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Trial Chamber

# Summary of Judgement

Case 002/02

16 November 2018

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## **SUMMARY OF JUDGEMENT IN CASE 002/02**

### **1.1. Introduction and Brief Case History**

1. The following is a summary of the Trial Chamber's Judgement in Case 002/02. The only authoritative account of the findings is contained in the full written Judgement, which will be made available in Khmer, English and French in due course. As a preliminary matter, the Chamber notes that the Parties raised, among others, issues regarding notice of the charges and scope of the trial in Case 002/02. The Chamber addresses these submissions in detail in the full written version of the Judgement.

2. Case 002 concerns the responsibility of NUON Chea and KHIEU Samphan for crimes committed in Democratic Kampuchea between 17 April 1975 and 6 January 1979. Following the issuance of the Closing Order by the Co-Investigating Judges on 15 September 2010, concluding almost three years of judicial investigations, NUON Chea and KHIEU Samphan were brought to trial. This case originally included two other Accused, IENG Thirith and IENG Sary. In 2011, the proceedings against IENG Thirith were stayed and the charges against her severed from the case after she was found unfit to stand trial due to a progressive, dementing disease. She died in 2015. Her husband IENG Sary died two years earlier in 2013. Their deaths extinguished all criminal and civil actions against them before the ECCC.

3. The Initial Hearing in Case 002 was held from 27 to 30 June 2011. In September 2011, the Chamber severed the proceedings in Case 002 into a series of smaller trials because of the size and complexity of the Closing Order and the age and health of the Accused. The Chamber limited the scope of the first trial in Case 002 (referred to since as "Case 002/01") to crimes against humanity alleged to have been committed: first, during the evacuation of Phnom Penh on 17 April 1975 (referred to as "movement of population (phase one)"); second, during movements of population in other regions of Cambodia from September 1975 until December 1977 (referred to as "movement of population (phase two)"); and finally, regarding alleged executions of former Khmer Republic officials at Tuol Po Chrey. The Chamber limited the scope of the second trial in Case 002 (referred to since as "Case 002/02") to crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide alleged to have been

committed at a number of cooperatives, worksites, security centres and execution sites (including S-21 Security Centre and Choeung Ek), in relation to the targeting of specific groups, namely the Cham, the Vietnamese, Buddhists and former Khmer Republic officials, the regulation of marriage, and within the context of the armed conflict with Vietnam. On 27 February 2017, the Chamber terminated the proceedings concerning all facts set out in the Closing Order not included in Case 002/01 or Case 002/02.

4. On 17 October 2014, the Chamber opened the substantive hearings in Case 002/02. Over the course of 24 months of evidentiary hearings, the Chamber heard the testimony of 185 individuals, including 114 fact witnesses, 63 Civil Parties and 8 experts. Close to 5,000 evidentiary documents were subjected to examination and admitted, totalling over 82,000 pages over the three official languages in Case 002/02 alone. In light of Cases 002/01 and 002/02 sharing a Case File, this brought the grand total of evidentiary documents to more than 10,000, totalling over 304,000 pages. The hearing of evidence in Case 002/02 concluded on 11 January 2017 after 274 hearing days. Closing arguments took place in June 2017.

### **1.2. The Charges Against the Accused**

5. During the period from 17 April 1975 to 6 January 1979, NUON Chea is alleged to have served as Deputy Secretary of the Communist Party of Kampuchea (hereinafter referred to as “CPK”), a full-rights member of the CPK Central and Standing Committees, Chairman of the People’s Representative Assembly and, on occasion, Acting Prime Minister of the Democratic Kampuchea government. KHIEU Samphan allegedly held various positions in the CPK and Democratic Kampuchea, including President of the State Presidium. He is also alleged to have been Chairman of Political Office 870 and a member of the CPK Standing Committee.

6. It is charged that both Accused committed several crimes against humanity, grave breaches and genocide by participating in a joint criminal enterprise (hereafter “JCE”). The JCE’s common purpose, which the Accused are said to have shared with other senior leaders such as CPK Secretary POL Pot, the army’s General Staff Chairman SON Sen and Zone Secretary RUOS Nhim, was allegedly to implement rapid socialist revolution in Cambodia through a “great leap forward” and to defend the Party against enemies by whatever means necessary. It is further charged that, in order to achieve

this common purpose, the Accused designed, together with the other JCE participants, five policies, the implementation of which resulted in and/or involved the crimes charged in Case 002/02 and which the Accused intended to be committed. These policies were: (1) the repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another; (2) the establishment and operation of cooperatives and worksites; (3) the establishment and operation of security centres and execution sites; (4) the targeting of specific groups, including the Cham and Vietnamese, Buddhists and former Khmer Republic officials (including both civil servants and military personnel and their families); and (5) the regulation of marriage. It is further charged that the Accused planned, ordered, instigated, aided and abetted the aforementioned crimes against humanity, grave breaches and genocide. In the alternative, the Accused are also charged on the basis of superior responsibility.

7. The Chamber will now enumerate the charges grouped together by policy. However, as the movement of population has only been charged in Case 002/02 with respect to the treatment of the Cham, this policy will be discussed only insofar as it concerns the Cham. The scope of the charges relevant to Case 002/02 include factual allegations concerning the Accused's responsibility for the following crimes:

- In relation to the establishment and operation of cooperatives and worksites, the Accused are charged with the following crimes against humanity: murder, extermination, enslavement, imprisonment, torture, persecution on political grounds, other inhumane acts through attacks against human dignity and other inhumane acts through conduct characterised as enforced disappearances.

- In relation to the establishment and operation of security centres and execution sites, the Accused are charged with the following crimes against humanity: murder, extermination, enslavement, imprisonment, torture, persecution on political grounds, other inhumane acts through attacks against human dignity and other inhumane acts through conduct characterised as enforced disappearances.

- In relation to the targeting of specific groups, the Accused are charged with:

- First, in relation to the Cham, the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious

grounds, other inhumane acts through attacks against human dignity, other inhumane acts through conduct characterised as forced transfer and other inhumane acts through conduct characterised as enforced disappearances, and genocide by killing.

- Second, in relation to the Vietnamese, the crimes against humanity of murder, extermination, deportation and persecution on racial grounds; the grave breaches of the Geneva Conventions of 1949 of wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or a civilian the rights of fair and regular trial, unlawful deportation of a civilian and unlawful confinement of a civilian; and genocide by killing.
- Third, in relation to Buddhists, the crimes against humanity of murder and persecution on religious grounds.
- Fourth, in relation to former Khmer Republic officials (including civil servants and military personnel) and their families, the crimes against humanity of murder and persecution on political grounds.

- In relation to the regulation of marriage, the Accused are charged with the following crimes against humanity: other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage.

### **1.3. The Chamber's Main Findings**

8. The Chamber will address its factual and legal findings regarding each crime base as they relate to the policies that were the subject of the charges at issue in Case 002/02. The Chamber will then address the joint criminal enterprise before turning to its findings regarding the responsibility of NUON Chea and KHIEU Samphan, respectively.

9. Before turning to the crime bases, the Chamber will first address the chapeau requirements of crimes against humanity and grave breaches of the Geneva Conventions of 1949. The Chamber finds that starting 17 April 1975 and continuing at least until 6 January 1979, the temporal period at issue in Case 002/02, there was a

widespread and systematic attack against the civilian population of Cambodia. The attack took many forms, including (but not limited to) enslavement, forced transfer, murder, extermination, enforced disappearances, attacks against human dignity and political persecution. This attack victimised millions of civilians throughout Cambodia and resulted in a large number of refugees fleeing to neighbouring countries. The attack was carried out in furtherance of, and pursuant to, Party policies and plans to build socialism and defend the country. The Chamber is satisfied that the attack was widespread in both its geographic scope and number of victims. The Chamber also finds that the attack was systematic insofar as crimes of such scope and magnitude could not have been random and were carried out in furtherance of, and pursuant to, Party policies. The Chamber finds that this attack was directed against the civilian population of Cambodia. The Chamber further finds that the attack was carried out on political, national, ethnical, racial and religious grounds, and that there is a nexus between this attack and the committed acts. The Chamber also finds that NUON Chea and KHIEU Samphan knew of the attack and that they both knew that their acts formed part of the attack.

10. The Chamber finds that an ongoing international armed conflict existed between Vietnam and Democratic Kampuchea from May 1975 through 6 January 1979. In relation to the grave breaches of the Geneva Conventions charged at S-21 Security Centre, the Chamber finds that the victims of these crimes were Vietnamese civilians or prisoners of war and thus protected persons for the purposes of the Geneva Conventions. Conversely, in relation to the crimes charged at Au Kanseng Security Centre, the Chamber was unable to satisfy itself beyond reasonable doubt that the Jarai concerned were protected persons within the meaning of the Geneva Conventions. The Chamber finds that the crimes committed against protected persons at S-21 Security Centre were closely related to the armed conflict between Democratic Kampuchea and Vietnam. The Chamber further finds that NUON Chea and KHIEU Samphan were aware of the existence of the armed conflict with Vietnam and that they both were aware of the protected status of victims at S-21 Security Centre.

### 1.3.1. *Historical Background*

11. The Chamber finds that in 1959, TOU Samouth, POL Pot and NUON Chea began the process of creating a new Cambodian Communist Party free of the Vietnamese influence characterised by the earlier Indochina Communist Party. The founding principles of this party were Marxism-Leninism and democratic centralism. The First Party Congress was held from 30 September to 2 October 1960, during which the Party's statute was adopted and the leadership committee appointed. TOU Samouth was appointed Secretary and NUON Chea Deputy Secretary of the Party. Both were also appointed to the Standing Committee along with POL Pot as full-rights members and IENG Sary as a candidate member. SON Sen, SAO Phim and *Ta* Mok also attended the Congress, with the former two having been appointed as candidate members of the Standing Committee. VORN Vet was appointed to the Party's Central Committee in addition to TOU Samouth, NUON Chea, POL Pot, IENG Sary and SON Sen. At the Second Party Congress in February 1963, where POL Pot was appointed Party Secretary in the wake of TOU Samouth's disappearance while NUON Chea remained the Party's Deputy Secretary, the use of political and revolutionary violence was reaffirmed. IENG Sary and SAO Phim were elevated to full-rights members of the Standing Committee, while VORN Vet, RUOS Nhim, SON Sen and *Ta* Mok were appointed to the Central Committee. The Third Party Congress was held in September 1971 and reiterated the Party's strategic lines adopted at the First and Second Congresses. It was the first Party Congress attended by KHIEU Samphan, who was then appointed to the Central Committee as an alternate member along with CHOU Chet, KE Pauk and KOY Thuon.

12. By 1969, the economy in Cambodia was flagging and there was uncertainty as to whether it would be dragged into the war in Vietnam despite NORODOM Sihanouk's official policy of neutrality. From 1969, devastating American bombings in Cambodia served to push North-Vietnamese troops further into the country, which heightened the crisis. In 1970, LON Nol, who was supported by the U.S.A., overthrew NORODOM Sihanouk. NORODOM Sihanouk created the National United Front of Kampuchea ("FUNK"), a political movement to fight against those who instigated his overthrow. In May of that year, NORODOM Sihanouk, with the tacit support of the CPK, formed a new government in exile called the Royal Government of National Union of



Kampuchea (“GRUNK”). KHIEU Samphan was the Deputy Prime Minister and the Minister of National Defence of GRUNK, in which roles he served as the link between NORODOM Sihanouk and POL Pot. The GRUNK administration lacked real power in Cambodia, although NORODOM Sihanouk remained influential overseas. The CPK was in fact responsible for the armed struggle in Cambodia. The CPK leaders had a strict policy of secrecy and did not disclose their identities publicly. Instead they favoured the use of the term “*Angkar*”, a deliberately vague and obfuscatory term, purporting to refer to an entity which led the country and which ordinary people understood had the power to control the entire nation. They also used public figures such as KHIEU Samphan and NORODOM Sihanouk locally and internationally, to present a respectable façade for their actions and policies.

13. On the morning of 17 April 1975, CPK forces entered Phnom Penh under the banner of the Cambodian People’s National Liberation Armed Forces and began to direct the population to leave Phnom Penh immediately, marking the start of the Democratic Kampuchea era.

#### 1.3.2. *Cooperatives and Worksites*

14. The Chamber finds that during the Democratic Kampuchea period there existed a policy to establish and operate cooperatives and worksites, viewed as the primary instrument for waging class struggle and intended to create a labour and production force of strictly controlled people. The following crime sites are part of Case 002/02 in this regard: the Tram Kak Cooperatives, the Trapeang Thma Dam Worksite, the 1<sup>st</sup> January Dam Worksite and the Kampong Chhnang Airfield Construction Site.

15. In relation to the Tram Kak Cooperatives, located in Tram Kak District in Sector 13 of the Southwest Zone (current-day Takeo province), the Chamber finds that people were deliberately forced to work in a climate of control, threats, fear, hunger and discrimination. There were periods of acute food shortages in the district and people died as a result. Various people died from malnutrition, overwork and sickness. New People – meaning people from cities and towns as opposed to people from rural areas referred to as Base or Old People – in particular were affected. Further, people died in the District Hospital among other locations because of inadequate medical treatment, malnutrition and overwork. The Chamber also finds that large numbers of people

disappeared in Tram Kak District, without there being any lawful process whereby persons could properly seek and obtain information about the fate of their relatives. This contributed to the continuous atmosphere of fear and uncertainty. Furthermore, religious practices and cultural traditions were forcibly abolished in Tram Kak District. The Chamber also finds that people were subjected to physical and psychological control because they were restricted in their movements, made to participate in criticism and self-criticism sessions, lost existing family structures and suffered threats of being sent for re-education, being arrested or disappeared. All of this amounted to a tightly controlled regiment of indoctrination, threats, restricted movement, forced labour, fear and violence.

16. In relation to the Trapeang Thma Dam Worksite, located in Sector 5 of the Northwest Zone (current-day Banteay Meanchey province), the Chamber finds that workers were forced to build a dam and two dykes, a combined structure that still exists today with the same main features. Workers at the dam did not have a choice: they were required to work regardless of the weather conditions, had to perform hard work for long hours, were not allowed to have rest days, were constantly monitored by their unit chiefs to see how much work they produced and were disciplined if they did not meet work quota. Workers were threatened with being killed or disappeared, or with having their food ration reduced if they engaged in behaviour considered to be against *Angkar* or if they did not carry out their assignments. Witnesses saw workers killed in front of them and were threatened with being killed too if they did not work hard enough. The Chamber finds that the deaths at the worksite were not only caused by poor working and living conditions, but also included deliberate killings.

17. In relation to the 1<sup>st</sup> January Dam Worksite, located in Sectors 42 and 43 in the Central (old North) Zone (current-day Kampong Thom province), the Chamber finds that working and living conditions were equally harsh, food similarly scarce and medical treatment likewise inadequate. Workers here also had no choice: they were compelled to work against their will and under extremely difficult conditions, resulting in some instances in death. Further, some workers were deliberately killed. The nearby Baray Choan Dek Pagoda, where a large amount of human remains and clothing were found on site after the collapse of Democratic Kampuchea, was a detention facility and a killing site. A number of workers were transferred from the 1<sup>st</sup> January Dam Worksite

to this facility and killed, while others simply disappeared. The Chamber further finds that the Cham and New People were particularly discriminated against at the worksite. Over the span of its construction, the number of workers at the 1<sup>st</sup> January Dam was in the tens of thousands, ranging between 20,000 and 40,000 during peak construction periods.

18. In relation to the Kampong Chhnang Airfield Construction Site, located in Sector 31 of the West Zone (current-day Kampong Chhnang province), the Chamber finds that the workers at this site were soldiers from various divisions of the Revolutionary Army of Kampuchea (“RAK”). The work they were carrying out was for military purposes. However, workers were held in slavery and could not refuse to work, otherwise they would be threatened and, in some cases, disappeared. They were told that those who disobeyed instructions would be removed or killed. The Chamber further finds that workers were exposed to unsafe working conditions and were forced to work long hours without sufficient food, which resulted in the death of many people. Soldiers from the East Zone or from divisions whose leaders were considered traitors were subjected to particularly hard or dangerous work for re-education purposes. Especially the breaking of rocks was highly risky and the workers involved had almost no means to protect themselves. Their lives were at the very least considered expendable. Finally, many workers simply disappeared with no notice and were never seen again at the worksite, while others were seen to be arrested after which they disappeared or were transferred to S-21.

19. The Chamber finds that the following crimes against humanity were committed in relation to the establishment and operation of cooperatives and worksites: murder, enslavement, persecution on political grounds, the other inhumane acts of attacks against human dignity and through conduct characterised as enforced disappearances.

### 1.3.3. *Security Centres and Execution Sites*

20. The Chamber finds that during the Democratic Kampuchea period there existed a policy to establish and operate security centres and execution sites to identify, arrest, isolate and “smash” those considered the most serious types of enemies. The following crime sites are part of Case 002/02 in this regard: S-21 Security Centre (including the

execution site Choeung Ek), Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre.

21. Regarding S-21 Security Centre, which was located at the Ponhea Yat High School in Phnom Penh for most of the Democratic Kampuchea period, the Chamber finds that it began operations in October 1975 at the latest. Its main function was to detain prisoners who were Party members and revolutionary combatants suspected of being enemies. The Chamber finds that prisoners at S-21 were detained without any procedural safeguards and that detention conditions were deplorable, causing a number of prisoners to die. While some prisoners were temporarily put to work, almost all were interrogated using different forms of mistreatment methods, and then executed. The Chamber finds that prisoners were brought to interrogation rooms handcuffed and blindfolded, their legs chained during questioning. Interrogation methods included: beatings with sticks, rods, electrical wire, whips and other tools; electroshocks; suffocation through covering the head with a plastic bag; covering the mouth and nose with a towel and pouring cold water from a kettle; and the extraction of toenails and fingernails. Some prisoners died after they had their blood drawn, which was taken for the treatment of wounded RAK soldiers. The Chamber further finds that, at the very least, 11,742 prisoners were executed at or in the vicinity of S-21 and Choeung Ek. At Choeung Ek, prisoners were executed – for instance, by a blow to the neck with an iron bar, after which their throats were slit with a knife and their bodies disembowelled – and buried in mass graves. The Chamber also finds that there were direct instructions received from the upper echelon, including NUON Chea and SON Sen, to kill prisoners or groups of prisoners. Among S-21 detainees were prominent party members, such as RUOS Nhim and VORN Vet, as well as former Khmer Republic officials and Vietnamese soldiers and civilians. S-21 prisoner lists also indicate that many children were detained and executed at S-21 and Choeung Ek throughout the Democratic Kampuchea period.

22. Kraing Ta Chan Security Centre, located in Tram Kak District west of Takeo town, was established in 1973 and remained operational throughout the Democratic Kampuchea period. The Chamber finds that prisoners at the Security Centre were detained without any procedural safeguards and under dire conditions, forced to sit shackled and chained together in rows on the floor of detention buildings. Some

prisoners, the majority of which were New People, were executed immediately after their arrival at Kraing Ta Chan without facing interrogation. Large numbers of others were interrogated within a few weeks of their arrival. The Chamber finds that interrogations at Kraing Ta Chan regularly involved beatings, whippings and suffocation to extreme degrees – treatment which caused the death of some prisoners. Prisoners also disappeared. The Chamber further finds that there existed a mandatory regime of work for a small number of prisoners, permitting their exploitation for the benefit of the Party until, in the vast majority of cases, they too were executed.

23. Au Kanseng Security Centre, located in Sector 102 of the Northeast Zone (current-day Ratanakiri province) was established between late 1976 and early 1977, and remained operational throughout the Democratic Kampuchea period. The Chamber finds that Au Kanseng served as an auxiliary to S-21, detaining and reforming less serious offenders from the Northeast Zone, while higher-ranking CPK and Division 801 cadres from the Zone were sent to, detained and frequently executed at S-21. From mid-1977, civilians who did not hold senior positions, including workers from cooperatives and rubber plantation unions across the Northeast Zone, were also detained at Au Kanseng. The Chamber finds that detention regimes varied between serious offenders, light offenders, and women and children. People who were considered dangerous were continuously chained or shackled in a separate detention building. Less serious offenders, as well as women and children, were not shackled, chained or otherwise restrained. The Chamber also finds that prisoners were interrogated through beatings, whippings and electrocutions through telephone cables or similar means. The Chamber was not satisfied beyond reasonable doubt that all detainees considered unreformed were killed without exception, but executions did take place. In addition, some died as a result of detention conditions. The Chamber further finds that at least 100 ethnic Jarai, comprising men, small children and approximately five women, were detained at Au Kanseng in mid-1977. About one week after their internment at the Security Centre, the Jarai were marched out of the detention compound under pretence and executed. The Chamber is satisfied that an order to execute the Jarai was channelled through SON Sen and army Division 801 Commander SAO Saroeun with the involvement of the CPK Standing Committee to personnel at the Security Centre for implementation. However, the Chamber was unable to satisfy itself beyond reasonable doubt that the

Jarai – likely combatants of the former South Vietnamese regime or perceived as such – were protected persons within the meaning of the Geneva Conventions.

24. Phnom Kraol Security Centre, located in Sector 105 (current-day Mondulkiri province), consisted of offices K-17 and K-11, Phnom Kraol Prison and the burial site Trapeang Pring. The Chamber finds that judicial or procedural safeguards were absent at the time of prisoners' arrests and throughout their subsequent detention at Phnom Kraol, during which they were forced to work. The Chamber further finds that one prisoner died as a result of detention conditions and that one prisoner was deliberately killed. However, the Chamber was unable to establish whether the Trapeang Pring burial site served to bury these detainees. Further, while the Chamber is satisfied that Trapeang Pring did in fact serve as a burial site during the Democratic Kampuchea period, the Chamber is unable to conclude that Trapeang Ping served as an execution site.

25. The Chamber finds that the following crimes against humanity were committed in relation to the establishment and operation of security centres and execution sites: murder, extermination, enslavement, imprisonment, torture, persecution on political grounds and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances. The Chamber will address its findings regarding grave breaches of the Geneva Conventions committed at S-21 Security Centre where it addresses the treatment of the Vietnamese.

#### 1.3.4. *Targeting of Specific Groups*

26. The Chamber finds that during the Democratic Kampuchea period there existed a policy to target the following groups, in order to establish an atheistic and homogenous society without class divisions by abolishing all ethnic, national, religious, racial, class and cultural differences: Cham, Vietnamese, Buddhist and former Khmer Republic officials (including civil servants and military personnel) and their families.

##### 1.3.4.1. *Cham*

27. Regarding the Cham, the Chamber finds that, after the September 1975 Koh Phal and October 1975 Svay Khleang rebellions, the East Zone Cham population, mainly the one living along the Mekong river, was dispersed into the Central (old North) Zone.

Cham were removed by CPK armed forces without their consent and under threat of being considered enemies if they did not comply. Even though this dispersion was part of a broader movement of people from the East Zone to the Central (old North) Zone aimed at distributing the population throughout Cambodia, the Chamber finds that the Cham in the East Zone were specifically targeted because of the rebellions that occurred as a reaction to earlier restrictions imposed on Cham religious and cultural traditions. The Chamber further finds that the Cham were not only moved from their original locations to new ones in order to satisfy the needs of the local labour force, but they were dispersed and scattered among Khmer villages for their communities to be broken up and fully assimilated into the Cambodian population. The Cham were thus targeted not as individuals but based on their membership of the group.

28. In addition, the Chamber finds that Cham people suffered discrimination as they, for instance at the 1<sup>st</sup> January Dam Worksite, were forced to eat pork and were prevented from worshipping and speaking their native tongue. The Chamber also finds that the CPK imposed restrictions on Cham religious and cultural practices in Kroch Chhmar district, in various locations within the Central (Old North) Zone, and in other various locations in Cambodia throughout the Democratic Kampuchea period. Such restrictions included prohibition on daily prayers, forcing Cham to eat pork and wear the same dress and haircuts as the Khmer people, forcing them to only speak the Khmer language, as well as burning Korans and dismantling mosques or using them for purposes other than prayer. Those who resisted were arrested and/or killed.

29. Furthermore, the Chamber finds that a large number of people, including a majority of Cham from the Kang Meas district (current-day Kampong Cham province), in Sector 41 of the Central (old North) Zone, were arrested and brought to Wat Au Trakuon in 1977 where they were executed. It further finds that, in 1978, a great number of Cham people from Kroch Chhmar district (also current-day Kampong Cham province) were arrested and taken to Trea Village Security Centre, located in the same district, where their membership of the Cham group was verified. Those who were deemed to be Cham were executed while non-Cham were spared. The Chamber also finds that orders targeting the Cham in the Central (old North) Zone, and specifically in Sector 41, came from the upper echelon. It similarly finds that orders targeting the Cham in the East Zone, and specifically in Kroch Chhmar district, came from the upper

echelon. While the Chamber was unable to establish a definite number of victims, it is satisfied that a great number of Cham civilians were taken to both Wat Au Trakuon Security Centre and Trea Village Security Centre and were thus killed on a massive scale. The Chamber is satisfied that perpetrators at Wat Au Trakuon and Trea Village Security Centres demonstrated a genocidal mental state toward the Cham found to have been killed in those locations. The Chamber further finds that in 1978, Cham people from Kroch Chhmar district were arrested and taken to Trea Village Security Centre, where they were arbitrarily detained, were denied due process rights, and where some were interrogated and beaten.

30. The Chamber thus finds that the crime of genocide and the crimes against humanity of murder, extermination, imprisonment, torture, persecution on political and religious grounds, and the other inhumane acts through conduct characterised as forced transfer were committed with respect to the Cham.

1.3.4.2. Vietnamese

31. Regarding the Vietnamese, the Chamber finds that from 1975 until the end of 1976, there was a nationwide policy to expel people of Vietnamese ethnicity living in Cambodia. This policy was implemented following agreements with Vietnamese authorities. Khmer Rouge cadres organised and monitored the transportation of Vietnamese people to the border with Vietnam, including by boats and by trucks. Khmer spouses of mixed families had to stay in Cambodia. The Chamber also finds that the CPK upper echelon ordered the identification of Vietnamese, as a result of which, from April 1975, lists and biographies were prepared by the lower echelons and then communicated back to the upper echelon for further action. From 1975, the CPK considered the Vietnamese ethnicity to be matrilineal, and as a result, targeted in mixed families Vietnamese mothers and their children while sparing Khmer fathers, as well as targeted Vietnamese fathers while sparing Khmer mothers and children. The Chamber finds that Vietnamese leaving Prey Veng, Svay Rieng and Tram Kak District in 1975 and 1976 were forced to do so by a coercive environment.

32. The Chamber further finds that specific instances of killings of Vietnamese civilians were established, for instance, in Svay Rieng in 1978; on Democratic Kampuchea waters after April or May 1977 and on 19 March 1978; in Kampong



Chhnang province in 1977; at Wat Khsach (Siem Reap province) in late 1978; and in Kratie in September 1978. These deliberate killings occurred on a massive scale, were systematically organised and directed against the Vietnamese. In each case, Vietnamese were targeted not as individuals but based on their membership of the group and their perceived ethnicity. This happened under the umbrella of the CPK's policy to specifically target the Vietnamese, including civilians, as a group. Until late 1976, the Vietnamese were targeted for expulsion, from April 1977, for destruction as such.

33. Regarding the treatment of Vietnamese detained at S-21 Security Centre, the Chamber finds that hundreds of Vietnamese civilians and soldiers were killed after having been interrogated using coercive methods and having been subjected to the dire conditions at S-21. Those killed were either Vietnamese civilians or prisoners of war and thus protected persons for the purposes of the Geneva Conventions. Confessions extracted from Vietnamese prisoners were published in various Democratic Kampuchea publications aimed at showing the Vietnamese "aggression" against Democratic Kampuchea. The Chamber further finds that the Vietnamese prisoners who entered S-21 were not provided any procedural safeguards or rights that would have allowed them to defend themselves following their arrest, were deprived of any semblance of a fair trial and were forced to confess that they were spies before being killed. All Vietnamese soldiers and civilian who entered S-21 were labelled as spies and considered enemies. The fate of these prisoners was a foregone conclusion as they were all ultimately subject to execution.

34. The Chamber thus finds that the crime of genocide and the crimes against humanity of murder, extermination, deportation and persecution on racial grounds were committed regarding the Vietnamese. In addition, recalling the existence of the ongoing international armed conflict between Vietnam and Democratic Kampuchea from May 1975 and the protected status of the victims, the Chamber finds that several grave breaches of the Geneva Conventions were also perpetrated against this group at S-21 Security Centre, including wilful killing, torture, inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilful deprivation of the rights of a fair and regular trial and unlawful confinement.

1.3.4.3. Buddhists

35. Regarding the treatment of Buddhists, which charges were limited to the Tram Kak Cooperatives, the Chamber finds that Buddhism was banned, Buddhist symbols were destroyed and pagodas were no longer allowed to be used for religious purposes. The Chamber further finds that over 100 monks were deliberately gathered at Angk Roka Pagoda and forced to defrock. Monks were also forcibly disrobed at other pagodas and this reflected the general pattern across Tram Kak District. While the evidence does not allow the Chamber to make a precise finding as to the total number of monks defrocked in Tram Kak District, the Chamber finds that there is reliable evidence which demonstrates that hundreds of monks were disrobed across various communes. The discriminatory intention behind the process is confirmed by references to monks as “worms” or “leeches” and announcements dismissing Buddhism as a mere superstition and the Buddha as “only concrete”.

36. The Chamber thus finds that the crime against humanity of persecution on religious grounds was committed with respect to Buddhists.

1.3.4.4. Former Khmer Republic officials

37. Regarding Former Khmer Republic officials, which charges were limited to the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre, the Chamber finds that at all four crime sites this group was persecuted. For example, the Chamber finds that, in Tram Kak District in the period immediately after 17 April 1975, members of the former Khmer Republic military and police were screened at Champa Pagoda and, having identified themselves, many were taken away and disappeared. The same process took place at other locations in Tram Kak District. Whereas there was a clear plan to purge and kill former Khmer Republic soldiers and officials in Tram Kak District in the aftermath of 17 April 1975, on at least one occasion thereafter instructions were disseminated not to harm former officers between the ranks of second lieutenant and colonel. The Chamber finds that in later periods, however, former Khmer Republic soldiers and officials were again targeted for arrest and killed. A large number of former military families were smashed in Popel Commune in May 1977, and an organised killing operation was underway in Tram Kak District from April 1977 with large numbers of persons taken to Kraing Ta Chan

Security Centre. The Chamber is satisfied these persons were targeted on the basis of their real or perceived former role(s) in the previous regime.

38. The Chamber finds that the crime against humanity of persecution on political grounds was committed at the Tram Kak Cooperatives between 20 April 1975 and late May 1975, and from early 1977 through 6 January 1979 at 1<sup>st</sup> January Dam, S-21 Security Centre and Kraing Ta Chan Security Centre. Further, the Chamber finds that the crime against humanity of murder was committed with respect to former Khmer Republic officials at S-21 Security Centre and Kraing Ta Chan Security Centre.

#### 1.3.5. *Regulation of Marriage*

39. The Chamber finds that there existed a nationwide policy to regulate family-building and marriage, which was implemented by Party cadres at all administrative and military levels. The CPK designed this policy, replacing the role of parents in the selection of a suitable spouse, forcing couples to marry and forcing the production of children, for the purpose of increasing the country's population within 10 to 15 years.

40. The Chamber finds that arranged marriage in Cambodian culture is different from forced marriage during the Democratic Kampuchea period as charged in the Closing Order. Arranged marriage in Cambodian culture pre-Democratic Kampuchea was based on mutual trust between children and parents who chose their children's spouses, an element absent when the Party arrogated the role of the parents in arranging marriages. The evidence put before the Chamber clearly demonstrates a practice during the Democratic Kampuchea regime that was far from reflective of traditional Khmer wedding tradition: families of future spouses were not involved at all in the negotiation, communities were not included, tradition was absent from wedding ceremonies and individuals agreed to get married for fear of being punished by the Party. The Chamber finds that Democratic Kampuchea authorities arranged marriages throughout the Democratic Kampuchea period and in numerous geographical locations throughout Cambodia. Individuals were married in a widespread climate of fear and the consent purportedly given either before or during wedding ceremonies did not amount in most cases to genuine consent. The Chamber finds that after wedding ceremonies, arrangements were usually made by the local authorities for newly wedded couples to sleep in an assigned location, monitored by militiamen, specifically to have sexual

intercourse. Both men and women felt forced to have sexual intercourse with their new spouse, and thus did so against their will. Couples who were found to have not had sexual intercourse were re-educated or threatened with being punished or killed.

41. The Chamber finds that the crime against humanity of other inhumane acts through conduct characterised as forced marriage and rape in the context of forced marriage was committed.

#### 1.3.6. *Joint Criminal Enterprise*

42. The Chamber finds that by 17 April 1975, and continuing until at least 6 January 1979, several senior CPK leaders shared the common purpose of rapidly implementing socialist revolution in Cambodia through a “great leap forward” designed to build the country, defend it from enemies and radically transform the population into an atheistic and homogenous Khmer society of worker-peasants. The common purpose was implemented across Democratic Kampuchea by the Party’s entire administrative network of zone, sector, district and local-level secretaries and CPK cadres through the execution of at least five policies. These policies, designed and implemented to achieve the common purpose, were: (1) the repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another; (2) the establishment and operation of cooperatives and worksites; (3) the establishment and operation of security centres and execution sites to identify, arrest, isolate and “smash” those considered belonging to the most serious enemy categories, and to re-educate “bad elements”; (4) the targeting of specific groups, including the Cham and Vietnamese, Buddhists and former Khmer Republic officials including both civil servants and military personnel and their families; and (5) the regulation of marriage. The Chamber finds that these policies were intrinsically linked to the common purpose and involved the commission of crimes. The Chamber therefore finds that the common purpose was itself criminal in character.

43. The Chamber further finds that the common purpose was shared by a plurality of persons including the senior leadership consisting of POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, IENG Thirith, SON Sen and VORN Vet (until his arrest in late 1978), as well as zone secretaries including *Ta Mok*, KE Pauk, KOY Thuon (until his house arrest in mid-1976), CHOU Chet (until his arrest in March 1978), RUOS Nhim

(until his arrest in May-June 1978) and SAO Phim (until his suicide in June 1978). Senior CPK leaders personally oversaw the implementation of the various policies and used direct perpetrators to commit the crimes involved in the furtherance of the common purpose. The Chamber finds that these crimes are properly imputed to the members of the joint criminal enterprise.

#### **1.4. The Accused's Individual Criminal Responsibility**

44. The Chamber now turns to its findings regarding the responsibility of NUON Chea and KHIEU Samphan, respectively.

##### ***1.4.1. NUON Chea's Responsibility***

45. The Chamber finds that, as one of those who played a leading role in laying the foundations for Democratic Kampuchea, NUON Chea participated in Party congresses and Central and Standing Committee meetings from the dawn of the revolution. NUON Chea was appointed Deputy Secretary of the Party in September 1960 and retained this position throughout the Democratic Kampuchea period. He was also a full rights member of both the CPK Central and Standing Committees, as well as Chairman of the Standing Committee of the People's Representative Assembly. NUON Chea participated in all key meetings and was involved in all major decisions of the Party during the Democratic Kampuchea period. Throughout the Democratic Kampuchea era, NUON Chea remained a key figure within the CPK as POL Pot's loyal right-hand man. Moreover, NUON Chea was appointed to replace POL Pot as interim Prime Minister when POL Pot officially took a leave of absence from September 1976 until September 1977. Due to his seniority within the leadership of the CPK, NUON Chea enjoyed oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the Democratic Kampuchea period. The Chamber finds that within the Standing Committee, NUON Chea, with POL Pot, exercised the ultimate decision-making power of the Party. As Deputy Secretary of the Party, his control extended not only to political decisions, but also to the government and the administration of Democratic Kampuchea as well as to military matters. The Chamber is therefore satisfied that NUON Chea not only shared support for the common purpose, but played a key role in formulating and controlling its content.

46. NUON Chea's support for the common purpose that he helped devise did not waver during the Democratic Kampuchea era. He continued to implement and disseminate the common purpose, retaining a tight grip on the CPK's carefully-crafted narrative through propaganda and training activities. NUON Chea had primary responsibility for propaganda-related matters, as well as for the education of peasants, cadres and other Party members, focusing in particular on the main principles and economic policies of the Party. In this capacity, NUON Chea held speeches and chaired study sessions for cadres from different regions, both in Phnom Penh and in other parts of the country, including at cooperatives and worksites; NUON Chea was one of the principal authors of the educational magazine the *Revolutionary Flag*, the Party's primary propaganda vessel that regularly rehashed speeches given by POL Pot, NUON Chea and KHIEU Samphan; and NUON Chea participated in Standing Committee meetings during which tactics of what to disclose and what to keep secret – secrecy being the counterpart of effective propaganda – were discussed. NUON Chea's formal responsibility for propaganda and education-related matters also extended to the discipline of cadres and other internal security matters, as well as the enemy situation more generally, where he advocated that enemies be uncovered and eliminated. The Chamber is thus satisfied that through his role in the propaganda campaign and tactics as well as the training of cadres both before and after April 1975, NUON Chea played a key role in implementing and disseminating the common purpose.

47. Further, the Chamber finds that NUON Chea's contributions to the commission of crimes exceeded policy development, implementation and dissemination of the common purpose through propaganda and education. NUON Chea executed the common purpose by directly and actively engaging in the purges of CPK cadres. He not only helped orchestrate and execute the Northwest Zone, Central (old North) Zone and East Zone purges, he was personally involved in the oversight of S-21 Security Centre and purges of prominent Party members such as Northwest Zone Secretary RUOS Nhim.

48. Regarding S-21 Security Centre, contemporaneous documents, notably detainees' confessions, show that since the early stage of S-21's operations NUON Chea knew and was involved in the arrest, detention, torture and killings of cadres targeted for purges. The Chamber further finds that NUON Chea acted as Duch's direct supervisor

from 15 August 1977, following the departure of SON Sen to the East Zone battlefield, until the fall of the Democratic Kampuchea regime in early January 1979. In this capacity, NUON Chea regularly met with Duch and gave him instructions, including directions regarding particular prominent prisoners. NUON Chea received and read S-21 confessions, and as he saw fit, ordered changes thereto. Further, the Chamber finds that NUON Chea was among those who decided who was arrested and sent to S-21. NUON Chea ordered executions, both of large groups, such as those arriving at S-21 as a result of the 1978 wave of East Zone purges and those detained at S-21 directly prior to its abandonment, and of specific individuals. Given the rapid entry of Vietnamese forces into Phnom Penh and the hasty abandonment of S-21 in January 1979, nothing was done with respect to the internal S-21 documents detailing the Security Centre's operations which remained on the premises. NUON Chea subsequently scolded Duch for not having destroyed these documents.

49. In sum, the Chamber finds that NUON Chea participated in the common purpose of the joint criminal enterprise. NUON Chea helped design, implement and disseminate the common purpose by publicly explaining, endorsing and advocating for the CPK's criminal policies. He did so through his leadership role as POL Pot's right hand, as Deputy Secretary of the CPK, as full-rights member of the Central and Standing Committees, and through his active involvement in propaganda and education. In addition, through his direct, extensive involvement in purges and the operation of S-21 Security Centre, NUON Chea executed the common purpose, using intermediaries such as Duch and direct perpetrators such as S-21 staff as the JCE's tools. Accordingly, the Chamber finds that NUON Chea made a significant contribution to the commission of crimes within the scope of Case 002/02.

50. Further, the Chamber finds that NUON Chea, for the reasons detailed in the Judgement, shared the intent, including where requisite the discriminatory and specific intent, of the other JCE members to commit the crimes encompassed by the common purpose, bar one exception. The Chamber was unable to identify or infer genocidal intent on the part of NUON Chea regarding the Cham, nor was the Chamber able to find beyond reasonable doubt that NUON Chea knew that genocide was committed against the Cham. However, the Chamber is satisfied that NUON Chea at the very least

had reason to know that genocide had been, or was about to be, committed against the Cham.

51. The Chamber thus finds that NUON Chea committed, through a joint criminal enterprise: (a) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity, conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage; (b) the crime of genocide by killing members of the Vietnamese ethnic, national and racial group; and (c) grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, the wilful deprivation of the rights of a fair and regular trial and unlawful confinement against persons protected under the Geneva Conventions at S-21 Security Centre. Accordingly, the Chamber enters a conviction for the commission of crimes through a joint criminal enterprise insofar NUON Chea shared the direct, discriminatory and specific intent of other JCE members.

52. Additionally, with respect to the deaths at cooperatives, worksites and security centres as a result of *dolus eventualis* (which were not encompassed by the common purpose), the Chamber finds that NUON Chea aided and abetted the crime against humanity of murder committed with *dolus eventualis* at the Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre. In the present circumstances, the Chamber finds that NUON Chea's conduct is most appropriately characterised under the mode of aiding and abetting. He provided encouragement and moral support, urging CPK cadres to implement the Party Centre's policies zealously, through his instrumental role in propaganda as well as his numerous appearances at meetings and speeches at study sessions throughout the country. The Chamber finds that this conduct had a substantial effect on the commission of crimes and that NUON Chea was aware of that. Accordingly, the Chamber enters a conviction for aiding and abetting the crime against humanity of murder with *dolus eventualis* at the above sites.

53. Finally, the Chamber finds that NUON Chea exercised ultimate decision-making power together with POL Pot and possessed the authority to discipline insubordinate



members of the Party and military. The Chamber therefore finds that NUON Chea is responsible as a superior for all the crimes committed pursuant to the CPK's criminal policies which fall within the scope of Case 002/02. This includes the crime of genocide by killing members of the Cham ethnic and religious group. However, having found that, first, NUON Chea was directly responsible for these crimes through his participation in the JCE except for the crime of genocide of the Cham and the crime against humanity of murder committed with *dolus eventualis* as particularised above, and second, that NUON Chea is responsible for aiding and abetting the aforementioned crimes against humanity of murder committed with *dolus eventualis*, the Chamber enters a conviction under the doctrine of superior responsibility for the crime of genocide by killing members of the Cham ethnic and religious group. For the remainder, the Chamber considered NUON Chea's superior position in sentencing.

#### 1.4.2. *KHIEU Samphan's Responsibility*

54. KHIEU Samphan became a candidate member of the CPK Central Committee in 1971 and a full-rights member in 1976. In 1970, KHIEU Samphan was named Deputy Chairman of FUNK and Commander-in-Chief of the Cambodian People's National Liberation Armed Forces. In reality, KHIEU Samphan held no direct military authority, and it was POL Pot who was in charge of the CPNLF forces. KHIEU Samphan also assumed the posts of Deputy Prime Minister and Minister of National Defence in GRUNK. After the fall of Phnom Penh in April 1975, KHIEU Samphan retained his roles as Deputy Prime Minister, Minister of National Defence and CPNLF Commander-in-Chief, and as such continued to exercise certain diplomatic functions, such as meeting visiting delegations from foreign countries and leading Cambodian delegations on trips abroad.

55. In October 1975, the CPK Standing Committee assigned KHIEU Samphan responsibility for "the Front and the Royal Government, and Commerce for accounting and pricing". Around October 1975, KHIEU Samphan became one of two members of Office 870 which oversaw the implementation of Standing Committee decisions. However, the Chamber is not satisfied that, as has been alleged, KHIEU Samphan ever served as the Chairman of Office 870. In April 1976, KHIEU Samphan was appointed President of the State Presidium, a role which was largely symbolic and in which he

had no executive power. As President of the State Presidium, he continued to perform diplomatic and ceremonial functions.

56. KHIEU Samphan was never formally a member of the CPK Standing Committee but he regularly attended and participated in Standing Committee meetings at which matters central to the common purpose were discussed. In his capacity as a member of the Central Committee, KHIEU Samphan attended the Third, Fourth and Fifth Party Congresses which adopted policies from the Standing Committee concerning the overall political line in accordance with the principle of democratic centralism. KHIEU Samphan was a fully-fledged member at the time the Central Committee approved the delegation of the “right to smash” down the ranks of the CPK. As a full-rights voting member of the Central Committee, KHIEU Samphan contributed to the adoption of the mid-1978 Central Committee memorandum calling for compassion to be accorded to “mised persons” who had, among other things, served as *Yuon* agents – a policy, which the Chamber found had no tangible impact. The Chamber is satisfied that KHIEU Samphan not only shared support for the common purpose, but that he publicly supported it throughout the Democratic Kampuchea period.

57. Further, the Chamber finds that in a pattern that continued throughout the Democratic Kampuchea era, KHIEU Samphan publicly promoted, confirmed and endorsed the common purpose. He was the chairman of a Special National Congress which was apparently held in the aftermath of 17 April 1975 and participated in meetings in May 1975 at the Silver Pagoda in Phnom Penh. Further, KHIEU Samphan personally perpetuated the Party line by leading indoctrination sessions at mass rallies and re-education seminars for, among others, returnees from abroad and Ministry of Commerce cadres, which were aimed at strengthening socialist consciousness, forging worker-peasant identity and engendering support for CPK policies. At 17 April anniversaries and other events, KHIEU Samphan publicly lauded the CPK’s successes and encouraged popular support of *Angkar*’s program for building and defending Democratic Kampuchea. The Chamber is therefore satisfied that KHIEU Samphan thus not only shared support for the common purpose, but as a senior leader he actively, vocally and publicly promoted, confirmed and endorsed it domestically and on the international stage. Moreover, through his many public speeches and statements during

the Democratic Kampuchea period, KHIEU Samphan encouraged and incited the execution of the CPK's various policies.

58. In sum, the Chamber finds that KHIEU Samphan participated in the common purpose. As the face of Democratic Kampuchea, KHIEU Samphan supported and promoted the common purpose, and encouraged, incited and legitimised its implementation through criminal policies. He further instructed cadres on their implementation while enabling and controlling the same. Accordingly, the Chamber finds that KHIEU Samphan made a significant contribution to the commission of crimes perpetrated by CPK cadres within the scope of Case 002/02.

59. Further, the Chamber finds that KHIEU Samphan, for the reasons detailed in the Judgement, shared the intent, including where requisite the discriminatory and specific intent, of the other JCE members to commit the crimes encompassed by the common purpose, bar one exception. The Chamber was unable to identify or infer genocidal intent on the part of KHIEU Samphan regarding the Cham.

60. The Chamber thus finds that KHIEU Samphan committed, through a joint criminal enterprise: (a) the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and other inhumane acts through attacks against human dignity, conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage; (b) the crime of genocide by killing members of the Vietnamese ethnic, national and racial group; and (c) grave breaches of the Geneva Conventions of wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, the wilful deprivation of the rights of a fair and regular trial and unlawful confinement against persons protected under the Geneva Conventions at S-21 Security Centre. Accordingly, the Chamber enters a conviction for the commission of crimes through a joint criminal enterprise for which KHIEU Samphan shared the direct, discriminatory and specific intent of other JCE members.

61. Additionally, with respect to the deaths of workers and peasants at cooperatives, worksites and security centres as a result of *dolus eventualis* (which were not encompassed by the common purpose), the Chamber finds that KHIEU Samphan aided and abetted the crime against humanity of murder at the Tram Kak Cooperatives, 1<sup>st</sup>

January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre. In the present circumstances, the Chamber finds that KHIEU Samphan's conduct is most appropriately characterised under the mode of aiding and abetting. He provided encouragement and moral support by his attendance at meetings and his appearances and speeches at study sessions throughout the country, openly and actively encouraging and providing moral support to CPK cadres in the implementation of the Party Centre's policies. The Chamber finds that this conduct had a substantial effect on the commission of crimes and that KHIEU Samphan was aware of that. Accordingly, the Chamber enters a conviction for aiding and abetting the crime against humanity of murder with *dolus eventualis* at the above sites.

62. Finally, the evidence did not rise to the level of proving that KHIEU Samphan actively assisted or facilitated the execution of the genocidal policy against the Cham. The Chamber is also not satisfied that KHIEU Samphan was a superior in the sense of having had the ability to prevent or punish the commission of crimes. The Chamber therefore finds that KHIEU Samphan is not responsible for the crime of genocide by killing members of the Cham ethnic and religious group, neither as aider or abettor nor as superior.

### **1.5. Civil Party Reparations**

63. A total of 3,865 Civil Parties were admitted in the present case and comprised the consolidated group of Civil Parties at trial represented by two Civil Party Lead Co-Lawyers.

64. The Chamber notes that both Accused in Case 002 have been found to be indigent. Under the ECCC Internal Rules, the Civil Party Lead Co-Lawyers may request the Chamber to recognise specific reparations measures. Such measures have been designed or identified in coordination with the Victims Support Section in order to appropriately acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes at issue in Case 002/02 and to provide benefits to the Civil Parties that address this harm. In Case 002/02, the Civil Party Lead Co-Lawyers sought the judicial recognition of 14 projects, out of 18 projects initially proposed, as appropriate reparations.

65. The Chamber finds that, as a consequence of the crimes of which the Accused have been convicted, the Civil Parties and a very large number of additional victims have suffered immeasurable harm, including physical suffering, economic loss, loss of dignity, psychological trauma and grief arising from the loss of family members or close relations.

66. The Chamber finds that the following projects comply with the requirements of Internal Rule 23*quinqüies* and therefore endorses them. Projects 1, 2 and 3 concern forms of education on Khmer Rouge history and Civil Parties' experiences aimed at guaranteeing non-repetition. Projects 4, 5, 6 and 12 provide documentation of the experiences of specific groups of Civil Parties, including persons affected by the treatment of the Cham, the treatment of the Vietnamese, and the regulation of marriage, with a view to prevent the recurrence of crimes targeting these groups. Projects 7, 8, 9 and 10 commemorate the suffering of Civil Parties and make their accounts accessible to the society at large, thus providing measures of satisfaction. Project 11 and the healthcare component of project 13 provide mental and physical care to Civil Parties focusing on rehabilitation.

67. The Chamber finds that the specific component of project 13 related to livelihood support seeks to provide benefits to the Civil Parties in the form of individual, monetary payments. As these initiatives fall outside the scope of Internal Rule 23*quinqüies* (1), which provides that the Chamber may only award collective and moral reparations, and excludes monetary payments to the Civil Parties, the Chamber is unable to endorse them as reparation measures. Further, the Chamber is unable to endorse project 15, which seeks to acknowledge the suffering experienced by indigenous minorities in Ratanakiri and Mondulkiri provinces because of their denigration, discrimination and persecution. The Chamber recalls that Case 002/02 does not include charges specifically related to the targeting, discrimination or persecution of indigenous minorities living in Ratanakiri and Mondulkiri provinces. While recognising the value of this project as such, the Chamber finds that it does not meet the requirements of Internal Rule 23*quinqüies* (1): reparation measures must acknowledge the harm suffered as a result of the commission of the crimes of which the Accused are convicted. The Chamber therefore declines to endorse this project.

68. This completes the summary of the Chamber's findings. I will now read out the disposition.

**1.6. Disposition and Sentence**

69. The Trial Chamber **REJECTS** the requests made by the KHIEU Samphan Defence to limit the scope of the trial in Case 002/02.

70. The Trial Chamber **RECHARACTERISES** the crime against humanity of extermination to the crime against humanity of murder, including with *dolus eventualis*, regarding deaths that occurred due to the conditions and circumstances imposed to the victims at the following crime sites: Tram Kak Cooperatives, 1<sup>st</sup> January Dam Worksite, Trapeang Thma Dam Worksite, Kampong Chhnang Airfield Construction Site, S-21 Security Centre, Kraing Ta Chan Security Centre and Phnom Kraol Security Centre.

71. The Trial Chamber finds the Accused **NUON Chea** to be **GUILTY** of having committed within the territory of Cambodia between 17 April 1975 and 6 January 1979, through his acts and omissions as summarised above and detailed in the full written version of the Judgement, the following crimes:

- PURSUANT TO Articles 5, 29 (new) and 39 (new) of the ECCC Law, the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in the context of forced marriage.
- PURSUANT TO Articles 6, 29 (new) and 39 (new) of the ECCC Law, grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian.
- PURSUANT TO Articles 4, 29 (new) and 39 (new) of the ECCC Law, genocide by killing members of the Vietnamese and Cham groups.

72. The Trial Chamber finds the Accused **KHIEU Samphan** to be **GUILTY** of having committed within the territory of Cambodia between 17 April 1975 and 6 January 1979, through his acts and omissions as summarised above and detailed in the full written version of the Judgement, the following crimes:

- PURSUANT TO Articles 5, 29 (new) and 39 (new) of the ECCC Law, the crimes against humanity of murder, extermination, deportation, enslavement, imprisonment, torture, persecution on political, religious and racial grounds, and the other inhumane acts through attacks against human dignity and conduct characterised as enforced disappearances, forced transfer, forced marriage and rape in context of forced marriage.
- PURSUANT TO Articles 6, 29 (new) and 39 (new) of the ECCC Law, grave breaches of the Geneva Conventions, namely wilful killing, torture, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian the rights of fair and regular trial and unlawful confinement of a civilian.
- PURSUANT TO Articles 4, 29 (new) and 39 (new) of the ECCC Law, genocide by killing members of the Vietnamese group.

73. The Trial Chamber finds the Accused **NUON Chea** and **KHIEU Samphan** to be **NOT GUILTY** of the remaining crimes within the scope of Case 002/02. Therefore, the Chamber **ACQUITS** both Accused of these crimes.

74. The Chamber has considered the gravity of the crimes, including their scale and brutality as well as the number and vulnerability of victims, for which the Accused have been convicted, as well as relevant aggravating and mitigating circumstances.

75. The Chamber sentences the Accused, **NUON Chea**, to **LIFE IMPRISONMENT**. Taking into consideration the life sentence imposed on NUON Chea in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.

76. The Chamber sentences the Accused, **KHIEU Samphan**, to **LIFE IMPRISONMENT**. Taking into consideration the life sentence imposed on KHIEU

Samphan in Case 002/01, the Chamber merges the two sentences into a single term of life imprisonment.

77. **DECLARING** the consolidated group of Civil Parties, individually listed in Annex 2, to have suffered harm as a result of the commission of the crimes for which NUON Chea and KHIEU Samphan have been convicted, and pursuant to Internal Rule 23*quinqies* (3) (b), the Chamber grants in part the Civil Party Lead Co Lawyers' requests for moral and collective reparations. As set out in detail in Section 21 of this Judgement, the Chamber endorses, as projects giving appropriate effect to the award sought and which may be implemented, 14 projects concerning remembrance of the victims and memorialisation of the suffering endured, therapy and psychological assistance to the victims, and documentation and education. The Chamber denies requests concerning two projects, one whole and one in part, which fail to satisfy the requirements of Internal Rule 23*quinqies* (3) (b) (Section 21).

78. This Judgement is publicly pronounced in the ECCC main court room on 16 November 2018.

79. The Chamber **CLARIFIES** that, in accordance with Internal Rule 107 (4) and Article 8.5 of the Practice Direction on the Filing of Documents before the ECCC, the time limit for filing a notice of appeal, if any, will commence on the first calendar day following the day of service of the notification of the fully reasoned, written Judgement in Khmer and one of the other official languages of the ECCC as selected by each Party pursuant to Article 2.2 of the Practice Direction.

80. Judge YOU Ottara appends a separate opinion on genocide to the Judgement.

81. This hearing in Case 002/02 is now concluded.



# Map of Cambodia with Case 002/02 Crime Sites

