sup>7897</sup> See above, para. 2277.

<sup>7898</sup> See above, Section 12.2.8.5.2: VORN Vet.

<sup>7899</sup> See below, Section 12.2.12.3: Interrogation methods and mistreatment.

<sup>7900</sup> The Chamber notes that Duch testified that this slogan was known by the public as the method of purging by the CPK, but the Party did not use this slogan and only required them to be absolute in their stance and distinguish between enemies and people. See T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 33. However, in light of the evidence to the contrary, the Chamber views this as an attempt to shift his responsibility and does not rely on Duch’s testimony in this regard. See e.g., T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 7 (“I know it clearly [...] It was known by the Khmer Rouge. And the saying and policy of the Khmer Rouge was fully known by the grassroots that, ‘To dig up grass, one must dig up the roots’”); T. 4 May 2016 (HIM Huy), E1/427.1, pp. 6-9 (“Yes, I heard about that. And it was Duch who gave us that instruction that if you dig the grass, you have to dig the root as well.”); BBC Cambodia Report, E3/536R, 2 June 2008, ERN V00172527, 00:27:05-00:27:22. See also, T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 56-57; T. 11 August 2016 (CHHAE Heap), E1/455.1, p. 21.

<sup>7901</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 56.

they were not needed for interrogation.<sup>7902</sup> In principle, important prisoners were interrogated first and a decision was later made about whether their wives and children would be questioned.<sup>7903</sup> Most of the spouses were not interrogated and were executed.<sup>7904</sup> The main reason why children were “smashed” was due to the Party’s fear that the children would take revenge.<sup>7905</sup>

2331. SON Sen directed Duch to take a clear stance regarding the enemy and friends, and this extended to children of “enemies”.<sup>7906</sup> The general policy was that when the head of the family was considered a traitor, the spouse and the children were also killed.<sup>7907</sup> For example, the direct relatives of SIN Dara *alias* Sok and MAI Lun (who was suspected of having a “tendency” towards the “*Khmer Serei*”), were arrested and brought to S-21. Duch personally made an annotation that four members of the family were to be interrogated and the rest had to be “smashed”.<sup>7908</sup> As discussed earlier, the wife and child of HUY Sre were also arrested and executed at S-21, as well as the wife of HU Nim.<sup>7909</sup>

2332. Following the orders of NUON Chea, Duch arrested PRUM Phal *alias* Vin, the wife of VORN Vet, and YANG Kan *alias* Phoas, the wife of CHENG An at the Suramarit Buddhist School and brought them to S-21. Given that there was not much

<sup>7902</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 16-17, 20-21, 45-48, 62-63, 75; T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 33. The Chamber notes that Duch clarified that he was unable to know exactly what happened in other security centres. The Chamber therefore does not rely on his evidence that this same principle of arresting the spouses and children of prisoners was applied in other security centres. *See* T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 73-75.

<sup>7903</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 67.

<sup>7904</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 45-46, 67-68.

<sup>7905</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 24-25; Case 001 Transcript (KAING Guek Eav), E3/5805, 25 June 2009, p. 9, ERN (En) 00345295.

<sup>7906</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 22. Duch’s brother-in-law, KEOLY Thong Huot, was arrested, sent to S-21 and killed. *See* Case 001 Transcript, E3/7477, 15 September 2009, p. 86, ERN (En) 00377745; KAING Guek Eav Interview Record, E3/5762, 18 February 2008, p. 9, ERN (En) 00164335 (stating that his brother in law THONG Huot *alias* Thoeun was arrested by KE Pauk; NUON Chea ordered his release in order for Duch to calm down, until Thoeun was re-arrested). *See also*, Case 001 Transcript (KAING Guek Eav), E3/5805, 25 June 2009, pp. 27- 28, ERN (En) 00345313-00345314 (discussing the arrest of “Tun”); Case 001 Transcript (KAING Guek Eav), E3/5808, 2 September 2009, pp. 70-71, ERN (En) 00374563-00374564 (mentioning one brother in law at S-21 and another at Kampong Thom).

<sup>7907</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 63.

<sup>7908</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 48-51 (testifying that the instruction on who to interrogate and who to smash came from SON Sen); KAING Guek Eav Interview Record, E3/1576, 24 January 2008, p. 5, ERN (En) 00160723; S-21 list of names of those removed: families of Sokh and Mai Lun, E3/2047, 7 April 1977.

<sup>7909</sup> *See above*, paras 2300, 2317.



benefit in interrogating them, they were both “smashed”.<sup>7910</sup> Duch could not recall whether the order to arrest them came personally from NUON Chea or whether NUON Chea’s orders were relayed through others.<sup>7911</sup> The approach of arresting family members is also apparent from a meeting attended by SON Sen and Duch in September 1977, where a decision was made to “take out” two more women including CHAN Chakrei’s wife and niece, and to discuss the concrete methods for their arrest later.<sup>7912</sup> S-21 lists support the finding that many prisoners’ wives, husbands, and children were arrested and detained at S-21.<sup>7913</sup>

<sup>7910</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 20, 25-38 (adding that VORN Vet’s family was arrested as well, including his son in law Noy who was the head of an iron factory); T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 27; Book by D. Chandler, *Brother Number One*, E3/17, p. 245, ERN (En) 00393159; Book by B. Kiernan, *Genocide and Democracy in Cambodia*, E3/3304, p. 49, ERN (En) 00430276; S-21 list of prisoners, E3/8445, undated, pp. 317, 521, ERN (En) 01565908, 01566112; S-21 Prisoner Biography – SAO San, E3/10563, undated, pp. 5-6, ERN (En) 01461737-01461738.

<sup>7911</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 26-27.

<sup>7912</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, pp. 2-3, ERN (En) 00937115-00937116.

<sup>7913</sup> S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837638 (referring to KEO Sodara); S-21 list of prisoners, E3/9842, 26 May 1977, p. 158, ERN (En) 01367286 (referring to KONG Bunserei, husband of KEO Sodara); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837637 (referring to CHEA Dary); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837641 (referring to HUOT Sovanna, husband of CHEA Dary); S-21 list of prisoners executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837631 (referring to KANG No); S-21 list of prisoners, E3/9841, undated, p. 8, ERN (En) 01252210 (referring to YUOS Saroeun, parent of KANG No); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837638 (referring to PEN Tuon); S-21 list of prisoners, E3/10082, 21 January 1977, p. 6, ERN (En) 01462111 (referring to MEAS Samei, husband of PEN Tuon); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837630 and S-21 list of prisoners in house “Chor”, E3/10164, undated, p. 27, ERN (En) 01368562 (referring to NHOEK Heng); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 92, ERN (En) 01367220 (referring to SANG Sambath, wife of NHOEK Heng); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837638; S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 158, ERN (En) 01367286 (referring to UNG Chanthol); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 159, ERN (En) 01367287 (referring to TOUCH Thong, husband of UNG Chanthol); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837638; S-21 list of prisoners in house “Chor”, E3/10164, undated, p. 68, ERN (En) 01368603 (referring to SUY Toyana (SUY Tauyana)); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 159, ERN (En) 01367287 (referring to MOK Sovanna, husband of SUY Toyana (SUY Tauyana)); S-21 prisoner list, E3/3185, undated, ERN (En) 00837638 (referring to SAING Sunnarak); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 159, ERN (En) 01367287 (referring to MEAS Kien *alias* Saret, husband of SAING Sunnarak); S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837639; S-21 list of prisoners entering on 1 January 1977, E3/9843, 2 January 1977, p. 3, ERN (En) 01507635 (referring to UK Sahieng); S-21 list of prisoners entering on 1 January 1977, E3/9843, 2 January 1977, p. 2, ERN (En) 01507634 (referring to SA Thai Seng, husband of UK Sahieng); S-21 list of prisoners entering on 28 August 1977, E3/10274, 29 August 1977, p. 63, ERN (En) 01366827 (referring to LONG Sidet); S-21 list of prisoners smashed on 18 October 1977, E3/2285, 19 October 1977, p. 529, ERN (En) 01565289 (referring to AO Makara, wife of LONG Sidet); S-21 list of prisoners who entered in April 1978, E3/10354, undated, pp. 73-74, ERN (En) 01507614-01507615 (lists HENG Yim and DI Yoeun, wife of HENG Yim); S-21 list of prisoners of Division 340, E3/9897, undated, p. 6, ERN (En) 01399161 (lists both KHORN Thin and KA Ven, wife of KHORN Thin); S-21 list of prisoners

2333. The NUON Chea Defence submits that there was no policy regarding the arrest of family members and that family relationships were simply recorded “as additional information to facilitate the identification of detainees”.<sup>7914</sup> The NUON Chea Defence points to examples of prisoners at S-21 whose spouses were not arrested and concludes that when wives were arrested this was because of their own subversive activities rather than because of the behaviour of their husbands.<sup>7915</sup> The Chamber is satisfied that it can rely on Duch’s testimony to the contrary, which is corroborated by documentary evidence,<sup>7916</sup> and accordingly rejects the NUON Chea Defence’s submission.

2334. SUOS Thy did not register the names of children who entered S-21 with their parents.<sup>7917</sup> S-21 records establish that some children were, however, independently registered at S-21.<sup>7918</sup> Photographs were taken of some prisoners with their young

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taken from house KH-1, E3/8707, 10 November 1976, p. 208, ERN (En) 00143244 (referring to KHLOENG Siheang); S-21 list of names of prisoners and photographs, E3/9214, 9 August 2012, p. 11, ERN (En) 01224588 (listing KHLOENG Siheang as the spouse of KOU Som Sorong); S-21 prisoner list, E3/9841, undated, p. 4, ERN (En) 01252206 (listing KU Sum Savong); S-21 list of prisoners executed on 2 July 1977 and S-21 list of prisoners executed on 22 July 1977 “Ministry of Public Works”, E3/8458, 17 July 1977, pp. 10, 16, ERN (En) 00828300, 00828306 (listing LY Samphat, and LY Sony, child of LY Samphat); S-21 list of prisoners executed in on 22 Mar 1976, E3/3187, undated, ERN (En) 00874251 (listing LONG Heng); S-21 prisoner list, E3/8600, undated, p. 17, ERN (En) 01321730 (listing NET Bun, LONG Heng’s wife); S-21 list of prisoners of the electricity station, E3/8590, undated, ERN (En) 01460838 (listing DAUNG Davuth); S-21 list of prisoners executed from 1 November 1976 to 15 November 1976, E3/3187, undated, ERN (En) 00874403 (listing NEL Vann Si, wife of DAUNG Davuth); S-21 list of prisoners from State Agriculture Section, E3/10352, undated, p. 2, ERN (En) 01528723 (listing CHEA Ean); S-21 list of prisoners from the Central Zone, E3/8898, undated, p. 11, ERN (En) 01529581 (listing PROK Lorn, wife of Ean); S-21 list of prisoners, E3/8445, undated, p. 326, ERN (En) 01565917 (noting PEN Choeun); S-21 list of prisoners who were destroyed on 31 May 1978, E3/8463, 31 May 1978, p. 41, ERN (En) 01554559 (listing SIV Tau, wife of PEN Choeun); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 66, ERN (En) 01367194 (noting CHHAEUY Nara); S-21 list of prisoners executed on 30 October 1976, E3/3187, undated, ERN (En) 00874253 (listing SUON Phally, wife of CHHOEY Naraing).

<sup>7914</sup> NUON Chea Closing Brief, paras 565-566.

<sup>7915</sup> NUON Chea Closing Brief, para. 566.

<sup>7916</sup> For a more detailed analysis of the Chamber’s approach to Duch’s evidence, *see above*, paras 2080-2082.

<sup>7917</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 90-92 (testifying that children under the age of 15 were rarely listed on the list of names but he could not recall whether children who did not come with their parents were registered and included on the lists); T. 3 June 2016 (SUOS Thy), E1/431.1, p. 31. *See e.g.*, S-21 Daily Prisoner Control List, E3/8493, 11 April 1976 (recording the names of prisoners who arrived at S-21 on 11 April 1976 and noting that in addition, 25 of their children were also brought to the facility).

<sup>7918</sup> *See e.g.*, T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 4-5 (testifying that a 14-year-old Vietnamese girl who was registered because she did not come with her parents); S-21 Prisoner Biography – KEATH Na *alias* Nak, E3/10546, ERN (En) 01451530 (14-year-old girl described as a “child in the Children’s Office at the Ministry of Industry”); S-21 Prisoner Biography – NHA, E3/10552, ERN (En) 01462394 (12-year-old girl from the Industry Office); Prisoner Biography – NEN Sreun, E3/10559, ERN (En) 01462405 (16-year-old boy described as the child of SVAY Chreah); S-21 Prisoner Biography – Nin, E3/10563, ERN (En) 01461747 (6-year-old girl described as the daughter of A 10).

children or of young detainees on their own.<sup>7919</sup> The Chamber observes from these photographs that some of those detained were clearly very young. Children between the ages of one and six were detained at S-21 along with their mothers in a large cell.<sup>7920</sup> NORNG Chanphal was detained at S-21 along with his brother when he was approximately eight years old. He recalled seeing two jeeps arriving before he was arrested along with his brother, mother and two other females carrying babies in their arms. Upon his arrival at S-21, he watched his mother have her photo taken. NORNG Chanphal, his brother, mother and the other women and children with them were taken to a common room. The next morning, he and his brother were separated from their mother and taken to a workshop, where they slept and ate with other children. They were fed gruel that was sometimes rotten and NORNG Chanphal did not recall ever having taken a bath at S-21.<sup>7921</sup> NORNG Chanphal was at S-21 when the Vietnamese entered the premises in January 1979. At that point, the children were very weak and NORNG Chanphal saw the body of a fellow child prisoner who had died with ants crawling on his or her face.<sup>7922</sup>

2335. The NUON Chea Defence submits that the majority of the children registered at S-21 were young cadres, that it was uncertain whether they were actually arrested

<sup>7919</sup> See e.g., S-21 photographs, E3/8058, ERN P00000046-P00000049; E3/8639.164, ERN P00000216; E3/8639.171, ERN P00000223; E3/8639.219, ERN P00000271; E3/8639.220, ERN P00000272; E3/8639.481, ERN P00000533; E3/8639.494, ERN P00000546; E3/8639.507, ERN P00000559; E3/8639.508, ERN P00000560; E3/8639.649, ERN P00000701; E3/8639.705, ERN P00000757; E3/8639.1081, ERN P00001133; E3/8639.1919, ERN P00001971; E3/8639.1962, ERN P00002014; E3/8639.1967, ERN P00002019; E3/8639.3039, ERN P00003091; E3/8639.3069, ERN P00003121; E3/8639.3199, ERN P00003251; E3/8639.4372, ERN P00004424; E3/8639.4406, ERN P00004458; E3/8639.4694, ERN P00004746; E3/8639.4992, ERN P00005044; E3/8639.5070, ERN P00005122; E3/8639.5109, ERN P00005161. The Chamber notes that in their Closing Statements, the Co-Prosecutors referred to the photograph of a 13-year-old Vietnamese girl from Svay Rieng who entered S-21 in May 1978 and the names of 16 Vietnamese children who appear on S-21 documentary records. See T. 15 June 2017 (Closing Statements), E1/522.1, pp. 67-68.

<sup>7920</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 13-14, 18; HIM Huy Interview Record, E3/5154, 18 September 2007, p. 9, ERN (En) 00161603. See also, Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 31-32, 42, ERN (En) 00346489-00346490, 00346500 (testifying about two children he saw at S-21); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 56 (testifying that he was never asked to interrogate the children); T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 55-56 (testifying that he did not personally photograph children at S-21 and that he rarely saw large numbers of children); Case 001 Transcript (NORNG Chanphal), E3/7453, 2 July 2009, pp. 49-50, ERN (En) 00348154-00348155.

<sup>7921</sup> Case 001 Transcript (NORNG Chanphal), E3/7453, 2 July 2009, pp. 25-30, 32, ERN (En) 00348130-00348135, 00348137. See also, T. 9 April 2012 (KAING Guek Eav), E1/61.1, pp. 112-113; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 20-21, 38 (testifying that NORNG Chanphal was detained at S-21); T. 27 June 2016 (KAING Guek Eav), E1/444.1, p. 25 (stating that he was shown an S-21 document relating to NORNG Chanphal's mother, and apologised to him because "his parents died at S-21").

<sup>7922</sup> Case 001 Transcript (NORNG Chanphal), E3/7453, 2 July 2009, pp. 32-34, ERN (En) 00348137-00348139.

and that, even if they were arrested, this was likely due “to their suspected participation in unlawful activities”, including children who worked at S-21.<sup>7923</sup> The NUON Chea Defence seems to acknowledge that some children entered S-21 but suggests that they “might have been accompanying their parents” and that these children were not considered detainees.<sup>7924</sup> The Chamber finds that these submissions are largely based on speculation and do not materially affect the Chamber’s assessment of whether or not their detention was arbitrary and thus unlawful. The lawfulness of the detention will be addressed in Section 12.2.24: Legal Findings. The Chamber also finds that the evidence cited by the NUON Chea Defence does not support the proposition that hardly any children were detained at S-21 and that they were instead sent to Prey Sar.<sup>7925</sup> Further, the evidence clearly establishes, and the Chamber is accordingly satisfied, that women and children were detained at S-21.

#### 12.2.10. *Prey Sar*

2336. According to the Closing Order, Prey Sar (S-24) was a labour camp located outside of Phnom Penh that operated as a prison and work site.<sup>7926</sup> The facts pertaining to Prey Sar were excluded from the scope of Case 002/02 and accordingly the Chamber does not make any factual findings with respect to crimes alleged to have been committed at this location.<sup>7927</sup> The KHIEU Samphan Defence challenges the hearing of witnesses who testified with respect to possible crimes committed in Prey Sar.<sup>7928</sup> Consistently with its prior ruling, the Chamber only has regard to evidence pertaining to the Prey Sar to the extent that this evidence was related to: (a) the creation and functioning of S-21 and also (b) to the killings of detainees at Choeung Ek, as a number of individuals were sent directly there from Prey Sar in order to be executed.<sup>7929</sup> The Chamber has also had regard to this evidence for the purpose of addressing the NUON

<sup>7923</sup> NUON Chea Closing Brief, paras 568-569.

<sup>7924</sup> NUON Chea Closing Brief, para. 570.

<sup>7925</sup> NUON Chea Closing Brief, para. 569. The Chamber is satisfied that children were detained at Prey Sar, but rejects the NUON Chea Defence’s submission that children were almost exclusively detained there as opposed to S-21; evidence shows that children were detained and killed in both places. *See above*, para. 2334. *See below*, paras 2510, 2522, 2530.

<sup>7926</sup> Closing Order, para. 400.

<sup>7927</sup> Additional Severance Decision, E301/9/1, 4 April 2014. *See also*, T. 2 June 2016 (oral ruling), E1/430.1, pp. 48-49.

<sup>7928</sup> KHIEU Samphan Closing Brief, paras 1194-1195.

<sup>7929</sup> T. 2 June 2016 (oral ruling), E1/430.1, pp. 48-49. *See below*, paras 2337, 2530.

Chea Defence's submissions that a large number of people registered at S-21 were in fact sent to Prey Sar.

2337. Prey Sar, also known as S-24, S-21D or S-21 Khor (or Kho),<sup>7930</sup> was a re-education centre located to the southwest of Phnom Penh in the Dangkao district, Kandal province (present-day Phnom Penh municipality).<sup>7931</sup> It extended roughly 380 hectares from Choeng Ek execution site and Bakou village to the west of Prey Sar Prison.<sup>7932</sup> According to Duch, those sent to Prey Sar were not formally called “enemies”, but were labelled as combatants.<sup>7933</sup> The main role of Prey Sar was to re-educate people,<sup>7934</sup> and some individuals were sent to S-21 after being sent to work at Prey Sar.<sup>7935</sup> Similarly, some S-21 staff members were also removed and reassigned to work at Prey Sar, and were later sent back to S-21 to be killed.<sup>7936</sup> Evidence indicates that many prisoners were sent directly from Prey Sar to Choeng Ek to be killed.<sup>7937</sup>

2338. The NUON Chea Defence submits that the majority of prisoners listed as having been arrested and detained at the S-21 Security Centre were in fact only registered at a

<sup>7930</sup> Kho or Khor represents the letter “D” in the Khmer alphabet. *See above*, para. 2143.

<sup>7931</sup> Case 001 Trial Judgement, para. 192; Interview Record of KAING Guek Eav, E3/1578, 27 March 2008, p. 3, ERN (En) 00194547.

<sup>7932</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 94-95; DK Telegram, E3/1100, 16 May 1976, ERN (En) 00517911 (“The land size of Prey Sar is 380 hectares”); Case 001 Transcript (BOU Thon), E3/7472, 12 August 2009, p. 71, ERN (En) 00364370 (testifying that “Bakou was part of S-21 and was a tempering site. Bakou was considered to be part of Prey Sar [...] Bakou was led by Huy and Huy was under the supervision of Duch”); NHEM Ny DC-Cam Interview, E3/5159, 19 August 2003, p. 10, ERN (En) 003035233 (stating that Prey Sar was also called Bakou Village).

<sup>7933</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 54-55.

<sup>7934</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 55-56.

<sup>7935</sup> T. 16 September 2016 (NOEM Oem), E1/475.1, p. 14 (testifying that they were photographed when transferred from Prey Sar). Some people, for example SRENG Thi, were sent from Prey Sar to Kampong Chhnang Airfield Construction Site. *See below*, paras 2352-2353; KOY Mon Interview Record, E3/369, 29 May 2008, pp. 4-5, ERN (En) 00272716-00272717 (KOY Mon was a member of Division 170 who was sent to Prey Sar for tempering together with his unit, and from there was sent to Kampong Chhnang Airfield in late 1977). *See also*, Case 001 Transcript (KAING Guek Eav), E3/7477, 15 September 2009, p. 83, ERN (En) 00377742 (Duch likened Prey Sar to Kampong Chhnang Airfield Worksite, saying “[I]et me state again that the people who were transferred into the unit at the airfield was already decided as partly a prison already so their status was like the status of those who were sent to Prey Sar”).

<sup>7936</sup> T. 3 May 2016 (HIM Huy), E1/426.1, p. 97; T. 5 May 2016 (HIM Huy), E1/428.1, p. 9.

<sup>7937</sup> *See above*, paras 2151, 2157 (HUY Sre was in charge of Prey Sar); Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, p. 12, ERN (En) 00344119 (testifying that children were separated from their parents and sent to the rice fields at Prey Sar and then smashed, as opposed to the “rest” who were killed around the S-21 compound); Case 001 Transcript (KAING Guek Eav), E3/5804, 24 June 2009, pp. 30, 53-54, ERN (En) 00345024, 00345047-00345048. *See also*, S-21 list of prisoners under Brother Huy Sre's authority to be eliminated, E3/2133, 23 July 1977; S-21 list of prisoners who were smashed on 30.6.77 Brother Huy Sre's Section, E3/2285, 1 July 1977, pp. 73-81, ERN (En) 01564833-01564841; S-21 list of prisoners smashed, Brother Huy Sre's section, E3/2285, 10 July 1977, pp. 88-89, ERN (En) 01564848-01564849 (a notation reads: “in *Bang Huysre* [*sic*] section, there were 409 people withdrawn from 29.6.77 to 10.7.77”); S-21 list of prisoners executed on 25-6-77 HUY Sre Section, E3/3186, 26 June 1977, p. 4, ERN (En) 00784596. *See below*, para. 2530.

peripheral office within the S-21 complex before being sent to locations including Prey Sar for re-education or released altogether.<sup>7938</sup>

2339. All incoming prisoners sent to both the S-21 Security Centre and Prey Sar were received at the common reception point near S-21 located on Street 360, which was subsequently referred to as the Beehive Radio Station.<sup>7939</sup> Incoming detainees were stopped at the main road, and HIM Huy was asked to send those designated for re-education to Prey Sar to work in the fields. The decision of who would be sent to Prey Sar was made by the Party Centre.<sup>7940</sup> Those sent to Prey Sar to be refashioned were not considered to have committed the most serious offences and thus did not enter S-21.<sup>7941</sup>

2340. Intake procedures for incoming prisoners at the S-21 reception point varied in practice. HIM Huy testified that prisoners whom Hor instructed him to drive to Prey Sar were not registered or photographed at the reception point before their departure.<sup>7942</sup> In contrast, Duch testified that, in principle, people sent to Prey Sar had their photographs taken, though it is not clear from his testimony where this occurred.<sup>7943</sup> Duch clarified in one instance that he believed incoming prisoners bound for Prey Sar were registered on a separate list, and their photographs were not taken in the same

<sup>7938</sup> NUON Chea Closing Brief, paras 637-639, 642.

<sup>7939</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 48; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 100-101, ERN (En) 00344207-00344208; Case 001 Transcript (KAING Guek Eav), E3/5804, 24 June 2009, p. 14, ERN (En) 00345008.

<sup>7940</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 48; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 56. *See also*, Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 19-20, ERN (En) 00940354-00940355 (where enemies were placed in three categories: (1) the destructive category where it was imperative to screen them out; (2) the normal liberal category who had to be re-educated in schools; and (3) those merely incited by the enemy who had to be educated to no longer believe in the enemy).

<sup>7941</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 56; Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, pp. 34-35, ERN (En) 00353914-00353915; T. 3 May 2016 (HIM Huy), E1/426.1, pp. 96-97. *See also*, T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 59-60; T. 7 June 2016 (SUOS Thy), E1/433.1, pp. 3-6 (testifying that he was not aware of any detainees from S-21 being transferred to Prey Sar or what happened to detainees who were not brought into the main S-21 compound but who were processed by the special force at the outer premises); T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 111; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 19-20, ERN (En) 00940354-00940355.

<sup>7942</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 35-39.

<sup>7943</sup> Case 001 Transcript (KAING Guek Eav), E3/7457, 9 July 2009, pp. 13-14, ERN (En) 00350462-00350463 (stating that Comrade Song was in charge of photographs of detainees at Prey Sar, but “I don’t fully understand how the practice would have been” and “In principle, people who were sent to Prey Sar would have been [*sic*] taken photographs”); T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 111 (“Immediately upon arrival, each prisoner would be taken photograph [*sic*]. And those who supposed to be sent to Prey Sar would be sent”).

place as those bound for S-21.<sup>7944</sup> SUOS Thy, who managed the daily list of incoming S-21 prisoners, indicated that he did not record prisoners bound for Prey Sar, stating: “I was not involved because there was each document worker for each respective unit”.<sup>7945</sup> SUOS Thy’s office (where he received prisoners for photographs and registration) was close to the entrance of the S-21 detention facility, and prisoners bound for Prey Sar were sent away from the previous reception point before ever reaching his office.<sup>7946</sup>

2341. Head photographer NOEM Oem testified that photographs were “sometimes” taken of the people sent to Prey Sar. He was sent to Prey Sar two to three times per year to take photographs of detainees if S-21 negatives were damaged, which indicates that perhaps photographs of some Prey Sar prisoners were first taken at the reception point.<sup>7947</sup>

2342. Similarly, LACH Mean testified to having been sent to Prey Sar to take photographs for biographies.<sup>7948</sup> At least four people attest to having their photograph and at times their biography taken at Prey Sar.<sup>7949</sup> Other former Prey Sar detainees claim that while they made their biography at Prey Sar, they did not have their photo taken there.<sup>7950</sup>

<sup>7944</sup> Case 001 Transcript (KAING Guek Eav), E3/5804, 24 June 2009, pp. 39-40, ERN (En) 00345033-00345034.

<sup>7945</sup> Case 001 Transcript (KAING Guek Eav), E3/5804, 24 June 2009, pp. 39-40, ERN (En) 00345033-00345034; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 11-12, ERN (En) 00356797-00356798.

<sup>7946</sup> SUOS Thy Interview Record, E3/444, 18 October 2007, p. 6, ERN (En) 00162613. *See above*, para. 2339.

<sup>7947</sup> T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 16, 47-52; T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 7-12, 31 (confirming that photographs were sometimes taken of prisoners outside of the S-21 compound); NIM Kimsreang Interview Record, E3/7639, 22 October 2007, pp. 6, 8, ERN (En) 00162734, 00162736 (stating that the majority of prisoners who were photographed were sent to farm rice). Duch denied that he told NOEM Oem *alias* NIM Kimsreang that most of the prisoners were sent to the rice field. *See* T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 50-51.

<sup>7948</sup> Case 001 Transcript (LACH Mean), E3/7468, 4 August 2009, p. 117, ERN (En) 00360276.

<sup>7949</sup> IEM Chhun Ky DC-Cam Interview, E3/7622, 6 March 2003, p. 19, ERN (En) 00337868; NHEM Ny DC-Cam Interview, E3/5159, 19 August 2003, pp. 8, 11, ERN (En) 00305231, 00305234; Case 001 Transcript (NAM Mon), E3/7457, 9 July 2009, p. 96, ERN (En) 00350545; Case 001 Transcript (NAM Mon), E3/7458, 13 July 2009, p. 49, ERN (En) 00350888; KAING Pan Interview Record, E3/7655, 31 March 2008, p. 6, ERN (En) 00401898.

<sup>7950</sup> SAOM Mon DC-Cam Interview, E3/5677, 13 August 2003, p. 14, ERN (En) 00597377.

2343. While the intake process at the S-21 reception point varied, it remains clear that arrested persons bound for Prey Sar were not registered by SUOS Thy and detained in the inner premises of S-21 before being sent to Prey Sar also known as S-24.

2344. The NUON Chea Defence's submission regarding large-scale releases or transfers from S-21 hinges on whether detainees bound for Prey Sar were first registered as entering S-21 and detained therein; *i.e.*, whether their numbers populated SUOS Thy's incoming and daily controlling lists. However, the evidence discussed above shows that those who were sent to Prey Sar from the S-21 reception point passed through separate channels; they were never registered by SUOS Thy and never entered the inner S-21 compound. There were in fact separate lists and a separate documentation process for the detainees headed to Prey Sar existed. As discussed above, their intake procedure varied or was at times non-existent.<sup>7951</sup>

#### 12.2.11. *NUON Chea Defence's "Release" Submission*

2345. The NUON Chea Defence relies on several lists to support its submission that prisoners were released from S-21 *en masse*.<sup>7952</sup> The Chamber will examine each list in turn.

2346. In its Closing Brief, the NUON Chea Defence cites to a list of 100 people from Division 920 labelled as "released" on 26 November 1977 to show that large groups of prisoners were released from detention at S-21.<sup>7953</sup> However, as Duch clarified, NUON Chea told him that these members of Division 920 were sent to him to be smashed. Hor prepared the list and titled it "Prisoners who were to be released", but Duch corrected

<sup>7951</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 35-36; Case 001 Transcript (KAING Guek Eav), E3/7457, 9 July 2009, pp. 13-14, ERN (En) 00350462-00350463; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 111; T. 24 June 2009 (KAING Guek Eav), E3/5804, pp. 39-40, ERN (En) 00345033-00345034; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 11-12, ERN (En) 00356797-00356798; T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 16, 47-52; T. 16 September 2016 (NOEM Oem), E1/475.1, pp. 7, 31; NIM Kimsreang Interview Record, E3/7639, 22 October 2007, p. 8; IEM Chhun Ky DC-Cam Interview, E3/7622, 6 March 2003, p. 19, ERN (En) 00337868; NHEM Ny DC Cam Interview, E3/5159, 19 August 2003, pp. 8, 11, ERN (En) 00305231, 00305234; Case 001 Transcript (NAM Mon), E3/7457, 9 July 2009, p. 96, ERN (En) 00350545; Case 001 Transcript (NAM Mon), E3/7458, 13 July 2009, p. 49, ERN (En) 00350888; KAING Pan Interview Record, E3/7655, 31 March 2008, p. 6, ERN (En) 00401898.

<sup>7952</sup> NUON Chea Closing Brief, para. 643; S-21 list of people released on 26-11-77/Division 920, E3/8648, 2 December 1977; "Brief Biography of Released Soldiers of Company 44 Security", E3/965, 20 December 1975.

<sup>7953</sup> NUON Chea Closing Brief, para. 643. *See also*, S-21 list of people released on 26-11-77/Division 920, E3/8648, 2 December 1977. The Chamber notes that E3/8648 and E3/10264 both contain English translations of the same list, which vary slightly in wording, but are substantively the same.



it, making an annotation on this list indicating “for removal”; *i.e.* these people were to be executed.<sup>7954</sup> SUOS Thy also denied that there were lists of released prisoners from S-21 but testified that if someone came to S-21 to have an individual released he did not know about this.<sup>7955</sup>

2347. Other contemporaneous S-21 lists corroborate this interpretation, and show that at least 38 of the Division 920 cadres mentioned in the “release” list were sent to S-21 from Prey Sar – all on dates subsequent to their registration on the aforementioned “release” list.<sup>7956</sup> In light of credible testimony on this point, the Chamber is satisfied

<sup>7954</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 86-87; S-21 list of those released on 26.11.77 – Division 920, E3/10264, 2 December 1977, p. 1, ERN (En) 01249736. *See also*, T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 63-65.

<sup>7955</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 82-84 *referring to* S-21 list of people released on 26-11-77/Division 920, E3/8648, 2 December 1977. SUOS Thy was unaware of any S-21 detainees who may have been sent to rice fields in Prey Sar or S-21D. *See* T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 84-88 (after being referred to S-21 Biography, E3/10555, pp. 2-4, ERN (En), 01462398-01462400; NIM Kimsreang Interview Record, E3/7639, 22 October 2007, p. 8, ERN (En) 00162736). The Chamber finds the answer provided by NIM Kimsreang in E3/7639 – that most of the prisoners who were photographed were sent to farm rice – to be equivocal, particularly in light of SUOS Thy’s credible evidence that those who photographed inside S-21 were never sent to the rice fields, but that some people may have been photographed in the outer section before they were sent to the rice fields.

<sup>7956</sup> CHHOEUNG Soeun/YOEUN Soeung, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) and is listed as having entered S-21 on 12 December 1977 (*see* S-21 list of prisoners entering in December 1977, E3/9950, 7 January 1978, p. 22, ERN (En) 01367584; List of Prisoners from Division 703, E3/1668, 26 November 1977, p. 3, ERN (En) 00185257); EAN Hon/IEN Hon/EAN Hun, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 25 January 1978 (*see* S-21 list of prisoners from S-21 D, E3/8460, 18 September 1977, ERN (En) 00843446); MEAS Lan, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 10 June 1978 (*see* S-21 list of prisoners entering in June 1978, E3/10161, 2 July 1978, p. 39, ERN (En) 01563995; Name of prisoners of different division entry in February to June 1978, E3/9905, undated, p. 26, ERN (En) 01398896); MAM Vin/MAM Bol/MORM Bol, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 13 February 1978 (*see* S-21 list of prisoners entering on 13 February 1978, E3/10451, 13 February 1978, p. 1, ERN (En) 01366964); KHOEM Seam Muoy, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 12 December 1977 (*see* S-21 list of prisoners entering in December 1977, E3/9950, 7 January 1978, p. 23, ERN (En) 01367585; List of Prisoners from Division 703, E3/1668, 26 November 1977, p. 3, ERN (En) 00185257); TE Na, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 11 July 1978 (*see* S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539679); CHANN Chhoeun, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 13 January 1978 (*see* S-21 list of prisoners entering on 13 January 1978, E3/10433, 13 January 1978, p. 1, ERN (En) 01366924; S-21 list of prisoners entering in January 1978, E3/10430, undated, p. 15, ERN (En) 01366857; S-21 list of prisoners of Division 920 Section, E3/10306, 9 March 1978, p. 1, ERN (En) 01528659); BO Boeun, allegedly released on 26 November 1977 (*see* S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 in July 1978 (*see* S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539679); YEAN Yin/YEAN Yeun/SAN Yin, allegedly released on 26 November 1977 (*see*

S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 11 July 1978 (see S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539679); SAMRITH Samrit/SAM Rith, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 11 July 1978 (see S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539680); HEM Muon, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 13 February 1978 (see S-21 list of prisoners entering on 13 February 1978, E3/10451, 13 February 1978, p. 3, ERN (En) 01366966); HAI Run/RUN Hai, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 11 July 1978 (see S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539679); SIEK En/SIEK En Kren, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 16 February 1978 (see S-21 list of prisoners entering in February 1978, E3/10439, undated, p. 11, ERN (En) 01398404); PAK Thiev/PAT Chheav, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 13 February 1978 (see S-21 list of prisoners entering on 13 February 1978, E3/10451, 13 February 1978, p. 3, ERN (En) 01366966); TRACH Ruon/THAP Ruon, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 6 April 1978 (see S-21 list of prisoners entering in April 1978, E3/10361, multiple dates, p. 45, ERN (En) 01368929); THLANG Rin/THLANG Vin, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 17 April 1978 (see S-21 list of prisoners entering on 17 April 1978, E3/10363, 17 April 1978, p. 5, ERN (En) 01559951); NEOU Samnieng/NEOU Samneang, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 17 April 1978 (see S-21 list of prisoners entering on 17 April 1978, E3/10363, 17 April 1978, p. 5, ERN (En) 01559951); HANG Hakk/HANG Hak/HANG Hat, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 16 July 1978 (see S-21 list of prisoners entering in July 1978, E3/10120, undated, p. 11, ERN (En) 01399073); S-21 list of prisoners entering on 16 July 1978, E3/10039, multiple dates, p. 5, ERN (En) 01368419); LIM Uong, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 14 July 1978 (see S-21 list of prisoners entering on 14 July 1978 from 21 Kh, E3/10108, 14 July 1978, p. 9, ERN (En) 01397571); PRUM An/PROM Orn Rai, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 7 January 1978 (see S-21 list of prisoners entering on 7 January 1978, 21 Kho, E3/10432, multiple dates, p. 8, ERN (En) 01366922); SAM Makk/SAM Mak, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 13 January 1978 (see S-21 list of persons entering on 13 January 1978, E3/10433, 13 January 1978, p. 1, ERN (En) 01366924); S-21 list of prisoners entering in January 1978, E3/10430, undated, p. 16, ERN (En) 01366858); HANG Lay/HAGN Lay, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292816) is listed as having entered S-21 on 11 July 1978 (see S-21 list of prisoners entering in July 1978, Farm Section, E3/10105, July 1978, ERN (En) 01539679); NOU Chhoeun/NUON Chhoeun, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 23 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10505, January 1978, p. 46, ERN (En) 01398586); S-21 list of prisoners entering on 23 January 1978, E3/2181, 23 January 1978, ERN (En) 001817130); CHEA Va, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 25 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10505, multiple dates, p. 52, ERN (En) 01398592); S-21 list of prisoners from S-21 D, E3/8460, 18 September 1977, ERN (En) 00843446); MEAS Noeun, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 23 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10505,

beyond reasonable doubt that the prisoners on the Division 920 list were not to be released but were prisoners that the Party had ordered to be “smashed”.<sup>7957</sup>

2348. The NUON Chea Defence also cites to a list dated 12 December 1975, labelled “Brief Biography of Released Soldiers”, recording the names of 49 soldiers of Company 44 of Division 703. The Defence claims that these soldiers were arrested,

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January 1978, p. 46, ERN (En) 01398586; S-21 list of prisoners entering on 23 January 1978, E3/2181, 23 January 1978, ERN (En) 00181713); SANN Mapp/SANN Map/SAN Mab, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 29 June 1978 (see S-21 list of prisoners entering in June 1978, E3/10161, 2 July 1978, p. 39, ERN (En) 01563995; S-21 list of prisoners of different division entry in February to June 1978, E3/9905, undated, p. 25, ERN (En) 01398895); SIEV Heng/SENG Siv Heng, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 8 May 1978 (see S-21 list of prisoners entering on 8 May 1978, E3/10142, 8 May 1978, p. 1, ERN (En) 01462134); KHUON Tai-Eng/YUON Tai Eng/KHUON Tay Eng/KHUON Chhai Eng, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 13 January 1978 (see S-21 list of prisoners entering on 13 January 1978, E3/10433, 13 January 1978, pp. 1-2, ERN (En) 01366924-01366925; S-21 list of prisoners entering in January 1978, E3/10430, undated, p. 16, ERN (En) 01366858); YOUK Mon/YOU Mon/YU Mon, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 22 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10430, undated, p. 16, ERN (En) 01366858); PRUM Leap/PROM Leat, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 13 January 1978 (see S-21 list of persons entering on 13 January 1978, E3/10433, 13 January 1978, p. 1, ERN (En) 01366924); HUN Uy/HUN UI/HIN Uy, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 16 February 1978 (see S-21 list of prisoners entering in February 1978, E3/10439, undated, p. 8, ERN (En) 01398401); SENG Huy/SENG Hun/SENG Hup, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 11 July 1978 (see S-21 list of persons entering in July 1978, E3/10105, July 1978, ERN (En) 01539679); SUON Oeun/UON Oeun, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292817) is listed as having entered S-21 on 16 February 1978 (see S-21 list of prisoners entering in February 1978, E3/10439, undated, p. 11, ERN (En) 01398404; S-21 list of prisoners of Division 920 Section, E3/10306, 9 March 1978, p. 1, ERN (En) 01528659); KEO Lonh Reth/KEO Ren, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 25 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10505, multiple dates, p. 51, ERN (En) 01398591; S-21 list of prisoners from S-21D, E3/8460, 18 September 1977, ERN (En) 00843446); CHANN Chan/CHAN Chan, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 23 January 1978 (see S-21 list of prisoners entering on 23 January 1978, E3/2181, 23 January 1978, ERN (En) 00181713); POAN Pin, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 25 January 1978 (see S-21 list of prisoners entering in January 1978, E3/10505, January 1978, p. 51, ERN (En) 01398591; S-21 list of prisoners of Division 920 Section, E3/10306, 9 March 1978, p. 1, ERN (En) 01528659); HUOT Sok/HOUT Sokha, allegedly released on 26 November 1977 (see S-21 list of prisoners released on 26-11-77/Division 920, E3/8648, 2 December 1977, ERN (En) 00292818) is listed as having entered S-21 on 13 January 1978 (see S-21 list of prisoners entering on 13 January 1978, E3/10433, 13 January 1978, p. 1, ERN (En) 01366924; S-21 list of prisoners entering in January 1978, E3/10430, undated, p. 15, ERN (En) 01366857).

<sup>7957</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 63-65.

detained and released from S-21 before the detention site was moved to the Tuol Sleng premises.<sup>7958</sup> An inspection of the content of the list and other contemporaneous S-21 prisoner lists proves otherwise.

2349. First, the top right-hand corner of the list's cover page contains the "TSL" code, indicating that this is a document from Tuol Sleng. The top left corner of the list is addressed to "Revolutionary Army of Kampuchea, Brigade 703, Battalion 96" and at the bottom of the cover page, an annotation reads "For Battalion 96 Com" above a signature. Similarly, the last page of the document also states "For Battalion 96 Com".<sup>7959</sup> The content of these notations indicates that this document was sent from S-21 to Battalion 96, requesting the "release" of the soldiers mentioned on the list. A comparison of S-21 entry lists shows that at least 24 of these 49 soldiers listed for "release" in December of 1975 were subsequently arrested, registered and sent to be killed at S-21.<sup>7960</sup> Accordingly, the Chamber finds that this was a list sent from S-21 to

<sup>7958</sup> NUON Chea Closing Brief, para. 643. *See* Brief Biography of Released People, E3/965, 20 December 1975, ERN (En) 00316312-00316318.

<sup>7959</sup> Brief Biography of Released People, E3/965, 20 December 1975, ERN (En) 00316312, 00316318; T. 9 January 2017 (HIN Sotheany), E1/517.1, p. 53 (indicating that original documents at the Tuol Sleng Museum had the TSL identification number).

<sup>7960</sup> THONG Nget, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316313) is listed as having entered S-21 on 22 April 1977 (*see* S-21 list of prisoners from Division 703's Section, E3/10496, undated, p. 2, ERN (En) 01528805); SOEM Yeng/SIM Yeng, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316313) is listed as having been executed on 19 January 1977 (*see* S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837640); CHHEANG Prang/Praing, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316313) is listed as having entered S-21 on 15 June 1978 (*see* S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978, p. 40, ERN (En) 01563996; S-21 list of prisoners, E3/9905, undated, p. 29, ERN (En) 01398899); PHENG Oeun, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316313) is listed as having entered S-21 on 22 September 1976 (*see* S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 89, ERN (En) 01367217; S-21 list of prisoners who entered from 15 September 1976, E3/10065, undated, p. 25, ERN (En) 01397487); LAO Seng Kim, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316314) is listed as having entered S-21 on 7 May 1977 (*see* S-21 list of prisoners arrived on 7 May 1977, E3/8660, May 1977, p. 38, ERN (En) 01565351); MEUN Yeng/MOENG Seng, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316314) is listed as having entered S-21 on 24 February 1977/2 April 1977 and having been executed on 10 April 1977 (*see* S-21 list of prisoners entering on 24 February 1977, E3/10266, p. 42, ERN (En) 01367739; S-21 list of prisoners from 17 February 1977 to 17 April 1977, E3/10506, 29 April 1977, p. 29, ERN (En) 01369007); KRUY Cheat, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316314) is listed as having entered S-21 on 14 July 1978 (*see* S-21 list of prisoners who entered on 14 July 1978 from 21 Kh, Srae, E3/10108, undated, p. 8, ERN (En) 01397570); KHUN Kuoy, allegedly released on 20 December 1975 (*see* Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316315) is listed as having entered S-21 on 24 or 25 February 1977 and having been executed on 18 March 1977 (*see* Entry List of Prisoners From 17

February 1977 to 17 April 1977, E3/10506, 29 April 1977, p. 113, ERN (En) 01369091; S-21 list of prisoners entering on 24 February 1977, E3/10266, 26 February 1977, p. 43, ERN (En) 01367740); MEN Ol, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316316) is listed as having entered S-21 on 30 or 31 March 1976 (see S-21 list of prisoners under interrogation, E3/10457, undated, p. 11, ERN (En) 01398443; S-21 list of prisoners, E3/10453, undated, p. 51, ERN (En) 01367894); CHHIM Pauch, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 12 April 1978 (see S-21 list of prisoners who entered the prison on 12 April 1978, E3/10361, April 1978, p. 80, ERN (En) 01368964); PROEUNG Sileang allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 4 or 14 November 1976 (see S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 96, ERN (En) 01367224; S-21 list of prisoners who entered from 1 November 1976 to 15 November 1976, E3/10061, undated, p. 10, ERN (En) 01397452); CHENG Srom, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 19 or 20 September 1976 (see S-21 list of prisoners who entered from 15 September 1976, E3/10065, p. 25, ERN (En) 01397487; S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, p. 89, ERN (En) 01367217); KIM Srou, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 5 July 1977 and as having been executed on 16 July 1977 (see S-21 list of prisoners who entered in July 1977/Division 703, E3/9954, 5 August 1977, p. 33, ERN (En) 01563489); VAN/VANN Yeng allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 4 July 1977 (see S-21 list of prisoners who entered in July 1977/Division 703, E3/9954, 5 August 1977, p. 33, ERN (En) 01563489); PRACH Torn, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316318) is listed as having been executed on 27 May 1976 (see S-21 list of prisoners executed in 1976, E3/3187, undated, ERN (En) 00874595); TIM Kim Ieng/Eang, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316318) is listed as having entered S-21 on 9 July 1976 and as having been executed on 14 July 1976 (see S-21 list of prisoners who died from 1.7.76 to 15.6.76, E3/8452, July 1978, ERN (En) 00843422); CHAN/SAN Song allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316317) is listed as having entered S-21 on 28 August 1976 and having been executed on 2 October 1976 (see S-21 list of Prisoners Executed from 1 October 1976 to 15 October 1976, E3/3187, ERN (En) 00874174); IM Phal, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316316) is listed as having entered S-21 on 22 July 1976 and being executed on 24 July 1976 (see S-21 list of Prisoners Executed and Died of Diseases from 15 July 1976 to 30 July 1976, E3/3187, ERN (En) 00874517); HONG Chen, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316315) is listed as having entered S-21 on 26 October 1976 and being executed on 27 October 1976 (see S-21 list of Prisoners Executed and Died of Diseases from 15 July 1976 to 30 July 1976, E3/3187, ERN (En) 00874322); SAO Vooun, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316314) is listed as having entered S-21 on 26 October 1976 and as having been executed on 27 October 1976 (see S-21 list of Prisoners Executed from 1 October 1976 to 15 October 1976, E3/3187, ERN (En) 00874322); EA/EAR Chhai Pauv, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316314) is listed as having entered S-21 on 24 July 1976 and having been executed on 7 May 1976 (see S-21 list of prisoners Executed and Died of Diseases from 15 July 1976 to 30 July 1976, E3/3187, ERN (En) 00874518, 00874521); MOU/MUO Pech, allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316315) is listed as having been executed on 30 March 1976 (see S-21 list of prisoners who Died at Office “S-21 Kor (c)”, E3/1539 [E3/1540], undated, ERN (En) 00182903); EA/EAR Kok allegedly released on 20 December 1975 (see Brief Biography of Released Soldiers of Company 44 Security, E3/965, 20 December 1975, ERN (En) 00316315) is listed as having been executed between 29 June 1977 and 10 July 1977 (see S-21 list of prisoners smashed, Brother Huy Sre’s section, E3/2285, 10 July 1977, p. 89, ERN (En) 01564849).

Battalion 96, specifying who was to be “released” from the Brigade 703 (*i.e.* arrested) and sent to S-21. Here, the term “release”, similarly to its use in the Division 920 list that Duch discussed above, indicates the prisoners’ arrest. Based on the above evidence, the Chamber rejects the NUON Chea Defence’s submission that these two lists prove that large groups of prisoners were freed from S-21.

2350. As discussed in further detail below, it was CPK policy to smash all people who were arrested and sent to S-21.<sup>7961</sup> In this regard, Duch testified that “when someone was arrested we actually had to smash them [...] There was no law to release any person. Those people arrested by the Party had to be interrogated and smashed, and the principle was strict.” It should be noted that Duch concedes that, at times, there were rare exceptions.<sup>7962</sup> HIM Huy, further testified that “[i]t was the instruction from the trainers, particularly Duch. He said anyone who was brought to S-21 would not have the chance to go out, and that [any] person would be killed.”<sup>7963</sup> SUOS Thy, who worked at S-21 throughout its duration,<sup>7964</sup> testified that “[i]t was the reality that after [prisoners] came into S-21 and after their interrogations were concluded, they were considered dead already [...] When they were brought in, they were supposed to be killed.”<sup>7965</sup>

2351. S-21 documentation uses several terms to represent the execution of prisoners, including, but not limited to, “removed”, “smashed” and “taken out”.<sup>7966</sup> When authenticating S-21 daily controlling lists in court, Duch testified that the informational column labelled “released”, found on early controlling lists, was later changed to

<sup>7961</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 18 (testifying that everyone who was arrested and brought to S-21 had to be smashed).

<sup>7962</sup> The Chamber notes that Duch clarified that there were three FULRO members who the Party ordered to be released and some prisoners were released to be allowed to work within the S-21 compound. *See* Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, pp. 15, 40, ERN (En) 00339323, 00339348; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 76-77 (discussing the release of a dentist to work within the Party); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 86; Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, pp. 27-30, ERN (En) 00339622-00339625. The release of members of the FULRO delegation was also confirmed by CHIN Saroeun. *See* CHIN Saroeun DC-Cam Interview, E3/7960, undated, p. 31, ERN (En) 00450296 (“In 1978 arrests of Fulro was [*sic*] conducted and sent to Phnom Penh. They returned.”).

<sup>7963</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 6.

<sup>7964</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 13; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, p. 13.

<sup>7965</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 56.

<sup>7966</sup> *See e.g.*, T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 70-72, 86-87; T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 104; T. 7 May 2013 (Phillip SHORT), E1/190.1, pp. 7-8; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 82; Name List of Prisoners taken out in May 1978, E3/8463, 29 May 1978, ERN (En) 01032507-01032536.

“removed”. Duch clarified that the words “to be removed” meant that the prisoners were to be “smashed”.<sup>7967</sup> Moreover, the strongest evidence contrary to the NUON Chea Defence’s submission that most prisoners were released from S-21 are the contemporaneous, tested S-21 execution lists in evidence which will be analysed in further detail below.<sup>7968</sup>

2352. The NUON Chea Defence highlights several examples of individual prisoners who were allegedly released from the detention centre. The NUON Chea Defence presents SRENG Thi as a prisoner who was arrested, registered, detained and then released from S-21.<sup>7969</sup> In his DC-Cam statement, SRENG Thi initially stated that he was detained at S-22 for three or four months, and then transferred to S-21 in March or April of 1977,<sup>7970</sup> adding that he was finally released from S-21 along with 50 other prisoners. When asked how he knew the place he was detained was S-21 he stated, “Yes I knew”.<sup>7971</sup> SRENG Thi explained to OCIJ investigators that in 1974 he was selected to enter Battalion 132 which was part of Division 11. After 1975, Division 11 was demobilised and was “taken into Division 502”. At the time of the arrest of CHAN Chakrei, commanders in former Division 11 and Division 170 were arrested from the company level upward. He further explained that “in 1977, [his] squad was completely disarmed and placed at Prey Sa, for two or three months” and that later he “was extracted and placed at S-22, located west of Tik La-ak school”. Finally, in late 1977

<sup>7967</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 70-72.

<sup>7968</sup> See e.g., List of prisoners killed on 22/3/7X, E3/1538, undated *verified in* T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 14-15; S-21 list of prisoners who died at office S-21 Kor (C), E3/1539 [E3/1540], undated *verified in* T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 16-17; S-21 list of prisoners smashed on 22 July 1977 ‘Ministry of Public Works’, E3/2285, undated *verified in* T. 21 November 2016 (SON Em), E1/500.1, pp. 23-24, T. 11 August 2016 (ROS Chuor Siy), E1/455.1, pp. 96-97, T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 15-16, T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 100-101; S-21 list of prisoners executed from 1 October 1976 to 15 October 1976, E3/3187, undated *verified in* T. 15 August 2016 (KAUN Sunthara), E1/457.1, pp. 64-65; S-21 list of Prisoners ‘smashed’ on 8-7-77, North Zone, E3/3861, 9 July 1977 *verified in* T. 14 September 2015 (SEN Srun), E1/346.1, pp. 21-23, T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 49-50; S-21 list of prisoners, E3/10454, various dates *verified in* T. 29 November 2016 (KHIEV Neab), E1/503.1, pp. 84-85; S-21 List of prisoners smashed on 6.3.78, E3/1900, 7 March 1977 [*sic*] *verified in* T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 87-94; S-21 List of prisoners taken out in May 78, E3/8463, 29 May 1978, ERN (En) 01032507-01032536 *verified in* T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 40-42. See above, para. 2128.

<sup>7969</sup> NUON Chea Closing Brief, para. 642.

<sup>7970</sup> SRENG Thi DC-Cam Interview, E3/7532, 25 May 2009, pp. 13, 17, ERN (En) 00329478, 00329482.

<sup>7971</sup> SRENG Thi DC-Cam Interview, E3/7532, 25 May 2009, pp. 16, 18, ERN (En) 00329481, 00329483.

he was “extracted again to work at the Kampong Chhnang airfield”.<sup>7972</sup> None of these locations correspond to S-21.

2353. SRENG Thi later stated that he visited S-21 after the fall of the regime, and he admits to being confused when he found that “the place was deeper than the place where the truck had transported me to”. When asked if S-21 and the place to which he was transferred were the same, he stated “they were different”.<sup>7973</sup> SRENG Thi does not mention S-21 in any of his other statements.<sup>7974</sup> The Chamber finds that SRENG Thi’s initial recollection of these events was confused and the assessment of the entirety of his statements shows that he was neither detained nor subsequently released from S-21. SRENG Thi, like other soldiers of his unit, was detained at Prey Sar, and later at S-22, a site aimed at tempering light offenders, before he was eventually transferred to the Kampong Chhnang Airfield Construction Site.

2354. The Chamber heard the testimony of NUON Trech, a former hospital worker from Division 310, who presented conflicting narratives about whether he had been detained at S-21 and subsequently released.<sup>7975</sup> He testified that in 1977, after the arrest of Oeun, his Division commander, he was asked to attend a meeting along with his comrades in Battalion 314. At the meeting, an announcement was made that their leaders and commanders betrayed the Party and a tape was played with the voice of Oeun discussing a plan to attack Phnom Penh.<sup>7976</sup> After this meeting, while NUON Trech was stationed at Anlong Knan, a truck arrived and transported him to Phnom Penh; his hands were not bound. The truck was fully covered and he did not see the

<sup>7972</sup> SRENG Thi Interview Record, E3/5263, 6 January 2009, pp. 2-4, ERN (En) 00282223-00282225; KOY Mon corroborates the existence of a place named S-22. KOY Mon was a former commander of Battalion 11 in Division 170, and he stated that after the arrest of CHAN Chakrei he was called to a meeting where he was demoted and appointed chief of company with 100 men, which was sent for tempering at Prey Sar, where prisoners were classified as heavy and light prisoners. The heavy prisoners were detained in the “hardest tempering S-21 located along Prek Th’noat river outside of Prey Sar compound. [...] The light prisoners were detained at S-22”. See KOY Mon Interview Record, E3/369, 29 May 2008, pp. 3-4, ERN (En) 00272715-00272716.

<sup>7973</sup> SRENG Thi Interview Record, E3/7532, 25 May 2009, pp. 16, 18-19, ERN (En) 00329481, 00329483-00329484.

<sup>7974</sup> See e.g., SRENG Thi Interview Record, E3/5263, 6 January 2009; SRENG Thi Interview Record, E3/5279, 17 March 2009; SRENG Thi Interview Record, E3/8739, 1 December 2010.

<sup>7975</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 92, 105-107; T. 6 December 2016 (NUON Trech), E1/507.1, pp. 59-65, 92-98; TES Trech Interview Record, E3/7877, 19 June 2009, p. 4, ERN (En) 00346979; TES Ol *alias* TES Trech DC-Cam Interview, E3/7537, 23 January 2004, pp. 8-9, ERN (En) 00251254-00251255. Here the Chamber makes its conclusions about NUON Trech’s credibility only on the limited subject of whether he was detained at S-21 or not, and does not address overall reliability of his statements.

<sup>7976</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 97, 102-103.



places they passed through. When he arrived, he “was placed in a location where [he] was left idle [...] I did not realize it was a prison”. NUON Trech further testified that he made a biography and that his photograph was taken somewhere he believes, in Phnom Penh.<sup>7977</sup> NUON Trech testified that at that place, prisoners were prohibited from moving freely. He was put in a room with some kind of window, but was not tied or shackled in any way. He confirmed his DC-Cam interview in which he stated that when he arrived, there were no guns. He was told to wait for *Angkar*, that *Angkar* would come to call a meeting and that he would be taken away. At this location, NUON Trech was asked whether he worked with “*Yuon*”, Vietnamese spies or the KGB.<sup>7978</sup> Yiet, the deputy director of the hospital that NUON Trech worked at, came to the centre, requested that NUON Trech be released for re-fashioning and left with him.<sup>7979</sup>

2355. NUON Trech stated that “people were not sent straight away to Tuol Sleng, they were sent to *that office* first before they were sent further to Tuol Sleng”.<sup>7980</sup> He testified that “the prison office was under the division” and that he was told that he “would be sent to the international section to treat people”.<sup>7981</sup> During his testimony, NUON Trech was shown his DC-Cam statement in which he stated that he was detained at the “Tuol Sleng prison office”, at which point he responded “at first I did not know that it was a prison compound”. He testified that he later learned that “[a]fter people were placed at that prison and charged by OI, those people would be *further sent to Tuol Sleng*”. He clarified that later he was transferred to Kampong Chhnang to do manual work for the construction of the airfield.<sup>7982</sup> However, when NUON Trech was shown a picture of S-21 with barbed wire, he responded that his detention location had an iron fence, “but when I was sent to Tuol Sleng, yes, there were such barbed wire fences”.<sup>7983</sup> The conditions that NUON Trech describes, such as being put in a room without any kind of restraints, not knowing he was in a prison, and being taken away by his supervisor, are not consistent with conditions at S-21 described by all other witnesses.

<sup>7977</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 104-106; TES Trech Interview Record, E3/7877, 19 June 2009, p. 4, ERN (En) 00346979.

<sup>7978</sup> T. 6 December 2016 (NUON Trech), E1/507.1, pp. 65, 92-93.

<sup>7979</sup> T. 5 December 2016 (NUON Trech), E1/506.1, p. 105; T. 6 December 2016 (NUON Trech), E1/507.1, pp. 63-64.

<sup>7980</sup> T. 6 December 2016 (NUON Trech), E1/507.1, p. 96 (emphasis added).

<sup>7981</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 104, 107.

<sup>7982</sup> T. 5 December 2016 (NUON Trech), E1/506.1, pp. 106-107 (emphasis added).

<sup>7983</sup> T. 6 December 2016 (NUON Trech), E1/507.1 pp. 97-98.

2356. The Chamber notes that NUON Trech was a cadre of relatively low level, who, like many soldiers of Division 310, was sent to be refashioned at the Kampong Chhnang Airport Construction Site.<sup>7984</sup> NUON Trech was transferred to the worksite about two weeks after the meeting during which he heard that his division commander betrayed the Party.<sup>7985</sup> The Chamber also notes that NUON Trech never experienced any coercive measures following his “arrest”, “transfer” or “stay” in a place which he was initially unable to identify as a prison, but which he later characterised later as “a prison office under the division”. Accordingly, the Chamber finds that the evidence does not support the finding that NUON Trech was ever detained at S-21.

2357. The NUON Chea Defence also points to SOKH Sophat as another example of an S-21 prisoner who was released from S-21.<sup>7986</sup> SOKH Sophat is consistent in his claim that he was detained at S-21, but in one instance he says he was arrested in mid-1978, and at other times he claims his arrest was in 1977; the exact date remains unclear. In his statements, SOKH Sophat admits to forgetting certain events and details.<sup>7987</sup> SOKH Sophat presents other questionable inconsistencies between his two statements, such as asserting first that his detention lasted more than a year, and later that the duration of his detention was one and a half months. He spoke in one statement about being walked to a place to be killed, but when asked in his other statement if he had “ever [been] walked near a killing place”, he responded that he had not.<sup>7988</sup>

2358. SOKH Sophat states that he was detained at S-21, where he was housed and made to serve porridge to prisoners until he escaped during the Vietnamese liberation of Phnom Penh. In one statement, SOKH Sophat claimed that he was at some point transferred from S-21 to work in the fields at Prey Sar.<sup>7989</sup> In his DC-Cam statement, he

<sup>7984</sup> See above, paras 2354-2355.

<sup>7985</sup> T. 5 December 2016 (NUON Trech), E1/506.1, p. 104.

<sup>7986</sup> NUON Chea Closing Brief, para. 642.

<sup>7987</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, pp. 25, 27-28, 42-44, ERN (En) 00335112, 00335114-00335115, 00335135-00335137 (first stating he was arrested in mid-1978, and later stating his arrest occurred in 1977); SOK Sophat Interview Record, E3/7664, 14 January 2008, pp. 3-5, ERN (En) 00163803-00163805 (indicating he was arrested “a little while” after late 1977).

<sup>7988</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, pp. 25-26, 47, ERN (En) 00335140; SOK Sophat Interview Record, E3/7664, 14 January 2008, pp. 3, 5, ERN (En) 00163803, 00163805.

<sup>7989</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, pp. 20-22, ERN (En) 00335113-00335115 (stating that in 1978 “*Ta Sy*” arrested him and put him in a truck, and he was driven to Tuol Sleng), 29, ERN (En) 003355122 (describing his escape from S-21 during the confusion “at the end of 1978 just before victory day”), 32, ERN (En) 00335125 (describing freeing himself from loose shackles and jumping from a building and hiding in a pile of mattresses), 47-48, ERN (En) 00335140-00335141 (testifying that he served porridge to prisoners), 49 (stating that he jumped from the building on 7 January); SOK Sophat Interview Record, E3/7664, 14 January 2008, pp. 3-5, ERN (En) 00163803-

describes being tortured at S-21; he claims he was struck with a whip until his skin peeled off, whipped with barbed wire and subjected to electric shocks. Yet in his WRI, SOK Sophat does not speak of experiencing torture but only describes observing other prisoners with injuries and electric shock burns.<sup>7990</sup> SOKH Sophat's description of how his detention ended also reveals inconsistencies. In his DC-Cam statement, SOKH Sophat asserts that on the day that Phnom Penh was liberated, he and the other prisoners who served porridge were shackled. His shackles were loose and he escaped by freeing himself, jumping out of the second floor of his building, and hiding in a pile of mattresses outside of S-21.<sup>7991</sup> Despite at one point stating that he was sent to S-21 in 1977, SOKH Sophat describes being sent to Tay Ninh in Vietnamese territory in early 1978, to "drive the Vietnamese from Cambodian territory" in his WRI. He makes no mention in this statement of a return to S-21 after being sent on this offensive, or his alleged escape on 7 January 1979.<sup>7992</sup>

2359. The Chamber finds that the abovementioned inconsistencies in SOKH Sophat's statements render his testimony unreliable and inconclusive, and without having had an opportunity to hear the witness, the Chamber accords little weight to his evidence. The Chamber is not satisfied that there was a reasonable possibility that he was detained and subsequently released from S-21.

2360. Lastly, the NUON Chea Defence refers to TRY Cheab Ngorn as another example of an S-21 detainee who was released from the facility.<sup>7993</sup> The Defence cites to his confession, in which the interrogator requests, in an annotation, for *Angkar* to release him. The Defence further cites to a DC-Cam report in which the interviewer attempted to speak to TRY Cheab Ngorn about his past.<sup>7994</sup> According to the notes from this conversation, TRY Cheab Ngorn stated that he was transferred from Takhmau

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00163805 (stating that he was arrested and sent to S-21 for a month and a half, and then was sent to the rice fields for one month. The Chamber notes that SOK Sophat only mentions his transfer to Prey Sar in his WRI, not his DC-Cam statement, and it is not clear how or when he was returned to S-21, which would have had to have happened for him to subsequently escape in 1979.

<sup>7990</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, p. 25, ERN (En) 00335118; SOK Sophat Interview Record, E3/7664, 14 January 2008, p. 4, ERN (En) 00163804.

<sup>7991</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, pp. 26, 29, 31-33, 49, 51-52, ERN (En) 00335119, 00335122, 00335124-00335126, 00335142, 00335144-00335145.

<sup>7992</sup> SOKH Sophat DC-Cam Interview, E3/7528, 25 June 2002, p. 40, ERN (En) 00335133; SOK Sophat Interview Record, E3/7664, 14 January 2008, pp. 3-5, ERN (En) 00163803-00163805.

<sup>7993</sup> NUON Chea Closing Brief, para. 643.

<sup>7994</sup> S-21 Confession – TRY Cheab Ngorn, E3/2461, 26 December 1975, ERN (En) 00821866 (annotation dated 25 December 1975 reads: "I request that *Angkar* release him"); DC-Cam PA Field Reports, E3/8778, multiple dates, ERN (En) 00989314.

prison to S-21, spent one month there being interrogated and tortured, and was transferred back to Takhmau prison, and finally to Prey Sar.<sup>7995</sup> Considering that these events occurred in December 1975 during the early stages of S-21's operations when Duch was still Nat's deputy and before its location had been moved to the Ponhea Yat High School, the Chamber finds that there is a reasonable possibility that TRY Cheab Ngorn was imprisoned at S-21 for a time and then "released" in the sense that he was transferred to Prey Sar at some point. However, the Chamber also notes the lack of evidence as to whether TRY Cheab Ngorn was at Prey Sar until the end of the DK regime, or how he otherwise extracted himself from the S-21 complex.

2361. There is further evidence indicating that at times, individual prisoners who had already been detained at S-21 were transferred to Prey Sar to work in the rice fields, or in the exceptional case, were even released.<sup>7996</sup>

2362. In addition to the release lists which are discussed above, the NUON Chea Defence refers to only a few individual examples to support its submission that thousands of prisoners were released from S-21.<sup>7997</sup> Even if the Chamber were to accept that these prisoners were indeed detained at S-21 and later released, the Chamber finds that overwhelming contemporaneous documentary evidence and testimony demonstrate that any release from S-21 after registration would have been a rare exception. Accordingly, the NUON Chea Defence's submission that there were large-scale releases or transfers of registered prisoners out of S-21 is rejected.

<sup>7995</sup> S-21 Confession – TRY Cheab Ngorn, E3/2461, 26 December 1975, ERN (En) 00821866 (the date of this confession indicates that it was taken while Duch was still deputy chairman of S-21 and before S-21 was moved to the Ponhea Yat High School premises; DC-Cam PA Field Reports, E3/8778, multiples dates, ERN (En) 00989314-00989315 (it should be noted that at the end of this report there is an exchange of emails between the director of DC-Cam and the interviewers (*see* ERN (En) 00989319), in which the interviewers state in all caps that: "The word release to me is not mean [*sic*] set free at all. Fact that *Bang* Nean found from list of prisoners released is to be arrested and sent to TSL again and killed [*sic*]."

<sup>7996</sup> Case 001 Transcript (KAING Guek Eav), E3/5798, 9 June 2009, pp. 15, 40, ERN (En) 00339323, 00339348. *See also*, S-21 list of prisoners of Central Zone, E3/2957, undated, ERN (En) 00583842 (entry 58 noted as "transferred to rice field" nine days after entry); Name List of Prisoners, E3/9953, 2 December 1977, ERN (En) 01367687, 01367693 (entries 58 and 12 "removed to" and "gone to rice field" nine days and one week after entry respectively); S-21 names of people entered on 8 March 1978, E3/10222, 8 March 1978, ERN (En) 01396200 ("Having been sent to rice field today, but was sent back); S-21 list of prisoners sent to paddy field on 11 May 1978, E3/8463, 12 May 1978, pp. 281-282, ERN (En) 01554799-01554800. *See above*, paras 2337, 2350.

<sup>7997</sup> NUON Chea Closing Brief, para. 642.

12.2.12. *Conditions of Detention*

2363. Detainees were forced to sit on the floor and had their ankles shackled constantly.<sup>7998</sup> The shackles were removed only when they were transported out of S-21 or when walking to interrogation.<sup>7999</sup> The shackles were only changed from one leg to another when one leg was injured.<sup>8000</sup> Prisoners were not allowed outside of their cells unless they had been selected to work.<sup>8001</sup>

2364. CHUM Mey<sup>8002</sup> was held in solitary confinement in a very small cell which was big enough for one person.<sup>8003</sup> After his interrogation, he was moved to larger rooms on the top floor of the building, where between 20 to 60 detainees were held with their legs shackled to a long row of bars.<sup>8004</sup> There were several rooms like this where detainees were held.<sup>8005</sup> New detainees were regularly brought to replace detainees who had been taken away. When detainees were taken away, the hands of the other detainees were cuffed before the guards unlocked the long bar.<sup>8006</sup> All detainees had to lie down, and had to ask for permission if they wanted to sit up.<sup>8007</sup> Detainees were forced to sleep on the floor with no sleeping mats, pillows or mosquito nets.<sup>8008</sup>

<sup>7998</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 24; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 10, ERN (En) 00346468; T. 25 April 2016 (LACH Mean), E1/421.1, p. 72. *See also*, T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 8-9.

<sup>7999</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 74; Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 39, ERN (En) 00341724.

<sup>8000</sup> Case 001 Transcript (LACH Mean), E3/7468, 4 August 2009, p. 68, ERN (En) 00360227.

<sup>8001</sup> Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 43, ERN (En) 00341728.

<sup>8002</sup> For discussion of CHUM Mey's credibility, *see above*, paras 2083-2085.

<sup>8003</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 23-26, 44-45 (testifying that he was detained in Room 22 which measured approximately 1.5 metres by two metres); Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, pp. 47-48, ERN (En) 00198074-00198075. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 22, 71, ERN (En) 00346480, 00346529.

<sup>8004</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 32-33; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 31, 44-47, ERN (En) 00346489, 00346502-00346505; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 7-8, ERN (En) 00198004-00198005; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 41, ERN (En) 00198068. *See also*, Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 21-22, ERN (En) 00346679-00346680; Case 001 Transcript (VANN Nath), 29 June 2009, E3/7450, p. 20, ERN (En) 00345678.

<sup>8005</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004.

<sup>8006</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 46, 64, ERN (En) 00346504, 00346522.

<sup>8007</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 63, ERN (En) 00346521. *See also*, Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 21, ERN (En) 00345679; Case 001 Transcript (CHUUN Phal), E3/7470, 10 August 2009, p. 82, ERN (En) 00361925.

<sup>8008</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 34, 45 (testifying that they were forced to sleep on the floor and did not have time to think about bedbugs or lice given that their whole bodies were swollen); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 34, ERN (En) 00346492; T. 25 April 2016

2365. While initially detained in their underwear, the detainees were later provided long-sleeved clothes.<sup>8009</sup> Hygienic conditions were very poor, and the detainees were rarely able to wash themselves. For example, CHUM Mey was detained for over four months but was only washed once.<sup>8010</sup> The guards brought a container of water to his cell, and CHUM Mey was ordered to strip off his shorts, but he could not do so since one of his legs was shackled. He was then lashed because he could not follow the instruction.<sup>8011</sup>

2366. Detainees were provided with a small bucket container in order to relieve themselves.<sup>8012</sup> The detainees had to relieve themselves in the same place where they ate and slept and they could smell their excrement and urine.<sup>8013</sup> The prisoners were sprayed with water when they smelled of urine, but there remained a bad smell from the cells as they were not cleaned properly.<sup>8014</sup> Detainees were collectively sprayed with water from a hose when their cells were cleaned or had water thrown on them.<sup>8015</sup> The detainees held in small individual cells were not allowed to bathe.<sup>8016</sup>

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(LACH Mean), E1/421.1, p. 75. *See also*, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006.

<sup>8009</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 33, 46. *See also*, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006.

<sup>8010</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 45-46.

<sup>8011</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 46.

<sup>8012</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 26, 34; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 34, 44, 71, ERN (En) 00346492, 00346502, 00346529; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006. *See also*, Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 51, ERN (En) 00198078; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 22, ERN (En) 00346680; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 28-29, ERN (En) 00345686-00345687. According to CHUM Mey, detainees were forced to lick any spilled excrement or urine off the floor and they had to lick until the floor was clean and were threatened that they would be beaten if they failed to do so. *See* T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 26, 35-36. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 48; Additionally, PRAK Khorn testified that Duch instructed them on “how prisoners had to be forced to eat faeces and to drink urine”. *See* T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 70.

<sup>8013</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, p. 9; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 34-35, ERN (En) 00346492-00346493.

<sup>8014</sup> Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, p. 46, ERN (En) 00353926; Case 001 Transcript (LACH Mean), E3/7468, 4 August 2009, p. 67, ERN (En) 00360226.

<sup>8015</sup> T. 25 April 2016 (LACH Mean), E1/421.1, pp. 74-75; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 34-35, 65, ERN (En) 00346492-00346493, 00346523; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 8-9, ERN (En) 00198005-00198006. *See also*, Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 25, 75-76, ERN (En) 00346683, 00346733-00346734 (testifying that the prisoners were naked when they were hosed down and were humiliated by the guards); Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 22, ERN (En) 00345680; Case 001 Transcript (CHUUN Phal), E3/7470, 10 August 2009, p. 24, ERN (En) 00361867.

<sup>8016</sup> T. 25 April 2016 (LACH Mean), E1/421.1, pp. 74-75.

2367. Detainees were provided with insufficient food. The food consisted of a ladle of thin gruel in the morning and evening and a little water.<sup>8017</sup> Detainees remained shackled while guards gave them their dish of food.<sup>8018</sup> Older prisoners were provided with left-over cooked rice while the other prisoners were only provided with gruel.<sup>8019</sup> Detainees became thinner and thinner due to the lack of food.<sup>8020</sup>

2368. Detainees were instructed not to speak with other detainees and to keep silent.<sup>8021</sup> They were afraid to move in the night, because they were shackled and if the chain made a sound, they would be beaten.<sup>8022</sup> CHUM Mey described how he was ordered to ask for permission if he wanted to change his sleeping position and was threatened that he would receive 200 lashes if he did not do so.<sup>8023</sup> While according

<sup>8017</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 27, 33, 45 (testifying that while initially they were only provided a little water, later the detainees had enough water to drink); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 14, 65, 71-72, 79, ERN (En) 00346472, 00346523, 00346529-00346530, 00346537 (testifying that he would ask the guard for water when he was thirsty but he did not dare to ask for more than what was given); T. 4 May 2016 (HIM Huy), E1/427.1, p. 100 (testifying that a few elderly prisoners were given leftover steamed rice but the prisoners in the cells only had watery gruel); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 46, 48; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 15, 66, ERN (En) 00346673, 00346724 (testifying that he felt so hungry that he wished lizards would fall near him so he could eat them); Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 20-22, ERN (En) 00345678-00345680 (describing eating insects).

<sup>8018</sup> HIM Huy Interview Record, E3/5154, 18 September 2007, p. 8, ERN (En) 00161602.

<sup>8019</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 100.

<sup>8020</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 59 (“They became thinner and thinner”); Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 13-14, ERN (En) 00356799-00356800 (“the majority of them were so skinny and malnourished”). *See also*, T. 3 May 2016 (MAK Thim), E1/426.1, p. 34. Duch testified that prisoners received “proper food regimes so they would not die and their confessions would not be cut off” and some important prisoners who became weak during interrogations had to be properly fed so that they would be strong enough for the interrogation. However, his evidence in this regard was qualified and he noted that this was his general conclusion and he was not personally involved in making such arrangements. *See* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 64-66; T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 34-35. The Chamber therefore does not rely on his conclusions in this regard. Given Duch’s denial of first-hand knowledge about the rations provided to prisoners, the Chamber does not rely on his speculation that staff and prisoners were provided with the same food. *See* T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 35-36. The Chamber also notes that this contradicts his prior testimony that the inadequate food rations resulted in weaker or malnourished detainees who became very weak and were easier to control and that some prisoners starved to death. *See* Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, pp. 84-85, 92, ERN (En) 00341769-00341770, 00341777.

<sup>8021</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 26, 34, 46-47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 44, 70, ERN (En) 00346502, 00346528 (testifying that he was not allowed to make any noise, even when he wept); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 85. *See also*, S-21 Circular, E3/8386, undated, p. 2, ERN (En) 00521632 (“The enemies who are in our place absolutely must not be permitted to talk to one another”); Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 21, ERN (En) 00345679.

<sup>8022</sup> T. 19 April 2016 (CHUM Mey), E1/418.1, p. 48.

<sup>8023</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 44, ERN (En) 00346502. The Chamber notes that LACH Mean testified that guards were not allowed to personally threaten or beat the prisoners, and that he had to report any incident of a prisoner disobeying or insulting them to the leadership of S-21. *See* T. 26 April 2016 (LACH Mean), E1/422.1, p. 57. While the Chamber has found

some S-21 documents, guards were instructed that “threatening or beating is absolutely not allowed”, this rule was in direct conflict with the instructions on the use of physical and mental abuse during interrogations. It was also inconsistent with the policy that all detainees had to be considered as enemies who did not deserve any mercy. As the core mandate of S-21 was to obtain confessions from certain prisoners, the use of physical violence outside interrogations was prohibited insofar as it could cause a prisoner’s death before a confession was extracted.<sup>8024</sup> Consequently, the Chamber finds that these instructions, which directly contradicted general S-21 policy regarding the welfare of its detainees, were not strictly adhered to and that the way that guards treated the detainees was in fact directly contrary to this written directive.

2369. S-21 survivors who testified in Cases 001 and 002/02 about detention conditions inside the Security Centre described feeling like they were treated like animals.<sup>8025</sup> Detainees lived in fear and suffered psychologically given that they did not know their fate and could not contact their family; they expected to be killed.<sup>8026</sup> Detainees were too scared to look into the face of their guards.<sup>8027</sup> Internal security guards were instructed to ensure that prisoners did not try to break their shackles or attempt suicide.<sup>8028</sup> If a prisoner committed suicide, this had to be reported to Duch, who in court recalled two such incidents.<sup>8029</sup> At study sessions, Duch informed S-21 staff about incidents where prisoners had burned themselves with kerosene, stabbed themselves or

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LACH Mean’s evidence to be generally credible and acknowledges that S-21 documentation notes such a policy, the Chamber has found that LACH Mean’s evidence regarding its implementation demonstrates an attempt to downplay the role of guards in the mistreatment of detainees. Given CHUM Mey’s credible testimony on this issue, the Chamber does not find LACH Mean’s testimony to be reliable in this regard.

<sup>8024</sup> Instructions to S-21 guards, E3/8711, 30 October 1976, p. 1, ERN (En) 01339065; S-21 Circular, E3/8386, undated, p. 1, ERN (En) 00521631. *See above*, paras 2163-2164, 2166. *See below*, paras 2383, 2387-2399.

<sup>8025</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 46-47. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 48; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 34-35, ERN (En) 00346492-00346493; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 23, ERN (En) 00346681; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 20-21, ERN (En) 00345678-00345679.

<sup>8026</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 42-43, 50; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 65, 70, ERN (En) 00346523, 00346528.

<sup>8027</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 77-78, ERN (En) 00346535-00346536; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 3, ERN (En) 00198000.

<sup>8028</sup> T. 25 April 2016 (LACH Mean), E1/421.1, pp. 78-80. *See also*, Instructions to S-21 guards, E3/8711, 30 October 1976, p. 1, ERN (En) 01561986.

<sup>8029</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 60 (testifying that he did not know about the incident of a female detainee from Regiment 152 who had hung herself). *See S-21 list of prisoners*, E3/3181, multiple dates (noting prisoners who died of disease and who had committed suicide). *See also*, Case 001 Transcript (SAOM Met), E3/7470, 10 August 2009, p. 89, ERN (En) 00361932.



jumped from a building.<sup>8030</sup> Annotations from the Orange Logbook refer to prisoners who committed suicide, including one who committed suicide by hanging himself and another who died from jumping from a house.<sup>8031</sup> The escape or suicide of a prisoner was a serious concern given that S-21 was tasked with ensuring that no important “enemies” died before their interrogation concluded.<sup>8032</sup>

2370. The NUON Chea Defence submits that “[e]ven if unfortunate, these conditions were not abnormal considering the general living standards in the country at the time and were certainly not worse than the conditions pre-1975 during the Khmer Republic regime or post-1979 under the PRK”.<sup>8033</sup> The NUON Chea Defence further submits that in any event, the conditions of detention “were not willingly and sadistically inflicted upon the detainees and [...] were certainly not implemented as punishment”.<sup>8034</sup>

2371. The Chamber finds that these submissions attempt to downplay the nature of the detention conditions at S-21 by reference to the prevailing situation in the country and by comparison to the conditions under other regimes. It finds that these submissions have no merit: the ultimate question is whether the legal elements for the crimes charged are established irrespective of whether these conditions were comparable to other conditions which may also have been inhumane.<sup>8035</sup> Similarly, the question of whether or not the conditions of detention were imposed sadistically or as a means of punishment has no bearing on the elements of the crimes charged. The NUON Chea Defence’s submissions are therefore rejected.

<sup>8030</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 16-17.

<sup>8031</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 35, ERN (En) 01460450 (4 May 1977), 79, ERN (En) 01460494 (11 June 1977, noting that Sim *alias* Sok committed suicide by hanging himself and KEM Oeun *alias* Thol died from jumping from a house).

<sup>8032</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 58-60. *See also*, Instructions to S-21 guards, E3/8711, 30 October 1976, p. 1, ERN (En) 01561986.

<sup>8033</sup> NUON Chea Closing Brief, para. 618.

<sup>8034</sup> NUON Chea Closing Brief, para. 618.

<sup>8035</sup> *See below*, Section 12.2.24.2.3: Inhumane Treatment.

12.2.12.1. Interrogations and mistreatment of detainees

2372. The core mandate of S-21 and the purpose of the interrogations was to extract confessions from prisoners, and to submit those confessions to the upper echelon for their decision and action.<sup>8036</sup>

2373. The Closing Order found that NUON Chea was aware of the practice of serious mistreatment during the interrogation of S-21 prisoners, given that he received confessions with annotations mentioning that torture was used.<sup>8037</sup> With respect to KHIEU Samphan, the Closing Order found that while he never went to S-21, he met with Duch and issued instructions prior to the entry of Vietnamese forces into Phnom Penh, and that by virtue of his regular attendance and participation at Standing Committee meetings, it was likely that he was aware of the practice of torture at S-21.<sup>8038</sup>

2374. The Co-Prosecutors submit that every person in S-21 and at other security centres was subjected to torture.<sup>8039</sup> They submit that even if some prisoners were not beaten, they were “shackled next to other living human corpses, unable to bathe, forced to defecate in a box, not allowed to speak, fed only spoonfuls of food per day, consumed with hunger, and all of them undoubtedly in extreme fear, expecting, fearing execution; expecting and fearing torture”.<sup>8040</sup> They further emphasise that being shackled 24 hours a day, pointing a gun to the head or a knife to a prisoner’s throat, or threatening to physically harm the victim or the victim’s family constitutes torture.<sup>8041</sup> The Co-Prosecutors point to evidence that S-21 confessions were obtained through torture and included evidence that was untrue, particularly as they falsely implicated prisoners as

<sup>8036</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 11-12; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 47.

<sup>8037</sup> Closing Order, para. 968.

<sup>8038</sup> Closing Order, paras 1182-1190.

<sup>8039</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 27, 40-41, 45-49. *See also*, Co-Prosecutors’ Closing Brief, paras 670, 883.

<sup>8040</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 28.

<sup>8041</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 27-29; Co-Prosecutors’ Closing Brief, para. 657 (clarifying that prisoners were shackled 24 hours a day and highlighting that Duch testified this to be common practice in other DK prisons too).

being CIA agents.<sup>8042</sup> The Co-Prosecutors further submit that KOY Thuon was indeed tortured.<sup>8043</sup>

2375. The NUON Chea Defence submits that Duch was “locked in his office” for “up to 18 hours a day”, and thus his testimony that in most cases “*tearunakamm*”<sup>8044</sup> was unavoidable is completely unreliable. The Defence states that Duch did not approve of this practice, that there is no evidence of it in the S-21 notebooks, and that evidence is also inadequate to prove beyond reasonable doubt that any specific incident of torture occurred at S-21.<sup>8045</sup> The KHIEU Samphan Defence concedes generally that it is very likely that torture and severe physical mistreatment occurred at S-21.<sup>8046</sup> The Lead Co-Lawyers submit that people detained at S-21 were subjected to severe pain or suffering primarily in order to extract a confession, and name CHUM Mey as an example of said treatment.<sup>8047</sup>

2376. Interrogators at S-21 were generally divided into three teams of seven to eight men, and all three were responsible for interrogating regular prisoners. However, some cadres selected from the more senior S-21 staff, such as Pon, Huy and Hor, were responsible for interrogating more important prisoners.<sup>8048</sup>

2377. Detainees were taken from their cells to separate rooms or houses where they were interrogated.<sup>8049</sup> Initially, detainees were interrogated at locations in different houses outside the prison compound and close to the outer zinc fence.<sup>8050</sup> Interrogations were held in other buildings so that guards and staff at S-21 could not hear or see

<sup>8042</sup> T. 22 June 2017 (Closing Statements), E1/527.1, pp. 31-37; Co-Prosecutors’ Closing Brief, paras 682-685 (explaining how torture was used to obtain confessions and to identify alleged treacherous networks, even extracting confessions as to CIA or KGB involvement from citizens who had never heard of such organisations).

<sup>8043</sup> T. 22 June 2017 (Closing Statements), E1/527.1, p. 30.

<sup>8044</sup> See below, NUON Chea’s submissions and the Chamber’s findings regarding the term “*tearunakamm*” at para. 2431 and discussion of their submission regarding annotations of “*tearunakamm*” at para. 2411.

<sup>8045</sup> NUON Chea Closing Brief, paras 605-611.

<sup>8046</sup> KHIEU Samphan Closing Brief, paras 1196, 1214.

<sup>8047</sup> Lead Co Lawyers’ Closing Brief, paras 1051-1059.

<sup>8048</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 91.

<sup>8049</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 5; T. 18 April 2016 (CHUM Mey), E1/417.1, p. 27. See also, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 10-11, ERN (En) 00346468-00346469.

<sup>8050</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 37; T. 21 April 2016 (TAY Teng), E1/420.1, pp. 83-84; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 59-60; T. 26 April 2016 (LACH Mean), E1/422.1, p. 54; KAING Guek Eav Interview Record, E3/5748, 22 November 2007, p. 3, ERN (En) 00153567 (stating that initially the interrogation was conducted in the two blocks south of the school).

them.<sup>8051</sup> Following Duch's appointment as the head of S-21 and the transfer of its premises to the Ponhea Yat High School in Phnom Penh, interrogations were conducted inside the school itself.<sup>8052</sup> In the interrogation rooms, the doors and windows were closed and detainees were brought there handcuffed and blindfolded.<sup>8053</sup>

12.2.12.2. "Cold", "hot" and "chewing" units

2378. TORNG Seng Hoeung *alias* Pon and Hor decided which interrogation group a prisoner would be assigned to and this depended on the level of importance of the prisoner.<sup>8054</sup> Within the interrogation unit there were different groups of interrogators: the "cold", "hot" and "chewing" units.<sup>8055</sup> This is corroborated by S-21 interrogation lists which identify interrogation of specific prisoners by each of these different groups.<sup>8056</sup>

2379. The "cold" method included making promises to the prisoner that they would be released and provided food if they confessed.<sup>8057</sup> Another technique of the cold method of interrogation involved applying psychological pressure and making the prisoner think about the welfare of their spouse and children and telling the prisoner that they would not have a chance to see them if they did not confess.<sup>8058</sup> During some

<sup>8051</sup> T. 26 April 2016 (LACH Mean), E1/422.1, pp. 55-56.

<sup>8052</sup> KAING Guek Eav Interview Record, E3/5748, 22 November 2007, p. 3, ERN (En) 00153567.

<sup>8053</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 17-18.

<sup>8054</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 86, 90.

<sup>8055</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 37, 53 (testifying that Snguon was his group chief in the Chewing Unit and upon Snguon's arrest it was first Chorn and then Tith); T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 64-66; T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 90-91, 102-103 (testifying that at the beginning the interrogation unit consisted of 33 interrogators who were categorised into different teams). *See also*, S-21 list of prisoners interrogated on 10.5.78, E3/1951, 10 May 1978, pp. 1-15, ERN (En) 00233740-00233754 (listing prisoners interrogated by the "Cold Group", "Hot Group" and "Documentation Group"). This finding is corroborated by a note from an S-21 notebook that from April 1977, S-21 had four groups, cold, hot, documentation and "Group A". *See* S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 29, ERN (En) 00184607 (with the entry dated 3 May 1978).

<sup>8056</sup> *See e.g.*, S-21 Interrogation Lists: E3/2135 (multiple dates); E3/8506 (4 April 1978); E3/1922 (multiple dates); E3/1654 (8 April 1978); E3/1674 (11 April 1978); E3/8432 (multiple dates); E3/1933 (26 April 1978); E3/1672 (27 April 1978); E3/2007 (24 May 1978, referring to the chewing group and the documentation group); E3/8522 (30 May 1978, referring to the chewing unit); E3/8526 (10 June 1978, referring to the chewing unit). These lists refer to prisoners interrogated by the cold, hot and chewing teams/groups. A list of prisoners from the Central Zone also refers to three individuals interrogated by the Chewing unit. *See* S-21 list of prisoners, E3/8898, p. 1, ERN (En) 01529571. Similar lists refer to other prisoners processed by the Chewing team/group. *See* S-21 list of prisoners, E3/2225, multiple dates, p. 12, ERN (En) 00885342; S-21 list of prisoners, E3/9856, multiple dates, p. 11, ERN (En) 01368703; S-21 list of prisoners from the Kampong Saom Port, E3/1978, undated, p. 1, ERN (En) 00234278; S-21 list of prisoners, E3/2010, undated, ERN (En) 00887854.

<sup>8057</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 70-71.

<sup>8058</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 12-13, 24; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 53-55. *See also*, S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 13, ERN (En)

interrogations, prisoners were presented with fake documents and letters which suggested that they would be pardoned by *Angkar*.<sup>8059</sup> Duch instructed S-21 staff to use cold methods to force prisoners to speak about their background in order to identify weak points which could then be focussed on in further questioning by the “hot” unit.<sup>8060</sup>

2380. The POU Phally Notebook describes the use of psychological pressures, detailing the “views and stances on the enemies whom the Party have arrested”. It reads as follows:

“Confess to the Party in order to live and not die in place of their leaders. Make them think of their wives and children. No one can help them. Have them believe in the Party. So we break them by making them stop trusting their associates, their leaders, their plans. [...] In summary, do whatever necessary to make them vague about the matter of life or death and still have hopes that they might live.”<sup>8061</sup>

2381. The “hot unit” was tasked with using more aggressive methods of physical abuse.<sup>8062</sup> Duch confirmed several methods of “torture”, stating that, “[s]ince Nat’s era, there were four types of torture that were used with approval from SON Sen”. These included: 1) beating detainees with a stick (which was the most common method); 2) administering electric shocks; 3) covering the head with a plastic bag to suffocate; and 4) covering the mouth and nose with a towel and pouring cold water from a kettle.<sup>8063</sup> The hot and cold methods were sometimes alternated to extract confessions.<sup>8064</sup>

2382. The chewing unit repeatedly asked the same questions until they obtained a full answer.<sup>8065</sup> The “chewing” unit used hot, cold and chewing techniques in their interrogation.<sup>8066</sup> Detainees were usually sent to the “chewing” unit after they had

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00225391; Letter to Duch, E3/1544, 26 September 1976, ERN (En) 00184020 (which notes that in connection with the interrogation of NEY Sarann *alias* MEN San *alias* Ya an instruction had been received from Duch to recall the welfare of his spouse and children, and that subsequently Duch was asked for permission to “carry out both hot and cold measures”).

<sup>8059</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 33.

<sup>8060</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 91-92, 95; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 8.

<sup>8061</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 13-14, ERN (En) 00225391-00225392.

<sup>8062</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 8.

<sup>8063</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 10-12; KAING Guek Eav Interview Record, 2 October 2007, E3/454, p. 5, ERN (En) 00147604. *See above*, paras 2387-2388, 2390-2393.

<sup>8064</sup> T. 4 April 2012 (KAING Guek Eav), E1/59.1, p. 66.

<sup>8065</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 38.

<sup>8066</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 66.

already been tortured exhaustively in order to “chew” the prisoners for more information.<sup>8067</sup>

2383. The POU Phally Notebook contains a chapter on the “Views and Stances Regarding Interrogation Methods”. It explains that:

- 1) There are two types of interrogation methods for each one of us:
  - a) Political pressure, that is we propagandize and put constant and repeated pressure on them at all times.
  - b) Torture is a supplementary method.
- 2) Past experience is that our interrogators mostly fall into torture, over-emphasizing torture over propaganda. This is the experience of our mistakes upon which that we absolutely must indoctrinate further.
- 3) The enemy does not confess to us easily. [...] Torture cannot be avoided. It only differs as to whether it is a little or a lot, that’s all.<sup>8068</sup>

#### 12.2.12.3. Interrogation methods and mistreatment

2384. Some prisoners were sent for interrogation as soon as they arrived at S-21 while others were detained for up to a month before being interrogated.<sup>8069</sup> Prisoners were not shown the confessions of other prisoners who may have implicated them but if a prisoner did not confess, an interrogator could, with authorisation, tell them who had implicated them.<sup>8070</sup> Some prisoners were interrogated for several months before a confession was obtained while others could be interrogated for as short as a week.<sup>8071</sup> Initially there were many interrogators at S-21, but later, after many of the interrogators were arrested and executed themselves and the number of prisoners increased, only important prisoners were interrogated and the remainder languished in detention until the day they were killed.<sup>8072</sup>

<sup>8067</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 37 (testifying that only a few prisoners were sent directly to the “chewing” unit).

<sup>8068</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 14, ERN (En) 00225392.

<sup>8069</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 17.

<sup>8070</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 92-93; T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 61-62; S-21 Confession – KE Kim Huot, E3/1705, 22 July 1977, pp. 9-10, ERN (En) 00183289-00183290 (noting that during his torture, the prisoner KE Kim Huot was told the names of those who had implicated him).

<sup>8071</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 18-19; T. 26 April 2016 (LACH Mean), E1/422.1, p. 19.

<sup>8072</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 58 (testifying that he estimated that between 50 and 60 percent of prisoners were interrogated); T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 95-98. See

2385. Once in the interrogation room, prisoners' handcuffs and blindfolds were removed and their legs were chained.<sup>8073</sup> The prisoners had to sit in a chair facing the interrogator, but sometimes when they fell off the chair during the interrogation, they were told to sit on the floor.<sup>8074</sup> Interrogations were carried out in three shifts of several hours starting at 7 a.m. and ending between 10 p.m. and 11 p.m.<sup>8075</sup>

2386. Interrogators were provided with a brief note on the name and origin of the prisoner before the interrogation but were not informed of the alleged offences they had committed or the network to which they allegedly belonged.<sup>8076</sup> Interrogators were told by their team leader the name, building and room number of the prisoner who had to be interrogated.<sup>8077</sup>

2387. Detainees were beaten and asked about their involvement with CIA and KGB networks. They were also asked for the names of others involved in those networks, even if the detainees did not know what the CIA and KGB were.<sup>8078</sup> Other networks which interrogators asked about included the "Yuon" and "Khmer Serei" networks.<sup>8079</sup>

2388. During beatings, some detainees such as CHUM Mey suffered broken bones and lost consciousness after being subjected to electric shocks.<sup>8080</sup> Some detainees

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*also*, T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 102-103 (testifying that the number of interrogators decreased when some were removed or "smashed" for "wrongdoing").

<sup>8073</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 18. *See also*, Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 27, ERN (En) 00346685.

<sup>8074</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 19.

<sup>8075</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 19 (testifying that prisoners were interrogated from 7 a.m. to 11 a.m. then from 11 a.m. to 2 p.m. and finally from 7 p.m. to 11 p.m.). *See also*, T. 26 April 2016 (LACH Mean), E1/422.1, p. 19 (testifying that the interrogations lasted from 7 a.m. to 11 a.m., then from 1 p.m. to 5 p.m. and finally from 6 p.m. to 10 p.m.); Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 16, ERN (En) 00346674.

<sup>8076</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 62-63; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 18.

<sup>8077</sup> T. 25 April 2016 (LACH Mean), E1/421.1, p. 93.

<sup>8078</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 30-31, 47, 56. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11, 14, 24, 37, 84, ERN (En) 00346469, 00346472, 00346482, 00346495, 00346542; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 42; T. 25 April 2016 (LACH Mean), E1/421.1, pp. 96-97; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 28, ERN (En) 00346686.

<sup>8079</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 42.

<sup>8080</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 54-55; T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 20, 24 (testifying that his finger was broken while trying to defend himself from the beatings); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11, 53, ERN (En) 00346469, 00346511. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47.

suffered long-term physical consequences as a result of the mistreatment they endured during interrogation at S-21.<sup>8081</sup>

2389. Different techniques were used to extract confessions, including terrifying the prisoners into confessing.<sup>8082</sup> For example, one of these techniques was to display torture instruments such as knives and axes in the interrogation room.<sup>8083</sup> Interrogators threatened prisoners to ensure they gave “correct answers”.<sup>8084</sup> Prisoners were first asked about their biographies and relationships and if they did not confess, interrogators sought permission from their superior, including Duch and MAM Nai, to use “torture”.<sup>8085</sup> For example, before PRAK Khorn resorted to violence, he sought the authorisation from his group chief, Tith, on whether physical abuse could be used on a prisoner who had not confessed.<sup>8086</sup> Tith sought authorisation from MAM Nai or Duch before physical mistreatment could be used.<sup>8087</sup> For simple combatants, Hor could order “*tearunakamm*”,<sup>8088</sup> whereas for important prisoners, SON Sen gave Duch orders and decided on the use of severe physical violence.<sup>8089</sup>

2390. As discussed above, the methods of torture used at S-21 included beatings, the use of electric shocks, covering the head of the prisoner with a plastic bag to suffocate and covering the mouth and nose of the prisoner with a towel and pouring cold water

<sup>8081</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 30, 49-50, 55; T. 19 April 2016 (CHUM Mey), E1/418.1, p. 20 (testifying that after the use of electric shocks, he lost consciousness and has since had difficulty seeing out of one of his eyes and hearing from one of his ears). *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 72-73, ERN (En) 00346730-00346731.

<sup>8082</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 72-73; T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 23.

<sup>8083</sup> Case 001 Transcript (PRAK Khan), E3/7463, 21 July 2009, pp. 73-74, ERN (En) 00355181-00355182; Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 22, ERN (En) 00341979.

<sup>8084</sup> T. 26 April 2016 (LACH Mean), E1/422.1, p. 71.

<sup>8085</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 64. *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, p. 99; S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 25, 29, ERN (En) 00182969, 00225407 (“If the Party orders us to beat, then we beat with mastery, beat them to talk, not to die, to escape, not to become so weak and feeble that they fall ill and we lose them.”).

<sup>8086</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 73-74.

<sup>8087</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 73-74 (testifying that interrogators had to seek permission for more serious acts of violence but not for pinching or pulling hairs for example); T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 68.

<sup>8088</sup> The Chamber finds that the Khmer word “*tearunakamm*”, when used in the context of S-21, refers to inflicting severe physical pain. For a full discussion, *see below*, para. 2431.

<sup>8089</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 34; KAING Guek Eav Interview Record, E3/5771, 30 April 2008, pp. 4-5, ERN (En) 00185500-00185501; T. 26 April 2016 (LACH Mean), E1/422.1, pp. 10-11, 14-15 (testifying that it was Hor who made the decision whether physical violence should be used during the interrogation of a particular prisoner).



from a kettle.<sup>8090</sup> While Duch allowed the use of suffocation by plastic bag, he testified that he did not personally see this method used.<sup>8091</sup> Duch stated that he was informed that one prisoner died when he was being suffocated with a plastic bag.<sup>8092</sup>

2391. Some prisoners had their toenails or fingernails removed using pliers and were subjected to electric shocks which made them lose consciousness during interrogations.<sup>8093</sup> Initially, under Nat's control, prisoners were electrocuted using a hand-crank telephone, but later Pon used the power from the main electricity supply on the wall to electrocute prisoners.<sup>8094</sup> Duch authorised the use of electrocution but strictly prohibited letting a prisoner die, in order to prevent their interrogation from being cut off.<sup>8095</sup> Duch was informed of one prisoner who had a wire attached to his genital organs, was electrocuted and then died.<sup>8096</sup>

2392. Duch taught interrogators the method of waterboarding, how to pull out the nails of prisoners and to force prisoners to eat faeces and drink urine.<sup>8097</sup> After a fingernail

<sup>8090</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 10-12 (testifying that he had used these methods since he was at M-13); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 73, 75, 90-92 (testifying that the bag was tightened on the prisoner's head until the prisoner could not breathe and was suffocating); T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 70; T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 23; PRAK Khan Interview Record, E3/79, 25 September 2007, p. 3, ERN (En) 00161554. *See also*, S-21 Confession – POL Pisit, E3/3847, undated, p. 2, ERN (En) 00223916 (transcript of annotations).

<sup>8091</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 29.

<sup>8092</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 13, ERN (En) 00342844.

<sup>8093</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 30, 49-50, 54-55; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11-12, 25-27, 55, ERN (En) 00346469-00346470, 00346483-00346485, 00346513 (testifying that he was electrocuted using a live wire from the wall which was inserted into his ear); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 75, 91-92 (testifying that he used the electric shock generated from a hand crank telephone); T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 69; PRAK Khan Interview Record, E3/79, 25 September 2007, p. 3, ERN (En) 00161554; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 10-11; T. 26 April 2016 (LACH Mean), E1/422.1, p. 10. *See also*, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47; S-21 Confession – UK Savann, E3/1874, 9 February 1978, p. 2, ERN (En) 00821432 (noting that a female detainee was "tortured and electrocuted" several times); S-21 Confession – UM Soeun, E3/3841, multiple dates, p. 53, ERN (En) 00825417 (in which the prisoner wrote that he "felt like committing suicide by hanging because the comrades beat and electrocuted me because I refused to confess my mistakes"); Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 30, 73, ERN (En) 00346688, 00346731 (testifying that he was electrocuted on his inner thigh and fell unconscious immediately); Case 001 Transcript (SAOM Met), E3/7470, 10 August 2009, p. 85, ERN (En) 00361928.

<sup>8094</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 27-28; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 28, 44.

<sup>8095</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 27-28 (testifying that he heard from Tuy that electric wire from the wall plug was attached to the toe of the prisoner but denied knowledge of electric wires being attached to the ears of prisoners). While Duch denied first-hand knowledge of electric wires being attached to the ears of prisoners, the Chamber does not consider that this undermines the credible testimony of CHUM Mey in this regard.

<sup>8096</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 27-28.

<sup>8097</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 70 ("Duch, himself, also provided us the training in the political study sessions on the techniques to mistreat prisoners [...] and the method of waterboarding was also taught by him, how prisoners had to be forced to eat faces and to drink urine; they were all

had been pulled, interrogators used a plier to squeeze the wound or would insert a nail or needle under fingernail until it became swollen and the prisoners screamed in pain.<sup>8098</sup> The Chamber notes that Duch testified that he warned interrogators to stop the practice of pulling out nails,<sup>8099</sup> and that when he received a report that prisoners had been forced to eat excrement, this irked him.<sup>8100</sup> However, in light of the credible evidence of PRAK Khorn that no such instruction was given and that it was Duch himself who taught them this technique,<sup>8101</sup> the Chamber finds that Duch's testimony was an attempt to shift responsibility for this practice and accordingly does not rely on his evidence in this regard. The Chamber further notes the credible evidence of CHUM Mey who entered S-21 relatively late, but still had his nails pulled out,<sup>8102</sup> which also undermines Duch's evidence on this issue.

2393. Detainees were beaten with various objects including rattan or bamboo sticks, rods, tree branches and electrical wire.<sup>8103</sup> If a stick was broken during the beatings,

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taught by Duch.”); T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 41-42; PRAK Khan Interview Record, E3/79, 25 September 2007, p. 3, ERN (En) 00161554. *See also*, S-21 Confession – KE Kim Huot, E3/1705, 22 July 1977, p. 9, ERN (En) 00183289 (which refers to a prisoner being forced to eat excrement after he cursed at those who were beating him). The Chamber notes that Duch testified that he warned interrogators to stop the practice of pulling out nails. *See* T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 24-26; Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, pp. 77-78, ERN (En) 00342034-00342035. However, in light of the credible evidence of PRAK Khorn that no such instruction was given and that it was Duch himself who taught them this technique, the Chamber finds that Duch's testimony was an attempt to shift responsibility for this practice and does not rely on his evidence in this regard. Waterboarding was used on HU Nhim. *See above*, para. 2302. The Chamber additionally notes that VANN Nath stated in a crime scene reconstruction that a detainee was beaten while hanging from a rope on a crossbeam, before being “ducked” into a large urn, and in Case 001 VANN Nath testified that he only drew a picture of this incident based on his recollection of what a prisoner told him. *See* Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 4, 8, ERN (En) 00198001, 00198005; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, ERN (En) 00198055-00195056; Case 001 Transcript (VANN Nath), 29 June 2009, E3/7450, p. 43, ERN (En) 00345701.

<sup>8098</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 75; PRAK Khan Interview Record, E3/79, 25 September 2007, p. 3, ERN (En) 00161554. *See also*, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 5-6, ERN (En) 00198002-00198003; Case 001 Transcript (SAOM Met), E3/7471, 11 August 2009, pp. 5-6, ERN (En) 00363697-00363698.

<sup>8099</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 24-26; Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, pp. 77-78, ERN (En) 00342034-00342035; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, 86-87.

<sup>8100</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 13. *See also*, T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 66.

<sup>8101</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 42 (“Duch never told us to stop pulling out nails because it was him who instructed us to do that. Maybe he made that statement in order to avoid himself being in trouble.”).

<sup>8102</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 30, 49-50, 54-55; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11-12, 25-27, 67-68, ERN (En) 00346469-00346470, 00346483-00346485, 00346525-00346526.

<sup>8103</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 10-11, 28; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 13, 22-23, ERN (En) 00346471, 00346480-00346481; T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 73, 88; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 67-68; T. 2 May

new sticks were used.<sup>8104</sup> Prisoners who had been beaten with whips had wounds and scars on their body which could remain for several months.<sup>8105</sup> Some prisoners were beaten so severely that they lost consciousness.<sup>8106</sup> Detainees could also hear the screams of other detainees.<sup>8107</sup> Detainees were prohibited from shouting, but if they violated this regulation while being mistreated, a cloth was put over their mouths.<sup>8108</sup>

2394. Detainees were cursed at and called traitors and “contemptibles” during interrogations.<sup>8109</sup> Interrogators were also allowed to scold and humiliate prisoners, for example by instructing them to pay homage to the image of dogs.<sup>8110</sup> Duch also ordered

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2016 (PRAK Khorn), E1/425.1, pp. 23-24; T. 26 April 2016 (LACH Mean), E1/422.1, pp. 10-11; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004. *See also*, S-21 Confession – POL Pisit, E3/3847, undated, p. 2, ERN (En) 00223916 (transcript of annotations noting that the prisoner was subject to beating with electrical wire and suffocation with a plastic bag); Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 12-13, ERN (En) 00346670-00346671; Case 001 Transcript (SAOM Met), E3/7470, 10 August 2009, pp. 84-85, ERN (En) 00361927-00361928 (testifying that he saw the detainee bleeding after he was beaten); S-21 Confession – OU Ros, E3/7434, multiple dates, ERN (En) 00219287 (noting that the prisoner was ordered to salute a picture of a dog and when he refused to respond to a question, he was beaten four to ten times with rod until he answered).

<sup>8104</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 54, 73, ERN (En), 00346512, 00346531. *See also*, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004 (BOU Meng stated that guards said “Do not torture him to death; we need him to make portraits of POL Pot.”).

<sup>8105</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 90.

<sup>8106</sup> S-21 Confession – UM Soeun, E3/3841, multiple dates, p. 5, ERN (En) 00223146 (transcript of annotations, entry dated 30 August 1975 stating that the prisoner “was so stubborn though he is a young man that he was beaten to unconsciousness”).

<sup>8107</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 30, 78, ERN (En) 00346488, 00346536. *See also*, T. 21 April 2016 (TAY Teng), E1/420.1, p. 83; T. 25 April 2016 (TAY Teng), E1/421.1, pp. 7-8 (testifying that as a guard he heard prisoners scream with pain when they were interrogated outside the S-21 compound and he also heard the cries of women); T. 25 April 2016 (LACH Mean), E1/421.1, p. 75; Combined S-21 Notebook, E3/834, multiple dates, p. 26, ERN (En) 00184508 (entry dated 11 August 1978 in which the author notes that there was a problem with beatings being heard outside); Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 46, ERN (En) 00346704; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 34, ERN (En) 00345692. Duch testified that no prisoners dared to scream and that it was an exaggeration to claim that the screams from beatings could be heard outside. *See* T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 31-34. However, the Chamber notes that Duch’s evidence on this point is equivocal and he does not respond to why PON Tuy’s notebook referred to this problem. The Chamber therefore does not rely on Duch’s evidence in this regard.

<sup>8108</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 85.

<sup>8109</sup> T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 13, ERN (En) 00346471.

<sup>8110</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 86-87 (testifying that the purpose was to humiliate and degrade the prisoners who would not confess and that some prisoners would not pay homage to the image of the dog). *See also*, S-21 Confession – POL Lak Pheng, E3/3844, 5 July 1978, p. 2, ERN (En) 00820962; S-21 Notebook of MAM Nai, E3/833, multiple dates, ERN (En) 00242259 (entry dated 28 May 1978); S-21 Confession – SUOR Heang, E3/7437, 18 July 1978, ERN (En) 00780892; S-21 Confession – OU Ros, E3/7434, multiple dates, ERN (En) 00219287 (noting that the prisoner was ordered to salute a picture of a dog); Combined S-21 Notebook, E3/834, multiple dates, p. 14, ERN (En) 00184496 (noting that they made prisoners pay respect to pictures of two dogs, one representing America and one representing the “Yvon”).

prisoners to worship cartoon pictures of dogs with the heads of HO Chi Minh and the President of the United States.<sup>8111</sup>

2395. CHUM Mey was interrogated for 12 days, with interrogations lasting up to 12 hours each day.<sup>8112</sup> CHUM Mey was interrogated in a room where pools of blood were visible next to a typewriter, which was used to type confessions after the beatings.<sup>8113</sup> During one interrogation, Sieng sat on CHUM Mey's head, cursed at him, hit his kneecaps with a stick and asked why he had not confessed.<sup>8114</sup> CHUM Mey also had his ears pulled up and down almost daily.<sup>8115</sup> After CHUM Mey's toenails were removed, alcohol was poured over his toes but no medicine was applied and he struggled to walk due to the physical pain and could not walk properly for more than one month.<sup>8116</sup>

2396. During interrogations, CHUM Mey was beaten and lashed for extended periods of time while his legs were shackled.<sup>8117</sup> He was insulted and lashed for not confessing earlier.<sup>8118</sup> When CHUM Mey denied knowledge of the CIA or KGB, he was beaten even more and told he should not lie because *Angkar* never arrested anyone for no reason.<sup>8119</sup> CHUM Mey eventually confessed his involvement with the CIA or KGB

<sup>8111</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, pp. 58-59, ERN (En) 00342015-00342016. Duch admitted that he encouraged this practice, which he considered very effective in obtaining confessions. See Case 001 Transcript (Agreed Facts), E3/9416, 1 April 2009, pp. 90-91, ERN (En) 00302118-00302119; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, p. 88, ERN (En) 00344195.

<sup>8112</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 27, 30; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 22, ERN (En) 00346480. See also, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47.

<sup>8113</sup> T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 46-47; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11, 24, 54-55, ERN (En) 00346469, 00346482, 00346512-00346513; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 7-8, ERN (En) 00198004-00198005.

<sup>8114</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 48-49 (testifying that in Khmer culture it was very humiliating to sit on someone's head); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 67-68, ERN (En) 00346525-00346526 (testifying that during one beating he was cursed at and asked why he was still hiding information).

<sup>8115</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 14, 77-78, ERN (En) 00346472, 00346535-00346536.

<sup>8116</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 49 (testifying that he did not dare shout because he was afraid of further beatings so he bore the pain by closing his eyes and biting his lips); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 68, ERN (En) 00346526. See also, Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 8, ERN (En) 00198005.

<sup>8117</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 27; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 11, 23, 53, ERN (En) 00346469, 00346481, 00346511. See also, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 46.

<sup>8118</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 48, 56.

<sup>8119</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 30-31; T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47.

because he could not endure the mistreatment and gave the interrogators the answers they wanted.<sup>8120</sup> After confessing, CHUM Mey was no longer beaten.<sup>8121</sup>

2397. While Duch allowed the use of physical and psychological abuse at S-21, interrogators were instructed that they were not allowed to cause the death of the detainees during interrogations prior to obtaining a confession and would be held responsible and punished if a prisoner died.<sup>8122</sup> At political study sessions, Duch taught interrogators that the mistreatment should not be so severe that the prisoners died before their confession could be completed.<sup>8123</sup> If an interrogator beat an important prisoner to death, the interrogator was to be arrested with permission from the upper echelon, namely SON Sen or NUON Chea.<sup>8124</sup> This is supported by notes of an interrogation unit training session where it was observed that “The enemy reacted and then we reacted too, that is wrong. Beating them to death impacts the Party Line.”<sup>8125</sup> Despite these instructions, some detainees died during the course of the interrogations.<sup>8126</sup> This is further corroborated by a number of annotations in the Orange Logbook regarding certain prisoners, including: “died from torture”, “refused to speak, died”, “died of torture, at the interrogation place”, “died from suffocation”, “died of wounds”.<sup>8127</sup> An

<sup>8120</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 55-56; T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 19-20, 24; CHUM Mey Interview Record, E3/5163, 25 March 2008, p. 2, ERN (En) 00176405; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 29, ERN (En) 00346487.

<sup>8121</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 29, ERN (En) 00346487.

<sup>8122</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 48-49 (testifying that they operated with instructions from the upper echelon that they had to do everything to keep prisoners alive so that a confession could be obtained); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 7-8, ERN (En) 00198004-00198005. *See also*, T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 62-63; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 47 (testifying that when an interrogator kicked the ribs of a prisoner who died, Duch asked for permission from the upper echelon to smash the interrogator).

<sup>8123</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 70, 93-94 (testifying that Duch used an example of how an interrogator had burned the genitals of a prisoner and that this interrogator was later arrested and detained); T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 12. *See also*, S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 10, ERN (En) 00225388 (noting that organisational discipline to be followed when interrogating, that detainees should not be beaten unless instructed to do so and that the health of the detainee had to be considered before beating).

<sup>8124</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 10, 100-103; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 59.

<sup>8125</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 47, ERN (En) 00184529 (entry dated 17 December 1978).

<sup>8126</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 59, 93. *See also*, S-21 Daily Controlling List, E3/9969, p. 2, ERN (En) 01462002 (noting that PING Kimsea, who was a doctor from the Northwest Zone, “died on account of torture and syncope in an interrogation place while he was writing”).

<sup>8127</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 8, 18, 20, 21, 26, 41, 44, 134, 170, 186, 191, 216, 218, ERN (En) 01460423, 01460433, 01460435, 01460436, 01460441, 01460456, 01460459, 01460549, 01460585, 01460601, 01460606, 01460631, 01460633 (these pages cover the following approximate dates: 4, 17-19, 24 April 1977; 7, 10 May 1977; 18 July 1977; 18, 30 August 1977; 4, 23-24 September 1977).

S-21 list of prisoners' diseases also includes notes which make reference to prisoners who had suffered torture.<sup>8128</sup>

2398. Both male and female prisoners who refused to confess were beaten and physically abused at S-21.<sup>8129</sup> At some stage, the wives of S-21 cadres were used as interrogators.<sup>8130</sup> In accordance with the 12 moral principles, Duch instructed his interrogators not to "play around" with women, and to have the doors and windows open when interrogating female prisoners, and NUON Chea personally instructed Duch not to interrogate female prisoners.<sup>8131</sup>

2399. Duch testified that while "torture" was considered to be a last resort, "physical torture was inevitable" and that in most cases physical abuse was used.<sup>8132</sup> When prisoners did not confess, Duch would sometimes instruct interrogators to use physical violence.<sup>8133</sup>

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<sup>8128</sup> S-21 list of prisoners' diseases, E3/8574, multiple dates, pp. 36-41, 43-46, 48-49, 51, 53-54, 75, 77, 80, 82, 84, 87, 92, 95-97, 99, 101-102, 104, 109, 112, 136, 196, 198, 200, 202, 204, 212, 214-215, ERN (En) 01321492-01321497, 01321499-01321502, 01321504-01321505, 01321507, 01321509-01321510, 01321531, 01321533, 01321536, 01321538, 01321540, 01321543, 01321548, 01321551-01321553, 01321555, 01321557-01321558, 01321560, 01321565, 01321568, 01321592, 01321652, 01321654, 01321656, 01321658, 01321660, 01321668, 01321670-01321671 (noting that many prisoners suffered from torture and were recorded as seriously ill as a result. Some were listed as also suffering from infected wounds following the torture. Three of those prisoners died as a result of the torture); S-21 list of prisoners, E3/8598, multiple dates, ERN (En) 00069009 (noting that prisoner KHEANG Sek "suffocated by covering plastic bags").

<sup>8129</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 57. *See also*, T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 21-23; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 36.

<sup>8130</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 36-37; T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 10-13 (testifying that PRAK Khorn's testimony that he interrogated a female prisoner was unreliable and that female cadres who interrogated female prisoners remained at S-21 until 7 January 1979). While LACH Mean initially testified that there were no female interrogators, he acknowledged that he was not aware whether there was a special interrogation unit for female prisoners which consisted of the wives of S-21 cadre. *See* T. 26 April 2016 (LACH Mean), E1/422.1, pp. 23-24, 26, 95-96.

<sup>8131</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 16-17.

<sup>8132</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 16; T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 17, 27; KAING Guek Eav Interview Record, E3/454, 2 October 2007, p. 4, ERN (En) 00147603 (stating that they were instructed not to rely heavily on torture and to be patient); T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 12. *See e.g.*, S-21 Confession – MEN San, E3/2475, 18 August 1975, ERN (En) 00836681-00836682 (where it was reported that the prisoner at first "refused to talk about his betrayal at all" and answered when he was tortured "really strongly" but later denied his confession because of the torture. It was also reported that the prisoner was very weak and had sores on his back caused by the torture). Duch confirmed that this report was prepared by the interrogators including the team leader. *See* T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 37-38. Duch's statements in this regard are consistent with the POU Phally Notebook. *See above*, para.2383.

<sup>8133</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 44-45 (testifying that he wrote on the confession of UM Soeun to use torture given that he had not confessed yet); S-21 Confession – UM Soeun, E3/3841, multiple dates, p. 1, ERN (En) 00223142 (transcript of annotations). *See also*, S-21 Confession – DANH Siyan, E3/7426, undated, p. 1, ERN (En) 00225275 (transcript of annotations bearing Duch's annotation instructing interrogators to ask more precise questions and to use torture in order to make the prisoner

2400. The NUON Chea Defence submits that Duch's evidence that torture was unavoidable was completely unreliable given his lack of awareness of most of the tasks at S-21.<sup>8134</sup> However, in light of the weight of evidence discussed above, the Chamber finds that Duch was intimately involved in monitoring the process of interrogation and confessions, and in particular he instructed interrogators that mental abuse and physical violence was inevitable, as corroborated by the S-21 notebooks reporting the content of the political trainings.<sup>8135</sup> The Chamber is therefore satisfied that Duch's testimony is reliable in this regard. The NUON Chea Defence's submissions are therefore rejected.

2401. The NUON Chea Defence submits that none of the four permitted "*tearunakamm*" techniques – namely beating, electric shocks, suffocation by plastic bags and waterboarding – "was by nature severe enough to *per se* amount to torture".<sup>8136</sup> The NUON Chea Defence further submits that the evidence is inadequate to prove beyond reasonable doubt any specific incident of torture at S-21 and that the Chamber needs to scrutinise the circumstances of each case and not the circumstances of the facility in general.<sup>8137</sup> The Chamber will have regard to the circumstances of each case to determine to what extent the use of severe physical and mental mistreatment constituting torture has been proved beyond reasonable doubt in its legal findings.<sup>8138</sup> However, the Chamber reiterates that while it needs to be satisfied beyond reasonable doubt that individual incidents amounted to torture, this does not preclude it from a legal finding that based on evidence from insiders, victims and contemporaneous documents that torture was employed as a general practice at S-21 in order obtain confessions.

2402. The Chamber finds that interrogators at S-21 were trained to be "absolute" and not to feel compassion for the prisoners; interrogators were instructed on how to inflict physical and mental abuse (cold, hot and chewing methods) upon detainees in order to obtain confessions. The Chamber is also satisfied that interrogators implemented these

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talk, and that she should be beaten until she stops saying she went to Vietnam for medical treatment); T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 34-36. The Chamber has relied on the original Khmer annotations to determine that Duch ordered the use of "moderately serious" torture with respect to this female prisoner. *See* S-21 Confession – DANH Siyan, E3/7426, undated, ERN (Kh) 00172772.

<sup>8134</sup> NUON Chea Closing Brief, para. 605.

<sup>8135</sup> *See above*, paras 2163- 2164, 2379-2380, 2383, 2399.

<sup>8136</sup> NUON Chea Closing Brief, paras 606-607.

<sup>8137</sup> NUON Chea Closing Brief, paras 606-607.

<sup>8138</sup> *See below*, Section 12.2.24.1.5: Torture.

methods during the interrogations at S-21 from the early days of its operation.<sup>8139</sup> The above evidence of both physical and mental mistreatment applied to prisoners during interrogations throughout the operation of S-21 demonstrates the environment of fear and oppression in which the prisoners were held and is a further factor that undermines the reliability of all S-21 confessions, which were used as a basis for the arrest of implicated enemies.<sup>8140</sup>

#### 12.2.12.4. Reporting and supervision

2403. Once a confession was obtained, the interrogators reported to their superiors. The interrogators were told to use further efforts to extract a confession if they were initially unable to do so.<sup>8141</sup> According to PRAK Khorn, interrogators did not dare to make recommendations for the release of prisoners and would simply report to their superiors that the prisoner had not yet confessed.<sup>8142</sup>

2404. Interrogators were only allowed to report on their work to their group chief and could not discuss their work among themselves. They were instructed in study or education sessions to maintain secrecy and to not spread information from person to person.<sup>8143</sup> The S-21 staff did not dare leak any information given the CPK slogan “you know your work, they know their work”.<sup>8144</sup> This was consistent with the general instruction on secrecy, which was to be maintained with respect to all operations of S-21 – for example, nobody from the outside was allowed to go beyond the reception area to the facility.<sup>8145</sup>

2405. Duch and Hor instructed interrogators to be thorough in their work, to avoid making mistakes and to ensure that the “enemy” would not say anything that was untrue.<sup>8146</sup> Chan, Hor, Tith and Duch sometimes came to inspect interrogations and at

<sup>8139</sup> See above, paras 2163, 2372, 2379-2383, 2391. See also, S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 16, ERN (En) 00225394 (“In summary, in doing propaganda, torture, putting questions or accusations to them, we must have a firm and absolute stance with no hesitation.”).

<sup>8140</sup> Section 2.4.6.3: Torture-Tainted Evidence.

<sup>8141</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 47-48.

<sup>8142</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 80.

<sup>8143</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 37, 44.

<sup>8144</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 11-12; T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 39-40 (testifying that another Party slogan was “do not know, do not see, do not hear [...] do not speak.”).

<sup>8145</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 40 (testifying that Pang was authorised to go deep inside S-21 as he was representing the upper echelon).

<sup>8146</sup> T. 26 April 2016 (LACH Mean), E1/422.1, pp. 70-71.



times asked the prisoners questions themselves.<sup>8147</sup> The Chamber notes that Duch testified that he did not have time to witness people being interrogated.<sup>8148</sup> While the Chamber accepts that Duch was not involved in most interrogations, the evidence demonstrates that particularly in connection with more important prisoners, he took a more active role and furthermore was involved in training cadres on interrogation techniques. The Chamber accordingly finds PRAK Khorn's evidence that Duch inspected interrogations on some occasions to be credible.<sup>8149</sup>

2406. Detainees were required to put their thumbprint on confessions, but these confessions were not read out to them.<sup>8150</sup> Once a full confession was obtained, it was typed in full and sent to MAM Nai or Duch.<sup>8151</sup> The report included the interrogator's name, the name of the prisoner and signature.<sup>8152</sup> Interrogators were also instructed to provide lists of the names of individuals implicated during an interrogation or in a confession.<sup>8153</sup> S-21 staff were also occasionally tasked with summarising the names of people implicated in previous confessions.<sup>8154</sup> If Duch or MAM Nai were dissatisfied with a confession, it would be sent back with an annotation to the interrogator with specific questions to be asked; the prisoner would have to be re-interrogated and the

<sup>8147</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 63-64; T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 36.

<sup>8148</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 87.

<sup>8149</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 63-64; T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 36.

<sup>8150</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 32.

<sup>8151</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 94-95 (testifying that the full confession would on average be between 30 and 40 pages long); T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 48-49 (testifying that he made six copies of each confession which were all provided to Duch); T. 26 April 2016 (LACH Mean), E1/422.1, p. 20. *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, p. 82 (testifying that he gave confessions which he typed to Hor).

<sup>8152</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 95-97. *See e.g.*, S-21 Confession – ENG Meng Heang, E3/1549, 24 February 1977, p. 3, ERN (En), 00769685. PRAK Khorn confirmed that his signature appeared on this document and that he used violence in order to obtain this confession. *See* T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 96-97.

<sup>8153</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 99-101 (testifying that there was never a case where he was instructed by his superiors to not include the names of senior leaders of the Party). *See e.g.*, S-21 Confession – CHAUN Maing, E3/8650, 4 January 1979, pp. 4-10, ERN (En) 00752851-00752857.

<sup>8154</sup> T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 76-79 (testifying that E3/963 was such a document, but that this document remained at S-21 but on other occasions they were asked by their superiors to provide them a summary). *See also*, S-21 list of prisoners from Ministry of Foreign Affairs, E3/963, undated, ERN (En) 00181772-00181774.

older confession was burned.<sup>8155</sup> On occasion, interrogators wrote to prisoners, relaying instructions received from Duch to provide further detail on traitorous activities.<sup>8156</sup>

2407. Interrogation reports of ordinary prisoners were sent to Hor, who forwarded them to Duch.<sup>8157</sup> Pon and Tuy provided the confessions of important prisoners to Duch.<sup>8158</sup> Duch's messenger was responsible for keeping the confessions of important prisoners while Hor was responsible for the other confessions.<sup>8159</sup> In a further reflection of the division between important and ordinary prisoners, Duch gave secret confessions to the typists, and these confessions were handled exclusively by Duch's messengers Chhen and Sam, rather than Hor or Huy.<sup>8160</sup>

2408. The Chamber notes that Duch testified that CPK leaders did not care whether confessions were true or not and used them as a way to smash people who opposed the revolution by identifying them as CIA or KGB agents or "agents of the land-grabbing 'Yuon'".<sup>8161</sup> However, it is unclear on what basis Duch reached this conclusion. The Chamber therefore does not rely on his opinion in this regard. The Chamber will make its own conclusion on what was intended by the CPK leadership when making findings on responsibility.<sup>8162</sup>

2409. As discussed above, during beatings and interrogations detainees were forced to confess and implicate others.<sup>8163</sup> These confessions were forwarded to the upper echelon which decided whether or not those implicated should be arrested.<sup>8164</sup> Duch also reported the names of those implicated to his superior in the "responses of the

<sup>8155</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 18-20. *See above*, paras 2222, 2275, 2288, 2302.

<sup>8156</sup> For example, on 29 September 1976 Pon, wrote to "Brother Ya" asking, following "Brother Duch's instructions, [to] confirm and detail [his] traitorous activities". *See* S-21 Confession – MEN San *alias* Ya *alias* IX, E3/1868, ERN (En) 00290104, 00290113, 00769574.

<sup>8157</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 43.

<sup>8158</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 43-44 (testifying that later Hor was also allowed to read the confessions of special prisoners before forwarding them to Duch).

<sup>8159</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 94.

<sup>8160</sup> Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, p. 26, ERN (En) 00322859; KAING Guek Eav Interview Record, E3/5770, 31 March 2008, pp. 5-6, ERN (En) 00177611-00177612.

<sup>8161</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 64-69; KAING Guek Eav Interview Transcript, E3/347, multiple dates, pp. 35-36, ERN (En) 00185030-00185031.

<sup>8162</sup> Section 16: Common Purpose; Section 17: The Criminal Responsibility of NUON Chea; Section 18: The Criminal Responsibility of KHIEU Samphan.

<sup>8163</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 31-32, 44, 54, 57 (testifying that he fabricated the names of those whom he implicated but he also mentioned individuals who had already been arrested); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 29, ERN (En) 00346487.

<sup>8164</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 12; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 51. *See also*, Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 25, ERN (En) 00341710 (testifying that people were arrested based on implications in confessions).

enemy”.<sup>8165</sup> A person typically had to be implicated in more than one confession before an arrest could be justified, but there were cases where people were arrested based on one confession.<sup>8166</sup>

2410. In May 1977, Duch received a request from “San” to hand over 17 persons who had been identified in confessions as having joined the CIA.<sup>8167</sup> In a similar letter, SOU Met wrote to Duch requesting permission to send three individuals to S-21, notably indicating that an individual named KIM Vik from Division 605 should be sent because he had previously been a musician “of the contemptible Thach Saly’s band”. SOU Met’s stated that even though KIM Vik had not been implicated in an “enemy” confession, “as I [Met] have examined and seen through his activities, he is of course an enemy because he also used to live in the division office for a period of time”.<sup>8168</sup> The Chamber finds that this indicates some prisoners were arrested by virtue of association and status rather than any genuine suspicion.

#### 12.2.12.5. Annotations and documentary evidence

2411. Duch instructed his interrogators to include an annotation about whether or not physical violence had been used during interrogations, and the extent of the abuse inflicted while confession was extracted.<sup>8169</sup> He regularly received such reports from his interrogators.<sup>8170</sup> The NUON Chea Defence submits that contrary to Duch’s evidence, only a few of the S-21 statements in evidence bear annotations indicating the use of “*tearunakamm*”.<sup>8171</sup> First, the Chamber finds that, contrary to the NUON Chea

<sup>8165</sup> Report from Duch, E3/8392, 2 February 1977, p. 1, ERN (En) 00824945.

<sup>8166</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 93-95 (testifying that POL Pot gave a speech that 10 confessions could be justification for an arrest, but this was something said to “make it look good”). See also, KAING Guek Eav Interview Record, E3/451, 5 May 2008, pp. 2-3, ERN (En) 00204339-00204340. See above, para. 2206.

<sup>8167</sup> Letter to Duch, E3/1042, 5 May 1977, p. 1, ERN (En) 00178184. See also, Letter to Duch, E3/8385, 4 October 1977, 00178070 (in which Meth on behalf of the military committee of Division 502 wrote to Duch indicating that he wanted to transfer three individuals who had been implicated). The Chamber notes that these letters would have passed through Duch’s supervisor in the Standing Committee before being given to Duch. See above, para. 2189.

<sup>8168</sup> Letter from Met to Duch, E3/9381, 2 June 1977, ERN (En) 00002409.

<sup>8169</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 15-16, ERN (En) 01319824-01319825.

<sup>8170</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 12-18 (testifying that it was probably following an order of SON Sen that interrogators were instructed to note down how much torture they used). See e.g., S-21 Confession – NHEUM Sim *alias* Saut, E3/1869, 11 November 1977, ERN (En) 00837417 (noting that the interrogator “tortured him until he confessed that he worked as a spy in a CIA network”); S-21 Confession – SIENG Pauy *alias* Sean, E3/1894, 28 October 1977, p. 4, ERN (En) 00702085 (noting that: “When we started torturing, he agreed to confess by telling about his connection, activities and plans in the network”).

<sup>8171</sup> NUON Chea Closing Brief, para. 605.

Defence's submissions, the absence of such a notation does not establish that "tearunakamm" was not used. Further, while not every S-21 confession which the Chamber has in evidence includes an annotation describing mistreatment, the Chamber is satisfied based on the evidence analysed below that interrogators did on occasion describe the manner in which prisoners were mistreated, whether or not the word "tearunakamm" was noted.

2412. Reports from interrogators attached to confessions confirmed that psychological abuse and physical violence were used in order to extract confessions.<sup>8172</sup> The reports and the annotated confessions were forwarded by Duch to SON Sen and subsequently to NUON Chea.<sup>8173</sup>

2413. The Chamber will now discuss a few examples of annotations and reports which corroborate the physical abuse of prisoners during the course of interrogations in order to extract confessions.

2414. In one report concerning the interrogation of KE Kim Huot, the interrogator asks for guidance from "Angkar" after he noted that he planned to "continue to torture with mastery, because the enemy is breaking emotionally".<sup>8174</sup> During the course of KE Kim Huot's interrogation, he was "pounded", electrocuted and forced to eat three spoonfuls of excrement, at which point annotations indicate that he "became delirious" and later confessed.<sup>8175</sup> KE Kim Huot was the former Secretary of Sector 7 of the Northwest Zone.<sup>8176</sup> KE Kim Huot was detained for a long period because Duch's

<sup>8172</sup> Excerpt of S-21 Confession – SOUR Heang *alias* Yom, E3/7437, 18 July 1978, ERN (En) 00780892 (noting that after being beaten, the prisoner admitted that he was a traitor and that only after he was electrocuted several times did he confess about CIA networks); Excerpt of S-21 Confession – MEN San *alias* Sie, E3/2475, 18 August 1977, ERN (En) 00836681-00836682 (noting that the prisoner initially "refused to talk about his betrayal at all" but he spoke when he was tortured "really strongly" and that the "[v]ery harsh torture caused sores on his back"); S-21 Confession – KE Kim Huot, E3/1705, pp. 5, 9-10, ERN (En) 00183285, 00183289-00183290 (noting that the interrogators decided to torture the prisoner who was "pounded" on several occasions, beaten with electrical wire and forced to eat excrement after which he confessed); Excerpt of S-21 Confession – KOAM Chan *alias* Chan, E3/3654, 21 October 1977, E3/3654, pp. 1-2, ERN (En) 00768300-00768301 (noting that the prisoner was "tortured continuously for more than half a day" but given that he "still did not break [...] we continued torturing him" and threatened to beat him again).

<sup>8173</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 13, 17-18.

<sup>8174</sup> S-21 Confession – KE Kim Huot, E3/1705, 22 July 1977, p. 10, ERN (En) 00183290.

<sup>8175</sup> S-21 Confession – KE Kim Huot, E3/1705, 22 July 1977, pp. 9-10, ERN (En) 00183289-00183290.

<sup>8176</sup> S-21 Confession – KE Kim Huot, E3/1705, 22 July 1977, p. 5, ERN (En) 00183285. *See above*, para. 2325.

superiors placed great importance on his confession and it was not possible to end his interrogation until his confession was complete.<sup>8177</sup>

2415. The confession of TIT Son *alias* Nhem contained a note from the interrogator which indicated that “Nhem was tortured on 12 and 13 December 1976. We then began to both persuade and threaten him, but there was no torture. We pushed him by annotating the reasons on the text that he had written, and then had him write again”.<sup>8178</sup> Duch wrote an annotation on Nhem’s confession with a proposal that three copies be made including “one copy to *Angkar*”.<sup>8179</sup>

2416. LY Phen’s confession contains an annotation reading that “[h]e refused to speak about his traitorous activities [...] [w]e tortured him, and now he cannot get up and has constant nausea”, after which it was reported that he confessed.<sup>8180</sup> There is a subsequent note from the prisoner requesting to postpone his confession and observing: “I could not tolerate such torture [...] I am humbly requesting forgiveness from *Angkar*”.<sup>8181</sup> Duch wrote a note observing that: “The Confessor wrote this”.<sup>8182</sup> For another prisoner there was an annotation which noted that he was “good at hiding information. We hit him with a lock three times. His head bled.”<sup>8183</sup> Other annotations indicated that some prisoners “confessed with very little torture. We only gave him some questions and he wrote the answers for us.”<sup>8184</sup>

2417. On 24 March 1977, Pon wrote a note to Duch regarding the interrogation of another prisoner and observed that “after being tortured, he wrote about Division 164”

<sup>8177</sup> Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 14-15, ERN (En) 00344121-00344122; KAING Guek Eav Interview Record, E3/106, 1 April 2008, pp. 3-4, ERN (En) 00177633-00177634.

<sup>8178</sup> S-21 Confession – TIT Son *alias* Nhem, E3/3849, 18 December 1976, p. 1, ERN (En) 00835995. For another example of a prisoner threatened with torture if they did not confess, see Letter from Pon to Duch, E3/8388, 26 September 1976, ERN (Kh-En) 00008155.

<sup>8179</sup> S-21 Confession – TIT Son *alias* Nhem, E3/3849, 24 December 1976, p. 6, ERN (En) 00836000 (transcript of annotations, entry dated 24 December 1976).

<sup>8180</sup> S-21 Confession – LI Phen, E3/3837, 20 June 1976, p. 33, ERN (En) 00807193 (transcript of annotations). See above, para. 2277.

<sup>8181</sup> S-21 Confession – LI Phen, E3/3837, multiple dates, pp. 37, 87, ERN (En) 00807197, 00807247.

<sup>8182</sup> S-21 Confession – LI Phen, E3/3837, 15 June 1976, p. 37, ERN (En) 00807197.

<sup>8183</sup> Prisoner Biography – KEV Srom, E3/10540, undated, p. 1, ERN (En) 01462367 (transcript of annotations).

<sup>8184</sup> S-21 Confession – MEI Sokhan, E3/3839, 8 September 1976, ERN (En) 00223911.

and that once the prisoner had provided a list of names he would have the prisoner write clearly about the activities of each of them.<sup>8185</sup>

2418. A further annotation included a report that the prisoner “spoke in a somewhat tricky manner. After being beaten, spoke clearly.”<sup>8186</sup> Another prisoner “admitted that he was a spy” after being “tortured”, and was further “tortured” in order that he admit to the “structure of the string” in place.<sup>8187</sup> Other annotations observed that one prisoner “[s]howed signs of not wanting to confess and wanting to conceal information” and that “[w]hen tortured, his eye contact and facial expressions showed that he still opposed us; It was not easy to change him”. This last annotation dates back to 26 December 1975, which demonstrates the use of severe physical violence during interrogation in the early days of S-21’s operations.<sup>8188</sup> A similar annotation for a prisoner from September 1975 includes an instruction to: “Pressure him into revealing his important contacts. Stop torturing and use political and ideological tactics.”<sup>8189</sup>

2419. SBAUV Him *alias* Oeun wrote in his confession that he regretted not having been given advance knowledge of his arrest in order to prove his loyalty to the Party and concluded that “it is now too late”.<sup>8190</sup>

2420. The manner in which pressure was used to obtain specific answers is illustrated in the annotations on the confession of PHOK Chhay *alias* Touch, a cadre from Office 870 who took minutes at Central Committee meetings.<sup>8191</sup> Pon wrote to Duch and observed:

My intensive and tricky interrogation caused him to reveal his treasonous activities at the Office of *Angkar*. He had written his denial again and again. However, I continued to torture him, finally forcing him to confess, by instructing him not to make any references to the

<sup>8185</sup> Letter from Pon to Duch, E3/8714, 24 March 1977, ERN (En) 01238903.

<sup>8186</sup> S-21 Confession – CHIP Lak *alias* Yun, E3/7425, 3 August 1977, p. 1, ERN (En) 00823337 (transcript of annotations).

<sup>8187</sup> S-21 Confession – IM Choeun, E3/7428, 28 June 1978, p. 4, ERN (En) 00819803.

<sup>8188</sup> S-21 Confession – KHIEV Sun, E3/7429, 26 December 1975, p. 2, ERN (En) 00780822. *See above*, paras 2136, 2138.

<sup>8189</sup> S-21 Confession – LANG Pring *alias* LANG Phat, E3/3652, 13 September 1975, p. 16, ERN (En) 00780855 (transcript of annotations).

<sup>8190</sup> S-21 Confession – SBAUV Him *alias* Euan, E3/1891, 20 February 1977, ERN (En) 00096820.

<sup>8191</sup> S-21 Confession – PHOK Chhay *alias* Touch, E3/1878, p. 3, ERN (En) 00753713 (transcript of annotations, entry dated 5 April 1977).

names of The or HOU Nim. I made him write about his involvements with Doeun and Phum only.<sup>8192</sup>

2421. In a note to the prisoner, Pon wrote: “Do not even cheat [b]y retaining and safeguarding treasonous force[...] These two points are regarded as cruelty, and you will surely be gradually tortured to death – death with the most suffering.”<sup>8193</sup> There was a notation in his confession stating that it was read and reported to *Angkar* on 30 March 1977.<sup>8194</sup>

2422. In the confession of CHEA Non *alias* Suong, there is an annotation which suggests that the confession “was written by him before being tortured”,<sup>8195</sup> and a further annotation written by Pon indicating that after political pressure was applied, the prisoner confessed “without being tortured or forced”.<sup>8196</sup> In a confession concerning another detainee named CHOR Chhan *alias* Sreng, an annotation states that CHOR Chan confessed without “torture”, but a later annotation observes that he had “not yet confessed” and that there were “grounds for having him beaten”.<sup>8197</sup> The Chamber considers these annotations as evidence that while physical violence may not have been used immediately with each prisoner, it was certainly considered as an available option at the disposal of interrogators. This is further confirmed by the above finding that hot methods were used when no results were obtained with cold methods.<sup>8198</sup>

2423. These reports and annotations also confirm the extent to which mistreatment and violence was reported to superiors for their approval or for their information. The Chamber accordingly finds that there was no attempt to hide this severe physical and mental abuse from the upper echelon, which was informed that these methods were used to extract confessions from prisoners who were detained at S-21. The upper

<sup>8192</sup> S-21 Confession – PHOK Chhay *alias* Touch, E3/1878, p. 3, ERN (En) 00753713 (transcript of annotations, entry dated 5 April 1977).

<sup>8193</sup> S-21 Confession – PHOK Chhay *alias* Touch, E3/1878, p. 9, ERN (En) 00753719 (transcript of annotations, entry dated 9 April 1977).

<sup>8194</sup> S-21 Confession – PHOK Chhay *alias* Touch, E3/3702, p. 1, ERN (En) 00224635 (transcript of annotations, entry dated 30 March 1977).

<sup>8195</sup> S-21 Confession – CHEA Non *alias* Suong, E3/1892, 20 February 1977, p. 1, ERN (En) 00769596 (transcript of annotations).

<sup>8196</sup> S-21 Confession – BOU Phat, E3/2470, p. 27, ERN (En) 00768243 (transcript of annotations, entry dated 3 February 1978).

<sup>8197</sup> S-21 Confession – CHOR Chhan *alias* SRENG, E3/3857, pp. 1, 46, ERN (En) 00825261, 00825306 (transcript of annotations, entry undated).

<sup>8198</sup> See above, paras 2379, 2381.

echelon was also sometimes asked for guidance and it gave instructions with respect to these interrogations.

2424. The NUON Chea Defence submits that the purpose of interrogation was to investigate, rather than force detainees to confess to pre-determined facts, and that interrogations were “part of a genuine investigative process to ascertain the truth”.<sup>8199</sup> However, the weight of evidence discussed above establishes that there is no basis for these assertions and accordingly the Defence’s submissions are rejected. On the contrary, the evidence establishes that confessions were often amended and supplemented in order to create a narrative which accorded with what was expected.<sup>8200</sup> Furthermore, prisoners were pressured to confess and implicate associates and did so under circumstances where they had been subjected to the threat of and/or use of psychological and physical abuse.<sup>8201</sup> This is further evidence which the Chamber has considered in concluding that S-21 confessions in general were unreliable given the circumstances in which the prisoners were held and the environment of fear which permeated S-21.<sup>8202</sup>

2425. In addition, the Chamber notes that the NUON Chea Defence cites to POU Phally’s notebook, which indicates that the “[t]he important thing is that we do not press on names, do not lead them to talk, or beat them to say what we want”.<sup>8203</sup> However, the NUON Chea Defence fails to contextualise this note: in the same note there is reference to prisoners dying after being questioned for days and months, and the need for the Party to “know what level of secrets were inside” the detainee.<sup>8204</sup> This note also explains that in fulfilling their duty to the Party, interrogators had to eliminate wrong views such as not trying to extract more information and believing the “deceptive talk” of prisoners.<sup>8205</sup>

<sup>8199</sup> NUON Chea Closing Brief, paras 580, 593-594; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 84-85.

<sup>8200</sup> *See above*, paras 2224, 2226-2228, 2406.

<sup>8201</sup> *See above*, para. 2412-2422; Section 12.2.12.1: Interrogations and Mistreatment of Detainees; 12.2.12.2: “Cold”, “Hot” and “Chewing” Units; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8202</sup> Section 2.4.6.3: Torture-Tainted Evidence.

<sup>8203</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 19, ERN (En) 00225397.

<sup>8204</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 18, ERN (En) 00225396.

<sup>8205</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 18-19, ERN (En) 00225396-00225397.



2426. The NUON Chea Defence also ignores that this note observes that it was “not a serious matter” for interrogators to believe in the confession, but that they “must have a stance of belief in the Party and whatever the Party instructs us to do”. Further, and more importantly, the note observes that interrogators were to unconditionally respect the instructions of the Party, including when to beat a prisoner and to only beat female prisoners with whips and not their hands.<sup>8206</sup> The note also observes that the “objective of torturing is to get their answers; it is not done for fun. Therefore, we must make them feel pain so that they will respond quickly.”<sup>8207</sup>

2427. The Chamber notes that POU Phally’s notebook also states that “[i]n the past we have tortured the enemy, and there have been many losses” and that “[i]f the Party orders us to beat, then we beat with mastery, beat them to make them talk, not to die, to escape”.<sup>8208</sup> The Combined S-21 Notebook observes that if they beat the prisoner, they had to “create some kind of story to permit the beating” so that they could “beat from a position of absolute political advantage over the enemy” to allow them to question when they have “sufficient pretext to accuse them, have a pretext to pressure them completely”.<sup>8209</sup> There is also discussion about whether to “separate the torture sections and the interrogator sections”.<sup>8210</sup> Another note from the Combined S-21 Notebook observes that there was a “problem of beating the enemy. Sometimes we beat to discover their forces right away” and further that: “The problem of torture is still serious”.<sup>8211</sup> There are also references in POU Phally’s Notebook to directions regarding interrogation and collection of files, and a reminder about “torture principles”.<sup>8212</sup>

2428. POU Phally’s notebook also contains lists of names with a notation that these were people “we must pound to get their histories of activity”, and refers to individuals who were authorised to be severely physically abused.<sup>8213</sup> POU Phally’s notebook also

<sup>8206</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 19, ERN (En) 00225397.

<sup>8207</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 15, ERN (En) 00225393.

<sup>8208</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 29, ERN (En) 00225407.

<sup>8209</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 41, ERN (En) 00184523 (entry dated 8 October 1978).

<sup>8210</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 41, ERN (En) 00184523 (entry dated 8 October 1978).

<sup>8211</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 18-19, ERN (En) 00184500-00184501 (entry dated 19 May 1978).

<sup>8212</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 4, ERN (En) 00225382.

<sup>8213</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 3-4, ERN (En) 00225381-00225382.

lists names of “people we struck and got something out of”.<sup>8214</sup> Furthermore, the document refers to a direction to “[e]xamine and compare the responses conscientiously before torturing” and not to beat unless instructed to do so.<sup>8215</sup> POU Phally’s notebook also notes that interrogators were not to simply make prisoners “confess because of the pain”. In order to counter that, the interrogators were to maintain “the view of letting them live for a long time so we can get the confessions to present to the Party”. The notebook further observed that “we break them by making them stop trusting their associates” and tells interrogators that the decision of whether to keep prisoners alive or to “smash” them depended on the judgement of the Party.<sup>8216</sup>

2429. MAM Nai’s Notebook indicates that measures taken against the enemy included “beat[ing] them to break them”.<sup>8217</sup> A further note indicates an instruction to interrogate “until it is seen which one [in Chakrei’s group] is important. When we see the important one, we apply pressure.”<sup>8218</sup> Other notations in the Combined S-21 Notebook indicate that during questioning, “[t]hey answer quickly, but we are quick to beat them too. This is a shortcoming, being quick to torture.”<sup>8219</sup> With respect to prisoners who did not talk, the note observes that the:

[R]esponses are not yet pure without having beaten them. The matter of taking the *Yuon* to beat right in front of them, that is no gain. If we bring a live person for them to see, that is a gain. They might be even quicker to answer, and it might be more pure.<sup>8220</sup>

2430. Further notations in POU Phally’s notebook observe that the “enemy does not confess to us easily” and stress the importance of using “politics” in addition to torture, which “makes prisoners clear in their responses, and even if we torture them later, it makes them confess quicker”.<sup>8221</sup> Contrary to the NUON Chea Defence’s submission, these S-21 notebooks corroborate the use of torture to obtain specific information and demonstrate that interrogations were conducted in accordance with a policy directed

<sup>8214</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 7-8, ERN (En) 00225385-00225386.

<sup>8215</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 10, ERN (En) 00225388.

<sup>8216</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, pp. 13-14, ERN (En) 00225391-00225392.

<sup>8217</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 12, ERN (En) 00184590 (entry dated 10 February 1978).

<sup>8218</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, p. 19, ERN (En) 00184597 (entry dated 28 March 1978).

<sup>8219</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 29, ERN (En) 00184511 (entry dated 18 August 1978).

<sup>8220</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 29, ERN (En) 00184511 (entry dated 18 August 1978).

<sup>8221</sup> S-21 Notebook of POU Phally, E3/8368, multiple dates, p. 14, ERN (En) 00225392.

from a higher level to extract information and identify “enemies”. In this regard, the Chamber recalls its earlier finding that Duch and MAM Nai recognised and confirmed the content of these notebooks as being consistent with the instructions given to the interrogators.<sup>8222</sup> The NUON Chea Defence assertion that there was no nationwide policy with respect to torture and that there was no criminal intent on the part of NUON Chea or other senior leaders will be addressed in the findings related to the joint criminal enterprise and the individual criminal responsibility of the accused.<sup>8223</sup>

2431. The NUON Chea Defence further submits that the Khmer terms “*chamloay*” and “*tearunakamm*” have respectively been mistranslated as “confessions” and “torture”, which has led to a fundamental misinterpretation of the evidence.<sup>8224</sup> The Chamber notes that there is indeed some inconsistent usage of the terms “*chamloay*” and “*tearunakamm*”. While “*tearunakamm*” has been translated into the English word “torture”, the Chamber is aware that the English word and the French equivalent do not entirely reflect the nuances of the Khmer word. For example, the English and French terms, unlike “*tearunakamm*”, do not refer to the discipline of a child. However, the Chamber is satisfied that when used with regard to S-21, “*tearunakamm*” refers to inflicting physical pain upon the prisoner.<sup>8225</sup> In reaching its conclusion, the Chamber has not only had regard to the term as used in Khmer, but also to the factual circumstances surrounding the evidence in question. Accordingly, in its legal discussion on the charges of torture, the Chamber considers carefully the context of the word “*tearunakamm*” at S-21 and the type of mistreatment it actually refers to in order to appropriately address the facts alongside the legal definition of this crime and to evaluate whether they reached the requisite level of gravity to amount to torture. The Chamber is therefore satisfied that there has been no misinterpretation of the evidence regardless of the various contexts and uses of the Khmer word.

### 12.2.13. *Medical Treatment*

2432. S-21 had a small medical unit consisting of former members of Division 703, but in mid-1978 most of medics in this unit were arrested and replaced by children who

<sup>8222</sup> See above, paras 2132-2133.

<sup>8223</sup> NUON Chea Closing Brief, paras 585-588, 607.

<sup>8224</sup> NUON Chea Closing Brief, paras 581-585; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 87-88.

<sup>8225</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 21-22, 25.

had been brought from Amleang by Duch.<sup>8226</sup> Try was the Chief of the S-21 medical unit until he was arrested.<sup>8227</sup>

2433. While prisoners were sometimes provided with medical treatment, the medicines were not effective.<sup>8228</sup> Important prisoners had to be kept in good health for interrogation, after which they were sent for execution.<sup>8229</sup> Medics were therefore instructed to be careful with the medical treatment of detainees and their wounds when their interrogations had not yet concluded.<sup>8230</sup>

2434. Following interrogations, the wounds of prisoners were cleaned with salt water and bandaged using pieces of cloth or mosquito nets because staff did not have proper bandages.<sup>8231</sup> There were approximately 10 to 15 medics who were assigned to provide treatment to prisoners and this included dressing wounds and the provision of pills.<sup>8232</sup> Most of the S-21 staff who worked in the medical unit were between the ages of 16 and 20.<sup>8233</sup> If a prisoner could not be treated after an interrogation this had to be reported to the chief medic who dealt with prisoners with serious conditions.<sup>8234</sup>

<sup>8226</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 44; Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 93, ERN (En) 00341778. *See also*, Case 001 Transcript (SEK Dan), E3/7467, 3 August 2009, p. 15, ERN (En) 00358866; S-21 list of prisoners, E3/9905, undated, p. 28, ERN (En) 01398898 (noting the arrest of the chairman, deputy chairman, and group chief of the S-21 hospital on 6 April, 8 May and 10 May 1978); S-21 list of prisoners who entered in July 1978, E3/10120, undated, p. 12, ERN (En) 01399074 (noting the arrest of AING Sor, S-21 medic, on 20 July 1978).

<sup>8227</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 61; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 14; T. 3 May 2016 (MAK Thim), E1/426.1, p. 7.

<sup>8228</sup> T. 2 May 2016 (MAK Thim), E1/425.1, p. 102. Photographs of dead prisoners from S-21 corroborate the emaciated state of the prisoners. *See e.g.*, S-21 photographs, E3/8063.16, undated, ERN P00005340; E3/8063.46, 24 September 1977, ERN P00005348; E3/8063.48, 5 October 1977, ERN P00005347; E3/8063.49, 11 October 1977, ERN P00005346. *See also*, Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 80, ERN (En) 00346738; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 23, ERN (En) 00345681.

<sup>8229</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 36-37.

<sup>8230</sup> T. 2 May 2016 (MAK Thim), E1/425.1, pp. 94-95, 99-100.

<sup>8231</sup> T. 2 May 2016 (MAK Thim), E1/425.1, pp. 89-90, 102-105 (testifying that the medical unit ran out of a “red liquid” which was an antibiotic they used to treat the wounds including when nails of detainees had been pulled out); T. 3 May 2016 (MAK Thim), E1/426.1, pp. 5-6, 29-30. *See also*, Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 31, ERN (En) 00346689.

<sup>8232</sup> T. 2 May 2016 (MAK Thim), E1/425.1, p. 98; T. 3 May 2016 (MAK Thim), E1/426.1, pp. 13-14, 27 (testifying that there was a separate medical unit for the treatment of S-21 staff). *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, pp. 80-81 (testifying that after prisoners had been tortured and beaten he saw prisoners bleeding and with scars and wounds on their backs, hands and feet); T. 25 April 2016 (LACH Mean), E1/422.1, pp. 60-61.

<sup>8233</sup> T. 3 May 2016 (MAK Thim), E1/426.1, p. 28.

<sup>8234</sup> T. 2 May 2016 (MAK Thim), E1/425.1, pp. 94, 106-107.

2435. Prisoners who had been handcuffed or shackled for long periods suffered from swollen and numb limbs, while others suffered from beriberi.<sup>8235</sup> Prisoners were given pills and vitamin injections by the medical unit to treat various conditions.<sup>8236</sup> There was a lack of medicines for the treatment of the prisoners.<sup>8237</sup>

2436. Records were also kept at S-21 which indicated that prisoners suffered from other conditions including dysentery, ulcers and diarrhoea, and documents indicated that some of these prisoners were emaciated and in critical condition.<sup>8238</sup> One of these records indicated that a prisoner was seriously sick after being tortured.<sup>8239</sup> Prisoners died on a regular basis from illness.<sup>8240</sup> This is corroborated by almost daily annotations in the Orange Logbook which note that over 200 prisoners died from illnesses including: kidney inflammation, syncope, viruses, gastrointestinal inflammation, swelling, numbness, dysentery, chest pains, fever, diarrhoea, small pox, exhaustion, bronchitis, vomiting blood, infected wounds, high blood pressure and blood-borne disease.<sup>8241</sup> Other annotations note that prisoners who had contracted syphilis were

<sup>8235</sup> T. 3 May 2016 (MAK Thim), E1/426.1, pp. 45-46 (noting that beriberi was the English term associated with a disease prisoners experienced involving numbness and swelling of limbs, treated by S-21 medics with vitamin injections).

<sup>8236</sup> T. 3 May 2016 (MAK Thim), E1/426.1, pp. 31-33, 45. MAK Thim also testified about where prisoners received medical treatment at S-21 and whether or not they were taken to the medical unit. *See* T. 2 May 2016 (MAK Thim), E1/425.1, pp. 90-94. However, MAK Thim's testimony was marked by contradictions, confusion and lack of recollection. The Chamber therefore does not rely on his evidence in this regard.

<sup>8237</sup> T. 3 May 2016 (MAK Thim), E1/426.1, pp. 31-32.

<sup>8238</sup> S-21 list of prisoners' diseases on 15 May 1977, E3/8438, 16 May 1977, pp. 1-4, ERN (En) 00701361-00701363; S-21 list of prisoners – report on the situation of illness of the enemy on 5-8-77, E3/2098, 5 August 1977, pp. 1-3, ERN (En) 00184324-00184326; S-21 list of prisoners – report on number of patients according to levels of security, E3/8703, undated, pp. 1-2, ERN (En) 00609177-00609178; S-21 list of prisoners who are sick, lame, beriberi and crippled, E3/8580, 1977, pp. 1-12, ERN (En) 01321737-01321748 (referring to sick, lame and crippled prisoners); S-21 list of prisoners' diseases, E3/10566, 1976, pp. 1-201, ERN (En) 01369329-01369529. *See also*, S-21 list of prisoners' diseases, E3/8574, 1976, pp. 136-218 (referring throughout to dozens of prisoners who were listed as severely ill and suffering from emaciation), ERN (En) 01321592-01321674.

<sup>8239</sup> S-21 list of prisoners – report on number of patients according to levels of security, E3/8703, undated, ERN (En) 00609178.

<sup>8240</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 62. *See also*, S-21 list of prisoners – report on number of patients according to levels of security, E3/8703, undated (noting that two prisoners who were patients had died) ERN (En) 00609177; Case 001 Transcript (SEK Dan), E3/7467, 3 August 2009, p. 16, ERN (En) 00358867 (testifying that the child medics had to carry and bury the bodies of prisoners who died of their illnesses in the vicinity of the compound).

<sup>8241</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 40, 53, 55, 60, 66, 76, 82, 89, 91, 94, 96, 98, 103, 105, 107, 111, 113, 116, 119, 122, 130, 136, 138, 140, 144, 146, 148, 158, 161, 169, 171-172, 174, 177, 186, 191, 195-196, 198-199, 202, 216, 218, 220, 222, 231, 233, 237, 239, 243, 245, 247, 249-250, 252, 257, 259, 261, 263, 265, 268, 271, 273, 275, 277, 279, 281, 283, ERN (En) 01460455; 01460468; 01460470, 01460475, 01460481, 01460491, 01460497, 01460504, 01460506, 01460509, 01460511, 01460513, 01460518, 01460520, 01460522, 01460526, 01460528, 01460531, 01460534, 01460537, 01460545, 01460551, 01460553, 01460555, 01460559, 01460561, 01460563, 01460573, 01460576, 01460584, 01460586-01460587, 01460589, 01460592, 01460601, 01460606, 01460610-01460611,

killed.<sup>8242</sup> Another annotation notes that a prisoner “died of being too thin”.<sup>8243</sup> A list of prisoners’ diseases notes a range of diseases that afflicted hundreds of prisoners in 1976 and records that several prisoners died from these diseases.<sup>8244</sup> This list classifies prisoners as slightly ill, moderately ill and seriously ill.<sup>8245</sup> One prisoner list which also records seriously ill prisoners in May 1976 includes a note which demonstrates that this list was sent to the S-21 Committee with a summary of the total number of prisoners suffering from different diseases.<sup>8246</sup>

2437. SUOS Thy copied the report provided by the medical staff regarding the cause of death.<sup>8247</sup> SUOS Thy testified that when there were annotations on lists which indicated “bruised”, the detainee had died as a result of “torture”, while an annotation “numb” indicated that the detainee had died from swelling due to lack of food.<sup>8248</sup> SUOS Thy testified that while he did not know the total number of those who died, he estimated that one or two prisoners died every day at S-21 from illness or beatings.<sup>8249</sup> This is consistent with the records found in the Orange Logbook which record over 200 prisoners who died as a result of disease and/or torture during much of 1977.<sup>8250</sup> The

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01460613-01460614, 01460617, 01460631, 01460633, 01460635, 01460637, 01460646, 01460648, 01460652, 01460654, 01460658, 01460660, 01460662, 01460664-01460665, 01460667, 01460672, 01460674, 01460676, 01460678, 01460680, 01460683, 01460686, 01460688, 01460690, 01460692, 01460694, 01460696, 01460698. The Chamber notes that this is only a sample of the pages which describe prisoners who died of sickness. These pages cover the following approximate dates: 6, 18-19, 23, 27 May 1977, 6, 9, 15-16, 18-20, 24-26, 29-30 June 1977, 2, 4, 14, 20, 22-23, 26, 28, 29 July 1977, 8, 11, 17, 19-21, 23, 30 August 1977, 4, 8-9, 11, 13, 23-24, 26-27 September 1977, 4-5, 8-9, 12-16, 18, 22-26, 28, 30-31 October 1977, 1, 3-5 November 1977.

<sup>8242</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 42, 166, ERN (En) 01460457, 01460581.

<sup>8243</sup> S-21 Orange Logbook, E3/10770, undated, pp. 60, ERN (En) 01460475.

<sup>8244</sup> S-21 list of prisoners’ diseases, E3/8574, 1976, pp. 1-218, ERN (En) 01321457-01321674.

<sup>8245</sup> S-21 list of prisoners’ diseases, E3/8574, 1976, pp. 1-218, ERN (En) 01321457-01321674. The list identified dozens of prisoners who died as a result of their diseases.

<sup>8246</sup> S-21 list of prisoners, E3/8461, 6 May 1976, p. 3, ERN (En) 00853245.

<sup>8247</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 10-11 (testifying that he could not recall whether or not the reports noted if a prisoner died from “acts of torture”); Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 48-49, ERN (En) 0035683-00356835 (testifying that the lists prepared by the medical staff did not necessarily indicate that a prisoner died as a result of torture, and could simply state that they died as a result of illness).

<sup>8248</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 11-13 (testifying that the list E3/3187 was probably made by Meng); S-21 list of prisoners died of diseases and executed from 1 May 1976 to 15 May 1976, E3/3187, ERN (En) 00874564-00874569.

<sup>8249</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 12-13. *See also*, T. 3 May 2016 (MAK Thim), E1/426.1, p. 6 (testifying that while he worked as a medic he saw a prisoner die at S-21 every three or four days or every week).

<sup>8250</sup> *See above*, para. 2436.

medical staff at S-21 were instructed to carry the dead prisoners and bury them outside the S-21 compound.<sup>8251</sup>

2438. Given the poor hygienic conditions, prisoners were infested with lice and suffered from skin rashes.<sup>8252</sup> The evidence contains a handwritten report in which MAM Nai seeks advice from *Angkar* following an inspection of the prisoners at S-21A in March 1976.<sup>8253</sup> The Chamber recalls its finding above that S-21A referred to the interrogation unit of S-21.<sup>8254</sup> The report notes that a number of prisoners had dysentery while others had swelling and numbness. It also notes that lice had decreased by 80 to 90 percent but that in a small number of rooms there were “human smell stinks”. MAM Nai requests to have the rooms cleaned, to cure illnesses by using Khmer medicine and to renovate some of the rooms.<sup>8255</sup> The Chamber finds that this handwritten document bears sufficient indicators of authenticity, including the signature and name of MAM Nai *alias* Chan, whose notebook the Chamber has admitted and found to be authentic.<sup>8256</sup> Furthermore, the document is consistent with and corroborates other evidence with respect to detention conditions at S-21.<sup>8257</sup>

2439. According to CHUM Mey, when he was detained at S-21 in 1978 there were no medical staff at all and he was not provided with medical treatment for the injuries sustained during beatings.<sup>8258</sup> The Chamber notes that S-21 medical staff was subjected to purges which impacted their number, and this could explain why CHUM Mey never saw medics.<sup>8259</sup> Regardless, there is ample evidence that medics treated prisoners who had open wounds as a result of beatings.<sup>8260</sup>

<sup>8251</sup> T. 3 May 2016 (MAK Thim), E1/426.1, pp. 6-7.

<sup>8252</sup> Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 76, ERN (En) 00346734; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, p. 22, ERN (En) 00345680.

<sup>8253</sup> Report from Chan, E3/8980, 7 March 1976, p. 1, ERN (En) 00574237.

<sup>8254</sup> *See above*, para. 2152.

<sup>8255</sup> Report from Chan, E3/8980, 7 March 1976, p. 1, ERN (En) 00574237.

<sup>8256</sup> The Chamber notes the similarity in the handwriting between this report and MAM Nai *alias* Chan’s notebook. *See* Decision on Objections to Documents Proposed to Be Put Before the Chamber on the Co-Prosecutors’ Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01, E185, 9 April 2012, p. 17, ERN (En) 00798273; Annex B – Documents Referred to in the Co-Prosecutors’ Annexes A1-A5, E185.2, 9 April 2012, p. 24, ERN (En) 00798991.

<sup>8257</sup> *See above*, paras 2366, 2435-2436.

<sup>8258</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 48; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 27, ERN (En) 00346485.

<sup>8259</sup> *See above*, para. 2432. *See below*, para. 2544.

<sup>8260</sup> Section 12.2.13: Medical Treatment.

**12.2.14. Blood Drawing and Medical Experiments**

2440. According to the Closing Order, some prisoners died after the S-21 doctors drew a large quantity of their blood.<sup>8261</sup>

2441. The Chamber finds that some detainees had their blood drawn at the medic's house which was located outside S-21.<sup>8262</sup> The blood was taken for the treatment of wounded Khmer Rouge soldiers.<sup>8263</sup> Those selected by Duch for blood drawing were prisoners in good physical condition and who did not have infectious diseases.<sup>8264</sup> While Duch did not see the practice himself, he and SON Sen gave permission for blood drawing from prisoners and SON Sen instructed them to be careful not to spread sexually transmitted diseases.<sup>8265</sup>

2442. Witness PRAK Khorn testified regarding blood drawing at S-21 and how the practice was implemented. He testified that prisoners were brought to the house, had their arms and legs tied to a bed, their mouths covered and eyes blindfolded before an needle was inserted into each arm for the blood to be drawn.<sup>8266</sup> The prisoners who had their blood drawn became very weak and were replaced by other prisoners who, in turn,

<sup>8261</sup> Closing Order, paras 473-474.

<sup>8262</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 101-102; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 12-13; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006; Photographs of S-21 Crime Scene Reconstruction, E3/9431, 27 February 2008, p. 53, ERN (En) 00198080; S-21 list of prisoners of "Blood Taking Section" 25 October 1977, E3/2164, 26 October 1977, p. 1, ERN (En) 00181692. While MAK Thim also stated that he had treated prisoners who had their blood drawn, his testimony on this issue was contradictory and marked by confusion and lack of clarity. The Chamber therefore does not rely on MAK Thim's testimony in this regard. *See* T. 3 May 2016 (MAK Thim), E1/426.1, pp. 14-20, 48-49; MAK Thim Interview Record, E3/7673, 30 November 2007, pp. 4-5, ERN (En) 00401871-00401872; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 113-114, ERN (En) 00344220-00344221 ("Regarding the blood, the superior ordered S-21 to distribute to 98 [...] the medic 3 drew the blood from the prisoners and took the blood to give to Comrade Tuy."), 49, ERN (En) 00344156 (98 was a military hospital).

<sup>8263</sup> Case 001 Transcript (PRAK Khorn), E3/7463, 21 July 2009, pp. 37-38, ERN (En) 00355145-00355146.

<sup>8264</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 84-85.

<sup>8265</sup> T. 27 June 2016 (KAING Guek Eav), E1/444.1, pp. 16-19 (testifying that they never received instructions to draw blood from cadres). The Chamber notes that Duch had in previous interviews denied authorising blood drawing. *See* KAING Guek Eav Interview Record, E3/455, 3 October 2007, pp. 6-7, ERN (En) 00149912-00149913; KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 7, ERN (En) 00154912. However, the Chamber accords more weight to Duch's live testimony in which he clarified that while he did not know when blood drawing started, he did receive instructions and authorised the practice. In addition, Duch in prior testimony had also testified about orders he received from the upper echelon and specifically SON Sen to draw blood from prisoners. *See* Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 27, ERN (En) 00342858; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, pp. 113-114, ERN (En) 00344220-00344221; Case 001 Transcript (KAING Guek Eav), E3/7471, 11 August 2009, p. 46, ERN (En) 00363738.

<sup>8266</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 102.



had their blood drawn.<sup>8267</sup> Four to five bags of blood were taken from the prisoners until the person “gasp[ed] or was dying”. After the blood had been drawn, the prisoners who died were thrown into a pile in the corner of the room before their bodies were taken for burial.<sup>8268</sup> When only a few prisoners died from blood drawing they were buried in the compound, but if a large number died, the bodies were loaded onto trucks and taken away.<sup>8269</sup> Blood was drawn from groups of 20 to 30 prisoners at a time.<sup>8270</sup>

2443. Following the instructions of Hor, SUOS Thy included the names of prisoners who had their blood drawn and died on the list of names of people who needed to be “smashed”.<sup>8271</sup> Annotations from the Orange Logbook corroborate the practice of blood drawing from prisoners. These annotations name several individuals who had their blood drawn or who were “destroyed to take their blood” in 1977.<sup>8272</sup>

2444. The NUON Chea Defence submits that Duch’s evidence on the issue of blood drawing is purely speculative.<sup>8273</sup> While the Chamber notes that Duch did not see the practice himself, his evidence is clear and precise about the manner in which blood drawing was authorised by him with the approval of SON Sen. The Chamber finds his evidence to be reliable in this regard and further corroborated by the evidence of other credible witnesses and documentary evidence referred to above.

<sup>8267</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 101-102; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 13-14 (testifying that those who had their blood drawn could not move or speak and were thrown to a corner of the room).

<sup>8268</sup> Case 001 Transcript (PRAK Khorn), E3/7463, 21 July 2009, pp. 37-38, ERN (En) 00355145-00355146; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 13 (testifying that he did not recall the exact number of bags of blood but that the prisoners had their “blood completely drawn”); PRAK Khorn Interview Record, E3/79, 25 September 2007, p. 9, ERN (En) 00161560.

<sup>8269</sup> Case 001 Transcript (PRAK Khorn), E3/7463, 21 July 2009, p. 38, ERN (En) 00355146; PRAK Khorn Interview Record, E3/79, 25 September 2007, p. 8, ERN (En) 00161559 (stating that he saw a vehicle full of prisoners whose blood had been taken, who had not yet died, but were “very weak and expiring”).

<sup>8270</sup> PRAK Khorn Interview Record, E3/79, 25 September 2007, p. 9, ERN (En) 00161560.

<sup>8271</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 13-16; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 37, ERN (En) 00356823; S-21 list of prisoners, E3/2285, multiple dates, pp. 212-213, 312-313, ERN (En) 01564972-01564973, 01565071, 01565072-01565073; S-21 list of prisoners of “Blood Taking Section” 25 October 1977, E3/2164, 26 October 1977, p. 1, ERN (En) 00181692.

<sup>8272</sup> S-21 Orange Logbook, E3/10770, multiple dates, pp. 137, 163, 197, 227, 239, ERN (En) 01460552, 01460578, 01460612, 01460642, 01460654 (22 July 1977: “Extract blood from 450”; 14 August 1977: “Extracted blood from 2 people”; 9 September 1977: “Two people KONG An and Chan, from Division 310 were destroyed to take their blood”; 3 October 1977: “Taking blood from five prisoners”; 10 October 1977: “Blood taken from a prisoner called Yin *alias* Sin from 21 Khor previously known as Social Affairs”). See also, S-21 list of prisoners of “Blood Taking Section” 25 October 1977, E3/2164, 26 October 1977, ERN (En) 00181692 (listing the names of five prisoners who entered at S-21 on 21 October 1977 and who had their blood drawn on 25 October 1977).

<sup>8273</sup> NUON Chea Closing Brief, para. 620.

2445. The NUON Chea Defence further asserts that the evidence of PRAK Khorn on the issue of blood drawing is “riddled with inconsistencies”.<sup>8274</sup> With regard to these submissions, the Chamber notes that the NUON Chea Defence mischaracterises PRAK Khorn’s prior interview to suggest that he saw blood drawing incidents from his house but later testified that he witnessed these incidents when he visited the medical site.<sup>8275</sup> The Chamber has analysed PRAK Khorn’s prior interview in light of his live testimony and has found that there were no significant contradictions in his accounts; his evidence with respect to what he witnessed in relation to blood drawing is consistently reliable and corroborated by the S-21 contemporaneous evidence. The NUON Chea Defence’s submissions are therefore rejected.

2446. The NUON Chea Defence refers to the minutes of a meeting on health and social affairs, where there was discussion about successful attempts to collect blood from 5,000 people monthly in Phnom Penh from offices, military and industries to save the lives of soldiers on the borders.<sup>8276</sup> The NUON Chea Defence submits that this document shows that “blood drawing may have been authorised at S-21 exceptionally” in order to meet the urgent need for blood.<sup>8277</sup> SUOS Thy was unable to comment on this document and was not aware whether S-21 staff were asked to donate blood.<sup>8278</sup> PRAK Khorn testified that neither he nor any of his comrades in Battalion 143 were ever asked to donate blood for wounded comrades.<sup>8279</sup> In light of the credible evidence of PRAK Khorn, it is clear that this practice was directed toward prisoners at S-21 and carried out in such a way that prisoners had blood drawn forcibly and often died. Under these circumstances, the motivation behind the practice of blood drawing is irrelevant to the Chamber’s assessment of whether this amounted to a crime.

2447. With regard to medical experiments, the Chamber notes that the available evidence is scarce and does not allow a comprehensive finding on the scope of the practice, both with respect to its duration and frequency. The Chamber finds, however, that THACH Chea’s wife was detained at S-21 and was subjected to an experiment to

<sup>8274</sup> NUON Chea Closing Brief, para. 620.

<sup>8275</sup> NUON Chea Closing Brief, para. 620 *referring to* PRAK Khorn Interview Record, E3/79, 25 September 2007, pp. 8-9, ERN (En) 00161559-00161560.

<sup>8276</sup> NUON Chea Closing Brief, para. 621 *referring to* Minutes of Meeting on Health and Social Affairs, E3/226, 10 June 1976, p. 10, ERN (En) 00183372.

<sup>8277</sup> NUON Chea Closing Brief, para. 621.

<sup>8278</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 14-15.

<sup>8279</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 41.

allow the medical unit to study the surgical process on a live body. She died as a result of this experiment and SON Sen blamed Duch and Nat for allowing this to happen to the wife of a famous person, saying that a normal person's wife should have been taken instead.<sup>8280</sup> THACH Chea was the former State Secretary of the Ministry of Education during the Khmer Republic.<sup>8281</sup> His surviving four children were left behind at S-21 and were also "smashed".<sup>8282</sup> Duch claimed that after this incident, there were no further live surgical experiments at S-21.<sup>8283</sup> The Chamber further finds that on one occasion, Duch did order that at least two dead bodies be thrown into a pond to test how long it would take a body to float.<sup>8284</sup> This was done to investigate the circumstances surrounding the discovery of a body that was found floating near the base of Division 920, for the purposes of sending a report to SON Sen.<sup>8285</sup> According to Duch, it was NUON Chea, through SON Sen, who had asked him to investigate this incident.<sup>8286</sup>

2448. While Duch claimed that the practice of conducting live surgery on prisoners did not continue, he stated that on one occasion NUON Chea instructed him to use prisoners to test pills which were found during a search and which were suspected to be poison.<sup>8287</sup> He further stated that new medicines were also tested on prisoners.<sup>8288</sup>

<sup>8280</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 96-97 (testifying that he had denied the request to conduct this experiment on TACH Chea's wife but that he was informed that the experiment had nonetheless been carried out); T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 94-95. The Chamber notes that Duch retracted from his earlier testimony that his superior had boasted about taking TACH Chea's wife away for the experiment. *See* Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 93, ERN (En) 00342050. The Chamber therefore does not rely on his prior evidence that the instruction to use live prisoners for the training of surgery was based on an instruction from his superiors.

<sup>8281</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 94, ERN (En) 00342051.

<sup>8282</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 94, ERN (En) 00342051.

<sup>8283</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 3; T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 95-97. While Duch was shown a prisoner list and recognised his handwriting which indicated "medical experimentation", he did not recall that any other female prisoners being taken for medical experiments but testified that four male prisoners were taken to test a poison. *See* T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 96-97; T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 2-3, 6-7; S-21 list of prisoners, E3/1671, undated, p. 1, ERN (En) 00181789.

<sup>8284</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 8-9.

<sup>8285</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 8-9.

<sup>8286</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 64.

<sup>8287</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 4; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 97; T. 27 June 2016 (KAING Guek Eav), E1/444.1, pp. 19-21. The Chamber notes that Duch further testified that he changed the powder in the capsules to paracetamol. However, the Chamber finds his evidence in this regard to be implausible given how strictly he followed all orders and given his testimony that all prisoners at S-21 were to be eventually killed in any event. The Chamber finds that this was an attempt to minimise his own involvement in the direct killing of prisoners.

<sup>8288</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, pp. 81-82, ERN (En) 00342038-00342039; S-21 list of prisoners, E3/1671, undated, p. 1, ERN (En) 00181789 (noting that one female prisoner was the subject of a medical experiment); KAING Guek Eav Interview Record, E3/1569, 29 April 2008, pp. 4-5, ERN (En) 00185476-00185477 (stating that this annotation was made by him and referred to the testing of new drugs).

However, the Chamber finds that there is insufficient evidence to enter a finding in this regard.

2449. The Chamber finds that the S-21 contemporaneous documentation corroborates the existence of a regular blood drawing practise which led to the death of a number of S-21 detainees. However, the Chamber is unable to establish the precise number of those who died in these circumstances during the entire operation of S-21. In this regard, the Chamber places no weight on PRAK Khorn's estimate that as many as 1,000 prisoners had their blood drawn in this manner.<sup>8289</sup> It is unclear on which basis PRAK Khorn made this estimate and to which period of time he referred. The Chamber also notes that Duch initially denied that such practice existed or that he was aware of it. Finally, Duch has estimated that approximately 100 people had been killed as a result of this practice.<sup>8290</sup> The Chamber notes that there is no documentary evidence available concerning this matter for the year 1976, the end of the 1977 or for 1978, when the armed conflict with Vietnam escalated. It finds that for the limited period of time covered by the Orange Logbook in year 1977, at the very least 12 prisoners died after having their blood extracted at S-21.<sup>8291</sup>

#### 12.2.15. *Forced Work*

2450. Detainees who had particular skills stemming from previous professions such as doctors, interpreters, artists and those with the ability to repair machines were not immediately executed.<sup>8292</sup> This is corroborated by an S-21 prisoner list which includes annotations next to specific prisoner names stating "keep to use",<sup>8293</sup> and other S-21 records which identify the names of prisoners who were assigned to work.<sup>8294</sup> These

<sup>8289</sup> PRAK Khorn Interview Record, E3/79, 25 September 2007, p. 9, ERN (En) 00161560.

<sup>8290</sup> Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 81, ERN (En) 00342038; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 37-38, ERN (En) 00342868-00342869; Case 001 Transcript (KAING Guek Eav), E3/7471, 11 August 2009, p. 46, ERN (En) 00363738.

<sup>8291</sup> See above, para. 2443. See also, Section 4: General Overview, paras 281, 289.

<sup>8292</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 36, 62-63 (testifying that he repaired sewing machines, typewriters and the water pump at S-21 and thus his life was spared); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 14-15, ERN (En) 00346472-00346473; KAING Guek Eav Interview Record, E3/5770, 31 March 2008, pp. 2-3, ERN (En) 00177608-00177609; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 8, ERN (En) 00198005. See also, T. 19 April 2016 (CHUM Mey), E1/418.1, p. 49; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 18-19, 35, ERN (En) 00346676-00346677, 00346693; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 34-35, ERN (En) 00345692-00345693.

<sup>8293</sup> See e.g., S-21 list of prisoners, E3/8484, p. 10, ERN (En) 01321709.

<sup>8294</sup> See e.g., S-21 list of prisoners who were assigned to work outside, E3/10326, 31 August 1978, pp. 1-4, ERN (En) 01528694-0152867 (referring to 22 individuals).

records demonstrate that prisoners were assigned to work as carpenters, interpreters, cooks, medics, mechanics, and construction workers.<sup>8295</sup> A prison list from December 1978 notes that 16 prisoners were working at S-21.<sup>8296</sup> VANN Nath and BOU Meng were both painters by trade who were kept alive at S-21 in order to paint portraits. BOU Meng also mentions that in Building E there was a wood sculptor and a wax moulder working with him and VANN Nath.<sup>8297</sup>

2451. While these detainees were to be executed eventually, their execution was deferred so that they could be used to work at S-21.<sup>8298</sup> NUON Chea's niece LACH Dara was selected by Duch to work as a medic.<sup>8299</sup> Both Duch and Hor had the ability to make such decisions.<sup>8300</sup>

2452. Duch received instructions from SON Sen to "release" prisoners to work inside the S-21 compound.<sup>8301</sup> Duch and Hor had the authority to order prisoners to work outside of S-21.<sup>8302</sup> There was a workshop behind the S-21 facility, where a few detainees who had particular skills were taken to work.<sup>8303</sup> The detainees were guarded and were warned not to attempt to escape or else they would be shot and killed.<sup>8304</sup> Some of the detainees who started working at the workshop were no longer mistreated during the day but were taken back at night and shackled.<sup>8305</sup>

<sup>8295</sup> See e.g., S-21 list of prisoners who were assigned to work outside, E3/10326, 31 August 1978, pp. 1-4, ERN (En) 01528694-0152867 (referring to 22 individuals).

<sup>8296</sup> S-21 list of prisoners, E3/2255, December 1978, p. 1, ERN (En) 00789494.

<sup>8297</sup> Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 24-26, ERN (En) 00345682-00345684; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 19, 29, 34-35, ERN (En) 00346677, 00346687, 00346692-00346693.

<sup>8298</sup> KAING Guek Eav Interview Record, E3/5770, 31 March 2008, pp. 2-3, ERN (En) 00177608-00177609.

<sup>8299</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 49-51 (testifying that there were no family attachments and NUON Chea gave no instructions with respect to his two nieces who were arrested and detained at S-21); T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 52-53 (testifying that the confessions NUON Chea's nieces were sent to the upper echelon).

<sup>8300</sup> KAING Guek Eav Interview Record, E3/5770, 31 March 2008, pp. 2-3, ERN (En) 00177608-00177609.

<sup>8301</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 76-77.

<sup>8302</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 33-34 (testifying that he could take prisoners outside on the orders of Hor).

<sup>8303</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 47-48, 90-92, ERN (En) 00346505-00346506, 00346548-00346550. See also, T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 24.

<sup>8304</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 14, 44-45, 48-49, ERN (En) 00346472, 00346502-00346503, 00346506-00346507 (testifying that they were guarded by a guard named Chab and that there were four or five individuals who worked at the workshop).

<sup>8305</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 74, ERN (En) 00346532. See also, Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 65-66, 97, ERN (En) 00345723-

2453. The NUON Chea Defence submits that CHUM Mey's evidence with respect to being forced to work at S-21 should be disregarded altogether "since even his mere presence at S-21 is dubious".<sup>8306</sup> The Chamber refers to its discussion above as to why it is satisfied that CHUM Mey was indeed detained and interrogated at S-21.<sup>8307</sup> Accordingly, the Chamber is satisfied that CHUM Mey's evidence in this regard is reliable and the NUON Chea Defence's submissions are accordingly rejected.

2454. The NUON Chea Defence further submits that two other witnesses who testified in Case 001 explained that their conditions improved when they started working and that they did not have to sleep with other detainees and were not shackled.<sup>8308</sup> The Chamber finds that this evidence is generally consistent with the testimony of CHUM Mey that the conditions of detention improved after he started working at S-21.<sup>8309</sup> The only difference was that CHUM Mey was taken back from the workshop at night and shackled with the other prisoners.<sup>8310</sup> Contrary to the NUON Chea Defence's submissions, the evidence does not establish that those who worked at S-21 were not treated as detainees anymore and had the same conditions as other S-21 staff. The Defence's submissions in this regard are accordingly rejected.<sup>8311</sup>

#### 12.2.16. *Arrest of S-21 Staff*

2455. Hor ordered SUOS Thy to make short biographies of those who worked within the 18 teams of the guard unit, and Meng was in charge of the biographies of all S-21 staff.<sup>8312</sup> Workers at S-21 completed biographies which had to show their loyalty and commitment to the tasks assigned to them. They performed their duties in fear that if they committed any wrongdoings or mistakes they would be considered "enemies" who

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00345724, 00345755 (testifying that the conditions of detention improved when he was assigned to work as a painter but the workers still lived in fear).

<sup>8306</sup> NUON Chea Closing Brief, para. 619.

<sup>8307</sup> *See above*, paras 2083-2085.

<sup>8308</sup> NUON Chea Closing Brief, para. 619 *referring to* Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 34-35, ERN (En) 00345692-00345693; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, pp. 35-36, ERN (En) 00346693-00346694.

<sup>8309</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 32-36, 63; T. 19 April 2016 (CHUM Mey), E1/418.1, p. 49.

<sup>8310</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 32-33. *See above*, para. 2364.

<sup>8311</sup> For discussion of the NUON Chea Defence's submission in regard to forced work at security centres exacted under emergent circumstances, *see* Section 10.1: Tram Kak Cooperatives, paras 1148-1149, 1155; Section 12.5: Phnom Kraol Security Centre, paras 3124-3126.

<sup>8312</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 82-83.

would be arrested, imprisoned and killed.<sup>8313</sup> Duch himself claimed that he also feared he would be arrested and killed.<sup>8314</sup>

2456. Guards and staff at S-21 lived in constant fear because co-workers, including former commanders such as HUY Sre,<sup>8315</sup> and other members of Division 703 were arrested.<sup>8316</sup> A significant number of S-21 cadres were arrested in 1977 and 1978, including most members of Division 703 and former resistance fighters in Phnom Penh.<sup>8317</sup> S-21 staff had to adhere to strict rules, which became stricter in late 1977 and in 1978 when internal arrests of S-21 staff intensified. One-on-one communication was forbidden and staff were afraid of being reported and arrested if they spoke to each other.<sup>8318</sup>

2457. Duch reported to the upper echelon, namely SON Sen and then NUON Chea, based on information he received from Hor on “mistakes” made by S-21 staff. SON Sen and NUON Chea then gave permission for arrests of S-21 staff, who were subsequently “smashed”.<sup>8319</sup> All of the mistakes or offences committed at S-21 had to

<sup>8313</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 29-31, 51-54 (testifying that Hor repeatedly emphasised that he should not mix up those detainees who had already been interrogated with those yet to be interrogated); T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 32-33, 35-37; Autobiography of SUOS Thy, E3/10570, 6 June 1977, p. 3, ERN (En) 01247579.

<sup>8314</sup> KAING Guek Eav Interview Record, E3/455, 3 October 2007, p. 10, ERN (En) 00149916; KAING Guek Eav Interview Record, E3/526, 5 May 2008, p. 5, ERN (En) 00204286; Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, p. 80, ERN (En) 00344187; Case 001 Transcript (KAING Guek Eav), E3/5807, 27 August 2009, p. 92, ERN (En) 00371914; T. 9 April 2012 (KAING Guek Eav), E1/61.1, pp. 4, 23; T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 42.

<sup>8315</sup> See above, para. 2317. See also, Section 12.2.8.4.4: NUN Huy *alias* HUY Sre.

<sup>8316</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 52-54 (stating that “in performing our function, we were afraid of committing infractions. If we had done anything wrong, we would have been imprisoned. We had to do whatever we can to avoid committing any infractions in order to survive, so it was useless to contest the tasks or jobs that we were assigned to do. [...] We had to focus on our work. We did not bother having any kind of sentiment or pity on the prisoners”). T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 47-48 (testifying that he feared that he would be arrested because people who belonged to the same network as the prisoner would also usually be arrested); T. 4 May 2016 (HIM Huy), E1/427.1, p. 3; T. 16 September 2016 (NOEM Oem), E1/475.1, p. 32. See also, T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 14 (testifying that he was terrified himself after the arrest of NGET Nhu *alias* Hong); Case 001 Transcript (SAOM Met), E3/7471, 11 August 2009, p. 16, ERN (En) 00363708.

<sup>8317</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 19-20, 27-28.

<sup>8318</sup> T. 5 May 2016 (HIM Huy), E1/428.1, pp. 79, 96-97. The Chamber notes that Duch testified that there were no blackboards with *Santebal* rules and the film produced by HO Vay Tan had been fabricated. See T. 27 June 2016 (KAING Guek Eav), E1/444.1, pp. 21-25. Accordingly, the Chamber does not place any weight on these *Santebal* rules. See also, The Security of Regulation, E3/8375, undated.

<sup>8319</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 19-21, 2630; T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 100 (testifying that an arrest could only be made with the authorisation of SON Sen or NUON Chea after a report was made on misconduct or offences); KAING Guek Eav Interview Record, E3/60, 3 June 2008, p. 6, ERN (En) 00195604. See e.g., S-21 Confession – VUNG Sam, E3/3694, 7 March 1978, ERN (En) 00768210 (annotation by Duch to “respected brother” identifying VUNG Sam as a member of the S-21 interrogator group who himself had been interrogated).

be reported to the upper level to decide whether the person was to be arrested. If no decision was made, Duch could decide to transfer the cadre to another unit.<sup>8320</sup> Only Duch had the authority to issue an order for these arrests.<sup>8321</sup> For example, when HUY Sre, who was third in command at S-21 and in charge of Prey Sar, made several “mistakes” with respect to Party discipline, Duch reported him to NUON Chea, who then made the final decision about his arrest and detention at S-21. HUY was subsequently executed.<sup>8322</sup> At times, S-21 staff were first reassigned to work at Prey Sar, only to be later sent back to S-21 and killed.<sup>8323</sup>

2458. Based on the Chamber’s independent review of the prisoner lists falling into the seven enumerated categories, it has identified a minimum of 200 S-21 cadres who were arrested and/or killed at S-21.<sup>8324</sup> The lists demonstrate that in August 1977 there was a large spike in arrests of S-21 cadres; approximately 72 were arrested and detained at S-21 during this month, with 30 cadres smashed on 8 August 1977 and another 23

<sup>8320</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 101.

<sup>8321</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 29 (testifying that these arrests took place after Duch issued an order to Hor, who issued an order to Peng); HIM Huy Interview Record, E3/5158, 18 January 2008, p. 3, ERN (En) 00164451.

<sup>8322</sup> T. 26 March 2012 (KAING Guek Eav), E1/53.1, pp. 55-56. *See above*, para. 2317.

<sup>8323</sup> *See above*, para. 2337.

<sup>8324</sup> *See e.g.*, S-21 list of prisoners executed in 1976, E3/3187, multiple dates, ERN (En) 00874249, 00874514; S-21 list of prisoners arrived in February 1977, E3/9844, 2 March 1977, pp. 21-25, ERN (En) 01368628-01368633; S-21 list of prisoners who entered in March 1977, E3/9845, undated, p. 91, ERN (En) 01332054; S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, p. 2, ERN (En) 01139859; S-21 List of prisoners, E3/10376, 1 April 1978; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, pp. 43-45, ERN (En) 01563499-501 (four of whom are listed as smashed on 16 July); S-21 list of prisoners smashed on 3-7-77, E3/3859, 4 June 1977, ERN (En) 00634835-36, 00634839; S-21 list of prisoners entering in August 1977, E3/10274, multiple dates, pp. 3,5,9-11, 13-14, 23-25, 27, 37-40, 42, 49, 54-55, 75, 77-78, ERN (En) 01366767, 01366769, 0136673-75, 01366777-01366778, 01366787-01366789, 01366791, 01366801-01366804, 01366806, 01366813, 01366818-01366819, 01366839, 01366841-01366842; S-21 list of prisoners executed in 1977, E3/2285, multiple dates, pp. 22,54,56,58,158, 192-194, 226, 247-249, 311, 340-341, 368-369, 378, 407, 442-447, 482, ERN (En) 01564782, 01564814, 01564816, 01564818, 01564918, 01564952-01564954, 01564986, 01565007-01565009, 01565071, 01565100-01565101, 01565128-01565129, 01565135, 01565167,01565202-01565207, 01565242; S-21 list of prisoners, E3/8600, undated, pp. 2-5, 13, ERN (En) 01321715-01321718, 01321727 (all destroyed in March 77); S-21 list of prisoners from Office S-21, E3/10376, 1 April 1978; S-21 list of prisoners who entered on 28 March 1978, E3/10242, 28 March 1978, p. 5, ERN (En) 01397872; S-21 list of prisoners who entered on 28 April 1978, E3/10373, undated, p. 1, ERN (En) 01462224; S-21 list of prisoners destroyed on 29 April 1978, E3/10167, undated, p. 5, ERN (En) 01397579; S-21 list of *Yvon* prisoners who entered on 4 May 1978, E3/10139, 4 May 1978; S-21 list of prisoners entered on 5 May 1978, E3/10140, 5 May 1978, ERN (En) 01366715; S-21 list of prisoners entered on 8 May 1978, E3/10142, 8 May 1978, p. 2, ERN (En) 01462135; S-21 list of prisoners who entered on 10-11 May 1978, E3/10144, 11 May 1978, p. 1, ERN (En) 01462136; S-21 list of prisoners who entered on 22 July 1978, E3/10113, 22 July 1978, p. 1, ERN (En) 01395536; S-21 list of prisoners who entered on 1-5 August 1978, E3/10126, 5 August 1978, p. 1, ERN (En) 01556333.



smashed later that month on 27 August 1977.<sup>8325</sup> Sporadic arrests continued through 1978.<sup>8326</sup>

2459. Typically, if a leader of a network was arrested and sent to S-21, all people who were considered part of that network, including interrogators and messengers, were removed.<sup>8327</sup> Many of the original interrogators at S-21 were arrested and killed. These interrogators were replaced by children from the West Zone.<sup>8328</sup> If the leaders of a particular division were arrested, their subordinates would be subsequently arrested.<sup>8329</sup> For example, HUY Sre was arrested and “smashed” at S-21.<sup>8330</sup> Those arrested and detained as a result included former S-21 cadres, such as Pauch and two Cham people.<sup>8331</sup> HIM Huy noticed that members of his group also kept disappearing in successive arrests.<sup>8332</sup> Duch himself was terrified after NUON Chea ordered the arrest of NGET You *alias* HONG Sochea.<sup>8333</sup> Former S-21 staff members who were arrested were killed in the vicinity of the S-21 compound.<sup>8334</sup>

<sup>8325</sup> S-21 list of prisoners entering in August 1977, E3/10274, multiple dates, pp. 3, 5, 9-11, 13-14, 23-27, 37-42, 49-50, 54-55, 75, 77-78, ERN (En) 01366767, 01366769, 01366773-01366775, 01366777-01366778, 01366787-01366791, 01366801-01366806, 01366813-01366814, 01366818-01366819, 01366839, 01366841-01366842; S-21 list of prisoners smashed on 27 August 1977, E3/2285, 27 August 1977, pp. 247-249, ERN (En) 1565007-01565009; S-21 list of prisoners smashed on 8 August 1977, E3/2285, 8 August 1977, pp. 442-448, ERN (En) 01565202-01565208; S-21 list of prisoners smashed on 23 October 1977, E3/2285, 24 October 1977, p. 482, ERN (En) 01565242.

<sup>8326</sup> S-21 list of prisoners from Office S-21, E3/10376, 1 April 1978, pp. 1-4, ERN (En) 01528332-01528335; S-21 list of prisoners who entered on 28 March 1978, E3/10242, 28 March 1978, p. 5, ERN (En) 01397872; S-21 list of prisoners who entered on 28 April 1978, E3/10373, undated, p. 1, ERN (En) 01462224; S-21 list of prisoners destroyed on 29 April 1978, E3/10167, undated, pp. 5-6, ERN (En) 01397579-01397580; S-21 list of *Yuon* prisoners who entered on 4 May 1978, E3/10139, 4 May 1978, p. 1, ERN (En) 01462131; S-21 list of prisoners entered on 5 May 1978, E3/10140, 5 May 1978, p. 7, ERN (En) 01366715; S-21 list of prisoners entered on 8 May 1978, E3/10142, 8 May 1978, pp. 1-2, ERN (En) 01462134-01462135; S-21 list of prisoners who entered on 10 May 1978, E3/10144, 11 May 1978, p. 1, ERN (En) 01462136; S-21 list of prisoners who entered on 22 July 1978, E3/10113, 22 July 1978, p. 1, ERN (En) 01395536; S-21 list of prisoners who entered on 1 August 1978, E3/10126, 5 August 1978, p. 1, ERN (En) 01556333.

<sup>8327</sup> T. 16 September 2016 (NOEM Oem), E1/475.1, p. 32; T. 15 September 2016 (NOEM Oem), E1/474.1, p. 110.

<sup>8328</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 49; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 15.

<sup>8329</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 50 (testifying that he was the only surviving member of Division 703 in the interrogation unit and that some interrogators were arrested and sent with their faces covered to special prisons).

<sup>8330</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 97 (testifying that Hor was not “smashed” because he was very meticulous in the tasks he carried out for the Party).

<sup>8331</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 27-28; T. 21 April 2016 (TAY Teng), E1/420.1, pp. 87-88; TAY Teng Interview Record, E3/7663, 17 January 2008, p. 4, ERN (En) 00401837.

<sup>8332</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 28.

<sup>8333</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 41-42.

<sup>8334</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 32; Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, pp. 70-71, ERN (En) 00353950-00353951; HIM Huy Interview Record, E3/5158, 18 January 2008, p. 3, ERN (En) 00164451.

12.2.17. *Vietnamese Detainees*

2460. Duch testified that the first Vietnamese soldier detained at S-21 entered in the facility in January 1978, and that many Vietnamese prisoners were brought to S-21 during that year.<sup>8335</sup> However, PRAK Khorn testified that many Vietnamese were brought to S-21 in 1977-1978, including soldiers, civilians and some of their spouses and children.<sup>8336</sup> HIM Huy testified that he went to collect Vietnamese soldiers who had been arrested near the border in Svay Rieng and Prey Veng provinces and brought them to Phnom Penh, but did not specify the date.<sup>8337</sup> CHHOUK Rin indicated in his WRI that in 1978, when he was fighting against the Vietnamese alongside SON Sen in the East Zone, he and his forces arrested Vietnamese soldiers and sent them to Phnom Penh.<sup>8338</sup> The Chamber also notes that documentary evidence establishes that Vietnamese prisoners were arrested, sent to S-21 and executed there as early as March 1976 and that the number of arrests and executions increased dramatically in 1978.<sup>8339</sup>

2461. Among the earliest Vietnamese detainees recorded at S-21 were Vietnamese nationals who were arrested in February or March 1976,<sup>8340</sup> either in Sector 25 at the border between Vietnam and Cambodia, or at Poulou Wai Island. These arrests show that border demarcation both on land and at sea was a point of serious contention even during times of relative détente between the two countries.<sup>8341</sup> Further, several S-21 biographies show that eleven Vietnamese were sent to S-21 on 6 May 1976. These

<sup>8335</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 84-85; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 11; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 105. *See e.g.*, S-21 Prisoner Biography – DAU Yang Soeng, E3/10557, ERN (En) 01462403; S-21 Prisoner Biography – TROEUNG Yang Ngim, E3/10558, ERN (En) 01462404 (prisoner biographies of Vietnamese prisoners who were arrested, registered and detained at S-21).

<sup>8336</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 105.

<sup>8337</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 25-26, 81-82.

<sup>8338</sup> CHHOUK Rin Interview Record, E3/361, 9 April 2008, pp. 6, 8-9, ERN (En) 00766452, 00766454-00766455.

<sup>8339</sup> *See below*, para. 2480.

<sup>8340</sup> The Chamber clarifies that these dates correspond with when the prisoners were arrested on the border, in territorial waters or on Poulou Wai Island, not their dates of entry at S-21, which occurred at a much later time. As noted in this paragraph, a few detainees were recorded as having been arrested in as early as November and December 1975.

<sup>8341</sup> S-21 list of Vietnamese prisoners, E3/7396, pp. 1-4, ERN (En) 00768213-00768216 (including the following who were arrested on 7 February 1976 at Poulou Wai Island: NGO Chen Long, civilian court of “Prey Nokor” (Saigon); DAING Yaing Phou, engine aircraft mechanic of a French company; LE Minh Try, second lieutenant and former medical student; VIT Beuy Lam, law and medical student; and LE Thy Thou Yaing. In addition, TROENG Yaing Lak, NGOV Yaing Chhun, LE Yaing Lak were arrested on 29 February 1976 and arrived at S-21 on 5 April 1976. YOEURNG Yaing Hip was arrested on 14 March 1976. Two notes signed by Duch indicate that the last three individuals were accused of being “Viet Cong spies” who were arrested while they had penetrated inside Cambodian territory as deep as 500 to 600 metres, with the purpose of removing the border posts at sites where there were no soldiers).

individuals are described as peasants or fishermen who entered DK territorial waters and were caught with their boats even earlier, in November and December 1975. Their biographies also contain notes indicating that after their arrests, they were sent to work at various plantations. There is no indication of the reason for their concomitant transfer to S-21 after months under the custody of local authorities.<sup>8342</sup> The information contained in these biographies is consistent with the testimony of MEAS Voeun, Deputy Commander of Division 1,<sup>8343</sup> who stated that when a boat with Vietnamese approached the waters patrolled by Division 1 near Koh Kong, the Division seized the boat and sent the captured Vietnamese to the “upper level” at the Division 164 headquarters in Kampong Som.<sup>8344</sup> An S-21 prisoner list shows that in addition to these 11 Vietnamese, other Vietnamese prisoners were sent from Kampong Som to S-21, arriving on 7 May 1976. The S-21 list reflects the arrival of 17 Vietnamese prisoners on 7 May 1976 and their execution two weeks later on 24 May 1976.<sup>8345</sup>

2462. “Comrade Lin” usually informed Duch about the arrival of Vietnamese prisoners, but sometimes NUON Chea also did so.<sup>8346</sup> NUON Chea told Duch that because the Vietnamese intended to invade Cambodia, “*Yvon*” prisoners were to be sent to S-21 and interrogated; moreover, their confessions were to be recorded and broadcast on the radio.<sup>8347</sup> Duch recalled that NUON Chea gave him this order on 8 January 1978

<sup>8342</sup> Compilation of S-21 Prisoner Biographies, E3/10520, p. 1, ERN (En) 01191483 (noting the following prisoners were all arrested on 30 November 1975 and sent to S-21 on 6 May 1976: S-21 Prisoner Biography – TROENG Yaing Kve, E3/10520, pp. 2-3, ERN (En) 01191484-01194485; S-21 Prisoner Biography – CHIM Yaing Koeu, E3/10520, pp. 4-6, ERN (En) 01191486-01191488; S-21 Prisoner Biography – CHIM Yaing Yop, E3/10520, pp. 7-9, ERN (En) 01191489-00191491; S-21 Prisoner Biography – CHIM Yaing Koeng, E3/10520, pp. 9-11, ERN (En) 01191491-01191493; S-21 Prisoner Biography – KVIEN Din Y, E3/10520, pp. 11-13, ERN (En) 01191493-01191495. Compilation of S-21 Prisoner Biographies, E3/10521, p. 1, ERN (En) 01195307 (noting the following prisoners were arrested on 12 December 1975 and sent to S-21 on 6 May 1976: S-21 Prisoner Biography – KVIENG Thy Thoeng, E3/10521, pp. 2-4, ERN (En) 01195308-01195310; S-21 Prisoner Biography – KVIENG Hiv Lang, E3/10521, pp. 5-7, ERN (En) 01195311-01195313; S-21 Prisoner Biography – CHOENG Thann Hoeung, E3/10521, pp. 8-11, ERN (En) 01195314-01195316. Compilation of S-21 Prisoner Biographies, E3/10522, p. 1, ERN (En) 01462295 (noting that the following prisoners were arrested in December 1975 and sent to S-21 on 6 May 1975: (1) S-21 Prisoner Biography – LE Yaing Hay, E3/10522, pp. 2-4, ERN (En) 01462296-01462298; (2) S-21 Prisoner Biography – KIM Ngoc Toeung, E3/10522, pp. 5-7, ERN (En) 01462299-01462301. *See also*, S-21 Prisoner Biography – PHAM Yaing Phann, E3/10523, pp. 1-3, ERN (En) 01368090-01368092 (arrested on 12 November 1975 and sent to S-21 on 7 May 1976).

<sup>8343</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 57.

<sup>8344</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 62-63; T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 10-11, 46-50; Section 13.3: Treatment of the Vietnamese, para. 3456.

<sup>8345</sup> S-21 list of prisoners, E3/3187, ERN (En) 00874556-00874557.

<sup>8346</sup> KAING Guek Eav Interview Record, E3/1580, 28 March 2008, p. 4, ERN (En) 00177588. Regarding the role of Lin, *see above*, para. 2211.

<sup>8347</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 11, 17; T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 19; T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 83, 86.

after a meeting regarding the “victory” of DK forces over the Vietnamese army, and that one of the Vietnamese prisoners whose confession was recorded was VO Ding Hor.<sup>8348</sup> His confession was reproduced in a July 1978 DK government publication entitled “*Evidences on [...] Vietnamese Aggression Against Democratic Kampuchea*”.<sup>8349</sup>

2463. On 14 February 1978, Brother 47 (*i.e.* SON Sen), who was headquartered in the East Zone at the time, sent a telegram copied to “Uncle” and “Uncle Nuon”, reporting that two “*Yuon* heads” had been sent to S-21.<sup>8350</sup>

2464. The registration of Vietnamese prisoners at S-21 is further corroborated by surviving photographs from S-21 which depict prisoners in Vietnamese military uniforms.<sup>8351</sup> A prisoner who knew how to read and write Vietnamese assisted SUOS Thy in registering the personal details of Vietnamese prisoners when they were brought to S-21.<sup>8352</sup> The Vietnamese who entered S-21 were both civilians and soldiers and they were all “smashed”.<sup>8353</sup> According to Duch, few of the Vietnamese prisoners were civilians as most were soldiers.<sup>8354</sup> MAM Nai similarly testified that most of the Vietnamese that he interrogated were soldiers, but also that there were a few civilians who had been arrested from the battlefield and transferred to S-21 by military units.<sup>8355</sup>

<sup>8348</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 19.

<sup>8349</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, E3/8394, July 1978, pp. 40-47, ERN (En) 00011374-00011377.

<sup>8350</sup> DK Telegram, E3/181, 14 February 1978, ERN (En) 00340537; T. 3 September 2012 (NORN Sophang), E1/120.1, p. 83 (testifying that SON Sen signed telegrams with the number 47). *See also*, Section 6: Communication Structures, para. 458 (fn. 1446).

<sup>8351</sup> S-21 photographs, E3/8063.3, undated, ERN P00000004-P00000021, P00000044-P00000045.

<sup>8352</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 50-51; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 4-6 (testifying that one detainee was a 14 year-old Vietnamese girl who was registered separately because she did not come with her parents); Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, p. 8, ERN (En) 00356794; T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 105; S-21 list of prisoners entering on 28 April 1978, E3/2209, 28 April 1978, ERN (En) 00181718 (signed by Thy).

<sup>8353</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 31 (testifying that the civilians were labelled agents or spies); T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 91; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 12; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 18-20 (testifying that the soldiers were arrested at the border where there were conflicts and many civilians were arrested at sea); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 105. *See also*, SUOS Thi DC-Cam Interview, E3/9320, 25 August 2003, p. 24, ERN (En) 00909159 (stating that the Vietnamese who were arrested were fleeing to Thailand).

<sup>8354</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 86.

<sup>8355</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, p. 90, ERN (En) 00351173.

2465. Some Vietnamese prisoners were brought to S-21 with their families after trying to flee the country.<sup>8356</sup> The Vietnamese soldiers who were arrested were labelled as spies and considered enemies.<sup>8357</sup> Duch also stated that Vietnamese civilians were forced to confess they were spies,<sup>8358</sup> and that all Vietnamese who entered Cambodian territory were considered spies and were arrested and brought to S-21.<sup>8359</sup> Vietnamese soldiers were only brought to S-21 after war broke out with Vietnam, whereas Vietnamese civilians were detained at different times.<sup>8360</sup>

2466. MAM Nai *alias* Chan, who could communicate in Vietnamese, was assigned to interrogate Vietnamese detainees.<sup>8361</sup> MAM Nai testified that he was the only interrogator at S-21 who questioned Vietnamese prisoners and that he also interrogated FULRO and Jarai group members.<sup>8362</sup> MAM Nai further clarified that he remembered interrogating 20-30 Vietnamese prisoners.<sup>8363</sup> MAM Nai was initially accompanied by

<sup>8356</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 31-32 (SUOS Thy noted that in regard to spouses and children being brought to S-21, it “did not happen often”).

<sup>8357</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 80-82. *See also*, T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 3-4; S-21 list of prisoners, E3/1553, 26 November 1978, p. 2, ERN (En) 01236389 (describing several prisoners who entered S-21 on 26 November 1978 as “*Yvon* Spy”). The Chamber has taken into consideration the June 1978 Central Committee Guidance toward “Misled persons who have [...] served as *Yvon* Agents”. *See* Section 13.3: Treatment of the Vietnamese, para. 3404; Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4260.

<sup>8358</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 40.

<sup>8359</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 30.

<sup>8360</sup> T. 7 June 2016 (SUOS Thy), E1/433.1, pp. 30-33, 36. *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, pp. 90-91 (testifying that he saw many Vietnamese brought to S-21 by truck especially in 1978). The Chamber notes some inconsistencies in the numbers provided by LACH Mean and therefore does not rely on his evidence with respect to the number of Vietnamese detainees who were brought to S-21. The Chamber further notes that some evidence suggests that some Vietnamese prisoners were captured in Vietnam. *See* Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, pp. 17-18, ERN (En) 00339612-00339613; BIL Sot DC-Cam Interview, E3/7590, 23 February 2003, pp. 14-16, ERN (En) 00890723-00890725; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 39. However, the Chamber finds that this evidence is not sufficient to make a finding beyond reasonable doubt that Vietnamese prisoners were captured in Vietnam.

<sup>8361</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 8-9; T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 87; T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 83; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 23-24; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004; T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 3. T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 105; T. 25 April 2016 (LACH Mean), E1/422.1, p. 32. *See also*, Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 22, 51-52, ERN (En) 00351105, 00351134-00351135.

<sup>8362</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, p. 52, ERN (En) 00351135; Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009, pp. 12, 14, ERN (En) 00351798, 00351800; Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, p. 9, ERN (En) 00339604.

<sup>8363</sup> Case 001 Transcript (MAM Nai), E3/7460, 15 July 2009 p. 12, ERN (En) 00351798. In view of this testimony, alongside evidence of hundreds of Vietnamese prisoners having been arrested and killed at S-21 from approximately March 1976 until the end of 1978 (*see below*, para. 2480), the Chamber concludes that many Vietnamese prisoners were not interrogated at S-21. *See e.g.*, S-21 list of prisoners destroyed on 28 April 1978, *Yvon* Spy Section, E3/8463, 28 April 1978, ERN (En) 01554605-01554606 (showing that many of the Vietnamese prisoners listed were detained at S-21 for 10 days or less before being killed). *See below*, para. 2552.

Hor during the interrogations and remembered interrogating only Vietnamese soldiers.<sup>8364</sup> MAM Nai testified that they did not need to use whips or any other coercion as they could obtain their confessions easily, and that he was unaware what happened to them thereafter. He also stated that he was not aware of a policy that anyone detained at S-21 would be killed.<sup>8365</sup> The Chamber finds that this is an attempt by MAM Nai to distance himself from the mistreatment and killings at S-21 and accordingly does not accept his evidence in this regard.<sup>8366</sup>

2467. Duch stated that the upper echelon determined that the “*Yuon*” soldiers should be questioned so that they would confess that they invaded Kampuchea and wanted to include Kampuchea in an Indochinese Federation.<sup>8367</sup> Duch clarified that he “ordered the interrogators to do what it took in order to receive the objective of the upper echelon”,<sup>8368</sup> and that he instructed interrogators to find “*Yuon*” who had hidden in Kampuchea.<sup>8369</sup> Vietnamese prisoners were subjected to torture in order to obtain these confessions.<sup>8370</sup>

2468. PHAN Than Chan, who served as interpreter and assistant during the interrogation of Vietnamese prisoners by MAM Nai, alleged in an interview that some

<sup>8364</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 22, 26-29, 45, 51, ERN (En) 00351105, 00351109-00351111, 00351128, 00351134. Cf. T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 87 (testifying that MAM Nai was assigned to interrogate Vietnamese civilians as well).

<sup>8365</sup> Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, pp. 52, ERN (En) 00351135.

<sup>8366</sup> PHAN Than Chann Interview Transcript, E3/2352 [E3/2352R], 1996, p. 16, ERN (En) 01245240 [ERN V00172536] (describing how MAM Nai *alias* Chan conducted the interrogation of Vietnamese detainees, PHAN Than Chan stated: “At first the Vietnamese replied honestly. They said that they were ordinary people, who lived on the border or were fishermen on the maritime border. Others said that they had been trying to flee South Vietnam for Thailand. However, Chan didn’t accept the replies and ordered ‘You’re going to admit that you’re a member of the army and that you are a secret agent who had come to spy in Khmer territory. If you do not say so, I will beat you to death.’ All of those under interrogation were terrified. They had already been beaten, but were afraid of dying. Under such circumstances, they said what Chan wanted. He recorded the statements in writing, affixed their thumbprints, recorded the sound and took photos.”); MAM Nai’s testimony in this regard is also contradicted the majority of evidence regarding interrogations at S-21, including the contemporaneous S-21 notebooks. See e.g., paras 2350, 2380-2381, 2383, 2426-2430; Section 12.2.3.2.4: S-21 Notebooks; Section 12.2.12.3: Interrogation Methods and Mistreatment. Likewise, MAM Nai’s testimony that he was not aware of a policy of killing Vietnamese is at odds with the evidence. See *below*, para. 2479.

<sup>8367</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 83, 86.

<sup>8368</sup> Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, p. 8, ERN (En) 00339603.

<sup>8369</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 92-93. See also, Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 16, 22, ERN (En) 00184498, 00184504 (entries dated 18 June 1978 and 18 July 1978, noting that “Maximum victory” involved finding “*Yuon*” and that “Minimum victory” involved finding “*Yuon*” agents).

<sup>8370</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 19 (testifying that the prisoners were tortured but not seriously). The NUON Chea Defence submits that Duch used the word “*tearunakamm*” which does not automatically translate as torture. See NUON Chea Closing Brief, fn. 1848. For the Chamber’s analysis of the term *tearunakamm*, see *above*, para. 2431.

civilian Vietnamese detainees were forced to wear military uniforms and to make false confessions. Confronted with these allegations, Duch denied them stating that “*Yuon* soldiers were *Yuon* soldiers”. He admitted however that “‘*Yuon*’ civilians, they were forced to confess that they were ‘*Yuon*’ spies”.<sup>8371</sup> The Chamber finds that the allegations made by PHAN Than Chan concerning the use of civilians disguised as soldiers are not corroborated by any reliable evidence and therefore it will not rely on them. It notes independently, however, that propaganda was of the utmost importance for the CPK leaders in order to denounce “Vietnamese aggression”.<sup>8372</sup>

2469. At a political study session attended by SON Sen and Duch, S-21 staff were informed that the Vietnamese were the “hereditary enemy” of the CPK.<sup>8373</sup> MAM Nai’s notebook indicates that “[i]n attacking the *Yuon*, we in [the] Special Branch must interrogate clearly and make documents clearly” and also refers to “sweep[ing] clean all the enemies, accurately” in accordance with “the principle of ‘1 against 30’ [Vietnamese]”.<sup>8374</sup> As discussed extensively in this Judgement, the Chamber has concluded that this order related to the whole of the Vietnamese population and was not limited to soldiers.<sup>8375</sup> Further, an entry in the S-21 Combined Notebook dated 18 July 1978 records the search for Vietnamese in hiding as one of the “principles set out by the Party”. It also notes that “Maximum victory = Finding the *Yuon*” and “Minimum victory = Finding additional traitor connections who are *Yuon* agents”.<sup>8376</sup> A further entry dated 8 October 1978 reflects on the new “objective” of S-21 “to save the maximum number of people who are misguided”.<sup>8377</sup> Pursuant to POL Pot’s directive,<sup>8378</sup> Vietnamese prisoners were explicitly exempted from this objective:

In the near term, we have plans to interrogate all of the Khmer without beatings and getting 80% confessions. No beatings and getting very detailed confessions, 70%. As for the foreigners, the *Yuon*, the

<sup>8371</sup> T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 40.

<sup>8372</sup> See e.g., Section 13.3.5.2: Evidence of a Policy Targeting the Vietnamese.

<sup>8373</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 7.

<sup>8374</sup> S-21 Notebook of MAM Nai, E3/833, multiple dates, pp. 23, 25, ERN (En) 00184601, 00184603 (entry dated 12 April 1978).

<sup>8375</sup> Section 13.3.5.1: The Use of the Terms “*Yuon*” and Vietnamese “Enemy”.

<sup>8376</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 22-23, ERN (En) 00184504-00184505.

<sup>8377</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 40, ERN (En) 00184522.

<sup>8378</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 46-50 (referring to the 8 October 1978 entry: “As for the ‘*Yuon*’, the practice remained the same and of course, the same applied to CIA agents; the ‘*Yuon*’, the CIA agents had to be beaten, but per Brother Pol’s instructions, all interrogations had to be stopped.”).

imperialist CIA, we apply absolute Special Branch methods, completely and totally, permanently.<sup>8379</sup>

2470. The Combined S-21 Notebook mentions that the “enemy who would dare to attack the revolution is scared of the people, and the people smash them” and that “sweeping out the enemy” is done because the people understand that it was necessary “in order to save their lives and defend the collective regime”.<sup>8380</sup> Other notes instruct to “have a clear ideological view that they are enemy”.<sup>8381</sup> Finally another entry in the same notebook reads as follows: “On 17 January 1978, Brother Party Secretary [*i.e.* POL Pot] said that if we hit their legs the *Yuon* can still crawl, if we hit their arms they can still walk”.<sup>8382</sup>

2471. There is reference in the Combined S-21 Notebook to the “interrogation of the *Yuon* and the writing the *Yuon* documents” and the notebook states that there were problems with the interrogation of the Vietnamese because “[o]ur Comrades want to interrogate the *Yuon* by beating, which is only the outer shell. They do not yet think about the *Yuon* Party, the *Yuon* People, the situation in the *Yuon* country” and that they needed to “write on the views of the *Yuon* opposing the Party”.<sup>8383</sup> These notes also indicate that documents pertaining to the interrogation of Vietnamese detainees had been submitted to “*Angkar*”.<sup>8384</sup>

2472. According to the Closing Order, the confessions of Vietnamese prisoners of war who had been interrogated at S-21 were broadcast on the radio.<sup>8385</sup> PRAK Khorn gave evidence that some Vietnamese prisoners were told by Duch that they would be released if they read the prepared confessions.<sup>8386</sup> MAM Nai prepared statements for the Vietnamese prisoners to read, in which they confessed that they had entered Kampuchean territory in order to spy on and to invade DK. These statements were then

<sup>8379</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 40, ERN (En) 00184522.

<sup>8380</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 39, ERN (En) 00184521 (entry dated 8 October 1978).

<sup>8381</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 43, ERN (En) 00184525 (entry dated 24 October 1978).

<sup>8382</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 15, ERN (En) 00184497 (entry dated 3 June 1978).

<sup>8383</sup> Combined S-21 Notebook, E3/834, multiple dates, pp. 42-43, ERN (En) 00184524-00184525 (entry dated 24 October 1978).

<sup>8384</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 43, ERN (En) 00184525 (entry dated 24 October 1978).

<sup>8385</sup> Closing Order, paras 112, 989.

<sup>8386</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 4.



broadcast each morning on the radio in Vietnamese with Khmer interpretation.<sup>8387</sup> The confessions of numerous captured Vietnamese soldiers were broadcast on the Phnom Penh Domestic Service between 21 January 1978 and 28 November 1978.<sup>8388</sup> This included the confessions of Vietnamese women who were identified as spies.<sup>8389</sup> In addition, the confessions of Cambodian nationals and Kampuchea Krom, who were identified as Vietnamese agents or employed by the Vietnamese, were also broadcast.<sup>8390</sup>

2473. These recordings and broadcasts were made pursuant to the instructions of NUON Chea to interrogate and record the confessions of these prisoners. NUON Chea

<sup>8387</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 3-4 (testifying that some of the prisoners were soldiers while others were civilians and that MAM Nai prepared their confessions). *See also*, T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 83; T. 16 June 2016 (KAING Guek Eav), E1/439.1, pp. 39-40; *SRV Troop Confessions* (in FBIS collection), E3/1359, multiple dates, pp. 118-124, 131-132, 137, ERN (En) 00169634-00169640, 00169647-00169648, 00169653 (containing the confessions of Vietnamese prisoners that were read on the Phnom Penh Domestic Service); *Confession Discusses SRV's Invasion Plans* (in FBIS collection), E3/292, 1 February 1978, pp. 19-25, 35-38, ERN (En) 00169190-00169195, 00169206-00169209; *Confession of a Captured SRV Sailor* (in SWB/FE/5730/A3 collection), E3/1249, 29 January 1978, pp. 3-5, ERN (En) 00008894-00008896; *Irrefutable Proof of the Strategy of Aggression of our Annexionist, Land-grabbing Vietnamese Enemy* (in Swedish document collection), E3/1587, pp. 4-8, ERN (En) 00280652-00280656; Case 001 Transcript (MAM Nai), E3/7459, 14 July 2009, p. 52, ERN (En) 00351135.

<sup>8388</sup> *SRV Troop Confessions* (in FBIS collection), E3/1359, multiple dates, ERN (En) 00169635-00169640 (TRAN Van Tay *alias* Nho and TRAN Van Hay), 00169647-00169648 (NGUYEN Van Muoi), 00169653 (NGUYEN Minh Tan), 00169681-00169685 (VU Dinh Ngo); *SRV Troop Confessions* (in FBIS collection), E3/292, multiple dates, ERN (En) 00169232-00169236 (TRAN Van Thuong), 00169276-00169277 (THIEU Loc), 0016289-00169290 (NGUYEN Cong Hoai); *SRV Troop Confessions* (in FBIS collection), E3/1360, multiple dates, ERN (En) 00169876-00169878 (HA Van Hach), 00169892-00169893 (PHAN Van Tien), 00169892-00169893 (PHAN Van Tien), 00169902-00169903 (DIN Van Hoa), 00169915-00169917 (THACH Van Thong), 00169934-00169936 (SAN Kin), 01666967 (CHIU Ly); *SRV Troop Confessions* (in FBIS collection), E3/1361, ERN (En) 00168785-00168787 (NGUYEN Van Chan), 00168790-00168791 (TRAN Van Xuan), 00168793-00168794 (VINH Minh Chau), 00168893 (NGUYEN Van Be); *SRV Troop Confessions* (in FBIS collection), E3/1362, ERN (En) 00170000-00170001 (NGUYEN Vi Duc), 00170042 (VING Huyen); *SRV Troop Confessions* (in FBIS collection), E3/1363, multiple dates, ERN (En) 00169780-0016781 (NGUYEN Van Hai), 00169810-00169812 (HOANG Minh Kha), 00169819-00169820 (TRAN Ngoc Tuong), 00169835-00169837 (LUONG Van Vy), 00169859-00169861 (LUONG Ten Hong), 00169865-00169866 (VINH Tu Phuong); *SRV Troop Confessions* (in FBIS collection), E3/274, multiple dates, ERN (En) 00167919-00169720 (NGUYEN Thanh Son), 00168931-00168933 (NGUYEN Van Que), 00168957-00168958 (VU Van Tau); *SRV Troop Confessions* (in FBIS collection), E3/76, multiple dates, ERN (En) 00170381-00170383 (LE Minh Dao); *SRV Troop Confessions* (in FBIS collection), E3/294, multiple dates, ERN (En) 00170273-00170274 (TRAN Van Long); *SRV Troop Confessions* (in FBIS collection), E3/77, ERN (En) 00170119-00170120 (LE Van Tieng), 00170149-00170150 (NINH Viet Hong), 00170158-00170159 (NGUYEN Minh Sung).

<sup>8389</sup> *SRV Troop Confessions* (in FBIS collection), E3/1360, ERN (En) 00169923-00169925 (confession of PHAN Thi My); *SRV Troop Confessions* (in FBIS collection), E3/1361, ERN (En) 00168893-00168894 (confession NGUYEN Thi Be); *SRV Troop Confessions* (in FBIS collection), E3/294, ERN (En) 00170314-00170316 (LAM Thi Thu); *SRV Troop Confessions* (in FBIS collection), E3/295, ERN (En) 00169135-00169136 (LE Thi Vinh Sang).

<sup>8390</sup> *SRV Troop Confessions* (in FBIS collection), E3/292, multiple dates, ERN (En) 00169190-00169193 (MAU Chhin), 00169193-00169195 (CHAU Moeung), 00169206-00169207 (CHAU Choy), 00169207-00169209 (SAM Oeun).

was provided with copies of the confessions to which he made minor corrections before the broadcast.<sup>8391</sup> The confessions were also used in DK publications and government statements as evidence of Vietnamese aggression against DK.<sup>8392</sup>

2474. The propaganda booklet printed by the DK Ministry of Foreign Affairs in September 1978 known as the “Black Paper”<sup>8393</sup> included the photographs of Vietnamese soldiers who had been captured and detained. These included Commander TRAN Van Thuon and Colonel NGUYEN Can Chen, who were captured at sea in January 1978 and were members of the General Staff of the Vietnamese Division 9.<sup>8394</sup> The text of their confessions was also printed in DK publications.<sup>8395</sup> The confessions of the following Vietnamese prisoners were also printed in these publications: TRAN Van Hay (Lieutenant in Division 1); NGUYEN Van Muoi (a Private in Company 1); NGUYEN Minh Tam (Private in Division 10); PHAN Van Thieng (Private in Company 1); VU Dinh Ngo (a midshipman in the Navy);<sup>8396</sup> PHAN Thi Ni (described as a “Vietnamese Woman Intelligence Agent”); TO Van Nguu (Captain of Special Company 9); HA Van Heut (Second Lieutenant of Division 4); HOANG Minh Kha

<sup>8391</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 83-84, 87; T. 16 June 2016 (KAING Guek Eav), E1/439.1, p. 11; T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 19; KAING Guek Eav Interview Record, E3/1580, 28 March 2008, p. 4, ERN (En) 00177588, Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, p. 8, ERN (En) 00339603 (routinely “the essence of the confessions of those Vietnamese was sent to uncle Nuon. Therefore, whatever it is he would adjust it and then he would send it to me and I would make some changes.”).

<sup>8392</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, E3/8394, July 1978, pp. 40-47, ERN (En) 00011374-00011377; DK Government Public Statement, E3/8393, 22 January 1978.

<sup>8393</sup> DK Ministry of Foreign Affairs Publication: *Black Paper: Facts and Evidences of the Acts of Aggression and Annexation of Vietnam Against Kampuchea*, September 1978, E3/23, p. 2, ERN (En) 00082511.

<sup>8394</sup> DK Ministry of Foreign Affairs Publication: *Black Paper: Facts and Evidences of the Acts of Aggression and Annexation of Vietnam Against Kampuchea*, September 1978, E3/23, p. 44, ERN (En) 00082553.

<sup>8395</sup> See e.g., DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, 26 January 1978, E3/7401 [E3/1258], ERN (En) 00420557-00420564 (confession of TRAN Van Thuong), ERN (En) 00420564-00420567 (confession of TRAN Van Tu); DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, E3/8394, July 1978, S00011357-S00011361 (confession of NGUYEN Van Chen), S00011361-S00011366 (confession of TRAN Van Thuong), S00011374-S00011377 (confession of VU Dinh Ngo).

<sup>8396</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, 26 January 1978, E3/7401 [E3/1258], ERN (En) 00420567, 00420572-00420573, 00420575, 00420577; DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, July 1978, E3/8394, ERN (En) S00011374; *Confession of a Captured SRV Sailor* (in SWB/FE/5730/A3 collection), E3/1249, 29 January 1978, ERN (En) S00008894-S00008896.

(Deputy Chief of a Squad in Division 2).<sup>8397</sup> S-21 records additionally confirm that some of these Vietnamese prisoners, were detained at S-21, namely TREN Van Hay, NGUYEN Van Moeuy, PHAN Van Thieng, VU Dinh Nga and HVANG Thini.<sup>8398</sup>

2475. Duch also received instructions that photographs should be taken of Vietnamese soldiers at S-21 to be used at a conference in Indonesia to show that the “*Yuon*” had invaded Kampuchea. In this regard, Duch testified that prisoners were photographed if they had names and physical features which were considered to be “*Yuon*”.<sup>8399</sup> While he initially stated that the order came from NUON Chea, he later clarified that Pang delivered the order and he was unsure whether it came from NUON Chea.<sup>8400</sup> While no date was given, Duch testified that this happened after SON Sen had been away at the battlefield for some time. The Chamber therefore places this event at the end of 1977 or early 1978.<sup>8401</sup>

2476. At around the same time, a movie was made on the premises of S-21 with Vietnamese prisoners dressed in the military uniforms in which they had been arrested.<sup>8402</sup> The film was shown to S-21 staff at a study session to celebrate the 17 April anniversary. This film depicted the arrest and the arrival of the Vietnamese soldiers at S-21 and showed their disembowelled bodies following their execution.<sup>8403</sup>

2477. The confession of VU Dinh Ho, published in January 1978 as evidence of Vietnamese aggression against Kampuchea, indicates that a number of Vietnamese

<sup>8397</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, July 1978, E3/8394, ERN (En) S00011369; S00011372, S00011378, S00011382.

<sup>8398</sup> See e.g., S-21 list of prisoners, E3/10122, 16 May 1978, p. 2, ERN (En) 01556325 (referring to TROEN Van Theoung and TREN Van Hay); S-21 list of prisoners, E3/8463, multiple dates, p. 309, ERN (En) 01554827 (referring to NGUYEN Van Moeuy and PHAN Van Thieng); S-21 list of prisoners, E3/10209, undated, p. 1, ERN (En) 01402117 (referring to VU Dinh Nga); S-21 list of prisoners, E3/10218, 14 March 1978, p. 3, ERN (En) 01556047 (referring to HVANG Thini). Despite the minor spelling differences, the Chamber is satisfied that these are the same individuals.

<sup>8399</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 87-88, 90-91.

<sup>8400</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 90.

<sup>8401</sup> As noted above, SON Sen went to the battlefield at some time in the second half of 1977, and Pang was arrested in April 1978. See above, paras 2193, 2195.

<sup>8402</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 88-89.

<sup>8403</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 82-84, 89-92. See also, T. 15 September 2016 (NOEM Oem), E1/474.1, pp. 61-62 (testifying that he took photographs of prisoners in Vietnamese military uniforms); T. 25 April 2016 (LACH Mean), E1/422.1, pp. 32-33 (testifying that S-21 workers were shown a film showing the interrogation of and, confessions made by, Vietnamese prisoners). See e.g., S-21 photographs, E3/8063.3; E3/8639.3917; E3/8639.3918; E3/8639.4303; E3/8639.4333; E3/8639.4334; E3/8639.4347.

navy personnel and civilians were captured on the ship that he was sailing on.<sup>8404</sup> These included navy officers, sailors and their family members, including women and children.<sup>8405</sup> S-21 lists show that VU Dinh Ngo entered S-21 on 3 January 1978.<sup>8406</sup> As found earlier, the Chamber has before it evidence that a number of other individuals whose confessions were recorded in publications were indeed detained at S-21.<sup>8407</sup>

2478. Moreover, the detention of Vietnamese children is demonstrated by S-21 records that refer to the detention of over 30 Vietnamese children between the ages of 13 and 17 taken to S-21 in 1978. They were taken primarily from the southern regions of the country and Vietnam border areas: 13 were taken from Svay Rieng,<sup>8408</sup> eight from the Southwest Zone<sup>8409</sup> and eight from Kampong Som,<sup>8410</sup> while one was arrested

<sup>8404</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, 26 January 1978, E3/7401, ERN (En) 00420577.

<sup>8405</sup> DK Ministry of Foreign Affairs Publication: *Evidences on the Vietnamese Aggression Against Democratic Kampuchea*, 26 January 1978, E3/7401, ERN (En) 00420577 (noting that 25 children below the age of 15 were aboard the ship and captured).

<sup>8406</sup> S-21 list of prisoners: *Yvon Spies*, E3/8492, undated, ERN (En) 00181701 (entered 3 January 1978); S-21 list of prisoners, Intelligence Section, E3/10209, undated, p. 1, ERN (En) 01402117 (entered 3 January 1978).

<sup>8407</sup> See above, paras 2462, 2474.

<sup>8408</sup> S-21 list of prisoners who entered in April 1978, E3/10354, p. 83, ERN (En) 01507624 (TROEUNG Thi Nhieng, 14-year-old female); S-21 list of Prisoners who entered 6 May 1978, E3/10141, p. 1, ERN (En) 01462132 (VIN Thi Ngok, 13-year-old female); S-21 list of Prisoners who entered on 12 May 1978, E3/10145, p. 15, ERN (En) 01395565 (NGVIENG Kong Thanh, 16-year-old male); S-21 list of Prisoners who entered in October 1978, E3/10205, p. 11, ERN (En) 01397686 (NGVIENG Thifa, 15-year-old female, described as a Vietnamese spy); S-21 list of prisoners entering in November 1978, E3/10212, pp. 3, ERN (En) 01397692 (PHAM Phankuo, 13-year-old male, described as a Vietnamese spy), 4, ERN (En) 01397693 (NGUYEN Vang Di, 17-year-old male, described as a Vietnamese spy), 8, ERN (En) 01397697 (LE Yang Seun, 16-year-old male, described as a Vietnamese spy); S-21 list of Prisoners, Intelligence Section, E3/10209, p. 3, ERN (En) 01402119 (LE Thi Yungkam, 15-year-old female, described as Vietnamese Intelligence Agent, entered on 27 September 1978); S-21 list of prisoners, E3/8435, pp. 3, ERN (En) 00234283 (VIN Ngoc Lung, 13-year-old male, TRAN Thi Dien, 17-year-old; LE Thi Dung Cam, 15-year-old female; LE Son Dung, 16 years old), 4, ERN (En) 00234284 (PHAN Van Kem, 15 years old).

<sup>8409</sup> S-21 list of prisoners who entered in April 1978, E3/10354, p. 83, ERN (En) 01507624 (DAU Yaing Tong, 15-year-old male, arrested on 23 April and “removed” on 28 April 1978); S-21 list of prisoners who entered in October 1978, E3/10205, p. 14, ERN (En) 01397689 (NGVIENG Yangyin, 13-year-old male, described as a Vietnamese spy; TROENG Yangfak, 7-year-old male, entered in October 1978); S-21 list of prisoners entering in November 1978, E3/10212, p. 12, ERN (En) 01397701 (TRINH Yang Laum, 13-year-old male, described as a Vietnamese spy); S-21 list of prisoners, Intelligence Section, E3/10209, p. 15, ERN (En) 01402131 (TROENG Yang Sin, 17-year-old male, described as Vietnamese Intelligence Agent, entered on 14 November 1978); PHAM Yang Song, 17-year-old male, described as Vietnamese Intelligence Agent, entered on 14 November 1978); S-21 Prisoner Biography – PHAM Yang Man, E3/10546, p. 23, ERN (En) 01451552 (PHAM Yang Man, 15-year-old male, described as a Vietnamese spy, entered on 10 December 1978); S-21 list of prisoners, E3/8435, p. 2, ERN (En) 00234282 (LE Van Loi, 15-year-old male, 12 September 1978).

<sup>8410</sup> S-21 list of prisoners entering 21 February 1978, E3/9848, pp. 1, ERN (En) 01368659 (TE Kokhuo, 16-year-old male) 2, ERN (En) 01368660 (LEANG Ming Tungng, 15-year-old male); S-21 list of prisoners who entered on 12 May 1978, E3/10145, pp. 13, ERN (En) 01395563 (CHOENG Thanh Voang, 17-year-old male), 14, ERN (En) 01395564 (TOENG Yang Nhien, 14-year-old male); S-21 list of prisoners entering 6 June 1978, E3/10201, p. 2, ERN (En) 01366723 (NGUYEN Cong Vieng, 15-

from Ministry S-71.<sup>8411</sup> Further S-21 records from May 1978 identify 16 Vietnamese children between the ages of 13 and 15 and seven other Vietnamese children between the ages of seven and 11 who were detained at S-21.<sup>8412</sup> The Chamber also notes S-21 records of May 1978 confirming that Vietnamese children were also taken out of S-21 and “smashed”.<sup>8413</sup>

2479. Vietnamese soldiers who had been arrested and detained at S-21 were killed behind the S-21 prison by Peng’s security guard unit after their interrogations had concluded.<sup>8414</sup> While Duch could not precisely indicate the number, he testified that there were hundreds of Vietnamese who were detained and executed at S-21.<sup>8415</sup> On one occasion, a Vietnamese family was brought to an office which received prisoners close to S-21. A young child was dragged away from his or her parents by guards, dropped from the balcony of the multi-storey building and killed.<sup>8416</sup>

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year-old male); S-21 list of prisoners who entered in April 1978, E3/10354, pp. 86, ERN (En) 01507627 (TROENG Yaing Cham, 17-year-old male), 87, ERN (En) 01507628 (NGVIENG Yi Hae, 17-year-old male), 89, ERN (En) 01507630 (NGVIENG Yi Sen, 17-year-old male).

<sup>8411</sup> S-21 list of prisoners who entered 17 July 1978, E3/10109, ERN (En) 01548708 (THOEUN Chhuong, a 15-year-old male “Combatant of Office K-13”, with a handwritten annotation indicating “*Yuon + Yuon* half blood.”).

<sup>8412</sup> S-21 list of prisoners, E3/10141, 6 May 1978, p. 1, ERN (En) 01462132 (VIN Yang Fa age eight and VIN Thi Ngok age 13 among the “*Yuon*” prisoners who entered S-21 on 6 May 1978); S-21 list of prisoners, E3/10205, pp. 10, 14, ERN (En) 01397685, 01397689 (LE Yangve aged 11 and TROENG Yangfak age seven who entered S-21 on 12 and 30 October 1978, respectively); S-21 list of prisoners, E3/10209, p. 13, ERN (En) 01402129 (TROENG Yang Ngok age 7, DING Thang Liem age 11, NGUYEN Yang Ta age 11, NGUYEN Thy Nga age 11 are listed as “*Yuon* Intelligence” agents who were arrested in Svay Rieng and detained on 13 November 1978); S-21 list of prisoners, E3/10212, 19 November 1978 (LE Thi Mi Phoeung age 8 who was described as a “*Yuon* Spy”, was arrested in Svay Rieng and brought to S-21 on 19 November 1978); S-21 list of prisoners, E3/10505, January 1978, ERN (En) 01398574 (MEU Chuk age 11, executed); S-21 list of prisoners, September 1978, E3/10203, ERN (En) 01016468 (VINH Saing Thach age 10, accused of being a spy and entered S-21 on 25 September 1978); S-21 list of prisoners, E3/8436, p. 2, ERN (En) 00250013 (YOR Yaingnheuk age 11, entered S-21 on 4 December 1978). *See also*, S-21 photograph, E3/9837, p. 96, ERN P01223785 (photograph number 610, including the name of LE Yaing Ve in Khmer).

<sup>8413</sup> S-21 list of prisoner smashed on 2 December 1978, E3/8463, 15 May 1978, pp. 8, ERN (En) 01554526 (VIN Thy Ngoc, aged 13), 13, ERN (En) 01554531 (LE Thy Yong Kam, aged 15), 14, ERN (En) 01554532 (TRING Yang Loeng and NGIENG Yang Ha, both aged 17); S-21 list of prisoners destroyed on 30 October 1978, E3/10456, 31 October 1978, ERN (En) 01558315 (referring to the execution of TROENG Yaing Hvak, age 7, along with 23 prisoners on 31 October 1978).

<sup>8414</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 25-26, 81, 84 (testifying that there were approximately 40 to 60 Vietnamese soldiers who had been arrested); HIM Huy Interview Record, E3/5155, 19 September 20017, p. 5, ERN (En) 00161591 (stating that Vietnamese soldiers were kept for about half a month before being killed by members of his and Peng’s teams).

<sup>8415</sup> KAING Guek Eav Interview Record, E3/1580, 28 March 2008, p. 3, ERN (En) 00177587. *See also*, Case 001 Transcript (KAING Guek Eav), E3/525, 10 June 2009, pp. 7, 9-10, 19, ERN (En) 00339602, 00339604-00339605, 00339614; T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 86.

<sup>8416</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 5 (testifying that he buried the body of the dead child who was about one year old); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006.

2480. These findings are further corroborated by S-21 prisoner lists. The S-21 lists demonstrate that the detention of Vietnamese soldiers and civilians was slow to start. From March 1976, there were at least 32 arrests of prisoners, both civilians and soldiers, labelled as Vietnamese or “*Yuon*”, and approximately 68 executions of the same.<sup>8417</sup> Lists show only five arrests of Vietnamese or “*Yuon*” for 1977, and only 11 executions.<sup>8418</sup> However, in 1978, arrests and executions of Vietnamese at S-21 increased dramatically, with lists demonstrating 695 individuals who were arrested and/or executed at S-21.<sup>8419</sup> An S-21 prisoner list from December 1978 records that only 35 Vietnamese prisoners remained at S-21.<sup>8420</sup>

<sup>8417</sup> S-21 list of prisoners, E3/1992, 5 October 1976, p. 2, ERN (En) 00844655 (indicating arrests in September 1976); S-21 list of prisoners, E3/8761, undated, pp. 1-2, 5, ERN (En) 00184840-00184841, 00184844 (indicating arrests in March 1976); S-21 list of prisoners, E3/10062, undated, p. 18, ERN (En) 01399004; S-21 list of prisoners of Commerce Section, E3/2090, undated, p. 6, ERN (En) 00701341; S-21 list of prisoners, E3/3597, undated, pp. 3-4, ERN (En) 00239747-00239748; S-21 list of prisoners, E3/10065, undated, pp. 2-3, ERN (En) 01397464-01397465; S-21 list of prisoners, E3/2261, 19 November 1976, p. 1, ERN (En) 01303317; S-21 list of prisoners who entered from 1 November 1976 to 15 November 1976, E3/10061, undated, p. 19, ERN (En) 01397461 (indicating arrests in November 1976); S-21 list of prisoners killed 1976, E3/3187, multiple dates, pp. 7, 9, 11, 20, 76, 124, 383-384, 394, 396, 415-417, ERN (En) 00874180, 00874182, 00874184, 00874193, 00874249, 00874297, 00874556-00874557 (indicating arrests in May 1976), 00874567, 00874569, 00874588-00874590, 00874598-00874599; S-21 list of prisoners killed from 1-15 July 1976, E3/8540, undated, p. 1, ERN (En) 00738605.

<sup>8418</sup> S-21 list of prisoners, E3/1999, undated, p. 5, ERN (En) 00233679; S-21 list of prisoners admitted in May 1977, E3/2590, 3 June 1977, p. 40, ERN (En) 01191295; S-21 list of prisoners from *Yuon*, E3/10073, 17 October 1977, p. 17, ERN (En) 01397561; S-21 list of prisoners executed on 12-5-77, E3/3858, 13 May 1977, p. 3, ERN (En) 00837617; S-21 list of prisoners, E3/2285, multiple dates, pp. 23, 276, 289, 547-548, ERN (En) 01564783, 01565036, 01565049, 01565307-01565309.

<sup>8419</sup> S-21 list of prisoners entry on 31.1.78, E3/10438, 1 February 1978, p. 4, ERN (En) 01366949; S-21 list of prisoners entered in January 1978, E3/10430, undated, pp. 62-67, ERN (En) 01366904-01366909 (listing four individuals as “Previously *A* [contemptible] Thieu-Ky majors); S-21 list of prisoners, E3/10505, multiple dates, pp. 7, 19, 22, 34, 46, 55, 70, ERN (En) 01398547, 01398559, 01398562, 01398574, 01398586, 01398595, 01398610 (identifying a former military captain); S-21 list of prisoners, E3/9848, multiple dates, pp. 1-2, 11, 13, ERN (En) 01368659-01368660, 01368669, 01368671; S-21 list of prisoners, E3/10439, undated, pp. 36-39, ERN (En) 01398429-01398432 (listing “*Youn* Spies”); S-21 list of prisoners entry on 13 February 1978, E3/10451, 13 February 1978, p. 2, ERN (En) 01366965; S-21 list of prisoners entry on 14 February 1978, E3/10452, 14 February 1978, p. 2, ERN (En) 01366967; S-21 list of prisoners interrogated, E3/2025, 2 February 1978, pp. 1-2, 4, 8-9, ERN (En) 00184712-00184713, 00184715, 00184719-00184720; S-21 list of prisoners admitted on 20 February 1978, E3/9847, 20 February 1978, p. 6, ERN (En) 01368655; S-21 list of prisoners entry on 2 March 1978, E3/10246, 2 March 1978, p. 1, ERN (En) 01366763; S-21 list of prisoners entered on 5 March 1978, E3/10219, 5 March 1978, p. 7, ERN (En) 01396190; S-21 list of prisoners entered on 20 March 1978, E3/10234, 20 March 1978, pp. 11, 14-15, 17, ERN (En) 01399133, 01399136-01399137, 01399139; S-21 list of prisoners entry on 23 March 1978, E3/10237, 23 March 1978, p. 4, ERN (En) 01366744; S-21 list of prisoners entry on 29 March 1978, E3/10243, 29 March 1978, pp. 2-3, ERN (En) 01366757-01366758; S-21 list of prisoners, E3/8655, multiple dates, ERN (En) 01460841-01460842, 01460844, 01460846, 01460848, 01460852, 01460857, 01460864, 01460866-01460867, 01460869-01460870, 01460872, 01460879; S-21 list of prisoners entered on 5 April 1978, E3/10378, 5 April 1978, p. 15, ERN (En) 01398038; S-21 list of prisoners admitted on 17 April 1978, E3/10382, 17 April 1978, pp. 7, 16, ERN (En) 01398087, 01398096; S-21 list of prisoners who entered on 18 April 1978, E3/10364, 18 April 1978, pp. 1-2, ERN (En) 01462217-01462218; S-21 list of prisoners executed on 21-4-78, E3/8448, 21 April 1978, pp. 1-2, ERN (En) 00784433-00784434; S-21 list of prisoners who entered on 23 April 1978, E3/10385, 23 April 1978, p. 3, ERN (En) 01548788; S-21 list of prisoners entered 21.4.78 to 28.4.78,

2481. The documentary evidence also demonstrates that Vietnamese prisoners were arrested in Svay Rieng province, not far from the border with Vietnam and Cambodian territorial waters between January and April 1978.<sup>8421</sup>

E3/2210, 28 April 1978, ERN (En) 00181721-00181722; S-21 list of prisoners admitted on 28 April 1978, E3/2209, 28 April 1978, pp. 1, 6, ERN (En) 00893763, 00893768; S-21 list of prisoners admitted on 27 April 1978, E3/10372, 27 April 1978, p. 14, ERN (En) 01528739; S-21 list of prisoners who entered in April 1978, E3/10354, undated, pp. 68-69, 82-91, ERN (En) 01507609-01507610, 01507623-01507632; S-21 list of prisoners admitted from 14 April 1978 to 21 April 1978, E3/10358, undated, pp. 24-25, 29-30, ERN (En) 01398017-01398018, 01398022-01398023; S-21 list of prisoners came in on 1 May 1978, E3/10390, 1 May 1978, pp. 11-12, ERN (En) 01398275-01398276; S-21 list of prisoners who entered on 4 May 1978, E3/10139, 4 May 1978, p. 1, ERN (En) 01462131; S-21 list of prisoners, E3/10141, 7 May 1978, ERN (En) 01462132-01462133; S-21 list of prisoners who entered on 12 May 1978, E3/10393, 12 May 1978, pp. 4, 15-17, 20, ERN (En) 01398307, 01398318-01398320, 01398323; S-21 list of prisoners who came in on 13 May 1978, E3/10146, 13 May 1978, p. 11, ERN (En) 01395576; S-21 list of prisoners, E3/10153, undated, p. 1, ERN (En) 01462138; S-21 list of prisoners who entered on 26 May 1978, E3/10157, undated, p. 3, ERN (En) 01462146; S-21 list of prisoners who entered on 27 May 1978, E3/10158, 27 May 1978, p. 1, ERN (En) 01462147; S-21 list of prisoners, E3/8463, multiple dates, pp. 3, 8-10, 12-15, 38-39, 42-43, 50, 52, 54-55, 56-59, 61-63, 70-74, 86-91, 94-95, 309-311, 313-314, 336, ERN (En) 01554621, 01554526-01554528, 01554530-01554533, 01554556-01554557, 01554560-01554561, 01554568, 01554570, 01554572-01554573, 01554574-01554577, 01554579-01554581, 01554588-01554592, 01554604-01554609, 01554612-01554613, 01554827-01554829, 01554831-01554832, 01554854; S-21 list of prisoners' entry on 18 June 1978, E3/10184, 18 June 1978, p. 3, ERN (En) 01366718; S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978, pp. 94-95, ERN (En) 01564050-01564051; S-21 list of prisoners who entered in July 1978, E3/10120, undated, pp. 36-38, ERN (En) 01399098-01399100; S-21 list of prisoners who entered from 01 July to 7 July 1978, E3/10199, 7 July 1978, p. 11, ERN (En) 01397675; S-21 list of prisoners' entry on 5/7/78, E3/10101, 5 July 1978, pp. 1-4, ERN (En) 01366703-01366706; S-21 list of prisoners who entered on 17 July 1978, E3/10109, undated, p. 5, ERN (En) 01548708; S-21 list of prisoners who entered on 22 July 1978, E3/10113, 22 July 1978, p. 1, ERN (En) 01395536; S-21 list of prisoners at various ministries, E3/10355, undated, pp. 8, 10, ERN (En) 01395676, 01395678; S-21 list of prisoners who entered on 10 August 1978, E3/10134, 10 August 1978, p. 1, ERN (En) 01558253; S-21 list of prisoners admitted on 2 September 1978, E3/10133, 2 September 1978, p. 1, ERN (En) 01462130; S-21 list of prisoners admitted on 5[*sic*] September 1978, E3/2248, 4 September 1978, ERN (En) 00181739; S-21 list of prisoners who entered on 5 September 1978, E3/10130, undated, p. 5, ERN (En) 01548729; S-21 list of prisoners entering on 17, 22 September 1978, E3/2249, 22 September 1978, pp. 1-2, ERN (En) 00181741-00181742; S-21 list of prisoners, E3/8472, multiple dates, ERN (En) 00181688-00181690; S-21 list of prisoners who entered on 22 September 1978, E3/10202, 22 September 1978, p. 1, ERN (En) 01548773; S-21 list of prisoners who entered on 24-25 September 1978, E3/10203, undated, pp. 1-3, ERN (En) 01548774-01548776; S-21 list of prisoners entered on 28.9.78, E3/8543, 28 September 1978, ERN (En) 00181744; S-21 list of prisoners entered on 8.10.78, E3/2250, undated, ERN (En) 00181746; S-21 list of prisoners, E3/8546, 9 September [*sic*] 1978, ERN (En) 00181748-00181749; S-21 list of prisoners who entered on 13 October 1978, E3/10206, undated, p. 2, ERN (En) 01462156; S-21 list of prisoners, E3/10207, undated, p. 1, ERN (En) 01462158; S-21 list of prisoners with the entry date of 24 October 1978, E3/8548, 24 October 1978, ERN (En) 00181752; S-21 list of prisoners entered on 28.10.78, E3/8551, 28 October 1978, ERN (En) 00181755; S-21 list of prisoners who were destroyed on 30-31 October 1978, E3/10456, 31 October 1978, pp. 2-3, ERN (En) 01558314-01558315; S-21 list of prisoners who entered in October 1978, E3/10205, undated, pp. 8-14, ERN (En) 013976834-01397689; S-21 list of prisoners, E3/8654, multiple dates, pp. 3-4, ERN (En) 01529404-01529405; S-21 list of prisoners, E3/10212, undated, pp. 2-12, 14-16, ERN (En) 01397691-01397701, 01397703-01397705; S-21 list of prisoners, E3/2255, undated, p. 1, ERN (En) 00789494; S-21 list of prisoners executed on December 12, 1978, E3/1901, undated, pp. 1-2, ERN (En) 00172214-00172215; S-21 list of prisoners, E3/1651, undated, pp. 2, 4, 8, ERN (En) 00789498, 00789500, 00789504; S-21 list of prisoners smashed on 20, 23 October 1978, E3/10454, multiple dates, pp. 5-6, ERN (En) 01544179-01544180.

<sup>8420</sup> S-21 list of prisoners, E3/2255, December 1978, p. 1, ERN (En) 00789494.

<sup>8421</sup> See e.g., S-21 list of prisoners, E3/8463, 30 April 1978, pp. 309-310, ERN (En) 01554827-01554828; S-21 list of prisoners, E3/10122, 16 May 1978, pp. 2-3, ERN (En) 01556325-01556326.

2482. The NUON Chea Defence submits that there is no objective evidence that Vietnamese civilians were detained at S-21 and that, in any event, there is no information about the reasons for their arrests.<sup>8422</sup> As discussed above, the Chamber received reliable evidence which allows it to conclude that Vietnamese prisoners at S-21 included soldiers and civilians, as well as children. Contrary to the NUON Chea Defence's submissions, the testimony of PRAK Khorn and SUOS Thy was clear and the Chamber was able to rely on their identification of Vietnamese civilians at S-21 without detailed evidence about the precise name or number of those detained. Further, in regard to the reason for their arrests, the evidence described above and elsewhere in this Judgement clearly indicates that the Vietnamese were targeted as an enemy group and as a threat to the DK.<sup>8423</sup>

2483. As noted above, it is also clear that Vietnamese soldiers were arrested and detained at S-21. The NUON Chea Defence correctly submit that in a time of armed conflict, it would be legitimate for a party to the conflict to detain captured foreign troops with which it was at war.<sup>8424</sup> However, with respect to such soldiers the question is whether any of the alleged grave breaches of the Geneva Conventions were committed against them, even if they were lawfully detained. This will be addressed in Section 12.2.24: Legal Findings.

2484. The NUON Chea Defence submits that no witness provided specific evidence regarding the basis or circumstances of arrest of Vietnamese detainees or of their conditions of detention at S-21.<sup>8425</sup> The Defence further submits that Vietnamese prisoners were kept in the Special Prison where detainees enjoyed relatively better conditions.<sup>8426</sup> Contrary to the NUON Chea Defence's submission, there is no evidence to suggest that Vietnamese prisoners were detained under better conditions. Further, it is not clear whether they were only interrogated or whether they were also detained in the Special Prison.<sup>8427</sup> In any event, the Chamber will assess what evidence it has

<sup>8422</sup> NUON Chea Closing Brief, para. 558.

<sup>8423</sup> *See above*, paras 2167, 2174-2175, 2460, 2464-2465, 2468, 2477-2478; Section 13.3.5: Targeting of the Vietnamese.

<sup>8424</sup> NUON Chea Closing Brief, para. 559.

<sup>8425</sup> NUON Chea Closing Brief, para. 560.

<sup>8426</sup> NUON Chea Closing Brief, para. 560.

<sup>8427</sup> *See e.g.*, Case 001 Transcript (KAING Guek Eav), E3/5795, 29 April 2009, pp. 85-86, ERN (En) 00325935-00325936.



received on the conditions and treatment of Vietnamese prisoners in Section 12.2.24: Legal Findings.

### 12.2.18. *Former Khmer Republic Officials*

2485. According to the Closing Order, former LON Nol or Khmer Republic officials and soldiers were detained at S-21.<sup>8428</sup> The NUON Chea Defence submits that the Closing Order lacks clarity, particularly in relation to any underlying factual allegations pertaining to the treatment of former Khmer Republic soldiers and officials.<sup>8429</sup> The Chamber notes that the Closing Order clearly found that the main purpose of S-21 was to extract confessions from prisoners that would help uncover other networks of potential traitors.<sup>8430</sup> It specifically found that CPK authorities identified several groups as “enemies” based on their real or perceived political beliefs, including former Khmer Republic officials,<sup>8431</sup> that former Khmer Republic officials and soldiers were detained at S-21<sup>8432</sup> and that junior officials of the former LON Nol regime were arrested and many were executed at S-21.<sup>8433</sup> The Chamber is therefore satisfied that the Closing Order clearly sets out a number of findings with respect to the treatment of former Khmer Republic soldiers and officials. The NUON Chea Defence’s submission is therefore rejected.

2486. Many former Khmer Republic officials were sent to M-13 and others to Takhmau for interrogation shortly after 17 April 1975 and before S-21 was established.<sup>8434</sup> As discussed above, after S-21 was established, Duch was assigned to collect documents from houses and government buildings belonging to the former Khmer Republic regime in order to use them at S-21 for further investigation.<sup>8435</sup> Prisoners associated with the former regime were arrested in higher volume during the

<sup>8428</sup> See above, para. 2076.

<sup>8429</sup> NUON Chea Closing Brief, paras 928-931; T. 19 June 2017 (Closing Statements), E1/524.1, p. 47. No other Party made submissions in this regard.

<sup>8430</sup> Closing Order, para. 455.

<sup>8431</sup> Closing Order, para. 1417.

<sup>8432</sup> Closing Order, paras 432-433.

<sup>8433</sup> Closing Order, para. 1417.

<sup>8434</sup> Case 001 Transcript (KAING Guek Eav), E3/62, 6 April 2009, p. 66, 85, ERN (En) 00314313, 00314332; Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 76-77, 83, ERN (En) 00325624-00325625, 00325631; Case 001 Transcript (KAING Guek Eav), E3/5793, 27 April 2009, p. 67, ERN (En) 00322900.

<sup>8435</sup> See above, para. 2137.

early days of S-21, and were viewed as “key enemies” during the first period of its operation.<sup>8436</sup>

2487. While Duch stated that he never saw a written decision that LON Nol soldiers were to be killed, he confirmed that KHOEM Pin (who succeeded Nat as commander of Division 703) and Hor both told him that the soldiers were systematically eliminated.<sup>8437</sup> This is corroborated by the order to “smash” 17 former Khmer Republic soldiers issued by KHOEM Pin on 4 June 1975.<sup>8438</sup>

2488. The Chamber notes that S-21 documentation confirms the arrest and execution of former civil servants and soldiers of the Khmer Republic regime, with arrests occurring as early as October 1975.<sup>8439</sup> The Chamber also has before it a prisoner list which suggests that government officials were also detained at S-21 in 1976. The list includes engineers, a doctor, a veterinarian and a palace clerk from Sector 22 and others

<sup>8436</sup> See e.g., Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 11, ERN (En) 00328455; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 3; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 26; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 47, ERN (En) 00342878 (Duch states that by January 1977, there would have been “only very few Lon Nol government officers” remaining); Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 7, ERN (En) 00341692 (“During the time that I was the Deputy Chairman, the people who entered S-21 were mostly the former officers, the former technicians. When I became Chairman, the former officers came in less frequency”). See also, T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 5-6 (Duch clarifies the latter testimony, confirming that by “former technicians” he meant people like engineers or people who had technical skills in the former regime); S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated; T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 14-15. See below, para. 2488.

<sup>8437</sup> KAING Guek Eav Interview Record, E3/429, 11 November 2009, pp. 5-6, ERN (En) 00403920-004039211; Section 16.4.3.4.1: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials: Existence of Policy.

<sup>8438</sup> Execution Order, E3/832, 4 June 1975, p. 8, ERN (En) 00068921.

<sup>8439</sup> See e.g., S-21 list of former civil servants of the old regime, E3/3973, undated, pp. 7-10, ERN (En) 00837533-00837536 (listing 60 former civil servants, with entries from December 1975 to August 1977, and executions from March 1976 to June 1978), pp. 45-55, ERN (En) 00837571-00837581 (listing military members notably CHOEK Brahim, a Lieutenant Colonel, as entering S-21 on 31 October 1975). See also, Section 16.4.3.4.1: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials: Existence of Policy; S-21 list of prisoners killed in 1976, E3/8455, undated, pp. 2, 4, ERN (En) 00784450, 00784452 (noting a “Khmer Republic student” and a Lieutenant killed on 29 November 1976, and a Captain killed on 31 July 1977); S-21 list of prisoners, E3/1949, undated, ERN (En) 00937127-00937128, 00937135-00937136, 00937140-00937141, 00937147-00934148, 00937153 (indicating the arrest of soldiers, Captains, Corporals, Lieutenants, a Lieutenant Colonel, a First Lieutenant, Second Lieutenants, a Sergeant, Major, an assistant to LON Nol, and the wife of a soldier); S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated, pp. 1-10, 12, ERN (En) 00182892-00182901, 00182903 (indicating the execution of 112 military members and one wife on 30 March 1976. The Chamber notes that this corresponds to evidence that in the early years of S-21, before it was relocated to the Ponhea Yat High School, prisoners were sent to be killed at Takhmau (S-21C). See above, para. 2152. See below, paras 2490, 2499, 2507. See also, S-21 list of prisoners in the soldier section, E3/8520, ERN (En) 01569467-01569469 (indicating the entry of 51 military members in August and September 1976); S-21 list of prisoners, E3/3187, ERN (En) 00874213-00874214 (indicating 11 military members who arrived in August and September 1976 as being executed on 16 September 1976).

from Battambang.<sup>8440</sup> Duch confirmed the authenticity of a list of former Khmer Republic soldiers who were “smashed” in March 1976.<sup>8441</sup>

2489. According to Duch, no generals or ministers of the LON Nol regime nor any singers or members of the royal family were detained at S-21.<sup>8442</sup> The Chamber notes that Duch’s evidence on this issue is contradicted by several S-21 prisoner lists which identify individuals as “Royal Family Relatives” who were detained and executed at S-21 between March 1976 and August 1978, including SISOWATH Butsara, SISOWATH Ketararak, NOREAK Norin Dararith and SISOWATH Iem Mariya.<sup>8443</sup>

2490. Well-known former Khmer Republic officials or people with connections to the regime, such as LONG Boret, NGOV Va, SAR Phorn, PAN Sothi and THACH Chea were labelled as traitors and targeted for arrest.<sup>8444</sup> LONG Boret was included in the “seven traitors” list, and his relatives along with those of THACH Chea were later arrested and sent to S-21.<sup>8445</sup> As found above, THACH Chea’s wife was killed at S-21 during a medical experiment.<sup>8446</sup> Duch also recognised another list of persons killed at S-21C,<sup>8447</sup> in which he identified relatives of LONG Boret.<sup>8448</sup> Shortly after March 1976, the Party shifted its focus from those associated with the previous regime to enemies within the Party.<sup>8449</sup> However, documentary evidence shows that while the arrest numbers of former Khmer Republic Officials began to dwindle at this time, some

<sup>8440</sup> S-21 list of prisoners, E3/2189, 1976, p. 1, ERN (En) 00181626.

<sup>8441</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 14-15, referring to S-21 list of prisoners smashed on 22 March 1976, E3/1538, undated.

<sup>8442</sup> T. 23 June 2016 (KAING Guek Eav), E1/443.1, pp. 106-107; KAING Guek Eav Military Tribunal Interview, E3/10586, 6 March 1999, p. 4, ERN (En) 00326765.

<sup>8443</sup> S-21 list of prisoners, E3/8462, undated, p. 2, ERN (En) 00786216; S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, pp. 91, 116-117, ERN (En) 01367219, 01367244-01367245; S-21 list of prisoners, E3/10049, p. 1, ERN (En) 01556252.

<sup>8444</sup> KAING Guek Eav Interview Record, E3/5761, p. 2, ERN (En) 00197754; Letter from Duch to Brother No. 3, E3/1052, 27 November 1975, ERN (En) 00289848-00289849. *See also*, KAING Guek Eav Interview Record, E3/106, 1 April 2008, p. 3, ERN (En) 00177633 (Duch speaks about his letter to Brother No. 3, stating that he was instructed by Nat to write it); Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, pp. 76-83, ERN (En) 00325624-00325631; Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 94, ERN (En) 00342051; T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 26; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 83.

<sup>8445</sup> KAING Guek Eav Interview Record, E3/5761, p. 2, ERN (En) 00197754; Case 001 Transcript (KAING Guek Eav), E3/5800, 16 June 2009, p. 94, ERN (En) 00342051; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 99-100.

<sup>8446</sup> *See above*, para. 2447.

<sup>8447</sup> The Chamber has found that S-21C refers to Takhmau prison. *See above*, para. 2153.

<sup>8448</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 16-17; S-21 list of prisoners who died at Office S-21-C, E3/1540, undated, ERN (En) 00182895.

<sup>8449</sup> Case 001 Transcript (KAING Guek Eav), E3/5799, 15 June 2009, p. 7, ERN (En) 00341692. *See also*, Section 16: Common Purpose, para. 3955.

prisoners associated with the previous regime were still arrested and killed at S-21 in 1977-1978.<sup>8450</sup>

2491. Confessions of former officers of the LON Nol regime were initially recorded. However, the practice was later ended as NUON Chea preferred to read confessions rather than listen to the recordings. Duch accordingly changed the S-21 practice to creating written records of confessions.<sup>8451</sup> The Chamber notes that in an annotation dated 18 September 1978 in the confession of TIV Mei, brother of TIV Ol, Duch states that the confession involved “people from previous regimes”. A copy of this document was sent to NUON Chea.<sup>8452</sup>

2492. The Chamber is therefore satisfied that former Khmer Republic officials and soldiers, as well as their relatives, were deliberately targeted for arrest and were executed at S-21. While most of the former Khmer Republic officials were arrested in 1976, the evidence shows that arrests and executions were also carried out in 1977-1978.

#### 12.2.19. *Cham Detainees*

2493. The Chamber recalls that the Closing Order refers to some Cham cadres at S-21 who were killed in 1977 and 1978.<sup>8453</sup> PRAK Khorn was aware of Cham detainees at S-21 but did not recall any special instructions with respect to them.<sup>8454</sup> Duch did not receive any specific instructions from SON Sen or NUON Chea with respect to the

<sup>8450</sup> S-21 list of prisoners, E3/3973, undated, pp. 45-55, ERN (En) 00837571-00837581. This was reflective of the nation-wide search for, arrest, detention and/or execution of former Khmer Republic officials at the time. *See* Section 16.4.3.4.1.3: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials: Existence of Policy: Early 1976 to 6 January 1979.

<sup>8451</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, p. 11. *See also*, S-21 Confession – TIV Mei, E3/1537, 18 September 1977 (indicating that one copy had been submitted to Brother Nuon).

<sup>8452</sup> S-21 Confession – TIV Mei, E3/1537, 18 September 1977, ERN (En) 01823838. *See above*, para. 2302.

<sup>8453</sup> Closing Order, para. 749.

<sup>8454</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 27-28. *See also*, T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 63-64; S-21 Confession – YI Sales Yasya, E3/7404, undated (indicating that he was arrested on 6 December 1976). YSA Osman testified that S-21 “was not actually the real target for the persecution of the Cham people” because S-21 was used to imprison and interrogate important people. *See* T. 10 February 2016 (YSA Osman), E1/389.1, pp. 87-88. However, the Chamber notes that this opinion falls outside the scope of his expertise and therefore does not rely on his conclusions in this regard. The Chamber does, however, accept his evidence based on his research that a small number of Cham prisoners were detained at S-21, including SALEH Yahya, who was a former Khmer Republic official, CHEK Ibrahim, who was a former Khmer Republic military commander, ISMAEL Ahmad, who was a student who studied overseas and returned to Cambodia, and others who were accused of being traitors. *See* T. 10 February 2016 (YSA Osman), E1/389.1, p. 87.

Cham people and testified that no Cham were arrested because they were Cham, but that if they committed a “mistake” they would be arrested.<sup>8455</sup> There was a Cham guard named SIM Mel *alias* Man at S-21 who was sent to work in the rice fields after he committed an offence. After he committed another mistake, he was arrested, interrogated and “smashed”.<sup>8456</sup> This is corroborated by PRAK Khorn’s testimony that a former S-21 Cham interrogator named “Man” was arrested and killed, but that to his knowledge, it was not because he was Cham.<sup>8457</sup> The Chamber finds that SIM Mel was treated the same as other S-21 cadre and his history is consistent with S-21 policy toward cadres perceived to be traitors, as described above.<sup>8458</sup> Evidence demonstrates that there were Cham prisoners who were arrested and detained at S-21,<sup>8459</sup> but because they comprised only a small percentage of the prison population at the facility, and while they were specifically recorded as “Cham ethnic” or “Cham”, the Chamber finds that this is not evidence of a specific policy of targeting the Cham at S-21.

#### 12.2.20. *Foreign Detainees*

2494. Duch identified four western prisoners detained at S-21 who were interrogated and then “smashed”.<sup>8460</sup> This included two American nationals named Michael Scott DEEDS and Christopher Edward DELANCE, who were arrested in November

<sup>8455</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 28-29; T. 23 June 2016 (KAING Guek Eav), E1/443.1, p. 105.

<sup>8456</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, p. 50.

<sup>8457</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 98-99 (testifying that, to his knowledge, Man was not arrested because he was Cham).

<sup>8458</sup> *See above*, paras 2455-2458.

<sup>8459</sup> *See e.g.*, S-21 list of prisoners who entered Office S-21 in 1976, E3/9852, 26 May 1977, pp. 148, ERN (En) 01367444 (entry no. 1271: REH Younol “Cham Bandit”), 156, ERN (En) 01367452 (entry no. 1366: MAT El, “Cham”); S-21 list of prisoners, E3/8445, undated, pp. 225, ERN (En) 01565816 (entry no. 82: MOEUN Math, “Cham ethnic”), 237, ERN (En) 01565828 (entry no. 186: MAN Lors, “Cham ethnic”), 243, ERN (En) 01565834 (entry no. 235: MOTH Lors, “Cham ethnic”), 359, ERN (En) 01565950 (entry no. 65: RUOM Math, “Cham ethnic”), 381, ERN (En) 01565972 (entry no. 151: SMAN Sless, “Cham ethnic”), 421, ERN (En) 01566012 (entry no. 441: SA Math, “Cham ethnic”; entry no. 445: SAMAS Karim, “Cham ethnic”), 436, ERN (En) 01566027 (entry no. 551: SALE Hat, “Cham”; entry no. 553: SA MAT, “Cham”), 475, ERN (En) 01566066 (entry no. 179: TEP You Nos, “Robber [Cham ethnic]”), 524, ERN (En) 01566115 (entry no. 138: YOEU Math, “Cham ethnic”). The Chamber considers that the only reasonable inference to be drawn under the circumstances is that these prisoners either died or were executed at S-21. *See also*, Book by Y. Osman, *Oukoubah: Justice for the Cham Muslims under the Democratic Kampuchea Regime*, E3/1822, 2002, p. 9, ERN (En) 00078457 (listing approximately 42 S-21 prisoners who were Cham Muslims).

<sup>8460</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83; T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 65; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 19-20 (testifying that one of the foreign prisoners was named David SCOTT). *See also*, S-21 list of prisoners, E3/1553, pp. 1-2, ERN (En) 01236388-01236389 (noting the detention of Christopher DELANCE and Michael Scott DEEDS KIMO at S-21).

1978.<sup>8461</sup> After being arrested and detained by the navy off the coast of Kampong Som, they were referred to the Central Committee, which gave instructions to transfer them to S-21. NUON Chea closely monitored their situation and discussed this matter with Duch during their meetings.<sup>8462</sup> These four western prisoners were treated as spies for having entered Kampuchea illegally, so they were interrogated and then “smashed”.<sup>8463</sup> Duch sent the photographs of the four western prisoners to his superior but was warned not to keep the films. He therefore ordered the destruction of the negatives.<sup>8464</sup> The western prisoners were detained in the Special Prison.<sup>8465</sup> S-21 prisoner lists also refer to other foreign nationals, including Jim CLARK, Lance MacNAMARA, Scott GLASS, Kerry HAMILL, John DEWHIRST, Ronald Keith DEAN and David Lloyd SCOTT. The Chamber notes that these individuals were arrested between August and November 1978.<sup>8466</sup>

2495. Duch issued instructions on how to interrogate a foreigner and chose interrogators who had experience interrogating “key” people to conduct the interrogation of western prisoners.<sup>8467</sup> The confessions of the English-speaking western prisoners were made in English and submitted by Duch to his superior.<sup>8468</sup> Foreign prisoners were interrogated in the public area of the S-21 compound by Duch and MAM Nai and were kicked during their interrogation.<sup>8469</sup> The Chamber notes that Duch

<sup>8461</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83; S-21 list of prisoners, E3/3973, p. 39, ERN (En) 00837565; S-21 list of prisoners, E3/1553, pp. 1-2, ERN (En) 01236388-01236389.

<sup>8462</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 51, 83-85; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 66-67.

<sup>8463</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83; T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 66.

<sup>8464</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 22.

<sup>8465</sup> Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, p. 75, ERN (En) 00356665; Case 001 Transcript (KAING Guek Eav), E3/5795, 29 April 2009, pp. 86-87, ERN (En) 00325936-00325937.

<sup>8466</sup> S-21 list of prisoners, E3/3973, p. 39, ERN (En) 00837565. It should be noted that on inspection of the Khmer original, this page of the prisoner list is composed of four pieces of one sheet that are clipped together. The two right pieces seem to be mistakenly used, as they are misaligned, and label these prisoners as “Pakistani”, “cow raiser” and has them entering or being executed at S-21 in April 1976, while other reliable evidence supports their entry dates in 1978. *See* S-21 Confession – John DEWHIRST, E3/7343, 13 October 1978; S-21 Confession – Kerry HAMILL, E3/7344, 17 September 1978-13 October 1978; Report of Australian Investigation, E3/8176, p. 10, ERN (En) 00526774. The Chamber notes that Kerry HAMILL’s brother was a Civil Party who testified in Case 001. *See* Case 001 Transcript (Robert Hamill), E3/5582, 17 August 2009, pp. 75-79, ERN (En) 00365860-00365864; *How Two Australians Found Death in Kampuchea* (The Bulletin, World in Focus), E3/8718, 5 February 1980, ERN (En) 00286671, 00286673; *The Nightmare at the End of a Voyage of a Lifetime* (International Media Report), E3/8856, undated.

<sup>8467</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 87; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 66-67.

<sup>8468</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 6-7; S-21 Confession – Kerry George HAMILL, E3/7344, multiple dates, ERN (En) 00007529-00007566.

<sup>8469</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 20.

testified that he assigned MAM Nai and Pon to interrogate the four western prisoners mentioned above, and that he did not personally participate in the interrogation but was there only to check on the quality of the interpreter.<sup>8470</sup>

2496. BOU Meng witnessed guards stomping on the chest of a foreign detainee, after which blood came out of the victim's mouth and he died. BOU Meng clarified that the body of this prisoner was subsequently taken out of the room and he assumed that the body was buried.<sup>8471</sup>

2497. The western prisoners were executed to the north of the S-21 compound. Duch then instructed Hor to burn the bodies rather than bury them.<sup>8472</sup> Duch had been personally instructed by NUON Chea that the western prisoners had to be “smashed” and burned completely so that there would be no evidence left behind that any westerner had been arrested and killed.<sup>8473</sup> NUON Chea told Duch that they were not like Cuba

<sup>8470</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 86-87; T. 4 April 2012 (KAING Guek Eav), E1/59.1, pp. 38-39.

<sup>8471</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 47, ERN (En) 00346705.

<sup>8472</sup> The Chamber notes that, consistently with its previous finding in Case 001, the evidence is not clear as to whether the westerners were still alive when their bodies were burned. However, it is satisfied that regardless of whether they were dead or alive at the time, there is sufficient evidence to show that several bodies of western prisoners were burned outside of S-21. *See* T. 4 May 2016 (HIM Huy), E1/427.1, pp. 92-94. *See also*, T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 20-21 (testifying that he was told by a security guard at S-21 that the American and Australian prisoners were put in the middle of a road, had tires placed on them and were burned with gasoline); T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 27 (testifying that the western prisoners had been first executed and then their bodies burned to destroy any evidence); T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83; KAING Guek Eav Interview Record, E3/504 [E3/65], 7 August 2007, p. 10, ERN (En) 00147526 (“Nuon Chea ordered them to be burned to ashes using vehicle tires.”); Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 28, ERN (En) 00342859 (stating that the four westerners were “executed and their dead bodies were burned to ash”); Case 001 Transcript (KAING Guek Eav), E3/5802, 22 June 2009, p. 110, ERN (En) 00344217 (testifying that the four westerners’ “corpses were burnt out.”); Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, pp. 60, 90, ERN (En) 00353940, 00353970 (“These four people were executed near the church and then they were burned using tyres just on the road, the paved road”); Case 001 Transcript (PRAK Khan), E3/7463, 21 July 2009, p. 50, ERN (En) 00355158; Case 001 Transcript (CHEAM Sour), E3/7469, 5 August 2009, pp. 16, 18, 41, ERN (En) 00360556, 00360558, 00360581 (testifying that the prisoner was still alive) *cf.* Case 001 Transcript (KAING Guek Eav), E3/7469, 5 August 2009, p. 53, ERN (En) 00360593 (“it is hard for me to believe that a prisoner was burned alive.”). *See also*, Case 001 Transcript (KAING Guek Eav), E3/5582, 17 August 2009, pp. 111-113, ERN (En) 00365896-00365898; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 65-68; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 20-21; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 92-93; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 27.

<sup>8473</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 83-84; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 67-68; T. 3 April 2012 (KAING Guek Eav), E1/58.1, pp. 10-11 (testifying that NUON Chea had given this instruction with respect to two of the western prisoners). *See also*, KAING Guek Eav Interview Record, E3/1570, 29 November 2007, ERN (En) 00154194 (stating that based on NUON Chea's orders, the four westerners were killed and burned close to the intersection of Mao Tse Toung Boulevard and Street 163).

where they retained American prisoners in order to exchange them for tractors.<sup>8474</sup> After the western prisoners had been killed and burned, Duch reported to his superiors that the order had been implemented.<sup>8475</sup>

2498. The Chamber notes that in his testimony, Duch recalled that:

Regarding Westerners, in fact there were four Westerners who were brought into S-21. In Case 001, two applied as a civil parties [*sic*] in relation to two Westerners [...]. I can say that they were interrogated and later on they were smashed per instructions. To smash here means they were burned with tires.<sup>8476</sup>

The Chamber recalls that the two Civil Parties in Case 001 were Timothy Scott DEEDS, brother of Michael Scott DEEDS, and Robert HAMILL, brother of Kerry HAMILL.

2499. An S-21 daily controlling list from 11 April 1976 contains the names of 33 individuals “brought in from Prek Dach in Sector 25”, with a further reference to 20 male children and 5 female children. The document identifies these detainees as Arab, Pakistani or Indian. According to Duch, these people were Muslim people living in an “Arab village” located outside the skirts of Phnom Penh city, where they raised livestock. Duch stated that they were evacuated to different locations, until Nat was ordered to gather them from Prek Dach to Takhmau prison, where ultimately they were “smashed”. The Chamber notes that based on this list it appears that some of these detainees were previously merchants or students.<sup>8477</sup> In the absence of any corroborating evidence, the Chamber does not rely on Duch’s evidence to determine the precise reasons for their arrests or their initial location.

2500. Additionally, S-21 prisoner lists indicate that detainees coming or returning from Canada, France, Egypt, Russia, China, Thailand, Laos, Australia, Japan, India, Pakistan and Yugoslavia were all arrested and detained at S-21.<sup>8478</sup>

<sup>8474</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 84-85.

<sup>8475</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 68.

<sup>8476</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83.

<sup>8477</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 70-73; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 29; T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 20; S-21 Daily Controlling List, E3/8493, 11 April 1976, pp. 2-3, ERN (En) 00181624-00181625.

<sup>8478</sup> See e.g., S-21 list of prisoners, E3/2236, undated, ERN (En) 00181633-00181635; S-21 list of prisoners not interrogations at House “Kor”, E3/2261, undated, ERN (En) 01303317-01303318; S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, pp. 152-153, 156-158, 162-163, 165, ERN (En) 01367280-01367281, 01367284-01367286, 01367290-01367291, 01367293; S-21 list of prisoners, E3/1999, undated, pp. 1-15, ERN (En) 00233676-00233689; S-21 list of prisoners who were



12.2.21. *Killings*

2501. The Closing Order found that NUON Chea gave specific orders with respect to the execution of specific prisoners and mass executions at S-21.<sup>8479</sup> Concerning KHIEU Samphan, the Closing Order found, as it did regarding his knowledge of torture, that due to his attendance and participation in Standing Committee meetings, it is likely that KHIEU Samphan was aware of the practice of execution at S-21.<sup>8480</sup>

2502. The Chamber finds that prisoners were usually taken out of the compound at night for execution. Prisoners were initially taken out every one or two weeks and the number of prisoners executed ranged from approximately 50 to 100 on any given day.<sup>8481</sup> Once a confession was obtained, the prisoner had to be taken out and killed unless there was a specific order to delay the execution.<sup>8482</sup>

2503. While the position of the CPK was that anyone arrested had to be “smashed”, in order to implement this principle, Hor decided which detainees had to be taken out for execution.<sup>8483</sup> However, after one incident in which Hor decided to smash a prisoner before his confession had been completed, SON Sen ordered in a telephone conversation that Hor consult Duch and seek his approval for every decision to “smash” a prisoner, after confirming that they had been interrogated.<sup>8484</sup> This instruction was implemented and Hor carried out the executions after receiving said order from Duch.<sup>8485</sup> PRAK Khorn testified that prisoners who did not confess even after torture

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executed from 15.1.77 to 31.1.77, E3/3185, undated, ERN (En) 00837627-00837628, 00837630-00837634, 00837636-00837639, 00837641; S-21 list of prisoners postponed in January 1977, E3/1542, 1 February 1977, pp. 3, 6-7, 12, 14, ERN (En) 00233975, 00233978-00233979, 00233984, 00233986; S-21 list of prisoners killed in 1977, E3/8455, undated, p. 1, ERN (En) 00784449; S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978, ERN (En) 00184808; S-21 Daily Controlling List, E3/8493, 11 April 1976, pp. 2-3, ERN (En) 00181624-00181625.

<sup>8479</sup> Closing Order, paras 970, 972-974.

<sup>8480</sup> Closing Order, para. 1183.

<sup>8481</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 87-88.

<sup>8482</sup> T. 27 March 2012 (KAING Guek Eav), E1/54.1, pp. 12, 14.

<sup>8483</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 36-37.

<sup>8484</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, pp. 38-40; KAING Guek Eav Interview Record, E3/452, 23 August 2007, pp. 5-6, ERN (En) 00147567-00147568; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 10, ERN (En) 00342841.

<sup>8485</sup> T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 62-63, 81; SUOS Thy Interview Record, E3/10571, 6 February 2015, pp. 5-6, ERN (En) 01079268-01079269; T. 26 March 2012 (KAING Guek Eav), E1/53.1, p. 55 (testifying that Hor would be sanctioned severely if he failed to report to Duch before taking a prisoner out); KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 10, ERN (En) 00147526; KAING Guek Eav Interview Record, E3/452, 23 August 2007, pp. 5-6, ERN (En) 00147567-00147568. SUOS Thy was presented with Duch’s prior statements, which suggested that Hor was responsible for smashing prisoners. SUOS Thy confirmed that this was correct, but to his knowledge, Hor acted on the

were taken out and executed.<sup>8486</sup> While the Chamber cannot rely on PRAK Khorn's evidence to reach a general conclusion in this regard, his testimony is consistent with the evidence discussed regarding the execution of all prisoners at S-21.

2504. As discussed earlier, the evidence shows that everyone sent to S-21 had to be "smashed" with rare exceptions, including those selected to work at the detention centre. For example, NUON Chea ordered that a dentist named DY Phon, who was arrested along with his wife on 10 December 1978, be "released" to work as a medic at S-21.<sup>8487</sup>

2505. The number of prisoners to be taken out to be killed varied depending on how many prisoners had been interrogated.<sup>8488</sup> Guards were instructed not to tell the prisoners that they were being taken to be killed and to instead tell them that they were being relocated to a new house.<sup>8489</sup> During the phase in October 1977 when 1,000 or more prisoners were detained at S-21, some prisoners were subjected to long interrogations, some were interrogated for shorter periods while others were not interrogated at all.<sup>8490</sup> During this period, the majority of prisoners at S-21 were sent to Choeng Ek to be executed without interrogation.<sup>8491</sup> Duch sent the less important prisoners for execution after receiving instructions to do so from SON Sen, while he was still Duch's direct supervisor.<sup>8492</sup>

2506. As discussed in the following section, while some executions were carried out at S-21 and its immediate surroundings, the majority of them were carried out at Choeng Ek.

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orders he received from Duch. Given Duch's own testimony in this regard, the Chamber finds that prisoners were only taken out by Hor after having reported to, and sought the authorisation of, Duch.

<sup>8486</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 73, 92.

<sup>8487</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 75-77; T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 58-59; T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 34; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 24-25, 75-76; S-21 list of prisoners of social affairs, E3/2088, undated, ERN (En) 00244255. *See above*, paras 2163-2164, 2178, 2236, 2350, 2450-2452.

<sup>8488</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 77.

<sup>8489</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 40, 44.

<sup>8490</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 6-7. *See also*, S-21 Orange Logbook, E3/10770, multiple dates, p. 260, ERN (En) 01460675 (entry dated 25 October 1977). For a more detailed discussion of peaks and troughs in S-21 prisoner arrest and execution numbers, *see below*, paras 2543, 2545-2552.

<sup>8491</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 7-8.

<sup>8492</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 37.

12.2.21.1. *Killings at S-21*

2507. Before S-21 was relocated to the Ponhea Yat High School location and while it was still at the PJ, prisoners were killed and buried at an execution site in Takhmau.<sup>8493</sup> The bones of those killed at Takhmau were burned before the location was handed over to the Ministry of Social Affairs.<sup>8494</sup> Prisoners were not killed or buried on site at the PJ location.<sup>8495</sup>

2508. Once Duch was appointed as the head of S-21, he designated the places where the prisoners were to be killed and buried, and Hor assigned guards to take prisoners to be killed. Peng's group of guards was responsible for killing the prisoners and digging the pits to bury the bodies.<sup>8496</sup> A strong guard known as Chan was assigned to "smash" prisoners within the S-21 premises, and he killed them by beating the back of their necks with a club, after which their bodies were thrown into pits.<sup>8497</sup> SON Sen ordered Duch to watch the killing of two important prisoners in 1976, Chhouk and CHEY Suon, both of whom were stabbed to death in the neck.<sup>8498</sup>

2509. Prisoners were taken to an open space to the west of the S-21 compound to be killed and buried in pits.<sup>8499</sup> There was another execution and burial site approximately 100 metres to the south of the S-21 compound.<sup>8500</sup> Some detainees were executed and buried in the grounds of S-21 in graves which were dug behind Building D and next to the Special Prison.<sup>8501</sup> Executed detainees were also buried in graves in the alleys surrounding S-21.<sup>8502</sup> As discussed above, western prisoners were executed to the north

<sup>8493</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 10-13; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 8-10, ERN (En) 00342839-00342841. For discussion of Takhmau prison, *see above*, paras 2138, 2153.

<sup>8494</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 11.

<sup>8495</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 10, ERN (En) 00342841.

<sup>8496</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 86-87.

<sup>8497</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 22-23.

<sup>8498</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 9, ERN (En) 00342840; KAING Guek Eav Interview Record, E3/5790, 3 December 2009, p. 9, ERN (En) 00414346.

<sup>8499</sup> T. 3 May 2016 (HIM Huy), E1/426.1, p. 86. *See also*, T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 10-11; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 8-9, ERN (En) 00342839-00342840.

<sup>8500</sup> T. 3 May 2016 (HIM Huy), E1/426.1, p. 90.

<sup>8501</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 30, 48, 89-90, ERN (En) 00346488, 00346506, 00346547-00346548 (testifying that he saw guards carry three dead bodies on a corrugated zinc plate and bury them in a pit under a big tree); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 9-10, ERN (En) 00198006-00198007.

<sup>8502</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, pp. 22-25 (testifying that he saw bloodstains in the vicinity of these gravesites and that there was a smell. He also testified that bodies were buried in the alleys near the fire station which ran to the SAING Sarun theatre).

of the S-21 compound and their bodies were burned.<sup>8503</sup> When Duch reported that a prisoner was “smashed”, sometimes he would receive an instruction from the upper echelon, including from NUON Chea, to have the body exhumed and a photograph taken.<sup>8504</sup>

2510. Children were killed and buried behind the prison.<sup>8505</sup> When children were taken away to be killed, the mothers were told that the children were being sent to a children’s centre.<sup>8506</sup> Children at S-21 were handled by Peng and Sry.<sup>8507</sup> Hor instructed Peng to take children away two or three days after their arrival at S-21.<sup>8508</sup> Children were usually taken out and killed before the removal of their parents from S-21.<sup>8509</sup> The older children were blindfolded, handcuffed and given to Peng to be killed.<sup>8510</sup> Babies were

<sup>8503</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 92-93. *See also*, T. 28 April 2016 (PRAK Khom), E1/424.1, pp. 20-21 (testifying that he was told by a security guard at S-21 that the American and Australian prisoners were put in the middle of a road, had tires placed on them and were burned with gasoline); T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 27 (testifying that the western prisoners had been first executed and then their bodies burned to destroy any evidence); T. 9 June 2016 (KAING Guek Eav), E1/435.1, pp. 82-83.

<sup>8504</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 21-22, 26-27; KAING Guek Eav Interview Record, E3/455, 3 October 2007, p. 4, ERN (En) 00149910 (stating that NUON Chea gave this order to SON Sen who passed on that order to him). *See e.g.*, S-21 photographs, E3/8063.6, ERN P00005342; E3/8063.9, ERN P00005355; E3/8063.15, ERN P00005284; E3/8063.16, ERN P00005340; E3/8063.20, ERN P00005287; E3/8063.27, ERN P00005352; E3/8063.28, ERN P00005341; E3/8063.29, ERN P00005251; E3/8063.30, ERN P00005357; E3/8063.32, ERN P00005278; E3/8063.33, ERN P00005351; E3/8063.37, ERN P00005353; E3/8063.44, ERN P00005261; E3/8063.45, ERN P00005257; E3/8063.46, ERN P00005348; E3/8063.47, ERN P00005349; E3/8063.48, ERN P00005347; E3/8063.49, ERN P00005346; E3/8063.109, ERN P00005285.

<sup>8505</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 15-17, 20-21 (testifying that children were killed in this way because there was fear that the secret of their killing would be leaked if they were transported with their parents for execution); T. 5 May 2016 (HIM Huy), E1/428.1, pp. 45-50; Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, p. 69, ERN (En) 00353949; HIM Huy Interview Record, E3/5154, 18 September 2007, p. 9, ERN (En) 00161603; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 8, 14, 42, ERN (En) 00342839, 00342845, 00342873.

<sup>8506</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 18-20. *See also*, Documentary: *Pol Pot: The Journey to the Killing Fields*, E3/2357R, undated, ERN V00172603, 00:40:48-00:41:15 (which shows HIM Huy’s interview answers regarding this issue).

<sup>8507</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 7, ERN (En) 00198004.

<sup>8508</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, pp. 9-10, ERN (En) 00198006-00198007. *See also*, T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 96-97 (testifying that for babies and toddlers, Hor instructed the guards whether or not to bring them out). The Co-Prosecutors submit that, given that S-21 children were not normally registered, the surviving records did not accurately reflect the number of children who were taken to and executed at S-21. *See* T. 15 June 2017 (Closing Statements), E1/522.1, p. 67. The Chamber has taken this into account, and when estimating the number of individuals killed at S-21 including children has noted that these figures are minimum calculations based on necessarily incomplete documentation.

<sup>8509</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 96-97; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 18-19, ERN (En) 00356804-00356805.

<sup>8510</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 20-22; BBC Cambodia Report, E3/536R, 2 June 2008, ERN V00172527, 00:27:38-00:28:15. The Chamber does not rely on HIM Huy’s assumption that children were killed in the same way as adults. The Chamber notes that during his testimony in Case 001, HIM Huy was more equivocal and testified that he did not have any idea about the detention and execution of children and he thought Peng carried out this operation. *See* Case 001 Transcript (HIM

carried away by the guards in their arms before being killed.<sup>8511</sup> With the exception of three children who survived following the closure of S-21, all other children who had previously entered S-21 were “smashed”.<sup>8512</sup>

2511. Even after Choeung Ek was established as a killing site some time in 1977, some prisoners including former S-21 staff members and important high-ranking detainees were still killed in the vicinity of the S-21 compound.<sup>8513</sup> Furthermore, prisoners who died inside the prison were also buried in the surroundings of S-21.<sup>8514</sup>

2512. The NUON Chea Defence contends that apart from the evidence of Duch, the only evidence of executions of children is the hearsay evidence of HIM Huy, and that no remains of children were found in the vicinity of S-21.<sup>8515</sup> The Chamber considers that while HIM Huy’s evidence is indeed hearsay, the Chamber is satisfied that his testimony on this issue is clear, consistent and credible. The Chamber considers that HIM Huy’s testimony corroborates Duch’s evidence that children who were detained at S-21 were killed, and further that the Party’s policy was to kill the children of those considered to be enemies. HIM Huy’s evidence is also consistent with S-21 lists that record the entry and execution of children at S-21.<sup>8516</sup> When considered in light of the reliable documentary evidence discussed below and Duch’s testimony that children were detained at S-21, the Chamber finds that children at S-21 were indeed killed in the vicinity of S-21.

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Huy), E3/7461, 16 July 2009, p. 59, ERN (En) 00353939. However, the Chamber is satisfied that while he did not personally witness the executions and know the details, his evidence is consistent that children were taken out and executed.

<sup>8511</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 23-25 (testifying that the children were aged between one month and eight years); BBC Cambodia Report, E3/536R, 2 June 2008, ERN V00172527, 00:28:45-00:29:15.

<sup>8512</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 37-38, 74-75 (testifying that there were no orphanages so when the parents were “smashed” the children were also “smashed”).

<sup>8513</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 32; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 60-63 (testifying that he heard Hor and Peng talking about this and that important prisoners had to be killed behind the prison because *Angkar* did not trust the people who transported prisoners); HIM Huy Interview Record, E3/5155, 19 September 2007, p. 6, ERN (En) 00161592; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 15, ERN (En) 00342846 (testifying that important detainees were killed somewhere near Mao Tse Tung Boulevard and that their photographs were taken and their throats were slit to prove that they had died). *See also*, T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 25.

<sup>8514</sup> T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 25.

<sup>8515</sup> NUON Chea Closing Brief, para. 571.

<sup>8516</sup> *See below*, para. 2543. *See above*, paras 2329-2332.

12.2.21.2. *Killings at Choeng Ek*12.2.21.2.1. *Location and establishment*

2513. Choeng Ek was located in fields in an area under the supervision of Division 703.<sup>8517</sup> It was located approximately 15 kilometres south-west of Phnom Penh in Kandal province (present-day Phnom Penh municipality).<sup>8518</sup> The Choeng Ek facility was surrounded by three layers of barbed wire fencing.<sup>8519</sup> From some time in 1977, prisoners were sent Choeng Ek for execution.<sup>8520</sup> Evidence indicates that prisoners from Prey Sar were also sent to Choeng Ek to be killed.<sup>8521</sup>

2514. Choeng Ek was established for the execution of S-21 prisoners following a discussion between Duch and Hor, whereupon they decided that killings had to be conducted at Choeng Ek because information may have leaked internationally about the killings at S-21.<sup>8522</sup> In addition, there was discussion about the need to move the killing site to Choeng Ek due to the risk of epidemics given the large number of corpses buried at the S-21 location.<sup>8523</sup> Duch requested “whitewash powder” from NUON Chea to spray on the dead bodies to avoid the spread of infection.<sup>8524</sup>

12.2.21.2.2. *Transportation and recording of prisoners*

2515. When detainees were sent to Choeng Ek, trucks parked in front of the gate to S-21 and SUOS Thy was given a list of detainees who had already been interrogated and were to be sent away.<sup>8525</sup> SUOS Thy confirmed his routine for compiling execution lists. First, Duch annotated lists with the word “smash”, which meant that he ordered the killings of all detainees mentioned in the lists; second, the lists went to Hor, who

<sup>8517</sup> HIM Huy Interview, E3/10767, 9 August 2014, p. 3, ERN (En) 01336767 (stating that Division 703 was under the responsibility of Nat, Kim and Pang).

<sup>8518</sup> Case 001 Transcript (Agreed Facts), E3/9416, 1 April 2009, p. 61, ERN (En) 00302089.

<sup>8519</sup> HIM Huy Interview, E3/10767, 9 August 2014, p. 3, ERN (En) 01336767.

<sup>8520</sup> T. 3 May 2016 (HIM Huy), E1/426.1, pp. 91-92 (testifying that he could not recall when in 1977 the killings were moved to Choeng Ek); T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 25. Contrary to the Co-Prosecutors’ submission (see Co-Prosecutors’ Closing Brief, para. 720), the evidence does not allow the Chamber to establish that the site began to be used in *early* 1977.

<sup>8521</sup> See above, para. 2337.

<sup>8522</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 33; HIM Huy Interview, E3/10767, 9 August 2014, p. 3, ERN (En) 01336767.

<sup>8523</sup> Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, p. 29, ERN (En) 00342860; KAING Guek Eav Interview Record, E3/5766, 28 February 2008, p. 4, ERN (En) 00165437; T. 4 May 2016 (HIM Huy), E1/427.1, p. 34.

<sup>8524</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, p. 11.

<sup>8525</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006.

finally gave them to SUOS Thy. SUOS Thy then made a separate execution list, tallied the numbers and noted the prisoners' cells and buildings. The detainees were gathered from their cells and checked carefully before being put on a truck and taken away.<sup>8526</sup> HIM Huy was in charge of receiving detainees after their interrogations and for sending them away for execution. HIM Huy gathered the prisoners with the help of Peng.<sup>8527</sup> Ultimately, SUOS Thy checked the names of the prisoners being loaded onto the trucks at the front gate against the names on his list.<sup>8528</sup>

2516. When HIM Huy transported prisoners out of S-21, he was provided a list of prisoners, which he would check to ensure the number of prisoners was accurate.<sup>8529</sup> Detainees were taken from S-21 by truck to be killed at Choeng Ek.<sup>8530</sup> HIM Huy was ordered by Hor to prepare vehicles to bring prisoners from S-21 to Choeng Ek, after which the prisoners were handed over to Peng's team.<sup>8531</sup> Hor informed HIM Huy about the specific number of prisoners who had already been interrogated and the number of vehicles needed to be prepared for them to be taken to Choeng Ek.<sup>8532</sup> Each vehicle could carry between 30 to 40 prisoners and there were occasions when two vehicles drove to Choeng Ek twice on the same day in order to transport the prisoners.<sup>8533</sup> Peng, Phal, HIM Huy and sometimes Hor took turns transporting prisoners to Choeng Ek depending on Hor's instructions.<sup>8534</sup>

<sup>8526</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 75-77; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 16-17, 23, 70-71, 74 (testifying that he only received the list of prisoners to be taken out from Hor); Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 21, 74, ERN (En) 00356807, 00356860. *See also*, SUOS Thy Interview Record, E3/7643, 18 October 2007, pp. 9-10, ERN (En) 00162616-00162617. After the prisoners were taken to the execution site, a list would be provided to Hor by the "100-men unit" and SUOS Thy would then make daily reports on those who had been killed, even though he did not personally know whether the people who had been taken out were actually executed. *See* T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 17-18; Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, p. 94, ERN (En) 00356684.

<sup>8527</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006.

<sup>8528</sup> Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 21, 74, ERN (En) 00356807, 00356860.

<sup>8529</sup> Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, pp. 62-65, ERN (En) 00353942-00353945; T. 4 May 2016 (HIM Huy), E1/427.1, p. 21.

<sup>8530</sup> Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 45-47, 79, ERN (En) 00346503-00346505, 00346537 (testifying that he was told this by another detainee when a truck arrived at around 11 p.m.).

<sup>8531</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 35-36.

<sup>8532</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 36.

<sup>8533</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 38-39 (testifying that he did not know about groups of multiple hundreds of prisoners being transported to Choeng Ek, but that others including Phal, Peng and Hor also went to this site). *See also*, T. 25 April 2016 (LACH Mean), E1/421.1, pp. 68-69 (testifying that the prisoners taken out of S-21 by truck never returned).

<sup>8534</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 39.

2517. SUOS Thy was responsible for ensuring that there were no discrepancies regarding the numbers of detainees and kept daily lists with the number of prisoners who entered, the number who were removed to be killed and the number of prisoners who had died in their cells including those who had died of severe illness, mistreatment or lack of food.<sup>8535</sup> On the daily prisoner lists, the words “to be removed” meant that the prisoners were to be “smashed”, and later the headings on the columns were changed from “released” to “died from illness” and the column “died from illness” was changed to “smashed”.<sup>8536</sup> Sometimes the word “released” was used on execution lists to conceal the fate of those whose execution was meant to remain secret, and in reality these people were also taken away and executed.<sup>8537</sup>

2518. After prisoners were taken for execution to Choeng Ek, HIM Huy made a list of the number of prisoners who were loaded off the vehicles at Choeng Ek and showed this to SUOS Thy, who in turn compared this with his own lists of the prisoners taken out of S-21 to ensure that the numbers were consistent.<sup>8538</sup> These daily lists were given to Hor for signature before being passed to Meng.<sup>8539</sup> Detainees were brought in or taken out almost on daily basis.<sup>8540</sup> SUOS Thy clarified that the names of important

<sup>8535</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 38, 97-98; T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 9-10, 74-75; SUOS Thy Interview Record, E3/7643, 18 October 2007, p. 5, ERN (En) 00162612; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 9, ERN (En) 00198006; T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 68-70 (confirming that the lists shown to him bore the handwriting of Hor and corresponded to the daily prisoner lists prepared at S-21). *See e.g.*, S-21 list of prisoners entering on 6 January 1978, E3/2020, 6 January 1978, ERN (En) 00184808-00184809; S-21 list of prisoners entered on 11 July 1978, E3/2242, 11 July 1978, ERN (En) 00885207; S-21 list of prisoners, E3/3181, multiple dates, ERN (En) 00784611-00784615 (noting prisoners who died of disease, and who had committed suicide); S-21 list of prisoners, E3/2164, 26 October 1977, pp. 2-4, ERN (En) 00181693-00181695; T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 72-74 (testifying that E3/2164 contained the totals of the number of prisoners but it was different from the list which on the incoming and outgoing prisoners). *See also*, T. 27 April 2016 (PRAK Khorn), E1/423.1, p. 62; T. 25 April 2016 (LACH Mean), E1/421.1, p. 75.

<sup>8536</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 70-72. Duch testified to this effect after having been referred to a number of S-21 daily control lists of prisoners (E3/9955 to E3/9967) and he testified that he recognised the handwriting of Hor.

<sup>8537</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 81-82. *See e.g.*, S-21 list of prisoners who were smashed on 30.6.77, E3/2285, 1 July 1977, p. 73, ERN (En) 01564833. *See above*, paras 2346-2347, 2351.

<sup>8538</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 41-42; Case 001 Transcript (SUOS Thy), E3/7465, 27 July 2009, pp. 94, 97, ERN (En) 00356684, 00356687 (testifying that he would insert the date, the names and the prisoners' positions on the execution list for those prisoners who had already been smashed).

<sup>8539</sup> SUOS Thy Interview Record, E3/7643, 18 October 2007, pp. 5-6, ERN (En) 00162612-00162613.

<sup>8540</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 70-71. SUOS Thy was shown a document which purported to be a list of prisoners executed from 1 November to 15 November 1976, but was unable to comment because this was not the kind of list which he prepared. He testified that it could have been drawn up by another unit: S-21 list of prisoners executed from 1 November 1976 to 15 November 1976, E3/3187, undated, ERN (En) 00874401-00874411. T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 65-71.



prisoners were reported directly to Duch, and SUOS Thy himself did not usually have all those names.<sup>8541</sup>

#### 12.2.21.2.3. *Mass graves*

2519. TAY Teng was the chief of the group of guards who were assigned to guard the prisoners who were transported to Choeng Ek for execution and to dig pits.<sup>8542</sup> TAY Teng testified that his group was involved in digging 20 to 30 pits, but his recollection on this matter was not clear.<sup>8543</sup> This group received instructions from HIM Huy who visited Choeng Ek to inspect the location and also accompanied some prisoners who were transported there from S-21.<sup>8544</sup>

2520. HIM Huy instructed the guards to dig pits which were approximately three metres long, two metres wide and two metres deep, and which could fit between 10 to 30 bodies.<sup>8545</sup> There was a stench of rotting bodies at Choeng Ek because some of the

<sup>8541</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, p. 90.

<sup>8542</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 89-91, 111-112 (testifying his duties also included performing executions and burying bodies. TAY Teng stated that his group consisted of between six to eight guards and that since people were “executed very easily” at Choeng Ek he could not disobey the orders with respect to tasks he had to perform, and was worried that he could also be executed); T. 25 April 2016 (TAY Teng), E1/421.1, pp. 40-43 (testifying that Chhuon was a member of his group, which consisted of seven or eight men and refuting Duch’s suggestion during the crime scene re-enactment that there was a company of 100 people in charge of Choeng Ek); TAY Teng Interview Record, E3/7617, 19 February 2008, p. 5, ERN (En) 00401879; T. 3 May 2016 (HIM Huy), E1/426.1, p. 92; Report of Crime Scene Reconstruction, E3/5764, 26 February 2008, pp. 4-5, ERN (En) 00197996-00197997. TAY Teng could not accurately estimate the number of people executed at Choeng Ek. He initially estimated that the number could have been 1,000, but when confronted with a figure in excess of 8,000, he was unable to estimate the specific numbers which would include those killed before he arrived at the site. See T. 21 April 2016 (TAY Teng), E1/420.1, pp. 112-114.

<sup>8543</sup> T. 25 April 2016 (TAY Teng), E1/421.1, pp. 48-51, 56-57 (testifying that on his arrival at Choeng Ek there were already two or three older Chinese graves); TAY Teng Interview Record, E3/7617, 19 February 2008, p. 5, ERN (En) 00401879 (stating that there were approximately 20 to 30 pits at Choeng Ek but that he did not remember clearly). The Chamber finds that while TAY Teng had difficulties in remembering the detail of certain matters, his recollection on key issues was consistent and can be relied on.

<sup>8544</sup> T. 21 April 2016 (TAY Teng), E1/420.1, p. 90; T. 4 May 2016 (HIM Huy), E1/427.1, p. 37. HIM Huy testified that was removed from his position at S-21 by Duch and assigned to work in the rice fields south of Choeng Ek in mid-1978, after he had been implicated in a confession for planning a rebellion at S-21 by NOP Nuon. The Chamber however notes that NOP Nuon was arrested on 6 July 1977 and smashed on 27 August 1977. It is implausible that Duch did not react to and punish HIM Huy’s implication in a rebellion until one year later. The Chamber finds that HIM Huy was embellishing this detail regarding his planned “rebellion” in an effort to minimise his responsibility at S-21, as seen with his testimony regarding his role in killing prisoners. In light of the above, the Chamber approaches HIM Huy’s evidence on this issue with caution. See T. 4 May 2016 (HIM Huy), E1/427.1, pp. 78-79; T. 5 May 2016 (HIM Huy), E1/428.1, pp. 7-8, 99-100; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, p. 44, ERN (En) 01563500; S-21 list of prisoners smashed on 27 August 1977, E3/2285, 27 August 1977, p. 247, ERN (En) 01565007.

<sup>8545</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 98-100 (testifying that he did not know exactly how many bodies were in each pit but he estimated that a pit could fit between 10 to 20 bodies); T. 4 May 2016 (HIM Huy), E1/427.1, p. 38 (testifying that a grave could fit 50 to 70 bodies); HIM Huy Interview

pits were not fully covered with dirt.<sup>8546</sup> Prior to the arrival of prisoners for execution, HIM Huy told the guards how many pits had to be dug.<sup>8547</sup> The burial of bodies in this manner without a funeral was against the Cambodian traditional practices and customs.<sup>8548</sup>

2521. HIM Huy arrived at Choeng Ek in the same vehicle as Hor.<sup>8549</sup> HIM Huy instructed TAY Teng that he had to be vigilant and take an “absolute stance” in their tasks, which meant that they had to be focused on their duty.<sup>8550</sup>

#### 12.2.21.2.4. *Arrival of prisoners*

2522. Prisoners were brought to Choeng Ek in the evening by truck and ordered to get off the vehicle and enter a wooden house where there were cells or small rooms.<sup>8551</sup> One and sometimes two trucks usually arrived at Choeng Ek at night.<sup>8552</sup> The prisoners brought to Choeng Ek were blindfolded, had their hands cuffed and were accompanied by two or three guards and HIM Huy.<sup>8553</sup> When there was a large number of prisoners being transported, the prisoners were shackled to prevent them from escaping.<sup>8554</sup> Prisoners, including children, were brought to Choeng Ek directly from Prey Sar to be killed as well.<sup>8555</sup> While Prey Sar is not a crime site within the scope of Case 002/02, the execution of prisoners from Prey Sar, by virtue of the fact that the killings occurred at Choeng Ek, falls within the ambit of the Case 002/02 charges.<sup>8556</sup>

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Record, E3/5155, 19 September 2007, p. 6, ERN (En) 00161592 (stating that there were about 30 bodies in each pit). *See also*, Case 001 Transcript (CHHUN Phal), E3/7470, 10 August 2009, pp. 35-39, ERN (En) 00361878-00361882.

<sup>8546</sup> T. 21 April 2016 (TAY Teng), E1/420.1, p. 98.

<sup>8547</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 99-101 (testifying that sometimes HIM Huy would inform them in person or send a messenger).

<sup>8548</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 38.

<sup>8549</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 47-48 (testifying that Hor would accompany each batch of prisoners brought to Choeng Ek and that Duch only visited the site on about three occasions).

<sup>8550</sup> T. 21 April 2016 (TAY Teng), E1/420.1, p. 92.

<sup>8551</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 100-101; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 40, 42.

<sup>8552</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 101-102. *See also*, HIM Huy Interview, E3/10767, 9 August 2014, p. 2, ERN (En) 01336766.

<sup>8553</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 102-103; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 40, 42-43 (testifying that there were two guards in the back with the prisoners, one driver and another guard in the cabin); HIM Huy Interview, E3/10767, 9 August 2014, p. 2, ERN (En) 01336766.

<sup>8554</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 40.

<sup>8555</sup> *See above*, para. 2337. *See below*, para. 2530.

<sup>8556</sup> *See above*, para. 2336.

2523. All prisoners were taken out of the house one at a time to the execution site and killed, usually on the same night on which they arrived.<sup>8557</sup> HIM Huy took note of the name of each prisoner as they were taken out for execution.<sup>8558</sup>

12.2.21.2.5. *Execution of prisoners*

2524. Hor was responsible for the overall organisation and supervision of how each prisoner had to be taken out and executed, and HIM Huy oversaw the transportation of prisoners to Choeung Ek and recorded their names with SUOS Thy.<sup>8559</sup> The execution sites were approximately between 20 to 100 metres away from the house where the prisoners were held and prisoners cried for mercy when they realised they were going to be killed.<sup>8560</sup>

2525. Prisoners were told to sit at the rim of the pit and were then hit from the back.<sup>8561</sup> Prisoners were executed by a blow to the neck with an iron bar, after which their throats were slit with a knife and their bodies buried in freshly dug graves.<sup>8562</sup> The shackles or cuffs were removed and the prisoners were typically disembowelled and thrown into the pit.<sup>8563</sup> The bodies were disembowelled to prevent them from swelling and to reduce the stench, so that people would not find out about the killings.<sup>8564</sup> Given the large number of detainees brought on any given night, the killing process could take several hours.<sup>8565</sup>

2526. Guards were taught how to kill the prisoners by Duch and Hor.<sup>8566</sup> Prisoners who were wearing new clothes were stripped on the instructions of Hor.<sup>8567</sup> After

<sup>8557</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 104-106; T. 25 April 2016 (TAY Teng), E1/421.1, p. 9; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 43-44.

<sup>8558</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 43.

<sup>8559</sup> T. 3 May 2016 (HIM Huy), E1/426.1, p. 94; T. 4 May 2016 (HIM Huy), E1/427.1, pp. 44, 48. *See above*, paras 2515-2516.

<sup>8560</sup> T. 21 April 2016 (TAY Teng), E1/420.1, p. 105; T. 25 April 2016 (TAY Teng), E1/421.1, pp. 9-10; T. 4 May 2016 (HIM Huy), E1/427.1, p. 45.

<sup>8561</sup> T. 21 April 2016 (TAY Teng), E1/420.1, p. 106; T. 4 May 2016 (HIM Huy), E1/427.1, p. 43.

<sup>8562</sup> T. 21 April 2016 (TAY Teng), E1/420.1, pp. 106-109; T. 25 April 2016 (TAY Teng), E1/421.1, pp. 9, 34-38 (confirming that the crime scene re-enactment at Choeung Ek corresponded to the location where he lived and worked and the place where people were executed); T. 4 May 2016 (HIM Huy), E1/427.1, pp. 22, 45-47; TAY Teng Interview Record, E3/7617, 19 February 2008, p. 3, ERN (En) 00401877; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 8, ERN (En) 00198005; BBC Cambodia Report, E3/536R, 2 June 2008, ERN V00172527, 00:25:00-00:26:00.

<sup>8563</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 46-47; T. 21 April 2016 (TAY Teng), E1/420.1, p. 107.

<sup>8564</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 76.

<sup>8565</sup> Case 001 Transcript (HIM Huy), E3/7461, 16 July 2009, p. 67, ERN (En) 00353947.

<sup>8566</sup> T. 4 May 2016 (HIM Huy), E1/427.1, pp. 46-47.

<sup>8567</sup> T. 4 May 2016 (HIM Huy), E1/427.1, p. 46.

prisoners were killed at Choeng Ek, their clothes were brought back to the workshop at S-21.<sup>8568</sup>

2527. When SUOS Thy was shown a document which purported that 582 prisoners from the East Zone, including 25 people with Vietnamese names, were “smashed” on 27 May 1978, SUOS Thy testified that it would not be possible for this number of people to be “smashed” on one day and that it was a consolidated list of prisoners.<sup>8569</sup> However, the Chamber observes that these executions took place at the apex of the East Zone purges. When Duch was confronted with the same list, he testified that he received instructions from the upper echelon that “a maximum amount of prisoners had to be withdrawn or removed to reserve space for newcomers. So, prisoners were sent to Choeng Ek in large numbers at that time”. He clarified that it was NUON Chea who ordered him “to remove prisoners to the maximum”, and that prisoners from the East Zone were brought in on trucks, were placed into cells and were sent out for execution the very same day without interrogation. He added “there were about 200 or 300 of them”.<sup>8570</sup>

2528. While Duch testified that he did not contest that more than 12,000 people died at S-21, this was based on the list prepared by the Co-Prosecutors.<sup>8571</sup> The Chamber has conducted its own analysis and assessment of these lists and underlying documents. This is addressed in more detail below.<sup>8572</sup>

2529. The NUON Chea Defence contests Duch’s testimony that children were sent to Choeng Ek to be killed and notes that those involved in the operations at Choeng Ek denied seeing children at the location.<sup>8573</sup> The NUON Chea Defence concludes that there is sufficient doubt about some of the evidence relied on by the Co-Prosecutors to establish that children were also taken to Choeng Ek to be killed.<sup>8574</sup> One such

<sup>8568</sup> Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, p. 47, ERN (En) 00346505.

<sup>8569</sup> T. 2 June 2016 (SUOS Thy), E1/430.1, pp. 77-81; S-21 list of prisoners smashed on 27 May 1978, E3/8463, 29 May 1978, ERN (En) 01032508-01032536.

<sup>8570</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 41-44. The Chamber further notes that the S-21 list of prisoners smashed on 27 May 1978, E3/8463, is actually dated 29 May 1978. Entries 526 through 556 on this list correspond to prisoners recorded as arriving on 28 May 1978, suggesting that these executions had carried over until the next day. *See also*, Section 12.1.6.3.4: Internal Factions: Purge of the East Zone.

<sup>8571</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 20-21.

<sup>8572</sup> *See below*, Section 12.2.22: Prisoner List Data and Analysis.

<sup>8573</sup> NUON Chea Closing Brief, para. 571 *referring to* KAING Guek Eav Interview Record, E3/5766, 28 February 2008, p. 5, ERN (En) 00165438.

<sup>8574</sup> NUON Chea Closing Brief, para. 572.

contested piece of evidence is a prisoner list from July 1977 of persons at Prey Sar who were to be eliminated, containing an annotation stating, in its previous translation, that 160 children were smashed by “Brother HUY Sre”.<sup>8575</sup> While Duch testified that this list indicated that on this day, 18 adults and 160 children were “smashed”, the Chamber notes that Duch was simply interpreting the list of prisoners and had no personal recollection of this incident and thus does not rely on Duch’s testimony in this regard.<sup>8576</sup> Additionally, the NUON Chea Defence contested the translation of this document.<sup>8577</sup> While the original document indicated that these children had been smashed, a revised translation was issued, and the annotation simply reads: “Total number of persons in the rice-production section: 178, including 160 children”.<sup>8578</sup> In light of the ambiguity in translation and Duch’s lack of first-hand knowledge regarding this document, the Chamber finds that it is not sufficient to support a finding that the 160 children mentioned therein were killed at Choeng Ek.

2530. TAY Teng testified that he never heard the sounds or the cries of children at S-21 and that he never saw children at Choeng Ek.<sup>8579</sup> However, many S-21 lists support the fact that children were killed at Choeng Ek.<sup>8580</sup> The Case File also contains S-21 lists indicating that children were transferred from Prey Sar to Choeng Ek for execution.<sup>8581</sup> Both the S-21 documentary evidence and the bone study conducted by

<sup>8575</sup> NUON Chea Closing Brief, para. 572; S-21 list of prisoners under Brother HUY Sre’s authority to be eliminated, E3/2133, 23 July 1977, p. 1, ERN (En) 00242285.

<sup>8576</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 81-82, 84-85; T. 23 June 2016 (KAING Guek Eav), E1/443.1, pp. 114-115; T. 27 June 2016 (KAING Guek Eav), E1/444.1, pp. 4-5.

<sup>8577</sup> NUON Chea Closing Brief, para. 572.

<sup>8578</sup> S-21 list of prisoners under Brother HUY Sre’s authority to be eliminated, E3/2133, 23 July 1977, p. 1, ERN (En) 00242285.

<sup>8579</sup> T. 25 April 2016 (TAY Teng), E1/421.1, pp. 7, 55-56; TAY Teng Interview Record, E3/7617, 19 February 2008, p. 4, ERN (En) 00401878.

<sup>8580</sup> See e.g., S-21 list of prisoners smashed, E3/2285, 7 June 1977, p. 98, ERN (En) 01564858 (naming UONG Ngech Eng, age 15); S-21 list of prisoners who were smashed on 31.10.77 Northwest section, E3/2285, undated, pp. 66-67, ERN (En) 01564826-01564827 (listing HAT Seng, age 15, “Art performance child” and RIEN Chet, age 15 “Medical child”); S-21 list of prisoners withdrawn on 29.8.77, E3/2285, 30 August 1977, pp. 101-103, ERN (En) 01564861-01564863 (listing BAU Li, age 14; AUN Voeun, age 14; and SREU Pheap, age 7); S-21 list of prisoners smashed on 23 November, 1977, E3/2285, 24 November 1977, pp. 209-210, ERN (En) 01564969-01564970 (listing PENG Ren, age 15 and LAN Pum, age 15); S-21 list of prisoners smashed on 12 May, 1977, E3/2285, 13 May 1977, p. 281, ERN (En) 01565041 (listing CHOM Phal, “A child”).

<sup>8581</sup> See e.g., S-21 list of smashed prisoners for Bong HUY Sre, E3/2285, 9 July 1977, pp. 328-329, ERN (En) 01565088-01565089 (listing 18 “Female youth(s)” as smashed); S-21 list of prisoners smashed on 2 July, 1977, the Section of HUY Srae, E3/2285, 3 July 1977, pp. 429-435, ERN (En) 01565189-01565195; S-21 list of prisoners from S-21D, E3/8460, 10 February 1978, ERN (En) 00843447 (listing CHEA Mao, age 14); S-21 list of prisoners of Bong HUY Srae’s Section: Smashed on 3 August 1977, E3/2285, 4 August 1977, pp. 405-407, ERN (En) 01565165-01565167 (listing 20 prisoners labelled as “child”); S-21 list of prisoners executed on 2 July 1977, Bang Huy Sre’s Section, E3/8458, 3 July 1977, pp. 9-10, ERN (En) 00828299-00828300.

VOEUN Vuthy, as discussed in more detail below, support the conclusion that children were taken to and executed at Choeung Ek.<sup>8582</sup> Thus, the NUON Chea Defence submission to the contrary is rejected.

2531. The NUON Chea Defence submits that the number of detainees who entered S-21 “likely lies around 6,000 and there is no evidence to prove beyond reasonable doubt that all those people were killed”.<sup>8583</sup> As outlined below, the Chamber finds that, based on its analysis of the verified information contained in the contemporaneous S-21 lists on the Case File, these lists allow the identification of a minimum of 10,887 prisoners who were arrested and detained at S-21 during its operation, and the identification of at least 11,742 prisoners who were executed in the vicinity of S-21 or at Choeung Ek after their registration at S-21.<sup>8584</sup> The evidence presents an incontrovertible picture that, contrary to the NUON Chea Defence’s assertion, S-21 was by no means a simple detention facility where most registered prisoners were sent to re-education sites and not killed. On the contrary, the evidence demonstrates that S-21 was a structure where perceived “enemies” of the DK regime were detained, tortured and ultimately executed without any trial or legal process, and that all these killings formed part of the same killing operation. In reaching this conclusion, the Chamber has had regard to the live evidence of guards, those involved in executions, survivors and S-21 staff who kept records of those who were arrested, detained, interrogated and subsequently executed in the vicinity of S-21 or Choeung Ek. The evidence analysed above establishes that prisoners who entered S-21 including men, women and children were labelled as “enemies”, were almost never released and were removed from the facility in order to be killed. The NUON Chea Defence’s submissions are accordingly rejected.

#### 12.2.21.2.6. *Analysis of VOEUN Vuthy’s evidence*

2532. VOEUN Vuthy testified in Case 002/02 as an expert in osteology, which is a branch of anatomy dealing with structure and function of bones. He testified about the bone analysis he conducted on remains from Choeung Ek and Kraing Ta Chan Security Centre.<sup>8585</sup> VOEUN Vuthy and his team also conducted investigative exhumations of

<sup>8582</sup> See above, para. 2337. See below, paras 2535, 2543.

<sup>8583</sup> NUON Chea Closing Brief, para. 451.

<sup>8584</sup> See below, para. 2541.

<sup>8585</sup> Decision on Designation of 2-TCE-1062, E404/8, 4 November 2016, paras 9, 12; T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 48-49.

human remains at other locations. He and his team produced a 32-volume Choeung Ek study with their results regarding the bones found, including total numbers, ages, genders, dates and causes of death, portions of which were admitted as evidence by the Chamber.<sup>8586</sup>

2533. VOEUN Vuthy's study evaluated the remains of 6,426 human crania at the Choeung Ek site.<sup>8587</sup> He used methods to identify the gender, age, cause of death and sometimes the type of weapon used.<sup>8588</sup> Due to budgetary constraints, VOEUN Vuthy and his team did not have the technological capacity to pinpoint the time of death. He testified that he and his crew used contextual factors to deduce windows of time within which the person died. For example, the team looked to both layers of soil and signs of trauma to infer that the remains came from victims of the DK regime. Similarly, VOEUN Vuthy asserts that based on the unique composition of dirt found on the crania, they could match bones to crime sites.<sup>8589</sup> When questioned on how the team knew that the bones at Choeung Ek were from victims of the DK regime as opposed to bodies from the Chinese burial ground located at the same site, VOEUN Vuthy testified that they looked to traces of trauma, type of mud on the remains and the circumstances surrounding the bones to determine this. He testified that unlike remains thought to be from the DK era, the Chinese bodies were buried in coffins, several of which they found during the project.<sup>8590</sup>

2534. At Choeung Ek, VOEUN Vuthy and his team examined 63,112 bones.<sup>8591</sup> Their methodology included a 12-step process of cleaning, photographing and registering the bones.<sup>8592</sup> VOEUN Vuthy draws conclusions about the types of weapons used on the victims. His conclusions are based on traces found on the bones, and interviews

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<sup>8586</sup> Decision on the Admission into Evidence of the Choeung Ek Study Documents, E404/9, 4 November 2016, paras 9-11; T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 57-59. *See also*, Evaluation of the Choeung Ek Conservation of Victims at Killing Fields Project, E3/10643, 2015, ERN (En) 01235378-01235427; Cheung Ek Genocidal Center: the Inventory of the Skeletons of the Victims, Preface, E3/10645, undated, ERN (En) 01240557-01240559; Cheung Ek Genocidal Center: the Inventory of the Skeletons of the Victims, Volume 32, E3/10646, undated, ERN (En) 01240562-01240563; Choeung Ek Study identified in E404 notice, Volume 32, E3/10647, undated, pp. 1-2, ERN (En) 01538271-01538272; Choeung Ek Study identified in E404 Notice, Volumes 1-32, summary charts, un-paginated, E3/10648, undated, ERN (En) 01324883-01324913.

<sup>8587</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, p. 58.

<sup>8588</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, p. 53.

<sup>8589</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 62-63; T. 10 January 2017 (VOEUN Vuthy), E1/518.1, pp. 13-14, 19-21.

<sup>8590</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 40-43, 89-91.

<sup>8591</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, p. 63.

<sup>8592</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 52-53.

conducted both with those on-site who may have witnessed the killings or the corpses at some stage and those who worked there, such as HIM Huy.<sup>8593</sup> VOEUN Vuthy and his team used microscopes to match particles from weapons used, such as bamboo sticks, with particles found on the skull. His study concludes that a variety of weapons were used to kill the victims at Choeung Ek, such as wood clubs, iron bars, knives, hoes, axes, bullets, bamboo stems and bayonets.<sup>8594</sup> VOEUN Vuthy later stated that his team could not find the actual tools used, and that they reproduced tools that matched the cracks and dents on the bones.<sup>8595</sup>

2535. VOEUN Vuthy and his team applied scientific, internationally standardised criteria to determine factors such as gender and age of the crania.<sup>8596</sup> He and his team found bones from individuals of the following ages:

- 1) 3-8 years old – 13 remains found;
- 2) 8-19 years old – 241 remains found;
- 3) 20-34 years old – 3,984 remains found;
- 4) 35-49 years old – 1,894 remains found;
- 5) 50-69 years old – 273 remains found; and
- 6) 70 years old and above – 18 remains.<sup>8597</sup>

2536. VOEUN Vuthy testified that, according to the Office of Propaganda and Culture of Phnom Penh, there were 8,985 crania stored at the Choeung Ek wooden stupa in 1983.<sup>8598</sup> However, the final number of crania that VOEUN Vuthy evaluated totalled only 6,426, and he and his team found 7,708 right humerus bones. The Chamber notes that VOEUN Vuthy conducted his research on-site 23 years after the creation of the stupa and after the official figure of 8,985 crania had been recorded. VOEUN Vuthy suggested that he and his team found less crania than the official figure because, over time, remains fell into the mass graves and/or were eaten by animals.<sup>8599</sup> Regardless of

<sup>8593</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 54-55, 58-59; T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 45-46.

<sup>8594</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 58-59, 65.

<sup>8595</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 60-61.

<sup>8596</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 62, 67-68.

<sup>8597</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 68-69.

<sup>8598</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 13, 16-18. *See also*, Evaluation of the Choeung Ek Conservation of Victims at Killing Fields Project, E3/10643, 2015, p. 17, ERN (En) 01235397 (noting that this total is quoted in other reports on Choeung Ek, such as HUGHES' report from 2006, and the reports of VENECIANO and HINTON from 2007).

<sup>8599</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 16-18. *See also*, Evaluation of the Choeung Ek Conservation of Victims at Killing Fields Project, E3/10643, 2015, pp. 18-19, ERN (En) 01235398-01235399.



what did or did not happen to the crania, the Chamber finds that only the number of bones actually found and studied can be taken into consideration. The team found marks of trauma on 28,083 of the 63,112 bones that they studied.<sup>8600</sup> Due to government restrictions and seasonal flooding, VOEUN Vuthy and his team investigated only 86 out of an estimated 129 pits at the site.<sup>8601</sup> Dr. Nancy BEAVAN, a New Zealand expert in radiocarbon dating and isotopic analyses specialising in bones,<sup>8602</sup> acted as an external consultant and evaluated the work that VOEUN Vuthy and his team did at Choeung Ek. Among other things, she determined that it “was a very successful program” based on its objectives. She determined in her evaluation that the methods used for data collection were “very professional”, and the monthly monitoring committee tasked with overseeing the project indicated a very high standard of quality control and monitoring. While she suggested ways to improve the database for easier access to information, Dr. BEAVAN’s evaluation of inventory lists and database information entry revealed no errors.<sup>8603</sup>

2537. The NUON Chea Defence opposed VOEUN Vuthy’s admission as an Expert in Case 002/02, and emphasised in its submissions that VOEUN Vuthy is not an expert in forensic pathology.<sup>8604</sup> As such, in its Closing Brief, the NUON Chea Defence submits that VOEUN Vuthy does not have the requisite expertise to draw conclusions on cause of death for legal purposes. Because VOEUN Vuthy often relied on interviews and investigative methods unrelated to osteology to draw conclusions in his study, the NUON Chea Defence submits that his testimony must be weighed cautiously. The NUON Chea Defence highlights VOEUN Vuthy’s testimony that he could not have reached certain conclusions about causes of death without the informal interviews that he and his team conducted. The NUON Chea Defence further draws attention to the fact that many conclusions made about weapons used were also partially based on interviews. The Defence additionally emphasises that VOEUN Vuthy and his team did not possess the requisite equipment and technology to determine the date of death, or

<sup>8600</sup> Exhausted [*sic*] List of Preserved Remains, E3/10766, undated, ERN (En) 01336759-01336760.

<sup>8601</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 70-71, 77; Cheung Ek Genocidal Center: The Inventory of the Skeletons of the Victims, Preface, E3/10645, 26 August 2016, ERN (En) 01240557.

<sup>8602</sup> Evaluation of the Choeung Ek Conservation of Victims at Killing Fields Project, E3/10643, 11-30 December 2015, p. 15, ERN (En) 01235395.

<sup>8603</sup> Evaluation of the Choeung Ek Conservation of Victims at Killing Fields Project, E3/10643, 11-30 December 2015, pp. 5, 8, 13, 25, ERN (En) 01235385, 01235388, 01235393, 01235405.

<sup>8604</sup> NUON Chea’s Submissions on the Possible Expert Status of VOEUN Vuthy [E404/5], E404/7, 1 September 2016, paras 18-20; NUON Chea Closing Brief, para. 468.

when an injury was sustained.<sup>8605</sup> Finally, the NUON Chea Defence notes that while they contest the reliability of VOEUN Vuthy's study results, the total number of crania evaluated by the expert and his team, 6,246, supports the Defence's submission that under 7,000 prisoners were killed at S-21.<sup>8606</sup>

2538. At trial, the Co-Prosecutors supported admission of VOEUN Vuthy as an Expert,<sup>8607</sup> and in their Closing Brief submit that VOEUN Vuthy's evidence can be relied on to quantify the scale of killing that took place at Choeung Ek, and corroborate the testimony of S-21 cadres about the usual method of killings at the site.<sup>8608</sup>

2539. The Chamber agrees with ICTY case law that holds that any doubts cast with regard to an expert's report and research methodology are to be reflected in the weight the trial chamber accords to the expert's evidence. Statements falling outside the scope of the expert's field of knowledge are to be treated as personal opinions and weighed accordingly.<sup>8609</sup> This Chamber designated VOEUN Vuthy as an expert in osteology.<sup>8610</sup> As such, he is not qualified to render expert advice on subjects such as cause of death or the occurrence of torture, especially for legal purposes. Thus, the Chamber only relies on VOEUN Vuthy's conclusions that are a direct product of his expertise as an osteologist, and accords no weight to conclusions made outside the scope of his expertise or personal experience.

2540. In light of the above, the Chamber is satisfied with VOEUN Vuthy's submissions, based on his expertise in osteology, regarding the numbers and types of bones evaluated, ages and gender of crania, and the existence and number of traces on the bones indicating trauma.<sup>8611</sup> As VOEUN Vuthy's conclusions regarding weapons used, torture, and cause of death fall outside his expertise, the Chamber will not consider them.<sup>8612</sup> Given that the exhumation process was not completed, that some pits

<sup>8605</sup> NUON Chea Closing Brief, paras 468, 472-473, 475.

<sup>8606</sup> NUON Chea Closing Brief, paras 640, 645-646.

<sup>8607</sup> Co-Prosecutors' Submission Regarding Possible Expert Status of Voeun Vuthy, E404/6, 25 August 2016, paras 4-5.

<sup>8608</sup> Co-Prosecutors' Closing Brief, paras 725-727.

<sup>8609</sup> See *Perišić*, Decision on Admissibility of Expert Report of Patrick Treanor (TC I), para. 14; *Milošević*, Decision on Admission of Expert Report of Robert Donia (TC III), para. 11.

<sup>8610</sup> Decision on Designation of 2-TCE-1062, E404/8, 4 November 2016, p. 7.

<sup>8611</sup> T. 13 December 2016 (VOEUN Vuthy), E1/512.1, pp. 58, 63-64, 67-70; T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 106-107; Exhausted [*sic*] List of Preserved Remains, E3/10766, 14 December 2016, ERN (En) 01336759-01336760.

<sup>8612</sup> See e.g., Decision on Designation of 2-TCE-1062, E404/8, 4 November 2016, p. 7.

remain untouched, some bones may have disappeared since 1979 and further because of their deterioration for other reasons, the Chamber finds that the number of bones actually found and studied does not represent the totality of the victims executed at Choeng Ek. It finds however that the 7,708 right humerus bones is indicative of a minimum number of detainees executed at Choeng Ek – a number which is consistent with the available documentary evidence.

### 12.2.22. *Prisoner List Data and Analysis*

2541. According to the Closing Order, more than 12,273 detainees were killed at the Choeng Ek execution site, in or within the vicinity of the S-21 complex or died as a result of the conditions of detention.<sup>8613</sup>

2542. The Chamber now turns to its own analysis of the prisoner list data. Based only on the select categories of prisoner lists mentioned above, the Chamber finds that, at the very least, 10,887 prisoners were arrested and detained at S-21 during its operation<sup>8614</sup> and at least 11,742 prisoners were executed at or in the vicinity of S-21

<sup>8613</sup> Closing Order, paras 460-472, 1373, 1381, 1385.

<sup>8614</sup> S-21 Lists relied upon, in chronological order: S-21 list of prisoners who entered in January 1977, E3/10265, 1 February 1977, pp. 1-27, ERN (En) 01397917-01397943; S-21 list of prisoners arrived in February 1977, E3/9844, 2 March 1977, pp. 1-42, ERN (En) 01368608-01368649; S-21 list of prisoners who entered in March 1977, E3/9845, March 1977, pp. 1-119, ERN (En) 01331964-01332082; S-21 list of prisoners entering in May 1977, E3/2590, 3 June 1977, pp. 1-170, ERN (En) 01191256-01191425; S-21 Daily Controlling List, E3/10074, 3 June 1977, pp. 1-2, ERN (En) 01462100-01462101; S-21 Daily Controlling List, E3/9976, 10 June 1977, pp. 1-2, ERN (En) 01462011-01462012; S-21 Daily Controlling List, E3/10006, 11 June 1977, pp. 1-2, ERN (En) 01462045-01462046; S-21 Daily Controlling List, E3/9977, 14 June 1977, ERN (En) 01462013-01462014; S-21 Daily Controlling List, E3/9978, 16 June 1977, pp. 1-2, ERN (En) 01462015-01462016; S-21 Daily Controlling List, E3/9979, 17 June 1977, pp. 1-2, ERN (En) 01462017-01462018; S-21 Daily Controlling List, E3/9980, 19 June 1977, pp. 1-2, ERN (En) 01462019-01462020; S-21 Daily Controlling List, E3/9981, 20 June 1977, pp. 1-2, ERN (En) 01562021-01462022; S-21 Daily Controlling List, E3/9982, 27 June 1977, pp. 1-2, ERN (En) 01462023-01462024; S-21 list of prisoners entering on 28 June 1977, E3/9646, 29 June 1977, pp. 1-7, ERN (En) 01139858-01139863; S-21 Daily Controlling List, E3/9984, 30 June 1977, pp. 1-2, ERN (En) 01461809-01461810; S-21 Daily Controlling List, E3/9985, 1 July 1977, pp. 1-2, ERN (En) 01461811-01461812; S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, pp. 1-64, ERN (En) 01563457-01563520; S-21 list of prisoners, E3/10274, multiple dates, pp. 1-78, ERN (En) 01366765-01366842; S-21 list of prisoners who entered in September 1977, E3/10275, multiple dates, pp. 1-58, ERN (En) 01368827-01368884; S-21 list of prisoners, E3/9953, 2 December 1977, pp. 1-38, ERN (En) 01367660-01367697; S-21 list of prisoners entering in October 1977, E3/9951, 2 November 1977, pp. 1-77, ERN (En) 01332083-01332159; S-21 list of prisoners, E3/9950, 7 January 1978, pp. 1-43, ERN (En) 01367563-01367605; S-21 list of prisoners, E3/10505, multiple dates, pp. 1-70, ERN (En) 01398541-01398610; S-21 list of prisoners, E3/10430, undated, pp. 1-67, ERN (En) 01366843-01366909; S-21 list of prisoners, E3/10439, undated, pp. 1-39, ERN (En) 01398394-01398432; S-21 list of prisoners, E3/8655, multiple dates, ERN (En) 01460840-01460884; S-21 list of prisoners who entered in April 1978, E3/10354, pp. 1-91, ERN (En) 01507542-01507632; S-21 list of prisoners who entered on 3 May 1978, E3/10138, 3 May 1978, pp. 1-4, ERN (En) 01548730-01548733; S-21 list of prisoners who entered on 2 May 1978, E3/10137, 2 May 1977, ERN (En) 01373835-01373841; S-21 list of prisoners who

and Choeng Ek after their registration at S-21.<sup>8615</sup> The Chamber notes that this is a conservative minimum finding which does not account for all documentation created during S-21's operations. As part of its calculations, the Chamber has not relied on certain S-21 prisoner lists on the Case File due to, for example, lack of authentication, internal or external inconsistencies or lack of sufficient resemblance to other documents associated with S-21. Other documentation disappeared since the abandonment of S-21, was never included on the Case File or is inaccessible.<sup>8616</sup> The above analysis relating to total number of prisoner arrested and executed does include the information in periodical entry lists, interrogation lists or entry lists by origin, due to the aforementioned issues with analysing the lists in a chronological fashion.<sup>8617</sup> Moreover,

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entered on 4 May 1978, E3/10139, 4 May 1978, p. 1, ERN (En) 01462131; S-21 list of prisoners who entered on 5 May 1978, E3/10140, 5 May 1978, ERN (En) 01366709-01366715; S-21 list of prisoners who entered the prison on 5 May 1978, E3/10392, 5 May 1978, pp. 1-16, ERN (En) 01398288-01398303; S-21 list of prisoners who entered on 6 May 1978, E3/10141, 7 May 1978, pp. 1-2, ERN (En) 01462132-01462133; S-21 list of prisoners who entered on 8 May 1978, E3/10142, 8 May 1978, pp. 1-2, ERN (En) 01462134-01462135; S-21 list of prisoners, E3/10144, 11 May 1978, pp. 1-2, ERN (En) 01462136-01462137; S-21 list of prisoners who entered on 12 May 1978, E3/10393, 12 May 1978, pp. 1-21, ERN (En) 01398304-01398324; S-21 list of prisoners who entered on 13 May 1978, E3/10146, 13 May 1978, pp. 1-11, ERN (En) 01395566-01395576; S-21 list of prisoners who entered on 16 May 1978, E3/10395, 16 May 1978, pp. 1-6, ERN (En) 01548792-01548797; S-21 list of prisoners who entered on 19 May 1978, E3/10152, 19 May 1978, pp. 1-3, ERN (En) 01548734-01548736; S-21 list of prisoners, E3/10153, undated, pp. 1-2, ERN (En) 01462138-01462139; S-21 list of prisoners who entered on 25 May 1978, E3/10156, 25 May 1978, pp. 1-2, ERN (En) 01462142-01462143; S-21 list of prisoners who entered on 26 May 1978, E3/10157, undated, pp. 1-3, ERN (En) 01462144-01462146; S-21 list of prisoners who entered on 27 May 1978, E3/10158, 27 May 1978, pp. 1-2, ERN (En) 01462147-01462148; S-21 list of prisoners who entered on 29 May 1978, E3/10396, 29 May 1978, pp. 1-2, ERN (En) 01548798-01548799; S-21 list of prisoners who entered on 30 May 1978, E3/10397, 5 August 1978, pp. 1-4, ERN (En) 01528750-01528753; S-21 list of prisoners who entered on 31 May 1978, E3/10160, 31 May 1978, pp. 1-2, ERN (En) 01462149-01462150; S-21 list of prisoners who entered in June 1978, E3/10161, 2 July 1978, pp. 1-95, ERN (En) 01563957-01564051; S-21 list of prisoners who entered in July 1978, E3/10120, undated, pp. 1-38, ERN (En) 01399063-01399100; S-21 list of prisoners at various ministries, E3/10355, August 1978, pp. 1-11, ERN (En) 01395669-01395679; S-21 list of prisoners who entered on 7 August 1978, E3/10421, undated, pp. 1-3, ERN (En) 01548803-01548805; S-21 list of prisoners who entered on 10 August 1978, E3/10134, 10 August 1978, pp. 1-3, ERN (En) 01558253-01558255; S-21 list of prisoners who entered on 2 September 1978, E3/10132, 2 September 1978, p. 1, ERN (En) 01462129; S-21 list of prisoners who entered on 2 September 1978, E3/10133, 2 September 1978, p. 1, ERN (En) 01462130; S-21 list of prisoners who entering on 3 September 1978, E3/2248, 3 September 1978, ERN (En) 00181737-00181739; S-21 list of prisoners who entered on 6.9.78, E3/10201, 5 June 1978, pp. 1-6, ERN (En) 01366722-01366727; S-21 list of prisoners, E3/8540, undated, ERN (En) 00738605; S-21 list of prisoners, E3/8541, multiple dates, ERN (En) 00181740; S-21 list of prisoners, E3/2249, multiple dates, ERN (En) 00181741-00181742; S-21 list of prisoners, E3/8472, multiple dates, ERN (En) 00181688-00181690; S-21 list of prisoners, E3/10203, undated, pp. 1-3, ERN (En) 01548774-01548776; S-21 list of prisoners entered on 28.9.78, E3/8543, 28 September 1978, ERN (En) 00181744; S-21 list of prisoners who entered in October 1978, E3/10205, undated, pp. 1-14, ERN (En) 01397676-01397689; S-21 list of prisoners, E3/10212, undated, pp. 1-18, ERN (En) 01397690-01397707; S-21 list of prisoners, E3/9888, undated E3/10171, p. 1, ERN (En) 01461953; S-21 list of prisoners who entered on 31 December 1976, E3/10290 28 December 1977, pp. 1-2, ERN (En) 01528637-01528638.

<sup>8615</sup> S-21 list of prisoners, E3/3187, multiple dates; S-21 list of prisoners, E3/2285, multiple dates; S-21 Execution List, E3/8463, multiple dates.

<sup>8616</sup> See above, paras 2111, 2115, 2117-2119.

<sup>8617</sup> See above, paras 2125, 2127.

because many prisoners were sent directly to Choeng Ek and executed without being registered or documented in any way, the actual number of deaths is certainly much greater.<sup>8618</sup> In light of the conservative approach that the Chamber has adopted with regard to prisoner lists, the figures identified should strictly be viewed as minimums.

2543. The majority of S-21 prisoners were male, and only approximately one in five prisoners arrested and detained at any given time was female.<sup>8619</sup> Both children and the elderly were also detained, and the age of prisoners at S-21 ranged anywhere from seven to 92 years old.<sup>8620</sup> S-21 prisoner lists indicate that many children were detained and executed at Choeng Ek and S-21 throughout its operation.<sup>8621</sup> The Chamber finds that the highest numbers of detainees arrested and detained at S-21 originated from the East and Northwest Zones.<sup>8622</sup> Most of the prisoners were arrested from Divisions 310, 703,

<sup>8618</sup> See above, para. 2244.

<sup>8619</sup> S-21 Daily Controlling List, E3/9955, 8 January 1977, ERN (En) 01249682; S-21 Daily Controlling List, E3/9960, 23 February 1977, ERN (En) 01461804; S-21 list of prisoners who entered in March 1977, E3/9845, undated, ERN (En) 01331968-01331984; S-21 Daily Controlling List, E3/9990, 16 July 1977, ERN (En) 01529833; S-21 Daily Controlling List, E3/10009, 24 October 1977, ERN (En) 01461725; S-21 list of prisoners entered in January 1978, E3/10430, undated, ERN (En) 01366843-01366909; S-21 list of prisoners brought in on March 1978 [sic], E3/8655, multiple dates, ERN (En) 01460884-01460884; S-21 list of prisoners who entered in July 1978, E3/10120, undated, ERN (En) 01399063-01399100.

<sup>8620</sup> S-21 list of prisoners, E3/2285, multiple dates, ERN (En) 01564761-01565312; S-21 list of prisoners who entered in March 1977, E3/9845, undated, ERN (En) 01331980, 01332052.

<sup>8621</sup> See e.g., S-21 list of prisoners in General Staff Section, E3/8487, undated, p. 4, ERN (En) 01321683 SOK Phal, age 13); S-21 list of prisoners arrived in May 1977, E3/8660, May 1977, p. 6, ERN (En) 01565319 (KHIN Phal, age 12); S-21 list of prisoners who entered in July 1977, E3/9954, 5 August 1977, pp. 17, 28, ERN (En) 01563473, 01563484 (KEV Soeung, age 14, HOENG Phorn, age 15); S-21 list of prisoners entering in October 1977, E3/9951, 2 November 1977, p. 6, ERN (En) 01332088 (CHEU Soeut, age 10); S-21 list of prisoners entered in January 1978, E3/10430, undated, p. 65, ERN (En) 01366907 (MEI Chuk, age 11); S-21 list of prisoners, E3/10439, undated, p. 19, ERN (En) 01398412 (ENG Chak, age 12); S-21 List of prisoners, E3/10141, multiple dates, p. 1, ERN (En) 01462132 (VIN Yang Fa, age 8); S-21 List of prisoners who entered on 14 July 1978, E3/10108, undated, p. 11, ERN (En) 01397573 (LOCH Rann, age 10); S-21 List of prisoners who entered in October 1978, E3/10205, undated, pp. 10, 14, ERN (En) 01397685, 01397689 (LE Yangve, age 10, TROENG Yangfak, age 7); S-21 list of prisoners who were destroyed on 31 October 1978, E3/10456, 31 October 1978, p. 3, ERN (En) 01558315 (TROENG Yaing Hvak, age 7).

<sup>8622</sup> See e.g., S-21 list of prisoners executed in 1976, E3/3187, multiple dates, ERN (En) 00874269, 00874288, 00874335; S-21 list of prisoners, E3/2285, multiple dates, ERN (En) 01564808-01564810, 01564823-01564832, 01564855, 01564866, 01564868-01564870, 01564872-01564873, 01564880-01564881, 01564889-01564894, 01564897-01564898, 01564906-01564913, 01564921, 01564941-01564945, 01564968-01564973, 01564975, 01565072, 01565138, 01565199-01565200, 01565212, 01565252-01565255, 01565264-01565269, 01565272-01565273, 01565277-01565278, 01565282, 01565284-01565290, 01565292-01565293, 01565304-01565307, 01565310-01565312; S-21 list of prisoners, E3/8463, multiple dates, ERN (En) 01032508-01032525, 01032527, 01032532-01032536, 01554519, 01554522-01554525, 01554527-01554529, 01554551, 01554559-01554564, 01554566, 01554570, 01554574-01554575, 01554578, 01554584-01554585, 01554593-01554601, 01554611-01554612, 01554619-01554620, 01554627-01554632, 01554645-01554651, 01554658, 01554662, 01554666-01554678, 01554703-01554709, 01554711-01554716, 01554719-01554721, 01554726-01554735, 01554738-01554739, 01554763-01554764, 01554767, 01554779-01554791, 01554796-

and 450.<sup>8623</sup> These numbers are consistent with the largest purges of the East Zone, starting in April 1976 and continuing into 1977 until a second crescendo in 1978, and the purges of the Central (old North) and Northwest Zones that occurred in 1977 and 1978.<sup>8624</sup>

2544. The prisoner lists corroborate the findings above<sup>8625</sup> that during the course of its operation, S-21 was also used to imprison DK ministry workers from the Ministries of Foreign Affairs, Commerce, Energy, Agriculture, Industry, Propaganda, Public Works and others.<sup>8626</sup> Furthermore, the prisoner lists confirm that officials from the Khmer Republic, S-21 cadres, labourers, Vietnamese, monks and foreigners from various countries were also among the prisoners at S-21.<sup>8627</sup> Medics and workers from hospitals

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01554797, 01554799-01554801, 01554804-01554806, 01554809-01554810, 01554813, 01554831, 01554839, 01554845-01554850.

<sup>8623</sup> See e.g., S-21 list of prisoners executed in 1976, E3/3187, multiple dates, ERN (En) 00874176-00874177, 00874182, 00874185-00874188, 00874197, 00874215, 00874288, 00874291, 00874306, 00874318-00874320, 00874336, 00874346-00874349, 00874353, 00874357, 00874379, 00874411, 00874414, 00874418, 00874423, 00874425, 00874451, 00874453-54, 00874457, 00874484, 00874494, 00874496, 00874497, 00874508, 00874513-00874514, 00874519-00874520, 00874522-00874523, 00874526, 00874528, 00874533, 00874566-00874567; S-21 list of prisoners, E3/2285, multiple dates, ERN (En) 01564770-01564776, 01564782, 01564785-01564793, 01564813-01564822, 01564834, 01564836, 01564838-01564839, 01564842, 01564844-01564854, 01564858, 01564861, 01564867, 01564878-01564880, 01564883-01564885, 01564888-01564889, 01564898-01564904, 01564913-01564920, 01564925-01564932, 01564961-01564968, 01564972-01564973, 01564976-01564977, 01564979-01564989, 01564992-01564993, 01564997-01564998, 01565014, 01565018-01565019, 01565023-01565027, 01565029, 01565031-01565034, 01565037-01565041, 01565043-01565055, 01565057-01565059, 01565062-01565064, 01565067, 01565070-01565073, 01565075, 01565080, 01565085, 01565087, 01565091-01565105, 01565117-01565118, 01565127-01565132, 01565134-01565135, 01565137-01565138, 01565144, 01565147, 01565150, 01565162-01565173, 01565175-01565176, 01565178-01565180, 01565197-01565198, 01565201, 01565206-01565207, 01565220-01565221, 01565232-01565234, 01565239-01565240, 01565247, 01565256-01565261, 01565293-01565294, 01565296-01565297, 01565303, 01565305, 01565311-01565312; S-21 list of prisoners, E3/8463, multiple dates, ERN (En) 01032527, 01554527-01554528, 01554539-01554540, 01554572, 01554574, 01554578, 01554583, 01554610, 01554614-01554617, 01554624-01554625, 01554655-01554656, 01554679, 01554695-01554696, 01554722-01554725, 01554736, 01554742-01554743, 01554745-01554750, 01554752, 01554756-01554757, 01554794, 01554834, 01554837, 01554854.

<sup>8624</sup> See above, paras 2266-2267, 2289, 2303, 2308, 2319.

<sup>8625</sup> See above, paras 2076, 2230, 2233, 2248, 2257, 2262, 2283, 2287, 2297, 2300, 2318, 2327.

<sup>8626</sup> See e.g., S-21 list of prisoners, E3/1994, undated; S-21 list of prisoners, E3/10057, 5 December 1976, ERN (En) 01366683-01366685; S-21 list of prisoners, E3/1981, undated; S-21 list of prisoners who entered in March 1977, E3/9845, pp. 95-98, ERN (En) 01332058-01332061; S-21 list of prisoners, E3/10506, 29 April 1977, pp. 203-208, ERN (En) 01369181-01369186; S-21 list of prisoners, E3/10504, 2 January 1978, pp. 1-19, ERN (En) 01395785-1395803.

<sup>8627</sup> See e.g., S-21 list of prisoners, E3/1949, undated, ERN (En) 00937153; S-21 list of prisoners, E3/10045, undated, ERN (En) 01397412-01397427; S-21 list of prisoners, E3/2274, undated, ERN (En) 00785260; S-21 list of prisoners, E3/8462, undated, ERN (En) 00786215; S-21 list of prisoners from France, E3/2236, undated; S-21 list of prisoners not interrogations at house "Kor" [sic], E3/2261, undated; S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, pp. 37, 138, 152-153, 160, 165, ERN (En) 01367165, 01367266, 01367280-01367281, 01367288, 01367293; S-21 list of prisoners, E3/1999, undated; S-21 list of prisoners who were executed from 15.1.77 to 31.1.77, E3/3185, undated; S-21 list of prisoners postponed in January 1977, E3/1542, 1 February 1977, pp. 3, 6, 7, 12, 14-16, ERN (En) 00233975, 00233978, 00233979, 00233984-00233986, 00233988; S-21 list of

from various regions were also arrested, sent to S-21 and killed throughout the Security Centre's operation.<sup>8628</sup> S-21 served as prison for not only people accused of being enemies but also their wives, children, siblings and parents.<sup>8629</sup>

2545. As discussed above, S-21 began operations by October 1975, but documentation from the Security Centre during this time period is scarce. Several S-21 lists on the Case File that fall into the tested categories<sup>8630</sup> indicate arrest dates of detainees ranging from August 1975 through the end of the year, with a few arrests occurring in February, April, May and July 1975.<sup>8631</sup> It is not clear how much time elapsed between the individuals' arrests and their detention at S-21, but these arrest dates indicate that S-21 was operational in 1975.

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prisoners killed in 1977, E3/8455, undated, p. 1, ERN (En) 00784449; S-21 List of prisoners entering on 6 January 1978, E3/2020, 6 January 1978, ERN (En) 00184808. *See also*, Section 12.2.16: Arrest of S-21 Staff; Section 12.2.17: Vietnamese Detainees; Section 12.2.18: Former Khmer Republic Officials; Section 12.2.20: Foreign Detainees.

<sup>8628</sup> *See e.g.*, S-21 list of prisoners, E3/2285, multiple dates, pp. 23, 222-225, 242, 279, 281-283, 307-308, 360, 417, 444, ERN (En) 01564783, 01564982-01564985, 01565002, 01565039, 01565041-01565043, 01565067-01565068, 01565120, 01565177, 01565204 (recording the deaths of around 37 hospital workers); S-21 list of prisoners died from 1-7-76 to 15-7-76 [*sic*], E3/8450, undated, p. 8, ERN (En) 00784445 noting arrest and execution of PRUM Samnieng, Chief of Hospital 259); S-21 list of prisoners who entered from 15 September 1976 until 30 September 1976, E3/10065, undated, p. 22, ERN (En) 01397484 (arrest of CHROK Hel from Hospital 17); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, pp. 7, 88, 149, 151, 163-164, 166, ERN (En) 01367135, 01367216, 01367277, 01367279, 01367291-01367292, 01367294; S-21 list of prisoners who were executed from 15.1.77 5 to 31.1.77, E3/3185, undated, ERN (En) 00837627 (noting the arrest of TOP Slep from 17 April hospital); S-21 list of prisoners arrived in May 1977, E3/8660, May 1977, pp. 2, 30, 39, 42, 107, ERN (En) 01565315, 01565343, 01565352, 01565355, 01565420; S-21 list of prisoners entering on 12 February 1978, E3/10450, multiple dates, p. 2, ERN (En) 01366961; S-21 list of prisoners entering on 410.78, E3/2250, undated, ERN (En) 00181745; [Partial] S-21 list of prisoners, E3/8463, multiple dates, pp. 2, 4, 33-34, 48, 99, 108-109, 116-117, 123, 131, 151, 153, 167, 194, 196-197, 209, 215, 226, ERN (En) 01554520, 01554522, 01554551-01554552, 01554566, 01554617, 01554626-01554627, 01554634-01554635, 01554641, 01554649, 01554669, 01554671, 01554685, 01554712, 01554714-01554715, 01554727, 01554733, 01554744.

<sup>8629</sup> *See e.g.*, S-21 list of prisoners, E3/10062, undated, p. 7, ERN (En) 01398993 (wife); S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, pp. 37, 66, 69, 82, ERN (En) 01367165, 01367194, 01367197, 01367210 (wives, brother, daughter, parents); S-21 list of prisoners entering in October 1977, E3/9951, 2 November 1977, pp. 18, 52, 60, ERN (En) 01332100, 01332134, 01332142 (wives, father, children); S-21 list of prisoners, E3/8463, multiple dates, pp. 99, 100, 118, 162, ERN (En) 01554617, 01554618, 01554636, 01554680 (sister, wife, mother-in-law, son, father-in-law).

<sup>8630</sup> *See above*, paras 2115-2119.

<sup>8631</sup> S-21 list of prisoners, E3/1949, undated, ERN (En) 00937128, 00937133, 00937136, 00937140, 00937141, 00937147; S-21 list of prisoners from Commercial Section from the beginning to 26 March 1977, E3/2005, undated, ERN (En) 00858491-00858492; S-21 list of prisoners, E3/10062, undated, ERN (En) 01398988-01398990, 01398993-01398994, 01398997-01398998, 01399000, 01399003-01399005; S-21 list of prisoners, E3/3973, undated, ERN (En) 00837527, 00837530, 00837533-00837534, 00837537, 00837542, 00837550-00837551, 00837567, 00837571-00837572; S-21 list of prisoners from 1-7-76 to 15-7-76, E3/8450, undated, ERN (En) 00784438, 00784441, 00784445-00784446; S-21 list of prisoners from Ministry of Commerce, E3/1980, undated; S-21 list of prisoners from the Base, E3/1992, 5 October 1976, ERN (En) 00844655.

2546. The number of S-21 prisoner lists from the seven categories discussed above increased in 1976, as demonstrated by several lists from every month of the year, including periodical entry lists, entry lists by origin, two daily entry lists, interrogation lists, a daily controlling list and execution logs.<sup>8632</sup> The only and earliest daily controlling lists of 1976 shows that in April 1976, S-21 held around 658 prisoners at one time, with 58 “new arrivals”, many having entered from Sector 25.<sup>8633</sup> Execution logs begin to appear in March 1976; one recording 47 prisoners “smashed” in one day from Sector 25, Battambang and Pochentong. Another list which includes the same prisoners brings the total for March to 153 smashed, with nine prisoners dying of illness.<sup>8634</sup> The analysis of the execution lists dated July and August 1976 show that the duration of a prisoners’ detention in S-21 varied from one day to eight months, and one prisoner is recorded as having been detained at S-21 for one year before dying of disease.<sup>8635</sup> Between 1 July and 15 July 1976, the lists record that 130 prisoners were executed and approximately 23 died of disease.<sup>8636</sup> On 31 August 1976 alone, 54 prisoners were executed.<sup>8637</sup>

2547. A compilation of 64 execution lists spanning 22 February 1976 to 28 December 1976, almost the full year, show that there were at least 3,031 detainees recorded as executed, not including those allegedly dying of disease. Detainees spent from less than one to 673 days at S-21 before execution. There were at least 649 military prisoners, 469 workers/laborers, 218 civilians, 15 “bandits” and 43 students.<sup>8638</sup> In 1976, more than 248 prisoners were arrested from Division 170 alone, and during the first week of

<sup>8632</sup> See e.g., S-21 list of prisoners who were government officials, E3/2189, undated, ERN (En) 00181626; S-21 list of prisoners, E3/8607, 20 February 1976; S-21 list of prisoners of the East Zone, 1976, E3/8489, undated; S-21 list of prisoners, E3/8761, undated; S-21 Daily Controlling List, E3/8493, 11 April 1976; S-21 list of prisoners who entered from 15 May 1976 until 30 May 1976, E3/10064, undated; S-21 list of prisoners, E3/1994, undated; S-21 list of prisoners who died from 1.7.76 to 15.7.76, E3/8452, undated; S-21 list of prisoners executed on 31-8-76, E3/8453, undated; S-21 list of prisoners, E3/2236, undated; S-21 list of prisoners who entered from 1 November 1976 to 15 November 1976, E3/10061, undated; S-21 list of prisoners who entered on 31 December 1976, E3/10054, undated.

<sup>8633</sup> S-21 Daily Controlling List, E3/8493, 11 April 1976, ERN (En) 00181623-00181624.

<sup>8634</sup> S-21 list of prisoners smashed on 22.03.76, E3/1538, 22 March 1976, ERN (En) 00233904-00233905; S-21 list of prisoners who died at Office “S-21 Kor (C)”, E3/1539 [E3/1540], undated, ERN (En) 00182892-00182903.

<sup>8635</sup> S-21 list of prisoners, E3/8451, undated, ERN (En) 00784447-00784448; S-21 list of prisoners who died of disease from 1-7-76 to 15-7-76, E3/8450, undated, ERN (En) 00784446.

<sup>8636</sup> S-21 list of prisoners, E3/8450, undated, ERN (En) 00784438-00784446; S-21 list of prisoners, E3/8451, undated, ERN (En) 00784447-00784448.

<sup>8637</sup> S-21 list of prisoners executed on 31-8-76, E3/8453, undated, ERN (En) 0778927-0778931.

<sup>8638</sup> S-21 list of prisoners, E3/3187, undated, ERN (En) 00874174-00874599.



October 1976, 114 prisoners from Division 170 were executed.<sup>8639</sup> This clear increase in the number of prisoners executed corresponds to the arrest of CHAN Chakrei in April 1976 and the following purge of Division 170.<sup>8640</sup> Prisoners arrested due to familial connections were executed relatively soon after they were brought to S-21.<sup>8641</sup>

2548. Operations at S-21 reached a peak in 1977 as the CPK systematically purged the North and Northwest Zones. From early January to 31 December 1977, an S-21 execution list indicates that approximately 5,282 prisoners were killed.<sup>8642</sup> This list indicates that as many as 418 prisoners were executed in one day.<sup>8643</sup> Roughly 836 women and at least 27 children between the ages of seven and 17 numbered among the victims that year. The execution list shows that in 1977, many of the prisoners killed were RAK members.<sup>8644</sup> The list indicates that the highest numbers of those killed in 1977 totalled approximately 550 prisoners from Division 310, approximately 500 prisoners from the Northwest Zone, and close to 360 prisoners from Division 450.<sup>8645</sup>

<sup>8639</sup> S-21 list of prisoners who entered Office S-21 in 1976, E3/9842, 26 May 1977, ERN (En) 01367131-01367157. *See also*, Section 12.1.4.2.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976): Findings.

<sup>8640</sup> *See above*, para. 2273. *See also*, Section 12.1.4.2.2: Internal Factions: The Royal Palace Grenade Explosions (April 1976): Findings.

<sup>8641</sup> *See e.g.*, S-21 list of prisoners executed in 1976, E3/3187, multiple dates, ERN (En) 00874195-00874196.

<sup>8642</sup> *See e.g.*, S-21 list of prisoners, E3/2285, multiple dates. This document was authenticated by SUOS Thy (*see* T. 3 June 2016 (SUOS Thy), E1/431.1, p. 16) and was put to other witnesses in court (*see* T. 21 November 2016 (SON Em), E1/500.1, pp. 23-25; T. 11 August 2016 (ROS Chuor Siy), E1/455.1, pp. 96-97; T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 100-101). However, the Chamber notes that this document includes irregularities, such as names crossed off or duplicated; thus, the total number of prisoner deaths is an approximate one.

<sup>8643</sup> S-21 list of prisoners, E3/2285, multiple dates, pp. 160-199, ERN (En) 00873281-00873320.

<sup>8644</sup> *See e.g.*, S-21 list of prisoners, E3/2285, multiple dates.

<sup>8645</sup> S-21 list of prisoners, E3/2285, multiple dates, Division 310: pp. 8, 10-15, 61, 85, 93-94, 102, 118-120, 123-124, 157, 159-160, 168-172, 205-206, 216-217, 220-226, 228-229, 237-238, 254, 259, 263, 264-267, 269, 271-274, 277-281, 283-285, 288-292, 302-304, 310-313, 327, 332, 341, 344-345, 366, 374, 377-378, 380-384, 408-410, 419-420, 446, 460-461, 472-474, 487, 496-501, 536-537, 552, ERN (En) 01564768, 01564770-01564775, 01564821, 01564845, 01564853-01564854, 01564862, 1564878-1564880, 01564883-01564884, 01564917, 0156419-0156420, 01564928-01564932, 01564965-01564966, 01564976-01564977, 01564980-01564986, 01564988-01564989, 01564997-01564998, 01565014, 015465019, 015465023-015465027, 01565029, 01565031-01565034, 01565037-01565041, 01565043-01565045, 01565048-01565052, 01565062-01565064, 01565070-01565073, 01565087, 01565092-01565101, 01565104-01565105, 01565126, 01565134, 01565137-01565138, 01565140-01565144, 01565168-01565170, 0156179-0156180, 01565206, 01565220-01565221, 01565232-01565234, 01565247, 01565256-01565261, 01565296-01565297, 01565312, Northwest Zone: pp. 48-50, 63-72, 95, 106, 120-121, 129-134, 137-138, 146-153, 161, 181-185, 208-210-215, 312, 439-440, 452, 492-495, 506-509, 512-513, 517-518, 522, 524-530, 532-533, 546-547, 550-552, ERN (En) 01564808-01564810, 01564823-01564832, 01564855, 01564866, 01564880-01564881, 01564889-01564894, 01564897-01564898, 01564906-01564913, 01564921, 01564941-01564945, 01564968-01564970, 01564975, 01560072, 01565199-01565200, 01565212, 01565252, 01565254-01565255, 01565266-01565269, 01565272-01565273, 01565277-01565278, 01565282, 01565284-01565290, 01565292-01565293, 01565306-01565307, 01565310-01565312, Division 450: pp. 7-8, 25-33, 61-62,

2549. Most of 1977 is also documented by daily controlling lists, many of which are also found in the Orange Logbook. Individual daily controlling lists along with the Orange Logbook itself were both authenticated by SUOS Thy.<sup>8646</sup> The S-21 Orange Logbook, together with the additional individual daily controlling lists from the Tuol Sleng Archives, show that within this time period at least 4,955 prisoners were arrested and detained at S-21, and 4,789 prisoners died or were executed.<sup>8647</sup> These totals do not

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84-88, 101, 123-124, 158, 165-168, 207-208, 221, 226-228, 232-233, 254, 286-290, 292, 307, 310, 312, 327, 330-344, 377-378, 384-387, 410-411, 416, 418-419, 441, 446-447, 460-461, 487, 534, 536, 550, ERN (En) 01564767-01564768, 01564785-01564793, 01567821-01567822, 01564844-01564848, 01564861, 01564883-01564884, 01564918, 01564925-01564928, 01564967-01564968, 01564981, 01564986-01564988, 01564992-01564993, 01565014, 01565046-01565050, 01565052, 01565067, 01565070, 01565072, 01565087, 01565090-01565104, 01565137-01565138, 01565144-01565157, 01565170-01565171, 01565176, 01565178-01565179, 01565201, 01565206-01565207, 01565247, 01565294, 01565296, 01565310.

<sup>8646</sup> See above, paras 2122-2123.

<sup>8647</sup> See e.g., S-21 Orange Logbook, E3/10770, multiple dates; S-21 Daily Controlling List, E3/9955, 8 January 1977, p. 1, ERN (En) 01249682; S-21 Daily Controlling List, E3/9956, 3 February 1977, p. 1, ERN (En) 01461990; S-21 Daily Controlling List, E3/10023, 7 February 1977, p. 1, ERN (En) 01462069; S-21 Daily Controlling List, E3/9974, 10 February 1977 p. 2, ERN (En) 01298102; S-21 Daily Controlling List, E3/9958, 15 February 1977, p. 1, ERN (En) 01461992; S-21 Daily Controlling List, E3/9959, 17 February 1977, p. 1, ERN (En) 01461993; S-21 Daily Controlling List, E3/9960, 22 February 1977, p. 1, ERN (En) 01461804; S-21 Daily Controlling List, E3/9961, 27 February 1977, p. 1, ERN (En) 01461994; S-21 Daily Controlling List, E3/9963, 2 March 1977, p. 1, ERN (En) 01461996; S-21 Daily Controlling List, E3/9964, 3 March 1977, p. 1, ERN (En) 01461997; S-21 Daily Controlling List, E3/9967, 5 March 1977, p. 1, ERN (En) 01461806; S-21 Daily Controlling List, E3/9965, 8 March 1977, p. 1, ERN (En) 01461998; S-21 Daily Controlling List, E3/9966, 29 March 1977, p. 1, ERN (En) 01461805; S-21 Daily Controlling List, E3/10027, 14 December 1977, p. 1, ERN (En) 01462077; S-21 Daily Controlling List, E3/10028, 19 December 1977, p. 1, ERN (En) 01556240; S-21 Daily Controlling List, E3/10031, 24 December 1977, p. 1, ERN (En) 01462083; S-21 Daily Controlling List, E3/10032, 26 December 1977, p. 1, ERN (En) 01462085; S-21 Daily Controlling List, E3/10034, 29 December 1977, p. 1, ERN (En) 01462089; S-21 Daily Controlling List, E3/9968, 5 May 1977, p. 1, ERN (En) 01461999; S-21 Daily Controlling List, E3/9969, 7 May 1977, p. 1, ERN (En) 0146200; S-21 Daily Controlling List, E3/9970, 8 May 1977, p. 1, ERN (En) 01461807; S-21 Daily Controlling List, E3/9971, 9 May 1977, p. 1, ERN (En) 01462003; S-21 Daily Controlling List, E3/9972, 10 May 1977, p. 1, ERN (En) 01462005; S-21 Daily Controlling List, E3/9974, 11 February 1977, p. 1, ERN (En) 01298101; S-21 Daily Controlling List, E3/9973, 12 May 1977, p. 1, ERN (En) 01462007; S-21 Daily Controlling List, E3/10075, 3 June 1977, p. 1, ERN (En) 01555965; S-21 Daily Controlling List, E3/10036, 20 May 1977, p. 1, ERN (En) 01462091; S-21 Daily Controlling List, E3/9975, 24 May 1977, p. 1, ERN (En) 01462009; S-21 Daily Controlling List, E3/10074, 3 June 1977, p. 1, ERN (En) 01462100; S-21 Daily Controlling List, E3/9976, 10 June 1977, p. 1, ERN (En) 01462011; S-21 Daily Controlling List, E3/10006, 11 June 1977, p. 1, ERN (En) 01462045; S-21 Daily Controlling List, E3/9977, 14 June 1977, p. 1, ERN (En) 01462013; S-21 Daily Controlling List, E3/9979, 17 June 1977, p. 1, ERN (En) 01462017; S-21 Daily Controlling List, E3/9980, 19 June 1977, p. 1, ERN (En) 01462019; S-21 Daily Controlling List, E3/9991, 17 July 1977, p. 1, ERN (En) 01556091; S-21 Daily Controlling List, E3/9982, 27 June 1977, p. 1, ERN (En) 01462023; S-21 Daily Controlling List, E3/9983, 29 June 1977, p. 4, ERN (En) 01556089; S-21 Daily Controlling List, E3/9984, 30 June 1977, p. 1, ERN (En) 01461809; S-21 Daily Controlling List, E3/9985, 1 July 1977, p. 1, ERN (En) 01461811; S-21 Daily Controlling List, E3/9986, 3 July 1977, p. 1, ERN (En) 01462025; S-21 Daily Controlling List, E3/9987, 5 July 1977, p. 1, ERN (En) 01462027; S-21 Daily Controlling List, E3/9989, 15 July 1977, p. 1, ERN (En) 01462031; S-21 Daily Controlling List, E3/9990, 16 July 1977, p. 1, ERN (En) 01529833; S-21 Daily Controlling List, E3/9991, 17 July 1977, p. 1, ERN (En) 01556091; S-21 Daily Controlling List, E3/9992, 18 July 1977, p. 1, ERN (En) 01529836; S-21 Daily Controlling List, E3/9993, 23 July 1977, p. 1, ERN (En) 01529839; S-21 Daily Controlling List, E3/9995, 30 July 1977, p. 1, ERN (En) 01529845; S-21 Daily Controlling List, E3/9996, 31 July 1977, p. 1, ERN (En) 01461813; S-21 Daily Controlling List, E3/9997,

include approximately 90 days in 1977 that the available controlling lists do not account for, which would explain the larger execution total noted in the list compilation referred to above. Many of the daily controlling lists are consistent with daily entry lists, execution lists and lists of deaths.<sup>8648</sup>

2550. Monthly entry lists for 1977 indicate that the prisoners arrested per month numbered in the hundreds, and in March alone, 1,059 prisoners were arrested, registered, and detained at S-21.<sup>8649</sup> According to the daily controlling lists, the

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9 August 1977, p. 1, ERN (En) 01462033; S-21 Daily Controlling List, E3/9998, 12 August 1977, p. 1, ERN (En) 01462035; S-21 Daily Controlling List, E3/9999, 29 August 1977, p. 1, ERN (En) 01558103; S-21 Daily Controlling List, E3/10000, 24 September 1977, p. 1, ERN (En) 01461836; S-21 Daily Controlling List, E3/9977, 14 June 1977, p. 1, ERN (En) 01462013; S-21 Daily Controlling List, E3/9978, 16 June 1977, p. 1, ERN (En) 01462015; S-21 Daily Controlling List, E3/10002, 6 October 1977, p. 1, ERN (En) 01461840; S-21 Daily Controlling List, E3/10003, 8 December 1977, p. 1, ERN (En) 01461721; S-21 Daily Controlling List, E3/10004, 9 October 1977, p. 1, ERN (En) 01461842; S-21 Daily Controlling List, E3/10005, 10 October 1977, p. 1, ERN (En) 01462043; S-21 Daily Controlling List, E3/10008, 15 October 1977, p. 1, ERN (En) 01461723; S-21 Daily Controlling List, E3/10009, 24 October 1977, p. 1, 01461725; S-21 Daily Controlling List, E3/10010, 6 October 1977, p. 1, ERN (En) 01462049; S-21 Daily Controlling List, E3/10011, 7 November 1977, p. 1, ERN (En) 01462051; S-21 Daily Controlling List, E3/10012, 12 November 1977, p. 1, ERN (En) 01462053; S-21 Daily Controlling List, E3/10013, 13 November 1977, p. 1, ERN (En) 01462055; S-21 Daily Controlling List, E3/10014, 20 November 1977, p. 1, ERN (En) 01462057; S-21 Daily Controlling List, E3/10016, 30 November 1977, p. 1, ERN (En) 01300026; S-21 Daily Controlling List, E3/10019, 4 December 1977, p. 1, ERN (En) 01462061; S-21 Daily Controlling List, E3/10020, 5 December 1977, p. 1, ERN (En) 01462063; S-21 Daily Controlling List, E3/10021, 6 December 1977, p. 1, ERN (En) 01462065; S-21 Daily Controlling List, E3/10022, 7 December 1977, p. 1, ERN (En) 01462067; S-21 Daily Controlling List, E3/10023, 8 February 1977, p. 1, ERN (En) 01462069; S-21 Daily Controlling List, E3/10024, 9 December 1977, p. 1, ERN (En) 01462071; S-21 Daily Controlling List, E3/10025, 15 December 1977, p. 1, ERN (En) 01462073; S-21 Daily Controlling List, E3/10026, 10 December 1977, p. 1, ERN (En) 01462075; S-21 Daily Controlling List, E3/10027, 15 December 1977, p. 1, ERN (En) 01462077; S-21 Daily Controlling List, E3/10028, 20 December 1977, p. 1, ERN (En) 01556240; S-21 Daily Controlling List, E3/10029, 21 December 1977, p. 1, ERN (En) 01556240; S-21 Daily Controlling List, E3/10030, 22 December 1977, p. 1, ERN (En) 01462081; S-21 Daily Controlling List, E3/10031, 25 December 1977, p. 1, ERN (En) 01462083; S-21 Daily Controlling List, E3/10032, 27 December 1977, p. 1, ERN (En) 01462085; S-21 Daily Controlling List, E3/10033, 28 February 1977, p. 1, ERN (En) 01462087; S-21 Daily Controlling List, E3/10034, 30 December 1977, p. 1, ERN (En) 01462089; S-21 Daily Controlling List, E3/10035, 31 December 1977, p. 1, ERN (En) 01461727; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 74-78.

<sup>8648</sup> See e.g., S-21 list of prisoners died on 12-10-77, E3/3181, 13 October 1977, ERN (En) 00784614-00784615; S-21 Daily controlling list, E3/10770, 13 October 1977, ERN (En) 01460657; S-21 list of prisoners who entered on 23 November 1977, E3/1645, 24 November 1977, ERN (En) 00809627-00809639; S-21 Daily Controlling List, E3/10770, 24 November 1977, ERN (En) 01460730; S-21 list of prisoners who entered on 18 December 1977, E3/10288, 19 December 1977, ERN (En) 01528632-01528634; S-21 Daily Controlling List, E3/10027, 15 December 1977, ERN (En) 01462077-01462078; S-21 list of prisoners from Military Division, smashed on 10-6-77, E3/2132, 11 June 1977, ERN (En) 00182876-00182891; S-21 Daily Controlling, E3/10006, 11 June 1977, ERN (En) 01462045.

<sup>8649</sup> S-21 list of prisoners who entered in January 1977, E3/10265, 1 February 1977, ERN (En) 01397917-01397943; S-21 list of prisoners entering in May 1977, E3/2590, 3 June 1977, ERN (En) 01191256-01191342; S-21 list of prisoners who entered in March 1977, E3/9845, undated, ERN (En) 01331968-01331982. See also, S-21 list of prisoners, E3/9843, multiple dates; S-21 list of prisoners [who] arrived in February 1977 [sic], E3/9844, 2 March 1977, ERN (En) 01368608-01368649; S-21 list of prisoners who entered in March 1977, E3/9845, undated, ERN (En) 01331964-01332082; S-21 list of prisoners entering in May 1977, E3/2590, 3 June 1977, ERN (En) 01191256-01191425; S-21 list of

maximum recorded number of prisoners entering S-21 on any given day during 1977 was 150,<sup>8650</sup> and the prisoner deaths and executions reached the maximum of 419 in a single day in October 1977. The majority of those deaths were prisoners from Division 170, 310, and 450, which correspond with the continuing East and West Zone purges discussed above.<sup>8651</sup>

2551. In 1977, there was a steady stream of prisoners who entered S-21 on a regular basis. By contrast, the number of deaths varied significantly with batches of prisoners sent for execution in either small or very large groups.<sup>8652</sup> The largest number of recorded prisoners held on any given day in that year was 1,729 prisoners held on 14 October 1977. Similarly, the lowest recorded number of prisoners held was on 3 February 1977 with 610 detainees.<sup>8653</sup> During the height of S-21's operations, groups of prisoners were taken immediately to Choeng Ek to be killed.<sup>8654</sup>

2552. In 1978, prisoner lists show that S-21 continued to receive and execute a large numbers of prisoners.<sup>8655</sup> Lists in evidence for 1978 are mostly daily entry lists, divided into multiple rounds of prisoners per day, as opposed to the daily controlling lists that the cadres used throughout 1977.<sup>8656</sup> In January 1978, records show that at least 404

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prisoners who entered in July 1977, E3/9954, 5 August 1977, ERN (En) 01563457-01563520; S-21 list of prisoners, E3/10274, multiple dates; S-21 list of prisoners who entered in September 1977, E3/10275, multiple dates; S-21 list of prisoners, E3/9951, 2 November 1977; S-21 list of prisoners, E3/9953, 2 December 1977; S-21 list of prisoners who entered in September 1977, E3/10275, multiple dates; S-21 list of prisoners., E3/9950, 7 January 1978.

<sup>8650</sup> S-21 Orange Logbook, E3/10770, 24 November 1977, p. 315, ERN (En) 1460730. *See also*, S-21 list of prisoners who entered on 23 November 1977, E3/1645, 24 November 1977, p. 13, ERN (En) 00809639 (closely corroborating this number with 151 entries on this day).

<sup>8651</sup> S-21 Orange Logbook, E3/10770, multiple dates, p. 250, ERN (En) 01460665. *See above*, Section 12.2.8.2: January 1977 to 17 April 1977 – Purges of the North Zone and Beyond; Section 12.2.8.3: April to late 1977 – Purges continue within Ministries and the East, North, and Northwest Zones.

<sup>8652</sup> *See e.g.*, S-21 Orange Logbook, E3/10770, multiple dates, pp. 159-172, ERN (En) 01460574-01460587.

<sup>8653</sup> S-21 Daily Controlling List, E3/9956, 4 February 1977, ERN (En) 01461990.

<sup>8654</sup> *See above*, para. 2244.

<sup>8655</sup> *See e.g.*, S-21 list of prisoners entered in January 1978, E3/10430, undated, p. 3, ERN (En) 01366845; S-21 list of prisoners who entered in April 1978, E3/10354, undated, p. 4, ERN (En) 01507545). *See also*, S-21 list of prisoners, E3/8463, multiple dates.

<sup>8656</sup> S-21 daily entry lists for 1978: E3/10431, E3/2020, E3/10432, E3/10433, E3/10434, E3/8923, E3/10435, E3/10436, E3/10504, E3/8494, E3/2181; E3/10437; E3/10438; E3/10305; E3/2184; E3/10440; E3/10442; E3/10441; E3/10442; E3/10444; E3/10179; E3/10445; E3/10446; E3/10448; E3/10450; E3/10451; E3/10452; E3/9847; E3/10245; E3/10246; E3/10219; E3/10221; E3/10222; E3/10224; E3/10225; E3/10226; E3/10227; E3/10228; E3/10230; E3/10232; E3/10233; E3/10234; E3/10235; E3/10236; E3/10237; E3/10240; E3/10241; E3/10242; E3/10243; E3/10244; E3/10234; E3/10239; E3/10378; E3/10379; E3/10380; E3/10362; E3/2203; E3/10382; E3/10364; E3/10367; E3/10383; E3/10384; E3/10385; E3/10386; E3/10370; E3/10371; E3/10238; E3/2210; E3/8512; E3/10368; E3/10387; E3/10372; E3/10373; E3/9883; E3/10374; E3/10390; E3/10138; E3/10137; E3/10391; E3/10139; E3/10140; E3/10392; E3/10141; E3/10142; E3/10144; E3/10145; E3/10393;

prisoners were arrested throughout the month, and at least 43 were executed.<sup>8657</sup> In March 1978, 589 new prisoners were arrested and detained at S-21.<sup>8658</sup> An April monthly entry list shows a spike in arrests, with 971 prisoners entering S-21, ranging from ages 15 to 71. In the same month, 343 of these prisoners were executed after less than a month in detention. This number does not include those executed during this time period who were detained prior to April 1978.<sup>8659</sup> An execution log shows that the number of prisoners executed on 27 May 1978 alone was 582 (approximately 350 from the East Zone) and the average duration of a prisoner's detention at that time was between one day and 2.5 weeks.<sup>8660</sup> This corresponds to the Chamber's earlier finding that arrests increased significantly following KOY Thuon's arrest with purges in the North, West, Northwest and finally the last wave of East Zone purges in approximately May-June 1978.<sup>8661</sup>

2553. S-21 lists demonstrate that the Security Centre continued to operate until the end of 1978 and witness testimony indicates that S-21 was operational until liberation by the Vietnamese in early January 1979.<sup>8662</sup>

### 12.2.23. *Abandonment of S-21*

2554. According to Duch, in late 1978 during a political education session led by POL Pot and attended by NUON Chea, POL Pot told him that the interrogations at S-21

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E3/10146; E3/10395; E3/10152; E3/2226; E3/10153; E3/8519; E3/10154; E3/10156; E3/10157; E3/10158; E3/10396; E3/10397; E3/2224; E3/1955; E3/10160; E3/8706; E3/1962; E3/10177; E3/8524; E3/10187; E3/2234; E3/2240; E3/8525; E3/10188; E3/10180; E3/10181; E3/10182; E3/10040; E3/10190; E3/10191; E3/10184; E3/10192; E3/10193; E3/10196; E3/10197; E3/10199; E3/10099; E3/10101; E3/2242; E3/10121; E3/2243; E3/10108; E3/10109; E3/9903; E3/10111; E3/10213; E3/10114; E3/10118; E3/10119; E3/10360; E3/10421; E3/10359; E3/10133; E3/10132; E3/2248; E3/10130; E3/10201; E3/8540; E3/8541; E3/2249; E3/8472; E3/10202; E3/10203; E3/8543; E3/9882; E3/2250; E3/8546; E3/10206; E3/10207; E3/8548; E3/8549; E3/8547; E3/10208; E3/8551; E3/8654; E3/10212; E3/8553; E3/10171; E3/10296; E3/10290.

<sup>8657</sup> S-21 list of prisoners entered in January 1978, E3/10430, undated, ERN (En) 01366843-01366909.

<sup>8658</sup> S-21 list of prisoners brought in on March 1978 [*sic*], multiple dates, E3/8655, ERN (En) 01460840-01460884.

<sup>8659</sup> S-21 list of prisoners who entered in April 1978, E3/10354, undated, ERN (En) 01507542-01507632.

<sup>8660</sup> S-21 list of prisoners taken out in May 1978, E3/8463, 29 May 1978, ERN (En) 01032507-01032536.

<sup>8661</sup> See above, Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>8662</sup> See e.g., S-21 list of prisoners smashed on 31-12-1978, E3/10455, undated, ERN (En) 01248066-01248083; T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 70-72. See also, T. 26 April 2016 (LACH Mean), E1/422.1, pp. 72-73; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 51, ERN (En) 00346709.

should stop. Duch passed on these instructions to the interrogators.<sup>8663</sup> Duch stated that he spoke to NUON Chea a few days later and asked NUON Chea what they should do with the remaining prisoners.<sup>8664</sup> NUON Chea reprimanded Duch for stopping the interrogation and told Duch that he was “well versed in the Party’s line”. After this discussion, Duch resumed interrogating the remaining prisoners.<sup>8665</sup>

2555. Duch testified that in early January 1979, before the arrival of Vietnamese forces, NUON Chea instructed him to remove and kill all prisoners from S-21.<sup>8666</sup> Duch subsequently ordered that all children and adults at S-21 be “smashed” without delay, but the order was not fully implemented and several prisoners – including those who had been kept to work, prisoners in the Special Prison and three or four children – were not killed.<sup>8667</sup>

2556. Duch asked NUON Chea whether he should “smash” the remaining Vietnamese detainees, because they still needed to “prepare the text for the radio broadcast”, and NUON Chea ordered Duch to “smash them all”. Duch further asked NUON Chea to keep four detainees from a unit known as YO-8 or Y-8 for further interrogation in a

<sup>8663</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 44-50; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 8-9. *See also*, Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 40, ERN (En) 00184522 (entry dated 8 October 1978 noting that there were short-term plans to “interrogate all of the Khmer without beatings” to secure confessions and that Special Branch methods would be completely and totally applied with respect to “foreigners, the *Yuon*, the imperialist CIA” but that in the temporary period the “old principles” were to be applied); KAING Guek Eav Interview Record, E3/429, 11 November 2009, pp. 8-9, ERN (En) 00403923-00403924. This is further corroborated by a note made on 4 December 1978 by an S-21 cadre that “Brother gave instructions on a number of situations [and] raised new interrogation requirements [*sic*] the newly arrived group”. *See* Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 46, ERN (En) 00184528 (entry dated 4 December 1978). *See also*, T. 28 April 2016 (PRAK Khorn), E1/424.1, p. 9; T. 2 May 2016 (PRAK Khorn), E1/425.1, pp. 49-50.

<sup>8664</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 46.

<sup>8665</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 46-48, 50; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 9-10.

<sup>8666</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 43-44; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 31; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 92-94; T. 2 April 2012 (KAING Guek Eav), E1/57.1, pp. 18-19; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 89-90. The Chamber notes that Duch could not recall the precise date of the conversation but testified that the prisoners were killed over several days and that they may have all been killed by 3 January 1979. The Chamber does not consider that Duch’s imprecision regarding the exact date undermines the credibility of his evidence on this issue.

<sup>8667</sup> T. 8 June 2016 (KAING Guek Eav), E1/434.1, pp. 37-38, 73-74; Case 001 Transcript (NORNG Chanphal), E3/7453, 2 July 2009, pp. 34-35, ERN (En) 00348139-00348140; Case 001 Transcript (SUOS Thy), E3/7466, 28 July 2009, pp. 13, 23, ERN (En) 00356799, 003567809 (“Regarding the detainees who would have been left behind on the 6<sup>th</sup> or 7<sup>th</sup> of January, 1979, I think I have no idea because all detainees had already been smashed before that date, except those who were detained at the special prisons [...] [T]oward late 1978 or early 1979 all the prisoners were taken out and killed and those remained [*sic*] were those who were allowed to work, and there were some inside a special prison but I did not know the exact number.”).

case concerning the killing of Malcom CALDWELL. NUON Chea told Duch that this was up to him and that Duch would be responsible for this investigation.<sup>8668</sup> After this conversation, Duch instructed Hor to remove all prisoners from S-21 and to interrogate the four individuals from Y-8.<sup>8669</sup> The final list of prisoners to be “smashed” was compiled and contained 225 prisoners.<sup>8670</sup> Prisoners were continuously transferred out of S-21 on trucks until about 2 or 3 January 1979, after which, no prisoners were transferred out.<sup>8671</sup> Hor reported to Duch that the task of removing the remaining prisoners had been completed.<sup>8672</sup>

2557. On or about 6 January 1979, Duch went to the Suramarit Buddhist School and attended a short meeting where KHIEU Samphan *alias* Brother Hem said that they should not panic and should continue working as usual because the DK forces were defending against the Vietnamese forces which had entered Cambodia.<sup>8673</sup> This

<sup>8668</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 43; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 89-90; Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 84-85, ERN (En) 00342915-00342916. Malcolm CALDWELL, a UK professor, was invited by DK authorities to visit Cambodia with journalists Richard DUDMAN and Elizabeth BECKER in late 1978, and during the visit and shortly after he met with POL Pot, Malcolm CALDWELL was killed. *See* T. 9 February 2015 (Elizabeth BECKER), E1/259.1, pp. 11, 30, 59-60, 64-66; *Delegations, Visitors, Journalists' Arrivals Reported: London University Professor* (in FBIS collection), E3/295, 9 December 1978, ERN (En) 00169086-00169087.

<sup>8669</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 43-44; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 12; T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 18-19; Case 001 Transcript (KAING Guek Eav), E3/5803, p. 9, ERN (En) 00344880.

<sup>8670</sup> T. 3 June 2016 (SUOS Thy), E1/431.1, pp. 24-26 (testifying that “from my review, it is a final list of prisoners who had to be smashed”); S21 list of prisoners smashed on 31-12-1978, E3/10455, 31 December 1978. The Chamber notes that there is ambiguity in the meaning of the original Khmer, and as to whether this list should be interpreted as prisoners already killed, or prisoners “to be killed”. Regardless of whether the killings were carried out or not, the Chamber considers that this list demonstrates the intent to execute the remaining prisoners at S-21 before the Vietnamese arrived.

<sup>8671</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 9-10.

<sup>8672</sup> T. 2 April 2012 (KAING Guek Eav), E1/57.1, p. 19. However, there were a number of detainees at S-21 who survived and remained there after S-21 cadres had abandoned the facility. *See above*, para. 2555. SUOS Thy refuted a prior statement which suggested that two months before Vietnamese forces captured Phnom Penh, all prisoners at S-21 were moved to the West. *See* T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 7-10; SUOS Thy Interview Record, E3/7845, 9 May 2007, pp. 6, 8, ERN (En) 00276838, 00276840.

<sup>8673</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 70; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 16-19; T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 84-88 (stating that the meeting was attended by five or six people); T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 95-97; T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 55-58. In a prior statement made before the Cambodia Military Tribunal, Duch stated that he had never met KHIEU Samphan and IENG Sary. *See* KAING Guek Eav Cambodia Military Tribunal Interview, E3/530, 6 March 1999, p. 3, ERN (En) 00329135. However, Duch maintained that he had met KHIEU Samphan at this meeting and later on the same day saw IENG Sary. Duch stated that his prior statement was not correct, he did not know the context of his interview at the time and that what he said had been taken out of context. *See* T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 94-103; T. 23 June 2016 (KAING Guek Eav), E1/443.1, pp. 12-17. The Chamber notes that in a subsequent interview, Duch did testify about this meeting with KHIEU Samphan. *See* KAING Guek Eav Interview Record, E3/452, 23 August 2007, p. 3, ERN (En) 00147565. Duch also

meeting was held to disseminate information to chiefs of units and to discuss work issues.<sup>8674</sup> Prior to this meeting, Duch had neither met nor had any direct involvement with KHIEU Samphan because he was not his direct superior.<sup>8675</sup> Despite this, the Chamber recalls its finding above that in training sessions, S-21 cadres were told on 12 April 1978 to “come and listen to speech by the Brother Head of State”, which the Chamber found to be a reference to KHIEU Samphan.<sup>8676</sup>

2558. Despite the assurances provided at this meeting by KHIEU Samphan, on 7 January 1979 Vietnamese forces and tanks arrived in Phnom Penh and Duch told the S-21 staff to return to their posts. By 3 p.m., Duch and other staff had hurriedly left S-21.<sup>8677</sup> The remaining detainees at S-21 were gathered in a hall and walked out of the facility at gunpoint in order to flee toward Amleang.<sup>8678</sup> When the Vietnamese tanks arrived, Duch was informed that the four remaining Y-8 prisoners had been killed in accordance with NUON Chea’s order and their corpses remained on the beds where they had been shackled.<sup>8679</sup>

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explained that he did not speak about this in a 2002 interview before the Investigating Judge of the Military Tribunal because he was not asked this question. The Chamber is therefore satisfied that this meeting with KHIEU Samphan occurred shortly before the arrival of Vietnamese forces in Phnom Penh. However, the Chamber notes some inconsistency in the evidence and is unable to conclude whether or not KHIEU Samphan disseminated any orders at this meeting, apart from the instruction to not panic and for staff to remain at their posts.

<sup>8674</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 17.

<sup>8675</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, pp. 2-5 (testifying that SON Sen never talked to him about KHIEU Samphan and that he was not sure what his superior did with S-21 confessions). Duch had previously stated that “Nothing allows me to affirm that KHIEU Samphan himself read the confessions”. See KAING Guek Eav Interview Record, E3/355, p. 4, ERN (En) 00242875.

<sup>8676</sup> Combined S-21 Notebook, E3/834, multiple dates, p. 1, ERN (En) 00184483 (entry dated 12 April 1978).

<sup>8677</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, pp. 70-71. See also, T. 26 April 2016 (LACH Mean), E1/422.1, pp. 72-73. While Duch’s travel pass was initially issued by SON Sen, it was later signed with the name “Khang”. Pang informed Duch that Khang referred to Brother Hem (*i.e.* KHIEU Samphan). See T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 87-88. However, given the hearsay nature of this evidence, in the absence of further evidence identifying Khang as KHIEU Samphan, the Chamber is unable to conclude whether or not KHIEU Samphan signed Duch’s travel passes.

<sup>8678</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 36-37, 39; T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 10-11. See also, T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 49-53; Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009, pp. 15-16, 28, 56-57, 83, ERN (En) 00346473-00346474, 00346486, 00346514-00346515, 00346541; Case 001 Transcript (BOU Meng), E3/7452, 1 July 2009, p. 51, ERN (En) 00346709.

<sup>8679</sup> T. 20 June 2016 (KAING Guek Eav), E1/440.1, p. 71; T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 32; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 12 (testifying that it was Comrade Nan who killed these prisoners); Case 001 Transcript (KAING Guek Eav), E3/5801, 17 June 2009, pp. 19-20, ERN (En) 00342850-00342851; Report of Crime Scene Reconstruction, E3/5765, 27 February 2008, p. 5, ERN (En) 00198002. See also, KAING Guek Eav Interview Record, E3/65, 7 August 2007, p. 4, ERN (En) 00147520 (stating that the killings continued from the beginning of operations at S-21 until noon on 7 January 1979); T. 19 April 2016 (CHUM Mey), E1/418.1, p. 50 (testifying that he heard that the prisoners had their throats slashed); Case 001 Transcript (CHUM Mey), E3/7451, 30 June 2009,



2559. Given the rapid entry of Vietnamese forces into Phnom Penh and the rapid abandonment of S-21, nothing was done with respect to the documents which remained.<sup>8680</sup> Neither Duch nor SOUS Thy received instructions on the destruction of S-21 documents prior to the arrival of the Vietnamese forces in Phnom Penh.<sup>8681</sup> However, PRAK Khorn destroyed and burned the draft documents which remained at the time.<sup>8682</sup> Duch was subsequently scolded by both NUON Chea and SON Sen for not having destroyed the S-21 documents.<sup>8683</sup>

#### 12.2.24. *Legal Findings*

##### 12.2.24.1. *Crimes Against Humanity*

###### 12.2.24.1.1. *Murder*

2560. The Closing Order charges the Accused with the crime against humanity of murder at S-21 based on the fact that personnel of S-21 both directly and indirectly caused the death of a large number of detainees. According to the Closing Order, in most instances the detainees were killed deliberately through a variety of means, including summary execution in or near the Security Centre. The Closing Order further charges the crime against humanity of murder in relation to prisoners who died as a result of torture or ill-treatment,<sup>8684</sup> including those who died following interrogations, as a result of blood-drawing, medical experiments and detention conditions.<sup>8685</sup>

2561. The Chamber notes that the Closing Order charges the Accused with the crime against humanity of murder in regard to security centres as a result of personnel both “directly and indirectly” causing the death of detainees. It further notes that the Closing Order charges the Accused with the crime against humanity of murder of detainees at S-21 through “ill-treatment” in addition to torture.<sup>8686</sup> The Chamber interprets the crime

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p. 82, ERN (En) 00346540; S-21 photograph, E3/8063.120, ERN P00005371; Case 001 Transcript (NORNG Chanphal), E3/7453, 2 July 2009, pp. 40, 76, ERN (En) 00348145, 00348181.

<sup>8680</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 33.

<sup>8681</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 32-35; T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 19; T. 6 June 2016 (SUOS Thy), E1/432.1, pp. 45-47; T. 7 June 2016 (SUOS Thy), E1/433.1, p. 14. *See also*, T. 25 April 2016 (LACH Mean), E1/422.1, p. 74 (testifying that neither he nor his group received orders to destroy any documents).

<sup>8682</sup> T. 2 May 2016 (PRAK Khorn), E1/425.1, p. 50 (testifying that he was not aware of what the other interrogation teams did).

<sup>8683</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 32-35.

<sup>8684</sup> Closing Order, paras 460-472, 1373, 1376.

<sup>8685</sup> Closing Order, paras 473-474.

<sup>8686</sup> Closing Order, para. 1376.

against humanity of murder as charged in the Closing Order to encompass deaths resulting from the deplorable detention conditions at S-21.<sup>8687</sup>

2562. The Chamber has found that at least 11,742 individuals were executed by S-21 cadres in the vicinity of the S-21 compound or at Choeng Ek.<sup>8688</sup> The Chamber has found that these executions were carried out in a thorough and precise fashion. Usually prisoners had already been registered at S-21 before they were transported to Choeng Ek for execution. They were executed by a blow to the neck, after which their throats were slit with a knife, the bodies disembowelled and then buried in freshly-dug graves.<sup>8689</sup> The Chamber has also found that prisoners killed at S-21 or near the premises were buried in the surrounding area.<sup>8690</sup> The Chamber is satisfied that the *actus reus* of murder is established with respect to detainees who were executed.

2563. The Chamber notes the systematic way in which these killings were organised, carried out and recorded, and the manner in which the bodies were disposed of in pits or mass graves.<sup>8691</sup> On occasion, photographs were taken of bodies which had been exhumed from graves in order to prove to the upper echelon that important prisoners had been killed.<sup>8692</sup> Killings, particularly of important prisoners, were reported to the higher levels.<sup>8693</sup> The Chamber has also established that S-21 cadres received instructions and training that anyone arrested and brought to S-21 was an “enemy” and that all prisoners had to be killed.<sup>8694</sup> The Chamber also found that there were direct instructions received from the upper echelon, including NUON Chea and SON Sen, to kill prisoners or groups of prisoners.<sup>8695</sup> This evidence establishes beyond reasonable doubt that the direct perpetrators, the S-21 leaders and the direct supervisors of S-21

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<sup>8687</sup> See above, para. 2560. The Chamber’s interpretation of the phrase “ill-treatment” is consistent with jurisprudence of the European Court of Human Rights, which has found that poor detention conditions can constitute ill-treatment. See e.g., *Peers v. Greece*, Judgement, ECtHR, Application No. 28524/95, 19 April 2001, paras 63-75 (holding that the conditions of the applicants detention in the segregation unit of a prison amounted to degrading treatment in violation of Article 3 of the European Convention on Human Rights). See also, *Kalashnikov v. Russia*, Judgement, ECtHR, Application No. 47095/99, 15 July 2002, paras 92-103; *Modarca v. Moldova*, Judgement, ECtHR, Application No. 14437/05, 10 May 2007, paras 60-69.

<sup>8688</sup> See above, para. 2542.

<sup>8689</sup> See above, paras 2245-2249, 2515-2518, 2524-2526.

<sup>8690</sup> See above, paras 2507-2511.

<sup>8691</sup> See above, paras 2501-2531.

<sup>8692</sup> See above, paras 2197, 2251, 2509.

<sup>8693</sup> See above, paras 2197, 2199, 2210-2211, 2215, 2234.

<sup>8694</sup> See above, paras 2149, 2162, 2503.

<sup>8695</sup> See above, paras 2197, 2203, 2215, 2234, 2285, 2282, 2311, 2312, 2316, 2318, 2505, 2511, 2555.

including SON Sen and NUON Chea, acted with the direct intent to kill the victims. The Chamber is satisfied that the *mens rea* of murder is also established.

2564. The Chamber has found that a number of prisoners died as a result of the practice of blood-drawing.<sup>8696</sup> This practice was forcibly carried out on prisoners at S-21 and directly resulted in numerous deaths.<sup>8697</sup> Annotations named several individuals who had their blood drawn or who were “destroyed to take their blood” in 1977.<sup>8698</sup> The Chamber has also found that one prisoner was subjected to an experiment to allow the medical unit to study the surgical process on a live body. As a result of this experiment, the victim died.<sup>8699</sup> The Chamber is satisfied that the *actus reus* of murder is established with respect to detainees who died as a result of blood drawing and surgical experimentation.

2565. Due to the forced nature of the blood drawing, the fact that these deaths were recorded in S-21 documents, and the nature of the surgical medical experiment, the Chamber finds that the direct perpetrators not only intended to cause serious bodily harm to the victims but acted with the knowledge that the blood drawing and the live surgical experiment could lead to death and accepted such outcome. The fact that the perpetrators repeatedly performed blood drawing and observed the physical effects that the procedure had on the prisoners’ bodies and at times their resulting deaths confirms their knowledge and acceptance of the result of their acts. The Chamber has also found that both SON Sen and Duch gave permission to carry out the blood drawing. The Chamber is satisfied that the *mens rea (dolus eventualis)* of murder is also established.

2566. Contrary to the NUON Chea Defence’s submissions,<sup>8700</sup> none of the killings carried out at S-21 followed a lawful process or had a legal basis. None of those killed at S-21 had the benefit of any kind of judicial process prior to their execution.<sup>8701</sup> Many prisoners were not even interrogated prior to their deaths. The findings above establish that all prisoners who entered S-21 were labelled as “enemies” and with rare exception,

<sup>8696</sup> See above, paras 2440-2446.

<sup>8697</sup> See above, paras 2440-2446.

<sup>8698</sup> See above, para. 2443.

<sup>8699</sup> See above, para. 2447.

<sup>8700</sup> NUON Chea Closing Brief, paras 648, 675.

<sup>8701</sup> See above, paras 2238, 2531; Section 4: General Overview, para. 276; Section 5: Administrative Structures, para. 417.

had to be killed.<sup>8702</sup> Others killed included the wives, family members or children of those identified as enemies.<sup>8703</sup> The evidence demonstrates that there was no legal justification for these killings.<sup>8704</sup>

2567. The Chamber has found that a number of prisoners at S-21 died as a result of beatings or mistreatment during or following their interrogation.<sup>8705</sup> Interrogators were instructed by the S-21 leadership to avoid causing the death of prisoners prior to obtaining their full confession and were told that they would be held responsible and punished if a prisoner died before their confession was complete.<sup>8706</sup> Despite this instruction, the Chamber has found that a number of detainees died in the course of interrogations or died from their wounds.<sup>8707</sup> In addition, the Chamber has found that prisoners died in detention not only as a result of these wounds but also from illnesses resulting from the conditions of detention imposed, which included severe starvation, inadequate hygiene and lack of proper medical care.<sup>8708</sup> Thus, the Chamber is satisfied that the *actus reus* of murder is further established with regard to these facts.

2568. The manner in which prisoners were systematically mistreated at S-21, the methods of interrogation used and the fact that many of the prisoners were in poor physical conditions not only due to mistreatment but also due to conditions of detention,<sup>8709</sup> all demonstrate that death resulting from such conduct was an entirely foreseeable possibility – and occurred repeatedly. The Chamber finds that the perpetrators acted in the reasonable knowledge that their conduct would likely lead to death of the prisoners and accepted the possibility of the fatal consequences. In this regard, the Chamber recalls that in some cases, permission was expressly given to the interrogators to use brutal violence towards prisoners. For example, with respect to Ya, Duch gave an instruction allowing for the “use [of] hot methods strongly and for a long time” and instructed that “even if you make a misstep and he died, you will have done

<sup>8702</sup> See above, paras 2149, 2162-2164, 2174, 2178, 2180, 2236, 2238, 2350-2505, 2531.

<sup>8703</sup> See above, paras 2329-2335.

<sup>8704</sup> See above, paras 2253, 2501-2531; Section 4: General Overview, para. 276; Section 5: Administrative Structures, paras 417-418.

<sup>8705</sup> See above, paras 2391, 2397, 2425.

<sup>8706</sup> See above, paras 2267, 2368-2369, 2391, 2397, 2425.

<sup>8707</sup> See above, paras 2397, 2425, 2436.

<sup>8708</sup> See above, paras 2367, 2390-2391, 2397, 2432, 2435-2436.

<sup>8709</sup> See above, paras 2363- 2401, 2433-2439.

nothing wrong in terms of organisational discipline”.<sup>8710</sup> In light of the above the Chamber is satisfied that the *mens rea (dolus eventualis)* of murder is also established.

2569. Some victims who were killed were former soldiers, and the Chamber recalls that victims of crimes against humanity may include non-civilians.<sup>8711</sup> Accordingly, the Chamber finds that the executions of at least 11,742 individuals, as well as deaths resulting from blood drawing, medical experiments, beatings or mistreatment and conditions of detention all constitute the crime against humanity of murder at S-21.

#### 12.2.24.1.2. *Extermination*

2570. The Closing Order charges the Accused with the crime against humanity of extermination at S-21 on the basis that the perpetrators’ acts and omissions, either direct or indirect, caused the deaths of a very large number of people, including through the creation of conditions that were calculated to bring about the destruction of part of the population.<sup>8712</sup> Specifically, it charges that in addition to individual killings, there is sufficient evidence of executions and deaths resulting from torture and other acts of violence of both a massive and collective character. It refers to documentary records establishing the death of more than 12,000 people at S-21.<sup>8713</sup>

2571. The Chamber has already established above that the intentional execution of at least 11,742 individuals in the vicinity of S-21 and at Choeung Ek constituted the crime against humanity of murder.<sup>8714</sup> These killings clearly formed part of the same murder operation.<sup>8715</sup> The Chamber is satisfied that killings were committed on a massive scale, thus establishing the *actus reus* of extermination. The systematic manner in which the killings were organised, the nature and objective of the S-21 facility, the way in which the killings were co-ordinated by the S-21 leadership, the manner in which the killings were carried out, the deliberate way in which the bodies were subsequently disposed of after the killings, and the orders which were given to those who physically carried out these killings<sup>8716</sup> all collectively show that the direct perpetrators, the S-21 leadership

<sup>8710</sup> See above, paras 2232, 2279.

<sup>8711</sup> Section 4: General Overview, paras 305-312.

<sup>8712</sup> Closing Order, paras 1381-1382.

<sup>8713</sup> Closing Order, para. 1385.

<sup>8714</sup> See above, para. 2542, Section 12.2.24.1.1: Murder.

<sup>8715</sup> See above, paras 2507-2531, Section 12.2.24.1.1: Murder.

<sup>8716</sup> See above, paras 2162-2163, 2197, 2203, 2215, 2234, 2236, 2285, 2311, 2316, 2318, 2350, 2502-2521, 2540, 2542, 2531, 2555.

and the direct supervisors of S-21 including SON Sen and NUON Chea, acted with intent to kill on a mass scale. The Chamber is satisfied that the *mens rea* of extermination is also established. The Chamber accordingly finds that the execution of at least 11,742 individuals in and around S-21 and at Choeung Ek constitutes the crime against humanity of extermination.

#### 12.2.24.1.3. *Enslavement*

2572. The Closing Order charges the Accused with the crime against humanity of enslavement at S-21 on the basis that prisoners at S-21 Security Centre were subjected to total physical and psychological control, such that virtually all decisions concerning their physical environment were made by the authorities in order to achieve Party goals. Victims were forced to perform work without their consent and without remuneration, and the perpetrators deliberately exercised all powers attached to the right of ownership over the detainees.<sup>8717</sup>

2573. The Chamber has found that detainees who had particular skills were forced to work at S-21 as carpenters, interpreters, cooks, medics, mechanics, construction workers and artists and other capacities.<sup>8718</sup> Although they continued to be treated as prisoners, the conditions of detention for those who worked at S-21 improved slightly.<sup>8719</sup> While they were still destined to be killed, their executions were suspended so that they could be used to work at S-21. While they were working, the detainees were guarded and warned that they would be shot if they tried to escape. At the end of the work day, they were returned to their cells and, in the case of CHUM Mey, shackled.<sup>8720</sup> The Chamber finds that the conditions in which individuals were detained at S-21, the lack of freedom of movement, the interrogations and executions created a pervasive atmosphere of fear in which the provision of genuine consent to work was impossible.<sup>8721</sup> The Chamber finds that S-21 personnel intentionally exercised powers over the prisoners attaching to the rights of ownership. Prisoners were brought to the work station from their cells, forced to work, guarded while they worked and brought back to their cells at night. They did not receive compensation and were temporarily

<sup>8717</sup> Closing Order, paras 1391-1394.

<sup>8718</sup> See above, para. 2450.

<sup>8719</sup> See above, paras 2450-2452, 2454.

<sup>8720</sup> See above, Section 12.2.15: Forced Work.

<sup>8721</sup> See above, para. 2238, Section 12.2.12: Conditions of Detention.

kept alive so that they could carry out the work.<sup>8722</sup> The Chamber finds that these individuals were reduced to mere commodities, and exploited for the benefit of the Party until they were to be executed.<sup>8723</sup> The physical and psychological control exerted over prisoners was absolute. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of enslavement are established. The Chamber accordingly finds that the crime against humanity of enslavement is established in relation to prisoners who were forced to work at S-21.

#### 12.2.24.1.4. *Imprisonment*

2574. The Closing Order charges the Accused with the crime against humanity of imprisonment at S-21 on the basis that S-21 staff intentionally imposed serious, arbitrary deprivation of liberty on the detainees in violation of legal guarantees. The Closing Order finds that the network of security centres replaced the judicial system in order to facilitate detention in violation of detainees' fundamental right to liberty and security as recognised under international law. Prisoners were not informed of the cause of their arrest or permitted to challenge their detention.<sup>8724</sup>

2575. The NUON Chea Defence submits that there were both factual and legal basis for the arrests and detention at S-21.<sup>8725</sup> In relation to the legitimate factual reasons, the NUON Chea Defence submits that in most cases there were reasonable grounds for the arrest. According to the Defence, "thorough investigations, and notably monitoring, were carried out prior to arrests to ensure that people were rightfully suspected of participation in unlawful activities".<sup>8726</sup> Regarding the legal basis, the NUON Chea Defence submits that S-21 implemented the "lawful policy to defend DK's national sovereignty and safeguard the territorial integrity of the nation" from traitors and spies collaborating with Vietnamese armed forces or engaging in subversive activities that could seriously jeopardise the integrity and safety of the country.<sup>8727</sup> The Co-Prosecutors respond that international law does not permit authorities to imprison and execute people without judicial process.<sup>8728</sup> They submit that arrests and imprisonments

<sup>8722</sup> See above, paras 2237-2238, 2245-2246, 2253, 2363, 2364, 2368, Section 12.2.15: Forced Work.

<sup>8723</sup> See above, para. 2351.

<sup>8724</sup> Closing Order, paras 1402-1404.

<sup>8725</sup> NUON Chea Closing Brief, paras 538-539, 553-554.

<sup>8726</sup> NUON Chea Closing Brief, para. 538.

<sup>8727</sup> NUON Chea Closing Brief, paras 553-554, 558-562, 565-566, 568-572, 574-575, 577.

<sup>8728</sup> Co-Prosecutors' Closing Brief, para. 650.

were carried out without due process: individuals were arrested solely on the basis of others' torture-induced confessions; prisoners were not informed of their rights and the charges against them, nor were they entitled to challenge their arrest and imprisonment through any judicial mechanism.<sup>8729</sup>

2576. The Chamber has found that from at least October 1975 until the abandonment of S-21 in early January 1979, S-21 was used for the detention of prisoners who had been identified as "enemies" by the CPK.<sup>8730</sup>

2577. The Chamber has found that, according to the aforementioned S-21 lists in evidence, at the very least, 10,887 prisoners were arrested and detained at S-21 during its operation.<sup>8731</sup> Detainees were arrested or transferred from a number of locations and zones across Cambodia to S-21. Those detained included Party members, revolutionary combatants, military and political leaders, monks, CPK officials, factory workers, soldiers, hospital workers, railway workers, engineers, intellectuals, former diplomats and ambassadors, district and commune-level officials, medics, performance artists, ministry workers and former Khmer Republic officials.<sup>8732</sup> The Chamber has also found, based in part on its analysis of S-21 prisoner lists, that S-21 staff were also subjected to purges and many were arrested, detained and killed at S-21.<sup>8733</sup> Important prisoners who were detained at S-21 included secretaries and deputy secretaries of zones, sectors, divisions and ministry officials.<sup>8734</sup> As found above, foreign prisoners including Vietnamese soldiers and civilians were also arrested, detained and killed at S-21.<sup>8735</sup>

2578. The Chamber has established that individuals were often arrested and detained at S-21 when they were implicated in confessions extracted from S-21 prisoners. Associates, friends and family members of those identified as enemies were rounded up, arrested and detained in large groups.<sup>8736</sup> For example, after KOY Thon's

<sup>8729</sup> Co-Prosecutors' Closing Brief, para. 648.

<sup>8730</sup> *See above*, paras 2135-2144, 2149, 2162-2164, 2236, 2558-2559.

<sup>8731</sup> *See above*, para. 2541.

<sup>8732</sup> *See above*, paras 2239, 2248, Section 12.2.22: Prisoner List Data and Analysis; Section 12.2.18: Former Khmer Republic Officials; Section 12.2.20: Foreign Detainees.

<sup>8733</sup> *See above*, Section 12.2.16: Arrest of S-21 Staff; Section 12.2.8.4.4: NUN Huy *alias* Huy Sre; Section 12.2.8.5.3: IN Lorn *alias* Nat.

<sup>8734</sup> *See above*, Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>8735</sup> *See above*, para. 2544, Section 12.2.20: Foreign Detainees; Section 12.2.17: Vietnamese Detainees.

<sup>8736</sup> *See above*, paras 2203-2204, 2206, 2233, 2268, 2270, 2273.



confessions, hundreds of people were arrested from the North Zone in early 1977.<sup>8737</sup> Typically, if a leader of a “network” or division was arrested, all people considered part of that network were arrested as well.<sup>8738</sup>

2579. The Chamber has found that some important individuals were monitored and arrested only after being implicated in a number of confessions.<sup>8739</sup> However, contrary to the NUON Chea Defence’s submissions, there is nothing to suggest that these individuals were arrested on the basis of concrete evidence.<sup>8740</sup> The Chamber finds that while they may have been implicated by multiple confessions, these confessions were obtained under conditions marked by intimidation, torture and fear.<sup>8741</sup> The Chamber finds that confessions given under these circumstances did not provide a legal basis for the arrest and continued detention of individuals without charge.<sup>8742</sup>

2580. Contrary to the NUON Chea Defence’s submissions,<sup>8743</sup> there is no evidence that most prisoners at S-21 were the subject of thorough investigations and monitoring prior to their arrests to ensure “that people were rightfully suspected of participation in unlawful activities”. Conversely, the evidence shows that individuals were detained without due process of law and without a warrant or any document emanating from an investigative or judicial authority. Moreover, there were often mass arrests and detention of individuals simply on the basis of association with perceived enemies, usually established through confessions obtained by torture. The Chamber recalls its finding that prisoners were arrested by virtue of association and status rather than any genuine suspicion.<sup>8744</sup> This did not provide a legal basis for arrests or detention.

2581. Further, the Chamber has found that any person who entered S-21 had already been deemed an “enemy” by the CPK and there was no room for the interrogators or S-21 staff to question that decision.<sup>8745</sup> Their role was simply to confirm the assumption that these individuals were “enemies” and to extract confessions which implicated

<sup>8737</sup> See above, para. 2289, 2548-2551.

<sup>8738</sup> See above, para. 2458, Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>8739</sup> See above, paras 2229, 2272, 2274, 2277, 2286.

<sup>8740</sup> See above, para. 2272; NUON Chea Closing Brief, para. 538-539.

<sup>8741</sup> See above, paras 2238, 2245-2246, 2364-2431.

<sup>8742</sup> Section 9: Applicable Law: Crimes, paras 691-694.

<sup>8743</sup> NUON Chea Closing Brief, para. 538. See above, para. 2575.

<sup>8744</sup> See above, paras 2203-2204, 2206, 2226, 2233, 2240, 2253, 2268, 2270, 2273; Section 12.2.7: Arrests, Arrival, Registration and Prisoner Photographs at S-21.

<sup>8745</sup> See above, paras 2163-2164, 2169, 2386.

others who were subsequently arrested.<sup>8746</sup> Contrary to the NUON Chea Defence's submissions, these implications did not constitute a legal basis for the arrest and continued detention of these individuals.<sup>8747</sup>

2582. Prisoners were not informed of the reason for their arrest, nor were they provided access to legal recourse.<sup>8748</sup> In this regard, the Chamber recalls its finding that no functioning judiciary existed during the DK period.<sup>8749</sup> Prisoners were cut off from all direct communication and if they wanted to make reports or requests they had to do so through the S-21 leadership. For example, as found above, KOY Thuon was told that he no longer had the right to meet *Angkar* and could only report to *Angkar* through Duch.<sup>8750</sup> When prisoners were arrested and brought to S-21 they were not provided with any information on their rights, what they were accused of or provided with counsel or access to judges. The prisoners had no opportunity to defend themselves against the allegations levelled against them and were never formally charged.<sup>8751</sup>

2583. Even allowing for the possibility that, as claimed by the NUON Chea Defence, there was a factual or legal basis for the initial detentions, the prisoners' continued detention would have become unlawful given that they were not provided with the opportunity to review their initial arrest and detention and thus were arbitrarily deprived of their liberty without due process of law.<sup>8752</sup> The NUON Chea Defence's submissions in this regard are therefore rejected. The Chamber is satisfied that the *actus reus* of imprisonment is established.

2584. The arbitrary arrests, the systematic failure to inform and sufficiently particularise the charges levelled against prisoners that allegedly caused their detention,

<sup>8746</sup> See above, paras 2161, 2253, 2372-2402. See also, paras 2273-2274, 2277, 2279, 2286-2287, 2291-2292, 2300, 2313, 2320, 2322-2323.

<sup>8747</sup> With regard to the NUON Chea Defence submissions that in times of public emergency states may derogate from certain obligations related to individuals' arrests and fair trial guarantees, the Chamber reiterates that pursuant to the ICCPR, a state is required to give notice of its intent to do so. There is no evidence to suggest that DK authorities at any time officially proclaimed the existence of a "public emergency which threatens the life of the nation." See Section 12.5: Phnom Kraol Security Centre, paras 3081-3082.

<sup>8748</sup> See above, para. 2531; Section 12.2.7: Arrests, Arrival, Registration and Prisoner Photographs at S-21.

<sup>8749</sup> Section 4: General Overview, para. 276; Section 5: Administrative Structures, paras 417-418.

<sup>8750</sup> See above, paras 2179, 2238, 2245, 2287, 2363, 2368; Section 12.2.5.4: Internal Reporting Structure; Section 12.2.5.5: External Reporting Structure.

<sup>8751</sup> See above, paras 2236, 2238, 2253.

<sup>8752</sup> Section 9.1.5: Applicable Law: Crimes Against Humanity: Imprisonment.

the prolonged detention without access to procedural safeguards or any ability to challenge their detention all demonstrates the flagrant, deliberate and continuous denial of due process rights that constitutes arbitrary detention contrary to international law. The Chamber is satisfied that the evidence above proves that the perpetrators demonstrated the requisite intent to arbitrarily deprive the individual of liberty. The Chamber is therefore satisfied that the *mens rea* of imprisonment is also established. Accordingly, the Chamber finds that the crime against humanity of imprisonment is established at S-21 Security Centre.

#### 12.2.24.1.5. *Torture*

2585. The Closing Order charges the Accused with crime against humanity of torture at S-21 on the basis that CPK cadres, through acts or omissions, deliberately inflicted severe physical and mental harm and suffering during interrogations. It finds that the interrogation methods, inhumane conditions, and context of terror in the security centres had serious physical and psychological effects, at times resulting in death. Torture was a premeditated, institutionalised policy use against “enemies” in order to extract confessions regarding subversive activities and identify members of the enemy “network” for arrest.<sup>8753</sup>

2586. The Chamber has found that at S-21 there were “cold”, “hot” and “chewing” interrogation units which applied different forms of mistreatment during the course of interrogations.<sup>8754</sup> Several methods of mistreatment were discussed with and approved by SON Sen and systematically inflicted on prisoners at S-21. Duch also taught the interrogation techniques to the interrogators.<sup>8755</sup>

2587. In assessing whether the acts inflicted caused severe pain or suffering, be it physical or mental, the Chamber has considered a number of objective and subjective criteria.<sup>8756</sup>

2588. Prisoners were brought to interrogation rooms handcuffed and blindfolded and had their legs chained during the questioning. The forms of severe mistreatment during

<sup>8753</sup> Closing Order, paras 1408-1411.

<sup>8754</sup> See above, Section 12.2.12.2: “Cold”, “Hot” and “Chewing” Units; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8755</sup> See above, paras 2162, 2201, 2260, 2392, 2405.

<sup>8756</sup> Section 9: Applicable Law: Crimes, para. 703.

interrogations included beatings with sticks, rods, rattan, bamboo, tree branches, electrical wire, whips and other tools; the use of electroshocks; suffocation through covering the head with a plastic bag; covering the mouth and nose with a towel and pouring cold water from a kettle; and the extraction of toenails and fingernails. Prisoners were cursed at and humiliated during interrogations and some were also forced to eat excrement and pay homage to images of dogs.<sup>8757</sup>

2589. The Chamber has found many individual examples of prisoners who were subjected to this kind of mistreatment in order to secure a confession. For example, as discussed above, the Chamber has found that individual examples include CHUM Mey, TIT Son *alias* Nhem, YIM Sambath, SEAT Chhae *alias* Tum, CHHIM Sam Aok *alias* Pang, LY Phen, HU Nim, NEY Sarann *alias* Ya and VORN Vet, all of whom were tortured to secure confessions about their supposed traitorous networks.<sup>8758</sup> Further, in one summary of a confession that was sent to NUON Chea, the interrogator noted that the prisoner “did not confess to being a traitor until he had been tortured [...] he did not provide clear information; thus he was tortured. After being tortured, he provided clear information about his systematic networks and activities.”<sup>8759</sup> The Chamber has established that prisoners were subjected to severe mistreatment in order to force them to produce and re-write their confessions until the content conformed with the Party’s expectations.<sup>8760</sup> Duch’s superiors, SON Sen and subsequently NUON Chea, were provided with full original confessions including annotations which described the use of torture,<sup>8761</sup> some of which refer to express instructions from “*Angkar*” to torture.<sup>8762</sup> Some confessions were the result of interrogations carried out over an extended period of time.<sup>8763</sup> The Chamber has found that the upper echelon was informed that torture was one of the methods used to extract confessions from prisoners who were detained at S-21. The upper echelon was also sometimes asked for clarification and gave further instructions with respect to these interrogations.<sup>8764</sup>

<sup>8757</sup> See above, para. 2377; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8758</sup> See above, paras 2268, 2277, 2279-2280, 2287, 2302, 2304, 2306, 2315-2316, 2322, 2328, 2395-2396, 2411-2431.

<sup>8759</sup> See above, para. 2231.

<sup>8760</sup> See above, paras 2275, 2287, 2302, 2406, 2415; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8761</sup> See above, paras 2221-2222, 2229-2232.

<sup>8762</sup> See above, para. 2232.

<sup>8763</sup> See above, paras 2287, 2316, 2384.

<sup>8764</sup> See above, paras 2412-2431.

2590. The Chamber has established that prisoners were threatened and told, for example, that they would not be beaten to death before they provided complete answers. Other prisoners were threatened in order to pressure them to reveal information about their own involvement in traitorous activities.<sup>8765</sup> One prisoner was threatened that if he continued to hide this information he would have his ankle tendons and eyes pierced.<sup>8766</sup> Another prisoner was threatened that he would be “gradually tortured to death” if he continued to safeguard information about treasonous forces.<sup>8767</sup> The Chamber has found that one of the cold interrogation techniques involved applying psychological pressure, making the prisoners fear for the safety of their wives and children and telling the prisoners that they would not have a chance to see their family if they did not confess.<sup>8768</sup> Other techniques included psychologically breaking the prisoners by destroying their trust in their associates and telling them that the decision of keeping them alive or “smashing” them depended on the judgement of the Party.<sup>8769</sup>

2591. The Chamber has found that some prisoners died following the severe abuse inflicted during interrogations.<sup>8770</sup> The Chamber has also found that prisoners who were beaten with whips had wounds and scars on their body, which remained for several months, and that some prisoners were beaten so severely that they lost consciousness.<sup>8771</sup> As a result of beatings and mistreatment during interrogations at S-21, prisoners such as CHUM Mey suffered broken bones and long-term physical consequences. CHUM Mey also lost consciousness during his interrogation after being subjected to electric shocks.<sup>8772</sup> The Chamber’s findings that severe pain and suffering were inflicted on prisoners are supported by annotations on confessions discussed above.<sup>8773</sup> For example, one annotation noted that after being tortured, the prisoner could not get up and had constant nausea. A further annotation observed that a

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<sup>8765</sup> See above, paras 2245, 2279, 2287-2288, 2292, 2389.

<sup>8766</sup> See above, para. 2292.

<sup>8767</sup> See above, para. 2421.

<sup>8768</sup> See above, para. 2379.

<sup>8769</sup> See above, para. 2428.

<sup>8770</sup> See above, paras 2390-2391, 2397.

<sup>8771</sup> See above, para. 2393.

<sup>8772</sup> See above, para. 2388.

<sup>8773</sup> See above, paras 2411-2431.

prisoner's head bled after he was hit with a lock three times.<sup>8774</sup> Detainees who survived also suffered extreme mental harm and could hear the screams of other prisoners.<sup>8775</sup>

2592. Where no specific evidence was available regarding the impact on a particular individual of the treatment imposed in his or her case, the Chamber has considered the nature and severity of the conduct described. The Chamber has further considered the circumstances in which the mistreatment was inflicted against these individuals, who were evidently placed in a position of vulnerability and an environment of fear. The Chamber finds that the severe mental suffering inflicted upon prisoners is demonstrated by the fact that prisoners begged for their lives, implored to be spared from mistreatment and pleaded for forgiveness from the CPK.<sup>8776</sup> Furthermore, guards were instructed to watch over prisoners to make sure that they did not commit suicide.<sup>8777</sup> The circumstances under which the prisoners were imprisoned and interrogated, the length of their detention without any outside communication and without any protection from the law, in combination with the awareness that other prisoners regularly disappeared, led to a genuine fear for their lives and placed them in a position of vulnerability and inferiority with respect to S-21 cadres.<sup>8778</sup>

2593. The NUON Chea Defence acknowledges that some mistreatment at S-21 may have reached the level of torture, but contends that "this was the exception" and that any such acts were conducted by staff who were deviating from the official policy.<sup>8779</sup>

2594. Having considered the objective and subjective criteria above, the Chamber is satisfied beyond reasonable doubt that the acts described above caused severe physical and mental pain and suffering. The Chamber did not hear sufficient evidence to establish that physical torture was inflicted with respect to each and every prisoner at S-21. However, having regard to the credible evidence of insiders, victims and contemporaneous documents, the Chamber finds that there was extensive use of torture

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<sup>8774</sup> See above, para. 2416.

<sup>8775</sup> See above, para. 2393.

<sup>8776</sup> See above, paras 2179, 2293, 2305.

<sup>8777</sup> See above, para. 2369.

<sup>8778</sup> See above, para. 2253; Section 12.2.12: Conditions of Detention.

<sup>8779</sup> NUON Chea Closing Brief, paras 580, 588; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 88-89.

at S-21 in order obtain confessions from prisoners who did not immediately provide a confession that supported the alleged existence of traitors' networks.<sup>8780</sup>

2595. The Chamber finds that this mistreatment was exclusively inflicted by S-21 cadres who were acting on behalf of the DK authorities and were thus public officials. This mistreatment was inflicted during the course of interrogations for a variety of purposes: to obtain information or a confession, as a means of intimidation, as punishment for failing to confess and to pressure prisoners to implicate associates. The Chamber is satisfied that the *actus reus* of torture is established.

2596. The Chamber has found that before resorting to physical violence, interrogators sought permission from their supervisors including Duch.<sup>8781</sup> Duch discussed methods of torture used at S-21 with SON Sen, who agreed to them.<sup>8782</sup> In training sessions, interrogators were told to feel no pity for the "enemy" even if they were dealing with their parents.<sup>8783</sup> S-21 cadres were instructed by Duch to be absolute in striking the enemy and to be merciless, firm and loyal to the Party. They were told that all people arrested by *Angkar* were "enemies" and were instructed that they had to work hard to obtain confessions for the Party, to search for networks based on the answers provided by prisoners, to take an "absolute" approach, to take vengeance and to harbour anger against the enemy.<sup>8784</sup> The Chamber therefore finds that these acts causing severe pain or suffering were inflicted intentionally. The *mens rea* of torture is also established.

2597. In view of the above, the Chamber finds that prisoners at S-21 were subjected to acts which caused severe physical and mental pain or suffering, and which were carried out intentionally by S-21 cadres acting on behalf of DK authorities. These acts were performed with the purpose of obtaining information, inflicting punishment and causing intimidation. The Chamber therefore finds that the crime against humanity of torture is established at S-21 Security Centre.

<sup>8780</sup> See above, paras 2268, 2277, 2279-2280, 2287, 2302, 2304, 2306, 2315-2316, 2322, 2328, 2395-2396, 2411-2431; Section 12.2.12.1: Interrogations and Mistreatment of Detainees; Section 12.2.12.2: "Cold", "Hot" and "Chewing" Units; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8781</sup> See above, para. 2389.

<sup>8782</sup> See above, para. 2201.

<sup>8783</sup> See above, para. 2163.

<sup>8784</sup> See above, paras 2161-2164, 2168-2180, 2383.

12.2.24.1.6. *Persecution on political grounds*

2598. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds of “real or perceived enemies of the CPK”, which it defines as those whose real or perceived political beliefs were contrary to the CPK, or were opposed to those wielding power within the Party. According to the Closing Order, such people were “arrested *en masse* for re-education and elimination” at security centres including S-21.<sup>8785</sup> The Closing Order finds in this regard that some junior officials of the former LON Nol regime were arrested, many were executed at S-21 and that intellectuals, students and diplomatic staff who were living abroad were recalled to Cambodia and sent to re-education camps or to S-21.<sup>8786</sup>

2599. In relation to S-21, the Closing Order specifically identifies numerous real or perceived enemies to the CPK or its ideology, including those considered to be traitors, CIA or KGB, or Vietnamese.<sup>8787</sup> People arrested under such suspicion included RAK soldiers, CPK cadres, ministry personnel, former Khmer Republic soldiers and officials, intellectuals, diplomats returning from abroad and foreigners.<sup>8788</sup>

2600. The Chamber has already found that the specific categories of real or perceived enemies mentioned above are not exhaustive, but included detractors of the socialist revolution and critics or opponents of the Party and these categories continued to expand over time.<sup>8789</sup> The discernibility of the targeted group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. As set out elsewhere in this Judgement, the Chamber is satisfied that the target group of “real or perceived enemies of the CPK” was sufficiently discernible in order to determine whether the requisite consequences occurred for the group.<sup>8790</sup>

<sup>8785</sup> Closing Order, paras 1416-1418.

<sup>8786</sup> Closing Order, para. 1417.

<sup>8787</sup> Closing Order, para. 455.

<sup>8788</sup> Closing Order, paras 424-433.

<sup>8789</sup> Section 16.3: Real or Perceived Enemies; The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemy particularised in the Closing Order (namely, former Khmer Republic Officials, New People and Cambodians returning from abroad. See KHIEU Samphan Closing Brief, para. 1255. This submission has been addressed and rejected elsewhere in this Judgement. See Section 2: Preliminary Issues, para. 170.

<sup>8790</sup> See e.g., Section 12.4 Au Kanseng Security Centre, paras 2981-2983.



2601. The Chamber has found that the focus of the S-21 operation was directed against real or perceived political enemies of the CPK.<sup>8791</sup> Individuals were arrested because they were implicated as members of an enemy network in confessions and were detained and subsequently interrogated with the use of torture to obtain confessions on their networks. They were eventually executed. On occasion, individuals were executed without being interrogated.<sup>8792</sup> Detainees were held in detention in extremely poor hygienic conditions and prevented from speaking and moving without permission for fear of being beaten.<sup>8793</sup> Detainees were subjected to physical and psychological torture. In particular, some were humiliated by having to at times eat their own faeces and bow to images of dogs.<sup>8794</sup> Some were forced to work and were momentarily spared from execution.<sup>8795</sup> Those arrested, detained, interrogated, tortured and ultimately executed at S-21 were identified and arrested based on the fact that they were labelled as enemies, traitors or spies and viewed as political enemies of the CPK and the revolution. These individuals were arrested *en masse* as described above, particularly during the purges and in connection to the escalation of the conflict with Vietnam.<sup>8796</sup> The prisoners at S-21 were subjected to severe mistreatment, including during the course of interrogations, and were held in deplorable living conditions prior to their execution at S-21 or Choeung Ek because they were labelled as enemies of the revolution. The Chamber is satisfied that the *actus reus* of persecution is established.

2602. The Chamber will now consider whether the foregoing underlying acts were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the targeted group of real or perceived enemies, such as to constitute persecution on political grounds. The Chamber has established that those arrested and detained at S-21 were in fact viewed as internal or external enemies with perceived links to the CIA, KGB or the Vietnamese, from the time of arrest throughout their detention.<sup>8797</sup> The Chamber has found that individuals were arrested, detained, subjected to harsher

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<sup>8791</sup> See above, Section 12.2.5.3: Political Training and Party Discipline; Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>8792</sup> See above, Section 12.2.5.3: Political Training and Party Discipline; Section 12.2.8: Prominent Prisoners and Internal Purges; Section 12.2.21: Killings.

<sup>8793</sup> See above, paras 2363-2364, 2367-2369, 2434-2436.

<sup>8794</sup> See above, paras 2366, 2392, 2394.

<sup>8795</sup> See above, Section 12.2.15: Forced Work; Section 12.2.24.1.3: Enslavement.

<sup>8796</sup> See above, paras 2236, 2547-2552; Section 12.2.5.3: Political Training and Party Discipline; Section 12.2.8: Prominent Prisoners and Internal Purges.

<sup>8797</sup> See above, Section 12.2.5.3: Political Training and Party Discipline; Section 12.2.8: Prominent Prisoners and Internal Purges.

treatment and living conditions and ultimately tortured and executed at S-21 as a direct result of their perceived status as enemies of the CPK. Having found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that the foregoing acts were discriminatory in fact. The Chamber has established that there was a policy targeting perceived political adversaries and that this was systematically disseminated.<sup>8798</sup> Further, the regular training and study sessions attended by S-21 cadres highlighted the need to target and destroy those labelled as enemies.<sup>8799</sup> The Chamber is satisfied that the *mens rea* of persecution is also established. Accordingly, the Chamber finds that the acts were committed at S-21 with the intent to discriminate on political grounds.

2603. The conduct the Chamber has taken into account for the purposes of persecution has been found to amount to independent crimes against humanity including murder, extermination, enslavement, imprisonment, torture and other inhumane acts through attacks against human dignity. The Chamber has considered all of this conduct together with the surrounding context and finds that these acts cumulatively rise to the requisite level of severity such as to constitute persecution. Accordingly, the Chamber is satisfied that the arrest, detention, mistreatment, conditions of detention and killing of perceived enemies at S-21 constituted the crime against humanity of persecution on political grounds.

2604. The Chamber therefore finds that the crime against humanity of persecution on political grounds is established at S-21 Security Centre.

#### 12.2.24.1.7. *Persecution on racial grounds*

2605. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds on the basis that “Vietnamese people were deliberately and systematically identified and targeted due to their perceived race”, as they were perceived by the CPK to be “racially distinct from Cambodian people”.<sup>8800</sup> With respect to S-21 in particular, Vietnamese were arrested, detained and killed. The Closing Order

<sup>8798</sup> See above, Section 12.2.5.3: Political Training and Party Discipline; Section 16.2: Common Purpose: Development of the Common Purpose; Section 16.3.2.1: Real or Perceived Enemies: The Stratification of the Population and the Categorisation of Enemies; Section 16.3.2.3: Real or Perceived Enemies: Dissemination of Information regarding Enemies.

<sup>8799</sup> See above, Section 12.2.5.3: Political Training and Party Discipline.

<sup>8800</sup> Closing Order, para. 1422.

finds that the intent to discriminate is reflected in the context of the attack and circumstances surrounding the commission of the acts.<sup>8801</sup>

2606. The KHIEU Samphan Defence submits that the evidence is insufficient to conclude that persecution of Vietnamese people on racial grounds occurred.<sup>8802</sup> The Defence submits that everyone at S-21 was considered to be a traitor to the nation or an enemy, and they were all treated in the same way, without distinction as to race or nationality.<sup>8803</sup> They submit that although a number of Vietnamese were held at S-21, they were not treated differently in terms of the conditions of their detention, or the nature of their interrogation. Accordingly, the Defence submits that the Vietnamese held at S-21 were not persecuted on the basis of their race.<sup>8804</sup> The KHIEU Samphan Defence notes that in Case 001, the Trial Chamber's conviction for persecution on political grounds was overturned by the Supreme Court Chamber on appeal and that the Chamber should adopt the same kind of reasoning on the basis that all detainees were treated equally and subjected to the same regime of terror, and acquit the Accused of all charges for persecution on racial or political grounds.<sup>8805</sup> The NUON Chea Defence posits that there is no evidence generally proving that any crimes were linked to the fact that the alleged victims belonged to the Vietnamese race, or that the perpetrators intended to discriminate based on race.<sup>8806</sup>

2607. The Chamber has established that the Vietnamese constituted a significant proportion of the foreign detainees at S-21. They were arrested from various locations near the border with Vietnam and in Cambodian territorial waters and included both soldiers and civilians.<sup>8807</sup> Vietnamese were arrested, detained, interrogated and executed at S-21, and were targeted on the basis that they were considered by the CPK to be racially distinct from the Cambodian people. The training and study sessions

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<sup>8801</sup> Closing Order, paras 1422-1424.

<sup>8802</sup> KHIEU Samphan Closing Brief, para. 1196.

<sup>8803</sup> KHIEU Samphan Closing Brief, paras 1196-1211; T. 21 June 2017 (Closing Statements), E1/526.1, pp. 14-15.

<sup>8804</sup> KHIEU Samphan Closing Brief, paras 1212-1219.

<sup>8805</sup> KHIEU Samphan Closing Brief, paras 1217-1219.

<sup>8806</sup> NUON Chea Closing Brief, paras 876-877.

<sup>8807</sup> See above, paras 2460-2461, 2478, 2480-2481.

attended by S-21 cadres inculcated national hatred and fear of the Vietnamese and their territorial ambitions.<sup>8808</sup>

2608. The Vietnamese prisoners were also labelled as “enemies”.<sup>8809</sup> While the Vietnamese were also seen as political enemies, it is clear that they were primarily identified as being hereditary enemies by virtue of their race.<sup>8810</sup> In this regard, the Chamber has found that they were referred to in a derogatory way and regarded with contempt by S-21 cadres.<sup>8811</sup> The Chamber finds that those Vietnamese who were detained, interrogated and ultimately executed at S-21 were labelled as Vietnamese spies or soldiers who were enemies of the CPK and the revolution.<sup>8812</sup>

2609. The Chamber will now consider whether the foregoing underlying acts were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the targeted group of Vietnamese, such as to constitute persecution on racial grounds. The Chamber’s findings above establish that those Vietnamese arrested and detained at S-21 were viewed as enemies throughout their detention. Contrary to the KHIEU Samphan Defence’s submissions outlined above,<sup>8813</sup> the Chamber finds that the Vietnamese individuals were arrested, detained, interrogated and executed at S-21 based on their racial difference. The Chamber accordingly finds that the acts were committed at S-21 with the intent to discriminate on racial grounds. Having found that the victims were in fact Vietnamese and therefore part of the targeted group, the Chamber is satisfied that the foregoing acts were discriminatory in fact. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of persecution are established. As discussed above, the acts committed with discriminatory intent include acts separately found to amount to independent crimes against humanity including murder and imprisonment.<sup>8814</sup>

<sup>8808</sup> See above, paras 2167-2168, 2174-2175; Section 12.2.17: Vietnamese Detainees; Section 13.3.5: Targeting of the Vietnamese; Section 13.3.6: Treatment of the Vietnamese: Identification of the Vietnamese and Matrilineal Ethnicity; Section 16.3: Real or Perceived Enemies, para. 3853.

<sup>8809</sup> See above, paras 2167-2168, 2174-2175; Section 12.2.17: Vietnamese Detainees.

<sup>8810</sup> Section 13.3.6: Treatment of the Vietnamese: Identification of the Vietnamese and Matrilineal Ethnicity.

<sup>8811</sup> See above, paras 2167-2168, 2174-2175, 2235, 2311, 2408, 2469-2471, 2476.

<sup>8812</sup> See above, paras 2167, 2174-2175; Section 12.2.17: Vietnamese Detainees.

<sup>8813</sup> See above, para. 2606.

<sup>8814</sup> See above, para. 2603.

2610. The Chamber therefore finds that the crime against humanity of persecution on racial grounds is established at S-21 Security Centre.

12.2.24.1.8. *Other inhumane acts through attacks against human dignity*

2611. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity at S-21, in particular through the conditions imposed at S-21, including deprivation of sufficient food, medical attention and sanitation, resulting in physical and psychological deterioration and at times death.<sup>8815</sup>

2612. The Chamber has found that S-21 prisoners were held in deplorable conditions. Prisoners were handcuffed and blindfolded before their arrival at S-21 and were then forced to strip to their underwear.<sup>8816</sup> They were forced to sit and sleep on the bare floor with their ankles constantly shackled.<sup>8817</sup> Prisoners were only taken out of their cells for interrogation or to work or for execution.<sup>8818</sup> Some prisoners were held in solitary confinement with windows completely closed. Most prisoners were detained in rooms of 20 to 60 detainees and were shackled and had to ask for permission if they wanted to move or sit. Prisoners were instructed not to speak with other detainees and to keep silent.<sup>8819</sup>

2613. The Chamber has found that hygienic conditions at S-21 were very poor. Prisoners were provided with a small bucket container in order to relieve themselves and, as they had to eat and sleep in the same place, could smell the excrement and urine. Prisoners were on occasion forced to consume excrement or urine. Given the poor hygienic conditions, prisoners were infested with lice and also suffered from skin rashes.<sup>8820</sup> Prisoners were rarely able to wash and had water thrown or sprayed on them.<sup>8821</sup> Those held in solitary confinement were not allowed to bathe. Prisoners were also provided with insufficient food which had dire consequences for their health.<sup>8822</sup>

<sup>8815</sup> Closing Order, paras 1434-1438.

<sup>8816</sup> See above, paras 2245-2246.

<sup>8817</sup> See above, para. 2363.

<sup>8818</sup> See above, paras 2363, 2502.

<sup>8819</sup> See above, paras 2363-2364, 2368.

<sup>8820</sup> See above, paras 2325, 2366, 2392, 2438.

<sup>8821</sup> See above, paras 2365-2366.

<sup>8822</sup> See above, paras 2366-2367.

2614. The Chamber has also found that prisoners were given inadequate medical care. While S-21 did have a medical unit at one point, the medics in this unit were all arrested and replaced by untrained children. The Chamber found that while prisoners were sometimes provided with medical treatment, the medicines were not effective and given the conditions of detention the prisoners became emaciated and suffered from various diseases, which placed some prisoners in a critical condition. There were inadequate medical supplies to treat injuries including those inflicted on prisoners during interrogations.<sup>8823</sup> Many prisoners died as a result of these diseases while in detention.<sup>8824</sup>

2615. The Chamber also finds that the acts and omissions described above were of a nature and gravity similar to other enumerated crimes against humanity. In reaching this conclusion, the Chamber takes into account the nature of the conditions of detention and treatment, the vulnerability of the prisoners and the impact on the victims. The Chamber is satisfied that the *actus reus* of other inhumane acts is established.

2616. The Chamber finds that these acts or omissions were performed intentionally by S-21 cadres. It has found that staff at S-21 were taught at training sessions to have vengeance and “harbour anger against the enemy” and that Duch gave instructions to eliminate any feelings of sympathy towards the enemy.<sup>8825</sup> These findings support the Chamber’s conclusion that the direct perpetrators acted with the requisite intent. The Chamber is satisfied that the *mens rea* of other inhumane acts is established.

2617. Accordingly, the Chamber is satisfied that both the intentional infliction of serious mental and physical suffering, as well as a serious attack on human dignity are established at S-21 Security Centre. The Chamber therefore finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at S-21 Security Centre.

2618. The purpose of important prisoners’ separate detention in the Special Prison was primarily to keep their presence at S-21 confidential, to monitor them strictly in order to prevent suicide and to keep them alive until they provided exhaustive confessions

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<sup>8823</sup> See above, paras 2432-2439.

<sup>8824</sup> See above, para. 2436.

<sup>8825</sup> See above, para. 2164.

prior to their unavoidable execution.<sup>8826</sup> While Duch asserted that those detained in the Special Prison had better living conditions and were treated when sick, the Chamber notes that there is no evidence that clearly corroborates this assertion.<sup>8827</sup> The Chamber notes that those who were detained in the Special Prison were considered extremely important detainees who were expected to provide valuable information.<sup>8828</sup> The Chamber recalls how information was extracted in S-21 and the physical and mental abuse that was inflicted upon prisoners to do so.<sup>8829</sup> The important prisoners' detention in a separate building did not spare them from the pervasive climate of fear at S-21.<sup>8830</sup> Additionally, the Chamber recalls that prominent prisoners held in the Special Prison wrote letters begging the upper echelon to spare them, which is also indicative of the conditions to which they were subjected and their utter despair.<sup>8831</sup> Accordingly, the Chamber's findings with respect to the crime against humanity of other inhumane acts through attacks against human dignity also apply to those prisoners detained in the Special Prison.

#### 12.2.24.2. Grave breaches of the Geneva Conventions

2619. The Chamber reiterates its finding that an ongoing international armed conflict existed between Vietnam and Democratic Kampuchea from May 1975 through 6 January 1979. The Chamber further recalls its finding that the crimes committed against protected persons at S-21 Security Centre were closely related to the armed conflict between Democratic Kampuchea and Vietnam.<sup>8832</sup> Furthermore, the Chamber recalls its findings that the Accused NUON Chea and KHIEU Samphan were aware of the existence of the armed conflict with Vietnam and that they both were aware of the protected status of victims at S-21 Security Centre.<sup>8833</sup>

<sup>8826</sup> See above, paras 2256, 2258-2259.

<sup>8827</sup> See above, para.2258.

<sup>8828</sup> See above, paras 2256, 2258-2260, 2286, 2494.

<sup>8829</sup> See above, para. 2328; Section 12.2.12.1: Interrogations and Mistreatment of Detainees; Section 12.2.12.2: "Cold", "Hot" and "Chewing" Units; Section 12.2.12.3: Interrogation Methods and Mistreatment; Section 12.2.24.1.5: Torture.

<sup>8830</sup> See above, paras 2238, 2258, 2328, 2369, 2402.

<sup>8831</sup> See above, paras 2179, 2293, 2305. The Chamber recalls that during his detention HU Nim wrote a letter pleading to be spared, and he requested the Party not to chain his legs as he had insomnia and hepatitis. See above, para. 2301.

<sup>8832</sup> Section 4: General Overview, paras 281, 338.

<sup>8833</sup> Section 4: General Overview, paras 339-340.

12.2.24.2.1. *Wilful killing*

2620. The Closing Order charges the Accused with wilful killing of Vietnamese prisoners of war and civilians as a grave breach of the Geneva Conventions at S-21, through both deliberate execution and deaths caused by methods of interrogation and general conditions of detention, inflicted with the reasonable knowledge that their death was likely.<sup>8834</sup>

2621. The Chamber has found that hundreds of Vietnamese civilians and soldiers were killed at S-21. Vietnamese prisoners were killed behind S-21 following the conclusion of their interrogations. Those killed included detained Vietnamese soldiers and children. This includes one incident where a young child was taken away from its parents by guards and dropped from the balcony of the multi-storey building and died.<sup>8835</sup>

2622. The Chamber finds that those killed were either Vietnamese civilians or prisoners of war and thus protected persons for the purposes of the Geneva Conventions. The circumstances in which these protected persons were killed were substantially the same as the incidents of murder discussed above in connection with S-21. The Chamber is therefore satisfied that the *actus reus* of wilful killing is satisfied. As found above, all Vietnamese who entered S-21 were killed in a deliberate and systematic manner following their interrogation. S-21 cadres were also shown images of Vietnamese soldiers who had been disembowelled following their execution.<sup>8836</sup> The Chamber accordingly finds that the perpetrators of each of these incidents and the S-21 leadership acted with the intent to kill the victims. The Chamber is satisfied that the *mens rea* of wilful killing is also satisfied. Accordingly, the Chamber finds that wilful killing as a grave breach of the Geneva Conventions is established at S-21 Security Centre.

12.2.24.2.2. *Torture*

2623. The Closing Order charges the Accused with torture as a grave breach of the Geneva Conventions at S-21 as a result of the alleged torture of Vietnamese prisoners

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<sup>8834</sup> Closing Order, paras 1491-1492.

<sup>8835</sup> See above, para. 2544; Section 12.2.17: Vietnamese Detainees.

<sup>8836</sup> See above, Section 12.2.17: Vietnamese Detainees; Section 12.2.21: Killings; Section 12.2.24.1.1: Murder.



of war and civilians, applied by S-21 cadres through interrogation methods inflicting severe physical or mental pain or suffering for the purpose of obtaining information or extracting confessions.<sup>8837</sup>

2624. The Chamber has found that interrogators were instructed to question Vietnamese prisoners in order to get them to confess that they invaded Kampuchea and to identify others who had hidden in Kampuchea.<sup>8838</sup> The Chamber has found that confessions of Vietnamese prisoners (soldiers) were published in various DK publications aimed at showing the Vietnamese “aggression” against the DK and that the names of a number of these prisoners were found in S-21 prisoner lists.<sup>8839</sup> The Chamber has also found that all Vietnamese who entered S-21 were killed in a deliberate and systematic manner following their interrogation by S-21 interrogators.<sup>8840</sup> The Chamber has also found that the Vietnamese constituted a significant proportion of the foreign detainees at S-21.<sup>8841</sup> The Chamber has rejected MAM Nai’s evidence that he did not use whips or other coercive means to obtain such confessions, and instead found detainees were subjected to coercive measures to provide confessions.<sup>8842</sup> The Chamber has also found that there were instructions from the upper echelon to apply “Special Branch methods, completely and totally, permanently”.<sup>8843</sup> Further, as discussed extensively above, the Chamber has found that torture as crime against humanity was inflicted on the prisoners at S-21.<sup>8844</sup> While the Chamber did not hear sufficient evidence to establish that physical torture was inflicted with respect to a specific Vietnamese person, having found that the Vietnamese constituted a significant portion of prisoners at S-21,<sup>8845</sup> the Chamber is satisfied that Vietnamese prisoners detained and interrogated at S-21 were victims of acts causing severe physical or mental pain or suffering. The Chamber further notes that S-21 interrogators were instructed to obtain confessions and were not only permitted but even encouraged to be “absolute” and to use torture to this end. This mistreatment was exclusively inflicted by S-21 cadres who were acting on behalf of the DK authorities

<sup>8837</sup> Closing Order, paras 1498-1499.

<sup>8838</sup> See above, paras 2167-2168, 2174-2175; Section 12.2.17: Vietnamese Detainees.

<sup>8839</sup> See above, paras 2462, 2467, 2472-2474, 2477.

<sup>8840</sup> See above, paras 2462, 2465-2469, 2471, 2621-2622.

<sup>8841</sup> See above, para. 2480.

<sup>8842</sup> See above, para. 2466.

<sup>8843</sup> See above, para. 2469.

<sup>8844</sup> See above, Section 12.2.24.1.5: Torture.

<sup>8845</sup> See above, para. 2480.

and were thus public officials.<sup>8846</sup> The Chamber therefore finds that both the *actus reus* and *mens rea* of torture are established. Accordingly, the Chamber finds that torture as a grave breach of the Geneva Conventions is established at S-21 Security Centre.

#### 12.2.24.2.3. *Inhumane treatment*

2625. The Closing Order charges the Accused with inhumane treatment as a grave breach of the Geneva Conventions at S-21 as a result of the alleged inhumane treatment of Vietnamese prisoners of war and civilians by S-21 personnel through conditions imposed causing serious physical or mental pain, suffering or injury, or acts which amounted to serious attacks on human dignity, constituting inhumane treatment. The Closing Order charges that these conditions of detention included overcrowding, lack of sanitation, medicine, food or clothing, which collectively degraded detainees, leaving them in a permanent climate of fear.<sup>8847</sup>

2626. The Chamber has already found that the conditions of detention and treatment of the prisoners at S-21 amounted to the crime against humanity of other inhumane acts through attacks against human dignity and that prisoners at S-21, including Vietnamese were victims of torture both as a crime against humanity and as a grave breach of the Geneva Conventions.<sup>8848</sup> Accordingly, the Chamber finds that inhumane treatment as a grave breach of the Geneva Conventions was also committed at S-21.

#### 12.2.24.2.4. *Wilfully causing great suffering or serious injury to body or health*

2627. The Closing Order charges the Accused with wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions at S-21 as a result of the alleged conditions imposed by acts or omissions aimed at Vietnamese prisoners of war and civilians, which caused great physical or mental suffering or serious injury to body or health. The general conditions of detention inflicted on the

<sup>8846</sup> See above, Section 12.2.5.3: Political Training and Party Discipline; Section 12.2.12.1: Interrogations and Mistreatment of Detainees; Section 12.2.12.2: “Cold”, “Hot” and “Chewing” Units; Section 12.2.12.3: Interrogation Methods and Mistreatment.

<sup>8847</sup> Closing Order, paras 1501-1503.

<sup>8848</sup> See above, Section 12.2.24.1.8: Other Inhumane Acts through Attacks against Human Dignity.

protected persons by S-21 staff included overcrowding and lack of adequate sanitation, medicine or food.<sup>8849</sup>

2628. The Chamber has already found that the conditions of detention and treatment of prisoners at S-21 amounted to the crime against humanity of other inhumane acts through attacks against human dignity and to inhumane treatment as a grave breach of the Geneva Conventions.<sup>8850</sup> As discussed above, the Chamber has found that S-21 prisoners were held in deplorable conditions: they were forced to sit and sleep on the bare floor with their ankles constantly shackled, and were only taken out of their cells for interrogation or to work or for execution.<sup>8851</sup> The Chamber has found that hygienic conditions were very poor. Given these poor conditions, prisoners were infested with lice and also suffered from skin rashes.<sup>8852</sup> Prisoners were also not provided with sufficient food which had dire consequences for their health.<sup>8853</sup> The Chamber has found that while prisoners were sometimes provided with medical treatment, the medicines were not effective and given the conditions of detention the prisoners suffered from various diseases which placed some prisoners in a critical condition. There were inadequate medical supplies to treat injuries, including those inflicted on prisoners during interrogations. Many prisoners died as a result of these diseases while in detention.<sup>8854</sup> The Chamber has found above that the staff at S-21 intentionally inflicted these conditions on the prisoners.<sup>8855</sup> Based on the fact that the Vietnamese constituted a significant portion of the population of S-21,<sup>8856</sup> the Chamber finds that wilfully causing great suffering or serious injury to body or health as a grave breach of the Geneva Conventions is also established at S-21 Security Centre.

12.2.24.2.5. *Wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial*

2629. The Closing Order charges the Accused with wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial as a grave breach of the Geneva Conventions at S-21 as a result of the alleged wilful deprivation of the rights of a fair

<sup>8849</sup> Closing Order, paras 1504-1505.

<sup>8850</sup> See above, Section 12.2.24.1.8: Other Inhumane Acts through Attacks against Human Dignity.

<sup>8851</sup> See above, para. 2612.

<sup>8852</sup> See above, para. 2613.

<sup>8853</sup> See above, para. 2613.

<sup>8854</sup> See above, para. 2614.

<sup>8855</sup> See above, para. 2616.

<sup>8856</sup> See above, para. 2480.

and regular trial to Vietnamese prisoners of war and civilians. S-21 cadres deprived the protected persons of the right to be judged by an independent and impartial court, the right to be informed of their charged offence, the rights and means of a defence, protection against collective punishment, the presumption of innocence, the right of appeal, and protection from a sentence without judgement pronounced by a competent court.<sup>8857</sup>

2630. The Chamber has found that the Vietnamese prisoners who entered S-21 were not provided any opportunity to defend themselves following their arrest, were deprived of any semblance of a fair trial and were forced to confess that they were spies before being killed. All Vietnamese soldiers and civilian who entered S-21 were labelled as spies and considered enemies. The fate of these prisoners was a foregone conclusion as they were all ultimately subject to execution.<sup>8858</sup> The Chamber recalls that prisoners were given no access to lawyers or judges throughout their detention as S-21 and were eventually executed without a trial.<sup>8859</sup> As found above, all Vietnamese who entered S-21 were killed in a deliberate and systematic manner following their interrogation.<sup>8860</sup> The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of this offence are established. Accordingly, the Chamber finds that wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial as a grave breach of the Geneva Conventions is established at S-21 Security Centre.

#### 12.2.24.2.6. *Unlawful deportation of a civilian*

2631. The Closing Order charges the Accused with unlawful deportation of civilians as a grave breach of the Geneva Conventions at S-21 as a result of the alleged unlawful deportation of Vietnamese civilians captured by CPK forces during military incursions into Vietnam, which was followed by detention, interrogation and execution at S-21. According to the Closing Order, these acts were carried out pursuant to well-defined CPK policies regarding the transfer of Vietnamese civilians to S-21 as opposed to security or military reasons.<sup>8861</sup>

<sup>8857</sup> Closing Order, paras 1507-1509.

<sup>8858</sup> See above, paras 2167-2168, 2174-2175, 2238, 2253; Section 12.2.17: Vietnamese Detainees.

<sup>8859</sup> See above, paras 2238, 2253. See also, Section 4: General Overview, para. 276; Section 5: Administrative Structures, para. 417.

<sup>8860</sup> See above, para. 2619.

<sup>8861</sup> Closing Order, paras 1515-1516.

2632. The Chamber recalls that while it has excluded from the scope of Case 002/02 the facts contained in paragraphs 832 to 840 of the Closing Order regarding deportation, it may consider evidence of crimes committed by the RAK, including incursions in Vietnam for other purposes, including but not limited to the grave breaches charges related to civilians or soldiers *hors de combat* who were arrested during such fights on Vietnamese territory and who were sent to S-21 thereafter.<sup>8862</sup>

2633. The Chamber has nevertheless found that there is insufficient evidence to conclude that Vietnamese prisoners at S-21 were originally captured in Vietnam.<sup>8863</sup> Accordingly, the Chamber finds that unlawful deportation of civilians as a grave breach of the Geneva Conventions is not established at S-21 Security Centre.

#### 12.2.24.2.7. *Unlawful confinement of a civilian*

2634. The Closing Order charges the Accused with the unlawful confinement of civilians as a grave breach of the Geneva Conventions at S-21 as a result of the alleged arbitrary detention of Vietnamese civilians in the absence of reasonable or legal grounds for detention and without procedural and substantive protections afforded by Geneva Convention IV.<sup>8864</sup>

2635. The Chamber has already found that individuals, including Vietnamese individuals, were arbitrarily deprived of liberty and detained at S-21 without due process of law and without a warrant or any document emanating from an investigative or judicial authority and this amounted to the crime against humanity of imprisonment.<sup>8865</sup> The Chamber has found that some of the Vietnamese prisoners were civilians who were brought to S-21 after trying to flee the country. Those detained included Vietnamese children and women.<sup>8866</sup> There is no evidence to suggest that the civilians were detained as a matter of absolute necessity for reasons of state security. On the contrary, the Chamber has found that Vietnamese civilians were arrested and detained at S-21 by virtue of their identity and without due process of law. The Chamber therefore finds that both the *actus reus* and the *mens rea* of unlawful confinement of

<sup>8862</sup> Section 9: Applicable Law: Crimes, para. 778.

<sup>8863</sup> *See above*, Section 12.2.17: Vietnamese Detainees.

<sup>8864</sup> Closing Order, para. 1518.

<sup>8865</sup> *See above*, paras 2238, 2253, 2582. The Chamber has also already found that this amounts to Wilful deprivation of the rights of fair and regular trial. *See above*, para. 2630.

<sup>8866</sup> *See above*, paras 2460, 2465, 2477-2479.

civilians is established. Accordingly, the Chamber is satisfied that unlawful confinement of civilians as a grave breach of the Geneva Conventions is established at S-21 Security Centre.

### **12.3. Kraing Ta Chan Security Centre**

#### ***12.3.1. Closing Order and Preliminary Issues***

2636. The Closing Order describes Kraing Ta Chan as a security centre located in Kus commune, Tram Kak district.<sup>8867</sup> The Chamber refers to this site as “Kraing Ta Chan”. The Closing Order charges the Accused with the following crimes against humanity committed at Kraing Ta Chan: (i) murder; (ii) extermination; (iii) enslavement; (iv) imprisonment; (v) torture; (vi) persecution on political and (vii) racial grounds; and other inhumane acts through (viii) attacks against human dignity and (ix) conduct characterised as enforced disappearances.<sup>8868</sup>

2637. The KHIEU Samphan Defence submits that various facts are either outside the scope of Case 002/02 or otherwise outside the Chamber’s jurisdiction, based on a comparison of the Closing Order with the Co-Prosecutors’ Introductory Submission. It submits that deaths resulting from the conditions of detention are outside the scope of the case, so that allegations of murder and extermination are restricted to executions only. It further submits that facts regarding the treatment of Vietnamese, persecution on racial grounds, enslavement, torture, and other inhumane acts as breaches of human dignity and enforced disappearances were all outside the scope of the judicial investigation.<sup>8869</sup> Specifically, it contends that to the extent that relevant allegations were set out in the Co-Prosecutors’ Introductory Submission, they were restricted to the annexes, whereas the relevant ECCC legal framework, including Internal Rule 53, requires that such facts be set out in the main body of a submission.<sup>8870</sup> The Lead Co-Lawyers note that the KHIEU Samphan Defence did not raise this matter in an appeal against the Closing Order or did not raise relevant preliminary objections before this

<sup>8867</sup> Closing Order, para. 489.

<sup>8868</sup> Case 002 Additional Severance Decision Annex, pp. 3-4.

<sup>8869</sup> KHIEU Samphan Closing Brief, paras 1223-1253, 1272-1283.

<sup>8870</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 27-28 (with reference to Cambodian law, the Internal Rules, French law and the jurisprudence of French courts).

Chamber.<sup>8871</sup> No other Party made relevant submissions in response.

2638. To the extent that the KHIEU Samphan Defence premises their submissions on their comparison of the Co-Prosecutors' Introductory Submission with the Closing Order issued by the Co-Investigating Judges, the Chamber has already found that such submissions should have been made at a much earlier stage – either to the Pre-Trial Chamber, or to the Chamber as a preliminary objection according to the time limit set by Internal Rule 89.<sup>8872</sup> These submissions in relation to Kraing Ta Chan are therefore rejected.

2639. The KHIEU Samphan Defence also challenges the relevance of evidence heard by the Chamber as having been outside the scope of Case 002/02, particularly evidence of rape and/or forced labour at Kraing Ta Chan.<sup>8873</sup> The NUON Chea Defence contends that, although the Closing Order refers to rape at Kraing Ta Chan, the Accused are not charged with rape outside the context of forced marriage.<sup>8874</sup> No other Party made relevant submissions in response.

2640. Contrary to the KHIEU Samphan Defence's submission, the Closing Order charges the crime of enslavement, which expressly includes forced labour in the context of the conditions at Kraing Ta Chan.<sup>8875</sup>

2641. In relation to rape, the Co-Investigating Judges found that rapes occurred at Kraing Ta Chan, but concluded that, outside the context of forced marriages, it had not been established that rape was used by CPK leaders as a means to implement the common purpose.<sup>8876</sup> As previously held during the evidentiary phase of Case 002/02, although the Closing Order did not find the Accused to be criminally responsible for rapes committed at Kraing Ta Chan, such rapes (or indeed other sexual violations) may be relevant to its examination of the general context of the conditions at Kraing Ta

<sup>8871</sup> T. 21 June 2017 (Closing Statements), E1/526.1, p. 58.

<sup>8872</sup> Section 2: Preliminary Issues, paras 158-165.

<sup>8873</sup> KHIEU Samphan Closing Brief, paras 1291-1294; T. 20 June 2017 (Closing Statements), E1/525.1, p. 30.

<sup>8874</sup> NUON Chea Closing Brief, para. 413 (fn. 1256), para. 623.

<sup>8875</sup> Closing Order, paras 501 (“Everyone was shackled day and night *unless they were put to work*”) (emphasis added), 503 (“Some prisoners recall being forced to work inside the prison compound performing a variety of labour”), 514 (referring to prisoners ordered to dig pits, where bodies were then buried), 1394 (referring to victims being “forced to perform work without their consent”).

<sup>8876</sup> Closing Order, para. 1429.

Chan, and to credibility assessments of persons who appeared before the Chamber.<sup>8877</sup> The Chamber accordingly rejects submissions that such evidence is outside the scope of Case 002/02.

2642. The NUON Chea Defence submits that the Khmer Krom are not identified as a targeted group in Case 002/02 and should not be subsumed within the Vietnamese group. As a result, it contends that evidence related to Khmer Krom at Kraing Ta Chan should be disregarded, at least in so far as it relates to allegations of racial persecution.<sup>8878</sup> The KHIEU Samphan Defence made broader submissions that the Trial Chamber is not seised of facts concerning the Khmer Krom as a group.<sup>8879</sup> No other Party made relevant submissions in this regard. The Chamber has confirmed that the Closing Order did not identify the Khmer Krom as a targeted group in Case 002.<sup>8880</sup> The Chamber has also found that the Defence were not adequately notified of an allegation that Khmer Krom were to be identified as a “sub-group” of the Vietnamese, such that the Chamber is not properly seised of the targeting of Khmer Krom either as a specific group or as a sub-group of the Vietnamese.<sup>8881</sup> The submission of the NUON Chea Defence in this regard is accordingly upheld. However, the Chamber recalls that while there is no charge of racial persecution against the Khmer Krom, evidence relating to such persons may be relevant to charges (murder, extermination, etc.) which do not depend upon their group identification.<sup>8882</sup>

2643. Finally, the NUON Chea Defence submits that the Closing Order lacks clarity, particularly in relation to any underlying factual allegations pertaining to the treatment of former Khmer Republic soldiers and officials.<sup>8883</sup> No other Party made relevant submission on this issue. The Chamber notes that the Closing Order specifically finds that CPK authorities identified several groups as “enemies” based on their real or perceived political beliefs, including former Khmer Republic officials and “New People”.<sup>8884</sup> As to Kraing Ta Chan specifically, the Closing Order describes a “purge

<sup>8877</sup> Section 2.5.6.7.2: Rape Outside the Context of Forced Marriage.

<sup>8878</sup> NUON Chea Closing Brief, para. 420.

<sup>8879</sup> T. 20 June 2017 (Closing Statements), E1/525.1, pp. 22-23; KHIEU Samphan Closing Brief, paras 157-170.

<sup>8880</sup> Section 2.5.6.7.1: Facts Allegedly Outside the Scope of the Indictment: Khmer Krom.

<sup>8881</sup> Section 2: Preliminary Issues, para. 185.

<sup>8882</sup> Section 2: Preliminary Issues, paras 182-183.

<sup>8883</sup> NUON Chea Closing Brief, paras 928-931; T. 19 June 2017 (Closing Statements), E1/524.1, p. 47.

<sup>8884</sup> Closing Order, para. 1417.



of evacuees” in the period after 17 April 1975, including those with the rank of “Corporal Sergeant or above” in the Khmer Republic’s armed forces, or “first deputy chief or higher” in the Khmer Republic’s administration.<sup>8885</sup> It also finds that the purge of former Khmer Republic soldiers and officials continued after 1975, with specific references to documentary evidence from 1977.<sup>8886</sup> There are specific references to former Khmer Republic soldiers and officials being arrested then taken to Kraing Ta Chan.<sup>8887</sup> The Chamber is therefore satisfied that the Closing Order clearly sets out a number of findings with respect to the treatment of former Khmer Republic soldiers and officials, such that related charges are properly before the Chamber. The NUON Chea Defence’s submission is therefore rejected.

### 12.3.2. *Witnesses, Civil Parties and the Tram Kak District Records*

#### 12.3.2.1. *Overview*

2644. The Chamber heard evidence from 17 witnesses, 14 Civil Parties (including those heard on harm suffered) and one expert during the trial segment nominally dedicated to the Tram Kak Cooperatives and Kraing Ta Chan.<sup>8888</sup> The Chamber heard from witnesses and Civil Parties whose detentions cumulatively encompassed the entire period over which the Chamber has jurisdiction. Civil Party SORY Sen was at Kraing Ta Chan from 1974 until the arrival of Vietnamese forces in 1979.<sup>8889</sup> Witness KEO Chandara was detained shortly before 17 April 1975 and released at the end of April 1975.<sup>8890</sup> Witness MEAS Sokha was detained from June 1976 to August 1978 –

<sup>8885</sup> Closing Order, para. 498.

<sup>8886</sup> Closing Order, para. 498.

<sup>8887</sup> Closing Order, paras 315, 319, 506 (referring to prisoners being accused of being “enemies” and questioned whether they were American or *Yvon* CIA and which rank they held during the Lon Nol era).

<sup>8888</sup> MEAS Sokha; OUM Suphany; CHOU Koemlan; CHANG Srey Mom; EM Phoeung; KEO Chandara; SORY Sen; Elizabeth BECKER; RY Pov; PHNEOU Yav; SAO Han; SREI Than; PHANN Chhen; VAN Soeun; NEANG Ouch; NUT Nov; RIEL Son; SAUT Saing; OEM Saroeun; Richard DUDMAN; PECH Chim; KHOEM Boeun; EK Hoeun; THANN Thim; VONG Sarun; TAK Sann; EAM Yen; BENG Boeun; YEM Khonny; BUN Saroeun; IM Vannak; LOEP Neang.

<sup>8889</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 44; T. 6 February 2015 (SORY Sen), E1/258.1, pp. 33-35.

<sup>8890</sup> Before the Chamber, KEO Chandara stated that he was arrested in March 1975 and released by the end of April 1975, thereby correcting an answer given in an earlier interview that he was arrested between 1973 and 1974. *See* T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 32-33 (testifying that he was detained until April 1975 for 29 days), 63 (stating he was detained for 25 days in Kraing ta Chan), 51 (stating that he was detained around mid-March until early April), 71 (stating that he was detained on 20 March 1975 and released by the end of April 1975), 104-105 (having discussed the chronology with his family, he was detained about 10 days before the liberation of Phnom Penh until about 10 days after the liberation); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 19 (explaining that his eldest son told him he was detained in late March 1975). The balance of KEO Chandara’s account, in particular his

together with members of his family, some of whom were killed or died there.<sup>8891</sup> Witness VONG Sarun arrived at Kraing Ta Chan on 23 May 1977 together with her baby girl, and remained there until the arrival of Vietnamese forces.<sup>8892</sup> In addition, Civil Party OEM Saroeun gave evidence that her husband (OY Mut), father (IM Pum), uncle (IM Chat) and elder brother (UNG Lim) were arrested then taken to Kraing Ta Chan;<sup>8893</sup> and Civil Party BUN Saroeun gave evidence of his father's detention at Kraing Ta Chan.<sup>8894</sup>

2645. Some witnesses and one Civil Party worked at Kraing Ta Chan, visited it, and/or had contemporaneous knowledge of its operation and oversight. Witness PHANN Chhen was the chief of Kus commune before 1975.<sup>8895</sup> Despite his attempts to distance himself from the security centre, the Chamber is satisfied, for reasons explained below, that he oversaw Kraing Ta Chan from 1973 into 1975.<sup>8896</sup> The Chamber heard from three former Kraing Ta Chan guards: Civil Party SAUT Saing, Witness VAN Soeun and Witness SREI Than *alias* Duch. SAUT Saing was a district soldier assigned to Kraing Ta Chan as a guard.<sup>8897</sup> His younger cousin, VAN Soeun, worked as a guard and messenger, having previously been a commune militiaman in Leay Bour commune then part of the Tram Kak District Military.<sup>8898</sup> SREI Than *alias* Duch was another district soldier assigned to Kraing Ta Chan as a guard and typist.<sup>8899</sup> Witness RIEL Son

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description of the events after his release, such as the arrival of large numbers of evacuees in Tram Kak district, satisfies the Chamber that he was indeed released *after* 17 April 1975.

<sup>8891</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 13, 43. Also before the Chamber are WRIs of persons detained around the same time as MEAS Sokha, including SOK Soth (*see* SOK Soth Interview Record, E3/5835, 31 October 2007) and his mother (HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 5 (stating she was in Kraing Ta Chan for 23 months from 1976 until June 1978); HUN Kimseng Interview Record, E3/10753, 15 September 2015).

<sup>8892</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 16-18, 54-55; Tram Kak District Record, E3/4164, undated, p. 1, ERN (En) 00973147 ("RANG Sarun" arrived at Kraing Ta Chan on 23 May 1977); Tram Kak District Record, E3/4101, 12 June 1977, ERN (En) 00322126 (a report from "Ann" detailing various persons from Hospital 22 including "the contemptible (female) Run"); Kraing Ta Chan Notebook, E3/5827, undated, p. 11, ERN (En) 00866434 (entry for VONG Sarun, described as 26 years old). The reliability of the date of 23 May 1977 is addressed below at para. 2714.

<sup>8893</sup> T. 26 March 2015 (OEM Saroeun), E1/283.1, pp. 14-15 (referring to her husband OY Mut), 25-26 (referring to IM Pum, IM Chat and UNG Lim being on a list she saw).

<sup>8894</sup> T. 3 April 2015 (BUN Sarouen), E1/288.1, pp. 29-30, 47-49.

<sup>8895</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 61-62 (stating that he was the chief of Kus commune), 81-82; T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 24-25 (describing attending meetings at the District Office twice per month as chief of Kus commune).

<sup>8896</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 65-67 (evasive when asked whether he was chief of Kraing Ta Chan), 81 (appearing to describe Phy as the chief, or at least part of the District Committee). *See below*, Section 12.3.5: Authority Structure.

<sup>8897</sup> SAUT Saing is VAN Soeun's elder cousin. *See* T. 24 March 2015 (SAUT Saing), E1/281.1, p. 26; T. 5 March 2015 (VAN Soeun), E1/272.1, p. 29.

<sup>8898</sup> VAN Soeun gave evidence before the Chamber on 3, 4 and 5 March 2015.

<sup>8899</sup> SREI Than *alias* Duch gave evidence before the Chamber on 19, 23 and 24 February 2015.

was the deputy chief of the Tram Kak District Hospital and visited Kraing Ta Chan once during the relevant period.<sup>8900</sup>

2646. The Chamber also heard evidence from persons with significant roles in Tram Kak district, at the district and/or commune level. In assessing the charges pertaining to Kraing Ta Chan, the Chamber found the evidence from the following persons to be significant: Witness PECH Chim (District Committee member then District Secretary until February 1977); Witness NEANG Ouch *alias Ta San* (*Ta Mok's* brother-in-law, present in Tram Kak district from late 1977, then District Secretary); and Witness KHOEM Boeun (related to LENG An, the chief of Kraing Ta Chan, secretary of Cheang Tong commune then, from 1978, member of the District Committee).<sup>8901</sup> A fuller discussion of their roles is found in the Chamber's findings in relation to the Tram Kak Cooperatives. In addition to the aforementioned persons heard during the segment dedicated to the Tram Kak Cooperatives and Kraing Ta Chan, the Chamber also heard evidence from expert VOEUN Vuthy in relation to his analysis of human remains stored at Kraing Ta Chan.<sup>8902</sup>

2647. In addition to persons who appeared before the Chamber, a significant number of persons were interviewed in the course of judicial investigations who either worked

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<sup>8900</sup> RIEL Son gave evidence before the Chamber on 16, 17, 18 and 19 March 2015.

<sup>8901</sup> For the Chamber's findings in relation to the functions of PECH Chim, NEANG Ouch *alias Ta San*, and KHOEM Boeun, *see* Section 10.1: Tram Kak Cooperatives, para. 818. For the Chamber's findings on the identity and role of LENG An, *see below*, paras 2693-2698.

<sup>8902</sup> VOEUN Vuthy gave evidence before the Chamber on 13, 14 December 2016 and 10 January 2017.

at,<sup>8903</sup> were imprisoned at,<sup>8904</sup> or lived nearby Kraing Ta Chan.<sup>8905</sup> The Chamber considered these interviews when evaluating the evidence of persons who appeared before it, in particular in the event of either corroboration or material contradictions.<sup>8906</sup> Some of these persons could not be called because they had died.<sup>8907</sup> The Chamber also recalls that it found the collection of documents referred to as the Tram Kak District Records to be authentic.<sup>8908</sup> Documents in this collection are directly relevant to Kraing Ta Chan. The Chamber assesses the weight and probative value of particular documents in the sections which follow.

#### 12.3.2.2. Credibility and related fair trial challenges

2648. The NUON Chea Defence challenges the credibility of former prisoners MEAS

<sup>8903</sup> IEP Duch Interview Record, E3/4627, 30 October 2007; IEP Duch Interview Record, E3/430, 1 November 2007; SAING Sim Interview Record, E3/5853, 28 November 2007; TOEM Hy Interview Record, E3/9605, 6 December 2013. The Chamber rejected a request by the NUON Chea Defence, submitted under Internal Rule 87(4), to locate and hear SAING Sim as an additional witness. *See* Reasons Following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016 paras 42-47. In the same decision, the Chamber deferred a decision on TOEM Hy but in the end he was not heard by the Chamber either. *See* Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02, E459, 18 July 2017, para. 32.

<sup>8904</sup> HUN Kimseng Interview Record, E3/5826, 31 October 2007; HUN Kimseng Interview Record, E3/10753, 15 September 2015; SOK Soth Interview Record, E3/5835, 31 October 2007; SEANG Soeun Interview Record, E3/7901, 29 October 2007; UK Him Interview Record, E3/9584, 14 July 2014; LIM Hach Interview Record, E3/7984, 29 November 2007; NEANG Dam Interview Record, E3/7904, 1 November 2007; KEV Mao Interview Record, E3/7900, 29 October 2007; SET YEM Interview Record, E3/9484, 9 September 2014. The Chamber rejected a request from the NUON Chea Defence to hear as additional witnesses former Kraing Ta Chan prisoners including HUN Kimseng, MEAS Sarat, OUCH Han, SET Yem. *See* Reasons following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, paras 35-37 (in relation to HUN Kimseng and MEAS Sarat), 38-39 (in relation to OUCH Han), 40-41 (in relation to SET Yem).

<sup>8905</sup> THAONG Seav Interview Record, E3/7902, 29 October 2007.

<sup>8906</sup> Section 2: Preliminary Issues, para. 49 (noting that the Chamber takes into consideration consistencies and inconsistencies in relation to material facts, corroboration and all the circumstances of the case); Section 2: Preliminary Issues, para. 69 (noting that the Chamber may consider whether evidence is corroborated by other evidence and, if so, the nature of that evidence).

<sup>8907</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard During Case 002/02, E459, 18 July 2017, para. 28 (referring to witnesses SOK Soth, IEP Duch and NEANG Dam). The Chamber finds that two interviews given by IEP Duch require increased scrutiny because he accepted that he was the head of the District Youth and worked at Kraing Ta Chan. *See* Section 2: Preliminary Issues, para. 72. *See* WESU Report Witness IEP Duch (strictly confidential), E29/462, 4 October 2014, ERN (En) 01029906; Death Certificate of IEP Duch (strictly confidential), E29/462.1, 18 July 2014, ERN (Kh) 01029905.

<sup>8908</sup> Section 10.1.4: Authenticity of the Trak Kak District Records.

Sokha and SORY Sen.<sup>8909</sup> It submits that both persons are emblematic examples of this tribunal's over-reliance on Civil Parties which, after MEAS Sokha's appearance, prompted their request for the Chamber to change its previous practice, in particular by asking Civil Parties to take an oath.<sup>8910</sup> It emphasises several points in challenging MEAS Sokha and SORY Sen's credibility, including their age at the relevant time, the asserted implausibility of their accounts, inconsistencies between their accounts and other evidence (particularly the guards' evidence), and suggests biases or tendencies to embellish answers when pressed. For example, it characterises SORY Sen's evidence as a "preposterous account" which derives from him seeing himself as "Kraing Ta Chan's spokesperson" who has "both the motive and means to embellish his pre-determined account".<sup>8911</sup> Just as the Supreme Court Chamber found a witness it heard during the Case 002/01 appeal to be unreliable, the NUON Chea Defence submits that the same result should follow for MEAS Sokha and SORY Sen. It also contends that their questioning of SORY Sen was systematically disrupted and their questioning of MEAS Sokha was subject to "absurdly rigorous time limitations", such that their evidence went unscrutinised in an unfair way.<sup>8912</sup>

2649. The KHIEU Samphan Defence also challenges the credibility of SORY Sen, but it focuses on discrepancies between his account and evidence from guards SREI Than *alias* Duch and SAUT Saing.<sup>8913</sup> It submits that SORY Sen's evidence should be rejected because, having heard their contradictory accounts, the Chamber failed to schedule a further confrontation between SREI Than *alias* Duch, SAUT Saing and SORY Sen.<sup>8914</sup> No other Party made relevant submissions in this regard.

2650. As a preliminary matter, the Chamber finds that the evaluation of credibility requires a case-by-case assessment. Further, the Chamber finds that the NUON Chea Defence repeatedly misrepresented MEAS Sokha's status. He appeared as a witness and not, as asserted by the NUON Chea Defence, a Civil Party.<sup>8915</sup> This error was

<sup>8909</sup> NUON Chea Closing Brief, para. 455; T. 16 June 2017 (Closing Statements), E1/523.1, pp. 92-93, 99, 101.

<sup>8910</sup> NUON Chea Closing Brief, para. 456.

<sup>8911</sup> NUON Chea Closing Brief, para. 460.

<sup>8912</sup> NUON Chea Closing Brief, paras 455 (in relation to SORY Sen), 461 (in relation to MEAS Sokha).

<sup>8913</sup> KHIEU Samphan Closing Brief, paras 1300-1303.

<sup>8914</sup> KHIEU Samphan Closing Brief, paras 1301.

<sup>8915</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 31 (confirming that he took an oath before the Iron Statue); T. 17 November 2014, E1/245.1, p. 2 (Greffier confirming that the witness took an oath that morning).

pointed out during the course of Closing Statements, but the NUON Chea Defence did not correct their submissions until they filed an Amended Closing Brief some months later, permission for which had been given only to account for the transcript review exercise.<sup>8916</sup>

2651. The Chamber has repeatedly found that a person's status as either a witness or Civil Party does not lead to a mechanistic attribution of more or less weight.<sup>8917</sup>

2652. The Defence teams' submissions depend, to varying degrees, on discrepancies between the evidence from MEAS Sokha and/or SORY Sen on the one hand, and the Kraing Ta Chan guards SAUT Saing, VAN Soeun and/or SREI Than *alias* Duch, on the other. The Chamber finds the guards' evidence to be unreliable in key respects. A common feature of their evidence was a clear tendency to diminish their role(s), including the length of time they spent at Kraing Ta Chan, the tasks they performed, and their knowledge of or their possible involvement in executions. The Chamber rejects the KHIEU Samphan Defence's submission that the inconsistent accounts required a further confrontation to be scheduled. These persons and others provided extensive evidence which allows a rigorous assessment of their credibility. The Chamber provides more specific reasons below, beginning with the three guards.

#### 12.3.2.2.1. SAUT Saing

2653. SAUT Saing was interviewed by the Co-Investigating Judges in 2007, at which time he described himself as an army combatant sent to Kraing Ta Chan in late 1977 because he lost his weapon.<sup>8918</sup> He admitted that he performed some official roles once there: escorting prisoners and watching over them.<sup>8919</sup> He presented the impression that he was a victim rather than a perpetrator. In 2008, he applied to become a Civil Party in Case 002. In his Civil Party Application, he claimed that he was a prisoner at Kraing

<sup>8916</sup> T. 21 June 2017 (Closing Statements), E1/526.1, p. 72 (MEAS Sokha is not a Civil Party, but a witness who took an oath); T. 22 June 2017 (Closing Statements), E1/527.1, p. 41. The NUON Chea Defence subsequently used the opportunity to file an Amended Closing Brief addressing the impact of corrections to transcripts and/or typographical errors to amend some (*see* NUON Chea Closing Brief, paras 433, 455-456, 461, 463) but not all of the incorrect references to MEAS Sokha being a Civil Party (*see* NUON Chea Closing Brief, paras 46, 596, 626, fn. 3877 which persist with the erroneous submission).

<sup>8917</sup> Section 2.4.4.2: Evidence of Civil Parties, Witnesses and Experts.

<sup>8918</sup> SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 2, ERN (En) 00223548.

<sup>8919</sup> SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 4, ERN (En) 00223550 (describing escorting prisoners and watching over them while they worked in rice fields).

Ta Chan, with the caveat added that, since his “grandfather” was friends with the prison chief, he was put in charge of other prisoners.<sup>8920</sup> SAUT Saing was one of 11 Civil Parties declared admissible by the Co-Investigating Judges in relation to crimes committed at Kraing Ta Chan.<sup>8921</sup>

2654. Interviewed again by OCIJ investigators in 2013, SAUT Saing suggested that he had withdrawn his Civil Party Application.<sup>8922</sup> He repeated that he was sent to Kraing Ta Chan in 1977 as punishment for losing his weapon.<sup>8923</sup> He elaborated, however, that he was a member of the district militia, assigned to Kraing Ta Chan as a soldier then head of the prison guards because the prison chief knew *Ta Chem* a close friend of his family he considered as his “god-grand-father”.<sup>8924</sup> The Chamber notes that SAUT Saing’s answers therefore evolved from being a prisoner with some oversight over fellow prisoners, to being a guard in charge of other guards.

2655. Before the Chamber, SAUT Saing conceded that none of the harm mentioned in his victim information form related to his time at Kraing Ta Chan.<sup>8925</sup> He then offered an alternative motivation for his Civil Party Application, referring to a cousin detained and executed at Kraing Ta Chan.<sup>8926</sup> He accepted that he was sent to Kraing Ta Chan in 1976, possibly even early 1976, rather than late 1977 as he had previously claimed.<sup>8927</sup> He described his functions in somewhat less equivocal terms than before: he was sent

<sup>8920</sup> SAUT Saing Victim Information Form, E3/5863, 28 August 2008, pp. 6-7, ERN (En) 00379421-00379422. He also referred to himself as a “prison guard working outside (outside gate)”. The specific harms said to have been suffered included: feeling uncomfortable, suffering from headaches and being unproductive, shrapnel injuries and related pains.

<sup>8921</sup> Closing Order, para. 515 (fn. 2232) referring to SAUT Saing’s Civil Party Application “D22/0088”; Order on the Admissibility of Civil Party Applications from Current Residents of Takeo Province (OCIJ), D399, 31 August 2010, p. 11, ERN (En) 00598049 referring to SAUT Saing’s Civil Party Application 08-VU-01691 and D22/0088. See SAUT Saing Civil Party Application, E3/5863, 28 August 2008.

<sup>8922</sup> SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 4, ERN (En) 00970115 (Answers 6-7). The Chamber is unable to identify any record of such a withdrawal.

<sup>8923</sup> SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 6, ERN (En) 00970117 (Answer 24).

<sup>8924</sup> SAUT Saing Interview Record, E3/9583, 25 November 2013, pp. 4, ERN (En) 00970115 (Answer 5 referring to District Militia), 9, ERN (En) 00970120 (Answer 48, identifying *Ta Chem* as his “god-grandfather”).

<sup>8925</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 35, 52 (father died in 1973), 56 (injury suffered in 1973 when fighting former Khmer Republic soldiers in Takeo province).

<sup>8926</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 57-62 (referring to his cousin “*Bong Chea*”, the son of Pou Yun and Ming Mech). The Chamber is unable to identify any further evidence to confirm the detention of SAUT Saing’s cousin at Kraing Ta Chan.

<sup>8927</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 8 (referring to 1977 having stayed in “*Trapeang Lean*” during 1976), 28 (referring to 1976, but unsure whether it was late 1976 or early 1976), 80 (accepting that he was already at Kraing Ta Chan when *Yeay Nha* and her family arrived, but they arrived in the same year that he did).

to Kraing Ta Chan to be a guard and provide security.<sup>8928</sup> He described being one of six members of the District Military who all started working at Kraing Ta Chan at the same time, including his cousin VAN Soeun, SREI Than *alias* Duch and Sim.<sup>8929</sup> He described guarding the eastern part of the compound at Kraing Ta Chan.<sup>8930</sup> He described having various roles inside the prison compound: handling prisoners, reporting on the number of incoming and outgoing prisoners each day, shackling and unshackling prisoners.<sup>8931</sup> He described sleeping in the prison compound and having access to it to cook and feed pigs.<sup>8932</sup>

2656. SAUT Saing claimed that his unit was told to guard outside while the “staff” performed executions.<sup>8933</sup> He described the staff as including the three-member committee, together with members of the youth league and militia, who dug pits and buried bodies.<sup>8934</sup> SAUT Saing’s evidence fluctuated, however, over whether he personally witnessed any executions.<sup>8935</sup> He accepted that he witnessed interrogations from the kitchen on three or four occasions, and appeared to accept that he “glimpsed” prisoners being killed – albeit from a distance.<sup>8936</sup> At other times, he claimed that he only saw one interrogation, and one man killed, but then further qualified his evidence by saying that he did not witness the killing but “guessed” the man was killed.<sup>8937</sup> Contrary to his clear admission to investigators, he denied being the head of the guard

<sup>8928</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 9-10.

<sup>8929</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 26 (clarifying that they were in different 50-member units in the District Military, but in the same regiment).

<sup>8930</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 13.

<sup>8931</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 24.

<sup>8932</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 50.

<sup>8933</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 53-54.

<sup>8934</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 57; T. 25 March 2015 (SAUT Saing), E1/282.1, p. 26.

<sup>8935</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 58 (accepting that he sometimes saw a “glimpse” of executions from a distance); T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 22-23 (claiming not to have seen the physical act of executions).

<sup>8936</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 47-49 (describing witnessing interrogations), 57-58 (describing glimpses of executions).

<sup>8937</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 18 (describing witnessing a single interrogation), 19-21 (qualifying his evidence as to witnessing killings), 22 (explaining that he did not actually see the execution but that, as the person had disappeared when he returned from his guard, he “made a guess that he must have been taken away and killed”).



unit.<sup>8938</sup> He confirmed, however, that *Ta Chem*, a close friend of his family, was also friends with the prison chief *Ta An*.<sup>8939</sup>

2657. The Chamber finds that SAUT Saing repeatedly sought to alter or qualify his evidence in an attempt to minimise his association with atrocities, about which he clearly knows. The Chamber therefore approaches his evidence with great caution.

#### 12.3.2.2.2. *VAN Soeun*

2658. VAN Soeun made incoherent attempts to distance himself from events *inside* Kraing Ta Chan. The Chamber found crucial aspects of his account to lack credibility.

2659. When interviewed by OCIJ investigators in 2007, he said he was a member of the District Military transferred to Kraing Ta Chan in late 1976.<sup>8940</sup> He was part of a six-man guard unit with Duch, Sim, Saing, Touch and Uok.<sup>8941</sup> When interviewed by investigators in 2013, he specified that he was sent to Kraing Ta Chan in October or November 1976.<sup>8942</sup> Before the Chamber, however, he testified that he started work at Kraing Ta Chan much earlier, in late 1975 together with fellow guards Saing, Sim and Srei Than *alias* Duch.<sup>8943</sup>

2660. Once at Kraing Ta Chan, VAN Soeun was ordered by prison chief *Ta An* to deliver messages to the District Office at Angk Roka.<sup>8944</sup> VAN Soeun sought to emphasise that he was an “outside guard” with limited knowledge of the work of the “Party members” inside Kraing Ta Chan.<sup>8945</sup> He claimed that he was never allowed to work inside the compound – only Party members were allowed to work there, while his guard unit stayed at the outer part of the compound.<sup>8946</sup> He described Moeun, a member

<sup>8938</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 76; T. 25 March 2015 (SAUT Saing), E1/282.1, p. 48.

<sup>8939</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 28-29 (explaining that they knew each other from Totueng Thngai village).

<sup>8940</sup> VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 2, ERN (En) 00223208.

<sup>8941</sup> VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 4, ERN (En) 00223210.

<sup>8942</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 4, ERN (En) 00980280 (Answer 15).

<sup>8943</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 14-15, 23; T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 52-53.

<sup>8944</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 11, 27, 30, 43 (referring to Angk Roka). *See also*, Section 10.1: Tram Kak Cooperatives, para. 932.

<sup>8945</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 36; T. 4 March 2015 (VAN Soeun), E1/271.1, p. 94; T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 25, 35.

<sup>8946</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 94.

of the “Core Youth League”, passing messages from inside Kraing Ta Chan to him for onward delivery to the district.<sup>8947</sup> VAN Soeun accepted that his unit guarded prisoners working outside the main compound.<sup>8948</sup> He maintained, however, that his unit did not work inside the compound and did not transfer prisoners to and from the detention buildings and the interrogation site – again this was the work of Party members rather than mere guards.<sup>8949</sup>

2661. According to VAN Soeun, executions at Kraing Ta Chan were the work of Party members inside the main compound, rather than the guards outside.<sup>8950</sup> When interviewed by the Co-Investigating Judges in 2013, he volunteered the identity of two Party members called “Ruos” and “Khorn” who killed prisoners.<sup>8951</sup> Before the Chamber, however, VAN Soeun claimed not to know Ruos or Khorn.<sup>8952</sup> He insisted that he did not see executions because he guarded outside the compound, and there were two layers of fence and a lot of banana trees which meant he could not see.<sup>8953</sup>

2662. Other aspects of VAN Soeun’s evidence undermined his suggestion that his unit was distanced from the events inside the main compound. He had intimate knowledge of the inner workings of Kraing Ta Chan.<sup>8954</sup> When interviewed by OCIJ investigators in 2013, despite stating that he was based “outside” Kraing Ta Chan, he repeatedly described seeing *Ta An* writing letters inside the compound from a distance of six or seven metres.<sup>8955</sup> He also saw “Big Duch” – a reference to IEP Duch, the head of the

<sup>8947</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 5, ERN (En) 00980281 (Answers 17-21). For a further discussion of Moeun, *see below*, para. 2712.

<sup>8948</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 36.

<sup>8949</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 37.

<sup>8950</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 42 (identifying An, Penh, Chhen, Moeun, Chheang and Chhoeun).

<sup>8951</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, pp. 24-25, ERN (En) 00980300-00980301 (Answers 187, 193 identifying Chhieng, Penh, Moeun, Ruos and Khorn as five Party members who were killers).

<sup>8952</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 18, 35 (“I really did not know Ruos and Khorn”), 42-44. The Chamber notes that SAUT Saing also identified *Ta Khorn* and *Ta Ruos* as people from the district who were responsible for executions at Kraing Ta Chan: SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 12, ERN (En) 00970123 (Answer 74).

<sup>8953</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 85; VAN Soeun Interview Record, E3/9586, 18 December 2013, pp. 22-23, 25, ERN (En) 00980298-00980299, 00980301 (Answers 176, 183, 193).

<sup>8954</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 29, 36; T. 4 March 2015 (VAN Soeun), E1/271.1, p. 93; T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 25, 35.

<sup>8955</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 46; VAN Soeun Interview Record, E3/9586, 18 December 2013, pp. 5, ERN (En) 00980281 (Answer 23, “I was posted outside”), 8, ERN (En) 00980284 (Answer 44, describing seeing *Ta An* writing letters).

District Youth – participate in meetings every month at Kraing Ta Chan.<sup>8956</sup> He knew that Party members took turns interrogating prisoners.<sup>8957</sup> He described fellow guard SREI Than *alias* Duch *alias* “Sarat” using the typewriter inside Kraing Ta Chan “every day”.<sup>8958</sup> He described a conversation with *Ta An* during one lunchtime, when *Ta An* made a statement about all Khmers being equal.<sup>8959</sup> He described sleeping in a room close to the fence, together with prisoner MEAS Sokha.<sup>8960</sup> He knew that executions took place, suggesting a frequency of perhaps once or twice per month.<sup>8961</sup> He also gave a detailed account of the killing of MEAS Sokha’s family members, explaining that “*Ta Kun*” and “*Boeun*” arrived first and were killed shortly thereafter: *Ta Kun* first then *Boeun*.<sup>8962</sup> The Chamber finds that VAN Soeun was selective and at times inconsistent in the evidence he provided, in particular in relation to his knowledge of events inside the main compound. The Chamber therefore approaches his evidence with caution.

#### 12.3.2.2.3. *SREI Than alias Duch*

2663. SREI Than *alias* Duch’s evidence differed from that given by VAN Soeun and SAUT Saing. At first, he was more forthcoming than his two colleagues. When interviewed by OCIJ investigators in 2008, he assisted with a sketch of the layout of Kraing Ta Chan and he described working there as guard and typist. He accepted that people were beaten during interrogations and smashed.<sup>8963</sup> Unlike SAUT Saing and VAN Soeun, he described his unit guarding detention buildings, with three guards assigned to the west and three guards to the east.<sup>8964</sup> SREI Than *alias* Duch guarded the eastern building with the main guard post being just 20 metres away – but during duty he sat even closer to the building.<sup>8965</sup> He described the main compound to be relatively small, estimating it to be some 1.5 hectares in size. He described resting inside the

<sup>8956</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 31, 38-39 (stating that he was scared to look at Big Duch’s face).

<sup>8957</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 33-34.

<sup>8958</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 46.

<sup>8959</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 37-38.

<sup>8960</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, p. 36.

<sup>8961</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, p. 31.

<sup>8962</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 10-11, 67 (husbands killed first); T. 5 March 2015 (VAN Soeun), E1/272.1, p. 9.

<sup>8963</sup> SREI Than Interview Record, E3/5852, 16 September 2008, p. 4, ERN (En) 00231675.

<sup>8964</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 26.

<sup>8965</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 9.

fence, next to the gate, in an area where three or four persons could tie hammocks.<sup>8966</sup>

2664. At other times, however, SREI Than *alias* Duch gave inconsistent evidence. His evidence fluctuated when asked about the date his unit arrived at Kraing Ta Chan, seeking to push back the date and reduce the length of time he worked inside the main compound. In 2008, he told investigators he was sent to Kraing Ta Chan during the harvest months of 1977. He described a first period receiving prisoners brought by commune militia, then a second period from March or April 1978 when he typed documents inside Kraing Ta Chan.<sup>8967</sup> In 2009, he told investigators that he was sent to Kraing Ta Chan in late 1977.<sup>8968</sup> He described being based about one kilometre away initially, only later working as a typist inside Kraing Ta Chan.<sup>8969</sup> He repeated that it was in 1978 when his group was moved to work inside the prison compound.<sup>8970</sup> In 2013, he told investigators that he started working at Kraing Ta Chan in 1976 or 1977, but claimed that he only worked as a typist for the last two or three months of his time there.<sup>8971</sup>

2665. Before the Chamber, SREI Than *alias* Duch testified that he was transferred to Kraing Ta Chan at the end of December 1976, or early January 1977.<sup>8972</sup> He maintained that two distinct phases followed: a first phase of almost one year when his unit worked one kilometre from the main compound, escorting arriving prisoners from there to Kraing Ta Chan,<sup>8973</sup> followed by a second phase when his unit was “asked to go inside” to guard, after which he was tasked with typing.<sup>8974</sup> He testified that the second phase started in late 1977 or early 1978, when he was assigned to guard the gate close to the prison buildings.<sup>8975</sup> He attributed the reason for his move there to the fact that there

<sup>8966</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 60-61, 99; T. 24 February 2015 (SREI Than), E1/268.1, pp. 12-14, 23.

<sup>8967</sup> SREI Than Interview Record, E3/5853, 16 September 2008, pp. 2-3, ERN (En) 00433568-00433569.

<sup>8968</sup> SREI Than Interview Record, E3/5834, 29 December 2009, p. 2, ERN (En) 00434688 (Answers 2-3).

<sup>8969</sup> SREI Than Interview Record, E3/5834, 29 December 2009, p. 4, ERN (En) 00434690 (Answers 14-16).

<sup>8970</sup> SREI Than Interview Record, E3/5834, 29 December 2009, p. 7, ERN (En) 00434693 (Answer 49).

<sup>8971</sup> SREI Than Interview Record, E3/9597, 31 October 2013, pp. 3, 6, ERN (En) 00970068, 00970071 (Answers 3, 26).

<sup>8972</sup> T. 24 February 2015 (SREI Than), E1/268.1, pp. 31-32.

<sup>8973</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 14, 18 (confirming that he walked the prisoners upon their arrival); T. 23 February 2015 (SREI Than), E1/267.1, p. 44; T. 24 February 2015 (SREI Than), E1/268.1, p. 33.

<sup>8974</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 46.

<sup>8975</sup> T. 24 February 2015 (SREI Than), E1/268.1, pp. 23, 27.

was a “larger number of prisoners” at the time, and he testified that the second phase lasted some six months until he left Kraing Ta Chan in June or July 1978.<sup>8976</sup>

2666. SREI Than *alias* Duch’s evidence became increasingly inconsistent and incoherent when he sought to introduce greater distance between his unit and events inside Kraing Ta Chan. He repeatedly distinguished his unit – the “combatants” – from the main prison staff.<sup>8977</sup> Bearing similarities to evidence given by SAUT Saing and VAN Soeun, he testified that his unit was told to guard the outside of Kraing Ta Chan while people were killed inside. He accepted, however, that he heard screams from people inside.<sup>8978</sup> As noted, whereas he described his unit guarding close to the detention buildings, at other times he claimed that his unit was generally on duty outside the main compound and they only went inside “accidentally”.<sup>8979</sup> This evidence was not credible, especially given that he accepted that he worked inside the compound, including when he typed lists of prisoners who were new arrivals, and lists of those who were killed.<sup>8980</sup> He testified that he saw prisoners returning to the prison building after having been beaten during interrogations.<sup>8981</sup> Considering the relatively small size of compound he described, SREI Than *alias* Duch’s belated attempts to introduce greater distance between his unit and events inside Kraing Ta Chan were not credible.

2667. While the Chamber accepts there was a distinction between the guard unit and more senior persons at Kraing Ta Chan, the specifics of SREI Than *alias* Duch’s account did not withstand scrutiny. He tried to introduce a unique and implausible distinction by claiming that his unit was so separate from Kraing Ta Chan that the leadership could not even issue it with “instructions”. He then distinguished “instructions”, which could not be given, from “requests” to perform a specific task, which he accepted his unit indeed performed.<sup>8982</sup> He maintained that the Kraing Ta

<sup>8976</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 63; T. 24 February 2015 (SREI Than), E1/268.1, pp. 23, 39, 42). He therefore maintained that, although he knew that his elder cousin MEAS Phoeun was imprisoned at Kraing Ta Chan, and the Tram Kak District Records indicate this was in mid-April 1977, he did not see his cousin. See T. 23 February 2015 (SREI Than), E1/267.1, pp. 31, 34; Tram Kak District Record, E3/5854, 17 April 1977, ERN (En) 00322134.

<sup>8977</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 10, 39 (claiming his unit was “not part of the prison staff”); T. 24 February 2015 (SREI Than), E1/268.1, p. 24.

<sup>8978</sup> SREI Than Interview Record, E3/5834, 29 December 2009, p. 5, ERN (En) 00434691 (Answer 26).

<sup>8979</sup> T. 24 February 2015 (SREI Than), E1/268.1, p. 16.

<sup>8980</sup> SREI Than Interview Record, E3/9597, 31 October 2013, p. 7, ERN (En) 00970072 (Answers 31-32).

<sup>8981</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 11.

<sup>8982</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 11, 56; T. 24 February 2015 (SREI Than), E1/268.1, pp. 24-25.

Chan leaders had no real authority over his six-man unit, which instead remained under the authority of the “military district”.<sup>8983</sup> Although he typed for prison chief An, he claimed this did not amount to supervision.<sup>8984</sup> The Chamber did not find these aspects of his account to be credible in light of evidence confirming that his unit followed orders from *Ta An*.<sup>8985</sup> The Chamber therefore approaches SREI Than *alias* Duch’s evidence with caution.

#### 12.3.2.2.4. *MEAS Sokha*

2668. The NUON Chea Defence focuses their challenges to MEAS Sokha’s credibility on his accounts of events at Kraing Ta Chan. It does not appear to challenge directly MEAS Sokha’s account of his arrest from a cooperative in Cheang Tong commune or transfer to Kraing Ta Chan via Angk Roka. The Chamber nonetheless considers MEAS Sokha’s account of these events to be relevant to the holistic assessment of MEAS Sokha’s credibility.

2669. MEAS Sokha explained that he was born in around 1960. In 1976, he worked in a children’s unit comprised of 10-14 year-olds because he was small for his age. In June 1976, his father MEAS Kun and brother-in-law MOM Boeun were arrested at the cooperative. He described the circumstances of his father’s arrest, including his father’s last words to him.<sup>8986</sup> Then a few days later, MEAS Sokha and around 12 members of his family were arrested.<sup>8987</sup> Among those arrested were his elder sister MEAS Sarat and her small children, and his mother HUN Kimseng who also had a baby.<sup>8988</sup> MEAS Sarat was MOM Boeun’s wife.<sup>8989</sup> MEAS Sokha testified that when he arrived at Kraing Ta Chan via another prison in Angk Roka, he saw his father’s cigarette lighter

<sup>8983</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 48-49.

<sup>8984</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 11-12.

<sup>8985</sup> *See above*, paras 2660, 2664.

<sup>8986</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 61 (describing his return from working in the children’s unit at lunchtime, the arrest of his father MEAS Kun by militiamen, his father leaving him his plate, spoon and knife then telling his son: “You should go home.”).

<sup>8987</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 37 (describing the children’s unit), 56 (stating that 12 members were arrested because his father had complained about food rations); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 68 (describing a “preparatory children’s unit”); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 27 -28 (explaining that he was 15 years old in 1975 but he was small for his age and his mother referred to him as a “stunt”); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 5, ERN (En) 00223497 (stating that he was 16 or 17 when he was arrested).

<sup>8988</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 57 (“For my sister’s babies, the oldest ones were three or four years old and the infant was two months old”).

<sup>8989</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 27.

and learned from others that his father had already been killed.<sup>8990</sup> His aunt THAO Sin *alias* Yeay Sin told him that his father and brother-in-law had been badly beaten. MEAS Sokha never saw his father again.<sup>8991</sup> The chief of the prison and other guards also told MEAS Sokha that his father had been smashed in the prison compound.<sup>8992</sup> HUN Kimseng *alias* Yeay Nha also described to investigators seeing her husband's lighter at Kraing Ta Chan, and explained that, when she arrived at Kraing Ta Chan, she learned from others that her husband had been beaten to death using an ox-cart axle.<sup>8993</sup>

2670. MEAS Sokha's account of his family's arrest and their transfer to Kraing Ta Chan is confirmed by documentary evidence. A notebook contains entries for his father MEAS Kun and his brother-in-law MOM Boeun.<sup>8994</sup> The same notebook contains entries for his mother HUN Kimseng, his sister MEAS Sarat and his aunt THAO Sin.<sup>8995</sup> The execution of his father and brother-in-law is specifically recorded by the following annotation to a list of prisoners which includes HUN Kimseng and MEAS Sarat: "The two women were the spouses of Kun and Boeun. We smashed their husbands because of their involvement in inciting people to depose a village chief."<sup>8996</sup> The Chamber finds that this evidence confirms MEAS Sokha's credibility when he testified to why MEAS Kun and MOM Boeun were arrested and killed.

2671. The presence of MEAS Sokha and his family at Kraing Ta Chan, and the execution of his father and brother-in-law, is further confirmed by other witnesses and Civil Parties. KHOEM Boeun, the former secretary of Cheang Tong commune, recalled the arrest of MEAS Sokha and his family from Srae Kruo village in Cheang Tong commune. According to her, MEAS Kun was said to have been involved in organising a petition to dismantle the cooperative, followed by a meeting of 50 to 70 persons to denounce the village chief Nop. This led to reports from the village to the commune,

<sup>8990</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 63-64.

<sup>8991</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 63-64; T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 13 (stating that Kraing Ta Chan staff told him that his father had been killed three days before MEAS Sokha arrived there), 33-34 (confirming THAO Sin was *Yeay* Sin, who told him that his father had been taken away, and stating that she later died at Kraing Ta Chan together with five or six relatives, including her husband and children).

<sup>8992</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 42.

<sup>8993</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 7, ERN (En) 01168012 (Answers 28-30).

<sup>8994</sup> Kraing Ta Chan Notebook, E3/4095, undated, p. 15, ERN (En) 00747250.

<sup>8995</sup> Kraing Ta Chan Notebook, E3/4095, undated, pp. 27, ERN (En) 00747262 (HUN Seng), 28, ERN (En) 00747263 (MEAS Sarat), 19, ERN (En) 0747254 (THAO Sin).

<sup>8996</sup> Tram Kak District Record, E3/4145, undated, p. 1, ERN (En) 00762837.

then district militia arrested MEAS Kun.<sup>8997</sup> Kraing Ta Chan guard and messenger VAN Soeun recalled that he was at Kraing Ta Chan when MEAS Sokha's family arrived: he remembered the husbands arriving first and the families arriving later.<sup>8998</sup> VAN Soeun testified that *Ta* Kun and Boeun were interrogated and killed just after they arrived.<sup>8999</sup> Another guard, SAUT Saing, also recalled the detention of *Yeay* Nha (*i.e.* HUN Kimseng) and her children, including *Yeay* Rat (*i.e.* MEAS Sarat), whom he said were detained *after* their husbands.<sup>9000</sup> Prisoner SORY Sen, who was already in Kraing Ta Chan, recalled that Kun and Boeun were tortured to death and their bodies buried at the south fence, where he planted coconut trees.<sup>9001</sup> Another prisoner VONG Sarun, who arrived in May 1977, confirmed that *Yeay* Nha and her family were at Kraing Ta Chan when she was there.<sup>9002</sup> HUN Kimseng was interviewed by investigators and her account was essentially the same as MEAS Sokha's account.<sup>9003</sup> MOM Boeun's elder brother, SOK Soth, likewise told investigators that he was arrested after his younger brother and *Yeay* Nha's husband, and he too was taken to Kraing Ta Chan.<sup>9004</sup> The Chamber concludes that there is no doubt whatsoever that MEAS Sokha and many of his relations were arrested from Cheang Tong commune and taken to Kraing Ta Chan, where his father and brother-in-law were killed. MEAS Sokha's detailed account of these events was credible and reliable in its entirety.

2672. As noted, the NUON Chea Defence's challenge to MEAS Sokha's credibility seems to focus on his account of what he experienced and witnessed while at Kraing

<sup>8997</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 77-80.

<sup>8998</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 24-25; T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 66-67 (the families arrived perhaps one or two weeks after the husbands).

<sup>8999</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 10, 65-66; T. 5 March 2015 (VAN Soeun), E1/272.1, p. 9 (stating that *Ta* Kun died first).

<sup>9000</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 79-81.

<sup>9001</sup> T. 5 February 2015 (SOR Y Sen), E1/257.1, pp. 77-78 (expanding that MOM Boeun was initially placed in the west prison building, then he was interrogated, beaten and placed in the east prison building where SORY Sen was at the time).

<sup>9002</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 13, 28-29 (referring to several of her sons and her youngest daughter who was 4-5 years of age, and stating that they were allowed to stay outside the cell because *Yeay* Nha was a cook).

<sup>9003</sup> HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 3, ERN (En) 00223488 (describing the arrest of her husband and son-in-law around one week before she was arrested with her children, and describing how she had to serve food and gruel to the prisoners); HUN Kimseng Interview Record, E3/10753, 15 September 2015, pp. 6-7, ERN (En) 01168011-01168011 (Answers 27-28, describing the arrest of her husband for complaining in the cooperatives and, when arriving at Kraing Ta Chan, seeing his lighter on the wall and being told by his cousin he had been "taken away" that morning).

<sup>9004</sup> SOK Soth Interview Record, E3/5835, 31 October 2007, p. 3, ERN (En) 00223505 (describing his arrest the morning after the arrest of his younger brother and *Yeay* Nha's husband, his detention in an "Industry building" for six days, before being transferred to Angk Roka then Kraing Ta Chan with *Yeay* Nha's family).



Ta Chan. By MEAS Sokha's own account, compared to most prisoners he and his surviving family members had a relatively privileged status. After an initial 20 to 30 days when he was not allowed to go outside, he was put to work.<sup>9005</sup> MEAS Sokha and some of his family members then received larger food rations compared to other prisoners.<sup>9006</sup> Although his tasks varied, they included: taking buffaloes to plough at dawn; picking vegetables and fruits for the guards in the morning; tending cows and buffaloes in the afternoon which allowed him to travel several kilometres away from Kraing Ta Chan, provided that he returned by around 5 p.m.; catching frogs or fish in the evening; and having to collect meals from the guards' kitchen.<sup>9007</sup> He was allowed to sleep outside the main detention buildings.<sup>9008</sup> Although MEAS Sokha had some freedom of movement during the daytime, he explained that could not escape because his remaining family members would be in jeopardy.<sup>9009</sup>

2673. Contrary to the NUON Chea Defence's submissions, the Chamber found MEAS Sokha's general account of his relatively privileged position at Kraing Ta Chan to be reliable and coherent. The Chamber rejects the submission that MEAS Sokha's age at the time of events should lead to less weight being given to his evidence. He was 16 or 17 at the time of his arrest and incarcerated for an extended period of time. He accurately and honestly described his arrest and arrival at Kraing Ta Chan. Moreover,

<sup>9005</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 10 (describing being allowed outside after about a month), 13-14 (starting work 20-25 days after his initial detention), 34 (initially he was kept inside and not allowed to go outside), 75 (he was initially detained for 25-30 days before starting work).

<sup>9006</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 14 (explaining that his mother and sister made gruel during the day and thus had some influence over the food); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 42 (receiving a bigger ladle of gruel compared to other prisoners), 45 (receiving more food than other prisoners); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 5, ERN (En) 00223497 (receiving more rations than given to prisoners held in cell: "They let us at twice a day.").

<sup>9007</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 14 (describing tending two cows and four buffaloes, but having to return by 5 p.m. then catching fish and frogs), 16-17 (describing picking vegetables and taking them to the guard's kitchen), 46-47 (describing bringing vegetables to the kitchen-hall close to the interrogation site), 70 (recalling being asked to take buffaloes to plough), 75 (describing tending two cows and four buffaloes, ploughing at dawn, then later having to return by 5 p.m.), 76 (describing collecting meals in the guards' kitchen), 77 (stating that during the day, he could even walk to Damrei Romeal); T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 24 (explaining that after 5 p.m. or 6 p.m. he would be called to assist guards for example by hunting frogs as required).

<sup>9008</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 87-88 (describing being allowed to sleep near to the detention building, on a bed underneath a gum tree); T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 49 (describing sleeping outside, when he saw prisoners brought into Kraing Ta Chan). This finds substantial corroboration in the evidence given by one of the Kraing Ta Chan guards, who described sleeping in the same room with MEAS Sokha at the outer gate to Kraing Ta Chan. *See* T. 5 March 2015 (VAN Soeun), E1/272.1, p. 36 (describing how MEAS Sokha the child of *Yeay Nha* slept in the same room with VAN Soeun).

<sup>9009</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 77 (explaining that he did not dare to flee as his mother would then be killed).

guard VAN Soeun confirmed that MEAS Sokha tended cows at Kraing Ta Chan and that he was allowed to sleep in the same room as him, rather than in the detention buildings.<sup>9010</sup> While it is not necessary for the Chamber to make a finding as to the possible reason(s) for such preferential treatment, MEAS Sokha's mother, HUN Kimseng *alias* Yeay Nha, told investigators that she was not killed because the prison chief hailed from her village in Cheang Tong commune.<sup>9011</sup> MEAS Sokha and some of his relatives (his mother, elder brother, sister and three others) were eventually released from Kraing Ta Chan in around August 1978.<sup>9012</sup> The guard VAN Soeun also confirmed to the investigators that he led the wives and children back to Srae Kruo village in Cheang Tong commune.<sup>9013</sup> The Chamber accepts MEAS Sokha's general description of his position at Kraing Ta Chan.

2674. The NUON Chea Defence also challenged MEAS Sokha's account of witnessing three particular atrocities at Kraing Ta Chan, the thrust of these submissions being that these instances revealed MEAS Sokha's evidence to be implausible, invented or embellished. The challenged incidents were: a man suffocated during an interrogation; the killing of baby smashed against a tree; and a mass execution. The Chamber evaluates these incidents in its factual findings below.

2675. The Chamber rejects the NUON Chea Defence's submissions that undue time limits were imposed on their examination. MEAS Sokha was the first witness to appear

<sup>9010</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 78; T. 5 March 2015 (VAN Soeun), E1/272.1, p. 36.

<sup>9011</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 6, ERN (En) 01168011 (Answer 23). To somewhat similar effect, KHOEM Boeun, the former chief of Cheang Tong commune, explained that she and *Ta An* were cousins. *See* T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 26. Consistently with this, a former guard from Kraing Ta Chan told the Office of Investigating Judges that An had lived in Kbal Au village in Cheang Tong commune: SAING Sim Interview Record, E3/5853, 28 November 2007, p. 4, ERN (En) 00433570.

<sup>9012</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 42-43 (describing the release of his mother, brother and sister around August 1978), 75 (identifying *Ta Chhen*, *Ta Seng*, *Sok San* and *Sok Soth* as released at the same time); SOK Soth Interview Record, E3/5835, 31 October 2007, p. 6, ERN (En) 00223508 (describing his release when the prison chairman wrote a letter to send through the militia to the commune chief); HUN Kimseng Interview Record, E3/5826, 31 October 2007, pp. 5-6, ERN (En) 00223490-00223491 (placing her release in June 1978, when she was transported back to the cooperative); HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 18, ERN (En) 01168023 (Answer 110-111, stating that after 23 months, she was told that she had served her sentence so she was released to a reserve/preparatory cooperative).

<sup>9013</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 13, ERN (En) 00980289 (Answers 90-91, including the suggestion, which the Chamber finds to be mistaken, that the family was released in 1979).

before the Chamber in Case 002/02. He was scheduled to be heard for one day.<sup>9014</sup> Instead, his evidence lasted three trial days. The Co-Prosecutors questioned MEAS Sokha for approximately two hours and 51 minutes split over two morning sessions on 8 and 21 January 2015.<sup>9015</sup> The Lead Co-Lawyers for the Civil Parties questioned him for approximately 24 minutes on 21 January 2015.<sup>9016</sup> The NUON Chea Defence questioned MEAS Sokha for approximately two hours and 17 minutes over the course of two days on 21 and 22 January 2015.<sup>9017</sup> The KHIEU Samphan Defence questioned MEAS Sokha for approximately one hour and twelve minutes on 22 January 2015.<sup>9018</sup>

2676. As noted below, the NUON Chea Defence spent nearly one hour of their time questioning MEAS Sokha on a single suffocation incident. After this, counsel submitted without substantiation that his approach was the “only way” to test MEAS Sokha’s credibility and a further three hours was necessary.<sup>9019</sup> The Chamber has reviewed the transcript and finds that there were occasions when counsel’s questions were repetitive and/or mischaracterised MEAS Sokha’s previous answers.<sup>9020</sup> To the extent that limitations were imposed on counsel’s questioning, they were justified in the circumstances. The NUON Chea Defence had ample opportunity to question MEAS Sokha on any subject they chose. Fair time limits are appropriate to impose discipline on questioning. The NUON Chea Defence also had numerous opportunities to question other witnesses about the incidents described by MEAS Sokha, including the suffocation incident, the killing of children and mass executions. The Chamber rejects

<sup>9014</sup> See Scheduling Order for Evidentiary Proceedings, E328, 17 December 2014 and Tram Kok Cooperatives and Kraing Ta Chan Witnesses, Civil Parties and Experts, E328.1, 17 December 2014 (listing the time allocation to be given to 2-TCW-936).

<sup>9015</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 36-65 (Co-Prosecutors’ questioning from approximately 10.51 a.m. to 12.05 p.m.); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 7-46 (Co-Prosecutors’ questioning from approximately 10.01 a.m. to 11.38 a.m.).

<sup>9016</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 57-67 (Lead Co-Lawyers’ questioning from approximately 1.37 p.m. to 2.01 p.m.).

<sup>9017</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 67-83 (NUON Chea Defence questioning from approximately 2.02 p.m. to 2.36 p.m.), pp. 84-108 (NUON Chea Defence questioning from approximately 3 p.m. to 4.01 p.m.); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 10-25 (NUON Chea Defence questioning from approximately 10.28 a.m. to 11.08 a.m.).

<sup>9018</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 25-54 (KHIEU Samphan Defence questioning from approximately 11.08 a.m. to 12.20 p.m.).

<sup>9019</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 6.

<sup>9020</sup> See e.g., T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 16-17 (counsel directed to move on from asserting that MEAS Sokha never saw the baby being killed, when MEAS Sokha had repeatedly stated that he saw this incident); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 23-25 (characterising MEAS Sokha’s earlier evidence as having denied being involved in burials, when his prior evidence was that he had been involved in burials but other persons such as SORY Sen and Ta Chhen had dug the pits beforehand).

the submission that the time limits imposed on the questioning of MEAS Sokha were too rigorous. There was no breach of NUON Chea's right to a fair trial.

#### 12.3.2.2.5. *SORY Sen*

2677. As noted, the NUON Chea Defence challenges the credibility of Civil Party SORY Sen. He was arrested and taken to Kraing Ta Chan in 1974.<sup>9021</sup> His father, for whom his mother worked, was a former official in the pre-1970 era.<sup>9022</sup> His father's past role led SORY Sen to use his mother's name KHUTH San, to conceal his background.<sup>9023</sup> SORY Sen gave evidence that, once at Kraing Ta Chan, his life was saved because the former prison chief *Ta Chhen* asked the new prison chief *Ta An* to spare him.<sup>9024</sup> PHANN Chhen essentially confirmed this, describing a visit to Kraing Ta Chan in 1975 when he saw SORY Sen who was 12 or 13 years old. PHANN Chhen knew SORY Sen because they were from the same commune. He confirmed that he took pity on him, then made a request to the Tram Kak District Committee for him to be spared to tend cows. PHANN Chhen confirmed that this is why SORY Sen survived.<sup>9025</sup>

2678. SORY Sen described having various tasks at Kraing Ta Chan including: farming, ploughing and tending cattle;<sup>9026</sup> carrying faeces from detention buildings;<sup>9027</sup> digging pits into which human corpses were placed, and dragging bodies from detention buildings to those pits;<sup>9028</sup> dragging bodies from the interrogation room to burial

<sup>9021</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 44 (stating he was arrested in 1974 but he could not recall the month).

<sup>9022</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 41-42, 55 (explaining that his father was not his mother's "lawful husband" and he learned this from his father's relatives).

<sup>9023</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 42. *Cf.* T. 4 March 2015 (VAN Soeun), E1/271.1, p. 64 (stating he only knew his name as SAY Sen; the name KHUT Sen did not ring a bell).

<sup>9024</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 92; T. 5 February 2015 (SORY Sen), E1/257.1, p. 40 (*Ta Chhen* told the people at Kraing Ta Chan to keep the Civil Party alive).

<sup>9025</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 76-78, 88; T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 24, 39-40, 84.

<sup>9026</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 45, 47 (explaining that he might return from tending cattle at around 4 p.m.).

<sup>9027</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 45, 49 (describing collecting coconut shells with human faeces and urine in them); T. 6 February 2015 (SORY Sen), E1/258.1, p. 17 (stating that if ordered to carry faeces or urine, he had to do it).

<sup>9028</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 45-46, 48 (describing how, if there was a dead body in the detention building, he had to remove and bury the body); 57 (when a person went without food and died, SORY Sen was ordered to drag bodies out to the pits for burial); 89-91 (explaining that bodies were left until 4 p.m. the next day, then he was the one ordered to unshackle the dead body and remove it).

sites;<sup>9029</sup> growing coconut trees;<sup>9030</sup> collecting alcoholic “palm juice” for guards;<sup>9031</sup> carrying prisoners to and from the interrogation building;<sup>9032</sup> cleaning and sweeping the site, including the interrogation room;<sup>9033</sup> and carrying a bucket of water or food to prisoners for their meals.<sup>9034</sup> He often worked together with another prisoner called IET Chen *alias* Ta Chen or Ta Chhin, who was over 50 years old.<sup>9035</sup> Another prisoner called Ta Norn also dug pits until around 1976.<sup>9036</sup>

2679. Contrary to the NUON Chea Defence’s submission that SORY Sen’s account of his tasks at Kraing Ta Chan was “preposterous”, the Chamber found SORY Sen’s description of his survival and his various roles to be reliable, coherent and corroborated by other evidence. Guard SREI Than *alias* Duch confirmed that, when he started working at Kraing Ta Chan, SORY Sen was allowed out to work, including cooking, but he was detained overnight.<sup>9037</sup> Guard VAN Soeun confirmed that people who “worked inside the compound”, including “Sen”, had to remove prisoners who had died in the detention buildings following beatings.<sup>9038</sup> He therefore specifically confirmed that SORY Sen, and also Ta Chhin, had to carry out dead bodies of prisoners who died

<sup>9029</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 99 (when a prisoner was clubbed to death, SORY Sen and Ta Chen were ordered to drag the body out).

<sup>9030</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 46.

<sup>9031</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 46; T. 5 February 2015 (SORY Sen), E1/257.1, p. 63 (describing prison chief An as being drunk and shouting and other guards inebriated).

<sup>9032</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 57.

<sup>9033</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 82.

<sup>9034</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 88-89; T. 6 February 2015 (SORY Sen), E1/258.1, p. 13 (describing taking food to MEAS Kun in the west building).

<sup>9035</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 45-46 (“they order me and Ta Chen to dig the grave or to dig the pits or also to bury the pits”), 81 (Ta Chhin was fifty something years old), 99; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 11-12. *See also*, Tram Kak District Record, E3/4145, ERN (En) 00762837 (List of prisoners detained for months or years, identifying IET Chin, 51 years old, as a civilian from Slaeng Kaong village in Nhaeng Nhang commune). This further corroborates MEAS Sokha evidence that Ta Chhin was involved in burying bodies following the mass execution discussed below at paras 2679, 2758, 2773.

<sup>9036</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 65, 101 (describing three prisoners working together, under the supervision of a soldier, digging pits), 75 (describing Ta Norn as responsible for fishing); T. 5 February 2015 (SORY Sen), E1/257.1, p. 9 (stating Ta Norn came from Hanoi and married a woman in Samraong commune who was “pure Khmer”); THAONG Seav Interview Record, E3/7902, 29 October 2007, p. 5, ERN (En) 00223470 (describing a person (THAONG Nat) carrying water nearby when he snuck up to THAONG Seav to tell her that her uncle, THAI Nath *alias* Ta Norn, had been killed inside Kraing Ta Chan). *See also*, HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 17, ERN (En) 01168022 (Answers 103-107, referring to Ta Norn, who did cooking, was killed at Kraing Ta Chan about one month after she had arrived there).

<sup>9037</sup> T. 19 February 2015 (SREI Than), E1/266.1, pp. 21-23; T. 23 February 2015 (SREI Than), E1/267.1, pp. 39, 63-64 (confirming that SORY Sen was a prisoner when SREI Than arrived and remained a prisoner after he left).

<sup>9038</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 38 (“They organised people; for example, in the case of Sen.”).

from beatings. SAUT Saing said that SORY Sen was engaged in “all kinds of works in the compound”.<sup>9039</sup> Prisoner VONG Sarun testified that SORY Sen was allowed to work outside of Kraing Ta Chan, and that he had to drag away dead prisoners and carry faeces from the detention buildings.<sup>9040</sup> When her group was ordered to carry human waste fertiliser to rice fields, they worked with SORY Sen, and during the planting season he also worked with her.<sup>9041</sup> SORY Sen’s account of the work he performed at Kraing Ta Chan finds further corroboration in interviews from a former guard<sup>9042</sup> and prisoners.<sup>9043</sup>

2680. SORY Sen gave evidence that his father was killed at Kraing Ta Chan. Although this incident appears to have pre-dated 17 April 1975, the Chamber scrutinised SORY Sen’s account because it was challenged by the NUON Chea Defence and is relevant to the Chamber’s overall credibility assessment. Before the Chamber, SORY Sen stated that he did not witness the execution.<sup>9044</sup> He told investigators in 2008 that he learned of his father’s arrival at Kraing Ta Chan from “*Ta Chhuon*” and that, although he did not see the execution, he saw his father’s dead body at an area known as the “old dungeon” under some tamarind trees.<sup>9045</sup> He further identified one of the Kraing Ta Chan staff called “Cheng” as having taken his father’s hat. Cheng and other prison staff including *Ta An* would sometimes wear this hat. SORY Sen was able to take his dead father’s t-shirt and sarong which he used to cover himself at night.<sup>9046</sup>

2681. It was suggested by the NUON Chea Defence that SORY Sen’s previous statements about his father differed from his evidence before the Chamber. In

<sup>9039</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 24-25.

<sup>9040</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 65.

<sup>9041</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 66.

<sup>9042</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (describing the killing of 100, up to 200 prisoners at a time, including children and adults, then stating that Sen, who was a prisoner, may know about this).

<sup>9043</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, pp. 11-12, ERN (En) 01168016-01168017 (Answer 64, Sen among other prisoners had to dig pits to bury bodies); NEANG Dam Interview Record, E3/7904, 1 November 2007, pp. 4-5, ERN (En) 00223518-00223519 (stating that Sen used to dig pits two or three times per month, and each pit would hold around 50 to 60 persons; further describing filling the pits and seeing bodies there).

<sup>9044</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 64 (stating that he heard of his father’s execution from a soldier and old people, that he took his t-shirt and sarong but the deputy chief and chief of the prison took his hat); T. 6 February 2015 (SORY Sen), E1/258.1, p. 22.

<sup>9045</sup> SORY Sen Interview Record, E3/5214, 1 September 2008, p. 10, ERN (En) 00225509.

<sup>9046</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 64; SORY Sen Interview Record, E3/5214, 1 September 2008, p. 10, ERN (En) 00225509 (referring to the trilby hat); SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527785 (describing his father’s white t-shirt and “cowboy hat” which *Ta An* then wore).

particular, a DC-Cam Interview from 2004 records SORY Sen as saying that he had climbed a tamarind tree, from where he saw his father's execution who was killed at the same time as two other people.<sup>9047</sup> The NUON Chea Defence failed to note, however, that earlier in the same interview, SORY Sen explained that although he knew his father was taken to be killed, he did not witness the actual execution.<sup>9048</sup> Reading this interview as a whole, the Chamber is not persuaded that any inconsistencies are material. Rather, SORY Sen's core account was that he knew that his father was killed and that later he went to the location to collect his clothes. The site identification report includes a plan compiled from information provided by SORY Sen. It depicts the "old dungeon" to the south-west of the inner compound.<sup>9049</sup> This report also summarises that SORY Sen described the old dungeon as "simply a deep hole covered by a roof held up by four corner posts" which was used to incarcerate prisoners before 1975, then after 1975 was filled with bodies and earth.<sup>9050</sup> The Chamber finds SORY Sen's account of the circumstances of the death of his father to be reliable and accurate.<sup>9051</sup> Contrary to the NUON Chea Defence's submissions, the Chamber found SORY Sen's general account of his relatively privileged position at Kraing Ta Chan to be reliable and coherent. The Chamber accepts SORY Sen's general description of his position at Kraing Ta Chan. The NUON Chea Defence also challenged SORY Sen's account in three further respects, the thrust of their submissions being that these instances revealed his evidence to be implausible, invented or embellished. The challenged matters were SORY Sen's account of: matters relating to MEAS Sokha's family, including an alleged sexual assault; the rape and execution of two women from a mobile unit; and the execution of two young girls. The Chamber addresses each in turn. The Chamber evaluates these incidents in its factual findings below.

2682. SORY Sen's evidence was subject to objections and interruptions. During the course of questioning by the NUON Chea Defence, there were objections to the basis

<sup>9047</sup> SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527785 (the interview also records SORY Sen saying that later that evening he went to collect his father's clothes).

<sup>9048</sup> SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527773 (Q. "Did you personally witness it?" A. "No, I did not witness it, but right after his execution I went to see him. In less than an hour they had transfer the body to the grave [*sic*]. I took my father's cloths [*sic*] off, washed the blood out and kept it to wear and cover myself.").

<sup>9049</sup> Site Identification Report, E3/5830, ERN (En) 00363333 (Annex D).

<sup>9050</sup> Site Identification Report, E3/5828, 17 March 2009, p. 3, ERN (En) 00363339.

<sup>9051</sup> The Chamber notes that guard SAUT Saing (SOTR Sain) was unaware of a dungeon at Kraing Ta Chan. See T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 32-33. The Chamber finds that the reason for this is that it had been filled in by the time SAUT Saing (SOTR Sain) started work at Kraing Ta Chan.

on which questions were put and counsel's attempts to summarise earlier evidence, as well as interruptions to address whether SORY Sen should be allowed to state the identity of particular guards in open session. There were also submissions about the privacy of a person whom SORY Sen identified as a victim of sexual assault. The Chamber is satisfied, however, that the NUON Chea Defence had a full opportunity to challenge SORY Sen's evidence, irrespective of any interruptions or objections during the progress of their questioning. After SORY Sen's appearance before the Chamber on 4, 5 and 6 February 2015, he returned for further questioning on 25 March 2015 when, in answer to a scheduling question from Judge Fenz, counsel for NUON Chea answered "To be honest, I think we should be able to finish four-ish".<sup>9052</sup> His questioning ended shortly before 4 p.m.<sup>9053</sup> The NUON Chea Defence's submissions challenging the fairness of this aspect of proceedings are therefore dismissed.

### 12.3.3. *Establishment and Location*

2683. Kraing Ta Chan was located in Kus commune, Tram Kak district, approximately 20.5 kilometres due west from Takeo town,<sup>9054</sup> and about seven or eight kilometres from the Tram Kak District Office at Angk Roka.<sup>9055</sup> The district authorities started using the site as a security centre in 1973 or 1974 with "Phy" in an oversight role, but before then it was used for meetings.<sup>9056</sup> It operated during the whole period

<sup>9052</sup> T. 25 March 2015 (SORY Sen), E1/282.1, p. 90.

<sup>9053</sup> T. 25 March 2015 (SORY Sen), E1/282.1, p. 100 (questioning recorded as having concluded at approximately 3.55 p.m.).

<sup>9054</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 63-65 (Kraing Ta Chan was originally part of Kus commune); T. 3 March 2015 (VAN Soeun), E1/270.1, p. 14 (Kraing Ta Chan was in Kus commune); Site Identification Report, E3/5828, 17 March 2009, p. 2, ERN (En) 00363338 (stating that the Kraing Ta Chan site is located 20.5km east [*sic*] of the town of Takeo).

<sup>9055</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 8, ERN (En) 00980284 (Answer 48, explaining that he delivered messages to the District Office and travelled by bike or by horse).

<sup>9056</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, p. 64; T. 25 February 2015 (PHANN Chhen), E1/269.1, 84, 89 (Kraing Ta Chan was taken over by the district for use as a security centre in mid-1973, with Phy in overall charge); T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 72 (Kraing Ta Chan was under the supervision of the district); T. 23 February 2015 (SREI Than), E1/267.1, p. 19 (confirming that documents emanating from Kraing Ta Chan had the header "Education Office, District 105", such as that in the report, Office of Education District 105, E3/2421, 5 July 1978, p. 1, ERN (En) 0032201); PHANN Chhen Interview Record, E3/5522, 8 December 2009, p. 5, ERN (En) 00426284 (in mid-1973, the district took Kraing Ta Chan for use as a detention office; and Phi, Duch (the district youth chairman) and An were the "commission" brought in "to represent Kraing Ta Chan" having been sent by Saom at the sector level and Nhev of the District Military); SREI Than Interview Record, E3/9597, 31 October 2013, p. 4, ERN (En) 00970069 (Kraing Ta Chan was a security office of District 105); IEP Duch Interview Record, E3/4627, 30 October 2007, p. 7, ERN (En) 00223478 (explaining that Kraing Ta Chan was his former office, in that it was used for youth study sessions). *See below*, para. 2697 on Phy's later roles.



of the Chamber's temporal jurisdiction.<sup>9057</sup>

2684. The Chamber heard different evidence about the provenance of the name Kraing Ta Chan. PHANN Chhen stated that the remains of “*Ta Chan*”, the former owner, were stored here.<sup>9058</sup> RIEL Son recalled that the site was previously known as “*Trapeang Ta Chan*” because of the pond (*trapeang*) to the west.<sup>9059</sup> The Chamber attaches no significance to the etymology of Kraing Ta Chan. The evidence that some remains were stored here before 1973 is addressed when evaluating the evidence of exhumations after 1979.

#### 12.3.4. *Layout*

2685. The Chamber dismissed a request during trial by the NUON Chea Defence to conduct a site visit because it would have been repetitious of the site identification visit conducted during the investigation.<sup>9060</sup> The report from that visit records that none of the original DK-era buildings still exist;<sup>9061</sup> accordingly, the Chamber found that the NUON Chea Defence had not substantiated the need for a site visit. Based in part on information from SORY Sen and SREI Than *alias* Duch as to how Kraing Ta Chan used to appear, the site identification report describes an inner compound surrounded by a fence, and notes that the southern boundary is lined by coconut trees in varying condition. The report estimates the size of the inner compound to be approximately 75 metres (north to south) by 90 metres (west to east).<sup>9062</sup> When in operation, the inner compound was accessed by two gates: one to the east and another to the west, with further rings of perimeter fences approximately 50 metres from the inner compound then another fence approximately 100 to 130 metres further out.<sup>9063</sup> The report observes

<sup>9057</sup> See above, para. 2645.

<sup>9058</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, p. 70.

<sup>9059</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 80. The Chamber notes that Site Identification Report, Annex B, E3/5866, ERN (En) 00363331 shows the existence of pond a short distance to the west.

<sup>9060</sup> T. 27 April 2015, E1/293.1, pp. 71-74.

<sup>9061</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 76 (stating that there were no buildings left when he visited the Kraing Ta Chan site in 1979); Site Identification Report, E3/5828, 17 March 2009, p. 2, ERN (En) 00363338 (no trace of the original prison buildings remain).

<sup>9062</sup> Site Identification Report, E3/5830, ERN (En) 00363333 (Annex D).

<sup>9063</sup> Site Identification Report, E3/5828, 17 March 2009, p. 2, ERN (En) 00363338.

that some distances measured by OCIJ investigators were “somewhat shorter” than SORY Sen’s estimates.<sup>9064</sup>

2686. Other persons who appeared before the Chamber gave similar descriptions of the inner compound surrounded by perimeter fences. Their estimates of size, distances and the number of perimeter fences sometimes differed.

2687. MEAS Sokha estimated that Kraing Ta Chan covered three hectares “at most” and recalled two perimeters of barbed wire fences.<sup>9065</sup> He thought the distance between perimeter fences was about 100 metres.<sup>9066</sup> SREI Than *alias* Duch thought the inner compound was about 150 square metres, surrounded by a barbed wire fence.<sup>9067</sup> At another point, he estimated the area to be 200 square metres.<sup>9068</sup> VAN Soeun estimated the inner compound at 70 square metres, with the outer perimeter about 300 square metres.<sup>9069</sup> According to KEO Chandara, Kraing Ta Chan measured 250 by 200 metres.<sup>9070</sup> IEP Duch told investigators that the outer perimeter barbed wire fence was 500 square metres with an inside “wall/fence” of about 100 square metres.<sup>9071</sup> VONG Sarun described entering Kraing Ta Chan as a prisoner, passing first fences with barbed wire, then 50 metres later there was another layer of fences with a gate.<sup>9072</sup>

2688. The Chamber finds that the fences at Kraing Ta Chan were made of barbed wire.<sup>9073</sup> The Chamber is also satisfied that there were at least two stages of perimeter

<sup>9064</sup> Site Identification Report, E3/5828, 17 March 2009, p. 2, ERN (En) 00363338. SORY Sen told investigators that Kraing Ta Chan covered approximately 500 by 800 metres, surrounded by three layers of fences: a first fence 10 metres from detention buildings, a second fence 100 metres from the detention buildings, and a third fence 600 metres from the detention building to the west. *See* SORY Sen Interview Record, E3/5214, 1 September 2008, p. 13, ERN (En) 00225512.

<sup>9065</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 64-65 (describing wires inside the walls, below the floor and under the roof “just like a chess grid”); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 36 (stating prisoners were detained in the prison compound of a three-hectare plot). *Cf.* MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 6, ERN (En) 00223498 (suggesting the prison compound was nearly two hectares).

<sup>9066</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 78.

<sup>9067</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 60; T. 24 February 2015 (SREI Than), E1/268.1, p. 27 (describing the area as less than 200 metres each side); T. 24 February 2015 (SREI Than), E1/268.1, p. 22 (describing the barbed wire fence).

<sup>9068</sup> T. 24 February 2015 (SREI Than), E1/268.1, p. 43.

<sup>9069</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, p. 22.

<sup>9070</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 62-63.

<sup>9071</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 9, ERN (En) 00223480.

<sup>9072</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 12.

<sup>9073</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 68-69 *confirming* PHANN Chhen Interview Record, E3/5522, 8 December 2009, p. 6, ERN (En) 00426285 (the fence comprised barbed wire and wooden poles); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 12 (Kraing Ta Chan was surrounded by barbed wire), 74 (there were several perimeters of fence around the compound).

fencing surrounding Kraing Ta Chan. For the size of the inner compound, the Chamber relies upon the more precise measurement performed during the site visit: 75 metres (from north to south) by 90 metres (from west to east).<sup>9074</sup> The Chamber is also satisfied there was at least 100 metres between the inner compound and at least one further perimeter fence.

2689. There were some differences in the various descriptions of the layout of the inner compound, and the Chamber is satisfied that over time structures were added between 1975 to 1979. Witnesses and Civil Parties described at least two long wooden buildings used to house prisoners, built running east-to-west. KEO Chandara, who was detained around April 1975, recalled one long building about 4 by 20 metres, running west-to-east, which held around 45 prisoners shackled at the ankles.<sup>9075</sup> He described thick barbed wires surrounding the buildings, with walls made from coconut leaf and the roofs made from sugar palm leaf.<sup>9076</sup> MEAS Sokha, who was detained from mid-1976, described three buildings which could house up to 100 prisoners, two of which were attached to each other with the third about 15 metres away.<sup>9077</sup> He described barbed wires inside the buildings in a grid pattern.<sup>9078</sup> The buildings had tile roofs and wooden walls and floors.<sup>9079</sup> SORY Sen, who was detained throughout the relevant period, stated that there were initially two buildings with two more added later on (he did not specify when) to house more prisoners. The site identification report includes a plan based upon SORY Sen's description, which shows four detention buildings located to the north of the inner compound.<sup>9080</sup> SORY Sen estimated there to have been between

<sup>9074</sup> Site Identification Report, Annex D, E3/5830, ERN (En) 00363333.

<sup>9075</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 33, 45, 75; T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 20-21.

<sup>9076</sup> T. 4 February 2015 (KEO Chandara), E1/256.1, p. 21.

<sup>9077</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 65; T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 65 (stating that there were three buildings which used to house up to 100 prisoners), 78 (stating that two detention buildings were attached to each other, with the third some 15 metres away).

<sup>9078</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, pp. 64-65 (describing wires inside the walls, below the floor and under the roof "just like a chess grid"); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 36 (prisoners detained in the prison compound of a three-hectare plot). *Cf.* MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 6, ERN (En) 00223498 (suggesting that the prison compound was nearly two hectares). *See also*, KEV Mao *alias* SAO Sary Interview Record, E3/7900, 29 October 2007, p. 5, ERN (En) 00163474 (describing two detention buildings made out of wood with thatched roofs, and barbed wire under the floors, along the walls and roofs, and along the outside of the walls).

<sup>9079</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 78 (reiterating that barbed wires were laid out like a grid under the roof tiles and on the walls).

<sup>9080</sup> Site Identification Report, Annex D, E3/5830, ERN (En) 00363333; T. 4 February 2015 (SORY Sen), E1/256.1, p. 71 (stating that prior to 1975 there were only two buildings, later another two buildings were added to house prisoners, making four buildings together); T. 5 February 2015 (SORY Sen), E1/257.1, pp. 35-36 (stating that two more buildings were built due to the increase in the number of

20 to 100 prisoners in each building.<sup>9081</sup> VONG Sarun, who was detained in 1977, recalled three detention buildings or “long halls” made of wooden planks, with roofs made from leaves. Prisoners were shackled in two rows with an aisle between them.<sup>9082</sup> According to her, the buildings usually held around 40 prisoners each.<sup>9083</sup>

2690. The guard VAN Soeun also described three detention buildings: one old building which could house only “a few” prisoners, then two newer buildings which could hold 50 to 60 prisoners each.<sup>9084</sup> SAUT Saing agreed there were three detention buildings, describing two towards the east and one to the west.<sup>9085</sup> SREI Than *alias* Duch described two buildings for prisoners: one to the east and one to the west, made from wood with a thatched roof, each holding 50 to 60 prisoners.<sup>9086</sup> RIEL Son visited the prison once during the relevant period. He described three long buildings and two smaller buildings.<sup>9087</sup> He looked into the longest building and saw rows of prisoners, around 100 prisoners lying on the ground.<sup>9088</sup> The Chamber is satisfied that the overall capacity of Kraing Ta Chan was well over 100 persons at any one time, and that sometimes more people were detained in the two or three main detention buildings, depending on the point in time.

2691. The site identification report depicts the interrogation house as situated in a cassava plantation, with the guards’ dining hall a short distance to the east, and the detention buildings and prison chief’s house further to the north.<sup>9089</sup> SREI Than *alias* Duch confirmed that the interrogation room was to the south of the compound.<sup>9090</sup>

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prisoners); SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 5, ERN (En) 00225504 (stating that there were four buildings to house prisoners but in general only three houses were used, depending on the number of prisoners), 11, ERN (En) 00225510 (stating that serious offence prisoners, being the 17 April People, were held in two central houses, a mixture of serious offence and light offence prisoners were held in a third house and base area prisoners were held in a fourth house).

<sup>9081</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 47 (estimating that there were 20-100 prisoners in each building), 51 (SORY Sen noticed many prisoners were brought in after the liberation of Phnom Penh, ranging from 20 to 50 to 100); T. 5 February 2015 (SORY Sen), E1/257.1, p. 65 (stating that at full capacity, there were 100 to 200 prisoners per building).

<sup>9082</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 18, 27-28, 31.

<sup>9083</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 32.

<sup>9084</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 9-10 *confirming* T. 19 February 2015 (SREI Than), E1/266.1, p. 18.

<sup>9085</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 40.

<sup>9086</sup> T. 19 February 2015 (SREI Than), E1/266.1, pp. 18-19; T. 24 February 2015 (SREI Than), E1/268.1, pp. 37-38.

<sup>9087</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 94.

<sup>9088</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 74.

<sup>9089</sup> Site Identification Report, Annex D, E3/5830, ERN (En) 00363333.

<sup>9090</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 23; T. 23 February 2015 (SREI Than), E1/267.1, p. 4.

According to him, the distance between each detention building, and from those to the interrogation building, was about 40 metres.<sup>9091</sup> He described the interrogation building as “not complicated” with a wooden wall and thatched roof.<sup>9092</sup> The distance between the prison chief’s room and the interrogation site was approximately 70 metres.<sup>9093</sup> The prison chief’s house was where SREI Than *alias* Duch worked typing documents.<sup>9094</sup> VAN Soeun described the interrogation site as approximately 30 metres south of Ta An’s office, in a building that was not fully enclosed.<sup>9095</sup> VONG Sarun, who the Chamber found was detained from May 1977, confirmed that the interrogation site was close (50 metres at most) to the guards’ kitchen, and explained that, but for cassava trees and/or Kantrang Khaet plants growing when she was there, she would have been able to see one from to the other.<sup>9096</sup> From the kitchen, however, she could “clearly hear” what was being said in the interrogation room.<sup>9097</sup> SAUT Saing also described the interrogation site as being to the south, after the cassava plantation, under a pongro tree next to a “small high hill”.<sup>9098</sup> He agreed that the interrogation site was next to the guards’ kitchen.<sup>9099</sup>

2692. There was an interrogation room to the south of the inner compound.<sup>9100</sup> Although there were discrepancies in the evidence as to the precise appearance of the

<sup>9091</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 5.

<sup>9092</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 6.

<sup>9093</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 5.

<sup>9094</sup> SREI Than Interview Record, E3/5834, 29 December 2009, p. 4, ERN (En) 00434690 (describing the house as three metres wide, with a table, chair, and cabinet for keeping documents inside); SREI Than Interview Record, E3/5852, 16 September 2008, p. 6, ERN (En) 00231677 (sketched drawing indicating prison chief’s room and typing room).

<sup>9095</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 31 (stating that the walls of the interrogation hut were not all covered, they only covered half of it).

<sup>9096</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 45. For the Chamber’s findings on the date of VONG Sarun’s arrival at Kraing Ta Chan, *see above*, para. 2644. *See below*, para. 2714 (fn. 9217).

<sup>9097</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 45.

<sup>9098</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 46.

<sup>9099</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 48 (specifying that the interrogation site was next to guards’ kitchen).

<sup>9100</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp 81-82; T. 6 February 2015 (SORY Sen), E1/258.1, p. 64 (the interrogation room was always in the same location); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 16-17 (describing the interrogation site 50 metres from where prisoners were detained and five metres from the guard’s kitchen), 93 (describing the interrogation room to the south); Site Identification Report, Annex D, E3/5830, 6 February 2015, p. 1, ERN (En) 003633333 (showing “interrogation house” on the south side of the compound); SAUT Saing confirmed that the location of the interrogation site on this map is correct. *See* T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 45-46. T. 23 February 2015 (SREI Than), E1/267.1, p. 4 (confirming interrogation room was on the south side of compound); SREI Than Interview Record, E3/5852, 16 September 2008, p. 6, ERN (En) 00231677 (sketched drawing indicating “interrogation site” to south of compound); T. 24 February 2015 (PHANN Chhen), E1/268.1, p. 76 *confirming* PHANN Chhen Interview Record, E3/5522, 8 December 2009, p. 7, ERN (En) 00426286 (stating that the interrogation site was a small building at the south of the site); T.

interrogation room, the Chamber is satisfied that, at times during the relevant period, it was possible to see into it from the outside – in particular from the guards’ kitchen which was located nearby.<sup>9101</sup> On the south side of the inner compound, there were “many” grave pits of varying sizes along the inner fence, as well as grave pits on the east side.<sup>9102</sup> After the pits in the inner compound were filled, bodies were buried in between the first and second fences, and then outside Kraing Ta Chan.<sup>9103</sup> SAUT Saing described rows of graves to the south of the interrogation site, although he attributed them to an earlier period when Chhen was the prison chief.<sup>9104</sup> VAN Soeun gave evidence that bodies were buried in the compound, to the south of the kitchen.<sup>9105</sup> His evidence was that the pits were dug by “internal people” working inside the compound.<sup>9106</sup> He recalled that Kraing Ta Chan smelled of human corpses and the smell came from the pits where corpses were buried.<sup>9107</sup> The Chamber finds that an increasing

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4 March 2015 (VAN Soeun), E1/271.1, p. 31 (stating that the interrogation room was to the south of *Ta An*’s office).

<sup>9101</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 16-17 (stating that the interrogation room was visible from the guard’s kitchen because it was an open place) p. 47 (stating that the interrogation room was not enclosed by walls); T. 4 February 2015 (SORY Sen), E1/256.1, p. 83 (stating that the front wall of the interrogation room was waist-high); T. 5 February 2015 (SORY Sen), E1/257.1, p. 38 (stating that the front wall of interrogation room was low, allowing the room to be seen into); T. 23 February 2015 (SREI Than), E1/267.1, pp. 6-7 (at first stating the wall was “close – and we could not see through” but then confirming interrogation room was not completely enclosed by walls); T. 4 March 2015 (VAN Soeun), E1/271.1, p. 31 (stating that the walls of the interrogation hut were not all covered, they only covered half of it); T. 2 February 2015 (KEO Chandara), E1/255.1, p. 77 (stating that the interrogation site had coconut tree leaves for walls, but they were rotten so it was possible to see through); T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 31-32 (describing the interrogation site as being to the west of the compound and as having four walls, which the Chamber rejects as mistaken, given the evidence that there was only one wall).

<sup>9102</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 62-63 (stating that there were pits on the southern part of the fence and in the eastern area in the paddy field); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 25 (stating that the sizes of the pits varied, the largest being approximately four by four metres); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 83-85 (stating that there were pits along the fence and coconut trees were planted there); T. 6 February 2015 (SORY Sen), E1/258.1, pp. 79-80 (stating that there were many pits of varying sizes, the smaller pits contained only two or three bodies); T. 5 March 2015 (VAN Soeun), E1/272.1, p. 22 (stating that there were pits for burying bodies and a smell came from the pits where corpses were buried); Site Identification Report, Annex D, E3/5830, ERN (En) 003633333 (indicating the location of grave pits on the eastern and southern sides of the inner compound).

<sup>9103</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 72, 84 (describing pits to the south and west of the compound and that there were too many burial places inside the compound, so some burials had to take place outside the perimeter); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 47 (describing how, when pits within first perimeter were filled, prisoners would be taken out and killed in between the first and second fences).

<sup>9104</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 43.

<sup>9105</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 33.

<sup>9106</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 44.

<sup>9107</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 21-22.

number of pits were filled with human corpses, first inside the main compound to the south, then expanding outwards and to the east over time.

### 12.3.5. *Authority Structure*

#### 12.3.5.1. *Leadership and oversight*

##### 12.3.5.1.1. *Kraing Ta Chan chief*

2693. PHANN Chhen was the chief of Kraing Ta Chan during the early period of its operation until approximately mid-1975.<sup>9108</sup> For most of the relevant period, however, the chief was LENG An *alias Ta An*.<sup>9109</sup> *Ta An* came from Totueng Thngai or nearby Kbal Ou village in Cheang Tong commune and was the cousin of KHOEM Boeun, Cheang Tong commune Secretary and later member of the District Committee.<sup>9110</sup>

<sup>9108</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, pp. 65-67 (PHANN Chhen sought to recharacterise his previous answers by suggesting that An was his deputy solely for the purpose of twice monthly meetings at Kraing Ta Chan. The Chamber rejects this characterisation and finds the PHANN Chhen was the chief of Kraing Ta Chan, and An his deputy, prior to 1975); T. 4 February 2015 (SORY Sen), E1/256.1, p. 73 (stating that *Ta An* came “after the liberation of Phnom Penh” but uncertain about the year); PECH Chim Interview Record, E3/4626, 27 August 2009, pp. 6-7, ERN (En) 00380136-00380137 (stating Chhen was transferred from Kraing Ta Chan in mid-1975); KEV Mao *alias* SAO Sary Interview Record, E3/7900, 29 October 2007, p. 4, ERN (En) 00163473 (recalling being detained at Kraing Ta Chan in 1974 when Chhen was the chief and An was the deputy); T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 19, 22 (confirming that when he was detained at Kraing Ta Chan, around the time of the liberation of Phnom Penh, the prison chief was *Achar* Chhen); KEO Chandara Interview Record, E3/5153, 12 March 2008, p. 4, ERN (En) 00205090 (stating that *Achar* Chhen was the prison leader).

<sup>9109</sup> T. 19 February 2015 (SREI Than), E1/266.1, pp. 19-20 (referring to chief named “Leng An” when shown Handwritten Report, E3/2109, November 1977); T. 17 March 2015 (RIEL Son), E1/278.1, pp. 68-69; T. 18 March 2015 (RIEL Son), E1/279.1, p. 35 (stating that *Ta An* was chief); T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 21, 27 (*Ta An* issued instructions and headed Kraing Ta Chan); T. 4 March 2015 (VAN Soeun), E1/271.1, p. 30 (indicating that An was responsible for everything in Kraing Ta Chan); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 40 (*Ta An* was the chief), pp. 67, 87 (stating that he fled Kraing Ta Chan with *Ta An* when Vietnamese soldiers arrived). Some prisoners used slightly different names to refer to *Ta An*, referring to both “Siv An” and “Pai An”. See T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 31-32 (indicating that Siv An (phonetic) was the chief), 40 (stating An was the chief), 50 (stating Pai An (phonetic) was the chief); SOK Soth Interview Record, E3/5835, 31 October 2007, p. 4, ERN (En) 00223506 (referring to Phai An). As to LENG An’s full name, the working relationship between *Ta An* and SREI Than *alias* Duch leads the Chamber to accept his identification to be the most reliable. The accuracy of the name LENG An is corroborated by research from EA Meng-Try, who identified LENG An as born in 1938 in Toteung Thngai village, Cheang Tong commune, based on interviews with his family members: Book by Ea M-T: *The Chain of Terror: The Southwest Zone Security System*, E3/2120, p. 50, ERN (En) 00416368 (based on the author’s interviews with LENG Tong and LENG Meay, *Ta An*’s elder brother and sister, on 3 June 2001).

<sup>9110</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 26 (although she claimed not to remember his full name); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 34, ERN (En) 01057708 (Answer 190). Consistently with this, a former guard told investigators that An had lived in Kbal Au village in Cheang Tong commune: SAING Sim Interview Record, E3/5853, 28 November 2007, p. 4, ERN (En) 00433570. See also, HUN Kimseng Interview Record, E3/10753, 15 September 2015 (Answer 23, stating that she knew *Ta An* from Cheang Tong commune, to which she attributed her survival).

12.3.5.1.2. *District-level involvement*

2694. KHOEM Boeun remembered *Ta An* attending meetings of the Tram Kak District Committee, where he reported on spy networks, although she claimed not to know whether he provided numbers of people purged.<sup>9111</sup> PECH Chim, the District Secretary, confirmed however that *Ta An* made monthly reports to the district, including the number of prisoners detained and smashed.<sup>9112</sup> In light of the evidence discussed below, the Chamber is satisfied that reports flowed regularly from Kraing Ta Chan to the district level, including on the numbers of people killed.

2695. In addition to *Ta An* attending meetings at the district, the evidence establishes that district-level cadres visited Kraing Ta Chan, stayed over and conducted interrogations. In interviews with investigators before he died, IEP Duch, the chief of the District Youth, accepted that he returned to Kraing Ta Chan about three or four months later, stayed over and participated in interrogations.<sup>9113</sup> Guard VAN Soeun recalled that “Big Duch”, that is IEP Duch the chief of the District Youth unit, came to Kraing Ta Chan and participated in meetings “every month”.<sup>9114</sup> He thought the frequency of these visits increased in 1978.<sup>9115</sup> SREI Than *alias* Duch saw An and Big Duch (with Sieng) together “quite often”.<sup>9116</sup> At one point he described his two superiors as *Ta An* and Duch, which as noted was contrary to his other claims that his only superiors were at the District Military rather than Kraing Ta Chan.<sup>9117</sup> When interviewed by OCIJ investigators, SAUT Saing identified Big Duch as “Head of Youth at Kraing Ta Chan”.<sup>9118</sup> MEAS Sokha identified Duch as the “deputy” at Kraing Ta Chan.<sup>9119</sup> NUT Nouv, a commune secretary who attended district meetings, knew IEP Duch “very well”, describing him as the chief of the Tram Kak Youth Committee later

<sup>9111</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 34-35.

<sup>9112</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 11; PECH Chim Interview Record, E3/5786, 6 December 2009, p. 8, ERN (En) 00422343 (stating that it was An’s task to make a monthly report, including on the number of prisoners and numbers smashed).

<sup>9113</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 8, ERN (En) 00223479.

<sup>9114</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 31, 38-39; T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 51-52.

<sup>9115</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 39.

<sup>9116</sup> T. 24 February 2015 (SREI Than), E1/268.1, pp. 14-15.

<sup>9117</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 11-12, 56-57; T. 24 February 2015 (SREI Than), E1/268.1, pp. 24, 38-39 (outlining how, when so instructed by An and Duch, he would leave his guard post to carry out typing tasks). The witness attributed this to late 1977, or March or April 1978, or late June or early July 1978.

<sup>9118</sup> SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 11, ERN (En) 00970122 (Answer 69).

<sup>9119</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 50.



sent to work at Kraing Ta Chan.<sup>9120</sup> Documentary evidence confirms that IEP Duch held a position at Kraing Ta Chan alongside *Ta An*: a report from Kus commune dated 14 May 1977 is addressed to Comrade Brother Duch and Brother “Ann”;<sup>9121</sup> and an undated message from Mien is addressed both to *Ta An* and Duch stating that persons had already been sent “to you”.<sup>9122</sup>

2696. In relation to IEP Duch and the district’s oversight of Kraing Tha Chan, the Chamber recalls its discussion of the authenticity of handwritten reports for the months of July and November 1977.<sup>9123</sup> These include overview data, including total numbers for prisoners, prisoners entering, and prisoners “swept away” (in the case of July) or “purged” (in the case of November).<sup>9124</sup> The Chamber found that the handwriting in one of these reports belonged to IEP Duch. Although the Chamber found that some of the information appears to go beyond Kraing Ta Chan specifically, including the references to rice issued to Samraong and manioc to Totueng Thngnai (*Ta An*’s home village),<sup>9125</sup> considering IEP Duch’s role the Chamber is satisfied that the data for prisoners relates to Kraing Ta Chan specifically.<sup>9126</sup> The numbers reported are consistent with the Chamber’s findings on Kraing Ta Chan’s overall capacity.<sup>9127</sup>

2697. Several witnesses and Civil Parties recalled another district-level cadre called “Phy”, who was memorable both for his cruelty and because he limped.<sup>9128</sup> PHANN

<sup>9120</sup> T. 16 March 2015 (NUT Nov), E1/277.1, p. 30.

<sup>9121</sup> Tram Kak District Records, E3/2441, 14 May 1977, ERN (En) 00369465.

<sup>9122</sup> Tram Kak District Records, E3/2449, ERN (En) 00366708. *See also*, further correspondence from Mien (sometimes spelled Mean) in Nhaeng Nhang commune such as Tram Kak District Record, E3/4118, undated, ERN (En) 00355475; and Tram Kak District Record, E3/4115, 11 June [1977], ERN (En) 00363656-00363657; Tram Kak District Record, E3/2450, undated, ERN (En) 00322161.

<sup>9123</sup> Section 10.1: Tram Kak Cooperatives, para. 852.

<sup>9124</sup> Tram Kak District Record, E3/4086, July 1977, ERN (En) 00276557-00276558 (reporting that one study meeting was held, 18 new prisoners entered during July 1977, making a total of 81 prisoners, 2 prisoners died from illness and 39 were “swept away”); Tram Kak District Record, E3/2109, November 1977, ERN (En) 00276555 (reporting that during the month of November 1977, 75 people entered, 92 people were purged, 6 people died of illness and one person was removed to the sector).

<sup>9125</sup> T. 30 April 2015 (Key Documents Hearing), E1/295.1, p. 47. The Chamber found above the LENG An came from Toteung Thngai or nearby. *See above*, para. 2693.

<sup>9126</sup> The Chamber therefore rejects the following evidence because it does not undermine its findings of IEP Duch’s role, knowledge and report(s): (1) T. 15 December 2016 (LONG Vonn), E1/514.1, pp. 99-100 (witness did not recognise the handwriting and did not see this sort of report, but he worked at the Angk Roka Commerce Office so, in the Chamber’s assessment, did not have cause to); (2) T. 19 February 2015 (SREI Than), E1/266.1, p. 20 (to the extent he denied that monthly reports were prepared at Kraing Ta Chan, he did not have cause to see IEP Duch’s reports unless he had been asked to type, and PECH Chim among others confirmed that monthly reports were made from Kraing Ta Chan to the district. *See above*, para. 2694).

<sup>9127</sup> *See above*, para. 2690.

<sup>9128</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 37; RIEL Son DC-Cam Interview, E3/5859, 22 May 2001, p. 75, ERN (En) 00729096 (stating that Phy was cruel and that he had a broken leg; also describing

Chhen identified Phy as part of the “management” and recalled that Phy suffered from a disability in his leg.<sup>9129</sup> He identified Phy as a member of the Tram Kak District Committee who conducted interrogations at Kraing Ta Chan.<sup>9130</sup> He suggested that it was Phy who took charge of Kraing Ta Chan from mid-1973, when it was taken from the commune to be under the supervision of the district.<sup>9131</sup> When PHANN Chhen visited Kraing Ta Chan and requested that SORY Sen be spared, he met Phy with *Ta An*.<sup>9132</sup> The guard VAN Soeun also described Phy as “overall in charge” of Kraing Ta Chan.<sup>9133</sup> NEANG Ouch *alias Ta San*, the secretary of Tram Kak district in 1978, recalled that Phy worked in the same office as *Ta An*.<sup>9134</sup> According to SORY Sen, Phy visited Kraing Ta Chan regularly.<sup>9135</sup> The Tram Kak District Records include a note from “Phy” to Comrade An, regarding a child called Phoeung Sao, age 12, who was to be interrogated.<sup>9136</sup> According to KHOEM Boeun, Phy supervised the district militia.<sup>9137</sup> SAN Lorn *alias Maunh* received oral instructions from Phy at the District Office relating to security matters.<sup>9138</sup> SAING Sim told OCIJ investigators that Phy, who he described as the Secretary of Tram Kak district, died in 1979.<sup>9139</sup> The Chamber finds that Phy was involved with security matters for Tram Kak district and this entailed oversight of and visits to Kraing Ta Chan.

2698. PECH Chim, the Tram Kak District Secretary, also visited Kraing Ta Chan. According to SORY Sen, before Phy started visiting regularly, he saw *Ta Chim*, the

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Phy as Dan’s predecessor as chief of the District Office); T. 16 March 2015 (NUT Nov), E1/277.1, p. 31 (Phy was handicapped in the legs and worked at Tram Kak district until sent to another commune); T. 28 January 2016 (SAN Lorn), E1/384.1, p. 29, 65 (Phy responsible for the education office; he limped); T. 25 February 2015 (PHANN Chhen), E1/269.1, p. 42, 50 (Phy handicapped in the legs since birth; his leg was not amputated but he could not walk well); T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 24-25 (Phy treated people badly. He was based at a logistics office west of Ph’choek Chrum pagoda until he became Secretary of District 107); T. 21 April 2015 (PECH Chim), E1/289.1, pp. 81-82 (Phy was in charge of medical services and had a handicap in his legs; he would distribute medicines and medical supplies).

<sup>9129</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 42, 50-51.

<sup>9130</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 66-67, 89.

<sup>9131</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, p. 89.

<sup>9132</sup> T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 23-24.

<sup>9133</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 40.

<sup>9134</sup> T. 10 March 2015 (NEANG Ouch *alias Ta San*), E1/274.1, p. 76.

<sup>9135</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 67 (stating he came to Kraing Ta Chan about three to four times per week).

<sup>9136</sup> Tram Kak District Record, E3/2057, 6 February [year not stated], ERN (En) 00276584.

<sup>9137</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 31.

<sup>9138</sup> T. 28 January 2016 (SANN Lorn), E1/384.1, pp. 28-29 (referring to Phi also being known as Thy); SANN Lorn Interview Record, E3/9487, 29 September-1 October 2014, p. 62, ERN (En) 01050395 (Answers 486-487).

<sup>9139</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 8, ERN (En) 00433574.

District Secretary, visit Kraing Ta Chan at least once per month.<sup>9140</sup> PECH Chim accepted in an interview that he visited Kraing Ta Chan, but claimed he only went twice: once in 1973 or 1974 then again in 1976 to release people.<sup>9141</sup> According to MEAS Sokha, district-level cadres such as *Ta Kit* and *Ta Keav* also visited Kraing Ta Chan from the district, but his evidence was that he did “not know them well” and did “not pay attention”.<sup>9142</sup> According to VAN Soeun, however, the district chiefs never went to visit Kraing Ta Chan Security Centre.<sup>9143</sup> The Chamber rejects this evidence, not least because PECH Chim accepted that he visited Kraing Ta Chan. The Chamber is satisfied that the highest-level cadres of Tram Kak district visited Kraing Ta Chan, in addition to the more regular visits by district cadres such as IEP Duch and Phy. The Chamber is also satisfied that other district-level cadres oversaw and came to Kraing Ta Chan on occasion, with various persons identifying *Ta Khorn* and *Ta Ruos* in particular.<sup>9144</sup>

#### 12.3.5.1.3. *Reporting to Tram Kak district*

2699. In addition to regular visits, the evidence establishes that the Tram Kak District Committee oversaw operations at Kraing Ta Chan via regular written communications. Kraing Ta Chan guard and messenger VAN Soeun was ordered by *Ta An* to deliver messages to the District Office at Angk Roka – he referred to the specific location as the “commerce office”.<sup>9145</sup> He did not dare to open and read the messages but confirmed

<sup>9140</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 66.

<sup>9141</sup> PECH Chim Interview Record, E3/401, 28 August 2009, p. 5, ERN (En) 00381027; PECH Chim Interview Record, E3/9587, 19 June 2014, p. 37, ERN (En) 01000699 (Answers 272-276, describing going to Kraing Ta Chan a second time in 1976 to receive prisoners who had conflicts in the cooperatives which had been solved).

<sup>9142</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 45 (further caveating his evidence that he knew *Ta Kit* but did not know the other leaders).

<sup>9143</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 17.

<sup>9144</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 25, ERN (En) 00980301 (Answer 193, identifying Ruos and Khorn as among the Party members who killed at Kraing Ta Chan); T. 3 March 2015 (VAN Soeun), E1/270.1, p. 18, 35 (“I really did not know Ruos and Khorn”), 41; T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 76-77; T. 25 March 2015 (SAUT Saing), E1/282.1, p. 47 (describing *Ta Khorn* and *Ta Run* (phonetic) coming in and out of Kraing Ta Chan), but they only made contact with senior people, namely *Ta An*, *Ta Penh* and *Ta Chen*); SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 12, ERN (En) 00970123 (Answer 74); TOEM Hy Interview Record, E3/9605, 6 December 2013, pp. 8-9, ERN (En) 00980269-00980270 (messenger from Tram Kak district describing Khorn as the security chairman at the district level, and messages passing between *Ta An* and Khorn); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 8, ERN (En) 00433574 (identifying *Ta Khuon* as one of the perpetrators at Kraing Ta Chan).

<sup>9145</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 10-11, 27, 30, 42-47. *See also*, VAN Soeun Interview Record, E3/9586, 18 December 2013, pp. 6-8, ERN (En) 00980282-00980284 (indicating that he carried sealed envelopes to the district, which were most frequently addressed to *Ta San* and which VAN Soeun would not read).

that *Ta An* wrote on the envelopes.<sup>9146</sup> According to VAN Soeun, HORL worked closely with the District Chief and was responsible for delivering messages from the district to the outside gate of Kraing Ta Chan.<sup>9147</sup> As noted above, TOEM Hy, a messenger from Tram Kak district, told investigators that he delivered messages from “Khorn”, who he identified as the chief of security in Tram Kak district, to *Ta An*.<sup>9148</sup> PECH Chim, the District Secretary, accepted in interview that he used messengers to communicate with Kraing Ta Chan.<sup>9149</sup> SAUT Saing recalled that VAN Soeun was assigned as a messenger in addition to the existing messenger.<sup>9150</sup> The Chamber finds that any inconsistencies as to the precise persons involved at particular moments in time are immaterial to the fundamental point: the Tram Kak District Office and Kraing Ta Chan were in regular communication.

2700. SREI Than *alias* Duch was assigned by *Ta An* and IEP Duch to type up prisoners’ statements from handwritten documents.<sup>9151</sup> *Ta An* sent written reports to the District Office on individual prisoners’ confessions. He recalled that documents he typed bore the heading “Education Office, District 105”, that *Ta An* or other persons signed the documents and they were submitted to the Party using a messenger.<sup>9152</sup> When shown one of the typed documents before the Chamber, he confirmed that the reports he typed were of a “similar nature”.<sup>9153</sup> There are more than 10 type-written documents before the Chamber headed “Educational Office of District 105” or a translation to similar effect. They are addressed to “the Party”, signed by An, and summarise the contents of prisoners’ statements, including: a report dated 14 November 1976

<sup>9146</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 32, 44-47.

<sup>9147</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 12-13 (HORL did not often enter into the compound, but would deliver letters at the outside gate); VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 6, ERN (En) 00980282 (Answer 29).

<sup>9148</sup> TOEM Hy Interview Record, E3/9605, 6 December 2013, 8-9, ERN (En) 00980269-00980270. *See above*, fn. 9144.

<sup>9149</sup> PECH Chim Interview Record, E3/401, 28 August 2009, p. 5, ERN (En) 00381027.

<sup>9150</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 52.

<sup>9151</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 5 (stating that he did the typing in the prison chief’s room); T. 23 February 2015 (SREI Than), E1/267.1, pp. 12-13, 19, 21, 47 (stating he was called in to do the typing, describing typing from handwritten notebooks; An and Duch would confirm with SREI Than the information he typed; he was told who to address reports: “Respectfully report to the party”); 57 (stating both An and Duch would call him to assist with typing).

<sup>9152</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 18-21, 79, 80-81.

<sup>9153</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 17 (shown a typed report dated 5 July 1978, E3/2421, ERN (En) 00322201-00322202 and responding that “the format and typing nature is true”).

summarising the statements of two persons;<sup>9154</sup> a report dated 10 March 1977 summarising the statements of three prisoners;<sup>9155</sup> a report dated 30 July 1977 summarising the statement of one prisoner;<sup>9156</sup> a report dated 30 July 1977 summarising the statement of one prisoner;<sup>9157</sup> a report dated 20 August 1977 summarising the statement of one prisoner;<sup>9158</sup> a report dated 25 August 1977 summarising the statements of three prisoners;<sup>9159</sup> a report from an unknown day in August 1977 summarising the statements of two prisoners;<sup>9160</sup> a report from an unknown day in September 1977 summarising the statement of one prisoner;<sup>9161</sup> a report from an unknown day in September 1977 summarising the statements of two prisoners;<sup>9162</sup> a report from an unknown day in July 1978 summarising the statement of one prisoner;<sup>9163</sup> a report from 5 July 1978 summarising the statements of seven prisoners;<sup>9164</sup> a report from July summarising the statements of two prisoners;<sup>9165</sup> and a report dated 5 July 1978 summarising the statement of one prisoner.<sup>9166</sup>

2701. Considered together with the guards' evidence, this documentary evidence establishes that cadres at Kraing Ta Chan in general, and *Ta An* in particular, regularly reported to the District Committee on the progress of individual interrogations. The

<sup>9154</sup> Tram Kak District Record, E3/2431, 14 November 1976, ERN (En) 00322117-00322119 (report to the Party on the "confession" of prisoners identified as Sea Song Heng, 30 years old, and Moeung Sophan, 23 years old).

<sup>9155</sup> Tram Kak District Record, E3/2434, 10 March 1977, ERN (En) 00276600-00276601 (the prisoners are identified as Seun Em, 34 years old; Maet Boeuk, 21 years old; and Kim Loeung, 22 years old).

<sup>9156</sup> Tram Kak District Record, E3/2012, 30 July 1977, ERN (En) 00276593 (the prisoner is identified as Ung Ly, 43 years old).

<sup>9157</sup> Tram Kak District Record, E3/2012, 30 July 1977, ERN (En) 00276594 (the prisoner is identified as Chan Soeun, 23 years old).

<sup>9158</sup> Tram Kak District Record, E3/2434, 20 August 1977, ERN (En) 00276603 (the prisoner is identified as Mark Y, 54 years old).

<sup>9159</sup> Tram Kak District Record, E3/4166, 25 August 1977, ERN (En) 00694355-00694356 (the prisoners are identified as YOENG Kean, 28 years old, UL Heang, age 37, and VAL Chea, 38 years old).

<sup>9160</sup> Tram Kak District Record, E3/4101, August 1977, ERN (En) 00271039 (the prisoners are identified as Sum Seang, 41 years old, and Sum Seng, 38 years old and identified as "kinsmen").

<sup>9161</sup> Tram Kak District Record, E3/4101, ERN (En) 00271038 (the prisoner is identified as Yem Poa, 38 years old).

<sup>9162</sup> Tram Kak District Record, E3/2434, September 1977, ERN (En) 00276602 (the prisoners are identified as San Sophann, 24 years old, and TO Hong, 21 years old).

<sup>9163</sup> Tram Kak District Record, E3/2434, July 1978, ERN (En) 00276598-00276599 (the prisoner is identified as the contemptible Voeun).

<sup>9164</sup> Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322201-00322202 (the prisoners are identified as Pok San, 23 years old, Chung Kim Chhe, 20 years old, Uk Nhim, 26 years old, Sao Tuon, 24 years old, Lim, 29 years old, Chung, 24 years old, and Chen Din, 25 years old).

<sup>9165</sup> Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322203-00322204 (the prisoners are identified as Im Lim, 25 years old, and Phan Boeun, 27 years old).

<sup>9166</sup> Tram Kak District Record, E3/2421, 5 July 1978, ERN (En) 00322205 (the prisoner is identified as Tes Rum, 23 years old).

Chamber therefore rejects the later District Secretary NEANG Ouch *alias Ta San*'s claim that he never received interrogation reports on prisoners at Kraing Ta Chan.<sup>9167</sup> There are also notes from Tram Kak district to Kraing Ta Chan giving very specific instructions in relation to the interrogation and execution of particular persons.<sup>9168</sup> The evidence establishes this to have been the general practice, including in 1978 when NEANG Ouch *alias Ta San* was the District Secretary.<sup>9169</sup>

#### 12.3.5.1.4. *Involvement of Sector 13 and/or Southwest Zone*

2702. According to PECH Chim, Kraing Ta Chan was controlled by Sector 13 rather than by the district, describing prisoners as under the “exclusive control of the sector”.<sup>9170</sup> In his view, the Sector Secretary *Ta Saom* was in charge of “the military” at Kraing Ta Chan. PECH Chim claimed only to have learned about Kraing Ta Chan because the district received communications requesting that rice to be provided.<sup>9171</sup> He attributed decision-making authority in relation to Kraing Ta Chan to the sector rather than the district, but conceded that the sector took decisions based on the district's reports. He characterised the district as merely “standing by” the sector's decisions.<sup>9172</sup> At another point, he characterised the district as operating like an “assistant” to the sector in relation to Kraing Ta Chan.<sup>9173</sup> He said that the district did not dare oppose the sector and would give up people to the sector if requested to do so.<sup>9174</sup> The Chamber finds that PECH Chim sought to minimise his own responsibility for Kraing Ta Chan. The evidence discussed in the previous section shows that the district level was heavily involved in the operation of Kraing Ta Chan.

<sup>9167</sup> T. 11 March 2015 (NEANG Ouch *alias Ta San*), E1/275.1, p. 76.

<sup>9168</sup> Tram Kak District Record, E3/2430, ERN (En) 00322110 (a note from Kit to the “Police” regarding the interrogation of Chau Nga, a former military captain and referring to statements discussed with Kit days beforehand); Tram Kak District Record, E3/2423, ERN (En) 00322210 (letter from San suggesting areas of questions to “[e]lder brother” in relation to two persons); Tram Kak District Record, E3/2048, 28 March 1977, p. 10, ERN (En) 01454953 (note from Kith to An, proposing detailed interrogation); Tram Kak District Record, E3/2052, 13 June 1977, p. 2, ERN (En) 00276591 (report to An from Kith stating that 10 traitors sent by the commune yesterday should be “interrogated harshly and thoroughly”); Tram Kak District Record, E3/2453, p. 12, 9 October 1977, ERN (En) 00388585 (note from Kit to An requesting him to “come down to make a concrete assessment and make the arrest”, referring to a previous report (at ERN (En) 00276574) from Trapeang Thom North commune).

<sup>9169</sup> Section 10.1.5.3.1: Tram Kak Cooperatives: Tram Kak District: Leadership.

<sup>9170</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 56.

<sup>9171</sup> T. 11 March 2015 (NEANG Ouch *alias Ta San*), E1/275.1, p. 76.

<sup>9172</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 28-29; T. 22 April 2015 (PECH Chim), E1/290.1, p. 59 (describing the sector's decision as an “instruction” but not an “absolute order”).

<sup>9173</sup> PECH Chim Interview Record, E3/4626, 27 August 2009, p. 6.

<sup>9174</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 28-29.

2703. The evidence satisfies the Chamber, however, that the sector could decide the fate of prisoners at Kraing Ta Chan. PECH Chim testified that confessions and other reports were sent from Kraing Ta Chan to Sector 13 via the District Office in Angk Roka. Perhaps one or two days later, the sector's decision would be returned. If it concerned individuals from Tram Kak district, the sector's decision would be in an open envelope and PECH Chim was entitled to read it. He explained that if names were crossed in red-ink, it meant that the sector's decision was those persons were to be killed. The district then forwarded those names to Kraing Ta Chan to implement.<sup>9175</sup> PECH Chim also described how Sector Secretary *Ta Saom* put a cross beside a name without additional comments which was forwarded to *Ta An*, and PECH Chim "did not dare do anything without letting [his superior] know". PECH Chim saw markings on documents sent to Kraing Ta Chan and, as noted, he explained to the Chamber what those markings sent from the sector level to Kraing Ta Chan meant: those persons were to be killed.<sup>9176</sup> According to PECH Chim, everything was there on paper and the upper echelon's decisions were carried out.<sup>9177</sup> PECH Chim further explained that Kraing Ta Chan could communicate directly with Sector 13 if the persons concerned were from other districts, such as Kirivong or Treang district.<sup>9178</sup> Irrespective of the veracity or otherwise of this last aspect, the Chamber is satisfied that Tram Kak district received regular instructions from Sector 13 in relation to the fate of prisoners at Kraing Ta Chan.

2704. PECH Chim further explained that, in his capacity as District Secretary, he could request the release of persons.<sup>9179</sup> PECH Chim recalled a specific example when he made a request to the sector to spare a person called Vang (phonetic) who he knew, but Sector Secretary Soam's response was to scold PECH Chim for indiscipline.<sup>9180</sup>

<sup>9175</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 49-50. At points in his evidence, PECH Chim claimed that names crossed in red had "no meaning". See T. 1 July 2013 (PECH Chim), E1/215.1, pp. 42-43, 60-61. At times during his evidence, he claimed that earlier (more incriminating) answers were given because he was tired and had been bombarded with questions. See T. 22 April 2015 (PECH Chim), E1/290.1, p. 35, 44. Cf. T. 1 July 2013 (PECH Chim), E1/215.1, pp. 42, 50, 60-61. The Chamber found these excuses to lack credibility.

<sup>9176</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 49-50, 53-56.

<sup>9177</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 44.

<sup>9178</sup> T. 24 April 2015 (PECH Chim), E1/292.1, pp. 79.

<sup>9179</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 56-57 (describing the possibility to request the release of persons: "I had the authority at that time to request for people to be released from the security centre" and describing the possibility to make proposals to *Ta Saom* to be lenient on certain individuals), 56-57 (giving the specific example of 10 persons who he concluded were not "involved in politics" therefore meriting release), 58 (stating that if he knew the persons to be good, gentle, obedient and hardworking, then he would "happily" make a request to the upper authority).

<sup>9180</sup> T. 01 July 2013 (PECH Chim), E1/215.1, p. 34.

The Chamber accepts PECH Chim's description of this incident, and finds that Sector 13 had an oversight role in relation to Kraing Ta Chan.

2705. Documentary evidence confirms Sector 13's oversight role and decision-making ability. Two typed reports from Kraing Ta Chan include annotations on the top-left corner signed by "Prak" with the additional identifier "Sector 13". There is an annotation dated 7 August 1977 on a report dated 30 July 1977 stating "Decided to smash",<sup>9181</sup> and an annotation dated 7 August 1977 on another report dated 30 July 1977 also stating "Decided to smash".<sup>9182</sup> The Chamber recalls that former District Secretary PECH Chim authenticated these documents and identified Prak as then Secretary of Sector 13, having succeeded *Ta Saom*.<sup>9183</sup> These reports clearly demonstrate the Sector Secretary deciding upon the fate of persons, based upon written reports from Kraing Ta Chan.

2706. Further evidence convincingly demonstrates the involvement of Sector 13 in decisions to smash particular prisoners at Kraing Ta Chan. NEANG Ouch *alias Ta San* agreed with PECH Chim's characterisation of the process, and the Chamber notes that *Ta San*'s evidence related to late 1977 into 1978 thus demonstrating continuity despite the different personnel involved.<sup>9184</sup> The Chamber has already addressed the notes of 7-8 August 1978 which NEANG Ouch *alias Ta San* authenticated.<sup>9185</sup> These discuss prisoners from Cheang Tong commune and a group of widows from Trapeang Thom North commune, with a request to "sweep them all clean". NEANG Ouch *alias Ta San* explained that, although he wrote and signed this message, it was dictated by then Sector Secretary, *Ta Rorn*. The Chamber rejects NEANG Ouch *alias Ta San*'s claim to have been merely a passive scribe. The Chamber finds that the five widows referred to in the aforementioned note entered Kraing Ta Chan on 9 August 1978.<sup>9186</sup> There are crosses next to their names in notebook E3/4083 which, in light of the evidence discussed above as to the meaning of crosses, indicates that the decision to execute them was conveyed to Kraing Ta Chan. It is significant, in the Chamber's assessment,

<sup>9181</sup> Tram Kak District Record, E3/2012, 30 July 1977, p. 2, ERN (En) 00276594 (the prisoner is identified as CHAN Soeun).

<sup>9182</sup> Tram Kak District Record, E3/2012, 30 July 1977, p. 1, ERN (En) 00276593 (the prisoner is identified as UNG Ly).

<sup>9183</sup> Section 10.1: Tram Kak Cooperatives, para. 849.

<sup>9184</sup> T. 10 March 2015 (NEANG Ouch *alias Ta San*), E1/274.1, p. 80.

<sup>9185</sup> Section 10.1: Tram Kak Cooperatives, paras 843-845.

<sup>9186</sup> Section 10.1: Tram Kak Cooperatives, para. 847.



that the five widows were sent from Angk Roka to Kraing Ta Chan *after* NEANG Ouch *alias* Ta San had been instructed by the Sector Secretary to “sweep them all clean”. They were sent to Kraing Ta Chan to be killed, and the only reasonable inference is that this decision was implemented.

2707. In addition to receiving reports on confessions and liaising with the sector level, the district level gave specific instructions to Kraing Ta Chan on interrogations. There were instances when the sector level monitored confessions from Kraing Ta Chan. There is documentary evidence of written communication between Sector 13 and Kraing Ta Chan. A report dated 5 December (no year specified) is addressed to An from Kit “for Sector 13 Committee” requesting that *Ta* An send “another copy of Khan Khiev today – it’s extremely urgent”.<sup>9187</sup> This further satisfies the Chamber that the sector level was involved in the operation of Kraing Ta Chan and decided the fate of some persons sent there.

2708. At the zone level, the evidence establishes that Southwest Zone Secretary *Ta* Mok visited Kraing Ta Chan and was kept apprised of its operation. KEO Chandara explained that *Ta* Mok personally came to Kraing Ta Chan on a motorcycle to release him shortly after 17 April 1975, after which *Ta* Mok took him to a zone hospital to repair a radiography machine.<sup>9188</sup> In addition to having a needed skill, KEO Chandara was released because *Ta* Mok knew his mother.<sup>9189</sup> The Chamber rejects the NUON Chea Defence’s submission that this evidence should be outweighed by KEO Chandara’s inability to pick out *Ta* Mok from a photographic array which they had prepared.<sup>9190</sup> KEO Chandara’s close relationship to *Ta* Mok was clearly established. While at Kraing Ta Chan, *Ta* Mok shouted to the prison chief “have you cooked a

<sup>9187</sup> Tram Kak District Record, E3/4124, ERN (En) 00789264 (a handwritten note dated 5 December [no year given] from Kit “for Sector 13 Committee” directing An, District 105 Reeducation Office that: “you must send me another copy of Khan Khiev today – it’s very extremely urgent!”).

<sup>9188</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 49-50; T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 32-33 (*Ta* Mok shouted from outside the compound’s gate, standing to the east of the prison compound. *Ta* Mok shouted “*Achar* Chhen, have you cooked a doctor who was detained here yet?” When Chhen responded “Not yet, brother”, *Ta* Mok responded, “release him, when I return from the south then I will take him to the hospital”).

<sup>9189</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 30; KEO Chandara Interview Record, E3/5153, 12 March 2008, p. 3.

<sup>9190</sup> NUON Chea Closing Brief, para. 512.

doctor who was detained here yet”. When Kraing Ta Chan Chief replied, “Not yet, brother”, *Ta Mok* directed KEO Chandara’s release.<sup>9191</sup>

2709. According to SORY Sen, *Ta Mok alias Ta 15* visited Kraing Ta Chan once or twice, driving a jeep.<sup>9192</sup> HUN Kimseng *alias Yeay Nha* also told investigators that *Ta Mok* came to Kraing Ta Chan.<sup>9193</sup> Although the basis for SORY Sen and HUN Kimseng’s identifications are less clear, the Chamber is satisfied that *Ta Mok* visited Kraing Ta Chan on at least a few occasions. *Ta Mok* also wrote to PHANN Chhen while he was at Kraing Ta Chan.<sup>9194</sup> PECH Chim told investigators that neither *Ta Saom* nor *Ta Mok* visited Kraing Ta Chan, and that instead they worked based on reports.<sup>9195</sup> While the evidence does not show that *Ta Mok* was intimately involved in the ongoing operation of Kraing Ta Chan, the Chamber is satisfied that information was relayed to the zone via the sector.<sup>9196</sup> Although the evidence is less clear as to the precise level of involvement of the Southwest Zone level after *Ta Mok* took on additional responsibilities outside the Southwest Zone, the Chamber is satisfied that the Southwest Zone level remained involved. The Southwest Zone’s ongoing oversight and control of Kraing Ta Chan is clear because guards were recalled from Kraing Ta Chan to Division 210 in 1978 in order to join the fight against Vietnamese forces.<sup>9197</sup> Division 210,

<sup>9191</sup> T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 32-33. *See also*, KEO Chandara Interview Record, E3/5837, 29 October 2007, pp. 4-5 (describing *Ta Mok* calling out “That doctor where is he? Feed him.” Then when *Ta Mok* returned, he took KEO Chandara with him). Although KEO Chandara did not mention *Ta Mok* having used the specific word “cook” in his prior interviews, the Chamber finds that these interviews did not dwell on the details of his release from Kraing Ta Chan. The Chamber accepts his oral evidence that this is what *Ta Mok* said.

<sup>9192</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 66-67 (explaining that he learned *Ta Mok*’s identity from soldiers).

<sup>9193</sup> HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 6; HUN Kimseng Interview Record, E3/10753, 15 September 2015, pp. 14-15 (Answers 85-88, suggesting that *Ta Mok* came once every month or two in a jeep accompanied by soldiers), 15 (Answer 89, *Ta Kit* came and sat at the same table with *Ta An*, Penh and Big Duch).

<sup>9194</sup> T. 24 February 2015 (PHANN Chhen), E1/268.1, p. 92; T. 25 February 2015 (PHANN Chhen), E1/269.1, p. 27.

<sup>9195</sup> PECH Chim Interview Record, E3/4626, 27 August 2009, p. 8.

<sup>9196</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 54-60 *confirming* PECH Chim Interview Record, E3/4626, 27 August 2009, pp. 7-8, ERN (En) 00380137-00380138 (in principle, the sector had to consult the zone before responding with decisions on executions and arrests; although PECH Chim did not know whether the zone was consulted in every matter, he heard a sector report to *Ta Mok* about Kraing Ta Chan, with *Ta Soam* telling *Ta Mok* that a group had been “resolved”, which PECH Chim understood to mean “purged”; then giving a further example when *Ta Mok* came to the office asking for Saom); T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 75-76 (after the commune level identified security concerns, the list of names would be sent to the district, which would in turn send it to the sector).

<sup>9197</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 10 (“transferred back to Division 210 in order to go to the battlefield”); T. 19 February 2015 (SREI Than), E1/266.1, p. 10; T. 24 February 2015 (SREI Than), E1/268.1, pp. 29-30 (describing backing been in Regiment 13, Division 210); SREI Than Interview Record, E3/5834, 29 December 2009, p. 10 (Answer 77, describing leaving Kraing Ta Chan and

formerly Division 2, had been Southwest Zone division and was later sent to Svay Rieng in the East Zone.<sup>9198</sup>

#### 12.3.5.1.5. *Visit by the Accused*

2710. KEO Chandara claimed that, prior to his release from Kraing Ta Chan where he was detained until shortly after 17 April 1975, he saw NUON Chea, who he identified as “*Ta Chea*”, around 2 p.m. one afternoon from a distance of 70-80 metres, near the senior cadres’ office. He said that a district-level person who was also detained identified “*Ta Chea*” to him.<sup>9199</sup> Contrasted with this, PHHAN Chhen told investigators that NUON Chea never visited Kraing Ta Chan when he was there.<sup>9200</sup> Whereas KEO Chandara knew *Ta Mok* and his ability to identify him is clear, the Chamber finds that his identification of NUON Chea is based on hearsay, performed from a distance, and insufficiently reliable. The Chamber therefore finds that the evidence does not establish that NUON Chea ever visited Kraing Ta Chan.

#### 12.3.5.2. *Organisation inside Kraing Ta Chan*

2711. The Chamber accepts the consistent evidence given by SAUT Saing, VAN Soeun and SREI Than *alias* Duch that the staff at Kraing Ta Chan were divided into two groups, and that they were part of the subordinate unit of six district soldiers described as the military group.<sup>9201</sup> Although they were not at Kraing Ta Chan

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returning to Platoon 24, Regiment 13, Division/Brigade 210); SREI Than Interview Record, E3/9597, 31 October 2013, p. 4 (Answer 12, describing leaving Kraing Ta Chan and returning to Regiment 13, Division 210, which he described as a “sector level” unit in the Southwest Zone military); VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 23 (Answer 184, although not stating the Division number, explaining that he re-joined the army for three months in 1978 and was then recalled back to Kraing Ta Chan).

<sup>9198</sup> T. 31 October 2016 (IENG Phan), E1/492.1, p. 15 (referring to “Brigade 210” having previously been Brigade 2), 39 (IENG Phan had been in charge of Regiment 12 in Brigade 210); IENG Phan Interview Record, E3/419, 23 November 2009, p. 4 (specifying that between late 1976 and early 1977, the Southwest Zone set up a structure of four brigade directly subordinate to the Southwest Zone); CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 4 THY Pouse, became commander of Division 210).

<sup>9199</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 50-52; T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 5-6; KEO Chandara Interview Record, E3/5153, 12 March 2008, p. 3 (other prisoners identified NUON Chea); KEO Chandara Interview Record, E3/7888, 27 November 2009, ERN (En) 00411483 (NUON Chea was talking to *Ta Chhen* and *Ta An*); KEO Chandara Interview Record, E3/7888, 27 November 2009, ERN (En) 00411483 (suggesting the distance was seven metres).

<sup>9200</sup> PHANN Chhen Interview Record, E3/72, 2 March 2010, ERN (En) 00490539 (Answer 33).

<sup>9201</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 12; T. 24 February 2015 (SREI Than), E1/268.1, pp. 6-8 (identifying the members of his guard unit as Saing, Sim, Soan and Touch); T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 22-23, 32 (confirming that his six-man unit included Saing Sim, Small Duch, Touch, Uok and himself); SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 10 (Answer 54, “There were a total of 13 guards, including seven working at the Centre and the other six

throughout the relevant period, they were there for a significant length of time and the Chamber is satisfied that this reflected the general structure.<sup>9202</sup>

2712. Above the military unit were approximately six persons, referred to variously in the evidence as the core, youth league or party members. Within this superior group, VAN Soeun identified the three-member committee comprising *Ta An* (the chief), *Penh* (the deputy) and *Cheng*. He identified the others as *Chieng*, *Choeun*, another *Chhieng* and *Moeun*.<sup>9203</sup> As noted, he and others identified *Sieng* as one of the Party members at *Kraing Ta Chan*.<sup>9204</sup> SAUT Saing identified the “office chiefs” as *Chheang* and *Moeun*, whereas the chiefs who performed interrogations were *Ta An*, *Penh* and *Ta Chhen*.<sup>9205</sup> SAUT Saing also referred to the “three-member committee”, members of the Youth League, members of the Party, and members of the militia.<sup>9206</sup> He described the core group, Youth League, and Party members as supervising his unit.<sup>9207</sup> SORY Sen also described the three-member committee at *Kraing Ta Chan* and identified *Ta Cheng* as the third member of that committee alongside *Ta An* and *Ta Penh*.<sup>9208</sup> VAN Soeun’s evidence was that the Party members, to whom the guards were subordinate, held their own meetings at *Kraing Ta Chan*.<sup>9209</sup> There were also regular meetings at

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serving as soldiers); SREI Than Interview Record, E3/5852, 16 September 2008, p. 3 (referring to six members of his unit including *Sim*, *Saing* and *Soan*).

<sup>9202</sup> In relation to the earlier period, see T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 39-40; T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 3-4 (describing 20 guards led by *Dam*, but the witness did not know their names); T. 24 March 2015 (SOTR Saing), E1/281.1, p. 77 (also recalling *Ta Dam*, but suggesting that he was sent away, committed moral misconduct then returned to *Kraing Ta Chan* as a prisoner).

<sup>9203</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 28 (also mentioning *Duch* as the chief of the unit from the district).

<sup>9204</sup> T. 4 March 2015 (VANN Soeun), E1/271.1, p. 74. This is corroborated by evidence from another guard, who identified *EM Sieng*. See SAING Sim Interview Record, E3/5853, 28 November 2007, p. 8.

<sup>9205</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 11, 49-50, 57, 72; SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 10 (Answer 57, identifying “*Cheng*” as third among the “Centre group” at *Kraing Ta Chan*). This is corroborated by SAING Sim Interview Record, E3/5853, 28 November 2007, p. 8 (identifying *Cheng* as one of the “leaders” at *Kraing Ta Chan*).

<sup>9206</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 30, 57 (distinguishing the three-member committee from the rest of the staff, then mentioning members of the youth league as separate from his own militia group), 76 (referring to the Youth League and/or Party members as the “core group” which supervised the soldiers).

<sup>9207</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 76.

<sup>9208</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 26, 31.

<sup>9209</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, p. 29; VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 5 (identifying the six CPK members as *An*, *Penh*, *Cheng*, *Chieng*, *Moeun* and *Chhoeun*). In interview, he further identified *Moeun* as part of the “Core Youth League” who would pass letters to him for delivery to the District Office. See VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 5 (Answers 17-18). Another guard interviewed by OCIJ investigators identified *Moeun* as *Van Moeun*. See SAING Sim Interview Record, E3/5853, 28 November 2007, pp. 5, 8.

which the guards were given instructions by *Ta An* and other leaders.<sup>9210</sup> The Chamber also accepts SORY Sen's evidence that more staff and soldiers would arrive at Kraing Ta Chan when the prison population increased, and recalls its findings that persons from the district regularly came to Kraing Ta Chan.<sup>9211</sup>

2713. The Chamber is satisfied that there was a Party committee of three persons at Kraing Ta Chan and that it was headed by *Ta An*. The Chamber also finds it to be demonstrated, especially in light of IEP Duch's role, that members of the Party's Youth League also worked inside Kraing Ta Chan.

### 12.3.6. *Arrests*

2714. The Chamber has already made findings of the circumstances of many arrests in Tram Kak district when evaluating the evidence in relation to the Tram Kak Cooperatives.<sup>9212</sup> The Chamber also recalls its findings in relation to the arrest of MEAS Sokha's family.<sup>9213</sup> The Chamber further heard evidence regarding VONG Sarun and UCH Han, former medics at the Southwest Zone's military hospital, who were detained at Kraing Ta Chan together with their young babies.<sup>9214</sup> The date they entered Kraing Ta Chan is recorded as 23 May 1977 in a handwritten document titled "Brief Biographies of Prisoners at Tram Kak District Education Office".<sup>9215</sup> VONG Sarun confirmed the accuracy of this date.<sup>9216</sup> The Chamber is satisfied that the dates recorded on this list are reliable. The dates for several other entries on the list are consistent with other Tram Kak District Records, including numerous dated

<sup>9210</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 28-29; T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 32-33 (VAN Soeun and the other guards attended meetings once per month with Penh where guarding duties were discussed); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 28-29 (SAUT Saing and other soldiers attended meetings at Kraing Ta Chan approximately once per month where they were given instructions by *Ta An* and the leaders of security).

<sup>9211</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 64.

<sup>9212</sup> Section 10.1.8: Tram Kak Cooperatives: Security.

<sup>9213</sup> *See above*, paras 2668-2674.

<sup>9214</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 11, 16-17; Tram Kak District Record, E3/4145, p. 1, ERN (En) 00762837 (list of prisoners detained for months or years, identifying VORNG Sanu, 27 years old, and UCH Han, 26 years old, both from Hospital 22 with the comment that they had both been "implicated by Hang, a worker in Hospital 22).

<sup>9215</sup> Tram Kak District Record, E3/4164, p. 1 (biographies of prisoners, identifying Sarun, 27 years old, and UCH Han, 26 years old, with arrival dates recorded as 23 May 1977 and the comment that "These two girls are implicated in the responses of Hang and Kang").

<sup>9216</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 18-19 (When shown the document and the date was put to her, she responded: "Yes, I recall it". She further confirmed that she arrived at Kraing Ta Chan at the same time as Han, who is also identified on the same list as arriving on 23 May 1977).

communications from communes and Kraing Ta Chan regarding prisoners identified on this list.<sup>9217</sup>

<sup>9217</sup> The following examples of consistency and corroboration between different Tram Kak District Records satisfied the Chamber that the document and the entry dates recorded therein are reliable:

- (1) The entry date recorded for VEN Ham and KUY Ni, 17 April People from Popel commune, is 15 July 1978 (*see* E3/4164, pp. 1-2, ERN (En) 00973147-00973148). The Chamber identified other Tram Kak District Records consistent with this date, including: an earlier note from Popel commune to Meng on 9 July 1978 (E3/2424, 9 July 1978, ERN (En) 00322221); a note from Meng to “Comrade Elder brother” on 15 July 1978 regarding sending over four persons, including Ham *alias* CHAU Peou Muny and “Any” from Popel commune (E3/2424, 15 July 1978, ERN (En) 00322223). *See also*, the discussion of other documents relevant to these persons in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 864.
- (2) The entry date recorded for AOM Chanta and POK Bunli, 17 April People from Angk Ta Saom commune, is 15 July 1978 (*see* E3/4164, pp. 2-3, ERN (En) 00973148-00973149). The Chamber identified other Tram Kak District Records consistent with this date, including: a note from Meng to “Comrade Elder brother” on 15 July 1978 regarding sending over four persons, including OM Chanta and PON Bunli from Angk Ta Saom (E3/2424, 15 July 1978, ERN (En) 00322223); and a subsequent typed report to the Party on 25 September 1978 signed by An reporting on the statements of OM Chanta and MOK Bunly (E3/2425, 25 September 1978, ERN (En) 00322226). *See also*, the discussion of other documents relevant to these persons in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 891.
- (3) The entry date recorded for CHAN Ngiv and MEN Mao, 17 April People from Popel commune, is recorded as 19 July 1978 (*see* E3/4164, p. 3, ERN (En) 00973149). The Chamber identified other Tram Kak District Records consistent with this date, including a handwritten note dated 13 July from Popel commune to “Comrade the District” requesting that two traitors (Ngiv and Mao) be received (E3/2424, ERN (En) 00322219). *See also*, the discussion of other documents relevant to these persons in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 865.
- (4) The entry date recorded for KONG Vet, EM Sambath and CHHAOM Hang, 17 April People from Angk Ta Saom commune, is recorded as 23 July 1978 (*see* E3/4164, pp. 3-4, ERN (En) 00973149-00973150). The Chamber identified other Tram Kak District Records consistent with this date, including an earlier handwritten note from Angk Ta Saom commune dated 17 July 1978 reporting on KONG Vaet and EM Sambath (E3/2424, 18 July 1978, ERN (En) 00322220). *See also*, the discussion of other documents relevant to these persons in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 866.
- (5) The entry date recorded for NGET Voeun, a Base Person from Samraong commune, is recorded as 28 June 1978 (E3/4164, p. 5, ERN (En) 00973151). The Chamber identified other Tram Kak District Records consistent with this date, including a subsequent confession by NGET Voeun dated 24 July 1978 (E3/8408, 28 July 1978, p. 1, ERN (En) 00361771). *See also*, the discussion of other documents relevant to this person in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 897.
- (6) The entry date recorded for TES Rum, a Base Person who “[r]an from Chrey Hou Phnov” is recorded as 28 June 1978 (E3/4164, p. 6, ERN (En) 00973152). The Chamber identified other Tram Kak District Records consistent with this date, including a typed report from Kraing Ta Chan on 5 July 1978 (E3/2421, 5 July 1978, ERN (En) 00322205). *See also*, the discussion of other documents relevant to this person in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 894.
- (7) The entry date recorded for five women, all 17 April People from Trapeang Thom North commune, is recorded as 9 August 1978. The Chamber identified other Tram Kak District Records consistent with this date, including a note from NEANG Ouch *alias* Ta San dated 7 August 1978 discussing a group of widows then station at Comrade Meng’s place (E3/4093, 7 August 1978, p. 1, ERN (En) 00831486); and a note signed by Meng on 8 August 1978 identifying the five women (E3/4093, 8 August 1978, pp. 2-3, ERN (En) 00831487-00831488). *See also*, the discussion of other documents relevant to these five women in Section 10.1.4: Authenticity of the Tram Kak District Records, paras 846-847.
- (8) The entry date recorded for THAI Phanna and PAN Naichi, 17 April People from Cheang Tong commune, is recorded as 9 August 1978 (E3/4164, p. 8, ERN (En) 00973154). The Chamber identified other Tram Kak District Records consistent with this date, including an earlier report from Boeun in Cheang Tong commune on 5 August 1978 on “Naicha” and “Phana” (E3/4093, 8 August

2715. VONG Sarun gave evidence that her husband PRACH Son *alias* Saet had been arrested and taken to Kraing Ta Chan about one week before she was arrested.<sup>9218</sup> Once she was at Kraing Ta Chan, she learned of her husband's earlier execution from another prisoner in the detention building called *Yeay Phon*.<sup>9219</sup> The evidence establishes that Saet and VONG Sarun were caught up in a purge of Hospital 22 for perceived unfaithfulness to the Party among the persons who worked there.<sup>9220</sup>

2716. Prisoners were tied up and led to Kraing Ta Chan on foot under guard,<sup>9221</sup> frequently at night,<sup>9222</sup> and entered the compound through either the east or west gate.<sup>9223</sup> Militiamen and/or soldiers brought prisoners to the external fence, where they were received by Kraing Ta Chan guards.<sup>9224</sup> The guards then walked the prisoners to

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1978, p. 3, ERN (En) 00831489). *See also*, the discussion of other documents relevant to these two women in Section 10.1.4: Authenticity of the Tram Kak District Records, para. 867.

<sup>9218</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 3 (identifying husband), 9-10 (confirming his execution at Kraing Ta Chan).

<sup>9219</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 37 (*Yeay Phon* said that VONG Sarun's husband was killed near a tree to the west of the compound), 39 (explaining that *Yeay Phon* had been allowed out of the detention building, which was how she knew what happened).

<sup>9220</sup> Tram Kak District Record, E3/4101, 12 June 1977, ERN (En) 00322126 (report from *Ta An* on the self-criticism of NHEP Yan, who revealed unfaithfulness to the Party at Hospital 22, including Kang, Saet and Duong); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 24 (confirming that *Ta Duong* was a surgeon who worked at the hospital with her husband); Tram Kak District Record, E3/8413, ERN (En) 00322108 (report detailing the network of the "contemptible Kang").

<sup>9221</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 68-69 (SORY Sen was tied up with other prisoners in a line and marched on foot to Kraing Ta Chan, escorted by village militia); T. 19 February 2015 (SREI Than), E1/266.1, p. 15 (prisoners were "tied up" when they arrived at Kraing Ta Chan); T. 23 February 2015 (SREI Than), E1/267.1, p. 45; T. 24 February 2015 (SREI Than), E1/268.1, pp. 35-36 (prisoners arriving at Kraing Ta Chan had their hands tied behind their backs); SREI Than Interview Record, E3/5852, 16 September 2008, p. 3, ERN (En) 00231674 (prisoners walked into Kraing Ta Chan with their arms tied behind their backs); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 9, ERN (En) 00223458 (arrestees were tied up).

<sup>9222</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 64 (although there were exceptions, prisoners were generally brought to Kraing Ta Chan at night, around 8 or 9 p.m.); SREI Than Interview Record, E3/5852, 16 September 2008, p. 3, ERN (En) 00231674 (prisoners were sometimes brought in the day and sometimes at night).

<sup>9223</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 73 (there was no specific entrance for prisoners, who would be taken to either the east or west gate); T. 23 February 2015 (SREI Than), E1/267.1, p. 51 (prisoners were brought in through either the east or west gates and handed over to prison staff); T. 24 February 2015 (SREI Than), E1/268.1, pp. 21-22 (both the east and west gates were used for prisoner entry to Kraing Ta Chan, with the west gate used more frequently because the road there was better).

<sup>9224</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 69 (militia brought SORY Sen to the external fence, rang a bell and Kraing Ta Chan staff would receive the prisoner from the external fence); T. 25 March 2015 (SAY Sen), E1/282.1, p. 78 (militiamen brought prisoners to the external perimeter of the compound, where they were received by the guards who accompanied them to the detention facility); T. 24 February 2015 (SREI Than), E1/268.1, p. 35 (the primary task of SREI Than's unit was to receive people who had been arrested from villages and communes); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 11 (special units brought arrestees to the fence of the compound, where they were collected by "people in the security office"); SREI Than Interview Record, E3/5852, 16 September 2008, p. 3, ERN (En) 00231674 (SREI Than and his group had the job of receiving people who had been arrested).

the inner compound, from where they were taken to the detention facility and detained.<sup>9225</sup>

2717. Before the Chamber are a significant number of notes from various communes sent to Kraing Ta Chan whereby communes request to send people, or record that particular persons had already been sent. Often these reports record the reasons why the person had been arrested. Collectively, the Chamber finds these reports to reliably demonstrate the types of “offences” for which it was considered appropriate to send persons to Kraing Ta Chan. These offences included complaining about work or food, planning to flee and/or inciting others to do the same, being lazy, stealing food, threatening unit chiefs, speaking favourably of the old society, having “contradictions” with the revolution, and breaking collective property. The Chamber’s findings in relation to this evidence now follows.

2718. A message dated 9 January 1977 from Angk Ta Saom commune to Kraing Ta Chan explained that PEOU Choal, a New Person and former LON Nol captain, was to be brought over for complaining about food.<sup>9226</sup> A message dated 18 February 1977 from Angk Ta Saom to the “District Police” described militia bringing in two persons from the vegetable planting unit to be investigated for complaining, having a plan to flee or kill and saying “[w]e all should never forget our original status”. The report further identified former LON Nol officials to be investigated.<sup>9227</sup>

2719. A message dated 29 April 1977 from Tram Kak commune to Kraing Ta Chan explained that they wanted to send in AMRIT Mart, a former LON Nol soldier, who had been argumentative and questioned what *Angkar* was.<sup>9228</sup> A message dated 8 May 1977 from Popel commune to “Respected Comrade Police” records the transfer of four

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<sup>9225</sup> T. 4 February 2015 (SAY Sen), E1/256.1, p. 69 (after arrival, prisoners were sent to the building and locked up); T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 63 (MEAS Sokha was placed in a detention place “immediately” after his arrival at Kraing Ta Chan); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 20 (MEAS Sokha was imprisoned at the outset and could not move freely); T. 24 February 2015 (SREI Than), E1/268.1, pp. 35-36 (the guards received the prisoners and escorted them to the next gate, along with a letter, and delivered them to staff at the next gate); T. 25 March 2015 (SAUT Saing), E1/282.1, p. 24 (“all guards” were involved in shackling and unshackling prisoners”); E3/5852, 16 September 2008, p. 3, ERN (En) 00231674 (SREI Than and his group walked the prisoners to the office fence and then individuals who worked in the office came to receive them).

<sup>9226</sup> Tram Kak District Record, E3/2044, 9 January 1977, ERN (En) 00290261.

<sup>9227</sup> Tram Kak District Record, E3/8423, 18 February 1977, ERN (En) 00322152 (identifying the persons as LONG Teul *alias* Chanthon and SOK Sal).

<sup>9228</sup> Tram Kak District Record, E3/2437, 29 April 1977, ERN (En) 00366707.



traitors to be interrogated, identifying them as former LON Nol soldiers or officials.<sup>9229</sup> A message dated 3 June 1977 from Khporp Trabaek commune to the District Party reported on 10 New People from Phnom Penh who were lazy and kept meeting together to plan to run off to Thailand.<sup>9230</sup> This message corresponds to a handwritten note dated 13 June to Kraing Ta Chan from Kit, the District Secretary, proposing that they be interrogated “harshly and thoroughly” to find their network.<sup>9231</sup>

2720. A message dated 11 June 1977 from Nhaeng Nhang commune to Kraing Ta Chan reported on the activities of PRUM Sovan Chan, second lieutenant, and NGIL Tun, self-defence soldier, who had spoken about attacking the Khmer Rouge, complained about work and said they were being used as if they were cows.<sup>9232</sup> A message dated 1 August 1977 from Angk Ta Saom commune to the “District Police” recorded that persons were being brought in for inciting people to flee to Vietnam and complaining about the work and lack of food.<sup>9233</sup> A message dated 14 October 1977 from K-105, which the Chamber finds to be a District Military location at Angk Ta Saom, to Kraing Ta Chan reported on three “forest bandits” who had been captured and would be sent in for questioning and clarification.<sup>9234</sup>

2721. A message dated 7 December 1977 from Sre Ronoung commune to Kraing Ta Chan described having sent in a second lieutenant named “Man” that evening, who had committed “corruption” with a young woman named Nang by instigating her to leave the women’s unit.<sup>9235</sup> A message dated 13 December [1977] from Trapeang Thom South commune to Kraing Ta Chan described the activities of three New People who the Party had decided to send in: SENG Lim, who complained that conditions were like living as an animal with no freedom, no religion, and who claimed that 90 percent of people disliked the current regime; Hum, who suggested there would be chaos in the upcoming Khmer New Year; and KONG Ha, a Chinese national who, upon hearing

<sup>9229</sup> Tram Kak District Record, E3/2440, 8 May 1977, ERN (En) 00322144 (identifying SOK Say, a former chief sergeant; Bien, a 2<sup>nd</sup> Lieutenant; Sim, said to be next below the provincial governor; and Prak Sary, linked to the law faculty).

<sup>9230</sup> Tram Kak District Record, E3/2052, 3 June 1977, p. 1, ERN (En) 00276590.

<sup>9231</sup> Tram Kak District Record, E3/2052, 13 June 1977, p. 2, ERN (En) 00276591. *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, para. 859.

<sup>9232</sup> Tram Kak District Record, E3/4115, 11 June 1977, p. 1, ERN (En) 00363656.

<sup>9233</sup> Tram Kak District Record, E3/4111, 1 August 1977, ERN (En) 00322153.

<sup>9234</sup> Tram Kak District Record, E3/2453, 14 October 1977, p. 2, ERN (En) 00388575. For the Chamber’s finding on K-105, *see* Section 10.1: Tram Kak Cooperatives, para. 924 (fn. 2820).

<sup>9235</sup> Tram Kak District Record, E3/2454, 7 December 1977, p. 1, ERN (En) 00364288.

gunfire, suggested that Vietnam would attack and seize the rice fields and/or that people would escape.<sup>9236</sup>

2722. A message dated 21 December 1977 from Angk Ta Saom commune to Kraing Ta Chan described persons who had refused to refashion themselves, had stolen a mosquito net and food, and had military ranks in the LON Nol regime.<sup>9237</sup> A message dated 23 December 1977 from Tram Kak commune to Kraing Ta Chan explained that they wanted to send in a new youth called SOEM Saren for fleeing and stealing.<sup>9238</sup> A message dated 26 December 1977 from Angk Ta Saom commune to Kraing Ta Chan reported on “enemy activities” by stating that KEA Heng had spoken of the previous regime in favourable terms and suggested that IN Tam would attack Cambodia in early 1978. The commune asked *Ta An* to “interrogate for his hidden strings in order to sweep up in accordance with the decision taken by our Party”.<sup>9239</sup> A message dated 27 December from Samraong commune to Kraing Ta Chan reported that the Party had “already decided” in relation to UM Phon, a new inhabitant, who had said that unit chiefs should be beaten and their stomach cut open to ask them why he had so little rice.<sup>9240</sup>

2723. A message dated 3 January 1978 from Trapeang Thom South commune to Kraing Ta Chan reported on the problems of “New People” who had been sent over, namely CHEA Song and Chhan, and who had praised the military strength of Vietnam and Thailand.<sup>9241</sup> A message dated 16 January 1978 from Trapeang Thom South commune to Kraing Ta Chan reported on an enemy named Nam who was “pure *Yuon*” and who said that, since his children worked hard, he should be able to stop working, had mocked KHIEU Samphan, and quarrelled with his wife.<sup>9242</sup> A message dated 17 January 1978 from Ta Phem commune asked Kraing Ta Chan to receive an enemy named SAN Sok, who had been implicated by CHIN Chrien so the “district level” decided to send him.<sup>9243</sup> A message dated 17 January 1978 from Angk Ta Saom

<sup>9236</sup> Tram Kak District Record, E3/4125, 13 December 1977, p. 1, ERN (En) 00364290.

<sup>9237</sup> Tram Kak District Record, E3/2456, 21 December 1977, p. 2, ERN (En) 00369495.

<sup>9238</sup> Tram Kak District Record, E3/2456, 23 December 1977, p. 3, ERN (En) 00369496.

<sup>9239</sup> Tram Kak District Record, E3/2456, 26 December 1977, p. 1, ERN (En) 00369494.

<sup>9240</sup> Tram Kak District Record, E3/4126, 27 December 1977, p. 1, ERN (En) 00366713.

<sup>9241</sup> Tram Kak District Record, E3/2457, 3 January 1978, ERN (En) 00322182.

<sup>9242</sup> Tram Kak District Record, E3/4127, 16 January 1978, p. 6, ERN (En) 00362232.

<sup>9243</sup> Tram Kak District Record, E3/4127, 17 January 1978, p. 4, ERN (En) 00362230.

commune to Kraing Ta Chan described two men who had left District 109 but were caught travelling across rice fields.<sup>9244</sup>

2724. A message dated 20 January 1978 from Nhaeng Nhang commune to Kraing Ta Chan recorded that three persons called Meng, Thon and Bav planned to join the “*Yuon*” so the Party had decided to arrest them and send them in.<sup>9245</sup> A message dated 27 January 1978 from Kus commune to Kraing Ta Chan recorded that the Party had decided to arrest three persons based on the confession of KEAN Kim, two of whom (Thong, a second lieutenant; and Sao, a Sergeant) had already been sent in.<sup>9246</sup> A message dated 2 February 1978 from Angk Ta Saom commune to Kraing Ta Chan reports on the Party’s decision to send over KUNG Pheun and KUNG Pet who had complained about discrimination under the revolution, suggested that food was more plentiful under the old society, stole food, and ridiculed *Angkar*’s claims to be attacking Vietnam when the sound of gunfire kept getting closer.<sup>9247</sup>

2725. A message dated 4 February 1978 from Tram Kak commune to Kraing Ta Chan described the arrest of four persons from the unit regrouping widows (“Widow Concentration Unit”) whose husbands *Angkar* had “smashed”. It reported on various comments the women made, including a plan to flee, and to their desire to smash the unit chief.<sup>9248</sup> A message dated 9 February 1978 from Ta Phem commune to Kraing Ta Chan requested to send in two enemies named Moeun and Hav who had been arrested following the responses of Sun Tren.<sup>9249</sup> A message dated 10 February 1978 from Tram Kak commune to Kraing Ta Chan described the enemy situation by reference to a person called Seng who incited “other new people not to work too hard” because of mistreatment and lack of food.<sup>9250</sup> A message dated 1 March 1978 from Angk Ta Saom commune to Kraing Ta Chan describes people brought over for talking to each other

<sup>9244</sup> Tram Kak District Record, E3/4127, 17 January 1978, p. 2, ERN (En) 00362228.

<sup>9245</sup> Tram Kak District Record, E3/4127, 20 January 1978, p. 1, ERN (En) 00362227.

<sup>9246</sup> Tram Kak District Record, E3/2441, 27 January 1978, p. 21, ERN (En) 00369489 (signed by Saen).

<sup>9247</sup> Tram Kak District Record, E3/2057, 2 February 1978, p. 9, ERN (En) 00276589.

<sup>9248</sup> Tram Kak District Record, E3/2057, 4 February 1978, pp. 6-7, ERN (En) 00276586-00276587. *See also*, the discussion of related documents at Section 10.1.4: Authenticity of the Tram Kak District Records, para. 898.

<sup>9249</sup> Tram Kak District Record, E3/2057, 9 February 1978, p. 2, ERN (En) 00276582.

<sup>9250</sup> Tram Kak District Record, E3/2057, 10 February 1978, p. 1, ERN (En) 00276581.

and saying they had no rights, suggesting that the leaders were stupid, mentioning a Buddhist prophecy and suggesting that Vietnam was stronger than *Angkar*.<sup>9251</sup>

2726. A message dated 7 March 1978 from “Chorn” provides a “Clarified Report” on PRUM Yan, a Khmer Krom, who the District Party had decided should be sent over based on his role as a former soldier from South Vietnam who had fought against the Party’s revolutionary forces.<sup>9252</sup> A message dated 10 March 1978 from Angk Ta Saom commune to Kraing Ta Chan describes three persons from the planting unit who had criticised the revolution by suggesting there were more superiors and less equity than before; giving the example that, when leaders arrived in Leay Bour commune, the villagers ingratiate themselves by providing “abundant pork and beef” whereas “we not only have insufficient food to eat but also have no tobacco to smoke”.<sup>9253</sup> A message dated 5 April 1978 from Samraong commune to Kraing Ta Chan recorded that *Ta Pring* had committed “social affairs corruption” whereas the Party had not yet made a decision in relation to two children, so they had not been sent yet.<sup>9254</sup> A message dated 16 June 1978 from Leay Bour commune to the Tram Kak “District Police” reported on the enemy situation in that Pruonh Nuon had described hearing artillery shells, expressed a desire to go back to privatisation, whereas his wife Pen Nheip had complained about hard work.<sup>9255</sup>

2727. A message dated 8 July 1978 from Trapeang Thom North commune to Kraing Ta Chan detailed a new youth called Kap to be brought over. It sets out the reasons for his arrest in detail, including whistling and singing a song while hospitalised which depicted Vietnam as the elder brother of the Khmer.<sup>9256</sup> A message dated 5 August 1978 from Cheang Tong commune to Kraing Ta Chan reported on two women: Naichi who had “contradictions with the Revolution” and refused to refashion; and Phana, who refused to work, disappeared for two days and complained saying that “[d]ying is better than living”. The message concluded that the “two women cannot be kept because they have so many contradictions”.<sup>9257</sup> A message dated 18 July 1978 from Angk Ta Saom

<sup>9251</sup> Tram Kak District Record, E3/2785, 1 March 1978, ERN (En) 00322197-00322198.

<sup>9252</sup> Tram Kak District Record, E3/2785, 7 March 1978, ERN (En) 00322194-00322195.

<sup>9253</sup> Tram Kak District Record, E3/2784, 10 March 1978, ERN (En) 00143484.

<sup>9254</sup> Tram Kak District Record, E3/2420, 5 April 1978, p. 1, ERN (En) 00369457.

<sup>9255</sup> Tram Kak District Record, E3/2448, 16 June 1978, ERN (En) 00322157-00322158.

<sup>9256</sup> Tram Kak District Record, E3/2423, 8 July 1978, pp. 4-5, ERN (En) 00322206-00322207.

<sup>9257</sup> Tram Kak District Record, E3/4093, 5 August 1978, ERN (En) 00831489-00831490. *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, para. 867.

commune to Kraing Ta Chan reports on an enemy named KONG Vaet, who had been stealing despite being educated collectively and individually. During the period of hard work transplanting rice, he had mocked those who worked hard. The report further identifies PICH San, a former LON Nol military, who spoke of fleeing; and EM Sambath, who intentionally broke a plough.<sup>9258</sup> There is a narrative entry for EM Sambath in notebook E3/4092.<sup>9259</sup> This is corroborated by the handwritten list of “Brief Biographies of Prisoners at Tram Kak District Education Office”, which includes an entry for EM Sambath and records his date of entry as 23 July 1978.<sup>9260</sup> Finally, there is another entry for EM Sambath in the tables contained in notebook E3/4083, with a cross next to his name.<sup>9261</sup>

2728. There are several undated reports which provide further insight into the reasons why persons were arrested and sent to Kraing Ta Chan. A message [date unknown] from Nhaeng Nhang commune to Kraing Ta Chan described various problems with a person called Soeun, a former teacher, who had complained about work in the ploughing unit and defecated in the cooperative’s dining hall.<sup>9262</sup> A message dated 19 September [year unknown] from Nhaeng Nhang commune to Kraing Ta Chan records that a woman called “O-A” over who was married to a lieutenant colonel and had three children was being brought. The report identifies disputes she had, namely complaints about the revolution and lack of food.<sup>9263</sup> A message dated 17 September [year unknown] from Nhaeng Nhang commune to Kraing Ta Chan records that three persons were being brought over who had disputes “mostly about doing works” and had stolen hens and eggs “very often”.<sup>9264</sup> An undated message from Nhaeng Nhang commune to Kraing Ta Chan records that three former LON Nol soldiers were being brought in because the Party had decided they had “high” ranks.<sup>9265</sup>

<sup>9258</sup> Tram Kak District Record, E3/2424, 18 July 1978, ERN (En) 00322220. *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, para. 866.

<sup>9259</sup> Kraing Ta Chan Notebook, E3/4092, March 1978, pp. 37-38, ERN (En) 00834828-00834829.

<sup>9260</sup> Tram Kak District Record, E3/4164, 23 July 1978, p. 3, ERN (En) 00973149 (noting that KONG Vet stole “a great deal” and had been educated for three years, but “remained the same”).

<sup>9261</sup> Kraing Ta Chan Notebook, undated, E3/4083, p. 1, ERN (En) 00323949.

<sup>9262</sup> Tram Kak District Record, E3/4118, p. 1, ERN (En) 00355475.

<sup>9263</sup> Tram Kak District Record, E3/2450, 19 September, ERN (En) 00322163.

<sup>9264</sup> Tram Kak District Record, E3/2450, 17 September, ERN (En) 00322162.

<sup>9265</sup> Tram Kak District Record, E3/2450, ERN (En) 00322161 (identifying two first lieutenants and one second lieutenant).

2729. The Chamber finds that these messages from various communes in Tram Kak district are consistent with the contents of various notebooks from Kraing Ta Chan. The Chamber has also found that it was members of the Party Committee who generally performed interrogations at Kraing Ta Chan.<sup>9266</sup> Various notebook entries record that people were arrested for offences such as scavenging for food;<sup>9267</sup> complaining or criticising their local authorities;<sup>9268</sup> being educated or upper-class;<sup>9269</sup> being lazy or pretending to be sick;<sup>9270</sup> stealing;<sup>9271</sup> or seeking to flee the area.<sup>9272</sup> Although the contents of these notebooks may derive in whole or in part from interrogations performed at Kraing Ta Chan, the Chamber finds that they demonstrate the matters which interrogators considered it appropriate to record in the course of their work and, therefore, their view of the reasons why those persons had been sent to Kraing Ta Chan.

<sup>9266</sup> See above, para. 2662. See below, para. 2736.

<sup>9267</sup> Kraing Ta Chan Notebook, E3/2427 undated, pp. 9-10, ERN (En) 00366684-00366685 (SOK Sourn stole husked rice), 10, ERN (En) 00366685 (VAN Sarun stole potatoes, chicken and chicken eggs), 12, ERN (En) 00366687 (Nhep stole palm tree juice); Kraing Ta Chan Notebook, E3/4095, undated, pp. 11-12, ERN (En) 00747246-00747247 (MAK Mun stole cucumber and garlic), 30-31, ERN (En) 00747265-00747266 (CHOY Nhor stole husked rice and climbed palm trees to get juice for his children).

<sup>9268</sup> Kraing Ta Chan Notebook, E3/2427, undated, p. 20, ERN (En) 00366695 (LONG Tel gathered with others for a debate where they said: “Nowadays we live in hardship like slaves; we can not stop working even a bit; the unit chief is very strict.”); Kraing Ta Chan Notebook, E3/4095, undated, p. 52, ERN (En) 00747287 (YANG Kay complained about collectivism, rations, the new regime resembled the old regime in that high-ranking officers could eat anything as long as they want, noting also that this person was interrogated “with some ‘hot’ methods to dig up his network, but he refused to confess”); Kraing Ta Chan Notebook, E3/4092, March 1978, p. 11, ERN (En) 00834802 (HEM Chantha refused to irrigate fields and said she was in sorrow for her husband, whom *Angkar* executed and she refused to eat); Kraing Ta Chan Notebook, E3/5860, undated, p. 8, ERN (En) 01064172 (HAO Neang heard gunfire at the border and said he would be happy if his people won the war and at least he would be appointed as village chief).

<sup>9269</sup> Kraing Ta Chan Notebook, E3/4092, March 1978, pp. 13-14, ERN (En) 00834804-008348005 (SIN Sarath “was a senior student from the petty bourgeoisie”); 00834817 (SOK Huoy was a “capitalist” owner of eight car shops); Kraing Ta Chan Notebook, E3/2427, undated, p. 20, ERN (En) 00366695 (KE Sav “working at a civil aviation company at Pochentong in Phnom Penh as a capitalist”).

<sup>9270</sup> Kraing Ta Chan Notebook, E3/2107, undated, p. 10, ERN (En) 00290213 (PRAK Un called to thresh rice, “he evaded and slept, and he tried to resolve this by saying he was faint and did not have to work”); undated, p. 20, ERN (En) 00290233 (IE Lim Touch “is lazy in his work and plays sick a lot.”); undated, p. 7, ERN (En) 00290210 (NGET Rin “is bored and too lazy to work, and he walks around saying if there is an opening he won’t stay with these people.”); Kraing Ta Chan Notebook, E3/4092, March 1978, pp. 35-36, ERN (En) 00834826-00834827 (POK Bunly “never stopped stealing [...] then [pretended] to be sick and was lazy [...]. He was often absent from work”); Kraing Ta Chan Notebook, E3/2427, undated, p. 10, ERN (En) 00366685 (Van Sarun: “He is lazy at work and he is a major thief.”).

<sup>9271</sup> Kraing Ta Chan Notebook, E3/2427, undated, p. 9, ERN (En) 00366684 (MOENG Sorn “is a major thief. The commune was unable to re-educate him so they arrested him and sent him in”); Kraing Ta Chan Notebook, E3/2107, undated, p. 53, ERN (En) EN 00290256 (CHEA Sophal, the “thief of thieves”, repeated re-education had not worked).

<sup>9272</sup> Kraing Ta Chan Notebook, E3/5860, undated, pp. 26-27, ERN (En) 01064190-01064191 (VAL Than); Kraing Ta Chan Notebook, E3/4095, undated, p. 3, ERN (En) 00747238 (LY Phai); Kraing Ta Chan Notebook, E3/5827, undated, p. 32, ERN (En) 00866455 (HANN Sou, TENG Len).

12.3.7. *Detention Conditions*

2730. Former prisoners and guards gave consistent evidence about the dire conditions at Kraing Ta Chan. Prisoners sat shackled and chained together in rows on the floor of the detention buildings.<sup>9273</sup> The metal shackles were painful and caused wounds which became infected and resulted in scarring.<sup>9274</sup> Guard VAN Soeun described prisoners shackled by the feet and handcuffed: when they fell ill they just lay there moaning until they died.<sup>9275</sup> VONG Sarun likewise described the death of prisoners inside the detention buildings, after which their bodies were dragged out and caught on the barbed wire on the floor at the door frame – causing damage and marks on the body as it was dragged out.<sup>9276</sup> Prisoner KEO Chandara described prisoners remaining shackled when defecating or urinating.<sup>9277</sup> Guard SREI Than *alias* Duch explained that prisoners ate their meals inside the detention buildings.<sup>9278</sup> Having assessed the evidence of VAN Soeun, VONG Sarun, KEO Chandara and SREI Than, the Chamber finds that the descriptions of the detention conditions are consistent and that the movement of prisoners was restricted by shackles, including at night and when relieving themselves,

<sup>9273</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 9 (prisoners shackled by the ankles on the floor day and night); T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 28 (prisoners shackled by the ankles in rows); T. 2 February 2015 (KEO Chandara), E1/255.1, p. 45 (prisoners shackled in a row); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 56 (prisoners were shackled and slept on the floor); 57 (prisoners “shackled and cuffed” in the detention building), 61 (some prisoners shackled “all the time”); T. 5 February 2015 (SAY Sen), E1/257.1, p. 61 (when they arrived, prisoners were shackled in rows); T. 24 February 2015 (SREI Than), E1/268.1, p. 38 (prisoners shackled by the ankles in rows); 70 (serious offence prisoners held in metal shackles); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 12 (prisoners “put in a house” shackled by the ankles when they arrived); 41 (each building could accommodate two rows of prisoners and there was a footpath in between); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 13 (VONG Sarun’s ankles shackled and her hands were cuffed); Photograph of Iron Shackles, E3/5851, 4 February 2015, ERN (En) 00407125 (which SORY Sen confirmed were the type of shackles used at Kraing Ta Chan); T. 4 February 2015 (SORY Sen), E1/256.1, p. 87; HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 3, ERN (En) 00223488 (HUN Kimseng placed in a row of people and shackled at Kraing Ta Chan); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 4, ERN (En) 00223496 (prisoners shackled in rows); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 3, ERN (En) 00225502 (prisoners shackled in rows); SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 4, ERN (En) 00223550 (prisoners shackled at the ankle); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 5, ERN (En) 00223211 (prisoners placed in rows in metal shackles).

<sup>9274</sup> T. 4 February 2015 (SAY Sen), E1/256.1, p. 88 (still has a scar on his ankle from the shackles, which caused wounds that became infected).

<sup>9275</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 37-38.

<sup>9276</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 34-35.

<sup>9277</sup> T. 4 February 2015 (KEO Chandara), E1/256.1, p. 21.

<sup>9278</sup> T. 19 February 2015 (SREI Than), E1/266.1, p. 25.

except when sent for interrogation or when some were unshackled and forced to work.<sup>9279</sup>

2731. Some evidence suggested that prisoners were treated differently according to their offences, but this evidence was inconclusive, and the Chamber is satisfied that the treatment the vast majority of prisoners received at Kraing Ta Chan was essentially the same, with prisoners put to work generally housed in the eastern detention building.<sup>9280</sup> The Chamber is satisfied that all prisoners were held at Kraing Ta Chan against their will.<sup>9281</sup>

<sup>9279</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 10, 13-14 (male and female prisoners were shackled day and night, except if they were released to work, and were shackled again when they returned; MEAS Sokha's mother worked outside of the building during the day and returned at night); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 44-46 (after a month of detention, he was allowed out of the detention building to work, including to tend livestock, carry human faeces from the detention building, dig pits and carry dead bodies. SORY Sen could not refuse any tasks assigned to him), 46 (prisoners would relieve themselves when in shackles), 56 (prisoners were shackled and slept on the floor); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 5 (prisoners were shackled day and night and only unshackled in order to work); 21 (prisoners were shackled when defecating or urinating); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 40-41 (after her interrogation, made to work in the fields with other inmates and had to work so hard that she became ill with symptoms which still persist today); 51 (prisoners were not allowed to go anywhere, except when they worked), 83 (during the daytime some prisoners worked under supervision, including in the fields, and the prisoners could not move freely); T. 23 February 2015 (SREI Than), E1/267.1, pp. 99-100 (some prisoners worked outside of the detention buildings, for example, carrying earth and harvesting rice); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 5 (some trusted prisoners were removed from the shackles during the day to tend the cattle and would be shackled again at night time); E3/5826, HUN Kimseng Interview Record, 31 October 2007, p. 5, ERN (En) 00223490 (most prisoners were not allowed to go anywhere but HUN Kimseng could move around to serve food to the other prisoners); MEAS Sokha Interview Record, E3/5825, 31 October 2007, pp. 4, ERN (En) 00223496 (MEAS Sokha's mother was shackled), 5, ERN (En) 00223497 (MEAS Sokha's family was put to work in the prison compound); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 11, ERN (En) 00225510 (prisoners were only released from shackles for interrogation).

<sup>9280</sup> The Chamber heard evidence suggesting that serious offenders would be shackled more heavily than light offence prisoners and some prisoners who were allowed to work were housed in a different building. See T. 4 February 2015 (SORY Sen), E1/256.1, pp. 48 (he was considered a "less serious" offender), 75-76 (light offence prisoners were let out to work), 75-77 (prisoners who worked were housed in the east building); T. 6 February 2015 (SORY Sen), E1/258.1, p. 60 (repeating that prisoners who were allowed to work would be housed in the east building). However, the Chamber also heard evidence that there was no significant difference in the treatment of different types of prisoner. See T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 51 (there were no distinctions between minor or serious prisoners for the purposes of detention, all prisoners were put in the building and deprived of food for a week before they were killed); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 11, ERN (En) 00225510 (serious offence prisoners had both their feet and hands shackled); T. 4 February 2015 (SORY Sen), E1/256.1, p. 63 (the treatment of all types of prisoner was "the same" in terms of executions). In view of this evidence, the Chamber finds that any differences in treatment of prisoners based upon whether they were considered light or serious offenders were minor.

<sup>9281</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 58-59 (prisoners who tried to escape from Kraing Ta Chan would be shot); T. 5 February 2015 (SORY Sen), E1/257.1, p. 38 (Sorn was shot dead while trying to escape from Kraing Ta Chan); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 48-49 (prisoners who tried to escape were beaten up); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 7, ERN (En) 00225506 (prisoners who tried to escape were shot); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 89 (prisoners were not allowed outside of the prison buildings). While MEAS Sokha was



2732. Prisoners were beaten by guards for behaviour the guards did not like.<sup>9282</sup> VONG Sarun testified that a guard called SIM beat her baby Chreb because it was crying.<sup>9283</sup> She described how, on entering one of the detention buildings, it smelled like death. The inside of the building was secured with bars and the floor and ceiling were also covered with barbed wire.<sup>9284</sup> MEAS Sokha testified that guards would beat prisoners if they moved or spoke to each other.<sup>9285</sup> The evidence further establishes that the food given to prisoners was inadequate. Prisoners were rendered weak and emaciated.<sup>9286</sup> HUN Kimseng *alias* Yeay Nha described to investigators how she cooked rice for prisoners: 10 cans of milled rice between 50 prisoners, but even if there

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allowed out to work during the day, he was told that if he escaped his mother would be killed. *See* T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 77.

<sup>9282</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 64 (SORY Sen was hit on the head with a rifle, whipped for picking vegetables and cassava leaves and beaten severely for stealing cassava for food); T. 5 February 2015 (SORY Sen), E1/257.1, pp. 32-33 (Saing would beat prisoners for making minor mistakes); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 11 (at night, if prisoners moved and nobody answered when a guard asked “who moved?” all the prisoners would be beaten with a bamboo stem); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 14, 25-26 (“After seven days I was walked out of the room to be interrogated. As soon as I got out of the room I was falling down repeatedly [...] I tried to stand up again and continue to walk because it was obvious that they would beat me”); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 5, ERN (En) 00223497 (prisoners who spilled urine or faeces when passing it to a can in the detention house were beaten); SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527773 (was accused of stealing a potato and beaten on the head), ERN (En) 00527779 (prisoners whose ankle chains became loose would be beaten to death). The Chamber notes the evidence of SAUT Saing that he did not beat prisoners for making mistakes and that he did not ever see little Duch beat anyone (T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 7-11). As noted above, the Chamber finds SAUT Saing to lack credibility on the issue of his alleged participation in crimes and rejects his evidence on this point.

<sup>9283</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 26 (her baby’s name was Chreb), 33 (her baby cried for three days and was beaten by “Sin”).

<sup>9284</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 28.

<sup>9285</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 77.

<sup>9286</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 47-48 (prisoners received porridge consisting of “only a few grains of rice” in water distributed in a coconut shell and some prisoners “died of starvation”), 57 (prisoners were denied food during interrogations, with some male prisoners denied food for as long as 18 days), 65 (prisoners who died of starvation were buried); T. 5 February 2015 (SORY Sen), E1/257.1, p. 30 (prisoners would be deprived of food following an interrogation); T. 23 February 2015 (SREI Than), E1/267.1, p. 51 (the largest quantity of food a detainee was given was a coconut shell full of rice, while guards received a better food ration although still insufficient); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 12-14 (VONG Sarun fell down while walking because she was so weak and had been shackled for seven days so she could not feel her legs), 29 (prisoners were “skinny” and could “hardly walk”), 79 (prisoners were given “very little gruel” and had no energy or strength); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 10-11 (prisoners given a ladle of gruel and several small pieces of potato and a little bit of water plant, which was “not enough”) 12 (prisoners died from starvation or illness), 13 (MEAS Sokha’s younger siblings died at Kraing Ta Chan due to “lack of milk and food”), 39 (prisoners “emaciated” due to starvation), 51 (prisoners were deprived of food because when they were emaciated they could be easily killed); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 14 (prisoners did not have enough food to eat, sometimes only watery gruel); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 6, ERN (En) 00223212 (prisoners died from starvation); HUN Kimseng Interview Record, E3/5844, 31 October 2007, p. 1, ERN (En) 01056614 (“the chairperson” instructed HUN Kimseng not to give prisoners their fill of food to ensure that they remained weak and unable to resist).

were 100 prisoners the allotted amount was the same.<sup>9287</sup> The same coconut shell which was used to distribute food among the prisoners was also used for prisoners to relieve themselves.<sup>9288</sup> Detainees did not have adequate facilities – indeed they were not allowed to clean themselves<sup>9289</sup> and multiple witnesses recalled the detention buildings filled with bugs and mice.<sup>9290</sup> IEP Duch, the chief of the district youth, confirmed the poor hygiene conditions to investigators: “When I entered [Kraing Ta Chan], when the door opened, I smelled the odour and saw all the people. I had them close [the door]. I did not want to look any more.”<sup>9291</sup> The Chamber accepts SORY Sen’s description of the conditions at Kraing Ta Chan as “miserable”<sup>9292</sup> and finds that prisoners were forced to live in unhygienic conditions.<sup>9293</sup>

2733. The NUON Chea Defence invites the Chamber to place weight on RIEL Son’s evidence that he visited Kraing Ta Chan to spray the centre with anti-mosquito chemical DDT on one occasion, which it contends shows Kraing Ta Chan was not a “blunt

<sup>9287</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 12 (Answer 68).

<sup>9288</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 47-49. *See also*, SORY Sen Interview Record, E3/5214, 1 September 2008, p. 4, ERN (En) 00225503.

<sup>9289</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 13 (prisoners were not allowed to clean themselves); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 89 (prisoners had one coconut shell of water to drink water and wash their faces and would be scolded for not being fast enough); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 11, ERN (En) 00225510 (prisoners did not receive any water for bathing); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 6, ERN (En) 00223212 (prisoners could not clean up after relieving themselves).

<sup>9290</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 11 (the detention building was filled with bedbugs); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 48-49 (bed bugs and insects surrounded the prisoners); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 34 (there were “many mice running around” in the detention facility); SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527779 (bed bugs and lice bit the prisoners); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 5, ERN (En) 00223454 (there were a lot of bed bugs); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 6, ERN (En) 00223212 (prisoners were bitten by bed bugs); MEAS Sokha, E3/5825, 31 October 2007, p. 5, ERN (En) (prisoners suffered from bed bug bites).

<sup>9291</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 5, ERN (En) 00223476.

<sup>9292</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 46.

<sup>9293</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 11-12 (prisoners would pass a container from one person to another in the detention unit to relieve themselves in front of other prisoners); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 88-89 (prisoners relieved themselves in the detention unit); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 4 (KEO Chandara was instructed to carry the faeces of other prisoners and pour them into a big jar); T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 20-21 (the compound stank of human corpses and “it was [an] awful smell everywhere inside the area, the site of the compound”); MEAS Sokha, E3/5825, 31 October 2007, p. 5, ERN (En) 00223497 (prisoners would use a gourd to relieve themselves and then pass it from one person to the next to put into a can and prisoner who spilled urine or faeces would be beaten); SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 4, ERN (En) 00225503 (prisoners relieved themselves into a coconut shell which was passed from one prisoner to another and emptied into a container), 8-9, ERN (En) 00225507-00225508 (soldiers did not enter the prison because it smelled of urine and excrement); SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 5, ERN (En) 00223551 (prisoners relieved themselves and passed a pot from one person to another to be emptied into a container).

instrument of death”.<sup>9294</sup> No other Party made relevant submissions on this matter. In fact, RIEL Son’s evidence was that this did not relate to prisoner welfare, and throughout his time working at the District Hospital he never received any requests from Kraing Ta Chan to provide medicine.<sup>9295</sup> Detainees were not provided with medical treatment and sick prisoners were left to die without treatment.<sup>9296</sup>

2734. The Chamber recalls its finding that evidence of sexual violations is relevant to the conditions in Kraing Ta Chan.<sup>9297</sup> The NUON Chea Defence challenged SORY Sen’s evidence that MEAS Sarat *alias* Rat (MEAS Sokha’s elder sister) was sexually harassed by the guard SREI Than *alias* (small) Duch.<sup>9298</sup> Before the Chamber, SORY Sen gave evidence that he did not see any rape, but suggested that MEAS Rat’s mother had told him about this.<sup>9299</sup> In 2013, however, he told investigators that he “saw [Duch] raping a female prisoner who was a cook at night. Her mother told me about that. Duch did not kill her after raping her, but she died in 1979, and her husband was killed in Kraing Ta Chan.”<sup>9300</sup> When challenged on the inconsistency in his evidence in court, SORY Sen explained that he saw the sexual harassment of MEAS Sarat but he did not see a rape.<sup>9301</sup> In 2004, he is recorded as having told DC-Cam in more general terms

<sup>9294</sup> NUON Chea Closing Brief, para. 613.

<sup>9295</sup> T. 17 March 2015 (RIEL Son), E1/278.1, p. 94 (the witness only went to Kraing Ta Chan to spray insecticide); T. 18 March 2015 (RIEL Son), E1/279.1, pp. 36-37.

<sup>9296</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 12 (there was no medical treatment for prisoners who were sick and such prisoners would be left there without treatment until they died); T. 4 February 2015 (SORY Sen), E1/256.1, p. 57 (some prisoners died from disease or starvation in the detention building); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 13-14, 43-44 (prisoners were not given medical treatment); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 34 (a detainee and his child’s bodies were swollen but they were not given medical treatment and died); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 44 (prisoners did not receive *any* medical treatment). VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 6, ERN (En) 00223212 (there was no clinic and sick prisoners “just laid there moaning and died”); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 11, ERN (En) 00225510 (prisoners died from illnesses for which there were no medicines or medics to treat); RIEL Son Interview Record, E3/9602, 18 February 2014, p. 20, ERN (En) 00982652 (there was no medical unit at Kraing Ta Chan); Tram Kak District Record, E3/2109, November 1977, p. 1, ERN (En) 00276555 (noting that 6 prisoners died of illness in November 1977).

<sup>9297</sup> *See above*, para. 2641.

<sup>9298</sup> T. 6 February 2015 (SORY Sen), E1/258.1, pp. 8-9; T. 25 March 2015 (SORY Sen), E1/282.1, pp. 92-93, 102 (stating that Rat was “physically touched” by Duch, then referring to her having been “sexually assaulted”).

<sup>9299</sup> T. 6 February 2015 (SORY Sen), E1/258.1, pp. 8-9 (suggesting that her mother said that thing but personally SORY Sen knew she was harassed, “fool her around”), 12; T. 6 February 2015 (SORY Sen), E1/258.1, p. 5. SORY Sen’s statement that MEAS Sarat’s mother “did not say anything about it” was not interpreted contemporaneously in court, but was noted in a subsequent revision to both the English and French transcripts. However, SORY Sen did proceed to state that it was MEAS Sarat’s mother “who had said that thing. *See* T. 6 February 2015 (SORY Sen), E1/258.1, p. 8.

<sup>9300</sup> SORY Sen Interview Record, E3/9589, 31 October 2013, p. 16 (Answers 107-108).

<sup>9301</sup> T. 6 February 2015 (SORY Sen), E1/258.1, pp. 8-9 (“as for Meas Sarat, what I saw was only sexual harassment committed by those people against her, but I did not see the raping.”); T. 6 February 2015

that he did not see rapes, but he heard about rapes from victims and perpetrators.<sup>9302</sup> Any distinction which SORY Sen made between sexual harassment versus rape was not well-explored before the Chamber.

2735. MEAS Sarat's mother denied to investigators that her daughter was assaulted at Kraing Ta Chan.<sup>9303</sup> The alleged perpetrator SREI Than *alias* Duch also rejected SORY Sen's allegations.<sup>9304</sup> Indeed he went further, claiming not to even know MEAS Sarat or MEAS Sokha.<sup>9305</sup> Guard SAUT Saing denied that any guard raped or sexually harassed "Rath" and said he knew nothing about any allegation involving SREI Than *alias* Duch (small Duch).<sup>9306</sup> Guard VAN Soeun testified that he frequently chatted with "Rat", who called him her "son", but he did not know whether she had been attacked by a guard.<sup>9307</sup>

2736. The Chamber finds there to be a lack of clarity in aspects of SORY Sen's account as to what exactly he saw or was told. The contradictory evidence is noted. The Chamber finds, however, that SREI Than *alias* Duch's claim not to even know MEAS Sarat lacks all credibility.<sup>9308</sup> The confusion in the evidence leaves the Chamber unable

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(SORY Sen), E1/258.1, p. 12 (Q. "Mr. Witness, did you watch, observe the rape of Meas Sarat or you didn't?" A. "No, I did not." Q. My follow up question would be, how did you know that she was raped?" The President intervened at this point to inform Mr Koppe that the witness had already given his answer to this. To which Mr Koppe replied "Whatever, Mr President."). Between days when SORY Sen appeared before the Chamber, he told investigators that he was not sure whether Rat was raped, but he believed that she was "just harassed" by small Duch. *See* SORY Sen Interview Record, E3/9553, 6 March 2015, p. 2, ERN (En) 01072286.

<sup>9302</sup> SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527782-00527783 (stating that Aunt Rath, the daughter of Grandma Nor, told him).

<sup>9303</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, pp. 13-14 (Answers 78, 82-83, describing the place as "clean and proper" which she explained as the staff only killing but not doing anything stupid like touching women). The Chamber rejected NUON Chea's request to summon MEAS Sarat and HUN Kimseng. *See* Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kok Cooperatives and Kraing Ta Chan Security Centre, E346/2, 30 April 2015, para. 2(b); Reasons following Decision on the NUON Chea Defence's Consolidated Rule 87(4) Request to Hear Additional Witnesses for the First Case 002/02 Trial Segment on the Tram Kak Cooperatives and Kraing Ta Chan Security Centre and Decision on SANN Lorn (2-TCW-1007), SOU Phirin (2-TCW-1027) and IV Sarik (2-TCW-1026) (E346/2), E346/3, 31 March 2016, paras 35-37 (noting that NUON Chea had failed to exercise diligence in his request, that although rape was relevant to the conditions at Kraing Ta Chan, it had not been charged outside the context of forced marriage, and that several other witnesses had given evidence on issues relating to Kraing Ta Chan including MEAS Sokha, KEO Chandara, SORY Sen and VONG Sarun).

<sup>9304</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 95.

<sup>9305</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 68.

<sup>9306</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 1-3 (CS).

<sup>9307</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 2-3 (CS), 10-11.

<sup>9308</sup> The Chamber also notes that SREI Than was known to other guards by the nickname "Sarat", that is the same name as MEAS Sokha's sister, MEAS Sarat. *See* T. 3 March 2015 (VAN Soeun), E1/270.1, p. 40 (referring to Duch *alias* Sarat); T. 4 March 2015 (VAN Soeun), E1/271.1, p. 52 (referring to Duch

to determine with sufficient specificity whether MEAS Sarat was assaulted by SREI Than *alias* Duch. Nevertheless, the Chamber keeps in mind that rape outside the context of forced marriage is not charged and remains satisfied, having reviewed SORY Sen's evidence as a whole, that his uncertainty and the lack of clarity as to what exactly he saw or learned in relation to MEAS Sarat does not undermine his overall credibility.

2737. In reaching this conclusion, the Chamber considered whether there is a risk, as was implied by the NUON Chea Defence's submissions, that SORY Sen invented or embellished details of sexual crimes by guards at Kraing Ta Chan. The Chamber finds his account of another incident to be instructive in this regard. SORY Sen recalled that two famous movie stars called NOP Nem and KIM Nova, together with their child, were killed at Kraing Ta Chan. According to SORY Sen, NOP Nem was taken for execution first, leaving KIM Nova in front of the prison chief's office. *Ta An* then started "touching" KIM Nova while her child asked for its father. Later that afternoon at around 4 p.m., KIM Nova and her child were killed. SORY Sen explained that he learned the actors' names from *Ta An*.<sup>9309</sup>

2738. SORY Sen's account finds independent and significant corroboration in an interview conducted with IEP Duch, the head of the Tram Kak District Youth, before he died. IEP Duch told the investigators that he learned that the Kraing Ta Chan unit had "done wrong" because of the rape of "Kim Nauva" (*i.e.* KIM Nova), and he went to investigate but "[i]t was difficult, because the victim was dead". IEP Duch thought it was two or three months after the incident that news of it leaked. He reported to District Secretary *Ta Chim* and he called *Ta An* to present his revolutionary life view, but the district pardoned him due to his "merit in making the revolution".<sup>9310</sup> PECH Chim was asked about KIM Nova in interview, but denied any knowledge of her or her husband NOP Nem.<sup>9311</sup> Nonetheless, IEP Duch's independent description of the assault

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*alias* Sarat and not knowing the reason why he was nicknamed Sarat); SAUT Saing Interview Record, E3/9583, 25 November 2013, p. 11, ERN (En) 00970122 (Answer 69, small Duch was called Sarat).

<sup>9309</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 96-97; T. 6 February 2015 (SORY Sen), E1/258.1, pp. 38-41; SORY Sen Interview Record, E3/5214, 1 September 2008, p. 10, ERN (En) 00225509 (their daughter was 7-8 years old, and other staff involved were *Ta Penh*, *Ta Cheng* and *Ta Phy*). Counsel for NUON Chea sought to challenge SORY Sen's account by suggesting that KIM Nova was interrogated at Kraing Ta Chan. However, the notebook entry he relied on to make this assertion related to a different actress: NAUK Lina, identified as married to Prak Vichara Put. See Kraing Ta Chan Notebook, E3/5827, p. 38, ERN (En) 00866461; T. 6 February 2015 (SORY Sen), E1/258.1, p. 42.

<sup>9310</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, pp. 4-5, 10, ERN (En) 00223475-00223476, 00223481.

<sup>9311</sup> PECH Chim Interview Record, E3/5786, 6 December 2009, p. 10, ERN (En) 00422345.

and execution of KIM Nova confirms SORY Sen's credibility when describing one instance of sexual assault. The Chamber finds that KIM Nova, NOP Nem and their young children were killed at Kraing Ta Chan, and that KIM Nova was sexually assaulted by *Ta An* before she was killed, and this is reflective of aspects of the conditions in Kraing Ta Chan.

### 12.3.8. *Work Conducted by Prisoners*

2739. Some prisoners including MEAS Sokha and SORY Sen were released from detention buildings and put to work.<sup>9312</sup> If those prisoners put to work attempted to flee, they were caught and beaten, which instilled fear in other prisoners.<sup>9313</sup> As noted, some prisoners were made to perform gruesome tasks, including MEAS Sokha, SORY Sen and IET Chhin who all buried dead bodies. KEO Chandara gave similar evidence that he had to drag people who were nearly dead or who had died because of beatings to a killing site.<sup>9314</sup> The Chamber finds that a very small number of prisoners were put to work inside the main compound.<sup>9315</sup> A select few prisoners worked as cooks.<sup>9316</sup>

<sup>9312</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 9-10 (small children and babies at Kraing Ta Chan were not shackled and were placed with their mothers), 13-14 (MEAS Sokha worked outside, including tending cows and buffaloes during the day); T. 4 February 2015 (SORY Sen), E1/256.1, p. 56 (children not shackled because there were not sufficiently small shackles at Kraing Ta Chan and so children sat next to their parents); T. 19 February 2015 (SREI Than), E1/266.1, pp. 21-22 (minors would be let out to work during the day and were detained at night time); T. 24 February 2015 (SREI Than), E1/268.1, p. 19 (children took care of livestock in the outer perimeters of the prison); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 13 (babies and children lived with their parents); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 4, ERN (En) 00223496 (MEAS Sokha was small and was not shackled but his sister and mother were).

<sup>9313</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 49 (describing an incident when a new female peasant working with VONG Sarun hid in a rice field, after which she was badly beaten up).

<sup>9314</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 39; T. 4 February 2015 (KEO Chandara), E1/256.1, p. 4 (more than 10 prisoners would be instructed to drag bodies into the pit).

<sup>9315</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 10; T. 23 February 2015 (SREI Than), E1/267.1, pp. 52 (identifying *Ta Dam* as one of the prisoners who swept the grounds and watered vegetables); 99 (confirming that some prisoners were allowed out the detention buildings); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 79 (identifying prisoners *Pou Saem* and *Ta Dam* as tasked to push carts of prisoners who were too weak to walk).

<sup>9316</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 65 (HUN Kimseng *alias Yeay Nha* and her daughter MEAS Sarat worked as cooks, serving gruel to the prisoners); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 80 (saw *Yeay Nha* working at the kitchen and cooking rice for prisoners, sometimes washing dishes for prison staff); HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 5, ERN (En) 00223490; HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 12, ERN (En) 01168017 (Answer 68, she cooked gruel for 50-100 prisoners using only 10 cans of milled rice); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 51 (also referring to 10 cans of rice being available for prisoners, which was less than the staff received); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 6, ERN (En) 00433572 (identifying both *Yeay Nha* and her child *Rat*); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 78-79 (describing seeing *Yeay Nha* working at the kitchen hall, cooking rice for prisoners, further describing chatting to *Rat* almost every day); HUN Kimseng Interview Record, E3/10753, 15

2740. In addition to a small number of prisoners working inside the main compound, SORY Sen further explained that 12 or 13 people were assigned to farm and grow vegetables and rice between the first and second perimeter fences.<sup>9317</sup> Guard VAN Soeun gave a larger estimate to investigators, estimating that 15-30 prisoners worked outside the detention buildings performing tasks such as carrying soil.<sup>9318</sup> SAUT Saing described supervising five to a maximum of ten prisoners working outside the main compound.<sup>9319</sup> He described some prisoners working outside to carry soil, fertiliser or cow dung to fertilise the fields.<sup>9320</sup> The guard unit was armed with guns.<sup>9321</sup> Prisoner VONG Sarun explained that prisoners who arrived at Kraing Ta Chan during transplanting season would be asked to transport seedlings with her group, after which they were killed.<sup>9322</sup> She described carrying soil and termite mounds.<sup>9323</sup> According to her, the prisoners who were not beaten were used to provide services for prison.<sup>9324</sup> She described heavy and hard labour work which she had to perform in order to receive her ration of gruel. Her group of workers were used whatever way the Kraing Ta Chan staff pleased.<sup>9325</sup> The Chamber finds that some prisoners worked outside the first perimeter fence, but this constituted a small minority of the overall number of prisoners in Kraing Ta Chan.<sup>9326</sup>

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September 2015, p. 17, ERN (En) 01168022 (Answer 103, her uncle, *Ta Norn*, had worked as the cook before her, but he was killed and she was tasked to take his place); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 13-14, 51 (*Yeay Nha* was the “lady in charge of cooking the gruel” and someone who was very kind to her and her baby; Han arrived at Kraing Ta Chan at the same time as VONG Sarun, and she had a three-month old baby with her); T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 8-9 (*Yeay Nha* and MEAS Sarat were only detained overnight, and allowed out to work during the day time); T. 17 March 2015 (RIEL San), E1/278.1, p. 76; T. 18 March 2015 (RIEL San), E1/279.1, p. 81; T. 19 March 2015 (RIEL San), E1/280.1, p. 28 (when RIEL San, the deputy chief of the District Hospital, visited Kraing Ta Chan he saw and recognised Han from Hospital 22 cooking a small pot of rice).

<sup>9317</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 47, 95.

<sup>9318</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 22, ERN (En) 00980298 (Answer 169).

<sup>9319</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 86; T. 25 March 2015 (SAUT Saing), E1/282.1, p. 49.

<sup>9320</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 16, 82, 86 (describing carrying earth from the pond to rice fields).

<sup>9321</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 40 (explaining that his team was armed with M16, AK [*sic*] and CKC weapons and they were armed “day and night”); T. 4 March 2015 (VAN Soeun), E1/271.1, p. 28 (suggesting that guards were armed at night with AK47 and M16 rifles, but not during the day).

<sup>9322</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 30, 40-41 (identifying the children of *Yeay Nha*, *Ta Dam*, *Pou*, *Saem*, *Aunty Rat*, *Aunty Phon* and *Vooun*).

<sup>9323</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 40-41.

<sup>9324</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 42.

<sup>9325</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 41-42, 85.

<sup>9326</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 84.

2741. The Chamber rejects the NUON Chea Defence's suggestion that "only" VONG Sarun encountered the hardship of physical labour at Kraing Ta Chan.<sup>9327</sup> These submissions bear little relation to the evidence before the Chamber, which described groups of prisoners. The Chamber is satisfied that prisoners including but not limited to VONG Sarun did not consent to work and could not, in all the circumstances, refuse to work.

### 12.3.9. *Interrogations*

2742. Some prisoners were executed immediately after their arrival at Kraing Ta Chan without facing interrogation.<sup>9328</sup> Large numbers of others were interrogated within a few weeks of their arrival.<sup>9329</sup> Detainees were taken from the detention room and led to the interrogation room on the south side of the compound, where one prisoner was interrogated at a time.<sup>9330</sup> Interrogations were conducted by members of the Party Committee, in particular *Ta An*, *Penh* and "Chhen". Typically, one member would conduct the interrogation with others present to take notes and guard the prisoner.<sup>9331</sup>

<sup>9327</sup> NUON Chea Closing Brief, para. 613.

<sup>9328</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 53-54 (describing a large group of people from Sre Ronoung and Nheang Nhang communes who were executed without being interrogated); T. 22 January 2015, pp. 18-24 (MEAS Sokha recalled that on one occasion more than 100 people were brought to Kraing Ta Chan and executed without interrogation because there was no space for keeping those people, he was ordered to bury the bodies); T. 5 February 2015 (SORY Sen), E1/257.1, p. 18 (confirming that in 1977 approximately 100 prisoners were executed without being interrogated first).

<sup>9329</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 45-47, 57, 90; T. 6 February 2015 (SORY Sen), E1/258.1, p. 61 (SORY Sen was detained for between 10 and 14 days at Kraing Ta Chan before being interrogated); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 12-13 (interrogated after seven days at Kraing Ta Chan), 51-52 (some prisoners would be interrogated after having entered the prison for one night and when new groups arrived, prisoners would be interrogated one after the other); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 16 (on arrival MEAS Sokha was not interrogated because he was considered to be a "young boy" and only adults, "head of a household" were interrogated); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 4, ERN (En) 00225503 (SORY Sen detained for six to seven days before being called for interrogation); KEO Chandara Interview Record, E3/5837, 29 October 2007, pp. 3-4, ERN (En) 00223452-00223453 (KEO Chandara interrogated on his first day at Kraing Ta Chan).

<sup>9330</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 9 (prisoner staff took the prisoners to and from the interrogation room); T. 25 March 2015 (SAY Sen), E1/282.1, p. 74 (the guards accompanied the prisoners to the interrogation place); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 12 (VONG Sarun was led to the interrogation room); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 82-85 (only one prisoner was interrogated at a time), 92, 99 (Cheng unshackled the prisoners in the detention building and walked them to the interrogation house and back); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 33 (prisoners were interrogated one after the other), 51-52 (prisoners would be interrogated one after the other).

<sup>9331</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 96 (MEAS Sokha witnessed an interrogation during which An was the interrogator while Penh took notes); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 61 (the chief and deputy chief of Kraing Ta Chan conducted interrogations, including Chhen, An and Penh), 86 (Chhen interrogated SORY Sen in the presence of two other Khmer Rouge cadres, including an armed soldier who stood guard); T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 33-34, 40 (the six party members, An, Penh, Chhen, Moeun, Chheang and Chhoeun, rotated interrogation duties); T. 24



As noted, representatives from the district such as IEP Duch and Phy also participated in interrogations on occasion.<sup>9332</sup> According to VAN Soeun, the six Party members rotated to perform interrogations.<sup>9333</sup> SREI Than *alias* Duch told investigators that only *Ta An* and his “deputy” IEP Duch interrogated prisoners with Sieng their “close associate”.<sup>9334</sup> The Chamber therefore finds that although interrogations were primarily conducted by *Ta An*, Penh and Chhen, others involved included Phy, IEP Duch and Sieng.

2743. Detainees were questioned about their backgrounds and political tendencies, and were frequently accused of being or having links to enemies, including the LON Nol regime, KGB, CIA and Vietnam.<sup>9335</sup> Others were questioned about and accused of

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March 2015 (SAUT Saing), E1/281.1, pp. 48 (there were three interrogators at Kraing Ta Chan: An, Penh and Chhen), 49 (notes were taken during interrogations, although SAUT Saing was not present when this occurred); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 33-40 (Penh interrogated VONG Sarun, while An took notes and Cheng was present), 45 (An took the notes); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (the interrogators were An, Penh, Cheng, Sieng and Moeun); HUN Kimseng Interview Record, E3/5826, 31 October 2007, pp. 4-5, ERN (En) 00223489-00223490 (HUN Kimseng was interrogated by “the Chairman and the Deputy Chairman” and little Duch administered beatings); SREI Than Interview Record, E3/5834, 29 December 2009, p. 10, ERN (En) 00434696 (the chairman and his staff, including An and Duch, interrogated prisoners at Kraing Ta Chan); SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 4, ERN (En) 00225503 (interrogated by three people, including Chhen, An and Duch, and a soldier stood guard), 8, ERN (En) 00225507 (SORY Sen saw An interrogate prisoners “once in a while”. After 1975, only the deputy chairman, Duch, and the member, Penh, conducted interrogations frequently, with one soldier on guard); SREI Than Interview Record, E3/9597, 31 October 2013, p. 8, ERN (En) 00970073 (An, Duch and Sieng conducted interrogations); VAN Soeun Interview Record, E3/5845, p. 4, ERN (En) 00223210 (An, Cheng and Penh conducted interrogations); KEO Chandara Interview Record, E3/5837, 29 October 2007, pp. 3-4, ERN (En) 00223452-3 (Chhen interrogated prisoners at Kraing Ta Chan); SORY Sen Interview Record, E3/9589, 31 October 2013, p. 9, ERN (En) 00969625 (An, Duch, Penh and some soldiers, Cheng, Sim and Saing, interrogated prisoners). While SORY Sen also confirmed that there were several cadres in the interrogation room during interrogations, he asserted that there was no note-taker. See T. 5 February 2015 (SORY Sen), E1/257.1, p. 30. In view of the overwhelming documentary evidence indicating that there were notetakers present during interrogation, the Chamber rejects SORY Sen’s evidence on this point and finds that, as in the case of VONG Sarun’s interrogation, a note-taker was usually present during interrogations.

<sup>9332</sup> See above, paras 2694-2696.

<sup>9333</sup> T. 3 March 2015 (VAN Soeun), E1/270.1, pp. 33-34.

<sup>9334</sup> SREI Than Interview Record, E3/9597, 31 October 2013, ERN (En) 00970073 (Answers 43-44).

<sup>9335</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 17-18, 96 (MEAS Sokha heard the interrogator ask prisoners what they did during the LON Nol regime, whether they had rank, whether they were American CIA or “*Yuon*” CIA); T. 2 February 2015 (KEO Chandara), E1/255.1, p. 93 (KEO Chandara was questioned at Kraing Ta Chan about who trained him in a CIA or KGB network); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 77, 85-86; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 6-7, 26-27 (SORY Sen listened to some interrogations, the purpose of which was to identify “CIA spies”, connections with Prum San or the LON Nol regime); T. 24 February 2015 (PHANN Chan), E1/268.1, p. 66 (prisoners at Kraing Ta Chan were accused of being KGB, CIA or White Khmer); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 30-32, 72 (VONG Sarun was asked where she hid a pistol, what level of education she had and whether her husband had introduced her to the KGB or “*Yuon*” spy network), 38-39 (VONG Sarun witnessed an interrogation where the detainee was asked whether he was a New Person or held the rank of captain in the army); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (during interrogation prisoners were asked what they did, whether they were

behaviours deemed to indicate opposition to the revolution, such as stealing food from cooperatives and complaining about hunger or fatigue.<sup>9336</sup> These findings are consistent with type of information provided by communes to Kraing Ta Chan as noted above.<sup>9337</sup>

2744. MEAS Sokha described being close by to the guards' kitchen one day to deliver fruit, when he both saw and heard a man being suffocated with a plastic bag as part of an interrogation session.<sup>9338</sup> Counsel for NUON Chea submitted that MEAS Sokha "made up his story", suggesting it was a complete fabrication.<sup>9339</sup> MEAS Sokha was questioned about it at some length – almost one hour during which he gave limited information on what he could recall. He thought he had been at Kraing Ta Chan for around three months when the incident happened, but he could not remember any particular prisoners who were brought into Kraing Ta Chan that day, or the day before this incident.<sup>9340</sup> He described the victim as quite tall and a bit fat, but he was unable to give any more details.<sup>9341</sup> He could not remember the specifics of questions asked by the interrogators, but remembered general questions about the person's rank in the LON Nol regime.<sup>9342</sup> The prisoner claimed to be a cyclo driver, but the interrogators did not believe him.<sup>9343</sup> Later that day, when MEAS Sokha was collecting wood, he saw the

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"American CIA or *Yuon* CIA" and for their rank during the LON Nol era); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 4, ERN (En) 00225503 (interrogated about possible contact with Prum San); Tram Kak District Record, E3/2052, 13 June 1977, p. 2, ERN (En) 00276591 (report from District Chief Kit to *Ta An* instructing him to interrogate ten former soldiers "harshly and thoroughly" to find all of "their network"); UK Him Interview Record, E3/9584, 14 July 2014, p. 14, ERN (En) 01031769 (Answer 52, describing being asked if she was ever a spy for LON Nol).

<sup>9336</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 57-58 (if prisoners did not confess, for example, to stealing a coconut or mango from the cooperative, they would be beaten until they confessed); SREI Than Interview Record, E3/5852, 16 September 2008, p. 4, ERN (En) 00231675 (notes from interrogations indicated that prisoners confessed to stealing food and complaining of hunger and fatigue); Kraing Ta Chan Notebook, E3/2107, undated, p. 23, ERN (En) 00290226 (CHAO Tit was arrested for criticising the revolution); Kraing Ta Chan Notebook, E3/5827, undated, p. 1, ERN (En) 00866424 (NOV Mom arrested for criticising the revolution, including food rations); Kraing Ta Chan Notebook, E3/2107, undated, p. 8, ERN (En) 00290211 (NGET Nel, son of a LON Nol colonel, was arrested for stealing coconuts and melons to eat).

<sup>9337</sup> See above, paras 2716-2727.

<sup>9338</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 16-18 (explaining that the kitchen was five metres from the interrogation site, that the use of a plastic bag was rare, he only saw it once and it lasted for five minutes); 87 (recalling that he had been asked to pick *kaisang* fruit); 90-91 (explaining that he was walking from his sleeping place to bring fruits for the kitchen when he saw the man, and the guards asked him to split wood for the kitchen).

<sup>9339</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 5 ("We are convinced that Meas Sokha never witnessed the torture incident of a fat cycle driver, suffocated by a plastic bag. We are convinced he made up his story").

<sup>9340</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 89.

<sup>9341</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 90-91.

<sup>9342</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 96.

<sup>9343</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 102.

same man carried back to the detention building in “bad shape” and he died the next day.<sup>9344</sup>

2745. The Chamber notes that MEAS Sokha does not appear to have mentioned the details of this specific incident in his 2007 interview with investigators. He is recorded, however, as making reference to faces being covered with plastic bags.<sup>9345</sup> The Chamber finds that MEAS Sokha’s account, when pressed for details, was a credible and cautious description of what he could best remember about one particular event.

2746. Other persons gave similar evidence that plastic bags were used to suffocate prisoners during the course of interrogations at Kraing Ta Chan, and they confirmed that the interrogation room could be seen and heard from the guards’ kitchen. The guard SAUT Saing recalled that plastic bags were used to suffocate prisoners during interrogations.<sup>9346</sup> He saw people suffocated during interrogations when he was cooking rice in the guards’ kitchen: he described an incident when the prison chief *Ta An* was the interrogator and a man was suffocated using a plastic bag made from a raincoat.<sup>9347</sup> The guard VAN Soeun confirmed that, from the kitchen, he also saw interrogations when prisoners’ heads were covered with plastic bags to suffocate them.<sup>9348</sup> Prisoner VONG Sarun described how, after she had been at Kraing Ta Chan for a year and it was trusted that she would not try to escape, she was tasked to feed pigs at the kitchen. She could hear interrogations clearly from that location.<sup>9349</sup> Prisoner

<sup>9344</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 96-107 (describing the prisoner claiming to be a tricycle/truck driver, *Om Penh* and *Pai* conducting the interrogation, with *Ta Cheng* kicking the prisoner; when MEAS Sokha later returned for wood, he saw the prisoner being carried back to one of the detention buildings in “bad shape” – he died and the next day *SORY Sen* and *Ta Chhen* were ordered to bury the body).

<sup>9345</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (“When they did not respond, at times they beat them unconscious. Sometimes they tortured. They covered their faces tightly with plastic bags.”).

<sup>9346</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 12 (“Yes, the prisoners were tortured and interrogated, for instance, they were beaten up to give answers, and plastic bags were used to cover their faces.”); 49 (“Prisoners were beaten by club and plastic sheet were used to cover their face to suffocate them in order to extract their confession.”); T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 16-18 (describing seeing plastic bags on the head of prisoners when he was cooking, describing the plastic bag as being made out of a raincoat and covering the head to suffocate the prisoner).

<sup>9347</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 16-18.

<sup>9348</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 32, 44 (describing how he witnessed this from the kitchen, that they would suffocate prisoners with plastic bags during the interrogation process). The Chamber notes that VAN Soeun subsequently, at p. 94, agreed with a leading question that he was “never able to watch interrogation in the interrogation room”. Contrary to the submissions at NUON Chea Closing Brief, para. 596, the Chamber does not consider this to undermine his previous evidence that he observed parts of interrogations from the kitchen.

<sup>9349</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 60.

SORY Sen described having to clean the interrogation room and seeing equipment including plastic sheets.<sup>9350</sup> The use of plastic to suffocate prisoners was also confirmed another guard<sup>9351</sup> and prisoners<sup>9352</sup> interviewed during the course of the investigation. The Chamber finds MEAS Sokha's account to be reliable, credible and reflective of interrogations at Kraing Ta Chan.

2747. The Chamber is satisfied that violence and threats of violence were used to extract confessions from prisoners,<sup>9353</sup> including beatings with whips and clubs and pinching with pliers.<sup>9354</sup> As noted, suffocation was another method frequently deployed

<sup>9350</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 82; T. 25 March 2015 (SORY Sen), E1/282.1, p. 79 (further stating that soldiers would use a plastic sheet made out of raincoat to cover the head of the prisoners whose hands were tied behind their back during the interrogation).

<sup>9351</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (stating that "plastic cloths" were put over prisoners' faces and he saw this when cooking nearby).

<sup>9352</sup> LIM Hach Interview Record, E3/7984, 29 November 2007, p. 3, ERN (En) 00166452 (describing her face being covered with a "rain cloth"); KEV Mao Interview Record, E3/7900, 29 October 2007, p. 4, ERN (En) 00163470 (describing his 1974 interrogation when a "plastic cloth" was wrapped around his face which "made me unable to breathe and I passed out").

<sup>9353</sup> T. 4 February 2015 (SAY Sen), E1/256.1, pp. 54-55 (stating that if prisoners did not confess to the allegations against them, they would be beaten until they confessed); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 38-39 (VONG Sarun overheard the interrogation of another detainee who denied holding the rank of captain, was whipped and asked again and denied it, and this process continued until he eventually confessed to being a captain to avoid being beaten again); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 18, 82-107; T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 10-12 (MEAS Sokha witnessed a detainee being suffocated with a plastic bag to compel his confession). *See also*, T. 25 February 2015 (PHANN Chhen), E1/269.1, pp. 17-18 (PHANN Chhen who oversaw Kraing Ta Chan from 1973 into 1975 (*see above*, para. 2693), was told by "someone" that two methods were used: cold to encourage prisoners to confess; and hot to force prisoners to confess, which might include torture); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 8, ERN (En) 00225507 (An would hit prisoners who were "not talking easily" during interrogations); VAN Soeun Interview Record, E3/5845, p. 4, ERN (En) 00223210 (prisoners were beaten to force them to answer during interrogations).

<sup>9354</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 12 (prisoners were beaten up, including with whips, and had plastic bags tied around their faces), 49 (describing seeing whips at the interrogation site); T. 25 March 2015 (SAUT Saing), E1/282.1, p. 18 (on one occasion, SAUT Saing witnessed a prisoner being beaten and plastic bags tied around his face during an interrogation in order to extract confessions); T. 23 February 2015 (SREI Than), E1/267.1, pp. 10-11 (SREI Than saw prisoners after their interrogation being brought back to the detention building who had been beaten and "probably tortured severely"); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 57 (SORY Sen was instructed to carry prisoners who had been tortured to the point that they could not walk back into the detention building), 82 (the equipment in the interrogation room which SORY Sen would see when cleaning it in the mornings included a bamboo club and plastic sheets and scarves to cover the face of prisoners); T. 5 February 2015 (SORY Sen), E1/257.1, p. 28 (prisoners were beaten with bamboo clubs during interrogations and pliers were used to extract or hurt the breast or nipples of female prisoners); T. 4 March 2015 (SAUT Saing), E1/271.1, pp. 30-31 (confirming that he witnessed plastic bags being used against prisoners during interrogations); T. 25 March 2015 (SAY Sen), E1/282.1, p. 79 (clubs were used to torture prisoners, as well as plastic sheets to cover the prisoners' eyes); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 29-30 (VONG Sarun saw prisoners being beaten up), 44-45 (VONG Sarun heard the sound of whipping during an interrogation of a New Person who was being asked whether he had held the position of captain in the army); T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 30-31 (VAN Soeun saw plastic bags being used during interrogations); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 16-17 (the interrogation room contained sticks, chains, axes and pliers for use during interrogation, bamboo sticks and rattan were used and the building was "filled with screams"), 17, 100 (prisoners were beaten with bamboo stems and rattan during interrogation and pliers were used to pull out their fingernails), 18 (MEAS Sokha saw a

at Kraing Ta Chan.<sup>9355</sup> Former prisoners and staff alike gave evidence that they heard screams coming from the interrogation room.<sup>9356</sup> According to VONG Sarun, they interrogated people “loudly”. She heard them interrogating a New Person from Phnom Penh, asking whether he had been a captain. She then heard what sounded like whipping until he confessed and the beating stopped.<sup>9357</sup> According to VAN Soeun, clubs and whips were kept at the interrogation site.<sup>9358</sup> These were used during the interrogation process, and prisoners were suffocated as well.<sup>9359</sup> He later suggested, however, that he never witnessed interrogations as he was asked to go outside the perimeter of the compound during interrogations.<sup>9360</sup> The Chamber finds VAN Soeun’s attempt to distance himself from events inside the main compound to lack credibility. SREI Than *alias* Duch saw prisoners who were beaten or “probably tortured severely” being taken back to the prisoners’ buildings following interrogations.<sup>9361</sup> SAUT Saing did not think interrogations took place on a daily basis.<sup>9362</sup> Yet he heard screaming from prisoners when they were being interrogated, because they were being beaten and tortured.<sup>9363</sup>

2748. VONG Sarun also described the interrogation of a fellow prisoner called “Rom” who she identified as the “child of district committee of Angkor Chey”. VONG Sarun

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prisoner being suffocated with a plastic bag), 48 (prisoners were beaten and if they did not confess a plastic bag would be placed over their heads and their fingernails pulled); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (SAING Sim saw prisoners being beaten and plastic cloths being put on their faces while they were interrogated); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 4, ERN (En) 00223210 (prisoners were beaten with whips and clubs during interrogation); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (prisoners faces were covered tightly with plastic bags during interrogations); SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 5, ERN (En) 00225504 (when sweeping the interrogation site, SORY Sen saw the plastic bags used to suffocate the prisoners), 8, ERN (En) 00225507 (SORY Sen witnessed Duch and Penh interrogating prisoners, with the guard putting a plastic bag over the detainee’s head and beating the detainee).

<sup>9355</sup> See above, para. 2746.

<sup>9356</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 76 (heard screaming or cries from prisoners when they were interrogated and suffered from torture or beating during interrogations); T. 23 February 2015 (SREI Than), E1/267.1, pp. 6 (could hear screaming from the interrogation room when he was typing in the prison chief’s room), 8, 53 (sometimes hear screaming during interrogations), 53 (heard the screaming of tortured prisoners); T. 21 Jan 2015 (MEAS Sokha), E1/249.1, p. 16 (describing the interrogation building as “filled with screams”); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 6, ERN (En) 00223498 (heard the screams of prisoners being interrogated); SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 6, ERN (En) 00223552 (heard screaming during interrogations).

<sup>9357</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 45-46.

<sup>9358</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 31.

<sup>9359</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 44.

<sup>9360</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 94.

<sup>9361</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 11.

<sup>9362</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 67-68.

<sup>9363</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 75-76.

explained they were kept in the same detention building and Rom had “rashes from the tortures as big as the size of my thumb all over her body”.<sup>9364</sup> The Chamber also finds that prisoners died from injuries sustained during interrogation.<sup>9365</sup> Based in particular on the roles of IEP Duch and Phy, the Chamber is satisfied that the district level knew and approved of extreme levels of mistreatment at Kraing Ta Chan. This is confirmed by the documentary evidence. In particular, a report from District Secretary Kit proposed that 10 “traitors” from Khpob Trabaek commune be interrogated “harshly and thoroughly”.<sup>9366</sup> Further, a report from *Ta An* to the Party on interrogations noted with regard to a woman who kept crying while she was interrogated by a “comrade in the Army at Ang Ta Saom” that “only with hot measures during interrogation would she confess”; and further noting that “within Army workplace at Ang Ta Saom there are no confidential places to conduct interrogation at ease”, this suggesting that Kraing Ta Chan was a more appropriate place for keeping the use of these methods of interrogation confidential.<sup>9367</sup> Finally one of the Kraing Ta Chan Notebook bears the following annotation “[t]his person was interrogated with some hot methods to dig up his network, but he refused to confess”.<sup>9368</sup>

2749. Some prisoners, including VONG Sarun, did not suffer direct physical violence during interrogations.<sup>9369</sup> Contrary to the NUON Chea Defence’s submission<sup>9370</sup> that VONG Sarun’s evidence precludes a finding about the use of torture beyond reasonable doubt, the Chamber finds that the overwhelming evidence above shows that many prisoners were abused during interrogations, some to the point where they died. While

<sup>9364</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 31.

<sup>9365</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 85-107 (MEAS Sokha recalled a detainee dying after being suffocated during interrogation); T. 4 February 2015 (SORY Sen), E1/256.1, p. 61 (prisoners were in very bad shape after interrogations and in the case that they were not executed, typically died within a month); SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 5, ERN (En) 00225504 (the three prisoners brought to Kraing Ta Chan with SORY Sen “died from being beaten during interrogation”), 11, ERN (En) 00225510 (prisoners died from wounds resulting from the torture); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (some prisoners were beaten to death at the interrogation site); VAN Soeun Interview Record, E3/5845, 29 November 2007, p. 4, ERN (En) 00223210 (confirming that prisoners died as a result of beating during interrogations); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 6, ERN (En) 00223498 (some prisoners died when they returned from interrogation); LIM Hach Interview Record, E3/7984, 29 November 2007, pp. 4-5, ERN (En) 00166453-00166454 (describing seeing prisoners Phat, Uon and Hai beaten to death).

<sup>9366</sup> Tram Kak District Record, E3/2052, 13 June [1977], p. 2, ERN (En) 00276591 (note from Kit, the District Secretary).

<sup>9367</sup> Tram Kak District Record, E3/4126, 26 December 1977, pp. 1-2, ERN (En) 00366713-00366714.

<sup>9368</sup> Kraing Ta Chan Notebook, E3/4095, ERN (En) 00747287 (YANG Kay).

<sup>9369</sup> See also, KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 7, ERN (En) 00223456 (KEO Chandara was not tortured during interrogations).

<sup>9370</sup> NUON Chea Closing Brief, para. 599.

VONG Sarun was not physically mistreated during interrogation, the Chamber notes the circumstances of her arrest and interrogation. She was made to walk all the way from Chan Teab village to Kraing Ta Chan while carrying her one year old baby girl.<sup>9371</sup> Once at Kraing Ta Chan, she was shackled and guards made fun of her because she was the wife of *Ta Saet*, whose execution just prior her arrival had been disclosed to her by a co-detainee.<sup>9372</sup> On arrival at Kraing Ta Chan, she thought she was “about to die”.<sup>9373</sup> She was detained for about seven days with very little food, shackled and handcuffed, before she was walked to the interrogation site. She fell down repeatedly on the way because she did not have the strength to walk.<sup>9374</sup> She was threatened both with physical violence and death<sup>9375</sup> During the interrogation, she was being accused of being a KGB or *Yuon* spy, – allegations she did not understand.<sup>9376</sup>

2750. Given the interrogators’ comments about VONG Sarun’s education level, her appearance and the well-being of her husband, the Chamber rejects the NUON Chea Defence’s submission that Vorng Sarun was imprisoned for her suspected participation in “unlawful activities”.<sup>9377</sup>

2751. The Chamber finds that this interrogation was an terrifying experience for VONG Sarun in horrendous circumstances, detained at Kraing Ta Chan with her young baby and in the knowledge that her husband had been executed.

### 12.3.10. Executions and Burials

2752. MEAS Sokha described an incident when he saw a guard called “Seang” smash a baby to death against a gum tree inside the first perimeter fence at Kraing Ta Chan. MEAS Sokha explained he was nearby because it happened close to where the cattle were kept. The incident happened in 1977 and he saw it by peeking through a fence

<sup>9371</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 11-13.

<sup>9372</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 13. *See above*, para. 2715.

<sup>9373</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 12.

<sup>9374</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 12-13.

<sup>9375</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 31-34 (Penh was about to hit her but he was stopped by *Ta An*), 34 (An stopped him and said that VONG Sarun was innocent but her husband had committed wrongdoing and “it would not be long before I die”), 35 (VONG Sarun was threatened with being beaten), 73 (at the end of her interrogation, VONG Sarun was told that she would “die anyway”).

<sup>9376</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 46; Kraing Ta Chan Notebook, E3/5827, ERN (En) 00866434 (VONG Sarun testified that she was not asked about Kang during her interrogation, even though the notes in notebook E3/5827 refer to Kang, the former head of the Zone Hospital). The Chamber does not find this discrepancy to be significant).

<sup>9377</sup> NUON Chea Closing Brief, para. 563.

made of coconut leaves.<sup>9378</sup> The tree was to attached to a pit inside the first perimeter. MEAS Sokha testified that he did not know the identity of the baby or its mother.<sup>9379</sup> The mother was killed first, then the baby was smashed against the tree and thrown into the pit.<sup>9380</sup>

2753. MEAS Sokha does not appear to have mentioned this particular incident when he was interviewed in 2007, although he did identify a guard called “Sieng” as one of the executioners.<sup>9381</sup> Before the Chamber, he maintained that Sieng was “the executioner” and “in charge of killing”.<sup>9382</sup> The Chamber is satisfied that the English and French translations in the alternate forms “Sieng” and “Seang” refer to the same person.

2754. Guard SREI Than *alias* Duch told the investigators in 2013 that “Sieng” was a close associate of prison chief *Ta An*.<sup>9383</sup> Before the Chamber, SREI Than *alias* Duch claimed at first not to even know “Sieng”, but then he accepted that he heard of “Seang” from others and saw him together with other “leaders” at Kraing Ta Chan.<sup>9384</sup> Guard VAN Soeun identified “Sieng” as one of the party members at Kraing Ta Chan.<sup>9385</sup> A former guard identified “Sieng” to the investigating judges as EM Sieng.<sup>9386</sup> The Chamber is satisfied that there was a relatively senior member of the Kraing Ta Chan staff known as Sieng. The Chamber is also satisfied that MEAS Sokha was in a position to correctly identify Sieng.

2755. There is evidence of similar incidents at Kraing Ta Chan and the Chamber finds that children, including babies, were killed there. KEO Chandara, who was detained for a relatively short period of time around 17 April 1975, described seeing the execution

<sup>9378</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 12-16.

<sup>9379</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 12-13.

<sup>9380</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 12-13.

<sup>9381</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (he also stated (at p. 7, ERN (En) 00223499) that he saw killings twice, which would consistent with having seen this incident and part of the mass killing incident described below).

<sup>9382</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 50; T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 46.

<sup>9383</sup> SREI Than Interview Record, E3/9597, 31 October 2013, p. 8, ERN (En) 00970073 (Answer 44). *See also*, SREI Than Interview Record, E3/5852, 16 September 2008, p. 3, ERN (En) 00231674 (identifying Sieng among the “supervisors” at Kraing Ta Chan).

<sup>9384</sup> T. 24 February 2015 (SREI Than), E1/268.1, pp. 12-15 (he saw An, Big Duch and Sieng together “quite often”).

<sup>9385</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 74.

<sup>9386</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 8, ERN (En) 00433574.



of a woman and two young children: a three-year-old and a newborn baby boy. They arrived at Kraing Ta Chan around 5 p.m. one afternoon and were walked towards the east of Kraing Ta Chan underneath a “*thngann* tree” by four militiamen, one of whom snatched the baby boy from the mother and hit him against the tree before throwing him into the pit. The mother fell down and the other child started to cry, so they took him and hit him against the “rain tree” and threw him into the pit. The mother fainted before they killed her as well.<sup>9387</sup> Although the Chamber is unable to determine whether the incident witnessed by KEO Chandara took place within ECCC’s temporal jurisdiction, such evidence is indicative of a pattern of conduct at Kraing Ta Chan and is similar to the type of atrocity witnessed by MEAS Sokha. Other prisoners also described similar incidents to investigators.<sup>9388</sup>

2756. The Chamber has considered carefully the possibility of the unconscious transference of memories over the years. The killing of children was confirmed, however, by former guards. SAUT Saing gave evidence that he knew that children were killed at Kraing Ta Chan because mothers and children disappeared at the same time.<sup>9389</sup> SREI Than *alias* Duch confirmed that many children were killed at Kraing Ta Chan.<sup>9390</sup> VAN Soeun was evasive when asked about the killing of children: despite having told investigators that children were killed at Kraing Ta Chan, before the Chamber he testified that he did not recall this very well.<sup>9391</sup> The Chamber finds that MEAS Sokha saw the incident as he described it, and that babies and children were killed at Kraing Ta Chan in this way.

2757. Before the Chamber, MEAS Sokha described a mass killing incident at Kraing Ta Chan when more than 100 people arrived from Sre Ronoung and Nhaeng Nhang communes. According to MEAS Sokha, there was insufficient space in Kraing Ta Chan at the time, so the killing started at around 2 p.m. or 3 p.m. in the afternoon, shortly

<sup>9387</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 40.

<sup>9388</sup> UK Him Interview Record, E3/9584, 14 July 2014, p. 14, ERN (En) 01031769 (Answer 51, describing children being killed by hitting them against a tamarind tree); HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 4, ERN (En) 00223489 (describing seeing children beaten against the trunk of a teal tree); SET Yem Interview Record, E3/9484, 9 September 2014, pp. 6-7, ERN (En) 01044898-01044899 (Answer 22, although not specifying the circumstances, explaining that her child SET Khem was killed in Kraing Ta Chan).

<sup>9389</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 59-60, 63 (describing his personal observation that when the children disappeared, it meant they were killed).

<sup>9390</sup> T. 23 February 2015 (SREI Than *alias* Duch), E1/267.1, p. 42 (confirming the accuracy of SAY Sen’s evidence and stating that many children, male and female were killed).

<sup>9391</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 34.

after the group arrived. MEAS Sokha considered this to be something of an exception because prisoners generally arrived at Kraing Ta Chan in the evening.<sup>9392</sup> He specified that the killing took place to the south of the compound, with two to four people taken away at a time.<sup>9393</sup> MEAS Sokha described seeing a guard use a “sword” some 60cm long and two fingers’ width to slit the victim’s throat, while two other guards restrained the prisoner.<sup>9394</sup> MEAS Sokha saw this because he had returned to the compound that afternoon to collect ropes to catch cattle. He saw the killing for a brief moment by climbing a nearby tree, but when spotted by one of the killers he left.<sup>9395</sup>

2758. MEAS Sokha was challenged on an apparent inconsistency in his evidence. He was asked how it could be that he knew more than 100 people were killed that day in light of his evidence that he only witnessed the killing of one person. MEAS Sokha explained in response that he was ordered to help bury all of the bodies at around 5 or 6 p.m. that day, together with SORY Sen and another prisoner called *Ta Chhen*.<sup>9396</sup> MEAS Sokha’s account of this incident was confirmed by SORY Sen.<sup>9397</sup> The Chamber is also satisfied that another prisoner called IET Chen *alias Ta Chen* or *Ta Chhin* frequently assisted with burials together with SORY Sen.<sup>9398</sup> The Chamber notes that another Kraing Ta Chan guard, asked during the investigation about the killing of prisoners and how many were killed at a time, answered: “There were more than 100, up to 200 prisoners each time they took prisoners to kill them, both children and adults. Sen, who was a prisoner there, may know about this.”<sup>9399</sup> This corroborates MEAS Sokha’s account he helped SORY Sen and *Ta Chhen* to bury large numbers of bodies.

<sup>9392</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 54 (killing started at 2 p.m.), 64 (people generally arrived at 8-9 p.m. at night, but the group from Sre Ronoung and Nhang Nhang communes arrived during the daytime and were then taken to be killed); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 18-19 (killing started at 3 p.m., with 3-4 people brought at a time).

<sup>9393</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 15, 54 (explaining that they were killed straight away because there was no room in the prison for them at the time); T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 16.

<sup>9394</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 36-37.

<sup>9395</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 20-22; T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 79-81.

<sup>9396</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 22 (explaining that he buried the bodies), 23 (explaining that SORY Sen and *Ta Chhen* dug the pits, but MEAS Sokha was ordered to bury the bodies).

<sup>9397</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 18-19 (confirming that he knew about the incident described by MEAS Sokha when these prisoners were executed without being interrogated and stating that it happened in 1977).

<sup>9398</sup> See above, para. 2677.

<sup>9399</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573.

2759. Although MEAS Sokha did not detail this incident in his 2007 interview, when asked how many prisoners he saw killed at any one time he answered that the number varied, “sometimes 50, sometimes 30, sometimes more than 100”.<sup>9400</sup> He also described seeing executions from a tree when prisoners had their throat cut.<sup>9401</sup> Other witnesses also described seeing a long knife used for killings. SORY Sen described a 40-50cm knife being used to slash prisoners’ throats before they were dropped into a pit.<sup>9402</sup> VONG Sarun described seeing guards sharpening a curved knife, walking prisoners off in a line then later washing the blood off themselves and the knife in the pond at Kraing Ta Chan.<sup>9403</sup> Contrary to the submissions made by the NUON Chea Defence, MEAS Sokha gave careful and limited evidence, on several occasions expressing limitations to what he saw or heard by himself or what he could now remember, some 40 years later.<sup>9404</sup> The Chamber is satisfied that this incident occurred, as described by MEAS Sokha and SORY Sen, and that they were tasked with the burials following this mass execution.

2760. The NUON Chea Defence claimed that SORY Sen lacks credibility because of his inability to recall specific dates of the arrest and killing of MEAS Sokha’s father and brother-in-law, and his explanation that he did not know why they were arrested.<sup>9405</sup> However, while SORY Sen could not specify dates, he remembered that “*Ta Kun*” and “*Boeun*” arrived first at Kraing Ta Chan, were interrogated, tortured to death, then *Yeay Nha* and her family arrived later.<sup>9406</sup> As to the reasons for these arrests, SORY Sen gave evidence that he never knew this information: it was not something he felt able to ask

<sup>9400</sup> MEAS Sokha Interview Record, E3/ 5825, 31 October 2007, p. 7, ERN (En) 00223499.

<sup>9401</sup> MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 7, ERN (En) 00223499 (MEAS Sokha watched executions from a tree and saw prisoners killed by having their throats cut and being hit).

<sup>9402</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 53-57, 100 (prisoners would be hit on the back of the neck with a hoe, then a 40 to 50 cm knife would be used to slash their throat, before they would be dropped into the pit).

<sup>9403</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 38-39 (VONG Sarun saw people sharpening a curved knife, walking people in a line, and then washing blood from themselves in the pond. The knife was also blood stained. She did not see the people closely enough to know their names).

<sup>9404</sup> See T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 89 (explaining that he was unable to recall the names of particular prisoners brought in to Kraing Ta Chan on the day or two before he witnesses a prisoner being suffocated with a plastic bag); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 15 (explaining that he did not know the name of the baby he saw smashed against a tree and thrown into a pit, or its mother), 20-22 (explaining in relation to a mass execution that he only saw one killing, but he then had to bury the bodies which is how he knew that more than 100 people had been killed on that single occasion).

<sup>9405</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 77-79.

<sup>9406</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 79-80 (stating that the family arrived 10 days or a month after the deaths); T. 6 February 2015 (SORY Sen), E1/258.1, p. 13 (stating that Kun passed away a month after his torture and he died before Boeun).

them.<sup>9407</sup> The Chamber found SORY Sen’s evidence to be a frank and reliable explanation of his knowledge at the relevant time.<sup>9408</sup> SORY Sen’s inability to recall precise dates are immaterial: his evidence of the arrival of *Ta Kun* and *Boeun*, their execution, followed by the arrival of their family including *Yeay Nha*, who is MEAS Sokha’s mother, is – as the Chamber has found – entirely accurate and indicative of his overall reliability.<sup>9409</sup>

2761. At around 3 or 4 p.m. one afternoon SORY Sen was returning some water-buffalo to Kraing Ta Chan, when SREI Than *alias* Duch sent him to an area in the south of the compound known as the “dark” prison. The evidence is unclear whether this refers to the “old dungeon” described above. When SORY Sen got there, he saw two dead women from a mobile unit who had been raped, with M-79 bullets inserted into their vaginas. SORY Sen was ordered to bury their corpses.<sup>9410</sup> He identified the guards involved in this incident as SREI Than *alias* Duch and his superior “Saing”.<sup>9411</sup>

2762. SREI Than *alias* Duch denied this allegation, suggesting that SORY Sen had fabricated it.<sup>9412</sup> SREI Than *alias* Duch expanded that rape was prohibited by the

<sup>9407</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 80 (stating he was not aware); T. 6 February 2015 (SORY Sen), E1/258.1, pp. 3-4 (the President preventing Mr KOPPE from asking SORY Sen again whether he knew “the reasons” for the arrest of MEAS Sokha’s family).

<sup>9408</sup> The Chamber notes that SORY Sen explained that still knows *Yeay Nha*, MEAS Sokha’s mother, and listened to reports of MEAS Sokha’s appearance before the Chamber in January 2015, but never sought to offer their accounts of the reasons for their arrest. See T. 5 February 2015 (SORY Sen), E1/257.1, pp. 6, 16 (CS).

<sup>9409</sup> See above, paras 2668-2671.

<sup>9410</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 62; T. 6 February 2015 (SORY Sen), E1/258.1, pp. 70-72 (the women had already been killed when SORY Sen was asked to bury the bodies, afterwards the guard asked whether SORY Sen “saw something” which he understood to be a reference to the M79 projectiles); T. 25 March 2015 (SORY Sen), E1/282.1, pp. 101-102 (the two female prisoners were apparently raped before being killed and M-79 grenade heads were inserted into their vaginas then SORY Sen was ordered to bury the dead bodies); T. 25 March 2015 (SORY Sen), E1/282.1, pp. 106 (suggesting that the two women had been brought in from Srae Ronoung village, then Duch told him to bury the bodies), 114 (after small Duch raped the two women, he killed them, then ordered SORY Sen to bury the dead bodies; small Duch himself told SORY Sen what he had done and also said Saing was involved); SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, p. 4, ERN (En) 00527774 (“Duch used to kill the young girls in the prison. They took the dead bodies and inserted the head of M79 missiles into the girls’ vaginas. They called on me to bury the bodies. Duch had asked me if I saw the M79 in the girl’s [sic] vaginas. I told him I did see it and ask[ed] him why he did that. After burying the, [sic] body Duch and his comrades laugh[ed] about it.”).

<sup>9411</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 31. See also, SORY Sen Interview Record, E3/9589, 31 October 2013, p. 12, ERN (En) 00969628 (Answer 78, stating that small Duch raped “many women in a Mobile Unit. He killed them after he had raped them. He inserted M-79 bullets in their vaginas, and he ordered me to bury them. Saing was Duch’s superior”).

<sup>9412</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 93-98.

army's 12 moral principles.<sup>9413</sup> SAUT Saing also denied this incident and stated that he did not witness rapes or anything similar at Kraing Ta Chan.<sup>9414</sup> He also recalled the 12 moral principles.<sup>9415</sup> VAN Soeun denied that members of his unit abused two women from a mobile unit, but added the caveat that he might have been elsewhere at the time.<sup>9416</sup>

2763. The Chamber finds the guards' generic references to the 12 moral principles to be irrelevant to whether this specific incident occurred. The Chamber has found that KIM Nova was sexually assaulted at Kraing Ta Chan, and that this was known to the District Office.<sup>9417</sup> There is also evidence that during the relevant period, persons who lived close by to Kraing Ta Chan learned that rapes were taking place inside.<sup>9418</sup>

2764. In relation to this specific incident of sexual assault and killing, the Chamber considers SORY Sen's evidence to be more reliable than that of the guards. The Chamber is satisfied that SORY Sen's account of this incident was consistent since he was interviewed by DC-Cam in 2004.<sup>9419</sup> The Chamber has found SREI Than *alias* Duch and SAUT Saing's evidence to be unreliable, especially in relation to matters concerning their own culpability. The Chamber rejects as untruthful their sporadic attempts to distance themselves from events inside Kraing Ta Chan. Other than unsubstantiated suggestions that SORY Sen's account was "preposterous", the NUON Chea Defence failed to articulate any foundation to support their submissions that SORY Sen deliberately and falsely implicated SREI Than *alias* Duch and SAUT Saing in this atrocity. The Chamber finds SORY Sen's account to be consistent with the permissions given to him to move around Kraing Ta Chan performing work as assigned, including burials.

<sup>9413</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 95; T. 24 February 2015 (SREI Than), E1/268.1, pp. 6-7.

<sup>9414</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 66-67; T. 24 March 2015 (SAUT Saing), E1/281.1, p. 3 (CS); T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 53-55.

<sup>9415</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 52.

<sup>9416</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 87, 89 ("If there were rapes. If would know about that. Or perhaps I was away, and rapes happened there.").

<sup>9417</sup> See *above*, para. 2738.

<sup>9418</sup> YIN Teng Interview Record, E3/9472, 29 December 2014, pp. 49-50, ERN (En) 01067076-01067077 (Answers 349, 354, stating that during the operation of Kraing Ta Chan, Moeun told her that the rapists were his "fellow workers").

<sup>9419</sup> SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, p. 4, ERN (En) 00527774; SORY Sen Civil Party Application, E3/5841, 17 November 2008, p. 2.

2765. SORY Sen described witnessing two young siblings killed by guards. He provided an account of this in his 2008 interview and it is also described in the site identification report. The 2008 interview records SORY Sen as stating that the elder girl, who was about three years old, was killed by “Saing”; whereas the younger girl (no age stated) was killed by SREI Than *alias* Duch – who smashed her head against the trunk of a tamarind tree while another guard called “SIM” stood by and watched.<sup>9420</sup> Included in the site identification report are two photographs in which SORY Sen is seen identifying the tree.<sup>9421</sup> The Chamber notes that SORY Sen identified this incident as having occurred outside the main compound to the west.<sup>9422</sup>

2766. Before the Chamber, however, SORY Sen described the younger girl as three or four years old, and the elder girl as five or six. He gave evidence that he was climbing palm trees one afternoon to make palm wine for guards when he witnessed the killings. The youngest girl was smashed against a “sugar palm tree”, whereas the eldest was killed using a hoe. Their gallbladders were removed and hung there. The bodies were dragged into a pit at the base of the trees.<sup>9423</sup> He described the incident as taking place outside the first perimeter fence, around 50 or 60 metres to the west, but inside the second perimeter fence.<sup>9424</sup> SORY Sen identified “Sieng” as the guard who grabbed the younger girl by the feet and smashed her head against the tree, whereas “Saing” killed

<sup>9420</sup> SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 11-12. The OCIJ site report similarly records that SORY Sen described small Duch and Saing’s murder of the two girls. *See* Site Identification Report, E3/5828, 17 March 2009, p. 4, ERN (En) 00363340 (the description in the Site Identification Report is different. It refers to a palm tree rather than a tamarind tree and suggests that both girls were swung by the feet and their heads dashed against the trunk).

<sup>9421</sup> Site Identification Report, E3/5828, 17 March 2009, p. 4, ERN (En) 00363340; Photograph, E3/5867, 17 March 2009, ERN (En) P00355394 (Photograph 29 showing SORY Sen pointing to a tree); Photograph, E3/5868, 17 March 2009, ERN (En) P00355395 (Photograph 30 showing SORY Sen standing next to a tree stump).

<sup>9422</sup> Site Identification Report, E3/5828, 17 March 2009, p. 40, ERN (En) 00363340; Plan of Site of former Kraing Ta Chan Prison, E3/5866, 17 March 2009, p. 1, ERN (En) 00363333 (marker indicating photographs 29 and 30, outside of the inner compound to the west).

<sup>9423</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 53-54 (stating that the parents had been killed two or three days beforehand, the younger girl was killed by smashing against the tree trunk, and the elder girl was made to sit with no blindfold then hit on the back of neck using a one metre long hoe), 99; T. 25 March 2015 (SORY Sen), E1/282.1, p. 82 (SORY Sen was up the palm tree when a child was killed at the base of the same tree).

<sup>9424</sup> T. 25 March 2015 (SORY Sen), E1/282.1, p. 86.

the elder girl.<sup>9425</sup> He identified other guards involved as SREI Than *alias* Duch, Sim and Moeun.<sup>9426</sup>

2767. SAUT Saing denied that he was involved in this incident and that there were palm trees inside the Kraing Ta Chan compound. He accepted there were palm trees “far from the compound”.<sup>9427</sup> The location to the west identified by SORY Sen was not put to SAUT Saing. He accepted that children were killed in Kraing Ta Chan because mothers and children “disappeared” at the same time.<sup>9428</sup> SREI Than *alias* Duch denied witnessing killings.<sup>9429</sup> At another point in his evidence, however, SREI Than *alias* Duch confirmed that many children were killed at Kraing Ta Chan.<sup>9430</sup>

2768. As noted, the Chamber generally considers Sory Sens evidence to be more reliable than that of the guards. There was a core consistency to SORY Sen’s account in that two young girls were killed in a horrific way at Kraing Ta Chan. He consistently described the location to the west, that the younger girl’s head was smashed against the tree, and that a group of guards was involved. The Chamber has already found it to be established beyond doubt that young children were indeed killed at Kraing Ta Chan, including in the manner described by SORY Sen.<sup>9431</sup> There is also relevant contextual evidence confirming that the execution of children was clearly contemplated in Tram Kak district.<sup>9432</sup> VONG Sarun similarly described a woman and new-born baby being

<sup>9425</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 46-49 (Sieng was the one who smashed the kids against the trunk of a palm tree. The other child was killed by Saing and the younger child was killed by Sieng).

<sup>9426</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 32-33 (identifying the four guards), 46-47 (the group who killed the kids were Saing, Sieng, small Duch and Sim).

<sup>9427</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 63 (clarifying that “far from the compound, there were palm trees); T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 11-12 (stating as follows: “I never killed any young baby or treated anyone with such cruelty there in the prison” then further denying any knowledge of the involvement of small Duch or Sieng in this incident).

<sup>9428</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 59-60, 63 (describing his personal observation that when the children disappeared, it meant they were killed).

<sup>9429</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 42-43 (stating that he did not witness any killing of children, so he could not assume how such killings took place).

<sup>9430</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 42 (confirming the accuracy of SAY Sen’s evidence and stating that many children, male and female were killed).

<sup>9431</sup> UK Him told investigators that she was detained at Kraing Ta Chan in 1978 and described there being “many children” and that the “Khmer Rouge killed those children by hitting them against a tamarind tree.” She described seeing an executioner hold human organs through a hole in the detention building wall. See UK Him Interview Record, E3/9584, 14 July 2014, p. 14, ERN (En) 01031769 (Answer 51).

<sup>9432</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, paras 843-846. See also, Tram Kak District Record, E3/4126, 26 December 1977, pp. 1-2, ERN (En) 00366713-00366714 (an instruction from Ta San to Ta An asking him to take four people to question including NEARY Huot, then stating “separate Neary Nuot’s 1 year-old child from her”); Tram Kak District Record, E3/2441, 24 April [no year stated], p. 5, ERN (En) 00369467 (a note from Saen to *Angkar* reporting that a woman had pretended

removed from the detention building and taken to the “north and west”, from where she heard the sound of crying and screaming.<sup>9433</sup> There were discrepancies in SORY Sen’s account, including in relation to the age of the victims, the identity of the specific perpetrators, and the type of tree. Of these, the Chamber finds the discrepancy over the ages of the victims to be the most significant inconsistency. These inconsistencies were not put to SORY Sen when he appeared before the Chamber, so he was not given an opportunity to explain them. These inconsistencies in SORY Sen’s evidence do not undermine the core consistency of his account. The Chamber has no doubt that he saw the type of atrocity he described, even if his recollection and answers differed at times.<sup>9434</sup> The Chamber finds that this young boy experienced years of unspeakable horror at Kraing Ta Chan, forced to perform gruesome tasks in the place where his father had also been killed. The Chamber remains satisfied by SORY Sen’s overall credibility and finds that two young girls were killed in the circumstances he described.

2769. SORY Sen was regularly involved with burying bodies.<sup>9435</sup> MEAS Sokha also buried bodies, including following a mass execution, but not as frequently as SORY Sen.<sup>9436</sup> As noted, the Chamber found that the three guards who gave oral evidence lacked credibility when they sought to distance themselves from executions. The guards readily accepted, however, that large numbers of people were executed at Kraing Ta Chan. SREI Than *alias* Duch and VAN Soeun both estimated that 99 per cent of prisoners at Kraing Ta Chan were killed.<sup>9437</sup> Although the Chamber does not take this to be a precise figure, it is a telling estimate in that it confirms their view that the vast majority of those persons who entered Kraing Ta Chan were killed. Guard SAUT Saing likewise stated: “As for the survival from the security office, I don’t think there were

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to be mentally ill, noting that “We smashed two of their children in 1976”); Tram Kak District Record, E3/4145, 22 May 1977, p. 9, ERN (En) 00762845 (a partial list of persons bearing an annotation dated 22 May 1977 stating that a “total of 37 people, both young and old, whose names contained in this list have been purged”).

<sup>9433</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 57-58.

<sup>9434</sup> See SORY Sen Civil Party Application, E3/5841, 17 November 2008, p. 2, ERN (En) 01069288 (referring to killing by the use of hoes to beat the back of heads, and children having their bellies cut open and gallbladders removed).

<sup>9435</sup> See *above*, paras 2677-2678 (digging pits into which human corpses were placed, and dragging bodies).

<sup>9436</sup> See *above*, paras 2678, 2739, 2758, 2761.

<sup>9437</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 33-34, 91 (confirming his prior statement that “Ninety-nine percent of prisoners were smashed”); SREI Than Interview Record, E3/5834, 29 December 2009, p. 8, ERN (En) 00434694; T. 4 March 2015 (VAN Soeun), E1/271.1, p. 35 (agreeing with SREI Than’s statement and confirming that the “huge majority” of prisoners were “liquidated on site”).



many of them”.<sup>9438</sup> He further stated: “one could hardly leave that security centre alive”.<sup>9439</sup>

2770. Whereas these three guards sought to distance themselves from executions and events inside Kraing Ta Chan, the Chamber considers it to be significant that they did not claim that prisoners who had been brought into Kraing Ta Chan were allowed to leave. The flow of detainees was generally one way. One exception noted by the Chamber was KEO Chandara, who was released following a direct intervention by *Ta Mok*.<sup>9440</sup> Another exception to this was VAN Soeun’s description to investigators that he escorted MEAS Sokha and some of his family members back to Cheang Tong commune.<sup>9441</sup> The Chamber finds that the release of MEAS Sokha and his family in approximately August 1978 may be explained in part by the Central Committee’s Guidance of 20 June 1978 which provided that the CPK’s policy was, for certain people, to “re-educate and admonish” but then return them to the “Party, Revolution and People”.<sup>9442</sup> In particular, although not referring to Kraing Ta Chan specifically, KHOEM Boeun, the Cheang Tong Commune Chief, confirmed that there was an amnesty whereby people who had committed more minor offences were released.<sup>9443</sup> Notwithstanding this evidence, the Chamber is satisfied that persons continued to be sent to Kraing Ta Chan for minor infringements perceived to challenge the revolution.<sup>9444</sup> This is confirmed by the documentary evidence.<sup>9445</sup> VONG Sarun

<sup>9438</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 13.

<sup>9439</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 62.

<sup>9440</sup> See above, para. 2708.

<sup>9441</sup> VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 13, ERN (En) 00980289 (Answers 90-91, including the suggestion, which the Chamber finds to be mistaken, that the family was released in 1979). There is evidence of other people being release from Kraing Ta Chan. See e.g., LIM Hach Interview Record, E3/7984, 29 November 2007, pp. 4-5 (describing being imprisoned for three months in Kraing Ta Chan in 1977); HUN Chim Civil Party Application, E3/5902, 28 August 2008, p. 6, ERN (En) 00379352 (learning that his brother HUN Chum was detained in Kraing Ta Chan from *Ta Aun*, “the old folk in Trapeang Keh” who was released from this security centre in 1977);

<sup>9442</sup> Guidance of the Central Committee of the CPK, E3/764, 20 June 1978, p. 3, ERN (En) 00275219.

<sup>9443</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 66-67; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 8, ERN (En) 01057682 (Answers 31-32).

<sup>9444</sup> See e.g., para. 2706 (discussing the five widows from Trapeang Thum North commune who entered Kraing Ta Chan on 9 August 1978).

<sup>9445</sup> Tram Kak District Record, E3/2421, 5 July 1978, p. 1, ERN (En) 00322201 (Kraing Ta Chan reporting to the district on seven prisoners’ confessions who planned to break hoes among other conduct); Tram Kak District Record, E3/2423, 8 July 1978, p. 1, ERN (En) 00322206 (Trapeang Thum North commune reporting to Kraing Ta Chan on the arrest of a youth); Tram Kak District Record, E3/2424, 15 July 1978, ERN (En) 00322223 (reporting on the decision to send over four persons including former LON Nol soldiers). See above, para. 2706 on the five widows from Trapeang Thum North commune, sent to Kraing Ta Chan in August 1978). See above, para. 2727 (on two women who “cannot be kept” because they had “so many contradictions”); Tram Kak District Record, E3/2424, 18 July 1978, p. 4, ERN (En) 00322220 (report from Angk Ta Saom commune to Kraing Ta Chan on three enemies who

likewise testified that prisoners were “taken away and killed almost on a daily basis” and the pretext that prisoners were being released was used “until all the prisoners were executed, except for very few of us”.<sup>9446</sup> While the Chamber allows for the possibility that there may have been other instances of release from time to time, including in mid-1978, the Chamber is satisfied that these were wholly exceptional and that execution was the rule.

#### 12.3.10.1. Execution process and burials

2771. While executions and on occasion spontaneous killings, were carried out at various locations in and around Kraing Ta Chan,<sup>9447</sup> the evidence reveals a systematic process. MEAS Sokha, who was detained at Kraing Ta Chan for two years, estimated that executions took place once per week.<sup>9448</sup> Killings could start in the afternoon and continue into the evening, depending on the number killed on any given day. Prisoners were brought to executions sites in groups of two to four at a time.<sup>9449</sup> Prisoners were starved in order to make it easier to kill them.<sup>9450</sup> VONG Sarun likewise described prisoners being taken to be executed “rather often” and recalled people as being very thin, hardly able to walk when taken to be executed.<sup>9451</sup> A pretext was used whereby prisoners were told they were to be released, but in reality they were killed.<sup>9452</sup> Several prisoners would be walked to the edge of a pit at a time, blindfolded with their hands tied, and ordered to kneel at a pit.<sup>9453</sup> Detainees were struck on the back of the neck

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stole and so would be sent over “to seek for the undercover networks of these enemies hiding in the villages and communes and to take further measures in order to achieve according to the Guidelines of the Party”).

<sup>9446</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 30.

<sup>9447</sup> For example, some prisoners were shot dead while trying to escape. *See* T. 5 February 2015 (SAY Sen), E1/257.1, p. 38. *See also*, SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (some prisoners were beaten to death at the interrogation site); SREI Than Interview Record, E3/5834, 29 December 2009, p. 5, ERN (En) 00434691 (prisoners were executed “both inside and outside the prison”).

<sup>9448</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 36.

<sup>9449</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 53-54.

<sup>9450</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 39, 51.

<sup>9451</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 29, 30, 47, 79 (stating that having been detained for half a month or a month with so little gruel that they had no energy or strength, they could “fall easily with just a little push”). This was corroborated by the guard VAN Soeun. *See* T. 18 May 2015 (VAN Soeun), E1/300.1, p. 38 (described seeing lines of people being walked off, without having to be tied up because they had only been given gruel, not rice, and “walked tiredly”).

<sup>9452</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 30, 79.

<sup>9453</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 60 (prisoners were blindfolded and their hands tied before they were taken to the execution site, walked near the pit and ordered to kneel); T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 53-54 (two to four prisoners were walked to the pit at a time and then the guards would return to collect more prisoners); T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 16-18 (during the mass execution of more than 100 people, two to four prisoners were taken to the

with a hoe and their throats were cut with a knife, before their bodies were dropped into pits.<sup>9454</sup> Guard VAN Soeun estimated that executions took place once or twice per month, following the delivery of messages from the district.<sup>9455</sup> According to him, prison chief *Ta An* called meetings when executions were to happen, following which the guard unit was told to guard outside and not allow anyone to escape.<sup>9456</sup> SREI Than *alias* Duch told investigators that he saw handwritten notes once or twice per month saying that 20 or 30 people had been destroyed at Kraing Ta Chan.<sup>9457</sup> The Chamber is satisfied that there were regular executions at Kraing Ta Chan, and finds MEAS Sokha's estimate of their frequency to be more reliable than that of the guards, who sought to minimise their responsibility.<sup>9458</sup>

2772. Contrary to claims by guards SREI Than *alias* Duch and SAUT Saing, the Chamber is satisfied by diverse accounts from other guards and prisoners that loud music was played over speakers to disguise the noise of executions.<sup>9459</sup> Evidence

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pit at a time, until all of the group had been killed); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 9, ERN (En) 00225508 (prisoners were tied and blindfolded before being taken to the execution site).

<sup>9454</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 36-38 (prisoners walked in front of the pit and their throats were cut with a 60 cm sword – two guards held the prisoner while another slit the throat, and some were beaten with a bamboo stump); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 60-61 (stating that prisoners were hit on the back of the neck with a hoe, then a 40 to 50cm knife would be used to slash their throat, before they would be dropped into the pit); T. 18 May 2015 (VONG Sarun), E1/300.1, p. 38 (VONG Sarun saw people sharpening a curved knife, walking people in a line, and then washing blood from themselves in the pond. The knife was also blood stained. She did not see the people closely enough to know their names); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 58; T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 22-23 (male and female prisoners killed using hoes or bamboo clubs).

<sup>9455</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 16-17; T. 5 March 2015 (VAN Soeun), E1/272.1, p. 31; VAN Soeun Interview Record, E3/9586, 18 December 2013, pp. 23-24, ERN (En) 00980299-00980300 (Answer 181, 185).

<sup>9456</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 34.

<sup>9457</sup> SREI Than Interview Record, E3/9597, 31 October 2013, p. 9, ERN (En) 00970074 (Answers 48-49).

<sup>9458</sup> *See above*, para. 2652 for the Chamber's view of MEAS Sokha's credibility compared to that of the guards.

<sup>9459</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 15, 37-38 (music played through a loudspeaker and they would knock on various instruments to hide the sounds of the killings); T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 40-41 (loudspeakers playing revolutionary songs used to mask the sounds of the killings); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 60 (Khmer Rouge songs played over the loudspeakers to muffle the sound of the killings), 93-94 (there was a loudspeaker in a tree at the gate and music would play when prisoners were taken for execution); T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 51, 53-54 (music would play on a loudspeaker when prisoners were smashed); T. 18 March 2015 (RIEL Son), E1/279.1, p. 37 (he saw loudspeakers hanging from a tree); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 29-30 (heard loud music played from a loudspeaker when people were sent to be killed), 59 (music was played when the prisoners were told that some people were allowed to return home, and VONG Sarun assumed its purpose was to mask the killings), 78; MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 7, ERN (En) 00223499 (MEAS Sokha heard the loudspeaker on days when prisoners were killed); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573 (Guard SAING Sim heard a loudspeaker playing while prisoners were being killed); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 7, ERN (En) 00223456 ("they" played

differed as to the precise nature and size of the speakers. Guard VAN Soeun testified that loud music was played over “two small speakers” when “they smashed the prisoners”.<sup>9460</sup> He described a small radio kept at *Ta An*’s office about 40cm wide with two removeable speakers which was used to listen to domestic radio broadcasts.<sup>9461</sup> MEAS Sokha described the playing of theatrical performances about *Yeay Lot*’s story called “Struggle, Snakebite and Amputated Hands” over the loudspeakers during executions.<sup>9462</sup> VONG Sarun described the volume as so high they could hardly hear the screaming of prisoners.<sup>9463</sup> HUN Kimseng told the OCIJ that loudspeakers were played when prisoners were killed.<sup>9464</sup> A former guard told the OCIJ that a loudspeaker was used when killings took place and “they always used prisoner Sen to play the loudspeaker and dig the pits to bury the bodies of those killed, the bodies of the prisoners”.<sup>9465</sup> According to RIEL Son, who visited Kraing Ta Chan on one occasion, there were loudspeakers hanging on the tree.<sup>9466</sup> KEO Chandara also described loudspeakers being used to play music, revolutionary songs which meant killing people that day.<sup>9467</sup> Music was played the moment it was announced that people were being “released” to go home, and VONG Sarun saw lines of people “walking tiredly” away.<sup>9468</sup> She assumed that the volume was put to the maximum to hide screaming.<sup>9469</sup> She described the sounds as coming from the direction of *Ta An*’s office.<sup>9470</sup> Whatever

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loudspeakers when enemies were killed); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 9, ERN (En) 00225508 (music was played over a loudspeaker to drown out the prisoner’s screams as they were killed); HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 11, ERN (En) 01168016 (Answer 59, loudspeakers were played when prisoners were killed). The Chamber notes that SAUT Saing and SREI Than claimed that they did not see any loudspeakers at Kraing Ta Chan or hear music during executions. *See* T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 57, 64-70, 87 (clarifying that there was a tape player, but no loudspeaker); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 57, 64; T. 25 March 2015 (SAUT Saing), E1/282.1, p. 32 (contradicting evidence given by former guard to investigators); T. 23 February 2015 (SREI Than), E1/267.1, pp. 39, 52, 61. However, the Chamber finds that the aforementioned evidence of other individuals, including other guards and RIEL Son, clearly establishes that there were loudspeakers at Kraing Ta Chan.

<sup>9460</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 54.

<sup>9461</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 94-97 (testifying that he could hear the sound from the speakers if he stood about 15 metres away, but not 20 or 30 metres); T. 5 March 2015 (VAN Soeun), E1/272.1, p. 7 (radio was kept at the prison chief’s office).

<sup>9462</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 38; MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 7, ERN (En) 00223499 (loudspeakers played on the days they killed prisoners).

<sup>9463</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 79-80.

<sup>9464</sup> HUN Kimseng Interview Record, E3/10753, 15 September 2015, p. 11, ERN (En) 01168016 (Answer 59).

<sup>9465</sup> SAING Sim Interview Record, E3/5853, 28 November 2007, p. 7, ERN (En) 00433573.

<sup>9466</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 37.

<sup>9467</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 41.

<sup>9468</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 37-38.

<sup>9469</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 59-60.

<sup>9470</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 79-81.

the precise technology used, the evidence establishes that loud music was played at Kraing Ta Chan, including when prisoners were being killed.<sup>9471</sup>

2773. After the executions, guards and other prisoners including SORY Sen and *Ta Chhin* and, on occasion, MEAS Sokha, covered the bodies in the pits.<sup>9472</sup> Initially killings took place within the inner compound, but later killings took place at the outer perimeter fence.<sup>9473</sup> Guard SREI Than *alias* Duch accepted in interview that he saw “dead bodies piled up on each other” at Kraing Ta Chan.<sup>9474</sup> Before the Chamber, however he sought to deny seeing piles of dead bodies.<sup>9475</sup> In light of the weight of the evidence, the Chamber does not find his belated denial to be credible.

2774. Guard VAN Soeun accepted that bodies were buried in the compound, recalling in particular an area to the south of the kitchen.<sup>9476</sup> He sought to assign responsibility for the burials to “internal people” working inside the compound.<sup>9477</sup> He explained that Kraing Ta Chan sometimes smelled of human corpses everywhere inside the compound, and the smell came from the pits where corpses were buried.<sup>9478</sup>

<sup>9471</sup> Further evidence corroborates this finding. *See* UK Him Interview Record, E3/9584, 14 July 2014, p. 19, ERN (En) 01031774 (Answer 83, detained towards the end of the relevant period, UK Him told OCIJ investigators that loudspeakers were played when women were sexually abused and killed); LIM Hach Interview Record, E3/7984, 29 November 2007, p. 6, ERN (En) 00166455 (detained for around six months in 1977, LIM Hach told OCIJ investigators that she recalled loudspeakers being played about once every 10 days); TOEM Hy Interview Record, E3/9605, 6 December 2013, p. 11, ERN (En) 00980272 (TOEM Hy, who worked as a district messenger, described to OCIJ investigators hearing Khmer Rouge songs playing “loudly” within the prison compound); THAONG Seav Interview Record, E3/7902, 29 October 2007, pp. 4-5, ERN (En) 00223469-00223470 (describing living nearby to Kraing Ta Chan and the playing of loudspeakers).

<sup>9472</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 36-38; T. 22 January 2015 (MEAS Sokha), E1/250.1, p. 23 (referring to *Ta Chhen* and SORY Sen digging a pit); Although SAUT Saing (SOTR Sain) asserted that the guards did not cover the grave pits and this was the job of “office staff”, former guard SAING Sim acknowledged that he was involved in covering the pits. *See* SAING Sim Interview Record, E3/5853, 28 November 2007, pp. 7-8, ERN (En) 00433573-00433574 (*Ta An* assigned various people, including on occasion guard SAING Sim, to cover the dead bodies in the grave pits). The Chamber accordingly finds that some guards did cover the grave pits. For the Chamber’s findings in relation to SORY Sen’s role covering bodies, *see above*, para. 2678.

<sup>9473</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 36-39 (estimating the change to have happened in 1977).

<sup>9474</sup> SREI Than Interview Record, E3/9597, 31 October 2013, p. 6, ERN (En) 00970071 (Answer 23).

<sup>9475</sup> T. 23 February 2015 (SREI Than), E1/267.1, p. 37 (“I never saw the piles of dead bodies”).

<sup>9476</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 33.

<sup>9477</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 44.

<sup>9478</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 21-22.

12.3.10.2. Executioners

2775. As to the identity of the executioners, the former guards heard by the Chamber asserted that they were assigned to guard the perimeter of the compound during executions while Kraing Ta Chan staff conducted the executions without the participation of the guard unit.<sup>9479</sup> For example, according to the guard VAN Soeun, the six Party members were the executioners, namely An, Penh, Chhen, Moeun, Chheang and Chhoeun.<sup>9480</sup> Conversely, several former prisoners asserted that both the staff and guards carried out the executions under the supervision of *Ta An*.<sup>9481</sup> Recalling its earlier finding that these former Kraing Ta Chan guards were not credible on issues involving their involvement in and proximity to possible crimes, the Chamber accepts the contrary evidence and finds that both staff and guards perpetrated executions at Kraing Ta Chan.

2776. Alcoholic drinks were consumed by the killers at Kraing Ta Chan and the Chamber finds that they were inebriated at times. Both SORY Sen and MEAS Sokha described alcoholic sugar palm juice being produced for the Kraing Ta Chan staff to drink when executions were carried out.<sup>9482</sup> MEAS Sokha further described staff adding human gallbladders to the alcohol to increase their “bravery”, having dried them off in

<sup>9479</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 38, 40-42, 98 (stating that when executions took place, SREI Than and his unit were outside the perimeter of the compound guarding the prison); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 52-53, 73 (explaining that the guards were assigned to guard outside the compound during executions and the staff inside would carry out the executions); SAING Sim Interview Record, E3/5853, 28 November 2007, p. 3, ERN (En) 00433569 (the guards were assigned to guard outside during executions); SREI Than Interview Record, E3/9597, 31 October 2013, p. 5, ERN (En) 00970070 (*Ta An* “murdered the prisoners himself” and the guards were not allowed near).

<sup>9480</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 41-44 (repeating that his unit was assigned to guard outside); VAN Soeun Interview Record, E3/9586, 18 December 2013, p. 25, ERN (En) 00980301 (the killings were perpetrated by Chhieng, Penh, Moeun, Ruos and Khorn).

<sup>9481</sup> T. 22 January 2015 (MEAS Sokha), E1/250.1, pp. 46-47 (An, Penh, Chhen, Duch, Moeun, Uok, Sim, Saing and Suon were all present at the time of executions, Chit and Sieng the executioner were there and only big Duch and a kitchen worker were absent); T. 4 February 2015 (SAY Sen), E1/256.1, pp. 93-95; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 25-28, 32; T. 25 March 2015 (SAY Sen), E1/282.1, pp. 71-72 (SORY Sen asserted that *Ta An* patrolled the execution site while soldiers and guards carried out the killings); T. 25 March 2015 (SAY Sen), E1/282.1, pp. 79-80 (generally soldiers were responsible for carrying out the executions); MEAS Sokha Interview Record, E3/5825, 31 October 2007, p. 8, ERN (En) 00223500 (An, Penh, Cheng, Moeun, Sieng and three guards participated in the executions).

<sup>9482</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 46, 99; T. 5 February 2015 (SORY Sen), E1/257.1, pp. 62-63 (explaining that “when you drink sour palm juice, you get drunk” and that he was asked to work on the palm trees to extract the juice); T. 6 February 2015 (SORY Sen), E1/258.1, p. 50 (explaining that *Ta An* asked SORY Sen to bring him sour palm juice); T. 25 March 2015 (SORY Sen), E1/282.1, p. 83 (all the staff at Kraing Ta Chan knew that SORY Sen was tasked by *Ta An* to collect sugar palm juice to produce alcohol, and describing 10 palm trees within the perimeter used to make palm juice wine for the staff).

the sun.<sup>9483</sup> The practice of drying human gallbladders is corroborated by KEO Chandara, who described an incident when three women, one of whom he knew to be called Siet from Ta Prem village in Treang district, were abused with pincers and acid before being killed while another 10 prisoners were ordered to sit and watch the torture. A prisoner's heart and liver were removed using a knife, then the organs were touched to the head of those watching, then they called the guard to make “*chha euk*” to accompany their wine and to dry the gallbladder in the sun. The same thing happened to all three women.<sup>9484</sup> Guard VAN Soeun confirmed that “sour sugar palm” drinks were produced for the Kraing Ta Chan staff, but claimed that he did not drink it because he was young.<sup>9485</sup> The production of alcohol is further corroborated by evidence given by IEP Duch who told investigators that the Kraing Ta Chan unit had “done wrong” by producing liquor.<sup>9486</sup> Guard SAUT Saing also accepted that palm juice was made, describing it being made at villages to the far north or far west of the compound.<sup>9487</sup> He denied seeing the consumption of livers or gall bladders at the security centre.<sup>9488</sup> The Chamber nonetheless finds that this took place at Kraing Ta Chan.

### 12.3.11. *Number and Identities of Victims*

#### 12.3.11.1. *Exhumations*

2777. There are inconsistencies in the evidence over the number of human remains discovered at Kraing Ta Chan after 1979. In recent years, expert VOEUN Vuthy and his team have examined and documented 1,904 crania and 3,158 other bones.<sup>9489</sup> The remains they examined were those stored in a stupa at the site: the Chamber understands that his team did not undertake new excavations; but he confirmed the existence of numerous mass grave pits.<sup>9490</sup> Other evidence indicated, however, that a much larger

<sup>9483</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 52-53, 66-67 (referring to “white wine”, and sometimes seeing only one or two gall bladders for a big container of wine).

<sup>9484</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 46-47. *See also*, T. 4 February 2015 (SORY Sen), E1/256.1, pp. 53-54 (describing children's gallbladders being hung from a tree); SORY Sen DC-Cam Statement, E3/4846, 26 February 2004, p. 7, ERN (En) 00527777.

<sup>9485</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 35-36, 90 (stating that he only saw three guards, Sim, Moeun and Cheng, who would drink this kind of alcohol and not knowing whether gallbladders or livers were added to it).

<sup>9486</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, p. 5, ERN (En) 00223476.

<sup>9487</sup> T. 24 March 2015 (SAUT Saing), E1/281.1, p. 63.

<sup>9488</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 31.

<sup>9489</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 64-66; VOEUN Vuthy's Kraing Ta Chan Report, E3/10769, undated, pp. 16-17, ERN (En) 01362865-01362865.

<sup>9490</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, p. 115 (stating that his team found 11 mass grave pits, excluding pits outside the fence where people were buried in the rice field).

number of remains were excavated after January 1979 compared to the numbers VOEUN Vuthy examined.

2778. KEO Chandara described the excavation of eight pits in the southern and eastern areas of Kraing Ta Chan taking place in around 1979.<sup>9491</sup> He identified various persons involved at that time, and described an initial count of 12,132 human skulls.<sup>9492</sup> Subsequent counts recorded lower numbers. He mentioned a count of 12,013<sup>9493</sup> and then lower figures of 10,045 and around 10,000 skulls.<sup>9494</sup> According to KEO Chandara, the discrepancy between the figure of around 12,000 versus the figures of around 10,000 resulted from relatives coming to Kraing Ta Chan to remove skulls and remains for funeral rites or rituals.<sup>9495</sup> This is corroborated by SORY Sen, who described chaotic scenes after 1979 when people rushed to excavate to find gold teeth. He recalled more than 10,000 skulls found at that time, but the precise source of his knowledge is not clear to the Chamber.<sup>9496</sup> THAONG Saev told OCIJ investigators that after 1979 she saw five or six rectangular pits covered only with banana leaves about 100 metres west of the compound, and covered pits south of the compound which she saw people dig up in 1980.<sup>9497</sup> VOEUN Vuthy's team also interviewed people who claimed to have been involved in the original exhumations at Kraing Ta Chan, who relayed to him a figure of 10,042 crania exhumed in around 1980.<sup>9498</sup> VOEUN Vuthy

<sup>9491</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 62-63 (discussing eight pits); T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 25-29 (stating that one of the first pits he exhumed was one he had dug when a prisoner, in the eastern part of the compound measuring four metres squared and three metres deep; further explaining the biggest pit he exhumed was four metres squared and the smallest was two metres squared).

<sup>9492</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 63-64 (referring to 12,132 "skulls"), 66 (referring to 12,132 skulls in eight pits then stored in a wooden house funded by Oxfam and identifying Venerable Khme Sok, the chief monk of Tram Kak district, as participating in the counting of skulls), 81 (repeating that 12,132 skulls were exhumed initially).

<sup>9493</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 63, 66 (attributing the difference to skulls taken away by dogs).

<sup>9494</sup> T. 4 February 2015 (KEO Chandara), E1/256.1, pp. 25-28, 66, 83 (more than 10,000 skulls recovered, then mentioning the figure of 10,013 when he counted the skulls with the chief monk of Tram Kak district); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 8, ERN (En) 00223457 (mentioning 10,045 skulls being counted from eight pits, but many pits were not dug up, then after a stupa was built the count gave a figure of 10,011).

<sup>9495</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 66 (describing skulls taken away), 81-82 (describing a few skulls disappearing each day, taken away for funeral rites).

<sup>9496</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 65-66.

<sup>9497</sup> THAONG Saev Interview Record, E3/7902, 29 October 2007, p. 5, ERN (En) 00223470.

<sup>9498</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 67-69 (identifying villagers including Yin Soeun or Yin Thoeun, *Ta Nom Rin*, Rim Kong, Roern Kin, "six other individuals" and a venerable monk who wished to remain anonymous); T. 10 January 2017 (VOEUN Vuthy), E1/518.1, p. 35; VOEUN Vuthy's Kraing Ta Chan Report, E3/10769, p. 3, ERN (En) 01362851.



also asserted that more than 17,000 people were killed at Kraing Ta Chan.<sup>9499</sup> This number appears to have come from SORY Sen, to whom VOEUN Vuthy spoke in the course of his work.<sup>9500</sup> The Chamber is unable to identify any precise basis for this assertion. It is therefore rejected.

2779. Figures of approximately 10,000 are also found in reports produced after 1979. Research in 1984 by the “Crime Research Commission of the Ministry of Propaganda and Culture” purported to document 10,001 persons killed at Kraing Ta Chan.<sup>9501</sup> However, the basis for this figure is unexplained. A 1996 report by the “Culture and Fine Arts Office” purported to record “more than 10,045 people” from Kraing Ta Chan.<sup>9502</sup> This figure matches one of the figures mentioned by KEO Chandara as emanating from the post-1979 counting process. On a careful reading, however, this 1996 report appears to attribute the figure of 10,045 to a “temporary statistics list” which is said to have since disappeared; and it distinguishes the figure of 10,045 from the exhumation of bones of “more than 3,000 persons”.<sup>9503</sup> A 1997 DC-CAM project estimated 10,043 victims from Kraing Ta Chan – a figure said to be based on the exhumation of 50-60 pits, plus an unspecified number based on a further 11 pits. This information was provided by a person called MEU Chren, then 63 years old, who DC-CAM identified as having excavated pits at Kraing Ta Chan between 1979 and 1982.<sup>9504</sup> However, the details of these excavations are unexplained.

2780. The Chamber finds that none of the 1984, 1996 or 1997 reports provide sufficient support for the estimates of more than 10,000 human remains at Kraing Ta

<sup>9499</sup> T. 10 January 2017 (VOEUN Vuthy), E1/518.1, pp. 31-32; VOEUN Vuthy’s Kraing Ta Chan Report, E3/10769, p. 3, ERN (En) 01362851 (attributing the figure of 17,000 to “the Khmer Rouge Tribunal” without further explanation or citation).

<sup>9500</sup> See SORY Sen Interview Record, E3/5214, 1 September 2008, pp. 13-14, ERN (En) 00225512-00225513 (recalling state authorities and journalists counting more than 17,000 skulls).

<sup>9501</sup> Interview Record, E3/7825, 19 October 1989, p. 2, ERN (En) 00434853 (“statistics that we researched after the 7 January 1979 victory day sufficiently document that 10,001 persons were here, and according to the documents, all types of prisoners were killed at this site.”).

<sup>9502</sup> History of Kraing Ta Chan, E3/2062, 5 March 1996, pp. 7-8, ERN (En) 00301369-00301370.

<sup>9503</sup> History of Kraing Ta Chan, E3/2062, 5 March 1996, pp. 7-8, ERN (En) 00301369-00301370.

<sup>9504</sup> DC-CAM Report: “Mapping the Killing Fields of Cambodia: Takeo”, E3/2063, 4 January 1997, pp. 1, ERN (En) 00095660 (estimate of victims at “Kraing Tachan” is 10,043 from 50-60 pits), 5, ERN (En) 00095664 (stating that he participated in excavating remains, describing pits 20 metres wide and 30 metres long, and a great number of small pits). EA Meng-Try gave a figure of 10,045 which he attributed to the DC-CAM mapping survey. See Book by EA M-T: The Chain of Terror: The Khmer Rouge Southwest Zone Security System, E3/2120, 2005, pp. 62, ERN (En) 00416380, 88, ERN (En) 00416406 (endnote 223). See also, Execution of Rogatory Letter, E3/8350, 5 November 2007, p. 4, ERN (En) 00163570 (reporting that MEU Chren is deceased).

Chan. The report with the most solid basis for such a figure is the 1997 DC-Cam report, but it does not provide sufficient information on the excavation process it describes. A clear risk remains that figures of more than 10,000 have simply been repeated, without analysis or proper attribution. Indeed, the 1996 report suggests that the figure of 10,045 came from a list which has since disappeared, rather than a physical analysis of human remains.

2781. Although KEO Chandara explained some of the details of the counts after 1979, and the figure of more than 10,000 is corroborated by local people interviewed by VOEUN Vuthy, the Chamber finds that the method of counting and the reasons behind any corroboration were insufficiently explored. No documentary or other records such as photographs were produced to demonstrate the process involved. While the Chamber accepts that remains went missing for various reasons, the size of the discrepancy between figures of more than 10,000 remains versus the numbers examined by VOEUN Vuthy's team, and the mention of 3,000 remains in the 1996 report, has not been explained on the evidence. In the circumstances, the Chamber therefore takes VOEUN Vuthy's figure of 1,904 crania and 3,158 other bones as the minimum figure for the number of human remains at Kraing Ta Chan.

2782. Some evidence suggested that areas at Kraing Ta Chan containing human remains may not have been excavated. The site identification report states that it appears that most, if not all, of the burial sites at Kraing Ta Chan appear to have been disturbed.<sup>9505</sup> SORY Sen identified locations in the west area of Kraing Ta Chan which remain untouched.<sup>9506</sup> VOEUN Vuthy referred to six un-excavated grave pits.<sup>9507</sup> On the evidence before the Chamber, it appears that the excavated areas focused on the locations to the southern and eastern areas of Kraing Ta Chan.<sup>9508</sup>

<sup>9505</sup> Site Identification Report, E3/5828, 17 March 2009, p. 4, ERN (En) 00363340.

<sup>9506</sup> T. 5 February 2015 (SORY Sen), E1/257.1, p. 33.

<sup>9507</sup> T. 14 December 2016 (VOEUN Vuthy), E1/513.1, pp. 67-69 (referring to six remaining un-excavated grave pits), 114-116 (referring to finding 11 mass grave pits).

<sup>9508</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 63 (pits on the southern part of the fence and in the eastern area in the paddy field); T. 4 February 2015 (KEO Chandara), E1/256.1, p. 25 (sizes of the pits varied, the largest being approximately four by four metres); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 83-85 (there were pits along the fence and coconut trees were planted there); T. 6 February 2015 (SORY Sen), E1/258.1, pp. 79-80 (there were many pits of varying sizes, the smaller pits contained only two or three bodies); T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 21-22 (pits for burying bodies in the inner compound); Annex D: Plan of Kraing Ta Chan Security Centre compiled from information provided by witness SORY Sen, E3/5830, 17 March 2009, p. 1, ERN (En) 00363333 (indicating the location of grave pits on the eastern and southern sides of the inner compound).

2783. It is not clear, however, whether all the remains which were undoubtedly excavated from Kraing Ta Chan related to killings and deaths between 1975 to 1979. As the Chamber found above, Kraing Ta Chan was in operation from 1973. Guard SAUT Saing sought to attribute rows of graves to the south of the compound to Chhen's period as chief of Kraing Ta Chan, meaning essentially but not exclusively to the period prior to 17 April 1975.<sup>9509</sup> The Chamber rejects his suggestion that *all* of those graves related to the earlier period. Even his fellow guard and cousin VAN Soeun accepted that bodies were buried in the main compound, to the south of the kitchen, during their time at Kraing Ta Chan, *i.e.* after 17 April 1975 under the leadership of *Ta An*.<sup>9510</sup> Prisoners VONG Sarun and SORY Sen both described pits being filled within the first perimeter fence *after* 1975, with prisoners later killed outside the first perimeter fence.<sup>9511</sup> The Chamber finds, however, that some unquantified portion of the human remains discovered at Kraing Ta Chan relate to the period before 1975.

2784. The NUON Chea Defence offers another explanation for the human remains, suggesting that Kraing Ta Chan was a grave site from long before 1975.<sup>9512</sup> They rely upon a suggestion in the 1985 report that "In the previous regime, Kraing Ta Chan had been a gravesite"; and a suggestion in the 1996 report that "Kraing Ta Chan used to be a completely quiet forest and a stupa to preserve the remains of the ancestor of the people in that base".<sup>9513</sup> The Chamber also notes that EK Hoeun, who worked at the Tram Kak District Office, questioned the origin of the remains at Kraing Ta Chan. He suggested that it had been a burial site before 1970. His evidence was that Kraing Ta Chan was close to the "forest of child ghosts" and children who died of measles before 1970 were buried to the east of Kraing Ta Chan.<sup>9514</sup> He further suggested that many people were killed in this area in 1979 when the Vietnamese forces invaded.<sup>9515</sup>

<sup>9509</sup> T. 25 March 2015 (SAUT Saing), E1/282.1, p. 43.

<sup>9510</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 33; T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 21-22 (pits for burying bodies in the inner compound).

<sup>9511</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 47; T. 4 February 2015 (SORY Sen), E1/256.1, pp. 84-85 (SORY Sen gave evidence that by 1977, when mass killings took place, there were too many burial sites within the first perimeter of the compound and so additional pits were dug beyond the second perimeter). *See also*, SREI Than Interview Record, E3/5834, 29 December 2009, p. 5, ERN (En) 00434691 (prisoners were executed "both inside and outside the prison").

<sup>9512</sup> NUON Chea Closing Brief, para. 625 *referencing* 1985 Report, E3/5838, p. 1, ERN (En) 00713113 and 1996 Report, E3/2062, 3 May 1996, p. 1, ERN (En) 00301363.

<sup>9513</sup> 1985 Report, E3/5838, p. 1, ERN (En) 00713113; 1996 Report, E3/2062, 3 May 1996, p. 1, ERN (En) 00301363.

<sup>9514</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 76, 110; T. 8 May 2015 (EK Hoeun), E1/299.1, p. 9; EK Hoeun Interview Record, E3/9582, 19 March 2014, p. 5, ERN (En) 00983570.

<sup>9515</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 110-111.

Contrary to EK Hoeun's evidence and NUON Chea's submissions, KEO Chandara denied that Kraing Ta Chan was a gravesite before 1975.<sup>9516</sup> There is evidence of children's remains being found at Kraing Ta Chan.<sup>9517</sup>

2785. The Chamber is not persuaded that imprecise references to previous graves in the vicinity of Kraing Ta Chan have any significant bearing on the Chamber's findings. The evidence of killings, mass graves and pits being filled during the relevant period, and then excavated shortly after 7 January 1979, is clear. While the possibility exists that there may be exceptions, the Chamber finds this to be a marginal possibility. The evidence of killings, burials, and excavations involving former prisoners like KEO Chandara and SORY Sen satisfies the Chamber that the remains examined by VOEUN Vuthy's team are essentially of persons who were killed or died at Kraing Ta Chan. While an unquantifiable portion of these remains relates to the period before 17 April 1975, the Chamber finds that the only reasonable inference which can be drawn from the totality of the evidence of executions and burials after that date is that most of these remains post-date 17 April 1975.

#### 12.3.11.2. *Findings on the Co-Prosecutors' analysis*

2786. The Co-Prosecutors' Closing Brief includes an analysis of some of the documentary evidence relevant to Kraing Ta Chan.<sup>9518</sup> They produced one prisoner list of 646 persons (at Annex G.1)<sup>9519</sup> and an additional prisoner list of 202 persons (at Annex G.3).<sup>9520</sup> The list of 646 persons is based on 11 Tram Kak District Records: seven notebooks<sup>9521</sup> and four other documents.<sup>9522</sup> The list of 202 persons is based on their analysis of another notebook E3/4083, the format of which the Chamber found to differ from the other seven notebooks.<sup>9523</sup> These documents and the Co-Prosecutors' analyses include varying degrees of identifying information for the persons mentioned,

<sup>9516</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 85.

<sup>9517</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 82 (describing finding the skulls of children the size of a ladle exhumed from the southern and eastern pits).

<sup>9518</sup> Co-Prosecutors' Closing Brief, paras 790-794.

<sup>9519</sup> Co-Prosecutors' Closing Brief, Annex G.1.

<sup>9520</sup> Co-Prosecutors' Closing Brief, Annex G.3.

<sup>9521</sup> Co-Prosecutors' Closing Brief, para. 790 (fn. 3178, identifying notebooks E3/2107, E3/2427, E3/4092, E3/4095, E3/4122, E3/5827 and E3/5860). *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, para. 841.

<sup>9522</sup> Co-Prosecutors' Closing Brief, para. 790 (fn. 3178, identifying Tram Kak District Records E3/2046, E3/4145, E3/4164 and E3/8407).

<sup>9523</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, para. 841; Section 10.1.4.2.4.3: Notebook E3/4083 (D00213).

such as whether they were a Base or New Person, their former ranks in the LON Nol regime if applicable, ethnicity, and the alleged offence(s) if identified.<sup>9524</sup>

2787. The Co-Prosecutors deployed their list of 646 persons (Annex G.1) and the data therein to produce further charts (in Annex G.2) presenting the prisoners' backgrounds. The Co-Prosecutors submit that the "overwhelming majority" (75.9 per cent) of people arrested and imprisoned at Kraing Ta Chan were New People.<sup>9525</sup> They further submit that this data demonstrates that former Khmer Republic soldiers and officials were targeted together with their families because almost 50 per cent of those persons in their analysis are recorded as having had roles in LON Nol regime.<sup>9526</sup> No other Party made submissions on the Co-Prosecutors' Kraing Ta Chan lists.<sup>9527</sup>

2788. The Chamber recalls its finding that seven of the notebooks comprise mostly short statements or notes relating to more than 500 individuals.<sup>9528</sup> Some of the information contained in these entries may have emerged from interrogations and may therefore be tainted by torture. The Chamber also identified instances whereby information provided by a commune to Kraing Ta Chan was repeated in notebook entries.<sup>9529</sup> It is therefore also possible that the entries in the notebooks mix information provided to Kraing Ta Chan with information obtained from prisoners within Kraing Ta Chan. In either case, consistent with its findings on the use of torture tainted evidence, the Chamber has regard to the basic biographical information in these notebooks and lists.

2789. The Chamber identified above some errors in the Co-Prosecutors' analyses.<sup>9530</sup> In addition, the Chamber cannot exclude the possibility of duplication within and/or between the Co-Prosecutors' lists, for example when the underlying documents contain more than one entry related to the same person.<sup>9531</sup> The Chamber's analysis of the

<sup>9524</sup> Co-Prosecutors' Closing Brief, paras 790-794 (*see* Annex G.2 in particular).

<sup>9525</sup> Co-Prosecutors' Closing Brief, para. 791 and Annex G.2, Figure 1.1.

<sup>9526</sup> Co-Prosecutors' Closing Brief, para. 793 and Annex G.2, Figure 1.5.

<sup>9527</sup> For the Chamber's findings on submissions from the NUON Chea Defence and KHIEU Samphan Defence on the authenticity of the underlying documents used by the Co-Prosecutors to produce their lists, *see* Section 10.1.4: Authenticity of the Tram Kak District Records.

<sup>9528</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, para. 841.

<sup>9529</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, paras 857, 859, 864-867.

<sup>9530</sup> For the Chamber's findings in relation to Tram Kak District Record, E3/4145, *see* Section 10.1.4: Authenticity of the Tram Kak District Records, para. 882.

<sup>9531</sup> *See e.g.*, VONG Sarun (VONG Sarun) appears in Annex G.1 at entries 132 (based on E3/4164) and 577 (based on E3/5827); LAY Kiek appears in Annex G.1 at entries 77 (based on E3/2056) and 305 (based on notebook E3/4092) and again in Annex G.3 at entry 51 (based on notebook E3/4083); and

authenticity of the Tram Kak District Records also identified instances of corroboration between documents. This highlights the possibility of double-counting. On the other hand, the Co-Prosecutors' analysis is incomplete because the Tram Kak District Records include additional sources: messages from communes to Kraing Ta Chan;<sup>9532</sup> or from Kraing Ta Chan to the district level,<sup>9533</sup> which indicate that additional persons specified therein were already detained at, or were about to be sent to, Kraing Ta Chan.

2790. Even taking these imperfections into account, however, the Chamber is satisfied that the Co-Prosecutors' analyses serve to identify information and trends in the underlying documents which they analysed, in particular the prevalence of persons identified as New People, former Khmer Republic officials and their family members. The Chamber therefore considers the Co-Prosecutors' analyses together with the Tram Kak District Records and the evidence from witnesses and Civil Parties.

#### 12.3.11.3. *New People and former Khmer Republic officials*

2791. The population of Kraing Ta Chan clearly increased after the liberation of Phnom Penh on 17 April 1975, with New People and former Khmer Republic soldiers prominent among this influx.<sup>9534</sup> For example, KEO Chandara described the arrival of a group of former students from Phnom Penh, who told him that they had been sent to

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VEN Ham appears in Annex G.1 at entries 133 (based on E3/4164) and 341 (based on notebook E3/4092). In other instances, the Co-Prosecutors expressly identified and eliminated potential duplication. For example, UCH Han appears once in Annex G.1 at entry 601 (based on E3/4164 and E3/4145); SOK Nam appears once in Annex G.1 at entry 383; KIM An Huor appears once at entry 113 (based on notebooks E3/5860 and E3/5827); and SUON Phy appears once in Annex G.1 at entry 404 (based on E3/4164 and notebook E3/4092).

<sup>9532</sup> See e.g., Tram Kak District Record, E3/2051, 7 May 1977, p. 1, ERN (En) 00276575 (report to An requesting to send AM Seu, a 2<sup>nd</sup> Lieutenant, for re-education, confirming that "two district unit members and two subdistrict militiamen are sending in this prisoner"); Tram Kak District Record, E3/4127, 20 January 1978, p. 1, ERN (En) 00362227 (report that three persons had been planning to join the "Yvon" so were sent to An); Tram Kak District Record, E3/2450, undated, p. 1, ERN (En) 00322161 (confirm to An that two lieutenants and one major lieutenant were brought to An only because the Party decided they had "high ranks").

<sup>9533</sup> See e.g., Tram Kak District Record, E3/2434, 20 August 1977, p. 6, ERN (En) 00276603 (report on confession of MARK Y); Tram Kak District Record, E3/4101, August 1977, p. 6, ERN (En) 00322129 (report on SUM Seang and Sum Seng from Angk Ta Saom commune, who had military rank of corporal and chief-corporal respectively); Tram Kak District Record, E3/4101, September 1977, p. 5, ERN (En) 00322128 (report on YEM Pao).

<sup>9534</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 76 (the number of prisoners increased after the liberation of Phnom Penh, with former LON Nol soldiers and 17 April People brought to Kraing Ta Chan); PECH Chim Interview Record, E3/4626, 27 August 2009, p. 4, ERN (En) 00380134; PECH Chim Interview Record, E3/9587, 19 June 2014, p. 33, ERN (En) 01000695 (Answer 240, referring to demands from Kraing Ta Chan to the district for more rice).

Kraing Ta Chan via Wat Champa.<sup>9535</sup> He also recalled the death of former LON Nol officials at Kraing Ta Chan, including Prosecutor Suon from the Takeo provincial court, and Sao, the chief of Samraong commune.<sup>9536</sup>

2792. SORY Sen provided a more general estimate that “most of the prisoners were the New People called 17 April People”.<sup>9537</sup> This was corroborated by IEP Duch, who told investigators that “[p]robably the majority [of Kraing Ta Chan prisoners] were the brothers and sisters who had been evacuated from the cities, those called the 17 April group”.<sup>9538</sup> Other witnesses recalled specific instances of groups of New People at Kraing Ta Chan. VONG Sarun described how, when she was allowed to go outside the detention building, she “noticed that other prisoners in the other buildings were in fact new peasants”.<sup>9539</sup> UK Him, a New Person, described being brought to Kraing Ta Chan in 1978 with a group of other New People, and described the composition of Kraing Ta Chan as including New People “who were all arrested”.<sup>9540</sup> The Chamber finds this evidence to be consistent with the Co-Prosecutors’ analyses.

2793. SORY Sen also suggested, however, that in 1977 the distinction was not so clear in that “anyone who commit any mistake were sent to Kraing Ta Chan”.<sup>9541</sup> The guard VAN Soeun appeared to deny that any distinction was drawn between categories of prisoner. According to him, the position was that if anyone committed any wrongdoing then the saying was “Your hair is on your head”, which the Chamber understands to mean that a person had to face the consequences of their conduct.<sup>9542</sup> People who stole

<sup>9535</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 42-43 (explaining that he learned this from asking them questions and they told him that they were sent to Champa Pagoda then sent to Kraing Ta Chan). For the Chamber’s findings on events at Champa Pagoda in the aftermath of evacuations, see Section 10.1.6.2: Tram Kak Cooperatives: Events at Champa Pagoda.

<sup>9536</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, p. 42.

<sup>9537</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 63; 74-77 (17 April People were detained on suspicion of being implicated with the former regime or being CIA spies); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 10, ERN (En) 00225509 (in 1975 the majority of prisoners were 17 April People, who were killed).

<sup>9538</sup> IEP Duch Interview Record, E3/4627, 30 October 2007, ERN (En) 00223476. See also, SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 4, ERN (En) 00223550 (prisoners at Kraing Ta Chan included 17 April People); KEO Chandara Interview Record, E3/5837, 29 October 2007, p. 8, ERN (En) 00223457 (prisoners at Kraing Ta Chan included 17 April People).

<sup>9539</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 29.

<sup>9540</sup> UK Him Interview Record, E3/9584, 14 July 2014, pp. 13-14, ERN (En) 01031768-01031769 (Answers 49-50).

<sup>9541</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 63.

<sup>9542</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 21.

or broke or lost cooking utilities were considered to be enemies, irrespective of whether they were New People or Base People.<sup>9543</sup>

2794. The Chamber finds that perceived wrongdoing and opposition to the Party's program was a factor in why persons were sent to Kraing Ta Chan. Base People were not immune in this regard, and in this context the Chamber recalls that MEAS Sokha and his family were Base People, originally from Srae Kruo village in Cheang Tong commune.<sup>9544</sup> The Chamber is satisfied, however, that the distinction between New People and Base People persisted: the group to which persons belonged continued to be identified as a factor in their being sent to Kraing Ta Chan. In this context, the Chamber notes that the "Brief Biographies of Prisoners at Tram Kak District Education Office" contains a column categorising prisoners as "Base/17 April People".<sup>9545</sup> This list identifies 28 persons who mostly arrived at Kraing Ta Chan in mid-1978, with 20 persons recorded as being 17 April People, including the five widows from Trapeang Thom North commune to whom the Chamber has already referred.<sup>9546</sup> The Chamber finds the entries for THAI Phanna and PAN Naicha on this list to be revealing: they are identified as 17 April People with the annotation added that they had "contradicted the line by refusing to work" and also said "[i]t is better to die than to live".<sup>9547</sup> A report from Trapeang Thom South commune to Kraing Ta Chan dated 13 December [1977] similarly describes three persons to be sent and records that they are "new people" or fall "into the category of the new people-17 April people". The note concludes: "With respect in the spirit of destroying the enemy".<sup>9548</sup> The Chamber is satisfied that staff at Kraing Ta Chan were able to identify prisoners as New People, and this origin was a decisive factor in determining their fate.

2795. Persons suspected of being former Khmer Republic soldiers or officials were taken to Kraing Ta Chan.<sup>9549</sup> The documentary evidence establishes a notable period of

<sup>9543</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, p. 45.

<sup>9544</sup> T. 8 January 2015 (MEAS Sokha), E1/247.1, p. 51 (confirming that they had never moved anywhere else).

<sup>9545</sup> Tram Kak District Record, E3/4164, undated, p. 1, ERN (En) 00973147.

<sup>9546</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, paras 846-847, 890.

<sup>9547</sup> Tram Kak District Record, E3/4164, undated, p. 8, ERN (En) 00973154. *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, para. 867.

<sup>9548</sup> Tram Kak District Record, E3/4125, 13 December [no year], pp. 1-2, ERN (En) 00364289-00364290.

<sup>9549</sup> T. 2 February 2015 (KEO Chandara), E1/255.1, pp. 36-37 (KEO Chandara saw former LON Nol soldiers he knew from a nearby village detained at Kraing Ta Chan); T. 6 February 2015 (SORY Sen), E1/258.1, p. 17 (former LON Nol officer, *Ta Sokreach Pann*, was detained and eventually killed at Kraing



activity in Tram Kak district in April and May 1977, with persons often sent to Kraing Ta Chan based on their prior ranks alone without reference to their having committed any particular offence. A report dated 11 April [1977] from Popel commune to Tram Kak district states that: “[f]or those people who hold a ranking position, we will send them out [to you] consecutively and for soldiers and some teachers who attempted to destroy [...] our revolution, could you please give us advice what to do or let us decide at some bases – so please give us your advice”.<sup>9550</sup> A list of 11 persons from Nhaeng Nhang commune on 17 April identifies former first and second Lieutenants, and a former major called MEAS Duch.<sup>9551</sup> There is an entry for MEAS Duch, a former major from Nhaeng Nhang commune, in notebook E3/5860.<sup>9552</sup> A report from the District Military location K-105 at Angk Ta Saom on 18 April 1977 identified “traitor” MEAS Phoeun, a former second Lieutenant, arrested in nearby Leay Bour commune.<sup>9553</sup> He was taken to Kraing Ta Chan and SREI Than *alias* Duch identified him as his cousin.<sup>9554</sup>

2796. A report from Angk Ta Saom commune provided confirmation on those with ranks of first or second lieutenant, stating that the author was going to contact the District Military “in order to take them out this evening right away”.<sup>9555</sup> Notebook E3/4083 includes a list of 36 people from Sre Ronoung commune, each of whom is identified according to their position and rank.<sup>9556</sup> A report from Ta Phem commune dated 28 April 1977 referred to having “examined and purged the enemies who held ranks after having received the instructions of the Party”. The report goes on to identify that there are “still six more with officer and official ranks” listed as first or second lieutenants and requests *Angkar*’s decision.<sup>9557</sup> A report from Cheang Tong commune

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Ta Chan); T. 24 March 2015 (SAUT Saing), E1/281.1, pp. 31-34 (prisoners at Kraing Ta Chan included former soldiers and officials of the LON Nol regime, as well as people with connections to former LON Nol officials); Tram Kak District Record, E3/4098, 4 August 1976, p. 1, ERN (En) 00322114 (report from An noting that a prisoner called LAY Thi held the rank of sergeant).

<sup>9550</sup> Tram Kak District Record, E3/4629, 11 April [1977], p. 4, ERN (En) 00322133. The Chamber is satisfied that this document is from 1977 because of the discussion of LIM Song in the same document, for whom there are other documents at around the same time. *See e.g.*, Tram Kak District Record, E3/4629, 9 April 1977, ERN (En) 00322130.

<sup>9551</sup> Tram Kak District Record, E3/2432, 17 April [1977], p. 1, ERN (En) 00366712.

<sup>9552</sup> Kraing Ta Chan Notebook, E3/5860, undated, p. 1, ERN (En) 01064165.

<sup>9553</sup> Tram Kak District Record, E3/5854, 18 April 1977, p. 1, ERN (En) 00322134.

<sup>9554</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 32-34 (identifying MEAS Phoeun as his cousin when shown Kraing Ta Chan Notebook, E3/5827, undated, p. 7, ERN (En) 00866430).

<sup>9555</sup> Tram Kak District Record, E3/2435, 26 April 1977, p. 1, ERN (En) 00322141.

<sup>9556</sup> Kraing Ta Chan Notebook, E3/4083, 20 and 27 April 1977, pp. 24-26, 28-30, ERN (En) 00323966-00323968; 00323970-00323972.

<sup>9557</sup> Tram Kak District Record, E3/2048, 28 April 1977, p. 4, ERN (En) 01454947.

dated 30 April 1977 records having “received successive instructions from *Angkar* on vigilance against enemies and purges of ranking enemy soldiers”, pursuant to which two people had been identified including a former second Lieutenant named CHHIT Pil and a former worker in the Ministry of Community and Development named KHIEU Sokha. The report concludes with a “request to submit these people to the Police”.<sup>9558</sup> KHOEM Boeun, the former Secretary of Cheang Tong commune, confirmed that she received successive instructions from the district to clean up enemy soldiers, in particular “high-ranking” soldiers.<sup>9559</sup> The Chamber is satisfied that from April 1977 in particular, significant numbers of these persons were being sent to Kraing Ta Chan.

2797. A report dated 2 May 1977 from Popel commune to “District *Angkar*” records that 106 military families (393 people) had been “smashed by *Angkar*”.<sup>9560</sup> While it is unclear whether all 393 people were sent to Kraing Ta Chan, the Chamber finds that this corroborates the general approach in Tram Kak district in general, and Kraing Ta Chan in particular, around that point in time. A report from Kus commune dated approximately 4 May 1977 records that “those with ranks” had been arrested and sent to the police, including a first and second Lieutenant.<sup>9561</sup> A report from Khporp Trabaek commune dated 6 May 1977 records four persons with “former ranks and positions” living in the commune base.<sup>9562</sup> Two of these persons are further identified in a report from Khporp Trabaek commune dated 8 May 1977, which explains that they had complained about the lack of food.<sup>9563</sup> Further documentary evidence demonstrates that at least two of these persons ended up at Kraing Ta Chan.<sup>9564</sup>

2798. The Chamber has already discussed a partial list of persons numbered 22 to 35 dated 22 May 1977.<sup>9565</sup> This list identifies various persons as having been soldiers, with their ranks indicated, and the following annotation: “A total of 37 people, both young

<sup>9558</sup> Tram Kak District Record, E3/2048, 30 April 1977, p. 2, ERN (En) 01454945; Tram Kak District Record, E3/4141, 30 April 1977, p. 1, ERN (En) 00711361.

<sup>9559</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 47-48.

<sup>9560</sup> Tram Kak District Record, E3/2048, 8 May 1977, p. 3, ERN (En) 01454946.

<sup>9561</sup> Tram Kak District Record, E3/2441, p. 2, ERN (En) 00369464 (describing arrests from 4 May 1977).

<sup>9562</sup> Tram Kak District Record, E3/2050, 6 May 1977, p. 1, ERN (En) 00276576 (identifying KONG Baurin, HANG Oeun, KIET Kham, MOM Ren).

<sup>9563</sup> Tram Kak District Record, E3/4108, 8 May 1977, p. 1, ERN (En) 00726245 (recording HANG Oeun and MOM Ven).

<sup>9564</sup> Kraing Ta Chan Notebook, E3/5860, undated, pp. 9-10, ERN (En) 01064173-001064174 (entries for KEAT Kham and KUNG Moran from Khpob Trabaek commune).

<sup>9565</sup> Section 10.1.4: Authenticity of the Tram Kak District Records, para. 884.

and old, whose names contained in this list, have been purged”.<sup>9566</sup> This list includes an entry at number 22 for KEAT Kham, a first lieutenant, from Chi Khmar commune in Treang district.<sup>9567</sup> There is a corresponding biographical information for KEAT Kham in notebook E3/5860.<sup>9568</sup> Similarly, this list includes an entry at number 23 for KUNG Boran, a second lieutenant, from Puok district in Siem Reap province.<sup>9569</sup> There is a corresponding biographical information for “KUNG Boran” in notebook E3/5860.<sup>9570</sup> The Chamber is satisfied that the annotation on this list refers to former Khmer Republic soldiers being killed at Kraing Ta Chan.

2799. VONG Sarun, who the Chamber notes was detained after May 1977, described overhearing the interrogation of a New Person from Phnom Penh, who was being asked whether they held the rank of captain in the army whereas the person denied having held any rank. VONG Sarun heard the sound of whipping and the person was between “almost to his death” before he confessed in order to have the beating stopped.<sup>9571</sup>

2800. The documentary evidence further establishes that persons identified as former Khmer Republic officials remained still in jeopardy after the notable period of activity in April and May 1977.<sup>9572</sup> A report from Kraing Ta Chan to the Party dated 25 August 1977 reported on the confessions of three former LON Nol soldiers who were “against the cooperative” and “not happy with labour work”. The report includes an annotation dated 27 August 1977 from District Secretary Kit, stating: “The Party decided to have the five traitors smashed”.<sup>9573</sup> A report from Kus commune dated 9 September 1977 identified seven further former LON Nol soldiers to be sent to the police, with the further annotation addressed to *Ta An* that he should arrest this group.<sup>9574</sup> An undated “letter of confirmation” from Nhaeng Nhang commune to *Ta An* records three persons

<sup>9566</sup> Tram Kak District Record, E3/4145, 22 May 1977, pp. 9-10, ERN (En) 00762845-00762846.

<sup>9567</sup> Tram Kak District Record, E3/4145, 22 May 1977, p. 9, ERN (En) 00762845.

<sup>9568</sup> Kraing Ta Chan Notebook, E3/5860, undated, p. 9, ERN (En) 01064173 (there is a minor discrepancy over the age, 31 or 33, but the consistency of the other information satisfies the Chamber that this is the same person).

<sup>9569</sup> Tram Kak District Record, E3/4145, 22 May 1977, p. 9, ERN (En) 00762845.

<sup>9570</sup> Kraing Ta Chan Notebook, E3/5860, p. 10, undated, ERN (En) 01064174.

<sup>9571</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, p. 46.

<sup>9572</sup> Tram Kak District Record, E3/4101, August 1977, p. 6, ERN (En) 00322129 (report from Kraing Ta Chan to the Party that prisoners included former LON Nol officials); Tram Kak District Record, E3/4166, 25 August 1977, p. 2, ERN (En) 00694356 (report from An at Education Office 105, noting that three prisoners were ranking officers).

<sup>9573</sup> Tram Kak District Record, E3/4166, 25 August 1977, pp. 1-2, ERN (En) 00694355-00694356. *See also*, Section 10.1.4: Authenticity of the Tram Kak District Records, fn. 2506.

<sup>9574</sup> Tram Kak District Record, E3/2441, 9 September 1977, pp. 18-19, ERN (En) 00369480-00369481.

been “brought over” because it had been “decided by the Party” they should be arrested because of their “(high) ranking”. The three individuals are identified as two first lieutenants and one second lieutenant.<sup>9575</sup>

2801. The Chamber finds that the categorisation and background of a prisoner influenced the length of time they survived at Kraing Ta Chan. SORY Sen’s evidence was that different sorts of prisoners were kept for different length of time: Base People were kept for longer, whereas 17 April People, or former soldiers would be kept no longer than one week.<sup>9576</sup> For “high ranking” officials, they were kept outside and marched in line to the killing site, without being brought into the detention building.<sup>9577</sup> As noted, this finds corroboration in MEAS Sokha’s evidence – some surviving members of his family, who were Base People, were released from Kraing Ta Chan in 1978. Men, women and children were all killed at Kraing Ta Chan.<sup>9578</sup> Family links were a basis for arrest and execution at Kraing Ta Chan.<sup>9579</sup>

#### 12.3.11.4. Vietnamese and Khmer Krom

2802. SORY Sen’s evidence before the Chamber was that many individuals at Kraing Ta Chan did not speak Khmer well and were labelled “*Yuon*” or Khmer Krom and executed.<sup>9580</sup> In 2017, after his appearance before the Chamber, he was interviewed by

<sup>9575</sup> Tram Kak District Record, E3/2450, undated, p. 1, ERN (En) 00322161 (letter from Nhang Nhang commune discussing KEO Chun, SAMRET Neun and LONG Phein and stating that they were arrested “because they were (high) ranking”).

<sup>9576</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 97 (continuing that for 17 April prisoners “they kept some of them a bit longer but later they were also executed”).

<sup>9577</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 98.

<sup>9578</sup> T. 21 January 2015 (MEAS Sokha), E1/249.1, pp. 9-10 (stating that there were small children and babies including some from MEAS Sokha’s own family); T. 4 February 2015 (SORY Sen), E1/256.1, pp. 56-57 (explaining that there were female prisoners and children in the prison); T. 23 February 2015 (SREI Than), E1/267.1, p. 45 (testifying that most of the prisoners were men, but there were females and children detained as well); T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 12 (stating that she was imprisoned with her baby), 34 (describing the death of a fellow detainee and his child at Kraing Ta Chan); T. 24 March 2015 (SAUT Saing), E1/281.1, p. 13 (stating that the babies and children at Kraing Ta Chan lived with their parents); SORY Sen Interview Record, E3/5214, 1 September 2008, p. 12, ERN (En) 00225511 (the prisoners included males, females and “small children”); SAUT Saing Interview Record, E3/5864, 28 November 2007, p. 5, ERN (En) 00223551 (male and female prisoners were mixed together).

<sup>9579</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 55-56 (stating as follows: “I believed my detention was due to my father being District Chief during the Sihanouk regime”); T. 5 February 2015 (SORY Sen), E1/257.1, pp. 7 (stating as follows: “one prisoner said he was accused of being connected with a former regime because his sibling or relative have a rank of a major or a captain”), 28-29 (manifesting that based on his observation, the prisoners that were alleged to have a connection with the former Lon Nol regime, would be tortured”).

<sup>9580</sup> T. 5 February 2015 (SORY Sen), E1/257.1, pp. 21-24 (in 1977 there were many individuals detained at Kraing Ta Chan who did not speak Khmer well were labelled “*Yuon*” or Khmer Krom and executed, referring to 1977 when the “*Yuon*” arrived, some were put there for a short while and some were taken

OCIJ investigators and clarified that there were Vietnamese in Kraing Ta Chan who could not speak Khmer.<sup>9581</sup> He also referred to Khmer Krom who, he said, were referred to as the Vietnamese at the time although they spoke Khmer “with dialects”.<sup>9582</sup> He suggested that, in 1977 two Vietnamese were taken to be killed immediately on arrival at Kraing Ta Chan.<sup>9583</sup> He also mentioned Khmer Krom arrested from Kirivong.<sup>9584</sup> HUN Kimseng *alias Yeay Nha* gave somewhat similar evidence to investigators, in that she recalled there being “two *Yuon*” at Kraing Ta Chan.<sup>9585</sup> In contrast, VAN Soeun testified that he never saw Vietnamese at Kraing Ta Chan.<sup>9586</sup> YIN Teng, who lived close to Kraing Ta Chan, described Khmer Krom taken to Kraing Ta Chan to be killed.<sup>9587</sup> This evidence suggests that there were both Vietnamese and a larger number of Khmer Krom – who were labelled as Vietnamese – at Kraing Ta Chan.

2803. The documentary evidence sheds more light on this issue. In particular, it reveals there to have been a concerted effort to track and screen Khmer Krom persons in Tram Kak district in April 1977. A report from Angk Ta Saom commune to “District *Angkar*” dated 26 April 1977 sought clarification concerning “the registration in the list of Kampuchea Krom people”. Angk Ta Saom commune asked the district level whether to distinguish (i) Cambodian husbands with Vietnamese wives; from (ii) Vietnamese husbands with Cambodian wives. It explained, now that the registration had taken place, people had started to request to leave Cambodia for Vietnam. The message concludes: “If all of them were *Yuon* (Vietnamese), we would send on to the *Angkar* (Organization) [Incomprehensible]. If it was like this, what would the *Angkar* decide then?”<sup>9588</sup> Although this is a report from a commune to the district level, it reveals a clear understanding over what to do with “pure Vietnamese” families – they would be sent to the district. There was, however, some uncertainty over what to do with mixed

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to the killing place); SORY Sen Interview Record, E3/9589, 31 October 2013, p. 13, ERN (En) 00969629 (Kampuchea Krom people were labelled “*Yuon*” by the Khmer Rouge and detained at Kraing Ta Chan).

<sup>9581</sup> SORY Sen Interview Record, E3/10801, 10 February 2017, pp. 3, 7, ERN (En) 01476144, 01476148 (Answers 12, 28).

<sup>9582</sup> SORY Sen Interview Record, E3/10801, 10 February 2017, p. 6, ERN (En) 01476147 (Answers 23-25).

<sup>9583</sup> SORY Sen Interview Record, E3/10801, 10 February 2017, p. 7, ERN (En) 01476148 (Answer 27).

<sup>9584</sup> SORY Sen Interview Record, E3/10801, 10 February 2017, p. 6, ERN (En) 01476147 (Answer 24).

<sup>9585</sup> HUN Kimseng Interview Record, E3/5826, 31 October 2007, p. 3, ERN (En) 00223488.

<sup>9586</sup> T. 5 March 2015 (VAN Soeun), E1/272.1, pp. 24-26.

<sup>9587</sup> YIN Teng Interview Record, E3/9472, pp. 21-24, ERN (En) 01067048-01067051 (Answers 131-133, 143, 152).

<sup>9588</sup> Tram Kak District Record, E3/2435, 26 April 1977, p. 1, ERN (En) 00322141.

families: “If it was like this, what would *Angkar* decide then?” The report also indicates the conflation of Khmer Krom with Vietnamese.

2804. Lists of Khmer Krom were prepared in various communes in late April 1977. Before the Chamber are lists of Khmer Krom people living in Kus commune dated 29 April 1977;<sup>9589</sup> Angk Ta Saom commune dated 30 April 1977;<sup>9590</sup> and an undated list of Khmer Krom people from Popel commune;<sup>9591</sup> a report from Popel commune dated 8 May 1977 referring to 228 Khmer Krom individuals;<sup>9592</sup> and a further report from Popel commune dated 4 May 1977 which refers to a Khmer Krom called CHAU Ny “who was brought over (to your place), on 3/4/77”.<sup>9593</sup> An undated list identifies more than 54 people as Khmer Krom, mentioning various locations such as Angk Ta Ngel, Trapeang Pring, Trapeang Pou, Trapeang Leang, Trapeang Thma, Ta Sman, Paen Meas, Ta Saom, Prey Kokir.<sup>9594</sup> The Chamber finds that some individuals mentioned in this list relates to locations in Samraong, Kus and Cheang Tong communes.<sup>9595</sup> There is also a report from Ta Phem commune to *Angkar* dated 13 May 1977, which records that a New Person had “propagandised people from Kampuchea Krom” by saying that *Angkar* did not need them and those in Samraong commune had been “taken away”. The report continues that, upon hearing this, an old Kampuchea Krom lady named CHHIV Ban Yi refused to work, and the unit chief found her at her house “weeping”.<sup>9596</sup>

2805. A report from Leay Bour commune to the District Party dated 4 September [1977] described a youth in the commune called HI Di who said that he did “not want to be alive; it is better to die”. The report describes him as complaining about food, then adds: “PS. This person is a *Yuon*”. The report bears an annotation dated 6 September 1977 from District Secretary Kit to *Ta An*: “Request that a thorough interrogation be

<sup>9589</sup> Tram Kak District Record, E3/2615, 29 April 1977, pp. 1-11, ERN (En) 00366665-00366675 (13 husbands, 43 wives, 23 male youth, seven female youth, 28 boys, 35 girls).

<sup>9590</sup> Tram Kak District Record, E3/2049, 30 April 1977, pp. 1-2, ERN (En) 00290262-00290263 (identifying eight families and indicating that the husband of one resident was “smashed since he was first arrived [here]”).

<sup>9591</sup> Tram Kak District Record, E3/2262, undated, pp. 1-3, ERN (En) 00742626-00742628.

<sup>9592</sup> Tram Kak District Record, E3/2917, 8 May 1977, p. 1, ERN (En) 00742890.

<sup>9593</sup> Tram Kak District Record, E3/2439, 4 May 1977, p. 1, ERN (En) 002322143.

<sup>9594</sup> Tram Kak District Record, E3/2428, undated, pp. 1-7, ERN (En) 0036699-00366705.

<sup>9595</sup> T. 17 February 2015 (PHEOU Yav), E1/264.1, p. 5; PHEOU Yav Interview Record, E3/5515, 12 November 2009, p. 3, ERN (En) 00410246 (Answer 7, villages in Samraong commune including Paen Meas, Ta Sman, Pong Tuek, Prey Kokir, Kraing Banteay, Praouth Thmei and Ta Saom).

<sup>9596</sup> Tram Kak District Record, E3/4084, 13 May 1977, p. 1, ERN (En) 00290264.

conducted, because this person is an organised string of the CIA”.<sup>9597</sup> A report from Trapeang Thum South commune to Kraing Ta Chan describes an “enemy” who had been sent for saying, among other things, that KHIEU Samphan boasted that he served the people when, in reality, he travelled by car, ate good food, all while the people worked hard but only ate gruel. The note concludes with the information that “[t]his contemptible Nam is a pure *Yuon*”.<sup>9598</sup>

2806. There are various entries for persons identified as Vietnamese in various notebooks, including: notebook E3/2427 (YIN Khoeun Hor Long);<sup>9599</sup> notebook E3/2107 (DE Yeun);<sup>9600</sup> notebook E3/4122 (PEOU Kan);<sup>9601</sup> notebook E3/5860 (THACH Soeung);<sup>9602</sup> and notebook E3/5827 (CHOU La).<sup>9603</sup> The Chamber is therefore satisfied that some Vietnamese persons were arrested, taken to Kraing Ta Chan and killed. The evidence also reveals occasions when Vietnamese and Khmer Krom were conflated together at Kraing Ta Chan.

#### 12.3.11.5. Overall number killed at Kraing Ta Chan

2807. Whereas the Closing Order charged that more than 15,000 people were killed at Kraing Ta Chan, the evidence does not enable the Chamber to establish the precise number of people killed there. The Chamber is satisfied, however, that significantly more than 1,000 people were killed or died there between 1975 to 1979. The following evidence considered together satisfies the Chamber that 1,000 is a reliable minimum number. The basis for this finding now follows.

2808. VOEUN Vuthy’s team examined 1,904 crania and 3,158 other bones, which the Chamber considered together with the evidence of the nature and extent of the exhumations performed at the site after 7 January 1979. While some of these human remains may relate to people killed at Kraing Ta Chan before 17 April 1975, and there is a remote possibility that this number includes remains from other sources, the evidence satisfies the Chamber that the majority of these remains are of people killed

<sup>9597</sup> Tram Kak District Record, E3/2447, 6 September 1977, p. 2, ERN (En) 00355474.

<sup>9598</sup> Tram Kak District Record, E3/4127, 16 January 1978, p. 6, ERN (En) 00362232.

<sup>9599</sup> Kraing Ta Chan Notebook, E3/2427, undated, p. 6, ERN (En) 00366681.

<sup>9600</sup> Kraing Ta Chan Notebook, E3/2107, undated, p. 13, ERN (En) 00290216.

<sup>9601</sup> Kraing Ta Chan Notebook, E3/4122, undated, p. 4, ERN (En) 00779249 (describing this person as born in Kirivong district but having “returned from the *Yuon*”).

<sup>9602</sup> Kraing Ta Chan Notebook, E3/5860, undated, p. 1, ERN (En) 01064165.

<sup>9603</sup> Kraing Ta Chan Notebook, E3/5827, undated, p. 34, ERN (En) 00866457.

at Kraing Ta Chan during the relevant period. The Chamber also recalls the evidence that human remains went missing for a variety of reasons, and therefore finds that this number understates the number of remains previously present at Kraing Ta Chan.

2809. Whereas witnesses such as the guard VAN Soeun testified that prisoners arrived at Kraing Ta Chan on an almost daily basis, their release or survival was the exception.<sup>9604</sup> The Chamber accepted prisoner VONG Sarun's description of the ruse whereby prisoners were told that they were being released having been "fully refashioned", but were in fact being taken to be executed. The Chamber accepted her description that this happened "very often".<sup>9605</sup> The Chamber also accepted SORY Sen's account of regular burials, and MEAS Sokha's description of burials and a mass execution. The Chamber recalls its findings that, as pits in Kraing Ta Chan became filled up with dead bodies, more and more pits had to be dug, further away from the inner compound.<sup>9606</sup> The monthly reports for July and November 1977 record 139 persons dead for those two months alone.<sup>9607</sup> Although it is impossible to extrapolate from such a small sample, this corroborates other evidence that executions were a regular occurrence. These monthly reports also confirm that the detention capacity of Kraing Ta Chan was over 100 persons at any one time.

2810. Notebooks contain entries for more than 500 persons, with other documentary evidence such as notes from communes to Kraing Ta Chan confirming that these notebooks are not comprehensive. Although not all the persons for whom there are notebook entries were killed, again the evidence established that survival was exceptional: two guards suggested that 99 per cent of those who entered Kraing Ta Chan were killed.<sup>9608</sup> The Chamber found this to be a telling estimate.<sup>9609</sup> Weighing these factors together, the Chamber finds that the minimum number of 1,000 persons

<sup>9604</sup> T. 4 March 2015 (VAN Soeun), E1/271.1, pp. 9, 35.

<sup>9605</sup> T. 18 May 2015 (VONG Sarun), E1/300.1, pp. 57-59.

<sup>9606</sup> *See above*, para. 2692.

<sup>9607</sup> Tram Kak District Record, E3/4086, July 1977, p. 1, ERN (En) 00276557 (reporting that one study meeting was held, 18 new prisoners entered during July 1977, making a total of 81 prisoners, two prisoners died from illness and 39 were "swept away"; Tram Kak District Record, E3/2109, November 1977, p. 1, ERN (En) 00276555 (reporting that during the month of November 1977, 75 people entered, 92 people were purged, six people died of illness and one person was removed to the sector).

<sup>9608</sup> T. 23 February 2015 (SREI Than), E1/267.1, pp. 33-34, 91-92 (confirming his prior statement that 99 per cent of prisoners were smashed); SREI Than Interview Record, E3/5834, 29 December 2009, p. 8, ERN (En) 00434694; T. 4 March 2015 (VAN Soeun), E1/271.1, p. 35 (agreeing with SREI Than's statement and confirming that the "huge majority" of prisoners were "liquidated on site").

<sup>9609</sup> *See above*, para. 2769.



killed or dead at Kraing Ta Chan during the period 1975 to 1979 is likely to be a significant underestimate.

### 12.3.12. *Legal Findings*

#### 12.3.12.1. *Murder*

2811. The Closing Order charges the Accused with the crime against humanity of murder in relation to summary executions in or near Kraing Ta Chan by Security Centre personnel, including the killing of children, with bodies buried in various locations in and around the site.<sup>9610</sup> The Closing Order further charges murder in relation to torture and ill-treatment carried out by Security Centre personnel, specifically from starvation, disease and beatings.<sup>9611</sup>

2812. The Chamber has found a number of specific instances of intentional killings to be established: (i) KIM Nova, NOP Nem and their young child were killed at Kraing Ta Chan, and KIM Nova was sexually assaulted by *Ta An* before she was killed;<sup>9612</sup> (ii) two young women were killed, with M-79 bullets inserted into their vaginas afterwards;<sup>9613</sup> (iii) MEAS Sokha's family members including his father MEAS Kun and brother-in-law MOM Boeun were executed;<sup>9614</sup> (iv) five widows from Trapeang Thom commune were killed at Kraing Ta Chan, having been sent from another detention site at Angk Roka;<sup>9615</sup> (v) young babies and children were killed, including by smashing their heads against trees then throwing the bodies into pits;<sup>9616</sup> (vi) two young girls were killed to the west of the compound, as witnessed by SORY Sen;<sup>9617</sup> (vii) prisoners had their throats slit while guards restrained them; and (viii) at least one incident of mass executions of more than 100 people took place.<sup>9618</sup> The Chamber is satisfied that both the *actus reus* and the *mens rea* of murder are established with respect to these victims.

<sup>9610</sup> Closing Order, paras 1373-1374, 1376, 1379-1380, 510-514.

<sup>9611</sup> Closing Order, paras 1373-1374, 1376, 1379-1380, 502.

<sup>9612</sup> See above, para. 2737.

<sup>9613</sup> See above, para. 2764.

<sup>9614</sup> See above, paras 2668-2676.

<sup>9615</sup> See above, paras 2705-2706.

<sup>9616</sup> See above, paras 2752-2756.

<sup>9617</sup> See above, paras 2765-2769.

<sup>9618</sup> See above, para. 2759.

2813. Victims also included the former “high ranking” Khmer Republic soldiers and officials who were, on occasion, simply killed on arrival, without interrogation.<sup>9619</sup> The evidence did not clearly support the finding in the Closing Order that former Khmer Republic soldiers below the ranks of first or second lieutenants, but with the specific rank of corporal sergeant or above, or civil officials with the rank first deputy chief or higher, were purged at Kraing Ta Chan in the period immediately following 17 April 1975.<sup>9620</sup> The Chamber has found nevertheless that some former Khmer Republic civilian officials were killed at Kraing Ta Chan shortly after the liberation.<sup>9621</sup> Former Khmer Republic soldiers and officials were specifically targeted, often on the basis of their rank alone, especially from April 1977 onwards.<sup>9622</sup> The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of murder are established with respect to these killings.

2814. In addition to the intentional killings in specific instances and of the former Khmer Republic officials, the evidence has established that a much larger number of killings took place. Monthly reports for July and November 1977 record 139 persons killed or dead for those two months alone.<sup>9623</sup> Evidence from the guards demonstrates that prisoners were not allowed to leave Kraing Ta Chan,<sup>9624</sup> and they estimated that 99 per cent of prisoners were killed.<sup>9625</sup> Survival was the exception and only for a small number of Base People such as MEAS Sokha’s family and/or hinged upon fortuitous connections to decision-makers, such as SORY Sen’s survival hinging upon the previous prison chief knowing him from before.<sup>9626</sup> Documentary evidence in particular various notebooks, albeit incomplete, records the presence of over 500 persons at Kraing Ta Chan, with the presence of many additional persons evident from messages from the communes to Kraing Ta Chan, and reports from Kraing Ta Chan to Tram Kak district.<sup>9627</sup> Orders to smash from the sector<sup>9628</sup> and the district,<sup>9629</sup> annotations such as

<sup>9619</sup> See above, paras 2742, 2800-2801.

<sup>9620</sup> See above, paras 2643. The evidence has established that persons considered to have had high ranks included first or second lieutenants.

<sup>9621</sup> See above, para. 2791.

<sup>9622</sup> See above, para. 2643. See below, paras 2840-2841.

<sup>9623</sup> See above, para. 2809.

<sup>9624</sup> See above, para.2770.

<sup>9625</sup> See above, paras 2752-2769.

<sup>9626</sup> See above, paras 2669-2673, 2677.

<sup>9627</sup> See above, paras 2788-2790.

<sup>9628</sup> See above, paras 2703-2706.

<sup>9629</sup> See above, para. 2800.

crosses on the documentary evidence,<sup>9630</sup> the systematic process often accompanied by loud music,<sup>9631</sup> and the extensive evidence of burial operations<sup>9632</sup> demonstrate intentional (direct intent) and repeated killings sufficient to constitute murder as a crime against humanity. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of murder are established with respect to these deaths.

2815. The Chamber has found that numerous other prisoners died in the detention buildings as a consequence of the treatment to which they were subjected, with their bodies dragged out the following day by other prisoners being forced to work. Some prisoners died following suffocation during interrogations.<sup>9633</sup> Both the nature of the treatment during interrogations, including suffocation, and the conditions in the detention buildings, including beatings for behaviour the guards did not like, demonstrate that deaths resulting from such conduct were an entirely foreseeable possibility – and one which eventuated repeatedly. The Chamber is accordingly satisfied that with regard to the facts described in the current paragraph the perpetrators acted with intent in the form of *dolus eventualis*. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of murder are established in relation to these deaths.

2816. Contrary to the NUON Chea Defence's submissions,<sup>9634</sup> none of the killings or deaths at Kraing Ta Chan followed a lawful process or had any basis in law or fact. None of those who died at Kraing Ta Chan had the benefit of anything approximating to a judicial process. Many prisoners were not even interrogated prior to their execution.<sup>9635</sup>

2817. In sum, the Chamber is satisfied that a minimum of 1,000 people were murdered at Kraing Ta Chan during the relevant period, a figure likely to be a significant underestimate.<sup>9636</sup> This minimum figure includes those who were summarily executed and those who died as a result of the conditions, *i.e.* victims killed either by perpetrators who acted with direct criminal intent to kill or by perpetrators who acted with intent in

<sup>9630</sup> See above, paras 2703, 2706, 2805.

<sup>9631</sup> See above, para. 2772.

<sup>9632</sup> See above, paras 2678, 2772-2774.

<sup>9633</sup> See above, paras 2674, 2676, 2744-2747.

<sup>9634</sup> NUON Chea Closing Brief, paras 648, 675.

<sup>9635</sup> See above, para. 2757.

<sup>9636</sup> See above, paras 2807-2810.

the form of *dolus eventualis*. All these deaths constitute murder as a crime against humanity. Accordingly, the Chamber finds that the crime against humanity of murder is established at Kraing Ta Chan Security Centre.

#### 12.3.12.2. Extermination

2818. The Closing Order charges the Accused with the crime against humanity of extermination on the basis of the deaths of more than 15,000 people at Kraing Ta Chan, by execution or resulting from torture and other acts of violence.<sup>9637</sup>

2819. For the purposes of establishing whether extermination was committed, the Chamber accumulates all the specific killings which are established beyond reasonable doubt. As detailed above, the only reasonable inference in light of the evidence as a whole is that a minimum of 1,000 people were killed or died.<sup>9638</sup> This is likely to be a significant underestimate. The Chamber notes that an unquantified fraction of this number died from the conditions and/or treatment to which they were otherwise subjected, and, having regard to extermination requirements, excludes these from consideration here because such deaths were not directly intended. The Chamber is satisfied that the remaining executions all formed part of the same murder operation and took place on a massive scale. The Chamber found that at least one mass execution took place,<sup>9639</sup> with other executions regularly taking place throughout the relevant period.<sup>9640</sup> The Chamber finds these executions at Kraing Ta Chan meet the required threshold for the crime of extermination. The *actus reus* of the crime is therefore established.

2820. In relation to the intent requirement, the Chamber is satisfied that the physical perpetrators, the district-level authorities, sector level and Southwest Zone level all acted with the intent to kill on a massive scale at Kraing Ta Chan. This is established beyond any doubt by the overall number and frequency of the executions often to loud music,<sup>9641</sup> the expanding burial operations,<sup>9642</sup> the regular and personal involvement of IEP Duch and Phy from the District Office, the Chamber's finding that the district level

<sup>9637</sup> Closing Order, paras 1381-1383, 1385, 1387-1390, 489, 514.

<sup>9638</sup> See above, paras 2807-2810.

<sup>9639</sup> See above, paras 2757-2759.

<sup>9640</sup> See above, para. 2771.

<sup>9641</sup> See above, para. 2772.

<sup>9642</sup> See above, paras 2772-2774.

sent additional personnel to Kraing Ta Chan at times of peak activity,<sup>9643</sup> and the decision-making by Sector Secretaries *Ta Prak* and *Ta Rorn* including in relation to groups of prisoners such as the five widows from Trapeang Thom North commune.<sup>9644</sup> The *mens rea* of the crime is therefore established. The Chamber is therefore satisfied that Kraing Ta Chan operated as an ongoing murder operation on a massive scale. It accordingly finds that the crime against humanity of extermination is established at Kraing Ta Chan Security Centre.

### 12.3.12.3. *Enslavement*

2821. The Closing Order charges the Accused with the crime against humanity of enslavement at Kraing Ta Chan Security Centre. It charges that the Security Centre personnel at Kraing Ta Chan subjected prisoners to total control and exercised all of the powers attaching to the right of ownership over the persons placed there.<sup>9645</sup> In particular, some prisoners were forced to work inside the prison compound and also outside in the rice fields under guard.<sup>9646</sup>

2822. The Chamber recalls that the crime against humanity of enslavement is characterised by the intentional exercise over a person of any or all powers attaching to the right of ownership.<sup>9647</sup> While not a prerequisite for the crime to be established, forced labour may be sufficient on its own to establish enslavement as a crime against humanity.<sup>9648</sup> The Chamber has found that during the daytimes, a small number of prisoners was put to work inside the main compound, with other prisoners put to work outside performing tasks such as carrying earth, flattening termite mounds, farming rice or grazing cattle.<sup>9649</sup> Tasks for those inside the main compound included cooking, sweeping, carrying and fetching meals for guards, burying bodies and dragging dead bodies out of detention buildings.<sup>9650</sup> This was a regime of mandatory unpaid work for incarcerated persons. The Chamber rejects the generalised submissions advanced by the NUON Chea Defence that it is permissible to “keep prisoners actively

<sup>9643</sup> See above, paras 2694-2698.

<sup>9644</sup> See above, paras 2705-2706.

<sup>9645</sup> Closing Order, paras 1391, 1393-1394.

<sup>9646</sup> Closing Order, paras 503, 508.

<sup>9647</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement, para. 662.

<sup>9648</sup> Section 9: Applicable Law: Crimes, para. 666.

<sup>9649</sup> See above, paras 2739-2741.

<sup>9650</sup> See above, paras 2730-2731, 2739.

employed”<sup>9651</sup> because these submissions bear no relation to the evidence of the conditions at Kraing Ta Chan. Those prisoners who were put to work without their consent had to do as they were told in order to receive food.<sup>9652</sup> Prisoners like SORY Sen were cruelly exploited and made to perform vile tasks.<sup>9653</sup> The atmosphere was one of fear and intimidation. Even though prisoner MEAS Sokha slept outside the detention buildings and he was able to tend cattle outside Kraing Ta Chan, he had to return because he knew that otherwise his remaining family members would be in jeopardy – his father and brother-in-law having already been killed.<sup>9654</sup> The Chamber is satisfied that this objectively demonstrates that prisoners had no choice but to work as instructed in a situation of mortal jeopardy. The Chamber is accordingly satisfied that this amounted to forced labour. It is therefore satisfied that the *actus reus* of enslavement is established.

2823. The Chamber finds that Kraing Ta Chan personnel intentionally exercised over prisoners the powers attaching to the rights of ownership. Some of the surviving documents refer to Kraing Ta Chan as an “Education Office”.<sup>9655</sup> In reality, there existed mandatory regime of work for a small number of prisoners, which reduced them to mere commodities, permitting their manipulation and exploitation for the benefit of the Party until, in the vast majority of cases, they too were executed.<sup>9656</sup> Prisoners were exploited physically and economically, to their physical and psychological detriment in the last weeks and months of their lives. The physical and psychological control exerted over prisoners was absolute, to the extent that when they served no further purpose, they were killed.<sup>9657</sup> The Chamber therefore finds that the *mens rea* of enslavement is also established. Accordingly, the Chamber finds that the crime against humanity of enslavement is established at Kraing Ta Chan Security Centre in relation to prisoners who worked inside and outside the main compound, whether they survived or not.

<sup>9651</sup> NUON Chea Closing Brief, para. 669.

<sup>9652</sup> See above, paras 2659, 2732-2741.

<sup>9653</sup> See above, paras 2677-2682.

<sup>9654</sup> See above, paras 2669-2676.

<sup>9655</sup> See above, para. 2700.

<sup>9656</sup> See above, para. 2677.

<sup>9657</sup> See above, paras 2739-2741.

12.3.12.4. *Imprisonment*

2824. The Closing Order charges the Accused with the crime against humanity of imprisonment. It charges that prisoners were arbitrarily deprived of their liberty at Kraing Ta Chan without legal basis or procedural safeguards.<sup>9658</sup> It describes a process of arrests based on reports from communes in Tram Kak district followed by imprisonment at Kraing Ta Chan.<sup>9659</sup>

2825. The Chamber has found that persons were sent to Kraing Ta Chan under the pretext of re-education, but this was a falsehood and death was the result for the overwhelming majority of prisoners.<sup>9660</sup> Although the reasons for specific arrests varied, the numerous messages from communes to Kraing Ta Chan reliably demonstrate the intentional and fundamental disregard for any procedural rights and that the initial deprivation of liberty was arbitrary.<sup>9661</sup> A common theme was that prisoners were sent to Kraing Ta Chan on the basis of a subjective perception that they had done something contrary to the Party or were a threat to the revolution, including by complaining, questioning what *Angkar* was, being lazy, criticising the revolution, or mocking its leaders.<sup>9662</sup> The Chamber rejects the NUON Chea Defence's submission that Kraing Ta Chan "served an entirely legitimate and lawful purpose" and that prisoners were interrogated "as part of a genuine criminal investigation".<sup>9663</sup> There is no evidence that individuals were detained after conviction by a competent court or for non-compliance of an order of a lawful court, or that they were afforded any right to challenge their detention.<sup>9664</sup>

2826. Arrests caught up families, including VONG Sarun and her young baby, MEAS Sokha's family, and SORY Sen – with no factual or legal basis offered for their lengthy detention, or the failure to afford them basic procedural guarantees, other than their association with other prisoners who, in each case, had already been executed.<sup>9665</sup> The eventual release of MEAS Sokha with some of his family members in mid-1978 does

<sup>9658</sup> Closing Order, paras 1402-1404, 1406-1407.

<sup>9659</sup> Closing Order, para. 497.

<sup>9660</sup> *See above*, paras 2769-2770.

<sup>9661</sup> *See above*, paras 2716-2729.

<sup>9662</sup> *See above*, paras 2716-2729.

<sup>9663</sup> *See above*, paras 2716-2728; NUON Chea Closing Brief, para. 414.

<sup>9664</sup> Section 5: Administrative Structures, paras 417-418.

<sup>9665</sup> *See above*, paras 2671, 2714-2715.

not alter the Chamber's finding that the entire period of their lengthy detention was arbitrary, lacking any hint of a proper process.

2827. Given the ultimate fate of the vast majority of those persons sent to Kraing Ta Chan, the Chamber rejects NUON Chea's submission that any reasonable inference remains that the CPK genuinely sought to identify prisoners' involvement in unlawful activities.<sup>9666</sup> Even allowing for the possibility that the conduct of some prisoners could arguably be considered to have been a criminal offence, as opposed to merely offending the Party, the Chamber finds that such detention was also arbitrary because of the total lack of procedural safeguards, or any ability to challenge detention. Release from Kraing Ta Chan was the exception and resulted from fortuitous connections, rather than due process. The Chamber is satisfied that the perpetrators intended to arbitrarily deprive individuals of their liberty. This is revealed in particular by the reasons for arrest recorded in the documentary evidence.<sup>9667</sup> The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of imprisonment are established. Accordingly, the Chamber finds that the crime against humanity of imprisonment is established in relation to all persons detained in Kraing Ta Chan Security Centre.

#### 12.3.12.5. Torture

2828. The Closing Order charges the Accused with the crime against humanity of torture in relation to Kraing Ta Chan based on the infliction of deliberate harm and suffering, both physical and mental, during interrogations.<sup>9668</sup> It refers to objective and subjective elements, including the methods used coupled with the inhumane conditions and context of terror.<sup>9669</sup> The abuse was mainly aimed at obtaining information about their activities and/or networks and was perpetrated by persons acting in an official capacity.<sup>9670</sup> The Closing Order describes serious mistreatment during interrogations at Kraing Ta Chan, by various methods including suffocation and beatings.<sup>9671</sup>

2829. The Chamber has found that interrogations at Kraing Ta Chan regularly involved beatings, whippings and suffocation to extreme degrees – treatment which

<sup>9666</sup> NUON Chea Closing Brief, para. 386.

<sup>9667</sup> See above, paras 2770, 2795-2797, 2810.

<sup>9668</sup> Closing Order, para. 1409.

<sup>9669</sup> Closing Order, para. 1410.

<sup>9670</sup> Closing Order, paras 1411-1412.

<sup>9671</sup> Closing Order, paras 507-508.



caused the death of some prisoners.<sup>9672</sup> The Chamber rejects the NUON Chea Defence's unsubstantiated submission that interrogations at Kraing Ta Chan did not involve the systematic use of torture.<sup>9673</sup> The evidence established that suffocation using plastic sheets was an interrogation practice at Kraing Ta Chan.<sup>9674</sup> Screams were regularly heard coming from the interrogation hut.<sup>9675</sup> Some prisoners died from the treatment they received during interrogations.<sup>9676</sup> Prisoners who survived were left with wounds which shocked other prisoners.<sup>9677</sup> The Chamber has found that various implements such as clubs, whips and plastic sheets, were kept available to interrogators at the interrogation hut.<sup>9678</sup> The physical and psychological pain and suffering inflicted by this mistreatment during interrogations was severe and, in some cases, fatal.<sup>9679</sup>

2830. The Chamber has found the interrogation of VONG Sarun, upon which the NUON Chea Defence places particular emphasis, to be instructive.<sup>9680</sup> Although she was not physically beaten during her actual interrogation, she had barely eaten for one week while imprisoned, spending that whole time shackled by the ankles with the result that she was unable to walk from the detention building to the interrogation hut. During the interrogation itself, she was threatened with physical violence by an interrogator holding a tree branch. She was told that she was going to die and that her husband had already been executed, all while she was imprisoned together with her one-year old baby. The Chamber finds that even in this particular case, the subjective characteristics of VONG Sarun including her physical and mental condition at the time, her inferiority in relation to her interrogators, the nature of the threats to which she was subjected, caused severe mental pain and suffering in an overall context of terror and constitute torture.

2831. The physical and mental mistreatment deliberately inflicted during interrogations came from persons acting on behalf of the CPK, who the Chamber finds to be public officials.<sup>9681</sup> Furthermore, this mistreatment was inflicted during the course

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<sup>9672</sup> See above, paras 2744-2748, 2798.

<sup>9673</sup> NUON Chea Closing Brief, para. 414.

<sup>9674</sup> See above, paras 2744-2746.

<sup>9675</sup> See above, para. 2747.

<sup>9676</sup> See above, para. 2743.

<sup>9677</sup> See above, para. 2747.

<sup>9678</sup> See above, para. 2747.

<sup>9679</sup> See above, paras 2744-2748.

<sup>9680</sup> See above, paras 2749-2751.

<sup>9681</sup> See above, para. 2742.

of interrogations and was utilised by interrogators, including cadres from the district level, for the purposes of obtaining information, a confession, or as a means of intimidation or punishment.<sup>9682</sup> The Chamber found that Kraing Ta Chan regularly reported to the district level on information generated from interrogations.<sup>9683</sup> Some reports contained explicit information on the actual or intended use of “hot” measures. The Chamber found that the district level gave specific instructions to Kraing Ta Chan on particular interrogations, and there were occasions when the sector level was provided with confessions.<sup>9684</sup>

2832. In light of all these factors, the Chamber finds that prisoners interrogated at Kraing Ta Chan were subjected to acts which caused severe physical and/or mental pain or suffering. These acts were carried out intentionally by Kraing Ta Chan cadres who were acting on behalf of the CPK. Furthermore, these acts were carried out with the purpose of obtaining information, a confession, or a means of punishment or intimidation. The Chamber is therefore satisfied that both the *actus reus* and the *mens rea* of torture are established. Accordingly, the Chamber finds that the crime against humanity of torture is established at Kraing Ta Chan Security Centre.

#### 12.3.12.6. Persecution on political grounds

2833. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds of “real or perceived enemies of the CPK”, which it defines as those whose real or perceived political beliefs were contrary to the CPK, or were opposed to those wielding power within the Party.<sup>9685</sup> According to the Closing Order, such people were “arrested *en masse* for re-education and elimination” at security centres including Kraing Ta Chan.<sup>9686</sup> In this regard, the Closing Order particularises that those suspected of being CIA and KGB were “identified and smashed”,<sup>9687</sup> there was a “purge of evacuees”,<sup>9688</sup> that prisoners generally being accused of being “enemies”,<sup>9689</sup> and that more than 15,000 “enemies” were killed.<sup>9690</sup>

<sup>9682</sup> See above, para. 2747.

<sup>9683</sup> See above, para. 2701.

<sup>9684</sup> See above, paras 2707, 2719.

<sup>9685</sup> Closing Order, paras 1416-1418.

<sup>9686</sup> Closing Order, para. 1418.

<sup>9687</sup> Closing Order, para. 492.

<sup>9688</sup> Closing Order, para. 498.

<sup>9689</sup> Closing Order, para. 506.

<sup>9690</sup> Closing Order, para. 514.

The Closing Order expressly links events there to an ongoing purge of former Khmer Republic soldiers and officials.<sup>9691</sup> It further finds that “most” of the prisoners were “new people”, but various other prisoners also “contributed to the population” including Base People and CPK cadres.<sup>9692</sup>

2834. The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemy particularised in the Closing Order under the heading of “legal findings” (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>9693</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>9694</sup>

2835. The KHIEU Samphan Defence further contends that, concerning those who were detained at Kraing Ta Chan, the conduct underlying this charge is restricted to arrests, re-education and elimination, and that the charge excludes the imposition of harsher living conditions on the targeted groups compared to the rest of the population.<sup>9695</sup> No other Party made relevant submissions in this regard. The Chamber finds that the Closing Order indeed distinguishes “harsher treatment and living conditions” in cooperatives and worksites, from the various acts of arrest, re-education and elimination at security centres.<sup>9696</sup> Notwithstanding this distinction, in so finding the Closing Order implies that the targeted groups were at particular risk of being sent to security centres for “re-education and elimination” (e.g. “they were arrested *en masse*”). The Chamber therefore finds that nothing of substance turns on the distinction highlighted by the KHIEU Samphan Defence.

2836. Finally, the KHIEU Samphan Defence contends more generally that the Closing Order fails to show discrimination against New People and/or former Khmer Republic officials and, repeating arguments made elsewhere, fails to articulate any discriminatory conduct sufficient to require a defence.<sup>9697</sup> This submission will be addressed by the Chamber in its analysis below.

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<sup>9691</sup> Closing Order, para. 498.

<sup>9692</sup> Closing Order, para. 500 (also referring to Chinese, Vietnamese and Cham).

<sup>9693</sup> KHIEU Samphan Closing Brief, para. 1255.

<sup>9694</sup> Section 2: Preliminary Issues, para. 170.

<sup>9695</sup> KHIEU Samphan Closing brief, paras 1257-1258.

<sup>9696</sup> Closing Order, para. 1418.

<sup>9697</sup> KHIEU Samphan Closing Brief, paras 1254-1271.

2837. In relation to Kraing Ta Chan, the Closing Order specifically identifies numerous real or perceived enemies to the CPK or its ideology, including those considered to be CIA or KGB,<sup>9698</sup> former Khmer Republic soldiers and officials,<sup>9699</sup> and New People.<sup>9700</sup> The Chamber is satisfied that real or perceived political enemies at this security centre included but were not limited to the three categories identified by the KHIEU Samphan Defence.

2838. The discernibility of the targeted group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. In this regard, the Chamber takes into consideration evidence of the CPK's ideological aspirations and policies concerning socialist revolution and State-building.<sup>9701</sup> It further takes into account the state of armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam between May 1975 and 6 January 1979,<sup>9702</sup> the evolving CPK policy toward the Vietnamese and other enemies,<sup>9703</sup> the spate of internal purges from 1977 and the resultant atmosphere of paranoia inside the Party.<sup>9704</sup> It is evident from the foregoing that the CPK identified as enemies counter-revolutionaries, detractors and traitors of the revolution, feudalists and those engaging in feudalistic practices, the Vietnamese, foreign agents and collaborators of the foregoing categories, among others. Accordingly, the Chamber is satisfied that the target group of "real or perceived enemies of the CPK" was sufficiently discernible in order to determine whether the requisite consequences occurred for the group.

2839. The evidence has established a significant amount of discriminatory conduct in relation to Kraing Ta Chan. Large numbers of real or perceived enemies of the CPK were sent to Kraing Ta Chan where they were starved, tortured and then killed.<sup>9705</sup> The discriminatory basis on which these persons were targeted is established in the documentary evidence recording the reasons why persons were sent to Kraing Ta Chan.<sup>9706</sup> The Chamber has found that New People and/or those believed to be

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<sup>9698</sup> Closing Order, para. 492.

<sup>9699</sup> Closing Order, para. 498.

<sup>9700</sup> Closing Order, para. 500 (also referring to Chinese, Vietnamese and Cham).

<sup>9701</sup> Section 16: Common Purpose.

<sup>9702</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict).

<sup>9703</sup> Section 16.3: Real or Perceived Enemies.

<sup>9704</sup> Section 12.1: Internal Factions.

<sup>9705</sup> See above, paras 2732, 2809.

<sup>9706</sup> See above, paras 2717-2729.

connected to the former Khmer Republic were particularly likely to be identified as enemies and sent to Kraing Ta Chan, often on spurious bases such as being lazy or criticising the revolution or sometimes on the mere basis that they had certain ranks.<sup>9707</sup> Perceived enemies also included persons who complained about work or food, planned to flee and/or incited others to do the same, were perceived to be lazy, stole food, threatened unit chiefs, spoke favourably of the old society, had “contradictions” with the revolution, broke collective property, and it included perceived unfaithfulness to the Party, which then caught up families such as VONG Sarun and MEAS Sokha.<sup>9708</sup> The Chamber found that five widows from Trapeang Thom commune were expressly identified as 17 April People and sent from one detention site at Angk Roka to Kraing Ta Chan in order for them to be killed.<sup>9709</sup>

2840. The Chamber is satisfied that the majority of prisoners in Kraing Ta Chan were New People. The isolated instances of survival (such as MEAS Sokha and some of his family members; and VONG Sarun) generally concerned Base People.<sup>9710</sup> The Chamber also found that SORY Sen’s survival depended upon the fortuitous intervention from the former prison chief.<sup>9711</sup> The nature of these exceptions, together with the documentary evidence which identifies categories of prisoners based on whether they were New or Base Persons, and/or their role in the LON Nol regime, satisfies the Chamber that both New People and those with connections to the Khmer Republic were identified as particular enemies and targeted on that basis.<sup>9712</sup> The Chamber has also found that, on occasion, former “high ranking” Khmer Republic officials were simply killed on arrival, without interrogation.<sup>9713</sup> The evidence has established that persons considered to have had high ranks included first or second lieutenants.<sup>9714</sup>

2841. The evidence did not clearly support the finding in the Closing Order that former Khmer Republic soldiers below the ranks of first or second lieutenants, but with the specific rank of corporal sergeant or above, or civil officials with the rank first deputy

<sup>9707</sup> See above, paras 2725-2729.

<sup>9708</sup> See above, paras 2715, 2717-2729.

<sup>9709</sup> See above, paras 2705, 2794.

<sup>9710</sup> See above, para. 2790.

<sup>9711</sup> See above, para. 2814.

<sup>9712</sup> See above, paras 2794-2795.

<sup>9713</sup> See above, paras 2742, 2800-2801.

<sup>9714</sup> See above, para. 2799.

chief or higher, were purged at Kraing Ta Chan in the period immediately following 17 April 1975.<sup>9715</sup> The Chamber has nevertheless found that some former Khmer Republic civilian officials were killed at Kraing Ta Chan shortly after the liberation.<sup>9716</sup> The Chamber has further found that New People were sent to Kraing Ta Chan shortly after 17 April 1975, when the population clearly increased and some evacuees arrived at Kraing Ta Chan via Wat Champa.<sup>9717</sup> Former Khmer Republic officials were specifically targeted, often on the basis of their rank alone, especially from April 1977 onwards.<sup>9718</sup> Real or perceived enemies of the CPK were arrested, detained and eliminated as a direct result of their perceived enemy status, and this was the case throughout the relevant period. The Chamber finds that these acts were committed with the intent to discriminate on political grounds, namely against anybody considered to be opposed to the CPK. Having found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that all the foregoing acts were discriminatory in fact.

2842. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>9719</sup> personal dignity,<sup>9720</sup> life, liberty and security,<sup>9721</sup> freedom from arbitrary or unlawful arrest,<sup>9722</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>9723</sup>

2843. The conduct which the Chamber has taken into account for the purposes of persecution has been found to amount to independent crimes against humanity, including murder, extermination, enslavement, imprisonment, torture, and other inhumane acts. The Chamber has considered this conduct together with the surrounding context and finds that it cumulatively rises to the requisite level of severity such as to constitute persecution. In light of the foregoing, the Chamber is satisfied that both the

<sup>9715</sup> See above, para. 2643.

<sup>9716</sup> See above, para. 2791.

<sup>9717</sup> See above, para. 2791.

<sup>9718</sup> See above, para. 2643.

<sup>9719</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights (UDHR), Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>9720</sup> As evidence of the state of customary international law, see UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>9721</sup> As evidence of the state of customary international law, see UDHR, Art. 3; ICCPR, Arts 6, 9(1); ECHR, Arts 2, 5; ACHR, Arts 4, 7.

<sup>9722</sup> As evidence of the state of customary international law, see UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>9723</sup> As evidence of the state of customary international law, see UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

*actus reus* and the *mens rea* of persecution on political grounds are established. Accordingly, the Chamber finds that the crime against humanity of persecution on political grounds is established.

12.3.12.7. Persecution on racial grounds

2844. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds. It charges that “Vietnamese people were deliberately and systematically identified and targeted due to their perceived race”, as they were perceived by the CPK to be “racially distinct from Cambodian people”.<sup>9724</sup> With respect to Kraing Ta Chan in particular, the Closing Order charges that Vietnamese persons were “probably” executed there.<sup>9725</sup>

2845. The evidence has established that there were some unidentified Vietnamese speaking prisoners at Kraing Ta Chan, and that a number of specific prisoners identified as Vietnamese were arrested, taken to Kraing Ta Chan, and killed there.<sup>9726</sup> The evidence did not establish, however, whether their Vietnamese race was the determining factor on which they were sent to Kraing Ta Chan. The Chamber found that “pure Vietnamese families” were clearly to be dealt with at the district level. In contrast, the position in relation to racially mixed families caused some confusion at the commune level.<sup>9727</sup> The evidence did not establish, however, whether any such “pure Vietnamese families” were actually sent to Kraing Ta Chan. In relation to particular persons identified at Kraing Ta Chan as speaking Vietnamese, as opposed to Khmer with an accent, the evidence did not establish who they were or the basis on which they had been sent to Kraing Ta Chan.

2846. The Chamber has also found that the evidence conflates Vietnamese with Khmer Krom. The Chamber recalls its finding that the Khmer Krom are not to be subsumed as part of the Vietnamese group.<sup>9728</sup> It has not been established with sufficient specificity whether the persons who the Chamber identified as killed at Kraing Ta Chan were really Vietnamese, or were rather Khmer Krom but labelled as

<sup>9724</sup> Closing Order, para. 1422.

<sup>9725</sup> Closing Order, para. 500.

<sup>9726</sup> See above, para. 2805.

<sup>9727</sup> See above, para. 1122.

<sup>9728</sup> Section 2.5.6.7.1: Facts Allegedly Outside the Scope of the Indictment: Khmer Krom.

Vietnamese. Accordingly, the Chamber is unable to determine whether the acts were discriminatory in fact, in that they actually had consequences for that group.

2847. The Chamber therefore finds that, while some individuals who were Vietnamese or perceived as Vietnamese were detained at Kraing Ta Chan, the allegation of racial persecution against the Vietnamese is not established on the evidence.

12.3.12.8. *Other inhumane acts through attacks against human dignity*

2848. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity at Kraing Ta Chan, in particular through conditions including the deprivation of sufficient food, medical attention and sanitation, poor living and detention conditions, overcrowded detention cells, and physical and psychological mistreatment.<sup>9729</sup>

2849. The Chamber has found that prisoners at Kraing Ta Chan were mostly shackled for extended periods in unhygienic buildings. While, according to some guards, the overall detention capacity of Kraing Ta Chan was over 100 persons, which already implied appalling conditions of detention, sometimes significantly more persons were crammed in.<sup>9730</sup> Prisoners spent the last days of their lives in squalid conditions, in a climate of extreme fear and intimidation.<sup>9731</sup> Prisoners died in detention buildings, their bodies left among the other prisoners overnight until other prisoners such as SORY Sen were made to remove them the next day, dragging them out across the barbed wire at the doorway.<sup>9732</sup> The Chamber has found that prisoners were starved before they were killed.<sup>9733</sup> Even prisoners like MEAS Sokha, who received comparatively better treatment in terms of food, or were allowed to sleep outside the detention buildings, were forced to perform gruesome tasks such as burying the bodies of executed prisoners.<sup>9734</sup> The Chamber has found that prisoners were subjected to physical violence and threats of physical violence.<sup>9735</sup> The Chamber found that prisoners were not provided with medical treatment and sick prisoners were left to die without

<sup>9729</sup> Closing Order, paras 1434, 1438.

<sup>9730</sup> See above, para. 2689.

<sup>9731</sup> See above, paras 2730-2732.

<sup>9732</sup> See above, paras 2678, 2730.

<sup>9733</sup> See above, para. 2732.

<sup>9734</sup> See above, para. 2731.

<sup>9735</sup> See above, para. 2731.



treatment.<sup>9736</sup> Prisoners saw other prisoners die, and some prisoners including SORY Sen were forced to bury large numbers of bodies over a period of years.<sup>9737</sup>

2850. In assessing the gravity of the acts, the Chamber takes into consideration the pervasive nature of attacks on the dignity of prisoners throughout the span of their incarceration, the severity of mental and physical suffering which was inflicted as a result of interrogations and the conditions, both inside and outside the main compound.<sup>9738</sup> The Chamber finds that the conditions of detention collectively rise to the gravity of other enumerated crimes against humanity. The Chamber is therefore satisfied that the *actus reus* of other inhumane acts through attacks against human dignity is established.

2851. This conduct necessarily entailed the intentional infliction of serious mental and physical suffering, as well as an incessant, long-lasting and egregious attack on human dignity. The Chamber is therefore satisfied that the *mens rea* of other inhumane acts through attacks against human dignity is also established. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at Kraing Ta Chan Security Centre.

12.3.12.9. Other inhumane acts through conduct characterised as enforced disappearances

2852. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances in respect of the great suffering experienced by victims as a result of the arrest, detention or abduction of loved ones and others in conditions that placed them outside the protection of the law, and the subsequent refusal to provide information on their whereabouts.<sup>9739</sup> In particular, it describes disappearances and executions at Kraing Ta Chan whereby guards told prisoners they were being returned to the cooperatives, but their fate was hidden from other prisoners by playing loudspeakers which drowned out their screams.<sup>9740</sup>

<sup>9736</sup> See above, para. 2733.

<sup>9737</sup> See above, paras 2677, 2732, 2773.

<sup>9738</sup> Section 9.1.8.2: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Attacks Against Human Dignity.

<sup>9739</sup> Closing Order, paras 1470-1478.

<sup>9740</sup> Closing Order, para. 511.

2853. The Chamber has already found that other inhumane acts through conduct characterised as enforced disappearances were established in relation to the Tram Kak Cooperatives.<sup>9741</sup> A legal issue therefore arises as to whether the crime of other inhumane acts through the underlying conduct of enforced disappearances should be considered in relation to Kraing Ta Chan, in circumstances where the Chamber is already satisfied that many of those who disappeared from Tram Kak district were brought to Kraing Ta Chan. In other words, is the disappearance established as an inhumane act just the once, at the moment of first disappearance in Tram Kak district, or can it be established a second time, at Kraing Ta Chan. No Party made submissions on this issue.

2854. The Chamber concludes that, as a matter of principle, the underlying conduct of enforced disappearance can be committed more than once in relation to the same person, provided the necessary elements of other inhumane acts are established on each occasion. In the case of Kraing Ta Chan specifically, although the original deprivation of liberty began with arrests in the Tram Kak Cooperatives, the Chamber is satisfied that this deprivation of liberty continued throughout the phase of detention at Kraing Ta Chan. Subsequently, the unrecorded nature of the new phase of detention, the almost inevitable and fatal result, combined with the form of the executions and burials committed by persons who may not have been involved in the original arrests, all served to ensure the complete denial of recourse for family or friends – either to intervene, or to determine the whereabouts of their loved ones' remains. These were deliberate and material steps by additional actors following the initial disappearance of persons from the cooperatives. The Chamber is satisfied that the removal of prisoners from detention buildings constituted the continued deprivation of liberty, and culminated in their execution.

2855. The Chamber is further satisfied that the foregoing circumstances demonstrate the refusal to disclose information regarding the fate of detainees removed from the detention buildings, either to fellow detainees in Kraing Ta Chan at the same time, or to family members and loved ones outside. The fact and method of executions ensured the complete denial of individual recourse for fellow inmates, family or friends to any

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<sup>9741</sup> Section 10.1.13.10: Tram Kak Cooperatives: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances.

of the applicable legal remedies and procedural guarantees enshrined under international law. The Chamber has found that when prisoners were removed from detention buildings, it was generally under the ruse that they were being sent home.<sup>9742</sup> Prisoners were therefore subjected to the disappearance of fellow inmates, left to speculate about their ultimate fate in circumstances where they came to associate the playing of music over loudspeakers with the disappearance and probable killings.<sup>9743</sup> In circumstances where some indication was provided as to their ultimate fates, such as the information obtained by MEAS Sokha and VONG Sarun, there had been a complete denial of individual recourse by fellow inmates, family or friends to any legal remedies or procedural guarantees.

2856. In light of the Chamber's findings on the prominence of the CPK at Kraing Ta Chan, the Chamber is satisfied that these further disappearances were carried out by state agents with the authorisation and support of the CPK, which held secrecy as a major principle imposed on its members.<sup>9744</sup> The murders of MEAS Sokha's relatives and VONG Sarun's husband illustrate the Chamber's approach to this issue. When these persons were arrested, they disappeared from their families – incidents which caused extreme anguish in each case. MEAS Sokha and VONG Sarun later learned some information about the fate of their loved ones at Kraing Ta Chan. Nonetheless, an official account was not provided to them. They never located the remains of their loved ones. The Chamber finds that the perpetrators at Kraing Ta Chan ensured that these prisoners could not exonerate themselves of the accusations levelled against them and executed them in circumstances which ensured that MEAS Sokha and VONG Sarun had no formal indication of their fate or ability to reliably identify their remains. The Chamber is therefore satisfied that enforced disappearances occurred at Kraing Ta Chan.

2857. The Chamber finds that the ongoing abduction of prisoners in the above circumstances inherently constitutes a serious attack on their human dignity. As to third parties such as fellow prisoners, the evidence demonstrated the long-lasting psychological effect of disappearances. Inmates were subjected not only to the unexplained disappearances of their fellow prisoners, but were put outside the

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<sup>9742</sup> See above, para. 2809.

<sup>9743</sup> See above, paras 2771-2774.

<sup>9744</sup> See above, paras 2693-2700.

protection of the law and subjected to an environment of uncertainty and fear that they too would be removed. In many instances, the prospect of discovering the fate of specific individuals is reduced to the fragmentary surviving documentary evidence, rumours or suspicion. As to the majority of family members, friends, acquaintances and fellow inmates of those who were abducted from communes throughout Tram Kak district and taken to Kraing Ta Chan, it is clear that no explanation was afforded to them in the nearly 40 years following their disappearances, leaving them to speculate or participate in the excavation of pits at Kraing Ta Chan in the hope of finding some indication as to the fate of their loved ones.<sup>9745</sup> The Chamber finds that the removal and execution of prisoners resulted in serious mental and physical suffering or injury to third parties and constituted a serious attack on their human dignity. The Chamber finds that the enforced disappearances at Kraing Ta Chan were of a nature and gravity similar to other enumerated crimes against humanity. The Chamber is therefore satisfied that the *actus reus* of other inhumane acts through conduct characterised as enforced disappearances is established.

2858. As to whether the personnel at Kraing Ta Chan intended to engage in the above acts, the Chamber is satisfied that the conduct amounting to enforced disappearances was carried out repeatedly and over a prolonged period of time with egregious disregard for the effect on either those detained or those who might seek information about those individuals. The repetitious nature of the conduct satisfies the Chamber that the serious attacks on human dignity were committed intentionally, often to loud music.<sup>9746</sup> The Chamber is therefore satisfied that the *mens rea* of other inhumane acts through conduct characterised as enforced disappearances is also established. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at Kraing Ta Chan Security Centre.

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<sup>9745</sup> See above, para. 2778.

<sup>9746</sup> See above, para. 2771.

**12.4. Au Kanseng Security Centre****12.4.1. Closing Order and Preliminary Issues**

2859. According to the Closing Order, Au Kanseng Security Centre, also known as the Au Kanseng Re-education and Corrections Office, Re-education School 801 or Military Prison 801, was operated by Division 801, a Centre Military Division under the direct command of General Staff Chairman SON Sen, who reported to the CPK Central Committee.<sup>9747</sup> The Closing Order charges the Accused with the crimes against humanity of (i) murder,<sup>9748</sup> (ii) extermination,<sup>9749</sup> (iii) enslavement,<sup>9750</sup> (iv) imprisonment,<sup>9751</sup> (v) political and (vi) racial persecution,<sup>9752</sup> and (vii) other inhumane acts through “attacks against human dignity” at Au Kanseng Security Centre.<sup>9753</sup> The Closing Order further charges the Accused with grave breaches of the Geneva Conventions through wilful killings and wilful deprivation of Jarai civilians’ rights to a fair and regular trial.<sup>9754</sup>

2860. The Chamber in Case 002/01 heard the testimony of two witnesses relevant to Au Kanseng Security Centre. Former Chairman CHHAOM Se gave evidence on the administrative and communication structures concerning the Security Centre but could not be recalled in Case 002/02 due to his death prior to appearing as a witness in those proceedings.<sup>9755</sup> The Chamber in Case 002/01 permitted certain questions to be put to the witness that were directly or incidentally relevant to the scope of Case 002/02.<sup>9756</sup> Insofar as the substance of these responses was open to examination by the Parties in court, the Chamber has relied upon the witness’s responses in making findings in this section.

<sup>9747</sup> Closing Order, paras 589-590.

<sup>9748</sup> Closing Order, paras 1373, 1376, 1380.

<sup>9749</sup> Closing Order, paras 1381, 1385, 1387, 1389.

<sup>9750</sup> Closing Order, paras 1391, 1393-1394.

<sup>9751</sup> Closing Order, paras 1402, 1404.

<sup>9752</sup> Closing Order, paras 1416-1418, 1422, 1424.

<sup>9753</sup> Closing Order, paras 1434, 1438.

<sup>9754</sup> Closing Order, paras 1485-1489, 1494, 1511.

<sup>9755</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be heard during Case 002/02, E459, 18 July 2017, para. 104 (fn. 264).

<sup>9756</sup> See e.g., T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 91-93 (request to *Angkar* for instruction regarding arrested Jarai); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 19-22 (women and children victims), 23-24 (execution of Jarai), 39-40 (classification of prisoners).

2861. The Chamber also has before it the witness's Written Records of Interview before the Office of the Co-Investigating Judges ("OCIJ") and interview by DC-Cam, which was conducted alongside his wife, AN Sopheap. The Chamber recalls that AN Sopheap was requested by the NUON Chea Defence as a witness to, among other things, internal purges within Division 801 and the alleged rebellion within CPK ranks under East Zone Secretary SAO Phim, but passed away prior to the Chamber's determination.<sup>9757</sup> Consistently with its approach to the assessment of the probative value of evidence,<sup>9758</sup> the Chamber recalls that the contents of such documents are of limited probative value and are accorded less weight than OCIJ interview records and in court testimony. Where appropriate, the Chamber has referred to such documents for corroborative purposes only. The Chamber also heard the testimony of former Division 801 Deputy Commander UNG Ren, who was initially called to testify about military structures within Democratic Kampuchea and gave evidence relevant to the reporting structure in Division 801.

2862. The Chamber in Case 002/02 heard the testimony of three witnesses in relation to Au Kanseng: former Deputy Chairman of the Security Centre, CHIN Kimthong, and former detainees MOEURNG Chandy and PHON Thol. The Chamber is cognisant of the possibility of unconscious transference and confabulation between the recollections of MOEURNG Chandy and PHON Thol, who were married during the DK period.<sup>9759</sup> The Chamber has assessed their evidence on a case-by-case basis and in light of the totality of evidence before it.

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<sup>9757</sup> NUON Chea's Third Witness Request for the Case 002/02 Security Centres and "Internal Purges" Segment (Evidence of Treasonous Rebellion), E395, 8 April 2016, paras 36-40; Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426), E443, 21 September 2016; Decision on NUON Chea Defence Requests to hear Additional Witnesses pursuant to Internal Rule 87(4) (E391, E392, E395, E412 and E426) (Full Reasons), E443/10, 30 March 2017, paras 13, 31.

<sup>9758</sup> Section 2.4.6.2: Written Statements including WRIs, Civil Party Applications, DC-Cam Statements, Refugee Reports and Newspaper Articles.

<sup>9759</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 33-34; T. 2 March 2016 (PHON Thol), E1/395.1, p. 39; T. 3 March 2016 (PHON Thol), E1/396.1, pp. 15-16.

## 12.4.2. *Establishment and Reporting Structure*

### 12.4.2.1. *Division 801*

2863. The formation of Division 801 was announced during a CPK rally held in July 1975 at the Olympic Stadium in Phnom Penh.<sup>9760</sup> The event, attended by POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, SON Sen and all Democratic Kampuchea military commanders,<sup>9761</sup> marked the foundation of the Revolutionary Army of Kampuchea and saw the re-designation of former Special Zone Division 14 into Division 801.

2864. In October 1975, the Standing Committee resolved to dispatch one RAK division to Ratanakiri and Steung Treng provinces as part of its “preparation of forces” along the DK-Vietnam frontier.<sup>9762</sup> By late 1975, former Special Zone Division 11 was absorbed into Division 801,<sup>9763</sup> which was deployed to the Northeast Zone, and was briefly headquartered in Ban Lung district before relocating to Veun Sai district in November or December of the same year.<sup>9764</sup> Consisting of over 5,000 soldiers,<sup>9765</sup> the Division was headed throughout the DK period by former Division 14 Commander SAO Saroeun<sup>9766</sup> *alias Ta 05 alias Roewn*.<sup>9767</sup> Deputy Commanders *Ta San alias Ta*

<sup>9760</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 42; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 3, ERN (En) 00406211; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 52-53; UNG Ren Interview Record, E3/84, 23 October 2009, p. 7, ERN (En) 00408399.

<sup>9761</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 52; T. 10 January 2013 (UNG Ren), E1/158.1, p. 41; T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 69.

<sup>9762</sup> Standing Committee Minutes, E3/1612, 9 October 1975, pp. 5-6, ERN (En) 00183397-00183398.

<sup>9763</sup> Standing Committee Minutes, E3/1612, 9 October 1975, p. 6, ERN (En) 00183398 (“Dissolve the 11th Division and incorporate into other divisions”).

<sup>9764</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 36-37; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 3-4, ERN (En) 00403579-00403580; CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 4, ERN (En) 00488706; T. 2 March 2016 (PHON Thol), E1/395.1, p. 46. *See also*, UNG Ren Interview Record, E3/402, 17 September 2009, p. 2, ERN (En) 00381032. The Chamber estimates the aerial distance between the Ban Lung and Veun Sai districts to be at least 30 kilometres. *See* Map of Ban Lung, Lumphat, Koun Mom, Ou Chum and Veun Sai Districts, E3/9190, undated, ERN (En) 01045062.

<sup>9765</sup> Standing Committee Minutes, E3/1612, 9 October 1975, p. 6, ERN (En) 00183398 (resolving to standardise divisions to three divisions at combined male-female combatant strength of 4,000); Rice Consumption Plan 1976, E3/3476, 4 January 1976, p. 2, ERN (En) 00003387 (indicating the composition of Division 801 as 5,423 regular and 500 reserve soldiers); RAK Joint Statistics of Armed Forces, E3/849, March 1977, ERN (En) 00183956 (indicating 5,284 personnel in March 1977, “including 41 elements, 24 of our comrades’ spouses and 4 young children”); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 56-57 (stating that the total number of soldiers was “more than 5,000” and that each regiment consisted of a logistical, military and political section).

<sup>9766</sup> Not to be confused with Sector 105 Secretary SAO Sarun. For SAO Sarun, *see* Section 12.5: Phnom Kraol Security Centre, para. 3039.

<sup>9767</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 42-43; T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 11; T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 28-29; T. 22 March 2016 (CHIN Kimthong),

06<sup>9768</sup> and Ta Leu<sup>9769</sup> served in that capacity until mid-1977, whereupon they were reassigned to Division 920 in Sector 105 (Mondulkiri). Former Division 14 regimental commanders UNG Ren<sup>9770</sup> and KEO Saroeun<sup>9771</sup> also briefly served as Division 801 Deputy Commanders in early to mid-1977.<sup>9772</sup> No replacements or appointments were made to these positions following this time as a result of the “chaotic” situation inside the division.<sup>9773</sup>

2865. Division 801 was subdivided into three regiments. Regiment 81 was initially posted to northern Ratanakiri before relocating to Bar Kaev to patrol the DK-Vietnam border region around Andoung Meas and Ou Ya Dav.<sup>9774</sup> Initially headed by Maut following the Division’s formation,<sup>9775</sup> the Regiment was subsequently led by KEO

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E1/406.1, p. 5; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 57-58; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 47, 74. Although CHHAOM Se identified the signature of “Rooun” as that of Division 801 Deputy Commander KEO Saroeun, the evidence (in particular, telegrams bearing the signature “Rooun” communicated before KEO Saroeun’s brief tenure as deputy commander in 1977 and after his arrest and execution later that year) consistently contradicts this assertion. *See* T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 30 (referring to telegram E3/1168, the witness asserts that “[t]he signature of Rooun – “Rooun” here referred to Keo Saroeun; it was Keo Saroeun who signed this letter, it was not Sou Saroeun”); Rice Consumption Plan, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing “comrade Rooun” as Division 801 “chair”); DK Telegram, E3/1164, 25 November 1976 (signed “Rooun”); DK Telegram, E3/1079, 25 December 1976 (signed “Rooun”); DK Telegram, E3/870, 5 April 1978 (signed “Rooun”); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 81-83; UNG Ren Interview Record, 23 October 2009, E3/84, p. 4, ERN (En) 00408396. The Chamber is accordingly satisfied that “Rooun” in contemporaneous evidence refers to SAO Saroeun, not KEO Saroeun.

<sup>9768</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 43; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 2, ERN (En) 00922117; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 5; CHIN Kimthong Interview Record, E3/9734, 19 May 2013, ERN (En) 00943563. *See also*, UNG Ren Interview Record, E3/402, 17 September 2009, p. 4, ERN (En) 00381034; Section 12.5: Phnom Kraol Security Centre, para. 3046.

<sup>9769</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 87. *See also*, DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714 (telegram from “Leu” to SAO Saroeun).

<sup>9770</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 73; T. 10 January 2013 (UNG Ren), E1/158.1, p. 83 (indicating that he remained for one month); UNG Ren Interview Record, 7 September 2009, E3/402, pp. 2-3, ERN (En) 00381032-00381033 (deposing that he was assigned to Phnom Penh in August 1977); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 90.

<sup>9771</sup> CHIN Kimthong Interview Record, E3/9734, 19 May 2013, ERN (En) 00943563. *See also*, CHHAOM Se and AN Sopheap DC-Cam Interview, E3/10569, 25 June 2012, pp. 89-90, 92, 94, ERN (En) 01079462-01079463, 01079465, 01079467.

<sup>9772</sup> It is unclear whether UNG Ren continued to occupy this position after being sent to Phnom Penh to attend study sessions in or about mid-1977. *See* T. 10 January 2013 (UNG Ren), E1/158.1, p. 83; UNG Ren Interview Record, 7 September 2009, E3/402, pp. 2-3, ERN (En) 00381032-00381033. KEO Saroeun was arrested in March or May 1977, detained at S-21 and executed in December 1977. *See below*, para. 2886.

<sup>9773</sup> DC-Cam Interview with CHHAOM Se and AN Sopheap, 25 June 2012, E3/10569, p. 147, ERN (En) 01079520. This is consistent with the spate of Division-wide purges conducted at around this time. *See below*, para. 2886.

<sup>9774</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 77; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 3-4, ERN (En) 00403579-00403580; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406212; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 6, ERN (En) 00922121.

<sup>9775</sup> T. 9 January 2013 (UNG Ren), E1/157.1, pp. 70-71.



Saroeun and PAO Sam On until at least April 1977, when the latter was removed at SAO Saroeun's request and replaced by Mao.<sup>9776</sup> Regiment 82 was stationed in Siem Pang district and charged with patrolling the DK-Laos border to the north.<sup>9777</sup> The regiment was commanded by UNG Ren from its inception in 1975 until early to mid-1977.<sup>9778</sup> Former Division 14 officer CHHAOM Se served as deputy commander until his appointment to the chairmanship of Au Kanseng Security Centre in late 1976 or early 1977,<sup>9779</sup> and was replaced as deputy commander by Son (or Sun).<sup>9780</sup> Regiment 83 was initially headed by Son (or Sun), who was followed by former Regiment 81 Deputy Commander Thy (or Thin) and Pra (or Bra) before his reassignment to Division 920.<sup>9781</sup> The regiment was posted to the north-eastern region of Ratanakiri province around Veun Sai and Ta Veang districts to patrol the DK-Laos-Vietnam border.<sup>9782</sup> Each regiment was further subdivided into military, political and logistical units.<sup>9783</sup>

2866. In addition to its patrolling duties, Division 801 and its regiments were tasked with assisting bases and cooperatives across the Northeast Zone with agricultural production.<sup>9784</sup> The division also comprised a "special" unit (802), artillery unit (803),

<sup>9776</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 99; T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 27, 30; DK Telegram, E3/1168, 30 March 1977, p. 1, ERN (En) 00916974 (requesting that Comrade Sam On be "transferred to the office and be replaced by Comrade Mao instead in accordance with *Angkar*'s recommendation."); DK Telegram, E3/1198, 5 April 1977 (telegram by "Sam Un" to "Rooun" on behalf of the Division 801 Political Section). *See also*, UM Keo Interview Record, E3/5173, 8 May 2009, p. 3, ERN (En) 00272660 ("The regimental commander was changed four times in a short period; Keo Savoeun [*sic*], Ta Mao, Comrade On and another one"); CHUM Cheat Interview Record, E3/5504, p. 6, ERN (En) 00398838 (indicating that PAO Sam On disappeared at about the same time as KEO Saroeun in 1977).

<sup>9777</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 77-78; T. 9 January 2013 (UNG Ren), E1/157.1, p. 70; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406212; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 3, ERN (En) 00403579.

<sup>9778</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 70; T. 10 January 2013 (UNG Ren), E1/158.1, p. 81; UNG Ren Interview Record, E3/402, 17 September 2009, p. 5, ERN (En) 00381035.

<sup>9779</sup> *See below*, paras 2867-2868.

<sup>9780</sup> DC-Cam Interview with CHHAOM Se and AN Sopheap, 25 June 2012, E3/10569, pp. 89, 95, ERN (En) 01079462, 01079468.

<sup>9781</sup> T. 9 January 2013 (UNG Ren), E1/157.1, pp. 70, 84; UNG Ren Interview Record, E3/402, 17 September 2009, p. 5, ERN (En) 00381035; DC-Cam Interview with CHHAOM Se and AN Sopheap, E3/10569, 25 June 2012, pp. 104-106, 109, ERN (En) 01079477-01079479, 01079482. The Chamber was unable to determine an approximate timeline of Regiment 83's leadership.

<sup>9782</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 77-78; DC-Cam Interview with CHHAOM Se and AN Sopheap, 25 June 2012, E3/10569, p. 106, ERN (En) 01079479.

<sup>9783</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 57.

<sup>9784</sup> Minutes of Meeting Division 801, E3/806, 16 December 1976, pp. 2-3, ERN (En) 00874987-00874988 (Reporting on the crop output by Regiments 81 and 82. Brother 89, *i.e.* SON Sen, comments that "[t]he Division's strategic direction or strategic task in that place [the vicinity of Roads 13 (Laotian border) and 19 (Vietnamese border) is to defend the border and reform the social image and geographical landscape there"]; T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 68, 75-78 (stating that Regiment 81 was assigned to patrolling the north along Road 19. Regiment 82 was tasked with the north to Ou Da Lav. Regiment 83 patrolled from Au Sedthei to the Dragon's Tail area by the border with Laos and

a female battalion (804), a hospital unit headed by LAY Sarim (805), a logistics and transportation battalion (806), a corrections office for minor offences at Au Tang chaired by *Ta Vanna* (809) and Au Kanseng Security Centre (810).<sup>9785</sup>

#### 12.4.2.2. Au Kanseng Security Centre

2867. Au Kanseng Security Centre was located to the west of Au Kanseng Lake, La Ban Siek commune, Ban Lung district, Ratanakiri province within Sector 102 of the Northeast Zone.<sup>9786</sup> The Security Centre was established between late 1976 and early 1977,<sup>9787</sup> coinciding with the resolution of General Staff Chairman SON Sen *alias* Khieu *alias* Brother 89<sup>9788</sup> in late August 1976 to “screen out no-good elements” and “concentrate [them] in one location”.<sup>9789</sup> The establishment of Au Kanseng also followed the arrest of Northeast Zone Secretary NEY Sarann *alias* Ya in September 1976.<sup>9790</sup> The Security Centre remained operational until the arrival of Vietnamese forces in early 1979.<sup>9791</sup>

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Vietnam); T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 30-31, 36-37; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 100; *East Region Army's Border Defense Efforts Cited: Northeast Army's Functions* (in FBIS collection), E3/1358, 20 August 1977, ERN (En) 00168288-00168289; *Revolutionary Army's Role in Northeast Praised* (in FBIS collection), E3/1362, 20 May 1978, ERN (En) 00170060-00170061.

<sup>9785</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 61-62; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406212; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 3, ERN (En) 00922118; CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 5, ERN (En) 00488707; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 3-4, 7, ERN (En) 00403579-00403580, 00403583; UM Keo Interview Record, E3/5173, 8 May 2008, p. 5, ERN (En) 00272662. *See also*, CHHAOM Se and AN Sopheap DC-Cam Interview, E3/10569, 25 June 2012, p. 129, ERN (En) 01079502.

<sup>9786</sup> Site Identification Report, E3/8024, 21 June 2009, p. 5, ERN (En) 00384800; T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 66-67; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 38; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 5-6; CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 3, ERN (En) 00488705; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406212.

<sup>9787</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 87; CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403574; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406213; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 6.

<sup>9788</sup> T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 71; T. 9 January 2013 (UNG Ren), E1/157.1, p. 70.

<sup>9789</sup> Minutes of Meeting (Deputy) Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183968 (SAO Saroeun was among those attending this meeting). This stance would be repeated over one year later in a meeting of divisional and regimental deputies. *See* Minutes of Logistics Meeting (Deputy) Secretaries of Divisions and Regiments, E3/810, 19 September 1976, p. 12, ERN (En) 00195350 (“Inside the army, it is imperative to educate [the soldiers] on the situational view and enemy manoeuvres and to fight against liberalism, attachment to the image and social ranks [...]. It is imperative to have an absolute stance and not to hesitate to screen out anti-revolutionary elements.”).

<sup>9790</sup> Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya.

<sup>9791</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 66, 68-69 (the re-education centre in Au Kanseng was under Division 801); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 6 (“that security centre was under the supervision of Division 801”); T. 2 March 2016 (PHON Thol), E1/395.1, p. 46 (“the re-

2868. Au Kanseng was operated by a committee consisting of former Division 14 officers CHHAOM Se and CHIN Kimthong, and former Battalion 806 officer Tim. Appointed by Battalion 806 Chairman *Ta Smien*, CHHAOM Se served as chairman from late 1976 until early 1979.<sup>9792</sup> CHIN Kimthong *alias* Chhang served as CHHAOM Se's deputy and was responsible for prisoner interrogations during the same period.<sup>9793</sup> Tim, who was in charge of security matters at Au Kanseng, served either as a member of the Security Centre committee or as Deputy Chairman alongside CHIN Kimthong.<sup>9794</sup> Although Witness CHIN Kimthong denied in court his role as deputy of the Security Centre and asserted it was Tim who exercised this function,<sup>9795</sup> the testimony and documentary evidence before the Chamber directly contradicts his uncorroborated account,<sup>9796</sup> and the Chamber rejects CHIN Kimthong's assertions in this regard. Between six and nine guards worked at Au Kanseng under Tim's supervision, including Nhok, Auy (or Ouy), Lay, Chuop, Chang and Set.<sup>9797</sup> A limited

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education school [...] was supervised by Division 801"); T. 10 January 2013 (UNG Ren), E1/158.1, p. 48 (the security centre at Au Kanseng was under the supervision of Division 801 and it was not under the supervision of the local authority). *See also*, CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403574-00403575; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 3, ERN (En) 00922118; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586.

<sup>9792</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 87; CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 4-5, ERN (En) 00406212-00406213; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 3, ERN (En) 00922118; T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 39, 55; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 7; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 4, ERN (En) 00403580.

<sup>9793</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 4, ERN (En) 00403580 ("I, Chhang, was deputy chairman in charge of interrogation and preparation of prisoner documents"); T. 2 March 2016 (PHON Thol), E1/395.1, p. 47 ("Se was the supervisor [...] and below him was Chhang"); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 3, ERN (En) 00272585 ("the Deputy Chairman responsible for the military was Chhang"); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 4, ERN (En) 00406212 ("Chhang who worked with me was the deputy chairman of the Re-education Centre at Au Kanseng"). *See also*, BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 13, ERN (En) 00843462 ("Yes [Se] was [chairman], and his deputy was Chhang [...] He was in charge of the soldiers."); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 ("There were only 3 cadres in charge of that prison; they were Se, Chhang, and another whose name I don't remember."); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 ("I knew Chhang who was one of the prison chiefs").

<sup>9794</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 47 (below Chhaom Se were Chhang and Tim); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213 ("Chhim Tim was deputy chairman in charge of techniques and arranging the guard and taking prisoners to work"); T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 40, 55, 90-91; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 7-8, 88.

<sup>9795</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 40 ("Se was the chief, and Tim was the deputy chief. And I was a member in charge of compiling the confessions or answers from the detainees."), 55 ("My actual role at Au Kanseng security centre was member and Se was the chairman and Tim was the deputy"); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 66 ("Tim was the deputy to Se and he was in charge of the security at Au Kanseng Security Centre [...] I simply took notes of the confessions or responses of the prisoners.").

<sup>9796</sup> *See above*, fn. 9793.

<sup>9797</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 40-41; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 8, 14; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 4, ERN (En)

number of Sector Military soldiers were also assigned to security roles at the Security Centre.<sup>9798</sup>

#### 12.4.2.3. Oversight of Au Kanseng Security Centre by Division 801

2869. Until late 1977, Au Kanseng reported to Battalion 806, the logistics unit of Centre Division 801 based in or near Veun Sai.<sup>9799</sup> CHHAOM Se maintained a direct relationship with the various chairmen of Battalion 806 including *Ta Smien* (until mid-1977<sup>9800</sup>), *Ta Koy* and *Ta Mon*, and routinely submitted reports on lesser Security Centre affairs to the Division through them.<sup>9801</sup> Smien, Koy and Mon made frequent trips to Au Kanseng to hold meetings with Security Centre staff to discuss security and living conditions at the Security Centre, as well as the general situation inside Au Kanseng.<sup>9802</sup> However, reporting through Battalion 806 had ceased by 1978 on Division 801 Deputy Commander *Ta San*'s direction, whereupon all Security Centre matters were reported directly to SAO Saroeun.<sup>9803</sup>

2870. Further, the Chamber heard consistent evidence that throughout the Security Centre's operation, reports concerning prisoner interrogations and confessions were not communicated through Battalion 806 but were sent directly to Division 801 commander SAO Saroeun.<sup>9804</sup> Only Witness CHIN Kimthong offered partly conflicting evidence in

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00403580. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9798</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 45-46 (“[T]here were also security forces from the sector and, actually, there were two of them”).

<sup>9799</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 79; CHHAOM Se Interview Record, E3/3985, 3 March 2010, pp. 2-3, ERN (En) 00488699-00488700; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 39.

<sup>9800</sup> *See below*, para. 2886.

<sup>9801</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 41-42; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 8, 89; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 4, 6, ERN (En) 00403580, 00403582. *See also*, CHHAOM Se Interview Record, E3/3985, 3 March 2010, pp. 2-3, ERN (En) 00488699-00488700.

<sup>9802</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 55-56; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 8-9; CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077.

<sup>9803</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 94 (“06 used to be in charge of this section, and later on he did not ask me to report things to him and he asked me to report directly to the commander of the division”).

<sup>9804</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 43, 94-95 (“And with regard to the report that we obtained from the confessions, for example, we did not report to or copy to these heads of the battalions but to the division commander instead”), 97; T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 11. *See also*, CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 3, ERN (En) 00488700 (“But throughout this period [referring to the three years from 1976] the work concerned with important matters such as the confessions that contained two or three pages, I also had to report directly to 801. As for the common political affairs, the control of forces, other activities, preventive measures, I reported through *Ta Smien*.”).

this regard. He initially testified that he did not know whether CHHAOM Se reported sensitive issues to anyone beyond Battalion 806.<sup>9805</sup> In response to a question by counsel for the Civil Parties however, and consistently with his 2009 statement to the OCIJ,<sup>9806</sup> he affirmed without elaboration that *all* communication to Division 801 passed through Battalion 806.<sup>9807</sup> In yet another statement to the OCIJ in 2013, the witness asserted that prisoner statements were forwarded by CHHAOM Se to SAO Saroeun.<sup>9808</sup> While the witness was not questioned in court about these discrepancies, the Chamber considers the testimony of Witness CHHAOM Se, who personally forwarded such confessions, to be more reliable on this point. CHHAOM Se was questioned at length and testified – consistently with his own prior statement to OCIJ investigators – that confession reports were never forwarded to battalion chiefs but were instead forwarded directly to SAO Saroeun.<sup>9809</sup> In light of his former position and consistent testimony, the Chamber finds CHHAOM Se’s account to be credible and is satisfied that reports concerning prisoner interrogations were forwarded directly to Division 801 Commander SAO Saroeun for the duration of the Security Centre’s operation to the exclusion of Battalion 806.

2871. The frequency of dispatches to the Division depended on their urgency and the inflow and outflow of prisoners at Au Kanseng.<sup>9810</sup> CHHAOM Se forwarded interrogation reports and confessions extracted at Au Kanseng either by telegram or

<sup>9805</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 42 (“Q. As regards sensitive issues and regarding confidential reports, did [*Ta Se*] address them directly to *Ta Saroeun* or did he meet *Ta Saroeun* directly? A. I did not know whether he went to meet *Ta Saroeun* or any other person.”).

<sup>9806</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582 (“After the interrogations, we made summary reports to be sent through *Ta Mon*, the commander of Unit 806, to *Ta Saroeun* at division level. I reported to *Se*, the office chairman, and *Se* reported to *Ta Mon*”).

<sup>9807</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 8 (“Q. Yesterday, you also testified that the communication between the centre and Division 801 had to go through 806. It means it has to pass through *Ta Smien*, Is that correct? A. Yes, it is.”). *See also*, NUON Chea Closing Brief, para. 520 (raising the discrepancy between CHHAOM Se and CHIN Kimthong’s evidence on this point).

<sup>9808</sup> CHIN Kimthong Interview Record, E3/9734, 19 May 2013, ERN (En) 00943563 (“When I arrived there, *Ta Cheng* assigned me to write down statements of prisoners when he questioned them. I was [*sic*] then handed in those written statements to *Ta Se* who then transferred the statements to the division commander.”).

<sup>9809</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 94-95 (“And with regard to the report that we obtained from the confessions, for example, we did not report to or copy to these heads of the battalions but to the division commander instead”) *See also*, CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 3, ERN (En) 00488700 (“But throughout this period [referring to the three years from 1976] the work concerned with important matters such as the confessions that contained two or three pages, I also had to report directly to 801. As for the common political affairs, the control of forces, other activities, preventive measures, I reported through *Ta Smien*.”).

<sup>9810</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 95; CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575.

radio to SAO Saroeun,<sup>9811</sup> who instructed that individual detainees were “to be resolved, to be lessened or to be re-educated” depending upon the severity of their alleged offending or the nature of the information elicited.<sup>9812</sup> CHHAOM Se attended meetings with SAO Saroeun in person “whenever there was any issue relating directly” to Au Kanseng Security Centre.<sup>9813</sup>

#### 12.4.2.4. Oversight of Division 801 by the RAK General Staff

2872. The evidence before the Chamber overwhelmingly demonstrates that overall authority at Au Kanseng Security Centre was vested in the RAK General Staff. SAO Saroeun reported directly to SON Sen at the General Staff headquarters in Phnom Penh via radio, by messenger and in person.<sup>9814</sup> Witness CHIN Kimthong encrypted SAO Saroeun’s reports to the General Staff during his posting to Division 14,<sup>9815</sup> and saw letters seeking the advice of the “upper echelon” on topics including battlefield issues, the border situation, the health of subordinates and medical supplies.<sup>9816</sup> At the time, he also personally delivered to the General Staff in Phnom Penh a letter from SAO Saroeun addressed “to *Bong Khieu*”, *i.e.* SON Sen.<sup>9817</sup>

2873. Former Division 801 Deputy Commander and later General Staff employee UNG Ren confirmed in court that SAO Saroeun sent reports during the DK period to the upper level, specifically SON Sen, who “was in charge above [the] division level”, and POL Pot.<sup>9818</sup> Questioned in court about his awareness of Division 801 seeking

<sup>9811</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 97-98; CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 4, ERN (En) 00488701; T. 9 January 2013 (UNG Ren), E1/157.1, pp. 60, 62; UNG Ren Interview Record, E3/402, 17 September 2009, p. 5, ERN (En) 00381035. *See also*, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 6, ERN (En) 00250075.

<sup>9812</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 97, 103; CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 4, ERN (En) 00488701. *See also*, CHIN Kimthong Interview Record, E3/9734, 19 May 2013, ERN (En) 00943563; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 9, ERN (En) 00403585.

<sup>9813</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 14; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 9, ERN (En) 00406217; CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 43 (CHHAOM Se “did not go to see the superiors every day”).

<sup>9814</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 33; T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 97-98.

<sup>9815</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 28-29, 36-37.

<sup>9816</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 34.

<sup>9817</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 35; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 100.

<sup>9818</sup> T. 10 January 2013 (UNG Ren), E1/158.1, p. 86 (“Son Sen was also the upper level; Pol Pot was also the upper level. And as I indicated earlier, when we had to make a report on politics or on military, these two were the main figures that reports would be sent to; 05 also made a report to them. And besides that, I did not know whether there were other people that division had to report to because above division,

instructions from the Party Centre, CHHAOM Se responded, “Yes, of course. We had to communicate. If we do not communicate, we cannot lead the unit.”<sup>9819</sup> In this regard, the Chamber has before it six telegrams addressed directly to “Brother 89” from SAO Saroeun.<sup>9820</sup> Dated between November 1976 and April 1978, the telegrams detail a vast range of military and non-military matters, including the general situation across all Northeast Zone sectors (101, 102, 104 and 107), soldier welfare and discipline across Division 801, civilian and military enemies and their re-education, seasonal conditions and rice yields. One such telegram bears multiple handwritten annotations to the attention of “*Angkar*” dated 5 April 1977.<sup>9821</sup> A similarly annotated telegram from Regiment 81 Commander PAO Sam On to SAO Saroeun details the military situation inside regiment and is copied to Brother “8[illegible]” and “Brother 81”.<sup>9822</sup> Consistent with evidence of the subordination of SEAT Chhae *alias* Tum *alias* 81 to SON Sen within the General Staff,<sup>9823</sup> the number of telegrams from other RAK Centre Divisions bearing the two as co-recipients<sup>9824</sup> and latter’s tendency to annotate telegrams channelled to the Party Centre,<sup>9825</sup> the Chamber finds that SON Sen was not only the intended recipient of this telegram, but that he received it prior to forwarding it to the Party Centre.

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there were Pol Pot and Son Sen. [...] Regarding the level above the division, first, on the military side, there was Son Sen who was in charge above division level. And above Son Sen, I would say there would be Pol Pot and no one else who would be above Son Sen”). Not to be confused with Comrade R(a)en. See Section 5: Administrative Structures, para. 428.

<sup>9819</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 25.

<sup>9820</sup> DK Telegram, E3/1164, 25 November 1976; DK Telegram, E3/1079, 25 December 1976; DK Telegram, E3/1061, 24 March 1977; DK Telegram, E3/1060, 25 March 1977; DK Telegram, E3/1168, 30 March 1977; DK Telegram, E3/870, 5 April 1978.

<sup>9821</sup> DK Telegram, E3/1060, 25 March 1977 (bearing annotation “To *Angkar*” dated 5 April 1977).

<sup>9822</sup> DK Telegram, E3/1198, 5 April 1977, ERN (En) 00916978.

<sup>9823</sup> Case 001 Transcript (KAING Guek Eav), E3/56, 26 May 2009, pp. 58-59, ERN (En) 00334467-00334468 (SEAT Chhae “was the Deputy Secretary of the Standing Committee of the General Staff”). SEAT Chhae was arrested, detained and executed at S-21. See Section 12.2.8.3.2: S-21 Security Centre: SEAT Chhae *alias* Tum.

<sup>9824</sup> See e.g., DK Telegram, E3/1100, 20 May 1976, ERN (En) 00517910-13 (Division 920); DK Telegram, E3/1162, 26 May 1976, ERN (En) 00525763-00525765 (Division 310); DK Telegram, E3/1212, 29 August 1976, ERN (En) 00782244 (Division 502); DK Telegram, E3/1199, 6 April 1977 (Division 920), ERN (En) 00531038; DK Telegram, E3/1127, 29 [illegible] 1977, ERN (En) 00983609-00983610 (Division 164); DK Telegram, E3/1099, 9 June 1977, ERN (En) 00509691 (Division 920); DK Telegram, E3/1080, 13 July 1977, ERN (En) 00143512-13 (Division 164); DK Telegram, E3/1033, 24 August 1977, ERN (En) 00335205 (Division 450).

<sup>9825</sup> See e.g., DK Telegram, E3/1135, 19 October 1976, ERN (En) 00505040; DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038; DK Telegram, E3/1082, 12 August 1977, ERN (En) 00233972; DK Telegram, E3/1033, 14 August 1977, ERN (En) 00335205.

2874. Both UNG Ren and CHHAOM Se testified that directives of the upper echelon were relayed to lower cadres through SAO Saroeun.<sup>9826</sup> Witnesses uniformly testified that SAO Saroeun frequently attended meetings in Phnom Penh with the “upper echelon”.<sup>9827</sup> Contemporaneous lists before the Chamber confirm the SAO Saroeun’s attendance at General Staff “revolutionary self-criticism study courses” along with Division 801 regimental commanders and other independent RAK division and regiment chiefs.<sup>9828</sup>

2875. The Chamber is satisfied that SON Sen was kept apprised of the situation inside Division 801, including prisoner interrogations inside Au Kanseng Security Centre. Consistently with the fact that he annotated reports that were channelled through the General Staff to the Party Centre,<sup>9829</sup> the Chamber is satisfied that, as the Chairman of the General Staff, SON Sen had overall authority for Au Kanseng and regularly relayed information to *Angkar* before furnishing instructions to lower echelons, including Au Kanseng Security Centre.

2876. Regarding operational authority at Au Kanseng, the Chamber heard consistent evidence that no independent authority was vested in Security Centre staff. Witness CHIN Kimthong asserted that decisions to arrest and send soldiers to Au Kanseng were “made at the upper level”.<sup>9830</sup> Witness CHHAOM Se testified that he never received

<sup>9826</sup> T. 10 January 2013 (UNG Ren), E1/158.1, p. 7 (in response to whether Sao Saroeun required authorisation from the Party Centre, “We knew of the instructions from the Upper Echelon through him, only through the meetings that he relayed those instructions to us”); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 11-13 (“[F]ollowing his meeting[s], [Sao Saroeun] disseminated information or direction from the upper authority as to *how we are going to execute the plan* [...] As for the security office [of which] I was in charge, *we had to monitor the execution of the plan*, as well, and we had to train our people, and we [had] to strengthen ourselves with all the components to which we belonged. *We had to make sure that we work[ed] along the line with the orders from the upper authority.*” [emphasis added]). See also, CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 7, ERN (En) 00922122; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9827</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 11 (Sao Saroeun “frequently travelled back and forth from Phnom Penh to the Northeast Zone – every year”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 33 (“When [*Ta Saroeun*] was immediately in Ratanakiri province, one month after his arrival in Ratanakiri, he went to Phnom Penh”); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 60-61 (“Sometimes I saw [Sao Saroeun] going up to Phnom Penh every month, or sometime[s] every two month”); UNG Ren Interview Record, E3/402, 17 September 2009, p. 4, ERN (En) 00381034.

<sup>9828</sup> First General Staff Training Session, E3/1585, 20 October 1976, pp. 1, 6, 7, ERN (En) 00897649, 00897654-00897655 (identifying SAO Saroeun (“Comrade Roen”), LAY Sarim, PAO Sam On, *Ta Mao*, *Ta Vanna* as being in attendance, among a total of 31 participants from Division 801); Second General Staff Training Session, E3/1142, 23 November 1976, ERN (En) 00535800 (identifying “Comrade Roen” as being in attendance).

<sup>9829</sup> See e.g., DK Telegram, E3/1135, 19 October 1976, ERN (En) 00505040; DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038; DK Telegram, E3/1082, 12 August 1977, ERN (En) 00233972; DK Telegram, E3/1033, 24 August 1977, ERN (En) 00335205. See below, para. 2906 (fn. 9940).

<sup>9830</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 10-11.



instructions or orders from NUON Chea or any leader other than SAO Saroeun.<sup>9831</sup> Both CHHAOM Se and CHIN Kimthong consistently declared that Security Centre staff did not have the right to exercise independent authority over the arrest, release or execution of detainees without SAO Saroeun's authorisation.<sup>9832</sup>

2877. With respect to these contentions, the Chamber has considered consciousness of guilt owing to the witnesses' positions and responsibilities at the time as a motivating factor to shift responsibility for the treatment of prisoners at the Security Centre. In light of the abundance and consistency of evidence demonstrating SAO Saroeun's considerable oversight at the Security Centre, the Chamber accepts as credible CHHAOM Se and CHIN Kimthong's assertions that ultimate operational authority at Au Kanseng did not vest in them.

#### 12.4.2.5. Oversight by the Northeast Zone Committee

2878. Concerning the relationship between Division 801 and the Northeast Zone Committee, CHHAOM Se testified that a line of "mutual assistance" and cooperation existed between the two.<sup>9833</sup> Several contemporaneous documents before the Chamber bear evidence of such cooperation. In February 1976, the Standing Committee resolved that "the military will report to the bases and the bases will report [the] information to the General Staff" following the escalation of "problems at the border" with Vietnam. Referring specifically to Ratanakiri province and the leadership of Northeast Zone

<sup>9831</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 59.

<sup>9832</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 95 ("It was for [SAO Saroeun] to make the decision [...] the person should be arrested or disciplinary actions shall be taken for that particular individual."), 104 ("Regarding the execution[s], I, myself, never issued any orders"), 106 (confirming that the decision to release detainees was decided at the division level by the division secretary); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 15-16 ("We did not arbitrarily accuse anyone of being [an] enemy and we were not allowed to exert any torture against the prisoner, either". The witness affirmed that he "exercised no authority in order to implement any decisions and that all decisions were exercised by Mr Sou Saroeun, whether it concerned the liberation or execution of prisoners"), 42 ("First and foremost, we were obliged to implement the policy"); CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 8-9, ERN (En) 00406216-00406217; CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 3, ERN (En) 00406222 ("[T]he upper echelon always had a plan before they did something"); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 11 ("Security centre supervisor did not have any authority to make an arrest of anyone in his or her respective unit. As for the release, he also did not have that authority. He needed to seek permission from the upper level."); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 7-8, ERN (En) 00403583-00403584.

<sup>9833</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 79-81 ("It was our intention to cooperate, to mutually assist each other, because the [Northeast] Zone was close to the area we were deployed.").

Secretary Ya, the Standing Committee determined that, “[t]he important thing is that the army and the bases are in agreement and stick together”.<sup>9834</sup>

2879. In a telegram dispatched to SON Sen at about the time of Ya’s arrest and Au Kanseng’s establishment, SAO Saroeun reports the organisation of “[a] number of forces [...] in collaboration with the bases in order to arrest the enemies”, and further indicates a wide-ranging initiative for Division 801 to “help the people at all costs, *i.e.* harvesting and threshing rice”, noting that generally, the Division “have to do their best” in the Northeast Zone.<sup>9835</sup>

2880. Ya’s arrest saw the promotion of his former deputy, UM Neng *alias* Vy *alias* Vong, to the position of Northeast Zone Secretary, with *Ta* Lav as deputy.<sup>9836</sup> A stream of reports to and from the Zone Committee detailing enemy activity and networks in the Northeast Zone is apparent from as early as February 1977. In a telegram to S-21 Chairman KAING Guek Eav *alias* Duch, Vy requests the “hasty” interrogation of “BUO Khao” from Kok Lak commune “in order to smash his string in Se San at the right time”, naming among his associates Nou and CHAN Deng.<sup>9837</sup> In a telegram to SON Sen in late March 1977, Division 801 Commander SAO Saroeun reports the incrimination of these three in the confession of Say and their “stirring [of] the people” in Sector 101.<sup>9838</sup> SAO Saroeun reported the hunt for this network’s “enemy strings” to SON Sen again a day later: “A [contemptible] Nou and A Chan Deng etc [had]

<sup>9834</sup> Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 2, ERN (En) 00182626.

<sup>9835</sup> DK Telegram, E3/1164, 25 November 1976, ERN (En) 00516711-00516712.

<sup>9836</sup> See *e.g.*, DK Telegram, E3/1122, 11 January 1977 (telegram by Vy to Party Centre); DK Telegram, E3/1058, 20 February 1977 (telegram by Vy addressed to Duch); DK Telegram, E3/240, 15 June 1977 (telegram by Vy to Party Centre). See *below*, Section 12.4.6: Arrival and Execution of the Jarai); DK Telegram, E3/919, 13 January 1978 (telegram by Vy to Party Centre); DK Telegram, E3/157, 21 April 1978 (telegram by Vy to Party Centre); DK Telegram, E3/943, 25 April 1978 (telegram by Vy to Party Centre); T. 26 July 2012 (ROCHOEM Ton), E1/97.1, p. 34 (“As for the Northeast zone, there were Ya and *Bong* Vong”). See also, NORNG Sophang Interview Record, 28 March 2009, E3/67, p. 4, ERN (En) 00483966 (“[T]he Northeast Zone where Mr Vi was in charge”); KLAN Vet Interview Record, 8 November 1009, E3/125, p. 5, ERN (En) 00404464 (referring to *Ta* Lav as having had “a role in the zone committee”); S-21 Confession – KHEANG Han *alias* But, E3/7388, 18 December 1978, ERN (En) 00143701 (referring to Vy and Lav being at a meeting with *Angkar* in 1975).

<sup>9837</sup> DK Telegram, E3/1058, 20 February 1977, ERN (En) 00583681 (“BUO Khao, who was sent from the North Zone, has been a cadre since the revolutionary struggling period. He is a Kavet ethnic minority in Kok Lak commune, Veun Sai Cheung district, located to the north of Se San River. Comrade Thi arrested him and sent him here. Please interrogate him hastily in order to smash his string in Se San at the right time.”).

<sup>9838</sup> DK Telegram, E3/1061, 24 March 1977, ERN (En) 00538730.

implicated other [...] names” but “the base simply ignored it”.<sup>9839</sup> BOUR Khav (BUO Khao) was executed at S-21 in October 1977.<sup>9840</sup>

2881. The close collaboration between the RAK and Zone Committee in the hunt for enemies is further evident in a telegram from Division 801 Deputy Commander Leu to SAO Saroeun dated late April 1977, where “the problem of Li” is reported as having been “handed over” to *Om* Lav. It notes that “*Om* Lav has been making the arrests” regarding enemies across cooperatives in Sector 107, stating that they were “still not finished” and reports Lav’s request for the Division “to cooperate with him closely and to monitor and to further cooperate”.<sup>9841</sup>

2882. A telegram by Vy in mid-June 1977 to the Party Centre reports on “secret measures” being taken by Battalion 81 Deputy Commander Thy against enemies in mobile units and rubber and cotton plantations. Specific references to the networks of enemies in Sector 107 and Stung Treng (Sector 104), as well as those connected with IN Tam and CHENG Heng; two of the “seven traitors” of the Khmer Republic.<sup>9842</sup> This same telegram reported to the Party Centre the arrest and detention of a group of Jarai in Sector 107 by Division 801 forces.<sup>9843</sup> Beside reporting the matter up the DK hierarchy, there is no evidence to suggest the Zone’s further involvement in the Jarai’s arrest or detention.

2883. With respect to the division of authority between Division 801 and the Zone Committee, the Chamber has already found that the Division regularly reported to the General Staff on both military and civilian matters.<sup>9844</sup> On the other hand, there was insufficient evidence to delineate the extent of the Zone Committee’s mandate with respect to civilian affairs. Concerning military affairs, while limited references point to the existence of a Northeast Zone Military headed by *Ta* Thoat,<sup>9845</sup> there was no evidence to suggest the Zone Committee’s direct involvement in the execution of

<sup>9839</sup> DK Telegram, E3/1060, 25 March 1977, ERN (En) 00574315.

<sup>9840</sup> See below, para. 2886.

<sup>9841</sup> DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714.

<sup>9842</sup> For IN Tam and CHENG Heng, see Section 3: Historical Background, fn. 556.

<sup>9843</sup> DK Telegram, E3/240, 16 June 1977, ERN (En) 00897667-00897668.

<sup>9844</sup> See above, para. 2873.

<sup>9845</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 10, ERN (En) 00406218 (“*Ta* Thoat was responsible for the Military Zone [after 17 April 1975]”. Following the removal of Ya as Northeast Zone Secretary, “*Ta* Thoat was still responsible for the military.”). The Chamber has found that a limited Zone Military presence existed at Au Kanseng Security Centre. See above, para. 2868.

arrests, and the Chamber has found that the foregoing arrests were in fact carried out by Division 801 forces.<sup>9846</sup> SAO Saroeun's elevation to the role of Northeast Zone Secretary shortly before the collapse of the DK regime further demonstrates the significant degree of trust that he enjoyed from the Party Centre and the predominant role that Division 801 played in the Northeast Zone.<sup>9847</sup>

2884. The Chamber is satisfied that while a high degree of cooperation existed between Division 801 and the Northeast Zone in the hunt for enemies and, to a lesser extent, agricultural production, the execution of arrests and detentions within the Northeast Zone was the sole jurisdiction of Division 801, which was accountable to the General Staff. Consistently with its findings that Au Kanseng Security Centre was subordinated to Division 801, the Chamber finds that the Northeast Zone Committee did not maintain oversight of the Security Centre or its operations. It is nevertheless satisfied that the Zone Committee did report the progress of internal purges across the Zone and inside Division 801 directly to the Party Centre.

#### 12.4.3. *Purpose, Location and Layout*

2885. Various referred to by witnesses as a “security”, “re-education” and “correction” centre or “prison”,<sup>9848</sup> Au Kanseng initially served as a detention and corrections centre for Division 801 soldiers who had been sent for re-education as a result of minor wrongdoings.<sup>9849</sup> Ill-disciplined soldiers and suspected internal enemies were reformed through indoctrination or reinforcement of the Party line.<sup>9850</sup> This

<sup>9846</sup> See above, paras 2878-2882. See below, paras 2893, 2935.

<sup>9847</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 11; CHHAOM Se Interview Record, 31 October 2009, E3/405, p. 10, ERN (En) 00406218.

<sup>9848</sup> For “re-education centre”, see T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 40, 43, 45; T. 2 March 2016 (PHON Thol), E1/395.1 (generally); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 71. For “security centre”, see T. 21 March 2016 (CHIN Kimthong), E1/405.1 (generally); T. 22 March 2016 (CHIN Kimthong), E1/406.1 (generally). See also, T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 87 (“correction centre”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 56 (“prison”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 37 (“the prison was called Au Kanseng prison”).

<sup>9849</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 45 (“[A]t the beginning there were about five to 60 prisoners and later on the number increased”); CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 5-6, ERN (En) 00406213-00406214 (the initial 50 prisoners were all soldiers; in 1977 there were no civilians or plantation union workers. “The prisoners were a mix of soldiers that had been arrested and brought in from units subordinate to Division 801”).

<sup>9850</sup> Minutes of Logistics Meeting (Deputy) Secretaries of Divisions and Regiments, E3/810, 19 September 1976, p. 12, ERN (En) 00195350 (“But [we must] be most especially vigilant of the enemy attacking from inside by boring holes inside the bases and our army. it is imperative to thwart them by frequent and clear education on the revolutionary line and the Party Statutes.”); DK Telegram, E3/1164, 25 November 1976, ERN (En) 00516711 (indicating organisational measures to arrest suspected enemies, examine those implicated by enemy confessions, “absolutely” remove “any company or squad

continued with the commencement of internal purges of Division 801 in late 1976, with lower-ranking Division 801 soldiers implicated in confessions also being sent to Au Kanseng for correction.<sup>9851</sup>

2886. As internal purges expanded across the Northeast Zone, a small number of CPK cadres were arrested, detained and executed at S-21 between 1976 to 1978, including Northeast Zone Secretary NEY Sarann *alias* Ya,<sup>9852</sup> Northeast Zone Committee Member and Rubber Plantation Chief TOUCH Soeun *alias* Tum,<sup>9853</sup> Veun Sai District Secretary MOUY Pay,<sup>9854</sup> Lumphat Leu and Krom District Secretaries KHORN Thin and SAO Thuok *alias* Phan<sup>9855</sup> and Kok Lak District Secretary PUY Ke *alias* BUOR Khav.<sup>9856</sup> Division 801 personnel were similarly arrested, detained and executed at S-

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cadres who are inactive, deceitful or lazy” and gradually arrest “[t]hose who affiliated to political tendency”); T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 86 (“[A]t the time, the situation at the border was chaotic, and a lot of people in the army were not properly disciplined. And for that reason, at each regiment, they had to make sure that a system was in place to discipline those people who were free and ill-disciplined [...] that’s why a centre was set up, so that the [...] irregular elements could be contained and detained”), 88 (“[P]eople who were holding the rank of captain or major would not be subjected to be sent to this centre”); T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 42 (“I could also note that it was a transitional period, the period to transfer the society into a social one, and people had to build their view and stance -- social stance [...] we would impart or indoctrinate or educate people to make sure they could be corrected, should be following the social line or policy”). *See also*, CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575; CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 4, 7, ERN (En) 00406212, 00406215; CHHAOM Se Interview Record, E3/407, 8 November 2009, pp. 2-3, ERN (En) 00406221-00406222.

<sup>9851</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 63-64; CHIN Kimthong Interview Record, E3/9734, 9 May 2013, ERN (En) 00943564 (“I saw they arrested and sent many people to Au Kanseng [as part of the purge of Division 801 in mid-1977]”). *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213; DK Telegram, E3/1164, 25 November 1976, ERN (En) 00516711; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9852</sup> Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya.

<sup>9853</sup> S-21 list of prisoners, E3/9905, undated, ERN (En) 01398940 (TOUCH Soeun *alias* Tum, entered 23 March 1978); S-21 list of prisoners interrogated on 28 April 1978, E3/1935, 28 April 1978, ERN (En) 00864801 (TOUCH Soeun *alias* Tum, “Chief of Ratankiri Rubber Plantation”, entered 22 March 1978). For descriptions of Tum’s position, *see* T. 2 March 2016 (PHON Thol), E1/395.1, pp. 37, 41; PHON Thol Interview Record, E3/5172, p. 3, ERN (En) 00272585; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 32-33, 35-36.

<sup>9854</sup> S-21 list of prisoners admitted on 12 November 1978, E3/10212, undated, ERN (En) 01397695 (entry no. 3, MUOY Poy, “Secretary of Veun Sai District, Sector 101”); S-21 list of Northeast Zone prisoners, E3/2257, 6 December 1978, ERN (En) 00747641 (entry no. 7, MOUY Pay, “removed”, “Secretary of Vensai district, Sector 101”).

<sup>9855</sup> S-21 list of prisoners smashed on 31 December 1978, E3/10455, ERN (En) 01248071 (entry no. 70, KHORN Thin *alias* Vieng Khann, “Secretary of Lumphatt Leu District”, entered 1 December 1978); S-21 list of prisoners admitted on 16 November 1978, E3/10212, undated, ERN (En) 01397702 (entry no. 1, SAO Thuok *alias* Phan, “Member of Sector 102 and Secretary of Lamphat Kraom District”, entered 16 November 1978).

<sup>9856</sup> S-21 list of prisoners smashed on 31 October 1977, E3/2285, 1 November 1977, ERN (En) 01564832 (entry no. 97, PUY Ke *alias* BUOR Khav, “Secretary of Kok Lak District”).

21 during this period,<sup>9857</sup> including Regiment 81 Commander KEO Saroeun,<sup>9858</sup> Unit 802 Chief NUON Lauch *alias* Phaath,<sup>9859</sup> Unit 803 Chief IENG Heang *alias* Han,<sup>9860</sup> Unit 805 Chief LAY Sarim<sup>9861</sup> and Unit 806 Chief HANG Keo *alias* Smien.<sup>9862</sup> There was no evidence to suggest that any or all of these detainees were incarcerated in, or otherwise transited through, Au Kanseng Security Centre prior to their imprisonment in S-21. To the contrary, the evidence was clear in demonstrating that there were no prisoner transfers between Au Kanseng and S-21, and that cadres arrested in the Northeast Zone were sent directly “to Phnom Penh”.<sup>9863</sup> The Chamber has accordingly

<sup>9857</sup> See e.g., S-21 list of prisoners to be interrogated at house “Cha”, E3/2263, 19 November 1976, p. 3, ERN (En) 01339126; S-21 Daily Controlling List, E3/10770, various dates, p. 141, ERN (En) 01460556 (recording 27 prisoners from Division 801 as at 25 July 1977); S-21 list of prisoners admitted in July 1977, E3/9954, 5 August 1977, pp. 36-37, ERN (En) 01563492-01563493; S-21 list of prisoners, E3/10073, 18 October 1977, p. 6, ERN (En) 01397550; S-21 list of prisoners, E3/8600, undated, p. 22, ERN (En) 01321735; S-21 list of prisoners admitted on 22 June 1978, E3/10196, 26 June 1978, p. 2, ERN (En) 01548767.

<sup>9858</sup> S-21 list of prisoners smashed on 9 December 1977, E3/2286, undated, p. 501, ERN (En) 00873622 (entry no. 189, KEV Saroeun *alias* Seng, Division 801, “Member of Division”, entry date listed as “5.77”); S-21 Confession – KEV Seng *alias* Saroeun, E3/2951, 5 June 1977, ERN (En) 00783145-007856 (cover page of confession dated 8 October 1977); Prisoner Biography – KEO Saroeun, E3/9276, undated, ERN (En) 01184741 (indicating date of arrest as 25 March 1977); T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 99-100 (KEO Saroeun “was called for a study session in Phnom Penh and he disappeared” and confirming S-21 record).

<sup>9859</sup> S-21 list of prisoners admitted in July 1977, E3/9954, 5 August 1977, ERN (En) 01563492 (entry no. 1, NUON Lauch *alias* Phaath, Chairperson of Battalion 802, entered 30 July 1977).

<sup>9860</sup> S-21 list of prisoners admitted on 22 June 1978, E3/10196, 26 June 1978, p. 2, ERN (En) 01548767 (entry no. 11, IENG Heang *alias* Han, Secretary of Battalion 803, in charge of division artillery).

<sup>9861</sup> T. 22 March 2016 (CHHIN Kimthong), E1/406.1, p. 10 (“Q. [W]as Lay Sarim also sent to the Au Kanseng Security Centre? A. Lay Sarim was not sent to Au Kanseng Security Centre. However, I indirectly heard that Lay Sarim was sent to Phnom Penh.”); S-21 Confession – LAY Sarim, E3/3637, 23 May 1977, ERN (En) 00779037-00779054; S-21 Confession – LAY Sarim, E3/3638, undated, ERN (Kh) 00514814-00514998.

<sup>9862</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 89 (“After *Ta* Smien was removed from the unit, *Ta* Koy and Mon were in charge of the unit”); CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 4, ERN (En) 00488706; S-21 list of prisoners admitted on 12 June 1977, E3/9646, 29 June 1977, ERN (Kh) 01017034 (entry no. 3, HANG Keo *alias* Smien, Secretary of Battalion 806 in Division Office, Division 801).

<sup>9863</sup> T. 9 January 2013 (UNG Ren), E1/157.1, p. 95 (stating that KEO Saroeun was called to Phnom Penh, where he “met [his] fate”); UNG Ren Interview Record, E3/84, 23 October 2009, pp. 2-3, ERN (En) 00408394-00408395; T. 11 January 2013 (CHHAOM Se), E1/159.1, pp. 102-103 (rejecting that battalion chief “Chhaom” was detained at Au Kanseng and stating that he heard that Chhaom “had been sent to Phnom Penh” and never returned); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403576 (“Cadres from Ratanakiri were transported to Phnom Penh on [*sic*] van or by plane. Some returned and some disappeared.”); CHHAOM Se Interview Record, E3/9459, 8 May 2013, pp. 5, ERN (En) 00922120 (“Elements accused of being traitors were called to Phnom Penh, but never seen to have returned [...] for example, in the case of the Secretary of Sector 101, when they took him to Phnom Penh, they put *Ta* Thin in replacement of the military side.”), 8, ERN (En) 00922123 (“Q. Do you know LAY Sarim? A. I know him [...] but he was never detained in my place [*i.e.* Au Kanseng Security Centre]”); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 10 (“Lay Sarim was not sent to Au Kanseng Security Centre. However, I indirectly heard that Lay Sarim was sent to Phnom Penh.”); CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077 (“Q. Were any prisoners transferred from Au Kanseng to Phnom Penh? A. There was not.”); CHIN Kimthong Interview Record, E3/5605, p. 4, ERN (En) 00488706 (“Smien had been arrested and sent to Phnom Penh”).

not considered these arrests as part of the Au Kanseng Security Centre crime base. It finds that Au Kanseng served as an auxiliary to S-21, detaining and reforming less serious offenders from the Northeast Zone, while higher-ranking CPK and Division 801 cadres from the Zone were sent to, detained and frequently executed at S-21.

2887. From mid-1977, civilians who did not hold senior positions including workers from cooperatives and rubber plantation unions across the Northeast Zone were also detained at Au Kanseng.<sup>9864</sup> While some were imprisoned under the pretext of being too lazy to work or stealing food from their respective groups or unit chiefs,<sup>9865</sup> these arrests in fact coincided with Division 801's identification of the presence of "enemy infiltrators" inside the division sowing discord by "inducing" soldiers to reject revolutionary values, encouraging laziness, free speech and food theft.<sup>9866</sup> As a result, the Northeast Zone had by mid-1977 resolved to "take secret measures against the contemptible persons burrowing within rubber and cotton plantations".<sup>9867</sup> Spouses and children of plantation and cooperative workers were also interned at Au Kanseng as a result of these purges.<sup>9868</sup>

<sup>9864</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 84 (base people from the cooperatives and some from unions were sent to Au Kanseng from mid-1977); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 40-41 (base people workers from the union in Sector 101 were sent to Au Kanseng); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 9 (a small number of ordinary people or workers were arrested by cooperative or union chairmen and sent to Au Kanseng); T. 2 March 2016 (PHON Thol), E1/395.1, pp. 40 (the witness was arrested while working at a rubber plantation in Ban Lung district), 47 (three categories of people were detained at Au Kanseng Security Centre: ordinary people, soldiers and union members); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 (stating that "Ta Tum reported me" and identifying the location of his arrest as Katieng village, Kachanh sub-district); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 31-32 (the witness was arrested while working at a plantation in Ban Lung district supervised by "Tum"); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 62; T. 2 March 2016 (PHON Thol), E1/395.1, p. 44.

<sup>9865</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 71; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 11-12. *See also*, SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

<sup>9866</sup> DK Telegram, E3/1164, 25 November 1976, ERN (En) 00516709 (specifically referring to enemy infiltrators in Regiment 83).

<sup>9867</sup> *See below*, fn. 9914.

<sup>9868</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 14; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 36; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 6, ERN (En) 00406214; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN (En) 00272580; UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661).

2888. As military confrontations intensified at the Cambodia-Vietnam border in 1977,<sup>9869</sup> a small number of Vietnamese were detained at Au Kanseng.<sup>9870</sup> The arrival and detention of a group of Jarai is discussed below.<sup>9871</sup>

2889. Up to 60 prisoners were detained at the Security Centre in the first year of its operation,<sup>9872</sup> with the number of prisoners growing progressively as the armed conflict with Vietnam and internal purges of Division 801 and CPK cadres escalated.<sup>9873</sup> Witness testimony and other evidence before the Chamber consistently identified there having been between 100 and 200 detainees in 1978 and 1979.<sup>9874</sup> The Chamber is satisfied that Au Kanseng Security Centre detained no more than 200 prisoners at the zenith of its operation in 1978.

<sup>9869</sup> Section 4: General Overview, paras 285-289.

<sup>9870</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 45 (“[I]t was difficult for me to record any responses from Vietnamese prisoners because I do not speak Vietnamese, and since Lai spoke Vietnamese he was used to interpret the responses”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583 (“There were some ethnic minority prisoners [at Au Kanseng], and there were some ethnic Vietnamese as well”); CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 7-8, ERN (En) 00406215-00406216 (“[A] group of six Vietnamese (civilians) had been taken prisoner [...]. My office [Au Kanseng Security Centre] only had the right to interrogate and to prepare the documents and report to [the] upper echelon for them to decide, that’s all.”). Witness MOEURNG Chandy did not see any Vietnamese prisoners in her detention building (which only contained female prisoners), but was not examined on the presence of Vietnamese detainees at Au Kanseng more generally. See T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 39, 70-71.

<sup>9871</sup> See below, Section 12.4.6: Arrival and Execution of the Jarai.

<sup>9872</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 45 (“at the beginning there were about five to sixty prisoners and later on the number increased”); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213 (initially fifty prisoners were all soldiers that had been sent from subordinate units of Division 801 to Au Kanseng Security Centre); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403574 (there were about forty prisoners detained in late 1976).

<sup>9873</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 45 (“[T]he situation developed from bad to worse and the purges operation was intensified and for that, more and more people were sent to [the] re-education centre. And this also coincides with the intensifying situation at the border areas”).

<sup>9874</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 80-81 (“The prisoners at Au Kanseng security centre were no more than 200 [...] they were somewhere near the number of 200”); T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 12-13 (“There were less than 200 prisoners. I can say there were around more than 100 prisoners”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583 (“By late 1977 when the situation was in turmoil, the number of prisoners had risen to more than 200. In 1978 and up until we fled from the *Yvon*, there were only 100 or more prisoners”); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 6, ERN (En) 00406214 (“By 1978 the number of prisoners increased to more than 100”); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403574 (“The number of prisoners was increased to about 70 in 1977 [...] In 1978, there were about 100 prisoners as more prisoners from the cooperatives and workers from trade unions were sent to the centre. The centre did not accommodate thousands of prisoners as there were not so many security people.”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (“At the beginning [of the witness’s detention at Au Kanseng] there were about 200 prisoners, but later it was down to about 100, and at the end of the regime there were about 20 to 30 prisoners left. During my stay in that prison the daily average number of prisoner[s] was about 100 persons”); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 5, ERN (En) 00272579 (“There were approximately 100 prisoners in total”).



2890. The Security Centre occupied an area of approximately 200 to 250 square metres in uninhabited forest behind what is today the Ratanakiri Hospital.<sup>9875</sup> The compound was encircled by a perimeter of bamboo spikes or stakes.<sup>9876</sup>

2891. Au Kanseng consisted of a number of bamboo buildings with thatched rooves, approximately four by six to 15 metres in dimension, used to detain prisoners in cells.<sup>9877</sup> Accounts of the number of detention buildings at the Security Centre varied between witnesses. Former Au Kanseng Deputy Chairman CHIN Kimthong testified that there were a total of five detention buildings, clarifying that one fell into disuse after another was constructed on the eastern part of the Security Centre compound.<sup>9878</sup> Former prisoner PHON Thol stated that there were three buildings in which detainees were housed.<sup>9879</sup> In their statements to OCIJ investigators, other witnesses variously deposed to having seen three to five detention buildings at various points in time.<sup>9880</sup>

2892. The compound further consisted of a separate interrogation house by the forest, partly enclosed by walls and located approximately 30 to 50 metres from the various

<sup>9875</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 37; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, pp. 2-3, ERN (En) 00404071-00404072; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215; Sketch by CHHAOM Se of the location of the Au Kanseng Security Centre, E3/2923, ERN 00699170; Site Identification Report, E3/8024, 21 June 2009, pp. 18-19, ERN (En) 00384813-00384814; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586.

<sup>9876</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 97 (describing a fence around the compound); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 (the centre was “surrounded by a bamboo fence with bamboo stakes emplaced”); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403576 (“the centre was not surrounded by walls”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581 (the centre was “not surrounded by a fence”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (“The prison compound was not fenced, but they planted bamboo spikes around it and guards were guarding constantly”).

<sup>9877</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 50 (five bamboo buildings with thatched rooves, one of which was a “long” building); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 40 (the building was 15 metres long); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072 (“the building was about 10 metres long and four metres wide”); T. 2 March 2016 (PHON Thol), E1/395.1, p. 67 (“three long buildings”); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (prisoner buildings were 4x6m); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (each prisoner house was 4x8m).

<sup>9878</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 50.

<sup>9879</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 67.

<sup>9880</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (four prisoner buildings); Sketch by PHON Thol of Au Kanseng Security Centre, E3/5172, 8 June 2008, ERN 00272590 (showing two buildings for “prisoners”, a third for “females” and a “wives’ house”); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072 (identifies three buildings similar to the first one in which she was detained); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (five houses for prisoners); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577 (three buildings in the prison).

detention buildings.<sup>9881</sup> A kitchen and food hall were located by the Au Kanseng stream within the compound,<sup>9882</sup> and living and working quarters for guards and cadres were also present within the Security Centre proper.<sup>9883</sup> B-52 bomb craters and jackfruit plantations were located to the south of the Security Centre.<sup>9884</sup> None of the buildings from Au Kanseng Security Centre remain on the site today.<sup>9885</sup>

#### 12.4.4. *Living, Working and Detention Conditions*

##### 12.4.4.1. *Arrest and transfer*

2893. Civilian detainees were transported to Au Kanseng in trucks under armed guard by Regiment 81, 82 and 83 soldiers,<sup>9886</sup> at times together with a number of other

<sup>9881</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 52 (the interrogation house was about 100 metres from CHIN Kimthong's house, had a thatched roof, was not fully enclosed by walls and had forest to the sides of the house); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 42 (interrogations were conducted in a separate room), 96 (the distance to the interrogation room from MOEURNG Chandy's holding cell was about 20 metres); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072 (the interrogation room was about 30m from the holding cells); T. 2 March 2016 (PHON Thol), E1/395.1, pp. 63 (PHON Thol was interrogated in a small and separate place which was about 50m from where he was detained), 78 (the interrogation room was "about 50 metres away" from the cell in which the witness was detained); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 3, ERN (En) 00272585 (the interrogation building was about 50m from the prisoner holding cells); Sketch by PHON Thol of Au Kanseng Security Centre, E3/5172, 8 June 2008, ERN 00272590 (showing the interrogation building 20 metres from the building for the "females"); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (the interrogation house was about 50 to 60 metres from the working building).

<sup>9882</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 50 (there was a kitchen hall); T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 7 (the centre had a kitchen which was built next to the stream), 70; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 60-61; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 89; Sketch by PHON Thol of Au Kanseng Security Centre, E3/5172, 8 June 2008, ERN 00272590 (showing a kitchen building by the stream).

<sup>9883</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215; Sketch by PHON Thol of Au Kanseng Security Centre, E3/5172, 8 June 2008, ERN 00272590 (showing a building labelled "HQs"); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9884</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 7 (there were no pits inside the Security Centre compound); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 81 (describing the B-52 craters as "far away from the detention buildings"); Sketch by CHHAOM Se of the location of the Au Kanseng Security Centre, E3/2923, ERN 00699170 (showing a B-52 bomb crater south of Au Kanseng Security Centre); CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 7, ERN (En) 00406226 (there were B-52 bomb craters at the middle of Svay Mountain); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN (En) 00272580 (stating that there were B-52 bomb craters less than one kilometre from the prison); Site Identification Report, E3/8024, 21 June 2009, p. 18, ERN (En) 00384813.

<sup>9885</sup> Site Identification Report, E3/8024, 21 June 2009, pp. 9-10, ERN (En) 00384804-00384805; DC-Cam Mapping Project (Ratanakiri Province), E3/2628, 7 December 1999, ERN (En) 00078145.

<sup>9886</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 34-37, 69; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, pp. 2-3, ERN (En) 00404071-00404072; T. 2 March 2016 (PHON Thol), E1/395.1, p. 40; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586; T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 63 (soldiers transferring prisoners to Au Kanseng were from Regiments 81, 82 and 83), 72, 74; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 10. *See also*, UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661; SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

detainees.<sup>9887</sup> New prisoners arrived irregularly.<sup>9888</sup> Guards from the Security Centre unloaded prisoners from the vehicles and custody of regimental units and brought them into the detention buildings,<sup>9889</sup> where they recorded prisoners' names and biographies, and queried the reasons for their arrests.<sup>9890</sup>

2894. Upon arrival, males and females were immediately segregated and detained in separate buildings,<sup>9891</sup> where they would await interrogation and thereafter remain for the duration of their incarceration.<sup>9892</sup>

2895. Witnesses before the Chamber testified that they were not provided with any information – either at the time of their arrest, upon their arrival at Au Kanseng or in the immediate aftermath thereof – about the reasons for their arrests. Witness PHON Thol, a plantation worker at the time of his arrest in mid-1977, testified that he was not only unaware of the reason for his arrest upon arrival at Au Kanseng, but that he was brought to the Security Centre along with his wife under the pretence of being required by *Angkar* for a meeting.<sup>9893</sup> PHON Thol's wife, Witness MOEURNG Chandy, was told by her village chief that Northeast Zone Plantation Chief Tum had ordered her to “go to a meeting”.<sup>9894</sup> Her account was consistent with other statements before the Chamber indicating that witnesses were brought to the Security Centre under the pretext

<sup>9887</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 13 (“Sometimes the prisoners would come in a group of three or sometimes on prisoner was brought in. The number varied. And not more than five prisoners were brought in at a time.”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 35-36 (there were two or three other people in the truck with the witness); T. 2 March 2016 (PHON Thol), E1/395.1, pp. 43-44 (there were approximately 10 other union workers in the truck); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 (around 10 people were transported by Chinese GAZ truck and dropped at Boeng Kanseng).

<sup>9888</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 77.

<sup>9889</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 63; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 13.

<sup>9890</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 66; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 12; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582. *See also*, CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9891</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 44-45 (stating that his pregnant wife was arrested with him and subsequently gave birth in the prison), 88; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 38, 41.

<sup>9892</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 49-50, 97. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578; BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 22, ERN (En) 00843471; SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

<sup>9893</sup> T. 3 March 2016 (PHON Thol), E1/396.1, p. 8 (“We were only told that *Angkar* needed us for re-education, and my wife and I were asked to board a vehicle”).

<sup>9894</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 36; MOEURNG Chandy Interview Record, E3/9357, p. 2, ERN (En) 00404071.

of attending meetings or re-education sessions.<sup>9895</sup> It was further consistent with Au Kanseng Deputy Chairman CHIN Kimthong's testimony that Tum had ordered the arrest of plantation workers arrests on the basis that they were workers of the "previous regime".<sup>9896</sup> MOEURNG Chandy only realised that she was being imprisoned upon arriving at and seeing the Security Centre.<sup>9897</sup> In their interviews with OCII investigators, former prisoners KHOEM Peou and UM Keo deposed to not having been told the reasons for their arrest,<sup>9898</sup> while witnesses including PHON Thol asserted they were only accused of wrongdoing during their interrogations.<sup>9899</sup> On the basis of the foregoing, the Chamber is satisfied that civilians were not properly informed of the reasons for their arrest before or within a reasonable time of having been brought to Au Kanseng Security Centre.

2896. The Chamber heard limited evidence about military prisoners who were detained at Au Kanseng. As part of the Division 801 purges in 1977, former Division 11 soldiers associated with Unit 805 Chief LAY Sarim were arrested and interrogated at the Security Centre,<sup>9900</sup> while senior Unit 805 cadres were sent to S-21.<sup>9901</sup> Security

<sup>9895</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577 ("Union Chairman Samrit [...] called me to a meeting to tell me, "*Angkar* has called [you] to study at S-8 [...] and had me get on a truck. But to the contrary, the truck did not bring me to S-8, but drove on past there to a location in the forest which they called Au Kanseng"); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 ("Chhap and Samrith were the ones who called me into the vehicle and told me that I had to go to attend an education").

<sup>9896</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 71 ("Regarding the union workers who were sent to Au Kanseng security centre, they were sent through the union chairperson named Tum [...] He said that those workers were former elements and former workers of the previous regime. They were workers of the rubber plantation in the previous regime and that they did not strictly adhere to *Angkar*'s disciplines. For instance, if they felt hungry, they would stop working and went to find food. And they rarely adhered to the instructions and he requested us to further question them."). The foregoing evidence is also consistent with the program of Division 801 and the Northeast Zone to identify and arrest enemies inside plantations and cooperatives. *See above*, para. 2887.

<sup>9897</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 41 ("I did not know the reasons that I was sent there and I thought that would be the end of my life").

<sup>9898</sup> KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 ("I didn't know why they arrested me and my wife [...] they told me that I had to go to attend education"); UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661 ("they interrogated me and I asked them in return 'what have I done wrong?").

<sup>9899</sup> *See below*, para. 2899.

<sup>9900</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 8, ERN (En) 00403584; CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 5, ERN (En) 00488707; CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 8, ERN (En) 00922123. *See also*, CHHAOM Se and AN Sopheap DC-Cam Interview, E3/10569, 25 June 2012, p. 136, ERN (En) 01079509 ("Most of the people from Division 11 were arrested").

<sup>9901</sup> S-21 list of prisoners admitted in July 1977, E3/9954, 5 August 1977, ERN (En) 01332192-01332193 (entry no. 3, SAOM Pech *alias* Sam An, Deputy Commander of Company 51, Battalion 805; entry no. 4, KHIM Kosal *alias* Chan, Political section of Platoon 502, Battalion 805; entry no. 5, PAN Khauy, Deputy Chairperson of Economic Section of Battalion 805; entry no. 9, SOEM Hum, Male

Centre staff received lists from time to time detailing the names of incoming soldiers, their units and the reasons for their arrests.<sup>9902</sup> Although he initially told investigators that soldiers were restrained upon arrival to Au Kanseng,<sup>9903</sup> Witness CHIN Kimthong testified in court that soldiers were typically neither shackled nor chained upon arrival to the Security Centre. This discrepancy was not tested at trial, however the witness did see one soldier blindfolded and a handful of other soldiers whose hands were tied.<sup>9904</sup> The blindfolded soldier, PHENG Phoy, was exceptional according to CHIN Kimthong, as he arrived to the Security Centre under armed guard in about mid-1977 after having been implicated in the S-21 confession of his superior, LAY Sarim.<sup>9905</sup> PHENG Phoy was immediately put into a detention room and chained pending interrogation.<sup>9906</sup> In his statement to investigators, Witness CHHAOM Se provided that some of the prisoners sent to Au Kanseng “arrived in shackles”. It remains unclear whether he was there referring to civilian or military prisoners. No further evidence was heard at trial in relation to the arrival of military prisoners at Au Kanseng. Noting the lack of further evidence in this regard, the Chamber considers CHIN Kimthong’s inconsistent account to be an insufficient basis to establish beyond reasonable doubt the manner of military prisoners’ arrivals at Au Kanseng Security Centre.

#### 12.4.4.2. Interrogations

2897. Interrogations did not take place immediately following arrest but occurred between a couple of days and one month after arrival at the Security Centre.<sup>9907</sup> They

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combatant of Economics Section of Battalion 805 – all entered between 23 and 30 July 1977). The Chamber has not considered these arrests and detentions as part of the Au Kanseng crime base.

<sup>9902</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 67; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581.

<sup>9903</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581 (“The prisoners were soldiers. Most of them were in restraints when they arrived”).

<sup>9904</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 72-74; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 9-10. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216 (some prisoners arrived in shackles when they arrived and remained shackled when put in cells).

<sup>9905</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 10; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 73. LAY Sarim was arrested, detained and executed at S-21. *See* T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 65; S-21 list of prisoners smashed on 19 September 1977, E3/2286, p. 47, ERN (En) 01564807 (entry no. 31, LAY Sarim, Division 801, Hospital Chief of Division, entered “04.07.1977”). *See also*, S-21 Confession – LAY Sarim, E3/3637, 23 February-23 May 1977 (partial confession).

<sup>9906</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 74. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216 (some prisoners arrived in shackles and remained shackled when put in detention cells). *See below*, para. 2906.

<sup>9907</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 86; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN

were variously conducted by CHIN Kimthong, CHHAOM Se and/or Tim in the presence of a guard.<sup>9908</sup> A Vietnamese prisoner named Lai assisted with questioning and interpreting the responses of suspected “Thieu-Ky” collaborators (*i.e.* of the former South Vietnamese regime<sup>9909</sup>), as Security Centre staff had difficulties in understanding the language.<sup>9910</sup>

2898. The evidence at trial demonstrated that the object of interrogations at Au Kanseng was to elicit responses about counter-revolutionary activity and weed out suspected enemies. Former Au Kanseng Chairman CHHAOM Se was asked by Division 801 Commander SAO Saroeun to carry out investigations into prisoners at the Security Centre, in particular to establish whether there were “internal enemies burrowing from inside” and at which level this was occurring.<sup>9911</sup> This is consistent with contemporaneous evidence before the Chamber indicating Division 801’s measures in late 1976 to “purge the enemy inside the unit and to try to search for all enemy networks within the unit”.<sup>9912</sup> In a telegram to SON Sen, Division 801 Deputy Chairman KEO Saroeun outlines the Division’s priority to “absolutely” arrest those suspected of being enemies, as well as those “affiliated to political tendency” in order to determine their disposition toward the Revolution.<sup>9913</sup> It is further consistent with the

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(En) 00272580. *See also*, CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 5-6, ERN (En) 00403581-00403582.

<sup>9908</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 67 (“Sometimes I also participate[d] because I want[ed] to get more information [about detainees’ techniques]”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 43 (“On the issue of interrogating every prisoner, Se was always present. And he was the one who interrogated those prisoners. I was there to take note of the responses.”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 42 (“[T]here was a guard who was past[ed] outside the room”); CHHAOM Se Interview Record, E3/405, 31 October 2009, pp. 8-9, ERN (En) 00406216-00406217 (“Comrade Chhang [*i.e.* CHIN Kimthong] interrogated the prisoners in the presence of a guard [...] I made him responsible for interrogation because he was clever theoretically and technically.”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (“There were 3 interrogators: first, the prison chief was Se [...], second, the deputy was Chhang, in charge of military; and another was Tim, in charge of logistic.”); SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620 (“Chhang questioned me”); UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661 (“I had two or three interrogators, the prison chiefs *Ta* Chhang, *Ta* Se and *Ta* Tin.”). *See also*, T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 44 (witness states that she was interrogated by two people).

<sup>9909</sup> *See below*, para. 2949.

<sup>9910</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 44-45. *See also*, CHIN Kimthong Interview Record, E3/5512, 3 November 2009, pp. 7-8, ERN (En) 00403583-00403584.

<sup>9911</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 99; T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 14; CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 5, ERN (En) 00406224.

<sup>9912</sup> *See above*, para. 2887 (fn. 9866).

<sup>9913</sup> DK Telegram, E3/1164, 25 November 1976, ERN (En) 00516710-00516711 (“Certain corrective measures: [...] 6. To cooperate with the base to completely purge the enemy inside the unit and to try to search for all enemy networks within the unit. Organisational measures: 1. Anyone who is suspicious [*sic*] of being an enemy must absolutely be examined; 2. To examine the document regarding a person

Northeast Zone's campaign in mid-1977 to "take out the contemptible persons burrowing within rubber and cotton plantations".<sup>9914</sup>

2899. Although Witness CHIN Kimthong initially claimed in court that detainees were interrogated because staff wanted to know why they were brought to the Security Centre, he later clarified that soldiers and union workers arrived with letters specifying the reasons for their arrest.<sup>9915</sup> Witness CHHAOM Se testified that interrogators would press detainees to reveal their "tactics" or "strategies".<sup>9916</sup> This was corroborated by Witness MOEURNG Chandy, who attested to having repeatedly been questioned about her alleged communications with the *Yuon*, which she steadfastly denied.<sup>9917</sup> Witness PHON Thol stated that he was first repeatedly asked, and then finally informed, of the reasons for this arrest during his interrogation, namely, his use of "modern", French-style rubber tree treatment techniques which were deemed to belong to the "feudalist class" and were contrary to the techniques of the "farmer class".<sup>9918</sup> His testimony is consistent with statements before the Chamber indicating that detainees at Au Kanseng were prompted to elicit answers during interrogation before being accused of counter-

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implicated by the enemy and request for a temporary arrest; [...] 5. Those who [are] affiliated to [*sic*] political tendency shall be gradually arrested. At the beginning, we examine these elements to determine their good or bad activities toward the Revolution. The good shall be temporarily kept. Anyone who is resisting or inactive shall be removed and put into a group.").

<sup>9914</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897668 ("Comrade Thi is chosen to take secret measure against the contemptible persons burrowing within rubber and cotton plantations as well as mobile units taken from the military in 1974").

<sup>9915</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 16, 83-84.

<sup>9916</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 67 ("So, first, we had to ask them repeatedly in order to identify the tactics or the strategies of the detainees. Later on, we invite them – we asked them again and again.").

<sup>9917</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 42, 45 ("I was questioned whether I had any communication with the '*Yuon*' and I kept responding that no"). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072 ("[T]hey pressed me on whether I had communicated with the *Yuon*; I still answered the same things that I had not communicated [with the *Yuon*].").

<sup>9918</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 42-43 ("[W]hen I was arrested, I had no idea what I did wrong, but when I was interrogated, they asked me whether I knew of what I had committed that I was brought to the prison. I told the interrogator that I did not do anything wrong and I did not do anything against the Party. The interrogator asked me several times and then, finally, they told me the reason that I was arrested and brought to the re-education school was because I belonged to the upper class and I used [...] techniques to treat the rubber trees of the feudalist class, and they were not the techniques needed by the farmer's class to work in the rubber plantation. [...] [T]hey alleged [...] that I applied the technique of the feudalist class. That was the modern technique. They said that the technique was only for those who travelled by aeroplane. They said that the technique applied by the farmer class was different. [...] Having heard the technique I had acquired from the French, I was told that the technique was for those who travelled by aeroplane."), 89 ("They simply accused me of using the feudalist class techniques, not the techniques from the farmer's class, and that's why I was brought into the re-education school."); T. 3 March 2016 (PHON Thol), E1/396.1, p. 8 ("I only knew about my case when they told me during the interrogation").

revolutionary activities, including being *Yuon* agents<sup>9919</sup> and working in CIA networks.<sup>9920</sup>

2900. The Chamber finds these accounts to be consistent and credible, and is satisfied that interrogative practices were employed at Au Kanseng to elicit confessions of counter-revolutionary activity in order to incriminate civilian prisoners and identify enemies. Consistently with this overarching objective, the subject matter of interrogations and the implementation by Security Centre personnel, Division 801 and the Northeast Zone of measures targeting perceived enemies, the Chamber is satisfied that civilians were arrested and detained at Au Kanseng as a result of the Party's perception that these individuals were enemies of the CPK or its ideology.

2901. The Chamber also heard evidence about prisoner treatment during interrogations at Au Kanseng. Although some witnesses referred to acts of "torture" being inflicted upon detainees during interrogations,<sup>9921</sup> the Chamber notes that it is not seized of torture as a crime against humanity in relation to Au Kanseng Security Centre. The Chamber will however analyse the evidence of prisoner treatment in the context of the residual category of crimes against humanity of other inhumane acts perpetrated through attacks against human dignity, of which it is seized.<sup>9922</sup>

2902. According to Witness CHHAOM Se, interrogators "were not allowed to exert any torture against the prisoner[s]".<sup>9923</sup> In response to questioning by defence counsel in Case 002/01 about whether Security Centre staff would resort to "torture" or beatings during interrogations, however, the witness testified that interrogators "asked them again and again, and if they do not tell us we may do it".<sup>9924</sup> While this witness's evidence could not further be tested during the course of either trial segment,<sup>9925</sup> Witness PHON Thol corroborated accounts of mistreatment by interrogators, stating in evidence that when interrogators "thought that the biographies [of detainees] were not

<sup>9919</sup> BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 7, ERN (En) 00843456.

<sup>9920</sup> UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661.

<sup>9921</sup> The Chamber notes that while the word "torture" was used in a casual manner by the Parties, witnesses and Civil Parties throughout Case 002 trial proceedings, the ultimate determination of whether underlying treatment or conduct amounts to the crime of torture as a crime against humanity will rest with the Chamber in the Legal Findings sections of this Judgement.

<sup>9922</sup> Closing Order, para. 1434.

<sup>9923</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 15.

<sup>9924</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 67.

<sup>9925</sup> The treatment of detainees was beyond the scope of the Case 002/01 trial and the witness was unable to be recalled during the Case 002/02 trial by virtue of his death.



consistent with what [staff] had, then they used a plier [*sic*] to squeeze their thighs until they became unconscious”, clarifying that one prisoner from Bar Keo was subjected to such treatment.<sup>9926</sup> He further testified to having personally witnessed from another building other detainees being beaten and electrocuted with a telephone cord in the interrogation house.<sup>9927</sup> In light of PHON Thol’s clear and corroborated testimony, the Chamber finds credible his account regarding prisoner mistreatment by Au Kanseng interrogators.

2903. Witness MOEURNG Chandy did not witness any “torture” as such, but described accounts of the treatment of other detainees’ husbands that she heard at the Security Centre.<sup>9928</sup> MOEURNG Chandy heard from a fellow detainee that the latter’s husband had or may have been electrocuted, adding that other women had indirectly spoken of the same happening to their spouses.<sup>9929</sup> MOEURNG Chandy further stated that she and other female inmates “realised”, “concluded” and “assumed” that their husbands were mistreated, as they had observed them walking differently following their interrogations.<sup>9930</sup>

<sup>9926</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 64-65; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216 (“Torture to get responses was done on any prisoners that we suspected were hiding things and were not responding truthfully”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (“There [was] some torturing during an interrogation if an interrogator thought the prisoner didn’t tell the tru[th]”).

<sup>9927</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 63-64 (“For other detainees, when they were interrogated, they were beaten and electrocuted with the power from a manual phone [...] I was interrogated at a small and separate place which was about 50 metres from where I was detained [...] I witnessed it personally [...] [T]he re-education centre’s buildings were built out of bamboo trees -- bamboo tree walls, so that you could actually see through”).

<sup>9928</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 44-48.

<sup>9929</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 45 (“[I]t was the wives, who were detained with me who told me that their husbands were tortured -- that is, they were electrocuted, for example, during their interrogation[s] [...] I learned this from their wives who spoke to their husbands. They said that some of their husbands were whipped or electrocuted during the interrogation.”), 47 (“And then those wives said maybe their husbands were asked serious questions [...] they concluded that their husbands were tortured during the interrogation.”), 48 (“the wives, who were detained with me, said that their husbands were tortured”); T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 14 (“One woman talked to me about that, not many of them. And that woman said that she discussed with other women that their husbands may have been tortured. And she came to tell me about that. Normally, their husbands, my husband probably received the same fate.”). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072.

<sup>9930</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 47-48 (“The interrogation room was not far from where we were detained and when [...] their husbands came out of the room, the wife saw him. So of course, when people [were] tortured, we could see that the way he walked was different from the normal way that he walked, so the wife realised that her husband was tortured [...] [A]fter they left the interrogation room, the wives could observe that the husbands walked in an abnormal way, so they concluded that their husbands were tortured during the interrogation. [...] We could see the husbands leaving the interrogation room because the buildings were kind of close to each other.”); T. 7 March

2904. The Chamber approaches MOEURNG Chandy's testimony on this point with caution, noting its inherent unreliability as speculation, inference and hearsay.<sup>9931</sup> In assessing its veracity, the Chamber also considers the witness's direct evidence of having seen a whip and an "electricity cable" in the interrogation room.<sup>9932</sup> Further, the Chamber notes that CHIN Kimthong initially testified that there were no clubs or electrical wires during his time in the interrogation room,<sup>9933</sup> but later confirmed that electric shocks were indeed administered to prisoners using telephone cables.<sup>9934</sup> Furthermore, Witness CHHAOM Se affirmed to OCIJ investigators that prisoners were beaten "with whips and were electrically shocked".<sup>9935</sup> KHOEM Peou saw blood stains and scars on prisoners after they had been interrogated and brought back into his detention cell.<sup>9936</sup> Former detainees variously stated that they were not "tortured" at Au Kanseng.<sup>9937</sup> However, the Chamber notes the direct evidence of PHON Thol and MOEURNG Chandy's first-hand perceptions, the consistency of their descriptions of the poriferous structure of detention buildings and their general ability to witness the various goings-on inside the Security Centre, witness accounts of electrocution, beatings or other mistreatment during interrogations, as well as CHIN Kimthong's initial denial, subsequent concessions and overall motive to minimise his involvement in the mistreatment of detainees. On this evidence, the Chamber is satisfied that, while not all detainees at Au Kanseng Security Centre may have been systematically

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2016 (MOEURNG Chandy), E1/397.1, p. 14 ("Normally, people who were healthy could walk very steadily, but [...] we could assume that some people may have been tortured and beaten because we noticed them, that they could not walk very steadily.").

<sup>9931</sup> The Chamber counts among the declarants of alleged "torture" to Witness MOEURNG Chandy: the female detainees at Au Kanseng who had witnessed or otherwise perceived their husbands' mistreatment (first degree hearsay); the male detainees who informed their wives of such mistreatment (second degree hearsay); and female detainees who had communicated stories of other detainees' husbands' mistreatment (third degree hearsay).

<sup>9932</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 42-43; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072.

<sup>9933</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 88.

<sup>9934</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 89 ("From my recollection, those electrical shocks were used when Jarai were sent into the security centre"); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582 ("There was equipment to apply electric shock. I saw security personnel use them on the ethnic Jarai prisoners they had captured on the battlefield.").

<sup>9935</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216.

<sup>9936</sup> KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9937</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 63 ("Personally, my hands were tied and my feet were shackled when I was being interrogated; however, I was not tortured."); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 42 ("During my interrogation, I was not threatened; I was asked questions and I responded to those questions accordingly."); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072 ("The interrogators did not bully, hit me"); SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620 ("I never saw them mistreat prisoners or torture [...] My husband and I were never beaten or mistreated."); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 ("They didn't torture me").

mistreated, some civilian inmates at the very least suffered ill-treatment in the form of beatings and electrocutions through telephone cables or similar means.

2905. As to military prisoners, Division 801 soldiers who had been implicated in confessions were interrogated personally by Nau (or Nao), a General Staff cadre from Phnom Penh who arrived at Au Kanseng in mid-1977 and stayed for about three months to uncover enemy communication lines among soldiers implicated in confessions.<sup>9938</sup>

2906. CHHAOM Se received from SAO Saroeun confessions which had originated in Phnom Penh<sup>9939</sup> and which were marked in red ink, indicating that the soldiers in question must be examined because “they were networks of the agents”.<sup>9940</sup> CHIN Kimthong testified that he was present during Nau’s interrogations of Division 801 soldiers in the capacity of note-taker but denied ever having seen or read a confession.<sup>9941</sup> The Chamber accords little weight to either assertion in light of the

<sup>9938</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 97; T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 43 (“Yes, [Nau] did give me the letter and I also called to the chief of the division to see whether he was actually sent from the division. Sou Saroeun confirmed such assignment.”); CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 5, ERN (En) 00406224; CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 4, ERN (En) 00488701; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 45, 93-94 (Nau “stated that he once worked in the interrogation unit in Phnom Penh. At the time, it was known as Tuol Svay Prey [...] However, through the dialogue exchange, he made mention about the location which was to the west of the Chinese Embassy, and it was in a school [...] He knew that the location consisted of school buildings. And then it was called Tuol Sleng and subsequently it was S-21, but I learnt about it later on.”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 8, ERN (En) 00403584. S-21 Chairman KAING Guek Eav *alias* Duch “did not know of any interrogator called N[a]o”. He did “not believe that any personnel were sent from Phnom Penh to organise training or to work with the [security] centres in the provinces”. See KAING Guek Eav Interview Record, E3/5790, 3 December 2009, p. 7, ERN (En) 00414344. The Chamber is unable definitively to conclude that Nao was in fact dispatched from S-21, but is satisfied that he was in fact sent by the General Staff, who otherwise coordinated security activities between S-21 and Au Kanseng.

<sup>9939</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 97 (“I received the confessions, in fact, usually through a message from 05’s [*i.e.* SAO Saroeun’s] office. It would be the names of people who had been implicated in a confession of this person or that person. And, on another instance, a person named Nao - - coming from the General Staff [came to Au Kanseng] asking about the people who were implicated. [...] Q. Were there confessions obtained in Phnom Penh that were sent to you because they were sent with the persons who came to your centre? Did such a thing happen? A. Yes.”).

<sup>9940</sup> CHHAOM Se Interview Record, E3/407, 8 November 2009, pp. 4-5, ERN (En) 00406223-00406224; CHHAOM Se Interview Record, E3/3985, 3 March 2010, p. 3, ERN (En) 00488700. See also, S-21 Confession – SOUR Tuon Mao, E3/3655, 2 June 1976, ERN (En) 00224628 (bearing annotation by SON Sen in red ink to SAO Saroeun requesting that he “read this report of Mao and pick out the relevant names + Unit 802”, referring to the names of persons denounced by Mao).

<sup>9941</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 86 (“When a prisoner was interrogated, only Nau had in his hand a confession document from Phnom Penh, and Nau himself was the one who interrogated the prisoner. I was sitting nearby to take notes of the questions and the answers, but I did not have access to that kind of a [*sic*] document [...] I did not ask [Nau] from which security centre those confessions were. I, myself, had to be careful in what I said or what I asked. If I were to know more about the affairs of other peoples [*sic*], it means that I put my security at risk. However, from my observation, he interrogated prisoners based on the documents he had with him.”); T. 22 March 2016 (CHIN Kimthong),

witness's tendency to minimise his role at the Security Centre at the time, and inconsistent prior statements indicating that he saw Nau holding a confession and was himself handed a further confession by SAO Saroeun to interrogate prisoners.<sup>9942</sup> Nevertheless, the witness further recalled witnessing Nau instruct security staff to feed soldiers, including PHENG Phoy, rice mixed with salt and directing them to draft a confession "to tell the truth to *Angkar*" before being given water.<sup>9943</sup> Having been questioned on the substance of this statement at trial, which was consistent with his statement to investigators,<sup>9944</sup> the Chamber accepts CHIN Kimthong's testimony regarding Nau's treatment of military prisoners as reliable. The Chamber is satisfied that soldiers were arrested and detained at Au Kanseng as a result of their perceived connection to or collaboration with enemies of the Party. It is further satisfied that soldiers were interrogated in order to elicit confessions of counter-revolutionary activity for the purpose of incriminating themselves and identifying enemies. It remains unclear whether military prisoners were informed of the reasons for their arrests before or within a reasonable time of arriving at Au Kanseng.

#### 12.4.4.3. Re-education

2907. Following interrogation, many detainees were subjected to regular re-education or refashioning sessions. Every 10 or so days,<sup>9945</sup> Au Kanseng Chairman CHHAOM Se presided over meetings to disseminate information to staff and detainees that he had obtained from the Party Centre.<sup>9946</sup> At the meetings, detainees were instructed how to correct their behaviour and attitudes to work,<sup>9947</sup> and were informed about internal and

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E1/406.1, p. 12 ("we have never seen any confession sent in together with the prisoners"). *See also*, CHIN Kimthong Interview Record, E3/5605, 4 March 2010, p. 4, ERN (En) 00488706.

<sup>9942</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 9, ERN (En) 00403585 ("Nau arranged the interrogations of company-level cadre PHENG Phay [*i.e.* Phoy] [...] and I saw Nau holding confession(s) [*sic*] from Phnom Penh. As for me, I received one confession from *Ta* 05 for use in interrogating prisoner(s) [*sic*] at Au Kansaeng [*sic*]."); CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078 ("I saw No [*sic*] carrying a bunch of the prisoner confession[s] which was about 20 pages, but I did not see the substance in that document.").

<sup>9943</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 87-88; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582.

<sup>9944</sup> CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582.

<sup>9945</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 49; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 14, 95. *See also*, CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575 (meetings were held "every fortnight").

<sup>9946</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 41; CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 14, 95-96.

<sup>9947</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 41.

security issues in Democratic Kampuchea.<sup>9948</sup> Loyalty to the CPK was taught through political indoctrination. *Revolutionary Flag* and *Revolutionary Youth* magazines were used as aids to explain the socialist revolution and strengthen socialist consciousness in life and work.<sup>9949</sup>

2908. Division 801 Chairman SAO Saroeun held annual or bi-annual workshops lasting two days in which he encouraged the strengthening of the military forces and of the Party line, and denounced as enemies anyone who opposed the revolution, socialist affairs or the progress of the CPK. He instructed that workers transplanting seeds at a distance greater than that prescribed would be accused of opposing the revolution and would therefore be considered the enemy.<sup>9950</sup> CHIN Kimthong attended one such workshop conducted by SAO Saroeun but testified that the Division 801 Commander did not personally visit Au Kanseng Security Centre.<sup>9951</sup> The Chamber is satisfied that while SAO Saroeun did not personally visit Au Kanseng, he instructed Security Centre cadres on the re-education of detainees in accordance with the Party line and its stance with regard to enemies and opponents of the revolution.

#### 12.4.4.4. Detention conditions

2909. Detention regimes varied between serious offenders, light offenders, and women and children. Soldiers who were considered dangerous were continuously chained or shackled in a separate detention building that was guarded day and night.<sup>9952</sup> Serious offenders, including both civilians and soldiers, would be fettered by the ankle

<sup>9948</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 56; CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575.

<sup>9949</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 49; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 14, 95. *See also*, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 8, ERN (En) 00272582; BUN Vann Tha DC-Cam Interview, E3/7953, undated, pp. 14, 30, ERN (En) 00843463, 00843479. *See also*, Section 6.1.5: Communication Structures: Magazines.

<sup>9950</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 68; T. 9 January 2013 (UNG Ren), E1/157.1, p. 71. *See also*, DK Telegram, E3/1160, 11 March 1976, ERN (En) 00590304 (“At the moment, Brother 05 is visiting all regiments with an aim to indoctrinate”); CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 4, ERN (En) 00406223.

<sup>9951</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 55, 68; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 8-9; CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077.

<sup>9952</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 52; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 84; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581.

using chains or metal or wooden shackles,<sup>9953</sup> in two rows of five to 10 prisoners.<sup>9954</sup> They would not be permitted to leave the detention buildings at any time.<sup>9955</sup> Serious offenders comprised a small proportion of the total Security Centre population, totalling approximately 10 to 30 in number at any one time.<sup>9956</sup>

2910. Less serious offenders, mostly plantation workers,<sup>9957</sup> were not shackled, chained or otherwise restrained.<sup>9958</sup> During the day, light offenders were able to move freely within the Security Centre compound and would be guarded in locked detention buildings at night.<sup>9959</sup> Female prisoners and children at Au Kanseng were treated more

<sup>9953</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 67 (there were three types of shackles and cuffs: chains with locks, shackles with a metal bar and shackles with a wooden bar); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 3, ERN (En) 00272585 (prisoners would be put in leg shackles “made from steel rebar”); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216 (steel and wooden shackles were used at night for serious offenders).

<sup>9954</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 52 (“The building to house the serious-offence prisoners, yes, there was such a building and that building was guarded day and night since those serious-offence prisoners were chained or shackled all the time”), 74-75 (confirming the accuracy of former prisoner KHOEM Peou’s statement regarding having his ankles chained); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 84 (confirms that soldiers who were considered dangerous were tied up and that people undergoing harsher treatments were locked in a room); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581 (“one chain might hold five or six prisoners strung together”); T. 2 March 2016 (PHON Thol), E1/395.1, pp. 45 (“And when we arrived in the prison, the security guards took the chain and locked us in rows”), 48 (“I was not allowed to [...] move freely and at that time my ankle was shackled”), 49 (“We were not allowed to get out of that house [...] we could not physically go out of the house”), 76 (upon entry to Au Kanseng Security Centre “I walked past a building [...] I just had a glance through the cracks of the wall and I noticed about 10 detainees lying on the ground locked into the metal bar or shackles”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 39 (“I saw one building [where] there were two or three people with their ankles shackled. And then in another building, I saw a few people who were also shackled.”). *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (serious offenders, of which there were about 10, were held separately, shackled and locked in from the outside); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (serious offenders were shackled by the ankle in rows of ten in two rows); BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 8, ERN (En) 00843457 (witness saw prisoners chained by the ankle; some had both ankles shackled).

<sup>9955</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 49 (We were not allowed to get out of that house [...] we could not physically go out of the house”). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073; BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 28, ERN (En) 00843477.

<sup>9956</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (stating that there “were about ten of those prisoners”, referring to serious offenders); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (“about 20 to 30 others were constantly chained”).

<sup>9957</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 52-53.

<sup>9958</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 84; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403582; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 40; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216.

<sup>9959</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 84; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 6, ERN (En) 00403580; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216.

leniently and were not shackled but were nevertheless also locked in the detention building at night.<sup>9960</sup>

2911. Detention buildings comprised five or six detention cells in which approximately four to 21 prisoners were detained.<sup>9961</sup> No sleeping mats, pillows or mosquito nets were provided to the female detainees, who slept on the floor in mosquito-infested cells.<sup>9962</sup> Detention building walls and floors were made of bamboo planks with large gaps, such that it was possible to see into and out of detention buildings.<sup>9963</sup> Detainees who were entitled to work used firewood brought from the forest to light fires to keep warm at night as the detention buildings were not insulated and could not retain any heat.<sup>9964</sup>

2912. There were no latrines at Au Kanseng.<sup>9965</sup> Prisoners received large bamboo tubes and pots into which they urinated and defecated.<sup>9966</sup> Prisoners emptied these receptacles themselves in the morning or when they were let out of their cells to work.<sup>9967</sup>

2913. Whether prisoners were compelled to relieve themselves inside their cells in the presence of other inmates was not the subject of examination in court. Witness

<sup>9960</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 39-40, 66; T. 2 March 2016 (PHON Thol), E1/395.1, p. 88. *See also*, SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

<sup>9961</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 86; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 3, ERN (En) 00272585 (seven to eight prisoners in each cell); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 5, ERN (En) 00406213 (ten to twelve persons were placed in a cell); UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661 (witness was put into a square 4x4m cell with 30 prisoners); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (each house could accommodate about 20 prisoners); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577 (there were five to six cells in each detention building, with about 10 prisoners per cell, each approximately 4x5m).

<sup>9962</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 75; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 76.

<sup>9963</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 40; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 49, 95.

<sup>9964</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 76.

<sup>9965</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 15; T. 2 March 2016 (PHON Thol), E1/395.1, p. 68.

<sup>9966</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 76 (prisoners were told to urinate into bamboo tubes); T. 2 March 2016 (PHON Thol), E1/395.1, p. 68 (“If we needed to urinate, we had to relieve ourselves in a bamboo tube”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588 (“When urinating or defecating, they had us relieve ourselves in large bamboo tubes placed in the cells. At dawn, they came and unlocked the shackles and the door, and had us pour [the bamboo tubes] out in a cluster of banana trees. They did not allow us to go outside to relieve ourselves during the night.”).

<sup>9967</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 68; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588.

CHHAOM Se stated to OCIJ investigators that nobody relieved themselves inside detention cells, adding that even serious offenders were escorted outside by guards to do so.<sup>9968</sup> MAO Phat similarly deposed that prisoners needing to relieve themselves would request permission from the guards, who would unlock the cell and chaperone them outside.<sup>9969</sup> Conversely, KHOEM Peou, who was incarcerated with MAO Phat,<sup>9970</sup> stated that shackled prisoners would urinate or defecate in their cell during his first night in detention.<sup>9971</sup> Both prisoners underwent an initial period of shackled and confined detention before being released to work within the Security Centre.<sup>9972</sup> KHOEM Peou separately indicated that he and other serious offenders were unable to sleep “[e]very night [...] because if someone needed to relieve himself, everyone in the row had to get up also since their ankles were chained together”.<sup>9973</sup> His statement did not permit the Chamber to ascertain whether he was in fact referring to prisoners being chaperoned beyond the confines of their cells to relieve themselves. Resultantly, the Chamber considers that there is insufficient evidence before it to find that prisoners were forced to urinate and defecate inside their cells.

2914. Male detainees, both serious and light offenders, were permitted to bathe in the stream running through Au Kanseng Security Centre under guard, respectively during the course of their detention and following work assignments.<sup>9974</sup> Witness MOEURNG Chandy testified that serious offenders “were not allowed to go out and bathe”.<sup>9975</sup> However, the evidence of former staff and prisoners, including serious offenders,

<sup>9968</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (“Light offenders could go outside to relieve themselves but a guard was posted. As for serious offenders the guards tied them with ropes and walked them outside to relieve themselves. No one relieved themselves inside the detention cells.”).

<sup>9969</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577.

<sup>9970</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN (En) 00272580 (“There are some prisoners still alive, like Khoem Peou, who was held with me in prison”).

<sup>9971</sup> KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (“In the first night at the prison [...] [t]hey shackled us in a room; so if we needed to urinate and defecate, we just did it in the room.”).

<sup>9972</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577 (“I was imprisoned for three months in a cell locked from the outside where I was chained day and night. After three months, they released me to do work outside the prison.”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (“I was chained in the room for one month, but was released to work outside afterward”).

<sup>9973</sup> KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072.

<sup>9974</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 76-77; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 15; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577.

<sup>9975</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 76 (asked what the situation for “male prisoners who were chained in the building” was, the witness responded that, “for them, they were not allowed to go out and bathe”).



consistently emphasised that they were permitted to wash themselves in the stream at the Security Centre.<sup>9976</sup> The Chamber therefore rejects MOEURNG Chandy's assertion in this regard. Female detainees were permitted to bathe unguarded and wash their clothes at a separate location near the kitchen.<sup>9977</sup> The Chamber is satisfied that detainees had the opportunity to bathe at Au Kanseng.

2915. Prisoners received two meals a day consisting of rice mixed with potatoes and sometimes soup or vegetables harvested within Au Kanseng.<sup>9978</sup> Portion sizes were small and witnesses were consistent in stating that they did not have enough food.<sup>9979</sup> Witness MOEURNG Chandy, who gave birth to a daughter while imprisoned at Au Kanseng, was not given a special food ration after giving birth and the food that she did

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<sup>9976</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 76-77 (“[A]fter [each detainee] returned from work from the plantation or gardens, they bathed themselves at the stream or river by themselves behind the building.”); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 15 (“[F]or those who were detained within the holding cells, when they wanted to bathe themselves, they would be walked towards the stream”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577; SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

<sup>9977</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 75-76; SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620 (guards allowed males and females to bathe at different locations).

<sup>9978</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 15 (food was served in medium sized bowls once in the morning and once in the evening), 70 (as the rice received from the Division was not sufficient, “we had to mix the potatoes with rice. We consumed those vegetables and the potatoes that [detainees] grew”); CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077 (“As for the regular prisoners, they had enough steamed rice mixed with potato to eat”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 74 (“We were given a food ration -- that is, a bowl each and whatever soup that was given to us we simply ate it”), 101 (“we were given food ration of one small bowl with potatoes”); T. 2 March 2016 (PHON Thol), E1/395.1, p. 72 (“We received a bowl of food. The bowl was small and a bowl of soup was for four people at the time”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 (detainees received rice mixed with potatoes, one small dish per meal twice a day). *See also*, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073 (the food ration was a small bowl for each person and there were two meals a day); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578 (detainees ate soup, never gruel, with rice and boiled potatoes mixed with banana stalks and cinnamon leaves which had no flavour. There was neither meat nor fruit to eat.).

<sup>9979</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 72 (“It was not the place that we were given supplementary food or enjoyed sufficient food to eat [...] I was so skinny. I never weighed myself but, you know, the trousers that I had brought along that I could not wear them anymore as they were too loose”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 (“As for the food in the prison [...] [i]t was not enough [...] When we ate it all, we did not dare ask for more”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (“I was not provided enough foods [*sic*] to eat”); UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661 (prisoners got little to eat and were skinny). *Cf.* SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620 (“For me, the food was sufficient, like normal, because I was at the kitchen where the food was”). The Chamber does not find SAM Soem's statement reflective of the conditions faced by other detainees as, by her own description, she was uniquely placed to work where food was being prepared.

otherwise receive was insufficient.<sup>9980</sup> Water was distributed to prisoners in bamboo tubes once a day.<sup>9981</sup>

2916. Former Au Kanseng Deputy Chairman CHIN Kimthong acknowledged in court that the limited food at the Security Centre led to prisoners dying of malnutrition.<sup>9982</sup> Indeed, former prisoner KHOEM Peou described in his statement to OCIJ investigators that prisoners looked healthy upon their arrival to the Security Centre, but became thinner and weaker with ongoing detention, with some dying occasionally from starvation and other diseases.<sup>9983</sup> The Chamber is satisfied that the provision of inadequate food led to prisoner malnutrition and death at the Security Centre.

2917. Prisoners at Au Kanseng suffered from a number of diseases and other health problems in detention. Prisoners suffered from malaria, inflammatory bowel disease and dysentery from drinking unboiled water,<sup>9984</sup> with the majority of deaths resulting from dysentery.<sup>9985</sup> Former prisoner PHON Thol saw prisoners become sick, develop swelling of the limbs as a result of chaining and dying of dysentery, and witnessed a serious offender die while chained.<sup>9986</sup> CHIN Kimthong disagreed that chained prisoners faced any serious illnesses and stated in court that he had not witnessed chained or shackled prisoners developing wounds from their imprisonment.<sup>9987</sup> On the

<sup>9980</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 74-75 (“[A]lthough I had just delivered a baby, [...] I did not receive any special food rations at all [...] Of course [the food] was not sufficient when we were detained there.”).

<sup>9981</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 77; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 4, ERN (En) 00250073.

<sup>9982</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 79 (“[T]he limited food [...] led to malnutrition, the illness became more serious until the prisoners died”). *See also*, CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077; CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 3, ERN (En) 00404077.

<sup>9983</sup> KHOEM Peou Interview Record, E3/7684, 26 August 2008, pp. 4-6, ERN (En) 00250073-00250074.

<sup>9984</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 78; T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 66.

<sup>9985</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 82.

<sup>9986</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 69 (identifying Ngoeun, a plantation worker from Kampuchea Krom, who died from dysentery; and another prisoner who died while chained); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588. *See also*, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (shackled and chained prisoners developed limb numbness and swollen legs after prolonged, fettered detention).

<sup>9987</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 79-80. The Chamber notes that Division 801 had been afflicted by sickness and fevers, leading to death, before the establishment of Au Kanseng Security Centre. *See* DK Telegram, E3/1160, 11 March 1973, ERN (En) 00590304 (“1. With regard to fever, as of 11 March 1976, 470 people have taken a rest. This figure does not include the sick people who lived along the stream. [...] 3. 14 people died in total by 11 March. 4. Mostly they died of horse fever.”).

basis of his senior position at the Security Centre and strong motive to minimise his involvement in the treatment of detainees, the Chamber does not find CHIN Kimthong's assertion reliable and is satisfied that conditions of detention contributed to the ill-health and death of detainees at Au Kanseng.

2918. Limited medical assistance was available to prisoners who developed illnesses or became sick. While former prisoners MAO Phat and KHOEM Peou told investigators that some prisoners never received medical treatment,<sup>9988</sup> testimony elicited at trial indicated that some form of medical assistance was indeed present at Au Kanseng. Witness CHIN Kimthong recalled that a medic worked inside the Au Kanseng compound and provided treatment to prisoners in the form of home-made herbal pills and modern medicine supplied by Battalion 806.<sup>9989</sup> He further acknowledged that prisoners died as a result of ineffective medicine.<sup>9990</sup> Witness MOEURNG Chandy received neither medicine nor medical assistance during her pregnancy while detained at Au Kanseng,<sup>9991</sup> but noted that a medic would bring medicine for her child in its infancy.<sup>9992</sup> The Chamber accepts that a limited degree of medical assistance and medicine was available at Au Kanseng Security Centre but was often ineffective and/or insufficient.

2919. A work regime was prescribed for prisoners at Au Kanseng, with light offenders assigned to work duties as part of the tempering process at the Security Centre. After they were no longer deemed to be a risk,<sup>9993</sup> detainees were assigned to work inside and

<sup>9988</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578 (There was no medicine and many prisoners died because there was no medicine to treat them); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (prisoners never received any medicines or treatment).

<sup>9989</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 78-79; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 67-68. *See also*, PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588 (“When we were sick, a medic from the division named Huot came to treat us; he cooked up the medicines for us to swallow”).

<sup>9990</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 79.

<sup>9991</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 67.

<sup>9992</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 72-73 (the medic “would bring some medicine” for her daughter, who recovered after medicating). *See also*, T. 2 March 2016 (PHON Thol), E1/395.1, pp. 69-70 (MOEURNG Chandy's husband, PHON Thol, testified that his wife was seen by a medic every day after delivery and was given traditional medicine or an injection).

<sup>9993</sup> T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 7 (“[L]ater on, when they believed that I would not flee [...] I was allowed to work outside and to pick vegetables”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 74-75 (agreeing that KHOEM Peou was released after interrogation); T. 2 March 2016 (PHON Thol), E1/395.1, p. 88 (Female detainees “were released to remove grass [...] a few days after they were brought in”). *See also*, CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 5, ERN (En) 00406224; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072.

outside the Security Centre compound,<sup>9994</sup> sometimes as far as border regions.<sup>9995</sup> Work hours ranged between 6am and 11am, and again from 1pm to 6pm, with a meal break in between.<sup>9996</sup> Agricultural assignments included planting, farming and foraging vegetables,<sup>9997</sup> which were fertilised with human faeces,<sup>9998</sup> and working in rice fields.<sup>9999</sup> Produce would either be delivered to the Division or frontline soldiers, or consumed by detainees and staff at the Security Centre.<sup>10000</sup> Many detainees were tasked with weeding and clearing grass for new plantations, and were forced to do so without the use of sickles, knives or other tools, causing cuts and abrasions.<sup>10001</sup> Some

<sup>9994</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 94, 97, 105; T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 55, 60-61. *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577.

<sup>9995</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 55, 58-59 (from June 1978 minor prisoners were allowed to work in the field along Road 19 close to the border). *See also*, T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 73, 92; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 3, ERN (En) 00404072; Map of Cambodia: Tile 6436, E3/9190, undated, ERN (En) 01045068.

<sup>9996</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 71; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586. *See also*, CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581; CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215; KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578; SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620; BUN Vann Tha DC-Cam Interview, E3/7953, undated, pp. 21, 30, ERN (En) 00843470, 00843479.

<sup>9997</sup> T. 7 March 2016 (MOEURNG Chandy), E1/397.1, pp. 7, 9, 20 (tasked to pick vegetables); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, pp. 3-4, ERN (En) 00404072-00404073; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 53, 98 (working in a jackfruit plantation); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586. *See also*, CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581 (prisoners grew wax melons, gourds, pumpkins, cabbage and farmed rice and potatoes under guard by security personnel); SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620 (growing potatoes and transplanting); UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661 (hoeing the ground).

<sup>9998</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 70 (“We planted vegetables, for instance, only with human fertiliser, that is our faeces”).

<sup>9999</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 55; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 5, ERN (En) 00403581. *See also*, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (detainee was sent to help other units working on rice paddy and building dams and dykes).

<sup>10000</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 70.

<sup>10001</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 70 (“The work there was to pull the grass with our bare hands and we were not given any tool to dig it”), 88, 94, 97; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587 (Security Centre staff had prisoners working with their bare hands, pulling grass); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 47 (“The work [detainees] mostly did was to clear grass at the potato plantation or to clear a forest area for plantations and planting potatoes”); T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 9. *See also*, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (“I worked with bare hands because they didn’t allow me to use knives or tools. Working in that condition my hands were cut by thorns, but I didn’t dare say anything”); BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 9, ERN (En) 00843458 (“We worked with our bare hands, so our hands sustained many cuts continuously”); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578 (“As for the work, it was done by hand; no sickles or other tools were used when weeding the potatoes”).

detainees were assigned to cooking duties in the kitchen,<sup>10002</sup> while others were directed to carry wood lumbered from the forest to construct buildings for cadres.<sup>10003</sup> There is no evidence that workers were remunerated at any point or otherwise compensated for their toil. The Chamber finds that detainees could not refuse to work.

2920. The Chamber has before it evidence that no exceptions were made to the work regime for female detainees who had given birth at Au Kanseng. MOEURNG Chandy was required to carry large planks shortly after giving birth to her daughter. She described struggling to carry 10 metre-long planks on her shoulders a long distance back to Au Kanseng without assistance.<sup>10004</sup> As a result of the laborious work assignment, she could no longer lactate and therefore feed her baby daughter, requiring her to be nourished by sugar cane juice.<sup>10005</sup> MOEURNG Chandy's daughter fell ill frequently during their detention at Au Kanseng, was malnourished and continues to suffer health problems to this day.<sup>10006</sup> The Chamber also has before it the corroborative statement of SAM Soem, who was forced to work three months after giving birth in Au Kanseng. She described having stiff hands and feet following childbirth and being assigned to transplanting duties, while she left her child to the care of other female inmates.<sup>10007</sup> MOEURNG Chandy in court similarly described having to leave her daughter with a caretaker while performing work tasks during the day.<sup>10008</sup> The Chamber accepts MOEURNG Chandy's account of the conditions she experienced and

<sup>10002</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 88-89; T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 9. *See also*, SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620.

<sup>10003</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 68; T. 2 March 2016 (PHON Thol), E1/395.1, p. 70. *See also*, PHON Thol Interview Record, E3/5172, 6 May 2008, p. 4, ERN (En) 00272586 ("The hardest work was shoulder-carrying wood from Au Kanseng to the prison. The cut face of that wood was 5x15, and it took three people to shoulder it up and down the mountain to the prison"); BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 24, ERN (En) 00843473.

<sup>10004</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 73-74; T. 7 March 2016 (MOEURNG Chandy), E1/397.1, pp. 11-12. *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073.

<sup>10005</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 67-68 ("I did not have any breast milk to feed my baby [...] Because I did not have breast milk to feed her, then I asked for sugar cane juice to feed her. And that happened because I did the hard work; namely, carrying wood."), 73 ("I was asked to sort of carry wood planks and the distance was rather far. And at that time I had just delivered my baby and I could not carry it."). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073.

<sup>10006</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 72 ("My child was young and was skinny [...] If children had enough breast milk, then the children would be healthy, but my child was not that healthy.").

<sup>10007</sup> SAM Soem Interview Record, E3/9327, 7 May 2008, p. 3, ERN (En) 00272620).

<sup>10008</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 72-73 ("When I went to work, the child would stay with the caretaker there [...] So it was up to the caretaker to ask for medicine if my child had fever and I only saw my child at night time.").

is satisfied that no exceptions were made to the mandatory work regime for female detainees who had given birth at Au Kanseng.

2921. While performing work assignments at Au Kanseng, detainees were not shackled but were under constant armed guard by the security unit.<sup>10009</sup> At night, prisoners were sent back to and locked in their detention cells and were required to remain silent.<sup>10010</sup> A few prisoners were tasked with assisting CHIN Kimthong and guards with night-time guarding duties.<sup>10011</sup>

2922. The Chamber heard evidence of the psychological distress experienced by detainees while interned at Au Kanseng. Witnesses PHON Thol and MOEURNG Chandy lived in fear of death during their one-and-a-half-year detention if they did not abide by the instructions of Security Centre staff,<sup>10012</sup> a sentiment shared by other former prisoners interviewed by OCIJ investigators.<sup>10013</sup> MOEURNG Chandy additionally recalled being terrified of being kicked by guards or hit with a rifle butt if she committed an infraction.<sup>10014</sup> Light offenders could talk with one another during the

<sup>10009</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 55. *See also*, CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403576 (workers were guarded by the security unit); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 3, ERN (En) 00272577 (workers were always under guard but unshackled); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 3, ERN (En) 00250072 (two armed soldiers guarded workers).

<sup>10010</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 78, 88. *See also*, BUN Vann Tha DC-Cam Interview, E3/7953, undated, p. 8, ERN (En) 00843457.

<sup>10011</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 16, 74. *See also*, T. 2 March 2016 (PHON Thol), E1/395.1, p. 98 (detainee was tasked with guarding the jackfruit plantation).

<sup>10012</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 44 (“After I disembarked [from] the truck, they instructed me to walk straight, not to turn anywhere or flee in the forest. Otherwise, we would be shot dead.”); 106 (“Anyone not following the order, he or she [would] certainly be killed”); T. 3 March 2016 (PHON Thol), E1/396.1, p. 24 (“Otherwise, we would be killed”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 39 (“I saw guards with guns, and I was so scared because I had no idea what would happen to my life, would I be killed or what [...] So all of this picture frightened me.”), 41 (“When I arrived in the area, I realised that I would die. I did not know the reasons that I was sent there and I thought that would be the end of my life.”), 48 (“[I]t was natural that we were scared when we were living there, but what could we do?”). The couple were detained from mid-1977 until the arrival of the Vietnamese in January 1979. *See e.g.*, PHON Thol Interview Record, E3/5172, 6 May 2008, p. 6, ERN (En) 00272588 (stating that he was able to sleep outside of his cell prior to the Vietnamese liberation).

<sup>10013</sup> MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578 (“While they worked, some prisoners captured various animals, like crickets and small lizards, and hid them in the waists of their trousers. When they got back to their cells, they would roast these animals and eat them. If they had been caught, they surely would have died.”); KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (“Prisoners were all frightened. Everyone was working and tempering themselves hard. No-one dared walk without permission because they were afraid of being caught and shot dead or killed. [...] Punishments were: 1) If a prisoner tries to escape, s/he will be shot dead; or if s/he is caught during escape, s/he will be shot dead also.”).

<sup>10014</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 62 (“When Auy released detainees to go to work and when those detainees committed any infraction, he would hit the offender with the rifle butt or sometimes he hit and kicked. [...] I was so terrified and I was afraid of him.”).

course of the day but dared not converse about politics or *Angkar* for fear of being accused of being CIA or KGB agents.<sup>10015</sup>

2923. Further, the Chamber heard accounts of Au Kanseng security guards menacing prisoners with acts and stories of brutality and human mutilation. Witness PHON Thol recounted witnessing security guard Nhok hang a human gallbladder in the kitchen area to dry, to frighten detainees.<sup>10016</sup> Witnesses consistently described hearing that Nhok had hacked open the back of a female prisoner who had been accused of immorality, and extracted her gallbladder.<sup>10017</sup> Witness MOEURNG Chandy also heard Security Centre guard Auy openly boasting that he consumed human gallbladder.<sup>10018</sup> As the commission of alleged brutality and mutilation by security personnel was not explored at trial, the Chamber is unable to conclude that prisoner mutilation or death resulting from such acts occurred as described in hearsay accounts. The consistency of these corroborated accounts nevertheless leads the Chamber to conclude that security guards at Au Kanseng did at the very least engage in scaremongering in order to intimidate prisoners.

2924. Adding to their psychological distress, detainees lived in fear of being called by Security Centre staff at night, aware that those summoned to attend study sessions with *Angkar* would not return and were believed to have been executed.<sup>10019</sup> Disappearances

<sup>10015</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 65-66; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 3, ERN (En) 00272585. See also, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578.

<sup>10016</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 60-61 (“I saw the gallbladder. I did not witness the execution itself but I saw the gallbladder, and [Nhok’s] hands stained with blood, when he hanged it to dry at the kitchen.”).

<sup>10017</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 62 (“I recall that she was accused of having a moral offence with a man and her husband”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587 (“From what I learned one female prisoner was hacked in the back and her bile bladder taken. I learned of this when Nhok, the person who hacked open her back, told all the prisoners in the kitchen building that ‘it was very difficult to take a hatchet and chop that prisoner’s back open to get that bile bladder’. The bile bladder had been hung in the kitchen building to frighten other prisoners. That bladder and Nhok’s hands were covered with blood. The woman had been a rubber plantation union worker who had been sexually immoral with a man.”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 65; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073; MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578.

<sup>10018</sup> T. 7 March 2016 (MOEURNG Chandy), E1/397.1, pp. 5-6; MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073.

<sup>10019</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 68-69 (“[W]hat I knew is that we were detained in that detention building and whenever a guard called a detainee out at night or detainees out at night we were terrified because those who were called out at night never returned.”), 77 (“At night time if I heard the sound of a door opening and names were being called out to attend a study session at the *Angkar* place, it was certain that those persons would disappear”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 90 (“I can recall that when prisoners were taken to be killed, mostly they took them out at night time”).

occurred from time to time,<sup>10020</sup> and detainees sometimes heard screams emanating from the interrogation hut.<sup>10021</sup> On the basis of the foregoing and scaremongering by Security Centre personnel, the Chamber is satisfied that detainees were subjected to a climate of fear and intimidation while detained at Au Kanseng.

2925. Aside from one account of approximately 20 prisoners accused of stealing potatoes having been released on instruction from SAO Saroeun,<sup>10022</sup> the Chamber finds that no other prisoners were released from Au Kanseng during its operation.<sup>10023</sup>

#### 12.4.5. Executions

2926. Orders to execute detainees at Au Kanseng emanated from Division 801 Chairman SAO Saroeun and were forwarded to Security Centre Chairman CHHAOM Se for action. CHHAOM Se testified that he never personally issued execution orders, stating that those who were ultimately executed “were not criminals”,<sup>10024</sup> but clarified that he did receive direct orders from SAO Saroeun to execute a group of six Vietnamese civilians.<sup>10025</sup> The Chamber concludes that the witness was here referring

<sup>10020</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 65, 101 (the person whom PHON Thol saw being mistreated with pliers disappeared a day later); T. 11 January 2013 (UNG Ren), E1/159.1, p. 55 (“Some people disappeared”).

<sup>10021</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 79; UM Keo Interview Record, E3/5173, 8 May 2008, p. 4, ERN (En) 00272661.

<sup>10022</sup> T. 9 January 2013 (UNG Ren), E1/157.1, pp. 86-87 (“I knew that there was a security or prison in the Boeng Kanseng area [...] through the people who live near the prison or the security centre, because two or three of their children who were starving while working in the cooperative decided to steal potato, and then they were arrested and taken to the security centre. [...] And when 05 arrived at Boeng Kanseng, I reported to him about the issue [...] and then he decided to release those people. And there were about 20 of them at the time.”).

<sup>10023</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, pp. 60-61 (“Regarding the release, in that period, they were released to work within the compound of Au Kanseng Security Centre. The release was applied to those [...] prisoners who had minor offences.”); T. 2 March 2016 (PHON Thol), E1/395.1, p. 80 (“After the interrogation no one at the Au Kanseng re-education school was released”). *See also*, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 5, ERN (En) 00272579 (“I never saw a prisoner released. The prisoners remained there until liberation, when they went free.”).

<sup>10024</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 104 (“I, myself, never issued any orders for the execution because they were not criminals, even if those people who committed serious offence[s] and were shackled, since we did not have a complete document on those people. [...] [R]egarding the group of six people, I receive[d] instructions from Sao Saroeun for them to be executed.”); T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 16 (witness confirms that he “exercised no authority in order to implement any decision and that all decisions were exercised by Mr Sou Saroeun, whether it concerned the liberation or execution of prisoners.”); CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (“After [six Vietnamese civilians] interrogations were completed, [the] upper echelon decided to finish off those persons in accordance with the orders of the Division 801 commander who made the decision to finish them off.”). With regard to the Security Centre staff’s authority to issue such orders, *see above*, para. 2876.

<sup>10025</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 7, ERN (En) 00406215 (“Shortly before 1979, before the strong Vietnamese attacks in 1979, I saw a group of six Vietnamese civilians had



to the same group of Vietnamese people referred to in his statement as having been “finished off” in accordance with the orders of the Division 801 Commander. CHHAOM Se further acknowledged that three detainees had been shot as a result of two separate melees with Security Centre guards.<sup>10026</sup> The Chamber accepts CHHAOM Se’s consistent accounts of these deaths and is satisfied that at least nine prisoners, including six captured Vietnamese civilians and three detainees, were executed by Au Kanseng security guards.

2927. Beyond these executions, CHHAOM Se testified that “no one else had been sent for execution” at Au Kanseng.<sup>10027</sup> This assertion is inconsistent with the witness’s own statements to investigators, in which he claimed that detainees who were unable to be re-educated would be “killed”.<sup>10028</sup> Noting the absence of further evidence in this regard, the Chamber considers CHHAOM Se’s contradictory statements insufficient to establish beyond reasonable doubt that unreformed detainees were killed without exception.

2928. The Chamber nevertheless has before it evidence of other extrajudicial executions at or within the purview of Au Kanseng Security Centre which contradicted CHHAOM Se’s assertion, and now turns thereto.

2929. Witness PHON Thol witnessed the execution of two to four soldiers while posted to guard a jackfruit plantation. He described seeing the people carried to the execution site by Au Kanseng security guards, whereupon they were struck to the head

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been taken prisoner at the Au Ya Dav village battlefield along the border. [...] After their interrogations were completed, [the] upper-echelon decided to finish off those persons in accordance with the orders of the Division 801 commander who made the decision to finish them off.”)

<sup>10026</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 104 (“However, some of them caused an injury to one of my guards. They were [in] a fight, and as a result, one died. And in the second instance, one person who was shackled escaped; that person was chased, and it resulted in his death. [...] As I stated earlier, there were three other people, due to their reactions and the harm they caused to one of [...] my guards.”). *See also*, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (“Another incident was about a prisoner who was trying to escape but was shot dead by the guards [...] Punishments were: 1) If a prisoner tries to escape, s/he will be shot dead.”).

<sup>10027</sup> T. 11 January 2013 (CHHAOM Se), E1/159.1, p. 104 (“Separately, regarding the group of six people, I receive[d] instructions from Sao Saroeun for them to be executed.”).

<sup>10028</sup> CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 9, ERN (En) 00406217 (“[I]f after being kept for a period of time [detainees] had still not reformed, *Ta* Saroeun ordered them killed”); CHHAOM Se Interview Record, E3/3984, 2 November 2009, ERN (En) 00403575 (“In the centre compound, there were about 10 pits. One of them was used for no-choice prisoners, namely those who could not be changed by the orders of the upper echelon. There were only about 10 prisoners.”). *See also*, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 4, ERN (En) 00272578 (“If prisoners broke the rules and could not be re-educated, they were taken away and killed”).

with the backs of hoes, “smashed and killed and buried” in trenches.<sup>10029</sup> Confronted with his previous statement to OCIJ investigators, PHON Thol clarified that he saw two previously-shackled divisional soldiers, one of whom “was dead and the other one was alive”, being carried to a jackfruit plantation, with the second soldier “killed with a hoe before being buried in the trench”.<sup>10030</sup> The witness unequivocally confirmed that the security guards who carried the prisoners “worked for Au Kanseng Security Centre”.<sup>10031</sup> The Chamber is satisfied that while the witness observed two dead bodies on this occasion, he witnessed the execution of only one military prisoner by Security Centre.

2930. Testifying about another incident, PHON Thol described being ordered to bury the body of a Jarai, Tumpoun or Kravet detainee, allegedly shot to death by Security Centre guard and leading cadre Tim after seeking food from a village while working outside the Au Kanseng compound.<sup>10032</sup> PHON Thol provided conflicting accounts about whether he personally witnessed the event; twice stating that he did, and twice stating that he did not see Tim kill the prisoner.<sup>10033</sup>

2931. The nexus between the alleged execution and subsequent burial was not explored at trial. Although he was consistent in asserting that he buried *a* body, the Chamber is at most able to infer from PHON Thol’s testimony that this was the body of the person allegedly shot by Tim. The Chamber does not have before it the witness’s observations of the body he buried, the perceived cause of death, the chain of custody of the corpse or information about the intervening period between alleged death and burial. Further, the Chamber does not have the benefit of corroborative accounts of this incident. As a result, while the Chamber is satisfied that PHON Thol was directed to

<sup>10029</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 57, 99-100. *See also*, PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587.

<sup>10030</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 99-105.

<sup>10031</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 57, 103-105; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587.

<sup>10032</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 59-60; T. 2 March 2016 (PHON Thol), E1/395.1, pp. 105-106; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587.

<sup>10033</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 59 (“Q: Did you ever see [Tin] kill anyone and if so, could you describe that incident for us? A: No”), 60 (“Q: Did you actually see Tin shoot this detainee? A: Yes, I witnessed it with my own eyes.”), 105 (“Q: Let me now go to the incident of Tin. You didn’t see Tin kill the person, but he asked you to bury a person. Is that correct? A: Yes.”); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587 (“I also saw a guard shoot and kill one prisoner [...] while I was labouring near the person who did the shooting. The shooter was Tin.”).

bury a body on this occasion, it is unable to satisfy itself to the requisite standard of proof that he in fact witnessed the execution.

2932. MOEURNG Chandy testified to a further incident before the arrival of Vietnamese forces in which she and two other women secretly witnessed Security Centre guard Auy hit a chained female detainee with the back of a hoe.<sup>10034</sup> The witness described the victim grasping Auy by the leg and begging for her life, before again being struck and killed and then buried in a specially dug pit. The women remained hidden from Auy, who “would have smashed” them had he seen them.<sup>10035</sup> As a result of the witness’s consistent and specific recollections of this event, the Chamber finds MOEURNG Chandy’s account to be credible.

2933. In light of the foregoing evidence, the Chamber rejects CHHAOM Se’s assertion that other prisoners were not executed at Au Kanseng.

2934. Bodies of executed detainees and those who had died of disease were buried in approximately 10 pits dug by Security Centre guards outside the compound.<sup>10036</sup> Two suspected grave sites were identified by OCIJ investigators immediately south of the Au Kanseng compound.<sup>10037</sup> According to former Au Kanseng Deputy Chairman CHIN

<sup>10034</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 62-63 (“One day, when I was picking up vegetables, I saw a woman was walked by [Auy] and that woman implored him. But [...] Auy hit her with the back of a hoe. At the time, the woman did not die yet and she was imploring Auy. There were three of us picking up vegetables in a nearby place and we secretly looked at that incident. [...] And a while later, that woman was smashed with the back of the hoe. She died as a result. He then dug a pit to bury her. [...] She was locked to the chains while being walked by *Ta Auy*”), 93 (“I saw Auy beating the woman with a hoe and then when the woman gent to grab his leg and begged for her life and then Auy did not let her survive. He kept beating her with another hoe and then he dug a pit and pushed her into the pit.”); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 (“I clearly saw *Ta Auy* killing one Cambodian female who folded her arms around his legs and begged him for her life. At that time, I was picking vegetables.”).

<sup>10035</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 63 (“We did not let him see us; otherwise, he would have smashed us too.”), 93 (“[W]e secretly sneaked out to make sure that Auy did not see us. After that, we secretly ran way, because we were afraid that he would beat us with a hoe too.”).

<sup>10036</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 47 (“Mostly that was the job done by security guards -- that is, to dig [...] pits”); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 7 (“[T]here was no pit *inside* the compound of the centre” [emphasis added]); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583 (describing “less than ten pits for burying the corpses of prisoners” but placing these “[i]nside the security office compound”, which “were old trench positions and B-52 craters and pits under breadfruit trees”). Despite his placement of the burial pits inside the compound proper, CHIN Kimthong’s descriptions are otherwise consistent with witness sketches of the Security Centre. See Sketch by CHHAOM Se of the location of the Au Kanseng Security Centre, E3/2923, ERN 00699170; Sketch by PHON Thol of Au Kanseng Security Centre, E3/5172, 8 June 2008, ERN 00272590.

<sup>10037</sup> Site Identification Report, E3/8024, 21 June 2009, pp. 19-20, ERN (En) 00384814-00384815. The first suspected site measuring approximately 3x3m in size was identified within a cashew nut plantation approximately 250m south of the compound. Brief test digging identified suspicious bone material but

Kimthong, the number of deaths at Au Kanseng possibly numbered in the hundreds, but fewer people “died from illnesses than those who were smashed”.<sup>10038</sup> Cognisant of the witness’s motive to minimise the extent of criminal offending at the Security Centre, the Chamber accords minimal weight to the witness’s estimation of the number of deaths at Au Kanseng.

#### 12.4.6. *Arrival and Execution of the Jarai*

2935. The Chamber has before it a telegram (E3/240) by Northeast Zone Secretary Vy requesting “*Angkar*’s comments” and “a high-level decision” with respect to “209 Vietnamese soldiers” of Jarai ethnicity including nine females arrested in Sector 107 by “Production Unit 801”. Dated 15 June 1977, the telegram states that the Jarai, who spoke “Khmer poorly” and who claimed that they were “people who came to seek refuge in Cambodia”, had “already been confined”. Vy concludes that “[b]ased on my examination, they are external enemies coming to burrow in our territory but when unmasked, they moved”.<sup>10039</sup>

2936. The telegram’s intended recipients are listed as “*Om*” (POL Pot), “*Om Nuon*” (NUON Chea), “*Bang Van*” (IENG Sary), “*Bang Vorn*” (VORN Vet), “*Bang Khieu*” (SON Sen), “Office” (870) and “Documentation”.

2937. The timing of this event as well as the type and number of prisoners were contested by the Parties at trial. The Chamber proceeds with an analysis of the evidence before it.

##### 12.4.6.1. *Arrival at Au Kanseng Security Centre*

2938. There was no evidence before the Chamber concerning the period between the Jarai’s arrest in Sector 107 and their arrival at Au Kanseng in Sector 102. It was further

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no further findings could be made. The second suspected grave site, consisting of two suspected pits measuring 8x10m and 5x5m in size, was identified within a jackfruit plantation approximately 145m west of the first site.

<sup>10038</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 83 (“I added that from my recollection, the number of prisoners who died was possibly hundreds of people”), 85 (“I cannot give any precise number or answer to the percentage of prisoners who died [...] there were hundreds of them who died, that included those who were smashed as well as those who died in the detention centre from illnesses. [...] I could say that there were a lesser number of prisoners who died from illnesses than those who were smashed.”).

<sup>10039</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897667-00897668.

unclear whether the telegram's reference to the group's "confinement" was referable to their eventual detention at Au Kanseng Security Centre or intervening detention at another location.

2939. The Jarai were transported to Au Kanseng at night in trucks and under armed guard. Upon reaching the Security Centre, they were bound by the hands with rope, segregated by gender and locked in detention buildings.<sup>10040</sup> The inability of Au Kanseng to accommodate such a large influx of prisoners resulted in the Jarai being locked in a "tiny space" in cramped conditions.<sup>10041</sup>

#### 12.4.6.1.1. *Date of arrival*

2940. The Chamber heard varying evidence regarding the Jarai's arrival date at Au Kanseng. Witness PHON Thol testified that the Jarai arrived at the Security Centre "about one month" after his own internment in mid-June 1977,<sup>10042</sup> or at about the time jackfruit ripened; "from February up to June".<sup>10043</sup> Witness CHIN Kimthong recalled that the event coincided with rainy season and sporadic border clashes that took place from late 1977.<sup>10044</sup> Witness MOEURNG Chandy initially testified that she saw Jarai prisoners while she was pregnant, stating that she was two months pregnant in mid-1977, and accepted NUON Chea defence counsel's suggestion that her daughter was born in or about January 1978.<sup>10045</sup> Confronted with her previous inconsistent statement to OCIJ investigators that she saw Jarai prisoners tied with rope two or three months after giving birth, MOEURNG Chandy conceded that she could not "recall things well" and reaffirmed her earlier assertions to investigators.<sup>10046</sup>

<sup>10040</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 91-92; CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583; CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078; T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 16. *See also*, CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 7, ERN (En) 00406226.

<sup>10041</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 91 ("[T]here were too many of them. The space to sleep was full, but we put them in that tiny space because we knew there was a door which can be locked.").

<sup>10042</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 40-41, 89, 99.

<sup>10043</sup> T. 3 March 2016 (PHON Thol), E1/396.1, p. 14 ("I only know that the jackfruits got ripe from February onwards, [...] so from February up to June").

<sup>10044</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 92-93.

<sup>10045</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 77 ("Q: [...] would you agree with me that if you were pregnant for about two months mid-June 1977, that your daughter must have been born somewhere in January 1978? A: Yes, it's probably like that. It was in 1978.").

<sup>10046</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 78-80 ("It [was] maybe like what you just said. I cannot recall things well. I lost some of my memory because my memory was not good. So what I answered in my first statement is correct.").

2941. The Chamber does not consider MOEURNG Chandy's testimony to be reliable in this regard, considering her own acknowledgment that she could not recall the date of her daughter's birth well, and her general ambiguity about temporal timeframes.<sup>10047</sup> For this reason, the Chamber finds more reliable the testimony of PHON Thol, who provided clear, consistent and specific testimony, and was able to recall with confidence the date of his arrest and transfer to Au Kanseng, namely 16 June 1977. This date accords with the dispatch date of Vy's telegram to *Angkar*, 15 June 1977, about the arrest of the Jarai.

2942. The Chamber recalls the significant probative value which attaches to the contents of contemporaneous records.<sup>10048</sup> On the basis of PHON Thol's independent corroboration of the temporal timeframe discussed in the telegram, the Chamber accepts as veritable Vy's report that the Jarai were arrested on or about 15 June 1977 and finds that the Jarai were transferred to the Security Centre in or about mid-1977. This timeframe further accords with the substance of CHIN Kimthong's testimony that the Jarai's arrival coincided with the onset of the rainy season and the escalation of armed conflict at border regions of the Northeast Zone, which occurred throughout 1977.<sup>10049</sup>

#### 12.4.6.1.2. *Number of Jarai*

2943. As to their precise number, while *Ta Vy*'s telegram reported 209 Jarai as having been arrested, witnesses consistently testified and deposed to the arrival of fewer than 200 Jarai to Au Kanseng. Former Deputy Chairman CHIN Kimthong and former prisoners PHON Thol and KHOEM Peou estimated that between 100 and 110 Jarai had

<sup>10047</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 77 ("I cannot recall because I did not pay attention to the date when the child was born. I simply gave birth without taking much notice of the date.").

<sup>10048</sup> Section 2: Preliminary Issues, para. 57.

<sup>10049</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 44-45 ("When I arrived in 1977, the 'Yuon' army were attacking in a number of directions [...] In the Northeast Zone, there was Division 801 in Ratanakiri [...] the Yuon army had invaded several fronts."), 47 (The Yuon "attacked a number of other targets including [...] Ratanakiri"); T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 27 ("The reason Division 801 was reassigned to Ratanakiri, that is to the Northeast Zone, is because of the encroachments by the Vietnamese troops, in particular in the area of Ou Dambouk"); DK Telegram, E3/1058, 20 February 1977, ERN (En) 00583681-00583685; Meeting Minutes of Divisional and Independent Regiment Secretaries and Deputy Secretaries, E3/807, 1 March 1977, p. 11, ERN (En) 00933843; DK Telegram, E3/1061, 24 March 1977, ERN (En) 00538730-00538731; DK Telegram, E3/876, 23 April 1977, ERN (En) 00183714; *Cambodian Border Clashes Confirmed* (Los Angeles Times), E3/8272, 29 August 1977, ERN (En) 00166112; Book by S. Morris: *Why Vietnam Invaded Cambodia*, E3/7338, p. 99, ERN (En) 01001766.

been brought to the Security Centre.<sup>10050</sup> Chairman CHHAOM Se rejected the number averred in telegram E3/240 as “not true”, stating that “only more than 100 were sent to my section”.<sup>10051</sup> When asked about *Ta Vy*’s report that 209 Jarai had been arrested, CHIN Kimthong testified, that:

I think that the [evidence] in relation to the capture of 209 Vietnamese [Jarai], when I compare to the real situation happening at my location, I think the number was overstated. When I received them at the security centre, there were less than 200 people. In fact, 200 people could not have been put together in a building which was about 10-metre[s] long and six-metre[s] wide. Together with previous prisoners who were soldiers, that centre could not accommodate all of them.<sup>10052</sup>

2944. Witness MOEURNG Chandy recalled seeing only 20 to 30 Jarai prisoners, of which 10 or 20 were women.<sup>10053</sup> Indeed, former Au Kanseng Deputy Chairman CHIN Kimthong testified that there were between five and 10 females,<sup>10054</sup> while *Vy*’s telegram identified nine females as having been arrested.<sup>10055</sup> Further, witnesses also confirmed that a small number of children or babies were among the Jarai brought to Au Kanseng.<sup>10056</sup>

<sup>10050</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 92 (“Perhaps there were around 105 or 110 of them”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583 (“Jarai were in fact captured and brought to the Au Kanseng Security Office [...] There were more than 100 of those Jarai”); T. 2 March 2016 (PHON Thol), E1/395.1, pp. 49-50 (affirms his estimate of 100 prisoners provided to OCIJ investigators); PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587; KHOEM Peou Interview Record, E3/7684, 26 August 2008, pp. 4-5, ERN (En) 00250073-00250074 (“But in one night they arrested 105 prisoners from the border (the guard-soldiers told me the figure). [...] I knew that they were Jarai because I heard them speaking the language.”).

<sup>10051</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 21 (“Q: You said that there were more than 100 people who were Jarai who were arrested. So was it a number between 100 and 200 people, or could this mean more than that even? A: There were more than 100”), 25 (“[T]he number here [in E3/240] is not true; only more than 100 people were sent to my section.”). *See also*, CHHAOM Se Interview Record, E3/405, 31 October 2009, p. 8, ERN (En) 00406216 (“In approximately 1978 more than 100 Jarai were captured and brought in from the Vietnamese border”).

<sup>10052</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 98.

<sup>10053</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 50 (There were actually 20 to 30 of them, including men, and later on, the men were separated and only women were placed in my building and those women amounted to [...] between 10 [and] 20”).

<sup>10054</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 94 (“There were not many female Jarai and [...] I cannot tell you whether there were five or ten female Jarai. Most of them were male, and as for the female, there were around 5 or 6 of them.”); CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078.

<sup>10055</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897667 (“Production Unit 801 being stationed at 107 patrolled and arrested 209 Vietnamese soldiers, including 9 females in the vicinity of O Laak”).

<sup>10056</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 50; PHON Thol Interview Record, E3/5172, 6 May 2008, pp. 4-5, ERN (En) 00272586-00272587; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 49-51. *See also*, MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN (En) 00272580.

2945. The Chamber finds these accounts to be consistent and reliable. Turning to the apparent discrepancy between the number of Jarai reported in Vy's telegram and those seen by witnesses who testified in court, the Chamber does not consider these accounts to be contradictory or mutually exclusive. First, the Chamber has already found that approximately one month had elapsed between the arrest in Sector 107 of 209 Jarai and the subsequent detention of at least 100 Jarai at Au Kanseng in Sector 102.<sup>10057</sup> Second, it recalls that witnesses who observed the arrival of at least 100 Jarai at Au Kanseng did so from the limited vantage point of their detention cells *inside* the Security Centre compound at night.<sup>10058</sup> Thirdly, and as a result of the foregoing, a number of inferences are available to the Chamber about the Jarai for whom witnesses did not account at trial, including that all 209 Jarai were conveyed to the Security Centre but that, in accordance with Au Kanseng's limited prisoner capacity,<sup>10059</sup> only a fraction was subsequently detained therein (*i.e.* those seen by witnesses). Alternatively, the Chamber could infer that only half of those arrested were detained at Au Kanseng, while the remainder were otherwise dealt with by Division 801. Having no evidence to support a finding concerning those Jarai who were not ultimately detained at Au Kanseng, the Chamber declines to speculate about the circumstances of their separation from the remainder of the arrested group or their ultimate fate. Consistently with the testimony before it regarding the present crime site, the Chamber is satisfied that at least 100 of the 209 arrested Jarai, including men, small children and at least five women, were detained at Au Kanseng Security Centre.

#### 12.4.6.1.3. *Identification*

2946. Witnesses consistently identified the prisoners as being of Jarai ethnicity. CHIN Kimthong stated that according to the group's skin colour, they were not Vietnamese and that, judging by their accents, they may have been Jarai.<sup>10060</sup> Although she did not speak with them for fear of getting into trouble from the guards,<sup>10061</sup> MOEURNG Chandy observed the group wearing ethnic clothing which was stylistically different from that of Khmers, and heard their Jarai accent, which she knew to be similar to the

<sup>10057</sup> See above, para. 2942.

<sup>10058</sup> The Chamber has found that prisoners were locked in poriferous detention buildings at night. See above, paras 2910-2911, 2921.

<sup>10059</sup> See above, paras 2889, 2939.

<sup>10060</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 99.

<sup>10061</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 52.



way Laotian or Thai people speak.<sup>10062</sup> While the Chamber did not hear expert testimony on the ethnic, national or linguistic distribution of Jarai populations, it has before it sufficient evidence corroborating the foregoing accounts about the spread of ethnic Jarai peoples across border regions of Ratanakiri province and former South Vietnam prior to and during the DK period.<sup>10063</sup> Witness testimony also consistently referred to Jarai people detained at Au Kanseng as an “ethnic” minority group.<sup>10064</sup> The Chamber is satisfied that the group referred to as Jarai and imprisoned at Au Kanseng in mid-1977 was, in fact, of Jarai ethnicity.

2947. Limited evidence was heard regarding the question of the Jarai’s origin. CHIN Kimthong testified that the Jarai specified that they lived in mountainous areas near the Vietnam-Kampuchea border on the Vietnamese side but were arrested on Cambodian territory.<sup>10065</sup> Indeed, Vy’s telegram reports the capture of 209 “Vietnamese” soldiers carrying “a Vietnamese map”. The Chamber notes the context in which this information was communicated to *Angkar*, including the intensifying armed conflict with Vietnam and pervasive atmosphere of paranoia in mid-1977.<sup>10066</sup> Noting further evidence indicating the wide geographic distribution of Jarai peoples across Cambodian and Vietnamese territory,<sup>10067</sup> the Chamber accords the foregoing assertions of the Jarai’s origin little weight. As no further evidence is available in this regard, the Chamber is unable to conclude beyond reasonable doubt that the Jarai were either nationals of the Socialist Republic of Vietnam or ordinarily resident in Vietnamese territory.

<sup>10062</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 51-53. *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 5, ERN (En) 00404074.

<sup>10063</sup> Map of Indochinese Ethnolinguistic Groups, E3/2651, undated, ERN (En) 00327660 (showing the Jarai as a “Tribal Malayo-Polynesian” ethnolinguistic group distributed across the Ratanakiri-Vietnam frontier). *See also*, Book by C. Etcheson: *The Rise and Demise of Democratic Kampuchea*, E3/29, p. 85, ERN (En) 00393271 (referring to Jarai populations “in the mountainous areas of Stung Treng”); Book by Sak S.: *The Khmer Republic at War and the Final Collapse*, E3/4534, p. 8, ERN (En) 00495598 (referring to the “majority of the population” in Monduliri and Ratanakiri comprising “ethnic minorities known as [...] Jarai”).

<sup>10064</sup> T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, p. 61; T. 8 August 2012 (SUONG Sikoeun), E1/104.1, p. 27; T. 9 February 2016 (YSA Osman), E1/388.1, p. 37; T. 10 February 2016 (YSA Osman), E1/389.1, p. 43; T. 2 March 2016 (PHON Thol), E1/395.1, p. 51; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 52; T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 91; T. 29 March 2016 (CHAN Bun Leath), E1/410.1, p. 19; T. 24 October 2016 (KUL Nem), E1/488.1, p. 99.

<sup>10065</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 93.

<sup>10066</sup> Section 16.3.1.4: Real or Perceived Enemies: 1977.

<sup>10067</sup> *See above*, para. 2946.

12.4.6.1.4. *Rationale for arrest*

2948. On its face, Vy's telegram evinces the perception that the group of Jarai consisted of enemy combatants as the rationale for their arrest. This conclusion appears to be a result of the Jarai's alleged possession of weapons (including one AK rifle, three guns, two pistols, three US-manufactured grenades, bayonets and knife blades), a Vietnamese map, US-made backpacks, the telegram's assertion that they "served in the army for two to ten years" and claim that they were seeking "refuge in Cambodia", which was considered as untrue.<sup>10068</sup>

2949. Witness CHHAOM Se deposed to investigators that members of the group were arrested and killed because they "were accused of being Vietnam's undercover agents embedding in cooperatives".<sup>10069</sup> Witness CHIN Kimthong testified that the Jarai were "not accused of being Vietnamese soldiers". From the information he received from the battlefield, "they were considered as Thieu-Ky soldiers in the war before 1970";<sup>10070</sup> a reference to soldiers of the former Republic of South Vietnam under President NGUYEN Van Thieu and General NGUYEN Cao Ky.<sup>10071</sup> Corroborating the view that this group was perceived as an external enemy, the Chamber has before it evidence that perceived Thieu-Ky combatants were indeed the subject of skirmishes and antagonisms with Cambodian revolutionary forces before and during the DK period.<sup>10072</sup> A number of prisoners identified as Thieu-Ky soldiers were arrested and detained or executed at S-21.<sup>10073</sup> In his statement to OCIJ investigators, the witness asserted that these Jarai

<sup>10068</sup> See above, para. 2935.

<sup>10069</sup> CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 6, ERN (En) 00922121.

<sup>10070</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 98.

<sup>10071</sup> Case 001 Transcript (KAINING Guek Eav), E3/5798, 9 June 2009, p. 71, ERN (En) 00339379.

<sup>10072</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 74 ("[A]fter 17 April 1975, [...] the fighting with us was not with the "Yuon" from the [sic] Vietnam, but was with the Thieu-Ky soldiers. [...] Thieu-Ky was the leader of [...] South Vietnam -- of the "Yuon" in the [sic] South Vietnam. [...] I fought against Thieu-Ky soldiers."); T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 81-82 ("[T]he shelling came from [the] direction [of Vietnam]. However, I could say there were two groups: one was good and one was bad. [...] [O]ne group was the Thieu-Ky group, and another group was a good Vietnamese group. [...] [the shelling] was in 1977, and it was early that year, not in the later part of the year."); T. 2 November 2016 (LONG Sat), E1/494.1, p. 74 ("Yes, in [19]70, there were Thieu-Ky soldiers entering our territory").

<sup>10073</sup> See e.g., S-21 list of prisoners admitted on 3 May 1978, E3/10138, p. 3, ERN (En) 01548732 (listing two "Vietnamese" soldiers "of Thiv Ky" from the Northeast Zone); S-21 list of prisoners, E3/10205, 1-13 October 1978, pp. 8-11, ERN (En) 01397683-01397687 (listing 18 "Thiv Ky 'Vietnamese'" soldiers including 13 from Mondulkiri and five from "Kratie, Snuol"); S-21 list of prisoners, E3/10212, 8 November 1978, pp. 4-5, ERN (En) 01397693-01397694 (listing four "Thiv Ky 'Vietnamese'" soldiers from Mondulkiri); S-21 list of "Yuon Espionage Section" prisoners, E3/8436, undated, ERN (En) 00250014 (listing four Thieu Ky "lieutenants", including one from Mondulkiri and another from Kratie). The Chamber has not considered these arrests and detentions as part of the Au Kanseng crime base.

were called “ethnic FULRO” at the time,<sup>10074</sup> referring to the *Front Uni pour la Lutte des Races Opprimées* (United Front for the Struggle of Oppressed Races); a multi-ethnic resistance group active in the mountainous region between Cambodia (Ratanakiri and Mondulokiri) and Vietnam (Central Highlands) before, during and after the DK era.<sup>10075</sup>

2950. It is clear from the foregoing that, whatever the nature of their ultimate categorisation by Division 801, the Jarai were arrested on grounds of their perceived non-Cambodian affiliations rather than their membership of any ethnic or racial group, whether Jarai or Vietnamese. Accordingly, the Chamber is satisfied that the Jarai were arrested as a result of Division 801 and the Northeast Zone Secretary’s perception that they were “external enemies”.

#### 12.4.6.2. Execution

2951. Less than one week following their arrival,<sup>10076</sup> the Jarai were tied with rope in lines of 10 and marched out of the prison under the pretext of being returned to their

<sup>10074</sup> CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078 (“They arrested and sent those prisoners to Au Kanseng during the night time. They called them ethnic FULRO”).

<sup>10075</sup> Founded in 1964, FULRO was initially supported by LON Nol, and had as its objective the liberation of the former Kingdom of Champa. It abandoned its struggle in 1992. See T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 45 (referring to Jarai, Rhade, Kacho, Kavet and “other minority people involved in the movement. [...] Initially, when the FULRO forces arrived at the [Mondulokiri] border, we assumed that they were the Vietnamese forces [...]. [T]hey were part of a resistance movement belonging to the Vietnamese ethnic minorities and their plan was to liberate their territory.”); T. 10 February 2016 (YSA Osman), E1/389.1, p. 91 (“As far as I know, Lon Nol himself was the chief of [the] FULRO movement. [...] FULRO Champa had participant from other ethnic groups such as Jarai and Rhade from Mondulokiri and Ratanakiri province who wanted to regain back our motherland, Champa territory.”); Book by W. P. Deak: *Road to the Killing Fields: The Cambodian War of 1970-1975*, E3/3328, p. 46, ERN (En) 00430626; Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, pp. 97, ERN (En) 00192282 (FULRO “received material support from the Khmer Rouge” in about 1977), 240, ERN (En) 00192425 (referring to FULRO resistance to the Khmer Rouge); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 265-266, ERN (En) 01150139-01150140 (referring to a quote from SENG Hong alias Chan: “The reason [that POL Pot scattered the Cham] was that the Muslims had an organisation called ‘FULRO Champa’, to defend the interests of the Muslims, led by Les Kasem, a colonel in Phnom Penh during the Lon Nol era.”).

<sup>10076</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 52 (the witness estimated that the Jarai disappeared “less than one week” after their arrival), 95 (“When I witnessed the Jarai disembarking from the truck and sent away four or five days later”); T. 3 March 2016 (MOEURNG Chandy), E1/396.1, p. 51 (“The tie [rope] remained there while they were detained in the building for about four to 10 days, and after that, they removed the rope”); MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 (“In about three, four days later [after MOEURNG Chandy first saw the Jarai tied] these minority people were told that they would be taken back to their birth district”). See also, KHOEM Peou Interview Record, E3/7684, 26 August 2008, p. 5, ERN (En) 00250074 (“Next morning [after their arrival at Au Kanseng] all of those prisoners disappeared”).

home districts.<sup>10077</sup>

2952. There are no eyewitness accounts or forensic evidence before the Chamber of the alleged execution of the Jarai.<sup>10078</sup> The Chamber nevertheless has before it significant circumstantial evidence that evinces the fate of this group following their removal from Au Kanseng.

2953. Witness MOEURNG Chandy testified that she had seen a large, empty B-52 bomb crater located one kilometre from the Security Centre.<sup>10079</sup> A few days after the Jarai had been taken away, she returned to the area on a work assignment to pick vegetables and saw the same crater filled with dirt. She testified that she could “smell the decomposed bodies from the cracked-open soil”,<sup>10080</sup> and “saw the clothing of the dead people”. Garments resembling the torn and distinctive clothes previously worn by the Jarai were distributed to detainees in the days following these observations, leading MOEURNG Chandy to conclude that they had been executed.<sup>10081</sup>

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<sup>10077</sup> T. 2 March 2016 (PHON Thol), E1/395.1, p. 49; PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587; T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 55 (“At that time, the Jarai people were told to leave the building in order to go back to their birth district and those Jarai people were tied together in single file and taken back”), 60-61.

<sup>10078</sup> Site Identification Report, E3/8024, 21 June 2009, p. 9, ERN (En) 00384814.

<sup>10079</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 60 (“Before the incident, I could see the pit was empty [...] For instance, one day before [the] Jarai people had been taken out, the pit was not covered”), 81-82 (“The empty pit [...] was the result of the B-52 bombing. [...] The first time I saw the crater, the pit was not filled with dirt [...] At one time I saw an empty, deep pit”); T. 7 March 2016 (MOEURNG Chandy), E1/397.1, pp. 20 (“The crater or pit was deep and, at the time, it was not covered with dirt yet. It [...] was the result of the bombing [...] At first the dirt was not covered with dirt yet and it was deep.”), 22 (“The pit, at one time, was deep”). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 (“But about a few hundred metres or nearly one kilometre [...] at the mouth of the bomb crater [...] I used to see those pits before”).

<sup>10080</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 57 (“A few days later, I returned to that location and I could smell the decomposed bodies from the cracked-open soil”), 60 (“[T]wo or three days later, I went back to that location or I went to a place close to the pit. The pit was fully covered after that incident.”), 82 (“The crater was filled with dirt, with a crack on the surface [...] I saw the pit was filled with dirt and I could smell the decomposing bodies.”); T. 7 March 2016 (MOEURNG Chandy), E1/397.1, pp. 20-21 (“On another occasion, after I went to that place for the second time, the dirt was used to cover the pit already. [...] And the dirt in that pit was cracked open, it smelled bad, so no one would go near it.”), 25 (“There was only one pit. When I first saw it, it was deep and not covered. And when I saw it again, it was covered with dirt.”). *See also*, MOEURNG Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 (“Two, three days later I went to pick the cassavas and saw the cracks in that pit and [it] smelled stinky”).

<sup>10081</sup> T. 3 March 2016 (MOEURNG Chandy), E1/396.1, pp. 51, 57 (“And at that location, I also saw the clothing of the dead people and [...] those clothes were taken and given to other people to wear, so it makes me to believe that those Jarai people had all been killed.”), 61 (“Two days later, clothes were distributed to other people to wear. [...] The clothes had the same colours and model. Those clothes [...] were distributed to other detainees.”); T. 7 March 2016 (MOEURNG Chandy), E1/397.1, p. 18 (“[T]heir clothing was distinctive from our clothing, [...] so I could recognise that the women were wearing red cloth with white colour in the front. So I knew that Jarai people wore that kind of clothing.”); MOEURNG

2954. MOEURNG Chandy's account is corroborated by Witness PHON Thol's own observations. About a week after the Jarai had disappeared from Au Kanseng,<sup>10082</sup> PHON Thol was assigned to guard a jackfruit plantation near a B-52 bomb crater, "approximately one kilometre away" from Au Kanseng. He testified that he saw a cracking pit and perceived a stench that he concluded were "decomposing bodies in that grave which was not fully covered".<sup>10083</sup> PHON Thol did not see any dead bodies at the time, but did see bloodstained and tattered clothes, shoes and sandals through the crack, asserting that he could recognise the clothing as that worn by the Jarai prisoners when they were taken away from the Security Centre.<sup>10084</sup>

2955. Witness CHIN Kimthong provided compelling corroboration of the death and burial of the Jarai. He confirmed knowing first-hand that the Jarai were executed and buried in a B-52 bomb crater that was outside of the Security Centre compound and among a jackfruit plantation, and stated that he personally saw the burial pit.<sup>10085</sup> Accounts of the pit, its distance to Au Kanseng and the stench emanating therefrom following the disappearance of the Jarai are further corroborated by the statements of

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Chandy Interview Record, E3/9357, 9 November 2009, p. 4, ERN (En) 00404073 ("The guards brought in the clothes of those ethnic prisoners to give to other prisoners; and I recognised those clothes because I stayed with those ethnic people for two, three days").

<sup>10082</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 94-96, 99.

<sup>10083</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 53 ("Later on, two days after [the Jarai] had disappeared, I was assigned to work in a jackfruit plantation and at that location, I saw a pit left by bombing next to the palm trees"), 56 ("Upon my arrival, I saw the cracking pit and I smelled the stench, and I concluded that the stench was of the decomposing bodies in that grave which was not fully covered, so [...] it made me believe that those people were killed and they died [...] it was about one kilometre away [...] It was outside the compound of the Au Kanseng Security Centre.").

<sup>10084</sup> T. 2 March 2016 (PHON Thol), E1/395.1, pp. 50-51, 53-55 ("I saw blood. And the pit was cracking. I also saw some clothes, shoes, sandals and flash lights and I suspected that Jarai minority people could have been killed, at that place, and the pit there was cracking [...] I could recognise [...] the clothing they wore when they were being taken. The clothing remained at the grave was the same clothes they wore when they were being taken away. [...] The clothes they wore were in blue and in red and the clothes were tattered and I assumed that the clothes I saw were the same clothes worn by those Jarai when they were being walked out. [...] I did not see the dead body, but clothes stained with blood."). *See also*, PHON Thol Interview Record, E3/5172, 6 May 2008, p. 5, ERN (En) 00272587 ("I saw a B[52] bomb crater [...]. Near that crater I saw blood, backpacks, native clothing, torches, and shoes; from those materials I concluded that the bodies were Jarai and that they had been brought there to be killed.").

<sup>10085</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 91 ("There was a pit used to put the Jarai people who had been killed. The pit was the result of a B-52 bombing. I knew that they buried them in the B-52 pit because on one occasion, a few days after the ethnic Jarai were smashed, I went to the upper area where there were jackfruits. It stunk [*sic*]. So I assumed that perhaps the ethnic Jarai had been killed at that location"). *See also*, CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583; CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078.

CHHAOM Se and MAO Phat.<sup>10086</sup>

2956. CHHAOM Se confirmed that both male and female Jarai were among those executed.<sup>10087</sup> The Chamber accepts as credible the consistent and corroborated accounts of Witnesses MOEURNG Chandy, PHON Thol, CHIN Kimthong and CHHAOM Se regarding the ultimate fate of the Jarai. The Chamber is satisfied that the only reasonable inference available from the foregoing evidence is the death and subsequent burial of the Jarai approximately one week after their arrival at Au Kanseng.

2957. The source of the order to execute the Jarai was affirmed by CHIN Kimthong in court. He described being called to a meeting with SAO Saroeun, along with CHHAOM Se, to discuss the Jarai situation. At the meeting, SAO Saroeun enquired whether or not the Security Centre could manage the Jarai, to which CHHAOM Se responded in the negative, citing limited accommodation within the Security Centre and the small number of available guards. SAO Saroeun thereafter instructed them to “sort out” or “solve” the situation. CHIN Kimthong confirmed that he understood this to mean “to kill” or “to kill and get rid of”.<sup>10088</sup> CHHAOM Se agreed that as commander of Division 801, the “particular issue of the 100 Jarai who were captured [was at] the sole discretion of *Ta Sou Saroeun*”.<sup>10089</sup> The Chamber recalls its findings that the RAK General Staff, and in particular SON Sen, oversaw the operation of Au Kanseng.<sup>10090</sup> It further recalls that members of the Standing Committee including POL Pot, NUON Chea, and SON Sen were not only apprised of the Jarai’s arrest by Northeast Zone

<sup>10086</sup> CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 7, ERN (En) 00406226 (“Those prisoners were taken away to be killed and buried in B[52] craters on the slope of Phnom Svay in the western part, northwest of the national road”); MAO Phat Interview Record, E3/9326, 6 May 2008, p. 6, ERN (En) 00272580 (“When I was working pulling grass, I saw three B[-52] bomb craters less than one kilometer from the prison and near those graves I saw shoes (Vietnamese style sandals) and Jarai clothing. I saw cracks in the grave pits full of flies and there was a strong smell since the pits had covered with only a thin layer of dirt. After seeing that, I concluded that those Jarai had been brought there and killed.”).

<sup>10087</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 21 (“Q: [A]mong the Jarai who had been executed close to your centre, were there women or young women among them? A: Yes, there were.”).

<sup>10088</sup> T. 21 March 2016 (CHIN Kimthong), E1/405.1, pp. 99-101 (“I can recall the instruction of *Ta Saroeun*, or *Ta 05*, about ethnic Jarai after the report of Se. And after hearing the report, he summed it up by saying that, ‘Please solve it’. ‘Solve it’ is the term they [*sic*] used. And from what we understood, the word [*sic*] ‘solve it’ meant to kill.”); CHIN Kimthong Interview Record, E3/5512, 3 November 2009, p. 7, ERN (En) 00403583 (“At the time, *Ta Saroeun (Ta 05)* called me and Se to meet him and he told us [...] to sort out those Jarai. [...] The term ‘sort out’ meant ‘to kill and get rid of’.”).

<sup>10089</sup> T. 8 April 2013 (CHHAOM Se), E1/177.1, p. 18. *See also*, CHHAOM Se Interview Record, E3/9459, 8 May 2013, pp. 5-6, ERN (En) 00922120-00922121.

<sup>10090</sup> *See above*, paras 2872-2875.

Secretary Vy, but were also asked for a “high level” decision on the matter.<sup>10091</sup> The Chamber is satisfied that the order to execute the Jarai was channelled through SON Sen and SAO Saroeun with the direct involvement of the CPK Standing Committee.

2958. The order was relayed to Au Kanseng security guards for action. CHIN Kimthong testified that the execution of the Jarai prisoners was carried out by Au Kanseng security personnel after a discussion with SAO Saroeun.<sup>10092</sup> In his interview with OCIJ investigators, CHHAOM Se conversely claimed that the Jarai were executed by the military unit that initially brought them to the Security Centre.<sup>10093</sup> The Chamber notes that CHHAOM Se could not be examined on this contention in court and that, as chairman of Au Kanseng, has sufficient reason to minimise his own and subordinates’ roles in the execution of Jarai. The Chamber therefore attributes no weight to his apportionment of blame. Consistently with its finding that other executions at Au Kanseng were perpetrated by security personnel,<sup>10094</sup> the Chamber accepts CHIN Kimthong’s testimony and finds that the Jarai were executed by the Security Centre’s security guards.

#### 12.4.7. *Legal Findings*

##### 12.4.7.1. *Murder*

2959. The Closing Order charges the Accused with the crime against humanity of murder at Au Kanseng Security Centre. It specifically charges the Accused with the execution of six ethnic Vietnamese by Security Centre personnel on the instructions of SAO Saroeun.<sup>10095</sup> The Chamber has found that six Vietnamese civilians were deliberately executed pursuant to the orders of SAO Saroeun.<sup>10096</sup> The Chamber is satisfied that both the *actus reus* and *mens rea* of murder are established and

<sup>10091</sup> See above, para. 2936.

<sup>10092</sup> T. 22 March 2016 (CHIN Kimthong), E1/406.1, p. 81 (“Regarding the killings of Jarai people, that task was performed by Tim, the deputy of Se”); T. 21 March 2016 (CHIN Kimthong), E1/405.1, p. 101 (“After we met *Ta* Saroeun, Se invited security guards and me to sit together and solve the issue”); CHIN Kimthong Interview Record, E3/406, 5 November 2009, p. 4, ERN (En) 00404078.

<sup>10093</sup> CHHAOM Se Interview Record, E3/407, 8 November 2009, p. 7, ERN (En) 00406226 (“The soldiers, who had transported those Jarai people [into my Centre], were the ones who killed them personally”); CHHAOM Se Interview Record, E3/9459, 8 May 2013, p. 5, ERN (En) 00922120 (“Q: Who killed the Jarai people? A27: The military who had brought the Jarai people there were the killers; it was not the sector’s military”).

<sup>10094</sup> See above, paras 2926, 2929, 2932.

<sup>10095</sup> Closing Order, para. 622.

<sup>10096</sup> See above, para. 2926.

accordingly finds that the crime against humanity of murder is satisfied with respect to these six civilians.

2960. The Closing Order further charges the Accused with the execution of 209 ethnic Jarai prisoners at Au Kanseng in mid-1977.<sup>10097</sup> The Chamber has found that at least 100 ethnic Jarai, comprising men, small children and approximately five women were detained at Au Kanseng in mid-1977.<sup>10098</sup> The Chamber has further found that approximately one week after their internment at the Security Centre, the Jarai were marched out of the detention compound under pretence, tied with rope,<sup>10099</sup> their remains to be found days later decomposing in a pit located beyond the Security Centre compound.<sup>10100</sup> The Chamber was satisfied that an order to execute the Jarai was channelled through RAK General Staff Chairman SON Sen and Division 801 Commander SAO Saroeun with the involvement of the CPK Standing Committee to security personnel for implementation.<sup>10101</sup>

2961. The Chamber finds that the order to execute the Jarai, their conveyance by security personnel under pretence beyond the Security Centre proper a short time after their arrival, their subsequent execution and burial clearly demonstrates intentional killings sufficient to constitute murder as a crime against humanity. The Chamber is satisfied that both the *actus reus* and *mens rea* of murder are established and finds that the crime against humanity of murder is established with respect to the Jarai.

2962. The Closing Order charges the Accused with other deaths at Au Kanseng more generally.<sup>10102</sup> The Chamber was not satisfied beyond reasonable doubt that unreformed detainees were killed without exception.<sup>10103</sup> Similarly, the Chamber was not satisfied that the evidence established to the requisite standard that a prisoner was killed before having his or her gallbladder removed, and could at most conclude that Security Centre staff were complicit in scaremongering and intimidation by spreading such stories.<sup>10104</sup> Accordingly, the Chamber is not satisfied that the *actus reus* of murder is established

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<sup>10097</sup> Closing Order, paras 618-621.

<sup>10098</sup> See above, para. 2945.

<sup>10099</sup> See above, para. 2951.

<sup>10100</sup> See above, paras 2953-2955.

<sup>10101</sup> See above, para. 2957.

<sup>10102</sup> Closing Order, para. 623.

<sup>10103</sup> See above, para. 2927.

<sup>10104</sup> See above, para. 2923.



with respect to either the alleged systematic execution of any unreformed prisoners, or the death of prisoners who were allegedly mutilated posthumously. It accordingly finds that the crime against humanity of murder is not established in these instances.

2963. The Chamber has found that three detainees died after melees with Security Centre guards.<sup>10105</sup> By shooting at these detainees, the Chamber finds that the guards' acts not only substantially contributed to their deaths, but were also perpetrated with intent to kill or cause serious bodily harm. The Chamber is therefore satisfied that both the *mens rea* and *actus reus* of murder are established and accordingly finds the crime against humanity of murder is established with respect to these three individuals.

2964. The Chamber has further accepted the accounts of PHON Thol and MOEURNG Chandy with respect to two separate prisoner executions perpetrated by security personnel.<sup>10106</sup> The manner of these executions, including sequestering detainees from their quarters, conveying them while restrained to an isolated location, striking at their bodies with blunt force and burying them in pits in and around the Security Centre demonstrates a clear intention by the direct perpetrators to occasion death. The Chamber is satisfied that both the *actus reus* and *mens rea* of murder are established and accordingly finds that the crime against humanity of murder is established with respect to these two deaths.

2965. Although the Chamber accorded limited weight to the estimation that "hundreds" of prisoners were "smashed" or died from illnesses at Au Kanseng,<sup>10107</sup> it has found that *some* deaths at the Security Centre had in fact resulted from prevailing conditions of detention, the lack of medicine and physical mistreatment inflicted upon detainees.<sup>10108</sup>

2966. With regard to executions, the Chamber has found that PHON Thol saw a dead soldier whose death he did not witness.<sup>10109</sup> Further, the witness recounted being instructed to bury the body of a Jarai, Tumpoun or Kravet detainee allegedly shot to death by security guard Tim. Although the nexus between the alleged shooting and the

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<sup>10105</sup> See above, para. 2926.

<sup>10106</sup> See above, paras 2929, 2932.

<sup>10107</sup> See above, para. 2934.

<sup>10108</sup> See above, paras 2917-2918, 2934.

<sup>10109</sup> See above, para. 2929.

burial of the body were not clarified at trial, the Chamber has found that PHON Thol was in fact directed to bury a body on this occasion.<sup>10110</sup> OCIJ investigators identified two suspected grave sites south of the Au Kanseng compound in jackfruit and cashew nut plantations, similar to those described by witnesses at trial. The investigation uncovered suspicious bone material within suspected grave sites, but no forensic analysis was subsequently conducted.<sup>10111</sup>

2967. The absence of forensic evidence notwithstanding, evidence before the Chamber indicates a pattern of conduct at Au Kanseng resulting in the deaths of civilian and military detainees during the course of its operation. The evidence does not, however, rise to a level such as to allow the Chamber to enter an inferential or general finding that “hundreds” of deaths were occasioned at the Security Centre. While it is probable that some of the deaths at Au Kanseng were the result of executions by Security Centre staff as suggested by witnesses at trial, the Chamber is unable to delineate the preponderance of instances to which executions (or deaths as a result of detention conditions) could be attributed and is, at most, able to find that deaths not exceeding hundreds in number resulted from both detention conditions and executions at Au Kanseng. In sum, the Chamber is satisfied that the crime against humanity of murder is established with respect to the foregoing 111 deaths and that these killings had no lawful basis.

#### 12.4.7.2. Extermination

2968. The Closing Order charges the Accused with the crime against humanity of extermination at Au Kanseng.<sup>10112</sup> The Chamber has already found that the intentional execution of a least 111 prisoners at this Security Centre constitutes murder as a crime against humanity.<sup>10113</sup> It is satisfied that the execution of at least 111 people constitutes death on a “massive scale”, and therefore fulfils the gravity requirement for the crime of extermination, and that these deaths were part of the same murder operation at Au Kanseng Security Centre. Separately, the Chamber is satisfied that the order to execute, and subsequent execution, of a group of at least 100 Jarai prisoners in and of itself evinces the direct intention to kill on a massive scale and therefore fulfils the mental

<sup>10110</sup> See above, paras 2930-2931.

<sup>10111</sup> See above, para. 2934.

<sup>10112</sup> Closing Order, paras 618-623, 1381, 1384-1385.

<sup>10113</sup> See above, Section 12.4.7.1: Murder.

element of the crime of extermination. Having satisfied itself of the *actus reus* and *mens rea* elements of the crime of extermination, the Chamber finds that the crime against humanity of extermination is established at Au Kanseng Security Centre with respect to at least 111 prisoners.

#### 12.4.7.3. Enslavement

2969. The Closing Order charges the Accused with the crime against humanity of enslavement at Au Kanseng Security Centre. It finds that prisoners at Au Kanseng Security Centre were subjected to total physical and psychological control, such that virtually all decisions concerning their physical environment were taken by the authorities in order to achieve Party goals.<sup>10114</sup>

2970. The NUON Chea Defence submits that the working conditions at the Security Centre did not exceed that which would normally be required of a person under “lawful detention”.<sup>10115</sup> The Chamber has already determined that compulsory labour may, under certain circumstances, legally fall within the remit of work “normally required” of detained persons. The prerequisite condition for legality in such circumstances, however, is the existence of a lawful order of a competent court mandating compulsory labour.<sup>10116</sup> In this regard, the Chamber does not have before it evidence of any judicial pronouncements – whether sentences, judgments or other ancillary judicial orders – rendered against prisoners at Au Kanseng prior to their arrival. This is consistent with the Chamber’s previous finding that a regular or functioning judicial system was absent during the DK era.<sup>10117</sup> Further, the Chamber has found that prisoners were not informed of the reasons for their arrests within a reasonable time of having been brought to Au Kanseng and were denied due process rights for the duration of their incarceration.<sup>10118</sup> Indeed, it has found that the denial of freedom to prisoners was the direct result of a discriminatory, and therefore persecutory, intent.<sup>10119</sup> Insofar as it submits that detainee labour at Au Kanseng was legally prescribed, the NUON Chea Defence’s submission is rejected.

<sup>10114</sup> Closing Order, paras 1391, 1393-1394.

<sup>10115</sup> NUON Chea Closing Brief, para. 615.

<sup>10116</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement.

<sup>10117</sup> Section 5: Administrative Structures, paras 417-418.

<sup>10118</sup> See above, para. 2895. See below, para. 2979.

<sup>10119</sup> See below, para. 2979.

2971. The NUON Chea Defence further submits that “crops which the detainees grew were meant for their own consumption”.<sup>10120</sup> The Chamber has found that produce harvested by detainees was either consumed by prisoners and cadres at Au Kanseng, or was otherwise distributed to divisional or frontline soldiers.<sup>10121</sup> It has further found that some workers transported firewood from the forest in order to keep warm in detention buildings at night.<sup>10122</sup> However, while it is clear that detainees may have derived benefit from their labour in some instances, this does not necessarily preclude a finding of enslavement. The relevant question, to which the Chamber now turns, is whether powers of ownership were exercised over detainees, reducing them to mere commodities.

2972. The Chamber has found that detainees were subjected to a regimented work regime as part of the tempering process at Au Kanseng and could not refuse to work.<sup>10123</sup> Light offenders were assigned to work inside and outside the Security Centre compound planting, farming and foraging vegetables, working in rice fields, weeding and clearing grass for new plantations, cooking, carrying wood and constructing buildings for cadres.<sup>10124</sup> Other detainees were assigned to assisting with interrogations, guarding other prisoners and burying bodies.<sup>10125</sup> Security Centre personnel dictated working times and locations, which at times were at distant locations at the Vietnam border.<sup>10126</sup> Security Centre staff additionally controlled the timing, distribution and quantity of meals and water during the workday,<sup>10127</sup> and determined the movements and actions of detainees, keeping them under armed guard while working and requiring them to return to their cells at night, where they were required to observe silence.<sup>10128</sup> Although permitted to talk among themselves during the day, detainees dared not discuss politics or *Angkar* lest they be implicated as enemies of the regime. Prisoners feared repercussions if they failed to abide by the instructions of Au Kanseng

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<sup>10120</sup> NUON Chea Closing Brief, para. 615.

<sup>10121</sup> *See above*, para. 2919.

<sup>10122</sup> *See above*, para. 2911.

<sup>10123</sup> *See above*, para. 2919.

<sup>10124</sup> *See above*, paras 2919-2921.

<sup>10125</sup> *See above*, paras 2897, 2921, 2930.

<sup>10126</sup> *See above*, para. 2919.

<sup>10127</sup> *See above*, para. 2915.

<sup>10128</sup> *See above*, paras 2910, 2921.

personnel.<sup>10129</sup> To that end, the Chamber has found that detainees were subjected to a climate of fear and intimidation while interned at Au Kanseng.<sup>10130</sup>

2973. That detainees were involuntarily subdued to the point of involuntary servitude is perhaps best illustrated by MOEURNG Chandy's testimony. Compelled to engage in physical labour shortly after giving birth to her daughter, the witness was required to leave her daughter with a caretaker while labouring; a process which she could scarcely undertake without the assistance of other workers, and which she attributed to the subsequently deterioration of not only her own health, but also that of her young daughter.<sup>10131</sup> The Chamber is satisfied that the *actus reus* of enslavement is established at Au Kanseng.

2974. The foregoing findings demonstrate that the predominant object of prisoners' labour – namely, assignments aimed at ensuring the nourishment of frontline troops and Security Centre staff as well as the construction of buildings for cadres – was largely centred on the subjugation of prisoners' needs to those of the Party apparatus. The Chamber finds that the prevailing regime of mandatory work imposed upon detainees at Au Kanseng entailed their physical and economic exploitation, to their physical and psychological detriment, which, together with their imprisonment at the Security Centre, rendered them incapable of expressing a genuine choice about whether they would work. As a result, the Chamber finds that prisoners were subjected to conditions of forced labour. Further, the Chamber finds that this mandatory regime effectively reduced prisoners to mere commodities and permitted their manipulation and exploitation for the benefit of the Party and its aims. By governing the movements, living arrangements, working conditions and environs of detainees within a climate of fear and intimidation, the Chamber is satisfied that Security Centre personnel intentionally exercised over them the powers attaching to the rights of ownership and is accordingly satisfied that the *mens rea* of enslavement is established. The Chamber therefore finds that the crime against humanity of enslavement has been established at Au Kanseng Security Centre.

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<sup>10129</sup> See above, para. 2922.

<sup>10130</sup> See above, paras 2921-2924.

<sup>10131</sup> See above, para. 2920.

12.4.7.4. Imprisonment

2975. The Closing Order charges the Accused with the crime against humanity of imprisonment at Au Kanseng Security Centre, finding that prisoners were arbitrarily held at Au Kanseng absent legal basis or procedural safeguards.<sup>10132</sup>

2976. The NUON Chea Defence submits that the evidence does not allow a finding that arrests at Au Kanseng lacked a legitimate factual basis.<sup>10133</sup> While the Chamber has found that military prisoners were received at the Security Centre from time to time along with lists detailing the reasons for their arrest, it has been unable to ascertain whether soldiers were in fact informed of the reasons of their arrests.<sup>10134</sup> With respect to civilian prisoners, the Chamber has found that these detainees were not properly informed of the reasons for their arrest, either before or within a reasonable time of having been brought to Au Kanseng Security Centre. Some civilian prisoners were brought to Au Kanseng by soldiers on the pretext of being required by *Angkar* for re-education. Others only realised that they were being imprisoned upon their arrival to the Security Centre. Detainees were frequently asked the reason for their arrest before being accused of wrongdoing during interrogations.<sup>10135</sup>

2977. The Chamber has additionally found that civilian prisoners were not detained pursuant to a warrant or any document emanating from an investigative or judicial authority.<sup>10136</sup> The Chamber specifically notes in this regard CHHAOM Se's acknowledgment that those detainees who were ultimately executed "were not criminals".<sup>10137</sup> Moreover, there was no evidence before the Chamber that any prisoners were either brought before a judicial officer vested with the authority to review the charges upon which prisoners had allegedly been detained, or to assess or appeal the lawfulness of ongoing detention. Further, the Chamber has found that prisoners languished in detention for an extended period of time beyond their initial arrest, having been interrogated between a few days and one month after their arrival at the Security Centre.<sup>10138</sup> Finally, and consistent with the Chamber's finding that no judicial system

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<sup>10132</sup> Closing Order, paras 1402, 1404.

<sup>10133</sup> NUON Chea Closing Brief, para. 535.

<sup>10134</sup> See above, para. 2906.

<sup>10135</sup> See above, paras 2893, 2899.

<sup>10136</sup> See above, para. 2895.

<sup>10137</sup> See above, para. 2926.

<sup>10138</sup> See above, para. 2897.

was established during the DK era,<sup>10139</sup> there was no evidence before the Chamber that detainees were afforded a trial or were otherwise convicted by a court of law before having being detained at Au Kanseng.

2978. The Chamber was able to deduce from the substance of prisoner interrogations the reasons for their arrest and detention at Au Kanseng. Having heard that civilians were interrogated about their “feudalist” activities, complicity with the Vietnamese or US collaborators and other “internal enemies”, the Chamber determined that interrogative practices were employed to procure confessions of counter-revolutionary activities in order to incriminate prisoners and identify enemies.<sup>10140</sup> While the NUON Chea Defence suggests that treasonable or espionage-type offences constituted serious, if not capital, punishment under DK law warranting detention,<sup>10141</sup> the Chamber rejects the notion that mere accusations of vaguely treasonous activity or espionage could, in the absence of supporting legal and procedural safeguards, legitimately found a basis for the deprivation of personal liberty.

2979. In view of the foregoing and insofar as it concerns civilian prisoners, the Chamber finds that the circumstances of civilian prisoners’ detention at Au Kanseng jointly and severally represent a fundamental disregard for and denial of the procedural rights enshrined under international law, and accordingly rejects the NUON Chea Defence’s submission on this point. The systematic failure to inform and sufficiently particularise the charges of which civilian detainees were suspected, and pursuant to which they were subsequently detained, demonstrates the flagrant, intentional and continuous denial of due process rights constituting arbitrary detention contrary to international law. The Chamber is satisfied that both the *actus reus* and *mens rea* of imprisonment are established and accordingly finds that the crime against humanity of imprisonment is established at Au Kanseng Security Centre as regards civilian prisoners.

#### 12.4.7.5. Persecution on political grounds

2980. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds of “real or perceived enemies of the CPK”, which it

<sup>10139</sup> Section 5: Administrative Structures, para. 417-418.

<sup>10140</sup> See above, para. 2899.

<sup>10141</sup> NUON Chea Closing Brief, para. 406.

defines as those whose real or perceived political beliefs were contrary to the CPK, or were opposed to those wielding power within the Party.<sup>10142</sup> The particular acts amounting to persecution must be expressly charged.<sup>10143</sup> According to the Closing Order, such people “were subjected to harsher treatment and living conditions” than the remainder of the population and were also “arrested *en masse* for re-education and elimination”.

2981. With respect to Au Kanseng Security Centre, the KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemy particularised in the Closing Order under the heading of “Legal Findings” (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>10144</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>10145</sup>

2982. The Chamber must satisfy itself that the targeted group of “real or perceived enemies of the CPK” referred to in the Closing Order was sufficiently discernible.<sup>10146</sup> In delineating the precise category of persons contemplated by the present charge at Au Kanseng, it is necessary to read the Closing Order’s ultimate disposition and legal characterisation of facts referable to that crime site in conjunction with the factual findings of the Co-Investigating Judges. In this regard, and in the context of directives issued regarding enemies in Division 801, subsequent purges, arrests, detentions, interrogations and executions at Au Kanseng, the Closing Order clearly identifies a group consisting of adversaries of the CPK or its ideology who, as perceived counter-revolutionaries, may broadly be characterised as real or perceived enemies. According to the Closing Order, this group included detractors of the socialist revolution and critics or opponents of the Party (including those connected with feudalistic practices or accused of immorality, and individuals suspected of or implicated in complicity with Party enemies), as well as the Vietnamese and suspected Vietnamese collaborators (including former Thieu-Ky soldiers, FULRO members and ethnic Jarai from

<sup>10142</sup> Closing Order, paras 1417-1418.

<sup>10143</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 716.

<sup>10144</sup> KHIEU Samphan Closing Brief, paras 1324-1325.

<sup>10145</sup> Section 2: Preliminary Issues, para. 170.

<sup>10146</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 714.



Vietnam).<sup>10147</sup> The Chamber is satisfied that real or perceived political enemies included, but were not limited to, the three groups referred to by the KHIEU Samphan Defence. The KHIEU Samphan Defence's submission is therefore rejected.

2983. According to the Closing Order, the targeted group included perceived enemies of the CPK.<sup>10148</sup> The discernibility of this group may accordingly be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. In this regard, the Chamber takes into consideration evidence of the CPK's ideological aspirations and policies concerning socialist revolution and State-building.<sup>10149</sup> It further takes into account the state of armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam between May 1975 and 6 January 1979,<sup>10150</sup> the evolving CPK policy toward the Vietnamese and other enemies,<sup>10151</sup> the spate of internal purges from 1977 and the resultant atmosphere of paranoia inside the Party.<sup>10152</sup> It is evident from the foregoing that the CPK identified as enemies counter-revolutionaries, detractors and traitors of the revolution, feudalists and those engaging in feudalistic practices, the Vietnamese, foreign agents and collaborators of the foregoing categories, among others. Accordingly, the Chamber is satisfied that the target group of "real or perceived enemies of the CPK" was sufficiently discernible in order to determine whether the requisite consequences occurred for the group.

2984. The Chamber has found numerous instances in which people were subjected to harsher treatment and living conditions than the remainder of the population and were arrested for re-education. A group of ethnic Jarai was arrested *en masse*, brought to Au Kanseng and detained in cramped conditions.<sup>10153</sup> The Chamber has found that civilian and military detainees were subjected to mental and physical suffering and attacks against their dignity constituting the crime against humanity of other inhumane acts as a result of the prevailing living, working and detention conditions at the Security

<sup>10147</sup> Closing Order, paras 591, 600-601, 613-614, 620, 622.

<sup>10148</sup> Closing Order, para. 1417.

<sup>10149</sup> Section 16: Common Purpose.

<sup>10150</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict).

<sup>10151</sup> Section 16.3: Real or Perceived Enemies.

<sup>10152</sup> Section 12.1: Internal Factions.

<sup>10153</sup> See above, paras 2939, 2957.

Centre.<sup>10154</sup> Detainees were subjected to re-education sessions while detained and interrogated in order to elicit confessions incriminating themselves or others.<sup>10155</sup> The Chamber is satisfied that the Jarai and other Au Kanseng detainees were subjected to harsher treatment and living conditions than the rest of the population by virtue of their detention at the Security Centre.

2985. The Chamber will now consider whether the foregoing underlying acts were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the targeted group of real or perceived enemies, such as to constitute political persecution.

2986. The Chamber has already found that the group of at least 100 Jarai were perceived by the Northeast Zone and Division 801 to be external enemies.<sup>10156</sup> As a result of their subsequent detention at Au Kanseng and the cramped conditions to which they were subjected, the Chamber is satisfied that the Jarai continued to be viewed as enemies throughout their detention. It is therefore satisfied that the arrest and detention of the Jarai, as well as the imposition of harsher treatment and living conditions, were perpetrated as a result of their perceived enemy status.

2987. Plantation worker PHON Thol was arrested, detained, interrogated about his use of “feudal” tree treatment techniques, subjected to re-education and attacks against his human dignity at Au Kanseng.<sup>10157</sup> In view of the CPK’s resolve to overthrow the “feudalist class” and abolish the “feudalistic” structures of the preceding regime, the Chamber is satisfied that Witness PHON Thol was arrested, detained and subjected to harsher treatment and living conditions as a result of his perceived enemy status.

2988. Plantation worker MOEURNG Chandy was arrested, detained, interrogated about her communications with the Vietnamese, subjected to re-education, forced labour and attacks against her human dignity at Au Kanseng.<sup>10158</sup> On the basis of her home’s proximity to the Vietnamese border and her marriage to perceived enemy PHON Thol, the Chamber is satisfied that Witness MOEURNG Chandy was arrested,

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<sup>10154</sup> See below, para. 2850.

<sup>10155</sup> See above, paras 2899, 2905-2907.

<sup>10156</sup> See above, para. 2950.

<sup>10157</sup> See above, paras 2895, 2899, 2907, 2917, 2922-2923, 2851.

<sup>10158</sup> See above, paras 2895, 2899, 2907, 2915, 2917, 2920, 2922-2923, 2851.

detained and subjected to harsher treatment and living conditions as a result of her perceived enemy status.

2989. Military prisoners were arrested, detained, interrogated about their collaboration with traitors and other enemies, subjected to re-education and attacks against their human dignity at Au Kanseng.<sup>10159</sup> The Chamber takes into consideration soldiers' perceived exposure to enemy combatants across the DK-Vietnam frontier and "internal enemies" or counter-revolutionary soldiers within military ranks as a result of the ongoing military conflict with Vietnam. It finds that military prisoners were arrested, detained and subjected to harsher treatment and living conditions as a result of their perceived enemy status.

2990. On the basis of the foregoing, the Chamber finds that enemies of the CPK were arrested, detained and subjected to harsher treatment and living conditions at Au Kanseng as a direct result of their perceived enemy status. Having regard to the systematic dissemination of the policy targeting perceived political adversaries, its steadfast implementation by the Northeast Zone, Division 801 and Au Kanseng personnel,<sup>10160</sup> the resultant uniform attack upon civilians and military personnel at the Security Centre and the intentional deprivation of rights contrary to international law,<sup>10161</sup> the Chamber finds that these acts were committed with the intent to discriminate on political grounds. It is therefore satisfied that the *mens rea* of persecution is established. Having found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that the foregoing acts were discriminatory in fact.

2991. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>10162</sup> personal dignity,<sup>10163</sup> liberty and security,<sup>10164</sup> freedom from arbitrary or unlawful arrest,<sup>10165</sup> a fair and public

<sup>10159</sup> See above, paras 2896, 2905-2907, 2851.

<sup>10160</sup> See above, paras 2867, 2873-2877, 2879-2884, 2886-2887, 2898, 2900.

<sup>10161</sup> See below, para. 2851.

<sup>10162</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>10163</sup> As evidence of the state of customary international law, see UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>10164</sup> As evidence of the state of customary international law, see UDHR, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

<sup>10165</sup> As evidence of the state of customary international law, see UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

trial and equality before the law as enshrined in customary international law.<sup>10166</sup>

2992. The acts charged as persecution include acts separately found to amount to independent crimes against humanity (including imprisonment, enslavement and other inhumane acts perpetrated through attacks against human dignity) as well as acts which, on their own, do not necessarily amount to crimes (in particular, arrests). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution. Accordingly, the Chamber is satisfied that the instances of imprisonment, enslavement and the other inhumane act through attacks against human dignity committed against enemies constituted political persecution. The *actus reus* of persecution is therefore established.

2993. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on political grounds is established at Au Kanseng Security Centre.

#### 12.4.7.6. Persecution on racial grounds

2994. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds against the Vietnamese in Au Kanseng Security Centre, finding that “Vietnamese people were deliberately and systematically identified and targeted due to their perceived race” as they were perceived by the CPK to be “racially distinct from Cambodian people”.<sup>10167</sup> It identifies two discrete incidents in this regard at Au Kanseng; namely, the arrest and execution of six Vietnamese and the group of Jarai.<sup>10168</sup>

2995. The Chamber has found that CHHAOM Se was directed by SAO Saroeun to execute a group of six Vietnamese civilians and that this order was further executed by Au Kanseng security personnel.<sup>10169</sup> The Chamber has already found that Vietnamese people were perceived as enemies by the CPK,<sup>10170</sup> and is accordingly satisfied that the

<sup>10166</sup> As evidence of the state of customary international law, *see* UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

<sup>10167</sup> Closing Order, para. 1422.

<sup>10168</sup> Closing Order, paras 618-622.

<sup>10169</sup> *See above*, para. 2926.

<sup>10170</sup> *See above*, para. 2837. *See also*, Section 16.3: Real or Perceived Enemies.

target group was sufficiently discernible in order to determine whether the requisite consequences occurred for the group.

2996. Turning to whether the arrest and execution of these six Vietnamese people was deliberately perpetrated with the intent to discriminate against them such as to constitute racial persecution, the Chamber takes into account the intensified nature of the armed conflict between DK and the Socialist Republic of Vietnam at the time of the group's arrest in late 1978, the impending collapse of the DK regime and evidence of the arrest and execution at S-21 of Vietnamese "spies" and perceived Thieu-Ky soldiers in late 1978.<sup>10171</sup> It is accordingly satisfied that the arrest and execution of the six Vietnamese was committed with the intention to discriminate on racial grounds. The *mens rea* of persecution is therefore established. Having already found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that the foregoing acts were discriminatory in fact.

2997. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to life,<sup>10172</sup> movement,<sup>10173</sup> personal dignity,<sup>10174</sup> liberty and security,<sup>10175</sup> freedom from arbitrary or unlawful arrest,<sup>10176</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>10177</sup>

2998. The acts charged as persecution include acts separately found to amount to independent crimes against humanity (murder) as well as acts which, on their own, do not necessarily amount to crimes (arrests). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the

<sup>10171</sup> See above, para. 2949. See also, Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict).

<sup>10172</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 6(1); ECHR, Art. 2; ACHR, Art. 4. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>10173</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>10174</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>10175</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

<sup>10176</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>10177</sup> As evidence of the state of customary international law, see Universal Declaration of Human Rights, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

requisite level of severity such as to constitute persecution. Accordingly, the Chamber is satisfied that this instance of murder committed against the Vietnamese constituted racial persecution. The *actus reus* of persecution is therefore established.

2999. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on racial grounds is established at Au Kanseng Security Centre with respect to the six executed Vietnamese people.

3000. With respect to the group of at least 100 Jarai, the Chamber has found that this group was arrested and detained on suspicion that they were external enemies and not as a result of their perceived membership of any racial group.<sup>10178</sup> Indeed, the Chamber has already found that the detention of civilians and soldiers at Au Kanseng was otherwise the result of persecutory practices grounded in political animus.<sup>10179</sup>

3001. Limited evidence was heard as to the reasons for the Jarai's execution. CHIN Kimthong's testimony suggested that the Jarai were executed on SAO Saroeun's orders after being informed that the Security Centre could not accommodate such a large number of detainees.<sup>10180</sup> While it has found that Au Kanseng's prisoner capacity was somewhat limited,<sup>10181</sup> the Chamber is not convinced by the witness's assertion and considers the swift execution of the Jarai within approximately one week of their arrival to be consistent with Division 801's desire to summarily dispense with the group of perceived external enemies. There remains, however, no evidence before the Chamber linking the group's death with their actual or perceived race.

3002. The Chamber is therefore not satisfied that the Jarai were arrested, detained or executed as a result of their actual or perceived race. It follows that the Chamber is not satisfied that these acts were carried out with the requisite discriminatory intent or were in fact discriminatory. The *mens rea* of persecution is not established. Accordingly, the Chamber finds that the crime against humanity of persecution on racial grounds is not established with respect to the Jarai.

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<sup>10178</sup> See above, paras 2949-2950.

<sup>10179</sup> See above, paras 2992-2993.

<sup>10180</sup> See above, paras 2889, 2939, 2957.

<sup>10181</sup> See above, paras 2889, 2939.

12.4.7.7. Other inhumane acts through attacks against human dignity

3003. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity at Au Kanseng. In this respect, the Closing Order particularises that conditions at Au Kanseng Security Centre, including the deprivation of sufficient food, medical attention and sanitation, poor living and detention conditions, and physical and psychological mistreatment, constitute attacks against human dignity.<sup>10182</sup>

3004. The Chamber found that prisoners were mistreated at Au Kanseng during interrogations. Civilian detainees were subjected to physical mistreatment during interrogations through beatings, whippings and electrocutions through telephone cables or similar means. The Chamber accepted at least one instance of interrogators using pliers to pincer a prisoner's thigh in order to elicit desired responses, which resulted in the prisoner losing consciousness. Prisoners endured the screams of fellow inmates emanating from the interrogation hut, audible throughout the Security Centre, and witnessed detainees return to their cells bloodied, beaten and limping. The Chamber also accepted that instructions were furnished to Security Centre personnel to feed soldiers salty rice and to deprive them of water until they provided admissions of wrongdoing or confessions.<sup>10183</sup>

3005. The assault on the mental and physical integrity of detainees was further demonstrated by the living and detention conditions prevalent at Au Kanseng. Upon their arrival at Au Kanseng, serious offenders were shackled into chain gangs, confined to the detention house for extended periods and not permitted to leave for the duration of their detention as serious offenders, save for bathing under supervision and toileting.<sup>10184</sup> Light offenders were segregated by gender immediately after arriving to Au Kanseng.<sup>10185</sup> All detainees were locked in poriferous detention huts at night, which provided neither privacy nor shelter from the elements. Detainees were forced to collect firewood for warmth at night, while cells were typically mosquito-infested. No mosquito nets were provided by Security Centre personnel. Neither sleeping mats nor pillows were made available to detainees. There were no latrines at Au Kanseng and

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<sup>10182</sup> Closing Order, paras 1434, 1438.

<sup>10183</sup> See above, paras 2901-2906.

<sup>10184</sup> See above, paras 2909-2914.

<sup>10185</sup> See above, para. 2894.

detainees were forced to urinate and defecate into bamboo tubes and pots before emptying the receptacles themselves.<sup>10186</sup>

3006. Detainees were provided insufficient amounts of food and only one can of water per day.<sup>10187</sup> The Chamber has accepted that a limited degree of medical assistance was available at Au Kanseng in the form of traditional medicine, but was often ineffective or insufficient.<sup>10188</sup> Further, having heard of instances of malaria, dysentery, and swollen limbs from shackling, the Chamber found that the conditions of detention contributed to the ill-health and death of detainees at Au Kanseng.<sup>10189</sup>

3007. The Chamber further found that detainees were subjected to a climate of fear and intimidation by Security Centre personnel while detained at Au Kanseng. Pending interrogation, some witnesses languished in detention for up to a month not knowing the reasons for their arrests.<sup>10190</sup> Others lived in fear of reprimand, physical harm or death if they did not follow instructions.<sup>10191</sup> Some inmates were subjected to intimidation and scaremongering by security personnel, as well as scenes of execution and the aftermath thereof.<sup>10192</sup> Prisoners disappeared from time to time, leaving inmates to speculate about their ultimate fate.<sup>10193</sup> Some were forced to bury the bodies of executed or otherwise deceased prisoners.<sup>10194</sup>

3008. Having satisfied itself that detainees at Au Kanseng were subjected to a relentless barrage of physical and psychological attacks by Security Centre personnel during the course of their detention, the Chamber finds that this conduct represents the intentional infliction of serious mental and physical suffering, as well as an incessant and serious attack on human dignity. The *mens rea* of other inhumane acts is therefore satisfied.

3009. The Chamber takes into consideration the pervasive nature of attacks on the dignity of prisoners throughout the span of their incarceration at Au Kanseng, the

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<sup>10186</sup> See above, paras 2910-2913.

<sup>10187</sup> See above, para. 2915.

<sup>10188</sup> See above, para. 2918.

<sup>10189</sup> See above, para. 2917.

<sup>10190</sup> See above, para. 2897.

<sup>10191</sup> See above, para. 2922.

<sup>10192</sup> See above, paras 2923, 2929, 2932, 2953-2956.

<sup>10193</sup> See above, para. 2924.

<sup>10194</sup> See above, para. 2930.



severity of mental and physical suffering which was inflicted as a result of their interrogations and living and working conditions, as well as the fact that forced labour may in and of itself constitute an other inhumane act.<sup>10195</sup> The Chamber accordingly finds that the conditions of detention at Au Kanseng collectively rise to the gravity of other enumerated crimes against humanity. The *actus reus* of other inhumane acts is therefore satisfied.

3010. Having satisfied the requisite elements, the Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at Au Kanseng Security Centre.

#### 12.4.7.8. *Wilful killing*

3011. The Closing Order charges the Accused with grave breaches of the Geneva Conventions as a result of the alleged wilful killing of the group of Jarai captured and ultimately executed at Au Kanseng Security Centre.<sup>10196</sup>

3012. The Chamber notes that Grave Breaches of the Geneva Conventions require that victims have the status of “protected persons”.<sup>10197</sup> The Chamber further notes that the Closing Order expressly limits the categories of “protected persons” in Case 002 to “[m]embers of the armed forces of the Socialist Republic of Vietnam” and “[c]ivilians who were nationals of the Socialist Republic of Vietnam” who had fallen into the power of the forces of Democratic Kampuchea.<sup>10198</sup>

3013. Turning first to whether the Jarai were “protected persons”, the Chamber recalls that the group was referred to as comprising “Vietnamese soldiers” in Vy’s telegram, was allegedly in possession of weapons and materiel at the time of their arrest, and reportedly claimed that they had “served in the army for two to ten years”.<sup>10199</sup> Although the veracity of the telegram’s contents could not be tested at trial, the Chamber recalls the significant probative value that attaches to contemporaneous evidence. It further has

<sup>10195</sup> Section 9.1.8: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Attacks Against Human Dignity.

<sup>10196</sup> Closing Order, paras 1485, 1494.

<sup>10197</sup> Section 4.3: General Requirements for Grave Breaches of the Geneva Conventions of 1949 Listed in Article 6 of the ECCC Law.

<sup>10198</sup> Closing Order, para. 1481. *See also*, Section 4.3: General Requirements for Grave Breaches of the Geneva Conventions of 1949 Listed in Article 6 of the ECCC Law, para. 331.

<sup>10199</sup> *See above*, para. 2948.

no reason to doubt the truth of Vy's report to his superiors, particularly in view of the CPK's strict upward reporting system (especially at the time of escalating border tensions),<sup>10200</sup> and independent corroboration by witnesses at trial of important aspects of the telegram, including the Jarai's ethnicity, their approximate number and the temporal and geographic details of their arrest and subsequent detention at Au Kanseng.<sup>10201</sup>

3014. Evidence of the presence of children or babies among the arrested Jarai poses a question as to the group's characterisation as combatants.<sup>10202</sup> Vy's telegram is silent on this issue. The Chamber resolves this ambiguity by applying the interpretation most favouring the Accused in conformity with the principle of *in dubio pro reo*. Consistently with the contents of Vy's telegram, the Chamber finds that the Jarai were indeed combatants. While it notes that Article 50(1) of Protocol I Additional to the Geneva Conventions mandates that, "[i]n case of doubt whether a person is a civilian, that person shall be considered to be a civilian",<sup>10203</sup> the Chamber finds that in the present instance, such interpretation would not, for the reasons outlined in the next paragraphs, affect the Jarai's status under international humanitarian law and would instead lead to interpretations inconsistent with the evidence before the Chamber and therefore the rights of the Accused.

3015. Turning to whether the Jarai were members of the armed forces of the Socialist Republic of Vietnam, the Chamber was unable to conclude beyond reasonable doubt that the Jarai were either nationals of the SRV or ordinarily resident in Vietnamese territory.<sup>10204</sup> Indeed, the evidence suggested that the Jarai were combatants of the former South Vietnamese (Thieu-Ky) regime (or perceived as such); not SRV combatants.<sup>10205</sup> Accordingly, while it is satisfied that the Jarai were combatants, it is unable to conclude beyond reasonable doubt that they were members of the armed forces of the SRV and therefore "protected persons" under the Geneva Conventions.

<sup>10200</sup> Section 6: Communication Structures.

<sup>10201</sup> *See above*, Section 12.4.6: Arrival and Execution of the Jarai.

<sup>10202</sup> *See above*, para. 2944.

<sup>10203</sup> Additional Protocol I, Art. 50(1).

<sup>10204</sup> *See above*, para. 2947.

<sup>10205</sup> *See above*, para. 2949.

3016. Having been unable to satisfy itself beyond reasonable doubt that the chapeau requirement of this crime has been met, it is unnecessary for the Chamber to consider whether the elements of wilful killings as a grave breach of the Geneva Conventions have been established. The Chamber finds that wilful killings as a grave breach of the Geneva Conventions at Au Kanseng Security Centre has not been established.

12.4.7.9. *Wilful deprivation of the rights of a fair and regular trial*

3017. The Closing Order charges the Accused with grave breaches of the Geneva Conventions as a result of the alleged wilful deprivation of the rights of a fair and regular trial to the group of Jarai captured and ultimately executed at Au Kanseng Security Centre.<sup>10206</sup> The Chamber was unable to satisfy itself beyond reasonable doubt that the Jarai were “protected persons” within the meaning of the Geneva Conventions.<sup>10207</sup>

3018. Having been unable to satisfy itself to the requisite standard that the chapeau requirement of this crime has been met, it is unnecessary for the Chamber to consider whether the elements of the crime have been established. The Chamber finds that the charge of wilful deprivation of the rights of a fair and regular trial as a grave breach of the Geneva Conventions has not been established at Au Kanseng Security Centre.

## **12.5. Phnom Kraol Security Centre**

### ***12.5.1. Closing Order and Preliminary Issues***

3019. According to the Closing Order, Phnom Kraol Security Centre was a Sector 105 (Mondulhiri province) Security Office consisting of Phnom Kraol Prison, two related sector offices, K-11 and K-17, and an execution site at nearby Trapeang Pring.<sup>10208</sup> The Closing Order charges the Accused with the crimes against humanity of (i) murder,<sup>10209</sup> (ii) extermination,<sup>10210</sup> (iii) enslavement,<sup>10211</sup> (iv) imprisonment,<sup>10212</sup> (v) torture,<sup>10213</sup>

<sup>10206</sup> Closing Order, paras 1511-1514.

<sup>10207</sup> See above, para. 3016.

<sup>10208</sup> Closing Order, paras 625, 627.

<sup>10209</sup> Closing Order, paras 1373, 1376, 1380.

<sup>10210</sup> Closing Order, paras 1381, 1385, 1387, 1389-1390.

<sup>10211</sup> Closing Order, paras 1391, 1393-1394, 1396.

<sup>10212</sup> Closing Order, paras 1402, 1404, 1407.

<sup>10213</sup> Closing Order, paras 1408, 1410-1412, 1414.

(vi) persecution on political grounds;<sup>10214</sup> and other inhumane acts through (vii) attacks against human dignity and (viii) conduct characterised as enforced disappearances at the Security Centre.<sup>10215</sup>

3020. The Chamber heard the evidence of seven witnesses and two Civil Parties across Cases 002/01 and 002/02 in relation to Phnom Kraol Security Centre. In both trial segments, the Chamber heard the testimony of former Sector 105 Secretary SAO Sarun<sup>10216</sup> and PHAN Van *alias* KHAM Phan, the son of SAO Sarun's predecessor, Laing. In Case 002/02, the Chamber heard from former K-17 detainees CHAN Toi *alias* CHAN Tauch and NETH Savat. It also heard the testimony of former Sector 105 Military soldier and younger brother of SAO Sarun, SOV Maing *alias* SAO Champi, and Division 920 soldier CHIN Saroeun, both of whom were stationed in the vicinity of Phnom Kraol. Further, the Chamber heard the evidence of former Division 920 soldier and K-11 detainee, Civil Party KUL Nem, as well as Civil Party SUN Vuth, who was detained at an indeterminate location near Phnom Kraol.

3021. The Chamber also heard the evidence of Witness BUN Loeng Chauy *alias* CHAN Bun Leath, who in his statements to the OCIJ and DC-Cam provided information about detention sites in and around Kaoh Nheaek. At trial, the witness clarified that, before being sent to Roya worksite, he was detained at the Sector 105 economics office, K-16, which he described as being located approximately two kilometres from K-17.<sup>10217</sup> The NUON Chea Defence submits that evidence relevant to K-16 is beyond the scope of the charges envisioned by the Closing Order.<sup>10218</sup>

3022. While the existence of K-16 office in Sector 105 was evident at the time of indictment, no evidence of criminal offending imputable to the Accused at this site was found during the judicial investigation, and the OCIJ did not resultantly charge the commission of crimes at K-16. Moreover, the Chamber considers that the wording of the Closing Order provided neither actual nor constructive notice to the Parties of alleged acts at K-16 in order to allow them to litigate facts or issues relevant to this

<sup>10214</sup> Closing Order, paras 1415-1418.

<sup>10215</sup> Closing Order, paras 1434, 1438, 1440-1441, 1470, 1472-1474, 1476-1478.

<sup>10216</sup> Not to be confused with Division 801 Commander SAO Saroeun. For SAO Saroeun, *see* Section 12.4: Au Kanseng Security Centre, para. 2864.

<sup>10217</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 11-14.

<sup>10218</sup> NUON Chea Closing Brief, para. 422.

office or the nearby Roya worksite.<sup>10219</sup> In its assessment of the evidence at Phnom Kraol Security Centre, the Chamber will consequently not take into account evidence of detention and working conditions referable to K-16 and the Roya worksite to assess the guilt of the Accused. Evidence relating to detention at these sites may nevertheless be relevant to understanding the general context of purges in Sector 105, or the implementation and operation of security measures in the sector.<sup>10220</sup>

3023. The KHIEU Samphan Defence submits that the Chamber is not seised of facts concerning worksites throughout Mondulhiri to which detainees were allegedly sent after their release from Phnom Kraol Security Centre.<sup>10221</sup> The evidence at trial showed that prisoners at K-17 were typically sent to a worksite or worksites in Nang Khi Loek commune,<sup>10222</sup> some distance from Phnom Kraol.<sup>10223</sup> Surveying the materials underlying the Closing Order's allegations of forced labour at Phnom Kraol, it is clear that the Co-Investigating Judges contemplated enslavement only within the offices of the Security Centre, namely K-17, K-11 and Phnom Kraol Prison. In this regard, the Chamber concludes that evidence of conditions at worksites outside of these offices is beyond the scope of the present site.

3024. The KHIEU Samphan Defence also challenges the Chamber's jurisdiction with respect to torture at Phnom Kraol Security Centre, pointing to a lack of particularisation of the crime in the Co-Prosecutors' Introductory and Supplementary Submissions.<sup>10224</sup> The KHIEU Samphan Defence seeks on similar grounds to circumscribe the Chamber's jurisdiction with respect to enforced disappearances and enslavement, submitting that these charges are limited to K-17 and K-11, respectively.<sup>10225</sup> The Chamber has already

<sup>10219</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 11-14, 22; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 8-11, ERN (En) 00274102-00274104.

<sup>10220</sup> *Nahimana et al.* Appeal Judgement, para. 315. *See also*, Section 2.5.6: Notice of Charges, Scope of the Trial and Evidence in Case 002/02.

<sup>10221</sup> KHIEU Samphan Closing Brief, para. 1418.

<sup>10222</sup> *See below*, para. 3103.

<sup>10223</sup> Map of Koh Neak District, E3/9100, undated, ERN 00992852 (showing "Nong Khilak" northeast of the Kaoh Nheaek "District HQ" by the border with Ratanakiri); Sketch of Phnom Kraol Security Centre and surrounds by BUN Loeng Chauy, E3/5179, ERN (En) 00274108 (showing the "Nang Khyloek worksite" near the Sre Pork River); Map of Cambodia: Tile 6435, E3/9190, undated, ERN 01045067. The Chamber estimates that the aerial distance between Phnom Kraol and Nang Khi Loek is approximately 25 to 30 kilometres.

<sup>10224</sup> KHIEU Samphan Closing Brief, paras 1382-1385.

<sup>10225</sup> KHIEU Samphan Closing Brief, paras 1372-1379 (enslavement); 1394-1399 (enforced disappearances).

rejected this line of argument as belated and therefore inadmissible.<sup>10226</sup>

### 12.5.2. *Establishment, Location and Layout*

3025. Sector 105 (Mondulkiri province) was subdivided into five districts during the DK period: Kaoh Nheaek, Chbar, Pechreada, Ou Reang and Kaev Seima.<sup>10227</sup> Phnom Kraol (Kraol Mountain) is located in Kaoh Nheaek, which today remains part of Kaoh Nheaek district, approximately 100 kilometres north of Mondulkiri provincial capital, Senmonorom.<sup>10228</sup>

3026. References at trial to “Phnom Kraol” were often equivocal.<sup>10229</sup> Witnesses at times referred to Phnom Kraol as the administrative multiplex located in Kaoh Nheaek and at other times to the detention facility therein.<sup>10230</sup> Witnesses’ use of descriptions such as “security centre” and “prison” to describe offices K-17 and K-11 further equivocated the distinction between individual Sector 105 offices and the Security Centre as a whole.<sup>10231</sup>

3027. The Chamber considers that the Closing Order clearly identifies the offices that constitute “Phnom Kraol Security Centre”, namely K-17, K-11, the Phnom Kraol

<sup>10226</sup> Section 2: Preliminary Issues, para. 165.

<sup>10227</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 87, 89; Organisational Chart of Khmer Rouge Leaders in Mondulkiri Province by BUN Loeng Chauy, E3/5179, ERN (En) 00274106.

<sup>10228</sup> Site Identification Report, E3/8057, 21 July 2009, p. 4, ERN (En) 00365622; T. 11 March 2016 (NETH Savat), E1/400.1, p. 98. *See also*, Map of Cambodia: Tile 6435, E3/9190, undated, ERN 01045067.

<sup>10229</sup> *See* NUON Chea Closing Brief, paras 522-524.

<sup>10230</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 15 (“Q. Was there a correction centre or education centre attached to [sector 105]? A. Yes, there was a correction centre or security centre attached to the sector. [...] People call it correction centre.”); T. 12 June 2012 (SAO Sarun), E1/85.1, p. 7 (“Q. Were the security office of the sector and the Phnom Kraol security office [...] the same -- just one name? A. No, these -- these are the two offices.”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 23 (“I do not recall the real name of the security centre; however, it was located near the K-11 office at Phnom Kraol. And as I said, it was a prison, although I cannot recall its official name. But it was the place they put K-11, which was a base for soldiers”); T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 31 (“Q. [W]as there a security office or prison located at the battalion or regiment to base at the Phnom Kraol Dam? A. Yes, there was a prison which [was] based at Phnom Kraol”); Sketch of Phnom Kraol Security Centre and surrounds by BUN Loeng Chauy, E3/5179, ERN (En) 00274108 (showing “Phnom Kraol Prison” south of “La[i]ng’s Office” [K-17] and “K-11”); Site Identification Report, E3/8057, 21 July 2009, pp. 3, 10-11, ERN (En) 00365621, 00365628-00365629.

<sup>10231</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 6 (referring to K-11 as a “security office”); T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 57 (referring to K-17 as a “security centre”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 22-23 (referring to K-11 as a prison); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 38 (referring to K-11 and K-17 being outside the perimeter of “Phnom Kraol”); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 15 (referring to K-11 as a “security centre” and “prison”); T. 24 October 2016 (KUL Nem), E1/488.1, p. 103 (referring to K-11 as a “security centre”).

Prison and Trapeang Pring. While Kaoh Nheak and its surrounds served as an administrative centre to a number interconnected sector offices and facilities, as clarified above,<sup>10232</sup> the Chamber considers itself seised only of facts concerning the four constituent sites particularised in the Closing Order. In that regard, the Chamber has taken care to distinguish and clearly identify the sites to which its findings relate.

3028. K-17, the office of Sector 105,<sup>10233</sup> was located on the road from Kaoh Nheak to Kratie at the north-western foot of Phnom Kraol, on the opposite side of the Phnom Kraol dam.<sup>10234</sup> The site comprised a two-storey concrete main building with wooden upper floor and walls and a corrugated iron roof.<sup>10235</sup> Small houses along a nearby road ascending Phnom Kraol to the southeast – containing the telegram decoding, radio communications, education, hospitality, mobile production and transport units<sup>10236</sup> – also formed part of K-17.<sup>10237</sup> The main office was initially used for re-education and

<sup>10232</sup> See above, paras 3022-3023.

<sup>10233</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 97; T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 54-55; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 41; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 13; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 124; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 17; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 7, 52.

<sup>10234</sup> Site Identification Report, E3/8057, 21 July 2009, p. 2, ERN (En) 00365620; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 97-98; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 10, 44; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 14; T. 11 June 2012 (SAO Sarun), E1/84.1, p. 54; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 60.

<sup>10235</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 17, 44, 65, 90; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 31-32; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 9; Site Identification Report, E3/8057, 21 July 2009, p. 7, ERN (En) 00365625 (OCIJ investigator noted the remnants of the concrete ground floor of the office building in 2009).

<sup>10236</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 74 (“At the office of 105, there was a workshop unit, for example, auto repair unit and the production -- mobile production unit, the unit in which there were people who had to do farming”), 75 (“There were other sections including the workers section and security within the office of 105”); T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 123 (referring to K-17 as the “messenger office”); T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, pp. 5-6 (stating that K-17 contained a telegram decoding and radio communications section); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 10 (stating that the telegram office was about 100 metres away from the K-17 building), 13-14 (“[There was also] the transport section and the section in charge of education and other sections. [...] Regarding the structure of K-17, there were different units, an education unit within K-17. There was a kitchen unit, hospitality units and units in charge of the field and transportation, growing crops.”); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 3, ERN (En) 00290505; T. 7 June 2012 (SAO Sarun), E1/83.1, p. 16 (stating that the telegram office in Mondulkiri Sector was located in K-17).

<sup>10237</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 8 (“It was large. I mean the compound was large. The area size was around five to 10 hectares”), 9 (“And there were small houses along the road from the dam along the foot of the mountain up to the peak of the mountain”), 11 (“[The K-17] compound was large, and there were different small houses within the compound. And there was also a big hall or big building within K-17. Those small houses and the big building were called an office. And houses were close to the meeting hall, and the distance was about 100 metres between the meeting hall and different small houses.”).

self-criticism seminars for Sector 105 staff.<sup>10238</sup> As internal purges of enemies intensified in late 1977 and throughout 1978, K-17's main building was used to detain Division 920 soldiers and Kaoh Nheak district cadres.<sup>10239</sup> The sector office was operational in that capacity prior to 1975 until the arrival of the Vietnamese in January 1979,<sup>10240</sup> and employed approximately 1,000 sector personnel under the supervision of Tin (until 1978) and VIN Lay *alias* Loy (until October 1978).<sup>10241</sup> The Sector 105 Chairman directly oversaw K-17's operations.<sup>10242</sup>

3029. K-11, the Sector 105 Military office,<sup>10243</sup> was located a few hundred metres to the southeast of K-17.<sup>10244</sup> Operated by the Sector 105 Military Commander,<sup>10245</sup> K-11

<sup>10238</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 84-85; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 24, 26 (stating that there was no detention at office K-17 while he was there; it was "simply an education place"); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00290506. *See also*, SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 4, ERN (En) 00244491.

<sup>10239</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 22 ("[A]t the time I was there, there were not many arrests and detentions."). *See below*, Section 12.5.5.1: K-17.

<sup>10240</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 124. *See also*, PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 4, ERN (En) 00295162 (sister of Kham Phan deposes to having worked at the telegram office between 1974 and 1976); T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 88 ("Q. Do you have [...] a sister [...] called Phan Sovan Hann? A. Yes, I do"); T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 6-8 (stating that his sister had been working at K-17 since liberation and that she took over his telegram duties).

<sup>10241</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 52; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 39; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 14, 52; KHAM Phan Interview Record, E3/57, 10 March 2009, p. 3, ERN (En) 00290505; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 100. VIN Lay *alias* Loy was arrested, detained at S-21 and executed. *See below*, para. 3056 (fn. 10346).

<sup>10242</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 76; T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, p. 7; KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 81; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 39. *See also*, NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486. *See below*, para. 3043.

<sup>10243</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 75; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 23; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 6. *See also*, KANG Sien Interview Record, E3/7697, 23 October 2008, p. 3, ERN (En) 00239500.

<sup>10244</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 14; T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 54-55; 12 June 2012 (SAO Sarun), E1/85.1, pp. 4, 6; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 36; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 41; Site Identification Report, E3/8057, 21 July 2009, pp. 2-3, ERN (En) 00365620-00365621; Sketch of Phnom Kraol Security Centre and surrounds by CHAN Bun Leath, E3/5179, ERN (En) 00274108; KANG Sien Interview Record, E3/7697, 23 October 2008, p. 3, ERN (En) 00239500. *See also*, T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 15-16 ("[K-11] was located far away [from K-17]. It was to the south of Kraol mountain. It's more than 10 kilometres away from K-17" but clarifies that "there was no straight road. We had to take a detour road to the west, and then we went east to go to the office [K-17]"). The Chamber is satisfied that KHAM Phan's estimation of distance referred to road distance, not aerial distance.

<sup>10245</sup> T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 38; T. 6 June 2012 (SAO Sarun), E1/82.1, p. 14; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 6; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 64; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 9; T. 24 October 2016 (KUL Nem), E1/488.1, p. 88. *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, pp. 3-4, ERN (En) 00244336-00244337; NOU Saay Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506; SAL Ra Interview Record, E3/5222, 27 October 2008, p. 3, ERN (En) 00242157.



was used as both the Sector 105 Military headquarters and as a temporary detention and re-education facility for light offenders.<sup>10246</sup> While the Chamber does not have the benefit of witness descriptions of the office, it is satisfied that K-11 consisted of at least one concrete building.<sup>10247</sup>

3030. For clarity, the Chamber also identifies office K-16, the Sector 105 economics office tasked, among other things, with receiving commodities from Phnom Penh,<sup>10248</sup> as having been located several hundred metres to a few kilometres south of both K-17 and K-11.<sup>10249</sup> The office was administered by Nhun under the supervision of the Sector 105 Deputy Secretary in charge of economic affairs.<sup>10250</sup>

3031. Phnom Kraol Prison was located approximately 300 metres southwest of K-11 and 500 metres southeast of K-17.<sup>10251</sup> It consisted of a single-storey, thatched-roof

<sup>10246</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 24-25; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 6, 8, ERN (En) 00274099, 00274101; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 15. *See also*, SAL Ra Interview Record, E3/5222, 27 October 2008, pp. 3-4, ERN (En) 00242157-00242158; SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510. For conditions at K-11, *see below*, paras 3093-3095, 3104.

<sup>10247</sup> Site Identification Report, E3/8057, 21 July 2009, pp. 5-6, ERN (En) 00365623-00365624 (report includes captioned picture of AUM Mol “standing on the top of the K-11’s concrete ground”); SAL Ra Interview Record, E3/5222, 27 October 2008, p. 3, ERN (En) 00242157 (“Inside the Office Ka-11 compound there was a prison with a concrete floor, brick walls and a thatch roof, approximately 8 by 7 metres in dimension”).

<sup>10248</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 92; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 27; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 15, 22. *See also*, DK Telegram, E3/1192, 12 October 1976, ERN (En) 00508560 (in a telegram addressed “To beloved and missed Brother Nuon”, Laing reports that “We have assigned a commerce group for Phnom Penh. Comrade Chuon has received them.”).

<sup>10249</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 13-14; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 29, 36, 38; T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 14, 22-23.

<sup>10250</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 87; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 38; Organisational Chart of Khmer Rouge Leaders in Monduliri Province by CHAN Bun Leath, E3/5179, ERN (En) 00274106. *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, p. 4, ERN (En) 00244337; HAM Ansi Interview Record, E3/366, 26 November 2008, p. 3, ERN (En) 00250750; B’LOEK Lam Interview Record, E3/5221, 26 October 2008, p. 2, ERN (En) 00239490. For the Sector 105 Deputy Secretary in charge of economic affairs, *see below*, para. 3034. For K-16’s use as a detention and re-education centre, *see below*, paras 3051-3055, 3144.

<sup>10251</sup> T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 38 (The “[s]ecurity centre was close to K-11 and about 500 metres further, there was K-17”); T. 30 March 2016 (SAO Sarun), E1/411.1, p. 42 (“[The security centre] was close to K-17. It was about 200 metres apart.”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 66 (“In Phnom Kraol, there was only one dam there. The name was known as *Ta Sot*. It was next to Phnom Kraol [...]. The prison was located nearby that area.”); T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 31 (“Q. [W]as there a security office or prison located at the battalion or regiment to base at the Phom Kraol Dam? A. Yes, there was a prison which [was] based at Phnom Kraol.”), 45 (“[Phnom Kraol Security Centre] was located next to the dam and it was also close to the base of the mountain”); T. 6 June 2012 (SAO Sarun), E1/82.1, p. 15 (“[The correction centre] was located close to the district office or to the sector’s office near Phnom Kraol”); SAO Sarun Interview Record, E3/10724, 2 April 2016, p. 5, ERN (En) 01235782 (The security office was located about 200 metres away from K-17); T. 24 October 2016 (KUL Nem), E1/488.1, p. 103 (“There was one [security centre] [...] [a]t Phnom Kraol, the location was under the supervision of Leng and it was not

building constructed on wooden stilt foundations comprising no internal walls and was surrounded by a fence.<sup>10252</sup> Phnom Kraol Prison was administered by the Military Commander for Ou Reang district, Phai,<sup>10253</sup> and operated by the Sector 105 Military Commander of Regiment 2 (or 502) under the supervision of the Sector 105 Military.<sup>10254</sup>

3032. Trapeang Pring (also known as Tuol Khamaoch and Trapeang Toeun), a burial site identified by the OCIJ and witnesses,<sup>10255</sup> was located approximately four kilometres southwest of the Phnom Kraol Security Centre complex on the road from Kaoh Nheaek to Kratie.<sup>10256</sup>

3033. Only the concrete foundations of offices K-17 and K-11 remain today, while no physical evidence of the Phnom Kraol Prison building or Trapeang Pring was found by OCIJ investigators. Investigation efforts were also hampered by the presence of landmines at the constituent offices of Phnom Kraol Security Centre.<sup>10257</sup>

### 12.5.3. *Reporting Structure*

#### 12.5.3.1. *Sector 105 Committee*

3034. As administrative boundaries were renamed and redrawn after 17 April 1975,

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far from the other one [K-11]. It was close to each other.”). *See also*, BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 6, 8, ERN (En) 00274099, 00274101.

<sup>10252</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 27; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 34; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 6, ERN (En) 00274099; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 37; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490; SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510; NOU Sauy Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506. *See below*, paras 3068-3069.

<sup>10253</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 27 (describing Phai as Sophea’s subordinate); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 31; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 36, 55-56. *See also*, UONG Dos Interview Record, E3/7703, 29 October 2008, p. 3, ERN (En) 00242171; SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510 (referring to Phai beating a prisoner to death at Phnom Kraol Prison [*see below*, para. 3100]).

<sup>10254</sup> T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 29; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 9, ERN (En) 00274102; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 43. For the Sector 105 Military, *see below*, para. 3044.

<sup>10255</sup> Site Identification Report, E3/8057, 21 July 2009, pp. 1, 12, ERN (En) 00365619, 00365630; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 28-31; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 10, ERN (En) 00274103. *See also*, SAL Ra Interview Record, E3/5222, 27 October 2008, p. 3, ERN (En) 00242157.

<sup>10256</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 28, 68; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 3, 10, ERN (En) 00274096, 00274103; Site Identification Report, E3/8057, 21 July 2009, pp. 4, 12, ERN (En) 00365622, 00365630. *See also*, SAL Ra Interview Record, E3/5222, 27 October 2008, p. 4, ERN (En) 00242158.

<sup>10257</sup> Site Identification Report, E3/8057, 21 July 2009, pp. 1, 12, ERN (En) 00365619, 00365630.

Mondulkiri province retained its pre-DK borders and was designated as Sector 105, initially under the administrative framework of the Northeast Zone and, by late 1976,<sup>10258</sup> as an autonomous sector.<sup>10259</sup> From about this time to late 1977, the Sector 105 Committee was headed by Laing *alias* Chhan *alias* Ham as Secretary,<sup>10260</sup> with KHAM Phoun serving as Deputy Secretary in charge of economic affairs.<sup>10261</sup> PHAN Khoun *alias* Chuon replaced KHAM Phoun as Deputy Secretary in charge of economic affairs,<sup>10262</sup> while SAU Kim An *alias* Mey served as Deputy Secretary in charge of political affairs until late 1977.<sup>10263</sup>

<sup>10258</sup> DK Telegram, E3/1192, 12 October 1976, ERN (En) 00508560 (Laing reporting directly to “Brother Nuon”); Map of DK Zones and Autonomous Regions, E3/2766, undated, ERN (En) 00429148; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 7, ERN (En) 00274100 (stating that Northeast Zone Secretary, NEY Sarann *alias* Ya or *Ta* Ya, served as Sector 105 secretary “until late 1976 and [or] early 1977”, after whom “Khen, Sovan, Ham *alias* Lang” served as Sector Secretary); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/8749, 1 July 2011, p. 4, ERN (En) 00715750 (confirming that Khen Sovann, Ham and *Ta* Laing were the same person); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 3, ERN (En) 00290505 (“From 1975 to 1979 Mondulkiri province was an autonomous Sector”).

<sup>10259</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 93; T. 11 June 2012 (SAO Sarun), E1/84.1, p. 54; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 62-63; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 46; KHAM Phan Interview Record, E3/57, 10 March 2009, p. 3, ERN (En) 00290505; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 9; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 69; SAO Sarun Interview Record, E3/10724, 2 April 2016, p. 4, ERN (En) 01235781. A separate line of communication was nevertheless maintained between Sector 105 and the Northeast Zone. *See* T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 2. *See also*, BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/8749, 1 July 2011, p. 4, ERN (En) 00715750 [ERN (Fr) 00727661: “Elle communiquait avec la zone Nord-Est”].

<sup>10260</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 78; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 44, 61, 110; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 16; T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, p. 22; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 59; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 9, 11; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 19; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 59; T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 11; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 49. *See also*, PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 4, ERN (En) 00295162; HAM Ansi Interview Record, E3/366, 26 November 2008, p. 2, ERN (En) 00250749.

<sup>10261</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 93; T. 6 June 2012 (SAO Sarun), E1/82.1, p. 87; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 9; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 13-15; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 3, ERN (En) 00239484. *See also*, Organisational Chart of Khmer Rouge Leaders in Mondulkiri Province by CHAN Bun Leath, E3/5179, 11 June 2008, ERN (En) 00274106; B’LOEK Lam Interview Record, E3/5221, 26 October 2008, p. 2, ERN (En) 00239490. Both Laing and KHAM Phoun died in Phnom Penh under suspicious circumstances in late 1977. *See below*, para. 3055.

<sup>10262</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 92; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 47. PHAN Khoun *alias* Chuon was arrested, detained at S-21 in November 1977 and executed in May 1978. *See below*, para. 3056 (fn. 10346).

<sup>10263</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 93, 101. *See also*, Organisational Chart of Khmer Rouge Leaders in Mondulkiri Province by CHAN Bun Leath, E3/5179, 11 June 2008, ERN (En) 00274106; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 4, 7-8, ERN (En) 00274097, 00274100-00274101 (indicating that SAU Kim was also known by the *alias* “Muth”); NETH Savat Interview Record, E3/7695, 23 October 2008, p. 3, ERN (En) 00239484. SAU Kim An *alias* Mey was arrested, detained at S-21 and executed in December 1977. *See below*, para. 3056 (fn. 10346).

3035. During his tenure as Sector 105 Secretary, Laing reported directly to the Party Centre at Office 870.<sup>10264</sup> Coded telegrams were transmitted through K-17's communications unit, manned by Laing's daughter, PHAN Sovannhan,<sup>10265</sup> to the Party Centre.<sup>10266</sup> Laing's son and personal messenger, PHAN Van *alias* KHAM Phan, credibly testified that his father addressed NUON Chea as "Brother" or "*Bong*" in telegrams and that "Uncle" or "Uncles" referred to NUON Chea, KHIEU Samphan and POL Pot.<sup>10267</sup> The Chamber has before it 12 telegrams dated between October 1976 and August 1977 either directly addressed or copied to NUON Chea and/or Office 870, reporting on the operational requirements of the sector, agricultural conditions, rice production and the enemy situation, and further requesting supplies and guidance on the treatment of captured Vietnamese combatants.<sup>10268</sup>

<sup>10264</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 61 ("Q. And in his capacity as Secretary of Sector 105, do you know to whom your father reported from April 1975 onwards? A. My father had to report to Office 870"), 103 (Q. Can you please tell us who within Sector 105, aside from your father, had the power to communicate directly via telegram with the Centre of the Party? [...] A. At that time, none; no-one was allowed. [...] [H]e was the only person who communicated via telegram to the Centre"); T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 3 ("According to my understanding, the communication went through 870"); T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, p. 13 ("Office 870 was a common place where messages were sent from the sectors"); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 46 ("870 was a general number from the upper level, it was named 870"); T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 70-71 ("I stated that [Mondulkiri] was an autonomous sector because of the administrative structure. Usually districts formed a province and a province would fall under a zone, and based on what my superior told me, the provincial governor would go straight to Phnom Penh and not to the zone. [...] [The autonomous sector 105] made a direct report [to the Party Centre]"). See below, fn. 10268.

<sup>10265</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 88; PHAN Sovannhan Interview Record, E3/365, 26 November 2008, pp. 2-3, ERN (En) 00251009-00251010; PHAN Sovannhan Interview Record, E3/44, 11 March 2009, pp. 3-5, ERN (En) 00295161-00295163.

<sup>10266</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 102-103 ("At the time, none [other than Laing] was allowed [to communicate with the Party Centre]. [...] [A]s far as the Sector 105 was concerned, [Laing] was the only person who communicated via telegram to the [Party] Centre."); KHAM Phan Interview Record, E3/57, 10 March 2009, p. 3, ERN (En) 00290505 ("All types of works were reported directly to the [Party] Centre"); KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088 ("Those coded typewritten documents were sent from the district level to my office [K-17] and also to/from the [Party] Centre"). See also, T. 7 June 2012 (SAO Sarun), E1/83.1, p. 16; PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 4, ERN (En) 00295162.

<sup>10267</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 104-105, 115; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 122 ("I simply addressed [Khieu Samphan] as 'Uncle', and everyone called him 'Uncle' at the time"); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 45 ("Q. You stated that you sent letters to uncles; who were those uncles; do you know their names? A. during the time, there were Uncle Nuon and Uncle Pol. Q. Who was Uncle Nuon and who was Uncle Pol? A. Uncle Pol was Pol Pot. Q. What about Uncle Nuon? A. It was Nuon Chea.").

<sup>10268</sup> DK Telegram, E3/1191, 12 October 1976, ERN (En) 00539058 ("To beloved and missed comrade Doeun", copied to "Brother Nuon", "Documentation" and "Office", signed "Laing", stating that he has changed his name to "Chhan"); DK Telegram, E3/1192, 12 October 1976, ERN (En) 00508560 ("To beloved and missed brother Nuon", copied to "Brother Nuon", "Archives" and "Office", signed "Laing"); DK Telegram, E3/1189, 12 October 1976, ERN (En) 00590301 ("To beloved and missed Two Brothers", copied to "Brother Nuon", "Documentation" and "Office", signed by "Laing"); DK Telegram, E3/1193, 15 October 1976, ERN (En) 00590302 ("To beloved and missed comrade Doeun", copied to

3036. PHAN Van *alias* KHAM Phan confirmed the authenticity of these telegrams in court.<sup>10269</sup> Stating that the majority of telegrams to K-17 emanated “from Office 870”,<sup>10270</sup> the witness confirmed that NUON Chea would personally instruct the sector on security and military matters, including the need to remain vigilant, at times requesting forces from the sector and advising on the conflict between Democratic Kampuchea and the Socialist Republic of Vietnam.<sup>10271</sup> PHAN Sovannhan similarly deposed to OCIJ investigators to having seen telegrams from NUON Chea and POL Pot, mostly regarding agricultural matters and calling cadres to study at the Party Centre.<sup>10272</sup> The Chamber is satisfied that Sector 105 Secretary Laing reported directly to the Party Centre, and received instructions from POL Pot and NUON Chea.

3037. Un-encoded reports were forwarded by the Sector 105 Secretary to KHIEU Samphan on non-security related matters including social affairs, equipment and healthcare, responses to which were received at Sector 105 from KHIEU Samphan signed “Hem”.<sup>10273</sup>

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“Brother Nuon”, “Documentation” and “Office”, signed by “Chhan”); DK Telegram, E3/1194 [E3/1663], 19 October 1976, ERN (En) 00548893 (“To beloved and missed Brother”, copied to “Brother Nuon”, “Documentation” and “Office”, signed by “Chhan”); DK Telegram, E3/1102, 20 October 1976, ERN (En) 00532708 (“To beloved and missed Comrade Dor [Doeun]”, copied to “Brother Nuon”, “Office” and “Documentation”); DK Telegram, E3/1118, 2 November 1976, ERN (En) 00436997 (“To respected and beloved Brother Nuon”, copied to “Brother Nuon”, “Office” and “Documentation”); DK Telegram, E3/1103, 7 November 1976, ERN (En) 00509692 (“To missed and respected Comrade Doeun”, copied to “Brother Nuon”, “Office” and “Documentation”); DK Telegram, E3/1104, 13 November 1976, ERN (En) 00532710 (“To beloved and missed Brother”, copied to “Brother Nuon”, “Office” and “Documentation”, signed by “Chhan”); DK Telegram, E3/1195, 25 November 1976, ERN (En) 00519519 (“To beloved comrade Pang”, copied to “Brother Nuon”, “Documentation” and “Office”, signed by “Lang”); DK Telegram, E3/1196, 26 November 1976, ERN (En) 00506647 (“To beloved and missed Office 870”, copied to “Brother Nuon”, “Brother Khiev”, “Office” and “Documentation”, signed by “Chhan”); DK Telegram, E3/877, 20 May 1977, ERN (En) 00185226 (“To beloved and missed Mo-870”, signed by “Chhan”). *See also*, DK Telegram, E3/1204, 27 August 1977, ERN (En) 00590303 (“To respected and beloved M-870”, signature illegible); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 47-48 (“Sometimes I saw the names of senders [of telegrams] and most of the time, I could see the name of Uncle Nuon. [...] The content was about security matters and particularly instructions on how to build the dams and dykes. [...] It [also] concerned the situation at the borders. At the time, when I was there, the clashes happened at the borders.”).

<sup>10269</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 112 (from a sample of seven telegrams, the witness responded: “I believe that, as long as the originality of these documents [is] concerned, it is true that they could have been sent from Sector 105 to the Upper Echelon”).

<sup>10270</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 47.

<sup>10271</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 98, 106; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, pp. 50, 68; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 41, 47; KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089.

<sup>10272</sup> PHAN Sovannhan Interview Record, E3/44, 11 March 2009, pp. 3-4, ERN (En) 00295161-00295162; PHAN Sovannhan Interview Record, E3/365, 26 November 2008, p. 2, ERN (En) 00251009.

<sup>10273</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 108-109 (“Q. Therefore, do you stand by this statement [E3/58, p. 4] [...] in terms of the issues that were being dealt with, Mr Khieu

3038. In addition to maintaining a written line of communication with the Party Centre, Sector 105 Secretary Laing also travelled to Phnom Penh to report in person and attend meetings and other major Party assemblies.<sup>10274</sup> Upon his return to Phnom Kraol, Laing convened meetings with sector and division officials to conduct training sessions and disseminate instructions from the Party Centre on the enemy situation.<sup>10275</sup>

3039. After his death in late 1977, Laing was replaced by longstanding CPK member and former Pechreada District Secretary, SAO Sarun,<sup>10276</sup> who testified before the Chamber in Cases 002/01 and 002/02. The Chamber approaches SAO Sarun's testimony with caution. The witness's evidence was characterised by poor recollections and outright denials, followed by acceptance of the contents of his OCIJ records of interview immediately thereafter when confronted, often in contradiction to his initial denial(s).<sup>10277</sup> The Chamber notes that the witness volunteered few details of his own volition relevant to his conduct during the DK era. SAO Sarun sought to minimise his own role and exhibited a tendency to attribute exclusive responsibility to POL Pot.<sup>10278</sup> He emphasised that, despite protestations to POL Pot, NUON Chea and SON Sen about his lack of qualification for the post in a meeting held in Phnom Penh following Laing's death, he was officially appointed to the position of Sector 105 Secretary during the Fifth CPK Party Congress in September 1978, but only served in that capacity for a

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Samphan sent telegrams relating to material, equipment, healthcare and social affairs, etc.? A. Yes, As I stated there, whenever it was related to equipment or so, as you enumerated, he would sign it with the initial 'Hem'.") *affirming* KHAM Phan Interview Record, E3/58, 21 November 2008, p. 4, ERN (En) 00250089; T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, pp. 10-13 ("No, [Khieu Samphan] had nothing to do with security. I did not see his name involving security matters. [...] Yes, I did see [non-coded letters going through the service from Hem]. [...] Q. But when you encoded telegrams to Khieu Samphan, you addressed them to 'Hem', am I right? A. Yes, you are.").

<sup>10274</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 91, 95-96; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 41-42, 46 ("Q. [H]ow did your father report to the upper level? A. The reports were done through telegrams. And when he arrived in Phnom Penh, he made oral reports by himself."). *See also*, HAM Ansi Interview Record, E3/366, 26 November 2008, p. 4, ERN (En) 00250751; SAN Lan Interview Record, E3/1650, 29 October 2008, p. 4, ERN (En) 00244337; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 5, ERN (En) 00244492.

<sup>10275</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 96; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 14, 40-42; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 45.

<sup>10276</sup> T. 6 June 2012 (SAO Sarun), E1/81.1, p. 79 *affirming* 00230781 (stating that he joined the Party in 1963); T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 53-54; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 81. For Laing's death, *see below*, para. 3055.

<sup>10277</sup> *See e.g.*, T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 87-88; T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 2-3, 18, 24-25; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 20-21, 38, 40-42; T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 5-6, 19-20, 26-27, 43-44, 46-47.

<sup>10278</sup> *See e.g.*, T. 29 March 2016 (SAO Sarun), E1/410.1, p. 76.

period of two months.<sup>10279</sup> Contrary to this assertion, the Chamber has before it four telegrams signed by “Sarun” dating from January 1978, bearing salutations to the Party Centre and reporting, among other topics, on the armed conflict, border situation and movement of enemies in various areas throughout Sector 105<sup>10280</sup> – all of which SAO Sarun acknowledged sending.<sup>10281</sup> Indeed, witnesses – including SAO Sarun himself<sup>10282</sup> – consistently testified that SAO Sarun was appointed to replace Laing after the latter’s death in late 1977.<sup>10283</sup> In light of the foregoing and other irregularities evident in his testimony,<sup>10284</sup> the Chamber accords no weight to SAO Sarun’s testimony insofar as it relates to assertions uncorroborated by other witnesses or other relevant

<sup>10279</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 73-74, 97-99; T. 7 June 2012 (SAO Sarun), E1/83.1, p. 12; T. 11 June 2012 (SAO Sarun), E1/84.1, p. 26; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 49; T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 73-74, 82; SAO Sarun Interview Record, E3/367, 17 December 2008, p. 4, ERN (En) 00278695.

<sup>10280</sup> DK Telegram, E3/248, 1 January 1978, ERN (En) 00324809 (“To Respected and beloved Brothers of Office 870” reporting on the border situation at Teh (Pechreada district) and Dak Dam (Ou Reang district) and that “we have swept them away”, referring to “nine *Yvon* people fleeing from their country”); DK Telegram, E3/1078, 9 April 1978, ERN (En) 00361189 (“To respected M-870”, copied to “Uncle”, “Uncle Nuon”, “Uncle Van”, “Uncle Vorn”, “Office” and “Documents”, reporting the arrest of three men accused of destroying two boats and equipment); DK Telegram, E3/155 [E3/156, E3/938], 23 April 1978, ERN (En) 00296220 (“To Respected Brother”, reporting on the enemy situation at Teh (Pechreada district), seeking advice on the issuance of weapons to the sector and the fate of Comrade Sot, implicated in a confession [For Sot, *see below*, paras 3079-3080]); DK Telegram, E3/498 [E3/1072], 24 April 1978, ERN (En) 00185059 (bearing salutation “Respected Brother”, copied to “Grand Uncle”, “Grand Uncle Nuon”, “Grand Uncle Vorn”, “Office” and “Documentation”, and reporting on enemy attacks in Teg [*i.e.* Teh] (Ou Reang district) and O Chbar (Kaoh Nheak district)).

<sup>10281</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, p. 35 (E3/155 [E3/156, E3/938]); T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 12-13 (E3/498); T. 12 June 2012 (SAO Sarun), E1/85.1, p. 102 (E3/155 [E3/156, E3/938], E3/498, E3/248, E3/1078).

<sup>10282</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 13 (“After Laing died, I was appointed to [...] report to Pol Pot”); T. 29 March 2016 (SAO Sarun), E1/410.1, p. 73 (“Q. You explained that [...] you were appointed by Pol Pot in late 1977, to replace Laing. Correct? [...] A. “Yes, that is correct. When *Ta* Laing died, I was appointed by Pol Pot, but I refused, and then there was a meeting in 1978, when the majority approved that I should be appointed the chief. I could not refuse it.”).

<sup>10283</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 79 (“Q. Who replaced your father as Secretary of Sector 105 after his death? A. *Ta* Sarun.”); T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 13 (“Q. *Ta* Sarun took over the position following your father’s death; is that correct? A. That is correct.”); T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 51 (“Q: [...] Sarun; is that the name of the man that you said replaced Ham as [...] sector secretary? A: Yes, that’s correct.”), 81 (“After *Ta* Ham died, *Ta* Sarun came to replace him as the head of the sector”); T. 11 March 2016 (NETH Savat), E1/400.1, p. 96 (“*Ta* Sarun was [on] the sector committee. He used to be a member of the sector committee. After *Ta* Laing and *Ta* Kham Phoun, I did not know what was going on.”); NETH Savat Interview Record, E3/7695, 23 October 2008, p. 4, ERN (En) 00239485; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 20 (“And after the [...] killing each of other of [*sic*] Laing and Kham Phoun, [*Ta* Sarun] came to replace Laing. [...] It was in late 1977, probably, or early 1978.”); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 7, ERN (En) 00274100; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 10-11 (“Is it correct that your brother, Sao Sarun, became the sector secretary after the death of *Ta* Laing? A. Yes.”).

<sup>10284</sup> *See e.g.*, T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 93-94 (denies having held a position other than that of District Secretary); T. 5 June 2012 (SAO Sarun), E1/81.1, p. 97 (denies participating in any meetings with Party leaders).

and reliable evidence before the Chamber, and finds that he was, at the very least, acting Sector 105 Secretary from late 1977 until January 1979.

3040. The reporting structure remained unchanged following SAO Sarun's ascension to the role of Sector 105 Secretary. SAO Sarun testified that as Sector 105 Secretary, he reported to the Party Centre daily by way of telegram addressed to POL Pot,<sup>10285</sup> and acknowledged receiving instructions from him on topics including resisting the Vietnamese.<sup>10286</sup> Despite claiming it was only POL Pot to whom he forwarded reports, the telegrams clearly demonstrate that other recipients included NUON Chea and Office 870. SAO Sarun also received telegrams from NUON Chea from time to time calling him and others to Phnom Penh to attend study sessions.<sup>10287</sup> The Chamber is satisfied that SAO Sarun's testimony regarding Sector 105 reporting structures is, save for the ultimate recipient of his telegram dispatches, sufficiently consistent with practices employed during Laing's tenure as described by other witnesses, and therefore credible in this respect. It is therefore satisfied that as Sector 105 Chairman, SAO Sarun continued the practice of reporting directly to, and receiving instructions from, the Party Centre, including POL Pot, NUON Chea and Office 870.

3041. In late 1977, SAO Sarun travelled to Phnom Penh for a meeting with leading Party members, where POL Pot and NUON Chea discussed Vietnam's "intention to invade and swallow up Kampuchean territory" and the need to make preparations for a counteroffensive.<sup>10288</sup> SAO Sarun told the Chamber that he spoke with KHIEU Samphan about economic issues in the sector, including agricultural production and food rations,<sup>10289</sup> indicating that this was the first and only time he did so.<sup>10290</sup> The Chamber has no evidence before it contradicting SAO Sarun's account or otherwise

<sup>10285</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, p. 19; T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 14, 50, 102-103. *See above*, para. 3039.

<sup>10286</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 47-48; T. 11 June 2012 (SAO Sarun), E1/84.1, p. 7; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 74; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 99; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 33.

<sup>10287</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 14; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 72. The Chamber does not have before it telegrams from NUON Chea to SAO Sarun.

<sup>10288</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 50, 55-56; T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 84-85.

<sup>10289</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, p. 59; T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 20-21.

<sup>10290</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, p. 60; T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 3-4; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 106.



indicating that SAO Sarun met with or reported to KHIEU Samphan on a regular basis. It therefore accepts the witness's testimony that this was their only encounter.

3042. Following his return to K-17, SAO Sarun convened meetings with sector, district and commune officials to convey the Party Centre's instructions.<sup>10291</sup>

#### 12.5.3.2. K-17, K-11 and Phnom Kraol Prison

3043. The Sector 105 Committee oversaw the operations of all sector units stationed at Phnom Kraol. The Sector 105 Secretary maintained authority over the sector office at K-17,<sup>10292</sup> appointed the Sector Military Commander and directed the Sector Military, headquartered at K-11.<sup>10293</sup> Despite their physical proximity, the Sector 105 Secretary received telegram reports from the Sector 105 Military Commander.<sup>10294</sup>

3044. The Sector Military, led by HUOT Ke *alias* Sophea until late 1978,<sup>10295</sup> comprised two regiments. Regiment 1 (or 501) consisted of approximately 90 soldiers and was responsible for the defence of Kaoh Nheaek under the command of SAN Lan.<sup>10296</sup> Regiment 2 (or 502) was headquartered at Phnom Kraol Prison and was in charge of sector security. Initially commanded by KHVEN Ngoc *alias* Leng, deputy Vieng (or Veang) *alias* Kham and member SOV Maing *alias* SAO Champi,<sup>10297</sup>

<sup>10291</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 11; T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 8, 33-34.

<sup>10292</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 95; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 68.

<sup>10293</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 45; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 64; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 43; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 9. *See also*, BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 4, 8, ERN (En) 00274097, 00274101.

<sup>10294</sup> *See e.g.*, DK Telegram, E3/1030, 20 June 1977, ERN (En) 00324806 ("To beloved and missed Brother Chhan" signed "Sophea" reporting on the military situation at Au Phlay, Pechr Chenda and Dak Dam).

<sup>10295</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 55; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 80; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 9. For the date of Sophea's removal to Phnom Penh, detention in S-21 and subsequent execution in late 1978, *see below*, fn. 10346.

<sup>10296</sup> T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 10-12, 47; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 8. *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, pp. 2-3, ERN (En) 00244335-00244336; B'LOEK Lam Interview Record, E3/5221, 26 October 2008, p. 3, ERN (En) 00239491; NOU Saury Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506.

<sup>10297</sup> T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 7-8, 13, 31; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 51-52; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 56; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 40. *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, p. 3, ERN (En) 00244336; KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088; NOU Saury Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506; SAO Sarun Interview Record, E3/367, 17 December 2008, p. 5, ERN (En) 00278696. SOV Maing *alias* SAO Champi

Regiment 2 and its companies were tasked with patrolling the border with Vietnam and administering Phnom Kraol Prison alongside Division 920 forces.<sup>10298</sup> Each regiment was further subdivided into three battalions.<sup>10299</sup> Following his removal as Sector 105 Military Commander, Sophea was briefly replaced by Leng,<sup>10300</sup> who in turn was replaced by former deputy Vieng as Regiment 2 Commander.<sup>10301</sup> Although he denied taking over from Leng as the operational head of Phnom Kraol Prison,<sup>10302</sup> there is convincing evidence before the Chamber that SOV Maing had indeed assumed this post.<sup>10303</sup> The Chamber is satisfied that SOV Maing replaced Leng as the operational head of Phnom Kraol Prison following the latter's promotion to the role of Sector 105 Military Commander. As the headquarters of Regiment 2, Phnom Kraol Prison was subordinated to the Sector Secretary.<sup>10304</sup>

3045. During the DK period, Sector 105 Secretaries Laing and SAO Sarun channelled information between districts and the Party Centre. They personally received reports from District Secretaries,<sup>10305</sup> held regular monthly meetings with various district

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is the brother of SAO Sarun. *See* T. 27 October 2016, pp 9-10; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490.

<sup>10298</sup> T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 8, 13, 47. *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, p. 3, ERN (En) 00244336.

<sup>10299</sup> T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 7. *See also*, Section 5.3: Structure of the CPK Military Forces.

<sup>10300</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 79; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 18-19, 77; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 31; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 13. *See also*, NOU Saury Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506. HUOT Ke *alias* Sophea and KHVEN Ngok *alias* Leng were arrested, detained at S-21 and executed. *See below*, para. 3056 (fn. 10346).

<sup>10301</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 51-52; T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 10-11.

<sup>10302</sup> T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 35-36.

<sup>10303</sup> T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 29, 31-32 (stating that Maing's office was next to the prison and that he was "the direct perpetrator to arrest all other prisoners and then send them to *Ta Phai's* prison", but acknowledging that he did not know whether he held a position within the prison); SAO Sarun Interview Record, E3/367, 17 December 2008, p. 5, ERN (En) 00278696 ("I know Maing, my younger brother in Battalion [*sic*] 2, [...] came to replace Leng at Phnom Kraol Dam Office").

<sup>10304</sup> T. 30 March 2016 (SAO Sarun), E1/411.1, p. 43 ("Ta Laing had overall supervision" at the Security Centre); SAO Sarun Interview Record, E3/10724, 2 April 2016, p. 5, ERN (En) 01235782; UONG Dos Interview Record, E3/7703, 29 October 2008, p. 3, ERN (En) 00242171.

<sup>10305</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 92; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 63; T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, p. 40; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 10-11; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 69.

cadres<sup>10306</sup> and appointed district officials.<sup>10307</sup>

### 12.5.3.3. Division 920

3046. RAK Centre Division 920 maintained a presence in Sector 105 from 1975,<sup>10308</sup> initially under the command of MEN Mang *alias* Chhin and Deputy Commander EA Chir *alias* Say (or Soy).<sup>10309</sup> Following their arrest and detention at S-21 in February and March 1977,<sup>10310</sup> the Division came under the command of former Division 801 Deputy Commanders San *alias* Ta 06 and Ta Leu, with CHAN Kung *alias* Kim (or Koem) as their deputy.<sup>10311</sup> Headquartered approximately seven kilometres south of Phnom Kraol,<sup>10312</sup> the Division dispatched its three battalions (91, 92 and 93) across Sector 105 to patrol and defend the border with Vietnam.<sup>10313</sup>

3047. A close line of cooperation existed between Division 920 and Sector 105 throughout the DK period. In September 1976, SON Sen proposed that “close contact”

<sup>10306</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 53; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 78, 83; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 9; KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088.

<sup>10307</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, p. 85; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 67.

<sup>10308</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 17; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 64-65.

<sup>10309</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 65; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 5; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 30, 68; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 10; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 4, ERN (En) 00274097; T. 30 March 2016 (SUN Vuth), E1/411.1, p. 60; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 65; T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 6. *See also*, Map of Koh Neak District, E3/9100, undated, ERN 00992852; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 3, ERN (En) 00239484; AUM Mol Interview Record, E3/7700, 29 October 2008, p. 2, ERN (En) 00239532.

<sup>10310</sup> DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038 (showing that, by April 1977, “San” was reporting “To respected and beloved *Bang* 89”). *See also*, UNG Ren Interview Record, E3/402, 17 September 2009, p. 4, ERN (En) 00381034 (stating that San, the Division 801 Deputy Commander under SAO Saroeun, was sent to Mondulkiri in July 1977). *See below*, fn. 10352.

<sup>10311</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 82; T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 12, 51; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 8; T. 11 March 2016 (NETH Savat), E1/400.1, p. 30; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 73, 75; S-21 list of prisoners, E3/10631, undated, ERN (En) 01335771 (entry no. 14, CHAN Kung *alias* Kim, Deputy Chief of Division 920); S-21 list of prisoners, E3/2253, undated, ERN (En) 00789492 (entry no. 16 CHAN Kung *alias* Koem, Deputy Secretary of Division 920). *See also*, PHAN Sovannhan Interview Record, E3/365, 26 November 2008, p. 3, ERN (En) 00251010; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 8, ERN (En) 00274101; Section 12.4: Au Kanseng Security Centre, para. 2864.

<sup>10312</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, p. 63; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 74; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 60, 85; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 42; T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 6.

<sup>10313</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 63-64; T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 59-61; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 31-37. *See also*, Division 920 Plenary Meeting Minutes, E3/799, 7 September 1976, ERN (En) 00184780 (the direction of Brother 89 [Son Sen]: “The task received by the 920<sup>th</sup> Division is to absolutely defend the entire Mondulkiri border with Vietnam”).

be maintained with Sector 105 Secretary Laing, since “the border can only be defended as long as we, the army, and the bases agree on the line”.<sup>10314</sup> Division 920 commanders met with the Sector Secretary, who at times furnished work assignments to the division, which in return assisted the Sector Committee in the execution of its mandate.<sup>10315</sup> This included assisting with the arrest and detention of enemies, as well as the administration of Phnom Kraol Security Centre.<sup>10316</sup> The Sector Military also assisted Division 920 in the field, particularly as the latter was unfamiliar with the geographic and topographic conditions of the region.<sup>10317</sup> Division 920 reported directly to the Party Centre and received direction from General Staff Chairman SON Sen.<sup>10318</sup> The Chamber finds that while Division 920 and Sector 105 maintained their own reporting lines to the Party Centre throughout the DK period (through SON Sen and POL Pot respectively<sup>10319</sup>), as shown below, both entities collaborated closely within the territory of Sector 105 to identify, arrest and detain suspected enemies after April 1977.

<sup>10314</sup> Minutes of Plenary Meeting of the 920th Division, E3/799, 7 September 1976, ERN (En) 00184781.

<sup>10315</sup> Minutes of Plenary Meeting of the 920th, E3/799, 7 September 1976, ERN (En) 00184781 (the direction of Brother 89 [Son Sen]: “Propose that our cadres keep close contact with Comrade Laing because the border can only be defended as long as we, the army, and the bases agree on the line. [...] We must report to Laing, to Comrade Ya [*i.e.* Northeast Zone Secretary NEY Sarann *alias* Ya] and to the General Staff”); T. 6 June 2012 (SAO Sarun), E1/82.1, p. 99; T. 12 June 2012 (SAO Sarun), E1/85.1, p. 55; T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 39-40; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 6, 10; T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 83-84; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 30. *See also*, SAO Sarun Interview Record, E3/367, 17 December 2008, p. 4, ERN (En) 00278695 (POL Pot advised SAO Sarun that *Ta* San could assist SAO Sarun in the execution of his function as Sector Secretary).

<sup>10316</sup> T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 22 (“[I]f the sector force had committed wrongdoing and then the Division 920 was instructed to perform the task, so whenever members of the sector forces committed wrongdoing, it was Division 920 that had the responsibility to make arrests. And when members of Division 920 committed wrongdoing, the sector forces would go and arrest them.”). *See above*, para. 3044. *See below*, paras 3076-3080, 3088.

<sup>10317</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 17; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 14-15; DK Telegram, E3/1030, 20 June 1977, ERN (En) 00324806 (telegram from Sector 105 Military Commander Sophea to Brother Chhan (Laing) stating that Comrade Veang (Division 920 member) is organising a force to monitor enemies). *See also*, DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038 (reporting to SON Sen, Division 920 Commander San reports that a decision to install an artillery battalion was done “in collaboration with *Bang* Saphea”, *i.e.* the Sector 105 Military Commander).

<sup>10318</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, p. 33; T. 7 June 2012 (SAO Sarun), E1/83.1, p. 27; DK Telegram, E3/1022, 9 March 1976, ERN (En) 00335203 (“To beloved Brother 89” signed by “Comrade Chhin”); DK Telegram, E3/1101, 23 September 1976, ERN (En) 00524192 (“To Beloved and Missed Comrade Chhin” signed by “Khiev”); DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038 (“To respected and beloved *Bang* 89”) signed “San” and bearing handwritten annotation from SON Sen “Sent to *Angkar* for information, Khiev, 7 April 1977”). *See also*, Division 920 Meeting Minutes, E3/805, 16 December 1976, ERN (En) 00185237 (meeting between SON Sen and Division 920 Deputy Commander Say and Ren).

<sup>10319</sup> For the Sector 105 Secretary’s reporting line, *see below*, Section 12.5.4.5: Authority to arrest.

12.5.4. *Arrest and Detention*12.5.4.1. *Internal purges*

3048. As part of its objective to “absolutely” implement the revolution and strengthen socialism inside Democratic Kampuchea, the CPK Central Committee on 30 March 1976 resolved that “the right to smash inside and outside the ranks” in independent (*i.e.* autonomous) sectors was reserved for the Standing Committee, whereas the right with respect to the Centre Military (*i.e.* divisions under the authority of the Party Centre) was bestowed upon the General Staff.<sup>10320</sup> The Chamber has before it evidence demonstrating the application of this policy through the systematic eradication of perceived enemies throughout civil and military ranks across Sector 105. By April 1977, the Standing Committee had decided to “take control” of Sector 105 directly.<sup>10321</sup> Following his arrival in Sector 105 that same month, new Division 920 Commander *Ta San* reported to SON Sen that re-education initiatives demonstrated that “more than 90% [of Division 920 cadres] were traitors”.<sup>10322</sup> Upper echelons progressively denounced, arrested and detained and/or executed cadres suspected of collaborating, communicating or otherwise dealing with Vietnamese forces, civilians or relatives.<sup>10323</sup>

<sup>10320</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 1, ERN (En) 00182809.

<sup>10321</sup> Standing Committee Minutes, E3/10693, 13 April 1977, ERN (En) 01324080-01324082 (at a meeting attended by POL Pot and SON Sen (among others), the Standing Committee, “[b]ased on the resolutions of the Central Party and the Standing Committee” decides that “we must take the [*sic*] control of the Sector 106 and 105”).

<sup>10322</sup> DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038 (telegram copied to Brothers 89, 81, “Office” and “Documentation”, bearing annotation “To *Angkar* for information” dated 7 April 1977).

<sup>10323</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, p. 107 (“Back then, those who had disappeared, they announced that those people were the traitors. Some were accused of the members of the traitorous network [...] charged of associating with the Vietnamese enemy”); T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 52-53 (“Every single Vietnamese [was] singled out and taken away to be killed”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 16-17 (“Later on, there was accusation of Khmer Sar, KGB, CIA and Vietnamese Network and the last group of people, that is Vietnamese network, was the most important target to be smashed.”), 57-58 (“Those people who were killed because of their relatives [living] in Vietnam, were part of the network of *Ta Bun Net* and also a network of *Ta Youn*; so they were also killed. [...] Only those linked to a particular network would be arrested and killed and later on, if other individuals were discovered that they were part of another network they would be arrested individually and killed. They were not arrested as a huge group or network but an individual arrest was made. [...] If they were suspected of having communication with Vietnam, it would result in their arrest.”); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 2-3, ERN (En) 00274095-00274096; T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 55 (“[I]f they told us they were part of FULRO, then they would be arrested and sent to the provincial level through the village and commune level”), 58 (“[M]y commander instructed that if they said that they were part of the FULRO movement, we needed to send them up through the line, we did not need to cause any harm to them”). See *below*, para. 3058.

Those perceived as ideologically opposed to *Angkar* or its policies,<sup>10324</sup> or indeed those suspected of the slightest subversion – including breaking spoons, damaging tools or losing cattle<sup>10325</sup> – were branded as enemies and faced a similar fate.

3049. Military personnel associated with “enemies” were routinely purged down the chain of command,<sup>10326</sup> and relatives of those arrested were similarly condemned,

<sup>10324</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 86 (“[T]here were conscientiousness [*sic*] enemy”), 87 (“[T]he ideological enemies, those who did not fall in lines with the organisation at the time, were also alleged to be the enemy of the Party”), 107 (“[I]nfiltrated enemies were the ones who did not fall in line with the instructions of the organisation, those who deviated from the instruction. So these people were no longer trusted by the organisation and they were no longer given any task to handle. In addition, in certain circumstances, they would be detained as well. So that was only the differing views from the organisation, and those people were considered infiltrated enem[ies]”); T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 17-18 (“[T]hose who did not respect orders were considered pacifists -- enemy, and those who were -- who had the background as teacher or officials of the previous regime -- those were the targets of removal.”); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 63 (“Those who did not follow the instructions were accused of being internal enemies”), 64 (“Anyone who did not follow the instructions or follow the orders, that person was accused of being a Vietnamese spy”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 20 (“And for those who had good behaviour survived the regime. Those who could not bear the regime were killed.”).

<sup>10325</sup> T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, p. 16 (“[W]hen we had a slightest suspicion against another person, then that person would be considered [an] enemy”); T. 30 March 2016 (SAO Sarun), E1/411.1, p. 48 (“And the reports [up the line] were made about the small issues such as broken spoons and stuff”); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 73 (“If we were digging the dirt and if we damaged a tool, then we would be accused of being an enemy since we had damaged the state’s property. [...] If somebody broke a hoe, in that sense then the person would be regarded as an enemy as well.”). *See also*, SAN Lan Interview Record, E3/1650, 29 October 2008, p. 3, ERN (En) 00244336 (“*Ta* Sophea also said ‘whoever pierces a [hole] through the dam or makes loss of many cattle is the enemy’”).

<sup>10326</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 16 (“[T]he leaders in the upper line disappeared and, later on, subordinates or people below them were also arrested”), 20 (“I was not interrogated, but they said that we were all traitors”), 82 (“[Guards] only alluded that we were traitors”); T. 11 March 2016 (NETH Savat), E1/400.1, p. 21 (“[A]fter Ham and Kham Phoun killed each other in Phnom Penh [...] there was this policy of arresting us”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 21 (“To my knowledge [...] those chiefs would be arrested and killed if their commander was arrested and killed. [...] And the arrests and killing took place only for cadres, in 1975, including those military commanders at various positions. And usually the purge was conducted through the line or chain of command.”), 64 (“And then they were reported to the upper echelon and not only these two were arrested, almost all of their soldiers under their commands were also arrested.”); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 23 (“[U]sually in the network, if the leader was arrested, [the subordinate] could not stay, so he fled”); T. 30 March 2016 (SUN Vuth), E1/411.1, p. 62 (“My leaders were called to attend a training session; however, people said that they were all taken to be killed under the accusation of betraying *Angkar*. [...] [A]ll the soldiers were told that please be cautious that you may have been linked to your commander[’]s network.”); DK Telegram, E3/877, 20 May 1977, ERN (En) 00185226 (Report to M-870 noting “arrest after arrest” of Division 920 in light of the sector’s suspicion that “henchmen of [...] contemptible Chhin [Division 920 Commander]” were to blame for Vietnamese incursions). *See also*, HAM Ansi Interview Record, E3/366, 26 November 2008, p. 3, ERN (En) 00250750 (“One day during a sector-level meeting with *Ta* Sophea and *Ta* Laing, I learned that [...] if I did not go, I was to be killed at once, because I was the right-hand close to *Ta* Laing”).

arrested and detained or executed.<sup>10327</sup>

3050. The NUON Chea Defence submits that evidence relating to the purges in Sector 105 and Division 920 is “totally irrelevant to the Phnom Kraol crime site”.<sup>10328</sup> No other Party made submissions in this regard. The Chamber notes that arrests, detentions and executions took place within and beyond the Phnom Kraol Security Centre complex and recalls that it is seised only of the above crimes as relevant to K-17, K-11, Phnom Kraol Prison and Trapeang Pring. Nevertheless, the Chamber deems it necessary to examine the evidence of internal purges within the broader sector as contextual evidence relevant to facts in issue at Phnom Kraol Security Centre. Where it has relied upon such evidence, the Chamber has taken care to clearly identify the extent to which it bears upon its findings.

#### 12.5.4.2. Backdrop of purges in Sector 105

3051. The Chamber has been able to trace the approximate genesis and chronology of purges throughout Sector 105 from about early 1977. While witness accounts were overwhelmingly consistent in substance, precise event chronologies and timeframe recollections varied. Where available, the Chamber has relied upon contemporaneous evidence to pinpoint events but notes that the following timeline is subject to a margin of appreciation and is extracted for the purpose of providing context to the events at Phnom Kraol Security Centre.

3052. Precipitated by accusations that he had entertained or harboured Vietnamese soldiers, Kaoh Nheaek District Secretary TIT Hem *alias* Svay committed suicide in early 1977 following skirmishes with Sector 105 officials.<sup>10329</sup> Kaev Seima District

<sup>10327</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 25; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 46; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 33; T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 21, 37, 74.

<sup>10328</sup> NUON Chea Closing Brief, paras 423-424.

<sup>10329</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 87-88; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 49 (testifying that Svay shot at a sector hospital officer before himself being shot and hanging himself), 83-85 (after being questioned about hiding Vietnamese, Svay shot dead two cadres, including Ou Reang district Secretary Ky and Dang, before committing suicide); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 66; T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 15-19, 23-25, 46. *See also*, Organisational Chart of Khmer Rouge Leaders in Monduliri Province by CHAN Bun Leath, E3/5179, 11 June 2008, ERN (En) 00274107; SAL Ra Interview Record, E3/5222, 27 October 2008, p. 5, ERN (En) 00242159; SAN Lan Interview Record, E3/1650, 29 October 2008, p. 4, ERN (En) 00244337; HAM Ansi Interview Record, E3/366, 26 November 2008, p. 3, ERN (En) 00250750; “Revolutionary Biography” – TIT Hem *alias* Svay, E3/2390, undated, ERN (En) 00343671.

Secretary Kasy, suspected of having collaborated with Svay,<sup>10330</sup> was accused of immoral relations, arrested in February 1977, detained by Sector 105 forces at K-16 and executed.<sup>10331</sup> Kasy's nephew and fellow K-16 detainee, Witness BUN Loeng Chauy, confirmed that Kasy's wife, relatives and neighbours were also arrested, detained and subsequently disappeared; "[o]nly one or two came back".<sup>10332</sup>

3053. Witness SAO Sarun testified that the entire population of the Kaev Seima district was relocated to K-16 for fear of their collusion with the Vietnamese.<sup>10333</sup> BUN Loeng Chauy – who served as the Deputy Chief of the Kaev Seima District Office between 1975 and his arrest in February 1977<sup>10334</sup> – corroborated this account in court and testified that he saw his former colleagues and soldiers imprisoned in a building near the Roya worksite (K-37),<sup>10335</sup> located approximately a kilometre from K-17.<sup>10336</sup> The Chamber is satisfied that the entire population of Kaev Seima district was relocated and imprisoned at office K-16 and the Roya worksite following Kasy's denunciation.

3054. In late 1977, approximately 18 Kaev Seima district members who had been accused of forming part of Kasy's network fled from K-16, led by K-16 supervisor Nhun.<sup>10337</sup> The wives and children of these escapees were arrested the next day as a

<sup>10330</sup> T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 66.

<sup>10331</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 7 (“[Kasy] was taken away from [K-16] and he was killed” on 22 February 1977), 11 (“I was dispersed from him [at the Roya worksite] so that they could take him to be killed”). *See also*, PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 5, ERN (En) 00295163 (Kasy “was arrested and killed because he had been accused of violating the moral codes”); HAM Ansi Interview Record, E3/366, 26 November 2008, pp. 2-3, ERN (En) 00250749-00250750. *See also*, “Revolutionary Biography” – PHIM *alias* Kasy, E3/2392, undated, ERN (En) 00343664 (indicating “PHIM” as surname and “Kasy” as revolutionary name, but no first name).

<sup>10332</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 15 (referring to the arrest of Kasy's wife), 25-26 (the witness's relatives “were arrested but not killed immediately. They were placed in the [*sic*] detention for one week, for example, and minor prisoners or offenders were sent to Nang Khi Loek, and for the serious offenders, they were sent away and killed. Few of them survived the regime [...]. Those who were arrested together with my uncle [Kasy] never returned. [...] Only one or two came back.”).

<sup>10333</sup> T. 5 June 2012 (SAO Sarun), E1/81.1, pp. 91-92 *affirming* HAM Ansi Interview Record, E3/366, 26 November 2008, pp. 2-3, ERN (En) 00250749-00250750 (stating that, by mid-1978, “all the people had been withdrawn from Keo Seima by *Angkar* for fear they would have contacts with the *Yuon*”). In light of other evidence, the Chamber places this relocation in mid to late 1977.

<sup>10334</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 7-10; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 3-4; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 6, ERN (En) 00274009.

<sup>10335</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 34-35 (stating that they told him “that about 80 of [his] former co[-]workers were arrested” but did not know their fate).

<sup>10336</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 13-14, 28, 68; Sketch of Phnom Kraol Security Centre and surrounds by CHAN Bun Leath, E3/5179, ERN (En) 00274108 (showing the Roya worksite halfway between K-17 and Trapeang Pring on the road to Kratie).

<sup>10337</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 86-87; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 37-38. Although SAO Sarun suggested that Nhun was arrested after Kasy, no other evidence supports this claim and the Chamber rejects his assertion. *See* T. 29 March 2016 (SAO Sarun), E1/410.1, p. 23



result.<sup>10338</sup> The evidence shows that 42 Sector 105 personnel, including 18 women (eight of whom are described as wives of K-16 combatants), entered S-21 on 23 November 1977.<sup>10339</sup> BUN Loeng Chauy confirmed in court that two women executed at S-21 were in fact the wives of those who had escaped from K-16.<sup>10340</sup> Among those suspected of coordinating the flight was the son of Sector 105 Deputy Chairman KHAM Phoun, Kham, who was later arrested and allegedly executed on the orders of Sector 105 Secretary Laing.<sup>10341</sup> While the Chamber could not confirm Kham's execution,<sup>10342</sup> it accepts BUN Loeng Chauy's testimony regarding the fate of the remaining K-16 detainees. Accordingly, it is satisfied that the wives and children of K-16 escapees were arrested and executed in late 1977 as a result of their husbands' flight.

3055. Sector 105 Deputy Secretary KHAM Phoun, who was Nhun's superior at K-16 and Svay's uncle, was similarly denounced as a Vietnamese conspirator and traitor.<sup>10343</sup> Both he and Sector Secretary Laing were summoned to a study session in Phnom Penh by NUON Chea and died under suspicious circumstances after a physical altercation in

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("Kasy was the first arrested. [...] So when Kasy was arrested, so was he."). For the Chamber's position on SAO Sarun's evidence, *see above*, para. 3039.

<sup>10338</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 39-40, 47.

<sup>10339</sup> DK Telegram, E3/9926, 24 November 1977, ERN (En) 01461972-01461976 (listing 42 Sector 105 personnel, including 19 women, as having entered S-21 on 23 November 1977); S-21 list of prisoners admitted on 23 November 1977, E3/1645, 24 November 1977, pp. 8-13, ERN (En) 00809634-00809639 (corroborating all names identified in telegram E3/9926 under heading "Sector 105" and listing a further female combatant: entry no. 143, Nhang of K-16 and "wife of Lang", which is a duplicate of entry no. 106); S-21 list of prisoners admitted on 23 November 1977, E3/9953, 2 December 1977, pp. 28-32, ERN (En) 01367687-01367691 (corroborating all 42 names identified in telegram E3/9926); S-21 list of prisoners on 23 November 1977, E3/10770, 24 November 1977, p. 315, ERN (En) 01460730 (showing 42 arrivals from Sector 105).

<sup>10340</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 44; S-21 list of prisoners admitted on 23 November 1977, E3/1645, 24 November 1977, ERN (En) 00809634 (entry no. 106, NHOENG Hoeun, wife of Lang, Sector 105), ERN (En) 00809638 (entry no. 142, SRUN Li, wife of Lam, K-11 combatant); S-21 list of prisoners smashed on 6 March 1978, E3/1900, 7 March 1977, ERN (En) 00193557 (entry no. 20, NHING Hoeun and entry no. 22 SRUN Ly).

<sup>10341</sup> T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 23 ("Kham Phoun smashed *Ta Han* because his only child was killed by *Ta Ham*"). *See also*, BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 5, ERN (En) 00274098 ("Ham killed KHAM Phoun's child and this made KHAM Phoun to [*sic*] hold a grudge."); PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 5, ERN (En) 00295163; SAN Lan Interview Record, E3/1650, 29 October 2008, p. 5, ERN (En) 00244338 (stating that Kham was arrested because K-16 supervisor Nhun had escaped).

<sup>10342</sup> No evidence before the Chamber suggests that Kham was detained or executed at either Phnom Kraol Security Centre or S-21.

<sup>10343</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19-20 (In about January 1977, "they said Kham Phoun [...] had betrayed the regime. [...] And it was said that they had [a] link to the Vietnamese. That was the reason of the arrests"); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 22; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 65 ("[T]hey announced that [KHAM Phoun] was a traitor"); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 13. *See also*, THIT Ya Interview Record, E3/5220, 23 October 2008, p. 3, ERN (En) 00242163.

late 1977.<sup>10344</sup> Following his death, KHAM Phoun was also denounced as a Vietnamese collaborator, and his family and known associates were arrested and later disappeared.<sup>10345</sup>

3056. A purge of the Sector 105 Committee at K-17, the Sector Military at K-11 and Phnom Kraol Prison staff ensued and continued throughout 1978. In this regard, the Chamber has before it evidence that Sector 105 Deputy Secretaries Mey and Chuon, and Sector 105 Military Commander Sophea were arrested, denounced respectively as members of the “CIA network”, KHAM Phoun’s “network” and as having connections to Vietnam, and executed at S-21. It has further evidence of the arrest and execution at S-21 of Sophea’s successor, Sector 105 Military Commander Leng, and K-17 supervisor Lay.<sup>10346</sup> S-21 logs indicate that at least 56 people from Sector 105 were

<sup>10344</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 119 (“[M]y father told me that Brother Number Two sent the telegram for him and my uncle to go to Phnom Penh for work, and I also learned that my father and my uncle prepared to go to Phnom Penh because of the telegram.”); KHAM Phan Interview Record, E3/58, 21 November 2008, pp. 4-5, ERN (En) 00250089-00250090 (stating that he found his father dead in the same room as KHAM Phoun in Phnom Penh); T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 11-12 (witness heard from Laing and KHAM Phoun’s messengers that the two had “exchanged gunfire and died”), 14-15, 69 (“The messenger told me that the two died but he did not mention the reasons for their deaths”); CHAN Toi Interview Record, E3/7694, 23 October 2008, pp. 2-3, ERN (En) 00242142-00242143 (Laing and *Ta* Kham Phoun shot one another to death in Phnom Penh”); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 23 (“Kham Phoun smashed *Ta* Ham because his child was killed by Ham”); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 5, 9, ERN (En) 00274098 (“Ham killed KHAM Phoun’s child and this made KHAM Phoun to hold a grudge”), 00274102 (“By knowing that he would be arrested and executed, KHAM Phoun [beat] Lang to death and took Lang’s gun to kill himself”); T. 11 March 2016 (NETH Savat), E1/400.1, pp. 61-63 (acknowledging having heard that KHAM Phoun murdered Ham with an iron piece, but acknowledging that this was a rumour); NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486; T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 94-96; SAO Sarun Interview Record, E3/10724, 2 April 2016, p. 6, ERN (En) 01235783. *See also*, SAO Champi Interview Record, E3/506, 18 November 2008, p. 4, ERN (En) 00244491. The Chamber is unable to determine the circumstances of Laing and KHAM Phoun’s deaths.

<sup>10345</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 14 (“*Ta* Sarun at that time arrested those who were linked to *Ta* Kham Phoun”), 22-25, 28, 47-48; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19-23, 41, 46, 63; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 52; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 22-23; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 5, ERN (En) 00274098; T. 7 June 2012 (SAO Sarun), E1/83.1, p. 37. *See also*, THIT Ya Interview Record, E3/5220, 23 October 2008, p. 3, ERN (En) 00242163.

<sup>10346</sup> Sector 105 Deputy Secretary SAU Kim An *alias* Mey: T. 6 June 2012 (SAO Sarun), E1/82.1, p. 78 (“Mey disappeared around 1977”); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 4-5, 7, ERN (En) 00274097-00274098, 00274100 (stating that Mey was denounced in February 1977 and executed in May 1977); PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 4, ERN (En) 00295162 (stating that Mei was denounced as being in the CIA network); S-21 list of prisoners smashed and photographed on 8 December 1977, E3/2285, undated, ERN (En) 01564921 (entry no. 7, SAU Kim An *alias* Mey, Sector 105 Deputy Secretary) [*See also*, S-21 Confession – SO Kim An, E3/1689, undated, ERN (En) 00284045-00284046 (summary of confessions reported on 28 March 1977 requesting that “*Angkar* examine the case involving *Achar* Mey”), 00773005-00773006 (S-21 confession cover page dated 10 October 1977); S-21 Confession – SOU Kim An *alias* Mey, E3/2597, 26 October 1977, ERN (En) 00820641-00820653]. Sector 105 Deputy Secretary PHAN

detained and/or executed at S-21 between March 1977 and 31 December 1978.<sup>10347</sup>

While it does not have evidence that these individuals were imprisoned at Phnom Kraol

Khoun alias Chuon: T. 7 June 2012 (SAO Sarun), E1/83.1, p. 10 (stating that Chuon died in 1977); T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 15 (referring to the disappearance of “Uncle Chuon”); T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 46-48 (confirming PHAN Khoun’s arrest as a result of his membership of “KHAM Phan’s network” and S-21 entry); S-21 list of prisoners admitted on 23 November 1977, E3/1645, 24 November 1977, p. 10, ERN (En) 00809636 (entry no. 128, PHAN Khuon *alias* Chuon, Sector 105 State Commerce Member); DK Telegram, E3/9926, 24 November 1977, p. 7, ERN (En) 01461972 (identifying entry no. 100, PHAN Khuon *alias* Chuon, Member of Sector Commerce, as having arrived at S-21 on 23 November 1977); S-21 list of prisoners smashed on 27 May 1978, E3/8463 [E3/10389], 28 May 1978, p. 56, ERN (En) 01032526 [01398238] (entry no. 377, PHAN Khoun *alias* Chuon, Sector 105 Committee Member of Commerce Section) [*See also*, S-21 Confession – PHAN Khon *alias* Chuon, E3/2598, 31 December 1977, pp. 1-56, ERN (En) 00701680-00701735]. Sector 105 Military Commander HUOT Ke alias Sophea: T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 25 (stating that Sophea was arrested); T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 71-72 (referring to Sophea’s disappearance after being “called to Phnom Penh”); SAO Champi Interview Record, E3/506, 18 November 2008, p. 4, ERN (En) 00244491 (stating that Sophea was put on a plane and flown to Phnom Penh for study); B’LOEK Lam Interview Record, E3/5221, 26 October 2008, p. 3, ERN (En) 00239491 (stating that Sophea was arrested in 1978 for having a connection with Vietnam); HAM Ansi Interview Record, E3/366, 26 November 2008, p. 3, ERN (En) 00250750 (states that he was told by *Ta* Sarun that Sophea was taken to study in Phnom Penh); S-21 list of prisoners, E3/2254, undated, p. 7, ERN (En) 00789709 (entry no. 9, HUOT Ke, Member of Sector 105, entered 6 December 1978); S-21 list of prisoners smashed on 31 December 1978, E3/10455, undated, p. 6, ERN (En) 01248071 (entry no. 74, HUOT Ke *alias* Sophea, Sector 105 Member). Sector 105 Military Deputy Commander (and later Commander) KHVEN Ngok alias Leng: T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 33 (testifying that he was told by *Ta* Vieng that Leng was “called to study” and “disappeared forever”) *affirming* SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 4, ERN (En) 00244491); S-21 list of prisoners, E3/8484, undated, p. 11, ERN (En) 01321710 (entry no. 3, KHVEN Ngok *alias* Leng, Secretary of Battalion 502, entered 13 February 1978) [*See also*, S-21 Confession – KHVENG Ngok *alias* Leng, E3/1653, 27 February 1978, ERN (En) 00834677-00834716]. K-17 supervisor VIN Lay alias Loy: T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, p. 39 (“And Ka Loy actually replaced [*Ta* Tin as the head of K-17] in 1978, and not long after, he was taken away and killed as well”); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 53 (confirming that he has not seen Loy since 1978); S-21 list of prisoners, E3/1651, undated, p. 10, ERN (En) 00789506 (entry no. 1, VIN Lay, Chief of Office of Sector 105, entered 20 October 1978); S-21 list of prisoners, E3/2254, undated, p. 6, ERN (En) 00789708 (VIN Lay, Chief of Office, Sector 105, entered 20 October 1978, interrogation “suspended”); S-21 list of prisoners smashed on 31 December 1978, E3/10455, undated, p. 6, ERN (En) 01248071 (entry no. 66, VIN Lay, Office Chief, Sector [illegible]).

<sup>10347</sup> In addition to the entries extracted above in fns 10339 and 10346, *see* S-21 list of prisoners admitted on 7 March 1978, E3/10221, 7 March 1978, p. 1, ERN (En) 01397708 (KEO Veng and VAN Sran, combatants of office Ba-17, Kaev Seima, Sector 105); S-21 list of prisoners admitted on 17 March 1978, E3/10231, 17 March 1978, p. 17, ERN (En) 01397814 (KHEAM Krud *alias* Tham [*see also*, E3/10335, undated, p. 1, ERN (En) 01462189; E3/10317, undated, p. 2, ERN (En) 01462181]); S-21 list of prisoners interrogated on 6 April 1978, E3/1922, 6 April 1978, ERN (En) 01303811 (LACH Maing *alias* Sarim, Bandit in Svay District, Old Person); S-21 list of prisoners admitted in June 1978, E3/10161, 2 July 1978, p. 84, ERN (En) 01564040 (HONG Sokhoeun *alias* Van, female combatant of sector office, wife of Cham, entered 27 June 1978); S-21 list of prisoners admitted in October 1978, E3/10205, undated, p. 7, ERN (En) 01397682 (ORN On and PHOEUNG Phon, K-17 combatants, entered 20 October 1978); S-21 list of prisoners admitted on 6 April 1978, E3/10361, 6 April 1978, p. 45, ERN (En) 01368929 (entry no. 87, HING Buon *alias* Vuth, previously office team chief in Sector 105); S-21 list of prisoners admitted on 30 January 1978, E3/10437, 30 January 1978, p. 3, ERN (En) 01366944 (entry no. 26, SY Cheang Ngy *alias* Khan, chief of squad or office, Sector 105 [*see also*, E3/10335, undated, p. 1, ERN (En) 01462189; E3/10317, undated, p. 3, ERN (En) 01462181]); S-21 list of prisoners, E3/10317, undated, pp. 2-3, ERN (En) 01462180-01462181 (entry no. 6, YIM Ngim *alias* Chhim *alias* Soem, combatant in Keo Seima District Unit, entered 25 February 1978; entry no. 12, SI Ngeng *alias* Vong, combatant of sector telegraph unit [*see also*, E3/10439, undated, p. 17, ERN (En) 01398410 (entry no.

Security Centre, the Chamber is satisfied on the evidence before it that they were purged from Sector 105 as a result of their perceived status as, or collaboration with, Party enemies, and subsequently detained and executed at S-21.

3057. From about April 1977, Division 920 was the target of a systematic purge by Division 801 cadres hitherto stationed in Ratanakiri.<sup>10348</sup> According to SAO Sarun, the purge was the result of the Northeast Zone Secretary NEY Sarann *alias* Ya's involvement in negotiations with the Vietnamese.<sup>10349</sup> Although it is unable to corroborate SAO Sarun's claim in its entirety, the Chamber notes that Ya had led border negotiations with Vietnam from March 1976 at the earliest,<sup>10350</sup> and was subsequently arrested, denounced as a Vietnamese collaborator, detained in S-21, tortured and executed.<sup>10351</sup> Division 920 Commander MEN Mang and Deputy Commander Soy were accused of betraying *Angkar* and collaborating with the Vietnamese, arrested, detained and executed at S-21.<sup>10352</sup> Subordinates suspected or otherwise implicated

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1, KHVENG Ngok *alias* Leng, commander of Battalion, Sector 105)]; S-21 list of prisoners, E3/10318, undated, ERN (En) 01462182 (entry no. 13, YUK Huor *alias* Teav, member of Srae Sangkum Cooperative, Sector 105, entered 15 February 1978 [see also, E3/10439, undated, p. 17, ERN (En) 01398410] (entry no. 2, [illegible] *alias* Keav); S-21 list of prisoners, E3/10505, undated, p. 5, ERN (En) 01398545 (entry no. 1, THUY Vanthan, member of Economics Unit 101 in Sector 105; entry no. 2, KO (or PHOU) Kadam *alias* La, deputy chief of large Unit 103 in Sector 105 [for both, see also, E3/10302, undated, pp. 2-3, ERN (En) 01528647-01528648]).

<sup>10348</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 63-64, 73, 90-91; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 47; T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 10-11. See also, Section 12.4.2.1: Au Kanseng Security Centre: Division 801.

<sup>10349</sup> T. 30 March 2016 (SAO Sarun), E1/411.1, p. 6 (“Division 920 initiated the negotiation [with the Vietnamese]. Ya had the first negotiation and later on, it was handled by the Division 920.”).

<sup>10350</sup> Standing Committee Minutes, E3/218, 26 March 1976 (generally discussing the military situation between DK and SRV), pp. 4-5, ERN (En) 00182654-00182655 (discussing the desire for solidarity with Vietnam and the agreement “to set up the [*sic*] Zone/Region and Sector Liaison Committees [...] [a]t the three border Sectors”. “Comrade Sophea” and “Comrade Phon” were appointed as Division and Sector “representatives” of the Mondulkiri Liaison Committee); Standing Committee Minutes, E3/221, 14 May 1976 (generally discussing the situation concerning Vietnam), p. 1, ERN (En) 00182693 (discussing Vietnam's complaint that the DK had attacked Vietnamese forces).

<sup>10351</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 4 (“[A]fter his disappearance there was a public announcement concerning this. He was said to have betrayed us. [...] We heard that he had been affiliated with the Vietnamese.”); T. 11 March 2016 (NETH Savat), E1/400.1, pp. 17 (“I did not witness [what happened to Ya during the Khmer Rouge regime]. I learned from others that he was tied up and killed”), 58 (“Ya's arrest may have happened in 1977”); S-21 list of prisoners, E3/10090, 22 January [1977], p. 24, ERN (En) 01399030 (entry no. 167, Ya, Secretary of the Northeast Zone). See also, Section 12.2.8.1.6: S-21 Security Centre: NEY Sarann *alias* MEN San *alias* Ya; S-21 Confession – MEN San *alias* Ya, E3/1868, 29-30 September 1976, ERN (En) 00769572-00769577 (inscriptions from Ya dated 29 and 30 September 1976).

<sup>10352</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 63 (“*Ta* Chhin, *Ta* Soy [...] were arrested and they disappeared. [...] They said that we betrayed *Angkar* and they were smashed in Phnom Penh and I heard that they were sent to Tuol Sleng Prison.”), 88-89 (confirming S-21 execution records of *Ta* Chhin and *Ta* Soy); T. 24 October 2016 (KUL Nem), E1/488.1, p. 88 (“Say, the commander, was arrested”); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 31-32 (testifying that *Ta* Chhin and *Ta* Soy “were accused of betrayal [...] they were called to work and they disappeared”, clarifying that “[i]t was the upper echelon” – “the individuals from Phnom Penh” – who called them to work); S-21 list of

were similarly arrested by Division 801 soldiers, detained and, in some cases, executed.<sup>10353</sup>

3058. Contemporaneous evidence further demonstrates the turmoil within the ranks of Division 920 at the time. The Chamber has before it a telegram communicated by MEN Mang's successor, new Division 920 Commander San, to SON Sen, reporting on the situation "from the division to the battalion level" in early April 1977.<sup>10354</sup> Bearing a handwritten notation to the attention of *Angkar*, the telegram describes the existence of "severe contradictions" between combatants and cadres as a result of authoritarian repression stemming from the divisional level, which resulted in "unmasking former leading cadres". A second handwritten notation instructs the arrest of "battalion secretaries" San and On; referring to Battalion 92 Commanders HEM San and SEK On, both of whom entered S-21 about a week after the telegram's receipt.<sup>10355</sup> Waves of Division 920 soldiers were sent to S-21 in March, April, May and June 1977.<sup>10356</sup>

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prisoners admitted between 17 February and 17 April 1977, E3/10506, undated, p. 54, ERN (En) 01369032 (entry no. 1, MEAS Meng *alias* Chin, Division Secretary, entered 16 March 1977); S-21 list of prisoners, E3/10163, undated, ERN (En) 01568203 (entry no. 29, EA Cheu *alias* Say, Division 920, Deputy of Division, entered 17 February 1977); S-21 list of prisoners smashed on 6 July 1977, E3/2285, 7 July 1977, p. 341, ERN (En) 01565101 (entry no. 124, EA Chir *alias* Say, Deputy Secretary of Division). *See also*, S-21 Biography – MAN Menh *alias* Chhin, E3/10563, undated, pp. 35-36, ERN (En) 01461767-01461768 (stating that he was arrested on 16 March 1977); S-21 Confession – MEN Meng *alias* Chhin, E3/2594, ERN (Kh) 00230510-00230532 (indicating that he was arrested in March 1977); PHAN Sovannhan Interview Record, E3/44, 11 March 2009, p. 5, ERN (En) 00295163; S-21 list of prisoners smashed on 14 May 1977, E3/2286, 15 May 1977, ERN (En) 00873351 (entry no. 66, EA Siet *alias* Ren, Division 920 wife of EA Cheu *alias* Som, Deputy of Division 920, entered 22 April 1977).

<sup>10353</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 62, 88; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 22, 27; T. 24 October 2016 (KUL Nem), E1/488.1, p. 95; DK Telegram, E3/877, 20 May 1977, ERN (En) 00185226 ("We suspect the Division, henchmen of [...] contemptible Chhin. This problem has already been reported to Comrade San. Despite arrests of unit 920, activities continue one after the other, but we are making arrest after arrest, too."). *See also*, HAM Ansi Interview Record, E3/366, 26 November 2008, p. 3, ERN (En) 00250750.

<sup>10354</sup> DK Telegram, E3/1199, 6 April 1977, ERN (En) 00531038.

<sup>10355</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 92, 94 ("Soeun [*sic*] was in charge of Regiment [*sic*] 92"); S-21 list of prisoners smashed on 19 September 1977, E3/2285, 20 September 1977, p. 47, ERN (En) 01564807 (entry no. 35, HEM San, Division 920 Secretary of Regiment [*sic*] 92, entered 11 April 1977); S-21 list of Division 920 prisoners, E3/10499, undated, ERN (En) 01573830 (SEK O, entered 12 April 1977); S-21 Prisoner List, E3/10506, undated, p. 57, ERN (En) 01369036 (entry no. 30, SEK On, Battalion Secretary).

<sup>10356</sup> S-21 list of prisoners admitted in March 1977, E3/9845, undated, pp. 33-36, ERN (En) 01331996-01331999 (listing 27 Division 920 prisoners between 11 and 31 March 1977); S-21 Daily Prisoner List, E3/10770, various dates, pp. 2-31, ERN (En) 01460417-01460446 (indicating the entry of 57 Division 920 soldiers in April 1977, adding to the total of 18 Division 920 prisoners detained hitherto, totalling 75 Division 920 prisoners from the division by the end of the month); S-21 Daily Prisoner List, E3/10770, various dates, pp. 32-65, ERN (En) 01460447-01460480 (indicating the entry of 74 and removal of five Division 920 soldiers in May 1977, totalling 148 Division 920 prisoners by the end of the month); S-21 Daily Prisoner List, E3/10770, various dates, pp. 67-110, ERN (En) 01460482-01460525 (indicating the entry of 76 and removal of 81 Division 920 prisoners in June 1977, totalling 143 Division 920 prisoners by the end of the month. *See also*, S-21 list of prisoners admitted in May 1977, E3/8660, 1-30 May 1977, ERN (En) 01565314-01565423; S-21 list of prisoners from military divisions smashed in June 1977,

Coinciding with the entry of 42 Sector 105 personnel,<sup>10357</sup> a further 99 Division 920 soldiers were detained at S-21 on 23 November 1977.<sup>10358</sup> S-21 logs indicate that over 420 Division 920 combatants, cadres, staff and relatives of Division 920 personnel were detained or executed at S-21 between February 1977 and December 1978.<sup>10359</sup> Consistent with the purges of Sector 105 personnel at the time, and the view that the Division 920 command was in collaboration with Vietnam, the Chamber is satisfied that members of Division 920 were purged as a result of their perceived enemy status.

#### 12.5.4.3. Evidence of arrests in Sector 105

3059. Evidence before the Chamber overwhelmingly demonstrated that arrests and detentions were as a result of mere association with suspected enemies. Within the wider context of purges within Sector 105, Civil Party SUN Vuth, a former Division 920 soldier, was accused of betraying *Angkar* and repeatedly underscored in court that

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E3/2131, 11 June 1977, pp. 10-16, ERN (En) 00182885-00182891 (showing the execution of 80 Division 920 soldiers, who entered S-21 between 13 March and 17 May 1977); S-21 list of Division 920 prisoners, E3/10276, undated, pp. 1-7, ERN (En) 01531418-01531424 (showing a majority of entries in May 1977).

<sup>10357</sup> See above, para. 3054.

<sup>10358</sup> S-21 Daily Prisoner List 23 November 1977, E3/10770, 24 November 1977, ERN (En) 01460730.

<sup>10359</sup> See e.g., S-21 list of prisoners admitted on 4 February 1977, E3/10266, 5 February 1977, p. 5, ERN (En) 01367702 (6 entries); S-21 list of prisoners admitted on 17 February 1977, E3/10266, [illegible] February 1977, ERN (En) 01367721 (1 entry); S-21 list of prisoners admitted between 17 February and 17 April 1977, E3/10506, 29 April 1977, pp. 54-58, 137, ERN (En) 01369032-01369036, 01369115 (36 entries); S-21 list of prisoners admitted in February 1977, E3/10439, undated, pp. 3, 8-11, ERN (En) 01398396, 01398401-01398404 (22 entries); S-21 list of prisoners admitted in May 1977, E3/2590, 3 June 1977, pp. 80-85, ERN (En) 01191335-01191340 (63 entries); S-21 list of prisoners admitted in May 1977, E3/8660, 1-30 May 1977, pp. 8, 22-26, 61-62, 69-72, ERN (En) 01565321, 01565335-01565339, 01565374-01565374, 01565382-01565385 (64 entries); DK Report: S-21 list of prisoners admitted on 6 May 1977, E3/10471, 7 May 1977, ERN (En) 01462262-01462264 (45 entries); S-21 list of Division 310 prisoners smashed on 10 June 1977, E3/2132, 11 June 1977, pp. 10-16, ERN (En) 00182885-00182891 (80 entries); S-21 list of prisoners admitted in August 1977, E3/9906, undated, p. 30, ERN (En) 01367514 (1 entry); S-21 list of prisoners smashed, E3/2286, 21 October 1977, pp. 47-48, 54, 111, 172-174, 232, 310, 341, 346-350, 394-400, 489-490, 493, 504, 532-533, ERN (En) 01564807-01564808, 01564814, 01564871, 01564932-01564934, 01564992, 01565070, 01565101, 01565106-01565110, 01565154-01565160, 01565249-01565250, 01565253, 01565264, 01565292-01565292 (184 entries); S-21 list of prisoners admitted in November 1977, E3/9953, 2 December 1977, p. 15, ERN (En) 01367674 (3 entries); S-21 list of prisoners, E3/10043, 19 December 1977, pp. 3, 6-8, 11-12, 20-22, 24, 26-27, 32-35, ERN (En) 01397376, 01397379-01397381, 01397384-01397385, 01397393-01397395, 01397397, 01397399-01397400, 01397405-01397408 (27 entries); S-21 list of prisoners admitted in December 1977, E3/9950, 7 January 1978, pp. 22-23, ERN (En) 01367584-01367585 (5 entries); S-21 list of prisoners admitted on 11 March 1978, E3/10225, 11 March 1978, pp. 1-2, ERN (En) 01366730-01366731 (16 entries); S-21 list of prisoners admitted in June 1978, E3/10161, 2 July 1978, p. 39, ERN (En) 01563995 (3 entries); S-21 list of prisoners, E3/10045, undated, ERN (En) 01397412, 01397419, 01397424 (3 entries); S-21 list of prisoners, E3/10276, undated, pp. 1-7, ERN (En) 01531418-01531424 (63 entries); S-21 list of prisoners admitted in April 1978, E3/10361, undated, pp. 50-51, ERN (En) 01368934-01368935 (13 entries). The Chamber notes the duplication of certain records in the foregoing lists. See Section 12.2.3.2.1: S-21 Security Centre: OCIJ and OCP Prisoner Lists.

this accusation was false.<sup>10360</sup> Witness BUN Loeng Chauy, former Deputy Chief of the Kaev Seima District Office and nephew of Kasy, “did not make any mistakes” to the best of his knowledge. He told the Chamber that, “[t]rust was withdrawn from me because of my uncle”.<sup>10361</sup>

3060. Witnesses who were detained at the Phnom Kraol Security Centre complex provided consistent testimony in this regard. Former Kaoh Nheak district messenger CHAN Toi was arrested by the Sector Military in November 1977 along with his whole family and 80 other people from the district. Men, women and children were placed in different vehicles, driven to Phnom Kraol and detained at K-17.<sup>10362</sup> He told the Chamber that he was arrested as a result of being in KHAM Phoun’s “network”, adding that both his supervisor, District Deputy SAN Ra, and wife were related to Sector 105 Deputy Secretary KHAM Phoun and were arrested.<sup>10363</sup> He further stated that the DK regime had a “policy” to arrest people, kill former LON Nol soldiers or those accused of being spies and single out and kill “[e]very single Vietnamese”.<sup>10364</sup>

3061. Witness NETH Savat, a former member of economics office K-21 at Srae Sangkom, received a letter inviting him to a meeting at K-17, following which he, together with his wife, children, siblings and approximately 60 or 80 others were arrested and interned in K-17.<sup>10365</sup> He testified that he was arrested as part of a “policy” resulting from the demise of his superior, KHAM Phoun.<sup>10366</sup> NETH Savat received a

<sup>10360</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 62-63, 67, 88, 100; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 27-28, 45.

<sup>10361</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 13.

<sup>10362</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 13, 15, 22-23, 25, 57, 60, 64, 81. *See also*, CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 3, ERN (En) 00242143.

<sup>10363</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 13-15 (“I, at that time, was arrested together with others. To my recollection, [the] network of *Ta Ham* arrested the members or the link of *Ta Kham Phoun*. [...] Q. What was your relation to Kham Phoun that led to the arrest of you? A. I was the messenger of Ra. Ra was the nephew of Kham Phoun. [...] My wife was [...] a distant relative [of Kham Phoun].”), 25 (“Q. [...] many people were arrested, if I understood you correctly, because they were related in some way to Kham Phoun. Is that correct? A. Yes.”).

<sup>10364</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 52-53 (“Q. [D]uring the regime [...] were there any Vietnamese in your district? A. Based on my observation, there were none because the regime, at that time, practice[d] very strict policy. Every single Vietnamese [was] singled out and taken away to be killed. [...] Because the regime had a policy that the Lon Nol [...] soldier of the former regimes or [...] anyone who [was] accused of being [a] spy, regardless whether they are Khmer or any [...] other ethnicity, they were arrested and killed.”), 64 (“It is my understanding that it was the policies of Khmer Rouge itself to arrest people at the time”).

<sup>10365</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 25-26, 29. *See also*, NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486.

<sup>10366</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 20-21 (Referring to the “subordinates of Kham Phoun [and] those under the subordination of Ham [*i.e.* Laing] after their demise, “there was this policy of arresting us”).

circular shortly before his arrest outlining three types of enemies: “The first type was to be smashed. The second was to be detained. And the third group was to be sent to cooperatives”.<sup>10367</sup>

3062. Although NETH Savat stated that he was arrested in January 1977,<sup>10368</sup> the Chamber notes the witness’s assertion that his arrest occurred following the death of Sector 105 Secretary Laing and Deputy KHAM Phoun,<sup>10369</sup> which it has found occurred in late 1977.<sup>10370</sup> NETH Savat further asserted that he was arrested at the same time as the Sector Hospital’s midwifery chief and wife of Svay, BOUR Ly.<sup>10371</sup> The Chamber has before it the S-21 records of SI Korng *alias* BOR Li, “Deputy Chief of Midwife[ry] and wife of Svay” who, along with a number of Sector 105 personnel, entered S-21 on 23 November 1977.<sup>10372</sup> The Chamber accepts that the witness may have mistaken about the precise timing of his arrest and is satisfied that he was arrested in late 1977 or early 1978.

3063. Civil Party KUL Nem, a former Division 920 soldier under the command of Deputy Soy, saw former Division 920 soldiers and civilians detained at K-11. The Civil Party told the Chamber that he suspected he was sent there as a result of his own commander’s removal.<sup>10373</sup>

3064. Contrary to the foregoing evidence, SAO Sarun rejected in court the proposition that *Angkar* arrested people “arbitrarily” during his tenure as Sector Secretary, stating that arrests were subject to “clear analysis and judgment”, adding that “[p]eople could

<sup>10367</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 29-30, 65-67; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 6, ERN (En) 00239487.

<sup>10368</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19, 91.

<sup>10369</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19-21; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486.

<sup>10370</sup> *See above*, para. 3055.

<sup>10371</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 23-24, 42-43. *See also*, Prisoner Biography – TIT Hem *alias* Svay, E3/2390, undated, ERN (En) 00343672 (indicating “SAV Teng *alias* BUO Ly” as his wife).

<sup>10372</sup> S-21 list of prisoners admitted on 23 November 1977, E3/1645, 24 November 1977, p. 11, ERN (En) 00809637 (entry no. 129, SI Korng *alias* BOR Li, among a total of 151 prisoners).

<sup>10373</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 95 (“I was sent [to K-11] only after my division commander had already been arrested. They did not tell me that, I just assumed it was like that. And [...] I thought that it was somehow a punishment.”), 98 (stating that he was a soldier), 103-104 (stating that “[t]here were some people from the division” and civilians detained at K-11). *See also*, AUM Mol Interview Record, E3/7700, 29 October 2008, pp. 2-3, ERN (En) 00239532-00239533 (describes being detained at K-11 with approximately 20 female prisoners).



not just be arrested without reason”. He acknowledged, however, that he did not know how the review process was applied at the district and sector level.<sup>10374</sup>

3065. The evidence before the Chamber overwhelmingly demonstrates the systematic arrest and detention of persons associated with perceived enemies within Sector 105. In light of their consistent and cross-corroborated accounts, the Chamber accepts the evidence of the above witnesses and Civil Parties, and rejects SAO Sarun’s assertion that arrests were the result of a legitimate process. It also rejects the NUON Chea Defence’s submission that arrests were “preventive measures” taken “to calm the chaotic situation” in Sector 105.<sup>10375</sup> The Chamber is satisfied that arrests and detentions within Sector 105, and in particular those at Phnom Kraol Security Centre, were conducted pursuant to a systematic process targeting individuals associated with perceived enemies with the objective of preventing collaboration with the Vietnamese.

#### 12.5.4.4. *Evidence of Civil Party SUN Vuth*

3066. Whether Civil Party SUN Vuth’s evidence fell within the scope of Case 002/02 was contested at trial. Both Defence teams submit that the Civil Party did not clearly identify where he was detained and that as a result, the Chamber cannot reasonably conclude that his evidence pertained to Phnom Kraol Security Centre.<sup>10376</sup> The Co-Prosecutors and Lead Co-Lawyers did not take a clear position on this.<sup>10377</sup> The NUON Chea Defence also impugns the Civil Party’s evidence on the basis that it was unsworn.<sup>10378</sup> The Chamber has already rejected the proposition that Civil Party evidence is of inherently lesser probative value.<sup>10379</sup>

3067. The Civil Party described being imprisoned in 1977 in a prison near Ou Chbar, approximately 500 metres to the south of the Division 920 office.<sup>10380</sup> Despite initially identifying Ou Lpov in his Supplementary Civil Party Application as the stream close

<sup>10374</sup> T. 30 March 2016 (SAO Sarun), E1/411.1, pp. 27-28.

<sup>10375</sup> NUON Chea Closing Brief, para. 537.

<sup>10376</sup> KHIEU Samphan Closing Brief, paras 1429-1438; NUON Chea Closing Brief, para. 422.

<sup>10377</sup> Lead Co-Lawyers’ Closing Brief, para. 973; Co-Prosecutors’ Closing Brief, para. 856 (the Co-Prosecutors identify the Civil Party’s location of detention as one of the “other buildings in the surrounding area” comprising Phnom Kraol Security Centre, in addition to K-17, K-11, Phnom Kraol Prison and Trapeang Pring).

<sup>10378</sup> NUON Chea Closing Brief, para. 422.

<sup>10379</sup> Section 2: Preliminary Issues, para. 67.

<sup>10380</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 64-65, 76, 78, 87, 99; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 42.

to which he was detained,<sup>10381</sup> SUN Vuth was twice questioned at trial about this discrepancy and clarified that he made a mistake when making the Application. He confirmed that “there is no Ou Lpov stream”, clarifying that “[t]here is only Ou Chbar stream” and reiterating that he “was detained near Ou Chbar stream”.<sup>10382</sup> SUN Vuth’s clarification accords with other evidence showing Ou Chbar as the only prominent river in the area.<sup>10383</sup> The Chamber recalls its position on the limited probative value attributable to Civil Party Applications, which are recorded outside of the judicial process and therefore of inherently low probative value.<sup>10384</sup> It accordingly makes no adverse findings on the Civil Party’s credibility as a result of this discrepancy and accepts his in-court assertion that he was detained near Ou Chbar.

3068. SUN Vuth maintained that the detention facility in which he was imprisoned was neither near Phnom Kraol nor by a reservoir,<sup>10385</sup> and instead described the location as being on the road to Kratie close to a turtle-shaped hill. Witnesses BUN Loeng Chauy and SOV Maing testified that Phnom Kraol Prison was located near the Phnom Kraol dam,<sup>10386</sup> while SOK El and UONG Dos – both of whom were detained at Phnom Kraol Prison – similarly deposed to OCIJ investigators that the prison was located near Phnom Kraol dam.<sup>10387</sup> Indeed, the OCIJ Site Identification Report of Phnom Kraol Security Centre describes the prison as being “adjacently east of a large water reservoir” and photographically shows the site next to a prominent body of water.<sup>10388</sup>

3069. Describing the detention building, SUN Vuth stated that it was a “not built properly” 10 by five metre-long construction consisting of wooden stilts and a half-

<sup>10381</sup> SUN Vuth Civil Party Application Supplementary Information Form, E3/6760a, 20 June 2010, p. 1, ERN (En) 01194793 (stating he was sent to a “special security office near the foot of a mountain near a tributary of the stream Aur Lpeou [*i.e.* Ou Lpov] in Koh Nhek [*i.e.* Kaoh Nheak] district”).

<sup>10382</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, p. 78; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 61-62.

<sup>10383</sup> *See below*, para. 3071 (fn. 10396).

<sup>10384</sup> Section 2: Preliminary Issues, para. 69.

<sup>10385</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 98-99.

<sup>10386</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 66; T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 45.

<sup>10387</sup> SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510; UONG Dos Interview Record, E3/7703, 29 October 2008, p. 4, ERN (En) 00242172.

<sup>10388</sup> Site Identification Report, E3/8057, 21 July 2009, pp. 10-11, ERN (En) 00365628-00365629 (P00364088 shows a large body of water, captioned “Eastern view of Tumnup Phnom Kraol or Phnom Kraol Dam”). *See also*, DC-Cam Mapping Project 1999: Mondulkiri Province, E3/2070, undated, p. 83, ERN (En) 00078120 (referring to a security office near a dam known as *Ta Leng*’s office).

thatch roof.<sup>10389</sup> He also described the building as both consisting of three rooms,<sup>10390</sup> and a single room partitioned by wooden planks.<sup>10391</sup> Other witnesses described Phnom Kraol Prison as consisting of wooden pillars and a thatched roof but no walls.<sup>10392</sup>

3070. The Chamber notes the partial structural and geographic similarities between descriptions of Phnom Kraol Prison and the building in which SUN Vuth was detained. It nevertheless refers to the Civil Party's statement that he was marched blindfolded at dusk approximately 500 metres to the detention centre from an unspecified location, and that he could only later "see the surrounding area" after his blindfold was removed.<sup>10393</sup> The quality of his evidence does not, for the following reasons, permit the Chamber to determine that he was in fact detained at Phnom Kraol Prison.

3071. First, considering SUN Vuth's evidence as a whole, the Chamber can at most *infer* from his visits to the Division 920 office that he was arrested there.<sup>10394</sup> The Chamber has already determined that this office was located several kilometres from Phnom Kraol.<sup>10395</sup> Further, the Civil Party's identification of Ou Chbar does not assist the Chamber in pinpointing his place of detention. Witnesses described the various offices in and around Kaoh Nheaek as being near this river which, as a tributary of the Sre Pok River, meanders southward through the district capital as well as the communes of Roya, Srae Huy and Srae Sangkom.<sup>10396</sup>

3072. Secondly, the prominence of a body of water directly adjacent or close to Phnom Kraol Prison, as demonstrated by witness testimony and accepted by the Chamber,<sup>10397</sup> in addition to the Civil Party's denial that he was detained near a reservoir militates against a finding that SUN Vuth was detained at or near Phnom Kraol Prison.

<sup>10389</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 64-66 (clarifying that Prochaen is the Phnong designation of the tree), 97-98 ("[I]t was not build properly. If it was built well, I could not have fled.").

<sup>10390</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, p. 65.

<sup>10391</sup> T. 31 March 2016 (SUN Vuth), E1/412.1, p. 49.

<sup>10392</sup> *See above*, para. 3031.

<sup>10393</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, p. 64; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 47-48.

<sup>10394</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, pp. 63-64; T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 44-49.

<sup>10395</sup> *See above*, para. 3046. *See also*, Section 5: Administrative Structures, para. 441.

<sup>10396</sup> Map of Cambodia: Tile 6435, E3/9190, undated, ERN 01045067 (the river name "Preaek Chbar" is visible at N13°14'60", E107°07'26"); Sketch of Phnom Kraol Security Centre and surrounds by CHAN Bun Leath, E3/5179, ERN (En) 00274108; Map of Koh Neak District, E3/9100, undated, ERN 00992852.

<sup>10397</sup> *See above*, para. 3068.

3073. Thirdly, the Civil Party's familiarity with Phnom Kraol and its vicinity was not explored at trial, rendering the Chamber unable to assess his firm conviction that he was not incarcerated at Phnom Kraol.

3074. Finally, the Chamber has already identified the Phnom Kraol Security Centre complex as having consisted of a number of buildings and offices. Witness testimony clearly demonstrates the presence of other buildings in the vicinity of Phnom Kraol, including wooden constructions with thatched rooves and stilts.<sup>10398</sup> The Civil Party's description of his detention building therefore does not permit the Chamber definitively to conclude the location of his detention.

3075. For the foregoing reasons, the Chamber cannot conclude beyond reasonable doubt that SUN Vuth was detained at Phnom Kraol Prison. The Chamber therefore accords no weight to his description of detention conditions.

#### 12.5.4.5. Authority to arrest

3076. Former Sector 105 Secretary SAO Sarun asserted that the authority to arrest and detain enemies in Sector 105 did not rest with him. He testified that he did not order any arrests as Sector Secretary, clarifying that he only had the authority to release minor offenders who did not commit political offences, which he did on two occasions.<sup>10399</sup> His evidence is at best equivocal on the question of whether this was done on the supreme authority of *Angkar*,<sup>10400</sup> but he affirmed that "without prior summons from the Central Committee, people were not allowed to be arrested by any persons from the Division".<sup>10401</sup> The Chamber now turns to evaluate SAO Sarun's assertions in this regard.

<sup>10398</sup> See above, para. 3028. See also, T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 52-53 (referring to villagers building wooden, thatched roof houses across Mondulkiri); T. 29 March 2016 (BUN Loeng Chauy), E1/410.1, pp. 32-33 (states he saw building houses near the Phnom Kraol Prison), 35-36 (stating that there were no concrete or big houses at the time; they were four by five-metre small houses or huts in the area surrounding K-11 with thatched rooves); T. 31 March 2016 (SUN Vuth), E1/412.1, p. 43 (stating that there were small houses built on round wooden poles in the vicinity of the Division 920 office); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 8-9, 11 (confirms that there were "hundreds [of] houses" at K-17, some with thatched rooves).

<sup>10399</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 48-49; T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 6-8; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 99; T. 30 March 2016 (SAO Sarun), E1/411.1, p. 48.

<sup>10400</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 7-8; T. 30 March 2016 (SAO Sarun), E1/411.1, pp. 48-50.

<sup>10401</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, p. 31; SAO Sarun Interview Record, E3/367, 17 December 2008, p. 6, ERN (En) 00278697.

3077. PHAN Van *alias* KHAM Phan's testimony supported SAO Sarun's assertion that the sector did not have the authority to order arrests, with the former consistently underscoring that the decision to arrest and detain emanated from the Party Centre.<sup>10402</sup> PHAN Van *alias* KHAM Phan stated that he never saw an arrest warrant or detention order in the telegrams that he decoded for his father, Sector 105 Secretary Laing, but explained that people were instead summoned by the "upper echelon" to attend work or study sessions, after which they disappeared and were thereafter branded as enemies.<sup>10403</sup> In this regard, SAO Sarun testified that:

Everybody was scared when he was called to Phnom Penh because when the person went to Phnom Penh, the person never returned. [...] The order must come from Pol Pot. Those people were called to work, and they disappeared. [...] Mostly, the orders came through telegrams for those people to go and attend study sessions and the names were provided from Phnom Penh. [...] When they went to study, they disappeared and never returned.<sup>10404</sup>

3078. PHAN Van *alias* KHAM Phan conceded that people disappeared during his father's tenure but insisted that disappearances of individuals and families increased once SAO Sarun assumed the role of Sector Secretary.<sup>10405</sup> This was rejected as an exaggeration by SAO Sarun, who claimed that family members, entire families and villagers were never arrested under his watch and attributed such acts to his predecessor.<sup>10406</sup> He stated that he "was not a strong man who arrested the people", pointing to his short tenure.<sup>10407</sup> The Chamber acknowledges the difficulty in reconciling PHAN Van *alias* KHAM Phan and SAO Sarun's competing accounts of

<sup>10402</sup> T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 13 ("[I]t was not up to the sector to decide on the arrests; the decision had to come from the Centre. [...] [E]very action was carried out on the behest of the [Party] Centre [referring to the arrest of Vietnamese]"), 18 ("The Sector did not have any discretion to decide on [the treatment of enemies] -- or such instruction. It had to come from the Centre.").

<sup>10403</sup> T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 86 ("But normally, those who attended these [self-criticism] sessions returned to that base, and then they mysteriously disappeared, and those people were thought of being the enemy"), 93, 96-97 ("Q. Would 105 cadres who had been convened to meetings in Phnom Penh often not come back to Sector 105 after? A. Yes, that was the case."); T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, p. 18; T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, pp. 9 ("At that time, people continued to disappear one after another"), 19; T. 14 December 2012 (PHAN Van *alias* KHAM Phan), E1/154.1, pp. 8-9; T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, pp. 32, 39; KHAM Phan Interview Record, E3/58, 21 November 2008, p. 3, ERN (En) 00250088.

<sup>10404</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 71-72. *See also*, T. 7 June 2012 (SAO Sarun), E1/83.1, p. 10 ("I did not understand the situation. People disappeared and everybody was afraid.").

<sup>10405</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, pp. 14-18, 24-26, 118.

<sup>10406</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, p. 84; T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 75-76.

<sup>10407</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 78-79.

the foregoing issues, which it notes may result from PHAN Van *alias* KHAM Phan's motive to minimise his father's responsibility as Sector 105 Secretary, and SAO Sarun's motive to distance himself from any offending conduct during his tenure as Laing's successor. However, it considers it unnecessary to do so as the Chamber is satisfied that, considered holistically, the witnesses' testimony is sufficiently consistent in demonstrating a pattern of arrests and detentions in Sector 105 throughout the chairmanships of both Laing and SAO Sarun. The Chamber therefore accords no weight to SAO Sarun's testimony insofar as he asserts that no arrests took place under his watch. As concerns SAO Sarun's allegedly short tenure as Sector Secretary, the Chamber has already rejected as implausible his assertion that his secretaryship lasted a mere few months.<sup>10408</sup>

3079. Turning to directives furnished by the "upper echelon", SAO Sarun acknowledged that he received orders from POL Pot instructing him to "track down" embedded enemies and traitors. Without specifying the measures he took, he affirmed implementing these orders for fear of death.<sup>10409</sup> The Chamber has before it a telegram by SAO Sarun addressed to POL Pot noting that "Sot" had been "arrested and detained" for "immoral acts with a woman", seeking direction on "the level at which this must be kept or sent" and bearing the handwritten annotation "Uncle Nuon".<sup>10410</sup> SAO Sarun acknowledged in court that POL Pot had informed him that Sot, the younger brother of Sector 105 Military Commander Sophea,<sup>10411</sup> had appeared in the confession of purged Sector 105 Deputy Secretary PHAN Khoun *alias* Chuon.<sup>10412</sup> He nevertheless sought to downplay this incident before the Chamber, emphasising that it was not a "real arrest" and that both Sot and the woman were later released.<sup>10413</sup> Witnesses CHAN Toi

<sup>10408</sup> See above, para. 3039.

<sup>10409</sup> T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 9-10; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 63 ("Q. [C]ould you make up the policies or were you required to follow the Party's policies, policies from the Centre? A. no, I could not. The policies were set out by the Party Centre and individual persons could not make or create a policy. [...] At that time, whether a policy was good or not, whether we were satisfied or not, we had to follow it. We could not refuse to implement the policy. If we refused, we might not survive, so we had to follow it."). See also, HAM Ansi Interview Record, E3/366, 26 November 2008, p. 4, ERN (En) 00250751.

<sup>10410</sup> DK Telegram, E3/155 [E3/156, E3/938], 23 April 1978, ERN (En) 00296220.

<sup>10411</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 50.

<sup>10412</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 39-44; T. 29 March 2016 (SAO Sarun), E1/410.1, p. 95.

<sup>10413</sup> T. 7 June 2012 (SAO Sarun), E1/83.1, pp. 40, 43, 45; T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 95-96.

and BUN Loeng Chauy contradicted this claim, testifying that they did not see Sot after his arrest.<sup>10414</sup>

3080. While the Chamber rejects SAO Sarun's assertion that Sot was released after his arrest, consistent with its findings that the Sector 105 Secretary reported to the Party Centre, it accepts that SAO Sarun implemented the will of POL Pot. Cognisant of the witness's tendency to impute responsibility squarely and exclusively unto POL Pot however,<sup>10415</sup> the Chamber takes into consideration the predominant role of the Standing Committee in "smash[ing] inside and outside the ranks";<sup>10416</sup> the systematic top-down dissemination of policy through civilian and military ranks;<sup>10417</sup> the close collaboration of Sector 105 and Division 920 in the hunt for enemies;<sup>10418</sup> the General Staff's oversight of military operations within the sector;<sup>10419</sup> and the central role played by SON Sen within the Party Centre.<sup>10420</sup> On this basis, the Chamber is satisfied that orders to arrest, detain and execute Sector 105 personnel were furnished under the authority and oversight of the CPK Standing Committee and implemented by the Sector 105 Secretary with the assistance of Division 920.

#### 12.5.5. *Detention Conditions*

##### 12.5.5.1. *K-17*

3081. The NUON Chea Defence submits that K-17 was "not a detention facility", but rather served as a place of "legitimate short-term preventive detention" as a result of "legitimate suspicions" arising out of KHAM Phoun's demise. The Chamber has found that the purge of KHAM Phoun's family and associates was part of the systematic arrest and detention of persons associated with perceived enemies within Sector 105, and has further rejected the notion that arrests in the sector were pursuant to "preventive measures".<sup>10421</sup>

<sup>10414</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 52, 82; T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 51.

<sup>10415</sup> *See above*, para. 3039.

<sup>10416</sup> *See above*, para. 3048.

<sup>10417</sup> *See above*, paras 3038, 3040-3042, 3061.

<sup>10418</sup> *See above*, para. 3047.

<sup>10419</sup> *See above*, paras 3047-3048, 3058.

<sup>10420</sup> Section 5.1: Structure of the CPK.

<sup>10421</sup> *See above*, para. 3065.

3082. Prisoners were brought to K-17 not knowing who issued the order for their arrests and without being provided legal representation or access to a court. Former K-17 detainee CHAN Toi told the Chamber that “[i]n that time, in that regime, there was no court, no lawyers. When people were arrested, they were taken away and shot dead.”<sup>10422</sup> He elaborated on the sense of hopelessness at the time of his and his wife’s arrest, explaining that they “had no hope of surviving” and that “[d]uring the Pol Pot regime, usually when people were arrested, none survived, and that’s how we felt. We felt that, after our arrest, we would be dead.”<sup>10423</sup> SAO Sarun confirmed that he did not hear of any trials or judgments issued against suspects during the DK regime, noting that “[t]here was no such system. What I saw is that people were called for study sessions and disappeared without any reasons provided.”<sup>10424</sup> There is no evidence to suggest that DK authorities at any time officially proclaimed the existence of a “public emergency which threatens the life of the nation” before taking the above measures.<sup>10425</sup> Having considered the pattern of evidence demonstrating that prisoners were arrested and detained at K-17 as a result of their affiliation with perceived enemies,<sup>10426</sup> the Chamber is satisfied that the object of interrogations at K-17 was to uncover information about enemies and impute guilt by association, and therefore rejects the NUON Chea Defence’s submission insofar as it claims that detention at K-17 was pursuant to legitimate suspicion. The Chamber is satisfied that prisoners were detained at K-17 absent judicial or procedural safeguards and further rejects the NUON Chea Defence’s submission insofar as it claims that detention at K-17 was legitimate or preventive.

3083. Approximately 80 men, women and children were detained on the ground floor of K-17’s main office upon the commencement of purges across Sector 105 in 1977.<sup>10427</sup> For the duration of their detention, prisoners were placed in wooden wrist shackles during the day and tied with rope in a row of chairs.<sup>10428</sup> According to CHAN

<sup>10422</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 21, 23, 54.

<sup>10423</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 25.

<sup>10424</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, p. 74.

<sup>10425</sup> For the requirements under international law, *see* Section 9.1.5: Applicable Law: Crimes Against Humanity: Imprisonment.

<sup>10426</sup> *See above*, paras 3060-3061.

<sup>10427</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 17-18, 87, 91-92; CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 3, ERN (En) 00242143; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19, 21, 31-32; NETH Savat Interview Record, E3/7695, 23 October 2008, pp. 5-6, ERN (En) 00239486-00239487.

<sup>10428</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 18-19, 26.



Toi, detainees were not shackled by their ankles during the day so that they could stomp jute seeds for periods of one to two hours,<sup>10429</sup> whereas NETH Savat stated that they were shackled only by one ankle.<sup>10430</sup> The Chamber is satisfied that detainees were shackled during the course of their detention at K-17, but that leg shackling was relaxed during work assignments. Men and women were shackled and tied in separate rows,<sup>10431</sup> while children were not restrained.<sup>10432</sup> The NUON Chea Defence's submission is rejected insofar as it claims that K-17 was not a place of detention.

3084. NETH Savat saw approximately four to 10 young children living at K-17, estimating them to be one or two years old,<sup>10433</sup> whereas CHAN Toi recalled seeing children between six and 17 years of age playing outside the main K-17 office building while detained at the facility.<sup>10434</sup> The Chamber does not accept CHAN Toi's estimate of the children's age and further does not find credible his assertion that 17-year-old detainees were not shackled. The Chamber is nevertheless satisfied that the evidence is sufficiently consistent to allow it to conclude that a small number of children were present at K-17 who were not shackled.

3085. Guards only unshackled detainees before escorting them to bathe or use the site's only toilet.<sup>10435</sup> According to Witness CHAN Toi, "[t]here was no hygiene at all" at K-17;<sup>10436</sup> he was not once permitted to bathe during his month-long incarceration and had only one set of clothes for the duration of his incarceration.<sup>10437</sup> Witness NETH Savat stated that he was permitted to bathe once a week in dirty water at the beginning of his detention.<sup>10438</sup> According to the evidence heard in court, while detainees suffered from skin diseases for which no medication was provided,<sup>10439</sup> instances of more serious conditions including diarrhoea and dysentery or death were uncommon at K-17.<sup>10440</sup>

<sup>10429</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 21-22, 26, 60. *See also*, CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 3, ERN (En) 00242143.

<sup>10430</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 33, 47.

<sup>10431</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 57.

<sup>10432</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 26-27, 57.

<sup>10433</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 47, 53.

<sup>10434</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 60, 91.

<sup>10435</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 31, 47.

<sup>10436</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 19.

<sup>10437</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 19, 59, 61.

<sup>10438</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 47.

<sup>10439</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 19, 60. Although NETH Savat could not recall any instances of skin diseases, he acknowledged that he may have forgotten about this. *See* T. 11 March 2016 (NETH Savat), E1/400.1, p. 52.

<sup>10440</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 20, 60.

No blankets or sleeping mats were provided for detainees at K-17.<sup>10441</sup> The Chamber is satisfied that prisoners were exposed to substandard conditions of hygiene and detention while detained at K-17 but finds that these conditions did not lead to serious diseases or death.

3086. In court, NETH Savat characterised the food situation at K-17 as “very bad”.<sup>10442</sup> Although the situation did not lead to deaths from starvation,<sup>10443</sup> witnesses consistently testified to not having had enough to eat while in detention at the office. Detainees were fed one meal a day, irregularly served at midday or in the evening, consisting of a small bowl of rice and pumpkin soup.<sup>10444</sup> Meat was served in small portions or not at all, but prisoners “did not dare to say anything about the food conditions”.<sup>10445</sup> Water was distributed in a bucket by guards once a day, either in the morning or afternoon.<sup>10446</sup>

3087. A second group of prisoners was detained on the upper floor of the main K-17 office building. Approximately one month prior to his own detention at K-17, NETH Savat was shown the upper floor of the detention building by Sector Secretary Laing, where he saw a small group of Division 920 soldiers, Kaoh Nheak district officials and K-21 officers shackled, all of whom subsequently disappeared and were not seen by him again.<sup>10447</sup>

3088. Armed Division 920 soldiers guarded K-17 detainees night and day.<sup>10448</sup> Prisoners were not permitted to speak with the soldiers and feared that they would be

<sup>10441</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 60-61.

<sup>10442</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 46-47.

<sup>10443</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 19-20.

<sup>10444</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 19, 58, 60; CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 3, ERN (En) 00242143; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 46-47.

<sup>10445</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 47.

<sup>10446</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 59.

<sup>10447</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 32-35 (“Q: *Ta* Ham had taken you to the upper floor at K-17 once, and there were prisoners from Division 920 who were detained there? [...] A: Yes. [...] I saw them shackled. [...] Sonthan, Tha, Ra, Voeun and Kem Chan [...] Kem Chan was a district committee [deputy], and Ra was also part of the district committee. And Ra was the deputy. As for Tha [...] and Sonthan were at the economic unit or commerce.”), 36 (“From what I heard, they were taken out and transported by vehicle, but I cannot recall whether they had been taken away before I was released or whether it happened after my release.” [...] Q: Did you ever see them again? A: No, I did not. And they disappeared since.”); NETH Savat Interview Record, E3/7695, 23 October 2008, p. 5, ERN (En) 00239486. *See also*, Organisational Chart of Khmer Rouge Leaders in Mondulkiri Province by CHAN Bun Leath, E3/5179, 11 June 2008, ERN (En) 00274107.

<sup>10448</sup> This practice continued after the removal of Division 920 cadres by Division 810, whereupon the latter assumed Division 920 designations. *See above*, para. 3057.

shot to death if they attempted to move around the office.<sup>10449</sup>

3089. Division soldiers conducted interrogations at K-17 and questioned detainees about their affiliations with enemies. NETH Savat was only questioned about KHAM Phoun, who had inducted him into the CPK, and “did not hear anything about torture” taking place at K-17.<sup>10450</sup> CHAN Toi testified that detainees were all accused of being traitors but told the Chamber that he “was not interrogated”, as such.<sup>10451</sup> In his statement to OCIJ investigators, which he did not recall well at trial, he deposed that “there were interrogations about *Ta* KHAM Phoun” during which there “was no torture [...] but there were serious threats and bullying” without elaborating on the nature of the threats.<sup>10452</sup> SAO Sarun acknowledged that prisoners were interrogated under Laing’s tenure; a time during which he claimed merely to have been assisting at K-17.<sup>10453</sup> In light of his tendency to minimise his role at Phnom Kraol, the Chamber accords no weight to SAO Sarun’s imputation of interrogations solely onto his predecessor’s tenure or description of his own role at the time. Based on the available evidence, the Chamber is satisfied that no physical mistreatment was inflicted upon detainees at K-17 during interrogations. In the absence of further evidence concerning the nature of threats used during interrogations, the Chamber is unable to assess the seriousness of psychological harm that may have resulted from this practice.

3090. Prisoners were removed from detention at K-17, put on trucks and never heard from again.<sup>10454</sup> CHAN Toi, whose family members and relatives disappeared without a trace, concluded that those who had disappeared had been killed.<sup>10455</sup> NETH Savat heard from others that people on the upper floor had been transported westward in the direction of Kratie and killed.<sup>10456</sup> SAO Sarun testified that Sector 105 and Division 920 personnel were transported to Kratie on vehicles and possibly thereafter by boat,

<sup>10449</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 30-31, 34, 46; T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 26.

<sup>10450</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 36-37.

<sup>10451</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 20.

<sup>10452</sup> CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 3, ERN (En) 00242143.

<sup>10453</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, p. 102.

<sup>10454</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, pp. 27, 62; T. 11 March 2016 (NETH Savat), E1/400.1, p. 38.

<sup>10455</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 27; CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 4, ERN (En) 00242144 (stating that he saw approximately eight siblings and nephews of KHAM Phoun disappear during his first two days in detention, concluding that they had been killed).

<sup>10456</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 38.

claiming that this happened before his promotion to the position of Sector Secretary.<sup>10457</sup> Consistent with its approach to SAO Sarun's testimony, the Chamber accords no weight to his timing of this event. Regarding the ultimate fate of detainees who had disappeared and were presumed by witnesses to have been killed, the Chamber accords little weight to such speculation and hearsay. However, the consistency of evidence regarding prisoners who had disappeared permits the Chamber to find that detainees were in fact removed without explanation from K-17.

3091. SAO Sarun provided further evidence relating to K-17 that was internally inconsistent and in stark contrast to other accounts before the Chamber. He initially testified that "[t]here were not many prisoners" at K-17, stating that "[t]here were around three or four" male detainees who had been detained by Laing, and no children.<sup>10458</sup> Asked whether the office was used to detain prisoners because other offices were full, the witness resiled from his earlier assertion and stated that he "never saw people being detained at K-17".<sup>10459</sup> He repeated this during examination by defence counsel in Case 002/02, stating that the detainees were actually interned at a "security centre" approximately 200 metres from K-17 – a location corresponding to that of Phnom Kraol Prison<sup>10460</sup> – which he visited in 1977 and 1978.<sup>10461</sup> This was inconsistent with his testimony in Case 002/01, where he denied ever having visited Phnom Kraol Prison.<sup>10462</sup> He also demonstrated specific knowledge of K-11 and its operation sufficient for the Chamber to reject the notion that he was here in fact referring to that office.<sup>10463</sup> Along with K-16 having universally been referred to as the

<sup>10457</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, pp. 100-102.

<sup>10458</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, p. 102 ("I was not yet in charge of that office. I went to assist the work there twice a week or sometimes I spent one or two days there to assist the work. There were not many prisoners. There were around three or four of them. [...] *Ta* Laing was the one who was in charge of arresting and tidying up the prisoners"). The Chamber has no reason to believe that the witness was here referring to any other office as the preceding line of questioning by the International Co-Prosecutor focused squarely on the sector office, *i.e.* K-17. *See also*, T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 11-13 (clarifying that he visited the sector office irregularly a few times a week).

<sup>10459</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, p. 103.

<sup>10460</sup> For the location of Phnom Kraol Prison in relation to K-17, *see above*, para. 3031.

<sup>10461</sup> T. 30 March 2016 (SAO Sarun), E1/411.1, pp. 42-43 ("I did not see at the time that people were arrested and detained at K-17 while I was working and invited to perform my duties, some of my duties at the location. [...] In fact, two or three prisoners were detained at a security centre, but no prisoners were detained at K-17. That was what I said yesterday. [...] It was in 1977 and '78. In fact, I was visiting that location. There were two or three, four or five inmates and they were working as usual.")

<sup>10462</sup> T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 4-5 ("Q. Were you ever aware of Phnom Kraol Security Centre? A. I am aware of the name, but I [have] never been there. [...] I have no idea about [its layout], as I have indicated, I have never been there. [...] I have never been to that location.")

<sup>10463</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 13-14 (referring to K-11 by name, its location, function and leadership).

sector's "commerce office" rather than a place of detention, there is no evidence before the Chamber suggesting another "security centre" in the immediate vicinity of K-17.

3092. The Chamber attributes the inconsistencies in SAO Sarun's testimony to a consciousness of guilt, motivation to lie and minimise his own responsibility, and desire to shift overall responsibility for the conditions at K-17. Consistently with the Chamber's approach to this witness's uncorroborated evidence, and to the extent that it has not addressed his assertions in the following regard, the Chamber accords no weight to SAO Sarun's testimony regarding prisoner numbers or conditions at Phnom Kraol Security Centre.

#### 12.5.5.2. K-11 and Phnom Kraol Prison

3093. Regarding detention conditions at K-11, the Chamber heard from Civil Party KUL Nem, who was assigned to work duties at that office. While the Civil Party was predominantly questioned about the working conditions at K-11, the Chamber infers from the punitive nature of his transfer to K-11 that he was indeed detained there.<sup>10464</sup> The Chamber did not hear any additional evidence in court about the detention conditions at K-11. Further, as the Chamber was unable conclusively to identify Civil Party SUN Vuth's place of detention, it remains without judicially tested evidence of prisoner conditions inside Phnom Kraol Prison.

3094. The Chamber nevertheless has before it Written Records of Interview from former K-11 prisoner AUM Mol, former Phnom Kraol Prison detainees SOK El and UONG Dos, and former Sector 105, Regiment 1 soldier, NOU Sauy. The Chamber notes that AUM Mol and SOK El were proposed as Civil Parties by the Office of the Co-Prosecutors but passed away prior to being considered by the Chamber.<sup>10465</sup> UONG Dos was not proposed as a witness or Civil Party, and prior to the admission of his WRI, the Chamber was notified by the Assistant International Co-Prosecutor that UONG Dos was deceased.<sup>10466</sup> Noting further that the Chamber is seised of the facts as they relate to Phnom Kraol Security Centre as a whole, and consistent with its

<sup>10464</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 95 ("Q. Were you sent to K-11 as a punishment or was it simply a new assignment? A. That was considered as a punishment because I was sent there only after my division commander had already been arrested.").

<sup>10465</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard during Case 002/02, E459, 18 July 2017, paras 90, 103.

<sup>10466</sup> T. 12 August 2016 (Key Document Hearing), E1/456.1, p. 22.

considerations on the use of witness statements following their death,<sup>10467</sup> the Chamber proceeds to analyse these witnesses' Written Records of Interview insofar as they corroborate or contradict evidence of detention conditions described at trial.

3095. Civil Party KUL Nem described his constant fear and the necessity of abiding by *Angkar*'s instructions in order to survive at K-11: "Had I dared to be courageous, I would have died".<sup>10468</sup> He told the Chamber that he was constantly afraid of being implicated in wrongdoing, stating that, "in the division, people were implicated on the accusation of being CIA agents".<sup>10469</sup> The Civil Party explained that people disappeared from K-11 and he did not know what became of them afterward.<sup>10470</sup> Former Division 920 combatant AUM Mol described being detained at K-11 with approximately 20 other prisoners following the arrest of her superiors, Division 920 Commander MEN Mang *alias* Chhin and Deputy Soy, in early 1977. Upon arrival at the office, she was interrogated by Sector 105 Military Commander Sophea about whether she was contacted by the *Yuon* or was in the Vietnamese or CIA network. She was not beaten during her questioning but was restrained during the course of her detention by wooden shackles in a row of five prisoners and only released to transplant rice or build dams.<sup>10471</sup> Men and women numbering about five in total disappeared from K-11 and AUM Mol heard that they had been arrested and sent to Kratie province.<sup>10472</sup> The witness also saw the son of a female prisoner hung upside down and beaten until he fell unconscious while his mother was forced to watch.<sup>10473</sup>

3096. Detained at Phnom Kraol Prison for seven months in early 1977, SOK EI described being interned with approximately 80 male prisoners. "Level one" and "level two" detainees were taken away on trucks and Land Rovers to Phnom Penh, while "level three" prisoners were reformed at Phnom Kraol Prison, where they were put to work within the prison compound.<sup>10474</sup> BUN Loeng Chauy heard that smaller groups of prisoners "were not sent far away for execution" and that large groups "were

<sup>10467</sup> Section 2: Preliminary Issues, paras 71-72.

<sup>10468</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 91-93, 106.

<sup>10469</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 88-89.

<sup>10470</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 92.

<sup>10471</sup> AUM Mol Interview Record, E3/7700, 29 October 2008, pp. 2-3, ERN (En) 00239532-00239533.

<sup>10472</sup> AUM Mol Interview Record, E3/7700, 29 October 2008, p. 4, ERN (En) 00239534.

<sup>10473</sup> AUM Mol Interview Record, E3/7700, 29 October 2008, pp. 2-3, ERN (En) 00239532-00239533.

See also, OM Mon Civil Party Application, E3/4927, undated, p. 2, ERN (En) 01060162.

<sup>10474</sup> SOK EI Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510.

transported by a vehicle [from Phnom Kraol Prison] to Kratie province to be killed”, since “large group[s] of prisoners could not be killed at a nearby location”.<sup>10475</sup>

3097. UONG Dos also deposed to the disappearance of prisoners. Detainees were told that those taken away would be returned to their villages; an assertion UONG Dos contested, stating that they were never seen to return. UONG Dos was detained at Phnom Kraol Prison without being told the reason for his arrest. He was interrogated by Sector 105 Military Commander Leng about the reasons for his arrest and was placed in leg shackles in a row of about 20 prisoners. Prisoners, whose number reached 385 according to UONG Dos, slept with their arms and legs shackled and were permitted to bathe once daily at the Phnom Kraol Dam.<sup>10476</sup> SOV Maing partly corroborated this account, testifying that he saw prisoners bathing at the prison compound while working a short distance away.<sup>10477</sup>

3098. Former Regiment 1 soldier NOU Saury deposed that all prisoners were placed in wooden leg shackles at Phnom Kraol Prison, with only light offenders released to work within the compound. Serious offenders were not permitted to work, and orders were received “to transport them away in trucks; this happened both during the day and night”. NOU Saury did not witness any prisoner beatings and noted that detainees were provided with two meals a day. He further deposed to the “three-point policy” of the Khmer Rouge in Sector 105 to defend against the lumbering and transportation of timber out of the country by the “*Yuon*”; to defend against “Thieu-Ky” soldiers driving people into Vietnam; and to defend against “commando units”, described as “American spies”, conducting reconnaissance on Cambodian territory.<sup>10478</sup>

3099. NOU Saury’s commander, SAN Lan, saw between 50 and 60 prisoners while driving past the compound.<sup>10479</sup> BUN Loeng Chauy observed from a distance of about 50 to 100 metres that the prison “was not better than a place to keep the cattle”.<sup>10480</sup> No changes of clothing were available at Phnom Kraol Prison and the entire facility stank

<sup>10475</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 28.

<sup>10476</sup> UONG Dos Interview Record, E3/7703, 29 October 2008, p. 4, ERN (En) 00242172. *See also*, UONG Dos Civil Party Application, E3/6260, 19 May 2009, p. 3, ERN (En) 01210154 (stating, inconsistently with his WRI, that there were “around eighty other prisoners imprisoned with me”).

<sup>10477</sup> T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, p. 37; SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490.

<sup>10478</sup> NOU Saury Interview Record, E3/7705, 29 October 2008, pp. 2-3, ERN (En) 00239505-00239506.

<sup>10479</sup> SAN Lan Interview Record, E3/1650, 29 October 2008, p. 3, ERN (En) 00244336.

<sup>10480</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 26.

according to UONG Dos. He described the food served to inmates as “insufficient” and consisting of gruel served twice a day. Prisoners were accused of being in the CIA network at meetings held inside the prison every day.<sup>10481</sup>

3100. UONG Dos and SOK El described the only instances of prisoner mistreatment at Phnom Kraol Prison. UONG Dos described the assault upon an ethnic detainee, Heus, who was beaten with a piece of wood and asked why he wanted “to flee to the *Yuon*”. According to UONG Dos, Heus was beaten to the point of unconsciousness by about five guards in his and other detainees’ presence, with blood spattering on them during the attack. Heus was thereafter “dragged away” and stabbed to death with a bayonet inside the prison.<sup>10482</sup> SOK El “personally saw” prisoner administrator Phai beat a prisoner to death because “fellow prisoners had told Phai that [the prisoner] spoke an ethnic language”. According to SOK El, the victim – the first husband of SOK El’s wife – was “tied to a cow and dragged away for burial”.<sup>10483</sup> Important aspects of the incident, including the victim’s identity, the nature of the attack against him, the manner of his death and subsequent treatment of his corpse are cross-corroborated by the Civil Party Applications of both UONG Dos and SOK El.<sup>10484</sup> The Chamber is satisfied that the two in fact witnessed the same attack upon Heus and finds their accounts to be consistent and credible.

3101. Describing a separate incident, SOK El described seeing another prisoner, Touch, an “ethnic Phnornng lying dead with his head hanging down and his tongue sticking out”.<sup>10485</sup> Upon his own arrest and detention at Phnom Kraol Prison, SOK El

<sup>10481</sup> UONG Dos Interview Record, E3/7703, 29 October 2008, pp. 3-4, ERN (En) 00242171-00242172.

<sup>10482</sup> UONG Dos Interview Record, E3/7703, 29 October 2008, pp. 3-4, ERN (En) 00242171-00242172.

<sup>10483</sup> SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510.

<sup>10484</sup> UONG Dos Civil Party Application, E3/6260, 19 May 2009, pp. 3-4, ERN (En) 01210154-01210155 (“One day, a prisoner named Heus (the first husband of Mrs KRES Sophen [...]) was mistreated because at that time, a prisoner [...] told the prison guard, ‘This person who is shackled next to me used to be a teacher, and he asked me to flee to Vietnam with him’. After having heard that, the prison guard took a five cm by five cm stick to beat [teacher] Haes. Soon after that, two more guards came to beat him. I and the other prisoners who were near him were stained with his blood. He was almost beaten to death, and they unshackled him and took him outside. He was stabbed with a bayonet on the neck until he died. His body was pulled away cruelly by cows.”); SOK El Civil Party Application, E3/6314, 22 January 2010, p. 3, ERN (En) 01323057 (“One day, teacher Heus (a former husband of Mrs KRES Sophen [...]) [...] was beaten because a prisoner shackled next to him told a prison officer, ‘The prisoner next to me is a former teacher and he asked me to flee to Vietnam with him’. Upon hearing this, the prison officers beat teacher Heus badly, and another prison officer also came in and beat him fiercely. Other prisoners and I were smeared with his blood. They nearly beat him to death. They unshackled him, took him outside and stabbed him in [the] neck with a bayonet. His corpse was tied up with a rope and pulled away by a cow.”).

<sup>10485</sup> SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510.



was hung upside down in leg shackles and held in solitary detention for the first day and night of his detention.<sup>10486</sup> The Chamber finds SOK El's evidence to be credible and representative of a pattern of prisoner mistreatment at Phnom Kraol Prison.

3102. The Chamber is satisfied that the evidence before it relating to prisoner conditions at K-11 and Phnom Kraol Prison is consistent with its findings with respect to K-17, and therefore representative of the conditions endured by prisoners at Phnom Kraol Security Centre as a whole. For clarity, the Chamber finds that the following factors are consistent with, and therefore corroborative of, prisoner conditions at K-17: the absence of judicial or procedural safeguards in the arrest and detention of prisoners (including a failure to provide adequate reasons for arrest); the shackling of prisoners; the exposure of detainees to substandard conditions of hygiene and detention; subjection to a mandatory work regime; the provision of insufficient food; the interrogation of detainees (including the nature and substance thereof); accusations of traitorous activity; occasional physical mistreatment outside of interrogations and the unexplained disappearance of fellow inmates.

#### 12.5.6. *Working Conditions*

##### 12.5.6.1. *K-17*

3103. Detainees at K-17 were given jute seeds to stomp for one to two hours per day while detained.<sup>10487</sup> Further evidence before the Chamber indicated that "correctible" or light offenders at K-17 were "released" to work at tempering or re-education worksites in Nang Khi Loek commune.<sup>10488</sup> Consistent with the above finding that it is not seized of conditions at these worksites, the Chamber refrains from entering any findings in relation to prisoner treatment at Nang Khi Loek.

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<sup>10486</sup> SOK El Interview Record, E3/7702, 29 October 2008, p. 2, ERN (En) 00239509.

<sup>10487</sup> See above, para. 3083.

<sup>10488</sup> See e.g., T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 22-23; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 8, ERN (En) 00274101; CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 4, ERN (En) 00242144; T. 11 March 2016 (NETH Savat), E1/400.1, pp. 19, 54-55; NETH Savat Interview Record, E3/7695, 23 October 2008, p. 6, ERN (En) 00239487. See also, Map of Koh Neak District, E3/9100, undated, ERN 00992852.

12.5.6.2. K-11

3104. Civil Party KUL Nem described the working conditions to which he was subjected at K-11. The Civil Party was detained at the office and assigned to rice threshing and transplantation duties at K-11 after his removal from Division 920.<sup>10489</sup> He stated that he and his wife were “forced to engage in hard labour” by harvesting rice day and night, often until 10 or 11pm, and described this as the cause of their hardship during and after their detention.<sup>10490</sup> He told the Chamber that the exhaustion, which was “the result of overwork”, remained until after the fall of the Democratic Kampuchea regime and that he suspected this was the cause of his wife’s miscarriages.<sup>10491</sup> KUL Nem repeatedly underscored the psychological pain and anger he felt during his time at K-11 and his lack of recourse at the time, describing further his fear of being killed if he did not follow *Angkar*’s instructions.<sup>10492</sup> Corroborating KUL Nem’s account that prisoners were compelled to work while detained at K-11, AUM Mol was only ever unshackled “when they had me go to do rice transplanting or to build dams”, but did so “tied with hammock strings” while under supervision of armed guards.<sup>10493</sup> The Chamber accepts as credible Civil Party KUL Nem’s evidence about the conditions of work at K-11 and his expression of psychological pain.

12.5.6.3. Phnom Kraol Prison

3105. SOV Maing testified that he saw from a distance prisoners being “taken” to clear grass outside the Phnom Kraol Prison compound, but did not see their characteristics.<sup>10494</sup> In his Written Record of Interview, the witness clarified that while he never entered the prison, he saw men and women at Phnom Kraol Prison engaging in physical labour such as clearing grass and sawing wood unrestrained.<sup>10495</sup> NOU Saury partially corroborated this account, deposing that only light offenders were permitted

<sup>10489</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 89, 95. The Chamber found that the Civil Party was in fact detained at K-11. *See above*, para. 3093.

<sup>10490</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 90-91.

<sup>10491</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 93-94, 106, 113-114.

<sup>10492</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 91-93, 101, 106-108.

<sup>10493</sup> AUM Mol Interview Record, E3/7700, 29 October 2008, p. 3, ERN (En) 00239533.

<sup>10494</sup> T. 27 October 2016 (SOV Maing *alias* SAO Champi), E1/491.1, pp. 37, 41 (“Q. How did [the prisoners] appear in terms of their health and weight when you saw them? A. I did not know whether they were light or they were heavy.”).

<sup>10495</sup> SOV Maing *alias* SAO Champi Interview Record, E3/506, 18 November 2008, p. 3, ERN (En) 00244490 (“I saw the prisoners bathing and doing labour such as clearing grass, sawing wood and they were not tied up while doing that. The prisoners wore ordinary clothes and they were men and women but there was no child prisoner.”).

to work within the confines of the prison complex under guard – sawing wood to make tables, cabinets and beds – but did not clarify whether they were restrained.<sup>10496</sup> SOK El, who deposed that he was “making a table” shortly before being released, told investigators that 80 prisoners worked in the prison while handcuffed.<sup>10497</sup> UONG Dos deposed that prisoners at Phnom Kraol Prison worked in two shifts, from 6.30am to 11am and again from midday to 4.30pm, after which they were sent back to the prison.<sup>10498</sup>

3106. The Chamber is satisfied that, despite limited variations, accounts of working conditions at Phnom Kraol Prison are sufficiently consistent with those at K-11 and K-17 to corroborate the existence of a mandatory and regimented work regime at all three offices. It accordingly finds that such a regime is representative of the conditions endured by prisoners at Phnom Kraol Security Centre.

#### 12.5.7. *Deaths, Executions and Burials*

3107. Evidence which was explored at trial relating to executions primarily concerned executions at S-21 of Section 105 and Division 920 personnel.<sup>10499</sup> The Chamber notes that such evidence falls beyond the immediate scope of Phnom Kraol Security Centre. The Chamber will nevertheless consider this evidence in its analysis of the wider context of CPK policy and the pattern of arrests, detentions and executions referable to Sector 105.

3108. The Sector 105 Secretary was required to implement the will of the upper authority when orders to execute embedded enemies and those accused of committing moral offences were received.<sup>10500</sup> The KHIEU Samphan and NUON Chea Defence

<sup>10496</sup> NOU Souy Interview Record, E3/7705, 29 October 2008, p. 3, ERN (En) 00239506.

<sup>10497</sup> SOK El Interview Record, E3/7702, 29 October 2008, p. 3, ERN (En) 00239510.

<sup>10498</sup> UONG Dos Interview Record, E3/7703, 29 October 2008, p. 4, ERN (En) 00242172.

<sup>10499</sup> See above, paras 3056-3058.

<sup>10500</sup> T. 13 December 2012 (PHAN Van *alias* KHAM Phan), E1/153.1, p. 19 (“[O]nly those who were alleged of being enemies, for example those people were destined to be executed, but it was also the decision of the upper authority, who passed it down to people at the lower leve[I] to carry out the activity.”); T. 7 April 2016 (PHAN Van *alias* KHAM Phan), E1/416.1, p. 39 (Regarding the removal of individuals who had committed immoral offenses or those from the previous regime: “It was the instruction issued from above and he simply followed that instruction. [...] I mean the top people in Phnom Penh.”).

teams both submit that there is insufficient evidence to prove beyond reasonable doubt that executions took place at the Security Centre.<sup>10501</sup>

3109. Eyewitness accounts of deaths, executions and burials at Phnom Kraol Security Centre were limited. None of the prisoners detained on the ground floor of K-17 alongside CHAN Toi were sent for execution during his month-long detention,<sup>10502</sup> and he did not witness any executions.<sup>10503</sup>

3110. The Chamber has accepted as credible and corroborated SOK EI and UONG Dos's accounts of the death of Phnom Kraol Prison inmate, Heus. It has further accepted SOK EI's account of the death of his fellow prisoner, Touch, who died while shackled.<sup>10504</sup>

3111. Turning to burials, CHAN Toi did not witness any gravesites during the DK period, but heard about killings and burial pits after his release,<sup>10505</sup> clarifying in his Written Record of Interview that "they probably killed [prisoners] not far behind Phnom Kraol".<sup>10506</sup> NHEANG Sokhan *alias* SAY Khan, whose father was detained at Phnom Kraol Prison with SOK EI, deposed to OCIJ investigators that he heard about a location along the road to Kratie called Au Krieng where people were killed.<sup>10507</sup> Former K-11 worker SAL Ra was told by a K-11 guard that his mother-in-law was taken and killed at Trapeang Pring.<sup>10508</sup>

3112. BUN Loeng Chauy learned from a sector soldier and prisoners after their release that smaller groups of detainees "were not sent far away for execution" at Trapeang Pring, where pits dug in 1977 were visible from the road to Kratie, approximately a kilometre away.<sup>10509</sup> The witness deposed to having seen a tractor at the site, which was used to bulldoze and cover pits containing about 200 male and female victims "after

<sup>10501</sup> KHIEU Samphan Closing Brief, para. 1458; NUON Chea Closing Brief, para. 635.

<sup>10502</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 20.

<sup>10503</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 44.

<sup>10504</sup> *See above*, paras 3100-3101.

<sup>10505</sup> T. 10 March 2016 (CHAN Toi *alias* CHAN Tauch), E1/399.1, p. 44.

<sup>10506</sup> CHAN Toi Interview Record, E3/7694, 23 October 2008, p. 4, ERN (En) 00242144.

<sup>10507</sup> NHEANG Sokhan Interview Record, E3/7701, 29 October 2008, p. 3, ERN (En) 00242153.

<sup>10508</sup> SAL Ra Interview Record, E3/5222, 27 October 2008, p. 4, ERN (En) 00242158.

<sup>10509</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 28-31; BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, p. 10, ERN (En) 00274103.

the killing”,<sup>10510</sup> but clarified in court that he did not witness any executions.<sup>10511</sup> The Chamber notes that the witness acknowledged “living at the killing site during the period of the killings”, which suggests a motive to minimise his role or observations at the time. BUN Loeng Chauy also deposed to the discovery of human bones in the area between 1983 and 1985, stating that the discovery was done “without any effort to look for them”.<sup>10512</sup> This aspect of his deposition was not clarified at trial. The witness further stated to DC-Cam that he saw with his own eyes “a small number” of corpses of people who had been clubbed to death, either at Trapeang Pring or on the road to Kratie, and buried in pits at Trapeang Pring or left where they fell.<sup>10513</sup> At trial, however, the witness testified that he was told that Trapeang Pring “was the killing place”, but that he “did not go there into the centre” of the site.<sup>10514</sup> BUN Loeng Chauy’s equivocal evidence in many respects does not permit the Chamber to conclude that he personally witnessed the execution of prisoners or the burial of corpses at Trapeang Pring.

3113. DC-Cam’s 1999 Mondulkiri Mapping Project estimated the number of victims at Trapeang Pring to be in the “hundreds” based on their interview with SAL Ra, without providing an evidentiary or methodological basis for this quantification.<sup>10515</sup> Although SAL Ra was also interviewed by the OCIJ nine years later, he was not asked to clarify the estimate that he had provided to DC-Cam.<sup>10516</sup> The judicial investigation

<sup>10510</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 28-31 (“Q. Did you ever have occasion to travel by the Trapeang Pring and did you see what was going on at that site? A. I have never been there again since then. I just walked nearby about one kilometre away and I saw the earth was shoved or bulldozed. I was told it was the killing place, but I did not go there into the centre. [...] Regarding those pits, everyone could see [them], not only me.”); BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 3-4, ERN (En) 00274096-00274097 (“A tractor was used to dig big pits and they were covered up with dirt after the killing. I saw those pits with my eyes. The killing site was buried by bulldozing by a tractor. [...] There were about 200 male and female victims buried inside the pit. They were civilians, Khmer Rouge cadres, soldiers from *Ta Chhin*’s and *Ta Say*’s Divisions [*i.e.* Division 920].”). See also, CHAN Bun Leath DC-Cam Interview, E3/5180, 26 December 1999, p. 8, ERN (En) 00274116 (stating that “at the spot where they clubbed people to death” there were approximately 200 bodies in the hole).

<sup>10511</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, p. 31.

<sup>10512</sup> BUN Loeng Chauy *alias* CHAN Bun Leath Interview Record, E3/5178, 10 June 2008, pp. 3-4, ERN (En) 00274096-00274097.

<sup>10513</sup> CHAN Bun Leath DC-Cam Interview, E3/5180, 26 December 1999, pp. 8, 11-12, ERN (En) 00274116, 00274119-00274120.

<sup>10514</sup> T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 28-29.

<sup>10515</sup> DC-Cam Mapping Project 1999: Mondulkiri Province, E3/2070, undated, pp. 85-86, ERN (En) 00078122-00078123.

<sup>10516</sup> SAL Ra Interview Record, E3/5222, 27 October 2008, pp. 2-5, ERN (En) 00242156-00242159.

was impeded by the presence of land mines at Trapeang Pring, and no further forensic or investigative evidence is available to assist the Chamber with regard to the site.<sup>10517</sup>

3114. The Chamber heard several witnesses who concluded that their relatives, acquaintances, superiors and cadres were killed – either after their arrest or following temporary incarceration at K-17, K-11 or Phnom Kraol Prison.<sup>10518</sup> Accounts of alleged executions were replete with speculation and hearsay, and possibly marred by a degree of common narrative, the veracity of which cannot in the present circumstances be gauged. Taking into account evidence of Sector 105’s campaign of arresting, detaining and executing perceived enemies, consistent accounts of the location and purpose of Trapeang Pring, and evidence of the discovery of human remains in the area after 1979, the Chamber is satisfied that Trapeang Pring did in fact serve as a burial site during the DK period. As a result of the paucity of evidence regarding executions at Trapeang Pring, the Chamber is unable to conclude that it served as an execution site. The Chamber is further unable to find that the only reasonable inference to be drawn from the available evidence is that Trapeang Pring served to bury detainees who died as a result of poor conditions of detention at K-17, K-11 and/or Phnom Kraol Prison. In that regard, the Chamber notes the possibility that those buried at Trapeang Pring may have died as a result of causes unrelated to detention conditions, whether at Phnom Kraol Security Centre or other Sector 105 security centres or re-education offices beyond the scope of the present trial.

### 12.5.8. *Legal Findings*

#### 12.5.8.1. *Murder*

3115. The Closing Order charges the Accused with the crime against humanity of murder at Phnom Kraol Security Centre. It finds that executions at Phnom Kraol were carried out at the Trapeang Pring execution site and that deaths were occasioned at the other constituent offices more generally, including indirectly through acts of Security Centre personnel.<sup>10519</sup> The Chamber was satisfied that UONG Dos and SOK El witnessed the assault and killing of their fellow inmate, Heus, by Phnom Kraol Prison

<sup>10517</sup> Site Identification Report, E3/8057, 21 July 2009, p. 12, ERN (En) 00365630.

<sup>10518</sup> See above, Section 12.5.4: Arrest and Detention.

<sup>10519</sup> Closing Order, paras 641-642, 1376.

guards.<sup>10520</sup> Taking into account the brutal nature of the attack preceding the victim's death, being a physical assault with wooden implements to the point of unconsciousness, as well as the infliction of grievous bodily harm by stabbing the victim with a bayonet, the Chamber finds that the prison guards intended to kill Heus. The Chamber is satisfied that both the *actus reus* and *mens rea* of murder are established and accordingly finds that the crime against humanity of murder is established with regard to Heus's death and that this killings had no lawful basis.

3116. The Chamber further accepted SOK El's account of the death of Touch, a fellow detainee whom the witness saw "lying dead with his head hanging down and his tongue sticking out".<sup>10521</sup> The Chamber is satisfied that the victim's death was the result of the conditions to which he was exposed while imprisoned at Phnom Kraol Prison, and which the Chamber has already found to have been substandard.<sup>10522</sup> The *actus reus* of murder is therefore established. Noting that the Closing Order envisages the death of prisoners as a result of detention conditions under the legal characterisation of murder,<sup>10523</sup> the Chamber is satisfied that the voluntary subjection of prisoners to abject conditions, or indeed the failure to remedy deleterious conditions of detention or hygiene, constitutes manifest indifference to human life by Security Centre personnel, thereby fulfilling the element of *dolus eventualis*.<sup>10524</sup> The *mens rea* of murder is therefore established with regard to Touch's death.

3117. Having satisfied the requisite elements, the Chamber finds that the crime against humanity of murder is established at Phnom Kraol Security Centre with respect to the above two deaths.

#### 12.5.8.2. Extermination

3118. The Closing Order charges the Accused with the crime against humanity of extermination at Phnom Kraol Security Centre. It charges that perpetrators' acts and omissions caused the deaths of a very large number of people at Phnom Kraol Security

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<sup>10520</sup> See above, para. 3100.

<sup>10521</sup> See above, para. 3101.

<sup>10522</sup> See above, para. 3102.

<sup>10523</sup> Closing Order, para. 1376 (charging that "the personnel of these [security] centres, both directly and indirectly, caused the death of a large number of detainees. [...] Moreover, many prisoners died as a result of [...] ill-treatment.").

<sup>10524</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder, para. 650.

Centre.<sup>10525</sup> On the limited evidence before it, the Chamber was able to satisfy itself beyond reasonable doubt of only two deaths at the Security Centre.<sup>10526</sup> Further, having had no evidence before it that victims buried at Trapeang Pring died as a result of detention conditions at K-17, K-11 or Phnom Kraol Prison, the Chamber was unable to conclude that the deaths of these victims were imputable to Security Centre personnel.<sup>10527</sup> The Chamber is accordingly unable to find that “a very large number of people” died at Phnom Kraol. The crime against humanity of extermination is therefore not established at Phnom Kraol Security Centre.

#### 12.5.8.3. Enslavement

3119. The Closing Order charges the Accused with the crime against humanity of enslavement at Phnom Kraol Security Centre. It charges that prisoners at Phnom Kraol were subjected to total physical and psychological control, such that virtually all decisions concerning their physical environment were taken by the authorities in order to achieve Party goals.<sup>10528</sup> The Chamber has already dismissed the KHIEU Samphan Defence’s submission that the Chamber is seised of enslavement as a crime against humanity at Phnom Kraol Security Centre only insofar as it relates to forced labour at K-11.<sup>10529</sup>

3120. The NUON Chea Defence submits that the only evidence regarding living and working conditions at Phnom Kraol Security Centre concerns K-17, and that these conditions of detention were consistent with prisons in DK at the time and not of the gravity required to constitute a crime against humanity.<sup>10530</sup> The Co-Prosecutors conversely submit that the evidence at K-17, K-11 and Phnom Kraol Prison demonstrates that prison officials exercised control over every facet of detainees’ lives.<sup>10531</sup> The Lead Co-Lawyers submit that the evidence demonstrates the exercise of

<sup>10525</sup> Closing Order, paras 1381-1382.

<sup>10526</sup> See above, paras 3115-3116.

<sup>10527</sup> See above, para. 3114.

<sup>10528</sup> Closing Order, paras 1391-1394.

<sup>10529</sup> Section 2.5.6.3: Limitation of the Scope of the Trial to the Facts Contained in the Introductory Submission or Supplementary Submissions.

<sup>10530</sup> NUON Chea Closing Brief, para. 616.

<sup>10531</sup> Co-Prosecutors’ Closing Brief, para. 880. The Co-Prosecutors also point to the evidence of CHAN Bun Leath, who the Chamber has found was in fact detained at K-16. The Chamber recalls its position on evidence related to K-16 and declines to take it into account in the present assessment. See above, paras 3021-3022.



powers attaching to the right of ownership to detainees at K-11.<sup>10532</sup>

3121. The Chamber has found that a mandatory and regimented work regime existed at K-17, K-11 and Phnom Kraol Prison, which was representative of the conditions at Phnom Kraol as a whole.<sup>10533</sup> Further, the Chamber has accepted evidence intimating the accrual of gain to the Security Centre through the control of prisoners' movements and physical environments. In this regard, the Chamber has found that some detainees at K-17 were compelled to stomp jute seeds for hours at a time under a relaxed shackling regime.<sup>10534</sup> Some detainees at K-11 and Phnom Kraol Prison were forced to clear grass, saw wood, work in rice fields and build dams while handcuffed or tied with rope and supervised by armed guards. Other prisoners were not shackled or restrained but were overworked and exhausted after being forced to thresh and transplant rice pursuant to a regulated work schedule.<sup>10535</sup> There was no evidence that detainees were remunerated for their toil. Detainees feared being killed if they did not follow *Angkar*'s instructions while working at Phnom Kraol and were subjected to psychological suffering as a result of their treatment.<sup>10536</sup>

3122. The Chamber is satisfied that the evidence consistently demonstrates the imposition of a mandatory regime of labour at Phnom Kraol entailing the economic exploitation of detainees for the benefit of the Party. By determining detainees' movements inside the Security Centre, controlling their physical environment for the duration of their incarceration and keeping them under guard at all times to prevent or deter their escape, the Chamber is satisfied that Security Centre personnel exercised a substantial degree of control over detainees, who were accordingly rendered incapable of articulating a choice about whether they would work. The Chamber finds that detainees were subjected to a regime of forced labour at Phnom Kraol which entailed the exercise by Security Centre personnel of the powers attaching to the right of ownership. The *actus reus* of enslavement is therefore established.

3123. In addition to the means of implementation of this regime of forced labour, the Chamber finds that the continuing subjugation of prisoners' rights to those of the Party

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<sup>10532</sup> Lead Co-Lawyers' Closing Brief, paras 988-991.

<sup>10533</sup> See above, para. 3106.

<sup>10534</sup> See above, para. 3083.

<sup>10535</sup> See above, paras 3104-3105.

<sup>10536</sup> See above, para. 3104.

is consistent with the intentional exercise of powers attaching to the right of ownership. The *mens rea* of enslavement is therefore established.

3124. The NUON Chea Defence makes a number of submissions regarding the alleged unlawfulness of forced labour at Phnom Kraol. It submits that “the use of ‘forced’ labour is not always unlawful” and that labour in the ordinary course of “lawful detention” does not amount to forced labour.<sup>10537</sup> No other Party made any relevant submissions in this regard.

3125. The Chamber has already determined that compulsory labour may, under certain circumstances, legally fall within the remit of work “normally required” of detained persons. The prerequisite condition for legality in such circumstances, however, is the existence of a lawful order of a competent court mandating compulsory labour.<sup>10538</sup> In the present case, the Chamber has found that judicial and procedural safeguards were absent at the time of prisoners’ initial and ongoing detention at Phnom Kraol and that the deprivation of their liberty was arbitrary and constituted a crime against humanity.<sup>10539</sup> The NUON Chea Defence further submits that service extracted in cases of emergency or calamity threatening the life or wellbeing of the community will not be considered a human rights violation. In support of its submission, it contends that “the very existence of Cambodia as a country was under threat at that time”, pointing generally to the state of armed conflict between DK and Vietnam at the time.<sup>10540</sup> While the Chamber has found that a state of armed conflict existed between the two countries, it notes that this state was ongoing for over three-and-a-half years, between May 1975 and 6 January 1979, and primarily consisted of intermittent and small-scale frontier skirmishes or incursions.<sup>10541</sup> The NUON Chea Defence fails to identify the precise “cases of emergency” or “calamity threatening the life or well-being of the community” which warranted conditions of forced labour during the Security Centre’s operation. Further, while the NUON Chea Defence seeks to rely upon Articles 49 and 51 of Geneva Convention III in support of its argument that forced labour may in some cases be permitted under international humanitarian law,<sup>10542</sup> the Chamber notes that these

<sup>10537</sup> NUON Chea Closing Brief, para. 669.

<sup>10538</sup> Section 9.1.3: Applicable Law: Crimes Against Humanity: Enslavement.

<sup>10539</sup> See below, Section 12.5.8.4: Legal Findings: Imprisonment.

<sup>10540</sup> NUON Chea Closing Brief, para. 670.

<sup>10541</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict).

<sup>10542</sup> NUON Chea Closing Brief, paras 669-670.

provisions unequivocally relate to prisoners of war “who have fallen into the power of the enemy”; not a state’s own citizens.<sup>10543</sup> There is no evidence before the Chamber that any of the detainees or labourers at Phnom Kraol were Vietnamese nationals or members of the Vietnamese armed forces. The NUON Chea Defence’s submissions are therefore dismissed.

3126. Having established the requisite elements, the Chamber finds that the crime enslavement as a crime against humanity is established at Phnom Kraol Security Centre.

#### 12.5.8.4. *Imprisonment*

3127. The Closing Order charges the Accused with the crime against humanity of imprisonment at Phnom Kraol Security Centre.<sup>10544</sup> The Chamber recalls that the deprivation of liberty is arbitrary if imposed without due process of law.<sup>10545</sup>

3128. The Chamber has already rejected the proposition that arrests in Sector 105 were preventive or carried out pursuant to a legitimate process, and has found that they were in fact conducted pursuant to a systematic process of implication by association with perceived enemies.<sup>10546</sup> The Chamber was satisfied that the evidence of arrests and detentions at Phnom Kraol Security Centre was consistent in this respect. Witness CHAN Toi and his entire family were detained alongside approximately 80 other Kaoh Nheak district personnel at K-17 because of their association with denounced Sector 105 Secretary, KHAM Phoun. KHAM Phoun’s subordinate, Witness NETH Savat, was also imprisoned at K-17 together with his wife, children and siblings as a result of his superior’s downfall. Former Division 920 soldier KUL Nem was similarly detained at K-11 as a result of his commander’s removal.<sup>10547</sup>

3129. The Chamber has further found that judicial or procedural safeguards were absent at the time of prisoners’ arrests and throughout their subsequent detention at Phnom Kraol.<sup>10548</sup> There was no evidence before the Chamber that Phnom Kraol detainees were brought before a judicial officer vested with judicial authority, either to

<sup>10543</sup> Geneva Convention III, Art. 4. *See also*, Geneva Convention III Commentary, Arts 2, 4, 49, 51-53.

<sup>10544</sup> Closing Order, para. 1403.

<sup>10545</sup> Section 9.1.5: Applicable Law: Crimes Against Humanity: Imprisonment.

<sup>10546</sup> *See above*, paras 3065, 3081-3082.

<sup>10547</sup> *See above*, paras 3060-3064.

<sup>10548</sup> *See above*, paras 3081, 3102.

review the charges upon which prisoners were detained, or to assess the lawfulness of ongoing detention. Consistently with the Chamber's finding that no judicial system was established during the DK era,<sup>10549</sup> there was no evidence before the Chamber that detainees were afforded a trial or were otherwise convicted by a court of law before having been detained at Phnom Kraol. Lastly, there was no evidence that, prior to taking the above measures, DK authorities at any time officially proclaimed the existence of a public emergency in accordance with international law.<sup>10550</sup>

3130. In view of the foregoing, the Chamber finds that the initial and subsequent detention of prisoners at Phnom Kraol was carried out with a serious disregard of fundamental procedural rights enshrined under international law, and accordingly finds that the deprivation of liberty at the Security Centre was arbitrary. The NUON Chea Defence submission is therefore rejected. The Chamber is satisfied that in addition to the systematic arrest and detention of individuals on the basis of mere affiliation with perceived Party enemies, the continuous denial of due process rights constitutes intentional deprivation of physical liberty.

3131. The Chamber is satisfied that the *actus reus* and *mens rea* of imprisonment are established, and accordingly finds that the crime against humanity of imprisonment is established at Phnom Kraol Security Centre.

#### 12.5.8.5. Torture

3132. The Closing Order charges the Accused with the crime against humanity of torture at Phnom Kraol Security Centre. It charges that severe harm and suffering of a physical and mental nature constituting torture was deliberately inflicted by CPK cadres during interrogations at the Security Centre.<sup>10551</sup> In this regard, the Chamber notes that the Closing Order only charges torture within the context of interrogations,<sup>10552</sup> and not generally with regard to the severe mistreatment of detainees intended to punish or intimidate detainees outside of interrogations.<sup>10553</sup> The Chamber has already dismissed

<sup>10549</sup> Section 5: Administrative Structures, para. 417-418.

<sup>10550</sup> See above, para. 3082.

<sup>10551</sup> Closing Order, paras 1408-1409.

<sup>10552</sup> Closing Order, para. 1409.

<sup>10553</sup> See e.g., Co-Prosecutors' Closing Brief, paras 881, 883 (referring to incidents described by UONG Dos, AUM Mol and SOK El outside of interrogations). See below, para. 3154.

the KHIEU Samphan Defence's submission arguing that the Chamber is not seized of torture at Phnom Kraol Security Centre.<sup>10554</sup>

3133. In view of "serious threats and bullying" of an indeterminate nature having been made during interrogations at K-17, the Chamber was unable to assess the seriousness of psychological harm that may have resulted from this practice. It was satisfied, however, that no physical mistreatment was inflicted upon detainees during these interrogations.<sup>10555</sup> The Chamber has further found that evidence at K-11 was consistent with the conditions found at K-17 and representative of Phnom Kraol Security Centre as a whole.<sup>10556</sup> The Chamber did not hear of any specific instances of detainees being shackled during interrogations but has found that, aside from work assignments, detainees at Phnom Kraol were shackled for the duration of their detention.<sup>10557</sup>

3134. Having found that no physical mistreatment was evident at Phnom Kraol, and having not been able to determine the severity of psychological harm that may have resulted from interrogative practices, the Chamber is not satisfied that prisoner treatment during interrogations rises to the degree of severity required to constitute torture. While it recognises that prisoner shackling during interrogation processes, "serious threats" of an indeterminate nature and a climate of fear and uncertainty conducive to the implication of others in counter-revolutionary activity doubtlessly inflicted serious psychological distress upon prisoners, the Chamber finds that these acts do not individually or collectively constitute "severe mental suffering" as envisaged by international jurisprudence. The Chamber will accordingly consider the distress caused during interrogations as part of its assessment of the crime against humanity of other inhumane acts.

3135. The Chamber agrees with the NUON Chea Defence's submission that there is insufficient evidence to find that acts of torture occurred at the Security Centre.<sup>10558</sup> Having not established the *actus reus* of torture, the Chamber finds that the crime against humanity of torture has not been established at Phnom Kraol Security Centre.

<sup>10554</sup> Section 2.5.6.3: Limitation of the Scope of the Trial to the Facts Contained in the Introductory Submission or Supplementary Submissions.

<sup>10555</sup> See above, para. 3089.

<sup>10556</sup> See above, paras 3095, 3102.

<sup>10557</sup> See above, paras 3083, 3102.

<sup>10558</sup> NUON Chea Closing Brief, paras 592, 604.

12.5.8.6. Persecution on political grounds

3136. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds of “real or perceived enemies of the CPK” at Phnom Kraol Security Centre.<sup>10559</sup> The particular acts amounting to persecution must be expressly charged.<sup>10560</sup> According to the Closing Order, such people “were subjected to harsher treatment and living conditions” than the remainder of the population and were also “arrested *en masse* for re-education and elimination”.

3137. The KHIEU Samphan Defence submits that the charge of persecution on political grounds is restricted to the three categories of enemy particularised in the Closing Order (namely, former Khmer Republic officials, New People and Cambodians returning from abroad).<sup>10561</sup> This submission has been addressed and rejected elsewhere in this Judgement.<sup>10562</sup>

3138. The Chamber must satisfy itself that the targeted group of “real or perceived enemies of the CPK” referred to in the Closing Order was sufficiently discernible.<sup>10563</sup> To assess the scope of the group of “real or perceived enemies of the CPK” at Phnom Kraol, it is necessary to read the Closing Order’s ultimate disposition and legal characterisation of facts referable to that crime site in conjunction with the factual findings of the Co-Investigating Judges. In this regard, the Closing Order clearly identifies a group consisting of adversaries of the CPK or its ideology who, as perceived counter-revolutionaries and external adversaries, may broadly be characterised as real or perceived threats. According to the Closing Order, this group included spies, traitors of the revolution, the Vietnamese and collaborators of the Vietnamese and CIA.<sup>10564</sup> The Chamber is satisfied that real or perceived political enemies included, but were not limited to, the three groups particularised in the Closing Order.

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<sup>10559</sup> Closing Order, paras 1416-1418.

<sup>10560</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 716.

<sup>10561</sup> KHIEU Samphan Closing Brief, paras 1386-1389.

<sup>10562</sup> Section 2: Preliminary Issues, para. 170.

<sup>10563</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds, para. 714.

<sup>10564</sup> Closing Order, paras 632, 634, 640.

3139. According to the Closing Order, the targeted group included perceived enemies of the CPK.<sup>10565</sup> The discernibility of the targeted group may be assessed by examining whether the victims belonged to a category of the group as identified by the Party leadership. In this regard, the Chamber takes into consideration evidence of the CPK's ideological aspirations and policies concerning socialist revolution,<sup>10566</sup> the state of armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam between May 1975 and 6 January 1979,<sup>10567</sup> the evolving CPK policy toward the Vietnamese and other enemies,<sup>10568</sup> the spate of internal purges from early 1977 in Sector 105,<sup>10569</sup> purges across DK more generally and the resultant atmosphere of paranoia inside the Party.<sup>10570</sup> It is evident that the CPK identified as enemies counter-revolutionaries, detractors and traitors of the revolution, foreign agents including the Vietnamese, as well as collaborators of the foregoing categories, among others. Accordingly, the Chamber is satisfied that the target group of "real or perceived enemies of the CPK" was sufficiently discernible in order to determine whether the requisite consequences occurred for the group.

3140. The Chamber has found numerous instances in which people were subjected to harsher treatment and living conditions than the remainder of the population and were arrested for re-education. Prisoners were arrested and arbitrarily detained at Phnom Kraol without judicial or procedural safeguards.<sup>10571</sup> While detained, they were classified according to the degree of their perceived criminality,<sup>10572</sup> interrogated,<sup>10573</sup> subjected to a regime of forced labour,<sup>10574</sup> exposed to substandard living and detention conditions which resulted in serious mental and physical suffering and constituted an attack on their human dignity,<sup>10575</sup> and forced to endure the unexplained disappearances of their fellow inmates to an indeterminate location and fate.<sup>10576</sup> The Chamber has found that these acts amounted to the separate crimes against humanity of

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<sup>10565</sup> Closing Order, para. 1417.

<sup>10566</sup> Section 16: Common Purpose.

<sup>10567</sup> Section 4: General Overview.

<sup>10568</sup> Section 16.3: Real or Perceived Enemies.

<sup>10569</sup> *See above*, Section 12.5.4.1: Internal purges; Section 12.5.4.2: Backdrop of purges in Sector 105; Section 12.5.4.3: Evidence of arrests in Sector 105.

<sup>10570</sup> Section 12.1: Internal Factions.

<sup>10571</sup> *See above*, paras 3127-3131.

<sup>10572</sup> *See above*, para. 3096.

<sup>10573</sup> *See above*, paras 3089, 3102.

<sup>10574</sup> *See above*, paras 3119-3126.

<sup>10575</sup> *See below*, paras 3153-3156.

<sup>10576</sup> *See below*, para. 3153.

imprisonment,<sup>10577</sup> other inhumane acts perpetrated through attacks on human dignity,<sup>10578</sup> and other inhumane acts perpetrated through enforced disappearances.<sup>10579</sup>

3141. Turning to whether the foregoing acts were discriminatory in fact and deliberately inflicted with the intent to discriminate against the targeted group, the Chamber has already found that arrests and detentions within Sector 105, and in particular those at Phnom Kraol Security Centre, were conducted pursuant to a systematic process targeting individuals associated with perceived enemies.<sup>10580</sup>

3142. At Phnom Kraol, CHAN Toi was arrested and detained at K-17 for being in Sector 105 Deputy Secretary KHAM Phoun's "network". CHAN Toi's wife and supervisor, both of whom were related to KHAM Phoun, were also arrested and detained there.<sup>10581</sup> KHAM Phoun's subordinate, Witness NETH Savat, was arrested and detained at K-17 as part of what he called a "policy" to arrest his supervisor's subordinates.<sup>10582</sup> Detainees at K-17 were interrogated about KHAM Phoun.<sup>10583</sup> Civil Party KUL Nem was arrested and detained at K-11 as a direct result of his commander's removal.<sup>10584</sup> Witnesses at K-11 and Phnom Kraol Prison were also variously accused of being CIA agents or Vietnamese collaborators.<sup>10585</sup>

3143. The pattern of arrests, detentions and implication by association was evidenced within the wider context of the Sector 105 purges. The Chamber refers to the following instances for the purpose of corroborating the foregoing accounts and contextualising the atmosphere within which arrests and detentions at Phnom Kraol took place.

3144. The Chamber has found that KHAM Phoun's nephew, Kaoh Nheaek District Secretary Svay, committed suicide pending his arrest on the suspicion that he had harboured Vietnamese soldiers. Svay's suspected collaborator, Kaev Seima District Secretary Kasy, was subsequently denounced, arrested, detained at K-16 and

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<sup>10577</sup> See above, Section 12.5.8.4: Legal Findings: Imprisonment.

<sup>10578</sup> See below, Section 12.5.8.7: Legal Findings: Other inhumane acts through attacks against human dignity.

<sup>10579</sup> See below, Section 12.5.8.8: Legal Findings: Other inhumane acts through conduct characterised as enforced disappearances.

<sup>10580</sup> See above, para. 3065.

<sup>10581</sup> See above, para. 3060.

<sup>10582</sup> See above, para. 3061.

<sup>10583</sup> See above, para. 3089.

<sup>10584</sup> See above, para. 3063.

<sup>10585</sup> See above, paras 3095, 3099.



executed.<sup>10586</sup> Kasy's nephew, BUN Loeng Chauy was arrested and imprisoned at K-16 as a result of his uncle's denunciation.<sup>10587</sup> The entire population of Kaev Seima district was consequently relocated and imprisoned at K-16 and the Roya worksite.<sup>10588</sup> The wives and children of approximately 18 K-16 escapees were executed as a result of their husbands' flight.<sup>10589</sup> As the superior of the escapees' suspected ringleader and uncle of Kasy, KHAM Phoun was denounced a Vietnamese conspirator and traitor, summoned to Phnom Penh and died under indeterminate circumstances alongside Sector 105 Secretary Laing. KHAM Phoun's family and known associates were arrested after his departure to Phnom Penh and were not seen again.<sup>10590</sup>

3145. Sector 105 Secretary Laing's subordinates, including deputies Mey and Chuon, and Sector Military Commander Sophea, were also arrested following Laing's disappearance. They were respectively denounced as collaborators of the CIA, KHAM Phoun and the Vietnamese, and executed in S-21. The Chamber has found that Sophea's successor Leng and K-17 supervisor Lay, both of whom worked closely with Laing,<sup>10591</sup> were also detained and executed at S-21.<sup>10592</sup> Additionally, the Chamber has found that Division 920 was purged as a result of its perceived enemy status, which was imputed due to its connection to Northeast Zone Secretary NEY Sarann *alias* Ya and his involvement with the Vietnamese.<sup>10593</sup>

3146. Finally, the foregoing is consistent with more general evidence heard by the Chamber that Sector 105 progressively denounced, arrested, detained and/or executed personnel suspected of collaborating, communicating or otherwise dealing with Vietnamese forces, civilians or relatives, as well as those perceived to be opposed to *Angkar* or those suspected of the slightest subversion.<sup>10594</sup>

3147. Having found that the victims were in fact perceived to be enemies and therefore part of the targeted group, the Chamber is satisfied that the foregoing acts were

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<sup>10586</sup> See above, para. 3051.

<sup>10587</sup> See above, para. 3059.

<sup>10588</sup> See above, para. 3053.

<sup>10589</sup> See above, para. 3054.

<sup>10590</sup> See above, para. 3055.

<sup>10591</sup> See above, paras 3028, 3044.

<sup>10592</sup> See above, para. 3056.

<sup>10593</sup> See above, paras 3057-3058.

<sup>10594</sup> See above, para. 3048.

discriminatory in fact.

3148. The foregoing evidence vividly demonstrates that enemies were arrested, detained and subjected to harsher treatment as a result of their perceived enemy status. With regard to Phnom Kraol Security Centre, the Chamber is satisfied that the overwhelmingly systematic process by which the arrest, detention and subjection to abject conditions of detention is consistent with the deliberate and calculated arrest and detention of perceived enemies. The Chamber accordingly finds that these acts were committed with the intent to discriminate on political grounds. The *mens rea* of persecution is therefore established.

3149. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>10595</sup> personal dignity,<sup>10596</sup> liberty and security,<sup>10597</sup> freedom from arbitrary or unlawful arrest,<sup>10598</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>10599</sup>

3150. The acts charged as persecution include acts separately found to amount to independent crimes against humanity (including imprisonment, enslavement, and other inhumane acts perpetrated through attacks against human dignity and enforced disappearance) as well as acts which, on their own, do not necessarily amount to crimes (in particular, arrests). Considered together and within the context within which these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of severity such as to constitute persecution. Accordingly, the Chamber is satisfied that the instances of imprisonment, enslavement and other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances committed against enemies constitute persecution on political grounds. The *actus reus* of persecution is therefore established.

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<sup>10595</sup> As evidence of the state of customary international law, *see* UDHR, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(1).

<sup>10596</sup> As evidence of the state of customary international law, *see* UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Art. 6. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>10597</sup> As evidence of the state of customary international law, *see* UDHR, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

<sup>10598</sup> As evidence of the state of customary international law, *see* UDHR, Art. 9; ICCPR, Art. 9; ECHR, Art. 5; ACHR, Art. 7.

<sup>10599</sup> As evidence of the state of customary international law, *see* UDHR, Arts 6-7, 10-11; ICCPR, Arts 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(4)-(6), 8.

3151. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on political grounds is established at Phnom Kraol Security Centre.

12.5.8.7. Other inhumane acts through attacks against human dignity

3152. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity at Phnom Kraol Security Centre. In this respect, the Closing Order particularises that conditions at Phnom Kraol, including the deprivation of sufficient food, medical attention and sanitation, poor living and detention conditions, and physical and psychological mistreatment (including during interrogations), amounted to attacks against human dignity.<sup>10600</sup>

3153. Evidence about prisoner living and detention conditions was consistent across K-17, K-11 and Phnom Kraol Prison. Once detained, detainees were placed in wooden wrist or leg shackles in rows of between five and 20 prisoners,<sup>10601</sup> and exposed to substandard conditions of hygiene and detention for the duration of their incarceration.<sup>10602</sup> In particular, the abject conditions at Phnom Kraol Prison were evident from a distance, and the prison was deemed no better than a place to keep cattle.<sup>10603</sup> Similarly, there was “no hygiene at all” at K-17, which contained a single toilet for use by approximately 80 people.<sup>10604</sup> Only one set of clothes was available to Security Centre inmates, while bathing facilities were accessible either periodically, or not at all.<sup>10605</sup> Food was consistently insufficient and consisted of a small portion distributed irregularly once or twice a day.<sup>10606</sup> Prisoners were shackled during interrogations, where verbal threats were issued by interrogators, causing a climate of uncertainty, fear and psychological distress.<sup>10607</sup> Throughout the Security Centre, detainees were subjected to the removal and unexplained disappearances of their fellow inmates, causing them to endure the psychological distress of having to speculate about their ultimate fates or concluding on the basis of limited information and common

<sup>10600</sup> Closing Order, paras 1434-1435, 1438.

<sup>10601</sup> See above, paras 3083, 3087, 3095, 3097, 3100-3102, 3104.

<sup>10602</sup> See above, paras 3085, 3099, 3102.

<sup>10603</sup> See above, para. 3099.

<sup>10604</sup> See above, para. 3085.

<sup>10605</sup> See above, paras 3085, 3099.

<sup>10606</sup> See above, paras 3086, 3099.

<sup>10607</sup> See above, para. 3134.

narratives that these people had been sent to their deaths.<sup>10608</sup>

3154. The Chamber has before it limited out-of-court accounts of solitary detention, beatings, the hanging of prisoners upside down and further physical assaults inflicted upon them leading to unconsciousness and death.<sup>10609</sup> The Chamber finds these accounts to be representative of a pattern of ill-treatment meted out to prisoners across Phnom Kraol Security Centre.

3155. Detainees were despondent as a result of their detention at Phnom Kraol, expressing that they “had no hope of surviving” after their arrest and detention at K-17 or that, “after our arrest, we would be dead”.<sup>10610</sup> Detainees dared not complain about their conditions of detention and feared being killed if they spoke to guards or failed to follow *Angkar*’s instructions.<sup>10611</sup> They were accused of being traitors of the regime of enemy collaborators,<sup>10612</sup> and were subjected to the unexplained disappearances of their fellow inmates.<sup>10613</sup>

3156. The Chamber is satisfied that the foregoing acts cumulatively constitute the infliction of serious mental and physical suffering to detainees as well as a serious attack on their human dignity.

3157. In assessing the gravity of these acts, the Chamber takes into account their pervasiveness throughout the span of prisoners’ incarceration at Phnom Kraol and the serious nature of mental and physical suffering caused as a result. The Chamber accordingly finds that the foregoing acts cumulatively rise to the same gravity of other crimes against humanity. The *actus reus* of other inhumane acts is therefore satisfied.

3158. In assessing the intent of Security Centre staff to engage in the above acts, the Chamber takes into account the relentless barrage of physical and psychological attacks to which they subjected detainees throughout the span of their detention, including during detention, interrogations and work assignments, as well as the deliberate infliction of underlying acts that the Chamber has found to constitute crimes against

<sup>10608</sup> See above, paras 3090, 3095, 3097-3098, 3104.

<sup>10609</sup> See above, paras 3095, 3100-3101.

<sup>10610</sup> See above, para. 3081.

<sup>10611</sup> See above, paras 3086, 3088, 3095, 3104.

<sup>10612</sup> See above, paras 3089, 3095, 3099, 3102.

<sup>10613</sup> See above, paras 3087, 3090, 3095, 3097, 3102.

humanity. The Chamber finds that the infliction of serious mental and physical suffering to detainees, as well as the serious attack upon their human dignity, was committed intentionally. The *mens rea* of other inhumane acts is therefore satisfied.

3159. Having established the requisite elements, the Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity is established at Phnom Kraol Security Centre.

12.5.8.8. *Other inhumane acts through conduct characterised as enforced disappearances*

3160. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances at Phnom Kraol Security Centre. It charges that the arrest, detention or abduction of victims in conditions which placed them outside of the protection of the law, as well as the refusal to provide access to, or convey information about, the fate or whereabouts of such persons were perpetrated at Phnom Kraol. It particularises that victims endured great suffering, serious mental suffering or injury, or a serious attack on human dignity as a result.<sup>10614</sup> The Chamber has already dismissed the KHIEU Samphan Defence's submission that the Chamber is seised of enforced disappearances at Phnom Kraol Security Centre only insofar as they relate to K-17.<sup>10615</sup>

3161. The Chamber has found that detainees were removed without explanation from K-17.<sup>10616</sup> It has also found that conditions at K-11 and Phnom Kraol Prison were consistent with those found at K-17 and representative of conditions at the Security Centre as a whole.<sup>10617</sup> At the Security Centre, prisoners were subjected to the disappearance of fellow inmates without being told the reasons for their disappearances, leaving them with the belief that they had been killed.<sup>10618</sup> One account before the Chamber revealed that prisoners were told that they were being returned to their home villages, after which time they were never seen again.<sup>10619</sup> Other witnesses variously heard, either at the time or shortly after the fall of the DK regime, that prisoners had

<sup>10614</sup> Closing Order, paras 1470-1474.

<sup>10615</sup> Section 2.5.6.3: Limitation of the Scope of the Trial to the Facts Contained in the Introductory Submission or Supplementary Submissions.

<sup>10616</sup> See above, para. 3090.

<sup>10617</sup> See above, para. 3102.

<sup>10618</sup> See above, paras 3087, 3090, 3095, 3097, 3102.

<sup>10619</sup> See above, para. 3097.

been transported in the direction of Kratie,<sup>10620</sup> with some accounts specifying that prisoners were taken there to be killed.<sup>10621</sup> The Chamber has accordingly satisfied itself that prisoners were in fact transported in the direction of Kratie after being removed from Phnom Kraol without explanation.<sup>10622</sup> The Chamber is satisfied that the removal of prisoners constitutes the deprivation of liberty. It is further satisfied that the foregoing circumstances demonstrate both the refusal to disclose information to fellow detainees or family members regarding the fate or whereabouts of detainees who had disappeared and, in circumstances where some indication was provided as to their ultimate fates, a complete denial of individual recourse for fellow inmates, family or friends to the applicable legal remedies and procedural guarantees enshrined under international law.

3162. Disappearances at Phnom Kraol were consistent with evidence of prisoner disappearances at other detention facilities in Sector 105.<sup>10623</sup> Former Sector 105 Secretary SAO Sarun saw people being summoned to attend “study sessions”, after which they were never again seen.<sup>10624</sup> This practice was separately corroborated by former Sector 105 Secretary Laing’s assistants and children.<sup>10625</sup> In light of Phnom Kraol’s direct subordination to Sector 105, which was itself overseen by the Party Centre, the Chamber is satisfied that disappearances at the Security Centre were carried out by DK authorities or with the authorisation, support or acquiescence of the CPK.

3163. The Chamber is satisfied that prisoners’ removals by DK authorities from detention at Phnom Kraol absent reasons, under pretence or without remedy constituted the deprivation of individual liberty. The Chamber is therefore satisfied that the underlying conduct of enforced disappearances is established at Phnom Kraol Security Centre.

3164. The Chamber finds that the abduction of prisoners in the above circumstances inherently constitutes a serious attack on their human dignity. As to third parties, the evidence demonstrated the long-lasting psychological effect of disappearances on other

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<sup>10620</sup> See above, paras 3090, 3095-3096, 3114.

<sup>10621</sup> See above, paras 3090, 3096.

<sup>10622</sup> See above, para. 3114.

<sup>10623</sup> See above, paras 3053, 3055, 3077, 3078, 3081.

<sup>10624</sup> See above, paras 3040, 3077, 3082.

<sup>10625</sup> See above, paras 3036, 3055, 3077.

prisoners. Inmates were subjected not only to the unexplained disappearances of their fellow prisoners, but were subjected to an environment of uncertainty and fear of themselves being removed from the Security Centre to a destination and fate unknown. As to those family members, friends, acquaintances and fellow inmates of those who were abducted, it is clear that no closure or definitive explanation was afforded to them in the nearly 40 year years following their disappearances, leaving them to speculate about their ultimate fates or to conclude on the basis of limited information and common narratives that these people had been sent to their deaths.<sup>10626</sup> The Chamber finds that the removal of prisoners resulted in the serious mental and physical suffering or injury to third parties and constituted a serious attack on their human dignity. The Chamber accordingly finds that enforced disappearances at Phnom Kraol were of a nature and gravity similar to other enumerated crimes against humanity. The *actus reus* of the crime against humanity of other inhumane acts is therefore established.

3165. In assessing the intent of Security Centre staff to engage in the above acts, the Chamber takes into consideration the existence of pretence and total absence of reasons furnished in the abduction of prisoners at Phnom Kraol, the climate of uncertainty created by these disappearances, the vulnerability of other inmates who were exposed to these conditions, and the long-lasting pain and suffering inflicted upon fellow inmates, family members and friends deprived of closure. The Chamber is satisfied that this egregious disregard for individual and collective rights is consistent with a pattern of wanton and calculated conduct. The Chamber finds that the serious attacks on human dignity were committed intentionally. The *mens rea* of the crime against humanity of other inhumane acts is therefore established.

3166. Having found that the enforced disappearances of prisoners entailed the intentional and serious attack on human dignity of a seriousness comparable to other inhumane acts, the Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances is established at Phnom Kraol Security Centre.

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<sup>10626</sup> See above, paras 3090, 3095, 3097-3098, 3104.

### 13. TREATMENT OF TARGETED GROUPS

3167. According to the Closing Order, one of the CPK policies was to implement and defend the socialist revolution through the targeting of specific groups, occurring throughout Cambodia from before 1975 and continuing at least until 6 January 1979.<sup>10627</sup> The Closing Order charges that an objective of this policy was to establish a homogeneous society without divisions based on class, ethnicity, nationality, religion or culture.<sup>10628</sup> It further alleges that another objective of this policy was to target and destroy specific groups.<sup>10629</sup> The targeted groups listed in the Closing Order are the following: the Buddhists, Cham, Vietnamese, and former officials of the Khmer Republic (including civil servants and former military personnel) and their families.<sup>10630</sup>

#### **13.1. Treatment of Buddhists**

##### ***13.1.1. Closing Order***

3168. The Closing Order charges the Accused with crimes against humanity of murder and persecution on religious grounds with respect to Buddhist groups in Cambodia.<sup>10631</sup> According to the Closing Order, one of the five CPK policies implemented to further and defend the CPK Socialist revolution was to target Buddhist groups with the objective of establishing an atheistic and homogenous society. This policy began on or before 17 April 1975 and continued until at least 6 January 1979.<sup>10632</sup>

##### ***13.1.2. Findings***

3169. Pursuant to the Case 002 Additional Severance Decision, the Chamber is limited to considering the implementation of this policy through the crimes against humanity of murder and persecution on religious grounds in relation to the Tram Kak

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<sup>10627</sup> Closing Order, para. 205.

<sup>10628</sup> Closing Order, para. 207.

<sup>10629</sup> Closing Order, para. 207.

<sup>10630</sup> Closing Order, para. 205.

<sup>10631</sup> Closing Order, paras 1373, 1419, 1421.

<sup>10632</sup> Closing Order, paras 158, 205, 207, 210, 1419, 1421.



Cooperatives.<sup>10633</sup> As such, the Chamber's factual and legal findings regarding the treatment of Buddhist groups are discussed in that section of the Judgement.<sup>10634</sup>

## **13.2. Treatment of the Cham**

### ***13.2.1. Closing Order and Scope of the Charges***

3170. In relation to the targeting of the Cham, the Closing Order charges the Accused with the crime of genocide by killing members of the group,<sup>10635</sup> as well as the following crimes against humanity: (i) murder;<sup>10636</sup> (ii) extermination;<sup>10637</sup> (iii) imprisonment;<sup>10638</sup> (iv) torture;<sup>10639</sup> (v) persecution on political<sup>10640</sup> and religious<sup>10641</sup> grounds; and other inhumane acts through (vi) attacks against human dignity<sup>10642</sup> and conduct characterised as (vii) forced transfer<sup>10643</sup> and (viii) enforced disappearances.<sup>10644</sup>

#### ***13.2.1.1. Party submissions relevant to the scope of the charges***

3171. The Co-Prosecutors submit that, with regard to the charge of genocide by killing members of the Cham group, the scope of Case 002/02 encompasses all facts relevant to the treatment of Cham nationwide, while with regard to the charges of crimes against humanity of murder and extermination, the scope of Case 002/02 is limited to the facts which occurred at Trea Village and Wat Au Trakuon Security Centres. They do not seek convictions regarding the crime against humanity of torture against members of the Cham group as they understand this crime to fall outside the scope of Case 002/02.<sup>10645</sup>

<sup>10633</sup> Case 002 Additional Severance Decision Annex, paras 3(x), 5(ii)(b)(1), 5(ii)(b)(8). *See also*, Annex I: Procedural History, paras 15-16.

<sup>10634</sup> Sections 10.1.9: Tram Kak Cooperatives: Treatment of Buddhists. *See also*, Section 16.4.3.3: Common Purpose: Targeting of Specific Groups: Buddhists.

<sup>10635</sup> Closing Order, paras 1336-1342.

<sup>10636</sup> Closing Order, paras 1373, 1374, 1377-1380.

<sup>10637</sup> Closing Order, paras 1381-1383, 1386-1390.

<sup>10638</sup> Closing Order, paras 1402-1403, 1406-1407.

<sup>10639</sup> Closing Order, paras 1408-1414.

<sup>10640</sup> Closing Order, paras 1415-1418.

<sup>10641</sup> Closing Order, paras 1419-1420.

<sup>10642</sup> Closing Order, paras 1434-1436, 1439-1440.

<sup>10643</sup> Closing Order, paras 1448-1452, 1454, 1456, 1460, 1462, 1463-1469.

<sup>10644</sup> Closing Order, paras 1470-1478.

<sup>10645</sup> Co-Prosecutors' Closing Brief, para. 1006.

3172. The KHIEU Samphan Defence submits that the charges regarding crimes committed against members of the Cham group are limited to: (i) genocide by killing and (ii) extermination from 1977 in Kang Meas and Kroch Chhmar<sup>10646</sup> districts (excluding facts at Kroch Chhmar Security Centre), because the Closing Order lacks specificity and because these places are the only ones which are specifically mentioned in the Introductory and Supplementary Submissions with regard to the genocide of the Cham by killing, furthermore, that the Severance Decision excluded from Case 002/02 all charges relevant to the Kroch Chhmar Security Centre;<sup>10647</sup> (iii) murder from 1977 at Wat Au Trakuon Security Centre, also that the Severance Decision excluded from Case 002/02 all charges relevant to the Kroch Chhmar Security Centre;<sup>10648</sup> (iv) imprisonment and (v) torture at Trea Village Security Centre, because the charges relevant to the Kroch Chhmar Security Centre have been excluded from Case 002/02 by the Severance Decision and because the Co-Investigating Judges did not find that Cham were detained at Wat Au Trakuon, but rather that they were immediately killed. Further, the Closing Order clarifies that Cham suffered torture while they were questioned and detained, and therefore the geographical limitations concerning places relevant to the charges of torture similarly apply to the charges of imprisonment;<sup>10649</sup> and (vi) persecution on religious ground throughout the DK period but only with regard to the facts committed during the Movement of Population (“MOP”) Phase Two, because neither the Introductory nor the Supplementary Submissions mention the 1<sup>st</sup> January Dam Worksite as a place relevant to persecution on religious ground.<sup>10650</sup>

3173. The KHIEU Samphan Defence further submits that the Chamber is not seised of other inhumane acts through attacks against human dignity, forced transfer and enforced disappearance as crimes against humanity, affirming that the Severance Decision allegedly limited MOP Phase Two in Case 002/02 to facts related to persecution on religious grounds.<sup>10651</sup>

3174. The NUON Chea Defence contests the exclusion of the Kroch Chhmar Security Centre from the scope of the charges and reiterates its submission that this prevents the

<sup>10646</sup> Also Romanised as “Krauch Chhmar” and “Krouch Chhmar”.

<sup>10647</sup> KHIEU Samphan Closing Brief, paras 1528-1539 (concerning the charges of genocide by killing), paras 1543-1546 (concerning the charges of extermination).

<sup>10648</sup> KHIEU Samphan Closing Brief, paras 1540-1542.

<sup>10649</sup> KHIEU Samphan Closing Brief, paras 1547-1552.

<sup>10650</sup> KHIEU Samphan Closing Brief, paras 1560-1569.

<sup>10651</sup> KHIEU Samphan Closing Brief, paras 1563-1565.

Chamber to make findings beyond reasonable doubt regarding the treatment of the Cham, “due to the exclusion of Kroch Chhmar Security Centre and the Chamber’s erroneous decisions not to hear OUK Bunchhoeun, HENG Samrin, and HUN Sen, key evidence in this regard is missing”.<sup>10652</sup>

3175. The Civil Party Lead Co-Lawyers do not make specific submissions on the scope of the charges but nonetheless address the following facts: persecution through the prohibition of the practice of Cham Islam before 1975 and throughout the DK period;<sup>10653</sup> killings, arbitrary imprisonment and torture following the 1975 rebellion in Svay Kleang;<sup>10654</sup> other inhumane acts before, during and after the 1975 rebellion in Svay Kleang;<sup>10655</sup> other inhumane acts, murder and extermination during MOP Phase Two;<sup>10656</sup> genocide, imprisonment, and murder in Wat Au Trakuon and Trea Village Security Centres.<sup>10657</sup>

#### 13.2.1.2. *Discussion*

3176. At the outset, the Chamber notes that the Severance Decision excluded facts at the Kroch Chhmar Security Centre<sup>10658</sup> and included facts related to MOP Phase Two limited to the treatment of the Cham, in the scope of the charges.<sup>10659</sup>

3177. Factual findings in the Closing Order on MOP Phase Two addresses specifically the Cham, stating that in 1975, after the Cham rebellions in the East Zone, Cham people were moved within Kampong Cham province, as well as from Kampong Cham province to Kratie, Kampong Thom and Battambang provinces, and that thousands of

<sup>10652</sup> NUON Chea Closing Brief, paras 701-704.

<sup>10653</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 697-728.

<sup>10654</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 729-738.

<sup>10655</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 739-744.

<sup>10656</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 747-765.

<sup>10657</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 766-784.

<sup>10658</sup> Case 002 Additional Severance Decision Annex, paras 2 (iv), 3 (xi).

<sup>10659</sup> Case 002 Additional Severance Decision Annex, paras 2 (i), 3 (i); Case 002 Additional Severance Decision, para. 43 (“In particular, the Chamber notes that movement of the Cham minority forms the basis of religious persecution charges, as well as a means of implementing policies concerning movement of population (phase two) and treatment of targeted groups. The Chamber excluded the charges based on the policy concerning the treatment of the Cham, including charges of religious persecution, from the scope of Case 002/01. However, treatment of the Cham and charges of religious persecution, including in the course of population movement (phase two), have been included within the scope of Case 002/02. The Chamber has therefore also included within the scope of Case 002/02 the movement of population policy only insofar as the Closing Order alleges that it was implemented through movement of the Cham minority.”).

Cham people were relocated to the North and Northwest Zones.<sup>10660</sup> The Chamber is therefore seized of these specific movements with regard to the treatment of the Cham in relation to MOP Phase Two.

3178. Factual findings in the Closing Order regarding the treatment of the Cham outline the policy toward the Cham in Kampong Cham province prior to the DK period<sup>10661</sup> and provide facts about the treatment of the Cham throughout the DK period and throughout Cambodia.<sup>10662</sup>

3179. Concerning the KHIEU Samphan Defence's challenges to the Chamber's jurisdiction with respect to the charges of torture, genocide and extermination beyond Kang Meas and Kroch Chhmar districts, and to persecution on religious grounds with regard to the facts committed at the 1<sup>st</sup> January Dam Worksite, pointing to a lack of particularisation of these crimes in the Co-Prosecutors' Introductory and Supplementary Submissions, the Chamber recalls that it has already rejected this line of argument as belated.<sup>10663</sup>

3180. The Severance Decision excludes from the scope of Case 002/02 charges related to facts at the Kroch Chhmar Security Centre<sup>10664</sup> and the legal findings of the Closing Order combined with the Severance Decision further limit the treatment of the Cham as follows:

- (i) genocide by systematic killings of members of the group without temporal or geographical limitations;<sup>10665</sup>

<sup>10660</sup> Closing Order, paras 264-266.

<sup>10661</sup> Closing Order, paras 748-752 (these facts, which are relevant for context purposes, include restrictions on religious practices and Cham culture, expulsion, arrest, detention, torture and killing of religious leaders and Cham who resisted the restrictions).

<sup>10662</sup> Closing Order, paras 753-770, 776-789 (these facts, which are directly relevant to the charges, include restrictions on religious practices and Cham culture, arrest, beating, expulsion and killing of religious leaders and Cham who resisted the restrictions throughout Cambodia from 1975, which increased after the East Zone Cham rebellions, as well as waves of killings in the Central and East Zones in 1977 and 1978, specifically arrests in Kang Meas district and killings at the Wat Au Trakuon Security Centre in 1977, as well as arrests in Kroch Chhmar district and killings at the Trea Village Security Centre from mid-1978).

<sup>10663</sup> Section 2: Preliminary Issues, para. 165.

<sup>10664</sup> Case 002 Additional Severance Decision Annex, para. 3(xi).

<sup>10665</sup> Closing Order, para. 1336. *See also*, Case 002 Additional Severance Decision Annex, para. 5(i)(a).

- (ii) murder as a crime against humanity at Wat Au Trakuon Security Centre and through widespread killings from 1977;<sup>10666</sup>
- (iii) extermination as a crime against humanity during MOP Phase Two and, from 1977, “notably in the security centres of Trea Village and Wat Au Trakuon”;<sup>10667</sup>
- (iv) imprisonment in security centres as a crime against humanity throughout the DK period;<sup>10668</sup>
- (v) torture as a crime against humanity without temporal or geographical limitations;<sup>10669</sup>
- (vi) persecution on political grounds (limited to MOP Phase Two)<sup>10670</sup> and religious grounds (during MOP Phase Two, at 1<sup>st</sup> January Dam Worksite<sup>10671</sup> and with regard to the treatment of the Cham nationwide)<sup>10672</sup> as a crime against humanity;
- (vii) other inhumane acts through attacks against human dignity as a crime against humanity (limited to MOP Phase Two);<sup>10673</sup>
- (viii) other inhumane acts through conduct characterised as forced transfer as a crime against humanity (limited to MOP Phase Two);<sup>10674</sup> and

<sup>10666</sup> Closing Order, para. 1378. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(1).

<sup>10667</sup> Closing Order, paras 1381, 1386. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(2).

<sup>10668</sup> Closing Order, paras 1402, 1404. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(5).

<sup>10669</sup> Closing Order, para. 1408. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(6).

<sup>10670</sup> Closing Order, paras 1416, 1418. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(7).

<sup>10671</sup> Section 11.2.22:1<sup>st</sup> January Dam Worksite: Treatment of Cham.

<sup>10672</sup> Closing Order, para. 1420. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(8).

<sup>10673</sup> Closing Order, paras 1434, 1436. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(11).

<sup>10674</sup> Closing Order, paras 1448, 1468. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(13).

- (ix) other inhumane acts through conduct characterised as enforced disappearances as a crime against humanity (limited to MOP Phase Two).<sup>10675</sup>

3181. The Closing Order charges the Accused with torture with regard to the treatment of Cham without naming particular crime sites and the Chamber therefore sees no reason to limit this charge to the Kroch Chhmar District Security Centre as submitted by the Co-Prosecutors.<sup>10676</sup> The Chamber agrees however, that the Closing Order refers to torture suffered by Cham while they were detained and interrogated. The Chamber finds that the Accused were expressly charged with the crime against humanity of torture in relation to the treatment of the Cham at the Trea Village Security Centre from mid-1978, which falls within the scope of Case 002/02.<sup>10677</sup> As noted by the KHIEU Samphan Defence, the Closing Order makes no explicit allegation that Cham were tortured at Wat Au Trakuon and the Chamber therefore finds that torture as a crime against humanity is not charged with respect to that Security Centre.<sup>10678</sup> The Chamber further notes that the Closing Order specifically states that the Cham were “not detained at all”, but rather killed immediately at the Wat Au Trakuon Security Centre,<sup>10679</sup> and therefore finds that imprisonment as a crime against humanity is not charged with respect to that Security Centre either. The Chamber further recalls that facts relevant to Kroch Chhmar Security Centre have been excluded from the scope of Case 002/02 and that the Closing Order contains no specific charges concerning the torture of Cham detainees at S-21 or at Kraing Ta Chan Security Centres, nor in any other place of detention within the scope of the present trial. In light of the above, the Chamber finds that charges of torture and imprisonment as regard to the treatment of the Cham are limited to facts at the Trea Village Security Centre from mid-1978.

3182. Regarding MOP Phase Two limited to the treatment of the Cham, the Chamber notes that the Case 002 Additional Severance Decision Annex limits the scope of the relevant factual findings to paragraphs 266, 268, 281 of the Closing Order.<sup>10680</sup> These

<sup>10675</sup> Closing Order, para. 1470. *See also*, Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(14).

<sup>10676</sup> Closing Order, para. 1408; Co-Prosecutors’ Closing Brief, para. 1006. *See above*, para. 3171.

<sup>10677</sup> Closing Order, paras 785-787, 1409.

<sup>10678</sup> KHIEU Samphan Closing Brief, paras 1558-1559.

<sup>10679</sup> Closing Order, paras 783,1337.

<sup>10680</sup> Case 002 Additional Severance Decision Annex, para. 3(i).

paragraphs state that the Cham were relocated,<sup>10681</sup> organised into groups, some were separated and dispersed, some had to live in open spaces, some leaders and religious leaders were arrested and killed before the movement,<sup>10682</sup> and that the movement was designed to break them up.<sup>10683</sup> However, these paragraphs do not address living conditions during the movement of population nor killings and disappearances,<sup>10684</sup> which renders the Severance Decision self-contradictory with regard to extermination and other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances. Indeed, while these crimes are specifically charged with regard to MOP Phase Two,<sup>10685</sup> their underlying factual conduct appears to be excluded from the scope of the case.

3183. The Chamber recalls that it is seised of facts which are detailed in the Closing Order, both in the section on factual findings and in the section of legal findings. The Chamber notes that the Severance Decision specifically includes paragraphs of the Closing Order addressing the legal findings of extermination,<sup>10686</sup> other inhumane acts through attacks against human dignity,<sup>10687</sup> and other inhumane acts through conduct characterised as enforced disappearances<sup>10688</sup> in relation to MOP Phase Two limited to the treatment of the Cham. The Chamber further notes that the legal findings dealing with these three crimes include details of facts described with sufficient specificity<sup>10689</sup> to satisfy the Chamber that both Defence teams were properly put on notice of the nature and the content of these three charges. The Chamber will therefore take into account such facts in analysing the evidence in relation to extermination, attacks against human dignity and conduct characterised as enforced disappearances during MOP Phase Two.

3184. The Chamber reads the Closing Order and the Severance Decision holistically, and notes that the factual findings state that widespread killings started in 1977. In light

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<sup>10681</sup> Closing Order, para. 266.

<sup>10682</sup> Closing Order, para. 268.

<sup>10683</sup> Closing Order, para. 281.

<sup>10684</sup> For such factual allegations, *see* Closing Order, paras 269-274.

<sup>10685</sup> Case 002 Additional Severance Decision Annex, paras 5(ii)(b)(2), 5(ii)(b)(11), 5(ii)(b)(14).

<sup>10686</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(2) *referring to* Closing Order, paras 1381-1390.

<sup>10687</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(11) *referring to* Closing Order, paras 1434-1441.

<sup>10688</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(14) *referring to* Closing Order, paras 1470-1478.

<sup>10689</sup> Closing Order, paras 1382-1383, 1387, 1435-1436, 1471-1474.

of the above, the Chamber finds that the scope of the charges regarding the treatment of the Cham encompasses facts related to the following:

- (i) genocide by killing members of the group from 1977, nationwide as regards the policy and limited to the Trea Village and Wat Au Trakuon Security Centres as regards the implementation of the policy;
- (ii) murder as a crime against humanity at Wat Au Trakuon and Trea Village Security Centres and through widespread killings from 1977;
- (iii) extermination as a crime against humanity, nationwide as regards the policy and limited to MOP Phase Two and the Trea Village and Wat Au Trakuon Security Centres and through widespread killings from 1977 as regards the implementation of the policy;
- (iv) imprisonment as a crime against humanity at the Trea Village Security Centre from mid-1978;
- (v) torture as a crime against humanity at the Trea Village Security Centre from mid-1978;
- (vi) persecution on political grounds during MOP Phase Two and on religious grounds as a crime against humanity during MOP Phase Two and nationwide throughout the DK period;
- (vii) other inhumane acts through attacks against human dignity as a crime against humanity during MOP Phase Two;
- (viii) other inhumane acts through conduct characterised as forced transfer as a crime against humanity during MOP Phase Two; and
- (ix) other inhumane acts through conduct characterised as enforced disappearances as a crime against humanity during MOP Phase Two.



13.2.2. *General Considerations of the Evidence*13.2.2.1. *Credibility of SOH Kamrei (SOS Kamri)*

3185. The Chamber notes the Defence submissions in relation to SOH Kamrei's lack of credibility; for his initial reluctance to testify and specifically for not testifying under oath (using the Koran).<sup>10690</sup> The Chamber notes that the Parties had the opportunity to cross-examine the witness on these matters and that SOH Kamrei, who is one member of Cambodia's Highest Council for Islamic Religious Affairs,<sup>10691</sup> explained that his initial reluctance to testify was for health reasons. He added that, based on his religion, he had the option to take the oath and he chose not to, as he was concerned he would not always recall everything he testified about in detail.<sup>10692</sup> The Chamber recalls that while SOH Kamrei did not take a religious oath, he did confirm he was telling the truth to the best of his recollection, which, in accordance with Rule 24.1 of the Internal Rules, is sufficient to satisfy the legal requirements for testifying before the Court.<sup>10693</sup> Furthermore, he was warned that false testimony is punishable under Cambodian Law.<sup>10694</sup> The Chamber draws no negative inference from his initial reluctance to testify or from his not taking the oath using the Koran.

3186. The Chamber also notes the Defence submissions in relation to SOH Kamrei's lack of credibility in light of the inconsistencies and contradictions between his interview record and his in-court testimony.<sup>10695</sup> The Chamber notes that eight years elapsed between SOH Kamrei's statement to the Co-Investigating Judges and his appearance in court.<sup>10696</sup> The Chamber recalls that it approaches testimonies given during various phases of the judicial process in a holistic manner.<sup>10697</sup> The Chamber finds that there are no major contradictions between SOH Kamrei's various accounts and considers that the minor inconsistencies and memory lapses noted by the Defence can be explained by the passage of time and related lapses of memory over time. It

<sup>10690</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 73; NUON Chea Closing Brief, paras 720-721; KHIEU Samphan Closing Brief, para. 1851.

<sup>10691</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 57-58.

<sup>10692</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 13-14, 57-62.

<sup>10693</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 4, 15-16.

<sup>10694</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 16.

<sup>10695</sup> KHIEU Samphan Closing Brief, paras 1859-1863; NUON Chea Closing Brief, para. 738.

<sup>10696</sup> SOH Kamrei Interview Record, 10 September 2008, E3/5216; T. 6 April 2016 (SOH Kamrei), E1/415.1.

<sup>10697</sup> Section 12.2: S-21 Security Centre, paras 2086-2087.

considers his evidence as generally credible and rejects the Defence submissions in this regard.

3187. Turning to the content of SOH Kamrei's account, the Chamber notes that he stated having read part of a booklet in Ou Nong commune in late 1978<sup>10698</sup> outlining a plan to "totally smash" the Cham people.<sup>10699</sup> SOH Kamrei testified that he "only read the section about the enemy situation concerning the Cham people", not the entire booklet.<sup>10700</sup> He said the book was brought to him, along with other books, by a messenger as he and his colleagues waited in the office of the chief of Ou Nong commune.<sup>10701</sup> The messenger got the books from his superior's office and gave them to the witness to have something to read to pass the time as they waited for the commune chief.<sup>10702</sup> He stated that he read "Cham is the biggest enemy who must be totally smashed before 1980" and did not dare to read any further as he was scared.<sup>10703</sup> Both Defence teams made submissions pointing out the lack of additional documentary evidence corroborating its existence.<sup>10704</sup>

3188. While the Chamber does not doubt the accuracy of SOH Kamrei's statement as regards the existence of the booklet, it notes that SOH Kamrei's statement lacks sufficient specificity. In particular, SOH Kamrei was unable to provide details on the nature of the document, its author or the context in which the plan to "totally smash" the Cham people was written.<sup>10705</sup> The fact that SOH Kamrei remembered the title of the book, upon having his memory refreshed, as being "The Plan for Progressive

<sup>10698</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 33-34, 39-40, 69-71, 74-75, 97-98.

<sup>10699</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 28, 30, 34, 39-40 (*cf.* p. 70); SOH Kamrei Interview Record, 10 September 2008, E3/5216, p. 4, ERN (En) 00225497.

<sup>10700</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 70-73.

<sup>10701</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 33-34, 69-71, 98-101; SOH Kamrei Interview Record, E3/5216, ERN (En) 00225497.

<sup>10702</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 70-71, 98-99.

<sup>10703</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 70; SOH Kamrei Interview Record, E3/5216, 10 September 2008, p. 4, ERN (En) 00225497.

<sup>10704</sup> KHIEU Samphan Closing Brief, para. 1863; NUON Chea Closing Brief, para. 738.

<sup>10705</sup> See also, Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, 1996, p. 280, ERN (En) 01150147 (reporting that YA Mat, a Cham from Kravar subdistrict (Central Zone), explained the scale of the killings of Cham people in his area by the fact that a 1978 "Document 163" from the Party Centre existed "about the Constitution of 1975-76" which stated that the "Cham race is not to be spared". Ben KIERNAN further notes that YA Mat's account was corroborated by OS El, another Cham displaced to Kravar subdistrict, who claimed to have seen a "Document 163" in June 1978. However, KIERNAN has not been able to obtain a copy of this document or confirm its authenticity. While this seems to indicate that the Party Centre distributed documents to the local level in order to purge the Cham, it is impossible to establish the existence or authenticity of such a document and the Chamber will not rely on this document to assess the alleged CPK policy against the Cham).

Cooperatives”,<sup>10706</sup> does not in itself provide sufficient specificity. The Chamber will therefore not rely on SOH Kamrei’s statement in assessing the alleged policy towards the Cham.

### 13.2.2.2. Credibility of PRAK Yut

3189. The NUON Chea Defence submits that PRAK Yut’s sixth WRI should be disregarded, notably because her *viva voce* testimony in Case 002/01 made no mention of the Cham and that her five previous Case 004 interview records “differed dramatically” from her sixth WRI.<sup>10707</sup> The NUON Chea Defence claims that in her sixth WRI, PRAK Yut “suddenly” said that she received clear orders to kill the Cham and that they originated from the upper echelon, higher than Sector 41 Secretary AO An.<sup>10708</sup> The Defence further alleges and that her in-court testimony in Case 002/02 was “consistent with her first five Case 004 interview records” and that she *de facto* recanted the evidence in her sixth WRI.<sup>10709</sup> The KHIEU Samphan Defence submits that PRAK Yut’s in-court testimony was unclear and self-contradictory.<sup>10710</sup> The Co-Prosecutors have not specifically discussed her credibility but have relied heavily on her testimony. The Civil Party Co-Lawyers have not addressed this point.

3190. PRAK Yut was first a Southwest Zone cadre in Kampot district, then in Sector 35, when KANG Chap *alias* Sae was himself the deputy secretary of the Southwest Zone, and Secretary of Sector 35 (Kampot).<sup>10711</sup> While PRAK Yut did not provide clear details on her precise position when she was in the Southwest Zone, she testified in court that she was the head of a clothes-making unit in Sector 35.<sup>10712</sup> She was sent to the Central Zone when the purges were initiated and she was appointed Secretary of Kampong Siem district (Sector 41) in around February 1977. Her predecessors at the head of Kampong Siem district were among the first cadres of the Central Zone to be

<sup>10706</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 70.

<sup>10707</sup> NUON Chea Closing Brief, paras 722-729.

<sup>10708</sup> NUON Chea Closing Brief, paras 724-725.

<sup>10709</sup> NUON Chea Closing Brief, para. 727.

<sup>10710</sup> KHIEU Samphan Closing Brief, para. 1676.

<sup>10711</sup> Section 10.1: Tram Kak Cooperatives, para. 906.

<sup>10712</sup> T. 19 January 2016 (PRAK Yut), E1/378.1 p. 87. PRAK Yut stated earlier that she “was in charge of Kampot district and was the chairwoman of the women’s affairs of the sector”. See PRAK Yut Interview Record, E3/163, 21 July 2009, p. 3, ERN (En) 00364079.

purged. They entered S-21 in February 1977.<sup>10713</sup>

3191. PRAK Yut was heard by the Co-Investigating Judges six times.<sup>10714</sup> She had also previously provided a DC-Cam statement and testified in Case 002/01.<sup>10715</sup> The Chamber considers the Defence's submissions that PRAK Yut's sixth WRI is "suspicious" or "odd" to be without substance and therefore disregards them.<sup>10716</sup> The Chamber further notes that the witness has repeatedly stated in court that the orders to kill the Cham came from the upper echelon,<sup>10717</sup> thus confirming the content of her sixth WRI. The fact that her earlier statements, as reported in her previous interview records, do not contain "the whole truth" is addressed at the very beginning of her questioning by the Co-Prosecutor.<sup>10718</sup> Furthermore, insofar as PRAK Yut's sixth WRI differs from her previous statements, the Chamber notes that this is explicitly accounted for when she states she would like to "clarify" what orders she received and where they came from.<sup>10719</sup> This is not the first time this witness later gave supplemental information, as even in her fifth WRI, she explains that she withheld information in her previous interviews because she was worried about her safety.<sup>10720</sup> PRAK Yut appeared to have a general tendency to attenuate incriminating evidence with regard to CPK Policies. PRAK Yut also minimised her own conduct and in particular the role she played in relation to the orders she received about targeting the Cham. However, despite the aforementioned, the Chamber considers her testimony to have been otherwise detailed, consistent and generally credible, and notes that it is corroborated by the evidence of

<sup>10713</sup> S-21 list of prisoners 'Smashed' on 8 July 1977, North Zone, E3/3861, ERN (En) 00657716 (entry no. 36, NOU Yan *alias* Sao, Secretary of Kampong Siem District, entry on 26 February 1977; entry no. 37, EL Tim *alias* Suy, Secretary of Kampong Siem District, entry on 26 February 1977). *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1463 (Witness PECH Chim, Tram Kak District Secretary in the Southwest Zone, testified that he was transferred to the Central (old North) Zone in February 1977 along with KANG Chap *alias* CHAN Sam *alias* Sae, PRAK Yut, AO An *alias* Ta An, Phen and Sim. They were all sent to Phnom Penh by the Party to meet KE Pauk who subsequently took them to Kampong Cham in the Central (old North) Zone).

<sup>10714</sup> PRAK Yut Interview Record, E3/163, 21 July 2009, ERN (En) 00364077; PRAK Yut Interview Record, E3/168, 29 July 2009, ERN (En) 00364074; PRAK Yut Interview Record, E3/164, 18 November 2009, ERN (En) 00407795; PRAK Yut Interview Record, E3/162, 19 November 2009, ERN (En) 00407802; PRAK Yut Interview Record, E3/9499, 30 September 2014, ERN (En) 01063603; PRAK Yut Interview Record, E3/9677, 21 August 2015, ERN (En) 01151266 ("PRAK Yut's sixth WRI").

<sup>10715</sup> PRAK Yut DC-Cam Interview, E3/9310, 13 August 2013, ERN (En) 01064224; T. 25 Jan 2012 (PRAK Yut), E1/33.1; T. 26 Jan 2012 (PRAK Yut), E1/34.1; T. 30 Jan 2012 (PRAK Yut), E1/35.1.

<sup>10716</sup> NUON Chea Closing Brief, paras 725-729.

<sup>10717</sup> *See e.g.*, T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 80-83; T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 9, 11, 13-15.

<sup>10718</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 79-80.

<sup>10719</sup> PRAK Yut Interview Record, E3/9677, 21 August 2015, pp. 5-6, ERN (En) 01151270-01151271 (A8-A9). *See also*, T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 9-14.

<sup>10720</sup> PRAK Yut Interview Record, E3/9522, 28 May 2013, ERN (En) 01056219.

other witnesses such as YOU Vann.<sup>10721</sup>

### 13.2.2.3. Expert evidence

3192. Both the NUON Chea Defence and the KHIEU Samphan Defence submit in their respective Closing Briefs that experts YSA Osman and Alexander Laban HINTON, who testified on the treatment of targeted groups, lack credibility.<sup>10722</sup> They state that YSA Osman’s testimony is biased as he is himself a Cham and his research was “driven by a desire to confirm his preconceived belief that the Cham were victims of persecution and genocide”.<sup>10723</sup> They also submit that he has no formal training and that his evidence relies exclusively on testimonies that cannot be verified.<sup>10724</sup> The Co-Prosecutors did not expressly respond but rely heavily on YSA Osman’s evidence throughout their Closing Brief. The Civil Party Lead Co-Lawyers make no relevant submissions on the issue. The Chamber recalls that, despite YSA Osman’s lack of an academic qualification, the Chamber decided to call him as an expert based on the “special knowledge” he gained through his practical experience and publications.<sup>10725</sup> The Chamber further noted the Defence’s allegations of bias and concerns with his “status as a victim and factual witness of the Khmer Rouge”, recalling that they are matters related to the evaluation of YSA Osman’s evidence. It found that the Parties would be in a position to test his impartiality and independence in court and decided to hear him as an expert, as well as on any relevant factual evidence it considered that he may be able to testify to.<sup>10726</sup>

3193. The Defence teams also submit that Alexander Laban HINTON’s evidence is biased, unreliable and unverifiable.<sup>10727</sup> They note, *inter alia*, that Alexander Laban HINTON’s sources are largely based on second-hand evidence since, in addition to personally interviewing people, he heavily relied on documentary evidence including other scholars’ publications, notably the work of Ben KIERNAN.<sup>10728</sup>

<sup>10721</sup> See also, MUOK Sengly Interview Record, E3/9744, 4 September 2015, ERN (En) 01152375-01152376. See below, para. 3219.

<sup>10722</sup> NUON Chea Closing Brief, paras 712-719; KHIEU Samphan Closing Brief, paras 579-586, 1587-1605, 2226-2233.

<sup>10723</sup> NUON Chea Closing Brief, para. 712; KHIEU Samphan Closing Brief, para. 1589.

<sup>10724</sup> NUON Chea Closing Brief, paras 712-714; KHIEU Samphan Closing Brief, paras 1595-1600.

<sup>10725</sup> Decision of Designation of 2-TCE-95, E367, 18 September 2015, pp. 5-6, para. 10.

<sup>10726</sup> Decision of Designation of 2-TCE-95, E367, 18 September 2015, pp. 3, 6, paras 7, 11-12.

<sup>10727</sup> NUON Chea Closing Brief, paras 715-719; KHIEU Samphan Closing Brief, paras 586, 2228-2231.

<sup>10728</sup> NUON Chea Closing Brief, paras 716-717; KHIEU Samphan Closing Brief, paras 2225, 2230-2231.

3194. The Chamber recalls that an expert is an individual who has specialised knowledge, experience or skills and who could assist it in its understanding of specific issues in dispute requiring special knowledge in a particular field. Experts provide clarification, context or additional assistance for the purpose of a Chamber’s assessment of the evidence. They are not expected “to testify on disputed facts or about the acts, conduct, or criminal responsibility of an accused as would a fact witness”.<sup>10729</sup> The Chamber acknowledges that limited information is available concerning the expert’s sources and it concurs with the Supreme Court Chamber that “[w]here the sources are not fully accessible and verifiable, a diminished weight must be attributed to expert evidence derived from them, given the restricted possibility for the Parties and the court to test the experts’ conclusions”.<sup>10730</sup> The Chamber is not bound by the evidence or conclusions given by an expert.

3195. Regarding the expertise provided by Alexander Laban HINTON, the Chamber finds that his sources are not fully accessible and verifiable, which diminishes the weight of his conclusions. The Chamber will therefore use Alexander Laban HINTON’s evidence with due caution.<sup>10731</sup>

3196. Regarding the expertise provided by YSA Osman, the Chamber notes that his sources of information are identified. Some of the persons he interviewed for his books were also questioned by the Co-Investigating Judges and a number were heard in court, where they generally repeated their previous statements in a consistent manner. The Chamber finds that the occurrence of minor variations or lack of recollection in court can be explained by the passage of time. The Chamber therefore finds YSA Osman’s evidence to be generally reliable concerning the evidence he gathered. The Chamber will therefore approach his evidence, as contained in his conclusions, with due caution.

#### 13.2.2.4. Demographic evidence

3197. The Chamber recalls its decision not to call Ewa Maria TABEAU to testify in Case 002/02 as “hearing her would not assist the Chamber in establishing legally

<sup>10729</sup> Case 002/01 Appeal Judgement, para. 328. *See also*, Decision on Designation of 2-TCE-88, E388, 4 March 2016, pp. 4-5, paras 10-11.

<sup>10730</sup> Case 002/01 Appeal Judgement, para. 329.

<sup>10731</sup> Case 002/01 Appeal Judgement, para. 329. *See also*, Decision on Designation of 2-TCE-88, E388, 4 March 2016, pp. 6-7, para. 17.

relevant facts in this case”.<sup>10732</sup> However, the demographic expert report she co-authored is available on the Case File<sup>10733</sup> and is relied upon in the Closing Order primarily to prove large-scale deaths of Vietnamese and Cham.<sup>10734</sup> The Chamber recalls that when it contacted Ewa Maria TABEAU through WESU regarding this report, she responded that she required several months in order to update it.<sup>10735</sup> The Chamber further recalls its finding that the absence of relevant and reliable statistical data for the purposes of assessing a precise number of deaths attributable to the CPK leads to inherent uncertainty surrounding the use of demographic evidence.<sup>10736</sup> The Chamber has also found that determining a precise number of deaths during the DK period is not necessary for determining the alleged criminal liability of the Accused in this case.<sup>10737</sup> Noting these findings, as well as the response by Ewa Maria TABEAU (where she implied that her demographic report is outdated),<sup>10738</sup> the Chamber decides to not rely on it as evidence in Case 002/02.

### 13.2.3. *Administrative Structures*

3198. For the purposes of Case 002/02, three districts within Kampong Cham province are of particular importance with regard to the treatment of the Cham: Kroch Chhmar district (Sector 21, East Zone), Kampong Siem district (Sector 41, Central (old North) Zone) and Kang Meas district (Sector 41, Central (old North) Zone).<sup>10739</sup>

<sup>10732</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, E459, 18 July 2017, para. 191.

<sup>10733</sup> Demographic Expert Report, E3/2413, 30 September 2009, ERN (En) 00385243.

<sup>10734</sup> Closing Order, paras 747, 792-793.

<sup>10735</sup> Request for Oral Submissions on Parties’ Requests to hear testimony of Ewa Tabeau, E371/2, 29 August 2016, p. 2, ERN (En) 01324584.

<sup>10736</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, E459, 18 July 2017, para. 191; Decision on NUON Chea’s Request to Summons Patrick Heuveline and to Admit Two Related Documents, E444/1, 6 December 2016, para. 22.

<sup>10737</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be Heard in Case 002/02, E459, 18 July 2017, para. 191; Decision on NUON Chea’s Request to Summons Patrick Heuveline and to Admit Two Related Documents, E444/1, 6 December 2016, para. 21.

<sup>10738</sup> Oral Submissions on Parties’ Requests to Hear Testimony of Ewa Tabeau, E371/2, 29 August 2016, p. 2, ERN (En) 01324584 (Dr. TABEAU stated that her report was eight years old).

<sup>10739</sup> Case 002 Additional Severance Decision Annex, p. 2, ERN (En) 00981688; Closing Order, paras 771-789; Co-Prosecutors’ Closing Brief, paras 26, 555; Map of Democratic Kampuchea, E3/475, 1976, ERN (En) 01577214. *See also*, Section 5: Administrative Structures, paras 376, 378; Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1455 (fn. 4984); KE Pauk Autobiography from 1949-1985, E3/2782, undated, ERN (En) 00089711-00089712; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-59 (testifying that after 17 April 1975, the old North Zone was transformed to be the Central Zone). However, in a telegram from April 1976, KE Pauk reports to POL Pot on the situation in the entire North Zone. *See* DK Telegram, Band 1100: Respectfully submitted to Brother Pol, E3/952, 2 April 1976, ERN (En) 00182658-00182660; Names of Prisoners Smashed on 22 July 1977 “Ministry of Public Works”,

13.2.3.1. Sector 21 (East Zone)

3199. During the period covered by the charges, Sector 21 was part of the East Zone,<sup>10740</sup> which was a battlefield.<sup>10741</sup> SAO Phim was the East Zone Secretary (as well as a member of the Standing Committee) from prior to 1970 until his death in June 1978.<sup>10742</sup> NUON Chea occasionally visited the East Zone to meet with him.<sup>10743</sup> Southwest Zone cadres took control of the East Zone between 1977 and 1978.<sup>10744</sup> SENG Hong *alias* Chan remained the Deputy Secretary of the East Zone until 1979.<sup>10745</sup> He also served as the Secretary of the “Twin-Sectors” 23 and 24 after Chhouk was arrested.<sup>10746</sup> In 1977, KE Pauk, the Secretary of the Central (old North) Zone, was placed in charge of the military in the East Zone along with SON Sen, who was in charge of the overall command of the soldiers.<sup>10747</sup> KE Pauk’s military position in the East Zone was added to his previous assignment. He was formally SAO Phim’s Deputy

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E3/2285, various dates, ERN (En) 00873216, 00873255, 00873433; Section 13.3.4: Treatment of the Vietnamese: Administrative Structure. In addition, lists of prisoners sent to S-21 arriving from Sectors 41, 42, 43 and Division 117 until May 1977 are noted as arriving from the North Zone, whereas those arriving from those sectors after May 1977 are noted as arriving from the Central Zone.

<sup>10740</sup> Map of Democratic Kampuchea, E3/475, 1976, ERN (En) 01577214. *See also*, Book by B. Kiernan: *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, E3/3304, ERN (En) 00430229.

<sup>10741</sup> Section 5.1.7: Zones, Sectors, Districts and Sub-District Entities.

<sup>10742</sup> T. 7 November 2016 (LONG Sat), E1/496.1, p. 69; S-21 Notebook, E3/833, 17 December 1977, p. 35, ERN (En) 00184613; T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 77-79; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. xii, ERN (En) 01149989; Book by B. Kiernan: *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, E3/3304, p. 15, ERN (En) 00430242. *See also*, Case 002/01 Trial Judgement, para. 219, fn. 693. *See also*, Section 5: Administrative Structures, paras 378-379; Section 12.1: Internal Factions, paras 1994, 2053.

<sup>10743</sup> T. 18 April 2012 (SAUT Toeung), E1/63.1, pp. 68, 73-75, 73; T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 50, 53, 70-71; T. 5 December 2016 (SIN Oeng), E1/506.1, pp. 12-13, 19, 65-66.

<sup>10744</sup> T. 17 September 2015 (IT Sen), E1/342.1, p. 77; T. 29 September 2015 (NO Sates), E1/351.1, pp. 18-19; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 5-7. *See also*, Section 12.1.6.3.4: Purge of the East Zone. *See below*, paras 3202, 3272, 3274, 3277, 3283-3287.

<sup>10745</sup> T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 26-28, 36-37, 55, 78, 95. *See also*, OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 14, ERN (En) 00542185; Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. xxii, ERN (En) 01149990; Book by B. Kiernan: *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, E3/3304, p. 15, ERN (En) 00430242. For more details on the structure of the East Zone, *see* Section 5: Administrative Structures, para. 378.

<sup>10746</sup> T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 26-28, 36-37, 43-44, 55, 78, 95. MEAS Soeun also testified that MEAS Senghong *alias* Chan replaced the Sector 21 Secretary Phuong prior to passing this responsibility to TAUCH Chaem *alias* Soth. *See* T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 36-37. *See also*, OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 14, ERN (En) 00542185; MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425894 (Answer 67); Book by B. Kiernan: *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79*, E3/1593, p. xxii, ERN (En) 01149990; Book by B. Kiernan: *Genocide and Democracy in Cambodia: The Khmer Rouge, the United Nations and the International Community*, E3/3304, p. 15, ERN (En) 00430242 (Table 2).

<sup>10747</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 6-7, 67-72, 80-81.



in this post,<sup>10748</sup> but his involvement in the East Zone occurred concomitantly and increased with the progress of the purges of local cadres. Forces from the Central (old North) Zone were deployed along National Road 7 (at the time Kampong Cham province, including the districts on the east bank of the Mekong River above Kampong Cham, in particular Kroch Chhmar district),<sup>10749</sup> and this also coincided with the appointment of cadres from the Central (old North) Zone to replace local cadres who had been purged.<sup>10750</sup>

3200. At the sector level, Phuong was the first secretary of Sector 21 and he was later replaced by TAUCH Chaem *alias* Sot, who was also in charge of the army and security, until his death in 1978.<sup>10751</sup> Rin, who according to one witness was related to the Southwest Zone Secretary *Ta* Mok, took over as secretary of Sector 21 at the same time as SON Sen became secretary of the East Zone.<sup>10752</sup> At the district level, Pha was the secretary of Kroch Chhmar district until he was arrested on 25 May 1978.<sup>10753</sup> BAN Seak (BAN Siek) *alias* HANG Phos became the Kroch Chhmar District Secretary in 1978 and he reported to the Sector 21 Secretary Rin, who in turn reported to SON Sen.<sup>10754</sup> BAN Seak is related to KE Pauk's wife, SOU Soeurn.<sup>10755</sup> She was a member

<sup>10748</sup> T. 2 November 2016 (LONG Sat), E1/494.1, p. 69; OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977, a battlefield was established along Route 7, under the chairmanship of SAO Phim and KE Pauk as deputy). *See also*, Section 5: Administrative Structures, para. 451.

<sup>10749</sup> T. 1 November 2016 (LONG Sat), E1/493.1, p. 95 (stating that KE Pauk's forces from the Centre were sent in December 1977); T. 2 November 2016 (LONG Sat), E1/494.1, p. 20 (stating that KE Pauk from the Central (old North) Zone was sent to the East Zone on 25 May 1978); POL Nhan Interview Record, E3/5554, 31 August 2009, pp. 5, 7, ERN (En) 00377401, 00377403; HENG Samrin Interview by Ben KIERNAN, E3/5593, 7 December 1992, ERN (En) 00651895 ("On H7, there was So Phim first and then they sent Pauk there"); OUK Bunchhoeun DC-Cam Interview, E3/387, 4 August 1990, pp. 17-18, ERN (En) 00350216-00350217 (stating that in October 1977, a battlefield was established along Route 7, under the chairmanship of SAO Phim and KE Pauk as deputy). *See also*, Section 5: Administrative Structures, para. 451.

<sup>10750</sup> T. 9 March 2016 (VAN Mat *alias* SALES Ahmat), E1/398.1, p. 29 ("After the purge, they would appoint different people to be in charge of the East Zone. They were all from the Central Zone."). BAN Seak, who is related to KE Pauk's wife SOU Soeurn, was also appointed in 1978. *See below*, para. 3200.

<sup>10751</sup> T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 36-41; T. 30 June 2016 (MEAS Soeun), pp. 3-19; Book by B. Kiernan: *Genocide and Democracy in Cambodia*, E3/3304, ERN (En) 00430242.

<sup>10752</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 62-63. The Chamber notes that it is likely that Rin, Secretary of Sector 21, was "Ren", the son-in-law of *Ta* Mok and SON Sen's deputy at the General Staff as well as the Commander of a Division in the East Zone. *See* Section 12.1: Internal Factions, paras 2018 (fn. 6785), 2030, 2055.

<sup>10753</sup> T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 64-65; MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425890 (Answer 48).

<sup>10754</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 62-63; BAN Siek Interview Record, E3/9517, 24 March 2014, ERN (En) 00984881 (Answer 58).

<sup>10755</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 9-10; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 40-41, 55.

of the Preaek Prasab District Committee, and then moved to the Chamkar Leu district in 1975 to become the only female member of that District Committee.<sup>10756</sup>

### 13.2.3.2. Sector 41 (Central (old North) Zone)

3201. After April 1975, KE Pauk replaced KOY Thuon *alias* Thuch *alias* Khuon as the Secretary of the Central (old North) Zone,<sup>10757</sup> which consisted of parts of Kampong Cham, Kampong Thom and western Kratie (Sectors 41, 42 and 43).<sup>10758</sup> Sector 41 encompassed Prey Chhor, Cheung Prey, Kang Meas and Kampong Siem districts.<sup>10759</sup> The members of the Zone Committee under KE Pauk were initially CHO Chhan *alias* Sreng (Sector 41 Secretary and Central (old North) Zone Deputy Secretary), CHAN Mon *alias* Tol (Sector 42 Secretary) and KOAM Chan *alias* Chorn (Sector 43 Secretary),<sup>10760</sup> all of whom were later purged in around May 1977.<sup>10761</sup>

3202. Indeed, the Chamber recalls its finding that in 1977, Southwest Zone cadres

<sup>10756</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 13-15.

<sup>10757</sup> For an extensive analysis of the Central (old North) Zone administrative structure, see Section 5: Administrative Structures, paras 376-377; Section 11.2.6: Administrative Structures – Central (old North) Zone and (new) North Zone.

<sup>10758</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-57 (following 17 April 1975, the old North Zone became the Central Zone); PRUM Sou Interview Record, E3/420, 24 November 2009, ERN (En) 00422380, 00422382 (in late 1977, NUON Chea announced the establishment of a new North Zone and appointed KANG Chap *alias* Sae as secretary and Ta Khim as Secretary of Sector 103); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613; T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 12, 61; T. 5 June 2015 (SOU Soeurn), E1/311.1, pp. 36-37; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089709 (KE Pauk states that KOY Thuon *alias* Thuch was the Central (old North) Zone secretary from 1967), ERN (En) 00089711 (after the capture of Phnom Penh, the Central Committee reassigned KOY Thuon to be the Minister of Commerce and KE Pauk was made secretary of the newly designated Central Zone, with Sreng as his deputy, Tol and Chan as members); T. 19 May 2015 (OR Ho), E1/301.1, p. 10; T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 56-59; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 33 (KE Pauk was the head of the worksite). See also, S-21 list of prisoners, E3/10090, 22 January [year illegible], p. 55, ERN (En) 01399061.

<sup>10759</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; T. 18 January 2016 (PRAK Yut), E1/377.1, p. 105; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 42-43, 46-47; SOU Soeun Interview Record, E3/5294, 5 July 2009, p. 3, ERN (En) 00360111. Sector 42 encompassed Tang Kok, Baray, Stung Trang, Chamkar Leu, and Prek Prasab districts, and Sector 43 encompassed Santuk, Kampong Svay and Stung districts. See Section 11.2.6: Administrative Structures – Central (old North) Zone and (new) North Zone.

<sup>10760</sup> T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 5-7; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 3, ERN (En) 00403003; KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089711; KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 5-6, ERN (En) 00346149-00346150 (the Central (old North) Zone Committee, composed of KE Pauk (Zone Secretary), Sreng (Sector 41), Tol (Sector 42) and Chan (Sector 43), was responsible for the dam project); T. 3 June 2015 (UTH Seng), E1/309.1, pp. 222-23 (UTH Seng testified that the 1<sup>st</sup> January Dam was under the responsibility of the zone based on the fact that there were workers from Sectors 42 and 43 present and the content of announcements on the loudspeakers); T. 30 July 2015 (OM Chy), E1/326.1, p. 70. For an extensive analysis of the evolution of the Central Zone administrative structure following the purges, see Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

<sup>10761</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713; T. 19 May 2015 (OR Ho), E1/301.1, pp. 55-56 (OR Ho also testified that Sector 42 Chairman Tol (CHAN Mon *alias* Tol), Sector

were sent to the Central (old North) Zone by the Standing Committee to conduct purges. At that time, KE Pauk remained the Zone Secretary during the purges,<sup>10762</sup> a number of his relatives kept important positions within the administrative hierarchy of the Zone or were even promoted,<sup>10763</sup> and under the his direction the Southwest Zone cadres also took over leadership positions and arrested dozens of cadres who were sent to S-21.<sup>10764</sup> AO An *alias* Ta An replaced CHUN Chhum *alias* Taing as Sector 41 Secretary.<sup>10765</sup> Sim became Prey Chhor District Secretary and was in charge of internal security in Sector 41.<sup>10766</sup> AO An reported to KE Pauk, who in turn sent reports to *Angkar*, copying NUON Chea at the Party Centre level.<sup>10767</sup> Within Sector 41, PRAK Yut became the Secretary of Kampong Siem district in around February 1977.<sup>10768</sup> She reported to Sector 41 Secretary AO An and Zone Secretary KE Pauk.<sup>10769</sup> PRAK Yut testified that

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43 Chairman Chan (KOAM Chan *alias* Chorn (Sector 43 Secretary), Baray District Committee members Sim and Ka had all been put in the security office and killed); T. 16 June 2015 (YEAN Lon), E1/317.1, p. 49 (Khy, Lim, Khoeun and Mom replaced the arrested commune chiefs); T. 20 May 2015 (PECH Sokha), E1/302.1, pp. 79-80; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 6, ERN (En) 00403006 (PECH Sokha testified that his co-technicians Long and Hao disappeared. They were summoned by handwritten letter from *Angkar* which they showed to PECH Sokha and said goodbye. Because PECH Sokha never heard from LONG and Hao, he presumed that both had been arrested and killed); T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 80-82 (SUON Kanil, the chief telegraph operator for the Central (old North) Zone, testified that “re-education” meant to arrest and that cadres were summoned by telegram or letter).

<sup>10762</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089714.

<sup>10763</sup> KE Pauk’s wife, SOU Soeurn, was the Chamkar Leu District secretary. In addition, KE Pauk’s brother-in-law, Oeun, became the Sector 42 Secretary following the purge of the Zone. See T. 5 October 2015 (BAN Seak), E1/353.1, pp. 9-10, pp. 20, 34, 58-59; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 40-41, 55 (BAN Seak was appointed Deputy Secretary of Chamkar Leu District by Oeun, after Oeun had been appointed Sector 42 Secretary around February or March 1977. BAN Seak was became later the Kroch Chhmar District Secretary in 1978. He is related to KE Pauk’s wife).

<sup>10764</sup> Section 11.2.7: Purges of Cadres in the Central (old North) Zone.

<sup>10765</sup> KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089713-00089714; KE Pich Vannak Interview Record, E3/35, 4 June 2009, ERN (En) 00346151; T. 21 May 2015 (PECH Sokha), E1/303.1, pp. 5-8; PECH Sokha Interview Record, E3/403, 12 October 2009, p. 3, ERN (En) 00403003; S-21 list of prisoners from the North Zone, from 1 February 1977 to 27 March 1977, E3/2956, undated, p. 3, ERN (En) 00222967 (entry no. 56 CHUN Chhum *alias* Taing, Secretary, Sector [*sic*] 31, entry on 18 February 1977); S-21 Confession – CHUN Chhum *alias* Taing, E3/2464, 24 February 1977, 1-18 March 1977, ERN (En) 00786988-00787018; S-21 list of prisoners ‘Smashed’ on 8-7-77, North Zone, E3/3861, p. 7, ERN (En) 00657720 (entry no. 103, CHUM Chhun *alias* Taing, Secretary of Sector 41). See also, Prisoner Biography – CHUN Chhum *alias* Taing, E3/9303, undated, ERN (En) 01215103 (arrested on 18 February 1977).

<sup>10766</sup> AOM An DC-Cam Interview, E3/8987, 1 August 2011, pp. 3-4, ERN (En) 01118146-01118147. Sim was later implicated as an enemy. See S-21 list of “North Zone people who are implicated by the enemies’ confessions”, E3/8871, 15 May 1977, p. 1, ERN (En) 01400080.

<sup>10767</sup> T. 14 December 2012 (SUON Kanil), E1/154.1, pp. 96-101; DK Telegram, E3/519, 29 March 1978, ERN (En) 00377841.

<sup>10768</sup> PRAK Yut Interview Record, E3/9522, 28 May 2013, ERN (En) 01056214 (Answer 2). See above, para. 3190.

<sup>10769</sup> T. 25 January 2012 (PRAK Yut), E1/33.1, pp. 88, 90-93; T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 71-72, 107; PRAK Yut Interview Record, E3/9496, 19 June 2013, ERN (En) 01056224 (Answer 19); PRAK Yut Interview Record, E3/163, 21 July 2009, ERN (En) 00364081.

she attended meetings every one to three months at the Zone Office in Kampong Cham town where KE Pauk and committee members of the Central (old North) Zone sectors were present.<sup>10770</sup> In Kang Meas district, also within Sector 41, Kan replaced CHUON Ol *alias* Meas as the district secretary after the arrival of the Southwest Zone cadres.<sup>10771</sup> At around the same time, Kan's wife, Pheap, became the chief of Peam Chi Kang commune, Kang Meas district.<sup>10772</sup>

#### 13.2.4. *The Cham in Cambodia as a Distinct Group*

3203. The Closing Order identifies the Cham living in Cambodia as an ethnic and religious group who self-identified and were identified as such by others outside the group.<sup>10773</sup> All of the Parties agree on qualifying the Cham group as an ethnic and religious group within Cambodia.<sup>10774</sup>

3204. The Chamber finds that Cham living in Cambodia form a distinct religious and ethnic group within Cambodia who share a common language, culture, and practice a Hinduised form of Islam.<sup>10775</sup> Their cultural and religious traditions differ from those of the Khmer majority and, for those practising Islam, include praying five times a day, gathering at mosques to pray, celebrating Ramadan, reading the Koran, wearing religious attire such as a headscarf for women who would generally let their hair grow long, and refraining from eating meat that has not been prepared according to religious custom, or pork.<sup>10776</sup>

<sup>10770</sup> T. 25 January 2012 (PRAK Yut), E1/33.1, p. 93; T. 26 January 2012 (PRAK Yut), E1/34.1, pp. 70-72; 99-100; T. 30 January 2012 (PRAK Yut), E1/35.1, pp. 60-61; T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 19-20; PRAK Yut Interview Record, E3/163, 21 July 2009, ERN (En) 00364081; PRAK Yut Interview Record, E3/9496, 19 June 2013, ERN (En) 01056230 (Answers 56, 58).

<sup>10771</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 105-106; PRAK Yut Interview Record, E3/9522, ERN (En) 01056217 (Answer 23); T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 33-34; List of prisoners 'smashed' on 8-7-77, North Zone, E3/3861, 9 July 1977, entry 35, ERN (En) 00657716.

<sup>10772</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 33-39; T. 14 September 2015 (SEN Srun), E1/346.1, pp. 19, 56, 111.

<sup>10773</sup> Closing Order, paras 745, 1336.

<sup>10774</sup> Co-Prosecutors' Closing Brief, paras 1007-1012; KHIEU Samphan Closing Brief, para. 1837; NUON Chea Closing Brief, para. 695. The Chamber notes that the Civil Party Lead Co-Lawyers do not specifically address this issue but nonetheless refer to "the Cham", "Cham people" and "Cham victims" throughout their Closing Brief.

<sup>10775</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 71-72; T. 9 February 2016 (YSA Osman), E1/388.1, p. 38; T. 10 February 2016 (YSA Osman), E1/389.1, p. 47; T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 98-99; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 254, ERN (En) 01150134; Book by Hean S.: *Ethnic Groups in Cambodia*, E3/3555, ERN (En) 00489300, 00489309, 00489313. See also, Section 3: Historical Background, paras 251-253.

<sup>10776</sup> T. 8 Jan 2016 (SOS Romly), E1/372.1, pp. 3-6; T. 7 September 2015 (IT Sen), E1/342.1, pp. 68,

3205. In 1975, the Cham were Cambodia's largest indigenous minority and, although they were spread throughout the country, a majority of them lived in Kampong Cham province.<sup>10777</sup> The majority of the Cham lived together in predominantly Cham communities, often along the Mekong and Tonlé Sap rivers, and their primary economic activity was fishing.<sup>10778</sup> Muslims formed a near-majority in the Kroch Chhmar district, which was considered the heartland of Cambodia's Cham community.<sup>10779</sup> The Islamic community within Cambodia was led by the *Mufti* who appointed a *Hakim* in each village, responsible for maintaining religious observance, while the *Tuon* was responsible for Islamic teaching,<sup>10780</sup> and *Imams* led daily prayers.<sup>10781</sup>

### 13.2.5. Targeting of the Cham

3206. With respect to the targeting of Cham people living in Cambodia, the Closing Order alleges that this policy began as early as 1970 in some areas and escalated throughout the DK period until at least 6 January 1979. It clarifies that a pattern of forced displacements of Cham villagers began in approximately 1973 and escalated after 1975. It charges that throughout the DK regime, the CPK prohibited the Cham from practising their religion, imprisoned or killed Cham religious leaders and elders

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110-111; T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 74-75; T. 7 September 2015 (IT Sen), E1/342.1, pp. 57-59, 68; T. 9 February 2016 (YSA Osman), E1/388.1, pp. 38, 52-54; Book by Ysa O.: *Oukoubah*, E3/1822, ERN (En) 00078544-00078545; Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, ERN (En) 00219115.

<sup>10777</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 42-43; T. 10 February 2016 (YSA Osman), E1/389.1, p. 47; Book by B. Kiernan: *Orphans of Genocide: The Cham Muslims of Kampuchea Under Pol Pot*, E3/9681, ERN (En) 01199563; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 254, ERN (En) 01150134; Book by M. Vickery: E3/1757, *Cambodia 1975-1982*, ERN (En) 00396927; Book by Farina S.: *An Oral History of Cham Muslim Women in Cambodia under the Khmer Rouge Regime*, E3/4519, ERN (En) 00554489; Book by Hean S.: *Ethnic Groups in Cambodia*, E3/3555, ERN (En) 00489353. See also, Section 3: Historical Background, para. 253.

<sup>10778</sup> T. 14 September 2015 (SEN Srun), E1/346.1, p. 10; T. 29 June 2016 (MEAS Soeun), E1/446.1, pp. 84-85; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 49-50; MEAS Soeun Interview Record, E3/5531, 18 December 2009, ERN (En) 00425891 (Answer 53); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 262-263, ERN (En) 01150138; Book by B. Kiernan: *Orphans of Genocide*, E3/9681, ERN (En) 01199567-01199568; Book by Farina S.: *An Oral History of Cham Muslim Women in Cambodia under the Khmer Rouge Regime*, E3/4519, ERN (En) 00554492; Book by Hean S.: *Ethnic Groups in Cambodia*, E3/3555, ERN (En) 00489320, 00489353.

<sup>10779</sup> T. 9 February 2016 (YSA Osman), E1/388.1 pp. 43-44; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 255, ERN (En) 01150134. See also, T. 7 September 2015 (IT Sen), E1/342.1, pp. 59-60.

<sup>10780</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 44-46; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 23-25; Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, ERN (En) 00219074; Book by Hean S.: *Ethnic Groups in Cambodia*, E3/3555, ERN (En) 00489336, 00489448; T. 6 Apr 2016 (SOH Kamrei), E1/415.1, pp. 43-44.

<sup>10781</sup> Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, ERN (En) 00219074.

and Cham people who protested or continued to practice their religion, and prohibited the Cham culture, language and dress. It further alleges that from 1977 and throughout 1978, the CPK adopted a policy of destroying the Cham as a group, which manifested in mass executions.<sup>10782</sup> It charges the Accused with genocide by killing of the Cham, where a common technique was to arrest or gather all the Cham of a particular region and take them to be killed in groups at an execution site, and other non-Cham people were specifically and expressly excluded from the attacks.<sup>10783</sup>

3207. The Co-Prosecutors generally submit that, from the inception of the DK regime, the CPK policy with regard to the Cham was one to “eliminate” the group.<sup>10784</sup> The Civil Party Lead Co-Lawyers submit that Civil Party evidence demonstrates the existence of a policy emanating from the “upper echelon” identifying the Cham as enemies.<sup>10785</sup> The NUON Chea Defence conversely submits that the evidence shows that the Cham “lived and worked under the same conditions as ethnic Khmers” and that no official CPK documents evince the targeting of the group.<sup>10786</sup> The KHIEU Samphan Defence generally points to the absence of plans specifically targeting the Cham.<sup>10787</sup>

13.2.5.1. *Evidence of the CPK targeting the Cham in contemporaneous materials*

3208. As explained in Section 3: Historical Background, the Cham mostly enjoyed good relations with the CPK as Khmer Rouge forces began taking control of Kampong Cham in 1970.<sup>10788</sup> This changed in 1972 and 1973,<sup>10789</sup> as prominent religious leaders were arrested and detained in Kroch Chhmar district,<sup>10790</sup> with mosques shut down,

<sup>10782</sup> Closing Order, paras 211-212, 1336-1337.

<sup>10783</sup> Closing Order, paras 1336-1338.

<sup>10784</sup> Co-Prosecutors’ Closing Brief, para. 1005.

<sup>10785</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 725-728. With regard to the classification of “enemies”, see Section 16.3.2.1.3: Real or Perceived Enemies: Specific Categories of Enemies.

<sup>10786</sup> NUON Chea Closing Brief, paras 735-736.

<sup>10787</sup> KHIEU Samphan Closing Brief, paras 1682-1768, 1842-1877.

<sup>10788</sup> T. 29 February 2016 (MEU Peou), E1/393.1, p. 19; T. 9 September 2015 (SOS Min), E1/344.1, pp. 5-6; T. 9 September 2015 (SENG Kuy), E1/344.1, p. 73; T. 28 September 2015 (NO Sates), E1/350.1, p. 48; T. 17 September 2015 (HIM Man), E1/349.1, p. 34; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 3-4. See also, Section 3: Historical Background, paras 253, 255.

<sup>10789</sup> The Chamber recalls that, at the same period, FUNK promised to all Cambodians, among other things, the freedom of religion and belief. See FUNK Political Program, E3/1391, 3 May 1970, pp. 11-13, ERN (En) S00012638-S00012639.

<sup>10790</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 54, 74; T. 28 September 2015 (NO Sates), E1/350.1, p. 82, T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-49; T. 10 February 2016 (YSA Osman), E1/389.1, p. 36; Book by Ysa O.: *The Cham Rebellion: Survivors’ Stories from the Villages*, E3/2653, p. 78, ERN (En) 00219139.

adherents pressured to stop practising Islam<sup>10791</sup> and some communities forced into cooperatives.<sup>10792</sup> The resultant tension escalated in November 1973, when Khmer Rouge cadres attempted to arrest and shoot a Cham villager in Trea village, causing the Cham community to protest and burn down a building.<sup>10793</sup> This uprising was swiftly crushed by Khmer Rouge forces and resulted in the expansion of arrests beyond religious leaders to the general Cham population in 1974.<sup>10794</sup>

3209. After the fall of Phnom Penh, CPK radio reports lauded the liberation of the country's "Moslems", among others. The reports hailed the "liberation" of "[a]ll our brothers and sisters from all circles and political tendencies, including our [...] Islamic brothers", their newfound "freedom" and commitment to harmonious cooperation in the spirit of the "revolutionary morale of the Cambodian people". Until October 1975 – which appears to be the last public mention of the Cham available on the Case File – reports asserted that the "fraternal Cambodian Moslems" of Kampong Cham continued to enjoy the improvement of living conditions, the freedom to preserve their religion and traditions, and were "guaranteed full democratic liberties".<sup>10795</sup>

<sup>10791</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-49; Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, p. 14, ERN (En) 00219075; T. 28 September 2015 (NO Sates), E1/350.1, p. 79; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 102; Book by E. Becker: *When the War was Over*, E3/20, p. 252, ERN (En) 00237957; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 230, ERN (En) 00396430. See also, Section 3: Historical Background, para. 255.

<sup>10792</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 79; Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, p. 8, ERN (En) 00219069 Section 3: Historical Background, para. 255.

<sup>10793</sup> T. 9 February 2016 (YSA Osman), E1/388.1, p. 59; Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages*, E3/2653, pp. 14-15, ERN (En) 00219075-00219076; Section 3: Historical Background, para. 255.

<sup>10794</sup> Section 3: Historical Background, paras 255-256.

<sup>10795</sup> *NUFC Radio Boasts of Expanding Population in Liberated Zone* (in FBIS collection), E3/488, 18 February 1975, ERN (En) 00166760 ("Many others [who were liberated] came from Phnom Penh city. They included [...] Cambodian Moslems"); *Moslem Villagers Enjoy New Life After Liberation* (in FBIS collection), E3/1366, 4 July 1975, ERN (En) 00167281 ("The Cambodian Moslems of Chrek Romiet village, Kompong Chhnang Province are very happy with their new life. Before liberation, they were severely oppressed and despised by the traitorous clique and lived a miserable life [...]. However, following liberation, the fraternal Cambodian Moslems of Chrak Romiet village have become the masters of water and land of their villages and communes. They enjoy the freedom to conduct business and increase[d] production for themselves [...]. They also enjoy the freedom to preserve their tradition and religion. Under the clear-sighted leadership of the revolutionary organisation of Cambodia they have strengthened their solidarity for mutual help and harmoniously live in a new society. [...] Their living conditions are improving every day. All fraternal Cambodian Moslems in Chrek Romiet village as well as other Moslems throughout the country are very happy and completely satisfied with their new life." [emphasis added]); *Phnom Penh Radio Hails National Independence, Self-Sufficiency* (in FBIS collection), E3/1366, 29 June 1975, ERN (En) 00167259; *Radio Hails People's Efforts to Become Masters, Build Country* (in FBIS collection), E3/1366, 30 June 1975, ERN (En) 00167260 ("All our people throughout the country, [...] including the Buddhists, Moslems and those of various other faiths, are cooperating harmoniously. They are helping each other in accordance with the tradition and high

3210. After the September 1975 Koh Phal and October 1975 Svay Khleang rebellions,<sup>10796</sup> in a telegram dated 30 November 1975, East Zone Secretary SAO Phim *alias* Chhon<sup>10797</sup> reported to POL Pot, with NUON Chea in copy, on mass transfers of people from the Chhloung, Peam Chileang and Kroch Chhmar districts, located in the East Zone, Sector 21, to the then North Zone (which would soon become the Central Zone), where they were supposed to be received in two locations: Stueng Trang and Preaek Prasab (Preah Prasab) districts before being further taken to the Northwest and Central (old North) Zone.<sup>10798</sup> People were collected and ferried to these locations but the reception sites categorically refused to take “Cambodian of Cham origin”.<sup>10799</sup> SAO Phim reports his concern on the matter and emphasises that the reason of the transfer was that the “Northwest Zone and the North Zone must receive [the Cham] in order to separate them from the banks of the Mekong River to ease tensions”.<sup>10800</sup> He later adds that the “transfer is in principle designed to disperse the Cham as per our previous discussion”.<sup>10801</sup> SAO Phim reminds POL Pot that the East Zone was supposed to transfer 50,000 people to the Central (old North) Zone, and that there was a “failure to follow *Angkar*’s advice”.<sup>10802</sup> He reports to POL Pot having “deported only the Cham from along the river and the border but not from Tboung Khmum district” and deciding to put the transfer on hold while awaiting “advice from you and the North Zone”.<sup>10803</sup> He adds that there were more than 100,000 Cham remaining in the East Zone and that “if the North Zone does not take the Cham, we are still willing to continue our

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revolutionary morale of the Cambodian people.”); *Moslems Guaranteed Full Democratic Liberties* (in FBIS collection), E3/272, 14 October 1975, ERN (En) 00167520 (“Along with enjoying a much more secure material life [after “liberation”], the fraternal Cambodian Moslems in Phum Antong Sar [Kampong Cham province] have received much help from the revolutionary organisation and are *guaranteed full democratic liberties*, including the freedom of belief and the freedom to work as they please. They are extremely proud of this and always express their deepest thanks to the Cambodian revolutionary organisation for having liberated them from all kinds of oppression and leading them toward progress and prosperity in all aspects.” [emphasis added]).

<sup>10796</sup> See below, paras 3251-3259.

<sup>10797</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict), fn. 771.

<sup>10798</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762 (“Telegram 15”).

<sup>10799</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762.

<sup>10800</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762-00766763. See also, SMAN At Interview Record, E3/5204, ERN (En) 00242081; CHI Ly Interview Record, E3/5290, ERN (En) 00340170-00340171 (of the 267 families living in Koh Phal village, Krouch Chhmar district, Kampong Cham province, only 96 remained after the fall of the Khmer Rouge regime. “More than half the population died or were killed during the Khmer Rouge Regime”).

<sup>10801</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766763.

<sup>10802</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762.

<sup>10803</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762-00766763.



endeavour to deal with them – no problem”.<sup>10804</sup> He warns however that “the population will not reach one hundred and fifty thousand (150,000) if the North Zone does not receive the Cham”.<sup>10805</sup>

3211. The KHIEU Samphan Defence submits that the transfer of the population discussed in the telegram is part of the broader distribution of the population projected by the CPK and includes both Khmer and Cham people, the latter amounting to only a third of the population to be transferred.<sup>10806</sup> It adds that this transfer of populations living close to the border is related to the ongoing armed conflict with Vietnam rather than the Cham rebellions, and was not a result of any persecution on religious grounds.<sup>10807</sup> The NUON Chea Defence submits that the Cham were not the only target of this transfer, which was therefore not discriminatory,<sup>10808</sup> and that the transfer was not aimed at “punitively ‘break[ing] up’ the Cham” as no causal link between the rebellions could be established beyond reasonable doubt.<sup>10809</sup> The Co-Prosecutors rely on the telegram to establish the alleged Party Centre plan to destroy the Cham.<sup>10810</sup> The Civil Party Lead Co-Lawyers do not refer to this document.

3212. In light of the above and taking into account the overall context, the Chamber finds that Telegram 15 establishes that the CPK specifically targeted the East Zone Cham population, especially the one residing along the Mekong River, after the September 1975 Koh Phal and October 1975 Svay Khleang rebellions. The Chamber concurs with the Defence that the transfer of 50,000 Cham from the East Zone to the Central (old North) Zone was part of a broader movement of populations aimed at distributing the population throughout Cambodia, but also notes that the Telegram 15 clarifies that “the transfer is in principle designed to disperse the Cham as per previous discussion” and that the “Northwest Zone and the North Zone must receive [the Cham] in order to separate them from the banks of the Mekong River to ease tensions”.<sup>10811</sup>

<sup>10804</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766762-00766763.

<sup>10805</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, ERN (En) 00766763.

<sup>10806</sup> KHIEU Samphan Closing Brief, paras 1617-1619.

<sup>10807</sup> KHIEU Samphan Closing Brief, paras 1620-1623.

<sup>10808</sup> NUON Chea Closing Brief, paras 776-777.

<sup>10809</sup> NUON Chea Closing Brief, paras 780-782.

<sup>10810</sup> Co-Prosecutors’ Closing Brief, para. 553.

<sup>10811</sup> DK Telegram, E3/1680 [E3/154] [E3/1679], 30 November 1975, ERN (En) 00766762-00766763.

The Chamber understands the reference to this last purpose as a reference to the very recent rebellions of Koh Phal and Svay Khleang.

3213. This telegram also demonstrates the Party Centre's coordination: the policy regarding the Cham was set by the Party Centre and the Central (old North) Zone's failure to accept the Cham is described by SAO Phim as a "failure to follow *Angkar*'s advice". In other words, the East Zone was obliged to first report from the zone level to POL Pot at the Centre level, and then wait for POL Pot's instruction.<sup>10812</sup>

3214. Additionally, the following DK documents show that during the DK period, Cham people were placed under high scrutiny in order to track down any suspicious activity and to prevent any risk of unrest. In a telegram dated 2 April 1976, the Cham in Chamkar Leu district in sector 42 Central (old North) Zone were identified as being implicated in enemy activity and were in particular considered as being associated with former LON Nol soldiers and former cooperative team chairmen.<sup>10813</sup> In September 1976, during a meeting at the General Staff of the secretaries of the Centre divisions and independent regiments, the alleged preparation of a Cham rebellion in Kampot Sector was discussed. According to the minutes of this meeting, it was reported, with regard to the Cham in Sre Cham village, Sre Cham commune, Prey Nob (Prey Nub) district, Kampot province, that "On 3 September, in Sre Cham village, a sound of gunfire was heard. And all Cham people together were sharpening their knives by stopping working in an attempt to rebel against Khmers."<sup>10814</sup> In a report dated 21 May 1977 addressed to the Northwest Zone, the Sector 5 Committee indicated that "special measures" were implemented in order to track down the head of a group of "17 April elements from Phnom Penh who were Cham nationals" and "sweep clean" the group

<sup>10812</sup> Section 6: Communication Structures, para. 483. *See also*, SUON Kanil Interview Record, E3/344, 18 August 2009, ERN (En) 00384435 ("Ke Pauk received the telegram about this matter from the Centre, not directly from the East Zone"). *See below*, para. 3262.

<sup>10813</sup> DK Telegram, E3/511 [E3/952], 2 April 1976, ERN (En) 00182658 ("The enemy situation in the entire North Zone. Fundamentally the enemy has not yet conducted any strong activity which has impacted the people or the production movement. In general the situation is stable but at the same time they have carried out some activities for example they made propaganda that the Revolution is strict, they made propaganda to resist the cooperatives and the new rice field dike system and they made propaganda about hunger. Specifically, some activity has happened in Chamkar Leu District. The enemies are former soldiers in combination with the Cham and former cooperative team chairmen. They used copies of a photo of Lon Nol and Nol's announcement of 18 March 70 to post on tree trunks near Trapeang Village in Chamkar Leu District and conducted other activities like burning forests and destroying crops like bananas papaya etc. Regarding the above enemy activity, the Zone has taken measures and instructed the Sectors to concentrate on tracking down these activities").

<sup>10814</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800, 16 September 1976, ERN (En) 00184338.

which was attempting to assert their constitutional right to eat food in accordance with their religion.<sup>10815</sup>

3215. On this matter, the Chamber recalls that in January 1976, the DK Constitution was adopted, guaranteeing the right of worship of any religion to the exclusion of “[r]eactionary religions which are detrimental to Democratic Kampuchea and [the] Kampuchean people”.<sup>10816</sup> However, MATH Ly, who was a member of the People’s Representative Assembly,<sup>10817</sup> stated in his WRI that “after the liberalization in 1975, all religions were considered reactionary”.<sup>10818</sup> In accordance with the testimonial evidence provided by Expert YSA Osman,<sup>10819</sup> several witnesses and Civil Parties and discussed below,<sup>10820</sup> the Chamber finds that in practice, the CPK never implemented the right of freedom of religion, even within the limits of the purported protection provided for in the DK Constitution, and considered Islam to be “reactionary” and therefore “absolutely forbidden”.<sup>10821</sup> As noted by KAING Guek Eav *alias* Duch, the first sentence of Article 20 granting the right to religion “was a lie”.<sup>10822</sup>

3216. Contemporaneous CPK publications emphasise the absolute preponderance of the “Khmer race” in Cambodia during the DK period. An August 1977 DK Publication noted that the “people of Democratic Kampuchea include Khmers (99 per cent) and

<sup>10815</sup> Weekly Report of Sector 5 Committee, E3/178, 21 May 1977, p. 2, ERN (En) 00342709 (“The 17 April elements from Phnom Penh who were Cham nationals conducted a protest in the common kitchen of the cooperative concerning their belief in what they eat according to their religion by pointing at and referring to Article 10 of the Constitution; for this situation, we have taken special measures, that is, [to] look for their string, look for the head of their movement in order to sweep clean.”).

<sup>10816</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184838 (Article 20).

<sup>10817</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 20, ERN (En) 00184067.

<sup>10818</sup> MATH Ly DC-Cam Interview, E3/7821, 27 March 2000, ERN (En) 00441581. The Chamber recalls that MATH Ly died in 2004 and therefore did not have the opportunity to testify.

<sup>10819</sup> T. 10 February 2016 (YSA Osman), E1/389.1, p. 97 (“[T]he DK regime defined a reactionary religion would include any religion, including Buddhism and Islamic. As a result all the monks, all the Buddhist monks, were defrocked and all the Buddhist temples were destroyed, all the mosques were destroyed and all parents and relatives were prohibited from practicing any religious belief. So among those religions, Islam was also prohibited.”).

<sup>10820</sup> See below, Section 13.2.6: Restrictions on Cham Religious and Cultural Practices.

<sup>10821</sup> See e.g., T. 6 January 2016 (SOS Romly), E1/371.1, pp. 95-97; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 76-77; T. 9 September 2015 (SOS Min), E1/344.1, p. 64; T. 19 June 2012 (YUN Kim), E1/88.1, p. 49; T. 9 March 2016 (VAN Mat), E1/398.1, p. 86; T. 27 August 2012 (EM Oeun), E1/115.1, pp. 8-9; T. 28 September 2015 (NO Sates), E1/350.1, p. 48; T. 6 Dec 2012 (HUN Chhunly), E1/149.1, pp. 58-59. See also, MATH Ly DC-Cam Interview, E3/7821, 27 March 2000, ERN (En) 00441581; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 96-97; Section 10.1.9: Tram Kak Cooperatives: Treatment of Buddhists.

<sup>10822</sup> Duch Response to the Co-Investigation Judges’ Questions, E3/15, 21 October 2008, ERN (En) 00251374, fn. 1.

numerous national minorities living all together in the same and great family”.<sup>10823</sup> By 1978, *Revolutionary Flag* publications and state-sponsored “education programs” broadcasted on the radio were issuing intensified appeals to “defend” and “preserve” the “Kampuchean race”.<sup>10824</sup> KHIEU Samphan also stressed the importance of protecting and preserving “forever the fruits of the revolution and the Kampuchean race” during his speeches.<sup>10825</sup>

#### 13.2.5.2. Evidence of the CPK targeting the Cham presented in court

3217. In-court evidence demonstrates that the CPK specifically targeted the Cham population living in Cambodia in a program which was expected to fully assimilate them into a single Khmer nation and identity. Civil Party PREAP Sokhoeurn, who was working in a girls’ unit in a cotton plantation, explained that “[t]he Cham people living in the union in 1975 were no longer considered Chams. They were like ordinary people. They were not allowed to practice their Cham religion.”<sup>10826</sup> HIM Man, a Cham villager from Sach Sou village, Peam Chi Kang commune, Kang Meas district, Kampong Cham province, further stated that in 1976, his village chief made announcements that the

<sup>10823</sup> DK Publication, *Democratic Kampuchea is Moving Forward*, E3/1388, undated, p. 6, ERN (En) S00050248.

<sup>10824</sup> Revolutionary Flag, E3/4604, April 1978, p. 9, ERN (En) 00519837 (“To defend Kampuchean territory means to defend the Kampuchean race”), 14, ERN (En) 00519842 (“We make our Army clean, our Party clean, our people clean, so that they can fight the enemy and defend Kampuchean territory, that is, defend the Kampuchean race.”); *Past Year’s National Defence Efforts Reviewed* (in FBIS collection), E3/1722, 10 May 1978, ERN (En) 00294788 (“1. Be resolutely determined to defend our territory. Defending Kampuchean territory means defending the Kampuchean race.”), ERN (En) 00294790 (“We must purify our armed forces, our party, and the people in order to continue fighting the enemy in defense of Kampuchean territory and the Kampuchean race for if we fail to do so our race will disappear.”); *Strength of Popular Revolution Determines Strength of Country* (in FBIS collection), E3/1363, 10 June 1978, ERN (En) 00169817 (“Making revolution means defending the country and preserving the Kampuchean race forever without becoming anyone’s slaves.”); Revolutionary Flag, E3/746, July 1978, p. 1, ERN (En) 00428289 (“Currently, under the correct and wise leadership of our Communist Party of Kampuchea with Comrade Secretary POL POT at the head we are determined to maintain and defend our national country our people and our Kampuchean race so that it will persist and survive eternally.”); *Revolutionary Army Stands Firm and Vigilant in Kratie* (in FBIS collection), E3/76, 2 September 1978, ERN (En) 00170355; *Armed Forces Meeting Supports Government Statement on SRC Aggression* (in FBIS collection), E3/296, 3 January 1979, ERN (En) 00169311 (“We are fully aware of our duty to defend the nation our territory the Kampuchean people and the Kampuchean race entrusted to us by the party and the Government of Democratic Kampuchea.”). See also, Section 13.3: Treatment of the Vietnamese.

<sup>10825</sup> *Sihanouk Attends Khieu Samphan Addresses KCP Banquet* (in FBIS collection), E3/294, 30 September 1978, ERN (En) 00170170. See also, KHIEU Samphan Speech, E3/169, 17 April 1978, ERN (En) 00280398 (“We must defend tooth and nail the country the Revolution the power the people the Army the Party and the Kampuchean race.”); KHIEU Samphan Speech, E3/562, 15 April 1978, ERN (En) S00010559, S00010563-S00010564. See also, T. 3 July 2013 (EK Hen), E1/217.1, p. 47 (“He [KHIEU Samphan] said Khmer had to be united and Khmer shall be free of Vietnamese, or the ‘Yuon’, and that we had to love one another.”). See also, Section 13.3: Treatment of the Vietnamese.

<sup>10826</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 5.

Khmer Rouge “wanted to make all of us into one flesh and one spirit. They wanted to convert the Cham into the Khmer. And because of such intent, they had to make sure there were no more Cham left, but only the Khmer.”<sup>10827</sup> OR Ho (AU Hau), who was the chief of Prey Srangae village, Ballangk commune, Sector 42, and later a work unit chief at the 1<sup>st</sup> January Dam Worksite, also heard from a “mid-level *Angkar* representative” that “in Kampuchea there would be [...] no New People, no Base People, no Javanese or no Cham, but one Khmer population”.<sup>10828</sup>

3218. The need to preserve the “Kampuchean race” was repeatedly expressed in CPK publications and the degree to which this “Kampuchean race” was inclusive of Cambodian ethnic and/or religious minorities was addressed by several witnesses, Civil Parties and experts. Witness SEN Srun, a former soldier and a palm tree climber who lived close to Wat Au Trakuon,<sup>10829</sup> testified that the “POL Pot regime” considered any race other than the Khmer people as enemies, “including the Cham people, the Vietnamese, the Chinese and even the New People”.<sup>10830</sup> Witness OR Ho also testified that the goal was to have “one single population” in Kampuchea; only ethnic Khmer.<sup>10831</sup> Several in-court accounts similarly described that, in requiring that the Cham be “the same” as the Khmer – including by wearing the same clothes as Khmer people and by only speaking Khmer<sup>10832</sup> – the Khmer Rouge effectively prevented the Cham from preserving their religious and cultural identity. Civil Party SENG Kuy, who was a Khmer rice farmer in Angkor Ban Village 2, Angkor Ban commune, Kang Meas

<sup>10827</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 76-77 referring to HIM Man Civil Party Application, E3/4706, ERN (En) 00417861; T. 20 May 2015 (OR Ho), E1/302.1, p. 60.

<sup>10828</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 60; T. 20 May 2015 (OR Ho), E1/301.1, p. 21 (“I knew that they only wanted to have only ethnic Khmer, but they failed to achieve that.”). See also, T. 10 February 2015 (Elizabeth BECKER), E1/260.1, pp. 52-53; Paper by S. Heder, *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective*, E3/4527, p. 25, ERN (En) 00661479; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 266-269, 282-283, ERN (En) 01150140-01150141, 01150148; Book by Ysa O.: *The Cham Rebellion: Survivors’ Stories from the Villages*, E3/9336, ERN (En) 00218503; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 282, ERN (En) 01150148 (reporting statements made by NAO Gha, a Cham peasant woman living in the Takeo region, who recalled CPK cadres stating that only Khmer language was allowed and: “There are no Vietnamese, Chinese, Javanese – only the Khmer race. Everyone is the same.” The Chamber notes the similarity with OR Ho’s testimony, whereas in a different location (Southwest Zone), which indicates common language in the CPK discourse at local levels).

<sup>10829</sup> See below, para. 3298.

<sup>10830</sup> T. 14 September 2015 (SEN Srun), E1/346.1, p. 98. See also, T. 14 September 2015 (SEN Srun), E1/346.1, pp. 49-50; SENG Srun Interview Record, E3/1692, p. 5, ERN (En) 00242088.

<sup>10831</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 21; T. 20 May 2015 (OR Ho), E1/302.1, p. 60.

<sup>10832</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, p. 20; T. 14 September 2015 (SEN Srun), E1/346.1, p. 11; T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 77-80; T. 25 May 2015 (MEAS Laihour), E1/304.1, pp. 109-110; MEAS Laihuo Interview Record, E3/9351, 20 November 2008, p. 5, ERN (En) 00244165.

district, and who directly saw arrests of Cham people in his area,<sup>10833</sup> explained this loss of identity in the following terms: “after Khmer Rouge had taken control of the area, Cham people were merged with Khmer people. Traditional clothes, religions, were abolished at the time and they were turned into Khmer people.”<sup>10834</sup> Similar evidence was provided by HIM Man, a Cham living in Sach Sou commune, who stated that “[t]hey wanted to make all of us into one flesh and one spirit. They wanted to convert the Cham into the Khmer. And because of such intent, they had to make sure there were no more Cham left, but only the Khmer.”<sup>10835</sup>

3219. PRAK Yut, the former Secretary of Kampong Siem district, Sector 41, Central (old North) Zone, testified that in 1977 she received an order from the sector level to purge the Cham and passed it on to her subordinates.<sup>10836</sup> SAY Doeun, who was a member, and at some point the chairman,<sup>10837</sup> of the Long Sword Group in Peam Chi Kang commune, Kang Meas district, Kampong Cham province similarly stated that he heard from the commune chief Pheap of a “plan that no Cham, no single Cham were to be spared”.<sup>10838</sup> In late 1978, he and his militia arrested entire Cham families, including parents and children.<sup>10839</sup> MUY Vanny, who was the “bodyguard” of the Wat Au Trakuon security chief Horn, stated that he heard of a “plan to exterminate all the Cham people”.<sup>10840</sup> SENG Kuy heard the chief of security in Angkor Ban commune, Kang Meas district, Kampong Cham province, Sector 41, Central (old North) Zone, who stated that they would kill all the Cham and not spare any of them.<sup>10841</sup> Similarly, SOS Romly, testified that in 1977, while he was a clerk in the Trea Commune Office in

<sup>10833</sup> See below, para. 3296.

<sup>10834</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, p. 73 (emphasis added).

<sup>10835</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 76-77 referring to HIM Man Civil Party Application, E3/4706, ERN (En) 00417861 (“The Khmer Rouge would broadcast announcements on a regular basis, indicating: ‘As of now, there are no longer any Cham, and no longer any Khmer. We are all part of the same nation, the Khmer nation. This is why we have to eat the same meal all together.’”). Concerning HIM Man’s experience as a survivor after he fled with his wife while the entire Cham population of his village was conducted to Wat Au Trakuon, see below, paras 3293-3295.

<sup>10836</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 79-82 (CS); T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 5-6, 9. See above, para. 3190.

<sup>10837</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 63-64.

<sup>10838</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 69-70.

<sup>10839</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 65-66, 92.

<sup>10840</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 65-66. See also, pp. 48 (“I heard people say that there was a plan to round up the Cham people”), 68 (“I heard from those people who were working in the pagoda”).

<sup>10841</sup> T. 10 September 2015 (SENG Kuy), E1/345.1, pp. 28-32. The Chamber notes that SENG Kuy relied in part on this statement in reaching his personal conclusion that the Khmer Rouge “only wanted to have one pure race. They even killed their own Khmer people, so they would not spare any other ethnicity, including the Cham race.”. See T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 93-94.

Kroch Chhmar district, Sector 21, East Zone, he had a conversation with a regional security officer who was waiting to see the commune secretary. This regional security officer who was not aware that he was Cham, asked him questions about the fate of the people who were living there and SOS Romly explained that about only 80 to 85 per cent of Cham people were evacuated to the Central (old North) Zone and there were around 15 per cent left in the village. SOS Romly heard then the regional security officer stating that the Cham who had not been evacuated would be smashed and “none [...] would be spared”.<sup>10842</sup> The CPK targeting of the Cham was also mentioned in the written interviews of MATH Ly and CHEA Sim,<sup>10843</sup> and by experts who explained that the DK leadership advocated a notion of ethnic purity, which involved the purging and killing of minorities in the hope of achieving a pure Khmer race.<sup>10844</sup>

<sup>10842</sup> T. 8 January 2016 (SOS Romly), E1/372.1, pp. 16-17. *See also*, MUOK Sengly Interview Record, E3/9744, 4 September 2015, pp. 9-10, ERN (En) 01152375-01152376 (Civil Party worked in a children’s unit in Kampong Siem district. He stated that there was a meeting presided over by PRAK Yut, the secretary of Kampong Siem district, where she explained the CPK policy towards Cham: “Q: Was there any meeting or announcement after they took the Cham away? A30: Yes, there was a big meeting attended by the children’s unit, mobile unit and the ‘base people’. Yeay Yuth, who was District Committee, said, ‘The Cham are the enemy of *Angkar* because they plan to rebel so *Angkar* has to smash them’. She said ‘If any Cham remain, this must be reported so they can be swept clean, because this is the plan of upper echelon.’ Yeay Yuth said, ‘Any base person hiding a Cham will also be considered an enemy.’”); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 279-280, ERN (En) 01150146-01150147 (reporting statements made by YA Los, a Cham who was deported to Bak Sna subdistrict (Sector 42, Central Zone) and heard from his team chief that “The district Security chief, Von, called a meeting in 1977 [...] He said that the Cham were not to be spared [...] In three days [they] were to be rounded up and got rid of”).

<sup>10843</sup> MATH Ly DC-Cam Interview, E3/7821, 27 March 2000, ERN (En) 00441579 (stating that Cham alike Chinese and Vietnamese populations were all targeted and there was a policy against them.); CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651868.

<sup>10844</sup> T. 10 February 2015 (Elizabeth BECKER), E1/260.1, pp. 52-53; Book by E. Becker: *When the War was Over*, E3/20, pp. 243, ERN (En) 00237948 (“The Khmer Rouge confused the idea of race with that of culture, creed, language, and nation, as had the Nazis. They arbitrarily decided that Cambodia’s minorities – the Chinese, the Chams, the ethnic Thais, and, on occasion, even the hill tribespeople – were a threat to the health and vitality of the Kampuchean nation. Their solution was to decree the assimilation of all people into a super-race of Kampuchean worker-peasants.”), 246, ERN (En) 00237951; T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 13-14. *See also*, T. 9 February 2016 (YSA Osman), E1/388.1, p. 18 (the Chamber notes that YSA Osman could not find any documents containing instructions by the Central Committee against the Cham but relied on several accounts, including SOH Kamrei’s, to conclude that “Cham people were gathered and brought for execution”); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 265, ERN (En) 01150139 (quoting interview of former Sector 21 Deputy Secretary OUK Bunchhoeun: “There was no policy of [allowing] minority nationalities. Everyone was mixed together. There was only one race – the Khmer”); Paper by S. Heder: *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes*, E3/4527, p. 30, ERN (En) 00661484 (By early 1977, “the top [CPK] leadership [...] concluded that the Cham were beyond re-education, and therefore must be totally exterminated as such”).

13.2.5.3. Defence submissions regarding the targeting of the Cham: Unlawful activities and undifferentiated treatment

3220. The NUON Chea Defence submits that “security measures against certain Cham individuals were taken because of their actions, not their Cham identity” and that they were “only intended for those who were involved in wrongful activities”.<sup>10845</sup> The KHIEU Samphan Defence submits that the Cham were not targeted because of their religion or ethnicity, but that they were living under the same conditions as any Khmer people under the CPK,<sup>10846</sup> and in some cases, were arrested in the aftermath of rebellions or in the context of armed conflict.<sup>10847</sup> The KHIEU Samphan Defence accepts that religious practices were prohibited by the CPK, but underlines that this applied to all religions and affected not only the Cham, but also the Khmer, Chinese, Buddhists and Catholics.<sup>10848</sup> The Co-Prosecutors submit that the Cham were first assimilated to the general population and therefore prevented from practicing their religion and cultural customs, those who resisted being killed, and that, from 1977, there existed a genocidal policy against them implemented through mass executions.<sup>10849</sup> The Civil Party Lead Co-Lawyers submit that Cham were persecuted on the basis of their religion.<sup>10850</sup>

3221. As regards unlawful activities, the NUON Chea Defence underlines that PRAK Yut and YOU Vann testified that only the “bad” Cham were arrested or disappeared, while the “good people” among them were spared.<sup>10851</sup> Upon reviewing PRAK Yut’s

<sup>10845</sup> NUON Chea Closing Brief, paras 748-752.

<sup>10846</sup> KHIEU Samphan Closing Brief, paras 1645-1768, 1876.

<sup>10847</sup> See e.g., KHIEU Samphan Closing Brief, paras 1681, 1706, 1709.

<sup>10848</sup> KHIEU Samphan Closing Brief, para. 1657.

<sup>10849</sup> Co-Prosecutors Closing Brief, paras 1013-1028.

<sup>10850</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 697-728.

<sup>10851</sup> NUON Chea Brief, para. 751. See also, T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 11-12 (“A. As for all the Cham people in Kampong Siem district, despite the order from the upper echelon and upon my examination of the situation, I had to distinguish who were good and who were bad [*sic*] or who opposed and who did not. So before the arrests were carried out, I had to make sure only bad elements were arrested, and not every Cham was arrested. Some people were good while others were bad”), 13 (“When I reported, I reported that some Cham people needed to be smashed and some who were good elements needed to be kept. So since I was in my position, the killings of Cham people did take place in Kampong Siem district and there were arrests and executions but it doesn’t mean that the killing took place for all Cham. Those who were good, did not oppose or not sabotage in the district, were spared. So we purge only the bad elements that caused problem [*sic*].”), 14 (“I think that, regarding the Cham people -- we didn’t kill all the Cham people. In the entire district, we purged based on the order from the upper echelon.”); T. 21 January 2016 (PRAK Yut), E1/380.1, pp. 11-12 (“Questioning by Judge FENZ: Now, when it comes to arrests, you said not all the Cham were arrested, so can you tell me which Cham were arrested? A. On the issue of the arrest of Cham people, there were category of Cham people who were arrested [*sic*]. So what kind of Cham people who were arrested, those who opposed the upper echelon [*sic*]. Cham people who live in the village and who were considered acting not normally within the



testimony, the Chamber finds that PRAK Yut did, in fact, testify that she reported that some Cham were “good element[s]” who could be kept alive, and that she “had to make sure only bad elements were arrested, and not every Cham was arrested”.<sup>10852</sup> However, she also repeatedly testified that the order coming “from the upper echelon” was a general instruction “to purge specifically the Cham people”.<sup>10853</sup> Furthermore, she stated that the “upper echelon instructed [her] to identify *all* Cham people”.<sup>10854</sup> PRAK Yut further testified that the only exception she was aware of was her assistant and adopted daughter Pheap, whom she managed to spare in obtaining special permission from AO An not to list her along with the other Cham. She added that “no other Cham people were spared, nor did I ask to spare any other Cham to *Ta An*”.<sup>10855</sup> The Chamber therefore considers that PRAK Yut’s references to “bad elements” were mostly an attempt to downplay her role in the arrests of Cham people in her district. Likewise, YOU Vann’s two brief statements in relation to Cham with a “good background” being spared must be read in context. Notably, YOU Vann testified that the instructions she received were to list, *inter alia*, “ethnic Cham people”,<sup>10856</sup> and she repeatedly responded that she did not know whether only people who had done something wrong or who opposed the regime were placed on the lists.<sup>10857</sup> In any event, considering that to be deemed “good”, the Cham had to renounce their cultural and religious practices,<sup>10858</sup> the Chamber finds that the Defence’s submission of “bad elements”

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villages would be arrested. Q. Go ahead. I didn’t mean to interrupt. So let me see if I understood that correctly. There were two orders, at least. One was to make a list of all the Cham, and at a later stage, there was another order to arrest those Cham who were bad elements. Did I understand that correctly? A. Yes, that is correct”).

<sup>10852</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 11-12.

<sup>10853</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 9 (“I received an order either to smash or to kill the people. I, myself, did not involve in the smashing of the Cham people.”), 14; T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 81-82 (“There was an order from the sector level to us to purge the Cham. [...] I myself was also wondering why the Cham [...]. But the order came from the upper echelon, so I simply implemented it.”), 83 (“And by the time I learned that there was such great numbers of Cham people within the commune that is true that Cham people had been purged. The upper echelon instructed me to identify *all* Cham people within that commune.” (emphasis added)), 104 (“[R]egarding the decision of the purge toward the Cham people, I simply followed the order because [*Ta An*] was my superior.”). See also, PRAK Yut Interview Record, E3/9499, 30 September 2014, p. 8, ERN (En) 01063610; PRAK Yut Interview Record, E3/9677, 21 August 2015, pp. 5-7, ERN (En) 01151271-01151272.

<sup>10854</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, p. 83 (emphasis added).

<sup>10855</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 14-17. See also, NHEM Kol Interview Record, E3/9548, 12 November 2013, p. 6, ERN (En) 00966999.

<sup>10856</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 65.

<sup>10857</sup> T. 18 January 2016 (YOU Vann), E1/377.1, pp. 18-22.

<sup>10858</sup> See below, paras 3229-3250.

being those “involved in activities threatening public order or state security” bears no weight.<sup>10859</sup>

3222. As regards undifferentiated treatment, the NUON Chea Defence submits that BAN Seak, Duch and VAN Mat *alias* SALES Ahmat stated that there was no specific targeting of the Cham people but rather they were arrested as rebels or enemies regardless of their ethnicity or religion.<sup>10860</sup> The KHIEU Samphan Defence similarly refers to Duch’s and others’ testimonies, including of CPK cadres, to submit that the Cham were not specifically targeted by the CPK due to their religious beliefs or ethnicity, but rather that they were treated the same as the rest of the population under a Marxist regime.<sup>10861</sup> The KHIEU Samphan Defence refers to former CPK cadres TEP Poch, PECH Chim, PRAK Yut, Duch and MATH Ly as well as witnesses and experts Philip SHORT, François PONCHAUD, Stephen HEDER and Henri LOCARD who all stated that there was no policy targeting the Cham or no specific hatred toward the Cham expressed by the CPK.

3223. As discussed in detail below, the Chamber finds BAN Seak’s testimony in relation to the treatment of the Cham to lack credibility.<sup>10862</sup> The Chamber further finds that Duch’s alleged lack of knowledge on the matter is consistent with the evidence showing that he never attended the meetings of the Standing or Central Committees, and never received instructions from NUON Chea and the Standing Committee directly.<sup>10863</sup> However, the Chamber notes that he recognised that there was a “policy to evacuate all Muslim people, either the Cham or non-Cham, [...] to make sure that they abandoned their religion”.<sup>10864</sup> Finally, VAN Mat, a Cham from Chumnik village, Chumnik commune, Kroch Chhmar district, Kampong Cham province, testified that commune and district chiefs in the East Zone were summoned to the Central (old North) Zone to attend a meeting in Kampong Thma, over which KE Pauk presided and during

<sup>10859</sup> NUON Chea Closing Brief, para. 751.

<sup>10860</sup> NUON Chea Closing Brief, para. 752.

<sup>10861</sup> KHIEU Samphan Closing Brief, paras 1865-1877.

<sup>10862</sup> *See below*, para. 3273.

<sup>10863</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 28-29 (stating that SON Sen and Brother Nuon never instructed him about Cham people); T. 23 June 2016 (KAING Guek Eav), E1/443.1, p. 105 (stating that no one was arrested because they were Cham and sent to S-21).

<sup>10864</sup> T. 3 April 2012 (KAING Guek Eav), E1/58.1, p. 22.

which they discussed “smashing” the Cham.<sup>10865</sup> He testified to overhearing that “*Angkar* gave the instruction to smash 100 per cent of the Cham and the targeted group that needed to be smashed needed to be the ones who betray the *Angkar*, regardless of their ethnicity, whether Cham or Khmer”.<sup>10866</sup> While the NUON Chea Defence focuses on the final part of the sentence stating “regardless of their ethnicity”, the Chamber notes that the instruction clearly includes killing 100 percent of the Cham. Furthermore, VAN Mat, testified that a few days after the meeting a group of between 400 to 500 people from his village and from places around were forced to board on boats at Svay Damnak village. Among this group the majority of people were Cham (“98 per cent”).<sup>10867</sup> VAN Mat clarified that he was also part of the evacuees which were brought to Stueng Trang, where they were received by people wearing Khmer Rouge military uniforms and carrying AK-47 rifles.<sup>10868</sup> He added that he jumped out of the boat, swam away and successfully fled. He further stated that those who were evacuated never returned, and that only “a small minority” of the evacuees were Khmer.<sup>10869</sup> VAN Mat also stated that when he was evacuated, the transfer of people had already started and the evacuation never stopped, with “thousands of people, including men, women and children, [being] evacuated before [him]”.<sup>10870</sup> The Chamber notes that the events described by the witness took place in Kroch Chhmar district and were contemporaneous with other arrests and killings of Cham in the same district, in particular at Trea Village Security Centre, which will be discussed below. The Chamber also notes that a number of Cham arrested at Trea village were members of mobile units and that these events occurred when the purge of East Zone cadres was ongoing and local cadres were replaced by people from the Southwest or the Central (old North) Zones who reported to KE Pauk, including BAN Seak, the then Secretary of Sector 21, who was related to him.

3224. The Chamber further notes that while VAN Mat testified that there were instructions to kill all the Cham at the meeting with KE Pauk, there is no evidence that the further implementation of such a policy was discussed at this meeting. Further, it is

<sup>10865</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 3, 9, 11, 28-33; Book by Ysa O.: *The Cham Rebellion*, E3/9323, 2006, p. 18, ERN (En) 00218542; VAN Mat Interview Record, E3/8735, 15 July 2011, p. 3. ERN (En) 00722240.

<sup>10866</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 32.

<sup>10867</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 39-40.

<sup>10868</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 42-43.

<sup>10869</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 42-45.

<sup>10870</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 39-40.

not clear from VAN Mat's other evidence whether the policy was to target the Cham specifically or was to purge all enemies.<sup>10871</sup> Notably, VAN Mat repeatedly stated that the CPK intended to purge all traitors in the Zone; not just the Cham.<sup>10872</sup> However, he testified that he not only heard that there were specific instructions from *Angkar* "to smash 100 per cent of the Cham", but also that KE Pauk was asking the new chiefs assigned to the East Zone if they had implemented "the policy of the *Angkar* regarding the smashing of the Cham".<sup>10873</sup> The witness also clarified "nothing was discussed about Cham, since Cham people were being transported out. They discussed only people or cadres from the East Zone at the time."<sup>10874</sup> When considered in its entirety, the Chamber considers that there are no substantive inconsistencies in VAN Mat's testimony and it accepts that after KE Pauk asked questions about the implementation of the policy to smash the Cham, this matter was not specifically raised again, first because the Cham issue at this time formed part of a general policy to smash all traitors and second because the implementation of the policy against the Cham which was to "smash" all of them, had already begun "since Cham people were being transported out".<sup>10875</sup>

3225. As regards TEP Poch, the Secretary of the Baray District Committee, who played an important role in monitoring Wat Baray Choan Dek Security Centre, the Chamber found that he attempted to deflect responsibility for certain events.<sup>10876</sup> Likewise, the Chamber found that PECH Chim, the former Tram Kak District Secretary who was appointed as the head of the rubber plantation at Chamkar Andoung in Sector 42, attempted to downplay his responsibility at times.<sup>10877</sup> In light of the likelihood that both of them (who came from Southwest Zone at the time of the purges in the Central Zone) attempted to minimise their roles as CPK cadres in the hunt for enemies, the

<sup>10871</sup> See e.g., T. 9 March 2016 (VAN Mat), E1/398.1, p. 32 ("I heard from the loudspeaker that the new chiefs assigned to the East Zone needed to implement the policy of the *Angkar* regarding the smashing of the Cham"); Book by Ysa O.: *The Cham Rebellion: Survivors' Stories from the Villages [extract]*, E3/9323, 2006, p. 18, ERN (En) 00218542; VAN Mat Interview Record, E3/5209, 15 August 2008, p. 3 (indicating that there was a policy to specifically target the Cham). Cf. T. 9 March 2016 (VAN Mat), E1/398.1, pp. 57-59, 103; VAN Mat Interview Record, E3/8735, 15 July 2011, p. 3. ERN (En) 00722240 (stating that there was no specific policy of targeting the Cham).

<sup>10872</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 32, 34, 56-59, 77-78, 86-87, 103.

<sup>10873</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 32. See also, p. 58 ("The questions were asked about Cham, Khmer and the plan was to purge East Zone cadres.")

<sup>10874</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 57.

<sup>10875</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 57.

<sup>10876</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1570-1571.

<sup>10877</sup> Section 10.1: Tram Kak Cooperatives, para. 2702.

Chamber accords minimum weight to their statements that there existed no plan to purge the Cham. In light of the otherwise compelling evidence, the Chamber finds that their accounts do not cast substantial doubt that such a plan indeed existed.

3226. As regards the expert evidence noted by the Defence, and while negating that a genocide happened during the DK period, expert François PONCHAUD clearly stated that, at least from 1978, the Cham were targeted as such by the CPK.<sup>10878</sup> He explained that at first, Cham who “did not follow the Khmer Rouge, they would be in danger”.<sup>10879</sup> He further stated that there was a shift in 1978 whereby the Khmer Rouge “searched for the Cham [...] because of the conflict between Cambodia and Vietnam, and the ethnic Cham were suspected of supporting the Vietnamese”.<sup>10880</sup> Similarly, expert Stephen HEDER noted that Cham were targeted from the start of the DK period,<sup>10881</sup> and that a shift occurred early 1977 when “the top [CPK] leadership [...] concluded that the Cham were beyond re-education, and therefore must be totally exterminated as

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<sup>10878</sup> T. 11 April 2013 (François PONCHAUD), EI/180.1, p. 39 (“As for the Cham, I think the same applies to them. They were not persecuted, in any case not until 1978. After that, it was different. They simply had to fall into the Khmer Rouge mould, the ‘new man’ of the Khmer Rouge and they couldn’t get out of it. And since the Cham have their own ancestral clothing and food traditions those who did not participate did not accept *Angkar*’s traditions were killed, “*komtech*”. Starting in 1978, things changed. I have new information according to which the Khmer Rouge, starting in 1978, sought out the Cham as Cham, not because the Cham were disobeying *Angkar* law, but because they were Cham. They went into villages, sought out the Cham. The Cham were taken away and undoubtedly killed. But that only started in 1978. It was political and religious persecution. There I would almost say “genocide”. The Cham were sought as Cham, but only in 1978. And once again, it was in a limited manner”).

<sup>10879</sup> T. 10 April 2013 (François PONCHAUD), EI/179.1, p. 73.

<sup>10880</sup> T. 10 April 2013 (François PONCHAUD), EI/179.1, p. 73.

<sup>10881</sup> T. 15 July 2013 (Stephen HEDER), EI/223.1, p. 102 (“[S]tarting as early as 1973, I would call it kind of active discouragement, maybe compulsive discouragement of the practice of religion, but not its outright prohibition. In some places at least, a scattering of Chams so they wouldn’t be concentrated in particular areas; the prohibition in some area again on Cham holding certain kinds of positions of political authority. But the picture before ‘75 and even after -- certainly through to the end of ‘75 and in some ways beyond -- is rather mixed. A lot of the early policies that could be described as anti-Cham -- or at least anti-Islamic -- were actually carried out by cadre who were themselves Cham. And that continued to be significantly the case, I would say, through the end of 1975, and to a lesser extent, as late as the middle of 1978, depending on the location and depending on the issue”). See also, Book by S. Heder: *Racism Marxism Labelling and Genocide* (in Book by B. Kiernan: *The Pol Pot Regime*, E3/3995, undated, pp. 15-16, ERN (En) 00773714-00773715 (“[Ben KIERNAN] correctly concludes that “Cham were persecuted and that one specific target was their cultural distinctiveness”. He is also right to argue that Cham were “not only persecuted, but also discriminated against, that is persecuted for being Cham” [...]. The treatment meted out to Cham – dispersal, prohibition of distinctive speech, dress and other customs and prohibition of religious practice and belief all backed by executions and massacres in case of dissidence and violent opposition add up to a genocidal targeting of Cham for destruction as such.”)).

such”.<sup>10882</sup> The Chamber finds that this is consistent with in-court statements recounting that orders to purge the Cham were issued from 1977.<sup>10883</sup>

#### 13.2.5.4. Conclusion on the CPK policy targeting the Cham

3227. Having considered the Defence submissions and assessed the evidence as a whole, the Chamber finds that the public calls of friendship made immediately after the “liberation” of Phnom Penh,<sup>10884</sup> as well as the adoption of Article 20 of the Constitution<sup>10885</sup> were disingenuous means of shoring up national and/or popular support for the revolution in the same fashion as was done with the Buddhists at the time,<sup>10886</sup> and therefore do not bear any probative value.

3228. The Chamber finds that the CPK, in the effort to establish an atheistic and homogenous society without class divisions,<sup>10887</sup> targeted the Cham as an ethnic and religious distinct group throughout the DK period. This policy evolved over time and was characterised by an escalation of the means used to implement such policy. In the early years of the DK period, the CPK, in an initial attempt to assimilate them, specifically targeted the Cham by restricting their cultural and religious practices.<sup>10888</sup> When the Cham resisted abandoning their ethnic and religious identity, “rebellions” were brutally suppressed, leaders of the rebellions were executed and Cham communities dispersed.<sup>10889</sup> A final shift occurred between 1977 and 1978, when purges of all Cham were ordered.<sup>10890</sup> This coincided with the escalation of the conflict with Vietnam when the need to preserve the Khmer race and to protect Cambodian population from all enemies was considered as a top priority. The Chamber will now turn to the implementation of this policy.

<sup>10882</sup> Report by S. Heder, *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes*, E3/4527, 1 March 2003, p. 30, ERN (En) 00661484. *See also*, Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, 1996, pp. 282-283, ERN (En) 01150148 (reporting statements made by NAO Gha, a Cham peasant woman living in the Takeo region, who heard the Treang Chief District Soeun (*Ta Mok*’s son in law) saying in several large meetings in 1977-1978 that the Cham were “hopeless”).

<sup>10883</sup> *See above*, para. 3219.

<sup>10884</sup> *See above*, para. 3209.

<sup>10885</sup> *See above*, para. 3215.

<sup>10886</sup> Section 16.4.3.3.2: Common Purpose: Targeting of Specific Groups: Buddhists: Criminality of Policy.

<sup>10887</sup> Section 16: Common Purpose, para. 3993.

<sup>10888</sup> *See below*, paras 3229-3250.

<sup>10889</sup> *See below*, paras 3251-3268.

<sup>10890</sup> *See below*, Section 13.2.9: Killing and Detention of the Cham.

### 13.2.6. *Restrictions on Cham Religious and Cultural Practices*

3229. The Closing Order alleges that throughout the DK period, the CPK prohibited the Cham culture, language and dress as well as the practice of Islam, while targeting religious leaders and scholars.<sup>10891</sup> It alleges that there was “a country-wide suppression of Cham culture, traditions and language”.<sup>10892</sup>

3230. The Khmer Rouge started taking control of parts of Kampong Cham from 1970.<sup>10893</sup> Early on, they imposed no or few restrictions on Cham religious and cultural practices.<sup>10894</sup> By 1973 however, the restrictions had become more strict.<sup>10895</sup> In 1975,

<sup>10891</sup> Closing Order, paras 211, 756, 1420.

<sup>10892</sup> Closing Order, para. 1420.

<sup>10893</sup> T. 8 January 2016 (SOS Romly), E1/372.1, pp. 48-49; SUF Romly Interview Record, E3/5196, 10 July 2008, p. 2, ERN (En) 00223086; SOH Kamri Interview Record, E3/5216, 10 September 2008, p. 2, ERN (En) 00225495; SOS Kamri DC-Cam Interview, E3/9750, 10 October 1999, ERN (En) 01222003; T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 3, 9. *See above*, para. 3208.

<sup>10894</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 10 (“Before the fall of Phnom Penh, we could provide religious teaching. However, that was banned after the fall of Phnom Penh”); SOH Kamri Interview Record, E3/5216, 10 September 2008, p. 3, ERN (En) 00225496 (“At the beginning they [the Khmer Rouge] didn’t restrict the Islamic religion or the Cham culture. I became a religion teacher and joined the educational structure in the village until 20 September 1974. The leadership of the village was not changed but they changed the ideology [making us] to comply with that of the Khmer Rouge”); T. 8 September 2015 (SOS Min), E1/343.1, pp. 69-70 (“Under their initial control, their policy or leadership was so good. They made a propaganda for us to join their action in order to liberate the country; they respected our religion, and that happened before 1975. However, everything changed after April 1975 - that is, after the liberation of Phnom Penh.”), 87-88 (“Before 1975, there were two mosques in our Svay Khleang village since there were many Cham people, so two mosques were built to accommodate the congregations [...] After the liberation the Khmer Rouge dismantled the mosques.”); T. 17 September 2015 (HIM Man), E1/349.1, pp. 34-35 (stating that Cham could practice their religion “as normal” before 1975); T. 7 September 2015 (IT Sen), E1/342.1, p. 57 (“After the Khmer Rouge took control of us the Cham people in 1970s, the Cham women were forced to cut their hair short. Women were no longer allowed to keep their hair long. And we were not allowed to do our daily prayers and fasting. The restriction began in 1970.”). *See above*, para. 3208.

<sup>10895</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 65 (“When they arrived, there were no more prayers and fasting. And the situation was strict in 1973. Those who dared to do daily prayers were arrested and disappeared. Two or three people were not allowed to have an assembly. From then on, we were under strict surveillance.”); T. 8 September 2015 (IT Sen), E1/343.1, p. 3; IT Sen Interview Record, E3/5195, 9 July 2008, pp. 2-3, ERN (En) 00242094-00242095; T. 19 May 2015 (OR Ho), E1/301.1, pp. 93-94 (“Buddhism and Islamic religion, from 1973 onwards, became less practical. For Buddhism, monks carried chicken to a battlefield at that time, and Cham people were no longer together going to the mosque and doing any worship. In 1975, Buddhist monks started to leave monkhood one after another, and Cham people no longer had latitude or had time to pray [...] At the outset, there were monks and there were Islamic people, However, in 1973 and 1974, Cham people were evacuated and Cham people were not allowed to go to their mosque to pray”); T. 6 January 2016 (SOS Romly), E1/371.1, pp. 95-97 (“Q. After the arrival of Khmer Rouge in your village and commune in 1970, were there changes in your commune and village; particularly, were there any changes in relation to Cham communities? A. In 1974, hakims had been called to commune office. They were arrested and detained at Krouch Chhmar security office and then three other *tuons*, who were knowledgeable, were also called and taken away.”); MAT Ysa Interview Record, E3/5207, 14 August 2008, pp. 2-3, ERN (En) 00242076-00242077 (“The Khmer Rouge came to this village in 1970. At that time they had us change our lives somewhat; initially there were not many changes. One important change was they had us participate in solidarity groups of 15 families per group, and we lived together in the same subdistrict. At that time the prohibition of our

there was a significant increase in prohibiting Cham from practicing their religion and culture, first following the fall of Phnom Penh on 17 April, and later in reaction to the Koh Phal and Svay Khleang rebellions.<sup>10896</sup> The Khmer Rouge subsequently monitored

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religion was not yet very strict, but during meetings they announced that *Angkar* wanted us to all live the same, have the same freedoms, to be in solidarity, living and eating together. [...] There were no arrests before 1973 and the first time was on 24 November when Khmer Rouge arrested me and eight other villagers. Before they arrested me they punished anyone who had done wrong by shaving their heads and having them walk along the road publicly announcing [their] confessions.”); T. 9 February 2016 (YSA Osman), E1/388.1, pp. 47-48, 50-51; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 31-32; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 102; Book by E. Becker: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, pp. 251-252, ERN (En) 00237956-00237957. See above, para. 3208.

<sup>10896</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 37-38 (“We were invited to attend a meeting and we were told that we, Cham ethnicity, were required to have our hair cut, not to cover our heads with *krama* and say daily prayers, but to eat pork at that time. Everything in relation to Islamic religion, we were prohibited from practising the religion and at the time we were told that the wheel of history was moving and if we happened to put our hands in or put our legs to in to stop the wheel [*sic*], we – our limbs would be cut by the speed of the wheel”); T. 28 September 2015 (HIM Man), E1/350.1, pp. 12-13, 39-40; T. 8 September 2015 (SOS Min), E1/343.1, pp. 69-70, 88-90, 92-94 (“[W]e, the Cham people were in the same status as those evacuees from Phnom Penh and both did not have any rights. [...] Everything to deal with the religion was forbidden. We were not even allowed to speak the Cham language.”); T. 6 January 2016 (SOS Romly), E1/371.1, pp. 95-97; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 76-77; T. 6 Apr 2016 (SOH Kamrei), E1/415.1, pp. 10-11 (“After the fall of Phnom Penh, we were not allowed to eat at our own home. We had to eat communally at a common kitchen. And we were not allowed to continue our religious practice. Q. Were Cham -- did Cham continue to dress in the same manner, or was there any -- were there any regulations about how men and women who were Cham should dress? A. In my village, after it was under the control of the Khmer Rouge, we were not allowed to wear our customary clothing. We had to wear the same clothing provided by the Khmer Rouge”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 5; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 53-54, 56-57, 64-67, 77-78 (stating he was prohibited from practicing his religion and he did not dare to speak Cham language); AHMAD Sofiyah Interview Record, E3/5194, 8 July 2008, p. 2, ERN (En) 00274707; MAT Ysa Interview Record, E3/5207, 14 August 2008, p. 3, ERN (En) 00242077; MEAS Soeurn Interview Record, E3/5531, 18 December 2009, ERN (En) 00425891; KAE Noh Interview Record, E3/5289, 20 May 2009, p. 4, ERN (En) 00340182 (“the Khmer Rouge abolished all religious practices. They forced me to eat pork, they held a big stick to threaten us to eat. We were not allowed to speak Cham language, they beat us if we spoke.”); SMAN At Interview Record, E3/5204, 12 August 2008, p. 3, ERN (En) 00242082 (“They did not permit us to practice religion and they forced us to eat pork and dog meat. Anyone who refused was beaten. I was beaten once because I refused to eat it. My uncle and his family were killed during that era because he worshipped.”); CHI Ly Interview Record, E3/5290, 12 May 2009, pp. 4-5, ERN (En) 00340172-00340173 (“They did not allow religious practices both Buddhism and Islam.”); Book by Ysa O.: *The Cham Rebellion: Survivors’ Stories from the Villages*, E3/2653, 2006, p. 113, ERN (En) 00219174; SOEM Dullos Civil Party Application, E3/5065, 23 June 2010, ERN (En) 00891053 (“Samraong Pagoda in Tuk Meas District was destroyed to build a dining hall while Islamic mosques were turned into piggeries. Khmer Cham people were forced to eat pork. If they had rejected this they would have been killed. Moreover we were forced to raise pigs. Bibles were destroyed. Praying to God was strictly prohibited. If somebody had done it, he would have been killed.”); NEU Paunh Supplementary Information Form, E3/5074, 22 June 2010, ERN (En) 00891060; KHUTH Voeurn Supplementary Information Form, E3/5079, ERN (En) 00891063 (“Chams could not practice their religion or worship their God”); HAK Math Civil Party Application, E3/4892, 24 September 2008, p. 1, ERN (En) 00890956 (“In 1975 the Khmer Rouge banned worship of God, and women had to keep their hair short, which was contrary to the practices of the Islamic religion They prohibited us from speaking the Cham language.”); MA Ty Supplementary Information Form, E3/4800, ERN (En) 00835937 (“The Koran, which was hidden by the Khmer Islam, was burned up by them after they had discovered it”). See below, fn. 10961.



whether the Cham were “rebel[ling] against Khmers”.<sup>10897</sup>

3231. The Chamber recalls its finding that in practice, the CPK never implemented the right of freedom of religion – even within the limits of the purported protection provided in the DK Constitution – and considered Islam to be “reactionary” and therefore “absolutely forbidden”.<sup>10898</sup>

13.2.6.1. Restrictions on Cham religious and cultural practices in the East Zone

3232. Several witnesses and Civil Parties testified that, shortly after the fall of Phnom Penh, instructions prohibiting Cham religious and cultural practices in Kroch Chhmar district, Sector 21, East Zone, came from the “upper echelon” down to the villages and that anybody opposing them would be considered as an enemy of *Angkar*.<sup>10899</sup> The policies were often announced through open meetings, during which the Cham were advised to stop practising Islam and women were instructed to cut their hair short and stop wearing head scarves.<sup>10900</sup> The Chamber notes that while such meetings may have been open to all and the instructions banning religion and religious practices – such as long hair and head scarves – applied to both Khmer and Cham,<sup>10901</sup> the latter were

<sup>10897</sup> Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800 [E3/810], 16 September 1976, ERN (En) 00184338 (“On 3 September, in Sre Cham village, a sound of gunfire was heard. And all Cham people together were sharpening their knives by stopping working in an attempt to rebel against Khmers.”).

<sup>10898</sup> See above, para. 3215.

<sup>10899</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 65-66; T. 28 September 2015 (NO Sates), E1/350.1, pp. 52-53 (“The meeting would take place once every month or even earlier than that and we were told not to speak Cham language. Our religion was abolished, we were prohibited from practising our religion and we were not allowed to do any prayers. We were not allowed to study the prayers. [...] Those who did not follow instructions would be considered enemies. We were prohibited from practising our religion or doing the worship and if we still did it, we would be considered enemies and taken away”), 80-81 (“*Angkar* prohibited all of us from wearing head scarf or traditional clothes and from worshipping, and we were instructed to cut our hair short, we were not allowed to practice, to use Korans; *Angkar* from the upper level ordered such prohibition. I did not know who *Angkar* was but, I only know that it was *Angkar*”); T. 8 September 2015 (SOS Min), E1/343.1, p. 72.

<sup>10900</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 52-53, 86-87 (stating that the statement in his interview record that there was no meeting to discuss religious practices is incorrect). See SALES Ahmat Interview Record, E3/5209, 15 August 2008, p. 2, ERN (En) 00242067; T. 28 September 2015 (NO Sates), E1/350.1, p. 53; T. 8 September 2015 (SOS Min), E1/343.1, p. 72.

<sup>10901</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 86-87; T. 29 June 2016 (MEAS Soeur), E1/446.1, p. 87 (stating that he never saw a principle specific to the treatment of the Cham, but that the Islamic religion, like the Buddhist religion, was forbidden and all people “were not allowed to practice their religious beliefs”).

predominantly and particularly affected by them because they had to radically change their lifestyle and religious practices to abide by them.<sup>10902</sup>

3233. Likewise, the prohibition of the Cham language, also announced during such meetings, in practice targeted Cham culture whether or not it is interpreted as merely imposing the Khmer language for all.<sup>10903</sup> For instance, if Cham people wanted to continue to practice their religion through prayer in their language, they ran the risk of being arrested or otherwise punished if they were caught.<sup>10904</sup>

3234. NO Sates lived in Village 5, Svay Kleang commune, Kroch Chhmar district, Kampong Cham province.<sup>10905</sup> She stated that in 1975: “[T]here were no religions. There were no Cham tradition and religion. The practising of religion was prohibited; Cham people were not allowed to practice their religion or to pray within the mosque.”<sup>10906</sup> She gave evidence that the two mosques in the area were “broken and dismantled” in 1975,<sup>10907</sup> and stated that after the arrival of the Khmer Rouge, the Cham language and traditional clothing were prohibited, Korans were collected and burned, and Cham women could no longer have their hair long or wear head scarves.<sup>10908</sup> She said these prohibitions were ordered by *Angkar* and communicated to the people at

<sup>10902</sup> See e.g., T. 9 March 2016 (VAN Mat), E1/398.1, pp. 12-13, 17, 52-53.

<sup>10903</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 53; T. 9 March 2016 (VAN Mat), E1/398.1, pp. 13, 53; T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-72; T. 13 January 2016 (MATH Sor), E1/375.1, p. 15; T. 7 September 2015 (IT Sen), E1/342.1, pp. 67-68.

<sup>10904</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 67 (“We were not allowed to speak the Cham language at all; only the Khmer language was allowed to be spoken at that time. The rule was also applied to young children. It would be your luck if they did not hear you speak Cham; but if they did, you would be taken away for refashioning immediately.”); T. 9 March 2016 (VAN Mat), E1/398.1, p. 53 (“We were banned from speaking the Cham language. [...] If we were to speak Cham, we would be taken away and killed, so we tried to force ourself [*sic*] to speak Khmer language for our communication. And some Cham people did not speak Khmer fluently.”); T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-72 (“The restriction was for us problematic since we were not allowed to speak the Cham language. And the restrictions applied almost to every aspects of life: on food, on clothing, and women -- Cham women were forced to cut their hair short. So the way of our living was extremely difficult.”). See also, MATH Ly Interview by Stephen HEDER, E3/390, undated, p. 12, ERN (En) 00436857 (“They stopped speaking Cham and anyone who spoke Cham was tied up for the fire ants to bite for one night”); HAK Math Civil Party Application, E3/4892, 24 September 2008, p. 1, ERN (En) 00890956 (“They prohibited us from speaking the Cham language.”); KHUTH Voern Civil Party Application, E3/5079, 20 May 2010, ERN (En) 00891063 (“we were prohibited from speaking the Cham language”).

<sup>10905</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 46.

<sup>10906</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 48.

<sup>10907</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 78-79, 82. See also, T. 6 January 2016 (SOS Romly), E1/371.1, pp. 95-97; T. 29 February 2016 (MAN Sles), E1/393.1, p. 69.

<sup>10908</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 79-81. See also, KHUTH Voern Civil Party Application, E3/5078, 18 December 2009, ERN (En) 0077961 (“In 1976, we started eating collectively. In the same year, we were forced to eat pork; we were not allowed to talk in our language; girls and women had to have short haircut.”).

meetings held by the commune chief, village chief, deputy village chief and members of village committee and anyone refusing to obey the instructions “would have been considered betraying [*sic*] *Angkar*”.<sup>10909</sup> Later, between 1975 and 1977, NO Sates lived in Khsach Prachheh Leu,<sup>10910</sup> where she attended meetings once a month during which Cham people were told not to speak their language or practice Islam, and those who did not follow the instructions would be considered enemies and taken away.<sup>10911</sup>

3235. NO Sates’s evidence is largely corroborated by SOS Min, who also stated that, by 1975, after the arrival of the Khmer Rouge in Village 5, Svay Khleang commune, Kroch Chhmar district, Kampong Cham province in 1973, the CPK started imposing restrictions on the practise of Islam through restrictions on food, and clothing, notably regarding women’s traditional haircuts and clothes<sup>10912</sup> SOS Min also gave evidence that Cham people were not allowed to read their Korans,<sup>10913</sup> and that, after the liberation, the Khmer Rouge dismantled the mosques in Svay Khleang village, which had been built to accommodate the congregations of Cham people.<sup>10914</sup> He stated that these restrictions “were harmful to the Cham identities” and rendered their way of life “extremely difficult”.<sup>10915</sup> He explained that if anyone deviated from these restrictions, they would be accused of being an enemy, which would be grounds for arrest or disappearance.<sup>10916</sup> SOS Min further gave evidence that the cooperative chief or the commune chief would present these restrictions at meetings and anyone refusing to abide by them would be accused of being an enemy of *Angkar*.<sup>10917</sup> According to SOS Min, *Hakims* “were the first targets of arrest by the Khmer Rouge” as Muslim leaders and teachers of Islam were arrested in 1974.<sup>10918</sup>

3236. IT Sen gave similar evidence in relation to the treatment of the Cham in Preaek Achi, Kroch Chhmar district, Kampong Cham province. He testified that during the DK

<sup>10909</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 81.

<sup>10910</sup> The Chamber notes that this location appears to be within Kroch Chhmar district in the East Zone. See T. 28 September 2015 (NO Sates), E1/350.1, p. 52.

<sup>10911</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 53.

<sup>10912</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 67, 71-72, 85. See also, T. 9 March 2016 (VAN Mat), E1/398.1, pp. 13, 50-53; T. 29 February 2016 (MAN Sles), E1/393.1, p. 65.

<sup>10913</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 104.

<sup>10914</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 87-88. See also, T. 6 January 2016 (SOS Romly), E1/371.1, pp. 95-97; T. 29 February 2016 (MAN Sles), E1/393.1, p. 69.

<sup>10915</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-72.

<sup>10916</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-73.

<sup>10917</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 72-73.

<sup>10918</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 104. See also, T. 28 September 2015 (NO Sates), E1/350.1, p. 82.

period, Cham were forced to eat pork, women had to cut their hair short and Korans were confiscated.<sup>10919</sup> He specified that orders came from the upper echelon down to the villages; the village chiefs and security guards then went around imposing “restrictions on private cooking and short haircut for the Cham women and other Islamic practices”.<sup>10920</sup>

3237. In relation to the Closing Order’s charges that religious leaders were arrested or killed,<sup>10921</sup> the Chamber notes that much of the evidence it heard on this matter refers to arrests that took place prior to 1975.<sup>10922</sup> In cases where religious leaders were arrested after the fall of Phnom Penh in the East Zone, the evidence shows that they were part of a larger group, and does not clearly demonstrate that they were targeted specifically because of their prominence. For instance, MAN Sles’s father, who was the second assistant to the *Hakim* of Svay Khleang, was arrested along with 50 to 60 other Cham, some as young as 15 years old.<sup>10923</sup> The Chamber is therefore not satisfied that Cham religious leaders were particularly targeted for killings or imprisonment during the indictment period. However, those who continued to practice and preach Islam were targeted for not abiding by the prohibitions.<sup>10924</sup>

3238. In light of the above, the Chamber finds that, after their arrival, in the East Zone, the Khmer Rouge forcibly imposed restrictions on Cham religious and cultural practices in Kroch Chhmar district. These restrictions included forcing the Cham to have the same appearance as Khmer people by adopting the same uniform way of

<sup>10919</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 57, 65-69, 74, 76, 109-110; T. 8 September 2015 (IT Sen), E1/343.1, pp. 9-10. *See also*, T. 9 March 2016 (VAN Mat), E1/398.1, pp. 3, 13 (VAN Mat lived in Chumnik village in Chumnik commune, Kroch Chhmar district: “We were prohibited from practising our religion and not allowed to use Cham language. And people were required to cut their hair short, and we were forced to eat pork”).

<sup>10920</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 66.

<sup>10921</sup> Closing Order, paras 211 (“The CPK imprisoned or killed Cham religious leaders and elders”), 756 (“Religious leaders and learned Islamic scholars were arrested and/or killed”), 1420 (“Religious leaders and learned Islamic scholars were arrested and killed.”).

<sup>10922</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 82 (“before 1975, there had been *hakims*”); T. 6 January 2016 (SOS Romly), E1/371.1, pp. 94-95, 97; T. 8 September 2015 (SOS Min), E1/343.1, p. 104; RES Tort Interview Record, E3/7766, 19 May 2009, pp. 2-3, ERN (En) 00340201-00340202 *confirming* Book by Ysa O.: *The Cham Rebellion: Survivors’ Stories from the Villages*, E3/2653, 2006, pp. 58-59, ERN (En) 00219119-00219120.

<sup>10923</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 54, 69-73, 82; MAN Sles Civil Party Application, E3/6714, 27 October 2009, p. 4, ERN (En) 01089919.

<sup>10924</sup> *See e.g.*, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Statement submitted by Amnesty International*, E3/4198, August 1978, ERN (En) 00271509 (listing religious leaders who were executed in Kroch Chhmar District “for performing prayers instead of attending a meeting called by a local Khmer Rouge leader.”).

dressing, forbidding traditional clothing and grooming practices, and forcing them to abide by the same dietary regime as the Khmer, which included eating pork.<sup>10925</sup> The Khmer Rouge also confiscated and burned Korans<sup>10926</sup> and dismantled mosques or used them for purposes other than prayer, such as stocking cattle and tobacco.<sup>10927</sup>

13.2.6.2. Restrictions on Cham religious and cultural practices in the Central (old North) Zone

3239. Starting from the fall of Phnom Penh, instructions prohibiting Cham religious and cultural practices were also imposed in various locations in the Central (old North) Zone. HIM Man stated that, after the April 1975 evacuation of Cham in Sach Sou village, Peam Chi Kang commune, Kang Meas district, Kampong Cham province,<sup>10928</sup> only about 30 Cham families remained in the village from the 200 to 300 that used to live there.<sup>10929</sup> In around 1976,<sup>10930</sup> the village chief called the remaining Cham to attend a meeting during which they were ordered to stop daily prayers, start eating pork, women had to cut their hair and not cover their heads.<sup>10931</sup> After the meeting, the Cham were “under constant monitoring by the militia”.<sup>10932</sup> The village chief *Ta Tam*, who headed the meeting, was a Muslim Cham and was later taken away and killed.<sup>10933</sup> HIM Man explained that, even though he did not know who gave the order, he assumed that *Ta Tam* was carrying out orders “from above” since “[d]uring the Khmer Rouge regime, when a chief raised something, it was certain that he must have received an order to do so”.<sup>10934</sup> HIM Man stated that he and other Cham were forced to eat pork at gunpoint and some of them “were weeping while they were eating pork”.<sup>10935</sup> Several witnesses and Civil Parties stated that the Cham could no longer pray, they had to wear the same dress and haircuts as Khmer people, Korans were destroyed, and mosques

<sup>10925</sup> See above, paras 3232-3236.

<sup>10926</sup> See above, paras 3234-3236.

<sup>10927</sup> See above, paras 3234-3235. See below, para. 3239; T. 29 February 2016 (MAN Sles), E1/393.1, p. 69.

<sup>10928</sup> The Chamber recalls that this province was located partly in the Central (old North) Zone and partly in the East Zone. See Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1456.

<sup>10929</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 32, 35, 37.

<sup>10930</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 42.

<sup>10931</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 37-40.

<sup>10932</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 39.

<sup>10933</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 37-38.

<sup>10934</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 38.

<sup>10935</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 41; T. 18 September 2015 (HIM Man), E1/350.1, p. 15.

were dismantled or used for storage purposes, leaving “no sacred place for [the Cham] to pray”.<sup>10936</sup>

3240. SOH Kamrei, a religious teacher from Akmok village in Chamkar Leu district, further stated that after the fall of Phnom Penh, he was permitted to continue teaching Cham children but he could no longer teach Islamic morality and religion; he could only teach Khmer literature.<sup>10937</sup>

3241. SENG Kuy who was a Khmer rice farmer in Angkor Ban village 2, Angkor Ban commune, Kang Meas district, corroborated the fact that the Cham were banned from practising their religion, were prevented from using their language and had a Khmer lifestyle imposed upon them.<sup>10938</sup>

3242. As was the case in the East Zone, the prohibitions on Cham religious and cultural practices in the Central (old North) Zone came down from the “upper level, upper echelon”.<sup>10939</sup> Meetings were held during which the Cham were told to stop practicing their religion and “to work for the regime’s interests”.<sup>10940</sup> The instructions announced during these meetings included to stop daily prayers, to start eating pork, for women to cut their hair short and to stop wearing headscarves.<sup>10941</sup> In limiting the educational topics to those taught to Khmer children,<sup>10942</sup> the Cham lost a piece of their

<sup>10936</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 34-35, 45-46; T. 17 September 2015 (HIM Man), E1/349.1, pp. 73-74; T. 18 September 2015 (HIM Man), E1/350.1, pp. 14, 31, 40; T. 14 September 2015 (SEN Srun), E1/346.1, p. 12.

<sup>10937</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 10, 12, 75-76.

<sup>10938</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 67, 79. *See also*, TES Raun Interview Record, E3/10740, 25 February 2016, p. 3, ERN (En) 0126000 (“Q: Did they allow you to wear Cham clothing? A12: We had been wearing black clothes for a long time before that. Women were ordered to have their hair cut. We had to eat rice together.” He further states that the Cham and Khmer looked the same and discusses Cham being evacuated and told they were to be sent to another place to work); YIM Kimsan Interview Record, E3/5528, 10 December 2009, p. 4, ERN (En) 00421619 (“They had those Cham eat pork just like the ethnic Khmer did.”); CHUOP Non Interview Record, E3/9349, 17 November 2008, p. 5, ERN (En) 00244158 (“They did not let them speak the Cham language. As for their food, it was the same as that of the ethnic Khmer. When there was pork in the soup, if they did not eat it, they had nothing to eat. As for observing their traditions, that was forbidden. In particular, the women could not cover their heads with scarves.”); BAO Troab OCP Interview, E3/7826, 5 August 2008, p. 5, ERN (En) 00210430 (stating that Cham were not allowed to practice their religion and were forced to eat pork).

<sup>10939</sup> T. 28 September 2015 (HIM Man), E1/350.1, pp. 41-42; T. 28 September 2015 (NO Sates), E1/350.1, p. 81; T. 17 September 2015 (HIM Man), E1/349.1, pp. 37-38.

<sup>10940</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 42, 52 (Chamkar Leu district); T. 17 September 2015 (HIM Man), E1/349.1, pp. 38-40 (Kang Meas district). *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1656.

<sup>10941</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 37, 40-41, 73; T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 10-11; SOH Kamrei Interview Record, E3/5216, 10 September 2008, pp. 5-6, ERN (En) 00225498-00225499.

<sup>10942</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 10, 12, 75-76.

religious identity and the capacity to pass it on to future generations. There was an announcement that any person refusing to eat pork would be considered to be opposing *Angkar*.<sup>10943</sup> The Chamber finds that, even if the prohibition on religion applied to other religious groups including to Khmer Buddhists, the Cham were specifically targeted in practice. They were specifically identified as Islam believers and as having their own cultural practices, while Islam was considered to be a reactionary religion and Cham cultural practices as incompatible with the revolutionary framework.<sup>10944</sup> The Cham were closely monitored by the Khmer Rouge and if they refused to abide by the instructions restricting their religious practices, for example by refusing to eat pork, they would be considered as opposing *Angkar* and punished. The vast majority of Cham did not dare contravene these requirements for fear of being taken away to be killed.<sup>10945</sup>

3243. The Chamber also heard evidence of Cham being discriminated against, prevented from worshipping their religion and speaking their language, and forced to eat pork at the 1<sup>st</sup> January Dam Worksite.<sup>10946</sup>

3244. In terms of religious leaders being especially targeted in the Central (old North) Zone, the Chamber finds that there is insufficient evidence to support this allegation. SOH Kamrei, who was a religious teacher, testified that religious teachers and leaders were not distinguished from ordinary Cham in terms of being targeted and, in fact, sometimes survived longer because they could hide their Cham identities.<sup>10947</sup> SOH Kamrei managed to survive by requesting that he be permitted to live in another village where he could hide his Cham identity and in 1977 he left Spueu and moved to Cheyyou.<sup>10948</sup>

<sup>10943</sup> T. 18 September 2015 (HIM Man), E1/350.1, pp. 14-15.

<sup>10944</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 19-20 (while MUY Vanny testified that religion was generally prohibited, he also testified that the Cham “did not dare speak their Cham language” and that the “Cham were targeted and taken away to be killed. And the Khmer people were not taken away.”).

<sup>10945</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 38-41 (“that was the conclusion that we made that we were under watch by the militia and if any of us was found to pray to Allah, then we would be risking our life as they would come to take us away at gun point at lunch time”); T. 18 September 2015 (HIM Man), E1/350.1, pp. 14-15 (“If I refused to eat pork, I was afraid that the bullet would be shot -- I would be shot -- I would be beaten with a stick. So it applies to other people. If we refused to eat pork, we would risk our lives. We had to eat pork in tears.”); MEAS Laihuo Interview Record, E3/9351, 20 November 2008, ERN (En) 00244165 (“They did not let the Cham practice their religion; they had them do everything like the ethnic Khmer. If they saw them practicing Islam they would take them away and kill them.”); T. 25 May 2015 (MEAS Laihour), E1/304.1, p. 109 (confirming interview record).

<sup>10946</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1656, 1659.

<sup>10947</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, p. 46.

<sup>10948</sup> T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 24-25, 76-77, 92-94.

3245. In light of the above, the Chamber finds that, after their arrival in the Central (old North) Zone, the CPK forcibly imposed restrictions on Cham religious and cultural practices in various locations within the Zone. These restrictions included prohibition on daily prayers, forcing Cham to start eating pork and wear the same dress and haircuts as the Khmer people, and requiring that the Cham speak the Khmer language only, as well as Korans being destroyed and mosques dismantled or used for purposes other than prayer. Most Cham did not resist these orders for fear of being taken away to be killed.

13.2.6.3. Restrictions on Cham religious and cultural practices in other locations

3246. Instructions prohibiting Cham religious and cultural practices were also imposed in various locations throughout the country. MEU Peou gave evidence that in 1975 the Khmer Rouge made an announcement in a village in Bakan district, Pursat province, Northwest Zone, instructing the Cham to stop living in groups and that women stop wearing a headscarf and cut their hair short.<sup>10949</sup> MEU Peou said the announcement was forcing the Cham “to do whatever the Khmer people did” – including by abandoning their religion and the Cham language – and that this had a significant impact on the Cham community: “we lost our own identities, lost our religion and our body became so thin”.<sup>10950</sup>

<sup>10949</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 8, 19-20.

<sup>10950</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 6-9. *See also*, MOES Him Victim Information Form, E3/7192a, 18 January 2010, ERN (En) 00835774; MOES Him Victim Information Form, E3/7192b, ERN (En) 00619515 (MOES Him was in Steung Kambot village, Bakan cooperative, Bakan Kraom district, Pursat province. He claimed that he was forced to eat Pork and that All Cham were deprived of all their rights and were not allowed to speak the Cham language); KEV Mae Victim Information Form, E3/6978a, 23 November 2008, p. 7, ERN (En) 00828277 (KEV Mae was in Koun Taot village, Rumlech commune, Bakan district. He stated: “Once there was a special meeting for the Cham people in the cooperative. The meeting was attended and convened by the unit committee’s and commune committee Thim. The general meaning of the meeting was to prohibit all Cham people from speaking the Cham language and praying and forcing them to cut their hair and to eat pork. Many elderly Cham people suffered and died as the result of prohibition of rights to religion and forcing them to do violate Islamic disciplines [*sic*.”); EK Khat Supplementary Information Form, E3/4801, multiple dates, ERN (En) 01057925-01057927 (stating that in 1975 she was evacuated from Boeng Bey village to Ruessei Kaun Khla village. In 1976 she was further evacuated to Ou Khsach, in Khnar commune, Bakan district. She stated that throughout the Khmer Rouge regime, Cham were not allowed to wear traditional clothes instead they were made to wear black clothes. Women were required to keep their hair short. People were not allowed to practice any religions or to worship any gods); KROEM Samy Hors Supplementary Information Form, E3/4934, 2 June 2010, ERN (En) 00861863-00861864 (she was evacuated from Kraol Krabei village Knar commune, Bakan district to Angtae Bospork. She stated that Khmer Rouge soldiers looked down on Cham people saying: “A Cham who has no country and lives in someone country must be destroyed” and that they forced Cham people to eat pork); MAN Yousoh Supplementary Information Form, E3/4744, 26 May 2008, ERN (En) 00864492 (stating that after 1975 they evacuated him to Totim village, Voat Angkor commune, Touk Meas district, Kampot province, and



3247. MEU Peou also testified that *Angkar* forced the Cham, including himself, to eat pork and stated that those who refused, like his father, would eventually starve to death as they were not served any other food and that it set “an example to scare other Cham people”.<sup>10951</sup> The Chamber also heard testimonial evidence of Cham being forced to eat pork in the Southwest Zone and the Northwest Zone,<sup>10952</sup> and has before it numerous written accounts corroborating that the CPK forced the Cham to eat pork throughout the country.<sup>10953</sup> While occasionally steps were taken to spare the Cham from being forced to eat pork, these instances appear to result from the benevolence of a given person in charge, who was willing to go against the general order imposing the forced consumption of pork.<sup>10954</sup> The Chamber finds that, while individual leaders may not always have imposed the forced consumption of pork, CPK announcements made it clear that it was one of the ways in which the Cham were expected to assimilate into Khmer culture. In that respect, the evidence provided by witnesses and Civil Parties is consistent with the view of Expert YSA Osman that, while the majority of the Cham were forced to eat pork, for those who were not, it was likely on the result of local chiefs expressing sympathy and allowing them to carry on with their traditional practices.<sup>10955</sup>

3248. In relation to the targeting of religious leaders in other locations, MEU Peou testified that among the 17 family members that he lost during the DK period, some were *Imams* and *Tuons*.<sup>10956</sup> He also stated that a family who lived near his house “knew a lot about Islam religion and culture. And that’s the reason they were taken away and

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that he was “threatened by comrade Chhim to eat the pork” and was told: “Nowadays, you still have the belief of evil ghosts. If you do not eat pork, it means that you oppose us.” Therefore, he “ate pork as other people did”).

<sup>10951</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 11, 38-39.

<sup>10952</sup> T. 3 April 2015 (LOEP Neang), E1/288.1, pp. 94 (in Tnaot Chang, Tram Kak), 96-98; T. 18 October 2016 (HUON Choeurm), E1/485.1, p. 35 (Northwest Zone); T. 6 December 2012 (HUN Chun Ly), E1/149.1, pp. 103-104 (Battambang); T. 14 November 2012 (PE CHUY Chip Se), E1/144.1, pp. 9-10.

<sup>10953</sup> HUON Choeum Interview Record, E3/9580, 22 September 2013, p. 13, ERN (En) 00978427; CHAN Lee Interview by Nate THAYER, E3/7521, September 1984, ERN (En) 00667245; YATOGOPE Bin Ali Interview by Nate THAYER, E3/7551, January 1985, ERN (En) 00053192; MUHAMED Ali Interview by Nate THAYER, E3/7490, August 1985, ERN (En) 00667215; SAVEE Bin Kasim Interview by Nate THAYER, E3/7578, ERN (En) 00053136; SAVEE Bin Kasim Interview by Nate THAYER, E3/7578, September 1984, ERN (En) 00053136; “Abdulah” Interview by Nate THAYER, E3/7480, 21-22 January 1985, ERN (En) 00667260; “Saleh” Interview by Nate THAYER, E3/7517, September 1989, ERN (En) 00053278; IEP Toh Interview by Nate THAYER, E3/7574, September 1984, ERN (En) 00053246; “Abraham” Interview by Nate THAYER, E3/7539, August 1985, ERN (En) 00667266.

<sup>10954</sup> T. 18 October 2016 (HUON Choeurm), E1/485.1, pp. 35-36; T. 24 April 2015 (PECH Chim), E1/292.1, pp. 25-26. *See also*, T. 9 February 2016 (YSA Osman), E1/388.1, pp. 53-56; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, 1996, p. 461, ERN (En) 01150237.

<sup>10955</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 55-56.

<sup>10956</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 11, 32.

killed.”<sup>10957</sup> The Chamber considers that this is insufficient evidence to support the charge that these people were targeted not only because they were Cham but specifically because they were religious leaders. Although religious leaders were arrested and taken away, there is no sufficient evidence to indicate that they were targeted at a rate higher than regular Cham people.

3249. The Chamber further notes that Nate THAYER of the Social Science Research Council collected numerous accounts which stated that, throughout the country, the practice of Islam was prohibited, Korans were confiscated and burned, mosques were destroyed or converted to secular uses, and Cham were forced to speak Khmer.<sup>10958</sup>

<sup>10957</sup> T. 29 February 2016 (MEU Peou), E1/393.1, p. 30.

<sup>10958</sup> SUFEEYAN Idres Interview by Nate THAYER, E3/7534, 25 December 1984, ERN (En) 00667253-00667255; MUHAMED Ali Interview by Nate THAYER, E3/7490, August 1985, ERN (En) 00667215; CHAN Lee Interview by Nate THAYER, E3/7521, September 1984, ERN (En) 00667246; YATOGOPE Bin Ali Interview by Nate THAYER, E3/7551, January 1985, ERN (En) 00053192; Zakreyah Interview by Nate THAYER, E3/7555, 22 January 1985, ERN (En) 00855135; SAVEE Bin Kasim Interview by Nate THAYER, E3/7578, September 1984, ERN (En) 00053136, 00053139; Saleh Interview by Nate THAYER, E3/7517, September 1984, ERN (En) 00053277; HUL Man Interview by Nate THAYER, E3/7578, September 1984, ERN (En) 00053144, 00053146; Abdulluh Interview by Nate THAYER, E3/7480, 21-22 January 1985, ERN (En) 00667260-00667261; RIM Sarah Interview by Nate THAYER, E3/5676, August 1984, ERN (En) 00667228-00667229; IEP Toh Interview by Nate THAYER, E3/7574, September 1984, ERN (En) 00053246-00053247; PEANG Romly Interview by Savy, E3/7502, 20 May 1985, ERN (En) 00667218-00667219. MAK Katheet Interview by Nate THAYER, E3/7482, 13 September 1984, ERN (En) 00667211-00667212; SAVEE Bin Kasim Interview by Nate THAYER, E3/7578, September 1984, ERN (En) 00053137, 00053139; LOAH Treh Interview by Nate THAYER, E3/7481, 16 June 1984, ERN (En) 00667202-00667204, 00667207; MAK Katheet Interview by Nate THAYER, E3/7482, 13 September 1984, ERN (En) 00667212; MAT Sman Interview by Nate THAYER, E3/7485, 10 September 1984, ERN (En) 00053218-00053219; Abraham Interview by Nate THAYER, E3/7539, August 1984, ERN (En) 00667266-00667267. *See also*, YOUSOH Slaiman Civil Party Application, E3/7017a, 20 May 2008, p. 4, ERN (En) 01226561 (YOUSOH Slaiman was evacuated in 1976 from Angkor Ban commune, Kang Meas district to Battambang province, Damrei Slab village, Doun Teav district. He stated “In 1977, Khmer Rouge *Angkar*, via En, the cooperative chief in Damrei Slab village, forced me to eat pork because he knew I was Khmer-Islam. They totally eliminated the practice of Islam. The reason they did this was because they did not want to have any religion in the Democratic Kampuchea regime); KHUTH Voern Supplementary Information Form, E3/5079, undated, ERN (En) 00891063 (KHUTH Voern was evacuated to Srae Chan village, Tuek Phos district, Kampong Chhnang province and stated: “With regard to the religion, traditions and customs of the Chams, the Khmer Rouge absolutely prohibited our practices. Chams could not practice their religion or worship their God, we were forced to eat pork, women were forced to have their hair cut short, and we were prohibited from speaking the Cham language. They destroyed the holy boards for worshipping our God and went up into our stilt houses to search for the Koran and other books written in the Cham script; they destroyed them all. They did not allow worship and they burned and destroyed mosques and turned them into food warehouses instead”); KHUTH Voern Civil Party Application, E3/5078, undated, p. 1, ERN (En) 00779611 (“Since 1973, the country had been in the war. As a result, the traditional worship of our Islam was prohibited. We were not allowed to practice and follow our religion as we traditionally did in the past. This event occurred in Tuol Tbaeng near Longveaek commune. For three or four months later, the water level in the north of Longveaek went down. The Khmer Rouge therefore evacuated us to the area of Boeng Thorn locating in the present commune of Chres. We lived in the east of Chres for one month. We were then evacuated to District 14”).

3250. In light of the above, the Chamber finds that the CPK forcibly imposed restrictions on Cham religious and cultural practices in other various locations throughout Cambodia, under the threat of killing those who refused to set an example for the others. These restrictions included prohibitions on daily prayers, forcing Cham to start eating pork and wear the same dress and haircuts as Khmer people, forcing them to only speak the Khmer language, burning Korans and dismantling mosques or using them for purposes other than prayer.

### 13.2.7. *The 1975 Rebellions in Kroch Chhmar District, Sector 21, East Zone*

3251. In September-October 1975, two rebellions occurred at around the time of Ramadan in two Cham communities within Kroch Chhmar district, Sector 21, East Zone. The first was in Koh Phal village, Peus I commune, and the second in Svay Khleang village, Svay Khleang commune.<sup>10959</sup> The CPK “cracked down” on both rebellions within days.<sup>10960</sup> Several witnesses and Civil Parties gave evidence that the rebellions were a reaction to earlier restrictions imposed on Cham religious and cultural traditions, and that the situation further worsened for the Cham as a result.<sup>10961</sup>

<sup>10959</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 105-106; T. 28 September 2015 (NO Sates), E1/350.1, p. 46; T. 29 September 2015 (NO Sates), E1/351.1, pp. 6-7; T. 29 June 2016 (MEAS Soeur), E1/446.1, p. 58; T. 9 March 2016 (VAN Mat), E1/398.1, pp. 13-14, 16; T. 7 September 2015 (IT Sen), E1/342.1, pp. 69-70; T. 9 February 2016 (YSA Osman), E1/388.1, pp. 25-26, 62-63; Article by S. Heder: “Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes”, E3/4527, undated, p. 26, ERN (En) 00661480; Book by Ysa. O.: *The Cham Rebellion*, E3/7675 [E3/2653], pp. 84-85, ERN (En) 00221859, 00219114-00219172; SOS Kamry DC-Cam Statement, E3/9750, 10 October 1999, ERN (En) 01222009; T. 6 Apr 2016 (SOH Kamrei), E1/415.1, pp. 77-78 (SOH Kamrei, whose name is also spelled SOS Kamri, clarified in court that he was not present in Koh Phal at the time of the rebellion but that he only “heard about people who came across [him] and spoke about it.”).

<sup>10960</sup> T. 29 February 2016 (MAN Sles), E1/393.1, p. 56; T. 9 September 2015 (SOS Min), E1/344.1, pp. 25-26; T. 8 September 2015 (IT Sen), E1/343.1, p. 17; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 64-68; T. 28 September 2015 (HIM Man), E1/350.1, pp. 9-13, 38-39; T. 29 September 2015 (NO Sates), E1/351.1, p. 7; MATH Ly Interview by Stephen HEDER, E3/390, undated, p. 12, ERN (En) 00436857; RES Tort Interview Record, E3/7766, 19 May 2009, p. 4, ERN (En) 00340203; SOS Kamry DC-Cam Statement, E3/9750, 10 October 1999, ERN (En) 01222009; KAE Noh Interview Record, E3/5289, 29 May 2009, p. 4, ERN (En) 00340182.

<sup>10961</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 75-76; T. 28 September 2015 (HIM Man), E1/350.1, pp. 12-13; T. 9 September 2015 (SOS Min), E1/344.1, pp. 5-6, 41-42; T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-72, 85-86, 103-105; T. 28 September 2015 (NO Sates), E1/350.1, pp. 48, 78-82; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 55-57, 64-65, 69-70, 76-82; T. 30 June 2016 (MEAS Soeur), E1/447.1, pp. 26-27; T. 7 September 2015 (IT Sen), E1/342.1, pp. 66, 71-72; T. 8 September 2015 (IT Sen), E1/343.1, pp. 14, 16-17; T. 9 March 2016 (VAN Mat), E1/398.1, pp. 14, 17, 76-77; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 53-54, 76-77. *See also*, SOS Kamry DC-Cam Statement, E3/9750, 10 October 1999, ERN (En) 01222008-01222009; KOB Math Interview by Nate THAYER, E3/7588, 5 June 1985, ERN (En) 00667271; Zakreyah Interview by Nate THAYER, E3/7555, 22 January 1984, ERN (En) 00855135; ISMAEL Maisam Interview Record, E3/5192, 7 July 2008, pp.

13.2.7.1. The September 1975 Koh Phal rebellion

3252. The CPK had increasingly imposed restrictions on Cham religious and cultural practices in Koh Phal, a Cham village on an island in the Mekong River, since it took control of the area in 1973.<sup>10962</sup> Witness IT Sen, who was then living in Ampil village in Kroch Chhmar district close to Koh Phal, explained that the Cham in Koh Phal rebelled against these restrictions, which included confiscating all the Korans and forbidding the practice of Ramadan.<sup>10963</sup> This evidence is further corroborated by statements made by SMAN At, KAE Noh, RES Tort and CHHI Ly, who directly took part in these events, and confirmed to OCIJ investigators their accounts of the rebellion as they had previously reported to YSA Osman.<sup>10964</sup>

3253. Evidence before the Chamber consistently shows that, in September 1975, five specific restrictions against the Cham were announced during a meeting called by the subdistrict chief: 1) Cham women were to cut their hair short following the revolutionary style and had to stop wearing a head scarves; 2) all Korans were to be gathered and burned; 3) all the Cham people in Koh Phal village were to raise pigs and eat pork; 4) all the Cham were to stop worshipping Allah and close all the mosques; and 5) Cham men and women were to marry other ethnic groups, and not other Cham.<sup>10965</sup>

2-3, ERN (En) 00242110-00242111; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 113, 151, ERN (En) 00219174, 00219212. *See above*, fn. 10896.

<sup>10962</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 30-32; T. 10 February 2016 (YSA Osman), E1/389.1, p. 71; RES Tort Interview Record, E3/7766, 19 May 2009, p. 3, ERN (En) 00340202 (Koh Phal village is an island.”); T. 7 September 2015 (IT Sen), E1/342.1, pp. 66-68; SMAN At Interview Record, E3/5204, 12 August 2008, p. 2, ERN (En) 00242081, Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 67-68, ERN (En) 00219128-00219129 (in his OCIJ interview, SMAN At affirmed the statements he made to YSA Osman in an interview dated 9 March 2001).

<sup>10963</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 66, 69-71; T. 8 September 2015 (IT Sen), E1/343.1, p. 14.

<sup>10964</sup> SMAN At Interview Record, E3/5204, 12 August 2008, pp. 2-3, ERN (En) 00242081-00242082; KAE Noh Interview Record, E3/5289, 20 May 2009, pp. 2-4, ERN (En) 00340180-00340182 [*see also*, Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 67-68, ERN (En) 00219128-00219129 (in his OCIJ interview KAE Noh affirmed the statements he made to YSA Osman in an interview dated 22 April 2001)]; RES Tort Interview Record, E3/7766, 19 May 2009, pp. 2-4, ERN (En) 00340201-00340203 [*see also*, Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 58-59, ERN (En) 00219119-00219120 (in his OCIJ interview RES Tort affirmed the statements he made to YSA Osman in interviews dated 13 November 1999 and 19 February 2000)]; CHHI Ly Interview Record, E3/5290, 20 May 2009, pp. 2-3, ERN (En) 00340170-00340171 [*see also*, Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 63-64, ERN (En) 00219124-00219125 (in his OCIJ interview CHHI Ly affirmed the statements he made to YSA Osman in an interview dated 14 March 2001, but he clarified that since he was interviewed he lost the statistical document showing that there were 267 families with the total number of 1,306 people living in Koh Phal at the time of the rebellion)].

<sup>10965</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 31-34; T. 10 February 2016 (YSA Osman), E1/389.1, pp. 57-58; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 58, 65-70, ERN (En) 00219119, 00219126-00219131; RES Tort Interview Record, E3/7766, 19 May 2009, p. 3, ERN

The Cham villagers, however, refused these conditions and continued to practice their religion.<sup>10966</sup> When the security guards of Ampil village and Preaek Kroch village started confiscating all the Korans and burned them upon order from the village chiefs and the upper echelon, the uprising started.<sup>10967</sup> The CPK sent in soldiers from the sector and district levels to “crack down” on the rebellion.<sup>10968</sup> They were armed and they arrived by boats after having been on standby for two and three days.<sup>10969</sup> The villagers were armed with only machetes, swords, or knife and stones, while the cadres had machine guns and artillery.<sup>10970</sup> IT Sen learned from his brother-in-law who managed to escape the fighting that “[t]hose who resisted were smashed or shot dead and some of them had their throats cut. Most Muslim men were killed. Only Muslim women remained.”<sup>10971</sup> Some Cham tried to flee by swimming across the Mekong River but

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(En) 00340202; KAE Noh Interview Record, E3/5289, 20 May 2009, p. 3, ERN (En) 00340181; SMAN At Interview Record, E3/5204, 12 August 2008, pp. 2-3, ERN (En) 00242081-00242082.

<sup>10966</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 34-35; Book by Ysa O.: *Oukoubah: Justice for the Cham Muslims under the Democratic Kampuchea Regime*, E3/1822, p. 4, ERN (En) 00078452 (“Lep Vanmath and Soh Ponyamin, the Khmer Rouge youth leaders of Svay Khleang village, and Rest Tort, the Khmer Rouge chief of Koh Phal village, led the people to rebel when upper-echelon *Angkar* ordered the closure of the mosques and arrested people in their villages. The rebellion of Koh Phal and Svay Khleang villages in Krauch Chhmar district, where people rose up to preserve their Islamic and Cham identity, took place in late 1975.”).

<sup>10967</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 66.

<sup>10968</sup> T. 8 September 2015 (IT Sen), E1/343.1, pp. 16-17; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 67-68; T. 10 February 2016 (YSA Osman), E1/389.1, p. 4; T. 23 March 2016 (YSA Osman), E1/407.1, pp. 50-51.

<sup>10969</sup> T. 8 September 2015 (IT Sen), E1/343.1, p. 19.

<sup>10970</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 70; T. 9 February 2016 (YSA Osman), E1/388.1, p. 35; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 59-66, ERN (En) 00219120-00219127; RES Tort Interview Record, E3/7766, 19 May 2009, pp. 3-4, ERN (En) 00340202-00340203; KAE Noh Interview Record, E3/5289, 20 May 2009, pp. 3-4, ERN (En) 00340181-00340182; PEN Sot Interview Record, E3/7786, 25 November 2008, p. 6, ERN (En) 00251068; CHHI Ly Interview Record, E3/5290, 20 May 2009, p. 4, ERN (En) 00340172. The Chamber notes that IT Sen’s testimony is contradictory as regard the date of the rebellion, which he sometimes seems to place in 1974. *See* T. 7 September 2015 (IT Sen), E1/342.1, p. 70; T. 8 September 2015 (IT Sen), E1/343.1, p. 7. At other times he places it in 1975. *See* T. 8 September 2015 (IT Sen), E1/343.1, pp. 14, 16. The Chamber has before it additional evidence placing the rebellion in 1975 and is satisfied that it indeed happened at that time. *See* T. 30 June 2016 (MEAS Soeurn), E1/447.1, pp. 25-26, referring to MEAS Soeurn Interview Record, E3/5531, 18 December 2009, ERN (En) 00425891-00425892; T. 6 April 2016 (SOH Kamrei), E1/415.1, pp. 80-81. The Chamber notes that there is only limited evidence to determine precisely which armed forces participated in the suppression of the rebellion. *See* PEN Sot Interview Record, E3/7786, 25 November 2008, pp. 5-7, ERN (En) 00251067-00251069 (PEN Sot was the deputy Chairman of Kampong Krabei Security Office, which was linked to Kroch Chhmar Security Centre. He explained that he was sent under the command of Chhan to suppress a Cham rebellion in Koh Phal and clarified that the District forces were equipped with “folding stock AKs” while the Cham “used swords and one from the area had a firearm”).

<sup>10971</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 70-71.

were captured and executed.<sup>10972</sup> A number of villagers died as a result of the fighting.<sup>10973</sup>

3254. After the rebellion, no Cham remained in Koh Phal as those who survived were later evacuated.<sup>10974</sup> Koh Phal, which means island of produce, became known as “Koh Phes”, meaning island of ashes, and the destruction of the village was used to warn other Cham not to resist the regime.<sup>10975</sup>

#### 13.2.7.2. The October 1975 Svay Khleang rebellion

3255. The Chamber heard three Cham Civil Party who were living in Svay Khleang when the rebellion occurred,<sup>10976</sup> as well as one witness who lived 10 kilometres away from Svay Khleang and gave indirect evidence of a “crackdown” in Svay Khleang in late 1975.<sup>10977</sup> The Chamber also relies on a number of interview records and Civil Party Applications in relation to the Svay Khleang rebellion.<sup>10978</sup> The Khmer Rouge had taken control of Svay Khleang in 1973 and gradually began applying restrictions

<sup>10972</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 70-71 (“my elder sister swam across the river to my village in Ampil, while my brother-in-law remained on the island engaging in the fighting. They sprayed villagers with bullets, and killed many of them. [...] Both my sister and brother-in-law swam across the river to seek refuge in Ampil village. I learnt about the fighting from my brother-in-law who had engaged in the fighting.”); T. 9 February 2016 (YSA Osman), E1/388.1, p. 36.

<sup>10973</sup> T. 9 February 2016 (YSA Osman), E1/388.1, pp. 35-36 (“So there were more victims at Kaoh Phal since they were fired upon by weapons and artillery and there were countless death of the villagers. There were 30 or 40 dead bodies in each pit and even those who carried the dead bodies were hit and died”); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 271, ERN (En) 01150142; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], pp. 57, 76, ERN (En) 00219118, 00219137; KAE Noh Interview Record, E3/5289, 20 May 2009, p. 4, ERN (En) 00340182; SMAN At Interview Record, E3/5204, 12 August 2008, p. 3, ERN (En) 00242082; Report on CGP Mapping Team Visit to Kampong Cham Province, E3/2631, 17-19 October 1995, 20-23 February 1996, EN 00208308; SOS Kamry DC-Cam Statement, E3/9750, 10 October 1999, ERN (En) 01222009.

<sup>10974</sup> T. 30 June 2016 (MEAS Soeurn), E1/447.1, pp. 26-27; T. 9 March 2016 (VAN Mat), E1/398.1, pp. 16-17, 76-77; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], p. 69, ERN (En) 00219130; KAE Noh Interview Record, E3/5289, 20 May 2009, p. 2, 4, ERN (En) 00340180, 00340182.

<sup>10975</sup> T. 28 September 2015 (HIM Man), E1/350.1, pp. 38-39; MAT Ly Interview by Stephen HEDER, E3/390, p. 12, ERN (En) 00436857; SOS Kamry DC-Cam Statement, E3/9750, 10 October 1999, ERN (En) 01222009.

<sup>10976</sup> T. 8 September 2015 (SOS Min), E1/343.1; T. 9 September 2015 (SOS Min), E1/344.1 (SOS Min *alias* SOS Ponyamin organised the rebellion with six other villagers); T. 28 September 2015 (NO Sates), E1/350.1; T. 29 September 2015 (NO Sates), E1/351.1 (her father participated in the rebellion. She herself was forcibly evacuated from the village following the rebellion); T. 29 February 2016 (MAN Sles), E1/393.1 (he denied being a leader in the rebellion but admitted having assisted his fellow villagers).

<sup>10977</sup> T. 8 January 2016 (SOS Romly), E1/372.1, pp. 66-68.

<sup>10978</sup> MAN Sen Interview Record, E3/5205, 13 August 2008; NO Sates Interview Record, E3/5193, 8 July 2008; TEH Sren Interview Record, E3/5206, 13 August 2008; MATH Ly Interview Record, E3/390, undated; HAK Math DC-Cam Statement, E3/4892, undated; SOS Min Civil Party Application, E3/4780, undated (Supplementary Information Form).

on Cham religious and cultural practices.<sup>10979</sup> Svay Khleang was considered to be a “Cham village” at the time, with thousands of Cham living there.<sup>10980</sup> The restrictions imposed included prohibitions on observing Ramadan, on speaking the Cham language, on using the mosques for prayer, and on wearing traditional clothing.<sup>10981</sup> Arrests in the village occurred from 1973 to 1975.<sup>10982</sup> In 1974, Cham religious leaders in Svay Khleang, including *Hakims* and *Tuons*, were arrested by the Khmer Rouge, and Korans were confiscated and stored at the house of the village chief.<sup>10983</sup> Before the rebellion, villagers were also arrested, including a group of 50 to 60 Cham men, women and children, aged from five and above.<sup>10984</sup> Five of the people arrested amongst that group were men with senior positions in the village, including the village chief and they were taken in the direction of the Kroch Chhmar District Hall and never returned, while the rest of the group was released.<sup>10985</sup> Resisting the Khmer Rouge became a matter of survival for the Cham villagers and their religious practices,<sup>10986</sup> and the rebellion arose from the fear that Cham would continue to be arrested, detained, or killed.<sup>10987</sup> According to Civil Party NO Sates, by 1975 all *Hakims*, *Tuons* and religious intellectuals and professors were arrested and it was for this reason that there was a rebellion in Svay Khleang.<sup>10988</sup>

<sup>10979</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 84-85; SOS Min Civil Party Application, E3/4780, undated p. 1, ERN (En) 00893529 (Supplementary Information Form); NO Sates Interview Record, E3/5193, 8 July 2008, pp. 2-3, ERN (En) 00274703-00274704; MAN Sen Interview Record, E3/5205, 13 August 2008, p. 2, ERN (En) 00275162; TEH Sren Interview Record, E3/5206, 13 August 2008, p. 2, ERN (En) 00275379.

<sup>10980</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 47-48, 77-78.

<sup>10981</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 48, 79-80; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 65, 69; T. 8 September 2015 (SOS Min), E1/343.1, pp. 71-72, 76-77; MAT Ly Interview, E3/390, undated, p. 12, ERN (En) 00436857; MAN Sen Interview Record, E3/5205, 13 August 2008, p. 3, ERN (En) 00275163; SOH Punyamin DC-Cam Statement, E3/9136, 25 January 2001, p. 2, ERN (En) 01133235.

<sup>10982</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 7, 9-10, 73-75, 85; T. 29 February 2016 (MAN Sles), E1/393.1, p. 74.

<sup>10983</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 104-105; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 54-55; T. 28 September 2015 (NO Sates), E1/350.1, p. 82; MAN Sen Interview Record, E3/5205, 13 August 2008, pp. 2-3, ERN (En) 00275162-00275163.

<sup>10984</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 70-71.

<sup>10985</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 71-74; MAN Sles Civil Party Application, E3/6714, undated, p. 4, ERN (En) 01089919.

<sup>10986</sup> T. 29 February 2016 (MAN Sles), E1/393.1, p. 55 (“During the time, the youth group banged the drum and the water buckets in order to call the Cham people to rise up and resist the Khmer Rouge since we came to understand that we no longer could survive and we had to resist for the survival of our religion”).

<sup>10987</sup> T. 29 September 2015 (NO Sates), E1/351.1, pp. 5-6; T. 29 February 2016 (MAN Sles), E1/393.1, pp. 74, 76; T. 8 September 2015 (SOS Min), E1/343.1, pp. 75-78.

<sup>10988</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 82.

3256. The Svay Khleang rebellion began at the end of Ramadan in October 1975, on the religious holy day called Raya, and lasted for one night and one day.<sup>10989</sup> The villagers were exceptionally allowed to celebrate Raya by slaughtering cows and holding group prayers, but were in fact being monitored in order to identify prominent Cham leaders.<sup>10990</sup> SOS Min received information that the Khmer Rouge were planning to arrest 80 Cham from his cousin SLEH Tam who worked for the village youth and learned this at a meeting.<sup>10991</sup> On 10 October 1975, SOS Min and seven friends organised themselves to collect and burn the list with the names of those 80 people, so that they would not be arrested.<sup>10992</sup> They were worried that they would be killed for having taken the list and they decided to “stage the revolt that night”.<sup>10993</sup> SOS Min encountered militiamen at night when he was getting a drum that would be used to send a signal to other villagers to start the uprising. They fought briefly and immediately after the signal was sent and the rebellion started: “After the drum was beaten, everyone from throughout the village came out to help and the revolt started that night, and it went on until the evening of the following day, before the Khmer Rouge soldiers surrounded us”.<sup>10994</sup> Eventually, other villagers came to join the rebellion and it lasted until the following day when Khmer Rouge soldiers surrounded the Cham and “[b]ullets flew everywhere in the village”.<sup>10995</sup> Various forces suppressed the rebellion in Svay Khleang.<sup>10996</sup> The Chamber notes that the evidence is insufficient to determine precisely which armed forces participated in the suppression of the rebellion, however the description of the weaponry used suggests the participation of well-equipped military forces. After one day and one night of fighting, the Cham surrendered.<sup>10997</sup> The

<sup>10989</sup> T. 29 September 2015 (NO Sates), E1/351.1, pp. 6-7.

<sup>10990</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 77.

<sup>10991</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 77-78.

<sup>10992</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 77-78.

<sup>10993</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 79.

<sup>10994</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 79-80.

<sup>10995</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 80.

<sup>10996</sup> T. 8 January 2016 (SOS Romly), E1/372.1, p. 68 (mentions troops from the sector level); T. 29 September 2015 (NO Sates), E1/351.1, pp. 10-11 (mentions district soldiers, commune soldiers and village militia “So there were armed forces at various levels within the area”). *See also*, T. 10 February 2016 (YSA Osman), E1/389.1, p. 4 (mentions forces coming from Sector 21); T. 23 March 2016 (YSA Osman), E1/407.1, pp. 50-51 (mentions troops from the Krouch Chhmar District and from Sector 21); DIN Pet DC-Cam Statement, E3/7998, 11 December 2000, pp. 19-20, ERN (En) 00726176-00726177 (mentions local soldiers and commune militiamen); SOS Min Civil Party Application, E3/4780, undated, ERN (En) 00893530 (Supplementary Information: mentioning commune militiamen).

<sup>10997</sup> T. 29 February 2016 (MAN Sles), E1/393.1, p. 56 (“After one day and one night of rebellion, we, Cham people, laid down the weapons”); T. 9 September 2015 (SOS Min), E1/344.1, p. 25 (“As far as I know, [the rebellion] lasted one whole day and one whole night.”); T. 28 September 2015 (NO Sates),



fighting resulted in hundreds of casualties for the Cham, and some casualties for CPK forces.<sup>10998</sup> The villagers were armed with only two rifles, one of which was captured from a Khmer Rouge soldier, knives and machetes.<sup>10999</sup> The Khmer Rouge soldiers were armed with different kinds of weapons and artillery.<sup>11000</sup>

3257. After the rebellion was over, all the surviving Cham were told to leave and were informed over loudspeaker that the Khmer Rouge wanted to search for enemies, and, if they did not leave, they would be considered enemies.<sup>11001</sup> The Khmer Rouge soldiers rounded up the people involved in the rebellion and walked them to Prek Samraong.<sup>11002</sup>

3258. The Cham were evacuated from their village, the men were separated from the women and detained in different locations.<sup>11003</sup> Women were placed in a pagoda and men were placed in tobacco-drying buildings, hospitals and schools where they were given inadequate food rations, interrogated, beaten and were threatened with bayonets and stabbed in the neck in the course of interrogations.<sup>11004</sup> SOS Min added that the soldiers, carrying hoes, took away some of the villagers “to the back where the tall Kokir trees were” a few days after the interrogation.<sup>11005</sup> Some Cham were also detained at the Kroch Chhmar district security office.<sup>11006</sup> Even after the fighting stopped, the

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E1/350.1, p. 52 (“The rebellion started at around 7 p.m. and it continued the day after. And the day after at 7 p.m. the rebels had been defeated and we were evacuated out of Svay Khleang village”).

<sup>10998</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 56, 81; T. 29 September 2015 (NO Sates), E1/351.1, pp. 12-13; T. 8 September 2015 (SOS Min), E1/343.1, pp. 80-81; T. 9 September 2015 (SOS Min), E1/344.1, p. 24. *See also*, T. 10 February 2016 (YSA Osman), E1/389.1, pp. 63-64.

<sup>10999</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 106; T. 9 September 2015 (SOS Min), E1/344.1, pp. 61-62; T. 29 February 2016 (MAN Sles), E1/393.1, p. 56; T. 9 February 2016 (YSA Osman), E1/388.1, p. 27. *See also*, MAN Sen Interview Record, E3/5205, 13 August 2008, p. 3, ERN (En) 00275163; HAK Math Civil Party Application, E3/4892, undated, p. 1, ERN (En) 00890956; SOH Punyamin DC-Cam Statement, E3/9136, 25 January 2001, p. 10, ERN (En) 01133243.

<sup>11000</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 106. *See also*, T. 29 September 2015 (NO Sates), E1/351.1, p. 7 (“And there was no way that the rebellion would defeat the Khmer Rouge because, you can imagine, on one side, there were only knives and swords while on the Khmer Rouge side, there were guns. So it was defeated. We surrendered and submitted to them”).

<sup>11001</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 82-83; T. 29 September 2015 (NO Sates), E1/351.1, p. 10 (“all the Cham people in Svay Khleang village had been cleansed and purged. And if anyone was to stay behind, that person would be considered the enemy or the CIA agent”).

<sup>11002</sup> T. 29 September 2015 (NO Sates), E1/351.1, p. 10.

<sup>11003</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 56, 77; T. 8 September 2015 (SOS Min), E1/343.1, p. 81; T. 29 September 2015 (NO Sates), E1/351.1, pp. 9-10.

<sup>11004</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 81-83.

<sup>11005</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 82.

<sup>11006</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 74-75; T. 29 September 2015 (NO Sates), E1/351.1, pp. 13-14. *See also*, LENG Sokchea Interview Record, E3/7781, 22 October 2008, pp. 2-4, ERN (En) 00235499-00235501 (LENG Sokchea was the interrogation team chief in Kroch Chhmar Security Centre. When the Cham rebelled in October 1975 he “interrogated many Cham who had been arrested and brought there”. He claimed that he did not know what happened once they were taken away from

Cham who were detained “kept disappearing every night”.<sup>11007</sup> The Chamber finds that the only inference which can reasonably be drawn is that these people were killed.

3259. In light of the above, the Chamber finds that, in September 1975 and October 1975, following increasing restrictions on Cham religious and cultural practices, two Cham rebellions were suppressed by CPK forces and, as a result, a great number of Cham were killed, and the remaining Cham population was forcibly removed from the villages of Koh Phal and Svay Kleang.

### 13.2.8. *Movement of Population Phase Two*

3260. The Closing Order charges that one of the CPK’s five policies was to implement and defend the socialist revolution through the movement of the population, and that in late 1975 Cham people were among those moved as part of Phase Two: the movement of people from the Central (old North), Southwest, West and East Zones.<sup>11008</sup> The Closing Order charges that after the Koh Phal and Svay Khleang rebellions of 1975, many Cham were moved from their villages in Kampong Cham province to other villages in the same province or other provinces.<sup>11009</sup> The movement of the Cham in connection with movement of the population (Phase Two) forms the basis of persecution on both political and religious grounds as well as extermination, and other inhumane acts through attacks against human dignity and conduct characterised as forced transfer and enforced disappearances.<sup>11010</sup>

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the detention office but “they disappeared after that”. He clarified that the arrests were made by YIN Sophy, the Sector 21 Chief of Security with the assistance of the military).

<sup>11007</sup> T. 29 February 2016 (MAN Sles), E1/393.1, p. 57. *See also*, T. 8 September 2015 (SOS Min), E1/343.1, p. 74 (“Anyway, if those people had not been killed, they would have returned. I never saw them again. And if they were to survive, they would be over 100 years old by now. I have never seen them return. So it is common sense that they died.”); T. 9 September 2015 (SOS Min), E1/344.1, p. 24 (“I cannot say the casualties reached 500. Perhaps it was below or a little bit above that number. I did not witness the casualty. I only noticed that people had been arrested and taken away. The arrests and acts of taking people away occurred on a regular basis.”); T. 28 September 2015 (NO Sates), E1/350.1, p. 50 (“Q. What about other villagers, who also had been evacuated [...] A. To my recollection, some of my neighbours disappeared and never returned but some other returned. My father disappeared and he has disappeared ever since.”).

<sup>11008</sup> Closing Order, paras 160-161, 266.

<sup>11009</sup> Closing Order, paras 281, 758, 1468.

<sup>11010</sup> Closing Order, paras 266, 268, 281, 901, 1381, 1416, 1420, 1434, 1436, 1448, 1470.

3261. Evacuations of Cham began before the Koh Phal and Svay Khleang rebellions took place.<sup>11011</sup> Some Cham people transferred from the East Zone to the Central (old North) Zone, were transported to Preaek Sandaek Pagoda, Baray district, which was overcrowded. There they were split up into various villages and assigned to work in various mobile units.<sup>11012</sup> According to OR Ho, who was then the village chief in Preaek Sandaek village, the “ethnic Cham were considered to be even lower than the 17 April People” and “they were not allowed to stay in their village and they were relocated or dispersed here and there in various other locations like 17 April People”.<sup>11013</sup> Once evacuated, some Cham were forced to live among the Khmer people and to follow their customs, including eating pork.<sup>11014</sup>

3262. Mass evacuations started following the Svay Khleang and Koh Phal rebellions when the CPK ordered forced transfers “designed to disperse the Cham” in order to “ease tensions”, as evidenced by Telegram 15.<sup>11015</sup> The Chamber recalls its finding that Telegram 15 establishes that the CPK, after the September 1975 Koh Phal and October 1975 Svay Khleang rebellions, adopted a policy of dispersing the East Zone Cham population into the Central (old North) and Northwest Zones in order to ease tensions, taking advantage of a broader movement of people from the East Zone to the Central (old North) Zone aimed at distributing the population throughout Cambodia”.<sup>11016</sup>

<sup>11011</sup> T. 19 June 2012 (YUN Kim), E1/88.1, pp. 13-14, 38-40; YUN Kim Interview Record, E3/368, 12 June 2009, p. 7, ERN (En) 00345195; T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 75, 94; T. 16 September 2015 (TAY Koemhun), E1/348.1, pp. 28-29.

<sup>11012</sup> T. 25 May 2015 (MEAS Layhuor), E1/304.1, p. 84; T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 45 (there were Khmer Islam or Cham people who had been evacuated who worked with the Khmer people and some of them were assigned to work at the 1<sup>st</sup> January Dam Worksite).

<sup>11013</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 7, 58-59.

<sup>11014</sup> T. 14 November 2012 (PE Chuy Chip Se), E1/144.1, pp. 9-10. *See also*, TUOLOAS Sma El Interview Record, E3/1678, 10 July 2009, pp. 3-5, ERN (En) 00353493-00353495 (“After 17 April 1975 my family and I were evacuated to Sector 555 in Sambaur village, Sambaur commune, Sambaur district, Kratie province. Other people from my village were evacuated but to different provinces like Kratie province, Battambang province and other provinces [...] The evacuation was done during the time when Mekong River was high [...] When we arrived we were accommodated with a family of the old people in the village. They specified that each family had to live with one old person family. We stayed under their house”).

<sup>11015</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, pp. 1-2, ERN (En) 00766762-00766763. *See also*, SMAN At Interview Record, E3/5204, 12 August 2008, p. 3, ERN (En) 00242082; CHHI Ly Interview Record, E3/5290, 20 May 2009, pp. 4-5, ERN (En) 00340172-00340173. *See above*, paras 3210-3212.

<sup>11016</sup> *See above*, para. 3212.

3263. Several Cham witnesses and Civil Parties provided direct and consistent evidence of these forced transfers.<sup>11017</sup> After the Koh Phal rebellion, the Cham from Ampil village, Peus commune in Kroch Chhmar district, Kampong Cham province, located about 2 kilometres away from Koh Phal,<sup>11018</sup> were evacuated to various locations, including Preaek Achi, also within Kroch Chhmar district, Battambang, Stueng Trang and Kratie.<sup>11019</sup> The evacuation orders came from the district committee, the commune committee, the village chief and the village security guards.<sup>11020</sup> There were about 100 boats loaded with Cham people being evacuated first to Stueng Trang

<sup>11017</sup> KAE Noh Interview Record, E3/5289, 20 May 2009, p. 4, ERN (En) 00340182 (after the end of the rebellion in Koh Phal he was transported by boat with his family to Phum Ti Prampi village, Roka Khnaor commune, Kroch Chhmar district, Kampong Cham province. One week after they sent them to Baray village Chhouk commune, Krouch Chhmar district, Kampong Cham province); SMAN At Interview Record, E3/5204, 12 August 2008, p. 3, ERN (En) 00242082 (“All the people who survived the attack, including men, women, and children, were transported by boat to Rokar Khnor for interrogation for two days. [...] after two days they split us up and sent us to four separate locations: Chamkar Daung, Krabei Kriek, Chravak Dek and Baray. They sent about 30 families to each of those locations. My family was sent to Baray [...] Every single day, five to ten people died from malaria because there was no medicine to treat them. In total, about 40 people died there before they sent us to Taing Krasaing, Kampong Thom Province. [...] They forced the survivors, my family and I included, to stay at Taing Krasaing until the Vietnamese came to liberate us in 1979”); CHI Ly Interview Record, E3/5290, 20 May 2009, pp. 4-5, ERN (En) 00340172-00340173 (after the fighting in Koh Phal, “[t]he people were herded to a place near the river bank and then were transported by boat to a number of villages. My family and I were transported to Phum Ti Prampi, Roka Khnaor, Krouch Chhmar district. At that time they had us live in the villagers’ houses. Five days later, they sent us by big boat to Krabei Kreak village with other fifty Koh Phal villagers. [...] My family and I were relocated many times. I was sent to Chong Ka village, Kakor commune, and then Pou Kel village, Suong commune, I was assigned to do fishing. Later on, I was sent to Songkum Thmei village, Sralab commune and finally to Saoy 2, Peus 1 where I am living now.”); MAT Ysa Interview Record, E3/5207, 14 August 2008, p. 3, ERN (En) 00242077 (“After the rebellion, aside from making arrests, they sent a number of villagers away by boat to Koh Ta Saoy and to Kampong Thom Province. Almost all of the original villagers were evacuated away, and they told us that we had to relocate to different villages and subdistricts. A small number of the original villagers, including my family, continued living in this village, but I did not know why they kept me living there.”); CHEU Than Interview Record, E3/5253, 23 October 2008, pp. 2-3, ERN (En) 00235482-00235483 (She lived in village 3, Svay Khleang subdistrict. She stated that: “there were rebellions in the villages east and west of my village. At that time the Khmer Rouge sent troops to suppress those rebels and then put them in boats and sent them to an [unknown destination]. After that they moved the Khmer people to live in those Cham villages.”); DIN Sreav Interview Record, E3/10739, 24 February 2016, p. 3, ERN (En) 01215995 (“Q: Were there any Cham people in this village during the Khmer Rouge regime? [referring to Veal Kriel village, Trean commune, Kampong Siem district] A13: Yes there were. Q: When did they live there? Where did they come from? A14: They were evacuated from the East Zone in 1976. Q: How many Cham families were there? A15: There were about 45 families. Q Did the Cham live separately or with the Khmer? A16: They lived with the Khmer people. There was one Khmer house and then one Cham house and so on”).

<sup>11018</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 69.

<sup>11019</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 72-75 (specifying on p. 74 that “there were no Khmer people. All were the Cham people who were moved. They were all Cham people, that is, when we were moved out of Krouch Chhmar”); T. 8 September 2015 (IT Sen), E1/343.1, p. 16 (“[I]n 1975 the Cham people were evacuated because of the rebellion.”).

<sup>11020</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 72 (“Q. Who was it that told you that you and your family had to leave your home village? A. They were the district committee, the commune committee, village chief and the village security guards who ordered all of us to leave our village by boats in order to be transferred to Battambang at that time.”).

district, and then to Kampong Thom.<sup>11021</sup> While in Preaek Achi, the Cham were made to mingle with the local Khmer people, often placed into various houses belonging to Khmer people.<sup>11022</sup> Cham from Chumnik village, Chumnik commune, Kroch Chhmar district, Kampong Cham province, and from Chhloung district were also sent to Kampong Thom in the Central (old North) Zone after the Koh Phal rebellion.<sup>11023</sup> The Chamber notes that this is consistent with Telegram 15 which mentions people, including Cham villagers, being sent from Kroch Chhmar district to Stueng Trang and from Chhloung district to Preaek Prasab.<sup>11024</sup>

3264. Likewise, the Cham from Svay Khleang were evacuated to other locations after the rebellion, including Dambae district and Stueng Trang district in Kampong Cham province, as well as Kampong Thom province.<sup>11025</sup> The Chamber notes that this is again consistent with Telegram 15 which mentions people, including Cham villagers, being sent from Kroch Chhmar district to Stueng Trang.<sup>11026</sup> Civil Party MAN Sles clarified that it was the commune chief, named Long, and the deputy chief of Svay Khleang, named PENG Heng, who were in charge of the evacuation.<sup>11027</sup> Civil Party NO Sates

<sup>11021</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 73-74.

<sup>11022</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 74-75.

<sup>11023</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 17-18, 76-77. This village was located about 10 kilometres away from Koh Phal and more than 20 kilometres away from Svay Khleang. *See* T. 9 March 2016 (VAN Mat), E1/398.1, p. 9.

<sup>11024</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, p. 1, ERN (En) 00766762. *See also*, UM Chi Interview Record, E3/5265, 14 January 2009, p. 3, ERN (En) 00282345 (when he was at Monkul village, Baray district, Kampong Thom province, Central Zone, he saw Cham people who were evacuated there, and these Cham came from Kroch Chhmar).

<sup>11025</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 69, 89-90 (after Svay Khleang uprising, he and other Cham people were detained for 29 days, but “all the residents of Svay Khleang village who had been detained were not allowed to enter the village again; [they] were evacuated by boats to live elsewhere, including Stueng Trang, Baray, Dambae, and many more that [he] cannot recall”); T. 29 February 2016 (MAN Sles), E1/393.1, pp. 58, 67, 77-78 (10 or 15 days after the end of the fighting in Svay Khleang he was sent to live in Stueng Trang district, Soupheas village with his wife and a three months infant, while his mother and his three other siblings were sent to Roka Khnaor. They were not allowed to stay together.). *See also*, MAN Sles Civil Party Application, E3/6714, undated, p. 5, ERN (En) 01089920; T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 85-86 (After they rebelled at Kaoh Phal and Svay Khleang, Muslim people were evacuated to many areas within Sector 21, so they were relocated to different locations within the same sector); T. 28 September 2015 (NO Sates), E1/350.1, pp. 46, 48-49 (“In 1975, Cham people were evacuated. My villagers and I, within the Svay Khleang village, had been evacuated. Some were sent to Dambae, Kampong Thom and Soupheas and I [...] was sent to live in Khsach Prachheh. We all left Svay Khleang village and stayed in Kroch Chhmar Leu. We were detained in a tobacco warehouse for one month and [...] later on we were further sent to Khsach Prachheh”); T. 25 May 2015 (MEAS Layhuor), E1/304.1, pp. 83-84 (Among the workers at the 1<sup>st</sup> January Dam construction site, there were Cham people. “those Cham people had been evacuated from the East Zone -- that is, from Kampong Cham. And they were assigned to work in the mobile units together, working with us. They were actually transported to Preaek Sandaek pagoda, and [...] later on, they were sent to various villages and assigned to work in the various mobile units”).

<sup>11026</sup> DK Telegram, E3/1680 [E3/154, E3/1679], 30 November 1975, p. 1, ERN (En) 00766762.

<sup>11027</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 76-78.

explained that after the fighting ceased, the villagers were informed over loudspeakers that if they did not leave they would be considered enemies.<sup>11028</sup> According to the consistent evidence provided by Civil Parties SOS Min, MAN Sles and NO Sates, the Cham in Svay Khleang commune were forcibly separated from their families, men and women separated and detained in various locations.<sup>11029</sup> They had their names and biographies registered, and were threatened, interrogated and stabbed in the neck during interrogations.<sup>11030</sup> Once the Cham arrived in their new locations, they were instructed to mix with the Khmer people, and some were evacuated again later.<sup>11031</sup>

3265. After having been detained in a school for 29 days, the remaining Cham from Svay Khleang village still detained with SOS Min were evacuated to Stueng Trang, Dambae and other locations.<sup>11032</sup> They were placed on boats they had to row themselves, and if they went off track they would be shot at from behind. In total, there were about 50 boats that could accommodate between 20 to 50 people each, and soldiers on about 10 of the boats.<sup>11033</sup> SOS Min witnessed three of the children or new-borns on

<sup>11028</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 83.

<sup>11029</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 81-82, 89 (“At a bridge so-called Preaek Cham, men and women were separated from each other. As for men, we were placed in hospitals, schools, and tobacco-drying buildings [...]. As for women, they were placed in a pagoda so-called Khchork under banyan trees”); T. 29 February 2016 (MAN Sles), E1/393.1, pp. 56-58, 77 (the men were held in a tobacco kiln while the women were held in Daem Chrei pagoda, about one kilometre from the tobacco warehouse); T. 28 September 2015 (NO Sates), E1/350.1, pp. 49-51, 84-85 (the women and children were held in the tobacco warehouse from the Prek Cham bridge).

<sup>11030</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 57, 77; T. 8 September 2015 (SOS Min), E1/343.1, pp. 81-82, 89. *See above*, para. 3258.

<sup>11031</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 92 (“When we arrived in Dambae, we were allowed to stay at Svay Kambet [...] village, Seda commune in Dambae district, and we were instructed to live - - to mix with the Khmer people”); SMAN At Interview Record, E3/5204, 12 August 2008, p. 3, ERN (En) 00242082 (“They deposited each Cham family to live under the houses of the Cambodian villagers already living there”); CHI Ly Interview Record, E3/5290, 20 May 2009, pp. 4-5, ERN (En) 00340172-00340173 (“At that time they had us live in the villagers houses. [...] They placed the people to live in the villagers houses, one or two families depending on the family size”); T. 28 September 2015 (NO Sates), E1/350.1, pp. 52-53. *See also*, SOS Min Civil Party Application, E3/4780, undated, p. 2, ERN (En) 00893530 (Supplementary Information: “After being released from the detention centre, all the villagers of Svay Khleang were sent by the Khmer Rouge leaders (names unknown) to Dambae District to be mixed with Cambodians in Stueng Trang District of Kampong Cham Province and in Kampong Thorn Province’s Baray and Santuk Districts. Most of them were made to live in villages with Khmer populations. Svay Kambet village, Seda commune and Dambae District of Kampong Cham province were in a malaria-prone mountainous area”).

<sup>11032</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 89-90.

<sup>11033</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 90-91 (“[They] were put on a boat and we had to row the boat ourselves. And for example, out of the 50 boats we had to row in a straight line. And if any boat was going left or right, that boat would be shot at from the back. [...] All people on the boats were Cham people. There were no Khmer [...] And actually, when we went ashore, we had to walk all day before we could reach the village of our destination where we were to settle in. [...] We did not travel voluntarily just by our group the Cham people, but we were forced to go on that trip. We were being watched over all along the way, and there were soldiers on about 10 boats who actually escorted us while

his boat die during the journey.<sup>11034</sup> SOS Min testified that out of the 20 families that were evacuated with him to Svay Dambae, only seven survived.<sup>11035</sup> When he returned to Village 5 in Svay Khleang commune after 1979, there were only 170 to 195 Cham families living there, whereas the 1974 population census estimated that there were 1,242 Cham families in Villages 5, 6, and 7 of Svay Khleang commune (only Cham lived in Villages 5 and 6, and both Cham and Khmer lived in Village 7).<sup>11036</sup> Similarly, MAN Sles estimates that there were between 800 to 1,000 Cham families living in Svay Khleang before 1975, and that at least half of them never returned.<sup>11037</sup> NO Sates stated that a number of his relatives and fellow villagers never returned.<sup>11038</sup>

3266. SOS Romly, who lived in Trea 2 village at Trea commune, Kroch Chhmar district, Kampong Cham province and who worked as a commune clerk during the DK period testified that he overheard in 1977 that about 80 to 85% of the Cham villagers had been evacuated to the Central (old North) Zone in late 1975.<sup>11039</sup> He further stated that these evacuations were forced and that approximately 60% of the Cham returned after 7 January 1979.<sup>11040</sup>

3267. The Chamber notes that forced movement of Cham people occurred in other parts of the country, and notably, Cham living in the Central (old North) zone were scattered within that zone or in the Northwest Zone. Civil Party HIM Man, a Cham villager from Sach Sou village, Peam Chi Kang commune, Kang Meas district,

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we were on the boat trip and we had to comply with their instructions. They escorted us all the way through until we reached the village”).

<sup>11034</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 90-92 (“During the boat trip, it was raining all night unfortunately. And, some young children and the new-born, several of them died on the boats. We were not allowed to rest at all during the boat trip. We were so exhausted and starving, but we had to row the boat”).

<sup>11035</sup> T. 8 September 2015 (SOS Min), E1/343.1, p. 95; T. 9 September 2015 (SOS Min), E1/344.1, p. 5.

<sup>11036</sup> T. 8 September 2015 (SOS Min), E1/343.1, pp. 85-86; T. 9 September 2015 (SOS Min), E1/344.1, pp. 55-59.

<sup>11037</sup> T. 29 February 2016 (MAN Sles), E1/393.1, pp. 67-68. *See also*, T. 29 February 2016 (MEU Peou), E1/393.1, p. 38.

<sup>11038</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 67 (“My last question perhaps, in relation to villagers who had been evacuated out of your village. Did you see them during the time that you returned to your village after the end of the regime? A. My mother, my younger siblings disappeared. People who were put in the warehouse were sent to live in various places. People, those who were working and living together with me at that time, disappeared”).

<sup>11039</sup> T. 8 January 2016 (SOS Romly), E1/372.1, pp. 3, 16-18.

<sup>11040</sup> T. 8 January 2016 (SOS Romly), E1/372.1, p. 46.

Kampong Cham province, estimated that out of the 200 to 300 Cham families living in the village, only about 30 families remained after the evacuation in late 1975.<sup>11041</sup>

3268. The Chamber finds that, after the September 1975 Koh Phal and October 1975 Svay Khleang rebellions, the East Zone Cham population was forcibly dispersed into the Central (old North) Zone in order to ease tensions. Cham were removed without their consent and under threat of being considered enemies if they did not comply. Families, and especially men and women, were separated. Even though this dispersion was part of a broader movement of people from the East Zone to the Central (old North) Zone aimed at distributing the population throughout Cambodia, the Chamber finds that the Cham in the East Zone were specifically targeted as a result of the rebellions. The Chamber further finds that this is indicative of the Cham being dispersed in order for their communities to be broken up rather than to simply displace the labour force.

### 13.2.9. *Killing and Detention of the Cham*

3269. The Closing Order charges that mass executions occurred in 1977 and 1978 in the East Zone and Central (old North) Zone.<sup>11042</sup> Specifically, it charges that the killing of Cham became widespread as of 1977 and increased progressively “until it reached such a scale as to qualify as extermination”, notably as perpetrated at the Trea Village and Wat Au Trakuon Security Centres.<sup>11043</sup>

#### 13.2.9.1. *East Zone: Trea Village Security Centre*

3270. Facts related to the Trea Village Security Centre are relevant to the charges of genocide and crimes against humanity of murder, extermination, imprisonment and torture.<sup>11044</sup> The Closing Order found that the Trea Village Security Centre was used to detain and torture prisoners, and there was a field used as an execution and burial site

<sup>11041</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 35-37. *See also*, YOUSOH Slaiman Civil Party Application, E3/7017a, 20 May 2008, p. 4, ERN (En) 01226561 (he and his family were evacuated in 1976 from Angkor Ban commune, Kang Meas district to Damrei Slab village, Doun Teav district, Battambang province); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 277, ERN (En) 01150145 (reporting statements made by TES Osman, a Cham living in Chamcar Andong village in Chamcar Leu district, who stated that, in 1975, the were five hundred Cham people living there were dispersed and only 20 families survived to 1979).

<sup>11042</sup> Closing Order, para. 212.

<sup>11043</sup> Closing Order, paras 1378-1386.

<sup>11044</sup> *See above*, para. 3183.



to the west of the Security Centre, adjacent to the Mekong River.<sup>11045</sup> It found that in mid-1978, many Cham were taken in groups from around Kroch Chhmar and the mobile labour units to the Trea Village Security Centre, located in Trea village, Kroch Chhmar district, in Sector 21 of the East Zone.<sup>11046</sup>

3271. OCIJ investigators conducted an on-site visit and confirmed that the Trea Village Security Centre was situated in Trea village, Kroch Chhmar district, immediately adjacent to the south of the main road from Kampong Treas, and that the original construction was a wooden residential house which was converted to be used for the detention of prisoners.<sup>11047</sup> IT Sen further described being detained in a house by the river,<sup>11048</sup> and NO Sates indicates that the military security centre operated out of houses.<sup>11049</sup> SOS Romly, who lived in Trea 2 village at Trea commune, Kroch Chhmar district, Kampong Cham province and who worked as a commune clerk during the DK period, stated that, in May 1978, the commune office was transformed into a district office,<sup>11050</sup> which was subsequently used as a security centre.<sup>11051</sup> He further says this centre was located near the riverbank, which is consistent with the abovementioned evidence.<sup>11052</sup>

#### 13.2.9.1.1. *Orders targeting the Cham*

3272. The Chamber heard evidence that the cadres from the Southwest and Central (old North) Zones were deployed to the East Zone in 1977-1978.<sup>11053</sup> Because of the escalation of the conflict with Vietnam and as East Zone cadres were viewed with

<sup>11045</sup> Closing Order, paras 784-789.

<sup>11046</sup> Closing Order, paras 784-785.

<sup>11047</sup> Site Identification Report, E3/8035, 30 June 2009, p. 2, ERN (En) 00364803.

<sup>11048</sup> T. 8 September 2015 (IT Sen), E1/343.1, pp. 58-63.

<sup>11049</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 65.

<sup>11050</sup> T. 6 January 2016 (SOS Romly), E1/371.1, pp. 92, 99-100; YUSUF Romly Interview Record, E3/9324, 17 August 2008, p. 2, ERN (En) 00242064 (“In May 1978, they took that site for use as their District Office instead. After that they also took the two adjacent houses for the use of the District Office. At that time there were not many houses, like there are today. They designated the areas north and south of that office as the District Security site. The areas north, south and east were not surrounded by a fence. The river was located to the west. The area was guarded by Khmer Rouge soldiers, and they absolutely forbid anyone from going in or out. All the houses surrounding the District Office were used to detain prisoners and the area south of the District Office was used as a killing and burial site. In 1979 they discovered hundreds of bodies in pits there”).

<sup>11051</sup> T. 8 January 2016 (SOS Romly), E1/372.1, pp. 10-13.

<sup>11052</sup> T. 8 January 2016 (SOS Romly), E1/372.1, p. 12.

<sup>11053</sup> T. 8 September 2015 (IT Sen), E1/349.1, p. 40; T. 29 September 2015 (NO Sates), E1/351.1, pp. 18-19; T. 10 February 2016 (YSA Osman), E1/389.1, p. 5. *See above*, para. 3202. *See also*, Section 4: General Overview; Section 5: Administrative Structures; Section 12.1: Internal Factions.

distrust, KE Pauk and SON Sen were put in charge of strengthening the military in the East Zone.<sup>11054</sup> BAN Seak, who was Kroch Chhmar district secretary at the time, testified to having witnessed decapitated corpses floating in the Mekong river while he was in Kroch Chhmar district and to having heard about an order from the upper echelon to execute people in Trea village.<sup>11055</sup> According to a number witnesses, Ho (or Hor) was Kroch Chhmar District Secretary and was in charge of the Trea Village Security Centre.<sup>11056</sup> Although BAN Seak admitted to having used the *alias* Hor during the DK period, he said that the use of such alias was limited to the Chamkar Leu district.<sup>11057</sup> However, having heard evidence from several witnesses indicating that the Kroch Chhmar district chief was the Hor (or Ho) in charge of Trea village, the Chamber finds that mentions of Hor (or Ho) refer to BAN Seak.<sup>11058</sup>

3273. The Chamber further notes that BAN Seak had initially denied any involvement in Kroch Chhmar district and, when questioned about this in court, he explained that he “would rather not raise the point because it could lead to more issues”, noting that his brother had been purged and that his colleagues warned him not to disclose too much.<sup>11059</sup> BAN Seak also specified that the arrests and killings did not target the Cham specifically, but rather targeted all rebels: “when they did not have a clean biography,

<sup>11054</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 63, 79-81. *See above*, para. 3199. KE Pauk was SAO Phim’s deputy until the latter’s suicide in June 1978. *See* Section 5: Administrative Structures, para. 451; Section 12.1.6.3.4.4: KE Pauk and SON Sen go to the East Zone.

<sup>11055</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 78-79; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 36, 69-70. *See also*, KE Pich Vannak Interview Record, E3/35, 4 June 2009, p. 11, ERN (En) 00346155 (“During that same period, there were headless copses floating in the Mekong River, and one day a few floating headless corpses were caught up at the dock in front of POL Pot’s office [...] The investigation found that the Cham people had been arrested, placed in the boats, and then were beheaded before they were dumped into the river”).

<sup>11056</sup> T. 13 January 2016 (MATH Sor), E1/375.1, p. 40; T. 29 September 2015 (NO Sates), E1/351.1, pp. 52-53; T. 28 September 2015 (NO Sates), E1/350.1, p. 69; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 8-9; SUF Romly Interview Record, E3/5196, 10 July 2008, p. 4, ERN (En) 00223088. *See also*, SOKH Proeung Interview Record, E3/7680, 18 August 2008, p. 3, ERN (En) 00275390; SA Nau Interview Record, E3/7679, 17 August 2008, pp. 2-3, ERN (En) 00242061-00242062; Book by Ysa O.: *The Cham Rebellion*, E3/2653 [E3/7675], p. 137, ERN (En) 00219198.

<sup>11057</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 66-69; T. 6 October 2015 (BAN Seak), E1/354.1, pp. 42-43.

<sup>11058</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 39-40; AHMAD Sofiyah Interview Record, E3/5194, 8 July 2008, p. 3, ERN (En) 00274708; T. 28 September 2015 (NO Sates), E1/350.1, pp. 68-69; T. 29 September 2015 (NO Sates), E1/351.1, pp. 52-53; T. 8 January 2016 (SOS Romly), E1/372.1, pp. 7-9; T. 24 March 2016 (YSA Osman), E1/408.1, pp. 13-14.

<sup>11059</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 75-76; BAN Siek Interview Record, E3/5275, 17 February 2009, p. 4, ERN (En) 00284493. The Chamber also notes that BAN Seak admitted previously that “[t]o my knowledge the rebels -- regardless of whether they were Cham Chinese or Khmer -- had to be smashed”. *See* BAN Siek Interview Record, E3/9517, 24 March 2014, p. 12, ERN (En) 00984879.

they were smashed”.<sup>11060</sup> He further denied attending a meeting in Sandan district in Kampong Thom province, during which KE Pauk asked him to “destroy all the Cham because they were traitors”.<sup>11061</sup> The Chamber considers his testimony to be at least partly driven by an attempt to minimise his own role and consequently considers it unreliable when it comes to his own participation in the events in Trea village including the denial of the existence of a plan to purge the Cham conveyed to him by KE Pauk. Similarly, the Chamber rejects his testimony that arrests and killings did not target the Cham.<sup>11062</sup> However, the Chamber has found him to be cooperative, forthcoming and credible with more factual evidence concerning such matters as the administrative structure and command hierarchy. The Chamber therefore accepts his testimony that, as Kroch Chhmar District Secretary, he reported to the Sector 21 Secretary Rin, who in turn reported to SON Sen.<sup>11063</sup> He further testified that orders on executions came from the “upper echelon”, notably that the “orders to purge the people in Kroch Chhmar district came from Son Sen and all the rebels were killed”.<sup>11064</sup>

3274. VAN Mat was a Cham villager from Chumnik village, Chumnik commune, Kroch Chhmar district, and worked in a mobile unit.<sup>11065</sup> He consistently testified that leaders in the East Zone were summoned to the Central (old North) Zone to attend a meeting in Kampong Thma, over which KE Pauk presided and during which they discussed “smashing” enemies and traitors.<sup>11066</sup> Furthermore, VAN Mat testified that a few days after the meeting, a group of between 400 to 500 people from his village and from places nearby were forced to board on boats at Svay Damnak Pagoda, Chumnik

<sup>11060</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 34. *See also*, UM Chi Interview Record, E3/5265, 14 January 2009, p. 4, ERN (En) 00282346 (indicating that UM Chi was the chairman of a mobile unit of Baray district, Central Zone, working at the 1<sup>st</sup> January Dam Worksite. He stated: “In making the plans, district level put the plans in place for the subdistricts to implement [...]. During each meeting the District [Committee] also spoke about national construction. In those meetings, he said, ‘If any of the people do not respect and follow the principles of upper-echelon, they will be considered to be enemies’. If we did not respect their orders they would smash us”). *See above*, paras 3218-3219, 3223.

<sup>11061</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 75-76.

<sup>11062</sup> T. 6 October 2015 (BAN Seak), E1/354.1, p. 34. *See above*, para. 3223.

<sup>11063</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 62-63; BAN Siek Interview Record, E3/9517 24 March 2014, p. 14, ERN (En) 00984881.

<sup>11064</sup> T. 5 October 2015 (BAN Seak), E1/353.1, pp. 69-72; T. 6 October 2015 (BAN Seak), E1/354.1, p. 34.

<sup>11065</sup> The Chamber notes that he also occasionally served as the driver for the chief of Chumnik Commune. *See* T. 9 March 2016 (VAN Mat), E1/398.1, pp. 18, 21, 29 (indicating that he drove motorbikes and boats).

<sup>11066</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 31-33; Book by Ysa O.: *The Cham Rebellion*, E3/9323, p. 3, ERN (En) 00218542; VANN Mat Interview Record, E3/8735, 15 July 2011, p. 3, ERN (En) 00722240. *See above*, paras 3223-3224.

commune, Kroch Chhmar district.<sup>11067</sup> Only “a small minority” of the evacuees were Khmer, the vast majority of people were Cham (“about 98 per cent”).<sup>11068</sup> VAN Mat also stated that when he was evacuated, the transfer of people had already started and the evacuation never stopped, with “thousands of people, including men, women and children, [being] evacuated before [him]”.<sup>11069</sup> He further testified that about 30 per cent of the initial population of Chumnik village remained.<sup>11070</sup> Of the 400 to 500 people being evacuated along with VAN Mat, none of them ever returned to the village and “before our group, there were thousands and thousands of people who were killed”.<sup>11071</sup> They were sent by boat to Stueng Trang with armed soldiers watching them and, at their arrival, they were tied up by Khmer Rouge cadres.<sup>11072</sup> VAN Mat realised that “the plan was not to keep those evacuees alive and that those already evacuated had all died”.<sup>11073</sup> He then jumped into the water, swam away and managed to escape,<sup>11074</sup> went back to Chumnik village to warn members of his unit and they fled into the forest, where they managed to survive for a few months until the fall of the DK.<sup>11075</sup> The Chamber notes that the events described by the witness took place in Kroch Chhmar district and were contemporaneous with other arrests and killings of Cham in the same district, in particular at Trea Village Security Centre, which is discussed below. The Chamber also notes that a number of Cham arrested at Trea village were members of mobile units and that these events occurred when the purge of East zone cadres was ongoing, and local cadres were replaced by people from the Southwest or the Central (old North) Zones who reported to KE Pauk, including BAN Seak, the then Secretary of Sector 21, who was related to him.

<sup>11067</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 34-35, 40; SALES Ahmat Interview Record, E3/5209, 15 August 2008, p. 4, ERN (En) 00242069; VANN Mat Interview Record, E3/8735, 15 July 2011, p. 3, ERN (En) 00722240.

<sup>11068</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 32-35, 39-40.

<sup>11069</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 40; SALES Ahmat Interview Record, E3/5209, 15 August 2008, p. 3, ERN (En) 00242068.

<sup>11070</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 35-36.

<sup>11071</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 39, 46-47.

<sup>11072</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 36 (stating that “they used a string of about 10 metres to tie the people in line.”).

<sup>11073</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 44, 46, 49.

<sup>11074</sup> T. 9 March 2016 (VAN Mat), E1/398.1, p. 36 (stating that “[b]ut for me, along with some of my friends, we jumped into the water when we heard that. They were shooting at us but we just dove in and swam, and we escaped”), 37 (testifying that “[the armed men on the boat] shot many bullets. I dove in the water and it was night-time, it was 9 p.m., so their bullets could not accurately target me.”).

<sup>11075</sup> T. 9 March 2016 (VAN Mat), E1/398.1, pp. 43-44, 49.

3275. In light of the above, the Chamber is satisfied that orders to purge the Cham in the East Zone, and specifically in Kroch Chhmar district, came from the upper echelon, including from KE Pauk, the Central (old North) Zone Secretary. This is consistent with the policy which was implemented on the other side of the Mekong by KE Pauk,<sup>11076</sup> and contemporaneous with the most serious purges conducted against the Cham in Trea village and at Wat Au Trakuon. The Chamber is likewise satisfied that a meeting was held in Kampong Thma, Central (old North) Zone with the East Zone leaders, discussing smashing enemies and that soon after Cham living along the Mekong river in Sector 21 were forcibly transferred and subsequently disappeared.

13.2.9.1.2. *Detention and killing of Cham at Trea Village Security Centre*

3276. Two witnesses and one Civil Party testified to having been detained in the Trea Village Security Centre. IT Sen was sent there in 1978 with his family and approximately 40 other Cham families from Ampil village and Saoy village, located about 2 kilometres from Koh Phal in Kroch Chhmar district.<sup>11077</sup> On the way, they were told by villagers that Cham people had been blindfolded and led to the river.<sup>11078</sup> Upon their arrival at Trea village, the men were separated from the women and children, and the men were ordered to go to the riverfront and stand in line, where they were tied up, beaten and asked repeatedly if they were Muslims.<sup>11079</sup> The beatings were administered by armed military men.<sup>11080</sup> IT Sen and about 40 other men were then placed in a house by the river guarded by armed Khmer Rouge soldiers and he saw more Cham being

<sup>11076</sup> The Chamber notes that at the time the East Zone was under his control. See T. 9 March 2016 (VAN Mat), E1/398.1, pp. 26-28. See also, para. 3199.

<sup>11077</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 69, 81-84, 91, 106.

<sup>11078</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 83.

<sup>11079</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 85-86 (stating that “After, I was tied up, I was beaten, kicked and they used the car-tyre sandals to hit our heads. Some of us fell down to the ground and they grabbed our hairs to sit up again in order to beat us and kick us again. They kicked us repeatedly and they asked whether we were Muslims. We thought that if we told that we were Khmer they would not beat us. No, it was not the case. They said we were lying to them, and as a result, they repeatedly kick and beat us even worse at that time. In fact, they knew that we were Chams. Out of fear and with the hope that it would get better by telling them that we were Khmer, things went the opposite. Having told them that we were Khmer, they started to mistreat us even worse. Sarcastically, we were not that badly mistreated when we told them that we were Chams.”).

<sup>11080</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 89.

detained in several nearby houses.<sup>11081</sup> He managed to escape the house<sup>11082</sup> and later witnessed, while hiding in bushes, cadres going to collect the Cham:

[P]eople with blindfold[s] were taken out of the houses, and led to the river. They then used a big rope to attach some 30 people together one after another, while the other end of the rope was attached to the back of a motor boat. And so when the boat got to the middle of the river, they released the rope with people attached to it into the river to drown those people.<sup>11083</sup>

3277. According to NO Sates, who lived in Village 5, Svay Kleang commune, Kroch Chhmar district, Kampong Cham province,<sup>11084</sup> the Southwest Zone cadres came to the East Zone “to purge Cham people, all the Cham people had to be collected” and relocated to places from where they “never returned”.<sup>11085</sup> All the Cham in Khsach Prachheh Leu, Kroch Chhmar district, were collected and sent away.<sup>11086</sup> First the male Cham were sent away and then the village chiefs invited the female Cham to a meeting where they told them that they would be relocated to other villages.<sup>11087</sup> Among the Cham evacuated were members of NO Sates’s family, who were sent to Stueng Trang

<sup>11081</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 88-90 (the Chamber notes that the witness alternatively mentions 10 and 20 houses).

<sup>11082</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 93-94, 97,100.

<sup>11083</sup> T. 7 September 2015 (IT Sen), E1/342.1, pp. 94-97.

<sup>11084</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 46.

<sup>11085</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 48-49 (stating that “[i]n 1975, Cham people were evacuated. My villagers and I within the Svay Khleang village, had been evacuated. Some were sent to Dambae, Kampong Thom and Soupheas and I [...] was sent to live in Khsach Prachheh. We all left Svay Khleang village and stayed in Kroch Chhmar Leu. We were detained in a tobacco warehouse for one month and [...] later on we were further sent to Khsach Prachheh.”), 56 (“I was in Khsach Prachheh for about a fortnight then the Southwest group gathered all the Cham people and took them away. They told us that we were being relocated to the other side of the river that is to Stueng Trang as that area was abundant with food. My mother, my younger siblings and grandmother, along with other villagers who were Cham people, were gathered up and sent there. As for me I was in a women’s group, then we were sent to Trea village. We were called to a meeting in Trea village -- it was in Khsach Prachheh Kandal rather, while my mother and the rest of my families got on a ferry to Kroch Chhmar. So I was at the Khsach Prachheh Kandal and by about 1 o’clock in the afternoon after the meeting, we were sent to live in Trea village”), 87 (“Q. [...] I’m asking you about when the people from the Southwest Zone arrived in Khsach Prachheh Leu, what year was it, that they arrived, the people from the Southwest Zone? A. There were many of them. I did not know when they came. I cannot tell you the exact day, month and year. What I can recall is that upon their arrival, they had bad treatments on people, even one committed a minor mistake he or she would be taken away. They came to purge Cham people, all Cham people had to be collected and we were told that we had to relocate to live at Stueng Trang for instance, because at Stueng Trang there were sufficient food, rice to eat and there was abundant of work at Stueng Trang. People who were sent to Stueng Trang never returned.”), 89-90 (stating that “[a]ll of them were gathered up including male, female, my two younger brothers, my sister, my grandmother, my mother, all of them were gathered up in groups, together with other villagers and they were sent away. [...] They have disappeared ever since.”).

<sup>11086</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 88.

<sup>11087</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 88-90.

by boat.<sup>11088</sup> She never saw them again.<sup>11089</sup> While some Khmer were also evacuated that day, NO Sates testified that they were sent to Roka Khnaor commune, Kroch Chhmar district but “they were not executed”.<sup>11090</sup>

3278. NO Sates was sent to Trea village along with a group of approximately 40 unmarried women from Khsach Prachheh Kandal, and when she arrived was placed in a house with several hundreds of other women from the surrounding area.<sup>11091</sup> The women were tied up and questioned by the district chief Ho, identified by the Chamber as being Ban Seak.<sup>11092</sup> They were asked if they were Khmer or Cham and anybody saying they were Cham was taken out of the line-up and escorted elsewhere by a soldier and “they have disappeared since”.<sup>11093</sup> NO Sates insisted that she was Khmer and was therefore not taken away.<sup>11094</sup> Only the 30 women who said they were Khmer remained and they were told they were lucky to be Khmer otherwise they would have been taken away.<sup>11095</sup> The 30 women who remained were closely monitored and they were asked to eat pork soup under the supervision of Hor and soldiers.<sup>11096</sup> During the nine days that NO Sates was detained in Trea village, she was forced one night to eat pork in order to convince the district chief that she was Khmer.<sup>11097</sup> After her release, she was sent to work around Trea village and one day in 1978 while she was working along the river bank, she witnessed dead bodies floating in bags in the river including children and a Cham woman from Khsach Prachheh Kraom whom she recognised, named *Bong Tho*.<sup>11098</sup>

<sup>11088</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 56-57, 88-90.

<sup>11089</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 89-90; T. 29 September 2015 (NO Sates), E1/351.1, p. 24.

<sup>11090</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 90.

<sup>11091</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 39, 56-58; T. 29 September 2015 (NO Sates), E1/351.1, pp. 37-41. She stated the surrounding area includes: “Peus Number 1, Peus Number 2 and Khpob and Svay Khleang and Kroch Chhmar”.

<sup>11092</sup> T. 28 September 2015 (NO Sates), E1/350.1, p. 58; T. 29 September 2015 (NO Sates), E1/351.1, pp. 38, 42-43, 46.

<sup>11093</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 58-59, 71; T. 29 September 2015 (NO Sates), E1/351.1, p. 43.

<sup>11094</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 59-60; T. 29 September 2015 (NO Sates), E1/351.1, pp. 24-25.

<sup>11095</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 59-60, 69-71, 75; T. 29 September 2015 (NO Sates), E1/351.1, pp. 42-44, 46-47.

<sup>11096</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 75-76.

<sup>11097</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 60-61, 75-76.

<sup>11098</sup> T. 28 September 2015 (NO Sates), E1/350.1, pp. 61-64; T. 29 September 2015 (NO Sates), E1/351.1, p. 22. *See also*, SA Chheang Interview Record, E3/9671p. 7, 28 April 2015, ERN (En) 01111790.

3279. NO Sates's account is corroborated by the testimony of MATH Sor *alias* AHMAD Sofiyah, who was born in Khsach Prachheh Kandal village, Kroch Chhmar commune, Kroch Chhmar district, and was a female worker in the same mobile unit as NO Sates when they were both sent to the Trea Village Security Centre in 1978.<sup>11099</sup> She was detained with around 30 other Cham women.<sup>11100</sup> The Chamber notes that while the testimonies of the two women differ on several details such as the number of detainees, they are similar on key points in relation to the treatment of the Cham as described below. Indeed, MATH Sor similarly testified that her group of 30 Cham detainees were all tied up, guarded by armed cadres and asked if they were Khmer or Cham.<sup>11101</sup> Like NO Sates, MATH Sor pretended she was Khmer in order to survive and stated that those who admitted they were Cham were escorted outside and never returned.<sup>11102</sup> She also saw, through a hole in the wall, that the Cham taken away were brought to a pit some eight metres from the house and thrown into it.<sup>11103</sup> MATH Sor further testified that “[t]he pit was pretty large and they placed a wooden plank near the pit and the people were asked to bend their head, then they hit them and they fell into the pit”.<sup>11104</sup> She further stated that all of her family members, including six siblings and both her parents, “were taken away and killed by the Khmer Rouge”.<sup>11105</sup>

3280. The Chamber dismisses the submissions by the NUON Chea Defence and the KHIEU Samphan Defence that the testimonies of IT Sen, NO Sates and MATH Sor lack credibility.<sup>11106</sup> The KHIEU Samphan Defence points out that the detainees were not allowed to speak to one another in order to cast doubt on IT Sen's testimony that he knew other detainees were Cham because they told him so.<sup>11107</sup> However, the Chamber notes that it is highly unlikely that any prohibition of verbal communication between prisoners would have been followed without exception and notes furthermore that IT Sen also explained having spoken with the new Cham detainees.<sup>11108</sup> Likewise, the Chamber does not consider that darkness and heavy rain would have prevented IT Sen

<sup>11099</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 17, 80.

<sup>11100</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 25-27.

<sup>11101</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 28-29.

<sup>11102</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 30, 37.

<sup>11103</sup> T. 13 January 2016 (MATH Sor), E1/375.1, pp. 34, 37-40, 69-70.

<sup>11104</sup> T. 13 January 2016 (MATH Sor), E1/375.1, p. 51.

<sup>11105</sup> T. 13 January 2016 (MATH Sor), E1/375.1, p. 41.

<sup>11106</sup> NUON Chea Closing Brief, paras 796-798; KHIEU Samphan Closing Brief, paras 1739-1750.

<sup>11107</sup> KHIEU Samphan Closing Brief, paras 1740-1741.

<sup>11108</sup> T. 7 September 2015 (IT Sen), E1/342.1, p. 90.



from witnessing people being drowned in the river, as suggested by the NUON Chea Defence.<sup>11109</sup> Both Defence teams point out the differences in the testimonies of NO Sates and MATH Sor,<sup>11110</sup> which the Chamber acknowledges but considers can be explained by the passage of time. The Chamber has therefore placed more weight on the evidence corroborated by both NO Sates and MATH Sor and carefully scrutinised the evidence it relied upon that came from only one of them. Finally, the Chamber finds no merit in the NUON Chea Defence's speculative submission that MATH Sor's testimony could be motivated by the same "quest for justice" that NO Sates showed in exaggerating the information she gave when interviewed by YSA Osman.<sup>11111</sup> The Chamber recalls that *viva voce* testimony provided the opportunity to the Defence to test the credibility of the witnesses. The Chamber finds IT Sen, NO Sates and MATH Sor to be all three credible and their evidence to be generally reliable.

3281. In light of the above, the Chamber finds that in 1978, a large number of Cham people from Kroch Chhmar district were arrested and taken to Trea Village Security Centre, where they were arbitrarily detained. Their membership to the Cham group was verified, sometimes through beatings, and those who were deemed to be Cham were executed while some others were moved to other places and spared.

#### 13.2.9.2. Central (old North) Zone: Wat Au Trakuon Security Centre

3282. In relation to the Wat Au Trakuon Security Centre, the Closing Order states that around 1977, CPK cadres, with the assistance of the Long Sword Militia, arrested all the Cham throughout Kang Meas district and took them to Wat Au Trakuon which had been turned into a security centre and execution site.<sup>11112</sup> It lists the categories of detainees at Wat Au Trakuon as including "new people, base people and Cham", noting that "when arrested, Cham people were not detained at all, but killed immediately".<sup>11113</sup>

3283. Wat Au Trakuon was located in Sector 41, in Sambaur Meas village, Peam Chikang subdistrict, Kang Meas district, Kampong Cham province, Central (old North)

<sup>11109</sup> NUON Chea Closing Brief, para. 798.

<sup>11110</sup> NUON Chea Closing Brief, para. 798; KHIEU Samphan Closing Brief, paras 1746-1748.

<sup>11111</sup> NUON Chea Closing Brief, para. 798.

<sup>11112</sup> Closing Order, paras 779, 1378, 1386. The Chamber recalls that Kroch Chhmar Security Centre falls outside the scope of Case 002/02.

<sup>11113</sup> Closing Order, paras 779, 783.

Zone.<sup>11114</sup> As of 1976, Wat Au Trakuon was used as a security centre. The pagoda compound was approximately 170m by 200m and was bounded by a barbed wire fence.<sup>11115</sup> Horn was the Security Centre's chief of security, under the Kang Meas District Committee Secretary Kan.<sup>11116</sup> Pheap, Kan's wife, who was his Deputy Secretary was also involved with the security centre and she was head of Peam Chi Kang commune, to which the Long Sword Group reported.<sup>11117</sup> Kan and Pheap were both cadres from the Southwest Zone who replaced previous local cadres after they had been purged.<sup>11118</sup>

3284. The Long Sword Group was created to conduct large arrests and bring those arrested to the district security guards at Wat Au Trakuon.<sup>11119</sup> It was named after the "Samurai-like" swords carried by its members.<sup>11120</sup> It was a commune militia group set up by Southwest Zone cadres in 1977 after their arrival and it reported to Pheap, the Peam Chi Kang commune chief.<sup>11121</sup> The militia consisted of nine to 14 members, each equipped with a long sword, including witnesses TAY Koemhun (TAY Kimhuon) *alias*

<sup>11114</sup> Site Identification Report, E3/8038, 30 June 2009, p. 1, ERN (En) 00364805, T. 11 January 2016 (MUY Vanny), E1/373.1, p. 32.

<sup>11115</sup> Site Identification Report, E3/8038, 30 June 2009, p. 2, ERN (En) 00364806.

<sup>11116</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 16-17, 31; T. 12 January 2016 (MUY Vanny), E1/374.1, p. 11; T. 15 September 2015 (SAMRETH Muy), E1/347.1, p. 36; T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 97-98; SENG Khuy Interview Record, E3/5301, 7 August 2008, p. 4, ERN (En) 00210483; T. 14 September 2015 (SEN Srun), E1/346.1, p. 8; SENG Srun Interview Record, E3/8736, 25 August 2011, ERN (En) 00740715-00740716; T. 16 September 2015 (TAY Koemhun), E1/348.1, pp. 9, 80-81, 97. *See also*, LEAV Loas Interview Record, E3/9342, 9 April 2009, pp. 2-4, ERN (En) 00339932-00339934 (stating that he was from Angkor Ban commune and a mobile unit worker in Kang Meas district at the time); SOK Meng Ly Interview Record, E3/9654, 26 August 2014, pp. 5-7, ERN (En) 01044616-01044618 (stating that he was a member of the Long Sword Group at the relevant time); TAY Kimhuon Interview Record, E3/5257, 24 November 2008, pp. 2, 7, ERN (En) 00251013, 00251018. The Chamber further notes that the Chief of Security at Wat Au Trakuon prior to the arrival of the Southwest Zone cadres was a man named Khun, who disappeared a few months after their arrival. *See* T. 14 September 2015 (SEN Srun), E1/346.1, pp. 16-17.

<sup>11117</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, p. 40; T. 14 September 2015 (SEN Srun), E1/346.1, p. 111. *See also*, SOK Meng Ly Interview Record, E3/9654, 26 August 2014, p. 5, ERN (En) 01044616. The Chamber notes the submissions made by the NUON Chea Defence that SAY Doeun had a "sudden change in testimony" regarding the arrests of Cham, however, the Chamber finds that although the witness was hesitant in addressing the topic by initially denying knowledge or recollection, he nonetheless confirmed the information contained in his written statement when he was confronted with it. *See e.g.*, T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 41, 44-45, 65-66.

<sup>11118</sup> *See above*, para. 3202.

<sup>11119</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 28, 75-76, 111; T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 46-47; T. 15 September 2015 (SAMRETH Muy), E1/347.1, p. 28; T. 16 September 2015 (TAY Koemhun), E1/348.1, pp. 81-82.

<sup>11120</sup> THONG Kim Interview Record, 4 August 2014, E3/9661, pp. 4, 8, ERN (En) 01044606, 01044610; T. 12 January 2016 (SAY Doeun), E1/374.1, p. 50; T. 11 January 2016 (MUY Vanny), E1/373.1, p. 37; SOK Meng Ly Interview Record, 26 August 2014, E3/9654, p. 6, ERN (En) 01044617.

<sup>11121</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 37-38, 40; T. 14 September 2015 (SEN Srun), E1/346.1, p. 111; T. 15 September 2015 (SEN Srun), E1/347.1, pp. 9-10. *See also*, Section 5: Administrative Structures, para. 454.

Kimhuon and SAY Doeun, who testified that he was appointed for two months by Pheap.<sup>11122</sup> The Long Sword Group received arrest orders from the Peam Chi Kang commune chief, who in turn had received them from the Kang Meas District Committee Secretary Kan.<sup>11123</sup> The orders were signed by Pheap, who, according to SAY Doeun, said she had received them from “the upper echelon”.<sup>11124</sup> After the arrival of the Southwest Zone cadres in 1977, a meeting was held in Damnak Svay village, presided over by the district secretary Kan, where the people living in the cooperative were in attendance and the main topic was to respect *Angkar*.<sup>11125</sup> Not long after that meeting, the Long Sword Group began frequently arresting Cham people.<sup>11126</sup>

#### 13.2.9.2.1. *Orders targeting the Cham*

3285. As discussed above, the Chamber heard evidence on orders targeting the Cham coming from the “upper echelon”.<sup>11127</sup> As regards Sector 41 specifically, PRAK Yut, Secretary of the Kampong Siem district testified that in 1977, “[t]here was an order from the sector level to us to purge the Cham”<sup>11128</sup> and that she had to follow the instructions of the “upper echelon” to identify all the Cham people in her commune.<sup>11129</sup> Similarly, YEAN Lon, who was part of the Kampong Thma commune militia located in Santuk district, Kampong Thom province, close to the 1<sup>st</sup> January Dam in the Central (old North) Zone, testified that the order to arrest the Cham came “down from the sector and the provincial level” and that the commune chief was implementing instructions coming from above.<sup>11130</sup> Moreover, SAY Doeun, who was a member of the Long Sword

<sup>11122</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 37-38, 56; T. 14 September 2015 (SEN Srun), E1/346.1, pp. 109-110; T. 15 September 2015 (SEN Srun), E1/347.1, pp. 3-4, 9, 15-16. The Chamber notes that TAY Koemhun’s testimony was contradictory as regards his membership and role in the Long Sword Group. *See* T. 16 September 2015 (TAY Koemhun), E1/348.1, pp. 37-40, 44, 54, 66-67, 84 (he first denied being ever part of the group, then stated being assigned to guard a rice barn, and finally stated that “I was not part of the Long Sword Group, however I stayed near the Long Sword Group”). The Chamber finds that this witness may have been trying to minimise his own role in the militia and finds him unreliable on this issue. The Chamber finds SEN Srun’s evidence credible and relies on it.

<sup>11123</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 40-41, 63.

<sup>11124</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 42, 66, 71.

<sup>11125</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 29-30.

<sup>11126</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 26-27, 29-30.

<sup>11127</sup> *See above*, para. 3221.

<sup>11128</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, p. 81.

<sup>11129</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 82-83; PRAK Yut Interview Record, E3/9525, 27 October 2013, p. 3, ERN (En) 01056238. *See also*, T. 18 January 2016 (YOU Vann), E1/377.1, pp. 37-38 (discusses PRAK Yut receiving orders from the upper echelon in relation to separating ethnicities for marriage purposes).

<sup>11130</sup> T. 16 June 2015 (YEAN Lon), E1/317.1, pp. 57-58; YEAN Lun Interview Record, E3/7322, 23 April 2009, p. 3, ERN (En) 00330719. The Chamber recalls that, like members of the Long Sword Group, YEAN Lon was identified by UTH Seng as carrying knives and swords with dry blood on them, which

Group in Peam Chi Kang commune, testified that he was appointed for two months after the arrival of the Southwest Zone cadres, and that the orders to arrest the Cham came from Pheap, the commune chief, who herself received them from the “upper echelon of the *Angkar*” and notably from her husband Kan.<sup>11131</sup> SAY Doeun also testified to having heard of a plan “that no Cham, no single Cham shall be spared”, through Pheap.<sup>11132</sup>

3286. The Chamber also heard evidence of meetings held early 1977, at which witnesses SAMRETH Muy (SAMRIT Muy), a village militiaman who was living in Sach Sou village, Kang Meas district and SEN Srun, a former soldier and a palm tree climber living close to Wat Au Trakuon, were present. They both testified that the meetings had been called by Sector Secretary AO An.<sup>11133</sup> SEN Srun attended a meeting called by AO An at Wat Au Trakuon.<sup>11134</sup> He testified that the Cham were not discussed and that AO An “spoke at length about the arrest of the former cadres who were accused of betraying *Angkar*”.<sup>11135</sup> SEN Srun further testified that, although the Cham were never specifically mentioned during the meeting, they would be considered the enemies of the Pol Pot regime as would any other non-Khmer race.<sup>11136</sup> SAMRIT Muy was called, along with all the people living in the cooperative, to a meeting held in Damnak Svay village after the arrival of the Southwest Zone cadres, presided over by the Kang Meas district secretary Kan. SAMRIT Muy attended the meeting and the main topic of the speeches was to instruct the population to “respect *Angkar*”, adding: “we did not understand them when they were referring to the big broom. We then returned to work. After that, we dared not get close to them.”<sup>11137</sup> During the meeting, warnings against “infiltrated enemies” were made<sup>11138</sup> and not long thereafter the Cham in Peam Chi

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was refuted by YEAN Lon. *See* Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1444; T. 16 June 2015 (YEAN Lon), E1/317.1, p. 74; T. 17 June 2015 (YEAN Lon), E1/318.1, pp. 17-18.

<sup>11131</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 70-71, 79, 89-90. *See also*, SOK Meng Ly Interview Record, E3/9654, 26 August 2014, p. 6, ERN (En) 01044617; MOENG Pang Interview Record, E3/7828, 7 August 2008, p. 4, ERN (En) 00210472.

<sup>11132</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 69-70.

<sup>11133</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 25, 29-31, 44, 83-84; T. 14 September 2015 (SEN Srun), E1/346.1, pp. 23-26; SENG Srun Interview Record, 6 August 2008, E3/5302, ERN (En) 00210486-00210487; SENG Srun Interview Record, E3/5527, 9 December 2009, p. 3, ERN (En) 00423722 (Answers 5-6); SENG Srun Interview Record, E3/8736, 25 August 2011, ERN (En) 00740714-00740715 (Answers 11, 17). *See above*, para. 3218.

<sup>11134</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 23, 25-26.

<sup>11135</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 96-97.

<sup>11136</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 97-98.

<sup>11137</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 29-30. *See also*, T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 42-45.

<sup>11138</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 84-85.

Kang commune (headed by Kan's wife, Pheap,<sup>11139</sup> and also located in Kang Meas district) were arrested and taken to Wat Au Trakuon.<sup>11140</sup> Cham in Sach Sou village were specifically targeted and "no one was left behind".<sup>11141</sup>

3287. The Chamber additionally heard evidence of lists being compiled in Kampong Siem district to distinguish the Khmer from those "who were not Khmer" such as the Vietnamese, the Chinese and notably the Cham.<sup>11142</sup> YOU Vann moved from the Southwest Zone to Kampong Cham province in Sector 41 of the Central (old North) Zone to become a messenger for PRAK Yut, the Secretary of Kampong Siem district.<sup>11143</sup> In this role, she took part in preparing a list for the latter with the names of "the soldiers of Sihanouk regimes, the ethnic Cham people and the Vietnamese people" in Kampong Siem district, including each person's parents.<sup>11144</sup> Although YOU Vann claimed not to know what the list was used for, she noticed the "gradual disappearance" of the people whose name was listed.<sup>11145</sup> She specified: "In some cases, the whole family disappeared. Other cases, only the parents disappeared and the children survived. And those children were collected by the village chiefs to bring them up and assigned them to work in different units."<sup>11146</sup>

<sup>11139</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 33-39; T. 14 September 2015 (SEN Srun), E1/346.1, pp. 19, 56, 111. *See above*, para. 3202.

<sup>11140</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 25-27, 31-32, 47-49, 83-85, 102-103.

<sup>11141</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 27, 102.

<sup>11142</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 31-32, 50, 56-57; SENG Srun Interview Record, 11 August 2008, E3/1692, p. 5, ERN (En) 00242088. *See also*, MAN Heang Interview Record, E3/5529, 10 December 2009, pp. 3-4, ERN (En) 00421084-00421085 (in 1976 this witness was appointed as the chairman of a mobile unit of around 110 people in Kang Meas district. He explained that the commune chairman came to compile biographies and he made lists. Feudalists and capitalists were searched. "Those who hid their background were able to survive; those who told the truth were killed". People were also asked if they were ethnic Khmer or Cham).

<sup>11143</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 46-48; T. 14 January 2016 (YOU Vann), E1/376.1, pp. 42, 43-44, 45. The Chamber recalls that PRAK Yut arrived in the Central (North) Zone in February 1977. *See* Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1463.

<sup>11144</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 64-65; YOU Vann Interview Record, E3/9507, 8 January 2015, p. 14, ERN (En) 01059282 (Answer 43); T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 7-8.

<sup>11145</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 67-68; YOU Vann Interview Record, E3/9507, 8 January 2015, pp. 7-8, ERN (En) 01059275-01059276 (Answer 18).

<sup>11146</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 69.

3288. PRAK Yut consistently testified to having purged the Cham upon orders from the upper echelon.<sup>11147</sup> YOU Vann corroborated this assertion.<sup>11148</sup> PRAK Yut further testified that her deputy district chief, Si, was in charge of preparing the lists which were then submitted by PRAK Yut to AO An.<sup>11149</sup> Si then “went to the lower chain of command to carry out the order” and reported to PRAK Yut, who further relayed the report to the sector Secretary AO An.<sup>11150</sup> YOU Vann testified that, after submitting the list she had compiled to PRAK Yut, she was called to attend a meeting in Prey Totueng in Prey Chhor district, Sector 41, chaired by AO An where those responsible for documentation in the Sector 41 districts were present.<sup>11151</sup> AO An instructed them to go personally to villages to compile the lists. In the past, they relied on the village chiefs to prepare them and then send the lists upward to the sector level.<sup>11152</sup> During that same meeting, AO An announced that “people who were linked to different ethnicities and affiliations” had to be purged.<sup>11153</sup> YOU Vann had also been told by the military commander of the district forces, Phon, that the Cham in Kampong Siem district had been purged.<sup>11154</sup> She explained that the word “purge” at that time in Kampong Siem district referred to making a list of the people.<sup>11155</sup> However, she also testified that

<sup>11147</sup> T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 80 (“I told that I was not involving myself in the killings that it came from the order from the upper echelon to me. For my side, I had deputies who I managed them to do. I did not carry out the order myself. The order came from *Ta An*”), 81 (“There was an order from the sector level to us to purge the Cham”), 104-105 (AO An instructed her and the other district secretaries from Sector 41 to purge the Cham during a meeting held at his place in Prey Totueng, Prey Chhor district); T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 9 (“I received an order either to smash or to kill the people. I, myself, did not involve in the smashing of the Cham people directly”), 14 (“In the entire district, we purged based on the order from the upper echelon”). *See also*, PRAK Yut Interview Record, E3/9499, 30 September 2014, p. 8, ERN (En) 01063610 (Answer 22); PRAK Yut Interview Record, E3/9522, 28 May 2013, ERN (En) 01056219 (Answer 45); PRAK Yut Interview Record, E3/9496, 19 June 2013, ERN (En) 01056228 (Answer 48).

<sup>11148</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 56-57 (discusses PRAK Yut instructing YOU Vann to prepare lists of the Cham who were consequently purged, however the Chamber notes that it is not clear from the testimony whether this instruction came before or after the meeting in Prey Totueng).

<sup>11149</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 6.

<sup>11150</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 51.

<sup>11151</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 71-72; YOU Vann Interview Record, E3/9507, 8 January 2015, pp. 18-19, ERN (En) 01059286-01059287 (Answer 58).

<sup>11152</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 66, 74; YOU Vann Interview Record, E3/9507, 8 January 2015, pp. 18-19, 30, ERN (En) 01059286-01059287, 01059298 (Answer 102).

<sup>11153</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 72-74. YOU Vann noted however that the lists were never compiled because of the arrival of the Vietnamese.

<sup>11154</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 63-64.

<sup>11155</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 64.

PRAK Yut used the terms “purge” and “cleaning up” interchangeably, although she claimed to “not understand in more details about this”.<sup>11156</sup>

3289. The Chamber further notes that SAY Doeun also provided direct evidence of seeing a list prepared by the commune committee in Peam Chi Kang commune, Kang Meas district, Kampong Cham province, with the names of the Cham people who had to be arrested.<sup>11157</sup> His deputy An read out the list to him and then they went together with other Long Sword members to conduct the arrests.<sup>11158</sup>

3290. In light of the above, the Chamber is satisfied that orders to purge the Cham in the Central (old North) Zone, and specifically in Sector 41, came from the upper echelon, and were implemented through the district secretaries including Kan, the Kang Meas district chief, and PRAK Yut, the Kampong Siem district chief. Both reported to AO An, the Sector 41 Secretary, who, in turn, reported to KE Pauk, the Central Zone Secretary.<sup>11159</sup> The Chamber is likewise satisfied that meetings were held in 1977 in Sector 41 discussing enemies, and not long thereafter Cham started being systematically arrested in various locations of this sector based on lists that had been prepared beforehand.

#### 13.2.9.2.2. *Killing of Cham at Wat Au Trakuon*

3291. The Chamber heard evidence from villagers as well as members of the security forces operating at Wat Au Trakuon on the arrests and killing of the Cham occurring on a massive scale after the arrival of Southwest Zone cadres. Three groups of people were most frequently arrested by the Long Sword Group: New People, former Lon Nol soldiers, and the Cham, with the last group forming the majority of the arrests.<sup>11160</sup> The Long Sword Group was often instructed to arrest “all Cham people” at a particular location, and they then brought them to Wat Au Trakuon.<sup>11161</sup>

<sup>11156</sup> T. 18 January 2016 (YOU Vann), E1/377.1, pp. 21, 63-64; T. 18 January 2016 (PRAK Yut), E1/377.1, pp. 105-106; PRAK Yut Interview Record, E3/9522, 28 May 2013, ERN (En) 01056217 (Answer 23).

<sup>11157</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 42, 70-72 *See also*, SOK Meng Ly Interview Record, E3/9654, 26 August 2014, p. 6, ERN (En) 01044617 (Answer 12).

<sup>11158</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 71-72.

<sup>11159</sup> *See above*, paras 3200-3202.

<sup>11160</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 45-46, 73-74, 84-85.

<sup>11161</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 32-34; T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 66-67, 70-71, 73-74, 84-85; T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 48-49, 65-66.

3292. Within Peam Chi Kang commune, hundreds of Cham were arrested by members of the Long Sword Group in early 1977.<sup>11162</sup> According to witness SAY Doeun, the Long Sword militia group, to which he belonged, conducted several arrests.<sup>11163</sup> He was told that his group also killed some of the arrestees.<sup>11164</sup> The people who were arrested by the Long Sword Group were brought to Wat Au Trakuon.<sup>11165</sup>

3293. HIM Man, who is Cham, lived in Sach Sou village, Peam Chi Kang commune, Kang Meas district, Kampong Cham province during the DK period. It was a Cham village where no Khmer people lived, until Khmer families were sent to live in the village in 1976.<sup>11166</sup> The Long Sword Group started rounding up the Cham in the village, including HIM Man and his wife, and took them in the direction of Wat Au

<sup>11162</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 33-37 (“As I said the figure of 200 and 300 people were for those Cham people who had been arrested at the villages and if you add the number of the Cham people who were arrested at the worksite, the figure rose to about 400 to 500.”); T. 17 September 2015 (HIM Man), E1/349.1, pp. 35, 44-45, 85-86 (one day the Khmer Rouge told all the Cham in Sach Sou village, Peam Chi Kang commune, Kang Meas district not to go to work in the fields and in the afternoon the Long Sword Group rounded them up and brought them to Wat Au Trakuon); T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 63-64, 69, 74, 87. *See also*, MAN Heang Interview Record, E3/5529, 10 December 2009, pp. 3-4, ERN (En) 00421084-00421085 (“Au Trakuon District Security personnel came to round up the Cham”. He knew Horn, who was the District Security chairman. He explained that: “The unit chairmen were not told in advance about those arrests for fear they would tell the people in their units to flee. Once in early 1977, security people came down and arrest the Cham. Later the security people came to arrest other Cham, sometimes during the daytime and sometimes during the night. There were more than 20 but less than 30 Cham in my group that had come from Sach Sau Village. Not one among them is still alive.”); HOK Hoeun Interview Record, E3/5256, 23 November 2008, pp. 3-8, ERN (En) 00251303-00251308 (describing himself as “the chief of the unit which controlled and was responsible for the people in the village” in Kang Meas district. He saw the arrival of New People who were evacuees from Phnom Penh and who were first put in the pagoda. Later “[t]hey told them to go study, meaning they arrested and killed them [...] And they selected people in the village according to their biographies and took them along too”, especially “those people [who] had been captains or majors in the military or had been commandos”. Concerning the Cham, they were arrested and they were killed in front of Wat Au Trakuon. People were not permitted to come near the pagoda; they could only hear the loudspeaker noise, and the screams of the victims. Cham people were arrested by the militiamen. The loudspeakers played revolutionary songs “at night, sometimes at 11 p.m. and sometimes at midnight”. All Cham in Sach Saur village were arrested. “[Cham] were arrested one after another through the connections who implicated one another, from one to the next”. The mosque was closed and Cham were not permitted to enter. Han, the chief of Wat Au Trakuon Security Centre, was from the Southwest Zone); RIEL Neang Interview Record, E3/9652, 21 November 2014, ERN (En) 01067799-01067801 (she was the chairwoman of Commune Women of Angkor Ban commune, Kang Meas district. Cham people in her commune were moved and sent to live in another village in Cheung Prey district, north of Skun. She saw Cham people being transported in horse carts to Au Trakuon); MAT Toulouh Interview Record, E3/9360, 7 April 2010, pp. 3-6, ERN (En) 00506026-00506029 (he was a Cham who was evacuated from Phnom Penh and later on worked as a boat driver on the Mekong during the DK period. He transported large numbers of people to Wat Au Trakuon, including children).

<sup>11163</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 85-86.

<sup>11164</sup> T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 84-87.

<sup>11165</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 28, 75-76; T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 46-47; T. 15 September 2015 (SAMRETH Muy), E1/347.1, p. 32; T. 16 September 2015 (TAY Koemhun), E1/348.1, pp. 81-82, 86.

<sup>11166</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 43.



Trakuon.<sup>11167</sup> HIM Man and his wife managed to escape and hide in a bush which was located approximately 100 metres from the pagoda and “the pit where they were killing the Cham people”.<sup>11168</sup> Lying there, they heard people screaming and calling to Allah for help.<sup>11169</sup> Many of HIM Man’s relatives disappeared after being rounded up by the Long Sword Group.<sup>11170</sup> HIM Man and his wife then hid in various places in the village, including a pond, for three months and 29 days.<sup>11171</sup> During this period, he smelled the stench of dead bodies.<sup>11172</sup> The Chamber notes that the witness could not recall the date of these events but assumed that he was hiding in the pond in late 1978 or early 1979.<sup>11173</sup> HIM Man estimates that the Long Sword Group arrested between 20 and 30 Cham families at that time.<sup>11174</sup>

3294. HIM Man and his wife were eventually captured by members of the Long Sword Group, beaten and detained in a corn barn in Sambuor Meas, which “was actually a prison as it was being secured by members of the Long Swords Group”.<sup>11175</sup> HIM Man stated that the corn barn was supposed to be “the place where people would be kept for a while before they were subsequently taken to be killed at Au Trakuon pagoda”.<sup>11176</sup> According to HIM Man, the people working there went to discuss with Kan, the head of Kang Meas district at the time, about sparing him and his wife as they were not associated with anyone and because he had multiple skills such as swimming under water, making spoons, melting steel and knew how to retrieve tangled nets at the bottom of the river.<sup>11177</sup> Kan was the one who decided that they could be spared, since he knew that they had not done anything but had stayed in the pond.<sup>11178</sup> Kan agreed to spare

<sup>11167</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 45.

<sup>11168</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 47-48; T. 28 September 2015 (HIM Man), E1/350.1, p. 21.

<sup>11169</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 48, 51-52, 82 (confirming (at p. 82) that the sounds he heard were “the screaming of people in agony” and not music coming from loudspeakers around or in the pagoda).

<sup>11170</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 52, 57.

<sup>11171</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 53-57, 59.

<sup>11172</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 60-61, 78.

<sup>11173</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 85. *See also*, T. 28 September 2015 (HIM Man), E1/350.1, pp. 24-25 (“As I stated, I do not recall the date or the year. But while I was in Sach Sou village, I heard them talking about that. I cannot specify the year. And for me, I am not really sure at all about the date or the year, and let me stress that again and again.”).

<sup>11174</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 80.

<sup>11175</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 61-63.

<sup>11176</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 61.

<sup>11177</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 62-63.

<sup>11178</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 62.

HIM Man and his wife as they were not associated with anyone, and they were given Khmer names “to show that no more Cham anymore living in the village [*sic*]”.<sup>11179</sup>

3295. After 1979, HIM Man saw the grave pits near Wat Au Trakuon Security Centre with many bones in them.<sup>11180</sup> HIM Man and his wife were the only two Cham to survive the DK period in Sach Sou village.<sup>11181</sup>

3296. SENG Kuy, who was a Khmer rice farmer in Angkor Ban village 2, Angkor Ban commune, Kang Meas district saw all the Cham of the village being arrested in the collective dining room where Cham and Khmer were eating one evening in 1977.<sup>11182</sup> Run, who held a position with the commune security forces, was in charge of the arrests.<sup>11183</sup> According to the witness, “the Cham people who were arrested were innocent Cham people. They did not do anything wrong, and they strived to work very hard.”<sup>11184</sup> He heard the chief of the commune security scolding Cham people, claiming that they had betrayed *Angkar*, and he understands that this was “why there were purges against them”.<sup>11185</sup> The witness was ordered by the deputy chief of the village to transport Cham people to Wat Au Trakuon on an ox cart along with five or six other carts.<sup>11186</sup> The Cham were received by a person identified by the witness as being “perhaps” a district security guard and none of them returned after being taken to the pagoda.<sup>11187</sup>

<sup>11179</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 61-64.

<sup>11180</sup> T. 17 September 2015 (HIM Man), E1/349.1, pp. 68-69. *See also*, Wat Au Trakuon Site ID Report, E3/8038, 30 June 2009, p. 2, ERN (En) 00364806; SOR Chheang Interview Record, E3/9671, 28 April 2015, p. 7, ERN (En) 01111790; THONG Kim Khun Interview Record, E3/9661, 4 August 2014, pp. 5-7, ERN (En) 01044607-01044609; HOK Hoeun Interview Record, E3/5256, 23 November 2008, p. 4, ERN (En) 00251304; LEAV Loas Interview Record, E3/9342, 9 April 2009, p. 5, ERN (En) 00339935; CHEA Maly OCP Interview, E3/7827, 6 August 2008, p. 3, ERN (En) 00210433.

<sup>11181</sup> CHEA Maly Interview Record, E3/8750, 14 July 2011, p. 4, ERN (En) 00722232 (“Kang Meas district. In the commune where we are now, only one [Cham] family survived for it ran away to live in the lake.”).

<sup>11182</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 81-82 (“I witnessed it with my own eyes. In around 1977, at around 8 o’clock at night, the Cham and Khmer people just returned from the rice field and we actually ate dinner together at the communal dining hall. That very night security force came to arrest the Cham people. They did not arrest only one person but they arrested all the Cham people living in Village Number Two and the arrest took place at the dining hall where they were having dinner together with the Khmer people and I was there having my dinner in that communal dining hall.”).

<sup>11183</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 83-84.

<sup>11184</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 92-93.

<sup>11185</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, p. 106.

<sup>11186</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 86-87.

<sup>11187</sup> T. 9 September 2015 (SENG Kuy), E1/344.1, pp. 88-89.

3297. As discussed below, killings at Wat Au Trakuon were further corroborated by members of the security forces operating at the pagoda at the relevant time. MUY Vanny, who was around 11 to 14 years old at the time,<sup>11188</sup> was the “bodyguard” of Wat Au Trakuon security chief Horn,<sup>11189</sup> who had an office at the pagoda.<sup>11190</sup> MUY Vanny testified that he and other security guards at the pagoda carried weapons,<sup>11191</sup> and that militiamen from the Long Sword Group were stationed inside the pagoda as well, but were headed by “someone else”.<sup>11192</sup> He saw prisoners detained at Wat Au Trakuon who were chained, shackled, not given sufficient food and generally living under miserable conditions.<sup>11193</sup> MUY Vanny did not witness any arrests,<sup>11194</sup> but saw people being transported to the pagoda by militiamen from the village, together with unit chiefs.<sup>11195</sup> The majority of the persons brought to the pagoda were Cham,<sup>11196</sup> brought there by “different people”, by ox cart or by boat.<sup>11197</sup> People arriving by boat were in groups of 50 to 100 while at other times, people were brought in smaller groups.<sup>11198</sup> Khmer people were taken to a school nearby to be interrogated, whereas the Cham were not, save for a few.<sup>11199</sup> MUY Vann personally witnessed people in the main temple being tied up, blindfolded and taken away in groups of 10.<sup>11200</sup> He also personally witnessed that the main temple was “full of people”,<sup>11201</sup> and that no one was left the next morning, and was told, upon inquiry, that “the people were all sent to be

<sup>11188</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 12-13, 35-36.

<sup>11189</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 15-16, 33, 81-83. The Chamber notes that his role was more that of a handyman than a security guard. *See* T. 11 January 2016 (MUY Vanny), E1/373.1, p. 82 (“Q. Would it be fair for me to say that you weren’t really his bodyguard in the sense that you had to protect him, but that you were just a young boy who did jobs for him? A. Yes, that is correct.”).

<sup>11190</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 16-17.

<sup>11191</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 36-37.

<sup>11192</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, p. 37; T. 12 January 2016 (MUY Vanny), E1/374.1, pp. 18-19.

<sup>11193</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 39, 48-49, 65-66; MUY Vanny Interview Record, E3/9659, 3 July 2014, pp. 5, 9, ERN (En) 01035844, 01035848. *See also*, T. 14 September 2015 (SEN Srun), E1/346.1, pp. 38-39, 82.

<sup>11194</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 43, 45.

<sup>11195</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 43-44.

<sup>11196</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 48-49, 65.

<sup>11197</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 46-47.

<sup>11198</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, p. 48.

<sup>11199</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 50-53.

<sup>11200</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 62 (“I saw people being tied up and walked away. They were blindfolded. Then they were tied up with their hands behind their back and they were put into a file and walked away.”), 64-65 (“In fact, I saw about 10 of those who were sent to be executed [...]. In fact, each time there were about 10 of them who were being tied up and led away [...] As I said, the next morning there was no one left.”), 74 (“I stated from the outset when I took the water there it was the time that the prisoners were tied up and led out.”), 75 (“Prisoners were in the main temple.”).

<sup>11201</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, p. 65.

killed”.<sup>11202</sup> He was also told that the persons were executed overnight about 100 metres away from the pagoda.<sup>11203</sup> According to MUY Vanny, all the Cham at Wat Au Trakuon Security Centre were killed within four days of their arrival.<sup>11204</sup>

3298. SEN Srun was told by his friend Moeun, a security guard at Wat Au Trakuon, that the music from loudspeakers he heard on certain nights served to mask the sounds of killing and screaming.<sup>11205</sup> SEN Srun recalled that the night he brought Cham people to Wat Au Trakuon, he heard music from the loudspeakers being played for unusually long and the next day, Moeun told him that all of the Cham had been killed, including mothers and babies, and that the smashing had lasted until midnight.<sup>11206</sup> His house was located 200 metres from the pagoda and, after 1976, he witnessed people being taken there on a daily basis but did not see them getting out.<sup>11207</sup>

3299. SAMRETH MUY was a village militiaman who lived in Sambuor Meas village “A” and Sach Sou village, both located in Peam Chi Kang commune, Kang Meas district.<sup>11208</sup> He stated that there was a majority of Cham living in Sach Sou village as they were the “original settlers”.<sup>11209</sup> He witnessed arrests of Cham families, including parents and children, in 1977, after he had been sent back to work in a cooperative in Sambuor Meas, where he was assigned to guard a cornfield.<sup>11210</sup> The witness saw people from different places being brought to the pagoda and never returning; to his knowledge, people were taken to Wat Au Trakuon to be killed.<sup>11211</sup> He never witnessed

<sup>11202</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 55 (“I took a quick look and found it very cruel because hundreds of people I had seen suddenly disappeared in the next morning and I did not know how they were treated or what happened to them”), 58 (“As I mentioned earlier -- during the morning I did not see those people, I did not know what happened. I just only brought the water to those people. Then I returned. And during the morning it was quiet. I did not see any person. So, I assumed that those people were taken out to be killed, not sent to anywhere else.”), 60 (“I know based -- actually, I was wondering where the people were sent and in the morning I asked other people. Then I asked where the people were sent and then they told me that the people were all sent to be killed.”), 73 (“I only knew that people were detained there for a few days and they disappeared. And when I asked the people, I was told that they were taken away and executed.”).

<sup>11203</sup> T. 11 January 2016 (MUY Vanny), E1/373.1, pp. 53, 71-72.

<sup>11204</sup> MUY Vanny Interview Record, E3/9659, 3 July 2014, p. 12, ERN (En) 01035851.

<sup>11205</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 14-15, 29, 42-43, 61-65.

<sup>11206</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 42-44. *See also*, T. 12 January 2016 (SAY Doeun), E1/374.1, pp. 88-89; HOK Hoeun Interview Record, E3/5256, 23 November 2008, pp. 4-5, ERN (En) 00251304-00251305.

<sup>11207</sup> T. 14 September 2015 (SEN Srun), E1/346.1, pp. 12-13.

<sup>11208</sup> T. 15 September 2015 (SAMRETH MUY), E1/347.1, pp. 22-25, 91-92, 96-97.

<sup>11209</sup> T. 15 September 2015 (SAMRETH MUY), E1/347.1, pp. 26, 61.

<sup>11210</sup> T. 15 September 2015 (SAMRETH MUY), E1/347.1, pp. 26-28, 31, 94, 100-103 (all Cham families from Sach Sou village were arrested and no more Cham were living there afterwards).

<sup>11211</sup> T. 15 September 2015 (SAMRETH MUY), E1/347.1, p. 33 (“Those who were brought into that pagoda never returned. They were brought in, and disappeared. That’s all I know.”).

the executions himself but witnessed people disappearing.<sup>11212</sup> He was living 200 metres from the pagoda and heard screams for help and loud music being played from loudspeakers at night on days where people were taken to the pagoda.<sup>11213</sup> He witnessed both Cham and Khmer people being brought to the pagoda on a daily basis and disappearing.<sup>11214</sup>

3300. The Chamber finally notes that numerous WRIs corroborate the mass killing of Cham at Wat Au Trakuon.<sup>11215</sup> Notably, SOR Chheang, who was residing in Pongro village, Roka Koy commune, Kang Meas district, and was in charge of transporting food supplies for the mobile units, stated being accused of wrongdoing and being sent to Wat Au Trakuon. There he saw 20 prisoners, who were ethnic Cham, taken to be killed. He was imprisoned there for 2 months and 28 days. He saw prisoners being tied up and tortured and children being beaten to death against the temple. He observed that 50 to 100 persons (17 April People and Cham families) were brought each day to be detained at the security office. The Khmer Rouge questioned the prisoners in the mornings and they took them to be killed at night. Some prisoners died during the interrogations.<sup>11216</sup> THONG Kim Khun, who was ordered to transport Cham people to the pagoda by the deputy chairperson of the Sach Sou Village Cooperative, also stated seeing what he believed to be 500 Cham people, including men, women and children, being led from a ferry boat anchored at the Wat Au Trakuon dock.<sup>11217</sup>

<sup>11212</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, p. 83.

<sup>11213</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 33-36, 86 (“When the Cham people were arrested and placed into the pagoda, at night-time the music was played over the loudspeaker and the Cham people disappeared.”).

<sup>11214</sup> T. 15 September 2015 (SAMRETH Muy), E1/347.1, pp. 86 (“And then they brought more people in. If the old ones had not been killed, there would not have been available space as both the Khmer and the Cham people were brought in on a daily basis.”), 101 (“I mentioned that the execution began to take place continuously from 1977 to 1979. Actually, not only the Cham people were killed, but also the Khmer people. After the execution of the Cham people, all types of the Khmer people including pregnant women and small children were taken to be killed. The execution took place on a daily basis. As I have told the Chamber, I did not dare to stay close to them. I was afraid at the time, and I do not know why the innocent people were taken away and killed every day.”).

<sup>11215</sup> SOR Chheang Interview Record, E3/9671, 28 April 2015, p. 4, ERN (En) 01111787; MOENG Peng Hao OCP Interview, E3/7828, p. 4, ERN (En) 00210472; THONG Kim Interview Record, E3/9661, 4 August 2014, pp. 5-7, ERN (En) 01044607-01044609; HOK Hoeun Interview Record, E3/5256, 23 November 2008, p. 4, ERN (En) 00251304; LEAV Loas Interview Record, E3/9342, 9 April 2009, p. 6, ERN (En) 00339936; CHEA Maly OCP Interview, E3/7827, 6 August 2008, pp. 3-5, ERN (En) 00210433-00210435; SOK Meng Ly Interview Record, E3/9654, 26 August 2014, pp. 6-7, ERN (En) 01044617-01044618. *See also*, T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 21-22, 129-130.

<sup>11216</sup> SOR Chheang Interview Record, E3/9671, 28 April 2015, pp. 2-8, ERN (En) 01111785-01111791.

<sup>11217</sup> THONG Kim Khun Interview Record, E3/9661, 4 August 2014, pp. 5-7, ERN (En) 01044607-01044609.

3301. The OCIJ site visit report also establishes that physical evidence of the alleged crimes was uncovered as human remains are stored within the Wat Au Trakuon memorial stupa.<sup>11218</sup> The Chamber notes that the amount of bones in the stupa does not accurately reflect the exact number of victims executed, considering that no official exhumation was conducted in the surroundings of the pagoda since 1979, and that many people dug up the remains in search of valuables.<sup>11219</sup>

3302. While the witnesses and Civil Parties heard by the Chamber did not directly and personally witness the killings, the Chamber has before it multiple hearsay accounts of executions at the pagoda of people perceived as enemies, including Cham civilians, who were executed *en masse*. The Chamber has also before it direct evidence, from villagers of the Kang Meas district as well as from members of the security forces and militia operating at Wat Au Trakuon, of: (i) Cham people, being systematically rounded up in various villages of Kang Meas district and taken to Wat Au Trakuon by militiamen, including members of the Long Sword Group; (ii) Cham people being tied up and held at the pagoda before being taken away *en masse*; and (iii) people hearing screams coming from the pits and calls for help, and music from loudspeakers being played at night over the screams. All witnesses and Civil Parties consistently stated that the Cham taken to the pagoda never returned, and pits containing human remains were uncovered around the pagoda after January 1979.

3303. The Chamber finally notes that numerous WRIs establish mass arrests and killings of Cham in other locations of Sector 41, and especially within Kampong Siem district.<sup>11220</sup> This is consistent with the above described evidence regarding Wat Au Trakuon.

<sup>11218</sup> Wat Au Trakuon Site ID Report, E3/8038, 30 June 2009, p. 2, ERN (En) 00364806. *See also*, OCP Mission Report, E3/2654, 1 August 2008-7 August 2008, p. 13, ERN (En) 00211164.

<sup>11219</sup> Wat Au Trakuon Site ID Report, E3/8038, 30 June 2009, p. 2, ERN (En) 00364806 (“Any bones that were left on the surface were collected and placed in the memorial stupa.”).

<sup>11220</sup> NHIM Kol Interview Record, E3/9667, 11 February 2015, pp. 10-11, ERN (En) 01076946-01076947; NHEM Kol Interview Record, E3/9548, 12 November 2013, p. 6, ERN (En) 00966999; MUOK Sengly Interview Record, E3/9744, 4 September 2015, pp. 9-10, ERN (En) 01152375-01152376; IEM Channy Interview Record, E3/9657, 9 May 2014, p. 7, ERN (En) 01032982; SBONG Yann Interview Record, E3/9656, 7 May 2014, p. 4, ERN (En) 01034899; KHOEM Neary Interview Record, E3/9655, 6 May 2014, p. 7, ERN (En) 01034078; PHLONG Han Interview Record, E3/9663, 23 March 2012, p. 4, ERN (En) 00797011; DIN Sreav Interview Record, E3/10739, 24 February 2016, pp. 3-4, ERN (En) 01215995-01215996; RUIN Him Interview by Nate Thayer, E3/7513, 24 December 1984, ERN (En) 00667232.

3304. In light of the above, the Chamber is satisfied that a large number of people perceived as enemies, including Cham people from various villages of Kang Meas district, Sector 41, were systematically arrested and brought to Wat Au Trakuon in 1977 where they were executed *en masse*. Systematic arrests and mass executions of Cham people at Wat Au Trakuon is further consistent with evidence showing similar patterns of conduct in other places of Sector 41, in particular in Kampong Siem district.

### 13.2.10. *Legal Findings*

#### 13.2.10.1. *Murder*

3305. The Closing Order charges the Accused with the crime against humanity of murder of Cham at Wat Au Trakuon and Trea Village Security Centres and through widespread killings from 1977.<sup>11221</sup>

3306. The Chamber has found that a large number of people, including a majority of Cham from the Kang Meas district, Sector 41, were arrested and brought to Wat Au Trakuon in 1977 where they were executed.<sup>11222</sup> It has further found that, in 1978, a great number of Cham people from Kroch Chhmar district were arrested and taken to Trea Village Security Centre, where their membership of the Cham group was verified. Those who were deemed to be Cham were executed while non-Cham were spared.<sup>11223</sup> The Chamber is satisfied that the *actus reus* of the crime against humanity of murder is established with respect to these victims.

3307. The Chamber recalls that it is satisfied that orders targeting the Cham in the Central (old North) Zone, and specifically in Sector 41, came from the upper echelon, that meetings were held in 1977 in Kang Meas district discussing enemies, that not long thereafter Cham started being arrested and that lists identifying the Cham had been prepared beforehand.<sup>11224</sup> It similarly found that orders targeting the Cham in the East Zone, and specifically in Kroch Chhmar district, came from the upper echelon and that a meeting was held in Kampong Thma, Central (old North) Zone with the East Zone

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<sup>11221</sup> See above, para. 3184.

<sup>11222</sup> See above, para. 3302.

<sup>11223</sup> See above, para. 3281.3281

<sup>11224</sup> See above, para. 3290.

leaders, discussing smashing enemies and that not long thereafter, Cham started being evacuated and disappearing.<sup>11225</sup>

3308. In light of the systematic and organised arrests of Cham and their subsequent executions at both security centres, the Chamber is satisfied that the Cham brought to and executed at the Wat Au Trakuon and Trea Village Security Centres were intentionally killed. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of murder is also established and therefore finds that the crime against humanity of murder is established with respect to the killings of Cham at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978.

#### 13.2.10.2. Extermination

3309. The Closing Order charges the Accused with the crime against humanity of extermination, nationwide as regards the policy and limited to MOP Phase Two and, from 1977, Trea Village and Wat Au Trakuon Security Centres as regards the implementation of the policy.<sup>11226</sup>

3310. The Chamber does not have before it any relevant evidence of specific instances of deliberate killings of Cham people in the course of MOP Phase Two limited to the treatment of the Cham. It is therefore unable to find that the crime against humanity of extermination during MOP Phase Two limited to the treatment of the Cham is established.

3311. The Chamber has found above that murder as a crime against humanity was established in relation to the intentional killings of Cham at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978.<sup>11227</sup> While the Chamber was unable to establish a definite number of victims, it is satisfied that a great number of Cham civilians were taken to both security centres. The Chamber also recalls having found that the Cham prisoners arrested and detained at S-21 were treated as any other detainees and either died or were executed there.<sup>11228</sup>

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<sup>11225</sup> See above, para. 3275.

<sup>11226</sup> See above, para. 3184.

<sup>11227</sup> See above, para. 3308.

<sup>11228</sup> Section 12.2: S-21 Security Centre, para. 2493.



3312. The Chamber finds that these murders satisfy the requirement of killings on a massive scale, considering the large number of people who were executed, the time, place and extent of the arrests and killings at both security centres, and the fact that Cham were specifically screened out and separated from non-Cham individuals before being killed at the Trea Village Security Centre. The Chamber is further satisfied that these killings formed part of the same murder operation. The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of extermination is established.

3313. In relation to the intent requirement, the evidence demonstrates that killings of Cham at the Wat Au Trakuon and Trea Village Security Centres were organised and deliberate, pursuant to the CPK general policy targeting the Cham,<sup>11229</sup> as well as CPK meetings and orders to identify and arrest enemies, including the Cham.<sup>11230</sup> This shows that the perpetrators acted with the intent to kill Cham on a massive scale. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of extermination is also established. The Chamber therefore finds that the crime against humanity of extermination is established in relation to killings at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978.

### 13.2.10.3. Imprisonment

3314. The Closing Order charges the Accused with the crime against humanity of imprisonment at the Trea Village Security Centre from mid-1978.<sup>11231</sup> The Chamber has found that in 1978, Cham people from Kroch Chhmar district were arrested and taken to Trea Village Security Centre, where they were arbitrarily detained.<sup>11232</sup> NO Sates and MATH Sor specifically stated that they had been detained along with numerous other Cham women for a number of days during which their membership within the Cham group was verified and those deemed Cham were taken away and never returned.<sup>11233</sup> IT Sen and about 40 other men were also held in a house by the river guarded by armed Khmer Rouge soldiers and he saw more Cham being detained

<sup>11229</sup> See above, para. 3227.

<sup>11230</sup> See above, paras 3275, 3290.

<sup>11231</sup> See above, para. 3184.

<sup>11232</sup> See above, para. 3281.

<sup>11233</sup> See above, paras 3276, 3278-3279.

in several nearby houses.<sup>11234</sup> Nothing in the above-mentioned evidence indicates that the Cham who were arrested and detained took part in any unlawful activities.

3315. The Chamber is therefore satisfied that this amounts to arbitrary deprivation of liberty without due process of law. The evidence shows that prisoners were detained with disregard for procedural rights and that the initial deprivation of liberty was arbitrary: the Cham civilian detainees were not properly informed of the reasons for their arrest, either before or within a reasonable time of having been brought to Trea Village Security Centre and were not detained pursuant to a warrant or any document emanating from an investigative or judicial authority. Moreover, there was no evidence before the Chamber that any prisoners were brought before a judicial officer vested with the authority, either to review the charges upon which prisoners had allegedly been detained, or to assess or appeal the lawfulness of ongoing detention. Finally, and consistent with the Chamber's finding that no judicial system was established during the DK era,<sup>11235</sup> there was no evidence before the Chamber that detainees were afforded a trial or were otherwise convicted by a court of law before having been detained at Trea Village Security Centre. The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of imprisonment is established.

3316. The systematic failure to inform and sufficiently particularise the charges of which civilian detainees were suspected, and pursuant to which they were subsequently detained, demonstrates the flagrant, intentional and continuous denial of due process rights constituting arbitrary deprivation of liberty contrary to international law. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of imprisonment is also established. Accordingly, the Chamber finds that the crime against humanity of imprisonment is established at Trea Village Security Centre as regards Cham civilian prisoners.

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<sup>11234</sup> See above, para. 3276.

<sup>11235</sup> Section 5: Administrative Structures, paras 417-418. With regard to the NUON Chea Defence submissions that in times of public emergency states may derogate from certain obligations related to individuals' arrests and fair trial guarantees, the Chamber reiterates that pursuant to the ICCPR, a state is required to give notice of its intent to do so and that there is no evidence to suggest that DK authorities at any time officially proclaimed the existence of a "public emergency which threatens the life of the nation". See Section 12.5: Phnom Kraol Security Centre, paras 3081-3082.

13.2.10.4. Torture

3317. The Closing Order charges the Accused with the crime against humanity of torture at the Trea Village Security Centre from mid-1978.<sup>11236</sup> The Chamber has found that in 1978, Cham people from Kroch Chhmar district were arrested and taken to Trea Village Security Centre, where they were arbitrarily detained.<sup>11237</sup> It has further found that on the day of IT Sen's arrest, men were separated from women and children and ordered to go to the riverfront and stand in line, where they were tied up, beaten and asked repeatedly if they were Muslims.<sup>11238</sup> The Chamber notes that NO Sates and MATH Sor did not experience such treatment.

3318. The Chamber recalls that beatings amount *per se* to acts of torture causing severe pain or suffering.<sup>11239</sup> The Chamber is therefore satisfied that the *actus reus* of torture is established. The Chamber is also satisfied that the beatings repeatedly suffered by IT Sen and his fellow Cham detainees, while being tied up, were deliberately inflicted by military men operating at the Security Centre, in order to identify whether the detainees were members of the Cham group. The Chamber is therefore satisfied that the *mens rea* of torture is established. The Chamber is satisfied that the physical and mental mistreatment deliberately inflicted during interrogations came from persons acting on behalf of the CPK, who the Chamber finds to be public officials. Further, this mistreatment was inflicted for the purposes of obtaining information.

3319. In light of the above, the Chamber finds that the crime against humanity of torture is established with regard to the beatings and interrogation of Cham men at the Trea Village Security Centre on the day of IT Sen's arrest in 1978.

13.2.10.5. Persecution on political grounds

3320. The Closing Order charges the Accused with the crime against humanity of persecution on political grounds during MOP Phase Two.<sup>11240</sup> With respect to population movements, the Closing Order finds that real or perceived enemies of the

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<sup>11236</sup> See above, para. 3184.

<sup>11237</sup> See above, para. 3281.

<sup>11238</sup> See above, para. 3276.

<sup>11239</sup> Section 9.1.6: Applicable Law: Crimes Against Humanity: Torture, para. 704.

<sup>11240</sup> See above, para. 3184.

CPK were subjected to harsher treatment and living conditions than the rest of the population.<sup>11241</sup>

3321. MOP Phase Two has been addressed in Case 002/01. The Supreme Court Chamber found that the crimes against humanity of murder<sup>11242</sup> and other inhumane acts through attacks against human dignity and conduct characterised as forced transfer and enforced disappearances read holistically<sup>11243</sup> were established beyond reasonable doubt against New People. It further found that the Trial Chamber erred in finding that the crime against humanity of persecution on political grounds was established beyond reasonable doubt against New People.<sup>11244</sup> The Supreme Court Chamber specifically found that “it cannot be said that it has been established that the transfer of people itself was carried out in a discriminatory manner or with discriminatory intent” and that “given that the transfer of people – primarily for economic goals – appears to have been a widespread practice that affected all parts of the population, the movement of the population during MOP Phase Two was not, as such, discriminatory or an emanation of persecutory intent”.<sup>11245</sup>

3322. The Chamber has found that, after the September 1975 Koh Phal and October 1975 Svay Khleang rebellions, the East Zone Cham population was dispersed into the Central (old North) Zone in order to ease tensions. Cham were removed by CPK armed forces without their consent and under threat of being considered enemies if they did not comply.<sup>11246</sup> Even though this dispersion was part of a broader movement of people from the East Zone to the Central (old North) Zone aimed at distributing the population throughout Cambodia, the Chamber has found that the Cham in the East Zone were specifically targeted as a result of the rebellions. The Chamber has further found that this was indicative of the Cham being dispersed in order for their communities to be broken up rather than just to displace the labour force.<sup>11247</sup>

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<sup>11241</sup> Closing Order, para. 1418.

<sup>11242</sup> Case 002/01 Appeal Judgement, paras 557-562. The Chamber recalls that the Supreme Court Chamber, upon finding that the scale element of the crime against humanity of extermination had not been reasonably established and that the perpetrators acted with *dolus eventualis*, recharacterised the charge of extermination as a crime against humanity into murder as a crime against humanity.

<sup>11243</sup> Case 002/01 Appeal Judgement, paras 658-660.

<sup>11244</sup> Case 002/01 Appeal Judgement, paras 698-706.

<sup>11245</sup> Case 002/01 Appeal Judgement, para. 705.

<sup>11246</sup> See above, paras 3261-3268.

<sup>11247</sup> See above, para. 3268.

3323. In light of the above, the Chamber is satisfied that the movement of Cham from the East Zone to the Central (old North) Zone was discriminatory in fact and deliberately perpetrated with the intent to discriminate against the Cham because they were perceived as enemies following the rebellions in the East Zone. The Chamber is satisfied that the Cham were sufficiently discernible as a political group to determine whether consequences occurred for this group, and that the victims of these acts were in fact Cham.

3324. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>11248</sup> personal dignity,<sup>11249</sup> liberty and security,<sup>11250</sup> freedom from arbitrary or unlawful arrest,<sup>11251</sup> and equality before the law as enshrined in customary international law.<sup>11252</sup>

3325. The acts charged as persecution include acts separately found to amount to independent crimes against humanity (including other inhumane acts perpetrated through forcible transfer) as well as acts which, on their own, do not necessarily amount to crimes (in particular, arrests). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of seriousness such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* and *mens rea* of the crime against humanity of persecution on political grounds are established.

3326. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on political grounds is established with regard to the forcible removal of the Cham population the East Zone to the Central (old North) Zone following the September 1975 Koh Phal and October 1975 Svay Khleang rebellions.

<sup>11248</sup> As evidence of the state of customary international law, *see* UDHR, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>11249</sup> As evidence of the state of customary international law, *see* UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>11250</sup> As evidence of the state of customary international law, *see* UDHR, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

<sup>11251</sup> As evidence of the state of customary international law, *see* UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>11252</sup> As evidence of the state of customary international law, *see* UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

13.2.10.6. Persecution on religious grounds

3327. The Closing Order charges the Accused with the crime against humanity of persecution on religious grounds during MOP Phase Two and nationwide throughout the DK period.<sup>11253</sup> The charged conduct with respect to the persecution on religious grounds of the Cham includes the suppression of Cham culture, traditions and language.<sup>11254</sup> It is alleged that the CPK banned the practice of Islam, forbade the Cham from praying, seized and burned Korans, closed or destroyed mosques, and forced Cham people to eat pork.<sup>11255</sup> It is further alleged that religious leaders and Islamic scholars were arrested and killed, and that Cham women were forced to cut their hair and were prohibited from covering their heads.<sup>11256</sup> Furthermore it is alleged that Cham communities were broken up and Cham people were forcibly moved throughout Cambodia and dispersed among other communities.<sup>11257</sup>

3328. The Chamber recalls its finding that Cham people suffered discrimination as they were forced to eat pork and they were prevented from worshipping and speaking their native tongue at the 1<sup>st</sup> January Dam worksite.<sup>11258</sup> The Chamber has further found that during the period relevant to the charges, the CPK implemented a policy specifically targeting the Cham as an ethnic and religious distinct group<sup>11259</sup> and imposed restrictions on Cham religious and cultural practices in Kroch Chhmar district,<sup>11260</sup> in various locations within the Central (old North) Zone,<sup>11261</sup> and in other various locations in Cambodia throughout the DK period.<sup>11262</sup> Such restrictions included prohibition on daily prayers, forcing Cham to eat pork and wear the same dress and haircuts as the Khmer people, forcing them to only speak the Khmer language, as well as burning Korans and dismantling mosques or using them for purposes other than

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<sup>11253</sup> See above, para. 3184.

<sup>11254</sup> Closing Order, para. 1420.

<sup>11255</sup> Closing Order, para. 1420.

<sup>11256</sup> Closing Order, para. 1420.

<sup>11257</sup> Closing Order, para. 1420.

<sup>11258</sup> Section 11.2.22: 1<sup>st</sup> January Dam Worksite: Treatment of Cham.

<sup>11259</sup> See above, para. 3228.

<sup>11260</sup> See above, para. 3238.

<sup>11261</sup> See above, para. 3245.

<sup>11262</sup> See above, para. 3250.

prayer. Those who resisted were arrested and/or killed.<sup>11263</sup> The Chamber does not consider such restrictions permissible.<sup>11264</sup>

3329. In light of the above, the Chamber is satisfied that these restrictions were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the Cham because of their religious and cultural practices. The Chamber is satisfied that the Cham living in Cambodia were sufficiently discernible as a religious group to determine whether consequences occurred for this group, and that the victims of these acts were in fact Cham.

3330. Accordingly, the Chamber finds that acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>11265</sup> personal dignity,<sup>11266</sup> liberty and security,<sup>11267</sup> freedom from arbitrary or unlawful arrest,<sup>11268</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>11269</sup>

3331. The acts charged as persecution include acts separately found to amount to independent crimes against humanity (including murder, extermination, imprisonment, persecution on political grounds during MOP Phase Two (including torture, genocide and conduct characterised as forcible transfer) as well as acts which, on their own, do not necessarily amount to crimes (in particular, arrests). Considered together and within the context these acts were committed, the Chamber is satisfied that they cumulatively rise to the requisite level of seriousness such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* and *mens rea* of the crime against humanity of persecution on religious grounds are established.

<sup>11263</sup> See above, paras 3229-3250.

<sup>11264</sup> Section 9: Applicable Law, paras 719-721.

<sup>11265</sup> As evidence of the state of customary international law, see UDHR, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>11266</sup> As evidence of the state of customary international law, see UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. See also, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>11267</sup> As evidence of the state of customary international law, see UDHR, Art. 3; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7.

<sup>11268</sup> As evidence of the state of customary international law, see UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>11269</sup> As evidence of the state of customary international law, see UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

3332. Having established the requisite elements, the Chamber finds that the crime against humanity of persecution on religious grounds against the Cham nationwide throughout the DK period (including during MOP Phase Two) is established.

13.2.10.7. Other inhumane acts through attacks against human dignity

3333. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through attacks against human dignity during MOP Phase Two.<sup>11270</sup> The Closing Order charges that attacks against human dignity resulted from “depriving the civilian population of adequate food, shelter, medical assistance, and minimum sanitary conditions”.<sup>11271</sup>

3334. The Chamber does not have before it any relevant evidence of specific instances of such deprivations during MOP Phase Two limited to the treatment of the Cham. It is therefore unable to find that the crime against humanity of other inhumane acts through attacks against human dignity during MOP Phase Two is established.

13.2.10.8. Other inhumane acts through conduct characterised as forced transfer

3335. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as forced transfer during MOP Phase Two.<sup>11272</sup> The Closing Order alleges that victims were forced to leave places where they lawfully resided without grounds permitted by international law.<sup>11273</sup>

3336. The Chamber has found that the crime against humanity of persecution on political grounds was established with regard to the forcible removal of the Cham population from the East Zone to the Central (old North) Zone following the September 1975 Koh Phal and October 1975 Svay Khleang rebellions.<sup>11274</sup>

3337. The Chamber is satisfied that, prior to their forced displacement, Cham people were living in their respective communities, some for generations.<sup>11275</sup> There was no

<sup>11270</sup> See above, para. 3184.

<sup>11271</sup> Closing Order, 1434-1441; Case 002 Additional Severance Decision Annex, p. 4, ERN (En) 00981690.

<sup>11272</sup> See above, para. 3184.

<sup>11273</sup> Closing Order, para. 1449.

<sup>11274</sup> See above, para. 2993.

<sup>11275</sup> Section 3.3: Cham in Cambodia before 1975.



evidence concerning the legality of their presence on Cambodian territory, and in particular no indication that their presence on Cambodian territory was unlawful.

3338. The Chamber recalls that conduct amounting to forced transfer has previously been found to be sufficiently serious as to amount to other inhumane acts by the Supreme Court Chamber in Case 002/01 as well as in the jurisprudence of the ICTY.<sup>11276</sup> In assessing the seriousness requirement, the Chamber takes into account the manner in which the individuals were removed from their residence under threat of being considered enemies if they did not comply and the fact that they were separated from their families and dispersed. Having considered the conduct holistically with the surrounding context, as well as the mental and physical suffering inflicted on the Cham, the Chamber is satisfied that the forcible transfer within Cambodia of Cham people is of a nature and gravity similar to other enumerated crimes against humanity. The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of other inhumane acts through conduct characterised as forced transfer is established.

3339. In light of the scale and the organised nature of these mass transfers, the Chamber finds that this conduct necessarily entailed the intentional infliction of serious mental and physical suffering. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of other inhumane acts through conduct characterised as forced transfer is established.

3340. The Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as forced transfer is established in relation to the forced transfer of the Cham population during MOP Phase Two.

13.2.10.9. *Other inhumane acts through conduct characterised as enforced disappearance*

3341. The Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances during MOP Phase Two.<sup>11277</sup> The Closing Order charges that enforced disappearances involved the arrest, detention or abduction of victims in conditions which placed them

<sup>11276</sup> Case 002/01 Appeal Judgement, paras 589-590, 654-660; *Stakić* Appeal Judgement, para. 317; *Krajišnik* Appeal Judgement, para. 331; *Karadžić* Trial Judgement, para. 495; *Krstić* Trial Judgement, para. 523; *Kupreškić et al.* Trial Judgement, para. 566.

<sup>11277</sup> See above, para. 3184.

outside the protection of the law and the refusal to provide access to, or convey information on the fate or whereabouts of such persons.<sup>11278</sup> It charges that measures were put in place to conceal the fate of individuals who had disappeared, and that in addition to withholding information, the authorities provided false reasons to justify the absence of those who disappeared.<sup>11279</sup>

3342. The Chamber does not have before it any relevant evidence of specific instances of such acts during MOP Phase Two limited to the treatment of the Cham. It is therefore unable to find that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances during MOP Phase Two is established.

#### 13.2.10.10. Genocide

3343. The Closing Order charges the Accused with the crime of genocide by killing members of the group from 1977, nationwide as regards the policy and limited to the Trea Village and Wat Au Trakuon Security Centres as regards the implementation of the policy.<sup>11280</sup>

3344. The Chamber has found that the crimes against humanity of murder and extermination of Cham were established in relation to killings at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978.<sup>11281</sup> The Chamber is therefore satisfied that the *actus reus* of the crime genocide by killing, namely the deliberate killing of members of the group, is established with regard to these two security centres.

3345. As regards the specific intent of genocide, namely killing with the intent to destroy, in whole or in part, the Cham group as such, the Chamber recalls that the CPK targeted the Cham as an ethnic and religious distinct group throughout the DK period, first by restricting their cultural and religious practices, then by brutally suppressing “rebellions” and dispersing Cham communities and, at a later stage, by ordering to purge all the Cham who had not yet been deemed as being fully assimilated to the Khmer society.<sup>11282</sup> The Chamber therefore relies on the existence of such a policy

<sup>11278</sup> Closing Order, para. 1471.

<sup>11279</sup> Closing Order, paras 1472-1474.

<sup>11280</sup> See above, para. 3184.

<sup>11281</sup> See above, para. 3308.

<sup>11282</sup> See above, para. 3228. See also, Section 16: Common Purpose, para. 3993.

specifically targeting the Cham as an ethnic and religious, and thus a protected group, and its evolution over time to assess genocidal intent.

3346. The Chamber further notes that this policy was implemented through restrictions on cultural and religious practices throughout Cambodia, mass forcible transfer following the Koh Phal and Svay Khleang rebellions, arbitrary arrest and detention, torture and mass killings of Cham civilians at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978. The Chamber has already found that this conduct constitutes culpable acts directed at the Cham amounting to crimes against humanity of murder, imprisonment, torture, persecution on religious and political grounds, and other inhumane acts through forced transfer. The Chamber specifically notes the massive scale and organised nature of killings at the Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978 amounting to extermination as crimes against humanity. In light of the above, the Chamber is satisfied that the Cham were systematically and repeatedly targeted on account of their membership of the Cham ethnic and religious group throughout the DK period and throughout Cambodia.

3347. The Chamber further finds that, on a national level, this specific genocidal intent had crystallised by at least 1977, when orders to kill all Cham were disseminated by CPK cadre and systematic mass arrests and killings started in Kang Meas district where Cham were taken to Wat Au Trakuon to be exterminated. Having considered all of the evidence taken together, the Chamber finds that the only reasonable conclusion available is that physical perpetrators at Wat Au Trakuon and Trea Village Security Centres demonstrated a genocidal mental state toward the Cham found to have been killed in those locations. The Chamber is therefore satisfied that the *mens rea* of the crime of genocide by killing is established.

3348. In light of the above, the Chamber finds that the crime of genocide by killing members of the Cham group as such is established.

**13.3. Treatment of the Vietnamese****13.3.1. Closing Order**

3349. The Closing Order finds that one of the five policies adopted by the CPK was to “implement and defend the CPK socialist revolution through the targeting of specific groups by whatever means necessary”, one objective of which was to destroy these groups in whole or in part.<sup>11283</sup> This policy targeted the Vietnamese as a group before 1975, continuing throughout the DK period until at least 6 January 1979.<sup>11284</sup> It further finds that the policy was implemented in two phases: first with the expulsion of the Vietnamese from Cambodian territory to Vietnam, by foot, train and boat, which began in 1973 and continued in 1975 and 1976, in Prey Veng and Svay Rieng provinces in the East Zone and throughout Cambodia;<sup>11285</sup> and second, from April 1977 onwards, with mass targeted killings of Vietnamese civilians in Prey Veng and Svay Rieng and throughout Cambodia.<sup>11286</sup> Crimes against the Vietnamese also charged to have occurred at security centres and crimes sites relevant to this case and are addressed in the corresponding sections.<sup>11287</sup>

3350. Under the section dealing with the treatment of targeted groups, the Closing Order charges the Accused with the crime of genocide by killing members of the group<sup>11288</sup> as well as with the crimes against humanity of murder,<sup>11289</sup> extermination,<sup>11290</sup> deportation<sup>11291</sup> and persecution on racial grounds.<sup>11292</sup>

<sup>11283</sup> Closing Order, paras 205, 207.

<sup>11284</sup> Closing Order, paras 205-207, 213, 214.

<sup>11285</sup> Closing Order, paras 213, 794-796.

<sup>11286</sup> Closing Order, paras 214, 797-804. As regards mass killings outside Prey Veng and Svay Rieng, the Closing Order refers specifically to the following locations: Wat Khsach, Yeang village, Russei-Lok subdistrict, Siem Reap province (*see* Closing Order, para. 802); Battambang and Pursat in the Northwest Zone; Mondulkiri in Autonomous Sector 105 in the Northeast Zone; Kampot, Takeo in the Southwest Zone; Kratie in Autonomous Sector 505; Koh Kong in the West Zone; and Kroch Chhmar and Khsach Kandal in the East Zone (*see* Closing Order, para. 803).

<sup>11287</sup> Section 10.1.10: Tram Kak Cooperatives: Treatment of Vietnamese; Section 12.2.17: S-21 Security Centre: Vietnamese Detainees; Section 12.4.5: Au Kanseng Security Centre: Executions.

<sup>11288</sup> Closing Order, paras 1343-1349.

<sup>11289</sup> Closing Order, paras 1373, 1374, 1378-1380.

<sup>11290</sup> Closing Order, paras 1381-1383, 1386, 1388-1390.

<sup>11291</sup> Closing Order, paras 1397-1401.

<sup>11292</sup> Closing Order, paras 1415, 1422-1423, 1425. For findings on persecution at S-21, Kraing Ta Chan and Au Kanseng Security Centres, *see* Sections 12.2.24.1.7, 12.3.12.7 and 12.4.7.6, respectively.

3351. The Closing Order further charges the Accused with a number of crimes against the Vietnamese at specific crime sites: the crimes against humanity of murder<sup>11293</sup> and extermination<sup>11294</sup> of six ethnic Vietnamese at Au Kanseng; grave breaches of the Geneva Conventions through wilful killing of Vietnamese detainees at S-21;<sup>11295</sup> torture of Vietnamese detainees at S-21;<sup>11296</sup> inhumane treatment of Vietnamese detainees at S-21;<sup>11297</sup> wilfully causing great suffering or serious injury to body or health of Vietnamese detainees at S-21;<sup>11298</sup> wilful deprivation of the rights of a fair and regular trial of Vietnamese detainees at S-21;<sup>11299</sup> unlawful deportation of Vietnamese civilians at S-21;<sup>11300</sup> and unlawful confinement of Vietnamese civilians at S-21.<sup>11301</sup> Findings relating to these charges have been made under the relevant sections and are cross-referenced here as necessary.<sup>11302</sup>

### 13.3.2. *Preliminary Issues and General Considerations*

#### 13.3.2.1. *Scope of the charges*

3352. The Civil Party Lead Co-Lawyers submit that the crime against humanity of other inhumane acts through enforced disappearances is charged with respect to the treatment of Vietnamese.<sup>11303</sup> The KHIEU Samphan Defence submits that the Chamber is not seised of facts concerning this crime, because the Severance Decision does not mention factual allegations of enforced disappearances with regard to the Vietnamese.<sup>11304</sup> No other Party makes relevant submissions in this regard. The Chamber finds that the crime against humanity of other inhumane acts through enforced disappearances in relation to the treatment of Vietnamese has been excluded from Case

<sup>11293</sup> Closing Order, paras 622, 1373, 1376. The Closing Order also alleges that 209 Jarai people were executed at the Au Kanseng Security Centre, however the Chamber has found that it was unable to conclude beyond reasonable doubt that the Jarai were either nationals of the Socialist Republic of Vietnam or ordinarily resident in Vietnamese territory. *See* Section 12.4: Au Kanseng Security Centre, para. 2947. *See also*, Closing Order, paras 618-621, 623.

<sup>11294</sup> Closing Order, paras 622, 1381, 1384-1385.

<sup>11295</sup> Closing Order, paras 1491-1493.

<sup>11296</sup> Closing Order, paras 1498-1500.

<sup>11297</sup> Closing Order, paras 1501-1503.

<sup>11298</sup> Closing Order, paras 1504-1506.

<sup>11299</sup> Closing Order, paras 1507-1510.

<sup>11300</sup> Closing Order, paras 1515-1517.

<sup>11301</sup> Closing Order, paras 1518-1520.

<sup>11302</sup> Section 12.2.17: S-21 Security Centre: Vietnamese Detainees; Section 12.4.5: Au Kanseng Security Centre: Executions.

<sup>11303</sup> Civil Party Lead Co-Lawyers Closing Brief, fn. 1589.

<sup>11304</sup> KHIEU Samphan Closing Brief, paras 1930-1931.

002/02 by the Severance Decision.<sup>11305</sup> The submission of the Lead Co-Lawyers in this regard is accordingly rejected. The Chamber notes further that this crime is charged in relation to the Movement of Population Phase Two (limited to the treatment of the Cham), Tram Kak Cooperatives, Trapeang Thma Dam, 1<sup>st</sup> January Dam, Kampong Chhnang Airport Worksites, and Kraing Ta Chan and Phnom Kraol Security Centres and it may concern Vietnamese victims among others, even if these last have not been particularised as such.<sup>11306</sup> Factual allegations concerning Vietnamese individuals with regard to these specific crime sites are addressed under the relevant sections.<sup>11307</sup>

3353. The KHIEU Samphan Defence submits that the Chamber is not properly seized of facts concerning deportation of the Vietnamese, and is therefore prevented from ruling on facts concerning murders committed in the course of deportation because it considers these to constitute the same underlying facts.<sup>11308</sup> The Chamber recalls that it has rejected the submission that facts constituting deportation of Vietnamese were not included within the scope of the judicial investigation.<sup>11309</sup> It rejects the related submission accordingly. The Chamber notes, however, that deportation charges are geographically limited to the Tram Kak Cooperatives and Prey Veng and Svay Rieng provinces.<sup>11310</sup>

3354. Both Defence teams submit that the Chamber is not seized of facts pertaining to the treatment of the Khmer Krom minority group.<sup>11311</sup> The Chamber recalls its finding that it is not seized of the targeting of Khmer Krom either as a specific group or as a sub-group of the Vietnamese,<sup>11312</sup> and will therefore not address factual allegations

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<sup>11305</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b). The Chamber finds that it is unclear whether enforced disappearances have been ever charged as part of the treatment of Vietnamese in the Closing Order. It notes that, while at paragraph 1470 the Closing Order finds that “[t]he legal elements of enforced disappearance have also been established in regard to the treatment of Vietnamese”, the section of the Closing Order dealing with the treatment of targeted groups charges the Accused only with genocide by killing members of the group as well as with the crimes against humanity of murder, extermination, deportation and persecution on racial grounds, and makes no reference to enforced disappearances.

<sup>11306</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b).

<sup>11307</sup> Section 10.1.10: Tram Kak Cooperatives: Treatment of Vietnamese; Section 12.2.17: S-21 Security Centre: Vietnamese Detainees; Section 12.4.5: Au Kanseng Security Centre: Executions.

<sup>11308</sup> KHIEU Samphan Closing Brief, paras 1879-1880.

<sup>11309</sup> Section 2.5.6: Notice of Charges, Scope of the Trial and Evidence in Case 002/02.

<sup>11310</sup> Case 002 Additional Severance Decision Annex, para. 5(ii)(b).

<sup>11311</sup> KHIEU Samphan Closing Brief, para. 157; NUON Chea Closing Brief, paras 707-711.

<sup>11312</sup> Section 2.5.6.7.1: Facts Allegedly Outside the Scope of the Indictment: Khmer Krom.

concerning the Khmer Krom minority as part of the charges concerning crimes against Vietnamese.

3355. The KHIEU Samphan Defence submits that with respect to the crimes of murder, extermination and genocide, the Chamber is only seized of facts concerning Prey Veng and Svay Rieng provinces as of 1977.<sup>11313</sup> The Co-Prosecutors, Civil Party Lead Co-Lawyers and NUON Chea Defence do not specifically respond to this submission but respectively make submissions regarding the treatment of Vietnamese outside of Prey Veng and Svay Rieng.<sup>11314</sup> As this KHIEU Samphan submission comprises multiple aspects, the Chamber addresses them in turn below.

3356. The KHIEU Samphan Defence first contends that the Co-Prosecutors' Introductory and Supplementary Submissions limited the treatment of Vietnamese to facts allegedly occurring in Prey Veng and Svay Rieng provinces, and that by addressing facts outside these provinces, the Closing Order exceeded the scope of the judicial investigation.<sup>11315</sup> The Chamber notes that this submission acknowledges that the Closing Order addresses facts outside of the two provinces, which appears to contradict the Defence's other submission that the Closing Order limits the factual allegations of joint criminal enterprise to the treatment of Vietnamese in Prey Veng and Svay Rieng.<sup>11316</sup> In substance, the submission challenges the Chamber's jurisdiction to adjudicate a number of facts because they exceeded the scope of judicial investigation. As this challenge was made outside the time limit set by Internal Rule 89,<sup>11317</sup> it is rejected as belated.

<sup>11313</sup> KHIEU Samphan Closing Brief, paras 1885, 1887-1888, 1895.

<sup>11314</sup> Co-Prosecutors' Closing Brief, paras 920-969, 982-1003; Civil Party Lead Co-Lawyers' Closing Brief, fn. 1589 (stating that the charges encompass "the killings of Vietnamese civilians outside of Prey Veng and Svay Rieng, specifically identifying a mass execution of Vietnamese in 1978, and throughout Cambodia, including Battambang, Pursat, Mondulkiri, Kampot, Takeo, Kratie, Koh Kong, Kroch Chhmar, and Khsach Kandal"), paras 877-882 (limiting however their submissions to deportation in Prey Veng and Svay Rieng and killings in Prey Veng, Svay Rieng and Kratie); NUON Chea Closing Brief, paras 814-825, 834-845.

<sup>11315</sup> KHIEU Samphan Closing Brief, paras 1882, 1884, 1887, 1895, 1932-1934.

<sup>11316</sup> KHIEU Samphan Closing Brief, para. 1881.

<sup>11317</sup> Section 2.5.6.3: Limitation of the Scope of the Trial to the Facts Contained in the Introductory Submission or Supplementary Submissions. All the necessary information was available to the Defence since 15 September 2010 when the Closing Order was issued. It clearly details, in the factual findings, the targeting of Vietnamese outside of Prey Veng and Svay Rieng. *See* Closing Order, paras 794-796 (movement of Vietnamese civilians from Cambodia to Vietnam), 802-804 (killing of Vietnamese civilians outside of Prey Veng and Svay Rieng) which is not contested by the KHIEU Samphan Defence. *See* KHIEU Samphan Closing Brief, para. 1933. Additionally, the legal findings of genocide as well as murder and extermination as crimes against humanity in the Closing Order contain no geographical

3357. The KHIEU Samphan Defence contends that the Chamber is not properly seized of the facts concerning the treatment of Vietnamese in DK territorial waters and that these were never part of the case.<sup>11318</sup> The NUON Chea Defence makes a similar submission.<sup>11319</sup> The Co-Prosecutors and Civil Party Lead Co-Lawyers do not specifically respond to this point, but the former make submissions in relation to the treatment of Vietnamese at sea in their Closing Brief and Closing Statements.<sup>11320</sup> The Chamber recalls that it has previously addressed this point, clarifying that “[f]acts concerning the treatment of Vietnamese at sea likewise form part of the facts set forth in the Closing Order”.<sup>11321</sup> The Chamber reiterates this finding and will address below the facts as charged.

3358. Regarding the geographical scope of the charged killings, the Chamber notes that the Closing Order addresses the treatment of Vietnamese not only in Prey Veng and Svay Rieng provinces,<sup>11322</sup> but also includes factual findings throughout Cambodia,<sup>11323</sup> with a specific sub-section on events occurring outside of Prey Veng and Svay Rieng including detailed findings of mass killings at the Wat Khsach.<sup>11324</sup> The Chamber accordingly finds that it is properly seized of the treatment of Vietnamese throughout Cambodia, save for the charges for which a clear geographical limit was set, namely, deportation (limited to Tram Kak Cooperatives, Prey Veng and Svay Rieng)<sup>11325</sup> and persecution on racial grounds (limited to Prey Veng and Svay Rieng

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limitation and directly refer to the factual findings. *See* Closing Order, para. 1335, 1350, 1373, 1381. The Accused have been on notice of the scope of the charges against them, but have failed to avail themselves of the opportunity to raise the matter before the Pre-Trial Chamber or before this Chamber in a preliminary objection.

<sup>11318</sup> KHIEU Samphan Closing Brief, para. 1934. *See also*, T. 6 January 2016, E1/371.1, pp. 12-15.

<sup>11319</sup> NUON Chea Closing Brief, para. 840.

<sup>11320</sup> Co-Prosecutors’ Closing Brief, paras 949-962; T. 15 June 2017 (Closing Statements), E1/522.1, pp. 61, 64-65.

<sup>11321</sup> Decision on Motion to Hear Additional Witnesses on the Topic of the Treatment of the Vietnamese and to Admit Related Written Records of Interview E380, E381, E382, E380/2, 25 May 2016, para. 21 *referring in footnote 37 to* DK Military Report from Division 164, E3/929, 1 April 1978, ERN (En) 00143507-00143508.

<sup>11322</sup> Closing Order, para. 206. The Closing Order also addresses facts concerning treatment of Vietnamese during incursions into Vietnam, but the Chamber notes that these were subsequently excluded from the scope of Case 002/02. *See* Case 002 Additional Severance Decision Annex, para. 2(iv)(b).

<sup>11323</sup> Closing Order, paras 213-215.

<sup>11324</sup> Closing Order, paras 802-803. The sub-section is headed “Killings of Vietnamese Civilians outside of Prey Veng and Svay Rieng”.

<sup>11325</sup> Closing Order, para. 1397; Case 002 Additional Severance Decision Annex, para. 5(ii)(b).



provinces, Kraing Ta Chan, Au Kanseng and S-21 Security Centres and Tram Kak Cooperatives).<sup>11326</sup>

3359. With respect to the temporal scope of the charged killings, the Chamber notes that the Closing Order finds killings of Vietnamese who resisted deportation in 1975-1976,<sup>11327</sup> and widespread killings of Vietnamese starting either beginning of 1977<sup>11328</sup> or from April 1977.<sup>11329</sup> The Closing Order otherwise specifically states that the turning point in the CPK policy targeting the Vietnamese was evidenced by the April 1977 issue of the *Revolutionary Flag*, which it considered to constitute a direct call to kill all Vietnamese remaining in Cambodia.<sup>11330</sup> In light of these discrepancies and reading the Closing Order as a whole, the Chamber finds that charges of murder encompass killings of Vietnamese who resisted deportation in 1975-1976 as well as the period from April 1977 to 6 January 1979, inclusive. Killings of Vietnamese charged as extermination or genocide are limited to the period starting from April 1977 to 6 January 1979, inclusive.

3360. Consequently, the scope of the charges regarding the treatment of Vietnamese, as set out in the Closing Order and delimited by the Severance Decision, encompasses facts related to the following:

- Genocide by killing (nationwide from April 1977 to 6 January 1979, inclusive);
- Murder as a crime against humanity (Vietnamese who resisted deportation in 1975-1976 and nationwide from April 1977 to 6 January 1979, inclusive);
- Extermination as a crime against humanity (nationwide from April 1977 to 6 January 1979, inclusive);
- Deportation as a crime against humanity (in Prey Veng, Svay Rieng and Tram Kak Cooperatives in 1975 and 1976); and
- Persecution on racial grounds as a crime against humanity (in Prey Veng, Svay Rieng, Tram Kak Cooperatives and S-21, Kraing Ta Chan and Au Kanseng Security Centres, throughout the DK period).

<sup>11326</sup> Closing Order, para. 1422; Case 002 Additional Severance Decision Annex, para. 5(ii)(b).

<sup>11327</sup> Closing Order, para. 1378. No specific evidence was heard on this point and therefore the Chamber will not address it.

<sup>11328</sup> Closing Order, paras 214, 797, 1378.

<sup>11329</sup> Closing Order, paras 1386, 1422.

<sup>11330</sup> Closing Order, paras 214, 814.

13.3.2.2. Overview of witnesses, experts and Civil Parties

3361. The Chamber heard the evidence of 13 witnesses,<sup>11331</sup> one expert<sup>11332</sup> and seven Civil Parties, including on the harm suffered,<sup>11333</sup> on the targeting of the Vietnamese. Unless otherwise stated, the Chamber generally found them credible and relies on their evidence.

3362. Some witnesses and Civil Parties heard during other trial topics also provided information on the targeting of the Vietnamese group. They are dealt with in the relevant sections of this Judgement.<sup>11334</sup> The Chamber has also considered a number of Written Records of Interview of witnesses who did not subsequently testify in court, in particular where these provided corroboration to other evidence.<sup>11335</sup>

13.3.2.3. Expert evidence

3363. Both Defence teams submit that the expert evidence given by Alexander Laban HINTON is unreliable since it is marked by a lack of neutrality and objectivity, including his interpretation of the word “*Yuon*” and its use in CPK leaders’ speeches.<sup>11336</sup> Both Defence teams also claim that his evidence lacks probative value as his research never focused on the treatment of Vietnamese and was essentially limited

<sup>11331</sup> UNG Sam Ean, SIN Chhem, Y Vun, SEAN Song *alias* Sung, PRUM Sarun, SAO Sak, THENG Huy *alias* THENG Phal, UM Suonn, PAK Sok, PRUM Sarat, IN Yoeung, SANN Lorn, MEAS Voeun *alias* SVAY Voeun.

<sup>11332</sup> Alexander Laban HINTON.

<sup>11333</sup> LACH Kry, PRAK Doeun, CHOEUING Yaing Chaet, DOUNG Oeurn *alias* DAUNG Oeun, SIENG Chanthly, KHOUY Muoy *alias* KHAUNG Muoy and UCH Sunlay.

<sup>11334</sup> Section 10.1: Tram Kak Cooperatives; Section 12.2: S-21 Security Centre; Section 12.4: Au Kanseng Security Centre.

<sup>11335</sup> KHOEM Samon Interview Record, E3/5260, 11 December 2008, ERN (En) 00327159-00327164; KOR Len Interview Record, E3/9543, 29 April 2014, ERN (En) 01067916-01067931; CHHAO Chat Interview Record, E3/9562, 18 December 2014, ERN (En) 01059935-01059972; SAOY Yen Interview Record, E3/9801, 8 May 2015, ERN (En) 01111929-01111934; CHAN Kea DC-Cam Interview, E3/7525, 30 August 2005, ERN (En) 00884974-00885017; EM Bunnim Interview Record, E3/7760, 4 April 2009, ERN (En) 00322928-00322932; BUN Beun Interview Record, E3/7811, 15 January 2009, ERN (En) 00282552-00282554; SIN Sun Interview Record, E3/9339, 23 September 2008, ERN (En) 00234113-00234117; IENG On Interview Record, E3/9352, 16 September 2008, ERN (En) 00231658-00231661; PRUM Yan Interview Record, E3/7816, 29 January 2009, ERN (En) 00292837-00292840; LAUNH Khun Interview Record, E3/7686, 26 August 2008, ERN (En) 00275404-00275407; MAM Nai Interview Record, E3/351, 7 November 2007, ERN (En) 00162905-00162934; SUM Alat Interview Record, E3/4637, 10 June 2008, ERN (En) 00242122-00242129; VEN Van Interview Record, E3/9780, 27 February 2014, ERN (En) 00986174-00986190; TROENG Yang Yong Interview Record, E3/5588, 15 December 2009, ERN (En) 00421058-00421063; DOU Yang Aun Interview Record, E3/5587, 15 December 2009, ERN (En) 00426464-00426468; EAR Sophal Interview Record, E3/5238, 13 January 2009, ERN (En) 00270668-00270674.

<sup>11336</sup> KHIEU Samphan Closing Brief, paras 586, 2226-2229; NUON Chea Closing Brief, para. 717.

to one village called “Banyan” in Kampong Siem district in Sector 41.<sup>11337</sup> They further contend that most of the sources on which the expert relies, namely conversations he had with about 150-200 people, and 10 or so interviews, including one with a Southwest Zone cadre only known under his pseudonym Teap, are inaccessible and therefore unreliable.<sup>11338</sup> The Co-Prosecutors did not expressly respond but rely heavily on the expert’s evidence.<sup>11339</sup> The Civil Party Lead Co-Lawyers make no relevant submissions in this regard.

3364. The Chamber recalls that an expert is an individual that has specialised knowledge, experience or skills that could assist it in its understanding of specific issues in dispute requiring special knowledge in a particular field. Experts provide clarification, context or additional assistance for the purpose of a Chamber’s assessment of the evidence. They are not expected “to testify on disputed facts or about the acts, conduct, or criminal responsibility of an accused as would a fact witness”.<sup>11340</sup> The Chamber acknowledges that limited information is available concerning the expert’s sources and it concurs with the Supreme Court Chamber that “[w]here the sources are not fully accessible and verifiable a diminished weight must be attributed to expert evidence derived from them given the restricted possibility for the Parties and the court to test the experts’ conclusions”.<sup>11341</sup> The Chamber is not bound by the evidence or conclusions given by an expert. Regarding the expertise provided by Alexander Laban HINTON, the Chamber finds that his sources are not fully accessible and verifiable which diminishes the weight of his conclusions. The Chamber will therefore limit its use of Alexander Laban HINTON’s evidence to assessing the appropriate interpretation of established facts and placing them in context when necessary and with due caution.<sup>11342</sup>

<sup>11337</sup> KHIEU Samphan Closing Brief, paras 1935, 2230; NUON Chea Closing Brief, para. 715.

<sup>11338</sup> KHIEU Samphan Closing Brief, paras 586, 2230-2231; NUON Chea Closing Brief, paras 716-719.

<sup>11339</sup> Co-Prosecutors’ Closing Brief, paras 901, 904, 906, 909, 913, 1004.

<sup>11340</sup> Section 2: Preliminary Issues, paras 50, 66; Case 002/01 Appeal Judgement, para. 328. *See also*, Decision on Designation of 2-TCE-88, E388, 4 March 2016, paras 10-11.

<sup>11341</sup> Case 002/01 Appeal Judgement, para. 329.

<sup>11342</sup> Section 2.4.7: Experts YSA Osman and Alexander HINTON; Case 002/01 Appeal Judgement, para. 329; Decision on Designation of 2-TCE-88, E388, 4 March 2016, para. 17.

3365. The Chamber also recalls its previous decision not to rely on demographic evidence provided by Ewa Maria TABEAU.<sup>11343</sup>

### 13.3.3. *Parties' General Submissions*

3366. The Co-Prosecutors submit that the CPK targeted Vietnamese as part of its general policy to persecute enemies,<sup>11344</sup> which ultimately resulted in killings on a massive scale and gross violations of human rights of Vietnamese at various locations.<sup>11345</sup>

3367. Both Defence teams submit that there was no policy targeting Vietnamese civilians, but that the CPK was attacking the state of Vietnam as a consequence of the ongoing armed conflict between the two countries.<sup>11346</sup> The NUON Chea Defence further submits that facts related to the alleged targeting of the Vietnamese have not been proved beyond reasonable doubt due to lack of credible, specific and reliable evidence.<sup>11347</sup> The NUON Chea Defence further submits that mass killings of the Vietnamese have not been established beyond reasonable doubt due to vague, unsubstantiated and limited evidence,<sup>11348</sup> and the lack of evidence linking “a handful of people’s alleged disappearances or killings [...] and the fact that they may have belonged to the Vietnamese group”.<sup>11349</sup> Similarly, the KHIEU Samphan Defence, which limits its submissions to facts found to have occurred in Prey Veng and Svay Rieng provinces,<sup>11350</sup> contends that the evidence presented generally lacks probative value as the Chamber heard mostly hearsay and/or uncorroborated, vague, speculative and contradicting accounts, and therefore the allegations contained in the Closing Order are not proved beyond reasonable doubt.<sup>11351</sup> Furthermore, it contends that contemporaneous official speeches and documentary evidence show that the CPK

<sup>11343</sup> Decision on Witnesses, Civil Parties and Experts Proposed to be heard during Case 002/02, E459, 18 July 2017, para. 191.

<sup>11344</sup> Co-Prosecutors’ Closing Brief, para. 295.

<sup>11345</sup> Co-Prosecutors’ Closing Brief, para. 890.

<sup>11346</sup> KHIEU Samphan Closing Brief, paras 2207, 2234-2257; NUON Chea Closing Brief, paras 179-213, 754-772.

<sup>11347</sup> NUON Chea Closing Brief, paras 807-848, 860-863, 864, 867, 872, 876-877, 888-892.

<sup>11348</sup> NUON Chea Closing Brief, para. 826.

<sup>11349</sup> NUON Chea Closing Brief, paras 826, 829, 833, 837, 839, 845, 848.

<sup>11350</sup> See above, para. 3355.

<sup>11351</sup> KHIEU Samphan Closing Brief, paras 1939-2206.

considered the enemy to be the Vietnamese State, not Vietnam's civilian population, and therefore there was no policy to specifically target Vietnamese as a group.<sup>11352</sup>

3368. The Civil Party Lead Co-Lawyers detail the harm suffered by the seven Civil Parties heard on the treatment of the Vietnamese and their evidence as regards deportation, killings and specific intent.<sup>11353</sup>

#### 13.3.4. *Administrative Structure*

3369. As set out above, crimes related to the treatment of the Vietnamese are charged in relation to events that occurred in Prey Veng and Svay Rieng provinces in the East Zone,<sup>11354</sup> as well as throughout Cambodia. The Chamber here sets out the administrative structure in the East Zone. The relevant administrative structures in other locations are addressed elsewhere in this Judgement.<sup>11355</sup>

3370. Prey Veng and Svay Rieng provinces encompassed part or all of the East Zone Sectors 20, 22, 23 and 24.<sup>11356</sup> During the periods covered by the charges, the East Zone was a battlefield.<sup>11357</sup> Its frontier with Vietnam and its "parrot's beak" made it a strategic location and RAK Divisions 3, 4 and 5 were stationed there.<sup>11358</sup> The war with Vietnam as well as internal purges led to very fluid, ever-changing administrative and command structures.<sup>11359</sup>

3371. SAO Phim was the East Zone Secretary and a member of the Standing Committee from prior to 1970 until his death in 1978.<sup>11360</sup> MEAS Seng Hong *alias*

<sup>11352</sup> KHIEU Samphan Closing Brief, paras 2207-2257.

<sup>11353</sup> Civil Party Lead Co-Lawyers' Closing Brief, paras 808-930.

<sup>11354</sup> Map of Democratic Kampuchea, E3/475, 1976, ERN (En) 01577214. *See also*, Closing Order, paras 65, 206; DK Publication, *Democratic Kampuchea is Moving Forward*, E3/1388, August 1977, p. 7, ERN (En) 00050249; DK Geography Textbook, E3/1398, 1977, pp. 31-33, ERN (En) 00814530-00814532; Administrative Map of Svay Rieng province, E3/2919, ERN (En) 000401122.

<sup>11355</sup> Section 5: Administrative Structures (generally). For specific locations, *see* Sections 10.1.5 (Tram Kak district, Sector 13 and the Southwest Zone [*see also*, Section 12.3.5]); 11.1.5 (Phnom Srok district, Sector 5 and the Northwest Zone); 11.2.6 (Central (old North) and new North Zones); 12.4.2 (Northeast Zone); 12.5.3 (Sector 105).

<sup>11356</sup> Map of Democratic Kampuchea, E3/475, 1976, ERN (En) 01577214. *See also*, Closing Order, para. 797; Ben Kiernan, "Introduction", in *Genocide and Democracy in Cambodia*, E3/3304, ERN (En) 00430229.

<sup>11357</sup> Section 5.3.1.2.1.11: East Zone Field Command Posts.

<sup>11358</sup> Section 5.3.1.2.2: Regional Forces.

<sup>11359</sup> Section 5: Administrative Structures, paras 378-379; Section 12.1.6: Internal Factions: 1978 Events – East Zone and SAO Phim.

<sup>11360</sup> T. 7 November 2016 (LONG Sat), E1/496.1, p. 69; S-21 Notebook of MAM Nai, E3/833, 17 December 1977, p. 35, ERN (En) 00184613; T. 29 June 2016 (MEAS Soeurn), E1/446.1, p. 79. *See also*,

Chan was the Deputy Secretary of the East Zone until 1979.<sup>11361</sup> He additionally served later on as the Secretary of the “Twin-Sectors” 23 and 24.<sup>11362</sup>

3372. Over the course of the East Zone purges, secretaries and their deputies changed frequently due to arrests and executions, many of them the result of forced confessions in which former secretaries incriminated current ones.<sup>11363</sup> Therefore, at the sector level, the Chamber has been unable to establish an exact chronology of the changes in the administrative structures, but outlines the extent of its findings in the following sections.

#### 13.3.4.1. Sectors 20, 22, 23 and 24

3373. In Sector 20, CHEA Sin *alias* Sun served as Secretary until his arrest and execution at S-21 on 5 June 1978.<sup>11364</sup> MAK Mok *alias* Tuy served as Deputy Secretary until his arrest and detention at S-21 where he was interrogated on 6 July 1978.<sup>11365</sup>

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Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. xx, ERN (En) 01149989; Ben Kiernan, “Introduction”, in *Genocide and Democracy in Cambodia*, E3/3304, p. 15, ERN (En) 00430242; Case 002/01 Trial Judgement, para. 219, fn. 693.

<sup>11361</sup> T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 26-28, 36-37, 55, 78, 95. *See also*, OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 14, ERN (En) 00542185; Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. xx, ERN (En) 01149989; Ben Kiernan, “Introduction”, in *Genocide and Democracy in Cambodia*, E3/3304, p. 15, ERN (En) 00430242. For more details on the structure of the East Zone, *see* Section 5: Administrative Structures, paras 378-379; Section 12.1.6: Internal Factions: 1978 Events – East Zone and SAO Phim.

<sup>11362</sup> T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 27, 43-44, MEAS Soeurn Interview Record, E3/5531, 18 December 2009, ERN (En) 00425894 (Answer 67). *See also*, OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 14, ERN (En) 00542185.

<sup>11363</sup> *See e.g.*, S-21 Confession – TAUCH Chem *alias* Sot, E3/2803, 17 May 1978, ERN (En) 00823425-00823445 (Sot, the Secretary of Sector 21, names 380 people as having been “involved” with him. Among these are Sector Secretaries Sun (ERN (En) 00823428, entry no. 75), Chhean (ERN (En) 00823434, entry no. 210), Chhouk (ERN (En) 00823434, entry no. 212) and Sau (ERN (En) 00823434, entry no. 213) as well as Deputy Secretary Tuy (ERN (En) 00823430, entry no. 121)). *See also*, Section 12.1.6: Internal Factions: 1978 Events – East Zone and SAO Phim.

<sup>11364</sup> S-21 list of prisoners, E3/2229, undated, p. 3, ERN (En) 00784618 (entry no. 25, CHEA Sin *alias* Sun, aged 38, “Secretary of Sector”, entered 5 June 1978); S-21 list of prisoners, E3/2187, undated, p. 7, ERN (En) 00837597 (entry no. 67); T. 29 June 2016 (MEAS Soeurn), E1/446.1, pp. 42-43. *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651897; NORNG Nim DC-Cam Interview, E3/10717, 9 July 2015, p. 30, ERN (En) 01355724; S-21 list of traitors in the East Zone, E3/2097, 24 June 1977, p. 4, ERN (En) 00182907 (entry no. 1, Sun, “Sector 20 Secretary”).

<sup>11365</sup> S-21 list of prisoners who entered on 3 July 1978, E3/10099, 3 July 1978, p. 1, ERN (En) 01548701 (entry no. 1, MAK Mok *alias* Tuy, aged 60, “Deputy secretary of Sector 20”); S-21 list of traitors in the East Zone, E3/2097, 24 June 1977, p. 4, ERN (En) 00182907 (entry no. 2, Tuy, “Sector 20 Deputy Secretary”). *See also*, S-21 Confession – MAK Mok *alias* Tuy, E3/1858, 6 July 1978, p. 7, ERN (En) 00808508 (entry no. 11, Tuy, “Past: Deputy director during the 9-year era. Present: Under-secretary of Sector 20”).

3374. In Sector 22, SEAT Chhae *alias* Tum served as Secretary until his arrest in April 1977 and subsequent execution at S-21.<sup>11366</sup> TI Srin (TY Srin) *alias* Muth became the Secretary of Sector 22 at some point during the DK period and he was arrested and sent to S-21 on 1 June 1977.<sup>11367</sup> MEAS Chhuon *alias* Chhean *alias* Ta Chhien entered S-21 in June 1978 and was recorded as Sector 22 Secretary.<sup>11368</sup> CHEA Sim was Secretary until August or September 1978 when he fled to take refuge in Vietnam.<sup>11369</sup> He was then replaced by Rin and was accused of having betrayed the Party.<sup>11370</sup> BUN Kung *alias* Sambok *alias* Ngin served as Deputy Secretary and is recorded as having been arrested on 8 June 1977.<sup>11371</sup>

<sup>11366</sup> OUK Bunchhoeun Interview by Ben KIERNAN, E3/432, 30 September 1980, p. 5, ERN (En) 00542176 (identifying “Tum” as “Secretary R22”). *See also*, S-21 Confession – SEAT Chhae, E3/1893, 3 November 1977, ERN (En) 00182870; S-21 Confession – SEAT Chhae, E3/527, 24 April 2001, p. 26, ERN (En) 00069056; S-21 list of prisoners, E3/10418, 23 November 1977, p. 26, ERN (En) 01398361 (entry no. 13, SEAT Chhe *alias* Tum, “Former secretary of Sector 22”, listed as “Documented”); S-21 list of prisoners who were brought in on October 28, 1977, E3/8919, undated, ERN (En) 01460908 (entry no. 2, SEATH Chhe *alias* Tum, “Former Sector 22 Secretary”, no entry date listed).

<sup>11367</sup> S-21 list of prisoners, E3/10418, 23 November 1977, ERN (En) 01398362 (entry no. 16, TI Srin *alias* Muth, “Secretary of Sector 22”). *See also*, S-21 Confession – TY Srin *alias* Mut, E3/1830, 13 November 1977, ERN (En) 00951132 (describing him as having been arrested on 1 June 1977); S-21 list of prisoners from Ministry of Social Affairs and Office of General Staff, E3/2009, ERN (En) 00233722 (entry no. 6, TY Srin *alias* Muth, describing him as having been arrested on 1 June 1977 and interrogated on 13 November 1977).

<sup>11368</sup> S-21 list of prisoners dated 12 June 1978, E3/10181, 12 June 1978, p. 1, ERN (En) 01397620; S-21 list of prisoners, E3/2187, undated, p. 7, ERN (En) 00837597 (entry no. 72, MEAS Chhuon *alias* Chhean, “Secretary of Sector”); HENG Samrin Interview by Ben KIERNAN, E3/1568, 7 December 1992, ERN (En) 00651898-00651900 (HENG Samrin talks about a meeting that took place on 27 May 1978 in Prey Veng city, in which “Ta Chhien the secretary of Region 22” participated). *See also*, S-21 Confession – SAM Huov *alias* MEAS Tal, E3/1887, 3 June 1978, p. 15, ERN (En) 00796034 (entry no. 34, “Chhien, Secretary of Sector 22. This person was already arrested”); T. 14 June 2016 (KAING Guek Eav *alias* Duch), E1/437.1, p. 35 (Ta Chhien was Secretary was arrested at the same time as SAO Phim’s purge).

<sup>11369</sup> T. 6 October 2015 (BAN Seak), E1/354.1, pp. 18-19 (CS) (“When I was transferred to work in Krouch Chhmar, I was told that Chea Sim had betrayed the Party and that he was the secretary of Section 22, and that he had fled to Vietnam.”); BAN Siek *alias* HANG Phos Interview Record, E3/9517 [E319/19.3.86], 24 March 2014, p. 11, ERN (En) 00984878 (“Perhaps in August or September 1978, Oeun appointed me Krouch Chhmar District Secretary to strengthen the district’s forces after CHEA Sim, Sector 22 Secretary had broken away to Vietnam.”).

<sup>11370</sup> BAN Siek Interview Record, E3/375, 6 July 2009, p. 5, ERN (En) 00360753 (“When the situation in the East Zone became chaotic [...] SON Sen sent three people to the East Zone. Those people were Rin, who [...] was nominated the Sector 22 Secretary”); BAN Siek *alias* HANG Phos Interview Record, E3/9517, 24 March 2014, p. 11, ERN (En) 00984878 (“Q: Who was Sector 22 Secretary [then]? A: Rin was secretary of Sector 22.”).

<sup>11371</sup> S-21 list of prisoners who were brought in on October 28, 1977, E3/8919, undated, ERN (En) 01460908 (entry no. 1, BUN Kung *alias* Ngin, “Peareang District Secretary and Sector 22 Deputy Secretary”, entered 8 June 1977); S-21 list of prisoners, E3/1949, undated, ERN (En) 00937120 (entry no. 35, BUN Kung *alias* Sambok, “Deputy Secretary of Sector 22”); S-21 list of prisoners smashed on 9 December 1977, E3/2285 [E3/2286], ERN (En) 01565264/ERN (Kh) 00009298 (entry no. 200, BUN Kong *alias* NGIN Sombuk is listed as Deputy Secretary of Sector 22). *See also*, S-21 Confession – BUN Kung *alias* Ngin, E3/3690, 13 August 1977, p. 1, ERN (En) 00874990; S-21 Confession – BUN Kung *alias* Sambok, E3/3682, undated, pp. 1-2, ERN (En) 00224279-00224280, ERN (Kh) 00174587, 00174654.

3375. Sector 23's Secretary was Ngatt *alias* UK Savann *alias* Savann (or So or Sau) until his arrest in March 1978.<sup>11372</sup> He was replaced by MEAS Seng Hong.<sup>11373</sup>

3376. Sector 24 was headed by SUOS Neou (SUOS Nov) *alias* Chhouk *alias* Men until his arrest in mid-1976.<sup>11374</sup> He was also replaced by MEAS Seng Hong.<sup>11375</sup> Chey was Deputy Secretary on 24 June 1977, when his name appeared on a "list of traitors" compiled at S-21.<sup>11376</sup> PORT Un *alias* Neouchey was Deputy Secretary until 12 July 1977, when he was arrested and transferred to S-21.<sup>11377</sup>

### 13.3.5. Targeting of the Vietnamese

#### 13.3.5.1. The use of the terms "Yuong" and Vietnamese "Enemy"<sup>11378</sup>

3377. According to the NUON Chea Defence, the "CPK policy was naturally directly shaped by, and often a reaction to, Vietnamese imperialist aggression".<sup>11379</sup> In submitting that there was no evidence of a policy targeting Vietnamese people, the NUON Chea Defence states that the term "*Yuong*" in official CPK documents referred to "Vietnam as an aggressor, as well as to individuals acting on behalf of Vietnam during the war, be they formal soldiers or civilians spying or infiltrating. It does not refer to ordinary Vietnamese civilians."<sup>11380</sup> The NUON Chea Defence provides no

<sup>11372</sup> S-21 list of prisoners from The East Zone, Sector 23, E3/10388, undated, p. 5, ERN (En) 01398102 (entry no. 31, So, "Secretary of Sector 23"). See also, Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, p. 90, ERN (En) 01150042; S-21 Confession – TAUCH Chem *alias* Sot, E3/2803, 17 May 1978, ERN (En) 00823434 (entry no. 213, "Sau"); S-21 Confession – BUN Kung *alias* Ngin, E3/3690, 13 August 1977, p. 7, ERN (En) 00874996 ("Sau"); S-21 Confession – CHHAI Taing Leang *alias* Yon, E3/2463, 30 July 1977, p. 17, ERN (En) 00807688 (entry no. 24, Sau *alias* Savan, "Secretary of Sector 23").

<sup>11373</sup> T. 20 June 2006 (MEAS Soeurn), E1/446.1, pp. 42-43; MEAS Soeurn Interview Record, E3/5531, 18 December 2009, ERN (En) 00425894.

<sup>11374</sup> S-21 Confession – SUOS Neou *alias* Chhouk, E3/2494, 1 September 1976, p. 1, ERN (En) 00796081; T. 18 May 2009 (KAING Guek Eav), E3/345, p. 45; T. 15 June 2009 (KAING Guek Eav), E3/5799, p. 25; KAING Guek Eav Interview Record, E3/5762, 18 February 2008, p. 9, ERN (En) 00164335; T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 15-16; Statistics List for State Security Organisations S-21, E3/8972, undated, pp. 2-5, ERN (En) 01367073-01367076; T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 20-21; SIN Chhem Interview Record, E3/7794, 5 December 2008, p. 2, ERN (En) 00251405; S-21 list of prisoners, E3/1949, undated, ERN (En) 00937155 (entry no. 440, Chhouk, "Secretary of Sector 24"). See also, Section 12.1: Internal Factions, paras 1893, 2012-2013; Section 12.2: S-21 Security Centre: SUOS Neou *alias* Chhouk.

<sup>11375</sup> T. 20 June 2006 (MEAS Soeurn), E1/446.1, pp. 42-43; MEAS Soeurn Interview Record, E3/5531, 18 December 2009, ERN (En) 00425894.

<sup>11376</sup> S-21 list of traitors in the East Zone, E3/2097, 24 June 1977, p. 4, ERN (En) 00182907 (entry no. 15, Chey, "Sector 24 Deputy Secretary").

<sup>11377</sup> S-21 list of prisoners to be fattened, E3/10087, undated, ERN (En) 01245975 (entry no. 16, PORT Un *alias* Neouchey, "Deputy Secretary of Sector 24, East").

<sup>11378</sup> Section 16.3.2.1.3.5: Real or Perceived Enemies: CIA, KGB and "*Yuong*" (Vietnamese) Agents.

<sup>11379</sup> NUON Chea Closing Brief, para. 179.

<sup>11380</sup> NUON Chea Closing Brief, para. 760.



evidence in support of this submission. To the contrary, the KHIEU Samphan Defence notes that numerous witnesses used “*Yuon*” generally, be they former soldiers or civilians, and it was used on numerous occasions to refer to family members or fellow villagers.<sup>11381</sup> The Co-Prosecutors submit that the “term *Yuon* was ubiquitous in CPK propaganda” and point to evidence indicating that it encompassed both civilians and soldiers.<sup>11382</sup> The Civil Party Lead Co-Lawyers did not specifically address this issue.

3378. The submissions of both Defence teams rely upon documentary evidence, notably POL Pot’s April 1978 “One against 30” speech, reproduced in the April 1978 special issue of the *Revolutionary Flag*, which they submit “clearly refers only to Vietnamese armed forces”.<sup>11383</sup> They also refer to the testimony of PRUM Sarat, Commander of Regiment 140 in Division 164, who testified that POL Pot’s speech was a comparison of military forces, adding “[i]t is clear in the document, [...]. It was meant to encourage the soldiers to find the strategies to smash enemies.”<sup>11384</sup>

3379. The Chamber finds that the evidence before it does not support the view that an inherent distinction between civilians and combatants was implied by using the term “*Yuon*”. As discussed below, the Chamber is satisfied that the “One against 30 policy” targeted not only Vietnamese armed forces in the context of an escalating conflict but also Vietnamese civilians.<sup>11385</sup> Further, there are multiple examples of witnesses on the stand using the term “*Yuon*” to refer to Vietnam or Vietnamese in general terms,<sup>11386</sup> and where the CPK’s use of the term “*Yuon*” cannot reasonably be understood as limited to combatants, especially when referring to “*Yuon*” children or babies.<sup>11387</sup> In light of the above, the Chamber concludes that any use of this term must be interpreted

<sup>11381</sup> KHIEU Samphan Closing Brief, paras 2222-2224.

<sup>11382</sup> Co-Prosecutors’ Closing Brief, para. 913.

<sup>11383</sup> NUON Chea Closing Brief, paras 757-758; KHIEU Samphan Closing Brief, paras 734-740, 2253; *Revolutionary Flag*, E3/4604, April 1978, ERN (En) 00519829-00519862.

<sup>11384</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 68; NUON Chea Closing Brief, para. 756. KHIEU Samphan Closing Brief, paras 735-738. The KHIEU Samphan Defence also refers to the testimony of CHUON Thy for the same purposes, citing T. 25 October 2016 (CHUON Thy), E1/489.1, p. 93.

<sup>11385</sup> See below, para. 3402.

<sup>11386</sup> See e.g., T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 12, 13, 80; T. 1 March 2016 (KHOUY Muoy), E1/394.1, p. 52; T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 40; T. 2 December 2015 (SAO Sak), E1/362.1, p. 92.

<sup>11387</sup> See e.g., DK Telegram, E3/1094, 4 August 1978, p. 7, ERN (En) 00143624 (M-401 reporting to *Angkar* that “100 Vietnamese people” were smashed, including “small and big, young and old”). See also, T. 16 December 2015 (PAK Sok), E1/369.1, p. 49 (the CPK instructed soldiers and sailors to kill Vietnamese “even if it was a baby”); S-21 list of prisoners, E3/8463, undated, pp. 43, 52, 55, 58, 59, 61, 62, 63, 70, 72-74, 94, 314, ERN (En) 01554519-01554854 (children from 7 to 15 are referred to as “*Yuon* spy”).

on a case-by-case basis and by taking into account the totality of the evidence and the circumstances in which it was used.

3380. The KHIEU Samphan Defence further submits that there was not necessarily a racist connotation to the term “*Yuong*” and therefore its use in speeches by DK leaders did not imply violent intentions towards the Vietnamese population.<sup>11388</sup> The NUON Chea Defence also submits that “*Yuong*” was not a derogatory term.<sup>11389</sup> The Co-Prosecutors point to evidence indicating that the term was used with a discriminatory intent.<sup>11390</sup> The Civil Party Lead Co-Lawyers did not specifically address this issue.

3381. The Chamber notes that CPK leaders repeatedly referred to the “*Yuong*” and Vietnam as being the “hereditary enemy” of the Cambodian people and of the Party.<sup>11391</sup> It has found elsewhere in this Judgement that contemporaneous “*Yuong*” (agents) were increasingly discussed throughout the DK era as the armed conflict between DK and Vietnam intensified, and were considered the most dangerous enemy.<sup>11392</sup> In light of the above, the Chamber finds that the word “*Yuong*” was used in a derogatory fashion in aggressive rhetoric and was associated with both combatants

<sup>11388</sup> KHIEU Samphan Closing Brief, paras 2218-2225.

<sup>11389</sup> NUON Chea Closing Brief, para. 760.

<sup>11390</sup> Co-Prosecutors’ Closing Brief, paras 570, 904, 913.

<sup>11391</sup> DK Government Statement, E3/8404, 2 January 1979, pp. 10-11, ERN (En) 00419728 (“we carry out a protracted people’s war, because the whole Kampuchea’s people [*sic*] are against Vietnam which is a hereditary enemy”); T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 6-7 (“We, staff at S-21, were told that Vietnamese were the hereditary enemy of the Communist Party of Kampuchea, that we intended to retake the part of the Cochinchine, that is, Kampuchea Krom. And these instructions were relayed by Son Sen and Duch to us at S-21 during a political study session.”); T. 3 February 2016 (MEAS Voeun), E1/387.1, p. 24 (“Q. Did you also hear during the DK period that the Vietnamese, whether they be from within or from outside of Cambodia, were the hereditary enemies of the Khmer? A. I heard of it. Everyone heard of it, that they were hereditary enemies.”); T. 16 December 2015 (PAK Sok), E1/369.1, p. 33 (“The status of the Vietnamese were [*sic*] greatly different from that of the Thai. The Vietnamese were considered as the hereditary enemy of Pol Pot, so regardless of whether they were military or civilians, when they had guns and shot at us, they must be shot and sunk.”); PAK Sok Interview Record, E3/9674, 18 October 2013, p. 10, ERN (En) 00977535 (“[T]he Thais had not have much conflict with Cambodians throughout history, unlike the Vietnamese, who had had much conflict with the Cambodians; that’s why the Vietnamese were considered the Hereditary Enemy and Enemy Number One.”); Revolutionary Flag, E3/746, July 1978, p. 1, ERN (En) 00428289 (“The *Yuong* enemy has committed aggression against us and swallowed our territory and committed genocide against our Kampuchean race from one generation to the next. They have been our national enemy from the beginning up through the present, and will be our enemy in the protracted future as well. [...] The national duty of all of us is to struggle to fight to eliminate our aggressive, expansionist, territory-swallowing and genocidal *Yuong* enemy. Just like the Kampuchean of our current generation, absolutely no Kampuchean of any subsequent generation will lay down arms and stop fighting the aggressive and expansionist/territory-swallowing and genocidal *Yuong* enemy of the Kampuchean race.”).

<sup>11392</sup> Section 16.3: Real or Perceived Enemies, paras 3793, 3811, 3819-3820, 3824, 3828-3829, 3853. See also, DK Ministry of Foreign Affairs, *Black Paper*, E3/23 [E3/266], September 1978, p. 9, ERN (En) 00082517 (the DK Ministry of Foreign Affairs explain that the term “*Yuong*”, which means “savage”, is “the name given by Kampuchea’s people to the Vietnamese since the epoch of Angkor”).

and civilians. The Chamber further notes that several witnesses and Civil Parties used the term to refer to Vietnam or the Vietnamese in general terms, without explicitly ascribing a negative connotation.<sup>11393</sup> The Chamber will therefore consider any derogatory intent associated with the use of the term “*Yuon*” or Vietnamese “enemy” on a case-by-case basis and by taking into account the totality of the evidence and the circumstances in which the term was used.

### 13.3.5.2. Evidence of a policy targeting the Vietnamese

3382. The CPK rhetoric against the Vietnamese was grounded in their perception of a long-standing animosity between the Khmers and Vietnamese, which the CPK dated back to the second century.<sup>11394</sup> CPK leaders resolved that Vietnam was the long-term “acute enemy” of Kampuchea as early as September 1971 at the Third CPK Congress.<sup>11395</sup> The deterioration of the relationship between the CPK and North Vietnamese authorities (following the signing of the January 1973 Paris Peace Accords between the governments of Vietnam and the US)<sup>11396</sup> must be considered against this background of animosity, which explains in part the CPK’s identification of ethnic Vietnamese living in Cambodia as a group deserving distinct attention.<sup>11397</sup> The CPK feared that beyond ending the US’s direct involvement in the Vietnamese conflict, the Accords would compel them to initiate negotiations with the Khmer Republic at risk of potential US military intervention.<sup>11398</sup> North Vietnam’s assent to the Accords raised dissatisfaction and distrust among CPK leaders, who considered that Hanoi had

<sup>11393</sup> See above, para. 3379. See also, T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 12, 13, 80; T. 1 March 2016 (KHOUY Muoy), E1/394.1, p. 52; T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 40; T. 2 December 2015 (SAO Sak), E1/362.1, p. 92.

<sup>11394</sup> DK Ministry of Foreign Affairs, *Black Paper*, September 1978, E3/23 [E3/266], p. 3, ERN (En) 00082514. See below, paras 3387-3389, 3394, 3412.

<sup>11395</sup> Section 3: Historical Background, para. 226.

<sup>11396</sup> Section 3: Historical Background, para. 228.

<sup>11397</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 18-20; KHIEU Samphan Interview Record, E3/4038, undated, p. 1, ERN (En) 00790140 (POL Pot’s refusal to join a peace agreement at that time “led Vietnam to be uncomfortable, although we did nothing toward them. Mr Saloth Sar had done nothing to them. We just became independent by ourselves, that’s all, but that impacted their intentions. What could we do?”). See also, Book by E. Becker: *When the War Was Over*, E3/20, pp. 143, 145, 346, ERN (En) 00237848 (suggesting that the Cambodian communists had refused to take part in any discussion of a cease-fire at the time of the Paris Peace Accord, meaning that they were “left very much to their own devices”), 00237850 (describing an “abrupt break with the Vietnamese immediately following the 1973 Paris Peace Accords”), 00238059 (“North Vietnam had urged Sihanouk to negotiate and had cut back aid to the Khmer Rouge once the prince refused.”).

<sup>11398</sup> Section 3: Historical Background, para. 228.

“betrayed” them.<sup>11399</sup> Believing that they were close to victory, FUNK refused to enter negotiations with the LON Nol government, but recognised that this regional peace initiative constituted a serious threat.<sup>11400</sup> As North Vietnam ceased providing military supplies to the CPK, US bombing raids continued to intensify across Cambodian territory until August 1973 causing extensive civilian deaths, destroying crops and agricultural infrastructure, killing livestock and damaging the country’s rural economy.<sup>11401</sup> This situation accelerated the deterioration of the relationship between the two sides,<sup>11402</sup> with tensions further exacerbated by the CPK leaders’ fervent belief that Vietnam intended to impose an Indochinese Federation, which would result in Cambodia being “swallowed” by its eastern neighbour.<sup>11403</sup>

<sup>11399</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons behind the Decisions I Made*, E3/18, p. 51, ERN (En) 00103748 (the Paris Peace Agreement of 1973 “further complicated matters” and CPK leaders “felt they had been abandoned and betrayed”, also citing with approval William SHAWCROSS’s conclusion that “1973 confirmed a historic conviction that survival, let alone victory, could be guaranteed only by absolute independence and an astonishing fixity of purpose.”).

<sup>11400</sup> T. 14 December 2011 (Accused NUON Chea), E1/22.1, pp. 18-20 (another factor in the deteriorating relationship was POL Pot’s rejection of Vietnamese pressure to end the war against the LON Nol regime). See also, Book by E. Becker: *When the War Was Over*, E3/20, pp. 143, 145, 346, ERN (En) 00237848 (suggesting that the Cambodian communists had refused to take part in any discussion of a ceasefire at the time of the Paris Peace Accord, meaning that they were “left very much to their own devices”), 00237850 (describing an “abrupt break with the Vietnamese immediately following the 1973 Paris Peace Accords”), 00238059 (“North Vietnam had urged Sihanouk to negotiate and had cut back aid to the Khmer Rouge once the prince refused.”).

<sup>11401</sup> Section 3: Historical Background, paras 228-229. See also, T. 23 June 2017 (Accused KHIEU Samphan), E1/528.1, pp. 34-35 (describing Cambodia’s countryside being “pounded by American bombs” and a feeling of being “abandoned by those who claimed to be our friends – that is, the Vietnamese communists who, in reality, simply wanted to subjugate us in an Indochinese communist federation.”); T. 17 October 2014 (Accused NUON Chea), E1/242.1, p. 69 (from the 1930s, Vietnam “had spoken of establishing and [sic] Indochinese Federation.”); Book by E. Becker: *When the War Was Over*, E3/20, pp. 148, 149, ERN (En) 00237853 (describing one consequence of the Accords being that, with the prohibition against American involvement in Vietnam and Laos, “Cambodia became the only arena for American bomber jets, and in February 1973, showers of explosive bombs began to fall from American B-52s and fighter jets [...] the Khmer Rouge decided the accords were one more betrayal by their communist allies”); 00237854 (“To the Khmer Rouge, the North Vietnamese by signing the accords had released American jets to bomb Cambodia.”).

<sup>11402</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 40-41 (“The reason why the Vietnamese did not [want] Kampuchea to engage in armed struggle [was] because they were afraid that they could not transport their weapons from Kampong Thom [sic] to Vietnam.”); Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 136-138, 157-159, ERN (En) 00396336-00396338 (noting that the VWP Central Committee authorised armed struggle in South Vietnam in January 1959, with armed struggle resuming in Laos in about 1960), 00396357-00396359 (no Vietnamese support was received for armed struggle in 1965); Book by D. Chandler: *The Tragedy of Cambodian History: Politics, War and Revolution since 1945*, E3/1683, pp. 114-115, 141, ERN (En) 00193197-00193198, 00193224 (highlighting the apparently hegemonic failure to sanction armed struggle since 1960).

<sup>11403</sup> T. 17 October 2014 (Accused NUON Chea), E1/242.1, p. 65 (criticising the Chamber for ignoring “long-term aggression towards Cambodia, by the land swallowing, annexationist neighbour, Vietnam.”); DK Letter to the UN Secretary General, E3/8399, 2 January 1979, p. 1, ERN (En) 00078239. An illustration of this belief and related propaganda in DK Ministry of Foreign Affairs, *Black Paper*, E3/266, September 1978, pp. 14, 15, 19, 21, ERN (En) 00082520, 00082522, 00082523; DK Embassy in Beijing Public Statement, E3/8393, 15 February 1978, ERN (En) 00009334-00009340; DK Press Communiqué,

3383. In line with the CPK leadership's desire to see Cambodia liberated of Vietnamese presence, the Paris Peace Accords required the complete withdrawal of North Vietnamese forces from Cambodian territory. By May 1973, the last vestiges of Vietnamese command over Cambodian communist regiments had dissipated, with some North Vietnamese soldiers remaining to guard the flow of arms down the Ho Chi Minh Trail.<sup>11404</sup> The withdrawal of Vietnamese forces was seen by some CPK cadre as a first "deportation",<sup>11405</sup> which was accompanied by fighting.<sup>11406</sup> Cambodians who had previously studied in Vietnam and returned to assist in the revolution were suspected of being enemies by the CPK, rounded up and smashed.<sup>11407</sup>

3384. The *Revolutionary Flag* subsequently praised the "liberation" of Banam by Khmer Rouge forces in 1973 by stating: "We took everyone in Banam Town, expelling the ethnic Vietnamese, the ethnic Chinese, the military, the police; we took everyone, taking away the people from the enemy".<sup>11408</sup>

3385. KHIEU Samphan described the Khmer Rouge's "preoccupation to have Phnom

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E3/9378, undated, ERN (En) 00337920-00337921; Phnom Penh Rally Marks 17th April Anniversary (in SWB/FE/5791/B collection), E3/562, 16 April 1978, ERN (En) 00010558; T. 10 February 2015 (Elizabeth BECKER), E1/260.1, pp. 89-90 (describing discussions with Sihanouk when he "kept saying 'swallowing Kampuchea', and DK leaders all said 'swallowing Kampuchea.' So, yes, that was the line."); *Report by Richard Dudman on his December 1978 visit to Kampuchea* (Richard Dudman, *New War in Southeast Asia*), E3/3290, ERN (En) 004192707 (describing his visit to Democratic Kampuchea in December 1978 when officials "denounced the Vietnamese continually as did Radio Phnom Penh, as fascist, false communists, aggressors, the Cubans of Asia, country swallows and crocodiles, a most ungrateful animal, which does not recognise as master the person who feeds it."). See also, MAM Nai Interview Record, E3/351, 7 November 2007, p. 26, ERN (En) 00162930 ("The conflict with Vietnam was not after 75 but from the beginning, since the people supported the CPK, since [19]73, because they knew that Vietnam wanted to rule Cambodia, so they attacked the *Yuon* to drive them out of Cambodia.").

<sup>11404</sup> Section 3: Historical Background, para. 228.

<sup>11405</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 93-94 (Civil Party who joined the Khmer Rouge in 1971 and was a Commune Committee member in Kratie until 1977, stated "Relating to the sending of Vietnamese people back to their country, I learnt about this in 1973. [...] The deportation of Vietnamese to their country took place before the liberation of Phnom Penh.").

<sup>11406</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 71 ("I knew that there was a deportation of the Vietnamese once in 1973 and there was also fighting in that year.").

<sup>11407</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 5-8 (explaining that very few cadre from Hanoi remained after 17 April 1975 because they were viewed as having committed offences against the CPK, and that there had been some 1,700 cadre who had been sent to Hanoi for training but when they returned they were instructed by POL Pot to abandon their "*Yuon*" nationality and become part of the CPK); KAING Guek Eav Interview Record, E3/5772, 6 May 2008, p. 3, ERN (En) 00209170 (describing how many Cambodians had been taken to Vietnam by SON Ngoc Minh in 1954 for training, before returning to Cambodia in 1970); KAING Guek Eav Interview Record, E3/45, 15 July 2008, p. 3, ERN (En) 00205158 (recalling that the husbands of two of NUON Chea's nieces, taken to S-21, were "Hanoi trained cadre"); Paper by KAING G. E.: *Lessons Learned from the Experiences of the Elders of Former Generations*, E3/9362, 2012, pp. 26-27, ERN (En) 00792001-00792002 (further describing the "Hanoi group" being "gradually removed" until, after 6 January 1979, only one was still with the movement). See also, Section 16: Common Purpose, para. 3937.

<sup>11408</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422.

Penh liberated before the liberation of Saigon, in order to prevent Vietnam from attempting to take control of Cambodia”.<sup>11409</sup> Phillip SHORT also suggested that the CPK sought to seize Phnom Penh before North Vietnam could capture Saigon.<sup>11410</sup> Elizabeth BECKER has similarly suggested that “a race had developed between the two communist armies of Vietnam and Cambodia over who would win victory first”.<sup>11411</sup> David CHANDLER however doubted these assessments, concluding that this was a subsequent characterisation of events put forward by the CPK.<sup>11412</sup> Either way, the Chamber has found that tension continued and border clashes took place between Cambodia and Vietnam after April 1975.<sup>11413</sup>

3386. Claiming that it intended to establish contacts in order to strengthen links of friendship with its neighbour,<sup>11414</sup> DK sent a delegation to Hanoi that included POL Pot and NUON Chea in June 1975 to discuss the border clashes with the SRV’s leader NGUYEN Van Linh.<sup>11415</sup> LE Duan, General Secretary of the Communist Party of Vietnam, subsequently led a delegation to visit Cambodia in early August 1975.<sup>11416</sup>

<sup>11409</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons behind the Decisions I Made*, E3/18, p. 51, ERN (En) 00103748. *See also*, Section 3: Historical Background, para. 230.

<sup>11410</sup> T. 7 May 2015 (Philip SHORT), E1/298.1, pp. 101-102.

<sup>11411</sup> Book by E. Becker: *When the War Was Over*, E3/20, p. 347, ERN (En) 00238060.

<sup>11412</sup> T. 25 July 2012 (David CHANDLER), E1/96.1, p. 7 (rejecting the idea of a “race” and testifying that there is no evidence to suggest that the Vietnamese thought they had lost by occupying Saigon two weeks after the Khmer Rouge took Phnom Penh).

<sup>11413</sup> Section 4: General Overview, paras 281-293. *See below*, para. 3387.

<sup>11414</sup> *Hong Kong Journalists Cite Field Commander on SRV Attacks: Pol Pot Interview Reported* (in FBIS collection), E3/76, 25 September 1978, ERN (En) 00170433 (“After liberation [...] We have tried to establish contacts with neighbouring countries in order to strengthen the links of friendship so that we can live in peace as neighbour. For this reason, in June 1975, a high level CPK delegation paid a visit to Hanoi.”).

<sup>11415</sup> DK Statement, E3/1393, 31 December 1977, pp. 5-6, ERN (En) 00713105-00713106; DK Ministry of Foreign Affairs, *Black Paper*, E3/266, September 1978, pp. 74-75, ERN (En) 00082550; SRV Foreign Languages Publishing House Hanoi, *The Vietnam-Kampuchea Conflict*, E3/2371, 1979, pp 19-20, ERN (En) 00187338-00187339; US Committee on International Relations, *Vietnam-Cambodia Conflict*, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; Australia Embassy Telegram, Subject: DRV-Cambodia, E3/9723, 20 August 1975, pp. 1-2, ERN (En) 01186943-01186944. *See also*, Standing Committee Minutes, E3/217, 11 March 1976, ERN (En) 00182635-00182636 (referring in general terms to a meeting in June 1975 during which the attempt to discuss “the problem of the eastern border” was ignored by the Vietnamese).

<sup>11416</sup> US Committee on International Relations, *Vietnam-Cambodia Conflict*, E3/2370, 4 October 1978, p. 8, ERN (En) 00187387; Australia Embassy Telegram, Subject: DRV-Cambodia, E3/9723, 20 August 1975, p. 1, ERN (En) 01186943; *Communique Issued on Le Duan Friendship Visit* (in FBIS collection), E3/119, 4 August 1975, ERN (En) 00167354; T. 27 April 2016 (Accused NUON Chea), E1/423.1, p. 3. *See also*, Book by N. Chanda: *Brother Enemy: The War after the War*, E3/2376, pp. 14-15, ERN (En) 00192199-00192200; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 298, ERN (En) 00396506. *See also*, *SRV Foreign Ministry Press Conference* (in SWB/FE/5785/C collection), E3/2300, ERN (En) S00010501 (mentioning that, during the visit of the Cambodian delegation in June 1975, this last suggested the conclusion of treaty of friendship between the two countries encompassing economic exchanges trade, the movement of the two populations across the border for their livelihood the question

From 30 August 1975 to 4 September 1975, KHIEU Samphan and NORODOM Sihanouk both travelled to North Vietnam to attend the 30<sup>th</sup> anniversary celebrations of the commencement of the Vietnamese independence movement.<sup>11417</sup> The Chamber has found that these visits and meetings coincided with the start of a period when Vietnamese were sent back to Vietnam and Khmer Krom persons arrived in Cambodia, with some participation from Vietnamese authorities.<sup>11418</sup> Further meetings were held between various delegations of the two countries in the first half of 1976.<sup>11419</sup>

3387. The CPK's antipathy toward foreigners, and in particular the Vietnamese,<sup>11420</sup> was further reflected during the first anniversary speech in 1976:

The second result of national revolution: Our people are called the 'Kampuchean people'. However, there were many foreigners, hundreds of thousands, and *one type of foreigner* [...] was very strongly poisonous and dangerous to our people. These people have what is called a poisonous composition since they came to wolf us down, came to nibble at us, came to swallow us, came to confiscate and take away everything, and came to endanger our nation and our people, and *they have caused us to lose much territory in the past*. [...] However, our revolution, in particular on 17 April 1975, *sorted this issue out cleanly and sorted it out entirely. We assume that we sorted it out permanently*. [...] The great typhoon of our democratic revolution swept hundreds of thousands of these foreigners *clean and expelled them from our country, for them permanently out of our territory*.<sup>11421</sup>

3388. The Chamber concurs with Expert Alexander HINTON that, within the broader

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of national frontiers and other matters but the Cambodian side did not request immediate negotiations on the settlement of the border question).

<sup>11417</sup> *Editorial Hails DRV Anniversaries* (in FBIS collection), E3/271, 3 September 1975, ERN (En) 00167422-001674223.

<sup>11418</sup> See below, paras 3429-3440. See also, Section 10.1: Tram Kak Cooperatives, paras 1119-1125.

<sup>11419</sup> See e.g., DK Telegram, E3/1018, 7 January 1976, pp. 2-3, ERN (En) 00434874-00434875 (reporting by Pet to POL Pot, NUON Chea, and IENG Sary among others on the results of the meeting between the delegations of the Military region 5 of Vietnam and the Northeast Zone Military of Cambodia. Among other things it was agreed that "[f]or the Cambodian people who crossed the border into Vietnam, the Vietnam side has agreed to report them to the Command Committee of the Military Region 5 and give the Cambodian cadres access to educate them and take those people back to Cambodia. If these people do not agree to return, they can be kept there for the time being. For the Vietnamese people in Soam village, who were evacuated by the Cambodian Defense Forces: In order to solve the border problem, the Cambodian delegation has agreed to do the same by reporting them to the committee of the Vietnamese Military Region. And when we give them back [to the Vietnamese authority], the Cambodian side will make a reasonable consideration on their property.").

<sup>11420</sup> See e.g., Section 3: Historical Background, paras 202, 204, 209, 226-229. See also, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 250, ERN (En) 00396450 (noting that 1973 was a turning point for the treatment of the Vietnamese by the Khmer Rouge: "At political training seminars, cadres began for the first time to speak of 'those with Khmer bodies and Vietnamese minds'").

<sup>11421</sup> *Revolutionary Flag*, E3/759, April 1976, ERN (En) 00517853-00517854 (emphasis added).

historical context, this text refers to ethnic Vietnamese who were living in Cambodia at the time and that the message was one of “purification” of ethnic Vietnamese, which was based on a “long-standing animosity and vitriol towards ethnic Vietnamese in Cambodia that was mobilized almost from the start” and intensified with the escalation of the armed conflict with Vietnam.<sup>11422</sup> In this regard, the Chamber notes the reference to the people who “have caused us to lose much territory in the past”, which points to the loss of Kampuchea Krom, associated with phrases such as “poisonous composition” or “people [who] came to swallow us” which were commonly used in CPK rhetoric designating the Vietnamese.<sup>11423</sup> The Chamber further notes that SAO Sarun testified

<sup>11422</sup> T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 13-14. *See also*, Section 16.3: Real or Perceived Enemies, para. 3775.

<sup>11423</sup> Concerning the association of the words “poisonous” or “swallow” with Vietnamese, *see e.g.*, Revolutionary Youth, E3/726, January-February 1978, pp. 5-6, ERN (En) 00278712-00278713 (“But all of their [the *Yuon*] black and *poisonous actions* were subsequently attacked and broken, attacked and eliminated, attacked and smashed, and humiliatingly defeated and dissolved by our heroic Revolutionary Army and the people of Kampuchea under the correct and enlightened leadership of our Communist Party of Kampuchea” [emphasis added]), 26, ERN (En) 00278733 (“We, the Revolutionary Youth, determine to unite with one another in views, stances, in concrete implementation, raising our spirit higher to continue attacking and eliminating the *various black poisonous manoeuvres and activities of the aggressor expansionist territory swallowing Yuon enemy* and to absolutely defeat them in every circumstance.” [emphasis added]); Revolutionary Youth, E3/765, October 1978, pp. 25, ERN (En) 00540000 (“Along with the abovementioned great victories the combatants of our Revolutionary Army clearly grasp tightly in their hands the true nature, the deceitful and tricky nature and *the dark poisonous maneuvers [sic] of the expansionist territory-swallowing Yuon aggressor enemy*, and not the least little thing about them remains vague.” [emphasis added]), 29, ERN (En) 00540004 (“We [the combatants of the Revolutionary Army of Kampuchea] have broken the military theories of *the poisonous obscene enemy the big country theory of wanting to swallow up Kampuchea and in particular the Indochina Federation.*” [emphasis added]); Revolutionary Flag, E3/215, September 1978, p. 6, ERN (En) 00488619 (“Inside the country we had to fight both the American imperialists, Thieu-Ky, the contemptible Nol and the *Yuon whose poisonous maneuvers [sic] intended to kill us behind our back in order to take our territory.*” [emphasis added]); Revolutionary Flag, E3/774, March-April 1978, p. 7, ERN (En) 00529424 (“We see the reasoning the importance and the necessity of the Kampuchean people and the revolutionary youth continuing to wage socialist revolution strongly and profoundly, and in particular at the present time when *the greedy expansionist territory swallowing Yuon enemy* continues to routinely carry out activities to pound at and penetrate our borders and continues to busily make *dark poisonous maneuvers [sic]* both overt and covert in terms of military and politics and espionage and sabotage and so on to attempt to invade our Kampuchean territory again in order to achieve their Indochina Federation strategy to take Democratic Kampuchea and turn our Kampuchean people into their slaves forever.” [emphasis added]); DK Minutes of Negotiation between the commerce delegations of the DK and China, E3/829, 3 December 1978, E3/829, p. 1, ERN (En) 00756519 (As for the eastern border the *Yuon* is having the intention to swallow our territory and exterminate the Kampuchean race by attacking us continuously); DK Document, [Committee 870] Declaration of Constant and Absolute Fight against the Invading and Land Swallowing *Yuon*, E3/780, 1 January 1979, pp. 2, ERN (En) 00721189 (“The Communist Party of Kampuchea CPK the entire people the Kampuchean Revolutionary Army male and female combatants and cadres of all offices and ministries must: 1. Strengthen and expand the stance of constant and absolute fight against the *Yuon enemy who is invading and swallowing Kampuchean land and attempting to exterminate Kampuchean race.* All activities must be based on a common and absolute stance of attacking the *Yuon enemy.* [...] 4. Absolutely rely on the forces of the masses and people to attack *the invading and land-swallowing Yuon enemy.*” [emphasis added]), 3, ERN (En) 00721190 (“As our history of glorious struggle has shown, our nation and people struggled and opposed the *Yuon’s strategy to invade and swallow Kampuchean land* in line with its Indochina Federation plan. During the past 48 years the *Yuon* has employed its Kampuchean land swallowing strategy of all sorts hot, cold, secretive,



in court that 10 to 12 days after 17 April 1975, he attended a meeting in Phnom Penh where both POL Pot and NUON Chea made presentations concerning the political situation after the liberation.<sup>11424</sup> SAO Sarun confirmed in court a previous statement he made before OCIJ investigators that he heard POL Pot saying, among other things, that all of the *Yuon* were being driven out from Cambodia.<sup>11425</sup> He further stated that, later on, he heard his lower-level cadres saying that trucks transported the Vietnamese from the provinces of Kampong Cham and Kratie back to their country.<sup>11426</sup> The Chamber recalls that it accords no weight to SAO Sarun's testimony insofar as it relates to assertions uncorroborated by other witnesses or other relevant and reliable evidence before the Chamber.<sup>11427</sup> The Chamber has accepted elsewhere in this Judgement that this meeting was held.<sup>11428</sup> In light of the overall evidence, the Chamber deems SAO Sarun's account plausible but, in the absence of relevant and reliable corroborative evidence, the Chamber cannot establish beyond reasonable doubt that the expulsion of Vietnamese was indeed discussed during this event.<sup>11429</sup>

3389. The Chamber recalls that hostilities with Vietnam commenced in, and continued after, 1975.<sup>11430</sup> Contemporaneous documents show that the CPK leadership continuously identified the Vietnamese as "enemies" – especially from May 1976<sup>11431</sup> with the arrest of CHAN Chakrei and the subsequent purges<sup>11432</sup> – a position which was

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open, subversive, *coup d'état* intimidation, persecution, endless invasion etc in its attempt to achieve its mass criminal strategy." [emphasis added]).

<sup>11424</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 31-35, 42-43; SAO Sarun Interview Record, E3/384, 30 June 2009, p. 5, ERN (En) 00348375; CHEA Sim Interview by Ben KIERNAN, E3/5593, 3 December 1991, ERN (En) 00651867 ("Pol Pot spoke a lot about the question of Vietnam. He stressed the importance of the issue of evacuating all of the Vietnamese people out of Cambodian territory.").

<sup>11425</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 42-43 *referring to* SAO Sarun Interview Record, E3/384, ERN (En) 00348375.

<sup>11426</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 37-38, 42-43.

<sup>11427</sup> Section 12.5: Phnom Kraol Security Centre, para. 3039.

<sup>11428</sup> Section 16: Common Purpose, para. 3736.

<sup>11429</sup> The Chamber notes that the only corroborative evidence available is composed of inculpatory statements that the Accused could not challenge in court and therefore bears very low probative value. *See* Book by B. Kiernan: *The Pol Pot Regime: Race Power and Genocide in Cambodia under the Khmer Rouge 1975-79*, E3/1593, pp. 55-56, ERN (En) 01150024-01150025, 58, ERN (En) 01150026; HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651884-00651885; OUK Bunchhoeun Interview by Stephen HEDER, E3/387, undated; p. 9, ERN (En) 00350208; MATH Ly DC-Cam Interview, E3/7821, 27 March 2000, ERN (En) 00441580. The Chamber further notes that two witnesses testified in court that the Vietnamese were not discussed at this event. *See* T. 19 January 2016 (PRAK Yut), E1/378.1, p. 75; T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 94-95 *confirming* PHAN Van Interview Record, E3/57, 10 March 2009, p. 4, ERN (En) 00287706. *See also*, Section 16: Common Purpose, para. 3736.

<sup>11430</sup> Section 4: General Overview, paras 282-293.

<sup>11431</sup> Section 16.3: Real or Perceived Enemies, para. 3775.

<sup>11432</sup> Section 12.2: S-21 Security Centre, para. 2271.

fully consolidated by October 1976.<sup>11433</sup> At this time, SON Sen indicated that the “revisionist” Vietnamese had been trying to attack DK internally and externally and that, in response, the Party had “even expelled the Vietnamese from our territory”. He added that although the Party had “basically smashed the traitors”, Vietnam was persisting in leading “remnants” to continue their activities inside Cambodia.<sup>11434</sup> In December 1976, SON Sen emphasised that Vietnamese revisionists were still active but had been scattered, noting that dangerous elements required screening and particular caution of those whose family members had been purged was imperative.<sup>11435</sup>

3390. The Chamber heard testimony from a number of witnesses who indicated that, from 1976 through 1978, POL Pot, NUON Chea, KHIEU Samphan and other senior CPK leaders lectured at or attended political training sessions at which the Vietnamese or Vietnamese “agents” were labelled as enemies.<sup>11436</sup> Witness EK Hen, who was a worker in a garment unit under the authority of Office 870, testified that she attended, together with 400 to 500 participants, a training session conducted by KHIEU Samphan, where he explained that “Khmer had to be united and Khmer shall be free of

<sup>11433</sup> Section 16.3: Real or Perceived Enemies, para. 3793.

<sup>11434</sup> Section 16.3: Real or Perceived Enemies, para. 3794.

<sup>11435</sup> Section 16.3: Real or Perceived Enemies, para. 3797.

<sup>11436</sup> T. 3 May 2012 (PEAN Khean), E1/72.1, p. 25 (Pang lectured on enemies as those “who were [...] agents of the Vietnamese – the ‘*Yvon*’”); T. 17 May 2012 (PEAN Khean), E1/73.1, pp. 20-22, 24 (meetings at Borei Keila at which Pang instructed were attended by NUON Chea and KHIEU Samphan); T. 20 June 2012 (YUN Kim), E1/89.1, p. 78 (NUON Chea lectured in Dar commune, Kratie, about the enemy situation where participants “were told that there were American enemies and the Vietnamese and the internal enemies.”); T. 27 August 2012 (EM Oeun), E1/115.1, pp. 26-28, 44-45 (POL Pot, NUON Chea, KHIEU Samphan, HU Nim and YUN Yat attended political training sessions at Borei Keila where NUON Chea discussed spy networks including “*Yvon* agent[s]” or “Aggressive *Yvon* agent[s]”); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 63, 71 (at a meeting attended by NUON Chea, KHIEU Samphan and IENG Sary at Mount Kulen in 1976, NUON Chea stated that “the enemy of the revolution were the ‘*Yvon*’”); T. 10 November 2016 (OU Dav), E1/498.1, pp. 93-94 (at a meeting attended by SON Sen, Ta Mok and NUON Chea at Borei Keila in 1976, NUON Chea stated that “contemptible ‘*Yvon*’ enemies do not abandon their ambitions to annex our Democratic Kampuchea into [the] Indochina Federation. They continuously brought a number of divisions in and they sent spy agents in order to invade our Democratic Kampuchea territory. [...] We absolutely [must] prevent the *Yvon* enemies to invade our country.”); T. 28 November 2016 (BEIT Boeurn *alias* BIT Na), E1/502.1, pp. 22-23, 25, 28 (*affirming* BIT Na DC-Cam Interview, E3/5647, 7 December 2002, p. 17, ERN (En) 00640152 (witness attended study sessions at which POL Pot, NUON Chea and KHIEU Samphan lectured and at which POL Pot discussed the Vietnamese, among others, as enemies and instructed cadre to “search for the enemy embedded within our revolutions”). *See also*, T. 3 July 2013 (EK Hen), E1/217.1, pp. 45, 47 (at a meeting in 1978 at Borei Keila, KHIEU Samphan stated that Pang had been arrested “because he was a traitor collaborating with the ‘*Yvon*’”); Section 7: Roles and Functions – NUON Chea, para. 542; Section 8: Roles and Functions – KHIEU Samphan, para. 607. *See also*, Section 12.2: S-21 Security Centre, paras 2167-2168, 2174-2175.

Vietnamese or *Yuon*".<sup>11437</sup>

3391. IENG Sary's diary heralded 1976 as a key year, indicating that "enemies are now weakening and are going to die. The revolution has pulled out their roots".<sup>11438</sup> Vietnamese and other enemies still abounded "among the military, the workers, in the co-operatives and even in our ranks". According to IENG Sary, implementing "Socialist Revolution deeply and strongly" meant that "these enemies must be progressively wiped out as soon as possible".<sup>11439</sup> As a result of Vietnamese and other attempts to "sabotage" the revolution, SON Sen declared that the defence of the country from such elements would be the priority from 1977.<sup>11440</sup>

3392. The April 1977 issue of the *Revolutionary Flag* reinforced this position to the Party faithful. Decrying "enemies that are 'CIA', 'KGB' and 'Yuon' agents", the commentary insisted that they were:

[S]neakily embedded inside our revolution and our revolutionary ranks, they are in a state of extreme loss of mastery because their major and intermediate apparatuses have fundamentally been smashed and the forces that remain have been fundamentally scattered, like rats being hit and falling from their nests into the water and being chased and struck by the people and annihilated. We must continue to strike them and trample them from our position of absolute advantage and must constantly be on the offensive against them during 1977 to smash them even more so they cannot raise their heads.<sup>11441</sup>

3393. The same month, at a mass meeting celebrating the second anniversary of the CPK's victory, KHIEU Samphan is reported as declaring that:

[W]e must carry on the task of defending our Democratic Cambodia, protecting our worker peasant administration and preserving the fruits of our Cambodian revolution by *resolutely suppressing all categories*

<sup>11437</sup> T. 3 July 2013 (EK Hen), E1/217.1, pp. 40, 42, 47. The Chamber notes that EK Hen testified that there were "only Cambodians and no *Yuons*" in the country at the time, The Chamber also recalls that this training occurred after Pang was denounced (he was arrested in or about April 1978). See also, Transcript of NEOU Sarem's Interview by VOA Khmer Service, E3/6934, pp. 7, 11, 113, ERN (En) 01003407, 01003411, 01003513 (NEOU Sarem returned from France to Cambodia at the beginning of 1976. Upon her arrival, she attended training sessions at the Khmer Soviet Institute in Phnom Penh together with other returnees. KHIEU Samphan came to teach them and told them "that all people in Kampuchea had to do farming. Those who did not know how to do farming, especially the Vietnamese would be sent back to Vietnam. So the Khmer Rouge had prepared a plan to send the Vietnamese back to Vietnam.").

<sup>11438</sup> IENG Sary's Diary, E3/925, published January 1997, ERN (En) 00003331.

<sup>11439</sup> IENG Sary's Diary, E3/925, published January 1997, ERN (En) 00003331; Section 16.3: Real or Perceived Enemies, para. 3803.

<sup>11440</sup> Section 16.3: Real or Perceived Enemies, para. 3804.

<sup>11441</sup> Revolutionary Flag, E3/742, April 1977, ERN (En) 00478496.

*of enemies*, preventing them from *committing aggression*, interference or subversion against us. *We must wipe out the enemy* in our capacity as masters of the situation, following the lines of domestic policy, foreign policy and military policy of our revolutionary organisation. Everything must be done neatly and thoroughly.<sup>11442</sup>

3394. In view of the escalating military conflict with Vietnam, the Party's intensified resolve to defend the revolution and country against perceived revisionist enemies including the Vietnamese, and the CPK's developing stance on Vietnam as "aggressors", "expansionists" and "annexationists" (which would continue throughout the DK period),<sup>11443</sup> the Chamber is satisfied that references to "all categories of enemies" in the above speech indeed included references to Vietnam as the "hereditary enemy".

3395. The August 1977 edition of the *Revolutionary Flag* reports on the West Zone Cadre Conference, held in Chbar Mon district in Kampong Speu on 25 July 1977. A speech attributed to the "Party Organisation Representative" instructs that "the 1977 plans" require "attacking and cleansing out the enemy".<sup>11444</sup> According to the presentation, the task of fighting the enemy was not only one for the army, but also for "the people armed with weapons [...] the poor peasant people and the lower-middle peasant people" who could "defend the rear battlefield [...] [w]ith their bare hands" or with "knives and machetes".<sup>11445</sup> The "*Yuon*" are identified as the "enemies that embed themselves within us, when they threaten us" immediately thereafter,<sup>11446</sup> with a warning issued to "not forget how the enemy makes propaganda. Do not forget how they mislead us."<sup>11447</sup> Witness MEAS Voeun, who was the Deputy Commander of Division 1 stationed at Koh Kong and who attended the Zone Conference, testified that the purpose of the conference was to instil consciousness of *Yuon* "tricks": "they wanted to search out the infiltrated enemies that were within the army or cooperatives. That

<sup>11442</sup> *Khieu Samphan's Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004165, S00004164 (in the same speech KHIEU Samphan stated that "In the field of defending Democratic Cambodia protecting our worker peasant administration and preserving our Cambodian revolutionary fruits, we were able to do so completely exercising mastery and without complications or worries since our army with the co-operation of our union workers co-operative peasants and various bases had allowed no enemy to infiltrate our territory or territorial waters or to sabotage our Cambodian revolution whether from outside or from within.").

<sup>11443</sup> Section 16.3: Real or Perceived Enemies, paras 3807, 3816, 3818-3819, 3821, 3823, 3833, 3853.

<sup>11444</sup> *Revolutionary Flag*, E3/193, August 1977, pp. 2-3, ERN (En) 00399222-00399223.

<sup>11445</sup> *Revolutionary Flag*, E3/193, August 1977, p. 22, ERN (En) 00399242.

<sup>11446</sup> *Revolutionary Flag*, E3/193, August 1977, p. 22, ERN (En) 00399242.

<sup>11447</sup> *Revolutionary Flag*, E3/193, August 1977, p. 23, ERN (En) 00399243.

was their purpose.”<sup>11448</sup>

3396. A notable change occurred in the CPK rhetoric against the Vietnamese when, in December 1977, the Vietnamese army made important incursions into Cambodian territory. So far, the existence of the international armed conflict between Democratic Kampuchea and the Socialist Republic of Vietnam was not officially recognised, but on 31 December 1977 the DK Government issued a statement condemning the Vietnamese “aggression” and severing diplomatic ties between the two States.<sup>11449</sup> The Chamber notes that, from that date, references to the “*Yuon*” as the enemy of DK were made very openly, in particular in statements aimed to reach a large public as detailed below.

3397. On 3 January 1978, the “Committee 870” issued instructions mandating the use of conventional and guerrilla warfare tactics against the “invading *Yuon* enemy and territory swallower”.<sup>11450</sup> In addition to inciting the “killing”, “wounding”, “destruction”, “crushing” and “smashing” of the enemy’s forces, the directive also underscores the necessity of ideological tactics to “constantly stir up national and class anger among the people toward the *Yuon* enemy invader in order to turn such anger into material anger”. After instructing the distribution of the directive to all Zone, Sector and District Party Committees, as well as to every level of the military “in each target area for them to absorb again and again”, the directive emphatically concludes with the instruction to: “Implement the Party’s military line, the line of people’s war and guerrilla war very well: the *Yuon* invader will definitely leave piles of their bones on our soil”.<sup>11451</sup> The Chamber notes that, read in context with the ongoing armed conflict, these instruction refer primarily to Vietnamese armed forces. A DK media report broadcast on 4 January 1978 reported that the three RAK branches and “all the

<sup>11448</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 71.

<sup>11449</sup> US Congressional Report, *Vietnam-Cambodia Conflict*, E3/2370, 4 October 1978 p. 9, ERN (En) 00187388; *Revolutionary Army Adopts Resolutions on SRV Dispute* (in FBIS collection), E3/1285, 5 January 1978, ERN (En) 00169538-00169539.

<sup>11450</sup> DK Document, Instructions of Office 870, E3/741, 3 January 1978, p. 1, ERN (En) 00296003.

<sup>11451</sup> DK Document, Instructions of Office 870, E3/741, 3 January 1978, pp. 1-3, 5-7, ERN (En) 00296003-00296005, 00296007-00296009 (“This direction shall be distributed and studied in the Zone, Sector and District Party Committees, in the cooperative committees, in the battlefield committees, division committees, regiments, battalions, companies, platoons, squads, combatants and the command committees in each target area for them to absorb again and again to constantly draw experience, and to constantly improve implementation according to experience of right and wrong.”). See also, Extracts from a Number of Documents from Office 870 (copied by C.E. Goscha), E3/10685, undated, ERN (En) 01320890.

Cambodian people throughout the country” had held a meeting to express their “seething anger and indignation at the annexationist Vietnamese enemy”.<sup>11452</sup> As discussed earlier in this Judgement, on 6 January 1978, Vietnamese forces withdrew from the East Zone and shortly after, POL Pot visited the East Zone and held a public meeting at Wat Taung, Suong district, during which he outlined CPK policy that every Cambodian should kill at least 30 Vietnamese.<sup>11453</sup>

3398. On 24 February 1978, after the Vietnamese armed forces had withdrawn from Cambodian territory, an unidentified Phnom Penh broadcaster reported on the support Cambodia was receiving in its “SRV dispute” and called for the all the Vietnamese aggressors to be “exterminated from Cambodia”.<sup>11454</sup> On 10 April 1978, an unidentified Phnom Penh broadcaster publicly delineated the distinction between “patriots” (which included the Party, RAK, worker-peasant class, collective system of the proletariat and cooperatives) and “enemies” (including “imperialist aggressors and lackeys of all stripes”, those intending to “swallow” the country and “the expansionist, annexationist Vietnamese enemy”). The broadcast stressed that “efforts to weed out and exterminate the enemy planted within” were only possible by harbouring “seething hatred for the enemy”.<sup>11455</sup> The Chamber finds that the form and substance of the broadcast text mirrors other CPK rhetoric and concludes that it was in fact issued by the Party Centre. Read in context and considering the Vietnamese armed forces withdrawal at the time, the Chamber finds that these calls targeted both Vietnamese soldiers and Vietnamese civilians.

3399. At a mass meeting held on 15 April 1978 in Phnom Penh and celebrating the third anniversary of the CPK’s victory, on behalf of the CPK, KHIEU Samphan pledged:

(4) To expel resolutely from Cambodian territory and destroy forever all the expansionist, annexationist Vietnamese aggressors;

(5) To exterminate resolutely all agents of the expansionist, annexationist Vietnamese aggressors from our units and from Cambodian territory forever;

<sup>11452</sup> *Revolutionary Army Adopts Resolutions on SRV Dispute* (in FBIS collection), E3/1285, 5 January 1978, ERN (En) 00169538.

<sup>11453</sup> See above, paras 3379, 3402. See also, Section 4: General Overview, para. 290.

<sup>11454</sup> *Various Marxist-Leninist Groups Offer Support in SRV Dispute: Italian, French Papers* (in FBIS collection), E3/292, 24 February 1978, ERN (En) 00169281.

<sup>11455</sup> Section 16.3: Real or Perceived Enemies, para. 3281.

[...]

(9) [...] [T]o exterminate the enemies of all stripes, particularly the expansionist, annexationist Vietnamese enemy, in order to preserve the nation and the Cambodian race forever;

(10) To hold extremely high and keep extremely seething the national spirit of revolutionary vigilance in order to be ready beforehand to deal with all poisonous manoeuvres of the enemy.<sup>11456</sup>

Read in context and noting the explicit reference to the preservation of the “Cambodian race”, the Chamber finds that this speech targeted all Vietnamese people indiscriminately.

3400. KHIEU Samphan reiterated the Party line in a speech delivered a day later, on 17 April 1978:

Our people have relentlessly fought to defend the country against imperialists, expansionists, annexationists and reactionary forces of all sorts to lead the socialist revolution and boost production. In particular, the fight against Vietnam the aggressor that wants to grab and annex our territory further, raised the political awareness and patriotism of our people and again *stirred up their national hatred* and class hatred. Consequently, our people’s political and ideological awareness was further developed.<sup>11457</sup>

Read in context and noting the explicit reference to the “national hatred”, the Chamber finds that this speech targeted all Vietnamese people indiscriminately.

3401. In his book “War and Hope”, NORODOM Sihanouk wrote that while he was trying to understand, according to his words, the reasons “of the Khmer Rouge’s senselessly dangerous provocation of Vietnam”:

KHIEU Samphan [...] unabashedly told me that ‘to unite our compatriots through the party, to bring our workers up to their highest level of productivity, and to make the *yotheas*’ [Khmer Rouge soldiers] ardor and valor in combat even greater, the best thing we could do was incite them to hate the *Yuons* more and more every day’. [...] Our *bang-phaaun* (literally, older and younger brothers and sisters) are willing to make any sacrifice the minute we wave the ‘Hate Vietnam’ flag in front of them”.<sup>11458</sup>

<sup>11456</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B collection), E3/562, 16 April 1978, ERN (En) S00010563. *See also*, Section 16.3: Real or Perceived Enemies, para. 3823.

<sup>11457</sup> *KHIEU Samphan Speech at Anniversary Meeting*, E3/169, 17 April 1978, p. 8, ERN (En) 00280396 (emphasis added).

<sup>11458</sup> Book by Sihanouk NORODOM, E3/1819, *War and Hope*, ERN (En) 00349591. *See also*, Book by N. Chanda, *Brother Enemy*, E3/2376, p. 298, ERN (En) 00192483.

While the defence did not have the opportunity to test in court the statements made by the late King Father NORODOM Sihanouk in his book, which diminishes the weight to be accorded to them, the Chamber finds that they are consistent and corroborate other evidence of CPK leaders inciting hatred of the Vietnamese among the Cambodian population.

3402. In the “One against 30” speech which was also delivered on 17 April 1978,<sup>11459</sup> POL Pot declared Vietnam to be an existential threat to DK and reinforced the Party’s “determination to fight and smash large numbers of the enemy’s life forces and to protect our forces to the maximum”. According to POL Pot, the Party “slogan” was now to “smash many of the others”.<sup>11460</sup> The Chamber accepts that POL Pot’s April 1978 speech stating the CPK’s “One against 30” policy primarily relates to soldiers and served to “stir up the fighting spirits of cadres and combatants to be ready in battlefields”.<sup>11461</sup> However, PRUM Sarat acknowledged that this statement “was like a road map”,<sup>11462</sup> and POL Pot explicitly extended the purpose of the policy by adding that it was not limited to the army, stressing that the entire Party and “the entire people [to] absorb this line and view and stance”.<sup>11463</sup> More importantly, the “One against 30” policy expressly encompassed the total populations of both countries, with POL Pot referring throughout his statement to 50,000,000 (total population of Vietnam) against 8,000,000 (total population of Cambodia),<sup>11464</sup> thus including both combatants and civilians in such policy. POL Pot even notes that applying this line, they only needed 2,000,000 Cambodian to “fight and mash 50,000,000 *Yuon*”.<sup>11465</sup> The “One against 30 policy” was subsequently broadcast on 10 May 1978 and references to the entire populations of both countries were reiterated.<sup>11466</sup> Therefore, the Chamber finds that this call was directed against the ethnic Vietnamese population as a whole, not just SRV

<sup>11459</sup> The Chamber notes that this policy was voiced as early as January 1978. See Section 4: General Overview, para. 290.

<sup>11460</sup> Section 16.3: Real or Perceived Enemies, para. 3824. Revolutionary Flag, E3/4604, April 1978, pp. 5-6, ERN (En) 00519833-00519834.

<sup>11461</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 70; Revolutionary Flag, E3/4604, April 1978, pp. 4-6, ERN (En) 00519832-00519834.

<sup>11462</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 70.

<sup>11463</sup> Revolutionary Flag, E3/4604, April 1978, p. 6, ERN (En) 00519834.

<sup>11464</sup> Revolutionary Flag, E3/4604, April 1978, pp. 5-6, 8-9, 24, ERN (En) 00519833, 00519834, 00519836, 00519837, 00519852.

<sup>11465</sup> Revolutionary Flag, E3/4604, April 1978, p. 6, ERN (En) 00519834.

<sup>11466</sup> *Past Year’s National Defence Efforts Reviewed* (in FBIS collection), E3/1362, 10 May 1978, ERN (En) 00170014-00170016. See also, *Cambodia’s Strategy of Defence against Vietnam* (in SWB/FE/5813/A3 collection), 10 May 1978, ERN (En) 00003960-00003962.



military forces.

3403. The May-June 1978 issue of the *Revolutionary Flag* described the “*Yuon* [as] the most noxious and acute” of enemies, describing the “life-and-death contradiction” that existed between DK and Vietnam.<sup>11467</sup> The July 1978 edition struck a more emphatic tone, exclaiming:

The national duty of all of us is to struggle to fight to eliminate our aggressive, expansionist, territory-swallowing and genocidal *Yuon* enemy. Just like the Kampuchean of our current generation, absolutely no Kampuchean of any subsequent generation will lay down arms and stop fighting the aggressive and expansionist/territory-swallowing and genocidal *Yuon* enemy of the Kampuchean race.<sup>11468</sup>

3404. The NUON Chea Defence submits that in 1978, contrary to targeting the Vietnamese, the DK called for friendship, peace and forgiveness with Vietnamese people.<sup>11469</sup> It refers to a number of documents in support of this view: a March Telex message,<sup>11470</sup> a July press communiqué,<sup>11471</sup> and the September issue of the *Revolutionary Flag*,<sup>11472</sup> all claiming that a friendship between the two countries could be established when Vietnam ceases its aggression. It further refers to the June 1978 Central Committee Guidance towards “Misled Persons who have joined the CIA, served as *Yuon* Agents or joined the KGB and opposed the Party, Revolution, People and Democratic Kampuchea”.<sup>11473</sup> No other Party made any submission in this regard. The Chamber notes that this submission contradicts the NUON Chea Defence’s position that Vietnam posed an existential threat that justified the targeting of the

<sup>11467</sup> *Revolutionary Flag*, E3/727, May-June 1978, p. 12, ERN (En) 00185333.

<sup>11468</sup> *Revolutionary Flag*, E3/746, July 1978, p. 1, ERN (En) 00428289.

<sup>11469</sup> NUON Chea Closing Brief, paras 754, 768-769.

<sup>11470</sup> Sweden-Kampuchea Friendship Association Telex Message, E3/1149, 4 March 1978, p. 5, ERN (En) 00717588 (“In actual fact the conflict between Kampuchea and Vietnam is neither a mere border issue nor a dispute over one or two pieces of land. It is rooted in Vietnam’s ambitions to spread its wings all across Indochina and South East Asia an, ambition that it is adamantly holding on to. Since the problem is born of Vietnamese aggression it cannot be resolved until Vietnam ceases the aggression. Vietnam must actually cease the cross-border incursions, machine gun attacks, bombardments, subversion and espionage activity; it must cease amassing its troops all along the border in a bid to surround Kampuchea from all sides; it must forsake its ambitions to establish an “Indochinese Federation” and one people and one party within the Indochinese Federation If Vietnam does this the dispute between Kampuchea and Vietnam will be a thing of the past and friendship between the two countries will germinate take root and grow Kampuchea is only seeking sincerity.”).

<sup>11471</sup> DK Press Communiqué, E3/1264, 1 July 1978, ERN (En) 00078180-00078182 (referring to Vietnam in inflammatory terms such as “Vietnam aggressor, annexationist and swallower of territories.”).

<sup>11472</sup> *Revolutionary Flag*, September 1978, E3/215, p. 5, 13, ERN (En) 00488618.

<sup>11473</sup> Central Committee’s Guidance on Misled Persons, E3/763, 20 June 1978, ERN (En) 00265217-00265219 (referring to Vietnam as a “*Yuon* aggressor who swallows of [*sic*] the territory”).

Vietnamese.<sup>11474</sup> Concerning the June 1978 Central Committee Guidance, although persons who ceased their “traitorous activity” were nominally subject to re-education under this policy, the Chamber finds that, while it was nominally applicable to those who *inter alia* were “serving as *Yuon* (Vietnamese) agents”, it is unclear whether this category extended beyond Khmer people who colluded with Vietnam to encompass people who were ethnic Vietnamese themselves.<sup>11475</sup> However, according to an annotation in an S-21 notebook, the “foreigners, the *Yuon*” were excluded from the line of alleged “compassion to the people”.<sup>11476</sup> Considering the inflammatory vocabulary used to describe Vietnam, Vietnamese and/or their actions in the documents partially cited by the NUON Chea Defence and in light of the otherwise consistent evidence, the Chamber finds that these isolated documents which purportedly called for friendship with Vietnam do not raise a reasonable doubt with respect to the targeting of the Vietnamese throughout the DK period.

3405. Notes in MAM Nai’s S-21 notebook from April 1978 record that the principle designated by the Party against the *Yuon* is “One against 30”.<sup>11477</sup> Further entries by S-21 cadres in the Combined S-21 Notebook throughout 1978 reveal that Vietnamese prisoners who had been isolated at the Security Centre in Phnom Penh were singled out for separate treatment. One entry notes that “[o]n 17 January 1978, Brother Party Secretary [*i.e.* POL Pot] said that if we hit their legs the *Yuon* can still crawl, if we hit their arms they can still walk”.<sup>11478</sup> An entry dated 18 July 1978 records the search for hiding Vietnamese as one of the “principles set out by the Party”. It also notes that “Maximum victory = Finding the *Yuon*” and “Minimum victory = Finding additional

<sup>11474</sup> See above, paras 3367, 3377.

<sup>11475</sup> Central Committee’s Guidance on Mised Persons, E3/763, 20 June 1978, ERN (En) 00265217. As discussed elsewhere in this Judgement, Duch testified this was a “deceptive ploy to calm the population” and that the evidence shows that arrests and executions continued. See Section 16: Common Purpose, para. 3971. See also, Section 16.3: Real or Perceived Enemies, para. 3828.

<sup>11476</sup> Section 16.3: Real or Perceived Enemies, para. 3828 (fn. 12794) referring to Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 38-40, ERN (En) 00184520-00184522 (entry dated 8 October 1978 noting that, as opposed to Khmer people who were to be interrogated without beatings, foreigners, *Yuon* and CIA imperialists would be interrogated following “absolute Special Branch methods, completely and totally, permanently”).

<sup>11477</sup> S-21 Notebook of MAM Nai, E3/833, June 1975 to October 1978, ERN (En) 00184600. The Notebook appears to record notes taken at POL Pot’s April anniversary speech. The Notebook also indicates that the principle in Svay Rieng is of One against 90, but in other location is 1:15-1:30 and that “in general we implement the principle of 1[:]:30”.

<sup>11478</sup> Combined S-21 Notebook, E3/834, April 1978-December 1978, p. 15, ERN (En) 00184497 (entry dated 3 June 1978). See also, Section 12.2: S-21 Security Centre, para. 2131.

traitor connections who are *Yvon* agents”.<sup>11479</sup> A further entry dated 8 October 1978 reflects on the new “objective” of S-21 “to save the maximum number of people who are misguided”.<sup>11480</sup> Pursuant to POL Pot’s directive,<sup>11481</sup> Vietnamese prisoners were explicitly exempt from this objective:

In the near term, we have plans to interrogate all of the Khmer without beatings and getting 80% confessions. No beatings and getting very detailed confessions, 70%. As for the foreigners, the *Yvon*, the imperialist CIA, we apply absolute Special Branch methods, completely and totally, permanently.<sup>11482</sup>

3406. Throughout 1978, the *Revolutionary Flag* and State-sponsored “educational” broadcasts were issuing intensified appeals to “defend” and “preserve” the “Kampuchean race” from the “*Yvon*”.<sup>11483</sup> Throughout 1978 and early 1979, POL Pot and KHIEU Samphan continued stressing the importance of protecting and preserving the success of the revolution and the “Kampuchean race” from Vietnamese “expansionists” and “annexationists”.<sup>11484</sup> NUON Chea echoed this line at a banquet in

<sup>11479</sup> Combined S-21 Notebook, E3/834, April 1978-December 1978, pp. 22-23, ERN (En) 00184504-00184505.

<sup>11480</sup> Combined S-21 Notebook, E3/834, April 1978-December 1978, p. 40, ERN (En) 00184522.

<sup>11481</sup> T. 14 June 2016 (KAING Guek Eav), E1/437.1, pp. 46-49 (referring to the 8 October 1978 entry: “As for the ‘*Yvon*’, the practice remained the same and of course, the same applied to CIA agents; the ‘*Yvon*’, the CIA agents had to be beaten, but per Brother Pol’s instructions, all interrogations had to be stopped.”).

<sup>11482</sup> Combined S-21 Notebook, E3/834, April 1978-December 1978, p. 40, ERN (En) 00184522.

<sup>11483</sup> See e.g., *Revolutionary Youth*, E3/726, January-February 1978, p. 29, ERN (En) 00278736 (“Poem” pledging to defend against the “*Yvon*” “eradicating the race and the territory”); *Revolutionary Flag*, E3/4604, April 1978, pp. 9, ERN (En) 00519837 (“To defend Kampuchean territory means to defend the Kampuchean race.”), 14, ERN (En) 00519842 (“We make our Army clean, our Party clean, our people clean, so that they can fight the enemy and defend Kampuchean territory, that is, defend the Kampuchean race.”); *Past Year’s National Defence Efforts Reviewed* (in FBIS collection), E3/1722, 10 May 1978, ERN (En) 00294785 (“Educational program” entitled “*Democratic Kampuchea’s national defence situation from April 1977 to April 1978*”), 00294788 (“1. Be resolutely determined to defend our territory. Defending Kampuchean territory means defending the Kampuchean race.”), 00294790 (“We must purify our armed forces, our party, and the people in order to continue fighting the enemy in defence of Kampuchean territory and the Kampuchean race for if we fail to do so our race will disappear.”); *Strength of Popular Revolution Determines Strength of Country* (in FBIS collection), E3/1363, 10 June 1978, ERN (En) 00169816 (“Educational program” entitled “*Concerning the people’s revolutionary strength and their situation*” read by unattributed announcer) 00169817 (“Making revolution means defending the country and preserving the Kampuchean race forever without becoming anyone’s slaves.”); *Revolutionary Flag*, E3/746, July 1978, p. 1, ERN (En) 00428289 (“Currently, under the correct and wise leadership of our Communist Party of Kampuchea with Comrade Secretary POL POT at the head, we are determined to maintain and defend our national-country our people and our Kampuchean race so that it will persist and survive eternally.”); *Revolutionary Army Stands Firm and Vigilant in Kratie* (in FBIS collection), E3/76, 2 September 1978, ERN (En) 00170355 (unattributed article entitled “Our Revolutionary Army units in Kratie Sector continue to raise high their sense of revolutionary vigilance, in order to defend our territory, people, Party, revolution and Kampuchean race so that they may live forever”).

<sup>11484</sup> See e.g., *Pol Pot Holds Interview on Cambodia-SRV Conflict* (in FBIS collection), E3/1361, 12 April 1978, ERN (En) 00168801 (referring to the “expansionist, annexationist aggressor Vietnamese who

Beijing on 3 September 1978, stating that the Cambodian people and the RAK have “crushed the Vietnamese strategy of ‘Indochina Federation’, aiming at swallowing the [*sic*] Kampuchea’s race”.<sup>11485</sup>

3407. Between 1977 and 1979, contemporaneous CPK publications including DK statements, media reports, *Revolutionary Flag* and *Revolutionary Youth* variously described the Vietnamese and their agents as noxious,<sup>11486</sup> greedy,<sup>11487</sup> savage;<sup>11488</sup> akin to rats,<sup>11489</sup> dogs,<sup>11490</sup> germs,<sup>11491</sup> sexually deprived,<sup>11492</sup> dishonourable,<sup>11493</sup> “cruel

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desire to destroy our Cambodian race”), 00168805 (Vietnam “plans to annex and swallow Cambodian territory and exterminate the Cambodian race”); KHIEU Samphan Speech, E3/169, 15 April 1978, p. 10, ERN (En) 00280398 (“We must defend tooth and nail the country, the Revolution, the power, the people, the Army, the Party and the Kampuchean race.”); *Phnom Penh Rally Marks 17th April Anniversary: Excerpts from Recording of Speech at the Meeting by Khieu Samphan* (in SWB/FE/5791/B collection), E3/562, 15 April 1978, ERN (En) S00010559 (expressing pride in the RAK “because it is a strong pillar of the forces defending [...] the Cambodian race”), S00010563-S00010564 (“We must [...]: (1) Successfully defend the country, revolution, State power, people, revolutionary army, Party and Cambodian race”); *Sihanouk Attends, Khieu Samphan Addresses KCP Banquet* (in FBIS collection), E3/294, 30 September 1978, ERN (En) 00170170 (“We must strengthen and expand solidarity and all possible strengths so as to protect and preserve forever the fruits of the revolution and the Kampuchean race.”); *Armed Forces Meeting Supports Government Statement on SRV Aggression* (in FBIS collection), E3/296, 3 January 1979, ERN (En) 00169311 (Speech by KHIEU Samphan in which he states that: “We are fully aware of our duty to defend the nation our territory the Kampuchean people and the Kampuchean race entrusted to us by the party and the Government of Democratic Kampuchea.”). See also, T. 3 July 2013 (EK Hen), E1/217.1, p. 47 (“He [Khieu Samphan] said Khmer had to be united and Khmer shall be free of Vietnamese, or the “*Yvon*”, and that we had to love one another.”).

<sup>11485</sup> NUON Chea Speech, E3/199, 3 September 1978, ERN (En) 00065915.

<sup>11486</sup> See above, para. 3403. See also, *Revolutionary Flag*, E3/746, July 1978, p. 3, ERN (En) 00428291 (“But the concealed enemies who were running-dog agents of the *Yvon* were the life and death foes who were noxious to the uttermost and of the uttermost danger.”).

<sup>11487</sup> See e.g., *Phnom Penh Rally marks 17th April Anniversary* (in SWB/FE/5791/B collection), E3/562, ERN (En) S00010558 (“As for the eastern border, the fight between the Vietnamese and us is a tense and firm one because the greedy Vietnamese have the evil intention of swallowing up our Cambodian territory in accordance with their Indochinese federation plan.”).

<sup>11488</sup> See above, para. 3381 (fn. 11392).

<sup>11489</sup> See e.g., *Revolutionary Flag*, E3/742, April 1977, p. 5, ERN (En) 00478496 (“As for enemies that are ‘CIA’, ‘KGB’ and ‘*Yvon*’ agents, [...] [they] have been fundamentally scattered, like rats being hit and falling from their nests into the water”).

<sup>11490</sup> See e.g., *Revolutionary Flag*, E3/742, April 1977, pp. 4-5, 11, ERN (En) 00478495-00478496, 00478502; *Revolutionary Flag*, E3/743, July 1977, p. 15, ERN (En) 00476170; *Revolutionary Flag*, E3/747, August 1977, pp. 7-8, ERN (En) 00499772-00499773.

<sup>11491</sup> See e.g., *Revolutionary Flag*, E3/4604, April 1978, p. 14, ERN (En) 00519842 (referring to the *Yvon*: “Do not let those germs bore inside among our people, our Party, our Army. We make our Army clean, our Party clean, our people clean, so that they can fight the enemy and defend Kampuchean territory, that is, defend the Kampuchean race.”).

<sup>11492</sup> See e.g., DK Publication: *Black Paper*, E3/23, September 1978, p. 60, ERN (En) 00082543 (“They despised Kampuchea’s people. They raped young girls”).

<sup>11493</sup> See e.g., *Revolutionary Flag*, E3/746, July 1978, p. 1, ERN (En) 00428289 (“The *Yvon* stink to high heaven and are degradingly despised as nothing, because the *Yvon* think only of carrying around a begging bucket and walking around with a cane to beg for charity in every nook and cranny.”).

fascists”<sup>11494</sup> and “barbaric”.<sup>11495</sup> During this time, terms such as “eradicate”,<sup>11496</sup> “attack and smash”,<sup>11497</sup> “sweep away”,<sup>11498</sup> “wipe out”,<sup>11499</sup> “exterminate”,<sup>11500</sup> “liquidate”,<sup>11501</sup> and “annihilate”<sup>11502</sup> were specifically employed by the Party to describe the treatment to be meted out to the “*Yuon*” in order to make DK “permanently

<sup>11494</sup> See e.g., Revolutionary Youth, E3/766, November 1978, p. 22, ERN (En) 00524183 (“when we grow up we can join the Army and smash the contemptible *cruel fascist Yuon enemy* aggressor and defeat them annihilate them forever and absolutely not let them invade Kampuchean territory” [emphasis added]); Revolutionary Youth, E3/726, January-February 1978, p. 26, ERN (En) 00278733 (“the aggressor expansionist territory swallowing *Yuon enemy* who wear the banners of revolution and socialism have committed degrading acts grabbing and raping us young girls in a *cruel and fascist way*” [emphasis added]).

<sup>11495</sup> See e.g., Revolutionary Youth, E3/726, January-February 1978, p. 29, ERN (En) 00278736 (“These acts display that their politics are *fascist and barbaric their heinous morals grow more barbarous*” [emphasis added]).

<sup>11496</sup> See e.g., Revolutionary Flag, E3/742, April 1977, p. 9, ERN (En) 00478500 (“They, the ‘CIA’ part, the ‘KGB’ part, and the ‘*Yuon*’ part still strive to struggle free to continue their criminal activities. This is a view that we must be constantly clear on in order to have a high-level spirit of revolutionary vigilance to resist and eradicate the enemy in advance with constant mastery.”); Revolutionary Flag, E3/4604, April 1978, p. 14, ERN (En) 00519842 (“They must be eradicated.”); Revolutionary Flag, E3/747, August 1978, pp. 11-12, ERN (En) 00499776-00499777 (“To every member of the Communist Party of Kampuchea: [...] eradicate the expansionist genocidal *Yuon* aggressor. [...] We also see clearly that the Kampuchean people under the leadership of our Communist Party of Kampuchea are fighting bravely to eradicate the *Yuon* enemy.”).

<sup>11497</sup> See e.g., Revolutionary Flag, E3/747, August 1977, p. 23, ERN (En) 00499788 (“We build solid practical, ideological and organisational stances following the proletariat class of our [CPK] so that the Party will be strong, and to gather the forces [...] to whip up the movement to attack and smash the territory-swallowing expansionist genocidal *Yuon* aggressor”); Revolutionary Flag, E3/4604, April 1978, pp. 11-12, ERN (En) 00519839-00519840 (“We attacked until we smashed them. [...] [W]e used outstanding forces to attack and smash them, swept them to bits, shredded their flesh. That’s why they fear our Army. [...] We attack and smash them.”); Revolutionary Flag, E3/746, July 1978, p. 15, ERN (En) 00428303 (“[I]n the great mass movement to attack and smash the aggressive, expansionist, territory-swallowing, genocidal *Yuon* enemy” the cooperatives have played an important part).

<sup>11498</sup> See e.g., Revolutionary Flag, E3/742, April 1977, p. 11, ERN (En) 00478502 (“[I]t is imperative to whip-up the people to sweep more of them [‘CIA’, ‘KGB’ and ‘*Yuon*’ agents] clean and make things permanently clean.”); Revolutionary Flag, E3/4604, April 1978, p. 11, ERN (En) 00519839 (“[W]e used outstanding forces to attack and smash them, swept them to bits.”); Revolutionary Flag, E3/746, July 1978, p. 11, ERN (En) 00428299 (“The concealed enemies boring from within who are *Yuon*-serving agents [...] are now breaking up successively. [...] Their henchmen have been cleanly swept away.”).

<sup>11499</sup> See e.g., *Revolutionary Army Adopts Resolutions on SRV Dispute* (in FBIS collection), E3/1285, 4 January 1978, ERN (En) 00169539 (RAK resolves to “fight and exterminate the annexationist Vietnamese enemy and other enemies of all stripes so that they will be completely wiped out from our Cambodian territory and country and so that the nation’s honour will be preserved”).

<sup>11500</sup> See e.g., *Revolutionary Army Adopts Resolutions on SRV Dispute* (in FBIS collection), E3/1285, 4 January 1978, ERN (En) 00169538-00169539 (reporting a “statement of the Government of Democratic Cambodia broadcast on 31 December 1977 and repeated on 1 and 2 January 1978 appealing to the entire Party and army as well as all the people to [...] counter and exterminate the annexationist Vietnamese enemy”).

<sup>11501</sup> See e.g., Revolutionary Youth, E3/765, October 1978, p. 23, ERN (En) 00539998 (referring to the plan to “defeat and scatter [the “*Yuon* enemy”] even more seriously up to the point that they are completely defeated and liquidated.”).

<sup>11502</sup> See e.g., DK Government Statement, E3/8404, 2 January 1979, p. 5, ERN (En) 00419725 (“[T]he Revolutionary Army of Kampuchea [has] been determined to annihilate a lot of them. The Vietnamese have had during these 3 months about 10,000 killed and wounded.”).

clean”.<sup>11503</sup>

3408. Contemporaneous telegrams before the Chamber show that throughout 1978, the arrest and execution of Vietnamese civilians and soldiers was either reported through the General Staff,<sup>11504</sup> or directly to senior CPK leaders including POL Pot, NUON Chea, IENG Sary and/or VORN Vet.<sup>11505</sup> Three telegrams warrant particular mention in this regard. A telegram from Division 164 Commander MEAS Muth dated 31 December 1977 and copied to POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870 reports that:

We have received the guiding view and the declaration of the Party about the aggression of the *Yuon* who have come to swallow the territory of our motherland. We who have the duty to defend the maritime spearhead would like to: 1. Be in total unity within the Party; 2. Vow determination to fashion forces who are a tool absolutely to defend the Party, [...] and to defend the socialist Kampuchean motherland by sweeping cleanly away and without half-measure the uncover [*sic*] elements of the enemy, whether the *Yuon* or other enemies.<sup>11506</sup>

3409. A telegram from Northwest Zone Secretary RUOS Nhim dated 17 May 1978 requests instructions from “*Angkar 870*” regarding the treatment of “elements” of

<sup>11503</sup> See above, fn. 11498.

<sup>11504</sup> See e.g., DK Telegram, E3/1079, 25 December 1976, ERN (En) 00143503 (Division 801 Commander SAO Saroeun reporting the capture of “a *Yuon*” to “Brother 89”, i.e. SON Sen); DK Telegram, E3/1132, undated, ERN (En) 00548773 (unknown sender reporting the capture of “a *Yuon*” to the General Staff); DK Telegram, E3/1061, 24 March 1977, ERN (En) 00538731 (Division 801 Commander SAO Saroeun reporting the capture of “7 *Yuons*” to “Uncle 89”, i.e. SON Sen); DK Telegram, E3/992, 2 March 1978, ERN (En) 00795287 (“We smashed and killed 98 *Yuon* enemies on the spot; the remaining six escaped to Loc Ninh; the others were completely smashed. I would like to clarify that we captured one *Yuon* enemy.”).

<sup>11505</sup> See e.g., DK Telegram, E3/248, 1 January 1978, ERN (En) 00324809 (Sector 105 Secretary SAO Sarun reporting to “Beloved Brothers of M-870” that “nine *Yuon* people fleeing the country” were caught and that “we have swept them away”); DK Telegram, E3/181, 14 February 1978, ERN (En) 00340537 (reporting to POL Pot and NUON Chea that “Comrade Tal captured 2 *Yuon* heads [...]. They were sent to S-21.”); DK Telegram, E3/1012, 22 March 1978, ERN (En) 00305369 (Northeast Zone Secretary Vy reporting to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office [870] that “24 of the *Yuon* enemies were killed”); DK Telegram, E3/998, 23 March 1978, ERN (En) 00185585 (Comrade Peam reporting to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870 the killing of 47 “enemy aggressor *Yuon* at Paung” village, which was “the objective specified by the Party”); DK Telegram, E3/928, 1 April 1978, ERN (En) 00183357 (Division 164 Commander MEAS Muth reporting to POL Pot, NUON Chea and IENG Sary: “[I]n sum, the number of *Yuon* who have been captured and shot to death from 17 March 1978 through 30 March 1978 is 120 head[s]”); DK Telegram, E3/1062, 8 April 1978, ERN (En) 00322059 (*Ta Mok* reporting to POL Pot that following the attack of “an enemy *Yuon* force [...] on 6, 7 and 8 April [1978], we smashed more than 100 of the enemy”); DK Telegram, E3/943, 25 April 1978, ERN (En) 00185204 (Northeast Zone Secretary Vy reporting to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870 the attack of “the Contemptible *Yuon* [...] and the enemy left 8 of their soldiers dead on the spot.”).

<sup>11506</sup> DK Telegram, E3/915, 31 December 1977, ERN (En) 00184995.

former Khmer Republic soldiers and “*Yuons* with Khmer spouses and the half-breed [Khmer-*Yuon*]”:

Regarding this issue the meeting would like to ask *Angkar* 870 what to do with them? Whatever *Angkar* decides, please give instruction. Generally speaking, these groups are scared of the situation and worried about their fate, but there is not yet any sign of opposing activities. If any of them make some suspicious activities, we will decide to take them out. Some people suggested that we should round them up and keep them in one place. I know it is not difficult to do that. The important thing is that we must be able to grasp them continuously. If they show any suspicions, we must be able to master the situation right away.<sup>11507</sup>

3410. A further telegram from the West Zone Committee to *Angkar*, dated 4 August 1978, explicitly references the CPK’s procedure with regard to the Vietnamese. It reports that elements including “*Yuon* aliens” have been “screened out from various units and [the] military”, but that such enemy activities “do not seriously affect us” and that “we have had plans in place to apply the Party’s assignment line to routinely remove, screen and sweep clean them [*sic*]”. It further reports that, as part of its “screening” operations of “Vietnamese” (among others) in the preceding month, the West Zone had smashed “100 Vietnamese people –small and big young and old”.<sup>11508</sup>

3411. On 1 January 1979, an announcement of “Committee 870” directed the Party, the entire Kampuchean people, all RAK combatants and cadres to “raise the spirit of revolutionary vigilance [and] track down and search out *Yuon* enemy agents and do not allow them to hide anywhere at all, to eliminate them and gain timely mastery”.<sup>11509</sup> The Chamber notes that this statement was made during an important military offensive of the Vietnamese army.<sup>11510</sup> Read in context, the Chamber therefore finds that these instructions refer primarily to Vietnamese armed forces.

3412. On 2 January 1979, the DK Government issued a statement decrying the aggression of Vietnam and reaffirming the country’s objective of defending its independence, sovereignty and territorial integrity. Echoing previous declarations of enmity toward Vietnam as the “national enemy from the beginning up through the

<sup>11507</sup> DK Telegram, E3/863, 17 May 1978, p. 2, ERN (En) 00321962.

<sup>11508</sup> DK Telegram, E3/1094, 4 August 1978, pp. 1, 7, ERN (En) 00143618, 00143624.

<sup>11509</sup> DK Document, Committee 870 Announcement, E3/722, 1 January 1979, ERN (En) 00183666.

<sup>11510</sup> See e.g., *Government Statement Appeals for Aid to Combat SRV Aggression* (in FBIS collection), E3/296, 2 January 1979, ERN (En) 00169296-00169297.

present, and [into] the protracted future”,<sup>11511</sup> the statement proclaimed that “out struggle is just, [...] because the whole Kampuchea’s people are against Vietnam which is a hereditary enemy”.<sup>11512</sup> Despite the contemporaneous military offensives, the Chamber notes the explicit reference to the “the whole Kampuchea’s people” and the “hereditary enemy”, and therefore finds that this statement targeted all Vietnamese people indiscriminately. Witnesses PAK Sok, MEAS Voeun and PRAK Khorn confirmed that the CPK and senior leaders promoted Vietnam as the “hereditary enemy” of the Cambodian people during the DK era.<sup>11513</sup>

3413. As Vietnamese forces swept through Cambodia in the final days of the DK period in early January 1979, Office 870 continued issuing directives instructing cadre to “destroy” the “*Yuon* enemy” militarily, politically, psychologically and economically,<sup>11514</sup> which the Chamber finds to be referring primarily to Vietnamese forces.

3414. The CPK’s twofold targeting of the Vietnamese was summarised by Civil Party HENG Lai Heang, who joined the Khmer Rouge in 1971 and who was a commune committee member in Kratie until 1977:<sup>11515</sup>

Based on what I heard, that the first principle would be that they would be sent back to their country. So at the beginning they were loaded onto trucks and transported to Vietnam. But later on when the Vietnamese intensified their attacks and then the ethnic Vietnamese in Cambodia were smashed.<sup>11516</sup>

3415. She described further that Vietnamese were “smashed” at security centres and

<sup>11511</sup> Revolutionary Flag, E3/746, July 1978, p. 1, ERN (En) 00428289 (“[The *Yuon*] have been our national enemy from the beginning up through the present, and will be our enemy in the protracted future as well. [...] The national duty of all of us its [*sic*] to struggle to fight to eliminate our aggressive, expansionist, territory-swallowing and genocidal *Yuon* enemy. Just like the Kampuchean of our current generation, absolutely no Kampuchean of any subsequent generation will lay down arms and stop fighting the aggressive and expansionist/territory-swallowing and genocidal *Yuon* enemy of the Kampuchean race.”).

<sup>11512</sup> DK Government Statement, E3/8404, 2 January 1979, pp. 10-11, ERN (En) 00419728.

<sup>11513</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 49; T. 3 February 2016 (MEAS Voeun), E1/387.1, p. 24 (“I heard it. Everyone heard of it, that [the Vietnamese] were hereditary enemies.”); T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 6-7 (“We, staff at S-21, were told that Vietnamese were the hereditary enemy of the Communist Party of Kampuchea, that we intended to retake the part of the Cochinchine, that is, Kampuchea Krom. And these instructions were relayed by Son Sen and Duch to us at S-21 during a political study session.”). *See also*, PAK Sok Interview Record, E3/9674, 18 October 2013, p. 10, ERN (En) 00977535.

<sup>11514</sup> DK Telegram, E3/9373, 3 January 1979, ERN (En) 00182798-00182804.

<sup>11515</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 6, 49, 76-78.

<sup>11516</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 73.



within villages.<sup>11517</sup> After the main wave of expulsions in 1975, the targeting was initiated at the sector level and disseminated to the district level, which in turn disseminated the instruction to the commune and village levels.<sup>11518</sup> Cadres from the district came to educate people at the commune level about the targeting.<sup>11519</sup>

3416. The Chamber has taken into account the state of armed conflict and the contemporaneous military offensives in assessing the evidence, and specified above when the CPK rhetoric was primarily directed against Vietnamese soldiers. The Chamber notes the remarkable continuity in the thrust of the statements or speeches emanating from the CPK cadre analysed above, and specifically notes a mere variation in the tone, as it was increasingly violent with the escalation of the conflict. Finally, while some statements may have primarily targeted the Vietnamese armed forces, the reference to the “*Yvon*” or to the Vietnamese enemy was often made indiscriminately and was directed against all ethnic Vietnamese, being military or civilian. In light of the above, the Chamber is satisfied beyond reasonable doubt that the CPK internally as well as publicly targeted Vietnamese as a group through contemporaneous documents and speeches, identifying them as “poisonous foreigners” from the early stages of the DK regime and calling for their expulsion from Cambodia as well as, from April 1977, their destruction. The Chamber is further satisfied that such directives were widely disseminated.

3417. The Chamber is accordingly satisfied that a centrally-devised policy targeting the Vietnamese for adverse treatment existed in DK throughout the indictment period. The Chamber will examine the crimes underpinning this policy, including the extent to which they are encompassed by the common purpose, in Section 16: Common Purpose.

### 13.3.6. *Identification of the Vietnamese and Matrilineal Ethnicity*

#### 13.3.6.1. *The Vietnamese living in Cambodia as a distinct group*

3418. The Closing Order identifies the Vietnamese living in Cambodia as an ethnic group that was also referred to as a national and/or racial group by the CPK.<sup>11520</sup> None of the Parties contest the existence of the Vietnamese living in Cambodia as constituting

<sup>11517</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 73-74.

<sup>11518</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 67-68, 72.

<sup>11519</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 72-73.

<sup>11520</sup> Closing Order, paras 791, 1343.

a group, as such. The Co-Prosecutors identify the Vietnamese as a distinct ethnic group within Cambodia who share a common language, culture and similar physical traits.<sup>11521</sup> The NUON Chea Defence interprets the terms “Vietnamese group” as an ethnic, national and racial group.<sup>11522</sup> The KHIEU Samphan Defence accepts that the Vietnamese belonged to a national or ethnic group,<sup>11523</sup> but rejects the racial qualification of the group on the basis that in-court testimony, except that of SIENG Chanthy, did not demonstrate that the Vietnamese have specific physical traits.<sup>11524</sup> The Civil Party Lead Co-Lawyers do not specifically address this issue but highlight evidence pertaining to Vietnamese physical features and skin colour, familial descent, language, accent and names.<sup>11525</sup>

3419. The Chamber notes that the evidence shows the existence of Vietnamese distinct features, including the Vietnamese language, cuisine, cultural practices and traditional dresses, as well as a distinct historical heritage.<sup>11526</sup> It demonstrates that most Vietnamese living in Cambodia spoke Khmer with an accent or not fluently.<sup>11527</sup> Vietnamese living in Cambodia were identified and identified themselves as such because one or several elder relatives in their families were Vietnamese,<sup>11528</sup> and/or because of their physical traits.<sup>11529</sup> Accordingly, the Chamber finds that the

<sup>11521</sup> Co-Prosecutors’ Closing Brief, paras 894, 895.

<sup>11522</sup> NUON Chea Closing Brief, para. 696.

<sup>11523</sup> KHIEU Samphan Closing Brief, para. 2201.

<sup>11524</sup> KHIEU Samphan Closing Brief, para. 2201. *See also*, T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 15.

<sup>11525</sup> Civil Party Lead Co-Lawyers’ Closing Brief, paras 888-902.

<sup>11526</sup> *See e.g.*, T. 15 December 2015 (Y Vun), E1/368.1, pp. 12, 15; T. 27 October 2015 (SEAN Song), E1/357.1, p. 10; T. 28 October 2015 (SEAN Song), E1/358.1, pp. 4-5; T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 94; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 47; Book by Centre for Advanced Study: *Ethnic Groups in Cambodia*, E3/3555, pp. 536, 540-543, 553, ERN (En) 00489828, 00489832-00489835, 00489845; Book by H. Kamm: *Cambodia: Report from a Stricken Land*, E3/2119, p. 75, ERN (En) 00394394; Thesis by E. Do, *Treatment of the Vietnamese Minority in Democratic Kampuchea from a Comparative Perspective*, E3/4524, ERN (En) 00548858; Book by F. Ponchaud: *Cambodia Year Zero*, E3/9403, ERN (En) 00862093-00862094.

<sup>11527</sup> *See e.g.*, T. 3 December 2015 (SAO Sak), E1/362.1, p. 79; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 47; T. 9 December 2015 (UM Suonn), E1/365.1, p. 55; T. 5 January 2016 (THANG Phal), E1/370.1, pp. 95-96; T. 20 January 2016 (LACH Kry), E1/379.1, p. 83; T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 68, 105; T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 49, 59; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 15.

<sup>11528</sup> *See e.g.*, T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 90. *See below*, paras 3424-3428.

<sup>11529</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 15 (“Everyone knew because my father had a fair complexion, and he looked really like Vietnamese, so villagers were aware that my father was Vietnamese.”); T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 94 (her father had a “fair complexion which was different from others”, and he hoped his children would survive because all of them had “black eyes, and [their] skin was like others”); T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 47 (describing his wife: “Her facial figure was that of Khmer but she had lighter complexion.”); T. 25

Vietnamese living in Cambodia constituted an ethnic, national and racial group at the relevant time.

### 13.3.6.2. Identification of the Vietnamese

3420. Ethnic Vietnamese living in Cambodia were often identified through their accents by their neighbours who would then report the information to the upper echelons.<sup>11530</sup> Several witnesses and Civil Parties explained that the upper echelons were well aware of which families had members who were of Vietnamese origin.<sup>11531</sup> HENG Lai Heang further stated that the policy to “counter the Vietnamese” was initiated “after the event in 1975” and the instruction to identify the Vietnamese was issued by “people in high authority” at the sector level, and then passed down to the district, commune and village level, where the lists of people who had Vietnamese origins were compiled.<sup>11532</sup>

3421. DK reports from 1977-1978 indicate that statistical lists were compiled at the village and commune levels and sent to *Angkar*.<sup>11533</sup> This was confirmed by HENG Lai Heang, who stated that the lists were prepared at the village level and brought to the

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January 2016 (DOUNG Oeum), E1/381.1, p. 15 (she could tell Ngang was Vietnamese “[f]rom the physical and facial features”).

<sup>11530</sup> T. 2 Feb 2016 (MEAS Voeun), E1/386.1, pp. 101-102 (the witness was the Deputy Commander of RAK’s Division 1 and stated that even if they spoke Khmer fluently “the local villagers would know that they were ‘*Yuon*’. And they told us”).

<sup>11531</sup> T. 1 March 2016 (SIENG Chanthu), E1/394.1, pp. 15, 22 (“They did not do anything to search for Vietnamese since Khmer Rouge had known in advance that which family was half-blooded. [...] Cooperative chief was well aware that -- which families had link to Vietnamese origin. They knew clearly who was who in the village. As for my family, the chief of the cooperative knew it very well that my grandparents were ethnically Vietnamese. They did not need to ask us anymore as they already knew who we were.”); T. 7 December 2015 (SAO Sak), E1/363.1, p. 13 (“I knew those who had Vietnamese wives or Vietnamese husbands but in *Angkar* in the village chief, I think they may have done some statistics about the ethnicity of the villagers, that’s why people in the higher ranking, in the *Angkar*, they knew something about the ethnicity of the people in the village.”); T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 103 (“In fact, in villages and communes, the cadres and Khmer Rouge were aware of the activities that we were doing and who belonged to which families. They knew who was who clearly in the village. In fact, everyone knew everyone else in the village.”).

<sup>11532</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 67-68, 71-72. *See also*, KOR Len Interview Record, E3/9543, 29 April 2014, p. 15, ERN (En) 01067930 (“There in fact was a policy that designated a goal of killing the Vietnamese during the Khmer Rouge regime, but I learned of that policy when *Ta Maong*, Preah Netr District Committee, said that during a joint meeting in Wat Chob Veari Pagoda in 1976.”); EK (UL) Hoeun Interview Record, E3/9582, 19 March 2014, p. 7, ERN (En) 00983572 (“In 1976, every single Vietnamese national living in the district was swept clean. [...] Among the communes of Khpok Trabaek, Trapeang Thum Cheung, Trapeang Thum Tboung, Saraong, and Kus, Nhaeng Nhang, the commune chiefs mastered this task themselves: meaning the commune chiefs themselves arrested and took those *Yuon* to be killed according to district-level plans. *Ta Chay* carried out the order to kill the *Yuon* killed. *Ta Chay* received the orders from the Sector.”).

<sup>11533</sup> DK Report, E3/861, May 1978, ERN (En) 00184010-00184013; Tram Kak District Record, E3/2435, 26 April 1977, ERN (En) 00322141.

commune level and from there “to the higher up”.<sup>11534</sup> HENG Lai Heang specified that the screenings to identify the Vietnamese in Kratie district, Special Sector 505, at that time, were called “*chumrouen*” or census and required residents to write their biographies and list any people with Vietnamese origins.<sup>11535</sup> According to CHOEUING Yaing Chaet,<sup>11536</sup> the Khmer Rouge in 1975 looked at the village’s “*lan tay*” documents in Kampong Chhnang province, which consisted of family record books owned by Vietnamese only,<sup>11537</sup> “[s]o they knew who were Khmer and who were Vietnamese”.<sup>11538</sup>

3422. The Chamber further heard evidence of CPK cadres gathering information on the ethnicity of members of particular units. PRAK Doeun,<sup>11539</sup> who was moved to Ta Mov island in 1977, heard a member of his unit tell the CPK cadres that his wife was Vietnamese, and believes he told them this information in exchange for some food.<sup>11540</sup> CPK cadres then questioned him as to the ethnicity of his wife.<sup>11541</sup> Cadres also questioned PRAK Doeun as to whether there were any Vietnamese in his cooperative. When he replied that he was not aware of any, they stopped asking about it.<sup>11542</sup> The same information gathering took place in the military. PRUM Sarun, who was the chief of Platoon 1 (Sector 3) in Phnom Sampov commune, Banan district, Battambang province,<sup>11543</sup> was asked by the Battalion Chief whether there were any “*Yuon*” in his unit and told that, if there were, he needed to report them to the chief of the district so that the upper echelon could “handle” them, which meant have them killed.<sup>11544</sup> When

<sup>11534</sup> T. 19 Sept 2016 (HENG Lai Heang), E1/476.1, p. 71.

<sup>11535</sup> T. 19 Sept 2016 (HENG Lai Heang), E1/476.1, p. 68 (“Q. Do you know if there were orders that residents needed to write their biographies and if there were lists of people who had Vietnamese origins? A. Yes, there was. At that time they called it ‘*chumrouen*’ (phonetic) or census. Q. And what did this word ‘*chumrouen*’ (phonetic) mean? A. The word ‘*chumrouen*’ (phonetic) means to do the screening or gathering.”).

<sup>11536</sup> See below, para. 3469.

<sup>11537</sup> T. 7 December 2015 (CHOEUING Yaing Chaet), E1/363.1, p. 79.

<sup>11538</sup> T. 7 December 2015 (CHOEUING Yaing Chaet), E1/363.1, pp. 77-80, 82, 87-88; T. 8 December 2015 (CHOEUING Yaing Chaet), E1/364.1, pp. 26, 42.

<sup>11539</sup> See below, para. 3466.

<sup>11540</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 58, 61-62 (“They [CPK cadres] actually were aware of how many people were Vietnamese within one family. Q. Do you know how they were aware of who was Vietnamese? A. It was probably the information given from those who came from the unit and I recall there was a person called Comrade Chum (phonetic) who left the village and who said that this man married a Vietnamese wife [...] I heard him say that with my ears.”).

<sup>11541</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 59-60.

<sup>11542</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 96-97.

<sup>11543</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 58.

<sup>11544</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 57, 61-62. See also, CHHAO Chat Interview Record, E3/9562, 18 December 2014, p. 29, ERN (En) 01059963 (“Q: You have said that the Vietnamese in your unit were taken to be killed. [...] A207: That happened after the Southwest group arrived. They

PRUM Sarun responded that there were only Chinese and no “*Yuon*” in his unit, the Battalion Chief walked away.<sup>11545</sup>

3423. The Chamber is satisfied that, from 1975, the upper echelon ordered the identification of Vietnamese, as a result of which lists and biographies were prepared by the lower echelons and then communicated back to the upper echelons for further action.

### 13.3.6.3. *Matrilineal ethnicity*

3424. Families where only one parent was Vietnamese were also targeted. Witness HENG Lai Heang testified that “after the event in 1975”, “those who were half-blood Vietnamese had to be smashed”.<sup>11546</sup> Several witnesses and Civil Parties gave evidence that the CPK considered ethnicity to be matrilineal and therefore, in mixed families, targeted children with Vietnamese mothers. Where instead the father was Vietnamese, only he would be targeted and the children would be spared.<sup>11547</sup>

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researched people’s biographies to find the Vietnamese, and when they discovered someone was Vietnamese, they would take them to be killed.”)

<sup>11545</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 62-63.

<sup>11546</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 32-33, 67-68. *See also*, SAOY Yen Interview Record, E3/9801, 8 May 2015, p. 5, ERN (En) 01111933 (“They [the Khmer Rouge cadres] stated repeatedly that when a tree is cut its roots must also be uprooted. [...] They stated that the Vietnamese had to be uprooted completely.”); DK Report, E3/863, 17 May 1978, p. 2, ERN (En) 00321962 (RUOS Nhim requests instructions from Office 870 on how to deal with “*Yuons* with Khmer spouses and the half-breed [Khmer-*Yuon*]?” The report states that they are generally “scared of the situation and worried about their fate, but there is not yet any sign of opposing activities. If any of them make some [suspicious] activities, we will decide to take them out.”).

<sup>11547</sup> T. 19 Sept 2016 (HENG Lai Heang), E1/476.1, p. 70 (“During that period of time, only half-blood Vietnamese people were smashed. For example, if the mother was Vietnamese the mother would be arrested and smashed and later on the half-blood children were arrested and then half-blood grandchildren were also arrested. [...] Q. So if I understand you correctly, in some families, insofar as there would be one grandparent who was of Vietnamese origin, the rest of the lineage would be eliminated. Is that what you are telling the Chamber? A. Yes. Q. In those families was the spouse who was ethnically Cambodian also a victim of measures of elimination, or was the spouse was of Khmer origin spared? A. Yes.”); T. 25 January 2016 (DOUNG Oeurn), E1/381.1, p. 31 (“The child was not arrested since the child was the offspring of Cambodian mother; only the father was taken. If the mother was a genuine Khmer, the child would be spared. [...] The Vietnamese would be taken away, all of them would not be spared in that regime. Since my child belonged to a Cambodian mother, only the husband was taken away.”); T. 14 December 2015 (SIN Chhem), E1/367.1, p. 26 (“For those who had Vietnamese wives and children, their wives were taken away to be killed. I felt pity for them; at least they should have kept their children alive. It was extremely callous. [...] Their children were also taken away to be killed. It was so brutal.”); T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 7 (“It was known by the Khmer Rouge. And the saying and policy of the Khmer Rouge was fully known by the grassroots that, ‘To dig up grass, one must dig up the roots.’ So when the Vietnamese mother and children were taken, their grandchildren and great grandchildren were considered Vietnamese, KGB agents, and they would be taken as well. I knew this clearly because I witnessed it and I observed it myself.”); T. 20 January 2016 (LACH Kry), E1/379.1, pp. 75-76. *See also*, T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 92-93;

3425. UCH Sunlay stated that the policy of the Khmer Rouge was to “dig up the roots” and therefore if a Vietnamese mother was taken, so were her children and grandchildren.<sup>11548</sup> As a result, UCH Sunlay’s Vietnamese wife and three children were killed during the DK period.<sup>11549</sup> Similarly, LACH Kry reported that it was “widely known to villagers” that “[i]f the husband was Khmer and the wife was Vietnamese, she together with the children were taken away. If the husband was Vietnamese and the wife was Khmer, only the husband was taken, not a single child was taken.”<sup>11550</sup> As for the fate of the children with Vietnamese mothers, SIN Chhem explained that it was announced at meetings and “people talked about” how the children of mixed-marriages who were fed by a Vietnamese mother “would not be kept alive; they must be killed; if they had two children both of them had to be taken away and killed; only the father was kept alive”.<sup>11551</sup> She also stated that: “It was so brutal. No child was spared. They said that if they kept any child alive he or she would grow up a Vietnamese descent.”<sup>11552</sup> THANG Phal testified that “the work of *Angkar*” was such that “it was believed that if the mother was Vietnamese then the children would also be Vietnamese” and would thereby “be taken away, as well. However, if the father was Vietnamese and the mother was Khmer then the children would not be taken away.”<sup>11553</sup>

3426. Contemporaneous documentary evidence shows that the Vietnamese and their mixed families were kept under surveillance despite them not having “yet” partaken in any “opposing activities”. They were suspected to have the potential of conducting “suspicious activities” based solely on their affiliation with the Vietnamese ethnicity. *Angkar* would ultimately decide their fate.<sup>11554</sup>

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BOU Van DC-Cam interview, E3/7498, ERN (En) 00884966; CHAN Kea Interview Record, E3/7525, 30 August 2005, pp. 41-42, ERN (En) 00885014-00885015.

<sup>11548</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 7-8. *See also*, T. 15 March 2016 (Alexander HINTON), E1/402.1, pp. 10-11; SAOY Yen Interview Record, E3/9801, 8 May 2015, p. 5, ERN (En) 01111933 (“The Khmer Rouge cadres stated their hatred of the ethnic Vietnamese. They stated that they would do everything they could to rid of the Vietnamese. They stated repeatedly that when a tree is cut its roots must also be uprooted.”).

<sup>11549</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 6-8. For evidence of children of a Cambodian mother spared, while the Vietnamese father was killed, *see* T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 30-31, 37-38; T. 6 January 2016 (THANG Phal), E1/371.1, pp. 47-48; T. 20 January 2016 (LACH Kry), E1/379.1, pp. 83-84; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 76.

<sup>11550</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 76.

<sup>11551</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 28-29. The witness did not attend these meetings herself. *See* T. 14 December 2015 (SIN Chhem), E1/367.1, p. 28.

<sup>11552</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, p. 26.

<sup>11553</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 53, 56.

<sup>11554</sup> DK Report, E3/863, 17 May 1978, p. 2, ERN (En) 00321962.

3427. The KHIEU Samphan Defence noted three instances where children of a Vietnamese mother were not targeted,<sup>11555</sup> or where children of a Vietnamese father were targeted,<sup>11556</sup> which purportedly cast doubt on the existence of a matrilineal policy. None of the other parties addressed this issue. Considering the compelling evidence set out above, the Chamber finds that these isolated events do not call into question the existence of the CPK policy targeting mixed families based on matrilineal ethnicity.

3428. The Chamber is satisfied that, from 1975, the CPK considered the Vietnamese ethnicity to be matrilineal and, as a result, targeted in mixed families Vietnamese mothers and their children while sparing Khmer fathers, as well as targeting Vietnamese fathers while sparing Khmer mothers and children.

### 13.3.7. *Movement of Vietnamese Civilians from Cambodia to Vietnam*

3429. The Closing Order finds that the CPK policy of expelling all Vietnamese people from Cambodia and sending them to Vietnam started in 1973 and was further implemented in 1975 and 1976, in Prey Veng, Svay Rieng and throughout Cambodia.<sup>11557</sup> It charges the Accused with the deportation of a large number of Vietnamese from Prey Veng and Svay Rieng in 1975 and 1976.<sup>11558</sup> The KHIEU Samphan Defence does not address the substance of these allegations, on the basis that the Chamber was not properly seised of deportation. The NUON Chea Defence submits that any return of Vietnamese to Vietnam was voluntary; that elements of the crime have not been established, namely their lawful presence on Cambodian territory and the absence of a legitimate justification for their removal;<sup>11559</sup> and more generally that the evidence presented was vague and unsubstantiated.<sup>11560</sup>

<sup>11555</sup> KHIEU Samphan Closing Brief, paras 1994, 2196, 2197.

<sup>11556</sup> KHIEU Samphan Closing Brief, paras 1997-1998.

<sup>11557</sup> Closing Order, para. 794.

<sup>11558</sup> Closing Order, paras 1397-1398.

<sup>11559</sup> T. 19 June 2017 (Closing Statements), E1/524.1, pp. 33-34; T. 20 June 2017 (Closing Statements), E1/525.1, pp. 42-45.

<sup>11560</sup> NUON Chea Closing Brief, paras 813-822.

13.3.7.1. Prey Veng province

3430. SAO Sak lived in Anlung Trea village, Preaek Chrey commune, Peam Ro district (Sector 24) her entire life and her mother was “half-blood Vietnamese”.<sup>11561</sup> She testified that “[f]rom 1969 to 1971, there were Vietnamese living sporadically in Lvea Aem [*sic*] district, however there were only a few living in Prey Veng and later on they all had been evacuated”.<sup>11562</sup> She directly witnessed the Vietnamese living in Anlung Trea village, Preaek Chrey commune, Kampong Leav district, Prey Veng province being gathered and “evacuated to the lower part”, with mixed families being gathered “continuously and they were sent by boats”.<sup>11563</sup> She did not know where they were sent to and did not know what happened to these persons outside her village, but heard from fellow villagers that those people were evacuated to Vietnam, because the Vietnamese were not allowed to live in Cambodia.<sup>11564</sup> EM Bunnim’s statement to the Co-Investigating Judges adds that the Vietnamese in Anlung Trea village were told by the civil authorities of the village and commune to go back to Vietnam, and he himself witnessed them leaving by boat from Anlung Trea village to Neak Loeung.<sup>11565</sup> BUN Reun’s statement to the Co-Investigating Judges further mentions one Vietnamese child being summoned by the village chief of Anlung Trea village and on the same day, the son of Voeun, “being arrested, put in a boat, and taken away”.<sup>11566</sup> BUN Reun indicates

<sup>11561</sup> T. 3 December 2015 (SAO Sak), E1/362.1, pp. 75-76, 80. *See also*, Combined Statistics in Country Construction in Dual Sector (23-24), E3/8390, undated, ERN (En) 00721017 (listing statistics from Peam Ro district).

<sup>11562</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 78.

<sup>11563</sup> T. 3 December 2015 (SAO Sak), E1/362.1, pp. 89-90 (“I saw [the Vietnamese] being gathered and they were evacuated to the lower part. As for those who were from the mixed families, they actually were gathered up continuously and they were sent by boats. So for the mixed families, usually they would be sent one family at a time and they kept disappearing”).

<sup>11564</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 90 (“I did not know, I only heard that they were being sent back to Vietnam. I did not know where they had been sent to.”); T. 3 December 2015 (SAO Sak), E1/363.1, pp. 16-18 (SAO Sak confirmed knowing that people were sent back to their home country from other villagers (“I heard from my fellow villagers that those people were evacuated to their home country, Vietnam, because the Vietnamese were not allowed to live in Cambodia that’s what I heard from fellow villagers”), 19 (She did not know what happened to Vietnamese outside her village).

<sup>11565</sup> EM Bunnim Interview Record, E3/7760, 4 April 2009, p. 3, ERN (En) 00322930 (“After the Khmer Rouge won [the war] in 1975 the Vietnamese people who had been living in Anlung Trea village (for a long time ago), were told by the civil authorities of the village and the commune to go back to Vietnam. I saw with my own eyes those Vietnamese people rode in the boats from Anlung village down to Neak Loeung”).

<sup>11566</sup> BUN Reun Interview Record, E3/7811, 15 January 2009, pp. 2-3, ERN (En) 00282553-00282554 (BUN Reun was the messenger for the village chief of Anlung Trea from 1975 to 1979 and explained being instructed to send the son of a Vietnamese villager to the village chief, but he did not follow this order as the boy was crying. He also witnessed the son of Voeun who was 7-8 years old being arrested, put in a boat and taken away).



that he learned of the transport of Vietnamese to Vietnam “through villagers and through [his] personal observation”.<sup>11567</sup>

3431. From 1975, DOUNG Oeurn who was living in Pou Chentam village, Svay Antor commune, Prey Veng district, Prey Veng province, heard that the Vietnamese living in her area had to return to Vietnam and that Ta Ki, *Yeay* Min and their children did.<sup>11568</sup> The manner in which this return occurred, however, was not further explored in court.

3432. Evidence suggests that an announcement was made in late 1975 by Ta Muon and Sin, the chiefs of Angkor Yos village, Preaek Anteah, Prey Veng district, Prey Veng province, that *Angkar* needed to send Vietnamese back to Vietnam and that subsequently many families, including Hong’s family left by boat under the supervision of Khmer Rouge cadres. They went to K’am Samnar on the Cambodian-Vietnamese border in Leuk Daek district of Sector 25, where “the Vietnamese side came to receive over these ethnic Vietnamese”. Hong’s family eventually had to go back as his family was declared to be Khmer.<sup>11569</sup> Even though this results from an annex to a Civil Party Application and therefore bears very limited probative value, the Chamber finds that this corroborates the existence of a pattern of displacements of Vietnamese in Prey Veng province in 1975.

3433. The Chamber is satisfied that Vietnamese living in Prey Veng province were ordered to go to Vietnam and that such events took place from 1975. The evidence regarding the displacement of entire Vietnamese families living in Prey Veng province, and their subsequent transportation by boats is consistent with the evidence put before the Chamber concerning a nationwide pattern of expulsion of all people of Vietnamese ethnicity living in Cambodia from mid-1975 to the end of 1976.

3434. Indeed, as outlined above, with the start of bilateral discussions between

<sup>11567</sup> BUN Reun Interview Record, E3/7811, 15 January 2009, ERN (En) 00282554.

<sup>11568</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 5, 7, 10-11 (“During the Khmer Rouge regime starting from 1975, did you hear or receive any information that Vietnamese who were living in Cambodia or in your area had to return to Vietnam? A. Yes. And in fact, I urged my husband to go together, but he refused to go. He said to live or to die, he would remain in Cambodia”); T. 25 January 2016 (DOUNG Oeurn), E1/381.1, p. 11 (“Q. And did you know if there were any Vietnamese families that returned to Vietnam after the announcement was made for Vietnamese to return to Vietnam? Did you know any? A. Yes. There were *Ta* Ki and *Yeay* Min and their children. The whole family actually went to Vietnam. And the man actually returned to Cambodia and, later on, he died.”).

<sup>11569</sup> PEOU Hong Civil Party Application Annex, E3/7165a, 14 November 2007, ERN (En) 00824527.

Cambodia and Vietnam in June 1975, a policy aimed at deporting ethnic Vietnamese to Vietnam was implemented with some participation from Vietnamese authorities.<sup>11570</sup> Evidence of such implementation was given by former CPK cadre who testified in court,<sup>11571</sup> Civil Parties who lived in other parts of Cambodia at that time, especially around the Tonlé Sap lake where numerous Vietnamese families lived at the time, and who pointed out that Khmer spouse of mixed families had to stay in Cambodia,<sup>11572</sup> as

<sup>11570</sup> See above, para. 3386.

<sup>11571</sup> T. 6 July 2015 (TOIT Thoeurn), F1/3.1, pp. 7, 19, 112-113 (TOIT Thoeurn, the foster son of the Northwest Zone Secretary RUOS Nhim, testified before the Supreme Court Chamber during appeal proceedings in Case 002/01 and stated that before he was sent to study in China from January 1976, he “escorted Vietnamese people to return to Vietnam”. He clarified that people were transported by boat from Battambang through Tonlé Sap river and that, before handing over Vietnamese people to Vietnamese authorities, he stopped at Phnom Penh where he met Pang who gave him a letter); T. 26 January 2016 (PRUM Sarat), E1/382.1, pp. 52-53, 71-72 (Similarly, PRUM Sarat, Commander of Regiment 140 in Division 164, testified that “another deportation [of the Vietnamese] took place in 1975 or 1976” and that “the deportation [was] made in the name of the government of Democratic Kampuchea”). See also, SUM Alat Interview Record, E3/4637, 10 June 2008, p. 4, ERN (En) 00422125 (Khmer Rouge gathered the Vietnamese and transported them by boats through Tonlé Sap and had them returned home. Other Vietnamese did not go back because they had Cambodian spouses. Later in 1977 the Khmer Rouge searched for and took them away for execution).

<sup>11572</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 6, 32-33 73-74, 86, 98; VEN Van Interview record, E3/9780, 27 February 2014, pp. 2-10, ERN (En) 00986175-00986183 (In 1975 this Civil Party lived in Bakan district, Pursat province, he is Khmer and his wife was Vietnamese. They had six children. In 1975 Vietnamese people from Phnum Kravanh district up to Pursat town and Krakor district were gathered. He estimated that one hundred thousand Vietnamese people were sent back to Vietnam. His wife, his children and his family in law were asked to go to Vietnam but they decided to stay as the Khmer Rouge refused to let him go. In 1977 his wife and other Vietnamese people were sent at Phum Veal security centre and were killed at Tuol Kakaoh); TROENG Yang Interview Record, E3/5588, 15 December 2009, ERN (En) 00421059-00421063 (This Civil Party of Vietnamese ethnicity lived in Baribo district, Kampong Chhnang province. He was a fisherman and at the end of 1975 he was transferred to Kep mountain to work at a dam construction site. Later on lot of Vietnamese people were gathered at the river front. Boats were brought in and they were asked to go back to Vietnam. He heard that they were repatriated in exchange for salt); DOU Yang Aun Interview Record, E3/5587, 15 December 2009, ERN (En) 00426465-00426467 (This Civil Party of Vietnamese ethnicity lived in Kampong Leang district, Kampong Chhnang province. At a meeting the commune chief announced that Vietnamese people were taken by boat to Vietnam back to their country. People walked to the river bank and went on 7 or 8 ferries, with roughly 200 people transported in each ferry. The people who were placed in the lower floor suffocated to death along the way. On the ferries there were Khmer Rouge in black clothes with a cap who were armed. When they arrived at the border he saw a Vietnamese official named NGUYEN Gia Dang who told him that they were exchanged with salt. Khmer spouses were not accepted and Vietnamese officials were stricter than the Khmer Rouge); EAR Sophal Interview Record, E3/5238, 13 January 2009, pp. 4-5, ERN (En) 00270671-00270672 (the Civil Party states that late 1975, the Vietnamese authorities were asking their citizens to return to Vietnam and his family succeeded in leaving Democratic Kampuchea in 1976. His mother had a language test in Koh Dach); T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 34, 39, 41-42, 57-60, CHOEUNG Yaing Chaet Civil Party Supplementary Statement, E3/5631, 21 December 2010, pp. 1-2, ERN (En) 00678292-93 (This civil party of Vietnamese ethnicity lived in Kampong Leang district, Kampong Chhnang province, after having witnessed and survived to the killings of his family in Dar commune, Kep mountain in April or March 1975, he joined other Vietnamese and went to Vietnam by boat in June or July 1975. He saw many ferries going to Vietnam. On the way they stopped three days at Neak Loeung, where Vietnamese arrived in large boats and traded rice and salt with the Khmer rouge). See also, PHAI Srung Civil Party Supplementary Statement, E3/5634, 22 November 2010, ERN (En) 000678299-00678300 (PHAI Srung lived in Phnum Kuk, Baribour district, Kampong Chhnang province. In July 1975 all Vietnamese people in Baribour district had to be transferred down to the port at Kampong Leang district. There, many

well as documentary evidence.<sup>11573</sup>

3435. The Chamber has also found that a large number of Vietnamese were expelled from Tram Kak district in 1975 and 1976 and sent to Vietnam.<sup>11574</sup>

3436. In light of the above, and considering the existing nationwide policy to expel Vietnamese from Cambodia, the Chamber is satisfied that the removal of Vietnamese had been witnessed from 1975 in Prey Veng province, that the overall environment in Prey Veng was coercive and that the Vietnamese people involved lacked any genuine choice in leaving the country. The Chamber is therefore satisfied that the only reasonable inference which can be drawn from the gathering, removal and departure by

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Vietnamese people including from Kep Mountain (district 16) had to go by boat to the border. All the people who were ill, died along the way. They passed by Phnom Penh. There were seven or eight Khmer Rouge cadre on his boat. At the border anyone who was Khmer or Chinese had to stay, specifically Khmer men who had Vietnamese wives were stopped. Language was used to identify Vietnamese and Khmer people. There was an allegation that Vietnamese people were traded for salt); LE Yang Sour Civil Party Supplementary Statement, E3/4574, 21 December 2010, ERN (En) 00678172 (this Civil Party of Vietnamese ethnicity lived in Kampong Leang district, Kampong Chhnang province where he was a fisherman. Four months after the Khmer Rouge entered in his village all Vietnamese families were forcibly transferred to the waterfront. Vietnamese were selected on the basis of facial characteristics and language. The children from mixed families who spoke Khmer fluently remained in Cambodia, all others, including himself, were sent to Vietnam by boat); NGUYEN Thi Tyet Civil Party Application, E3/4731, 5 December 2008, pp. 3, 6-7, ERN (En) 00464744, 00464747-00464748 (Civil Party lived in Kampong Leang district, Kampong Chhnang province. In 1975, 28 people of her family were taken away to be killed by the Khmer Rouge. In August 1975, she went back to Vietnam by boat, and she heard that Vietnam brought in salt in exchange for the release of Vietnamese people); NGVIENG Yang An Civil Party Supplementary Statement, E3/5633, 22 December 2010, ERN (En) 00678296-00678298 (This Civil Party of Vietnamese ethnicity lived in Kampong Leang district, Kampong Chhnang province where he was a fisherman. In April 1975, he was first transferred with 250 families to Dar mountain. Three months later he was asked to attend a meeting at Kampong Boeung and he was then forced to join many other Vietnamese people on a ferry. When they arrived at the border he saw Vietnamese government officials exchanging people for rice, one person equalling 20 kilograms of rice); NGVIENG Yang An Civil Party Application, undated, E3/6696, pp. 1-2, ERN (En) 01069328-01069329; NEOU Sarem Interview by VOA, E3/6934, 30 December 2008, p. 11, ERN (En) 01003411 (The Civil Party had a training with KHIEU Samphan where he talked about the “solution toward *Yuon* (Vietnamese people) in Kampuchea”. The civil party adds “Khieu Samphan said that all people in Kampuchea had to do farming. Those who did not know how to do farming, especially the Vietnamese, would be sent back to Vietnam. So the Khmer Rouge had prepared a plan to send the Vietnamese back to Vietnam. They prepared food and sent them back by boats. Khieu Samphan said this problem would be solved easily”).

<sup>11573</sup> Revolutionary Flag, E3/759, April 1976, pp. 5-6, ERN (En) 00517853-00517854 (discussing in general terms having swept clean “hundreds of thousands” of foreigners and having “expelled” them out the country. The Chamber recalls that the only reasonable interpretation to this reference to “foreigners” referred to Vietnamese previously present in Cambodia. See above, paras 3387-3388); Kraing Ta Chan Security Centre Notebook, E3/5827, undated, pp. 6-7, ERN (En) 00866429-00866430 (the note on detainee ING Try states that “In January 1976 *Angkar* rounded the *Yuon* [Vietnamese] people and sent them back to Vietnam. [...] At that time *Angkar* transported him, his brother and father by truck to Phnom Den. The *Yuon* came to receive those Vietnamese families at Phnom Den, but they accepted only those of pure ethnic *Yuon* [Vietnamese]”).

<sup>11574</sup> See also, Section 10.1.10: Tram Kak Cooperatives: Treatment of the Vietnamese.

boat of Vietnamese in Prey Veng province from 1975 is that at least a significant number of them were transported to Vietnam and were forced to cross the border.

### 13.3.7.2. Svay Rieng province

3437. The Chamber heard evidence from Witness UNG Sam Ean indicating that, after 1975, four to five Vietnamese families living within a kilometre of Kraham Ka village, Chantrei subdistrict, Romeas Haek district, were “chased away to return to their country”.<sup>11575</sup> However, the witness could not recall the exact date and could not indicate what happened to these families,<sup>11576</sup> and later contradicted herself in stating that the arrest happened before the fall of Phnom Penh.<sup>11577</sup> Further, the Civil Party gave inconsistent answers as to the details of the arrest of the Vietnamese families, including their children, and as to whether she personally witnessed them being taken away.<sup>11578</sup> However, she consistently testified that she no longer saw any of the members of these families with Vietnamese links.<sup>11579</sup>

3438. Evidence shows that in 1975, in Leakreacha village, Chak subdistrict, Rumduol district, ethnic Vietnamese who had lived there for generations were sent back to Vietnam.<sup>11580</sup> KHOEM Samon told OCIJ investigators that she knew a girl named Kun who was sent back with her family to her country.<sup>11581</sup>

3439. In light of the above, and recalling the Chamber’s findings on the existence of a nationwide policy to expel Vietnamese and on specific instances of forced

<sup>11575</sup> T. 11 December 2015 (UNG Sam Ean), E1/366.1, pp. 38-40; UNG Ian Interview Record, E3/7796, 11 December 2008, pp. 1-2, ERN (En) 00268644-002686445.

<sup>11576</sup> T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 39 (“I only noticed that they disappeared from the village and I did not know where they went or whether they returned to their country”). *See also*, T. 11 December 2015 (UNG Sam Ean), E1/366.1, pp. 40-41 (the witness refers to the families being “arrested and taken away” and later on to children being “taken to a mobile unit”).

<sup>11577</sup> T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 50.

<sup>11578</sup> T. 11 December 2015 (UNG Sam Ean), E1/366.1, pp. 39 (“Q. Do you know whether those Vietnamese people were arrested and taken away? A. No, I don’t.”), 40 (“Q. Did you witness the arrest? A. I witnessed it, that’s why I said it; if I did not see it, I would not say it.”), 42-43 (“Q. My question is about the parents of those children who were taken away. Were they sent somewhere? A. No, they were not. They remained living in their houses.”), 43 (“Q. Does it mean you did not know about the fate of the parents of those mixed-race children? Am I correct? A. No, I did not know about their fate.”), 50 (“Q. So how do you know then that some Vietnamese had been chased out of the village and sent back to their country? How did you learn that? Is this something that people talked about in the village? A. Villagers living close to my house mentioned about that”).

<sup>11579</sup> *See e.g.*, T. 11 December 2015 (UNG Sam Ean), E1/366.1, pp. 39-43; UNG Ian Interview Record, E3/7796, 11 December 2008, p. 2, ERN (En) 00268645.

<sup>11580</sup> KHOEM Samon Interview Record, E3/5260, 11 December 2008, pp. 1-2, ERN (En) 00327159-00327160.

<sup>11581</sup> KHOEM Samon Interview Record, E3/5260, 11 December 2008, p. 2, ERN (En) 00327160.

displacements in the neighbouring province of Prey Veng, the Chamber finds that it is very likely that some Vietnamese people were deported from Svay Rieng to Vietnam. However, considering the inconsistencies in UNG Sam Ean's account and the fact that KHOEM Samon's evidence on this matter was limited to only one case, which could not be fully explored as the Parties did not have the opportunity to question this witness in court, the Chamber finds that the removal of Vietnamese had been witnessed in 1975 in Svay Rieng province. The available evidence, however, does not meet the required standard to establish specific instances of forcible displacements of Vietnamese across the border to Vietnam beyond reasonable doubt in Svay Rieng province from 1975.

#### 13.3.7.3. *Tram Kak district*

3440. The charge of deportation of Vietnamese in Tram Kak district is dealt with under the relevant section of this Judgement.<sup>11582</sup>

#### 13.3.8. *Killing of Vietnamese Civilians in Prey Veng and Svay Rieng Provinces*

3441. The Closing Order finds that waves of killings of Vietnamese civilians occurred in Prey Veng and Svay Rieng provinces in the East Zone from April 1977.<sup>11583</sup> It further finds that the killing of Vietnamese civilians was "organised as a national policy", and occurred "throughout Cambodia", including a mass execution at Wat Khsach in mid-to-late 1978.<sup>11584</sup>

##### 13.3.8.1. *Prey Veng province*

3442. In 1978 or 1979, SAO Sak's mother, who was then in charge of taking care of babies and children at the cooperative, was called into a meeting at Krasar Pha'eul village in the southeast of Anlong Trea village where she went with SAO Sak's daughter.<sup>11585</sup> A militiaman named Khon informed SAO Sak that her mother was detained and she learned that "[a]nyone who was related to Vietnamese origin would be taken away and killed".<sup>11586</sup> The source of this information has not been identified.

<sup>11582</sup> Section 10.1.10: Tram Kak Cooperatives: Treatment of the Vietnamese.

<sup>11583</sup> Closing Order, paras 214, 797, 1378.

<sup>11584</sup> Closing Order, paras 802-803.

<sup>11585</sup> T. 3 December 2015 (SAO Sak), E1/362.1, pp. 81-82, 85.

<sup>11586</sup> T. 3 December 2015 (SAO Sak), E1/362.1, pp. 82-83.

She heard from other villagers that “the Vietnamese were not allowed to live in Cambodia”.<sup>11587</sup> She went to visit her mother in Krasar Pha’eul village to get her daughter back.<sup>11588</sup> In doing so, her mother told her not to think of her since she was getting old, and SAO Sak realised then that she would be taken away and killed.<sup>11589</sup> That is the last time SAO Sak saw her mother; she never heard anything about her again, even after the war ended.<sup>11590</sup> She said others in her village with Vietnamese links also disappeared and never returned but she did not know where they were taken.<sup>11591</sup> She believed that the village chief made statistics or reports about the ethnicity of the villagers and that is how the higher ranks in the *Angkar* knew who was ethnic Khmer. However, she did not know of statistics about ethnic Vietnamese.<sup>11592</sup>

3443. The Chamber notes that SAO Sak also affirmed in her previous statement made before the Co-Investigating Judges, as well as testified in court that after the arrest of her mother, she was herself called to attend a meeting at Wat Anlong Trea and then she was sent to Ang (or Angkor Ang) village, near Chheu Kach mountain in Ba Phnom district, where she was detained for 10 or 12 days with her three children. There she was asked the ethnicity and the previous occupation of her father and she answered that he was Khmer and a villager. She further stated that she “recognised that if the father or the mother was Vietnamese the children were taken away and killed” and she added that she “don’t know why [she] got to return home”.<sup>11593</sup>

3444. Noting that SAO Sak’s mother was of Vietnamese ethnicity and that SAO Sak and her children were nonetheless spared and allowed to return to their home, the Chamber finds that they benefited from an exception to the nationwide policy to kill Vietnamese living in Cambodia at the time. Though the final fate of the mother remains unknown, it cannot be ruled out that while she was arrested and disappeared, she eventually also benefited from a similar exception. Therefore, a finding about her death as a consequence of this policy cannot be made to the requisite standard.

<sup>11587</sup> T. 7 December 2015 (SAO Sak), E1/363.1, p. 17.

<sup>11588</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 83.

<sup>11589</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 83.

<sup>11590</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 85.

<sup>11591</sup> T. 3 December 2015 (SAO Sak), E1/362.1, p. 89. *See also*, T. 7 December 2015 (SAO Sak), E1/363.1, pp. 4-9.

<sup>11592</sup> T. 7 December 2015 (SAO Sak), E1/363.1, pp. 13-14.

<sup>11593</sup> T. 3 December 2015 (SAO Sak), E1/362.1, pp. 86-88; SAO Sak Interview Record, E3/7780, 14 October 2008, p. 3, ERN (En) 00235512.

3445. In Pou Chentam village, Svay Antor commune, Prey Veng district (Sector 20), there were three families with Vietnamese members living there in 1975.<sup>11594</sup> All three families were from mixed marriages, with one spouse being Khmer and the other being Vietnamese. The three Vietnamese spouses were named Van Ngang, Chuy, and San (the wife of LACH Ny).<sup>11595</sup> LACH Ny's brother, LACH Kry, and Chuy's wife, DOUNG Oeurn, gave evidence in Case 002/02.<sup>11596</sup> DOUNG Oeurn stated that her husband Chuy was taken away to cut *rumpeak* vine and he "simply disappeared".<sup>11597</sup> Although DOUNG Oeurn did not witness her husband being walked away, she said her mother was present and told her he was taken from his house by one person saying he would be back soon, but he "never returned".<sup>11598</sup> According to THANG Phal, who was also from Pou Chentam village, people were saying that "the Vietnamese including Chuy and LACH Ny's wife had been taken away for a study session".<sup>11599</sup>

3446. LACH Kry stated that San, his sister-in-law, and her four children were arrested in November 1977, placed on a horse cart and taken away.<sup>11600</sup> LACH Kry was harvesting rice nearby with 20 others including his brother LACH Ny when they saw three militiamen, including Ngoy, the chief of security in Svay Antor, call out for San to take her to a study session.<sup>11601</sup> LACH Ny fainted upon witnessing his wife and children getting arrested.<sup>11602</sup> Their eldest daughter was working about two kilometres away and "the militiaman went to fetch her after them".<sup>11603</sup> LACH Kry said he later spoke to the driver of the horse cart and he told him that San and her children were taken to Trapeang Pring forest where two security guards received them.<sup>11604</sup> LACH

<sup>11594</sup> T. 5 January 2016 (THANG Phal), E1/370.1, pp. 80, 89, 94; T. 20 January 2016 (LACH Kry), E1/379.1, pp. 54, 61.

<sup>11595</sup> T. 5 January 2016 (THANG Phal), E1/370.1, pp. 92, 94-96; T. 20 January 2016 (LACH Kry), E1/379.1, pp. 59-61 ("What was her (LACH Ny's wife) name? A. Sam San (phonetic) was her name. [...] Q. Can you provide more detail to the Court regarding these three Vietnamese families and who was of Vietnamese origin within these families? A. One was Wan (phonetic) Ngang, the father and mother were Vietnamese; and the second family was Chuy, who had a wife who was Khmer; and third was the wife of my brother, Lach Ny.").

<sup>11596</sup> T. 20 January 2016 (LACH Kry), E1/379.1, pp. 57-60; T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 8-10.

<sup>11597</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 11-12, 28-29, 59-60.

<sup>11598</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 12-13.

<sup>11599</sup> T. 6 January 2016 (THANG Phal), E1/371.1, p. 62.

<sup>11600</sup> T. 20 January 2016 (LACH Kry), E1/379.1, pp. 64-65.

<sup>11601</sup> T. 20 January 2016 (LACH Kry), E1/379.1, pp. 64-66.

<sup>11602</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 66.

<sup>11603</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 65.

<sup>11604</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 69.

Kry and his brother never saw them again.<sup>11605</sup> DOUNG Oeurn also gave evidence that she never saw them since that day.<sup>11606</sup> THANG Phal also testified that LACH Ny's wife and children "disappeared ever since after it was said that they had been taken away for a study session".<sup>11607</sup> He heard from villagers that LACH Ny's wife and Chuy "had been transferred by a horse cart toward the east direction to be killed" and that "Vietnamese had been gathered, taken away and executed".<sup>11608</sup>

3447. Upon hearing this, THANG Phal realised that Ngang could have been killed as well since he had also "just disappeared".<sup>11609</sup> Indeed, THANG Phal testified to having worked in a unit with Ngang cutting *rumpeak* vine but when the Deputy Village Chief called the unit back to the village around late 1976, Ngang was ordered to stay behind.<sup>11610</sup> This is corroborated by DOUNG Oeurn's evidence that Ngang was taken to cut *rumpeak* vine and that he "disappeared from that time onwards. He never returned."<sup>11611</sup> Likewise, LACH Kry gave evidence that he no longer saw Ngang in the village after he "disappeared".<sup>11612</sup> Ngang's wife was Khmer and they had two children, all of whom are still alive today.<sup>11613</sup>

3448. THANG Phal testified that "the work of *Angkar*" was such that "it was believed that if the mother was Vietnamese then the children would also be Vietnamese" and would thereby "be taken away, as well. However, if the father was Vietnamese and the mother was Khmer then the children would not be taken away."<sup>11614</sup> According to

<sup>11605</sup> T. 20 January 2016 (LACH Kry), E1/379.1, pp. 69, 89.

<sup>11606</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 38-39.

<sup>11607</sup> T. 6 January 2016 (THANG Phal), E1/371.1, p. 56.

<sup>11608</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 44-45. *See also*, SIN Sun Interview Record, E3/9339, 23 September 2008, p. 3, ERN (En) 00234115; IENG On Interview Record, E3/9352, 16 September 2008, p. 3, ERN (En) 00231660.

<sup>11609</sup> T. 6 January 2016 (THANG Phal), E1/371.1, p. 44.

<sup>11610</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 41-44. LACH Kry testified that Ngang's arrest happened first, in late 1975, perhaps December or November. *See* T. 20 January 2016 (LACH Kry), E1/379.1, pp. 93, 100. *See also*, T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 14, 16 (DOUNG Oeurn could not recall the date but remembered that "Ngang had been taken away first to cut 'rumpeak vine'. Ngang disappeared from that time onwards. He never returned" and "Ngang was the first one who was taken away, and then LACH Ny. And my husband was the last one who was taken away.").

<sup>11611</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, p. 14.

<sup>11612</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 73.

<sup>11613</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 37-38 ("Ngang's wife was not taken away. She is living. As of now, I do not know her place of residence. She's living in a different location now"); T. 6 January 2016 (THANG Phal), E1/371.1, pp. 47-48 ("At the time when their father was taken away and killed, they were not harmed and are still staying in the same house"); T. 20 January 2016 (LACH Kry), E1/379.1, p. 84 (Ngang's wife went to live in Siem Reap and LACH Kry does "not know about their condition now").

<sup>11614</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 53, 56.



LACH Kry, this was “widely known” by villagers.<sup>11615</sup> Similarly, when DOUNG Oeurn was asked why San’s children were also taken away she responded: “the children were taken away because the mother was ethnically Vietnamese and they would not spare even a single child”.<sup>11616</sup> Although DOUNG Oeurn is Khmer, she feared that her daughter, who was named KIM Va, a Vietnamese surname, might be taken away as was her Vietnamese father, so she renamed her “Kamean”.<sup>11617</sup> Kamean was not taken away.<sup>11618</sup>

3449. There was no specific discrimination against Vietnamese families in Pou Chentam before they were taken away.<sup>11619</sup> no specific meetings dealing with people of Vietnamese ethnicity were held ahead of the transfers or arrests,<sup>11620</sup> and the witnesses did not know the reason why these families had been taken away.<sup>11621</sup>

3450. The Chamber notes that the LACH Kry, THANG Pal, and DOUNG Oeurn do not fully corroborate each other’s testimony on the dates and the sequence of these events. LACH Kry testified that Chuy’s arrest happened late 1976, almost one year after Ngang’s arrest, thus placing Ngang’s arrest late 1975.<sup>11622</sup> THANG Phal places Chuy and LACH Ny’s wife and children being taken to a study session on the same day of Ngang’s disappearance, late 1976 or early 1977.<sup>11623</sup> After having her memory refreshed, DOUNG Oeurn stated that her husband Chuy was taken away to cut *rumpeak* vine in 1977.<sup>11624</sup> Considering the passage of time and the fact that the three witnesses’

<sup>11615</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 76 (“If the husband was Khmer and the wife was Vietnamese, she together with the children were taken away. If the husband was Vietnamese and the wife was Khmer, only the husband was taken, not a single child was taken”).

<sup>11616</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 38-39.

<sup>11617</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 8, 10, 20-21.

<sup>11618</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, p. 10; T. 20 January 2016 (LACH Kry), E1/379.1, p. 84.

<sup>11619</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 19, 37 (“No, no derogatory and insulting words were used. Before me, no one used this kind of words”); T. 20 January 2016 (LACH Kry), E1/379.1, pp. 63-64 (“They were living like other ordinary villagers”) (“For San, the Vietnamese, nothing happened to her until 1977 when the situation changed [...] She was living like the rest of the villagers”); T. 6 January 2016 (THANG Phal), E1/371.1, pp. 63-64 (“Concerning the gathering of ‘*Yuon*’, I never heard of it. Only after I had heard of Ngang’s arrest was I aware of such an event. However, before that, I never heard that Vietnamese were being arrested, taken away and killed. The *Angkar* could have kept it confidential.”).

<sup>11620</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, p. 40; T. 20 January 2016 (LACH Kry), E1/379.1, pp. 66-68; T. 6 January 2016 (THANG Phal), E1/371.1, pp. 56-57, 64.

<sup>11621</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 75; T. 6 January 2016 (THANG Phal), E1/371.1, pp. 50, 52-53.

<sup>11622</sup> T. 20 January 2016 (LACH Kry), E1/379.1, p. 93.

<sup>11623</sup> T. 6 January 2016 (THANG Phal), E1/371.1, pp. 44, 68-69.

<sup>11624</sup> T. 25 January 2016 (DOUNG Oeurn), E1/381.1, pp. 11-12, 28-29, 59-60.

accounts corroborate one another in large parts, the Chamber finds that discrepancies regarding the dates and the sequence of events do not affect the overall credibility of their live testimonies. The Chamber recalls, however, that it is seised of killings of Vietnamese starting in April 1977. In light of the above, the Chamber is unable to establish with certainty whether the events described by LACH Kry, THANG Pal, and DOUNG Oeurn occurred within the temporal scope of the charges. The Chamber will therefore not take into account, in its legal findings, the killings of Van Ngang, Chuy, and San.

3451. The overall evidence presented with regard to killings of Vietnamese in Prey Veng province consists of direct and indirect evidence of transfers or arrests of Vietnamese individuals who were then taken away and never returned. The witnesses later found out through hearsay that these individuals were in fact killed. Taking into account the nationwide targeting of the Vietnamese, as evidenced before the Chamber,<sup>11625</sup> it is probable that killings of Vietnamese occurred in Prey Veng province. However, considering the circumstantial and inconclusive evidence presented, the Chamber cannot conclude to the relevant standard that killings occurred. Additionally, recalling that the Chamber will not consider the killings of VAN Ngang, Chuy, and San, and because of the uncertainty surrounding the date where the killings described by LACH Kry, THANG Pal, and DOUNG Oeurn occurred, the Chamber is unable to reasonably establish that waves of killings of Vietnamese civilians occurred in Prey Veng province from April 1977.

#### 13.3.8.2. Svay Rieng province

3452. SIENG Chanthy, who worked in a cooperative in Svay Chrum district, gave evidence that the cooperative chief was well aware of which families were of Vietnamese origin: “They knew clearly who was who in the village. As for my family, the chief of the cooperative knew it very well that my grandparents were ethnically Vietnamese.”<sup>11626</sup> Her father was ethnically Vietnamese and her mother was Khmer.<sup>11627</sup> After 17 April 1975, she was “evacuated” with her family to Chhuk Sa

<sup>11625</sup> See above, Sections 13.3.5-13.3.6.

<sup>11626</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 22; T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 90.

<sup>11627</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 90; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 14.

village, Chheu Teal commune, Svay Rieng province and shortly after left for Ruessei Prey village, Chamlang commune, Svay Chrum district in Svay Rieng province because they were accused of “being feudal capitalist and of being Vietnamese half-blooded”.<sup>11628</sup> She said that villagers knew her father was Vietnamese, and that there were three mixed Vietnamese families in her village.<sup>11629</sup> During the harvest season, meaning toward the later part of the year of 1977, SIENG Chanthy heard from villagers<sup>11630</sup> that her brother Chanthan and ten members of two of the Vietnamese families were taken away and killed at Tuol Sngnuon, to the east of Chey Pagoda.<sup>11631</sup> SIENG Chanthy’s father told her he witnessed two of the daughters from one of the Vietnamese families being raped and that he wanted to commit suicide to protect his family.<sup>11632</sup> She explained that “at the time, when the cooperative chiefs saw my father, they always said that my father, *Ta* Thoeung (phonetic) was a pure Vietnamese, and he was a Vietnamese puppet. He had a fair complexion which was different from others.”<sup>11633</sup> When her father hung himself, her mother said that he had never opposed the revolution but that “[h]e was terrified because his son had been taken away and killed and two Vietnamese families were also killed. He did not want to die the way his son was [*sic*], and that’s why he committed suicide because he wanted his six other children to survive.”<sup>11634</sup> The Chamber is satisfied that SIENG Chanthy’s father committed suicide in 1977 out of fear of being killed due to his Vietnamese ethnicity and wanting to protect his family.

3453. Witness SIN Chhem, who lived in Svay Yea village, Svay Chrum district, Svay Rieng province,<sup>11635</sup> testified that the four Vietnamese families who were living one kilometre away from her house were taken away at night by the commune chief in 1978 and disappeared.<sup>11636</sup> She stated that they were killed by someone named Savin along

<sup>11628</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, pp. 88, 90-91.

<sup>11629</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 15.

<sup>11630</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 10, 21, 27.

<sup>11631</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 93; T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 20-22, 26-27, 33-35.

<sup>11632</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 93; T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 5, 35.

<sup>11633</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 94.

<sup>11634</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 95; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 19.

<sup>11635</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, p. 4.

<sup>11636</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 26-27, 71 (it is unclear whether SIN Chhem witnessed this herself or if it was reported to her by her husband: “Q. And how did you know about the Vietnamese families who were taken away and killed, how did you know about that? A. Because they lived near my house, it was just one kilometre away and how come I didn’t know. And my husband was

with others from the new commune committee and security guards, but the source of her knowledge is unclear.<sup>11637</sup> The witness never saw any killing but she saw scattered remains of dead bodies south of her house of unidentified “persons” whom she heard had been killed the night before.<sup>11638</sup> The witness also heard from close neighbours of Vietnamese people being taken away and killed in three other villages (Tuol Vihear, Sikar and Kien Ta Siv villages).<sup>11639</sup> The Chamber recalls its finding that the CPK internally as well as publicly targeted Vietnamese as a group through contemporaneous documents and speeches, and widely called, from April 1977, for their destruction.<sup>11640</sup> In light of the above, and considering the existing nationwide policy to kill Vietnamese living in Cambodia at the time, the Chamber is satisfied that the only reasonable conclusion which can be drawn from the arrest in 1978 by the commune chief followed by the disappearance of the four Vietnamese families living one kilometre away from SIN Chhem’s house and the presence of dead bodies close to this house, is that these arrests and disappearances were the result of the systematic implementation in this area of the said policy and that those who disappeared were killed.

3454. During her testimony in court, IN Yoeung was questioned on a DC-Cam statement given by her late husband in which another person identified as a “neighbour” also gave statements on the Vietnamese families in her area who were sent to Prey Chak village, Chrey commune, Svay Rieng province and then disappeared.<sup>11641</sup> However, her in-court testimony was unclear on whether she is the person identified as the “neighbour” or whether she was also interviewed at the time. The Chamber instructed the Parties not rely on that DC-Cam statement when putting questions to her.<sup>11642</sup> The Chamber further notes that IN Yoeung repeatedly answered that she could not recall

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a policeman in the commune. They were also the member of the commune committee” [...] “My husband said those people were fine and hard-working. And later on, those people were taken away to be killed and I had very much pity on them. Even their breast-fed baby was not spared”); SIN Chhem Interview Record, E3/7794, 5 December 2008, pp. 3, ERN (En) 00251406 (“During the 1978 rice transplanting season, people were evacuated in [...] After four or five days, they were taken further on”), 4, ERN (En) 00251407 (“At about the same time that the ethnic Khmer people were being selected for evacuation [...] [T]he ethnic Vietnamese were being arrested and killed”).

<sup>11637</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 27-30 (SIN Chhem heard of the killings through Savin/Savorn who “spread words”). See T. 14 December 2015 (SIN Chhem), E1/367.1, p. 30.

<sup>11638</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, p. 79.

<sup>11639</sup> T. 14 December 2015 (SIN Chhem), E1/367.1, pp. 30-31.

<sup>11640</sup> See above, para. 3416.

<sup>11641</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 66-79; CHAN Kea Interview Record, E3/7525, p. 40, ERN (En) 00885013.

<sup>11642</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 66-79, 82.

anything in relation to information contained in that DC-Cam statement.<sup>11643</sup> The witness was also questioned on PRUM Yan's statement concerning the arrest of Tep's wife, a mixed-race Vietnamese women, in Khla Lout, Kampong Trach commune, Romeas Haek district, Svay Rieng province, described in the statement.<sup>11644</sup> PRUM Yan lived in IN Yoeung's village in Chheu Phleung and IN Yoeung knows him well to date.<sup>11645</sup> IN Yoeung testified that she had heard about this incident and that the woman arrested was killed. She recalled her being half-blooded Chinese, not Vietnamese, and her knowledge was based on what PRUM Yan had told her.<sup>11646</sup> The Chamber therefore finds that IN Yoeung's testimony is not helpful or reliable in providing evidence in relation to the treatment of Vietnamese and will not rely on it.

3455. In sum, the Chamber is satisfied that SIENG Chanthy's father committed suicide in 1977 out of fear of being killed due to his Vietnamese ethnicity and wanting to protect his family and that the four Vietnamese families living one kilometre away from SIN Chhem's house were killed in 1978. The remaining evidence provided by IN Yoeung and PRUM Yan with regard to killings of Vietnamese in Svay Rieng province is inconclusive and the Chamber cannot rely on them to conclude to the relevant standard that other specific instances of killings of Vietnamese civilians occurred in Svay Rieng province from April 1977.

### 13.3.9. *Killing of Vietnamese Civilians Outside Prey Veng and Svay Rieng Provinces*

#### 13.3.9.1. Capture of Vietnamese boats

3456. MEAS Voeun, who was Deputy Commander of Division 1, testified that his division and the navy (Division 164) cooperated and shared information on operations to capture Thai and Vietnamese boats, including in order to "seize" any "Thai or 'Yvon' boat [that] encroached on our waters".<sup>11647</sup> He testified that between 1975 and 1979, when a boat with Vietnamese refugees approached the waters where Division 1 was

<sup>11643</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 61-67, 74-79.

<sup>11644</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 83-87; PRUM Yan Interview Record, E3/7816, 29 January 2009, pp. 2-3, ERN (En) 00292838-00292839.

<sup>11645</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, p. 83.

<sup>11646</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, p. 85.

<sup>11647</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 60-61.

situated at the coast of Koh Kong province,<sup>11648</sup> his division would capture it and send the captured Vietnamese to “the upper echelon”; the Division 164 headquarters in Kampong Som.<sup>11649</sup> The order to do so was issued by *Ta Soeung*, the commander of West Zone Division 1, who would then forward the report up the line of command.<sup>11650</sup> MEAS Voeun claimed not to know what happened to Vietnamese refugees once they were sent to the upper level: “when they were captured by my unit I would send them to my upper leadership level and whatever decision they made that was theirs”.<sup>11651</sup>

3457. PAK Sok, who was a member of Division 164, testified that between 1975 and 1979, thousands of Thai and Vietnamese fishermen and refugees were arrested and killed.<sup>11652</sup> He confirmed that if “*Yuon*” were arrested, whether soldiers or refugees, they would be killed.<sup>11653</sup> PAK Sok explained that “if there were many of the Vietnamese, they would be sent ashore. But if there were only a few Vietnamese, they would be killed right on the island”,<sup>11654</sup> referring to Poulo Wai Island.<sup>11655</sup> If those captured were Vietnamese soldiers, they would be sent ashore; some of them to S-21 Security Centre in Phnom Penh. Those sent to S-21 are discussed further in that section of this Judgement.<sup>11656</sup> A number of those who were detained at S-21 had their confessions broadcasted via the national radio before being killed.<sup>11657</sup> The orders

<sup>11648</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 57.

<sup>11649</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. 62-64; T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 10-11, 46-49.

<sup>11650</sup> T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 10, 14, 48-49, 52.

<sup>11651</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, pp. pp. 63-64 (“For me, for my unit, when they were captured then I would send them through to the upper level and I did not know the process that the upper level used in dealing with foreign matters. So I would send them through to the division.”), 65; T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 47-48 (“Regarding the refugees I had sent to the headquarter in Kampong Som, I did send them to the headquarter but, afterward, I did not know what happened to those people and what steps were taken”).

<sup>11652</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 15, 27-28. The Chamber notes that PAK Sok first testified having seen once or twice Vietnamese being brought to the Ou Chheu Teal port in 1977 and not knowing where they were taken “because [his] responsibility was assigned to base at the port”. See T. 16 December 2015 (PAK Sok), E1/369.1, p. 26. See also, MOUL Chhin Interview Record, pp. 12-13 (Answers 71, 74-76), ERN (En) 01056666-01056667.

<sup>11653</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 34-36.

<sup>11654</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 35-36.

<sup>11655</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 36.

<sup>11656</sup> Section 12.2.17: S-21 Security Centre: Vietnamese Detainees.

<sup>11657</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 22. The Chamber notes that PAK Sok first testified that if there were orders to send Vietnamese individuals to shore after capture, the soldiers would do so, but he had no knowledge of what happened after that. When confronted with his previous statement E3/9674, he then confirmed that “The orders were clear on whether they were to be killed on the spot or sent ashore. If those persons captured were Vietnamese soldiers, we had to send them to the shore, then they would broadcast their confessions via the national radio before they killed them”. See T. 16 December 2015 (PAK Sok), E1/369.1, pp. 21-22; Section 12.2.17: S-21 Security Centre: Vietnamese Detainees.

concerning the arrests and the fates of those who were arrested were relayed down the hierarchy, “from top to the bottom, division to regiment, and regiment to battalion, and then it was the soldiers who implemented [them]”.<sup>11658</sup> PAK Sok explained that the reports equally followed the chain of command, therefore any arrest was “reported to the battalion and the battalion reported to the regiment, and the regiment reported further to the division”.<sup>11659</sup>

3458. PAK Sok also testified about a number of killing incidents. Prior to 1977, when PAK Sok was with Regiment 622 at Koh Poulo, he witnessed the arrest of a Vietnamese family of “ordinary citizens” at sea, consisting of a husband, wife and a one-year-old child.<sup>11660</sup> They were sent to Poulo Wai Island where soldiers from a special unit of Regiment 622 tied them under a coconut tree and killed them using “the hoes and the bamboo clubs”. After the husband and wife died, “when it saw the mother was bleeding, the baby crawled to the mother and at that time the soldier picked up the baby and smashed against the trunk of the coconut tree”.<sup>11661</sup> The Chamber considers that while relevant to understand the pattern of conduct with regard to Vietnamese at sea, this incident falls outside the temporal scope of the charged killings of the Vietnamese, which start from April 1977, and accordingly will not consider this event in its legal findings.

3459. PAK Sok left Poulo Wai Island around April or May 1977<sup>11662</sup> and was then stationed at Ou Chheu Teal port until 1978.<sup>11663</sup> On one occasion, PAK Sok was involved in transporting 12 to 13 captured Vietnamese to the port by truck. He testified that they were beaten before being transported and that one of them had an amputated hand.<sup>11664</sup> According to the detainees, the amputee was a soldier while the rest of them were unarmed “ordinary people” heading to Thailand.<sup>11665</sup> PAK Sok recalled that there

<sup>11658</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 21-22, 34-35.

<sup>11659</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 21.

<sup>11660</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 36-37.

<sup>11661</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 36.

<sup>11662</sup> T. 5 January 2016 (PAK Sok), E1/370.1, p. 43.

<sup>11663</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 26-27, 36.

<sup>11664</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 25. The Chamber notes that before being confronted with his prior statement, PAK Sok denied having ever arrested people from captured boats. *See* T. 16 December 2015 (PAK Sok), E1/369.1, pp. 23-24 (“Q. First of all sir, did you yourself ever capture any boats, people in boats? A. At that time, I myself did not make the arrest. Q. Sir, weren’t you involved in the capture of Vietnamese refugees? A. No, I was not involved in it”). He then reiterated having witnessed arrest and transportation of Vietnamese when he was stationed at Ou Chheu Teal port during cross-examination. *See* T. 5 January 2016 (PAK Sok), E1/370.1, p. 55.

<sup>11665</sup> T. 16 December 2015 (PAK Sok), E1/369.1, pp. 25-26.

was also a baby among the group who cried loudly once they arrived at Ou Chheu Teal port because the mother was tied up, as a result of which “the soldiers threw the baby into the sea”.<sup>11666</sup> PAK Sok tended to downplay his own responsibility during his testimony in court. However, when reminded of previous statements, he confirmed them.<sup>11667</sup> In light of this eventual confirmation of his previous testimony and taking into consideration the corroborating contemporaneous high-level evidence of a nationwide targeting of the Vietnamese,<sup>11668</sup> the Chamber finds his evidence generally credible and reliable.

3460. In a Division 164 report to Brother 89 dated 20 March 1978, MEAS Muth informs SON Sen of two incidents involving Vietnamese boats. In the first incident on 19 March 1978, Division 164 fired at a Vietnamese motorboat one kilometre south of Koh Khyang, causing it to sink, with “no damages” suffered by the Cambodia side.<sup>11669</sup> The second incident occurred at Koh Tang island on the same date as the report, and involved the capture of two Vietnamese motorboats. The report states that “76 Vietnamese people – both young and old, male and female” were tied up and brought to the main land, and that they lost two persons who fell into the water due to the fact that “the smaller motor-boat was shaky and plunged”.<sup>11670</sup>

3461. Considering the above, the Chamber is satisfied that Vietnamese boats entering DK territorial waters were systematically seized or otherwise targeted during the DK period, and that a number of Vietnamese fishermen and refugees were killed as a result, either on the spot or short after they were ashore, and accepts Pak Sok’s testimony that, while stationed at Ou Chheu Teal port after April or May 1977, he witnessed a baby being thrown into the sea by soldiers while he was transporting Vietnamese refugees as well as the two specific instances of killings mentioned in the 20 March 1978 Report.

### 13.3.9.2. Prey Nob district

3462. Civil Party KHOUY Muoy was separated from her parents in 1976 and sent to work in a mobile unit in Prey Nob district, Kampot province, while her parents

<sup>11666</sup> T. 16 December 2015 (PAK Sok), E1/369.1, p. 26.

<sup>11667</sup> See e.g., T. 16 December 2015 (PAK Sok), E1/369.1, pp. 22-27; T. 5 January 2016 (PAK Sok), E1/370.1, pp. 11-16.

<sup>11668</sup> See below, paras 3384-3416.

<sup>11669</sup> DK Report, E3/997, 20 March 1978, ERN (En) 00233649.

<sup>11670</sup> DK Report, E3/997, 20 March 1978, ERN (En) 00233649.



remained in their village of Srae Cham, Ou Chrov commune, Prey Nob district, Kampot province.<sup>11671</sup> One day in late 1978,<sup>11672</sup> she came back to visit her family and found an empty house.<sup>11673</sup> She was told by villagers that her parents “had been told to pack up so they would be sent back to Vietnam”.<sup>11674</sup> She also learned from Chrunh<sup>11675</sup> or villagers that a number of her family members and relatives were taken away on the same day and brought to a prison about three kilometres away.<sup>11676</sup> Chrunh told her that her parents had been taken away and killed because they were accused of being Chinese and Vietnamese,<sup>11677</sup> and her aunt and uncle later told her that her parents had been killed because they were accused of having Chinese and Vietnamese blood and speaking Khmer with an accent.<sup>11678</sup>

3463. The Civil Party also stated that the mother and children of a Vietnamese family of her mobile unit were taken away and killed.<sup>11679</sup> It is unclear if she witnessed these killings herself or not. She also found out later from a “youth” that her younger brother who was working in another mobile unit was taken away and killed.<sup>11680</sup> The Civil Party lost most of her relatives.<sup>11681</sup>

3464. In light of the existence of a nationwide policy to destroy Vietnamese living in Cambodia from April 1977, it is possible that killings of Vietnamese occurred in Prey Nob district during this period. However, it is not the only reasonable conclusion from the evidence above. The Chamber finds that the uncorroborated hearsay evidence, where the sources of the hearsay remain unidentified,<sup>11682</sup> and the fact that the date of the Civil Party’s relatives’ disappearance remains unclear, is not sufficient to prove

<sup>11671</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 44, 46, 57, 59.

<sup>11672</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, p. 64.

<sup>11673</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, p. 46.

<sup>11674</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 49-51, 56.

<sup>11675</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 46-48 (this person is referred to as “an elder person”, “the man”, “an old man”).

<sup>11676</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 46 (stating that her parents and eight relatives were taken away and killed), 49-51 (stating that 13 members of her family being taken away and killed).

<sup>11677</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 46, 48.

<sup>11678</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 49, 51, 59.

<sup>11679</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 47, 79-80.

<sup>11680</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 47, 51, 53.

<sup>11681</sup> T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 46-47, 49-50, 63-64, 87.

<sup>11682</sup> It is unknown how Chrun or the Civil Party’s aunt and uncle knew about the killings and their reasons; “the villagers” and the “youth” are not further identified and it is unknown if they have witnessed the event themselves; it is also unknown how the Civil Party learned about the fate of the other Vietnamese family in her mobile unit.

beyond reasonable doubt that the alleged killings of Vietnamese occurred in Prey Nob district from April 1977.

### 13.3.9.3. Tram Kak district

3465. Alleged killings of Vietnamese in Tram Kak district are dealt with under that section of this Judgement.<sup>11683</sup>

### 13.3.9.4. West Zone

3466. PRAK Doeun gave evidence of Vietnamese being killed on the inland island of Ta Mov, Kampong Chhnang province. *Angkar* had moved him there in 1975, and near the end of 1976, *Angkar* accepted his request that his family join him on the island.<sup>11684</sup> PRAK Doeun's wife was part Vietnamese and part Chinese, and together they had six children.<sup>11685</sup> He recalled hearing a radio announcement while he was working in his cooperative which sought out "the Vietnamese who infiltrated inside".<sup>11686</sup> His wife and others heard the same announcement and spoke about how the Vietnamese accused of infiltrating inside the rank had all been gathered and they were not sure if "they had been sent back to their homeland or taken away to be killed".<sup>11687</sup> There were seven mixed families – where one spouse was Khmer and the other Vietnamese – in PRAK Doeun's unit.<sup>11688</sup> The CPK cadres "were aware of how many people were Vietnamese within one family".<sup>11689</sup> PRAK Doeun noted that the cadres inquired about how many Vietnamese people there were in his cooperative and about the ethnicity of his wife.<sup>11690</sup> One evening in late 1977,<sup>11691</sup> Khmer Rouge cadres gathered all of the seven mixed

<sup>11683</sup> Section 10.1.10: Tram Kak Cooperatives: Treatment of Vietnamese.

<sup>11684</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 56-58.

<sup>11685</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 45-50.

<sup>11686</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 66.

<sup>11687</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 66.

<sup>11688</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 60-61.

<sup>11689</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 61.

<sup>11690</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 59-62, 96-97; T. 3 December 2015 (PRAK Doeun), E1/362.1, pp. 49-50.

<sup>11691</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 73 ("I recall that it was during the time that the water in the river receded. I cannot tell you the exact date"). The Chamber notes that this expression indicates the end of the year. *See e.g.*, Revolutionary Flag, October-November 1975, E3/748, ERN (En) 00495807 (a caption to a photograph notes that "while the water level is about to go down [...] our cooperative peasants are building the new rice paddy dikes that are high and wide across the break water to store the water for the irrigation of dry season rice"); T. 3 December 2015 (PRAK Doeun), E1/362.1, p. 72 (the Civil Party accepts the supplementary statement put to him and stating that "[b]efore they killed my wife and children [before 1978] I was not aware of any other killing of Vietnamese people that is apart from the other five or six families that were killed on the basis of being Vietnamese in 1978").

families to “send those people back”, including the Khmer spouses.<sup>11692</sup> The families, including PRAK Doeun, his wife, his mother-in-law, and one of his children, were ordered to walk several kilometres towards Tuol Ka Munlong and when they reached Wat Melum they were split into two groups dividing the ethnically Khmer from the ethnically Vietnamese.<sup>11693</sup> PRAK Doeun was thereby separated from his family, including his youngest child, who was sent with his mother in the Vietnamese group.<sup>11694</sup> PRAK Doeun noted that “[i]f the mother was Khmer, then the child would be allowed to be with the mother in the group of Khmer”.<sup>11695</sup>

3467. The Khmer group was taken to Wat Along, where the unit chief, Comrade Hoem, told PRAK Doeun that his wife and child and the other Vietnamese people were “smashed immediately” after being separated and that they were all “killed at the pit”.<sup>11696</sup> Comrade Hoem blamed him for marrying a Vietnamese woman and suggested that he ask *Angkar* to remarry a Khmer woman.<sup>11697</sup> PRAK Doeun heard the unit chief and others speaking about how the Vietnamese mothers were killed first and then the children “were thrown into the air and pierced with a bayonet”.<sup>11698</sup> After those Vietnamese from the mixed families were taken away and killed, there were no more Vietnamese on Ta Mov island.<sup>11699</sup> The rest of PRAK Doeun’s children were sent to different places and he was told that three of his daughters died in the cooperative and mobile units, while his two daughters who “looked purely Khmer” managed to survive because he would sometimes secretly send them food.<sup>11700</sup>

3468. CHOEUING Yaing Chaet,<sup>11701</sup> whose parents were both Vietnamese, gave evidence that his family fled Srae Ta Kouy village in Kampong Leaeng district (District

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See PRAK Doeun Civil Party Supplementary Statement, E3/5632, p. 2, ERN (En) 00678295; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 89 (The Civil Party Lawyer suggested that the events happened “at the end of 1977” and the witness did not contest this). See also, PRAK Doeun Civil Party Application, E3/4989, ERN (En) 00891032-00891034 (placing the events late 1977 or early 1978).

<sup>11692</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 72, 74.

<sup>11693</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 72-73.

<sup>11694</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 73, 75-76.

<sup>11695</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 76.

<sup>11696</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 86-88; T. 3 December 2015 (PRAK Doeun), E1/362.1, p. 36.

<sup>11697</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 87; T. 3 December 2015 (PRAK Doeun), E1/362.1, p. 36.

<sup>11698</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 72-73, 77, 85, 88.

<sup>11699</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 88, 90.

<sup>11700</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 89-90.

<sup>11701</sup> The NUON Chea Defence mentioned that his statement was unsworn, without drawing any conclusion from this fact. See NUON Chea Closing Brief, para. 845. The Chamber recalls that it rejected

18), Kampong Chhnang province, in 1975 because *Ta Peang's* group in charge of the area told the Vietnamese that if they remained there they would be killed.<sup>11702</sup> *Ta Peang* “was the Khmer Rouge chief in that area”.<sup>11703</sup> They fled to Kandal village in Kampong Chhnang with the other 30 Vietnamese families of his village where they stayed over a month,<sup>11704</sup> before being forcibly relocated along with some 1,000 Khmer and Vietnamese families to Phum Dar village at Kangkaeb mountain (District 18).<sup>11705</sup>

3469. One morning in 1975, about a month after their arrival in Phum Dar village, when CHOEUNG Yaing Chaet was 13 or 14 years old, eight armed men wearing scarves and black uniforms from Paeng’s group came to his house and arrested him and his family.<sup>11706</sup> They were tied up along with another ethnically Vietnamese family, walked through the forest for about one kilometre, stopped 100 metres from a pit where they were taken one by one to be killed, untied and pushed into the pit.<sup>11707</sup> When CHOEUNG Yaing Chaet’s turn came, the cadres ordered him to kneel, hit the nape of his neck three times with an axe and left him for dead.<sup>11708</sup> Before losing consciousness, CHOEUNG Yaing Chaet saw the dead bodies of his parents and siblings.<sup>11709</sup> At approximately 4 p.m. the same day, he regained consciousness with severe pain and a swollen neck and walked day and night until he reached Krous village where he met *Ta Ly* who later helped him flee to Vietnam at the time where lot of Vietnamese people were sent back to Vietnam by boat.<sup>11710</sup>

3470. Killings of Vietnamese in the West Zone are further evidenced by a telegram dated 4 August 1978 consisting of a July 1978 monthly report from Office 401 to *Angkar*. It states, under the heading “Region 37” and sub-heading “Screening out persons with elements as Vietnamese, CIA agents, and those with no good elements”

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the NUON Chea general submission that Civil Party evidence is of inherently lesser probative value. *See* Section 2: Preliminary Issues, para. 67. The Chamber finds the Civil Party to have been generally consistent and credible and therefore accepts his evidence.

<sup>11702</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 38-39. *See also*, T. 8 December 2015 (CHOEUNG Yaing Chaet), E1/364.1, pp. 20-21.

<sup>11703</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 74-75. *See also*, T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, p. 39 (“*Ta Peang* was in charge of Kampong Leang district”); p. 41 (“He was the chief of the Pol Pot group”), 95 (“He was the Khmer Rouge supervisor of Kampong Leang district”).

<sup>11704</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 38-39, 75-76.

<sup>11705</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 39-40.

<sup>11706</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 42-44, 48.

<sup>11707</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 44-46.

<sup>11708</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 46-48.

<sup>11709</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 44, 47, 85.

<sup>11710</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 47-48.

point number 1, that “100 Vietnamese people – small and big, young and old – have been smashed”.<sup>11711</sup> The Chamber notes that point number 4 further mentions “Measures must be taken on three Vietnamese combatants”, which indicates, conversely, that the 100 Vietnamese “smashed” were civilians.

3471. In light of the above, the Chamber is satisfied beyond reasonable doubt that Vietnamese families were targeted and killed in the West Zone due to their perceived ethnicity. The Chamber specifically finds that PRAK Doeun’s wife, children and mother-in-law as well as Vietnamese members of 6 other families were deliberately executed on Ta Mov island, Kampong Chhnang province, in late 1977, and that CHOEUING Yaing Chaet’s family members, along with another ethnically Vietnamese family, were deliberately executed in Phnum Dar village in 1975.<sup>11712</sup> However, the Chamber recalls that it is seised of killings of Vietnamese starting in April 1977, and will therefore not take into account in its legal findings the killing of CHOEUING Yaing Chaet’s family members. The Chamber is also convinced that, following a screening process aimed at implementing a nationwide policy to exterminate the Vietnamese, further killings of Vietnamese occurred in the West Zone, Sector 37, in July 1978 as evidenced by the telegram dated 4 August 1978. However, considering that this telegram does not provide any precise information on the exact circumstances of the killings, is unclear as to the sources concerning the number of deaths reported and is not corroborated by other evidence, the Chamber finds that this telegram alone is

<sup>11711</sup> DK Telegram, E3/1094, 4 August 1978, p. 7, ERN (En) 00143624.

<sup>11712</sup> The Chamber notes that, when they were heard by OCII investigators or in their Civil Party Application, many Civil Parties of Vietnamese ethnicity stated that members of their families or of their community were killed in Kompong Leang district in the aftermath of 17 April 1975. See DOU Yang Aun Interview Record, E3/5587, 15 December 2009, ERN (En) 00426465-00426467 (after 17<sup>th</sup> April 1975, his parents and his elder siblings disappeared and he was told that they were executed at Da village Kompong Leang district); LE Yang Sour Civil Party Supplementary Statement, E3/4574, 21 December 2010, ERN (En) 00678172 (he lived in Kampong Leang district, Kampong Chhnang province, where he was a fisherman. He stated that short after the Khmer Rouge took the power, his family was forced to move to Pou where his aunt, his uncle, two siblings and his grand-parents were taken away to be killed); NGUYEN Thi Tyet Civil Party Application, E3/4731, 5 December 2008, p. 6, ERN (En) 00464747 (she lived in Kampong Leang district, Kampong Chhnang province and stated that in 1975, 28 people of her family were taken away to be killed by the Khmer Rouge); NGVIENG Yang An Civil Party Supplementary Statement, E3/5633, 22 December 2010, ERN (En) 00678296-00678298 (he lived in Kampong Leang district, Kampong Chhnang province where he was a fisherman and stated that 250 Vietnamese families were forcibly moved to Dar mountain and that he heard that many of them were arrested and killed in 1975. He further clarified that when he was assigned to work in a fishermen unit at Pralay Meas village, 14 people of the families of two of his aunts whose husbands were Viet Cong soldiers were killed.); NGVIENG Yang Than Civil Party Application, E3/6696, 15 October 2009, pp. 1-2, ERN (En) 01069328-01069329. While all this evidence corroborates CHOEUING Yaing Chaet’s statements none of these facts fall within the temporal scope of Case 002/02.

insufficient to prove to the requisite standard a distinct incident or incidents of killings beyond reasonable doubt.

13.3.9.5. Northwest Zone: Tuol Ta Trang

3472. PRUM Sarun, who was the chief of Platoon 1 (Sector 3) in Phnom Sampov commune, Banan district, Battambang province,<sup>11713</sup> testified that while there were no Vietnamese in his battalion, there were about four Vietnamese families in Battalion 2.<sup>11714</sup> Both battalions were located in Krapeu Cheung village.<sup>11715</sup> It was in that village that PRUM Sarun witnessed four young cadres, armed with rifles, arrest members of the Vietnamese families in Battalion 2 and take them westward towards Tuol Ta Trang, near Koy Mountain.<sup>11716</sup> The young cadres used scarves to tie up the person arrested.<sup>11717</sup> He then saw those young cadres return without the Vietnamese they had arrested.<sup>11718</sup> Approximately two days later, he saw four adult corpses at Tuol Ta Trang that were swollen and decomposed.<sup>11719</sup> He also saw skulls, bones and bloodstains on the ground.<sup>11720</sup> He did not witness the killings,<sup>11721</sup> and did not know the persons arrested.<sup>11722</sup> He described Tuol Ta Trang as “the execution site where skulls were piled up as high as a hill” as well as “the location of the upper echelon”.<sup>11723</sup> After witnessing the arrest and the dead bodies, PRUM Sarun stated that no Vietnamese remained in Battalion 2.<sup>11724</sup> The Chamber notes that, in his previous statement before the Co-Investigating Judges, PRUM Sarun stated that, in 1976, the “*Yuon*” in Battalion 2 were arrested, tied up, and walked away to be killed at Tuol Ta Trang and that “[a]fter that string of *Yuon* was killed, [he] never saw any more *Yuon* remaining”.<sup>11725</sup>

3473. PRUM Sarun’s testimony was at times unclear and contradictory on key points such as the number of persons arrested (he variously answered two, three, four or he

<sup>11713</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 57-58.

<sup>11714</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 68-69.

<sup>11715</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 63.

<sup>11716</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 65-66, 69, 72.

<sup>11717</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 66.

<sup>11718</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 68-69.

<sup>11719</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 69-72, 78.

<sup>11720</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 71-72, 77-79.

<sup>11721</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 71-72.

<sup>11722</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 68 (“Q. Did you know anyone amongst those who were arrested and walked away? A. No, I didn’t, because they belonged to a different battalion”).

<sup>11723</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 66-67.

<sup>11724</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 74.

<sup>11725</sup> PRUM Sarun Interview Record, E3/5187, 18 June 2008, pp. 2-3, ERN (En) 00274177-00274178.

did not remember), their ethnicity (Vietnamese or he did not know), age (adults or children), his knowledge as to where they were taken, or even if he actually witnessed the arrest.<sup>11726</sup> No specific date was given for these events. The Chamber therefore approaches his evidence with caution. It notes that the witness consistently stated that a number of persons were arrested and taken away towards Tuol Ta Trang, and that he later saw bodies and human remains there. Without further elements, it is not possible to conclude that the bodies and the remains belonged to the same individuals who were arrested and taken away two days before. While it is possible that the individuals PRUM Sarun witnessed being taken away were killed, it is not the only reasonable conclusion.

3474. The Chamber further notes that IM An, the Krapeu Cheung village chief from 17 April 1975, stated to the Co-Investigating Judges that “[t]here were 30 Vietnamese families, including children, living in Krapeu Tbaung village, Sampeou subdistrict who were killed by Khmer Rouge soldiers in 1976 at Au Tauch, south of Phnom Koy, seven kilometres south of Krapeu Tbaung village; villagers have spoken about this”.<sup>11727</sup> This hearsay evidence, untested in court, is insufficient to establish specific instances of killings, but however corroborates that Vietnamese families living in Krapeu Cheung village were targeted during the DK period.

3475. In light of the above and considering the circumstantial nature of the evidence presented, the Chamber considers that, despite the fact that disappearance and killings

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<sup>11726</sup> T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 64 (Q. “You stated that the arrests happened within Battalion Number 2. How many people were arrested from that Battalion Number 2?” A. “Two of them. Two people were arrested and sent away. I did not know to where they were taken”), 65 (upon being confronted with his Interview Record (E3/5187, ERN (En) 00274177), whereby he stated that there were 20 arrested and killed, he replied that he forgot as it happened a long time ago) 72 (“I only saw the arrest of the four people.”), 104 (“I said between three and four Vietnamese individuals. They were taken away to be killed at Tuol Ta Trang”); T. 9 December 2015 (PRUM Sarun), E1/365.1, pp. 4 (“Q. Do you remember what you said, Witness, yesterday regarding the site of Tuol Ta Trang? Did you see bodies there? And if you did, who were the people who died at Tuol Ta Trang? A. I saw the dead bodies of children when I was looking for the water buffaloes. And after that, I walked past the area. Q. And were these children Cambodian or Vietnamese? Who were they? A. I could not say because I could not recognize them. The bodies were being swollen. I could not say whether they were Khmer or Vietnamese. [...] Q. You said yesterday that you -- did you witness arrests of Vietnamese people? And if so, do you know where these people were taken to? A. I never saw the arrest. I did not know as to where they were taken. I did not dare to ask them about any arrest as I was only mindful of my own life”), 21-22 (“Can you explain to me again how it was that you knew or concluded that they -- that those two people that you saw were in fact Vietnamese? A. I only saw them being tied up and walked away. I did not know about their ethnicity. I saw them from a distance. And I was afraid to ask people about the incident. Q. Just to be sure, did you even know them, those two people that you saw being taken away? A. I did not know them because people of mixed identities were just arriving in my village. People were constantly sent to my village. I did not know who they actually were.”).

<sup>11727</sup> IM Man Interview Record, E3/7737, 17 June 2008, p. 4, ERN (En) 00274160.

of Vietnamese were reported, it is unable to establish to the relevant standard that the alleged killings of Vietnamese occurred in Sampov commune, Banan district, Battambang province from April 1977.

13.3.9.6. North Zone: Wat Khsach

3476. The Closing Order finds that a mass execution of Vietnamese people occurred at Wat Khsach in Yeang village, Chi Kraeng district (Sector 106), Siem Reap province in mid-to-late 1978.<sup>11728</sup>

3477. Three witnesses testified to seeing this mass execution take place in late 1978: SEAN Song *alias* Sung, UM Suonn and Y Vun.<sup>11729</sup> Although their testimonies differ on certain points such as the number of Vietnamese present at the pagoda and the length of the executions, there is significant commonality in their evidence as to the Vietnamese being targeted and the general sequence of events. In light of this and considering the passage of time and the traumatic nature of this event, the Chamber finds their evidence generally credible and reliable. The Chamber however notes that UM Suonn demonstrated inconsistencies as to which executions he personally witnessed and for how long he observed the events.<sup>11730</sup> The Chamber accordingly will not rely on UM Suonn's evidence unless it is sufficiently corroborated.

3478. SEAN Song and UM Suonn testified that they went together to Wat Khsach in the evening the killings took place because they heard screaming, and they hid and watched the executions from about 30 metres in distance.<sup>11731</sup> Y Vun lived in Yeang village, some 300 metres from the Wat Khsach, and the night of the execution he heard the screams coming from the pagoda that lasted for about two hours.<sup>11732</sup>

<sup>11728</sup> Closing Order, para. 802.

<sup>11729</sup> T. 11 December 2015 (UM Suonn), E1/366.1, pp. 4-5; T. 27 October 2015 (SEAN Song), E1/357.1, pp. 79-81; T. 15 December 2015 (Y Vun), E1/368.1, pp. 20-22, 28.

<sup>11730</sup> See e.g., T. 11 December 2015 (UM Suonn), E1/366.1, pp. 10-17, 29-32.

<sup>11731</sup> T. 9 December 2015 (UM Suonn), E1/365.1, pp. 60-69; T. 27 October 2015 (SEAN Song), E1/357.1, pp. 84-86.

<sup>11732</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 9, 30-32.



3479. People were brought to Wat Khsach from various locations.<sup>11733</sup> They included NEARY Chantha, whose Vietnamese grandparents were also later executed,<sup>11734</sup> and a family with Vietnamese/Chinese origins referred to as the Chum family.<sup>11735</sup> NEARY Chantha was called for a study session<sup>11736</sup> and thereafter taken to and killed at Wat Khsach.<sup>11737</sup> SEAN Song witnessed this killing, describing that the executioners “bent her head down under her legs, and then they removed her gall bladder, placed it in a container of wine and drank it”.<sup>11738</sup> UM Suonn testified to seeing “gall bladders attached to one another by a piece of barbed wire hanging on the wall” the following day when he returned to the execution site.<sup>11739</sup> The Vietnamese members of the Chum family, including Hong, her husband, their three children, her brother and her mother in law were also killed.<sup>11740</sup>

3480. SEAN Song explained that he thought the executioners were soldiers because they were all armed with AK-47s and in the regime only soldiers could carry a gun.<sup>11741</sup> He also testified that he heard directly from the village chief, Soy, that the order to kill the Vietnamese came from “the superior”.<sup>11742</sup> Although this is hearsay evidence, the Chamber accepts it as it found SEAN Song’s evidence to be generally credible and reliable and it is corroborated by further hearsay evidence provided by Y Vun, who testified that other villagers told her that Soy received his orders from the upper echelon.

<sup>11733</sup> T. 28 Oct 2015 (SEAN Song), E1/358.1, pp. 10, 69; T. 15 December 2015 (Y Vun), E1/368.1, p. 25.

<sup>11734</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 10-11, 20-21. *See also*, T. 27 October 2015 (SEAN Song), E1/357.1, pp. 81-84; T. 9 December 2015 (UM Suonn), E1/365.1, pp. 43-44; T. 11 December 2015 (UM Suonn), E1/366.1, pp. 29-32.

<sup>11735</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 13-15.

<sup>11736</sup> T. 15 December 2015 (Y Vun), E1/368.1, p. 60; T. 9 December 2015 (UM Suonn), E1/365.1, p. 59; T. 27 October 2015 (SEAN Song), E1/357.1, p. 82; T. 28 October 2015 (SEAN Song), E1/358.1, p. 49.

<sup>11737</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 43-44, 54-55, 59-60; T. 9 December 2015 (UM Suonn), E1/365.1, pp. 43-44, 46, 54-55, 58-59, 74, 81; T. 11 December 2015 (UM Suonn), E1/366.1, pp. 11-13, 19-20; T. 27 October 2015 (SEAN Song), E1/357.1, pp. 77-78, 82; T. 28 October 2015 (SEAN Song), E1/358.1, pp. 3-5.

<sup>11738</sup> T. 28 October 2015 (SEAN Song), E1/358.1, p. 3. *See also*, pp. T. 28 October 2015 (SEAN Song), E1/358.1, 30-31.

<sup>11739</sup> T. 9 December 2015 (UM Suonn), E1/365.1, pp. 44, 74-76, 82.

<sup>11740</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 13-15, 20, 24-25, 32; T. 9 December 2015 (UM Suonn), E1/365.1, pp. 57-58. *See also*, LAUNH Khun Interview Record, E3/7686, 26 August 2008, p. 3, ERN (En) 00275406 (“I remember that my husband’s younger brother Kea, his younger sister Hong and Hong’s husband Chai along with three of Hong’s children and my mother in law Nheav were killed. All three of Hong’s children: one was three years old; one was just learning to walk; and another had been born the week before”).

<sup>11741</sup> T. 28 Oct 2015 (SEAN Song), E1/358.1, p. 43.

<sup>11742</sup> T. 28 Oct 2015 (SEAN Song), E1/358.1, pp. 23-25.

3481. While the witnesses gave different estimates as to the number of people detained at Wat Khsach – ranging from over 10 people or 20 people,<sup>11743</sup> to 25,<sup>11744</sup> to between 300 and 400<sup>11745</sup> – they all agreed that only Vietnamese individuals were targeted. SEAN Song testified that he heard soldiers asking detainees whether they were Vietnamese or Chinese, and those who said they were Vietnamese “were killed at the pit”, including children, whereas those who said they were Chinese were spared.<sup>11746</sup> This is corroborated by Y Vun’s testimony that he knew of a woman and her son who survived the executions at Wat Khsach, and he recalled that “she was asked about her origin and she said she was Chinese”.<sup>11747</sup> While UM Suonn did not hear anything about Chinese people while he was observing the execution site, he did hear the executioners refer to the detainees as “*Yuon*” before killing them one at a time.<sup>11748</sup> After the Wat Khsach executions, there were no more Vietnamese in the village.<sup>11749</sup>

3482. The Chamber finds on the basis of the above that in late 1978, all Vietnamese living in and around Yeang village, Chi Kraeng district (Sector 106), Siem Reap province were brought to and killed *en masse* at Wat Ksach due to their perceived ethnicity and upon orders from the upper echelon.<sup>11750</sup> This is consistent with the Chamber’s finding that the CPK internally as well as publicly targeted Vietnamese as a group through contemporaneous documents and speeches, and widely called, from April 1977, for their destruction.<sup>11751</sup> While the evidence presented does not allow the Chamber to establish the exact number of victims, it is satisfied beyond reasonable doubt that at least 10-20 Vietnamese civilians were killed.

<sup>11743</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 29-30 (stating that he cannot give an exact figure as he was observing the events from a distance).

<sup>11744</sup> T. 9 December 2015 (UM Suonn), E1/365.1, pp. 79-80.

<sup>11745</sup> T. 28 October 2015 (SEAN Song), E1/358.1, pp. 7, 9, 10-11 (SEAN Song witnessed 50 to 80 persons being killed during his one hour observation).

<sup>11746</sup> T. 27 October 2015 (SEAN Song), E1/357.1, pp. 87-89, 95-96; T. 28 October 2015 (SEAN Song), E1/358.1, pp. 40-41.

<sup>11747</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 25-27.

<sup>11748</sup> T. 9 December 2015 (UM Suonn), E1/365.1, pp. 69-70, 72.

<sup>11749</sup> T. 15 December 2015 (Y Vun), E1/368.1, pp. 34-35 (“All of them including the children were killed.”); T. 9 December 2015 (UM Suonn), E1/365.1, p. 72 (“They disappeared and never returned. They were all executed. No one was spared. And the names of those whom I knew in the village who had been taken for execution never returned as well. They were all killed in that pit.”).

<sup>11750</sup> See below, para. 3500.

<sup>11751</sup> See above, para. 3416.

13.3.9.7. Sector 505 (Kratie)

3483. UCH Sunlay, who was from Phum Voat village, Kratie commune, Kratie province, testified that he lost several family members during the DK period.<sup>11752</sup> In September 1978, 13 of his relatives including his three children, his half-Vietnamese wife, and her parents and sister were killed in separate incidents.<sup>11753</sup> His wife and children were sent to the island of Kbal Kaoh Trong where militiamen from the cooperative took them to the edge of the island and killed them.<sup>11754</sup> UCH Sunlay did not see this personally, as he had been sent away to collect bamboo. UCH Sunlay explained that “[t]hey used this ugly trick to separate the men from their wives and children before taking them away”.<sup>11755</sup> The cooperative chief, Moeun, assigned those who had Vietnamese wives to go and collect bamboo at a place that took two nights by boat to get to.<sup>11756</sup> UCH Sunlay was told what had happened by villagers, especially by Thol, one of the villagers who transported the Vietnamese by oxcart to the site and then witnessed the killings himself.<sup>11757</sup> UCH Sunlay learned that the children – aged one, three, and eight years old<sup>11758</sup> – were swung against a tree next to the pit and died instantly, following which the bodies were all thrown into the pit.<sup>11759</sup> The perpetrators were militiamen, including the chief UK Tang Hin, whom UCH Sunlay knew because they lived in his village.<sup>11760</sup> UCH Sunlay said that they were just sons of poor farmers from the low class who were assigned those tasks, and that “[t]here was a secret order from the upper echelon, and that secret order went down the line”.<sup>11761</sup>

3484. UCH Sunlay testified that the “Khmer Rouge knew very well” that his wife and her sister “were the children of Vietnamese” and that because of that his own children were linked to “being the grandchildren of Vietnamese grandparents”.<sup>11762</sup> The clothes of his dead wife and children were distributed to people in the cooperatives and two

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<sup>11752</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 90-92.

<sup>11753</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 92, 105.

<sup>11754</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 93-94, 101-102, 105-106.

<sup>11755</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 103-104.

<sup>11756</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 94.

<sup>11757</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 94, 105-106; T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 4.

<sup>11758</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 4.

<sup>11759</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 93-94.

<sup>11760</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 8.

<sup>11761</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 9.

<sup>11762</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 102-103; T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 7, 9-10.

women recognised them and knew that they had been killed. He explained that “the Khmer Rouge distributed the clothes from those people they killed to people in the cooperatives, and told them that they were trophies”.<sup>11763</sup>

3485. The Vietnamese wives and children of three or four other men were also sent away on that occasion, while the men were assigned to collect bamboo for making ladders.<sup>11764</sup> UCH Sunlay testified that when they returned, the chief of the cooperative summoned him along with those men to tell them that they had fulfilled a great task for the *Angkar* by cleansing themselves of their origin, and that their wives and children had been collected and taken away.<sup>11765</sup> UCH Sunlay and the other men were then made to stand up and repeat the following: “We would like to solemnly declare our commitment, and sacrifice to have this piece rotten flesh cut off, in order to build the labour class of the Communist Party of Kampuchea”.<sup>11766</sup>

3486. UCH Sunlay also provided hearsay testimony of another incident where Vietnamese people were invited to gather at Krakor Pagoda in Krakor commune, Kratie district, Kratie province, where they were loaded onto trucks heading towards Vietnam.<sup>11767</sup> He learned later on from a driver named Ang that his mother-in-law was among the group sent there and that these persons were in fact executed.<sup>11768</sup> This hearsay account remains confusing as regards locations and, owing to the lack of corroborative evidence, the Chamber will not rely on it.<sup>11769</sup>

3487. Another Civil Party, HENG Lai Heang, stated that the targeting of Vietnamese included killing the half-blood Vietnamese in order to prevent them from “collud[ing] with the Vietnamese side”.<sup>11770</sup> By 1977, HENG Lai Heang lost 37 family members and relatives during the DK period, including grandchildren, who were half-blood

<sup>11763</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 95.

<sup>11764</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 94, 103-104.

<sup>11765</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 94.

<sup>11766</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 94-95.

<sup>11767</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 99-100; T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 10-12, 24.

<sup>11768</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 99-100; T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 10-12, 24.

<sup>11769</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 99, 100 (the trucks headed Vietnam passing by Prich (phonetic) mountain); T. 2 March 2016 (UCH Sunlay), E1/395.1, pp. 11 (people were boarded in trucks to be executed at Phnum Prech located along the way from Kratie to Lok Nin, Vietnam), 12 (people were taken on the way to Mountain 5000 located in Snuol district (phonetic), Kratie province).

<sup>11770</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 68.

Vietnamese and only one survived.<sup>11771</sup> Her uncle was married to a woman who was ethnically Vietnamese and she was taken to Kaoh Sroka Security Centre, Kantuot commune in Kratie district.<sup>11772</sup> Although her uncle was Khmer and his children could not speak Vietnamese, she said they were not spared because there was a policy that people with a Vietnamese network or relationship would also be “collected and taken away”.<sup>11773</sup> The Vietnamese in Kratie district were screened and identified through the biographies residents had to provide and through the lists prepared at the village level and passed to the upper echelon.<sup>11774</sup> While it is likely that the disappearance at around the same period of time of such a large number of HENG Lai Heang’s relatives who were all half-blood Vietnamese corresponds to the implementation of a nationwide policy to destroy Vietnamese living in Cambodia, the Chamber notes that HENG Lai Heang never witnessed the executions of her relatives herself,<sup>11775</sup> and it is unclear how she was informed of their fate, which she describes in very general terms. Without further information, such as the circumstances of her relatives’ deaths or the date of these events (which seem to have taken place before 1977), the Chamber is unable to establish that HENG Lai Heang’s relatives were killed from April 1977 because of their Vietnamese ethnicity.

3488. In light of the above, the Chamber is satisfied that Vietnamese were targeted due to their perceived ethnicity and killed in 1978 in Kratie province. The Chamber specifically finds that 13 of UCH Sunlay’s Vietnamese relatives, including his three children, his half-Vietnamese wife, and her parents and sister, as well as the wives and children of three or four other Khmer men in Kratie were deliberately executed in September 1978 in Kratie province.

#### 13.3.9.8. Au Kanseng Security Centre and S-21 Security Centre

3489. The Closing Order alleges that Vietnamese people were detained and killed at Au Kanseng Security Centre and at S-21 Security Centre. The factual findings with

<sup>11771</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 32-33 (“all of my relatives disappeared by 1977 since these relatives, who were half-blood with the Vietnamese even grandchildren, had been arrested or they had gone and from that family side, only one survived”), 73-74, 101-102.

<sup>11772</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 73-74; HENG Lai Heang Interview Record, E3/436, 23 November 2009, p. 10, ERN (En) 00414570.

<sup>11773</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 32-33, 70.

<sup>11774</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 68, 71-72.

<sup>11775</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 74.

respect these two security centres are addressed in the relevant sections of this Judgement.<sup>11776</sup>

### 13.3.10. *Legal Findings*

#### 13.3.10.1. *Murder*

3490. The Closing Order charges the Accused with the crime against humanity of murder of Vietnamese in 1975-1976 in relation to those Vietnamese who resisted deportation, as well as nationwide from April 1977.<sup>11777</sup> Based on the available evidence the Chamber has found no instances of killings of Vietnamese who resisted deportation in 1975-1976. The Chamber has found that specific instances of killings of Vietnamese were established in Svay Rieng in 1978,<sup>11778</sup> on DK waters after April or May 1977 and on 19 March 1978,<sup>11779</sup> in Kampong Chhnang province in 1977;<sup>11780</sup> at Wat Khsach in late 1978;<sup>11781</sup> and in Kratie in September 1978.<sup>11782</sup>

3491. Regarding Svay Rieng, the Chamber is satisfied beyond reasonable doubt that the killing of four Vietnamese families living one kilometre away from SIN Chhem's house were deliberate, especially considering that these Vietnamese were arrested by local authorities before disappearing. The *actus reus* and *mens rea* of murder are therefore established with respect to these killings.

3492. The Chamber has already clarified that it will address whether the suicide of a person could amount to murder as this arises on the facts of the case and to the extent that incidents of suicide are alleged to amount to murder in the Closing Order. As regards Svay Rieng province, the Chamber notes that the suicide of SIENG Chanthy's father was not addressed in the Closing Order, therefore it considers that this suicide is not part of the charges of murder and will not make any legal finding of murder as a crime against humanity with regard to this event.<sup>11783</sup>

<sup>11776</sup> Section 12.2: S-21 Security Centre; Section 12.4: Au Kanseng Security Centre.

<sup>11777</sup> Closing Order, para. 1378.

<sup>11778</sup> See above, paras 3453, 3455. The Chamber has found that the four Vietnamese families living one kilometre away from SIN Chhem's house were killed in 1978.

<sup>11779</sup> See above, para. 3461.

<sup>11780</sup> See above, para. 3471.

<sup>11781</sup> See above, para. 3482.

<sup>11782</sup> See above, para. 3488.

<sup>11783</sup> Section 9.1.1: Applicable Law: Crimes Against Humanity: Murder.

3493. Turning to killings of Vietnamese fishermen and refugees on DK waters, the Chamber is satisfied that CPK armed forces were ordered to systematically target Vietnamese boats encroaching on DK waters, without discriminating military from civilian targets, and that a number of Vietnamese fishermen and refugees were intentionally killed by CPK forces as a result, specifically after April or May 1977 at Ou Chheu Teal port as evidenced by PAK Sok, and on 19 March 1978 as reported by Division 164.<sup>11784</sup> The *actus reus* and *mens rea* of murder are therefore established with respect to these killings.

3494. As regards Kampong Chhnang province, the Chamber is satisfied that PRAK Doeun's wife, children and mother-in-law as well as Vietnamese members of six other families were deliberately executed on Ta Mov island in 1977. The organised nature of the gathering and the systematic screening and separation of Khmer individuals from the Vietnamese individuals who were later executed shows a clear intent to cause death. The *actus reus* and *mens rea* of murder are therefore established with respect to these killings.

3495. The Chamber is similarly satisfied that Vietnamese civilians were brought to and killed *en masse* in late 1978 at Wat Khsach due to their perceived ethnicity and upon orders from the upper echelon. The order, the organised nature of the gathering of Vietnamese, their screening, as well as their systematic execution show a clear intent to cause death. The *actus reus* and *mens rea* of murder are therefore established with respect to these killings.

3496. Finally, the Chamber is satisfied that the September 1978 killings of the 13 Vietnamese relatives of UCH Sunlay, including his three children, his half-Vietnamese wife and her parents and sister, as well as the wives and children of three or four other Khmer men in Kratie were deliberate. In sending the husbands away while arresting and executing their Vietnamese relatives, the perpetrators showed a clear intent to cause death. The *actus reus* and *mens rea* of murder are therefore established with respect to these killings.

3497. Accordingly, the Chamber finds that the crime against humanity of murder is established with respect to the killings of Vietnamese civilians in Svay Rieng in 1978;

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<sup>11784</sup> See above, paras 3456-3461.

in DK waters after April or May 1977 at Ou Chheu Teal port as evidenced by PAK Sok; in DK waters on 19 March 1978 as reported by Division 164; in Kampong Chhnang province in 1977 (limited to the killing of PRAK Doeun's wife, children and mother-in-law as well as Vietnamese members of six other families); at Wat Khsach late 1978; and in Kratie in September 1978 (including killings of the 13 Vietnamese relatives of UCH Sunlay, including his three children, his half-Vietnamese wife and her parents and sister, as well as the wives and children of three or four other Khmer men).

### 13.3.10.2. *Extermination*

3498. The Closing Order charges the Accused with the crime against humanity of extermination of Vietnamese nationwide and, beginning in April 1977, finding that the execution of members of this group “increased progressively until it reached such a scale as to qualify as extermination”.<sup>11785</sup>

3499. The Chamber has found above that murder as a crime against humanity was established in relation to the intentional killings of Vietnamese civilians in Svay Rieng in 1978, Vietnamese fishermen and refugees in DK waters after April or May 1977 at Ou Chheu Teal port as evidenced by PAK Sok and on 19 March 1978 as reported by Division 164, of PRAK Doeun's relatives and Vietnamese members of six other families in Kampong Chhnang province in 1977, UCH Sunlay's relatives and family members of three or four other Khmer men in Kratie in September 1978, and the mass killing of Vietnamese civilians at Wat Khsach in late 1978.<sup>11786</sup> The Chamber is satisfied that these specific instances of killings established beyond reasonable doubt total approximately 60 deaths;<sup>11787</sup> a number which, in light of the overall evidence, is almost certainly an underestimation of the actual situation. The Chamber also recalls having found specific instances of killings of Vietnamese at S-21 and Au Kanseng.<sup>11788</sup>

<sup>11785</sup> Closing Order, para. 1386.

<sup>11786</sup> See above, para. 3497.

<sup>11787</sup> The Chamber considers it reasonable to estimate a minimal average number of two people per family when the evidence was not specific and a minimal average number of five people per boat as regards killings on DK waters, which amounts to the following estimates: eight in Svay Rieng, eight in DK waters, 14 in Kampong Chhnang, 19 in Kratie and 10 at the Wat Khsach Pagoda.

<sup>11788</sup> Section 12.4: Au Kanseng Security Centre, paras 2926, 2959 (murder of a group of six Vietnamese, which is also part of the basis for extermination finding at Au Kanseng); Section 12.2: S-21 Security Centre, paras 2571 (the extermination finding at S-21 encompass killings of the Vietnamese), 2621 (hundreds of Vietnamese soldiers and civilians were killed at S-21).



3500. The Chamber recalls that there is no minimum number of victims required to establish extermination,<sup>11789</sup> and finds that these murders satisfy the requirement of killings on a massive scale. Further, there is overwhelming evidence that these killings were all part of the same murder operation. In this regard, the Chamber takes into account the general evidence of the CPK targeting Vietnamese and specifically the CPK calls to kill Vietnamese,<sup>11790</sup> the established facts that, in each case, the Vietnamese were targeted as being members of a collective group rather than victims in their individual capacity; the fact that they were specifically screened out and separated from non-Vietnamese individuals before being killed in Kampong Chhnang, Wat Khsach and Kratie; the manner in which the killings were carried out;<sup>11791</sup> and the fact that witnesses and Civil Parties in Kampong Chhnang<sup>11792</sup> and Wat Khsach<sup>11793</sup> consistently testified that all Vietnamese families were killed at the time and no Vietnamese individual remained in the area afterwards.<sup>11794</sup> The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of extermination is established.

3501. In relation to the intent requirement, the evidence demonstrates that all of these killings were organised and deliberate, pursuant to CPK calls to identify, expel and/or kill the Vietnamese. This shows that the perpetrators acted with the intent to kill Vietnamese on a massive scale. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of extermination is established. Accordingly, the Chamber finds that the crime against humanity of extermination is established in relation to the above outlined killings in Svay Rieng in 1978, at Kampong Chhnang in 1977, at Wat Khsach in late 1978, in Kratie in September 1978, as well as on DK waters after April or May 1977 at Ou Chheu Teal port and on 19 March 1978.

<sup>11789</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination.

<sup>11790</sup> See above, Section 13.3.5: Targeting of the Vietnamese.

<sup>11791</sup> Evidence of particularly brutal executions was shown in each individual location, such as the removing of the gallbladders of victims in Wat Khsach (see above, para. 3482); children being thrown into the air and pierced with a bayonet in Kampong Chhnang (see above, para. 3467); and the smashing of babies against tree trunks in Kratie (see above, para. 3488). Evidence of an attempt to conceal the executions was also shown: pretending to be sending victims to a study session in Wat Khsach (see above, para. 3479); sending Khmer husbands away while gathering up, taking away and killing their Vietnamese relatives in Kratie (see above, para. 3488).

<sup>11792</sup> See above, paras 3466-3467 (all the seven mixed families of PRAK Doeun's unit were gathered, the Vietnamese were separated, taken away and killed).

<sup>11793</sup> See above, para. 3481 ("After the Wat Khsach execution there were no more Vietnamese in the village").

<sup>11794</sup> See *Lukić and Lukić Appeal Judgement*, para. 543 ("The Appeals Chamber notes that almost the entire Muslim population of Koritnik perished in the Pionirska Street Incident.").

13.3.10.3. *Deportation*

3502. The Closing Order charges the Accused with the crime against humanity of deportation of a large number of Vietnamese from Prey Veng, Svay Rieng and Tram Kak district in 1975 and 1976.<sup>11795</sup>

3503. The Chamber has found that from 1975 until the end of 1976, there was a nationwide policy to expel people of Vietnamese ethnicity living in Cambodia. This policy was implemented following agreements with Vietnamese authorities. Khmer Rouge cadres organised and monitored the transportation of Vietnamese people including by boats and by trucks. Khmer spouses of mixed families had to stay in Cambodia.<sup>11796</sup> The Chamber has also found that the CPK upper echelon ordered the identification of Vietnamese, as a result of which, from April 1975, lists and biographies were prepared by the lower echelons and then communicated back to the upper echelons for further action.<sup>11797</sup> It has further established that, from 1975, the CPK considered the Vietnamese ethnicity to be matrilineal and, as a result, targeted in mixed families Vietnamese mothers and their children while sparing Khmer fathers, as well as targeting Vietnamese fathers while sparing Khmer mothers and children.<sup>11798</sup> The Chamber has found that the removal of Vietnamese was witnessed in Prey Veng and Svay Rieng in 1975 and 1976.<sup>11799</sup> The Chamber is satisfied that the CPK policy publicly targeting the Vietnamese, the preparation of lists and the implementation of a matrilineal policy created a coercive environment. The Chamber therefore finds that Vietnamese leaving Prey Veng and Svay Rieng in 1975 and 1976 were forced into doing so by this threatening environment, thereby lacking any genuine choice.

3504. The Chamber is satisfied that, prior to their forced displacement from Cambodia to Vietnam, these Vietnamese individuals were living in their respective communities, some for generations. The Chamber recalls that evidence regarding the legal status of deportation victims need not be presented.<sup>11800</sup>

<sup>11795</sup> Closing Order, para. 1398. Regarding the deportation of the Vietnamese from the Tram Kak district, *see* Section 10.1.13.3: Tram Kak Cooperatives: Legal Findings: Deportation.

<sup>11796</sup> *See above*, paras 3382-3386, 3389, 3414, 3434.

<sup>11797</sup> *See above*, paras 3420-3423.

<sup>11798</sup> *See above*, paras 3424-3428.

<sup>11799</sup> *See above*, paras 3436, 3439.

<sup>11800</sup> Section 9.1.4: Applicable Law: Crimes Against Humanity: Deportation, para. 677.

3505. The witnesses and Civil Parties gave accounts of having seen, or heard of, a number of Vietnamese being gathered and evacuated and never returning to their villages throughout Prey Veng province. Specific instances of families being gathered, removed and seen leaving by boats were found in Anlung Trea village, Preaek Chrey commune, Kampong Leav district, Pou Chentam village, Svay Antor commune, Prey Veng district and Angkor Yos village, Preaek Anteah, Prey Veng district.<sup>11801</sup> The Chamber also found that it was very likely that some Vietnamese people were deported from Svay Rieng to Vietnam but that the available evidence did not meet the requisite standard to establish specific instances of forcible displacements of Vietnamese beyond reasonable doubt in Svay Rieng province from 1975. The Chamber is satisfied that the *actus reus* of the crime against humanity of deportation is established.

3506. Although the Chamber has found that a state of armed conflict existed between Cambodia and Vietnam from at least April 1975, this does not provide a lawful basis on which to coercively transfer civilians across the border.

3507. Recalling that there existed a policy from 1975 until the end of 1976 to expel people of Vietnamese ethnicity living in Cambodia,<sup>11802</sup> the Chamber is satisfied that the displacements of the Vietnamese across the Cambodian border outlined above were intentional. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of deportation is established. Accordingly, the Chamber finds that the crime against humanity of deportation is established in relation to the large number of Vietnamese expelled from Prey Veng province in 1975 and 1976.

#### 13.3.10.4. Persecution on racial grounds

3508. The Closing Order charges the Accused with the crime against humanity of persecution on racial grounds of Vietnamese in Prey Veng, Svay Rieng, Tram Kak Cooperatives, S-21, Kraing Ta Chan and Au Kanseng,<sup>11803</sup> throughout the DK period and on the basis that Vietnamese people were “deliberately and systematically identified and targeted due to their perceived race” as they were perceived by the CPK to be “racially distinct from Cambodian people, based on biological and particularly

<sup>11801</sup> See above, paras 3430-3436.

<sup>11802</sup> See above, para. 3503.

<sup>11803</sup> For the discussion of persecution on racial grounds in Tram Kak Cooperatives, S-21, Kraing Ta Chan and Au Kanseng, see Sections 10.1.13.8, 12.2.24.1.7, 12.3.12.7 and 12.4.7.6, respectively.

matrilineal descent”.<sup>11804</sup> The particular acts amounting to persecution must be expressly charged.<sup>11805</sup> On the basis of the Closing Order and the Severance Decision, the acts charged with regard to the treatment of the Vietnamese are limited to expulsions from Cambodian territory to Vietnam, arrest, detention and killings of Vietnamese and, from April 1977, mass gathering and killings in Prey Veng and Svay Rieng.<sup>11806</sup>

3509. The Chamber has already found that the crime against humanity of persecution on racial grounds was established in the Tram Kak Cooperatives in 1975 until mid-1976, based on acts of deportation of Vietnamese to Vietnam;<sup>11807</sup> at S-21 Security Centre based on acts of arrests, detention and killings of Vietnamese;<sup>11808</sup> and at Au Kanseng based on acts of arrest and execution of Vietnamese.<sup>11809</sup> It was not satisfied that persecution on racial grounds was established at Kraing Ta Chan.<sup>11810</sup> It here considers the conduct charged as persecution on racial grounds of Vietnamese in Prey Veng and Svay Rieng.

3510. The Chamber has found that, from April 1975, the Vietnamese were identified by the CPK through the creation of lists,<sup>11811</sup> and that mixed families were targeted on the basis of matrilineal ethnicity.<sup>11812</sup> The Chamber has also found that the crime against humanity of deportation of a large number of Vietnamese from Prey Veng to Vietnam in 1975 and 1976 was proved beyond reasonable doubt and further established that displacements of Vietnamese, some of which were preceded by arrests, took place in Prey Veng between 1977 and 1979, and that the Vietnamese who were taken away never returned.<sup>11813</sup> The Chamber has also found that Vietnamese civilians were killed in Svay Rieng in 1978.<sup>11814</sup>

3511. The Chamber is satisfied that the Vietnamese living in Cambodia were sufficiently discernible as a racial group to determine whether consequences occurred

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<sup>11804</sup> Closing Order, para. 1422.

<sup>11805</sup> Section 9.1.7: Applicable Law: Crimes Against Humanity: Persecution on Political, Racial or Religious Grounds.

<sup>11806</sup> Closing Order, para. 1422; Case 002 Additional Severance Decision Annex, para. 5(ii)(b).

<sup>11807</sup> Section 10.1.13.8: Tram Kak Cooperatives: Legal Findings: Persecution on Racial Grounds.

<sup>11808</sup> Section 12.2.24.1.7: S-21 Security Centre: Legal Findings: Persecution on Racial Grounds.

<sup>11809</sup> Section 12.4.7.6: Au Kanseng Security Centre; Legal Findings: Persecution on Racial Grounds.

<sup>11810</sup> Section 12.3: Kraing Ta Chan Security Centre; Legal Findings: Persecution on Racial Grounds.

<sup>11811</sup> *See above*, para. 3423.

<sup>11812</sup> *See above*, para. 3428.

<sup>11813</sup> *See above*, para. 3451.

<sup>11814</sup> *See above*, paras 3452-3455.

for this group, and that the victims of these acts were in fact Vietnamese.<sup>11815</sup> The acts were accordingly discriminatory in fact. Acts committed against this group variously infringed upon and violated fundamental rights and freedoms pertaining to movement,<sup>11816</sup> personal dignity,<sup>11817</sup> liberty and security,<sup>11818</sup> freedom from arbitrary or unlawful arrest,<sup>11819</sup> a fair and public trial and equality before the law as enshrined in customary international law.<sup>11820</sup>

3512. In determining whether these acts reach the level of seriousness required for the crime of persecution, the Chamber considers the deportation of a large number of Vietnamese from Prey Veng to Vietnam in 1975 and 1976 and the arrests of Vietnamese families in Prey Veng and Svay Rieng between 1977 and 1979, in the context that they were displaced from their homes and never returned, cumulatively with the killings of Vietnamese civilians in Svay Rieng in 1978, as well as all of the other acts of persecution already established at other crime sites. Together, these acts cumulatively rise to the requisite level of seriousness such as to constitute persecution. The Chamber is therefore satisfied that the *actus reus* of the crime against humanity of persecution on racial grounds is established.

3513. With respect to the *mens rea*, the Chamber notes the systematic targeting of Vietnamese individuals due to their perceived race, as evidenced by the preparation of lists, the matrilineal policy applied to mixed families, and contemporaneous publications in the *Revolutionary Flag* and speeches of leading CPK figures targeting the Vietnamese. The Chamber is satisfied on this basis that Vietnamese were intentionally targeted in Prey Veng and Svay Rieng on the basis of their race and finds that the specific intent to discriminate on racial grounds is established. The Chamber is therefore satisfied that the *mens rea* of the crime against humanity of persecution on racial grounds is established. Accordingly, the Chamber finds that the crime against

<sup>11815</sup> Section 16.3.2.1.3.5: CIA, KGB and “*Yuon*” (Vietnamese) Agents.

<sup>11816</sup> As evidence of the state of customary international law, *see* UDHR, Art. 13(1); ICCPR, Art. 12(1); ECHR Protocol No. 4, Art. 2; ACHR, Art. 22(5).

<sup>11817</sup> As evidence of the state of customary international law, *see* UDHR, Preamble, Arts. 1, 22, 23(3); ICCPR, Art. 10; ACHR, Arts 5-6. *See also*, *Kordić and Čerkez* Appeal Judgement, para. 106.

<sup>11818</sup> As evidence of the state of customary international law, *see* UDHR, Art. 3; ICCPR, Arts 6, 9(1); ECHR, Arts 2, 5; ACHR, Arts 4, 7.

<sup>11819</sup> As evidence of the state of customary international law, *see* UDHR, Art. 9; ICCPR, Art. 9(1); ECHR, Art. 5; ACHR, Art. 7(3).

<sup>11820</sup> As evidence of the state of customary international law, *see* UDHR, Arts 6, 10; ICCPR, Arts. 9(2)-(4), 14; ECHR, Art. 6; ACHR, Arts 7(6), 8.

humanity of persecution on racial grounds is established in relation to Vietnamese in Prey Veng and Svay Rieng.

13.3.10.5. *Genocide*

3514. The Closing Order charges the Accused with the crime of genocide by systematically killing members of the Vietnamese group, qualified as “an ethnic and national group, who may also have been considered as a racial group by the CPK”, with the intent to destroy, in whole or in part, the Vietnamese group as such.<sup>11821</sup> The Chamber is satisfied that the Vietnamese constituted a racial, national and ethnic group at the relevant time, and thus a protected group.<sup>11822</sup>

3515. The Chamber has found that a number of Vietnamese were among the victims of the crimes against humanity of murder and extermination at Au Kanseng Security Centre<sup>11823</sup> and S-21 Security Centre.<sup>11824</sup> The Chamber has also found that the crimes against humanity of murder and extermination of Vietnamese are established in Svay Rieng in 1978, in Kampong Chhnang in 1977, Wat Khsach in late 1978 and Kratie in September 1978, as well as on DK waters after April or May 1977 at Ou Chheu Teal port and on 19 March 1978.<sup>11825</sup>

3516. The Chamber finds that these killings were systematically organised and directed against the Vietnamese. The Chamber is satisfied that, in each case, Vietnamese were targeted not as individuals but on the basis of their membership in the group. Vietnamese were arrested and detained before disappearing in Svay Rieng because of their perceived ethnicity, boats were targeted on DK waters because they were identified as being Vietnamese, and as a result Vietnamese civilians were killed, and Vietnamese in Kampong Chhnang, Wat Khsach and Kratie, were specifically screened out and separated from non-Vietnamese individuals before being killed, thus showing that members of the group were deliberately killed on the basis of their group membership. The Chamber is therefore satisfied that the *actus reus* of the crime of genocide by killing is established.

<sup>11821</sup> Closing Order, paras 1343, 1345.

<sup>11822</sup> See above, para. 3419.

<sup>11823</sup> Section 12.4: Au Kanseng Security Centre, paras 2959, 2994-2999.

<sup>11824</sup> Section 12.2: S-21 Security Centre, paras 2560-2571.

<sup>11825</sup> See above, paras 3497, 3501.

3517. Turning to the *mens rea*, the Chamber has found that the CPK specifically targeted Vietnamese as a group, including civilians, throughout the DK period.<sup>11826</sup> In particular, it has found that POL Pot's "One against 30 policy" specifically targeted Vietnamese armed forces as well as civilians.<sup>11827</sup> The Accused were found to have lectured at or attended political training sessions at which the Vietnamese or Vietnamese "agents" were labelled as enemies.<sup>11828</sup> KHIEU Samphan repeatedly and publicly referred to Vietnam in inflammatory terms,<sup>11829</sup> and NUON Chea publicly stated that the Cambodian people and RAK had "crushed the Vietnamese strategy of 'Indochina Federation' aiming at swallowing the Kampuchea's territory and exterminating the [*sic*] Kampuchea's race".<sup>11830</sup> The Chamber was further satisfied that the Vietnamese were identified by the CPK through the creation of lists,<sup>11831</sup> and that mixed families were targeted on the basis of matrilineal ethnicity.<sup>11832</sup>

3518. The Chamber finds that CPK internally and publicly targeted the Vietnamese as a group through contemporaneous documents and speeches identifying them as "poisonous foreigners" from the early stages of the DK regime and calling for their expulsion from Cambodia until late 1976, as well as, from April 1977, their destruction;<sup>11833</sup> through the creation of lists and following a matrilineal policy designed to "dig up the roots" of the Vietnamese,<sup>11834</sup> and that these instructions were disseminated widely. The Chamber is satisfied that the actions of the physical perpetrators in the above instances of killings demonstrate the specific intent to destroy the Vietnamese group, as such. The Chamber is therefore satisfied that the *mens rea* of the crime of genocide by killing is established.

3519. In light of the above, the Chamber finds that the crime of genocide by killing members of the Vietnamese group is established.

<sup>11826</sup> See above, para. 3416. See also, Section 12.1: S-21 Security Centre, paras 2167-2168, 2174-2175.

<sup>11827</sup> See above, paras 3377-3381.

<sup>11828</sup> See above, fn. 11436.

<sup>11829</sup> See above, paras 3385, 3390, 3391, 3396.

<sup>11830</sup> IENG Sary Speech, E3/199, 3 September 1978, p. 4, ERN (En) 00065915.

<sup>11831</sup> See above, para. 3497.

<sup>11832</sup> See above, para. 3501.

<sup>11833</sup> See above, para. 3416.

<sup>11834</sup> See above, paras 3425, 3428.

**13.4. Treatment of Former Khmer Republic Officials****13.4.1. Closing Order**

3520. The Closing Order charges the Accused with the crimes against humanity of humanity of persecution on political grounds and other inhumane acts through conduct characterised as forced transfer with respect to former officials of the Khmer Republic (including both civil servants and military personnel) and their families.<sup>11835</sup> The Closing Order finds that one of the five CPK policies used to implement and defend the CPK socialist revolution was to target this group, and that former officials were identified as “enemies” based on their real or perceived political beliefs.<sup>11836</sup> It charges that this policy came into existence before 1975 and continued until at least 6 January 1979.<sup>11837</sup> The Closing Order further specifies that the policy began with public declarations of intent to execute senior Khmer Republic figures in February 1975, followed by a secret decision to kill members of the Khmer Republic elite after 17 April 1975 in order to “make it impossible for them to stage a counter-revolutionary comeback”.<sup>11838</sup>

**13.4.2. Findings**

3521. Pursuant to the Case 002 Additional Severance Decision, the Chamber is limited to considering the implementation of this policy through the crime against humanity of persecution on political grounds<sup>11839</sup> at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre.<sup>11840</sup> As such, the Chamber’s factual and legal findings regarding the treatment of former Khmer Republic officials (including both civil servants and military personnel) and their families are discussed in the sections of each respective crime site.<sup>11841</sup>

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<sup>11835</sup> Closing Order, paras 1417, 1424, 1468.

<sup>11836</sup> Closing Order, paras 156-158, 205-206, 208-209, 1417.

<sup>11837</sup> Closing Order, paras 158, 208.

<sup>11838</sup> Closing Order, para. 208.

<sup>11839</sup> The Chamber limited the crime against humanity of other inhumane acts through conduct characterised as forced transfer to Phase Two of the Movement of Population, which itself was further limited to the treatment of the Cham. *See* Case 002 Additional Severance Decision Annex, para. 5(ii)(b)(13).

<sup>11840</sup> Annex I: Procedural History, paras 15-16.

<sup>11841</sup> Section 10.1: Tram Kak Cooperatives; Section 11.2: 1<sup>st</sup> January Dam Worksite; Section 12.2: S-21 Security Centre; Section 12.3: Kraing Ta Chan Security Centre. *See also*, Section 16.4.3.4: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials.



## 14. REGULATION OF MARRIAGE

### 14.1. Closing Order

3522. According to the Closing Order, the Regulation of Marriage was one of five CPK policies designed and implemented to achieve a socialist revolution in Cambodia and defend the CPK against internal and external enemies by whatever means necessary. The Closing Order charges that the CPK started forcing people to marry as early as 1974 and continued with this practice until at least 6 January 1979. It further charges that people were forced to marry throughout the territory of Cambodia.<sup>11842</sup>

3523. The Closing Order states that the objectives of this policy included: controlling interaction between individuals, in that they were permitted to marry and have sexual relations only in accordance with CPK policy; reconstructing the concept of marriage, in order for “the CPK to replace the role of parents and to enable the mothers to go to work”; “increasing population growth” and “building up a family”. The objective of this policy “was achieved by matching people with similar political status and marrying soldiers.” The Closing Order further states that marriage was a key means by which the CPK did “whatever can be done that is a gain for the revolution”.<sup>11843</sup>

3524. In relation to Case 002/02, the Accused are charged with the crime against humanity of other inhumane acts through conduct characterised as forced marriage, nationwide, as well as at the Tram Kak Cooperatives, Trapeang Thma Dam and 1<sup>st</sup> January Dam Worksites. The Accused are also charged with the crime against humanity of other inhumane acts through conduct characterised as rape within the context of forced marriage.<sup>11844</sup>

3525. The Chamber has noted above that the term “forced marriage” has been used in international jurisprudence to cover a range of different factual circumstances and that

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<sup>11842</sup> Closing Order, paras 156-157, 216, 218.

<sup>11843</sup> Closing Order, para. 217.

<sup>11844</sup> Closing Order, paras 1426-1433, 1442-1447; Decision on NUON Chea and IENG Thirith Appeal Against the Closing Order (PTC), D427/3/12, 13 January 2011, para. 11(2); Decision on Nuon Chea and Ieng Thirith Appeal Against the Closing Order (PTC), D427/3/15, 15 February 2011, paras 149-166.]. See also, Section 2.5.6.7.2: Facts Allegedly Outside of the Scope of the Indictment: Rape Outside the Context of Forced Marriage.

there is no common understanding of this label.<sup>11845</sup> Accordingly, the Chamber will not make any findings with respect to the existence of “forced marriage”, as such. It will instead determine whether the conduct underlying the Closing Order’s findings of “forced marriage” has been established and whether this conduct rises to the level of other inhumane acts.

## **14.2. Preliminary Issues and General Considerations**

### ***14.2.1. Evidence of Witnesses, Civil Parties and Experts***

3526. During the Regulation of Marriage trial segment, the Chamber heard two witnesses and nine Civil Parties on the facts, three Civil Parties on harm suffered and two experts in relation to their knowledge or expertise relevant to this trial topic.<sup>11846</sup> The Chamber notes that during the course of the whole trial, some witnesses and Civil Parties who were called for and heard during other trial topics also gave evidence on the Regulation of Marriage.

#### ***14.2.1.1. Challenges to the Evidence of Civil Parties***

3527. Both the NUON Chea Defence and the KHIEU Samphan Defence raise a number of challenges with respect to the evidence given by the Civil Parties. The KHIEU Samphan Defence submits that the consolidated representation of Civil Parties may have affected the substance of their answers, consciously or not, because of the gathering of Civil Parties in group meetings where accounts of individual experiences were shared.<sup>11847</sup> The KHIEU Samphan Defence further raises challenges to the evidence of the Civil Parties on the basis that their answers varied over time and incriminating evidence was often only included later in the proceedings.<sup>11848</sup> Similarly, the NUON Chea Defence submits that certain in-court testimonies were “drastically different or exaggerated” compared to information appearing in Civil Party

<sup>11845</sup> Section 9.1.8.3: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Forced Marriage, paras 743-747.

<sup>11846</sup> Final List of Witnesses Civil Parties and Experts, E454.1, 27 December 2016, ERN (En) 01369547-01369548. *See also*, Decision on Designation of 2-TCE-82, E431, 23 August 2016; Decision on Designation of 2-TCE-81, E433, 30 August 2016.

<sup>11847</sup> KHIEU Samphan Closing Brief, para. 2324.

<sup>11848</sup> KHIEU Samphan Closing Brief, paras 2325-2328.

Applications.<sup>11849</sup> It further submits that the Civil Parties’ exposure to “Tuol Sleng exhibits, documentaries or civil society” impacts the reliability of their evidence.<sup>11850</sup>

3528. The Chamber recalls that due to their special status, Civil Parties are not required to take an oath.<sup>11851</sup> This does not give rise to any presumption that their evidence is unreliable. As noted in the Introductory and Preliminary Issues section, the Chamber will assess the credibility and reliability of Civil Parties on a case-by-case basis in light of the credibility of the evidence and in consideration of factors such as the demeanour of the person giving evidence, consistencies and inconsistencies in relation to material facts, possible ulterior motivations, corroboration and all the circumstances of the case.<sup>11852</sup> With respect to Civil Party Applications, the Chamber recalls that these are not created by a judicial entity and are accordingly not accorded a presumption of reliability. They are accorded little, if any, probative value. The Chamber accordingly will place greater weight on Civil Parties’ in-court statements than on their Civil Party Applications.<sup>11853</sup> As to specific challenges to the evidence of particular Civil Parties, the Chamber will address these in the relevant section of its factual finding.

14.2.1.2. Evidence of Experts Peg LEVINE and Kasumi NAKAGAWA

3529. The NUON Chea Defence submits that Expert Peg LEVINE is mostly credible and reliable, though her evidence should be considered in context due to the small population sample of her study. The NUON Chea Defence further submits that her study on “Weddings, Births, and Ritual Harm under the Khmer Rouge” followed strict methodology, with impartial sample selection and transparent sources.<sup>11854</sup> Additionally, the NUON Chea Defence submits that during her testimony, Peg LEVINE was very cautious regarding the scope of her study, the evidence provided and in relation to the existence and pressure of “the dominant western perspective”, which perceives marriage as taking place in a certain way and under certain circumstances.<sup>11855</sup> The KHIEU Samphan Defence submits that Peg LEVINE’s

<sup>11849</sup> NUON Chea Closing Brief, para. 1145.

<sup>11850</sup> NUON Chea Closing Brief, para. 1146.

<sup>11851</sup> Section 2: Preliminary Issues, para. 49.

<sup>11852</sup> Section 2: Preliminary Issues, para. 49.

<sup>11853</sup> Section 2: Preliminary Issues, para. 73.

<sup>11854</sup> NUON Chea Closing Brief, para. 1149.

<sup>11855</sup> T. 19 Jun 2017 (Closing Statements), E1/524.1, p. 103. *See also*, NUON Chea Closing Brief, para. 1149.

testimony contained important information, including with respect to the prevailing cultural context in Cambodia before, during and after the DK period.<sup>11856</sup> The Co-Prosecutors do not challenge the credibility of this expert, but contest her conclusion that there was no forced marriage under the Democratic Kampuchea regime.<sup>11857</sup> The Co-Prosecutors submit that Peg LEVINE's view on the question of whether couples felt their marriages were forced was not complete because, by her own admission, she did not ask her interviewees this question.<sup>11858</sup> The Co-Prosecutors further submit that in spite of the rather inexplicable logic behind this expert's approach, information provided by the respondents in Peg LEVINE's study confirmed that people were coerced into marrying against their wills.<sup>11859</sup> The Lead Co-Lawyers do not make any submission in relation to this expert.

3530. The Chamber recalls that Peg LEVINE was summonsed to testify as an expert during the trial topic on the Regulation of Marriage because of her specialised knowledge on and extensive research experience with "Weddings, Births and Ritual Harm Under the Khmer Rouge".<sup>11860</sup> As an expert, her role was limited to assisting the Chamber in understanding, assessing or corroborating the first-hand evidence heard during the trial.<sup>11861</sup> Peg LEVINE testified that her formal academic research in relation to marriages under the Democratic Kampuchea regime was conducted in the context of her second doctorate, which was later published as a book. The research involved 192 respondents, including 11 couples and a random selection of 170 persons, from 18 different regions in Cambodia.<sup>11862</sup> The expert attempted to discover the "emic" rather than the "etic" views of her respondents. In order to maintain objectivity, she was required to disassociate from her views of love and partnership.<sup>11863</sup> The expert attempted to then ask questions and focus on the "bond" between people rather than relying necessarily on the question of force or on western notions of love, which are a

<sup>11856</sup> KHIEU Samphan Closing Brief, para. 2329.

<sup>11857</sup> Co-Prosecutors' Closing Brief, para. 610.

<sup>11858</sup> T. 14 June 2017 (Closing Statements), E1/521.1, p. 94. *See also*, Co-Prosecutors' Closing Brief, para. 610.

<sup>11859</sup> Co-Prosecutors' Closing Brief, para. 610.

<sup>11860</sup> Decision on Designation of 2-TCE-81, E433, 30 August 2016, paras 11-12.

<sup>11861</sup> Case 002/01 Appeal Judgement, para. 329.

<sup>11862</sup> NUON Chea Closing Brief, para. 1149; Thesis by P. Le Vine: *A Contextual Study into Weddings and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, 2007, p. 72, ERN (En) 00482504. *See also*, T. 10 October 2016 (Peg LEVINE), E1/480.1, pp. 25, 32, 47, 63-64.

<sup>11863</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 67 (According to the expert, from an anthropological perspective, "emic" is the point of view from within the culture itself and "etic" is the point of view of looking at a culture as an outsider.).

part of her conception of partnership.<sup>11864</sup> She characterised the marriages under the Democratic Kampuchea regime as “conscription”,<sup>11865</sup> rather than being “forced”. In the context of marriage, conscription entailed being called up by *Angkar* to be married as part of one’s national duty or service.<sup>11866</sup> Peg LEVINE noted that many of her respondents described their weddings as though they were providing a service to the future of the country.<sup>11867</sup> She tied in the idea of “conscription” with the idea of “*Angkar*” and established a relationship between weddings and expressions of loyalty to *Angkar*.<sup>11868</sup> According to her, people attributed transformative powers to *Angkar* and, in that regard, *Angkar* was very unpredictable.<sup>11869</sup> The expert stated that men usually considered “*Angkar* to be a person who was associated with the Khmer Rouge”, whereas women considered *Angkar* as being “transformational forces”.<sup>11870</sup> She further stated that most people believed that *Angkar* was an “animist force”.<sup>11871</sup> The more one perceived *Angkar* to be a “transforming and destructive force that could come anytime, unpredictably, the more they were mute, the more they complied and the more they said yes”.<sup>11872</sup> Peg LEVINE concluded that people were not forced to marry during the DK regime.<sup>11873</sup> She further concluded that there was no policy on weddings at the beginning of the regime, although the structure of a policy in relation to wedding ceremonies and proceedings had developed by 1978.<sup>11874</sup>

3531. The Chamber is not bound by any opinion provided by Peg LEVINE or any other expert including with regard to the legal analysis of the facts in question. The Chamber notes that the material available to the expert was far more limited than the totality of evidence before it. Where the opinion of the expert is based on reasoning which contradicts the preponderance of the evidence before the Chamber – especially the contemporaneous documents concerning the CPK regulations of marriages and the

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<sup>11864</sup> T. 10 October 2016 (Peg LEVINE), E1/480.1, p. 67.

<sup>11865</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 26, 36-38, 92.

<sup>11866</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 28, 38, 92.

<sup>11867</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 35.

<sup>11868</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 38.

<sup>11869</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 53.

<sup>11870</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 53-54.

<sup>11871</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 56.

<sup>11872</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 56-57.

<sup>11873</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 41-42.

<sup>11874</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 45.

statements made in court by those who experienced marriage during the DK era – the Chamber will discard it as erroneous.

3532. In relation to expert Kasumi NAKAGAWA, the NUON Chea Defence submits that her evidence is mostly reliable but must be assessed with caution.<sup>11875</sup> Neither Defence team objects to the conclusions of this expert. The Co-Prosecutors and the Lead Co-Lawyers do not make any submission in relation to this expert.

3533. The Chamber recalls that Kasumi NAKAGAWA was appointed as an expert to testify in court in relation to the Regulation of Marriage trial topic because of her extensive work and research experience related to this topic.<sup>11876</sup> The Chamber notes that Kasumi NAKAGAWA followed a strict methodology in her research and demonstrated her specialised knowledge throughout her testimony in court. She conducted three research projects: “I want to tell you – Stories of Sexual Violence during Democratic Kampuchea”;<sup>11877</sup> “Gender-Based Violence during the Khmer Rouge Regime – Stories of Survivors from the Democratic Kampuchea”;<sup>11878</sup> and “Motherhood at War”.<sup>11879</sup> She confirmed in court that the first two of her research projects were “biased” as they were shaped to document the stories of men and women who experienced sexual violence during the DK regime.<sup>11880</sup> However, her third research project was larger in size and was conducted randomly. While the initial focus of this research was to document women who had experienced pregnancy during the DK period, it evolved to encompass the story of marriages. The expert stated that this research was not biased.<sup>11881</sup> She concluded that she did not have enough evidence to say whether there was a policy from the top level to organise forced marriage as it was not part of her study.<sup>11882</sup> The expert distinguished between two types of marriage during the DK regime: authorised marriage, when “women who were willing to have husbands chosen by either their parents or the Khmer Rouge and they would have

<sup>11875</sup> NUON Chea Closing Brief, paras 1147-1148.

<sup>11876</sup> Decision on Designation of 2-TCE-82, E431, 23 August 2016.

<sup>11877</sup> Book by K. Nakagawa: “I want to tell you” – *Stories of Sexual Violence during Democratic Kampuchea (1975-1979)*, E3/3416, 2007; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 81.

<sup>11878</sup> Book by K. Nakagawa: *Gender-Based Violence during the Khmer Rouge Regime – Stories of Survivors from the Democratic Kampuchea (1975-1979)*, E3/2959, December 2008; T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 81.

<sup>11879</sup> Book by K. Nakagawa: *Motherhood at War*, E3/10655, 2015; E1/472.1, p. 81.

<sup>11880</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 93-94, 96-97.

<sup>11881</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 97-98.

<sup>11882</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 93.

accepted those marriages”; and forced marriage, when “regardless of age or social status; if a person did not want to marry, but [was] forced or instructed by the Khmer Rouge”.<sup>11883</sup> In relation to the pattern of weddings, the expert concluded that by late 1977 to 1978, many mass weddings were organised among couples whose marriages fit the definition of being “forced”.<sup>11884</sup>

3534. Kasumi NAKAGAWA’s opinion was generally well reasoned and consistent. She demonstrated caution in reaching conclusions, limiting these to what she found in her research. The Chamber will evaluate her research findings accordingly, in the context of the evidence before it.

#### 14.2.2. *The Charge of Rape outside the Context of “Forced Marriage”*

3535. The KHIEU Samphan Defence submits that the Chamber is seised of the crime of rape only in the context of forced marriage and accordingly contends that the Chamber should discard the evidence of the four Civil Parties who, in the view of the Defence, testified about rape outside the context of forced marriage.<sup>11885</sup> The Chamber recalls its earlier decision that rape outside the context of forced marriage will not be considered in support of the elements of any criminal charge in this case, but that such facts may be relevant to understanding the general context (in the cited case) of the living conditions in security centres and to assessing the credibility of the authors of statements implicating perpetrators of such crimes or implicated by other declarants.<sup>11886</sup> Accordingly, evidence identified by the Chamber as concerning rape outside of the context of forced marriage will not be considered in support of any criminal charge in this case. However, such facts may be relevant to understanding the general context in which marriages were brought about, including regarding the CPK policy vis à vis rape in general, and in assessing the credibility of the Civil Parties.<sup>11887</sup>

<sup>11883</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 73.

<sup>11884</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 74.

<sup>11885</sup> KHIEU Samphan Closing Brief, paras 2333-2334 (referring to Civil Parties HENG Lai Heang, NGET Chat, OM Yoeurn and MOM Vun).

<sup>11886</sup> Section 2: Preliminary Issues, para. 188.

<sup>11887</sup> Section 2: Preliminary Issues, para. 188.

### **14.3. Factual Findings**

#### **14.3.1. Introduction**

3536. The Chamber has set out an overview of marriage traditions in Cambodian culture prior to 1975 in the Historical Background section of this Judgement.<sup>11888</sup> As discussed in that section, limitations were placed on wedding festivities in areas “liberated” by the Khmer Rouge between 1970 and 1975.<sup>11889</sup> The organisation of weddings and wedding practices varied over time and according to locations, as shown below.<sup>11890</sup> The evidence shows that at the beginning of the DK period, the situation was diverse and in some areas of the country, such limitations continued at least until 1976.<sup>11891</sup> A large amount of evidence shows that weddings started to be celebrated again from April 1975.<sup>11892</sup>

<sup>11888</sup> Section 3.5: Marriage in Cambodia before 1975.

<sup>11889</sup> Section 3: Marriage in Cambodia before 1975, para. 273.

<sup>11890</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 82; T. 10 October 2016 (Peg LEVINE), E1/480.1 p. 75.

<sup>11891</sup> T. 14 September 2015 (SEN Srun), E1/346.1, p. 57 (“I married my wife under the Khmer Rouge and that happened in 1976 [...] that was the first marriage ceremony that took place in Peam Chi Kang commune and there were 28 couples”); SENG OI Interview Record, E3/5833, p. 7, ERN (En) 00413909 (“A44: In 1973 a man proposed to me [...] *Angkar* did not agree to the marriage, saying, ‘There was a war on.’ Q45: When did *Angkar* permit marriage? A45: Around 1976 or 1977.”); PREAP Sokhoeurn Interview Record, E3/9820, 08 October 2014, ERN (En) 01050568 (“I did not see weddings before 1976 [...] The weddings happened frequently [...] in 1976, 1977 and 1978.”); RUOS Suy Interview Record, E3/10620, 7 July 2015, p. 16, ERN (En) 01147809 (“The marriages began in 1976, but strict measures were implemented from 1977.”). *See also*, UN ECOSOC Report, E3/2060, 30 January 1979, ERN (En) 00078662 (“It is alleged that the right to marry has been seriously infringed, and several refugees have claimed that prior to 1976 marriages were entirely prohibited in the communities where they lived.”); T. 19 May 2015 (OR Ho), E1/301.1, p. 53 *confirming* OR Ho Interview Record, E3/5255, 18 November 2008, p. 6, ERN (En) 00250047 (stating that weddings were not allowed in his commune (Ballang) in Kampong Thom province until September 1977 as the war was still raging and *Angkar* needed to engage men and women at the front). The Chamber notes however that the evidence of OR Ho is isolated from majority of other consistent evidence on the Case File. *See also*, T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 19 (stating that it was chaotic at the beginning of the regime, particularly in 1975 and 1976 when people had so much access to traditional weddings and it was not until 1977 when weddings seemed to have appeared to be more consistent).

<sup>11892</sup> PHAT Duongchan Interview Record, E3/9355, 26 August 2009, p. 2. ERN (En) 00375682 (stating she was prepared by *Angkar* to get married in December 1975 in Sambour district, Kratie province); SIN Sisophal Interview Record, E3/10626, 25 May 2015, p. 3, ERN (En) 01111743 (stating he was married in June 1975 in Kratie district, Kratie province.); CHHOEUN Sem Interview Record, E3/5286, 21 April 2009, p. 3, ERN (En) 00338374 (stating that she got married in 1975 (after 17 April 1975) in Phnom Srok district, Battambang province); SUM Chanthol Interview Record, E3/10744, pp. 2-3, ERN (En) 01178451-01178452 (stating she got married in June 1975 in Kampong Siem district, Kampong Cham province); MAK Met Interview Record, E3/9796, 1 May 2015, pp. 2-3, ERN (En) 01111866-01111867 (stating she got married in late 1975 or early 1976 in Sangkae district, Battambang province); VAT Phat Interview Record, E3/9822, 23 February 2015, pp. 51, 54, ERN (En) 01079920, 01079923 (stating that there was a military meeting held in Pursat province in 1975 attended by people from regiments, battalions, companies and platoons. During that meeting, an announcement was made that those who turned 25 had to marry and he was married in 1975 in Pursat provincial town); CHEAM Kim Interview



3537. The Chamber has before it evidence of wedding ceremonies taking place in various locations throughout Cambodia during the DK regime, including in Phnom Penh;<sup>11893</sup> the Southwest (Takeo,<sup>11894</sup> Kandal<sup>11895</sup> and Kampot provinces<sup>11896</sup>), Northwest (Banteay Meanchey (Sector 5),<sup>11897</sup> Battambang<sup>11898</sup> and Pursat provinces<sup>11899</sup>), West (Kampong Chhnang province (Sector 31)),<sup>11900</sup> Central (old North) (Kampong Thom (Sector 42))<sup>11901</sup> and East Zones (Kampong Cham,<sup>11902</sup> Svay Rieng<sup>11903</sup> and Prey Veng provinces<sup>11904</sup>); Sectors 105 (Mondolkiri)<sup>11905</sup> and 505

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Record, E3/9524, 13 March 2014, p. 5, ERN (En) 00985175 (stating she was married to *Ta Val* who was a chairman of Sector 5 mobile unit in 1975 in Svay Sisophon, Sector 5); NOEM Sem Interview Record, E3/43, 18 July 2009, ERN (En) 00365658-00365659 (stating she got married in August 1975 in Phnom Penh while she was working for the Ministry of Propaganda).

<sup>11893</sup> T. 4 May 2016 (HIM Huy), E1/427.1; T. 11 August 2016 (PHOUNG Yat), E1/455.1; T. 30 August 2016 (CHEA Deap), E1/466.1; T. 31 August 2016 (CHEA Deap), E1/467.1; T. 31 August 2016 (PHAN Him), E1/467.1; T. 1 September 2016 (PHAN Him), E1/468.1; T. 21 November 2016 (THUCH Sithan), E1/500.1; T. 20 August 2009 (CHUM Neou), E3/7473.

<sup>11894</sup> T. 26 January 2015 (CHOU Koemlan), E1/252.1; T. 29 January 2015 (CHEANG Sreimom), E1/254.1; T. 16 February 2015 (EM Phoeung), E1/263.1; T. 17 February 2015 (PHNEOU Yav), E1/264.1; T. 4 May 2015 (KHOEM Boeun), E1/296.1; T. 5 May 2015 (KHOEM Boeun), E1/297.1; T. 7 May 2015 (EK Hoeun), E1/298.1; T. 8 May 2015 (EK Hoeun), E1/299.1; T. 10 March 2015 (NEANG Ouch), E1/274.1; T. 11 March 2015 (NEANG Ouch), E1/275.1; T. 22 April 2015 (PECH Chim), E1/290.1; T. 23 April 2015 (PECH Chim), E1/291.1; T. 23 August 2016 (SOU Sotheavy), E1/462.1; T. 24 August 2016 (SOU Sotheavy), E1/463.1; T. 25 August 2016 (YOS Phal), E1/464.1; T. 27 July 2016 (MOENG Vet), E1/449.1; T. 28 July 2016 (MOENG Vet), E1/450.1; T. 19 May 2015 (OR Ho), E1/301.1; T. 18 March 2015 (RIEL Son), E1/279.1; T. 12 February 2015 (RY Pov), E1/262.1.

<sup>11895</sup> T. 29 August 2016 (SENG Soeun), E1/465.1; T. 30 August 2016 (SENG Soeun), E1/466.1.

<sup>11896</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1; T. 15 August 2016 (YUN Bin), E1/457.1.

<sup>11897</sup> T. 27 July 2015 (SEN Sophon), E1/323.1; T. 28 July 2015 (MAM Soeurn), E1/324.1; T. 29 July 2015 (MAM Soeurn), E1/325.1; T. 2 September 2015 (MEAN Loeuy), E1/340.1; T. 18 August 2015 (CHHUM Seng), E1/332.1; T. 24 August 2015 (CHHUY Huy), E1/335.1; T. 20 August 2015 (LING Lrysov), E1/334.1; T. 10 August 2015 (KAN Thorl), E1/327.1; T. 1 December 2015 (PAN Chhoung), E1/360.1.

<sup>11898</sup> T. 5 September 2016 (NOP Ngim), E1/469.1.

<sup>11899</sup> T. 12 October 2016 (PEN Sochan), E1/482.1; T. 13 October 2016 (PEN Sochan), E1/483.1; T. 24 October 2015 (NGET Chat), E1/488.1; T. 25 October 2015 (NGET Chat), E1/489.1.

<sup>11900</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1; T. 29 July 2015 (KHIN Vat), E1/325.1; T. 30 July 2015 (KHIN Vat), E1/326.1 (testifying that she was sent to Kampong Chhnang Airport to marry her husband); T. 2 December 2015 (PRAK Doeun), E1/361.1; T. 3 December 2015 (PRAK Doeun), E1/362.1.

<sup>11901</sup> T. 25 June 2015 (KONG Uth), E1/322.1; T. 1 September 2015 (CHAO Lang), E1/339.1; T. 26 May 2015 (MEAS Laihour), E1/305.1; T. 25 October 2016 (SAY Naroeun), E1/489.1; T. 30 July 2015 (OM Chy), E1/326.1.

<sup>11902</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1; T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1; T. 22 August 2016 (OM Yoeurn), E1/461.1; T. 23 August 2016 (OM Yoeurn), E1/462.1; T. 14 January 2016 (YOU Vann), E1/376.1; T. 18 January 2016 (YOU Vann), E1/377.1; T. 14 September 2015 (SEN Srun), E1/346.1; T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1; T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1; T. 25 October 2016 (SAY Naroeun), E1/489.1; T. 22 August 2016 (OM Yoeurn), E1/461.1; T. 23 August 2016 (OM Yoeurn), E1/462.1; T. 21 September 2016 (SEM Om), E1/478.1.

<sup>11903</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1; T. 3 February 2016 (IN Yoeung), E1/387.1.

<sup>11904</sup> T. 23 August 2012 (EM Oeun), E1/113.1; T. 17 August 2016 (MY Savoeun), E1/459.1.

<sup>11905</sup> T. 24 October 2016 (KUL Nem), E1/488.1; T. 3 August 2016 (CHIN Saroeun), E1/454.1; T. 7 April 2016 (PHAN Van), E1/416.1.

(Kratie).<sup>11906</sup>

3538. The Chamber finds that weddings were organised throughout the entire period of the DK regime, from 1975 until 1979, with some limitations in certain locations as set out above.<sup>11907</sup>

#### 14.3.2. *Policy regarding the Regulation of Marriage and Discipline*

3539. The CPK considered family and marriage as crucial to building a new society which would accord with the ideological standards of its socialist revolution. In this regard, marriage and family had to be seen from the perspective of a collectivist approach aimed at eliminating private ownership and advancing the class struggle, including through the dictatorship of the proletariat.<sup>11908</sup> This implied a radical departure from Khmer traditions based on respect owed by children to their parents and on religious beliefs, as the new society intended to oppose all “reactionary religions”.<sup>11909</sup> Further, the interest of the collective, as represented by *Angkar*, was to

<sup>11906</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1; T. 1 March 2016 (UCH Sunlay), E1/394.1; T. 2 March 2016 (UCH Sunlay), E1/395.1.

<sup>11907</sup> T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 16 (stating that his wedding was organised in August 1977); T. 25 August 2016 (YOS Phal), E1/464.1, p. 12 (stating that his wedding was organised in around mid-1978); T. 31 August 2016 (CHEA Deap), E1/467.1, pp. 40-43 (stating that her wedding was organised in 1975); T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 11 (stating that she was arranged to get married in 1976); T. 25 October 2016 (NGET Chat), E1/489.1, pp. 5-6 (stating that she was arranged to get married in August 1978); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 49 (stating that her wedding occurred in either late 1976 or early 1977); T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 30, 36 (stating that her wedding took place in 1978); T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 35, 50-51, 54 (stating that her wedding took place in 1975 during the windy season and her sister was arranged to get married in late 1978); T. 24 October 2016 (KUL Nem), E1/488.1, p. 99 (stating that he got married in 1977.); T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 41, 110 (stating that she got married in 1978 when the rice plant was growing); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 53, 68 (stating that she got married in late 1975); T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 15 (stating that she got married in 1977); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 22 (recalling that his wedding perhaps took place in late 1978 or early 1979); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 67 (“I got married during the Khmer Rouge period”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64 (stating that she was forced to get married in late 1978); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 55 (stating that her wedding was organised almost at the end of the regime).

<sup>11908</sup> Revolutionary Flag, E3/4, July 1976, p. 3, ERN (En) 00268915 (a Party slogan for 1976 declared: “Continue storming attacks to conduct class struggle inside the Party, inside the Army, inside all revolutionary ranks, inside the people, and inside the entire national society! Absolutely!”); Revolutionary Flag, E3/10, September-October 1976, p. 37, ERN (En) 00450537 (“As for the private ownership of the capitalist class, the landowners, the wealthy peasants, it was thick and demanded mighty, absolute struggle; it demands class dictatorship”); Revolutionary Flag, E3/10, September-October 1976, p. 14, ERN (En) 00450514 (stating that the Party must continue to strengthen and expand the collective position). See below, Section 14.3.2.1: The CPK Policy on the Regulation of Marriage and Discipline.

<sup>11909</sup> DK Constitution, E3/259, undated, p. 6, ERN (En) 00184838 (Article 20: “Reactionary religions which are detrimental to Democratic Kampuchea and the Kampuchean people are absolutely

prevail over the interests of the individuals or of their biological families.<sup>11910</sup> In this new social scheme, in which children were considered the best source for the revolution and more trustworthy than their parents, *Angkar* was placed above the parents or was even intended to replace them.<sup>11911</sup> The ideological values promoted by the CPK had a strong impact not only on the significance of family and on the purpose of marriage, but also on the organisation and monitoring of marriages,<sup>11912</sup> on spouse selection,<sup>11913</sup> on the consummation of marriage and on the prohibition of sexual intercourse outside marriage.<sup>11914</sup> All these various aspects are considered in turn below.

#### 14.3.2.1. The CPK policy on the regulation of marriage and discipline

3540. The policy on family building was set out notably in the *Revolutionary Youth* issue of 2 February 1974, reprinted in June 1975. The document underlines the importance of the family as the basis for human society to prosper and advance. It instructs the revolutionary youth to “grasp, understand, and have proper views, stances,

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forbidden”). See below, Section 14.3.7.2: Absence of Khmer Tradition; Section 13.1: Treatment of Buddhists.

<sup>11910</sup> Revolutionary Flag, E3/4, July 1976, p. 5, ERN (En) 00268917 (“Our Party understands that building socialism building anything at all is for the collective for everyone for proletarian equality for all. Building socialism is not for the private interests of any one class”). As noted by a cadre of S-21 in a notebook on CPK policy, the implementation of a collectivist approach affected the entire society and led also to a control by *Angkar* of children and families (“Notre socialisme a cours dans tout le pays. Ex La coopérative est collectiviste. Les syndicats et les armées sont également collectivistes. Les bureaux et les ministères sont collectivistes. Vivre travailler apprendre sont des activités collectivistes. *Les enfants et les familles sont sous la direction collectiviste de leur organisation.*” [emphasis added]). See S 21 Notebook by MAM Nai alias Chan, E3/833, p. 65, ERN (Fr) 00282532.

<sup>11911</sup> Revolutionary Flag, E3/725, December 1977-January 1978, ERN (En) 00184320 (“[T]he masses are the original source for making revolution. [...] Children are also the best. The strong points of child combatants in the ministries reside precisely in that they know how to behave in accordance with the ministerial and office order and have learned more politically ideologically and organizationally than those in the cooperatives. Whereas child combatants in the cooperatives don’t understand orderly behavior and don’t have much learning, but they fight more seethingly [*sic*] despite natural causes, rain and wind, shortages of medication and food supplies, and destruction caused by enemies. [They have] stronger and profounder class struggle [spirit] seething in their fight against nature and are more persevering than those in the ministries and offices. This source is thus a good one. And it would be good if in the days to come we took this source for the building up of district, sector, zone and even centre cadres. What we are clarifying here is the importance of building up the progressive masses. We mean progressive masses according of the Party’s class line and line of clear cut biographies.”); T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 37 (Concerning the policy of family and marriage: “I was doubtful or curious because I noted that some sons and daughters of the senior officials -- officers were asked to call or address their fathers as uncle or aunt. And later on, after 1975, the people were not educated on how to be thankful to their parents. And I think this ideology was already written in a song, and perhaps we can refer to the song. They say that parents could only create you, but *Angkar* would be the one who controlled you and who owned you.”). See below, Section 14.3.5.4: Parents’ involvement; Section 14.3.7.3: Participation of parents and other family members.

<sup>11912</sup> See below, Section 14.3.5: Authorisation to Marry; Section 14.3.7: Wedding Ceremonies.

<sup>11913</sup> See below, Section 14.3.6: Notice and Consent.

<sup>11914</sup> See below, paras 3617-3625.

and world views toward family building so that [their] revolutionary lives [would] keep developing on into the future along a good path, a path of constant progress”.<sup>11915</sup> It then sets out what were considered to be revolutionary (to be adopted) and non-revolutionary (to be avoided) “world views regarding the matter of family building”.<sup>11916</sup>

As for us, revolutionary youth, we consider matters of family as being inseparable from matters of the entire nation and people. [...] So, building our revolutionary families is not just for our personal interests or happiness or to have children and grandchildren to continue the family line. Importantly, it is so that the revolution may achieve its highest mission, to liberate the nation, the people, and the poor class and then advance toward socialism and communism, which are societies in which people no longer exploit other people.<sup>11917</sup>

3541. In terms of choosing a spouse, individuals were to respect the organisational discipline absolutely. In the matter of family building, *Angkar*'s assessment or decision was to be respected by each individual, as only *Angkar* could make a thorough assessment.<sup>11918</sup>

[T]he revolutionary youth, must completely eradicate and purify all incorrect views and stances toward these matters of family building, such as free morality and being in a hot panic wanting to build a family while we are too young, or being free and not respecting organisational discipline and not respecting the collective in building a family, for example.<sup>11919</sup>

3542. In line with a subsequent *Revolutionary Youth* issue, marriage was based on two principles of the Party:

First, both parties agree.

Second, the collective agrees, and then it's done. Why should this impact male-female morality?<sup>11920</sup>

<sup>11915</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, p. 2, ERN (En) 00417941.

<sup>11916</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, pp. 2-7, ERN (En) 00417941-00417946.

<sup>11917</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, pp. 3-4, ERN (En) 00417942-00417943.

<sup>11918</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, p. 8, ERN (En) 00417947.

<sup>11919</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, p. 8, ERN (En) 00417947.

<sup>11920</sup> Revolutionary Youth, E3/765, October 1978, p. 19, ERN (En) 00539994.

3543. The individuals had the possibility to submit to their superiors a request to marry somebody who would accord with their own feelings. Such request would be granted if it was found consistent with the collective interest, especially with regard to the respective biographies of the future spouses.<sup>11921</sup> As reflected in its official publication, the CPK instructed people to choose a spouse carefully in accordance with the following guidance:

1. It is imperative to be vigilant in regard to sexual morals. Don't choose recklessly all over the place. Should a situation arise, it is imperative to honestly make proposals to the Organization, to the collective, to have them help sort things out.
2. Organization discipline must be absolutely respected. In the matter of building a family, no matter the outcome of the Organization's and the collective's assessments and decisions, they must be absolutely respected. Do not have hard feeling. Do not be disappointed. This is because only the Organization and the collective are able to make a thorough assessment from every aspect. Therefore, do not be subjective, relying on your personal emotions.
3. Do not helter-skelter in a rush; do not be hot to follow whatever your heart sees. It is imperative to look at their background very clearly first. That is to say, they must be clean in living morals and clean politically, without involvement with any enemy strings or bad elements.
4. If both are inside the ranks, it is imperative to choose someone who has a solid revolutionary stance; no matter what their position may be, they must have a stance of absolute combat to constantly fulfill revolutionary missions for the Party, the revolution, and the people. Therefore, we do not just choose someone who is good-looking and who knows how to dress and make themselves up playfully in the modern imperialist style, or who is the child of a wealthy person, or who has high old society cultural abilities, or who is capable of oratory, or who is a pistol- or rifle-toting comrade, or who has some high position.<sup>11922</sup>

3544. It follows that, from an ideological point of view and for the sake of the Revolution, *Angkar's* decisions based on collective interest were to prevail ahead of personal choices or personal sentiment. In this regard, the *Revolutionary Youth* also called for the abolition of individual and private possessions, including that of "sentiment", and clarified what this meant:

To eliminate the individual and private possession decisively and  
strengthen and expand the collective possession forcefully

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<sup>11921</sup> See below, Section 14.3.4.1: Screening of Biographies; Section 14.3.5.2: Marriage Proposed by Individuals.

<sup>11922</sup> Revolutionary and Non-Revolutionary World Views Regarding the Matter of Family Building, E3/775, 2 June 1975, p. 4, ERN (En) 00417943.

[...] Our human being or any classes always have many kinds of possessions such as: [...] sentiment possession which include love, anger, compassion, worry, and happiness etc [...]. This private possession is the view and the ideological stance of the imperialist feudalist and capitalist classes which our revolutionary male female youths must fight to eliminate them from Kampuchean society from our revolution rank, and from our selves [...]. [While the] collective possession [...] is the controlling or the collective property of the mass people laborer, who are the producers, inventor, society reformer, human history maker. Therefore the collective possession is good and just. This collective possession ideology is wanted by our revolution [...]. In our revolutionary rank, our revolutionary male-female combatants and cadres sacrificed private possessions such as housing, paddy-farm, garden, family, parents, relatives, children and other properties in order to serve the Party, revolution, and the people.<sup>11923</sup>

3545. The *Revolutionary Youth* also required people to consider “knowledge possession” and “sentiment possession” as contrary to the correct ideological stance:

Knowledge possession: This view and stance is [that of the persons] who considers that they are the only [ones who] know and understand more, so they reject the opinion or knowledge of the mass. Those with the knowledge possession mostly consider their idea as better and do not listen to the Party instruction.

Sentiment possession: Only care about sympathize with and love their own family friends relatives and parents.<sup>11924</sup>

3546. Finally, revolutionary male-female youths were warned that:

[They] must understand and have a clear view that the struggle between the private possession ideology and the collective possession ideology within the revolution rank and inside our selves is part of the class struggle. So, it is a life and death, tense and tough struggle which our revolutionary male female youths should not compromise with it or tolerate it or ignore it. If we compromise with it or tolerate or ignore it, the collective possession stance will definitely be defeated by the private and individual possession stance. So it means that the revolution is defeated by the feudalist capitalist regime. [...] So if any revolutionary male female youths are still attached to this individual possession and regretting it, they can stay behind and embrace this

<sup>11923</sup> Revolutionary Youth, E3/750, November 1975, pp. 9-10, ERN (En) 00522459-00522460. *See also*, Revolutionary Flag, E3/139, November 1976, pp. 11, ERN (En) 00455288 (“Party documents say to cast off private ownership. It is not difficult. [...] We are not entangled in family problems or with relatives”), 39, ERN (En) 00455316 (“In order to gain mastery, there must be a high spirit of responsibility to fulfill and grasp the mission. We strive to do whatever can be done that is a gain for the revolution.”).

<sup>11924</sup> Revolutionary Youth, E3/750, November 1975, p. 11, ERN (En) 00522461. An extreme illustration of this ideological stance may be found in notes taken by a cadre at S-21 on CPK policy. *See* S 21 Notebook by MAM Nai *alias* Chan, E3/833, p. 30, ERN (En) 00184608 (referring to the arrest of MEN Tol *alias* Sat, who was the husband of LACH Dara, a niece of NUON Chea: “The feeling of the peasants: Entanglements with wives, children, husbands, this hinders the work of serving the nation. Love must abandon and cast off this feeling. Our party always makes the example of socialist revolution. Brother Number Two arrested his nephew named Sat.”).

individual possession further, but the people and the mass can not wait for them and will leave them behind. So it means that you comrades are dropped off from the movement.<sup>11925</sup>

3547. This call to strictly adhere to the Party's ideological line and to respect the party discipline was formulated to closely mirror the CPK statute, and Party members were warned that a breach of the discipline would lead to punishment.<sup>11926</sup>

3548. While the individual's consent was part of the marriage principles of the Party, in practice, the agreement of both parties was less important than the adherence by future spouses to *Angkar's* directives because, as a principle, the latter was considered to be the expression of the collective interests of the nation, the worker-peasant class, the people and the revolution, to which personal and family interest were to be subordinated.<sup>11927</sup> This is illustrated by the commitment that spouses were instructed to make during wedding ceremonies.<sup>11928</sup> The CPK required individuals to be fully committed to building the nation and to abolish private possession including sentiment.<sup>11929</sup>

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<sup>11925</sup> Revolutionary Youth, E3/750, November 1975, p. 12, ERN (En) 00522462.

<sup>11926</sup> Statute of the Communist Party of Kampuchea, E3/130, pp. 12-13, ERN (En) 00184033-00184034 (Article 4: Party discipline. 1. In order to maintain and to consolidate internal Party solidarity and unity to be always good, the Party has designated and raised the principle of respect for Party discipline and organization. Party discipline is very firm, but stands on the principle of awareness of each individual Party member. Each Party member, regardless of position, must absolutely respect and follow Party discipline. Respecting Party discipline and organization is respecting the Party's political line, Party ideological principles and stances, Party organizational stances, and Party statutes. 2. Any Party member or any Party echelon opposing the Party political line, Party ideological stances, Party organizational stances, and Party Statute, causes fractures in internal Party solidarity and unity, creates groups to carry out activities to destroy the Party, the revolution, and the people abandons the duty of the Party member, causes a break in secrecy endangers the Party the revolution and the people and Party property, acts immorally, or does not participate in Branch lifestyle meetings for three consecutive months, commits Party discipline violations which are punishable, lightly or severely as follows: A. Criticism – warning; B. Change of duties – removal from duty; C. Rejection from the Party – Various punishments according to whether the violations were activities opposing the party, part of a continuous chain of such violations or was treason against the Party.”).

<sup>11927</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B collection), E3/562, 16 April 1978, ERN (En) S00010563 (concerning a resolution adopted during a mass meeting on occasion of the third anniversary of 17 April 1975 in which KHIEU Samphan delivered a speech, which *inter alia* included the following solemn general pledge: “(12) To subordinate resolutely all personal and family interests to the collective interests of the nation, class, people and revolution”).

<sup>11928</sup> See below, paras 3633-3634.

<sup>11929</sup> Revolutionary Youth, E3/772, January 1977, p. 13, ERN (En) 00541712 (“[W]e the youth of this generation must pay a great deal of attention to building ourselves well following the Party's revolutionary stances in every field and not be bothered with or become entangled with miscellaneous issues surrounding our individual persons that might cause us to build ourselves slowly or attract us into falling backwards again.”); Revolutionary Youth, E3/733, August 1975, p. 3, ERN (En) 00357870 (“Our Kampuchean youth have the task of defending the country and constructing the country to be firm, mighty, skilled and esteemed and glorious extremely rapidly following the Party's new direction of socialist revolution absolutely.”); Revolutionary Youth, E3/729, October 1975, p. 12, ERN (En)

14.3.2.2. Objectives of policy to regulate marriage14.3.2.2.1. *Population increase*

3549. The CPK claimed that its objective was to improve the wellbeing of the population, and that this would permit it to increase population growth in order to develop Cambodia into a strong and economically independent country.

3550. The objective of population growth is evident from the speeches of various CPK leaders. On 27 September 1977, in a speech in Phnom Penh commemorating the founding anniversary of the CPK, POL Pot stated that:

We continue to strive to improve the conditions of the life and health of our people, because we hope to increase our population to 15 to 20 million in the course of the next 10 years or more [...] Thus, we must double our efforts, we must further improve the standard of living of people in all fields so that each person continues to be strong, healthy and to have a resolute sense of patriotism and so that the Cambodian people in general can increase in number quickly enough to effectively defend and build our Cambodia into a prosperous and developed country by leaps and bounds. We have no reason to reduce or cause our population to level off, for the current size of our population -- nearly 8 million people -- is still far too small to cope with our country's potentials which call for more than 20 million Cambodian people. Therefore, our aim is to increase the population as quickly as we can.<sup>11930</sup>

3551. In an April 1978 speech on the occasion of the Party's 17<sup>th</sup> April anniversary, KHIEU Samphan stated that in order to improve the livelihood of the people, Party members should aim, among other things:

(5) to strive to improve the living conditions and rapidly increase the size of the population while at the same time giving the people basic political, ideological and organizational education;

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00357911 ("Our revolutionary youth must constantly keep building, strengthening, expanding and arming themselves the four essential proletarian qualities of the Party: the highest sacrifice, the sharpest combat, unconditional respect for organizational discipline, and unceasing innovation and building. [...] Along with this, it is imperative to constantly have a high spirit of revolutionary vigilance, vigilance in outlook and stance, vigilance in organization, vigilance in routine daily life, absolutely respecting the organizational discipline of the Party, absolutely respecting and implementing the Party's line and organizational provisions."); Revolutionary Youth, E3/730, December 1975, p. 12, ERN (En) 00363433 ("In terms of organization, it is imperative to concentrate on educating and refashioning our youth to have correct and solid organization, to have unconditional and awakened respect for organizational discipline."). See above, para. 3544.

<sup>11930</sup> *Text of POL Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 4 October 1977, p. 35, ERN (En) 00168651.



(6) to grasp firmly and implement well the plan to increase the size of the population to its maximum, so as to have 15-20,000,000 people in the next 10-15 years;

(7) to grasp firmly and implement well the plans to maximize the size of the population within one year, three years, five years, 10 years and 15 years.<sup>11931</sup>

3552. IENG Sary, the Minister of Foreign Affairs, informed the United Nations Secretary General in a note dated 22 April 1978 that “the goal of the Government of the Democratic Kampuchea is to increase our population as quickly as possible”.<sup>11932</sup>

3553. When asked about the DK government policy regarding population and development during an interview at the Asian parliamentarians’ conference in Beijing in October 1981, NUON Chea responded:

Concerning the problem of population and development in Kampuchea, Democratic Kampuchea has pursued a policy of increasing its population. Kampuchea covers an area of over 181,000 sq.km. and its population was estimated in February 1971 at 7,760,000 people. [...] Since 1975 Democratic Kampuchea has always required a rapid increase in its population. Thus, the four-year plan of 1977-1980 aimed at increasing our population to at least 15,000,000 within five to 10 years. As a result of this plan, our population has increased as follows: From March to December 1976, it increased by 160,000 or 2%; in 1977 it increased by 220,000 or 2.8%; and in 1978 it increased to 260,000 or 3.2%. This increase was the result of the policy of

<sup>11931</sup> *Internal Affairs* (in SWB/5791/B collection), E3/562, ERN (En) S00010565 (including KHIEU Samphan’s speech on occasion of the 17<sup>th</sup> April anniversary); *KHIEU Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5908/A3 collection), E3/201, 15 April 1977, ERN (En) 00419514 (“Our country has a small population, making it necessary for us rapidly to strengthen and expand our population [...]. This is the political line dictated by our revolutionary organisation”). See also, Book by Khieu S.: *Considerations on the History of Cambodia from Early Stage to the Period of Democratic Kampuchea*, E3/16, 2007, p. 65, ERN (En) 00498284 (confirming that POL Pot’s aim was “to increase the population by a factor of two or three. Specifically, he wanted the population of Kampuchea to rise to ‘15 to 20 million within ten years’”).

<sup>11932</sup> UN Doc. E/CN.4/1295 (“Note to the Secretary-General on the Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories”, 13 June 1978) E3/1385, p. 7, ERN (En) 00235727 (“Moreover, the Government of Democratic Kampuchea is making every effort to improve the level of living of the people in all respects as quickly as possible in order to ensure that every citizen is in possession of his full physical, intellectual and moral powers and acts on the basis of ardent patriotism and to ensure that the population of Kampuchea increases rapidly in order to defend and develop the country and to achieve prosperity by leaps and bounds. There is no reason for the Government of Kampuchea to reduce the population or to maintain it at its currently level, since today’s population of 8 million is well below the potential of the country, which needs more than 20 million. Accordingly, the goal of the Government of the Democratic Kampuchea is to increase our population as quickly as possible.” [emphasis added]). See also, UN Doc. A/32/PV.28 (“UNGA Thirty-Second Session Official Records”), E3/1586, 11 October 1977, ERN (En) 00079815 (IENG Sary states that the DK needs a population of 15-20 million inhabitants within 10 years, further adding that: “We are endeavouring as rapidly as possible to improve still further the living conditions of our people, so that everyone may have sufficient strength and health and ardent patriotism, so that our entire people may rapidly and constantly progress and that we continue in the defence and speedy construction of a prosperous Kampuchea.”).

Democratic Kampuchea to protect the people's lives primarily by solving and improving the people's living conditions.<sup>11933</sup>

3554. The policy of increasing the population was also described in the *Revolutionary Flag*. The December 1976-January 1977 issue stated that:

[T]he essence of socialist revolution and building socialism is the goal of building the country well, defending the country well, and sorting out the livelihood of the people quickly. We need from 15-20 million people to meet the needs of our land. For our population to constantly increase, the livelihood of the people must rise and they must be in good health. So then, this means quickly increasing production.<sup>11934</sup>

3555. The September 1978 issue similarly referred to the Party's aim to increase the population to 15-20 million within 10-15 years. In order to do that, the Party announced that it would raise and maintain the livelihood of the people.<sup>11935</sup>

3556. The CPK's objective of increasing the population was disseminated across the country, through meetings and training sessions. Witness SAO Sarun, the Secretary of Sector 105, confirmed without specifying when, that he heard that *Angkar* wanted to increase the population because their numbers were small, and therefore "male and female combatants were encouraged to get married".<sup>11936</sup> According to Witness MEAS Voeun, the Deputy Commander of Division 1, marriages were encouraged in order to increase Cambodia's population because Vietnam had a larger population.<sup>11937</sup> Witness CHIN Saroeun, a combatant in the Northeast Zone, understood that the purpose of having people married was to increase the population in the provinces.<sup>11938</sup> Civil Party PEN Sochan stated that they were instructed to marry and produce more children for *Angkar*.<sup>11939</sup> During their wedding ceremonies, numerous witnesses and Civil Parties had to commit to producing children for *Angkar* in order to increase the population.<sup>11940</sup>

<sup>11933</sup> Interviews with DK Leader on Population Policy and Struggle against Vietnam (in SWB/FE/6869/A3 collection), E3/686, 2 November-10 December 1981, ERN (En) S00030349.

<sup>11934</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 42, ERN (En) 00491436.

<sup>11935</sup> Revolutionary Flag, E3/215, September 1978, ERN (En) 004488637.

<sup>11936</sup> T. 29 March 2016 (SAO Sarun), E1/410.1, p. 69.

<sup>11937</sup> T. 3 February 2016 (MEAS Voeun), E1/387.1, pp. 37-39.

<sup>11938</sup> T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 74-78.

<sup>11939</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 89-90.

<sup>11940</sup> T. 20 October 2016 (PREAP Sokhoeun), E1/487.1, pp. 104-106; T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 40-41 (stating that during the wedding ceremony, the couples had to make a commitment by repeating the instruction from *Angkar*. They had to commit "to produce babies, as many as possible, in order to meet the targets of *Angkar*."); T. 24 October 2016 (KUL Nem), E1/488.1, pp. 102-103 (KUL Nem was told that it would be against the law if they do not produce children for *Angkar*); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 55-57 (stating that the couples had to commit "to reproduce more children in order to serve in the revolutionary army for *Angkar*").

Civil Party NGET Chat described being told at the ceremony itself to consummate her marriage to produce as many children as possible for *Angkar*.<sup>11941</sup> Civil Party SOU Sotheavy, who worked in a mobile unit in the Southwest Zone, stated that during her wedding, the chief announced that “[t]he population of Cambodia is not that great and for us, male and female youths we strive to work best. And for that reason *Angkar* required us to get married to increase the population.”<sup>11942</sup>

3557. Although this might not always have explicitly been stated, the evidence shows that a further objective of the augmentation of the Cambodian population was to increase the number of available soldiers, particularly from 1977 when the situation along the border intensified.<sup>11943</sup>

3558. Based on the above, the Chamber is satisfied that one of the purposes of the regulation of marriage was to facilitate the increase of population.

#### 14.3.2.2.2. *Control over sexual interactions outside of marriage*

3559. The CPK policy regulating marriage was further aimed at controlling sentimental or sexual interactions between men and women outside marriage, as such relationships were considered as potentially endangering the revolution. First, in order to ensure the success of the class struggle, it was necessary to keep those constituting the proletarian forces as pure as possible, as they were the main support of the revolution. This not only required the screening of biographies of future spouses to ensure that unions would not create class contradictions,<sup>11944</sup> but it was also necessary to prevent love affairs outside marriage with persons of undesirable backgrounds.

<sup>11941</sup> T. 25 October 2016 (NGET Chat), E1/489.1, pp. 11-12.

<sup>11942</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 79.

<sup>11943</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 67 (in which she explained that KHIEU Samphan gave an instruction that older male and female youths should be arranged to get married so that “when they produce children, we will have more forces to defend our territory”); UN Doc. E/CN.4/1295, Note to the Secretary-General on the Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories, E3/1385, 13 June 1978, ERN (En) 00235727 (“Moreover, the Government of Democratic Kampuchea is making every effort [...] to ensure that the population of Kampuchea increases rapidly in order to defend and develop the country and to achieve prosperity by leaps and bounds”).

<sup>11944</sup> See below, Section 14.3.4: The Matching.

Further, the CPK wanted to be seen as taking a strict ethical stance in order to distance itself from the alleged depravity of the previous regimes.<sup>11945</sup>

3560. The 12 precepts of the revolution, described in the *Revolutionary Youth* as the laws and rules of the Party,<sup>11946</sup> prohibited (at precept 6) any behaviour “that violates females”, as this would impact male-female morality, the clean and pure tradition of the people and ultimately could impact the revolution and put the movement at risk.<sup>11947</sup>

3561. Witness KHOEM Boeun, the Secretary of the Cheang Tong commune in the Tram Kak district in the Southwest Zone from 1973 and later in 1978, joined the District Committee, stated that the “upper echelon” instructed them to separate boys and girls to avoid “thoughts of moral misconduct”. Male-female relationships without the approval of *Angkar* were prohibited under the regime.<sup>11948</sup>

3562. CPK cadres as well as the general population were educated to avoid committing moral offences.<sup>11949</sup> The term “moral offence” was understood to have different forms and meanings.<sup>11950</sup> As described by Witness PECH Chim, it could be used to refer to the affairs between a man and a woman, disrespect toward elders, the mistreatment of women by men or “moral offences” committed by women against their

<sup>11945</sup> Notebook No 71, E3/8381, p. 8, ERN (En) 01369248 (“the Kampuchean society was half-colonial and half-feudal. Such a society was beset beyond our thought, by [in]justice of the human beings, oppression, debauchery, corruption and private ownership. [...] Achieving our struggle to abolish this and to build up and purify the revolution’s internal lines required each cadre, candidate, and soldier to take strong courage, respect and carry out the guidelines and policies of the Marx-Leninist doctrine”).

<sup>11946</sup> *Revolutionary Youth*, E3/765, October 1978, pp. 13-14, ERN (En) 00539988-00539989.

<sup>11947</sup> *Revolutionary Youth*, E3/765, October 1978, p. 19, ERN (En) 00539994 (“6<sup>th</sup> Precept: Do not behave in any way that violates females. Generally speaking, do not do anything that impacts male-female morality, because this issue impacts our honor and our influence as revolutionaries and impacts the clean and pure and dignified traditions of our people. Therefore, this impacts our people. This is one thing. But even more importantly, when we impact male-female morality, that is the true corrupt and rotten nature of the enemies of all types and this enables the enemy to attract us. Therefore, this is dangerous for us and is dangerous for the revolutionary movement.”).

<sup>11948</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 86 (stating that there was instruction from upper echelon to separate boys and girls to avoid thoughts of moral misconduct committed by them).

<sup>11949</sup> T. 26 April 2016 (LACH Mean), E1/422.1, pp. 35-36 (stating that the instruction to avoid moral offence spread throughout the regime and moral discipline was the strictest discipline applied to everyone. “Cadres in all places were educated about morality and avoiding committing moral offences. [...] Every cadre in the entire hierarchical order must avoid committing moral offences.”); T. 12 August 2015 (LAT Suoy), E1/329.1, p. 25 (“Nobody was pregnant. We were forbidden from loving each other. If anybody was found loving each other, they would be accused of committing moral offences then they would be taken away for execution.”).

<sup>11950</sup> T. 13 June 2012 (OEUN Tan), E1/86.1, p. 25 (“Moral misconduct referred to the actions that damaged the properties of the people, the livestock of the villages”); T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 91-92 (stating that her understanding of morality is that people have to respect others by their title).

husbands.<sup>11951</sup> According to Civil Party CHEA Deap, a moral offence was considered a serious offence and the rules regulating morality were applied strictly especially in case of “rape”.<sup>11952</sup> However, according to NEANG Ouch *alias Ta San*, some moral offences were considered to be light offences. This latter view was corroborated by other witnesses.<sup>11953</sup> Regardless of these different views, there was a consensus that any moral offence was punishable.<sup>11954</sup> Moral offences and subsequent measures were then reported to the Party Centre.<sup>11955</sup>

3563. Male-female relationships outside the context of marriage were considered a form of moral offence or moral misconduct, according to numerous witnesses and Civil

<sup>11951</sup> T. 24 April 2015 (PECH Chim), E1/292.1, p. 39.

<sup>11952</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 90 (“During the Khmer Rouge Regime, the discipline was very strict and we were not allowed to engage in any moral affairs.”).

<sup>11953</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 58. *See also*, Section 10.1: Tram Kak Cooperatives, para. 1057.

<sup>11954</sup> T. 5 December 2012 (PECH Srey Phal), E1/148.1, pp. 70-71 (stating that she witnessed militiamen saying to someone named Som that he committed a moral offence. The militiamen cut his stomach opened to remove his gallbladder while he was still alive); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 78-79 (stating that during that time, everyone knew that if people could not refrain from committing a moral offence or if they were found to have committed a moral offence, they could not avoid being arrested); T. 21 January 2015 (MEAS Sokha), E1/249.1, p. 50 (stating that, to his knowledge, those who committed moral offences would have their hair shaved and they would be asked to bang coconut shells and say “please do not follow what I did”); T. 3 March 2015 (VAN Soeun), E1/270.1, p. 30 (“This person had a moral offence with a lady outside of the compound and he was detained in the prison.”); T. 24 March 2015 (SAUTR Saing), E1/281.1, p. 67 (“[F]or the male and female units who were outside or who worked at the villages or in various other communes and who were accused of moral misconduct, were arrested and brought to be detained at Kra[i]ng Ta Chan centre”; when asked about what would happen to the prison staff who committed moral misconduct, he answered: “for moral misconduct, the person would be disappeared [*sic*]. It means the person was not absolute with *Angkar* regardless whether they were a soldier or a youth in a mobile unit or female youth in a mobile unit.”); T. 24 April 2015 (PECH Chim), E1/292.1, pp. 40-41 (“People who were involved in moral offences would be sent to work in the field, engaging in the rice farming activity or in raising pigs. And as to the period of refashioning, [...] it varied depending on the behavior of that individual.”); T. 26 April 2016 (LACH Mean), E1/422.1, pp. 34-35 (confirming that there was an instruction from Duch that any person committing a moral offence would be punished and that “cadres in all places were educated about morality and avoiding committing moral offences.”); T. 4 May 2016 (HIM Huy), E1/427.1, p. 84 (“There was a young guard who raped a female prisoner. That young guard had moral offence with the female prisoner and later on he was arrested, detained and killed.”); T. 13 June 2016 (KAING Guek Eav), E1/443.1, pp. 22-23 (stating that those who were caught in committing moral offence would be smashed but some cases, were tolerated).

<sup>11955</sup> DK Report, E3/1092, 16 July 1978, p. 3, ERN (En) 00289923 (“In Samraong Tong cooperative, when *Angkar* assigned some people to go to the northwest zone, a man named Sokh instigated [*sic*] that ‘What a damned socialist revolution! It separates children from their parents’. This man committed such an act twice and also committed moral offenses. He got educated for two to three times. At the moment we have taken organizational measures.”); DK Report, E3/1094, 4 August 1978, p. 6, ERN (En) 00315373 (reporting on the moral code activities: “In some bases within each district these activities occurred continuously between some male and female youths as well as men and women or even between married men and youths. In Tasal cooperative of District 27 on 21-7-78, Soeung, a militia of Tasal cooperative, violated a moral code by raping a girl from Sector Koh Kong. As a measure for this, Soeung has been already sent to the district re[-]education camp.”). *See also*, DK Telegram, E3/156, 23 April 1978, ERN (En) 00296220 (SAO Sarun, Sector 105 Secretary, states that Comrade Sot was previously implicated in confessions had committed immoral acts with a woman, clarifying that both the man and the woman had been arrested, and seeking the views of the Party Centre).

Parties.<sup>11956</sup> In some instances, even general interactions, such as speaking to someone from the opposite sex, were considered moral offences.<sup>11957</sup> If a person was caught by the authorities having an inappropriate male-female relationship, they would be subjected to re-education or punishment.<sup>11958</sup> In some instances, people who loved one another or who committed moral misconduct were arranged to be married to prevent moral misconduct or avoid further misconduct.<sup>11959</sup> In this regard, the Chamber notes

<sup>11956</sup> Case 001 Transcript (KAING Guek Eav), E3/2978, 8 April 2009, p. 18, ERN (En) 00315937 (explaining that in the revolutionary rank, an immoral offence is when people have sexual affairs without being married by *Angkar*); T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 58 (“At that time, when someone was reported as having committed moral offence, it means that person could have been committing the sexual offence or misconduct.”); T. 8 October 2012 (MEAS Voeun), E1/131.1, pp. 63-64 (“The word ‘moral misconduct’, in the eyes of the leadership, is about the moral offence between a man and a woman, [...] but the most important point was for those men to – not to play around with women or to violate any discipline, military disciplines regarding women, and that’s important for them to adhere to such guidelines.”); T. 6 February 2015 (SORY Sen), E1/258.1, p. 73 (“To commit a moral offence means to play around with a woman or to molest a woman.”); T. 24 August 2015 (CHHUY Huy), E1/335.1, p. 49 (stating that when a man and woman who loved each other decided to marry by themselves, this was considered as moral offence); T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 22 (agreeing that sexual relations between a man and a woman outside of marriage approved by *Angkar* was considered as a form of moral offence or immoral act); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 67 (confirming that when man and woman had sex with one another, they were considered to have engaged in moral misconduct); T. 16 September 2016 (NOEM Oem), E1/475.1, p. 22 (“At that time, if there was a rape incident took place, it was considered as a moral offence”); T. 20 June 2012 (YUN Kim), E1/89.1, p. 13 (the witness, the chief of a cooperative, gave as an example of moral misconduct when a man had an affair with a woman); T. 12 November 2012 (PECHUY Chip Se), E1/143.1, p. 109 (describing the term misconduct as having affairs or prenuptial affairs and stating that both persons would be taken to re-education sessions or, in other times, only one side were taken to re-education session); T. 11 June 2015 (KEO Kin), E1/314.1, p. 41 (“Moral misconduct meant people having sexual intercourse. If such a case was found out, the offenders would be taken away and smashed.”); T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 66-68 (stating that when individuals loved one another and had sexual intercourse before marriage, they were considered to have engaged in moral misconduct); CHHUOM Savoeun Interview Record, E3/9578, 15 October 2014, p. 8, ERN (En) 01053603 (stating that *Angkar*’s resolute stances was that only husband and wife could have intimacy, and intimacy outside of wedlock was a crime of immorality).

<sup>11957</sup> T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 21 (“Men and women did not dare to discuss with one another, even in the same unit. If we were found to have discussion with one another, we would be considered [...] committing moral offences.”); KIM Huon Civil Party Application, E3/6015, p. 7, ERN (En) 00893527 (stating that before her marriage, she did not dare to talk about love because it would be considered a form of moral misconduct).

<sup>11958</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 22-23 (stating that if individuals were caught engaging in moral misconduct, they would be smashed but for some cases, they were tolerated); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 66 (stating that those who committed moral misconduct were subject to education or study session).

<sup>11959</sup> T. 25 February 2015 (PHAN Chhen), E1/269.1, pp. 68-69 (“For those who committed moral misconduct, [...] I asked them whether they truly loved each other for life. If that was the case then they should invite their parents and then we would arrange the marriage [...] otherwise in other places they would be punished.”); T. 30 November 2015 (PAN Chhoung), E1/359.1, pp. 72-73 (stating that workers who committed misconduct would be refashioned for a maximum of three times and, if they could not be re-educated, their marriage would be arranged); T. 13 June 2016 (KAING Guek Eav), E1/436.1, pp. 20-21 (describing an event which *Ta Mok* solved the issue of a young man and a young woman who loved one another by allowing them to get married so that they do not commit moral misconduct); T. 30 August 2016 (CHEA Deap), E1/466.1, p. 92 (“If a man or a woman fell in love with one another without permission then the persons would be separated. However, later on if they observed that they behaved well then the marriage would be organised for them.”).

that KAING Guek Eav *alias* Duch joined a study session with POL Pot in which the latter stated that couples who loved one another should be allowed to get married in order to avoid moral misconduct.<sup>11960</sup> Witness PAN Chhoung, the commander of the battlefield responsible for supervising workers at Trapeang Thma Dam worksite in the Northwest Zone, also testified that marriage would be arranged for those who committed moral misconduct and failed to address their conduct after being warned, to avoid further moral misconduct. However, if the female didn't agree to the marriage, the couple would be sent back to their respective cooperatives.<sup>11961</sup>

#### 14.3.3. *Oversight and Reporting Structure regarding Marriage Policy*

##### 14.3.3.1. *Instructions from the Upper Echelon*

3564. The Chamber finds that instructions allowing the lower authority to organise marriages were given from the upper echelon.

3565. PECH Chim, District Secretary in Tram Kak from mid 1976 until early 1977, and KHOEM Boeun, Chief of Cheang Tong commune in Tram Kak district and later served in the Tram Kak District Committee, both agreed that instructions relating to marriage were communicated from the “upper echelon”.<sup>11962</sup> In his statement to OCIJ investigators, Witness SAO Sarun, the Secretary of Sector 105 stated, without specifying a date, that in a meeting in Phnom Penh attended by representatives from all regions, POL Pot gave instructions in relation to weddings.<sup>11963</sup>

3566. Instructions regarding marriage were then disseminated to zones, sectors, districts, communes and villages through meetings or study sessions.<sup>11964</sup> SAO Sarun stated that instructions concerning marriage given by POL Pot in the meeting were passed down to the sector and then to the district levels.<sup>11965</sup> MEAS Voeun, Deputy Commander of Division 1 in the West Zone and then a Secretary of Sector 103, attended

<sup>11960</sup> T. 13 June 2016 (KAING Guek Eav), E1/436.1, p. 23 (“It was better to prevent the moral misconduct from happening than to arrest the people for moral misconduct.”).

<sup>11961</sup> T. 30 November 2015 (PAN Chhoung), E1/359.1, p. 76. *See also*, Section 11.1: Trapeang Thma Dam Worksite, para. 1214 (fn. 4145).

<sup>11962</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 3; T 22 April 2015 (PECH Chim), E1/290.1, pp. 48-49; T. 5 May 2015 (KHOEM Boeun), E1/297.1, p. 72.

<sup>11963</sup> SAO Sarun Interview Record, E3/384, 30 June 2009, p. 3, ERN (En) 00348373.

<sup>11964</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 19 (stating that the policy of weddings was organic).

<sup>11965</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 68-69. *See also*, SAO Sarun Interview Record, E3/384, 30 June 2009, p. 3, ERN (En) 00348373.

a meeting at the zone level where instructions regarding marriage were relayed.<sup>11966</sup> Witness KHOEM Boeun, received the instruction in relation to marriage from her immediate upper level – the district – and she disseminated this instruction to the village chiefs.<sup>11967</sup> Civil Party SENG Soeun, who served as the Deputy Chief of the Handicapped Youth Office of Sector 13 and was then promoted to Chief of the District Office and then to Secretary of Sector 505, stated that he received instruction on weddings from the District Committee. While he was the Chief of the District Office in 1978, the District Committee relayed instructions to implement the CPK’s plan relating to marriage to all the commune chiefs during the meetings.<sup>11968</sup> He was told that the CPK plan in relation to marriage was disseminated throughout the country.<sup>11969</sup> KE Pauk’s wife, Witness SOU Soeurn, who was the District Secretary of the Chamkar Leu district in the Central or old North Zone from late 1975 and was later in charge of female workers in that district until the end of the regime, stated that instructions in relation to marriages were first relayed to the sector, then to the district and subsequently from the district to the commune.<sup>11970</sup> According to a lower level cadre in Kratie, Civil Party HENG Lai Heang, the Sector Committee relayed instructions on marriage to the lower level such as the subordinate office chiefs, the district level or the ministry office.<sup>11971</sup>

3567. Instructions in relation to marriage given at the higher level (*i.e.* zones, sectors and districts) were more general, with the details of the organisation of marriage discussed at the lower levels. At the meeting that SAO Sarun attended, POL Pot stated that they should marry two or three couples at the same time, that the family if nearby could attend, and that the couple would have to “rise to make a resolution announcing their biographies and their loyalty to one another”.<sup>11972</sup> In Chamkar Leu district in the Central (old North) Zone, general issues of marriage were discussed at the district level but the details concerning the organisation of the wedding ceremony were to be

<sup>11966</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 64.

<sup>11967</sup> T. 5 May 2015 (KHOEM Boeun), E1/296.1, pp. 18-19.

<sup>11968</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 42 (“I can recall that based on the meetings and the information relayed by the district committee to all the commune chiefs in S’ang district. He said that we had to implement such plan; that is, to marry those people in their respective communes.”).

<sup>11969</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 41 (stating that the plan was that after the end of the war, general population who reached the age of marriage had to get married in their respective communes).

<sup>11970</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 80. *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1450 (fn. 4970).

<sup>11971</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 13, 35-36.

<sup>11972</sup> SAO Sarun Interview Record, E3/384, 30 June 2009, p. 3, ERN (En) 00348373.



implemented by each commune.<sup>11973</sup> Similarly, in Tram Kak district, the cadres at the sector and district levels discussed the details among themselves under the guidelines from the Southwest Zone.<sup>11974</sup>

#### 14.3.3.2. Reports on marriages to the upper echelon

3568. The Chamber finds that reports relating to marriages were communicated to the upper echelon through reports. A report dated 16 July 1978 from Office 401 to *Angkar* in relation to family building states that “10 new families have been created in District 26, Sector 32, while there is no confirmation on this issue in Sectors 31 and 37”.<sup>11975</sup> In another report to *Angkar* dated 4 August 1978, 42 couples were reported married. The report also mentioned the case of a man who had committed suicide by hanging himself, an incident that happened 15 days after his marriage was arranged by *Angkar*. The report further mentions that a recent investigation to search for a motive behind the suicide found nothing noticeable.<sup>11976</sup>

#### 14.3.3.3. Personal involvement of KHIEU Samphan

3569. KHIEU Samphan was personally involved in relaying instructions regarding marriage. Civil Party CHEA Deap, who joined the revolution as a combatant and worked at the Ministry of Commerce in Phnom Penh, gave evidence in court that she attended a meeting at Wat Ounalom in Phnom Penh chaired by KHIEU Samphan. The Civil Party could not recall the exact date of the meeting but based on her testimony, the Chamber concludes that the meeting took place about six to seven months after the liberation of Phnom Penh in April 1975.<sup>11977</sup> According to the Civil Party, KHIEU Samphan lectured cadres on the necessity of remaining detached from one’s parents and instructed that all ministries had to arrange marriages for all male and female youths

<sup>11973</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 83.

<sup>11974</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 4.

<sup>11975</sup> DK Report, E3/1092, 16 July 1978, p. 4, ERN (En) 00289924. *See also*, CHOUN Thy Interview Record, E3/10713, 18 September 2015, p. 8, ERN (En) 01168345 (stating that, as regiment commander in Division 1, he “had to report the number of couples to the upper echelons. Other units did the same. Because the situation during that time was in turmoil during 1978-1979, they forced multi-couple weddings.”).

<sup>11976</sup> DK Report, E3/1094, 4 August 1978, p. 6, ERN (En) 00315373.

<sup>11977</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 88-89 (“I met him for the first time at Borei Keila stadium and that happened in 1975 [...] And the second time that I met him was at the Ounalom Pagoda when he chaired a conference for male and female youths that day and the conference lasted for the whole day.”); T. 31 August 2016 (CHEA Deap), E1/467.1, pp. 40-43 (stating that she entered Phnom Penh in April 1975, that she got married about 6 or 7 months after arriving in Phnom Penh and confirming that she met KHIEU Samphan before her marriage).

so that the couples could produce children and there would be more forces to defend the country. She further confirmed that the latter point was raised in all study sessions and meetings she attended.<sup>11978</sup> Both the NUON Chea Defence and KHIEU Samphan Defence challenged the Civil Party's evidence on this point, submitting that this information was added later to the supplementary form of her Civil Party Application and that her evidence was unsworn.<sup>11979</sup> As noted above, the Chamber ascribes greater weight to information from in-court statements than from Civil Party Applications. The Chamber finds that the fact that the Civil Party did not raise this information in her Civil Party Application does not render her evidence on the issue unreliable. Further, the Parties had the opportunity to confront the Civil Party on this particular issue in court and the Chamber finds her evidence in court was reliable and consistent throughout.

3570. The Chamber also notes that the allegation that all ministries had to arrange marriages is corroborated by RUOS Suy, who worked as a Ministry of Commerce cadre, and who explained to OCIJ investigators that his ministry unit was assigned monthly minimum quotas for marriages in 1977 and 1978.<sup>11980</sup> Further, in a speech made on the occasion of the third anniversary of the founding of Democratic Kampuchea, KHIEU Samphan called the people to be:

[D]etermined to draw inspiration from the noble and lofty revolutionary heroism of our Revolutionary Army by [...] resolutely putting the interests of the nation the class the people and the revolution over the personal and family interests and by mobilizing all [their] efforts to fulfil all the tasks entrusted by the Party to each of [them].<sup>11981</sup>

3571. While KHIEU Samphan did not directly address the question of marriage in this speech, the Chamber finds that these statements consistently echo his call at Wat Ounalom to state workers to marry in order to produce children and therefore provide more forces to defend the country. It is further consistent with the recollection of

<sup>11978</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 66-67.

<sup>11979</sup> NUON Chea Closing Brief, para. 1163; KHIEU Samphan Closing Brief, para. 2325.

<sup>11980</sup> RUOS Suy Interview Record, E3/10620, 7 July 2015, pp. 15-18, ERN (En) 01147808-01147811 (“there was a plan which required the unit (the State Warehouse unit) to have 100 couples married per month. [...] The marriages began in 1976, but strict measures were implemented from 1977. [...] 100 couples per month had to get married [...] I think that [the order] was issued by the ministry chairman [...] they wanted population growth [...] I just know that Rith *alias* Roeung ordered my chief, and my chief ordered me to prepare vehicles. Marrying 100 couples a month did not mean those 100 couples had to get married at once. The wedding ceremonies could be held three times a month.”).

<sup>11981</sup> *Text of KHIEU Samphan Speech at the occasion of the Third Anniversary of the Glorious April 17 and the Founding of the Democratic Kampuchea*, E3/202, undated, p. 5, ERN (En) 00002960.

NORODOM Sihanouk, who recalled hearing KHIEU Samphan praising fervent patriotic young girls for their sacrifices to the nation by marrying disabled veterans of the RAK.<sup>11982</sup>

#### 14.3.4. *The Matching*

##### 14.3.4.1. *Screening of biographies*

3572. In the view of the CPK, the selection of a spouse could affect the revolution and it was imperative to select someone with a firm revolutionary stance. Therefore, in pairing couples, certain factors were considered by screening the biographies of individuals,<sup>11983</sup> including their age, status or class (New People or 17 April People, Old People or Base People, peasants), location and ethnicity. Couples who matched were paired up.<sup>11984</sup> Witness NOP Ngim was matched with her husband as both of them had good biographies; they were both from poor backgrounds and lived close to each other.<sup>11985</sup>

3573. Witness MOENG Vet, Deputy Chief of Office in Division 117 in Sector 505 (Kratie), testified that everything was based on individuals' backgrounds. He was told that people with different backgrounds should not be matched for marriage and should not propose to one another. According to him, people with different backgrounds, such as 17 April People, might be affiliated with the KGB or CIA and therefore, if cadres and Base People were married to them, they could be implicated as enemies.<sup>11986</sup>

<sup>11982</sup> See below, Section 14.3.4.4.1: Disabled soldiers.

<sup>11983</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 19 (stating that the commune chief decided who she would marry by matching her with her husband on the basis of their biographies, as they were both ethnic Chinese and candidate people); T. 17 August 2016 (MY Savoeun), E1/459.1, p. 62 (describing that individuals were matched by their biographies).

<sup>11984</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 81-82 (stating that the village chief reviewed the biographies and then matched the couples. For example, if they belonged to the same peasant class then they would be matched and likewise it applied to other classes. It also applied to the new evacuees, so the village chief would look at their biography and if they were both evacuees from Phnom Penh then they could be matched. So the Cham people would be matched with the Cham people.); T. 29 August 2016 (SENG Soeun), E1/465.1, p. 39; T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 23 (testifying that the instruction that people could only marry a partner of the same class was relayed at the meeting convened by senior authorities and this instruction was relayed to the chiefs of battalions and companies). See also, T. 12 October 2016 (Peg LEVINE), E1/482.1, pp. 19-20 ("Ofentimes, people were put on a list. The boys' leader and the girls' leader would get together and they would make a list of the people that they thought would be most suited to marry.").

<sup>11985</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 42, 63.

<sup>11986</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, p. 27. See also, Section 16.3.2.1.3.5: Real or Perceived Enemies: CIA, KGB, and "Yuong" (Vietnamese) Agents.

3574. Civil Party SENG Soeun, who was involved in matching individuals, received an order from the S'Ang District Committee to collect biographies of individuals who reached the age of marriage from the male and female mobile units. After receiving the biographies, he screened them and matched individuals according to their ages, statuses and the communes in which they lived, without any discussion with the male and female unit chiefs. The Civil Party stated that while he did the matching, the actual decision that people of marrying age had to marry was made by the District Committee.<sup>11987</sup>

3575. In cases where the couples themselves requested permission to marry, their biographies would still need to be verified.<sup>11988</sup>

3576. The Chamber is satisfied that biographies of individuals were screened before matching them to get married.

#### 14.3.4.2. Matching couples with different backgrounds

3577. A number of witnesses and Civil Parties stated that New People were to be married with New People, Old People were to be married with Old People and New People were not allowed to marry Old People.<sup>11989</sup> According to Civil Party SENG Soeun, there was an instruction from the S'ang District Committee that New People should only be matched with New People and Base People should be matched with Base People.<sup>11990</sup> Similarly, Witness MOENG Vet testified that people with different backgrounds should not be matched together.<sup>11991</sup> In court, Duch explained that:

<sup>11987</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 21-22, 38-39.

<sup>11988</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 114-115 (stating that couples sometimes requested to be married. This request would be forwarded upward and they could only get married after the commune chief verified their biographies). See below, Section 14.3.5.2: Marriage Proposed by Individuals.

<sup>11989</sup> T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 22 (“New [P]eople were to get married with new people and old people were marry the old people”); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 68 (stating that mixed couples were not formed and New People were not allowed to marry Base People); T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 11; T. 29 August 2016 (SENG Soeun), E1/465.1, p. 23 (stating that the instruction from the District Committee allowed New People to be matched only with New People and Base People only with Base People); T. 25 August 2016 (YOS Phal), E1/464.1, p. 28 (describing that he did not dare to propose marriage to his fiancée because he was considered to be a 17 April Person. Among the 50 couples that were married alongside him, some of them had good biographies and they were matched with their desired partners); KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 23, ERN (En) 01057697 (“It was my understanding that the new people were no-good. They were the enemy and were not as valuable as the old people. Thus they were not allowed to married the old people”); OR Ho Interview Record, E3/5255, 18 November 2008, p. 6, ERN (En) 00250047 (“Both new and old people could marry, but the new people married new people and old people married old people. [...] The Cham married other Cham; the Chinese married other Chinese.”).

<sup>11990</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 23.

<sup>11991</sup> T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 26-27.

In marriage affair[s], we [...] were not prohibited from getting married with any person. However, we were asked to be very careful to make sure that, when we get married, we can have our children and to make sure that one plus one equals two. This ideology, it means that we should refrain from getting married with girls or women who were evacuees. And I was myself bound by this ideology and principle to get married to [...] a woman who was trusted.<sup>11992</sup>

3578. However, one Civil Party gave evidence that in some rare instances, New People and Base People were allowed to marry if the district considered that they were “good people” and approved the marriage.<sup>11993</sup>

3579. There is also evidence before the Chamber that people with different ethnicities were not allowed to intermarry. Specifically, there is evidence that Cham people were matched with other Cham and that mixed marriages were not allowed.<sup>11994</sup> According to YOU Vann, the Deputy Chief of Ro’ang commune in Kampong Siem district, PRAK Yut, District Secretary of Kampong Siem district, announced by microphone that marriage should take place between people of the same ethnicity and that marriage between different ethnicities was forbidden.<sup>11995</sup> However, during her testimony in court, PRAK Yut stated that she received instructions from *Ta An*, the Sector Secretary, regarding mixed marriages between Cham and Khmer; namely, that they should be allowed if the mixed couple loved each other.<sup>11996</sup> The Chamber recalls its assessment that PRAK Yut minimised her own conduct, in particular the role she played in relation to the orders she received about targeting the Cham,<sup>11997</sup> and finds that YOU Vann’s testimony was sufficiently corroborated by other evidence and is therefore credible in this regard. The Chamber finds that in general, mixed marriages between Cham and Khmer were not allowed during the regime. There is insufficient evidence for the Chamber to make a finding on mixed marriages between other ethnicities.

3580. The Chamber finds that generally people with similar backgrounds were matched to marry; Base People were matched to marry Base People and not New

<sup>11992</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 35.

<sup>11993</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 80-84.

<sup>11994</sup> T. 26 May 2015 (MEAS Layhuor), E1/305.1, pp. 13-14 (“In my place, Cham married their own people.”); T. 8 January 2016 (SOS Romly), E1/372.1, p. 47 (stating that there were two weddings organised in Trea village where Cham were married to the Cham and Khmer were married to the Khmer).

<sup>11995</sup> T. 18 January 2016 (YOU Vann), E1/377.1, p. 36.

<sup>11996</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 49.

<sup>11997</sup> Section 13.2: Treatment of the Cham, para. 3191.

People. However, people with different backgrounds were also allowed to marry if the authorities considered that they were “good people”.

#### 14.3.4.3. Marrying age

3581. The Chamber heard varying evidence in relation to the age at which individuals were considered to be ready to marry. Witness MEAS Voeun, Deputy Commander of Division 1 in the West Zone and then a Secretary of Sector 103, attended a meeting at the zone level during which the instruction was relayed that males must be at least 20 years old and females at least 18 years old in order to marry.<sup>11998</sup> This evidence was confirmed by CHEA Deap, who attended a conference for male and female youths and heard KHIEU Samphan state that women between the ages of 19 and 35 should marry. At that meeting, KHIEU Samphan also confirmed that younger women should not get married.<sup>11999</sup>

3582. In practice, however, the age of individuals who were arranged to marry varied. SENG Soeun gave evidence that while he was serving as the Chief of the S’ang District Office, men had to be at least 25 and females between two to five years younger. He confirmed receiving this instruction from Phon, the member of the District Committee.<sup>12000</sup> Although some individuals could not recall their exact dates of birth or ages, they were able to give an estimate in court of how old they were when they married. Numerous female witnesses and Civil Parties were married between the ages of 20 and 28.<sup>12001</sup> Civil Party OM Yoeurn, a unionist at a rubber plantation in Kampong Cham province, was married when she was around 23 or 24 years old, while her husband was around 47 or 48 years old.<sup>12002</sup> CHEA Deap stated that she was married at around 19 or 20 years of age, while her husband was 26 years old.<sup>12003</sup> Civil Party

<sup>11998</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 64.

<sup>11999</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 86-89.

<sup>12000</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 21; T. 30 August 2016 (SENG Soeun), E1/466.1, p. 49 (testifying that, at first, the age of the wives had to be two to three years less than the husband and that, later on, the age of the men have to be three to five older than the women).

<sup>12001</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 68 (stating that she did not want to get married because she was still young, 19 or 20 years old at that time); T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 53-54 (stating that she got married when she was 25 years old); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 99 (stating she got married when she was around 23-24 years old); T. 5 September 2016 (NGOP Ngim), E1/469.1, p. 61 (“I got married when I was 28 at the time.”); T. 25 August 2016 (YOS Phal), E1/464.1, p. 27 (stating that the age of the 50 couples that were to be married during his wedding, was around 23-25 years old); T. 16 September 2016 (MOM Vun), E1/475.1, p. 57 (stating that among the 60 couples that were married together with her, their ages were around 20-27 years old).

<sup>12002</sup> T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 99.

<sup>12003</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 72 (stating that other couples were similar ages).

NGET Chat, a mobile unit worker, was married when she was 20 years old, while her husband was almost twice her age.<sup>12004</sup>

3583. Women were married as young as 16,<sup>12005</sup> or as old as 60. PEN Sochan was married when she was 15 or 16 years old, while her husband was 25 years old.<sup>12006</sup> Witness LING Lrysov was married when she was 17 years old.<sup>12007</sup>

3584. Within the military, the age at which combatants were married fell within a similar range to that of the general population. Civil Party SUN Vuth stated that marriages were usually arranged for male combatants who were 30 years old and above and for female combatants who were 29 or 30 years old.<sup>12008</sup> NOP Ngim stated that the minimum age for male combatants to marry was 18 years old.<sup>12009</sup> Civil Party MY Savoeun, an East Zone soldier, gave evidence that he was married at around 25 years of age, while his wife was around five years younger.<sup>12010</sup>

3585. Although the ages of individuals who were married varied, the Chamber finds the evidence to be consistent in showing that women were generally in their twenties and men were generally 25 or older when they married.

#### 14.3.4.4. *Favoured individuals*

##### 14.3.4.4.1. *Disabled soldiers*

3586. Arrangements were made for soldiers who were disabled as a consequence of wounds suffered in the battlefield to be married. In his book, NORODOM Sihanouk described hearing KHIEU Samphan talking about young women who were brought to marry disabled soldiers:

Young girls chased from Phnom Penh and other towns in April 1975 forced into unions with the “Khmer Rouge heroes”, the disabled – yes, indeed! – the severely injured, the disabled veterans, the one eyed, the

<sup>12004</sup> T. 24 October 2016 (NGET Chat), E1/488.1, p. 124.

<sup>12005</sup> T. 5 September 2016 (NOP Ngim), E1/469.1 pp. 44-45 (testifying that there were two 16 years old girl who were to be married at her wedding but they ran away and they were not pursued because *Ta* Mok said they were too young. She confirmed knowing about their ages from the two individuals after the wedding); T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 8 (stating that her sister got married when she was around 15 or 16 years old).

<sup>12006</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, p. 98.

<sup>12007</sup> T. 20 August 2016 (LING Lrysov), E1/334.1, p. 60.

<sup>12008</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, p. 79; 31 March 2016 (SUN Vuth), E1/412.1, p. 6.

<sup>12009</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 61-62.

<sup>12010</sup> T. 17 August 2016 (MY Savoeun), E1/459.1, pp. 82-83.

blind, the armless, the one-legged and even individuals without legs. [...] Khieu Samphan asserted that the young ladies were “fervently patriotic” (*sic*) and “accepted, by way of their marriage, to care for the well-being of the heroes who had sacrificed themselves for the nation”.<sup>12011</sup>

3587. SENG Soeun heard from his former superior that there was an instruction from *Ta Mok* to marry off disabled soldiers. According to his superior – who was the head of the “Youth Handicap Unit” in Takhmau – *Ta Mok* established a policy requiring the Youth Handicap Unit to bring in women to marry the disabled soldiers because they were getting older.<sup>12012</sup> This instruction was relayed from *Ta Mok* to the sector level, from sector level to the district level, and then to subordinates below the district level. The ages of those disabled soldiers ranged from 25 to over 30 years of age.<sup>12013</sup> The women to be married to the disabled soldiers were normal civilians brought in from pepper plantations in Kampot.<sup>12014</sup>

3588. NOP Ngim, who was a combatant herself, was among a group of 40 women who were arranged to marry 40 disabled soldiers, under the instruction of *Ta Mok*. She was sent from Kampot province to Battambang province along with other female combatants. She stated that the disabled soldiers married at her wedding ceremony were sent by *Ta Mok* to Samlaut district from the Southwest Zone in order to be married.<sup>12015</sup>

<sup>12011</sup> Book by Norodom S.: *Prisoner of the Khmer Rouge*, E3/2813, p. 1, ERN (En) 00632939 (original emphasis).

<sup>12012</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 15-18, 22, 36 (SENG Soeun was a former deputy chief of the Youth Handicap Office of Sector 13. After he left the office, he went to visit his former office and his former superior told him about order of the arrangement of marriage for disabled soldiers).

<sup>12013</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 18. *See also*, SENG OI Interview Record, E3/5833, 2 December 2009, pp. 6-7, ERN (En) 00413906-00413907 (SENG OI, the chairperson of the women unit in Nheang Nhorng commune, told the OCIJ that “[i]n 1977 or 1978, the army came to request women from my unit to be married in Kampong Saom. Proposal letters were sent from the army to my commune, and the Commune Comm[itee] told me to select women to go to Kampong Saom, saying that the army had requested them. At that time, neither I nor the women selected to go knew that they were being taken away to marry handicapped soldiers. According to my understanding, those soldiers were not severely handicapped; they were only slightly handicapped. I selected about three to five women from my unit. The selections were not made only in my unit; various other communes did the same. [...] I don’t know if those women volunteered or not; but not one of those women refused.”).

<sup>12014</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 17, 19.

<sup>12015</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 43-44 (while 40 women were arranged, only 38 were married because two women escaped); PREAP Kap Interview Record, E3/9818, 3 November 2014, pp. 8-13, ERN (En) 01053908-01053911 (PREAP Kap, a disabled soldier (who had lost his eyesight) and the husband of NOP Ngim, provided that *Ta Mok* took 100 disabled soldiers from the unit for disabled persons located in Takhmau to the Northwest Zone. When they arrived Battambang, he was among the 40 disabled soldiers who were selected by *Ta Mok* to get married in Samlaut. He also confirmed that at the end, only 38 disabled soldiers were married because two women escaped).



3589. At CHEA Deap's group wedding involving 12 couples; female combatants were married to disabled soldiers (some of whom had lost one or both legs or an arm, or were blind in one eye, and many of whom could not walk properly). She explained that the disabled soldiers were brought in from the North Zone to marry because they could no longer fight the enemy. A female combatant herself, her husband had a problem with his leg and could not walk properly.<sup>12016</sup> Civil Party PREAP Sokhoeurn was married to a disabled man without being notified in advance. Her husband was disabled in one leg and, after the marriage, PREAP Sokhoeurn noticed that he had very poor eyesight as a result of the war.<sup>12017</sup> SOU Sotheavy witnessed a wedding of disabled soldiers when she was in Takeo province. According to her, the disabled soldiers were sent back from the battlefield and married to Base People, who were considered to be loyal to the Party.<sup>12018</sup>

3590. These testimonies are further consistent with CPK ideological discourse, including the speeches made by KHIEU Samphan, on the duty to serve the revolution and respect the Party discipline unconditionally.<sup>12019</sup> They show that marriages between

<sup>12016</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 70-71.

<sup>12017</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 31-32.

<sup>12018</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 94-95.

<sup>12019</sup> Revolutionary Flag, E3/166, February-March 1976, p. 24, ERN (En) 00517836 ("Our people have a high level of sacrifice, have the stance of respect for organizational discipline, respect Party leadership unconditionally, and have a laboring nature along with the highest spirit and stance of the collective."); Revolutionary Flag, E3/4, July 1976, pp. 23, ERN (En) 00268935 ("There is only one single firm organizational discipline. There is not a separate discipline for upper echelon, a separate one for Party members. It is imperative that we all respect it."), 30, ERN (En) 00268942 ("If we respect this organization, we will not be wrong. If we are wrong, we will be able to rectify it."); Revolutionary Youth, E3/733, May 1976, p. 3, ERN (En) 00357870 ("Our Kampuchean youth have the task of defending the country and constructing the country to be firm, mighty, skilled and esteemed and glorious extremely rapidly following the Party's new direction of socialist revolution absolutely."); Revolutionary Youth, E3/753, June 1976, p. 10, ERN (En) 00583795 ("By doing so, we revolutionary youth build ourselves well, firmly, and properly following the lines of the Party and so by guarantee our future tum at successfully and permanently waging and achieving socialist revolution and building socialism on into the future."); Revolutionary Youth, E3/772, September 1977, p. 13, ERN (En) 00541712 ("We the youth of this generation must pay a great deal of attention to building ourselves well following the Party's revolutionary stances in every field and not be bothered with or become entangled with miscellaneous issues surrounding our individual persons that might cause us to build ourselves slowly or attract us into falling backwards again."); Revolutionary Youth, E3/729, October 1975, p. 12, ERN (En) 00357911 ("Our revolutionary youth must constantly keep on building, strengthening, [...] the four essential proletarian qualities of the Party: the highest sacrifice, the sharpest combat, unconditional respect for organizational discipline [...] Along with this, it is imperative to constantly have a high spirit of revolutionary vigilance, vigilance in outlook and stance, vigilance in organization, vigilance in routine daily life, absolutely respecting the organizational discipline of the Party, absolutely respecting and implementing the Party's line and organizational provisions."); Revolutionary Youth, E3/730, December 1975, p. 12, ERN (En) 00363433 ("In terms of organization, it is imperative to concentrate on educating and refashioning our youth to have correct and solid organization, to have unconditional and awakened respect for organizational discipline"); Revolutionary Youth, E3/754, August 1976, pp. 10-11, ERN (En) 00539858-00539859 ("They respect [Party discipline] unconditionally, consciously, voluntarily and

disabled soldiers, considered as war heroes and trusted revolutionaries, and young women selected from among Base People, were implemented according to a policy promoted by the highest levels of the CPK. Based on such ideological values, females were expected to sacrifice themselves for “patriotic” reasons and for the benefit of the revolution.

#### 14.3.4.4.2. *Combatants and cadres*

3591. The evidence shows that male combatants were usually asked or encouraged to choose a wife or were consulted when paired with someone.<sup>12020</sup> Expert Kasumi NAKAGAWA confirmed in court that combatants had more privilege in relation to marriage. They were usually allowed to choose a wife and, once that choice was made, the woman had to accept the decision without any question. To the best of the expert’s knowledge, this was the practice nationwide.<sup>12021</sup> Similarly, male cadres also received special treatment in relation to marriage but not everyone voluntarily consented to such arrangements.<sup>12022</sup> Additionally, there is no evidence that the consent of the other

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wholeheartedly”), 14, ERN (En) 00539862 (This point means that we respect comrade who is the representative of *Angkar* or the leading committee whenever that comrade or committee instructs, educates, and leads us to follow the correct line of the Party, various organizational conditions of the Party, and the correct policy of the Party.”), 15, ERN (En) 00539863 (“To respect the *Angkar*-disciplines unconditionally.”), 16, ERN (En) 00539864 (“As long as our revolutionary male female youths strive to learn and grasp the Party political and ideological lines firmly and know well about various organizational conditions of the Party it means that we respect the Party *Angkar* disciplines well and consciously.”); Revolutionary Youth, E3/726, January-February 1978, p. 11, ERN (En) 00278718 (“It is imperative to consciously and unconditionally respect the organizational discipline of the Party at all times.”); Revolutionary Youth, E3/765, October 1978, p. 8, ERN (En) 00539983 (“Speaking in terms of the stance of unconditional respect for organizational discipline, we can see that our comrades who are good clearly respect the leadership of the Party: no matter what the Party has them do, they do it, and they have no complicated ideologies.”). *See above*, para. 3569.

<sup>12020</sup> T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 65, 74-77; T. 24 October 2016 (KUL Nem), E1/488.1, pp. 88-90 (As a Division 920 soldier, KUL Nem was forced to choose a wife, although he already had a fiancée. Eventually, he asked *Angkar* to choose one for him); T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 21, 25-26 (MOENG Vet gave an example that women did not have the right to freely choose men but soldiers; the men conversely had the right to choose which women they wanted to marry); CHHUOM Savoeng Interview Record, E3/9578, 15 October 2014, p. 11, ERN (En) 01053606 (“*Angkar* told me that it was time for me to get married. So I proposed the name of a woman I liked for *Angkar* to arrange the marriage. After 1979 that woman requested a divorce”); EM Sarin Interview Record, E3/10639, 23 April 2005, p. 19, ERN (En) 01098421 (regarding the Handicap Unit in Division 2: “The grooms chose their spouses freely. [...] Q: [...] [D]id you ask the brides if they agreed to marry these men? A229: I did not ask the women”). KOEM Men Interview Record, E3/10768, 3 September 2015, p. 25, ERN (En) 01170548 (As a Battalion 623 commander, he explained that men and women were free to marry. He further stated that “[t]hey brought and showed women to the soldiers, and they asked whether they loved the women or not. I lived on the island, and they brought women to the island”).

<sup>12021</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 64-67.

<sup>12022</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 26 (as a chief of the district office, SENG Soeun was informed of his marriage in advance. He testified that he was in a difficult situation as he did not want to get married). *See also*, T. 4 May 2016 (HIM Huy), E1/427.1, pp. 94-95 (On one occasion, six

spouse was sought in such circumstances; on the contrary, several women stated that the decision to marry cadres was imposed on them.<sup>12023</sup> The Chamber therefore finds that even though some male cadres were allowed to choose their wives, their spouses were forced to marry without being asked.

#### 14.3.5. *Authorisation to Marry*

3592. A number of witnesses and Civil Parties stated that marriages had to be authorised by *Angkar*,<sup>12024</sup> or that weddings had to comply with *Angkar*'s policy.<sup>12025</sup> Expert Kasumi NAKAGAWA stated that while the process of marriages varied in many ways, the "Khmer Rouge" had the absolute right to authorise marriages – if anyone wanted to marry, they had to seek permission from the "Khmer Rouge".<sup>12026</sup>

3593. The Chamber heard evidence of weddings proposed by the matching authorities as well as weddings proposed by individuals seeking to marry. The Chamber addresses these in turn.

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women were brought in from the garment section to marry S-21 staff to be married in a group ceremony, which was arranged by Duch. The couples did not know each other before the marriages.)

<sup>12023</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 39, 43-44 ("*Angkar* organized my marriage and we were living together. I did not think of having a husband; however, *Ta* Chap said that I should get married and I, actually, was hesitating to get married because I was rather young. However, because I was told by *Ta* Chap, then I decided to marry my husband but, personally, I did not want to marry him. However, because upper *Angkar* organized it, then I followed the instruction. [...] I had to make that decision because sooner or later, as a woman, I had to marry a man. For that reason, I had to follow that instruction... [*Ta* Chap] was overall in charge, and if I did not follow his instructions, it meant that I disrespected him. Loving [my future spouse] or not, I had to follow his instruction."); CHEAM Kim Interview Record, E3/9524, 13 March 2014, p. 5, ERN (En) 00985175 (explaining that in May 1975, while she was in Svay Sisophon, she had to marry *Ta* Val who was the Chairman of the Sector 5 Mobile Unit and who was twice her age). *See also*, Revolutionary Flag, E3/4, July 1976, p. 23, ERN (En) 00268935 ("There is only one single firm organizational discipline. There is not a separate discipline for upper echelon, a separate one for Party members. It is imperative that we all respect it.").

<sup>12024</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1 p. 3 (stating that people could not get married without the authorisation of *Angkar*); T. 30 March 2016 (SAO Sarun), E1/411.1, p. 79 (marriages had to be authorised by *Angkar*); T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 48-49 (men and women who loved each other could not propose and decided to marry by themselves. They had to propose it through their respective chief and if they married by themselves without recognition from others, that was considered to be a moral offence.); T. 22 April 2015 (PECH Chim), E1/290.1, p. 45 ("It was impossible for any marriage to be celebrated without the authorisation"); T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 18 (explaining that the weddings could take place only after marriage proposals were approved by the upper level).

<sup>12025</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 54-55; T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 12-14, 34-36. *See above*, Section 14.3.2: Policy regarding the Regulation of Marriage and Discipline.

<sup>12026</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 58; T. 12 October 2016 (Peg LEVINE), E1/482.1, p. 19 ("The fact that they were selected to marry is clear, and that the marriage had to be approved. Oftentimes, people were put on a list.").

14.3.5.1. Marriage proposed by authorities

3594. Once lower authorities matched individuals to marry, the proposed selection required approval by the upper authorities. If the selection and matching was made by a unit chief, the request would have to be approved by a higher-level authority.

3595. Civil Party MOM Vun, a mobile unit worker in Siem Reap province in the North Zone, stated that Than *alias* Rom, who was in charge of the worksite, selected those who would marry following instructions from the district level.<sup>12027</sup>

3596. As discussed above, SENG Soeun stated that he received an order and instruction to organise marriages from Brother SAO Phon of the District Committee.<sup>12028</sup> SENG Soeun prepared a list of couples he had matched and submitted them to the District Committee. The decision to approve the weddings was made at the district level.<sup>12029</sup> The district level was responsible and made decisions regarding the marriage of male and female youths who were part of the district mobile unit. The commune level was responsible for the marriage of male and female youths in their respective communes.<sup>12030</sup>

3597. NOP Ngim, a female combatant from Kampot, stated that the district secretary forced people to marry following an instruction from *Ta* Mok who, at the time, was the Southwest Zone Secretary. According to her understanding, *Ta* Mok was the one who matched the couples.<sup>12031</sup> However, based on evidence from other witnesses and Civil Parties, the Chamber finds that while the authorisation to proceed with weddings emanated from the higher level, the matching was done by lower-level cadres.<sup>12032</sup>

3598. The Chamber finds that the evidence consistently demonstrates that, following general instruction from the upper level, the lower level cadres matched the individuals to be wedded and then proposed such lists to the higher authority cadres for approval.

<sup>12027</sup> T. 16 September 2016 (MOM Vun), E1/475.1, pp. 76-78.

<sup>12028</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 20-21.

<sup>12029</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 39, 82.

<sup>12030</sup> T. 30 August 2016 (SENG Soeun), E1/466.1, pp. 47-48.

<sup>12031</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 47, 64.

<sup>12032</sup> See above, paras 3594-3596.

14.3.5.2. Marriage proposed by individuals

3599. According to some witnesses and Civil Parties, in certain circumstances individuals were effectively allowed to name whom they wanted to marry to their superior or supervisor for approval. This practice was confirmed by Witness CHHUM Seng, chief of a company within one of the mobile units operating at the Trapeang Thma Dam, who stated that if an individual wanted to marry a particular person, he or she had to make a request. Similarly, Witness OM Chy, Unit Chief in Kampong Thom province of the Central Zone, confirmed that such requests had to be made to the supervisor.<sup>12033</sup> OM Yoeurn knew a man who requested to marry the woman he loved to the chief of the women's group. The wedding was approved by *Angkar* after the woman agreed.<sup>12034</sup> The Chamber notes that while both males and females could in theory make such requests, women do not generally propose marriage in Cambodian culture.<sup>12035</sup>

3600. While SENG Soeun was at S'ang district, he witnessed a couple who fell in love and requested approval to marry from Brother SAO Phon, the member of the District Committee. The District Committee approved the marriage.<sup>12036</sup> Witness MEAS Voeun also stated that when individuals liked each other, they would inform him and he would consent to their marriage.<sup>12037</sup>

3601. However, not all weddings proposed by individuals were approved by the authorities. OM Yoeurn received a marriage proposal from OM Phon. The next day,

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<sup>12033</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 24 (if people want to marry a particular individual, they had to make a request); T. 30 July 2015 (OM Chy), E1/326.1, pp. 114-115 (couples sometimes requested to be married; this request was forwarded upward and they could only get married after the commune chief verified their biographies). *See also*, T. 19 May 2015 (OR Ho), E1/301.1, pp. 54-55 ("In my village the man would tell that he loved certain woman and likewise the woman would do the same and after that we would like a report to the upper echelon about this. [...] For the upper echelon, they received the biography that we send to them and after that they would arrange the place for the marriage to take place."); CHHUOM Savoeun Interview Record, E3/9578, 15 October 2014, p. 11, ERN (En) 01053606 ("*Angkar* told me it was time to get married. So I proposed the name of a woman I liked for *Angkar* to arrange the marriage. After 1979, that woman requested a divorce"); CHUON Pheap Interview Record, E3/9527, 18 February 2014, p. 4, ERN (En) 00982315 ("At that time the Khmer Rouge allowed me to select a girl from among the base women. After I had found one I liked, I made a request to my unit chief who in turn made a request to the woman's unit chairperson.").

<sup>12034</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, p. 28.

<sup>12035</sup> T. 18 January 2016 (YOU Vann), E1/377.1, p. 51.

<sup>12036</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 77.

<sup>12037</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 64.

the authority arranged for OM Yoeurn to be married. However, on the day of her wedding, she discovered that she was arranged to be married to a different man.<sup>12038</sup>

3602. The Chamber finds that all marriages, whether proposed by individuals or matched by authorities, required approval by a higher authority. As set out below, the level authorising the marriage depended on the level and/or position of the individuals who were to marry.

#### 14.3.5.3. The authorising authority

3603. The authority which approved the marriage varied depending on the level and/or position of the persons to be married.

3604. According to NEANG Ouch *alias* Ta San, Tram Kak District Secretary from October 1977, once a draft for matching people was ready, a nominal list of the concerned individuals was sent to the commune or sector level for approval. In general, the names were reported from the village to commune and from commune to the district level. Certain couples required approval from the sector level due to their connection with that level.<sup>12039</sup> SENG Soeun from the Southwest Zone gave similar evidence that authorisation was required from the district level.<sup>12040</sup>

3605. Witness YOU Vann, the Deputy Chief of Ro'ang commune in Kampong Siem district in the Central (old North) Zone, understood that the decision to approve a marriage lay at the district level. When a proposal was made to a group chief, from there it would be forwarded to the village chief, then to the commune level and eventually to the district level.<sup>12041</sup> PRAK Yut, District Secretary of the Kampong Siem district in Sector 41 of the Central (old North) Zone, testified to the involvement of the sector. According to her, after a couple had "consented" to marry, a request for approval would be made to the sector. She further stated that as a District Secretary, she did not have the authority to approve marriages without discussion with the Sector

<sup>12038</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 3-4, 30-31.

<sup>12039</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 38 (men or women who were part of the sector forces needed authorisation from the sector to be married. However, if they had no involvement with the sector level, marriage was proposed by the cooperative chief or commune chief for, with approval from the district level).

<sup>12040</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 39.

<sup>12041</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 77; T. 14 September 2015 (SEN Srun), E1/346.1, pp. 57-58 (individuals are prohibited to marry on their own); T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 80, 83.

Secretary.<sup>12042</sup> Others also testified that their marriages were decided by the district level. MOM Vun stated that Rom *alias* Than, a person attached to the Chikraeng district, was responsible for the selection of individuals to get married. She further stated that Rom implemented the instruction she received from the district.<sup>12043</sup> PEN Sochan was told by her unit chief that the instructions with respect to the arrangement of marriage were received from the district level.<sup>12044</sup>

3606. Where individuals worked at the district level, the District Committee was the authority to approve and arrange those marriages.<sup>12045</sup> For mobile units belonging to the district, all steps related to the organisation of marriages were taken at the District Office by the district level.<sup>12046</sup> Similarly, the ministries were responsible for arranging and approving marriages for staff in their ministries.<sup>12047</sup> This was also confirmed by CHEA Deap who worked at the Ministry of Commerce in Phnom Penh. Her marriage was arranged by her supervisor.<sup>12048</sup> Marriages of those in the military were arranged by their commanders or supervisors.<sup>12049</sup>

3607. According to HENG Lai Heang, who served on the Commune Committee in Sector 505 (Kratie), those who worked at the commune and district levels would have their weddings organised by cadres working in the respective zone. For the general population, weddings would be authorised by the commune. She explained that her wedding was attended only by cadres of the village and commune levels because the zone level cadres were busy in the battlefield.<sup>12050</sup>

<sup>12042</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 47-48.

<sup>12043</sup> T. 16 September 2016 (MOM Vun), E1/475.1, p. 76.

<sup>12044</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, p. 77.

<sup>12045</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 39.

<sup>12046</sup> T. 30 August 2016 (SENG Soeun), E1/466.1, pp. 46-49.

<sup>12047</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 13, 35-36.

<sup>12048</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 69.

<sup>12049</sup> EM Sarin Interview Record, E3/10639, 23 April 2005, pp. 14, 17, ERN (En) 01098416, 01098419 (explaining that Division Commander arranged marriages for soldiers in all companies, platoons and battalions); MUOL Eng Interview Record, E3/9833, 4 May 2015, pp. 21-22, ERN (En) 01111846-01111847 (MUOL Eng, a military in the Southwest Zone, explained that his regiment commander arranged and presided over his wedding).

<sup>12050</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 13, 35-36, 40 (zone level cadres sent a letter saying that they could not attend her wedding because they were busy at the border, therefore, only the village and commune level cadres attended her wedding).

3608. While some evidence suggests that decisions to approve weddings might have been made at a lower level,<sup>12051</sup> the Chamber finds that this can be explained by the fact that individuals understood the level which informed them that the wedding was approved to be the approving authority. This evidence does not contradict consistent evidence that authorisation generally came from higher levels. The Chamber is therefore satisfied that in general, the decision to authorise a marriage rested at the district level for the general population and those who worked below the district level. Where individuals worked for or had certain connections with the zone or sector levels, these levels were involved in the authorisation and organisation of their marriages. For individuals working in a ministry or a specific office, that ministry or office would arrange the marriage. In the military, marriages were authorised by the commanders or supervisors.

3609. The Chamber finds PRAK Yut's account on the level at which marriage was approved to not be credible, and finds that she sought to minimise her responsibility and involvement in the approval of marriages in her position as District Secretary.

#### 14.3.5.4. Parents' involvement

3610. One of the objectives of the revolution was for youths to abandon private ownership, which according to the CPK ideology, included the relationship with their parents. During the regime, *Angkar* supplanted the role of parents in DK, as is evidenced by the language commonly used in speeches and official CPK documents referring to citizens as its children.<sup>12052</sup>

<sup>12051</sup> T. 30 July 2015 (OM Chy), E1/326.1, pp. 81, 114-115 (OM Chy, a Unit Chief at the 1<sup>st</sup> January Dam worksite, stated that marriages were authorised by the village chief. According to him, when individuals requested to get married, the unit chief would advise them to request the village chief to prepare the biographies to be forwarded to the commune chief. The decision of whether or not to authorise and hold the wedding ceremony rested with the commune.); T. 24 August 2015 (CHHUY Huy), E1/335.1, pp. 39-43 (CHHUY Huy, Chief of a squad at Trapeang Thma Dam in the Northwest Zone, testified that during the DK regime, marriages had to be authorised by the unit chief.); T. 24 June 2015 (CHUM Samoeurn), E1/321.1 pp. 64, 67 (Civil Party CHUM Samoeurn, who worked at the Kampong Chhnang Airport in the West Zone, stated that her unit chief paired her with her husband and arranged the marriage for them.).

<sup>12052</sup> Revolutionary Youth, E3/750, November 1975, ERN (En) 00522460 (the male and female combatants in the revolutionary ranks "sacrificed private possession such as [...] parents, relatives, children and other properties in order to serve the Party, revolution and the people."); Revolutionary Youth, E3/767, January-February 1977, ERN (En) 00590200 ("in terms of vision and stance, our youths do not seem to have complication with private ownership issues such as family, parents, grandchildren"); Revolutionary Youth, E3/753, June 1976, ERN (En) 00583805 ("Our children in the Revolutionary Army are very industrious and never have idle hands. Back during the revolutionary war our children,



3611. Numerous witnesses and Civil Parties were told that they were under the supervision of *Angkar* and that *Angkar* was now their parent.<sup>12053</sup> During the wedding of Civil Party YOS Phal, a mobile unit worker in Takeo in the Southwest Zone, the chief of a youth group told the 50 couples getting married that “you are all the children of *Angkar* so you have to obey *Angkar* [...] Because you are the children of *Angkar*, you are not allow to reject”.<sup>12054</sup>

3612. According to a number of cadres, marriage had to be approved by parents of the individuals.<sup>12055</sup> However, witnesses and Civil Parties gave evidence in court that their parents were neither consulted nor informed of their weddings.<sup>12056</sup> Couples were told to follow the instruction of *Angkar*, and not their parents.<sup>12057</sup> OR Ho, a chief of a unit of 100 workers at the 1<sup>st</sup> January Dam Worksite, testified that the people at the commune level would act as parents of individuals in the matter of marriage.<sup>12058</sup> A mobile unit worker in the Southwest Zone, CHANG Srey Mom, testified that before she got married, she attended a meeting at which she and others were told to sacrifice themselves for *Angkar* and when the unit chief asked for her decision on her marriage,

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the troops, made every sacrifice and endured every hardship [...] when the war ended, our children the troops did not get to rest); Revolutionary Youth, E3/766, November 1978, ERN (En) 00524189 (“Stances and views making it clear that they are the children of the people, of the Communist Party of Kampuchea”). See also, Section 5.1.8: *Angkar*.

<sup>12053</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 93-94 (confirming that KHIEU Samphan discussed the necessity of remaining detached from one’s parents, adding: “Usually people who chaired the meetings spoke about that as well, that we should not have any feelings toward our parents and that we should detach ourselves from our parents and we should focus on our work. [...] As for the parents and siblings, we were completely detached from one another.”); T. 24 August 2016 (SOU Sotheavy), E1/463.1, pp. 23-24 (during his wedding ceremony, the district chief announced that “*Angkar* was happy to marry a wife or a husband to you, and in order to return gratitude, as children, you had to get married.”).

<sup>12054</sup> T. 25 August 2016 (YOS Phal), E1/464.1, p. 20.

<sup>12055</sup> T. 5 May 2015 (KHOEM Boeun), E1/297.1, pp. 70-71 (confirming [KHOEM Boeun Interview Record, E3/9480, p. 29, ERN (En) 01057703]; T. 22 April 2015 (PECH Chim), E1/290.1, p. 49 (“We consulted the communes and the district in order to celebrate such marriages [...] but we also had to consult the parents of those involved, in particular, the couples themselves.”).

<sup>12056</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, p. 35 (“My parents were not aware of my marriage because [they] lived at a different place from time. I did not have time to go and invite my parents and sibling to join my wedding.”); T. 30 August 2016 (CHEA Deap), E1/466.1, p. 69 (“I never consulted with my parents or siblings because they were living far away from me, although I wanted to ask for permission to visit them but they did not allow me to do so. So I simply followed the order from *Angkar*.”); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 58 (“My parents did not know that I got married.”); T. 31 August 2016 (PHAN Him), E1/467.1, p. 95 (“My family members were not there and my parents were not aware of my marriage.”); T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 11, 15 (“At that time, my parents did not participate in the decision-making, but it was the supervisors who did that.” She further explained that it was because she was far from her parents).

<sup>12057</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 68 (after her second refusal to get married, she was told by senior cadres that she “was [one of] the children of *Angkar*. If you were with your parents, you had to respect them. If you were the children of *Angkar*, you had to respect *Angkar*. Therefore, you had to follow *Angkar*[’s] advice.”).

<sup>12058</sup> T. 19 May 2015 (OR Ho), E1/301.1, pp. 53-54.

she felt that she had no choice and answered that “[i]t was up to my parents”. She was then asked “Are you a daughter of your parents or a daughter of *Angkar*?”, to which she answered that she was a daughter of *Angkar*.<sup>12059</sup>

3613. In light of the consistent evidence that in general the parents were not involved, the Chamber finds that the cadres who gave evidence to the contrary in relation to the arrangement of weddings sought to minimise their responsibility surrounding the arrangement of weddings.

#### 14.3.6. *Notice and Consent*

##### 14.3.6.1. *Notice*

3614. Once approval for the wedding was obtained from the upper level, individuals were not consulted about their weddings in most cases and were only informed shortly before the wedding took place. Some were informed on the same day.<sup>12060</sup> Others were informed in advance by a few hours,<sup>12061</sup> one day<sup>12062</sup> or a few days.<sup>12063</sup> As a District Office Chief, SENG Soeun was informed of his own wedding by his superior.<sup>12064</sup>

<sup>12059</sup> T. 2 February 2015 (CHANG Srey Mom), E1/255.1, pp. 7-8; T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 55-56, 78-79, 91 (further explaining that “I was in fear because I was considered as the daughter of *Angkar*. I had no right to rely on my parents, so I dare not to opposed [*sic*] *Angkar*’s instruction, if I do – if I did, I would be accused of opposing *Angkar*.” Although her parents were not aware of her wedding in advance, her mother and grandmother were called to attend the wedding).

<sup>12060</sup> T. 31 August 2016 (PHAN Him), E1/467.1, pp. 89-91 (PHAN Him was told about her wedding in the evening and in the next morning, she was instructed to attend the assembly for the wedding); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 33, 82 (PREAP Sokhoeurn said that she was called from the plantation site and was told to go the wedding venue on that day. She further stated that two or three women next to her wept because they had no idea where they are going and they had not been informed about the ceremony); T. 24 October 2016 (NGET Chat), E1/488.1, pp. 123-125 (NGET Chat stated that one day, the organiser came to tell that she did not have to go to work and sent her to get married at Boeng Khnar); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 74 (explaining that there are many patterns but that most commonly, both men and women were informed within 24 hours that they were going to marry early in the morning, in the afternoon, or one day before and the wedding ceremony would be conducted by the evening of that day.).

<sup>12061</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 77-78 (SOU Sotheavy was never informed of the wedding day; he was called from the worksite by the unit chief at 3 p.m. while he was breaking rocks and the wedding ceremony began at 6 p.m. on that same day).

<sup>12062</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 32-33 (KONG Uth was told that she would get married one day before the wedding took place); T. 17 August 2016 (MY Savoeun), E1/459.1, p. 26 (he learned about his wedding one day before the ceremony took place).

<sup>12063</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 69 (stating that she did not know whom she would marry but that she was informed three days in advance of the wedding ceremony); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 46-47 (MOM Vun stated that she was told that she had to get married two days before the ceremony took place).

<sup>12064</sup> T. 23 August 2015 (SENG Soeun), E1/465.1, p. 26.

3615. Many others were told to go to a meeting only to discover that the meeting was in fact their wedding ceremony. They only found out that they were to be married when they arrived at the wedding venues.<sup>12065</sup> SENG Soeun confirmed that couples were not aware in advance of the marriage and that after he matched them by their biographies, he never consulted with them in advance to obtain their consent. It was the respective (unit) chiefs of individuals who were aware and, on the day of the wedding, they would call the individuals to the wedding venue on the pretext that they would be attending a study session or meeting.<sup>12066</sup> His cousin only found out about the wedding when he arrived at the wedding venue.<sup>12067</sup> NOP Ngim, a female combatant, was called to attend a meeting and discovered that she was to be married when she arrived at the location.<sup>12068</sup> In many instances, individuals had never met those whom they were to marry before the day of the wedding. They only found out who they were and what they looked like at the wedding venue.<sup>12069</sup>

<sup>12065</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 17 (CHANG Srey Mom was invited to go to the commune office at 6.30 p.m. where her unit chief told her to make a resolution and to marry that evening); T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 69, 71-72; 68-69; 103 (PEN Sochan stated that while she was walking from work at 5 p.m., she was told to go to the worksite and when she arrived, she was instructed to get married. She further stated that none of the couples who were married with her were informed beforehand and that they did not have opportunity to consult each other); T. 29 August 2016 (SENG Soeun), E1/465.1, pp. 22-25 (SENG Soeun stated that couples were not aware in advance of the marriage and were not consulted in order to obtain their consent. The unit chief would request them to attend the wedding ceremony location); T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 35-36, 55 (SAY Naroeun stated that one day she was called to join the assembly meeting. She followed the unit chief and when she arrived, the unit chief told her to wear skirt to the assembly and then she was told to get married, which she protested); T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 3-4 (OM Yoeurn only learned about her wedding when she arrived at the wedding venue); CHHUOM Savoern Interview Record, E3/9578, 15 October 2014, p. 10, ERN (En) 01053605 (describing an event where all single women at the worksite were called to attend a meeting to declare their determination to obey *Angkar* and were ordered to get married. Among 80 of them, 40 agreed to the proposal by *Angkar*).

<sup>12066</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 22; T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 55-56.

<sup>12067</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 37.

<sup>12068</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, p. 55.

<sup>12069</sup> T. 25 October 2016 (SAY Naroeun), E1/489.1, p. 38 (SAY Naroeun did not know her future husband before the wedding. She described the pairing process as “pairing the cattle.”); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 95 (“They did not tell me about the names of the person whom I would get married to.” She only learned about the identify of her husband after the announcement at the wedding ceremony); T. 25 August 2016 (YOS Phal), E1/464.1, p. 28 (“I never saw her before. [...] When I was committing to the marriage, I did not know her.”); T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 70-71 (“We never knew each other. We knew each other only on the day that we were matched up.”); T. 16 September 2016 (MOM Vun), E1/475.1, p. 48 (“I was not told as to which man I had to marry.”); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 98, 103 (“I never saw him and I did not know where he worked. [...] We did not know each other, nor did we like each other and we were not informed about whom we were to marry to.”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 30 (“When I attended the meeting, I was not sure as to which man I was matched to.”); T. 24 October 2016 (NGET Chat), E1/488.1, p. 123 (“I was told that I would be required to get married. I had no idea which man I would be matched up with.”); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 68 (“In the marriage, some couples did not know each other in advance, and after the marriage they could not even find their spouses.”); T. 24 June

3616. The Chamber finds that, with the exception of some favoured individuals discussed above, the individuals who were matched to be married were usually not consulted about the marriage and received little to no notice that they were to be married.

#### 14.3.6.2. Consent

3617. A number of former CPK cadres gave evidence that, in accordance with the official policy which required that “both parties agree”,<sup>12070</sup> marriages were arranged based on the “consent” of individuals.<sup>12071</sup> Witness RIEL Son stated that those who were to be married agreed to the marriages and that no one was forced to marry somebody they did not wish to marry.<sup>12072</sup> Witness OR Ho testified that there were people who did not agree to be married and that nothing happened to them as a consequence.<sup>12073</sup> Witness PECH Chim testified that for a wedding to be organised, both individuals had to consent. According to him, before a marriage was organised, people at the district level consulted with those at the commune level and with the couples themselves.<sup>12074</sup> The Chamber notes that PECH Chim himself admitted that there was a gap in this practice because according to him, people at the district initially planned to orally inquire of all couples whether they were satisfied, but when it was too busy at the district level, the tasks were transferred to commune and the commune transferred this to the unit chief. He was not sure if the commune chief had thoroughly reviewed the intentions and enquired with all proposed couples. He confirmed that it was obvious that those who were reluctant to respond at the wedding ceremony did not

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2015 (CHUM Samoeun), E1/321.1, p. 61 (“I did not know the prospective husband at all.”); T. 17 August 2016 (MY Savoeun), E1/459.1, pp. 64-65 (although the mobile unit chief told him about the proposed marriage and the name of his future wife one day before the wedding, he however never knew her before the wedding); T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 98 (stating that couples did not know their prospective spouse and were typically matched by the cadres).

<sup>12070</sup> See above, para. 3542.

<sup>12071</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 107 (EK Hoeun testified that there were arranged marriages between men and women in Tram Kak district but if a girl disagreed with the marriage, she would not be forced and there were no threats nor coercion); T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 38 (when men and women consented to the marriage, the chief of that unit would organise the event); T. 19 May 2015 (OR Ho), E1/301.1, p. 72 (OR Ho testified that marriage ceremonies were arranged for those who consent to them); T. 12 June 2012 (SAO Sarun), E1/85.1, pp. 16, 67-73 (before a wedding was organised, it was required that the parents, the groom and the bride agree. They never force couples to marry).

<sup>12072</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 39.

<sup>12073</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 71.

<sup>12074</sup> T. 22 April 2015 (PECH Chim), E1/290.1, p. 49.

consent to the marriage.<sup>12075</sup> According to Witness MEAS Voeun, the marriages in his section were organised based on the consent of the individuals and were not forced.<sup>12076</sup> Witness TEP Poch, member of the Baray District Committee, confirmed in court that the marriage criteria were: firstly, the issue of age, the girls would have to be at least 18 years old; secondly, love (which the Chamber interprets as “consent”); and thirdly, the couple’s parents approved the marriage.<sup>12077</sup> YOU Vann, a deputy commune chief, stated that marriages would be arranged only if the females agreed.<sup>12078</sup>

3618. However as noted above, the CPK required individuals – including Party members, cadres, combatants and the general population – to unconditionally follow the Party discipline, Party line or whatever *Angkar* ordered.<sup>12079</sup> This included orders from *Angkar* regarding marriages, which had to be respected.<sup>12080</sup>

3619. In contradiction to the statements made by CPK cadres concerning the consent given by spouses, numerous witnesses and Civil Parties described weddings as “forced”<sup>12081</sup> or involuntary.<sup>12082</sup> While some individuals may genuinely have agreed to

<sup>12075</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 40-41; T. 23 April 2015 (PECH Chim), E1/291.1, pp. 4, 7-9.

<sup>12076</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 64.

<sup>12077</sup> T. 22 August 2016 (TEP Poch), E1/461.1, p. 84.

<sup>12078</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 69; T. 18 January 2016 (YOU Vann), E1/377.1, p. 50.

<sup>12079</sup> See above, para. 3540.

<sup>12080</sup> T. 1 September 2016 (PHAN Him), E1/468.1, p. 11 (PHAN Him was told that she lived in this society, she had to respect the *Angkar* and Party’s discipline. If the Party decided for her to get married, she had to agree); T. 27 July 2016 (MOENG Vet), E1/449.1, pp. 28-29 (“According to the Party’s policies, if we were to disobey the Party’s line, it meant we opposed the Party. And usually in the self-criticism meetings, such people would be subject to being criticized. If I was arranged to marry someone and I refused, then I would be considered as opposing the Party, and people were afraid of doing that.”).

<sup>12081</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 64-68 (testifying that she was forced to marry a man in a wedding ceremony arranged for five couples.); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 90; T. 30 July 2015 (KHIN Vat), E1/326.1, p. 11 (testifying that she was forced to get married a man called Laoth whom she did not know before and was told that if she refused the marriage, *Angkar* would not be responsible.); T. 1 March 2016 (SIENG Chanthly), E1/394.1, p. 20 (mentioning that her sister was “forced” to get married); T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 35 (“They forced us to marry”); T. 25 August 2016 (YOS Phal), E1/464.1, p. 11 (“During the Democratic Kampuchea regime, I was not properly married. And I was forced to marry.”); T. 31 August 2016 (CHEA Deap), E1/467.1, p. 71 (“It was so painful, particularly when I was forced to get married.”); T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 101 (“I was forced to marry the man that was not my choice and we had to agree.”); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 73 (“We were forced to get married.”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 80 (“I was arranged to get married and I was forced to have intercourse with a person that I did not like.”); T. 14 September 2015 (SEN Srun), E1/346.1, p. 53 (many were forced to get married); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 97 (“I refused that I would not get married, but because I was forced to do so, so I had to agree.”).

<sup>12082</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 18 (CHANG Srey Mom and her husband were asked if they got married voluntarily, to which they said they did, although she felt that she did not get married voluntarily but had to agree to do so. She further explained her father was killed because he

marry a person whom they had selected or who had been proposed to them, a large number of witnesses and Civil Parties testified that they had no choice or right to refuse and believed that they had to respect the orders of *Angkar*.<sup>12083</sup>

3620. Individuals therefore “consented” to marriage out of fear, including the fear or threat of being placed in danger,<sup>12084</sup> subjected to various accusations<sup>12085</sup> including opposing *Angkar*,<sup>12086</sup> sent for re-education<sup>12087</sup> or refashioning;<sup>12088</sup> being moved to another location;<sup>12089</sup> or killed.<sup>12090</sup> When OM Yoeurn refused to get married at her wedding ceremony, a military cadre told her that she had to do so because that was the order from *Angkar*. She did not dare to refuse any longer because she had observed that there had been cases where people disappeared after they had protested or refused to marry.<sup>12091</sup>

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was accused of opposing *Angkar* and therefore, she was fear that she may be killed if she opposed *Angkar*’s order to marry.); T. 30 March 2016 (SUN Vuth), E1/411.1, p. 80 (“They [did] not volunteer or they did not fall in love with one another.”).

<sup>12083</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 12 (“I had no rights to refuse.”); T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 81 (“I could not refuse. That was the time that we had to follow them.”); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 52 (“I did not want to get married and I wanted to run away. But there was no choice so I had to bear with the arrangement [...] I had no option but to go along with *Angkar*’s plan.”); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 47-48, 52 (MOM Vun was told by her Unit Chief that she had no choice and that she had to remarry. She further stated that there were other couples who refused to get married but they had to because, just like her, they had no choice); T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 68, 97 (she was told that because they were the children of *Angkar*, she had to respect *Angkar*’s instructions. She further stated that she had no choice because she already refused for a few times); T. 30 July 2015 (KHIN Vat), E1/326.1, p. 10 (she felt as though she had no other choice than to follow *Angkar*’s orders).

<sup>12084</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 12 (“I felt frightened. I felt concerned about my own safety, and that’s why I agreed to accept whatever they arranged.”); T. 25 October 2016 (NGET Chat), E1/489.1, pp. 23-24 (she agreed to get married because her friend convince her to think about her safety as if she refused, she would be in trouble).

<sup>12085</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 97 (when she tried to refuse for the first time, she was accused of having a fiancé and the second time she refused, she was accused of having a boyfriend).

<sup>12086</sup> T. 25 June 2015 (KONG Uth), E1/322.1, pp. 33-34.

<sup>12087</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, p. 75 (she and the others at the wedding ceremony did not dare to refuse because they were afraid to being arrested and sent for re-education).

<sup>12088</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 72-73 (she agreed to get married because her unit chief told her that if she objected, she would be re-fashioned).

<sup>12089</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 91-92 (stating that she felt that if she had refused, she would have been taken to another location).

<sup>12090</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 22 (she did not dare to refuse because she would be dead); T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 21 (her sister did not dare to protest the marriage because she feared being taken away and killed); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 96 (OM Yoeurn did not dare to refuse the marriage because she saw that many people who refused to marry disappeared. She added that her cousin refused to get married one or two times and was taken away. She later found out that her cousin was killed); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 46-47 (stating that she felt that if she did not obey the instruction, she would be killed).

<sup>12091</sup> T. 22 August 2016 (OM Yoeurn), E1/461.1, pp. 96-97; T. 23 August 2016 (OM Yoeurn), E1/462.1, p. 35.

3621. Some witnesses and Civil Parties eventually consented to marriage because, after having initially refused a number of times, they were threatened by the authorities.<sup>12092</sup> CHUM Samoeurn was threatened, being told that if she refused to marry, she would never date a man in her life and that if she was caught smiling at a man, she would risk being killed.<sup>12093</sup> After MOM Vun's husband was taken away to a "study session", she was told to remarry. She was then "raped" by five militiamen two days before the date of the marriage arranged for her. She believes that she was "raped" because of her refusal to get married and therefore agreed to marry for the survival of her children.<sup>12094</sup>

3622. Others were threatened with death by the authorities. Civil Party PREAP Sokhoeurn stated that if anyone failed to obey *Angkar*'s orders, they would be killed like animals. She was threatened that she would either be put into prison or be killed.<sup>12095</sup> When Witness LING Lrysov told her unit chief that she did not want to get married, the unit chief told her "[p]lease be careful, you will be killed", and that if she refused her whole family would be killed.<sup>12096</sup> Threats were also made if the person chose a person with a dubious background. YOS Phal was told that he was going to die if he married his fiancée, as her brother had been smashed by *Angkar*.<sup>12097</sup> Kasumi NAKAGAWA, identified two patterns of threat. The first pattern concerns the instances where the Khmer Rouge explicitly said that an individual or family member would be killed if that individual refused to marry. The second pattern relates to individuals who were already terrified and were living under extreme fear that if they went against the Khmer Rouge, they would be killed. There was a silent pressure in the society which meant that they could not reject marriage.<sup>12098</sup> Kasumi NAKAGAWA further explained in court that although there were "a lot of opportunities" for both men and women to

<sup>12092</sup> T. 31 August 2016 (PHAN Him), E1/467.1, p. 91 (explaining that after she refused to marry, she was told by her supervisor that *Angkar* had assigned her to a husband and if she violated the discipline, she would have to be careful); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 95 (stating that when she tried to reject the wedding arranged for her, she was told to get married anyway, otherwise actions would be taken against her); T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 70, 75 (testifying that she was warned by her unit chief not to refuse the marriage). *See also*, T. 23 August 2012 (EM Oeun), E1/113.1, p. 104 (indicating that he was working at the hospital when he refused to marry someone he did not love, and that he was transferred to work at the worksite as a punishment instead of working at the hospital).

<sup>12093</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64.

<sup>12094</sup> T. 16 September 2016 (MOM Vun), E1/475.1, p. 80.

<sup>12095</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 93, 101-102.

<sup>12096</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, pp. 57-59.

<sup>12097</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 16-18.

<sup>12098</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 80.

refuse to marry, people were aware, “particularly in 1977-1978 when people were already terrorised by the Khmer Rouge”, that refusal may have resulted in their deaths. Therefore, many people did not dare to refuse.<sup>12099</sup> According to Peg LEVINE, “the level of trauma that was exacerbated by lack of access to ritual was excruciating” and people were afraid on a daily basis.<sup>12100</sup> With regard to marriage, she stated that “people attributed transforming powers to *Angkar*”, and that if individuals were asked to marry by *Angkar*, “it was essential that they comply”.<sup>12101</sup>

3623. The Chamber finds that while certain individuals, such as combatants, cadres and disabled soldiers, may have been consulted on their marriage, the general practice was that individuals (including the spouses of those privileged with prior consultation) had no choice as to whether they would marry. The general climate of fear created by the authorities and/or threats against the individuals led them to obey *Angkar* and did not allow them to object to an order to marry. Therefore, despite the evidence provided by cadre that, in accordance with the CPK policy, future spouses had to consent to be married, the Chamber finds that the consent given was not genuine. The Chamber further rejects the evidence of former cadre on this particular issue, noting that consent given to them may not have been genuine and their tendency to minimise their own responsibility.<sup>12102</sup> The Chamber finds that PECH Chim is an exception in this regard, having admitted that those who were reluctant to respond at the wedding ceremony did not consent to the marriage.

3624. Some witnesses and Civil Parties explained that they refused to get married. They stated that in their cases, the consequences of refusal included being moved to a different location<sup>12103</sup> and/or resulted in direct threats to be sent for re-education.<sup>12104</sup>

<sup>12099</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 78.

<sup>12100</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, pp. 87-88.

<sup>12101</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 53.

<sup>12102</sup> See above, para. 3617 (EK Hoeun, PAN Chhuong, OR Ho, SAO Sarun, RIEL Son, MEAS Vooun, TEP Poch, YOU Vann).

<sup>12103</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 98 (stating that after a few refusals, she was sent to work at another location and then realised that she could no longer refuse to get married); T. 25 October 2016 (NGET Chat), E1/489.1, pp. 22-24 (explaining that she was sent to work at Preaek Chik when she refused to get married); T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 84-85 (stating that after her refusal to marry, she was reassigned to work at a different location).

<sup>12104</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 92-93 (testifying that those who refused to get married would be sent for re-education at the commune office).



3625. The Chamber heard the evidence of two individuals who refused a marriage without detrimental consequences.<sup>12105</sup> Witness EM Phoeung, a former monk, refused to marry with no consequence. The witness himself explained that it was strange that he would suffer no consequence for his refusal and concluded that the local people intervened as they had known him from childhood.<sup>12106</sup> Civil Party SUN Vuth, stated that when he was ordered to marry, he decided to refuse and was not forced to obey, in contrast to the situation experienced by other men in his group who could not refuse. He clarified that his refusal did not lead to detrimental consequences and understood that this was due to the fact that he was young enough at the time to not be forced to marry.<sup>12107</sup> Noting that these situations were exceptional and may be explained by specific circumstances, the Chamber finds that the overwhelming majority of the evidence shows that people could not refuse to marry without suffering consequences.<sup>12108</sup> The Chamber is further satisfied that the coercive environment throughout the country during the DK regime was such that genuine consent was impossible and, therefore, people had no choice other than to obey and marry in accordance with a coercive practice stemming from CPK directives on marriage.

#### 14.3.7. *Wedding Ceremonies*

##### 14.3.7.1. *Organisation*

3626. Once weddings were authorised or approved by *Angkar*, ceremonies were organised by cadre at the district level, commune level or unit level,<sup>12109</sup> depending on the position of the individuals who were to be married.<sup>12110</sup>

3627. Ceremonies were conducted at various places including commune offices,<sup>12111</sup>

<sup>12105</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 54-57; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 3; T. 30 March 2016 (SUN Vuth), E1/411.1, p. 79.

<sup>12106</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 54-57.

<sup>12107</sup> T. 30 March 2016 (SUN Vuth), E1/411.1, p. 79.

<sup>12108</sup> See above, paras 3619-3624.

<sup>12109</sup> T. 4 June 2015 (SOU Soeurn), E1/310.1, p. 80 (explaining that the commune itself, in addition to the district, had the authority to organise wedding ceremonies within its own commune); T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 97-98 (testifying that spouses were chosen by the unit cadre and that district cadre organised the ceremony); KONG Vach Interview Record, E3/5590, 17 December 2009, p. 8, ERN (En) 00426480 (“The ceremony organizers were the Khmer Rouge cadres such as heads of villages, heads of cooperatives, heads of units and district committees.”).

<sup>12110</sup> See above, Section 14.3.5.3: The Authorising Authority.

<sup>12111</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 23 (testifying that her wedding was held at the office of Nheang Nhang commune, where the unit chief resided); T. 3 June 2015 (UTH Seng), E1/309.1, p. 28 (explaining that the marriages were held at the commune office).

district offices,<sup>12112</sup> construction sites,<sup>12113</sup> worksites,<sup>12114</sup> kitchens,<sup>12115</sup> pagodas,<sup>12116</sup> at the house of a cooperative chief,<sup>12117</sup> in classrooms,<sup>12118</sup> on a hill,<sup>12119</sup> in meeting places,<sup>12120</sup> assembly halls<sup>12121</sup> or near the forest.<sup>12122</sup>

3628. Weddings were mostly held in the evening or at night time, after people had finished their work at the field or the construction site.<sup>12123</sup> Some wedding ceremonies were organised during the daytime.<sup>12124</sup> The duration of wedding ceremonies ranged from 30 minutes to a few hours.<sup>12125</sup> Witness NEANG Ouch *alias Ta San*, the Tram Kak District Secretary, stated that marriage ceremonies would only last for 2 hours.<sup>12126</sup>

3629. The Chamber finds that wedding ceremonies were conducted in various ways

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<sup>12112</sup> T. 18 March 2015 (RIEL Son), E1/279.1, p. 39 (specifying that they were called to the district office to get married); T. 14 January 2016 (YOU Vann), E1/376.1, p. 77 (describing that the wedding ceremony was held at the district office); T. 29 August 2016 (SENG Soeun), E1/465.1, p. 40 (explaining that the wedding ceremony took place at the district office); T. 30 July 2015 (OM Chy), E1/326.1, p. 75 (testifying that “they organised such ceremonies at the commune office or at the pagoda or sometimes at the security centre.”).

<sup>12113</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, p. 81; T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 92-93; T. 1 December 2015 (PAN Chhuong), E1/360.1, p. 36.

<sup>12114</sup> T. 16 September 2016 (MOM Vun), E1/475.1, p. 51; T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 68-69.

<sup>12115</sup> T. 17 August 2016 (MY Savoeun), E1/459.1, p. 26.

<sup>12116</sup> T. 28 September 2015 (HIM Man), E1/350.1, p. 18; T. 30 July 2015 (OM Chy), E1/326.1, p. 75.

<sup>12117</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 59.

<sup>12118</sup> T. 31 August 2016 (PHAN Him), E1/467.1, p. 94.

<sup>12119</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 21-22.

<sup>12120</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 55.

<sup>12121</sup> T. 31 August 2016 (PHAN Him), E1/467.1 p. 92.

<sup>12122</sup> T. 23 April 2015 (PECH Chim), E1/291.1, pp. 7-8.

<sup>12123</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 22-23 (stating that her wedding ceremony was held at 8:30 p.m. and continued until 10:30 p.m.); T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 31; T. 28 July 2015 (MAM Soeurm), E1/324.1, pp. 94-95 (explaining that his wedding ceremony was held at night); T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 77-78 (testifying that the ceremony started at 6:00 p.m. when everybody arrived); T. 25 October 2016 (NGET Chat), E1/489.1, p. 4 (stating that the wedding started in the evening); T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 22 (indicating that she joined a wedding ceremony that took place at night after the working time); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 60 (specifying that the ceremony took place after the children had gone to bed); T. 22 August 2016 (OM Yoeurn), E1/461.1, p. 99 (stating that the marriage took place between 5:30-6:30 p.m.); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 68 (explaining that his wedding was celebrated at night around 8:00 or 9:00 p.m.).

<sup>12124</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 9; T. 30 August 2016 (CHEA Deap), E1/466.1, p. 67 (testifying that her wedding ceremony took place in the morning and that it was completed by noon); T. 31 August 2016 (PHAN Him), E1/467.1, p. 92 (explaining that she was called for the ceremony at 2:00 p.m.); T. 25 June 2015 (KONG Uth), E1/322.1, p. 35 (stating that her wedding started at 4:00 p.m. or 5:00 p.m.).

<sup>12125</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 34 (testifying that the ceremony lasted two hours); T. 30 August 2016 (CHEA Deap), E1/466.1, p. 77 (indicating that the ceremony lasted less than one hour); T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 22 (explaining that her wedding started at 8:30 p.m. and ended at 10:30 p.m.); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 40 (her wedding ceremony took place for about three hours); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 69 (“The wedding was very short, most probably to save time”, and would last “maximum one hour”).

<sup>12126</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 34.

throughout different zones. However, there were some common practices. Before the ceremony, individuals were usually given instructions on what to do during the ceremony. In numerous ceremonies, males and females were instructed to stand in separate lines or sit in separate rows and each couple would be called out.<sup>12127</sup> During PREAP Sokhoeurn's wedding ceremony, men and women stood on different side of the room, with a long wooden table between them, not knowing their future spouses at that moment. The names of a man and a woman were called, couple by couple, and they stood up to go to sit at a table.<sup>12128</sup> In other instances, couples were required to stand and salute the Party flag,<sup>12129</sup> hold hands,<sup>12130</sup> or march in front of the crowd.<sup>12131</sup>

3630. During SOU Sotheavy's wedding, the men and women to be married were arranged into two groups, the Base People and the 17 April People. Men and women in each group were organised in separate lines. After the sun set, they switched off the lights and the individuals were instructed to touch each other to find their future spouses. SOU Sotheavy describes this event as similar to "playing hide-and-seek".<sup>12132</sup>

3631. When weddings started to be celebrated again in 1975, the ceremonies initially involved one couple or a small number of individuals. Later, collective marriages of an increasingly larger number of people were organised by local authorities.<sup>12133</sup> As

<sup>12127</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 20-22 ("They called 50 males to stand in lines according to numbers from 1 to 50."); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 69 ("When I arrived at the venue, I saw people sitting in rows; female on one side and male on another side."); T. 17 August 2016 (MY Savoeun), E1/459.1, p. 62 (indicating that "there were two lines of men and two lines of women sitting in the dining hall"); T. 31 August 2016 (PHAN Him), E1/467.1, p. 91 (explaining that when she arrived at the wedding venue, she was instructed to sit separately from the men); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64 (describing that the men had to sit on one side of the room and the women on the other); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 74 (explaining that even though women did not know who their future husband was, when they were brought to the wedding venue, they were ordered to sit in one line and males were ordered to sit in another in front of them and normally, the person that you were marrying was in front of you, as *Angkar* had already selected the couples).

<sup>12128</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, p. 83.

<sup>12129</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 77; T. 31 August 2016 (PHAN Him), E1/467.1, p. 92; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 91.

<sup>12130</sup> T. 8 October 2012 (MEAS Voeun), E1/131.1, p. 64; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64; T. 1 September 2015 (CHAO Lang), E1/339.1, p. 70; T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 63; T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 78; T. 13 January 2016 (MATH Sor), E1/375.1, p. 104; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 21; T. 31 August 2016 (PHAN Him), E1/467.1, p. 92; T. 5 September 2016 (NOP Ngim), E1/469.1, p. 42; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 82.

<sup>12131</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 14-15.

<sup>12132</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 80-81, 92; T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 25.

<sup>12133</sup> T. 8 January 2016 (SOS Romly), E1/372.1, p. 47 (stating that as a clerk at the commune office in Kroch Chhmar district, he noticed that during the first years of the regime, wedding ceremonies were

explained by Witness PECH Chim, the number of marriages increased as the country was liberated and male and female youths aged. Group weddings were organised in order to expedite marriages of numerous people on a large scale. The evidence shows that, during the DK regime, collective weddings were a widespread practice across Cambodia.<sup>12134</sup>

3632. The Chamber finds that the number of couples married in a single wedding ceremony ranged from one couple to 70-80 couples.<sup>12135</sup> In rare instances, wedding

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conducted for small groups of up to four couples, but from 1978 onwards, the ceremonies were conducted for more than 20 couples at a time).

<sup>12134</sup> See below, para. 3632; T. 19 May 2015 (OR Ho), E1/301.1, pp. 53-54 (explaining that in Baray district, Kampong Thom province, marriages were arranged collectively by *Angkar* after 1977, sometimes in order to allow 30 to 40 couples to marry at the same time “for fear that there would be single women remaining in the village”). See also, T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 74 (indicating that by at least late 1977-1978, many “mass weddings were organised among only forced marriage couples.”).

<sup>12135</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 23-24 (indicating that the unit chief and commune chief presided over her marriage ceremony which counted 10 participants including her family members, inferring that they were the only ones to get married); T. 6 June 2012 (SAO Sarun), E1/82.1, p. 67 (stating that the wedding ceremonies for combatants were sometimes organised for multiple couples at a time whereas in some other cases, it was held for only one couple); T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 32 (explaining that the wedding ceremonies were organised for groups of 10 to 20 couples); T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 71 (indicating that he attended a wedding which was held for three couples); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 61 (stating that her marriage was organised for three couples); T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 33 (specifying that four or five couples would be married in one ceremony); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64 (“I was forced to marry a man in a five couple wedding ceremony.”); T. 27 July 2015 (SEN Sophon), E1/323.1, pp. 79-80 (explaining that he attended a marriage ceremony of five couples); T. 23 April 2015 (PECH Chim), E1/291.1, p. 7 (“[W]edding ceremonies were held on a large scale”); T. 30 July 2015 (OM Chy), E1/326.1, p. 80 (“[E]ach marriage ceremony involved between 10 and 15 couples”); T. 18 August 2015 (CHHUM Seng), E1/332.1, p. 22 (testifying that he was married along with 20 other couples); T. 25 June 2015 (KONG Uth), E1/322.1, p. 33 (explaining that she got married in a wedding ceremony arranged for 25 couples); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 75-76 (specifying that 30 to 40 couples were married at a time at Trapeang Thma Dam worksite); T. 19 May 2015 (OR Ho), E1/301.1, p. 53 (stating that he “arranged marriages”, sometimes 30-40 couples married at the same time.”); T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 36-37 (explaining that many couples were married at once but that he cannot recall the number, although he reckoned it was around 50 or 60); T. 2 September 2015 (MEAN Loey), E1/340.1, p. 63 (stating that he was married in a wedding group of 63 couples); T. 28 July 2015 (MAM Soeurn), E1/324.1, p. 93 (indicating that weddings were held for many couples at the time, without recalling the exact number); T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 3 (saying that she was arranged to marry her husband amongst the 25 couples to be married at the ceremony); T. 3 June 2015 (UTH Seng), E1/309.1, p. 26 (explaining that in the youth unit, *Angkar* arranged marriage ceremonies for five, 10 or more couples); T. 28 September 2015 (HIM Man), E1/350.1, p. 16 (specifying that 50 other couples were married during his wedding ceremony); T. 14 September 2015 (SEN Srun), E1/346.1, p. 57 (testifying that he was married in a wedding ceremony that counted 28 other couples); T. 13 January 2016 (MATH Sor), E1/375.1, p. 76 (stating that there were 70 couples married at the same time as him); T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 98 (specifying that he was married during a ceremony where 25 couples were married); T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 98 (explaining that a wedding ceremony was arranged for 11 couples, including his father-in-law); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 65 (testifying that he “was one amongst the 16 couples who were arranged to marry on that particular day”); T. 25 August 2016 (YOS Phal), E1/464.1, p. 20 (saying that there were 50 couples to get married during her wedding.); T. 30 August 2016 (CHEA Deap), E1/466.1, p. 70 (stating: “There were 12 couples”); T. 31 August 2016

ceremonies could reach hundreds of couples. Witness EK Hoeun, a Tram Kak District Office cadre, attended a wedding of 400 couples in September 1978 when he arrived in the Central Zone.<sup>12136</sup> SOU Sotheavy stated that she was married in a ceremony of 117 couples, the number having been announced during the ceremony.<sup>12137</sup>

3633. During wedding ceremonies, couples were instructed to make a commitment or resolution.<sup>12138</sup> The commitment or resolution included gratitude toward *Angkar*,<sup>12139</sup> the obligation to produce children for *Angkar*,<sup>12140</sup> to take each other as husband and wife,<sup>12141</sup> to love each other and to live together,<sup>12142</sup> to respect the disciplines of *Angkar*,<sup>12143</sup> to strive and work hard to build the country,<sup>12144</sup> to work hard to increase

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(PHAN Him), E1/467.1, p. 91 (specifying that he was arranged to marry in a ceremony organised for 21 couples); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 68 (indicating that she got married in a ceremony held for 12 couples); T. 24 October 2016 (PREAP Sokhoeun), E1/488.1, pp. 46-47 (stating that she was married along with 15 other couples and that she also attended a wedding which was organised for 12 couples); T. 22 August 2016 (OM Yoeun), E1/461.1, p. 97 (explaining that during her wedding ceremony, 12 couples were to be married); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 40 (“I got married in Samlout among other [*sic*] 40 couples.”); T. 16 September 2016 (MOM Vun), E1/475.1, p. 54 (specifying that “on that particular day, 60 couples got married”); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 65 (“I was one amongst the 16 couples who were arranged to marry on that particular day.”); T. 17 August 2016 (MY Savoeun), E1/459.1, pp. 25-26 (explaining that he “was amongst the 60 couples who were organised for that marriage”).

<sup>12136</sup> T. 8 May 2015 (EK Hoeun), E1/299.1, p. 91 (“I came to live in Chup; I saw a marriage celebration of 400 couples and that happened in September 1978.”).

<sup>12137</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 79; T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 43 (stating first that there were 107 couples but recalling on the next day that there were 117 couples).

<sup>12138</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 17; T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 36 (the couples were instructed to make commitment or resolution); T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 22-23; T. 10 August 2015 (KAN Thorl), E1/327.1, p. 82; T. 19 May 2015 (OR Ho), E1/301.1, pp. 72-73; T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 32 (explaining that he attended two wedding events and described that “people were instructed to make the resolution saying that ‘I commit to love my wife or my husband for the rest of my life’”).

<sup>12139</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 81; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 99; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 91.

<sup>12140</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 81; T. 30 August 2016 (CHEA Deap), E1/466.1, p. 98; T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 40-41; T. 16 September 2016 (MOM Vun), E1/475.1, pp. 56-57.

<sup>12141</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 62; T. 1 September 2015 (CHAO Lang), E1/339.1, p. 76; T. 29 July 2015 (KHIN Vat), E1/325.1, p. 91.

<sup>12142</sup> T. 25 August 2016 (YOS Phal), E1/464.1, p. 32; T. 30 August 2016 (CHEA Deap), E1/466.1, p. 72; T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 40-41; T. 16 September 2016 (MOM Vun), E1/475.1, p. 56; T. 31 March 2016 (SUN Vuth), E1/412.1, p. 4 (stating that before people got married, they had to make a commitment that they had to be honest to one another, be faithful to one another); T. 6 June 2012 (SAO Sarun), E1/82.1, p. 70; T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 15.

<sup>12143</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 71-72; T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 68; T. 1 September 2015 (CHAO Lang), E1/339.1, p. 75.

<sup>12144</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 71-72; T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 99.

rice production,<sup>12145</sup> and to adhere to DK policies.<sup>12146</sup>

3634. In limited cases, no commitment was made. During PREAP Sokhoeurn's wedding, the male and female representatives made a speech about the Party's direction and the couples listened to them.<sup>12147</sup>

3635. The authorities attended the wedding ceremonies.<sup>12148</sup> Individuals who chaired or presided over the wedding ceremonies included the union chief,<sup>12149</sup> the unit chief,<sup>12150</sup> the village chief,<sup>12151</sup> the commune chief,<sup>12152</sup> the district secretary<sup>12153</sup> and various cadre.<sup>12154</sup> During wedding ceremonies, representatives of the authorities made announcements on the policy of *Angkar* and/or instructed the individuals on certain issues. These included the need for couples to commit to and love each other,<sup>12155</sup> the

<sup>12145</sup> T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 40-41; T. 16 September 2016 (MOM Vun), E1/475.1, p. 56; T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 68.

<sup>12146</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 98.

<sup>12147</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 47-48. *See also*, T. 24 October 2016 (KUL Nem), E1/488.1, pp. 102-103.

<sup>12148</sup> T. 29 August 2016 (SENG Soeun), E1/465.1, p. 39 (stating that at a wedding ceremony organised by the district level, the participants included all the commune chiefs); T. 17 August 2016 (MY Savoeun), E1/459.1, pp. 61-62 (explaining that the chief of the company (namely the commune chief), the chiefs of the male and the female mobile unit participated in the ceremony); T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 83-84 (testifying that his commune chief and the unit chiefs attended his wedding); T. 25 August 2016 (YOS Phal), E1/464.1, p. 22 (specifying that the unit chief instructed the leader of the female unit to bring the females to make their commitment); T. 31 August 2016 (PHAN Him), E1/467.1, pp. 88, 93 (indicating that during her wedding, the minister of commerce, *Ta* Rith, and his deputy, her direct supervisor *Ta* Hong, and a few female unit chiefs attended the weddings); T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 52 (stating that people who attended her wedding included individuals from the district and commune level); T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 74-75 (testifying that people present at her wedding included comrade Om (the chief of her mobile unit) and comrade Oeun (someone in a higher rank)); T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 83-85 (explaining that unit chief attended her wedding); T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 55-56 (the cadres who attended her wedding included the sector committee and district chiefs, the chief of the big unit and the commune chief and many unit chiefs).

<sup>12149</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, p. 83.

<sup>12150</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 18; T. 27 July 2015 (SEN Sophon), E1/323.1, p. 80.

<sup>12151</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, p. 58.

<sup>12152</sup> T. 19 May 2015 (OR Ho), E1/301.1, p. 72; T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 18; T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 33; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410250 (testifying that the wedding was held with the participation of the commune committee, the cooperative and unit chiefs and that *Ta* Khem, the commune chief, presided over the ceremony).

<sup>12153</sup> T. 14 January 2016 (YOU Vann), E1/376.1, p. 69 (stating that PRAK Yut and other village chiefs presided over the wedding ceremony).

<sup>12154</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 61.

<sup>12155</sup> T. 25 August 2016 (YOS Phal), E1/464.1, p. 22 (describing that the unit chief educated the couples to commit to each other and to love each other); T. 31 August 2016 (PHAN Him), E1/467.1, p. 92 (specifying that the cadre gave them "instructions to live together as husband and wife and to love one another"); T. 5 September 2016 (NOP Ngim), E1/469.1, p. 42; T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 72, 98-99.

need to increase the population,<sup>12156</sup> to work hard for the Party and the people,<sup>12157</sup> to be loyal to the Party and *Angkar*,<sup>12158</sup> to achieve work plans set by *Angkar*<sup>12159</sup> and to produce children for *Angkar*.<sup>12160</sup>

#### 14.3.7.2. Absence of Khmer tradition

3636. Wedding ceremonies were not conducted in accordance with Khmer tradition.<sup>12161</sup> During OM Yoeurn's wedding ceremony, there was no traditional Khmer music, no monks' blessings and no *Bach Pka Sla*.<sup>12162</sup> Similarly, SOU Sotheavy's wedding ceremony was not held according to Khmer tradition.<sup>12163</sup> CPK cadre including Witnesses PECH Chim and KHOEM Boeun also confirmed that wedding ceremonies were not held according to Khmer tradition.<sup>12164</sup> Expert Kasumi

<sup>12156</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 79 (an announcement was made that "The population of Cambodia is not that great and for us, male and female youths we strive to work best. And for that reason *Angkar* required us to get married to increase the population.").

<sup>12157</sup> T. 31 August 2016 (PHAN Him), E1/467.1, p. 92; T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 74-75.

<sup>12158</sup> T. 31 August 2016 (PHAN Him), E1/467.1, p. 95; T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 74-75.

<sup>12159</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 68-69.

<sup>12160</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 67, 89-90, 98-99 (stating that she heard KHIEU Samphan saying this at a meeting in Wat Ounalom); T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 74-75).

<sup>12161</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 69-70, 77-78; T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 14-15; T. 25 October 2016 (NGET Chat), E1/489.1, p. 5; T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 18, 33-34; T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 57-58; T. 16 September 2016 (MOM Vun), E1/475.1, pp. 51, 72-73; T. 26 October 2016 (CHUON Thy), E1/490.1, p. 78 ("Regarding family building, to my knowledge, it was not organized according to the tradition."); UK Him Interview Record, E3/9584, 14 July 2014, p. 9, ERN (En) 01031764 ("When they forced me to get married to my second husband, I said that how I could get married [*sic*] and live with him because we did not follow traditional ceremony; I was afraid that ancestors would harm us."); KHET Sokhan Interview Record, E3/9830, 27 November 2014, p. 14, ERN (En) 01077083 (when asked about her feelings about her wedding, she answered "I felt regret because I was not able to have a proper ceremony in accordance with our tradition."); SREY Soeum Interview Record, E3/9826, 16 December 2014, ERN (En) 01067748 ("In the past, I was disappointed because I was not able to marry like we do now. No *Achar* and no relatives were present."); CHUOM Savoeun Interview Record, E3/9578, 15 October 2014, p. 11, ERN (En) 01053606 ("The weddings were not conducted following Khmer traditions. They just declared their determination and then held hands as husband and wife."); SEK Sam At Interview Record, E3/10783, 10 November 2016, p. 10, ERN (En) 01365565 ("I saw that weddings were not the same as before. In the old days a proper process for marriage proposals would be followed."); YIM Sovann Interview Record, E3/9785, 3 November 2014, p. 17, ERN (En) 01053858 (when asked whether the wedding was similar to the Khmer traditional weddings, she answered no); EM Sarin Interview Record, E3/10639, 23 April 2005, p. 18, ERN (En) 01098420 ("There are differences between Khmer Rouge weddings and our traditional weddings.").

<sup>12162</sup> T. 22 August 2016 (OM Yoeurn), E1/461.1, pp. 97-99. The Chamber notes that *Bach Pka Sla* is a process in which the respective families and their relatives bless the couple.

<sup>12163</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 83.

<sup>12164</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 8 (stating that when he was asked whether the wedding ceremony was organised according to the Cambodian tradition, he answered: "No. At that time there was no band, no music"); T. 4 May 2015 (KHOEM Boeun), E1/296.1, p. 23 (explaining that "wedding ceremonies during the regime were not held the way they were traditionally held prior to the regime. The

NAKAGAWA explained that there was no religious ceremony and no monks present at the weddings during the regime.<sup>12165</sup> According to Expert Peg LEVINE, traditional rituals at the wedding ceremonies were lost, resulting in a “grave violation” which she claimed was a “crime against culture”.<sup>12166</sup>

3637. There is limited evidence that there were Buddhist blessings at weddings. Witness EM Phoeung, a monk who resided in the Tram Kak district during the regime, stated that the village chief invited him to give a Buddhist blessing during a group wedding of 20-30 couples in 1977 or 1978. While EM Phoeung did give blessing at the wedding, he did not do so as a Buddhist monk because he had already been defrocked in 1976.<sup>12167</sup> In June 1975, OUM Suphany’s marriage to her fiancé was organised by her mother-in-law. Her wedding was a small ceremony held in the presence of a monk and the unit chief. She further stated that during the beginning of the Democratic Kampuchea regime, the rules were not so strict.<sup>12168</sup>

3638. The Chamber notes that there is only limited evidence of Buddhist blessings at wedding ceremonies. These instances do not have an impact on the consistent evidence that weddings were not conducted in accordance with Cambodian tradition. The Chamber is satisfied that, in general, wedding ceremonies during the DK period were not conducted according to Cambodian tradition.

#### 14.3.7.3. *Participation of parents and other family members*

3639. According to Witness TEP Poch, who served on the District Committee in the Baray district in the Kampong Thom province of the Central Zone, in rare instances couples’ parents were present during the wedding ceremony.<sup>12169</sup> However, the

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couples were asked to declare their commitment to live with each other as a man and wife forever. Those wedding ceremonies were not held the traditional way.”)

<sup>12165</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 70.

<sup>12166</sup> Book by P. Levine: *Love and Dread in Cambodia*, E3/10677, p. 31, ERN (En) 01334905; T. 12 October 2016 (Peg LEVINE), E1/482.1, p. 10.

<sup>12167</sup> T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 57-59, 60, 75 (explaining that he was invited to give his blessing because the cadres knew that he was a monk before).

<sup>12168</sup> T. 23 January 2015 (OUM Suphany), E1/251.1, p. 104. *See also*, T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 19 (explaining that at the beginning of the regime, “people had so much access to traditional weddings” in the early stages of the group weddings, “particularly in 1975 and 1976”).

<sup>12169</sup> T. 22 August 2016 (TEP Poch), E1/461.1, p. 82; T. 17 August 2016 (MY Savoieun), E1/459.1, p. 90 (“During the time when I got married, family members were not invited to the ceremony or the wedding. If we had a parent, mother or father, the mother or the father would be allowed to be present in the wedding. As for the family members of the couples, they were present at the kitchen hall in the village



majority of the evidence indicates that family members did not attend wedding ceremonies.<sup>12170</sup> CHEA Deap's parents and siblings did not attend her wedding ceremony.<sup>12171</sup> Similarly, Civil Party PREAP Sokhoeurn stated that “[d]uring the wedding, none of my parents or relatives attended the meeting; there were only representatives of big units, that is, our representatives and the representatives from the men's unit were there”.<sup>12172</sup>

3640. In light of the consistent evidence detailing how wedding ceremonies unfolded, the Chamber finds that parents and family members of the couples were usually not present at the wedding.

#### 14.3.8. *Consummation of Marriage*

##### 14.3.8.1. *Monitoring*

3641. After the wedding ceremony, newlywed couples spent their first night or nights together, usually at their respective places or at a room, house or hut organised for the

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where the wedding was organised.”); T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 15 (her parents attended her wedding).

<sup>12170</sup> T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 37-38 (“When I was called to make the commitment on that day, none of my relatives and parent attended it because they called me from the worksite [...] They did not know that I got married”); T. 25 October 2016 (CHUON Thy), E1/489.1, p. 109 (“My marriage was not attended by my parents.”); T. 22 August 2016 (OM Yoeurn), E1/461.1, pp. 97-98 (stating that during her wedding ceremony, none of the parents of the 12 couples attended the wedding); T. 20 August 2015 (LING Lrysov), E1/334.1, p. 62 (“I was really disappointed because my parents were not allowed to attend the occasion at the time.”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 17-18, 49 (explaining that the marriage during the regime did not give her happiness as it was not attended by her parents and relatives. At her wedding, there were no parents attended); T. 29 July 2015 (KHIN Vat), E1/325.1, p. 91 (stating that it was unfortunate for her that her parents were not aware of her marriage); T. 16 September 2016 (MOM Vun), E1/475.1, p. 56 (stating that among the 60 couples married at the ceremony, none of their parents attended the wedding); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 50 (explaining that in traditional wedding ceremony, there was participation of parents and family members to celebrate, which was missing during the DK regime).

<sup>12171</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 69.

<sup>12172</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 84-85 (“We were weeping, we wanted to have the present [*sic*] of our parents.”).

couples.<sup>12173</sup> The newly-wed couples were expected to have sexual intercourse.<sup>12174</sup> While other phrases were used by witnesses and Civil Parties to describe what was expected, such as to “get along” or to “sleep together”, the Chamber understands that they all refer to having sexual intercourse.<sup>12175</sup> The couples were monitored on the night or nights after their respective wedding ceremonies took place.<sup>12176</sup> Militiamen were

<sup>12173</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 23-24 (stating that after the ceremony, the couples were sent to work all day and at night, the husband and wife were brought together to find a place to sleep); T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 72-73 (explaining that after her wedding, each couple was sent to stay in a room); T. 31 August 2016 (PHAN Him), E1/467.1, p. 114 (explaining that after the wedding ceremony, she was transferred to a small room where her husband was staying); T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 82-83 (explaining that all couples that got married had to sleep in the divided rooms that were built); T. 24 October 2016 (NGET Chat), E1/488.1, p. 125 (explaining that after the marriage ceremony, she and her husband were given a small shelter to spend the night); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 10, 55 (recalling that married couples were instructed to live in a long building for three nights); T. 23 August 2016 (OM Yoeurn), E1/462.1, p. 4 (explaining that the couples were instructed to stay in different rooms); T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 38-39 (stating that after she made the commitment, the militiamen brought her and her husband to one of the shelters that were built for the newlywed couples to sleep); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 58 (stating that after her wedding ceremony, she and her husband were allowed to return to their sleeping quarters and were instructed to sleep there and not to go anywhere); T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 27-28 (explaining that the commune chief asked her to live in the house arranged by *Angkar*); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 71 (“Khmer Rouge provided a small hut for the newlywed couple to stay for [...] three days to one week. The newlyweds were allowed to stay in that hut for the evening, but during the day time, they had to work”).

<sup>12174</sup> See below, para. 3645.

<sup>12175</sup> The Chamber notes that the issue of sex is still taboo in Cambodian society and while few witnesses and Civil Parties who testified in court on this topic in public session were not reluctant in describing sexual intercourse, others were reluctant in using the word “sex”. The Chamber therefore understands witness and Civil Party references to “getting along” or “sleeping together” as describing their wedding nights. See also, T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 35 (“What do you mean by getting along or not? [...] They wanted to know whether the couple consummate[d] their marriage”); T. 31 August 2016 (CHEA Deap), E1/467.1, p. 31 (“Q: [...] what did your husband say or do right before the first time you had sex with each other? A. He said that if we still did not get well together or get along together, then we would be mistreated.”); T. 26 May 2015 (MEAS Laihour), E1/305.1, p. 19 (“They came to watch over whether we got along with each other and whether we consummated our marriage”); T. 28 July 2015 (MAM Soeurn), E1/324.1, p. 95 (“Actually [...] surveillance was conducted at that time and they really wanted to know whether the newlywed got along with each other.”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, p. 35 (“after my marriage, I begged my husband not to touch me [...] I kept crying. I told him that so that we could hide the fact that we did not get along from *Angkar*.”); T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 16 (“Q: After your marriage, were you required to consummate your marriage and, if so, were you monitored by the militiamen? A. For those who agreed with each other, they were not monitored. But for those who did not get along with each other, they were monitored and investigated.”); T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 8, 47 (“And if we did not consummate our marriage, then measures would be taken. And for that reason, I agreed to sleep with my husband [...] Madam, can you tell the Chamber at which point that you have sex with your husband? A. It was a month later [...] I was so afraid so I agreed to sleep with him.”); NHIM Kol Interview Record, E3/9667, 11 February 2015, p. 16, ERN (En) 01076952 (“At the end of my wedding, they told us what to do as a husband and wife. If any couple did not get along with each other, they would be accused of being against *Angkar* or betraying *Angkar*. They did not say directly we had to have sex, but we all understood that they meant by that [...]. We all knew in advance that after marriage, we had to sleep with our partners.”).

<sup>12176</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 85-86; T. 24 August 2016 (SOU Sotheavy), E1/463.1, pp. 44-46, 53-55 (referring to the fact that on the wedding night, SOU Sotheavy saw movements of shadows under his house through the floor made of bamboo. The next morning, he saw

sent to check whether they had consummated the marriage – that is, whether they had had sexual intercourse.<sup>12177</sup> NOP Ngim, a member of the Samlaut District Committee, believed that she and her husband were monitored by the militiamen.<sup>12178</sup> When PREAP

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mass of people crawling under the house and he thought that they came to spy whether they had consummated the marriage. He described them as militiamen who were young adults at the age between 12 and 13 years old. He further stated that they were village or commune militiamen); T. 25 August 2016 (YOS Phal), E1/464.1, p. 31 (explaining that after the wedding, the militiamen monitored them once or twice every night); T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 73-75 (explaining that after the wedding, she was told to be careful because they would be monitored at night. On the first night together, she heard footsteps outside the door); T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 16-18 (stating that they monitored the couples who did not get along well. Those who agreed to consummate the marriage were not monitored); T. 13 October 2016 (PEN Sochan), E1/483.1, pp. 63-65 (stating that the militiamen were standing in front of the entrance of the hut monitoring them. She could see them because the walls were made of thatch that were not completely closed); T. 24 October 2016 (NGET Chat), E1/488.1, pp. 125-126 (explaining that she and her husband kept quiet because the militiamen were walking nearby); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 7-8 (stating that couples were under surveillance throughout the night); T. 24 October 2016 (KUL Nem), E1/488.1, pp. 100-101 (explaining that he and his wife were monitored to see whether they had consummated the marriage); T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 28-29 (stating that on the first night that she spent with her husband, militiamen eavesdropped from below her house); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 65-66 (explaining that the militiamen would eavesdrop the married couples to check if they had consummated the marriage); T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 90-91 (there were people conducting surveillance after the marriage); T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 70-71 (explaining that on the first night of her wedding, militiamen eavesdropped so she and her husband did not talk nor moved); T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 17-18 (stating that after her marriage, militiamen conducted surveillance to see whether she and her husband had celebrated traditional religious and to see whether they had consummated the marriage); T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 3-4 (“most of those forced couples were spied their night lives by c[h]hlop, the spies, and they had to complete it. And it was impossible to avoid it. In case a spy knew that they were not consummating the marriage [...] the consequences would be a punishment. It could be ranged from punishment in a form of detention in the re-education center for education in many ways, or it could be a punishment in the forms of sexual violence against either the wife or husband or to both, or it could be a punishment to death.”).

<sup>12177</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 99, 100 (explaining that on their wedding night, cadres would spy on the newlywed to verify whether they had consummated the marriage); T. 31 March 2016 (SUN Vuth), E1/412.1, p. 4 (explaining that after the marriage, the couples would be monitored to see whether they had consummated the marriage); T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 8, 40, 55 (explaining that when her husband was allowed to come to visit her, she saw military men when she came downstairs and that was why she decided to sleep with her husband); T. 17 February 2015 (PHNEOU Yav), E1/264.1, pp. 34-35 (stating that the commune chief sent the militiamen who were about 20 or 30 years old to listen to the couples’ room at night to see whether they had got along with each other); T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 88 (explaining that at night, they would silently approach the house of the new married couples in order to spy their conversations). *See also*, KAING Guek Eav Interview Record, E3/5789, 2 December 2009, p. 4, ERN (En) 00414335 (explaining that to his knowledge, there were no measures to organise surveillance. The ones who spied on married couples to find out whether they were sleeping together were immoral cadres. Comrade Pang, regimental secretary and later secretary of the Military Hospital 98 Committee was punished because he had asked his subordinate to spy on married couple. The Chamber notes that contrary to Duch’s statement, the evidence before the Chamber indicates that newlywed couples were monitored to check whether they had consummated the marriage. The Chamber further notes that Pang, the secretary of Hospital P-98, was not arrested due to the above acts but a large purge of people from Hospital P-78 did take place). *See also*, S-21 Entry Log 6 January 1977, E3/9843, 7 January 1977, p. 5, ERN (En) 01207675-01507678 (35 entries); S-21 Entry Log 1976, E3/9842, 26 May 1977, ERN (En) 01367291, 01367292, 01367297 (3 entries); S-21 Entry Log March 1977, E3/9845, undated, ERN (En) 01332043 (2 entries); S-21 Entry Log 23 June 1977, E3/9646, 24 June 1977, ERN (Kh) 01017050 (1 entry); S-21 Entry Log May 1977, E3/2590, undated, ERN (En) 01191306 (1 Entry).

<sup>12178</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 51-52, 60-61, 76, 78, 108-109.

Sokhoeurn left the building arranged for her and her husband on the night of her wedding, she was asked by the militiamen where she was going.<sup>12179</sup> Similarly, when Civil Party SAY Naroen was brought to the shelter with her husband on the night of her wedding, she saw about six militia men walking back and forth and taking couples away.<sup>12180</sup>

3642. During the first night after MOM Vun's wedding, the militiamen came into their room and forced her and her husband to have sexual intercourse with each other in front of them. She recalled that after she had sex with her husband, the militiamen said "[l]et's move to another couple because this couple already had sex". The militiamen came again on the second and third nights after the wedding and when they saw that MOM Vun and her husband were sleeping and hugging one another, they said that this couple "went along well" and left.<sup>12181</sup> According to her, the militiamen received instructions to monitor the newly wedded couples from Rom, the chief of the worksite, and Sea, the unit chief.<sup>12182</sup>

3643. There is evidence that militiamen who monitored couples reported to the authorities.<sup>12183</sup> A mobile unit worker in the Southwest Zone, Civil Party RY Pov, was instructed to monitor the activities of the newlywed couples and to report to the units nearby.<sup>12184</sup> HENG Lai Heang, who served in the Commune Committee in one of the communes in Sector 505, confirmed that people were assigned to monitor couples in order to obtain information on their reactions after marriage. If the couple did not "get along", this information would be reported to senior chiefs who would take action in the form of re-education and then, if necessary, reprimand. According to this Civil

<sup>12179</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 7-8.

<sup>12180</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 39, 56-58.

<sup>12181</sup> T. 16 September 2016 (MOM Vun), E1/475.1, pp. 58-59, 78.

<sup>12182</sup> T. 16 September 2016 (MOM Vun), E1/475.1, pp. 58-59, 78.

<sup>12183</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 61-62 (explaining that the militiamen would report if the couple did not get along. If a woman refused to have sexual intercourse with her husband, that woman would be criticised in the criticism meeting and sanctioned to hard labour); KOL Set Interview Record, E3/9821, 16 May 2014, p. 19, ERN (En) 01040482 (explaining that as a militiaman, KOL Set was ordered to go listen and investigate the new-married couples, and then he had to report. According to him, "they wanted to know who talked about *Angkar* and who refused to sleep together after their marriage."); T. 31 March 2016 (SUN Vuth), E1/412.1, p. 4 (testifying that he heard that after the monitoring, a report would be made to the upper echelon).

<sup>12184</sup> T. 12 February 2015 (RY Pov), E1/262.1, pp. 31, 61-63.

Party, she was not monitored on her wedding night due to her position.<sup>12185</sup>

3644. In light of this consistent evidence, the Chamber is satisfied that after wedding ceremonies, couples were commonly monitored to ensure that they had consummated their marriages.

#### 14.3.8.2. Coercive environment

3645. Witness PRAK Yut, District Secretary of the Kampong Siem district, stated that “after the marriage, it is common sense that they had to consummate their marriage. Then, if not, what was the purpose of marriage?”<sup>12186</sup> A number of witnesses and Civil Parties stated that cadres advised couples to consummate, usually in a meeting.<sup>12187</sup> Witness IN Yoeung was told by the cadre to consummate the marriage and that if they refused, she and her husband would be taken to the commune office to make sure that they would consummate there.<sup>12188</sup>

3646. Some individuals engaged in sexual intercourse with their spouses for fear of the consequences if they did not.<sup>12189</sup> On the night of her wedding, SAY Narooun saw two militiamen taking two couples away and concluded that the couples did not get along with each other. After seeing that, she was so scared that her body was trembling,

<sup>12185</sup> T. 19 September 2016 (HENG Lai Heang), E1/476.1, pp. 16-18, 40, 55-57. *See also*, T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 3-4 (“the consequences would be a punishment. It could be ranged from punishment in a form of detention in the re-education center for education in many ways, or it could be a punishment in the forms of sexual violence against either the wife or husband or to both, or it could be a punishment to death.”).

<sup>12186</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, p. 53; T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 5; T. 10 October 2016 (Peg LEVINE), E1/480.1, pp. 86-87 (explaining that among the weddings that took place in Kandal province, 0.8% of the people went to what she described as the “honeymoon huts or wedding huts”, and 35% went home. If the couples had parents living nearby, they would return home and people who went to the huts were the ones who did not have families they could return to).

<sup>12187</sup> T. 2 December 2015 (PRAK Doeun), E1/361.1, pp. 99, 100 (stating that *Angkar* advised the couple to consummate the marriage); T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 61-63 (explaining that in the criticism meeting in a group which she attended, the woman who refused to make love or to have sex with her husband was called to be criticised for refusing to consummate the marriage and that woman was sanctioned to hard labour. She further stated that couples who did not consummate their marriage would be called to first criticism, second criticism and third criticism, and if they continued to refuse, they would be punished through hard labour).

<sup>12188</sup> T. 3 February 2016 (IN Yoeung), E1/387.1, pp. 92-93.

<sup>12189</sup> T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 28 (stating that after being warned a couple of times, he engaged in sexual intercourse with his wife out of fear); T. 25 October 2016 (SAY Narooun), E1/489.1, pp. 39-40 (explaining that she agreed to give her body to her husband because she had seen militiamen patrolling and taking away other couples); T. 24 October 2016 (KUL Nem), E1/488.1, pp. 100-101 (stating that after three nights, he and his wife were both afraid of being killed so he decided to consummate the marriage).

and she had to give herself to her husband in order to fulfil *Angkar*'s requirements.<sup>12190</sup> She stated that if she did not consummate the marriage with her husband, she would risk being taken away and killed.<sup>12191</sup> OM Yoeurn did not dare to protest because she was very frightened. She agreed to consummate the marriage, explaining that her husband would report it to his superior if she did not.<sup>12192</sup> When describing the consummation of her marriage, CHEA Deap stated in court that she was afraid of her husband and the militiamen.<sup>12193</sup> She explained that if the militiamen found out that a couple did not agree to stay with one another, they would be called for re-education or refashioning. When she consummated the marriage, it was her husband's choice.<sup>12194</sup> Similarly, Civil Party KUL Nem explained that "[w]e were afraid, so we had to consummate the marriage and that happened three days after the marriage".<sup>12195</sup> Witness CHANG Srey Mom mentioned that she felt as though she had no choice but to have sexual relations with her husband and she had a fear of being killed.<sup>12196</sup> Witness MAM Soeurn, a member of the Sector 5 mobile unit, testified that couples who refused to consummate would risk their lives by going against *Angkar*.<sup>12197</sup> PEN Sochan stated that the first two nights after her wedding she refused to consummate the marriage. As a consequence, her husband beat her and her Unit Chief, Comrade Om, refashioned her, saying that if she refused to consummate on the third night, she would be dead.<sup>12198</sup> On the night of her wedding, OM Yoeurn resisted when her husband tried to force her to have sex "violently", so her husband went to complain to his military commander, Comrade Phan. On that same night, Comrade Phan called OM Yoeurn to a quiet room alone and asked her for the reason she refused to have sex with her husband and then "raped" her and threatened to kill her if she shouted or told anyone. OM Yoeurn felt

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<sup>12190</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 39-40.

<sup>12191</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 49.

<sup>12192</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 8, 57.

<sup>12193</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 73-74.

<sup>12194</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 74-75.

<sup>12195</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 100.

<sup>12196</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 29, 33-34, 63 (explaining that if she did not consummate the marriage, she would be "in trouble because my father had been executed for just two days ago. So I fear for my life. So I try to calm down myself because I was fear that I will be executed [...] If I oppose the party, I may be in trouble.").

<sup>12197</sup> T. 28 July 2015 (MAM Soeurn), E1/324.1, p. 94.

<sup>12198</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 85-86.

that she had been “raped” as a warning for refusing to consummate her marriage, so she agreed to have sex with her husband later on.<sup>12199</sup>

3647. Those who did not consummate their marriage had to hide the fact and pretend that they loved each other in order to avoid any negative consequences. CHUM Samoeurn explained in court that she did not consummate her marriage and while trembling begged her husband to keep this secret. Although she did not know what would happen if it was discovered that she and her husband had not consummated their marriage, she was scared.<sup>12200</sup> YOS Phal considered his wife as a sibling. He agreed with her to keep the nature of their relationship to themselves and, if asked, to tell others that they loved each other and to act like husband and wife.<sup>12201</sup>

#### 14.3.8.3. Forced sexual intercourse between spouses

3648. Four Civil Parties testified in court in relation to rape in the context of marriage: OM Yoeurn, MOM Vun, PREAP Sokhoeurn and PEN Sochan. As a preliminary matter, the Chamber notes that the KHIEU Samphan Defence raises credibility issues in relation to OM Yoeurn, MOM Vun and PREAP Sokhoeurn.<sup>12202</sup>

3649. The KHIEU Samphan Defence submits that OM Yoeurn did not mention rape in her Civil Party Application and that her evidence is inconsistent in relation to the dates and the duration of gaps in which she had sexual intercourse with her husband.<sup>12203</sup> It objects to the credibility of both MOM Vun and PREAP Sokhoeurn due to the inconsistencies between information in their Civil Party Applications and their in-court testimonies.<sup>12204</sup> The Chamber notes that the Defence had the opportunity to confront each of these Civil Parties on these issues in court. The Chamber recalls that it places greater weight on in-court testimonies rather than upon Civil Party Applications. It notes that minor inconsistencies are common with respect to the details of events which occurred more than 30 years ago, such as the dates or duration of gaps

<sup>12199</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 4-6, 38-40 (“I had to bite my mouth, bite my lip and shed tear[s], but I did not dare to make any noise because I was afraid that I would be killed if I made any noise.”).

<sup>12200</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 64.

<sup>12201</sup> T. 25 August 2016 (YOS Phal), E1/464.1, p. 37.

<sup>12202</sup> KHIEU Samphan Closing Brief, para. 2369; NUON Chea Closing Brief, fn. 4010. The Chamber notes that while the NUON Chea Defence reserved its right to discuss the evidence or credibility of these Civil Parties in the oral arguments, they did not do so.

<sup>12203</sup> KHIEU Samphan Closing Brief, para. 2397.

<sup>12204</sup> KHIEU Samphan Closing Brief, para. 2398.

between sexual intercourse, specifically when they are related to traumatic event.<sup>12205</sup> The Chamber also notes that in the context of Cambodian culture, where sexual issues are still a taboo subject, Civil Parties may have been reluctant to talk about such issues in their respective Civil Party Applications, only addressing the issues when questioned in court. Further it is common for individuals who have been threatened or who fear social pressure to be reluctant to divulge that they have been the victim of rape, as they may be afraid of retraumatisation or detrimental backlash following such disclosure.<sup>12206</sup> In this regard, the Chamber considers that the KHIEU Samphan Defence's assertion that PREAP Sokhoeurn was provoked to mention that she was raped, because of the compelling needs of the case, has no basis and misinterprets her in-court statements. Having reviewed the evidence they provided in their Civil Party Applications in light of their in-court statements, the Chamber is satisfied that the inconsistencies raised by the KHIEU Samphan Defence, especially with regard to dates, do not affect the overall credibility of these three Civil Parties. However, it remains to be considered whether the evidence provided is plausible and consistent.

3650. MOM Vun gave evidence that she was “raped” by five men after she initially refused to remarry.<sup>12207</sup> Subsequently, on the night of her wedding, she and her husband discussed and agreed to pretend to “go along” with each other and to separate once there was peace in the country. She stated that the militiamen heard their discussion and came into the house. At that point, they ordered the couple at gunpoint to take off their clothes and have sexual intercourse. They then forced her husband's penis into her vagina.<sup>12208</sup> She did not dare to protest because she was afraid that she would be killed.<sup>12209</sup> She further stated that “[w]henver I had sex with him, it was like I forced myself to do it because if I disagreed and then we would be in trouble”.<sup>12210</sup>

3651. OM Yoeurn gave evidence that she was “raped” by her husband's unit chief, which she believed was a consequence of her refusal to consummate her marriage with

<sup>12205</sup> *Nyiramasuhuko et al. (Butare)* Appeal Judgement, paras 1852, 1859; *Kvočka et al.* Trial Judgement, para. 552; *Muhimana*, Appeal Judgement, para. 152; *Kunarac et al.* Appeal Judgement, para. 309.

<sup>12206</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 57-58, 61 (explaining that she did not speak about rape in her previous statements because she was shy about what happened and she did not want to talk about her personal issues to the interviewer).

<sup>12207</sup> *See above*, para. 3621.

<sup>12208</sup> T. 16 September 2016 (MOM Vun), E1/475.1, p. 58.

<sup>12209</sup> T. 16 September 2016 (MOM Vun), E1/475.1, pp. 57, 78, 82.

<sup>12210</sup> T. 16 September 2016 (MOM Vun), E1/475.1, p. 84.



her newly wedded husband.<sup>12211</sup> After this incident, OM Yoeurn agreed to live with her husband only because she was afraid that she would be killed or would be “raped” again.<sup>12212</sup>

3652. PEN Sochan gave evidence that, after refusing to consummate her marriage during the first two nights after her wedding, she was “raped” by her husband on the third night. Five militiamen came to the room and tied her hands to a pole. Her husband tore her pants off and “raped” her, while the militiamen watched and gave instructions to her husband. At the end, the militiamen left, congratulating the couple that they had done well and were producing children for the Party. The Civil Party stated that she bled for a long time after that incident.<sup>12213</sup>

3653. After not consummating her marriage with her husband, PREAP Sokhoeurn was threatened by the elderly cadres, *Ta Hom* and *Yeay Kim*, that if she did not have sexual intercourse, she would be killed. Subsequently, the elderly cadres instructed her husband to take her by oxcart to a location where they were confined in a house. That night, her husband tore off her clothes, took off her bra and “raped” her.<sup>12214</sup> He told her that he had to follow the Party’s instructions and that if he did not, they would both die.<sup>12215</sup>

3654. Kasumi NAKAGAWA explained in court that individuals did not consent to marriage of their own free will and that consequently the decision to have sexual intercourse was also not their own. Individuals were terrified and therefore neither men nor women genuinely consented.<sup>12216</sup> She further explained that in “the eyes of the Khmer Rouge, it was a duty and responsibility as a part of the revolution that once a man and a woman became a couple, they had to consummate a marriage”.<sup>12217</sup>

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<sup>12211</sup> See above, para. 3646.

<sup>12212</sup> T. 23 August 2016 (OM Yoeurn), E1/462.1, pp. 40, 42, 50.

<sup>12213</sup> T. 12 October 2016 (PEN Sochan), E1/482.1, pp. 84, 87, 90, 107.

<sup>12214</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 86-87, 88-90, 94; PREAP Sokhoeurn Interview Record, E3/9820, 8 October 2011, pp. 15-17, ERN (En) 01050572-01050574 (“He chased me into the house and he tore my blouse and bra apart. He hugged me. When I refused, he removed my trousers and his trousers. He pushed me onto a board and started raping me. I tried to put my legs close to each other, but he used his legs to separate them. When he inserted his penis in my vagina, I immediately felt pain. I cried and cursed him. At that time I did not want to have sexual intercourse with him. After that miserable event, I kept crying and I lost my appetite. Later, he tried to console me and he even sewed up my clothes and bra.”).

<sup>12215</sup> T. 20 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 102-104.

<sup>12216</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 90.

<sup>12217</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, p. 5.

According to Peg LEVINE's study, 76 out of 192 respondents (38 percent), who married during the regime, reported that sexual intercourse was prescribed.<sup>12218</sup> However, only 19 respondents (9 percent) reported compliance with the prescription.<sup>12219</sup>

3655. In the immediate aftermath of her wedding, CHEA Deap did not consummate her marriage with her husband. However, when they next met, they consummated the marriage. The Civil Party stated that "it was his choice" to do so.<sup>12220</sup> Civil Party PHAN Him stated that after she was threatened with being married by *Angkar*, she started to feel pity for her husband and eventually, after one-and-a-half months, did not object to consummating the marriage.<sup>12221</sup>

3656. In general, when the authorities discovered that couples had not consummated their marriages, there was a follow-up process in which the authorities called in the individuals and talked to them, either separately or together. YOU Vann stated that if a husband complained that his wife did not agree to sleep with him, she would tell the village chief to meet the husband and wife in order to re-educate them. After they received the advice, once or twice, they generally agreed to consummate the marriage and to remain husband and wife.<sup>12222</sup> PRAK Yut stated that when couples did not agree to consummate the marriage, they would be brought to the district to be educated in order to understand each other.<sup>12223</sup> SUN Vuth gave evidence in court that if the woman did not love her husband, she would be re-educated to love him in accordance with *Angkar*'s instructions. The couple had to obey *Angkar*'s order.<sup>12224</sup>

3657. The evidence shows that couples were summoned by superiors and threatened with consequences if they did not consummate their marriages. SOU Sotheavy did not have sexual intercourse with his wife for several weeks after their weddings. He and his wife were then called separately by the village chief and warned that if it was

<sup>12218</sup> T. 12 October 2016 (Peg LEVINE), E1/482.1, p. 18.

<sup>12219</sup> T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 49; T. 12 October 2016 (Peg LEVINE), E1/482.1, p. 18. The Chamber notes that in her testimony on 11 October 2016, the expert provided that 79 out of 192 respondents (39 percent) reported that sexual intercourse was prescribed. Later, she revisited her data and found that 3 among that 79 respondents got married in 1979, but after the collapse of the regime.

<sup>12220</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 73-74.

<sup>12221</sup> T. 31 August 2016 (PHAN Him), E1/467.1, p. 115. *See also*, fn. 12092 (PHAN Him).

<sup>12222</sup> T. 14 January 2016 (YOU Vann), E1/376.1, pp. 77-80.

<sup>12223</sup> T. 19 January 2016 (PRAK Yut), E1/378.1, pp. 54-55.

<sup>12224</sup> T. 31 March 2016 (SUN Vuth), E1/412.1, pp. 5-6.

discovered that they had not consummated their marriage, they would be smashed. He was given some wine and after drinking the wine and being warned repeatedly, he and his wife decided to consummate the marriage.<sup>12225</sup> After NOP Ngim's wedding, *Ta Tith* (on behalf of the authority) asked couples whether any of them had not consented to living together. He also advised them to live together happily.<sup>12226</sup>

3658. The Chamber is satisfied that at least two other incidents of forced sexual intercourse occurred. There is evidence that rape was used as punishment for non-compliance regarding the consummation of marriages. Following OM Yoeurn's refusal to consummate her marriage on her wedding night, Comrade Phan forced her to have sexual intercourse with him.<sup>12227</sup> In another case, rape was used as a threat for refusal to marry. After MOM Vun refused to remarry, she was forced to have sexual intercourse with five comrades, one by one.<sup>12228</sup> While these events are beyond the scope of rape within the context of marriage as they were not committed by a husband on his wife, but by a cadre or militiamen, they are nonetheless relevant to the context in which crimes within the scope of the trial occurred, because they explain a context of fear and of violence in which they took place.

3659. The Chamber is satisfied that these women, with the exception of PHAN Him, were forced to consummate their marriages, either because they acted out of fear for their lives or physical security and therefore did not genuinely consent, or because they were physically forced to engage in sexual intercourse with their husbands.

3660. The Chamber is satisfied that after the wedding ceremonies, cadres checked with the newlyweds to ensure that they had consummated their marriages. The only way to avoid consummating a marriage was to hide the fact that consummation had not taken place.

3661. The Chamber finds that genuine consent to consummation of a marriage was not possible in an environment where couples had not consented to enter into same

<sup>12225</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, pp. 86-87; T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 29 (stating that he was threatened that if he did not consummate the wedding, he would be "killed").

<sup>12226</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, p. 50.

<sup>12227</sup> See above, para. 3651.

<sup>12228</sup> See above, para. 3650.

marriage in the first place, knew that consummation was required, compliance was monitored, and in case of noncompliance, forced.

#### 14.3.8.4. Separation

3662. After a wedding ceremony, arrangements were made for couples to spend some time together, as set out above.<sup>12229</sup> Subsequently, couples were separated and instructed to return to their respective units or worksites.<sup>12230</sup>

3663. After being separated, most couples were allowed to meet once every seven to 15 days.<sup>12231</sup> Witness CHANG Srey Mom stated that *Angkar* decided when couples were allowed to see each other.<sup>12232</sup> Civil Party MEAN Leouy and his wife were allowed to rest for 7 days after the marriage and were sent to work at a place where men and women had to sleep separately. While couples were allowed to meet after the work was completed, he was not able to meet his wife because she had been killed by that time.<sup>12233</sup>

<sup>12229</sup> See above, para. 3641.

<sup>12230</sup> T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 79-80 (explaining that three days after the marriage, she was assigned to work at a different locations and was separated from her husband); T. 30 August 2016 (CHEA Deap), E1/466.1, p. 74 (stating that after the marriage, the couples were allowed stay together for three days and then the husbands and wives were sent to their respective workplace); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 71 (explaining that perhaps one week after the wedding, most often, the husbands were forced to move very far to engage in the hard labour and after two or three months or if he was lucky, one month, he could come back to see his wife).

<sup>12231</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 74-75, 100-101 (stating that after the wedding took place, she and her husband were allowed to meet every 10-15 days. After that, her husband was employed to work at Kirirum mountain and then they only met once every one or two months); T. 25 October 2016 (SAY Naroeun), E1/489.1, pp. 41, 49 (explaining that she stayed with her husband for three days after the marriage and they were required to go back to their respective units. Once every week, they were allowed to meet each other again to spend the night together); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 58-61 (stating that after she got pregnant, her husband was sent to a different worksite and he was allowed to visit her a few days every two months); T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 79-81 (stating that after the wedding ceremony, couples were allowed to stay together for three days. After that, they were allowed to meet once every 10 days); T. 25 June 2015 (KONG Uth), E1/322.1, pp. 36-37 (testifying that she did not spend the night of the wedding with her husband but she was instructed to stay with her husband three nights after that. Subsequently, they went to work in different locations and are allowed to meet every tenth day); T. 31 August 2016 (PHAN Him), E1/467.1, p. 94 (stating that following the marriage, her husband came to visit her once per week); T. 23 August 2016 (OM Yoeurn), E1/462.1, p. 7 (explaining that after the wedding, she and her husband were allowed to meet after 10-15 days); T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 88; T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 48 (stating that he and his wife were allowed to meet every 10 days); T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 33 (explaining that after the marriage, the couples were told to go back to their respective units and they saw each other again after 10 days).

<sup>12232</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 68.

<sup>12233</sup> T. 2 September 2015 (MEAN Loey), E1/340.1, pp. 68-71.

3664. After couples were sent back to their respective units, some were required to ask for permission to see their spouse. For instance, Witness KAN Thorl, the Deputy Chief of a platoon within a mobile unit in the Phnom Srok district, stated that those who lived far from each other would have to ask the battalion chief for a letter of permission to meet their spouse.<sup>12234</sup>

3665. The Chamber finds that even after marriage, couples' relationships were still commonly controlled by the CPK.

#### 14.3.9. *Divorce*

3666. During an interview with the visiting delegation of the Belgium-Kampuchea Association, POL Pot answered a number of questions including on the subject of building up families. In relation to divorce, POL Pot stated that:

After marriage, should problems arise within the family, the masses give advice to the partners in order to sort out their problems. Should the parties concerned find it impossible to cohabit any longer, they have the choice of divorce. Neither of the parties concerned need to go to court.<sup>12235</sup>

3667. In the same interview, POL Pot stated that:

[T]he question of separation is very rare as both the husband and wife have a high political consciousness and each family enjoys a well guaranteed existence in a national society which is sound and uncorrupted. Therefore, no contradiction is permanent and unable to be settled within the family.<sup>12236</sup>

3668. Given that no court system was established in DK,<sup>12237</sup> POL Pot's statement is obviously misleading. The context in which it was given exposes it as propaganda. The Chamber further notes that evidence from numerous witnesses and Civil Parties contradicts this claim. In fact, couples did not have the right to divorce.<sup>12238</sup> Rather than being able to divorce, people had to hide the fact that they did not get along with or

<sup>12234</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 81-83.

<sup>12235</sup> *Pol Pot 5 August Interview with Belgian Visitors Reported* (in FBIS collection), E3/76, 26 September 1978, ERN (En) 00170426.

<sup>12236</sup> *Pol Pot 5 August Interview with Belgian Visitors Reported* (in FBIS collection), E3/76, 26 September 1978, ERN (En) 00170426.

<sup>12237</sup> Section 5: Administrative Structures, paras 417-418.

<sup>12238</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 90.

love each other.<sup>12239</sup> People who did not get along did not dare to seek divorce for fear<sup>12240</sup> of being reprimanded,<sup>12241</sup> being sent for re-education,<sup>12242</sup> or killed.<sup>12243</sup> MEAS Lai Hour stated that she has never seen couple who had been married by *Angkar* get a divorce during the regime.<sup>12244</sup>

3669. The Chamber finds that, contrary to POL Pot's statements, once *Angkar* married couples it was not possible for them to divorce during the regime.

#### 14.3.10. *Findings on Nationwide Implementation*

3670. Based on the evidence above, the Chamber is satisfied that in those areas of the nation other than the specifically-charged crime sites addressed below, due to environment of fear as described above, people had no choice other than to obey and marry in accordance with a coercive practice stemming from CPK directives on marriage.

#### 14.3.11. *Findings on Specifically Charged Crime Sites*

3671. In Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as forced marriage nationwide, as well as at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite and 1<sup>st</sup> January Dam Worksite.<sup>12245</sup> The Chamber addresses the relevant conduct at

<sup>12239</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, pp. 90-91 (stating that her life would be at risk if she told anyone that she did not love her husband).

<sup>12240</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 64 (explaining that she wanted to divorce her husband but she was afraid of what would happen if she did).

<sup>12241</sup> T. 24 August 2016 (SOU Sotheavy), E1/463.1, pp. 59-60 (explaining that people who attempted to split up were taken away for re-education); T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 33.

<sup>12242</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 35; T. 30 August 2016 (CHEA Deap), E1/466.1, pp. 74-75 (explaining that if couples did not agree to live together, they would be called for re-education or refashioned).

<sup>12243</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 29, 31-32, 37 (he told his wife to tell the commune chief that they loved each other and if they said that they wanted to separated, they would be killed).

<sup>12244</sup> T. 26 May 2015 (MEAS Laihour), E1/305.1, pp. 17-18 (explaining that she never saw a divorce during the regime because people were afraid of being killed by *Angkar*).

<sup>12245</sup> Closing Order, paras 1442-1447; Annex: List of Paragraphs and portions of the Closing Order relevant to Case 002/02, E301/9/1.1, 4 April 2014, p. 4. The Chamber notes that the Closing Order also charges the Accused with other inhumane acts as crime against humanity through acts of forced marriage in relation to the treatment of the Buddhists. Having regard to the scope of Case 002/02, the Chamber further notes that while the CPK Policy concerning the treatment of Buddhists may be considered nationwide, facts concerning the implementation of such policy are limited by the Severance Decision to the Tram Kak Cooperatives. The Chamber therefore addresses this charge under that section of the Judgement.

these crime sites below.<sup>12246</sup>

#### 14.3.11.1. Tram Kak Cooperatives

3672. In the Tram Kak Cooperatives, the commune chief or cooperative chief made a list of individuals matched to be married and sent that list to the district level for approval. NEANG Ouch *alias* Ta San, who became the secretary of Tram Kak district in late 1977 or early 1978, testified that in the arrangement, some people were able to choose their spouse while some were matched by the commune and cooperative chiefs.<sup>12247</sup> In her position as Secretary of Cheang Tong commune, KHOEM Boeun testified that she prepared a list of individuals matched to be married and submitted the proposal to the upper level (*i.e.* the district level) for approval.<sup>12248</sup> The wedding ceremonies were organised by the commune level, but only when the list was approved by the district level.<sup>12249</sup> This was confirmed by PECH Chim, who testified that while he was a member of the Tram Kak District Committee, the district level usually approved any marriage proposal.<sup>12250</sup> Weddings were organised in groups,<sup>12251</sup> and the

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<sup>12246</sup> In relation to the charge of rape within the context of forced marriage, the Chamber notes that it did not find any evidence of forced marriages committed at Kraing Ta Chan Security Centre. Accordingly, the Chamber is not able to establish whether rape within the context of forced marriage occurred at this security centre. Similarly, while the Chamber heard evidence of at least a group marriage being arranged by Duch at S-21 Security Centre, the evidence is not sufficient to establish whether rape occurred within the context of this marriage. *See above*, fn. 12022.

<sup>12247</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 34 (explaining that in some places, the head of communes or the head of cooperatives would decide the partner for those people, while at other places people could choose). *See also*, paras 3572-3576; 3594-3602.

<sup>12248</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 18-19, 21; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 21-22, ERN (En) 01057695-01057696 (explaining that if the proposal was approved, the marriage would take place; if it was rejected, marriage would not take place.). *See above*, para. 3577. *See also*, paras 3603-3608.

<sup>12249</sup> T. 10 March 2015 (NEANG Ouch), E1/274.1, p. 34 (explaining that the request would be made by the commune or cooperative chief to the district level for consideration and after that the wedding would be held); T. 11 March 2015 (NEANG Ouch), E1/275.1, p. 8 (stating that the communes decided which female was to be married with other males); T. 23 April 2015 (PECH Chim), E1/291.1, pp. 6-7 (explaining that the wedding ceremony was the responsibility of the commune level); T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 18, 21; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, pp. 21-22, ERN (En) 01057695-01057696.

<sup>12250</sup> T. 23 April 2015 (PECH Chim), E1/291.1, p. 6.

<sup>12251</sup> T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 31; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410250 (explaining that he was a Base Person who lived in Samrong commune. He attended two wedding ceremonies at Angk Ponnareay village in Samrong commune. The first one was for 20 couples and the second one was for 10 couples.); NUT Nov Interview Record, E3/5521, 1 December 2009, p. 14, ERN (En) 00422328 (stating that he worked at various communes in Tram Kak district. "Q: How was the marriage arranged in Sre Ronoung commune? A102: The commune arranged the couples to make commitments for marriage and 5 to 20 couples were married each time. A103: Very few couples were not satisfied [...] but some couples just said they agreed for marriage as they were afraid."); T. 26 January 2015 (CHOU Koemlan), E1/252.1, pp. 71-72 (explaining that in a wedding ceremony she witnessed, there were a few couples making resolution in Leay Bour commune. She also heard about group weddings of about 30-32 couples were also organised at K-1 Cooperative

authority which organised and presided over the wedding ceremonies included unit chief, village chief and commune chief.<sup>12252</sup>

3673. While some cadre claimed that marriages were not forced,<sup>12253</sup> other cadre in leadership roles such as KHOEM Boeun and PECH Chim admitted that weddings were forced for some individuals.<sup>12254</sup> There is evidence that individuals did not refuse marriage organised for them by the cadre, because they felt they had to, even though they did not actually consent.<sup>12255</sup> CHANG Srey Mom, a candidate person in Nheang Nhang commune, stated that she involuntarily married a man whom she did not love. When she was asked by Ol (SENG Ol), the chairman of the women's unit, whether she consented to the wedding arranged for her, she agreed. She clarified, however, that she did not dare to refuse at that time, because she was afraid of being accused of opposing an order from *Angkar*. For the same reason, she also did not dare to refuse to consummate the marriage.<sup>12256</sup> SENNG Ol, who presided over her wedding, told the OCII that there was no forced marriage in her unit and that marriage only occurred when the

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where couples were instructed to make resolution and *Ta Mok* presided over the marriage). *See above*, paras 3631-3632.

<sup>12252</sup> T. 27 January 2015 (CHOU Koemlan), E1/253.1, p. 23 (CHOU Koemlan, a New Person worked in K-3 Cooperative, explained that she attended a wedding ceremony which the unit chief and the village chief also attended); T. 29 January 2015 (CHANG Srey Mom), E1/252.1, pp. 23-24; CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, p. 4, ERN (En) 00410264 (explaining that she was arranged to get married at the Nheang Nhang Commune Office. The persons presided over her wedding include Boeun, the commune chief and Ol, the women unit chief.); T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 30; T. 17 February 2015 (PHNEOU Yav), E1/264.1, p. 33; PHNEOU Yav Interview Record, E3/5515, 12 November 2009, ERN (En) 00410249-00410250 (stating that the wedding was attended by the Commune Committee, cooperative chief and unit chief. *Ta Khem*, the commune chief presided over the ceremony); T. 22 April 2015 (PECH Chim), E1/290.1, pp. 45-48 (explaining that the unit chiefs and commune authorities organised the marriages); SENNG Ol Interview Record, E3/5833, 2 December 2009, p. 4, ERN (En) 00413906 (the commune level and the unit chief organised the marriages); UK Him Interview Record, E3/9584, 14 July 2014, p. 10, ERN (En) 01031765 (“Q: Who made the arrangement for your forced marriage? A38: The village chief and the commune chairman.”).

<sup>12253</sup> T. 7 May 2015 (EK Hoeun), E1/298.1, p. 108 (testifying that there were arranged marriages between men and women in Tram Kak district but if a girl disagreed with the marriage, she would not be forced and there were no threats nor coercion); SENNG Ol Interview Record, E3/5833, 2 December 2009, p. 4, ERN (En) 00413906 (explaining that commune level selected their partners for them, and if both parties agreed, they were married. The witness stated: “there was never any coercion in my unit”).

<sup>12254</sup> T. 4 May 2015 (KHOEM Boeun), E1/296.1, pp. 23-24; KHOEM Boeun Interview Record, E3/9480, 21 May 2014, p. 21, ERN (En) 01057695 (the witness first testified that in her opinion, there were no forced marriages because individuals consented to the marriage; she later confirmed in court that marriages were forced because the Party decided for them). Regarding PECH Chim, *see above*, para. 3617 (fn. 12075).

<sup>12255</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, p. 18 (stating that she and her husband were asked if they got married voluntarily, which they said they did, although she felt that she did not get married voluntarily but had to agree to do so); UK Him Interview Record, E3/9584, 14 July 2014, p. 9. ERN (En), 01031764 (UK Him was a depositee person in Kus commune, Tram Kak district. She explained how she was forced to get married in a group weddings of 40 couples after her first husband was taken away to attend a study session).

<sup>12256</sup> T. 29 January 2015 (CHANG Srey Mom), E1/254.1, pp. 18, 22, 34.



individuals consented.<sup>12257</sup> This inconsistency can be explained by the fact that the individuals who dared not refuse to marry “consented” out of fear.<sup>12258</sup>

3674. The Chamber finds that due to the environment of fear described above,<sup>12259</sup> people had no choice other than to obey and marry at Tram Kak district in accordance with a coercive practice stemming from CPK directives on marriage. The evidence before the Chamber also demonstrates at least one instance of rape in the context of forced marriage at the Tram Kak Cooperatives.<sup>12260</sup>

#### 14.3.11.2. *Trapeang Thma Dam*

3675. Instructions related to the marriage of people of the same class at Trapeang Thma Dam were given by commanders down the chain of command.<sup>12261</sup> Pursuant to these instructions, marriages of people of the same class were organised for workers at Trapeang Thma Dam.<sup>12262</sup> In some cases, the marriage of workers at Trapeang Thma Dam took place at the Dam worksite<sup>12263</sup> and in other cases, it took place in other villages located around the dam.<sup>12264</sup> Witness TAK Buy, a platoon chief, stated that

<sup>12257</sup> SENG OI Interview Record, E3/5833, 2 December 2009, pp. 6-7, ERN (En) 00413907.

<sup>12258</sup> See above, paras 3619-3623.

<sup>12259</sup> See above, para. 3625. See also, Section 10.1.8.3: Tram Kak Cooperatives: Arrests and Disappearances.

<sup>12260</sup> See above, para. 3673 (fn. 12256).

<sup>12261</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 22-23 (explaining that the order came through his commanders, *Ta Khoeng* and *Ta Vorn*, in a meeting and was relayed to the witness and other company chiefs).

<sup>12262</sup> T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 22-23 (CHHUM Seng, a company chief of a mobile unit at Trapeang Thma Dam, explained that only *Ta Val* or battalion chiefs upwards had the right to attend wedding ceremonies and give instructions to the newlywed couples.).

<sup>12263</sup> T. 10 August 2015 (KAN Thorl), E1/327.1, pp. 75-76, 81-83 (KAN Thorl, deputy chief of platoon in a mobile unit, attended one ceremony as a guest, testified that marriages were held at the worksite for 30 to 40 couples at a time. According to the witness, the people knew each other in advance of the marriage; if a male worker wanted to marry a specific woman, he would tell his chiefs, who in turn would talk to and make the request of the chief of the women’s unit. The witness also testified that the battalion chief allowed the newlyweds to stay together for three days in the villagers’ houses after getting married, after which they would meet each other once every ten days. The spouses’ parents were neither informed of nor were present at the wedding ceremony.); T. 1 December 2015 (PAN Chhuong), E1/360.1, pp. 36-38 (PAN Chhuong testified that he once participated in a marriage ceremony held at Trapeang Thma Dam, where about 50 or 60 couples got married. The witness testified that among these, 50 couples only two people had committed a moral offence and were thus married as a consequence; all of the other people married because they consented and there was agreement from their parents and relatives. The upper echelon would announce that on a certain date people would get married and those who were to be involved in organising the event, namely unit chiefs, battalion and hospital chiefs, would be informed about that and asked to attend the event.).

<sup>12264</sup> T. 20 August 2015 (YI Laisov), E1/334.1, pp. 57-63 (stating that she was told by her unit chief that she had to be married to someone she did not know. The witness did not want to get married but she declared that she was too afraid to refuse as she was told that she and her family would be killed if she did not. The witness stated that she was told by her mobile unit chief that she had to go to her home village. Once she arrived there, the chief of the children’s unit told her that she had to marry a man named

people were free to select their future spouse and the proposal needed to be made to the unit chief for the wedding to be held.<sup>12265</sup> Similarly, PAN Chhoung, who was a cadre who monitored the performance of workers at Trapeang Thma Dam, stated that people consented to the marriages.<sup>12266</sup> The Chamber reiterates that the evidence of former cadre on this particular issue must be assessed with caution because the consent given to them may not have been genuine and some former cadre may have exhibited a tendency to minimise their own responsibility.<sup>12267</sup> The Chamber notes that some people assigned to work at Trapeang Thma Dam were married during ceremonies held in their respective villages and did not return to the Dam worksite afterwards. While these facts occurred outside the specifically charged crime site, they nonetheless fall within the charges of “forced marriage” nationwide and must be considered in that regard.

3676. Concerning both the people who were married in their respective villages and at the Trapeang Thma Dam worksite, the Chamber finds that, while some of them may have consented to be married, many others, due to the particular environment of

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Rom at Paoy Char. She stated that the marriage was held at Paoy Char in the evening, at the house of the chief of the cooperative, and that it was held for three couples. The couples were told to make a resolution to be husband and wife forever. The witness stated that relatives and family members did not attend the wedding ceremony, and that no Buddhist or traditional rituals were performed. A month after the marriage, the Vietnamese arrived and the couple separated.); T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 68-70 (MEAN Loeuy, a Base Person and a member of a 100-person unit, stated that while he was working at Trapeang Thma Dam, he was told by his unit chief that he would be married. The marriage was arranged at Thnal Dach village and 63 couples took part in the ceremony. The couples included both Base People and New People, but the Base People could not marry the New People. The future spouses were told to sit in the middle and there was a table and a bottle with flowers in it and a representative would chair the marriage. The marriage was held at night, at around 8 or 9 p.m. The witness testified that some couples did not know each other in advance. After it was announced that the couples had to respect the line of *Angkar*, they were told to hold each other’s hands and to make a resolution to follow the guideline of *Angkar* and to achieve three or four tonnes of rice per hectare. The Civil Party explained that they consummated their marriage. After they left for the cooperative to work, he stated that 13 relatives (including his wife) were taken away and killed.)

<sup>12265</sup> T. 19 August 2015 (TAK Buy), E1/333.1, pp. 65-66 (testifying that marriages were not forced and that people would normally select their future spouse. If for example a man fell in love with a woman, he would approach his unit chief to make a proposal to the woman’s unit chief. After an agreement was reached, the ceremony was held for them. Usually many couples participated in a ceremony, up to 50 or 60 couples at a time. The parents of the couples did not attend the ceremony.). *See also*, T. 18 August 2015 (CHHUM Seng), E1/332.1, pp. 23-24 (stating that commanders had the freedom to choose their spouses and that if the other person did not agree to the proposal the marriage was not possible.).

<sup>12266</sup> T. 1 December 2015 (PAN Chhoung), E1/360.1, pp. 36-38 (testifying that among these 50 couples, only two people had committed a moral offence and were thus married as a consequence; all of the other people married because they consented).

<sup>12267</sup> *See above*, para. 3623.

fear,<sup>12268</sup> had no other choice than to obey and marry in accordance with a coercive practice stemming from CPK directives on marriage.

#### 14.3.11.3. 1<sup>st</sup> January Dam

3677. As a general rule, only unmarried persons worked at the 1<sup>st</sup> January Dam.<sup>12269</sup> The Chamber finds that there is no evidence which shows that wedding ceremonies ever took place at the 1<sup>st</sup> January Dam.<sup>12270</sup> However there is evidence that collective marriages were organised in the surrounding villages, including workers from these villages assigned to work at the 1<sup>st</sup> January Dam construction site.<sup>12271</sup> While these facts occurred outside the specifically charged crime site, they nonetheless fall within the charge of “forced marriage” nationwide and must be considered in that regard. KONG Uth, a mobile unit worker, stated that she was arranged to marry while she was working at 1<sup>st</sup> January Dam worksite. She was married to her husband with 24 other couples in Doung village organised by the unit chief. She was only informed one day before her wedding and she did not dare to refuse for fear that she would be accused of opposing *Angkar*.<sup>12272</sup> CHAO Lang, a mobile unit worker, testified that while she was working at the Dam, she was forced to marry her husband whom she did not love and was warned

<sup>12268</sup> See above, paras 3619-3625. See also, Section 11.1.11: Trapeang Thma Dam Worksite: Deaths, Killings and Disappearances.

<sup>12269</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 55 (as a worker at 1<sup>st</sup> January Dam, she testified that both men and women in her unit were all unmarried.); T. 19 May 2015 (OR Ho), E1/301.1, p. 36 (as the chief of Prey Srangae village in Ballangk commune, Baray district, and later the chief of a work unit of 100 workers he testified that workers of the mobile units were the main force at the dam construction site and that they were unmarried. He explained that there were other workers who worked on the construction of feeder canals and that these workers were usually married.); T. 1 September 2015 (NUON Narom), E1/339.1, p. 15 (as a worker at 1<sup>st</sup> January Dam stated that unmarried youth were brought from throughout the zone to work long hours, with insufficient food, rudimentary housing, and insanitary conditions to complete the work under constant fear of reprisals.).

<sup>12270</sup> T. 20 May 2015 (OR Ho), E1/302.1, p. 37 (stating that marriages were conducted in villages but not at the dam site. He further stated that while they were building the dam, they were focusing on building it and there were no marriages.); T. 20 May 2015 (PECH Sokha), E1/302.1, p. 37.

<sup>12271</sup> T. 2 June 2015 (SEANG Sovida), E1/308.1, p. 46 (testifying that her sister, Ly Sivyen, was forced to marry when she was 16 year old in Ruessei Keo Leu village); T. 26 May 2015 (MEAS Layhuor), E1/305.1, pp. 11-13, 19, 85; T. 4 June 2015 (SOU Soeurn), E1/310.1, pp. 80, 83, 84; T. 30 July 2015 (OM Chy), E1/326.1, p. 80 (as commune level unit chief, he testified that marriages were organised at the commune office or at the pagoda or, sometimes, at the security centre, involving 10 to 15 couples, but not at the worksite.). Cf. T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 70, 75 (stating that the Sector 42 secretary presided over the wedding and made a speech and that after the wedding, they were allowed three nights to stay together before returning to work); T. 19 May 2015 (OR Ho), E1/301.1, pp. 8, 53 (as chief of Prey Srangae village he stated that he arranged marriages for people from his village and that sometimes 30 to 40 couples were married at the same time.).

<sup>12272</sup> T. 25 June 2015 (KONG Uth), E1/322.1, p. 10 (stating that after her marriage, she was assigned to work elsewhere).

not to refuse the marriage otherwise she would face trouble. She further testified that there were militiamen monitoring them on their wedding night.<sup>12273</sup>

3678. The Chamber finds that, due to the environment of fear as described above, these people had no other choice than to obey and marry in villages surrounding the 1<sup>st</sup> January Dam worksite in accordance with a coercive practice stemming from CPK directives on marriage.

#### 14.3.12. *Impact on Victims*

##### 14.3.12.1. *Impact of “forced marriage”*

3679. A number of witnesses and Civil Parties testified in court about their shocking experiences and negative emotions when they found out that they had to marry someone they did not know. Many of them recalled that they wept and that they were upset, disappointed and fearful during their wedding ceremonies.<sup>12274</sup> CHEA Deap described that she was not happy and stated that: “actually I wept almost every day. I felt the pain but I could not do anything.”<sup>12275</sup> SAY Naroen stated that when she realised she was about to get married, her body was trembling and cold because she was so fearful.<sup>12276</sup> SOU Sotheavy, a transgender woman, explained that she and her wife “did not dare to

<sup>12273</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, pp. 70-71 (after her marriage, she and her husband were assigned to work at other place to grow cotton).

<sup>12274</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, pp. 40-43 (stating that she was forced to marry a blind military. She explained that: “I also cried. I was disappointed, very disappointed since I had never seen my would-be husband before the marriage day [...] If I had refused, I would have been killed so I had to bear the situation”); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 68 (stating that at that time, she was very young and was scared); T. 24 October 2016 (KUL Nem), E1/488.1, p. 90 (“I, myself, felt the sorrow and the pain inside me”); T. 23 August 2012 (EM Oeun), E1/113.1, pp. 104-105 (“[A]s a youth, I believe that we wanted our freedom to choose our own wife, and if you were forced to get married to someone whom you do not love, that was very painful [...] My wife did not love me either, so, whenever we stayed together at night, we cry to each other.”); PREAP Sokhoeun Interview Record, E3/9820, 8 October 2014, p. 18, ERN (En) 01050575 (“I dare not even to look at my husband’s face. I was very upset, and I looked down at the ground. When I saw his leg was curved, I was even more disappointed.”); SUM Pet Interview Record, E3/9824, 4 August 2014, p. 10, ERN (En) 01044589 (“It felt troubled because we did not understand each other’s feelings [...] My wife also felt frightened”); SUON Yim Interview Record, E3/9829, 24 November 2014, p. 11, ERN (En) 01054037 (“[A]t the time, I felt angry and sad.”); KHET Sokhan Interview Record, E3/9830, 27 November 2014, p. 14, ERN (En) 01077083 (“I felt very upset in my heard, and I also secretly cried, but I did not let anyone know that I was crying.”); T. 25 October 2016 (NGET Chat), E1/489.1, p. 26 (stating that when she saw the person she was supposed to marry who was about 18 years older than her, she felt intimidated and frightened but she did not dare to protest).

<sup>12275</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 77.

<sup>12276</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 37. *See also*, CHANG Srey Mom Interview Record, E3/5832, 11 November 2009, p. 4, ERN (En) 00410264 (“I was very shocked when I was told that they arranged the wedding for me that night [...] I did not have other choices. I cried in my mind, and I was very sad.”).

cough, we did not dare to talk because if we talked, we would be disappeared [*sic*], so we had to accept it. But with the expression of weeping, tears coming down.”<sup>12277</sup> OM Yoeurn stated that “I was terribly worried. I did not want to get married to my husband. I did not like him. I was forced to get married so I was so angry and I could not eat.”<sup>12278</sup>

3680. Victims who were forced to remarry described their difficult emotions at having to remarry without their consent while still grieving the loss of their partners.<sup>12279</sup> NGET Chat was forced to remarry after her husband was taken away. She described that she was still weeping for the loss of her husband at the time she was sent to remarry.<sup>12280</sup> MOM Vun was in a similar state when she was forced to remarry: “I was not happy at all. I was afraid and I was very worried that my husband would return and I did not like the man I was supposed to marry to, but I was forced anyway.”<sup>12281</sup> Despite having a fiancée, YOS Phal was forced to marry another person. He felt remorse for his fiancée as he could not marry her. He explained that:

I felt a heavy pain in my chest, and even now when I think about it, it’s beyond belief. And I scold myself, how come I was born during such a terrible period of time [...] I concede that my life is a pitiful life. It’s a life without freedom. And now I am old, although now I have freedom but it’s too late. Throughout the entire life, I have only carried with me the pains, the sorrows and the sufferings.<sup>12282</sup>

3681. Victims regretted the fact that their marriages were not done in accordance with tradition.<sup>12283</sup> The absence of parents and family members made many victims feel

<sup>12277</sup> T. 23 August 2016 (SOU Sotheavy), E1/462.1, p. 93.

<sup>12278</sup> T. 22 August 2016 (OM Yoeurn), E1/461.1, pp. 98-99.

<sup>12279</sup> T. 30 May 2013 (PO Dina), E1/199.1, p. 105 (“I lost my beloved husband, son and parents. I was then forced to marry another husband, but I refused. That was the time I was seriously beaten and imprisoned”).

<sup>12280</sup> T. 25 October 2016 (NGET Chat), E1/489.1, p. 26.

<sup>12281</sup> T. 16 September 2016 (MOM Vun), E1/475.1, pp. 47, 101 (“I knew they were all forced because the 60 couples all wept [...] None of them volunteered to get married [...] Anyone would weep, regardless whether you were single virgin or whether you are a widow. And there was no permission at all from our parents, they just mixed and matched us, and that’s how we all wept. All 60 of us stood together and wept.”).

<sup>12282</sup> T. 25 August 2016 (YOS Phal), E1/464.1, pp. 61-62 (“I felt so sorrowful that I could not marry my fiancée whom I loved and I wanted to live with her for life. It was like the fruit was about to ripen and then it was picked and taken away from me and I had no right to protest against that.”).

<sup>12283</sup> T. 5 September 2016 (NOP Ngim), E1/469.1, p. 58 (“In my heart, I wanted my marriage to be held according to the tradition, but how could I do? I had no choice.”); KHET Sokhan Interview Record, E3/9830, 27 November 2014, p. 14, ERN (En) 01077083 (“I felt regret because I was not able to have a proper ceremony in accordance with our tradition [...] I felt very upset inside my heart, and I also secretly cried.”); T. 12 October 2016 (Peg LEVINE), E1/482.1, p. 5 (stating that people experienced anxiety by not having a particular kind of protection that is embedded for centuries of culture in Cambodia”). See also, Thesis by Peg LEVINE: *A Contextual Study into Weddings and Births under the Khmer Rouge: The Ritual Revolution*, E3/1794, 2007, p. 8, ERN (En) 00482440.

remorse, disappointment and emotional pain.<sup>12284</sup> Witness LING Lrysov stated “I was really disappointed because my parents were not allowed to attend the occasion at the time”.<sup>12285</sup> Witness KHIN Vat felt that it was unfortunate that her parents were not aware of her marriage.<sup>12286</sup>

3682. These experiences have had a long-lasting impact on the victims and many of them are still haunted by this to this day.<sup>12287</sup>

#### 14.3.12.2. Impact of forced sexual intercourse on victims

3683. Victims of forced sexual intercourse were additionally deeply traumatised. PREAP Sokhoeurn explained that when her husband tried to have sexual intercourse

<sup>12284</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 42, 76 (stating that she still felt regret to this day as she should not have lost her virginity without the presence of her parents on her wedding day); T. 16 September 2016 (MOM Vun), E1/475.1, p. 101 (“[T]here was no permission at all from our parents, they just mixed and matched us, and that’s how we all wept.”); T. 12 October 2016 (PEN Sochan), E1/482.1, p. 73 (“[T]hat’s the point that made me suffered. That wedding took place without the participation of my siblings and relatives. None of my relatives were aware of the marriage.”). *See also*, T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 112 (“[A] loss of parental consent to the husband was a big traumatic experience and now that she was forced to actually have the relationship, sexual relationship, with a man by breaking her virginity without her parents’ consent is another step to [...] put her into another traumatic experience.”); MEAS Saran Interview Record, E3/9736, 29 December 2014, p. 18, ERN (En) 01057632 (“I feel hurt because they sent me to faraway places, they arranged my wedding without telling my parents or siblings”); VA Limhun Interview Record, E3/9756, 15 September 2014, p. 10, ERN (En) 01046941 (“I wanted to be married legally following Khmer tradition. I would leave this matter to be arranged by my parents. I would have been happier if my parents had arranged the marriage for me no matter if the groom were rich or poor”); T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 105 (“[B]efore the DK period, in the process of marriage, the parents of both parties engaged actively more than their son or daughter because it’s very important duty of the parents to proceed to arrange and to proceed and to manage, materialize the marriage.” The absence of family during the wedding ceremony “impacted absolutely a lot over the people who were married in the DK regime, whatever ways they were married [...] They were very sad. They regretted that their parents were not there to stay with them and they still carry on this legacy or remorse until now.”). Book by T. De Langis, J. Strasser, Kim T., Taing S.: *Like Ghost Changes Body: A Study on the Impact of Forced Marriage under the Khmer Rouge Regime*, E3/9614, pp. 16-17, 49, ERN (En) 01037042-01037043, 01037075 (“Forced marriages were considered by many victims as disobedient acts against parents and ancestors. [...] Disappointment is the prevailing response [...] at having lost the opportunity to exert control over a major life decision such as marriage and to not have that life decision validated and legitimized by family and ancestors”).

<sup>12285</sup> T. 20 August 2015 (LING Lrysov), E1/334.1, p. 62.

<sup>12286</sup> T. 29 July 2015 (KHIN Vat), E1/325.1, p. 91 (“It was unfortunate enough that my parents were not aware of my marriage; moreover, I had to remain committed, and ready to endure all sorts of hardship ahead.”).

<sup>12287</sup> T. 30 August 2016 (CHEA Deap), E1/466.1, p. 78 (“[E]very time I think of what happened, that I did not like my husband, that I was organised to marry him by *Angkar*, I feel the pain in my chest.”); T. 23 August 2012, E1/113.1, p. 105 (“I could not hold my tears because, if I recall my past, I sometime cannot hold my tears. And I was a man; I suffer from it, but I could also imagine the feeling of the lady; she was suffering from it as well.”); T. 25 October 2016 (NGET Chat), E1/489.1, p. 8 (“I endure the pain the most. I told my children that it was a great misery, and it stays inside me”); T. 16 September 2016 (MOM Vun), E1/475.1, p. 58 (“[T]o me, I can never forget what happened that night”).

with her, she was hurt physically and morally:

I hurt physically and morally. First, it was the pain that he inflicted upon me physically, and second, morally I was hurt. I did not intend to have a husband and wife relationship at all and there was nothing I could do besides weeping and I regretted for what happened and that I betrayed my father's words. So all these things added together caused me a worried and I could not sleep and I could not eat and I became pale.<sup>12288</sup>

3684. Forced sexual intercourse has serious and long-lasting traumatising effects on the victims. According to Kasumi NAKAGAWA, men also suffered greatly when they had to force themselves to rape their wives.<sup>12289</sup> The loss of virginity featured prominently in the minds of many victims.<sup>12290</sup>

3685. In the Cambodian context, “daughters” are regarded as important property of the parents and women should be pure and keep their virginity until marriage.<sup>12291</sup> Considered in this cultural and social context, the loss of virginity of Cambodian women resulted in additional suffering to the victims, in some cases exacerbated by unwanted pregnancies.<sup>12292</sup>

<sup>12288</sup> T. 24 October 2016 (PREAP Sokhoeurn), E1/487.1, pp. 96-97.

<sup>12289</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 110-111 (“[F]orcing a man to rape somebody is [an] inhuman act. Not all men could do it, first of all, but they were forced to do that. And the fear is unmeasurable how he was scared if he failed to do it. And many women apparently were very scared or they were showing the emotion that they don't want to accept the husband. And under such terrible circumstances, men had to complete it. It's an inhuman act and I cannot imagine how some men could have done that, and maybe that's why many men were sent to re-education for failing to rape the wife. And I'm sure that it impacted over the marriage life, that the husband might have been feel[ing] guilty to the wife or he [was] worried or scared that his wife would never love him and that might have remained as a scar or a trauma for a long period of time until he could recover his masculinity and to ensure that -- he could ensure that his wife actually accepted him. So the impact was huge and it's really [an] inhuman act against the man.”).

<sup>12290</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 111-112 (stating that for women “the impact was already huge when she was forced to marry against her will [...] without her parents' consent. So she was already after the stage that she was deprived of almost all hopes. And those forced married couples, mostly they knew that they have to consummate the marriage because of the instruction at the marriage ceremony or from the village chief [...] this is a huge terror imposed woman who may not have been most probably exposed to any sexuality issues and, of course, after the rape it happens, I think, in many ways. Some rape happened in a very violent way [...] some rapes were not violent [...] but the man [*sic*] were forced to rape their wife and the wife had to be raped by the husband.”); T. 25 October 2016 (SAY Nareoun), E1/489.1, p. 40 (“I felt difficult in to breathe in my heart because in my whole life, I never encountered such an incident. And as a Khmer woman, nothing is more important than our body. Although I was fearful and trembling, I thought to myself that I had to give my body to my husband in order to fulfil the requirement of *Angkar*. It was so painful for me.”).

<sup>12291</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, pp. 108-109.

<sup>12292</sup> T. 13 September 2016 (Kasumi NAKAGAWA), E1/472.1, p. 114 (“A lot of women get angry because they could not escape from pregnancy. They didn't love the husband [...] If she is carrying a child of a man that raped her or the husband whom she didn't want [...] if a child is born, can she love

**14.4. Legal Findings****14.4.1. *Other Inhumane Acts through Conduct Characterised as Forced Marriage***

3686. The Closing Order charges the following acts as the crime against humanity of other inhumane acts through conduct characterised as forced marriage: victims were forced to enter into conjugal relationships in coercive circumstances;<sup>12293</sup> in “the majority of cases of forced marriage death threats were made, violence was used and people were even executed if they refused to marry”;<sup>12294</sup> weddings “took place devoid of traditional involvement of the parents” with no respect of traditional rituals. Marriages were performed at the same time involving between 20 and 60 couples;<sup>12295</sup> and sexual relations aimed at enforced procreation were imposed.<sup>12296</sup>

3687. The KHIEU Samphan Defence submits that traditional Cambodian marriage does not correspond to the Western concept of marriage.<sup>12297</sup> It contends that the traditional Cambodian arranged marriage was an agreement between two families and that neither the sentiment of love nor the consensus of the future husband and wife played a central role.<sup>12298</sup> It submits that the final decision on marriage rested with the parents, with the future husband and wife mostly removed from negotiations and arrangements related to a wedding and unable to refuse to marry due to social pressure.<sup>12299</sup> The NUON Chea Defence similarly submits that pre-DK marriages were always arranged by parents, with the opinion of the future spouses seldom being sought, and that opposing the parents’ decision would often be unthinkable. It contends that by charging the Accused with forced marriage and rape in the context of forced marriage, the Closing Order and the Co-Prosecutors are effectively putting the entire practice of arranged marriage on trial.<sup>12300</sup> The Civil Party Lead Co-Lawyers submit that there is a distinction between arranged marriage and forced marriage. In a traditional arranged

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a child as a child that was born from parental consent marriage from the husband. So there is a huge traumatic experience for women.”).

<sup>12293</sup> Closing Order, para. 1443.

<sup>12294</sup> Closing Order, para. 1447.

<sup>12295</sup> Closing Order, paras 1446-1447.

<sup>12296</sup> Closing Order, para. 1445.

<sup>12297</sup> KHIEU Samphan Closing Brief, para. 2338.

<sup>12298</sup> KHIEU Samphan Closing Brief, paras 2337-2345.

<sup>12299</sup> KHIEU Samphan Closing Brief, paras 2343, 2347-2348.

<sup>12300</sup> NUON Chea Closing Brief, para. 1136.



marriage, future spouses express their consent by delegating decision-making to their parents. However, if the marriage takes place even after one of the spouses refuses the arrangement, it is a forced marriage.<sup>12301</sup> The Co-Prosecutors make no submission in relation to the distinctions or similarities of arranged and forced marriage.

3688. The Chamber finds that, contrary to the Defence teams' submissions, arranged marriage in Cambodian culture is very different from forced marriage in the DK regime as charged in the Closing Order. Arranged marriage in Cambodian culture pre-DK regime was based on a mutual trust between parents and children. As Expert Kasumi NAKAGAWA described, parents were obliged to find the best option for the future of their children so that they would have a happy married life.<sup>12302</sup> In return, children trusted that their parents would make the best possible decision for them, and their agreement demonstrated respect and gratitude to their parents.<sup>12303</sup> The Chamber accepts the position of both Defence teams that weddings in the Cambodian culture do not correspond to the Western concept of marriage. In western culture, consent is given on the basis of an assessment and consequent choice of a partner made by the individual. In traditional Khmer culture, the making of this assessment and choice is delegated by the children to their parents on the basis of trust. Generally, arranged marriages do not include an element of force. There is no evidence that this delegation based on trust and the existence of a functional, caring family system was voluntarily transferred to the Party (*Angkar*) in DK. Finally, to what extent and how often social pressure in traditional marriages impacted the ability to freely consent is not of relevance for the facts charged in these proceedings. The evidence set out in this section clearly demonstrates a practice during the DK regime that was far from reflective of traditional Khmer wedding tradition: families of future spouses were not involved at all in the negotiation, communities were not involved, tradition was absent from wedding ceremonies and individuals agreed to get married for fear of being punished by the Party.

3689. Further, CPK policy deemed that *Angkar* could replace parents or should be put above them, however the CPK implemented measures notably aimed at discriminating

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<sup>12301</sup> T. 13 June 2017 (Closing Statements), E1/520.1, p. 92.

<sup>12302</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 12, 36.

<sup>12303</sup> T. 14 September 2016 (Kasumi NAKAGAWA), E1/473.1, pp. 10, 33. *See also*, T. 11 October 2016 (Peg LEVINE), E1/481.1, p. 108.

against real or perceived political enemies, at forcibly moving city dwellers from their hometowns, at imposing upon a large number of people work in extremely harsh conditions on various construction sites and in cooperatives.<sup>12304</sup> It is hardly conceivable that all these revolutionary measures could, somehow, be compared with parents' behaviour toward their children in traditional Khmer society. It is even harder to merely imagine that children of families the victims of severe discrimination and mistreatment could trust or agree in any manner to decisions concerning the core of their privacy and dignity, as these decisions were made by those seen as being responsible for deciding such policy and for implementing such measures. The arguments of the Defence teams in this regard are therefore rejected.

3690. The Chamber has found that DK authorities arranged marriages throughout the DK period and in numerous geographical locations throughout the territory of Cambodia.<sup>12305</sup> Individuals were married in a widespread climate of fear and the consent purportedly given either before or during wedding ceremonies did not amount in most cases to genuine consent.<sup>12306</sup> Individuals were instructed to follow *Angkar*'s instructions to get married and produce children, and there were instances where individuals were threatened with being killed if they refused to marry.<sup>12307</sup> Both men and women were forced to marry during the DK regime throughout the territory.<sup>12308</sup>

3691. In the majority of cases, during the wedding ceremony parents of individuals were not involved,<sup>12309</sup> traditional rituals were abandoned,<sup>12310</sup> and many couples were married at the same time.<sup>12311</sup> The Chamber has found that with the exception of favoured individuals, individuals were neither consulted nor informed in advance of their marriage – in many instances, they did not even know their spouse until the moment they arrived at the wedding venue.<sup>12312</sup> After marriage ceremonies, individuals were subjected to monitoring particularly aimed at establishing whether they had consummated the marriage.<sup>12313</sup> This pressure caused fear and led victims to feel that

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<sup>12304</sup> Case 002/01 Trial Judgement, paras 489-493.

<sup>12305</sup> See above, para. 3538.

<sup>12306</sup> See above, paras 3619-3623.

<sup>12307</sup> See above, paras 3620-3633.

<sup>12308</sup> See above, para. 3625.

<sup>12309</sup> See above, Section 14.3.7.3: Participation of Parents and Other Family Members.

<sup>12310</sup> See above, Section 14.3.7.2: Absence of Khmer Tradition.

<sup>12311</sup> See above, paras 3631-3632.

<sup>12312</sup> See above, Section 14.3.6.1: Notice.

<sup>12313</sup> See above, Section 14.3.8.1: Monitoring.

they were obliged to have sexual intercourse.<sup>12314</sup> The Chamber finds that the foregoing conduct, characterised in the Closing Order as forced marriage, cumulatively caused serious mental or physical suffering or injury or constituted a serious attack on the human dignity of the victims.

3692. In assessing the gravity of these acts, the Chamber considers the mental and physical suffering inflicted upon individuals through the threats of forcing them to marry, the fact that they had to marry someone that they did not know, the fear instilled to pressure them to consummate the marriage and that the conduct was performed intentionally. The severity of the mental suffering caused by being forced to marry in a coercive environment caused serious mental harm with lasting effects on the victims.<sup>12315</sup> Considered holistically, the Chamber finds that this conduct is of similar gravity as other enumerated crimes against humanity. The *actus reus* of the crime against humanity of other inhumane acts through conduct characterised as forced marriage is therefore established.

3693. In assessing the intent of the authorities to engage in the above conduct, the Chamber has found that instructions on the regulation of marriage originated from the upper level. The lower level was involved in the matching of couples, for which authorisation was required from the upper level (district, sector or ministry level, depending on the spouse's rank). Authorities used threats to force individuals to marry and were involved in wedding ceremonies and in implementing the monitoring process. The Chamber finds on this basis that this conduct was performed intentionally by the authorities. The *mens rea* of the crime against humanity of other inhumane acts through conduct characterised as forced marriage is therefore established.

3694. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts was committed nationwide through conduct characterised as forced marriage.

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<sup>12314</sup> See above, Section 14.3.8.2: Coercive Environment; Section 14.3.8.3: Forced Sexual Intercourse between Spouses.

<sup>12315</sup> See above, para. 3689.

14.4.2. *Other Inhumane Acts through Conduct Characterised as Rape in the Context of Forced Marriage*

3695. As relevant to Case 002/02, the Closing Order charges the Accused with the crime against humanity of other inhumane acts through conduct characterised as rape in the context of forced marriage.<sup>12316</sup> Specifically, it alleges that “by imposing the consummation of forced marriages, the perpetrators committed a physical invasion of a sexual nature against a victim in coercive circumstances in which the consent of the victim was absent” and that “perpetrators intended the physical invasion of a sexual nature, with the knowledge that it occurred in coercive circumstances or otherwise without the consent of the victim”.<sup>12317</sup>

3696. The Chamber has found that after wedding ceremonies, arrangements were usually made by the local authorities for newly wedded couples to sleep in an assigned location specifically in order to have sexual intercourse.<sup>12318</sup> Militiamen were commonly ordered to monitor the couples at night to make sure that they had sexual intercourse.<sup>12319</sup> Both men and women felt compelled to have sexual intercourse with their new spouse.<sup>12320</sup> Couples who were found to have not had sexual intercourse were re-educated or threatened with being killed or receiving punishment.<sup>12321</sup>

3697. The Chamber finds that in the described circumstances a woman’s lack of physical resistance does not indicate consent but a mere appearance of acquiescence due to coercion or coercive circumstances.<sup>12322</sup> The Chamber further notes that while the in-court statements were not always necessarily explicit in describing the penetration of the vagina by the penis of the husband, the circumstances such as the pain, the bleeding for a long time thereafter, or the explicit reference to forced penetration allow the Chamber to conclude that such penetration occurred. The Chamber further finds that in view of the establishment of conditions specifically to force the consummation of marriages, the conduct was performed intentionally. The

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<sup>12316</sup> See above, para. 3524.

<sup>12317</sup> Closing Order, para. 1431.

<sup>12318</sup> See above, para. 3641.

<sup>12319</sup> See above, Section 14.3.8.1: Monitoring.

<sup>12320</sup> See above, Section 14.3.8.2: Coercive Environment; Section 14.3.8.3: Forced Sexual Intercourse between Spouses.

<sup>12321</sup> See above, paras 3656-3658.

<sup>12322</sup> See above, para. 3661.

Chamber accordingly finds that this conduct constitutes rape. The Chamber further finds that this conduct cumulatively caused serious mental and physical suffering or injury and constituted a serious attack on the human dignity of the victims.<sup>12323</sup>

3698. In assessing the gravity of these acts, the Chamber considers in particular the mental and physical suffering inflicted upon those individuals who were raped as part of the requirement that marriage would be consummated, and that such acts were performed intentionally. Considered holistically, the Chamber finds that this conduct is of similar gravity to other enumerated crimes against humanity. The *actus reus* of the crime against humanity of other inhumane acts through conduct characterised as rape in the context of forced marriage is therefore established.<sup>12324</sup>

3699. Noting that these acts were conducted in a framework established to force the consummation of marriages, the Chamber finds that such conduct was performed intentionally. The *mens rea* of the crime against humanity of other inhumane acts through conduct characterised as rape in the context of forced marriage is therefore established.

3700. Accordingly, the Chamber finds that the crime against humanity of other inhumane acts was committed through conduct characterised as rape in the context of forced marriage.

3701. The Chamber recalls its finding that, having regard to the definition of rape adopted by the Chamber, men could not be the victims of rape in the context of forced marriage. The Chamber will nonetheless consider whether men were subjected to sexual violence of such gravity that it amounts to other inhumane acts. The Chamber understands sexual violence to entail “any act of a sexual nature which is committed on a person under circumstances that are coercive”.<sup>12325</sup> The Chamber understands sexual violence to not be limited to physical invasion of the human body and may include acts that do not involve penetration or even physical contact.<sup>12326</sup> The Chamber has found that men also could not refuse to consummate marriage. On one occasion, a husband

<sup>12323</sup> Section 9.1.8.3: Applicable Law: Crimes Against Humanity: Other Inhumane Acts: Forced Marriage, para. 749.

<sup>12324</sup> See above, Section 14.3.12.2: Impact of Forced Sexual Intercourse on Victims.

<sup>12325</sup> *Akayesu* Trial Judgement, para. 688; *Kvočka et al.* Trial Judgement, para. 180.

<sup>12326</sup> *Akayesu* Trial Judgement, para. 688.

had sexual intercourse with his wife following *Angkar*'s instructions and out of fear for the lives of him and his wife.<sup>12327</sup> One Civil Party suffered greatly because he was not able to marry his fiancée.<sup>12328</sup> However, in the absence of clear evidence concerning the level of seriousness of this kind of conduct and of its impact on males, the Chamber, while acknowledging that men were subjected to sexual violence that was contrary to human dignity, is unable to reach a finding on the seriousness of the mental and physical suffering suffered by these men. Accordingly, the Chamber is unable to reach a conclusion to the requisite standard in relation to these incidents and does not consider that they constitute the crime against humanity of other inhumane acts through sexual violence.

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<sup>12327</sup> See above, para. 3657 (SOU Sotheavy).

<sup>12328</sup> See above, para. 3680 (YOS Phal).

## 15. APPLICABLE LAW: INDIVIDUAL CRIMINAL RESPONSIBILITY

### 15.1. Introduction

3702. Article 29 (new) of the ECCC Law outlines the applicable forms of individual criminal responsibility: commission, planning, instigating,<sup>12329</sup> ordering, aiding and abetting,<sup>12330</sup> and superior responsibility. The Closing Order as relevant to Case 002/02 charges that the Accused committed, through their acts and omissions (and through a joint criminal enterprise, which is charged in its basic form),<sup>12331</sup> planned, instigated, ordered, aided and abetted the charged crimes.<sup>12332</sup> Alternatively, the Closing Order charges the Accused with superior responsibility for the charged crimes.<sup>12333</sup> The Chamber may choose the form or forms charged in the Closing Order that describe the responsibility of the Accused most accurately. It is not obliged to make exhaustive factual findings on every charge.<sup>12334</sup> Where an accused is found to be both directly responsible and responsible as a superior in relation to the same conduct, the Chamber will convict on the basis of the former and consider an accused's superior position as an aggravating factor in sentencing.<sup>12335</sup>

3703. The Chamber recalls that it has previously accepted the general principle applied consistently by the *ad hoc* tribunals that "a crime may be committed by culpable omission where there is a duty to act".<sup>12336</sup> This principle applies to all modes of individual criminal responsibility, except for planning and ordering as these modes of liability require a positive act to materialise. The Chamber finds that the general

<sup>12329</sup> On the discrepancy between the Khmer, English and French versions of the ECCC Law concerning the notions of instigation and incitement, *see below*, para. 3718 (fn. 12397).

<sup>12330</sup> On the discrepancy between the Khmer, English and French versions of the ECCC Law concerning the notions of aiding and abetting and "complicité" *see below*, para. 3721 (fn. 12414).

<sup>12331</sup> Closing Order, para. 1541.

<sup>12332</sup> Closing Order, paras 1521, 1532-1533, 1536-1537, 1545, 1548, 1551, 1554.

<sup>12333</sup> Closing Order, paras 1559-1560.

<sup>12334</sup> Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 472; *Milutinović et al.* Trial Judgement, para. 76 (Volume I).

<sup>12335</sup> Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 539; *Blaškić* Appeal Judgement, para. 91.

<sup>12336</sup> Case 002/01 Trial Judgement, para. 693, fn. 2159. *See also*, Section 9.1: Applicable Law: Crimes: Crimes Against Humanity, paras 690, 701.

principle, that there needs to be a duty to act, applies to all culpable omissions. Accordingly, an omission will be culpable only where there is a duty to act.

3704. The Chamber finds that it was both foreseeable and accessible in general that commission through a joint criminal enterprise (“JCE”) in its basic and systemic forms (also known as JCE I and JCE II, respectively),<sup>12337</sup> planning,<sup>12338</sup> instigating,<sup>12339</sup> ordering,<sup>12340</sup> aiding and abetting,<sup>12341</sup> and superior responsibility<sup>12342</sup> were modes of liability that existed in customary international or Cambodian law between 1975 and 1979. Submissions pertaining to the precise definition of the various elements of these forms of individual criminal responsibility are addressed in the relevant subsections below.

3705. As a preliminary matter, the Chamber notes that the KHIEU Samphan Defence’s Closing Brief incorporates by reference submissions regarding planning, instigating and aiding and abetting that were raised in its appeal brief in Case 002/01, but that were not addressed by the Supreme Court Chamber. It further incorporates by

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<sup>12337</sup> See below, para. 3707.

<sup>12338</sup> Case 002/01 Trial Judgement, para. 697; Case 001 Trial Judgement, para. 474. Planning was criminalised by Articles 223, 239 and 290 of the Cambodian Criminal Code 1956.

<sup>12339</sup> Case 002/01 Trial Judgement, para. 699; Case 001 Trial Judgement, paras 474-475. Instigation and incitement were codified in various international instruments prior to 1975 (Nuremberg Charter, Article 6; Genocide Convention, Article 3; Supplementary Slavery Convention, Article 6; ICCPR, Article 20; Racial Discrimination Convention, Article 4; Statutory Limitations Convention, Article II; Apartheid Convention, Article III(a); Hostage Convention, Article 4(a)). Nuremberg-era courts entered convictions against accused who incited and instigated crimes against humanity (*Nuremberg* Judgement, pp. 302-304; *Ministries* Judgement, pp. 565-576). Instigating was criminalised by Articles 83 and 84 of the Cambodian Criminal Code 1956.

<sup>12340</sup> Case 002/01 Trial Judgement, para. 701; Case 001 Trial Judgement, paras 474-475. Prior to 1975, ordering was codified in international instruments (Geneva Convention (I), Article 49; Control Council Law No. 10, Article II(2)(b)). Nuremberg-era courts entered convictions against accused for ordering war crimes and crimes against humanity (*Nuremberg* Judgement, pp. 289-291, 311-315; *High Command* Judgement, pp. 560-561, 665, 693; *RuSHA* Judgement, p. 106; *Justice* Judgement, p. 1119). Ordering was criminalised by Articles 83 and 85 of the Cambodian Criminal Code 1956.

<sup>12341</sup> Case 002/01 Trial Judgement, para. 703; Case 001 Trial Judgement, paras 474-475. Accomplice liability, including aiding and abetting, was recognised as a principle of international law and codified in various international instruments prior 1975 (Nuremberg Charter, Article 6; Control Council Law No. 10, Article II(2)(b); Nuremberg Principles, Principle VII; Supplementary Slavery Convention, Articles 3, 5-6; Statutory Limitations Convention, Article II; Apartheid Convention, Article III(b); Hostage Convention, Article (2)(b); Protected Persons Convention, Article 2(1)(e)). Nuremberg-era courts entered convictions for aiding and abetting war crimes and crimes against humanity (see e.g., *Justice* Judgement, p. 1118; *Pohl* Judgement, pp. 1031, 1039; *Ministries* Judgement, pp. 645-646). Aiding and abetting was criminalised by Articles 83 and 87 of the Cambodian Criminal Code 1956.

<sup>12342</sup> Case 002/01 Trial Judgement, para. 714; Case 001 Trial Judgement, paras 476-477; Decision on Appeals by NUON Chea and IENG Thirith against the Closing Order (PTC), D427/2/15, 15 February 2011, paras 190-232; Decision on IENG Sary’s Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, paras 413-460. See also, *Hadžihasanović and Kubura*, Decision on Interlocutory Appeal Challenging Jurisdiction in Relation to Command Responsibility (AC), para. 29.



reference submissions regarding ordering that were raised in the NUON Chea Defence's appeal brief in Case 002/01.<sup>12343</sup> The Chamber notes that it is not properly seised of arguments that are incorporated by reference rather than set out in closing briefs.<sup>12344</sup> This approach constitutes an impermissible attempt to circumvent the page limits imposed by the Chamber on the parties' respective briefs. The Chamber will accordingly not consider any of the submissions referred to in this way by the KHIEU Samphan Defence.

## **15.2. Commission through a Joint Criminal Enterprise**

3706. Participation in a JCE amounts to commission within the scope of Article 29 (new) of the ECCC law.<sup>12345</sup> The ICTY Appeals Chamber has held that JCE comprises three categories:

- The basic category ("JCE I"), where all participants act pursuant to a common purpose and share the same criminal intent;<sup>12346</sup>
- The systemic category ("JCE II"), referring to instances of ill-treatment in organised institutions, such as concentration camps;<sup>12347</sup> and
- The extended category ("JCE III"), where participants have agreed on a common purpose involving the perpetration of crime(s) and are liable for criminal acts which, while outside the common purpose, are nevertheless a natural and foreseeable consequence of effecting that common purpose, and the participants willingly took the risk that those crimes would occur (*dolus eventualis*).<sup>12348</sup>

3707. The Pre-Trial, Trial and Supreme Court Chambers have all held that JCE III did not exist in customary international or Cambodian law by 1975,<sup>12349</sup> and it will

<sup>12343</sup> KHIEU Samphan Closing Brief, paras 2469-2470, referring to NUON Chea Appeal Brief, paras 674-679.

<sup>12344</sup> *Šainović et al.* Appeals Decision on Pavković's Second Motion, para. 18 ("a party may not dispose of its burden on appeal by merely referring to another party's submissions."); *Hadžihasanović & Kubura* Appeal Judgement, para. 46 ("The Appeals Chamber recalls that appellants have to substantiate their arguments in support of each ground of appeal in their appeal briefs and not by reference to submissions made elsewhere.").

<sup>12345</sup> Case 002/01 Trial Judgement, para. 690; Case 002 Pre-Trial Chamber Decision on JCE, para. 49; Case 001 Trial Judgement, para. 511.

<sup>12346</sup> *Tadić* Appeal Judgement, paras 196-201.

<sup>12347</sup> *Tadić* Appeal Judgement, paras 202-203.

<sup>12348</sup> *Tadić* Appeal Judgement, paras 204, 220 ("What is required is a state of mind in which a person, although he did not intend to bring about a certain result, was aware that the actions of the group were most likely to lead to that result but nevertheless willingly took that risk. In other words, the so-called *dolus eventualis* is required (also called 'advertent recklessness' in some national legal systems)."), para. 228.

<sup>12349</sup> Case 002/01 Appeal Judgement, paras 791-807; Case 002 Trial Chamber Decision on JCE, paras 31, 35, 38; Case 002 Pre-Trial Chamber Decision on JCE, paras 77, 83, 87-88.

accordingly not be considered further. The Pre-Trial, Trial and Supreme Court Chambers have all affirmed that JCE I and JCE II were forms of criminal liability recognised in customary international law between 1975 and 1979.<sup>12350</sup> In this respect, the Chamber takes into account the customary status and the positions held by the Accused as members of Cambodia's governing authority. Having weighed these factors objectively, the Chamber concludes that it was both foreseeable and accessible in general that JCE I and JCE II were forms of individual criminal responsibility by 1975.<sup>12351</sup> Since only JCE I, *i.e.* joint criminal enterprise in its basic form, is charged in the Closing Order and considered relevant to Case 002/02,<sup>12352</sup> JCE II will not be discussed separately.

3708. All categories of JCE have three objective elements. First, there must be a plurality of persons. While it is necessary to identify the plurality of persons participating in the JCE, it is not necessary to identify by name each person involved.<sup>12353</sup> Second, there must be a common purpose of a criminal character which amounts to or involves the commission of a crime.<sup>12354</sup> Third, an accused must participate in the common purpose, making a significant, but not necessarily indispensable, contribution to the commission of the crime.<sup>12355</sup>

3709. The common purpose must either have as (one of) its primary objective(s) the commission of (a) crime(s) (*i.e.* "amounts to") or must contemplate the commission of (a) crime(s) as a means to achieve an objective that is not necessarily criminal (*i.e.* "involves").<sup>12356</sup> While the common purpose is a JCE's most distinctive feature, it need

<sup>12350</sup> Case 002/01 Appeal Judgement, para. 807 ("Thus, the Supreme Court Chamber finds that criminal liability based on making a contribution to the implementation of a common criminal purpose was, at the time relevant to the charges in the case at hand, limited to crimes that were actually encompassed by the common purpose."); Case 002 Trial Chamber Decision on JCE, para. 22; Case 002 Pre-Trial Chamber Decision on JCE, paras 57-69, 72. *See also*, Case 002/01 Trial Judgement, para. 691; Case 001 Trial Judgement, para. 512.

<sup>12351</sup> Case 002 Pre-Trial Chamber Decision on JCE, paras 69, 72; Case 002/01 Appeal Judgement, para. 1093. *See also*, Section 7: Roles and Functions – NUON Chea; Section 8: Roles and Functions – KHIEU Samphan (on the senior positions of the Accused).

<sup>12352</sup> Closing Order, para. 1541.

<sup>12353</sup> Case 002/01 Trial Judgement, para. 692; Case 001 Trial Judgement, para. 508; *Krajišnik* Appeal Judgement, para. 156.

<sup>12354</sup> Case 002/01 Appeal Judgement, para. 789, 807, 814; Case 002/01 Trial Judgement, para. 692; Case 001 Trial Judgement, para. 508; *Tadić* Appeal Judgement, para. 227.

<sup>12355</sup> Case 002/01 Appeal Judgement, para. 983; Case 002/01 Trial Judgement, para. 692; Case 001 Trial Judgement, para. 508; *Brđanin* Appeal Judgement, para. 430.

<sup>12356</sup> Case 002/01 Appeal Judgement, paras 807-808; Case 002 Trial Chamber Decision on JCE, para. 17.

not be previously arranged or formulated.<sup>12357</sup> It may materialise extemporaneously “and be inferred from the fact that a plurality of persons act in unison to put into effect a joint criminal enterprise”.<sup>12358</sup> Thus, the common purpose, plan or design of a JCE can be fluid and change over time to include additional crimes.<sup>12359</sup> However, this potential fluidity must not erode the requirement of a shared intent for JCE I. An explicit agreement amongst JCE members regarding the expansion of the common purpose is not required – this too may materialise extemporaneously, and can be inferred from circumstantial evidence.<sup>12360</sup> In such case, liability arises when JCE members, while knowing that new types of crime are included in the common plan, have taken no effective measures to prevent the recurrence of such new types of crime and have subsequently persisted in the implementation of the common purpose.<sup>12361</sup>

3710. Participation in a common purpose may be by positive act or culpable omission.<sup>12362</sup> The significance of a contribution to the commission of crimes within the common purpose is to be determined on a case-by-case basis, taking into account a variety of factors including the position of the Accused, the level and efficiency of the participation, and any efforts to prevent crimes.<sup>12363</sup> An accused’s participation in a common purpose need not involve commission of a specific crime provided for in the Agreement or ECCC Law (for example murder, extermination or torture), but may take the form of assistance in, or contribution to, the execution of the common purpose.<sup>12364</sup> Such a contribution need not be an indispensable condition, without which the crimes could or would not have been committed.<sup>12365</sup> However, a JCE member’s involvement in the crime must form a link in the chain of causation.<sup>12366</sup> The significance of the

<sup>12357</sup> Case 001 Trial Judgement, para. 508; *Tadić* Appeal Judgement, para. 227.

<sup>12358</sup> *Tadić* Appeal Judgement, para. 227. *See also*, Case 001 Trial Judgement, para. 508.

<sup>12359</sup> *Krajišnik* Appeal Judgement, para. 163; *Krajišnik* Trial Judgement, para. 1098.

<sup>12360</sup> *Krajišnik* Appeal Judgement, para. 163; *Karadžić* Trial Judgement, para. 563.

<sup>12361</sup> *Krajišnik* Trial Judgement, para. 1098 (“With acceptance of the actual commission of new types of crime and continued contribution to the objective, comes intent, meaning that subsequent commission of such crimes by the JCE will give rise to liability under JCE form 1.”). *See also*, para. 890 (“knowledge combined with continuing participation can be conclusive as to a person’s intent.”).

<sup>12362</sup> *Kvočka et al.* Appeal Judgement, paras 187, 421, 556. *See above*, para. 3703. *See also*, Section 9.1: Applicable Law: Crimes Against Humanity: Murder, para. 627.

<sup>12363</sup> Case 002/01 Trial Judgement, para. 693; *Kvočka et al.* Trial Judgement, para. 311.

<sup>12364</sup> Case 002/01 Trial Judgement, para. 693; *Vasiljević* Appeal Judgement, para. 100; *Brđanin* Appeal Judgement, para. 424. *See also*, Case 002/01 Appeal Judgement, para. 981, *citing Blagojević and Jokić* Trial Judgement, para. 702.

<sup>12365</sup> Case 002/01 Appeal Judgement, para. 980; *Popović et al.* Appeal Judgement, para. 1653; *Krajišnik* Appeal Judgement, para. 215; *Brđanin* Appeal Judgement, para. 151.

<sup>12366</sup> *Blagojević and Jokić* Trial Judgement, para. 702; *Brđanin* Trial Judgement, para. 263.

Accused's contribution is relevant for determining whether such a link existed.<sup>12367</sup> Mere membership of a JCE is not sufficient in this regard; it must at least be shown that the Accused's acts or omissions were directed at furthering the common purpose.<sup>12368</sup>

3711. Participants in a JCE can incur liability for crimes committed by direct perpetrators who were not JCE members, provided that it has been established that the crimes can be imputed to at least one JCE participant and that this participant, when using a direct perpetrator, acted to further the common purpose.<sup>12369</sup> Establishing the link between a JCE member and a direct perpetrator is a matter to be assessed on a case-by-case basis.<sup>12370</sup> It is not determinative whether the direct perpetrator shared the *mens rea* of the JCE member or knew of the existence of the JCE; what matters under JCE I is whether the JCE member used the direct perpetrator to commit the *actus reus* of the crime forming part of the common purpose.<sup>12371</sup> While the existence of an express agreement between a JCE participant and a direct perpetrator may be used to establish that a certain crime formed part of the common purpose, the existence of such an express agreement is not a requirement.<sup>12372</sup> Nor is it a requirement that the JCE member exercised effective control over the direct perpetrator.<sup>12373</sup>

3712. With respect to the *mens rea* for JCE I, an accused must intend to participate in the common purpose and this intent must be shared with the other JCE participants.<sup>12374</sup> JCE participants must also be shown to share with the other JCE participants the required intent regarding the underlying crime, which includes the specific intent if

<sup>12367</sup> *Prlić et al.* Appeal Judgement, para. 2052; *Milutinović et al.* Trial Judgement, para. 105 (Volume I); *Blagojević and Jokić* Trial Judgement, para. 702; *Brđanin* Trial Judgement, para. 263.

<sup>12368</sup> *Prlić et al.* Appeal Judgement, para. 2052; *Brđanin* Trial Judgement, para. 263.

<sup>12369</sup> Case 002/01 Trial Judgement, para. 693; *Krajišnik* Appeal Judgement, para. 225; *Brđanin* Appeal Judgement, para. 413.

<sup>12370</sup> *Krajišnik* Appeal Judgement, para. 226; *Brđanin* Appeal Judgement, para. 413; *Martić* Appeal Judgement, para. 169.

<sup>12371</sup> *Krajišnik* Appeal Judgement, para. 226; *Mladić* Trial Judgement, para. 3561.

<sup>12372</sup> *Brđanin* Appeal Judgement, paras 415-419.

<sup>12373</sup> *Šainović et al.* Appeal Judgement, para. 1368; *Kvočka et al.* Appeal Judgement, paras 144, 383.

<sup>12374</sup> Case 002/01 Trial Judgement, para. 694; Case 001 Trial Judgement, para. 509; *Kvočka et al.* Appeal Judgement, paras 82, 110.

such is required by the offence, as with persecution and genocide.<sup>12375</sup> Thus, JCE intent must cover both the common purpose and the crimes it encompassed.<sup>12376</sup>

3713. The KHIEU Samphan Defence submits that JCE I requires proof of direct intent with respect to both the common purpose and the underlying crime, and that *dolus eventualis* does not suffice.<sup>12377</sup> It contends that crimes that are merely foreseeable are not properly included in the common purpose.<sup>12378</sup> No other parties made any relevant submissions in this regard. The KHIEU Samphan Defence makes these submissions in response to the Supreme Court Chamber’s Appeal Judgement in Case 002/01, in which the Supreme Court Chamber allegedly created a new hybrid category of JCE by combining *actus reus* elements from JCE I with *mens rea* elements from JCE III, which was not foreseeable to the Accused, violating the principle of legality.<sup>12379</sup>

3714. The Chamber notes that the *mens rea* requirement for JCE varies according to category and in particular depending on whether crimes are encompassed by the common purpose.<sup>12380</sup> While JCE I requires that crimes are encompassed by the common purpose, JCE III pertains to crimes committed outside the common purpose as a natural and foreseeable consequence of effecting that common purpose. On the basis of this distinction, international jurisprudence has held that JCE I requires direct intent while JCE III requires only that an accused was aware that these crimes were a possible consequence of the execution of the common purpose and willingly took the risk that they would be committed (*dolus eventualis*).<sup>12381</sup> For example, in *Stanišić and*

<sup>12375</sup> Case 002/01 Trial Judgement, para. 694; Case 002 Trial Chamber Decision on JCE, para. 16; *Kvočka et al.* Appeal Judgement, para. 110; *Milutinović et al.* Trial Judgement, para. 109 (Volume I). If an accused is not shown to have shared the required discriminatory intent, he may still be liable as an aider and abettor if he knowingly made a substantial contribution to the crime.

<sup>12376</sup> Case 002/01 Appeal Judgement, para. 1053 (“for an accused to be guilty of a crime based on liability under the notion of JCE, his or her *mens rea* must cover, both the ingredients of the crime and those of the mode of liability.”) See also, *Popović et al.* Appeal Judgement, para. 1652; *Brđanin* Appeal Judgement, para. 365.

<sup>12377</sup> KHIEU Samphan Closing Brief, paras 499-504, 2462.

<sup>12378</sup> KHIEU Samphan Closing Brief, paras 452, 459-462, 470, 498.

<sup>12379</sup> KHIEU Samphan Closing Brief, paras 430-431, 449-451, 514. See also, Case 002/01 Appeal Judgement, paras 806-810, 857, 860, 1054, 1062, 1086.

<sup>12380</sup> See e.g., *Tadić* Appeal Judgement, paras 204, 220, 228 (“By contrast, the *mens rea* element differs according to the category of common design under consideration.”); *Blagojević and Jokić* Trial Judgement, para. 703 (“The *mens rea* required for the first and third categories of joint criminal enterprise differs.”); *Vasiljević* Appeal Judgement, para. 101 (“the *mens rea* differs according to the category of joint criminal enterprise under consideration”); *Brđanin* Appeal Judgement, para. 365 (“The *mens rea* required for a finding of guilt differs according to the category of joint criminal enterprise liability under consideration.”).

<sup>12381</sup> *Tadić* Appeal Judgement, para. 228; *Stakić* Appeal Judgement, para. 87. See also, *Mladić* Trial Judgement, paras 3560-3561. See above, para. 3706.

*Simatović*, the ICTY Trial Chamber stated that: “[i]t follows [...] that the first form of the JCE requires intent in the sense of *dolus directus*, and that recklessness or *dolus eventualis* does not suffice”.<sup>12382</sup> In *Karemera and Ngirumpatse*, the ICTR Appeals Chamber stated that: “[t]he question of “foreseeability” relates to the extended form of joint criminal enterprise, not the basic form”.<sup>12383</sup> The ICTY Appeals Chamber confirmed in *Šainović et al.* that the “ability to predict” is an improper *mens rea* standard under JCE I and that the Trial Chamber had correctly required that Šainović “had knowledge of, as opposed to ability to foresee, the commission of crimes and shared the intent for their commission with the other members of the JCE”.<sup>12384</sup>

3715. The Chamber finds that the intent (*dolus eventualis*) that forms part of the definition of JCE III cannot be transposed into JCE I. As JCE III was not part of customary international law during the relevant period of the Closing Order,<sup>12385</sup> indirect intent (*dolus eventualis*) does not suffice for a finding of JCE before the ECCC.<sup>12386</sup> Accordingly, and consistent with the submissions of the KHIEU Samphan Defence, the Chamber finds that the degree of intent required under JCE I is direct intent.

3716. The Co-Prosecutors submit that the *mens rea* for JCE I includes only the two degrees of direct intent: “(i) direct intent that the crime be committed (*dolus directus* of the first degree), and (ii) awareness that the crime will occur in the ordinary course of events, or phrased another way, awareness of a substantial likelihood that it will occur (*dolus directus* of the second degree)”.<sup>12387</sup> While the Chamber agrees that JCE I requires direct intent, it notes that the Co-Prosecutors mischaracterise direct intent of the second degree. Awareness that something will occur is not the same as awareness

<sup>12382</sup> *Stanišić and Simatović* Trial Judgement, para. 1258, fn. 2193.

<sup>12383</sup> *Karemera and Ngirumpatse* Appeal Judgement, paras 564 (“However, as above, the Trial Chamber understands such knowledge and acceptance of the risk that crimes would be committed to be insufficient for the first form of JCE liability.”), 2332.

<sup>12384</sup> *Šainović et al.* Appeal Judgement, paras 1014-1016, 1470 (“The Appeals Chamber recalls that the *mens rea* standard relevant to liability for commission through participation in a JCE is that the accused must share the intent for the commission of the crimes alleged in the Indictment and not merely foresee their occurrence.”).

<sup>12385</sup> See above, para. 3707. See also, Case 002/01 Appeal Judgement, paras 791-807.

<sup>12386</sup> The Trial Chamber observes that the ECCC is in the rare position of employing the mode of liability JCE, while not all three forms of it were part of customary international law during the relevant period of the Closing Order. However, the Chamber sees no reason to deviate from established jurisprudence from the *ad hoc* Tribunals defining JCE I’s *mens rea*.

<sup>12387</sup> Co-Prosecutors’ Closing Brief, para. 227, fn. 641. See also, T. 18 February 2016 (Appeal Hearing), F1/7.1, p. 79.

of the substantial likelihood that something will occur. The words “will occur in the ordinary course of events” require “virtual certainty”, while awareness of a substantial likelihood that something will occur indicates a probable, not a necessary, outcome.<sup>12388</sup> The former standard “implies that ‘the consequence will follow, barring an unforeseen or unexpected intervention that prevent this occurrence’”.<sup>12389</sup> Thus, the standard described by the Co-Prosecutors as *dolus directus* in the second degree is in fact a less than direct degree of intent moving more closely toward the notions of recklessness and *dolus eventualis*.<sup>12390</sup>

### **15.3. Planning**

3717. To be held responsible for planning, an accused, alone or with others, must design criminal conduct constituting or involving a crime later perpetrated.<sup>12391</sup> The plan must precede and substantially contribute to the criminal conduct;<sup>12392</sup> it need not be established that the crime would not have been committed without the accused’s plan.<sup>12393</sup> An accused must intend the commission of a crime; this includes cases where the accused is aware of the substantial likelihood that a crime will be committed upon the execution of the plan.<sup>12394</sup> For specific intent crimes such as persecution and genocide, it must be proved that the accused had the requisite intent.<sup>12395</sup> Finally, the Chamber recalls its finding that planning is a mode of liability which requires a positive act to materialise.<sup>12396</sup>

<sup>12388</sup> *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC Trial Chamber, ICC-01/05-01/13, Judgement, 19 October 2016, para. 29.

<sup>12389</sup> *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC Trial Chamber, ICC-01/05-01/13, Judgement, 19 October 2016, para. 29.

<sup>12390</sup> *Orić* Trial Judgement, paras 277, 279, fn. 773; Case 002/01 Appeal Judgement, para. 1054. *See also*, *Blaškić* Appeals Judgement, paras 41-42; *Kordić and Čerkez* Appeals Judgement, paras 30-32.

<sup>12391</sup> Case 002/01 Trial Judgement, para. 698; Case 001 Trial Judgement, para. 518; *Kordić and Čerkez* Appeal Judgement, para. 26.

<sup>12392</sup> Case 002/01 Trial Judgement, para. 698; Case 001 Trial Judgement, para. 518; *Kordić and Čerkez* Appeal Judgement, para. 26; *Nahimana et al.* Appeal Judgement, fn. 2116.

<sup>12393</sup> *Karadžić* Trial Judgement, para. 571; *Popović et al.* Trial Judgement, para. 1006.

<sup>12394</sup> Case 001 Trial Judgement, para. 519; *Kordić and Čerkez* Appeal Judgement, para. 31; *Nahimana et al.* Appeal Judgement, para. 479; *Karadžić* Trial Judgement, para. 571; *Limaj et al.* Trial Judgement, para. 513.

<sup>12395</sup> *Kalimanzira* Trial Judgement, para. 161.

<sup>12396</sup> *See above*, para. 3703.

**15.4. Instigating**

3718. While the Khmer and French versions of Article 29 of the ECCC Law refer to incitement (“*inciter*”), the notions of instigation and incitement are considered synonymous.<sup>12397</sup>

3719. To be held responsible for instigating, an accused must, through an act or a culpable omission, prompt another to commit a crime and the crime must have been actually perpetrated.<sup>12398</sup> Prompting may be express or implied, and liability may ensue through verbal, written or other non-verbal prompting.<sup>12399</sup> Instigating does not require that an accused have authority over the perpetrator,<sup>12400</sup> distinguishing it from ordering.<sup>12401</sup> The act or omission must precede and substantially contribute to, not merely facilitate, the criminal conduct.<sup>12402</sup> It is, however, not necessary to prove that without such instigation the crime would not have been committed.<sup>12403</sup> An accused must intend the commission of a crime; this includes cases where the accused is aware of the substantial likelihood that a crime will be committed, as a result of the instigation.<sup>12404</sup> For specific intent crimes such as persecution and genocide, it must be proved that the accused had the requisite intent.<sup>12405</sup>

**15.5. Ordering**

3720. Ordering requires that an accused, in a *de facto* (in fact) or *de jure* (in law) position of authority, instruct another person to commit a crime. No formal superior-

<sup>12397</sup> Case 002/01 Trial Judgement, para. 699; *Akayesu* Appeal Judgement, para. 478.

<sup>12398</sup> Case 002/01 Trial Judgement, para. 700; Case 001 Trial Judgement, para. 522; *Ministries* Judgement, p. 576; *Kordić and Čerkez* Appeal Judgement, para. 27; *Dorđević* Trial Judgement, para. 1870; *Milutinović et al.* Trial Judgement, para. 83 (Volume I); *Brdanin* Trial Judgement, para. 269; *Blaškić* Trial Judgement, para. 280; *Karadžić* Trial Judgement, para. 572.

<sup>12399</sup> Case 002/01 Trial Judgement, para. 700; Case 001 Trial Judgement, para. 522; *Orić* Trial Judgement, paras 271-273.

<sup>12400</sup> Case 002/01 Trial Judgement, para. 700; Case 001 Trial Judgement, para. 522; *Orić* Trial Judgement, paras 271-273.

<sup>12401</sup> See below, para. 3720. See also, *Strugar* Trial Judgement, para. 332.

<sup>12402</sup> Case 002/01 Trial Judgement, para. 700; Case 001 Trial Judgement, para. 522; *Nuremberg* Judgement, pp. 336-338 (acquitting a defendant, in part, on the basis that the incitement was not sufficiently direct or unequivocal); *Kordić and Čerkez* Appeal Judgement, para. 27; *Nahimana et al.* Appeal Judgement, fn. 2116.

<sup>12403</sup> *Karadžić* Trial Judgement, para. 572; *Kordić and Čerkez* Appeal Judgement, para. 27.

<sup>12404</sup> Case 002/01 Trial Judgement, para. 700; Case 001 Trial Judgement, para. 524; *Nuremberg* Judgement, pp. 303 (noting that the accused received current information of the progress of the final solution and “continued to write and publish his propaganda of death”), 338; *Kordić and Čerkez* Appeal Judgement, para. 32; *Nahimana et al.* Appeal Judgement, para. 480.

<sup>12405</sup> *Nchamihigo* Appeal Judgement, para. 61; *Kalimanzira* Trial Judgement, para. 161.



subordinate relationship between the two is required.<sup>12406</sup> Responsibility may ensue where an accused issues, passes down or otherwise transmits an order, including through intermediaries.<sup>12407</sup> There is no requirement that an order be given in any particular form and the existence of an order may be proved through circumstantial evidence.<sup>12408</sup> The order must precede and substantially contribute to the commission of a crime.<sup>12409</sup> It need not be proved that without the order the crime would not have been committed.<sup>12410</sup> An accused must intend the commission of a crime; this includes cases where the accused is aware of the substantial likelihood that the execution of the order will result in the commission of a crime.<sup>12411</sup> For specific intent crimes such as persecution and genocide, it must be proved that the accused had the requisite intent.<sup>12412</sup> Finally, the Chamber recalls its finding that ordering is a mode of liability which requires a positive act to materialise.<sup>12413</sup>

### **15.6. Aiding and Abetting**

3721. The Chamber notes that the French version of Article 29 (new) of the ECCC Law equates “aiding and abetting” with the notion of “*complicité*”. While the two share some common features, the Chamber has already determined that the phrase “*aidé et encouragé*” more clearly reflects the nature of aiding and abetting liability in customary international law and accords with the English and Khmer versions of the ECCC Law.<sup>12414</sup>

<sup>12406</sup> Case 002/01 Trial Judgement, para. 702; Case 001 Trial Judgement, para. 527; *RuSHA* Judgement, p. 106; *Einsatzgruppen* Judgement, pp. 487-488; *Kordić and Čerkez* Appeal Judgement, para. 28.

<sup>12407</sup> Case 002/01 Trial Judgement, para. 702; Case 001 Trial Judgement, para. 527; *High Command* Judgement, pp. 616-617 (those transmitting orders may be responsible if the order is criminal on its face or may be applied in a criminal manner and the order is not transmitted subject to the necessary clarification or safeguard).

<sup>12408</sup> Case 002/01 Trial Judgement, para. 702; Case 001 Trial Judgement, para. 527; *Kamuhanda* Appeal Judgement, para. 76.

<sup>12409</sup> Case 002/01 Trial Judgement, para. 702; Case 001 Trial Judgement, para. 527; *High Command* Judgement, p. 683 (considering that officers drafting orders based upon the overall directives and ideas of the commander may be responsible if they demonstrate some initiative, as opposed to “merely transcrib[ing]”).

<sup>12410</sup> *Karadžić* Trial Judgement, para. 573; *Strugar* Trial Judgement, para. 332.

<sup>12411</sup> Case 002/01 Trial Judgement, para. 702; Case 001 Trial Judgement, para. 528; *High Command* Judgement, p. 511; *Blaškić* Appeal Judgement, paras 41-42; *Nahimana et al.* Appeal Judgement, para. 481.

<sup>12412</sup> *Kalimanzira* Trial Judgement, para. 161.

<sup>12413</sup> See above, para. 3703.

<sup>12414</sup> Case 001 Trial Judgement, para. 532; Case 002/01 Trial Judgement, para. 703.

3722. An aider and abettor must provide practical assistance, encouragement or moral support which has a substantial effect on the commission of a crime that is in fact committed.<sup>12415</sup> No evidence of a plan or agreement between the aider or abettor and the perpetrator is required.<sup>12416</sup> To be found guilty for aiding and abetting, an accused must know that a crime would likely be committed and that his conduct assists or facilitates the commission of a crime.<sup>12417</sup> Furthermore, an accused must be aware of the essential elements of the crime committed by the perpetrator, but need not share the perpetrator's intent to commit the crime, including the specific intent to commit crimes such as persecution and genocide.<sup>12418</sup>

3723. The ICTY Appeals Chamber has expressly held “that the *actus reus* of aiding and abetting a crime may occur before, during or *after* the principal crime has been perpetrated”.<sup>12419</sup> The Trial Chamber considers that the ICTY approach reflects an understanding that an offer, made before or during the commission of a crime, of assistance to be provided after the fact, may encourage or morally support the perpetrator and thereby have a substantial effect on the commission of a crime.<sup>12420</sup> This approach also appears to have been favoured in certain post-World War II jurisprudence.<sup>12421</sup> This Chamber finds that the overarching requirement is that assistance, encouragement or moral support must have a substantial effect on the commission of a crime.<sup>12422</sup> Therefore, in the absence of any form of prior assistance,

<sup>12415</sup> Case 002/01 Trial Judgement, para. 704; Case 001 Trial Judgement, paras 528, 533; *Flick* Judgement, p. 1217 (“One who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes”); *Justice* Judgement, p. 1118; *Schonfeld* Trial, pp. 64, 70 (giving “additional confidence to his companions”); *Blaškić* Appeal Judgement, paras 45-46, 48.

<sup>12416</sup> Case 002/01 Trial Judgement, para. 704; Case 001 Trial Judgement, para. 534; *Tadić* Appeal Judgement, para. 229.

<sup>12417</sup> Case 002/01 Trial Judgement, para. 704; Case 001 Trial Judgement, paras 534-535; *Einsatzgruppen* Judgement, p. 569 (“in locating, evaluating and turning over lists of Communist party functionaries to the executive department of his organization he was aware that the people listed would be executed when found”); *Blaškić* Appeal Judgement, paras 45-50.

<sup>12418</sup> Case 002/01 Trial Judgement, para. 704; Case 001 Trial Judgement, para. 535; *Blagojević and Jokić* Appeal Judgement, para. 127; *Seromba* Appeal Judgement, para. 65.

<sup>12419</sup> Case 002/01 Trial Judgement, para. 712; *Blaškić* Appeal Judgement, para. 48 (emphasis added).

<sup>12420</sup> Case 002/01 Trial Judgement, para. 712; *Furundžija* Trial Judgement, para. 230; *Aleksovski* Trial Judgement, para. 62. *See also*, *Brđanin* Appeal Judgement, para. 277 (“encouragement and moral support can only form a substantial contribution to a crime when the principal perpetrators are aware of it”). The Chamber notes that the *Blagojević* Trial Chamber “required for *ex post facto* aiding and abetting that at the time of the planning, preparation or execution of the crime, a prior agreement exist[ed] between the principal and the [aider and abettor]” (*Blagojević and Jokić* Trial Judgement, para. 731). This approach was not endorsed by the ICTY Appeals Chamber.

<sup>12421</sup> *Schonfeld* Trial, p. 70; *Rohde* Trial, p. 56.

<sup>12422</sup> Case 002/01 Trial Judgement, paras 704, 713.

encouragement or moral support, assistance provided exclusively after the time of perpetration cannot satisfy such requirement. It is only when a substantial effect occurs that the necessary causal link exists.<sup>12423</sup> The Chamber need not identify in the abstract all conduct that may have a substantial effect on the commission of a crime. Rather, this is a matter of evidence to be assessed on a case-by-case basis.<sup>12424</sup> The Chamber also finds that the *actus reus* of aiding and abetting does not require proof of “specific direction”.<sup>12425</sup>

3724. Finally, the Chamber finds that customary international law, as set out in post-World War II jurisprudence and later clarified by *ad hoc* Tribunal jurisprudence, foresees that an accused may be held criminally liable for a culpable omission which aids and abets the commission of a crime.<sup>12426</sup> Whether an omission aids or abets a crime is a matter to be determined on a case-by-case basis.<sup>12427</sup> This determination will depend on the position and authority of an accused.<sup>12428</sup>

### **15.7. Superior Responsibility**

3725. For a superior to be held responsible for the criminal conduct of his subordinates, there must first be a superior-subordinate relationship between an accused and the person who committed the crime. Superior responsibility, applicable to both military and civilian superiors, may ensue on the basis of both direct and indirect relationships of subordination.<sup>12429</sup> The superior must have exercised effective control over the perpetrator, in the sense of possessing the material ability to prevent or punish the crimes.<sup>12430</sup> Whether a superior had effective control is a matter of evidence, not

<sup>12423</sup> Case 002/01 Trial Judgement, paras 708-710, 713.

<sup>12424</sup> Case 002/01 Trial Judgement, para. 713; *Taylor* Appeal Judgement, para. 475; *Blagojević and Jokić* Appeal Judgement, para. 134.

<sup>12425</sup> Case 002/01 Trial Judgement, paras 707-710; *Šainović et al.* Appeal Judgement, paras 1649, 1651.

<sup>12426</sup> See e.g., *Einsatzgruppen* Judgement, p. 572; *Essen Lynching* Trial, p. 90; *Mrkšić and Šljivančanin* Appeal Judgement, para. 49; *Brđanin* Appeal Judgement, para. 277; *Orić* Appeal Judgement, para. 43; *Popović et al.* Trial Judgement, para. 1019. See above, para. 3703. See also, Case 002/01 Trial Judgement, para. 706; Section 9.1: Applicable Law: Crimes: Crimes Against Humanity, paras 627, 708.

<sup>12427</sup> Case 002/01 Trial Judgement, para. 706; *Taylor* Appeal Judgement, para. 475; *Blaškić* Appeal Judgement, para. 47.

<sup>12428</sup> Case 002/01 Trial Judgement, para. 706; *Einsatzgruppen* Judgement, pp. 572 (omissions of a person in a high position of authority may encourage an accused to commit a crime), 585 (acquitting an accused considering his low position and that he was not “in a position to protest”); *Essen Lynching* Trial, p. 90; *Orić* Appeal Judgement, para. 42.

<sup>12429</sup> Case 001 Trial Judgement, para. 542; Case 002/01 Trial Judgement, paras 715, 721.

<sup>12430</sup> Case 002/01 Trial Judgement, para. 715; ECCC Law, Article 29 (new); Case 001 Trial Judgement, paras 540-542; ECCC Law, Article 29 (new); *Delalić et al.* Appeal Judgement, paras 191-192, 198, 206, 252.

law, and thus must be assessed on a case-by-case basis.<sup>12431</sup> Second, the superior must have known, or have had reason to know, that a crime was about to be or had been committed by his subordinate.<sup>12432</sup> The superior must have knowledge that his subordinate committed a crime and not simply knowledge of the occurrence of a crime.<sup>12433</sup> A superior has reason to know that a crime has been, or was about to be, committed where he possessed information sufficiently alarming to justify further enquiry.<sup>12434</sup> However, this information need not provide specific details about the unlawful acts committed or about to be committed.<sup>12435</sup>

3726. Finally, a superior must have failed to take the necessary and reasonable measures to prevent the crime or punish the perpetrator.<sup>12436</sup> Necessary measures are those appropriate for a superior to discharge his obligation, showing a genuine effort to prevent or punish. Reasonable measures are those reasonably falling within the material power of a superior. Necessary and reasonable measures must be considered on a case-by-case basis.<sup>12437</sup> The failure to prevent and the failure to punish arise at different points in time: a superior's responsibility to prevent a crime arises prior to its commission, while the responsibility to punish a perpetrator arises after the commission of a crime.<sup>12438</sup> In customary international law, as it existed by 1975, there was no prerequisite that a superior have a duty to act recognised in domestic law.<sup>12439</sup>

<sup>12431</sup> Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, para. 459; *Blaškić* Appeal Judgement, para. 69.

<sup>12432</sup> Case 002/01 Trial Judgement, para. 715; ECCC Law, Article 29 (new); Case 001 Trial Judgement, paras 543-544. *See also*, *RuSHA* Judgement, p. 106; *High Command* Judgement, p. 545; *Hostage* Judgement, pp. 1230, 1271 (a superior "may require adequate reports of all occurrences that come within the scope of his power [...] If he fails to require and obtain complete information, the dereliction of duty rests upon him and he is in no position to plead his own dereliction as a defence"), 1281 ("He cannot close his eyes to what is going on around him and claim immunity from punishment because he did not know that which he is obliged to know"); *Toyoda* Judgement, p. 5006 (a superior may be responsible if "knew or should have known by use of reasonable diligence"); *Delalić et al.* Appeal Judgement, paras 228-241.

<sup>12433</sup> Case 002/01 Trial Judgement, para. 715; Case 001 Trial Judgement, para. 543; *Orić* Appeal Judgement, paras 57-59.

<sup>12434</sup> Case 002/01 Trial Judgement, para. 715; Case 001 Trial Judgement, para. 544; *Hadžihasanović and Kubura* Appeal Judgement, para. 28.

<sup>12435</sup> *Čelebići* Appeal Judgement, para. 238; *Galić* Appeal Judgement, para. 184.

<sup>12436</sup> Case 002/01 Trial Judgement, para. 716; ECCC Law, Article 29 (new); Case 001 Trial Judgement, paras 545-547; *Einsatzgruppen* Judgement, pp. 485-486.

<sup>12437</sup> Case 002/01 Trial Judgement, para. 716; Case 001 Trial Judgement, para. 545; *Halilović* Appeal Judgement, para. 63.

<sup>12438</sup> Case 002/01 Trial Judgement, para. 716; Case 001 Trial Judgement, para. 546; *Hadžihasanović and Kubura* Appeal Judgement, paras 40 (a causal link between the failure to punish and the crime is not required), 259-260.

<sup>12439</sup> Case 002/01 Trial Judgement, para. 720; Case 001 Trial Judgement, para. 477; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011, para. 459.

## 16.COMMON PURPOSE

### 16.1. Closing Order

3727. According to the Closing Order, the common purpose of the CPK leaders was to “implement rapid socialist revolution in Cambodia through a ‘great leap forward’ and defend the Party against internal and external enemies, by whatever means necessary”.<sup>12440</sup> The Closing Order charges that the common purpose, which was in existence on or before 17 April 1975 and continued until at least 6 January 1979, was shared, among others, by members of the CPK Standing Committee, including NUON Chea and IENG Sary; members of the CPK Central Committee, including KHIEU Samphan; heads of CPK ministries, including IENG Thirith; zone and autonomous sector secretaries; and heads of the Party Centre military divisions.<sup>12441</sup>

3728. As limited to Case 002/02, the Closing Order charges that a plurality of persons designed, contributed to and implemented the following policies during the DK period in order to achieve the above common purpose:

1. The repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another, implementation limited to the treatment of the Cham during the movement of the population out of the Central (old North), Southwest, West and East Zones “from the latter part of 1975 until some time in 1977” (MOP Phase Two);<sup>12442</sup>
2. The establishment and operation of cooperatives and worksites, implementation limited to the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam and Kampong Chhnang Airfield Construction Site;<sup>12443</sup>

<sup>12440</sup> Closing Order, paras 156, 158, 1524, 1528. Regarding the term “by whatever means necessary”, see below, para. 3864.

<sup>12441</sup> Closing Order, paras 158, 159, 895-901, 903-993, 1153-1199, 1528, 1529, 1532-1533, 1536-1537.

<sup>12442</sup> Case 002 Additional Severance Decision Annex, paras 2(i), 3(i); Closing Order, paras 157, 160-163, 165, 167.

<sup>12443</sup> Case 002 Additional Severance Decision Annex, paras 2(ii), 3(ii)-(v); Closing Order, paras 157, 168-177 (generally), 302-321 (Tram Kak Cooperatives), 323-349 (Trapeang Thma Dam Worksite), 351-367 (1<sup>st</sup> January Dam Worksite), 383-398 (Kampong Chhnang Airfield Construction Site).

3. The re-education of “bad elements” and killing of “enemies”, both inside and outside CPK ranks as it relates to the establishment and operation of security centres and execution sites and within the context of internal purges, implementation limited to S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre;<sup>12444</sup>
4. The targeting of specific groups, including the Cham and Vietnamese (implementation limited to the relevant geographic and temporal scopes identified below);<sup>12445</sup> Buddhists (implementation limited to the Tram Kak Cooperatives);<sup>12446</sup> and former officials of the Khmer Republic, including both civil servants and military personnel and their families (implementation limited to Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre);<sup>12447</sup> and
5. The regulation of marriage, nationwide implementation.<sup>12448</sup>

3729. The Co-Prosecutors submit that the CPK’s policies broadly served to enslave the population and persecute and kill enemies “on an industrial scale”. They submit that the policies constituted a “common plan” which was criminal in nature and which led to the commission of crimes, including extrajudicial killings, imprisonment, forced transfers, enslavement, persecution of various groups, forced marriage and sexual crimes.<sup>12449</sup>

<sup>12444</sup> Case 002 Additional Severance Decision Annex, paras 2(iii), 3(vi)-(ix); Closing Order, paras 157, 178-203 (generally), 415-474 (S-21 Security Centre), 489-514 (Kraing Ta Chan Security Centre), 589-623 (Au Kanseng Security Centre), 625-642 (Phnom Kraol Security Centre).

<sup>12445</sup> For the Cham, *see* Case 002 Additional Severance Decision Annex, paras 2(iv)(a), 3(xi); Closing Order, paras 157, 205-207, 211-212 (generally), 745-770, 776-789 (implementation). *See below*, Section 16.4.3.1: Cham. For the Vietnamese, *see* Case 002 Additional Severance Decision Annex, paras 2(iv)(b), 3(xii); Closing Order, paras 157, 205-207, 213-215 (generally), 791-831 (implementation). *See below*, Section 16.4.3.2: Vietnamese.

<sup>12446</sup> Case 002 Additional Severance Decision Annex, paras 2(iv)(c), 3(x); Closing Order, paras 157, 205-207, 210 (generally), 740-743 (implementation).

<sup>12447</sup> Case 002 Additional Severance Decision Annex, para. 2(iv)(d); Closing Order, paras 157, 205-209 (generally).

<sup>12448</sup> Case 002 Additional Severance Decision Annex, para. 2(v), 3(xiii); Closing Order, paras 157, 216-220 (generally), 842-860 (implementation).

<sup>12449</sup> Co-Prosecutors’ Closing Brief, paras 256, 261-267.

3730. The NUON Chea Defence submits that, even if an agreement to implement rapid socialist revolution through a “great leap forward” and to defend the country against enemies could be established, that common purpose was not criminal and did not lead to the commission of crimes in its implementation. It further submits that the evidence demonstrates the diametrically opposing purposes of senior CPK leaders, which militates against a finding of a plurality of persons acting in concert in the furtherance of a common purpose.<sup>12450</sup>

3731. The KHIEU Samphan Defence does not advance any submissions regarding the common purpose.<sup>12451</sup> On the basis of the Defence team’s submissions with respect to the policies underlying the charged common purpose,<sup>12452</sup> however, the Chamber interprets the KHIEU Samphan Defence to be challenging the inherent criminality of the common purpose or resultant crimes in line with its understanding of the law applicable to joint criminal enterprise.

3732. In addressing the above submissions, the Chamber will first turn to the existence of a common purpose as charged by the Closing Order before examining the “policies” pursuant to which the common purpose is charged to have been implemented. Finally, the Chamber will consider whether the crimes established at the crime base (as delimited by the Severance Decision) are attributable to the relevant policy and were therefore perpetrated in furtherance or implementation of the common purpose. The individual criminal responsibility of each Accused will be considered in the following sections.<sup>12453</sup>

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<sup>12450</sup> NUON Chea Closing Brief, paras 355-376.

<sup>12451</sup> KHIEU Samphan Closing Brief, paras 2452-2468 (*see* para. 2455: “Parce que KHIEU Samphân a été condamné définitivement dans 002/01 pour sa participation au régime du KD, il ne se fait aucune illusion sur l’issue de 002/02. S’il ne cessera jamais de contester les conclusions de la Chambre et de la Cour suprême sur son rôle et sur sa contribution aux crimes objet de 002/01, il ne voit aucun intérêt à développer dans 002/02 les arguments qu’il a constamment avancés et qui ne seront jamais entendus par les CETC.”).

<sup>12452</sup> *See e.g.*, KHIEU Samphan Closing Brief, paras 1147-1174 (establishment of worksites, cooperatives and the movement of populations), 1461-1486 (establishment of security centres), 1522-1526 (Buddhists), 1840-1877 (Cham), 2207-2257 (Vietnamese), 2306-2318 (Khmer Republic officials and soldiers), 2428-2439 (regulation of marriage).

<sup>12453</sup> Section 17: The Criminal Responsibility of NUON Chea; Section 18: The Criminal Responsibility of KHIEU Samphan.

**16.2. Development of the Common Purpose****16.2.1. 1930 – 17 April 1975: *The Road to Socialist Revolution***

3733. The intention by CPK leaders to initiate socialist revolution in Cambodia predated the 17 April 1975 “liberation” of Phnom Penh, and therefore the ECCC’s temporal jurisdiction. The Chamber incorporates by reference the relevant paragraphs of Section 3: Historical Background detailing the development of the common purpose between January 1930 and 17 April 1975.<sup>12454</sup>

**16.2.2. 17 April 1975 – 6 January 1979: *The Socialist Revolution***

3734. On the morning of 17 April 1975, CPK forces entered Phnom Penh under the banner of the Cambodian People’s National Liberation Armed Forces (“CPNLAF”).<sup>12455</sup> KHIEU Samphan attributed this success to the “correct political line of our Revolutionary Organisation, notably the line of independence, sovereignty, self-reliance and being master[s] of our own destiny”.<sup>12456</sup> As demonstrated in this section, senior CPK leaders including NUON Chea and KHIEU Samphan continued to support and promote this line as the basis of the Party’s socialist revolution ultimately waged throughout the entire DK period.

3735. Between 25 and 27 April 1975, KHIEU Samphan reportedly chaired a Special National Congress, which resolved that FUNK/GRUNK structures would temporarily be maintained and emphasised that no foreign military bases would be tolerated in Cambodia. It further declared the new government’s commitment to the construction of a classless society, free from exploitation, in which all would strive to build and defend the country.<sup>12457</sup> Although it is unclear to the Chamber whether this congress

<sup>12454</sup> Section 3: Historical Background, paras 196-204, 206, 208-210, 212, 214-215, 220-223, 226-227, 229-230, 233, 235.

<sup>12455</sup> Section 3: Historical Background, para. 235.

<sup>12456</sup> Speech by KHIEU Samphan at the Fifth Summit Conference of Non-Aligned Countries, E3/549, 16-19 August 1976, p. 14, ERN (En) 00644938.

<sup>12457</sup> POL Pot Interview by Yugoslavian Journalists, E3/5713, 20 March 1978, ERN (En) 00750098 (POL Pot states that, during the Special National Congress, the CPK noted the desire to build an equal, classless society devoid of exploitation “in which everyone strives to increase production and to defend the country”); *Cambodia Holds ‘Special Congress’* (The Guardian), E3/3722, 21 May 1975, ERN (En) S00003467 (reporting that the Special National Congress unanimously adopted a communiqué endorsing the creation of an independent, sovereign, non-aligned state in which “the exploiting and exploited strata no longer exist”).



actually took place,<sup>12458</sup> it is satisfied that the reported resolution represented the political line espoused by the CPK at the time.

3736. Over the course of about 10 days in May 1975, Central Committee members including POL Pot, NUON Chea, KHIEU Samphan and zone secretaries met at the Silver Pagoda, located within the Royal Palace compound in Phnom Penh. During this time, reasons justifying the evacuations of the cities were provided by the Party leadership and priority was given to the need to rapidly build and defend the country through the creation of cooperatives and the construction of dams and canals.<sup>12459</sup> Thereafter, between approximately 20 and 25 May 1975, the Party leadership convened a series of mass education sessions before tens of thousands of cadres in Phnom Penh to convey the CPK's platform for leading the country. POL Pot, NUON Chea, KHIEU Samphan, IENG Thirith, SON Sen, *Ta* Mok and others attended at least one meeting at the Olympic Stadium, Borei Keila and/or the Khmer-Soviet Technical Institute during this time.<sup>12460</sup> POL Pot, NUON Chea and others specifically instructed representatives from all military units and all district, sector and zone secretaries on the organisation of cooperatives, the elimination of private property, the prohibition of currency and markets, and the building of dams and canals.<sup>12461</sup> Speakers further identified several

<sup>12458</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 593.

<sup>12459</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 20-21 (the Central Committee met in April or May at the Silver Pagoda, where POL Pot announced the commencement of the socialist revolution and indicated the end of the united front. Land was to become collective property and dams and canals had to be built quickly); KHIEU Samphan Interview Record, E3/27, 13 December 2007, p. 9, ERN (En) 00156749 (explanations for the evacuation of Phnom Penh were given at a meeting in the Silver Pagoda); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 69-71 (for about ten days in May 1975 at the Silver Pagoda, zone leaders attended study sessions. POL Pot and NUON Chea led the meetings, summarising the situation and outlining plans for the socialist revolution including building and defending the country and establishing cooperatives).

<sup>12460</sup> The Chamber attributes the differing accounts to the size, duration, timing and importance of these seminars and accepts that several meetings, seminars or rallies were held during this time.

<sup>12461</sup> T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 24-25, 27-28, 30-35, 44-46, 57-58, 60-61 (SAO Sarun was present at a meeting lasting three days in Phnom Penh; held not long after the liberation of Phnom Penh (around 10 days after 17 April 1975). He was instructed to attend by the sector. There were people from all over the country representing the sectors, as well as the military. POL Pot and NUON Chea lectured that the country had been liberated and the people had to be led to farm rice so that starvation could be avoided. They discussed political matters, the organisation of cooperatives, the prohibition of currency, the closing of the markets, private property, building irrigation systems and the closing of monasteries); T. 11 June 2012 (SAO Sarun), E1/84.1, pp. 51-52 (participants were told to explain the content of the meeting to their bases); T. 12 June 2012 (SAO Sarun), E1/85.1, p. 71 (confirming that POL Pot spoke); T. 12 December 2012 (PHAN Van *alias* KHAM Phan), E1/152.1, pp. 35-37 (rally held outside the Olympic Stadium in May 1975 involving tens of thousands of participants from all over the country); T. 11 December 2012 (PHAN Van *alias* KHAM Phan), E1/151.1, pp. 93-94 (PHAN Van *alias* KHAM Phan's father attended meetings at the time of Khmer New Year and in May 1975 in Phnom Penh); T. 19 January 2016 (PRAK Yut) (CS), E1/378.1, pp. 86-90 (recalling POL Pot, *Ta* Mok and SAO Phim and adding that it was POL Pot who spoke); T. 20 January 2016 (PRAK Yut), E1/379.1, pp. 21-22

categories of enemy and instructed cadres on their treatment. This is discussed elsewhere in this Judgement.<sup>12462</sup>

3737. On 9 October 1975, the Standing Committee convened to assign governmental responsibilities to POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, KOY Thuon, SON Sen and VORN Vet, among others.<sup>12463</sup> POL Pot reaffirmed that the “general line is to build and defend the country [...] on the force of the masses”.<sup>12464</sup>

3738. The new Constitution of Democratic Kampuchea, which came into effect on 5 January 1976, entrenched this general line. Reaffirming the resolutions adopted at the Special National Congress in April 1975, the Constitution declared DK to be a “State of the people, workers, peasants, and all other Kampuchean labourers” which “absolutely opposed to the corrupt, reactionary culture of the various oppressive classes and that of colonialism and imperialism”.<sup>12465</sup> During the Fourth Party Congress in January 1976, the Party leadership adopted a slightly amended CPK Statute which

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(recalling 300 participants at one event); T. 21 January 2016 (PRAK Yut) (CS), E1/380.1, pp. 66-67; CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651865-00651867 (a national meeting lasting 5 days was held in Phnom Penh on 20 May 1975 with secretaries of every district, region and zone in attendance. NUON Chea spoke on the first day; POL Pot spoke on the second. The agenda of the meeting included the party line and the principles of building socialism in DK. In ten to 15 years, the Party planned to modernise agriculture by means of scientific methods, by preparing irrigation dams and canals, and to modernise industry. POL Pot and NUON Chea spoke about eight points including the creation of cooperatives, the closure of markets and the abolition of money); HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651880 (on 20 May 1975, there was a meeting at the Olympic Stadium to receive a plan from the Party Centre for the whole country, attended by both military and civilian officials. The plan concerned the evacuation of people and the non-circulation of money). *See also*, T. 16 July 2013 (Stephen HEDER), E1/224.1, pp. 103-104 (those he interviewed indicated that there was more than one meeting in more than one place and attended by “not entirely overlapping groups of people”); OUK Bunchhoeun Interview by Stephen HEDER, E3/387, undated, pp. 7-11, ERN (En) 00350206-00350210; HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651883-00651885; CHEA Sim Interview by Ben KIERNAN, E3/1568, 3 December 1991, ERN (En) 00651865-00651866.

<sup>12462</sup> For the identification of general categories of enemies, *see below*, paras 3942-3943. For the treatment of Buddhists, *see* Section 10.1.9: Tram Kak Cooperatives: Treatment of Buddhists. For the treatment of Khmer Republic soldiers and officials, *see below*, para. 4038. *See also*, Section 10.1.6.3: Tram Kak Cooperatives, Instructions in relation to Evacuees and former Khmer Republic Officials. For the treatment of the Vietnamese, *see* Section 13.3.5: Targeting of the Vietnamese. For the treatment of the Cham, *see* Section 13.2: Treatment of the Cham.

<sup>12463</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, ERN (En) 00183393-00183394, 00183402. *See also*, Section 5: Administrative Structures, para. 396.

<sup>12464</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, 13, ERN (En) 00183393-00183394, 00183405.

<sup>12465</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184833-00184835 (Preamble (reaffirming the desire for an independent, sovereign and equal society “without rich or poor and without exploiters or [the] exploited”, in which all people “join forces to do manual labour together and increase production for the construction and defence of the country”), Articles 1 (“The State of Kampuchea is a State of the people, workers, peasants, and all other Kampuchean labourers”), 3 (“The culture of Democratic Kampuchea [...] will serve the tasks of defending and building Kampuchea into an ever more prosperous country”). *See also*, Section 5: Administrative Structures, para. 412.

reinforced the need to continue taking major strides in the socialist revolution by implementing Marxism-Leninism with the aim of moving toward communism in the future; building and defending the country; continuing the class struggle against non-proletarian world views, the petty bourgeoisie, capitalists, feudalists, imperialists and all reactionaries; and rapidly striving toward prosperity pursuant to the principles of independence and self-reliance. It also declared the CPK as the highest organisation of the peasants and army.<sup>12466</sup> The political line was further echoed in the CPK Youth League Statute, also adopted in early 1976.<sup>12467</sup>

3739. On 30 March 1976, the CPK Central Committee declared all state organisations, including the government, subordinate to the Party. It also designated national holidays and celebrations, including independence celebrations (15-17 April), intended to incite “resolution to build and defend the country in a great miraculous leap”.<sup>12468</sup> The objective of achieving a “great and magnificent leap” was again promoted by KHIEU Samphan at the first session of the People’s Representative Assembly, held between 11 and 13 April 1976. At the meeting, which was attended by POL Pot, NUON Chea, IENG Thirith and other CPK leaders, KHIEU Samphan endorsed the priority of building and defending an independent and self-reliant country quickly while continuing the class struggle against imperialism, colonialism and other “oppressor classes”.<sup>12469</sup> The Assembly also unanimously resolved to mobilise “the entire people” to maximise rice production “ever higher and ever faster” to build the country “in a great and miraculous leap”.<sup>12470</sup> The need to be “on the offensive” and make a “great leap forward” rapidly to achieve socialist goals was further promoted throughout the

<sup>12466</sup> CPK Statute, E3/130 [E3/214], January 1976, ERN (En) 00184024-00184025 (Articles 1-5).

<sup>12467</sup> Statute of the Communist Youth League of Kampuchea, E3/1607, January 1976, ERN (En) 00574535-00574537 (Articles 2, 4-11).

<sup>12468</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, pp. 4-6, ERN (En) 00182812-00182814 (noting that state organisations are “totally of our Party” and that the government “must be totally an organisation of the Party, directly of our state”). *See also*, Section 5: Administrative Structures, paras 412-414.

<sup>12469</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, pp. 5-9, ERN (En) 00184052-00184056. The Chamber has already found that the elections, as well as the PRA itself, were a façade. *See* Section 5: Administrative Structures, para. 413; Section 7: Roles and Functions – NUON Chea, para. 537.

<sup>12470</sup> Document on Conference of Legislature, E3/165, 11-13 April 1976, pp. 24, ERN (En) 00184071 (“After careful discussion of all matters raised in the agenda, the Assembly made the following unanimous decisions”), 29, ERN (En) 00184076 (“Further strengthen and expand the force of great national solidarity and the entire people to be on the offensive on every battlefield of production in every sector, especially in agriculture, aiming to produce the maximum amount of rice to solve and raise the livelihood of the people ever higher and ever faster, and along with this to push the building of our country even faster in a great and miraculous leap.”).

DK period in the *Revolutionary Flag* and *Revolutionary Youth* magazines,<sup>12471</sup> and was internally endorsed by Standing Committee members.<sup>12472</sup> POL Pot, NUON Chea, KHIEU Samphan and other senior leaders further lectured cadres at mass study sessions on the need to work harder, “eat less” and “rest less” and fulfil the Party’s goals “at all costs”.<sup>12473</sup>

3740. The Standing Committee continued to meet regularly throughout the DK period to discuss the implementation of the Party’s political line and administration of the country.<sup>12474</sup> Senior CPK leaders who were not members of the Standing Committee,

<sup>12471</sup> See e.g., *Revolutionary Youth*, E3/146, August-September 1974, pp. 10-11, ERN (En) 00538741-00538742; *Revolutionary Flag*, E3/5, August 1975, pp. 2, 12, 20, 29, ERN (En) 00401477, 00401487, 00401495, 00401504; *Revolutionary Youth*, E3/728, September 1975, pp. 6-7, ERN (En) 00773401-00773402; *Revolutionary Flag*, E3/166, February-March 1976, pp. 22-25, 34-36, ERN (En) 00517834-00517836, 00517846-00517848; *Revolutionary Youth*, E3/733, May 1976, ERN (En) 00184256; *Revolutionary Flag*, E3/760, June 1976, p. 25, ERN (En) 00509628; *Revolutionary Flag*, E3/762, August 1976, pp. 3-9, ERN (En) 00486744-00486750; *Revolutionary Youth*, E3/755, September 1976, pp. 21-22, ERN (En) 00509656-00509657; *Revolutionary Youth*, E3/758, December 1976, p. 31, ERN (En) 00544887; *Revolutionary Flag*, E3/135, June 1977, pp. 28-29, ERN (En) 00446873-00446874; *Revolutionary Flag*, E3/743, July 1977, pp. 3-4, ERN (En) 00476158-00476159; *Revolutionary Youth*, E3/772, September 1977, pp. 16-23, ERN (En) 00541715-00541722; *Revolutionary Flag*, E3/4604, April 1978, pp. 18-19, ERN (En) 00519846-00519847; *Revolutionary Flag*, E3/746, July 1978, pp. 3, 7, ERN (En) 00428291, 00428295; *Revolutionary Flag*, E3/215, September 1978, p. 24, ERN (En) 00488637; *Revolutionary Youth*, E3/766, November 1978, p. 12, ERN (En) 00524173.

<sup>12472</sup> See e.g., Standing Committee Minutes, E3/228, 9 January 1976, p. 3, ERN (En) 00182616 (unaccredited speaker); Standing Committee Minutes, E3/224, 30 May 1976, p. 1, ERN (En) 00182667 (by POL Pot, with NUON Chea, KHIEU Samphan, VORN Vet and SON Sen in attendance).

<sup>12473</sup> T. 23 August 2012 (EM Oeun), E1/113.1, pp. 80-83 (training session at Borei Keila which stressed the importance of a “great leap forward” at which POL Pot, NUON Chea, KHIEU Samphan, HU Nim and YUN Yat were present); T. 27 August 2012 (EM Oeun), E1/115.1, pp. 28 (stating KHIEU Samphan and NUON Chea were present), 31-32, 45-46 (KHIEU Samphan indicated that, “to uncover the traitors of the Revolution and the infiltrated enemies, we were asked to understand the -- how to work more, eat less, rest less”), 47 (cadres urged to accomplish *Angkar*’s directions “at all costs”); T. 20 September 2012 (CHEA Say), E1/124.1, pp. 29-34, 71 (NUON Chea and KHIEU Samphan lectured on “the economisation and on strengthening or working hard”, including “working hard to build the country”); T. 3 July 2013 (EK Hen), E1/217.1, pp. 42-44 (study session “started with [KHIEU Samphan] explaining and instructing the workers to strive harder in our work in order to assist our country. [...] He did not want us to argue [with] each other, but rather to consolidate and strive to work hard to build the country, as the war had just ended.”). See also, T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, pp. 76-78 (KHIEU Samphan and NUON Chea were among the presenters who taught “how to follow the principle of national democratic revolution and the organisational position, or stance.”), T. 1 August 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/100.1, pp. 95-96 (KHIEU Samphan lectured on “the situation inside and outside the country and the situation after the liberation. And besides that, he talked about the socialist revolution [and the] revolutionary life view”); T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, p. 99 (witness was told by his wife that, at K-15, KHIEU Samphan lectured that “Cambodia is being developed and it needs the resources, and also that we had to build ourselves”).

<sup>12474</sup> Section 5.1.2: Standing Committee and Central Committee.

including KHIEU Samphan,<sup>12475</sup> IENG Thirith,<sup>12476</sup> KOY Thuon,<sup>12477</sup> SAO Phim,<sup>12478</sup> NEY Sarann *alias* Ya,<sup>12479</sup> KANG Chap *alias* Se,<sup>12480</sup> RUOS Nhim and KE Pauk<sup>12481</sup> also took part in meetings where matters of the political line, foreign affairs, commerce and trade, national defence, social affairs and economic affairs including agricultural production were discussed.

3741. In September 1976, POL Pot was provisionally relieved of his duties as Prime Minister, reportedly for health reasons, and NUON Chea served as interim Prime Minister until September 1977.<sup>12482</sup> POL Pot reappeared at a mass rally on 27 September 1977, where he publicly announced the existence of the CPK. At the rally, reportedly attended by CPK Central Committee members and cadres from “all departments”, POL Pot confirmed the Party line of independence, sovereignty and self-reliance; the development of a worker-peasant state built on collectivism and socialist class struggle; the need to defend and build the country quickly through cooperatives and construction initiatives; and opposition to imperialists, feudalists, capitalists, reactionaries, counter-revolutionary elements and enemies generally.<sup>12483</sup> Although the Party publicly celebrated 1960 as its founding year at this and other events, this was an illusory campaign designed to suppress its origins: the CPK had earlier resolved to dissociate itself from its 1951 reconstitution as the KPRP, and therefore its connection with the Vietnamese-dominated ICP. This revisionist policy is evident from early

<sup>12475</sup> Section 8.3.3: Roles and Functions – KHIEU Samphan: Membership of the Central and Standing Committees.

<sup>12476</sup> See e.g., Standing Committee Minutes, E3/226, 10 June 1976, ERN (En) 00183363-00183373.

<sup>12477</sup> See e.g., Standing Committee Minutes, E3/227, 2 November 1975, ERN (En) 00183409-00183415; Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, ERN (En) 00182625-00182627; Standing Committee Minutes regarding economic matters, E3/230, 22 February 1976, ERN (En) 00182546-00182547; Standing Committee Minutes, E3/238, 28 February 1976, ERN (En) 00424112-00424115; Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, ERN (En) 00182635-00182637; Standing Committee Minutes, E3/233, 13 March 1976, ERN (En) 00182649-00182650.

<sup>12478</sup> See e.g., Standing Committee Minutes (copied by C.E. Goscha), E3/10693, 10, 11 and 13 April 1977, ERN (En) 01324075-01324082.

<sup>12479</sup> See e.g., Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182651-00182657; Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182693-00182705; Standing Committee Minutes, E3/223, 17 May 1976, ERN (En) 00182708-00182714.

<sup>12480</sup> See e.g., Standing Committee Minutes, E3/221, 14 May 1976, ERN (En) 00182693-00182705; Standing Committee Minutes, E3/223, 17 May 1976, ERN (En) 00182708-00182714.

<sup>12481</sup> See e.g., Standing Committee excerpts (Document 21.5.23 from PRT Trial), E3/7328, 11 April 1977, ERN (En) 01002086-01002086.

<sup>12482</sup> Section 7.4.2: Roles and Functions – NUON Chea: Acting Prime Minister.

<sup>12483</sup> Revolutionary Flag, E3/11, September 1977, pp. 3-54, ERN (En) 00486214-00486265; 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, ERN (En) 00168771-00168776.

publications of the *Revolutionary Flag* and internal meeting records,<sup>12484</sup> and was confirmed by NUON Chea at trial.<sup>12485</sup>

3742. Between 1 and 2 November 1978, the CPK held its Fifth Party Congress at which agriculture, economics and defence continued to be the main focus.<sup>12486</sup> The Party line was variously promoted, confirmed, supported and endorsed in speeches, interviews, statements and meetings by POL Pot,<sup>12487</sup> NUON Chea,<sup>12488</sup> KHIEU

<sup>12484</sup> Decision of Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 2, ERN (En) 00182810 (the Central Committee decided to: “Designate the birth of the Party back to 1960, not using 1951, in order to not let it get attached to others – to be clearly separate”); *Revolutionary Flag*, E3/5, August 1975, p. 16, ERN (En) 00401491 (“The strategic and tactical lines of the Communist Party of Kampuchea were clearly and fundamentally correctly drawn up in 1960 during the First Party General Assembly (even though it is true that our Party was created in 1951)”). Cf. *Revolutionary Flag*, E3/10, September-October 1976, p. 5, ERN (En) 00450505 (“In 1951, we set up a temporary organisation in order to prepare to create a Party. At that time, the Party had not yet been born. We just set up the preconditions to organise a Party.”). See also, Section 3: Historical Background, paras 198, 204.

<sup>12485</sup> T. 5 December 2011 (Accused NUON Chea), E1/16.1, p. 65.

<sup>12486</sup> Fifth Party Congress Meeting Minutes, E3/816, 1-2 November 1978, pp. 1-3, ERN (En) 00281339-00281341 (committees established or re-appointed included the Central Committee Economics Committee (POL Pot and *Ta Mok* as chairman and vice-chairman; IENG Sary, VORN Vet and KHIEU Samphan as members), Military Staff Committee (POL Pot as chairman, SOU Met, *Ta Mok* and Ruonn [SAO Saroeun] as permanent members), Rubber Plantation Committee and the Economy and Planning Committee (VORN Vet listed but without a title. He was purged in the aftermath of the Fifth Congress. See Section 12.2.8.5.2: S-21 Security Centre: VORN Vet)). See also, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 392, ERN (En) 00396600 (stating that VORN Vet was sent to S-21 a day after the Congress).

<sup>12487</sup> See e.g., Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11 March 1976, p. 4, ERN (En) 00182641 (“Opinions of Comrade Secretary”); *Revolutionary Flag*, E3/11, September 1977, pp. 3-54, ERN (En) 00486214-00486265; *Text of Pol Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 28 September 1977, ERN (En) 00168617-00168654; POL Pot Interview by Yugoslav Journalists (*Journal of Contemporary Asia*), POL Pot Speech at 10th Anniversary of the Founding of the RAK, E3/349, 17 January 1978, ERN (En) S00012699-S00012722; POL Pot Interview by Yugoslavian Journalists, E3/5713, 20 March 1978, pp. 1-8, ERN (En) 00750097-00750104; *27 Sep Phnom Penh Meeting Celebrates KCP 18th Anniversary: Pol Pot Speech* (in FBIS collection), E3/76, 29 September 1978, ERN (En) 00170446-00170469.

<sup>12488</sup> See e.g., Document on Conference of Legislature, E3/165, 11-13 April 1976, pp. 24-30, ERN (En) 00184071-00184077; *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168465-00168470; *Revolutionary Flag*, E3/11, September 1977, p. 20, ERN (En) 00486231 (“A country association was organised [in 1955] to whip up the worker movement. The Comrade Deputy Secretary of our Party was given the task of leading this movement.”); Standing Committee Minutes, E3/218, 26 March 1976, p. 6, ERN (En) 00182656 (“Opinions and instructions from Comrade Deputy Secretary” instructing members to: “Keep implementing the measures of the Party, political, military and diplomatic.”); NUON Chea Speech at TENG Ying-Tchao Banquet (DK News Bulletin), E3/78, 18 January 1978, p. 7, ERN (En) 00290285; NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, ERN (En) 00762391-00762398. See also, Section 7: Roles and Functions – NUON Chea, para. 542.

Samphan,<sup>12489</sup> IENG Sary,<sup>12490</sup> SON Sen<sup>12491</sup> and VORN Vet<sup>12492</sup> throughout the DK period.

3743. In light of the foregoing, the Chamber finds that by 17 April 1975, and continuing until at least 6 January 1979, senior CPK leaders including POL Pot, NUON Chea and KHIEU Samphan among others, shared the common purpose of rapidly implementing socialist revolution in Cambodia through a “great leap forward” designed to build the country, defend it from enemies and radically transform the population into a homogenous Khmer society of worker-peasants. The Chamber observes that the common purpose does not have as its primary objective the commission of crimes, as such, and cannot therefore “amount to” such under the applicable law.<sup>12493</sup> Nevertheless, and as detailed further below, the successful implementation of the common purpose – and therefore the transformation of the country into a pure,

<sup>12489</sup> See e.g., *Khieu Samphan 21 Apr Victory Message on Phnom Penh Radio* (in FBIS collection), E3/118, 21 April 1975, ERN (En) 00166995-00166996; *Khieu Samphan Interview by Kampuchea News Agency Representative*, E3/4588, 12 August 1975, pp. 1-4, ERN (En) 00878358-00878361; *Reception for Sihanouk: Speeches by Khieu Samphan and Sihanouk* (in SWB/FE/5006/B collection), E3/711, 11 September 1975, ERN (En) S00003732-S00003733; *Khieu Samphan Speech at Fifth Summit Conference of Non-Aligned Countries*, E3/549, 16-19 August 1976, pp. 4-21, ERN (En) 00644931-00644941; *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004164-S00004165, S00004169 (“We must uphold our spirit of revolutionary vigilance at all times against the enemy from all quarters, both at home and abroad”); *Radio Reports More on Visit of LPDR’s Souphanouvong: Khieu Samphan’s Address* (in FBIS collection), E3/1497, 20 December 1977, ERN (En) 00168379-00168380; *Third Anniversary Celebrated at 15 April Mass Rally: Khieu Samphan Statement* (in FBIS collection), E3/1361, 16 April 1978, ERN (En) 00168813-00168814, 00168818-00168819; *Sihanouk Attends, Khieu Samphan Addresses KCP Banquet* (in FBIS collection), E3/294, 30 September 1978, ERN (En) 00170170; *Government Statement Appeals for Aid to Combat SRV Aggression* (in FBIS collection), E3/296, 1 January 1979, ERN (En) 00169296. See also, Section 8: Roles and Functions – KHIEU Samphan, para. 607.

<sup>12490</sup> See e.g., *Phoun Sipaseut, Ieng Sary Speak at 15 Dec Phnom Penh Banquet: Ieng Sary Speech* (in FBIS collection), E3/1356, 18 December 1975, ERN (En) 00167583-00167584; *Leaders Receive SRV Journalists Delegation: Ieng Sary Speech* (in FBIS collection), E3/278, 21 July 1976, ERN (En) 00167879; *Ieng Sary Hosts Banquet for Burmese Delegation: Ieng Sary Speech* (in FBIS collection), E3/143, 31 August 1977, ERN (En) 00168723; *IENG Sary Speech at UN General Assembly*, E3/607, 5 October 1976, pp. 6-8, ERN (En) 00586803-00586805; *IENG Sary Speech at UN General Assembly*, E3/1586, 11 October 1977, paras 34, 44-45, 48, ERN (En) 00079811, 00079812-00079813; *IENG Sary Speech at UN General Assembly*, E3/547, 9 June 1978, pp. 31-32, ERN (En) 00081532-00081533; UN ECOSOC Document: Telegram from IENG Sary to Commission on Human Rights, E3/4605, 20 September 1978, ERN (En) 00095649.

<sup>12491</sup> See e.g., *Speeches Mark Sihanouk’s Return: Son Sen Welcome Speech* (in FBIS collection), E3/271, 10 September 1975, ERN (En) 00167442-00167443; *PRC Charge in Phnom Penh Hosts National Day Reception: Son Sen’s Speech* (in FBIS collection), E3/290, 30 September 1977, ERN (En) 00168616.

<sup>12492</sup> See e.g., *Fang I Friendship Delegation Arrives 24 Dec: Vorn Vet Speech* (in FBIS collection), E3/283, 26 December 1976, ERN (En) 00167745-00167746; *PRC Minister Speaks at Phnom Penh Banquet 2 Jan: Vorn Vet Speech* (in FBIS collection), E3/147, 3 January 1977, ERN (En) 00168448-00168449; *Banquet Speeches by Chen Yung-Kuei and Vorn Vet: Excerpts from Speech by Vorn Vet* (in SWB/FE/5695/A3 collection), E3/2730, 14 December 1977, ERN (En) 00390995.

<sup>12493</sup> Section 15.2: Applicable Law: Individual Criminal Responsibility: Commission through a Joint Criminal Enterprise, para. 3709. See also, Case 002/01 Appeal Judgement, para. 808.

revolutionary society – was contingent upon the execution of harmful policies and the elimination of all counter-revolutionary elements perceived to be inhibiting the Party or the progress of the socialist revolution. In Section 16.3 the Chamber will assess the categories of real or perceived enemies whose elimination was central to the common purpose. The ultimate determination of whether the common purpose involved the commission of crimes, and therefore whether it was criminal in character, will be made upon examination of its implementation through the charged policies (Section 16.4: Implementation of the Common Purpose).

### **16.3. Real or Perceived Enemies**

#### ***16.3.1. Chronological Overview of the CPK's Notion of Enemies***

3744. This section provides a chronological overview of contemporaneous documentary evidence relating to the CPK's notion of enemies, followed by a factual analysis of that evidence. As a general introduction, the Chamber notes that this section will demonstrate that throughout the DK era so-called enemies were discussed continuously and at length during meetings at various levels: in telegrams, at study sessions, in speeches, in CPK publications and in other contemporaneous documents such as notebooks and policy directives. As further shown below, the concept of the "enemy" encompassed those who were perceived as opposing in fact or ideologically the communist revolution. Individuals would be classified as such based on their real or perceived association with a particular group or class, or as a consequence of having engaged in particular real or perceived counter-revolutionary behaviour, which could range from stealing food to disseminating leaflets critical of the regime. Enemies also encompassed foreign (including neighbouring) countries and their nationals. From early on, a distinction between internal enemies (that is, from within the country and the CPK) and external enemies (including Thai, Vietnamese, KGB and CIA) was made.

3745. For the purposes of this chronological overview, the Chamber has considered the numerous contemporaneous documents it has before it. In this regard, the Chamber finds internal, contemporaneous documents, on which it relies for its substance, to have significant probative value.<sup>12494</sup> These include Standing Committee meeting minutes;

<sup>12494</sup> Section 2: Preliminary Issues, para. 57. *See also*, Section 5: Administrative Structures, paras 349-350; Section 6: Communication Structures, paras 470-472, 479.



other DK meeting minutes, including of meetings of the Deputy Secretaries and Secretaries of Divisions and Regiments, and of the Council of Ministers; DK notebooks, including a notebook described as IENG Sary's diary; policy documents and telegrams.

3746. With respect the notebook which the Chamber refers to as the IENG Sary diary, the Chamber notes the following. The diary, which follows the activities of IENG Sary, appears on the Case File in English as "IENG Sary's Regime: The Diary of the Khmer Rouge Foreign Ministry, 1976-1979" translated by PHAT Kosal and Prof. Ben KIERNAN.<sup>12495</sup> The unsigned diary was found in early 1979 by KHIEU Kanharith in a house that apparently had been recently vacated by IENG Sary. In 1986, Minister KHIEU Kanharith allowed Prof. KIERNAN to copy it.<sup>12496</sup> The diary, with entries ranging from 21 May 1976 to 1 August 1978, contains a summary record of speeches and documents prepared by or distributed by IENG Sary, recording internal meetings held at the DK Foreign Ministry in May and July of 1976. The contents of the diary are consistent with other contemporaneous CPK documents.<sup>12497</sup> Considering IENG Sary's prominent role within the upper echelon of the CPK, the substance of these meetings provides important insight into CPK policies and deliberations.

3747. With respect to contemporaneous documents intended to be used for external communication purposes or as material for ideological training, the Chamber is mindful of the fact that these may contain propaganda. They include CPK publications, such as the *Revolutionary Flag* and *Revolutionary Youth*; FBIS and SWB records of DK radio broadcasts and any other record of public appearances by CPK leaders, either in DK or abroad. Regarding the *Revolutionary Flag* and the *Revolutionary Youth*, the Chamber is mindful of the fact that these educational magazines, while contemporaneous

<sup>12495</sup> IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated.

<sup>12496</sup> IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated, pp. 3-4, ERN (En) 00003239-00003240; Letter from Ben Kiernan to Office of Co-Investigating Judges, D269/9/1, 30 April 2010, ERN (En) 00517677-00517678.

<sup>12497</sup> See e.g., IENG Sary's Diary, E3/522 [E3/925 and E3/926], undated, pp. 40-44, ERN (En) 00003276-00003280 (recording on 30 November 1976 "Documents on Consciousness", including "(1) socialist revolution; (2) class contradictions; (3) authority of the proletarian class; (4) private property; (5) dialectical materialism"). See also, *Revolutionary Flag*, E3/10, September-October 1976, pp. 18-47, ERN (En) 00450518-00450547 (setting out "five fundamental ideological and strategic documents for all comrades in the Party" which are "(1) socialist revolution in every field; (2) class contradictions; (3) state power and dictatorship of the proletarian class; (4) private ownership of classes opposed to collective ownership of proletarian class; (5) dialectical materialism"). The consistency between these two documents serves to buttress the reliability of the IENG Sary Diary.

evidence intended for CPK members, were disseminated more widely than other internal, contemporaneous CPK documents such as meeting minutes, notebooks, policy documents and telegrams, and may therefore contain propaganda. The Chamber will keep this in mind when assessing such evidence. Regarding FBIS and SWB records, while the Chamber is aware that these are transcriptions translated into English of original broadcasts in Khmer of which the audio recordings are not available to the Chamber, it notes that many of the speeches contained within FBIS and SWB reports may be compared with the same speeches that appear in DK contemporaneous publications. The Chamber considers the FBIS and SWB compilations to be important evidence. Nonetheless, given the indirect nature of this evidence the Chamber will only rely on it when sufficiently corroborated by other evidence.<sup>12498</sup>

3748. In addition, various witnesses testified in relation to specific documents or events discussed therein. These witnesses were called to testify with respect to particular crime sites and the Chamber accordingly addresses their reliability and credibility in the relevant sections of the Judgement. They also gave evidence relevant to some of the documents discussed in this section and the topic of real or perceived enemies. They include Duch,<sup>12499</sup> PECH Chim,<sup>12500</sup> NETH Savat,<sup>12501</sup> SAO Sarun,<sup>12502</sup> MEAS Voeng,<sup>12503</sup> SUONG Sikoeun,<sup>12504</sup> OM Chy<sup>12505</sup> and PRUM Sarat.<sup>12506</sup>

#### 16.3.1.1. Pre-1975

3749. The pre-DK draft CPK Statute lists the English, Japanese, German and Australian imperialists as the “imperialists [who] are absolutely the enemies of our nation and people”. It notes these were only a small number – 1,500 people – but that

<sup>12498</sup> Section 6: Communication Structures, paras 469-472.

<sup>12499</sup> See e.g., Section 12.2: S-21 Security Centre, paras 2080-2082.

<sup>12500</sup> See e.g., Section 10.1: Tram Kak Cooperatives, para. 818.

<sup>12501</sup> See e.g., Section 12.5: Phnom Kraol Security Centre, para. 3020.

<sup>12502</sup> See e.g., Section 12.5: Phnom Kraol Security Centre, para. 3020.

<sup>12503</sup> See e.g., Section 6: Communication Structures, paras 512, 516; Section 13.3: Treatment of the Vietnamese, paras 3395, 3412, 3456.

<sup>12504</sup> See e.g., Section 3: Historical Background, para. 400; Section 6: Communication Structures, para. 481; Section 8: Roles and Functions – KHIEU Samphan, para. 623; Section 12.2: S-21 Security Centre, paras 2240, 2325.

<sup>12505</sup> See e.g., Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1450, 1468, 1501, 1513, 1525, 1531, 1540, 1553, 1563, 1570-1571, 1578, 1586, 1590, 1593, 1617, 1651.

<sup>12506</sup> See e.g., Section 4: General Overview, para. 290; Section 6: Communication Structures, paras 463, 510.

they had joined forces with the ruling class in Cambodia, namely the feudalists and capitalists.<sup>12507</sup>

3750. An undated notebook containing a CPK analysis of social classes in Cambodian society before 1975 explains that there were two categories of feudalists: the feudal class of nobles and the feudal class of landlords. The former included members of the royal family and powerful, high-ranking officials; the latter included the many landlords in rural Cambodian society.<sup>12508</sup> Other classes were: the capitalist class; the petty bourgeoisie class (with whom peasants and workers could work well together); the peasant class; and the labour class. Other separate classes included: monks (regarded as similar to the peasant class, but living “their lives as dependants of others from all classes, especially the peasant class”); intellectuals (“afraid of hardship and prolonged revolutionary struggle”); police and soldiers (“the armed forces of class enemy”, who are “absolutely reactionary”); and “various ethnic classes” (such as the “*Champa* ethnic group and Thai”, who were also “divided into many classes according to economic status”).<sup>12509</sup> With regard to monks, the document also notes that “high-ranking monks” are close to the high class and therefore have “high class political influence”, while (especially low class) monks are nationalistic and “love democracy”.<sup>12510</sup> The document additionally states that all party members and revolutionists must “have to absolutely prove loyalty to the Party’s labour class and avoid showing any allegiance to other classes like the petty bourgeoisie class, average or rich peasant class, feudal class, and foreign imperialism”.<sup>12511</sup>

<sup>12507</sup> Draft CPK Statute, E3/8380, undated, p. 40, ERN (En) 00940602 (handwritten copy 1972).

<sup>12508</sup> Notebook, E3/1233, undated, pp. 2-3, ERN (En) 00711612-00711613 (the feudal class of nobles encompassed the royal family and high-ranking officials who were powerful, including the King, provincial governors and District governors), 4, ERN (En) 00711614 (the petty bourgeoisie class also included civil servants), 8, ERN (En) 00711618 (the police and soldier class were a special class who used weapons to serve the dictatorship, they were the tool of the armed forces of class enemy and were “absolutely reactionary”).

<sup>12509</sup> Notebook, E3/1233, undated, pp. 3-8, ERN (En) 00711613-00711618. Regarding “various ethnic classes” it was noted at p. 8, ERN (En) 00711618: “All the ethnic people in Cambodian society are divided into classes. Generally speaking various ethnic people are in the peasant class. However, like Khmer, *Champa* ethnic group and Thai are divided into many classes according to economic status. As for ethnic groups living in forests and very rural areas and having insufficient means, politically speaking, they are very good and important fighters for our Revolution”.

<sup>12510</sup> Notebook, E3/1233, undated, p. 7, ERN (En) 00711617.

<sup>12511</sup> Notebook, E3/1233, undated, p. 9, ERN (En) 00711619.

16.3.1.2. 1975

3751. An undated document (seemingly authored by “LONG Ya”) from the DK era entitled “Viewpoint on Kampuchea following 17 April 1975” identifies people who lived or studied abroad as a threat to the revolution. The document notes that “some people who have lived or studied abroad have been convinced to return to the country in order to find any gap and infiltrate into our Revolution”.<sup>12512</sup> It also notes that the CPK’s enemy was LON Nol and that they were to fight and destroy him. To achieve this, the document notes “we must equip people with the anger of the classes”.<sup>12513</sup> The CPK’s “morality towards the oppressing classes” was to “hate each of the oppressing and hidden classes. We must work against them according to the Party’s line by destroying Fascist cruel people; terminating such a regime.”<sup>12514</sup>

3752. In the beginning of the DK era, despite ongoing armed hostilities with Vietnam to the east,<sup>12515</sup> the CPK’s focus with respect to enemies was on Thailand, the western border and internal enemies especially those being former Khmer Republic soldiers and officials and those having counter-revolutionary behaviour. On 4 June 1975, Comrade Pin of the Special Zone (*alias* KHOEM Pin, later Secretary of Division 703),<sup>12516</sup> ordered the execution of 17 former Khmer Republic officials whom the Party had decided to “smash”; identified members of their families as “traitors”; and “asked” all cadres “to implement this policy of the Party”.<sup>12517</sup>

3753. On 22 July 1975, a conference took place with the Revolutionary Army of Kampuchea (“RAK”).<sup>12518</sup> The “comrade chairman of the High Level Military Committee” stressed the importance for the RAK to defend the entire country, noted

<sup>12512</sup> DK Notes entitled Viewpoint on Kampuchea following 17 April 1975, E3/1235, undated, p. 2, ERN (En) 00707612.

<sup>12513</sup> DK Notes entitled Viewpoint on Kampuchea following 17 April 1975, E3/1235, undated, p. 7, ERN (En) 00707617.

<sup>12514</sup> DK Notes entitled Viewpoint on Kampuchea following 17 April 1975, E3/1235, undated, p. 8, ERN (En) 00707618.

<sup>12515</sup> Section 4: General Overview, paras 282-284.

<sup>12516</sup> List of Participants of the 1st General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 11, ERN (En) 00897659; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 6, 49-50, 171, ERN (En) 00081291, 00081334-00081335, 00081456.

<sup>12517</sup> Execution Order, E3/832, 4 June 1975, ERN (En) 00068915.

<sup>12518</sup> Revolutionary Flag, E3/5, August 1975, p. 13, ERN (En) 00401488.

that “we will continue to smash the defeated enemy remnants to consolidate our victory”, and urged to continue to “smash” internal and external enemies.<sup>12519</sup>

3754. In August 1975, the Standing Committee visited the Northwest Zone. The record of this visit discusses the “[e]nemy situation” and makes a distinction between “A. Border activities” and “B. Internal activities”. In relation to border activities, it mentions that the IN Tam group, allegedly supported by the Thai and the Americans, had been active along the border with Thailand.<sup>12520</sup> The IN Tam group was said to have come three kilometres into DK to cultivate rice, but “we are seeking to eradicate them”. In relation to internal activities, the record notes that there were spies amongst “the railway works (new workers)”,<sup>12521</sup> who “conduct psychological warfare and sabotage” and encourage people to flee the country and cross the border into Thailand. The record notes that these internal enemies were being sought and arrested, but that not all had been purged yet.<sup>12522</sup>

3755. In the August 1975 issue of the *Revolutionary Flag*, the struggle between March 1970 and March 1975 is described as “the struggles of the Party in the economic-financial sector with the enemy, the feudalists-capitalists and their henchmen”.<sup>12523</sup> In addition, the issue repeatedly refers to “the LON Nol traitors”.<sup>12524</sup>

3756. Policy Document No. 3 dated 19 September 1975 speaks of the American imperialists and Thailand as real threats, and of Vietnam as an enemy not to worry about.<sup>12525</sup> Money is described as something that not only leads to private ownership, which means a separation from the collective, but that could also be used by the enemy to bribe cadre.<sup>12526</sup> With respect to raising capital for the bases, it also notes “[t]he new group cannot be guaranteed. If later on a world war occurs, we cannot rely on the group

<sup>12519</sup> *Revolutionary Flag*, E3/5, August 1975, p. 26, ERN (En) 00401501.

<sup>12520</sup> IN Tam had been a general and politician associated with the LON Nol government. He was considered one of the “seven traitors”. See Section 3: Historical Background, para. 231, fn. 556; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 214, 259-260, ERN (En) 00396414, 00396467-00396468.

<sup>12521</sup> The phrase “new workers” was sometimes used to refer to certain “new people”. See *below*, para. 3848.

<sup>12522</sup> Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 1, ERN (En) 00850973.

<sup>12523</sup> *Revolutionary Flag*, E3/5, August 1975, p. 3, ERN (En) 00401478.

<sup>12524</sup> *Revolutionary Flag*, E3/5, August 1975, pp. 18, 20, ERN (En) 00401493, 00401495.

<sup>12525</sup> DK Policy Document No. 3, E3/1765, 19 September 1975, p. 17, ERN (En) 00523585.

<sup>12526</sup> DK Policy Document No. 3, E3/1765, 19 September 1975, p. 18, ERN (En) 00523586.

who lived comfortably; we can only depend upon our poor base people.”<sup>12527</sup> The Chamber understands the “new group” to refer to the “New People” or “17 April People”.

3757. Policy Document No. 6, dated 22 September 1975, notes a more nuanced stance toward New People:

We must not treat them, as in the past, as capitalists, university students, former officials, students, petty bourgeoisies, traders, and national capitalists, compradors because they have joined our circle [side]. We are fully competent to grab hold of them. We must organize livelihood meetings and continuous education sessions for them, so that most of them can be changed quickly.<sup>12528</sup>

The document also notes that “most of the monks, from 90 to 95 percent of them, abandoned their monkhood” and now worked in rice fields. People no longer went to pagoda’s or offered alms to monks; “[t]his [religious] practice has disappeared [...] [s]o, this special layer [of society] will no longer cause any worry”.<sup>12529</sup>

3758. An introductory document for party members containing strategies on ideologies recalls the Party’s September 1975 decision that “no other class stratum is allowed besides the worker-peasant class”.<sup>12530</sup> The document is also copied in the September-October 1976 issue of the *Revolutionary Flag*.<sup>12531</sup>

3759. The October 1975 issue of the *Revolutionary Youth* notes in relation to the former regime of LON Nol that “[w]e must remember these stories forever, and use them in the future to educate our children to hold a hereditary grudge against the enemy forever”.<sup>12532</sup>

<sup>12527</sup> DK Policy Document No. 3, E3/1765, 19 September 1975, p. 21, ERN (En) 00523589.

<sup>12528</sup> DK Policy Document No. 6, E3/99, 22 September 1975, p. 3, ERN (En) 00244276. “New workers” and “new peasants” appear to have been categories of “New People”. “New workers” were those who worked at factories, see p. 4 (ERN (En) 00244277: “In sum, we are able to take hold of 70 percent of the base workers and peasants and 30 percent of the new workers and peasants”). See also, *Revolutionary Youth*, E3/750, 11 November 1975, pp. 23-25, ERN (En) 00522473-00522475; *Revolutionary Youth*, E3/752, March 1976, p. 27, ERN (En) 00593574; *Textile Factory Aids Peasant Struggle* (in FBIS collection), E3/1358, 27 July 1977, ERN (En) 00168270.

<sup>12529</sup> DK Policy Document No. 6, E3/99, 22 September 1975, p. 2, ERN (En) 00244275.

<sup>12530</sup> Introductory Document for Party Members, E3/138, undated, p. 8, ERN (En) 00743797.

<sup>12531</sup> See below, para. 3792.

<sup>12532</sup> *Revolutionary Youth*, E3/729, October 1975, p. 23, ERN (En) 00357922. See also, pp. 30-31, ERN (En) 00357929-00357930 of the same *Revolutionary Youth* issue (poetry titled “Do Not Forget The Blood Grudge Of Our Revolutionary Ancestors” urging readers to seek revenge against the enemy).

3760. The minutes of the Standing Committee meeting of 9 October 1975 note that it was agreed that radio communications should be used, *inter alia*, to “spy on the enemy”.<sup>12533</sup> During that same Standing Committee meeting, POL Pot noted that “we must monitor closely in politics, in ideology, and in organization to get a close, agile and detailed grasp”.<sup>12534</sup> The issue of branding people “traitors” was also discussed; POL Pot noted that the word “traitor” was serious and should not be used too easily. POL Pot talked about Comrade Mean (*alias* CHAN Chakrei) and a Comrade Phan, regarding whom suspicion had arisen at this point,<sup>12535</sup> as examples. POL Pot said enemy networks could not be trusted; *Angkar*’s own networks were to be used to investigate CHAN Chakrei *alias* Mean and Phan, and it was to be kept quiet.<sup>12536</sup>

3761. On 27 November 1975, Duch sent a report to “Brother 03”, whom Duch identified as IN Lorn *alias* Nat(h), at the time Duch’s superior at S-21, from Division 703.<sup>12537</sup> Duch sought advice on whether or not to arrest three persons: KEAM Tort and NGOV Va, who allegedly had lied about their biographies, claiming they were “workers”, and TAB Bundin, son of an upper middle-class peasant and son-in-law of a feudal landowner. Duch said KEAM was the son of an upper middle-class peasant and had been a member of the Khmer Youth Group; Duch accused NGOV Va of having visited the house LON Nol.<sup>12538</sup> Duch testified that he sent this report to Nat(h), because he did not have the authority to arrest anyone himself.<sup>12539</sup>

3762. The November 1975 issue of *Revolutionary Youth* warns that:

[C]omrades, you should understand and remember that it is you who have sacrificed everything continuously, even your young life, for the Party, the revolution, and the people in smashing up the neo colonialism of American imperialism and the feudal-capitalist regime until they have been gone from the Kampuchea land. So, why

<sup>12533</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 9-10, ERN (En) 00183401-00183402.

<sup>12534</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 11, ERN (En) 00183403.

<sup>12535</sup> Section 12.1: Internal Factions, paras 1890-1892, 1894-1896.

<sup>12536</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 11-12, ERN (En) 00183403-00183404. *See also*, Section 12.1: Internal Factions, paras 1890-1892, 1894-1896; Section 12.2.8.1.3: S-21 Security Centre: CHAN Chakrei *alias* Mean (Comrade Mean *alias* CHAN Chakrei was purged around May 1976).

<sup>12537</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 72-73 (explaining that “Brother 03” was an abbreviation of “Brother 703” from “Division 703”, as the practice at the time was to refer to people by using the unit number).

<sup>12538</sup> DK Report, E3/1052, 27 November 1975, pp. 1-2, ERN (En) 00289848-00289849.

<sup>12539</sup> T. 7 June 2016 (KAING Guek Eav), E1/433.1, pp. 72-73.

should you still regret or want to embrace the individual possession, which is the legacy of the colonist, feudalist, and capitalist regime which has been already kicked out by us? There is no material better than socialism.<sup>12540</sup>

3763. The DK Constitution, agreed upon in December 1975 and adopted on 5 January 1976, includes a general provision in Article 10 on “[a]cts violating the laws of the people’s State are as follows”. It reads: “Hostile and destructive acts which are systematically organised and endanger the people’s State are punishable to the highest degree. Other cases are subject to constructive re-education within the framework of the State’s or people’s organisations”.<sup>12541</sup> The DK Constitution includes a provision on freedom of religion but bans “reactionary religion”: “Reactionary religions which are detrimental to Democratic Kampuchea and Kampuchean people are absolutely forbidden”.<sup>12542</sup>

#### 16.3.1.3. 1976

3764. In early 1976, Thailand was still perceived as an important enemy, while less attention was given to Vietnam to the east. During the Standing Committee meeting of 9 January 1976, both the western and the eastern borders were discussed, referring again to the Thai as enemies.<sup>12543</sup> Fighting was reported to have occurred along the western border, stating that “Thailand acts as the core for the traitor groups which the CIA sponsors”.<sup>12544</sup> With respect to the eastern border, the minutes state that nothing was happening, due to measures having been taken in every sector (“politically, militarily, and diplomatically”).<sup>12545</sup>

3765. The CPK Statute, adopted at the Fourth Party Congress held in January 1976,<sup>12546</sup> sets out the Party line with respect to counter-revolutionary ideologies and behaviour. It states that “[t]he Party absolutely opposes any political, ideological, or organizational violation of organizational discipline through independentism,

<sup>12540</sup> Revolutionary Youth, E3/750, November 1975, p. 13, ERN (En) 00522463.

<sup>12541</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184836.

<sup>12542</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184838.

<sup>12543</sup> Standing Committee Minutes, E3/228, 9 January 1976, pp. 2-3, ERN (En) 00182615-00182616.

<sup>12544</sup> Standing Committee Minutes, E3/228, 9 January 1976, p. 2, ERN (En) 00182615.

<sup>12545</sup> Standing Committee Minutes, E3/228, 9 January 1976, p. 2, ERN (En) 00182615.

<sup>12546</sup> Section 5: Administrative Structures, para. 343.



liberalism, sectarianism, or nepotism which, destroys Party solidarity and unity, and absolutely opposes any creation of cliques to break up the Party”.<sup>12547</sup> It continues that:

The Party must have high level revolutionary vigilance toward all enemy activities and trickery, direct or indirect, overt or secret, which have the intent to destroy the Party by every means. All Party organizations and every Party member must always be good and clean and be pure politically, ideologically, and organizationally, by building a clear, clean, and pure personal history, consecutively and constantly.<sup>12548</sup>

3766. The Statute of the Communist Youth League of Kampuchea (“CYLK”), also from January 1976, demands that the CYLK “[m]ust have the high spirit of revolutionary vigilance and secrets, counter all enemy destructive activities and tricks, and protect the “CYLK”, the Party, revolution, and worker-peasant people”.<sup>12549</sup> It also requires that all CYLK members “be morally and politically clean with no involvement with the enemy”.<sup>12550</sup>

3767. At an S-21 “livelihood” meeting that took place on 18 February 1976, Duch noted that there were difficulties interrogating CIA agents,<sup>12551</sup> the need to “eliminate the view that attacking the enemy is cruel” and that sympathy with the enemy had to be eliminated.<sup>12552</sup> The minutes include a “special note” added under Duch’s name that reads: “The army has to smash all CIA agents without sparing even a single person”.<sup>12553</sup> Duch testified that staff at S-21 were taught to have vengeance and “harbour anger against the enemy”.<sup>12554</sup>

3768. A report dated 26 February 1976 from a person named Sem reports “Enemy CIA Situations” when referring to a radio communication in Thai that had been intercepted. Two persons were detained for questioning and implicated another person named Khan in Phnom Penh. The report contains a note from SON Sen to inform *Angkar* of the fact that a person named Khan had been implicated, and another note in

<sup>12547</sup> CPK Statute, E3/130, undated, p. 4, ERN (En) 00184025.

<sup>12548</sup> CPK Statute, E3/130, undated, p. 4, ERN (En) 00184025.

<sup>12549</sup> CYLK Statute, E3/1230, January 1976, p. 4, ERN (En) 01201895.

<sup>12550</sup> CYLK Statute, E3/1230, January 1976, p. 5, ERN (En) 01201896 (Article 1C).

<sup>12551</sup> Minutes of Meeting, E3/8384, 18 February 1976, ERN (En) 00543733.

<sup>12552</sup> Minutes of Meeting E3/8384, 18 February 1976, ERN (En) 00543734-00543735. *See also*, Section 12.2: S-21 Security Centre, paras 2164, 2616.

<sup>12553</sup> Minutes of Meeting, E3/8384, 18 February 1976, p. 3, ERN (En) 00543734; Section 12.2: S-21 Security Centre, para. 2164.

<sup>12554</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 36; Section 12.2: S-21 Security Centre, paras 2164, 2596, 2616.

a different handwriting to inquire in every department whether a person named Khan had been arrested.<sup>12555</sup>

3769. On 8 March 1976, two Standing Committee meetings took place: one on propaganda and one on base work.<sup>12556</sup> During the meeting regarding propaganda, *Angkar* discussed the 20 March 1976 election, noting that radio broadcasts had to be prepared in order to avoid attacks from “the enemy”. While the *Agence France Presse* (“AFP”) was named as one of the entities attacking them, the word “enemy” appears to be used in general terms here, referring to any outsider.<sup>12557</sup> The meeting regarding base work also included a discussion on the election, its function of preventing “the enemy” from attacking them and showing the outside world that they (*i.e.* the DK government) are organised and acting appropriately.<sup>12558</sup> Here, too, the word “enemy” was used in a general sense. Comrade Sot, Secretary of Sector 106 (Siem Reap),<sup>12559</sup> reported on the “enemy situation” in Sector 106 during the same meeting on base work, referring to Thai spies who had infiltrated 16 kilometres into DK territory and who had been captured.<sup>12560</sup> A similar situation is reported by BOU Phat *alias* Hang, Secretary of Sector 103 (Preah Vihear);<sup>12561</sup> Thai nationals, termed “spies”, were captured along the Thai border at Prasat Preah Vihear.<sup>12562</sup> Comrade Sreng reported on a number of arrests

<sup>12555</sup> DK Telegram, E3/1175, 26 February 1976, p. 1, ERN (En) 00525784.

<sup>12556</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976; Standing Committee Minutes regarding base work, E3/232, 8 March 1976.

<sup>12557</sup> Standing Committee Minutes regarding propaganda, E3/231, 8 March 1976, p. 1, ERN (En) 00183360.

<sup>12558</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 2, ERN (En) 00182629.

<sup>12559</sup> Comrade Sot was arrested and sent to S-21 early 1977. *See* S-21 Prisoner List, E3/10266, various dates, p. 35, ERN (En) 01367732 (noting arrest on 21 February 1977); S-21 confession (PA Phal *alias* Sot), E3/1754, 19 March 1977; Section 12.2: S-21 Security Centre, para. 2327. *See also*, Section 12.1: Internal Factions, paras 1885-1887.

<sup>12560</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 4, ERN (En) 00182631.

<sup>12561</sup> T. 4 September 2012 (NORNG Sophang), E1/121.1, p. 6 (Hang was Sector 103 Secretary); PRUM Son Interview Record, E3/4606, 20 November 2009, ERN (En) 00414070 (Hang was chairman of Sector 103 until his arrest in 1978); PRUM Sou Interview Record, E3/420, 24 November 2009, ERN (En) 00422379 (Hang was secretary of Sector 103 until his arrest in 1978); SENG Kimoeun Interview Record, E3/425, 17 December 2009, p. 3, ERN (En) 00421613 (after 17 April 1975 Hang was secretary of Sector 103 until his arrest). *See also*, Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 4-7, ERN (En) 00182631-00182634 (Comrade Hang reported to the Standing Committee on the situation in Sector 103 requesting and receiving instructions); Section 12.2: S-21 Security Centre, para. 2327.

<sup>12562</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 4, ERN (En) 00182631.

made by the military “in 303” (*i.e.* the North Zone)<sup>12563</sup> as well as that a number of persons attempted to flee to Southern Vietnam.<sup>12564</sup> Regarding the “enemy situation” in Sectors 103 and 106, *Angkar* named the Thai as such, while it regarded Laos as a nation in serious trouble, and therefore, no threat to DK.<sup>12565</sup>

3770. During the Standing Committee meeting on 11 March 1976 regarding the resignation of NORODOM Sihanouk, the label “enemies” was used in general terms by *Angkar*.<sup>12566</sup> The minutes note that “[w]e must end feudalism, just like this. The chess game has gotten to that point. The entire feudalist regime has been permanently smashed and dug out by the revolution. The kings existing over 2,000 thousand [*sic*] years must, in the end, be clean.”<sup>12567</sup> During a second meeting that day, where the eastern border was discussed, the term “enemies” was used by *Angkar* to refer to foreign powers: neighbouring countries in general, Vietnam and France in particular.<sup>12568</sup>

3771. The “Decision of the Central Committee Regarding a Number of Matters” dated 30 March 1976 contains the headline “the right to smash, inside and outside the ranks”, and specifies which organisations had the authority to do so: “[i]f in the base framework, to be decided by the Zone Standing Committee; Surrounding the Centre Office, to be decided by the Central Office Committee; In independent Sectors, the decision shall be taken by the Standing Committee; For the Centre Military, the decision shall be taken by the [General] Staff.”<sup>12569</sup>

3772. In a telegram dated 2 April 1976 to POL Pot, KE Pauk noted that the enemy situation was generally stable in the North Zone. Yet, he also noted that some engaged in “propaganda” that the revolution was strict and that cooperatives should be resisted,

<sup>12563</sup> Section 5: Administrative Structures, para. 370 (initially, this zone had code number 304). Comrade Sreng was later purged, *see* Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1465-1466; Section 12.2: S-21 Security Centre, para. 2291.

<sup>12564</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 3, ERN (En) 00182630.

<sup>12565</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 7, ERN (En) 00182634.

<sup>12566</sup> Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11 March 1976, p. 2, ERN (En) 00182639.

<sup>12567</sup> Standing Committee Minutes regarding Sihanouk’s resignation, E3/197, 11 March 1976, p. 4, ERN (En) 00182641.

<sup>12568</sup> Standing Committee Minutes regarding the eastern frontier, E3/217, 11 March 1976, pp. 1-2, ERN (En) 00182635-00182636.

<sup>12569</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 1, ERN (En) 00182809. *See also*, Section 16: Common Purpose, paras 3955-3956.

and included complaints about hunger.<sup>12570</sup> Particularly in Chamkar Leu district, in Sector 42, enemies were identified as former soldiers “in combination with the Cham and former cooperative team chairmen”.<sup>12571</sup> They were reported to have posted photos of LON Nol along with his 18 March 1970 announcement on trees in Trapeang village, to have burned forests and to have destroyed crops.<sup>12572</sup>

3773. KHIEU Samphan gave a speech on 15 April 1976 to mark the first anniversary of 17 April 1975. In his speech, KHIEU Samphan repeatedly referred to the “traitorous LON Nol clique” as a lackey of US imperialists.<sup>12573</sup> Propaganda Minister HU Nim used the same language in a statement issued to also commemorate this anniversary.<sup>12574</sup>

3774. At the first meeting of the Council of Ministers on 22 April 1976, POL Pot gave a speech saying that Thailand was still “a strong enemy”, but that they still made contact with the Thai.<sup>12575</sup> POL Pot stated that some countries sent spies, and that diplomatic agents of some countries were CIA agents. He added that the United States “arrang[ed] espionage inside the Soviet Embassy”. POL Pot continued with a warning to be vigilant when contacting foreigners and to speak as little as possible as to not misspeak.<sup>12576</sup>

POL Pot stated the CPK’s revolutionary ideology:

Defend the revolutionary state authority, the fruits of the revolution, defend the Party, the people, the Army, independence, sovereignty, etc, [against] every form of enemy activity, both overt and covert. [...] We can be in mastery only when we train/educate the masses in every ministry and office and in the Army, in the cooperatives, the unions, etc. Therefore, do not think just about Committees. Only when the entire masses absorb, only when we use the masses as our eyes and as our noses, will we be able to defend, to be in mastery. Therefore, hold meetings constantly, hold study sessions constantly, draw experience constantly.<sup>12577</sup>

<sup>12570</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>12571</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>12572</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>12573</sup> See e.g., *Khieu Samphan Address* (in FBIS collection), E3/275, 16 April 1976, ERN (En) 00167630-00167631 (entry dated 15 April 1976).

<sup>12574</sup> See e.g., *Hu Nim Statement* (in FBIS collection), E3/275, 16 April 1976, ERN (En) 00167637 (“Thousands of troops of the U.S. imperialists, the Thieu-Ky clique and the traitorous Lon Nol clique – ground air and naval forces – savagely machinegunned and bombed our people, our women, children and Buddhist monks, killing them and destroying our homes and monasteries.”) (entry dated 14 April 1976).

<sup>12575</sup> Meeting of the Council of Ministers, E3/817, 22 April 1976, p. 4, ERN (En) 00143464.

<sup>12576</sup> Meeting of the Council of Ministers, E3/817, 22 April 1976, p. 12, ERN (En) 00143472.

<sup>12577</sup> Meeting of the Council of Ministers, E3/817, 22 April 1976, p. 7, ERN (En) 00143467.

3775. The focus on enemies started to shift towards Vietnam in early 1976, when border negotiations between DK and Vietnam were failing.<sup>12578</sup> During the Standing Committee meeting on 14 May 1976, the Liaison Committees and the border situation with Vietnam were discussed, stating “enemies are active” and “[s]ometimes enemies create problems to destroy our negotiations”.<sup>12579</sup>

3776. A document dated 20 May 1976 issued on the third-year anniversary of the “Organization of Peasant Cooperatives” notes that after the coup in the early 1970s, revolutionary forces were not strong and “[d]rawing the distinction between comrade and enemy was not clear”.<sup>12580</sup> It recounted the “Party’s achievements” of 1975 and its alleged victory over “American imperialists and the traitor’s army”.<sup>12581</sup> It emphasised the importance of the cooperatives in helping defeat “enemies in the military, political and diplomatic realms”.<sup>12582</sup> It continued: “[c]ooperatives serve as an additional weapon for the Party to attack the enemies economically”.<sup>12583</sup> Strong cooperatives meant “a strong country defense [...]. No enemy shall be able to enter”.<sup>12584</sup>

3777. The June 1976 issue of the *Revolutionary Flag* signals the beginning of a shift in the CPK’s attention away from Thailand. It contains excerpts from a speech to West Zone Assembly by the “Comrade Party Organization Representative” on the enemy situation.<sup>12585</sup> The representative noted that enemy activity along the border was at a minimum, while having “smashed many enemies in the interior of the country and [having] scattered them”.<sup>12586</sup> The representative warned that enemy activity would

<sup>12578</sup> Section 4: General Overview, para. 284.

<sup>12579</sup> Standing Committee Minutes, E3/221, 14 May 1976, p. 13, ERN (En) 00182705. *See also*, T. 11 February 2015 (Elizabeth BECKER), E1/261.1, p. 49 (confirming in relation to this document the shift in focus towards Vietnam as “they started to see Vietnamese, very separate from this border issue, as interfering in their internal life and accusing many, many members of Democratic Kampuchea of being agents for Vietnam”).

<sup>12580</sup> Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 2, ERN (En) 00636009.

<sup>12581</sup> Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 3, ERN (En) 00636010.

<sup>12582</sup> Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 4, ERN (En) 00636011.

<sup>12583</sup> Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 4, ERN (En) 00636011.

<sup>12584</sup> Third Year Anniversary of the Organization of Peasant Cooperatives, E3/50, 20 May 1976, p. 10, ERN (En) 00636017.

<sup>12585</sup> *Revolutionary Flag*, E3/760, June 1976, pp. 11-12, ERN (En) 00509614-00509615.

<sup>12586</sup> *Revolutionary Flag*, E3/760, June 1976, p. 11, ERN (En) 00509614.

continue: “[t]his is a continual struggle between revolution and counter revolution; it will not stop”.<sup>12587</sup>

3778. The IENG Sary’s diary contains summary records of speeches and documents prepared or distributed by IENG Sary, including the records of internal meetings held in the DK Foreign Ministry in May and July of 1976.<sup>12588</sup> An entry dated 10 July 1976, minuting a meeting of the Ministry Congress, contains enumerations of “enemies of Cambodia”, which include imperialists and liberals, “who spy on us”. It also noted: “[t]he consciousness of private property is an enemy of the revolution”.<sup>12589</sup> The notes speak of reducing enemies to a minimum.<sup>12590</sup> Enemy tactics are also noted: “[they] verbally attack *Angkar*’s standpoint and political line. Our enemies mostly attack via this route, so we must have revolutionary vigilance and adhere to criticism and self-criticism.”<sup>12591</sup>

3779. In a telegram dated 18 July 1976 from BOU Phat *alias* Hang, Secretary of Sector 103 (Preah Vihear),<sup>12592</sup> to NUON Chea, SON Sen and IENG Sary, Hang reported that “CIA pacification agents made contact with these guys from Thailand via this very Preah Vihear temple corridor”, making the link between Thailand and the CIA.<sup>12593</sup> Hang also asked for advice regarding a person named Phoeun, who Hang reported had refused to participate in communal eating, enjoyed too much freedom and allegedly threatened to rape five women, wives of the commerce unit’s soldiers, and was allegedly seen assaulting one. Hang noted that he and others were of the opinion that Phoeun had “no more revolutionary element”, was incapable of observing the “Socialist line”, and could not be “changed back”.<sup>12594</sup>

<sup>12587</sup> Revolutionary Flag, E3/760, June 1976, p. 11, ERN (En) 00509614.

<sup>12588</sup> See above, para. 3746.

<sup>12589</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 18, ERN (En) 00003254 (entry dated 10 July 1976). See also, T. 1 April 2015 (TAK Sann), E1/286.1, pp. 38-39 (confirming her previous statement that upon arrival at Tram Kak, TAK was informed that if *Angkar* discovered that anyone was keeping private property, that person would be considered an enemy of the regime).

<sup>12590</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, pp. 19-20, 87, ERN (En) 00003255-00003256, 00003323 (entries dated 10 July 1976 and 15 December 1976, respectively).

<sup>12591</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 29, ERN (En) 00003265 (entry dated 10 July 1976).

<sup>12592</sup> See above, para. 3769. Comrade Hang was arrested and sent to S-21 early 1978. See S-21 confession (BOU Phat *alias* Hang), E3/2470, 3 February 1978; Section 12.2: S-21 Security Centre, para. 2327.

<sup>12593</sup> DK Telegram, E3/874, 18 July 1976, ERN (En-Kh) 00003705.

<sup>12594</sup> DK Telegram, E3/874, 18 July 1976, ERN (En-Kh) 00003705-00003706.

3780. The July 1976 issue of *Revolutionary Flag* warns about CIA infiltration:

[E]xperience has shown that it is imperative to grasp the biographies. If the biographies are unclear, even though the [candidates] are good, do not yet induct them. Be vigilant regarding the CIA; they have infiltrated. The CIA attacks the revolution by injecting drugs into the veins of the revolution. Therefore, it is imperative to clearly grasp the biographies.<sup>12595</sup>

3781. At a 3 August 1976 Standing Committee meeting of the military work in Kampong Som, MEAS Muth of Division 164 (navy) reported on the “enemy situation” within territorial waters, noting no significant activity at the borders with Thailand and Vietnam.<sup>12596</sup> POL Pot, when responding with his advice and noting the lack of activity from “enemies both in the East and in the West”, said that the West is composed of “American imperialists”, Thais and “traitors who foster their schemes to invade us”.<sup>12597</sup>

3782. In 1976, the focus also gradually shifted more inwards, as the fear of enemies within the CPK increased.<sup>12598</sup> At a meeting of the Secretaries and Deputy Secretaries of Brigades and Regiments on 2 August 1976, SON Sen addressed the duty to defend the DK as follows:

[I]t is imperative to think in terms of fending off enemies both external and internal, but it is especially important to pay attention fending off the enemy that is burrowing from within. This means it is imperative to pay attention to purging no-good elements completely from the Party, the Core Organizations and our male and female combatants within the Revolutionary Army.<sup>12599</sup>

3783. At a similar meeting on 18 August 1976, Comrade Pin (*alias* KHOEM Pin, Secretary of Division 703),<sup>12600</sup> Comrade Sok (*alias* KE Sok(h), CHAN Chakrei’s successor as Secretary of Division 170)<sup>12601</sup> and Comrade Suong (Secretary of Division

<sup>12595</sup> *Revolutionary Flag*, E3/4, July 1976, ERN (En) 00268938.

<sup>12596</sup> Standing Committee Minutes, E3/823, 3 August 1976, p. 1, ERN (En) 00234012.

<sup>12597</sup> Standing Committee Minutes, E3/823, 3 August 1976, p. 2, ERN (En) 00234013.

<sup>12598</sup> Section 12.1.4: Internal Factions: 1976 Events – Explosions in Siem Reap and Phnom Penh.

<sup>12599</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, p. 10, ERN (En) 00656578.

<sup>12600</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 11, ERN (En) 00897659; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 6, 49-50, ERN (En) 00081291, 00081334-00081335.

<sup>12601</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, ERN (En) 00897657; Book by Huy V.: *The Khmer Rouge Division 703: From Victory to Self-destruction*, E3/2116 [E3/2117], 4 June 2003, pp. 51, 139, ERN (En) 00081336, 00081424. *See also*, Section 12.1: Internal Factions, para. 2017.

450)<sup>12602</sup> reported on the “enemy situation”. Comrade Pin reported the following activity: “[t]wo bandits have been captured at the sea”, persons who allowed weapons to be stolen, theft in general, desertions and villagers who convinced people to take more food beyond their rations. Comrade Sok mentioned the arrest of a woman named Poeu and nine desertions in August. Comrade Suong reported that 18 people deserted in August alone, alleged banditry and “[c]ompany cadres hit and maltreated combatants”.<sup>12603</sup> SON Sen advised to resolve these issues by educating people about the socialist revolution and added that “no-good elements must be definitely screened”, blaming conflicts on enemy motivation and ignorance.<sup>12604</sup>

3784. At another similar meeting on 30 August 1976, SON Sen reported that on 26 August 1976 internal unrest had occurred at Ang Prouch, on the border between Kandal Steung district and Sector 33 (in the Southwest Zone),<sup>12605</sup> as a result of which 100 people were arrested. SON Sen said that those arrested had said there was a connection with the army regarding this unrest and had implicated Chakrei (*i.e.* CHAN Chakrei *alias* Mean) as their leader. SON Sen also reported that before this incident, 60 people had been arrested. He noted that the unrest described appeared to have been planned, as they initially had prepared for an uprising on 20 August. SON Sen further reported that they had raised banners with the slogans “Long Live Buddhism” and “Long Live the White Khmer Front of Liberation from Rice by the Can”. SON Sen noted again a nexus between this and the army: soldiers from Division 170 had fled to Sector 20, where they allegedly had engaged in propaganda to “the effect that there was unrest in Phnom Penh between the Khmer Rouge and the White Khmer”.<sup>12606</sup> SON Sen stated that measures to be taken should include additional education (“Do not allow

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<sup>12602</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 4, ERN (En) 00897652 (listing Comrade Suong as belonging to the Division Committee of Division 450); Report from Division 450, E3/1163, 14 November 1976, p. 3, ERN (En) 00877004 (indicating that Comrade Suong worked in Division 450); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Suong at the “Unit Chair” of Division 450). Comrade Suong was arrested and sent to S-21 early 1977. *See* S-21 confession (CHEA Non *alias* Suong), E3/1892, 20 February 1977; Section 12.2: S-21 Security Centre, para. 2422.

<sup>12603</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/797, 18 August 1976, ERN (En) 00234457-00234458.

<sup>12604</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/797, 18 August 1976, ERN (En) 00234458-00234459.

<sup>12605</sup> Section 10.1: Tram Kak Cooperatives, para. 904.

<sup>12606</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183966.



pacifism”), and Divisions were to examine and keep track of “no-good elements”.<sup>12607</sup> Others at the meeting reported instances of theft and (promoting) desertion.<sup>12608</sup> Dissent was also reported as enemy activity. Comrade Sao said that a fisherman at Logistics Fishing had criticised the collective eating system and had said “the White Khmer” and people in the cooperative will “rise up, attack and smash anybody who makes them eat rice gruel”.<sup>12609</sup> In response to these reports, SON Sen made the following general statement about enemies:

The enemy would like to take the opportunity to gather up no-good elements, the status-and rank-conscious, those whose families we have swept out, those whom we have removed from their positions, and those who have not internalized the revolutionary movement and can’t keep up with the rest, and, at the same time, the new people who don’t yet understand things, whom we are putting in difficulty and temporarily lack food: the CIA enemy is finding opportunities to gather them all up to attack us.<sup>12610</sup>

He also summed up the measures to be taken: educate Party and Youth League members as well as soldiers; screen out no-good elements, isolate and educate them.<sup>12611</sup>

3785. At the Plenary Meeting of Division 920 on 7 September 1976, Comrade Say (Deputy Secretary of Division 920)<sup>12612</sup> reported on the internal situation, noting increased efforts to educate people about the socialist revolution, but warning about weak Party members and problems relating to misuse of the Party line. As an example, he mentioned that some cadre and Party members beat and threatened combatants, having “twisted the Party line and used authority against combatants”.<sup>12613</sup>

<sup>12607</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183966.

<sup>12608</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183967.

<sup>12609</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183968.

<sup>12610</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183968.

<sup>12611</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/798, 30 August 1976, ERN (En) 00183968.

<sup>12612</sup> List of Participants Second General Staff Study Session, E3/847, 23 November 1976, p. 16, ERN (En) 00195337; Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535809. *See also*, Section 12.5: Phnom Kraol Security Centre, para. 3046.

<sup>12613</sup> Minutes of Plenary Meeting of the 920<sup>th</sup> Division, E3/799, 7 September 1976, p. 3, ERN (En) 00184779.

3786. During the meeting with Division 703 and S-21 of 9 September 1976,<sup>12614</sup> it was discussed that leaflets (with texts critical of the regime) were found on the street east of Wat Botum and near the Chinese Embassy in Phnom Penh. Duch was present at this meeting and said that they had arrested (YIM) Sambat, and had questioned Leat and Mat, who said that the leaflets came from Phuon of Division 170.<sup>12615</sup> SON Sen said it was necessary to examine the units of Division 170 as well as the units of Division 703 and nearby units. He said that this problem must have come from within (noting such leaflets were also found in June and July of that year), as they were produced “in legitimate working places, offices of Divisions, regiments or various ministries”.<sup>12616</sup> SON Sen also stated these activities were part of an overall enemy plan.<sup>12617</sup> As for measures to be taken, SON Sen suggested increased efforts regarding political and ideological education, increased surveillance and rounding up persons from Division 170 in one location.<sup>12618</sup> SON Sen also suggested that Comrade Pang (*alias* CHHIM Sam Aok), head of S-71,<sup>12619</sup> liaise with the various ministries,<sup>12620</sup> which indicates that such enemy activities were reported to the ministries as well.

3787. On the same day, a meeting took place of Division 164 with MEAS Muth. With respect to the internal situation, a desertion plan from VUNG Sruol, a platoon cadre, involving 40 persons was discussed. The minutes noted that “the Division commander separated the bad people and sent them to stay at the different places so that they were not mixed with the good people”.<sup>12621</sup> The 40 that deserted were apparently re-distributed amongst other units, and most of them improved. Some, however, refused to work, demanding to be reunited with those who were sent away earlier.<sup>12622</sup> SON Sen spoke of an elaborate, but never executed, plan to attack the islands by foreign enemies (United States, France, Thailand, Taiwan, South Korea, Japan), which he

<sup>12614</sup> Section 12.2: S-21 Security Centre, paras 2203-2273.

<sup>12615</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 1, ERN (En) 00933846. *See also*, Section 12.1: Internal Factions, para. 1892.

<sup>12616</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 3, ERN (En) 00933848.

<sup>12617</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 3, ERN (En) 00933848.

<sup>12618</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 4, ERN (En) 00933849.

<sup>12619</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 67-68 (when questioned on this meeting, Duch confirmed that Comrade Pang was the head of S-71, and that Comrade Pang and KHMA My, a member of S-71, were tasked with finding out who had distributed the leaflets in Phnom Penh). *See also*, Section 12.2: S-21 Security Centre, para. 2203.

<sup>12620</sup> Minutes of Meeting with Office 703 and S-21, E3/811, 9 September 1976, p. 4, ERN (En) 00933849.

<sup>12621</sup> Minutes of Meeting of comrades 164, E3/813, 9 September 1976, p. 2, ERN (En) 00657355.

<sup>12622</sup> Minutes of Meeting of comrades 164, E3/813, 9 September 1976, p. 2, ERN (En) 00657355.

connected to internal enemies (“Khmer traitors”).<sup>12623</sup> He also alleged these external enemies were liaising with one another and wanted the Japanese to put an embassy in place in DK to use for spying – SON Sen stated that the CIA was hiding in embassies.<sup>12624</sup> SON Sen indicated that this information came from confessions from enemies: “According to the confession[s] of the returnees from outside the country”.<sup>12625</sup>

3788. SON Sen discussed the “enemy situation” at another Divisions meeting on 16 September 1976, where he said that American imperialists had been plotting to take the islands of Koh Trang and Poulo Wai, and to target Battambang and Preah Vihear provinces. These enemies allegedly reported back to CIA agents in South Vietnam.<sup>12626</sup> SON Sen also referred to CHAN Chakrei again:

Chakrey is a main network who has a contact with both Imperialists and revisionists. They enticed opponents, authoritarianists and those who are not satisfied with our revolution. Soviet, Vietnam, and CIA agents also have a linked network with Chakrey who is an old enemy buried inside. The new ones (enemy): opponents, [and] authoritarianists, had been enticed by Vietnam. If [we]examine the tumultuous activity these days, they [are making] contacts with CIA agents. Those who have non-revolutionary standpoint also encourage such activity. This situation is linked to the general situation of enemy.<sup>12627</sup>

In addition to imperialists, revisionists are identified as enemies.<sup>12628</sup>

3789. On the same day, 16 September 1976, a meeting took place with people from Divisions 290 and 170, which also discussed these Divisions and (possible) enemies within them.<sup>12629</sup> The enemy situation discussed at this meeting pertained to those within the military. SON Sen noted that since CHAN Chakrei *alias* Mean was arrested, Chakrei had implicated others in his confessions: “After his arrest, Chakrei implicated a number of people of Sector 24 who had been in contact with the Vietnamese and the

<sup>12623</sup> Minutes of Meeting of comrades 164, E3/813, 9 September 1976, pp. 2-3, ERN (En) 00657355-00657356.

<sup>12624</sup> Minutes of Meeting of comrades 164, E3/813, 9 September 1976, p. 3, ERN (En) 00657356.

<sup>12625</sup> Minutes of Meeting of comrades 164, E3/813, 9 September 1976, p. 2, ERN (En) 00657355.

<sup>12626</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800, 16 September 1976, ERN (En) 00184339.

<sup>12627</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800, 16 September 1976, ERN (En) 00184339-00184340.

<sup>12628</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/800, 16 September 1976, ERN (En) 00184340.

<sup>12629</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976.

Soviets to attack our revolution on this 30 September 1976”.<sup>12630</sup> As a result, they arrested Chhouk and others from Sector 24. The meeting agreed to arrest four people from Division 290: CHUM Chan, KHIEV Ma, Chum, YOS Yan (the older brother of YOS Sophon).<sup>12631</sup> DUCH was also present at this meeting, and added another 29 names from Division 170 of people that needed to be arrested.<sup>12632</sup> It was also decided to “take out” two women: Chakrei’s wife and niece.<sup>12633</sup> All these people were to be arrested and transported to S-21, maintaining secrecy.<sup>12634</sup>

3790. On 19 September 1976, small incidents of possible sabotage and theft were reported at a logistics meeting. Comrade Oeun, Secretary of Division 310,<sup>12635</sup> noted that anyone who steals was to be regarded as the enemy and noting that the theft of 200kg of rice was a “political trend”.<sup>12636</sup> People fleeing and returning home were also seen as enemies.<sup>12637</sup> SON Sen responded by explaining that there were two main enemy networks: “Network 1: American imperialists, French, Taiwan, CIA. [...] Network 2: Revisionists such as Soviet-Vietnam”. He referred again to the example of Chakrei, who by then had been arrested, and described him as “a CIA agent [who] has a close relationship with revisionists in the base – Sector 24 and Sector 25 adjacent to Vietnam”.<sup>12638</sup> SON Sen noted that the real danger is the enemy attacking “from inside”.<sup>12639</sup> He explained that “[t]his is a conflict between revolutionary class and imperialist and revisionist [classes]”.<sup>12640</sup>

<sup>12630</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 1, ERN (En) 00937114.

<sup>12631</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, pp. 1-2, ERN (En) 00937115.

<sup>12632</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, pp. 2-3, ERN (En) 00937115-00937116.

<sup>12633</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 3, ERN (En) 00937116.

<sup>12634</sup> Minutes of Meeting Divisions 290 and 170, E3/822, 16 September 1976, p. 3, ERN (En) 00937116.

<sup>12635</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 2, ERN (En) 00897650 (listing Comrade Oeun as Secretary of Division 310); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Oeun as belonging to Division 310). *See also*, Section 5: Administrative Structures, para. 436.

<sup>12636</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183970, 00183974.

<sup>12637</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183976.

<sup>12638</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183978.

<sup>12639</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183978.

<sup>12640</sup> Minutes of Logistics Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/809, 19 September 1976, ERN (En) 00183978.

3791. The summary of the 1976 study session, which had introduced the 1977 four-year plan, notes that they had made a lot of progress in a very short time, “in the context of a fierce and uncompromising fight to the death with the class enemy, both inside the country and coming from outside the country”.<sup>12641</sup> The summary further notes:

It is the property-less class under the leadership of its Party according to its correct line, in combat with exploiting classes of every description, whether they are international exploiting classes or exploiting classes remaining in our national society, and especially the combat by absolute means against their instruments and representatives who furtively steal their way into and hide themselves in our revolutionary ranks and in the ranks of the Party.<sup>12642</sup>

The document also makes clear that the 1977 Plan included renewed efforts to impose a rigorous study regime of Party documents.<sup>12643</sup> However, the Chamber does not have the Khmer original of the summary of the 1976 study session, and therefore approaches this evidence with appropriate caution.

3792. In September-October 1976, the *Revolutionary Flag* stressed that:

[T]here are only the worker class and the peasant class, but the peasants include both old and new peasants. Among the old peasants there are poor peasants, lower-middle peasants, mid-level peasants, upper middle peasants, and wealthy peasants. Among the new peasants are the petty bourgeoisie, the capitalists, the feudalists, and other workers and laborers. Therefore, there are contradictions within the old peasants from upper-middle peasants on up, in particular with the wealthy peasants, that are life and death contradictions. There are also contradictions within the new peasants, contradictions with capitalists and feudalists that are life-and-death contradictions. When individuals reform, they are not life and death contradictions, but they do not easily reform.<sup>12644</sup>

This *Revolutionary Flag* uses language which is identical to that of an introductory document for party members.<sup>12645</sup> It continued: “These contradictions are buried, because the forces of the proletarian dictatorship are stronger, and they cannot move.

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<sup>12641</sup> Chapter by B. Kiernan, “Summary of the Results of the 1976 Study Session” in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8 [E3/213 and E3/735], September 1976, p. 169, ERN (En) 00104081.

<sup>12642</sup> Chapter by B. Kiernan, “Summary of the Results of the 1976 Study Session” in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8 [E3/213 and E3/735], September 1976, p. 170, ERN (En) 00104082.

<sup>12643</sup> Chapter by B. Kiernan, “Summary of the Results of the 1976 Study Session” in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8 [E3/213 and E3/735], September 1976, p. 176, ERN (En) 00104085.

<sup>12644</sup> *Revolutionary Flag*, E3/10, September-October 1976, p. 29, ERN (En) 00450529.

<sup>12645</sup> The English translations of these passages differ, but the originals in Khmer are identical.

Some elements may reform, but many elements do not reform. When they die, they instruct their children to struggle on against the communists.”<sup>12646</sup>

3793. The consolidation of the change in focus toward Vietnam and internal enemies is illustrated at the meeting of the Secretaries and Deputy Secretaries of Divisions and Regiments on 9 October 1976. Regular “enemy activity” was reported: people trying to flee and stealing food.<sup>12647</sup> In addition, Comrade San (likely the Deputy Secretary of Division 502)<sup>12648</sup> concluded that more than 80 elements with political tendencies had already “been removed”,<sup>12649</sup> showing that political opposition was also equated with enemy activity.<sup>12650</sup> Comrade Suong (Secretary of Division 450)<sup>12651</sup> noted that enemies had infiltrated the organisation, “attacking the Revolution in words”.<sup>12652</sup> He also mentioned “[t]hey are opposing the paddy farming plan taking combatants who are ill to lie in the paddy fields and compelling them to work although they are ill”.<sup>12653</sup> Comrade Oeun, Secretary of Division 310,<sup>12654</sup> noted that some people were concealing their biographies, notably those who were White Khmer or had lived in Vietnam.<sup>12655</sup> Comrade Nat, former Secretary of Division 703, former chairman of S-21 and later reassigned to the General Staff,<sup>12656</sup> confirmed the shift in focus away from Thailand

<sup>12646</sup> Revolutionary Flag, E3/10, September-October 1976, ERN (En) 00450529. *See also*, Introductory Document for Party Members, E3/138, undated, p. 8, ERN (En) 00743799 (the same passage in different wording is included here).

<sup>12647</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 3-4, ERN (En) 00940338-00940339.

<sup>12648</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 12, ERN (En) 00897660 (listing Comrade San as Deputy Secretary of Division 502). *See also*, Section 5: Administrative Structures, para. 438.

<sup>12649</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 4, ERN (En) 00940339.

<sup>12650</sup> *See e.g.*, para. 3786 (spreading leaflets with texts critical of the regime was also perceived as enemy activity).

<sup>12651</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 4, ERN (En) 00897652 (listing Comrade Suong as belonging to the Division Committee of Division 450); Report from Division 450, E3/1163, 14 November 1976, p. 3, ERN (En) 00877004 (indicating that Comrade Suong worked in Division 450); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Suong at the “Unit Chair” of Division 450).

<sup>12652</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 13, ERN (En) 00940348.

<sup>12653</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 13, ERN (En) 00940348.

<sup>12654</sup> List of Participants of the 1<sup>st</sup> General Staff Training, E3/1585 [E3/10574.1], 20 October 1976, p. 2, ERN (En) 00897650 (listing Comrade Oeun as Secretary of Division 310); Rice Consumption Plan in 1976, E3/1136, 4 January 1976, p. 1, ERN (En) 00543743 (listing Comrade Oeun as belonging to Division 310).

<sup>12655</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 14, ERN (En) 00940349.

<sup>12656</sup> Section 12.2: S-21 Security Centre, para. 2145.

and towards Vietnam: “the enemy to the West, despite the *coup d’état* in Thailand, is unable to attack us. The enemy to the East, the revisionists is our absolute enemy and very dangerous”.<sup>12657</sup> SON Sen gave a long speech summarising recent events surrounding the arrests and confessions of CHAN Chakrei *alias* Mean (Secretary of Division 170), SUOS Neou *alias* Chhouk (Secretary of Sector 24 in the East Zone), MEN San *alias* NEY Sarann *alias* Ya (Secretary of the Northeast Zone) and KEO Meas (former member of the Central Committee),<sup>12658</sup> stressing that everyone was to maintain secrecy and not disseminate the information to the lower levels.<sup>12659</sup> He also spoke of the leaflets and grenades being thrown around the Royal Palace in Phnom Penh as enemy activities.<sup>12660</sup> SON Sen claimed that they had “basically smashed the CIA agents on the inside”,<sup>12661</sup> stressing the importance of a “clean army” and maintaining absolute secrecy.<sup>12662</sup> SON Sen said that the 1976 internal purges were a victory over the revisionists who had been trying to infiltrate for more than ten years.<sup>12663</sup> He noted that enemies were attacking internally and externally, but that attacks from the inside were the determining factor. Referring to the recent internal purges, SON Sen noted: “[n]ow, we have smashed to smithereens these internal stratagems, and smashed them to smithereens strategically”.<sup>12664</sup> SON Sen also suggested evil elements “in the sense of class struggle” must be screened based on three principles: first, the “destructive category” must be screened out; second the “normal liberal category” must be educated more; and third, the “category of those who have merely been incited by the enemy” must be educated so that they no longer believe the enemy.<sup>12665</sup> The existence of these three categories was confirmed by witnesses who testified at trial. For example, Duch

<sup>12657</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 16, ERN (En) 00940351.

<sup>12658</sup> Section 12.1: Internal Factions, paras 1878-1887, 1890-1899.

<sup>12659</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 6-7, ERN (En) 00940341-00940342. SON Sen reiterates this at the end of the meeting, *see* Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 20, ERN (En) 00940355.

<sup>12660</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 6-7, ERN (En) 00940341-00940342. *See above*, para. 3786.

<sup>12661</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 8, ERN (En) 00940343.

<sup>12662</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 9, ERN (En) 00940344.

<sup>12663</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 17, ERN (En) 00940352.

<sup>12664</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 18, ERN (En) 00940353.

<sup>12665</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, pp. 19-20, ERN (En) 00940354-00940355.

testified that these three categories had been part of the Party line since its creation in 1960, but that in each category it depended on the decision-maker in charge how to implement this policy.<sup>12666</sup> Witness NETH Savat testified that he recalled these three categories of enemies; he saw them in a circular shortly before he was arrested himself.<sup>12667</sup> The circular indicated that the first category was to be killed, the second to be detained and the third to be sent to the cooperatives.<sup>12668</sup> Witness SAO Sarun also testified that he recalled these three categories and said that there was no absolute instruction to only arrest; they were also to re-educate.<sup>12669</sup>

3794. On 18 October 1976, at a subsequent meeting of the Secretaries and Deputy Secretaries of Divisions and Regiments, SON Sen emphasised the measures, also discussed at the previous meeting on 9 October 1976, to be taken to counter the enemy and protect the revolution.<sup>12670</sup> He noted that the CIA's plan was to attack the revolution "with the French and American imperialists, the Japanese, and traitor groups" and seize DK's islands. He said they must conduct internal purges to undercover any enemies hiding within.<sup>12671</sup> With respect to "the revisionists, [*i.e.*] the Soviets and the Vietnamese", SON Sen noted that the Vietnamese had been trying to attack them both internally and externally.<sup>12672</sup> SON Sen said that in response to these attempts they "drove the Vietnamese from our territory".<sup>12673</sup> He noted "[e]ven though the traitor groups have already been fundamentally smashed, Vietnam still continues to lead the remaining groups to continue their activities".<sup>12674</sup>

<sup>12666</sup> T. 21 June 2016 (KAING Guek Eav), E1/441.1, p. 59.

<sup>12667</sup> T. 11 March 2016 (NETH Savat), E1/400.1, p. 19. *See also*, Section 12.5: Phnom Kraol Security Centre, para. 3061.

<sup>12668</sup> T. 11 March 2016 (NETH Savat), E1/400.1, pp. 28-29, 66-67.

<sup>12669</sup> T. 30 March 2016 (SAO Sarun), E1/411.1, pp. 24-25.

<sup>12670</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976; Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976.

<sup>12671</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976, p. 1, ERN (En) 00877015.

<sup>12672</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976, p. 1, ERN (En) 00877015.

<sup>12673</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976, p. 2, ERN (En) 00877016. *See also*, Section 13.3.7: Treatment of the Vietnamese: Movement of Vietnamese Civilians from Cambodia to Vietnam.

<sup>12674</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/815, 18 October 1976, p. 1, ERN (En) 00143500.



3795. A telegram dated 26 November 1976 from SON Sen to Comrade Dim (*i.e.* KUN Dim, Deputy Commander of a battalion within Division 164)<sup>12675</sup> illustrates that attention was still paid to the islands and that to some extent Thailand was still considered as a potential threat to the CPK. The telegram states that “CIA [agents] from Thailand” were active on Poulo Wai islands.<sup>12676</sup>

3796. The IENG Sary diary includes an entry dated 30 November 1976 entitled “Documents on Consciousness”, which includes a document “about class contradiction”. The document lists various classes (worker class, the peasant class, the petty-bourgeois, the capitalists, the nobility and the feudalist classes) and notes that “contradictions” were to be resolved, meaning class contradictions within Cambodian society. While types of classes were eliminated, their “class essence” was still there.<sup>12677</sup> The document stresses that the Party must be able to see these contradictions, and that before analysing them, they need to find out the class which is at the source of such contradictions. It concludes that they must “analyse the contradictions based mainly on class”.<sup>12678</sup> Outside enemies were identified as “American imperialists and the revisionists”,<sup>12679</sup> and elsewhere, in an entry dated 1 August 1978, specified as including Japan, Russia, Laos and Thailand.<sup>12680</sup>

3797. Enemy activity included theft and desertion, as noted during the meeting of Secretaries and Logistics Officers of Divisions and Regiments on 15 December 1976.<sup>12681</sup> There was, however, also a sense that the internal enemy situation was under control. In general, SON Sen noted that there had been fewer problems, but warned that there were still occurrences of theft, spreading of anonymous letters and “[e]xpressing slogans attacking the collective regime”.<sup>12682</sup> He added that the Soviet and Vietnamese

<sup>12675</sup> List of Participants Second General Staff Study Session, E3/847, 23 November 1976, p. 11, ERN (En) 00195332; Second General Staff Study Course, E3/1142, 23 November 1976, ERN (En) 00535795.

<sup>12676</sup> DK Telegram, E3/1153, 26 November 1976, ERN (En) 00233926.

<sup>12677</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 42, ERN (En) 00003278 (entry dated 30 November 1976). This sentiment is also echoed in Introductory Document for Party Members, E3/138, undated, p. 2, ERN (En) 00743791.

<sup>12678</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 42, ERN (En) 00003278 (entry dated 30 November 1976).

<sup>12679</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 50, ERN (En) 00003286 (entry dated 30 November 1976).

<sup>12680</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 81, ERN (En) 00003317 (entry dated 1 August 1978).

<sup>12681</sup> Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, pp. 6-7, ERN (En) 00233715-00233716.

<sup>12682</sup> Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, p. 9, ERN (En) 00233718.

revisionists had been scattered, but were still active. SON Sen said that dangerous elements must be screened out of the units. He stated that efforts to grasp biographies had been good, but that there were still some comrades hiding their histories: “[b]e most careful about those who [*sic*] mothers and fathers were purged or whose siblings were purged”.<sup>12683</sup>

3798. The IENG Sary diary includes minutes of another meeting that took place on 15 December 1976, and notes that capitalists, feudalists and imperialists (“the pests attempting to destroy our leadership machine”) had been “wiped out”.<sup>12684</sup> The entry also notes that enemies to the west and to the east both wanted to “destroy them”, that Thailand was being helped in this regard by American imperialists, and that these enemies tried to infiltrate in the Party, calling on everyone to be careful.<sup>12685</sup>

3799. On 16 December 1976, at the meeting of Division 920, SON Sen again stated that with respect to the internal enemy situation there was nothing to worry about, because they had been “smashed”.<sup>12686</sup> SON Sen also noted that the strategy was to disperse enemies:

Problems inside units of organization: On the matter of those who used to be with the Vietnamese: do not allow them to concentrate. They must be split up and sent to be carpenters and water jar makers and the like, interspersed with forces belonging to us whose stance is solid.<sup>12687</sup>

3800. At the meeting of Division 801 on 16 December 1976, Comrade Thi noted that the (external) enemy situation had (also) eased. He only reported some theft.<sup>12688</sup> The General Staff held a meeting on 19 December 1976, where it noted that with respect to “the enemy situation in general”, there was nothing of great concern.<sup>12689</sup>

3801. Witness PECH Chim testified that, during a political training session he attended in December 1976, NUON Chea explained how to make the distinction

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<sup>12683</sup> Minutes of Meeting Secretaries and Logistics Officers of Divisions and Regiments, E3/804, 15 December 1976, p. 9, ERN (En) 00233718.

<sup>12684</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 86, ERN (En) 00003322 (entry dated 15 December 1976).

<sup>12685</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 86, ERN (En) 00003322 (entry dated 15 December 1976).

<sup>12686</sup> Minutes of Meeting Division 920, E3/805, 16 December 1976, p. 1, ERN (En) 00923160.

<sup>12687</sup> Minutes of Meeting Division 920, E3/805, 16 December 1976, p. 2, ERN (En) 00923161.

<sup>12688</sup> Minutes of Meeting Division 801, E3/806, 16 December 1976, p. 2, ERN (En) 00874987.

<sup>12689</sup> DK Military Minutes General Staff Office, E3/826, 19 December 1976, p. 1, ERN (En) 00233994.

between internal and external enemies, and between friends and enemies.<sup>12690</sup> NUON Chea also spoke about class struggle, the repressed class and the oppressors, and how people in high positions were not good. PECH Chim further testified that “they were very afraid of Lon Nol’s men”.<sup>12691</sup> PECH Chim said that they received instructions in study sessions to assess, track, capture and smash the enemy. According to him, the term “smash” meant to eradicate or to rid society of – in his opinion, it did not necessarily mean to kill them, but to eliminate the sense of class, the repression and exploitation of other people, to get rid of that mindset.<sup>12692</sup>

#### 16.3.1.4. 1977

3802. The December 1976-January 1977 issue of the *Revolutionary Flag* includes excerpts of a speech by NUON Chea delivered on 16 January 1977 at a rally in Phnom Penh on the occasion of the ninth anniversary of the founding of the RAK.<sup>12693</sup> NUON Chea warned that every type of enemy (outside the country, inside the country, “imperialist enemies”, and “the various exploiting class enemies”) wanted to take back DK and “take our people, our workers and our peasants, and make them slaves again”.<sup>12694</sup> NUON Chea recounted that in 1970 they were fighting “the American imperialists and their servants, the contemptible Nol being the ringleader”.<sup>12695</sup> NUON Chea also reminisced that when fighting in the town of Banam in 1973 they expelled, among others, the ethnic Vietnamese and the ethnic Chinese as a tactic to take away people from the enemy with the aim to bar the enemy from having an army or an economy.<sup>12696</sup> Regarding attacking the enemy militarily, NUON Chea noted that the enemy had to be attacked “by eradicating their war of espionage, their psychological warfare, and their pacifist agents”.<sup>12697</sup> When discussing combat lines, NUON Chea

<sup>12690</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 39, 41, 75; T. 22 April 2015 (PECH Chim), E1/290.1, p. 39. *See below*, para. 3858 (regarding the meaning of “smash” according to the Chamber). PECH Chim was initially inconsistent regarding the year he attended this meeting, flitting between December 1975 and December 1976. He finally settled on December 1976, which is consistent with when he became District Secretary (in 1976). *See also*, Section 10.1: Tram Kak Cooperatives, para. 953.

<sup>12691</sup> T. 22 April 2015 (PECH Chim), E1/290.1, pp. 38-39.

<sup>12692</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 37-38; T. 22 April 2015 (PECH Chim), E1/290.1, pp. 52-53.

<sup>12693</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, pp. 13-45, ERN (En) 00491406-00491438. *See also*, *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168465-00168470.

<sup>12694</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 17, ERN (En) 00491410.

<sup>12695</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 18, ERN (En) 00491411.

<sup>12696</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 29, ERN (En) 00491422. *See also*, Section 13.3: Treatment of the Vietnamese, para. 3384.

<sup>12697</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491424.

stated that one guerrilla team could “kill one enemy and wound one enemy per day”, adding that 5,000 teams could thus “smash” lots of enemies.<sup>12698</sup>

3803. IENG Sary’s diary summarised the achievements of 1976 in an entry dated 18 January 1977 and included having found many cases of “CIA pests”.<sup>12699</sup> It noted that the world was divided into three “blocs”. The first bloc – “our real enemy” – included “American Imperialists, the West German, Japanese, French, English Imperialists and the capitalist countries including European countries, Canada”. The second bloc – “our enemies like the first bloc”, “they always want us to be liberal like them” – included the Soviet Union and Eastern Europe. The third bloc included different groups: first, those completely loyal to them, namely China, Albania and North Korea; second, “normal friends”, namely Yugoslavia, Romania and Algeria; and third, those who were not content with them and opposed them as “the puppets of the Imperialists”, namely Taiwan and South Korea.<sup>12700</sup> It was also noted that 1976 had been a key year:

Our enemies are now decrepit and possibly dying. The revolution has pulled out their roots, and the espionage networks have been smashed. In respect of the enemy classes, they no longer exist. However, there remain American imperialists, the revisionists, the KGB, and Vietnam. Even though they have been defeated, they still persist. Another thing is that the enemies are burrowing within us, the military, the workers, the co-operatives, who are inside our ranks. In order to make the Socialist Revolution meaningful and powerful, these enemies must be wiped out one after the other.<sup>12701</sup>

One of the core tasks of the Ministry of Foreign Affairs was to “clearly define our [external] enemies”.<sup>12702</sup>

3804. Where in December 1976 there had still been a sense of having the enemy situation under control, this state of relative calm quickly faded in early 1977. At a divisions and regiments meeting on 1 March 1977, various enemy activities were

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<sup>12698</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 36, ERN (En) 00491429. *See also*, para. 3817 (discussing guerrilla tactics at Instructions from 870, E3/741, 3 January 1978, p. 3, ERN (En) 00296005).

<sup>12699</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 89, ERN (En) 00003325 (18 January 1977).

<sup>12700</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, pp. 93-94, ERN (En) 000033329-000033330 (18 January 1977).

<sup>12701</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 95, ERN (En) 00003331 (18 January 1977).

<sup>12702</sup> IENG Sary’s Diary, E3/522 [E3/925 and E3/926], undated, p. 97, ERN (En) 00003333 (18 January 1977).

reported, including purges of those who had come from Vietnam,<sup>12703</sup> theft,<sup>12704</sup> drinking alcohol,<sup>12705</sup> internal purges,<sup>12706</sup> writing poetry and short stories,<sup>12707</sup> and having long hair.<sup>12708</sup> SON Sen responded that these enemy activities demonstrated that the CIA, Vietnamese and revisionists were still trying to sabotage their revolution.<sup>12709</sup> SON Sen noted that they now saw more clearly who the enemy was: “the contemptible Chhouk, Ya and Chakrei traitorous networks were revisionist networks, and we did not give weight to characterizing them as CIA networks. In fact, all these contemptible guys were CIA links who had been infiltrated into our Party long ago”.<sup>12710</sup> SON Sen claimed that the CIA and revisionists were one.<sup>12711</sup> He concluded that every external enemy was connected to an internal enemy and that “[t]he enemies to the east and to the west are in it together”.<sup>12712</sup> SON Sen said that their priorities would change in 1977:

Before, we stipulated our duties as: First, the duty of socialist revolution; Second, the duty of building socialism; Third, the duty of defending the country. Now, we are putting forward the duty of defending the country as number one, the duty of continuing the socialist revolution as number two, and the duty of building socialism as number three.<sup>12713</sup>

<sup>12703</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 2, ERN (En) 00933834 (Comrade Chhin noted that “[a]fter the studies, those who came from Vietnam, the children of soldiers, sub-district chiefs and police were purged and sent to do production in one place”).

<sup>12704</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 3, ERN (En) 00933835 (Comrade Maut reported: “as for units deployed in the vicinity of depots, chicken of those who are guarding the depots have been stolen. A number of the cadres and combatants guarding the depots used to be with the traitors as their bodyguards for long.”).

<sup>12705</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 3, ERN (En) 00933835 (Comrade Pheap mentioned persuading combatants to drink alcohol and picking fruit as enemy activity).

<sup>12706</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, pp. 3-4, ERN (En) 00933835-00933836 (Comrade Yan spoke of “[m]aybe 600 persons are elements who must be removed” but it was not known at what level of the organisation these “enemy elements” were).

<sup>12707</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 4, ERN (En) 00933836 (reported by Comrade Sokh).

<sup>12708</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 4, ERN (En) 00933836 (Comrade Sim noted that some persons were suspicious “because they were wearing long hair and behaving widely [*sic*]”).

<sup>12709</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 7, ERN (En) 00933839.

<sup>12710</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, pp. 7-8, ERN (En) 00933839-00933840.

<sup>12711</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 8, ERN (En) 00933840.

<sup>12712</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 9, ERN (En) 00933841.

<sup>12713</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 9, ERN (En) 00933841.

3805. At a meeting of divisions and independent regiments held on 3 April 1977, it was noted with respect to the internal enemy that “in 1976, we basically eliminated most [of] the reactionaries from the important organizations, including the revisionists and CIA members”.<sup>12714</sup> The minutes also include the plan to educate and purge “the reactionaries in our military ranks” by requesting biographies of all high-ranking officials of regiments, battalions and companies, and of all soldiers by the end of 1977.<sup>12715</sup> The Chamber notes that this information comes from minutes that Professor GOSCHA found at the People’s Army Library in Hanoi in the form of Vietnamese translations of Khmer contemporaneous documents, and which he copied entirely. The Chamber will accordingly have regard to the subject-matter, theme and general thrust of the minutes, without according undue weight to the meaning of particular words or phrases.<sup>12716</sup>

3806. In a special issue of the *Revolutionary Flag* released in April 1977 on the second anniversary of 17 April 1975, excerpts from a speech by a “Comrade representing the Party” are included.<sup>12717</sup> The representative discussed the first quarter of 1977 regarding defeat of all types of enemies:

Thus, the view toward the victories in every field during the past few months is that they were profound and audacious and underwent strenuous, tense combat between us and the enemies both internal and external, between the revolution and the traitors to the revolution both internal and external, between the collective and the private, between socialism and capitalism, between the Kampuchean revolution under the correct leadership of the Communist Party of Kampuchea on one side and the “CIA”, the “KGB”, and the “Y[uon]” and their running dogs on the other.<sup>12718</sup>

In the same issue, the “Comrade representing the Party” is featured as telling readers, regarding “CIA”, “KGB” and “Yuon” agents, to continue to “strike them and trample them [...] [and] smash them even more so they cannot raise their heads”.<sup>12719</sup>

<sup>12714</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments (copied by C.E. Goscha), E3/10693, 3 April 1977, p. 2, ERN (En) 01324076.

<sup>12715</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments (copied by C.E. Goscha), E3/10693, 3 April 1977, p. 3, ERN (En) 01324077.

<sup>12716</sup> Section 5: Administrative Structures, paras 351-354.

<sup>12717</sup> *Revolutionary Flag*, E3/742, April 1977, p. 3, ERN (En) 00478494 (the title above the speech is: “Continue to Strengthen and Expand the Great Victories of Early 1977 to Become Even Mightier In Order to Sweep the Enemy Clean and Continue to Completely Implement and Even Surpass The Party’s 1977 Plan”. Similar language of “sweep clean” is used at ERN (En) 00478496, 00478499-00478502).

<sup>12718</sup> *Revolutionary Flag*, E3/742, April 1977, p. 4, ERN (En) 00478495.

<sup>12719</sup> *Revolutionary Flag*, E3/742, April 1977, p. 5, ERN (En) 00478496.

3807. KHIEU Samphan delivered a speech on the occasion of the second anniversary of 17 April 1975, in which he stated that: “[w]e must wipe out the enemy in our capacity as masters of the situation, following the lines of domestic policy, foreign policy and military policy of our revolutionary organization”. He also said “[w]e must uphold our spirit of revolutionary vigilance at all times against the enemy from all quarters, both at home and abroad, to defend Democratic Cambodia, protect the worker-peasant administration and preserve the fruits of our revolution resolutely and permanently”.<sup>12720</sup>

3808. The June 1977 *Revolutionary Flag* issue reiterates the need to concentrate on continuing attacking external and internal enemies. It explained that the revolution has enemies because:

This is the law of nature in the conflicts between revolution and counter revolution, between the people and the oppressor classes, between the worker class and the capitalist class, between the collective and the private, between socialism and capitalism, between true Marx-Leninism and revolution-betraying revisionism, between independence/mastery and aggression, expansionism, colonialism, imperialism, etc.<sup>12721</sup>

3809. A telegram from Comrade Vy dated 15 June 1977 – with NUON Chea, IENG Sary, VORN Vet and SON Sen all copied – reported the capture in Sector 107 of 209 Vietnamese soldiers, including nine women, identified as mostly Jarai (Charai) and deemed external enemies.<sup>12722</sup> Comrade Vy asked *Angkar* for a “high-level decision”.<sup>12723</sup> As discussed elsewhere, the Chamber finds that at least 100 ethnic Jarai from the group mentioned in the telegram were executed approximately one week after their arrival at Au Kanseng Security Centre.<sup>12724</sup>

3810. The July 1977 issue of the *Revolutionary Flag* contained a speech by the “Party Organization Representative” on the occasion of the West Zone Cadre Conference on 25 July 1977, in which the representative stressed that it was imperative to counter any

<sup>12720</sup> *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200 [E3/201], 19 April 1977, ERN (En) S00004165, S00004169, respectively. The same speech can be found at [partly illegible]: *Khieu Samphan Speech* (in FBIS collection), E3/286, 18 April 1977, ERN (En) 00168204-00168211 (entry dated 15 April 1977).

<sup>12721</sup> *Revolutionary Flag*, E3/135, June 1977, p. 34, ERN (En) 00446879.

<sup>12722</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897667. *See also*, Section 12.4: Au Kanseng Security Centre, paras 2935-2937.

<sup>12723</sup> DK Telegram, E3/240, 15 June 1977, ERN (En) 00897668.

<sup>12724</sup> Section 12.4.6: Au Kanseng Security Centre: Arrival and Execution of the Jarai.

capitalist propaganda by “[re-educating] the poor peasants and the lower middle peasants so they will have class anger, have class combat, and have a firm class stance”.<sup>12725</sup> It included an example of a person named Ham, who had allegedly said during a Zone committee meeting, that cattle of the rich were fatter than cattle of the poor. This was considered an attack on the regime: “[t]o believe that private property cattle are fatter than collective property cattle is to attack the collective regime, to attack the Party’s socialist revolution, whether wittingly or unwittingly”.<sup>12726</sup> This Ham was later allegedly exposed as an enemy embedded in the Party, for which his remarks regarding fat cattle were considered an omen.<sup>12727</sup> Witness MEAS Voeun, Deputy Chairman of Division 1 of the West Zone, testified that this conference was intended to raise awareness about the internal enemy, “those who were within the ranks”.<sup>12728</sup>

3811. A report dated 12 September 1977 of the Ministry of Foreign Affairs states that “[a]t our Ministry’s conference, it was noted that we have basically smashed and swept cleanly away the enemies who were CIA, KGB and *Yuon* territory-swallowers”.<sup>12729</sup> The Ministry noted that there was still enemy activity but 98 percent “cleanliness” had been achieved in the Ministry, meaning that 98 percent of the people working there were good and had “an understanding of the problem of sweeping enemies cleanly away”.<sup>12730</sup> According to the Ministry, there were still some “liberal elements” of which it could not be determined whether they were “thick individuals” or enemy elements.<sup>12731</sup> The report also notes: “[f]or example, the enemy makes it heard that ‘in a little while, everybody will be arrested, and only Brother Khieu Samphan will be left.’ [...] We must raise revolutionary vigilance really high, because our Ministry has rather a lot of contact with foreigners.”<sup>12732</sup>

3812. On 27 September 1977, POL Pot gave a five-hour speech on the occasion of the 17<sup>th</sup> anniversary of the CPK, at which the existence of the CPK was officially and publicly announced.<sup>12733</sup> The speech is reported in the FBIS collection and according

<sup>12725</sup> Revolutionary Flag, E3/193, July 1977, p. 25, ERN (En) 00399245.

<sup>12726</sup> Revolutionary Flag, E3/193, July 1977, p. 25, ERN (En) 00399245.

<sup>12727</sup> Revolutionary Flag, E3/193, July 1977, pp. 25-26, ERN (En) 00399245-00399246.

<sup>12728</sup> T. 2 February 2016 (MEAS Voeun), E1/386.1, p. 71.

<sup>12729</sup> Report on Committee Meeting, E3/857, p. 1, ERN (En) 00355487.

<sup>12730</sup> Report on Committee Meeting, E3/857, p. 1, ERN (En) 00355487.

<sup>12731</sup> Report on Committee Meeting, E3/857, p. 1, ERN (En) 00355487.

<sup>12732</sup> Report on Committee Meeting, E3/857, p. 2, ERN (En) 00355488.

<sup>12733</sup> 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, 29 September 1977, ERN (En) 00168771 (entry dated 27 September 1977). See also, Revolutionary Flag,



to the Phnom Penh radio announcer, “all members [not named] [*sic*] of the KCP [*i.e.* CPK] Central Committee” were present at this rally in Phnom Penh, including “more than 10,000 representatives of workers, cooperative peasants, the Cambodian Army and various departments and cabinet ministries in Phnom Penh”.<sup>12734</sup> In his speech, POL Pot noted that there were still a “handful of reactionary elements who continue to carry out activities against [*sic*] and attempt to subvert our Cambodian Revolution”.<sup>12735</sup> He warned that these “counter-revolutionary elements” were “not to be regarded as belonging to our people”, but were to be seen as enemies of DK.<sup>12736</sup> POL Pot said that these elements were to be dealt with the same way any enemy should be dealt with, namely:

[B]y separating, educating and training elements that can be won over to the people’s side, neutralizing [*apyeakret*] [*sic*] any reluctant elements so that they will not undermine the revolution, and isolating and eradicating [*kamchat*] [*sic*] only the smallest possible number of the elements who are cruel and who determinedly oppose the revolution and the people and collaborate with foreign enemies to fight against their own nation, their own people and their own revolution.<sup>12737</sup>

3813. POL Pot’s speech of 27 September 1977 is also replicated in the September 1977 special issue of the *Revolutionary Flag*, with some differences in the language.<sup>12738</sup> The same section as in the preceding paragraph is included as:

We do not consider these traitors, these counterrevolutionary elements, to be part of the people. They are enemies of Democratic Kampuchea, of the Kampuchean revolution and of the Kampuchean people. Contradictions with these elements must be solved by the measures proper for enemies: separate, educate and win over the elements which can be won over; neutralize the elements which are wavering, preventing them from doing any damage to the revolution; and, finally, isolate and eradicate only the smallest possible number of those elements who are cruel and persist in acting against the revolution and

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E3/11 [E3/144], September 1977, p. 4, ERN (En) 00486215. *See also*, Section 5: Administrative Structures, para. 342.

<sup>12734</sup> 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, 29 September 1977, ERN (En) 00168771 (entry dated 27 September 1977).

<sup>12735</sup> 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, 29 September 1977, ERN (En) 00168775 (entry dated 27 September 1977).

<sup>12736</sup> 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, 29 September 1977, ERN (En) 00168775 (entry dated 27 September 1977).

<sup>12737</sup> 27 Sep Mass Meeting, Pol Pot Speech Mark KCP Anniversary (in FBIS collection), E3/143, 29 September 1977, ERN (En) 00168775 (entry dated 27 September 1977).

<sup>12738</sup> These differences likely stem from differences in translation: the FBIS collection contains translations done contemporaneously by the U.S. embassy in Bangkok (with the original Khmer not available), while the *Revolutionary Flag* was translated from the original Khmer. *See* Section 6: Communication Structures, para. 470.

the people, and collaborate with foreign enemies to destroy their own people and their own revolution.<sup>12739</sup>

POL Pot noted that 98 to 99 percent of Kampuchean people had been liberated, creating a “vast productive force”,<sup>12740</sup> but “life and death contractions” still existed in society: “These antagonistic contradictions are also due to another infamous handful of reactionary elements, who carry out their counter-revolutionary work and seek to destroy our Kampuchean revolution. These elements are small in number one to two percent of the population.”<sup>12741</sup> POL Pot appears to suggest that the remaining one to two percent should be regarded as not belonging to the Kampuchean people, and must be dealt with by re-educating them or isolating and eradicating them. Witness SUONG Sikoeun, who worked at the Ministry of Foreign Affairs at the time, confirmed that this *Revolutionary Flag* issue was disseminated by the propaganda and information section of the Ministry of Foreign Affairs.<sup>12742</sup> This issue also grouped together the American imperialists and the “LON Nol traitor clique” and enemies of the revolution.<sup>12743</sup> Additionally, it noted that:

[T]he true essence of their so-called ‘struggle’ was to obtain ‘independence’ for Kampuchea from the French colonialists in the interests of the feudalists, the aristocrats, the landowners, the capitalists, and the other privileged strata. This form of struggle confused and deceived the opinions of masses only for a while: later, the masses cursed, denied, and opposed it.<sup>12744</sup>

3814. On 28 September 1977, the day after his five-hour speech in Phnom Penh, POL Pot went to Beijing, China, for a meeting between DK and Chinese delegations.<sup>12745</sup> At a banquet on 28 September 1977, POL Pot distinguished between friends and enemies by calling out enemies of the revolution, and listing all the countries and peoples they considered friends.<sup>12746</sup> Minutes transcribed by Professor GOSCHA indicate that at a

<sup>12739</sup> *Revolutionary Flag*, E3/11 [E3/144], September 1977, p. 42, ERN (En) 00486253.

<sup>12740</sup> *Revolutionary Flag*, E3/11 [E3/144], September 1977, pp. 42, 47, ERN (En) 00486253, 00486258 (“Thus, to summarize, 98% to 99% of the population are for the revolution”).

<sup>12741</sup> *Revolutionary Flag*, E3/11 [E3/144], September 1977, ERN (En) 00486253.

<sup>12742</sup> T. 7 August 2012 (SUONG Sikoeun), E1/103.1, pp. 7-8.

<sup>12743</sup> *Revolutionary Flag*, E3/11, September 1977, pp. 28, 36, ERN (En) 00486239; 00486247.

<sup>12744</sup> *Revolutionary Flag*, E3/11, September 1977, p. 10, ERN (En) 00486221.

<sup>12745</sup> Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 29 September 1977, ERN (En) 01324057-01324074; *Cambodian Delegation’s Visit to China* (in SWB/FE/5628/A3 collection), E3/1349, 28 September 1977, ERN (En) 00390895.

<sup>12746</sup> *Cambodian Delegation’s Visit to China* (in SWB/FE/5628/A3 collection), E3/1349, 28 September 1977, ERN (En) 00390903-00390904 (enemies being “the imperialists, expansionists and reactionaries of all kinds” and friends being “people of the non-aligned and Third World countries”, which included

conference with the Chinese delegation the next day on 29 September 1977, still in Beijing, POL Pot identified three spy networks: the CIA (the largest); the Vietnamese (smaller, but very active); the KGB (“newly operating in Kampuchea”).<sup>12747</sup> He noted that all three had been operating in DK, and that their operations had become intensive. The movement of Khmer Serei, which operated among students and intellectuals, was alleged to operate closely with the CIA and Vietnam’s spy network. The KGB was alleged to be involved in a much smaller quantity.<sup>12748</sup> POL Pot also noted that the CIA, Thailand, the Soviet Union and Vietnam were collaborating.<sup>12749</sup> The Chamber notes that this information comes from minutes copied by Professor GOSCHA from the Vietnamese translation he found at the People’s Army Library in Hanoi, and will accordingly have regard to the subject-matter, theme and general thrust of the minutes, without according undue weight to the meaning of particular words or phrases.<sup>12750</sup>

3815. In relation to the same visit to China in 1977, at a farewell press conference on 3 October in Beijing, POL Pot is recorded as saying:

[W]e launched struggle both in the countryside and cities and took the countryside as base areas. We waged both overt and covert struggles with covert struggle as the basis. We waged both legal and illegal struggles with illegal struggle as the basis. We attached special importance to violent struggle, unfolding both violent political struggle and armed struggle with armed struggle as the main form.<sup>12751</sup>

3816. On 30 December 1977, KHIEU Samphan made a statement on the severance of diplomatic ties with Vietnam, which occurred the next day,<sup>12752</sup> referring to Vietnam as an “aggressive expansionist and annexationist” enemy.<sup>12753</sup> In this statement, KHIEU Samphan referred to “the enemy” within the context of the ongoing armed conflict with

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China, North-Korea, East Timor, the Palestinian people, and the Zimbabwean, Namibian and Azanian peoples in South-Africa).

<sup>12747</sup> Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 29 September 1977, p. 1, ERN (En) 01324057.

<sup>12748</sup> Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 29 September 1977, p. 1, ERN (En) 01324057.

<sup>12749</sup> Minutes of the conference between Kampuchea and China on 29 September 1977 (copied by C.E. Goscha), E3/10686, 29 September 1977, p. 2, ERN (En) 01324058.

<sup>12750</sup> Section 5: Administrative Structures, paras 351-354.

<sup>12751</sup> *Pol Pot’s Press Conference in Peking* (in SWB/FE/5631/A3 collection), E3/2728, 3 October 1977, ERN (En) 00390925.

<sup>12752</sup> Section 4: General Overview, para. 289.

<sup>12753</sup> *KHIEU Samphan Statement* (in FBIS collection), E3/1359, 3 January 1978, p. 6, ERN (En) 00169523 (entry dated 30 December 1977). The statement was also recorded in SWB: *Statement by Khieu Samphan* (in SWB/FE/5703/A3 collection), E3/267, 3 January 1978, ERN (En) S00008729. See also, DK Communication to the RAK and People of Cambodia, E3/1393, 31 December 1977, ERN (En) 00713101-00713112.

Vietnam, which had reached a new high around the time DK severed diplomatic ties with Vietnam: “[w]e continue to drive out and destroy the enemy forces from Cambodian territory”.<sup>12754</sup>

#### 16.3.1.5. 1978

3817. A DK telegram dated 3 January 1978 with instructions from Office 870 contains a warning that the “Soviet-backed invading *Yuon* enemy” planned to invade DK.<sup>12755</sup> Instructed countermeasures included military attacks, political attacks (eliminating espionage and psychological warfare), cutting off food and economy (“starving them constantly”) and cutting off the roads to prevent the enemy from transporting food, ammunitions and troops.<sup>12756</sup> Guerrilla tactics were discussed, pursuant to which one team of 10 persons could “attack and smash at least three enemies, killing or wounding them in one day and one night”.<sup>12757</sup> The instructions also warned against allowing any room for the enemy to “incite pacifist agents”.<sup>12758</sup> The instructions were to be “distributed and studied in the Zone, Sector and District Party Committees, in the cooperative committees, in the battlefield committees, divisions, committees, regiments, battalions, companies, platoons, squads, combatants, and the command committees”.<sup>12759</sup>

3818. On 17 January 1978, POL Pot gave a speech at a mass rally on the occasion of the 10<sup>th</sup> anniversary of the RAK, in which he characterised the pre-DK era as two periods of struggle for national liberation (the first from 1968 to March 1970 and the second from March 1970 to April 1975) and the DK era as a period of national defence.<sup>12760</sup> Regarding the former periods of struggle for national liberation, he considered LON Nol and SISOWATH Sirik Matak “as chieftains” with “the US

<sup>12754</sup> *KHIEU Samphan Statement* (in FBIS collection), E3/1359, 3 January 1978, p. 7, ERN (En) 00169524 (entry dated 30 December 1977).

<sup>12755</sup> Instructions from 870, E3/741, 3 January 1978, p. 1, ERN (En) 00296003.

<sup>12756</sup> Instructions from 870, E3/741, 3 January 1978, p. 2, ERN (En) 00296004.

<sup>12757</sup> Instructions from 870, E3/741, 3 January 1978, p. 3, ERN (En) 00296005. *See also*, para. 3802 (where guerrilla tactics are discussed at Revolutionary Flag, E3/25, December 1976-January 1977, p. 36, ERN (En) 00491429).

<sup>12758</sup> Instructions from 870, E3/741, 3 January 1978, p. 4, ERN (En) 00296006.

<sup>12759</sup> Instructions from 870, E3/741, 3 January 1978, p. 6, ERN (En) 00296008.

<sup>12760</sup> Speech by POL Pot, E3/349, 17 January 1978, p. 9, ERN (En) S00012704. This speech is also included in: Revolutionary Flag, E3/744, February 1978, pp. 1-19, ERN (En) 00464050-00464068; and excerpts are included in: *Pol Pot's Speech at 17th January Army Day Meeting* (in SWB/FE/5718/B collection), E3/5710, 20 January 1978, ERN (En) S00008685-S00008691 (entry dated 17 January 1978).

imperialists as strings-pullers”.<sup>12761</sup> Regarding the latter period, the “Vietnamese aggressors, annexationists, swallows of territories” were named as the enemy being fought by the RAK.<sup>12762</sup> POL Pot then spoke of “the grand victory” over the Vietnamese in January 1978, when Vietnam allegedly had suffered 29,000 casualties or wounded at the hands of the RAK.<sup>12763</sup> POL Pot also referred to enemies more generically throughout the speech as meaning all those who the RAK had fought.<sup>12764</sup> Additionally, he noted that “[a] mother with a strong revolutionary nature would also have sons with a strong revolutionary nature”.<sup>12765</sup> He further highlighted the stance and importance of the role of children:

If these mothers are good, their sons and daughters are also good. These mothers belong to a good origine [*sic*] of class and they have been successively and firmly armed with politics, ideology and collectivist organization by the Party. With such good mothers, their sons and daughters would also be as good.<sup>12766</sup>

POL Pot also noted that if mothers have a “strong revolutionary nature” so do their children. “It is these children that fight and win victory, no matter how mighty the enemy may be. This will forever be the line and the organizational stance of our Revolutionary Army.”<sup>12767</sup>

3819. The January-February 1978 issue of *Revolutionary Youth* warns that “the expansionist territory-swallowing *Yuon* are constantly looking for opportunities to invade and take Kampuchea and re-enslave the Kampuchean people”.<sup>12768</sup>

3820. The March 1978 issue of the *Revolutionary Flag* notes many enemies operate the same way: “When the *Yuon* attacked us, the *Yuon* agents come to the surface. The CIA agents come to the surface. The CIA and the *Yuon* are the same. They both attack

<sup>12761</sup> Speech by POL Pot, E3/349, 17 January 1978, pp. 9, 11, ERN (En) S00012704-S00012705. *See also*, Revolutionary Flag, E3/744, February 1978, p. 8, ERN (En) 00464057.

<sup>12762</sup> Speech by POL Pot, E3/349, 17 January 1978, p. 12, ERN (En) S00012705. *See also*, Revolutionary Flag, E3/744, February 1978, p. 11, ERN (En) 00464060.

<sup>12763</sup> Speech by POL Pot, E3/349, 17 January 1978, p. 15, ERN (En) S00012707. *See also*, Revolutionary Flag, E3/744, February 1978, p. 13, ERN (En) 00464062.

<sup>12764</sup> *See e.g.*, Speech by POL Pot, E3/349, 17 January 1978, pp. 3-4, 10, ERN (En) S00012701, S00012704.

<sup>12765</sup> Speech by POL Pot, E3/349, 17 January 1978, p. 6, ERN (En) S00012702.

<sup>12766</sup> Speech by POL Pot, E3/349, 17 January 1978, p. 5, ERN (En) S00012702. *See also*, Revolutionary Flag, E3/744, February 1978, p. 5, ERN (En) 00464054.

<sup>12767</sup> Revolutionary Flag, E3/744, February 1978, p. 5, ERN (En) 00464054. *See also*, Speech by POL Pot, E3/349, 17 January 1978, p. 6, ERN (En) S00012702.

<sup>12768</sup> Revolutionary Youth, E3/726, January-February 1978, p. 3, ERN (En) 00278710.

the Kampuchean revolution. They just wear *Yuon* labels or CIA labels. Their theme is the same. Their mission is the same.”<sup>12769</sup>

3821. On 10 April 1978, an unidentified Phnom Penh radio broadcaster stressed the importance of distinguishing between “patriots” and “enemies”, “between us and the enemy”, “between patriotism and treason”, “between the worker-peasant class and the feudal-capitalist landowner and other oppressor classes, between revolution and counterrevolution, between the collective system of the party’s proletariat and the private system of other anti-proletarian classes, and between the KCP [*i.e.* CPK] and another antinational and counter-revolutionary sham party.” The announcer proceeded to explain what was to be understood by “we” in this context: “our nation, people, worker-peasant class, revolution, collective system of the proletariat, cooperatives, trade unions, Revolutionary Army, and KCP [*i.e.* CPK]”. The enemy included:

[I]mperialist aggressors and lackeys of all stripes; the enemy which has the intention of annexing and swallowing our territory; the enemy which is planted within our revolutionary ranks; the enemy in the form [*sic*] of the feudal-capitalist and landowner classes and other oppressor classes; the enemy in the form of the private and individualist system; and, particularly, the expansionist, annexationist Vietnamese enemy.<sup>12770</sup>

The announcer also stressed that “[o]nly when you have a seething hatred for the enemy [...] will you stay alert in your efforts to weed out and exterminate the enemy planted within”.<sup>12771</sup>

3822. In an entry dated 12 April 1978, with respect to “the internal problem (traitors)”, the S-21 notebook referred to by the Chamber as the Combined S-21 Notebook<sup>12772</sup> includes statistics of how “clean” the Party now was: 90% “[p]ure zones”, 80% “[p]ure sectors” and 70-80% “[p]ure districts”, 50-60% “[p]ure cooperatives” and 90% “[p]ure army”.<sup>12773</sup>

<sup>12769</sup> Revolutionary Flag, E3/745, March 1978, p. 7, ERN (En) 00504073.

<sup>12770</sup> *Importance of Distinguishing Between Patriots, Enemies Stressed* (in FBIS collection), E3/1361, 14 April 1978, ERN (En) 00168808 (entry dated 10 April 1978).

<sup>12771</sup> *Importance of Distinguishing Between Patriots, Enemies Stressed* (in FBIS collection), E3/1361, 14 April 1978, ERN (En) 00168810 (entry dated 10 April 1978).

<sup>12772</sup> Section 12.2: S-21 Security Centre, paras 2131, 2134.

<sup>12773</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 2-3, ERN (En) 00184484-00184485 (entry dated 12 April 1978).

3823. KHIEU Samphan delivered a speech on the occasion of the third anniversary of 17 April 1975 at a mass meeting held on 15 April 1978. KHIEU Samphan addressed the border clashes with Vietnam and wished the army “continuous victories over the enemy, especially over the Vietnamese enemy aggressors, annexationists and swallowers of territory”.<sup>12774</sup> At this meeting, a resolution was adopted, which included the following solemn pledges regarding national defence: no. 5 “[t]o exterminate resolutely all agents of the expansionist, annexationist Vietnamese aggressors from our units and from Cambodian territory forever”; no. 6: “[t]o exterminate resolutely all CIA agents from our units and Cambodian territory forever”; and part of no. 9: to “maintain national unity in the struggle to exterminate the enemies of all stripes, particularly the expansionist, annexationist Vietnamese enemy, in order to preserve the nation and the Cambodian race forever”.<sup>12775</sup> Regarding “labour leadership”, it included the pledge (no. 5): “[t]o screen and exterminate all enemy elements planted within our ranks disguised as cadres of various echelons and in various corps”.<sup>12776</sup> The resolution ends with a statement of solidarity with all Marxist-Leninists against “against imperialism, expansionism, annexationism, racism and all reactionaries”.<sup>12777</sup>

3824. The April 1978 special issue of the *Revolutionary Flag* contains a speech delivered by POL Pot on the third anniversary of 17 April 1975, in which he addressed internal and external enemies. He briefly noted that there had been some clashes at the western border but focused mainly on the events surrounding the eastern border. POL Pot reiterated that “[t]he party made the determination to fight and smash large numbers of the enemy’s life forces” and that the Party’s slogan was that one of them had to fight 30 “*Yuon*”.<sup>12778</sup> In this same speech, POL Pot said, as also reiterated in a radio broadcast on 10 May 1978,<sup>12779</sup> that “[t]his issue [of one against 30] does not just apply to the

<sup>12774</sup> Speech by KHIEU Samphan, E3/202 [E3/169], undated, p. 4, ERN (En) 00002959. *See also*, *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B/1 collection), E3/562, 16 April 1978, ERN (En) S00010558-S00010559 (noting that this speech took place on 15 April 1978); *Third Anniversary Celebrated 15 April Mass Rally* (in FBIS collection), E3/1361, 17 April 1978, ERN (En) 00168813-00168814 (entry dated 16 April 1978).

<sup>12775</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B/1 collection), E3/562, 16 April 1978, ERN (En) S00010563.

<sup>12776</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B/1 collection), E3/562, 16 April 1978, ERN (En) S00010566.

<sup>12777</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B/1 collection), E3/562, 16 April 1978, ERN (En) S00010566.

<sup>12778</sup> *Revolutionary Flag*, E3/4604, April 1978, pp. 5-6, ERN (En) 00519833-00519834. *See also*, Section 13.3.5: Treatment of the Vietnamese: Targeting of the Vietnamese. *See below*, para. 3826.

<sup>12779</sup> *See below*, para. 3826.

Army: the entire Party, the entire Army, the entire people absorb this line and view and stance”.<sup>12780</sup> He warned that if the *Yuon* would be able to take Kampuchea, the Kampuchean race would be gone within 30 years.<sup>12781</sup> POL Pot also said that the Vietnamese look down on DK “and want to take Kampuchea as its slave”.<sup>12782</sup> In comparing the Americans to the Vietnamese, POL Pot noted that Kampuchean “when they fight the Americans they strike just 10 blows of the club; however, when they fight the *Yuon*, they strike 100 blows of the club”.<sup>12783</sup>

3825. A memorandum from the DK Ministry of Foreign Affairs to the United Nations and its Member States dated 22 April 1978 called attention to the “propaganda machine of the imperialists, expansionists and annexationists” that “has raised the ‘human rights’ issue in its slander and denigration” of DK.<sup>12784</sup> These external entities were accused of not only launching verbal attacks, but also having repressed and massacred Cambodians – stated in reference to US bombing between 1970 and 1975, “with the active participation of the British imperialists”.<sup>12785</sup>

3826. In a radio broadcast dated 10 May 1978, the “one against 30” policy towards the Vietnamese was set out again, reiterating that “[t]his matter does not concern only the armed forces, the entire party, army and people must become fully aware of these lines views and stand”.<sup>12786</sup>

3827. The May-June 1978 issue of the *Revolutionary Flag* warns with respect to insiders to not “rely on the fact that they may be Party or Youth League members, because the enemy set up [...] traitorous apparati [*sic*] long ago”.<sup>12787</sup>

3828. A Central Committee circular dated 20 June 1978 outlined the Party’s policy

<sup>12780</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 6, ERN (En) 00519834. See also, Section 13.3: Treatment of the Vietnamese, paras 3379, 3402, 3405.

<sup>12781</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 9, ERN (En) 00519837.

<sup>12782</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 10, ERN (En) 00519838.

<sup>12783</sup> *Revolutionary Flag*, E3/4604, April 1978, p. 22, ERN (En) 00519850.

<sup>12784</sup> DK Ministry of Foreign Affairs Memorandum to the United Nations, E3/1385, 22 April 1978, ERN (En) 00235721.

<sup>12785</sup> DK Ministry of Foreign Affairs Memorandum to the United Nations, E3/1385, 22 April 1978, ERN (En) 00235722, 00235725, 00235728.

<sup>12786</sup> *Past Year’s National Defense Efforts Reviewed* (in FBIS collection), E3/1362, 12 May 1978, ERN (En) 00170015 (entry dated 10 May 1978). See also, *Cambodia’s Strategy of Defence against Vietnam* (in SWB/FE/5813/A3 collection), E3/8398, 15 May 1978, ERN (En) 00003960 (entry dated 10 May 1978). See above, para. 3824. See also, Section 4: General Overview, para. 283.

<sup>12787</sup> *Revolutionary Flag*, E3/727, May-June 1978, ERN (En) 00185335.



regarding “those who have been misled in accepting an assignment from the enemy, joining the CIA or serving as *Yuon* (Vietnamese) agents or joining the KGB and opposing the Party, Revolution, People and Democratic of Kampuchea”.<sup>12788</sup> It stated that amnesty would be given to those who would cease their (spying) activities immediately.<sup>12789</sup> Those who did not, however, were still to be eliminated. The same policy was reiterated in the May-June 1978 issue of the *Revolutionary Flag*, which noted the policy was issued to “quiet and calm things down”.<sup>12790</sup> The circular also contained instructions for the application of this guidance: all sections were instructed to hold meetings and educate people on this party policy.<sup>12791</sup> Witness OM Chy, a commune level work unit chief who supervised 500 workers at a canal worksite connected to the 1<sup>st</sup> January Dam,<sup>12792</sup> testified that fewer arrests took place after this guidance was issued, although arrests still happened.<sup>12793</sup> This party line also appears in the Combined S-21 Notebook as a re-focus on re-education, at least with respect to Khmer. Foreigners, “*Yuon*” and “CIA imperialists” were excluded from this line of alleged “compassion to the people”.<sup>12794</sup> Persons who served any of these groups before 17 April 1975 but then stopped would not be blamed. However, any person who continued such activities after 17 April 1975 had to be punished.<sup>12795</sup>

3829. The July 1978 issue of the *Revolutionary Flag* exhorts readers to pay attention to “sweeping out the concealed enemy boring from within even more absolutely clean”. These enemies were identified as being CIA agents, *Yuon* agents and KGB agents. They were all considered “life and death foes”, but the *Yuon* agents were now deemed the “utmost dangerous”.<sup>12796</sup> It also highlights the “contemptible Lon Nol traitors” and

<sup>12788</sup> Guidance of the Central Committee, E3/763, 20 June 1978, ERN (En) 00275217.

<sup>12789</sup> Guidance of the Central Committee, E3/763, 20 June 1978, ERN (En) 00275217-00275218.

<sup>12790</sup> *Revolutionary Flag*, E3/727, May-June 1978, ERN (En) 00185328-00185329.

<sup>12791</sup> Guidance of the Central Committee, E3/763, 20 June 1978, ERN (En) 00275220.

<sup>12792</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1450, 1468, 1501, 1513, 1525, 1531, 1540, 1553, 1563, 1570-1571, 1578, 1586, 1590, 1593, 1617, 1651.

<sup>12793</sup> T. 30 July 2015 (OM Chy), E1/326.1, p. 76.

<sup>12794</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 38-40, ERN (En) 00184520-00184522 (entry dated 8 October 1978).

<sup>12795</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 27, ERN (En) 00184509 (entry dated 11 August 1978).

<sup>12796</sup> *Revolutionary Flag*, E3/746, July 1978, pp. 3, 7, ERN (En) 00428291, 00428295 (“sweep cleanly away concealed enemies boring from within who are CIA agents, are *Yuon* agents and KGB, they must be sweptly [*sic*] completely cleanly away in terms of their politics, ideology and organizing too.”). Similar language appears in *Revolutionary Flag*, E3/747, August 1978, pp. 5, 14, 21, ERN (En) 00499770, 00499779, 00499786 (“CIA agents, running-dog agents of the *Yuon*, and KGB agents”).

their collaboration with external enemies to ruin the CPK's revolution.<sup>12797</sup>

3830. In a statement to the Communist Workers' Party of Denmark dated 30-31 July 1978,<sup>12798</sup> NUON Chea noted that during the years of building the party (from 1960 to 1967) their enemies were "the US imperialists, their lackey and the reactionary classes".<sup>12799</sup> NUON Chea said that the Soviet Union and Vietnam were both opposed to the CPK engaging in armed struggle and that they took actions against them; the Soviets by creating a new party and the Vietnamese by "sneaking around giving our cadres pamphlets such as Lenin's *Left Wing Communism: An Infantile Disorder*. They said we were too left."<sup>12800</sup> During the time of armed struggle, indicated by NUON Chea as dating from 1968 to 1975, they only had a small army that used bows and arrows, but they "gained the confidence of the people by showing them that traditional weapons could kill the enemy".<sup>12801</sup> NUON Chea noted that external enemies, particularly Vietnam, were trying to undermine them, but "[w]e are not worried about the external military aggression. We worry most of all about the enemy inside."<sup>12802</sup> In response to the question why they did not mention the Soviets externally, NUON Chea answered:

Inside the party we struggle resolutely against the Soviet Union, but we have many enemies now – US imperialism, Thailand, Vietnam – and for tactical reasons we must limit our enemies as much as possible. It should be clear that we oppose the Soviet Union and revisionism, but our line has to be different from the line taken in China because we are a small country.<sup>12803</sup>

<sup>12797</sup> Revolutionary Flag, E3/746, July 1978, p. 5, ERN (En) 00428293 ("In 1970, the concealed enemy boring from within also reported all the plans put forward by the Party in opposition to the *coup d'état* to the contemptible traitor Lon Non, and the contemptible Lon Nol traitors even presented plans to the contemptible concealed enemies boring from within for wrecking the plans put forward by the Party as well. But neither the enemy on the outside nor the enemies within were able to hold things back. They were defeated, and they were exposed for what they were.").

<sup>12798</sup> This visit is also recorded in the FBIS collection, see *29 July Banquet* (in FBIS collection), E3/75, 29 July 1978, ERN (En) 00168896-00168898. A few days later, the Danish delegation also met POL Pot, see *Pol Pot Meeting with Danish Party Delegation Recorded* (in FBIS collection), E3/75, 5 August 1978, ERN (En) 00168935.

<sup>12799</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 21, ERN (En) 00762393.

<sup>12800</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 22, ERN (En) 00762394.

<sup>12801</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 22, ERN (En) 00762394.

<sup>12802</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 27, ERN (En) 00762399.

<sup>12803</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 27, ERN (En) 00762399.

NUON Chea said that enemy activity inside the party usually involved “CIA, Vietnamese and KGB agents”. These had been active inside the party for a long time, but they discovered this only recently because they had not been able to solve “an internal contraction” through persuasion and self-criticism.<sup>12804</sup> NUON Chea said the reason they emptied the cities after 17 April 1975 was to ruin a joint plan by the United States, KGB and Vietnam to take over DK. By spreading CIA, KGB and Vietnamese agents out over the country side, they could not implement their plan to seize power.<sup>12805</sup> NUON Chea also elaborated on how the Party’s strategy was that its leadership was to be defended at any cost; without leadership the Party would perish and would not be able to lead the struggle: “[i]f we lose members but retain the leadership, we can continue to win victories. [...] There can be no comparison between losing two to three leading cadres and 200-300 members. Rather the latter than the former.”<sup>12806</sup> The Chamber notes that this information appears to come from a chain (re)translation and will accordingly have regard to the subject-matter, theme and general thrust of the statement, without according undue weight to the meaning of particular words or phrases.<sup>12807</sup>

3831. The West Zone’s monthly report to *Angkar* dated 4 August 1978 notes that “persons with elements as Vietnamese, CIA agents, and those with no-good elements” were being “screened”. It mentioned 100 Vietnamese people had been smashed, 60 people “who had been from the ranking group as well as the CIA of the American imperialist” had been smashed.<sup>12808</sup>

<sup>12804</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 30, ERN (En) 00762402.

<sup>12805</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 30, ERN (En) 00762402.

<sup>12806</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 31, ERN (En) 00762403.

<sup>12807</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 36, ERN (En) 00762408 (a note is added at the end of this document, saying: “Nuon Chea spoke to the delegation in Khmer, the national language of Kampuchea. His remarks were translated into English by Ngo Pin, official interpreter of Democratic Kampuchea, and recorded verbatim in Danish longhand by Peter Bischoff. The text that follows has been retranslated into English by Peter Bischoff and edited, abridged and annotated by Laura Summers.”). *See also*, T. 10 July 2013 (Stephen HEDER), E1/221.1, p. 53 (noting that NUON Chea’s speech presumably in Khmer could also have first been translated into French, while the transcript given to Laura SUMMERS by the Danish Communist Workers’ Party may have been in English, French or Danish).

<sup>12808</sup> Zone 401 Report, E3/1094, 4 August 1978, p. 7, ERN (En) 00315374 (listed under the heading “About the screening of the *Yuon* elements, CIA agents, and the not good elements”). *See also*, Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1727; Section 6: Communication Structures, paras 489-491.

3832. In an entry dated 11 August 1978, the Combined S-21 Notebook<sup>12809</sup> shows that the strategic line was to: “[s]mash all agents of the CIA, KGB, and the *Yuon*, but we smash them by gathering the maximum force and isolating the enemy to the maximum”.<sup>12810</sup> It addresses the global conflict between the capitalist and the worker, which “is a conflict between friend and enemy”.<sup>12811</sup> It notes that the strategic line had changed over the years: “the old tactical line designated that the enemy of the socialist revolution was the capitalist. The new strategic line designates the enemies of the revolution are the CIA, KGB, the *Yuon*, and their running dogs.”<sup>12812</sup> The old line was not wrong, but “not yet strong and enlightened”.<sup>12813</sup> The document also offers more information on who were considered CIA: “the CIA were built by the Americans from those in all classes, intellectuals, monks, feudalists, capitalists, landowners, peasants of all strata, workers, laborers. Each person who joined the CIA, regardless of his former class, even the base stratum, worked to serve the international capitalists, that is, the Americans.”<sup>12814</sup> The same is stated to apply to the KGB and the “*Yuon*”.

3833. The August 1978 issue of *Revolutionary Flag* refers to the Vietnamese as the “territory-swallowing expansionist genocidal *Yuon* aggressor enemy”.<sup>12815</sup>

3834. A telegram dated 16 September 1978 from IENG Sary to the Sub-Commission on Prevention of Discrimination and Protection of Minorities responds to that Sub-Commission’s decision taken the previous day to investigate the human rights situation in DK. IENG Sary characterised this decision as support for the activities of traitors and American Imperialists, who he accused of killing more than 1 million people in DK and “destroying 80 percent of Kampuchea”. IENG Sary warned that “as in the past people and government of Democratic Kampuchea will make mincemeat of any criminal

<sup>12809</sup> Section 12.2: S-21 Security Centre, paras 2131, 2134.

<sup>12810</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, pp. 25-26, ERN (En) 00184507-00184508 (entry dated 11 August 1978).

<sup>12811</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 25, ERN (En) 00184507 (entry dated 11 August 1978).

<sup>12812</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 27, ERN (En) 00184509 (entry dated 11 August 1978).

<sup>12813</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 27, ERN (En) 00184509 (entry dated 11 August 1978).

<sup>12814</sup> Combined S-21 Notebook, E3/834, April 1978 to December 1978, p. 27, ERN (En) 00184509 (entry dated 11 August 1978).

<sup>12815</sup> *Revolutionary Flag*, E3/747, August 1978, ERN (En) 00499786.

manoeuvres of the Imperialists and their partisans”.<sup>12816</sup>

### 16.3.2. *Factual Analysis*

3835. As the evidence discussed above shows, the meaning of real or perceived enemies that may be deduced from both internal and external CPK communications depends in large part on the context in which these so-called enemies were discussed. For the Chamber’s overall assessment, the evidence regarding who was considered an enemy discussed here will thus be complimented by evidence from the relevant crime site.<sup>12817</sup>

3836. In addition, the Chamber takes into consideration that before 1975 the CPK was engaged in armed struggle against the LON Nol regime.<sup>12818</sup> The Chamber also notes its finding that there existed an armed conflict between DK and Vietnam from May 1975 until 6 January 1979.<sup>12819</sup> It further notes that the ideology underlying the CPK revolutionary stance was based on a Marxist-Leninist approach to communism and on its own reading of the class struggle in Cambodian society.<sup>12820</sup> These circumstances are relevant for assessing the evidence discussed in this section and the CPK’s references to enemies.

3837. The NUON Chea Defence submits, relying on the DK Constitution, that the term “enemy” was exclusively used to refer to activity, that is those who conduct “dangerous activities in opposition to the people’s State”,<sup>12821</sup> rather than group identity. It also submits that “enemy” is thus not a generic term referring to any pre-defined group targeted based on their identity as such, but a term used to refer to those

<sup>12816</sup> DK Telegram from IENG Sary to Sub-Commission on Prevention of Discrimination and Protection of Minorities, E3/4605, 16 September 1978, ERN (En) 00095649.

<sup>12817</sup> See e.g., Section 10.1: Tram Kak Cooperatives; Section 11.1: Trapeang Thma Dam Worksite; Section 11.2: 1<sup>st</sup> January Dam Worksite; Section 11.3: Kampong Chhnang Airfield Construction Site; Section 12.2: S-21 Security Centre; Section 12.3.: Kraing Ta Chan Security Centre; Section 12.4: Au Kanseng Security Centre; Section 12.5: Phnom Kraol Security Centre.

<sup>12818</sup> Section 3: Historical Background, para. 222.

<sup>12819</sup> Section 4: General Overview, para. 336.

<sup>12820</sup> Section 3: Historical Background, paras 202, 226.

<sup>12821</sup> NUON Chea Closing Brief, para. 395, referring to DK Constitution, E3/259, 5 January 1976, ERN (En) 00184836 (Article 10, titled “Acts violating the laws of the people’s State are as follows” actually reads in full: “Hostile and destructive acts which are systematically organised and endanger the people’s State are punishable to the highest degree. Other cases are subject to constructive re-education in the framework of the State’s or people’s organisations”). See above, para. 3763.

who had breached DK law by engaging in activities that threatened national sovereignty and state security.<sup>12822</sup> No other Party made submissions in this regard.

3838. The Chamber notes that the DK Constitution neither mentions nor explains the meaning of the term “enemy”. Based on the evidence discussed above and analysed further below, the Chamber finds that while engaging in certain types of activity could indeed result in being branded an enemy, the CPK did not use the term exclusively to refer to activity rather than group identity.

16.3.2.1. *The stratification of the population and the categorisation of enemies*

3839. The CPK continuously stratified the DK population into classes (which included, for instance, subdividing the peasant class into types: old or new, poor, lower-middle, mid-level, upper-middle and wealthy)<sup>12823</sup> and categorised different kinds of potential threats, to which it referred as enemies. The Chamber finds that despite the CPK’s constant (re-)categorisation of different types of enemies and changing shifts in focus, any person or entity not adhering to or threatening the CPK’s Party line, *i.e.* the Marxist-Leninist notion of communist revolution through armed struggle, could be branded an enemy; it was a distinction between who could be considered a “comrade” within the only remaining classes of workers and peasants in DK or a “friend” among the few foreign countries that had ties with the regime, and who could not.<sup>12824</sup>

3840. The degree of emphasis on different types of enemies fluctuated during the DK era, depending on whoever posed the biggest threat at a certain time. The initial focus in this regard was on the previous regime of LON Nol and generic enemies of the Marxist-Leninist revolution: feudalism, capitalists, imperialists, revisionists.<sup>12825</sup> Soon the notion of enemies became more concrete. Thailand was initially the primary enemy,<sup>12826</sup> but this attention started to shift to Vietnam in early to mid-1976.<sup>12827</sup> Around the same time, internal enemies became central to discussions on enemies.<sup>12828</sup>

<sup>12822</sup> NUON Chea Closing Brief, para. 395.

<sup>12823</sup> *See above*, paras 3750, 3792, 3810.

<sup>12824</sup> *See above*, paras 3801, 3803, 3814, 3832, 3839.

<sup>12825</sup> *See above*, paras 3751-3759.

<sup>12826</sup> *See above*, paras 3752, 3756, 3768-3769, 3774.

<sup>12827</sup> *See above*, paras 3756, 3770, 3775, 3777.

<sup>12828</sup> *See above*, paras 3752, 3786-3787, 3789-3790, 3793-3794. Matters appeared to calm down in December 1976, when SON Sen stated at a meeting that regarding the internal enemy situation there was nothing to worry about because they had been “smashed”. *See above*, paras 3797-3799.

While the categories were broad and plentiful, they did not change significantly after the 1976 internal purges and rise in conflict with Vietnam that same year.<sup>12829</sup>

3841. Some countries were off the CPK's radar in this regard. China was considered a friend of DK and always remained supportive.<sup>12830</sup> Laos was considered an enemy but was not perceived as a real threat and was therefore only sporadically discussed.<sup>12831</sup>

#### 16.3.2.1.1. *Internal and external enemies*

3842. Enemies were roughly divided into two categories: internal enemies and external enemies.<sup>12832</sup> Internal enemies were generally those from within the ranks of the party or the army – *i.e.* insiders – or civilians.<sup>12833</sup> External enemies could be anyone from outside the organisation or outside the country.<sup>12834</sup>

3843. The CPK leaders briefly appeared to feel that the internal enemy situation was under control around mid-December 1976, after the first wave of internal purges triggered by the Royal Palace incident was behind them.<sup>12835</sup> The alleged attempted *coup d'état* of early 1977 seemed to have quickly ended the CPK leaders' brief sense of control over the internal enemy situation.<sup>12836</sup> Throughout the DK period, the CPK regarded internal enemies as a very significant threat.<sup>12837</sup> Mid-1978, the CPK considered their new Party line to be stronger and more enlightened as it had then evolved from focusing on capitalists as the main internal enemy of the revolution to realising the primary enemies in this regard were CIA, KGB and “*Yuon*” agents, all of whom had to be smashed.<sup>12838</sup>

<sup>12829</sup> Section 12.1.1.4: Internal Factions: 1976 Events – Explosions in Siem Reap and Phnom Penh; Section 4: General Overview, paras 284-285.

<sup>12830</sup> *See above*, paras 3803, 3814-3815.

<sup>12831</sup> *See above*, paras 3769, 3796.

<sup>12832</sup> *See above*, paras 3752, 3782, 3800-3801, 3809 (meeting minutes and telegrams); 3806, 3808, 3824, 3829-3830 (CPK Magazines and speeches).

<sup>12833</sup> *See above*, paras 3786, 3793. *See also*, Minutes of Meeting Secretaries and Deputy Secretaries of Brigades and Regiments, E3/795, 2 August 1976, p. 10, ERN (En) 00656578.

<sup>12834</sup> *See above*, paras 3752, 3782, 3799, 3801, 3806, 3808-3809, 3824, 3829-3830.

<sup>12835</sup> *See above*, paras 3797-3799. *See also*, Section 12.1.4.2: Internal Factions: The Royal Palace grenade explosions (April 1976).

<sup>12836</sup> *See above*, para. 3804. A second wave of internal purges followed, *see* Section 12.1.5: Internal Factions: 1977 Events – Division 310 and the Northwest Zone (RUOS Nhim).

<sup>12837</sup> *See above*, paras 3790, 3793, 3827, 3830.

<sup>12838</sup> *See above*, para. 3832.

3844. While this (internal versus external) distinction was the one most commonly made, the line between the two categories was often blurred. Internal enemies were usually alleged to be agents from foreign entities, and accused of being CIA, KGB and “*Yuon*” agents.<sup>12839</sup> Toward the end of the DK era, this lumping together of different types of internal and external enemies became more persistent – everyone was in it together.<sup>12840</sup>

#### 16.3.2.1.2. *Counter-revolutionary ideologies and behaviour*

3845. Those who were considered as adhering to or supporting pacifism and revisionism,<sup>12841</sup> imperialism, capitalism and feudalism – or any political or ideological stance that did not accord with the CPK’s Marxist-Leninist revolutionary approach, which necessarily included armed struggle and thus excluded any type of pacifist thought or behaviour – were all considered enemies.<sup>12842</sup>

3846. Many different types of behaviour could fall under counter-revolutionary “enemy activity”. For example, theft (often of food);<sup>12843</sup> rape (or any conduct deemed “immoral”);<sup>12844</sup> people fleeing home and desertion;<sup>12845</sup> mistreatment of combatants and cadre;<sup>12846</sup> misuse of the Party line;<sup>12847</sup> and expressing opinions (through spreading leaflets, for instance); having “political tendencies”; or practicing “reactionary religions”.<sup>12848</sup> This could include something as seemingly harmless as saying “cattle

<sup>12839</sup> See above, paras 3794, 3804. For instance, CHAN Chakrei *alias* Mean was accused of being a CIA agent. See above, para. 3793; Section 12.1.4.2: Internal Factions: The Royal Palace grenade explosions (April 1976).

<sup>12840</sup> See above, paras 3804 (SON Sen saying countries to the east and the west were in it together and that CIA and revisionists were one), 3814 (POL Pot saying that the CIA, Thailand, the Soviet Union and Vietnam were all collaborating), 3820 (a Revolutionary Flag issue noting that the CIA and the “*Yuon*” were the same).

<sup>12841</sup> Marxism split into two main camps late nineteenth century: “revisionist” Marxists favoured a gradual and peaceful transition to socialism, while revolutionary Marxists favoured armed struggle. Lenin rejected revisionism and added his own changes to the ideology, thus creating what was later known as Marxist-Leninist communism, which the CPK claimed to adhere to. Revisionism’s rejection of armed struggle as the favoured means to achieve socialism was generally deemed bourgeois and counterrevolutionary by orthodox Marxists. See T. Ball and R. Dagger, ‘Communism: Communism after Marx’, *Encyclopædia Britannica* (online edition). See also, Section 3: Historical Background, paras 202, 226. The June 1977 issue of Revolutionary Flag spoke of a conflict “between true Marx-Leninism and revolution-betraying revisionism”. See above, para. 3808.

<sup>12842</sup> See above, paras 3755, 3757-3758, 3762, 3784, 3788, 3792, 3803, 3808, 3813, 3821, 3832.

<sup>12843</sup> See above, paras 3783-3784, 3790, 3793, 3797, 3800.

<sup>12844</sup> See above, para. 3779.

<sup>12845</sup> See above, paras 3754, 3769, 3783-3784, 3787, 3790, 3793, 3797.

<sup>12846</sup> See above, paras 3783, 3785, 3793.

<sup>12847</sup> See above, para. 3785.

<sup>12848</sup> See above, paras 3763, 3784, 3786, 3792-3793, 3797, 3810, 3813.



of the rich were fatter than cattle of the poor”.<sup>12849</sup> There were also several instances in which people with long hair were targeted for arrest.<sup>12850</sup>

### 16.3.2.1.3. *Specific categories of enemies*

#### 16.3.2.1.3.1. Former ranking civilian and military personnel of the Khmer Republic

3847. Those linked to the former regime were regarded as enemies throughout the DK era, but from 1976 the CPK’s fear-driven attention shifted towards so-called CIA agents and Vietnam.<sup>12851</sup> “LON Nol traitors” were discussed at length in the CPK magazines *Revolutionary Flag* and *Revolutionary Youth* as late as August 1978, though, and accused of working together with the American imperialists or acting as “their lackeys”.<sup>12852</sup>

#### 16.3.2.1.3.2. “New People”

3848. “New People” or “17 April People”, who were roughly divided into the categories “new peasants” and “new workers”,<sup>12853</sup> were generally distrusted and therefore at risk of being branded enemies more quickly than “Old People” or “Base People”.<sup>12854</sup> Policy Document No. 6, dated 22 September 1975, tends to indicate, however, that in some CPK publications there was not an outright target on New People: “We must not treat them, as in the past, as capitalists, university students, former officials, students, petty bourgeoisies, traders, and national capitalists, compradors because they have joined our circle [side]”.<sup>12855</sup> This sentiment was echoed

<sup>12849</sup> See above, para. 3810 (a Revolutionary Flag issue explained that “[t]o believe that private property cattle are fatter than collective property cattle is to attack the collective regime, to attack the Party’s socialist revolution, whether wittingly or unwittingly.”).

<sup>12850</sup> See above, para. 3804. See also, Minutes of Meeting of Secretaries and Economics of Divisions, E3/793, 16 May 1976, p. 1, ERN (En) 00923159 (Comrade Pin noted that there were no problems with enemies in the unit, but that “two skinny, long-haired persons were arrested at Central Market” on 11 May 1976); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/13, 9 October 1976, p. 4, ERN (En) 00940339 (“someone who was wearing both men’s and women’s clothes and long hair was shot dead at Wat Chumpou Voan Pagoda”. Comrade Met added that this person was an enemy but not from within the “unit of organization”); Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 4, ERN (En) 00933836 (Comrade Sim noted that: “Three persons were also detained on the waterways at Division 450. They fell under suspicion because they were wearing long hair and behaving widely [*sic*].”).

<sup>12851</sup> See above, paras 3751, 3755, 3761, 3772-3773, 3818.

<sup>12852</sup> See e.g., paras 3755, 3813, 3818, 3829.

<sup>12853</sup> See above, paras 3756-3757.

<sup>12854</sup> See e.g., para. 3756.

<sup>12855</sup> See above, para. 3757.

a year later in a meeting on 30 August 1976: New People who do not yet understand must be educated, but they do form a risk for CIA infiltration.<sup>12856</sup> Although officially eradicated, class origin thus remained at the centre of the CPK's analyses of contradictions and real or perceived enemies in DK society, and a matter of life and death struggle in order to succeed in the class warfare.<sup>12857</sup>

#### 16.3.2.1.3.3. Returnees from abroad

3849. People returning to Cambodia from abroad, such as students and diplomats who returned either voluntarily or after having been recalled,<sup>12858</sup> were also at risk of being branded enemies more quickly than “Old People” or “Base People”. An undated DK document entitled “Viewpoint on Kampuchea following 17 April 1975” notes that “some people who have lived or studied abroad have been convinced to return to the country in order to find any gap and infiltrate into our Revolution”.<sup>12859</sup> During a meeting with Division 164, SON Sen said that certain information came from confessions from people returning from abroad, whom SON Sen – as the minutes indicate – considered enemies.<sup>12860</sup>

#### 16.3.2.1.3.4. Monks

3850. Monks were deemed a “special class” that related most closely to the peasant class,<sup>12861</sup> but who were allegedly susceptible to CIA infiltration, just as “New People”

<sup>12856</sup> See above, para. 3784.

<sup>12857</sup> See above, paras 3792, 3796.

<sup>12858</sup> See e.g., DK Policy Document No. 6, E3/99, 22 September 1975, pp. 2-3, ERN (En) 00244275-00244276 (“external fronts have returned to the country [...] former officials working with us before, or other diplomats of Lon Nol, students in Europe and America who were not previously on our side [...] it is up to us to decide what to do with them”); SISOWATH Ayravady Declaration, E3/5679, 22 October 1989, pp. 1-3, ERN (En) 00078082-00078083 (for instance, returnees were former GRUNK officials and diplomats, and included, *inter alios*, NORODOM Phurissara and SARIN Chhak, the former GRUNK Minister of Foreign Affairs based in Beijing); T. 6 August 2012 (SUONG Sikoeun), E1/102.1, pp. 87-92 (witness learned in 1979 that some of the returned diplomats had disappeared); T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 100, 105 (some returnees disappeared and the Witness later learned that they were executed); T. 8 August 2012 (ONG Thong Hoeung), E1/104.1, pp. 81-86 (many returnees were sent to Boeng Trabaek where they worked and were criticised pursuant to the class struggle); T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 17-19 (citing Book by P. Short, *Pol Pot: The History of a Nightmare*, E3/9, 2004); Book by B. Kiernan, *The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979*, E3/1593, pp. 147-149, ERN (En) 01150070-001150071 (describing how Cambodians returned once their admission back into the country was approved by *Angkar* in September 1975).

<sup>12859</sup> See above, para. 3751.

<sup>12860</sup> See above, para. 3787.

<sup>12861</sup> See above, para. 3750. See also, DK Notebook, E3/8381, undated, pp. 21, 26, ERN (En) 01369261, 01369266 (echoing the undated Notebook E3/1233, pp. 6-7, ERN (En) 00711616-00711617, listing monks as a “special class”); Section 10.1.9: Tram Kak Cooperatives: Treatment of Buddhists.

and returnees from abroad.<sup>12862</sup> A policy document dated 22 September 1975 stated that 90 to 95 percent of monks had already abandoned their monkhood and were working in the rice fields, noting that this special class would no longer be cause for worry.<sup>12863</sup>

#### 16.3.2.1.3.5. CIA, KGB and “*Yuon*” (Vietnamese) agents

3851. CIA, KGB and “*Yuon*” (Vietnamese) agents were sometimes discussed as separate categories, but were usually mentioned together, as alleged collaborators.<sup>12864</sup> For instance, CHAN Chakrei *alias* Mean was alleged to have been a CIA agent supported by the Soviet Union and Vietnam,<sup>12865</sup> and POL Pot, during his visit to China on 28 September 1977, said the CIA, Thailand, the Soviet Union and Vietnam were all working together.<sup>12866</sup> The Thai were linked to the CIA and the “American imperialists” throughout the entire DK era.<sup>12867</sup>

3852. The KGB is not mentioned in any of the minutes of the Standing Committee meetings or other DK era meetings before the Chamber, indicating the CPK did not perceive the KGB as a realistic threat. However, the Chamber finds that “KGB agents” appear in other evidence as enemies nonetheless,<sup>12868</sup> because the Soviet Union was deemed an ally of the CPK’s enemy, revisionist Vietnam.<sup>12869</sup> Any pacifist or revisionist tendencies were not in line with the Kampuchean revolution. NUON Chea said to the Danish Communist Workers’ Party in July 1978 that the Soviet Union was surely considered an enemy, yet one not wise to take on considering the DK’s small size and more important enemies they had to focus on.<sup>12870</sup>

3853. The Vietnamese or “*Yuon*” (agents) were increasingly discussed throughout the DK era as the armed conflict between DK and Vietnam intensified, and were considered the most dangerous enemy.<sup>12871</sup> In early 1978, the CPK introduced its “one against 30” policy.<sup>12872</sup> Witness PRUM Sarat testified that he understood this to mean that one RAK

<sup>12862</sup> See above, para. 3832. See also, para. 3784.

<sup>12863</sup> See above, para. 3757.

<sup>12864</sup> See above, paras 3774, 3788, 3790, 3793, 3804, 3806, 3814, 3820.

<sup>12865</sup> See above, para. 3790.

<sup>12866</sup> See above, para. 3814.

<sup>12867</sup> See above, paras 3752, 3756, 3764, 3774, 3779, 3781, 3795, 3814.

<sup>12868</sup> See above, paras 3803, 3806, 3811, 3814, 3828-3830, 3832.

<sup>12869</sup> See above, para. 3790.

<sup>12870</sup> See above, para. 3830.

<sup>12871</sup> See above, paras 3793, 3811, 3819-3820, 3824, 3828-3829.

<sup>12872</sup> See above, paras 3824, 3826. See also, Section 4: General Overview, paras 282-293.

soldier “had to smash 30 Vietnamese soldiers”.<sup>12873</sup> Conversely, POL Pot said, as also reiterated in a radio broadcast on 10 May 1978,<sup>12874</sup> that “[t]his issue [of one against 30] does not just apply to the Army: the entire Party, the entire Army, the entire people absorb this line and view and stance”.<sup>12875</sup> The Chamber finds that the word “*Yuon*”, which had been used in Cambodia since long ago to refer to Vietnamese people, was used in a derogatory fashion in aggressive rhetoric and associated with both combatants and civilians.<sup>12876</sup>

3854. The NUON Chea Defence submits that the words “CIA” and “KGB” were never used as literal references to these intelligence agencies. Rather, they were labels given to those with Western imperialist leanings on the one hand, and Soviet or Vietnamese (revisionist) leanings on the other hand.<sup>12877</sup> Similarly, the KHIEU Samphan Defence submits that these labels were used for foreigners as well as anyone who opposed the CPK’s regime.<sup>12878</sup> No other Party made submissions in this regard.

3855. The Chamber agrees with the NUON Chea Defence and the KHIEU Samphan Defence that the CPK’s references to foreign intelligence agencies are not to be taken literally. It cannot be known how many CIA agents, KGB agents and Vietnamese agents, if any, were in DK at the relevant time, nor can it be known how many persons had connections to – or sympathised with – these intelligence agencies and their corresponding home countries. The Chamber finds that references in the evidence to CIA, KGB and Vietnamese agents must be understood to have served predominantly rhetorical purposes, and mainly expressed the CPK’s fear of the different external (counter-revolutionary) influences on people within DK.

### 16.3.2.2. CPK’s approaches to enemies

#### 16.3.2.2.1. *Advocating “class anger”*

3856. The CPK advocated “class anger”, which entailed, for example, ensuring that children would hold “a hereditary grudge against the enemy forever” and ensuring that

<sup>12873</sup> T. 26 January 2016 (PRUM Sarat), E1/382.1, p. 66.

<sup>12874</sup> See above, para. 3826.

<sup>12875</sup> See above, para. 3824. See also, Section 13.3: Treatment of the Vietnamese, paras 3379, 3402, 3405.

<sup>12876</sup> Section 13.3.5: Treatment of the Vietnamese: Targeting of the Vietnamese.

<sup>12877</sup> NUON Chea Closing Brief, para. 218. See also, T. 1 February 2017 (Stephen MORRIS), E1/486.1, p. 72.

<sup>12878</sup> KHIEU Samphan Closing Brief, paras 1215-1216.

people would have “a seething hatred for the enemy” as this would help people stay alert when exterminating internal enemies.<sup>12879</sup> Duch testified in this regard that staff at S-21 were taught to have vengeance and “harbour anger against the enemy”.<sup>12880</sup>

#### 16.3.2.2.2. *Disperse, isolate, educate, smash*

3857. Policies regarding how to deal with so-called enemies depended on the type of enemy and on the context. Generally, with respect to less threatening categories, the CPK’s emphasis was on isolation (removing bad elements from good elements to avoid contaminating the latter) and re-education.<sup>12881</sup> It was also a tactic to disperse enemies so that they would not be able to gather forces and would be influenced positively by good elements.<sup>12882</sup> Some categories of enemies, such as New People and returnees from abroad, were suspect and were thus at risk of being branded an enemy and being sent for re-education, but they were considered to pose less of a threat than those suspected of being CIA, Soviet or “*Yuon*” agents. Internal and external enemies suspected of being such spies were to be eliminated, “exterminated” “swept cleanly away” or “smashed” immediately.<sup>12883</sup>

3858. According to Witness PECH Chim, the term “smash” meant to eradicate or to rid society of – in his opinion, it did not necessarily mean to kill them, but to eliminate the sense of class, the repression and exploitation of other people, to get rid of that mindset.<sup>12884</sup> Conversely, according to Duch “to smash” meant “to execute”.<sup>12885</sup> On S-21 execution lists, the term “smashed” was used to indicate prisoners had been executed.<sup>12886</sup> Moreover, when discussing combat lines in the December 1976-January 1977 issue of the *Revolutionary Flag*, NUON Chea stated that one guerrilla team could “kill one enemy and wound one enemy per day”, adding that 5,000 teams could thus

<sup>12879</sup> See above, paras 3751, 3759, 3767, 3810, 3821.

<sup>12880</sup> T. 20 April 2012 (KAING Guek Eav), E1/51.1, p. 36. See also, Section 12.2: S-21 Security Centre, paras 2164, 2596, 2616.

<sup>12881</sup> See above, paras 3757, 3774, 3783-3787, 3791-3793, 3828. See also, Section 16.4.2.1.3: Common Purpose: Implementation of the Common Purpose: Establishment and Operation of Security Centres and Execution Sites: Existence of Policy: Re-education of “Bad Elements”.

<sup>12882</sup> See above, paras 3777, 3799.

<sup>12883</sup> See above, paras 3767, 3793-3794, 3803, 3806, 3811, 3823-3824, 3829, 3831, 3832.

<sup>12884</sup> T. 1 July 2013 (PECH Chim), E1/215.1, pp. 37-38; T. 22 April 2015 (PECH Chim), E1/290.1, pp. 52-53.

<sup>12885</sup> KAING Guek Eav Interview Record, E3/453, 5 September 2007, p. 3, ERN (En) 00147581; KAING Guek Eav Interview Record, E3/449, 21 January 2008, pp. 7-8, ERN (En) 00159558-00159559; T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 17-18.

<sup>12886</sup> Section 12.2.3.2.2.6: S-21 Security Centre: General Considerations on Evidence: Documentary Evidence: Contemporaneous S-21 prisoner lists: Execution lists.

“smash” lots of enemies.<sup>12887</sup> The Chamber therefore finds that, unless the context of the evidence clearly indicates otherwise, “to smash” meant “to kill”.

3859. According to Witness NEANG Ouch, the phrase “to sweep clean somebody” meant to execute or kill that person.<sup>12888</sup> Stephen HEDER similarly stated that the phrase “swept cleanly away” meant “wiped out”.<sup>12889</sup> Moreover, the evidence demonstrates that the terms “to smash” and “to sweep (cleanly) away” were used interchangeably.<sup>12890</sup> The Chamber thus finds that “to sweep cleanly away” (or variations thereof) meant “to kill”, unless the context of the evidence clearly indicates otherwise.

#### 16.3.2.2.3. *Family members, including children*

3860. Children and other family members played a vital role in combatting enemy activity. On the one hand, children were used to perpetuate grudges.<sup>12891</sup> On the other hand, children of “no-good” elements were perceived as potential enemies. SON Sen said at a meeting in December 1976: “[b]e most careful about those who [*sic*] mothers and fathers were purged or whose siblings were purged”.<sup>12892</sup> An introductory document for party members, copied also in the *Revolutionary Flag* issue of September-October 1976, stated “[w]hen they die, they instruct their children to struggle on against the communists”.<sup>12893</sup>

3861. The February 1978 issue of the *Revolutionary Flag* included a speech by POL Pot in which he highlighted the stance and importance of the role of children: “When the mother is good, the children are good. The mothers have good, correct class origin, and the Party has collectively indoctrinated them politically, ideologically, and organizationally time and time again. With good mothers like this, the sons and daughters, the troops, are also good.”<sup>12894</sup> “The mothers have mighty revolutionary

<sup>12887</sup> *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 36, ERN (En) 00491429. *See above*, para. 3802. *See also*, para. 3817 (discussing guerrilla tactics at Instructions from 870, E3/741, 3 January 1978, p. 3, ERN (En) 00296005).

<sup>12888</sup> T. 10 March 2015 (NEANG Ouch *alias* Ta San), E1/274.1, p. 4; T. 11 March 2015 (NEANG Ouch *alias* Ta San), E1/275.1, p. 13. *See also*, T. 12 March 2015 (NUT Nov), E1/276.1, p. 69 (testifying that “sweeping clean” meant “to purge within the rank”).

<sup>12889</sup> T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 12, 41-42.

<sup>12890</sup> *See above*, paras 3811, 3829.

<sup>12891</sup> *See above*, para. 3759.

<sup>12892</sup> *See above*, para. 3797.

<sup>12893</sup> *See above*, para. 3792.

<sup>12894</sup> *Revolutionary Flag*, E3/744, February 1978, ERN (En) 00464054. *See above*, para. 3818.

natures, so the children have mighty revolutionary natures. It is these children that fight and win victory, no matter how mighty the enemy may be. This will forever be the line and the organizational stance of our Revolutionary Army.”<sup>12895</sup>

### 16.3.2.3. Dissemination of information regarding enemies

3862. In addition to the numerous discussions held during Standing Committee meetings and other DK era meetings discussed above in the Chronological Overview (Section 16.3.1), the CPK used study sessions, radio broadcasts, speeches and CPK magazines to disseminate the information about the enemy to the masses. Such information pertained to who should be considered an enemy. Details of how to deal with enemy activity and how specific enemies had been dealt with were discussed only within the CPK at the higher level: with members of the Standing Committee,<sup>12896</sup> with the Deputy Secretaries and the Secretaries of Divisions and Regiments,<sup>12897</sup> and at meetings at the ministries such as the Ministry of Foreign Affairs,<sup>12898</sup> and offices such as S-21.<sup>12899</sup> These discussions were kept secret.<sup>12900</sup>

3863. The *Revolutionary Flag* and the *Revolutionary Youth* were both used to disseminate information regarding people considered enemies by the Party, and included speeches by POL Pot and NUON Chea.<sup>12901</sup> Real or perceived enemies were discussed at length throughout these CPK publications, for instance: (the former regime of) LON Nol,<sup>12902</sup> non-revolutionary individuals (feudalists, capitalists, etc.),<sup>12903</sup> American imperialists or CIA,<sup>12904</sup> and the Vietnamese (“*Yuon*”).<sup>12905</sup>

<sup>12895</sup> Revolutionary Flag, E3/744, February 1978, ERN (En) 00464054. See above, para. 3818. This is corroborated by Duch who testified that children were arrested and brought to S-21 at the same time as their parents “to avoid vengeance or revenge at a later stage”. See Case 001 Transcript (KAING Guek Eav), E3/5808, 2 September 2009, p. 71, ERN (En) 00374564. Duch gave the example of Huy Sre, the former head of Prey Sar, whose wife and child were arrested and killed alongside Huy Sre, in accordance with “the principle of the upper echelon”. See T. 14 June 2016 (KAING Guek Eav), E1/437.1, p. 22. See also, Section 12.2: S-21 Security Centre, para. 2317.

<sup>12896</sup> See above, paras 3754, 3760, 3764, 3769, 3770, 3781.

<sup>12897</sup> See above, paras 3782, 3793, 3794.

<sup>12898</sup> See above, para. 3786.

<sup>12899</sup> See above, paras 3767, 3786.

<sup>12900</sup> See above, paras 3760, 3789, 3793.

<sup>12901</sup> See above, paras 3802, 3812-3813, 3818, 3824. See also, Section 6.1.5: Communication Structures: Methods of Communication: Magazines; Section 7: Roles and Functions – NUON Chea, para. 545.

<sup>12902</sup> See e.g., paras 3755, 3813, 3818, 3829.

<sup>12903</sup> See e.g., paras 3762, 3792, 3813.

<sup>12904</sup> See e.g., paras 3780, 3829.

<sup>12905</sup> See e.g., paras 3819-3820, 3824, 3829, 3833.

**16.4. Implementation of the Common Purpose**

3864. The Closing Order charges that CPK leaders intended to achieve the common purpose of rapidly implementing socialist revolution “by whatever means necessary”. It further charges that, in order to achieve this common purpose, CPK leaders designed and implemented measures including the five “policies” described above.<sup>12906</sup> The Chamber finds that the expression “by whatever means necessary” refers in this case to the policies through which socialist revolution in Cambodia was implemented. The Chamber will examine below whether these policies existed, whether they encompassed the commission of crimes and whether they were intrinsically linked to the common purpose, thereby rendering it criminal in character.

3865. In determining whether a policy as charged in the Closing Order existed at the relevant time,<sup>12907</sup> the Chamber will review contemporaneous CPK pronouncements and documents which it has ruled to be particularly probative,<sup>12908</sup> and will look to consistent patterns of conduct beyond the crime base which corroborate the existence of a centrally-devised policy.<sup>12909</sup> The Chamber will then assess whether crimes established at the crime base in the preceding sections of this Judgement were perpetrated in furtherance of the policy as charged, and therefore whether they were encompassed by the common purpose.

**16.4.1. “Control” and “Capture the People”: Movement of Population, Establishment of Cooperatives and Worksites**

3866. The Closing Order charges the existence of a policy to establish and operate cooperatives and worksites throughout Cambodia during the DK period. According to

<sup>12906</sup> See above, para. 3728. See also, Closing Order, paras 157, 1524.

<sup>12907</sup> In so doing, the Chamber may have reference to any relevant and credible evidence which clarifies a given context, establishes by inference the elements of criminal conduct during the indictment period (including criminal intent) and/or demonstrates a deliberate pattern of conduct. See *Nahimana et al.* Appeal Judgement, para. 315. See also, Case 002/01 Appeal Judgement, paras 827, 963, 970 (permissible reference to extratemporal and extra-jurisdictional supporting the existence of a pattern of conduct or policy); Trial Chamber Senior Legal Officer Email to Parties, E362, 26 August 2015, ERN (En) 01134372 (clarifying that evidence of the *existence* of the alleged targeting policy of former Khmer Republic officials could be led which concerned events outside its alleged *implementation* at the sites identified in the Severance Decision).

<sup>12908</sup> Section 2: Preliminary Issues, para. 46.

<sup>12909</sup> Case 002/01 Appeal Judgement, paras 963, 970. The Chamber will use such evidence for corroborative purposes only and will not make findings relevant to the commission of crimes outside of seised crime sites.



the Closing Order, the objectives of population movements included fulfilling the labour requirements of cooperatives and worksites, providing food supplies to the people, protecting the population from security threats and depriving city dwellers (*i.e.* New People) and former Khmer Republic civil servants of their economic and political status by transforming them into peasants.<sup>12910</sup> The related program of establishing cooperatives and worksites intended to provide food for internal consumption and for export according to the Closing Order. This involved rapidly increasing the production of paddy and other commodities, creating a nationwide irrigation network and building infrastructure pursuant to the ideological objective of eliminating the private sphere, destroying the existing social structure and replacing it with a system of collectivisation.<sup>12911</sup>

3867. Although charged as two separate “policies” pursuant to which the common purpose was allegedly implemented, the Chamber deems it apposite to consider the movement of populations and establishment of cooperatives and worksites collectively in light of their overlapping political and ideological objectives. However, as the movement of populations has only been charged with respect to the treatment of the Cham, the implementation of the movement of populations policy will be discussed below in Section 3988 only insofar as it concerns the Cham.

3868. The Co-Prosecutors submit that the CPK adopted a policy to seize, control and enslave the Cambodian population at cooperatives and worksites in order to achieve unrealistic agricultural targets. According to the Co-Prosecutors, this brought about the forcible displacement of populations nation-wide, their complete physical and psychological enslavement and resulted in direct and indirect deaths.<sup>12912</sup>

3869. The NUON Chea Defence submits that the charged cooperatives and worksites policy was not criminal, and that the Closing Order’s findings to the contrary exemplify “ignorance of socialism at best, and at worst, a deep bias against it”. It contends that the establishment of cooperatives served to “improve agricultural production, and thus provide sufficient food for all DK citizens, irrespective of their social origin or wealth”, while the establishment of worksites sought to ameliorate the conditions occasioned by

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<sup>12910</sup> Closing Order, para. 161.

<sup>12911</sup> Closing Order, para. 169.

<sup>12912</sup> Co-Prosecutors’ Closing Brief, paras 268-290.

the civil war. Noting that it was “both a duty and a right of DK citizens to build and defend the country”, the NUON Chea Defence claims that the overarching aim of ensuring independence and self-reliance was legitimate and lawful, and that it succeeded in increasing prosperity during the DK period despite evident limitations of the time.<sup>12913</sup> It does not advance any submissions with respect to the charged population movement policy.

3870. The KHIEU Samphan Defence advances that the CPK inherited a decrepit “war economy” in need of modernisation. To surmount the challenges of the time, the KHIEU Samphan Defence submits that it was necessary to dispatch human resources to rebuild the country and economy, with agriculture being the only available means of capital generation. The Defence maintains that the objective of cooperatives and worksites was the improvement of living conditions.<sup>12914</sup>

3871. The Civil Party Lead Co-Lawyers do not make any submissions with regard to the policies concerning the movement of populations and the establishment and operation of cooperatives and worksites. The Chamber will address the merits of the Parties’ submissions following a holistic appraisal of the evidence before it.

#### 16.4.1.1. *Existence of policy*

3872. For the reasons discussed in Section 3: Historical Background, in May 1972 the CPK Central Committee resolved to close markets, end the use of currency and organise cooperatives in liberated areas. NUON Chea reasoned that the continued circulation of currency was a threat to the expansion of liberated zones and the CPK’s ability to control the population since “US spies or the Vietnamese spies used money in order to buy or to lure our cadres” at the time.<sup>12915</sup> In late 1972, the CPK acknowledged the shortcomings of its various approaches, noting that the lack of ideological education had led to dissent and opposition in liberated areas, and further emphasised the need for direct political mobilisation of the masses through indoctrination.<sup>12916</sup>

<sup>12913</sup> NUON Chea Closing Brief, paras 974-1005.

<sup>12914</sup> KHIEU Samphan Closing Brief, paras 1152-1174.

<sup>12915</sup> T. 31 January 2012 (Accused NUON Chea), E1/36.1, p. 20. *See also*, DK Policy Document No. 3, E3/1765, September 1975, p. 18, ERN (En) 00523586.

<sup>12916</sup> Revolutionary Flag, E3/783, September-October 1972, pp. 9-10, ERN (En) 00720210-00720211.

3873. As part of its stronger approach to the control the population in this new phase of national democratic revolution, on 20 May 1973 the Party proclaimed its decision to organise cooperatives in liberated zones by communally harnessing the productivity of 15 to 30 households per village, which was deemed to be the “fundamental unit in the organisation of production cooperatives”.<sup>12917</sup> Referred to as the “cornerstone in ensuring the great victory of the Great Socialist Revolution”,<sup>12918</sup> a number of rationales would be proffered for the introduction of cooperatives before and throughout the DK period.

3874. Ideologically, the cooperative was viewed as the primary instrument for waging class struggle by attacking old methods of production and organising economically subjugated peasants into self-sufficient collectives.<sup>12919</sup> This approach was heralded by the CPK under its guiding principles of “independence”, “mastery” and “self-reliance”,<sup>12920</sup> which necessitated the “relentless, complete and conclusive elimination of class and regime of feudalists, landlord[s] and capitalists”<sup>12921</sup> – often referred to as

<sup>12917</sup> Revolutionary Youth, E3/729, October 1975, pp. 3-4, ERN (En) 00357902-00357903; Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, pp. 1, 3, ERN (En) 00636008, 00636010. *See also*, *Pol Pot's Press Conference in Peking* (in SWB/FE/5631/A3/4 collection), E3/2728, 4 October 1977, ERN (En) 00390926. *See also*, Section 3.2.1: Historical Background: Establishment of Cooperatives before 1975.

<sup>12918</sup> Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, 20 May 1976, p. 1, ERN (En) 00636008.

<sup>12919</sup> *See e.g.*, Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495826-00495827; Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, p. 2, ERN (En) 00636009. *See also*, Section 3: Historical Background, paras 239-251; Section 10.1.7: Tram Kak Cooperatives: Life and Work in the Cooperatives.

<sup>12920</sup> *See e.g.*, Revolutionary Flag, E3/785, July 1973, ERN (En) 00713996; Revolutionary Flag, E3/5, August 1975, pp. 14, 19-20, ERN (En) 00401489, 00401494-00401494; Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495808-00495809, 00495811, 00495814-00495815; Revolutionary Flag, E3/166, February-March 1976, pp. 4, 7-9, ERN (En) 00517816, 00517819-00517821; Revolutionary Flag, E3/759, April 1976, pp. 3, 14, ERN (En) 00517851, 00517862; Revolutionary Flag, E3/4, July 1976, pp. 16, ERN (En) 00268928 (referring to the adoption of the line of independence-mastery in 1966), 25, ERN (En) 00268937; Revolutionary Flag, E3/139, November 1976, p. 8, ERN (En) 00455285; Revolutionary Flag, E3/25, December 1976-January 1977, p. 9, ERN (En) 00491402; Revolutionary Flag, E3/742, April 1977, p. 7, ERN (En) 00478498; Revolutionary Flag, E3/743, July 1977, p. 16, ERN (En) 00476171; Revolutionary Flag, E3/170, October-November 1977, ERN (En) 00182571; Revolutionary Flag, E3/4604, April 1978, p. 20, ERN (En) 00519848; Revolutionary Flag, E3/746, July 1978, p. 18, ERN (En) 00428306; Revolutionary Flag, E3/747, August 1978, pp. 10-11, ERN (En) 00499775-00499776; Revolutionary Flag, E3/215, September 1978, p. 22, ERN (En) 00488635.

<sup>12921</sup> *See e.g.*, Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495814; Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, p. 2, ERN (En) 00636009 (Organising cooperatives “consisted of attacking the power of the classes of feudalists, land owners and capitalists. It was a measure to harness the force of the base people and forge a strong alliance between workers and peasants.”).

the “enemy”.<sup>12922</sup> It further required “abolishing”, “attacking”, “uprooting”, liquidating” and “smashing” the entire feudal class including land owners, rich peasants, the bourgeois and other non-revolutionary or oppressive classes as the “hallmark of our absolute revolution”, alongside the total elimination of private ownership, in paving the way for a new socialist order.<sup>12923</sup>

3875. As the “forward battlefields” and “hottest frontlines” of the revolution at the time,<sup>12924</sup> the cooperatives further served to defend against enemy forces by depriving them of vital human resources. The people would therefore no longer be subject to counter-revolutionary conversion or exploitation by the ideological enemy or Khmer Republic soldiers in liberated areas.<sup>12925</sup>

3876. In a trend that would continue well into the DK period, the CPK sought to address the apathy of the masses in liberated zones and opposition to the revolutionary cause by enhancing “socialist consciousness” through communal initiatives.<sup>12926</sup> As the

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<sup>12922</sup> See e.g., Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495804 (“Storming attack against the imperialist enemies, the storming attack against the feudalist, landlord and capitalist enemies”); Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, p. 5, ERN (En) 00636012 (“Cooperatives accelerated the movement attacking the enemy in all realms. Its role serves as a fundamental key in achieving the great victory of the National Democratic Revolution.”). See above, Section 16.3.2.1.2: Counter-Revolutionary Ideologies and Behaviour.

<sup>12923</sup> See e.g., Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495802; Revolutionary Flag, E3/166, February-March 1976, pp. 3-6, ERN (En) 00517815-00517818; Revolutionary Flag, E3/762, August 1976, pp. 26-27, ERN (En) 00486767-00486768; Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, pp. 4-5, 7-8, 21-22, ERN (En) 00636011-00636012, 00636014-00636015, 00636028-00636029.

<sup>12924</sup> See e.g., Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495824; Revolutionary Flag, E3/747, August 1978, p. 20, ERN (En) 00499785.

<sup>12925</sup> See e.g., Revolutionary Flag, E3/5, August 1975, p. 12, ERN (En) 00401487; Revolutionary Flag, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422 (referring to fighting on Highway 6 in 1971: “[T]he contemptible Thieu’s forces could attack from the south and take Kratie. However, they were defeated. Why was that? Because we pulled out the people. When all the people were pulled out, they gained no additional forces. They had no additional strength in terms of economics or manpower. They grew even weaker. [...] The decisive factor in the victory: we pulled out the people.”); Speech of Party Zone Representative, E3/8, June 1976, ERN (En) 00104007; Revolutionary Flag, E3/747, August 1978, p. 20, ERN (En) 00499785 (“Also in 1973, the Party decided to organize cooperatives throughout the country. The cooperative movement was at a mighty boil in class struggle and in going on offensives against the enemy on the forward battlefields”). See also, DK Publication, Document No. 6: Concerning the Grasp and Implementation of the Political Line in Mobilising the National Democratic Front Forces of the Party, E3/99, 22 September 1975, p. 4, ERN (En) 00244277 (“Our responsibility is to take control of [the lower level] so that the enemy will not fight us.”).

<sup>12926</sup> See e.g., Revolutionary Flag, E3/785, 7 July 1973, ERN (En) 00713996 (“We must be able to control the concrete situation of each individual in order to determine and take measures, and develop requests properly for each period by avoiding subjectivism and idealism”); Third Year Anniversary of the Organisation of Peasant Cooperatives, E3/50, undated, p. 2, ERN (En) 00636009 (after 1970 coup “the people had not yet matured to absolute revolutionary consciousness; they were still influenced by the capitalists and land owners.”).

primary social unit, the cooperative was to supplant notions of private ownership,<sup>12927</sup> industry, production and means of production,<sup>12928</sup> family;<sup>12929</sup> formal education,<sup>12930</sup> medical institutions and the production of medicine.<sup>12931</sup> The CPK would declare that “everything resides in the cooperatives”, necessitating the need to “grasp hold” of them.<sup>12932</sup>

3877. As acknowledged in Party publications, an important strategic line of the revolution was to “control” and “capture the people”,<sup>12933</sup> which the CPK implemented

<sup>12927</sup> See e.g., Revolutionary Flag, E3/5, August 1975, p. 7, ERN (En) 00401482 (referring to the period 1973-1975: “We set up a process of cooperativization [...] but we made progress in eliminating private ownership of land and means of production, and in general we put cooperative ownership in place.”); Revolutionary Flag, E3/166, February-March 1976, pp. 5-6, ERN (En) 00517817-00517818; Revolutionary Flag, E3/10, September-October 1976, pp. 13, 36-37, ERN (En) 00450513, ERN (En) 00450536-00450537.

<sup>12928</sup> See e.g., Revolutionary Flag, E3/5, August 1975, p. 33, ERN (En) 00401508; Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495823, ERN (En) 00495826 (“The cooperative is mandatory to mobilize the labour forces among the base peasants for all kinds of production, including agricultural and handicraft production etc, and industrial production in the long run”); Revolutionary Flag, E3/139, November 1976, p. 23, ERN (En) 00455300; Revolutionary Flag, E3/745, March 1978, p. 13, ERN (En) 00504079.

<sup>12929</sup> See e.g., Revolutionary Flag, E3/10, September-October 1976, pp. 38-39, ERN (En) 00450538-00450539 (“Private ownership in organization, organizing by one’s personal sentiments, by one’s family, by one’s clique, and not standing upon the political, ideological, and organizational line on the Party. [...] [T]hat is wrong. [...] [A]nyone who thinks a lot about family interests always deceives the revolution, renounces the revolution, and lives separately seeking family happiness, not seeking happiness inside the Party.”); Revolutionary Flag, E3/139, November 1976, p. 11, ERN (En) 00455288; Revolutionary Flag, E3/743, July 1977, p. 12, ERN (En) 00476167. See also, Section 14: Regulation of Marriage, para. 3544.

<sup>12930</sup> See e.g., Revolutionary Flag, E3/11, September 1977, pp. 50-51, ERN (En) 00486261-00486262; Revolutionary Flag, E3/4604, April 1978, pp. 20-21, ERN (En) 00519848-00519849 (“Operating [within cooperatives], later on the masses will be able to make everything throughout the country. How will this progress? Not by studying in one or two universities, but by studying in the university of the entire country of Kampuchea. So then, anyone can go to the university in the cooperatives. [...] Throughout the country, every cooperative studies; this is called eradicating illiteracy in the great revolution[ary] movement of the masses, not eradicating illiteracy by opening a school or two.”). See also, IENG Sary Speech at UN General Assembly, 32nd Session, E3/1586, 11 October 1977, para. 59, ERN (En) 00079814 (“Our schools exist mainly at the level of cooperatives and factories. Our education rests on a popular and national base, from which we are speeding up the development of technology and the sciences.”).

<sup>12931</sup> See e.g., Revolutionary Flag, E3/166, February-March 1976, pp. 21-22, ERN (En) 00517833-00517834 (“[S]ince modern medicine is currently not very plentiful, [...] modern hospitals in the base areas must have mastery in going around to look for the maximum quantity roots to combine into traditional medicines for every type of disease in order to guarantee the maintenance of health of our people”); Revolutionary Flag, E3/743, July 1977, p. 19, ERN (En) 00476174 (the “fundamental class” in cooperatives is to be responsible for medicine, among other areas); Revolutionary Flag, E3/745, March 1978, p. 13, ERN (En) 00504079; POL Pot Interview by Yugoslavian Journalists, E3/5713, 20 March 1978, p. 2, ERN (En) 00750098; Revolutionary Flag, E3/4604, April 1978, p. 20, ERN (En) 00519848.

<sup>12932</sup> Chapter by B. Kiernan, “Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a Zone Assembly”, in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8, 3-7 June 1976, ERN (En) 00104006.

<sup>12933</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422 (referring to its pre-1975 achievements at Banam and Oudong: “This is a very important strategic line: *control the people and capture the people* [...]. So then, in the work of defending the country at present and later on,

both with respect to cooperatives and the movement of populations from liberated zones. With regard to the former, the *Revolutionary Flag* explained that strict adherence to the Party line – which was to be strengthened through “indoctrination of [the] Party’s situational views and political lines toward the elimination of any non-revolutionary views and the reinforcement of the Party’s revolutionary views” – and active participation in the revolutionary movement through cooperatives was essential “in order to gain a [*sic*] strict control over the people”.<sup>12934</sup> KHIEU Samphan later reflected on the success of pre-1975 cooperatives, confirming that they in fact allowed the CPK “to control rice, control the enemy, [and] control the people”.<sup>12935</sup>

3878. By controlling the people, the CPK could, by extension, control the enemy. From as early as 1973, the CPK internally disseminated the imperative to “control the concrete situation of each individual” in zones under CPK administration:

In the evacuation of people from the areas under the control of the enemy to the liberated zones, we took strong and optimistic views of mass population to successfully send them away to the countryside with no worry that people could be fraught with difficulty due to the lacks [*sic*] of everything. In addition, we were not afraid that people in the liberated areas could not help the evacuated people.<sup>12936</sup>

3879. Under the mantra of “whatever side has the people, that side wins” and with the objective of depriving the enemy of human and economic resources, the CPK proceeded to remove inhabitants of areas liberated from Khmer Republic control.<sup>12937</sup>

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*it is important to have a grasp on the people. That is why the Party concentrates on grasping the cooperatives.”* [emphasis added] More generally: “Throughout the world, they never capture the people. Our line was to capture the people: one we took him; two week took them; 100, we took them; 1,000, we took them, and so on until we captured the people from Phnom Penh too. [...] When the enemy has no people, the enemy has no military and no economic strength. Our reasoning is correct. [...] We fight to capture the people in every location.”). Philip SHORT testified that “seizing the people” was a Chinese communist tactic employed throughout the Chinese Revolution. See T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 78-79.

<sup>12934</sup> Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495803.

<sup>12935</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 83, ERN (En) 00498302.

<sup>12936</sup> Revolutionary Flag, E3/785, 7 July 1973, ERN (En) 00713995-00713996 (further claiming that the CPK’s ability to mobilise “people of all classes [and] status” was the result of their “ability to manage them in accordance with the popular masses’ line and views.”). See also, Section 3.2.1: Historical Background: Establishment of Cooperatives before 1975.

<sup>12937</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422 (“An example: The fighting in Banam in 1973. We took everyone in Banam Town, expelling the ethnic Vietnamese, the ethnic Chinese, the military, the police; we took everyone, taking away the people from the enemy.” Regarding the fighting on Highway 6 in 1971: “[T]he contemptible Thieu’s [*i.e.* Thieu-Ky] forces could attack from the south and take Kratie. However, they were defeated. Why was that? Because we pulled out the people. When all the people were pulled out, they gained no additional forces. They had no additional strength in terms of economics or manpower. They grew even weaker. [...] The

POL Pot would also later explain that the liberation the Cambodian worker-peasant population meant liberating an “immense labour and production force”.<sup>12938</sup> KHIEU Samphan acknowledged that forced evacuations and the “frenetic campaign for superior-level agricultural cooperative” was part of the “same utopian program” by the Party Centre.<sup>12939</sup> Evidence before the Chamber indicates that people were “evacuated” between 1970 and 1975 from towns in Prey Veng,<sup>12940</sup> Svay Rieng,<sup>12941</sup> Kampong Cham and surrounding villages,<sup>12942</sup> Kampot,<sup>12943</sup> Stung Treng,<sup>12944</sup> Kratie,<sup>12945</sup> Oudong<sup>12946</sup> and Kampong Thom following their liberation by CPK forces.<sup>12947</sup> As the CPNLAF advanced toward the capital, CPK forces removed residents from localities they captured along the way, including those living near National Road 1 between Neak Loeung and Phnom Penh in July 1974.<sup>12948</sup>

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decisive factor in the victory: we pulled out the people. An example: We liberated Oudong in 1974. We pulled out all the people. When they took it back, they had no forces. They had no forces of the people; they had no economic or military strength.”)

<sup>12938</sup> *Text of Pol Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 28 September 1977, ERN (En) 00168645.

<sup>12939</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 62, 111-112, ERN (En) 00103754, 00103778-00103779.

<sup>12940</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422 (Banam). *See also*, LANG Hel Interview Record, E3/5251, 14 October 2008, pp. 2-3, ERN (En) 00235494-00235495 (Prey Veng town); BUN Buon Interview Record, E3/5508, 27 October 2009, p. 3, ERN (En) 00403040.

<sup>12941</sup> KHEM Leng Interview Record, E3/5539, 28 August 2009, pp. 3-4, ERN (En) 00380123-00380124; LOEM Savon Interview Record, E3/5296, 18 July 2009, pp. 2-3, ERN (En) 0035814-00358146.

<sup>12942</sup> T. 9 April 2013 (François PONCHAUD), E1/178.1, pp. 13 (evacuation of Bos Khnor in 1970), 61-62; T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 8 (evacuation of Kampong Cham in 1973); T. 10 July 2013 (Stephen HEDER), E1/221.1, pp. 95, 98 (evacuation of Kampong Cham in September 1973); T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 4; T. 15 July 2013 (Stephen HEDER), E1/223.1, p. 71; T. 29 July 2016 (Henri LOCARD), E1/451.1, p. 56 (evacuation of Kampong Cham). *See also*, *Further Submission from the International Commission of Jurists under Commission on Human Rights Decision 9 (XXXIV) (ECOSOC)*, E3/3327, 25 January 1979, p. 2, ERN (En) 00075939.

<sup>12943</sup> T. 9 April 2013 (François PONCHAUD), E1/178.1, p. 13; T. 10 April 2013 (François PONCHAUD), E1/179.1, pp. 3-4 (Danmak Chang'aeur).

<sup>12944</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, p. 60; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 98; IENG Sary Interview by ABC Television (Australia), E3/93, 6-19 September 1996, p. 7, ERN (En) 00078611; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 5, ERN (En) 00417603.

<sup>12945</sup> IENG Sary Interview by ABC Television (Australia), E3/93, 6-19 September 1996, p. 7, ERN (En) 00078611; IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, p. 5, ERN (En) 00417603.

<sup>12946</sup> Revolutionary Flag, E3/25, December 1976-January 1977, p. 31, ERN (En) 00491422; FUNK Publication: *Nouvelles du Cambodge*, No. 696, E3/114, 4 April 1974, pp. 7-8, ERN (En) 00280556-00280557; FUNK Publication: *Nouvelles du Cambodge*, No. 698, E3/167, 10 April 1974, ERN (En) 00280586; T. 18 July 2012 (David CHANDLER), E1/91.1, p. 44; T. 20 July 2012 (David CHANDLER), E1/93.1, p. 98; T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 8; T. 19 June 2013 (NOU Mao), E1/209.1, pp. 6, 41-43; T. 10 July 2013 (Stephen HEDER), E1/221.1, pp. 88, 94; T. 29 July 2016 (Henri LOCARD), E1/451.1, p. 56; T. 11 July 2013 (Stephen HEDER), E1/222.1, p. 5.

<sup>12947</sup> T. 10 April 2013 (François PONCHAUD), E1/179.1, p. 4 (Kampong Kou).

<sup>12948</sup> US State Department Telegram, Subject: Recent Movement of Khmer Refugees to Neak Loeung, E3/4185, 10 July 1974.

3880. Plans for the final assault and evacuation of Phnom Penh and other urban centres were discussed at a meeting of the CPK Central Committee in June 1974 attended by POL Pot, NUON Chea, SAO Phim, KOY Thuon, *Ta* Mok, VORN Vet, RUOS Nhim and SON Sen. At the meeting, they resolved to take the capital in the dry season of 1974-1975.<sup>12949</sup> The plan to liberate and evacuate Phnom Penh was finalised in early April 1975 at a meeting at Office B-5 attended by POL Pot, NUON Chea, KHIEU Samphan, SON Sen, VORN Vet, KOY Thuon, KE Pauk, SAO Phim and *Ta* Mok.<sup>12950</sup>

3881. People were removed from Phnom Penh on a large scale in the aftermath of liberation on 17 April 1975.<sup>12951</sup> Orders to remove residents to the countryside were communicated down the chain of command and consistently implemented throughout the city.<sup>12952</sup> POL Pot later described the “evacuation” of residents to the countryside as one of the important factors for the success of the revolution.<sup>12953</sup>

3882. From early 17 April 1975 to 25 April 1975, at the latest, Phnom Penh was under

<sup>12949</sup> Section 3: Historical Background, para. 230.

<sup>12950</sup> Section 3: Historical Background, para. 233. *See also*, Section 8.1.3.1: Roles and Functions – KHIEU Samphan: Attendance at June 1974 Central Committee Meeting and April 1975 meeting of CPK leaders.

<sup>12951</sup> Section 4: General Overview, para. 277.

<sup>12952</sup> T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, p. 57; ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 4, ERN (En) 00223581; T. 20 September 2012 (CHEA Say), E1/124.1, pp. 44-45; CHEA Say Interview Record, E3/69, 11 December 2007, p. 2, ERN (En) 00233150 (witness was a soldier stationed north of Phnom Penh in Preak Por); T. 24 October 2012 (KUNG Kim), E1/138.1, pp. 90-91, 101; T. 25 October 2012 (KUNG Kim), E1/139.1, pp. 18-21 (“Oeun from Division 310 [...] rendered orders all the way from [the] Division and then to the company, and platoon, and to the squad, and I received such order from this level”), 53, 57-58; T. 5 November 2012 (SUM Chea), E1/140.1, pp. 10-12, 19 (witness was a soldier in Division 1); T. 8 April 2013 (CHHAOM Se), E1/177.1, pp. 34 (“Regarding the order to evacuate the population from the city, I believe that these orders were the blanket ones; every city had to be evacuated, no doubt.”), 66; T. 22 April 2013 (CHHOUK Rin), E1/181.1, pp. 89-94 *affirming* CHHOUK Rin Interview Record, E3/362, 29 July 2008, p. 4, ERN (En) 00268896. The consistent manner in which the evacuation was executed throughout the city demonstrates that there was in fact a decision to do so, even though it may have been communicated down the ranks imperfectly. *See* T. 19 April 2012 (SAUT Toeung), E1/64.1, pp. 78-81; T. 2 May 2012 (PEAN Khean), E1/71.1, p. 57; T. 3 October 2012 (MEAS Voeun), E1/129.1, pp. 88-89, 93-95; T. 14 December 2012 (SUON Kanil), E1/154.1, p. 57; T. 17 December 2012 (SUON Kanil), E1/155.1, pp. 21-22. T. 9 January 2013 (UNG Ren), E1/157.1, pp. 41-42; T. 24 April 2013 (CHUON Thi), E1/183.1, pp. 30, 45-48, 71. *See also*, T. 15 August 2012 (SA Siek), E1/108.1; T. 28 January 2013 (Al ROCKOFF), E1/165.1; T. 5 June 2013 (Sydney SCHANBERG), E1/201.1; T. 6 June 2013 (Sydney SCHANBERG), E1/202.1; US State Department Telegram, Subject: Khmer Refugee Walks Out From Phnom Penh, E3/3004, June 1975, ERN (En) 00495556-00495560; French Ministry of Foreign Affairs Telegram, Subject: Situation in Phnom Penh, Morning of 18 April, E3/2703, 19 April 1975, ERN (En) 00488013; *A Great Caravan of Human Misery* (Times Newspaper), E3/51, 18 April 1975, ERN (En) S00003279; *Red Forces ‘Purifying’ Cambodia* (Los Angeles Times), E3/3365, 8 May 1975, ERN (En) 00445199-00445200.

<sup>12953</sup> *Far Eastern Relations: Pol Pot on Evacuation of Cambodian City Residents* (in SWB/FE/5631/A3 collection), E3/2728, 4 October 1977, ERN (En) 00390921; *Pol Pot’s Press Conference in Peking* (in SWB/FE/5631/A3 collection), E3/2728 [E3/2072], 4 October 1977, ERN (En) 00390927 [S00080549].



the direct control of military divisions from the Special Zone (commanded by VORN Vet), East Zone (SAO Phim), North Zone (KE Pauk) and Southwest Zone (*Ta Mok*).<sup>12954</sup> Consistently with the procedures followed throughout military campaigns between 1970 and 1975, Zone Secretaries sought and received instructions from senior leaders including POL Pot, NUON Chea and SON Sen, stationed at B-5 at the time.<sup>12955</sup>

3883. In a pattern of conduct that continued after the fall of Phnom Penh, all population centres along National Road 5 to the Thai border had been emptied of their inhabitants by May 1975.<sup>12956</sup> By at least June 1975, all population centres along National Road 6 between Prek Dam and Siem Reap had been removed.<sup>12957</sup> By August 1975, inhabitants of various provincial towns including Takeo, Kampong Speu, Kampong Thom, Kampong Chhnang, Kampong Cham, Kampot, Kampong Som, Pursat, Pailin, Poipet, Battambang and Siem Reap were also displaced.<sup>12958</sup>

3884. By 25 April 1975, POL Pot, NUON Chea, KHIEU Samphan, IENG Sary and SON Sen had arrived in Phnom Penh and formed a Joint Leadership Committee,<sup>12959</sup>

<sup>12954</sup> Section 3: Historical Background, para. 233.

<sup>12955</sup> T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, pp. 93-94 (after 1970, “Pol Pot called upon me to go [to the CPK headquarters] in order to participate and to listen to what he did with the military cadre from various [...] battlefields who came to report to him and to listen to him how he gave directions back to those people”); T. 31 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/99.1, pp. 39-40 (at the time of the 1973 offensive on Kampong Cham town, POL Pot and NUON Chea were at nearby S-71, while SON Sen was at Bos Khnaor. Soldiers who carried out the attacks “belonged to the Centre”); T. 9 January 2013 (UNG Ren), E1/157.1, pp. 36-39 (following the 1974 attack on Oudong, SON Sen assumed command and arranged communicated tactical instructions “in order [for brigades, regiments and battalions] to succeed in the attack”); T. 5 June 2013 (Sydney SCHANBERG), E1/201.1, pp. 46-47 (a Khmer Rouge military leader at the Ministry of Information on 17 April 1975 stated that “some of the top political and governmental leaders are not far from the city”); KE Pauk Autobiography, E3/2782, undated, ERN (En) 00089710-00089711 (in 1972, the Central Committee ordered him to cooperate with Centre Unit 39, led by SON Sen, to “sweep and clean enemies around Kampong Thom”. In July 1973, the Central Committee met and decided to attack National Road 6. In September 1973, the Central Committee pledged to attack the whole country and ordered that East Zone forces attack along National Road 1, Southwest Zone forces along National Roads 2, 3 and 4 and Western Zone forces along National Roads 4 and 5, the North Zone along National Road 5. The “higher level” decided to launch offensives on Oudong).

<sup>12956</sup> US State Department Telegram, Subject: Evacuation of Foreigners from Cambodia, E3/4147, 3 May 1975, pp. 1-2, ERN (En) 00413469-00413470; US State Department Telegram, Subject: American Talks of Phnom Penh After the Fall, E3/4148, 4 May 1975, p. 4, ERN (En) 00413478.

<sup>12957</sup> French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 3, ERN (En) 00517765. *See also*, T. 20 March 2012 (KAING Guek Eav), E1/51.1, pp. 72-73 (“I received some information about the evacuation of people in Kampong Thom [...] from my brother-in-law. [...] He said that the evacuation was prepared. People who were taken by cars were to be smashed, and people who were walked [*sic*] would live.”).

<sup>12958</sup> Section 4: General Overview, para. 277.

<sup>12959</sup> KHIEU Samphan Interview Record, E3/27, 13 December 2007, pp. 2, ERN (En) 00156742 (deposing that he entered Phnom Penh about seven to 10 days after 17 April 1975), 6, ERN (En) 00156746 (stating that he, NUON Chea and POL Pot entered together); T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 61-62 (testifying that, by 20 April 1975, all divisional commanders

meeting regularly with Zone and Sector Secretaries to discuss policies and plans to develop the country.<sup>12960</sup> In this new phase of socialist revolution, the Party's priority was to rapidly build a self-reliant, independent and classless country and defend it from enemies.<sup>12961</sup> KHIEU Samphan explained that, in order to build the country quickly and solve food shortages occasioned by civil war, people needed to be coerced to join cooperatives.<sup>12962</sup> In his doctoral thesis, he wrote that it was necessary for the feudal

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of the surrounding battlefields, including KOY Thuon, SAO Phim, VORN Vet, CHENG An and *Ta Mok*, were meeting at the Phnom Penh railway station, while NUON Chea arrived later, perhaps 21 April, and POL Pot and KHIEU Samphan arrived thereafter); ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (deposing that he entered Phnom Penh with SON Sen on 20 April 1975); POL Pot Interview by Yugoslavian Journalists, E3/5713, 20 March 1978, p. 8, ERN (En) 00750104 (POL Pot returned to Phnom Penh on 24 April 1975); IENG Sary Interview by Stephen HEDER, E3/543, 17 December 1996, p. 5, ERN (En) 00442665 (IENG Sary returned around 23-25 April 1975).

<sup>12960</sup> T. 26 July 2012 (ROCHOEM Ton), E1/97.1, pp. 67-68 (POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, SON Sen, KOY Thuon, VORN Vet, *Ta Mok*, SAO Phim and others regularly met), 70-71 (among other topics, they discussed the socialist revolution, building and defending the country and building cooperatives); ROCHOEM Ton *alias* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (POL Pot gave presentations and NUON Chea led discussions about the internal and external situation and the implementation of the socialist revolution).

<sup>12961</sup> See e.g., IENG Sary Speech at UN General Assembly, 31st Session, E3/607, 5 October 1976, p. 6, ERN (En) 00586803 (“[I]mmediately after liberation our people throughout the country engaged in a vast and intensive revolutionary mass movement to perform two fundamental tasks: the defence and building of the country.”); Standing Committee Minutes, E3/182, 9 October 1975, p. 13, ERN (En) 00183405 (“The general line is to build and defend the country, to build the country and defend it based on the force of the masses.”); POL Pot Interview by Yugoslavian Journalists, E3/5713, 20 March 1978, p. 2, ERN (En) 00750098 (following a “special national congress in late April 1975”, the CPK determined “to build a prosperous and happy Cambodian society [...] free from all class or individual forms of exploitation, in which everyone strives to increase production and to defend the country”); Revolutionary Flag, E3/5, August 1975, p. 12, ERN (En) 00401487 (“When all of the cadres, Party members, people and our Revolutionary Army are in unity with the Party line like this, they are truly a mighty and magnificent force for successfully fulfilling the missions of defending the country and building the country in great leaps of absolute victory moving toward a bright, glorious future.”); Revolutionary Flag, E3/5, August 1975, pp. 12, 29-30, ERN (En) 00401487, 00401504-00401505; Revolutionary Flag, E3/166, February-March 1976, p. 12, ERN (En) 00517824; Revolutionary Flag, E3/759, April 1976, p. 3, ERN (En) 00517851; Revolutionary Flag, E3/25, December 1976-January 1977, p. 4, ERN (En) 00491397; Revolutionary Flag, E3/135, June 1977, p. 11, ERN (En) 00446856; Revolutionary Flag, E3/215, September 1978, p. 25, ERN (En) 00488638; Revolutionary Youth, E3/766, November 1978, pp. 7-8, ERN (En) 00524168-00524169.

<sup>12962</sup> KHIEU Samphan Interview Transcript, E3/4049, undated, p. 1, ERN (En) 00789058 (“[T]o be able to build our country quickly, first, food issues would be resolved speedily. [...] But, in order to reach that goal, there had to be coercion for a while, coercion to join cooperatives, because nobody would voluntarily take part in cooperatives. Even poor peasants would not accept these high-level cooperatives, because there was no private harvest for themselves”); KHIEU Samphan Interview Transcript, E3/4050, undated, p. 1, ERN (En) 00789062 (“Within a brief period their lives would be better off. So then everyone would be happy with their own achievements. Even the city people would be happy that they had joined in the actual rebuilding of the country. First they were coerced, but later when they saw the results, [...] they would become crystal clear in themselves that they had joined in rebuilding the country and everyone would come to the idea that we were all peasants.”); Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 61, ERN (En) 00103753 (“I was greatly surprised to learn, during my talks with C.P.K. executives after April 1975, that the superior level cooperatives had been used in the liberated regions since 1973. For sure, they had to be imposed on the population, because peasants in any country would never agree to give all the fruits of their labour to any organization. They might, however, if, after years of living in a cooperative, they saw the benefits of

class of landlords, retailers and usurers to be driven from their unproductive activities to participate in collective production.<sup>12963</sup> He also argued that “methodical organisation of the peasant force into mutual aid teams and then into cooperatives” would increase productivity, opening up new land and improving irrigation.<sup>12964</sup> Eventually, KHIEU Samphan believed that the people would become willing participants in the socialist revolution after seeing the fruits of their labour, and would accept the part they played – as peasants – in rebuilding and defending Cambodia.<sup>12965</sup>

3885. Both KHIEU Samphan and NUON Chea later acknowledged that those who joined cooperatives were not free and could not leave.<sup>12966</sup> The coercive nature of the population movements coupled with the institution of agricultural cooperatives was recognised in the *Revolutionary Youth*:

After the liberation of the entire country, 99.9% of the Kampuchean people *have been obliged to live in the countryside* so as to be able to participate in the movement to increase production to sustain themselves and contribute to defending and building the country. During this initial period in which we have just emerged from the massively destructive war and there are all kinds of shortages, everything from, shelter, housings, food supplies, the various means and tools from production, etc, the cooperatives.<sup>12967</sup>

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such an arrangement and how it could improve their living conditions.”), 111, ERN (En) 00103778 (“[T]he Khmer Rouge victory on April 17, 1975, strengthened Pol Pot’s conviction that the only way to ensure the movement’s survival [...] was the forced collectivization of the country.”).

<sup>12963</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 567.

<sup>12964</sup> Thesis by Khieu S.: *Cambodia’s Economy and Industrial Development*, E3/123, p. 104, ERN (En) 00750637.

<sup>12965</sup> See above, fn. 12962. See also, KHIEU Samphan Speech at Third Anniversary of Founding of DK, E3/169, 17 April 1978, p. 8, ERN (En) 00280396 (“[O]ur people are increasingly satisfied with our socialist collectivist regime. They have become increasingly aware of the power of this regime which can effectively defend and build the country by force, and rapidly improve the people’s standard of living in all independence and sovereignty while relying on its own forces at the highest level.”).

<sup>12966</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 61, ERN (En) 00103753; KHIEU Samphan and NUON Chea Interview by EA Meng-Try and LOEUNG Sopheak, E3/108, 9-11 June 2006, ERN (En) 00000928 (“Meng-Try: Why there was [*sic*] an evacuation in 1975? Khieu Samphan: They evacuated people to live in cooperative[s]. In the cooperative people were not free but they had enough food to eat. And the country could also [be] strong enough to fight our enemy.”). See also, *An Encounter with Khieu Samphan* (The Nation), E3/660, 25 January 1981, ERN (En) S00029266 (“During 1975-78, the people saw that Democratic Kampuchea did some good things and also some bad things. [...] So, there must be new political programs which have been implemented within the country since September, 1979. There is no more collectivism. People are free to grow their rice and vegetables.”); T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 24-25 (“Q. [...] Mr Nuon Chea, can you please tell the Chamber if those who were living in the cooperatives, [...] had the choice to leave the cooperatives and settle elsewhere? A. If they were to live in the cooperatives they could not go anywhere else. They would stay and lived [*sic*] and worked in the cooperative.”).

<sup>12967</sup> *Revolutionary Youth*, E3/729, October 1975, p. 4, ERN (En) 00357903 (emphasis added).

3886. A 1975 CPK Policy Document sought to lure the population into joining the cooperative movement:

Although our economy is based on an organised cooperative, we manage to mobilise resources. [...] People become a member [*sic*] of the cooperative at their own wish. We do not force them. If they do not want to enter the cooperative, they are welcome. Those who do not want to do so, *they can wait, observe and do it later*. So, even if the enemy want[s] to attack us, they cannot do so.<sup>12968</sup>

3887. In late August 1975, the Standing Committee visited Battambang and Pursat provinces (Northwest Zone), receiving and assessing reports in the various sectors concerning the situation of the people, enemies, the military, agriculture and industry. Reaffirming that the role of cooperatives had been to provide human resources, economic and political strength for defeating “imperialism”, the Standing Committee record further noted that the role of cooperatives was now “to absorb all the new people coming out of all the cities and towns, especially Phnom Penh city and, in the Northwest [Zone], Battambang”. It further noted that “[e]very type of horrible element exists among the hundreds of thousands of new people in Battambang”, but that the “cooperatives have absorbed them completely”. The Standing Committee cautioned the need for vigilance with respect to the “contemptibles” and “no-good elements” among the “New People”, who were to be made to be “satisfied with the Revolution” and made “to see that this regime is one that belongs to them, so that they no longer desire to go anywhere else”.<sup>12969</sup>

3888. The report concerning the Standing Committee’s visit to the Northwest Zone does not indicate who attended. The Chamber notes, however, that NUON Chea was present in Cambodia in late August 1975, had ultimate decision-making authority, was a longstanding member of the Standing Committee and played a central and ongoing role in the development of Party policy.<sup>12970</sup> KHIEU Samphan, on the other hand, was travelling to China, Vietnam and North Korea in late August 1975.<sup>12971</sup> While there is insufficient evidence to establish to the required standard that either NUON Chea or

<sup>12968</sup> DK Publication, Document No. 6: Concerning the grasp and implementation of the political line in Mobilizing the National Democratic Front Forces of the Party, E3/99, 22 September 1975, p. 1, ERN (En) 00244274 (emphasis added).

<sup>12969</sup> Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, pp. 3-4, ERN (En) 00850975-00850976.

<sup>12970</sup> Section 7: Roles and Functions – NUON Chea.

<sup>12971</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 592.

KHIEU Samphan participated in the August 1975 visit to the Northwest Zone, the Chamber is satisfied that, by virtue of their positions of seniority within the Party, they were both aware of the report and participated in the development of plans and policies reflected therein.

3889. Following the Standing Committee's visit to the Northwest Zone, a September 1975 policy document signified the Party's intention to transform the country's "backward" agricultural system to a modern one within 10 to 15 years, noting that "agriculture is the key to restoring and building our economy" and resolving food shortages.<sup>12972</sup> In so doing, the CPK intended, among other things, to build dams, dykes and canals; implement a production target of three tonnes of rice per hectare by 1977 with a view to exporting at least two million tonnes of rice by 1980; gradually phase out human labour by independently manufacturing agricultural machinery within three to four years; and eventually eliminate villages and replace them with cooperatives, which would also subsume the role of schools, hospitals and machinery workshops.<sup>12973</sup> The speed at which this was to be achieved was key:

Today, we have only people's cooperative ownership and state ownership. Therefore, comparing revolutionary eras, China, Korea, Vietnam, we were the fastest, 30 years faster. This is very good. [...] As for the Chinese experience, they set up cooperatives at a high level during 1956 through 1958. They continue to set up the collective. China has been liberated for [3]0 years and has still not yet organised to solve the rice field dykes. But for us, we already have cooperatives. Therefore, our speed is very fast.<sup>12974</sup>

3890. The Standing Committee had by this time recognised the limitations inherent in this plan. The imperative to advance agricultural production and rapidly increase rice production was hampered by the deficit in agrarian machinery. As a result, manpower was the only form of capital available and therefore required strategic allocation.<sup>12975</sup>

<sup>12972</sup> DK Publication, *Examination of Control and Implementation of the Policy Line*, E3/781, September 1975, pp. 1, 12, ERN (En) 00523569, 00523580. See also, Section 10.1.7.1: Tram Kak Cooperatives: Economic Plans and Production Targets.

<sup>12973</sup> DK Publication, *Examination of Control and Implementation of the Policy Line*, E3/781, September 1975, pp. 1-20, ERN (En) 00523569-00523588.

<sup>12974</sup> DK Publication, *Examination of Control and Implementation of the Policy Line*, E3/781, September 1975, pp. 2-3, ERN (En) 00523570-00523571.

<sup>12975</sup> Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978; DK Publication, *Examination of Control and Implementation of the Policy Line*, E3/781, September 1975, p. 8, ERN (En) 00523576. See also, Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543730 (POL Pot comments that "we lack manpower" but that "mobilization has to be done in the future"); Decisions of Party Committee Conference of all Divisions, E3/790, 10-14 July 1976, ERN (En) 00714791; Minutes of Meeting Secretaries and Logistics Officers of Divisions and

In this regard, the September 1975 policy document emphasised the need to address all shortages in the country (including food, cattle and medicine) and instructed the relocation of people to the Northwest Zone (“an additional force of 500,000”); Preah Vihear province (20,000 people); Kampong Thom province (North Zone, later the Central Zone) and the East Zone (to “sectors which are short of people”). Lastly, the document highlights that the Party “can only depend upon our poor base people”, and that “the new group [...] who lived comfortably”, *i.e.* New People, “cannot be guaranteed”.<sup>12976</sup>

3891. Although the September 1975 policy document does not name its authors or those responsible for the plans and policies it sets out, it is clear that its purpose was to examine the implementation of the Party line to build the country following liberation. IENG Sary confirmed that he was present at a September 1975 Standing Committee meeting including POL Pot, NUON Chea, KHIEU Samphan, SAO Phim, SON Sen, Ta Mok, VORN Vet, RUOS Nhim and KOY Thuon, among others, at which defence, agriculture, drought and industry were discussed.<sup>12977</sup>

3892. The policy document’s objectives were rapidly formalised and promulgated nationwide. The October-November 1975 issue of the *Revolutionary Flag* reported that the First National Economic Congress, attended by “economic cadres”, mandated that all would labour to rapidly build and defend the country, achieving a modern agricultural economy within 10 to 15 years; confirmed the production target of three tonnes of rice per hectare; determined that the struggle against imperialists and “their lackeys” remained necessary; encouraged the advancement of the class struggle and the expansion of cooperatives; and instructed that all manpower be organised for consecutive projects on a seasonal basis.<sup>12978</sup> In this latter regard, mobile units were

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Regiments, E3/804, 15 December 1976, p. 3, ERN (En) 00233712 (Comrade Pin notes that, in relation to food production, “there were some manpower shortages”).

<sup>12976</sup> DK Publication, *Examination of Control and Implementation of the Policy Line*, E3/781, September 1975, pp. 1-20, ERN (En) 00523569-00523588. *See also*, Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 6, ERN (En) 00850978 (recording a lack of “mastery of [the] water problem”, that “human being strength is insufficient” and insisting that: “The labour force must be increased. Three or four hundred thousand more would not be enough. The current strength of one million persons can only work 50 per cent. It’s imperative to add four or five hundred thousand more.”).

<sup>12977</sup> IENG Sary Interview by Stephen HEDER, E3/89, 17 December 1996, pp. 2-5, ERN (En) 00417600-00417603. *See also*, T. 15 July 2013 (Stephen HEDER), E1/223.1, pp. 63-64 (confirming the accuracy of the interview transcripts in E3/89).

<sup>12978</sup> *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495808-00495816. The 1976 production plan was advertised throughout the year. *See e.g.*, *Revolutionary Flag*, E3/166, February-

always on standby and designed for regular deployment to cooperatives and construction sites.<sup>12979</sup> Only once cooperatives were individually expanded from 10 or 20 families to 1,000 families, and thus able to provide manpower for all activities, would it be possible to avoid further population movements.<sup>12980</sup>

3893. According to the Party, the improvement of living standards and the people's livelihood was inextricably linked to the rapid and ongoing fulfilment of economic targets.<sup>12981</sup> In addition to initiating large-scale agricultural projects nation-wide, the priority was also to repair and restore factories, road, sea and air communication routes; construct new bridges, ports and roads; and restart national industry, including the production of light and heavy machinery for agriculture, construction materials, raw materials and pharmaceutical products.<sup>12982</sup> All of this was to be achieved independently without foreign aid or assistance.<sup>12983</sup>

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March 1976, pp. 25-30, ERN (En) 00517837-00517842; Revolutionary Flag, E3/759, April 1976, pp. 17-24, ERN (En) 00517865-00517872; Revolutionary Flag, E3/760, June 1976, pp. 3-32, ERN (En) 00509606-00509635; Revolutionary Flag, E3/4, July 1976, pp. 8-32, ERN (En) 00268920-00268944 (“Constructing socialism is three tons per hectare, paddy dike and canal systems, fertilizer, caring for the cattle, etc.”); Revolutionary Flag, E3/762, August 1976, pp. 10-11, 17, ERN (En) 00486751-00486752, 00486758; Revolutionary Flag, E3/10, September-October 1976, pp. 14-17, ERN (En) 00450514-00450517; Revolutionary Flag, E3/139, November 1976, pp. 5-15, ERN (En) 00455282-00455292.

<sup>12979</sup> For mobile units, *see* Section 10.1: Tram Kak Cooperatives. *See below*, para. 3903.

<sup>12980</sup> Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495827. For a detailed survey of the proposed expansion of cooperatives, *see* Section 10.1.5.5: Tram Kak Cooperatives: Communes and Cooperatives.

<sup>12981</sup> Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495818-00495819. Promotion of the revolution as a means of improving living standards and the people's livelihood continued throughout the DK period. *See e.g.*, Revolutionary Flag, E3/166, February-March 1976, pp. 13-15, 19-22, ERN (En) 00517825-00517827, 00517831-00517834; Revolutionary Flag, E3/760, June 1976, p. 3, ERN (En) 00509606; Revolutionary Flag, E3/4, July 1976, p. 10, ERN (En) 00268922; Revolutionary Flag, E3/10, September-October 1976, pp. 8, 33-35, ERN (En) 00450508, 00450533-00450535; Revolutionary Flag, E3/742, April 1977, p. 12, ERN (En) 00478503 (“We must push the offensive to build socialism in every field as stated in the 1977 Plan of the Party, economically (agriculture, industry, communications, transport, commerce, rubber, salt, and so on), culturally, educationally, in social affairs, in public health, in every aspect of the livelihood of the people, technologically, and so on.”); Revolutionary Flag, E3/135, June 1977, p. 18, ERN (En) 00446863 (advocating small, intermediate and large-scale rice farming as contributors to “sorting out livelihood to strengthen and expand our collective regime”); Revolutionary Flag, E3/4604, April 1978, p. 23, ERN (En) 00519851 (“When there is rice, when there is water, and when there are fish, [the people] plant other crops too, and their livelihood changes its face tremendously. They have great confidence [...] in the regime, confidence in the results that [they] can actually see.”).

<sup>12982</sup> *See e.g.*, Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495809; Revolutionary Flag, E3/166, February-March 1976, p. 13, ERN (En) 00517825; Revolutionary Youth, E3/730, December 1975, p. 9, ERN (En) 00363430. *See also*, Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975, pp. 5-6, ERN (En) 00850977-00850978; Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543729-00543731 (generally).

<sup>12983</sup> Revolutionary Flag, E3/762, August 1976, p. 5, ERN (En) 00486746 (“[W]e resolve our contradictions in terms of industry by standing upon our agricultural capital. We do not strengthen and

3894. By late September 1975, the CPK claimed not only to have gained “effective control over all regions” of the country, but also over most of the people. Former class distinctions had been dissolved and the people reduced to one “peasant class”, “cooperatively” organised as “the only class to carry out economic activities”.<sup>12984</sup> Henceforth, “no other class stratum [was to be] allowed beside the worker-peasant class”.<sup>12985</sup> Former civil servants, petty bourgeoisies, traders, compradors and aristocrats – all reclassified as “New People” – were no exception to this rule:

These new peasants do not have the political regime and economic base as before, particularly, in the rural areas. Therefore, now we have control over all regions. In the cities are our workers, youths and soldiers. In the rural area are base and new peasants. That is it; nothing else.<sup>12986</sup>

3895. As discussed above,<sup>12987</sup> the CPK maintained a distinction between Base or Old People and New or 17 April People throughout the DK period. The Standing Committee specifically instructed that New People were to subordinate themselves to the cooperatives and to the “leadership of cadres emerging from the basic classes” – *i.e.* Base People.<sup>12988</sup>

3896. Despite proclaiming the success of the cooperative movement, the CPK quickly acknowledged that “bad elements” were “still chaotically mixed in among the ranks of the new people”.<sup>12989</sup> However, it was “impossible to attack, completely smash and [immediately] dispose of” the “outlook, stances, ideology, worldview and credo” of the

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expand industry by requesting foreign aid. Therefore, we are able to resolve our contradictions based upon both our agricultural capital and our stance of independence, mastery, and self-reliance.”).

<sup>12984</sup> DK Publication, *Document No. 6: Concerning the Grasp and Implementation of the Political Line in Mobilising the National Democratic Front Forces of the Party*, E3/99, 22 September 1975, p. 2, ERN (En) 00244275.

<sup>12985</sup> DK Publication, *Introductory Document for Party Members*, E3/138, undated, p. 8, ERN (En) 00743797 (“We made a decision in September 1975 that no other class stratum is allowed besides the worker-peasant class. We consider anyone working in the worker framework as a worker, and we consider anyone working in the peasant framework is as a peasant.”).

<sup>12986</sup> DK Publication, *Document No. 6: Concerning the Grasp and Implementation of the Political Line in Mobilising the National Democratic Front Forces of the Party*, E3/99, 22 September 1975, p. 2, ERN (En) 00244275.

<sup>12987</sup> Section 10.1.7.2: Tram Kak Cooperatives: Categorisation of People: Full-Rights, Candidates and Depositees. *See above*, Section 16.3.2.1.3.2: “New People”.

<sup>12988</sup> Section 10.1: Tram Kak Cooperatives, paras 990-991, 999. Regarding the further classification into Full-Rights Persons, Candidates and Depositees, *see below*, para. 3908.

<sup>12989</sup> Revolutionary Youth, E3/729, October 1975, p. 4, ERN (En) 00357903 (“In the complex situation where more than two million new people have just gone down to live in the countryside and enemy agents and various other bad elements are still chaotically mixed in among the ranks of the new people, our production cooperatives also have the duty to help strengthen the state authorities in the villages and subdistricts”).



“new worker-peasant people”. The collective movement would slowly expunge the remnants of “imperialist-feudalist-capitalist outlooks” and, with the aid of political indoctrination and manual labour, would succeed in transforming the entire population into worker-peasants.<sup>12990</sup>

3897. On 14 December 1975, KHIEU Samphan chaired a National Congress at which he was reported to have presented the new constitution and emphasised that all people could work collectively, either in the factories or in the fields.<sup>12991</sup> The preamble to the constitution declared that the “entire Kampuchean people and the entire Kampuchean Revolutionary Army desire [...] a society in which all live harmoniously in great national solidarity and join forces to do manual labour together and increase production for the construction and defence of the country”. Article 2 provided that all important means of production were the property of the State and people’s collectives, while Article 12 insisted that: “There is absolutely no unemployment in Democratic Kampuchea”. Article 14 determined that: “It is the duty of all to defend and build the country together in accordance with individual ability and potential”.<sup>12992</sup> The statutes of the CPK and Communist Youth League of Kampuchea similarly placed members under an ongoing duty to “keep close contact with the popular masses, [...] the worker-peasants in the unions and cooperatives” and participate in building and defending Democratic Kampuchea in the direction of socialist revolution.<sup>12993</sup>

3898. 1976 saw an intensified campaign to control people inside cooperatives. Contemporaneous publications demonstrate the CPK’s push to increase “criticism” and “self-criticism” at lifestyle meetings as “the most important means of eradicating all the non-revolutionary elements within us”. In order to counter the enemy, it was necessary to “grasp the cooperatives” and “grasp the biographies” of its inhabitants to “know

<sup>12990</sup> Revolutionary Youth, E3/729, October 1975, pp. 9-10, ERN (En) 00357908-00357909.

<sup>12991</sup> *National Congress Held; New Constitution Adopted* (in FBIS collection), E3/1356, 15 December 1975, ERN (En) 00167574-00167575 (the “Special National Congress” recognised the “appeal of the people” for a “new Cambodia” in which all people “jointly strive to increase production to build and protect the country”); *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 6 January 1976, ERN (En) 00167810-00167817 (“Everybody works in the fields because our workers practice the collective system of labor and because they collectively own the factories, trains and all production sites.”). It was not clear to the Chamber whether this congress actually took place. See Section 8: Roles and Functions – KHIEU Samphan, para. 593.

<sup>12992</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184833-00184834, 00184837-00184838 (Preamble, Articles 2, 12, 14).

<sup>12993</sup> CPK Statute, E3/214, undated, pp. 4-5, 10, ERN (En) 00184025-00184026, 00184031; CYLK Statute, E3/1230, January 1976, pp. 4-5, ERN (En) 01201895-01201896.

clearly which person is good and which person is not good”.<sup>12994</sup> “Contradictions” between collective workers and the former capitalist regime nevertheless remained manifest during 1976. In cooperatives, the revolutionary stance was “still not firm” and “[e]nemies still continue[d] their activities”.<sup>12995</sup> The CPK further intensified efforts to expand Party membership to hasten production in all sectors, expand its control over the base and discourage potentially bad elements away from enemy conduct and firmly into the grasp of the Party.<sup>12996</sup>

3899. On 30 March 1976, the CPK Central Committee declared that the goal of the revolutionary struggle was to “seize state power and place it in the hands of the worker-peasants, and to attack and eliminate all oppressive state power”. Following a similar resolution by the Standing Committee earlier the same month with regard to the construction of dykes,<sup>12997</sup> the Central Committee resolved to establish a regime of weekly reporting to Office 870 on matters related to the three tonnes of rice per hectare target.<sup>12998</sup> Telegrams before the Chamber confirm that updates on the construction of dykes and canals, as well as rice production targets and agricultural accomplishments,

<sup>12994</sup> Section 10.1.7.5.2: Tram Kak Cooperatives: Meetings, Education, Biographies and Criticism.

<sup>12995</sup> Revolutionary Flag, E3/166, February-March 1976, pp. 6, ERN (En) 00517818 (“Therefore, the contradictions between the capitalist-private regimes and the collective workers remain as they were. For example: Some members of the cooperatives hide rice: this is private and capitalist in nature. This path does not head toward socialism, toward the collective. Those unhappy with the collective path walk toward the capitalist path, the private path. Those who are happy with the collective walk toward the socialist path, the collective path of the proletarian class. This is a struggle between two contradictory views, stances, and lines.”), 7, ERN (En) 00517819 (“We built, strengthened, and expanded the collective regime in terms of production and daily living and made an important large step, like the cooperatives, the unions and the organization of collective living in the revolutionary ranks. However, it is still not firm. So then, this is why our Party has said, “It is imperative to continue socialist revolution by continuing to attack the remnants of the capitalist class, the private regime, and all private ownership”); Revolutionary Flag, E3/760, June 1976, p. 12, ERN (En) 00509615 (“Enemies still continue their activities. [...] In the cooperatives, we must gain mastery.”). *See also*, Chapter by B. Kiernan, “Excerpted Report on the Leading Views of the Comrade Representing the Party Organization at a Zone Assembly”, in *Pol Pot Plans the Future: Confidential Leadership Documents from Democratic Kampuchea, 1976-1977*, E3/8, p. 19, ERN (En) 00104007 (“Talking about co-operatives is talking about socialism. [...] This shows that socialist consciousness and socialist relationships are still not very strong. Socialist revolution has not yet penetrated deeply into our co-operatives.”).

<sup>12996</sup> *See e.g.*, Revolutionary Flag, E3/4, July 1976, pp. 25-26, ERN (En) 00268937-00268938; Revolutionary Flag, E3/762, August 1976, pp. 27-28, ERN (En) 00486768-00486769; Revolutionary Flag, E3/135, June 1977, pp. 27, 33, ERN (En) 00446872, 00446878; Revolutionary Flag, E3/193, August 1977, p. 9, ERN (En) 00399229. KAING Guek Eav *alias* Duch estimated that CPK membership amounted to five percent of the population. *See* T. 21 March 2012 (KAING Guek Eav), E1/52.1, pp. 83-84. In light of the Party’s April 1977 projection of recruiting three Party members per 100 families, the Chamber finds Duch’s estimation to be excessive. *See* Revolutionary Flag, E3/742, April 1977, p. 15, ERN (En) 00478506 (“We must build three Party members per every 100 families. [...] 1,000 families must have 30 Party members”).

<sup>12997</sup> Section 6: Communication Structures, para. 487.

<sup>12998</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 1, ERN (En) 00182809.

were indeed regularly communicated to the Party Centre by zone authorities.<sup>12999</sup> However, the available evidence before the Chamber was incomplete and did not permit it to confirm that this was done on a strict weekly basis. The Central Committee also announced that model districts which achieved the “three tonnes per hectare” target, and which had arranged their labour force “well and properly”, would be rewarded with the presentation of an honorary flag with the inscription “great leap forward”.<sup>13000</sup>

3900. POL Pot affirmed the government’s obligation to adhere to the Party line at the first Council of Ministers meeting on 22 April 1976.<sup>13001</sup> At the second Council of Ministers meeting on 31 May 1976, POL Pot praised the achievements of the socialist revolution and reported on the construction of rice fields, dykes and canals; the collection of “thousands of forces in each working site” where irrigation projects were underway; and highlighted drawbacks including food shortages, disease and inadequate shelters.<sup>13002</sup> The “weaknesses” identified by POL Pot mirror the poor living conditions in the Northwest Zone witnessed by the Minister of Social Affairs, IENG Thirith, one year later.<sup>13003</sup> Reporting to POL Pot and other CPK leaders, IENG Thirith relayed that people in Battambang were ill from malaria and diarrhoea, had to work far from their villages and had no homes. In addition, “all people [were] going to the rice fields” despite an apparent directive to exclude young children or old people, pregnant women or new mothers from this initiative.<sup>13004</sup> Similar living conditions were also reported in

<sup>12999</sup> See e.g., DK Telegram, E3/1219, 20 May 1977, ERN (En) 00583935-00583936 (Sector 401 [*i.e.* West Zone] report to *Angkar*); DK Telegram, E3/179, 29 May 1977, ERN (En) 00183013-00183018 (Sector 560 [*i.e.* Northwest Zone] report to *Angkar*); DK Telegram, E3/853, 3 June 1977, pp. 3-5, ERN (En) 00185244-00185246 (Southwest Zone report to *Angkar*); DK Telegram, E3/1179, 8 June 1977, pp. 2-5, 00583918-00583921 (Sector 560 [*i.e.* Northwest Zone] report to *Angkar*); DK Telegram, E3/1073, 10 April 1978, pp. 3-4, ERN (En) 00293360-0029336-1 (report from North Zone Secretary Se to *Angkar*, copied to POL Pot, NUON Chea, IENG Sary and Office 870); DK Telegram, E3/1094, 4 August 1978, pp. 54-58, ERN (En) 00143626-00143630 (Sector 401 [*i.e.* West Zone] report to *Angkar*).

<sup>13000</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, pp. 1-2, ERN (En) 00182809-00182810. See also, Section 10.1.11: Tram Kak as a Model District.

<sup>13001</sup> Meeting of the Council of Ministers, E3/817 [E3/818], 22 April 1976, p. 1, ERN (En) 00143461 (“Therefore, members of the Government and members of the Committees in all sectors must grasp the true nature of our Government and our duties, and strive to fulfil their tasks as well, following the Party line. Grasping the Party line means grasping the organizational stance of the Party and grasping the political objectives of the Party in every sector in order to implement the policies of the Party well and correctly.”).

<sup>13002</sup> Minutes of Meeting of the Council of Ministers, E3/794, 31 May 1976, pp. 7-9, ERN (En) 00182677-00182679.

<sup>13003</sup> IENG Thirith was appointed as Minister for Social Affairs in April 1976. See Section 5.2.1: DK Ministries and Committees.

<sup>13004</sup> IENG Thirith Interview by Elizabeth BECKER, E3/659, October-November 1980, p. 25, ERN (En) 00182322 (“I reported to our leaders that there was something queer in some provinces, for example in Battambang, I saw something very clear, that they make people, all people going to the rice fields, very far from the village and they have no home; and I saw they have no home and they are all ill. I reported

Siem Reap (Sector 106) in 1976, where 40 percent of the workforce was reportedly lost due to illness.<sup>13005</sup> At various construction sites it was reported that progress, without the use of machinery or tools, was slow, and that supplies and raw materials were dwindling.<sup>13006</sup> Indeed, the Ministry of Commerce reported that forces were not being used “in accordance with modern technology”, citing as an example labour groups assigned to digging ponds and growing crops on infertile land.<sup>13007</sup>

3901. By mid-1976, the Party leadership began to realise that they faced difficulties in reaching the target of three tonnes of rice per hectare by the end of 1976. At a Health and Social Affairs meeting attended by KHIEU Samphan in June 1976, the Party leadership reiterated that unless the target of three tonnes of rice per hectare was achieved, the Party would not be able to feed the general public or build or defend the country.<sup>13008</sup> The *Revolutionary Flag* acknowledged that manpower had not been distributed with proper discernment in the implementation of the “Great Magnificent Leap”: having sent all of its human resources to worksites, the Party did not have any “secondary forces” left behind to grow vegetables or crops.<sup>13009</sup>

3902. In response, the West Zone was instructed by a Party representative in June 1976 to allocate manpower strategically on a countrywide basis according to need.<sup>13010</sup>

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to [...] the Prime Minister. That’s quite queer. It is not normal. [...] At the time I told my leader there is something wrong in that province because I know the directives of the Prime Minister: not young, not old people, not pregnant women, not women feeding babies and not small children, but I saw [...] many people ill of diarrhoea and malaria so I reported it to him.”). POL Pot was “appointed” as “Prime Minister” at the first PRA conference in April 1976. See Section 5: Administrative Structures, para. 414.  
<sup>13005</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 3, ERN (En) 00182630.

<sup>13006</sup> See e.g., Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543729-00543730 (on 10 March 1976, the Ministry of Public Works held a meeting at which it discussed the slow progress of: Kirrom Dam (“it is a bit slow because we break the stone by ourselves; There is a shortage of nuts that must be bought; [...] Request to Korea to bring in some equipments [*sic*.”), Chroy Changvar Bridge (“Request for more mechanics from the southwest; The lack of a crane that can lift bridge’s materials of over 100 tons is also a problem”), the provision of water and electricity (“Request for immediate delivery of raw materials”, noting that: the electricity section had run out of spare parts at all three locations; the water section has sufficient chloride stock for three months; and that alum stocks will last two more months) and construction of National Roads 4 and 5 (“Request for rock grinding machines”)).

<sup>13007</sup> Ministry of Commerce Report, E3/1159, 25-26 July 1976, p. 5, ERN (En) 00701591.

<sup>13008</sup> Standing Committee Minutes, E3/226, 10 June 1976, p. 7, ERN (En) 00183369.

<sup>13009</sup> Revolutionary Flag, E3/760, June 1976, pp. 24-25, ERN (En) 00509627-00509628 (“We firmly believe that we can build the country rapidly. The enemies cannot attack us. [...] The strategy and tactics must be disseminated to the cooperatives for their enlightenment so [that] they can build the country quickly. [...] This is the concrete meaning of the Great Magnificent Leap.”).

<sup>13010</sup> Revolutionary Flag, E3/760, June 1976, pp. 9-10, 15, 18-21, ERN (En) 00509612-00509613, 00509618, 00509621-00509624 (instructing that labour had to be organised throughout the country to ensure that both the front and rear revolutionary forces had adequate forces). See also, Revolutionary Flag, E3/4, July 1976, pp. 8-12, ERN (En) 00268920-00268924 (storming attacks had to be launched

The following month, the Ministry of Commerce reported its contribution to national development and defence by providing resources for agricultural production.<sup>13011</sup>

3903. From late 1975 and continuing throughout 1976, a seasonal workforce consisting of tens of thousands of people was displaced within and between Battambang and Pursat provinces (Northwest Zone),<sup>13012</sup> within and between Kampot, Takeo, Prey Veng, Svay Rieng, Kampong Cham, Kampong Thom and Kandal provinces (Southwest, West, Central (old North) and East Zones),<sup>13013</sup> and to Kratie province (Sector 505).<sup>13014</sup> From season to season, these people (and in particular mobile units specifically designated in each cooperative) were relocated to farm and build infrastructure, including dams and irrigation systems.<sup>13015</sup>

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“following the most effective and correct lines of action” including strengthening and expanding the cooperatives, focusing on water, and fulfilling the goal of achieving three tonnes of rice per hectare by way of careful and consistent planning and organisation); Standing Committee Minutes, E3/237, 10 March 1976, ERN (En) 00543730 (it was necessary to mobilise “in order to expand roads and bridges”); East Zone Report, E3/1218, 15 November 1976, ERN (En) 00548800 (on 15 November 1976, the East Zone received a report concerning, among other topics, the gathering of mobile work forces to intensify rice harvests at the places where there was much ripening rice); Revolutionary Flag, E3/762, August 1976, pp. 15-16, ERN (En) 00486756-00486757 (water was a priority and forces had to be gathered from many communes to sort out water in any other communes or districts).

<sup>13011</sup> Ministry of Commerce Report, E3/1110 [E3/1159], 25-26 July 1976, p. 2, ERN (En) 00583830 [ERN (En) 00701588] (“Contributed to nation [*sic*] protection and development; and [a]ctually, we’ve contributed to achieving three tons per hectare and building 30% of new rice field dike system [*sic*] in 1976.”).

<sup>13012</sup> See e.g., T. 7 February 2013 (PIN Yathay), E1/170.1, p. 45; MOUR SETHA Interview Record, E3/5311, 19 August 2009, pp. 3-7, ERN (En) 00373362-00373366; PRUM SARUN Interview Record, E3/5187, 18 June 2008, pp. 3-5, ERN (En) 00274178-00274180; Refugee Accounts, E3/4590, p. 243, ERN (En) 00820561; Article by Utara N., *The Deprivation of Rights*, E3/1800, July 2003, p. 56, ERN (En) 00080450.

<sup>13013</sup> See e.g., T. 6 December 2012 (KIM VANNDY), E1/149.1, pp. 11-12 (KIM VANNDY was moved from Kandal to a worksite at Prey Phdau Dam in Svay Rieng); YUOS PHAL Interview Record, E3/4611, 12 December 2009, pp. 3-4, ERN (En) 00455376-00455377 (YUOS PHAL was moved from Phnom Penh to Kampong Cham, later to Takeo province, La Ach Sva in Kampot province and, in late 1975, finally to Trapeang Tum in Pursat province for three years to work with a mobile unit). See also, LONG SORN Civil Party Application, E3/4872, 9 January 2008, p. 3, ERN (En) 00842162 (LONG SORN was moved from Takeo to Svay Rieng and Kampot); CHIN KIM LEANG Supplementary Information, E3/4941, 15 June 2010, p. 1, ERN (En) 00833992 (CHIN KIM LEANG was moved from Kampot to Kampong Thom); YANN NHAR Civil Party Application, E3/4987, 24 July 2009, p. 6, ERN (En) 00873677 (YANN NHAR was moved from Phnom Penh to Au Ansa village in Takeo, and later to Svay Sa village, Takeo province); LY MAT Civil Party Application, E3/5053, 12 August 2009, pp. 2-3, ERN (En) 00840069-00840070 (LY MAT was moved first within Kandal province and then later to Prey Veng province); REACH YEN Civil Party Application, E3/5019, undated, pp. 1-2, ERN (En) 00893424-00893425 (REACH YEN was moved twice within Svay Rieng province); SUM SOEUN Civil Party Application, E3/5055, undated, p. 4, ERN (En) 00893430 (SUM SOEUN was moved to Kandal province to build dykes). See also, Section 13.2.8: Movement of Population Phase Two.

<sup>13014</sup> See e.g., HENG LAI HEANG Interview Record, E3/436, 23 November 2009, pp. 8-9, ERN (En) 00414568-00414569.

<sup>13015</sup> See e.g., Minutes of Meeting of the Council of Ministers, E3/794, 31 May 1976, p. 8, ERN (En) 00182678 (thousands of people were collected to build canals at worksites throughout the Northwest, Southwest, East and West Zones); PRUM SARUN Interview Record, E3/5187, 18 June 2008, pp. 3-5, ERN

3904. From as early as August 1976, the *Revolutionary Flag* promoted the need to create preconditions to improve agricultural conditions to permit six tonnes of rice to be harvested per hectare.<sup>13016</sup> The primary impediment, however, was “the water problem”, *i.e.* drought. In order to harness water for irrigating fields throughout the year and ensure increased production, it was necessary to construct more dams, reservoirs and feeder canals.<sup>13017</sup> The feasibility of achieving these objectives was raised at a meeting of division and regiment leaders on 12 August 1976. Referring to the mismanagement of labour forces and incorrect land fertilisation and irrigation techniques to date, Division 310 Commander SBAUV Him *alias* Oeun stated that:

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(En) 00274178-00274180 (PRUM Sarun was sent to the Kampong Puoy worksite, Battambang province, along with tens of thousands of others from all over Battambang, for three months every year after the harvest was over); Refugee Accounts, E3/4590, pp. 82, ERN (En) 00820400 (after the harvest, people were forced to go elsewhere to start from scratch), 187, ERN (En) 00820505 (in September/October 1975, all the boys and girls were withdrawn as part of an “elite” force to build a dyke at Damnak Siem, Siem Reap), 243, ERN (En) 00820561 (youths were sent to harvest crops or build waterworks far away from their home cooperatives); Book by E. Becker: *When the War was Over: Cambodia and the Khmer Rouge Revolution*, E3/20, p. 241, ERN (En) 00237946 (people in the Northwest were moved from project to project and then back to the rice fields); Article by F. Ponchaud, “Kampuchea: A Revolutionary Economy”, E3/2412, 25 January 1979, pp. 5, ERN (En) 00598523 (while one part of the population was engaged in massive water projects, another part was assigned to clearing forests. In 1976, a significant number of those sent to work virgin lands were sent back to traditionally cultivated lands), 13, ERN (En) 00598531 (in the dry season, a large proportion of cooperative workers were sent to construction sites). *See also*, BIEAN Sareth Civil Party Application, E3/4755, 18 January 2009, p. 4, ERN (En) 00864551 (BIEAN Sareth was moved to various cooperatives as part of a mobile unit in Battambang province to transplant and harvest rice and work on dykes as the season changed); ENG Hong Sum Civil Party Application, E3/5091, 13 November 2009, p. 8, ERN (En) 00569691 (when the rice was ripe in 1976, they were moved again to Krang Svat village, Battambang province); SOK Moeun Civil Party Application, E3/4918, undated, p. 4, ERN (En) 00893391 (SOK Moeun was sent to farm rice at Svay Doun Kaev, Bakan district, Pursat province in June 1976); EL Yas Civil Party Application, E3/4975, 6 February 2008, pp. 3-4, ERN (En) 00871631-00871632 (after being relocated within Pursat province in 1975, EL Yas and her family were sent to Chonlong village, Kbal Trach commune, Krakor district, Pursat province. As soon as the rainy season rice harvest was complete, they were ordered to farm dry season rice in Russei Muoy Roy Kum, Bakan district, Pursat province).

<sup>13016</sup> *Revolutionary Flag*, E3/762, August 1976, p. 6, ERN (En) 00486747.

<sup>13017</sup> *See e.g.*, *Revolutionary Flag*, E3/166, February-March 1976, p. 14, ERN (En) 00517826 (“Our Party members and evolutionary cadres [...] went down close to the [popular mass] movement to put up dams, dig feeder canals, dig reservoirs, and sort out the water problem for the people to increase production.”); *Revolutionary Flag*, E3/10, September-October 1976, p. 15, ERN (En) 00450515 (“According to [our] estimate, within five years our agriculture will progress greatly. If there is water, there will be rice. The harvest will increase from three tons to four tons to five tons to six tons.”); *Revolutionary Flag*, E3/135, June 1977, p. 20, ERN (En) 00446865 (“[I]n order to build socialism according to [the] plan, we have to master water. We have to continue sorting out water.”); *Revolutionary Flag*, E3/743, July 1977, p. 3, ERN (En) 00476158 (“Our core mission of the Party for 1977 is to push a great offensive movement systematically in marvellous great leaps to produce rice during 1977 and to absolutely achieve three tons and six tons per hectare [...] by going on an offensive to sort out the water problem to a greater extent in terms of reservoirs, canals, paddy [dyke] systems, and small and large feeder canals.”); *Revolutionary Flag*, E3/11, September 1977, p. 50, ERN (En) 00486261 (“In total, in 1977 our cooperative peasants built all sorts of water projects, which solved the water problem during all seasons, dry as well as rainy, for 400,000 hectares of farmland.”). *See also*, *Revolutionary Flag*, E3/215, September 1978, p. 20, ERN (En) 00488633 (“According to the experience of our movement over the past three years, we see that the water problems can be sorted out within eight to ten years.”).

“Achieving 1.5 ton[ne]s per hectare of early rice is not possible yet because we do not have experience”.<sup>13018</sup> SON Sen reiterated that 1.5 tonnes of first harvest rice was “not yet reliably guaranteed” and noted that the achievement of three tonnes per hectare of late [*i.e.* second harvest] rice was “also not yet guaranteed”. Despite acknowledging the lack of technical expertise on the ground – including the cultivation, fertilisation and irrigation of crops – SON Sen declared that this “is not a major obstacle”; the only impediment was an ideological one: “the Party [...] does not yet have a spirit of mastery as regards work”. “What is of fundamental importance”, he added, “is the leadership of the Party”.<sup>13019</sup>

3905. In spite of evident limitations, the CPK pushed forth with its economic planning, demanding even more output. On 17 and 18 November 1976, the Party leadership held its Second National Economic Congress, at which it adopted the economic plan for 1977.<sup>13020</sup> The draft Four-Year Economic Plan for 1977 to 1980 reveals the decision to continue increasing rice production by harvesting “fertile, first-class fields” twice a year to reap between six and seven tonnes of grain “according to the soil, and zone and the region”.<sup>13021</sup> The Four-Year Plan was promoted by the Party throughout 1977 until at least March 1978.<sup>13022</sup>

3906. The CPK leadership continued to promote the need to gather manpower and every type of material force to achieve, and where possible surpass, the Party’s economic targets. In the face of persistent drought and food shortages, all available manpower was to be assigned to planting and cultivation, building paddy dyke systems,

<sup>13018</sup> Minutes of Meeting of the Committees Attached to Divisions and Regiments, E3/796, 12 August 1976, p. 9, ERN (En) 00597001. Oeun was arrested six months later and executed at S-21 Security Centre. See Section 12.2.8.2.3: S-21 Security Centre: SBAUV Him *alias* Oeun.

<sup>13019</sup> Minutes of Meeting of the Committees Attached to Divisions and Regiments, E3/796, 12 August 1976, p. 11, ERN (En) 00597003.

<sup>13020</sup> Revolutionary Flag, E3/139, November 1976, p. 3, ERN (En) 00455280.

<sup>13021</sup> Four Year Plan 1977-1980, E3/8, p. 51, ERN (En) 00104023. Twenty percent or more of arable land in Sector 103 (Preah Vihear), the West and (old) North Zones was slated for two harvests per year of a combined six or seven tonnes in 1977, with this percentage increasing progressively through the four years. See also, Section 10.1.7.1: Tram Kak Cooperatives: Economic Plans and Production Targets.

<sup>13022</sup> See *e.g.*, Revolutionary Flag, E3/742, April 1977, pp. 3, 12-14, ERN (En) 00478494, 00478503-00478505; Revolutionary Youth, E3/770, May 1977, pp. 27-28, ERN (En) 00539044-00539045; Revolutionary Flag, E3/135, June 1977, pp. 7, 20-21, 34-36, ERN (En) 00446852, 00446865-00446866, 00446879-00446881; Revolutionary Flag, E3/743, July 1977, pp. 3-7, ERN (En) 00476158-00476162; Revolutionary Flag, E3/193, August 1977, pp. 3-4, 8, 14-15, 20, ERN (En) 00399223-00399224, 00399228, 00399234-00399235, 00399240; Revolutionary Youth, E3/772, September 1977, pp. 7, 26-30, ERN (En) 00541706, 00541725-00541729; Revolutionary Flag, E3/745, March 1978, pp. 3-4, 12-13, ERN (En) 00504069-00504070, 00504078-00504079.

canals, dams, reservoirs and textile production.<sup>13023</sup> As part of this enterprise, KHIEU Samphan declared that irrigation projects were being built by “progressive corps” in every region, sector and district, and reported that each reservoir, canal and dam construction site was manned by as many as 10,000 to 30,000 workers.<sup>13024</sup>

3907. According to the CPK, the success of these initiatives allowed the DK to begin exporting tens of thousands of tonnes of rice in 1977, in order to amass capital for further construction and national defence efforts.<sup>13025</sup> Evidence before the Chamber shows that while DK had begun exporting husked rice to Madagascar in 1977,<sup>13026</sup> its export operations were generally hampered by the lack of export-quality merchandise.<sup>13027</sup>

3908. In 1977, population movements were again consistently reported in Battambang and Pursat provinces (Northwest Zone), where displaced persons were assigned to farms, worksites and factories.<sup>13028</sup> Sector-level mobile units were also sent to build

<sup>13023</sup> See e.g., Revolutionary Flag, E3/742, April 1977, p. 12, ERN (En) 00478503; Revolutionary Flag, E3/135, June 1977, pp. 18, ERN (En) 00446863 (noting food shortages and that the diet of some workers during the rainy season “may in some locations be somewhat poor, leading the people to be a little weak”, the Party insisted that “mobile units can be assigned anywhere to build reservoirs, plant potatoes, bananas, etc”. The use of these collective forces was “not yet appropriate [since] there are still contradictions” including “embedded enem[ies]”), 20-22, ERN (En) 00446865-00446867 (noting the “bad natural drought impacting our early year rice” and stating that it “is imperative to distribute manpower properly. [...] It is imperative to sort out the problem of food supplies first. [...] [I]t is imperative that we keep on building the paddy dike systems. [...] The same for dams and reservoirs. [...] Move most of the manpower to increasing production planting potatoes, pumpkins, gourds, wax melons, eggplant, etc. [...] The same for canals, dams, reservoirs. [...] The same even with textiles”), 35, ERN (En) 00446880; Revolutionary Flag, E3/743, July 1977, pp. 3-5, ERN (En) 00476158-00476160; Revolutionary Flag, E3/170, October-November 1977, p. 28, ERN (En) 00182575 (“Our experience in 1977 has been drought and more drought. The people had to go four or five kilometres to get water, and [others] had to waste time waiting for it. We have not yet been able to resolve this contradiction because our action line on the water problem still isn’t effective.”). See also, Revolutionary Flag, E3/11, September 1977, pp. 49-50, ERN (En) 00486260-00486261 (lauding efforts which resulted in the damming of the Preaek Thnaot, Chinit, Pursat, Battambang, Siem Reap and Steung Kralanh Streams).

<sup>13024</sup> *Khieu Samphan’s Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004166 (“Each construction site of a reservoir, canal or dam is manned by as many as 10,000, 20,000 or even 30,000 workers. For this reason, the work progresses quickly.”).

<sup>13025</sup> Revolutionary Flag, E3/11, September 1977, p. 50, ERN (En) 00486261; *Radio Text of Ieng Sary’s 11 Oct UN Address* (in FBIS collection), E3/290, 25 October 1977, ERN (En) 00168717.

<sup>13026</sup> See e.g., Commerce Committee Report, E3/2043, 11 June 1977, ERN (En) 00583637 (5,250 tonnes in 52,500 sacks); Commerce Committee Report, E3/325, 15 August 1977, ERN (En) 00685482 (5,250 tonnes of rice to the amount of \$997,550.00); DK Telegram, E3/2080, 15 September 1977, ERN (En) 00531912 (reporting the transportation of 5,000 tonnes of husked rice via Tamatao).

<sup>13027</sup> DK Telegram, E3/2082, 14 October 1977, ERN (En) 00509589 (“At the present situation, we are lacking everything and we have no significant goods to export to free markets.”). See also, Article by N. Chanda, *Cambodia Goes to Market* (in Far Eastern Economic Review), E3/1912, 20 May 1977, p. 75, ERN (En) S00006573 (a merchant who inspected DK samples noted that “30% of the rice was broken and of coarse quality”).

<sup>13028</sup> *Submission from the International Commission of Jurists under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/1804, 16 August 1978, p. 4, ERN (En) 0087527; LAY Bony



dams in the Northwest Zone (including Trapeang Thma Dam),<sup>13029</sup> Kampong Thom (including the 1<sup>st</sup> January and 6<sup>th</sup> January Dams),<sup>13030</sup> Kampong Cham (Central (old North) and East Zones) and Kampot (Southwest Zone).<sup>13031</sup> By this time, construction had also begun on the Kampong Chhnang Airfield (West Zone).<sup>13032</sup> Echoing previous failures to eradicate undesirable elements,<sup>13033</sup> the *Revolutionary Flag* in August 1977 announced that “various oppressor classes” had “seized power” in some cooperatives and determined that “[i]f we are not absolute [...] the other classes will continue to hold power in the cooperatives”.<sup>13034</sup> This also followed the introduction of a tripartite classification of Full-Rights People, Candidates and Depositees in early 1977 which was “imperative to clearly distinguish” the different elements in cooperatives and “to not allow any further confusion”.<sup>13035</sup> As discussed elsewhere,<sup>13036</sup> the CPK in 1977 continued its practice of setting different rations for different categories of person, with the largest quantities intended for those of poor and lower-middle peasant classification or those who were deemed to be the “most productive”. While there was evidence that this was indeed implemented at cooperatives and worksites,<sup>13037</sup> the Chamber has found that food dispensed to workers, peasants and prisoners throughout the DK period was generally inadequate and frequently led to disease and death from malnutrition.<sup>13038</sup>

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Interview Record, E3/3958, 26 August 2009, p. 10, ERN (En) 00379163 (LAY Bonyand others were transferred to Boeng Kol, Bakan district in Pursat province to farm); SOK Moeun Civil Party Application, E3/4918, 6 January 2008, p. 4, ERN (En) 00893391; LONG Sorn Civil Party Application, E3/4872, 9 January 2008, p. 3, ERN (En) 00842162; EL Yas Civil Party Application, E3/4975, 6 February 2008, pp. 3-4, ERN (En) 00871631-00871632; SAN Mom Civil Party Application, E3/4992, 11 July 2009, p. 3, ERN (En) 00893412; SAM Pha Civil Party Application, E3/5005, 26 July 2009, p. 4, ERN (En) 00871751.

<sup>13029</sup> Section 11.1.6.1: Trapeang Thma Dam Worksite: Workforce Composition.

<sup>13030</sup> Section 11.2.10: 1<sup>st</sup> January Dam Worksite: Gathering the Workforce.

<sup>13031</sup> T. 25 January 2012 (PRAK Yut), E1/33.1, pp. 92, 94-96 (as Kampong Siem District Secretary (in Kampong Cham), PRAK Yut sent people out of Kampong Siem to build dams, including in Prey Chhor district, Kampong Cham province. Approximately 50 people from each district were also recruited to build the dam at Kaoh Sla, the biggest in Kampot.); Article by F. Ponchaud, *Kampuchea: A Revolutionary Economy*, E3/2412, 25 January 1979, pp. 3-4, ERN (En) 00598521-005985212 (the 17 January Dam was built by 20,000 peasants and youths in mobile units beginning in May 1977; more than 23,000 youths constructed the 6 January Dam).

<sup>13032</sup> Section 11.3: Kampong Chhnang Airfield Construction Site.

<sup>13033</sup> See above, para. 3895.

<sup>13034</sup> Revolutionary Flag, E3/193, August 1977, p. 19, ERN (En) 00399239. See also, Section 11.1: Trapeang Thma Dam Worksite, para. 1341.

<sup>13035</sup> Section 10.1: Tram Kak Cooperatives, para. 989.

<sup>13036</sup> Section 10.1.7.3: Tram Kak Cooperatives: Rations and Communal Eating: Implementation in Tram Kak.

<sup>13037</sup> Section 10.1.7.3.2: Tram Kak Cooperatives: Implementation in Tram Kak; Section 11.1.8.2.2: Food Rations at Trapeang Thma Dam.

<sup>13038</sup> Section 10.1: Tram Kak Cooperatives, paras 1011-1016, 1020, 1142; Section 11.2.17.1: 1<sup>st</sup> January Dam Worksite: Living Conditions: Food; Section 11.1.8.2.2: Trapeang Thma Dam Worksite: Food

3909. By 1978, CPK leaders had declared the success of their economic policies. In January 1978, NUON Chea delivered a speech on the occasion of a visiting Chinese delegation, in which he declared that the rice production targets of three and six tonnes of crop per hectare had been achieved.<sup>13039</sup> In April 1978, POL Pot declared that the “water issue” had been resolved and that economic output in the preceding year had exceeded expectations. He added that if economic targets were maintained, “we can export more [rice] than last year”.<sup>13040</sup> KHIEU Samphan repeated these assertions in an April 1978 speech celebrating the third anniversary of the CPK victory and praised the development of the country’s agricultural production, industry, handicraft and social sectors. In addition, he announced the increase of the rice production target for 1978 to three-and-a-half and seven tonnes per hectare, reinforced the need to meet and exceed production targets pursuant to the Four-Year Plan and underscored the need to “subordinate resolutely all personal [...] interests to the collective interests of the nation, class, people and revolution”.<sup>13041</sup>

3910. In April 1978, POL Pot continued the CPK’s trend of calling for relentless “storming attacks” to build and defend the country.<sup>13042</sup> Contrary to his contention that the CPK did not furnish instructions on extended working hours at cooperatives<sup>13043</sup> – an assertion which was repeated again in a June 1978 broadcast<sup>13044</sup> – earlier Party

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Rations at Trapeang Thma Dam; Section 11.1.12.4: Trapeang Thma Dam Worksite: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 11.2.24.5: 1<sup>st</sup> January Dam Worksite: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1747-1748, 1832; Section 12.2: S-21 Security Centre, para. 2367; Section 12.3.12.8: Kraing Ta Chan Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 12.4.7.7: Au Kanseng Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity (*see also*, paras 2915-2916); Section 12.5.8.7: Phnom Kraol Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity.

<sup>13039</sup> Speech by NUON Chea, E3/78, 18 January 1978, p. 7, ERN (En) 00290285 (“With regard to nation building, in particular rice production in 1977, we have achieved 100% success in the plan to produce 3 tons per hectare and 6 tons per hectare. We must keep up our revolutionary vigilance [...] [to] build our country quickly and improve our people’s standards of living.”).

<sup>13040</sup> Revolutionary Flag, E3/4604, April 1978, pp. 16-17, ERN (En) 00519844-00519845.

<sup>13041</sup> Speech by KHIEU Samphan, E3/169, 17 April 1978, p. 12, ERN (En) 00280400; *Third Anniversary Celebrated at 15 April Mass Rally: Khieu Samphan Statement* (in FBIS collection), E3/1361, 16 April 1978, pp. H8-H9, ERN (En) 00168820-00168821; *Phnom Penh Rally Marks 17th April Anniversary* (in SWB/FE/5791/B/1 collection), E3/562, 16 April 1978, ERN (En) S00010564.

<sup>13042</sup> *See e.g.*, Revolutionary Flag, E3/748, October-November 1975, ERN (En) 00495802, 00495804, 00495808-00495828; Revolutionary Flag, E3/4, July 1976, pp. 6, 8-13, ERN (En) 00268918, 00268920-00268925; Revolutionary Flag, E3/135, June 1977, ERN (En) 00142910.

<sup>13043</sup> Section 11.2.11.2: 1<sup>st</sup> January Dam Worksite: Government Policy Regarding Work Hours.

<sup>13044</sup> *Nation-Building, Defence Tasks Outlined* (in FBIS collection), E3/293, 30 June 1978, ERN (En) 00169721.

broadcasts insisted that:

We must work wholeheartedly and achieve tangible results. We must perform our tasks expeditiously by augmenting manpower *or extending working hours*. We must do this because the forefront has been working day and night. Neither the army nor the people at the front think of time or schedules.<sup>13045</sup>

3911. Yet another broadcast in May 1978 declared that workers had “increased their working hours” as part of an “offensive to overfulfil the plan of the Party and the Democratic Kampuchea government”.<sup>13046</sup> The Chamber recalls its findings that the Party Centre issued instructions concerning work hours, was aware that workers were forced to work irregular hours and without rest and envisaged work outside of regular hours.<sup>13047</sup> It accordingly finds that broadcasts to the contrary sought to deflect blame and eschew responsibility.

3912. As part of their regular reports to *Angkar*, zone secretaries routinely reported on the “livelihood” and living conditions of workers and peasants inside their respective zones. The evidence demonstrates that, following reports by the sectors,<sup>13048</sup> the issue of food shortages was reported directly to senior leaders including POL Pot, NUON Chea, SON Sen and IENG Sary throughout the DK period by the Southwest, West,

<sup>13045</sup> *Unity Between Front, Rear Needed for Victory* (in FBIS collection), E3/292, 31 January 1978, ERN (En) 00169180 (emphasis added).

<sup>13046</sup> *Commentary Urges Unity of Cambodian People* (in FBIS collection), E3/1362, 11 May 1978, ERN (En) 00170038.

<sup>13047</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1277.

<sup>13048</sup> See e.g., DK Telegram, E3/178, 21 May 1977, p. 14, ERN (En) 00342721 (Sector 5 Committee reporting to RUOS Nhim that: Thma Puok and Sisophon districts “have had rather less” food rations than that determined by *Angkar*; the three *sangkats* of Phnom Leab, Teuk Cho and Rohal “must face difficulty this coming June” and that “[t]he solution is to plan to share the food” from other *sangkats* “in order to get through to the months of September and October”; in Phnom Srok and Preah Netr Preah “there is also concern about the food”); DK Telegram, E3/1086, 28 May 1977, ERN (En) 00143569 (Region 1 report indicating that “The matter of food supply has been tackled to an extent”); DK Telegram, E3/851, 28 May 1977, ERN (En) 00183603 (Sector 4 report: “There is no change in the people’s standard of living in Daun Teav district, in that the rations are being sorted out appropriately to the state of shortages. [...]. The standard of living of the people in Bak Pre a district is one of economic shortages of food. From an evaluation of the last six months, it’s run out in every cooperative, and it’s apparent [that] the people’s strength is weak. Looking forward, the eating is already down to one can for every two and a half people, and we can see already that there’s no potential for barter between one cooperative and the next.”); DK Telegram, E3/950, 11 May 1978, ERN (En) 00185216-00185217 (RUOS Nhim report to “*Angkar* 870” indicating that food shortages had beset Regions 1, 4 and 5); DK Telegram, E3/1198, 5 April 1977, p. 1, ERN (En) 00916976 (Report of Division 801, Regiment 81 Commander PAO Sam On to SAO Saroeun, copied to SON Sen and Office 870, warning that in Sector 107 (Northeast Zone) cooperatives, “The Hang people face shortages like this. If we force them to work hard, be careful or they will hack.” The original bears a handwritten annotation by SON Sen asking: “Who is Hang?”).

Northwest, North, Northeast and East Zones,<sup>13049</sup> as well as by the air force.<sup>13050</sup>

3913. The prevalence of diseases and illnesses including malaria, cholera, fever, diarrhoea, leprosy, jaundice and swelling,<sup>13051</sup> as well as the lack of available

<sup>13049</sup> See e.g., DK Telegram, E3/1164, 25 November 1976, ERN (En) 0516709-00516710 (Division 801 Commander SAO Saroeun reporting to SON Sen that “enemies” in the Northeast Zone had “indoctrinated the cadres and combatants not to trust our Revolution” due to “insufficient food rations” and stating that one of the shortcomings was because “we sometimes suffered from a shortage of food”); DK Telegram, E3/179, 29 May 1977, ERN (En) 00183013 (Northwest Zone (*i.e.* M-560) telegram to *Angkar* reporting, under heading “People Situation”: “People’s living standard is a shortage in many regions. Now, people in Regions 1, 2, 4, 6 and 7 are the most needy. Most people at support bases eat thin rice soup [gruel], while those at front battle[grounds] have in some regions a ration of 2 cans of rice per day, and eat in some other regions either of alternative rice and gruel twice a day.”); DK Telegram, E3/853, 3 June 1977, ERN (En) 00185246 (Southwest Zone report to *Angkar* that “some districts and sub-districts have encountered the shortage” but that “it can be addressed”); DK Telegram, E3/1179, 8 June 1977, p. 3, ERN (En) 00583919 (West Zone report stating that “As for people’s livelihood, [the] food issue has been solved in part”); DK Telegram, E3/1091, 23 August 1977, ERN (En) 00143573 (North Zone Secretary KANG Chap *alias* Se, reporting to Committee 870: “The shortage of food for people in some districts did not result from the shortage of water, compost, or people’s less effort, but it was because cadres had not understood the guidelines of cultivation [crop diversification] of the Party clearly and building of class stand points had been paid less attention to.”); DK Telegram, E3/1144, 5 September 1977, ERN (En) 00517924-00517925 (North Zone Secretary KANG Chap *alias* Se reporting to Committee 870 that: “Because of the large shortage of food supply, we could estimate that our supply could not last up to September” and that “Sector 44 is still in shortage for food”, which caused pilfering); DK Telegram, E3/907, 24 December 1977, p. 1, ERN (En) 00183634 (Chhon (*i.e.* SAO Phim) report copied to POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870 that “Our daily food rations are totally expended. That which I asked for previously, please Brother, supply it urgently.”); DK Telegram, E3/914, 31 December 1977 (Phuong report copied to POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870 that “A large number of cooperative people and workers in Krek and Memut [East Zone] [...] are facing food shortage now”); DK Telegram, E3/157, 21 April 1978 (Brother Ri report copied to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870 indicating that “[T]he food ration is the same as reported previously. Generally speaking, the situation is not as difficult as in 1977”); DK Telegram, E3/1092, 16 July 1978, p. 3, ERN (En) 00289923 (West Zone report to *Angkar* indicating that “In general, people have rice for lunch and dinner; however now they start having the mixture of rice with corn and yam sometimes.”); DK Telegram, E3/1093, 23 July 1978, ERN (En) 00295173 (West Zone report to *Angkar* indicating that the food situation has been “dealt with” by supplying corn, cassava and yams). See also, DK Telegram, E3/1218, 15 November 1976, ERN (En) 00548800 (“Brother Lao” reporting to “respected Brother” (*i.e.* SON Sen) that “recommendations have been given to people [in districts 21 and 22 in Sector 101 (Northeast Zone)] to grow corn, bean and potato to have enough food for consumption” since the districts “do not produce enough rice”. In District 34: “It’s tough [...] Kalai and [illegible] may face food shortage[s] for three months. The situation is severe in L’ak village”).

<sup>13050</sup> DK Telegram, E3/1133, 1 September 1976, ERN (En) 00505035-00505036 (SOU Met reporting on behalf of the Division 502 Committee (*i.e.* the navy) an act of thievery by two individuals due, *inter alia*, to insufficient food).

<sup>13051</sup> See e.g., DK Telegram, E3/853, 3 June 1977, p. 5, ERN (En) 00185246 (Southwest Zone report to *Angkar* that: “Nowadays, in Kampot, Kampong Speu and Takeo province. the people have got cholera, and some people died. Therefore, the local hospitals have launched campaigns against this disease by sending medical workers to examine and treat patients.”); DK Telegram, E3/1179, 8 June 1977, p. 3, ERN (En) 00583921 (West Zone telegram reporting that in Sector 1: regarding the “people’s health issue, in [our] concentration worksite, there are numerous diseases, particularly fever, dysentery, amenorrhoea, [and] fallen uterus.” In Sector 5: “As for health [issue], there are some chill and flu especially in Kok Rumchek. In Sre Daemdai battlefield, cholera caused one person dead. With respective other people, we have protective measures, sanitary practice, and 10,000 have already been offered vaccination.”); DK Telegram, E3/1093, 23 July 1978, ERN (En) 00295173 (West Zone telegram to *Angkar* reporting on the health situation: “Generally, our people were not frequently sick, but in some bases there were some health problems such as people got diarrhoea, swelling, fever, paling, etc. and other chronic illness. To

medication,<sup>13052</sup> was also regularly reported to the *Angkar* by way of sector committees.<sup>13053</sup> The Standing Committee was informed about disease and the lack of food and medicine in the Northwest Zone during its visit in August 1975.<sup>13054</sup> POL Pot informed the Council of Ministers (HU Nim and IENG Thirith in attendance, among others) about the shortage of rations, poor shelter and diseases in May 1976 and urged that improvements be made by the ministries.<sup>13055</sup> IENG Thirith personally reported instances of illness in Battambang to POL Pot and other CPK leaders.<sup>13056</sup> Members of the Standing Committee were encouraged to visit “the rice fields frequently, at least 15 days each month”.<sup>13057</sup> In light of the systematic vertical reporting regime within the ranks of the CPK and the foregoing evidence demonstrating their actual knowledge, the Chamber finds that members of the uppermost echelon of the CPK – including POL Pot, NUON Chea and KHIEU Samphan – were aware of living conditions on the ground. While some documentation shows the Party Centre’s intention to keep the

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address this issue, we educated medics at all levels for them to observe the kind of diseases and provide treatment at all time. We also asked for hygiene practice, that is by always using hot water and cleaning houses.”); DK Telegram, E3/179, 29 May 1977, ERN (En) 00183013 (Northwest Zone (*i.e.* M-560) telegram to *Angkar* reporting: “In all regions, such disease[s] as fainting spell[s], diarrhoea and fever are most prominent”, and that “there have been some people affected” by malaria); DK Telegram, E3/950, 11 May 1978, ERN (En) 00185216 (RUOS Nhim report to “*Angkar* 870” that the issue of malaria “must be gradually addressed”).

<sup>13052</sup> See *e.g.*, DK Telegram, E3/879, 11 November 1975, p. 2, ERN (En) 00182596 (SAO Phim (*i.e.* Chhon) telegram to POL Pot, copied to SON Sen, IENG Sary, Doeun and IENG Thirith, reporting that the Zone is “short [of] general treatment medications”: “In general, general medications in the villages and sector are all gone. The medicine which *Angkar* provided previously has been handed out, only a little per each patient.”); DK Telegram, E3/1209, May 1978, ERN (En) 00522888 (KANG Chap (*i.e.* Se) telegram to Committee 870, copied to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870, reporting that in the North Zone: “there is some shortage of medicine; [we] have continuously dealt with it by gradually producing more medicine.”).

<sup>13053</sup> See *e.g.*, DK Telegram, E3/1086, 28 May 1977, ERN (En) 00143569 (Region 1 report to Northwest Zone: “People at concentration work sites mostly caught diseases like fever and diarrhoea; women ceased menstruating and had genital diseases.”); DK Telegram, E3/1218, 15 November 1976, ERN (En) 00548800-00548801 (“Brother Lao” reporting to “respected Brother” (*i.e.* SON Sen) instances of “malaria, stomach ache blood in urine and jaundice” as well as leprosy in Sector 101 (Northeast Zone). In Sector 107: “jaundice, nerve shaking” and “leprosy” are reported, with “the number of lepers [having] increased to more than 1000”); DK Telegram, E3/1181, 27 June 1977 (Sector 5 telegram to Northwest Zone reporting: “[People’s] living standards [in Thmar Puork] are medium”; in Phom Srok: “Living conditions are fairly poor”; in Preah Netr Preah: “It is the worst place of starvation, which last year alone killed more than 20,000 people”). See also, SON Em Interview Record, E3/9477, 2 June 2014, p. 4, ERN (En) 01034083 (stating that he “received reports from various sectors in the [Northwest] Zone, and I typed the reports by a typewriter and telegraph” before sending them to “Office 870”); T. 22 November 2016 (SON Em), E1/501.1, pp. 37-39.

<sup>13054</sup> Record of the Standing Committee’s visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 1, ERN (En) 00850973.

<sup>13055</sup> Minutes of Meeting of the Council of Ministers, E3/794, 31 May 1976, pp. 8-9, 11-12, ERN (En) 0018267-00182679, 00182681-00182682.

<sup>13056</sup> See above, para. 3900.

<sup>13057</sup> Meeting of the Council of Ministers, E3/817 [E3/818], 22 April 1976, p. 10, ERN (En) 00143470.

labour force healthy,<sup>13058</sup> as shown below dismal living conditions abounded across the country and the CPK repeatedly failed to respond adequately to widespread disease and hunger.<sup>13059</sup> The standing healthcare system of past, which had been staffed by trained medical professionals – *i.e.* those deemed by the CPK to have been steeped in “feudalist” and “capitalist” tendencies – was replaced by laypeople without qualifications or medical training in the spirit of independence, mastery and self-reliance.<sup>13060</sup> The Chamber finds that as part of its mandate to monitor the implementation of the Party’s policies,<sup>13061</sup> the Central Committee (and in particular the Standing Committee) was fully apprised of issues affecting the livelihood of workers and peasants at bases, cooperatives and worksites including food shortages, health issues and the lack of medicine throughout the DK period.

3914. In spite of widespread starvation across the country, the CPK exported large quantities of rice to generate capital. Between January and September 1978, DK exported over 29,000 tonnes of rice valued at nearly six million US dollars, atop other commodities totalling over 20 million dollars.<sup>13062</sup> Imports to the various DK offices during the same period exceeded 58 million dollars.<sup>13063</sup>

3915. The displacement of populations continued between late 1977 and early 1979. In contrast to previous displacements taking place across the entire country, the CPK “evacuated” populations from Prey Veng, Svay Rieng, Kampong Cham and Kampong Chhnang as a result of the East Zone purges and border clashes. Notwithstanding the cause of their displacement, evidence before the Chamber demonstrates that the effect

<sup>13058</sup> Standing Committee Minutes regarding base work, E3/232, 8 March 1976, p. 6, ERN (En) 00182633; *Radio Calls for Attention to Year’s Last Crop* (in FBIS collection), E3/1339, 29 November 1977, ERN (En) 00168308.

<sup>13059</sup> See below, para. 3926. The Chamber notes reports of a “countrywide medical conference” ostensibly held between 25 and 28 October 1978, at which POL Pot reportedly discussed the need to improve the people’s health, prevent all diseases, provide medicine to the sick and master the use of “modern” medicine. See *Countrywide Medical Conference Issues Resolution* (in FBIS collection), E3/77, 9 November 1978, ERN (En) 00170123-00170124. As this event was not corroborated by any reliable evidence on the Case File, the Chamber accords this article minimal weight. On the available evidence, it is unclear to the Chamber whether this event genuinely took place.

<sup>13060</sup> Section 11.1.8.5.1: Trapeang Thma Dam Worksite: CPK Approach to Health.

<sup>13061</sup> Section 5: Administrative Structures, para. 355.

<sup>13062</sup> Export Statistics in 1978 (from January to September), E3/2059, undated, ERN (En) 00583647-00583648 (rice exports totalled 29,758.145 tonnes at \$5,911,833.85, while other exports (including rubber, cotton, coffee, pepper, sesame, soybeans, mung beans, peanuts, wood, animal and other products) amounted to \$20,204,168).

<sup>13063</sup> Import Statistics in 1978 (from January to September), E3/2059, undated, ERN (En) 00583646 (total imports: \$58,690,705.96), ERN (En) 00583651-00583652 (imports by weight). DK largely imported textiles, fuel, medicine, insecticide and machine parts.

of these population movements was, much like previous displacements, to put populations to work in cooperatives in Pursat, Kampong Thom, Battambang and Takeo provinces.<sup>13064</sup>

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<sup>13064</sup> See e.g., PHOK Sdaeng Interview Record, E3/7795, 10 December 2008, pp. 2-3, ERN (En) 00268641-00268642; HENG Nea Interview Record, E3/5259, 10 December 2008, pp. 2-3, ERN (En) 00275915-00275916; KHOEM Samon Interview Record, E3/5260, 11 December 2008, pp. 3-5, ERN (En) 00327161-00327163; SOM Chhom Interview Record, E3/7892, 10 December 2009, pp. 2-3, 6, ERN (En) 00422365-00422366, 00422369; DUONG Sau Interview Record, E3/7708, 20 November 2008, pp. 2-3, ERN (En) 00250740-00250741; UNG Chhat Interview Record, E3/4600, 21 August 2009, pp. 3-4, ERN (En) 00373917-00373918; IN Vuthy Interview Record, E3/5542, 3 September 2009, p. 6, ERN (En) 00373230; PRUM Yan Interview Record, E3/7816, 29 January 2009, p. 3, ERN (En) 00292839; MEY Savoeun Interview Record, E3/9467, 11 October 2013, pp. 7-8, ERN (En) 00978755-00978756; DUONG Uon Interview Record, E3/7789, 3 December 2008, pp. 3-5, ERN (En) 00268628-002686230; MAN Saroeun Interview Record, E3/5258, 4 December 2008, pp. 2-4, ERN (En) 00251699-00251701; KEO Chea Interview Record, E3/7791, 4 December 2008, pp. 2-3, ERN (En) 00251755-00251756; HIM Tan Interview Record, E3/7788, 2 December 2008, pp. 3-4, ERN (En) 00268635-00268636. See also, KE Pich Vannak Interview Record, E3/35, 4 June 2009, pp. 12-13, ERN (En) 00346156-00346157 (declaring that: “There was an evacuation of people from the East Zone to other Sectors” at a time when “fighting along the borders [was] also intensifying”); SENG Yon Interview Record, E3/7738, 20 April 2008, pp. 3-4, ERN (En) 00272282-00272283; KHEM Leng Interview Record, E3/5539, 28 August 2009, ERN (En) 00380127-00380128; SOK Thul Interview Record, E3/5254, 5 November 2008, p. 6, ERN (En) 00242363; TUM Son Interview Record, E3/7756, 5 February 2009, p. 3, ERN (En) 00294403; KOL Lim Interview Record, E3/5243, 17 September 2008, p. 4, ERN (En) 00225492; KHOEM San Interview Record, E3/5250, 13 October 2008, p. 3, ERN (En) 00235490; CHAP Yon Interview Record, E3/7885, 22 October 2009, ERN (En) 00404269; KUNG Tes Interview Record, E3/5241, 12 February 2009, pp. 2-3, ERN (En) 00333962-00333963; MAT Ysa Interview Record, E3/5207, 14 August 2008, p. 4, ERN (En) 00242078; ROS Samen *alias* ROS Men Interview Record, E3/5240, 12 February 2009, p. 3, ERN (En) 00289621; THENG Huy Interview Record, E3/5244, 17 September 2008, p. 4, ERN (En) 00233301; RUOS Savi Interview Record, E3/7715, 12 May 2009, pp. 3, 10, ERN (En) 00328375, 00328382; KHUN Mon Interview Record, E3/7806, 16 September 2008, p. 2, ERN (En) 00225486; SIN Chhem Interview Record, E3/7794, 5 December 2008, p. 3, ERN (En) 00251406; IENG On Interview Record, E3/9352, 16 September 2008, p. 3, ERN (En) 00231660; UNG Ien Interview Record, E3/7796, 11 December 2008, p. 3, ERN (En) 00268646; SOKH Chhin Interview Record, E3/3956, 8 December 2009, ERN (En) 00426294-00426295; CHAK Muli Interview Record, E3/5234, 13 January 2009, pp. 6-7, ERN (En) 00288203-00288204.

3916. The object of fulfilling economic and ideological goals, both by establishing and operating cooperatives and worksites nationwide, and by moving populations to and between rural areas to these sites was variously promoted, supported and/or endorsed by POL Pot,<sup>13065</sup> NUON Chea,<sup>13066</sup> KHIEU Samphan,<sup>13067</sup> IENG Sary,<sup>13068</sup> SON Sen,<sup>13069</sup> IENG Thirith<sup>13070</sup> and VORN Vet throughout the DK period.<sup>13071</sup> Both NUON Chea and KHIEU Samphan lectured cadres on meeting economic and production targets,<sup>13072</sup> while NUON Chea furnished specific instructions to cadres on the management of cooperatives in order to ensure the fulfilment of quotas and to increase the amount of harvests per year.<sup>13073</sup>

<sup>13065</sup> See e.g., Record of the Standing Committee's visit to the Northwest Zone, E3/216, 20-24 August 1975, p. 3, ERN (En) 00850975 ("Angkar's guiding opinions" provided at a meeting discussing the strengthening and expansion of cooperatives); Standing Committee Minutes regarding base work, E3/232, 8 March 1976, pp. 4-6, ERN (En) 00182631-00182633 ("Opinions and instructions of Angkar regarding the base" discussing rice production, dykes, cooperatives at Sectors 303, 103 and 106); Standing Committee Minutes, E3/223, 17 May 1976, p. 3, ERN (En) 00182710 (reporting POL Pot's conclusion that: "Our policy is still the same: strengthening and extending forces in all fields, namely the [P]arty, the military, economy, and especially [the] food issue."); Standing Committee Minutes, E3/226, 10 June 1976, pp. 7, ERN (En) 00183369 (three tonnes of crop per hectare), 10, ERN (En) 00183372 (mobilising children into the workforce); Standing Committee Minutes, E3/823, 3 August 1976, ERN (En) 00234015 (advocating crop diversification for self-sufficiency and nation-building); *Text of Pol Pot Speech at 27 Sep KCP Anniversary Meeting* (in FBIS collection), E3/290, 28 September 1977, ERN (En) 00168617 (production targets and cooperatives), 00168644-00168645 (cooperatives and collective production, liberated people as an "immense labor and production force"), 00168650 (transformation of Cambodia into a modern agricultural society); *The Far East: Pol Pot on Evacuation of Cambodian City Residents* (in SWB/FE/5631/A3 collection), E3/2728, 3 October 1977, ERN (En) 00390926-00390927 (POL Pot "said that it was imperative to master the economy if the people's forces were to be consolidated and expanded to the greatest extent possible. [...] One of the important factors [of the success of the revolution] is the evacuation of city residents to the countryside. [...] 'The second success is the solution of our people's livelihood. Our 1976 harvest can in the main [sic] meet the people's need for livelihood. After the war, we must first of all solve the problem of grain and the problem of people's livelihood.'"); *Final Instalment of Tanjug Report on Cambodia* (in FBIS collection), E3/1361, 24 April 1978, ERN (En) 00168878 ("The cooperative is the basic cell of society. Pol Pot maintains that they embrace about 85% of the population."); *Conclusion of Pol Pot Speech at 27 Sep Phnom Penh Meeting* (in FBIS collection), E3/294, 29 September 1978, ERN (En) 00170162-00170163 (extolling the virtues of cooperatives in alleviating food shortages and improving livelihood and living conditions, mobilising "the entire people and nation", national construction including dams, reservoirs, canals and increased land under irrigation), 00170166 (industrial development); Revolutionary Flag, E3/215, September 1978, pp. 7, ERN (En) 00488620 (speech by POL Pot counselling that comrades "must know how to increase production"), 13-18, ERN (En) 00488626-0048631 (extolling the benefits of the cooperative regime).

<sup>13066</sup> See e.g., *Nuon Chea's Speech at Army Anniversary Meeting* (in SWB/FE/5417/C1 collection), E3/191, 17 January 1977, ERN (En) S00004076 (discussing 1976 production targets); *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168465; Document on Conference of Legislature, E3/165, 11-13 April 1976, p. 29, ERN (En) 00184076; Standing Committee Minutes, E3/224, 30 May 1976, pp. 1-4, ERN (En) 00182667-00182670 (POL Pot, NUON Chea, VORN Vet, SON Sen and KHIEU Samphan attend meeting discussing rice production in different regions and economic goals in detail); DK Telegram, E3/898, 11 December 1977, ERN (En) 00183626 (copied to a telegram by KANG Chap to Committee 870 noting that Siem Reap comprises mostly New People "to be distributed to other districts"); NUON Chea Speech at TENG Ying-Tchao Banquet (DK News Bulletin), E3/78, 18 January 1978, p. 7, ERN (En) 00290285 (praising the three and six tonnes per hectare plan); DK Telegram, E3/1209, May 1978, p. 1, ERN (En) 00522888 (copied to a telegram by KANG Chap discussing the progress of agricultural production, construction of dams, canals and dykes,



and production of fertilisers throughout the zone); NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, July 1978, ERN (En) 00762396-00762397 ("As for living conditions, we have basically solved our problems by means of irrigation projects. We are accumulating capital for the development of our country on the basis of independence and self-reliance."). See also, Section 7: Roles and Functions – NUON Chea; Section 11.2.9: 1<sup>st</sup> January Dam Worksite: Inauguration of the 1<sup>st</sup> January Dam and Visits of Senior Cadres and Foreign Delegations. See below, fns 13072-13073.

<sup>13067</sup> See e.g., *Khieu Samphan 21 Apr Victory Message on Phnom Penh Radio* (in FBIS collection), E3/118, 21 April 1975, ERN (En) 00166994-00166995 (referring to "all people" building dykes, digging canals and water reservoirs, increasing production, cultivating two rice harvests annually, "working day and night [...] without rest"); *Welcome Rally Marks Sihanouk's Return: Khieu Samphan Speech* (in FBIS collection), E3/271, 12 September 1975, ERN (En) 00167454 ("It is the beginning of an important revolution affecting water, field embankments, ditches, paddyfields [*sic*] and so forth. In the years to come our nation and its countryside will make even greater changes to the joy and satisfaction of all our people."); *First People's Representative Assembly Convenes* (in FBIS collection), E3/275, 16 April 1976, ERN (En) 00167641 ("[I]n our capacity as representatives of the Cambodian workers, peasants and revolutionary armed forces, we still have a set of other immediate, actual tasks to fulfill. [...] We must always maintain our revolutionary vigilance so as to advance in giant strides in all production fields and particularly in the field of agriculture in which we must produce rice to the maximum to help raise our people's living standards as high and as quickly as possible and, at the same time, to accelerate our nation-building efforts by leaps and bounds."); *Khieu Samphan's Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004165-S00004170 ("We must continue the struggle on the basis of the principles of independence and self-reliance, and implement and carry out our revolutionary organization's 1977 plan 100% and even more. We must fulfil or overfulfil production plans both within the framework of the overall 1977 plan and within the framework of each production battlefield, front, unit or base."); *Third Anniversary Celebrated at 15 April Mass Rally: Khieu Samphan Statement* (in FBIS collection), E3/1361, 16 April 1978, ERN (En) 00168816-00168818; *Sihanouk Attends, Khieu Samphan Addresses KCP Banquet* (in FBIS collection), E3/294, 30 September 1978, ERN (En) 00170170 ("[W]e have the correct leadership of the KCP and Comrade Secretary Pol Pot and valiant people who are pleased with the party's collective system. For this reason we have confidence in the brilliant future of our revolution and our KCP."); *Government Statement Appeals for Aid to Combat SRV Aggression* (in FBIS collection), E3/296, 1 January 1979, ERN (En) 00169295 ("The rear is vigorously struggling to maximize production in order to maintain under all circumstances mastery in food supplies at the rate set by the [P]arty."). See also, *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, ERN (En) 00166660 (stating that liberated zones were working to solve the water problem by building dams, digging canals and increasing production to two crop harvests per year). See also, Section 8: Roles and Functions – KHIEU Samphan. See below, fn. 13072.

<sup>13068</sup> U.S. State Department Telegram, Subject: Newsweek Interview of IENG Sary, E3/621, 10 September 1975, ERN (En) 00413791 ("All of our people are working day and night to rebuild the country. Cambodia is like a giant workshop."); *Reportage on Visit of PRC Trade Minister: Ieng Sary Reception Speech* (in FBIS collection), E3/274, 7 March 1976, ERN (En) 00167952 (discussing the need to build new field embankments, irrigation canals and develop agricultural and industrial production, adding that: "There are worksites everywhere"); *Ieng Sary Hosts 31 Dec Diplomatic Corps Banquet: Ieng Sary Speech* (in FBIS collection), E3/147, 1 January 1977, ERN (En) 00168437 (reporting the success of the 1976 agricultural plan and advocating the need to build field embankments, ditches, canals, dams, dykes and reservoirs); DK Publication, *Democratic Kampuchea: A Workers' and Peasants' State in South-East Asia*, E3/3306, March 1977, ERN (En) 00419293-00419294; *Ieng Sary Holds Reception to Mark National Day: Ieng Sary Address* (in FBIS collection), E3/286, 17 April 1977, ERN (En) 00168215-00168216 (discussing agricultural development to ensure two harvests per year and therefore economic surplus); DK Telegram, E3/243, 20 January 1978, ERN (En) 00532796 (copied to a telegram notifying *Angkar* of the "evacuation" of people from the border and the progress of agricultural production in Sectors 23 and 24); *Ieng Sary Interview with Le Monde on Conflict with SRV* (in FBIS collection), E3/75, 31 July 1978, ERN (En) 00168912 (explaining that the evacuation of populations was for three reasons: food shortage, the presence of "enemy networks" and the people's "farming experience").

<sup>13069</sup> See e.g., *Sihanouk, Penn Nouth Visit Worksite* (in FBIS collection), E3/271, 19 September 1975, ERN (En) 00167470 (accompanying NORODOM Sihanouk and his entourage on a visit to the Boeung Pralit-Boeung Snor worksite consisting of 7,000 hectares of rice fields); DK Telegram, E3/952, 2 April 1976, pp. 1-2, ERN (En) 00182658-00182659 (telegram copied to SON Sen reporting on rice production,

cooperatives and agricultural construction in the North Zone); DK Telegram, E3/1227, 3 September 1977, ERN (En) 00590300 (telegram by SON Sen to “Committees of Divisions and Regiments” instructing “storm attacks” to meet agricultural production goals for the 1977 rainy season cultivation plan); DK Telegram, E3/1145, 6 September 1977, ERN (En) 00517924 (telegram by KANG Chap to Committee 870, copied to SON Sen, indicating that “a small fraction of people [were] resisting the new policy of agricultural production” and noting that it was the North Zone’s measure “to educate them [...] about the new *policy*” [emphasis added]); DK Telegram, E3/978, 5 November 1977, p. 1, ERN (En) 00324808 (telegram copied to SON Sen, reporting, among other things, the situation of drought and the intended mobilisation of “all masses to solve the water issue”, pushing dry season rice and preparing “the forces to work rice fields on all the land where there is water”); DK Telegram, E3/914, 31 December 1977, p. 1, ERN (En) 00183641 (telegram copied to SON Sen noting that “[a] large number of cooperative people and workers in Krek and Memut [East Zone] move[d] to the river sides starting from Chhlong to Kroch Chhmar” and that they were “facing food shortage[s] now”).

<sup>13070</sup> See e.g., Minutes of Meeting of the Council of Ministers, E3/794, 31 May 1976, pp. 7-9, ERN (En) 00182677-00182679 (POL Pot reporting on the ongoing construction of cooperatives, dyke systems and canals, and the need to increase rice production to resolve food shortages), 18-19, ERN (En) 00182688-00182689 (noting that “Comrade Phea” was in “total agreement with *Angkar*’s comments” and Phea reporting that “[o]ur brothers and sisters work until 10 pm at offices as well as [at] factories”, and noting generally that they must “endeavour to know their respective duties in order to be with the movement of three tons per hectare”); Standing Committee Minutes, E3/226, 10 June 1976, pp. 1, ERN (En) 00183363 (reporting to Standing Committee on the production of medical supplies and noting that the workforce was not yet “in full scale”), 10, ERN (En) 00183372 (POL Pot directing that the whole nation “faced [a] shortfall of work force” and that some workers “were still young children” but that “in a little while they would become adults [...] If the request was for young children [to work] it would be easier [...] because young children could make striking assault without having [a] repellent mood in making fertiliser compost”); *Vietnam Women’s Union Delegation Arrives 7 Feb: Ieng Thirith Speech* (in FBIS collection), E3/284, 8 February 1977, ERN (En) 00168415 (referring to the success of the “seething mass movement” and the need to solve the irrigation problem by planting dry season crops, building canals, ditches and bank networks); *Material on Activities of Ha Thie Que, SRV Delegation: Ieng Thirith Banquet Speech* (in FBIS collection), E3/284, 12 February 1977, ERN (En) 00168425 (referring to the “sacrifice of the Cambodian people” who were “struggl[ing] enthusiastically and ardently to build dikes, canals, water reservoirs and [...] embankment networks so as to master the water supply problem”).

<sup>13071</sup> See e.g., Standing Committee Minutes, E3/224, 30 May 1976, ERN (En) 00182670 (attending meeting discussing the cessation of dry season farming from March 1977 and the implementation of “storm attacks” thereafter to achieve irrigation for two farming intervals); *Fang I Friendship Delegation Arrives 24 Dec: Vorn Vet Speech* (in FBIS collection), E3/283, 26 December 1976, ERN (En) 00167746 (“Our Cambodian people are now launching a seething battle in all spheres, particularly in increasing production and improving their livelihood [...]. Our people are busy gathering and storing the rice crop without loss and in good time”); DK Telegram, E3/1113, 17 February 1978, p. 1, ERN (En) 00434864 (copied to a telegram discussing the transfer of mobile units to undertake rice transplantation during the rainy season).

<sup>13072</sup> T. 23 April 2013 (CHHOUK Rin), E1/182.1, pp. 9-10; CHHOUK Rin Interview Record, E3/421, 26 November 2009, p. 4, ERN (En) 00414059; T. 3 July 2013 (EK Hen), E1/217.1, p. 43; T. 31 August 2016 (PHAN Him), E1/467.1, p. 103 *affirming* PHAN Him DC-Cam Interview, E3/9318, 14 February 2004, ERN (En) 00679670.

<sup>13073</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1479, 1486-1487.

3917. Throughout the DK period, cooperatives were established around Phnom Penh;<sup>13074</sup> in the Central (old North),<sup>13075</sup> Southwest,<sup>13076</sup> West,<sup>13077</sup> Northwest,<sup>13078</sup> East<sup>13079</sup> and Northeast Zones;<sup>13080</sup> Kratie (Sector 505),<sup>13081</sup> Preah Vihear (Sector 103),<sup>13082</sup> Siem Reap (Sector 106)<sup>13083</sup> and Mondulkiri (Sector 105).<sup>13084</sup> The construction of dams, canals and irrigation networks was similarly recorded across the country,<sup>13085</sup> including in the Central (old North),<sup>13086</sup> Southwest,<sup>13087</sup> West,<sup>13088</sup> Northwest,<sup>13089</sup> Northwest<sup>13090</sup> and East Zones;<sup>13091</sup> in Kratie (Sector 505),<sup>13092</sup> Preah Vihear (Sector 103),<sup>13093</sup> Mondulkiri (Sector 105)<sup>13094</sup> and Siem Reap (Sector 106).<sup>13095</sup> Evidence further demonstrates the construction of railway projects stretching across the country.<sup>13096</sup>

<sup>13074</sup> See e.g., T. 4 June 2012 (SAR Kimlouth), E1/80.1, p. 68 (Steung Meanchey); T. 10 November 2016 (NORNG Net), E1/498.1, p. 36 (“Stung” Cooperative).

<sup>13075</sup> See e.g., Section 11.1.8.2.2: Trapeang Thma Dam Worksite: Food Rations at Trapeang Thma Dam (referring generally to cooperatives in the Central (old North) Zone); Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1486-1488, 1492 (referring to cooperatives in the vicinity of the 1<sup>st</sup> January Dam); Revolutionary Flag, E3/135, June 1977, p. 8, ERN (En) 00446853 (showing a cooperative in Batheay district); DK Publication, *Democratic Kampuchea: A Workers’ and Peasants’ State in South-East Asia*, E3/3306, March 1977, p. 12, ERN (En) 00419308 (Meak cooperative in Stung Trang).

<sup>13076</sup> See e.g., Section 10.1: Tram Kak Cooperatives; T. 4 June 2012 (SAR Kimlouth), E1/80.1, pp. 67-68 (Kien Svay); T. 9 August 2012 (ONG Thong Hoeung), E1/105.1, p. 44 (Chhouk); T. 22 October 2012 (YIM Sovann), E1/136.1, p. 19 (Kaoh Thum district); T. 1 July 2013 (PECH Chim), E1/215.1, p. 30 (District 105); T. 4 December 2012 (TOENG Sokha), E1/147.1, p. 46 (Bati district); T. 5 December 2012 (PECH Srey Phal), E1/148.1, p. 27 (Prey Trab, Kandal); Revolutionary Youth, E3/770, May 1977, p. 9, ERN (En) 00539026 (picture showing “[t]he youth of the Preak Rokar Cooperative in the Southwest Zone”); Revolutionary Youth, E3/726, January-February 1978, p. 23, ERN (En) 00278730 (picture showing “female youths and cooperative peasants in the Southwest Zone”); *Briefs: Southwest Region Production Cooperatives* (in FBIS collection), E3/273, 27 January 1976, ERN (En) 00167863 (“the people in the southwestern region organized themselves into production cooperatives”).

<sup>13077</sup> See e.g., T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 12 (in 1973: Kampong Tralach district, Kampong Chhnang; and Amleang commune, Kampong Speu); T. 1 October 2012 (KHIEV En), E1/127.1, pp. 10, 12 (Kampong Leaeng, Kampong Chhnang); DK Press Release, E3/1387, 26 December 1978, p. 2, ERN (En) 00853087 (Kraing Dei Vay, Kampong Speu consisting of “5,000 people”).

<sup>13078</sup> See e.g., T. 19 April 2012 (SAUT Toeung), E1/64.1, p. 52 (Battambang); T. 19 October 2012 (YIM Sovann), E1/135.1, p. 101 (Kbal Chheu Puk Cooperative, Pursat); T. 24 October 2012 (LAY Bony), E1/138.1, p. 5 (Kaoh Chum Cooperative, Pursat); T. 23 November 2012 (CHAU Ny), E1/146.1, pp. 60-61 (Moung Ruessei district, Battambang); T. 5 December 2012 (PECH Srey Phal), E1/148.1, p. 48 (Stueng, Pursat); T. 30 May 2013 (YIM Roumdoul), E1/199.1, p. 88 (Ou Preal, Bakan district, Pursat); Revolutionary Youth, E3/765, October 1978, p. 11, ERN (En) 00539986 (showing picture of cooperative in Kandal Steung district, Battambang).

<sup>13079</sup> See e.g., T. 29 May 2013 (CHHENG Eng Ly), E1/198.1, p. 107 (Roka Kaong, Kampong Cham); T. 1 September 2016 (PHAN Him), E1/468.1, p. 20 (cooperative at “Seh Sar office” which was “west of a road to Knaor Dambang”); Voice of DK, E3/1245, undated, pp. 6-7, ERN (En) 00484189-00484190 (Svay Rieng; Prey Veng; Chhloung district); DK Magazine: *Kampuchea*, E3/9315, August 1976, pp. 4-6, ERN (En) 01149223-01149225; *Briefs: Chamkar Leu District Rice* (in FBIS collection), E3/294, 20 October 1978, ERN (En) 00170286 (Chamkar Leu, Kampong Cham); *Peasant Representatives Meet in Prey Veng City 21-22 Oct* (in FBIS collection), E3/294, 24 October 1978, ERN (En) 00170309.

<sup>13080</sup> See e.g., Section 12.4: Au Kanseng Security Centre, paras 2866, 2881, 2887 (referring generally to cooperatives in the region); T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 7-8 (Kaoh Nheaek, Mondulkiri); *People in Northeast Welcome New Constitution* (in FBIS collection), E3/273, 18 January 1976, ERN (En) 00167847 (Stung Treng; Ratanakiri); *Briefs: Northeast Production Drive* (in FBIS collection),

E3/1357, 11 February 1976, ERN (En) 00167775; *People Strive to Produce Farm Tools to Preserve Rice* (in FBIS collection), E3/283, 8 December 1976, ERN (En) 00167732 (reporting cooperatives in Mondulkiri, Ratanakiri and Stung Treng); *Youth, Cooperative Peasants Produce in Northeast* (in FBIS collection), E3/291, 21 October 1977, ERN (En) 00168556-00168557 (Ratanakiri); *Voice of DK*, E3/1245, undated, pp. 4, 8, ERN (En) 00484187, 00484191 (Kaoh Nheak, Mondulkiri, Ratanakiri).

<sup>13081</sup> See e.g., T. 19 June 2012 (YUN Kim), E1/88.1, pp. 10-11; T. 19 September 2016 (HENG Lai Heang), E1/476.1, p. 6 (Kantuot commune); *People Strive to Produce Farm Tools to Preserve Rice* (in FBIS collection), E3/283, 8 December 1976, ERN (En) 00167732 (reporting cooperatives in Kratie).

<sup>13082</sup> See e.g., KOR Bun Heng Interview Record, E3/47, 18 November 2009, ERN (En) 00412144, 00412146; *Army's Defence, Reconstruction Efforts in Preah Vihear* (in FBIS collection), E3/143, 10 September 1977, ERN (En) 00168742.

<sup>13083</sup> See e.g., *Briefs: Siem Reap Rice Crop* (in FBIS collection), E3/273, 23 January 1976, ERN (En) 00167863 ("production cooperatives throughout Siem Reap province"); *Briefs: Kralanh Tool Production* (in FBIS collection), E3/75, 26 July 1978, ERN (En) 00168933 (Kralanh).

<sup>13084</sup> See e.g., *Briefs: Srok O Rang Livestock* (in FBIS collection), E3/1358, 21 July 1977, ERN (En) 00168259; *DK Magazine: Kampuchea*, E3/9316, April 1977, p. 28, ERN (En) 01174762.

<sup>13085</sup> See e.g., *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 ("There are now reservoirs, canals, ditches, dams and embankment networks virtually everywhere."); *Revolutionary Flag*, E3/759, April 1976, p. 17, ERN (En) 00517865 ("building paddy dike systems in the flatlands throughout the country"); *DK Magazine: Kampuchea*, E3/9316, April 1977, p. 28, ERN (En) 01174762 ("The united endeavour to resolve water issues has gained strong momentum all over the country."); *Revolutionary Flag*, E3/11, September 1977, pp. 49-50, ERN (En) 00486260-00486261 ("In total, in 1977 our cooperative peasants built all sorts of water projects, which solved the water problem during all seasons, dry as well as rainy, for 400,000 hectares of farmland. All of these have been built by our workers and peasants relying entirely on their own efforts, with their own bare hands and their hoes."); *Revolutionary Flag*, E3/215, September 1978, p. 19, ERN (En) 00488632 ("We fundamentally achieved our water construction project plans throughout the country during 1978. That is, during 1978 we built new dams, reservoirs and large and small feeder canals and can now irrigate an additional 300,000 hectares of rice paddies. Added to the 400,000 hectares in 1977, this makes a total of 700,000 hectares").

<sup>13086</sup> See e.g., CHANN Sang Interview Record, E3/9498, 24 May 2013, p. 3, ERN (En) 00950665 (30 September Canal, Kampong Thom); *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (17 April Reservoir, Srok Batheay); *DK Magazine: Kampuchea*, E3/9316, April 1977, pp. 21, ERN (En) 01174755 (12 April Reservoir, Kang Meas district; Kaebrae Thamacheat "Transforming Nature Reservoir", Kampong Siem district; Mohasamaki "Great Solidarity Reservoir", Phkay Proek commune; 5 January Reservoir, Kampong Svay), 22, ERN (En) 01174756 (6 November Reservoir, Stoung district; 1 November Reservoir, Sandan district); *Revolutionary Youth*, E3/771, July-August 1977, pp. 19-20, ERN (En) 00509678-00509679 (Sre Ampil Dam, Kien Svay); *Revolutionary Youth*, E3/774, March-April 1978, p. 27, ERN (En) 00529444 (construction of a square reservoir in Kampong Cham, a dam and two canals on the Steung Stong in Kampong Thom).

<sup>13087</sup> See e.g., *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (ditches along Route 38 in Srok Kandal Stoeng); *Peasants in Kampong Trach, Kampot Overcome SRV Rice Destruction* (in FBIS collection), E3/1360, 26 February 1978, ERN (En) 00169873 (dams in Phnum Leav and Sre Chea communes); *Revolutionary Flag*, E3/748, October-November 1975, ERN (En) 00495817 (Prek Taphe Dam, Kandal); *Revolutionary Youth*, E3/769, April 1977, p. 8, ERN (En) 00491110 (Tuol Lolork Reservoir, Prey Kabbas district); *DK Magazine: Kampuchea*, E3/9316, April 1977, pp. 25, ERN (En) 01174759 (Tuol Krasang Dam; channel worksite from Kampong Tram Dam to Prey Puoch commune; Tuek Mlech Reservoir worksite, Srae Knong district), 26, ERN (En) 01174760 ("Three canal worksites each about 10 kilometres long to channel water from Kampong Tuol Dam to irrigate rice fields in Kandal Stoung district."); *Revolutionary Youth*, E3/771, July-August 1977, pp. 19, ERN (En) 00509678 (Chong Khsach Dam; Chong Koh Dam; Samroang Thom Dam, Kandal; Prek Thmei canal); 22, ERN (En) 00509681 (Boeung Thorn Thom Reservoir in Samroang Thom commune); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, p. 6, S00702870 (40 km of canals in the districts of Tbaung Khmum, Aur Reaing Euv and Kanhchriech). See also, Section 10.1: Tram Kak Cooperatives.

<sup>13088</sup> See e.g., LEV Lam Interview Record, E3/4630, 1 July 2008, pp. 4-5, ERN (En) 00274645-00274646 (Trapaing Pring ditch worksite for cadre prisoners, Svay Chuk); VA Limhun Interview Record, E3/9756, 15 September 2014, p. 4, ERN (En) 01046935 (Anlong Chrey dam); SA Sarin DC-Cam Interview,

E3/4596, 5-6 May 2009, p. 37, ERN (En) 00739529 (Roleang Chrey dam); *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (15 March Canal, Kampong Speu); Revolutionary Flag, E3/759, April 1976, p. 10, ERN (En) 00517858 (construction of “major dam” in Kampong Speu by cooperative workers); DK Magazine: *Kampuchea*, E3/9316, April 1977, pp. 9, ERN (En) 01174743 (Trapeang Vaeng Dam, Kampong Speu), 22, ERN (En) 01174756 (Baek Krang, Ou Ta Pang, Banteay Brei and Lou Cheung Kou canals, Prey Nob district); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, p. 6, S00702870 (Angkor Borei dyke dam, Koh Sla-Stung Kev dam, dams along the Pek Thnot river, other canals dozens of kilometres long).

<sup>13089</sup> See e.g., Revolutionary Flag, E3/170, October-November 1977, ERN (En) 00182577 (Steung Streng); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, pp. 6-7, S00702870-00702871 (referring to many dykes, reservoirs and irrigation networks in Ratanakiri).

<sup>13090</sup> See e.g., T. 19 August 2015 (CHHUM Seng), E1/333.1, p. 31 (describing the construction of a dam in Pongro village); T. 8 December 2015 (PRUM Sarun), E1/364.1, p. 79 (describing the Kamping Puoy dam); PAN Chhuong Interview Record, E3/9483, 14 March 2013, p. 3, ERN (En) 00937033 (Kok Romchek dam worksite at the border of Phnom Srok district and Preah Neth Preah district; Kamboar dam worksite, Preah Neth Preah); CHHEAN Hea Interview Record, E3/9807, 13 October 2013, pp. 5, 11, ERN (En) 00969638, 00969644 (Kang Hort Dam, Battambang); PHAN Saray Interview Record, E3/9789, 25 February 2014, p. 6, ERN (En) 00986689 (Tumnup Yeay Rim dam, Trapeang Chong cooperative); *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (Phnom Thipadei reservoir, Srok Koh Kralor; reservoir at Prachiech, Battambang); Revolutionary Youth, E3/756, October 1976, pp. 23-24, ERN (En) 00574392-00574393 (Kampuchea Thmei Canal and eight feeder canals dug by cooperative youth); DK Magazine: *Kampuchea*, E3/9316, April 1977, pp. 24, ERN (En) 01174758 (Charik Dam, Kandieng); 29, ERN (En) 01174763 (Tuek Chrab reservoir, Battambang); Revolutionary Flag, E3/135, June 1977, p. 31, ERN (En) 00446876 (Damnak Ampil dam, Pursat); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, p. 6, S00702870 (60 km-long “Democratic Kampuchea Canal” and the 50 km-long “17 April canal”).

<sup>13091</sup> See e.g., *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (reservoir stretching from Phum Dak Po in Srok Romeas Hek to Srok Chantrea, Svay Rieng; reservoir at Soeng Krachap, Tbong Khmum); Revolutionary Youth, E3/758, December 1976, p. 25, ERN (En) 00544881 (new dyke, canal system, dam and reservoir to hold rain water in Sector 20); DK Magazine: *Kampuchea*, E3/9316, April 1977, pp. 27, ERN (En) 01174761 (Boeng Krachab Reservoir, Tbong Khmum), 29, ERN (En) 01174763 (channel digging in Sithor Kandal district); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, p. 6, S00702870 (dams along the Pursat, Maung and Sangke rivers; Phnom Bassac, “17 January” and Trapeang Thma reservoirs); Revolutionary Flag, E3/25, December 1976-January 1977, p. 19, ERN (En) 00491412 (dam in Svay Teap sub-district); Revolutionary Youth, E3/774, March-April 1978, p. 27, ERN (En) 00529444 (6 km-long canal, Memot district); Revolutionary Flag, E3/4604, April 1978, p. 15, ERN (En) 00519843 (Steung Trabaek; dams at Koh Sautin).

<sup>13092</sup> See e.g., *Democratic Kampuchea News*, E3/300, pp. 6-7, S00702870-00702871 (referring to many dykes, reservoirs and irrigations networks in Kratie).

<sup>13093</sup> See e.g., *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (O Talok, O Po and Prey Chik dams, Srok Rovieng).

<sup>13094</sup> See e.g., T. 6 June 2012 (SAO Sarun), E1/82.1, pp. 44-45 (generally), 75 (Ou Buon Leu in Kaoh Nheak); T. 28 March 2016 (BUN Loeng Chauy), E1/409.1, pp. 37, 61-62 (Ou Buon Leu and Ou Buon Krom dams); BUN Loeng Chauy Interview Record, E3/5178, 10 June 2008, p. 11, ERN (En) 00274104 (Ou Buon Kroam dam, Mondulkiri); *Democratic Kampuchea News* (in SWB/D56/087 collection), E3/300, December 1977, pp. 6-7, S00702870-00702871 (referring to many dykes, reservoirs and irrigations networks in Mondulkiri).

<sup>13095</sup> See e.g., *Commentary on Completing Dry Season Irrigation Work* (in FBIS collection), E3/287, 9 May 1977, ERN (En) 00168140 (O Chruk dam, Siem Reap); Revolutionary Youth, E3/768, March 1977, pp. 27, ERN (En) 00525963 (Baek Tab dam, Banteay Srei, Reservoir in Nokor Pheas) 28, ERN (En) 00525964 (Canal, Au Chik); DK Magazine: *Kampuchea*, E3/9316, April 1977, p. 27, ERN (En) 01174761 (Puok district reservoir); Revolutionary Flag, E3/135, June 1977, p. 8, ERN (En) 00142909 (Baray Toek Thla, Siem Reap); Revolutionary Flag, E3/4604, April 1978, p. 15, ERN (En) 00519843 (Steung Kralanh, Siem Reap).

<sup>13096</sup> See e.g., KHIM Samnang DC-Cam Interview, E3/5660, 10 October 2003, p. 13, ERN (En) 00884271 (“I was transferred to work at railway construction in Kampong Speu”); CHEAL Choeun Interview

3918. The Chamber finds that the foregoing clearly demonstrates the existence of a policy to establish and operate cooperatives and worksites as a means of furthering the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to build the country, defend it against enemies and radically transform the population into a homogenous society of worker-peasants. This policy was directly implemented at cooperatives and worksites throughout the country and was carried out by the Party’s entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK personnel. The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

#### 16.4.1.2. Criminality of policy

3919. As limited to Case 002/02, the Chamber is seized of facts relevant to the implementation of this policy through a joint criminal enterprise with respect to crimes charged at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13097</sup> For the reasons outlined below, the Chamber finds that the policy to establish and operate cooperatives and worksites involved the commission of crimes which were encompassed by the common purpose.

3920. *Murder* – The Chamber has found that the crime against humanity of murder was established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13098</sup> The crime was found to have been perpetrated with direct intent at Trapeang Thma Dam and the 1<sup>st</sup> January Dam worksites only, with those ultimately killed at these sites

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Record, E3/10681, 27 January 2016, pp. 8-10, ERN (En) 01213338-01213340 (describing railway construction in various sectors); *Phnom Penh Reports Repair of Battambang-Pursat Railway Line* (in FBIS collection), E3/1365, 14 June 1975, ERN (En) 00167205-00167206 (“Our revolutionary army has completed repair work on the railway line from Battambang to Pursat”); *Phnom Penh Notes Repair of Sihanoukville-Veal Railway* (in FBIS collection), E3/1365, 24 June 1975, ERN (En) 00167249-00167250 (describing the cadres of the revolutionary army engaged in repairing the section of railway line from Veal Renh to Sihanoukville); *Revolutionary Youth*, E3/770, May 1977, p. 17, ERN (En) 00539034 (“the brothers and sisters received a new mission from the Party, the mission of preparing and building a new railway of international standard from Phnom Penh to Kampong Saom”); *Railway Work* (in FBIS collection), E3/1362, 3 May 1978, ERN (En) 00170012 (“At present, railway workers are building another portion of the railway line from Samraong station to Kompong Speu town.”).

<sup>13097</sup> See above, para. 3728.

<sup>13098</sup> Section 10.1.13.1: Tram Kak Cooperatives: Legal Findings: Murder and Extermination; Section 11.1.12.1: Trapeang Thma Dam Worksite: Legal Findings: Murder and Extermination; Section 11.2.24.1: 1<sup>st</sup> January Dam Worksite: Legal Findings: Murder and Extermination; Section 11.3.13: Kampong Chhnang Airfield Construction Site: Legal Findings: Murder and Extermination.

having been accused of being enemies.<sup>13099</sup> The Chamber is satisfied that these executions were perpetrated in pursuit of the CPK's policy of "smashing" the most serious category of enemy, discussed below.<sup>13100</sup> It is therefore satisfied that the execution of enemies was perpetrated in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of murder, as established at the Trapeang Thma Dam and 1<sup>st</sup> January Dam worksites, was encompassed by the common purpose insofar as the crimes were committed with direct intent.

3921. The Chamber has further found that workers died as a result of prevailing conditions at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, and that these deaths were occasioned as a result of *dolus eventualis*.<sup>13101</sup> Recalling that JCE in its basic form is incompatible with *dolus eventualis*,<sup>13102</sup> the Chamber finds that these deaths were not encompassed by the common purpose.

3922. *Enslavement* – The Chamber has found that the crime against humanity of enslavement was established at the Tram Kak Cooperatives, Trapeang Thma Dam

<sup>13099</sup> Section 11.1.12.1: Trapeang Thma Dam Worksite: Legal Findings: Murder and Extermination (finding that those who were murdered were identified as enemies and killed on Ta Val's orders; accused of feigning night blindness and therefore unable to undertake construction work; and two individuals accused of not working hard or following instructions) [*see also*, Section 11.1.11.2.3: Trapeang Thma Dam Worksite: Public Executions (finding that workers were executed for failing to work hard or follow instructions)]; Section 11.2.24.1: 1<sup>st</sup> January Dam Worksite: Legal Findings: Murder and Extermination (referring to those killed at Baray Choan Dek Pagoda) [*see also*, Section 11.2.16: 1<sup>st</sup> January Dam Worksite: Killings at Baray Choan Dek Pagoda (finding that those who were arrested and killed at the Baray Choan Dek Pagoda were considered to be detractors of the revolution and enemies, including those who did not work hard enough)].

<sup>13100</sup> *See below*, Section 16.4.2.1.2: "Smashing" of Enemies.

<sup>13101</sup> Section 10.1.13.1: Tram Kak Cooperatives: Legal Findings: Murder and Extermination (deaths resulting from food shortages, malnutrition, overwork, sickness and inadequate medical treatment); Section 11.1.12.1.2: Trapeang Thma Dam Worksite: Legal Findings: Murder and Extermination: Deaths resulting from Working and Living Conditions (deaths resulting from hard labour, food deprivation, poor detention conditions, lack of medical care, poor hygiene and exhaustion); Section 11.2.24.1.2: 1<sup>st</sup> January Dam Worksite: Legal Findings: Murder and Extermination: Deaths resulting from Working and Living Conditions (deaths resulting from hard labour, starvation, inhospitable conditions and ineffective medicine); Section 11.3.13.1.2: Kampong Chhnang Airfield Construction Site: Legal Findings: Murder and Extermination: Deaths resulting from Working and Living Conditions (deaths resulting from poor working conditions, starvation and overwork). While the crime against humanity of extermination was charged at the above sites, the Chamber found that extermination was not proved because mass deaths were the result of living and working conditions (*i.e. dolus eventualis*). In accordance with the applicable law, the Chamber recharacterised these incidents as the crime against humanity of murder.

<sup>13102</sup> Section 15.2: Applicable Law: Individual Criminal Responsibility: Commission through a Joint Criminal Enterprise.

Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13103</sup> It has found that the population of Tram Kak district was enslaved for the purpose of constructing extensive irrigation infrastructure (including cooperatives, paddy fields, dams, dykes and feeder canals) in order to harvest three to six tonnes per hectare of crop in line with the CPK's economic plans.<sup>13104</sup> The primary purpose of the 1<sup>st</sup> January Dam was to provide irrigation to nearby rice fields and thus help attain the three-tonnes-per-hectare crop yield target set by the Party.<sup>13105</sup> Trapeang Thma Dam was constructed in response to the CPK Central Committee's decision to implement dry season farming in accordance with the CPK's 1977 economic plan.<sup>13106</sup> The Chamber finds that these objectives were implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, build the country and radically transform the population into a homogenous society of worker-peasants. The Chamber finds that the crime against humanity of enslavement, as established at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite and Trapeang Thma Dam Worksite, was encompassed by the common purpose.

3923. Underpinning the construction of Kampong Chhnang Airfield was the defence of the country as part of DK's military strategy.<sup>13107</sup> In this regard, the Chamber recalls that while the CPK's categorisation of external enemies shifted over time from the Thai to the Vietnamese as a result of the armed conflict between the two countries, its policy of defending against external enemies steadfastly remained throughout the entire DK period.<sup>13108</sup> Further, the Chamber has found that soldiers were sent to the Airfield for tempering as punishment for their alleged enemy affiliations.<sup>13109</sup> The Chamber is satisfied that the construction of Kampong Chhnang Airfield was undertaken in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country

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<sup>13103</sup> Section 10.1.13.2: Tram Kak Cooperatives: Legal Findings: Enslavement; Section 11.1.12.2: Trapeang Thma Dam Worksite: Legal Findings: Enslavement; Section 11.2.24.2: 1<sup>st</sup> January Dam Worksite: Legal Findings: Enslavement; Section 11.3.13.2 Kampong Chhnang Airfield Construction Site: Legal Findings: Enslavement.

<sup>13104</sup> Section 10.1.7.1: Tram Kak Cooperatives: Economic Plans and Production Targets.

<sup>13105</sup> Section 11.2.5: Purpose of the 1<sup>st</sup> January Dam.

<sup>13106</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1224. *See above*, para. 3905.

<sup>13107</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1723.

<sup>13108</sup> *See above*, Section 16.3: Real or Perceived Enemies: Chronological Overview (*see e.g.*, Sections 16.3.1.4-16.3.1.5).

<sup>13109</sup> Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1736.



against enemies (in this instance, internal and external enemies). The Chamber finds that the crime against humanity of enslavement, as established at Kampong Chhnang Airfield Construction Site, was encompassed by the common purpose.

3924. *Persecution on political grounds* – The Chamber has found that the crime against humanity of persecution on political grounds was established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13110</sup> Real and perceived enemies of the CPK including New People, former Khmer Republic officials, traitors, counter-revolutionaries and other detractors of the revolution who were perceived as unable to fulfil revolutionary goals were systematically singled out for discriminatory treatment by CPK cadres for detention, disappearance and death.

3925. Having found that the CPK actively discriminated against several categories of enemy as a means of defending and preserving the revolutionary order, the Chamber is satisfied that the foregoing discriminatory treatment was meted out to real and perceived enemies in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of persecution on political grounds, as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, was encompassed by the common purpose.

3926. *Other inhumane acts through attacks against human dignity* – The Chamber has further found that the crime against humanity of other inhumane acts through attacks against human dignity was established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13111</sup> On the whole, workers were afforded less than adequate living

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<sup>13110</sup> Section 10.1.13.6: Tram Kak Cooperatives: Legal Findings: Persecution on Political Grounds; Section 11.1.12.3: Trapeang Thma Dam Worksite: Legal Findings: Persecution on Political Grounds; Section 11.2.24.3: 1<sup>st</sup> January Dam Worksites: Legal Findings: Persecution on Political Grounds; Section 11.3.13.3 Kampong Chhnang Airfield Construction Site: Legal Findings: Persecution on Political Grounds.

<sup>13111</sup> Section 10.1.13.9: Tram Kak Cooperatives: Legal Findings: Other Inhumane Acts through Attacks against Human Dignity (food shortages, malnutrition, lack of adequate toileting facilities, arduous labour, long working hours, inadequate medical facilities, conditions of fear); Section 11.1.12.4: Trapeang Thma Dam Worksite: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity

and working conditions to sustain them in their assignments. CPK authorities furnished inadequate food rations and failed to provide clean drinking water, satisfactory accommodation, toilets, sanitation and medical facilities. Workers were exposed to hazardous working practices and instructed to work harder to fulfil Party-determined quotas to achieve overarching economic, agricultural and military objectives in the face of rampant overexertion, emaciation, malnutrition, disease and death. The Chamber considers that such delinquent conditions, in the form of serious attacks on human dignity, were essential to the CPK authorities' exercise of control over the workers and therefore the implementation of revolutionary objectives. The Chamber is satisfied that such conditions were implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, build the country and radically transform the population into a homogenous society of worker-peasants. The Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity, as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, was encompassed by the common purpose.

3927. *Other inhumane acts through conduct characterised as enforced disappearances* – The Chamber has found that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances was established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13112</sup> It has found that those who disappeared at these sites were identified by CPK cadres as enemies.<sup>13113</sup> As

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(insufficient food, lack of clean drinking water and sanitation facilities, arduous labour for long periods without rest days, climate of fear); Section 11.2.24.5: 1<sup>st</sup> January Dam Worksites: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity (malnutrition, starvation, irregular menstruation, inhospitable living conditions, rampant illness, inadequate medical care); Section 11.3.13.4: Kampong Chhnang Airfield Construction Site: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity (insufficient food and starvation, arduous labour, strict working schedules and long shifts, inadequate living and working conditions).

<sup>13112</sup> Section 10.1.13.10: Tram Kak Cooperatives: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances; Section 11.1.12.5: Trapeang Thma Dam Worksite: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances; Section 11.2.24.6: 1<sup>st</sup> January Dam Worksite: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances; Section 11.3.13.5: Kampong Chhnang Airfield Construction Site: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances.

<sup>13113</sup> Section 10.1.13.10: Tram Kak Cooperatives: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances (referring to the disappearance of Buddhist monks in the aftermath of 17 April 1975, former soldiers and teachers, political opponents and/or serious offenders, the Vietnamese and Khmer Krom); Section 11.1.12.5: Trapeang Thma Dam Worksite: Legal Findings:

to the circumstances in which they disappeared, the Chamber has found that the principle of secrecy was a fundamental tenet of the CPK's *modus operandi* from its earliest days.<sup>13114</sup> According to NUON Chea, secrecy safeguarded the Party “from the danger of enemy infiltration”, allowed the CPK to triumph over enemies who “cannot find out who is who” and therefore ensured the longevity of the Party.<sup>13115</sup> The Chamber finds that dealing with enemies in accordance with the revolutionary framework necessitated operating in a shroud of secrecy, and is satisfied that disappearances at the foregoing sites were enforced in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances, as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, was encompassed by the common purpose.

#### 16.4.1.3. Conclusion

3928. In light of the foregoing, the Chamber finds that the policy to establish and operate cooperatives and worksites was intrinsically linked to the common purpose. The policy involved the commission of the crimes against humanity of murder, enslavement, persecution on political grounds and other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances as a means of achieving the common purpose, thereby rendering it criminal in character.

3929. Having regard to the scale and duration of atrocities perpetrated in the implementation of the common purpose through this policy, the NUON Chea and KHIEU Samphan Defence teams' submissions positing that cooperatives and worksites were lawfully established with the overarching purpose of ameliorating living

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Other Inhumane Acts through Conduct Characterised as Enforced Disappearances (including those accused of feigning sickness, former soldiers and civil servants, those with “bad backgrounds” and people labelled as “enemies”); Section 11.2.24.6: 1<sup>st</sup> January Dam Worksite: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances (many of those who disappeared were those labelled as enemies and sent to Baray Choan Dek Pagoda. *See* Section 11.2.16: 1<sup>st</sup> January Dam Worksite: Killings at Baray Choan Dek Pagoda); Section 11.3.13.5: Kampong Chhnang Airfield Construction Site: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances (workers were arrested and disappeared on the basis of unfounded accusations).

<sup>13114</sup> *See below*, para. 3939. *See also*, Section 16.3: Real or Perceived Enemies.

<sup>13115</sup> *See below*, para. 3939.

conditions occasioned by the civil war are not substantiated on the evidence and are therefore rejected.

**16.4.2. *Establishment and Operation of Security Centres and Execution Sites***

3930. The Closing Order charges the existence of a policy by the CPK to re-educate “bad elements” and kill “enemies”, both inside and outside Party ranks, as a means of achieving the common purpose.<sup>13116</sup> According to the Closing Order, the CPK destroyed existing legal and judicial structures as it took power across liberated zones from 1970, and that, by 17 April 1975, it had replaced these structures with a network of approximately 200 security centres and “countless execution sites” in every zone throughout Cambodia. According to the Closing Order, the objective of these sites was to “smash” – *i.e.* identify; arrest (or “sweep”); interrogate (often through torture and in order to incriminate “networks”); and execute – enemies in secret, in order to defend the country.<sup>13117</sup> In contrast to how the terms are described in the Closing Order, the Chamber has found that the CPK used the terms “to smash” and “to sweep cleanly away” (or variations thereof) to denote executions.<sup>13118</sup>

3931. The NUON Chea Defence submits that the CPK’s “national defence and security policy” did not amount to or involve the commission of crimes. Rather, it submits that the policy was “perfectly legitimate and akin to many security related policies worldwide”. It contends that the CPK’s security and defence framework prioritised education as the main response to offences and that its implementation did not amount to or involve the commission of offences, citing to the gravity of alleged treasonous activity and the operation of the DK legal system as justifying the Party’s actions. Finally, it posits that the implementation of this policy varied due to local authorities’ deviations, without substantiating this submission.<sup>13119</sup>

3932. The KHIEU Samphan Defence submits that the establishment of security centres was not a “pre-existing ideology” but was rather triggered by rebellion which allowed authorities to isolate dangerous elements during a period that threatened the

<sup>13116</sup> Closing Order, para. 157.

<sup>13117</sup> Closing Order, paras 178-180, 182.

<sup>13118</sup> Section 16.3.2.2.2: Real or Perceived Enemies: Disperse, Isolate, Educate, Smash.

<sup>13119</sup> NUON Chea Closing Brief, paras 389-412.

existence of the DK regime. The KHIEU Samphan Defence further submits that the Kraing Ta Chan Security Centre's district-level administration and paucity of in-court evidence demonstrating the dissemination of orders to an echelon higher than the sector level militates against a finding of the existence of a centralised CPK policy.<sup>13120</sup>

3933. Both Accused testified that DK did not have a policy "to kill its own people".<sup>13121</sup> Contrary to the foregoing assertions, the Co-Prosecutors submit that the CPK adopted an extreme line against enemies from 1960, which continued throughout the DK period. They submit that this policy indiscriminately targeted an evolving category of civilian and military personnel, both within and beyond ranks, and entailed the extrajudicial "slaughter" of the Cambodian population under the direction of the Party.<sup>13122</sup> The Civil Party Lead Co-Lawyers did not make any submissions with respect to this policy. The Chamber will address the merits of the Parties' submissions following a holistic appraisal of the evidence before it.

#### 16.4.2.1. *Existence of policy*

3934. The Chamber has above examined the various categories of enemy identified by the CPK throughout the DK period.<sup>13123</sup> Their identification for elimination as a fundamental tenet of the communist movement in Cambodia traces back to the self-proclaimed foundations of the CPK. NUON Chea acknowledged that, after 1960, *Angkar* "clearly decided that political action and armed violence must be used to overthrow and crush the enemy" who was "using arms and totalitarian tools to repress and kill our people".<sup>13124</sup> Duch testified that the Party Centre had resolved to purge bad elements who could not be re-educated in 1960 and affirmed that three categories of enemies had been delineated at this time.<sup>13125</sup>

<sup>13120</sup> KHIEU Samphan Closing Brief, paras 1469-1486. The KHIEU Samphan Defence's submission that a policy referable to S-21, Au Kanseng and Phnom Kraol Security Centres cannot be imputed to KHIEU Samphan as a result of their administration under the military hierarchy is examined in Section 18.1.2.2: The Criminal Responsibility of KHIEU Samphan: Knowledge Concurrent with the Commission of Crimes: Security Centres, Execution Sites and Internal Purges.

<sup>13121</sup> T. 29 May 2013 (Accused NUON Chea), E1/198.1, p. 56; T. 4 June 2013 (Accused NUON Chea), E1/200.1, p. 26; T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, p. 68.

<sup>13122</sup> Co-Prosecutors' Closing Brief, paras 293-304.

<sup>13123</sup> See above, Section 16.3: Real or Perceived Enemies.

<sup>13124</sup> *Nuon Chea Speaks on Cambodian Army Anniversary* (in FBIS collection), E3/147, 17 January 1977, ERN (En) 00168467. See above, para. 3741 (fn. 12485). See also, Section 3: Historical Background, para. 205.

<sup>13125</sup> See above, Section 16.3: Real or Perceived Enemies, para. 3793.

3935. According to contemporaneous CPK publications, Secret Defence Units were subsequently established in 1968 to “defend the revolution’s base areas” in zones under Khmer Rouge control, in particular to “covertly smash the enemy, government agents and reactionaries in order to defend the Party, the revolution, and the People”.<sup>13126</sup> NUON Chea testified that these units were tasked with monitoring “people whose activities were suspicious or whose activities were regarded [to be] of those who infiltrated in the Party”.<sup>13127</sup> NUON Chea asserted that the Secret Defence Units had “the authority to smash those spies”.<sup>13128</sup> The Chamber has found that the CPK inflated the role of these autonomously organised and ill-equipped security formations, which primarily consisted of children who defended local CPK cadres.<sup>13129</sup>

3936. Cambodians allegedly affiliated with the Viet Minh became the objects of the CPK’s suspicions shortly after their return to Cambodia in 1970.<sup>13130</sup> NUON Chea, who was himself sent by the Party to Vietnam for political training between about 1951 and 1954,<sup>13131</sup> bemoaned their very presence in Cambodia:

They lived in Vietnam for 16 years [*i.e.* since the Geneva Accords] and they were influenced by the views, standpoints, political line, organizational line from the Vietnamese Communist Party and they were to disseminate and implement those in Cambodia. In addition, they even attacked the political line, organizational line, the strategy and the tactics of the Communist Party of Kampuchea continually since 1960.<sup>13132</sup>

3937. Duch confirmed in court that, following a purge of “cadres from Hanoi”, a number were sent to M-13 in 1973 and that three were “interrogated and, later on, smashed”.<sup>13133</sup> Expert David CHANDLER observed that the campaign of arrests and killings of “Hanoi people” – “highly trained” political cadre who ideologically “upstaged” their Cambodian counterparts – had foreshadowed the system of seeking

<sup>13126</sup> Section 3: Historical Background, para. 212.

<sup>13127</sup> T. 12 January 2012 (Accused NUON Chea), E1/26.1, pp. 8-9.

<sup>13128</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 9.

<sup>13129</sup> Section 3: Historical Background, para. 212.

<sup>13130</sup> Section 3: Historical Background, para. 226.

<sup>13131</sup> Section 7: Roles and Functions – NUON Chea, para. 522.

<sup>13132</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, p. 79.

<sup>13133</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, pp. 8-9.

out “strings”, networks or traitorous associations.<sup>13134</sup> Duch confirmed that “not many of them remained after 17 April 1975”.<sup>13135</sup>

3938. The treatment of enemies was highlighted in a leadership manifesto published in the July 1973 issue of the *Revolutionary Flag*, wherein the Party promoted the need to maintain absolute secrecy in their arrest and execution:

If our leadership is loosen[ed], we will not be able to carry out shock assaults against the enemies and we will be destr[oyed]. [...] If the spies are arrested to be executed in the meeting before the people, some people may be frightened of us. They think that we are extremely cruel. *The stance to smash the spies is correct* but it is inappropriately carried out.<sup>13136</sup>

3939. Secrecy pervaded the very core of the CPK’s operations.<sup>13137</sup> Expert Philip SHORT testified that the “obsession” with secrecy stretched back to the Issarak struggle against the French colonial authorities.<sup>13138</sup> According to Philip SHORT, the “paranoia about enemies burrowing within the Party” was a guiding factor in the Party’s methodology.<sup>13139</sup> NUON Chea publicly confirmed in 1978 that secrecy was “a way to defend ourselves from the danger of enemy infiltration”, adding that, “[o]nly through secrecy can we be masters of the situation and win victory over the enemy who cannot find out who is who”.<sup>13140</sup>

3940. NUON Chea confirmed in court that the process of eliminating enemies had actively been considered by the Party leadership in 1974. He testified that an extraordinary session of the CPK Standing Committee held in mid-1974 discussed the

<sup>13134</sup> T. 19 July 2012 (David CHANDLER), E1/92.1, pp. 64-67.

<sup>13135</sup> T. 15 June 2016 (KAING Guek Eav), E1/438.1, p. 7. *See also*, T. 19 July 2012 (David CHANDLER), E1/92.1, p. 66 (“The ones who stayed behind were, I think, taken by surprise and executed. [...] These people did not resurface in Cambodia.”).

<sup>13136</sup> *Revolutionary Flag*, E3/785, July 1973, ERN (En) 00713998-00713999 (emphasis added).

<sup>13137</sup> Section 5: Administrative Structures, para. 342. *See above*, para. 3927; Section 16.3: Real and Perceived Enemies, paras 3793, 3862. *See also*, KHIEU Samphan Response to OCIJ, E3/112, 30 December 2007, p. 2, ERN (En) 00170882 (“Whoever’s task it is, that person knows it. The tasks of others are not to be known, not to be seen, not to be heard.”).

<sup>13138</sup> For the Khmer Issarak resistance movement, *see* Section 3: Historical Background, para. 197.

<sup>13139</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 85-86 (describing the principle of secrecy as having “as much to do with Khmer culture as with [the] objective practical considerations” of the Party’s very survival at the time), 88-89. *See also*, T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 18-19.

<sup>13140</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, July 1978, ERN (En) 00762399 (referring to the period “after liberation”: “Secret work is fundamental in all that we do. [...] On the one hand, this is a matter of general principle, and on the other, it is a way to defend ourselves from the danger of enemy infiltration. As long as there is class struggle or imperialism, secret work will remain fundamental. Only through secrecy can we be masters of the situation and win victory over the enemy who cannot find out who is who.”).

“destructive actions by the traitors who [had] infiltrated in the Party”.<sup>13141</sup> The *Revolutionary Flag* later confirmed that the Central Committee had decided to close the door to Party membership in 1974 to prevent spies from infiltrating its ranks.<sup>13142</sup> Consequently, “there were internal purges”; measures which “were primarily [...] to struggle to build ideology within the Party, the Army, and the state authorities”.<sup>13143</sup>

3941. The *Revolutionary Flag* identifies the subjects of these purges as cadre in Sector 37 (Koh Kong and Kampong Seila), who were accused of collaborating “with the contemptible [LON] Nol and the Thai reactionaries” in 1974 and were promptly purged along with Southwest Zone Deputy Secretary and CPK Central Committee member Prasith *alias* Chong.<sup>13144</sup> While NUON Chea testified that Prasith was killed by bandits in the forest after being called to a meeting with *Ta Mok*,<sup>13145</sup> the Chamber does not find this account convincing in light of the foregoing evidence and other indicators that Prasith’s disappearance coincided with his summons to attend a Central Committee meeting.<sup>13146</sup> Expert Philip SHORT observed that, while Prasith was perhaps not the first CPK cadre to have been liquidated, his execution was the first occasion at which the Party’s leadership had approved the execution of a Central Committee member, adding that he considered this event to be a “tipping point” in the CPK’s history and “the beginning of the internal purges which went on to devour” the Party.<sup>13147</sup>

<sup>13141</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 103-104.

<sup>13142</sup> Section 5: Administrative Structures, para. 402.

<sup>13143</sup> *Revolutionary Flag*, E3/166, February-March 1976, pp. 32-33, ERN (En) 00517844-00517845. *See also*, *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 29, ERN (En) 00491423 (noting that after mid-1974, “we agreed to close the doors to the Party and not to expand the party to prevent the enemy from entering”).

<sup>13144</sup> *Revolutionary Flag*, E3/193, August 1977, pp. 6-7, ERN (En) 00399226-00399227 (“The despicable Chong and the Despicable Chhan got along well. [...] [T]hey wanted to take Koh Kong [...] in order to collaborate with the contemptible Nol and the Thai reactionaries, and take all of Koh Kong to join with the Thai reactionaries. [...] This is not a minor issue. Re-examining this, it is seen that the group that collaborated with the traitors in Koh Kong committed a very serious offence. *But we were able to sort out the germ elements at Koh Kong and Kampong Seila. Now, the whole of Sector 37 [...] is clean, very much cleaner than before. [...] But in 1974 we sorted out this issue completely and permanently: no problem remained because we had already eradicated all the enemies.*” [emphasis added]). *See also*, Section 3: Historical Background, para. 203.

<sup>13145</sup> T. 30 January 2012 (Accused NUON Chea), E1/35.1, p. 25.

<sup>13146</sup> T. 26 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/97.1, pp. 44-45 (testifying that Chong was not seen at the June 1974 Central Committee meeting); Combined S-21 Notebook, E3/834, April 1978-December 1978, p. 26, ERN (En) 00184508 (entry dated 11 August 1978: “In March 1974, we judged A-Chong”); Book by B. Kiernan: *The Pol Pot Regime*, E3/1593, pp. 68-72, ERN (En) 01150031-01150033 (according to the author’s interviews, Prasith was summoned to a Central Committee meeting in January 1974 and never seen again).

<sup>13147</sup> T. 6 May 2013 (Philip SHORT), E1/189.1, pp. 19-21; T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 76-77; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, pp. 259-260, ERN (En) 00396467-00396468 (“Prasith was not the first CPK cadre to be liquidated. Mok had already eliminated



3942. After 17 April 1975, POL Pot, NUON Chea and KHIEU Samphan held mass education seminars in Phnom Penh.<sup>13148</sup> Reiterating POL Pot and NUON Chea’s talking points on the need to uncover enemies and “spy networks”,<sup>13149</sup> KHIEU Samphan instructed cadres to transform their behaviour in order to achieve the Party’s goals and identify enemies, clarifying that malingering workers and those who broke equipment would be categorised “as people who betray the Party”.<sup>13150</sup> Civil Party EM Oeun, a former medic who attended one of these lectures at Borei Keila at which POL Pot, NUON Chea, KHIEU Samphan and other senior leaders were present, told the Chamber that:

[The speakers said] that in order to find out who would be the infiltrated enemies, then we needed to look at those people[’s] performance. So, to do so, one needed to allow people to work more, eat less. And they had to look into the activity of the persons who were doing farming, and if these individuals every now and then broke things, even needles -- if women broke needles often, these people could also be perceived as enemies. Not just women, anyone.<sup>13151</sup>

3943. EM Oeun added that KHIEU Samphan instructed cadres to “pay attention to the New People”, as they were steeped in feudalism.<sup>13152</sup> The Civil Party clarified that the CPK “had the view that anyone who obstructs the Party’s affair[s] or opposed the Party

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a number of lower-ranking officials [...] This was the first time, however, that intra-Party conflict had reached into the ranks of the Central Committee. It was the first time, too, that the Party leadership had authorised the execution of one of its own number.”). *See also*, Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4221-4230; Sections 12.1: Internal Factions (*see* Sections 12.1.3-12.1.6).

<sup>13148</sup> *See above*, para. 3736.

<sup>13149</sup> T. 23 August 2012 (EM Oeun), E1/113.1, pp. 82-83 (summarising the contents of previous speakers), 84-85 (NUON Chea spoke about “soldiers in the previous regimes, including Norodom Sihanouk and Lon Nol regimes, and [the speakers] also targeted the intellectuals and students, particularly those who graduated abroad”), 103; T. 28 November 2016 (BEIT Boeurn), E1/502.1, pp. 22-23 (KHIEU Samphan “used to speak [at study sessions]. When the chief made a speech, then the member and the deputy would be allowed also to comment or to supplement the presentation made by the chief.”). On POL Pot and NUON Chea’s statements regarding enemies, *see e.g.*, T. 23 August 2012 (EM Oeun), E1/113.1, p. 84 (referring to NUON Chea’s speech); T. 27 August 2012 (EM Oeun), E1/115.1, pp. 26-28 (naming other participants at Borei Keila), 31-32 (POL Pot speech about need to know who enemies are regardless of family relationship), 44 (NUON Chea talked about “spy networks”); T. 28 November 2016 (BIT Boeurn), E1/502.1, p. 23 (“They did not say who the enemies were. However, [POL Pot] said that sometimes the enemies were our parents or our relatives and did we dare to smash those enemies if our parents were the enemies.”), 27-28 (“They said that we should strengthen our leadership and to search for the enemy embedded within our revolutions”).

<sup>13150</sup> T. 23 August 2012 (EM Oeun), E1/113.1, pp. 84-85.

<sup>13151</sup> T. 23 August 2012 (EM Oeun), E1/113.1, p. 82; T. 28 August 2012 (EM Oeun), E1/116.1, p. 32. *See also*, T. 27 August 2012 (EM Oeun), E1/115.1, pp. 52-53 (“I was rather terrified, myself, and my colleagues were a bit terrified upon hearing that statement”). The Civil Party’s evidence about this event was generally consistent with his Civil Party Application. The Chamber accepts his account as credible.

<sup>13152</sup> T. 27 August 2012 (EM Oeun), E1/115.1, pp. 51-53 *affirming* EM Oeun Civil Party Application, E3/1729, 29 January 2010, p. 7, ERN (En) 00751867.

[...] would be regarded as the enemy or the traitor of the Party”, clarifying that “the Party had to smash the enemies” at the time, meaning “to execute”.<sup>13153</sup>

3944. At this time, the CPK proceeded to dismantle or failed to replace vestiges of state institutions of the Khmer Republic and pre-1970 monarchy, including the legislature and judiciary.<sup>13154</sup> By August 1975 at latest, the CPK was establishing *Santebal* – a neologism encompassing the notions of *Norkorbal* (the police force under the NORODOM Sihanouk and Khmer Republic eras) and *Santesok* (“security”) – which became synonymous with the DK detention and execution apparatus.<sup>13155</sup> As Duch testified:

The word *Santebal* does not refer exactly to a prison as prisons existed in France or as prisons existed in Cambodia in the time before that. [...] *Santebal* offices in Cambodia refer[red] to a location where people were to be kept before they were sent to be killed. That was the role played by *Santebal* offices in Cambodia at the time, that is, people were kept there, interrogated and later on they were smashed. It was not a place like a court where people go through a trial and they later are sentenced to serve a certain amount of years.<sup>13156</sup>

3945. The remit of security centres was to absolutely implement orders to “smash” enemies:

When a decision was made to smash, then other security offices or units had to make the arrest and to send to the security office to arrest, to detain, to torture and to smash. It had to happen and nobody dared to object the decision [...]. If somebody opposed, [he] would be punished.<sup>13157</sup>

3946. As discussed further below, the ultimate treatment of prisoners at security centres was commensurate with their prisoner status and the severity of their alleged

<sup>13153</sup> T. 27 August 2012 (EM Oeun), E1/115.1, pp. 31-32, 37-38.

<sup>13154</sup> Section 5: Administrative Structures, paras 417-418.

<sup>13155</sup> KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 3, ERN (En) 00154908; Laurence PICQ Interview Record, E3/5168, 30 October 2008, p. 2, ERN (En) 00323633.

<sup>13156</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 74.

<sup>13157</sup> Case 001 Transcript (KAING Guek Eav), E3/5794, 28 April 2009, p. 32, ERN (En) 00325580 (specifically referring to decisions by those to whom the right to smash was delegated, *see below*, para. 3955). *See also*, T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 26 (“The policy was applied the same -- the same policy was that whenever the Party regarded someone as an enemy we had to smash him or her, and we had no way to contest it. When the Party determined a person as an enemy, we had nothing but to smash that enemy for the Party.”); T. 29 March 2012 (KAING Guek Eav), E1/56.1, p. 15 (“The Party’s policy towards the enemy [was] stable, as the renounced enemy would be smashed. But it was to be done in accordance with particular circumstance. So there was no precise guidance. [...] We had stable policies against the enemies, that is, the enemies were to be killed.”). *See also*, Section 12.2.4: S-21 Security Centre: Locations and Establishment.

offending. Evidence before the Chamber demonstrated that whereas the most serious category of enemy was “smashed” in accordance with the revolutionary framework (Section 16.4.2.1.2), less serious offenders were reformed, re-educated or refashioned (Section 16.4.2.1.3). In view of its findings below, the Chamber accepts Duch’s evidence of the operation of security centres but only insofar as it concerns the “smashing” of the most serious category of offender.

#### 16.4.2.1.1. *Number of security centres and offices*

3947. The Chamber has identified several security centres and offices which existed prior to 1975, including: Kraing Ta Chan Security Centre (Takeo);<sup>13158</sup> M-13A and M-99 (Kampong Speu); M-13B (Kandal); M-15 (Southwest Zone); and security offices in Krouh Chhmar, Kok Kduoch and Pongro.<sup>13159</sup>

3948. The Co-Prosecutors submit that over 260 DK-era security offices have been identified by researchers, citing to mapping initiatives by DC-Cam and Henri LOCARD.<sup>13160</sup> The Co-Prosecutors’ precise methodology in arriving at the figure of “more than 260” security centres was not apparent to the Chamber. The Chamber has nevertheless reviewed the available evidence on the Case File to ascertain an approximate number. In so doing, it has independently reviewed evidence of the existence of security centres and offices during the DK period and cross-checked its findings against DC-Cam and Henri LOCARD’s respective investigations. In line with its general considerations on the evidence, the Chamber has only relied upon credible (and where available, appropriately corroborated) evidence in reaching an approximate number of security centres.

#### 16.4.2.1.1.1. *DC-Cam’s findings*

3949. The Co-Prosecutors reference a number of DC-Cam documents in support of the above submission,<sup>13161</sup> including a report identifying 195 former security centres investigated as part of mapping missions conducted between 1995 and 2003.<sup>13162</sup> An

<sup>13158</sup> Section 12.3.3: Kraing Ta Chan Security Centre: Location and Establishment.

<sup>13159</sup> Section 3: Historical Background, paras 245, 250.

<sup>13160</sup> Co-Prosecutors’ Closing Brief, para. 264. *See also*, Case 001 Trial Judgement, para. 110.

<sup>13161</sup> Co-Prosecutors’ Closing Brief, para. 264, fn. 779.

<sup>13162</sup> DC-Cam Report, *DK Prison*, E3/2378, 23 August 2006, ERN (En) 00194821-00194829. *See also*, *Genocide Sites in Cambodia 1975-1979* (Yale University), E3/2366, undated, ERN (En) 00188711

updated version of the report dated February 2008 identifies a total of 196 security centres.<sup>13163</sup> A further report prepared by Craig ETCHESON, a former DC-Cam and OCP investigator and Expert in Case 001, provides details of DC-Cam’s methodology in arriving at the total number of security centres. It details the collection of witness statements by DC-Cam investigators as part of a mass grave and security centre mapping initiative conducted over several years, focusing on the nationwide network of DK detention facilities established at the zone, region, district, commune and village levels. According to Craig ETCHESON, the accumulated expertise of DC-Cam investigators enabled them to gauge the reliability of informants through a process of corroboration with other eyewitnesses, perpetrators, victims and other available evidence. Systematic Global Positioning System recording also pinpointed the location of these sites.<sup>13164</sup> The testimony of DC-Cam Deputy Director VANTHAN Dara Peou further confirmed that investigators were trained experts in conducting such interviews.<sup>13165</sup>

3950. No other party made submissions with regard to the total number of security centres. The Chamber notes that Duch accepted the existence of 196 security centres at trial but acknowledged that this figure was put to him by the Co-Prosecutors during the course of proceedings in Case 001,<sup>13166</sup> and that “[i]t was not the figure that I came up with through my research”. Indeed, he testified that he was aware of only “a small number of security centres” during the DK period aside from S-21, M-15 and two offices in Kampong Thom and Sector 32.<sup>13167</sup> The Chamber is satisfied that the source of his knowledge in this regard was in fact the DC-Cam report identifying 196 security

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(mapping security centre sites identified by DC-Cam); DC-Cam Map of Security Centre sites, E3/2365, 2001, ERN 00188695.

<sup>13163</sup> DC-Cam Report, *DK Prison*, E3/2764, 18 February 2008, ERN (En) 00347406-00347413. Two further documents cited by the Co-Prosecutors and entitled “memorial” and “burial” contain references to execution sites listed in E3/2764. See DC-Cam Report, *Memorial*, E3/2765, 7 November 2006, ERN (En) 00379116-00379119; DC-Cam Report, *Burial*, E3/2763, 18 February 2008, ERN (En) 00379092-00379115.

<sup>13164</sup> Report by C. Etcheson, *The Number: Quantifying Crimes Against Humanity in Cambodia*, E3/1807, 1999, pp. 8, 12-13, ERN (En) 00089465, 00089469-00089470.

<sup>13165</sup> T. 23 January 2012 (VANTHAN Dara Peou), E1/31.1, p. 11.

<sup>13166</sup> See e.g., KAING Guek Eav Organigram of DK Structure, E3/457, 25 June 2008, ERN (En) 00198898 (noting: “There are 196 offices throughout the whole country (including S-21)”); KAING Guek Eav Final Submission in Case 001, E3/442, 23 November 2009, p. 21, ERN (En) 00412111. The Chamber observes that it was in Duch’s interest to emphasise, during proceedings against him, the number of other security centres, and therefore the number of other persons responsible for similar atrocities during the DK period.

<sup>13167</sup> T. 22 June 2016 (KAING Guek Eav), E1/442.1, pp. 64-66.

offices and accords minimal weight to his testimony regarding the total number of security centres between 1975 and 1979.

3951. The Chamber is satisfied that DC-Cam's approach to investigating security centres was methodologically sound and finds that the organisation's research credibly and verifiably demonstrates the existence of 196 DK-era security centres across the country. The Chamber observes that DC-Cam's investigations were at times limited by unfavourable conditions including security concerns, inclement weather and scheduling issues,<sup>13168</sup> and as a result do not represent the totality of security centres established or operated during the DK period.

#### 16.4.2.1.1.2. Henri LOCARD's findings

3952. The Co-Prosecutors also point to the research of Henri LOCARD in support of their submission positing the existence of more than 260 security centres.<sup>13169</sup> The NUON Chea Defence objects to the totality of Henri LOCARD's evidence for the reasons outlined elsewhere in this Judgement.<sup>13170</sup>

3953. The Chamber has examined Henri LOCARD's findings insofar as they relate to the identification of security centres operational during the DK period. Subject to a margin of error accounting for divergent transliterations, approximately 50-60 security

<sup>13168</sup> Report by C. Etcheson, *The Number: Quantifying Crimes Against Humanity in Cambodia*, E3/1807, 1999, pp. 9, 11, ERN (En) 00089466, 00089468.

<sup>13169</sup> Co-Prosecutors' Closing Brief, para. 264, fn. 779 citing to Report by H. Locard, *Research Notes on Democratic Kampuchea Prison Network: Northwest Region*, E3/2071, May 2007, pp. 1-36, ERN (En) 00087303-00087332; Report by H. Locard, *S-21 & Phnom Penh Under DK*, E3/3214, 11 July 2007, pp. 1-9, ERN (En) 00403279-00403287; Report by H. Locard, *Preah Vihear Sector or Zone 103*, E3/3244, 31 May 2007, pp. 1-3, ERN (En) 00403276-00403278; Report by H. Locard, *Northeast: Eisan Region – Zone-Sector 105, Mondulkiri*, E3/3219, 27 June 2007, pp. 1-10, ERN (En) 00403253-00403262; Report by H. Locard, *Northeast: Eisan Region – Zones-Sectors 101, 102, 104, 105, 107, 505, Provinces of Ratanakiri, Mondulkiri, Stung Treng and Kratieh*, E3/3255, 14 June 2007, pp. 1-51, ERN (En) 00403192-00403242; Report by H. Locard, *Kratieh – 505: Special Zone*, E3/3274, 24 June 2007, pp. 1-10, ERN (En) 00403243-00403252; Report by H. Locard, *Kompong Thom-Uddor Region Sector or Zone 43*, E3/3218, 2 June 2007, pp. 1-28, ERN (En) 00208411-00208438; Report by H. Locard, *Bophea Region: Dambon 20-24*, E3/3209, undated, pp. 1-61, ERN (En) 00403131-0043191; Report by H. Locard, *Niredey Region: the Southeast*, E3/3232, 11 July 2007, pp. 1-69, ERN (En) 00217621-00217689; Report by H. Locard, *Kampong Cham: West Bank of the Mekong, Old North Region, Zone or Sectors 41 & 42*, E3/2649, 5 June 2007, pp. 1-26, ERN (En) 00208385-00208410; Report by H. Locard, *Siem Reap Province: New North Region*, E3/3863, 30 May 2007, pp. 1-59, ERN (En) 0064149-00164207; Report by H. Locard, *Stung Treng: Dambon 104 & 103*, E3/3265, 16 June 2007, pp. 1-13, ERN (En) 00403263-00403275; Report by H. Locard, *Research Notes on Democratic Kampuchea Prison Network: Northwest Region-Peayaoap*, E3/2071, May 2007, pp. 1-30, ERN (En) 00087303-00087332.

<sup>13170</sup> Section 2.4.7.2: Considerations Regarding Specific Witnesses, Civil Parties and Experts: Expert Henri LOCARD.

centres identified by Henri LOCARD are corroborated by DC-Cam's findings and other reliable evidence on the Case File. A further 83 security centres identified by Henri LOCARD find no corroboration with other evidence. The Chamber recalls its finding that Henri LOCARD's writings are of limited, if any, probative value and that it will accord them little weight unless clear and reliable evidence corroborates his findings.<sup>13171</sup> The Chamber takes into account that Henri LOCARD's findings are based on information he personally gathered which are not always identifiable or verifiable. The Chamber therefore accepts the conclusions of Henri LOCARD only insofar as they concern the 50-60 security centres corroborated by DC-Cam's findings and other reliable evidence on the Case File, and accords minimal weight to his findings regarding the remainder.

#### 16.4.2.1.1.3. Other security centres and conclusion

3954. In addition to the foregoing, the Chamber has identified at least 20 further security centres or offices from the Case File.<sup>13172</sup> While only a handful of these were subject to examination in court, the Chamber observes that the existence of the vast majority of others could not definitively be established to the requisite standard. The

<sup>13171</sup> Section 2: Preliminary Issues, para. 106.

<sup>13172</sup> T. 19 June 2012 (YUN Kim), E1/88.1, p. 76 (stating that there was a security centre at Prasral for "light offence people"); T. 20 June 2012 (YUN Kim), E1/89.1, p. 36 ("B-3, before it was converted into the youth work site, was also a security office where cadres were guarded from other districts to be detained at the B-3 location."); T. 22 October 2012 (CHUM Sokha), E1/136.1, pp. 68 (stating "Uncle Meak" had been arrested and detained at the Security Centre in Samraong village), 70 (stating that his father was tempered and forced to work in Trapeang Leak Kbal Security Centre, located to the east of Kdei village); T. 24 October 2012 (LAY Bony), E1/138.1, pp. 43, 61-62 (testifying that she was marched from Tuk Thkoul prison to Boeng Kol Re-education Centre and observed that many disappeared) [see also, LAY Bony Interview Record, E3/3958, 26 August 2009, ERN (En) 00379161-00379163]; Case 001 Transcript (VANN Nath), E3/7450, 29 June 2009, pp. 12-15, ERN (En) 00345670-00345673 (describing the prison in Balatt Cooperative where he was shackled with the same type of shackles used at S-21); SAU Ren DC-Cam Interview, E3/2073, 24 January 2003, p. 37, ERN (En) 00876415 ("When I arrived in Tang Kouk, I was imprisoned for three months [...] I was imprisoned in Chiveakpheap village, Andoung Pou commune"); RUOS Savi Interview Record, E3/7715, 12 May 2009, p. 8, ERN (En) 00328380 (stating that the sector in the East had security offices in Bak Ay and Kansoam Sat villages); BUN Sat Interview Record, E3/7884, 14 October 2009, pp. 3, ERN (En) 00398828 (stating that he was detained in Ta Suos Pagoda in Ta Suos commune, Svay Rieng), 4, ERN (En) 00398829 (stating that in the Svay Rieng district there were detention centres at Sla Pagoda, Chreang Pagoda, Thnal Keng and Tuol Pralay), 5, ERN (En) 00398830 (There was a security centre, known as Svay Yea Commune Security Centre); SOU Sotheavy Interview Record, E3/4609, 18 December 2009, ERN (En) 00434881 (describing torturing tools used at Krang Chheh Security Centre); UK Soeum Interview Record, E3/5603, 3 March 2010, pp. 7, ERN (En) 00491352 (describing the "militia office" in Rumlech Cooperative where people who were arrested were detained), 9, ERN (En) 00491354 (stating that he was told by *Ta Pheng* that Bakan Leu had a security centre called Sam Sant); TOAT Thoeun Interview Record, E3/9610, 10 September 2013, p. 23, ERN (En) 00974033 (stating that Kakaoh Chak correction centre detained thousands of combatants).

Chamber is satisfied that a minimum of 200 security centres were established and operated across DK during the indictment period. It recognises that the totality of evidence indicates a much higher number, however the Chamber is unable to determine whether or not that number exceeds 260, as submitted by the Co-Prosecutors.

16.4.2.1.2. *“Smashing” of enemies*

3955. The framework and modalities by which enemies were condemned to detention in security centres – and frequently death – were constitutionally legitimised and implemented pursuant to Party decree. The DK Constitution determined that “hostile and destructive acts which are systematically organised and endanger the people’s State are punishable to the highest degree”.<sup>13173</sup> The contours of the Party’s stance toward the punishment of enemies were plainly outlined in the Central Committee’s 30 March 1976 decision, wherein “[t]he right to smash, inside and outside the [Party] ranks” was delegated down the Party lines:

The right to smash inside and outside the [Party] ranks

Objective:

1. Establish a framework to carry out our absolute revolution.
2. To strengthen our socialist democracy.

All this to strengthen our state authority.

- If in the base framework, to be decided by the Zone Standing Committee.
- Surrounding the Centre Office, to be decided by the Central Office Committee.
- In independent Sectors, the decision shall be taken by the Standing Committee.
- For the Centre Military, the decision shall be taken by the [General] Staff.<sup>13174</sup>

3956. The Chamber considers this to be a significant document. The provenance, chain of custody and probative value of this document (and others in the collection as

<sup>13173</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184836 (Article 10). The Chamber notes that the original publication was made available in Khmer and French, with the latter edition omitting the words “systematically organised” (“systématiquement organiser”) (see ERN (Kh) 00089847; ERN (Fr) S00012654-00012655). The Chamber declares the Khmer version to be authoritative in this instance.

<sup>13174</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 1, ERN (En) 00182809.

part of which it was obtained) is discussed elsewhere in this Judgement.<sup>13175</sup> The document is consistent with other high-level CPK documentation in substance and in form,<sup>13176</sup> and contains reference to events otherwise verified by the Chamber.<sup>13177</sup> The Co-Prosecutors refer to this document extensively in their closing brief, and the NUON Chea Defence accepts it as the Central Committee's framework for "identifying the competent authority to implement its policy depending on the suspected offender's workplace".<sup>13178</sup> Neither the KHIEU Samphan Defence nor the Civil Party Lead Co-Lawyers made any relevant submissions in this regard. The Chamber is satisfied that this document is an authentic, reliable and probative piece of evidence demonstrating the dissemination of policy instructions from the upper echelon of the CPK.

3957. NUON Chea claimed that "[t]he Party had no authority to smash anyone", and could only "demote or [...] sack Party members" before sending them "to the base authority to make decisions, or to the Court to decide".<sup>13179</sup> In light of its findings in this section, the Chamber accords no weight to NUON Chea's assertion. Furthermore, and contrary to NUON Chea's claim that such matters were forwarded to the courts, the Chamber has found that no functioning judiciary existed during the DK period.<sup>13180</sup>

3958. Despite the Party's policy of secrecy, the smashing of enemies was widely reported within Party ranks. As outlined in Sections 16.4.2.1.2 and 16.4.2.1.3, the *Revolutionary Flag* explained that 1976 and 1977 in particular were marked by purges and the systematic "smashing" of enemies with "strings" or "networks" embedding

<sup>13175</sup> Section 5: Administrative Structures, para. 349. *See also*, Section 16.3: Real or Perceived Enemies, para. 3771.

<sup>13176</sup> The typeface and typeset (indentation, alignment, headings and presentation) is consistent with other high-level documents. *See e.g.*, DK Document, Instructions of 870, E3/741, 3 January 1978; DK Document, Guidance of the Central Committee, E3/764, 20 June 1978; DK Document, Instructions of 870, E3/723, undated; DK Document, Advice from 870, E3/9373, 3 January 1979.

<sup>13177</sup> References in the document to the target of "three tonnes per hectare" (ERN (En) 00182809 [*see above*, para. 3892]); "model districts" (ERN (En) 00182809 [*see* Section 10.1.11: Tram Kak Cooperatives: Tram Kak as a Model District]); founding date of the Party (ERN (En) 00182810 [*see above*, para. 3741]); "elections", setting up "state organisations" including the PRA, State Presidium and government (ERN (En) 00182812-00182814 [*see above*, paras 3737-3739]) have otherwise been established by the Chamber.

<sup>13178</sup> NUON Chea Closing Brief, para. 403.

<sup>13179</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 42.

<sup>13180</sup> Section 5: Administrative Structures, paras 417-418. *See above*, para. 3944.



within the ranks of the Party.<sup>13181</sup> IENG Sary also defined 1976 as a “key year” in the hunt for enemies.<sup>13182</sup>

3959. That this was nothing short of a nationwide enterprise was made clear by the October-November 1977 edition of the *Revolutionary Flag*:

We now consider that our Party is already strong, and that is why we have been able to sweep cleanly away more than 99% of the contemptible major concealed enemies boring from within. But supposing if they were able to strengthen and expand and make a comeback someplace: that would mean that place was weak. Things throughout the country must be examined like this. Each zone must be examined like this. Each sector must be examined like this. Each district must be examined like this. Each cooperative must be examined like this. The army and ministries and offices must be examined like this.<sup>13183</sup>

3960. KHIEU Samphan echoed the call for the “suppression” of enemies in a speech during the second anniversary of the 17 April 1975 “liberation”:

We must wipe out the enemy in our capacity as masters of the situation, following the lines of domestic policy, foreign policy and military policy of our revolutionary organization. Everything must be done neatly and thoroughly. We must not become absent-minded, careless or forgetful because of past victories. On the contrary, we must further steel ourselves, remain alert, constantly maintain the spirit

<sup>13181</sup> See also, *Revolutionary Flag*, E3/139, November 1976, p. 9, ERN (En) 00455286 (“During 1976 the enemy carried out strong activities. They had their networks inside the country that have been embedded inside our ranks for a long time. They made propaganda against socialist revolution, against the collective, against the cooperatives, and they agitated for the return of the private regime. However, because our socialist revolution was profound, the bad elements embedded inside the Party’s ranks and outside the party were totally scattered and overthrown by our people and our Revolutionary Army.”); *Revolutionary Flag*, E3/25, December 1976-January 1977, p. 5, ERN (En) 00491398 (“The traitor strings that we smashed successively were organized traitor strings, systematic strings, that had existed since the national democratic revolution period. However, during that period, they could live with us. In socialist revolution, they were segregated out. 1976 was a year of these class combat inside our revolution and inside our Party. Many germs appeared. All the traitor strings appeared.”); *Revolutionary Flag*, E3/742, April 1977, p. 4, ERN (En) 00478495 (“These enemies of all types strive to build espionage forces: all three of their major networks that have embedded and bored holes from within the Party, the revolution, and our Army during the past 27 years were discovered by us and were fundamentally smashed during the first trimester of 1977.”); *Revolutionary Flag*, E3/135, June 1977, p. 27, ERN (En) 00446872 (“During first half of 1977 we systematically swept clean the embedded enemy boring holes from within. Through this experience, we see that we cannot just look at their movements. After we look at their movements, we must also look at their personal histories. Which network? Who do they contact? Who brought them in? We know their circles. We know their origins. We are able to research them. So then, we must clearly assess their personal histories time after time. Only when their personal histories are clearly grasped can we feel warm about the quality of our cadres and our Party members.”); *Revolutionary Flag*, E3/745, March 1978, pp. 6, ERN (En) 00504072, 8, ERN (En) 00504074.

<sup>13182</sup> See above, Section 16.3: Real or Perceived Enemies, para. 3803.

<sup>13183</sup> *Revolutionary Flag*, E3/736, October-November 1977, ERN (En) 00182550.

of revolutionary vigilance and continue to fight and suppress all stripes of the enemy at all times.<sup>13184</sup>

3961. Civil Party PREAP Chhon told the Chamber that, in delivering a speech to a group of East Zone evacuees at Chbar Ampov market in 1977, KHIEU Samphan stated that:

[W]e made a revolution in order to eliminate the Lon Nol regime. And another point was to eliminate the capitalist, the feudalist, the intellectuals. He [*i.e.* KHIEU Samphan] didn't want them to exist. That's what he meant in his speech. [...] If we betrayed the Party and the Party knew it, then we would be killed. He added another point that, 'If you are kept, no gain; if you're pulled out, no loss'! It is for those who betrayed the revolution.<sup>13185</sup>

3962. Telegrams dispatched to *Angkar* bear conclusive evidence of the Standing Committee's direct involvement in the campaign to identify and eliminate enemy networks. Three telegrams before the Chamber from the West Zone to the Party Centre best demonstrate the regular and comprehensive reporting relationship between the zones and the CPK leadership. A telegram dated 16 July 1978 details the "national defence" situation within the Zone, including the identification, arrest and interrogation of internal enemies including former Khmer Republic soldiers and workers who had allegedly committed moral offences or expressed dissatisfaction with the revolution, collectivist initiatives and work regimes. The telegram further details the interrogation of enemies and the extraction of confessions, adding in one instance that following the interrogation of a former Khmer Republic second lieutenant, "we will send him as well as his confession to *Angkar*". Measures by the Zone directed against enemy activity include "examining, searching and following [...] the trail of all kinds of tricks of our undercover enemy burrowing from within, so that we can absolutely sweep them away

<sup>13184</sup> *Khieu Samphan's Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004165. *See above*, Section 16.3: Real or Perceived Enemies, para. 3807.

<sup>13185</sup> T. 30 November 2016 (PREAP Chhon), E1/504.1, pp. 90, 95-96. The Civil Party was examined at length (for over one hour) by the KHIEU Samphan Defence about his failure to name KHIEU Samphan in his initial Civil Party Applications. In court, the Civil Party credibly and consistently described the circumstances under which he provided his initial statements, including the fact that he was not specifically asked about KHIEU Samphan and that he sought to limit his answers to the questions asked of him. *See* T. 1 December 2016 (PREAP Chhon), E1/505.1, pp. 6-37. In view of the Civil Party's credible evidence in court and the Chamber's position on the probative value of Civil Party Applications (in particular the circumstances under which they are furnished), the Chamber accepts the Civil Party's evidence on this event.

by way of strictly following the party's organizational line *to go parallel with [the] political and ideological line*".<sup>13186</sup>

3963. A further telegram dated 23 July 1978 similarly details enemy activity, as well as "building [the] socialist regime", living conditions inside the West Zone and political and ideological education, including that "cadres of all levels" are working closely with all areas "to an even greater extent in order to control movements and investigate biographies and activities of people who are to be admitted into the Party membership". The report also includes tables detailing agricultural and industrial output by the Zone in the preceding period.<sup>13187</sup> The third telegram, a West Zone monthly report of June 1978, recounts in minute detail enemy conduct inside cooperatives rather than districts and sectors. Under the heading "Screening out persons with elements as Vietnamese, CIA agents, and those with no-good elements", the report identifies that "100 Vietnamese people – small and big, young and old – have been smashed" along with 60 others "burrow[ing] inside units and collectives".<sup>13188</sup>

3964. Regular reports to *Angkar* by zone secretaries detailing the internal and external enemy situation, including the search for enemy strings and networks, was further evidenced in the Southwest,<sup>13189</sup> Northwest,<sup>13190</sup> Central (old North),<sup>13191</sup> new

<sup>13186</sup> DK Telegram, E3/1092, 16 July 1978, ERN (En) 00289921-00289923 (emphasis added).

<sup>13187</sup> DK Telegram, E3/1093, 23 July 1978, ERN (En) 00143593-00143602.

<sup>13188</sup> DK Telegram, E3/1094, 4 August 1978, ERN (En) 00143618-00143630. *See also*, Section 13.3: Treatment of the Vietnamese, paras 3410, 3470.

<sup>13189</sup> *See e.g.*, DK Telegram, E3/853, 3 June 1977, ERN (En) 00185243 (Southwest Zone report addressed to *Angkar*).

<sup>13190</sup> *See e.g.*, DK Telegram, E3/1179, 8 June 1977, ERN (En) 00583917-00583918 (M-560 (*i.e.* Northwest Zone) report for period 24 May 1977 to 7 June 1977 referring to "enemies who had been identified [and] were arrested and smashed successively"); DK Telegram, E3/1183, August 1977, ERN (En) 00574570-00574573 ("Weekly report to beloved *Angkar* from M.560"); DK Telegram, E3/950, 11 May 1978, ERN (En) 00185215-00185216 (telegram by RUOS Nhim to "*Angkar* 870" reporting the "smashing" of 40 attempted escapees and generally listing as one of the measures the "smash[ing of] invasive enemies"); DK Telegram, E3/863, 17 May 1978, ERN (En) 00321961-00321962 (telegram by RUOS Nhim to "*Angkar* 870" noting that "we smashed 58" people trying to escape to Thailand; that "border guards smashed some" of the remainder; and that "we attacked" and "smashed 3 heads and wounded 1 head" of Thai spies).

<sup>13191</sup> *See e.g.*, DK Telegram, E3/952, 2 April 1976, ERN (En) 00182658 (telegram by KE Pauk to "respected Brother Pol", copying NUON Chea, SON Sen and Office 870).

North<sup>13192</sup> and Northeast Zones.<sup>13193</sup> The Chamber is satisfied that these telegrams demonstrate the monitoring by the Central and Standing Committees of the implementation of the Party's policies in accordance with their mandates.<sup>13194</sup>

3965. Consistently with its findings about mass arrests, detentions and executions at S-21 and Kraing Ta Chan Security Centres, the Chamber finds that the CPK maintained a policy of identifying, arresting, isolating and smashing the most serious category of enemy throughout the DK period.<sup>13195</sup> This policy was directly implemented at security centres and execution sites throughout the country and was carried out by the Party's entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK personnel.

#### 16.4.2.1.3. *Re-education of "bad elements"*

3966. Less serious offending conduct not deemed "hostile and destructive" to the state was nominally "subject to constructive re-education within the framework of the people's organisations".<sup>13196</sup> Beginning in 1975 and continuing throughout the DK period, CPK publications encouraged re-education as a means of strengthening the revolutionary stance and defending against enemies attempting to bore into the ranks of the Party.<sup>13197</sup> The *Revolutionary Flag* specifically promoted the need to engage in

<sup>13192</sup> See e.g., DK Telegram, E3/1209, 6 May 1976, ERN (En) 005522888 (telegram by KANG Chap alias Se to "Com 870", copying POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870, reporting that "Generally speaking, we can defend from the internal and external enemies."); DK Telegram, E3/1144, 6 September 1977, ERN (En) 00517923-00517924 (telegram by KANG Chap alias Se to "Committee 870", copying POL Pot, NUON Chea, IENG Sary, VORN Vet, SON Sen and Office 870); DK Telegram, E3/1077, 11 April 1978, ERN (En) 00340539-00340540 (telegram by KANG Chap alias Se to "Committee 870", copying POL Pot, NUON Chea, VORN Vet, IENG Sary and Office 870); DK Telegram, E3/949, 9-10 May 1978 (telegrams by KE Pauk to "Committee 870", copying POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870, reporting the death and injury of over 55 "enemies" following attacks).

<sup>13193</sup> See e.g., DK Telegram, E3/157, 21 April 1978, ERN (En) 00348086 (telegram by UM Neng alias Vy to "Respected Brother", copied to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870, reporting "At the border, we are still pushing the enemy back. Spies have entered locations twice; we smashed some").

<sup>13194</sup> Section 5: Administrative Structures, para. 355.

<sup>13195</sup> Section 12.2: S-21 Security Centre; Section 12.3: Kraing Ta Chan Security Centre.

<sup>13196</sup> DK Constitution, E3/259, 5 January 1976, ERN (En) 00184836 (Art. 10).

<sup>13197</sup> See e.g., *Revolutionary Flag*, E3/139, November 1976, pp. 30, ERN (En) 00455307 (referring to weak collective stances: "That comes from not being responsible, not from opposing socialist revolution, but from not understand. So then, there must be more education and indoctrination again and again."), 40, ERN (En) 00455317 ("Correctly implement all the lines of the Party, the ideology of the Party, the organisational line of the Party. This is fundamental. When we go out of bounds, we help one another by refashioning one another. But the important thing is advance prevention. Educate and study in advance not to make that have to be sorted out later. So then, strive to indoctrinate in advance. When the masses absorb the political and ideological lines of the Party, they will not do anything to the contrary. Even if they do not understand them in the sense of implementation, they will not do anything contrary to

criticism and self-criticism meetings to “eradicate” non-revolutionary elements within DK society while educating the popular masses about appropriate views on the new revolutionary order.<sup>13198</sup> Although the magazine limited the methodology behind this framework to conducting meetings, studying various Party documents and listening to radio reports,<sup>13199</sup> the reality proved otherwise. Intellectuals and other Cambodians returning from abroad were subjected to hard labour and self-criticism at K-15.<sup>13200</sup> Witness ONG Thong Hoeung provided the most vivid description of the process of re-education. He described it as a combination of study sessions, criticism/self-criticism and gruelling physical labour as a means of eradicating class distinction and refashioning the population into a single class.<sup>13201</sup>

3967. In court, KHIEU Samphan acknowledged that the Party’s regime of re-education through criticism and self-criticism meetings was ideologically fundamental to the class struggle,<sup>13202</sup> including building class stance and developing “class anger”.<sup>13203</sup> At mass rallies during the DK period, he directed this class anger at New People. Civil Party EM Oeun confirmed that KHIEU Samphan “clearly stressed that in order to uncover enemies burrowing from within, we needed to assign much hard labour to the New People”. He added that:

On this point, I still recall what he told us and the political lines at that time. They wanted to uncover the enemy burrowing from within, and in doing so, [...] we had to give [New People] a lot of work, little food to eat so that they – so that we could uncover the enemies from within. That’s what he mentioned in the session. I was rather terrified, myself,

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them.”); Revolutionary Flag, E3/193, August 1977, p. 26, ERN (En) 00399246 (“Since we had not yet profoundly whipped them up, we had not yet re-educated them to deeply understand the matter of class, class nature, true class content, the true nature of state power in order to seize state power, in order to defend state power, and what state power is, we had not yet re-educated them constantly, deeply, at clearly at all Therefore, this is why the enemies and the various classes are still able to deceive them. If we whip them up like this, the enemy will not be able to enter. The enemies embedded inside will be unable to do anything. The enemies outside will not be able to enter.”).

<sup>13198</sup> Section 10.1: Tram Kak Cooperatives, paras 1026-1028.

<sup>13199</sup> Section 10.1: Tram Kak Cooperatives, para. 1028.

<sup>13200</sup> DK Publication, Document No. 6: Concerning the Grasp and Implementation of the Political Line in Mobilising the National Democratic Front Forces of the Party, E3/99, 22 September 1975, p. 4, ERN (En) 00244277; T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 98-102; T. 11 August 2016 (ROS Chuor Siy), E1/455.1, pp. 94-95.

<sup>13201</sup> T. 7 August 2012 (ONG Thong Hoeung), E1/103.1, pp. 100-102.

<sup>13202</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 23.

<sup>13203</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 88.

and my colleagues were a bit terrified. [...] That's what he said at that time: "Keeping you is of no gain; and losing you is of no loss".<sup>13204</sup>

3968. Both NUON Chea and KHIEU Samphan specifically lectured cadres on the importance of introspection and refashioning through criticism and self-criticism sessions.<sup>13205</sup> At a meeting of Independent Divisions and Regiments in March 1977, SON Sen declared that those indebted to the enemy "must be re-educated and concentrated in one place".<sup>13206</sup> By 1978, however, the CPK had recognised that failed attempts at re-education would require other disciplinary measures "at the appropriate level":

When any cadre or any Party member is not systematically revolutionarily vigilant, this causes systematic breaks in secrecy and systematic damage to revolutionary forces; when the Party has educated and refashioned them many times but they refuse to change, measures at the appropriate level must be taken.<sup>13207</sup>

3969. NUON Chea described before the Chamber exactly what these "measures" were:

*Communism only eliminates those people who destroy the country, [i.e. those] who could not be educated. I'll give you an example. The bad people would be reminded, criticised -- self-criticised -- once, twice, thrice, and then they would have to make a text on revolutionary life-view, and if they can be reformed to build the country, that would be fine. [...] Some people can be re-educated while others could not. So for those who could be re-educated, they became good people, and those who could not would be sacked and removed from the Party and sent to the local authority to engage in labour.*<sup>13208</sup>

<sup>13204</sup> T. 27 August 2012 (EM Oeun), E1/115.1, pp. 51-53 *affirming* EM Oeun Civil Party Application, E3/1729, 29 January 2010, p. 7, ERN (En) 00751867. *See also*, T. 23 August 2012 (EM Oeun), E1/113.1, p. 90.

<sup>13205</sup> T. 23 August 2012 (EM Oeun), E1/113.1, pp. 84-85; T. 3 July 2013 (EK Hen), E1/217.1, pp. 52-53. *See also*, T. 25 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/96.1, pp. 76-78.

<sup>13206</sup> Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/807, 1 March 1977, p. 12, ERN (En) 00933844. *See also*, Minutes of Meeting Secretaries and Deputy Secretaries of Divisions and Regiments, E3/797, 18 August 1976, ERN (En) 00234458-00234459 (SON Sen concludes that: "People with no-good elements must be definitely screened. Our principle and standpoint must be defined that external enemies are not able to harm us, but we must be careful with internal enemies by specifically carrying out education and handling disputes in time.").

<sup>13207</sup> Revolutionary Flag, E3/747, August 1978, p. 10, ERN (En) 00499775. *See also*, Revolutionary Flag, E3/4, July 1976, p. 27, ERN (En) 00268939 ("Discipline must be implemented carefully in order that the Party be strong, in firm solidarity and unity. The Party's principle is to criticise/self-criticise in order to refashion. This is the foundation. But if after being repeatedly refashioned there is no reform, no progress, it is imperative to implement discipline, so that the masses will have faith and the Party will be firm, enabling us to improve the principles of the Party, improve the Party line.").

<sup>13208</sup> T. 13 December 2011 (Accused NUON Chea), E1/21.1, p. 42 (emphasis added).

3970. In a speech delivered on 17 January 1978, POL Pot expressly identified as suspect and unreliable persons from outside the peasant class.<sup>13209</sup> Three months later, KHIEU Samphan broadcast a statement stating that “our people’s vigilance” and “class hatred” had “become more seething” in the past year.<sup>13210</sup> Indeed, the Chamber has found that the Party had long been implementing “absolute measure[s]” on the ground “against those elements who cause destruction to the collective regime and socialism”; notably, “by decreasing and sweeping clean by means of implementing the proletarian class dictatorship”.<sup>13211</sup>

3971. In June 1978, the CPK Central Committee issued a directive regarding “Misled Persons who have joined the CIA, served as *Yuon* Agents or joint the KGB and opposed the Party, Revolution, People and Democratic Kampuchea”, apparently amnestying enemies who had engaged in counter-revolutionary activities prior to 1975 but maintaining that “the CPK must eliminate” those who intentionally continued in such treasonous acts. Those engaging in “just some opposing activities”, those verbally inciting opposition to the Party and those “who have just been persuaded by the propaganda” of the enemy, were now subject to a policy of re-education and admonition, “in order for them to be awakened, and to return to take sides with our Party, Revolution and people”.<sup>13212</sup> The directive was disseminated in the May-June edition of the *Revolutionary Flag* and at a mass meeting in about September of that year.<sup>13213</sup> Duch described this directive as a deceptive ploy to calm the population.<sup>13214</sup> Indeed, while this “reorientation” in policy appears to have been limited to the Khmer

<sup>13209</sup> POL Pot Speech, E3/349, 17 January 1978, p. 5, ERN (En) S00012702 (“The peasants of poor and inferior middle strata can be considered as belonging to the proletarian and semi-proletarian classes in the countryside. [...] In we base [the army] on other sources, then our army would not be strong any more.”).

<sup>13210</sup> *Phnom Penh Rally Marks 17<sup>th</sup> April Anniversary* (in SWB/FE/5791/B collection), E3/562, 16 April 1978, ERN (En) S00010562.

<sup>13211</sup> Section 11.1: Trapeang Thma Dam Construction Site, para. 1341. *See also*, Section 11.1: Trapeang Thma Dam Construction Site, para. 1319 (referring to measures taken by the CPK to solve social antagonisms through class struggle).

<sup>13212</sup> Central Committee Guidance, E3/764, 20 June 1978, ERN (En) 00275218-00275219.

<sup>13213</sup> *Revolutionary Flag*, E3/727, May-June 1978, ERN (En) 00185328; *Conclusion of Pol Pot Speech at 27 Sep Phnom Penh Meeting* (in FBIS collection), E3/294, 29 September 1978, ERN (En) 00170162-00170169 (“As for contradictions, we are making every effort to solve them by taking re-education and reorientation as the basis and relying on the force of the collective masses.”); KAING Guek Eav Responses to OCIJ, E3/15, 21 October 2008, ERN (En) 00251388; SAO Sarun Interview Record, E3/367, 17 December 2008, p. 3, ERN (En) 00278694; SAO Sarun Interview Record, E3/404, 20 October 2009, pp. 2-3, ERN (En) 00403024-00403025.

<sup>13214</sup> KAING Guek Eav Responses to OCIJ, E3/15, 21 October 2008, ERN (En) 00251388. *See also*, T. 29 March 2012 (KAING Guek Eav), E1/56.1, pp. 5-10.

population – the Vietnamese<sup>13215</sup> and Cham<sup>13216</sup> having explicitly been exempted from clemency – it is clear that arrests and executions continued to take place after this point.<sup>13217</sup>

3972. Consistently with its findings at Au Kanseng and Phnom Kraol Security Centres, the Chamber finds that the CPK maintained a policy of re-educating enemies whose alleged offending or status was not deemed to be serious according to the revolutionary framework. This policy was directly implemented at security centres (and worksites<sup>13218</sup>) throughout the country and entailed the refashioning of “bad elements” through political indoctrination, criticism/self-criticism and work assignments designed to temper counter-revolutionary tendencies. This policy was carried out by the Party’s entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK personnel. The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

#### 16.4.2.2. Criminality of policy

3973. As limited to Case 002/02, the Chamber is seized of facts relevant to the implementation of this policy through a joint criminal enterprise within the context of internal purges and at S-21,<sup>13219</sup> Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13220</sup> For the reasons outlined below, the Chamber finds that the policy to establish and operate security centres and execution sites to identify, arrest, isolate and smash enemies and re-educate “bad elements” involved the commission of crimes which were encompassed by the common purpose.

3974. *Murder* – The Chamber has found that the crime against humanity of murder was established at S-21 and Kraing Ta Chan Security Centres, and that the vast majority

<sup>13215</sup> Section 13.3: Treatment of the Vietnamese, para. 3404. *See above*, Section 16.3: Real or Perceived Enemies, para. 3828.

<sup>13216</sup> Mass executions of the Cham continued throughout 1978. *See* Section 13.2.9: Treatment of the Cham: Killing and Detention of the Cham.

<sup>13217</sup> *See e.g.*, Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1468; Section 12.2.8.5: S-21 Security Centre: July 1978 to 7 January 1979 – The Last of the Internal Purges.

<sup>13218</sup> *See e.g.*, Section 10.1.7.5.2: Tram Kak Cooperatives: Meetings, Education, Biographies and Criticism; Section 11.1.7.4: Trapeang Thma Dam Worksite: Criticism and Self-Criticism Meetings; Section 11.2.14: 1<sup>st</sup> January Dam Worksite: Criticism and Self-Criticism Meetings; Section 11.3.10: Kampong Chhnang Airfield Construction Site: Meetings.

<sup>13219</sup> Grave breaches of the Geneva Conventions were charged in relation to the treatment of the Vietnamese at S-21 and Au Kanseng Security Centres and are discussed below in Section 16.4.3.2.2.2 with respect to S-21 Security Centre only, having not been established at Au Kanseng Security Centre.

<sup>13220</sup> *See above*, para. 3728.



of those executed were marked for death from the moment of their entry as a result of their enemy status.<sup>13221</sup> Insofar as detainees were executed at these sites with direct intent, the Chamber finds that their deaths were part of the policy to “smash” the most serious category of enemy.

3975. The Chamber has further found that the executions a) at Au Kanseng Security Centre of at least 100 ethnic Jarai, perceived by CPK to have been “external enemies”; and b) at Phnom Kraol Security Centre of prisoner Heus for speaking “an ethnic language”,<sup>13222</sup> separately constituted the crime against humanity of murder. In view of the CPK’s stance toward perceived enemies, the Chamber finds that their execution was the direct result of the policy to “smash” the most serious category of enemy.

3976. The Chamber is satisfied that the foregoing executions were perpetrated in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of murder, as established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres in the above instances, was encompassed by the common purpose.

3977. The Chamber has further found that prisoners died as a result of prevailing conditions at S-21, Kraing Ta Chan and Phnom Kraol Security Centres, and that these deaths were occasioned as a result of *dolus eventualis*.<sup>13223</sup> Recalling that JCE in its basic form is incompatible with *dolus eventualis*,<sup>13224</sup> the Chamber finds that these deaths were not encompassed by the common purpose. Further, the Chamber has found that three deaths at Au Kanseng Security Centre were the result of melees with guards, while two further executions were perpetrated for reasons which were not apparent to the Chamber.<sup>13225</sup> As a result of the paucity of evidence relevant to the intent of the

<sup>13221</sup> Section 12.2.24.1.1: S-21 Security Centre: Legal Findings: Murder; Section 12.3.12.1: Kraing Ta Chan Security Centre: Legal Findings: Murder.

<sup>13222</sup> Section 12.4.7.1: Au Kanseng Security Centre: Legal Findings: Murder (*see also*, para. 3001 (finding that the Jarai were executed as a result of their perceived “external enemy” status)); Section 12.5.8.1: Phnom Kraol Security Centre: Legal Findings: Murder (*see also*, paras 3107-3114).

<sup>13223</sup> Section 12.2: S-21 Security Centre, paras 2560 (blood drawing), 2567-2569 (beatings and mistreatment); Section 12.3: Kraing Ta Chan Security Centre, para. 2815 (mistreatment and detention conditions); Section 12.5: Phnom Kraol Security Centre, para. 3116 (death of Touch as a result of detention conditions).

<sup>13224</sup> Section 15: Applicable Law: Individual Criminal Responsibility, para. 3715.

<sup>13225</sup> Section 12.4: Au Kanseng Security Centre, paras 2963-2964.

perpetrators, the Chamber is not satisfied that these deaths were occasioned as a result of the CPK's policy to "smash" the most serious category of enemy, and accordingly finds that they were not encompassed by the common purpose.

3978. *Extermination* – The Chamber has found that the crime against humanity of extermination was established at S-21, Kraing Ta Chan and Au Kanseng Security Centres. It has found that at least 11,742 people were intentionally executed as part of the same murder operation at S-21. From at least 1,000 deaths at Kraing Ta Chan, an indeterminate fraction were killed as a result of direct intent. At least 111 prisoners were executed at Au Kanseng including at least 100 ethnic Jarai and six Vietnamese.<sup>13226</sup> The Chamber has assessed the criminal conduct underlying the charge of extermination at these sites above under the characterisation of murder and has found that, insofar as it relates to the abovementioned intentional acts,<sup>13227</sup> the crime of murder was encompassed by the common purpose. By extension, the Chamber finds that the intentional, large-scale murder of enemies at these sites was part of the CPK's policy to "smash" the most serious category of enemy. It finds that it was therefore perpetrated in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of extermination, as established at S-21, Kraing Ta Chan and Au Kanseng Security Centres, was encompassed by the common purpose.

3979. *Enslavement* – The Chamber has found that the crime against humanity of enslavement was established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13228</sup> It has found that prisoners were exploited at these sites for the

<sup>13226</sup> Section 12.2.24.1.2: S-21 Security Centre: Legal Findings: Extermination; Section 12.3.12.2: Kraing Ta Chan Security Centre: Legal Findings: Extermination; Section 12.4.7.2: Au Kanseng Security Centre: Legal Findings: Extermination.

<sup>13227</sup> See above, paras 3974-3976.

<sup>13228</sup> Section 12.2.24.1.3: S-21 Security Centre: Legal Findings: Enslavement (finding that detainees with particular skills were forced to work as carpenters, interpreters, cooks, medics, mechanics, construction workers and artists); Section 12.3.12.3: Kraing Ta Chan Security Centre: Legal Findings: Enslavement (finding that a small number of detainees was forced to cook, sweep, carry and fetch for guards, drag corpses from detention buildings and bury them, while others were forced to carry earth, flatten termite mounds, farm rice or graze cattle); Section 12.4.7.3: Au Kanseng Security Centre: Legal Findings: Enslavement (finding that light offenders were forced to plant, farm and forage vegetables, work in rice fields, weed and clear grass for new plantations, cook, carry wood, construct buildings for cadre, assist with interrogations, guard other prisoners and bury bodies); Section 12.5.8.3: Phnom Kraol Security Centre: Legal Findings: Enslavement (finding that light offenders were forced to stomp jute seeds, clear grass, saw wood, work in rice fields, build dams, thresh and transplant rice).

purpose of exacting a gain for the Party. Prisoners who were put to work at S-21 and Kraing Ta Chan had their executions suspended until they had exhausted their purpose.<sup>13229</sup> Light offenders at Au Kanseng and Phnom Kraol Security Centres were forced to work as part of the Party's attempt to "re-educate", "refashion" and "reform" them in line with the Party's aim of developing class stance and disposition toward the revolution.<sup>13230</sup> The Chamber is satisfied that prisoners at all four security centres were enslaved by CPK authorities as a measure of control as part of the revolutionary framework. It finds that this was done in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of enslavement, as established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, was encompassed by the common purpose.

3980. *Imprisonment* – The Chamber has found that the crime against humanity of imprisonment was established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13231</sup> It has found prisoners were arbitrarily detained at these locations as a result of their perceived enemy status.<sup>13232</sup> Detention was overwhelmingly the result of purges and prisoner numbers spiked as the purge of cadres intensified nationwide.<sup>13233</sup> The Chamber is satisfied that the imprisonment of real and perceived

<sup>13229</sup> Section 12.2: S-21 Security Centre, para. 2451; Section 12.3: Kraing Ta Chan Security Centre, para. 2823.

<sup>13230</sup> See above, Section 16.4.2.1.3: Re-education of "Bad Elements".

<sup>13231</sup> Section 12.2.24.1.4: S-21 Security Centre: Legal Findings: Imprisonment; Section 12.3.12.4: Kraing Ta Chan Security Centre: Legal Findings: Imprisonment; Section 12.4.7.4: Au Kanseng Security Centre: Legal Findings: Imprisonment; Section 12.5.8.4: Phnom Kraol Security Centre: Legal Findings: Imprisonment.

<sup>13232</sup> Section 12.2.24.1.4: S-21 Security Centre: Legal Findings: Imprisonment (finding that from at least October 1975 through 7 January 1979, S-21 was used to detain prisoners identified as "enemies", some of whom were implicated in confessions, with the associates of others rounded up, arrested and detained *en masse*); Section 12.3.12.4: Kraing Ta Chan Security Centre: Legal Findings: Imprisonment (finding that prisoners were sent to Kraing Ta Chan on the basis of perceived transgressions against the Party or perceived threat to the revolution, and that this was often the result of their association with other executed prisoners); Section 12.4.7.4: Au Kanseng Security Centre: Legal Findings: Imprisonment (finding that prisoners were detained as a result of their perceived enemy status and that interrogative practices were employed to procure further "confessions" of counter-revolutionary activities); Section 12.5.8.4: Phnom Kraol Security Centre: Legal Findings: Imprisonment (finding that detention at Phnom Kraol Security Centre was the result of a systematic process of implication by association with perceived enemies).

<sup>13233</sup> The incarceration of prisoners at S-21 increased following former Deputy (old) North Zone Secretary KOY Thuon's confessions, which incriminated scores of individuals and led to the arrest, detention and execution of others from early 1977. See Section 12.1.5.1: Internal Factions: Division 310's Planned Capture of Phnom Penh; Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon. At Kraing Ta Chan, an influx of prisoners was apparent from 1977. See Section 12.3: Kraing Ta Chan Security Centre.

enemies was conducted in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of imprisonment, as established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, was encompassed by the common purpose.

3981. *Torture* – The Chamber has found that the crime against humanity of torture was established at S-21 and Kraing Ta Chan Security Centres.<sup>13234</sup> It has found that severe pain and suffering was by and large inflicted upon prisoners during interrogations for the purpose of obtaining “confessions” of counter-revolutionary conduct or procuring incriminatory evidence about other “enemies” or traitorous networks. Torture was also used as a means of intimidating or punishing detainees, typically for failing to provide confessions.<sup>13235</sup> The Chamber is satisfied that detainees were tortured as part of the CPK’s quest to weed out enemies of the revolution and that this was done in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of torture, as established at S-21 and Kraing Ta Chan, was encompassed by the common purpose.

3982. *Persecution on political grounds* – The Chamber has found that the crime against humanity of persecution on political grounds was established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13236</sup> Real and perceived enemies including CIA, KGB and Vietnamese agents, former Khmer Republic officials, counter-revolutionaries, detractors and traitors of the revolution, feudalists,

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Au Kanseng experienced an increase in civilian and military detainees as a result of purges of the Northeast Zone and Division 801, which also coincided with the demise of the Zone Secretary Ya. *See* Section 12.4: Au Kanseng Security Centre, paras 2867, 2885-2886. Prisoner number at Phnom Kraol spiked from 1977 against the backdrop of purges of Sector 105 and Division 920. *See* Section 12.5.4.3: Phnom Kraol Security Centre, Evidence of Arrests in Sector 105.

<sup>13234</sup> Section 12.2.24.1.5: S-21 Security Centre: Legal Findings: Torture; Section 12.3.12.5: Kraing Ta Chan: Legal Findings: Torture.

<sup>13235</sup> Section 12.2.24.1.5: S-21 Security Centre: Legal Findings: Torture (finding that prisoners were systematically tortured in order to secure confessions of involvement in counterrevolutionary conduct or treason); Section 12.3.12.5: Kraing Ta Chan: Legal Findings: Torture (generally).

<sup>13236</sup> Section 12.2.24.1.6: S-21 Security Centre: Legal Findings: Persecution on Political Grounds; Section 12.3.12.6: Kraing Ta Chan Security Centre: Legal Findings: Persecution on Political Grounds; Section 12.4.7.5: Au Kanseng Security Centre: Legal Findings: Persecution on Political Grounds; Section 12.5.8.6: Phnom Kraol Security Centre: Legal Findings: Persecution on Political Grounds.

ethnic Vietnamese and others were systematically singled out for adverse treatment by the CPK and dispensed with at these security centres according to the revolutionary framework. As detailed above, these elements were variously targeted for arbitrary arrest and detention, torture, physical and psychological mistreatment, re-education through forced labour and indoctrination, disappearance and death.

3983. Having found that the CPK actively discriminated against several categories of enemy as a means of defending and preserving the revolutionary order, the Chamber is satisfied that the foregoing discriminatory treatment was meted out to real and perceived enemies in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of persecution on political grounds, as established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, was encompassed by the common purpose.

3984. *Persecution on religious grounds* – The Closing Order charges the Accused with the crime against humanity of persecution on religious grounds under the mode of liability of joint criminal enterprise pursuant to the policy to “smash” enemies and re-educate “bad elements”.<sup>13237</sup> The Case 002 Additional Severance Decision limited the implementation of this policy to the establishment and operation of security centres and execution sites and within the context of internal purges.<sup>13238</sup> The Chamber observes that the Closing Order does not charge religious persecution at any of the security centres within the scope of Case 002/02. Instead, the crime is charged with regard to the treatment of the Cham, MOP Phase Two, at 1<sup>st</sup> January Dam and at the Tram Kak Cooperatives.<sup>13239</sup> The Chamber has assessed below in Section 16.4.3: Targeting of Specific Groups whether this crime is encompassed by the common purpose with regard to the treatment of the Cham<sup>13240</sup> and Buddhists.<sup>13241</sup> As the charge of

<sup>13237</sup> Closing Order, paras 1525(iii)(h), 1529.

<sup>13238</sup> See above, para. 3728.

<sup>13239</sup> Closing Order, paras 1419-1421. Persecution on religious grounds against Buddhists is charged at nine other sites which are outside the scope of Case 002/02. See Case 002 Additional Severance Decision Annex.

<sup>13240</sup> See below, para. 3992.

<sup>13241</sup> See below, para. 4019.

persecution on religious grounds is inapplicable to the security centres within the scope of Case 002/02, the Chamber enters no findings in this regard.

3985. *Other inhumane acts through attacks against human dignity* – The Chamber has found that the crime against humanity of other inhumane acts through attacks against human dignity was established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13242</sup> Prisoners at all four sites were imprisoned arbitrarily; exposed to appalling and unhygienic detention conditions; deprived of sufficient food and effective medicine causing illness, disease and death; and subjected to dehumanisation and a climate of fear and intimidation by security centre personnel. Some prisoners were tortured and threatened into complying with *Angkar*'s prescriptions, while others witnessed the death and disappearance of their fellow detainees. Those who were forced to work were enslaved for the sole benefit of the Party. The Chamber considers that the imposition of such delinquent conditions, in the form of serious attacks on human dignity and serious mental and physical suffering, was part of the CPK authorities' means of exercising control over the prisoners and was therefore implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country from enemies and radically transform society. The Chamber finds that the crime against humanity of other inhumane acts through attacks against human dignity, as established at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, was encompassed by the common purpose.

3986. *Other inhumane acts through conduct characterised as enforced disappearances* – The Chamber has found that the crime against humanity of other inhumane acts through enforced disappearances was established at Kraing Ta Chan and Phnom Kraol Security Centres.<sup>13243</sup> The Chamber recalls that a fundamental tenet of the CPK's *modus operandi* was the principle of secrecy in order to safeguard the Party

<sup>13242</sup> Section 12.2.24.1.8: S-21 Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 12.3.12.8: Kraing Ta Chan Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 12.4.7.7: Au Kanseng Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity; Section 12.5.8.7: Phnom Kraol Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity.

<sup>13243</sup> Section 12.3.12.9: Kraing Ta Chan Security Centre: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances; Section 12.5.8.8: Phnom Kraol Security Centre: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances.

from enemy infiltration and therefore the Party's longevity.<sup>13244</sup> The Chamber has found that dispensing with enemies in accordance with the revolutionary framework necessitated operating in a shroud of secrecy, and is satisfied that this was in fact done in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform society. The Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as enforced disappearances, as established at Kraing Ta Chan and Phnom Kraol Security Centres, was encompassed by the common purpose.

#### 16.4.2.3. *Conclusion*

3987. In light of the foregoing, the Chamber finds that the policy to identify, arrest, isolate and "smash" the most serious category of enemy at security centres and execution sites, and to re-educate "bad elements" was intrinsically linked to the common purpose. The policy variously involved the commission of the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, persecution on political grounds and other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, thereby rendering it criminal in character.

#### 16.4.3. *Targeting of Specific Groups*

3988. The Closing Order charges the existence of a targeting policy by the CPK to establish "an atheistic and homogenous society without class divisions, abolishing all ethnic, national, religious, racial, class and cultural differences", as a means of achieving the common purpose. According to the Closing Order, Cham, Vietnamese and Buddhist groups, as well as former Khmer Republic officials (including civil servants and former military personnel) and their families, were targeted in a pattern that began before 1975 and continued until at least 6 January 1979.<sup>13245</sup>

<sup>13244</sup> See above, para. 3927.

<sup>13245</sup> Closing Order, paras 205, 207.

16.4.3.1. *Cham*

3989. The Closing Order identifies the Cham as one of the objects of the CPK's targeting policy.<sup>13246</sup> The Parties' submissions regarding the treatment of the Cham, including the existence of a CPK policy targeting this group, have been addressed in Section 13.2: Treatment of the Cham.

16.4.3.1.1. *Existence of policy*

3990. The Chamber has established the existence of a CPK policy throughout the DK period targeting the Cham as a result of their group identity as part of the Party's overarching goal to establish an atheistic and homogenous Khmer society.<sup>13247</sup> As part of this targeting policy, which intensified following a series of rebellions in late 1975, the Cham population was forcibly removed from the East Zone, broken up and systematically dispersed in the Central (old North) Zone to "ease tensions" (MOP Phase Two). The Chamber has found that this was done to break up Cham communities rather than merely to reallocate the labour force.<sup>13248</sup> The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

16.4.3.1.2. *Criminality of policy*

3991. As limited to Case 002/02, the Chamber is seized of facts relevant to the implementation of this policy through a joint criminal enterprise. Regarding the treatment of the Cham, the Chamber is seized of facts concerning genocide by killing members of this group (from 1977 at Trea Village Security Centre and Wat Au Trakuon); murder and extermination as crime against humanity (within the same temporal and geographic scope for extermination, with murder limited to Wat Au Trakuon, Trea Village Security Centre and widespread killings from 1977); and imprisonment and torture (both from mid-1978 at Trea Village Security Centre). With respect to MOP Phase Two, the Chamber is seized of the implementation of this policy regarding the crimes against humanity of persecution on political and religious grounds, and other inhumane acts through conduct characterised as forced transfer only.<sup>13249</sup> For

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<sup>13246</sup> See above, para. 3728.

<sup>13247</sup> Section 13.2.5: Treatment of the Cham: Targeting of the Cham.

<sup>13248</sup> Section 13.2.8: Movement of Population Phase Two.

<sup>13249</sup> Section 13.2: Treatment of the Cham, para. 3182. The crimes against humanity of extermination and other inhumane acts through attacks against human dignity and conduct characterised as enforced



the reasons outlined below, the Chamber finds that the policy targeting the Cham for adverse treatment involved the commission of crimes which were encompassed by the common purpose.

3992. *Murder, extermination and genocide by killing* – The Chamber has found that a large number of people including a majority of Cham from the Kang Meas district in Sector 41 were arrested and brought to Wat Au Trakuon in 1977 for execution.<sup>13250</sup> It has further found that Cham people were arbitrarily arrested and detained in 1978 at Trea Village Security Centre, where their Cham identity was systematically screened, at times through torture, before they were executed in large numbers.<sup>13251</sup> Furthermore, the Chamber has found that these executions constituted the *actus reus* of genocide by killing members of the Cham religious group and were perpetrated with genocidal intent.<sup>13252</sup>

3993. Having established that a CPK policy to destroy the Cham population existed from 1977,<sup>13253</sup> the Chamber finds that the CPK policy targeting the Cham had as its primary objective their physical destruction as an ethnic and religious group, as such. The Chamber is satisfied that the treatment of the Cham demonstrates the CPK's objective of establishing an atheistic and homogenous society without class divisions and, in so doing, the Party's intent to abolish all national, religious, class and cultural differences. The Chamber is further satisfied that this objective was implemented through the CPK's policy to identify, arrest, isolate and "smash" enemies,<sup>13254</sup> and was therefore in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society. The Chamber accordingly finds that the crime of genocide by killing and the crimes against humanity of murder and extermination committed

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disappearances were not established with respect to MOP Phase Two. *See* Section 13.2.10: Treatment of the Cham: Legal Findings (specifically Sections 13.2.10.2, 13.2.10.7, 13.2.10.9).

<sup>13250</sup> Section 13.2.10.1: Treatment of the Cham: Legal Findings: Murder.

<sup>13251</sup> Sections 13.2.10.1-13.2.10.4: Treatment of the Cham: Legal Findings: Murder, Extermination, Imprisonment, Torture.

<sup>13252</sup> Section 13.2.10.10: Treatment of the Cham: Legal Findings: Genocide.

<sup>13253</sup> Section 13.2: Treatment of the Cham, para. 3228.

<sup>13254</sup> *See above*, Section 16.4.2: Establishment and Operation of Security Centres and Execution Sites.

against the Cham, as established by the Chamber within the relevant temporal and geographic parameters described above, were encompassed by the common purpose.

3994. *Imprisonment and torture* – The Chamber refers to its finding in the preceding paragraph that the treatment of the Cham, including their arbitrary detention at Trea Village Security Centre, torture and eventual execution, constituted the implementation of the CPK’s policy to identify, arrest, isolate and “smash” enemies. The Chamber is satisfied that these acts were in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society. The Chamber accordingly finds that the crimes against humanity of imprisonment and torture, as established by the Chamber at Trea Village Security Centre, were encompassed by the common purpose.

3995. *Persecution on political grounds* – The Chamber has found that the CPK imposed restrictions on Cham religious and cultural practices in the East Zone, Central (old) North Zone and other locations, and that these restrictions largely took place between 1975 and 1977 (*i.e.* within the scope of MOP Phase Two). Such restrictions widely included the evacuation of Cham populations and their dispersal among Khmer communities;<sup>13255</sup> prohibitions on the use of the Cham language, daily prayers, traditional clothing and grooming practices; the confiscation or burning of Korans; the destruction, dismantling and repurposing of mosques and an enforced “Khmer” dietary regime including the consumption of pork.<sup>13256</sup> The Chamber has further found that these practices were imposed in response to the Cham rebellions in late 1975 and the group’s status as perceived enemies,<sup>13257</sup> and that these acts were committed with specific intent to discriminate against the Cham.<sup>13258</sup> The Chamber is satisfied that the foregoing discriminatory acts were perpetrated against the Cham in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society.

<sup>13255</sup> Section 13.2.8: Treatment of the Cham: Movement of Population Phase Two.

<sup>13256</sup> Section 13.2.6.1: Treatment of the Cham: Restrictions on Cham Religious and Cultural Practices in the East Zone; Section 13.2.6.2: Treatment of the Cham: Restrictions on Cham Religious and Cultural Practices in the Central (old North) Zone; Section 13.2.6.3: Treatment of the Cham: Restrictions on Cham Religious and Cultural Practices in Other Locations.

<sup>13257</sup> Section 13.2: Treatment of the Cham, paras 3232, 3234, 3242, 3268.

<sup>13258</sup> Section 13.2.10.5: Treatment of the Cham: Legal Findings: Persecution on Political Grounds.

The Chamber accordingly finds that the crimes against humanity of persecution on political grounds, as established by the Chamber within MOP Phase Two, was encompassed by the common purpose.

3996. *Persecution on religious grounds* – The Chamber has found that the CPK imposed restrictions on Cham religious and cultural practices at the 1<sup>st</sup> January Dam Worksite, in Krouch Chhmar district, within the Central (old North) Zone and various areas throughout Cambodia. Further, the Chamber has found that the CPK targeted the Cham for destruction as an ethnic and religious group, as such, from some time in 1977.<sup>13259</sup> The Chamber is satisfied that such discriminatory treatment was meted out in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society. The Chamber accordingly finds that the crime against humanity of persecution on religious grounds was encompassed by the common purpose.

3997. *Other inhumane acts through conduct characterised as forced transfer* – The Chamber has found that Cham communities were “evacuated” from the East Zone after two rebellions in late 1975 and dispersed among Khmer populations.<sup>13260</sup> The Chamber has additionally found that this was part of a discriminatory campaign targeting the Cham broadly as enemies (during MOP Phase Two) and on religious grounds from late 1975 through 6 January 1979.<sup>13261</sup> The Chamber is satisfied that the forcible transfer of Cham communities was perpetrated in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society. The Chamber accordingly finds that the crime against humanity of other inhumane acts through conduct characterised as forced transfer was encompassed by the common purpose.

<sup>13259</sup> Section 13.2.10.6: Treatment of the Cham: Legal Findings: Persecution on Religious Grounds.

<sup>13260</sup> Section 13.2.10.8: Treatment of the Cham: Legal Findings: Other Inhumane Acts through Conduct Characterised as Forced Transfer.

<sup>13261</sup> Sections 13.2.10.5-13.2.10.6: Treatment of the Cham: Legal Findings: Persecution on Political and Religious Grounds.

16.4.3.1.3. *Conclusion*

3998. In light of the foregoing, the Chamber finds that the policy targeting the Cham population for adverse treatment on the basis of their identity was intrinsically linked to the common purpose. The policy variously involved the commission of the crime of genocide by killing members of the Cham group and the crimes against humanity of murder, extermination, imprisonment, torture, persecution on religious and political grounds and the other inhumane act of conduct characterised as forced transfer as a means of achieving the common purpose, thereby rendering it criminal in character.

16.4.3.2. *Vietnamese*

3999. The Closing Order identifies the Vietnamese as one of the objects of the CPK's targeting policy.<sup>13262</sup> The Parties' submissions with regard to the Vietnamese, including the existence of a CPK policy targeting this group, have been addressed in Section 13.3: Treatment of the Vietnamese.

16.4.3.2.1. *Existence of policy*

4000. The Chamber has accepted that a broad policy targeting the Vietnamese for adverse treatment existed in DK throughout the indictment period,<sup>13263</sup> and now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

16.4.3.2.2. *Criminality of policy*

4001. As limited to Case 002/02, the Chamber is seized of facts relevant to the implementation of this policy through a joint criminal enterprise to the exclusion of crimes allegedly committed by the RAK on Vietnamese territory. Regarding the treatment of the Vietnamese, the Chamber is seized of facts concerning genocide by killing (nationwide from April 1977); the crimes against humanity of murder (of Vietnamese who resisted deportation in 1975-1976 and nationwide from April 1977), extermination (nationwide from April 1977), deportation (from Prey Veng, Svay Rieng and Tram Kak Cooperatives in 1975 and 1976) and persecution on racial grounds (in

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<sup>13262</sup> See above, para. 3728.

<sup>13263</sup> Section 13.3.5: Treatment of the Vietnamese: Targeting of the Vietnamese. See also, Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict); Section 16.3: Real or Perceived Enemies.

Prey Veng, Svay Rieng, Tram Kak Cooperatives and the S-21, Kraing Ta Chan and Au Kanseng Security Centres throughout the indictment period); as well as grave breaches of the Geneva Conventions (at S-21).<sup>13264</sup> For the reasons outlined below, the Chamber finds that the policy targeting the Vietnamese for adverse treatment involved the commission of crimes which were encompassed by the common purpose.

#### 16.4.3.2.2.1. Genocide and crimes against humanity

4002. *Murder, extermination and genocide by killing* – The Chamber has found that the crime against humanity of murder was established in relation to: a) four Vietnamese families in Svay Rieng in 1978; b) Vietnamese fishermen and refugees caught encroaching on DK waters at Ou Chheu Teal port after April or May 1977; c) Vietnamese captured by Division 164 on 19 and 20 March 1978; d) seven Vietnamese families on Ta Mov, Kampong Chhnang province in 1977; e) a large number of Vietnamese civilians at Wat Ksach in Siem Reap province in late 1978; and f) 13 relatives of UCH Sunlay and the wives and children of three or four other Khmer men in Kratie in September 1978.<sup>13265</sup> Each of the victims was killed as a result of their Vietnamese identity.<sup>13266</sup> In addition to these deaths, the Chamber has found that the execution of 780 Vietnamese persons at S-21 and Au Kanseng Security Centres – all of whom were executed on the basis of their Vietnamese identity<sup>13267</sup> – established the crime against humanity of extermination.<sup>13268</sup> Finally, the Chamber has found that the foregoing killings were systematically perpetrated with genocidal intent targeting

<sup>13264</sup> Section 13.3: Treatment of the Vietnamese, paras 3351 (grave breaches of the Geneva Conventions against Vietnamese detainees including wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial and unlawful confinement, 3360 (crimes against humanity).

<sup>13265</sup> Section 13.3.10.1: Treatment of the Vietnamese: Legal Findings: Murder.

<sup>13266</sup> Regarding (a), *see* Section 13.3: Treatment of the Vietnamese, para. 3453 (the victims were killed as part of a systematic policy targeting Vietnamese in the area). Regarding (b) and (c), *see* Section 13.3: Treatment of the Vietnamese, paras 3490, 3493 (CPK armed forces were ordered to systematically target Vietnamese boats). For (d), (e) and (f), *see* Section 13.3: Treatment of the Vietnamese, paras 3497, 3500 (the victims were separated from non-Vietnamese individuals before being killed).

<sup>13267</sup> Regarding Au Kanseng, *see* Section 12.4: Au Kanseng Security Centre, para. 2996 (finding that the six Vietnamese victims were targeted on racial grounds). Regarding S-21, *see* Section 12.2: S-21 Security Centre, paras 2480 (finding that 774 Vietnamese were killed at S-21), 2607-2609 (finding that the Vietnamese were arrested and detained at S-21 as a result of their perceived racial difference to Khmers).

<sup>13268</sup> Section 13.3.10.2: Treatment of the Vietnamese: Legal Findings: Extermination.

individuals on the basis of their membership of the Vietnamese racial, national and/or ethnic group, and therefore constituted the crime of genocide by killing.<sup>13269</sup>

4003. Having established that a CPK policy to destroy the Vietnamese population in Cambodia existed from April 1977,<sup>13270</sup> the Chamber finds that the CPK policy targeting the Vietnamese as enemies had as its primary objective their physical destruction as a racial group, as such, in Cambodia from April 1977 to 6 January 1979. The Chamber is satisfied that this objective was implemented through the CPK's policy to identify, arrest, isolate and "smash" enemies,<sup>13271</sup> and was therefore in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform the population into a homogenous Khmer society. The Chamber therefore finds that the crime of genocide by killing and the crimes against humanity of murder and extermination against the Vietnamese, as established by the Chamber within the relevant temporal and geographic parameters described above, were encompassed by the common purpose.

4004. *Deportation* – The Chamber has found that the crime against humanity of deportation of the Vietnamese was established in 1975 and 1976 at the Tram Kak Cooperatives, across Prey Veng and Svay Rieng.<sup>13272</sup> This was consistent with evidence showing that, due to their perceived enemy status,<sup>13273</sup> the Vietnamese were generally targeted for deportation from the early stages of the DK regime.<sup>13274</sup> In line with the Chamber's findings concerning the CPK's shift in policy from deportation of the Vietnamese to their destruction from about April 1977,<sup>13275</sup> the Chamber finds that between 17 April 1975 and April 1977, the CPK policy targeting the Vietnamese had as its primary objective their deportation from Cambodian territory. It is satisfied that this objective was implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among

<sup>13269</sup> Section 13.3.10.5: Treatment of the Vietnamese: Legal Findings: Genocide.

<sup>13270</sup> Section 13.3: Treatment of the Vietnamese, para. 3416.

<sup>13271</sup> See above, Section 16.4.2: Establishment and Operation of Security Centres and Execution Sites.

<sup>13272</sup> Section 10.1.13.3: Tram Kak Cooperatives: Legal Findings: Deportation; Section 13.3.10.3: Treatment of the Vietnamese: Legal Findings: Deportation.

<sup>13273</sup> Section 13.3.7: Treatment of the Vietnamese: Movement of Vietnamese Civilians from Cambodia to Vietnam; Section 16.3.2.1.3.5: Real or Perceived Enemies: CIA, KGB and "Yvon" (Vietnamese) Agents.

<sup>13274</sup> Section 13.3: Treatment of the Vietnamese, para. 3415.

<sup>13275</sup> Section 13.3: Treatment of the Vietnamese, para. 3415.

other things, defend the country against enemies and radically transform the population into a homogenous Khmer society. The Chamber finds that the crime against humanity of deportation, as established at the Tram Kak Cooperatives, Prey Veng and Svay Rieng in 1975 and 1976, was encompassed by the common purpose.

4005. *Persecution on racial grounds* – The Chamber has found that the crime against humanity of persecution on racial grounds was established at the Tram Kak Cooperatives (in the period before mid-1976), S-21 Security Centre (from March 1976), Au Kanseng Security Centre (in late 1978), and in Prey Veng and Svay Rieng (between 1975 and 1979).<sup>13276</sup> The Chamber recalls its findings that the Vietnamese were singled out by the CPK prior to 1975,<sup>13277</sup> targeted for adverse treatment throughout the DK period (in particular, for deportation before April 1977 and for destruction as a racial group thereafter),<sup>13278</sup> and were considered to be the DK’s most dangerous enemy,<sup>13279</sup> especially as the armed conflict with Vietnam intensified from 1977.<sup>13280</sup> The Chamber has found that the Vietnamese were specifically subjected to discrimination on the basis of their membership of the Vietnamese racial group,<sup>13281</sup> and is satisfied that this specific intent was shared by direct perpetrators and JCE participants alike. In view of the forgoing, and in light of the above findings concerning the extent and scale of atrocities committed against the Vietnamese population, the Chamber finds that the CPK’s discriminatory policies targeting the Vietnamese for deportation and destruction were implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into a homogenous Khmer society of worker-peasants. The Chamber therefore finds that the crime against humanity of persecution on racial grounds, as

<sup>13276</sup> Section 10.1.13.8: Tram Kak Cooperatives: Legal Findings: Persecution on Racial Grounds; Section 12.2.24.1.7: S-21 Security Centre: Legal Findings: Persecution on Racial Grounds; Section 12.4.7.6: Au Kanseng Security Centre: Legal Findings: Persecution on Racial Grounds; Section 13.3.10.4 Treatment of the Vietnamese: Legal Findings: Persecution on Racial Grounds.

<sup>13277</sup> Section 3: Historical Background, paras 225-229; Section 13.3: Treatment of the Vietnamese, paras 3382-3384.

<sup>13278</sup> Section 13.3.5: Treatment of the Vietnamese: Targeting of the Vietnamese. *See above*, paras 4002-4003.

<sup>13279</sup> *See above*, Section 16.3: Real or Perceived Enemies, para. 3853.

<sup>13280</sup> Section 4: General Overview, para. 285; Section 12.1.5.1.2: Internal Factions: 1977 Events: Findings.

<sup>13281</sup> Section 13.3.10.4: Treatment of the Vietnamese: Legal Findings: Persecution on Racial Grounds.

committed against the Vietnamese and established by the Chamber, was encompassed by the common purpose.

16.4.3.2.2.2. Grave breaches of the 1949  
Geneva Conventions

4006. The Chamber has found that grave breaches of the Geneva Conventions were committed at S-21 Security Centre against Vietnamese prisoners protected under the 1949 Geneva Conventions through: a) wilful killing; b) torture; c) inhumane treatment; d) wilfully causing great suffering or serious injury to body or health; e) wilfully depriving prisoners of war or civilians of the rights of a fair and regular trial; and f) unlawful confinement of civilians. The Chamber has assessed the criminal conduct underpinning these charges (as crimes against humanity) in the foregoing paragraphs with regard to the treatment of the Vietnamese at S-21, and elsewhere in this Judgement within the context of security centres, execution sites and purges.<sup>13282</sup>

4007. *Wilful killing, torture and unlawful confinement* – The Chamber recalls that save for their chapeau requirements, the grave breaches of wilful killing, torture and unlawful confinement share the same legal elements as the respective crimes against humanity of murder, torture and imprisonment,<sup>13283</sup> which the Chamber has determined were committed in furtherance of the common purpose and encompassed thereby.<sup>13284</sup> Having established that these crimes were committed at S-21 against Vietnamese prisoners protected under the Geneva Conventions,<sup>13285</sup> the Chamber finds that the grave breaches of wilful killing, torture and unlawful confinement were encompassed by the common purpose.

4008. *Wilfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial* – The Chamber recalls that save for their chapeau requirements, the grave breach of wilfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial is largely identical to the crime against humanity of imprisonment, and fundamentally turns on the arbitrary deprivation of liberty without due process of

<sup>13282</sup> See above, Section 16.4.2: Establishment and Operation of Security Centres and Execution Sites.

<sup>13283</sup> Sections 9.2.1-9.2.2, 9.2.7: Applicable Law: Grave Breaches of the Geneva Conventions 1949 (wilful killing, torture and unlawful confinement of a civilian).

<sup>13284</sup> See above, paras 3980 (imprisonment), 3981 (torture), 3974 (murder), 4002 (murder, extermination and genocide by killing of the Vietnamese).

<sup>13285</sup> See above, fn. 13282.



law.<sup>13286</sup> In finding that the crime against humanity of imprisonment was established at S-21, the Chamber has taken into consideration the fact that prisoners were provided with no legal recourse upon being detained at S-21; they were given no information on their rights, what they were accused of and were not provided with access to legal representation or brought before a judge. Prisoners were not formally charged and had no opportunity to defend themselves against allegations that they were “enemies”. Indeed, the Chamber has found that no functioning judiciary existed during the DK period.<sup>13287</sup> Having established that the crime against humanity of imprisonment was committed in furtherance of the common purpose and was encompassed thereby,<sup>13288</sup> and that Vietnamese persons protected under the Geneva Conventions were arbitrarily imprisoned at S-21,<sup>13289</sup> the Chamber finds that the grave breach of wilfully depriving a prisoner of war or a civilian of the rights of a fair and regular trial was encompassed by the common purpose.

4009. *Inhumane treatment* – The Chamber observes that save for their chapeau requirements, the legal elements of the grave breach of inhumane treatment are similar to those of the crime against humanity of other inhumane acts. Whereas both crimes require intentional acts or omissions causing serious mental or physical suffering or injury, or intentional acts constituting a serious attack on human dignity, the grave breach of inhumane treatment imports the notion of “serious mental *harm* or physical suffering or injury”.<sup>13290</sup> The Chamber considers the addition of “harm” to be inconsequential to the overall assessment of conduct, as the notion is synonymous with suffering and/or injury. Having established that the crime against humanity of other inhumane act through attacks against human dignity was committed in furtherance of the common purpose and was encompassed thereby,<sup>13291</sup> and that this crime was

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<sup>13286</sup> Section 9: Applicable Law: Crimes, paras 689, 691-694 (the crime against humanity of imprisonment); 770 (the grave breach of the Geneva Conventions 1949 of wilfully depriving a prisoner of war or civilian the rights of a fair and regular trial).

<sup>13287</sup> Section 5: Administrative Structures, paras 417-418; Section 12.2: S-21 Security Centre, para. 2582.

<sup>13288</sup> See above, para. 3980.

<sup>13289</sup> Section 12.2.24.2.5: S-21 Security Centre: Legal Findings: Wilfully Depriving a Prisoner of War or Civilian of the Rights of Fair and Regular Trial.

<sup>13290</sup> Section 9: Applicable Law: Crimes, paras 724-725 (other inhumane acts), 766 (the grave breaches of the Geneva Conventions of 1949 of inhumane treatment).

<sup>13291</sup> See above, para. 3982.

perpetrated against Vietnamese prisoners at S-21,<sup>13292</sup> the Chamber finds that the grave breach of inhumane treatment was encompassed by the common purpose.

4010. *Wilfully causing great suffering or serious injury to body or health* – The Chamber recalls that this grave breach consists of conduct causing great suffering or serious injury to body or health (including mental health) but does not include acts which solely cause harm to an individual’s human dignity.<sup>13293</sup> The Chamber has found that the treatment meted out to Vietnamese prisoners at S-21 constituted attacks against human dignity *and* serious mental and physical suffering and injury.<sup>13294</sup> Having established that this conduct, in the form of the crime against humanity of other inhumane acts, was committed in furtherance of the common purpose and was encompassed thereby,<sup>13295</sup> the Chamber finds that the grave breach of wilfully causing great suffering or serious injury to body or health was encompassed by the common purpose.

4011. In view of the CPK’s policy targeting the Vietnamese for destruction from April 1977 to 6 January 1979, and its policy to “smash” the most serious category of enemy, the Chamber is satisfied that the foregoing grave breaches of the Geneva Conventions were perpetrated in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and radically transform the population into a homogenous Khmer society of worker-peasants.

#### 16.4.3.2.3. *Conclusion*

4012. In light of the foregoing, the Chamber finds that the policies targeting the Vietnamese population in Cambodia a) for deportation between 17 April 1975 and April 1977; b) for destruction from April 1977 until 6 January 1979; and c) generally for identification, arrest, isolation and “smashing” as the most serious category of enemy, were intrinsically linked to the common purpose. The policies variously

<sup>13292</sup> Section 12.2.24.1.8: S-21 Security Centre: Legal Findings: Other Inhumane Acts through Attacks Against Human Dignity (generally). For Grave Breaches, *see also*, Section 12.2.24.2.2: Torture; Section 12.2.24.4: Wilfully Causing Great Suffering or Serious Injury to Body or Health, Inhumane Treatment.

<sup>13293</sup> Section 9: Applicable Law: Crimes, para. 761.

<sup>13294</sup> Section 12.2.24.2.4: S-21 Security Centre: Legal Findings: Wilfully Causing Great Suffering or Serious Injury to Body or Health.

<sup>13295</sup> *See above*, para. 3982.

involved the commission of the crimes against humanity of murder, extermination, deportation, persecution on racial grounds; the crime of genocide by killing; and grave breaches of the Geneva Conventions through wilful killings, torture, inhumane treatment, wilful infliction of great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial and unlawful confinement of civilians. The policies were therefore criminal in character.

#### 16.4.3.3. Buddhists

4013. The Closing Order identifies the Buddhists as one of the objects of the CPK's targeting policy.<sup>13296</sup> The Co-Prosecutors submit that the CPK policy to persecute and kill enemies included the persecution of Buddhists.<sup>13297</sup> The KHIEU Samphan Defence submits that the Chamber was improperly seized of facts concerning a nationwide policy against Buddhists.<sup>13298</sup> The Chamber has already determined that, while it is only seized of facts relevant to the targeting of Buddhists in the Tram Kak Cooperatives, this does not preclude consideration of evidence that is relevant to the development of the policy about their treatment, which may have originated outside of Tram Kak district.<sup>13299</sup>

4014. Neither the NUON Chea Defence nor the Lead Co-Lawyers make any submissions relevant to the existence of a targeting policy against Buddhists. The Chamber will address the merits of the other Parties' submissions following a holistic appraisal of the evidence before it.

##### 16.4.3.3.1. *Existence of policy*

4015. Evidence demonstrating the CPK's stance toward Buddhism and monks has been assessed in Section 3: Historical Background, Section 10.1.9: Tram Kak Cooperatives and Section 16.3.2.1.3.4: Real or Perceived Enemies. In addition to the evidence discussed in the Tram Kak Cooperatives section, the Chamber has before it evidence demonstrating a consistent and widespread pattern of the forcible defrocking of monks in the aftermath of 17 April 1975, followed by their expulsion from pagodas

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<sup>13296</sup> See above, para. 3728.

<sup>13297</sup> Co-Prosecutors' Closing Brief, paras 372-381.

<sup>13298</sup> KHIEU Samphan Closing Brief, paras 1492-1521.

<sup>13299</sup> Section 2: Preliminary Issues, para. 178.

throughout the country.<sup>13300</sup> The evidence also demonstrates the subsequent closure and destruction of pagodas,<sup>13301</sup> their conversion for use for non-religious purposes

<sup>13300</sup> See e.g., T. 2 May 2012 (PEAN Khean), E1/71.1, p. 50 (stating that he “heard people saying that monks were defrocked or disrobed”); T. 19 June 2012 (YUN Kim), E1/88.1, p. 50 (“after 1976, there were no longer any monks” in Kratie); T. 20 June 2012 (YUN Kim), E1/89.1, p. 77 (stating that, in Kratie, “when no people or laypersons offering food to the monk, a monk could never remain in the pagoda.”); T. 1 October 2012 (KHIEV En), E1/127.1, p. 67 (Kampong Leang, Kampong Chhnang, West Zone); T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 57 (stating that the head monk of Po Veal Pagoda (Battambang) was evacuated and had disappeared since his removal), 59 (“at Battambang, from the New Year of 1976, all Buddhist monks were dispelled [*sic*] from the pagodas.”); T. 13 December 2012 (PHAN Van), E1/153.1, p. 21 (stating that in Mondulkiri during the Khmer Rouge era, people “did not see Buddhist monks anymore”); T. 7 February 2013 (PIN Yathay), E1/170.1, p. 22 (recalling *Samdech* HUOT Tat’s refusal to leave Phnom Penh due to his old age); T. 19 March 2015 (RIEL Son), E1/280.1, pp. 13-14 (stating that more than 100 monks were “evacuated” from Phnom Penh and elsewhere); T. 19 May 2015 (OR Ho), E1/301.1, pp. 6, 42, 59 (Prey Sraengae village, Kampong Thom, Central Zone); T. 26 May 2015 (MEAS Layhuor), E1/305.1, pp. 66-67 (1<sup>st</sup> January Dam); T. 27 May 2015 (HUN Sethany), E1/306.1, p. 30 (Baray district, where he met the monk who was instructed to disrobe); T. 13 August 2015 (CHHIT Yoekuk), E1/330.1, p. 24 (stating that in the Preah Netr Preah district, Northwest Zone, monks “were not allowed to remain in the temple” and that “all the monks were defrocked and they all were forced to leave the monkhood.”); T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 61 (monks and civilians were evacuated from Bo Pagoda in Phnum Srok district, Northwest Zone, in 1975); T. 9 September 2015 (SOS Min), E1/344.1, p. 64 (Angkor Ban commune, Krouch Chhmar district, Central/East Zones); T. 14 September 2015 (SEN Srun), E1/346.1, pp. 12-13 (Wat Au Trakuon, Central (old North) Zone); T. 16 September 2015 (TAY Koemhun), E1/348.1, p. 23 (stating that in Sambuor Meas village, Kampong Cham province, East Zone “[t]he commune chief [...] had been a monk there until the time that he was asked to defrock.”); T. 5 October 2015 (BAN Seak), E1/353.1, p. 37 (Chamkar district, East Zone); T. 19 January 2016 (PRAK Yut), E1/378.1, p. 84 (stating that “[b]etween 1975 and 1979 there were not Buddhist monks and there were no pagodas” in Kampot (Southwest Zone) and Kampong Cham (East Zone)); T. 11 December 2015 (UNG Sam Ean), E1/366.1, pp. 68-69 (stating that “[t]here were no monks in the pagoda any more” at Kraham Ka village, Chantrei commune, East Zone); T. 6 January 2016 (THANG Phal), E1/371.1, p. 70 (stating that “[b]etween 1975 and ’79, there were no longer any monks living in the pagoda” in Pou Chentam village, Svay Antor commune, East Zone); T. 3 August 2016 (CHIN Saroeun), E1/454.1, pp. 34-35 (stating that “it was after the 17 April 1975 that I was defrocked. [...] I was told to leave the monkhood [when sent to Mondulkiri] because the regime said that there would be no more monks in the regime”); T. 17 October 2016 (CHEAL Choeun), E1/484.1, p. 6 (“monks were “disrobed one after another until there was no monk in the pagoda” in Bakan district, Northwest Zone); T. 21 November 2016 (SON Em), E1/500.1, p. 29 (“It did not happen only in Battambang province. It happened all over the country. Monks and pagoda[s] were not allowed to continue.”); T. 15 December 2016 (LONG Vonn), E1/514.1, p. 83 (stating that *Ta Tit[h]* “was defrocked in around 1975” in Takeo province). See also, T. 19 June 2013 (NOU Mao), E1/209.1, pp. 71-72 (stating that *Ta Mok*, who was in charge of the cult section, promoted the idea of defrocking Buddhist monks in the Southwest Zone before 1975 and that after 1975 there were no more monks to defrock, because they had already been defrocked at the very beginning).

<sup>13301</sup> See e.g., T. 2 May 2012 (PEAN Khean), E1/71.1, p. 50 (stating that after 1975, “[t]here were no pagodas; pagodas were removed”); T. 19 June 2012 (YUN Kim), E1/88.1, pp. 51 (stating that, in Kratie “people were not allowed to enter the compound of the pagoda.”), 53 (“Sambour pagoda, the 100 Pillars pagoda, became decayed, and some of the roof tiles were removed so that they could be used to build – to use as the roof of a hospital.”); T. 23 August 2012 (EM Oeun), E1/113.1, p. 72 (stating that the Party asked him to smash the pagoda and he had no choice but to obey); T. 12 June 2013 (SIM Hao), E1/206.1, pp. 78, 96 (stating that in Phnom Penh pagodas were mined and destroyed, and the Khmer Rouge would use the monks in order to destroy the Tuol Tumpoung Pagoda, so that they could reuse remnants from the temple for road construction); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 31; T. 9 December 2015 (UM Suonn), E1/365.1, pp. 41-42 (Yeang village, Chi Kraeng district, Siem Reap province); T. 8 January 2016 (SOS Romly), E1/372.1, p. 43 (Wat Ampeak Vaon, or Mango Grove, Pagoda); LOET Khun Interview Record, E3/7769, 31 May 2009, p. 3, ERN (En) 00340190 (Badeum Pagoda, Kamphun village, Chey Mungkul Pagoda, Samkhuoy commune, Sesan district, Stung Treng province); SAO Phen Interview Record, E3/445, 5 April 2010, ERN (En) 00508574 (stating that in Krang Leav commune,

(including as security centres and execution sites,<sup>13302</sup> warehouses and worksites,<sup>13303</sup> as places of accommodation<sup>13304</sup> and for administrative purposes),<sup>13305</sup> and desecration through sacrilegious use.<sup>13306</sup> Further evidence indicates that general Buddhist worship was prohibited between 1975 and 1979,<sup>13307</sup> as were Buddhist rituals and practices

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Kampong Chhnang province, “[s]oon after the Khmer Rouge took power, I saw that pagodas were demolished or destroyed [...] for example, at this Krang Leav pagoda, the temple was detonated by landmines.”).

<sup>13302</sup> See e.g., T. 7 December 2012 (HUN Chhunly), E1/150.1, p. 31 (stating that, in Battambang “certain Buddhist pagodas were transformed into prisons. And others were transformed into the detention centre”); T. 19 May 2015 (OR Ho), E1/301.1, p. 42 (Prey Sraeng village, Kampong Thom, Central (old North) Zone); T. 14 September 2015 (SEN Srun), E1/346.1, p. 13 (Wat Au Trakuon, Central (old North) Zone); T. 11 August 2016 (CHE Heap), E1/455.1, p. 20 (testifying that his “brother’s wife along with the wives of other cadres who worked in the sewing unit, were taken away in one truck to Russei Sanh pagoda”); T. 21 September 2016 (SEM Om), E1/478.1, p. 36 (stating that *Ta Rem* “ordered his subordinates to lift the children up and smash them against car tyre. And that happened near a pond located inside Suong pagoda”, in the East Zone); T. 30 November 2016 (PREAP Chhon), E1/504.1, p. 80 (stating that when he was called to study at Wat Chey pagoda [Ta Chey village, Kampong Chamlang commune, Svay Chrum district], he found around 500 former soldiers or self-defence force imprisoned there); HUOT Robieb Interview Record, E3/7771, 24 June 2009, p. 3, ERN (En) 00350257 (stating that Samraong Knong Pagoda was under the control of the soldiers to be used as the interrogation place and detain people and that in 1977, he saw the Khmer Rouge soldiers walking a person into Samraong Knong Pagoda, and I never saw him return.”). See also, Section 11.2.16: 1<sup>st</sup> January Dam Worksite: Killings at Baray Choan Dek Pagoda.

<sup>13303</sup> See e.g., T. 19 June 2012 (YUN Kim), E1/88.1, p. 52 (pagodas in Kratie “were used as warehouses or, as the kiln were bricks were made, tiles were made”); T. 15 June 2015 (KEO Loeur), E1/316.1, p. 31 (witness was told that pagodas at the rear battlefield were turned into handicraft places); T. 9 December 2015 (UM Suonn), E1/365.1, pp. 41-42 (pagodas in Yeang village, Chi Kraeng district, Siem Reap province, were used to pound rice); T. 15 December 2015 (Y Vun), E1/368.1, pp. 9, 19-20 (Khsach Pagoda (Kampong Speu, West Zone) was used as an handicrafts place and to store rice and timber; and that one of the monk residences was used to store rice); T. 29 June 2016 (MEAS Soeur), E1/446.1, p. 75 (confiscated weapons were stored in Tuntim Pagoda in Tboung Khmum district, East Zone); LOET Khun Interview Record, E3/7769, 31 May 2009, p. 3, ERN (En) 00340190 (stating that in (Sesan district), Stung Treng province, the Khmer Rouge turned the pagoda into communal eating halls and rice warehouses).

<sup>13304</sup> See e.g., T. 19 June 2012 (YUN Kim), E1/88.1, p. 52 (young people “were made to live” in pagodas); T. 27 October 2015 (SEAN Song), E1/357.1, pp. 72,75 (the pagoda in Sanvaeuy commune, Siem Reap province was used to house mobile unit workers” for about a fortnight); HUOT Robieb Interview Record, E3/7771, 24 June 2009, p. 3, ERN (En) 00350257 (stating that “Samraong Knong Pagoda was used as a place for the Khmer Rouge to stay.”).

<sup>13305</sup> See e.g., T. 19 June 2012 (YUN Kim), E1/88.1, p. 51 (“at one of the pagodas [in Kratie], they reserved a place for meeting.”); T. 7 December 2012 (HUN Chhunly), E1/150.1, p. 31 (“one of the pagodas [in Battambang] was transformed into the operation training centre.”); T. 5 October 2015 (BAN Seak), E1/353.1, pp. 22-23 (the commerce office of Sector 42 (Central (old North) Zone) was in the Cheyyou Pagoda in Spueu), 64 (the Krouch Chhmar (East Zone) district office was constantly mobile and that sometimes meetings were held in the pagoda); T. 8 January 2016 (SOS Romly), E1/372.1, p. 44 (stating that sometimes pagodas were used as a mobile office); T. 28 November 2016 (BEIT Boeur), E1/502.1 pp. 14, 52-53 (*Angkar* sent him to base at Tuol Tumpung Pagoda in Phnom Penh, where he worked within the pagoda’s “compound”).

<sup>13306</sup> See e.g., T. 9 August 2012 (ONG Thong Hoeung), E1/105.1, p. 26 (Wat Langka in Phnom Penh “was kind of used for pigs”); T. 9 December 2015 (UM Suonn), E1/365.1, pp. 41-42 (the monastery in Yeang village, Chi Kraeng district, Siem Reap province, was used to raise animals); LOET Khun Interview Record, E3/7769, 31 May 2009, p. 3, ERN (En) 00340190 (stating that in Samkhuoy commune, Sesan district, Stung Treng province the Khmer Rouge turned the pagodas into pigsties).

<sup>13307</sup> See e.g., T. 6 December 2011 (KLAN Fit), E1/17.1, pp. 92-93 (“At Stung Treng we were banned from practicing religions, believing in spirits. [...] at that time we had to really abandon [religion] because we were intimidated, otherwise we would be accused of losing the firm stands”); T. 2 May 2012

including the lighting of incense,<sup>13308</sup> and wedding and funerary rites.<sup>13309</sup> Buddha statues and religious objects were also frequently destroyed.<sup>13310</sup> Witnesses were told about Buddhism's incompatibility with the revolution,<sup>13311</sup> and described in court the complete destruction of Buddhism during the DK period.<sup>13312</sup> As YUN Kim put it:

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(PEAN Khean), E1/71.1, p. 50 (“After 1975, such practice [paying homage to monks] were in no existence [*sic*.”]); T. 6 January 2016 (THANG Phal), E1/371.1, pp. 70-71 (stating that, in Pou Chentam village, Svay Antor commune, Prey Veang district East Zone “[b]etween 1975 and ’79, we were not allowed to celebrate any Buddhist religious ceremony.”); T. 29 June 2016 (MEAS Soeurn), E1/446.1, p. 87 (“even the majority of the people who were Buddhists, they were not allowed to practice their religious beliefs”); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 35 (Kratie); BAN Siek Interview Record, E3/375, 6 July 2009, p. 11, ERN (En) 00360759 (“even the Buddhist monks were not allowed to chant.”).<sup>13308</sup> See e.g., T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 93 (testifying that “my own father [...], a clergyman at the pagoda [in Kratie], was also killed for having collected some dead plants to burn as incense for praying to Buddha. [...] even lighting the incense to pay gratitude to Buddha, he was arrested and executed for that simple reason.”); T. 9 March 2016 (VAN Mat *alias* SALES Ahmat), E1/398.1, pp. 86-87 (stating that he attended a meeting about the prohibition of religious practices of Islam and other religions, including Buddhism); T. 3 August 2016 (CHIN Saroeun), E1/454.1, p. 35 (“At the time we were not allowed to use incense lights”).

<sup>13309</sup> See e.g., T. 6 December 2012 (KIM Vannady), E1/149.1, p. 12 (testifying, with reference to the death of his mother in Prey Phdau Dam, that “death, during the regime, was very pathetic [...]. [W]hen someone died, he or she would be buried or covered with some leaves. They died like [...] animals.”); T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 95 (stating that he requested his brother-in-law to be buried at Chantrei Pagoda, in Chantrei commune, East Zone, but he was not allowed to do it); T. 24 August 2016 (SOU Sotheavy), E1/463.1, p. 63 (“In the Pol Pot’s time, there were no sermon preached by monks and there were no wedding procession.”).

<sup>13310</sup> See e.g., T. 23 August 2012 (EM Oeun), E1/113.1, p. 72 (“at that time the Party asked me to smash [...] the Buddha, but I had no choice.”); T. 12 June 2013 (SIM Hao), E1/206.1, p. 96 (Tuol Tumpung Pagoda in Phnom Penh); T. 30 May 2013 (SOPHAN Sovany), E1/199.1, p. 47 (stating that “the Buddha statues were destroyed. Some of the heads were gone, or the limbs”); T. 16 February 2015 (EM Phoeung), E1/263.1, pp. 67-68 (“During the DK regime [...] everything was destroyed. The Buddhist manuscript, for example, that were made from palm tree leaves, they torn them – they torn them apart and used them as hats.”). T. 2 December 2015 (PRAK Doeun), E1/361.1, p. 63 (stating that he “saw the Khmer Rouge actually dismantle a Buddha statue.”); T. 9 December 2015 (UM Suonn), E1/365.1, pp. 41-42 (Khsach pagoda Yeang village, Sangvaeuy commune, Chi Kraeng district, Siem Reap province); T. 11 December 2015 (UNG Sam Ean), E1/366.1, p. 69 (“There were no longer Buddha statues, they were all gone” and stating that he “saw the structure of the [Chantrei] temple but there were no Buddha statues.”); LOET Khun Interview Record, E3/7769, 31 May 2009, pp. 3-4, ERN (En) 00340190-00340191 (stating that at Chey Mongkul Pagoda, Samkhuoy commune, Sesan district, Stung Treng province, “the Buddha statues were carried away and tossed in the river.”); T. 6 April 2016 (SOS Kamri *alias* KAMARUTTIN Yusof), E1/415.1, pp. 82-83 (Chamkar Leu district, Kampong Cham province, North Zone).

<sup>13311</sup> See e.g., T. 5 October 2015 (BAN Seak), E1/353.1, p. 88 (the witness, secretary of Krouch Chhmar district in the East Zone, stated that “[t]he Buddhist monks were considered enemies of the Khmer Rouge.”); KHIM Soeun Interview Record, E3/7979, 22 November 2007, p. 3, ERN (En) 00223545 (stating that he was shown Leninist documents about not having monks); BAN Siek Interview Record, E3/375, 6 July 2009, p. 11, ERN (En) 00360759 (stating that “The Communist Party loathed Buddhist monks and monarch the most.”).

<sup>13312</sup> See e.g., T. 19 May 2015 (OR Ho), E1/301.1, p. 59 (“And as for [Cham] religion – or we can say also for Buddhism – the religion and Islam were abolished. Monks were defrocked and Cham were not allowed to worship anymore.”); T. 9 September 2015 (SOS Min), E1/344.1, p. 64 (“All religions, including Buddhism and Islam, were abolished. Buddhism is the religion of the nation and other religions were abolished in the regime. Buddhism was abolished during the time [...] although Buddhism is the national religion in the country.”); T. 11 January 2016 (MUY Vanny), E1/373.1, p. 20 (stating that in Peam Chi Kang commune “[r]eligion was prohibited, and that applied to the Cham and to the Khmer people.”); T. 6 April 2016 (SOS Kamri *alias* KAMARUTTIN Yusof), E1/415.1, p. 83 (stating that in Kampong Cham “[i]f you speak about religion, other religious followers [than the Cham] including

Regarding religion, [...] we were advised [...] not to believe in any religion [...]. Buddhism came to an end in 1976. [...] During the Democratic Kampuchea regime, there were no monks, so no one practiced Buddhism. It was an end to Buddhism. No monks, no religion. So I could say that it was an end to Buddhism.<sup>13313</sup>

4016. EM Oeun described his anguish at being ordered to destroy the remnants of Buddhism:

I loved Buddhism and I loved people, but at that time the Party asked me to smash the pagoda, the Buddha, but I had no choice. I loved Buddhism and I was bestowed with the authority to smash the religion, the Buddha that I once loved and respected, but I had no choice. [...] Destroying Buddhism took many forms, one of which was [...] not allowing people to enter the monkhood. And they also forbid pagoda construction and building. That was the overall picture of the destruction of Buddhism.<sup>13314</sup>

4017. The Chamber is satisfied that a centrally-devised policy to abolish Buddhist practices and forbid the practice of Buddhism in DK existed throughout the indictment period. It has examined evidence of the charged policy's implementation at the Tram Kak Cooperatives in Section 10.1.9.1: Events at Angk Roka Pagoda and Section 10.1.9.2: Other Pagodas, Buddhist Symbols and Practices. The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

#### 16.4.3.3.2. *Criminality of policy*

4018. As limited to Case 002/02, the Chamber is seized of facts relevant to the implementation of this policy through a joint criminal enterprise at the Tram Kak Cooperatives.<sup>13315</sup> For the reasons outlined below, the Chamber finds that the policy targeting Buddhists for adverse treatment involved the commission of crimes which were encompassed by the common purpose.

4019. *Persecution on religious grounds* – The Chamber has found that the crime against humanity of persecution on religious grounds was established at the Tram Kak

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Buddhist were also killed.”); LOET Khun Interview Record, E3/7769, 31 May 2009, pp. 3-4, ERN (En) 00340190-00340191 (stating that in Badeum, Samkhuoy commune, Sesan district, Stung Treng province “[a]t the time the Khmer Rouge imposed a policy to eliminate Buddhism. [...] the Khmer Rouge abolished Buddhism, and prohibited people not to provide meals to the monks; they said ‘this group does nothing’.”); BAN Siek Interview Record, E3/375, 6 July 2009, p. 11, ERN (En) 00360759.

<sup>13313</sup> T. 19 June 2012 (YUN Kim), E1/88.1, pp. 49-52.

<sup>13314</sup> T. 23 August 2012 (EM Oeun), E1/113.1, p. 72.

<sup>13315</sup> See above, para. 3728.

Cooperatives.<sup>13316</sup> It has found that over 100 monks were deliberately gathered at Angk Roka Pagoda in Tram Kak district and forced to defrock, having specifically been targeted on the basis of their religious identity.<sup>13317</sup> Reflective of a pattern across Tram Kak district,<sup>13318</sup> the Chamber has further found that the complete abolition of Buddhist practices – including the repurposing of pagodas for non-religious use and the destruction of Buddhist symbols – was consistent with the prohibition of Buddhism as a result of its incompatibility with revolutionary principles.<sup>13319</sup>

4020. The treatment of Buddhists in Tram Kak district was consistent with evidence that the persecutory treatment of Buddhists outside that district,<sup>13320</sup> the CPK’s categorisation of monks as a “special class”,<sup>13321</sup> a September 1975 policy pronouncement indicating that “90 to 95 percent of [monks had] left the monkhood” and projection that “Buddhist practices will no longer exist”,<sup>13322</sup> the 1976 constitutional prohibition of “reactionary religions” (which Buddhism was considered to be) and KHIEU Samphan’s explanation of the Party’s motivation for this prohibition, including the need to oppose “at all costs” those using religion to subvert the regime,<sup>13323</sup> as well as his 1976 statement that “just like everyone else, even Buddhist monks have the duty and obligation to work”.<sup>13324</sup> The evidence also confirms Elizabeth BECKER and Yugoslavian journalist Slavko STANIĆ’s accounts of pagodas being used as granaries and storehouses in late 1978.<sup>13325</sup> The Chamber is satisfied that the foregoing instances mirror practices specifically targeting Buddhists at the Tram Kak Cooperatives for adverse treatment on the basis of their religious identity and finds that this specific intent was shared by direct perpetrators and JCE participants alike.

4021. In view of the foregoing, the Chamber is satisfied that the policy to abolish Buddhist practices and forbid the practice of Buddhism was implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a “great

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<sup>13316</sup> Section 10.1.13.7: Tram Kak Cooperatives: Legal Findings: Persecution on Religious Grounds.

<sup>13317</sup> Section 10.1: Tram Kak Cooperatives, para. 1183.

<sup>13318</sup> Section 10.1: Tram Kak Cooperatives, paras 1105, 1183.

<sup>13319</sup> Section 10.1: Tram Kak Cooperatives, para. 1184.

<sup>13320</sup> *See above*, paras 4015-4017.

<sup>13321</sup> *See above*, Section 16.3.2.1.3.4: Real or Perceived Enemies: Monks.

<sup>13322</sup> Section 10.1: Tram Kak Cooperatives, para. 1088.

<sup>13323</sup> Section 10.1: Tram Kak Cooperatives, paras 1090, 1108.

<sup>13324</sup> Section 18.2.2: The Criminal Responsibility of KHIEU Samphan: Commission through a Joint Criminal Enterprise: Intent.

<sup>13325</sup> Section 10.1: Tram Kak Cooperatives, para. 1108.



leap forward” in order to, among other things, defend the country against enemies and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants. The Chamber therefore finds that the crime against humanity of persecution on religious grounds, as established at the Tram Kak Cooperatives, was encompassed by the common purpose.

#### 16.4.3.3.3. *Conclusion*

4022. In light of the foregoing, the Chamber finds that the policy to abolish Buddhist practices and forbid the practice of Buddhism was intrinsically linked to the common purpose. The policy involved the commission of the crime against humanity of persecution on religious grounds against Buddhist monks as a means of achieving the common purpose, thereby rendering it criminal in character.

#### 16.4.3.4. *Former Khmer Republic officials*

4023. The Closing Order collectively identifies former Khmer Republic officials (including civil servants and former military personnel) and their families as objects of the CPK’s targeting policy.<sup>13326</sup> It charges that this policy came into existence before 1975 and continued until at least 6 January 1979. According to the Closing Order, public declarations of intent to execute the most senior Khmer Republic figures were evident in February 1975 and, following 17 April 1975, a secret decision to kill many other members of the Khmer Republic elite had been made. As charged, this led to the arrest and execution of high-ranking officials, in particular during the evacuation of Phnom Penh and during population movements throughout Cambodia.<sup>13327</sup>

4024. The KHIEU Samphan Defence submits that the Closing Order charges the existence of a targeting policy only in relation to the evacuation of Phnom Penh.<sup>13328</sup> The KHIEU Samphan Defence nevertheless acknowledges that “the movement of the population from Phnom Penh [...] constitutes *only one of the several occurrences* of a pattern of targeting former officials of the Khmer Republic”.<sup>13329</sup> As identified above, the Closing Order also clearly charges that this policy continued throughout the DK

<sup>13326</sup> See above, para. 3728.

<sup>13327</sup> Closing Order, paras 205-206, 208-209.

<sup>13328</sup> KHIEU Samphan Closing Brief, paras 2310-2311.

<sup>13329</sup> KHIEU Samphan Closing Brief, para. 2310 quoting Closing Order, para. 206 (emphasis added).

period.<sup>13330</sup> The KHIEU Samphan Defence further contends that the absence of a charged policy is evident in the Closing Order’s failure to include former Khmer Republic officials as one of the “targeted groups” in the section pertaining to “Factual Findings of Crimes”.<sup>13331</sup> While the Closing Order does not specifically enumerate former Khmer Republic officials in that section, it plainly contemplates facts referable to their (mis)treatment under sub-sections relating to the crime sites under examination in Case 002/02.<sup>13332</sup> The KHIEU Samphan Defence submissions in this regard are therefore rejected.

4025. The NUON Chea Defence asserts that documentary evidence, contemporaneous records and in-court testimony fail to establish the existence of a nationwide targeting policy of Khmer Republic officials.<sup>13333</sup> The Co-Prosecutors conversely submit that a policy to identify, arrest and often execute former soldiers and officials of the LON Nol regime was evident throughout the DK period.<sup>13334</sup> The Civil Party Lead Co-Lawyers made no submissions in this regard. The Chamber will address the merits of the NUON Chea Defence and Co-Prosecutors’ submissions following a holistic appraisal of the evidence before it.

#### 16.4.3.4.1. *Existence of policy*

##### 16.4.3.4.1.1. Pre-17 April 1975

4026. By September 1972, KHIEU Samphan, HU Nim and HOU Youn were publicly calling for the “elimination” of high-ranking members of the Khmer Republic administration “and others and their subordinates” on behalf of GRUNK and the CPNLAF.<sup>13335</sup> Early editions of the *Revolutionary Flag* magazine echoed these calls within CPK ranks.<sup>13336</sup> The question of Khmer Republic loyalists was discussed at an

<sup>13330</sup> See above, para. 4023.

<sup>13331</sup> KHIEU Samphan Closing Brief, para. 2312.

<sup>13332</sup> See e.g., Closing Order, paras 319 (Tram Kak Cooperatives), 366 (1<sup>st</sup> January Dam Worksite), 432 (S-21 Security Centre), 498, 506 (Kraing Ta Chan Security Centre). See below, para. 4050.

<sup>13333</sup> NUON Chea Closing Brief, paras 935-948.

<sup>13334</sup> Co-Prosecutors’ Closing Brief, para. 305.

<sup>13335</sup> KHIEU Samphan, HOU Youn, HU Nim Statement, E3/116, 9 September 1972, ERN (En) 00485283 (appeal to all people to “fight resistantly [*sic*] to eliminate the main traitors including the contemptible LON Nol, SIRIK Matak, SON Ngoc Thanh, IN Tam, LON Non, HANG Thun Hak, and others and their subordinates”).

<sup>13336</sup> Revolutionary Flag, E3/783, September-October 1972, ERN (En) 00720205 (“Currently, imperialist America and traitors LON Nol, SIRIM [*sic*] Matak and SOENG Ngoc Thanh are failing and we have suppressed them; they can no longer manoeuvre. They are desperately trying to fight back with poisonous

extraordinary meeting of the Central Committee in late 1974. NUON Chea told the Chamber that, following liberation, the Party leadership anticipated that:

[Defecting LON Nol soldiers] would start stealing, robbing, burning down people[']s homes, and so on and so forth. And we had not enough people to protect our people if these things happened. They would start fighting; attacking our people through means of guerrilla war and they would drag us to follow them and that there will be no peace. We could never transplant rice or go about our daily life.<sup>13337</sup>

4027. In December 1974, NORODOM Sihanouk declared that GRUNK would grant amnesty to Khmer Republic officials who joined forces with FUNK and GRUNK.<sup>13338</sup> In the meantime, KHIEU Samphan maintained the CPK's line through the veneer of GRUNK, publicly declaring in January 1975 that the "traitorous Phnom Penh clique" could not "escape complete annihilation" by the CPNLAF.<sup>13339</sup> On 26 February 1975, a FUNK press release announced that, on behalf of FUNK, GRUNK and the CPNLAF, a National Congress purportedly chaired by KHIEU Samphan had declared it "absolutely necessary to kill [the] seven traitors" of the Khmer Republic for treason. President LON Nol, Prime Minister LONG Boret, presidential advisor Prince SISOWATH Sirik Matak, former Prime Ministers SON Ngoc Than and IN Tam, former President CHENG Heng and Khmer Republic Commander-in-Chief SOSTHÈNE Fernandez were marked for execution.<sup>13340</sup> All other Khmer Republic officials and personnel were invited to cease collaborating with the republican regime and join FUNK.<sup>13341</sup>

4028. The resolutions of the National Congress were repeated in the lead-up to 17 April 1975. KHIEU Samphan, HU Nim, HOU Youn, FUNK and GRUNK outlets

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politics to disrupt our movement. We, however, must absolutely crush them."); Revolutionary Flag, E3/785, July 1973, ERN (En) 00713995.

<sup>13337</sup> T. 22 November 2011 (Accused NUON Chea), E1/14.1, pp. 94, 107-108.

<sup>13338</sup> The Chamber has already found that NORODOM Sihanouk was effectively marginalised by the CPK since 1970 and had no power to enforce such promises or to control events inside the country. See Section 3: Historical Background, para. 222. See below, fn. 13372.

<sup>13339</sup> *Khieu Samphan 14 Jan Message to CPNLAF Fighters* (in FBIS collection), E3/30, 15 January 1975, ERN (En) 00166709-00166710 ("This clique cannot escape complete annihilation by our CPNLAF and people in the near future.").

<sup>13340</sup> The Chamber could not conclusively determine whether this "National Congress" took place but has accepted that the decisions allegedly reached therein were representative of other pronouncements by KHIEU Samphan. See Section 8: Roles and Functions – KHIEU Samphan, para. 581. See also, *Sihanouk: U.S. Will 'Not Lose Face' If It Lets Cambodia Fail* (in FBIS collection), E3/120, 6 March 1975, ERN (En) 00166786 (listing titular functions of the Khmer Republic administration).

<sup>13341</sup> *Khieu Samphan Chairs NUF C Congress Session: Communiqué Issued* (in FBIS collection), E3/488, 26 February 1975, ERN (En) 00166772.

reiterated calls for the death of the “seven traitors”, urged defections from Khmer Republic forces and advocated for civil unrest to bring about the end of the LON Nol regime.<sup>13342</sup> Assurances of amnesty continued to be extended to all republican forces and officials (except the “seven traitors”), provided that they ceased their collaboration with the Khmer Republic immediately.<sup>13343</sup> The GRUNK leadership warned that the children of those who did not defect were “indelibly marked as the descendants of traitors”,<sup>13344</sup> and cautioned that clemency would be denied and that a bloodbath would ensue if the CPNLAF met any resistance after taking Phnom Penh.<sup>13345</sup>

<sup>13342</sup> See e.g., *NUFC Editorial Hails Decisions of 2[n]d National Congress* (in FBIS collection), E3/120, 4 March 1975, ERN (En) 00166792-00166793 (urging people to respond to communiqué of second national congress and defect); *Further Appeal Urges People to Join CPNLAF Struggle* (in FBIS collection), E3/120, 7 March 1975, ERN (En) 00166796 (inciting civil disturbances and urging “brother army officers, troops, policemen, militiamen who have weapons” to “turn [their] weapons” on the seven traitors: “Without them, the Cambodian nation and people will be at peace.”) [emphasis added]; *Khieu Samphan Appeals for Intensified Struggle* (in FBIS collection), E3/120, 15 March 1975, ERN (En) 00166828 (inciting riots, civil unrest and the seizure of weapons; “The time has come for us to put an end to the existence of the traitors.”); *NUFC Radio Hails CPNLAF Successes: 17 Mar ‘Urgent Appeal’* (in FBIS collection), E3/120, 17 March 1975, ERN (En) 00166843 (“No matter how obstinate the US imperialists may be, they cannot prevent the traitorous [seven traitor] clique from collapse.”); *RGUNC’s Hou Nim Issues Appeal to Monks on Current Situation* (in FBIS collection), E3/120, 22 March 1975, ERN (En) 00166870 (“the existence of the [seven] traitors should be ended.”); *RGUNC Cabinet Issues 25 March Communiqué-Appeal* (in FBIS collection), E3/120, 26 March 1975, ERN (En) 00166874 (KHIEU Samphan reiterates the national congress’s decision that “the existence of the fascist, rotten traitors must be ended at all costs”) [emphasis added]; *AKI: CPNLAF Continuing Offensive ‘Without Compromise’* (in FBIS collection), E3/118, 10 April 1975, ERN (En) 00166937 (reporting that LON Nol, CHENG Heng, SOSTHÈNE Fernandez, SON Ngoc Than and IN Tam had fled Phnom Penh and that the “residents and youths will annihilate and put an end to the existence of traitors Sirik Matak and LONG Boret, who are now in Phnom Penh.”).

<sup>13343</sup> See e.g., *NUFC Editorial Hails Decisions of 2[n]d National Congress* (in FBIS collection), E3/120, 4 March 1975, ERN (En) 00166792-00166793 (urging people to respond to communiqué of second national congress and rise up); US State Department Telegram, Subject: Khmer Report, March 1975, E3/3334, 4 March 1975, pp. 6-7, ERN (En) 00413052-00413053 (politicians and high personalities, other than the seven traitors, could join FUNK if they stopped cooperating with LON Nol “now”); GRUNK Telegram to UN Secretary-General, E3/189, 18 March 1975, p. 2, ERN (En) 00894299 (the National Congress called upon LON Nol officials to abandon the seven traitors “while there is still time”); *Khieu Samphan Issues Statement on Current Situation* (in FBIS collection), E3/118, 1 April 1975, ERN (En) 00166897-00166898; *Khieu Samphan Appeals to Phnom Penh Citizens to Join NUFC 14 Apr* (in FBIS collection), E3/118, 14 April 1975, ERN (En) 00166948-00166949.

<sup>13344</sup> *Peen [sic] Nouth Greets Compatriots on Cambodian New Year* (in FBIS collection), E3/118, 13 April 1975, ERN (En) 00166956 (“You should take this good opportunity to defect from [Khmer Republic] ranks and join the patriotic ranks of the people in order to avoid passing on a bad name to your children, who will be indelibly marked as the descendants of traitors to the nation and the people. You know that you must bear full responsibility for the good name of your families.”).

<sup>13345</sup> U.S. State Department Telegram, Subject: March 12 EA Press Summary, E3/3338, 12 March 1975, ERN (En) 00413155; U.S. State Department Telegram, Subject: John Burns Interview with Sihanouk, E3/3339, 15 March 1975, ERN (En) 00413177-00413178; U.S. State Department Telegram, Subject: Khmer Report, E3/3341, 18 March 1975, ERN (En) 00413197.

4029. KHIEU Samphan also continued publicly lauding the successes of the CPNLAF and its “elimination” of Khmer Republic forces.<sup>13346</sup> On 16 April 1975, NORODOM Sihanouk rejected outright the Khmer Republic’s offer of a ceasefire (conditional on the guarantee that no reprisals for previous government acts would follow), urging the “first rank traitors” to flee the country because as war criminals, they “deserve nothing less than the gallows”.<sup>13347</sup> The following day, having marched on parts of Phnom Penh, the CPNLAF warned the remaining Khmer Republic leadership that “we are not coming here for negotiations. We are entering the capital through force of arms of the CPNLAF.”<sup>13348</sup>

4030. With regard to the treatment of Khmer Republic soldiers before 1975, refugee accounts obtained by Stephen HEDER at the Thai border indicate that initial CPK campaigns to re-educate captured Khmer Republic soldiers had been dropped by mid-1973, whereupon arrestees were subject to execution.<sup>13349</sup> These accounts were neither explored nor confirmed during the course of Stephen HEDER’s testimony before the Chamber. According to Expert Philip SHORT, there was no written CPK policy concerning the treatment of Khmer Republic soldiers before 1975, but he opined that

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<sup>13346</sup> See e.g., FUNK Publication: *Nouvelles du Cambodge No. 698: KHIEU Samphan Speech*, E3/167, 10 April 1974, ERN (En) 00280586 (“On 18 March, our People’s National Liberation Armed Forces liberated another city, Udong, by annihilating all the puppet soldiers there along with their reinforcements; in other words, over 5,000 enemies were eliminated, 1,500 of whom were captured.”); *Khieu Samphan 14 Jan Message to CPNLAF Fighters* (in FBIS collection), E3/30, 15 January 1975, ERN (En) 00166709-00166710 (“We annihilated close to 20 battalions of enemy troops and liberated tens of thousands of our people from the demonic claws of the traitor Lon Nol and his clique. [...] The Mekong is the transportation route upon which the traitors had pinned almost all their hopes to prolong their doomsday and to continue to sow devastation on our nation and people.”); *Khieu Samphan Congratulates CPNLAF on Neak Luong Victories* (in FBIS collection), E3/118, 5 April 1975, ERN (En) 00166924 (lauding the death or wounding of 20 battalions (5,500 soldiers) and “liberation” of 50,000 people); KHIEU Samphan, HOU Youn, HU Nim Statement, E3/637, 17 April 1975, ERN (En) 00740933, 00740938 (“According to an interim report some 1,550 heads of the enemy military personnel and officers including of hundreds [of] colonels, captains, lieutenants and major lieutenants have been smashed while ten thousands of people have been liberated. [...] All in all, up to mid-January 1973, [...] [w]e have smashed total of 10,245 heads of the enemies and liberated dozens of bases, Mekong River and tens of thousands of people, and confiscated thousands of rifles and the enemies have become hot-blooded and more panic stricken.”).

<sup>13347</sup> Section 3: Historical Background, para. 234.

<sup>13348</sup> *CPNLAF Representative Tells Government Troops to Surrender* (in FBIS collection), E3/118, 17 April 1975, ERN (En) 00166974.

<sup>13349</sup> Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodian Border*, E3/1714, February-March 1980, p. 25, ERN (En) 00170716 (In or about 1973 “Those who could be proved [to be] LON NOL agents were executed. Agents were hated more than LON NOL soldiers. Most LON NOL soldiers who were captured were forgiven but all the agents were executed. Most LON NOL soldiers were re-educated for a short time and told not to re-join the LON NOL army and then released. They were put into the co-ops and all[o]wed to go back to LON NOL zones. After 1973 up to 75% of LON NOL soldiers were forgiven. Before 1973, all were forgiven and even allowed to return to their homes in LON NOL zones.”).

the uniformity of treatment meted out to armed forces evinced the existence of such policy.<sup>13350</sup> The Chamber notes that the Expert's finding was based on limited sources and approaches it with due caution.<sup>13351</sup> Former Khmer Rouge soldier and Witness IENG Phan described receiving instructions from the upper echelon "not to kill" or mistreat Khmer Republic soldiers before 1975, but rather to "send them to the rear".<sup>13352</sup> While he furnished relatively consistent responses in court and was otherwise a credible witness, IENG Phan acknowledged that, as a frontline soldier, he was not aware of the fates of prisoners of war once they had been sent to the rear.<sup>13353</sup> The Chamber considers that although his testimony credibly reveals the nature of orders disseminated to certain frontline soldiers, it does not shed light on the actual fates of those republican soldiers who had surrendered to CPNLA soldiers before 1975. The Chamber finds IENG Phan's evidence to be inconclusive on the question of a policy targeting Khmer Republic soldiers.

4031. In contrast to IENG Phan's evidence, other in-court evidence consistently and credibly indicated that Khmer Republic soldiers, officials and their family members were variously arrested throughout the country prior to 17 April 1975, detained and/or executed in areas under Khmer Rouge control.<sup>13354</sup> Such indicators support the

<sup>13350</sup> T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 98-102. *See also*, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 255, ERN (En) 00396455 (referring to the events at Oudong on 3 March 1974: "Officials and uniformed soldiers were separated from the rest, led away and killed.").

<sup>13351</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 73-74; T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 98-102; Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 255, ERN (En) 00396455. *See also*, Case 002/01 Appeal Judgement, paras 879-881.

<sup>13352</sup> T. 20 May 2013 (IENG Phan), E1/193.1, pp. 8, 15-16, 36, 65-70.

<sup>13353</sup> T. 20 May 2013 (IENG Phan), E1/193.1, pp. 8, 70.

<sup>13354</sup> T. 2 February 2015 (KEV Chandara), E1/255.1, p. 41 ("When I was detained at the [Kraing Ta Chan Security] Centre, [...] [t]here was not less than 50 victims executed a day. It's not only for the Lon Nol officers or soldiers [...]. They [among others] were taken for execution in that prison. And the killing was more intense in 1975."); T. 4 February 2015 (SORY Sen), E1/256.1, p. 55 ("I believed my detention [at Kraing Ta Chan in 1974] was due to my father being District Chief during the Sihanouk regime."); SORY Sen DC-Cam Interview, E3/4846, 26 February 2004, ERN (En) 00527771 ("In 1973 they question[ed] my background because my father was the chief [of the] district in the past. I was sent to [the] security centre [in 1974]"); T. 25 March 2015 (SAUT Saing), E1/282.1, pp. 42-43 (stating that under the tenure of *Ta Chhen* (1973-1975) at Kraing Ta Chan Security Centre, there were more prisoners who were former LON Nol soldiers or civil servants); T. 3 April 2015 (BUN Sarouen), E1/288.1, pp. 28, 45 (witness's father and uncle were chiefs in Prey Chheu Teal village during the Khmer Republic and were subsequently arrested and detained in Kraing Ta Chan Security Centre in 1973 or 1974); T. 29 March 2016 (CHAN Bun Leath), E1/410.1, pp. 11 ("I know that in Mondolkiri at that time, there were no more former Lon Nol soldiers. [...] The issue of Lon Nol soldiers already ended because it happened since '70 until '75. [...] Therefore, most of them were purged"), 12 ("I don't think that they were killed because there were no more former Lon Nol soldiers at that time, but during the [DK] period, Khmer Rouge soldiers killed themselves -- killed each other, rather."). *See also*, PHOL Phai Interview Record, E3/7752, 7 August 2008, pp. 2-3, ERN (En) 00275154-00275155; T. 11 July 2013 (Stephen HEDER),

conclusion that, by 1975, a discriminatory stance toward Khmer Republic officials and their families for adverse treatment had begun materialising in CPK-controlled areas. Whether this amounted to a policy entailing the commission of specific crimes will be determined following the Chamber's assessment of the totality of evidence encompassing the entire DK period.

16.4.3.4.1.2. Aftermath of 17 April 1975 to late 1975

4032. According to Duch, “former soldiers and officers of [the] Lon Nol regime were the key enemies” of the CPK after 17 April 1975.<sup>13355</sup> Pursuant to information he received during his chairmanship of S-21, “after 17 April, soldiers were systematically eliminated”, adding that, “[a]fter the liberation, soldiers were hunted down and fled”.<sup>13356</sup> The Chamber's review of contemporaneous documents referring to enemies confirms that former Khmer Republic officials were indeed the objects of the CPK's attention as at April 1975.<sup>13357</sup>

4033. Witness PRAK Khorn provided clear and convincing testimony about the treatment of Khmer Republic soldiers on 17 April 1975. After “not more than 50” soldiers were arrested and gathered up in Takhmau, PRAK Khorn put them onto vehicles “to be smashed at Kouk Roluos pagoda”, which he personally witnessed as he stood guard. PRAK Khorn specifically recalled that one of the executed soldiers was a colonel whose French wife and children were also executed. He added that “[i]f we had not killed those people, they would have shot back at us”.<sup>13358</sup>

4034. IENG Sary stated in a later interview that:

[The] decision to *kill* so many people was not made beforehand, but after 17 April, maybe around 20 April, *when it was decided to do whatever had to be done* in order to make it impossible for [Khmer

E1/222.1, p. 31 *affirming* Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodian Border*, E3/1714, February-March 1980, p. 67, ERN (En) 00170758.

<sup>13355</sup> T. 21 March 2012 (KAING Guek Eav), E1/52.1, p. 26. *See also*, Section 12.2.18: S-21 Security Centre: Former Khmer Republic Officials.

<sup>13356</sup> T. 20 March 2012 (KAING Guek Eav), E1/51.1, p. 66 (“The documents of [M-13], the documents that [were] the heritage of S-21, mentioned that a lot of soldiers and military officials [of the Khmer Republic] were arrested. So it is clear that those people were collected and smashed.”); KAING Guek Eav Interview Record, E3/429, 11 November 2009, pp. 5-6, ERN (En) 00403920-00403921. *See also*, Case 001 Transcript (KAING Guek Eav), E3/5795, 29 April 2009, pp. 3-4, ERN (En) 00325853-00325854.

<sup>13357</sup> *See above*, Section 16.3: Real or Perceived Enemies, para. 3751.

<sup>13358</sup> T. 28 April 2016 (PRAK Khorn), E1/424.1, pp. 21, 28-31.

Republic soldiers] to stage a counter-revolutionary comeback. According to what I was told, these guys had made a defeat plan according to which they would assassinate the Khmer Rouge once we had arrived and carry out a *coup d'état* to seize power back from us. When I asked for details, I was told that searches of [Khmer Republic] officer[s'] homes had found grenades and guns everywhere that were part of the preparations for such a *coup d'état*. It was only once the evacuation had begun that this was clearly seen and the decision was made.<sup>13359</sup>

4035. Witness ROCHOEM Ton *alias* PHY Phuon conversely told the Chamber that upon his arrival in Phnom Penh on 20 April 1975, orders were issued to not harm Khmer Republic soldiers who had surrendered.<sup>13360</sup> In his statement to investigators, he clarified that this instruction was issued by POL Pot himself.<sup>13361</sup> Much like IENG Phan's testimony on the instructions furnished to front-line soldiers,<sup>13362</sup> the instructions received by ROCHOEM Ton *alias* PHY Phuon were not consistent with events unfolding behind the scenes. While the Chamber accepts that orders to not harm surrendering Khmer Republic soldiers may have been issued by the Party Centre, these instructions proved to be little more than a ruse, as demonstrated below.<sup>13363</sup>

4036. Extreme measures were taken to curb the threat of a counter-revolutionary insurgency in the Northwest Zone following liberation. Witness evidence described the rounding up, arrest and execution of at least 250 former Khmer Republic soldiers and officials at Tuol Po Chrey in Kandieng district, Northwest Zone, approximately one week after 17 April 1975.<sup>13364</sup> By about May 1975, two of the "seven traitors", LONG Boret and Prince SISOWATH Sirik Matak were executed in Phnom Penh, the latter

<sup>13359</sup> IENG Sary Interview by Stephen HEDER, E3/537, 17 December 1996, p. 6, ERN (En) 00003665 (emphasis added).

<sup>13360</sup> T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, p. 88 *affirming* PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582.

<sup>13361</sup> PHY Phuon Interview Record, E3/24, 5 December 2007, p. 5, ERN (En) 00223582 (clarifying that "[d]uring war, on the battlefield, [it] was different"; in Phnom Penh "they had surrendered to us, and we need not touch them, just welcome them and greet them [...]. [POL Pot] said that they were 'Cambodians, like us'; Don't touch them at all. Those were the words of Pol Pot.").

<sup>13362</sup> *See above*, para. 4030.

<sup>13363</sup> *See below*, para. 4051.

<sup>13364</sup> *See e.g.*, T. 2 May 2013 (LIM Sat), E1/187.1, pp. 29, 73-74; LIM Sat Interview Record, E3/364, 23 November 2008, pp. 2-3, ERN (En) 00250759-00250760; LIM Sat Interview Record, E3/4601, 18 November 2009, ERN (En) 00412158-00412159; T. 4 July 2013 (SUM Alat), E1/218.1, pp. 28-31, 34-38, 93-94; SUM Alat Interview Record, E3/4637, 10 June 2008, pp. 4-5, ERN (En) 00242125-00242126. *See also*, T. 19 October 2012 (YIM Sovann), E1/135.1, pp. 113-115; T. 30 April 2013 (UNG Chhat), E1/186.1, pp. 11-13, 18-20, 22-23, 25-27, 84-85; SIEM Soeum Interview Record, E3/5235, 15 January 2009, p. 3, ERN (En) 00287329; ORK Chhoem Interview Record, E3/5500, 22 August 2009, p. 3, ERN (En) 00367288; ORK Chhoem Interview Record, E3/9471, 2 October 2014, pp. 4-5, ERN (En) 01050496-01050497; Case 002/01 Appeal Judgement, paras 487-508.



having declined US Ambassador John DEAN's offer to be evacuated from Phnom Penh in the days before 17 April 1975, even in the face of certain execution.<sup>13365</sup> Five other high-ranking Khmer Republic officials had also been arrested and executed by this time, including LON Non (resigned Brigadier General and younger brother of former President LON Nol),<sup>13366</sup> UNG Bun Hor (former National Assembly President), THOM Lim Huong (former Minister of Information), CHHIM Chhuon (former Phnom Penh Special Military Region Commander) and SREY Yar (former Paratrooper Brigade Commander).<sup>13367</sup> The relatives and associates of ranking Khmer Republic officials (including LONG Boret's family) were also targeted for arrest and execution at S-21 Security Centre.<sup>13368</sup>

4037. KHIEU Samphan praised the destruction of the former regime following liberation, heralding the fact that "the enemy [had] died in agony".<sup>13369</sup> Conversely, GRUNK Prime Minister PENN Nouth denied as "grossly exaggerated" the alleged "bloodbath" of "traitors" in Phnom Penh, citing to "the fact that [GRUNK/CPNRAF] had incited the traitors to flee and now continue to allow them to escape in large numbers".<sup>13370</sup> Noting the spurious role of GRUNK,<sup>13371</sup> PENN Nouth's diminished capacity to credibly comment on events in Cambodia in the aftermath of 17 April 1975 as a result of his presence in Beijing, and the French Foreign Ministry's opinion that he

<sup>13365</sup> White House Cabinet Meeting Transcript, E3/3445, 16 April 1975, p. 3, ERN (En) 00443344.

<sup>13366</sup> LON Non was named by NORODOM Sihanouk in an expanded list of 16 "super-traitors" who "ought to be brought before the State courts to answer [for] the countless heinous crimes and misdemeanours they committed against the land, the people, the nation and the State of Kampuchea." See NORODOM Sihanouk Speech (Kampuchea News Agency), E3/1287, 2 April 1975, ERN (En) 00771787.

<sup>13367</sup> U.S. State Department Telegram, Subject: American Talks of Phnom Penh After Fall, E3/4148, 4 May 1975, ERN (En) 00413478. See also, T. 28 January 2013 (AI ROCKOFF), E1/165.1, pp. 47-48, 56-57; T. 5 June 2013 (Sydney SCHANBERG), E1/201.1, pp. 51-59; T. 7 June 2013 (Sydney SCHANBERG), E1/203.1, pp. 5-6; Amnesty International Report: *Democratic Kampuchea* (Cambodia), E3/3865, 1975-1976, p. 1, ERN (En) 00004213 (IENG Sary confirmed in November 1975, during a visit to Thailand, that LONG Boret, SIRIK Matak and LON Non had been executed); U.S. State Department Telegram, Subject: IENG Sary Visit to Thailand, E3/3360, 20 November 1975, ERN (En) 00413889 (IENG Sary stated that LONG Boret and LON Non had been executed).

<sup>13368</sup> Section 12.1: S-21 Security Centre, para. 2490.

<sup>13369</sup> *Khieu Samphan 21 Apr Victory Message on Phnom Penh Radio* (in FBIS collection), E3/118, 21 April 1975, ERN (En) 00166994.

<sup>13370</sup> French Foreign Ministry Telegram, Subject: Interview with Mr PENN Nouth, E3/4132, 19 April 1975, ERN (En) 00491365.

<sup>13371</sup> Section 3: Historical Background, para. 222.

had “no clear idea of the events unfolding in Cambodia”,<sup>13372</sup> the Chamber accords no weight to PENN Nouth’s statement.

4038. During mass rallies and political training sessions in May 1975, senior CPK leaders including POL Pot, NUON Chea, KHIEU Samphan, SON Sen and HU Nim spoke about the presence of enemies inside the country. According to Civil Party EM Oeun, NUON Chea spoke about enemies infiltrating the Party and was, according to the Civil Party, “referring to people who could have been the soldiers in the previous regimes, including [the] Norodom Sihanouk and Lon Nol regimes”.<sup>13373</sup> This was confirmed by three former Division 310 soldiers who attended the May 1975 rallies. SAM Aum, who was interviewed by OCIJ investigators, recalled that SON Sen spoke about “screening and sorting” enemies including “in the context of the army, soldiers whose parents or relatives were affiliated with LON Nol’s government”. These soldiers were referred to as “soldiers with tendency”, according to SAM Aum.<sup>13374</sup> SON Sen’s call to “find those with connections to political tendencies such as [those] having relatives who had served as Republican soldiers” was confirmed by SAEM Heuan in his DC-Cam interview.<sup>13375</sup> KHOEM Samhuon told the OCIJ that SON Sen’s order extended to arresting former high-ranking civil servants and soldiers.<sup>13376</sup> The Chamber accepts that SON Sen issued orders to identify and arrest former soldiers of the Khmer Republic during the May 1975 rallies in Phnom Penh.<sup>13377</sup>

4039. Expert David CHANDLER opined that, following liberation, those who had a connection with the Khmer Republic had become the targets of “a kind of vendetta”

<sup>13372</sup> French Foreign Ministry Telegram, Subject: Interview with Mr PENN Nouth, E3/4132, 19 April 1975, ERN (En) 00491366 (“It is obvious that both the prime minister of GRUNK and the Head of State [*i.e.* NORODOM Sihanouk] are completely wrapped up in the myriad protocol and public relations activities in Peking and have had in recent days, no clear idea of the events unfolding in Cambodia.”). *See also*, French Ministry of Foreign Affairs Telegram, Subject: Your Telex No. 347 Refers, E3/2718, 17 April 1975, ERN (En) 00722361-00722362 (“[W]e tried to reach Mr Penn Nouth [...]. He sneaked off before I got the chance to tell him why I wanted to speak to him. It was quite clear that our Cambodian interlocutors in Peking had sensed why we wanted to talk to them; so they chose to hide from us because they felt powerless.”).

<sup>13373</sup> T. 23 August 2012 (EM Oeun), E1/113.1, pp. 81-85.

<sup>13374</sup> SAM Aun Interview Record, E3/10731, 18 April 2016, p. 5, ERN (En) 01246896.

<sup>13375</sup> SAEM Heuan *alias* Kim DC-Cam Interview, E3/7516, 28 February 2005, ERN (En) 00183598.

<sup>13376</sup> KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, p. 4, ERN (En) 00293365.

<sup>13377</sup> *See also*, HENG Samrin Interview by Ben KIERNAN, E3/1568, 2 December 1991, ERN (En) 00651884 (in his interview with Ben KIERNAN, HENG Samrin stated that the CPK leadership did not instruct cadre to kill – they used the general word *komchat*, not *komtec* (*i.e.* kill) – but rather instructed that LON Nol leaders not be allowed “to remain in the framework”).

involving, in many cases, executions.<sup>13378</sup> Contemporaneous news articles reported evidence of a “blood debt” being paid by former republican officials, soldiers and their families from May 1975, with orders allegedly issued by the Party leadership to “eliminate all high-ranking military officials” including officers from the rank of lieutenant to colonel.<sup>13379</sup> An execution order issued by the Special Zone on 4 June 1975 notes that the listed 17 person had been “examined by the Party” and instructs that “they are to be smashed”, with a request that “comrades [...] implement this policy of the Party”.<sup>13380</sup>

4040. Deputy chief of the General Staff for the Northwest Zone TOAT Thoeun, who testified before the Supreme Court Chamber, recalled a meeting held approximately one month after liberation, which was attended by Northwest Zone Secretary RUOS Nhim. Asked whether he had heard any “policy [or] general statement of what to do with Lon Nol soldiers”, TOAT Thoeun stated that he overheard the dissemination of a “policy from the upper echelon” – which he understood to mean “those who were in the [Party] Centre” – “to smash all former imperialists” and “former feudalists”. The “policy” was not well received by zone and sector officials who, according to the witness, were heard to say that they would beseech the Party Centre “to spare [the] lives of the former soldier[s]”.<sup>13381</sup>

<sup>13378</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 8-9. *See also*, T. 18 July 2012 (David CHANDLER), E1/91.1, p. 22.

<sup>13379</sup> *Reports Hint ‘Blood Debt’ Being Paid* (The Washington Post), E3/3370, 12 May 1975, ERN (En) 00445425 (“Not long after the Communists captured Phnom Penh [...] they issued the following secret instructions: ‘Eliminate all high-ranking military officials, government officials. Do this secretly. Also get provincial officers who owe the Communist Party a blood debt.’ [...] One unit, relaying orders from the Communist high command, called for the execution of all military officers from lieutenant to colonel, with their wives and their children.”). *See also*, *Massive Cambodia Bloodbath Reported* (Los Angeles Times), E3/3393, 4 May 1975, ERN (En) 00445197 (“The first victims of the bloodbath were said to be officers of the Cambodian army and some government officials. All officers down to the rank of second lieutenant were to be killed along with their wives”); Paper by S. Heder: *Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective*, E3/4527, p. 11, ERN (En) 00661465 (referring to political training sessions in May-June 1975: “It was apparently during the course of these conclaves that Pol [Pot] and Nuon [Chea] refined and expanded the categories whose members must all be killed to include ‘officers, starting from the generals and working down through to the lieutenants, as well as *kinh*, policemen, military police personnel and reactionary civil servants.”).

<sup>13380</sup> DK Execution Order, E3/832, 4 June 1975, ERN (En) 00068915 (listing one “secret agent” and 16 soldiers, including one second lieutenant, five first lieutenants, one captain, three majors, five lieutenant colonels and one colonel; one entry references the soldier’s “absolute support for the Republic regime”, while the family members of three other named soldiers are referenced as “traitors”).

<sup>13381</sup> T. 6 July 2015 (TOAT Thoeun), F1/3.1, pp. 123-126. The Chamber has found that TOAT Thoeun’s testimony was largely consistent with his statements and therefore credible. *See* Section 12.1: Internal Factions, para. 1935.

4041. In-court witness testimony, Civil Party evidence, witness statements and contemporaneous materials on the Case File clearly demonstrate the nationwide hunt for high-ranking former members of the Khmer Republic armed forces, civilian officials and their families in the immediate aftermath of liberation and throughout 1975,<sup>13382</sup> and their subsequent disappearance,<sup>13383</sup> arrest<sup>13384</sup> and/or execution.<sup>13385</sup>

<sup>13382</sup> See e.g., IENG Phan Interview Transcript, E3/419.1, 23 November 2009, p. 2, ERN (En) 00912383 (the witness, a Khmer Rouge soldier, was instructed to look for LON Nol soldiers after the evacuation of Phnom Penh); KHOEM Samhuon Interview Record, E3/3962, 6 March 2009, p. 4, ERN (En) 00293365 (SON Sen gave an order to arrest high-ranking civil servants and soldiers of the Khmer Republic in May 1975); CHHIM Srorn Interview Record, E3/9827, 11 March 2014, p. 7, ERN (En) 00985094 (The Khmer Rouge “searched for those who had been involved with the LON Nol government, including the commandoes. They gathered up those people so that it would be easy to kill them.”); PEN Thol Interview Record, E3/9775, 10 August 2015, p. 5, ERN (En) 01151235 (“[T]he people they had us arrest [in Kampong Siem] were people with tendencies toward the LON Nol regime, such as government officials, soldiers, military police (PM), police officers, teachers, and so on.”). See also, U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 13, ERN (En) 00443170 (reports that a Khmer Rouge order went out to kill all army officers and civilian officials of the former regime).

<sup>13383</sup> See e.g., T. 22 October 2012 (CHUM Sokha), E1/136.1, pp. 41-42, 69-70 100-101 (the Civil Party was a former member of the Khmer Republic air force whose father, two uncles and other extended family members, who also were part of the Khmer Republic armed forces, disappeared after liberation); T. 24 October 2012 (LAY Bony), E1/138.1, pp. 27-29 (the Civil Party’s husband was a captain in the Khmer Republic armed forces who stated that after 17 April 1975, if the CPK “noticed the ankles had the marks of where [they were] wearing boots”, they would “conclude that they were the soldiers and they would be arrested”; her in-law, a former soldier, returned to Phnom Penh from Preaek Ang, Siem Reap province upon hearing an announcement and thereafter disappeared. “[W]e concluded that he was killed by the Khmer Rouge.”); T. 4 December 2012 (TOENG Sokha), E1/147.1, p. 78 (the Civil Party was evacuated from Phnom Penh on 17 April 1975: “When we reached Bati [Takeo], people from Phnom Penh were made to live at houses of the Base People. The Base People knew very immediately that these people were soldiers of former officials, but a few days later, they were nowhere to be found”); T. 27 May 2013 (YOS Phal), E1/197.1, p. 74 (the Civil Party was a police officer during the Khmer Republic but managed to dissimulate that fact from the Khmer Rouge: “Those [Lon Nol soldiers] from the rank of major-lieutenant, lieutenant and captain were taken away one after another.”); T. 19 May 2015 (OR Ho), E1/301.1, pp. 16, 26-28 (witness was the deputy chief of Prey Srangae village and saw 15 families disappear from Baray district, Kampong Thom: “some of them were in [the] civil service, policemen and some were in the army. [...] I have never seen them back.”); T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 53-55 (following liberation, the witness, who was a Khmer Rouge soldier, heard that those identified as having connections to the Lon Nol regime were arrested and taken away: “And then they disappeared.”. The witness “heard from others that they would be killed.”); T. 10 November 2016 (OU Dav), E1/498.1, pp. 82, 100 (the Civil Party, who was defrocked in 1971 and drafted into Division 1, described the disappearance of her brother and other soldiers at Pochentong who heeded Khmer Rouge calls to board trucks to be returned to their native villages: “they boarded the vehicles and they disappeared”); BUN Thoeun Interview Record, E3/9746, 16 July 2014, pp. 5-6, ERN (En) 01031927-01031928 (the witness was the Sanlung commune member who stated that “they killed those holdings ranks of second-lieutenant and higher-ups [one or two weeks after the fall of the Khmer Republic regime] [...]. They were not seen [to] return, so I assumed that they were taken to be killed.” The order “had to be from the top level before arriving at the district level.”); NGET Yi Interview Record, E3/9832, 9 July 2014, p. 9, ERN (En) 01035034 (the witness worked as a guard in Damnak Kansaeng village, Pursat; immediately after liberation, those from the LON Nol regime “were searched for and sent to be ‘re-educated’ [...] and I never saw them return.”); Refugee Accounts, E3/4590, various dates, p. 13, ERN (En) 00820331 (“All the refugees gave the same answer: they ‘disappeared’ all the soldiers, all the civil servants [...]. Anyone who seemed to have any authority among Lon Nol loyalists had to disappear. Intellectuals, students and the like, they were not spared” in the aftermath of liberation).

<sup>13384</sup> See e.g., BUN Thien Interview Record, E3/5498, 17 August 2009, p. 6, ERN (En) 00384400 (the witness, who was a Khmer Rouge soldier, stated that: “Only the ranked people were taken [...] at least equivalent to a major lieutenant” after liberation); French Embassy Letter, Subject: Testimony of Brigadier-General SOR Buon, E3/2666, 23 June 1975, p. 6, ERN (En) 00517767 (all soldiers who were not shot were gathered into camps; executions occurred almost every day at a camp in Kampong Thom); CHAN Sokeat Interview Record, E3/5169, 21 April 2008, p. 5, ERN (En) 00250081 (the witness was detained at Wat Cha Detention Centre in Svay Rieng, which was “used as the detention centre to put prisoners who were LON Nol soldiers” in mid-1975); KHEM Chhoeun Interview Record, E3/7749, 16 July 2008, p. 3, ERN (En) 00275041 (the witness was responsible for food and vegetable stuffs in a cooperative in Toul Torteung village: “There were people arrested [in 1975 in Takeo]. They were the soldiers and civil servants of the Lon Nol regime.”); PHOL Phai Interview Record, E3/7752, 7 August 2008, p. 8, ERN (En) 00275160 (After 1975, “I made the biographies of the newly arrived people and sent them to the subdistrict. While I was [Kraing Lovea (Kampong Chhnang)] village chairman, they came and arrested people in my village. They were former teachers, soldiers and policemen.”); KUNG Samat Interview Record, E3/5232, 22 December 2008, p. 3, ERN (En) 00279257 (the witness, who was a soldier in Regiment 4, saw soldiers being separated from the people being evacuated to Kampong Chhnang gathered at one place after liberation).

<sup>13385</sup> See e.g., T. 10 April 2012 (François PONCHAUD), E1/179.1, pp. 14 (testifying about a man whom he interviewed, who told him that “*Angkar* requested that soldiers and high-ranking officials write their name on a board in Kien Svay Pagoda [Kandal]. [...] In the evening, they gathered those [...] soldiers, as well as the high-ranking officials – and they killed them in the lake. I learned about that on the 22nd or the 23rd of April 1975”); T. 24 October 2012 (LAY Bony), E1/138.1, pp. 15-18 (the Khmer Rouge learned that her husband was a Khmer Republic soldier upon their arrival in Pursat province in 1975; both were arrested and her husband was executed); T. 5 November 2012 (SUM Chea), E1/140.1, pp. 16-18, 31-32, 113 (the witness heard from Koeun that the Khmer Rouge “put [up] the loudspeakers and they would propagandise along the street, and then those [former soldiers] who pop up would be instantly arrested and they would eventually be killed” west of Preak Pnov [Kandal] in the days following 17 April 1975); T. 12 November 2012 (PE CHUY Chipse), E1/143.1, pp. 69, 72-73, 90-91 (testifying about trucks of former officials from Siem Reap to be executed; those evacuated to Kampong Kdei were not detailed, but were interrogated and executed); T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 39-40 (“Lon Nol soldiers ranking from the Major Lieutenant gathered [...] [a]nd those who had the rank below that gathered at a primary school near the new bridge. On the 23rd of April 1979 [*sic*] at 5 a.m., there was a truck coming to pick all those military officers and all the public servants, all the heads of all departments from Battambang, heading towards National Road Number 5. As for the lower-rank soldiers below Major Lieutenant, they were transported by truck toward Pailin. [...] I learned [about their fate] through one of the drivers. He said the soldiers were transported to Thipakdei Mountain and they were executed there.”); T. 2 July 2013 (LEV Lam), E1/216.1, p. 26 (“After the meeting and after the sorting out of the biographies, some of those people [17 April evacuees who had been identified as Lon Nol soldiers] disappeared; they were smashed. [...] My uncle [...] was taken away and killed [...] about three or four kilometres to the west of the village.”); T. 17 August 2015 (CHHUM Seng), E1/331.1, p. 66 (testifying that “the Khmer Rouge [were] determined to eradicate all Lon Nol soldiers” following liberation); T. 8 December 2015 (PRUM Sarun), E1/364.1, pp. 86-87 (a formerly ranking soldier was “arrested, taken away and shot to death at the corner of Phnom Krapeu” in Banan district (Battambang province) on 17 April 1975); T. 9 December 2015 (PRUM Sarun), E1/365.1, p. 8 (testifying that she had to bury the executed soldier and his wife since “the stench would be too strong for the villagers”); CHEK Vanthang Interview Record, E3/5188, 18 June 2008, p. 2, ERN (En) 00274200 (witness’s husband, a former Khmer Republic soldier in Siem Reap, was rounded up by the Khmer Rouge and killed after 17 April 1975); CHUCH Punlork Interview Record, E3/5211, 26 August 2008, p. 3, ERN (En) 00275399 (Khmer Republic soldiers were assembled, driven away by truck and killed in Phnom Sampeou district, Battambang province); POV Sinuon Interview Record, E3/5545, 29 September 2009, p. 3, ERN (En) 00387500 (witness’s father, a former Khmer Republic soldier, was shot by the Khmer Rouge on 17 April 1975 in Pursat); UT Seng Interview Record, E3/5267, 14 January 2009, p. 9, ERN (En) 00282358 (“Those connected with the former regime were killed during 1975. [...] As for those who had gone to study in Phnom Penh and had returned home, they were killed along with their entire families. [...] They said, ‘[When you] dig up grass, dig it out by the roots.’”); MUN Mot Interview Record, E3/9564, 25 July 2014, p. 5, ERN (En) 01044795 (describing the execution of a former Khmer Republic village chairman, his wife, son and daughter); U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 14, ERN (En) 00443171 (one account describes the execution of ten former senior civil servants and their families (about 60

## 16.4.3.4.1.3. Early 1976 to 6 January 1979

4042. Following the campaign to drive populations from urban and rural centres into cooperatives and worksites, the shortcomings of the unsustainable collective regime were soon blamed on elements of the former regime. According to the September-October 1976 edition of the *Revolutionary Flag*, most of the “contradictions” in base areas were due to Depositee People who were members of the former regime:

In the base areas, as for the characteristics of the contradictions that we can detect, most of them are government officials, policemen, soldiers, and students. This comes from the capitalists and the landowners not showing themselves. They are the instigators, but they do not show their faces. When they held power, they did not show their faces; they just paid government agents to show their faces.<sup>13386</sup>

4043. The same issue highlighted that unreformed elements and their families could not be trusted, emphasising that “[w]hen they die, they instruct their children to struggle against the communists”.<sup>13387</sup>

4044. IENG Sary acknowledged that by this time, the CPK had decided to separate “people who supported Lon Nol” from base people and “poor people from the cities”.<sup>13388</sup> Indeed, evidence before the Chamber clearly demonstrates that former Khmer Republic officials and their families were systematically screened through registers and biographies to determine their class affinities and former occupations.<sup>13389</sup>

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people total) in Mongkol Borei); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, p. 5, ERN (En) 00443067 (the Khmer Rouge killed all military officers, civil servants, village chief, businessmen and local militia, as well as their families, of Phnom Srok between 17 and 20 April 1975); *Further Submission from the International Commission of Jurists under Commission on Human Rights Decision 9 (XXXIV)* (ECOSOC), E3/3327, 25 January 1979, p. 2, ERN (En) 00075939.

<sup>13386</sup> *Revolutionary Flag*, E3/10, September-October 1976, pp. 29-30, ERN (En) 00450529-00450530.

<sup>13387</sup> See above, Section 16.3: Real or Perceived Enemies, para. 3860.

<sup>13388</sup> IENG Sary Interview with Elizabeth BECKER, E3/94, 22 July 1981, ERN (En) 00342504 (“In 1976, then we began to divide the people. [...] As chairman, Pol Pot summed it up collectively. At that time we divided it up: 1) people of the base 2) poor people from the cities 3) people who supported Lon Nol.”).

<sup>13389</sup> See e.g., T. 22 October 2012 (CHUM Sokha), E1/136.1, pp. 39-40 (Southwest Zone); T. 5 December 2012 (PECH Srey Phal), E1/148.1, p. 22 (Phnom Penh); T. 7 February 2013 (PIN Yathay), E1/170.1, p. 23 (Phnom Penh); T. 30 May 2013 (NOU Hoan), E1/199.1, pp. 25-26 (Phnom Penh); T. 2 July 2013 (LEV Lam), E1/216.1, pp. 24-26 (West Zone); T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 79 (Southwest Zone); T. 7 May 2015 (EK Hoeun), E1/298.1, pp. 34-35 (Southwest Zone); T. 19 May 2015 (OR Ho), E1/301.1, pp. 18-19 (Old North Zone); T. 11 June 2015 (KEO Kin), E1/314.1, pp. 46-47 (Old North Zone); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 75 (Southwest Zone); T. 11 August 2015 (LAT Suoy), E1/328.1, pp. 53-54 (Northwest Zone); T. 17 August 2015 (CHHUM Seng), E1/331.1, pp. 66-67 (Northwest Zone). See also, T. 16 December 2015 (PAK Sok), E1/369.1, pp. 59-60 (CPK cadre were also required regularly to draft biographies to separate those with connections to the Khmer Republic).

They were induced to reveal their backgrounds under the pretext that they would meet NORODOM Sihanouk,<sup>13390</sup> be sent for education or to meet *Angkar*,<sup>13391</sup> or returned to their previous professions.<sup>13392</sup>

4045. With specific regard to former Khmer Republic soldiers, Expert David CHANDLER opined that the imprisonment and execution of this group continued throughout the DK regime, despite the “formal” cessation of a directed CPK campaign of persecution against republican soldiers in mid-1975.<sup>13393</sup> Expert Philip SHORT concluded that “soldiers above a certain rank” and “high officials [...] were executed”, adding that there is “abundant testimony” to that effect in his research and experience.<sup>13394</sup> Contrary to large numbers of former civil servants, who were able to dissimulate their identities throughout the DK period, it was Philip SHORT’s view that the execution of former soldiers was “systematic” and formed part of a nationwide pattern.<sup>13395</sup> As illustrated below in Section 16.4.3.4.2, David CHANDLER and Philip SHORT’s findings were consistent with the evidence before the Chamber in both trial segments of Case 002.

4046. Reports of adverse treatment toward Khmer Republic officials continued from mid-1975 through 1976.<sup>13396</sup> Disappearances, arrests and/or executions of ranking

<sup>13390</sup> See e.g., T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 45-47; T. 30 April 2013 (UNG Chhat), E1/186.1, pp. 3-4; T. 13 October 2016 (CHEAL Choeun), E1/483.1, pp. 119-122; T. 17 October 2016 (CHEAL Choeun), E1/484.1, p. 8 (stating that they were all killed).

<sup>13391</sup> See e.g., T. 30 April 2013 (UNG Chhat), E1/186.1, p. 4; T. 3 May 2013 (LIM Sat), E1/188.1, pp. 10-11; T. 4 July 2013 (SUM Alat), E1/218.1, p. 20 (soldiers were promised that they would “meet *Angkar*”); T. 16 September 2016 (MOM Vun), E1/475.1, pp. 46, 75-76. See also, T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 32-33 affirming Report by S. Heder and M. Matsushita: *Interviews with Kampuchean Refugees at Thai-Cambodian Border*, E3/1714, February-March 1980, ERN (En) 00170737 (“The method of arrest is always to call someone in for study sessions. [...] The same method was used against Lon Nol officers in 1975. They were asked to go meet [*Angkar*] voluntarily and offered forgiveness but then just taken away and executed.”).

<sup>13392</sup> See e.g., T. 5 December 2012 (PECH Srey Phal), E1/148.1, p. 22; T. 10 November 2016 (OU Dav), E1/498.1, pp. 80-81; T. 24 October 2012 (LAY Bony), E1/138.1, pp. 27-28; T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 60-61; T. 25 August 2016 (YOS Phal), E1/464.1, pp. 43-44. See also, T. 10 April 2013 (François PONCHAUD), E1/179.1, pp. 28-29 (“*Angkar* was very good at telling lies. [...] *Angkar* told those people to write down their names on the board. Those who wrote their names were promised some jobs. *Angkar* cheated them and *Angkar* killed them.”).

<sup>13393</sup> T. 20 July 2012 (David CHANDLER), E1/93.1, pp. 8-9.

<sup>13394</sup> T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 94-95.

<sup>13395</sup> T. 7 May 2013 (Philip SHORT), E1/190.1, pp. 87-88.

<sup>13396</sup> See e.g., PRUM Sarun Interview Record, E3/5187, 18 June 2008, p. 4, ERN (En) 00274179 (“[D]uring those times [in 1976] the Khmer Rouge gathered up the families of Lon Nol soldiers and took them to live at the Au Pongmoan base [Battambang]. [...] They asked around looking for high ranking soldiers to take them and kill them.”); SENG Srun Interview Record, E3/1692, 11 August 2008, pp. 2-3, ERN (En) 00242085-00242086 (in early 1976, soldiers were arrested and detained); AP Chroeng Interview Record, E3/9788, 27 March 2015, E3/9788, p. 11, ERN (En) 01092984 (“The killing of LON

Khmer Republic officials intensified in 1977,<sup>13397</sup> and continued throughout 1978.<sup>13398</sup>

Nol soldiers [in 1976 or 1977 was] carried out by a different unit. [...] My uncle, cousins and other relatives who were soldiers under [the] LON Nol regime were brought to be killed at Kandieng district. They were transported in a convoy of vehicles to be killed there.”); U.S. State Department Telegram, Subject: Life Inside Cambodia, E3/3559, 31 March 1976, pp. 3, 23-24, ERN (En) 00443063, 00443065, 00443085-00443086 (refugees from Cambodian provinces close to the Thai border reported executions of teachers, students and low-ranking LON Nol soldiers since 1 January 1976); U.S. National Security Council Memorandum, Subject: Assessment of Developments in Indochina Since the End of the War, E3/3472, 15 July 1976, p. 24, ERN (En) 00443170 (reporting that, since 1 January 1976, the Khmer Rouge executed former teachers, students and low-ranking enlisted men of the Khmer Republic army); *Submission from Amnesty International under Commission on Human Rights Decision 9 (XXXIV) (ECOSOC)*, E3/4521, 15 August 1978, ERN (En) 00076003-00076004 (reports of summary executions of many people because of their position under the former administration and in some cases, relatives of those regarded as traitors or enemies, who were also executed. Many refugees alleged that large-scale summary executions of officers of the former republican army occurred in 1975 and early 1976, sometimes involving their family dependents. They were either executed or taken away and never heard of again.).

<sup>13397</sup> See e.g., T. 14 January 2016 (YOU Vann), E1/376.1, pp. 64-65 (“[W]e needed to record the number of soldiers from the old regimes in each village. [...] [I]f that family had soldiers’ member [*sic*] and then we recorded only the parents. If we identified that that person was the soldier and we recorded only that individual as a soldier and his wife.”); T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 27-28 (regarding the disappearance of her brothers in 1977 in the East Zone, the Civil Party stated that “of course [their disappearance and deaths were] related [to their former professions] because [the Khmer Rouge] knew that my brother had been a policeman and that the other brother had been a soldier.”); T. 24 October 2016 (PREAP Sokhoeurn), E1/488.1, pp. 20-21 (“From 1975 to 1977, at that time they searched for people with affiliation or tendency to Lon Nol’s government. At the time, my brother named Ol, who was a soldier of [the] Lon Nol regime, was arrested and taken away to be killed. His wife was put in a truck. There were also two other women [...] [whose] husbands were accused of being linked to a network, they were arrested in 1975 or 1976, and in 1977, the wives were also identified, put in a truck and taken away to be killed. [...] [My brother] was searched for and identified as a Lon Nol soldier, and he was arrested and killed. [...] I also heard that my father [was] taken away to be killed.”); CHAN Sokeat Interview Record, E3/5169, 21 April 2008, pp. 5-6, ERN (En) 00250081-00250082 (the “Southwest group” came to “arrest LON Nol soldiers” in 1977 in Svay Rieng and “[s]ome were arrested in 1978”); HUN Sa Interview Record, E3/5228, 19 November 2008, p. 4, ERN (En) 00250274 (after the arrival of the Southwest Zone cadre, witness “personally saw them take those three [Lon Nol soldiers] and shoot them to death”); YANG Sokhom Interview Record, E3/9778, 15 September 2014, pp. 9, 15-16, ERN (En) 01047773, 01047779-01047780 (attendees at district-level meetings in Pursat from mid-1977 were told: “Anyone appearing to be an enemy who raises their head must be swept clean and smashed”, specifically referring to civil servants or soldiers of the Khmer Republic); ORK Chhoem Interview Record, E3/9471, 2 October 2014, pp. 23-24, ERN (En) 01050515-01050516 (referring to the killing of persons in Bakan district before mid-1977, “I heard that [the Khmer Rouge] had received information that those people were former LON Nol government officials.”); CHECH Sopha Interview Record, E3/9831, 13 October 2014, pp. 8-9, ERN (En) 01050625-01050626 (witness’s uncle and relatives who were Khmer Republic soldiers were “taken to be killed” in 1977). See also, T. 11 July 2013 (Stephen HEDER), E1/222.1, pp. 61-62 *affirming* Paper by S. HEDER: *Seven Candidates for Prosecution: Accountability for the Crimes of the Khmer Rouge*, E3/48, March 2004, p. 37, ERN (En) 00393523.

<sup>13398</sup> See e.g., CHAN Sokeat Interview Record, E3/5169, 21 April 2008, pp. 5-6, ERN (En) 00250081-00250082 (deposing to the arrest and disappearance of LON Nol soldiers in 1977 and 1978 in Svay Rieng: “their clothes were brought back to the villagers; that made villagers [suspect] that those soldiers had all been killed.”); IM An Interview Record, E3/7737, 17 June 2008, p. 5, ERN (En) 00274161 (in late 1978, Khmer Rouge military cadre went looking for the witness “because they knew I had been a 50 household chief during the Lon Nol Era”); IN Choeun Interview Record, E3/5185, 17 June 2008, pp. 2-3, ERN (En) 00274164-00274165 (the witness’s nephew and others were arrested and escorted to Wat Kirirum [Kampong Speu] in 1978, accused “of having been in the Military Police during the Lon Nol regime”); HENG Chuy Interview Record, E3/5215, 9 September 2008, p. 3, ERN (En) 00275443 (In 1978, former soldiers, police and government officials were detained in Siem Reap, later transporting



4047. The CPK actively sought the return of high-ranking “traitors” who had fled the country after 17 April 1975.<sup>13399</sup> Evidence also shows that some lower-ranking officials, non-commissioned soldiers and family members of the former regime who were not executed after 17 April 1975 were interned at security centres or forced to perform manual labour.<sup>13400</sup> The unabating threat of counter-revolutionary rebellion from republican officials nevertheless necessitated the relentless targeting of *all* officials of the former regime.<sup>13401</sup> Indeed, the *Revolutionary Flag*, which continued praising the elimination of Khmer Republic officials well into the last days of the DK,<sup>13402</sup> identified that there were between 40,000 and 60,000 “core forces [...] meaning the contemptible [LON] Nol’s group” in 1975, which required “sweeping away” and “smashing”.<sup>13403</sup>

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them away by truck); CHHIM Srom Interview Record, E3/9827, 11 March 2014, pp. 7-8, ERN (En) 00985094-00985095 (“They killed those who had been involved with the LON Nol government probably in August 1978 at Au Ngang in Trapeang Chong commune [Bakan district], which was a forest. After those people had been killed, I smelled a bad smell from a trench while I was driving a cart to meet my wife. [...] I knew because 28 members of my unit had been killed. All of those 28 people had been former LON Nol soldiers or commandos. [...] I saw flies surrounding the trench, but I did not see the corpses.”); LY Lon Interview Record, E3/9769, 13 May 2014, p. 20, ERN (En) 01034986 (“It was in mid-1978. It was the last time that they killed ex-LON Nol’s soldiers [in Bakan district].”); U.K. Foreign Policy Document No. 25, Human Rights Violations in Democratic Kampuchea, E3/3319, 14 July 1978, ERN (En) 00420644.

<sup>13399</sup> See e.g., GRUNK Mission in Paris Communiqué, E3/1352, 28 March 1975, p. 1, ERN (En) 00488015 (reminding the international community that SOSTHÈNE Fernandez, who had fled to France, remained one of the traitors sentenced by the “National Congress” and encouraging all people to support the declaration thereof); French Foreign Ministry Memo, Subject: Cambodian Review (September 1976), E3/491, 15 October 1976, p. 4, ERN (En) 00525814 (DK authorities repeatedly requested the Thais to hand over Cambodian refugees particularly close to the LON Nol regime including General SEK Sam Siet, Col. KETH Reth, Col. CHOU Deth and former Minister of Justice, BAN Sang).

<sup>13400</sup> See e.g., T. 6 December 2012 (HUN Chhunly), E1/149.1, pp. 39-40 (“As for the lower-rank soldiers below Major Lieutenant, they were transported by truck toward Pailin [...] they were ordered to farm the land near Ou Pong Moan.”); T. 26 January 2015 (CHOU Koemlan), E1/252.1, p. 59 (stating that workers were accused of being lazy and threatened with execution); T. 20 August 2015 (TAK Boy), E1/334.1, p. 5 (he and former soldiers were transferred to a place west of Nam Tau to clear the forest for seven months); BUN Sat Interview Record, 5 May 2008, E3/7709, p. 4, ERN (En) 00243278 (Chheu Teal pagoda was a detention centre of about 700 youths, consisting of students, soldiers or teachers of the LON Nol regime).

<sup>13401</sup> See above, fn. 13382.

<sup>13402</sup> See e.g., *Revolutionary Flag*, E3/747, August 1978, pp. 19-20, ERN (En) 00499784-00499785 (“In just one month, our Party liberated 70-75 percent of the villages and subdistricts throughout the country. With a little more time, the revolutionary movement would certainly have completely swept clean the contemptible Lon Nol traitors, and *none would have remained.*” [emphasis added]). See above, Section 16.3: Real or Perceived Enemies, para. 3847.

<sup>13403</sup> *Revolutionary Flag*, E3/5, August 1975, pp. 21-22, ERN (En) 00401496-004014967 (“However, the Party’s analysis was that the enemy situation had the American imperialists and the Thieu [Ky] group, but their core forces were the traitors in Kampuchea, meaning the contemptible Nol’s group. [...] Despite the fact that at the time militarily we were few and there were more than 40,000 of the enemy, and including the royal police, there were more than 60,000 of them. This was the army. As for the militia and the village defence forces, there were many more tens of thousands, many hundreds of thousands.

4048. Telegrams before the Chamber demonstrate that the arrest of Khmer Republic officials was routinely reported to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870 throughout 1976 and 1977.<sup>13404</sup> As the nominal heads of state in 1976 and 1977, GRUNK Prime Minister PENN Nouth and subsequently-appointed President of the State Presidium KHIEU Samphan were forwarded letters of concern by Amnesty International, noting refugee reports of summary executions of civilians and Khmer Republic soldiers, and requesting that inquiries be made.<sup>13405</sup> Having not received a response, Amnesty International renewed its appeal in May 1978, this time joined by the UN Commission on Human Rights.<sup>13406</sup>

4049. In light of the foregoing, the Chamber is satisfied that a policy broadly targeting former Khmer Republic officials for adverse treatment existed throughout the DK period which was implemented by the Party's entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK forces. The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

#### 16.4.3.4.2. *Criminality of policy*

4050. As limited to Case 002/02, the Chamber is seised of facts relevant to the implementation of this policy through a joint criminal enterprise at Tram Kak Cooperatives, Kraing Ta Chan Security Centre, 1<sup>st</sup> January Dam Worksite, and S-21

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As for us, we had at the most companies, but after several months of fighting and sweeping them away, the enemy was smashed.”)

<sup>13404</sup> See e.g., DK Telegram, E3/511 [E3/952], 2 April 1976, ERN (En) 00182658 (KE Pauk reporting to POL Pot, NUON Chea, SON Sen and Office 870 on the enemy situation in the North Zone, including former soldiers posting pictures of LON Nol and his announcement of 18 March 1970); DK Telegram, E3/1144, 5 September 1977, ERN (En) 00517923-00517924 (Sector 801 reported to POL Pot, NUON Chea, IENG Sary, VORN Vet and SON Sen that former officials, police and soldiers had been identified and only a few remained undercover); DK Telegram, E3/996 [E3/995], 19 March 1978, pp. 1-2, ERN (En) 00436995-00436996 (North Zone Secretary reporting to POL Pot, NUON Chea, IENG Sary, VORN Vet and Office 870 that “enemies contacted with the former policemen, sold[i]ers and government officials. They mingled themselves as the ‘New People’. After they acted against us, we knew them clearly and we systematically purged them. Right now, some police men, soldiers and government officials escaped after more than 20 people were purged. More actions will be taken to arrest more people.”); DK Report, E3/1094, 4 August 1978, ERN (En) 00315368 (West Zone monthly report to “*Angkar*” noting the “screening out” of enemy elements “from various units and [the] military [including] the elements of the 17 April including former civil servants”). See also, DK Report, E3/4103, 11 April 1977, p. 4, ERN (En) 00322133; DK Report, E3/2450, 17-19 September 1977, pp. 1-3, ERN (En) 00322161-00322163.

<sup>13405</sup> Amnesty International Report 1975-1976, E3/4520, May 1976, ERN (En) 00002901; Amnesty International Letter to KHIEU Samphan, E3/3864, 28 February 1977, ERN (En) 00498337-00498338.

<sup>13406</sup> *Cambodians: An Endangered Species* (Los Angeles Times), E3/4492, 7 May 1978, ERN (En) 00445239. See also, Amnesty International Press Release, E3/3311, 8 May 1977, ERN (En) 00419521.

Security Centre.<sup>13407</sup> For the reasons outlined below, the Chamber finds that the policy targeting former Khmer Republic officials for adverse treatment involved the commission of crimes which were encompassed by the common purpose.

4051. *Murder* – The Chamber has found that the crime against humanity of murder was established with respect to former Khmer Republic officials at S-21 and Kraing Ta Chan Security Centres in the aftermath of 17 April 1975.<sup>13408</sup> It recalls that the execution of members of this group after liberation is reflective of Duch’s testimony that they had become “key enemies” after 17 April 1975, resulting in them being “hunted down” by authorities. Although he did not provide a precise timeframe, the Chamber’s findings correspond to Duch’s assertion that the most serious category of “[p]eople in Lon Nol’s regime” were “smashed secretly”.<sup>13409</sup> These findings further align with IENG Sary’s statement that the decision “to do whatever had to be done” had been made in the days following liberation – around 20 April – in order to make it impossible for republican forces to stage a counter-revolutionary comeback.<sup>13410</sup> The timing and scale of the arrests and executions in Tram Kak district further mirrors the events at Tuol Po Chrey.<sup>13411</sup>

4052. ROCHOEM Ton *alias* PHY Phuon’s evidence directly contradicted the notion of a clear policy to kill Khmer Republic soldiers.<sup>13412</sup> The Chamber notes that the witness was uniquely placed alongside the CPK leadership in Phnom Penh from 20 April 1975; a point at which the city had largely been swept clean of its resident population, including Khmer Republic defenders. It is not clear from his evidence whether the witness actually saw any republican officials including soldiers after his arrival in the capital.<sup>13413</sup> He was further not in a position to testify about events outside of Phnom Penh in the aftermath of liberation. The Chamber finds that POL Pot’s alleged

<sup>13407</sup> See above, para. 3728.

<sup>13408</sup> Sections 12.2.18: S-21 Security Centre: Former Khmer Republic Officials (*see also*, Section 12.2.24.1.1: Legal Findings: Murder); Section 12.3.12.1: Kraing Ta Chan Security Centre: Legal Findings: Murder.

<sup>13409</sup> Case 001 Transcript (KAING Guek Eav), E3/345, 18 May 2009, p. 10, ERN (En) 00328454.

<sup>13410</sup> See above, para. 4034.

<sup>13411</sup> See above, para. 4036.

<sup>13412</sup> See above, para. 4035.

<sup>13413</sup> T. 30 July 2012 (ROCHOEM Ton *alias* PHY Phuon), E1/98.1, p. 87 (stating that he did not see any more “enemies” after the evacuation of Phnom Penh; most likely a reference to KGB and CIA agents).

order not to harm republican soldiers, as described by ROCHOEM Ton *alias* PHY Phuon, was not reflective of actual events on the ground after 20 April 1975.

4053. In any event, the Chamber accepts IENG Sary's assertion that the CPK leadership's "decision to kill" was formalised on or about 20 April 1975 in an attempt to prevent a counter-revolution, and that the decision was accordingly implemented in a systematic fashion – including at the Tram Kak Cooperatives and Kraing Ta Chan Security Centre. The Chamber finds that the policy targeting all former Khmer Republic officials for execution from 20 April 1975 was implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and transform the population into a homogeneous Khmer society of worker-peasants.

4054. The brief departure from this policy in late May 1975 is extensively corroborated. Several witnesses recalled mass rallies and political training sessions in May 1975 in Phnom Penh, attended by senior leaders including POL Pot, NUON Chea and KHIEU Samphan,<sup>13414</sup> at which SON Sen spoke about the need to "find", "screen" and "sort" soldiers affiliated with the LON Nol government. These accounts were corroborated by HENG Samrin's detailed recollection that the CPK leadership did not instruct cadre to kill at the May 1975 mass rallies, but rather directed that republican leaders be prevented from "remain[ing] in the framework".<sup>13415</sup> The Chamber has found that, consistently with this evidence, instructions were indeed issued in Tram Kak district to not harm former Khmer Republic soldiers, including those above the rank of second lieutenant to colonel.<sup>13416</sup> The Chamber is satisfied that the directive to not harm high-ranking Khmer Republic soldiers was issued by the CPK leadership during rallies held in Phnom Penh in late May 1975.

4055. The Chamber has found that the crime against humanity of murder was established with respect to formerly ranking Khmer Republic officials at S-21 Security Centre (from October 1975)<sup>13417</sup> and Kraing Ta Chan Security Centre (from April

<sup>13414</sup> See above, para. 3736.

<sup>13415</sup> See above, fn. 13377.

<sup>13416</sup> Section 10.1: Tram Kak Cooperatives, para. 967. See also, Section 10.1.6.3: Tram Kak Cooperatives: Instructions in relation to Evacuees and former Khmer Republic Soldiers and Officials.

<sup>13417</sup> Section 12.2.24.1.1: S-21 Security Centre: Legal Findings: Murder. The earliest recorded execution of Khmer Republic elements was in October 1975. See Section 12.2: S-21 Security Centre, para. 2488.

1977).<sup>13418</sup> It has specifically found that ranking officers and civil servants were arrested and executed at S-21 from as early as October 1975, and that this continued throughout the security centre's operations, peaking in 1976.<sup>13419</sup> At Kraing Ta Chan, republican officials and soldiers were targeted for arrest from April and May 1977.<sup>13420</sup> In particular, former soldiers were kept at Kraing Ta Chan for no longer than one week before being executed, while "high ranking" officers – including those with the rank of first and second lieutenant – were kept outside the detention facility and marched directly to the killing site without being detained or interrogated.<sup>13421</sup>

4056. Consistently with the general nationwide pattern of executions of high-ranking republican soldiers and officials in 1976, 1977 and 1978,<sup>13422</sup> the Chamber finds that the policy targeting this group for adverse treatment had as its objective their execution from October 1975 and that this continued throughout the remainder of the DK period. It is satisfied that this policy was executed in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, defend the country against enemies and radically transform the population into a homogeneous society of worker-peasants.

4057. Having established the existence of a policy targeting all Khmer Republic officials for execution from 20 April 1975 to late May 1975, and ranking personnel from October 1975 throughout the remainder of the DK period, the Chamber finds that the crime against humanity of murder, as established during these periods at S-21 and Kraing Ta Chan Security Centres, was encompassed by the common purpose.

4058. *Persecution on political grounds* – The Chamber has found that the crime against humanity of persecution on political grounds was established with respect to former Khmer Republic officials and soldiers throughout the DK period at Tram Kak

<sup>13418</sup> Section 12.3.12.1: Kraing Ta Chan Security Centre: Legal Findings: Murder (finding that survival was the exception at Kraing Ta Chan Security Centre). *See also*, Section 12.3.11.3: Kraing Ta Chan Security Centre: New People and Former Khmer Republic Officials (finding that Khmer Republic officials and soldiers were sent to Kraing Ta Chan Security Centre from April 1977 in particular).

<sup>13419</sup> Section 12.2.18: S-21 Security Centre: Former Khmer Republic Officials.

<sup>13420</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2840.

<sup>13421</sup> Section 12.3: Kraing Ta Chan Security Centre, para. 2840 (*see also*, Section 12.3: Kraing Ta Chan Security Centre: New People and Former Khmer Republic Officials, para. 2801).

<sup>13422</sup> *See above*, 4046.

Cooperatives, Kraing Ta Chan Security Centre, S-21 Security Centre and 1<sup>st</sup> January Dam.<sup>13423</sup>

4059. In addition to being targeted for execution (as detailed above), the Chamber has found that former Khmer Republic officials and soldiers were variously subject to arrest, detention, torture and disappearances at the Tram Kak Cooperatives, Kraing Ta Chan Security Centre, 1<sup>st</sup> January Dam Worksite and S-21 Security Centre.<sup>13424</sup> The Chamber's findings reflect an intentional and sustained campaign specifically targeting all former republican officials for discrimination at these sites throughout the DK period. Consistently with the widespread pattern of arrests, disappearances and discrimination of former Khmer Republic elements before 17 April 1975,<sup>13425</sup> after liberation in 1975,<sup>13426</sup> 1976, 1977 and 1978,<sup>13427</sup> the Chamber is satisfied that a policy targeting *all* Khmer Republic officials and their family members for discriminatory treatment existed throughout the DK period, and that this specific intent was shared by direct perpetrators of crimes and JCE participants alike.

4060. The Chamber is satisfied that this policy was implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a “great leap forward” in order to, among other things, defend the country against enemies and

<sup>13423</sup> Section 10.1: Tram Kak Cooperatives, para. 1175 (referring to disappearances and executions); Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1690 (referring to the identification of Khmer Republic soldiers, their arrest and disappearance); Section 12.2: S-21 Security Centre, para. 2601 (referring to arrests, detentions, interrogations, torture and executions); Section 12.3: Kraing Ta Chan Security Centre, para. 2813 (referring to arrests, detentions and executions). *See also*, Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1666, 1577 (fn. 5375) (referring to the death of former republican civil servants).

<sup>13424</sup> Section 10.1: Tram Kak Cooperatives, paras 1175, 1179 (former Khmer Republic military and police were screened at Champa Pagoda in the aftermath of 17 April 1975, with many having disappeared thereafter. From April and May 1977, former republican soldiers and officials were targeted for arrest and execution). *See also*, Section 10.1: Tram Kak Cooperatives, para. 1201 (finding that former soldiers and teachers disappeared in the aftermath of 17 April 1975); Section 11.2.21: 1<sup>st</sup> January Dam Worksite: Treatment of New People Compared to Old People; Section 11.2.23: 1<sup>st</sup> January Dam Worksite: Treatment of former Khmer Republic Officials (referring to the identification of this group for arrest and disappearance); Section 11.2.24.3: 1<sup>st</sup> January Dam Worksite: Legal Findings: Persecution on Political Grounds (ranking soldiers were screened for the purpose of arresting them and many former soldiers disappeared); Section 11.2.24.6: 1<sup>st</sup> January Dam Worksite: Legal Findings: Other Inhumane Acts through Conduct Characterised as Enforced Disappearances (generally); Section 12.2: S-21 Security Centre, para. 2599 (referring to the identification, arrest, detention and torture of this group before execution); Section 12.2: S-21 Security Centre, para. 2577; Section 12.2.24.1.5: S-21 Security Centre: Legal Findings: Torture (generally); Section 12.3.13.6: Kraing Ta Chan Security Centre: Legal Findings: Torture (generally). For Kraing Ta Chan Security Centre, *see also*, paras 2799 (specifically referring also to the torture of a suspected ranking soldier), 2813 (former Khmer republic soldiers and officials were specifically targeted from April 1977 for arrest, detention and execution).

<sup>13425</sup> *See above*, para. 4031.

<sup>13426</sup> *See above*, para. 4041.

<sup>13427</sup> *See above*, para. 4046.

transform the population into a homogenous society of worker-peasants. The Chamber finds that the crime against humanity of persecution on political grounds, as directed against former Khmer Republic soldiers, officials and their family members throughout the DK period at the Tram Kak Cooperatives, Kraing Ta Chan Security Centre, 1<sup>st</sup> January Dam and S-21 Security Centre, was encompassed by the common purpose.

#### 16.4.3.4.3. *Conclusion*

4061. In light of the foregoing, the Chamber finds that the policy targeting former Khmer Republic elements for discriminatory treatment was intrinsically linked to the common purpose. The policy involved the commission of the crimes against humanity of murder (from 20 April 1975 to late May 1975, and from October 1975 to 6 January 1979) and persecution on political grounds (throughout the DK period) as a means of achieving the common purpose, thereby rendering it criminal in character.

#### 16.4.4. *Regulation of Marriage*

4062. The Closing Order charges the existence of a policy by CPK leaders to regulate marriage.<sup>13428</sup> According to the Closing Order, the CPK intended to reconstruct the concept of marriage in order to regulate sexual relations, replace the role of parents in the selection of a suitable spouse, force couples to marry and encourage the production of children to increase the country's population to 20 million within 10 to 15 years.<sup>13429</sup> The Parties' submissions with regard to this policy have been addressed in Section 14: Regulation of Marriage.

##### 16.4.4.1. *Existence of policy*

4063. The existence of a policy to regulate family-building and marriage from as early as 1974, which was implemented nationwide by the Party's entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK forces, has been established above in Section 14: Regulation of Marriage.<sup>13430</sup> The Chamber now turns to examine the scope of this policy and the crimes encompassed by the common purpose.

<sup>13428</sup> See above, para. 3728.

<sup>13429</sup> Closing Order, paras 216-218.

<sup>13430</sup> See also, Section 3.5: Historical Background: Marriage in Cambodia before 1975.

16.4.4.2. Criminality of policy

4064. As limited to Case 002/02, the Chamber is seised of facts relevant to the nationwide implementation of this policy through a joint criminal enterprise,<sup>13431</sup> as well as specifically at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam and Trapeang Thma Dam.<sup>13432</sup> For the reasons outlined below, the Chamber finds that the policy to regulate family-building and marriage involved the commission of crimes which were encompassed by the common purpose.

4065. *Other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage* – The Chamber has found that the crime against humanity of other inhumane acts was established through conduct characterised as forced marriage and rape in the context of forced marriage.<sup>13433</sup> It has determined that the CPK implemented this policy in accordance with its desire to increase the country's population within 10 to 15 years.<sup>13434</sup> In so doing, the CPK actively sought to supplant the traditional institution of marriage with a regime – implemented by local authorities in accordance with directives of the Party Centre – of arbitrary pairing largely devoid of individual or familial input.<sup>13435</sup> Weddings ceremonies were stripped of their ceremonial character, couples were required to pledge their commitment to *Angkar* to produce children, to strive to work hard to build the country, to work hard to increase rice production or to adhere to DK policies. Policy announcements including the need to increase the population and to work hard for the CPK in order to achieve work plans set by *Angkar* were frequently announced by Party officials during ceremonies.<sup>13436</sup> Newly-wedded couples were coerced into marriage and its consummation to fulfil the will of *Angkar* and produce children for the revolution to build and defend the country against enemies.<sup>13437</sup> Failure to comply led to the fear of being reported, beaten or

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<sup>13431</sup> See above, para. 3728.

<sup>13432</sup> Section 14.3.11: Regulation of Marriage: Findings on Specifically Charged Crime Sites.

<sup>13433</sup> Section 14.4.1: Regulation of Marriage: Legal Findings: Other Inhumane Acts through Conduct Characterised as Forced Marriage; Section 14.4.2: Regulation of Marriage: Legal Findings: Other Inhumane Acts through Conduct Characterised as Rape in the Context of Forced Marriage.

<sup>13434</sup> Section 14.3.2.2: Regulation of Marriage: Objectives of Policy to Regulate Marriage.

<sup>13435</sup> Sections 14.3.4-14.3.6: Regulation of Marriage.

<sup>13436</sup> Section 14.3.7: Regulation of Marriage: Wedding Ceremonies.

<sup>13437</sup> Section 14: Regulation of Marriage, para. 3646.



abused by one's spouse or CPK authorities, being sent for re-education or taken away and killed.<sup>13438</sup>

4066. The Chamber finds that marriages were forcibly arranged and their consummation enforced for the purpose of increasing DK's population, and that this was implemented in furtherance of the common purpose of rapidly implementing socialist revolution through a "great leap forward" in order to, among other things, build the country, defend it against enemies and radically transform society. Having found that the CPK considered Vietnam to be the "eternal" enemy and most serious threat to the continued existence of DK,<sup>13439</sup> the Chamber is further satisfied that the primary enemy against which this policy was designed to defend in the medium to long term was, in fact, the Vietnamese. The Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage, as established by the Chamber, was encompassed by the common purpose.

#### 16.4.4.3. *Conclusion*

4067. In light of the foregoing, the Chamber finds that the policy to regulate marriage and family-building was intrinsically linked to the common purpose. The policy involved the commission of the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage, as a means of achieving the common purpose, thereby rendering it criminal in character.

#### 16.4.5. *Legal Findings*

4068. Having reviewed the totality of the evidence, the Chamber is satisfied that by 17 April 1975, and continuing until at least 6 January 1979, senior CPK leaders shared the common purpose of rapidly implementing socialist revolution in Cambodia through a "great leap forward" designed to build the country, defend it from enemies and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants. The common purpose was implemented across DK by the Party's

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<sup>13438</sup> Section 14.4.2: Regulation of Marriage: Legal Findings: Other Inhumane Acts through Conduct Characterised as Rape in the Context of Forced Marriage.

<sup>13439</sup> Section 13.3.5.2: Treatment of the Vietnamese: Evidence of a Policy Targeting the Vietnamese. See above, Section 16.3: Real or Perceived Enemies, paras 3843, 3853.

entire administrative network of zone, sector, district and local-level secretaries, CPK cadres and RAK forces through the execution of at least five policies. The Chamber has found that these policies were intrinsically linked to the common purpose and involved the commission of crimes. The Chamber therefore finds that the common purpose was itself criminal in character. The NUON Chea Defence's submission to the contrary is accordingly rejected.

4069. As demonstrated in Sections 16.2 to 16.4 above, the common purpose was shared by a plurality of persons including the senior leadership consisting of POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, IENG Thirith, SON Sen and VORN Vet (until his arrest in late 1978), as well as zone secretaries including *Ta Mok*, KE Pauk, KOY Thuon (until his house arrest in mid-1976), CHOU Chet (until his arrest in March 1978), RUOS Nhim (until his arrest in May-June 1978) and SAO Phim (until his suicide in June 1978).

4070. As discussed in detail in Sections 10-14 of this Judgement, senior CPK leaders personally oversaw the implementation of the various policies. As the nominal head of state, KHIEU Samphan promoted the common purpose and encouraged the masses on its implementation through the policies. NUON Chea and SON Sen maintained direct leadership over S-21 Security Centre, personally instructed KAING Guek Eav *alias* Duch on its operations and ordered the execution of prisoners. As the Chairman of the General Staff, SON Sen held overall authority for Au Kanseng Security Centre, which was administered by Centre Military Division 801, and routinely channelled information about its operations – including the execution of over 100 Jarai prisoners – to the Party Centre. NUON Chea and POL Pot personally furnished instructions to the Sector 105 Secretary, who oversaw Phnom Kraol Security Centre and ensured that the directions from the upper echelon was implemented throughout the Autonomous Sector. As the Southwest Zone Secretary, *Ta Mok* was involved in the extensive flow of execution reports between Sector 13, which directly administered Kraing Ta Chan Security Centre, and the Zone.

4071. *Ta Mok* also maintained ongoing involvement with the events in Tram Kak district, personally visiting the Tram Kak Cooperatives and instructing Sector 13 cadres on the implementation of the Party's economic policy thereat. KE Pauk was responsible for the construction of the 1<sup>st</sup> January Dam and reported on its construction to Office

870. Northwest Zone Secretary RUOS Nhim often visited Trapeang Thma Dam, provided detailed reports about living and working conditions in the Zone to Office 870 and directly oversaw the Sector 5 Committee which was responsible for the Dam's construction. Kampong Chhnang Airfield was under the supervision of RAK Division 502, whose commander SOU Met regularly visited the Airfield, passed instructions to cadres supervising the Airfield, reported to SON Sen and had regular contact with Duch and SON Sen in relation to the transfer of prisoners to S-21 Security Centre. In addition, KE Pauk oversaw Sector 41 of the Central (old North) Zone at the time of mass purges by Southwest Zone cadres and was responsible for the genocide of Cham populations in that sector.

4072. SAO Phim was involved in the suppression of the October 1975 Cham rebellion, directly oversaw the destruction of Vietnamese and Cham communities through genocidal means in Sectors 20, 21, 22, 23 and 24 of the East Zone, and was replaced as zone secretary by SON Sen after his death in mid-1978. Finally, instructions to arrange marriages were funnelled down the entire CPK hierarchy from POL Pot, through sector secretaries and to lower-level committees.

4073. The Chamber finds that the above-named JCE participants used direct perpetrators to commit the crimes involved in the furtherance of the common purpose. By designing, implementing, controlling and contributing to the five policies, and by their overall positions of authority in DK, the above JCE participants are responsible for the crimes established in Case 002/02.

4074. Having established that NUON Chea and KHIEU Samphan shared the common purpose of other JCE members, the Chamber now turns to assess the degree to which they participated in the common purpose and whether such contribution was significant to the commission of crimes encompassed thereby.

## 17. THE CRIMINAL RESPONSIBILITY OF NUON CHEA

4075. As limited to Case 002/02, the Closing Order charges NUON Chea with the commission of crimes against humanity, grave breaches of the Geneva Conventions and genocide by killing members of the Vietnamese and Cham populations through a joint criminal enterprise in its basic form.<sup>13440</sup> In addition, it charges NUON Chea with the crimes underlying these charges under the modes of liability of planning, instigating, ordering, aiding and abetting, and, in the alternative, superior responsibility.<sup>13441</sup>

4076. The NUON Chea Defence makes the general submission that “the evidence demonstrates that key constitutive elements of the modes of liability charged against him – in particular, the primary mode of liability of JCE I – have not been proven beyond reasonable doubt”.<sup>13442</sup> The Chamber recalls that it has addressed different elements of this submission in the appropriate parts of this Judgement.<sup>13443</sup>

4077. The assessment of NUON Chea’s criminal responsibility will rest on the Chamber’s assessment of his roles, functions and conduct during the DK period as presented during Case 002. In evaluating the extent of his contemporaneous knowledge of, and contribution to, the commission of crimes and/or intent to commit the crimes charged, the Chamber will consider the totality of NUON Chea’s statements and conduct including, where appropriate, statements made after the fall of the DK.

### **17.1. Knowledge Relevant to the Modes of Liability**

4078. NUON Chea’s knowledge of the policies, patterns of conduct and specific crimes falling within the scope of Case 002/02 is relevant to the Chamber’s assessment of all forms of responsibility,<sup>13444</sup> and will therefore be addressed first. The requisite level of knowledge varies depending on whether the criminal liability of the Accused

<sup>13440</sup> Closing Order, paras 1521-1531, 1532-1533; Case 002 Additional Severance Decision Annex, para. 6(i).

<sup>13441</sup> Closing Order, paras 1543-1560; Case 002 Additional Severance Decision Annex, para. 6(ii).

<sup>13442</sup> NUON Chea Closing Brief, para. 125.

<sup>13443</sup> See e.g., Section 12.1: Internal Factions; Section 16: Common Purpose; Section 7: Roles and Functions – NUON Chea.

<sup>13444</sup> For the applicable law on each mode of liability, see Section 15: Applicable Law: Individual Criminal Responsibility.

materialises before, concurrent with or after the commission of the crimes.<sup>13445</sup> Therefore, in this section, the Chamber will examine what NUON Chea knew prior to, concurrent with and after the commission of the crimes falling within the scope of Case 002/02.

4079. NUON Chea made various admissions, outlined below, concerning his general knowledge of the policies and of the crimes being committed by the CPK. Furthermore, throughout the time period relevant to Case 002/02, NUON Chea had access to wide-ranging information concerning the crimes.

#### 17.1.1. *Awareness of the Substantial Likelihood of the Commission of Crimes*

4080. A strong proponent of waging “class struggle”,<sup>13446</sup> NUON Chea placed himself at the centre of a revolutionary movement that continuously, both before and after 17 April 1975, stratified the population into classes and categorised various groups of people according to different alleged kinds of potential threats they posed, to which it referred as internal and external enemies.<sup>13447</sup> Since the First Party Congress in 1960, NUON Chea was the Deputy Secretary of the Party, and throughout the DK period, he was a full-rights member of both the Standing and Central Committees.<sup>13448</sup> In these capacities, he played a crucial role in designing the Party’s line, which was based on the Marxist-Leninist notion of communist revolution through armed struggle, and formulating the Party’s policies, which entailed that any person or entity not adhering to or threatening the Party line or its policies could be branded an enemy.<sup>13449</sup> Throughout the Party’s existence, NUON Chea also had primary responsibility for propaganda-related matters, through which he kept a tight grip on the CPK’s carefully-crafted narrative. He was a principal author of the Party’s internal educational magazines *Revolutionary Flag* and *Revolutionary Youth*, the contents of which were under his ultimate control.<sup>13450</sup> Furthermore, he appeared as the chairman, trainer or

<sup>13445</sup> Section 15: Applicable Law: Individual Criminal Responsibility, paras 3715, 3717, 3719-3720, 3722, 3725.

<sup>13446</sup> Section 7: Roles and Functions – NUON Chea, paras 520-525.

<sup>13447</sup> Section 16: Common Purpose, para. 3734; Section 16.3: Real or Perceived Enemies, paras 3839-3840; Section 17: The Criminal Responsibility of NUON Chea, paras 4127, 4142.

<sup>13448</sup> Section 7: Roles and Functions – NUON Chea, paras 530, 532.

<sup>13449</sup> Section 16: Common Purpose, paras 3734, 3738; Section 16.3: Real or Perceived Enemies, paras 3839-3840, 3845-3846.

<sup>13450</sup> Section 7: Roles and Functions – NUON Chea, para. 545.

speaker at a range of meetings, trainings and study sessions where he promoted the Party line of vigilance and anger against internal and external enemies to lower-level followers.<sup>13451</sup> NUON Chea must have known that such indoctrination to hate would inevitably lead to violence, especially in an environment where pacifist or revisionist tendencies were targeted as enemy behaviour, and violence was an acceptable means to the end of the type of revolution the CPK advocated.<sup>13452</sup> NUON Chea supported the view that the revolution should rely on the peasants of the lowest classes in order to impose on Cambodia the dictatorship of the proletariat. The majority of those belonging to this new ruling class had very little formal education. All were strictly disciplined, indoctrinated, and taught to deceive people and behave in accordance with the principle of secrecy. NUON Chea could not ignore that giving extensive power to these people would lead to unquestioning implementation of the Party line without the exercise of proper judgement.

4081. For this reason, the only reasonable expectation was that creating a nationwide system of cooperatives, worksites, regulated marriages and security centres under the umbrella of the Party's propaganda of vigilance and anger against enemies would lead to mistreatment and death, and that such a system would involve the commission of large numbers of crimes against humanity, war crimes and genocide. The crimes falling within the scope of Case 002/02 formed part of consistent patterns of conduct carried out throughout the country before 17 April 1975 and continuing thereafter.<sup>13453</sup> In view of NUON Chea's access to reports and information concerning the implementation of the common purpose's policies, the Chamber is therefore satisfied that NUON Chea knew of these consistent patterns of conduct before, during and after the crimes falling within the scope of Case 002/02 were committed and of which they formed part.<sup>13454</sup> Furthermore, in engaging in propaganda activities and training cadre on vigilance and anger against enemies, the strict indoctrination of peasants on class struggle, including the identification of Buddhists, the Vietnamese, the Cham and former Khmer Republic

<sup>13451</sup> Section 7: Roles and Functions – NUON Chea, paras 541-542.

<sup>13452</sup> Section 16.3: Real or Perceived Enemies, paras 3845 (fn. 12841), 3852, 3854.

<sup>13453</sup> Section 16: Common Purpose, paras 3733, 3736-3739, 3741-3743, 3872-3918, 3920-3927, 3934-3946, 3974-3986, 3990, 3992-3997, 4000, 4002-4011, 4015-4017, 4019-4021, 4026-4049, 4051-4060, 4063, 4065-4066. *See generally*, Section 3: Historical Background.

<sup>13454</sup> Section 16: Common Purpose, paras 3920-3927, 3974-3986, 3990, 4000, 4019-4021, 4051-4060, 4065-4066.

officials and their family members as enemies, NUON Chea knew of the substantial likelihood that crimes against these groups would be committed.

### 17.1.2. *Knowledge Concurrent with the Commission of Crimes*

4082. NUON Chea, as CPK Deputy Secretary and as a full-rights member of both the CPK Central Committee and its Standing Committee,<sup>13455</sup> was privy to information which would necessarily have put him on notice, at the time of the crimes, that the charged crimes were being committed.<sup>13456</sup> For instance, NUON Chea met with other CPK senior leaders of the Central Committee in May 1975 at the Silver Pagoda where reasons justifying the evacuations of the cities were provided and priority was given to the need to rapidly build and defend the country through the creation of cooperatives and the construction of dams and canals;<sup>13457</sup> as a Standing Committee member, NUON Chea was aware of the Standing Committee's visit to the Northwest Zone in August 1975 which preceded the Standing Committee's related policy document regarding agriculture;<sup>13458</sup> he was present at the September 1975 Standing Committee meeting discussing defence and industry;<sup>13459</sup> and he was present at the October 1975 Standing Committee meeting assigning governmental responsibilities to POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, KOY Thuon, SON Sen and VORN Vet, among others.<sup>13460</sup> NUON Chea also resided and met informally with other senior Party leaders.<sup>13461</sup> NUON Chea was specifically delegated responsibility for social action policy.<sup>13462</sup> Furthermore, by virtue of his seniority within the leadership of the CPK, NUON Chea had oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period.<sup>13463</sup> NUON Chea's involvement in military and security matters, such as his instructions regarding the conflict with Vietnam, his orders regarding the purges in the East Zone and his

<sup>13455</sup> Section 7: Roles and Functions – NUON Chea, paras 518, 530-533.

<sup>13456</sup> Section 6: Communication Structures, paras 484-493, 508, 510; Section 16: Common Purpose, paras 3887-3888, 3911-3912, 4040, 4048.

<sup>13457</sup> Section 16: Common Purpose, para. 3736.

<sup>13458</sup> Section 16: Common Purpose, paras 3887-3889.

<sup>13459</sup> Section 16: Common Purpose, para. 3891.

<sup>13460</sup> Section 7: Roles and Functions – NUON Chea, para. 543; Section 16: Common Purpose, para. 3737.

<sup>13461</sup> Section 6: Communication Structures, para. 484; Section 7: Roles and Functions – NUON Chea, para. 534.

<sup>13462</sup> As well as Party Affairs, Culture, Propaganda and Education policy. *See* Section 5: Administrative Structures, para. 412.

<sup>13463</sup> Section 7: Roles and Functions – NUON Chea, para. 561.

supervision of S-21 Security Centre, demonstrates this.<sup>13464</sup> Accordingly, the Chamber is satisfied that NUON Chea obtained knowledge of the crimes in his capacity as Deputy Secretary, through his membership of the Central and Standing Committees and by virtue of his seniority and responsibilities within the Party.

4083. By virtue of his membership of the Standing Committee, NUON Chea received reports and telegrams from zones and autonomous sectors on a regular basis, in particular on issues that necessitated coordination between various zones.<sup>13465</sup> For example, NUON Chea received a telegram discussing mass transfers of people from Sector 21 in the East Zone to the then North Zone in November 1975.<sup>13466</sup> NUON Chea also received reports and telegrams from military leaders. Numerous surviving telegrams concerning the situation on the battlefields as well as on the border with Vietnam were copied to him.<sup>13467</sup> This includes telegrams sent by East Zone Secretary SAO Phim discussing particular incidents of fighting, shelling, casualties and injuries (suffered by both the DK side and the SRV side),<sup>13468</sup> as well as telegrams sent by Chhean, the DK Ambassador in Hanoi, discussing complaints of acts of aggression committed by DK armed forces on Vietnamese territory.<sup>13469</sup> Moreover, NUON Chea was personally involved in border negotiations with Vietnam in June 1975.<sup>13470</sup> NUON Chea was also present at the Standing Committee meeting on 9 October 1975 during which the reorganisation of the army and the setting up of the General Staff was discussed.<sup>13471</sup> In addition, SON Sen forwarded written messages and reports received from military commanders to other senior CPK leaders, including NUON Chea, with handwritten annotations and requests for instructions.<sup>13472</sup> Accordingly, the Chamber is satisfied that the NUON Chea received detailed information about military matters and the situation on the ground.

4084. In addition to what is discussed above, the Chamber further considers that evidence of NUON Chea's knowledge of crimes at the time of their commission is

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<sup>13464</sup> Section 7: Roles and Functions – NUON Chea, paras 552-560.

<sup>13465</sup> Section 6: Communication Structures, paras 482-493.

<sup>13466</sup> Section 13.2: Treatment of the Cham, para. 3210.

<sup>13467</sup> Section 7: Roles and Functions – NUON Chea, para. 555; Section 4: General Overview, paras 286-291.

<sup>13468</sup> *See e.g.*, Section 4: General Overview (Nature of the Armed Conflict), para. 288 (fn. 760).

<sup>13469</sup> Section 4: General Overview (Nature of the Armed Conflict), para. 286.

<sup>13470</sup> Section 4: General Overview (Nature of the Armed Conflict), paras 283, 339.

<sup>13471</sup> Section 5: Administrative Structures, para. 424.

<sup>13472</sup> Section 6: Communication Structures, para. 508.



clearly canvassed through the policies by which the common purpose was implemented.

17.1.2.1. Cooperatives and worksites

4085. The Chamber recalls that NUON Chea was instrumental in developing the policy to establish and operate cooperatives and worksites, and was included in the decision-making process to close markets and in fact create cooperatives and worksites.<sup>13473</sup> In May 1975, NUON Chea was among the senior CPK leaders who instructed CPK cadre in this regard.<sup>13474</sup> Furthermore, NUON Chea was knew that a Standing Committee delegation visited the Northwest Zone in August 1975 and participated in the development of plans and policies reflected in the report of this visit.<sup>13475</sup> NUON Chea was thus closely involved in the Party's efforts to implement a system of cooperatives and worksites from early on during the DK regime, and thus knew first-hand of their existence and the circumstances on the ground.

4086. NUON Chea visited the 1<sup>st</sup> January Dam Worksite on more than one occasion, personally witnessing the circumstances of the workers at the dam. The Chamber recalls its findings that NUON Chea knew of the lack of food and medicine at the 1<sup>st</sup> January Dam Worksite.<sup>13476</sup> While the Chamber was unable to establish that NUON Chea visited the Tram Kak Cooperatives, Trapeang Thma Dam or Kampong Chhnang Airfield, the Chamber is satisfied that NUON Chea knew of their existence and the circumstances at these locations. In this regard, it recalls that reports were sent to the highest level of the CPK hierarchy, which included NUON Chea, through which it was informed of the difficult regime imposed on workers.<sup>13477</sup> The evidence also shows that at least at one Standing Committee meeting, SON Sen reported to the Standing Committee on the progress of the Kampong Chhnang Airfield construction.<sup>13478</sup> NUON Chea was present at this meeting. NUON Chea also participated in a key Standing Committee meeting held on 30 May 1976, during which POL Pot observed that 30 to

<sup>13473</sup> See below, para. 4121; Section 16: Common Purpose, paras 3887-3888.

<sup>13474</sup> See below, para. 4130.

<sup>13475</sup> Section 16: Common Purpose, paras 3887-3888.

<sup>13476</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1634.

<sup>13477</sup> Section 10.1: Tram Kak Cooperatives, paras 856, 876, 897, 924, 979, 1055; Section 11.3: Kampong Chhnang Airfield, para. 1727; Section 11.1: Trapeang Thma Dam, paras 1236, 1238-1253.

<sup>13478</sup> Standing Committee Minutes, E3/222, 15 May 1976, p. 2, ERN (En) 00182666 (NUON Chea and KHIEU Samphan were both present at this meeting).

50 percent of rice production had to be handed over to the State.<sup>13479</sup> NUON Chea thus knew that substantial amounts of food were being extracted from the cooperatives. These visits and briefings provided NUON Chea with knowledge of the reality on the ground at the cooperatives and worksites that were founded pursuant to the CPK's ideological plans that he actively promoted and were operating pursuant to instructions he personally gave or supervised.

4087. NUON Chea's knowledge of the commission of crimes is further shown by his own statements post-DK; the Chamber recalls that NUON Chea later acknowledged that those who joined cooperatives could not leave.<sup>13480</sup>

4088. In light of the foregoing, the Chamber is satisfied that NUON Chea knew of the crimes committed in the course of the policy to establish and operate cooperatives and worksites.

17.1.2.2. Security centres, execution sites and internal purges

4089. NUON Chea actively engaged in disseminating the CPK's message of vigilance and anger regarding enemies through his role in propaganda and education, which included his role as one of the principal authors of the CPK's educational magazine, the *Revolutionary Flag*.<sup>13481</sup> Throughout the DK era, NUON Chea conducted study sessions in Phnom Penh, including with cadres who were being relocated to other areas of the country in light of purges. For instance, a group of Southwest Zone cadre sent by *Ta Mok* to the Northwest Zone stopped in Phnom Penh for a meeting with NUON Chea and were lectured by NUON Chea on there being traitors in the Northwest Zone.<sup>13482</sup> Moreover, NUON Chea was continuously kept abreast of enemy activity through meetings, reports and telegrams.<sup>13483</sup> For instance, enemy activity was discussed during

<sup>13479</sup> Standing Committee Minutes, E3/224, 30 May 1976, p. 2, ERN (En) 00182668. *See also*, Section 10.1: Tram Kak Cooperatives, para. 968; Section 16: Common Purpose, fn. 13066.

<sup>13480</sup> Section 16: Common Purpose, para. 3885. *See also*, T. 31 January 2012 (Accused NUON Chea), E1/36.1, pp. 24-25 ("Q. [...] Mr Nuon Chea, can you please tell the Chamber if those who were living in the cooperatives, [...] had the choice to leave the cooperatives and settle elsewhere? A. If they were to live in the cooperatives they could not go anywhere else. They would stay and lived [*sic*] and worked in the cooperative.").

<sup>13481</sup> Section 7: Roles and Functions – NUON Chea, para. 545; Section 6: Communication Structures, para. 476.

<sup>13482</sup> Section 12.1: Internal Factions, para. 1953.

<sup>13483</sup> Section 16.3: Real or Perceived Enemies, paras 3760, 3764, 3769-3770, 3775, 3779, 3809. *See also*, Section 13.2: Treatment of the Cham, para. 3202.

the Standing Committee's visit to the Northwest Zone in August 1975,<sup>13484</sup> in relation to which the Chamber has found that NUON Chea was aware that a Standing Committee delegation visited the Northwest Zone in August 1975 and participated in the development of plans and policies reflected in the report of this visit.<sup>13485</sup> Enemy activity was further discussed during numerous Standing Committee meetings, including those held on 9 October 1975, 9 January 1976, 8 March 1976 and 11 March 1976,<sup>13486</sup> all of which were attended by NUON Chea. NUON Chea also received telegrams in relation to purges and the conflict with Vietnam, reporting enemy activity and incidents, including killings, to him and other senior CPK leaders.<sup>13487</sup>

4090. Regarding S-21 Security Centre, the Chamber recalls its legal finding that NUON Chea acted with the direct intent to commit murder as crime against humanity at S-21.<sup>13488</sup> The Chamber similarly recalls its legal finding that NUON Chea acted with the direct intent to kill on a mass scale, and thus committed extermination as a crime against humanity at S-21.<sup>13489</sup> Thus, NUON Chea's knowledge with respect to these crimes has been established.

4091. NUON Chea was also informed about torture being used at S-21 to extract confessions.<sup>13490</sup> Moreover, NUON Chea received reports from Duch detailing the mental and physical abuse inflicted upon S-21 prisoners.<sup>13491</sup> NUON Chea's contemporaneous knowledge of the commission of crimes is further shown by his own statements post-DK. NUON Chea admitted in a video recorded interview with THET Sambath that he read confessions, stating he did so to use their contents for educational purposes.<sup>13492</sup> In another video of a THET Sambath interview, NUON Chea said:

They weren't party cadres anymore because they had betrayed us. They were agents for foreigners. These people were killed. It was Pol Pot who made the final decision to kill. As for innocent people's deaths, neither Pol Pot nor I knew too much. We only knew about the

<sup>13484</sup> Section 16.3: Real or Perceived Enemies, para. 3754.

<sup>13485</sup> Section 16: Common Purpose, para. 3888.

<sup>13486</sup> Section 16.3: Real or Perceived Enemies, paras 3760, 3764, 3769-3770.

<sup>13487</sup> See e.g., Section 16.3: Real or Perceived Enemies, paras 3779, 3809; Section 13.2: Treatment of the Vietnamese, paras 3408-3410; Section 13.2: Treatment of the Cham, para. 3202; Section 4: General Overview, paras 282-294.

<sup>13488</sup> Section 12.2: S-21 Security Centre, para. 2563.

<sup>13489</sup> Section 12.2: S-21 Security Centre, para. 2571.

<sup>13490</sup> Section 12.2: S-21 Security Centre, para. 2589.

<sup>13491</sup> Section 12.2: S-21 Security Centre, paras 2379, 2412, 2589.

<sup>13492</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled "on Confessions").

ex-cadres' deaths because Pol Pot decided to kill them. So obviously we knew.<sup>13493</sup>

4092. In a similar recording, NUON Chea further explained his motivations as follows:

If those individuals had been left alive, we would have lost our country and our people. We would have no Cambodia today. I have feelings for both the nation and the individual. But I will always put the needs of the nation before those of the individual. An individual's needs can be met later. But if the individual becomes a problem, then they must be solved.

When then asked by THET Sambath: "Are you sorry for those who were killed?", NUON Chea answered: "I have no regrets".<sup>13494</sup>

4093. NUON Chea further said that those who would not stop their traitorous activities after re-education and warnings would be killed: "If they still could not be corrected they had to be solved. [...] They were killed and destroyed."<sup>13495</sup> NUON Chea continued that if they had spared these people they would have harmed the Party line. When asked by THET Sambath what he thought of POL Pot's decision to kill traitors, NUON Chea responded that at the time he agreed and just wanted the problem solved.<sup>13496</sup> When THET Sambath suggested that traitors could also have been imprisoned, NUON Chea said: "That's a matter of opinion".<sup>13497</sup>

4094. In light of the foregoing, the Chamber thus finds that NUON Chea had contemporaneous knowledge of the crimes being committed in relation to the policy of setting up the security centres and execution sites.

### 17.1.2.3. Targeting of specific groups

#### 17.1.2.3.1. *Cham*

4095. The Chamber recalls its finding that the CPK specifically targeted the Cham

<sup>13493</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled "on Innocent Deaths").

<sup>13494</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled "on the Nation").

<sup>13495</sup> Documentary by THET S.: *Enemies of the People*, E3/4001R, ERN V00800935, 00:48:00-00:48:45.

<sup>13496</sup> Documentary by THET S.: *Enemies of the People*, E3/4001R, ERN V00800935, 00:49:00-00:49:10.

<sup>13497</sup> Documentary by THET S.: *Enemies of the People*, E3/4001R, ERN V00800935, 00:49:10-00:49:19.

throughout the DK period as part of a policy which evolved over time.<sup>13498</sup> In addition, the Chamber notes that it was satisfied that the CPK imposed restrictions that were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the Cham because of their religious and cultural practices.<sup>13499</sup> The Chamber also recalls its findings that NUON Chea played a key role in designing the CPK's policies.

4096. After the September 1975 Koh Phal and October 1975 Svay Khleang rebellions, in a telegram dated 30 November 1975, SAO Phim reported to POL Pot, with NUON Chea in copy, on mass transfers of Cham from the East Zone, Sector 21, to the then North Zone.<sup>13500</sup> Further, KE Pauk, the Secretary of the Central (old North) Zone and from late 1977 also SON Sen's deputy in the East Zone,<sup>13501</sup> regularly sent reports to *Angkar*, copying NUON Chea at the Party Centre level.<sup>13502</sup> In particular, in a telegram dated 2 April 1976 to POL Pot, NUON Chea in copy, KE Pauk noted that the enemy situation was generally stable in the North Zone. Yet, he also noted that some engaged in "propaganda" that the revolution was strict and that cooperatives should be resisted, and included complaints about hunger.<sup>13503</sup> Particularly in Chamkar Leu District, in Sector 42, enemies were identified as former soldiers "in combination with the Cham and former cooperative team chairmen".<sup>13504</sup> They were reported to have posted photos of LON Nol along with his 18 March 1970 announcement on trees in Trapeang village, to have burned forests and to have destroyed crops.<sup>13505</sup>

4097. The Chamber recalls that KE Pauk played an instrumental role in the charged crimes committed against the Cham during the DK period.<sup>13506</sup> The Chamber therefore finds the relationship between KE Pauk, who remained a trusted CPK member throughout the DK period and who was a fellow JCE participant,<sup>13507</sup> and NUON Chea

<sup>13498</sup> Section 13.2: Treatment of the Cham, para. 3228. *See also*, Section 16: Common Purpose, para. 3990.

<sup>13499</sup> Section 13.2: Treatment of the Cham, para. 3329.

<sup>13500</sup> Section 13.2: Treatment of the Cham, para. 3210.

<sup>13501</sup> Section 5: Administrative Structures, paras 376, 451.

<sup>13502</sup> Section 13.2: Treatment of the Cham, para. 3202.

<sup>13503</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>13504</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>13505</sup> DK Telegram, E3/952 [E3/953 and E3/511], 2 April 1976, p. 1, ERN (En) 00182658.

<sup>13506</sup> Section 13.2: Treatment of the Cham, paras 3202, 3223-3224, 3272-3274, 3290.

<sup>13507</sup> Section 16: Common Purpose, para. 4069. The level of trust between KE Pauk and members of the Party Centre is also demonstrated by the fact that KE Pauk in his capacity as Secretary of the Central Zone received S-21 confessions. *See* Section 12.2: S-21 Security Centre, para. 2217.

to be significant in this regard. Given KE Pauk's position within the Party, the reporting structure to which he dutifully adhered and his close relationship with the Party Centre, the Chamber is satisfied that KE Pauk was not a rogue agent acting clandestinely on his own accord,<sup>13508</sup> but that NUON Chea was aware of KE Pauk's actions in name of the Party.

4098. The Chamber is satisfied that NUON Chea was aware of the persecution on political and religious grounds committed against the Cham, as well as that Cham considered to be rebels were to be purged which resulted in mass killings increasing over time.<sup>13509</sup> The Chamber is not satisfied, however, that the evidence shows to the required standard of proof that NUON Chea knew specifically that the killings of members of the Cham group at Wat Au Trakuon Security Centre in 1977 and Trea Village Security Centre in 1978 were perpetrated with genocidal intent.

4099. Finally, while NUON Chea knew of crimes committed at S-21, which involved Cham victims, the Chamber recalls that the evidence does not show that Cham detainees were specifically targeted at S-21, nor that they were treated differently than other detainees.<sup>13510</sup>

4100. The Chamber thus finds that NUON Chea knew of the commission of the crimes against humanity committed against the Cham during the DK period. However, the Chamber is not satisfied that NUON Chea knew that the deliberate killings of members of the Cham group were committed by physical perpetrators at the Wat Au Trakuon

<sup>13508</sup> Cf. Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1469.

<sup>13509</sup> KE Pich Vannak stated to OCIJ investigators that his father KE Pauk was asked to conduct an investigation following the discovery of a number of beheaded corpses at the dock in front of POL Pot's office in Phnom Penh. According to KE Pich Vannak, it was found that these corpses were of Cham people who had been killed in Kroch Chhmar district. He clarified that his father sent a report to Office 870, and pointed out the involvement of the Intervention Unit of the Centre led by Pin in these killings. However, no documentary evidence corroborates KE Pich Vannak's statements on these matters and neither KE Pauk nor any other witness ever mentioned the existence of decapitated corpses of Cham people in Phnom Penh or a report sent to the Centre following an investigation on this issue. As it was not possible for the Defence to cross-examine KE Pich Vannak before he died, the Chamber, noting possible ulterior motives and the absence of clear corroborating evidence, does not rely on KE Pich Vannak's statements as supporting evidence of NUON Chea's knowledge of the killings of Cham. *See also*, Section 13.2: Treatment of the Cham, para. 3272, fn. 11055.

<sup>13510</sup> Section 12.2: S-21 Security Centre, para. 2493.

and Trea Village Security Centres with the intent to destroy, in whole or in part, the Cham group as such.<sup>13511</sup>

#### 17.1.2.3.2. *Vietnamese*

4101. The Chamber recalls its findings that the CPK specifically targeted Vietnamese as a group, including civilians, throughout the DK period.<sup>13512</sup> It has found that POL Pot's "one against 30 policy" specifically targeted not only Vietnamese armed forces but also Vietnamese civilians. NUON Chea was found to have lectured at or attended political training sessions at which the Vietnamese or Vietnamese "agents" were labelled as enemies. Also, NUON Chea publicly stated that the Cambodian people and RAK had "crushed the Vietnamese strategy of 'Indochina Federation' aiming at swallowing the Kampuchea's territory and exterminating the [*sic*] Kampuchea's race".<sup>13513</sup> The Chamber was further satisfied that the Vietnamese were identified by the CPK through the creation of lists, and that mixed families were targeted on the basis of matrilineal ethnicity.<sup>13514</sup>

4102. NUON Chea received several telegrams reporting the arrest and execution of Vietnamese civilians and soldiers.<sup>13515</sup> Through his involvement with the operation of S-21, NUON Chea knew of the crimes committed against Vietnamese prisoners.<sup>13516</sup> In this regard, the Chamber recalls its findings that NUON Chea informed Duch of the arrival of Vietnamese prisoners at S-21 and told Duch that these "Yuong" prisoners had to be interrogated, their confessions recorded, and broadcast on the radio.<sup>13517</sup> NUON Chea edited these confessions himself to ensure they could be used on the radio, in DK publications and governments statements for educational and propaganda purposes.<sup>13518</sup>

<sup>13511</sup> Even though it is likely that NUON Chea was informed in more detail of what was happening in these locations by KE Pauk, who ordered the systematic killings of Cham in the Central Zone, the Chamber finds that the evidence put before it is insufficient to establish to the required standard of proof that NUON Chea knew that the deliberate killings of members of the Cham group were committed by physical perpetrators at the Wat Au Trakuon and Trea Village Security Centres *with the intent to destroy, in whole or in part, the Cham group as such*. See below, paras 4154-4155, 4192-4193.

<sup>13512</sup> Section 13.3.5: Targeting of the Vietnamese. See also, Section 16.4.3.2: Common Purpose: Vietnamese.

<sup>13513</sup> Section 13.3: Treatment of the Vietnamese, paras 3406, 3517.

<sup>13514</sup> Section 13.3: Treatment of the Vietnamese, paras 3497, 3501.

<sup>13515</sup> Section 13.3: Treatment of the Vietnamese, para. 3408; Section 4: General Overview, paras 286-291.

<sup>13516</sup> Section 12.2: S-21 Security Centre, paras 2210-2215, 2229, 2231, 2460-2484, 2556, 2607-2608.

<sup>13517</sup> Section 12.2: S-21 Security Centre, paras 2462, 2472-2473.

<sup>13518</sup> Section 12.2: S-21 Security Centre, para. 2473.

4103. The Chamber thus finds that NUON Chea knew of the crimes committed against the Vietnamese during the DK period.

#### 17.1.2.3.3. *Buddhists*

4104. The Chamber recalls its finding that the CPK was intent on eliminating Buddhism from Cambodian society and that the defrocking of monks was a deliberate means to achieve this aim.<sup>13519</sup> The Chamber recalls that during meetings held in May 1975, the CPK leadership, including NUON Chea, instructed representatives from military units and all district, sector and zone secretaries on the Party's policies. Following these meetings, District Secretary PREAK Khom *alias* Yeay Khom passed on instructions in Tram Kak District related to, among other things, the disrobing of Buddhist monks.<sup>13520</sup> The Chamber further recalls that a CPK policy document dated 22 September 1975 stated that 90 to 95 percent of monks had already abandoned their monkhood and were working in the rice fields, noting that this special class would no longer be cause for worry.<sup>13521</sup> NUON Chea also explained to the Chamber that, in his speeches during the DK era, he did not pay respect to monks because he did not want to mix religion with politics and no monks were "participating" at that time.<sup>13522</sup> In his speech to the Danish Communist Workers' Party in July 1978, NUON Chea clarified the CPK's tactic of calculated deception to achieve the Party's goals leading up to April 1975: "We even worked within the movement of Buddhist monks, making them follow us by saying we would defend the country and religion"<sup>13523</sup> and "[w]e used slogans opposing foreign suppression of the culture of Kampuchea. Monks then became patriotic, supporting us without being aware of it."<sup>13524</sup>

<sup>13519</sup> Section 16: Common Purpose, para. 4015. *See also*, Section 3: Historical Background, para. 264.

<sup>13520</sup> Section 10.1: Tram Kak Cooperatives, paras 1087-1088.

<sup>13521</sup> Section 16. 3: Real or Perceived Enemies, paras 3757, 3850.

<sup>13522</sup> T. 15 December 2011 (Accused NUON Chea), E1/23.1, p. 81.

<sup>13523</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 34, ERN (En) 00762406 (NUON Chea stated this in the context of how they tricked people in the cities into supporting their movement between 1960 and 1973: "We did not use words like 'revolutionary', 'communist', or 'red', for example. Instead we used words everyone would accept such as 'Fight US Imperialism', 'Fight for Sovereignty', etc. People were especially scared of words such as 'communist' and 'revolutionary'. But we made them adopt our party line, in its essence, by putting out the party line. If in this way we could make people adopt the line – people who were otherwise afraid of 'revolution' and 'communism' – then those people, in spite of their fears, were able to hold aloft our party flag.").

<sup>13524</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 35, ERN (En) 00762407.



4105. In light of the foregoing, the Chamber thus finds NUON Chea knew of the crimes committed against Buddhists during the DK period.

17.1.2.3.4. *Former Khmer Republic officials*

4106. The Chamber recalls its findings that the CPK targeted former Khmer Republic officials throughout the DK period for discrimination and adverse treatment including murder between 20 April 1975 and late May 1975, and again between October 1975 and 6 January 1979.<sup>13525</sup>

4107. The Chamber further recalls that “LON Nol traitors” were discussed at length in the CPK magazines *Revolutionary Flag* and *Revolutionary Youth*, the content of which was under NUON Chea’s ultimate control, and accused of working together with the American imperialists or acting as “their lackeys”.<sup>13526</sup>

4108. The Chamber also recalls its findings that the crime against humanity of murder was established with respect to formerly ranking Khmer Republic officials at S-21 Security Centre (from October 1975)<sup>13527</sup> and Kraing Ta Chan Security Centre (from April 1977).<sup>13528</sup> It has specifically found that ranking officers and civil servants were arrested and executed at S-21 from as early as October 1975, and that this continued throughout the security centre’s operations; peaking in 1976.<sup>13529</sup>

4109. On the basis of the foregoing and NUON Chea’s personal involvement in S-21,<sup>13530</sup> the Chamber finds NUON Chea knew of the crimes committed against former Khmer Republic officials. NUON Chea’s knowledge of the commission of crimes is further shown by his own statements post-DK. NUON Chea said to THET Sambath: “We eliminated the previous system. Nothing bad remained.”<sup>13531</sup>

<sup>13525</sup> Section 16: Common Purpose, para. 4061.

<sup>13526</sup> Section 16.3: Real or Perceived Enemies, paras 3755, 3813, 3818, 3829, 3847.

<sup>13527</sup> Section 12.2.24.1.1: S-21 Security Centre: Legal Findings: Crimes Against Humanity: Murder; Section 12.2: S-21 Security Centre, para. 2488.

<sup>13528</sup> Section 12.3.12.1: Kraing Ta Chan Security Centre: Legal Findings: Murder (finding that survival was the exception at Kraing Ta Chan Security Centre). *See also*, Section 12.3.11.3: Kraing Ta Chan Security Centre: New People and Former Khmer Republic Officials (finding that Khmer Republic officials and soldiers were sent to Kraing Ta Chan Security Centre from April 1977 in particular).

<sup>13529</sup> Section 12.2.18: S-21 Security Centre: Former Khmer Republic Officials.

<sup>13530</sup> Section 12.2: S-21 Security Centre, paras 2188, 2191, 2193, 2197, 2210-2215.

<sup>13531</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled “on Revolution”).

17.1.2.4. Regulation of marriage

4110. The Chamber recalls its findings that there existed a nationwide policy to regulate family-building and marriage, which was implemented by the Party's entire administrative and military network.<sup>13532</sup> The CPK implemented this policy in accordance with its desire to increase the country's population within 10 to 15 years: marriages were arranged and consummation enforced for this purpose.<sup>13533</sup> The Chamber further recalls that reports related to marriages were sent to *Angkar*.<sup>13534</sup> The Chamber thus finds that NUON Chea knew of the crimes committed in furtherance of the criminal policy to regulate marriage as he received such reports in his position of ultimate policy and decision-maker.

4111. The Co-Prosecutors rely on an alleged quote from NUON Chea in the book *Behind the Killing Fields*: "The man always wants to choose a beautiful girl, so that's why we forced them to get married and *Angka* [sic] chose the wife."<sup>13535</sup> However, the Chamber has not been able to independently verify whether NUON Chea said this, and accordingly, does not accord any weight to it.

17.1.3. *Knowledge Arising After the Commission of Crimes*

4112. In addition to being informed of matters through the CPK reporting hierarchy, and as demonstrated by the interviews referred to above, NUON Chea also had access to reports by other States, international organisations and international news agencies. These external sources of information publicly reported allegations of atrocities, during and after their commission.<sup>13536</sup>

4113. In 1976 and 1977, Amnesty International sent two letters, the first to then-Prime Minister PENN Nouth and the second to the recently-appointed President of the State Presidium KHIEU Samphan, expressing concern at reports of summary executions and maltreatment of civilians and requesting that inquiries be made. As no response was

<sup>13532</sup> Section 14.3.2: Regulation of Marriage: Policy Regarding the Regulation of Marriage and Discipline; Section 16: Common Purpose, para. 4063.

<sup>13533</sup> Section 14.3.2.2.1: Regulation of Marriage: Objectives of Policy to Regulate Marriage: Population Increase; Section 16: Common Purpose, paras 4065-4066.

<sup>13534</sup> Section 14: Regulation of Marriage, para. 3568.

<sup>13535</sup> Book by Gina C. and Thet S.: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, p. 41, ERN (En) 00757496.

<sup>13536</sup> Section 6: Communication Structures, paras 502-506.

forthcoming, Amnesty International – joined by the UN Commission on Human Rights – renewed its appeal in 1978.<sup>13537</sup>

4114. The Chamber has found that the CPK Standing Committee ordered the DK Ministry of Propaganda and Information to monitor foreign news reports closely and that detailed procedures were established for the summarising and reporting of news by the Ministry of Propaganda to the Standing Committee.<sup>13538</sup> The Chamber is satisfied that through these Ministry reports, NUON Chea, a member of the Standing Committee, was made aware of news reports detailing the crimes.

4115. On the basis of the foregoing, the Chamber finds that NUON Chea also knew of the crimes after their commission.

### **17.2. Commission through a Joint Criminal Enterprise**

4116. The Closing Order found that NUON Chea participated or contributed to the “design, implementation and control of the execution” of the common purpose, both before and during the DK period, which “resulted in and/or involved the commission of crimes”.<sup>13539</sup> The Chamber has found that the appropriate standard is whether the accused participated in the common purpose which amounted to or involved the commission of crimes, and by his or her acts or omissions made a significant contribution to the commission of crimes encompassed by the common purpose.<sup>13540</sup>

4117. The Chamber’s factual findings in relation to the development and the criminality of the common purpose, to which all the policies were intrinsically linked, included that the common purpose of rapidly implementing socialist revolution in Cambodia through a “great leap forward” designed to build the country, defend it from enemies and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants was shared by a plurality of persons.<sup>13541</sup> The Chamber now turns to assess whether NUON Chea made a significant contribution to

<sup>13537</sup> Section 16: Common Purpose, paras 4048, 4113.

<sup>13538</sup> Section 6: Communication Structures, paras 480-482.

<sup>13539</sup> Closing Order, para. 1532.

<sup>13540</sup> Section 15.2: Applicable Law: Commission through a Joint Criminal Enterprise.

<sup>13541</sup> Section 16: Common Purpose, paras 4068-4069.

the common purpose and whether he shared with the other JCE members the intent to commit the crimes charged.

### 17.2.1. *Contribution to the Common Purpose*

#### 17.2.1.1. *Designing the Common Purpose: policy development*

4118. As one of DK’s founding fathers, NUON Chea participated in Party congresses and Central and Standing Committee meetings from the dawn of the revolution.<sup>13542</sup> NUON Chea was appointed Deputy Secretary of the newly rebranded Workers’ Party of Kampuchea (“WPK”) at the First Party Congress in September 1960, where he played an instrumental part in the formulation of the Party’s stance on revolutionary violence and the use of armed struggle to achieve its goals. At the First Party Congress, when the new Party Statute was enacted, the Party also outlined its goal of socialist revolution and decreed that foreign imperialists, their “lackeys” or henchmen and the “feudalists, capitalists and reactionaries” were all class enemies.<sup>13543</sup> In his capacity as the Party’s Deputy Secretary and with his contribution to the Party stance, NUON Chea helped initiate and officially approved this Party line.

4119. In the mid-1960s, NUON Chea participated in several Central and Standing Committee meetings held in the *maquis*.<sup>13544</sup> NUON Chea later, in July 1978, explained in a speech to the Communist Workers’ Party of Denmark that during this time the Party made a conscious choice for political and armed struggles, adding that “[t]he political struggle was promoted through legal struggle and illegal struggle, with the illegal being the basic form of struggle”.<sup>13545</sup>

4120. In January 1968, NUON Chea, alongside other senior leaders of the – by this time renamed – Communist Party of Kampuchea (“CPK”), determined that the armed revolution had to begin.<sup>13546</sup> As the revolution developed, NUON Chea met with fellow

<sup>13542</sup> Section 3: Historical Background, paras 197-215; Section 16: Common Purpose, para. 3733.

<sup>13543</sup> Section 3.1.1: Historical Background, paras 203-204.

<sup>13544</sup> Section 3: Historical Background, para. 211; Section 7: Roles and Functions – NUON Chea, paras 525-526.

<sup>13545</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 20, ERN (En) 00762392. *See also*, Section 16.3: Real or Perceived Enemies, para. 3830.

<sup>13546</sup> Section 3: Historical Background, para. 212; Section 7: Roles and Functions – NUON Chea, para. 552.

Party leaders and advocated that it was time for armed struggle against the LON Nol government.<sup>13547</sup>

4121. In May 1972, the CPK Central Committee decided to close markets, end the use of currency and organise cooperatives.<sup>13548</sup> As a member of the Central Committee, NUON Chea was one of the people who made this decision. NUON Chea never wavered in his belief that this was the correct thing to do. In July 1978, NUON Chea reiterated to the Danish Communist Workers' Party that he believed that the CPK's Party line was still the correct one in sending most of their cadres to work in the countryside.<sup>13549</sup> NUON Chea later reasoned that the circulation of currency was a threat to the expansion of liberated zones and the CPK's ability to control the population since "US spies or the Vietnamese spies used money in order to buy or to lure our cadres".<sup>13550</sup>

4122. NUON Chea participated in the key meetings leading up to 17 April 1975. In June 1974, the CPK Central Committee met in Meak village, Prek Kok commune to discuss plans for the final assault, liberation and evacuation of Phnom Penh and other urban centres. NUON Chea was present at this meeting. Together with other JCE participants, NUON Chea resolved to seize the capital in the dry season of 1974-1975. The plan was finalised in early April 1975 at another meeting with senior CPK leaders also attended by NUON Chea.<sup>13551</sup> By 25 April 1975, NUON Chea, together with POL Pot, KHIEU Samphan, IENG Sary and SON Sen had arrived in Phnom Penh and together formed a Joint Leadership Committee.<sup>13552</sup>

4123. NUON Chea was aware that a Standing Committee delegation visited the Northwest Zone in August 1975 and participated in the development of plans and policies reflected in the report of this visit.<sup>13553</sup> The Standing Committee's report of this visit offered "*Angkar*'s guiding opinions" on key questions of "workforce arrangements", cooperatives and the handling of cities. The Chamber finds that the

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<sup>13547</sup> Section 3: Historical Background, para. 215; Section 7: Roles and Functions – NUON Chea, paras 525-526, 552.

<sup>13548</sup> Section 3: Historical Background, para. 239.

<sup>13549</sup> NUON Chea Speech to the Communist Workers' Party of Denmark, E3/196, 30-31 July 1978, p. 21, ERN (En) 00762393.

<sup>13550</sup> Section 16: Common Purpose, para. 3872.

<sup>13551</sup> Section 3: Historical Background, para. 233; Section 16: Common Purpose, para. 3880.

<sup>13552</sup> Section 16: Common Purpose, para. 3884.

<sup>13553</sup> Section 16: Common Purpose, para. 3888.

report outlines a calculated plan by the leadership to augment and improve national defence (by creating cooperatives) and the economy (by population movements).<sup>13554</sup>

4124. Following the Standing Committee's visit to the Northwest Zone, a September 1975 policy document signified the Party's intention to transform the country's "backward" agricultural system to a modern one within 10 to 15 years, noting that "agriculture is the key to restoring and building our economy" and resolving food shortages. The document expressly examined the Party lines on "Social Action" and "Culture", both portfolios for which NUON Chea was assigned responsibility at a Standing Committee meeting on 9 October 1975.<sup>13555</sup> On that same day the Standing Committee approved the general policy of building and defending the country "based on the force of the masses".<sup>13556</sup> During that time, NUON Chea continued as Deputy Secretary of the Party and as a full-rights member of the Standing Committee.<sup>13557</sup>

4125. NUON Chea continued to be involved in all major decisions of the Party during the DK period. On 30 March 1976, the CPK Central Committee, of which NUON Chea was a member, declared all state organisations, including the government, subordinate to the Party.<sup>13558</sup> This Central Committee decision also contains the headline "the right to smash, inside and outside the ranks", and specifies which organisations had the authority to do so.<sup>13559</sup> A few weeks later, in mid-April 1976, NUON Chea attended the first session of the People's Representative Assembly, where KHIEU Samphan promoted the objective of achieving a "great and magnificent leap" and endorsed the priority of building and defending an independent and self-reliant country quickly while continuing the class struggle against imperialism, colonialism and other "oppressor classes".<sup>13560</sup> The Assembly also unanimously resolved to mobilise "the entire people" to maximise rice production "ever higher and ever faster" to build the country "in a

<sup>13554</sup> Section 16: Common Purpose, para. 3916, fn. 13065.

<sup>13555</sup> Section 7: Roles and Functions – NUON Chea, para. 543; Section 16: Common Purpose, paras 3737, 3889; Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, p. 1, ERN (En) 00183393.

<sup>13556</sup> Standing Committee Minutes, E3/1733 [E3/1612, E3/182 and E3/183], 9 October 1975, pp. 1-2, 13, ERN (En) 00183393-00183394, 00183405. *See also*, Section 16: Common Purpose, para. 3737.

<sup>13557</sup> Section 7: Roles and Functions – NUON Chea, paras 530, 532.

<sup>13558</sup> Section 16: Common Purpose, para. 3739.

<sup>13559</sup> Decision of the Central Committee Regarding a Number of Matters, E3/12, 30 March 1976, p. 1, ERN (En) 00182809. *See also*, Section 16: Common Purpose, paras 3739, 3955-3956.

<sup>13560</sup> Section 16: Common Purpose, para. 3739; Section 16.3: Real or Perceived Enemies, para. 3771; Section 5: Administrative Structures, para. 415. *See also*, Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4262-4264.

great and miraculous leap”.<sup>13561</sup> The need to be “on the offensive” and make a “great leap forward” rapidly to achieve socialist goals was further promoted throughout the DK period in the *Revolutionary Flag* and *Revolutionary Youth* magazines,<sup>13562</sup> of which NUON Chea was a principal author, and was internally endorsed by Standing Committee members at meetings attended by NUON Chea.<sup>13563</sup>

4126. The Standing Committee continued to meet regularly throughout the DK period to discuss the implementation of the Party’s political line, administration of the country, foreign affairs, commerce and trade, national defence, social affairs and economic affairs including agricultural production.<sup>13564</sup> NUON Chea took part in most of these meetings.<sup>13565</sup>

4127. NUON Chea’s close relationship with POL Pot further illustrates his *de facto* position of power and high status within the Party. Throughout the DK era, NUON Chea remained a key figure within the CPK as POL Pot’s loyal right-hand man, often seen directly at POL Pot’s side.<sup>13566</sup> As full-rights member of both the Central and Standing Committees, NUON Chea was involved in the decision-making process at the highest level. Moreover, he was appointed to replace POL Pot as interim Prime Minister when POL Pot officially took a leave of absence from September 1976 until September 1977.<sup>13567</sup> POL Pot’s and NUON Chea’s positions of ultimate power were described by NUON Chea, when interviewed by THET Sambath, as: “We could have easily just

<sup>13561</sup> Section 16: Common Purpose, para. 3739.

<sup>13562</sup> Section 16: Common Purpose, para. 3739.

<sup>13563</sup> Section 16: Common Purpose, para. 3739.

<sup>13564</sup> Section 16: Common Purpose, para. 3740.

<sup>13565</sup> The Chamber notes in this regard that of the 23 sets of Standing Committee meeting minutes that were available before to the start of Case 002/02 trial proceedings, 20 include a list of attendees. NUON Chea is recorded as present at 19 of these 20. This number excludes minutes copied by Professor Goscha and excerpts from the PRT Trial, which not always listed attendees. See Section 5: Administrative Structures, paras 347-354.

<sup>13566</sup> See e.g., Photograph of senior CPK leaders at Pochentong Airport, E3/3485, undated, ERN P00440823 (NUON Chea seen next to POL Pot); Photograph of senior CPK leaders, E3/4290, undated, ERN P00513522 (NUON Chea seen next to POL Pot); Photograph of senior CPK leaders in the DPRK, E3/3239, undated, ERN P00416541 (NUON Chea seen next to POL Pot); Photograph of senior CPK leaders at Pochentong Airport, E3/3240, undated, ERN P00416542 (NUON Chea seen next to POL Pot); Video of meeting at Olympic Stadium, E3/3051R, undated, ERN V00422509 (NUON Chea is seen right behind or right next to POL Pot at all times); Video of meeting at Olympic Stadium, E3/3052R, undated, ERN V00422555 (NUON Chea is seen right behind or right next to POL Pot at all times); Video of the CPK’s 17<sup>th</sup> Anniversary, E3/3029R, September 1977, ERN V00422534 (only NUON Chea and POL Pot on stage); Book by Gina C. and Thet S.: *Behind the Killing Fields: A Khmer Rouge Leader and One of His Victims*, E3/4202, ERN (En) 00757517 (depicting POL Pot and NUON Chea in northern Cambodia in 1979; photo provided to the author by NUON Chea).

<sup>13567</sup> Section 7: Roles and Functions – NUON Chea, paras 539-540.

made ourselves Prime Minister and King. But anyone who calls that a revolution is completely wrong.”<sup>13568</sup>

4128. Through his contributions at Party Congresses and other meetings with the highest level of CPK leaders, the Chamber is satisfied that NUON Chea not only shared support for the common purpose, but played a key role in formulating and controlling its content.

17.2.1.2. Implementing and disseminating the Common Purpose: propaganda and education

4129. NUON Chea’s support for the common purpose that he helped devise did not waver during the DK era. He continued to implement and disseminate the common purpose, retaining a tight grip on the CPK’s carefully-crafted narrative through propaganda and training activities. As further detailed below, NUON Chea held speeches and chaired study sessions for cadres from different regions, both in Phnom Penh and in other parts of the country, including at cooperatives and worksites, he was one of the principal authors of the educational magazine the *Revolutionary Flag*, the Party’s primary propaganda vessel that regularly rehashed speeches given by POL Pot, NUON Chea and KHIEU Samphan, and he participated in Standing Committee meetings during which tactics of what to disclose and what to keep secret – secrecy being the counterpart of effective propaganda – were discussed.

4130. Shortly after the May 1975 meeting at the Silver Pagoda in Phnom Penh, NUON Chea, along with POL Pot and other key leaders, led a series of meetings. Between 20 and 25 May 1975 NUON Chea and other leaders instructed representatives from military units and all district, sector and zone secretaries on the Party’s policies concerning the organisation of cooperatives, elimination of private property, prohibition of currency and markets, and the building of dams and canals.<sup>13569</sup>

4131. Throughout the DK era, as noted above,<sup>13570</sup> NUON Chea conducted study sessions in Phnom Penh with cadres who went there for that specific (educational) purpose or with cadres who were being relocated to other areas of the country in light

<sup>13568</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048, 00:01:05-00:01:20 (titled “on Revolution”).

<sup>13569</sup> Section 16: Common Purpose, para. 3736.

<sup>13570</sup> See above, para. 4089.



of purges. For instance, a group of Southwest Zone cadres sent by *Ta Mok* to the Northwest Zone in early 1977 stopped in Phnom Penh for a meeting with NUON Chea and were lectured by NUON Chea on there being traitors in the Northwest Zone.<sup>13571</sup> Cadres on their way to the East Zone's battlefield similarly stopped in Phnom Penh for study sessions with CPK leaders where NUON Chea spoke of eliminating the Vietnamese.<sup>13572</sup> NUON Chea also held speeches, study sessions and rallies on special occasions, such as the RAK January anniversaries, where he lectured on how to make the distinction between friends and enemies, and how to detect and "smash" the latter.<sup>13573</sup> NUON Chea also summoned higher level CPK cadres, such as sector secretaries, to attend study sessions in Phnom Penh.<sup>13574</sup>

4132. NUON Chea also held speeches and study sessions outside of Phnom Penh for district secretaries and heads of cooperatives concerning the cultivation of rice and how to dig canals, build dams and organise workforces among cooperatives.<sup>13575</sup> For this purpose, he visited the 1<sup>st</sup> January Dam Worksite, among others, on more than one occasion.<sup>13576</sup> At the Dam, NUON Chea met with the leaders responsible for its construction, reviewed the status of the Dam's construction as well as the rice cultivation and the performance of cooperatives in the area.<sup>13577</sup>

4133. In addition to his appearances at meetings, rallies and study sessions, NUON Chea's role as one of the principal authors of the *Revolutionary Flag* magazine allowed him to continue spreading the Party line.<sup>13578</sup> The *Revolutionary Flag* and the *Revolutionary Youth* were both used to disseminate information regarding people considered enemies by the Party, and included speeches by NUON Chea.<sup>13579</sup> Real or perceived enemies were discussed at length throughout these CPK publications, for instance: (the former regime of) LON Nol; non-revolutionary individuals (feudalists,

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<sup>13571</sup> Section 12.1: Internal Factions, para. 1953.

<sup>13572</sup> Section 12.1: Internal Factions, para. 2047.

<sup>13573</sup> Section 16: Common Purpose, para. 3934; Section 16.3: Real or Perceived Enemies, paras 3801-3802.

<sup>13574</sup> Section 12.5: Phnom Kraol Security Centre, paras 3040, 3055.

<sup>13575</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1479.

<sup>13576</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1486-1488, 1490.

<sup>13577</sup> Section 11.2: 1<sup>st</sup> January Dam, para. 1486.

<sup>13578</sup> Section 7: Roles and Functions – NUON Chea, para. 545; Section 6: Communication Structures, para. 476.

<sup>13579</sup> Section 16.3: Real or Perceived Enemies, para. 3863; Section 6: Communication Structures, paras 473-477.

capitalists, etc.); American imperialists or CIA; and the Vietnamese (“*Yuon*”).<sup>13580</sup>  
 Duch testified that cadres at S-21 were obligated to read the *Revolutionary Flag*.<sup>13581</sup>

4134. NUON Chea’s control over the regime’s narrative to manipulate the masses is further demonstrated by the calculated approach to information dissemination which was aimed at indoctrinating people while concealing *Angkar*’s actual activities and goals under the veil of the principle of secrecy of CPK. The Chamber recalls its findings that in addition to numerous discussions held during Standing Committee meetings and other DK era meetings, the CPK used study sessions, radio broadcasts, speeches and CPK magazines to disseminate the information about the enemy to the masses.<sup>13582</sup> Such information pertained to who should be considered an enemy and what was considered enemy behaviour.<sup>13583</sup> Details of how to define enemy activity and how specific networks of enemies had to be purged were discussed only within the CPK at the higher level, which included NUON Chea and other senior leaders from the Standing Committee, the Deputy Secretaries and the Secretaries of Divisions and Regiments, the ministries such as the Ministry of Foreign Affairs, and offices such as S-21.<sup>13584</sup> In line with the Party’s general aim of maintaining secrecy, these discussions were kept secret as a tactic to facilitate and secure the identification and the elimination of enemies in furtherance of the common purpose.<sup>13585</sup> In July 1978, referring to the period “after liberation”, NUON Chea explained why the CPK regarded secrecy vital:

Secret work is fundamental in all that we do. [...] On the one hand, this is a matter of general principle, and on the other, it is a way to defend ourselves from the danger of enemy infiltration. As long as there is class struggle or imperialism, secret work will remain fundamental. Only through secrecy can we be masters of the situation and win victory over the enemy who cannot find out who is who.<sup>13586</sup>

<sup>13580</sup> Section 16.3: Real or Perceived Enemies, para. 3863.

<sup>13581</sup> Section 12.2: S-21 Security Centre, para. 2165.

<sup>13582</sup> Section 6: Communication Structures, paras 465-472, 477.

<sup>13583</sup> Section 16.3: Real or Perceived Enemies: Dissemination of Information Regarding Enemies.

<sup>13584</sup> Section 16.3: Real or Perceived Enemies, para. 3862.

<sup>13585</sup> See e.g., Standing Committee Minutes regarding national defence matters, E3/229, 22 February 1976, p. 2, ERN (En) 00182626 (NUON Chea was present at this meeting where a speaker only identified as *Angkar*, urged those present to remain vigilant, concentrate on maintaining secrecy and keeping communications quiet). See also, Section 16.3: Real or Perceived Enemies, paras 3760, 3789, 3793, 3862; Section 5: Administrative Structures, paras 342, 362, 398; Section 12.2: S-21 Security Centre, paras 2171, 2183, 2217, 2404.

<sup>13586</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 27, ERN (En) 00762399.

4135. Both in the years preceding the evacuation of Phnom Penh and during the subsequent DK period, NUON Chea focused actively on propaganda (which involved deciding what to propagate and what to keep secret) and training CPK cadres in the countryside, advocating the Party's revolutionary and economic policies, the formation of cooperatives and worksites and vigilance against enemies. NUON Chea also appeared as the chairman, trainer or speaker at a range of meetings, trainings or study sessions where he promoted the Party line of vigilance and anger against internal and external enemies.<sup>13587</sup>

4136. The Chamber is thus satisfied that through his role in the propaganda campaign and tactics (including his instrumental role in issuing the *Revolutionary Flag* and urging secrecy, the corresponding counterpart of effective propaganda) and training of cadres both before and after April 1975, NUON Chea played a key role in implementing and disseminating the common purpose.

17.2.1.3. *Direct involvement in executing the Common Purpose: purges and S-21 Security Centre*

4137. NUON Chea's contributions to the commission of crimes exceeded policy development, implementation and dissemination of the common purpose through propaganda and education. NUON Chea executed the common purpose by directly and actively engaging in the purges.<sup>13588</sup> He not only helped orchestrate and execute the Northwest Zone, Central (old North) Zone and East Zone purges, he was personally involved in the oversight of S-21 Security Centre and purges of prominent Party members such as Northwest Zone Secretary RUOS Nhim.

4138. The Chamber recalls that NUON Chea, among others, was involved in ordering a large number of purges. For instance, the Standing Committee, of which NUON Chea was a full-right member, ordered the arrest, torture and execution of hundreds of soldiers from Centre Division 170 (a former East Zone unit)<sup>13589</sup> brought to S-21 in light of the 1976 events in Phnom Penh – the distribution of critical leaflets at different locations in the city, gunfire at the Fine Arts School and a grenade explosion at the

<sup>13587</sup> Section 7: Roles and Functions – NUON Chea, paras 541-547; Section 16: Common Purpose, para. 3742.

<sup>13588</sup> Section 16: Common Purpose, para. 4070.

<sup>13589</sup> Section 5: Administrative Structures, para. 435.

Royal Palace after which Division 170 Commander CHAN Chakrei was arrested in May 1976.<sup>13590</sup> NUON Chea also ordered the purges in the Central (old North) Zone.<sup>13591</sup> Southwest Zone cadres were sent to the Central (old North) Zone by the Standing Committee, including POL Pot and NUON Chea. Under the direction of KE Pauk, the Southwest Zone cadres took over leadership positions and executed the arrests of dozens of cadres who were sent to S-21.<sup>13592</sup> Purges in the Central (old North) Zone had been ordered by NUON Chea, SON Sen and the Standing Committee. Prisoner lists from S-21 confirm that arrests continued throughout the country, and particularly in the Central (old North) Zone, after June 1978 until the end of the regime.<sup>13593</sup> Additionally, NUON Chea, as a full-rights member of the Standing Committee, was involved in ordering the East Zone purges.<sup>13594</sup> In this regard, the Chamber recalls that the arrests of CHAN Chakrei in May 1976 and SUOS Nou *alias* Chhouk (former secretary of Sector 24) in August 1976 triggered a continuing cycle of arrests, torture, confessions and executions of East Zone cadres at the hands of Central (old North) and Southwest Zone cadres.<sup>13595</sup> The Chamber also considers the fact that NUON Chea ordered Duch to immediately execute large groups of East Zone cadre arriving at S-21 during the second wave of East Zone purges between January and June 1978.<sup>13596</sup> Furthermore, NUON Chea was involved in ordering the Northwest Zone purges, including the arrest of Northwest Zone Secretary RUOS Nhim.<sup>13597</sup>

4139. NUON Chea played an indispensable role regarding the operation of S-21 Security Centre. NUON Chea acted as Duch's direct supervisor from 15 August 1977, following the departure of SON Sen to the battlefield, until the fall of the DK regime in early January 1979.<sup>13598</sup> In this capacity, NUON Chea regularly met with Duch and gave him instructions,<sup>13599</sup> including directions regarding particular prominent

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<sup>13590</sup> Section 12.1: Internal Factions, paras 1890-1899.

<sup>13591</sup> Section 12.1: Internal Factions, para. 2069; Section 11.2: 1<sup>st</sup> January Dam, para. 1466.

<sup>13592</sup> Section 12.1: Internal Factions, para. 2069; Section 11.2: 1<sup>st</sup> January Dam, para. 1466.

<sup>13593</sup> Section 12.1: Internal Factions, para. 2069; Section 11.2.7: 1<sup>st</sup> January Dam: Purges of Cadres in the Central (old North) Zone.

<sup>13594</sup> Section 12.1: Internal Factions, para. 2031.

<sup>13595</sup> Section 12.1: Internal Factions, paras 2017, 2072.

<sup>13596</sup> Section 12.1: Internal Factions, paras 2031, 2038; Section 12.2: S-21 Security Centre, paras 2243, 2311, 2527.

<sup>13597</sup> Section 12.1: Internal Factions, paras 1941-1942, 1972; Section 12.2: S-21 Security Centre, paras 2284, 2312, 2319.

<sup>13598</sup> Section 12.2: S-21 Security Centre, paras 2188, 2191, 2193, 2210-2215.

<sup>13599</sup> See e.g., Section 12.2: S-21 Security Centre, paras 2243, 2311, 2457, 2462, 2494, 2497, 2510, 2554-2556.

prisoners.<sup>13600</sup> NUON Chea received and read S-21 confessions, and as he saw fit, ordered changes thereto.<sup>13601</sup> NUON Chea was among those who decided who was arrested and sent to S-21.<sup>13602</sup> NUON Chea ordered executions, both of large groups, such as those arriving at S-21 as a result of the 1978 wave of East Zone purges and those detained at S-21 directly prior to its abandonment,<sup>13603</sup> and of specific individuals.<sup>13604</sup> For instance, in 1978, CHHIM Sam Aok *alias* Pang, head of office S-71, was arrested and taken to S-21. Pang was subject to extended interrogation under torture, and was executed as ordered by Duch pursuant to NUON Chea's instructions.<sup>13605</sup> Also, shortly before the arrival of Vietnamese forces, NUON Chea instructed Duch to remove and kill hundreds of prisoners still detained at S-21.<sup>13606</sup> Given the rapid entry of Vietnamese forces into Phnom Penh and the rapid abandonment of S-21, nothing was done with respect to the documents which remained at the Security Centre. NUON Chea subsequently scolded Duch for not having destroyed the S-21 documents.<sup>13607</sup>

4140. The instructions provided by NUON Chea to Duch included instructions regarding Vietnamese prisoners, who NUON Chea ordered the interrogation of and their confessions recorded and broadcasted on the radio.<sup>13608</sup> NUON Chea received these confessions, and in his role as propagandist, edited them for use on the radio, in DK publications and government statements.<sup>13609</sup>

4141. NUON Chea's contributions to the operation of S-21 were not limited to the period in which he acted as Duch's direct supervisor. Even prior to taking over from SON Sen as Duch's direct supervisor at S-21, NUON Chea received confessions,<sup>13610</sup>

<sup>13600</sup> See e.g., Section 12.2: S-21 Security Centre, paras 2312, 2316-2317, 2323.

<sup>13601</sup> See e.g., Section 12.1: Internal Factions, para. 2017; Section 12.2: S-21 Security Centre, paras 2221-2222, 2226, 2228-2230, 2462, 2473, 2491.

<sup>13602</sup> See e.g., Section 12.2: S-21 Security Centre, paras 2183, 2197, 2312, 2317, 2457.

<sup>13603</sup> See e.g., Section 12.1: Internal Factions, para. 2031; Section 12.2: S-21 Security Centre, paras 2243, 2311, 2497, 2527, 2555-2556.

<sup>13604</sup> See e.g., Section 12.2: S-21 Security Centre, paras 2316, 2318, 2323, 2457; Section 5: Administrative Structures, para. 369.

<sup>13605</sup> Section 12.2: S-21 Security Centre, paras 2315-2316; Section 5: Administrative Structures, para. 369.

<sup>13606</sup> Section 12.2: S-21 Security Centre, paras 2555-2556.

<sup>13607</sup> Section 12.2: S-21 Security Centre, para. 2559.

<sup>13608</sup> Section 12.2: S-21 Security Centre, paras 2462, 2472-2473.

<sup>13609</sup> Section 12.2: S-21 Security Centre, paras 2472-2473.

<sup>13610</sup> Section 12.2: S-21 Security Centre, para. 2229.

ordered the interrogation of specific prisoners, and the exhumation and photographing of the bodies of certain prisoners who had been killed.<sup>13611</sup>

4142. NUON Chea's involvement with the operation of security centres was not limited to S-21. The Standing Committee, thus including NUON Chea, also made decisions regarding prisoners elsewhere. For instance, the order to kill a group of at least 100 Jarai prisoners at Au Kanseng Security Centre, which was under Centre Division 801's supervision, originated from the Standing Committee.<sup>13612</sup> NUON Chea also gave instructions regarding Phnom Kraol Security Centre and Autonomous Sector 105 on security and military matters.<sup>13613</sup>

4143. In light of the foregoing, the Chamber is satisfied<sup>13614</sup> that through his involvement in ordering large number of purges and his role in the operation of S-21 Security Centre, NUON Chea played a key role in executing the common purpose.

#### 17.2.2. *Intent*

4144. The Chamber recalls that intent must cover both the common purpose and the crimes it encompassed.<sup>13614</sup> The Chamber has found that NUON Chea formed part of a plurality of persons who acted in unison to put into effect the common purpose.<sup>13615</sup> NUON Chea's intent to participate in the common purpose is further demonstrated by the significant contribution he made thereto directed at furthering the common purpose through his acts within the three pillars (designing, implementing and disseminating, and executing the common purpose) described above. The Chamber now turns to assess whether NUON Chea possessed the requisite *mens rea* for the crimes encompassed by the common purpose.

##### 17.2.2.1. Cooperatives and worksites

4145. The Chamber has found that the crimes against humanity of murder, enslavement, persecution on political grounds and the other inhumane acts of attacks against human dignity and through conduct characterised as enforced disappearances

<sup>13611</sup> Section 12.2: S-21 Security Centre, paras 2197, 2510.

<sup>13612</sup> Section 12.4: Au Kanseng Security Centre, para. 2957.

<sup>13613</sup> Section 12.5: Phnom Kraol Security Centre, paras 3035-3036, 3040.

<sup>13614</sup> Section 15: Applicable Law: Individual Criminal Responsibility, para. 3712.

<sup>13615</sup> Section 16: Common Purpose, para. 4069.

were variously established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13616</sup> It has further found that, insofar as they were established at these sites, these crimes were encompassed by the common purpose as part of the policy to establish and operate cooperatives and worksites.<sup>13617</sup>

4146. NUON Chea was among the Central Committee members who decided to close the markets, end the use of currency and organise cooperatives. As found above, he never wavered in his belief that this was the correct thing to do.<sup>13618</sup> The Standing Committee's report of the Northwest Zone visit in August 1975 offered "*Angkar's* guiding opinions" on key questions of "workforce arrangements", cooperatives and the handling of cities. NUON Chea participated in the development of the plans and policies reflected in this report.<sup>13619</sup> The Chamber has found that NUON Chea visited some of the worksites and knew of the crimes being committed in furtherance of the common purpose in relation to the cooperatives and worksites. Yet, no changes were ever ordered to be made to the regimes that the cooperatives and worksites were operating under. Throughout the DK era, despite this knowledge of the crimes being committed at the cooperatives and worksites, NUON Chea continued to actively advocate for this economic system in speeches and CPK publications in furtherance of the common purpose.<sup>13620</sup> Not only was NUON Chea one of the principal authors of the *Revolutionary Flag*, he also held speeches and training sessions with cadres in cooperatives and worksites concerning the cultivation of rice and how to dig canals, build dams and organise the workforce amongst cooperatives.<sup>13621</sup> The Chamber also recalls that NUON Chea later acknowledged that those who joined cooperatives could not leave.<sup>13622</sup> Furthermore, NUON Chea lectured Southwest Zone cadres who were being relocated to the Northwest Zone on the presence of traitors in that zone.<sup>13623</sup> He

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<sup>13616</sup> Section 10.1.13: Tram Kak Cooperatives: Legal Findings; Section 11.1.12: Trapeang Thma Dam Worksite: Legal Findings; Section 11.2.24: 1<sup>st</sup> January Dam Worksite: Legal Findings; Section 11.3.13: Kampong Chhnang Airfield Construction Site: Legal Findings.

<sup>13617</sup> Section 16.4.1: Common Purpose: "Control" and "Capture the People": Movement of Population, Establishment of Cooperatives and Worksites.

<sup>13618</sup> Section 16: Common Purpose, paras 3888-3891.

<sup>13619</sup> Section 16: Common Purpose, para. 3888.

<sup>13620</sup> Section 16.3: Real or Perceived Enemies, paras 3736, 3872, 3885, 3909, 3912-3913, 3916; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1479, 1486-1488, 1490.

<sup>13621</sup> Section 16: Common Purpose, paras 3896-3901.

<sup>13622</sup> Section 16: Common Purpose, paras 3885-3886.

<sup>13623</sup> See above, para. 4131.

also held speeches, study sessions and rallies where he lectured, those present on how to make the distinction between friends and enemies, and how to detect and “smash” the latter.<sup>13624</sup> The Chamber finds that this establishes NUON Chea’s specific intent to discriminate against Party enemies on political grounds. In line with his support of the revolutionary framework concerning the treatment of enemies and particularly the principle of secrecy,<sup>13625</sup> the Chamber is satisfied that NUON Chea intended that enemies were to be dealt with in secret.<sup>13626</sup>

4147. In light of the foregoing, the Chamber finds that NUON Chea intended the commission of crimes at cooperatives and worksites. In particular, the evidence establishes that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, enslavement and the other inhumane act through of attacks against human dignity and through conduct characterised as enforced disappearances. In addition, and having established his specific intent to subject Party enemies to adverse treatment and discrimination, the Chamber finds that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds.

17.2.2.2. Security centres, execution sites and internal purges

4148. The Chamber has found that the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, persecution on political grounds and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances were variously established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13627</sup> It has further found that, insofar as they were established at these security centres, these crimes were

<sup>13624</sup> See above, paras 4129-4136.

<sup>13625</sup> See above, paras 4131-4135.

<sup>13626</sup> See e.g., Section 16.4.2.1.2: Common Purpose: “Smashing” of enemies; Section 16.4.2.1.3: Common Purpose: Re-education of “bad elements”.

<sup>13627</sup> Section 12.2.24: S-21 Security Centre: Legal Findings; Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings; Section 12.4.7: Au Kanseng Security Centre: Legal Findings; Section 12.5.8: Phnom Kraol Security Centre: Legal Findings.



encompassed by the common purpose as part of the policy to identify, arrest, isolate and “smash” enemies.<sup>13628</sup>

4149. As discussed above, NUON Chea held speeches, study sessions and rallies where he promoted vigilance and anger against internal and external enemies and where he instructed participants on identification of and how to “smash” enemies. He summoned Southwest Zone cadres at study sessions in Phnom Penh before they were redeployed to the Northwest Zone, in order to lecture them on traitors in that area.<sup>13629</sup> The Chamber finds that NUON Chea’s conduct demonstrates his specific intent to discriminate against Party enemies on the basis of their perceived political affiliations. He supported the principle of secrecy, knew about the widespread arrests of people and actively ordered the purges of the Northwest Zone, the Central (old North) Zone and the East Zone, both the 1976-1977 wave after CHAN Chakrei’s arrest and the second wave in 1978.<sup>13630</sup> He also received confessions from S-21 prisoners and gave instructions both after and prior to his official role as Duch’s supervisor. NUON Chea thus knew of the commission of crimes and continued participating in their perpetration, even ordering them. NUON Chea’s hard-line approach regarding stratifying the population and hunting for enemies demonstrates that he intended the result of the violence he was advocating, supervising and ordering. His acceptance of this result is illustrated by his own remarks to the Danish Communist Worker’s Party in 1978: “There can be no comparison between losing two to three leading cadres and 200-300 members. Rather the latter than the former.”<sup>13631</sup> Important leaders were to be protected, others were expendable. NUON Chea’s intent is further demonstrated by his answers to questions posed by THET Sambath discussed above: NUON Chea approved of killing traitors, a category one easily fell into. The Chamber thus finds that NUON Chea intended the crimes committed in relation to the purges and at the security centres and execution sites.

4150. With regard to torture, the Chamber recalls that NUON Chea was informed about torture being used to extract confessions.<sup>13632</sup> Moreover, NUON Chea received

<sup>13628</sup> Section 16.4.2: Common Purpose: Establishment and Operation of Security Centres and Execution Sites.

<sup>13629</sup> See above, paras 4131, 4133-4135.

<sup>13630</sup> See above, para. 4138.

<sup>13631</sup> NUON Chea Speech to the Communist Workers’ Party of Denmark, E3/196, 30-31 July 1978, p. 31, ERN (En) 00762403.

<sup>13632</sup> Section 12.2: S-21 Security Centre, paras 2231, 2589.

reports from Duch detailing the mental and physical abuse inflicted upon S-21 prisoners.<sup>13633</sup> He continued overseeing S-21 until the end of the DK era and this practice never changed. When Duch was asked whether he ever received instructions from NUON Chea to stop torturing prisoners at S-21, Duch answered “[n]o, never”.<sup>13634</sup>

4151. NUON Chea’s intent regarding the commission of these crimes is further shown by his own statements post-DK. NUON Chea admitted in a video recorded interview with THET Sambath that he read confessions, stating he did so to use their contents for educational purposes.<sup>13635</sup> In another video of a THET Sambath interview, NUON Chea said:

They weren’t party cadres anymore because they had betrayed us. They were agents for foreigners. These people were killed. It was Pol Pot who made the final decision to kill. As for innocent people’s deaths, neither Pol Pot nor I knew too much. We only knew about the ex-cadres’ deaths because Pol Pot decided to kill them. So obviously we knew.<sup>13636</sup>

4152. In light of the foregoing, the Chamber finds that NUON Chea intended the commission of these crimes as part of the CPK’s policy of identifying, arresting, isolating and “smashing” enemies. In particular, the evidence establishes that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, extermination, enslavement, imprisonment, torture and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances. Having established that NUON Chea specifically intended the adverse treatment and discrimination of Party enemies, the Chamber finds that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds.

<sup>13633</sup> Section 12.2: S-21 Security Centre, paras 2379, 2412, 2589.

<sup>13634</sup> T. 9 June 2016 (KAING Guek Eav), E1/435.1, p. 58. *See also*, Section 12.2: S-21 Security Centre, para. 2231.

<sup>13635</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled “on Confessions”).

<sup>13636</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled “on Innocent Deaths”).

17.2.2.3. Targeting of specific groups17.2.2.3.1. *Cham*

4153. The Chamber has found that the crime of genocide and the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious grounds, and the other inhumane acts through conduct characterised as forced transfer were established with respect to the treatment of the Cham.<sup>13637</sup> The Chamber has found that the foregoing crimes were encompassed by the common purpose as part of the CPK's policy targeting the Cham for adverse treatment.<sup>13638</sup>

4154. The Chamber has found the treatment of this group at the Wat Au Trakuon and Trea Village Security Centres constituted the implementation of a policy to identify, arrest, isolate and "smash" enemies.<sup>13639</sup> The Chamber has already addressed NUON Chea's specific intent to discriminate against enemies on the basis of their real or perceived political affiliations, as well as his instrumental role regarding the policy to identify, arrest, isolate and "smash" enemies, including the crimes against humanity of imprisonment, torture, murder and extermination.<sup>13640</sup> The Chamber has also found that in the case of the Cham, discriminatory policies that evolved over time were implemented to disperse the group, restrict their religious and cultural practices and kill those members who resisted assimilation.<sup>13641</sup> The Chamber accordingly finds that NUON Chea intended the commission of crimes as part of the CPK's policy targeting the Cham for adverse treatment. In particular, the evidence establishes that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, extermination, imprisonment, torture and persecution on political and religious grounds against the Cham. Furthermore, as found above, the Chamber was satisfied that NUON Chea knew of the crime against humanity of other inhumane acts through conduct characterised as forced transfer.<sup>13642</sup> The Chamber finds that NUON Chea's knowledge taken together with his continued

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<sup>13637</sup> Section 13.2.10: Treatment of the Cham: Legal Findings.

<sup>13638</sup> Section 16.4.3.1: Common Purpose: Cham.

<sup>13639</sup> Section 16: Common Purpose, paras 3991-3994.

<sup>13640</sup> *See above*, Section 18.2.2.2: Security centres, execution sites and internal purges.

<sup>13641</sup> Sections 13.2.10.6: Treatment of the Cham: Legal Findings: Persecution on Religious Grounds.

<sup>13642</sup> *See above*, paras 4096, 4100.

participation in the CPK's policy to adversely treat the Cham demonstrate his direct intent in this regard.

4155. The Chamber recalls that it is not satisfied that NUON Chea knew that the deliberate killings of members of the Cham group were committed by physical perpetrators at the Wat Au Trakuon and Trea Village Security Centres with the intent to destroy, in whole or in part, the Cham group as such. It further finds that, conversely to other crimes, in the absence of any evidence demonstrating NUON Chea's genocidal intent to destroy the Cham ethnic and religious group, as such, NUON Chea is not responsible for genocide by killing members of the Cham group committed through the joint criminal enterprise. Accordingly, the Chamber will not impute responsibility for this crime to NUON Chea under the mode of liability of commission through a joint criminal enterprise.

4156. In sum, the Chamber finds that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political grounds, persecution on religious grounds and other inhumane acts through conduct characterised as forced transfer. The Chamber, however, is not satisfied beyond reasonable doubt that NUON Chea shared the genocidal intent to commit, through a joint criminal enterprise, the crime of genocide by killing members of the Cham religious and ethnic group.

#### 17.2.2.3.2. *Vietnamese*

4157. The Chamber has found that the crime of genocide and the crimes against humanity of murder, extermination, deportation and persecution on racial grounds were established with regard to the treatment of the Vietnamese. In addition, the Chamber has found that a number of grave breaches of the Geneva Conventions were also established with regard to this group at S-21 Security Centre, including wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial and unlawful confinement.<sup>13643</sup> The Chamber has further found that these crimes were encompassed

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<sup>13643</sup> Section 12.2.24: S-21 Security Centre: Legal Findings; Section 13.3.10: Treatment of the Vietnamese, Legal Findings.

by the common purpose throughout the entire DK period, with the exception of deportation as a crime against humanity, which was limited to the period between 17 April 1975 and April 1977, and genocide by killing, which was limited to the period between April 1977 and 6 January 1979.<sup>13644</sup>

4158. NUON Chea played a key role in advocating hatred of the Vietnamese. He consistently described the Vietnamese as a threat to the Khmer people and labelled them enemies,<sup>13645</sup> in line with the CPK's policy.<sup>13646</sup> The Chamber recalls that the *Revolutionary Flag* and the *Revolutionary Youth*, the contents of which was under NUON Chea's ultimate control, were used to disseminate information regarding people considered enemies by the Party. The Vietnamese ("Yuon") were discussed at length in these publications.<sup>13647</sup> Not once did NUON Chea deviate from the Party line; conversely, he consistently echoed it. NUON Chea's intent is further corroborated through his acts at S-21, where he instructed Duch to interrogate Vietnamese prisoners, whose particular confessions were recorded, edited by NUON Chea and broadcast on the radio.<sup>13648</sup> The Chamber thus finds that NUON Chea had the specific discriminatory intent regarding the crimes committed pursuant to the policy to target the Vietnamese.

4159. The "one against 30" policy expressly encompassed the total populations of both countries,<sup>13649</sup> thus including both combatants and civilians in this policy. NUON Chea publicly stated that the Cambodian people and the RAK had "crushed the Vietnamese strategy of 'Indochina Federation' aiming at swallowing the Kampuchea's territory and exterminating the [*sic*] Kampuchea's race".<sup>13650</sup> His perception of Vietnam as the ultimate threat and defence of the CPK's policies never wavered. When asked by THET Sambath, "Was it right to kill traitors?", NUON Chea replied:

I don't want to be accused of being brutal, but we have to consider whether it was reasonable given the threat they posed to our nation. We can't just think of the individual. Think how threatened our country would have been, if they had stayed alive. [...] Cambodia would have been lost for centuries and we would never have won her

<sup>13644</sup> Section 16.4.4.2: Common Purpose: Vietnamese.

<sup>13645</sup> Section 13.3: Treatment of the Vietnamese, para. 3390.

<sup>13646</sup> Section 13.3: Treatment of the Vietnamese, para. 3389; Section 16.3: Real or Perceived Enemies, paras 3839-3840, 3842-3844, 3851, 3853.

<sup>13647</sup> Section 16.3: Real or Perceived Enemies, paras 3819-3820, 3824, 3829, 3833, 3863.

<sup>13648</sup> Section 12.2: S-21 Security Centre, paras 2462, 2473-2474.

<sup>13649</sup> Revolutionary Flag, E3/4604, April 1978, pp. 5-6, 8-9, 24, ERN (En) 00519833, 00519834, 00519836, 00519837, 00519852.

<sup>13650</sup> Section 13.3: Treatment of the Vietnamese, paras 3406, 3517.

back. Believe me if these traitors were alive, the Khmers as a people would have been finished. So I dare to suggest our decision was the correct one. If we had shown mercy to these people, the nation would have been lost. [...] I mean that we would be Vietnam's poodle until we were totally subjugated.<sup>13651</sup>

4160. The Chamber refers to NUON Chea's statements about the Vietnamese, examined above in Section 17.1.2.3.2. It considers that NUON Chea's words and actions during the DK period evince his contempt for the Vietnamese and direct intent to kill, on a large scale, the Vietnamese in Cambodia from April 1977 through 6 January 1979. The Chamber accordingly finds that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder and extermination against the Vietnamese in DK. Further, the Chamber is satisfied that the intent to kill was the result of NUON Chea's specific intent to discriminate against the Vietnamese on racial grounds. It accordingly finds that NUON Chea shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on racial grounds, and that the intended discriminatory acts were deliberate killing of Vietnamese, on a large scale.

4161. Furthermore, the Chamber considers that NUON Chea's words and actions during the DK period demonstrate his genocidal intent to destroy the Vietnamese as a racial, national and ethnic group, as such.<sup>13652</sup> In line with its findings in the preceding paragraph, the Chamber finds that the means by which this group was to be destroyed was through killing of Vietnamese in DK, on a large scale. The Chamber accordingly finds that NUON Chea shared the genocidal intent of other JCE members to commit, through a joint criminal enterprise, the crime of genocide by killing members of the Vietnamese racial, national and ethnic group.

4162. Lastly, the Chamber has found that NUON Chea knew of the protected status of Vietnamese prisoners at S-21 Security Centre,<sup>13653</sup> supported the revolutionary framework concerning enemies and shared the intent of other JCE members to commit, through a joint criminal enterprise, crimes underlying the policy to establish security

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<sup>13651</sup> NUON Chea Interview by THET Sambath, E3/7209R, undated, ERN V00717048 (titled "on Killing Traitors". NUON Chea repeats the same in the clip titled "on the Nation").

<sup>13652</sup> See above, paras 4101-4102.

<sup>13653</sup> Section 4: General Overview, para. 340.

centres and execution sites.<sup>13654</sup> It accordingly finds that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, grave breaches of the Geneva Conventions against Vietnamese prisoners at S-21 Security Centre, including through wilful killing; torture; inhumane treatment; wilfully causing great suffering or serious injury to body or health; wilfully depriving prisoners of war or civilians of the rights of a fair and regular trial; and unlawful confinement.

#### 17.2.2.3.3. *Buddhists*

4163. The Chamber has found that the crime against humanity of persecution on religious ground was established as part of the CPK's policy targeting Buddhist monks for adverse treatment.<sup>13655</sup> It has further found that this crime was encompassed by the common purpose.<sup>13656</sup>

4164. NUON Chea was among the senior CPK leaders who decided to eliminate Buddhism in Cambodia. As discussed above, following meetings in Phnom Penh in May 1975, District Secretary *Yeay Khom* returned to Tram Kak District with instructions related to, among other things, the disrobing of Buddhist monks. NUON Chea further explained to the Chamber that in the speeches he gave during the DK era, he did not pay respect to monks as he did not want to mix religion with politics and that no monks were "participating" at the time. The Chamber recalls that monks were systematically defrocked in the aftermath of 17 April 1975, pagodas were destroyed, closed or converted for use for non-religious purposes.<sup>13657</sup> Moreover, in his speech to the Danish Communist Workers' Party in July 1978, NUON Chea showed his intent towards Buddhists by explaining how the Party had deliberately deceived monks in the months leading up to 17 April 1975 to garner their support while intending to abolish religion in Cambodia.<sup>13658</sup>

4165. The Chamber is satisfied that NUON Chea's actions demonstrate his specific intent to discriminate against Buddhists on the basis of their membership of that religious group. His support of the CPK's policies and their implementation

<sup>13654</sup> See above, paras 4137-4143, 4148-4152.

<sup>13655</sup> Section 10.1: Tram Kak Cooperatives, para. 1187.

<sup>13656</sup> Section 16: Common Purpose, para. 4022.

<sup>13657</sup> Section 10.1.9: Tram Kak Cooperatives: Treatment of Buddhists; Section 16: Common Purpose, para. 4015.

<sup>13658</sup> See above, para. 4104.

demonstrates his intent to eliminate Buddhism in Cambodia, a necessary component of which was the defrocking of monks. The Chamber finds that the evidence establishes that NUON Chea shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on religious grounds.

#### 17.2.2.3.4. *Former Khmer Republic officials*

4166. The Chamber has found that the crime against humanity of persecution on political grounds was established at the Tram Kak Cooperatives between 20 April 1975 and late May 1975, and from early 1977 through 6 January 1979 at 1<sup>st</sup> January Dam, S-21 Security Centre and Kraing Ta Chan Security Centre.<sup>13659</sup> It has further found that the crime was encompassed by the common purpose throughout the DK period as part of the CPK's policy targeting former Khmer Republic officials for adverse treatment.<sup>13660</sup>

4167. Further, the Chamber has found that the crime against humanity of murder was established with respect to former Khmer Republic officials at S-21 and Kraing Ta Chan Security Centres.<sup>13661</sup> It has found that, insofar as the crime was committed at these locations between 20 April 1975 and late May 1975 and from October 1975 through 6 January 1979, it was encompassed by the common purpose.<sup>13662</sup>

4168. NUON Chea was among the senior CPK leaders who during mass rallies and political training sessions in May 1975 urged vigilance and anger against enemies from the former LON Nol regime.<sup>13663</sup> Moreover, telegrams before the Chamber demonstrate that the arrest of former Khmer Republic soldiers and officials was routinely reported to NUON Chea during the DK period.<sup>13664</sup> Regardless, NUON Chea continued to disseminate and implement to common purpose in this regard, as demonstrated by the fact that "LON Nol traitors" were discussed at length in the CPK magazines

<sup>13659</sup> Section 10.1.13: Tram Kak Cooperatives: Legal Findings; Section 11.2.24: 1<sup>st</sup> January Dam Worksite: Legal Findings; Section 12.2.24: S-21 Security Centre: Legal Findings, Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings.

<sup>13660</sup> Section 16: Common Purpose, paras 4058-4060. The Chamber recalls that in this context the phrase "officials" includes civil servants and former military personnel.

<sup>13661</sup> Section 12.2.24: S-21 Security Centre: Legal Findings, Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings.

<sup>13662</sup> Section 16: Common Purpose: Former Khmer Republic Officials, paras 4051-4057, 4060.

<sup>13663</sup> Section 16: Common Purpose, para. 4038.

<sup>13664</sup> Section 16: Common Purpose, para. 4048.



*Revolutionary Flag* and *Revolutionary Youth* throughout the DK period, and were systematically accused of working together with the American imperialists or acting as “their lackeys”.<sup>13665</sup> Even before becoming Duch’s direct supervisor as S-21, NUON Chea was also directly involved in the operation of the Security Centre, where, as found above, former LON Nol soldiers and civil servants were detained and executed.<sup>13666</sup>

4169. In light of the foregoing, the Chamber finds that NUON Chea intended the commission of crimes against officials (and their family members) of the former Khmer Republic. In particular, the evidence establishes that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of murder. Further, the Chamber finds that NUON Chea shared the specific intent of other JCE participants to discriminate against all officials of the former Khmer Republic on the basis of their political status, in particular their perceived ability to stage a counter-revolution. The Chamber therefore finds that NUON Chea shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds against former Khmer Republic officials throughout the DK period.

#### 17.2.2.4. Regulation of marriage

4170. The Chamber has found that the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape within the context of forced marriage was established as part of the CPK’s nationwide policy to regulate marriage.<sup>13667</sup> It has further found that these crimes were encompassed by the common purpose.<sup>13668</sup>

4171. The Chamber recalls its finding that reports related to marriages were sent to *Angkar*.<sup>13669</sup> The Chamber thus finds that NUON Chea knew of the crimes committed pursuant to the policy to regulate marriage as he received such reports in his position of ultimate policy and decision-maker.<sup>13670</sup> Despite this knowledge, NUON Chea

<sup>13665</sup> Section 16.3: Real or Perceived Enemies, paras 3755, 3813, 3818, 3829, 3847.

<sup>13666</sup> See above, paras 4139, 4141. See also, Section 12.2.18: S-21 Security Centre: Former Khmer Republic Officials.

<sup>13667</sup> Section 14.4: Regulation of Marriage: Legal Findings.

<sup>13668</sup> Section 16.4.4: Common Purpose: Regulation of Marriage.

<sup>13669</sup> Section 14: Regulation of Marriage, para. 3568.

<sup>13670</sup> See above, para. 4110. See also, Section 7: Roles and Functions – NUON Chea, para. 516.

continued to further the common purpose in this regard through his active role as propagandist and educator. He covered the specific topics of *Angkar*'s stance on family building and marriage as means to increase the population and achieve revolutionary goals in numerous *Revolutionary Flag* and *Revolutionary Youth* publications.<sup>13671</sup> Moreover, when asked about the DK government policy regarding population and development during an interview at the Asian parliamentarians' conference in Beijing in October 1981, NUON Chea confirmed that the DK government had pursued a policy of rapidly increasing its population.<sup>13672</sup>

4172. In light of the foregoing, the Chamber finds that NUON Chea intended the commission of crimes as part of the CPK's nationwide policy regulating marriage. In particular, the evidence establishes that NUON Chea shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage.

### 17.2.3. *Conclusion on Joint Criminal Enterprise*

4173. Having considered the evidence before it, the Chamber is satisfied that NUON Chea participated in the common purpose of the joint criminal enterprise. NUON Chea helped design, implement and disseminate the common purpose by publicly explaining, endorsing and advocating for the CPK's criminal policies. He did so through his leadership role as POL Pot's right hand, as Deputy Secretary of the CPK, as full-rights member of the Central and Standing Committees, and through his active involvement in propaganda and education. In addition, through his direct, extensive involvement in purges and the operation of S-21 Security Centre, NUON Chea executed the common purpose, using intermediaries such as Duch and direct perpetrators such as S-21 staff as the JCE's tools. In this regard, the Chamber recalls that the crimes at S-21 Security Centre (from August 1977) and in the course of internal purges are imputable to NUON Chea as JCE participant.<sup>13673</sup> Furthermore, regarding NUON Chea's involvement in S-21 prior to August 1977, the time period for which the crimes committed at S-21 are

<sup>13671</sup> Section 14: Regulation of Marriage, paras 3549-3555.

<sup>13672</sup> Section 14: Regulation of Marriage, para. 3553.

<sup>13673</sup> Section 16: Common Purpose, para. 4070.

imputable to SON Sen as JCE participant,<sup>13674</sup> the Chamber considered NUON Chea's acts of reading confessions and ordering interrogations, exhumations and documentations of bodies. Accordingly, the Chamber finds that NUON Chea made a significant contribution to the commission of crimes within the scope of Case 002/02.

4174. Having established that direct perpetrators acted to further the common purpose at the behest or command of JCE participants,<sup>13675</sup> and having established that NUON Chea shared the intent of other JCE members to commit crimes underlying the common purpose,<sup>13676</sup> the Chamber finds that NUON Chea committed, through a joint criminal enterprise (in its basic form), the crimes against humanity of murder (insofar as murder with direct intent was established at the Trapeang Thma Dam and 1<sup>st</sup> January Dam Worksites, the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to the Cham, the Vietnamese and former Khmer Republic officials); extermination (as established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to the Vietnamese and Cham); deportation (as established with respect to the treatment of the Vietnamese); enslavement (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong Chhnang Airfield Construction Site, and the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres); imprisonment (as established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to the treatment of the Cham); torture (as established at the S-21 and Kraing Ta Chan Security Centres and with respect to the treatment of the Cham); persecution on political grounds (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to former Khmer Republic officials and the Cham), persecution on religious grounds (as established with respect to Buddhists at the Tram Kak Cooperatives and the Cham); persecution on racial grounds (as established with respect to Vietnamese, including at the Tram Kak Cooperatives, S-21 and Au Kanseng Security Centres); the other inhumane acts of attacks against human dignity (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong

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<sup>13674</sup> Section 16: Common Purpose, para. 4070.

<sup>13675</sup> Section 16: Common Purpose, para. 4073.

<sup>13676</sup> See above, Section 17.2.2: The Criminal Responsibility of NUON Chea: Commission through a Joint Criminal Enterprise: Intent.

Chhnang Airfield Construction Site and the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres), other inhumane acts through conduct characterised as enforced disappearances (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong Chhnang Airfield Construction Site and the Kraing Ta Chan and Phnom Kraol Security Centres), forced transfer (as established with respect to the Cham), forced marriage and rape in the context of forced marriage (as established within the context of the nationwide regulation of marriage).

4175. The Chamber further finds that NUON Chea committed, through a joint criminal enterprise, the crime of genocide by killing members of the Vietnamese ethnic, national and racial group and committed, through a joint criminal enterprise, the grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial and unlawful confinement of a civilian under the Geneva Conventions at S-21 Security Centre.

4176. The Chamber has found that the evidence did not establish NUON Chea's specific intent to destroy the Cham ethnic and religious group, as such. Accordingly, the Chamber finds that NUON Chea is not responsible for committing, through a joint criminal enterprise, the crime of genocide by killing members of the Cham group.

### **17.3. Other Modes of Liability**

4177. In addition to the commission of crimes through a joint criminal enterprise, the Closing Order charges NUON Chea with planning, instigating, ordering and aiding and abetting crimes (as delimited by the Case 002 Additional Severance Decision). In the alternative to these modes of liability, the Closing Order charges NUON Chea under the mode of superior responsibility.<sup>13677</sup>

4178. The Chamber observes that the Closing Order does not particularise specific facts under the present modes of liability.<sup>13678</sup> Nevertheless, it notes that all the modes of liability under which NUON Chea has been charged share a common factual base, much of which has been discussed above in Section 17.2: Commission through a Joint

<sup>13677</sup> Closing Order, paras 1543-1560; Case 002 Additional Severance Decision Annex, para. 6(ii).

<sup>13678</sup> See e.g., Closing Order, paras 1543-1545, 1547-1548, 1550-1551, 1553-1554.

Criminal Enterprise. Because the Closing Order charges all possible forms of responsibility in respect of each charge, the Chamber may choose under which form or forms of responsibility to assess the evidence in respect of each Accused. The Chamber is not obliged to make exhaustive factual findings on each and every charged form of responsibility,<sup>13679</sup> and accordingly, will not do so in the present case. Moreover, where an accused is found to be both directly responsible and responsible as a superior in relation to the same conduct, the Chamber will convict on the basis of the former and consider an accused's superior position as an aggravating factor in sentencing.<sup>13680</sup>

4179. Having considered all of the evidence and in light of NUON Chea's instrumental role in the JCE, the Chamber finds that commission through a JCE most accurately and appropriately reflects NUON Chea's responsibility for the crimes that fall within the common purpose and for which NUON Chea's knowledge and intent has been established. For these crimes, the Chamber will therefore not analyse NUON Chea's responsibility under the other, additionally charged, modes of liability. Regarding the crimes against humanity of murder committed with *dolus eventualis* as established at Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre, the Chamber recalls that these do not fall within the common purpose. The Chamber will consider NUON Chea's responsibility for these crimes under aiding and abetting, as the Chamber finds that this most accurately reflects NUON Chea's role *vis-à-vis* these murders. Additionally, the Chamber will assess NUON Chea's responsibility for the crime of genocide regarding the Cham under superior responsibility, as the Chamber finds that this most accurately reflects NUON Chea's role *vis-à-vis* this crime. Finally, where appropriate, the Chamber will consider NUON Chea's position as a superior for sentencing purposes.

<sup>13679</sup> Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 472; *Milutinović et al.* Trial Judgement, para. 76 (Volume I).

<sup>13680</sup> See above, Section 15: Applicable Law: Individual Criminal Responsibility, para. 3702; Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 539; *Blaškić* Appeal Judgement, para. 91.

### 17.3.1. *Aiding and Abetting*

4180. As a preliminary matter, the Chamber recalls that the present mode of liability does not require the existence of a plan or agreement between the aider or abettor and the perpetrator. Instead, it requires that the accused knew that a crime would likely be committed; that his or her conduct assisted or facilitated the commission of the crime; and that he or she was aware of the essential elements of the crime committed. The accused need not have shared the perpetrator's intent to commit the crime, including the specific intent, where applicable.<sup>13681</sup>

4181. In CPK propaganda materials such as the *Revolutionary Flag* magazine and at indoctrination and study sessions such as the series held in May 1975 in Phnom Penh, NUON Chea disseminated, endorsed, praised and encouraged the Party's economic policies providing for the strategic allocation of labour and class struggle through population movements and the establishment and operation of cooperatives and worksites, the Party's targeting of enemies and consequential establishment and operation of security centres and execution sites, the Party's aim to transform the population into an atheistic and homogenous Khmer society of worker-peasants which led to the targeting of specific groups and the Party's aim to increase the population which led to CPK to devise a policy to regulate marriage.

4182. NUON Chea's encouragement and moral support is particularly demonstrated by the following appearances he made throughout the country: between 20 and 25 May 1975, NUON Chea and other leaders instructed representatives from military units and all district, sector and zone secretaries on the Party's policies concerning the organisation of cooperatives, elimination of private property, prohibition of currency and markets, and the building of dams and canals;<sup>13682</sup> throughout the DK era, NUON Chea conducted study sessions with cadres in Phnom Penh, including with cadres who were being relocated to other areas of the country in light of purges;<sup>13683</sup> NUON Chea also held speeches, study sessions and rallies on special occasions, such as the January anniversaries of the RAK, where he lectured on how to make the distinction between

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<sup>13681</sup> Section 15: Applicable Law: Individual Criminal Responsibility: Aiding and Abetting, para. 3722.

<sup>13682</sup> Section 16: Common Purpose, para. 3736.

<sup>13683</sup> See above, paras 4089, 4129, 4131.

friends and enemies, and how to detect and “smash” the latter;<sup>13684</sup> NUON Chea summonsed higher-level CPK cadres, such as sector secretaries, to attend study sessions in Phnom Penh;<sup>13685</sup> NUON Chea held speeches and study sessions outside of Phnom Penh in the provinces for district secretaries and heads of cooperatives concerning the cultivation of rice and how to dig canals, build dams and organise workforces among cooperatives;<sup>13686</sup> NUON Chea visited the 1<sup>st</sup> January Dam Worksite, where he met with the leaders responsible for its construction, reviewed the status of the Dam’s construction as well as the rice cultivation and the performance of cooperatives in the area.<sup>13687</sup>

4183. In addition to his appearances at meetings, rallies and study sessions, NUON Chea’s role as one of the principal authors of the *Revolutionary Flag* magazine allowed him to continue spreading and endorsing the Party line.<sup>13688</sup> The *Revolutionary Flag* and the *Revolutionary Youth* were both used to disseminate information regarding people considered enemies by the Party, and included speeches by NUON Chea.<sup>13689</sup> As noted above, real or perceived enemies were discussed at length throughout these CPK publications, for instance: the former regime of LON Nol; non-revolutionary individuals (feudalists, capitalists, etc.); American imperialists or CIA; and the Vietnamese (“*Yuon*”).<sup>13690</sup> Further, information regarding occurring crimes undeniably reached the Party Centre also from outside DK: in 1976 and 1977, Amnesty International sent two letters, one to the recently-appointed President of the State Presidium KHIEU Samphan in 1977, expressing concern at reports of summary executions and maltreatment of civilians and requesting that inquiries be made. The appeal was renewed in 1978 and at this time, Amnesty International was joined by the UN Commission on Human Rights.<sup>13691</sup> The Chamber is thus satisfied that NUON Chea

<sup>13684</sup> Section 16: Common Purpose, para. 3934; Section 16.3: Real or Perceived Enemies, paras 3801-3802.

<sup>13685</sup> Section 12.5: Phnom Kraol Security Centre, paras 3040, 3055.

<sup>13686</sup> Section 11.2: 1<sup>st</sup> January Dam, para. 1479.

<sup>13687</sup> Section 11.2: 1<sup>st</sup> January Dam, paras 1486-1488, 1490.

<sup>13688</sup> Section 7: Roles and Functions – NUON Chea, para. 545; Section 6: Communication Structures, para. 476.

<sup>13689</sup> Section 16.3 Real or Perceived Enemies, para. 3863; Section 6: Communication Structures, paras 473-477.

<sup>13690</sup> Section 16.3 Real or Perceived Enemies, para. 3863.

<sup>13691</sup> See above, para. 4113.

was at all times aware of the elements of the crime against humanity of murder committed with *dolus eventualis* and facilitated their commission.

4184. This conduct had a substantial effect on the commission of the crimes. The Chamber is satisfied that it encouraged lower-level CPK officials to act zealously in implementing the Party's policies.

4185. The Chamber is also satisfied that NUON Chea was aware that his actions and support of the Party's policies to transfer populations and identify class enemies legitimated and fortified the resolve of CPK soldiers and officials to commit the crimes. Through his support for the common purpose and its intrinsically linked criminal policies, the Chamber is also satisfied that NUON Chea was aware of the essential elements of the crimes.

4186. In light of the foregoing, the Chamber is satisfied that NUON Chea is responsible for aiding and abetting the crimes against humanity of murder committed with *dolus eventualis* at S-21 Security Centre, Kraing Ta Chan Security Centre, Phnom Kraol Security Centre, Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite and Kampong Chhnang Airfield Construction Site.

### 17.3.2. *Superior Responsibility*

#### 17.3.2.1. *Superior-subordinate relationship*

4187. At all times during the DK period, NUON Chea was Deputy Secretary of the Party and a full-rights member of the Standing and Central Committees. Along with POL Pot, the only person who was officially senior to him, NUON Chea exercised ultimate decision-making power.<sup>13692</sup> The CPK's upper echelon instructed the lower echelon through the chain of both the administrative hierarchy, from the zones to the sub-district entities, and the military hierarchy, from the divisions to their subunits via SON Sen and the General Staff.<sup>13693</sup> While the Chamber was not satisfied based on the available evidence that NUON Chea was a member of the Military Committee,<sup>13694</sup> he

<sup>13692</sup> See above, para. 4127; Section 7: Roles and Functions – NUON Chea, para. 561.

<sup>13693</sup> Section 6: Communication Structures, paras 482-501, 507-515; Section 5: Administrative Structures, paras 430, 466, 479.

<sup>13694</sup> Section 5: Administrative Structures, para. 359; Section 7: Roles and Functions – NUON Chea, para. 551.



nevertheless exerted considerable influence on DK military policy and its implementation. For instance, in a meeting of the Standing Committee in March 1976, during which POL Pot was absent, NUON Chea provided instructions concerning the border situation with Vietnam, indicating that both political and diplomatic measures were required, as well as military force.<sup>13695</sup> In other instances, NUON Chea was requested by SON Sen to provide direction. SON Sen forwarded written messages and reports received from military commanders to senior CPK leaders, including NUON Chea, with handwritten annotations and requests for instructions.<sup>13696</sup> Moreover, NUON Chea was involved in the supervision of the operation of S-21 Security Centre, and had a direct superior-subordinate relationship with Duch from August 1977 until the fall of the DK on 6 January 1979.<sup>13697</sup> Accordingly, the Chamber finds that in fact a superior-subordinate relationship existed between NUON Chea and both the zone secretaries and military commanders throughout the DK period, and that through the strict chain of command of both the administrative and military sides of the DK government, NUON Chea had an indirect relationship of subordination with the persons who committed the crimes within the scope of Case 002/02.

4188. Furthermore, the CPK Statute provided that any Party member or Party echelon which opposed the Party's organisational stances violated Party discipline and was subject to sanctions, including removal from duties and rejection from the Party.<sup>13698</sup> The Chamber recalls that NUON Chea, in addition to being responsible for propaganda and training of cadres, was also assigned responsibility for discipline.<sup>13699</sup>

4189. Accordingly, the Chamber is satisfied that by virtue of the CPK Statute and his assigned responsibilities, NUON Chea possessed both *de facto* (in fact) and *de jure* (in law) authority to discipline insubordinate members of the Party and military.

#### 17.3.2.2. "Knew or had reason to know"

4190. As outlined above, through his senior leadership roles, NUON Chea knew or had reason to know that subordinates would commit or had committed the crimes

<sup>13695</sup> Standing Committee Minutes, E3/218, 26 March 1976, ERN (En) 00182656-00182657.

<sup>13696</sup> Section 6: Communication Structures, para. 508.

<sup>13697</sup> Section 7: Roles and Functions – NUON Chea, para. 560; Section 12.2: S-21 Security Centre, paras 2210-2215.

<sup>13698</sup> Section 16.3: Real or Perceived Enemies, paras 3765-3766.

<sup>13699</sup> Section 7: Roles and Functions – NUON Chea, paras 542, 546-547.

pursuant to the CPK's criminal policies. In this regard the Chamber considers that NUON Chea, as CPK Deputy Secretary and as a full rights member of both the CPK Central Committee and its Standing Committee, was privy to information which would necessarily have put him on notice, at the time of the crimes, that the crimes were being committed. During Central or Standing Committee meetings, the members received reports, discussed and planned the socialist revolution and the policies through which to achieve it. As well as attending formal Party meetings, NUON Chea also resided, dined and met informally with other senior Party leaders. Accordingly, the Chamber is satisfied that NUON Chea obtained knowledge of the crimes in his capacity as Deputy Secretary and through his membership of the Central and Standing Committees.<sup>13700</sup>

4191. NUON Chea received reports and telegrams from military leaders, putting him on notice of the situation on the battlefields as well as on the border with Vietnam.<sup>13701</sup> NUON Chea travelled throughout the country, personally witnessed the circumstances at the 1<sup>st</sup> January Dam Worksite, and was actively engaged in purges and the operation of S-21 Security Centre.

4192. The Chamber has found that the evidence did not establish beyond reasonable doubt that NUON Chea knew that genocide was committed against the Cham.<sup>13702</sup> The Chamber recalls, however, that the applicable *mens rea* standard under the present mode of liability is twofold: "knew" or "had reason to know", the latter of which is of significance here. A superior *has reason to know* that a crime has been, or was about to be, committed where he possessed information sufficiently alarming to justify further enquiry.<sup>13703</sup> The Chamber further notes that "[a] showing that a superior had some general information in his possession, which would put him on notice of possible unlawful acts by his subordinates, would be sufficient to prove that he 'had reason to know'".<sup>13704</sup> The information may be oral or written and need not provide specific details about the unlawful acts.<sup>13705</sup> Moreover, the relevant information "only needs to

<sup>13700</sup> See above, para. 4082.

<sup>13701</sup> Section 7: Roles and Functions – NUON Chea, paras 555-556; Section 4: General Overview, paras 289, 339; Section 13.3: Treatment of the Vietnamese, paras 3408-3410.

<sup>13702</sup> See above, Section 17.1.2.3.1: The Criminal Responsibility of NUON Chea: Knowledge Relevant to the Modes of Liability: Knowledge Concurrent with the Commission of Crimes: Targeting of specific groups: Cham.

<sup>13703</sup> Section 15: Applicable Law: Individual Criminal Responsibility, para. 3725.

<sup>13704</sup> *Delalić et al.* Appeal Judgement, para. 238.

<sup>13705</sup> *Delalić et al.* Appeal Judgement, para. 238.

have been provided or available to the superior”; it is not required that the superior “actually acquainted himself with the information”.<sup>13706</sup>

4193. In light of the foregoing, the Chamber considers that NUON Chea received, among others, information from KE Pauk relating to the mistreatment of the Cham.<sup>13707</sup> The Chamber also considers that the CPK imposed restrictions that were discriminatory in fact and deliberately perpetrated with the intent to discriminate against the Cham because of their religious and cultural practices,<sup>13708</sup> and that NUON Chea was instrumental in developing and implementing such Party policies.<sup>13709</sup> The Chamber further considers NUON Chea’s close relationship with KE Pauk, his senior place within the Party and the CPK’s reporting structures in general, all of which gave NUON Chea access to information relevant to unlawful acts committed upon the Cham group by subordinates. The Chamber is satisfied that, taken together, these factors demonstrate that NUON Chea had information in his possession that justified further inquiry. The Chamber is therefore satisfied that NUON Chea at the very least had reason to know that genocide had been, or was about to be, committed against the Cham.

4194. In sum, the Chamber is thus satisfied that NUON Chea knew that his subordinates were about to or had committed crimes, or at the very least NUON Chea had reason to know this, given that he possessed information sufficiently alarming to justify further inquiry. Furthermore, in view of NUON Chea’s senior leadership role and his own contributions to CPK magazines and education sessions, the Chamber is also satisfied that NUON Chea was aware that his subordinates possessed discriminatory intent and knew, or at the very least had reason to know, that their acts would constitute persecution on political, racial and religious grounds, and genocide.

### 17.3.2.3. Failure to prevent or punish

4195. Notwithstanding, NUON Chea failed to take any reasonable measures to prevent further crimes at the hands of the direct perpetrators at the cooperatives and worksites, security centres and execution sites and the direct perpetrators carrying out

<sup>13706</sup> *Delalić et al.* Appeal Judgement, para. 239.

<sup>13707</sup> *See above*, paras 4095-4100. *See also*, Section 13.2: Treatment of the Cham, para. 3202.

<sup>13708</sup> Section 13.2: Treatment of the Cham, para. 3329.

<sup>13709</sup> *See above*, paras 4118-4143.

crimes pursuant to targeting policies and the regulation of marriage. During the DK period, there was no functioning justice system.<sup>13710</sup> Whatever discipline cadres were subjected to, an area informally under NUON Chea's responsibility,<sup>13711</sup> this only pertained to whether or not cadres adhered to the CPK's notion of correct revolutionary behaviour.<sup>13712</sup>

4196. The Chamber finds that NUON Chea had the material ability to prevent or punish the crimes. In this regard, the Chamber recalls NUON Chea position of power and his role, together with POL Pot, as ultimate decision and policy-maker.

4197. The Chamber considers that NUON Chea failed to take necessary and reasonable measures to prevent or punish the crimes committed pursuant to the CPK's criminal policies. In this regard, the Chamber recalls that not only did NUON Chea not take any steps to prevent or punish crimes, he partly caused their commission by directly ordering them.<sup>13713</sup> Consequently, the Chamber is satisfied that NUON Chea is responsible as a superior for the crimes against humanity, grave breaches of the Geneva Conventions and genocide, which thus includes the crime of genocide by killing members of the Cham ethnic and religious group as well as the crime of genocide by killing members of the Vietnamese ethnic, national and racial group as established under JCE,<sup>13714</sup> and additionally, the crimes against humanity of murder committed with *dolus eventualis* at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre, and the crime of genocide by killing members of the Cham group.

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<sup>13710</sup> Section 5: Administrative Structures, paras 417-418; Section 16: Common Purpose, paras 3944-3957.

<sup>13711</sup> Section 7: Roles and Functions – NUON Chea, para. 547.

<sup>13712</sup> Section 16.3: Real or Perceived Enemies, paras 3765, 3845-3846. The Chamber recalls that the CPK Statute, adopted at the Fourth Party Congress held in January 1976, sets out the Party line with respect to counter-revolutionary ideologies and behaviour. It states that “[t]he Party absolutely opposes any political, ideological, or organizational violation of organizational discipline through independentism, liberalism, sectarianism, or nepotism which, destroys Party solidarity and unity, and absolutely opposes any creation of cliques to break up the Party”. See CPK Statute, E3/130, undated, p. 4, ERN (En) 00184025; Section 5: Administrative Structures, paras 345, 396, 398.

<sup>13713</sup> See above, paras 4082, 4138-4143, 4149, 4173.

<sup>13714</sup> See above, paras 4174-4175.

**17.4. Overall Conclusion on Individual Criminal Responsibility**

4198. The Chamber has found that NUON Chea committed, through a joint criminal enterprise: (a) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage; (b) the crime of genocide by killing members of the Vietnamese ethnic, national and racial group; and (c) grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial and unlawful confinement of a civilian under the Geneva Conventions at S-21 Security Centre. Accordingly, the Chamber enters a conviction for the commission of crimes through a joint criminal enterprise insofar as NUON Chea shared the direct, discriminatory and specific intent of other JCE members.<sup>13715</sup>

4199. Additionally, with respect to the deaths at cooperatives, worksites and security centres as a result of *dolus eventualis* (which were not encompassed by the common purpose), the Chamber has found that NUON Chea aided and abetted the crime against humanity of murder committed with *dolus eventualis* at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre.<sup>13716</sup> In the present circumstances, the Chamber finds that NUON Chea's conduct is most appropriately characterised under the mode of aiding and abetting, and accordingly, enters a conviction for aiding and abetting the crime against humanity of murder with *dolus eventualis* at the above sites.

4200. Finally, the Chamber has found that NUON Chea is responsible as a superior for all the crimes committed pursuant to the CPK's criminal policies which fall within the scope of Case 002/02. This includes the crime of genocide by killing members of the Cham ethnic and religious group. However, having found that, first, NUON Chea

<sup>13715</sup> Section 17.2.3: The Criminal Responsibility of NUON Chea: Conclusion on Joint Criminal Enterprise.

<sup>13716</sup> See above, paras 4177, 4179-4186.

was directly responsible for these crimes through his participation in the JCE except for the crime of genocide of the Cham and the crime against humanity of murder committed with *dolus eventualis* at S-21 Security Centre, Kraing Ta Chan Security Centre, Phnom Kraol Security Centre, Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite and Kampong Chhnang Airfield Construction Site, and second, that NUON Chea is responsible for aiding and abetting the aforementioned crimes committed with *dolus eventualis*, the Chamber only enters a conviction under the doctrine of superior responsibility for the crime of genocide by killing members of the Cham ethnic and religious group. For the remainder, the Chamber will instead consider NUON Chea's superior position in sentencing.

**18. THE CRIMINAL RESPONSIBILITY OF KHIEU SAMPHAN**

4201. As limited to Case 002/02, the Closing Order charges KHIEU Samphan with the commission of crimes against humanity, grave breaches of the Geneva Conventions and genocide by killing members of the Vietnamese and Cham populations through a joint criminal enterprise in its basic form.<sup>13717</sup> In addition, it charges KHIEU Samphan with the crimes underlying these charges under the modes of liability of planning, instigating, ordering, aiding and abetting and, in the alternative, superior responsibility.<sup>13718</sup>

4202. KHIEU Samphan denied knowledge of any crimes during the DK period or his complicity therein before and during proceedings in Case 002.<sup>13719</sup> He denied being a senior leader of the CPK and rejected having been part of high-level decision-making processes in DK.<sup>13720</sup> He maintained that he was an “intellectual” of the “feudal class” who was neither trusted by the Party leadership nor considered to be a true Party member. In this regard, KHIEU Samphan claimed that he was merely “tolerated” within the CPK and was “considered useless”.<sup>13721</sup> Accordingly, by virtue of his

<sup>13717</sup> Closing Order, paras 1521-1531, 1536-1537, 1540-1541; Case 002 Additional Severance Decision Annex, para. 6(i).

<sup>13718</sup> Closing Order, paras 1543-1560; Case 002 Additional Severance Decision Annex, para. 6(ii).

<sup>13719</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 36-38 (denying knowledge about crimes related to the regulation of marriage, discrimination of New People, minorities and religious adherents, extermination and genocide of the Vietnamese); T. 23 November 2011 (Accused KHIEU Samphan), E1/15.1, p. 15 (generally); T. 27 May 2013 (Accused KHIEU Samphan), E1/197.1, pp. 82-83 (killings); T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 18, 87 (in response to Civil Party statements of suffering); T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, pp. 17 (atrocities), 81 (“[N]ever had I known the atrocity committed by the military commanders and leaders. [...] I did not know the great suffering of our people.”); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 98, ERN (En) 00103772 (“My knowledge of the extent of the suffering of 1975-1979 was limited”), 119, ERN (En) 00103782 (claiming he was unaware of POL Pot’s “ultra-radical policy and his brutal methods” or crimes and atrocities at the time).

<sup>13720</sup> T. 23 November 2011 (Accused KHIEU Samphan), E1/15.1, p. 17; T. 13 December 2011 (Accused KHIEU Samphan), E1/21.1, p. 95; T. 27 May 2013 (Accused KHIEU Samphan), E1/197.1, pp. 23, 83; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, pp. 55, 85, 88; T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, p. 17; T. 4 June 2013 (Accused KHIEU Samphan), E1/200.1, p. 24; KHIEU Samphan Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269. *See also*, T. 31 October 2013 (Closing Statements (Case 002/01)), E1/237.1, pp. 70-71; Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414, 00:53:02-00:53:41.

<sup>13721</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 576 (fn. 1805).

“confinement” in Phnom Penh,<sup>13722</sup> and as a result of the Party’s policy of secrecy,<sup>13723</sup> KHIEU Samphan claimed that he knew nothing, saw nothing and heard nothing during the DK period. All that he discovered about the DK he claimed to have learned after the fall of the regime in early 1979.<sup>13724</sup>

4203. The assessment of KHIEU Samphan’s criminal responsibility will rest on the Chamber’s assessment of his roles, functions and conduct during the DK period as presented during Case 002. In evaluating the extent of his contemporaneous knowledge of, and contribution to, the commission of crimes and/or intent to commit the crimes charged, the Chamber will consider the totality of KHIEU Samphan’s statements and conduct including, where appropriate, statements made after the fall of the DK.

### **18.1. Knowledge Relevant to the Modes of Liability**

4204. KHIEU Samphan’s knowledge of the policies, patterns of conduct and specific crimes falling within the scope of Case 002/02 is relevant to the Chamber’s assessment of all forms of responsibility,<sup>13725</sup> and will therefore be addressed first. The requisite level of knowledge varies depending on whether the criminal liability of the Accused

<sup>13722</sup> See e.g., T. 30 May 2013 (Accused KHIEU Samphan), E1/199.1, p. 80 (“From 1970 to 1979, I had to live close to the leaders of the Democratic Kampuchea”); Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 119, ERN (En) 00103782 (stating that he “cloistered” himself in K-1 “without the slightest idea that [POL Pot’s] ultra-radical policy and his brutal methods were bleeding the nation dry and making a weak defendant against Vietnam. [...] I was unaware of [the crimes and massacres] at the time.”); *I Knew Nothing* (Stéphanie Giry, Newsweek International), E3/629, 18 September 2006, ERN (En) 00524527 (stating that he was isolated at headquarters in Phnom Penh and “knew nothing of what was happening in the countryside”). See also, T. 31 October 2013 (Closing Statements (Case 002/01)), E1/237.1, p. 73 (“I did not know what happened subsequently following the victory”).

<sup>13723</sup> T. 23 November 2011 (Accused KHIEU Samphan), E1/15.1, p. 16; T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 88; KHIEU Samphan Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview by Radio Free Asia, E3/713, 1 December 2007, ERN (En) 00177984; KHIEU Samphan Letter to the Co-Investigating Judges, E3/112, 8 January 2008, p. 2, ERN (En) 00170882; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 83, ERN (En) 00103764, 141, ERN (En) 00103793; Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414, 00:32:10-00:32:52.

<sup>13724</sup> KHIEU Samphan Written Record of Adversarial Hearing, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/210, 14 December 2007, pp. 2, ERN (En) 00156948, 3-4, ERN (En) 00156949-00156950; Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 127, 141, ERN (En) 00103786, 00103793; *I Knew Nothing* (Stéphanie Giry, Newsweek International), E3/629, 18 September 2006, ERN (En) 00524528. See also, T. 23 June 2017 (Closing Statements), E1/528.1, p. 37.

<sup>13725</sup> For the applicable law on each mode of liability, see Section 15: Applicable Law: Individual Criminal Responsibility.



materialises before, concurrent with or after the commission of the crimes.<sup>13726</sup> Therefore, in this section, the Chamber will examine what KHIEU Samphan knew prior to, concurrent with and after the commission of the crimes falling within the scope of Case 002/02.

4205. KHIEU Samphan made various admissions concerning his general knowledge of the policies and crimes being committed by the CPK. The Chamber will assess these in turn to determine the extent of KHIEU Samphan's knowledge about crimes during the DK period.

#### 18.1.1. *Awareness of the Substantial Likelihood of the Commission of Crimes*

4206. Through his doctoral thesis published ten years prior to joining the CPK, KHIEU Samphan advocated for the necessity of “detering” the capitalist classes from their “unproductive” activities, “encouraging” them to participate in production and the organisation of cooperatives to increase production in Cambodia.<sup>13727</sup> To bring about such a radical transformation, KHIEU Samphan opined that “a package of very strict measures” was “absolutely essential”.<sup>13728</sup> The Chamber has accepted that KHIEU Samphan's thesis was not a strict “blueprint” for the policies that were ultimately enacted during the DK period.<sup>13729</sup> However, as established in the sections that follow, KHIEU Samphan's thesis demonstrates his positive disposition toward the CPK's policies of collectivism, including through the population's subjugation to state production initiatives.

4207. Between KHIEU Samphan's induction into the CPK ranks in 1969 and the Party's victory on 17 April 1975, policies were planned, tested and implemented in “liberated” areas, and patterns of conduct emerged which were evident to KHIEU Samphan as a prominent member of the CPK leadership. In a process initiated in May 1972 and confirmed one year later, the Central Committee (of which KHIEU Samphan

<sup>13726</sup> Section 15: Applicable Law: Individual Criminal Responsibility, paras 3715, 3717, 3719-3720, 3722, 3725.

<sup>13727</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 567.

<sup>13728</sup> Thesis by Khieu S.: *Cambodia's Economy and Industrial Development*, E3/123, March 1979, p. 75, ERN (En) 00750608.

<sup>13729</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 568.

was then part<sup>13730</sup>) decided to close markets and organise cooperatives by forcibly and communally harnessing human resources to increase rice production.<sup>13731</sup> By September 1972, KHIEU Samphan and other CPK leaders were calling for the “elimination” of the Khmer Republic leadership and planning the country’s liberation from republican forces through violent means.<sup>13732</sup> By 1973, the CPK was executing its political opponents and was conducting purges within ranks from 1974.<sup>13733</sup> Between 1973 and 1975, Buddhist monks were variously persecuted in liberated areas, pressured to disrobe and subjugated to collectivist activities.<sup>13734</sup> The CPK had also laid out its policy on family building by early 1974 and had begun arranging the marriages of cadres.<sup>13735</sup> Before 1975, those affiliated with Vietnam were the objects of high suspicion by the CPK and were at times singled out for execution.<sup>13736</sup>

4208. The Chamber has found that the foregoing policies were implemented during the DK period in pursuit of the common purpose and involved the commission of crimes.<sup>13737</sup> In his capacity as GRUNK Deputy Prime Minister, Minister of National Defence and CPNLAF Commander-in-Chief, KHIEU Samphan fortified the FUNK and GRUNK façade that obscured the CPK’s operations after 17 April 1975. During this time, KHIEU Samphan held important positions, attended meetings of the Standing Committee where important matters were discussed and crucial decisions were made, lived and worked in close proximity to other senior members and travelled throughout liberated zones.<sup>13738</sup> Despite occasional travel outside the country, this proximity to the Party Centre ensured KHIEU Samphan’s ongoing knowledge of the development of plans, their implementation and the substantial likelihood that crimes within the scope of Case 002/02 would occur. As discussed in further detail in the following sections, KHIEU Samphan personally issued statements on the above topics, was privy to public statements made by members of the Party Centre, received CPK circulars, and attended and presented at training and indoctrination sessions where the implementation of the

<sup>13730</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 600.

<sup>13731</sup> Section 3: Historical Background, para. 239.

<sup>13732</sup> Section 16.4.3.4.1.1: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials: Existence of Policy: Pre-17 April 1975.

<sup>13733</sup> Section 16: Common Purpose, paras 3937, 3940.

<sup>13734</sup> Section 3.4: Buddhism in Cambodia before 1975.

<sup>13735</sup> Section 3.5: Marriage in Cambodia before 1975; Section 14: Regulation of Marriage, para. 3540.

<sup>13736</sup> Section 13.3.5.2: Evidence of a Policy Targeting the Vietnamese. *See above*, fn. 13733.

<sup>13737</sup> Section 16.4.5: Common Purpose: Legal Findings.

<sup>13738</sup> Section 8: Roles and Functions – KHIEU Samphan.

criminal policies was discussed. The Chamber is therefore satisfied that KHIEU Samphan knew of the above CPK policies and of the resulting patterns of conduct adopted in order to implement them. It finds that KHIEU Samphan knew of the substantial likelihood that further implementation of these policies would result in the crimes committed within the scope of Case 002/02.

### 18.1.2. *Knowledge Concurrent with the Commission of the Crimes*

4209. The Chamber considers that evidence of KHIEU Samphan's knowledge of crimes at the time of their commission is most clearly canvassed by the policies through which the common purpose was implemented.

#### 18.1.2.1. Cooperatives and worksites

4210. In court, KHIEU Samphan claimed that he was unaware that the construction of the country entailed "such great loss" during the DK period.<sup>13739</sup> As shown by his contribution to the establishment and operation of cooperatives and worksites,<sup>13740</sup> KHIEU Samphan maintained outward support for the cooperative movement until the very fall of the DK. Only in 1981 did he acknowledge that "Democratic Kampuchea did some good things and also some bad things", noting that after 1979, a new political program was implemented by the CPK – including the abolition of collectivism – which finally left people "free to grow their rice and vegetables".<sup>13741</sup> Indeed, he acknowledged that those who had joined cooperatives during the DK period – including his own relatives<sup>13742</sup> – were in fact "not free" and could not leave.<sup>13743</sup> He openly conceded that cooperatives "had to be imposed on the population, because peasants [...] would never agree to give all the fruits of their labour to any organisation".<sup>13744</sup> KHIEU Samphan further agreed that forced evacuations and high-level cooperatives

<sup>13739</sup> T. 29 May 2013 (Accused KHIEU Samphan), E1/198.1, p. 22.

<sup>13740</sup> See below, Section 18.2.1.2: Promoting the Common Purpose; Section 18.2.2.1: Intent: Cooperatives and worksites. See also, T. 23 June 2017 (Closing Statements), E1/528.1, pp. 35-36.

<sup>13741</sup> Section 16: Common Purpose, para. 3885 (fn. 12966 (E3/660)).

<sup>13742</sup> See below, paras 4232-4233. See also, T. 11 June 2013 (SO Socheat), E1/205.1, pp. 19-20; KAING Guek Eav Interview by UNHCR, E3/347, 4-6 May 1999, ERN (En) 00185031 [ERN (Fr) 00160953].

<sup>13743</sup> Section 16: Common Purpose, para. 3885.

<sup>13744</sup> Section 16: Common Purpose, para. 3884.

were part of the same “frenetic campaign” and that such initiatives allowed the CPK to control rice production and therefore the people.<sup>13745</sup>

4211. In post-DK interviews, KHIEU Samphan acknowledged that the CPK had to “run fast” to modernise the country through the construction of irrigation infrastructure which would give the country a 30-year lead on the Chinese, Korean and Vietnamese revolutions.<sup>13746</sup> He acknowledged, however, that conditions deteriorated as time went on “because things had to be expedited”.<sup>13747</sup> KHIEU Samphan knew that the target of harvesting three tonnes of crop per hectare was not feasible,<sup>13748</sup> but was nevertheless determined that the country could be industrialised if there was plenty to eat – only then would the masses “understand the Party”.<sup>13749</sup> Conversely, in a 2006 interview, KHIEU Samphan claimed that those in cooperatives after 1975 “had enough food to eat” and they would contribute to a country “strong enough to fight our enemy”.<sup>13750</sup> In court, however, he acknowledged that food was generally “not abundant” during the DK period.<sup>13751</sup>

4212. The Chamber considers KHIEU Samphan’s contradictory statements to be consistent with an attempt to distance himself from the crimes committed at cooperatives and worksites. In light of the Chamber’s finding that food rations at cooperatives were far below the amount that could sustain the population,<sup>13752</sup> the clear pattern demonstrating the deliberate provision of insufficient food at worksites<sup>13753</sup> and the above statements evidencing his knowledge of deteriorating conditions as a result of the implementation of the “great leap forward”, the Chamber finds that KHIEU Samphan knew of wide-scale food shortages at cooperatives and worksites.

4213. KHIEU Samphan “excitedly” observed the construction of Trapeang Thma Dam in 1976 by a work force of between 10,000 and 20,000 workers.<sup>13754</sup> Dispelling

<sup>13745</sup> Section 16: Common Purpose, paras 3878-3879. For high-level cooperatives, see Section 3: Historical Background, para. 242. See also, Section 10.1: Tram Kak Cooperatives, para. 949.

<sup>13746</sup> Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414, 00:30:27-00:31:02. See also, Section 16: Common Purpose, para. 3890.

<sup>13747</sup> KHIEU Samphan Interview, E3/4043, undated, ERN (En) 00786110.

<sup>13748</sup> KHIEU Samphan Interview, E3/4043, undated, ERN (En) 00786110.

<sup>13749</sup> KHIEU Samphan Interview, E3/3196, undated, ERN (En) 00815869.

<sup>13750</sup> KHIEU Samphan Interview by MENG-TRY Ea and SOPHEAK Loeung, E3/108, 9-11 June 2006, ERN (En) 00000928.

<sup>13751</sup> T. 27 May 2013 (Accused KHIEU Samphan), E1/197.1, p. 83.

<sup>13752</sup> Section 10.1.7.3: Tram Kak Cooperatives: Rations and Communal Eating.

<sup>13753</sup> Section 16: Common Purpose, paras 3913-3914.

<sup>13754</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1254, 1261.

any notion that he did not personally observe conditions at these sites or have actual knowledge of them, KHIEU Samphan publicly announced the following year the presence of “as many as 10,000, 20,000 or even 30,000 workers” at each major reservoir, canal or dam construction site.<sup>13755</sup>

4214. KHIEU Samphan reflected on the necessity to work hard – regardless of illness – to achieve a rice yield three times greater than that of China and Vietnam.<sup>13756</sup> His post-DK interviews reveal his contemporaneous knowledge that “both the healthy people and the sick people had to work”, adding that “[m]oderately sick people had to work too”.<sup>13757</sup> He described the abysmal conditions at worksites and workers’ suffering during the DK period:

Thus, during these three years, we still could not resolve the issue of starvation. However, regarding the lack of medicines, I had the task to buy them from abroad. Much was purchased, nothing other than medicines for diarrhoea, fever, so called-general disease medicines, not sophisticated medicines such as penicillin or medicines for lung ailments and such. We went all-out to collect all the money we could to buy general medicines. I was the one who implemented this. It was not me who made the decision: the Standing Committee made the decision, *but I was the one who implemented it, and this is what I saw.* But there was not enough. No matter how much we [purchased] there was never enough. [...] *People were forced to work without food, while they could barely walk, but even so, they were made to work.* [...] [T]he majority of deaths [was] from lack of medicine, starvation, not because they were deprived of food and medicine, but because there were shortages.<sup>13758</sup>

4215. By contrast, KHIEU Samphan was less forthcoming in his writings about the role he played during the DK period. In 2004 he wrote that his role between 1975 and 1978 had merely consisted of importing goods and distributing products to zones and regions.<sup>13759</sup> KHIEU Samphan nevertheless acknowledged that the Central Committee

<sup>13755</sup> Section 16: Common Purpose, para. 3906 (fn. 13024).

<sup>13756</sup> KHIEU Samphan Interview with HENG Reaksmeay, E3/587, undated, p. 2, ERN (En) 00680029 (referring to “Vietnam, China Africa or others [...] They got less than one ton[ne] of rice per hectare per year. Therefore, efforts were made – we had to work harder at that time in order to achieve the minimum three ton[ne]s of rice per hectare. [...] Regarding the rice yield, it was possible to achieve this within three or four years by using fertiliser and something else if tremendous efforts were put into it, even [if] one was ill or well.”).

<sup>13757</sup> KHIEU Samphan Interview, E3/4050, undated, ERN (En) 00789062. The Chamber does not consider that KHIEU Samphan was necessarily referring to conditions at Trapeang Thma Dam, but is rather demonstrable of his wider knowledge of working conditions at worksites.

<sup>13758</sup> KHIEU Samphan Interview, E3/4043, undated, ERN (En) 00786109-00789110 (emphasis added).

<sup>13759</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 66, ERN (En) 00103756.

had noted and criticised “certain abuses” in the first year of the regime, and indicated that measures had been implemented to “correct” them:

- Return to smaller cooperatives (they were easier to manage).
- Improve working conditions in the fields. The number of people sent to the fields was to match the number of mattocks, shovels, baskets or other tools. The other workers were to be allowed to rest in the village or do lighter work, such as making baskets.
- Establish a rest schedule which was to be three days a month. During those three days, extra rations were to be provided.<sup>13760</sup>

4216. Consistently with KHIEU Samphan’s contemporaneous knowledge about living conditions in cooperatives in Preah Vihear,<sup>13761</sup> as well as his 1987 concession that 20,000 people “died from illness and food shortage during the three-year period throughout the country”,<sup>13762</sup> the Chamber finds that KHIEU Samphan knew of the abject working conditions at cooperatives and worksites during the DK period.

4217. Concerning the persecutory treatment of workers at cooperatives and worksites, KHIEU Samphan denied in court knowing about the discrimination between Old People and New People.<sup>13763</sup> This was in stark contrast to his statement ten years earlier that it was “imperative to grasp the history of each person” in order to identify and prevent enemy infiltrators, adding that “the easiest thing to do was to differentiate them into Old People and New People”.<sup>13764</sup> Contrary to his in-court assertion and consistently with the Chamber’s findings below,<sup>13765</sup> the Chamber finds that KHIEU Samphan knew of the discriminatory treatment meted out to New People at cooperatives and worksites.

4218. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan knew of the crimes committed in the course of the policy to establish and operate cooperatives and worksites.

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<sup>13760</sup> Book by Khieu S.: *Cambodia’s Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 58, ERN (En) 00103752.

<sup>13761</sup> See below, paras 4232-4234.

<sup>13762</sup> DK Publication: *What are the Truth and Justice about the Accusations Against Democratic Kampuchea of Mass Killings from 1975 to 1978?*, E3/703, 15 July 1987, ERN (En) 00004001 (stating that this figure had been reached after “preliminary but careful assessments”).

<sup>13763</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 36-37.

<sup>13764</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 67, ERN (En) 00498286.

<sup>13765</sup> See below, para. 4281.

18.1.2.2. Security centres, execution sites and internal purges

4219. Evidence before the Chamber indicated that KHIEU Samphan's role was limited with respect to the oversight of security centres within the scope of Case 002/02, namely S-21 Security Centre, Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre. Considerable evidence nevertheless demonstrated KHIEU Samphan's contribution to the purges of CPK cadres and DK citizens, which the Chamber has found was inextricably intertwined with the establishment and operation of security centres and execution sites throughout the country.<sup>13766</sup>

4220. KHIEU Samphan told the Co-Investigating Judges that Office 870's role was "to monitor suspected members of the Party for the Standing Committee" but claimed that he learned of its true role after the fall of the DK regime.<sup>13767</sup> He similarly deposed that he did not learn of any arrests before 1979.<sup>13768</sup> These assertions are not convincing. On the one hand, KHIEU Samphan acknowledged witnessing the arrest of Central and Standing Committee members "one after another", noting that "everyone seemed to approve" of their removal, but on the other denied knowing that arrests took place or the true "extent or the scope of such arrests".<sup>13769</sup>

4221. *High-level purges generally* – In 1980, KHIEU Samphan publicly stated that the Party had, in 1977 and 1978, "defeated *Yuon* agents" who had "obtained important positions" within the CPK:

Some of them had the major power to distort our line, making some people in the areas they were in charge of unhappy and affecting the lives of innocent people. What did they do all these things for? They did these to isolate our Democratic Kampuchean government from the

<sup>13766</sup> Section 16.4.2.1.3: Common Purpose: "Smashing" of Enemies. *See also*, Section 16: Common Purpose, para. 3980.

<sup>13767</sup> KHIEU Samphan Interview Record, E3/557, 19 November 2007, p. 4, ERN (En) 00153269; KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 5, ERN (En) 00156756. The Chamber recalls that it was unable to delineate the precise role of KHIEU Samphan as a member of Office 870. *See* Section 8.3.4.1: Roles and Functions – KHIEU Samphan: Roles and Functions: Membership of Office 870.

<sup>13768</sup> KHIEU Samphan Interview Record, E3/210, 14 December 2007, p. 3, ERN (En) 00156949.

<sup>13769</sup> KHIEU Samphan Interview Record, E3/210, 14 December 2007, pp. 2-3, ERN (En) 00156948-00156949 (Q. "Do you maintain that you did not learn of any arrests before 1979?" A. "Not any. I observed that some members of the Central Committee disappeared one after another. I could not inform you about these names because I was not close to them. Nonetheless I did not know the extent of the arrests at that time. [...] [I]n relation to the disappearance of the members of the Central Committee and the Standing Committee, everyone seemed to approve, but I did not know the extent or the scope of such arrests.").

people. Then it would be easy for them to stage a coup. This was an attack on us from the inside out. It was an attempt to attack us from the inside out. Nonetheless, we fought constantly against these attempts and defeated them. Until 1977-1978, *we managed to deal with those people completely* and brought order back to the country. Thus, the people were very satisfied.<sup>13770</sup>

4222. He further acknowledged that “less than half” of the Central Committee had been swept away as part of the purges, along with “half [of] the Standing Committee”.<sup>13771</sup> KHIEU Samphan minimised these figures in his later publications, acknowledging the disappearance of only two Central and Standing Committee members.<sup>13772</sup> He nevertheless maintained that the arrests sanctioned by POL Pot were “not that large-scale”,<sup>13773</sup> and that the upper echelon “only considered the arrests of cadres who had committed misconduct; so then, in comparison with the nation-wide arrests, the numbers were small”.<sup>13774</sup> According to KHIEU Samphan, “hundreds” of “important cadres” had been arrested; “not thousands”, adding that some were executed extrajudicially “because these cadres had their own networks, conflicts [and] jealousy”.<sup>13775</sup> He blamed the “warlord nature” of the zone chairmen for the purges and named them as “the sources of all the violations during the research of networks to see who had to be arrested”.<sup>13776</sup> When Stephen HEDER pressed him on whether it was possible that some leading cadres who were denounced were innocent and wrongly killed, KHIEU Samphan responded: “No, none”. Everyone who was executed was, according to KHIEU Samphan, in fact a traitor.<sup>13777</sup>

4223. KHIEU Samphan maintained that POL Pot “did not just arrest cadres randomly”,<sup>13778</sup> adding that he “considered and weighed [matters] meticulously”.<sup>13779</sup>

<sup>13770</sup> KHIEU Samphan Interview by Stephen HEDER, E3/203, 4 August 1980, p. 18, ERN (En) 00424013 (emphasis added).

<sup>13771</sup> KHIEU Samphan Interview by Stephen HEDER, E3/203, 4 August 1980, p. 19, ERN (En) 00424014.

<sup>13772</sup> See below, para. 4223.

<sup>13773</sup> KHIEU Samphan Interview, E3/4041, undated, ERN (En) 00790270.

<sup>13774</sup> KHIEU Samphan Interview, E3/4023, undated, ERN (En) 00792450.

<sup>13775</sup> KHIEU Samphan Interview by Voice of America, E3/630, 13 November 2007, ERN (En) 00524534.

<sup>13776</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 62, ERN (En) 00498281. See also, T. 23 June 2017 (Closing Statements), E1/528.1, p. 34.

<sup>13777</sup> Working Paper by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, pp. 25-26, ERN (En) 00002770-00002771.

<sup>13778</sup> KHIEU Samphan Interview, E3/4035, undated, ERN (En) 00789052.

<sup>13779</sup> KHIEU Samphan Interview, E3/4039, undated, p. 1, ERN (En) 00789648.



KHIEU Samphan reflected on the CPK leaders' unwavering support of POL Pot even as their colleagues disappeared around them:

In a word, Pol Pot represented the historical leader who was never wrong when it came to making important decisions. Judging from what I saw during the expanded sessions of the Permanent Bureau [*i.e.* Standing Committee], however, nothing approaching fear was apparent during these meetings. [...] However, because everyone had great confidence in Pol Pot, they accepted most of the ideas and analyses without much discussion. Once when a member of the Central Committee – and later a member of the Permanent [*i.e.* Standing] Committee – was arrested, the committee leadership's confidence in Pol Pot did not waver. *The committee considered each disappearance as a separate case and probably, in the eyes of the insiders, justified.*<sup>13780</sup>

4224. In view of the above evidence demonstrating knowledge of arrests, and his unique position of standing within the Party, the Chamber is satisfied that KHIEU Samphan knew of the arrest and death of formerly high-ranking CPK cadres during the DK period. This conclusion is further supported by the examples of KHIEU Samphan's knowledge of the fates of several high-level cadres, discussed below.

4225. *SUA Vasi alias Doeun* – KHIEU Samphan's wife, SO Socheat, testified that KHIEU Samphan dined with Office 870 Chairman *SUA Vasi alias Doeun* at K-3 prior to the latter's disappearance.<sup>13781</sup> KHIEU Samphan told the Co-Investigating Judges that he only discovered after the DK's collapse that Doeun had been arrested in 1977, adding that he was not surprised by his absence at the time due to the principle of secrecy and because Doeun "travelled quite a lot". He also asserted that "[n]o one knew where [Doeun] was except for the members of the Standing Committee".<sup>13782</sup> The Chamber is not convinced by these assertions and finds that KHIEU Samphan knew of Doeun's arrest and subsequent execution. In reaching this finding, the Chamber has considered KHIEU Samphan's attendance at and participation in Standing Committee meetings, his close relationship with and proximity to POL Pot and NUON Chea,<sup>13783</sup>

<sup>13780</sup> Book by Khieu S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, pp. 63-64, ERN (En) 00103754-00103755 (emphasis added and citations omitted). The Chamber notes the slight differences between the French and English translations of this book. It has reviewed both versions and considers that these differences do not affect the meaning of the author KHIEU Samphan who, according to the publisher, approved the English translation of his book. See ERN (En) 00103718.

<sup>13781</sup> T. 12 June 2013 (SO Socheat), E1/206.1, pp. 12-16.

<sup>13782</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 2, ERN (En) 00156753.

<sup>13783</sup> Section 7: Roles and Functions – NUON Chea, paras 526, 534; Section 8: Roles and Functions – KHIEU Samphan, para. 589.

and the fact that he remained as one of the few members in Office 870 after Doeun's disappearance for about two years before the fall of DK.<sup>13784</sup> More prominently, however, KHIEU Samphan's assumption of Doeun's oversight responsibilities in the Commerce Committee by late October 1976<sup>13785</sup> coincided with the removal of cadres from the Ministry of Commerce.<sup>13786</sup> Mass purges of Commerce cadres continued well into KHIEU Samphan's tenure as overseer of the Ministry's affairs, spiking in May and June 1977 and continuing throughout 1978.<sup>13787</sup> By assuming Doeun's roles during a period of internal turmoil, KHIEU Samphan not only knew that Doeun had been purged but personally ensured that his predecessor's responsibilities remained fulfilled after his removal.

4226. *CHAN Chakrei, SUOS Neou alias Chhouk, KOY Thuon and KEO Meas* – KHIEU Samphan was present at a 1976 political education session at Borei Keila where NUON Chea lectured on the need to identify and eliminate traitors, spy networks and CIA and KGB infiltrators. After NUON Chea specifically denounced Division 170 Commander CHAN Chakrei, old North Zone Secretary KOY Thuon and Central Committee member KEO Meas as traitors, KHIEU Samphan reiterated these sentiments before commencing his own lecture.<sup>13788</sup> KHIEU Samphan acknowledged in post-DK interviews that CHAN Chakrei's arrest, along with that of his alleged associate, Sector 24 Secretary SUOS Neou *alias* Chhouk, was implemented after "many documents" had been collected by POL Pot "before making a decision".<sup>13789</sup>

<sup>13784</sup> Section 8.3.4.1: Roles and Functions – KHIEU Samphan: Roles and Functions: Membership of Office 870.

<sup>13785</sup> Section 8.3.4.2: Roles and Functions – KHIEU Samphan: Oversight of Commerce.

<sup>13786</sup> Commerce Committee Arrest Decision, E3/962, 17 October 1976, ERN (En) 00333254 (decision "to arrest and send the following [six] persons to security to interrogate for information"); Commerce Committee Arrest Decision, E3/174, 17 October 1976, ERN (En) 00548780 (decision to "send the [following 10 people] [...] to the re-education centre of the security"); Commerce Committee Report, E3/846, 19 October 1976, pp. 1-3, ERN (En) 00234229-00234231 (ten-day periodic report announcing: "Those making contact from outside the unit are quieter than before, after we removed a number of the bad groups from the Ministry. [...] Some of the masses are worried after we took measures to remove bad groups for re-education", reporting the arrest of specific individuals and referring to lists of individuals separately "reported to *Angkar*".).

<sup>13787</sup> Section 12.2: S-21 Security Centre, para. 2284, 2297.

<sup>13788</sup> T. 27 August 2012 (EM Oeun), E1/115.1, pp. 39-46. *See also*, Section 16: Common Purpose, para. 3967.

<sup>13789</sup> KHIEU Samphan Interview, E3/4023, undated, ERN (En) 00792451; Video of KHIEU Samphan Interview, E3/4023R, ERN V00753085, 00:03:20-00:03:58, 00:07:38-00:08:20; KHIEU Samphan Interview, E3/4024, undated, p. 1, ERN (En) 00788870 ("[W]ith the arrests, [POL Pot] collected much information; he had to assemble a lot of information. As long as I knew him, Mr. Pol Pot implemented that principle; he was a leader who monitored"); KHIEU Samphan Interview, E3/4035, undated, ERN (En) 00789052.

KHIEU Samphan demonstrated his insight into POL Pot's methods regarding the two men's removal: "Chakrei had conspired with Mr. Chhouk, and who else they conspired with is unknown, to act like that, to act as instructed by Vietnam".<sup>13790</sup> CHAN Chakrei was monitored by the Standing Committee, arrested in 1976 and interrogated at S-21 between June and October 1976.<sup>13791</sup> The purge of CHAN Chakrei's alleged associates and other Division 170 "strings" followed thereafter. Chhouk and KEO Meas were arrested and executed at S-21, the former on SON Sen's direct orders.<sup>13792</sup> The *Revolutionary Flag* openly denounced CHAN Chakrei, Chhouk and KEO Meas in editions available to KHIEU Samphan.<sup>13793</sup> KHIEU Samphan further knew that KOY Thuon was imprisoned for nine months before the "Standing Committee sent him to S-21 for interrogation".<sup>13794</sup> The Chamber is satisfied the KHIEU Samphan knew of the fates of CHAN Chakrei, Chhouk, KEO Meas and KOY Thuon at the time.

4227. *HU Nim* – In a letter addressed to KHIEU Samphan, NUON Chea and other CPK leaders, HU Nim pleaded for forgiveness after his incarceration in S-21, stating that he had not betrayed the Party and recognising that "the Party may kill me".<sup>13795</sup> While it is not clear whether KHIEU Samphan, a long-time close friend of HU Nim, actually received or in fact read the letter, he acknowledged before the Co-Investigating Judges that HU Nim was killed after expressing disagreement with CPK policy.<sup>13796</sup> After HU Nim's arrest in April 1977, KHIEU Samphan publicly called for his messengers to be interrogated.<sup>13797</sup> HU Nim was executed at S-21 in July 1977.<sup>13798</sup> The Chamber is satisfied that KHIEU Samphan knew of HU Nim's arrest and death at the time.

4228. *CHOU Chet alias Sy* – According to Expert Philip SHORT and Witness Stephen HEDER, KHIEU Samphan was entrusted with conducting delicate investigations to

<sup>13790</sup> KHIEU Samphan Interview, E3/4036, undated, ERN (En) 00790622.

<sup>13791</sup> Section 12.2: S-21 Security Centre, para. 2271.

<sup>13792</sup> Section 12.2: S-21 Security Centre, paras 2265, 2274-2275.

<sup>13793</sup> Section 12.2.8.1.1: S-21 Security Centre: KEO Meas *alias* KAEV Meah; Section 12.2.8.1.3: CHAN Chakrei *alias* Mean; Section 12.2.8.14: SUOS Neou *alias* Chhouk.

<sup>13794</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 54, ERN (En) 00498273. *See also*, Section 12.2.8.2.1: S-21 Security Centre: KOY Thuon.

<sup>13795</sup> Section 12.2: S-21 Security Centre, para. 2301.

<sup>13796</sup> KHIEU Samphan Interview Record, E3/37, 14 December 2007, p. 6, ERN (En) 00156757. *See also*, Section 3: Historical Background, para. 230.

<sup>13797</sup> T. 30 August 2016 (CHEA Deab), E1/466.1, p. 66.

<sup>13798</sup> Section 12.2.8.3.1: S-21 Security Centre: HU Nim *alias* Phoas.

determine whether or not individuals were enemies.<sup>13799</sup> KHIEU Samphan implicitly acknowledged his knowledge of the identification of enemies on at least one instance, telling Stephen HEDER in 1980 that “a comrade in [the] west” was accused of being a Vietnamese agent, but that the accusation was not founded, since “we investigated the case in a timely manner”.<sup>13800</sup> Stephen HEDER attributed this reference to the investigation of West Zone Secretary CHOU Chet *alias* Sy in August 1977.<sup>13801</sup> Duch confirmed this at trial, testifying – albeit in a hearsay account – that he learned through CHHIM Sam Aok *alias* Pang that when the Standing Committee convened to decide the fate of West Zone Secretary CHOU Chet, it was KHIEU Samphan who was invited to partake in deliberations; not Standing Committee member VORN Vet.<sup>13802</sup> CHOU Chet was arrested and detained at S-21 in April 1978 following a purge of most of his subordinates.<sup>13803</sup> The Chamber is satisfied that KHIEU Samphan was involved in Standing Committee discussions about CHOU Chet’s fate and knew of his execution.

4229. *VORN Vet and SAO Phim* – In a 2006 interview, KHIEU Samphan acknowledged that VORN Vet was arrested “because he [was] also one of the Viet Minh bodies hidden in the Communist Party of Kampuchea”.<sup>13804</sup> KHIEU Samphan further stated that SAO Phim “was also arrested for the same reason” as VORN Vet and noted that POL Pot was “suspicious and not happy” with him.<sup>13805</sup> He provided a reasonably detailed account of the purge of the East Zone Committee, the growing

<sup>13799</sup> T. 8 May 2013 (Philip SHORT), E1/191.1, pp. 20-21 *referring to* Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 371, ERN (En) 00396579; T. 9 May 2013 (Philip SHORT), E1/192.1, pp. 87-89 (testifying that according to SUONG Sikoeun (and possibly ROCHOEM Ton *alias* PHY Phuon) POL Pot assigned KHIEU Samphan the task of investigating “particularly delicate” matters of a political nature and reporting back); Working Paper by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, pp. 14-15, ERN (En) 00002759-00002760.

<sup>13800</sup> KHIEU Samphan Interview by Stephen HEDER, E3/203, 4 August 1980, p. 21, ERN (En) 00424016; Working Paper by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, pp. 25-26, ERN (En) 00002770-00002771 (referring to 1980 interview, with alternate translation: “to this problem, [the “Yvon”] were unable to make their accusations stick because we kept track of things and examined them”).

<sup>13801</sup> Working Paper by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, p. 26, ERN (En) 00002771.

<sup>13802</sup> T. 28 March 2012 (KAING Guek Eav), E1/55.1, pp. 94-95; T. 10 April 2012 (KAING Guek Eav), E1/62.1, p. 7. *See also*, KAING Guek Eav Interview Record, E3/453, 5 September 2007, p. 6, ERN (En) 00147584; KAING Guek Eav Interview Record, E3/448, 4 December 2007, p. 6, ERN (En) 00154911; KAING Guek Eav Interview Record, E3/61, 2 June 2008, p. 8, ERN (En) 00195578; KAING Guek Eav Interview Record, E3/356, 25 November 2008, p. 7, ERN (En) 00242901.

<sup>13803</sup> Section 12.2.8.4.2: S-21 Security Centre: CHOU Chet *alias* Sy.

<sup>13804</sup> KHIEU Samphan Interview by MENG-TRY Ea and SOPHEAK Loeung, E3/108, 9-11 June 2006, ERN (En) 00000929.

<sup>13805</sup> KHIEU Samphan Interview by MENG-TRY Ea and SOPHEAK Loeung, E3/108, 9-11 June 2006, ERN (En) 00000929.

distrust of SAO Phim until his death and the Party's measures implemented to quell the resultant upheaval.<sup>13806</sup> The Chamber recalls that VORN Vet was arrested during the Fifth Party Congress in late 1978 before being executed along with his family.<sup>13807</sup> Both NUON Chea and KHIEU Samphan attended the Fifth Party Congress in their capacities as full-rights members of the Central Committee.<sup>13808</sup> The Chamber is satisfied that KHIEU Samphan knew the circumstances of VORN Vet and SAO Phim's fates.

4230. *VEUNG Chhaem alias SOTH Saphon alias Phuong* – By mid-1978 at latest, KHIEU Samphan was personally facilitating purges of undesirable elements from within Party ranks. KHIEU Samphan acknowledged that he took care of the “comfort” of East Zone Rubber Plantations chief and Central Committee member VEUNG Chhaem *alias* SOTH Saphon *alias* Phuong at K-3 when the latter was summoned to K-1 to “meet the members of the Permanent Bureau”.<sup>13809</sup> Contemporaneous evidence indicates that Phuong had been implicated in treacherous activity well before this summons,<sup>13810</sup> and that his arrival in Phnom Penh had followed or coincided with the purge of prominent East Zone cadres.<sup>13811</sup> Phuong was arrested on 6 June 1978 and executed at S-21 Security Centre. Members of the East Zone Plantation office including Phuong's bodyguards and associates were executed in the days following his arrest.<sup>13812</sup> In view of the tumultuous purges of East Zone personnel at the time, KHIEU Samphan's position of unique standing within the Party and closeness to POL Pot and NUON Chea, the Chamber is satisfied that he knowingly and actively facilitated the arrest, imprisonment and execution of Phuong.

4231. *Lower-level purges* – Beyond high-level CPK cadres, KHIEU Samphan exposed his knowledge of the widespread purges and executions of the country's

<sup>13806</sup> DK Publication: *What are the Truth and Justice about the Accusations Against Democratic Kampuchea of Mass Killings from 1975 to 1978?*, E3/703, 15 July 1987, ERN (En) 00004003. The Chamber recalls that SAO Phim committed suicide after units were dispatched to arrest him in June 1978. Purges of the East Zone cadre continued throughout 1978 following his demise. *See* Section 12.1.6.3.7: Events at Akrei Ksatr and SAO Phim's Suicide; Section 12.2: S-21 Security Centre, para. 2310.

<sup>13807</sup> Section 12.2.8.5.2: S-21 Security Centre: VORN Vet.

<sup>13808</sup> Section 12.2.8.5.2: S-21 Security Centre: VORN Vet. *See above*, para. 4262. For NUON Chea's full-rights status, *see* Section 7: Roles and Functions – NUON Chea, para. 532.

<sup>13809</sup> Book by Khieu S: *Cambodia's Recent History and the Reasons behind the Decisions I Made*, E3/18, pp. 131-132, ERN (En) 00103788-00103789. *See also*, Working Paper by S. Heder: *Pol Pot and Khieu Samphan*, E3/3169, 1991, pp. 20-21, ERN (En) 00002765-00002766.

<sup>13810</sup> Section 12.2: S-21 Security Centre, para. 2313.

<sup>13811</sup> OUK Bunchhoeun DC-Cam Interview, E3/387, undated, pp. 23-24, ERN (En) 00350222-00350223. *See also*, Section 12.1: Internal Factions, para. 2008. *See also*, Section 12.1.6.3.4: Purge of the East Zone.

<sup>13812</sup> Section 12.2: S-21 Security Centre, para. 2313.

population through his various post-DK interviews and publications. In court, KHIEU Samphan specifically denied knowing that people had been “abused and mistreated”, or that “people had been detained arbitrarily in the base”.<sup>13813</sup> This was contradicted by his earlier statements. In a recorded interview, KHIEU Samphan demonstrated his knowledge of the widespread arrests of “networks” at the bases:

Those in charge of the bases all had their relatives and networks. Those networks included cliques, friends and relatives, who relied upon that person’s rank and power. But sometimes some people who had been assigned to work with those being arrested were also arrested along with them because it was said they were networks or elements. At that time, they used the word “element”, being linked as an “element”. As a result, many were arrested. For each one arrested how many others were in that person’s network? *As I see it, there were four to ten to approximately twenty people. This is what led to the large number of arrests.*<sup>13814</sup>

4232. In an open letter penned in 2001, KHIEU Samphan publicly admitted his contemporaneous knowledge of the imprisonment and ill-treatment of civilians:

In about mid-1978, I accidentally learnt of a case of arrests and barbarous acts taking place in Preah Vihear province. My wife, who was in tears, told me about it. Her siblings and relatives, along with many other people, were shackled on both their hands and legs for over a year, causing nasty wound[s] on their bodies.<sup>13815</sup>

4233. Consistently with this, Witness MEAS Voeun – a military officer under Division 1 of the West Zone who was dispatched to head Sector 103 (Preah Vihear) in August 1978<sup>13816</sup> – testified that KHIEU Samphan had sent him a telegram in 1978 asking about the welfare of his relatives and instructing that if they were facing hardship they should be sent to Phnom Penh.<sup>13817</sup> MEAS Voeun made enquiries and helped to secure the release of KHIEU Samphan’s sister-in-law from a security centre in Siem Reap.<sup>13818</sup> Notably, MEAS Voeun’s report to KHIEU Samphan did not merely describe the whereabouts and welfare of KHIEU Samphan’s sister-in-law:

<sup>13813</sup> T. 4 June 2013 (Accused KHIEU Samphan), E1/199.1, p. 82.

<sup>13814</sup> KHIEU Samphan Interview, E3/4041, undated, ERN (En) 00790270 (emphasis added).

<sup>13815</sup> KHIEU Samphan Letter, E3/205, 16 August 2001, ERN (En) 00149526.

<sup>13816</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 69-70 *confirming* MEAS Voeun Interview Record, E3/424, 16 December 2009, p. 6, ERN (En) 00421073.

<sup>13817</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 73-75. *See also*, KHIEU Samphan Interview Record, E3/210, 14 December 2007, p. 5, ERN (En) 00156951 (explaining that his sister-in-law was sent to Takhmao).

<sup>13818</sup> T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 75-76.

I reported about the people in Preah Vihear, many of whom were facing starvation, and the arrests of the people and detention in the security office. [...] The contents of the report were about how the living conditions of the people in the cooperative were; cloth[e]s, mosquito nets and blankets were provided to people; where people were arrested and sent to; where his [*i.e.* KHIEU Samphan's] sister-in-law was arrested and sent to.<sup>13819</sup>

4234. This evidence not only debunks KHIEU Samphan's assertions that he was unaware of the arrest and detention of civilians or indeed the conditions faced by the population across the country, but also demonstrates the degree of influence and authority his position carried to intervene in Party affairs. As a result of this interposition, KHIEU Samphan acknowledged that "the Zone Party secretaries were arrested",<sup>13820</sup> specifically naming the (new) North Zone Secretary KANG Chap.<sup>13821</sup>

4235. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan knew of the crimes committed during the course of internal purges throughout the DK period.

### 18.1.2.3. Targeting of specific groups

#### 18.1.2.3.1. *Cham*

4236. The Chamber recalls its finding that the CPK specifically targeted the Cham throughout the DK period as part of a policy which evolved over time.<sup>13822</sup> While the Chamber has found that KHIEU Samphan stressed the importance of preserving "forever the fruits of the revolution and the Kampuchean race" at a time when CPK cadres in the Central Zone and in the East Zone along the Mekong river were executing a genocidal policy to destroy the Cham religious and ethnic group in DK,<sup>13823</sup> the timing of such speeches coincided with the destruction of the Vietnamese racial, national and

<sup>13819</sup> MEAS Voeun Interview Record, E3/424, 16 December 2009, p. 6, ERN (En) 00421073; T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 75-77 (statement put to witness, who confirmed that on this occasion "I reported to [KHIEU Samphan] only once about [...] the situation of the starvation people were facing.").

<sup>13820</sup> KHIEU Samphan Letter, E3/205, 16 August 2001, ERN (En) 00149526.

<sup>13821</sup> KHIEU Samphan Interview Record, E3/210, 14 December 2007, p. 5, ERN (En) 00156951 ("The cadre involved in the arrest [of his sister-in-law] was called Kang Chap and he was arrested at a later stage."). *See also*, Section 12.2.8.5.1: S-21 Security Centre: CHANN Sam *alias* KANG Chap *alias* Se (or Sae); T. 4 October 2012 (MEAS Voeun), E1/130.1, pp. 86-87 *confirming* MEAS Voeun Interview Record, E3/424, 16 December 2009, p. 5, ERN (En) 00421072 ("Preah Vihear was the autonomous area directly controlled by the Central Committee. *Ta* NUON Chea and *Ta* KHIEU Samphan used to visit there.").

<sup>13822</sup> Section 13.2.5.4: Conclusion on the CPK Policy Targeting the Cham. *See also*, Section 16: Common Purpose, para. 3990.

<sup>13823</sup> Section 13.2.5.4: Conclusion on the CPK Policy Targeting the Cham.

ethnic group, as such.<sup>13824</sup> Nevertheless, as a senior leader with unique standing in the Party Centre, KHIEU Samphan supported the common purpose and was privy to the implementation of policies aimed at establishing an atheistic and homogenous Khmer society of worker-peasants. Inherent in the policies targeting specific groups, including Cham populations, was the commission of crimes on a discriminatory basis aimed at achieving an atheistic society. The Chamber is therefore satisfied that KHIEU Samphan knew of the commission of crimes committed against the Cham during the DK period.

#### 18.1.2.3.2. *Vietnamese*

4237. The Chamber recalls its findings that the CPK specifically targeted Vietnamese as a group, including civilians, throughout the DK period.<sup>13825</sup> It has found that POL Pot's "one against 30 policy" specifically targeted not only Vietnamese armed forces but also Vietnamese civilians. In the early years of DK, KHIEU Samphan openly advocated for removal of Vietnamese populations back to Vietnam.<sup>13826</sup> Such calls mirrored the substance, form and ultimate implementation<sup>13827</sup> of the common purpose of deporting all Vietnamese peoples across the border in 1975 and 1976.<sup>13828</sup>

4238. Through his public statements, KHIEU Samphan singled out the Vietnamese for discriminatory treatment. He urged the DK population to "hate the *Yuons* more and more each day" and encouraged vigilance and "seething" anger against the Vietnamese enemy. He joined other CPK leaders in decisively calling for the Vietnamese to be "wiped out [...] neatly and thoroughly" from DK, "exterminate[d] resolutely" and "destroy[ed] forever". As military confrontations with Vietnam escalated, KHIEU Samphan branded the Vietnamese as requiring particular attention, citing to the "life-and-death contradiction" that existed between the DK and Vietnam. In order to protect the revolution and the "Kampuchean race", KHIEU Samphan called for DK to be "permanently clean[ed]" of the Vietnamese in order to "be free" from them.<sup>13829</sup> The

<sup>13824</sup> Section 13.3.5.2: Evidence of a Policy Targeting the Vietnamese. *See also*, Section 13.3.10.5: Treatment of the Vietnamese: Legal Findings: Genocide.

<sup>13825</sup> Section 13.3.1.10.5: Treatment of the Vietnamese, para. 3516. *See also*, Section 16.4.3.2: Common Purpose: Targeting of Specific Groups: Vietnamese.

<sup>13826</sup> *See below*, para. 4271.

<sup>13827</sup> Section 16: Common Purpose, para. 4004.

<sup>13828</sup> Section 16: Common Purpose, para. 4004.

<sup>13829</sup> Section 13.3: Treatment of the Vietnamese, paras 3406-3407.



Chamber has found that these and similar calls were often indiscriminate and often directed at the ethnic Vietnamese population in general.<sup>13830</sup>

4239. The Chamber has further found that KHIEU Samphan was aware of the protected status of Vietnamese detainees at S-21 Security Centre and knew of their ill-treatment.<sup>13831</sup> In light of the foregoing, the Chamber is satisfied that KHIEU Samphan knew of the crimes committed against the Vietnamese during the DK period.

#### 18.1.2.3.3. *Buddhists*

4240. The Chamber recalls its finding that the CPK was intent on eliminating Buddhism from Cambodian society and that the defrocking of monks was a deliberate means to achieve this aim.<sup>13832</sup> KHIEU Samphan stated that he was unaware of anything to do with the practice of religion during the DK period.<sup>13833</sup> As the moral guarantor of the revolutionary movement and a liberated Cambodia, KHIEU Samphan endorsed FUNK's pledge that Buddhism was and would remain the state religion.<sup>13834</sup> As was his practice in the lead-up to 17 April 1975,<sup>13835</sup> KHIEU Samphan paid homage to the *Sangha* in a broadcast on 21 April 1975 for the last time, saluting "every venerable Buddhist monk" and their "great fighting will" in the name of FUNK.<sup>13836</sup> An apparent Special National Congress chaired by KHIEU Samphan issued a communiqué claiming that members of the Buddhist clergy had attended in representation of the *Sangha*.<sup>13837</sup> Such pronouncements proved to be little more than subterfuge aimed at shoring up the legitimacy of the interim CPK-dominated government: monks were rounded up and defrocked in the immediate aftermath of 17 April 1975 in Tram Kak District and the

<sup>13830</sup> Section 13.3: Treatment of the Vietnamese, para. 3416.

<sup>13831</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the nature of the Armed Conflict).

<sup>13832</sup> Section 16: Common Purpose, para. 4015. *See also*, Section 3: Historical Background, para. 264.

<sup>13833</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 37.

<sup>13834</sup> Section 3: Historical Background, para. 263.

<sup>13835</sup> *See e.g.*, *Cambodians Urged to Unite in New Year's Offensive* (in FBIS collection), E3/30, 31 December 1974, ERN (En) 00166659; *Kheiu [sic] Samphan Issues Appeal to Compatriots, Monks* (in FBIS collection), E3/30, 24 January 1975, ERN (En) 00166721; *Khieu Samphan Appeals for Intensified Struggle 15 March* (in FBIS collection), E3/120, 15 March 1975, ERN (En) 00166826-00166828; *Khieu Samphan Appeals to Phnom Penh Citizens to Join NUFC 14 Apr* (in FBIS collection), E3/118, 14 April 1975, ERN (En) 00166948.

<sup>13836</sup> Section 10.1: Tram Kak Cooperatives, para. 1086.

<sup>13837</sup> Section 10.1: Tram Kak Cooperatives, para. 1086.

remainder of the country,<sup>13838</sup> with Buddhist worship and practices banned during the entire DK period.<sup>13839</sup>

4241. KHIEU Samphan nevertheless continued publicly supporting the charade of normalcy. As Deputy Prime Minister of the GRUNK interim government, he welcomed NORODOM Sihanouk upon his return to Cambodia in September 1975 in the presence of clergy members.<sup>13840</sup> While monks were being defrocked *en masse* across the country, KHIEU Samphan lauded the DK Constitution's universal guarantee of the right to worship "any religion" to the exclusion of "reactionary religions",<sup>13841</sup> which in fact Buddhism was considered to be.<sup>13842</sup> In the same stroke, KHIEU Samphan acknowledged that the CPK's stance was one of prohibiting the use of religion to subvert the Party and its aims, especially through "foreign imperialists" using a "religious cloak to infiltrate our country". The CPK would, in KHIEU Samphan's words, "oppose them at all costs".<sup>13843</sup> He acknowledged in a later interview that the constitutional guarantee "does not imply respect also for some old privileges enjoyed by the religious class", adding that "[j]ust like everyone else, even Buddhist monks have the duty and obligation to work".<sup>13844</sup>

4242. Following the CPK's victory, KHIEU Samphan abruptly ceased his praise of Buddhist monks, making no further mention of them in his speeches, whether as GRUNK Deputy Prime Minister in marking the introduction of the DK Constitution in January 1976,<sup>13845</sup> as President of the State Presidium following PRA "elections" in

<sup>13838</sup> Section 10.1.9.1: Tram Kak Cooperatives: Events at Angk Roka Pagoda.

<sup>13839</sup> Section 16.4.3.3.1: Common Purpose: Treatment of Buddhists: Existence of Policy.

<sup>13840</sup> Video of NORODOM Sihanouk's return to Cambodia, E3/3023R, September 1975, ERN V00422528, 00:02:49-00:03:04 (showing a group of monks seated behind PENN Nouth followed by a shot of KHIEU Samphan prominently seated immediately opposite NORODOM Sihanouk).

<sup>13841</sup> Section 10.1: Tram Kak Cooperatives, para. 1090.

<sup>13842</sup> Section 10.1: Tram Kak Cooperatives, para. 1108.

<sup>13843</sup> Section 10.1: Tram Kak Cooperatives, para. 1090 (referring to *Phnom Penh Reportage on Third National Congress: KHIEU Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167816). The KHIEU Samphan Defence mischaracterises the Closing Order's citation of this document as proof of the abolition of national minorities. See KHIEU Samphan Closing Brief, para. 1845. The Closing Order avers that, through this speech, KHIEU Samphan "generally affirmed and contributed to the execution of [the targeting] policy", and notes that "his statements were made at around the same time that the CPK affirmed its intention to abolish all national minorities and other groups". See Closing Order, para. 1192. In light of the Chamber's considerations on the use of FBIS reports (see Section 6: Communication Structures, paras 469-472), the Chamber dismisses the KHIEU Samphan Defence's submission positing that its unavailability in Khmer renders it unusable.

<sup>13844</sup> *Khieu Samphan Interviewed on Executions, National Problems* (in FBIS collection), E3/608, 26 September 1976, p. 4, ERN (En) 00419843.

<sup>13845</sup> Reports of the Second Special National of April 1975 listed "representatives [...] of the Buddhist clergy" as in attendance. See *'Special National Congress' Retains Sihanouk, Penn Nouth* (in FBIS

March 1976,<sup>13846</sup> following the reorganisation of the state and government in April 1976,<sup>13847</sup> or during 17 April anniversary speeches commemorating the role the *Sangha* had played in supporting the revolutionary cause.<sup>13848</sup> Behind the scenes, KHIEU Samphan was fervently instructing the arrangement of marriages in the absence of monks and in a manner fundamentally inconsistent with Buddhist traditions.<sup>13849</sup> Such practices continued unabated throughout 1977 and 1978 under KHIEU Samphan's watch.<sup>13850</sup>

4243. In light of the foregoing, the Chamber rejects KHIEU Samphan's assertion that he knew nothing about the practice of religion in DK insofar as it concerns Buddhism. Accordingly, the Chamber finds that KHIEU Samphan knew of the crimes committed against Buddhists during the DK period.

#### 18.1.2.3.4. *Former Khmer Republic officials*

4244. The Chamber recalls its findings that the CPK targeted former Khmer Republic officials throughout the DK period for discrimination and adverse treatment including murder between 20 April 1975 and late May 1975, and again between October 1975 and 6 January 1979.<sup>13851</sup> As a figure of respect, one of the faces of FUNK and GRUNK and titular Commander-in-Chief of the CPNLAF,<sup>13852</sup> KHIEU Samphan was instrumental in ensuring the CPK's victory on 17 April 1975. By late 1972, KHIEU Samphan was publicly calling for the elimination of high-ranking members of the Khmer Republic administration and their subordinates.<sup>13853</sup> Following the CPNLAF's immense territorial gains over the next few years, KHIEU Samphan announced the final assault upon Phnom Penh on 31 December 1974.<sup>13854</sup> The following month, he

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collection), E3/118, 27 April 1975, ERN (En) 00167012. *Cf. National Congress Held; New Constitution Adopted* (in FBIS collection), E3/1356, 15 December 1975, ERN (En) 00167574-00167575 (December 1975 "Special National Congress" does not report any Buddhist representatives).

<sup>13846</sup> The PRA "elections" led to the "appointment" of 250 members representing workers, peasants and the RAK. *See Results of National Assembly Elections Announced* (in FBIS collection), E3/274, 21 March 1976, ERN (En) 00167985-00167989 (KHIEU Samphan announcing the successful appointees on behalf of the "election commission").

<sup>13847</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 596, 598.

<sup>13848</sup> Section 10.1: Tram Kak Cooperatives, paras 1084-1086.

<sup>13849</sup> Section 14: Regulation of Marriage, paras 3551, 3569, 3586, 3611 (fn. 12053).

<sup>13850</sup> Section 14: Regulation of Marriage, para. 3570.

<sup>13851</sup> Section 16.4.3.4: Common Purpose: Targeting of Specific Groups: Former Khmer Republic Officials.

<sup>13852</sup> Section 3: Historical Background, paras 219-220; Section 8.3.1: Roles and Functions – KHIEU Samphan: Deputy Prime Minister, Minister of National Defence and CPNLAF Commander-in-Chief.

<sup>13853</sup> Section 16: Common Purpose, para. 4037.

<sup>13854</sup> Section 3: Historical Background, para. 232.

announced that the “traitorous Phnom Penh clique” could not “escape complete annihilation”, declaring it “absolutely necessary to kill [the] seven traitors” of the Khmer Republic: LON Nol, LONG Boret, SISOWATH Sirik Matak, SON Ngoc Than, IN Tam, CHENG Heng and SOSTHÈNE Fernandez.<sup>13855</sup>

4245. Contrary to the treatment they ultimately received, non-ranking government officials received assurances of amnesty in the names of KHIEU Samphan, GRUNK and FUNK if they ceased their cooperation with the “seven traitors” and joined FUNK.<sup>13856</sup> KHIEU Samphan also urged defections from the ranks of the Khmer Republic and openly advocated for civil unrest to bring about the end of the LON Nol regime.<sup>13857</sup> Following the CPK’s march on Phnom Penh, KHIEU Samphan praised the destruction of the former regime and lauded the fact that “the enemy [had] died in agony”.<sup>13858</sup>

4246. The extent of KHIEU Samphan’s knowledge with respect to specific crimes committed against former Khmer Republic officials is discussed further below in Section 18.2.2.3.4: Former Khmer Republic Officials.

#### 18.1.2.4. Regulation of marriage

4247. KHIEU Samphan testified that he knew nothing about forced marriages during the DK period as “no such event happened” at the offices around Phnom Penh.<sup>13859</sup> Contrary to this assertion, the Chamber found that at a meeting held at Wat Ounalom approximately six or seven months after 17 April 1975, he instructed that all ministries were to arrange marriages so that couples could produce children in order to augment forces to defend the country.<sup>13860</sup> This was indeed implemented, including in the Ministry of Commerce, of which KHIEU Samphan had direct oversight, and where monthly quotas called for a minimum of 100 couples to be married during 1977 and 1978.<sup>13861</sup>

<sup>13855</sup> Section 3: Historical Background, para. 231; Section 16: Common Purpose, paras 4027, 4036-4037.

<sup>13856</sup> Section 16: Common Purpose, para. 4028.

<sup>13857</sup> Section 16: Common Purpose, para. 4027.

<sup>13858</sup> Section 16: Common Purpose, para. 4037.

<sup>13859</sup> T. 27 May 2013 (Accused KHIEU Samphan), E1/197.1, p. 84. *See also*, T. 23 June 2017 (Closing Statements), E1/528.1, p. 37.

<sup>13860</sup> Section 14: Regulation of Marriage, para. 3569.

<sup>13861</sup> Section 14: Regulation of Marriage, para. 3570. *See also*, Section 8.3.4.2: Roles and Functions – KHIEU Samphan: Oversight of Commerce.

4248. In line with the CPK's policy concerning the regulation of marriage, KHIEU Samphan continued calling for the population to divest themselves of personal sentiment toward their parents in favour of *Angkar*, which was now to supplant the role of parents.<sup>13862</sup> He further personally promoted the Party's policy to rapidly increase DK's population.<sup>13863</sup> His involvement in the execution of this policy was corroborated by NORODOM Sihanouk, who recalled him describing the matching of young women (whom KHIEU Samphan described as fervently patriotic) with disabled soldiers as a sacrifice to the nation.<sup>13864</sup>

4249. In view of the foregoing, the Chamber finds that KHIEU Samphan knew of the crimes committed in the course of the CPK's nationwide policy to regulate marriage.

### 18.1.3. *Knowledge Arising After the Commission of the Crimes*

4250. KHIEU Samphan knew about the commission of crimes within the scope of Case 002/02 after their perpetration. In 1977, Amnesty International sent a letter to KHIEU Samphan expressing concern at reports of summary executions and the maltreatment of civilians, and further requesting that inquiries be made. As no response was forthcoming, Amnesty International renewed its appeal in 1978, this time joined by the UN Commission on Human Rights.<sup>13865</sup> KHIEU Samphan could not ignore such reports, considering his strong connection to, in particular, IENG Sary and the Ministry of Foreign Affairs.<sup>13866</sup>

4251. Through his interviews, statements and publications, as discussed above, KHIEU Samphan also demonstrated his contemporaneous knowledge of the patterns of conduct and underlying acts which the Chamber has found to have constituted crimes during the DK period. Specifically, KHIEU Samphan demonstrated his knowledge of crimes committed as part of the establishment and operation of cooperatives and worksites<sup>13867</sup> and internal purges.<sup>13868</sup>

<sup>13862</sup> Section 14: Regulation of Marriage, paras 3569, 3611 (fn. 12053).

<sup>13863</sup> Section 14: Regulation of Marriage, para. 3551.

<sup>13864</sup> Section 14: Regulation of Marriage, para. 3586.

<sup>13865</sup> Section 16: Common Purpose, para. 4048.

<sup>13866</sup> Section 5: Administrative Structures, para. 414.

<sup>13867</sup> See above, paras 4210-4217.

<sup>13868</sup> See above, paras 4221-4223, 4225-4230.

4252. In a 1980 interview with Time Magazine, KHIEU Samphan rejected the proposition that over three million people had been killed during the DK period, stating instead that “the number was not more than 10,000”.<sup>13869</sup> In his post-DK capacity as “Vice President of Democratic Kampuchea for Foreign Affairs”, however, KHIEU Samphan acknowledged the death of 10,000 Vietnamese agents acting “in violation of State policy”. In addition, 8,000 organisers of the six “*coups d’état* and the chief traitors who in connivance with the Vietnamese tried to take control of the Eastern Zone” were “imprisoned”, with KHIEU Samphan admitting that 3,000 “minor offenders or innocent civilians” had “died from our mistakes”.<sup>13870</sup> In the same document, KHIEU Samphan justified the loss of life during the DK period as “small in comparison with other countries in the world, whether during big historical changes or peaceful time”.<sup>13871</sup> In stark contrast to such admissions, KHIEU Samphan later downplayed the number of people executed as part of DK-era purges, writing in 2004 that “the cadres that had to be arrested were few in number, probably not more than several hundred”.<sup>13872</sup>

4253. KHIEU Samphan attended and lectured at study sessions and mass rallies at which criminal conduct toward CPK enemies was discussed, encouraged and incited, including against the Vietnamese, former Khmer Republic officials, New People and other detractors of the revolution.<sup>13873</sup> By virtue of his positions of responsibility, KHIEU Samphan had access to CPK circulars, policy documents and *Revolutionary Flag* and *Revolutionary Youth* magazines which discussed the implementation of various CPK policies. KHIEU Samphan was privy to the speeches of other senior leaders on the implementation of various CPK policies and received, as nominal head of state, letters of concern from international bodies noting reports of atrocities against former Khmer Republic soldiers and officials.<sup>13874</sup> In this regard, KHIEU Samphan

<sup>13869</sup> *A Plea for International Support* (Time Magazine), E3/628, 10 March 1980, ERN (En) 00524517. See also, Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414, 00:52:40-00:53:02 (rejecting that two million people had been killed: “That’s a bit exaggerated”).

<sup>13870</sup> DK Publication: *What are the Truth and Justice about the Accusations Against Democratic Kampuchea of Mass Killings from 1975 to 1978?*, E3/703, 15 July 1987, ERN (En) 00004002.

<sup>13871</sup> DK Publication: *What are the Truth and Justice about the Accusations Against Democratic Kampuchea of Mass Killings from 1975 to 1978?*, E3/703, 15 July 1987, ERN (En) 00004004-00004005 (“Even during [the] Vietnam war in the 60s or 70s there were much more people who died than in Kampuchea.”).

<sup>13872</sup> Book by Khieu S.: *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, p. 62, ERN (En) 00498281.

<sup>13873</sup> See below, paras 4271-4273.

<sup>13874</sup> Section 16: Common Purpose, para. 4048.

publicly rejected the “story of massacres [in DK], which is being publicised by sections of the Western press at regular intervals”, adding that: “I wish to be very emphatic about this: the revolutionaries are no assassins”. In his very next response, however, KHIEU Samphan acknowledged that “[t]hose traitors who remained in Democratic Kampuchea have been executed”.<sup>13875</sup>

4254. For the foregoing reasons, the Chamber finds that KHIEU Samphan also knew of the crimes after their commission.

### **18.2. Commission through a Joint Criminal Enterprise**

4255. The Closing Order found that KHIEU Samphan participated or contributed to the design, implementation and control of the execution of the common purpose, which “resulted in and/or involved the commission of crimes”.<sup>13876</sup> The Chamber has found that the appropriate standard is whether the accused participated in the common purpose which amounted to or involved the commission of crimes, and by his or her acts or omissions made a significant contribution to the commission of crimes encompassed by the common purpose.<sup>13877</sup>

4256. The Chamber’s factual findings in relation to the development and the criminality of the common purpose, to which all the policies were intrinsically linked, included that the common purpose of rapidly implementing socialist revolution in Cambodia through a “great leap forward” designed to build the country, defend it from enemies and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants was shared by a plurality of persons.<sup>13878</sup> The Chamber now turns to assess whether KHIEU Samphan made a significant contribution to the common purpose and whether he shared with the other JCE members the intent to commit the crimes charged.

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<sup>13875</sup> *Khieu Samphan Interviewed on Executions, National Problems* (in FBIS collection), E3/608, 26 September 1976, ERN (En) 00419841.

<sup>13876</sup> Closing Order, para. 1536.

<sup>13877</sup> Section 15.2: Applicable Law: Individual Criminal Responsibility: Commission through a Joint Criminal Enterprise, paras 3709-3710.

<sup>13878</sup> Section 15.2: Applicable Law: Individual Criminal Responsibility: Commission through a Joint Criminal Enterprise.

18.2.1. *Contribution to the Common Purpose*18.2.1.1. *Supporting the Common Purpose*

4257. KHIEU Samphan's support of the CPK and its policies traces back to at least 1967.<sup>13879</sup> Following the overthrow of NORODOM Sihanouk as Head of State on 18 March 1970, KHIEU Samphan was appointed to the roles of GRUNK Deputy Prime Minister and Minister of National Defence in the government in exile.<sup>13880</sup> His appointment as a candidate member of the CPK Central Committee at the Third Party Congress in 1971,<sup>13881</sup> where a mostly unchanged Party Statute was adopted calling for Marxist-Leninist national democratic revolution, class struggle and the opposition to feudalists and imperialists,<sup>13882</sup> demonstrates KHIEU Samphan's disposition toward the Party's revolutionary goals. While the Chamber has acknowledged that the objective of socialist revolution was not itself criminal in character,<sup>13883</sup> through his continued occupation of positions within the CPK and DK throughout the indictment period, KHIEU Samphan supported, tacitly encouraged, legitimised by his presence and therefore facilitated the overarching common purpose which involved the commission of crimes.<sup>13884</sup> KHIEU Samphan attributed the success of the CPK following "liberation" to the "correct political line of [*Angkar*], notably the line of independence, sovereignty, self-reliance and being master[s] of our own destiny".<sup>13885</sup> His support for the CPK and its policies continued throughout his capacities as full-rights member of the Central Committee and President of the State Presidium from 1976 to 1979.<sup>13886</sup> KHIEU Samphan's regular attendance at Standing Committee meetings where crucial decisions were made,<sup>13887</sup> membership of Office 870 from October 1975,<sup>13888</sup> and oversight of DK commerce matters from October 1976 until January 1979<sup>13889</sup> further

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<sup>13879</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 573-574.

<sup>13880</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 577.

<sup>13881</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 274.

<sup>13882</sup> Section 3: Historical Background, paras 226-227 (KHIEU Samphan supported the Party's call for a strengthened "proletarian stance" and intensified struggle against oppressive classes of the Khmer Republic).

<sup>13883</sup> Section 16: Common Purpose, para. 3743.

<sup>13884</sup> Section 16.4.5: Common Purpose: Legal Findings.

<sup>13885</sup> Section 16: Common Purpose, para. 3734.

<sup>13886</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 576, 598, 601.

<sup>13887</sup> Section 8.3.3: Roles and Functions – KHIEU Samphan: Membership of the Central and Standing Committees.

<sup>13888</sup> Section 8.3.4.1: Roles and Functions – KHIEU Samphan: Membership of Office 870.

<sup>13889</sup> Section 8.3.4.2: Roles and Functions – KHIEU Samphan: Oversight of Commerce.



evidence his support for and continued assistance to the CPK in the realisation of its objectives.

4258. KHIEU Samphan regularly attended and participated in Standing Committee meetings at which matters central to the common purpose were discussed,<sup>13890</sup> including: agriculture, drought and industry,<sup>13891</sup> the mandatory acquisition of rice from bases in the amount of “30 to 50 percent [...] or up to 100 percent”,<sup>13892</sup> and the attainment of the target of three tonnes of rice per hectare which, if unsuccessful, would leave the Party unable to feed the general public or build or defend the country.<sup>13893</sup> KHIEU Samphan also participated in discussions concerning the identification and purge of enemies, including West Zone Secretary CHOU Chet *alias* Sy.<sup>13894</sup> He was present when Standing Committee members regularly furnished reports concerning cooperatives, worksites and areas under their control regarding the progress and implementation of the common purpose,<sup>13895</sup> including Southwest Zone Secretary *Ta* Mok,<sup>13896</sup> Central (old North) Zone Secretary KE Pauk,<sup>13897</sup> and Northwest Secretary RUOS Nhim.<sup>13898</sup> KHIEU Samphan was present at the Standing Committee meeting at which the construction of a military airfield in Kampong Chhnang was planned in October 1975,<sup>13899</sup> and was present at later meetings at which SON Sen reported on the construction of Kampong Chhnang Airfield.<sup>13900</sup>

4259. In his capacity as a member of the Central Committee, KHIEU Samphan attended the Third, Fourth and Fifth Party Congresses which adopted policies from the Standing Committee concerning the overall political line in accordance with the principle of democratic centralism.<sup>13901</sup> By his membership of this body and participation in its meetings, KHIEU Samphan assented to the directive to place state power into the hands of the worker-peasants and initiatives encouraging districts to

<sup>13890</sup> Section 8.3.3: Roles and Functions – KHIEU Samphan: Membership of the Central and Standing Committees.

<sup>13891</sup> Section 16: Common Purpose, para. 3891.

<sup>13892</sup> Standing Committee Minutes E3/224, 30 May 1976, p. 2, ERN (En) 00182668.

<sup>13893</sup> Section 16: Common Purpose, para. 3901.

<sup>13894</sup> *See above*, para. 4228.

<sup>13895</sup> Sections 5: Administrative Structures, paras 355, 364.

<sup>13896</sup> For *Ta* Mok’s attendance at Standing Committee meetings, *see e.g.*, Standing Committee excerpts (Document 21.5.23 from PRT Trial), E3/7328, 11 April 1977.

<sup>13897</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1455, 1458.

<sup>13898</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1236, 1250.

<sup>13899</sup> Section 11.3: Kampong Chhnang Airfield Worksite, para. 1723.

<sup>13900</sup> Section 11.3: Kampong Chhnang Airfield Worksite, para. 1727.

<sup>13901</sup> Section 5.1.1: Party Congress; Section 5.1.9: Democratic Centralism.

achieve the “three tonnes per hectare” target.<sup>13902</sup> Indeed, he publicly endorsed the DK Constitution which promoted the CPK’s objective of transforming the entire population into a society of worker-peasants.<sup>13903</sup>

4260. KHIEU Samphan was a fully-fledged member at the time the Central Committee approved the delegation of the “right to smash” down the ranks of the CPK.<sup>13904</sup> As a full-rights voting member of the Central Committee, KHIEU Samphan contributed to the publication of a mid-1978 memorandum by the Central Committee calling for compassion to be accorded to “misled persons” who had, among other things, served as *Yuon* agents – a policy which the Chamber found had no tangible impact on the ground.<sup>13905</sup> The Chamber has found that this new policy was selectively reserved for Khmers and explicitly exempted “the *Yuon*” from more lenient re-education; the latter were instead subject to “absolute Special Brach measures, completely and totally, permanently”.<sup>13906</sup> In the final months of the DK, KHIEU Samphan attended the Fifth Party Congress at which VORN Vet was arrested and thereafter sent to S-21 Security Centre for interrogation and execution.<sup>13907</sup>

4261. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose but that he publicly supported it throughout the DK period.

#### 18.2.1.2. Promoting the Common Purpose

4262. In a pattern that continued throughout the DK era, KHIEU Samphan publicly promoted, confirmed and endorsed the common purpose. Reports naming KHIEU Samphan as the chairman of a Special National Congress in the aftermath of 17 April 1975 detailed the government’s resolution to build a classless society free from exploitation in which all citizens would strive to build and defend the country.<sup>13908</sup>

<sup>13902</sup> Section 16: Common Purpose, para. 3899.

<sup>13903</sup> Section 16: Common Purpose, para. 3897.

<sup>13904</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 600; Section 16: Common Purpose, paras 3771, 3955.

<sup>13905</sup> Section 13.3: Treatment of the Vietnamese, para. 3404; Section 16.3: Real or Perceived Enemies, para. 3828.

<sup>13906</sup> Section 13.3: Treatment of the Vietnamese, paras 3405-3406.

<sup>13907</sup> See above, para. 4229.

<sup>13908</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 593; Section 16: Common Purpose, para. 3735. While it was unclear to the Chamber whether this congress actually took place, it was satisfied that the reported resolution represented the political line of the CPK.

Alongside other Central Committee members, senior leaders and zone secretaries, KHIEU Samphan participated in meetings in May 1975 over the course of about 10 days at the Silver Pagoda in Phnom Penh, laying the groundwork for rapid socialist revolution through the displacement of populations, the establishment of cooperatives, the construction of irrigation infrastructure and the initiation of defence projects.<sup>13909</sup> In his capacity as newly-appointed President of the State Presidium, KHIEU Samphan endorsed and promoted the objective of achieving a “great and magnificent leap” while building and defending an independent and self-reliant country.<sup>13910</sup> Further, KHIEU Samphan personally perpetuated the Party line by leading indoctrination sessions at mass rallies and re-education seminars for, among others, returnees from abroad and Ministry of Commerce cadres, which were aimed at strengthening socialist consciousness, forging worker-peasant identity and engendering support for CPK policies.<sup>13911</sup>

4263. At 17 April anniversaries and other events, KHIEU Samphan publicly lauded the CPK’s successes and encouraged popular support of *Angkar*’s program for building and defending DK.<sup>13912</sup> Although he claimed that these speeches were dictated by POL Pot, that they “were not very important” and that his “role was just protocol”, he acknowledged that, “generally I agreed with the content”.<sup>13913</sup>

4264. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose, but that as a senior leader he actively, vocally and publicly promoted, confirmed and endorsed it domestically and on the international stage.

18.2.1.3. *Encouraging, inciting and legitimising the implementation of the Common Purpose through its policies*

4265. As a respected Cambodian politician and the face of GRUNK and DK, KHIEU Samphan used his positions to support and therefore legitimise the implementation of the common purpose both domestically and internationally. Through his many public

<sup>13909</sup> Section 16: Common Purpose, para. 3736.

<sup>13910</sup> Section 16: Common Purpose, para. 3739.

<sup>13911</sup> Section 16: Common Purpose, para. 3736. *See below*, Section 18.2.1.4: Instructing on the implementation of the Common Purpose through its policies.

<sup>13912</sup> Section 16: Common Purpose, para. 3742 (fn. 12489).

<sup>13913</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 598.

speeches and statements during the DK period, KHIEU Samphan encouraged and incited the execution of the CPK's various policies. As interim Deputy Prime Minister and later President of the State Presidium, KHIEU Samphan called on the masses to work collectively in the fields and factories in order to increase production and defend the country.<sup>13914</sup> He offered a "100 percent guarantee" that in one or two years there would be sufficient produce to export, and that "people's livelihood will be gradually improved".<sup>13915</sup> He reported the construction of dykes, canals, reservoirs and dams throughout the country by a labour force "working day and night [...] without rest" to build the country.<sup>13916</sup> In particular, KHIEU Samphan announced the DK's intention to "build new embankments measuring thousands of kilometres in length",<sup>13917</sup> and supported the transformation of the country into a "construction site" to be "built by all of our people working actively together".<sup>13918</sup> Confirming that such early speeches were far from propaganda, KHIEU Samphan acknowledged that construction workers were indeed pushed to work irregular hours.<sup>13919</sup> His knowledge of appalling conditions, gruelling work regimes and inadequate food was described by NORODOM Sihanouk in 2000:

At the beginning, from September 1975 until April 1976, I, as Head of State, travelled through my country, through Cambodia, together with KHIEU Samphan. I saw that the communes were concentration camps. I saw how work went on day and night. When the moon shone, people could not sleep. Sleep was not allowed. People had to work. I saw what people ate, for there was no rice. The rice was mixed with maize and

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<sup>13914</sup> Section 16: Common Purpose, para. 3897.

<sup>13915</sup> *Deputy Premier Grants Interview to AKI* (in FBIS collection), E3/119, 13 August 1975, ERN (En) 00167386.

<sup>13916</sup> Section 16: Common Purpose, para. 3916 (fn. 13067).

<sup>13917</sup> *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167816.

<sup>13918</sup> *Welcome Rally Marks Sihanouk's Return: Khieu Samphan Speech* (in FBIS collection), E3/271, 12 September 1975, ERN (En) 00167454 ("In the countryside the movement for increasing production is developing daily, thus greatly transforming the entire countryside this year. [...] Our country will be transformed into a most agreeable site built by all of our people working actively together"); U.S. State Department Telegram, Subject: Khieu Samphan Visit to PRC, E3/619, August 1975, ERN (En) 00413733 ("Khieu Samphan Listed his country's new tasks as 'defending the state, rehabilitating the economy and building the country in an all-round way at a rapid speed' [...]. He said the whole country had become 'a big construction site' and 'it would not be long' before Cambodia became a progressive and prosperous country.").

<sup>13919</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1508. KHIEU Samphan's assertion was confirmed by the Chamber's findings at the worksites and construction sites under examination in the present case. See Section 16.4.1.2: Common Purpose: Movement of Population, Establishment of Cooperatives and Worksites: Criminality of Policy.

other things, beans, even leaves, the chopped-up stalks of banana plants. The diet was very, very bad.<sup>13920</sup>

4266. At the first anniversary of the CPK's victory, KHIEU Samphan lauded the people's "victories" which were "achieved by great leaps and bounds", noting that DK had in one year achieved "as much as one would in 10 years". Despite being aware of conditions on the ground,<sup>13921</sup> KHIEU Samphan continued to celebrate the CPK's desire to build irrigation infrastructure "at a pace never before attained" and through manual work,<sup>13922</sup> and called on worker-peasants to increase economic output and export more rice to generate capital.<sup>13923</sup>

4267. KHIEU Samphan issued statements promoting the cultivation and harvest of dry season rice in accordance with early economic initiatives,<sup>13924</sup> impelled the general population to "fulfil or overfulfil" *Angkar*'s Four Year Economic Plan and "maintain *under all circumstances*" the targets set by the Party.<sup>13925</sup> He promoted the country's independence and self-reliance by praising the construction of a dam in Kampong Speu in a "single month", announcing that the 1977 construction plan would be fulfilled "by the end of May" that year and boasting that the DK had built in months that which "would have taken years to finish" had the population engaged foreign "so-called agricultural experts of the previous era".<sup>13926</sup>

4268. KHIEU Samphan also called on the population to divest themselves of personal sentiment toward their parents in favour of *Angkar*, which was now to supplant the role of parents. He further openly promoted the Party's policy to rapidly increase DK's population.<sup>13927</sup> Contrary to his earlier praise of the *Sangha* for their contributions to the success of the revolution, KHIEU Samphan deceptively maintained the image of

<sup>13920</sup> Jungle War, E3/3113R, ERN V00172509, 00:29:32-00:30:26; T. 31 January 2013 (Key Document Hearing), E1/168.1, pp. 25-26. See also, Book by P. Short: *Pol Pot: The History of a Nightmare*, E3/9, p. 333, ERN (En) 00396541 ("Sihanouk was brought face to face with the awfulness of life in Democratic Kampuchea for the first time during two provincial tours he made that winter [1975-1976] in the company of Khieu Samphan, one to the Eastern and Northern Zones, the other to the North-West. '[It] bowled me over', he wrote later. 'My people [...] had been transformed into cattle'").

<sup>13921</sup> See above, paras 4214-4217.

<sup>13922</sup> *Phnom Penh Reportage on Third National Congress: Khieu Samphan Report* (in FBIS collection), E3/273, 5 January 1976, ERN (En) 00167817.

<sup>13923</sup> Section 16: Common Purpose, para. 3909.

<sup>13924</sup> Section 16: Common Purpose, para. 3742 (fn. 12489).

<sup>13925</sup> Section 16: Common Purpose, para. 3742 (fn. 12489) (emphasis added).

<sup>13926</sup> *Khieu Samphan's Speech at Anniversary Meeting* (in SWB/FE/5490/C collection), E3/200, 15 April 1977, ERN (En) S00004166, S00004168.

<sup>13927</sup> See above, para. 4248.

normalcy in public while actively encouraging the arrangement of marriages contrary to Buddhist traditions and supporting the abolition of Buddhism in DK.<sup>13928</sup> Furthermore, in his position as President of the State Presidium, KHIEU Samphan publicly denied and sought to obscure the regime's crimes against former Khmer Republic officials in the wake of 17 April 1975.<sup>13929</sup>

4269. KHIEU Samphan actively propagated the CPK's rhetoric calling for the discriminatory treatment of the Vietnamese in Cambodia throughout the DK period. NORODOM Sihanouk recalled KHIEU Samphan's fervour for inciting the population "to hate the *Yuons* more and more every day" to unite the population and further the Party's aims.<sup>13930</sup> In light of heightened tensions and growing animosity toward Vietnam at the time, the Chamber considers the foregoing statement to have been a clear reference to the Vietnamese.<sup>13931</sup> At 17 April celebrations in 1978, KHIEU Samphan pledged on behalf of the CPK to "destroy forever all the expansionist, annexationist Vietnamese aggressors". He vowed further to "exterminate resolutely all agents" of the Vietnamese "from our units and from Cambodian territory forever". While repeating his calls to "exterminate the enemies of all stripes", KHIEU Samphan announced that this "particularly" applied to "the expansionist, annexationist Vietnamese enemy" whose elimination was necessary to "preserve the nation and the Cambodian race forever". Lastly, KHIEU Samphan resolved that DK would "keep extremely seething the national spirit of revolutionary vigilance" against the Vietnamese enemy.<sup>13932</sup> Far from being isolated instances, KHIEU Samphan continued calling for the elimination of the Vietnamese at various fora throughout 1978 and the beginning of 1979. According to KHIEU Samphan, national defence initiatives against the Vietnamese had "stirred up [the people's] national hatred and class hatred". KHIEU Samphan joined POL Pot in statements stressing the importance of protecting and preserving the fruits of the revolution and the "Kampuchean race" from the Vietnamese.<sup>13933</sup> Such pronouncements echoed state-sponsored broadcasts and *Revolutionary Flag* articles at the time describing the "life-and-death contradiction"

<sup>13928</sup> See above, paras 4240-4242.

<sup>13929</sup> See above, paras 4252-4253.

<sup>13930</sup> Section 13.3: Treatment of the Vietnamese, para. 3401.

<sup>13931</sup> Section 13.3: Treatment of the Vietnamese, para. 3394.

<sup>13932</sup> Section 13.3: Treatment of the Vietnamese, para. 3399.

<sup>13933</sup> Section 13.3: Treatment of the Vietnamese, para. 3406.

between DK and Vietnam and the need to “permanently clean” DK from the “*Yuon*”.<sup>13934</sup>

4270. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose, but that he encouraged and incited its implementation through the CPK’s policies while using his senior position to legitimise the same.

18.2.1.4. *Instructing on the implementation of the Common Purpose through its policies*

4271. KHIEU Samphan vocally supported the CPK’s policies concerning the deportation of the Vietnamese. In 1975 and 1976, he attended and personally lectured at events stressing the importance of “evacuating” all Vietnamese from Cambodia. At this time, he specifically lectured Cambodian returnees from abroad on the common purpose, including that “all people in Kampuchea had to do farming” and remarked that those who could not – “especially the Vietnamese” – “would be sent back to Vietnam”.<sup>13935</sup> He repeated this call in April 1978,<sup>13936</sup> a point at which the CPK’s policy had evolved from their deportation to their destruction.<sup>13937</sup> After the shift in the CPK’s policy toward the Vietnamese in 1977, KHIEU Samphan lectured at indoctrination sessions that the “Khmer had to be united” and that the “Khmer shall be free of [the] Vietnamese”,<sup>13938</sup> while also attending and lecturing at political training sessions at which the Vietnamese and their “agents” were denounced as enemies.<sup>13939</sup>

4272. KHIEU Samphan attended mass rallies at which he publicly acknowledged, and therefore legitimised by virtue of his senior position, the search for enemies through the country. He attended a May 1975 rally at which CPK leaders spoke about the need to “screen” and “sort” “internal enemies” from the previous regime, such that they would be removed from “the framework”.<sup>13940</sup> As late as 1977, he was personally advising the masses that the object of the revolution was to “eliminate the Lon Nol regime [...]

<sup>13934</sup> Section 13.3: Treatment of the Vietnamese, paras 3404, 3406, 3408.

<sup>13935</sup> Section 13.3: Treatment of the Vietnamese, para. 3390 (fn. 11437).

<sup>13936</sup> Section 13.3: Treatment of the Vietnamese, para. 3400.

<sup>13937</sup> Section 13.3: Treatment of the Vietnamese, para. 3416.

<sup>13938</sup> Section 13.3: Treatment of the Vietnamese, para. 3390.

<sup>13939</sup> Section 13.3: Treatment of the Vietnamese, para. 3517.

<sup>13940</sup> Section 16: Common Purpose, para. 4054.

eliminate the capitalist, the feudalist [and] the intellectuals”.<sup>13941</sup> KHIEU Samphan exhorted the population to seek out “infiltrated enemies” and those opposing or obstructing the work of the CPK.<sup>13942</sup> He told the masses that if they betrayed the Party or the revolution, they would be killed, reiterating that those who were kept were no gain and those who were “pulled out” were no loss.<sup>13943</sup> KHIEU Samphan instructed commerce cadres on leadership, discipline and morality, and denounced “those who were lazy to work” as enemies of the Party.<sup>13944</sup> At rallies, KHIEU Samphan reiterated NUON Chea’s denunciation of CHAN Chakrei, KOY Thuon and KEO Meas.<sup>13945</sup> In mid-1978, KHIEU Samphan presided over a political education meeting at Borei Keila, where he announced before 400 to 500 participants that Office S-71 Chairman CHHIM Sam Aok *alias* Pang had been arrested and taken away “because he was a traitor collaborating with the *Yvon*” and instructed that cadres “should not follow what Pang did”.<sup>13946</sup>

4273. KHIEU Samphan also personally lectured cadres on the necessity of meeting production targets<sup>13947</sup> and encouraged the fulfilment of work plans regardless of the cost to workers, specifically instructing cadres that malingering workers would be categorised as “people who betray the Party”.<sup>13948</sup> He told participants that New People, in particular, were to bear the brunt of hard labour – they were to be given “a lot of work [and] little food” to simultaneously ensure the fulfilment of production targets while refashioning them into worker-peasants and weeding out enemies.<sup>13949</sup> KHIEU Samphan further instructed that all ministries were to arrange marriages so that couples could produce children in order to augment forces to defend the country.<sup>13950</sup> This was indeed implemented, including at the Ministry of Commerce, of whose operations KHIEU Samphan had direct oversight, and where monthly quotas called for a minimum of 100 couples to be married during 1977 and 1978.<sup>13951</sup>

<sup>13941</sup> Section 16: Common Purpose, para. 4272.

<sup>13942</sup> Section 16: Common Purpose, paras 3942-3943.

<sup>13943</sup> Section 16: Common Purpose, para. 3961.

<sup>13944</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 620.

<sup>13945</sup> *See above*, para. 4226.

<sup>13946</sup> T. 3 July 2013 (EK Hen), E1/217.1, pp. 40-42, 45, 47 *affirming* EK Hen Interview Record, E3/474, 5 March 2008, p. 4, ERN (En) 00205049.

<sup>13947</sup> Section 16: Common Purpose, para. 3916.

<sup>13948</sup> Section 16: Common Purpose, para. 3942.

<sup>13949</sup> Section 16: Common Purpose, para. 3967.

<sup>13950</sup> Section 14: Regulation of Marriage, para. 3569.

<sup>13951</sup> Section 14: Regulation of Marriage, para. 3570 (fn. 11980).



4274. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose, but that he actively instructed on its implementation through the various policies.

18.2.1.5. Enabling and controlling the implementation of the Common Purpose and its policies

4275. In his position as GRUNK Deputy Prime Minister, KHIEU Samphan willingly participated in the CPK's rouse designed to mask the widespread mistreatment of Buddhists in the first year of DK while actively lauding practices which were fundamentally inconsistent with Buddhism.<sup>13952</sup>

4276. As a member of Office 870 and overseer of DK trade and commerce, KHIEU Samphan personally enabled the smooth functioning of the DK administration to the detriment of its population. For over two years after SUA Vasi *alias* Doeun's removal from Office 870 and as supervisor of commerce-related matters, KHIEU Samphan personally ensured that Doeun's responsibilities remained fulfilled.<sup>13953</sup> While the countryside was stricken by drought, and as cooperative and construction workers were deprived of adequate food<sup>13954</sup> and suffered under mandatory rice requisition policies of the Party Centre,<sup>13955</sup> KHIEU Samphan ensured that cooperatives handed over communally harvested rice for export.<sup>13956</sup> He received requests from zones for the delivery of goods, and responded to them with delivery orders. He received reports detailing the quantities of rice sent to state warehouses by the zones and the quantities of rice exported, ensuring that the maximum quantity was exported in accordance with CPK economic plans. He visited state warehouses where he inspected products destined for export,<sup>13957</sup> while personally supervising the import and export of goods in and out of DK.<sup>13958</sup>

<sup>13952</sup> See below, Section 18.2.2.3.3: Buddhists.

<sup>13953</sup> See above, para. 4225.

<sup>13954</sup> Section 10.1.7.3: Tram Kak Cooperatives: Rations and Communal Eating; Section 11.2.17.1: 1<sup>st</sup> January Dam Worksite: Living Conditions: Food (*see also*, paras 1450-1451); Section 16.1.4.1: Common Purpose, paras 3908, 3912-3913, 3926.

<sup>13955</sup> Section 10.1.7.3: Tram Kak Cooperatives: Rations and Communal Eating: High-Level Policy Documents.

<sup>13956</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 619.

<sup>13957</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 619-621.

<sup>13958</sup> Section 8.3.4.2: Roles and Functions – KHIEU Samphan: Oversight of Commerce; Section 16: Common Purpose, paras 3907, 3909, 3914.

4277. KHIEU Samphan's position of unique standing within the CPK and regular attendance at Standing Committee meetings gave him insight into the Party's operations. He participated in meetings at which cadres' fates were decided<sup>13959</sup> and contributed to the investigation and purge of others, including KANG Chap,<sup>13960</sup> while participating in a system he knew was arresting and executing members from its ranks.<sup>13961</sup> Further still, his silent assent to the mistreatment of civilians in cooperatives and worksites enabled the continued implementation of criminal policies against the DK population.<sup>13962</sup> To the outside world, however, KHIEU Samphan obscured the events inside DK and denied the perpetration of large-scale crimes.<sup>13963</sup>

4278. In light of the foregoing, the Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose, but that he personally enabled and controlled its implementation through the various policies.

#### 18.2.2. *Intent*

4279. The Chamber recalls that the intent must cover both the common purpose and the crimes it encompassed.<sup>13964</sup> The Chamber has found that KHIEU Samphan formed part of a plurality of persons who acted in unison to put into effect the common purpose.<sup>13965</sup> KHIEU Samphan's intent to participate in the common purpose is further demonstrated by the contribution he made thereto, which was aimed at furthering it (supporting and promoting the common purpose; encouraging, inciting and legitimising the underlying policies; and enabling, controlling and instructing on the common purpose's implementation through underlying policies) as described above. The Chamber now turns to assess whether KHIEU Samphan possessed the requisite *mens rea* for the crimes encompassed by the common purpose.

##### 18.2.2.1. Cooperatives and worksites

4280. The Chamber has found that the crimes against humanity of murder, enslavement, persecution on political grounds and the other inhumane acts of attacks

<sup>13959</sup> See above, para. 4228.

<sup>13960</sup> See above, para. 4234.

<sup>13961</sup> See above, paras 4219, 4221-4230.

<sup>13962</sup> See above, paras 4231, 4231-4235.

<sup>13963</sup> See above, para. 4253.

<sup>13964</sup> Section 15: Applicable Law: Individual Criminal Responsibility, para. 3712.

<sup>13965</sup> Section 16.4.5: Common Purpose: Legal Findings.

against human dignity and conduct characterised as enforced disappearances were variously established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.<sup>13966</sup> It has further found that, insofar as they were established at these sites, these crimes were encompassed by the common purpose as part of the policy to establish and operate cooperatives and worksites.<sup>13967</sup>

4281. KHIEU Samphan maintained his support of the common purpose throughout the DK period as it concerned the establishment and operation of cooperatives and worksites.<sup>13968</sup> In so doing, he participated in meetings at which plans for achieving three tonnes of rice per hectare were devised and discussed,<sup>13969</sup> publicly promoted the objective of achieving a “great leap forward” at a “pace never before attained”<sup>13970</sup> in order to transform the country into a “construction site”,<sup>13971</sup> and called for quotas and economic plans to be fulfilled and over-fulfilled at any cost.<sup>13972</sup> All the while, KHIEU Samphan knew that the population was being converted into a society of worker-peasants which was being forced to work communally,<sup>13973</sup> and was determined that by eating “gruel together” and working without rest, the population would industrialise the country in record time.<sup>13974</sup> His enthusiasm for the implementation of the CPK’s plans was not dampened by his knowledge of the appalling working and living conditions which were intentionally imposed at cooperatives and worksites throughout the country.<sup>13975</sup> To the contrary, he actively enabled this system to continue by overseeing the requisition and distribution of rice internationally, much to the detriment of the population.<sup>13976</sup> Furthermore, KHIEU Samphan encouraged cadres to assign more work to New People and to deprive them of adequate food while supporting the unequal treatment of class enemies perceived to be impeding the CPK’s progress.<sup>13977</sup> The

<sup>13966</sup> Section 10.1.13: Tram Kak Cooperatives: Legal Findings; Section 11.1.12: Trapeang Thma Dam Worksite: Legal Findings; Section 11.2.24: 1<sup>st</sup> January Dam Worksite: Legal Findings; Section 11.3.13: Kampong Chhnang Airfield Construction Site: Legal Findings.

<sup>13967</sup> Section 16.4.1: Common Purpose: “Control” and “Capture the People”: Movement of Population, Establishment of Cooperatives and Worksites.

<sup>13968</sup> See above, para. 4210.

<sup>13969</sup> See above, para. 4258.

<sup>13970</sup> See above, paras 4262, 4265-4266.

<sup>13971</sup> See above, para. 4265.

<sup>13972</sup> See above, paras 4214, 4267.

<sup>13973</sup> See above, para. 4210.

<sup>13974</sup> See above, paras 4211, 4267.

<sup>13975</sup> See above, paras 4215, 4231-4234.

<sup>13976</sup> See above, para. 4275.

<sup>13977</sup> See above, paras 4217, 4273.

Chamber finds that this establishes KHIEU Samphan's specific intent to discriminate against Party enemies on political grounds. In line with his support of the revolutionary framework concerning the treatment of enemies and particularly the principle of secrecy, the Chamber is satisfied that KHIEU Samphan intended that enemies were to be dealt with in secret.<sup>13978</sup>

4282. In light of the foregoing, the Chamber finds that KHIEU Samphan intended the commission of crimes at cooperatives and worksites. In particular, the evidence establishes that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, enslavement and the other inhumane act through attacks against human dignity and conduct characterised as enforced disappearances. In addition, and having established his specific intent to subject Party enemies to discrimination and adverse treatment, the Chamber finds that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds.

18.2.2.2. Security centres, execution sites and internal purges

4283. The Chamber has found that the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, persecution on political grounds and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances were variously established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres.<sup>13979</sup> It has further found that, insofar as they were established at these security centres, these crimes were encompassed by the common purpose as part of the policy to identify, arrest, isolate and "smash" enemies.<sup>13980</sup>

4284. The Chamber recalls that KHIEU Samphan contributed to nationwide purges, which the Chamber has found was inextricably intertwined with the policy to establish

<sup>13978</sup> See e.g., Section 16.4.2.1.2: "Smashing" of Enemies; Section 16.4.2.1.3: Re-education of "Bad Elements".

<sup>13979</sup> Section 12.2.24: S-21 Security Centre: Legal Findings; Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings; Section 12.4.7: Au Kanseng Security Centre: Legal Findings; Section 12.5.8: Phnom Kraol Security Centre: Legal Findings.

<sup>13980</sup> Section 16.4.2: Common Purpose: Establishment and Operation of Security Centres and Execution Sites.

and operate security centres and execution sites.<sup>13981</sup> KHIEU Samphan demonstrated acute knowledge of the circumstances of his fellow leaders' arrests. By virtue of his position of standing within the CPK, KHIEU Samphan knew of and supported the arrests of prominent Party leaders including at least four zone secretaries,<sup>13982</sup> Standing Committee members,<sup>13983</sup> former GRUNK minister HU Nim,<sup>13984</sup> formerly ranking CPK member KEO Meas,<sup>13985</sup> Office S-71 Chairman CHHIM Sam Aok *alias* Pang,<sup>13986</sup> Office 870 Chairman SUA Vasi *alias* Doeun,<sup>13987</sup> Division 170 Commander CHAN Chakrei<sup>13988</sup> and Division 170 Commander Chhouk.<sup>13989</sup>

4285. KHIEU Samphan urged cadres to identify enemies obstructing the work of the Party, urged seething anger and “vigilance” against them, and warned that traitors would be killed.<sup>13990</sup> The Chamber finds that KHIEU Samphan's conduct demonstrates his specific intent to discriminate against Party enemies on the basis of their perceived political affiliations. He supported the principle of secrecy, knew about the widespread arrests of people at bases on the basis of their real or perceived affiliation with enemies, was personally informed about arbitrary detentions and conditions of imprisonment in Preah Vihear and exercised his authority to extricate his relatives therefrom.<sup>13991</sup> Twenty-five years after the fall of Democratic Kampuchea, KHIEU Samphan still supported as “ever legitimate and necessary” the defence of revolutionary objectives ahead of individual human rights principles.<sup>13992</sup>

4286. Through incongruous and often contradictory statements, KHIEU Samphan betrayed his professed ignorance about the wide-scale executions which ravaged the country throughout the DK period. By defending POL Pot's methods as warranted in the circumstances, he implicitly but necessarily endorsed the arbitrary and secret arrest,

<sup>13981</sup> *See above*, para. 4219.

<sup>13982</sup> CHOU Chet (*see above*, paras 4228, 4258), SAO Phim (*see above*, para. 4229); KOY Thuon (*see above*, paras 4226, 4272); KANG Chap (*see above*, para. 4234). For RUOS Nhim and NEY Sarann, *see e.g.*, para. 4222.

<sup>13983</sup> VORN Vet (*see above*, para. 4229).

<sup>13984</sup> *See above*, para. 4227.

<sup>13985</sup> *See above*, para. 4226.

<sup>13986</sup> *See above*, para. 4272.

<sup>13987</sup> *See above*, para. 4225.

<sup>13988</sup> *See above*, para. 4226.

<sup>13989</sup> *See above*, para. 4226.

<sup>13990</sup> *See above*, para. 4272.

<sup>13991</sup> *See above*, paras 4231-4234.

<sup>13992</sup> Book by KHIEU S.: *Cambodia's Recent History and the Reasons Behind the Decisions I Made*, E3/18, p. 30, ERN (En) 00103738.

detention, torture and extrajudicial execution of his fellow CPK leaders. By deflecting the ultimate blame for atrocities onto zone secretaries, he sought to distance himself from the actions of the upper echelon, of which he himself formed part. By encouraging cadres to identify enemies and counter-revolutionary behaviour, KHIEU Samphan actively furthered the common purpose of rapidly implementing socialist revolution in order to, among other things, defend the country against enemies. By selectively exercising his authority to prevent the commission of crimes, he demonstrated his ability to avert the horrendous treatment and slaughter of his countrymen – something he was not willing to do for the others who perished under the CPK’s rule.

4287. In light of the foregoing, the Chamber finds that KHIEU Samphan intended the commission of crimes as part of the CPK’s policy of identifying, arresting, isolating and smashing enemies. In particular, the evidence establishes that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, extermination, enslavement, imprisonment, torture and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances. Having established that KHIEU Samphan specifically intended the discrimination and adverse treatment of Party enemies, the Chamber finds that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds.

### 18.2.2.3. Targeting of specific groups

#### 18.2.2.3.1. *Cham*

4288. The Chamber has found that the crime of genocide and the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious grounds, and the other inhumane act through forced transfer were established with respect to the treatment of the Cham.<sup>13993</sup> The Chamber has found that the foregoing crimes were encompassed by the common purpose as part of the CPK’s policy targeting the Cham for adverse treatment.<sup>13994</sup>

<sup>13993</sup> Section 13.2.10: Treatment of the Cham: Legal Findings.

<sup>13994</sup> Section 16.4.3.1: Common Purpose: Cham.

4289. The Chamber has found the treatment of this group at Wat Au Trakuon and Trea Village Security Centre constituted the implementation of the CPK's policy to identify, arrest, isolate and "smash" enemies.<sup>13995</sup> The Chamber has already addressed KHIEU Samphan's specific intent to discriminate against enemies on the basis of their real or perceived political affiliations, as well as his support of the policy to identify, arrest, isolate and "smash" enemies, including the crimes against humanity of imprisonment, torture, murder and extermination.<sup>13996</sup> The Chamber has also found that in the case of the Cham, discriminatory policies were implemented to disperse the group, restrict their religious and cultural practices and kill those members who resisted assimilation.<sup>13997</sup> The Chamber accordingly finds that KHIEU Samphan intended the commission of crimes as part of the CPK's policy targeting the Cham for adverse treatment. In particular, the evidence establishes that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious grounds and the other inhumane act of conduct characterised as forced transfer against the Cham.

4290. Concerning the crime of genocide by killing members of the Cham group, the Chamber observes that while it has established KHIEU Samphan's shared intent to commit, through a joint criminal enterprise, the underlying crime of murder against this group, no evidence was available to demonstrate, to the requisite standard, that KHIEU Samphan specifically intended to destroy the Cham ethnic and religious group, as such. Accordingly, the Chamber will not impute responsibility to KHIEU Samphan for this crime under the mode of liability of commission through a joint criminal enterprise.

#### 18.2.2.3.2. *Vietnamese*

4291. The Chamber has found that the crime of genocide and the crimes against humanity of murder, extermination, deportation and persecution on racial grounds were established with regard to the treatment of the Vietnamese. In addition, the Chamber has found that a number of grave breaches of the Geneva Conventions were also

<sup>13995</sup> Section 16: Common Purpose, para. 3993.

<sup>13996</sup> *See above*, Section 18.2.2.2: Security centres, execution sites and internal purges.

<sup>13997</sup> Sections 13.2.10: Treatment of the Cham: Legal Findings (*see* Sections 13.2.10.6 (persecution on religious grounds), 13.2.10.8 (other inhumane acts through conduct characterised as forced transfer)). These acts were encompassed by the common purpose. *See* Section 16: Common Purpose, paras 3996-3997.

established with regard to this group at S-21 Security Centre, including wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial and unlawful confinement.<sup>13998</sup> The Chamber has further found that these crimes were encompassed by the common purpose throughout the entire DK period, with the exception of deportation as a crime against humanity, which was limited to the period between 17 April 1975 and April 1977, and genocide by killing, which was limited to the period between April 1977 to 6 January 1979.<sup>13999</sup>

4292. The Chamber refers to KHIEU Samphan's statements about the Vietnamese, examined above in Section 18.1.2.3.2. In line with his calls to remove Vietnamese populations from Cambodia back to Vietnam in the early days of DK,<sup>14000</sup> the Chamber finds that KHIEU Samphan shared the intent of other JCE participants to deport Vietnamese populations to Vietnam, and thereby commit, through a joint criminal enterprise, the crime against humanity of deportation between 17 April 1975 and April 1977.

4293. The Chamber also considers that KHIEU Samphan's words and actions during the DK period evince his contempt for the Vietnamese and direct intent to kill, on a large scale, the Vietnamese in Cambodia from April 1977 through 6 January 1979.<sup>14001</sup> The Chamber accordingly finds that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crimes against humanity of murder and extermination against the Vietnamese in DK. Further, the Chamber is satisfied that the intent to kill was the result of KHIEU Samphan's specific intent to discriminate against the Vietnamese on racial grounds. It accordingly finds that KHIEU Samphan shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on racial grounds, and that the intended discriminatory acts were the deliberate killings of Vietnamese on a large scale.

4294. Furthermore, the Chamber considers that KHIEU Samphan's words and actions during the DK period demonstrate his genocidal intent to destroy the Vietnamese as a

<sup>13998</sup> Section 13.3.10: Treatment of the Vietnamese: Legal Findings.

<sup>13999</sup> Section 16.4.3.2: Common Purpose: Targeting of Specific Groups: Vietnamese.

<sup>14000</sup> See above, para. 4237.

<sup>14001</sup> See above, para. 4238.



racial, national and ethnic group, as such.<sup>14002</sup> In line with its findings in the preceding paragraph, the Chamber finds that the means by which this group was to be destroyed was through killing of Vietnamese in DK on a large scale. The Chamber accordingly finds that KHIEU Samphan shared the genocidal intent of other JCE members to commit, through a joint criminal enterprise, the crime of genocide by killing members of the Vietnamese racial, national and ethnic group.

4295. Lastly, the Chamber has found that KHIEU Samphan knew of the protected status of Vietnamese prisoners at S-21 Security Centre,<sup>14003</sup> supported the revolutionary framework concerning enemies and shared the intent of other JCE members to commit, through a joint criminal enterprise, crimes underlying the policy to establish security centres and execution sites.<sup>14004</sup> It accordingly finds that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, grave breaches of the Geneva Conventions against Vietnamese prisoners at S-21 Security Centre, including through wilful killing; torture; inhumane treatment; wilfully causing great suffering or serious injury to body or health; wilfully depriving prisoners of war or civilians of the rights of a fair and regular trial; and unlawful confinement.

#### 18.2.2.3.3. *Buddhists*

4296. The Chamber has found that the crime against humanity of persecution on religious ground was established as part of the CPK's policy targeting Buddhist monks for adverse treatment.<sup>14005</sup> It has further found that this crime was encompassed by the common purpose.<sup>14006</sup>

4297. The Chamber recalls that KHIEU Samphan fortified the FUNK and GRUNK façade that obscured the CPK's operations after 17 April 1975, initially by praising the *Sangha* for its contributions to the revolution and maintaining the impression of normalcy under the new regime. This proved to be little more than subterfuge aimed at

<sup>14002</sup> KHIEU Samphan's lasting ire at the group is emphatically demonstrated in a 2007 interview wherein he lambasts the Vietnamese as aggressors and Vietnam as a "gigantic S-21" while nonchalantly dismissing the "little S-21 over here". See Documentary by D. Aronowitsch and S. Lindberg: *Facing Genocide – Khieu Samphan and Pol Pot*, E3/4201R, ERN V00720414, 01:15:10-01:17:23.

<sup>14003</sup> Section 4.1: Factual Overview of the Temporal Scope of Case 002/02 (including the Nature of the Armed Conflict), para. 339.

<sup>14004</sup> Section 16.4.2: Establishment and Operation of Security Centres and Execution Sites.

<sup>14005</sup> Section 10.1.13: Tram Kak Cooperatives: Legal Findings.

<sup>14006</sup> Section 16.4.3.3: Common Purpose: Targeting of Specific Groups: Buddhists.

shoring up the legitimacy of the interim CPK-dominated government which, behind the scenes, was defrocking monks in large numbers. KHIEU Samphan supported the charade of normalcy before discontinuing any mention of the monkhood while at the same time urging the arrangement of marriages in a fashion fundamentally inconsistent with Buddhist traditions.<sup>14007</sup>

4298. The Chamber is satisfied that KHIEU Samphan's actions demonstrate his specific intent to discriminate against Buddhists on the basis of their membership of that religious group. His steadfast support of the CPK's policies and concurrent concealment of their implementation demonstrates his intent to eliminate Buddhism in Cambodia, a necessary component of which was the defrocking of monks. The Chamber finds that the evidence establishes that KHIEU Samphan shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on religious grounds.

#### 18.2.2.3.4. *Former Khmer Republic officials*

4299. The Chamber has found that the crime against humanity of persecution on political grounds was established at the Tram Kak Cooperatives between 20 April 1975 and late May 1975, and from early 1977 through 6 January 1979 at 1<sup>st</sup> January Dam, S-21 Security Centre and Kraing Ta Chan Security Centre.<sup>14008</sup> It has further found that the crime was encompassed by the common purpose throughout the DK period as part of the CPK's policy targeting former Khmer Republic officials for adverse treatment.<sup>14009</sup>

4300. The Chamber has found that KHIEU Samphan was instrumental in ensuring the CPK's victory on 17 April 1975.<sup>14010</sup> He called for the execution of the Khmer Republic leadership and was a staunch supporter of the Party's discriminatory policies throughout the DK period. The Chamber finds that KHIEU Samphan shared the specific intent of other JCE participants to discriminate against all officials of the former Khmer

<sup>14007</sup> See above, paras 4240-4243, 4268.

<sup>14008</sup> Section 10.1.13: Tram Kak Cooperatives: Legal Findings; Section 11.2.24: 1<sup>st</sup> January Dam Worksite: Legal Findings; Section 12.2.24: S-21 Security Centre: Legal Findings, Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings.

<sup>14009</sup> Section 16: Common Purpose, paras 4058-4060. The Chamber recalls that in this context, "officials" includes former Khmer Republic civil servants and military personnel.

<sup>14010</sup> See above, paras 4244-4245.

Republic on the basis of their political status, in particular their perceived ability to stage a counter-revolution. The Chamber is also satisfied that, in line with his disposition toward the revolutionary framework, KHIEU Samphan specifically intended that all former Khmer Republic officials be subjected to adverse treatment. The Chamber therefore finds that KHIEU Samphan shared the specific intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of persecution on political grounds against former Khmer Republic officials throughout the DK period.

4301. Further, the Chamber has found that the crime against humanity of murder was established with respect to former Khmer Republic officials at S-21 and Kraing Ta Chan Security Centres.<sup>14011</sup> It has found that, insofar as the crime was committed at these locations between 20 April 1975 and late May 1975 and from October 1975 through 6 January 1979, it was encompassed by the common purpose.<sup>14012</sup>

4302. KHIEU Samphan calls alongside HU Nim and HOU Youn in 1972 to “eliminate” high-ranking Khmer Republic officials and their subordinates mirrored his later assertion that the object of the revolution was to “eliminate the Lon Nol regime” – including the capitalists, feudalists and intellectuals who occupied its ranks – and that those who betrayed the Party or the revolution would be killed.<sup>14013</sup> These calls were reflective of events at both S-21 and Kraing Ta Chan Security Centres, where former Khmer Republic officials and their families were screened out for execution through lists and biographies.<sup>14014</sup> The Chamber is satisfied that former Khmer Republic officials (including soldiers and civil servants) and their families were subject to the CPK’s policy to identify, arrest, isolate and “smash” the most serious category of enemy, and that in this regard, KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of murder.

<sup>14011</sup> Section 12.2.24: S-21 Security Centre: Legal Findings, Section 12.3.12: Kraing Ta Chan Security Centre: Legal Findings.

<sup>14012</sup> Section 16: Common Purpose, paras 4051-4057.

<sup>14013</sup> See above, paras 4244, 4272.

<sup>14014</sup> Section 12.2.18: S-21 Security Centre: Former Khmer Republic Officials; Section 12.3.11.3: Kraing Ta Chan Security Centre: New People and Former Khmer Republic Officials.

18.2.2.4. Regulation of marriage

4303. The Chamber has found that the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage was established as part of the CPK's nationwide policy to regulate marriage.<sup>14015</sup> It has further found that these crimes were encompassed by the common purpose.<sup>14016</sup>

4304. KHIEU Samphan openly advocated for the rapid increase of DK's population and concomitantly encouraged the population to divest themselves of personal sentiment toward their parents in favour of *Angkar*. He personally instructed that all ministries were to arrange marriages so that couples could produce children for the ultimate defence of the country.<sup>14017</sup>

4305. In light of the foregoing, the Chamber finds that KHIEU Samphan intended the commission of crimes as part of the CPK's nationwide policy regulating marriage. In particular, the evidence establishes that KHIEU Samphan shared the intent of other JCE members to commit, through a joint criminal enterprise, the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage.

18.2.3. **Conclusion on Joint Criminal Enterprise**

4306. Having considered the evidence before it, the Chamber is satisfied that KHIEU Samphan participated in the common purpose. As the face of DK, KHIEU Samphan supported and promoted the common purpose, and encouraged, incited and legitimised its implementation through criminal policies. He further instructed cadres on their implementation while enabling and controlling the same. Accordingly, the Chamber finds that KHIEU Samphan made a significant contribution to the commission of crimes perpetrated by CPK cadres within the scope of Case 002/02. Having established that direct perpetrators acted to further the common purpose at the behest or command of other JCE participants,<sup>14018</sup> and having established that KHIEU Samphan shared the

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<sup>14015</sup> Section 14.4: Regulation of Marriage: Legal Findings.

<sup>14016</sup> Section 16.4.4: Common Purpose: Regulation of Marriage.

<sup>14017</sup> See above, para. 4248.

<sup>14018</sup> Section 16.1.4.5: Common Purpose: Legal Findings.

intent of other JCE members to commit crimes underlying the common purpose,<sup>14019</sup> the Chamber finds that KHIEU Samphan committed, through a joint criminal enterprise (in its basic form), the crimes against humanity of murder (insofar as murder with direct intent was established at the Trapeang Thma Dam and 1<sup>st</sup> January Dam Worksites, the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to the Vietnamese and Cham); extermination (as established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to Vietnamese and Cham); deportation (as established with respect to the treatment of the Vietnamese); enslavement (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong Chhnang Airfield Construction Site and the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres); imprisonment (as established at the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to the treatment of the Cham); torture (as established at S-21 and Kraing Ta Chan Security Centres and with respect to the treatment of the Cham); persecution on political grounds (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site, the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres, and with respect to former Khmer Republic officials and the Cham), persecution on religious grounds (as established with respect to Buddhists at the Tram Kak Cooperatives and the Cham); persecution on racial grounds (as established with respect to Vietnamese, including at the Tram Kak Cooperatives, S-21 and Au Kanseng Security Centres); the other inhumane acts of attacks against human dignity (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong Chhnang Airfield Construction Site and the S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres), other inhumane acts through conduct characterised as enforced disappearances (as established at the Tram Kak Cooperatives, Trapeang Thma Dam Worksite, 1<sup>st</sup> January Dam Worksite, Kampong Chhnang Airfield Construction Site and the Kraing Ta Chan and Phnom Kraol Security Centres), forced transfer (as established with respect to the Cham), forced marriage and rape in the context of forced marriage (as established within the context of the nationwide regulation of marriage).

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<sup>14019</sup> See above, Section 18.2.2: Commission through a Joint Criminal Enterprise: Intent.

4307. The Chamber further finds that KHIEU Samphan committed, through a joint criminal enterprise, the crime of genocide by killing members of the Vietnamese ethnic, national and racial group and committed, through a joint criminal enterprise, the grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial and unlawful confinement of a civilian under the Geneva Conventions at S-21 Security Centre.

4308. The Chamber has found that the evidence did not establish KHIEU Samphan's specific intent to destroy the Cham ethnic and religious group, as such. Accordingly, the Chamber finds that KHIEU Samphan is not responsible for committing, through a joint criminal enterprise, the crime of genocide by killing members of the Cham group.

### **18.3. Other Modes of Liability**

4309. In addition to the commission of crimes through a joint criminal enterprise, the Closing Order charges KHIEU Samphan with planning, instigating, ordering and aiding and abetting crimes (as delimited by the Case 002 Additional Severance Decision). In the alternative to these modes of liability, the Closing Order charges KHIEU Samphan under the mode of superior responsibility.<sup>14020</sup>

4310. The Chamber observes that the Closing Order does not particularise specific facts under the present modes of liability.<sup>14021</sup> Nevertheless, it notes that all the modes of liability under which KHIEU Samphan has been charged share a common factual base, much of which has been discussed above in Section 18.2: Commission through a Joint Criminal Enterprise. Because the Closing Order charges all possible forms of responsibility in respect of each charge, the Chamber may choose under which form or forms of responsibility to assess the evidence in respect of each Accused. The Chamber is not obliged to make exhaustive factual findings on each and every charged form of responsibility,<sup>14022</sup> and accordingly, will not do so in the present case. Moreover, where an accused is found to be both directly responsible and responsible as a superior in

<sup>14020</sup> Closing Order, paras 1543-1560; Case 002 Additional Severance Decision Annex, para. 6(ii).

<sup>14021</sup> See e.g., Closing Order, paras 1543-1545, 1547-1548, 1550-1551, 1553-1554.

<sup>14022</sup> Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 472; *Milutinović et al.* Trial Judgement, para. 76 (Volume I).

relation to the same conduct, the Chamber will convict on the basis of the former and consider an accused's superior position as an aggravating factor in sentencing.<sup>14023</sup>

4311. Having considered all of the evidence and in light of KHIEU Samphan's role in the joint criminal enterprise, the Chamber finds that commission through a joint criminal enterprise most accurately and appropriately reflects KHIEU Samphan's responsibility for the crimes that fall within the common purpose. For these crimes, the Chamber will therefore not analyse KHIEU Samphan's responsibility under the other, additionally charged, modes of liability. Regarding the crime against humanity of murder committed with *dolus eventualis* as established at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre, the Chamber recalls that it does not fall within the common purpose. The Chamber will consider KHIEU Samphan's responsibility for these crimes under the mode of aiding and abetting, as the Chamber finds that this most accurately reflects KHIEU Samphan's role vis-à-vis these murders. Similarly, the Chamber will assess KHIEU Samphan's responsibility for the crime of genocide as charged regarding the Cham, under the mode of aiding and abetting. Finally, where appropriate, the Chamber will consider KHIEU Samphan's position as a superior for sentencing purposes.

### 18.3.1. *Aiding and Abetting*

4312. As a preliminary matter, the Chamber recalls that the present mode of liability does not require the existence of a plan or agreement between the aider or abettor and the perpetrator. Instead, it requires that the accused knew that a crime would likely be committed; that his or her conduct assisted or facilitated the commission of the crime; and that he or she was aware of the essential elements of the crime committed. The accused need not have shared the perpetrator's intent to commit the crime, including the specific intent, where applicable.<sup>14024</sup>

<sup>14023</sup> Section 15.1: Applicable Law: Individual Criminal Responsibility, para. 3702; Case 002/01 Trial Judgement, para. 688; Case 001 Trial Judgement, para. 539; *Blaškić* Appeal Judgement, para. 91.

<sup>14024</sup> Section 15.6: Applicable Law: Aiding and Abetting, para. 3722.

4313. KHIEU Samphan attended and participated in various meetings of the CPK leadership at which at which economic plans, irrigation initiatives and the implementation of the CPK's policies were planned and discussed. Notably, KHIEU Samphan attended meetings of the Standing Committee at which the implementation of the policy concerning cooperatives (including the Tram Kak Cooperatives) and worksites (including 1<sup>st</sup> January Dam, Trapeang Thma Dam and Kampong Chhnang Airfield) were discussed was monitored.<sup>14025</sup> By his attendance, KHIEU Samphan morally supported and implicitly encouraged the decision-making apparatus which continued to push forth with the planning and implementation of criminal initiatives.

4314. In public, KHIEU Samphan openly and actively encouraged and provided moral support to CPK cadres in the implementation of the Party Centre's policies at any and every cost. Through his speeches, pronouncements, instructions and lectures during the DK period, KHIEU Samphan variously lauded the labour force "working day and night" and "without rest" to build the country, impelled the population to fulfil or overfulfil" the CPK's economic plans and maintain targets set by the Party "under all circumstances".<sup>14026</sup> Through his visits to cooperatives and worksites, KHIEU Samphan observed the abject living and working conditions of worker-peasants, including starvation, illness and disease.<sup>14027</sup> As the moral guarantor of the DK, KHIEU Samphan's presence at cooperatives and worksites legitimised the absolute implementation of criminal policies. His subsequent praise encouraged cadres to continue implementing conditions which would achieve the Party's objectives regardless of the impact upon the newly-forged worker-peasants.

4315. In light of the foregoing and the considerations discussed above,<sup>14028</sup> the Chamber is satisfied that KHIEU Samphan knew that deaths would likely result from the conditions imposed at cooperatives and worksites. By his acts, KHIEU Samphan provided encouragement and moral support which had a substantial effect on the deaths of workers at cooperatives and worksites, and was at all times aware of the essential elements of the crimes committed by direct perpetrators. The Chamber therefore finds

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<sup>14025</sup> See above, para. 4258.

<sup>14026</sup> See above, paras 4265-4267.

<sup>14027</sup> See above, paras 4213-4216. See also, Section 16: Common Purpose, paras 3910-3916.

<sup>14028</sup> See above, Section 18.1.1: Awareness of the Substantial Likelihood of the Commission of Crimes.



that KHIEU Samphan facilitated the commission of the crime against humanity of murder (through *dolus eventualis*) at cooperatives and worksites.

4316. Turning to the commission of this crime at security centres and within the context of internal purges, the Chamber recalls that KHIEU Samphan was apprised of the arrest, imprisonment, mistreatment and execution of real or perceived enemies or the CPK.<sup>14029</sup> As a result of his position of unique standing within the Party, KHIEU Samphan attended and supported meetings of decision-making bodies where the fates of enemies were discussed, and participated in the CPK's decision-making processes.<sup>14030</sup> He also openly called for the execution of those who betrayed the Party or revolution.<sup>14031</sup> As discussed above, KHIEU Samphan was generally aware of the conditions of starvation, the deprivation of adequate or effective medicine and mistreatment of real or perceived enemies of the CPK by cadres at cooperatives and worksites across DK in the absolute implementation of the Party's policies.<sup>14032</sup> The Chamber is satisfied that KHIEU Samphan knew of the substantial likelihood that this practice extended to security centres.

4317. In view of his knowledge about various high and low-level purges, and his shared intent to commit, through a joint criminal enterprise, the crime against humanity of murder against such persons,<sup>14033</sup> the Chamber is satisfied that KHIEU Samphan knew that deaths would likely result from the conditions imposed at security centres. By his acts, KHIEU Samphan provided practical assistance and moral support to the Party Centre in the formulation and execution of this policy. These acts had a substantial effect on the commission of crimes by CPK cadres, and KHIEU Samphan was at all times aware of the essential elements of the crimes committed by direct perpetrators. The Chamber therefore finds that KHIEU Samphan assisted and facilitated the commission of the crime against humanity of murder (through *dolus eventualis*) at security centres and within the context of internal purges.

<sup>14029</sup> See above, Section 18.1.2.2: Knowledge Concurrent with the Commission of Crimes: Security Centres, Execution Sites and Internal Purges.

<sup>14030</sup> See above, paras 4221-4234.

<sup>14031</sup> See above, para. 4272.

<sup>14032</sup> See above, para. 4314.

<sup>14033</sup> See above, Section 18.2.2.2: Knowledge Concurrent with the Commission of Crimes: Security Centres, Execution Sites and Internal Purges. See also, Section 18.1.1: Awareness of the Substantial Likelihood of the Commission of Crimes.

4318. In view of the foregoing, the Chamber finds that KHIEU Samphan is responsible for aiding and abetting the crime against humanity of murder committed with *dolus eventualis* at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site and the S-21, Kraing Ta Chan and Phnom Kraol Security Centres.

4319. With regard to the crime of genocide by killing members of the Cham ethnic and religious group, the Chamber recalls that while aiding and abetting does not require that an accused share the perpetrator's intent to commit the crime, including specific intent, the applicable law requires that the accused nevertheless assisted or facilitated the commission of crimes by providing practical assistance, encouragement or moral support which has a substantial effect on the commission of the crime. While the evidence demonstrated the KHIEU Samphan was aware of the underlying crimes of murder and extermination of Cham populations – and shared the intent of other JCE members to commit, through a joint criminal enterprise, these crimes – the evidence did not rise to the level of proving that KHIEU Samphan actively assisted or facilitated the execution of the genocidal policy against the Cham. The Chamber is therefore not satisfied that KHIEU Samphan aided and abetted the crime of genocide by killing members of the Cham ethnic and religious group. Further, the Chamber is not satisfied that the totality of KHIEU Samphan's conduct, as presented during the course of Case 002/02 with respect to the Cham, is appropriately characterised under the modes of planning, instigating or ordering. Accordingly, the Chamber will not impute responsibility for the crime of genocide by killing members of the Cham ethnic and religious group under the modes of liability of planning, instigating, ordering or aiding and abetting.

### 18.3.2. *Superior Responsibility*

4320. The crimes committed within the scope of Case 002/02 were carried out by CPK cadres and RAK personnel under the direct authority of their commanders, zone and sector secretaries. The Chamber has found that while KHIEU Samphan participated in meetings where CPK policies were discussed, and had the ability to influence others through political seminars, public statements and radio announcements in his various capacities, he did not have sufficient authority to directly order the perpetration of crimes. In the circumstances, the Chamber concludes that KHIEU Samphan did not

have effective control prior to or during the commission of crimes within the scope of Case 002/02, and therefore had no accompanying duty to prevent the crimes.

4321. The Chamber next considers KHIEU Samphan's effective control, in fact or in law, after the commission of the crimes, and whether he had any accompanying duty to punish the perpetrators. Although KHIEU Samphan held various titles between 17 April 1975 and 6 January 1979,<sup>14034</sup> there is no evidence that he issued any orders to the direct perpetrators of the crimes under examination in Case 002/02. The evidence does not demonstrate that KHIEU Samphan exercised effective control over the direct perpetrators of the crimes by virtue of his positions or through his contributions to the crimes encompassed by the common purpose.

4322. Further, within the Party structures, it was NUON Chea, not KHIEU Samphan, who had the responsibility for disciplining Party members.<sup>14035</sup> KHIEU Samphan was a candidate member and, as of January 1976, a full-rights member of the Central Committee. However, this body had no ultimate decision-making authority; rather, it was the Standing Committee which was vested with this authority throughout the DK period.<sup>14036</sup> The Chamber has found that the principle of democratic centralism afforded KHIEU Samphan the opportunity to participate in meetings of the Party Centre,<sup>14037</sup> in particular the Standing Committee, however this falls short of establishing that he exercised effective control over the perpetrators of crimes.

4323. Despite overseeing the Commerce Committee from late October 1976, exercising considerable oversight and being fully apprised of DK trade and commerce matters, KHIEU Samphan's role was limited to administrative functions within that role.<sup>14038</sup> The Chamber considers that KHIEU Samphan did not exercise effective control as part of his functions as supervisor of DK commerce matters.

4324. Finally, the Chamber notes KHIEU Samphan's continuing proximity to senior leaders throughout the time period relevant to Case 002/02, his continuing importance within the CPK and significant contribution to the commission of crimes, in particular

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<sup>14034</sup> Section 8.3: Roles and Functions – KHIEU Samphan: Roles During the DK Period.

<sup>14035</sup> Section 7.5: Roles and Functions – NUON Chea: Roles in Propaganda and Other Related Matters.

<sup>14036</sup> Section 5.1.2: Standing Committee and Central Committee.

<sup>14037</sup> Section 5.1.9: Democratic Centralism.

<sup>14038</sup> Section 8.3.4.2: Roles and Functions – KHIEU Samphan: Oversight of Commerce.

his regular attendance at and participation in meetings of the Standing Committee. The Chamber is not satisfied that this evidence leads to the conclusion that he exercised effective control. Partially substantial influence alone does not establish effective control within a command structure.<sup>14039</sup>

4325. Having considered the totality of the evidence, the Chamber is not satisfied that KHIEU Samphan was a superior in the sense of having had the ability to decide upon and take measures to prevent or punish the commission of crimes. Indeed, other reasonable inferences may be drawn from his overall role which militate against such a finding. The Chamber accordingly dismisses the charge that KHIEU Samphan is responsible as a superior for the crimes committed within the scope of Case 002/02.

#### **18.4. Overall Conclusion on Individual Criminal Responsibility**

4326. The Chamber has found that KHIEU Samphan committed, through a joint criminal enterprise: (a) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and other inhumane acts through attacks against human dignity, conduct characterised as enforced disappearances, forced transfer, forced marriage and rape within the context of forced marriage; (b) the crime of genocide by killing members of the Vietnamese ethnic, national and racial group; and (c) grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial and unlawful confinement of a civilian under the Geneva Conventions at S-21 Security Centre.<sup>14040</sup>

4327. Accordingly, the Chamber enters a conviction for the commission of crimes through a joint criminal enterprise for which KHIEU Samphan shared the direct, discriminatory and specific intent of other JCE members.

4328. Additionally, with respect to the deaths of workers and peasants at cooperatives, worksites and security centres as a result of *dolus eventualis* (which were not encompassed by the common purpose), the Chamber has found that KHIEU Samphan

<sup>14039</sup> *Delalić et al.* Appeal Judgement, paras 258, 266.

<sup>14040</sup> See above, Section 18.2.3: Conclusion on Joint Criminal Enterprise.

aided and abetted the crime against humanity of murder at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre.<sup>14041</sup> In the present circumstances, the Chamber finds that KHIEU Samphan's conduct is most appropriately characterised under the mode of aiding and abetting and accordingly enters a conviction for aiding and abetting the crime against humanity of murder with *dolus eventualis* at the above sites.

4329. Finally, the Chamber has found that KHIEU Samphan is not responsible for the crime of genocide by killing members of the Cham ethnic and religious group.

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<sup>14041</sup> See above, Section 18.3.1: Aiding and Abetting.

## 19. CUMULATIVE CONVICTIONS

### 19.1. Applicable Law

4330. Where the same Accused's conduct fulfils the elements of different offences, the Chamber must evaluate the impact of cumulative convictions. Cumulative convictions serve to "describe the full culpability of a particular accused or provide a complete picture of his criminal conduct".<sup>14042</sup> Where a Chamber has made findings of guilt on more than one statutory crime arising out of the same acts or omissions on the part of the accused, a conviction for each crime is permissible only if each of them has a materially distinct element that the other crimes in question do not.<sup>14043</sup> When this is not the case, a Chamber must convict the accused only of the crime with the more specific element or elements.<sup>14044</sup> In applying the cumulative convictions test, a Chamber must compare, in the abstract, all the general requirements of the statutory crimes in question, including *chapeau* elements, as well as the elements of the charged underlying offences, to determine whether each crime as a matter of law, requires proof of an element that the others do not.<sup>14045</sup>

### 19.2. Summary of the Accused Convictions

4331. The Chamber has found NUON Chea and KHIEU Samphan individually criminally responsible for committing, through a joint criminal enterprise: (a) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity, conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage; (b) the crime of genocide by killing members of the Vietnamese ethnic, national and racial group; and (c) grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of

<sup>14042</sup> Case 002/01 Trial Judgement, para. 1055 quoting *Kunarac et al.* Appeal Judgement, para. 169. See also, Case 001 Appeal Judgement, para. 330.

<sup>14043</sup> Case 001 Appeal Judgement, paras 318, 332; *Delalić et al.* Appeal Judgement, para. 412.

<sup>14044</sup> Case 001 Appeal Judgement, para. 298; *Delalić et al.* Appeal Judgement, para. 413.

<sup>14045</sup> Case 001 Appeal Judgement, paras 325-326.

a fair and regular trial and unlawful confinement of a civilian under the Geneva Conventions at S-21 Security Centre.<sup>14046</sup>

4332. The Chamber has further found that NUON Chea and KHIEU Samphan aided and abetted the crime against humanity of murder committed with *dolus eventualis* at Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre.<sup>14047</sup>

4333. Finally, the Chamber has found NUON Chea individually responsible as a superior for the crime of genocide by killing members of the Cham ethnic and religious group.<sup>14048</sup>

**19.3. Cumulative Convictions Under Articles 4 (Genocide), 5 (Crimes Against Humanity) and 6 (Grave Breaches of the Geneva Conventions) of the ECCC Law**

4334. The Chamber notes the well-established case law on the permissibility of cumulative convictions for the crime of genocide and crimes against humanity on the basis that each crime contains a materially distinct element not contained in the other.<sup>14049</sup> More specifically, genocide requires proof of an intent to destroy, in whole or in part, a national, ethnical, racial or religious group which is not required as regards crimes against humanity.<sup>14050</sup> The latter requires proof that the crime was committed as part of a widespread or systematic attack against a civilian population, an element not required for genocide.<sup>14051</sup>

4335. Additionally, grave breaches of the Geneva Conventions under Article 6 require proof of a nexus between the acts of the accused and the existence of an international armed conflict, and that the victim or victims belong to a group of persons having

<sup>14046</sup> Section 17: The Criminal Responsibility of NUON Chea, para. 4198; Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4326-4327.

<sup>14047</sup> Section 17: The Criminal Responsibility of NUON Chea, para. 4199; Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4328.

<sup>14048</sup> Section 17: The Criminal Responsibility of NUON Chea, para. 4200.

<sup>14049</sup> See e.g., *Tolimir* Appeal Judgement, para. 610; *Musema* Appeal Judgement, paras 366-367; *Nahimana et al.* Appeal Judgement, paras 1029-1030.

<sup>14050</sup> Section 9.3: Applicable Law: Genocide, para. 797.

<sup>14051</sup> Section 4.2.2.1: Widespread or Systematic Attack against a Civilian Population.

protected status under the Geneva Conventions.<sup>14052</sup> Genocide and crimes against humanity do not require this materially distinct element.

4336. Cumulative convictions for genocide under Article 4, crimes against humanity under Article 5 and grave breaches of the Geneva Conventions under Article 6 based on the same criminal conduct are therefore permissible.

#### **19.4. Cumulative Convictions Within Article 5 (Crimes Against Humanity) of the ECCC Law**

4337. In relation to S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres and with respect to the treatment of the Vietnamese and the Cham, some of the Chamber's findings on the crimes against humanity of murder and extermination are based on the same deliberate killings.<sup>14053</sup> Both murder and extermination require death by intentional act or omission.<sup>14054</sup> While murder has no other elements, extermination additionally requires deaths on a massive scale.<sup>14055</sup> Accordingly, extermination, as the more specific offence, subsumes murder.<sup>14056</sup> The Chamber will therefore enter convictions only for extermination in relation to S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres and with respect to the treatment of the Vietnamese and the Cham when based on the same killings.

4338. The ECCC case law further established that there may be cumulative convictions reached for the crime against humanity of persecution and other underlying acts constituting crimes against humanity on the basis of the same criminal conduct.<sup>14057</sup> It was specifically established that extermination (encompassing murder), enslavement,

<sup>14052</sup> Section 4.3: General Requirements for Grave Breaches of the Geneva Conventions of 1949 Listed in Article 6 of the ECCC Law; Section 12.2.24.1.1: S-21 Security Centre: Legal Findings: Murder. *See also*, Case 001 Trial Judgement, para. 562 referring to *Kordić and Čerkez* Trial Judgement, paras 820, 821, 824; *Kordić and Čerkez* Appeal Judgement, para. 1037.

<sup>14053</sup> Section 12.2.24.1.2: S-21 Security Centre: Legal Findings: Extermination; Section 12.3.12.1: Kraing Ta Chan Security Centre: Legal Findings: Murder; Section 12.3.12.2: Kraing Ta Chan Security Centre: Legal Findings: Extermination; Section 12.4.7.1: Au Kanseng Security Centre: Legal Findings: Murder; Section 12.4.7.2: Au Kanseng Security Centre: Legal Findings: Extermination; Section 12.5.8.1: Phnom Kraol Security Centre: Legal Findings: Murder; Section 12.5.8.2: Phnom Kraol Security Centre: Legal Findings: Extermination; Section 13.2.10.1: Treatment of the Cham: Legal Findings: Murder; Section 13.2.10.2: Treatment of the Cham: Legal Findings: Extermination; Section 13.3.10.1: Treatment of the Vietnamese: Legal Findings: Murder; Section 13.3.10.2: Treatment of the Vietnamese: Legal Findings: Extermination.

<sup>14054</sup> Section 9.1: Applicable Law: Crimes Against Humanity, paras 627, 630, 655, 657.

<sup>14055</sup> Section 9.1.2: Applicable Law: Crimes Against Humanity: Extermination, para. 655.

<sup>14056</sup> Case 002/01 Trial Judgement, para. 1057.

<sup>14057</sup> Case 001 Appeal Judgement, para. 316.



imprisonment, torture, other inhumane acts and persecution each have a materially distinct element not contained in the other, and therefore, can lead to cumulative convictions on the basis of the same criminal conduct.<sup>14058</sup> The same reasoning applies to the crime of deportation, which requires proof of forced displacement of persons across a border,<sup>14059</sup> a materially distinct element that none of the other crimes against humanity require. As a result, cumulative convictions for the crimes against humanity of extermination (encompassing murder), deportation, enslavement, imprisonment, torture, persecution and other inhumane acts are permissible.

**19.5. Cumulative Convictions within Article 6 (Grave Breaches of the Geneva Conventions) of the ECCC Law**

4339. In relation to S-21, some of the Chamber's findings on the grave breaches of inhuman treatment and wilfully causing great suffering or serious injury to body or health are based on the same conduct.<sup>14060</sup> The Chamber recalls that acts which constitute wilfully causing great suffering or serious injury to body or health will simultaneously constitute inhumane treatment.<sup>14061</sup> The two crimes require proof of an intentional infliction of serious bodily or mental harm.<sup>14062</sup> The grave breach of inhuman treatment, as a residual category, does not require proof of any additional, materially distinct element. The constitutive elements of wilfully causing great suffering or serious injury to body or health, on the other hand, rise to a specific level of seriousness.<sup>14063</sup> Accordingly, wilfully causing great suffering or serious injury to body or health, as the more specific offence, subsumes inhuman treatment and the Chamber will therefore enter convictions only for wilfully causing great suffering or serious injury to body or health in relation to S-21 when based on the same conduct.

<sup>14058</sup> Case 001 Appeal Judgement, para. 332 (extermination (encompassing murder), enslavement, imprisonment, torture, other inhumane acts and persecution are permissible); Case 002/01 Trial Judgement, paras 1059-1060 (cumulative convictions for persecution on political grounds, extermination and other inhuman acts (comprising forced transfer, enforced disappearances and attacks against human dignity) are permissible).

<sup>14059</sup> Section 9.1.4: Applicable Law: Crimes Against Humanity: Deportation, para. 674. *See also, Stakić* Trial Judgement, para. 360; *Krajišnik* Appeal Judgement, paras 390-391.

<sup>14060</sup> Section 12.2.24.2.3: S-21 Security Centre: Legal Findings: Inhumane Treatment; Section 12.2.24.2.4: Wilfully Causing Great Suffering or Serious Injury to Body or Health.

<sup>14061</sup> Section 9.2.3: Applicable Law: Grave Breaches of the Geneva Conventions of 1949, para. 761; Case 001 Trial Judgement, para. 442.

<sup>14062</sup> Section 9.2: Applicable Law: Grave Breaches of the Geneva Conventions of 1949, paras 761, 763, 766, 768.

<sup>14063</sup> Section 9.2: Applicable Law: Grave Breaches of the Geneva Conventions of 1949, para. 761.

4340. The remaining categories of grave breaches of the Geneva Conventions for which the Accused have been found individually criminally responsible all require proof of a materially distinct element. Therefore, cumulative convictions for wilful killing, torture, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of a fair and regular trial and unlawful confinement of a civilian are permissible.

### **19.6. Conclusion**

4341. In light of the above, the Chamber convicts the Accused of all the crimes for which they have been found individually responsible, save for the following instances:

- (i) When the Accused have been found, based on the same criminal conduct, individually responsible of murder and extermination as crimes against humanity at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol Security Centres and with respect to the treatment of the Vietnamese and the Cham. In light of the law on cumulative convictions as set out above, the Chamber will enter a conviction for extermination only regarding these crimes.
- (ii) When the Accused have been found, based on the same criminal conduct, individually responsible of inhuman treatment and wilfully causing great suffering or serious injury to body or health as grave breaches of the Geneva Conventions at S-21. In light of the law on cumulative convictions as set out above, the Chamber will enter a conviction for wilfully causing great suffering or serious injury to body or health only regarding these crimes.

## 20.SENTENCING

### 20.1. Submissions

4342. The Co-Prosecutors submit that in evaluating the gravity of the crimes committed, the Chamber should consider, among other things, the number and vulnerability of the victims, the impact of the crimes upon them and their relatives, the discriminatory intent of the Accused when not already an element of the crime, the scale and brutality of the offences, the role played by the convicted person, and the geographic and temporal scope of victimisation.<sup>14064</sup> In this regard, the Co-Prosecutors submit that KHIEU Samphan and NUON Chea each played unique and critical roles in contributing to the JCE and the crimes alleged.<sup>14065</sup> As to aggravating circumstances, the Co-Prosecutors submit that the Accused were situated at the CPK's "apex of authority" during the regime, and that due to their intelligence and education, they were fully able to grasp the nature and seriousness of their acts.<sup>14066</sup> They further submit that there are no relevant mitigating factors as there is no evidence of diminished mental capacity or duress, neither Accused has cooperated with the court beyond their legally-required attendance at hearings, and they have not demonstrated sincere remorse or accepted personal responsibility for what occurred.<sup>14067</sup> Further, the age and health of both Accused provide no ground for mitigation, given the gravity of the crimes and the aggravating factors. The Co-Prosecutors therefore request that the Trial Chamber sentence NUON Chea and KHIEU Samphan to life imprisonment for the crimes proved in Case 002/02.<sup>14068</sup>

4343. The NUON Chea Defence seeks acquittal on all charges.<sup>14069</sup> It makes no submissions as to aggravating or mitigating circumstances in its Closing Brief and Closing Statement. During the trial in Case 002/02, while NUON Chea stated that he was remorseful for the suffering that occurred and that he accepted moral responsibility

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<sup>14064</sup> Co-Prosecutors' Closing Brief, para. 1224.

<sup>14065</sup> Co-Prosecutors' Closing Brief, para. 1225.

<sup>14066</sup> Co-Prosecutors' Closing Brief, paras 1227-1228; T. 15 June 2017 (Closing Statements), E1/522.1, pp. 115-119.

<sup>14067</sup> Co-Prosecutors' Closing Brief, paras 1230-1232; T. 15 June 2017 (Closing Statements), E1/522.1, pp. 118-120.

<sup>14068</sup> Co-Prosecutors' Closing Brief, para. 1233; T. 15 June 2017 (Closing Statements), E1/522.1, p. 120.

<sup>14069</sup> NUON Chea Closing Brief, para. 1215.

as one of the most senior leaders of the CPK, he maintained his innocence as to the alleged crimes.<sup>14070</sup> He did not make a closing statement in Case 002/02.<sup>14071</sup>

4344. During Case 002/01, NUON Chea stated that while he “share[d] the responsibility as the leaders of this regime”, he had “no role whatsoever” in the executive branch. He stated that he was aware of certain things, and unaware of others.<sup>14072</sup> NUON Chea testified that bad elements within the cooperatives destroyed supplies, and that the party did not have the authority to smash anyone, stating “the allegation that people were killed or genocide was committed is not real”.<sup>14073</sup> NUON Chea denied any connection with S-21 or being a Duch’s superior. The Accused stated that he spent his life carrying out duties to serve country and people, and that he did not have any authority or connection with the commission of crimes during the DK period.<sup>14074</sup>

4345. The KHIEU Samphan Defence seeks acquittal on all charges, but does not address aggravating or mitigating factors.<sup>14075</sup> KHIEU Samphan made a closing statement in which he acknowledged the suffering of the Civil Parties and bowed in memory of all innocent victims, “but also to all those who perished by believing in a better ideal of the brighter future and who died during the five-year war under the American bombardments and the conflict with the Vietnamese invaders”.<sup>14076</sup> He acknowledged that life was hard in the cooperatives, but noted that those in senior positions believed they had a right to accuse and punish other people.<sup>14077</sup> KHIEU Samphan explained that Cambodia was emerging from an unprecedented crisis and noted the urgency of rebuilding the economy and the adverse impact of a drought of 1978 and the conflict with Vietnam.<sup>14078</sup> He claimed to have no knowledge of policies regarding discrimination, the fate of minorities and the practice of religions during the DK regime.<sup>14079</sup> KHIEU Samphan further denied that the CPK exterminated its own

<sup>14070</sup> T. 17 October 2014, E1/242.1, pp. 69-70.

<sup>14071</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 12.

<sup>14072</sup> T. 30 May 2013, E1/199.1, p. 19.

<sup>14073</sup> T. 13 December 2011, E1/21.1, pp. 31-34, 42-43.

<sup>14074</sup> T. 18 April 2012, E1/63.1, pp. 3-4; T. 31 October 2013 (Closing Statements), E1/237.1, pp. 2-4.

<sup>14075</sup> KHIEU Samphan Closing Brief, para. 2511; T. 21 June 2017 (Closing Statements), E1/526.1, p. 52.

<sup>14076</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 38.

<sup>14077</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 34.

<sup>14078</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 34-35.

<sup>14079</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 36-37.

people, attributing this charge to Vietnamese propaganda.<sup>14080</sup> During Case 002/01 hearings, KHIEU Samphan answered questions from Civil Parties and offered his condolences to them, but repeatedly stated that he was not a leader, had no real authority, and was not aware of the “such great loss”.<sup>14081</sup>

## **20.2. Applicable Law**

### ***20.2.1. ECCC Provisions and Sentencing Framework***

4346. Rule 98(5) of the Internal Rules provides that “[i]f the accused is found guilty, the Chamber shall sentence him or her in accordance with the Agreement, the ECCC Law and these [Internal Rules]”. Article 10 of the ECCC Agreement provides that “[t]he maximum penalty for conviction for crimes falling within the jurisdiction of the Extraordinary Chambers shall be life imprisonment”. Article 39 (new) of the ECCC Law provides additional guidance as follows:

Those who committed any crime as provided in Articles 3 new, 4, 5, 6, 7 and 8 [of the ECCC Law] shall be sentenced to a prison term from five years to life imprisonment.

In addition to imprisonment, the [Trial Chamber] may order the confiscation of personal property money and real property acquired unlawfully or by criminal conduct.

The confiscated property shall be returned to the State.<sup>14082</sup>

4347. The ECCC Agreement, the ECCC Law and the Internal Rules are largely silent as to principles and factors to be considered at sentencing. Therefore, the Chamber will exercise its own discretion in determining the sentence justified in the particular circumstances and in accordance with Article 33 of the ECCC Law will seek guidance from both relevant international and Cambodian sentencing principles and factors.<sup>14083</sup>

<sup>14080</sup> T. 23 June 2017 (Closing Statements), E1/528.1, p. 37.

<sup>14081</sup> See e.g., T. 23 May 2013, E1/196.1, pp. 17-18; T. 27 May 2013, E1/198.1, pp. 18-19, 22, 29, 54-55; T. 30 May 2013, E1/199.1, pp. 16-17, 80-81.

<sup>14082</sup> See also, Article 38 of the ECCC Law (all penalties shall be limited to imprisonment) and Article 189 of the Cambodian Criminal Code 2009 (crimes against humanity shall be punishable by life imprisonment).

<sup>14083</sup> Case 001 Trial Judgement, paras 575, 578; Case 002/01 Trial Judgement, para. 1066. See also, Case 002/01 Appeal Judgement, para. 1107 quoting *Dragomir Milosevic* Appeal Judgement, para. 297 (“[T]rial Chambers are vested with broad discretion in determining the appropriate sentence”).

### 20.2.2. *Relevant Sentencing Principles and Factors*

4348. In reducing crimes of considerable enormity and scope to an individualised sentence, the Chamber seeks to reassure the surviving victims, their families, the witnesses and the general public that the law is effectively implemented and enforced, and applies to all regardless of status or rank.<sup>14084</sup> Sentencing further serves the purposes of deterrence, both to the accused and more generally,<sup>14085</sup> and punishment, though not revenge.<sup>14086</sup> The sentence must be proportionate and individualised in order to reflect the culpability of the accused based on an objective, reasoned and measured analysis of the accused's conduct and its consequential harm.<sup>14087</sup> These principles are also recognised and applicable in Cambodian law.<sup>14088</sup>

4349. In determining the appropriate sentence, the gravity of the crime committed is the “litmus test”<sup>14089</sup> and requires “consideration of the particular circumstances of the case, as well as the form and degree of the participation of the [a]ccused in the crime”.<sup>14090</sup> The Supreme Court Chamber has identified the following factors as being relevant to an assessment of the gravity of a crime: the number and the vulnerability of victims; the impact of the crimes upon them and their relatives; the discriminatory intent of the convicted person when it is not already an element of the crime; the scale and the brutality of the offences; and the role played by the convicted person.<sup>14091</sup>

<sup>14084</sup> Case 002/01 Trial Judgement, para. 1067. *Cf.* Case 001 Trial Judgement, para. 579; *Kordić & Čerkez* Appeal Judgement, paras 1073, 1080.

<sup>14085</sup> Case 002/01 Trial Judgement, para. 1067; *Kordić & Čerkez* Appeal Judgement, paras 1073, 1076-1078.

<sup>14086</sup> Case 002/01 Trial Judgement, para. 1067; Case 001 Trial Judgement, para. 580; *Kordić & Čerkez* Appeal Judgement, paras 1073, 1075.

<sup>14087</sup> Case 002/01 Trial Judgement, para. 1067; Case 001 Trial Judgement, para. 580; *Furundžija* Appeal Judgement, para. 249; *Prlić et al.* Appeal Judgement, para. 3341; *Popović et al.* Appeal Judgement, para. 1998; *Šainović et al.* Appeal Judgement, para. 1839; *Nikolić* Sentencing Appeal Judgement, para. 19.

<sup>14088</sup> See Article 96 of the Cambodian Criminal Code 2009; Case 001 Trial Judgement, para. 581.

<sup>14089</sup> Case 002/01 Trial Judgement, para. 1068; Case 001 Trial Judgement, para. 582, *citing* *Aleksovski* Appeal Judgement, para. 182; Case 002/01 Appeal Judgement, para. 1118.

<sup>14090</sup> Case 002/01 Trial Judgement, para. 1068; Case 001 Trial Judgement, para. 582, *citing* *Stakić* Appeal Judgement, para. 380. *See also*, Rule 145(1)(c) of the ICC Rules of Procedure and Evidence. Similarly, Article 96 of the Cambodian Criminal Code 2009 provides that in imposing a penalty, account must be taken of the seriousness and circumstances of the offence and the character of the accused; Case 002/01 Appeal Judgement, paras 1112, 1118.

<sup>14091</sup> Case 002/01 Trial Judgement, para. 1068; Case 001 Appeal Judgement, para. 375; Case 002/01 Appeal Judgement, para. 1118.

4350. Moreover, the Chamber will consider all relevant aggravating and mitigating factors in determining a sentence.<sup>14092</sup> Aggravating factors must be proved by the Co-Prosecutors to the same standard as that required for a conviction and only circumstances directly related to the commission of the offence charged, and for which the accused has been convicted, will be considered to be aggravating. An element of the underlying offence cannot be taken into account as an aggravating factor.<sup>14093</sup> Further, the same fact cannot be used both to demonstrate the gravity of the crime and as an aggravating factor.<sup>14094</sup> Finally, the Chamber adopts the useful guidelines regarding aggravating factors set out in Rule 145(2)(b) of the ICC's Rules of Procedure and Evidence, where relevant to the instant case:

(i) [a]ny relevant prior criminal convictions for crimes under the jurisdiction of the [ICC] or of a similar nature; (ii) abuse of power or official capacity; (iii) commission of the crime where the victim is particularly defenceless; (iv) commission of the crime with particular cruelty or where there were multiple victims; (v) commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3 [*i.e.*, gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status]; (vi) other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.<sup>14095</sup>

4351. The Supreme Court Chamber has affirmed that the Trial Chamber may consider abuse of a position of authority as an aggravating circumstance, particularly where a person uses such a position to contribute to a criminal purpose. It stated that what matters is the manner in which the authority is exercised.<sup>14096</sup> It has also affirmed the consideration of a person's high level of education as an aggravating factor.<sup>14097</sup>

4352. The jurisprudence of other international tribunals has established that the burden of proof on an accused with regard to mitigating factors is a lower standard than on

<sup>14092</sup> Aggravating and mitigating factors are also considered in sentencing under Cambodian law. *See e.g.*, Articles 77-82 and 93 of the Cambodian Criminal Code 2009.

<sup>14093</sup> Case 002/01 Trial Judgement, para. 1069; Case 001 Trial Judgement, para. 583; *Blaškić* Appeal Judgement, para. 693.

<sup>14094</sup> Case 002/01 Trial Judgement, para. 1069; Case 001 Trial Judgement, para. 583; *Deronjić* Judgement on Sentencing Appeal, paras 106-107.

<sup>14095</sup> Case 002/01 Trial Judgement, para. 1069, *citing* ICC Rules of Procedure and Evidence, Rule 145(2)(b).

<sup>14096</sup> Case 002/01 Appeal Judgement, para. 1113.

<sup>14097</sup> Case 002/01 Appeal Judgement, para. 1114.

prosecution for aggravating factors.<sup>14098</sup> Mitigating factors may be taken into account regardless of whether they are directly related to the alleged offence or not.<sup>14099</sup> Rule 145(2)(a) of the ICC's Rules of Procedure and Evidence identifies the following mitigating factors, which the Chamber again adopts:

(i) The circumstances falling short of constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court.<sup>14100</sup>

4353. It is within the Trial Chamber's discretion to determine what additional factors may be considered mitigating and how much weight, if any, is to be accorded to these factors.<sup>14101</sup>

4354. The Supreme Court Chamber has also recognised that a person's good character may constitute a mitigating factor in sentencing.<sup>14102</sup> It nonetheless upheld the Trial Chamber's conclusion in Case 002/01 that specific instances of fair treatment of others cannot play a significant part in mitigating crimes of particularly severe gravity.<sup>14103</sup>

4355. The Chamber notes that, in accordance with established international jurisprudence, the decision of the Accused to remain silent at certain times during the trial was not considered an aggravating factor in determining their sentences.<sup>14104</sup>

### 20.2.3. *The Impact of Multiple Convictions in the Same Proceedings*

4356. There are no provisions in the ECCC Agreement, the ECCC Law or the Internal Rules indicating whether the Chamber may impose a single sentence following conviction for multiple offences in the same case, where each conviction is based on

<sup>14098</sup> Case 002/01 Trial Judgement, para. 1070; Case 001 Trial Judgement, para. 584; *Blaškić* Appeal Judgement, para. 687, fn. 1466.

<sup>14099</sup> Case 002/01 Trial Judgement, para. 1070; Case 001 Trial Judgement, para. 584; *Blaškić* Appeal Judgement, para. 696.

<sup>14100</sup> ICC Rules of Procedure and Evidence, Rule 145(2)(a).

<sup>14101</sup> *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, ICC Appeals Chamber (ICC-01/05-01/13 A6 A7 A8 A9), Judgement on the appeals of the Prosecutor, Mr Jean-Pierre Bemba Gombo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled "Decision on Sentence pursuant to Article 76 of the Statute", 8 March 2018, para. 187.

<sup>14102</sup> Case 002/01 Appeal Judgement, para. 1115.

<sup>14103</sup> Case 002/01 Appeal Judgement, para. 1115.

<sup>14104</sup> Case 002/01 Trial Judgement, para. 1071; *Blaškić* Appeal Judgement, para. 687; *Delalić et al.* Appeal Judgement, para. 783; *Limaj et al.* Trial Judgement, para. 729.



distinct criminal conduct.<sup>14105</sup> In its previous judgements, however, the Trial Chamber has held that where an accused is convicted of multiple offences, a single sentence which reflects the totality of the criminal conduct must be imposed.<sup>14106</sup> The Trial Chamber sees no reason to depart from this jurisprudence which is fully consistent with Cambodian law, in particular with Article 137 of the 2009 Cambodian Criminal Code.<sup>14107</sup>

#### 20.2.4. *The Impact of Further Convictions in Case 002/02*

4357. Case 002/02 is the first instance at the ECCC where the same Accused have been convicted on criminal counts in two trials resulting from the severance of proceedings in Case 002. In view of the fact that the Accused are already serving a life sentence for the criminal convictions in Case 002/01 and that such sentence is the maximum penalty foreseen by the ECCC legal framework, the Chamber must now consider whether it must impose a separate sentence for the Accused's convictions in Case 002/02.

4358. There are no provisions in the ECCC Law, ECCC Agreement or Internal Rules applicable to the present situation. The Chamber notes that sentencing guidelines at the international level concerning this specific matter are limited and finds it appropriate to first consider the relevant provisions of Cambodian law. Deference to sentencing practice at the domestic level is a common practice before international courts. For example, both the ICTY and ICTR rules instruct the court to consider "the general

<sup>14105</sup> The Chamber notes that this issue differs from that of cumulative convictions, which pertains to whether an Accused person may be convicted of different crimes on the basis of the same underlying act or acts, and which has already been addressed. *See* Section 19: Cumulative Convictions, paras 4330, 4334-4341.

<sup>14106</sup> Case 002/01 Trial Judgement, para. 1072; Case 001 Trial Judgement, para. 590. In Case 001, the Trial Chamber entered a sentence of 35 years for all of the convictions proved. *See* Case 001 Trial Judgement, para. 679. The Supreme Court Chamber found that this was a manifestly inadequate sentence, augmenting it to life imprisonment. It nonetheless, entered a single sentence for all convictions. *See* Case 001 Appeal Judgement, para. 383. In Case 002/01, the Trial Chamber likewise entered a single sentence of life imprisonment against each Accused without specifying the sentences for individuals crimes. *See* Case 002/01 Trial Judgement, para. 1105. Although the Supreme Court Chamber reversed several convictions in that case, it affirmed a single life sentence imposed against each Accused. *See* Case 002/01 Appeal Judgement, paras 1117, 1121.

<sup>14107</sup> Cambodian Criminal Code 2009, Article 137 ("If, in the course of a single prosecution, the accused is found guilty of several concurrent offences, each of the penalties incurred may be imposed. However, if several penalties of a similar nature are incurred, only one such penalty not exceeding the highest maximum penalty allowed by law shall be imposed.").

practice regarding prison sentences in the courts of [the domestic state]”.<sup>14108</sup> The rationale for deferring to sentencing regimes at the domestic level is equally, if not more, compelling in the context of chambers such as the ECCC established within the existing court structure of Cambodia. It is only when there is good reason that the ECCC should deviate from the Cambodian sentencing regime.<sup>14109</sup>

4359. Article 138 of the Cambodian Criminal Code provides that where an Accused is convicted of concurrent offences<sup>14110</sup> in separate prosecutions, “the sentences imposed for the offences shall run cumulatively (*i.e.* consecutively) *to the extent of the highest maximum penalty allowed by law*”.<sup>14111</sup> Where the highest maximum penalty of life imprisonment has already been imposed in one proceeding, particularly when that proceeding is final following the completion of any appeal process, in practice any subsequent penalty of the same nature imposed in later trials in relation to offences concurrent to those adjudicated in the initial proceeding is automatically aggregated or combined with the previous sentence. Accordingly, the convicted person will serve a single sentence. In such circumstances, French law refers to a situation of *confusion automatique des peines*.<sup>14112</sup> This concept of *confusion des peines* has been imported

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<sup>14108</sup> ICTY Rules of Procedure and Evidence, Rule 101(B)(iii); ICTR Rules of Procedure and Evidence, Rule 101(B)(iii). The ICTY Appeals Chamber has explained that “Trial Chambers have to take into account the sentencing practices in the former Yugoslavia and, should they depart from the sentencing limits set in those practices, *must give reasons for such departure*”. See *Nikolić Sentencing Appeal Judgement*, para. 69 (emphasis added). The statute of the Special Court for Sierra Leone which is an hybrid court, also directs the trial chamber to have recourse, where appropriate, to sentencing practice in the national courts of Sierra Leone and the ICTR (article 19).

<sup>14109</sup> Case 001 Appeal Judgement, Partially Dissenting Joint Opinion of Judges Agnieszka KLONOWIECKA-MILART and Chandra Nihal JAYASINGHE, paras 26-27.

<sup>14110</sup> Cambodian Criminal Code 2009, Article 136. The Chamber notes that the English translation of this provision is misleading. It provides that “Offences are said to be concurrent where an offence is committed by a person who has not yet been finally tried for another offence.” This suggests that the offences are concurrent where the trial of the primary offence(s) has not yet concluded when the person commits a further offence. However, the Khmer provision provides “មានបទល្មើសត្រូវត្រួតគ្នាទៅវិញទៅមក កាលបើ បទល្មើសមួយត្រូវបានប្រព្រឹត្តដោយបុគ្គលម្នាក់ មុនពេលដែលបុគ្គលនេះត្រូវបានផ្តន្ទាទោសជាស្ថាពរចំពោះបទល្មើស មួយផ្សេងទៀត”, indicating that where the *commission* of the primary and a secondary offence occurs prior to a final conviction of the primary offence, the offences are considered to be concurrent. This understanding is confirmed by the French provision which served as a model for Article 136 of the Cambodian Criminal Code 2009. It provides: “Il y a concours d’infractions lorsqu’une infraction est commise par une personne avant que cette personne n’ait été définitivement jugée pour une autre infraction”.

<sup>14111</sup> Cambodian Criminal Code 2009, Articles 136, 138 (emphasis added).

<sup>14112</sup> Cambodian Criminal Code 2009, Article 138. Although the English translation of this provision could be more clear, the French Penal Code, upon which the Cambodia criminal code is modelled, is more explicit. Article 132-5 of the French Penal Code provides: “Pour l’application des articles 132-3 et 132-4, les peines privatives de liberté sont de même nature et toute peine privative de liberté est confondue avec une peine perpétuelle”. Translated in English, Article 132-5 means that “For the purposes

into Cambodian law, but it can also in effect be reconciled with the common law notion of “concurrent sentence”, which refers to a sentence served at the same time as one another. In both cases, the results are similar as the highest maximum penalty allowed by law must be served.

4360. In the present case, as the crimes within the scope of Cases 002/01 and 002/02 are “concurrent offences” in the sense of Cambodian law and both Accused have already been sentenced to life imprisonment in Case 002/01, the imposition of any further prison sentence in Case 002/02 would lead to the imposition of a concurrent sentence of up to life imprisonment. In other words, pursuant to the concept of *confusion des peines* these sentences will be aggregated to be served as a unique sentence of life imprisonment. However, as the sentences imposed must reflect the totality of the criminal conduct of the Accused,<sup>14113</sup> the Chamber now considers the criminal conduct in Case 002/02 in order to clarify which factors have been taken into account in order to determine the appropriate sentence for each of the Accused in this case.

#### 20.2.5. *Gravity of the Crimes*

4361. The Chamber will now turn to the factors it has identified as being relevant to determine the gravity of the crimes.<sup>14114</sup> In doing so, it will have recourse to all factual findings made in this verdict and highlight some of the most illustrative evidence.

##### 20.2.5.1. *Number and vulnerability of victims, scale and brutality of crimes*

4362. The Chamber recalls the large number of victims, the fact that many victims were extremely vulnerable, the disastrous impact of the crimes upon them and their relatives, as well as the massive scale and brutality of these crimes.

4363. The Chamber has found that over ten thousand individuals were arrested, imprisoned and killed at S-21 (at least 11,742), Kraing Ta Chan (at least 1,000), Au

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of articles 132-3 and 132-4, all custodial sentences are of a similar nature and all custodial sentences run concurrently within a life sentence.”

<sup>14113</sup> Case 001 Trial Judgement, paras 586-590; Case 002/01 Trial Judgement, para. 1072.

<sup>14114</sup> See above, para. 4349.

Kanseng (at least 111) and Phnom Kraol (two) Security Centres.<sup>14115</sup> Hundreds of the prisoners were Vietnamese civilians and soldiers.<sup>14116</sup> A large number of victims died at worksites due to the starvation rations, unhygienic conditions and unsafe work environments.<sup>14117</sup> Particularly vulnerable populations, even those who posed no threat to CPK governance, including the wives, family members and children of those identified as enemies, were imprisoned and often killed.<sup>14118</sup> Weakened by inadequate food, sickness and brutal work conditions, workers who failed to meet work demands were arrested and executed or disappeared in large numbers.<sup>14119</sup>

4364. The CPK systems of mistreatment permeated every aspect of life as the able-bodied were conscripted and enslaved at worksites and cooperatives throughout the country. Tens of thousands of workers were enslaved at the Tram Kak Cooperatives (about 8,000), Trapeang Thma Dam Worksite (10 to 20 thousand), 1<sup>st</sup> January Dam Worksite (about 20,000), and the Kampong Chhnang Airfield Construction Site (“thousands”).<sup>14120</sup> Young children were forced to work in cooperatives and worksites.<sup>14121</sup> At the security centres forming part of this case, hundreds of individuals were forced to take part in the system of mistreatment by supporting cadres as carpenters, interpreters, cooks, medics, mechanics, construction workers, artists, etc.<sup>14122</sup>

4365. The conditions at security centres were appalling as detainees were constantly shackled, were rarely able to wash, and were forced to excrete into a small, shared

<sup>14115</sup> Section 12.2: S-21 Security Centre, paras 2542, 2569, 2571; Section 12.3: Kraing Ta Chan Security Centre, paras 2807-2810, 2817, 2819; Section 12.4: Au Kanseng Security Centre, paras 2967-2968; Section 12.5: Phnom Kraol Security Centre, paras 3115-3117.

<sup>14116</sup> Section 12.2: S-21 Security Centre, para. 2479. *See also*, Section 12.4: Au Kanseng Security Centre, para. 2959.

<sup>14117</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1384-1385, 1387; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1670-1671; Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1800-1803, 1805.

<sup>14118</sup> Section 12.2: S-21 Security Centre, para. 2566; Section 12.3: Kraing Ta Chan Security Centre, para. 2812; Section 12.5: Phnom Kraol Security Centre, para. 3128.

<sup>14119</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1378-1379 (those identified as enemies were killed pursuant to *Ta Val*’s orders), 1401; Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1703.

<sup>14120</sup> Section 10.1: Tram Kak Cooperatives, paras 1151, 1155; Section 11.1: Trapeang Thma Dam Worksite, paras 1262, 1392-1402; Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1732, 1736, 1810-1817.

<sup>14121</sup> Section 10.1: Tram Kak Cooperatives, paras 1153, 1196; Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1614.

<sup>14122</sup> Section 12.2: S-21 Security Centre, para. 2573; Section 12.3: Kraing Ta Chan Security Centre, para. 2822; Section 12.4: Au Kanseng Security Centre, paras 2919, 2972; Section 12.5: Phnom Kraol Security Centre, para. 3121.

container.<sup>14123</sup> They were provided with very little thin gruel, were forced to remain silent and were regularly beaten; some were raped.<sup>14124</sup>

4366. Conditions at worksites were also extremely brutal as workers were forced to meet very demanding work requirements by strictly manual labour and under gruelling hours, both night and day.<sup>14125</sup> Workers were provided measly rations and contaminated drinking water while those who fell ill were provided with ineffective medicines and were accused of feigning sickness.<sup>14126</sup> A large number of the workers died at these worksites due to the imposition of these harsh conditions.<sup>14127</sup>

4367. At security centres, torture was institutionalised and imposed on a massive scale in order to obtain forced confessions.<sup>14128</sup> Methods of torture were extremely brutal at S-21.<sup>14129</sup> The prisoners were particularly vulnerable as they were imprisoned without any legal protection and in an environment created to instil fear.<sup>14130</sup>

4368. Large numbers of former Khmer Republic officials, New People, Jarai, and other perceived enemies were subjected to mistreatment and worse conditions, such as smaller food rations than Base People.<sup>14131</sup> Under a strict regime of enforced work, restricted freedoms and threats for deviating from the Party line, a large number of

<sup>14123</sup> Section 12.2: S-21 Security Centre, paras 2363-2366; Section 12.3: Kraing Ta Chan Security Centre, para. 2730; Section 12.4: Au Kanseng Security Centre, paras 2902, 2912.

<sup>14124</sup> Section 12.2: S-21 Security Centre, paras 2367-2369 (thin gruel and beatings); Section 12.3: Kraing Ta Chan Security Centre, paras 2732, 2738 (beatings and sexual assault). Although conditions at Au Kanseng and Phnom Kraol Security Centres were not shown to be as severe, they were nonetheless inhumane. *See* Section 12.4: Au Kanseng Security Centre, paras 2902, 2904, 3004; Section 12.5: Phnom Kraol Security Centre, para. 3102 (physical mistreatment and interrogations).

<sup>14125</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1384.

<sup>14126</sup> Section 11.1: Trapeang Thma Dam Worksite, paras 1298, 1384, 1415.

<sup>14127</sup> Section 11.1: Trapeang Thma Dam Worksite, para. 1384.

<sup>14128</sup> Section 12.2: S-21 Security Centre, paras 2590, 2594; Section 12.3: Kraing Ta Chan Security Centre, paras 2747, 2829.

<sup>14129</sup> Section 12.2: S-21 Security Centre, paras 2363-2402, 2597. Such included beatings with sticks, rods, rattan, bamboo, tree branches, electrical wire, whips and other tools; the use of electroshocks; suffocation through covering the head with a plastic bag; waterboarding; and the extraction of toenails and fingernails. Prisoners were cursed at and humiliated during interrogations and some were also forced to eat excrement and pay homage to images of dogs.

<sup>14130</sup> Section 12.2: S-21 Security Centre, para. 2592.

<sup>14131</sup> Section 10.1: Tram Kak Cooperatives, paras 1175-1177; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1688-1690; Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1822; Section 11.1: Trapeang Thma Dam Worksite, para. 1409; Section 12.3: Au Kanseng Security Centre, paras 2984, 2986.

people disappeared from their respective locations, be they cooperatives, worksites or security centres never to be seen again.<sup>14132</sup>

4369. Certain crimes were intended to damage the social fabric of Cambodian society, undermining a sense of well-being and security. For example, families were divided and children separated from their parents.<sup>14133</sup> In addition, hundreds of monks were publicly defrocked, Buddhist symbols and pagodas destroyed, eliminating a class of people who were venerated and a way of life which had served an important cultural and religious purpose for much of the country.<sup>14134</sup> The elimination of traditional marriage guided by a relationship of trust between parents and children, in favour of a regime of forced marriage overseen by CPK cadres, further disrupted the social fabric.<sup>14135</sup> Women who were forced to marry were raped as they were physically forced, or coerced, to have sexual intercourse with their new husbands.<sup>14136</sup> The Chamber considers that CPK policies which undermined traditional sources of emotional and psychological comfort in the face of mistreatment, famine and the disappearance of loved ones, further exacerbates the gravity of these crimes.

4370. A large number of Vietnamese were expelled from Tram Kak District, and Prey Veng province and sent to Vietnam without their consent in 1975 and 1976.<sup>14137</sup> The policies targeting Vietnamese, their deportation and killing of a large number of this racial/ethnic group, led the Chamber to conclude that there was a specific intent to destroy Vietnamese as such.<sup>14138</sup> The gravity of genocide cannot be overstated.

4371. Cham were systematically targeted through their identification, arrest, torture, killing and/or disappearance.<sup>14139</sup> Entire Cham families, including women and children,

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<sup>14132</sup> Section 10.1: Tram Kak Cooperatives, paras 1152, 1201; Section 11.2: 1<sup>st</sup> January Dam Worksite, para. 1710; Section 11.3: Kampong Chhnang Airfield Construction Site, para. 1841; Section 11.1: Trapeang Thma Dam Worksite, paras 1365, 1394, 1416, 1424.

<sup>14133</sup> Section 10.1.7.5.3: Tram Kak Cooperatives: Dislocation of Families; Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1543, 1611, 1614, 1621; Section 11.1: Trapeang Thma Dam Worksite, para. 1263 (fn. 4312).

<sup>14134</sup> Section 10.1: Tram Kak Cooperatives, paras 1183-1184.

<sup>14135</sup> Section 10.1: Tram Kak Cooperatives, para. 1186; Section 14: Regulation of Marriage, paras 3688-3691.

<sup>14136</sup> Section 14.3.8: Regulation of Marriage: Consummation of Marriage.

<sup>14137</sup> Section 10.1: Tram Kak Cooperatives, para. 1159; Section 13.3: Treatment of the Vietnamese, paras 3435-3436, 3507.

<sup>14138</sup> Section 13.3: Treatment of the Vietnamese, paras 3518-3519.

<sup>14139</sup> Section 13.2: Treatment of the Cham, paras 3276, 3304.

were arrested and disappeared.<sup>14140</sup> The Cham way of life was also under direct attack as the CPK prohibited their language, dress and the practice of Islam.<sup>14141</sup> Mosques were closed and destroyed, Korans were burnt and Cham people forced to eat pork.<sup>14142</sup>

#### 20.2.5.2. *Victim impact*

4372. The victims of the crimes in Case 002/02, and their families, suffered extreme physical, emotional and psychological damage as a result of these crimes. Tens of thousands of direct victims lost their lives.<sup>14143</sup> When victims' families learned of the deaths of their loved ones, it caused them deep suffering.<sup>14144</sup> In other instances, victims were arrested and disappeared, compounding a sense of loss for their families with the uncertainty of their loved one's fate.<sup>14145</sup>

4373. Victims at cooperatives suffered immediate and long-term mental and physical suffering.<sup>14146</sup> In particular, the separation of families had a strong emotional impact on many victims with particularly harsh consequences for children.<sup>14147</sup> Victims at worksites were physically injured or fell ill because of overwork and unhygienic conditions.<sup>14148</sup> They suffered from hunger due to insufficient food and lived under constant fear that they would be arrested or killed.<sup>14149</sup> Victims were enslaved by the CPK, dehumanised and made to feel like animals.<sup>14150</sup>

4374. The methods of torture implemented at security centres caused intense physical and psychological pain to victims.<sup>14151</sup> The family members of those killed at security centres suffered long-term emotional suffering, loneliness and material harm.<sup>14152</sup>

<sup>14140</sup> Section 13.2: Treatment of the Cham, paras 3219, 3299-3300.

<sup>14141</sup> Section 13.2: Treatment of the Cham, paras 3230-3231, 3246, 3249, 3255, 3328.

<sup>14142</sup> Section 13.2: Treatment of the Cham, para. 3328.

<sup>14143</sup> *See above*, para. 4363.

<sup>14144</sup> Section 21: Civil Party Reparations, paras 4440, 4444, 4448-4449.

<sup>14145</sup> Section 21: Civil Party Reparations, para. 4442.

<sup>14146</sup> Section 21: Civil Party Reparations, para. 4440.

<sup>14147</sup> Section 21: Civil Party Reparations, para. 4440.

<sup>14148</sup> Section 21: Civil Party Reparations, paras 4443-4445.

<sup>14149</sup> Section 21: Civil Party Reparations, para. 4443.

<sup>14150</sup> Section 21: Civil Party Reparations, paras 4443-4444.

<sup>14151</sup> Section 21: Civil Party Reparations, paras 4446-4447; Section 12.2: S-21 Security Centre, paras 2591-2592, 2594.

<sup>14152</sup> Section 21: Civil Party Reparations, para. 4448.

4375. Vietnamese and Cham victims were forcibly removed from their homes and sent to uncertain futures.<sup>14153</sup> Large numbers of victims were killed, while their next of kin were forced to attempt to survive in foreign environments without their loved ones.

4376. Under threats and compulsion, victims were forced to marry strangers even if he or she had a fiancé or was grieving the loss of a partner, causing significant stress and psychological harm.<sup>14154</sup> Victims were forced to consummate their forced marriages, overriding the will of victims and depriving them of any emotional or psychological refuge.<sup>14155</sup>

#### 20.2.5.3. Role of NUON Chea

4377. The Trial Chamber has found that NUON Chea was a key actor responsible for the formulation of Party policies. As Deputy Secretary of the Party, he exercised ultimate decision-making power with POL Pot. NUON Chea knew that the crimes would be committed and was involved in the common purpose from the time of its inception throughout the period relevant to Case 002/02: from his participation in the initial development of the above policies to his active involvement in their continuing implementation. The Chamber has found that the significance of his role is heightened in view of the limited number of people who constituted the “upper echelon”.<sup>14156</sup>

4378. NUON Chea had a central and ongoing role in the development of Party policy, including the creation of cooperatives and worksites, where he acknowledged people were not free.<sup>14157</sup>

4379. NUON Chea was, among other things, directly involved in the supervision and operation of S-21 Security Centre as well as the purges in the Central (old) North Zone, Northwest Zone and East Zone, including the purging of prominent Party members such as RUOS Nhim and SAO Phim.<sup>14158</sup>

<sup>14153</sup> See above, paras 4370-4371.

<sup>14154</sup> Section 21: Civil Party Reparations, para. 4451.

<sup>14155</sup> Section 21: Civil Party Reparations, para. 4452.

<sup>14156</sup> Section 7: Roles and Functions – NUON Chea, para. 561.

<sup>14157</sup> Section 16: Common Purpose, para. 3885.

<sup>14158</sup> Section 17: The Criminal Responsibility of NUON Chea, paras 4082, 4118, 4137-4138, 4144, 4149; Section 12.1: Internal Factions, paras 2031, 2053, 2069.



4380. NUON Chea was instrumental in promoting, confirming, supporting and endorsing CPK policies.<sup>14159</sup> He had a central role in writing and disseminating CPK policies as one of the principal authors of the *Revolutionary Flag* magazine.<sup>14160</sup> NUON Chea used his position of influence to advocate hatred for the Vietnamese as well as their destruction.<sup>14161</sup>

4381. The Chamber accordingly finds NUON Chea's involvement in the crimes to be pivotal, extensive and significant.

#### 20.2.5.4. Role of KHIEU Samphan

4382. The Trial Chamber has found that KHIEU Samphan was a key actor responsible for the formulation of the Party policies that are the subject of Case 002/02. Throughout the period relevant to Case 002/02, he also disseminated, endorsed and defended the common purpose and policies, providing encouragement, support and his trusted and respected character which allowed the crimes to be more readily committed. KHIEU Samphan knew that the crimes would be committed and was involved in the common purpose from the time of its inception throughout the period relevant to Case 002/02. Meanwhile, he implemented key economic aspects of the common purpose which were intended to ensure the evolution of Cambodia into a modern agricultural and thereafter industrial state, while disregarding the human cost of their implementation.<sup>14162</sup> As a Central Committee member and an attendee at Standing Committee meetings, KHIEU Samphan was privy to important matters and crucial decisions, and thus enjoyed elevated standing within the party.<sup>14163</sup>

4383. KHIEU Samphan promoted, confirmed, supported and endorsed the Party line in speeches, interviews, statements and meetings.<sup>14164</sup> KHIEU Samphan used his position of influence to support and therefore legitimise the implementation of CPK policies.<sup>14165</sup> He publicly called for the elimination of high-ranking members of the

<sup>14159</sup> Section 16: Common Purpose, para. 3916 (fn. 13066); Section 17: The Criminal Responsibility of NUON Chea, para. 4173.

<sup>14160</sup> Section 17: The Criminal Responsibility of NUON Chea, paras 4089, 4129, 4181, 4183.

<sup>14161</sup> Section 17: The Criminal Responsibility of NUON Chea, paras 4158-4162.

<sup>14162</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4206, 4258, 4276.

<sup>14163</sup> Section 8: Roles and Functions – KHIEU Samphan, para. 604; Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4208.

<sup>14164</sup> Section 16: Common Purpose, para. 3916 (fn. 13067); Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4208, 4257, 4261-4262, 4264.

<sup>14165</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4265.

Khmer Republic administration.<sup>14166</sup> KHIEU Samphan actively supported the use of cooperatives and worksites despite his awareness that starvation and illness were ongoing problems.<sup>14167</sup> In particular, he instructed cadres that New People should bear the brunt of hard labour with less food in order to weed out enemies.<sup>14168</sup>

4384. KHIEU Samphan propagated the CPK's rhetoric calling for the discriminatory treatment of the Vietnamese in Cambodia throughout the DK period.<sup>14169</sup> He called on the population to divest themselves of personal sentiment toward their parents in favour of *Angkar* and openly promoted the Party's policy to rapidly increase DK's population, vitiating the importance of Buddhist traditions and normalising the policy of forced marriage.<sup>14170</sup>

4385. The Chamber accordingly finds KHIEU Samphan's involvement in the crimes to be extensive and substantial.

#### 20.2.6. *Aggravating Facts*

4386. The Chamber has already considered the number and vulnerability of victims, the scale and brutality of the crimes in its assessment of the gravity of these crimes.<sup>14171</sup>

##### 20.2.6.1. Considerations applicable to NUON Chea

4387. The Chamber finds that NUON Chea's contribution to the crimes, including through his participation in the JCE, was undertaken in his official capacities, including as Deputy Secretary of the CPK throughout the DK period and a full rights member of both the CPK Central and Standing Committees. The Chamber has further found NUON Chea culpable for superior responsibility of multiple crimes, including genocide of the Cham.<sup>14172</sup> This constitutes an abuse of his position of authority and influence<sup>14173</sup> and thus aggravates his culpability.

<sup>14166</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4272.

<sup>14167</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4213-4215, 4258-4259.

<sup>14168</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, para. 4273.

<sup>14169</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4269, 4271.

<sup>14170</sup> Section 18: The Criminal Responsibility of KHIEU Samphan, paras 4268, 4304.

<sup>14171</sup> See above, paras 4362-4371.

<sup>14172</sup> Section 17: The Criminal Responsibility of NUON Chea, para. 4197.

<sup>14173</sup> *Šainović et al.* Appeal Judgement, para. 1802; *Stanišić and Župljanin* Trial Judgement, paras 929, 948.

4388. The Chamber further finds that NUON Chea is also a well-educated individual who well understood the import and consequences of his actions.<sup>14174</sup> The Chamber finds that this constitutes an aggravating factor.

20.2.6.2. *Considerations applicable to KHIEU Samphan*

4389. KHIEU Samphan's contribution to the crimes, including through his participation in the JCE, was undertaken in his official capacities, including as a member of the Central Committee, a member of Office 870, President of the State Presidium, and highest official in GRUNK. This constitutes an abuse of his position of authority and influence<sup>14175</sup> and thus aggravates his culpability.

4390. The Chamber finds that KHIEU Samphan is a well-educated individual.<sup>14176</sup> He studied both law and economics successfully at the tertiary level and was therefore well equipped to know the import and consequences of his actions. The Chamber finds that these facts constitute an aggravating factor.

20.2.7. *Mitigating Factors*

4391. The Chamber agrees with the Co-Prosecutors' submission that there is no evidence of diminished mental capacity or duress.

20.2.7.1. *Considerations applicable to NUON Chea*

4392. During Case 002/02, NUON Chea stated that he recognised that "many people suffered greatly by the provocation of those enemies within". He went on to say he was "remorseful for that suffering" and that he accepted moral responsibility based on his leadership as one of the most senior figures of the CPK. However, NUON Chea contested his culpability for the crimes charged, arguing that enemies from within, such as SAO Phim and RUOS Nhim, were responsible for committing these acts outside of his control and knowledge.<sup>14177</sup>

<sup>14174</sup> Section 7: Roles and Functions – NUON Chea, paras 520-522.

<sup>14175</sup> Šainović *et al.* Appeal Judgement, para. 1802; Stanišić and Župljanin Trial Judgement, paras 929, 948.

<sup>14176</sup> Section 8: Roles and Functions – KHIEU Samphan, paras 564-569.

<sup>14177</sup> T. 17 October 2014 (Accused NUON Chea), E1/242.1, pp. 69-70.

4393. In order to be a factor in mitigation, expressions of remorse must be real and sincere.<sup>14178</sup> An accused can express sincere regrets without admitting his participation in the crimes, but remorse requires acceptance of some moral responsibility for personal wrongdoing.<sup>14179</sup> While NUON Chea expressed general sympathy for suffering of victims during the Khmer Rouge regime and stated that he “accept[s] morally responsibility”, he does not accept responsibility for personal wrongdoings.<sup>14180</sup> The Chamber finds that the mitigating impact of NUON Chea’s apology is undermined by his failure to accept responsibility for his own wrongdoing.

4394. Cooperation with the court may also be considered a mitigating factor. NUON Chea’s cooperation with the court – which did not exceed the legally required minimum participation in court hearings – does not amount to a mitigating factor.<sup>14181</sup>

4395. The Chamber acknowledges that advanced age can be considered as a mitigating factor<sup>14182</sup> and accords it some minimal weight here. Noting that ill-health will only be considered mitigating in exceptional circumstances,<sup>14183</sup> and in view of the Chamber’s assessment of the health of the Accused,<sup>14184</sup> the Chamber declines to consider ill-health as a mitigating factor in the circumstances of this case. Thus, the Chamber does not find any mitigating factors to be applicable.

#### 20.2.7.2. Considerations applicable to KHIEU Samphan

4396. During Closing Statements, KHIEU Samphan stated that the Court has “done everything in order to let you, the civil parties, to refer to me as someone who has the responsibility for all the sufferings”. In reference to the regulation of marriage, the fate of minorities and the practice of religion under the DK, he stated that he “did not know about these issues” at the time.<sup>14185</sup> During Case 002/02 proceedings, KHIEU Samphan

<sup>14178</sup> *Blaškić* Appeal Judgement, para. 705.

<sup>14179</sup> *Strugar* Appeal Judgement, paras 366-367.

<sup>14180</sup> T. 17 October 2014 (Accused NUON Chea), E1/242.1, pp. 69-70.

<sup>14181</sup> The Chamber notes however, that it does not find NUON Chea’s absence of cooperation to be an aggravating circumstance or a prejudicial factor to the merits of NUON Chea’s case. See *Prosecutor v. Thomas Lubanga Dyilo*, ICC Trial Chamber (ICC-01/04-01/06), Decision on Sentence pursuant to Article 76 of the Statute, 10 July 2012, para. 33; *Prosecutor v. Germain Katanga*, ICC Trial Chamber (ICC-01/04-01/07), Decision on Sentence pursuant to article 76 of the Statute, 23 May 2014, para. 34.

<sup>14182</sup> *Dorđević* Appeal Judgement, paras 974, 980.

<sup>14183</sup> *Simić* Sentencing Judgement, paras 97-98; *Kordić and Čerkez* Trial Judgement, para. 848.

<sup>14184</sup> Sixth Decision on Fitness of the Accused NUON Chea to Stand Trial, E460/4, 27 February 2018, paras 10-11.

<sup>14185</sup> T. 23 June 2017 (Closing Statements), E1/528.1, pp. 34, 36-37.

did not express remorse or sympathy toward victims, nor did he accept any personal responsibility for the events that occurred. Therefore, the Chamber finds that KHIEU Samphan did not express remorse that would justify a mitigation of his sentence.

4397. Although KHIEU Samphan attended nearly every Case 002/02 hearing, his cooperation with the court – which did not exceed the legally required minimum participation in court hearings – does not amount to a mitigating factor.<sup>14186</sup>

4398. The Chamber acknowledges that advanced age can be considered as a mitigating factor<sup>14187</sup> and accords it some minimal weight here. Noting that ill-health will only be considered mitigating in exceptional circumstances,<sup>14188</sup> and in view of the Chamber's assessment of the health of the Accused,<sup>14189</sup> the Chamber declines to consider ill-health as a mitigating factor in the circumstances of this case. Thus, the Chamber does not find any mitigating factors to be applicable.

#### 20.2.8. *Character Witnesses*

4399. No character witnesses were heard by the Trial Chamber in respect of NUON Chea or KHIEU Samphan.<sup>14190</sup>

#### 20.2.9. *Sentence*

##### 20.2.9.1. *Imprisonment*

4400. The Trial Chamber, in deciding on appropriate sentences for NUON Chea and KHIEU Samphan, has taken into account the totality of the circumstances in Case

<sup>14186</sup> The Chamber notes however, that it does not find KHIEU Samphan's absence of cooperation to be an aggravating circumstance or a prejudicial factor to the merits of KHIEU Samphan's case. See *Prosecutor v. Thomas Lubanga Dyilo*, ICC Trial Chamber (ICC-01/04-01/06), Decision on Sentence pursuant to Article 76 of the Statute, 10 July 2012, para. 33; *Prosecutor v. Germain Katanga*, ICC Trial Chamber (ICC-01/04-01/07), Decision on Sentence pursuant to article 76 of the Statute, 23 May 2014, para. 34.

<sup>14187</sup> *Dorđević* Appeal Judgement, paras 974, 980.

<sup>14188</sup> *Simić* Sentencing Judgement, paras 97-98; *Kordić and Čerkez* Trial Judgement, para. 848.

<sup>14189</sup> Fourth Decision on Fitness of the Accused KHIEU Samphan to Stand Trial, E460/5, 27 February 2018, paras 10-11.

<sup>14190</sup> The Chamber previously considered the testimony of five character witnesses who testified on behalf of KHIEU Samphan during Case 002/01. The Chamber determined that it: "accept[ed] that KHIEU Samphan may have treated his wife well and been kind to people in specific instances. However, these factors cannot play any significant part in mitigating crimes of the severity of those for which KHIEU Samphan has been found guilty, and will not be given undue weight. The Trial Chamber therefore gives limited weight to KHIEU Samphan's purported good character as a mitigating factor in sentencing." See Case 002/01 Trial Judgement, para. 1103 *affirmed in* Case 002/01 Appeal Judgement, para. 1115.

002/02, including the relevant sentencing principles and guidelines set out above. While the Chamber has found that NUON Chea's responsibility exceeds that of KHIEU Samphan, a sentence of life imprisonment most appropriately sanctions the criminal conduct of each Accused.

4401. On the basis of the foregoing, the Trial Chamber decides to impose a sentence of life imprisonment on NUON Chea. Taking into consideration the life sentence imposed on NUON Chea in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.<sup>14191</sup>

4402. On the basis of the foregoing, the Trial Chamber decides to impose a sentence of life imprisonment on KHIEU Samphan. Taking into consideration the life sentence imposed on KHIEU Samphan in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.<sup>14192</sup>

20.2.9.2. Confiscation of personal property, money, and real property

4403. The Chamber has identified no personal property, money or real property acquired unlawfully or by criminal conduct by either NUON Chea or KHIEU Samphan.<sup>14193</sup> Accordingly, there are no identified assets which could form the subject of confiscation pursuant to Article 39 (new) of the ECCC Law.

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<sup>14191</sup> See above, paras 4359-4360.

<sup>14192</sup> See above, paras 4359-4360.

<sup>14193</sup> KHIEU Samphan: Determination of indigence, A151, 30 January 2008; NUON Chea: Determination of means, A49, 17 October 2007.

## 21. CIVIL PARTY REPARATIONS

### 21.1. Introduction

4404. Internal Rule 23(1) provides that: “The purpose of Civil Party action before the ECCC is to:

- a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and
- b) Seek collective and moral reparations.

Taking into account the difficulties experienced in Case 001 and the need to improve efficiency in trial management, the Internal Rules were amended prior to the trial phase of Case 002.<sup>14194</sup> The amendments were designed to meet the requirements of trials of mass crimes and to ensure that ECCC proceedings responded more fully to the needs of victims. They streamlined and consolidated Civil Party participation at trial. Civil Parties now participate as individuals only at the pre-trial stage, while at the trial stage and beyond they comprise a single, consolidated group, whose interests are represented by one Cambodian and one international Civil Party Lead Co-Lawyer supported by the Civil Party Lawyers.<sup>14195</sup> Previously, in Case 001, the Trial Chamber had to decide on both the applications of Civil Parties to participate in the proceedings and their requests for reparations.<sup>14196</sup> Following the change to the Internal Rules, a final determination of Civil Party Applications to participate in the proceedings is made at the pre-trial stage.<sup>14197</sup> The Chamber now decides only on the Civil Parties’ consolidated claim for reparations.<sup>14198</sup>

4405. The Internal Rules were also amended to expand the range of reparations before the ECCC. The amendments created a new reparation avenue in addition to the

<sup>14194</sup> Internal Rules 23, 23bis, 23ter, 23quater and 23quinquies.

<sup>14195</sup> Internal Rules 12ter, 23(3), 23bis, 23ter and 23quinquies.

<sup>14196</sup> Internal Rules (6 March 2009), Internal Rule 100(1); Case 001 Trial Judgement, paras 635, 639-675.

<sup>14197</sup> Internal Rule 23bis(1) requires Civil Party applicants to “a) be clearly identified; and b) demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based”.

<sup>14198</sup> Internal Rule 100 provides that “[t]he Chamber shall make a decision on the Civil Party claim in the judgment”. Internal Rule 23quinquies, entitled “Civil Party Claim”, specifies the bases on which the Chamber may award reparations.

traditional Civil Party claim.<sup>14199</sup> This alternative permits the Civil Party Lead Co-Lawyers to request the Chamber to recognise that specific reparations measures, designed or identified in coordination with the Victims Support Section (VSS), are appropriate for implementation using external funding. Over the course of the trials in both Case 002/01 and Case 002/02, this enabled VSS and the Lead Co-Lawyers to seek funding for reparations from donor contributions and to develop these projects in collaboration with governmental and non-governmental organisations external to the ECCC.

4406. The costs of an award of Civil Party reparations may still be borne by the convicted persons.<sup>14200</sup> Where the convicted persons are indigent, however, reparations awarded under the classic Civil Party model are unlikely to yield significant, tangible results for Civil Parties.<sup>14201</sup>

4407. The Co-Investigating Judges determined that 2,117 Civil Party applications were admissible in Case 002.<sup>14202</sup> Following resolution of the final expedited appeals by the Pre-Trial Chamber on 24 June and 1 July 2011, a total of 3,869 Civil Parties were admitted in Case 002.<sup>14203</sup> Subsequent to the withdrawal of two Civil Party Applications, 3,867 Civil Parties comprised the consolidated group at the start of the

<sup>14199</sup> Internal Rule 23*quiquies*(3)(b).

<sup>14200</sup> Internal Rule 23*quiquies*(3)(a). Initial specification of the substance of reparations awards sought by the Civil Party Lead Co-Lawyers pursuant to Internal Rule 23*quiquies* (TC), E125, 23 September 2011.

<sup>14201</sup> Case 001 Trial Judgement, para. 666 (indicating that “constraints also stem from [...] the unlikelihood of recovery from KAING Guek Eav, who appears to be indigent.”).

<sup>14202</sup> Civil Party Lead Co-Lawyers’ Closing Brief, para. 3; Statistical Overview of the Consolidated Group of Civil Parties in Case 002/01, E295/6/2.1.4, 26 September 2013, p. 1, ERN (En) 00948995. In order to participate in proceedings as a Civil Party, individuals who claim to be victims of crimes of which the Accused are charged are required to file an application before the Co-Investigating Judges who decide on their admissibility. These decisions are subject to a right of expedited appeal to the Pre-Trial Chamber. *See* Internal Rules 23*bis*, 77*bis*.

<sup>14203</sup> Decision on appeals against orders of the Co-Investigating Judges on the admissibility of Civil Party Applications (PTC), D404/2/4, 24 June 2011; Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications (PTC), D411/3/6, 24 June 2011; Decision on the reconsideration of the admissibility of civil party Applications (PTC), D250/3/2/1/8, 1 July 2011; Decision on the reconsideration of the admissibility of civil party applications (PTC), D364/1/6, 1 July 2011. *See also*, Separate and partially dissenting opinion of Judge Catherine MARCHI-UHEL, Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications (PTC), D404/2/4, 24 June 2011; Separate and partially dissenting opinion of Judge Catherine MARCHI-UHEL, Decision on appeals against orders of the co-investigating judges on the admissibility of civil party applications (PTC), D411/3/6, 24 June 2011; Dissenting Opinion of Judge MARCHI-UHEL, Decision on the reconsideration of the admissibility of civil party applications (PTC), D250/3/2/1/8, 1 July 2011; Dissenting Opinion of Judge MARCHI-UHEL, Decision on the reconsideration of the admissibility of civil party applications (PTC), D364/1/6, 1 July 2011.



trial.<sup>14204</sup> The subsequent severance of the charges had no impact on the nature of Civil Party participation at trial or on membership of the consolidated group.<sup>14205</sup> The same consolidated group participated in both Cases 002/01 and 002/02, with some changes to the composition of the group due to deaths among the Civil Parties and subsequent successions for some of those who passed away during the course of the two trials. The consolidated group eventually consisted of 3,865 Civil Parties in Case 002/02.<sup>14206</sup>

## **21.2. Legal Framework**

4408. Internal Rule 23*quinqüies*(1) provides that in the event an accused is convicted, the Chamber may award only collective and moral reparations to Civil Parties. Collective and moral reparations for the purpose of the Internal Rules are measures that:

- a) acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and
- b) provide benefits to the Civil Parties which address this harm.

Internal Rule 23*quinqüies*(1) expressly states that the benefits referred to in Internal Rule 23*quinqüies*(1)(b) shall not take the form of monetary payments to Civil Parties.<sup>14207</sup>

4409. The Supreme Court Chamber has interpreted the term “collective” as confirming the unavailability of individual financial awards and “moral” to mean repairing moral damages rather than material ones.<sup>14208</sup>

<sup>14204</sup> Request to withdraw from applicant 00-VU-00013 SENG Chantheary, E2/28, 3 March 2014; Mr. CHEY Theara’s Letter of Withdrawal from ECCC, E2/39, 18 November 2011; Civil Party Lead Co-Lawyers’ Closing Brief, para. 5; Statistical Overview of the Consolidated Group of Civil Parties in Case 002/01, E295/6/2.1.4, 26 September 2013, p. 1, ERN (En) 00948995.

<sup>14205</sup> Case 002 Second Severance Decision, paras 10, 157; Case 002 First Severance Decision, para. 8.

<sup>14206</sup> Annex II: List of Civil Parties.

<sup>14207</sup> Internal Rule 23*quinqüies*(1). Civil Parties are victims who have volunteered to participate in the proceedings. Because they form a consolidated group at the trial stage, the moral and collective reparations sought on their behalf may not only address the harm suffered by this limited group, but also collaterally benefit a large number of unrepresented victims who have suffered harm as a result of the commission of the crimes for which the Accused are convicted.

<sup>14208</sup> Case 001 Appeal Judgement, para. 658. The Chamber notes that the Civil Parties expressed their dissatisfaction with the lack of monetary payments by means of a petition annexed to the Lead Co-Lawyers Interim Report of 17 June 2015. *See* Civil Party Lead Co-Lawyers’ Interim Report on Reparations in Case 002/02 and Related Request, E352, 17 June 2015; Annex 3: Trial Chamber Memorandum and Civil Party Letter, E352.4, 31 October 2014; Civil Party Lead Co-Lawyers’ Closing Brief, para. 37. The Chamber placed the petition on the Case File in recognition of its receipt but reiterated that “the ECCC has no jurisdiction to order the implementation or the payment of reparations measures; it may only impose collective and moral reparations”. *See* Trial Chamber Memorandum on

4410. The redress available before the ECCC differs from that available under a number of international treaties and other instruments, or before certain regional human rights courts, which are instead empowered to adjudicate questions of State responsibility and to order States to make reparation to their citizens, where States are found responsible for gross violations of international human rights law.<sup>14209</sup> The Chamber has no jurisdiction to order the implementation or the payment of reparation measures against Cambodian or other national authorities or international bodies.<sup>14210</sup> Nor can it properly impose obligations on persons or entities that were not parties to the proceedings before it.<sup>14211</sup> However, the adoption of Internal Rule 23*quinqüies*(3)(b) has enabled the Chamber to recognise that specific projects give appropriate effect to an award sought on behalf of the consolidated group of Civil Parties to contribute to their rehabilitation, reintegration and restoration of dignity where national or international authorities, non-governmental organisations or other potential donors, provide financial support and other forms of assistance to show solidarity with the victims of DK era crimes.

4411. Internal Rule 23*quinqüies*(2) sets out the pleading requirements of the single claim, and requires that:

Reparations shall be requested in a single submission, which may seek a limited number of awards. This submission shall provide:

- a) a description of the awards sought;
- b) reasoned argument as to how they address the harm suffered and specify, where applicable, the Civil Party group within the consolidated group to which they pertain; and
- c) in relation to each award, the single, specific mode of implementation described in Rule 23*quinqüies*(3)(a)-(b) sought.

4412. The obligation on the Lead Co-Lawyers to indicate, in relation to each award, which specific mode of implementation is sought reflects the alternatives embodied in Internal Rule 23*quinqüies*(3)(a) and (b).<sup>14212</sup> It also reflects that the two avenues of

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Civil Party Lead Co-Lawyers' Request to Acknowledge Receipt of Petition, E352/1, 30 July 2015, para. 2.

<sup>14209</sup> Case 002/01 Trial Judgement, para. 1116; Case 001 Trial Judgement, para. 663.

<sup>14210</sup> Case 002/01 Trial Judgement, para. 1116; Case 001 Trial Judgement, para. 663.

<sup>14211</sup> Case 002/01 Trial Judgement, para. 1116; Case 001 Trial Judgement, para. 663.

<sup>14212</sup> Under the ECCC legal framework, all reparations must "acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and provide benefits to the Civil Parties which address this harm" and may only be awarded following conviction of one or more Accused. See Internal Rules 23*quinqüies*(1) and 100.

reparations before the ECCC are not only distinct but also mutually exclusive and that the Lead Co-Lawyers shall necessarily select one or the other.<sup>14213</sup>

4413. In creating alternative avenues of reparation before the ECCC, the Internal Rules provide that “[i]n deciding the modes of implementation of the awards, the Chamber may, in respect of each award, *either*:

- a) order that the costs of the award shall be borne by the convicted person; *or*
- b) recognise that a specific project appropriately gives effect to the award sought by the Lead Co-Lawyers and may be implemented. Such project shall have been designed or identified in cooperation with the Victims Support Section and have secured sufficient external funding.”<sup>14214</sup>

4414. The Chamber has previously noted that the formulation of reparations claims made on behalf of the consolidated group of Civil Parties by the Lead Co-Lawyers should take account of Internal Rule 23*quinqüies*(1)(a).<sup>14215</sup> Therefore, the proposed reparation measures should be limited to crimes relevant to Case 002/02. When issuing the Case 002 Second Severance Decision, however, the Chamber expressly stated that the severance of charges will place no limitation on the ability of individual members of the consolidated group to benefit from any reparations ultimately endorsed or awarded by the Chamber under Internal Rule 23*quinqüies*(3)(b).<sup>14216</sup> The Chamber has also provided guidance to the Lead Co-Lawyers to assist their efforts in formulating requests that may result in meaningful measures of reparation and encompass the entire consolidated group of Civil Parties.<sup>14217</sup> In particular, it has indicated that the severance of proceedings has no impact in relation to the new and separate reparations avenue created by Internal Rule 23*quinqüies*(3)(b), pursuant to which the initiatives proposed as possible measures do not result in enforceable claims against an accused, and may be developed in parallel with the trial.<sup>14218</sup>

<sup>14213</sup> Case 002/01 Trial Judgement, para. 1118.

<sup>14214</sup> Internal Rule 23*quinqüies*(3) (emphasis added).

<sup>14215</sup> Case 002 Second Severance Decision, paras 10, 158; Case 002 First Severance Decision, para. 8.

<sup>14216</sup> Case 002 Second Severance Decision, para. 158.

<sup>14217</sup> Case 002 Second Severance Decision, para. 158.

<sup>14218</sup> Case 002 Second Severance Decision, para. 158.

**21.3. Civil Party Requests**

4415. As in Case 002/01, over the course of the trial, the Chamber exercised its powers under Internal Rule 80*bis*(4) to request the Lead Co-Lawyers to provide early indications of the types of reparations measures contemplated pursuant to Internal Rule 23*quinqüies*(3)(b), and updates on the status of the financing of these projects. This was considered necessary to ensure that all measures sought on such grounds were capable of realisation, with the support of donor assistance and external collaborators, and within a meaningful time-frame.<sup>14219</sup> In view of limited donor funds and finite human resources in both the Lead Co-Lawyers' and Victims Support Sections, the Chamber also urged the Lead Co-Lawyers to prioritise reparations projects which appeared to have the likelihood of being realised in order to ensure that proceedings resulted in meaningful reparation for victims.<sup>14220</sup> Accordingly, following the practice established in Case 002/01, the Lead Co-Lawyers elaborated a number of specific projects proposed as reparation in Case 002/02 and progressively updated the Chamber on their development over the course of the trial.<sup>14221</sup>

4416. The Chamber notes that the Accused in Case 002 have been found to be indigent,<sup>14222</sup> and that all reparation requests advanced by the Lead Co-Lawyers are sought through Rule 23*quinqüies*(3)(b).<sup>14223</sup> In their Closing Brief and Final Claim for Reparation, the Lead Co-Lawyers recognise that the two possible modes of

<sup>14219</sup> Internal Rule 80*bis*(4) provides that “[t]he Trial Chamber may direct the Lead Co-Lawyers, within a deadline determined by the Chamber, to provide initial specification of the substance of the awards they intend to seek within the final claim for collective and moral reparation pursuant to Rule 23*quinqüies* (3)(b). At a later stage, the Chamber will determine the date by which the Lead Co-Lawyers shall file the final claim for collective and moral reparation.” See also, Scheduling Order for Further Initial Hearing, E311, 11 June 2014; Agenda for further Initial Hearing in Case 002/02 (30 July 2014) (TC), E311/1, 7 July 2014, para. 5.

<sup>14220</sup> Indication of Reparation Projects for Implementation in Case 002/02 (TC), E352/2, 10 June 2016, para. 2, referring to this practice in Case 002/01.

<sup>14221</sup> T. 30 July 2014 (Initial Hearing), E1/240.1, pp. 7-20; Civil Party Lead Co-Lawyers' Interim Report on Reparations in Case 002/02 and Related Request, E352, 17 June 2015; Civil Party Lead Co-Lawyers' Submission Relating to Reparation Projects for Implementation in Case 002/02, E352/2/1, 15 July 2016. See also, Annex I: Procedural History.

<sup>14222</sup> Defence Support Section, Khieu Samphan: Determination of Indigence, A151, 30 January 2008; Defence Support Section, Determination of Means, A49, 17 October 2007. The Co-Investigating Judges and the Pre-Trial Chamber have both denied Civil Parties' requests to undertake investigative action concerning properties owned by the Charged Persons including measures to preserve such properties for the purpose of reparations. See Order on Civil Parties' Request for Investigative Actions Concerning All Properties Owned by the Charged Persons (OCIJ), D193/4, 1 March 2010; Decision on Appeal of Co-Lawyers for Civil Parties Against Order on Civil Parties' Request for Investigative Actions Concerning All Properties Owned by the Charged Persons (PTC), D193/5/5, 4 August 2010.

<sup>14223</sup> Civil Party Lead Co-Lawyers' Closing Brief, para. 44; Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, para. 4.

implementation of the awards foreseen by Internal Rule 23<sup>quinqüies</sup>(3)(a) and (b) are not only distinct but also mutually exclusive, and therefore that an award cannot be sought under both procedural avenues simultaneously.<sup>14224</sup>

4417. In their Final Claim for Reparation, the Lead Co-Lawyers initially requested the Chamber to judicially recognise eighteen projects as appropriate reparations.<sup>14225</sup> Twelve of the eighteen projects proposed by the Lead Co-Lawyers had secured sufficient external funding at the moment of filing the Final Claim.<sup>14226</sup> Subsequently, on 30 November 2017, the Lead Co-Lawyers filed a Supplemental Submission providing proof of secured funding also for projects 13 and 15, and withdrawing the remaining projects for which funding could not be secured.<sup>14227</sup> The Lead Co-Lawyers also requested the Chamber to provide guidance regarding additional funding and activities for projects 1-3, 5, 6 and 9.<sup>14228</sup> On 15 December 2017, the Chamber acknowledged receipt of proof of funding with respect to projects 13 and 15 and the withdrawal of the remaining projects, and found that minor changes to projects' duration or reach did not impact on the originally proposed projects.<sup>14229</sup>

4418. The total number of reparation projects proposed by the Lead Co-Lawyers with regard to Case 002/02 is therefore fourteen. The Chamber is aware that the majority of

<sup>14224</sup> Civil Party Lead Co-Lawyers' Closing Brief, paras 38, 41; Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, para. 4. The Lead Co-Lawyers submit that the absence of the phrase "shall be awarded against" from the current formulation of the Internal Rules "undermines an important principle of international law that a convicted person is responsible for the harm s/he caused". See Civil Party Lead Co-Lawyers' Closing Brief, para. 41. The Chamber notes that the Lead Co-Lawyers do not request the reparation measures in Case 002/02 to be ordered against the Convicted Persons nor do they seek an amendment of the Internal Rules. Therefore, there is no need for the Chamber to address this submission.

<sup>14225</sup> Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 15-79 (project 12 is supported exclusively by the International Lead Co-Lawyer).

<sup>14226</sup> Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 15-58 (fully-funded projects), 59-79 (not fully-funded projects).

<sup>14227</sup> Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, para. 3 (the Lead Co-Lawyers withdrew projects 14, 16, 17 and 18, which as a consequence are not assessed by the Chamber).

<sup>14228</sup> Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, paras 4, 11-22.

<sup>14229</sup> Memorandum Responding to the Lead Co-Lawyers' Request for Guidance Regarding Additional Funding and Activities for Certain Reparation Projects (TC), E457/6/2/5, 15 December 2017, paras 3-5. The Chamber indicated that the development of new substantive content and the addition of novel elements would be considered as a deviation from the original projects, falling beyond the reach of its endorsement.

these projects have already been partially or fully implemented. In this context, the Chamber recalls the Lead Co-Lawyers' concerns regarding the practical difficulties in securing external funding for the realisation of reparation projects under the mode of implementation established in Internal Rule 23 *quinquies*(3)(b).<sup>14230</sup> The Chamber addressed these concerns during the course of proceedings in Case 002/01 by permitting the implementation of projects to begin prior to the verdict in order to ensure the realisation of meaningful reparations within a reasonable time.<sup>14231</sup> The Chamber reiterates that while a conviction is a precondition for awarding collective and moral reparations pursuant to Internal Rule 23*quinquies*(1), recognising projects whose implementation has already begun or even concluded is in keeping with the purposes of Internal Rule 23*quinquies*(3)(b).

4419. Each of the requested projects is discussed below.

### 21.3.1. *Project 1: App-Learning on Khmer Rouge History*

4420. The Lead Co-Lawyers seek the recognition of a learning web-based application for mobile devices, designed and implemented by the Bophana Audiovisual Resource Center in cooperation with the Lead Co-Lawyers and VSS. The application is described as a compilation of accurate and standardised information on Khmer Rouge history, incorporating contemporaneous audio-visual materials and Civil Party accounts. The Lead Co-Lawyers submit that the application, which is disseminated free of charge, will contribute to intergenerational dialogue with the goal of preventing future recurrence of the experiences of the Civil Parties in Cambodia. The Lead Co-Lawyers further submit that through its educational and dialogue components, the application also benefits unrepresented victims. Implementation of the project had already begun when the Lead Co-Lawyers filed their Final Claim for Reparation, and the application was launched on 25 July 2017. The project was fully funded by the European Union

<sup>14230</sup> T. 27 August 2012 (Trial Management Meeting), E1/114.2, p. 8 (“We simply want to make it known that it is not always easy to secure funding, as donors are only, often, willing to advance funds when the deadlines, modalities, and other project details are clearly defined. This is complicated process, and I would impress this point upon the Chamber.”).

<sup>14231</sup> Indication of priority projects for implementation as reparation (Internal Rule 80 *bis* (4)) (TC), E218/7, 3 December 2012 (“Noting the challenges in bringing reparations to fruition described by the International Lead Co-Lawyer in the recent Trial Management Meeting, the Chamber wishes to clarify that implementation of these measures may begin prior to the verdict in Case 002/01. This is in keeping with the purposes for which Internal Rule 23*quinquies*(3)(b) was adopted, which were to enable, with donor assistance and that of external collaborators, the realization of meaningful reparations within reasonable time.”).

through the United Nations Office for Project Services (“UNOPS”) and by the REI Foundation, and it has been formally endorsed by the Ministry of Education, Youth and Sports.<sup>14232</sup>

**21.3.2. *Project 2: Khmer Rouge History Education through Teacher and University Lecturer Training and Workshops***

4421. The second project was designed and implemented by the Documentation Center of Cambodia (“DC-Cam”) in cooperation with the Lead Co-Lawyers and VSS. This project entailed holding two Commune Teacher Trainings and one University Lecturer Training, and conducting 15 classroom forums for students on Khmer Rouge history. Implementation of the project had already begun when the Lead Co-Lawyers filed their Final Claim for Reparation, and concluded in August 2017. The project’s trainings and curriculum have been approved by the Ministry of Education, Youth and Sports for use in schools and universities. The Lead Co-Lawyers submit that the project benefits Civil Parties by educating young people in Cambodia about both Khmer Rouge history and the experiences of Civil Parties, which will help prevent the future recurrence of crimes. Funding for this project was fully secured from the European Union through UNOPS.<sup>14233</sup>

**21.3.3. *Project 3: The Turtle Project: Innovative Cross Media Project, Promoting Historical Awareness and Civil Courage in Cambodia***

4422. With funding from the *Institut für Auslandsbeziehungen* of the German Federal Foreign Office and the European Union through UNOPS, this project created theatre performances, film screenings and photography exhibitions, and used multimedia cultural and educational activities during workshops with high school and university students. It was intended to educate students about Civil Party experiences and promote intergenerational dialogue, providing Civil Parties with the opportunity to engage with the younger generation. This project was designed and implemented by the Cambodian-

<sup>14232</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 17-19; Annex 1: App-Learning on Khmer Rouge History, E457/6/2/1.1.1, 30 May 2017, ERN (En) 01485919-01485995.

<sup>14233</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 20-22; Annex 2: Khmer Rouge History Education through Teacher and University Lecturer Training and Workshops, E457/6/2/1.1.2, 30 May 2017, ERN (En) 01485996-01486052.

German Cultural Association and Khmer Art Action with the support from the Lead Co-Lawyers and VSS. It began in 2015 and continued until the end of 2017, with the support of the Ministry of Education, Youth and Sport.<sup>14234</sup>

**21.3.4. *Project 4: Community Media Project: The Cham People and the Khmer Rouge***

4423. This project was designed and implemented for the benefit of Cham Civil Parties, their families and the younger generations, by educating the public about the experiences of the Cham people during the DK regime. Two films and a multimedia exhibition were produced, and a website and blog accompanied and complemented the project, which was intended to increase access to the younger generations. The Lead Co-Lawyers submit that the project benefits Civil Parties – and addresses the harm suffered by the Cham Civil Parties in particular – by educating communities about the treatment of the Cham and documenting their experiences. Project activities started in 2016 and ended in July 2017. This project was designed and implemented by the Cambodian-German Cultural Association in cooperation with the Lead Co-Lawyers and VSS, and was fully funded by the Embassy of Switzerland in Bangkok and the Heinrich Böll Foundation.<sup>14235</sup>

**21.3.5. *Project 5: Phka Sla Kraom Angkar***

4424. The project “Phka Sla Kraom Angkar” was designed and implemented by the Khmer Arts Academy in collaboration with Kdei Karuna, the Bophana Center and the Transcultural Psychosocial Organisation (“TPO”). This project developed a classical dance production and related exhibition addressing the regulation of marriage during the DK period, in order to promote public awareness, understanding and discussion of the regulation of marriage. The project ran from May 2016 to March 2018. It was fully funded by the Swiss Development Cooperation, the German Ministry for Economic Cooperation and Development through the *Deutsche Gesellschaft für Internationale*

<sup>14234</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 23-25; Annex 3: The Turtle Project: Innovative Cross Media Project, promoting historical awareness and civil courage in Cambodia, E457/6/2/1.1.3, 30 May 2017, ERN (En) 01486053-01486128.

<sup>14235</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 27-29; Annex 4: Community Media Project: The Cham People and the Khmer Rouge, E457/6/2/1.1.4, 30 May 2017, ERN (En) 01486129-01486148.



*Zusammenarbeit* (“GIZ”) and the United States Agency for International Development (“USAID”).<sup>14236</sup>

**21.3.6. *Project 6: Voices from Ethnic Minorities: Promoting Public Awareness about the Treatment of Ethnic Vietnamese and Cham living in Cambodia during the Khmer Rouge Regime***

4425. This project was designed by Kdei Karuna, in collaboration with the Lead Co-Lawyers and VSS, to benefit the Cham and Vietnamese Civil Parties by documenting their experiences and providing opportunities for intergenerational dialogue about their treatment during the DK regime. The project was intended to enhance public awareness of the causes and consequences of ethnic violence and discrimination, address stereotypes, promote anti-discrimination, provide opportunities for dialogue and express the experiences of these groups through exhibitions, forum theatre and a graphic novel. The project began in January 2016 and continued until December 2017. The project was fully funded by the German Ministry for Economic Cooperation and Development through the Civil Peace Service of GIZ and the Embassy of Switzerland in Bangkok.<sup>14237</sup>

**21.3.7. *Project 7: The Unheard Stories of Civil Parties Participating in Case 002/02 at the ECCC***

4426. Designed and implemented by the Cambodian Human Rights Action Coalition in cooperation with the Lead Co-Lawyers and VSS, this project commenced in June 2015 with the collection of Civil Party stories and was completed in August 2016 with the production of an illustrated book. The book contains the accounts of 30 Civil Parties who were admitted to participate in the proceedings but did not have an opportunity to give statements before the Court, in relation to Case 002/02 crimes and topics, including the regulation of marriage, the treatment of Buddhists, the treatment of minorities, security centres, worksites and cooperatives. The Lead Co-Lawyers submit that the

<sup>14236</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 30-32; Annex 5: Phka Sla Kraom Angkar, E457/6/2/1.1.5, 30 May 2017, ERN (En) 01486149-01486179.

<sup>14237</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 33-35; Annex 6: Voices from Ethnic Minorities: Promoting public awareness about the treatment of ethnic Vietnamese and Cham living in Cambodia during the Khmer Rouge regime, E457/6/2/1.1.6, 30 May 2017, ERN (En) 01486180-01486194.

project affords Civil Parties the opportunity to provide an account of their experiences for public dissemination, which allows for recognition and acknowledgement of their suffering. Five hundred copies of the book have been printed. The project was fully funded by the Heinrich Böll Foundation.<sup>14238</sup>

**21.3.8. *Project 8: A Time to Remember: Songwriting Contest 2016, Involving Youth in the Creating of Cambodia's Remembrance Song***

4427. This project, designed to acknowledge the experiences of survivors by fostering intergenerational dialogue between Civil Parties and the younger generation through song writing and performance, was realised between March and December 2016, with the final concert taking place in December 2016. The project was fully implemented by the Youth Resource Development Program in cooperation with the Lead Co-Lawyers and VSS. It was fully funded by the German Ministry for Economic Cooperation and Development through the Civil Peace Service of GIZ, and enjoyed the support of the Ministry of Culture and Fine Arts.<sup>14239</sup>

**21.3.9. *Project 9: Memory Sketches of Kraing Ta Chan***

4428. The project “Memory Sketches of Kraing Ta Chan” was designed and fully implemented by Youth for Peace and the Peace Institute of Cambodia in cooperation with the Lead Co-Lawyers and the VSS from January to December 2016. This project created a public exhibition of memory sketches of the Kraing Ta Chan Security Centre, produced by university students on the basis of survivors’ accounts, and accompanied by a booklet commemorating the process of making the memory sketches. The Lead Co-Lawyers submit that the project commemorates and recognises the suffering of Civil Parties as a result of their experiences at the Kraing Ta Chan Security Centre, while offering students the possibility to engage with Civil Parties and other victims through a consultation workshop on the sketches hosted by Youth for Peace and

<sup>14238</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 38-40; Annex 7: The Unheard Stories of Civil Parties Participating in Case 002/02 at the ECCC, E457/6/2/1.1.7, 30 May 2017, ERN (En) 01486195-01486209.

<sup>14239</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 41-43; Annex 8: A Time to Remember: Songwriting Contest 2016, Involving youth in the creating of Cambodia’s Remembrance Song, E457/6/2/1.1.8, 30 May 2017, ERN (En) 01486210-01486237.

organised by a group of young students. The project was fully funded by International Coalition of Sites of Conscience.<sup>14240</sup>

**21.3.10. *Project 10: Access to the Judicial Records of the Khmer Rouge Trials and Civil Party Materials at the Legal Documentation Center related to the ECCC (LDC)***

4429. This project was proposed by the Council of Ministers of the Kingdom of Cambodia after the Lead Co-Lawyers and VSS initiated discussions, through the ECCC Office of Administration, with the Royal Government of Cambodia. The Legal Documentation Center (“LDC”) has created a repository of publicly available documents related to Case 002, the ECCC and the role of Civil Parties, free of charge. Public events will be held to raise awareness of the history of DK through Civil Party experiences. A full list of the Civil Parties in Case 002 will be displayed, and their statements and related documents will be publicly available. The Lead Co-Lawyers submit that this project benefits Civil Parties by providing access to records relating to the ECCC and facilitating access and dissemination of publicly available records, consistent with victims’ rights to satisfaction and access to justice, thus also benefitting a larger group of unrepresented victims. The project is funded by the Royal Government of Cambodia through the national budget; the LDC facility was built with funding from the Embassy of Japan.<sup>14241</sup>

**21.3.11. *Project 11: Healing and Reconciliation for Survivors of the Khmer Rouge Regime***

4430. This healing and reconciliation project was designed by the TPO in collaboration with Kdei Karuna, and with the support from the Lead Co-Lawyers and VSS. The project is intended to provide trauma healing to Civil Parties as well as other survivors of the Khmer Rouge regime in 15 provinces. It aims to do so by providing access to mental health services, interventions using truth-telling and reconciliation,

<sup>14240</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 44-46; Annex 9: Memory Sketches of Kraing Ta Chan, E457/6/2/1.1.9, 30 May 2017, ERN (En) 01486238-01486268.

<sup>14241</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 47-49; Annex 10: Access to the Judicial Records of the Khmer Rouge Trials and Civil Party Materials at the Legal Documentation Center related to the ECCC (LDC), E457/6/2/1.1.10, 30 May 2017, ERN (En) 01486269-01486293.

and capacity development for project staff in each target community. These services are delivered by on-site and telephone counselling, self-help groups and testimonial therapy. The project started in August 2016 and will end in August 2019. The Lead Co-Lawyers submit that truth-telling and reconciliation activities, such as community dialogues, memory initiatives/forum theatre and youth outreach activities, aim to both educate and enhance empathy for survivors. Furthermore, the project intends to provide benefits to a wide range of Civil Parties who have suffered from torture, including Cham Muslims, survivors of gender-based violence and survivors of forced labour. Funding for the project has been fully secured by USAID.<sup>14242</sup>

**21.3.12. *Project 12: Legal and Civic Education for Minority Civil Parties***

4431. The project “Legal and Civic Education for Minority Civil Parties” was designed and fully implemented by the Minority Rights Organization between July and December 2016. The project focussed on harm suffered by ethnic Vietnamese Civil Parties. It consisted of one legal and civic education pilot project, one community consultation event, outreach and education workshops, and the production of outreach materials. The purpose of the project was to allow Civil Parties to better understand their legal status according to Cambodian law. The project is said to have benefitted not only ethnic Vietnamese Civil Parties but also the wider community of ethnic Vietnamese survivors of the Khmer Rouge regime. The project was fully funded by the German Ministry for Economic Cooperation and Development through the Civil Peace Service of GIZ.<sup>14243</sup>

**21.3.13. *Project 13: Improving Health and Mental Wellbeing and Reducing the Risk of Poverty and Social Exclusion of Some Civil Parties and other Vulnerable Older People in Cambodia***

4432. This project is developed by HelpAge Cambodia in collaboration with the TPO, the Health Department of Battambang Province and the Older Persons Associations (“OPAs”) in different provinces, with the support from the Lead Co-Lawyers and VSS.

<sup>14242</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 52-54; Annex 11: Healing and Reconciliation for Survivors of the Khmer Rouge Regime, E457/6/2/1.1.11, 30 May 2017, ERN (En) 01486294-01486305.

<sup>14243</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 56-58; Annex 12: Legal and Civic Education for Minority Civil Parties, E457/6/2/1.1.12, 30 May 2017, ERN (En) 01486306-01486322.

The project seeks to assist ageing Civil Parties by facilitating access to healthcare services and increasing their income security. The healthcare component of the project entails establishing mobile health camps to offer basic primary healthcare and check-ups, as well as providing mental health education at the community level. The project also intends to train medical staff and volunteers, and expand the capacity of OPAs networks. The project aims to benefit Civil Parties whose physical and mental health was affected by the crimes within the scope of Case 002/02. The livelihood support component of the project entails strengthening the OPAs network and increasing income security through equipping OPAs sub-committees in target communities with a community revolving fund. The fund is an OPA-managed safety net that provides small loans to OPA members to help them participate in income generating activities. The establishment of this system seeks to support in particular the children and spouses of those who died during the DK regime, and were thus left without a socio-economic support system. The project is currently ongoing with an expected duration of two years, until December 2019.<sup>14244</sup> On 30 November 2017, the Lead Co-Lawyers filed proof of funding for this project, which is to be provided by the European Union through UNOPS and the Swiss Agency for Development and Cooperation. The Lead Co-Lawyers also provided proof of cooperation and support by the implementing partners as well as additional details on the project's activities and implementation plan.<sup>14245</sup>

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<sup>14244</sup> Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 60-62; Annex 13: Improving Health and Mental Wellbeing and Reducing Risk of Poverty and Social Exclusion of Some Civil Parties and other Vulnerable Older People in Cambodia, E457/6/2/1.1.13, 30 May 2017, ERN (En) 01486323-01486336; Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, paras 5-7; Annex A: Improving Health and Mental Wellbeing and Reducing the Risk of Poverty and Social Exclusion of Some Civil Parties and other Vulnerable Older People in Cambodia, E457/6/2/4.2, 30 November 2017, ERN (En) 01547818-01547865.

<sup>14245</sup> Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, paras 5-7; Annex A: Improving Health and Mental Wellbeing and Reducing the Risk of Poverty and Social Exclusion of Some Civil Parties and other Vulnerable Older People in Cambodia, E457/6/2/4.2, 30 November 2017, ERN (En) 01547818-01547865. Funding for this project was not secured at the time the Lead Co-Lawyers filed their Final Claim for Reparation. On 7 July 2017, the Chamber granted the Lead Co-Lawyers' request to extend the deadline for filing supplemental submissions regarding proof of funding. The Chamber then also noted that the project description appeared to lack sufficient detail. *See* Decision on the Lead Co-Lawyers' Request for an Extension of Time to File Supplemental Submissions Containing Proof of Secured Funding by 30 November 2017 for Six Reparations Projects, E457/6/2/2, 7 July 2017, paras 4, 6.

**21.3.14. *Project 15: Cambodia's Indigenous People and Pol Pot***

4433. This project, designed by the Cambodian-German Cultural Association with the support of the Lead Co-Lawyers and VSS, seeks to produce two documentaries and a series of video testimonials about the experiences of Cambodia's indigenous people in Ratanakiri and Mondulakiri provinces during the DK period. The documentaries and video testimonials will be made by indigenous filmmakers and students, in cooperation with Civil Parties. The screenings will be accompanied by a photo exhibition. The Lead Co-Lawyers submit that the project will facilitate intergenerational dialogue and exchange of knowledge in minority communities. The project started in January 2018 and is expected to end in December 2018.<sup>14246</sup> On 30 November 2017, the Lead Co-Lawyers filed proof of funding for this project from the European Union through UNOPS and the Heinrich Böll Foundation.<sup>14247</sup>

**21.4. Harm Suffered by the Civil Parties**

4434. The Accused NUON Chea has been convicted of (i) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage; (ii) grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner

<sup>14246</sup> Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, paras 66-68; Annex 15: Cambodia's Indigenous People and Pol Pot, E457/6/2/1.1.15, 30 May 2017, ERN (En) 01486358-01486367; Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, paras 8-10; Annex B: Cambodia's Indigenous People and Pol Pot, E457/6/2/4.3, 30 November 2017, ERN (En) 01547866-01547909.

<sup>14247</sup> Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance with Confidential Annexes, E457/6/2/4, 30 November 2017, paras 8-10; Annex B: Cambodia's Indigenous People and Pol Pot, E457/6/2/4.3, 30 November 2017, ERN (En) 01547882-01547904. Funding for this project was not secured at the time the Lead Co-Lawyers filed their Final Claim for Reparation. On 7 July 2017, the Chamber granted the Lead Co-Lawyers' request to extend the deadline for filing supplemental submissions regarding proof of funding. See Decision on the Lead Co-Lawyers' Request for an Extension of Time to File Supplemental Submissions Containing Proof of Secured Funding by 30 November 2017 for Six Reparations Projects, E457/6/2/2, 7 July 2017, para. 6.

of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian; and (iii) genocide by killing members of the Vietnamese and Cham groups.

4435. The Accused KHIEU Samphan has been convicted of (i) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in context of forced marriage; (ii) grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian; and (iii) genocide by killing members of the Vietnamese group.

4436. Internal Rule 23*quinqies*(1) requires that reparations awarded by the Chamber acknowledge and address the harm suffered by Civil Parties as a result of the commission of these crimes.

4437. Sixty-three Civil Parties appeared before the Chamber in the course of Case 002/02.<sup>14248</sup> All were given the opportunity to make a statement on the harm they suffered after they provided evidence. In addition, with the exception of when it heard testimony on the nature of the armed conflict and the role of the Accused, the Chamber set aside a number of trial days to hear oral evidence from a representative selection of Civil Parties specifically about the ways in which they suffered during the DK period in connection with each trial topic examined.<sup>14249</sup> Twenty-six Civil Parties gave statements during such hearings on a total of ten days. The Chamber also recalls the testimony heard in Case 002/01 from Expert CHHIM Sotheara, a psychologist and mental health professional with experience working with victims of the DK regime (including Civil Parties), who discussed the psychological impact of events during the

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<sup>14248</sup> Civil Party SAR Sarin appeared before the Court on 8 November 2016 but subsequently did not complete his statement. The Chamber thus withdrew his name from the list of Civil Parties. *See* Decision Withdrawing 2-TCCP-237 from the list of Civil Parties heard in court, E29/501/1, 14 December 2016. *See also*, Section 2.4.7.1: Preliminary Issues: Civil Party SAR Sarin, paras 97-101.

<sup>14249</sup> Information on (1) Key Document Presentation Hearings in Case 002/02 and (2) Hearings on Harm Suffered by the Civil Parties in Case 002/02 (TC), E315/1, 17 December 2014, paras 7-9; Final Stages of Case 002/02 – Notice of Deadlines (TC), E421, 28 June 2016, para. 2 (the Chamber considered that the topics of the nature of the armed conflict and the role of the Accused did not “lend themselves to hearings on the harm suffered by Civil Parties.”).

DK period on those victims. Finally, many Civil Parties provided written accounts of injuries they suffered and crimes they witnessed during the DK era in their Civil Party Applications, to which the Chamber also had regard.

4438. In assessing the harm suffered, the Chamber draws from its findings on the various crime sites and the treatment of targeted groups, and relies on the in-court statements made by the Civil Parties. The Chamber's findings on the harm suffered are provided below.

4439. Many Civil Parties shared their accounts of suffering when forced to work at the Tram Kak Cooperatives, the Trapeang Thma Dam Worksite, the 1<sup>st</sup> January Dam Worksite and Kampong Chhnang Airfield Construction Site.

4440. The way in which life and work were organised at Tram Kak Cooperatives caused immediate and long-term mental and physical suffering to Civil Parties.<sup>14250</sup> The separation of families in Tram Kak district had a strong emotional impact on many Civil Parties and affected the children in particular.<sup>14251</sup> Civil Party BUN Saroeun, who at the time was an 11-year-old working in a children's unit at Trapeang Chaeng cooperative, explained that the limited nature of the schooling activities and the prioritisation of work commitments deprived children of a proper education.<sup>14252</sup> He stated that the lack of proper education during the regime made him "ignorant, even today" as he does not know how to write.<sup>14253</sup> Civil Parties suffered harm as a consequence of the malnutrition and overwork. Civil Party YEM Khonny explained that she became "skinny" and "bony" as a result of the harsh conditions.<sup>14254</sup>

4441. The prohibition to use pagodas for religious purposes in Tram Kak caused extreme emotional suffering to those who followed Buddhist practice. Civil Party BUN

<sup>14250</sup> See e.g., T. 3 April 2015 (YEM Khonny), E1/288.1, p. 10; T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 35; T. 2 April 2015 (THANN Thim), E1/287.1, pp. 30-31. See also, Section 10.1: Tram Kak Cooperatives, paras 1010-1016, 1020, 1023, 1034-1039.

<sup>14251</sup> See e.g., T. 2 April 2015 (YEM Khonny), E1/287.1, p. 91 ("At that time, because I recently separated from my parents, at night time, I wept. And they joked at me that I could just continue weeping and maybe I wish that I would see my family members."); T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 30; T. 21 April 2015 (THANN Thim), E1/289.1, p. 8. See also, Section 10.1: Tram Kak Cooperatives, paras 1034-1036, 1039.

<sup>14252</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 34. See also, Section 10.1: Tram Kak Cooperatives, para. 1038.

<sup>14253</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 35, 43.

<sup>14254</sup> See e.g., T. 3 April 2015 (BUN Saroeun), E1/288.1, p. 35; T. 3 April 2015 (YEM Khonny), E1/288.1, p. 10. See also, Section 10.1: Tram Kak Cooperatives, paras 1011, 1013, 1016-1020.



Saroeun explained that his local pagoda was empty, all the 15 monks previously living there were gone, including his uncle and his elder brother, who has since disappeared. He felt that he “was completely deprived of any psychological base” as pagodas were no longer sacred places.<sup>14255</sup>

4442. Civil Parties described how the loss of their relatives made them suffer tremendously.<sup>14256</sup> Civil Parties also suffered as a result of the arrest and disappearance of family members, as they did not know the fate of their loved ones or thought they had died.<sup>14257</sup> Civil Party YEM Khonny explained that she has been on her own since her mother and the rest of the family members were placed on a truck together with many other people and disappeared.<sup>14258</sup>

4443. Working and living conditions were very difficult at the Trapeang Thma Dam Worksite and affected the Civil Parties both physically and mentally.<sup>14259</sup> Civil Parties suffered physical injuries and fell ill because of overwork.<sup>14260</sup> They became skinny and emaciated because of the lack of food.<sup>14261</sup> The arrest and disappearance of workers made those who were left behind terrified.<sup>14262</sup> Civil Party SAM Sak explained that his life at the Worksite “could be regarded as the life of an animal”.<sup>14263</sup> Civil Party SEN

<sup>14255</sup> T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 31-32. *See also*, Section 10.1: Tram Kak Cooperatives, paras 1107-1108.

<sup>14256</sup> *See e.g.*, T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 36-39; T. 2 April 2015 (YEM Khonny), E1/287.1, pp. 95-96. *See also*, Section 10.1.7.3.2: Tram Kak Cooperatives: Implementation in Tram Kak; Section 10.1: Tram Kak Cooperatives, para. 1020.

<sup>14257</sup> *See e.g.*, T. 2 April 2015 (THANN Thim), E1/287.1, pp. 35-36; T. 2 April 2015 (YEM Khonny), E1/287.1, pp. 94-95; T. 3 April 2015 (BUN Saroeun), E1/288.1, pp. 31-32, 40-41. *See also*, Section 10.1: Tram Kak Cooperatives, paras 1071-1079, 1204.

<sup>14258</sup> T. 2 April 2015 (YEM Khonny), E1/287.1, pp. 94-96.

<sup>14259</sup> *See e.g.*, T. 25 August 2015 (NHIP Horl), E1/336.1, pp. 17-18, 20; T. 28 July 2015 (SEN Sophon), E1/324.1, pp. 15-16; T. 2 September 2015 (SAM Sak), E1/340.1, p. 20; T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 82. *See also*, Section 11.1.7: Trapeang Thma Dam Worksite: Working conditions; Section 11.1.8: Trapeang Thma Dam Worksite: Living conditions.

<sup>14260</sup> *See e.g.*, T. 25 August 2015 (NHIP Horl), E1/336.1, p. 20; T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 64, 82; T. 2 September 2015 (SAM Sak), E1/340.1, pp. 10, 16 (explaining that he became sick due to overwork and had a fever); T. 27 July 2015 (SEN Sophon), E1/323.1, p. 71. *See also*, Section 11.1: Trapeang Thma Dam Worksite, paras 1271, 1320.

<sup>14261</sup> *See e.g.*, T. 2 September 2015 (SAM Sak), E1/340.1, pp. 11, 21-22, 27; T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 66. *See also*, Section 11.1.8.2.2: Trapeang Thma Dam Worksite: Food rations at Trapeang Thma Dam.

<sup>14262</sup> *See e.g.*, T. 2 September 2015 (SAM Sak), E1/340.1, p. 16; T. 2 September 2015 (MEAN Loeuy), E1/340.1, pp. 65-66. *See also*, Section 11.1: Trapeang Thma Dam Worksite, paras 1354-1355.

<sup>14263</sup> T. 2 September 2015 (SAM Sak), E1/340.1, p. 20.

Sophon stated that they were treated “like cattle”.<sup>14264</sup> Civil Party MEAN Loeuy described his experience as follows:

I could not ever imagine that I could survive. Every morning when I opened my eyes I knew that I lived for another day and I could not possibly know what would happen the next day. At night, we were afraid of being killed for fear that we committed any mistake during the day time. We kept saying to one another that if we lived through the day we might not survive during the night and we only looked forward to one day at a time.<sup>14265</sup>

4444. Conditions were similar at the 1<sup>st</sup> January Dam Worksite.<sup>14266</sup> The insufficient amount of food and the lack of proper drinking water caused Civil Parties to suffer from a number of physical ailments.<sup>14267</sup> Civil Parties also described the harm suffered as a result of working day and night without rest.<sup>14268</sup> Civil Party CHAO Lang explained that the work “was beyond my physical strength”.<sup>14269</sup> She became emaciated and weak as a result of the intense activity, but carried on working “in order to avoid being killed”.<sup>14270</sup> The lack of hygiene and sanitary facilities affected women in particular, because during their menstruation they could not properly wash themselves.<sup>14271</sup> Civil Party NUON Narom said in this respect that they “were treated as animals.”<sup>14272</sup> The Civil Parties experienced immediate and long-term emotional suffering because of the mistreatment and death of loved ones at the Dam.<sup>14273</sup> Civil Party CHAO Lang explained that upon hearing that her relatives were chained to an ox cart and dragged until they died, she almost fainted, her knees trembled and she became weak. She

<sup>14264</sup> T. 28 July 2015 (SEN Sophon), E1/324.1, p. 15.

<sup>14265</sup> T. 2 September 2015 (MEAN Loeuy), E1/340.1, p. 77.

<sup>14266</sup> Section 11.2.11.3: 1<sup>st</sup> January Dam Worksite: Experience of workers at the 1<sup>st</sup> January Dam; Section 11.2.12: 1<sup>st</sup> January Dam Worksite: Work Conditions and Quotas; Section 11.2.17: 1<sup>st</sup> January Dam Worksite: Living Conditions.

<sup>14267</sup> See e.g., T. 1 September 2015 (CHAO Lang), E1/339.1, p. 67. See also, Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1586, 1595; Section 11.2.17.2: 1<sup>st</sup> January Dam Worksite: Water and hygiene.

<sup>14268</sup> See e.g., T. 1 September 2015 (NUON Narom), E1/339.1, pp. 13, 16 (stating that she was hospitalised for two weeks due to acute cramps in her abdomen), 26-27 (explaining that the skin on her shoulder peeled from carrying the heavy load of earth on the basket); T. 1 September 2015 (CHAO Lang), E1/339.1, p. 64 (stating that one day she got a high fever and became unconscious and had to be taken to the hospital). See also, Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1606, 1629.

<sup>14269</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 61.

<sup>14270</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 62.

<sup>14271</sup> Section 11.2: 1<sup>st</sup> January Dam Worksite, paras 1602-1603.

<sup>14272</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 15.

<sup>14273</sup> See e.g., T. 1 September 2015 (NUON Narom), E1/339.1, pp. 15, 30, 32; T. 1 September 2015 (CHAO Lang), E1/339.1, p. 63. See also, Section 11.2.15: 1<sup>st</sup> January Dam Worksite: Arrests and Disappearances; Section 11.2.16: 1<sup>st</sup> January Dam Worksite: Killings at Baray Choan Dek Pagoda; Section 11.2.19: 1<sup>st</sup> January Dam Worksite: Deaths Resulting from Working and Living Conditions.

further stated that all her “hopes and expectations disappeared”.<sup>14274</sup> Civil Party NUON Narom stated that she has felt very lonely since she lost many of her relatives during the regime. She explained that she has “no goal in [...] life after the regime”.<sup>14275</sup>

4445. Civil Parties similarly suffered while working at the Kampong Chhnang Airfield Construction Site as they became thin and fell ill as a result of the working and living conditions.<sup>14276</sup> Civil Parties explained that many women did not menstruate regularly due to the heavy nature of the tasks they had to perform at the Worksite.<sup>14277</sup> Civil Party KONG Siek explained that the effects of the hard work she had to perform continue to persist today: “I am still suffering from that overwork. My chest and waist have been in pain. I am on regular medication, such as high blood pressure and blood vessel, that’s why I can live until today.”<sup>14278</sup>

4446. Civil Parties suffered psychological trauma and physical injury also at different security centres created during the DK period. Civil Party SORY Sen was cruelly exploited at the Kraing Ta Chan Security Centre, where he had to perform vile tasks such as carrying faeces from detention buildings and digging pits into which human corpses were placed.<sup>14279</sup> He suffers to this day from these experiences, and has nightmares that he continues to be detained at Kraing Ta Chan.<sup>14280</sup> Furthermore, the metal shackles used at the security centre to cuff the Civil Party caused him injury to the ankles, which often got infected and whose scars are still visible today.<sup>14281</sup> Civil Party KUL Nem described his constant fear and the psychological pain and anger he felt during his time at K-11, one of the offices constituting the Phnom Kraol Security Centre.<sup>14282</sup> He described the hard working conditions he had to endure, including rice threshing and transplantation duties, as the cause of his hardship during and after his

<sup>14274</sup> T. 1 September 2015 (CHAO Lang), E1/339.1, p. 63.

<sup>14275</sup> T. 1 September 2015 (NUON Narom), E1/339.1, p. 21.

<sup>14276</sup> See e.g., T. 17 June 2015 (KONG Siek), E1/318.1, p. 44 (“We were rather bony, and the only big thing that you could see was the head and the two knees -- kneecaps.”); T. 24 June 2015 (CHUM Samoeurn), E1/321.1, pp. 62-63. See also, Section 11.3: Kampong Chhnang Airfield Construction Site, paras 1739, 1745-1758.

<sup>14277</sup> See e.g., T. 17 June 2015 (KONG Siek), E1/318.1, pp. 40-42; T. 24 June 2015 (CHUM Samoeurn), E1/321.1, p. 87 (explaining that she suffered from abdominal pain and when her menstruation was interrupted she was accused of being pregnant, which affected her physically and emotionally).

<sup>14278</sup> T. 17 June 2015 (KONG Siek), E1/318.1, p. 92.

<sup>14279</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 45, 49; T. 6 February 2015 (SORY Sen), E1/258.1, p. 17. See also, Section 12.3: Kraing Ta Chan Security Centre, paras 2677-2679.

<sup>14280</sup> T. 4 February 2015 (SORY Sen), E1/256.1, pp. 66-67.

<sup>14281</sup> T. 4 February 2015 (SORY Sen), E1/256.1, p. 88.

<sup>14282</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 91-93, 101. See also, Section 12.5: Phnom Kraol Security Centre, para. 3095.

detention.<sup>14283</sup> The Civil Party told the Chamber that the exhaustion, which was “the result of overwork”, remained until after the fall of the DK regime and that he suspected this was also the cause of his wife’s miscarriages as she suffered the same appalling working and living conditions.<sup>14284</sup> The fact that he could not have children was a painful experience for KUL Nem, who explained that at the time he was angry about this, but he had to keep it to himself.<sup>14285</sup>

4447. The few survivors of S-21 described the physical and moral suffering, trauma and loss of dignity they experienced at the Security Centre. Civil Party CHUM Mey was interrogated about his links with the CIA and KGB and beaten up for 12 days and nights, as a result of which his back was swollen.<sup>14286</sup> He was electrocuted twice until he lost consciousness.<sup>14287</sup> As a result of this treatment he suffered permanent harm in the form of partial loss of sight and hearing.<sup>14288</sup> While being tortured, two of his toenails were removed which caused him pain so intense that he “almost passed out”.<sup>14289</sup> CHUM Mey also described the humiliation he experienced when the interrogator Seng sat on his head and when he had to lick his excrements as they spilled out of the container into which prisoners had to relieve themselves.<sup>14290</sup> He described his detention as follows: “The situation was so miserable. I thought that I was being treated worse than a human being, I was treated like an animal, like a dog. A dog would be given steamed rice to eat, but for me, I was given only watery gruel.”<sup>14291</sup> CHUM Mey also described the anguish and suffering he experienced at not knowing about his fate while at S-21.<sup>14292</sup> The Civil Party was separated from his pregnant wife when he was taken to S-21 and was concerned as he could not take care of her.<sup>14293</sup>

<sup>14283</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 89, 90-91, 95. *See also*, Section 12.5: Phnom Kraol Security Centre, para. 3104.

<sup>14284</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 93-94, 106, 113-114.

<sup>14285</sup> T. 24 October 2016 (KUL Nem), E1/488.1, pp. 92-94.

<sup>14286</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 27; T. 19 April 2016 (CHUM Mey), E1/418.1, pp. 47-48.

<sup>14287</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 30. *See also*, Section 12.2: S-21 Security Centre, paras 2387-2388, 2395-2396.

<sup>14288</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 30.

<sup>14289</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, p. 49; T. 19 April 2016 (CHUM Mey), E1/418.1, p. 47.

<sup>14290</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 48-49; T. 19 April 2016 (CHUM Mey), E1/418.1, p. 48.

<sup>14291</sup> T. 19 April 2016 (CHUM Mey), E1/418.1, p. 48.

<sup>14292</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 43, 46.

<sup>14293</sup> T. 18 April 2016 (CHUM Mey), E1/417.1, pp. 42-43.

4448. Many Civil Parties described the suffering connected with the execution of their relatives at S-21.<sup>14294</sup> The loss of family members created long-term emotional suffering, loneliness and material deprivation to those who survived the DK period.<sup>14295</sup> Civil Party KAU Sunthara explained her shock at the sight of the pictures of her brother and sister-in-law at S-21 after the regime fell.<sup>14296</sup> Civil Party CHE Heap explained the suffering caused by the arrest of his brother CHE Heng from Division 310 and his subsequent execution at S-21.<sup>14297</sup> Civil Party CHAU Kim described the desperate search to find out the truth about the death of her brother CHAU Seng, an intellectual who had returned from France to join the revolution and was subsequently killed at S-21.<sup>14298</sup> She also described the immense loss inflicted on Cambodian society by the killings of many intellectuals during the DK regime.<sup>14299</sup>

4449. Civil Parties affected by the treatment of the Vietnamese described the harm they suffered as a consequence of the targeting and separation of their families.<sup>14300</sup> Some Civil Parties described being isolated as others living in the villages did not want to be associated with people of Vietnamese origin.<sup>14301</sup> Many were affected by the arrest and killing of family members and other individuals living in their communities, and feared they would sooner or later also be taken away.<sup>14302</sup> Civil Party SIENG Chanthy stated that she wept when her elder brother was accused of being lazy because he could

<sup>14294</sup> See e.g., T. 15 August 2016 (CHAU Kim), E1/457.1, p. 71; T. 11 August 2016 (CHHAE Heap), E1/455.1, pp. 19-20 (“And when I saw the photo of my brother, I wept for the whole day because I felt pity for him. They mistreated him before they killed him because in the photo he looked very thin. Back then, when I saw him during my visit, he was in good health. He looked healthy. I burst into tears when I saw that photo, and I heard that he was detained there.”).

<sup>14295</sup> See e.g., T. 15 August 2016 (KAU Sunthara), E1/457.1, pp. 53 (“I have felt suffered until nowadays.”), 58 (“Whenever I feel sick, no one take care of me and I always remembered that damned regime that makes me lonely nowadays.”), 66; T. 15 August 2016 (CHAU Kim), E1/457.1, p. 71 (“For me and the family, the great loss of my older brother, Chau Seng, as well as my father, means the loss of core people in my family [...] We became poor. We lost our hope. We lost our future and we did not have someone be in charge of our family.”).

<sup>14296</sup> T. 15 August 2016 (KAU Sunthara), E1/457.1, p. 53.

<sup>14297</sup> T. 11 August 2016 (CHHAE Heap), E1/455.1, pp. 29-31.

<sup>14298</sup> T. 15 August 2016 (CHAU Kim), E1/457.1, pp. 71-74 (“I try to seek the truth everywhere.”). See also, Section 12.2: S-21 Security Centre, para. 2318.

<sup>14299</sup> T. 15 August 2016 (CHAU Kim), E1/457.1, pp. 72 (“As for the nation, the loss of Chau Seng is the loss of an intellectual who loved the nation and who was an elite, a progressive person, who participated actively in the building of society during the Sangkum Reastr Niyum from 1956 to 1968.”), 77.

<sup>14300</sup> See e.g., T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 92-94, 101-104 (describing the separation from his Vietnamese wife and three children, who were subsequently killed); T. 1 March 2016 (KHOUY Muoy), E1/394.1, pp. 46-49, 54-55. See also, Section 10.1: Tram Kak Cooperatives, para. 1125; Section 13.3.7.1: Treatment of the Vietnamese, paras 3433-3436.

<sup>14301</sup> See e.g., T. 29 February 2016 (SIENG Chanthy), E1/393.1, pp. 99-100; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 6 (explaining that she had to work and eat alone).

<sup>14302</sup> See e.g., T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 100; T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 9; T. 1 March 2016 (UCH Sunlay), E1/394.1, pp. 103-104.

not work due to illness and was taken away to be killed.<sup>14303</sup> The memory of this event still haunts her today.<sup>14304</sup> She also explained that even after the liberation she observed that her mother “was in a lost state of mind, that she was by herself without knowing what she was doing”.<sup>14305</sup> Civil Party UCH Sunlay described how he felt after learning that his Vietnamese wife and children had been killed. He and others who lost relatives were told by the cooperative chief that they “had fulfilled a great task for the *Angkar*” as they got “rid of this piece of rotten flesh”.<sup>14306</sup> The Civil Party stated that “all this suffering and harms cannot be forgotten. Despite some 30-40 years has passed, and my tears have kept flowing for months and years, I still think of them and miss them.”<sup>14307</sup> UCH Sunlay also explained that his suffering was so intense that it “was like people was cutting and removing my internal organs”.<sup>14308</sup> The loss of family members left many Civil Parties in a situation of poverty.<sup>14309</sup> Civil Party CHOEUNG Yaing explained that after the killing of his parents, who were of Vietnamese ethnicity, he fled Cambodia to go to Vietnam and only returned to Cambodia in 1982. At that time he did not have any documentation showing his ties to the country because “[w]hen I left Cambodia, I had nothing at all, because everything was burnt -- that is, my house was burnt. I only had a pair of clothes that I was wearing at the time.”<sup>14310</sup>

4450. Being forced to abandon their religion and religious traditions inflicted profound emotional trauma on Cham Civil Parties.<sup>14311</sup> Civil Party MEU Peou explained that Cham had to abandon their religion, eat pork, cut their hair short and not speak the Cham language. This caused them to lose their identities, as they “had nothing to hang onto during the regime”.<sup>14312</sup> Civil Party HIM Man stated that he and other Cham were forced to eat pork at gun point and that some of them “were weeping while

<sup>14303</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 10-11, 27.

<sup>14304</sup> T. 29 February 2016 (SIENG Chanthy), E1/393.1, p. 100; T. 1 March 2016 (SIENG Chanthy), E1/394.1, pp. 7-8.

<sup>14305</sup> T. 1 March 2016 (SIENG Chanthy), E1/394.1, p. 12.

<sup>14306</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 94.

<sup>14307</sup> T. 1 March 2016 (UCH Sunlay), E1/394.1, p. 95.

<sup>14308</sup> T. 2 March 2016 (UCH Sunlay), E1/395.1, p. 6.

<sup>14309</sup> See e.g., T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, p. 72 (“at that time I had nothing. I had no rice, I had no money. So I got on a boat with other people, and I helped them row the boat to make our ways back home.”); T. 8 December 2015 (CHOEUNG Yaing Chaet), E1/364.1, pp. 13, 47; T. 1 March 2016 (KHOUY Muoy), E1/394.1, p. 63.

<sup>14310</sup> T. 7 December 2015 (CHOEUNG Yaing Chaet), E1/363.1, pp. 72, 79.

<sup>14311</sup> See e.g., T. 29 February 2016 (MEU Peou), E1/393.1, pp. 7-9; T. 17 September 2015 (HIM Man), E1/349.1, p. 41. See also, Section 13.2: Treatment of the Cham, paras 3238, 3245, 3250.

<sup>14312</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 7-9.

they were eating pork”.<sup>14313</sup> Cham Civil Parties also experienced long-term suffering due to the separation of families and the loss of family members.<sup>14314</sup> Civil Party MEU Peou described the suffering he endured as a young boy during the DK period, when he had to separate from his family, had to work without receiving enough food and without proper accommodation.<sup>14315</sup> Civil Party HIM Man explained that he was left without hope for the future as a result of the suffering he endured during the DK period and the loss of many relatives: “I do not have any hope in my life. At the moment, I do not have any hope for my future.”<sup>14316</sup>

4451. Amongst the Civil Parties admitted in Case 002, there were also a significant number of persons who described their experiences when forced to marry and consummate the marriage. Many Civil Parties reported being afraid and stressed when they were required to get married.<sup>14317</sup> Civil Party SAY Naroen explained that she suffered deeply because she was to be married without her parents knowing about the wedding and having an opportunity to attend.<sup>14318</sup> The Civil Party also stated that she and others “were paired up like the way they pair up cattle”.<sup>14319</sup> Civil Party KUL Nem explained that he was worried and sad when he was told that his marriage would be arranged, as he had a fiancée in his village.<sup>14320</sup> Despite this, he agreed to the arrangement of marriage “in order to survive so that I could see the open sky again and see what happened to the country”.<sup>14321</sup> Other Civil Parties described their difficult emotions at having to remarry without their consent while still grieving the loss of their partners. Civil Party NGET Chat was forced to remarry after her husband was taken

<sup>14313</sup> T. 17 September 2015 (HIM Man), E1/349.1, p. 41; T. 28 September 2015 (HIM Man), E1/350.1, p. 15.

<sup>14314</sup> See e.g., T. 28 September 2015 (HIM Man), E1/350.1, p. 43 (“At present, I am still suffering from what happened during the regime. I lost all my hope since I lost many blood relatives and distant relatives”). See also, Section 13.2.9.1.2: Treatment of the Cham: Detention and killing of Cham at Trea Village Security Centre; Section 13.2.9.2.2: Treatment of the Cham: Killing of Cham at Wat Au Trakuon.

<sup>14315</sup> T. 29 February 2016 (MEU Peou), E1/393.1, pp. 6-7.

<sup>14316</sup> T. 28 September 2015 (HIM Man), E1/350.1, p. 43.

<sup>14317</sup> See e.g., T. 25 October 2016 (SAY Naroen), E1/489.1, p. 37 (explaining that when she realised she was about to get married, her body was trembling and cold because she was afraid); T. 25 October 2016 (NGET Chat), E1/489.1, p. 6 (stating that when she was sent to get married her body was shaking and her heart was racing). See also, Section 14: Regulation of Marriage, paras 3633-3635, 3638-3640.

<sup>14318</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 37-38, 42.

<sup>14319</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 38.

<sup>14320</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 89.

<sup>14321</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 89.

away. She explained that she was still weeping for the loss of her husband at the time she was sent to remarry.<sup>14322</sup>

4452. Forced sexual intercourse in the context of forced marriage had serious traumatising effects on the Civil Parties, some of whom consummated the marriage out of fear, when they realised they were monitored.<sup>14323</sup> Civil Parties were told that *Angkar* wanted them to produce as many children as possible.<sup>14324</sup> For Civil Party SAY Naroen that was incredibly painful because “as a Khmer woman, nothing is more important than our body”.<sup>14325</sup> The Civil Party got pregnant as a result of the sexual intercourse but was still required to work and was not given enough food, as a result of which she became very skinny.<sup>14326</sup> SAY Naroen subsequently lost the baby because she got malaria and did not have any medications. She explained: “Though I did not plan to have a baby, as a mother, I loved the child. But at the end, I did not see his/her face even one bit. And this is the things that made me really suffered and I cannot forget about it.”<sup>14327</sup> These experiences inflicted long-lasting harm in the Civil Parties. Civil Party KUL Nem explained that he felt he had dishonoured his fiancée by marrying another woman, and this unsettling feeling remained with him until the present day.<sup>14328</sup> Civil Party NGET Chat stated “I endured the pain the most. I told my children that it was a great misery, and it stays inside me.”<sup>14329</sup>

4453. The Chamber recalls expert evidence heard in Case 002/01 that the suffering inflicted on the Civil Parties as a result of the crimes committed by the Accused has contributed to the symptoms of long-term psychological damage reported by a great number of them.<sup>14330</sup> Expert CHHIM Sotheara explained that in many cases, the experiences of victims of the Khmer Rouge caused lasting trauma, with symptoms such

<sup>14322</sup> T. 24 October 2016 (NGET Chat), E1/488.1, pp. 123, 125; T. 25 October 2016 (NGET Chat), E1/489.1, p. 8.

<sup>14323</sup> See e.g., T. 24 October 2016 (KUL Nem), E1/488.1, p. 100; T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 39-40. See also, Section 14: Regulation of Marriage, paras 3641, 3644, 3646-3647.

<sup>14324</sup> See e.g., T. 25 October 2016 (SAY Naroen), E1/489.1, pp. 40-41; T. 25 October 2016 (NGET Chat), E1/489.1, pp. 11-12.

<sup>14325</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 40.

<sup>14326</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 50.

<sup>14327</sup> T. 25 October 2016 (SAY Naroen), E1/489.1, p. 43.

<sup>14328</sup> T. 24 October 2016 (KUL Nem), E1/488.1, p. 90.

<sup>14329</sup> T. 25 October 2016 (NGET Chat), E1/489.1, p. 8.

<sup>14330</sup> See e.g., T. 5 June 2013 (CHHIM Sotheara), E1/201.1, p. 83 (discussing the psychological impact of losing loved ones); T. 5 June 2013 (CHHIM Sotheara), E1/201.1, pp. 93-94 (discussing the psychological effects of relocation); T. 5 June 2013 (CHHIM Sotheara), E1/201.1, pp. 95-96 (discussing the psychological impact of witnessing traumatic events); T. 5 June 2013 (CHHIM Sotheara), E1/201.1, p. 98 (discussing the psychological effects of hunger).



as nightmares, post-traumatic stress disorder, depression, anxiety and paranoia.<sup>14331</sup> Post-traumatic stress disorder can manifest itself through vivid recollections of past events; a reluctance to discuss or revisit the past; physical trembling; and insomnia.<sup>14332</sup> The Chamber finds that, as a consequence of the crimes of which the Accused have been convicted in Case 002/02, the Civil Parties and a very large number of additional victims have suffered immeasurable harm, which includes physical suffering, economic loss, loss of dignity, psychological trauma and grief arising from the loss of family members or close relations.

### **21.5. Assessment of all Awards sought by the Lead Co-Lawyers**

#### ***21.5.1. Projects Aimed at Guaranteeing Non-Repetition: Projects 1, 2 and 3***

4454. The Chamber finds that projects 1, 2 and 3, which concern forms of education aimed at guaranteeing non-repetition, comply with the requirements of Internal Rule 23*quinquies* and are of a collective and moral nature. As this Chamber held previously, public education regarding the suffering of victims and the nature of the DK regime is likely to advance the goals of acknowledgment, remembrance, awareness of the crimes committed and the suffering resulting therefrom.<sup>14333</sup> The Chamber finds that by providing education on CPK history and Civil Parties' experiences, these projects acknowledge the harm suffered by the Civil Parties. Furthermore, the Chamber agrees with the Lead Co-Lawyers that intergenerational dialogue, both directly by creating appropriate spaces for interaction and indirectly through digital media as well as artistic projects, is an important way of educating the younger generation about the past in order to prevent the repetition of Civil Parties' and other DK survivors' experiences.<sup>14334</sup> The Chamber finds that by educating the younger generation with a view to preventing the recurrence of crimes in Cambodia these initiatives provide benefits to the Civil Parties which address their harm.

4455. With respect to projects 1 and 2, which provide historical accounts of the DK regime, the Chamber recalls that the determination of the facts and the criminal

<sup>14331</sup> T. 5 June 2013 (CHHIM Sothea), E1/201.1, pp. 68-69.

<sup>14332</sup> T. 5 June 2013 (CHHIM Sothea), E1/201.1, p. 70.

<sup>14333</sup> Case 002/01 Trial Judgement, para. 1156.

<sup>14334</sup> Civil Party Lead Co-Lawyers' Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, para. 15.

responsibility of the Accused are the sole prerogative of the ECCC and depend upon an assessment of witnesses' and Civil Parties' credibility.<sup>14335</sup> It is therefore appropriate to add a disclaimer to the web-based learning application on DK history and to the curriculum developed for the teacher and university lecturer training and workshops, respectively, and the Chamber so directs.<sup>14336</sup>

4456. The Chamber notes that funding for the realisation of these projects was previously secured and that their implementation has been completed.<sup>14337</sup> The Chamber consequently endorses projects 1, 2 and 3.

**21.5.2. *Projects Aimed at Guaranteeing Non-Repetition Benefitting Specific Groups of Civil Parties and Victims: Projects 4, 5, 6 and 12***

4457. Projects 4, 5 and 6 also concern forms of education aimed at guaranteeing non-repetition, promoting intergenerational dialogue through the arts and providing documentation of Civil Parties' experiences. The only difference between these and the projects discussed in the previous section is that these projects are tailored to benefit specific groups of Civil Parties and other victims, including persons affected by the treatment of the Cham, the treatment of the Vietnamese, and the regulation of marriage. The projects acknowledge the harm suffered by these groups of Civil Parties through the documentation of their experiences. By raising awareness about their treatment and promoting non-discrimination in order to prevent the recurrence of crimes targeting these groups, the projects provide benefits to Civil Parties which address their harm. The Chamber finds that these projects comprise collective and moral reparations within the scope of the ECCC legal framework and satisfy the other requirements of Internal Rule 23*quinquies*.

<sup>14335</sup> Case 002/01 Trial Judgement, para. 1157.

<sup>14336</sup> The Chamber considers the inclusion of a disclaimer such as the following one to be appropriate: "The content of this reparation project was developed on the basis of information gathered by research experts, teachers, scholars and archivists. The determination of the guilt or innocence of the Accused NUON Chea and KHIEU Samphan as reflected in the Trial Chamber Judgement and, if appropriate, confirmed or amended by the Supreme Court Chamber, is the sole legally binding account of the events relayed in this project." See also, Case 002/01 Trial Judgement, para. 1157 (fn. 3296).

<sup>14337</sup> Annex 1, App-Learning on Khmer Rouge History, E457/6/2/1.1.1, 30 May 2017; Annex 2, Khmer Rouge History Education through Teacher and University Lecturer Training Workshops, E457/6/2/1.1.2, 30 May 2017; Annex 3, The Turtle Project: Innovative Cross Media Project, Promoting Historical Awareness and Civil Courage in Cambodia, E457/6/2/1.1.3, 30 May 2017.

4458. The Chamber notes that project 12 seeks to address the harm caused to Civil Parties affected by the treatment of the Vietnamese by the loss of their legal status and the lack of access to basic social, economic and political rights resulting from their targeting during the DK period.<sup>14338</sup> In the project description, it is indicated that “[o]verall, clients’ statements and additional interview records establish that the crimes they were subjected to, *caused*, in part, their present-day harm in that, during the various occasions in which they were forcibly relocated by the Khmer Rouge in 1975, victims were forced to leave behind, destroy or otherwise lost, important documentation demonstrating their ties to Cambodia”.<sup>14339</sup>

4459. The Chamber has determined that Civil Parties affected by the treatment of the Vietnamese suffered harm including psychological trauma, discrimination, material deprivation and, importantly in this context, the loss of legal status due to the loss of documentation showing their ties to Cambodia, as a result of the crimes related to the treatment of which they were victims during the DK period.<sup>14340</sup> The Chamber finds that by providing legal and civic education to allow Civil Parties to better understand their legal status according to Cambodian law, the specific reparation measures proposed under project 12 acknowledge the harm suffered by these Civil Parties and provide benefits to them which address this harm. It also finds that these measures constitute collective and moral reparations within the scope of the ECCC legal framework.

4460. The Chamber notes that funding for the realisation of these projects was previously secured and that their implementation has been completed.<sup>14341</sup> The Chamber consequently endorses projects 4, 5, 6 and 12.

<sup>14338</sup> Annex 12: Legal and Civic Education for Minority Civil Parties, E457/6/2/1.1.12, 30 May 2017, ERN (En) 01486311.

<sup>14339</sup> Annex 12: Legal and Civic Education for Minority Civil Parties, E457/6/2/1.1.12, 30 May 2017, p. 5 (original emphasis), ERN (En) 01486310.

<sup>14340</sup> *See above*, para. 4449. *See also*, Section 13.3: Treatment of the Vietnamese, paras 3503-3507, 3509-3513, 3515-3519.

<sup>14341</sup> Annex 4: Community Media Project: The Cham People and the Khmer Rouge, E457/6/2/1.1.4, 30 May 2017; Annex 5: Phka Sla Kraom Angkar, E457/6/2/1.1.5, 30 May 2017; Annex 6: Voices from Ethnic Minorities: Promoting public awareness about the treatment of ethnic Vietnamese and Cham living in Cambodia during the Khmer Rouge regime, E457/6/2/1.1.6, 30 May 2017; Annex 12: Legal and Civic Education for Minority Civil Parties, E457/6/2/1.1.12, 30 May 2017.

**21.5.3. *Projects Aimed at Providing Satisfaction: Projects 7, 8, 9 and 10***

4461. Projects 7, 8, 9 and 10 provide measures of satisfaction, which the Chamber has previously acknowledged as a means of reparation.<sup>14342</sup> The Chamber recalls that satisfaction may include remedies such as an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim, a public apology, including acknowledgement of the facts and acceptance of responsibility, and commemorations and tributes to the victims.<sup>14343</sup> The Chamber agrees with the Lead Co-Lawyers that satisfaction as reparation includes “the verification of facts and full and public disclosure of the truth, commemorations and tributes to victims, and the inclusion of an accurate account of violations that occurred in educational materials at all levels”.<sup>14344</sup> The Chamber has previously observed that other international bodies have characterised as reparation comparable official acknowledgements of suffering of considerable symbolic significance for victims and finds that the proposed projects constitute appropriate measures of satisfaction.<sup>14345</sup> By making Civil Parties’ accounts accessible to the public, all four initiatives acknowledge the Civil Parties’ harm. Further, these projects provide benefits to the Civil Parties in that they commemorate their experiences and ensure that their suffering is not forgotten. The Chamber is satisfied that these measures constitute collective and moral reparations and comply with the requirements of Internal Rule 23quinquies.

4462. In light of the above and considering that funding for the implementation of these projects has been secured, the Chamber endorses projects 7, 8, 9 and 10.

**21.5.4. *Projects Serving Rehabilitation: Projects 11 and 13***

4463. The Chamber finds that project 11, which focuses on providing Civil Parties with access to mental health services, complies with the requirements of Internal Rule 23quinquies and is of a collective and moral nature. Through a range of measures including truth-telling community dialogues, memory initiatives/forum theatre, and

<sup>14342</sup> Case 001 Trial Judgement, para. 668, fn. 1153; Case 002/01 Trial Judgement, para. 1158.

<sup>14343</sup> UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, Article 22; Committee against Torture, General Comment No. 3, para. 16.

<sup>14344</sup> Civil Party Lead Co-Lawyers’ Final Claim for Reparation in Case 002/02 with Confidential Annexes, E457/6/2/1, 30 May 2017, para. 36; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, Article 22.

<sup>14345</sup> Case 001 Trial Judgement, para. 667.

youth outreach activities the project acknowledges the harm suffered as a result of the crimes in Case 002/02, and provides benefits to the Civil Parties as it is likely to aid healing by facilitating access to counselling and mental health services. The Supreme Court Chamber has previously acknowledged that providing psychological care constitutes an appropriate form of reparation.<sup>14346</sup> The Chamber also notes that funding for the implementation of this project has been secured and that the partners to this project have all expressed their willingness to assist in its realisation. Consequently, the Chamber endorses project 11.

4464. In relation to project 13, the Chamber finds that, through the creation of revolving funds aimed at increasing income security of OPA's members, the project effectively seeks to provide benefits to the Civil Parties in the form of individual, monetary payments. The project aims at redressing the loss of standard of living and of financial security caused to spouses and dependants by the death of their relatives during the Khmer Rouge regime. While recognising the importance of such efforts, the Chamber recalls that these fall outside the scope of Internal Rule 23*quinqüies*(1) which provides that the Chamber may only award collective and moral reparations. As noted above, the Supreme Court Chamber has interpreted the term "moral" to mean repairing moral damages rather than material ones.<sup>14347</sup>

4465. With regard to the other aspects of project 13, seeking to provide mental and physical care to Civil Parties,<sup>14348</sup> the Chamber finds that these activities comply with the requirements of Internal Rule 23*quinqüies*(1) in that they acknowledge the harm suffered by Civil Parties, provide benefits which address this harm, and are of a collective and moral nature. Further, funding for the implementation of these project activities has been secured and the partners have all expressed their willingness to assist in their realisation. In light of this, while the Chamber does not endorse the specific component of project 13 related to livelihood support, it endorses the healthcare component of this project.

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<sup>14346</sup> Case 001 Appeal Judgement, paras 700-701. *See also*, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, Article 21.

<sup>14347</sup> Case 001 Appeal Judgement, para. 658.

<sup>14348</sup> Such project activities include the creation of mobile health camps to provide basic primary healthcare and check-ups to ageing Civil Parties, as well as providing mental health education and training at the community level. *See above*, para. 4432.

### 21.5.5. *Project Not Endorsed by the Chamber: Project 15*

4466. Through the direct involvement of 35 indigenous Civil Parties in intergenerational dialogue and exchange of knowledge activities, project 15 seeks to acknowledge the suffering experienced by indigenous minorities in Ratanakiri and Mondulakiri provinces as a consequence of their denigration, discrimination and persecution.<sup>14349</sup> The Chamber acknowledges that indigenous Civil Parties, as the wider population of Cambodia, have suffered greatly during the DK regime and that some members of indigenous communities were among the victims of the crimes of which the Accused have been convicted, in particular political persecution when they were considered real or perceived enemies. However, Internal Rule 23*quinqüies*(1) requires reparation measures to acknowledge the harm suffered as a result of the commission of the crimes of which the Accused are convicted. In this regard, the Chamber recalls that Case 002/02 does not include charges specifically related to the targeting, discrimination or persecution of indigenous minorities living in Ratanakiri and Mondulakiri provinces.<sup>14350</sup> While recognising the value of the project as such, the Chamber finds that it does not meet the requirements of Internal Rule 23*quinqüies*(1) and therefore declines to endorse it.

4467. As stated in Case 002/01, the Chamber generally welcomes any initiative that offers support to the victims, keeps their memory alive, acknowledges their suffering and awakens public awareness to avoid repetition of acts such as those that occurred. The Chamber also wishes to remind donors that they have the option to support measures that have not been specifically endorsed in this Judgement.<sup>14351</sup>

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<sup>14349</sup> Annex B: Cambodia's Indigenous People and Pol Pot, E457/6/2/4.3, 30 November 2017, ERN (En) 01547869 (the Short Project Summary explains that "[t]hrough history, Cambodia's indigenous minorities have endured denigration, discrimination, and persecution. In the 1960's, the Khmer Rouge (KR) had exploited growing resentment of the government in order to build a revolutionary base in Ratanakiri, Mondulakiri, Stung Treng, and Kratie.").

<sup>14350</sup> The only charges related to the targeting of specific groups are brought in respect of the treatment of Vietnamese and Cham people. See Section 1: Introduction, para. 16; Section 2: Preliminary Issues, paras 184-185 (clarifying that evidence of the alleged persecution of Khmer Krom as a targeted group falls outside the scope of Case 002/02, and therefore the Chamber does not consider itself properly seized of the targeting of Khmer Krom either as a specific group or as sub-group of the Vietnamese).

<sup>14351</sup> Internal Rule 12*bis*(4); Case 002/01 Trial Judgement, para. 1164.

## 22. DISPOSITION

FOR THE FOREGOING REASONS, having considered all the evidence and the submissions of the Parties the Trial Chamber decides as follows:

The Trial Chamber **REJECTS** the requests made by the KHIEU Samphan Defence to limit the scope of the trial in Case 002/02.

The Trial Chamber **RECHARACTERISES** the crime against humanity of extermination to the crime against humanity of murder, including with *dolus eventualis*, regarding deaths that occurred due to the conditions and circumstances imposed to the victims at the following crime sites: Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre.

The Trial Chamber finds the Accused **NUON Chea** to be **GUILTY** of having committed within the territory of Cambodia between 17 April 1975 and 6 January 1979, through his acts and omissions, the following crimes:

- PURSUANT TO Articles 5 and 29 (new) of the ECCC Law, the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage.
- PURSUANT TO Articles 6 and 29 (new) of the ECCC Law, grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian.
- PURSUANT TO Articles 4 and 29 (new) of the ECCC Law, genocide by killing members of the Vietnamese and Cham groups.

The Trial Chamber finds the Accused **KHIEU Samphan** to be **GUILTY** of having committed within the territory of Cambodia between 17 April 1975 and 6 January 1979, through his acts and omissions, the following crimes:

- PURSUANT TO Articles 5 and 29 (new) of the ECCC Law, the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in context of forced marriage.
- PURSUANT TO Articles 6 and 29 (new) of the ECCC Law, grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian.
- PURSUANT TO Articles 4 and 29 (new) of the ECCC Law, genocide by killing members of the Vietnamese group.

The Trial Chamber finds the Accused **NUON Chea** and **KHIEU Samphan** to be **NOT GUILTY** of the remaining crimes within the scope of Case 002/02. Therefore, the Chamber **ACQUITS** both Accused of these crimes.

The Chamber has considered the gravity of the crimes, including their scale and brutality as well as the number and vulnerability of victims, for which the Accused have been convicted, as well as relevant aggravating and mitigating circumstances.

PURSUANT TO Article 39 (new) of the ECCC Law, the Chamber sentences the Accused, **NUON Chea** to **LIFE IMPRISONMENT**. Taking into consideration the life sentence imposed on NUON Chea in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.

PURSUANT TO Article 39 (new) of the ECCC Law, the Chamber sentences the Accused, **KHIEU Samphan**, to **LIFE IMPRISONMENT**. Taking into consideration



the life sentence imposed on KHIEU Samphan in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.

**DECLARING** the consolidated group of Civil Parties, individually listed in Annex 2, to have suffered harm as a result of the commission of the crimes for which NUON Chea and KHIEU Samphan have been convicted, and pursuant to Internal Rule 23*quinq*ues (3) (b), the Chamber grants in part the Civil Party Lead Co Lawyers' requests for moral and collective reparations. As set out in detail in Section 21 of this Judgement, the Chamber endorses, as projects giving appropriate effect to the award sought and which may be implemented, 13 projects concerning remembrance of the victims and memorialisation of the suffering endured, therapy and psychological assistance to the victims, and documentation and education. The Chamber denies requests concerning two projects, one whole and one in part, which fail to satisfy the requirements of Internal Rule 23*quinq*ues (3) (b).

This Judgement is publicly pronounced in the main courtroom of the ECCC in Phnom Penh on 16 November 2018.

This Judgement is appealable by the Parties in accordance with the Internal Rules. In this regard, the Chamber **CLARIFIES** that, in accordance with Internal Rule 107 (4) and Article 8.5 of the Practice Direction on the Filing of Documents before the ECCC, the time limit for filing a notice of appeal, if any, will commence on the first calendar day following the day of service of the notification of the fully reasoned, written Judgement in Khmer and one of the other official languages of the ECCC as selected by each Party pursuant to Article 2.2 of the Practice Direction.

Judge YOU Ottara appends a separate opinion on genocide to the Judgement.

**Done in Khmer, English and French.**  
**Dated this 16<sup>th</sup> day of November 2018**  
**At Phnom Penh**  
**Cambodia**

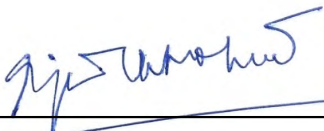
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LIM Suy-Hong




Milan JOVANČEVIĆ




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Judge NIL Nonn  
Presiding



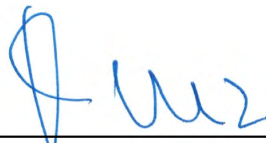
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Judge Jean-Marc LAVERGNE




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Judge YA Sokhan



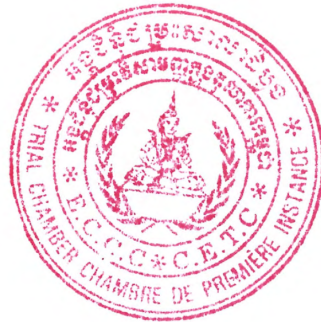
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Judge Claudia FENZ



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Judge YOU Ottara



## 23. JUDGE YOU OTTARA'S SEPARATE OPINION ON GENOCIDE (*PROLAI POUCH-SAS*)

### **23.1. Introduction**

4468. In relation to the crime of genocide (*prolai pouch-sas* in Khmer), this case focused exclusively on charges of genocide by killing Vietnamese and Cham.<sup>14352</sup> Yet the reasons for such a narrow focus have not been explained – adequately or at all. During the judicial investigation, for example, the Lead Co-Lawyers for the Civil Parties requested that broader genocide charges should be examined by an external expert, specifically in relation to the Khmer national group.<sup>14353</sup> The Co-Investigating Judges rejected this request. They stated that it was for them to “decide whether to characterise the facts as genocide when drafting the Closing Order”.<sup>14354</sup> Submissions were also made to the Co-Investigating Judges in relation to the Khmer Krom.<sup>14355</sup> The Closing Order merely notes such submissions.<sup>14356</sup> It does not explain the restrictive approach to genocide which the Co-Investigating Judges adopted.

4469. In my view, the resulting approach which the Trial Chamber has necessarily followed is much too narrow. It risks implying an overly formalistic, and entirely unrealistic, approach to the definition and identification of genocides. The ECCC could have considered, for example, whether persons who were targeted for destruction were essential to the survival of the Cambodian national group as it existed in 1975.<sup>14357</sup> It

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<sup>14352</sup> Closing Order, paras 745-770, 776-790, 1336-1342 (in relation to Cham), paras 791-831, 1343-1349 (in relation to Vietnamese).

<sup>14353</sup> Sixth Investigative Request of Co-Lawyers for Civil Parties Concerning the Charge of Genocide Against the Khmer Nationals, D349, 4 February 2010, paras 3, 41-44.

<sup>14354</sup> Order on Civil Parties Request Concerning the Charge of Genocide Against the Khmer Nationals (OCIJ), D349/1, 24 February 2010, para. 4.

<sup>14355</sup> Civil Parties' Request for Supplementary Investigations Regarding Genocide of the Khmer Krom & the Vietnamese, D250/3, 3 December 2009.

<sup>14356</sup> Closing Order, fn. 5141.

<sup>14357</sup> UN Doc. A/53/850-S/1999/231, Annex (“Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135”, 18 February 1999), paras 64-65 (concluding as follows: “As for atrocities committed against the general Cambodian population, some commentators have asserted that the Khmer Rouge committed genocide against the Khmer national group, intending to destroy a part of it. The Khmer people of Cambodia do constitute a national group within the meaning of the Convention. However, whether the Khmer Rouge committed genocide with respect to part of the Khmer national group turns on complex interpretive issues, especially concerning the Khmer Rouge’s intent with respect to its non-minority-group victims. The Group does not take a position on this issue, but believes that any tribunal will have to address this question should Khmer Rouge officials be charged with genocide against the Khmer national group.”). The experts were: Ninian Stephen (Chair, Australia); Rajsoomer Lallah (Mauritius); and Steven R. Ratner (USA). I note that it appears that Mr. Ratner later

might have been feasible and appropriate to distinguish between different parts of the Cambodian national group, which may have been targeted for myriad reasons – e.g. political, economic, social, cultural reasons, in the name of societal purification more broadly. This Separate Opinion explains why I think this would have been feasible.

4470. It is very well known that political groups and cultural genocide were deliberately omitted from the Genocide Convention. But there is nothing in either the plain language of the Convention, the *travaux préparatoires*, or in its overall purpose, which excludes from its scope the intentional destruction of a substantial part of a national group as such, provided that the requisite elements are met. Just because additional motivations probably existed, be they political, cultural or ideological, this should not have diverted the ECCC from a fuller assessment of the legal elements of the crime of genocide in the context of the Cambodian national group. This Separate Opinion sets out my views on the definition of genocide as a matter of legal interpretation. I have not reached any conclusions on the facts because these were not litigated before the Trial Chamber. Notwithstanding that major but necessary limitation, I consider the legal issue to be of such importance that I wish to set out my views.

### **23.2. The Application of the Genocide Convention by the ECCC**

4471. Although the provisions in Article 2 of the Genocide Convention are well-known, it is helpful to set out the definition of genocide in full:

In the present Convention, genocide means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

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subscribed to a possibly different view, stating that although the Khmer people “clearly constitute a national group”, the facts suggested that the Khmer Rouge targeted their Khmer victims on economic, social, or political grounds, and not as members of the Khmer nation as such. *See* Steven R. Ratner and Jason S. Abrams, *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy* (New York: Oxford University Press, 2<sup>nd</sup> Edition, 2001), pp. 286-287 (“the argument that the Khmer Rouge committed genocide with respect to the Khmer national group appears relatively weak in light of the facts.”).

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

4472. This raises various points for interpretation, four of which I address in detail in this Opinion, namely: (a) the protected groups; (b) the meaning of “intent to destroy”; (c) the meaning of “in whole or in part”; and (d) the meaning of “as such”. I also consider related matters such as the term “auto-genocide” and whether groups may be defined in the absence of particular characteristics. It is the definition of genocide as set out in Article 2 of the Genocide Convention which is to be applied at the ECCC. Although another theory is sometimes developed to suggest that customary international law extends further than the specific provisions in the Genocide Convention, I do not consider that to merit analysis here because the focus of the ECCC is on the Convention.<sup>14358</sup>

4473. The application of Article 2 of the Genocide Convention before the ECCC has, however, caused some linguistic confusion. The English version of Article 4 of the Law on the Establishment of the ECCC uses a mistaken formulation when attempting to repeat Article 2 of the Genocide Convention. It specifies that acts of genocide “mean any acts committed with the intent to destroy, in whole or in part, a national ethnical, racial or religious group, such as [...]” This formulation differs from the language found in Article 2 of the Genocide Convention in two fundamental respects: (a) “as such” is changed to “such as”; and (b) “any of the following acts” is changed to “any acts”.

4474. On one view, these differences might alter both the particular mental element required by the Genocide Convention (*i.e.* “as such”) and open up the previously closed set of acts listed in Article 2. Such a view cannot be sustained. The better explanation is that the discrepancies between the Genocide Convention and Law on the Establishment of the ECCC, glaring though they are, result from basic mistranslations or a scrivener’s error to which no significance should be attached. Indeed Article 4 of the ECCC Law expressly states that the ECCC’s jurisdiction relates to the “crimes” of

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<sup>14358</sup> See *e.g.*, Beth van Schaack, “The Crime of Political Genocide: Repairing the Genocide Convention’s Blind Spot”, 106 Yale Law Journal, Vol. 106 (1996), pp. 2259-2291.

genocide “as defined in the [Genocide Convention]”.<sup>14359</sup> Article 33(4) of the Vienna Convention on the Law of Treaties directs me to adopt “the meaning which best reconciles the texts, having regard to the object and purpose of the treaty [...]”. The express purpose of the ECCC Law was to provide the ECCC with jurisdiction over the crimes contrary to Article 2 of the Genocide Convention – not some alternative formulation. I therefore conclude that it is Article 2 of the Genocide Convention which falls to be interpreted; rather than the errors in the text of Article 4 of the ECCC Law.

### **23.3. The Term “Auto-Genocide”**

4475. Before turning to the interpretation of Article 2 of the Convention, I note that the term “auto-genocide” is sometimes used in relation to Cambodia, to connote the idea of a self-genocide, or the destruction of one’s own people.<sup>14360</sup> The earliest example of its use in relation to Cambodia that I have been able to locate is a publication by Jean Lacouture dated 31 March 1977. In his review of François Ponchaud’s just-published book “*Cambodia: Year Zero*”, Mr. Lacouture offered the following contention:

Ordinary genocide (if one can ever call it ordinary) usually has been carried out against a foreign population or an internal minority. The new masters of Phnom Penh have invented something original, auto-genocide.<sup>14361</sup>

<sup>14359</sup> In addition, Article 9 of the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committee during the period of Democratic Kampuchea provides that the ECCC’s subject-matter jurisdiction “shall be the crime of genocide as defined in the 1948 Convention”. In my view, the Khmer version of the Law on the ECCC mistakenly translates “as such” into “such as” (*doch chea* in Khmer). Similar difficulties with translation occurred during the course of the trial. For example, the International Co-Prosecutor addressed the Chamber on the interpretation of genocide and his references to “as such” were interpreted “such as (*doch chea*) at first. This was subsequently corrected to “as such” (*nis aeng*).

<sup>14360</sup> The *Oxford English Dictionary* identifies earlier references to “auto-genocide” as far back as 1958, in particular in the work of British Professor Arnold J. Toynbee on the Western World, who suggested that the Western community was “on its way towards being merged in a worldwide society that will eventually include the whole human race, if mankind does not commit auto-genocide *en route*.” See *OED*, 3<sup>rd</sup> Edition, June 2011 (entry for “autogenocide” defined as “(a) the self-destruction of the entire human race (*rare*); (b) the mass killing by a government or regime of a section of its own people.”).

<sup>14361</sup> Jean Lacouture, “The Bloodiest Revolution”, *The New York Review of Books*, Vol. 24 (31 March 1977), pp. 9-10. See Book by David Chandler, *Voices From S-21: Terror and History in Pol Pot’s Secret Prison*, E3/1684, ERN (En) 00192672 (stating that French author Jean Lacouture “coined the term *auto-genocide*”); *Where Terror is King* (Anthony Lewis, New York Times), E3/8293, 21 March 1977, ERN (En) 00445300 (describing Jean Lacouture’s article in the New York Review of Books).

4476. Mr. Ponchaud had not used the term “auto-genocide” himself. And aspects of Mr. Lacouture’s review of Mr. Ponchaud’s book generated controversy at the time, which led to some corrections being issued.<sup>14362</sup> Those debates are interesting and important but, for present purposes, the notable point is that the phrase “auto-genocide” – whether hyphenated or not – clearly stuck. It began to be used in discussions at the United Nations and in more general discourse. Ambassador Samantha Power has attributed the term to Mr. Haim Herzog of Israel, who used it before the UN Economic and Social Council on 4 May 1977 in reference to the situation in Democratic Kampuchea at that point in time.<sup>14363</sup> It seems likely that Mr. Herzog had read Mr. Lacouture’s recent article. In a December 1978 newspaper article, Witness Richard Dudman questioned whether “auto-genocide” had taken place.<sup>14364</sup> At a meeting of the United Nations Commission on Human Rights on 7 March 1979, the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Adelwahab Bouhdiba, presented an analysis of events in Democratic Kampuchea and concluded that the situation “constituted nothing less than autogenocide”.<sup>14365</sup> Fifteen years later, Mr. Michael Kirby, Special Representative of the UN Secretary-General, submitted a report in 1994 which again referred to the “manifestation of auto-genocide unique in world history”.<sup>14366</sup>

<sup>14362</sup> Jean Lacouture, “Cambodia: Corrections”, *The New York Review of Books*, Vol. 24 (26 May 1977); *Distortions at Fourth Hand* (Noam Chomsky & Edward S. Herman, The Nation), E3/7293, 6 June 1977, ERN (En) 00994159-00994169.

<sup>14363</sup> UN Doc. E/AC.7/SR.811, UNGA Seventh Committee, GAOR 62nd Sess. (“Minutes of the Eight Hundred and Eleventh Meeting”, 4 May 1977), p. 7, cited in Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Flamingo: 2003), p. 125.

<sup>14364</sup> *Conformity a Must for Survival in Cambodia* (Richard Dudman, Chicago Tribune), E3/9641, 26 December 1978, ERN (En) 00444937 (describing “no clear answer to the question of ‘auto-genocide,’ the term used by some observers for an alleged methodical execution of much of the entire class of former professionals, tradesmen, civil servants and soldiers”).

<sup>14365</sup> UN Doc. E/CN.4/SR.1510, Commission on Human Rights, 35<sup>th</sup> Sess. (“Summary Record of the First Part (Public) of the 1510th Meeting”, 9 March 1979), para. 22. The written report did not refer to genocide or autogenocide. It did, however, refer to the following allegation: “launching of a systematic programme aimed at the physical elimination of various categories of persons formerly associated with the previous régime or belonging to higher social or educational categories”. See UN Doc. E/CN.4/1335, Commission on Human Rights, 35<sup>th</sup> Sess. (“Question of the Violation of Human Rights and Fundamental Freedoms in Any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories – Analysis Prepared on Behalf of the Sub-Commission by its Chairman of Materials Submitted to It and the Commission on Human Rights Under Decision 9 (XXXIV) of the Commission on Human Rights”, 30 January 1979), para. 23(4).

<sup>14366</sup> Report of the Special Representative of the Secretary-General, Mr. Michael Kirby (Australia), on the Situation of Human Rights in Cambodia, Submitted in Accordance with Commission on Human Rights Resolution 1993/6, E3/7301, 24 February 1994, p. 8, ERN (En) 00178779 (quoting Grant Curtis, “Transition to What? Cambodia, UNTAC and the Peace Process”, UNRISD, November 1993).

4477. I also noted that during his statement to the Chamber at the conclusion of Case 002/02, KHIEU Samphan denied the existence of any “self-genocide” and suggested this allegation was the result of Vietnamese propaganda and manipulation.<sup>14367</sup> Roeland Burgler, upon whom the NUON Chea Defence has relied,<sup>14368</sup> has stated that “auto-genocide” is an “absurdity” which was “often repeated after the fall of Democratic Kampuchea by Cambodians inside Cambodia asked to explain the Pol Pot killings”.<sup>14369</sup> In discussing “auto-genocide”, Professor Schabas warns that to confuse mass killing of the members of the perpetrators’ own group with genocide is inconsistent with the purpose of the Convention, which he describes as being “to protect national minorities from crimes based on ethnic hatred”.<sup>14370</sup> The phrase “auto-genocide” or “self-genocide” has therefore lurked throughout these proceedings. It has not been adequately addressed.

4478. In my view, however, adding a prefix such as “auto” to genocide distracts more than it assists with the interpretation of Article 2 of the Convention. The term “auto” is not found in the Convention. That being said, I do not discern from Article 2 any requirement that perpetrators and victims of genocide must be from entirely distinct groups. In my view, that would be an entirely artificial restriction on the meaning of Article 2. To interpret Article 2 as only applying to the genocide of one hermetically sealed group committed by another would, in my view, be to ignore humanity’s complexities. It would also ignore the possibility that perpetrators may hold erroneous or prejudicial beliefs as to purity of their own group affiliation(s) versus that of their victim(s). Benjamin Whitaker, in his 1985 study as Special Rapporteur to the United Nations Sub-Commission on Prevent of Discrimination and Protection of Minorities, considered it noteworthy that the definition of genocide “does not exclude cases where

<sup>14367</sup> T. 23 June 2017 (Accused KHIEU Samphan), E1/528.1, p. 37; Book by KHIEU Samphan, *Considerations on the History of Cambodia from the Early Stage to the Period of Democratic Kampuchea*, E3/16, ERN (En) 00498221 (similarly stating in Chapter 5 that “[i]f mistakes were made later on, they certainly not have been crimes of auto-genocide.”).

<sup>14368</sup> See e.g., NUON Chea Closing Brief, para. 127 (pointing out that the NUON Chea Defence considered that Roeland Burgler could have provided insight into the threat posed by Vietnam).

<sup>14369</sup> Book by R. A. Burgler, *The Eyes of the Pineapple: Revolutionary Intellectuals and Terror in Democratic Kampuchea*, E3/7333, p. 138, ERN (En) 01002259.

<sup>14370</sup> William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), pp. 119, 108 (recognising that the victim group can constitute either a minority or a majority). See also, William A. Schabas, “Problems of International Codification: Were the Atrocities in Cambodia and Kosovo Genocide?”, *New England Law Review*, Vol. 35 (2000), p. 291 (contending that “the fundamental difficulty with using the term genocide to describe the Cambodian atrocities lies with the group that is victim of genocide. Destruction of Khmers by Khmers simply stretches the definition too much.”).



the victims are part of the violator's own group".<sup>14371</sup> On this aspect, I entirely agree with Mr. Whitaker.<sup>14372</sup> I do not think it necessary, or helpful for that matter, to add the prefix "auto" in order to reach that conclusion. I now turn the four key areas of interpretation that I identified above, starting with the groups protected by the Genocide Convention.

#### **23.4. The Protected Groups**

4479. Article 2 of the Genocide Convention protects four named groups ("national, ethnical, racial or religious"). It does not define them, or provide criteria by which they should be identified.<sup>14373</sup> It is well-known that, during the drafting process of the Convention, there were failed attempts to include other groups (e.g. political groups),<sup>14374</sup> and that a separate provision on cultural genocide<sup>14375</sup> was eventually dropped. It is readily apparent from the case law of the *ad hoc* tribunals, however, that the identification of a group protected by the Convention depends upon a mixture of factors – both objective (*i.e.* existing in fact) and subjective (*i.e.* matters of perception which may or may not have a solid basis).

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<sup>14371</sup> UN Doc. E/CN.4/Sub.2/1985/6, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38th Sess. ("Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide Prepared by Mr. B. Whitaker", 2 July 1985), para. 31.

<sup>14372</sup> The Sub-Commission discussed Mr. Whitaker's report on 21 August 1985, when certain concerns were raised including in relation to a paragraph of Mr. Whitaker's reports identifying various genocides. It was suggested by a representative of the International Commission of Jurists that the concept of "auto-genocide" was "not a very clear one" and "seemed to imply that any civil war could be regarded as an act of genocide". See UN Doc. E/CN.4/Sub.2/1985/SR.18, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38th Sess. ("Summary Record of the 18th Meeting", 21 August 1985), para. 41. The Sub-Commission eventually adopted a Resolution thanking Mr. Whitaker, without resolving the issues of controversy. See UN Doc. E/CN.4/Sub.2/1985/SR.36/Add.1, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38th Sess. ("Summary Record of the 36th Meeting", 29 August 1985), para. 21.

<sup>14373</sup> Section 9.3: Applicable Law: Genocide, para. 792.

<sup>14374</sup> Political groups were deleted from Article 2 following a re-examination of their enumeration by the Sixth Committee on the evening of 29 November 1948. The proposal to delete political groups was adopted by 22 votes to 6, with 12 abstentions. See UN Doc. A/C.6/SR.128, UNGA Sixth Committee, GAOR 3rd Sess. ("Minutes of the Hundred and Twenty-Eighth Meeting", 29 November 1948), pp. 663-664.

<sup>14375</sup> In a roll-call vote on 25 October 1948, the Sixth Committee voted by 25 votes to 16, with four abstentions, 13 delegations being absent, to delete provisions relating to cultural genocide. See UN Doc. A/C.6/SR.83, UNGA Sixth Committee, GAOR 3rd Sess. ("Minutes of the Eighty-Third Meeting", 25 October 1948), p. 206. See also, UN Doc. A/C.6/SR.84, UNGA Sixth Committee, GAOR 3rd Sess. ("Minutes of the Eighty-Fourth Meeting", 26 October 1948), p. 207 (where the draft convention was considered further).

4480. In *Akayesu*, an ICTR Trial Chamber attempted to define each of the four protected groups and suggested that the intention of the drafters of the Convention had been to protect “any stable and permanent group”.<sup>14376</sup> As the Chamber notes in this Judgement, however, it is highly doubtful whether this describes the drafters’ intentions with complete accuracy. It is an obvious overstatement to suggest that the drafters intended to protect “any” such group; the Convention is specifically limited to just four groups. As the Chamber has noted in the present case, however, the drafters had in mind to protect “relatively stable and permanent groups” and juxtaposed these from “political and economic groups” – which were “excluded from protection because they were considered to be ‘mobile’ which were joined through ‘individual voluntary commitment’”.<sup>14377</sup> I agree that the drafters of the Genocide Convention did not intend to protect entirely transient groups.

4481. But that is not where the analysis ends. The *Akayesu* Trial Chamber noted that Tutsis and Hutus shared many common characteristics including language, religion, culture, and they lived in mixed communities. To distinguish between the two, the ICTR Chamber relied on the fact that identity cards had specified a person’s “ethnicity”, even though such categorisations may have been imposed by former colonial rulers, sometimes based on socio-economic factors.<sup>14378</sup> In *Rutaganda*, another ICTR Trial Chamber further emphasised the relevance of subjective features when identifying a group: “membership of a group is, in essence, a subjective rather than an objective concept. The victim is perceived by the perpetrator of genocide as belonging to a group slated for destruction.”<sup>14379</sup> The *ad hoc* tribunals have also repeatedly referred to identifying protected groups in light of the particular political, social and cultural context.<sup>14380</sup> In *Krstić*, an ICTY Trial Chamber concluded that “[t]o attempt to

<sup>14376</sup> *Akayesu* Trial Judgement, paras 512-516.

<sup>14377</sup> Section 9.3: Applicable Law, Genocide, para. 795 (fn. 2366) (referring to *Akayesu* TJ, para. 511 and *Rutaganda* Trial Judgement, para. 57).

<sup>14378</sup> *Akayesu* Trial Judgement, paras 83 (Belgian authorities introduced a permanent distinction between groups and it became mandatory for every Rwandan to carry an identity card mentioning his or her “ethnicity”); 170 (identity cards referred to “*ubwoko*” in Kinyarwanda, or “*ethnie*” in French).

<sup>14379</sup> *Rutaganda* Trial Judgement, para. 56.

<sup>14380</sup> See e.g., *Semanza* Trial Judgement, para. 317 (whether a group is protected should be “assessed on a case-by-case basis by reference to the objective particulars of a given social or historical context, and by the subjective perceptions of the perpetrators”); *Musema* Trial Judgement, paras 161-163; *Jelisić* Trial Judgement, paras 69-72; *Brđanin* Trial Judgement, para. 684; *Kajelijeli* Trial Judgement (TC II), para. 811; *Bagilishema* Trial Judgement, para. 65 (referring to the “political, social, historical and cultural context” which all must be weighed in the determination of the protected group).

differentiate each of the named groups on the basis of scientifically objective criteria would thus be inconsistent with the object and purpose of the Convention”.<sup>14381</sup>

4482. This Chamber has found in its Judgement that such an approach, one that is looking both to objective and subjective features when identifying protected groups, accords with the object and purpose of the Convention.<sup>14382</sup> I agree. Indeed, the various references in the case law to the relevance of subjective perceptions, and other features such as the particular political, social and cultural context, are highly instructive in my view. The overall effect is to caution against too rigid or narrow an approach when deciding whether a group falls within the protection of Article 2 of the Convention.

### **23.5. The Meaning of “Intent to Destroy”**

4483. The phrase “intent to destroy” has been interpreted to mean “physical or biological” destruction, even though the prohibited acts listed in Article 2 do not necessarily involve such extreme destruction, *e.g.*, causing serious bodily or mental harm to members of the group.<sup>14383</sup> In the *Krstić* case, a majority of the ICTY Appeals Chamber focused on the physical or biological destruction of the Bosnian Muslims of Srebrenica; but in my view the reasoning offered in support was substantially broader.

4484. The *Krstić* Appeals Chamber set out what it considered to be the governing legal principle: an enterprise “attacking only the cultural or sociological characteristics of a human group in order to annihilate these elements which give to that group its own identity distinct from the rest of the community would not fall under the definition of genocide”.<sup>14384</sup> The Appeals Chamber distinguished such matters from physical or biological destruction. It proceeded to accept, however, that the forcible transfer of women, children and elderly out of Srebrenica had eliminated the residual possibility that the Muslim community in the area could reconstitute itself.<sup>14385</sup> It held that, although forcible transfer “does not constitute in and of itself a genocidal act”, it was

<sup>14381</sup> *Krstić* Trial Judgement, paras 556-557 (also finding that a “group’s cultural, religious, ethnical or national characteristics must be identified within the socio-historic context which it inhabits.”).

<sup>14382</sup> Section 9.3: Applicable Law: Genocide, para. 795.

<sup>14383</sup> See *e.g.*, *Krstić* Appeal Judgement, para. 25. In *Akayesu*, the ICTR Trial Chamber held that acts of sexual violence and rape can therefore constitute acts of genocide. See *Akayesu* Trial Judgement, para. 731.

<sup>14384</sup> *Krstić* Appeal Judgement, para. 25, quoting with approval *Krstić* Trial Judgement, para. 580.

<sup>14385</sup> *Krstić* Appeal Judgement, para. 31.

relevant to the examination of genocidal intent.<sup>14386</sup> Another reason why evidence of non-genocidal acts was expressly stated to be relevant to the finding of genocidal intent was that the forcible transfers distracted international attention: perpetrators adopted methods which allowed them to “implement the genocidal design while minimizing the risk of retribution”.<sup>14387</sup>

4485. The *Krstić* Appeals Chamber did not clarify whether it could have reached a different conclusion on the relevance of forcible transfers in the event that the community could have reconstituted itself, for example if the transfers had been less extreme. In any event, it is clear to me that, even under the Appeals Chamber’s restrictive interpretation of physical or biological destruction of the group, it was appropriate to consider a range of contextual matters in order to properly assess whether the perpetrators intended to destroy the protected group, in whole or in part. Such contextual matters did not have to amount to physical or biological destruction of persons.

4486. Judge Shahabuddeen dissented from the majority’s approach on the basis that he would have gone further still. It is helpful to set out his reasoning in full:

49. [...] It is not apparent why an intent to destroy a group in a non-physical or non-biological way should be outside the ordinary reach of the Convention [...] provided that the intent attached to a listed act, this being of a physical or biological nature.

50. [...] It is the group which is protected. A group is constituted by characteristics – often intangible – binding together a collection of people as a social unit. If those characteristics have been destroyed in pursuance of the intent with which a listed act of a physical or biological nature was done, it is not convincing to say that the destruction, though effectively obliterating the group, is not genocide because the obliteration was not physical or biological.

51. [...] The intent certainly has to be to destroy, but, except for the listed act, there is no reason why the destruction must always be physical or biological.

53. Out of abundant caution, I would make two things clear. First, the question is whether there was the required intent, not whether the intent was in fact realised. Second, the foregoing is not an argument for the recognition of cultural genocide. It is established that the mere destruction of the culture of a group is not genocide: none of the methods listed in article 4(2) of the Statute need be employed. But there is also need for care. The destruction of culture may serve

<sup>14386</sup> *Krstić* Appeal Judgement, para. 33.

<sup>14387</sup> *Krstić* Appeal Judgement, para. 32.

evidentially to confirm an intent, to be gathered from other circumstances, to destroy the group as such. In this case, the razing of the principal mosque confirms an intent to destroy the Srebrenica part of the Bosnian Muslim group.

54. In sum, I consider that the Statute is to be read to mean that, provided there is a listed act (this being physical or biological), the intent to destroy the group as a group is capable of being proved by evidence of intent to cause the non-physical destruction of the group in whole or in part, except in particular cases in which physical destruction is required by the Statute. This is not an excepted case. Consequently, the fact that, in this case, women, children and the elderly were allowed to survive did not signify an intent which was at variance with that which is required.

4487. I find that the wording of Article 2 supports Judge Shahabuddeen's approach to the existence of the intent to destroy a protected group. In my view, his approach offers a much more coherent basis on which to understand why, even according to the majority, non-genocidal acts may nevertheless evince genocidal intent. I would differ from Judge Shahabuddeen, however, in that he did not explain what he meant by physical versus non-physical destruction. I understand Article 2 to prohibit physical (there being no express reference to biological<sup>14388</sup>) measures which seek to put an end to the previous existence of the protected group, in whole or in part. To destroy a group is to obliterate it; to end the essence of what it had been. In other words, conduct which falls short of the actual physical destruction of persons might still reveal an intention to destroy the physical existence of (a part of) the protected group. In my view, that is the only plausible explanation for why the majority of the Appeals Chamber in *Krstić* considered the forcible transfers to be relevant to its finding of genocidal intent.

4488. Judge Shahabuddeen further considered that the destruction of a group's culture may serve evidentially to confirm the intent to destroy the group as such. He referred to the razing of the principal mosque in Srebrenica as further demonstrating an intention to destroy the Srebrenica part of the Bosnian Muslim group. He also referred to the "disastrous consequences for the family structures" in Srebrenica. In my view, Judge

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<sup>14388</sup> The *travaux préparatoires* of the Genocide Convention reveal that the drafters originally envisaged two types of genocide: physical or biological genocide, on the one hand, or cultural genocide, on the other. UN Doc. E/794, Proceedings of the Economic and Social Council, GAOR 7th Sess., Supp. No. 6 ("Report of the *Ad Hoc* Committee on Genocide", 24 May 1948); UN Doc. A/C.6/SR.83, UNGA Sixth Committee, GAOR 3rd Sess. ("Minutes of the Eighty-Third Meeting", 25 October 1948), pp. 193-207. This point was also noted by the ICJ in *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136.

Shahabuddeen was entirely correct in this aspect of his approach.<sup>14389</sup> I find that such measures can demonstrate the intent to physically destroy what the group had previously been. Indeed, aspects of Judge Shahabuddeen’s approach can, in my view, be readily accommodated within the reasoning set out by the majority in the *Krstić* case.

4489. In *Bosnia v. Serbia*, the ICJ held that “the destruction of historical, religious and cultural heritage cannot be considered to be a genocidal act within the meaning of Article II”, but proceeded to endorse an observation by the *Krstić* ICTY Appeals Chamber that evidence of attacks on cultural and religious property and symbols of the targeted group “may legitimately be considered as evidence of an intent to physically destroy the group”.<sup>14390</sup> I understand that this reasoning also allows for aspects of Judge Shahabuddeen’s approach to be retained. Further still, in this Judgement, the Chamber has concurred with the approach of the ICJ in *Croatia v. Serbia* that underlying acts of genocide do not need to “directly concern the physical or biological destruction of the group” provided those acts must be carried out “with the intent of achieving the physical or biological destruction of the group, in whole or in part”.<sup>14391</sup> In my view, this also demands that, when evaluating genocidal intent, consideration ought also to be given to the broader circumstances. It seems to me that this broader approach to identifying an “intent to destroy” is relatively well-settled.

4490. By way of further examples, in *Blagojević and Jokić*, an ICTY Trial Chamber interpreted the intent to destroy as being evidenced by various conduct which destroyed the continued existence of the group, without necessarily killing its members.<sup>14392</sup> On appeal, the Appeals Chamber rejected any suggestion that forcible displacement could, by itself, demonstrate the requisite destruction or the intent to destroy a group.<sup>14393</sup> In *Tolimir*, the ICTY Appeals Chamber, while reversing a Trial Chamber finding that

<sup>14389</sup> See e.g., *Prosecutor v. Al Bashir* (PTC I), Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, Separate and Party Dissenting Opinion of Judge Anita Ušacka, para. 62, where Judge Ušacka similarly preferred the “more expansive approach” outlined by Judge Shahabuddeen when considering the relevance of evidence of forced displacement in connection with determining whether or not there were reasonable grounds to believe (*i.e.* the legal test at the arrest warrant stage) that genocidal intent existed.

<sup>14390</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 344.

<sup>14391</sup> Section 9.3: Applicable Law: Genocide, para. 799 (fn. 2379) (referring to *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 136).

<sup>14392</sup> *Blagojević and Jokić* Trial Judgement, para. 666.

<sup>14393</sup> *Blagojević and Jokić* Appeal Judgement, para. 123.

destruction of a mosque was genocidal act *per se*, accepted that it could be considered to be evidence of intent to physically destroy the group.<sup>14394</sup>

4491. I am therefore satisfied that Article 2 of the Genocide Convention requires proof of an intention to physically destroy the protected group, in whole or in part, but this intention may be evidenced by a range of factors – including conduct which does not necessarily entail the physical or biological destruction of individual persons. It would be unnecessary and unwise to seek to set out a predetermined list of the conduct relevant in this regard. Notwithstanding this, I find that this broader interpretation is entirely consistent with Article 2 of the Convention because the underlying test remains the intent to destroy, in whole or in part. What is more, the underlying acts which may themselves lead to criminal liability remain those which are specifically enumerated elsewhere in Article 2. This approach keeps Article 2 within specific bounds, while directing our attention to the whole range of relevant circumstances in order to properly evaluate genocidal intent. The key point that I take from this analysis is that the ECCC could have considered a range of conduct as having been relevant to an intention to destroy a part of the Cambodian national group.

### **23.6. The Meaning of “In Whole or In Part”**

4492. The meaning of “in whole or in part” has been scrutinised by the *ad hoc* tribunals, in particular in cases before the ICTY relating to events in Srebrenica and other municipalities of Bosnia and Herzegovina. These cases have identified a substantiality element to this aspect of the *mens rea*.

4493. The *Jelisić* case concerned events from May 1992 in the municipality of Brčko, a sizeable town in north-east Bosnia-Herzegovina. The accused pleaded guilty to various crimes but not guilty to genocide. The Trial Chamber acquitted him of genocide but, in so doing, held that it is “recognised that the destruction need not be directed at the whole group”.<sup>14395</sup> The *Jelisić* Trial Chamber continued by referring to the “especially useful” ILC report commenting upon the Articles of the Draft Code of Crimes Against the Peace and Security of Mankind” which had observed that “[i]t is

<sup>14394</sup> *Tolimir* Appeal Judgement, para. 230 (finding that the Trial Chamber erred in concluding that the destruction of mosques was an additional act of genocide under Article 4(2)(c) of the Statute). *See also*, *Karadžić* Trial Judgement, para. 553.

<sup>14395</sup> *Jelisić* Trial Judgement, para. 80.

not necessary to intend to achieve the complete annihilation of a group from every corner of the globe”.<sup>14396</sup> The *Jelisić* Chamber then described it as “widely acknowledged that the intention to destroy must target at least a *substantial* part of the group”.<sup>14397</sup>

4494. The *Krstić* case concerned the genocide committed against Bosnian Muslims in Srebrenica in mid-1995, when thousands of men and boys were executed while women, children and elderly were expelled from the enclave – which had been an UN-declared safe-haven. The *Krstić* Trial Chamber referred to a “margin of discretion” when assessing the meaning of “in part”, provided that the discretion was exercised “in a spirit consonant with the object and purpose of the Convention which is to criminalise specified conduct directed against the existence of protected groups, as such”.<sup>14398</sup> The *Krstić* Trial Chamber also referred to the perpetrators intending to eliminate the part of the group as a “distinct entity”.<sup>14399</sup> Some other Chambers have subsequently referred to an intention “to destroy a distinct part of the group as opposed to an accumulation of isolated individuals within it”.<sup>14400</sup>

4495. Returning to the *Krstić* case, the Appeals Chamber reviewed the drafting history, authorities and scholarly opinions before concluding that it is not necessary to demonstrate an intention to destroy the entirety of a protected group. Rather, the intent requirement is satisfied by an intention to destroy at least a substantial part of the protected group; and the determination of whether the targeted part is substantial may involve an evaluation of both quantitative and qualitative factors. The *Krstić* Appeals Chamber explained that, in addition to numeric considerations, various factors such as the prominence or emblematic nature of those persons targeted in relation to the overall group could, depending on the precise factual circumstances, reveal genocidal intent.<sup>14401</sup> The *Krstić* Appeals Chamber cautioned that such considerations are only guidelines: their applicability or weight will vary depending on the circumstances of a

<sup>14396</sup> *Jelisić* Trial Judgement, para. 80 (referring to ILC Draft Articles, p. 89). See UN Doc. A/51/10, International Law Commission, GAOR 51st Sess., Supp. No. 10 (“Report of the International Law Commission on the Work of Its Forty-Eighth Session”, 26 July 1996), p. 45.

<sup>14397</sup> *Jelisić* Trial Judgement, para. 82 (emphasis in original).

<sup>14398</sup> *Krstić* Trial Judgement, para. 590.

<sup>14399</sup> *Krstić* Trial Judgement, para. 590.

<sup>14400</sup> *Stakić* Trial Judgement, para. 524; *Brđanin* Trial Judgement (TC II), para. 700.

<sup>14401</sup> *Krstić* Appeal Judgement, paras 12-13.



particular case.<sup>14402</sup> On the facts of the case, the *Krstić* Appeals Chamber confirmed that the importance of Srebrenica to the Muslim community was not captured solely by its (relatively small) size: “the elimination of that enclave would have accomplished the goal of purifying the entire region of its Muslim population”; and “[t]he fate of the Bosnian Muslims of Srebrenica would be emblematic of that of all Bosnian Muslims”.<sup>14403</sup>

4496. The International Court of Justice has confirmed that genocide does not necessarily entail an intention to destroy the entire group, provided that a substantial part of the group is targeted. In its 2007 judgment in *Bosnia v. Serbia*, and its 2015 judgment in *Croatia v. Serbia*, the ICJ held that, when assessing whether the targeted part of the protected group is substantial, relevant criteria include: numbers, geographic location, the prominence of the targeted part and its emblematic nature in relation to the overall group.<sup>14404</sup>

### 23.6.1. *Vasiliauskas v. Lithuania*

4497. I now turn to an important judgement of the Grand Chamber of the European Court of Human Rights in the case of *Vasiliauskas v. Lithuania*.<sup>14405</sup> In 2003, Lithuania had introduced a new Criminal Code which expressly included political and social groups as protected groups for the purposes of its domestic law definition of genocide. In 1953, Mr. Vasiliauskas had been an officer in the Ministry of the Interior of Soviet-ruled Lithuania. He had participated in the killings of Lithuanian partisans who resisted Soviet rule. Some fifty years later, in 2004, a Lithuanian court convicted Mr. Vasiliauskas of genocide. The issue before the Grand Chamber, therefore, was whether his genocide conviction under the 2003 Criminal Code breached Article 7 of the European Convention of Human Rights (no crime/punishment without law). In other words, was the law in 1953 sufficiently accessible and foreseeable for Mr. Vasiliauskas to have reasonably expected that his conduct amounted to genocide, in circumstances

<sup>14402</sup> *Krstić* Appeal Judgement, para. 14.

<sup>14403</sup> *Krstić* Appeal Judgement, paras 15-16.

<sup>14404</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 198 (indicating that the “intent must be to destroy at least a substantial part of the particular group” and referring to the “requirement of substantiality” as supported by rulings of the ICTY, ICTR, and Commentary of the ILC to its Articles in the draft Code of Crimes against the Peace and Security of Mankind); *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 142 (referring to the “targeted part of a protected group”).

<sup>14405</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015.

where political and social groups were not included within the Genocide Convention? There was some discussion of whether “political groups” might be protected by customary international law if that is broader than the Convention,<sup>14406</sup> but the crucial issue became whether the Lithuanian partisans were a “part” of the Lithuanian national group and therefore protected by Article II of the Genocide Convention.

4498. The Grand Chamber split 9:8, with the bare majority holding that Mr. Vasiliauskas’s genocide conviction breached Article 7 ECHR. I find it instructive to consider the reasoning of both the majority and the minority. The majority concluded that the international caselaw has interpreted the phrase “in part” in a manner which could not have been foreseen in 1953. In particular, in the majority’s view, reference to qualitative factors such as “prominence” marked a change in the law:

In particular, as transpires from the case-law [...], the intentional destruction of a “distinct” part of the protected group could be considered as genocide of the entire protected group, provided that the “distinct” part was substantial because of the very large number of its members. Furthermore, in addition to the numerical size of the targeted part, judicial interpretation confirmed that its “prominence” within the protected group could also be a useful consideration. Be that as it may, this interpretation of the phrase ‘in part’ could not have been foreseen by the applicant at the relevant time.<sup>14407</sup>

4499. In a joint dissenting opinion, Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris thought it “excessively formalistic” to view the partisans exclusively through the prism of a political group and to end the analysis at that stage. They further reasoned that the key issue was whether “the objective of the extermination of the Lithuanian partisans – as a significant part of the nation – was the impact that their destruction would have on the survival of the national or ethnic group as a whole”.<sup>14408</sup> They concluded that the partisans were targeted because they were simultaneously “a significant and emblematic part of the national group whose very

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<sup>14406</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, para. 175 (“notwithstanding those views favouring the inclusion of political groups in the definition of genocide, the scope of the codified definition of genocide remained narrower in the 1948 Convention and was retained in all subsequent international law instruments [...]. In sum, the Court finds that there is no sufficiently strong basis for finding that customary international law as it stood in 1953 included “political groups” among those falling within the definition of genocide.”).

<sup>14407</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, para. 177.

<sup>14408</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Joint Dissenting Opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris, para. 11; Dissenting Opinion of Judge Ziemele, para. 15.

purpose was the protection of the Lithuanian nation from destruction by the Soviet regime”.<sup>14409</sup> They considered that it was “overly formalistic” and inconsistent with the spirit of the Genocide Convention to place outside of its protection a resistance movement that sought to defend itself against the destruction of a nation’s very fabric.<sup>14410</sup> They concluded that the partisans could have been considered to be a significant part of the Lithuanian national group; and they were targeted for elimination as a distinct part of a group rather than as mere individuals.<sup>14411</sup> They concluded that such an interpretation was indeed foreseeable in 1954, particularly given the particular factual context which involved, in their view, an intention to destroy “the fabric of the nation of Lithuania”.<sup>14412</sup>

4500. Also dissenting, Judge Ziemele reasoned as follows:

The Court should have been able to distinguish between, on the one hand, a prominent part of a national group being targeted for political, social or, in any event, discriminatory reasons, and, on the other, a political group plain and simple. There is nothing in the history of outlawing genocide which would exclude from its scope an intention to destroy in part or as a whole a (national) group for political and otherwise discriminatory purposes. Regrettably, the Court has not exemplified this issue, which is crucial to this case.<sup>14413</sup>

4501. Judge Ziemele criticised the majority’s conclusion that reference to qualitative factors such as prominence amounted to a new interpretation or an extension of the 1948 Genocide Convention.<sup>14414</sup> She further suggested that it was wrong to isolate political groups completely from the concept of national groups in the context of post-war events in Lithuania.<sup>14415</sup> I understand the point here to have been that a range of

<sup>14409</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Joint Dissenting Opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris, para. 16.

<sup>14410</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Joint Dissenting Opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris, para. 11.

<sup>14411</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Joint Dissenting Opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris, paras 24-25.

<sup>14412</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Joint Dissenting Opinion of Judges Villiger, Power-Forde, Pinto de Albuquerque and Kuris, para. 36.

<sup>14413</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Dissenting Opinion of Judge Ziemele, para. 15.

<sup>14414</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Dissenting Opinion of Judge Ziemele, para. 17.

<sup>14415</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Dissenting Opinion of Judge Ziemele, para. 24.

contextual factors may conceivably be relevant to the definition of a (protected) national group.

4502. Judge Power-Forde issued a further dissenting opinion of her own in which she criticised the majority’s “excessively formalistic and rather blinkered approach of viewing the partisans solely through the lens of a ‘political group’ and of ending its analysis there”.<sup>14416</sup> Judge Kuris (who is Lithuanian) issued a further dissenting opinion criticising a suggestion in the majority opinion that the Lithuanian courts had not shown that the partisans were “representatives” of the Lithuanian nation.<sup>14417</sup>

4503. Put simply, I consider there to be significant force to the minority’s views in *Vasiliauskas v. Lithuania* and I find it to be regrettable that such issues were not properly explored before the ECCC. The nature of the discussion in the various opinions from the Grand Chamber of the European Court of Human Rights demonstrate the significance of the interpretative issues involved. For my part, I disagree with the approach of the majority in *Vasiliauskas v Lithuania* for two main reasons.

4504. First, I see no basis on which to conclude that the reference to “in part” in the Genocide Convention is restricted to quantitative factors to the exclusion of qualitative factors. Whilst the numbers involved are obviously a highly relevant fact when assessing genocidal intent, in my view the majority read an unjustified restriction into the meaning of “in part”, and they did so without proper explanation as to why the substantiality requirement should be limited to numbers alone. In my view the majority’s approach confuses the *mens rea* with the *actus reus* of genocide.<sup>14418</sup> For

<sup>14416</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Dissenting Opinion of Judge Power-Forde, para. 1.

<sup>14417</sup> *Vasiliauskas v. Lithuania*, Judgement (GC), ECtHR, Application no. 35343/05, 20 October 2015, Dissenting Opinion of Judge Kuris, paras 4-5. Judge Kuris concluded by quoting from a poem by Archibald MacLeish, entitled: The young dead soldiers do not speak:

Nevertheless, they are heard in the still houses: who has not heard them?

They have a silence that speaks for them at night and when the clock counts.

They say: We were young. We have died. Remember us.

They say: We have done what we could but until it is finished it is not done.

They say: We have given our lives but until it is finished no one can know what our lives gave.

They say: Our deaths are not ours: they are yours, they will mean what you make them.

They say: Whether our lives and our deaths were for peace and a new hope or for nothing we cannot say, it is you who must say this. We leave you our deaths. Give them their meaning.

We were young, they say. We have died; remember us.

<sup>14418</sup> In discussing the drafting history of Article 2, Professor Schabas has noted that there was similar confusion but he concludes that “what is really germane to the debate is whether the author of the crime *intended* to destroy the group ‘in whole or in part’ [...] intent is normally proven as a deduction from the material act. Where genocide involves the destruction of a large number of members of a group, the

present purposes, the matter under consideration is the intention, and the factors to be considered when discerning whether genocidal intent is established.

4505. Secondly, I do not agree that the discussion of qualitative factors which one finds in more recent caselaw represented a change to the law that previously existed in the 1950s. As I read authorities such as the *Krstić* Appeals Chamber judgement,<sup>14419</sup> or the decisions of the International Court of Justice to which I have already referred,<sup>14420</sup> those courts had regard to the plain meaning of “in part”, to the object and purpose of the Genocide Convention, and to its drafting history, to reach a clear conclusion as to the meaning of that phrase when the Convention entered into force. Indeed, whether or not an absolute number is “substantial” might well depend on contextual factors such as the overall numbers of any particular group. I note in this regard that in Mr. Whitaker’s 1985 study – to which I referred above – when discussing the “extent of destruction of a group” he concluded that the phrase in part “would seem to imply a reasonably significant number, relative to the total of the group as a whole, or else a *significant section of the group such as its leadership*”.<sup>14421</sup> Similarly, Cherif Bassiouni in 1994 expressed his clear view that the Genocide Convention is “sufficiently pliable to encompass not only the targeting of an entire group, as stated in the convention, but

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logical deduction will be more obvious. If there are only a few victims, this deduction will be far less evident, even if the criminal is in fact animated with the intent to destroy the entire group. Hence, unable to rely on the quantity of the victims as evidence of genocidal intent, the prosecution will be required to introduce other elements of proof.” See William A. Schabas, *Genocide in International Law: The Crime of Crimes* (Cambridge: Cambridge University Press, 2000), pp. 233-234. I also note that there is no minimum numerical threshold in relation to the *actus reus* of genocide. See Section 9.3: Applicable Law: Genocide, para. 796.

<sup>14419</sup> *Krstić* Appeal Judgement, para. 12.

<sup>14420</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), paras 199-200 (discussing contextual factors such as the opportunity available to a perpetrator and emphasising that qualitative factors, while noting that the qualitative approach cannot stand alone); 296 (again referring to “emblematic or qualitative factors”); *Croatia v. Serbia*, ICJ, Judgement, 3 February 2015 (ICJ Reports 2015), para. 142 (recalling that “in part” within the meaning of Article II of the Convention “must be assessed by reference to a number of criteria [...]. Account must also be taken of the prominence of the allegedly targeted part within the group as a whole [...]. It follows that, in evaluating whether the allegedly targeted part of a protected group is substantial in relation to the overall group, the Court will take into account the quantitative element as well as evidence regarding the geographic location and prominence of the allegedly targeted part of the group.”).

<sup>14421</sup> UN Doc. E/CN.4/Sub.2/1985/6, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 38th Sess. (“Revised and Updated Report on the Question of the Prevention and Punishment of the Crime of Genocide Prepared by Mr. B. Whitaker”, 2 July 1985), para. 29 (emphasis added).

also the targeting of certain segments of a given group, such as the Muslim elite or Muslim women”<sup>14422</sup>.

4506. I do not think that the evaluation of qualitative factors stretches the meaning of “in part” in an objectionable way. Quantitative factors remain important, as do the other elements of genocidal intent. Indeed, whether a substantial part of a national group has been targeted for destruction will depend upon a full assessment of that national group, or what some of the dissenting judges in *Vasiliauskas v. Lithuania* described as the fabric of the nation. I see no reason why the law should fail to give such realities their proper meaning. Moreover, the phrase “in part” was included in drafts at a time when the drafters were also discussing including “political groups” and even cultural genocide.<sup>14423</sup> I therefore find it inconceivable to suggest, as the *Vasiliauskas* majority seems to have done, that the purpose of the reference to “in part” was to imply a numerical requirement alone.

### **23.7. The Meaning of “As Such”**

4507. The phrase “as such” is significant because it requires an intention to destroy a group, in whole or in part, because of their particular group identity.<sup>14424</sup> It is in my view important, however, that this does not necessarily mean that persons were targeted solely because of such membership. In both the *Jelisić* and *Kayishema and Ruzindana* cases, the Appeals Chamber held that the existence of particular personal motives does not preclude the conclusion that the perpetrator also had the specific intent to destroy the targeted group.<sup>14425</sup> This received even more detailed scrutiny by the ICTR Appeals Chamber in *Niyitegeka*, which unanimously held that:

The term “as such” clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also driven by other motivations that are legally irrelevant in this

<sup>14422</sup> M. Cherif Bassiouni, “The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia”, *Criminal Law Forum*, Vol. 5 (1994), pp. 323-324, discussed in William A. Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2000), pp. 236-237.

<sup>14423</sup> For example, the phrase “in part” was included within the Secretariat’s draft of 26 June 1947, which included linguistic and political groups as protected groups, and separately would have prohibited “cultural genocide”. This followed UNGA Res. 96(I), 11 December 1946, which had affirmed that “[m]any instances of genocide have occurred when racial, religious, political and other groups have been destroyed, entirely or in part.”

<sup>14424</sup> *Karadžić* Trial Judgement, para. 551; *Stakić* Appeal Judgement, para. 20; *Niyitegeka* Appeal Judgement, para. 53.

<sup>14425</sup> *Jelisić* Appeal Judgement, para. 49; *Kayishema and Ruzindana* Appeal Judgement, para. 161.

context. Thus the Trial Chamber was correct in interpreting “as such” to mean that the proscribed acts were committed against the victims because of their membership in the protected group, but not solely because of such membership.<sup>14426</sup>

4508. In other words, “as such” has been interpreted to require that victims were targeted because of their membership in the protected group, but not solely because of that membership. In addition, “as such” has been interpreted as requiring more than the targeting on the basis of membership of a protected group – although such discriminatory targeting may well amount to another crime, such as persecution on specified grounds. In further understanding the import of this phrase, I have reviewed the relevant *travaux préparatoires*.

4509. The phrase “as such” was inserted into draft Article 2 during the discussions in the Sixth Committee, following a proposal from Venezuela which entailed deleting the following language: “on grounds of the national or racial origin, religious belief, or political opinion of [the group’s] members”.<sup>14427</sup> A review of the discussions in the Sixth Committee suggests that there was confusion as to the import of the phrase “as such”. The discussion centred on whether motives should be deleted entirely from Article 2 (the United Kingdom’s proposal); specifically enumerated in relation to each distinct group (the Soviet Union’s preference); or whether a compromise could be reached. This discussion took place at a time when political groups were included as a protected group, “ethnic” groups had just been added, and the phrase “in whole or in part” had also been included.

4510. At one stage, the Venezuelan representative justified his country’s amendment by arguing that “motives were implicitly included in the words ‘as such’”.<sup>14428</sup> Shortly before this amendment was put to a vote, he explained that a group must be destroyed “*qua* group” and reasoned that his country’s amendment re-introduced motives but

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<sup>14426</sup> *Niyitegeka* Appeal Judgement, para. 53.

<sup>14427</sup> UN Doc. A/C.6/231, UNGA Sixth Committee, GAOR 3rd Sess. (“Genocide: Draft Convention and Report of the Economic and Social Council, Venezuela: Amendment to Article II of the draft Convention (E.794) 13 October 1948.

<sup>14428</sup> UN Doc. A/C.6/SR.76, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Sixth Meeting”, 10 October 1948), pp. 124-125 (per Mr. Pérez Perozo).

without “doing so in a limitative form which admitted of no motives other than those which were listed”.<sup>14429</sup> He continued:

The aim of the amendment was to give wider powers of discretion to the judges who would be called upon to deal with cases of genocide [...]. The adoption of the Venezuelan amendment would enable the judges to take into account other motives than those listed in the Ad Hoc Committee’s draft.<sup>14430</sup>

4511. The Venezuelan amendment was adopted by 27 votes to 22, with 2 abstentions.<sup>14431</sup> The Rapporteur noted during the discussion, however, that the interpretation of “as such” must be left to those who would apply the Convention.<sup>14432</sup> Similarly, the Assistant Secretary General observed that it was the text of an amendment, regardless of any advance interpretation, which was put to the vote.<sup>14433</sup> In his report to the General Assembly forwarding the final draft, the Rapporteur noted that:

The question arose whether, as motives of acts of genocide, the Committee should retain the words ‘on grounds of the national or racial origin, religious belief, or political opinion of its members’, proposed by the ad hoc Committee. This was settled when the Committee, at its 77<sup>th</sup> meeting, by 27 votes to 22, with 2 abstentions, adopted an amendment submitted by the representative of Venezuela (A/C.6/231) whereby the phrase in question was deleted and the words ‘as such’ added after the word ‘group’.<sup>14434</sup>

4512. I therefore conclude that the drafters did not adopt a position one way or the other as to the meaning of “*as such*”. In light of the foregoing discussion, I agree with the Chamber’s finding that this phrase emphasises that the victim of the crime of genocide is not merely the individual, but the group itself.<sup>14435</sup> Although a part of the group is to be destroyed “as such”, and various other motives might exist alongside

<sup>14429</sup> UN Doc. A/C.6/SR.77, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Seventh Meeting”, 18 October 1948), p. 131 (per Mr. Pérez Perozo).

<sup>14430</sup> UN Doc. A/C.6/SR.77, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Seventh Meeting”, 18 October 1948), p. 131 (per Mr. Pérez Perozo).

<sup>14431</sup> UN Doc. A/C.6/SR.77, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Seventh Meeting”, 18 October 1948), p. 133.

<sup>14432</sup> UN Doc. A/C.6/SR.77, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Seventh Meeting”, 18 October 1948), p. 132 (per Mr. Spiropoulos, Greece).

<sup>14433</sup> UN Doc. A/C.6/SR.77, UNGA Sixth Committee, GAOR 3rd Sess. (“Minutes of the Seventy-Seventh Meeting”, 18 October 1948), p. 134.

<sup>14434</sup> UN Doc. E/760, UNGA Sixth Committee, GAOR 3rd Sess. (“Genocide: Draft Convention and Report of the Economic and Social Council. Rapporteur: Mr. J. Spiropoulos (Greece)”, 3 December 1948), p. 3.

<sup>14435</sup> Section 9.3: Applicable Law: Genocide, para. 798.



such genocidal intent, it remains the case that it is the group which is thereby victimised. In the present context, the victimised group would remain (a substantial part of) the Cambodian national group, targeted for myriad reasons in order to purify what remained of that group. In my view, neither the plain language of “as such”, the overall object and purpose of the Convention, nor the *travaux préparatoires*, exclude such an interpretation.

### **23.8. Groups Defined by Negative Characteristics**

4513. The Chamber’s description of the applicable law recites that a protected group cannot be defined by negative criteria.<sup>14436</sup> This statement emerges from a line of cases at the *ad hoc* tribunals which holds that the Genocide Convention protects groups on the basis of their positive identity, rather than their absence of a particular characteristic or identity. The most detailed analysis of this point is found in the ICTY Appeals Chamber’s judgement in the *Stakić* case. It held that the Convention protects “unique, positively defined groups with particular identities”,<sup>14437</sup> and observed that the drafting history of the Genocide Convention is “incompatible with the negative definition of target groups”.<sup>14438</sup> The ICTY Appeals Chamber therefore rejected a prosecution submission that genocide had been committed against a targeted group defined as the “non-Serbs” in a particular location.<sup>14439</sup> The ICTY Appeals Chamber considered that genocide required proof of distinct intent towards different specific groups, namely Bosnian Croats and Bosnian Muslims.

4514. Judge Shahabuddeen dissented from this conclusion.<sup>14440</sup> Although he accepted, as do I, that the drafting history of the Convention reflects a focus on genocide against specific groups in Europe during the Second World War, he considered that this “need not prevent a more general approach being taken to the matter.”<sup>14441</sup> I find Judge Shahabuddeen’s reasoning to be compelling. He explained in particular: “I cannot think of anything which necessarily prevents several different victim groups from being

<sup>14436</sup> Section 9.3: Applicable Law: Genocide, para. 793.

<sup>14437</sup> *Stakić* Appeal Judgement, para. 24 (affirming the Trial Chamber’s rejection of the Trial Chamber in the *Jelisić* case, *see Stakić* Trial Judgement, para. 71).

<sup>14438</sup> *Stakić* Appeal Judgement, para. 22. Judge Shahabuddeen dissented on this point, *see Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, paras 8-18.

<sup>14439</sup> *Stakić* Appeal Judgement, paras 21-24.

<sup>14440</sup> *Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, paras 8-18.

<sup>14441</sup> *Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, para. 12.

defined as collectively belonging to a “group” *other than that* of the perpetrator”.<sup>14442</sup> He noted that victims may belong to different component groups and it would be “natural and unobjectionable” to take a broader view.<sup>14443</sup> In my view this would be consistent with the language and purpose of the Convention, and also its drafting history. It is far from clear that the drafters of the Genocide Convention intended to draw a rigid distinction between negative and positive characteristics of groups. To exclude entirely negative definitions of groups would seem to me to be an overly narrow interpretation of the Convention and its drafting history. Provided it was proved that a perpetrator thereby intended to destroy the component(s) of the negatively defined group as such, for my part I see no reason to read into Article 2 an absolute rule that groups (including multiple groups at the same time) can never be targeted on the basis of their characteristics negatively defined.

4515. That being said, the ICJ has considered this point and clearly preferred the approach of the majority in *Stakić* so as to require the positive identification of people who have a particular group identity. In the *Bosnia v. Serbia* case, the ICJ held that “[i]t is a matter of who those people are, not who they are not”.<sup>14444</sup> It further held that “the targeted group must in law be defined positively”.<sup>14445</sup> Recent cases at the ICTY have further confirmed that the elements of genocide must be considered separately in relation to the targeting of each group.<sup>14446</sup> In light of this, although I think that Judge Shahabuddeen’s approach is more coherent and realistic, I accept the opinions of high authority that the targeted group must be defined on some positive basis. Therefore I do not dissent from the Chamber’s recitation of the law on this point.

### **23.9. Conclusion**

4516. To summarise, I would interpret Article 2 of the Genocide Convention in the following way:

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<sup>14442</sup> *Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, para. 12 (emphasis in original).

<sup>14443</sup> *Stakić* Appeal Judgement, Partly Dissenting Opinion of Judge Shahabuddeen, para. 17.

<sup>14444</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 193.

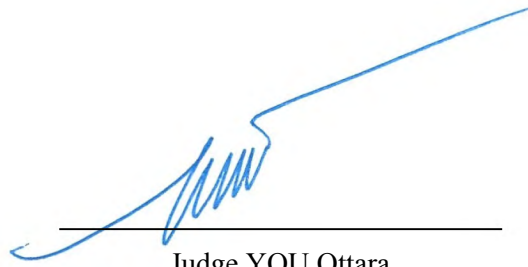
<sup>14445</sup> *Bosnia and Herzegovina v. Serbia and Montenegro*, ICJ, Judgement, 26 February 2007 (ICJ Reports 2007), para. 196.

<sup>14446</sup> See e.g., *Mladić* Trial Judgement, para. 3436; *Karadžić* Trial Judgement, para. 541.

- (1) there is no requirement that perpetrators and victims of genocide must be from entirely distinct groups – to hold otherwise is to read into Article 2 a restriction that is not there;
- (2) there are only four protected groups, but their identification depends on various (objective and subjective) factors, and consideration should be given to the political, social and cultural context;
- (3) acts which, on their own, would not be prohibited by the Genocide Convention may nevertheless be relevant to the assessment of the intention to destroy a protected group, in whole or in part;
- (4) it is unnecessary to prove an intention to destroy the entire protected group;
- (5) the intention can be directed towards a part of a group, provided that part is substantial, and the assessment of this involves both quantitative and qualitative factors; and
- (6) the overall target must be shown to be the group, in whole or in part, as opposed to individual persons.

4517. On the basis of this understanding of Article 2 as a matter of law, in my view there would have been a clear basis to examine the broader context of events in Cambodia between 17 April 1975 and 6 January 1979, in particular whether there existed an intention to destroy a substantial part of the very fabric of the Cambodian national group as it then existed. This has little to do with any discussion of “political groups” and/or cultural genocide. If it had been proved that the Khmer Rouge intended to purify Cambodia by intentionally destroying a substantial part of the Cambodian national group, both in terms of numbers and the qualitative features of the society – its religion, leaders and the political, social and cultural features which (and this is the crucial point) defined the *national* group between 17 April 1975 and 6 January 1979 – the ECCC might have been able to give to such deaths and destruction their proper meaning.

**Done in Khmer, English and French.  
Dated this 16<sup>th</sup> day of November 2018  
At Phnom Penh  
Cambodia**

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Judge YOU Ottara