

BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

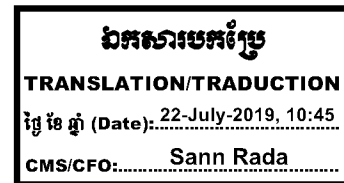
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KHIEU Samphân's Notice of Appeal (002/02)

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Before:

The Supreme Court Chamber

Judge KONG Srim

Judge Chandra Nihal JAYASINGHE

Judge SOM Sereyvuth

Judge Florence Ndepele MWACHANDE-

MUMBA

Judge MONG Monichariya

Judge Phillip RAPOZA

Judge YA Narin

The Co-Prosecutors

CHEA Leang

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All Civil Party Lawyers

NUON Chea's Defence

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 16 November 2018, in open court, the Trial Chamber (the "Chamber") found KHIEU Samphân guilty of genocide (of the Vietnamese), crimes against humanity and grave breaches of the Geneva Conventions, and sentenced him to life imprisonment.¹ The Chamber noted that the full reasons for its judgement would be notified in writing "in due course".²
2. On 19 November 2018, the KHIEU Samphân Defence (the "Defence") appealed against the judgement and requested the Supreme Court Chamber (the "Supreme Court") to annul it on the grounds that it contained procedural defects and was not reasoned.³ On 13 February 2019, the Supreme Court ruled the appeal inadmissible.⁴
3. On 20 March 2019, the Defence requested that this decision be reversed on the grounds that the panel of judges that issued it was then unlawfully set up.⁵ Almost three months later, the Supreme Court still has not notified this request.⁶
4. On 28 March 2019, the parties were notified of the full statement of reasons for the Case 002/02 judgement, dated 16 November 2018, consisting of 4,101 pages in Khmer, 2,828 pages in French and 2,387 pages in English (including annexes), with 14,446 footnotes ("written judgement").⁷
5. On 3 April 2019, the Defence requested 8 months and 100 pages for the filing of its notice of appeal in two languages, while the NUON Chea Defence requested 6 months and 100 pages for its own.⁸ On 26 April 2019, the Supreme Court granted all the parties 3 months and 60 pages.⁹

¹ Transcript ("T") of the hearing of 16 November 2018, **E1/529.1**, pp. 64-68, between 11:28 and 11:38.

² T.16 November 2018, **E1/529.1**, p. 3, at about 9:35.

³ **E463/1** KHIEU Samphân's Urgent Appeal Against the Summary of Judgement Pronounced on 16 November 2018, 19 November 2018.

⁴ **E463/1/3** Decision on KHIEU Samphân's Urgent Appeal Against the Summary of Judgement Pronounced on 16 November 2018, 19 November 2018, notified on 20 November 2018.

⁵ KHIEU Samphân's Request to Annul Decision E463/1/3 on his Urgent Appeal Against the Summary of Judgement Pronounced 16 November 2018, 20 March 2019.

⁶ This request was filed on 20 March 2019 at 11:52 but has still not been notified at the time of submission of the present application for translation. It is still with the greffier of the Supreme Court.

⁷ **E465** Case 002/02 Judgement, 16 November 2018 (the "written judgement").

⁸ **F39/1.1** KHIEU Samphân Defence Request for Extension of Time and Number of Pages to File Notice of Appeal, 3 April 2019, (the "**F39/1.1** Request"); **F40/1.1**.NUON Chea's Urgent First Request for an Extension of Time and Page Limits for Filing his Notice of Appeal against the Trial Judgement in Case 002/02, 3 April 2019.

⁹ **F43** Decision on NUON Chea and KHIEU Samphân's Requests for Extension of Time and Page Limits on Notices of Appeal (the "**F43** Decision").

6. On 3 May 2019, the Defence requested a review of this decision.¹⁰ More than a month later, on 7 June 2019, the Supreme Court dismissed the application.¹¹
7. The Defence hereby¹² files its notice of appeal against the conviction and sentence of KHIEU Samphân in Case 002/02/02.
8. KHIEU Samphân had neither the time nor the facilities necessary for the preparation of this fundamental document in the appeal proceedings and was placed at a disadvantage in relation to the Prosecution.
9. In the much too short time allowed, no member of the Defence was able to analyze the written judgement in its entirety. It goes without saying that the necessary source verification work could not be carried out. Even if he did not follow the doctors' recommendations and worked to the detriment of his health,¹³ KHIEU Samphân was not able to read the written judgement properly so as to be able to fully discuss it with his Defence.
10. In these circumstances, which are incompatible with the rules governing a fair trial, the Defence has endeavoured to identify all the errors leading to the conviction and sentence as well as interlocutory decisions relating to the means of appealing the judgement. But since no one is bound to do the impossible, this notice of appeal by KHIEU Samphân is necessarily imperfect and non-exhaustive.
11. Due to time and space constraints, the Defence has been unable to present this notice of appeal as it would have liked. In accordance with the Supreme Court's jurisprudence,¹⁴ the Defence has identified the errors in a succinct manner. It therefore has not presented any arguments or explained how the errors invalidate the judgement or decision and have led to a miscarriage of justice and/or caused harm. However, the Defence would like to point out that, in general, the legal errors identified stem from an application of the law that flouts the principle of legality or from a faulty application of the principles when they have been properly recalled. Thus, the errors

¹⁰ KHIEU Samphân's Application for Review of Decision on Requests for Extensions of Time and Page Limits on Notices of Appeal, 3 May 2019, **F44**.

¹¹ **F44/1** Decision on KHIEU Samphân's Application for Review of Decision on Requests for Extensions of Time and Page Limits on Notices of Appeal, 7 June 2019, (the "F44/1 Decision").

¹² Based on Rules 104 and 105 of the Internal Rules (the "IR").

¹³ **E13/442** See for example KHIEU Samphân's weekly medical report of 23-05-2019, (strictly confidential).

¹⁴ **F43** Decision, para.11 referring to para.8 Decision on Requests for Extension of Time and Page Limits on Notices of Appeal, 29 August 2014, **F3/3**. See also the **F44/1** Decision, p. 3 : "the preparation of notices of appeal is intended to be a (...) limited procedure compared to the preparation and filing of fully-reasoned submissions on appeal").

of fact identified are the direct consequence of this ill-defined or poorly applied law and are the result of a biased and incomplete analysis of the evidence, in particular through an evidentiary approach which is solely inculpatory.

12. In addition, given the impossibility of critically examining the 2,828-page judgement in French in three months in two languages and only in 60 pages, the Defence was forced to use very many abbreviations, listed in the appendix. The Defence will also merely point out that the paragraphs of the written judgement referred to in the notice of appeal include the references, decisions and references contained therein in a footnote. Moreover, the errors identified were not presented according to a plan that could have been used as a plan for the appeal brief, but simply in the sequence of the written judgement. It is therefore possible that some errors may overlap, but the Defence did not have the time to do this cross-checking work. This is particularly the case when similar findings of the Chamber are justified in a different way according to the sections of the judgement. Conversely, some errors exposed in a single error are actually made up of several errors. This is the case, for example, of errors of fact resulting from errors of law in the assessment of the evidence.
13. Due to time and space constraints, the Defence identified interlocutory decisions not mentioned in the written judgement it is appealing because they had an impact on the Chamber's findings, but it could not indicate to which specific errors they were linked and had to list them only in the annex. These include 159 oral and 196 written decisions, 74 of which were rendered by e-mail.
14. Moreover, while working on the notice of appeal and motion for recusal of the Supreme Court judges, the Defence was not able to simultaneously prepare the notice of appeal and the motion which it would have liked to file as soon as possible after the filing of its notice of appeal.¹⁵ The Defence will do what is humanly possible to file the motion for recusal in the coming weeks and wishes to point this out now so that the process for the appointment of a special panel of judges can begin.¹⁶
15. In this notice of appeal, in addition to the non-exhaustive 355 interlocutory decisions identified in the annex, the Defence was able to identify at least 1,824 errors committed by the Chamber,

¹⁵ F39/1.1 Request, para.35.

¹⁶ If, due to multiple disqualification applications, it is impossible to convene a Chamber to hear the applications, the Judicial Administration Committee shall choose additional judges from amongst the ECCC judges (IR 34-6).

presented very briefly and simply classified into preliminary errors (I) and errors according to the plan of the written judgement (II).

I. PRELIMINARY ERRORS

16. The Chamber violated the basic rules of a fair trial, by committing the following errors, *inter alia*:

0.1 LE failure to provide the reasons for the judgement on the day it was pronounced **0.2 - 0.15** PLE at trial and by prosecuting KS **by violating his right**: to be tried without undue delay (**0.2**), a tribunal that respects its jurisdiction / and is established in accordance with the law (**0.3**), to be informed of the nature and reasons of the charges against him (**0.4**), legal and procedural certainty (**0.5**), an independent and impartial tribunal (**0.6**), the presumption of innocence (**0.7**), has the time and resources necessary for the preparation of his defence (**0.8**), and adversarial proceedings (**0.9**), that his case be heard (**0.10**), effective defence (**0.11**), transparent procedures (**0.12**), reasoning of the decisions and judgement (**0.13**), equality of arms (**0.14**), not to be prosecuted or punished for an offense of which he has already been acquitted or convicted (**0.15**) **0.16** Proven legal error (PLE) failure to reopen the debate after the E319/71 disclosure.

II. ERRORS ACCORDING TO THE PLAN OF THE WRITTEN JUDGEMENT

INTRODUCTION

17. In **section 1** of the written judgement, the Chamber committed the following errors, *inter alia*:

1.1 Legal errors (LE) late decision on the outcome of the remaining charges para.13

1.2 LE scope of crimes charged in Case 002/02 para.16

PRELIMINARY ISSUES

18. In **section 2** of the written judgement, the Chamber committed the following errors *inter alia*:

2.1 Factual and legal errors (FLE) personal jurisdiction as concerns KS para.17-18

2.2 LE definition of the principle of legality and rejection of the submissions of KS paras. 20-32

2.3 LE dismissal of the submissions of KS on the nature and value of transcripts in Cases 002/01 and 002/02 para.36

2.4 LE distinction between *intime conviction* and conviction beyond reasonable doubt paras.38-40

2.5 LE neglect of the exceptional nature of Rule 87-4 para.43

2.6 LE presumptions about the documents obtained, archived and stored by the DC-Cam para.46

2.7 LE presumptions about documents cited in the Closing Order para.46

2.8 LE burden of rebut presumptions para.46

2.9 LE review of allegations to rebut presumptions para.46

2.10 LE by asserting that all witnesses testified under oath para.50, fn 29

- 2.11 LE admissibility of written statements para.51
- 2.12 LE review of prior statements and confirmation at the hearing para.52
- 2.13 LE admission of evidence and adversarial hearings para.56
- 2.14 LE evidence admitted following a request IR 87-4 para.56
- 2.15 LE accessibility and probative value of period documents para.57
- 2.16 LE reliance on out-of-scope evidence para.60
- 2.17 LE review of submissions on the probative value of evidence para.61
- 2.18 LE criteria for assessing the probative value of evidence para.61
- 2.19 LE assessing the credibility of a witness and cultural bias para.62
- 2.20 LE approach by deduction and proof beyond reasonable doubt paras.64-65
- 2.21 LE quality of exhibit and assessment of the value of depositions para.67
- 2.22 LE reliance of exhibits and their impact on crimes para.67
- 2.23 LE reliance on written statements para.69
- 2.24 LE admission of written statements in lieu of oral testimonies para.70
- 2.25 LE admission of written statements of deceased or unavailable witnesses paras.71-72
- 2.26 LE value of written statements of deceased or unavailable witnesses paras.71-72
- 2.27 LE use of torture-tainted evidence paras.74-78
- 2.28 LE failure to systematically apply the principles recalled and set out in paras.36, 38, 40, 49, 53, 60, 61, 62, 63, 64-65, 65, 66, 69, 71, 72, 73, 194, 344, 351, 354, 470, 471, 472, 479
- 2.29 LE review of allegations of impartiality paras.113-115
- 2.30 LE review of submissions on the appearance of summoned witnesses paras.126-127
- 2.31 LE review of submissions on the introduction of evidence from cases 003/004 paras.139-148
- 2.32 LE legal re-characterization of facts of extermination into murder in the form of *dolus eventualis* paras.152-157
- 2.33 LE Referral following a breach of jurisdiction by the Co-Investigating Judges paras.158-165
- 2.34 LE referral of facts of deportation paras.166-168
- 2.35 LE referral of facts of deportation to TK, para.169
- 2.36 LE Referral of facts of persecution on political grounds of former KR officials and soldiers paras.170-176
- 2.37 LE Referral of facts relating to Buddhists, paras.177-178
- 2.38 LE Referral based on charges insufficient to send the case to trial, paras.179-180
- 2.39 LE Referral of facts relating to Kampuchea Krom (KK) and evidence, paras.181-185
- 2.40 LE Referral of facts of rape outside marriage and evidence, paras.186-188
- 2.41 LE Referral of acts carried out in Vietnamese territory and evidence, paras.189-190

HISTORICAL CONTEXT

19. In **section 3** of the written judgement, the Chamber committed the following errors, *inter alia*:

ESTABLISHMENT AND RISE OF THE CPK

- 3.1 Factual errors (FE) considering only the establishment and rise of the CPK to establish the historical context, paras.191-235
- 3.2 Reliance on testimonies and works of the Accused and expert witnesses, paras.192-195
- 3.3 Assessment of KS's statements and writings, para.194
- 3.4 FE national movements reconstituted at the 1951 Indochinese Communist Party (ICP) Congress, para.198

- 3.5 FE Kampuchea People's Revolutionary People's Party (KPRP) on the brink of dissolution after the 1954 Geneva Accords, para.199
- 3.6 FE late 1955, reorganization of the KPRP under a 5-member Central Committee, para. 201
- 3.7 FE omission in 1955-1960, Disorganized and almost completely dissolved Party, paras.201-202
- 3.8 FE objectives of the national democratic revolution, para.202
- 3.9 FE decision of the 1960 Congress to wage a political and armed struggle, para.204
- 3.10 FE reaffirmation in 1963 of the strategy for the use of political and armed violence, para.206
- 3.11 FE inclusion by the Central Committee (CC) inclusion of revolutionary violence in the policy in January 1965, para.208
- 3.12 FE in September 1966 a resolution is adopted enjoining each zone to prepare for the armed struggle, para.209
- 3.13 FE NC led KS, HU Nim and HOU Yuon into the *maquis*, para.211
- 3.14 FE 23 March 1970 appeal by NS corrected, para.218
- 3.15 FE letter of support to FUNK on behalf of the "three ghosts", para.219
- 3.16 FE KS's liaison role with NS, para.220
- 3.17 FE role and contribution of NS within GRUNK, para.222
- 3.18 FE 1971 Congress and resolution that the Vietnam (VN) was the long-standing "sworn enemy", para.226
- 3.19 FE CC meeting in 05.1972, para.227
- 3.20 FE presence Vn in Cambodia after the Paris Agreements in 01.1973, para.228
- 3.21 FE reaction of the KR following the Paris Agreements of 01.1973, para.228
- 3.22 FE benefit to the CPK from the situation caused by the bombings, para.229
- 3.23 FE KR rid of Vn and concentration of fighting on the KR, para.230
- 3.24 FLE reversal on the presence of KS at the CPK CC meeting in 06.1974, para.230
- 3.25 FLE HOU Yuon detractor and purge victim with other CC members, para.230
- 3.26 FE radio broadcast of statement of 31.12.1974 attributed to KS, para.231
- 3.27 FE press release of 26.02.1975 attributed to KS, para.231
- 3.28 FE calls by KS in his capacity as Deputy Prime Minister of the GRUNK, para.231
- 3.29 KS's statement of 03.04.1975, para.232
- 3.30 FE KS's presence at a meeting in early 04.1975, para.233

ESTABLISHMENT OF COOPERATIVES AND SECURITY CENTRES BETWEEN 1970 AND 1975

- 3.31 FE CC Decision of 05.1972 on markets, cooperatives and terminating the use of currency and implementation, para.239
- 3.32 FE KS's reasons for setting up cooperatives, para.240
- 3.33 FE KS and the need to impose a forced collectivization program, para.241
- 3.34 FE Higher-level cooperative, para.242
- 3.35 FLE establishment of cooperatives in 1973 and various associations para.243
- 3.36 FE functioning of M13, paras.245-250

THE CHAM OF CAMBODIA BEFORE 1975

- 3.37 FLE situation of the Cham before DK, paras.251-256

BUDDHISM IN CAMBODIA BEFORE 1975

- 3.38 Referral of treatment of monks before 1975 to establish a *modus operandi*, paras.257-264
- 3.39 FE Buddhist monks defrocked and sometimes threatened with death from 1973-17.04.1975, para.264

MARRIAGE IN CAMBODIA BEFORE 1975

- 3.40 FLE arranged marriage and mutual trust between parents and children, paras.266-267
- 3.41 FLE distortion of the works of experts, para.267
- 3.42 FE central role of monks in marriage ceremonies, para.271
- 3.43 FE measures imposed to limit wedding celebrations between 1970 and 1975, para.273
- 3.44 FE marriages before 1975 arranged by Angkar, para.273

GENERAL OVERVIEW: PERIOD FROM 17 APRIL 1975 TO 6 JANUARY 1979

20. In **section 4** of the written judgement, the Chamber made the following errors, *inter alia*:

OVERVIEW OF THE FACTS (INCLUDING THE NATURE OF THE ARMED CONFLICT)

- 4.1 FLE reasons for Movements of the Population (MP) under DK, para.278
- 4.2 FLE objectives of the regulation of marriage, para.279
- 4.3 FLE collectivist conception of the CPK society, para.279
- 4.4 FLE implementation of the generalized system of forced marriages and rapes throughout the country by the CPK administrative network, para.279
- 4.5 FLE clashes between KR and Vn forces after 04.1975, paras.282-287
- 4.6 FE LONG Sat Eye-witness to the attacks at military camp 27, paras.288, 292
- 4.7 FLE Pol Pot's speech of 04.1978 (E3/4604), para. 290
- 4.8 FE radio message by KS calling soldiers to be vigilant in the face of the enemy, para.290
- 4.9 FE new proposal for border negotiations by the Vietnam (VN) in 1978 never accepted, para.291
- 4.10 FE Pol Pot and SOR Phim's attempted coup d'état, paras.292-293
- 4.11 FLE Prosecution analysis of the DK Constitution, para.294
- 4.12 FLE existence of policies of measures against specific enemies, para.295
- 4.13 FLE findings on the existence of a widespread attack on the civilian population, para.296
- 4.14 FLE assessment of the number of victims, paras.296-297

CONTEXTUAL ELEMENTS OF CRIMES AGAINST HUMANITY (CAH)

- 4.15 Contextual elements of CAH and the principle of legality, para.300
- 4.16 LE definition of contextual elements of CAH, paras.301-316
- 4.17 FLE the CPK launched a widespread and systematic attack on the population in order to implement its policies, paras.317-318
- 4.18 A widespread and systematic attack against a civilian population may also be discriminatory, paras.319-320
- 4.19 FLE characterization of the common purpose and the means to achieve it, para.319
- 4.20 FLE recourse to ill-treatment or violence against any person perceived as hostile to the revolution and collectivization, para.319
- 4.21 FLE attack launched in the form of specific measures directed against different specific groups on national, ethnic, racial and religious grounds, para.320
- 4.22 FLE violation of the referral as concerns specific measures against Buddhists, para.320

- 4.23 FLE the widespread and systematic attack took the form of specific measures against the Cham because of their ethnicity and religion, and against the Vietnamese (Vn) because of their ethnicity, nationality and race, para.320
- 4.24 FLE direct link between the perpetrators of the alleged attack and KS, para.321
- 4.25 FLE characterization of the common purpose and the means to achieve it, para.321
- 4.26 FLE KS's leading role in policy development/implementation, para.321
- 4.27 FLE elements of which KS was aware at the time of the events, paras.322-323
- 4.28 FLE role and duties of KS and his participation in policy development, paras.322-323
- 4.29 FLE widespread attack against the population as an integral part of the policies, paras.322-323

CONTEXTUAL ELEMENTS OF GRAVE BREACHES OF THE 1949 Geneva Conventions (GC)

- 4.30 Contextual elements of grave breaches of the Geneva Conventions and the of legality, paras.325-326
- 4.31 THE definition of contextual elements of grave breaches of the GC, paras.327-335
- 4.32 FLE KS, senior official, had a link with S-21 under DK, paras.338-340
- 4.33 FLE KS briefly met Duch on 06.01.1979, para.340
- 4.34 FLE KS was informed of the status of victims as protected persons at S-21, para.340

ADMINISTRATIVE STRUCTURES

21. In **section 5** of the written judgement, the Chamber made the following errors, among others:

- 5.1 FE reconstitution of the organizational structure of the CPK and the principle of secrecy, paras.342-454
- 5.2 FE date of the 4th CPK Congress in 1976, para.343
- 5.3 FE authentication of the 1976 Statute, para.344
- 5.4 FE participation in the 1976 and 1978 Congresses, para.345
- 5.5 FLE authenticity and probative value of 23 records of SC meetings from 002/01, paras.347-350
- 5.6 FLE probative value of PV excerpts of SC meetings presented before the People's Revolutionary Tribunal (PRT) in 1979, para.351
- 5.7 FLE obtaining and admitting 13 docs from GOSCHA, paras.352-354
- 5.8 FLE probative value given to the 13 GOSCHA documents, paras.352-354
- 5.9 FE date of admission of KS as a full-fledged member of the CC, para.355
- 5.10 FE Composition of the CC during DK, para.356
- 5.11 FLE CC vested with the power to appoint members of the SC and others, para.357
- 5.12 FE frequency of KS's participation in SC meetings, para.357
- 5.13 FLE CC/SC members purged after having been implicated in confessions, para.358
- 5.14 FLE establishment of management committees (MC) within the armed forces loyal to the Management Committee, para.359
- 5.15 FE use of the term "Party Centre", paras.360-361
- 5.16 FE use of code number "870", para.362
- 5.17 FE role and functions of Office 870, paras.362-365
- 5.18 FE composition and functioning of Office 870, paras.364-365
- 5.19 FLE arrest of Party members implicated in confessions, para.375

- 5.20 LE irregular referral of facts of purges, paras.376-382, 385-387, 404-405
- 5.21 FE use of the term "Angkar", paras.388-389
- 5.22 FE Management Committee and decision making, paras.390-397, 399
- 5.23 FE comparison of the 1960, 1971 and 1976 Party Statutes, para.398
- 5.24 FE nomination of candidates by a full member of the Party, paras.399-400
- 5.25 FE CC decision mid-1974 to close the door on Party membership, para.402
- 5.26 FLE number of Party members and purges, paras.401-406
- 5.27 FE nominations by the CC on 30.03.1976, including KS to the Presidium, para.414
- 5.28 CC's opinion that the DK government should be exclusively an organ of the Party, para.416
- 5.29 FE establishment of committees in the economic sector under the authority of VORN Vet and KS, para.421
- 5.30 FE KS fully informed of the economic issues of the DK under the purview of these committees from 1976 to the end of 1978, para.421
- 5.31 FE receipt by KS of reports after the arrest of VORN Vet, para.421
- 5.32 FE FORTRA and Ren Fung under the supervision of the Trade Committee reporting to KS, para.422
- 5.33 FE announcement of the establishment of the KRA and certain military divisions from the zones under the authority of the CC, para.424
- 5.34 FE presence of NC and KS at a SC meeting on 09.10.1975, para.424
- 5.35 FE use of the term "Centre Divisions", para.424
- 5.36 FE RAK General Staff under the supervision of the CC and the Military Committee, para.427
- 5.37 FE S-21 under the supervision of the General Staff solely for logistical matters, para.450
- 5.38 FE existence of special units at the level of the communes, para.454

COMMUNICATION SYSTEMS

22. In **section 6** of the written judgement, the Chamber made the following errors, among others:

- 6.1 FLE probative value of official correspondence in different forms, para.455
- 6.2 FE telegraph system maintained until the arrival of the Vn in 1979, para.456
- 6.3 FE operation of the telegram communication system, paras.457-459
- 6.4 FE incoming mail to the "Party Centre" via K-7, para.460
- 6.5 FE radio of FUNK in Hanoi composed mainly of CPK members, para.464
- 6.6 FE dissemination of recordings of speeches and interviews of leaders, para.465
- 6.7 FE information for dissemination relates to different topics, para.466
- 6.8 FE re-broadcasts of the recordings of confessions of imprisoned Vietnamese military personnel, para.466
- 6.9 FE Minutes of the SC meeting 03.1976 and need for information on the elections, para.466
- 6.10 FE freedom of access to information by radio, para.468
- 6.11 FE comparison of speech in FBIS and in DK publications, para.470
- 6.12 FE FBIS and SWB important evidence, paras.470-471
- 6.13 FE distribution of Revolutionary Flag, para.475
- 6.14 FE CPK considered it important for its members to read the Revolutionary Flag, para.477
- 6.15 Authenticity of Revolutionary Flag and Revolutionary Youth magazine on file, para.478
- 6.16 FE conditions relating to verification of reviews heard by the Chamber, para.478
- 6.17 FE lateral communication within the "Party Centre", para.483

- 6.18 FE minutes of meetings kept show that the CC and SC met regularly, para.484
- 6.19 FE Pol Pot, NC and KS meetings one-on-one or collectively, at K-1 and – K-3, para.484
- 6.20 FE "Party Centre" offices and telephone transmissions, para.485
- 6.21 FE telegrams from the lower echelons to the "Party Centre" at K-1, para.486
- 6.22 FE mixture of the "Party Centre", SC and other CPK organs in Phnom Penh, paras.487-493
- 6.23 FE direct reports from autonomous zones and sectors to the "Party Centre", para.487
- 6.24 FE synthesis reports of autonomous zones and sectors for the "Party Centre", para.489
- 6.25 FE reporting at regular intervals, sometimes daily, para.489
- 6.26 FE representatives of autonomous zones and sectors report in person to the "Party Centre", para.489
- 6.27 FE reports from zones and sectors to the "Party Centre", requests for instructions and advice on various subjects or material assistance, para.491
- 6.28 FE telegrams used by the "Party Centre" to communicate instructions, para.493
- 6.29 FE regular sending of KS telegrams, para.493
- 6.30 FE responsible for autonomous areas and sectors received letters from Office 870 and particular CPK leaders including KS, para.493
- 6.31 FE transmission of district reports to the "Party Centre", para.496
- 6.32 FE District reports to sectors on different topics, para.497
- 6.33 FE transmission of directives from the "Party Centre" to the district level, para.499
- 6.34 FE district and commune officials or cooperatives often met in person to exchange information or communicate orders, para.500
- 6.35 FE entities below the district forward requests and reports to districts on various topics, para.501
- 6.36 FE visits to foreign trade delegations and meetings at the Ministry of Commerce, para.505
- 6.37 FE Transmission of messages and written reports from military commanders by Son Sen to other CPK leaders including requests for instructions to be followed, para.508
- 6.38 FE SON Sen attended SC meetings and kept him informed, para.508
- 6.39 FE communications between staff and divisions by telegram or telephone, para.509
- 6.40 FE military divisions under the command of the "Party Centre", para.509
- 6.41 FE military meetings/assemblies in Phnom Penh, some of which are monitored by KS, para.510
- 6.42 FE divisions kept the staff regularly informed on various subjects, para.511

ROLES/DUTIES OF KS

23. In **section 8** of the written judgement, the Chamber committed the following errors, among others:

PERSONAL INFORMATION AND PERIOD PRIOR TO DK

Childhood, Youth and Career

- 8.1 FE KS activities and associates in France, paras.565-566
- 8.2 FE KS doctoral thesis and foreshadowing of aspects of the ideology of the CPK, paras.567-568
- 8.3 Purpose, content and support of *l'Observateur*, para.569
- 8.4 FE omission of exculpatory evidence in KS's career, paras.569-571

Member of the CPK

- 8.5 FE KS activities between 1967 and 1970, para.573
- 8.6 FE impact of KS's admission to the CPK, para.573
- 8.7 FE knowledge of important future Party members, para.573
- 8.8 FE date of admission of KS as a full member of the CC, para.574

From 1970 to 17 April 1975

- 8.9 FE support message sent to FUNK after the coup and role of KS, para.575
- 8.10 FE importance of the role of the CPK as a link between the CPK and NS, para.576
- 8.11 FE public figures of the CPK-dominated resistance movement, para.577
- 8.12 FE assists in the preparation of FUNK propaganda documents and the organization of political training sessions, para.578
- 8.13 FE tours and visits to the countryside and liberated areas, para.579
- 8.14 FE reception of a delegation from the People's Revolutionary Government of the Republic of South Vietnam, para.580
- 8.15 FE appointment President of the Association of Friendship between Cambodia and the VN, para.580
- 8.16 FE KS press releases, statements and speeches in 1975-1976, para.581
- 8.17 FE installation of KS at Office B-5, para.581
- 8.18 FE important role in winning support, para.582
- 8.19 FE contribution to confer and strengthen the legitimacy of the CPK-dominated resistance movement, para.582

Participation in the June 1974 CC meeting and the April 1975 leaders' meeting

- 8.20 FLE KS's participation in a meeting in B-5 in 04.1975, paras. 583-588
- 8.21 FLE reversal compared to Case 002/01 as regards the meeting of 06.1974, paras.583-588

WORK PLACES OF RESIDENCE AND MOVEMENTS DURING DK

- 8.22 FE places of residence and close contact with senior cadres, paras.589, 526, 534
- 8.23 FE travel within Cambodia to visit worksites, para.590

POSITIONS HELD DURING THE DK PERIOD

Deputy Prime Minister, Minister of National Defence and Commander in Chief of the Khmer People's National Liberation Armed Forces (CPNLAF)

- 8.24 FE congresses attributed to KS and legitimacy of the CPK program internationally, para.593

President of the State Presidium

- 8.25 FE KS appointed President of the Presidium by the CC on 30.03.1976, para.596
- 8.26 FE KS's speeches during DK, para.598
- 8.27 FE general promotion of the CPK line, para.599

Member of the CC and SC

- 8.28 FE date of appointment of KS as a full member of the CC, para.600
- 8.29 FE CC functions, para.600
- 8.30 FE frequency of KS attendance of SC meetings, para.602

- 8.31 FE KS participation in SC meetings, para.602
- 8.32 FE attendance of CP meetings and knowledge of issues discussed, para.603
- 8.33 FE belonging to a restricted group of knowledgeable CPK members, para.604
- 8.34 FE unique position in the Party, para.604

Residual functions

- 8.35 FLE KS had other duties that did not fall within his official remit or that the Chamber was unable to assign to a particular role, para.605
- 8.36 FE KS accompanied Sihanouk on visits to agricultural projects and worksites, para.606
- 8.37 FE KS attended/conducted political training sessions between 04.1975 and 1978, para.607
- 8.38 FEs participating in political training sessions, para.607
- 8.39 FE training sessions conducted by KS on various topics, para.607
- 8.40 FE KS trained participants to identify "enemies" and find "traitors", para.607
- 8.41 FLE KS training sessions in Borei Keila and at the Technical Institute, para.607

Member of the Board of Office 870

- 8.42 FE office functions at Office 870, para.608
- 8.43 FE composition of Office 870, paras.608, 610
- 8.44 FE KS's duties and activities, paras.609, 616
- 8.45 FE Doeun "predecessor" of KS at Office 870, para.616

Supervision of the Commerce Committee

- 8.46 FE KS was responsible for "trade, lists and prices", para.617
- 8.47 FE KS appointment by the SC to the committees in 03.1976, para.617
- 8.48 FE from the end of 10.1976 the Trade Committee started reporting to KS, para.618
- 8.49 FLE distortion of KS's comments, para.619
- 8.50 FE overlapping responsibilities of KS and exact contours, para.619
- 8.51 FE KS exercises significant control over the business affairs of the DK, para.619
- 8.52 FE requests for instructions and advice to KS on commercial matters, para.619
- 8.53 FE various documents addressed or otherwise delivered to KS between 10.1976 and 12.1978, para.619
- 8.54 FE Trade and international trade reports addressed to KS as a priority, para.620
- 8.55 FE KS accompanied by VAN Rith to inspect goods, para.620
- 8.56 FE KS's meetings with workers and business executives on various topics, para.620
- 8.57 FLE considerable level of supervision by KS in commercial matters, para.620
- 8.58 FLE KS informed of all DK national and international trade and exchange issues between 10.1976 and early 1979, para.620

Head of the Ministry of Foreign Affairs (MFA)

- 8.59 FE KS assistance in several areas of government administration, para.623
- 8.60 FE residual functions of KS in addition to his official functions, para.623

8.61 FE temporary assistance from KS to MFA, para.623

Summary of the Chamber's findings

8.62 FLE summary of findings on the roles and duties of KS, para.624

APPLICABLE LAW: CRIMES

24. In **section 9** of the written judgement, the Chamber committed the following errors, *inter alia*:

9.1 LE principle of legality, paras.651, 654, 661, 672-673, 688, 700, 712, 723, 757, 759, 761-763, 765-767, 770-771, 780-781, 784-789

9.2 LE definition of the *actus reus* for the CAH of murder, paras.627-629

9.3 LE definition of the *mens rea* for the CAH of murder, paras.630-650

9.4 LE definition of the *actus reus* for the CAH of extermination, paras.655-656

9.5 LE definition of the *mens rea* for the CAH of extermination, paras.657-659

9.6 LE definition of the *actus reus* for the CAH of enslavement, paras.662-666

9.7 LE definition of the *mens rea* for the CAH of enslavement, para.670

9.8 LE definition of the *actus reus* for the CAH of deportation, 674-685

9.9 LE definition of the *mens rea* for of the CAH of deportation, para.686

9.10 LE definition of the *actus reus* for the CAH of imprisonment, paras.689-696

9.11 LE definition of the *mens rea* for of the CAH of imprisonment, para.697

9.12 LE definition of the *actus reus* for torture, paras.701-705, 708-709

9.13 LE definition of the CAH of persecution, paras.713-721

9.14 LE definition of the CAH of other inhumane acts (OIA), paras.724-727

9.15 LE definition of the CAH of OIA (rape), paras.727, 728-732

9.16 LE definition of the CAH of OIA (attacks against human dignity), paras.727, 733-739

9.17 LE definition of the CAH of OIA (forced marriage), paras.727, 740-749

9.18 LE definition of the CAH of OIA (forced transfer), paras.727, 750-752

9.19 LE definition of the CAH of OIA (enforced disappearances), paras.727, 753-755

9.20 LE definition of the *actus reus* for intentional killing as grave breaches (GB), para.757

9.21 LE definition of the *mens rea* for intentional killing as GB, para.757

9.22 LE definition of the *actus reus* for torture as GB, para.759

9.23 LE definition of the *actus reus* for torture as GB, para.759

9.24 LE definition of the *actus reus* for great suffering or serious injury or bodily harm as GB, para.761

9.25 LE definition of the *mens rea* for great suffering or serious injury or bodily harm as GB, paras.762-763

9.26 LE definition of the *actus reus* for inhumane treatment GB, paras.765-767

9.27 LE definition of the *mens rea* for inhumane treatment as GB, para.767

9.28 LE definition of the *actus reus* for deprivation of the rights of a fair and regular trial as GB, para.770

9.29 LE definition of the *mens rea* for deprivation of the rights of a fair and regular trial GB, paras.771, 773

9.30 LE definition of the *actus reus* for unlawful confinement of a civilian as GB, paras.790-781

9.31 LE definition of unlawful confinement of a civilian as GB, para.780

9.32 LE definition of groups targeted in genocide, paras.790-795

9.33 LE definition of the *actus reus* for murder as genocide, para.796

9.34 LE definition of the *mens rea* for murder as genocide, paras.797-804

COOPERATIVES

25. In **section 10** of the written judgement, the Chamber committed the following errors, *inter alia*:

Preliminary issues

- 10.1 Referral of all cooperatives located in the Tram Kak District, para.808
- 10.2 Inadmissibility of arguments on CIJs' violation of their jurisdiction, para.809
- 10.3 Referral of deaths due to imposed living conditions and deaths due to famine in Samraong and Ta Phem, which constitute the CAH of extermination, para.811
- 10.4 Referral of the CAH of persecution on political grounds of ex-Khmer Republic officials and soldiers (ex-KRs), para.812
- 10.5 Referral of the treatment of New People (NP) as the CAH of persecution on political grounds, para.813
- 10.6 References to out-of-court evidence authorized, para.815
- 10.7 LE treatment of the Khmer Krom (KK) which is relevant and included in Case 002/02, para.816
- 10.8 FE authenticity of TK archives, paras.852, 854-872, 875-877, 878-902

Facts

- 10.9 FLE arrival of thousands of KK from the Vietnam (VN) in TK, para.938
- 10.10 FE policy of cooperatives on grouping people by categories, paras.939-949
- 10.11 FE regular visits by Communist Party of Kampuchea (CPK) leaders to supervise worksites, paras.950-955
- 10.12 FE CPK structures mobilized to manage the arrival of evacuees at TK, paras. 956-957
- 10.13 FE evacuees sorted at Champa pagoda and then killed and/or disappeared and sent to Kraing Ta Chan (KTC) and pagoda activities stopped by mid-May 1975 at the latest, paras.958-962
- 10.14 FE instructions on arrest/execution of ex-KRs in TK and implementation, paras.963-967
- 10.15 FE miscellaneous documents known as high-level general policy documents / implementation, paras.968-979
- 10.16 FE policy of the CP providing for the subordination of the NP to cooperatives, paras.981-982
- 10.17 FE classification into categories with NP/BP distinction and implementation, paras.983-1004
- 10.18 FE organization of cooperatives as a means of controlling the population and implementation at TK of the principles and methods set out in CPK documents, paras.1005-1039
- 10.19 FE non-application of the policy announced in mid-1978 and maintenance of the distinction, para.1007
- 10.20 FE rations and work system based on category membership, paras.1008-1020
- 10.21 FE severe working conditions known at upper echelons, para.1020
- 10.22 FLE distortion and de-contextualization of KS's statements, paras.1021-1022's
- 10.23 FE inadequate facilities, insufficient food and deaths due to malnutrition and exhaustion, paras.1040-1047
- 10.24 FE medical care in communes and workplaces, paras.1040-1051
- 10.25 FE on militias, surveillance, misconduct and sanctions, paras.1048, 1052-1060
- 10.26 FE orders relating to ex-KRs and concerted raids from 04.1977, paras.1061-1063, 1080

- 10.27 FE orders targeting the NP, power of arrest and numerous disappearances at TK, paras.1064-1071, 1080-1081
- 10.28 FE executions and credibility of witnesses, paras.1072-1076
- 10.29 FE general practice of arrest, interrogation and re-education, paras.1077-1083
- 10.30 FE release issued on 28.04.1975 as part of a suitable façade strategy, para.1086
- 10.31 FE prohibition of religions and motivation of KS, para.1090
- 10.32 FE CPK's intention to eradicate Buddhism and its practice including by forcing monks to defrock and subsequent orders, paras.1087-1093, 1095-1108
- 10.33 FLE measures targeting Vietnamese (Vn) at TK, paras.1110-1125
- 10.34 FE process for repatriating Vn after 17.04.1975, paras.1110-1125
- 10.35 FE District Instructions and Witness Contradictions, paras.1110-1125
- 10.36 FE exchange with Kampuchea Krom (KK), paras.1110-1125
- 10.37 FLE "corroboration" of documentary evidence, paras.1122-1125
- 10.38 FE expulsions, disappearances and executions of Vn at TK, paras.1110-1125
- 10.39 FE findings on TK as a model district, paras.1126-1129

Legal characterization of the facts

- 10.40 LE Referral of the crime against humanity (CAH) of extermination of Vn at TK, paras.1139-1140, 1146
- 10.41 LE Referral of deaths due to imposed living conditions, paras.1140-1141
- 10.42 FLE CAH of murder at TK, paras.1142-1146
- 10.43 LE Referral of facts of genocide, CAH of murder of Vn at TK, para.1146
- 10.44 FLE re-characterization of the CAH of extermination as murder in the form of *dolus eventualis*, paras.1144-1145
- 10.45 FLE CAH of enslavement established at TK, paras.1149-1155
- 10.46 LE Referral of deportation in the district of TK, para.1156
- 10.47 FLE CAH of deportation established at TK, paras.1157-1159
- 10.48 LE Referral of facts constituting the CAH of persecution on political grounds beyond the three groups of enemies defined in applicable law, para.1168
- 10.49 LE Referral of treatment of the NP constituting the CAH of persecution on political grounds, paras.1170-1171
- 10.50 LE Referral of treatment of the ex-KRs constituting the CAH of persecution on political grounds, para.1172
- 10.51 FLE persecution on political grounds established at TK, paras.1174-1179
- 10.52 FLE CAH of persecution on religious grounds established at TK, paras.1183-1187
- 10.53 LE Referral of persecution of Vn on racial grounds at TK, para.1188
- 10.54 FLE CAH of persecution on racial grounds established at TK, paras.1189-1192
- 10.55 LE Referral of enforced disappearances of Vn at TK, paras.1200, 1201
- 10.56 FLE CAH of other inhumane acts (OIA) established at TK, paras.1201-1204

WORK AND CONSTRUCTION SITES

26. In **section 11** of the written judgement, the Chamber committed the following errors, *inter alia*:

TRAPEANG THMA DAM (TTD) WORKSITE

Preliminary issues

11.1 LE Referral of OIA/enforced disappearances at TTD, para.1206

Facts

11.2 FE date of works at the TTD, paras.1220-1221

11.3 FE execution of CC decision, para.1224

11.4 FE hierarchical and decision-making structure at the TTD and evolution, paras.1225-1237

11.5 FE TTD communication systems, paras.1238-1253

11.6 FE reports sent by the NW Zone office to Office 870, topics discussed and the leaders' knowledge of the situation and living conditions, paras.1244-1253

11.7 FLE composition and organization of the workforce, paras.1262-1269

11.8 FLE working conditions and reporting to the "Party Centre", paras.1270-1296

11.9 FLE on quotas and sanctions imposed, paras.1288-1295

11.10 FLE response of the "Party Centre" to living conditions, paras.1297-1310,1327-1329

11.11 FLE CPK health policy and situation at , paras.1312-1326

11.12 FLE findings on surveillance, ill-treatment and discipline, paras.1330-1339

11.13 FLE discrimination of the NP and Party ideology, arrests and executions, paras.1340-1352

11.14 FLE on arrests and disappearances, paras.1353-1361

11.15 FLE out-of-scope evidence and rejection of exculpatory evidence on disappearances, paras.1353-1361

11.16 FLE confusion of the concepts of arrest and disappearance, paras.1357

11.17 FLE use of torture-tainted evidentiary documents, para.13586

11.18 FLE out-of-scope evidence, distorted, contradictory or insufficient to establish murder, paras.1353-1374

11.19 FLE findings on public executions, para.1372

11.20 FLE death due to living conditions, paras.1375-137

Legal characterization of the facts

11.21 FLE murder as a CAH established at the TTD, paras.1378-1390

11.22 FLE crime of enslavement established at the TTD, paras.1395-1402

11.23 LE referral of facts constituting the CAH of persecution on political grounds, para.1404

11.24 LE referral of facts constituting the CAH of persecution on political grounds, para.1405

11.25 FLE the CAH of persecution established at TTD, paras.1407-1413

11.26 FLE the CAH of OIA/attacks against human dignity established at TTD, paras.1415-1421

11.27 FLE the CAH of OIA/enforced disappearances established at TTD, paras.1424-1429

1 JANUARY DAM (1JD) WORKSITE**Preliminary Issues**

11.28 LE referral of acts committed at Baray Choan Dek Pagoda, para.1434

11.29 LE references to events occurring at the 6 January Dam and in the canal network of 1 January Dam and 6 January Dam, para.1434

11.30 LE referral of facts constituting the CAH of persecution on political grounds, on religious grounds and the CAH OF OIA/enforced disappearances at the 1 January Dam, para.1435

Facts

11.31 FE shipping rice out of communes during food shortages, paras.1450-1454

- 11.32 FE general supervision by the "Party Centre" of the hierarchy of the Central Zone (CZ) and of the 1 January Dam, paras.1455-1470
- 11.33 FE purges of CZ cadres and CC decision, paras.1461-1470
- 11.34 FE communications between "Party Centre", CZ, sectors and districts, paras.1471-1475
- 11.35 FE upper echelon authorization required to act at zone level, para.1474
- 11.36 FE meetings and dissemination of Party policy and work plans, paras.1476-1480
- 11.37 FE living and working conditions known to the SC via executive visits by CPK leaders, paras.1483-1497
- 11.38 FE manpower organization and orders from the upper echelon, paras.1498-1503
- 11.39 FLE working conditions, supervision, knowledge of the "Party Centre", paras.1504-1560
- 11.40 FLE distortion and de-contextualization of KS's book, para.1508
- 11.41 FLE arrests, punishment and disappearances, paras.1561-1566
- 11.42 FLE executions at Baray Choan Dek pagoda, paras.1567-1580
- 11.43 FLE living conditions on the 1 January Dam and examination of evidence, paras.1581-1610
- 11.44 FE CPK's policy for modernizing agriculture by exporting rice, para.1594
- 11.45 FLE on forced labour, paras.1616-1623
- 11.46 FLE deaths due to working and living conditions, paras.1624-1629
- 11.47 FLE upper echelon's knowledge of working and living conditions, paras.1630-1640
- 11.48 FLE treatment of the NP and general policy of the CPK, paras.1641-1653
- 11.49 FLE treatment of the Cham at 1 January Dam in the context of sectors 41, 42 and 43, paras.1654-1659
- 11.50 FLE disappearances of Cham in Kang Sau, para.1655
- 11.51 FLE Cham victims of discrimination at 1 January Dam, paras.1655-1659
- 11.52 FLE on the treatment of ex-KRs considered AS enemies, para.1660
- 11.53 FLE ex-KRs victims of discrimination at the 1 January Dam, paras.1661-1663

Legal characterization of the facts

- 11.54 FLE CAH of persecution on political grounds at the 1 January Dam, paras.1687-1692
- 11.55 Referral of the CAH of persecution on religious grounds, para.1693
- 11.56 FLE CAH of persecution of the Cham on religious grounds at the 1 January Dam, paras.1695-1697
- 11.57 FLE CAH of OIA/attacks against human dignity at the 1st January Dam, paras.1703-1707
- 11.58 LE Referral of facts constituting CAH of OIA/enforced disappearances at the 1 January Dam, para.1708
- 11.59 FLE CAH of OIA/enforced disappearances at the 1 January Dam, paras.1710-1712
- 11.60 FLE CAH of murder in respect of the people killed at the pagoda, para.1666
- 11.61 FLE re-characterization of the facts of extermination facts as murder in the form of *dolus eventualis* at the 1 January Dam, para.1672
- 11.62 FLE CAH murder resulting from living and working conditions at the 1 January Dam, paras.1670-1673
- 11.63 FLE CAH of enslavement at the 1 January Dam, paras.1677-1684
- 11.64 Referral of the facts constituting the CAH of persecution on political grounds, paras.1685-1686

KAMPONG CHNANG AIRFIELD (KCA) CONSTRUCTION SITE

Preliminary Issues

- 11.65 LE Interpretation of Internal Rule 89 and geographical and temporal referral, paras.1714-1716
- 11.66 Referral of executions at Mongol Khan Pagoda after 06.01.1979, para.1714
- 11.67 FLE number of witnesses and CPs heard during the trial, para.1717
- 11.68 FLE credibility of CHAN Morn and CHUM Samoeurn, paras.1719-1720

Facts

- 11.69 FLE reason for KS's presence at the SC meetings of 09.10.1975 and 22.02, para.1723
- 11.70 FLE hierarchical structure and communication, paras.1725-1730
- 11.71 FLE on workforce and reason for assignment to KCA, paras.1731-1736
- 11.72 FLE working conditions and operation of units paras.1737-1746, 1761-1770
- 11.73 FLE living conditions and injuries and deaths due to these conditions, paras.1747-1760
- 11.74 FE various meetings at the KCA site, para.1761
- 11.75 FLE arrests, disappearances and accusations from the upper echelon, paras.1770-1786
- 11.76 FLE Mongol Khan pagoda executions with insufficient and out-of-scope evidence, paras.1779-1786
- 11.77 FLE purges by the RAK at Kampong Chhnang Airfield, paras.1785-1786

Legal characterization of the facts

- 11.78 FLE re-characterization of the facts as a CAH of murder in the form of *dolus eventualis* at KCA, paras.1800-1806
- 11.79 FLE CAH of enslavement at KCA, paras.1807-1816
- 11.80 FLE Referral of facts constituting persecution on political grounds at KCA, paras.1818-1828
- 11.81 FLE CAH of persecution on political grounds at KCA, paras.1820-1828
- 11.82 FLE CAH OF OIA/attacks against human dignity at KCA, paras.1832-1837
- 11.83 FLE CAH OF OIA/enforced disappearances at KCA, paras.1840-1845

SECURITY CENTERS, EXECUTION SITES AND INTERNAL PURGES

27. In section **12** of the written judgement, the Chamber committed the following errors, *inter alia*:

VIETNAMESE THREAT AND DK SECURITY POLICY

- 12.1 LE E350/8 Decision on torture, paras.1847, 1849
- 12.2 FE 1978 DK declaration on purges carried out in the E Zone in 1978, para.1874
- 12.3 FE purges of a large number of Division 170 soldiers, paras.1893, 1898, 1899
- 12.4 FE SEM Hoern and his company commander arrested and sent to Prey Sar, para.1920
- 12.5 FE Division 310 purges, paras.1903, 1929-1931
- 12.6 FE RUOS Nhim arrested and sent to S-21 in 1978, para.1936
- 12.7 FE NW Zone purges, paras.1941-1945
- 12.8 LFE referral of facts of purges in the E Zone, paras.2012, 2070, 2071
- 12.9 FE purges in the E Zone, paras.2001, 2013-2038, 2070-2072
- 12.10 FE SON Sen sent to the E Zone to carry out purges, para.2063
- 12.11 LE referral of facts of purges in the old and new N Zone and E Zone, para.2066
- 12.12 FE purges in the C Zone (former N Zone) in 1977 and 1978, paras.2068-2069

S-21 SECURITY CENTRE

Preliminary issues

- 12.13 LFE HIN Sotheany's work is "generally reliable", paras.2103-2106
- 12.14 LFE the Co-Prosecutors' lists and OCIJ lists are reliable, paras.2110-2113
- 12.15 LFE reliability of the lists drawn up at the time of the events, paras.2114-2128
- 12.16 LFE use of annotations in the margin of documents containing confessions, paras.2129-2130
- 12.17 LFE reliability of S-21 notebooks, paras.2131-2134
- 12.18 LFE referral of facts at Prey Sar, paras.2251, 2336-2344
- 12.19 LE referral of cases of incarceration and execution of foreign prisoners, paras.2494-2500

Facts

- 12.20 LFE facts relating to M-13, para.2135
- 12.21 FE first wave of purges in the E Zone in 1976, para.2166
- 12.22 FE Party line broadcast from top to bottom, para.2170
- 12.23 FE KS's speech on the victory of the revolution linking him to the purges, para.2173
- 12.24 FE agents of the CIA, the KGB and the "Yuons" sworn enemies of the CPK, paras.2174-2175
- 12.25 FE eliminate CIA and VN affiliates from military or Party ranks, paras.2174-2175
- 12.26 FE CPK's decisive role in disseminating policies, including through incitement to hatred among S-21 cadres in order to identify and adopt an absolute position against enemies, paras.2161-2180
- 12.27 FE S-21 absolute instrument of the CPK and the "Party Centre", para.2183
- 12.28 FE S-21 directly linked to the SC and CPK leaders, para.2191
- 12.29 FE purge of CHAN Chakrei and other Division 170 cadres, paras.2203, 2271-2273
- 12.30 FE Arrest of members of Divisions 170 and 290, paras.2203-2204
- 12.31 FE Office 870 received confessions and identified those to be arrested, para.2233
- 12.32 FE information transmitted from S-21 to the Party and then to lower ranks by the Revolutionary Flag, para.2235
- 12.33 FE purges of NW Zone cadres sent to S-21, para.2241
- 12.34 FE use of biographies from S-21, paras.2247-2248

Purges

- 12.35 LE referral of purges in the old and new N Zones and E Zone, para.2254 purges
- 12.36 LE KS aware of and involved in the purges of senior CPK cadres, para.2254
- 12.37 FE internal purges outside the old N Zone in 1976 and E Zone in 1978, paras.2255-2263
- 12.38 FE first purge in the E Zone of Division 170, para.2264
- 12.39 FE Yim Sambath and other large-scale internal purges, paras.2266-2270
- 12.40 FE arrest, interrogation and execution of SUOS Neou, paras.2274-2276
- 12.41 FE arrest, interrogation and execution of LY Phen and BUN Sani, paras.2277-2278
- 12.42 FE directive 870 of 30.03.1976 on purges, para.2278

- 12.43 FE arrest, interrogation and execution of Ya, paras.2279-2281
- 12.44 FE Arrest, interrogation and execution of NON Suon in 1976 and many people from the Ministry of Industry, paras.2282-2283
- 12.45 FE purges from 01.1977 to 17.04.1977 in N Zone, NW Zone, C Zone and E Zone, paras.2284-2296
- 12.46 FR prisoners from Divisions 310 and 450 "removed" from S-21, para.2296
- 12.47 1977 FE purges within ministries, E Zone, N Zone and NW Zone, paras.2297-2307
- 12.48 FR 155 prisoners from the Ministry of Public Works arrested and 120 "removed", para.2297
- 12.49 FE executions of an increasing number of prisoners of the Ministry of Commerce, para.2297
- 12.50 FE increase in purges in the NW Zone around mid-1977, para.2299
- 12.51 FE Hu Nim challenged by Koy Thuon, para.2300
- 12.52 FE use of Hu Nim's confession, para.2301
- 12.53 FE purges from January to June 1978 in the E Zone, paras.2308-2318
- 12.54 FE Phuong implicated in numerous confessions before being arrested, para.2313
- 12.55 FE KS played a role in the purges of the E Zone in mid-1978, para.2313
- 12.56 FE KS received Phuong and other CC officials for dinner before they were arrested, para.2313
- 12.57 FE internal purges from 07.1978 to 07.01.1979, paras.2319-2328
- 12.58 FE circumstances of the arrest of VORN Vet, para.2321
- 12.59 FE KS's presence at the 5th Party Congress, para.2321
- 12.60 FE VORN Vet's treacherous activities and implication of his wife and children, para.2322
- 12.61 FE Arrest of other important prisoners, para.2327

Vietnamese detainees

- 12.62 FE Vn arrested in 1975 and brought to S-21 and executed in 1976, paras.2460-2461
- 12.63 FE arrest, profession and origin of Vn arrested at S-21, para.2461
- 12.64 FE 11 Vn sent to S-21 on 06.05.1976, para.2461
- 12.65 FE 17 Vn prisoners arrived at S-21 on 07.05.1976 and were executed 2 weeks later, para.2461
- 12.66 FE Lin and/or NC informed Duch of the arrival of Vietnamese prisoners, para.2462
- 12.67 FE statement by NC on the arrest and interrogation of the Vn, para.2462
- 12.68 FE confession of a Vn inmate reproduced in a MFA publication in 07.1978, para.2462
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- 12.161 FE internal purges carried out in Division 801 at the end of 1976, para.2885
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- 12.182 FLE the CAH of murder at AuKg, paras.2960-2967
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- 12.200 FE transmissions of telegrams between K-17 and the "Party Centre" or Office 870, paras.3035-3038
- 12.201 FE reports transmitted by the secretary of Sector 105 to KS, para.3037
- 12.202 FE report to the "Party Centre" and receive instructions from it, paras.3039-3041
- 12.203 FE meeting with KS to discuss economic issues in the sector, para.3041
- 12.204 FE statements by NC and Pol Pot on the intentions of Vietnam, para.3041
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- 12.206 FE functioning, structure and organization of Sector Committee 105, paras.3043-3045
- 12.207 FE detention and arrest of Division 920 at S-21, para.3046
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- 12.209 FE decision of the CC of 30.03.1976 and power to execute, para.3048
- 12.210 FE statements of BUN Loeng Chauy including, paras.3048-3060,3079, -3103,3112
- 12.211 FE out-of-scope evidence, paras.3048-3058, 3092-3102, 3112-3114
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- 12.218 FE working conditions at PK, paras.3105-3106

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- 12.220 FLE referral of cases of enslavement at PK, para.3119
- 12.221 FLE the CAH of enslavement established at PK, paras.3120-3126
- 12.222 FLE distortion of the law regarding the facts of imprisonment at PK, para.3127
- 12.223 FLE the CAH of imprisonment established at PK, paras.3128-3131
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- 12.226 FLE referral of the facts of OIA/attacks against human dignity at PK, para.3152
- 12.227 FLE the CAH of OIA/attacks against human dignity at PK, paras.3153-3159
- 12.228 FLE referral of facts of OIA/enforced disappearances at PK, para.3160
- 12.229 FLE the CAH of OIA/enforced disappearances at PK, paras.3161-3166

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28. In **section 13** of the written judgement, the Chamber committed the following errors, *inter alia*:

MEASURES TARGETING BUDDHISTS (reference to other sections)

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- 13.1 FLE distortions of the submissions of KS regarding the charges, paras.3172-3173
- 13.2 Referral of forced transfers in 1975 in the N Zone and NW Zone, para.3177
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- 13.5 FLE establishing as policy practices observed only locally, paras.3206-3228
- 13.6 FLE credibility of SOH Kamrei, paras.3185-3186
- 13.7 FLE consistency, credibility, corroboration of PRAK Yut and YOU Vann, paras.3189-3191, 3221
- 13.8 EDA and FE expert status of YSA Osman and reliability of the evidence provided, paras.3192, 3196

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- 13.9 FE functions of the different cadres in the East Zone, para.3199
- 13.10 FE deployments of Central Zone and East Zone forces, particularly following the purges, para.3199
- 13.11 FE frameworks, functions and administrative structures of the East Zone, para.3200
- 13.12 FE moving people from the South Zone to the North Zone by the SC to carry out purges, para.3201
- 13.13 FE purges in the NZ and cadres of the South Zone under the direction of KE Pauk, para.3202
- 13.14 FE administrative structures and communication system of the NZ, para.3202
- 13.15 FE sending reports to Angkar para.3202
- 13.16 FLE use of the term "at the Party Centre level", para.3202

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- 13.17 FLE YSA Osman main source on the Cham community, paras.3204-3205, 3192, 3194, 3196

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- 13.19 FLE field/CPK relations and specific measures taken before and during DK, para.3208
- 13.20 FLE telegram analysis 15, paras.3210, 3212-3213, 3262-3264
- 13.21 FLE distortion of KS's arguments concerning the telegram, para.3211
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- 13.23 FLE "the Party Centre played a coordinating role", para.3213
- 13.24 FE Islam "reactionary" religion and therefore "absolutely prohibited", paras.3215, 3231
- 13.25 FLE resumption of the analysis of the constitution by Duch, para.3215
- 13.26 FLE the Khmer or Kampuchean race and protection of the population from all its enemies, paras.3216,3217-3219,3228
- 13.27 FLE distortion of speeches and comments by KS, para.3216
- 13.28 FE measures taken to assimilate the Cham in the Khmer nation, para.3217
- 13.29 FLE analysis of the evidence to reach findings on the policy of the CPK, paras.3217-3219

- 13.30 FLE orders from the upper echelon specifically targeting the Cham, paras.3221, 3232, 3236, 3272-3275, 3285, 3288, 3290, 3307
- 13.31 FE arrests of Cham in the village of Trea, para.3223
- 13.32 FLE Duch's assessment of the policy against the Cham, paras.3223, 3311, 2493
- 13.33 FE VAN Mat on policy and arrests and executions of Cham, paras.3223-3224
- 13.34 FLE credibility of TEP Poch and PECH Chim in particular, para.3225
- 13.35 FE PONCHAUD and targeting of Cham at least from 1978, para.3226
- 13.36 FE concordance in experts' opinions on the order to purge the Cham in 1975, paras.3226, 3219
- 13.37 FE manoeuvres to strengthen national/popular support for the revolution, para.3227
- 13.38 FLE evolution of measures against the Cham and intensification thereof, paras.3228-3229

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- 13.40 FE religious restrictions affected the Cham in particular, paras.3232-3242
- 13.41 FE restrictions in E Zone and C Zone ordered by the upper echelon, paras.3232-3236, 3242
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- 13.43 FE restrictions on religious and cultural practices upon arrival of the KRs in Kroch Chhmar district and C Zone, paras.3230, 3238-3245
- 13.44 FE discrimination against Cham at 1 January Dam, para.3243
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- 13.47 FLE sympathy of local leaders only explanation for the flexibility of the policy, para.3247
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- 13.49 FLE use of Nate THAYER's writings, para.3249
- 13.50 FE banning of Cham religious and cultural practices in various parts of the country, paras.3250, 3246

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- 13.51 FE rebellions in the face of restrictions and deterioration of conditions endured, para.3251
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- 13.53 FE restrictions at Koh Phal since 1973 due to rebellions, para.3252
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- 13.61 FLE assessment and use of BAN Siek's statement only for inculpatory purposes, para.3273
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- 13.69 FE 1977 meeting by Kan and subsequent Cham arrests, paras.3284, 3290-3297
- 13.70 FE Cham disappearances after meetings in Kang Meas district, paras.3285-3286
- 13.71 FLE analysis of evidence on arrests and disappearances of Cham, paras.3285-3287
- 13.72 FE lists of persons in Kampong Siem district and disappearances, paras.3287-3288
- 13.73 FE term "purges" explained by witnesses, para.3288
- 13.74 FE list of names of Cham and arrests in Kang Meas District, para.3289
- 13.75 FE chain of communication of execution reports going back to KE Pauk, para.3290
- 13.76 FE Cham stopped and executed at Au Trakuon pagoda, paras.3291-3299
- 13.77 FE HIM Man's account of measures taken against the Cham, paras.3293-3295
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- 13.81 FLE the CAH of killings of the Cham, paras.3303-3308
- 13.82 FLE the CAH of extermination of the Cham, paras.3308-3313
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- 13.85 FLE CAH of persecution on political grounds during Movement of the Population (MOP) Phase 2, paras.3320-3326
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- 13.89 Referral of facts constituting deportation to TK, PVg and SR, para.3353
- 13.90 Referral of the KK in connection with their examination of the charges relating to crimes committed against the Vn, para.3354
- 13.91 KS's arguments concerning referral of facts relating to Vn, para.3356
- 13.92 Referral of facts relating to Vn in DK territorial waters, para.3357
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- 13.94 Referral of facts of deportation from Vn to TK, PVg and SR, para.3358
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- 13.96 Referral of facts of murder of Vn who resisted their deportation in 1975-1976 1975-1976, para.3359
- 13.97 LE referral of facts constituting genocide by nationwide killing, nationwide killing of Vietnamese who resisted the CAH of deportation in 1975 and 1976, and nationally from 04.1977 to 06.01.1979, nationwide extermination, deportation to TK, PVg and SR and the CAH of persecution on racial grounds, para.3360
- 13.98 FLE credibility of the witnesses, expert and CPs who testified about the Vn, para.3361
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- 13.102 FE crimes committed against Vn are related to events in PVg, SR provinces and nationwide, para.3369
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- 13.104 FE administrative structure of the E Zone, paras.3369-3372
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- 13.106 FE cadres from the E Zone arrested, sent and executed at Š-21, paras.3373-3376

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- 13.107 FE parties' submissions on the use of the term "Yuon", paras.3377, 3378, 3380
- 13.108 FE the "1 vs 30" policy targeted Vn armed forces and civilians Vn, para.3379
- 13.109 FE interpretation of the term "Yuon", paras.3379-3381

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- 13.110 FE "CPK anti-Vietnamese rhetoric" based on long-standing animosity towards VN, para.3382
- 13.111 FE VN "sworn enemy" of DK from the 3rd Party Congress in 09.1971, para.3382
- 13.112 FE ethnic Vn deserved particular attention in the eyes of the CPK, para.3382
- 13.113 FE historical events between Cambodia and the VN before 1975, paras.3382, 3383
- 13.114 FE withdrawal of Vn troops in 1973 perceived as "expulsion" and "deportation" accompanied by fighting, para.3383
- 13.115 Cambodian FEs who had studied in VN and returned to Cambodia "were assembled and "smashed", para.3383
- 13.116 FE Vn, Chinese, soldiers, police officers released during the liberation of Banam in 1973, para.3384
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- 13.118 FE historical events between Cambodia and VN after 1975, paras.3385, 3386, 3387
- 13.119 FE the CPK's antipathy towards foreigners, and in particular Vietnamese, para.3387
- 13.120 FE ethnic Vn referred to in a speech in 04.1976, para.3388
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- 13.124 FE qualification of enemy Vn by CPK leaders from 05.1976, para.3389
- 13.125 FE SON Sen's 1976 statements about the Vn, para.3389

- 13.126 FE "Vietnamese" qualified as enemies during training sessions and meetings, para.3390
- 13.127 FE Vn or "agents" Vn qualified as enemies during training sessions and meetings attended by Pol Pot, NC and KS, para.3390
- 13.128 FE KS's statements about the "Yuong" during a training session, para.3390
- 13.129 FE handwritten notes of Ieng Sary and SON Sen's statement on enemies and Vn, para.3391
- 13.130 FE Revolutionary Flag of 04.1977 on enemies, para.3392
- 13.131 FE distorting KS's speech of 04.1977 paras. 3393-3394
- 13.132 FE ER of 08.1977 and testimony of MEAS Voeng on enemies and Vn para.3395
- 13.133 FE from 12.1977 the "Yuong" were openly designated as "the enemy of DK", para.3396
- 13.134 FE use of FBIS documents to reach incriminating findings, para.3396
- 13.135 FE 870 committee guidelines advocating guerrilla and ideological tactics, para.3397
- 13.136 FE CPK policy "one against 30" after the withdrawal of the Vn forces para.3397
- 13.137 FE the form and substance of the broadcast texts produced by the Party Centre targeted both Vn soldiers and civilians, para.3398
- 13.138 FE KS's speeches of 16 and 17.04.1978 targeted all Vn without distinction, para.3399, 3400
- 13.139 FE NS statements on KS urging the Cambodian population to hate the Vn para.3401
- 13.140 FE Pol Pot's speech "one Cambodian against 30 "Yuong"" targeted the entire Vn ethnic population, para.3402
- 13.141 FE ER of 05-06.1978 and 07.1978 on Vn, para.3403
- 13.142 FE Vn targeted throughout the DK period, para.3404
- 13.143 FE prisoners Vn to S-21 considered and treated differently from other prisoners, para.3405
- 13.144 FE political line of defence and preservation of the Kampuchean race against the "Yuong", para.3406
- 13.145 FE Vn or Vietnamese Khmer, civilians and soldiers arrested, executed, this being reported to CPK senior leaders throughout 1978, paras.3408-3410
- 13.146 FE telegram division 164 of 31.12.1977, para.3408
- 13.147 FE telegram from RUOS Nhim of 17.05.1978, para.3409
- 13.148 FE telegram from the W Zone committee dated 04.08.1978, para.3410
- 13.149 FE Vn, civil and/or military and their agents referred to in contemptuous terms in CPK statements and documents, paras.3407-3413
- 13.150 FE anti-Vn action led by CPK in 2 parts, para.3414
- 13.151 FE Vn expelled in 1975, crushed in security centres and villages and the population was informed of other measures against the Vn, para.3415
- 13.152 FE taking into account the CA situation at the time of the events, paras.3382-3417
- 13.153 FE allusions to "Yuong" or the Vn enemy without distinction and directed against all ethnic Vn, military or civilian, paras.3412, 3416
- 13.154 FE CPK attacked the Vn as a group, calling first for their expulsion and then, from 04.1977, for their destruction. These guidelines were widely disseminated, para.3416
- 13.155 FE Centrally designed policy of hostile measures against Vn, paras.3382-3417
- 13.156 FE confusion of persons covered by this policy, paras.3382-3417
- 13.157 FE exculpatory testimonies on Vn and CPK policy ignored, paras.3382-3417

Identification of Vietnamese and matrilineality of ethnic affiliation

- 13.158 FE Vn from Cambodia constituted an ethnic, national and racial group, para.3419

- 13.159 FE Vn from Cambodia were easily identifiable, para.3420
- 13.160 FE policy targeting Vn after 1975 and lists established at sector and district levels to identify them, para.3420
- 13.161 FE identification of Vn by lists and family biographies, para.3421
- 13.162 FE information collected by CPK cadres on the ethnic affiliation of certain units to identify Vn, para.3422
- 13.163 FE lists and biographies of Vn since 1975 drawn up and communicated to the next level according on their orders, paras.3418-3423
- 13.164 FE CPK considered ethnic affiliation as matrilineal, paras.3424, 3425
- 13.165 FE Angkar surveillance of Vn and their mixed families, para.3426
- 13.166 EF cases against the matrilineality of isolated filiation, para.3427
- 13.167 FE Vn targeted on account of ethnicity transmitted by matrilineality, paras.3419-3428

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- 13.168 Referral of facts of deportation of Vn, para.3429
- 13.169 FE deportations of Vn from PVg, paras.3430-3434
- 13.170 FE orders to the Vn from PVg to go to VN from 1975, para.3433
- 13.171 FE movement of whole Vn families from PVg in accordance with a national expulsion regime applied from mid-1975 to the end of 1976 for all Vn living in Cambodia, para.3433
- 13.172 FE policy of deportation of ethnic Vn from Cambodia to VN, para.3434
- 13.173 FE expulsion of a large number of Vn from TK to VN in 1975 and 1976, para.3435
- 13.174 FE evacuation of Vn from PVg in 1975 and coercive environment not allowing them the choice to leave the territory, para.3436
- 13.175 FE Vn collected in 1975 at PVg for transportation to VN and forced to cross the border, para.3436
- 13.176 FE movement of Vn families from PVg province to VN, paras.3430-3436
- 13.177 FE some Vn from the province of SR "probably" deported to the VN, paras.3437-3439
- 13.178 FE standard of proof for facts of deportation to PVg and SR, paras.3430-3439

Murders of Vietnamese civilians in Prey Veng and Svay Rieng provinces

- 13.179 LE Referral of massacre of Vn civilians throughout Cambodia as part of a national policy, including at Ksach Pagoda, para. 3441
- 13.180 FE RU non-compliance with the standard of proof, paras.3442-3451
- 13.181 FE SAO Sak is an exception to the national policy to kill Vn residing in Cambodia, para.3444
- 13.182 FE general credibility of statements made at trial, para.3450
- 13.183 FE transfers or arrests of Vn at PVg, para.3451
- 13.184 FE murders of Vn "probably" committed in the province of PVg, para.3451
- 13.185 FE Cooperative chiefs' knowledge of persons Vn including the grandparents of SIENG Chanthy, para.3452
- 13.186 FE family of SIENG Chanthy left because they were accused of being feudal capitalist and Vn of mixed blood, para.3452
- 13.187 FE knowledge of the villagers of the Vn origin, of the father of SIENG Chanthy and three mixed families in the village, para.3452
- 13.188 FE brother of SIENG Chanthy and 10 members of 2 of the 3 mixed families taken away and killed, para.3452

- 13.189 FE remarks made by SIENG Chanthy's father about two raped girls and about committing suicide to protect his family, para.3452
- 13.190 FE father of SIENG Chanthy considered as a "pure Vietnamese", "a Vietnamese puppet", "clear of skin, not like the others", para.3452
- 13.191 FE suicide and reasons for the suicide of SIENG Chanthy's father in 1977, paras.3452, 3455
- 13.192 FE 4 Vn families disappeared in 1978 after having been led away by the commune chief, para.3453
- 13.193 FE 4 Vn families killed by a certain Savin, members of the new communal committee and security guards, para.3453
- 13.194 FE remains of the bodies were those of the Vn, para.3453
- 13.195 FE Vn taken away and killed in 3 other villages, para.3453
- 13.196 FLE murders of Vn in Svay Rieng, para.3453
- 13.197 FE internally as well as publicly, CPK attacked the Vn as a group, calling from April 1977 for their destruction, para.3453
- 13.198 FE national policy to kill the Vn who lived in Cambodia at the time, para.3453
- 13.199 FE arrests and disappearances of Vn resulted from the application of the policy, para.3453
- 13.200 FE missing Vn killed, para.3453
- 13.201 FE DC-Cam declaration and testimony of IN Yoeung, para.3454
- 13.202 FLE suicide of SIENG Chanthy's father in 1977, para.3455
- 13.203 FLE reasons for the suicide of SIENG Chanthy's father, para.3455
- 13.204 FLE killing of the 4 Vn families living 1 kilometer from SIN Chhem in 1978, para.3455

Killings of Vietnamese civilians outside Prey Veng and Svay Rieng provinces

- 13.205 FLE referral of facts constituting killings outside PVg and SR, paras.3456-3489
- 13.206 FLE referral of facts relating to the treatment of Vn at sea, paras.3456-3461
- 13.207 FE capture of vessels with Vn sent to the upper echelon, para.3456
- 13.208 FE knowledge of the fate of Vn refugees once they are sent to the next level, para.3456
- 13.209 FE capture of Thai and Vn vessels in DK territorial waters, para.3456
- 13.210 FE Ta Soeung's order and report transmitted by chain of command, para.3456
- 13.211 FE thousands of Thai fishermen and refugees and Vn arrested and killed, para.3457
- 13.212 FE "Yuong" soldiers and refugees arrested and killed, para.3457
- 13.213 FE many Vn arrested and sent to the mainland or killed on the island, para.3457
- 13.214 FE captive soldiers sent to S-21 or to the mainland and their confessions broadcasted before their execution, para.3457
- 13.215 FE dissemination and implementation of orders relating to arrests and the fate of arrested persons, para.3457
- 13.216 FE soldiers' reports sent to upper echelons, para.3457
- 13.217 FE facts of killings reported by PAK Sok, para.3458
- 13.218 FE arrest and fate of a Vn family arrested at sea before 1977, para.3458
- 13.219 FLE facts relating to the arrest of a Vn family useful for understanding the behaviour adopted towards Vn at sea, para.3458
- 13.220 FE PAK Sok's positions on the island of Poulo Wai and the port of Ou Chheu Teal, para.3459
- 13.221 FE PAK Sok's participation in transporting in trucks 12 or 13 Vn captured and beaten before being transported, para.3459
- 13.222 FE composition of detainees who wanted to travel to Thailand, para.3459

- 13.223 FLE confirmation of prior statements of PAK Sok, para.3459
- 13.224 FLE general credibility and reliability of PAK Sok's testimony, para.3459
- 13.225 FE MEAS Muth report of 20.03.1978 on a sunken Vn boat and about 76 Vn persons captured, para.3460
- 13.226 FE Vn vessels caught in DK territorial waters systematically targeted, para.3461
- 13.227 FE report of 20.03.1977 and executions and murders of Vn fishermen and refugees, para.3461
- 13.228 FE treatment of Vn at sea, paras.3456-3461
- 13.229 FE fate of members of the family of KHOUY Muoy and other Vn at Prey Nob, para.3462-3464
- 13.230 FLE killings of Vn "probably" in Prey Nob district, para.3464
- 13.231 FLE national policy to destroy Vn living in Cambodia from 04.1977, para.3464
- 13.232 Referral of facts relating to VN in the W Zone, paras.3466-3467
- 13.233 FE Broadcast announcing the search for Vn infiltrators living in Cambodia from 04.1977, para.3464
- 13.232 Referral of facts relating to VN in the W Zone, paras.3466-3467
- 13.233 FE broadcast announcing the search for Vn infiltrators, para.3466
- 13.234 FE Vn collected and returned to their country or killed, para.3466
- 13.235 FE 7 mixed families in the PRAK Doeun unit, para.3466
- 13.236 FE CPK cadres' knowledge of the number of Vn in a family, para.3466
- 13.237 FE at the end of 1977 members of 7 Vn mixed families were assembled and the cadres announced that they would be expelled, para.3466
- 13.238 FE PRAK Doeun and his family walked together and were then separated into two groups, one Khmer, the other Vn, para.3466
- 13.239 FE the child could stay with his Khmer mother in the Khmer group, para.3466
- 13.240 FE wife and children of PRAK Doeun and other Vn were smashed, killed in the pit para.3467
- 13.241 FE reproached for marrying a Vn and advised to remarry a Khmer, para.3467
- 13.242 FE Vn women killed first and children after, para.3467
- 13.243 FE there were no Vn left on Ta Mov Island, para.3468
- 13.244 FE 2 of the girls who resembled Khmer survived, para.3467
- 13.245 FE fate of the family of CHOEUING Yaing Chaet and others Vn in Kg Chhnang, paras.3468, 3469
- 13.246 FE telegram of 04.08.1978 on 100 Vn killed, para.3470
- 13.247 FE Vn families targeted and killed in the W Zone because of their alleged ethnicity para.3471
- 13.248 FLE deliberate execution of Vn in Kampong Chhnang in 1975 and late 1977, para.3471
- 13.249 FLE killing of Vn in Sector 37 of the W Zone in 07.1978 following a screening aimed at implementing the national policy to exterminate Vn, para.3471
- 13.250 FLE Standard of proof in the examination of telegrams, paras.3460, 3461, 3470, 3471
- 13.251 FE fate of Vn arrested in Battalion 2, paras.3472,3473
- 13.252 FLE the people that PRUM Sarun saw taken away "probably" killed, para.3474
- 13.253 FE Vn families from Krapeu Cheung village targeted in DK, para.3474
- 13.254 THE referral of facts about Vn at Ksach pagoda, paras.3476-3482
- 13.255 FLE SEAN Song, UM Suonn and Y Vun credible and reliable, paras.3477-3479
- 13.256 FE partial admission of SEAN Song's hearsay testimony para.3480
- 13.257 FE the order to kill the Vn came from the upper echelon, para.3480

- 13.258 FE only Vn were targeted at Ksach pagoda, para.3481
- 13.259 FE Vn killed and Chinese spared, para.3481
- 13.260 FE no more Vn in the village after the executions at Ksach pagoda, para.3481
- 13.261 FLE all Vn from Yeang and its surroundings were killed en masse at Ksach Pagoda at the end of 1978 because of their supposed ethnicity and on the orders of the upper echelon
- 13.262 FLE the CPK internally and publicly attacked the Vn as a group, calling largely, from 04.1977, for their destruction, para.3482
- 13.263 FLE at least 10 to 20 Vn Civilians were killed, para.3482
- 13.264 FE execution of UCH Sunlay's family members and the wives of 3 or 4 Khmers from Kratie on the orders of the upper echelon and circumstances, paras.3483-3484, 3488
- 13.265 FE the Vn spouses and children of other men were taken away, para.3485
- 13.266 FE the Khmer men were rid and purified of their origins, para.3485
- 13.267 FE loss of HENG Lai Heang's family members of "mixed blood" in 1977, para.3487
- 13.268 FE measures against Vn included the elimination of Vn of mixed blood to prevent them from "associating" with Vn, para.3487
- 13.269 FE policy that any person associated with Vn should be taken away, para.3487
- 13.270 FE in Kratie, Vn were identified by means of biographies and lists drawn up in the villages and sent to the upper echelon, para.3487
- 13.271 FE disappearance of many close relatives who were Vn of mixed blood "probably" linked to the national policy of destruction of Vn living in Cambodia, para.3487
- 13.272 FE Kratie in 1978, Vn targeted and killed for their alleged ethnicity, para.3488

Legal characterization of the facts

- 13.273 LE referral of facts constituting murder of Vn who resisted their deportation in 1975-1976 and nationwide murder of Vn from 04.1977, para.3490
- 13.274 FLE the CAH of murder of Vn civilians, paras.3490-3497
- 13.275 FLE referral of facts constituting nationwide from 04.1977, para.3498
- 13.276 LE no minimum threshold of victims is required for the characterization of extermination, para.3500
- 13.277 FLE the CAH of extermination of Vn, paras.3498-3501
- 13.278 LE referral of facts constituting the deportation of Vn, para.3502
- 13.279 FLE the CAH of deportation of Vn, paras.3503-3507
- 13.280 LE Referral of facts constituting persecution on racial grounds, para.3508
- 13.281 LE particular acts of persecution must be expressly referred to, para.3508
- 13.283 FLE the CAH of persecution on racial grounds established, paras.3508-3513
- 13.284 FLE referral of the facts of genocide by nationwide killing of the group of Vn, para.3514
- 13.285 FLE genocide by systematic killing of members of the Vn group, paras.3514-3519

REGULATION OF MARIAGE

29. In **section 14** of the written judgement, the Chamber committed the following errors, among others:

Preliminary Issues

- 14.1 FLE in the overview of facts according to the Severance Decision, paras.3522-3523
- 14.2 FLE interpretation of case law cited on the expression "forced marriage", para.3525
- 14.3 FLE mode of evaluation of statements made by the Civil Parties (CPs), para.3535

14.4 FLE by not taking into account the appointment of lawyers in the context of drastic changes in certain statements, para.3528

14.5 FLE review of relevant expert evidence, para.3531

14.6 FLE analysis of out-of-scope evidence to understand the general context, para.3535

14.7 FLE rape outside the context of marriage, paras.3621, 3646, 3650-3652, 3658

Facts

14.8 FE measures limiting marriages in areas liberated between 1970-1975, para.3536

14.9 FLE distortion of the ideology of the CPK, para.3539

CPK Policy on the Regulation of Marriage and Discipline

14.10 FLE CPK guidelines for marriages and families, paras.3540-3541, 3543-3546, 3548

14.11 FLE CPK docs on the ideology of private and collective property, paras.3544-3546, 3548

14.12 FE distortion of the role and content of the Revolutionary Flag and Revolutionary Youth magazines, paras.3546-3547

14.13 FE sanctions imposed on Party members for disciplinary violations, para.3547

14.14 FE distortion of the 2 clear marriage conditions, paras.3548, 3542

14.15 FLE distortion and de-contextualization of KS's 1978 speech, para.3548

14.16 FE primacy of collective interests illustrated by commitments of future spouses at marriage ceremonies, paras.3548, 3633-3634

14.17 FE regulation of marriage as a means of increasing population, paras.3556-3558

14.18 FLE distortion of Sarun's statements on marriage policy, para.3556

14.19 FLE MEAS Voern and objective of population growth against VN, para.3556

14.20 FE population increase to increase the number of soldiers, para.3557

14.21 FE objective of monitoring gender relations outside marriage, paras.3559, 3561-3563

14.22 FLE distortion of point 6 of the CPK's 12 moral principles, paras.3560-3561

14.23 FE sanctions for punishable moral misconduct presented as the rule, para.3562

14.24 FE Moral misconduct and reporting of actions taken to the "Party Centre", para.3563

Supervision and communication of information

14.25 FE instructions on marriages forwarded to subordinate authorities, paras.3564, 3566-3567

14.26 FE marriage instructions come from the upper echelon and Pol Pot, para.3565

14.27 FE SENG Soeun on the marriage plan and instructions issued in the country, para.3566

14.28 FE information on marriages reported to higher levels, para.3568

14.29 FLE distortion of reports to Angkar, para.3568

14.30 FLE KS's participation in the dissemination of marriage instructions, para.3569

14.31 FLE credibility of CHEA Deab's isolated testimony, paras.3569, 3581

14.32 FLE analysis of RUOS Suy's account of marriages and link with KS, para.3570

14.33 FE KS's speech and call made at Ounalom pagoda, paras.3570-3571

14.34 FLE use of NS's book regarding KS, para.3571

14.35 FE biographies examined before marriage, paras.3572-3576, 3559

Matching of couples

14.36 FE limited unions of persons of different social classes, paras.3577-3580

14.37 Age for marriage, paras.3581-3585

14.38 FLE use of Norodom Sihanouk's book about KS, para.3586

14.39 FLE analysis of evidence on marriages of disabled persons, paras.3587-3590

- 14.40 FLE statements consistent with CPK speeches including KS's speeches, para.3590
- 14.41 FLE marriages of young BP women to disabled soldiers in the implementation of a policy supported by the highest governing bodies, para.3590
- 14.42 FE choice of couples allowed to combatants and cadres but not to women, para.3591

Authorization to marry

- 14.43 FE marriages in accordance with Angkar and its policy, paras.3592-3593
- 14.44 FE Pairing of couples by lower cadres on general instructions from senior cadres before seeking approval from future spouses, paras.3594-3597
- 14.45 FLE authority to approve marriages depends on the rank of the persons to be married, paras.3592, 3602, 3603-3608
- 14.46 FLE credibility of PRAK Yut, paras.3609, 3645
- 14.47 FLE parents are excluded from the marriage process and supplanted by Angkar; non-compliance with the Khmer tradition, paras.3610-3612, 3636-3640

Information given and consent of the persons concerned

- 14.48 FLE credibility of former cadres referring to parental approval, paras.3612-3613
- 14.49 FE lack of consultation/information of persons to be married, paras.3614-3616, 3528
- 14.50 FLE analysis of the deposition of PECH Chim, para.3617
- 14.51 FE respect for Party discipline applies to the order to marry, paras.3618, 3620
- 14.52 FE on the representativeness of 002/02 statistics, paras.3617, 3619
- 14.53 FE no real consent due to the climate of coercion under DK and the harmful consequences of a refusal, paras.3619-3625
- 14.54 FE CPK directives on marriage denies the choice to marry, paras.3622-3625

Marriage ceremonies

- 14.55 FE collective marriages organized to speed up large-scale weddings, paras.3631-3632
- 14.56 FE production of children for Angkar and resolution of the future spouses or instructions from the authorities present at the marriage ceremony, paras.3633, 3635

Consummation of the marriage

- 14.57 FE context of coercion of sex after marriage, paras.3641, 3645-3646
- 14.58 FE getting along or sleeping together means having sex, para.3641
- 14.59 FLE consumer surveillance marriage and reports to authorities, paras.3641-3644, 3660
- 14.60 FE concealment of "non-agreements" to avoid adverse consequences, paras.3645-3647
- 14.61 FLE distorting KS's arguments and evidence to support the credibility of the CPs, paras.3649-3653
- 14.62 FLE expert statements on consent to consummation of marriage, para.3654
- 14.63 EF authorities' measures in case of non-consumption of marriage, paras.3656-3657
- 14.64 FLE CP women except PHAN Him forced to consummate their marriage, paras.3659, 3648
- 14.65 FLE was the only way to avoid consummating the marriage was concealment, para.3660
- 14.66 FLE conclusions on the consumption of forced marriage, paras.3660-3661
- 14.67 FE measures taken to ensure that couples spend time together after marriage, para.3662
- 14.68 FE relationships of couples controlled by CPK after marriage, paras.3665, 3662-3663

Divorce

- 14.69 FE interview of Pol Pot as part of propaganda, paras.3666-3668

14.70 FLE impossibility of divorce, paras.3668-3669

Implementation at national level

14.71 FLE in areas of the country other than those related to the crime sites being prosecuted, people lived in a climate of fear and had no choice but to obey and marry in accordance with a practice based on coercion that resulted from CPK's marriage guidelines, para.3670

Crime sites specifically targeted in the prosecutions

14.72 FLE climate of fear in TK, people had no choice but to obey and marry in accordance with the practice of coercion under CPK directives, paras.3672-3674

14.73 FLE analysis of evidence relating to marriage at TK, paras.3672-3673

14.74 FLE "at least" 1 case of rape committed in the context of forced marriages in TK, para.3674

14.75 FLE credibility of the testimonies of former KR cadres, para.3675

14.76 FLE analysis of evidence relating to marriage at TTD, para.3675

14.77 FLE in TTD and the respective villages of married people, given the climate of fear, people had no choice but to obey and marry in accordance with CPK's practice of coercion in marriage, paras.3675-3676

14.78 FLE analysis of all evidence relating to marriage at 1 January Dam, para.3677

14.79 FLE in villages around 1 January Dam, given the climate of fear, people had no choice but to obey and marry in accordance with the coercive practice that followed CPK's marriage guidelines, paras.3677-3678

Impacts on victims

14.80 FLE traumas and negative emotions of married people under DK, paras.3679-3681

14.81 FLE long-term effects of forced marriage experiences on victims, para.3682

14.82 FLE number of victims are still haunted by these memories, para.3682

14.83 FLE serious and lasting traumatic effects of forced sexual intercourse, paras.3683-3685

14.84 FE analysis of all evidence of women's suffering, paras.3684-3685

Legal characterization of the facts

14.85 FLE CAH of OIA/forced marriages established, paras.3686-3694

14.86 FLE CAH of OIA/rape in the context of forced marriages, paras.3695-3700

APPLICABLE LAW: INDIVIDUAL CRIMINAL LIABILITY

30. In **section 15** of the written judgement, the Chamber made the following errors, among others:

15.1 Modes of liability and principle of legality, paras.3703, 3704, 3707, 3721

15.2 FE "general principle" omission, para.3703

15.3 Submissions referred to by reference to other submissions, para.3705

15.4 FE definition of the *actus reus* for of JCE, paras.3708-3711

15.5 Participation in the common purpose resulting from an omission, para.3710

15.6 FE *mens rea* of JCE extending to the intent to participate in the purpose, para.3712

15.7 FE definition of material element of assistance and encouragement (A&E), paras.3722-3723

15.8 FE definition of the *mens rea* of A&E, para.3722

15.9 A&E by omission, para.3724

THE COMMON PURPOSE

31 In **section 16** of the written judgement, the Chamber made the following errors, among others:

REFERRAL DECISION

16.1 LE scope of the Chamber's referral in 002/02, para.3728

16.2 LE process of examining the common purpose, para.3732

DEVELOPMENT OF THE COMMON PURPOSE

From 1930 to 17 April 1975: the road to socialist revolution

16.3 FLE development of the common purpose from 01.1930 to 17.04.1975, para.3733

From April 17, 1975 to January 6, 1979: the socialist revolution

16.4 FLE findings on an uncertain congress, para.3735

16.5 FLE KS's participation in mass study sessions, speakers and content, paras.3736, 3739

16.6 FE date of the 4th Party Congress, para.3738

16.7 FE content of doc E3/12 of 30.03.1976, para.3739

16.8 FE participants at the KPRA meeting in 04.1976, para.3739

16.9 FE speech of 11.04.1976 attributed to KS, para.3739

16.10 FE content of the speech of 11.04.1976, para.3739

16.11 FLE by not noting the need for the CPK to prioritize paddy production, para.3739

16.12 FE analysis of CPK documents and credibility of witnesses, paras.3739-3741

16.13 FLE findings on KS's presence at meetings CP, para.3740

16.14 FE KS senior leader of the CPK as well as other members of the CPK, para.3740

16.15 FE CC members' attendance of meeting of 27.09.1977, para.3741

16.16 FE falsification campaign and revisionist policy, para.3741

16.17 FE KS's speech and Party line throughout the DK period, para.3742

16.18 FLE content / purpose of the policy advocated by the CPK, characterization of the common purpose of leaders and examination of its criminal nature, paras.3742-3743

REAL OR SUPPOSED ENEMIES

16.19 FLE excerpts of CPK docs referring to the term "enemy" out of context, paras.3744-3863

16.20 FE specific power of SON Sen in the hidden military field, paras.3744-3863

16.21 FLE context of the CA with the concealed VN in the analysis of documents and speeches, paras.3744-3863

16.22 FE interpretation and distortion of CPK ideology and the fight against those opposed to this ideology, paras.3744-3863

Chronological overview of the meaning given to the notion of "enemies" by CPK

16.23 FLE interpretation of the notion of enemy in any context, para.3744

16.24 FE definition and distinction of enemies inside and outside, para.3744

16.25 FE foreign nationals were perceived as enemies, para.3744

16.26 FLE probative value given to internal documents of that period, paras.3745-3746

16.27 FE evaluation/use of CPK publications and FBIS/SWB documents, para.3747

16.28 FE credibility of Duch on the functioning of the CC, CP and organs of the CPK, para.3748

Before 1975

- 16.29 FE use of draft CPK statutes that were furthermore undated, para.3749
16.30 FE CPK policy line from an undated notebook by an unknown author, paras.3750-3751

1975

- 16.31 FE identification and definition of CPK enemies in 1975, paras.3751-3763
16.32 FE descriptions of the enemies in CPK documents, paras.3751-3763
16.33 FE CPK policy deduced from military decisions, paras.3751-3752
16.34 FE Thailand and ex-KRs enemies of DK at the beginning of the regime, paras.3752, 3759
16.35 FE fight to defend the country and use of the word enemy, para.3753
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16.311 FLE grave breaches of the Geneva Conventions which is intentionally causing great suffering or serious injury to physical integrity or health, committed against prisoners Vn to S-21, in furtherance of the common purpose in the same way as the CAH OF OIA to S-21, para. 4010

16.312 FLE grave breaches of the Geneva Conventions which is intentionally causing great suffering or serious injury to physical integrity or health, committed against prisoners Vn to S-21, in furtherance of the common purpose, para.4010

16.313 FLE grave breaches of the Geneva Conventions committed against prisoners Vn to S-21 were part of CPK's policy against Vn, para.4011

16.314 FLE grave breaches of the Geneva Conventions committed against Vn prisoners at S-21 in furtherance of the common purpose, para.4011

16.315 FLE definition and characterization of the common purpose, paras.4003-4005, 4011

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16.317 Referral of out-of-scope facts to assess the development of the alleged policy on measures against Buddhists para.4013

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16.318 LE referral of evidence of a systematic and widespread modus operandi aimed at forcing monks to defrock, then expel them from their pagodas throughout the country and destroy the pagodas or reassign them to secular uses, para.4015

16.319 LE referral of evidence of the prohibition of Buddhism, paras.4015-4016

16.320 Centrally developed policy to abolish Buddhist practices and prohibit Buddhism in DK, para.4017

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16.321 FLE policy of hostile measures against Buddhists involved the commission of crimes in furtherance of the common purpose, para.4018

16.322 FLE facts constituting persecution on religious grounds as a CAH established at TK, para.4019

16.323 FLE corroborating evidence establishing that persecution was not limited to TK, para.4020

16.324 FLE KS on the Party's motivations, para.4020

16.325 FLE shared intent to engage in discriminatory treatment on account of the identification of Buddhists as members of a religious group, para.4020

16.326 FLE implementation of a policy in furtherance of the common purpose; therefore the CAH of religious persecution in TK was part of the common purpose, para.4021

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16.328 referral of, paras.4023-4024

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16.329 FLE tendency to discriminate against KR officials before 1975, paras. 4026-4031

16.330 FLE Duch on the alleged attacks on the former KRs in 04.1975, para.4032

16.331 FLE PRAK Khorn on the treatment of KR soldiers on 17.04.1975, para.4033

16.332 FLE orders not to harm KR soldiers who had surrendered were only a ruse, paras.4035, 4051

16.333 FLE extreme measures taken in the NW Zone after liberation, including the execution of at least 250 former KR soldiers at TPC, para.4036

16.334 FLE KS's speech on the destruction of the old regime after liberation, para.4037

16.335 FLE gatherings on 05.1975 of CPK senior leaders including KS and mention of the presence of enemies inside the country, para.4038

16.336 FLE searches, arrests, disappearances and executions of ex-KRs and their families in 1975 throughout Cambodia, paras.4039-4041

16.337 FLE responsibility for the failures of the "unsustainable" collectivist scheme attributed to all members of the former regime, paras.4042-4043

16.338 FLE registers and biographies systematically examined, para.4044

16.339 FLE review of the work of CHANDLER and SHORT, para.4045

16.340 FLE discriminatory treatment from mid-1975 to late 1976, para.4046

16.341 FLE disappearances/arrests/executions in 1977-1978, para.4046

16.342 FLE ex-KRs at security centres or subjected to forced labour, para.4047

16.343 FLE reports concerning the arrest of ex-KRs "regularly" transmitted to Pol Pot, NC, IS, VORN Vet and to Office 870 in 1976-1977, paras.4047-4049

16.344 FLE discriminatory measures against ex-KRs throughout DK and implemented by the Party's administrative network, para.4049

Criminality of policy

16.345 FLE policy of taking hostile measures against the Ex-KRs involving the commission of crimes which were encompassed by the common purpose, para.4050

16.346 FLE CAH of the murder of ex-KRs established at S-21 and KTC after 17.04.1975, para.4051

16.347 FLE "decision to kill" taken and implemented in a systematic fashion, para.4053

16.348 FLE policy implemented in furtherance of the common purpose para.4053

16.349 FLE CAH of murder of ex-KRs at S-21 and KTC in furtherance of the common purpose, paras.4054-4057

16.350 FLE CAH of persecution on political grounds established with respect to the former Khmer Republic officials and soldiers throughout the DK period in TK cooperatives, at KTC and S-21 and at the 1 January Dam, para.4058

16.351 FLE ex-KRs victims of various forms of arrest, detention, torture and disappearances at TK cooperatives, KTC and S-21 and at the 1 January Dam worksite, para.4059

16.352 FLE specific intent to engage in discriminatory treatment of all ex-KRs, para.4059

16.353 FLE policy implemented in furtherance of the common purpose, para.4060

16.354 FLE CAH of persecution on political grounds of the ex-KRs and their families throughout DK at TK, KTC, 1 January Dam and S-21 in furtherance of the common purpose, para.4060

Conclusion

16.355 FLE the policy is criminal because it is intrinsically linked to the common purpose and involves the commission of murder (from 20.04.1975 to the end of 05.1975 and from 09.1975 to 06.01.1979) and persecution on political grounds (throughout DK) as a means of achieving the common purpose, para.4061

Regulation of marriage

Existence of the policy

16.356 FE policy on the regulation of family building and marriage since 1974, para.4063

16.357 FE policy implemented throughout DK by the Party's administrative network, para.4063

Criminality of policy

16.358 FLE policy involving the commission of crimes encompassed by the common purpose, para.4064

16.359 FLE crime against humanity of other inhumane acts committed through conduct characterized as forced marriages and rape in the context of forced marriage, para.4065

16.360 FLE CPK actively sought to supplant the traditional institution of marriage, para.4065

16.361 FLE implementation of the policy in accordance with the desire to increase the population, para.4065

16.362 FLE marriage celebrations and policy announcements, para.4065

16.363 FLE marriage and consummation forced to fulfill the will of Angkar, para.4065

16.364 FLE punishment and/or threat thereof in case of non-compliance with these requirements, para.4065

16.365 FLE forcibly arranged marriages, para.4066

16.366 FLE consummation of marriage imposed to increase population, para.4066

16.367 FLE policy implemented in furtherance of the common purpose, para.4066

16.368 FLE marriage policy to be used to fight against VN, paras.4065-4066

16.369 FLE policy intrinsically linked to the common purpose, para.4066

16.370 FLE the CAH OF OIA/forced marriages and rape was part of the common purpose, para.4066

Conclusion

16.371 FLE the marriage and family foundation policy involved the commission of the CAH of OIA/forced marriages and rapes as a means of achieving the common purpose, which therefore had the effect of making it criminal, para.4067

Legal characterization of the facts

16.372 FLE content and objectives of CPK policies, paras.4068-4074

16.373 FLE concealment of evidence showing the difference between the CPK political purpose and its application in the different areas para.4068

16.374 FLE CPK policies were intrinsically linked to the common purpose and involved the commission of crimes, para.4068

16.375 FLE the common purpose was in itself criminal in nature, para.4068

16.376 FLE definition of common purpose, para.4068

16.377 FLE common purpose implemented throughout DK, para.4068

16.378 FLE common purpose implemented by the entire administrative network of the Party, para.4068

16.379 FLE common purpose implemented through at least 5 policies, para.4068

16.380 FLE identity of members of the group sharing the common criminal purpose, paras.4069-4073

16.381 FLE personal supervision of CPK senior leaders, including KS, in the implementation of the various policies, paras.4070-4072

16.382 FLE participants in the JCE from whom KS used persons who acted as direct perpetrators to commit the crimes committed in order to achieve the common purpose, para.4073

16.383 FLE participants in the JCE (including KS) responsible for crimes established for designing, implementing, monitoring and contributing to the 5 policies while holding positions of authority in DK, para.4073

16.384 FLE KS's powers/roles and adherence to the criminal aspects of the common purpose, paras.4070, 4074

KHIEU SAMPHÂN'S CRIMINAL RESPONSIBILITY

32 In **section 18** of the written judgement, the Chamber committed the following errors, *inter alia*:

ANALYSIS OF ELEMENTS WHERE THE KNOWLEDGE OF THE ACCUSED IS REQUIRED IN ACCORDANCE WITH THE DIFFERENT IMPUGNED MODES OF PARTICIPATION

18.1 LE variation in the requisite level of knowledge depending on the time when the impugned acts were committed, para.4204

The Accused's awareness that crimes would most likely be committed

- 18.2 FE KS's thesis and arrangements "to accommodate policies" of CPK, para.4206
- 18.3 FE KS "important member" of the CPK leadership could only have been aware of the policies and operating procedures that emerged between 1969 and 1975, para.4207
- 18.4 FE CC Decision of 05.1972 on the establishment of a market and cooperative by force para.4207
- 18.5 FE KS member of the CC in 1972 and decision-making power, para.4207
- 18.6 FE KS envisaged the elimination of the KR leaders and the liberation of the country by violent means, para.4207
- 18.7 FE omission of the Civil War context, para.4207
- 18.8 FE KS aware of the execution of political opponents and purges, para.4207
- 18.9 FLE treatment of Buddhist monks between 1973 and 1975, para.4207
- 18.10 FE policy on family foundation and arrangement of marriages early 1974, para.4207
- 18.11 FE before 1975 those with links to VN strongly suspected and wanted, para.4207
- 18.12 FLE policies put in place during DK to achieve the common purpose whose implementation involved the commission of crimes, para.4208
- 18.13 EF KS increased the credit of FUNK/GRUNK, a front to hide the activities of the CPK after 17.04.1975, para.4208
- 18.14 FE KS and CP meetings; para.4208
- 18.15 FE role of KS before 1975 and knowledge of CPK affairs due to his "proximity" to the "Party Centre", para.4208
- 18.16 FE KS's ongoing knowledge, para.4208
- 18.17 FE failure to take into account the law of secrecy, para.4208
- 18.18 FLE KS familiar with CPK policies and operating procedures, para.4208
- 18.19 FLE KS's awareness of the real likelihood that further implementation of policies would lead to the commission of crimes, para.4208

Accused's knowledge that crimes were being committed

- 18.20 FLE KS's knowledge of the crimes at the time they were committed, paras.4209-4249

Cooperatives and worksites

- 18.21 FE use of KS's comments on cooperatives and worksites, paras.4210-4218
- 18.22 FLE reliability of alleged interviews with KS, paras. 4211-4214
- 18.23 FE CPK's deliberate policy of handing out insufficient food rations, para.4212
- 18.24 FLE KS's knowledge of large-scale food shortage, para. 4212
- 18.25 FE remarks made by or attributed to KS on the TTD in 1976, para. 4213
- 18.26 FE announcement by KS excluding any idea that he had not personally witnessed or been aware of the conditions on these sites para.4213
- 18.27 FE KS's comments on the purchase of medicines for workers, para. 4214
- 18.28 FE KS's comments on his role and willingness to provide information, para. 4215
- 18.29 FLE KS's knowledge of living conditions in Preah Vihear, para. 4216

18.30 FE KS's knowledge of the deplorable conditions in cooperatives and worksites during the DK period, para. 4216

18.31 FE KS's knowledge of the discriminatory treatment of the NP, para.4217

18.32 FLE KS's knowledge of crimes committed in furtherance of the policy to establish and operate cooperatives and worksites, paras.4209-4218

Security centers, execution sites and internal purges

18.33 FLE KS had a link with the surveillance of security centres, para.4219

18.34 FE KS's contribution to the purges of CPK officials and DK citizens, para.4219

18.35 FLE purges inextricably linked to the creation and operation of security centres and execution sites, para. 4219

18.36 FLE link between knowledge of certain arrests/disappearances of cadres and knowledge of security centres and the crimes committed there, para. 4219

18.37 FLE distortion and misinterpretation of KS's comments on his knowledge of the arrests and their extent, para. 4220

18.38 FLE use of KS's post-DK statements to assess his knowledge that crimes were being committed, paras. 4221-4224

18.39 FLE use of a KS interview with HEDER, paras.4221-4222

18.40 FLE KS's knowledge of the arrest and death of high-ranking cadres, paras. 4221-4224

18.41 FLE conclusion corroborated by examples illustrating the knowledge of KS, paras.4224-4234

18.42 FLE KS's knowledge of the circumstances of Doeun's departure from 870, para.4225

18.43 FLE KS knew that Doeun was arrested and executed, para. 4225

18.44 FLE KS's knowledge by virtue of his presence and participation in CP meetings and his "close" links with Pol Pot and NC and their proximity, para.4225

18.45 FLE KS ensured that Doeun's responsibilities at Office 870 were taken care of after his disappearance, para. 4225

18.46 FE KS took over the supervision of the Trade Committee, para.4225.

18.47 FLE link between the resumption of Doeun's supervisory functions on the Commerce Committee by KS in 10.1976 and the purge of officials from the Ministry of Commerce, para. 4225

18.48 FLE KS knew that Doeun had been purged and ensured the continuity of Doeun's responsibilities after his elimination, para. 4225

18.49 FLE KS attended a political training session in 1976 in Borei Keila on the identification and elimination of traitors and various enemies, para. 4226

18.50 FLE charges of KS against CHAN Chakrei, KOY Thuon and KEO Meas para. 4226

18.51 FE Revolutionary flag denouncing CHAN Chakrei, Chhouk and KEA Meas who were at the disposal of KS, para. 4226

18.52 FLE KS's knowledge of the fate of CHAN Chakrei, Chhouk and KOY Thuon at the time of the events, para. 4226

18.53 FE use of a letter sent by HU Nim to KS without proof of receipt, para.4227

- 18.54 FE use of KS's post-DK statements on HU Nim's disappearance to conclude that he was aware of his arrest and death at the time of the events, para. 4227
- 18.55 FLE after HU Nim's arrest, KS summoned his messengers for interrogation, para. 4227
- 18.56 FLE KS's knowledge of HU Nim's arrest and death at the time of the events, para. 4227
- 18.57 FLE KS in charge of delicate investigations to identify enemies, para. 4228
- 18.58 FLE in reference to an investigation against CHOU Chet, KS acknowledged that enemies had been identified, para. 4228
- 18.59 FE invitation to KS to participate in a meeting of the Standing Committee (SC) to decide on the fate of CHOU Chet, para. 4228
- 18.60 FLE KS took part in the SC's discussions on the fate of CHOU Chet para.4228
- 18.61 FLE KS was aware of the execution of CHOU Chet, para. 4228
- 18.62 FLE "About KS" on the reasons for the arrest of VORN Vet and SAO Phim, para. 4229
- 18.63 FE KS presence at the 5th CPK Congress during which VORN Vet was arrested, para. 4229
- 18.64 FLE KS's knowledge of the fate of VORN Vet and SAO Phim under DK, para. 4229
- 18.65 FLE KS personally contributed to the purges within the ranks of CPK, para. 4230
- 18.66 FLE KS took care of the comfort of Phuong at K-3 for his convocation at K-1 to meet the members of the SC, para. 4230
- 18.67 FLE KS knowingly and actively facilitated the arrest, imprisonment and execution of Phuong, para. 4230
- 18.68 FLE KS was aware of widespread purges and executions of the population, large-scale arrests of "networks" at the local level, paras. 4231-4232
- 18.69 FLE telegram from KS to release members of his in-laws and report by MEAS Voeun informing KS of the conditions and arrests of the inhabitants, paras. 4231-4233
- 18.70 FLE KS was aware of the arrest and detention of civilians and the living conditions of the population nationwide, paras. 4232-4234
- 18.71 FLE KS had the authority, position and influence to intervene in the affairs of the Party, para. 4234
- 18.72 FLE KS's knowledge of KANG Chap's arrest at the time of the events, para. 4234
- 18.73 FLE KS's knowledge at the time of the crimes committed during the internal purges carried out throughout the period of DK, paras. 4219-4235

Measures targeting certain specific groups

The Cham

- 18.74 FLE existence of measures targeting the Cham and KS's knowledge, para. 4236
- 18.75 FLE distortion of KS's speeches during the war against the Vn, para. 4236
- 18.76 FLE correlation of KS's speech and CPK's genocidal policy towards Vn, para. 4236
- 18.77 FLE KS informed of the implementation of policies aimed at establishing a Khmer atheistic and homogeneous society of peasant workers, para. 4236
- 18.78 FLE KS supported a common purpose involving the commission of crimes against the Cham population, para. 4236

18.79 FLE discrimination and targeting of the Cham population were part and parcel of the CPK's policy, para. 4236

18.80 FLE KS knew that crimes committed against the Cham during the DK period, para. 4236

Vietnamese

18.81 FLE existence of measures targeting Vn as a group, including civilians, para.4237

18.82 FE Pol Pot's de "one against 30" policy also targeting Vn civilians, para.4237

18.83 FLE KS openly advocated the deportation of Vn populations to VN, para.4237

18.84 FLE KS's remarks reflect the common purpose aimed at the deportation of Vn, para.4237

18.85 FE KS's remarks made no distinction and targeted the population of ethnic Vn in general, para.4238

18.86 FLE KS's speech targeted Vn in a discriminatory way, para.4238

18.87 FLE KS knew that Vn detainees enjoyed the status of protected persons and he was aware of the ill treatment they were subjected to, para.4239

18.88 FLE KS was aware that crimes were committed against Vn during the DK period, para.4239

Buddhists

18.89 Exceeding the referral on the treatment of Buddhists, paras. 4240-4243

18.90 CPK's intention to eliminate Buddhism from Cambodian society and the means to achieve this objective was to force the monks to defrock themselves, para. 4240

18.91 FE KS's statements as a subterfuge to strengthen the legitimacy of the CPK-dominated caretaker government, para. 4240

18.92 FE monks arrested and defrocked immediately after 17.04.1975 in TK and the rest of the country, Buddhist worship and practices were prohibited throughout DK, para. 4240

18.93 FLE the elimination of Buddhism was part and parcel of the common purpose, para. 4240

18.94 FLE acknowledgement by KS that the CPK's position was to prohibit the use of religion to overthrow the Party and oppose its objectives, para. 4241

18.95 FLE interpretation evolution evolution speech by KS and knowledge of crimes, paras. 4240-4243

18.96 FLE remarks attributed to KS, para. 4241

18.97 FE virulent statements by KS behind the scenes and instructions for arranging marriages in the absence of monks, para. 4242

18.98 Marriage outside Buddhist traditions was a crime, para. 4242

18.99 FLE KS knew that crimes were committed against Buddhists during the DK period, para. 4243

Former officials of the Khmer Republic

18.100 FLE CPK targeted ex-KRs who were victims of discrimination and ill-treatment, including murder, throughout DK, para. 4244

18.101 FLE KS played a decisive role in the victory of the CPK on 17.04.1975, para. 4244

18.102 FLE distortion of KS's speeches in 1972, in particular his speeches in times of occult warfare, paras. 4244-4246

18.103 FLE knowledge by KS of crimes against ex-KRs, para. 4246

Regulation of marriage

18.104 FLE KS instructed all ministries to arrange marriages so as to have children and increase the population, para. 4247

18.105 FLE KS's instructions were effectively implemented, in particular within the Ministry of Commerce under his direct supervision, where quotas were instituted, para. 4247

18.106 LE use of KS statements reported by NS, para. 4248

18.107 FLE promotion of marriage in KS's speeches, para. 4248

18.108 FLE remarks by KS urging the population to abandon its personal feelings in favour of Angkar, which was now to replace parents, para. 4248

18.109 FLE KS was aware that crimes were being committed in furtherance of CPK's policy on marriage regulation, para. 4249

The Accused's awareness that crimes had been committed

18.110 FE KS's knowledge of letters from international organizations given his "close ties" with IS and the Ministry of Foreign Affairs, para.4250

18.111 FE KS's statements and publications and knowledge of the crimes committed, para.4251

18.112 FE KS's knowledge of the crimes committed (cooperatives and worksites), para.4251

18.113 FE KS's knowledge of the crimes committed (internal purges), para.4251

18.114 FLE use of KS's post-DK statements to infer his knowledge, paras.4252-4253

18.115 FLE study sessions involving KS and their content, para.4253

18.116 FLE access to CPK internal documents including the Revolutionary Flag, para.4253

18.117 FE KS and speeches by other senior officials on policy implementation, para.4253

18.118 FE receipt of letters from international organizations in his capacity as Head of State, para.4253

18.119 FLE KS "also" had knowledge of the crimes after the facts, para.4254

COMMISSION BY PARTICIPATION IN A JCE

18.120 LE participation in the common purpose and significant contribution, paras.4255-4256

18.121 FLE members and definition of the common purpose, para.4256

Contribution to the common purpose**Support to the common purpose**

18.122 FE KS's support to the common purpose since 1967, para.4257

18.123 FE KS full member of the CC and 4th Party Congress, para.4257

18.124 FLE KS in favour of the CPK's revolutionary objectives, para.4257

18.125 FLE KS supported, "tacitly" encouraged and legitimized by his presence and therefore facilitated the implementation of the common purpose, para.4257

18.126 FLE KS's speech at the 5th Non-Aligned Countries Conference, para.4257

18.127 FLE KS's "support for the CPK and its policies continued" as he was a member of the CPK and President of the State Presidium from 1976 to 1979, para.4257

18.128 FLE KS's regular participation in SC meetings where crucial decisions were taken, para.4257

18.129 FLE on KS's functions throughout the DK period, para.4257

18.130 FLE evidence of the support and assistance that KS consistently provided to the CPK in achieving its objectives, para.4257

- 18.131 FE KS's regular participation in PC meetings where discussions on key issues of the common purpose were taken, para.4258
- 18.132 FE KS's participation in discussions on enemy identification and purges, para.4258
- 18.133 FLE findings based on KS's presence at SC meetings, para.4258
- 18.134 FE KS's participation in the CPK Congresses, para.4259
- 18.135 FE in the analysis of the principle of democratic centralism, para.4259
- 18.136 FE participation in CC meetings, para.4259
- 18.137 FLE KS's agreement to encourage the "3 tons per hectare" target, para.4259
- 18.138 FLE criticizes KS for defending the DK Constitution, para.4259
- 18.139 FLE KS's approval, as a member of the CC, of the delegation of the power to decide on the execution at different levels of the CPK, para.4260
- 18.140 FE KS's contribution to the publication of a 1978 CC memorandum, para.4260
- 18.141 FLE no impact of this memorandum and no application to Vn, para.4260
- 18.142 FLE subjecting the Vn to the "absolute special branch measures", para.4260
- 18.143 FLE attendance at the 5th CPK Congress and arrest of VORN Vet, para.4260
- 18.144 FLE KS's membership of the common purpose and public support throughout the DK period, paras.4257-4261

Promotion of the common purpose

- 18.145 FLE findings on an uncertain Congress, para.4262
- 18.146 FLE by reaching incriminating findings on a government resolution to rebuild a classless society without exploitation and in which every citizen would contribute to the building and defence of the country, para.4262
- 18.147 FLE by referring to communist and socialist standards of thought in order to reach incriminating findings, para.4262
- 18.148 FLE KS's participation and content of the meetings at the Silver Pagoda in 1975, para.4262
- 18.149 FLE KS's contribution to perpetuate the CPK line, paras.4260-4262
- 18.150 FLE KS's statements in and regarding his speeches during the DK period, para.4263
- 18.151 FLE KS adhered to the common purpose and was a senior leader who actively, energetically and publicly advocated, confirmed and defended it, both within the country and on the international scene, para.4264

Encouragement, incitement and legitimization geared towards implementation of the common purpose

- 18.152 FLE KS by virtue of his various positions used his powers to legitimize in his speeches and public statements the common purpose and its related policies within and outside the country, para.4265
- 18.153 FLE KS promoted the criminal aspects of the common purpose, paras.4265-4270
- 18.154 FLE use of KS's post-DK statements to find that the crimes were encouraged and legitimized at the time of the facts, para.4265
- 18.155 FLE Norodom Sihanouk's account of working conditions during his visits to the country with KS, para.4265
- 18.156 EF KS's statements on cooperatives and certain major works, paras.4266-4267
- 18.157 FLE KS's promotion of the policy of increasing the population and encouraging marriages incompatible with Buddhist traditions, the abolition of which was desired, para. 4268
- 18.158 FLE KS sought to conceal crimes of ex-KRs, para.4268

- 18.159 FLE KS made speeches inciting hatred of Vn in whole, para.4269
 18.160 FLE KS did not only adhere to the common purpose but also encouraged and instigated its implementation through various policies, para.4270
 18.161 FLE KS used his position as a senior leader to legitimize the common purpose, para.4270

Instructions regarding implementation of the common purpose

- 18.162 FLE KS's presence at events and speeches concerning Vn, para.4271
 18.163 FLE KS legitimized the hunt for enemies in the country in various rallies and educational sessions, para.4272
 18.164 FLE KS's presence at a CPK rally in 05.1975, para.4272
 18.165 FE remarks made by KS to the population on the purpose of the revolution, para.4272
 18.166 FE KS exhortations to flush out infiltrated enemies, opponents and obstacles, para.4272
 18.167 FE training by KS of trade administration cadres, para.4272
 18.168 FLE KS's reiterations of NC's denouncement of CHAN Chakrei, KOY Thuon and KEO Meas, para.4272
 18.169 FLE KS's participation and chairing of a training session in Borei Keila in mid-1978, para.4272
 18.170 FLE KS addressed cadres and personally encouraged the execution of work plans by all necessary means and without consideration of the population including the NP and by eliminating enemies, para.4273
 18.171 FLE instruction by KS to arrange marriages to increase the country's forces, para.4273
 18.172 FLE instruction implemented, in particular at the Ministry of Commerce, para.4273
 18.173 FLE KS did not only adhere to the common purpose but also actively gave instructions for its implementation by means of various policies, paras.4271-4274

Facilitation and supervision of the implementation of the common purpose

- 18.174 FLE KS, member of Office 870 and person in charge of supervising DK trade, promoted the administration of DK, para.4276
 18.175 FLE KS supervised trade-related matters, para.4276
 18.176 FLE KS personally ensured that Doeun's functions at Office 870 continued to be performed after his death, para.4276
 18.177 FLE food shortages were due to the rice requisition policies of the "Party Centre", para.4276
 18.178 FE rice requisition policies of the "Party Centre", para.4276
 18.179 FLE food shortages of cooperative workers and labourers were not part of the concerns of the leaders, para.4276
 18.180 FLE KS's export/import functions and role, para.4276
 18.181 FE KS's exceptional position in the CPK and knowledge, para.4277
 18.182 FE Regular attendance at SC meetings and knowledge, para.4277
 18.183 FE KS at meetings during which the fate of cadres was decided, para.4277
 18.184 FE KS contributed to investigations leading to purges, para.4277
 18.185 FLE KS's participation in an internal purge system, para.4277
 18.186 FLE KS's "silent assent" to the ill-treatment of civilians, para.4277
 18.187 FLE KS's concealment from the outside world of events that occurred inside the DK, para.4277
 18.188 FLE KS did not only adhere to the common purpose, but also facilitated and monitored its implementation through the various policies adopted, paras.4275-4278

Mens rea

18.189 LE *mens rea* applied both to participation in the common purpose and to the commission of crimes arising therefrom, para.4279

18.190 FLE KS belonged to a group of persons who acted in concert to execute the common purpose to which it contributed, para.4279

18.191 FLE KS's intention to participate in the common purpose, para.4279

18.192 FLE KS's intention to commit the derivative crimes, paras.4280-4307

Cooperatives and worksites

18.193 FLE crimes established in the worksites covered in Case 002/02 as part of the common purpose in accordance with the policy on cooperatives and worksites, para.4280

18.194 FLE KS supported the common purpose throughout the DK period in establishing and operating cooperatives and workplaces para.4281

18.195 FE KS participated in the formulation and discussion of production targets, called for quotas and urged everyone to meet and exceed the targets at any cost, para.4281

18.196 FE KS was aware that deplorable working and living conditions were intentionally imposed in cooperatives and worksites throughout the country and still supported the implementation of CPK's plans, para.4281

18.197 FE KS's contribution to the continuation of this system to the detriment of the population para.4281

18.198 FE KS encouraged cadres to assign more work to the NP and to deprive them of sufficient food, para.4281

18.199 FLE KS motivated by the specific intent to discriminate against enemies of the Party on political grounds, para.4281

18.200 FE KS intended that the fate of the enemies should be settled in secret, para.4281

18.201 FLE KS intended in the course of his duties and actions that crimes would be committed in cooperatives and on worksites, paras.4281-4882

18.202 FLE KS shared the intention to commit the CAH of murder, enslavement and OIA/atacks against human dignity and enforced disappearances, para.4282

18.203 FLE with the specific intent to discriminate and ill-treat the Party's enemies, KS shared the intent to commit the CAH of persecution on political grounds, paras.4281-4282

Security centres, execution sites and internal purges

18.204 FLE crimes committed in the security centres covered in Case 002/02 as part of the common purpose as regards the policy on enemies, para.4283

18.205 FLE KS's contribution to purges nationwide, paras.4284-4286

18.206 FLE purges inextricably linked to the policy for the establishment of security centres and execution sites, para.4284

18.207 FLE KS demonstrated a thorough knowledge of the circumstances surrounding the arrest of other leaders, para.4284

18.208 FLE KS was aware of the arrests of prominent Party leaders and supported such arrests, para.4284

18.209 FLE urged cadres to identify enemies, inciting them to anger, inter alia, para.4285

18.210 FLE specific intention of KS to discriminate against enemies of the Party, para.4285

- 18.211 FLE KS was aware of the widespread arrests at local level and was informed of the arbitrary detentions and conditions of detention at Preah Vihear, para.4285
- 18.212 FLE KS's support for the defence of revolutionary objectives 25 years after the fall of the regime, para.4285
- 18.213 FLE KS was aware of large-scale executions throughout DK, para.4286
- 18.214 FLE KS approved the arrest, detention, torture and arbitrary extrajudicial executions of other CPK leaders, para.4286
- 18.215 FLE KS sought to distance himself from the acts attributable to the upper echelon, para.4286
- 18.216 FLE KS actively pursued the common purpose of rapidly implementing the socialist revolution in order to defend the country against enemies, para.4286
- 18.217 FLE KS demonstrated his ability to prevent the appalling treatment and massacre of his compatriots and failed to do so for others who perished, para.4286
- 18.218 FLE KS intended crimes to be committed as part of the CPK's policy on enemies, para.4287
- 18.219 FLE KS shared the intention to commit the CAH of murder, enslavement and OIA/attacks against human dignity, enforced disappearances, para.4287
- 18.220 FLE with the specific intention to discriminate and ill-treat the Party's enemies, KS shared the intention to commit the CAH of persecution on political grounds, para.4287

Measures targeting certain specific groups

The Cham

- 18.221 FLE crimes against the Cham committed in furtherance of the common purpose as part of the CPK's policy of hostile measures against them, para.4288
- 18.222 FLE treatment of Cham at Au Trakuon Pagoda and Trea Security Centre corresponded to the implementation of CPK's policy against enemies, para.4289
- 18.223 FLE KS's specific intent to discriminate against enemies, para.4289
- 18.224 FLE discriminatory policies implemented against the Cham, para.4289
- 18.225 FLE KS's specific discriminatory intent against the Cham as such is explained by the discriminatory intent against enemies because of their actual or supposed political affiliations and his support for such discrimination, para.4289
- 18.226 FLE KS intended that crimes against the Cham (except genocide) would be committed in furtherance of the CPK's policy of taking hostile measures against them, para.4289
- 18.227 FLE KS shared the intent to commit the CAH of murder, extermination, imprisonment, torture, persecution on political and religious grounds and OIA/forced transfers against the Cham, para.4289

The Vietnamese

- 18.228 FLE the crimes established against the Vn were encompassed by the common purpose para.4291
- 18.229 FLE KS statements about the Vn including calls to transfer the Vn population to VN, para.4292
- 18.230 FLE KS shared with the other JCE participants the intention to deport the Vn population to VN and consequently committed the CAH of deportation between 17.04.1975 and 04.1977, para.4292

- 18.231 FLE remarks and acts of KS denoting his contempt for the Vn, para.4293
- 18.232 FLE KS with the direct intent to kill Vn in Cambodia on a large scale from 04.1977 to 06.01.1979 para.4393
- 18.233 FLE KS shared the intent to commit the CAHs of murder and extermination against the Vn, para.4293
- 18.234 FLE KS was motivated by the intent to kill resulting from the specific inten to discriminate against Vn on racial grounds, para.4293
- 18.235 FLE KS shared the specific intent to commit the CAH of persecution on racial grounds, the discriminatory acts targeted being the large-scale deliberate killing of Vn, para.4293
- 18.236 FLE KS's statements and actions show that he was motivated by the genocidal intent to destroy the Vn as a racial, national and ethnic group, as such, para.4294
- 18.237 FLE the Vn were to be destroyed by means of the large-scale murder of Vn living in DK, para.4294
- 18.238 FLE KS shared the genocidal intent to commit the crime of genocide by murdering members of the Vietnamese racial, national and ethnic group, para.4294
- 18.239 FLE KS knew that the Vn detained at S-21 enjoyed the status of protected persons, para.4295
- 18.240 FLE KS supported the revolutionary plan concerning enemies and shared the intent to commit the crimes underlying the policy on the establishment of security centres and execution sites, para.4295
- 18.241 FLE KS shared the intent to commit grave breaches of the GC against Vn detained at S-21, para.4295

Buddhists

- 18.242 FLE CAH of persecution on religious grounds committed in furtherance of the policy of hostile measures against Buddhist monks, para.4296
- 18.243 FLE this crime was part of the common purpose, para.4296
- 18.244 FE KS fortified the credibility of FUNK and GRUNK by praising the *Sangha* and maintaining the impression of normalcy under the new regime, para.4297
- 18.245 FE KS supported this façade of normality, before discontinuing any mention of monkhood while encouraging the arrangement of marriages contrary to Buddhist traditions, para.4297
- 18.246 FLE specific intention of KS to discriminate against Buddhists, para.4298
- 18.247 FLE KS's intention to eradicate Buddhism in Cambodia, para.4298
- 18.248 FLE KS shared the specific intent to commit the CAH of persecution on religious grounds, para.4298

Former officials of the Khmer Republic

- 18.249 FLE CAH of persecution on political grounds established at various places at different times was part of the common purpose throughout DK under the policy of hostile measures against the ex-KRs, para.4299
- 18.250 FLE KS's leading role in ensuring CPK's victory on 17.04.1975, para.4300
- 18.251 FLE KS called for the execution of the leaders of the KR and was a strong supporter of the Party's discriminatory policies throughout the DK period, para.4300
- 18.252 FLE KS shared the specific intention to discriminate against all ex-KRs on the grounds of their political status, para.4300
- 18.253 FLE KS's specific intent to subject them to ill-treatment, para.4300

18.254 FLE KS shared the specific intent to commit the CAH of persecution on political grounds against the ex-KRs throughout DK, para.4300

18.255 FLE CAH of ex-RK murder established at S-21 and KTC in common purpose para.4301

18.256 FLE calls from KS in accordance with acts committed at S-21 and KTC, notably the identification and execution of the ex-KRs and their families, para.4302

18.257 FLE ex-RK targeted by the policy regarding enemies para.4302

18.258 FLE KS shared the intent to commit the CAH of murder by virtue of his participation in the JCE, paras.4301-4302

Regulation of marriage

18.259 FLE the CAH OF OIA/forced marriages and rape were part of CPK's policy to regulate marriage, para.4303

18.260 FLE these crimes were part of the common purpose, para.4303

18.261 FLE KS advocated a rapid increase in the population and at the same time encouraged people to abandon their personal feelings in favour of Angkar, para.4304

18.262 FLE KS's instructions to all ministries to arrange marriages for the purposes of production and population growth, para.4304

18.263 FLE KS acted with the intention that crimes would be committed as part of the CPK's national policy to regulate marriage, para.4305

18.264 FLE KS shared the intent to commit the CAH OF OIA/forced marriages and rape committed in the context of forced marriages, para.4305

Finding regarding JCE

18.265 FLE KS participated in the common purpose, para.4306

18.266 FLE in his functions, actions and speeches, KS made a significant contribution to the commission of the crimes within the scope of Case 002/02 perpetrated by CPK officials, para.4306

18.267 FLE action by the principal authors to implement the common purpose on the order or under the command of the other participants in the JCE, para.4306

18.268 FLE KS shared the intent to commit the crimes encompassed by the common purpose, para.4306

18.269-18.276 FLE KS through a JCE committed the CAH of intentional killing at TTD (18.269), at the 1 January Dam (18.270), at S-21 (18.271), at KTC (18.272), at AuKg (18.273) and at PK (18.274), of Vn (18.275), and of the Cham (18.276), para.4306

18.277-18.281 FLE KS through a JCE committed the CAH of extermination at S-21, at KTC (18.277), at AuKg (18.278), PK (18.279 LE), of Vn (18.280), of the Cham (18.281) para.4306

18.282 FLE KS through a JCE committed the CAH of deportation of the Vn, para.4306.

18.283-18.289 FLE KS through a JCE committed the CAH of enslavement at TK, at TTD (18.283), at the 1 January Dam (18.284), at KCA (18.285), at S-21 (18.286), at KTC (18.287), at AuKg (18.288), at PK (18.289) para.4306.

18.290-18.293 FLE KS through a JCE committed the CAH of imprisonment at S-21, at KTC (18,290), at AuKg (18,291) and at PK (18,292), of the Cham (18,293), para.4306.

18.294-18.296 KS through a JCE committed the CAH of torture at S-21 (18.294), KTC (18.295) of the Cham (18.296), para.4306.

18.297-18.305 FLE KS through a JCE committed the CAH of persecution on political grounds at TK, at TTD (18.297), 1 January Dam (18.298), AKC (18.299), S-21 (18.300), KTC (18.301), Au Kg (18.302), PK (18.303), ex-KRs (18.304), of the Cham (18.305), para.4306.

18.306-18.307 FLE KS through a JCE committed the CAH of persecution of Buddhists on religious grounds at TK (18.306), of the Cham (18.307), para.4306

18.308-18.311 FLE KS through a JCE committed the crime of persecution of Vn on racial grounds (18.308), including at TK (18.309), S-21 (18.310) and AuKg (18.311) para.4306

18.312-18.319 FLE KS through a JCE committed OIA/attacks against human dignity at TK (18.312), TTD (18.313), 1 January Dam (18.314), AKC (18.315), S-21 (18.316), KTC (18.317), AuKg (18.318), and PK (18.319), para.4306

18.320-18.325 FLE KS through a JCE committed the CAH of OIA/enforced disappearances at TK (18.320), TTD (18.321), 1 January Dam (18.322), AKC (18.323), KTC (18.324), and PK (18.325) para.4306

18.326 FLE KS through a JCE committed the CAH of OIA/forced transfers of the Cham, para.4306

18.327 FLE KS through a JCE committed the CAH of OIA/forced marriages, para.4306

18.328 FLE KS through a JCE committed the CAH of OIA/rapes in the context of marriage, para.4306

18.329 FLE KS through a JCE committed the crime of genocide by killing members of the Vietnamese ethnic, national and racial group, para.4307

18.330-18.335 FLE KS through a JCE committed at S-21 grave breaches of the CG by intentional killing (18,330), torture (18,331), inhumane treatment (18,332), causing serious suffering or bodily harm (18,333), deprivation of the right to a fair trial (18,334), and illegal detention of civilians (18,335), para.4307

OTHER MODES OF PARTICIPATION

18.336 FLE by re-characterizing certain facts as the CAH of murder in the form of *dolus eventualis* and changing the mode of liability as assisting and encouraging (A&E) whereas that was not provided for in the charges, para. 4311

Providing encouragement and support

18.337 FLE KS's attendance at various meetings, moral support and implicit encouragement to decision-making bodies that continued their efforts in the planning and implementation of criminal purposes, para.4313

18.338 FLE moral and implicit support in the form of encouraging and supporting without definition, paras.4313-4316

18.339 FLE KS openly and actively encouraged and provided moral support to CPK officials in the implementation of the policies of the "Party Centre", para.4314

18.340 FLE praises for the workforce and urging of the population to achieve the Party's objectives, para.4314

18.341 FLE observation of living and working conditions during site visits, para.4314

18.342 FLE KS "moral guarantor of the DK regime", his presence in cooperatives and workplaces legitimized the absolute implementation of criminal policies, para.4314

18.343 FLE KS's "praises" subsequently encouraged cadres to maintain working conditions with a view to achieving the objectives set by the Party, para.4314

18.344 FLE KS was aware that conditions imposed at cooperatives and worksites were likely to result in deaths, para.4315

18.345 FLE KS's acts and significant impact on the death of workers para.4315

18.346 FLE KS was at all times aware of the essential elements of the crimes committed by the direct perpetrators thereof, para.4315

18.347 FLE KS facilitated the commission of murder in the form of *dolus eventualis* at cooperatives and worksites, para.4315

18.348 FE KS's knowledge of arrests, detentions, ill-treatment and executions, para.4316

18.349 FLE KS's unique position within the Party and contributions during meetings where the fate of enemies was discussed, para.4316

18.350 FLE KS's participation in CPK decision-making processes, para.4316

18.351 FLE KS openly called for the execution of persons who were traitors to the Party or Revolution, para.4316

18.352 FLE KS was generally aware of the famine, lack of adequate and effective medicines and ill-treatment of enemies in cooperatives and on worksites as part of the implementation of Party policies conducted in an absolute manner, para.4316

18.353 FLE KS's awareness of the real probability that these practices were going to be applied in security centres, para.4316

18.354 FLE KS's awareness that conditions imposed in security centres were likely to result in deaths, para.4317

18.355 FLE KS's acts and significant effect on the commission of crimes by CPK cadres, para.4317

18.356 FLE KS was at all times aware of the essential elements of the crimes committed by the direct perpetrators, para.4317

18.357 FLE KS supported and encouraged the commission of murder in the form of *dolus eventualis* in security centres and as part of internal purges para.4317

18.358-18.364 FLE KS supported and encouraged the CAH of killings in the form of *dolus eventualis* at TK (18.358), 1 January Dam (18.359), TTD (18.360), AKC (18.361), S-21 (18.362), KTC (18.363), and PK (18.364), para.4318

GENERAL FINDING REGARDING INDIVIDUAL CRIMINAL RESPONSIBILITY

18.365 FLE KS through a JCE committed the crimes set out in para.4236

18.366 FLE KS is liable for all the crimes committed by virtue of his participation in a JCE insofar as he shared the direct, discriminatory and specific intent with the other co-perpetrators in the said JCE, para.4237

18.367 FLE KS supported and encouraged the commission of the crimes referred to in para.4328

CUMULATIVE FINDINGS OF GUILT

- 33 In **section 19** of the written judgement, the Chamber committed an error:
19.1 LE accumulation of the findings of guilt with that of extermination at PK, paras.4337, 4341

SENTENCING

- 34 In **section 20** of the written judgement, the Chamber committed the following errors, *inter alia*:

- 20.1 FLE selection of statements by KS for sentencing, para.4345
- 20.2 LE objectives and criteria for determining the sentence, paras.4348-4349
- 20.3 LE taking into account relevant aggravating circumstances, paras.4350-4351
- 20.4 LE taking into account relevant mitigating circumstances, paras.4350, 4352-4354
- 20.5 LE severance, new findings of guilt and the sentence, paras.4357-4360
- 20.6 FLE factors considered relevant in determining the gravity of the crimes, paras.4361-4376
- 20.7 FLE the broad and decisive role of KS in the commission of the crimes, paras.4382-4385
- 20.8 FLE aggravating circumstances for KS, paras.4386, 4389-4390
- 20.9 FLE mitigating circumstances for KS, paras.4391, 4396-4398
- 20.10 FLE character witnesses for KS, para.4399
- 20.11 FLE sentence imposed on KS, paras.4400, 4402

FOR THESE REASONS

35 The KHIEU Samphân Defence requests the Supreme Court Chamber:

- *primarily*, to DECLARE the judgement null and void;
- *in the alternative*, to OVERTURN the judgement and FIND the Accused not guilty on each count;
- *in the further alternative*, to REVIEW the conviction and HAND DOWN a fixed-term prison sentence.

KONG Sam Onn	Phnom Penh	signed
Anta GUISSÉ	Phnom Penh	signed