

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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NUON CHEA'S CLOSING SUBMISSIONS IN CASE 002/01

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The Co-Lawyers for Nuon Chea ('the Defence') hereby submit Nuon Chea's closing submissions in Case 002/01:

1. Nuon Chea stands charged before the ECCC for a staggering array of crimes allegedly committed in Cambodia between 17 April 1975 and 6 January 1979. In a Closing Order issued on 15 September 2010, the Co-Investigating Judges ('CIJs') charged Nuon Chea with responsibility for hundreds of thousands of deaths, counts of torture and other forms of mistreatment flowing from his position as Deputy Secretary of the Communist Party of Kampuchea ('CPK'). These crimes were allegedly committed between 17 April 1975 and 6 January 1979, the period during which the CPK held power in what was then known as Democratic Kampuchea.
2. The instant submissions are, however, concerned with only a small subset of these allegations. Pursuant to an order of this Chamber, the allegations at issue in the Closing Order have been severed into a series of smaller trials, of which this is only the first. This first trial ('Case 002/01') concerns three principal sets of facts.
3. First, Nuon Chea is charged with the CPK's decision to evacuate the city of Phnom Penh immediately upon seizing power in April 1975, and to send the inhabitants of the city to agricultural cooperatives in the countryside. Second, he is charged with the CPK's alleged decision to move large segments of the population from the southern, western and eastern regions of Cambodia toward the north and northwest zones in late 1975 and 1976. Third, he is charged with the alleged decision to kill as many as 3,000 soldiers and officials of the Khmer Republic, the government in power between 1970 and 1975, shortly after taking power on 17 April 1975.
4. According to both the Co-Prosecutors and Co-Investigating Judges ('CIJs'), Nuon Chea bears responsibility for these crimes by virtue of his role in formulating the policies of the CPK in his capacity as one of its senior leaders. Nuon Chea does not deny his role in formulating CPK policy. Yet for Nuon Chea, this is only the starting point. Nuon Chea maintains that although he bears responsibility for CPK policy, he is not legally responsible for the criminal acts which were committed in Democratic Kampuchea. Nuon Chea submits that two critical facts require consideration in that regard.
5. The first fact is that the policies adopted by the CPK were not, in themselves, unlawful. Democratic Kampuchea was not Nazi Germany. The CPK was a communist movement which sought not to harm ordinary Cambodians, but to eliminate the injustices which affected a broad cross-section of the Cambodian population, especially the rural poor. Their goals were neither malicious nor discriminatory. Numerous witnesses who appeared before this Chamber expressed admiration for these objectives. It would be

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difficult to imagine an expert witness at Nuremberg describing his ‘respect’ for Hermann Göring, in the way that David Chandler did about Nuon Chea.¹

6. The fundamental objectives of the CPK – its ‘policies’, which the Co-Prosecutors say constitute the core of Nuon Chea’s liability – constituted an application of orthodox Marxist-Leninism. It may be easy in 2013 to criticize those policies. But in 1975, economic and social collectivisation was a widespread global phenomenon. No reasonable person could have understood or expected that it was unlawful as such.
7. Although in some respects certain policies in Democratic Kampuchea could be perceived as more radical than those adopted by other Communist states, the CPK was contending with a truly unique set of circumstances. Cambodia’s economy and infrastructure had been obliterated by the effects of the war in neighboring Vietnam, and the American intervention therein. According to Ben Kiernan, whom this Chamber certified as an expert, ‘Cambodia may well be the most heavily bombed country in history.’² Simultaneously, the CPK faced acute existential military threats from within the country and from foreign powers – both of which came to pass. As described in greater detail herein, it was these legitimate considerations – and not extremist ideology – that caused the CPK to adopt the policies that it did.
8. The second fact is that the experience of the average Cambodian in Democratic Kampuchea was not a reflection of Party policy objectives. Substantial evidence shows that the conduct of cadres on the ground routinely deviated from the intent of the Party center. Indeed, the Party itself was more an *ad hoc* agglomeration of competing factions than it was a unified entity. Accordingly, Nuon Chea’s ability to exercise regularized administrative control over both troops and cadres varied tremendously from one situation to the next.
9. David Chandler agreed during his appearance before this Chamber that much of what happened in Democratic Kampuchea was beyond the control of the senior leaders. Yet he felt compelled to add:

You’ve got to accept the idea that the top people were ultimately responsible for what was happening because they were in charge of the country.’³

Nuon Chea agrees with Professor Chandler in the sense that he is deeply remorseful for the harms that occurred during Democratic Kampuchea. As a senior leader of the CPK, Nuon Chea takes moral responsibility – as he has before this Chamber⁴ – for events during Democratic Kampuchea.

10. Yet, at this Tribunal, David Chandler’s conclusion is not good enough. Legal liability and moral responsibility are not one and the same. This Chamber is duty-bound to

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critically assess the evidence before it prior to determining whether Nuon Chea's *criminal* responsibility is proven beyond a reasonable doubt.

11. The procedures employed by this Tribunal, including the manner in which the instant case was conceived, investigated and tried, failed manifestly to perform this critical assessment. For both the Royal Government of Cambodia ('RGC') and the international community, Nuon Chea was guilty long before his arrival at the ECCC detention facility. That reality manifested continuously in the proceedings, through investigative practices and trial procedures concerned less with ascertaining the truth than with confirming a dominant biased narrative about Democratic Kampuchea. That narrative – which holds that a tiny group of evildoers planned, organized and implemented a genocide motivated by racism and hate – suited the interests of the RGC in maintaining a perpetual scapegoat for all of Cambodia's ills, and those of the international community in finding a comprehensible explanation for incomprehensible events.
12. The reality is that Nuon Chea has powerful defences to all of the crimes charged in Case 002/01. Although Nuon Chea has conceded his participation in the decision to evacuate Phnom Penh, he states emphatically that its purpose was not to harm or take vengeance on the inhabitants of Phnom Penh. The purpose was to implement an economic policy that, under the extraordinary circumstances in which Cambodia found itself in 1975, Nuon Chea genuinely believed was in the best interests of the Cambodian people. Nuon Chea certainly did not agree to the evacuation in order to cause death and suffering to the evacuees.
13. Nuon Chea's role in the 'second phase' population movement was less significant. Although he did not plan or agree to the movement ahead of time, he did learn of it while it was underway. Nevertheless, he had no role at all, nor was he in control over, its implementation. He certainly did not agree to, order or plan the commission of criminal offences.
14. In relation to Tuol Po Chrey, Nuon Chea's defence is even more straightforward. Nuon Chea never agreed to, planned or ordered the widespread killing of any group of ordinary Cambodians – including those affiliated with the Khmer Republic. The Co-Prosecutors allege that the crimes allegedly committed at Tuol Po Chrey were one aspect of a much larger effort to systematically eradicate soldiers and civilian officials of the Khmer Republic. That allegation is simply untrue, and is not supported by any reliable evidence. By contrast, substantial evidence exists that lower-level cadres had both the motive and the opportunity to commit those crimes without encouragement from the Party center.

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15. This brief will proceed in three broad segments. First, the Defence will set out the systemic failures of this Tribunal to respect Nuon Chea's right to a fair trial. Those failures are critical to the analysis as a whole, both because they are sufficiently serious to mandate the dismissal of the charges concerning Tuol Po Chrey, and because they bear on the reliability and probative value of the material entered into evidence in Case 002 as a whole. Second, the Defence will describe the facts critical to Nuon Chea's theory of the case, including the context, objectives and structure of the Cambodian socialist revolution and Nuon Chea's role therein. Finally, the Defence will establish that Nuon Chea may not be held criminally liable for the crimes charged in connection with the evacuation of Phnom Penh, the second phase population movement or Tuol Po Chrey.

I. LEGITIMACY AND FAIRNESS OF THIS TRIAL

16. Case 002 unfolded amidst a perfect storm of the hazards that any international criminal proceeding should seek to avoid: it was initiated and run by the government that ousted the Accused from power; it took place under the control of an authoritarian government with a substantial interest in the outcome of the proceedings; it was designed for the express purpose of punishing specific Accused identified as culpable prior to the advent of the Tribunal; it began thirty years after the fact, rendering evidence collection difficult and complicated; it concerned a subject about which exhaustive analysis had been done and opinion long ago firmly crystallized; it was carried out pursuant to a *sui generis* procedure with no clear rules; and it was subject to serious time pressures driven by financial constraints and aging defendants. Prior to the constitution of the Tribunal, observers repeatedly warned the UN that no fair trial was possible under these circumstances.⁵ The UN proceeded in spite of those warnings, hoping that the ECCC could manage a constellation of challenges with which no other international criminal trial has been forced to contend.
17. Well-meaning jurists seeking substantive 'justice' as they understood it under these conditions were continually pressed between two inconsistent objectives: holding a real trial where perceptions, assumptions and allegations are subject to rigorous scrutiny in open court, and delivering the pre-determined guilty verdict which their patrons in both the RGC and the international community expected as a matter of course. In a genuine effort to seek compromise between these conflicting demands, all the participants in the process took decisions they would never have imagined making under so-called normal circumstances. These decisions systematically transformed the process from a trial, as it is normally understood, into a showcase of the conclusions that all involved had accepted from the outset. Each small slip away from rigor and toward expedience was

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psychologically justified by the collective knowledge that *of course* the defendants are guilty. Fundamentally, the problem was this: the presumption of guilt is so deeply embedded in the fabric of the institution that a fair trial was in practice impossible.

A. Limits of the Tribunal's Jurisdiction

18. The decision to create a tribunal for the limited purpose of judging the CPK's conduct over a three year and eight month time-period during the late 1970s was both arbitrary and unfair. For decades, a succession of domestic leaders and foreign governments, including the French colonial authorities, Prince Sihanouk, Lon Nol, the United States and Vietnam, committed atrocities on Cambodian territory. In many cases those crimes were similar in character to the allegations against Nuon Chea. Yet the ECCC chose to condemn Nuon Chea for the unintended consequences of his effort to liberate Cambodia while blindly ignoring the conduct which motivated Nuon Chea to act in the first place.
19. The crimes committed by actors other than the CPK outside the jurisdiction of the Tribunal are well-known. The United States government murdered an estimated 150,000 Cambodians in the course of their futile and unprovoked eight-year campaign of terror against the Cambodian countryside.⁶ Khmer Republic soldiers systematically executed thousands of Vietnamese civilians, an allegation for which Nuon Chea alone stands charged.⁷ Both Prince Sihanouk and Lon Nol brutally repressed political opposition, including the Communists.⁸ The Vietnam-backed People's Republic of Kampuchea caused, according to the testimony of one witness, hundreds of thousands of deaths during the 1980s as a consequence of the K-5 forced labour program.⁹
20. These crimes were not merely incidental to the events within the jurisdiction of this Tribunal. On the contrary, the actions of the CPK were direct reactions to the conduct of the French, American and Lon Nol governments. The CPK was similarly motivated by their concerns of Vietnamese intentions; real fears which later proved reasonable when they came to pass.
21. International criminal justice has a long tradition of prosecuting all sides of a conflict – and of being critical of institutions that fail to do so. Justice Radhabinod Pal's dissent at the IMTFE recognized that a trial which does not 'correspond to any idea of justice' could only amount to 'formalized vengeance.'¹⁰ He further explained:

It does not quite comply with the idea of international justice that only the vanquished states are obliged to surrender their own subjects to the jurisdiction of an international tribunal for the punishment of war crimes. The victorious states too should be willing to transfer their jurisdiction over their own subjects who have offended the laws of warfare to the same independent and impartial international tribunal.¹¹

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The authorities who established subsequent international tribunals heeded these warnings. The ICTY brought to trial Serbians, Bosnians and Croats. Defendants at the Special Court for Sierra Leone included representatives of the RUF, the AFRC and the CDF. The ICTR's failure to prosecute Hutus along with Tutsis was so conspicuous that even the chief prosecutor, Carla del Ponte, objected, and ultimately resigned.¹²

22. Several witnesses who appeared before this Tribunal expressed this same concern about the ECCC's failure to prosecute wrongdoers other than the CPK. Francois Ponchaud repeated several times his views on the 'terror and trauma' caused by the Americans' bombing campaign,¹³ and opined that 'if there are people who should be condemned, I think Kissinger should be among them.'¹⁴ Norng Sophang condemned 'foreigners who had their hand involved in the war in Cambodia', adding that he was 'delighted to once again come to testify regarding this fact' and asking the Tribunal to 'please try to gather all the relevant evidence and documents.'¹⁵

B. The Standard Total View

23. The ECCC's limited focus on the alleged crimes committed by the CPK is due in part to a fatal design flaw - it owes its existence to the support and cooperation of the other principal aggressors, in particular France and the United States. There is a near perfect overlap between the states which created, fund and staff the ECCC and those against which the CPK fought for most of its existence. With the notable exception of the Supreme Court Chamber, nearly all of the judges, prosecutors and other lead lawyers at the ECCC were and are nationals of France, the United States and their closest allies. Three of the five international judges to have adjudicated over Case 002 thus far were French nationals. Nuon Chea cannot but wonder whether the context of, and reasons for his conduct can be genuinely understood by these judges under these circumstances.
24. The evidence admitted by the Chamber reflects this same bias. Four of the five experts certified by this Chamber in relation to the substance of the evidence – David Chandler, Ben Kiernan, Elizabeth Becker and Stephen Heder – are US nationals. The fifth, Philip Short, is British. The Co-Prosecutors have relied extensively on FBIS reports, summaries produced by the United States' Central Intelligence Agency, as proof of events within Democratic Kampuchea. The secondary source material entered into evidence was produced overwhelmingly by French and American sources.
25. Even within this small circle of western academics, the narrative adopted by the Tribunal has systematically favoured those least sympathetic to the CPK. Elizabeth Becker and Philip Short are journalists with no Khmer-language skills, no academic credentials and, in Short's case, no exposure to Cambodia prior to 1999.¹⁶ These

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‘experts’ wrote a combined two books and a selection of newspaper articles about Cambodia. By contrast, the Chamber declined to call Michael Vickery, a professional academic fluent in written and spoken Khmer, who had first arrived in Cambodia in 1961 and authored countless academic publications about Cambodia and the Khmer Rouge. Vickery’s shortcoming would seem to be, as Francois Ponchaud pointed out, that he is ‘a Communist’.¹⁷ Gareth Porter and William Shawcross, other expert witnesses sought by the Defence whose opinions did not complement the standard total view of the ECCC, have similarly been rejected.

26. This bias is not remedied by the Tribunal’s hybrid nature. Even today, the Cambodian government is led by the former CPK cadres who conspired with the Vietnamese to oust Pol Pot from power and install a Vietnamese-backed puppet government in its place. As numerous authors have recognized, the Vietnamese actively sought to manufacture a ‘manichean’ narrative about Democratic Kampuchea to lay blame on, and delegitimize, the senior leaders of the CPK – a narrative which ‘became [...] in a sense, realit[y].’¹⁸ Rather than provide a modicum of domestic legitimacy, the RGC’s pervasive influence over national side judges, lawyers, and staff – and occasionally, those on the international side¹⁹ – at the ECCC²⁰ merely transformed the proceedings into the basest form of victor’s justice.

C. Systemic Flaws in the Judicial Investigation

27. The tone of the judicial investigation was set early by investigator Wayne Bastin’s revelation that Judge Marcel Lemonde instructed his staff in 2009 that they ought to search only for inculpatory evidence. There is no serious question that the incident took place: Bastin had no reason to lie,²¹ he produced his contemporaneous notes of the interview showing that he wrote down Judge Lemonde’s words as they were spoken. Other investigators present at the meeting confirmed Bastin’s account.²²
28. This incident was an early indication that the fears of Court observers were well founded. Indeed, it has implications for the reliability of the investigation even if Judge Lemonde’s explanation - that he was speaking in jest - is to be believed.²³ It reflects the unspoken assumption, pervasive at the ECCC, that the point of the exercise is the substantiation of a guilty verdict. The ‘joke’ would have had no significance to a crowd that did not implicitly understand that, in spite of the formal neutrality of their task, there was no practical doubt about the outcome of the investigation. This was inadvertently confirmed by the CIJs on 19 June 2009, when they indicated their intention to ‘close [their] judicial investigation *once* [they have] determined that there is sufficient evidence to’ issue a Closing Order.²⁴

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29. The likelihood that the investigation would focus primarily on inculpatory evidence was increased substantially by the fact that the investigation was conducted in conditions of absolute secrecy.²⁵ Contrary to standard practice in civil law systems,²⁶ Defence counsel was excluded from the CIJs' interviews completely.²⁷ Defence teams were also prohibited from, and indeed sanctioned for, conducting their own investigations.²⁸ For more than two years of the three-year investigation, the CIJs refused to provide basic information about the general direction and strategy of the investigation or the standard operating procedures of its investigators.²⁹ Defence teams were in effect instructed to sit on their hands as the CIJs added documents and WRIs to the case file in a manner which, from their blind vantage point, meant little in terms of a narrative of the history of Democratic Kampuchea or of Nuon Chea's role and responsibility.³⁰
30. The Co-Prosecutors were very differently situated. They had conducted their own investigations in preparation for their Introductory and Supplementary Submissions, which included interviews with many of the key subjects of the judicial investigation.³¹ They had previously employed the CIJs' lead investigator, Steve Heder, for the purpose of drafting their Introductory Submissions, and certainly understood his opinions and intentions well. They also had confidential access to the Case 001 Case File, and all of the relevant context it provided in relation to Case 002.
31. When the CIJs did release basic information concerning their operating procedures, those procedures showed themselves to fall well short of the requirements of a fair and impartial investigation. Basic investigatory methods aiming to look beneath a witness's surface claims were rarely, if ever used.³² These include questions intended to probe the sources of witnesses' knowledge and the reliability of their thirty-year old recollections.³³ Subsequent analysis has furthermore shown that investigators failed to employ safeguards, such as avoiding leading questions, to ensure the reliability of the WRIs. Numerous irregularities, such as 'off the record' interviews and outright inaccuracies, also surfaced in the WRIs.³⁴
32. The culmination of these flaws came in the Closing Order itself, which reads not at all as a judicial document rendering findings on a balance of probabilities, but as an argument in favour of Nuon Chea's guilt. The word 'credibility' does not appear once. Almost never does the Closing Order weigh conflicting evidence prior to articulating its conclusions. It repeatedly makes straightforward assertions of fact based on the uncorroborated claims of a single witness who was in no position to make the claim in

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question. It is apparent that the CIJs never conceived of their task as a judicial exercise. They conceived of it instead as an attempt to gather support for a finding of guilt.

33. One example concerns the CIJs' findings in relation the alleged crimes at Tuol Po Chrey, the only crime site to ever be subject to serious adversarial analysis at the ECCC. As the Defence has previously shown, nearly all of the CIJs' most crucial findings were unsupported even on the face of the evidence cited in the footnotes.³⁵ To reiterate just one example, investigators were provided several estimates of the number of people allegedly killed at Tuol Po Chrey, ranging from 200 up to 3,000.³⁶ The CIJs' own investigators described in their Site Identification Report 'the killing of several hundreds (minimum 200) up to ONE thousand or more'.³⁷ Yet the Closing Order states simply: 'Witness estimates as to the number of victims range from 2,000 up to approximately 3,000 corpses.'³⁸
34. Another example concerns the CIJs' constant reliance on Duch's testimony in support of propositions for which he could not possibly have had any relevant contemporaneous knowledge. A rough estimate shows that Duch's testimony is cited in almost 1,000 of the 5,125 footnotes in the 'Factual Findings' section of the Closing Order. Excluding the CIJs' conclusions in relation to S-21, Duch's testimony is the *only* evidence cited in support of over a hundred allegations in the Closing Order. These concern subjects as varied as: the purpose of the Secret Defence Units established in the 1960s, before Duch (then 16 years old) had any involvement with the CPK³⁹; the role and authority of full rights versus candidate members of the Central and Standing Committee⁴⁰; the membership and roles of specific people on the Standing and Central Committees⁴¹; the functions of the Standing Committee relative to the Central Committee⁴²; the functions of Office S-71⁴³; the intended recipients of communications addressed to '870'⁴⁴; Nuon Chea's duties and responsibilities⁴⁵; and dozens of other propositions beyond the scope of Duch's knowledge. Never did the CIJs question whether Duch was an appropriate witness in relation to any of these claims – until January 2013, when Judge Lemonde publicly admitted that, during his tenure at the ECCC, he had asked himself exactly that question.⁴⁶
35. The Closing Order makes numerous other highly prejudicial conclusions on the basis of a single (clearly unreliable) witness. Its allegation that Nuon Chea decided on purges within the military and belonged to a so-called 'purge planning committee' is supported by a single ordinary soldier who – as Suong Sikoen explained to the CIJs⁴⁷ – knew nothing about the tasks of Party leaders.⁴⁸ The Closing Order cites the statement of Nomg Sophang, a telegram decoder who knew nothing substantive about the work of

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the Party center,⁴⁹ to conclude that Standing Committee meetings were called ‘whenever there was an important matter requiring discussion’.⁵⁰ The CIJs never even considered whether there was reason to doubt the credibility of Ieng Sary’s claims that it was Nuon Chea, and not he, who was responsible for a variety of tasks in Democratic Kampuchea.⁵¹ Notably, while the Closing order relies on those claims repeatedly for inculpatory testimony in relation to Nuon Chea, it fails to cite them for exculpatory purposes as to Ieng Sary.⁵²

36. On other occasions, the Closing Order fails to put forth exculpatory evidence that is directly inconsistent with the findings it purports to make. In one egregious example, the Closing Order cites to only three pieces of evidence supporting Nuon Chea’s alleged participation in a policy of targeting former officials and soldiers of the Khmer Republic; one of these is ██████████ claim that Nuon Chea indicated that former officials of the Khmer Republic should not be allowed to ‘stay in the framework’ of the new regime.⁵³ Yet the Closing Order fails to consider ██████████ larger point: that Nuon Chea wanted those officials to be removed *rather than killed*.⁵⁴ The Closing Order similarly ignores the numerous statements of well-placed witnesses that the Party center specifically instructed cadres not to harm Khmer Republic soldiers captured in battle.⁵⁵ Two of these witnesses, Meas Voeun and Phy Phoun, are cited by the CIJs a combined 121 times in the Closing Order, almost exclusively for inculpatory purposes.⁵⁶ Ignoring their clearly exculpatory statements, the Closing Order wrongly concludes that Nuon Chea is criminally responsible for, and therefore intended the commission of, widespread executions of former Lon Nol soldiers and officials.
37. In another example, the CIJs failed to consider evidence of pre-1975 context, which as the Defence has explained in numerous RIAs, was crucial to Nuon Chea’s ability to defend against the forced transfer charges.⁵⁷ Although the CIJs nominally responded to these RIAs in part, the relevant issues were almost entirely ignored in the Closing Order. Living conditions in Cambodia prior to 1975 were badly misrepresented,⁵⁸ and not a single word was spoken about the massive US bombing campaign and its singular effect on the state of the country as of April 1975.⁵⁹ As the Defence was prohibited from otherwise undertaking its own investigations,⁶⁰ a three-year investigation concluded without any substantive examination of the Defence’s primary exculpatory theories in relation to the crimes which would later form the core of Case 002/01.⁶¹

D. Fair Trial Violations

38. The trial phase of Case 002 failed to remedy any of the prejudice arising from the judicial investigation. Instead, the procedures adopted by the Trial Chamber introduced

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numerous additional deficiencies in the proceedings, often in ways that compounded the shortcomings of the investigation.

39. Past Defence filings have thoroughly canvassed the fair trial standards applicable to this case, which are developed herein as appropriate. In general terms, relevant safeguards include Nuon Chea's right to be presumed innocent until proven guilty;⁶² to present and participate meaningfully in his defence;⁶³ to request and examine witnesses 'under the same conditions as witnesses against him';⁶⁴ to present evidence substantiating Nuon Chea's legal claims and to raise defences throughout the trial;⁶⁵ and to be tried by an independent and impartial tribunal.⁶⁶ These rights have broad acceptance in Cambodian and international law and in domestic jurisdictions throughout the world.⁶⁷

i – Violations of Nuon Chea's right to present exculpatory evidence

40. The Chamber's refusal to call crucial witnesses, admit documents, and allow relevant and exculpatory lines of questioning prevented the Defence from exploring key exculpatory theories. Although the Defence filed detailed requests to introduce evidence, rulings from the Chamber were generally conclusory and unreasoned. In some cases, it was apparent that the decisive factor in the Chamber's decisions was the influence of the RGC, and the absence of meaningful judicial independence at the ECCC. The Co-Prosecutors were, at times, oddly complicit in that regard.

██████████ *and other high-ranking members of the CPP*

41. The Chamber refused to call numerous high-ranking members of the CPP. The most serious manifestation concerns the Chamber's persistent refusal to call the most important witness in Case 002/01, ██████████. The Defence has sought the appearance of ██████████ in six separate written filings and numerous oral submissions before the Chamber, including as a character witness.⁶⁸ In these requests, the Defence articulated with specificity its reasons for seeking ██████████ appearance. The Chamber refused three of these requests without reasons and failed to respond to three others.⁶⁹
42. As the Defence has demonstrated in past filings before this Chamber, ██████████ is the most important fact witness in relation to both key aspects of the trial: the alleged executions at Tuol Po Chrey and the evacuation of Phnom Penh. In regards to Tuol Po Chrey, the only direct evidence of Nuon Chea's intent in relation to the crimes charged at Tuol Po Chrey is ██████████ claim in a statement given to Ben Kiernan that Nuon Chea specifically instructed cadres not to kill former Khmer Republic soldiers and officials.⁷⁰ By itself, ██████████ statement raises a reasonable doubt as to Nuon

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Chea's criminal responsibility; had ██████████ been heard at trial, his evidence would have ensured that this reasonable doubt was firmly established.

43. Further, ██████████ is the senior-most military official to have participated in the evacuation of Phnom Penh, arriving at Independence Monument in that capacity at 9 a.m. on 17 April 1975.⁷¹ No witness of comparable stature appeared before this Chamber, and not one witness was able to testify to command structures in place above the level of the zone military. As the deputy commander of one of the three divisions making up the East Zone army, ██████████ is uniquely situated to describe the relationship between the Standing Committee and the zone-based military forces. Had he appeared in Court, he would have affirmed that the Standing Committee had no effective control over the troops responsible for liberating and evacuating Phnom Penh, and that no orders to commit criminal acts were forthcoming from Nuon Chea.
44. ██████████ is not the only witness critical to Case 002/01 shielded by RGC protection; the same applies to ██████████ and ██████████. As detailed further in section VII-B, *infra*, both witnesses claim to possess first-hand knowledge of the intent of the Party center in relation to the treatment of former soldiers and officials of the Khmer Republic. The appearance of these witnesses at trial would have further corroborated ██████████ testimony that Nuon Chea did *not* seek the execution of former soldiers and officials of the Khmer Republic.⁷²
45. Every branch of the Tribunal understood the relevance of these witnesses' testimony to the proceedings. The international co-investigating judge summonsed all three men to appear as witnesses in the investigation.⁷³ The International Co-Prosecutor supported the summons and encouraged the CIJs to issue an order to the judicial police to compel their presence before the OCIJ.⁷⁴ Even though the witnesses openly refused to comply with those summonses,⁷⁵ the CIJs chose to rely on prior written statements in the Closing Order – exclusively for inculpatory purposes⁷⁶ – without having had any opportunity to conduct their own examination. Similarly, both the civil parties and Co-Prosecutors relied on partial written records of both witnesses' statements for inculpatory purposes, and put those statements into evidence before the Chamber.⁷⁷
46. As the international judges of the Pre-Trial Chamber acknowledged, the failure of these witnesses to appear 'prevented [Nuon Chea] from obtaining possible advantage that may emerge from the testimony of [these] Officials.'⁷⁸ The Chamber nevertheless failed not only to secure their appearance, but also to permit discussion of the summonses they ignored or the Trial Chamber's failure to include them on its witness list.⁷⁹ Attempts to discuss the role of ██████████ and his exculpatory statements during his interview with Ben Kiernan were routinely rebuffed.⁸⁰ This, coupled with the Chamber's

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acquiescence in the use of their statements for inculpatory purposes, amounts to a serious infringement of Nuon Chea's right to a fair trial – and confirms the Trial Chamber's continued willful blindness of the RGC's interference at the Tribunal.

47. The Trial Chamber's blanket refusal to summons witnesses relevant to the Defence case also encompassed other witnesses connected to the RGC, including [REDACTED] and [REDACTED].⁸¹ Both witnesses were senior ranking cadres in the Ministry of Foreign Affairs with close connections to Ieng Sary; indeed, the Co-Prosecutors' conceded their 'evidentiary value in relation to Ieng Sary'.⁸² The Nuon Chea defence has argued that, due to their position of authority in the regime, their testimony would prove relevant and exculpatory as to Nuon Chea as well.⁸³ Yet, the Chamber denied both Ieng Sary's and Nuon Chea's requests to hear these witnesses.

Rob Lemkin

48. The Chamber refused to summons Rob Lemkin or attempt to obtain exculpatory material in his possession.⁸⁴ As the Chamber recalls, the Defence received an unsolicited email from Lemkin, co-director/producer of the films *Enemies of the People* and *One Day at Po Chrey*, explaining that the broader footage in his possession from which those films were cut establish that (i) the crimes allegedly committed at Tuol Po Chrey were not ordered by the Party center and (ii) according to Nuon Chea, a military tribunal was held prior to the execution of the senior-most officials of the Khmer Republic. The Defence requested the Chamber to make one simple inquiry concerning the nature of that information and/or summons Lemkin to appear as a witness.⁸⁵ The Chamber refused to do either.
49. Although the Chamber issued a reasoned decision in this instance, its reasoning was wholly unpersuasive. The Chamber observed that Lemkin has previously refused to cooperate with the Tribunal or provide the relevant material.⁸⁶ Yet Lemkin himself volunteered the existence of the information the day before the Defence brought the issue to the attention of the Chamber. The Chamber's concern that Lemkin *might* not respond to a hypothetical investigation negates the purpose of that investigation, that is, to assess whether relevant evidence can be obtained. The Chamber also noted that Nuon Chea has previously declined to waive the 'promise of confidentiality' given to him by Thet Sambath or to inform the Chamber that footage before the Chamber omits Nuon Chea's exculpatory statements. Those facts are irrelevant to Lemkin's claims in regard to Tuol Po Chrey, which are unrelated to Nuon Chea's statements to Thet Sambath. It is furthermore unrealistic to expect Nuon Chea to have remembered every word of his conversations with Thet Sambath beginning more than 10 years before the video was tendered into evidence.

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50. It is apparent to the Defence that the Chamber's real reason for declining to seek the original material was not the risk that Lemkin might *refuse* to cooperate but that he might *agree*. The Chamber indicated as such: 'considering the frail health of the Accused', Lemkin's cooperation with an investigation might place 'timely delivery of the judgement' at risk.⁸⁷ This reasoning is perplexing and disappointing: the Chamber never doubted the likelihood that Lemkin is in possession of exculpatory evidence, and is apparently willing to forgo that evidence in its rush to secure a verdict. It seems that the issuance of a judgment – any judgment – is more important than what that judgment ultimately says.

Pre-1975 context

51. From the beginning of the judicial investigation, the Defence maintained that a comprehensive narrative of the circumstances surrounding the Cambodian socialist revolution was essential to the substance of Nuon Chea's defence.⁸⁸ Assessing CPK policy and Nuon Chea's conduct cannot be (and should not have been) divorced from the context of how and why events during the Democratic Kampuchea era occurred. As noted above, the CIJs failed to give this question any serious consideration.⁸⁹
52. The Trial Chamber proved even less responsive. Over the course of the trial, the Defence relentlessly pursued witness testimony in relation to pre-1975 context, including the food and security situation in Phnom Penh and elsewhere in Cambodia in 1975 and the details of the American bombing campaign that ravaged the country. After identifying 132 such witnesses that could speak to these facts in its initial Rule 80 witness lists,⁹⁰ the Defence narrowed that list to 47 witnesses in February 2012⁹¹ and finally to six essential witnesses that September.⁹²
53. When the Defence sought the opportunity to provide reasons for seeking this testimony orally, the Chamber repeatedly refused.⁹³ Accordingly, the Defence filed an unsolicited, written, reasoned request, to which the Chamber failed to respond.⁹⁴ Five months later, the Defence supplied a second reasoned request; this time the Chamber did respond, dismissing nearly all the relief sought without reasons.⁹⁵
54. In the aggregate, the Defence requests identified nearly a dozen reasons why evidence of pre-1975 context was legally relevant to the case. These include, among others, whether deaths attributed to the evacuation of Phnom Penh were caused by the evacuation itself or by pre-existing conditions of starvation; whether the evacuation of Phnom Penh was justified by a 'ground permitted under international law' (or, as the Defence formulated it more recently, whether under the circumstances the evacuation was of sufficient severity to constitute an other inhumane act⁹⁶); Nuon Chea's

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knowledge and intent in relation to the consequences of the evacuation; and the perceived ‘cruelty’ of the evacuation as a factor in sentencing in the event of a conviction.⁹⁷ As the Defence also noted in those requests, the relevance of historical context is firmly established at other international criminal tribunals.⁹⁸

55. Given the modest nature of the Defence request to call a small number of carefully selected witnesses vital to its case, the Trial Chamber’s decision not to hear any of these witnesses was a blatant abuse of Nuon Chea’s fair trial rights. Such testimony constituted the only opportunity the Defence had to *investigate*, let alone present, evidence before the Chamber. With no ability to call its own context-related witnesses, the Defence was required instead to examine witnesses sought by the Co-Prosecutors and chosen by the Trial Chamber. While these witnesses occasionally gave evidence of their own personal experiences in relation to subjects including the US bombing campaign or living conditions in Phnom Penh during that time period, none was able to testify to the systemic factors which motivated (and justified) the CPK’s conduct. Even under these circumstances, the Chamber sometimes prohibited the Defence from engaging in meaningful questioning in regards to the pre-1975 conditions in Cambodia and the impact they had over the beginning of the DK regime.⁹⁹

Imbalances in witnesses called

56. The prejudicial effect of these rulings was amplified by the overall imbalance in the respective parties’ opportunities to call witnesses. At the close of evidence, the Chamber had heard 75 substantive witnesses; of these, 35 were selected by either the Co-Prosecutors or the Civil Parties without a parallel endorsement by the Defence teams, while only four were selected by all the Defence teams *combined*.¹⁰⁰

Post-1979 context

57. The Chamber similarly prevented the Defence from exploring facts arising in the post-1979 period. This evidence was legally relevant to numerous issues in Case 002/01, including the treatment and collection of documents (later admitted at trial) by the PRK and Vietnam’s role in writing the history of the CPK to suit its political agenda. These questions are at the heart of the legitimacy and independence of the Tribunal, the authenticity of the evidence against Nuon Chea, and the inherent bias against the Accused caused by the inculpatory narrative fostered by the PRK from the moment the CPK was ousted from power.
58. Attempts to examine witnesses regarding Vietnam’s influence in Cambodia after Democratic Kampuchea,¹⁰¹ including the PRK’s redrafting of the Cambodian Constitution and Cambodian history books,¹⁰² and the ‘brainwashing’ of Cambodians

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with a view to influencing the accountability procedure for the CPK's alleged crimes,¹⁰³ were curtailed by the Chamber.¹⁰⁴ The Defence also sought to pursue exculpatory lines of questioning relating to deaths caused by the K-5 program, in support of its position that many deaths attributed to the CPK in fact occurred after 1979. This latter effort was blocked by the Chamber in a sequence of unreasoned decisions.¹⁰⁵ There is little doubt that these decisions were determined, in part or in full, by the absence of meaningful judicial independence at the ECCC.

59. By contrast, the Co-Prosecutors were regularly permitted to raise matters outside the ECCC's temporal or subject-matter jurisdiction.¹⁰⁶ When Defence counsel objected, the Chamber either overruled those objections,¹⁰⁷ or simply reminded the Co-Prosecutors to formulate questions more relevant to the facts.¹⁰⁸

ii – Violations of Nuon Chea's right to confront the evidence against him

60. *Prohibition on Impeachment Documents.* The Chamber effectively eliminated a fundamental strategy of cross-examination by prohibiting the use of any document not admitted into evidence for impeachment purposes. The Defence made countless attempts to highlight the difference between the admission of documents as substantive evidence and their use solely for impeachment purposes.¹⁰⁹ Instead of acknowledging this well-accepted distinction, the Trial Chamber insisted the Defence comply with rules meant for the admission of substantive evidence offered for the truth of its content.¹¹⁰
61. The effect of the rule adopted by the Chamber was to prohibit the use of any document for any purpose unless (i) it had been identified as potential material for admission into evidence months before the start of trial; or (ii) it satisfied the 'extremely high threshold' applicable to the admission of evidence after the start of trial.¹¹¹ The Chamber furthermore ruled that an application to admit new evidence must be made at least two weeks prior to the use of that evidence during in-court examinations.¹¹²
62. Nothing in the plain language or underlying rationale of Rule 87 or Cambodian law prohibits the use of documents solely for impeachment purposes.¹¹³ Indeed, Cambodian law places virtually no restrictions on the *admission* of documents into evidence¹¹⁴ even until the last day of trial.¹¹⁵ Neither was the Trial Chamber's position in conformity with any known system for impeachment in international law or the *ad hoc* tribunals.¹¹⁶ Prior notice is not required when the relevant material is intended to be used to challenge a witness' credibility, for the party intending to do so 'cannot know whether and on which basis it will seek to rebut evidence until the time when the witness testifies'.¹¹⁷
63. The Chamber's position was directly at odds with the position put forward by the Senior Legal Officer in 2011,¹¹⁸ and the parties' expectations – including those of the Co-

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Prosecutors.¹¹⁹ The Trial Chamber's implementation of this rule was furthermore unequal, as both the Co-Prosecutors and the Civil Parties made use of material not put before the Chamber prior to the advent of the rule in the spring of 2012.¹²⁰

64. The Chamber's reasoning in upholding the Rule 80 procedure lays bare the illogic of the scheme it adopted. In January 2011, the Chamber issued an order to file materials in preparation for trial ('Order to File Materials').¹²¹ The Chamber instructed the parties, *inter alia*, to provide a list of documents it sought to put before the Chamber.¹²² In its preliminary objections, filed on 25 February 2011, the Defence argued that the Order to File Materials was inconsistent with Cambodian law, which states that, 'unless it is otherwise provided by law, in criminal cases all evidence is admissible'.¹²³ The Defence argued that, pursuant to the ECCC Agreement, Cambodian procedural law controls except under limited circumstances, including 'where Cambodian law does not deal with a particular matter'.¹²⁴ Since Cambodian law has clear rules governing the admission of evidence at trial, international procedure did not apply.¹²⁵
65. The Chamber held that 'trials at the ECCC differ substantially from cases before ordinary Cambodian courts'.¹²⁶ On that basis, the Chamber upheld the Order to File Materials, which 'represent prevailing international standards.'¹²⁷ However, contrary to those international standards, the Chamber applied the Rule 80 procedure not only to documents tendered into evidence, but also to those used for impeachment purposes. The perverse consequence is that the Chamber adopted a stricter procedural scheme for the use of documents at trial than that which exists *either* under Cambodian law *or* the procedure of the international courts. Or indeed, so far as the Defence is aware, anywhere in the world.
66. In addition to having no legal basis, the Trial Chamber's decision was utterly unreflective of the realities of large-scale, complex criminal litigation. Even the Chamber's most flexible approach demanded that Defence teams provide potential impeachment documents weeks before a witness's actual testimony.¹²⁸ In light of the ongoing nature of preparation for cross-examination, and the reality that such preparation can only be finalized after a witness's direct testimony is heard, this requirement defied logic. Chaining the Defence to anticipated cross-examination weeks ahead of actual testimony 'simply made no sense',¹²⁹ and undermined Nuon Chea's right to challenge the evidence against him.
67. The impracticality of the Chamber's procedure is highlighted by the Defence's vain effort to comply with it. Over the last year of trial, the Defence attempted to begin preparation for cross-examination one month prior to the scheduled appearance of each witness. That effort was frequently not possible, as witness lists changed regularly and

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were often provided on very short notice. On other occasions, witnesses were scheduled and then cancelled.¹³⁰ In the only instance in which the Chamber granted a Nuon Chea Defence request pursuant to Rule 87(4) and the witness appeared for testimony, the Defence ultimately failed to make use of the admitted document.¹³¹ The reason was as predicted: because the document was identified in an abstract process weeks before a cross-examination strategy was finalized, it proved useless in practice.

68. *Review of Statements Prior to Testifying.* Nuon Chea's right to confront the evidence against him in open court was compromised by the Trial Chamber's decision to show witnesses, experts and civil parties their past recorded statements before testifying.¹³² Despite strenuous objections from the Defence that the practice would serve to coach and create memories in witnesses, experts and civil parties,¹³³ the Trial Chamber instituted the practice in order 'to avoid a waste of valuable in-court time should witnesses [...] need to reacquaint themselves with their prior statements or attest that they made these statements'.¹³⁴ The Chamber also rejected the Defence's request to exempt from this practice carefully selected witnesses called to testify on narrow subjects in dispute between the parties.¹³⁵ The Chamber never supported these decisions by reference to Cambodian or international law or practice, nor did it provide a rational decision in response to the Defence's numerous reasoned objections.
69. An invaluable purpose of cross-examination is to determine whether witness recollections remain consistent across time. Given the fact that the events in question took place more than thirty years before the interviews were conducted, real concerns existed as to the quality of the witnesses' memories. These concerns were aggravated considerably by the fact that, contrary to standard practice in civil law jurisdictions, Defence counsel was excluded entirely from the interviews from which these statements originated.¹³⁶ Cross-examination was therefore the first and only opportunity for the Defence to identify failings in witness memories and inconsistencies in their statements crucial to assessments of both reliability and probative value.¹³⁷
70. Faced with this impossible environment for the assessment of witness memory and credibility, the Defence requested that witnesses at least be asked what memories they had before being allowed to review their past statements.¹³⁸ Even this request was denied by the Chamber, laying bare the fact that the Trial Chamber's desire for efficiency – and predictability of the witnesses' testimony – trumped the Accused's right to meaningful cross-examination.
71. *Chain of Custody.* Nuon Chea's fair trial rights suffered additional harm with the Chamber's admission of DC-Cam documents whose chain of custody was never properly investigated or established. Concerned with their origin, authenticity, and

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reliability, the Defence first requested the OCIJ to verify their origin and chain of custody. Despite the reliance placed on them in the Closing Order, such requests were ignored by the CIJs.¹³⁹ New and more serious fears concerning their authenticity and origin came to light after the testimony of DC-Cam employees Van Than Dara and Youk Chhang revealed flaws in their chain of custody.¹⁴⁰ These concerns prompted the Defence's request that the Chamber order DC-Cam to provide relevant chain of custody and provenance information of DC-Cam documents.¹⁴¹ The Chamber denied the request,¹⁴² saddling the Defence with the mis-placed burden¹⁴³ of assessing the authenticity of the documents.¹⁴⁴ However, unsuccessful attempts to access the documents left the Defence with no way to conduct even a cursory review of the documents or engage in any meaningful assessment of their origins and chain of custody.¹⁴⁵

72. *Leading Questions Derived from Statements.* The Chamber aggravated the prejudice already experienced by the Accused by permitting the Co-Prosecutors to examine witnesses by first reading aloud excerpts of their prior statements and then asking them whether the statement read was true. The Co-Prosecutors often conducted entire direct examinations consisting of little more than these superficial exchanges.¹⁴⁶ The Defence is unaware of any civil law system in which this manner of proceeding is allowed as a matter of course. The Co-Prosecutors acknowledged the logic of the Defence's objections to this practice even while they invoked the Chamber's past rulings as a basis for continuing to use it.¹⁴⁷ The Chamber failed to cite a single legal authority, national practice or international practice in support of it.
73. *Prohibition on Exploring the CIJs' Investigative Practices.* The Trial Chamber further curtailed Nuon Chea's rights by preventing the Defence from exploring the flawed investigatory practices of the OCIJ. The Defence identified serious irregularities in OCIJ investigative procedures, including the manner in which witness interviews had been conducted and generated,¹⁴⁸ calling into question the validity of the overwhelming majority of the testimonial evidence proffered against Nuon Chea.¹⁴⁹ When the Defence attempted to explore these concerns at trial, it met with resistance and hostility from the Trial Chamber.
74. There can be no question that the investigation of Case 002 was marred with errors and oversights, including the manner in which witness interviews were conducted and documented.¹⁵⁰ The Defence began to sound the alarm regarding these irregularities from the beginning of the case: from August 2009 onwards, the Defence submitted more than a dozen motions and Requests for Investigation Action regarding irregularities in investigative procedures.¹⁵¹ As discussed *supra*, these irregularities

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included material inconsistencies between written and audio records of key witness interviews. Yet these requests fell on deaf ears.¹⁵²

75. The only remaining avenue open to the Defence for exposing these irregularities was the cross-examination of witnesses at trial. Indeed, the Pre-Trial Chamber, affirming the OCIJ, instructed the parties that issues such as these could and should be raised during the cross-examination of relevant witnesses at trial.¹⁵³ The Trial Chamber further found that, ‘the Nuon Chea Defence will in any event have the further safeguard of being able to question any witness at trial on these alleged discrepancies, where these alleged inconsistencies are demonstrably relevant either to assessing the probative value of the evidence or necessary to safeguard the fairness of trial proceedings.’¹⁵⁴ However, when the Defence teams attempted to follow this advice, they were rebuffed at all turns.
76. In particular, the Defence was prohibited from exploring whether witnesses had been fed information,¹⁵⁵ coached,¹⁵⁶ shown documents,¹⁵⁷ coerced, intimidated or influenced,¹⁵⁸ misunderstood or misquoted,¹⁵⁹ or interviewed multiple times without audio records being prepared.¹⁶⁰ Attempts to question witnesses regarding fears that OCIJ investigators had potentially fed answers to and manipulated a witness,¹⁶¹ calling into question the reliability of the record of witness interview summarizing the witness’s responses, were denied. The Chamber denied Defence attempts to cross-examine a witness as to whether OCIJ investigators has said anything ‘off the record’ to the witness during his interview, despite the fact that it had previously been revealed that investigators had done so with another witness living in the same town, who was a DK-era colleague of the current witness, and who had been interviewed 20 minutes prior to the witness being cross examined.¹⁶² Defence efforts to question a witness regarding an incident in which the witness was heard to ask OCIJ investigators if he could look at his notes before responding to a question were also denied.¹⁶³ The prejudice from these decisions was exacerbated by the unreliability of witness memory, which, as already discussed, is a significant problem at this Tribunal.
77. The Trial Chamber further prevented counsel from asking Stephen Heder, a former five-year veteran employee of the OCIJ, a single question about the judicial investigation. Heder is in possession of first-hand knowledge of the CIJs’ investigative practices and witnessed international co-investigating Judge Lemonde’s alleged instruction to search only for inculpatory evidence.¹⁶⁴ Counsel’s questions satisfied all of the requirements for the admission of evidence under Rule 87(3): the questions were relevant and Heder is obviously a suitable witness through which to introduce these facts into evidence. Standard practice at other international courts not only permits

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counsel to ask investigators about the circumstances of the interviews they took; such questions are the exact purpose for which those witnesses are called to testify. Yet the Chamber gave no reasoning for its decision, beyond the bare fact that the questioning concerned the judicial investigation,¹⁶⁵ as if that constituted a ground for exclusion under the Rules.

78. *Prohibition on Confrontation with Other Witnesses' Statements.* The Chamber's shifting set of rules related to confronting witnesses with third-party statements again compromised the ability of the Defence to conduct meaningful cross-examinations. The Chamber initially barred the Defence from confronting testifying witnesses with the details of third-party witness statements,¹⁶⁶ only gradually reversing its original ruling.¹⁶⁷ The most damaging manifestation of this decision came at a critical moment of the Case 002/01 trial, with the cross-examination of Duch. The Defence repeatedly attempted to confront Duch with third-party witness statements in direct contradiction to his in-court testimony.¹⁶⁸ The Chamber ruled that 'Counsel is not allowed to cite the statement by another witness and put before [the testifying] witness to comment.'¹⁶⁹
79. Although this decision would have damaged the cross-examination of any witness, the harm was amplified by the importance of Duch's testimony, in light of the fact that he had testified extensively about Nuon Chea's role and responsibilities.¹⁷⁰ Consequently, the opportunity to challenge Duch's testimony was of paramount importance. Even more egregious was the Chamber's later decision allowing parties the opportunity to do exactly what it had prohibited the Defence from doing with Duch: confront witnesses with third-party witness statements.¹⁷¹

iii – Other manifestations of political interference in the work of the tribunal

80. In addition to the Chamber's refusal to admit exculpatory testimonial and documentary evidence, the RGC's interference in the work of the Tribunal has manifested in numerous other ways¹⁷² -- proving that judges at the ECCC are not independent, and therefore a fair trial is impossible *as such*. There is no requirement that an Accused subject to trial by a Tribunal beholden to the government establish specific prejudice. The right to trial by an independent and impartial tribunal is absolute.¹⁷³
81. Since the Tribunal's inception it has become objectively indisputable that officials and agents of the RGC have and continue to interfere with the work of the court¹⁷⁴ in a manner which impacts directly on national staff.¹⁷⁵ The Defence has repeatedly voiced concerns regarding political interference¹⁷⁶ in relation to, for example: (i) the effort of RGC officials to prevent the appearance of the late King Father Norodom Sihanouk as a witness¹⁷⁷; (ii) the failure of six high-ranking government officials to appear before

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the CIJs pursuant to validly issued summonses, and the role of [REDACTED] and other members of the RGC therein¹⁷⁸; and (iii) the Prime Minister's effort, aided and abetted by various members of the RGC, to thwart Cases 003 and 004.¹⁷⁹ The Defence furthermore raised concerns regarding the complicity of the National Co-Prosecutor and Co-Investigating Judge You Bunleng,¹⁸⁰ and formally called upon Judge Bunleng's to resign.¹⁸¹ Irrefutable proof of the RGC's interference came with Judge Kasper-Ansermet's resignation, accompanied by his ten-page note detailing the RGC's persistent interference in his work. As Judge Kasper stated: 'there exist[s] within the ECCC such serious irregularities, dysfunctions, and violations of proper procedures that endanger and impede due process of law.'¹⁸²

82. Thus, no serious question exists that the proceedings against Nuon Chea are not, as required by law, conducted by an independent and impartial tribunal. In addition to causing a *per se* violation of Nuon Chea's right to a fair trial, the influence of the RGC over proceedings at the ECCC has caused direct prejudice to Nuon Chea. From the start of the Case 002 proceedings, officials and agents of the RGC have improperly voiced their opinion on the guilt of the Accused. In January 2012, at an international press conference, [REDACTED] [REDACTED] [REDACTED] [REDACTED] publicly announced that Nuon Chea was 'deceitful', a 'killer' and a 'perpetrator of genocide'.¹⁸³ The Defence immediately requested the Trial Chamber to publicly condemn the Prime Minister's characterization of Nuon Chea as a *genocidaire* and demand that he refrain from making such comments in the future.¹⁸⁴ The Defence contended that such commentary violates Nuon Chea's fundamental right to a presumption of innocence.
83. Instead of taking active steps to remedy that bias, the Trial Chamber answered the Defence request with silence, allowing the Prime Minister's comments to fester. More than a week later, the Trial Chamber stated that it 'preferred not to make any comment to react'.¹⁸⁵ With another week passing, the Trial Chamber still had not publicly condemned the [REDACTED] assertions of Nuon Chea's guilt, managing only to muster a statement that the process of determining guilt or innocence was its sole responsibility and that it would not take public statements into account.¹⁸⁶ Amidst the Chamber's toothless platitudes, [REDACTED] continued to publicly air his belief in Nuon Chea's guilt.¹⁸⁷ With no substantive remedy forthcoming,¹⁸⁸ the Defence turned to the Supreme Court Chamber.¹⁸⁹ Despite agreeing that [REDACTED] statements had the potential to violate Nuon Chea's presumption of innocence,¹⁹⁰ the SCC merely affirmed the Trial Chamber's empty words,¹⁹¹ not wanting to 'sanction or embarrass [REDACTED]'.¹⁹²

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84. The Defence was again frustrated by the Trial Chamber when it sought to bring to public attention statements prejudicial to Nuon Chea made by Minister of Foreign Affairs ██████████.¹⁹³ The Chamber cut off counsel's microphone and ruled that the issue could be raised only in written form.¹⁹⁴ The Chamber then refused to investigate the effect of ██████████ statements on witnesses appearing before the Chamber,¹⁹⁵ even after one witness recanted his prior testimony in an apparent direct reaction to ██████████ ██████████ intimidation.¹⁹⁶
85. Other manifestations of RGC interference include the Trial Chamber's refusal to allow discussion of bringing members of the RGC to testify or of the roles of high-ranking members of the CPP in the DK period. As already noted, discussion of ██████████ role, even when directly exculpatory, was often disallowed.¹⁹⁷ Questions regarding ██████████ involvement in the CPK prompted the Trial Chamber to direct counsel to move on.¹⁹⁸ The Chamber also blocked attempts by the Defence to discuss ██████████ role during the DK period.¹⁹⁹ The Trial Chamber even directed a witness not to answer a question regarding 'the degrees of separation between the alleged crimes of yesterday and the leaders of Cambodia today.'²⁰⁰
86. Such overwhelming evidence of interference prompted commentary and concern from the international community. The Open Society Justice Initiative ('OSJI')²⁰¹ and other veteran tribunal monitors called for the United Nations and donors to seriously examine the institutional damage caused by RGC interference and reconsider its commitment to the Tribunal.²⁰² Yet the Trial Chamber, like the CIJs and PTC before it, declined to take any remedial action.²⁰³

iv – Adoption of *ultra vires* procedural schemes

87. In numerous instances described above the Trial Chamber acted beyond the scope of the authority conferred upon it by the ECCC Law in adopting *ad hoc* procedural schemes with no grounding in any applicable law. Although the Defence maintains its position that the Internal Rules are themselves unconstitutional,²⁰⁴ the Chamber repeatedly acted beyond the scope even of that authority.
88. The rules adopted by the Trial Chamber *ultra vires* its authority include the procedural scheme employed to govern the use of documents at trial²⁰⁵ and the restrictions imposed on the Defence ability to explore flaws in the judicial investigation at trial.²⁰⁶ Also *ultra vires* the Chamber's authority is the scheme it adopted for the purpose of determining the admissibility of pre-trial witness statements without the appearance of the author for cross-examination.²⁰⁷

v – Systematic failure to reason decisions

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89. The Chamber systematically failed to reason its decisions, providing no or virtually no reasoning in support of its: (i) refusal to allow counsel to use documents for impeachment purposes;²⁰⁸ (ii) refusal to hear the small selection of witnesses the Defence deemed critical to articulating its defence;²⁰⁹ (iii) decision to allow witnesses to review past statements immediately prior to testifying;²¹⁰ and (iv) decision to prohibit parties from confronting testifying witnesses with the prior statement of a third-party witness.²¹¹ The Chamber's reasoning in relation to the Defence's various complaints concerning political interference was systematically weak and evasive.²¹²
90. The right to a reasoned decision is well established in both international criminal practice and the law of this Tribunal.²¹³ Indeed, the Supreme Court Chamber has previously chastised this Chamber for its failure to provide adequate reasoning, including in relation to Defence motions as to political interference.²¹⁴

vi – Prosecutorial bias

91. The Chamber has systematically violated the equality of arms by interpreting its frequently shifting procedural rules in the prosecution's favour, including by: (i) regularly permitting the Co-Prosecutors to raise matters outside the ECCC's temporal or subject-matter jurisdiction, despite the Chamber's denial of Defence requests to do the same;²¹⁵ (ii) acquiescing in the use of statements of ██████████ and ██████████ for inculpatory purposes, while disallowing exculpatory questions relating to the same substance;²¹⁶ (iii) permitting the Co-Prosecutors and the civil parties to make use of material not 'put before' the Trial Chamber;²¹⁷ and (iv) allowing the Co-Prosecutors to confront witnesses with third-party statements after weakening the Defence's cross-examination of Duch with their prohibition of the same.²¹⁸ Such unequal treatment created a fundamentally unfair environment where Nuon Chea's case was presented at a substantial disadvantage vis-a-vis the OCP.

II. EVIDENTIARY ISSUES OF GENERAL APPLICATION

92. As a consequence of these systemic flaws, there are serious questions surrounding the reliability, probative value and comprehensiveness of the material in evidence. Certain types of evidence must, however, be treated with special caution. These categories are described herein before turning to the key factual issues in section III, *infra*.

A. Evidence Outside the Scope of the Trial

93. On 22 September 2011, the Trial Chamber issued an order severing the Case 002 Closing Order into a series of sequential trials ('Severance Order').²¹⁹ On 18 October 2011, the Chamber issued a decision denying the Co-Prosecutors' request for reconsideration of the Severance Order ('Reconsideration Decision').²²⁰ The Chamber attached to that decision an annex listing the paragraphs of the Closing Order at issue in

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Case 002/01 ('Severance Annex'). That annex was subsequently modified, most recently in October 2012.²²¹

94. The Defence has previously articulated its position concerning the probative value of evidence outside the scope of Case 002/01 in oral submissions before this Chamber and in written submissions before the Supreme Court Chamber, which it incorporates herein by reference.²²² As the Defence argued therein, the only evidence on which the Chamber is entitled to rely in relation to the existence of policies beyond the scope of Case 002/01 is that which goes directly to the intentions and activities of the Party center. These include minutes of Standing Committee meetings, publications issued by the Party center such as Revolutionary Flag and Revolutionary Youth, and testimony concerning the acts and conduct of members of the Standing Committee.
95. For three distinct reasons, no other evidence may be considered. First, the Chamber has repeatedly indicated as such to the parties. Second, facts 'lower down the line'²²³ were systematically excluded from live evidence given before the Chamber.²²⁴ Reliance on documentary evidence in relation to those facts would violate the right of the Accused to confront the evidence against him.²²⁵ Third, an arbitrary selection of evidence purportedly showing individual manifestations of an alleged CPK policy is not probative of the existence of such a policy.
96. From the outset of the trial, the Co-Prosecutors recognized that, pursuant to the Severance Annex, the only evidence admissible in relation to policies outside the scope of Case 002/01 concerned direct evidence of the roles and responsibilities of the Accused. Thus, they noted a potential 'inconsistency between' the Reconsideration Decision and the Severance Annex and asked the Chamber for clarification.²²⁶ The Chamber reaffirmed its holding that 'no examination of the implementation' of those policies was contemplated and that Case 002/01 will include only a discussion 'in general terms' of 'the manner in which the polic[ies were] developed.'²²⁷ It follows that the only evidence admissible in relation to policies outside the scope of Case 002/01 is that which directly concerns the participation of the Accused in the formulation of the alleged policies of Democratic Kampuchea.
97. The Chamber has repeatedly indicated that evidence of individual crime sites outside the scope of the trial is inadmissible for any purpose. The Severance Order states: 'No co-operatives, worksites, security centres, execution sites or facts relevant to the third phase of population movements will be examined during the first trial.'²²⁸ The Severance Annex indicates that no factual findings concerning crimes alleged beyond population movement phases I and II and Tuol Po Chrey would be considered.²²⁹ The

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the scope of Case 002/01 only for the purpose of administrative, communication or military structures,²³⁰ and disallowed any such questions where they concerned the substance of the crimes alleged.²³¹

98. The Chamber similarly indicated that evidence concerning ministries and national-level administrative structures was relevant merely as a ‘foundation’ for future trials and that the role of these structures in either policies or crimes outside the scope of Case 002/01 was not under consideration.²³² The allegations concerning ministries included in the Severance Annex are limited to two paragraphs which state the names and putative heads of ten ministries.²³³ Every allegation which concerns the role of any ministry in any crime or policy outside the scope of Case 002/01 was excluded from the trial.²³⁴
99. A comparison between the factual allegations concerning ministries in the Closing Order’s general discussion of Nuon Chea’s role (included in Case 002/01) and those contained in its analysis of Nuon Chea’s alleged participation in the common purpose (outside the scope of Case 002/01²³⁵) demonstrates this clearly. The allegations concerning ministries in paragraphs 862 through 894 of the Closing Order concern Son Sen’s position as the Minister of Defence,²³⁶ Nuon Chea’s alleged responsibility for the Ministries of Propaganda, Education, Social Affairs and Culture,²³⁷ and Yun Yat’s role in the Ministry of Propaganda.²³⁸ No alleged crimes or criminal policies are mentioned. By contrast, extensive criminal conduct is alleged in relation to various ministries in connection with Nuon Chea’s alleged participation in the alleged policy of killing enemies.²³⁹ Similar conclusions arise from an analysis of the Closing Order’s treatment of the role of Khieu Samphan.²⁴⁰
100. The same is true of the national administrative structure. The Closing Order’s discussion of the national administrative and communication structures describes reporting relationships and means and methods of communications, but says nothing about the role of either in implementing any alleged CPK policy. The word ‘enemy’ appears only in connection with communications delivered to alleged Party center organs and Party center publications such as Revolutionary Flag and Revolutionary Youth.²⁴¹ Questions about national level structures were permitted where relevant to structure and prohibited in relation to substance beyond the scope of Case 002/01.²⁴²
101. Finally, the Defence notes, as it previously has before the Chamber, that the existence of substantial variation across Democratic Kampuchea is a feature of that regime routinely described by observers. Francois Ponchaud testified to this before this Chamber.²⁴³ Similarly, Philip Short testified that policies were established by the Party center pursuant to which there were widespread discrepancies in the manner of their implementation.²⁴⁴ It follows that determining whether individual practices formed part

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of CPK 'policy' requires an assessment of the extent to which those practices were consistent across the regime. That assessment cannot be taken for granted, nor is it generally possible in on the basis of the evidence before the Chamber in relation to facts outside the scope of Case 002/01.

B. Witness Statements Untested by Cross-Examination

102. The issue of the standards applicable to the admission of witness statements without cross-examination of the author has been litigated by the parties, and decided upon by the Chamber.²⁴⁵ The Defence emphasizes that out-of-court witness statements admitted without cross-examination should generally be accorded limited probative value. International practice recognizes the principle of 'orality', pursuant to which evidence is generally to be given in open court.²⁴⁶ That principle is enshrined in Internal Rule 79(6) and Article 316 of the Cambodian Code of Criminal Procedure, both of which recognize that 'trial hearings shall be conducted in public'. The Trial Chamber has accordingly instructed the parties as follows:

Remember that the evidence can be admitted is valuable when it is debated in front of the Chamber, so the Chamber can consider it, can use it. The evidence is not valuable if it is just stored in the case file, so this is important for us to conduct the hearing to hear the debate.²⁴⁷

103. In relation to witness statements specifically, the Chamber has repeatedly recognized that the probative value of such evidence is 'limited' where the author has not appeared for cross-examination.²⁴⁸ Certain categories of witness statements admitted by the Chamber in the Second Statements Decision are especially inconsistent with the principle of orality and are entitled to zero probative value.
104. First, the Chamber admitted evidence of the acts and conduct of the accused where such evidence also constitutes proof of other relevant facts. The authority cited by the Chamber in support of that conclusion, which included three opinions of the ICTY Appeals Chamber, establish that the use to which such evidence may be put is extremely circumscribed. The first opinion, from the ICTY Appeals Chamber in *Prlić*, concerned the special case of the prior statement of an accused, for which a distinct provision exists in the rules of that Tribunal. The Chamber concluded that neither Rule 92*bis* nor 92*quater* of the ICTY RPEs applied, initiated a detailed analysis of the circumstances under which the statement was taken, and concluded that admission was appropriate under the circumstances.²⁴⁹ The other two opinions, both arising from the *Milošević* case, concern witnesses who appeared for cross-examination and are therefore inapposite on the facts.²⁵⁰ Both decisions opined in *dicta* that admission of a statement was possible independent of the Rule 92*bis* scheme where an alternate ground for admission exists.²⁵¹

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105. The common feature of the *Prlić* decision and the *dicta* in *Milošević* is that both explicitly concerned the admission of evidence beyond the framework provided for in Rule 92*bis*, 92*ter* and 92*quater* of the ICTY RPEs. Indeed, the premise of the *Prlić* decision was that evidence of acts and conduct of the accused was appropriate precisely because ICTY Rule 92*bis* did not apply.²⁵² While this Chamber is not in principle bound to follow the legislative scheme of another tribunal, the rules provided for therein constituted the only basis for admission articulated in the First Statements Decision. The Chamber cited no legal authority in that decision other than Rules 92*bis*, *ter* and *quater* of the ICTY and SCSL RPEs, Rule 92*bis* (A) through (E) of the ICTR RPEs, and the jurisprudence of the ICTY in connection with those rules.²⁵³ No authority cited in the Second Statements Decision supports the admission of evidence of acts and conduct of the accused within that framework.
106. The Chamber's holding in the Second Statements Decision that evidence of acts and conduct of the accused amounts to a substantial departure from the First Statements Decision; the finding that this evidence is admissible because grounds for the admission of written statements exist at the *ad hoc* tribunals beyond Rules 92*bis*, *ter* and *quater*, therefore introduces a new basis for the admission of such evidence. The Defence respectfully submits that no authority exists at any international criminal tribunal for the wholesale admission of evidence of acts and conduct of the accused contained in written statements merely because such evidence also goes to proof of other relevant facts.²⁵⁴ Accordingly, the use to which such evidence may be put must derive from identifiable rules applicable before this Tribunal, including Cambodian domestic law, the Internal Rules and, where permissible, 'procedural rules established at the international level.'²⁵⁵ That evidence is otherwise entitled to zero probative value.
107. Second, for all of the reasons articulated in its prior submissions, the Defence submits that evidence contained in statements tendered which concerns facts proximate to the accused or of a live issue between the parties must be accorded zero probative value.²⁵⁶ The Defence respectfully submits that in relegating these questions to 'technical and detailed requirements' of the ICTY legal scheme which do not constitute a standard of international procedure, the Second Statements Decision grossly misstated the law.²⁵⁷ Although the structure of the provisions at the ICTY, ICTR and SCSL differ slightly, at all three Tribunals courts are required to consider the proximity of the evidence tendered to the accused and its importance to the case as a whole prior to consenting to admission without cross-examination.²⁵⁸ Indeed, whereas the Co-Prosecutors' original request to admit statements encouraged the Chamber to consider the standards in place at the ICTY,²⁵⁹ the Defence's Preliminary Response broadened the analysis to

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incorporate the rules and case law of all three tribunals.²⁶⁰ In so doing, the Defence demonstrated the consistency of these requirements across international(ised) courts.²⁶¹ Further evidence of the importance of these considerations to the analysis is found in the First Statements Decision, in which the Chamber cited jurisprudence from the ICTY elaborating these factors as preconditions to admission in the context of its description of the standards applicable before the ECCC.²⁶²

108. The Defence notes that the Chamber relied on a single decision of the ICC Appeals Chamber in the *Bemba* case in support of its holding that the ICTY RPEs concerning the admission of witness statements do not constitute a standard of international procedure and that such rules should not therefore ‘automatically’ apply at other international courts.²⁶³ The holding in *Bemba*, however, says nothing about the standards applicable to the admission of witness statements. It holds, in relation to a different proposition, that the standards in place at the ICTY, ICTR and SCSL do not trump the express language of the ICC Statute.²⁶⁴ That holding is irrelevant here, where the Chamber has explicitly sought guidance in the rules of those courts for the purpose of articulating the standards applicable at the ECCC.²⁶⁵
109. Moreover, the only findings in *Bemba* which do concern the admission of witness statements directly support the Defence’s position on the applicable standards. The ICC Appeals Chamber rejected the lower court’s contention that an individualized evaluation of each witness statement was not required prior to admission and reversed its ‘wholesale’ admission of witness statements without an ‘item-by-item’ assessment.²⁶⁶ The Appeals Chamber then opined that such an assessment would require consideration of: ‘(i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence.’²⁶⁷ Those standards are almost identical to the analysis urged upon the Trial Chamber by the Defence, in particular, in relation to whether statements contain evidence of a ‘live issue’ between the parties and whether they are cumulative to, in the sense of corroborating,²⁶⁸ live evidence heard at trial.²⁶⁹ *Bemba* therefore establishes that these standards apply not only at the ICTY, ICTR and SCSL, as the Defence has previously shown, but also at the ICC.
110. For all of the above reasons, the Defence submits that, prior to according any probative value and weight to evidence contained in the statement of a witness not subject to cross-examination, the Chamber must: (i) in relation to evidence of the acts and conduct of the accused, identify a specific principle for admission beyond the

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framework provided for in the First Statements Decision; and (ii) consider whether that evidence goes to proof of a live issue between the parties or of conduct proximate to the accused, or is corroborative of live evidence given at trial.

C. Case 001 Transcripts

111. The Defence's observations in relation to witness statements apply equally to the Case 001 Transcripts tendered into evidence by the Co-Prosecutors. Much of the testimony proffered in the form of Case 001 Transcripts constitutes expert testimony given by Craig Etcheson and is purportedly relevant to the internal workings of the Party center.²⁷⁰ This evidence is extremely prejudicial, and entitled to zero probative value.
112. There are numerous reasons to give no weight to this testimony. First, it concerns highly contentious questions of fact.²⁷¹ Second, it concerns subject-matter on which fact witnesses have been unable to testify.²⁷² Third, though an expert is obliged to testify 'with the utmost neutrality and with scientific objectivity',²⁷³ Dr. Etcheson was, for most of the Case 002/01 proceedings, employed by the Co-Prosecutors. For that reason, his status as an independent expert is doubtful to begin with.
113. This Chamber has previously expressed reservations on the probative value of Dr. Etcheson's evidence. During the *Duch* trial, Defence counsel objected to the use of documents of which Dr. Etcheson became aware of after he joined the OCP in 2007, arguing that on these issues he would not be impartial or objective.²⁷⁴ Following Judge Lavergne's suggestion that the witness's testimony be taken with 'a grain of salt', the Defence agreed to waive its objection provided the Chamber 'take note of the [Defence] reservations regarding the probative value of Etcheson's answers'.²⁷⁵
114. The Chamber's concerns over Dr. Etcheson's objectivity is even more pronounced in this trial, in which the Defence was not allowed the opportunity to cross-examine the witness. Nor was Duch's cross-examination a meaningful substitute: Dr. Etcheson testified repeatedly that command structures in Democratic Kampuchea were rigid and hierarchical,²⁷⁶ a proposition which is prejudicial to (and strongly disputed by) Nuon Chea, but supports Duch's claim that he was required to follow orders.
115. Expert testimony has in any case been given in *this* trial before *these* parties by David Chandler, a witness who is, relative to Dr. Etcheson, far more qualified as an expert.²⁷⁷ Professor Chandler made concessions on cross-examination directly inconsistent with Dr. Etcheson's testimony in relation to the widespread discretionary conduct of lower-level cadres.²⁷⁸ To nevertheless accept Dr. Etcheson's conclusions in the form of a transcript without cross-examination is tantamount to allowing the prosecution to read

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its own opinions into evidence without rebuttal of any form by the Defence. It should not be permitted.

D. Live Testimony

116. When evaluating the credibility of witnesses, the Trial Chamber should take into account a variety of factors. Though the Trial Chamber in *Duch* found that hearsay evidence was admissible,²⁷⁹ the Chamber also emphasized that it would give particular consideration to whether the Accused was able to confront the source of the statements.²⁸⁰ Similarly, the Chamber attested that it would examine the evidence of a single witness with particular care before attaching to it any weight.²⁸¹ The testimony of accomplice witnesses must be treated with caution, ‘the main question being to assess whether the witness concerned might have motives or incentives to implicate the accused.’²⁸²
117. The Defence reminds the Chamber that particular issues regarding expert witnesses must be considered when assessing their evidence. The evidence of an expert witness is meant to provide specialized knowledge – be it a skill or knowledge acquired through training²⁸³ – that may assist the Court with the evidence presented.²⁸⁴
118. The admission of expert testimony does not necessarily mean that the Trial Chamber accepts the evidence and the opinion based on that evidence.²⁸⁵ It is necessary to distinguish between statements of fact and the final opinion based on these facts.²⁸⁶ Ultimately, the Chamber will determine what weight, if any, it will afford to the expert witness’ opinion, by taking into account a number of matters including: the basis of their opinion and the extent of corroborating evidence.²⁸⁷

E. DC-Cam

119. For reasons developed elsewhere in Defence submissions, the Chamber should give little or no weight to interviews taken by DC-Cam.²⁸⁸ Both Dara Vanthanpeou and Chhang Youk admit that DC-Cam took interviews as part of an active effort to ensure that Nuon Chea was convicted by this Tribunal.²⁸⁹ Chhang Youk furthermore admits that DC-Cam assumed as a matter of course that crimes committed by lower level cadres were consistent with the instructions of their superiors.²⁹⁰ That assumption served the interests of both DC-Cam in convicting Nuon Chea and those of its interviewees, who were allowed to escape culpability by blaming higher ranking cadres. The only party absent from this mutually beneficial arrangement was the Accused, who was unable to press his case during the interviews or during cross-examination.

F. Duch

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120. Any evidence given by Duch which does not directly concern S-21 is entitled to zero probative value. Duch admitted that during the regime, his functions, knowledge and movements were limited to S-21.²⁹¹ He ‘never grasped anything concretely’,²⁹² in part because he was ‘at a lower level.’²⁹³ He explained that he never attended any meeting of the Standing or Central Committee, saw the minutes of any such meeting,²⁹⁴ or asked anyone what happened at those meetings,²⁹⁵ that he did not know anything about the working relationship between Pol Pot, Nuon Chea, Ieng Sary, Son Sen and Vorn Vet,²⁹⁶ and that he never visited Office 870 and did not know where it was.²⁹⁷ He admitted that he studied Democratic Kampuchea extensively after 1979, including by reading numerous books²⁹⁸ and reviewing the Case 001 case file. He had weeks or months to review that documentation prior to answer the written questions of the investigating judges.²⁹⁹ Summarizing the state of his knowledge, he explained:

If you really want me to only talk about what I knew back then, I’m afraid I may not have anything to tell the world about this because I was confined to S-21 in particular.³⁰⁰

Since Duch was never qualified as an expert, any testimony about any subject beyond S-21, to which he was ‘confined’, is inadmissible.

G. Ieng Sary

121. The Defence submits that Ieng Sary’s statements should be treated cautiously under certain circumstances. First, where his claims about the roles of other senior leaders arise specifically in the context of his own denial of responsibility they ought to be viewed with skepticism. As assertions of innocence of an accused co-perpetrator, such claims are inherently suspect and entitled to limited probative value.³⁰¹ Second, Ieng Sary makes numerous claims in relation to subjects about which he also claims to have had no knowledge or role. In these cases, the Chamber must conclude either that Ieng Sary is lying about his own position or that he has no relevant first-hand knowledge. The evidence is unreliable and must be disregarded in either case.
122. The Defence furthermore submits that the publication *The True Fact about Pol Pot’s Dictatorial Regime* should be given zero weight.³⁰² It was published under the guise of the Democratic National Union Movement, a political party founded by Ieng Sary for the purpose of reintegrating into civilian life. It was issued on 6 September 1996, eight days prior to the Royal Pardon and Amnesty granted to Ieng Sary by the RGC and King Sihanouk. The document is transparent propaganda, issued in exchange for the amnesty, against the leaders of the rebel force then continuing to fight the CPP.
123. The Defence notes that the same document repeatedly denies Ieng Sary’s responsibility for events for which he was accused in the Closing Order.³⁰³ The CIJs and the Co-

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Prosecutors therefore both apparently doubt its veracity. These two components of *The True Fact about Pol Pot's Dictatorial Regime* – that Ieng Sary is not responsible and that Nuon Chea is – are not autonomous claims. The premise of the document is that Ieng Sary is not responsible *because* real authority lay with Pol Pot and Nuon Chea. If the CIJs and the Co-Prosecutors disbelieve the first claim, they must also disregard the second.

H. Findings Based on Circumstantial Evidence

124. The Trial Chamber may only find an accused guilty of a crime if the Prosecution proves the element of each crime beyond a reasonable doubt. This standard applies whether the evidence evaluated is direct or circumstantial.³⁰⁴ Where the Chamber relies on an inference in order to establish a fact on which the conviction relies, this inference must be the only reasonable one that can be drawn from the evidence presented.³⁰⁵ If there is another conclusion which is also reasonably open from the evidence, and which is more favorable to the accused, only that inference may be drawn.³⁰⁶

I. Nuon Chea's Decision Not to Resume Testimony

125. Nuon Chea testified extensively in the early stages of the Case 002/01 trial, giving evidence over ten days of trial.³⁰⁷ On 27 May 2013, Nuon Chea indicated that he would agree to answer questions from the civil parties and give further testimony on subjects within a defined temporal period.³⁰⁸ On 17 July 2013, Nuon Chea decided to withdraw his notice of intention to respond to questioning, and gave a statement in court to explain his decision.³⁰⁹ In response, the Co-Prosecutors orally requested the Chamber to draw adverse inferences against Nuon Chea in considering the evidence.³¹⁰ On 30 July 2013, Nuon Chea filed his Withdrawal of Notice of Intent Pursuant to Rule 90 to provide detailed explanations concerning his decision not to answer questions.³¹¹ The Co-Prosecutors also filed written submissions, asking the Chamber to draw similar adverse inferences against Khieu Samphan.³¹²
126. No adverse inference may be drawn from Nuon Chea's decision to exercise his right to remain silent under these circumstances.³¹³ As the Co-Prosecutors acknowledge, an accused may not be forced to testify against his will and hence adverse inferences may not be drawn from his failure to give evidence.³¹⁴ Should the Chamber consider that Nuon Chea's previous participation in the proceedings amounts to a waiver of his right to remain silent, the circumstances surrounding his decision nevertheless preclude the Chamber from drawing adverse inferences.
127. A careful examination of the Co-Prosecutors' partial and misleading analysis of the case law shows that an adverse inference is not appropriate merely because an Accused

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who is deemed to have waived his right to remain silent decides to stop giving testimony.³¹⁵ An adverse inference may be drawn only if the accused fails to respond on specific issues in relation to which there is a ‘convincing *prima facie* case’ calling for an explanation on his part.³¹⁶ The fact that the accused provides a plausible explanation for his choice to remain silent,³¹⁷ as well as the fact that he relied on legal advice to take this decision,³¹⁸ are important factors to be taken into consideration. If a trier of fact is not convinced that ‘his silence [is] consistent only with guilt and his reliance on legal advice to stay silent merely a convenient self-serving excuse’, then he or she should refrain from drawing adverse inferences against the accused.³¹⁹

128. In this case, Nuon Chea never refused to answer any question in particular and thus cannot be considered to have failed to respond on specific issues calling for an explanation.³²⁰ Indeed, pursuant to an oral decision of the Chamber,³²¹ even the list of topics which the Co-Prosecutors intended to discuss with Nuon Chea has not been disclosed. Nuon Chea’s initial willingness to answer questions,³²² as well as his extensive participation in the proceedings, furthermore show that he is not trying to hide behind a ‘convenient self-serving excuse’. Finally, the reasons expounded in detail in his Withdrawal of Notice of Intent constitute a plausible explanation of his decision not to respond to questioning. For all of these reasons, Nuon Chea respectfully submits that the Chamber should not draw adverse inferences from his decision not to respond to questioning.

III. THE CAMBODIAN SOCIALIST REVOLUTION

129. With these cautionary notes about the evidence before the Chamber in mind, the Defence turns to Nuon Chea’s (highly circumscribed) analysis of key factual issues. These include the context within which the CPK’s revolution took place, the objectives of that revolution, the nature of Nuon Chea’s role, and the administrative and communication structures through which Democratic Kampuchea operated.

A. The Context of the Cambodian Socialist Revolution

130. Nuon Chea has repeatedly insisted that the limits on this Tribunal’s jurisdiction were sure to distort its work and hinder its effort to ascertain the truth. His first words to the Trial Chamber were:

I am of the opinion that this Court is unfair to me since the beginning because only certain facts are to be adjudicated by this Court. I must say only the body of the crocodile is to be discussed, not its head or the tails which are the important parts of its daily activities. All it means, the root cause and its consequence are those that happened pre-1975 and post-1979 are ignored by this Court.³²³

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Almost two years later, the head and tail of the crocodile remain obscured. The Co-Prosecutors speak regularly before this Chamber about CPK political lines, using words like colonialism, feudalism and imperialism.³²⁴ Yet these words are never used in the manner the CPK intended: to describe a very real set of political and economic forces and their effect on the lives of ordinary peasants. Instead, they are used only in the abstract, as catchphrases in an ideology. They are openly mocked by the Co-Prosecutors, who derisively describe class struggle as the CPK's 'favourite topic'.³²⁵

131. For Nuon Chea, colonialism and feudalism are not a 'topic'. Instead, they describe a lived reality: entrenched poverty caused by class oppression, supported in turn by violent, opportunistic foreign intervention. By failing to examine at all the realities of Cambodian society which the CPK was founded to combat, the Chamber chose not to consider in any substantive way the objectives of CPK policy – and by extension, Nuon Chea's intent. The Co-Prosecutors have willingly filled that void, arguing that Nuon Chea acted with gross disregard for the value of human life. In fact, Nuon Chea worked tirelessly to institute policies that he genuinely believed were in the best interests of Cambodia and the Cambodian people.
132. At this stage, it is not possible to articulate the relevant context in any serious detail.³²⁶ That is especially true in these unnecessarily circumscribed closing submissions. The Defence is left with no alternative but to summarize key points in the briefest possible form. These key points fall into three broad categories: French colonialism, the long history of Thai and Vietnamese aggression, and the acute destruction wrought by American imperialism.
133. France's presence in Cambodia was fundamentally an exercise in economic exploitation. French authorities demanded taxes from impoverished peasants on pain of violence while securing their own privileged access to raw materials which belonged rightfully to the Cambodian people. While the French claimed to be administering Cambodia for the benefit of ordinary Cambodians, in reality their policies were intended to ensure that the masses remained docile while French profits remained high. For French administrators, 'economics' in colonial Cambodia meant little more than 'export crops and colonial initiatives [...] In the eyes of French officials, Cambodia had become a rice-making machine.'³²⁷
134. The role of the average Cambodian in this arrangement was straightforward: 'peasants paid in the long run with their labor and their rice for all the improvements in Phnom Penh and for the high salaries enjoyed by French officials.'³²⁸ Development of the lives of these ordinary Cambodians was, meanwhile, non-existent: 'the French spent almost

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nothing on education [...] medical services were also derisory, and electricity and running water were unknown outside Phnom Penh.³²⁹ Although Cambodians paid the highest taxes of any colony or protectorate in Southeast Asia,³³⁰ what they received in exchange amounted to ‘very little.’³³¹

135. Nuon Chea observed these dynamics as a young man and was moved by the powerlessness of Cambodians under colonial control.³³² Yet, over time, he came to understand that the inequities of French exploitation were not unique to the relatively brief period of French control. Instead, they were essentially continuous from the periods that preceded and followed it. Under the French, the ‘essence of government [...] remained what it had always been, the extraction of revenue from the peasants.’³³³
136. French colonialism merely interrupted centuries of domination by Cambodia’s larger neighbors. For hundreds of years, Siam and the various kingdoms occupying modern day Vietnam fought for control over, and occupied, large sections of the modern Cambodian state. ‘Thai and Vietnamese objectives in Cambodia, seldom voiced explicitly [...] were to extend their prestige along their frontiers and to amplify their self-images as universally accepted kings.’³³⁴ Like the French, both kingdoms justified these material exploits with a patronizing view of Cambodia which reflected their deeply-held prejudice about Cambodia and Cambodians:

In these [turns of phrase], the Thai and Vietnamese became the ‘mother’ and the ‘father’ of the Khmer, whose king was referred to as their ‘child’ or their ‘servant’ [...] Whatever the reasons, Thai and Vietnamese statements, like those made later by the French, amounted to unilateral declarations of dependence. The family-oriented images were unjustified and far-fetched, but they give us a useful way of looking at the period – that is, as the continuing struggle between increasingly incompatible parents for the custody of a weak but disobedient child.³³⁵ (emphasis added)

137. With few exceptions, Cambodian leaders were shameless collaborators in this cycle of exploitation. Both before and after the onset of French control, Cambodian monarchs sold their legitimacy amongst ordinary Cambodians to foreign powers as necessary to maintain power.³³⁶ ‘Power’ meant sustaining their position to extract their own share from the wealth created by the agricultural economy before passing on the balance to whomever supplied the military force necessary to ensure stability.
138. Prince Sihanouk’s effort after 1953 to present the Sangkum Reastr Niyum as an authentically Cambodian government leading a newly liberated state was in substance no different. Fundamentally, Sihanouk’s regime was as unconcerned with the lives and livelihoods of the overwhelming majority of Cambodians as the French had been before him. Sihanouk cultivated absurd fantasies about the carefree life of the happy-go-lucky peasant while enacting policies which institutionalized the inequalities promoted by

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colonialism.³³⁷ Thus, he adopted an ‘educational system geared toward a foreign culture [which] had the effect of creating class divisions based on the idea that there was an elite cadre of *neak ches-doeng* [...] who had all the answers for society’s ills and were trained to lead if not to work.’³³⁸

139. Nuon Chea tried at first to effect change within this system politically. Yet he found upon his return to Cambodia in 1954 that those who sought to resist the government were ‘arrested, imprisoned [...] brutality was inflicted on them.’³³⁹ Acting under Prince Sihanouk’s authority, Lon Nol ‘oppressed the people, the peasants at their own pleasure.’³⁴⁰ French Ambassador Pierre Gorce wrote in 1960 that Sihanouk was “‘so thirsty for power that he can admit no opposition [...] The system he has created accepts no contradiction. [To maintain it] the police impose a sort of reign of terror.’”³⁴¹ According to Philip Short, ‘people spoke “with a mixture of fear, repugnance and gallows humour” about the expeditive methods of Sihanouk’s security services.’³⁴² Nuon Chea recalls the profound effect on the CPK of the mass murder of Indonesian Communists, which saw the execution of 600,000 people in 1965-66.

140. It was this repression of the socialists’ peaceful activities that, after many years, caused the CPK to adopt armed struggle.³⁴³ In 1962, cadres armed themselves with stakes and knives in self-defence against the violence perpetrated by Lon Nol’s forces.³⁴⁴ Following the spontaneous 1967 peasant revolt in Samlaut, Lon Nol dispatched thousands of soldiers to suppress the peasants:

Some people were beheaded and the heads were stuck to the fences of their houses. It gradually spread and the suppression became even more serious. The Lon Nol barbarous clique, including Kou Roun from the police side, were so barbarous; they acted in their own pleasure in killing people.³⁴⁵

The victims of this violence and the children of those who were killed took it upon themselves to fight back. On the morning of 17 January 1968, this small group raided the police station in Bay Damran and stole seven weapons. ‘As a result of that event, the armed struggle spread from one location to the next’.³⁴⁶ Thus began the socialist revolution of the Communist Party of Kampuchea.³⁴⁷

141. The fundamental forces which motivated Cambodian socialism were therefore essentially domestic. Yet the Vietnamese fight for independence and the Americans’ disastrous decision to enter into it vaulted the nascent Cambodian liberation movement to the forefront of the global struggle of oppressed peoples against foreign domination. Over nearly two decades, the United States government had employed overwhelming military, economic and political violence against Communists in neighboring Vietnam, then the CPK’s closest comrades-in-arms. The conflict extended to Cambodian territory

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as early as 1965. It escalated in 1969 before reaching a level of unprecedented destruction over eight unrelenting months in 1973. All together, the Americans dropped 2,756,941 tons of bombs on Cambodia, more than the total used by all the Allied Forces combined during the entirety of World War II, including the nuclear bombs that struck Hiroshima and Nagasaki.³⁴⁸ The CPK alone lost an estimated 16,000 men and women.³⁴⁹ ‘Cambodia may well be the most heavily bombed country in history.’³⁵⁰

142. The Closing Order notes that the American bombing had concluded by an act of US Congress eighteen months prior to the liberation of Phnom Penh.³⁵¹ But Nuon Chea asks: what significance was there to an eighteen-month hiatus after 30 years of unprovoked armed aggression? What significance was there to an act of Congress after eight years of unauthorized, clandestine military operations against him and his allies?
143. For Cambodian socialists in a desperate fight for survival in 1975 there was, of course, none. Nuon Chea learned from decades of bitter experience that anyone seeking to elevate the status of the rural poor would be subject to swift and violent retaliation. He understood well that foreign states would never have the interests of ordinary Cambodians at heart. He and his comrades decided that the only path to justice and prosperity lay in an independent and authentically Cambodian state free of the connivances of more powerful global actors.
144. In the late 1960s and early 1970s, these sentiments ran wild across the so-called ‘Third World’. Six months after the United States government functionally seized control of the Cambodian state on 18 March 1970, the United Nations General Assembly would recognize:

that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security, [...] that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality.³⁵²

145. In the wake of the massive trauma endured simultaneously by Cambodia’s rural poor and the Cambodian socialists, these ideals were compelling. They – and not some vague ideas Philip Short believes were learned from Stalinist texts in the 1940s³⁵³ – are what ‘indelibly marked’ Nuon Chea as he waged war against oppression on behalf of his people.

B. The Objectives of the Cambodian Socialist Revolution

146. In this same period, Communism was a powerful and growing ideological force. By the time Nuon Chea joined the Thai Communist Party in 1951, at least 12 states,

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representing nearly a third of the world's population, had adopted some form of socialist government. In Asia especially, the promise of Communism seemed irresistible. The continent's two superpowers, Russia and China, had already adopted socialist forms of government.³⁵⁴ Both of Cambodia's immediate (and much more powerful) neighbors had active Communist movements. The North Vietnamese Communist revolution and its war of liberation were one and the same.

147. Nuon Chea saw in Communism the promise of a state free from both foreign exploitation and the oppressive networks of power of the landowning elite. He genuinely believed that Communism held the key to a modern and independent Kampuchean state capable of providing for its citizenry instead of serving the extractive foreign interests which had come to dominate it.³⁵⁵
148. These objectives have been systematically misunderstood, both in the literature and before this Tribunal. Three significant aspects of the CPK's project are especially in need of clarification: (i) the CPK sought to abolish unjust political and economic systems, not to mistreat ordinary civilians; (ii) the CPK sought to establish an equitable society, not subject the rich to the poor; and (iii) the CPK sought to build a state that was strong and independent, not isolationist and reclusive.

i – Systems, not people

149. The strategy by which the Cambodian socialist revolution sought to achieve its goals derived from the CPK's diagnosis of the source of Cambodia's ills: to liberate the Cambodian people from the interlocking forces of colonialism, imperialism and feudalism. Both the theory and practice of the Cambodian socialist revolution were infused with that strategy.
150. Discerning the intent behind CPK policy requires an understanding of the revolutionary language employed by the CPK as a matter of ordinary discourse. Francois Ponchaud is correct that the CPK adopted new linguistic forms not typical to pre-revolutionary Khmer.³⁵⁶ That language was distinctive precisely in its use of warlike metaphors to describe the most ordinary tasks.³⁵⁷ Cadres were urged to launch 'mighty offensives',³⁵⁸ 'attack',³⁵⁹ and liven the 'combat line',³⁶⁰ against the rice harvest and the planting season.³⁶¹ The Standing Committee employed similar language even in their own internal discussions.³⁶²
151. Exactly the same language was used to describe the CPK's efforts to promote adherence to its political goals. Cadres across the regime were encouraged to 'smash',³⁶³ 'purge', 'cleanse' and 'attack' 'class',³⁶⁴ 'ideology',³⁶⁵ 'stances',³⁶⁶ and

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‘relations of production.’³⁶⁷ Opponents of the CPK are similarly described trying to ‘smash’ the revolution.³⁶⁸

152. Even the most violent, aggressive language is used repeatedly to describe ideological and political struggle. In order to achieve socialist revolution and build Kampuchea successfully:

it is necessary to fight on the battlefield of ideology profoundly, hotly, and extremely strongly. In carrying out the socialist revolution in terms of ideology, it is imperative to fight to eradicate and smash the ideology of private ownership both materially and in terms of stances, to not let it raise its head again, and to not let it strengthen and expand at all.

[...]

In brief summary, carrying out socialist revolution and building socialism currently is a tense, strenuous and extremely profound class fight on the ideological battlefield inside each of us, inside the ranks of the entire Party, inside the entire revolutionary ranks, and inside the entire national society. The class fight on an invisible, tangible battlefield buried deeply in the mind, thoughts and habits of every individual in the human society is an extremely difficult fight. It demands constantly and repeatedly taking absolute combat stances, tense and strenuous combat stances: the fight is to absolutely and completely eradicate non-proletarian stances and private ownership stances in terms of stances and in terms of authority and demands the constant sharpening of firm proletarian stances. So then, ideological class combat in some cases is more tense, strenuous, and life and death than combat on the hot battlefields was during the Five Year War, even though outwardly it seems to be cool, seems to be easy, without bloodshed, without killing. (emphasis added)³⁶⁹

153. ‘Revolutionary vigilance’, with which CPK cadres are repeatedly instructed to arm themselves, similarly means:

having a robust stance to correctly enforce any Party’s lines which are not extreme right nor extreme left and leave no shortcoming that may allow the enemy to perform its activities.³⁷⁰

Accordingly, the Party is safe against the enemy when it ‘grasps the people’, which it does by ‘mak[ing] them understand the important political lines of the Party’, including ‘paddy dikes, feeder canals, three tons, building the country and defending the country.’³⁷¹

154. Read in light of the CPK’s metaphorical use of violent language, CPK documents instructing cadres to attack or smash capitalists, feudalists and imperialists can only be given this same interpretation. As the Defence demonstrated during its response to the Co-Prosecutors’ document presentation hearings, those documents frequently describe the importance of smashing *capitalism* and *feudalism*.³⁷² Moreover, as the Defence will show in section III-B, *infra*, the CPK frequently described these groups’ welcome

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participation in Cambodia's socialist revolution. That imperative was wholly incompatible with a supposed desire to execute or even persecute them as a class.

155. One indication of the CPK's focus on systems rather than people can be seen in the Co-Prosecutors' efforts to mischaracterize documents which, on their face, say nothing at all about enemies. In one instance, the Co-Prosecutors read an excerpt concerning the effort to smash 'class, regime and ideology' and then summarized the document as an instruction to smash 'these people, and their class, and their regime, and their ideology.'³⁷³ If real evidence of the Party center's intention to smash people existed, the Co-Prosecutors would have proffered those documents – rather than inserting words that did not exist into the documents they did present.
156. The primary means by which the CPK sought to build socialism was accordingly not through violence. The October 1975 issue of Revolutionary Youth shows this clearly. It instructs cadres to continue class combat against the feudalists and capitalists in the ranks of the workers in the cooperatives:

Thus, class struggle in the new Kampuchean society must continue to be carried out mightily in a new form appropriate with the new revolutionary times. But even though class struggle in this new revolutionary period does not take the form of armed violence, revolutionary war or blood-letting combat between one another, class struggle in this new revolutionary period must be sharp, tense and tenacious; we cannot relax at all.³⁷⁴

As already noted, other CPK publications are equally explicit.

157. Instead of violence, defending the socialist revolution post-liberation had two principal components: education and dismantling the networks of power of the oppressive classes. The December 1972 issue of Revolutionary Flag explains that bourgeois attitudes in the Party should be eliminated through a 'process of workerization for the Party in terms of their psychological stance.'³⁷⁵ The September 1974 issue of Revolutionary Youth instructs cadres to educate youth to see the oppression of the landowning class and seek to liberate itself from imperialist ideology.³⁷⁶ The August 1975 issue of Revolutionary Youth explains that vigilance against the enemy requires a strong military presence *at the border* together with political education and a proletarian stance.³⁷⁷ Philip Short is correct in his conclusion that Cambodian socialism was distinctive in its belief that class consciousness was not immutable and could be constructed through education and a proletarian lifestyle.³⁷⁸
158. The elimination of networks of power – the essence of a fight against systems, and not people – is equally clear The October 1976 issue of Revolutionary Flag explains:

Closing the markets [in 1972] was no minor matter. It was a very mighty revolutionary movement that struck right at the economic foundations of the

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capitalists and the feudalists. We did not use military force to kill them. We got control of the important products, like rice, oil, salt, cloth, and medicine. When we were able to control the strategic products, we gained control over the entire economy.³⁷⁹

159. Thus, where socialism functions properly as an economic and political system, opposing ideologies are not needed or desired.³⁸⁰

ii – Equity, not subjection

160. Within the context of this overt socialist struggle, Nuon Chea finds himself perplexed by the Co-Prosecutors' persistent effort to prove that an entity which called itself the Communist Party of Kampuchea was engaged in class struggle.³⁸¹ Nuon Chea wonders in what other kind of struggle workers of the world would be expected to unite. These efforts confirm Nuon Chea's deeply held suspicion that he is being tried not for crimes but for Communism; for beliefs and not for conduct.
161. The only question of potential relevance for this Chamber is not whether CPK philosophy was based in part on class theory but whether it intended to mistreat a legally cognizable group. The answer is no. As Nuon Chea has explained before this Chamber, the CPK never believed that peasant-workers were in contradiction with any other class as such. Even groups at the very top of the feudalist class, such as the royal family, included nationalists who supported the people and the revolution.³⁸² Certainly it was not the case that 'those in the feudalist regime', including petty officials, commune chiefs and clerks were in contradiction with the peasants. As Nuon Chea testified: 'Who had contradictions with the commune chiefs? Who could have such life and death contradictions with them?'³⁸³ Indeed, with the exception of the imperialists, no group at all was an enemy of the Party. That conclusion followed from both the CPK's class analysis and the imperatives of the revolution, which needed to 'reduce enemies, increase friends.'³⁸⁴ Summarizing the CPK's position, Nuon Chea explained: 'Apart from those people who were committed to ruining the country, who were the foreign henchmen or imperialists' henchmen, they were all good people.'³⁸⁵
162. As the Defence demonstrated during its response to the Co-Prosecutors' document presentation on the CPK's alleged policy against 'enemies',³⁸⁶ the documents proffered consistently support Nuon Chea's account. The petty bourgeoisie, intellectuals and students are 'allies'³⁸⁷ of the peasant-workers and 'love revolution'.³⁸⁸ National level capitalists are 'the strategic supporting force of the Democratic National Revolution.'³⁸⁹ These classes are united because as Cambodians they all live under threat of the colonialists and imperialists: 'any class whatsoever in the framework of an enslaved country and semi-enslaved country has their national souls damaged, whether a little or

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a lot.³⁹⁰ Ouk Bunchhoen told Steve Heder that Pol Pot's policy emphasized the manner in which 'middle-class farmers, upper-class farmers, petty bourgeoisie, monks, intellectuals' were all repressed by the 'old society'.³⁹¹

163. Neither was there any animosity toward city-dwellers in general or those living in Phnom Penh in April 1975. Khieu Samphan's broadcasts in the months prior to liberation urged 'our brother countrymen in Phnom Penh' to rise up against their oppressors.³⁹² An October 1975 issue of Revolutionary Youth describes the efforts of the cooperatives to feed and support 'more than two million people who have just been liberated from the rule of the contemptible traitors.'³⁹³ If the people in Phnom Penh had themselves been enemies, there would have been no sense describing their 'liberation'. Numerous witnesses furthermore testified that no distinction was made between base people and new people.³⁹⁴ ██████████, a senior CPK official, told Steve Heder that he was instructed in his sector 'to prepare food, water and lodging for the evacuees, to slaughter animals, to feed them and give them co-op rice.'³⁹⁵ Nuon Chea similarly told Thet Sambath that 'we always advised our cadres to take care of the new people and to make them equal. Even though they are April 17 people, they still had the right to work in the cooperative.'³⁹⁶
164. As a socialist movement, the CPK did of course endeavor to eliminate the position of privilege previously enjoyed by the feudalist and capitalist classes. But that policy was the antithesis of discrimination: it required only that all Cambodians be afforded the same privileges and obligations irrespective of class. Hence, the unjust influence of the feudalist-landowners was diminished by 'reducing their rice paddy to as little as what the other peasants have.'³⁹⁷ They were to be treated the same as everyone else; which is to say, worse than they were before.³⁹⁸

iii – Independence, not isolation

165. The CPK's analysis of Cambodia's history of colonialism, feudalism and imperialism identified a clear link between foreign political control of the state and the economic plight of the poor. Khieu Samphan's doctoral thesis, which gave him the reputation of a mainstream progressive and a future leader of the country, advocated for autarky as a central pillar of his plan to lift the peasantry.³⁹⁹ Speaking from a less analytic perspective, Nuon Chea recalls that as a student in Bangkok in the late 1940s he observed that Thailand was not truly independent because the economy was dominated by foreign interests and the poor were oppressed by the wealthy.⁴⁰⁰ David Chandler, writing in 1976, agreed that 'autarky makes sense'.⁴⁰¹

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166. Nuon Chea articulated this idea during his testimony before the Chamber in the language which the CPK would, years later, adopt to express it:

the true nature of [this] Cambodian society is half colonial, half feudalism. Therefore, the task of the revolution of the Democratic Kampuchea at that time is to eliminate the remnants of the half colonialism, half feudalism, and to oppose and resist the half capitalism. It means to liberate the nation and the people. To liberate the nation means to eliminate remnants of the colonialism at that time and to gradually eliminate the feudalism.⁴⁰²

167. The mere cessation of military hostilities in 1975 – even if the CPK could have been expected to believe that hostilities had indeed terminated – did not mean that a further threat of foreign intervention no longer existed. The CPK was acutely aware of the ability of powerful states to use non-military means, including diplomacy and foreign aid, to exercise their will over weaker states. In this respect, the CPK’s analysis was decades ahead of academic observers, who only later developed the post-colonial critical theory to formalize the CPK’s reasonably held suspicions.⁴⁰³

168. The CPK’s reticence did not, however, amount to the policy of near-total isolation suggested by the Closing Order.⁴⁰⁴ Nor was it rooted in an abstract ideological fixation on self-reliance. Foreign aid, for instance, was freely accepted when it was not intended as a tool for the manipulation of domestic Cambodian policy.⁴⁰⁵ Nuon Chea explains that aid from China was ‘free of charge’, meaning that it was offered without condition.⁴⁰⁶ Aid from other friendly states was also often accepted.⁴⁰⁷ Only when it was conditional was aid rejected.⁴⁰⁸ Suong Sikoen testified that he ‘cannot recall clearly’ a supposedly unconditional offer of aid from OPEC, which is also not reflected in Standing Committee meeting minutes discussing aid offers.⁴⁰⁹

169. The CIJs and the Co-Prosecutors cite to various documents in support of their allegation that the CPK refused foreign aid and assistance.⁴¹⁰ Included within these documents are three secondary source newspaper articles that make vague, unsubstantiated declarations that the CPK shunned foreign aid, and fail to support these claims with any specificity.⁴¹¹ Another document characterizes the CPK’s refusal of an offer by the French Embassy to loan one teacher and a few medics to the new government as a denial of ‘foreign aid’.⁴¹² Other documents indicate that the issue of whether foreign aid was actually accepted was unknown,⁴¹³ while two others remain silent on the matter completely.⁴¹⁴ Others highlight the CPK’s goal of self-sufficiency,⁴¹⁵ but none come close to establishing a blanket refusal to accept outside aid.

170. Pol Pot’s approach to diplomatic affairs was equally nuanced, and ‘endeavor[ed] to make foreign policies for particular foreign countries’.⁴¹⁶ He saw that only newly

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decolonized African states would understand the CPK's worldview and sought close diplomatic relations.⁴¹⁷ He advised caution with regard to 'minor capitalist countries' such as Sweden, Denmark, Finland and Turkey in reaction to their negative public statements about Democratic Kampuchea⁴¹⁸ but accepted unconditional Swedish aid.⁴¹⁹ Sweden was considered a state with which Democratic Kampuchea could communicate 'as foreign friends but not revolutionary friends.'⁴²⁰ Mexico and Cuba were also considered friends.⁴²¹ Pol Pot adopted a *realpolitik* attitude toward Thailand, agreeing to diplomatic relations and trade beneficial to Democratic Kampuchea in spite of his general wariness of Thai intentions.⁴²²

C. Nuon Chea and the Cambodian Socialist Revolution

171. Nuon Chea has described at length before this Chamber his reasons for joining, and ultimately becoming a leader of, the Cambodian socialist revolution. He explains that he was 'heartbroken' by the oppression of ordinary Cambodians by the French and the plight of the poor.⁴²³ As a young man, he believed that he had found in Communism an antidote to these ills:

After reading the newspaper's articles, I have also observed that Communism or the Communist Regime could help resolve the countries under the oppression of the colonies to really liberate the country from such colonialism.⁴²⁴

172. Unlike some of his former colleagues, Nuon Chea never wavered from these objectives. He never became rich. He never acted opportunistically to seek position or privilege for himself or his family. He lived meagerly in the Cambodian jungle for nearly thirty years in the service of the principles in which he believed. He worked clandestinely and in constant danger in Phnom Penh for twenty years more. As he himself stated before this Chamber: 'I have devoted myself to serving the country. I have put my family behind for the love of my country.'⁴²⁵

173. Nuon Chea notes that numerous misconceptions exist about his background and he welcomes this opportunity to correct the public record. According to several books on the case file, including those written by David Chandler, Philip Short and Ben Kiernan, Nuon Chea's birth name is Long Bunruot.⁴²⁶ As Nuon Chea indicated to this Chamber, he has never used that name and does not know where it originated.⁴²⁷ As the Closing Order correctly indicates, Nuon Chea's birth name is Lao Kim Lorn. He also used the name Runglert Laodi as a student in Thailand. Nuon Chea cannot help but notice that the supposed experts to whom this Chamber has given so much of its attention 'can't even get [his] name right'. He may need to be forgiven for doubting their other purported expertise about his life.

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174. Nuon Chea was never known, during Democratic Kampuchea or prior to 1975, as ‘Brother Number Two’. To Nuon Chea, the origin of this, too, is a mystery. Nuon Chea notes that several witnesses to appear before this Tribunal claim to recall the use of this title to describe him.⁴²⁸ Like the ‘experts’ who do not even know Nuon Chea’s name, these witnesses are also mistaken. Their testimony demonstrates the fallibility of human memory, and in particular, the tendency to create false memories consistent with widely held misconceptions.
175. Nuon Chea has also observed that he is regularly described in popular media as the ‘chief ideologue’ of the CPK. That title is an odd one to confer on a man who did not write a single word of CPK philosophy. As the Chamber knows, Nuon Chea’s principal role in the CPK was in political education (*see infra*). In that capacity, he disseminated political and strategic lines to cadres throughout the Party. He also participated over time in the development of CPK policy as a senior leader of the Party. But Nuon Chea was not an intellectual, and as he testified before this Chamber, he was instructed by Pol Pot not to concern himself with the intellectuals in the Party.⁴²⁹ It was not his role to set the direction of Party policy.
176. Conventional wisdom also misstates the principal influences on Nuon Chea’s early revolutionary life. While Nuon Chea was influenced by some of Mao Zedong’s writings, he rejects the common characterization of his philosophy as ‘ultra-Maoist’. Indeed, he distrusted the ‘gang of four’ – China’s indigenous ultra-Maoists – whom he suspected of being interested only in power.⁴³⁰ Nuon Chea’s formative Communist training was in North Vietnam. Accordingly, he identifies as a conventional Marxist-Leninist. He points to Truong Chinh, the first general secretary of the Central Committee of the Communist Party of Vietnam, and second to Ho Chi Minh in the Vietnamese Communist hierarchy from 1941 until 1957, as his primary influence. Truong Chinh’s leading tract, *The Resistance Will Win*, stands out as a key document within Communist literature.
177. Related is the misconception that Pol Pot and Nuon Chea were adherents to a *sui generis* philosophy which marked a fundamental divide between them and the Vietnamese-influenced Communists in the East Zone. As Nuon Chea told Thet Sambath, his closest friend and confidant within the CPK was Sao Phim.⁴³¹ The origin of that friendship was in their shared training in Vietnam in 1954. Thet Sambath summarizes the nature and history of their relationship accurately:

Nuon Chea had built up the Eastern Zone with So Phim, who was placed in charge of the zone after the Khmer Rouge victory in 1975. The two had known each other even longer than Nuon Chea had known Pol Pot. Because of their

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long history together, the two were very close. When So Phim came to Phnom Penh, he stayed at Nuon Chea's home during the Khmer Rouge's years in power [...] So Phim was like a brother to Nuon Chea. [...] 'We took care of each other,' Nuon Chea said. 'I loved him and he loved me. I was the closest to him because we used to struggle together and we took care of each other. He used to protect me.'⁴³²

178. For these reasons, Nuon Chea had great faith in Sao Phim's abilities as a leader within the Cambodian Communist movement. Nuon Chea is accordingly not surprised by the findings of some academics, notably Professor Kiernan, that East Zone policy was more flexible and the conduct of East Zone cadres more disciplined than elsewhere in the country.⁴³³ Sao Phim was a trained Communist who understood and sought to further core CPK objectives: improving rice yields and the living standards of average Cambodians. As Steve Heder rightly testified, the policies of the East Zone were *more* in line with the intent of the Party center than the hardline attitudes found in other parts of the country,⁴³⁴ especially the Northwest Zone.⁴³⁵
179. Nuon Chea explains that the notion that he was aligned with some zone leaders against others is simply incorrect. To the contrary, Nuon Chea gained a reputation within the Standing Committee as a negotiator, someone who could bring warring factions together.⁴³⁶ Pol Pot told Nuon Chea, 'You get along with everyone, the intellectuals and the farmers', and used him often as a peacemaker to resolve disputes between zone-level authorities. Nuon Chea saw himself in the same light: his attitude toward Cambodian politics was not as abstract as Khieu Samphan, but he had been educated in a way that Ta Mok and Sao Phim – both ordinary farmers – had not. More than any senior leader, Nuon Chea was able to communicate across these lines.
180. Sao Phim's ultimate rift with Pol Pot was accordingly not rooted in any deep-seated ideological differences. It was instead the byproduct of the CPK's complicated and shifting relationship with Vietnam. When Sao Phim was accused in 1978 of betraying the CPK by selling rice to the Vietnamese, Nuon Chea was deeply conflicted. Along with Pol Pot, he tried to persuade Sao Phim not to support the Vietnamese against the CPK. Nuon Chea disagreed with Pol Pot's decision to send troops to the East Zone but had no authority to stop it. He also recognized the seriousness of the problem:

In Nuon Chea's mind, So Phim's life had to be sacrificed for the survival of the nation. 'What could I do?' he said. 'It was a national problem. If he did something wrong and it's dangerous to the nation and I protected him, what would happen to the nation if we did not solve this problem? I separate the two clearly [...] But I still have feelings for him and miss him.'⁴³⁷

181. These same tensions marked Nuon Chea's relationship with Vietnam. Observers such as Philip Short are simply misinformed when they conclude that a fundamental

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ideological or historical divide separated the leaders of the CPK from their counterparts in Vietnam.⁴³⁸ Although some of the CPK's policies varied from those implemented by the Vietnamese, that difference was the product of context: as a smaller, more vulnerable country, Cambodia was forced to 'row quickly' in order to protect its sovereignty and territorial integrity.⁴³⁹

182. Nuon Chea valued and appreciated his experience learning from the Vietnamese Communists. He was never resentful toward the Vietnamese for giving him menial tasks during his time studying in Vietnam, as some authors suggest about Pol Pot.⁴⁴⁰ Instead, he 'welcomed Vietnamese participation' and saw the Vietnamese as his allies and comrades-in-arms.⁴⁴¹ The Vietnamese were fighting the same battle against the same enemies and doing so successfully. Nuon Chea admired their courage and their abilities.
183. Yet, Nuon Chea had good reason to be wary of Vietnam's intentions. The Vietnamese Communists always imagined themselves as the rightful godfathers of a unified Indochinese meta-state. They spoke openly of an 'Indochinese Federation' and of Vietnam's 'special relationship' with Cambodia.⁴⁴² Prince Sihanouk was equally alarmed by Vietnamese designs on Cambodian territory, arguing that once the war ended, 'a reunified Vietnam would once again turn its energies to subjugating its smaller neighbours.'⁴⁴³ Even after 17 April 1975, the Vietnamese continued to assert that they had a claim on the Cambodian Communist movement and over Cambodian territory.⁴⁴⁴
184. Vietnam's interference in the progress of Cambodian socialism went beyond vague statements of principle. Prior to 1970, the North Vietnamese openly resisted the efforts of the Cambodian Communists to secure the same liberation from the Americans as they were seeking in a unified Vietnamese state. When leaders of the CPK told the North Vietnamese that the CPK intended to follow its own path, Vietnamese leaders were taken aback by the show of independence and became incensed.⁴⁴⁵ Following the 1970 coup, they operated entire units on Cambodian soil, subjected military and civilian personnel to their authority, and sent weapons and equipment captured from Khmer Republic forces back to Vietnam.⁴⁴⁶ After the Paris Peace Accords in 1973, which mandated the departure of Vietnamese troops from Cambodian territory, they remained in Cambodia without CPK permission.
185. Nuon Chea's reaction to these tensions was neither extreme nor vitriolic. During the entire period of the civil war, Nuon Chea acted as the CPK's emissary to Hanoi, finding political, negotiated settlements to their disputes over territory and military command.

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In that sense, he filled the same role in relation to the CPK's relationship with Vietnam as he he did within CPK, resolving tensions between friendly but competing factions.⁴⁴⁷

186. Yet, between 1975 and 1979, the Vietnamese threat became considerably worse. As this Chamber has already held, Vietnam and Cambodia were at war from the moment the CPK liberated Phnom Penh.⁴⁴⁸ East Zone cadres began formulating plans to revolt weeks after 17 April 1975. Loek Sao, a messenger in the East Zone army, testified that Chan Chakrei, the commander of the East Zone Fourth Division, was plotting to 'seize power back from POL Pot on 17 April 1976' at a conference in Phnom Penh in May 1975.⁴⁴⁹ Nuon Chea has reason to believe that Ruos Nhim and Sao Phim (Chakrei's direct superior) discussed an alliance against the Party center at this same meeting. Chakrei's deputy was ██████████, who admits to plotting against Pol Pot in 1978.⁴⁵⁰ Samrin, of course, followed through.
187. The definitive proof that CPK fears about Vietnamese intentions were neither unfounded nor exaggerated is in the simple fact that they all came to pass. Nuon Chea takes bitter satisfaction from the minutes of the 26 March 1976 meeting of the Standing Committee, which record his warning to '[b]e vigilant for another thing with people who flee to Vietnam and who do not return and make propaganda leading others to revolt.'⁴⁵¹ Despite Vietnam's efforts to justify its invasion and ten-year occupation of Cambodia by accusing the CPK of atrocities, there is little doubt that its real motivation was a question of domination, control, and territory, of ridding Vietnam of the 'problem' of Cambodia once and forever [...] The communists in Hanoi had turned a near-disaster into a historic opportunity to realize what their predecessors had attempted centuries earlier: control over the Mekong River.⁴⁵²
188. Finally, the Defence submits that there is a strong likelihood that the evidence understates the extent to which the Vietnamese sought to interfere in the internal affairs of Democratic Kampuchea. The Vietnamese had ten years of unfettered access to the Cambodian government archives before any serious effort to collect and organize those archives began. David Chandler noted in testimony before the Chamber that certain key documents have never been found, including the confession of Northeast Zone secretary Ney Sarann alias Ya. Professor Chandler hypothesized that PRK authorities may have sought to filter out those documents which tended to show that Vietnam was 'subverting [the Democratic Kampuchea] regime'.⁴⁵³ Ong Thong Hoeung, who worked for the PRK at the nascent Tuol Sleng Genocide Museum in the summer of 1979, confirmed that some documents were, indeed, 'missing'.⁴⁵⁴ The Vietnamese government conspicuously failed to respond to a request by the CIJs (prompted by a

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request from the Nuon Chea defence) to turn over relevant documents in its possession to this Tribunal.⁴⁵⁵

D. The Structure of the Cambodian Socialist Revolution

189. The Closing Order is accurate in its conclusion that the Standing Committee was the pre-eminent authority within the CPK. It is, however, inaccurate to the extent that it assumes that the Communist Party of Kampuchea was co-extensive with the government of Democratic Kampuchea. The administrative entities responsible for implementing decisions of the CPK – which in a modern government might be called the ‘bureaucracy’ or the civil service – were not functionally under the control of the so-called ‘Party center’. The Closing Order is also incorrect to the extent it assumes that every decision of the Standing Committee implied the concurrence of all of its members. Matters were discussed among those present, but that discussion did not carry on *ad infinitum* until all present were in agreement. No decisions would otherwise have ever been made. Ultimately it was Pol Pot, and not the entire Standing Committee, who determined the decisions of the Committee.

i – Party center

190. The role of the Standing Committee was to monitor compliance with the high-level political goals of the CPK. Standing Committee meeting minutes emphasize that cadres should avoid ‘asking only the Standing Committee’ because ‘the Standing Committee cannot run if everything comes here in its entirety.’⁴⁵⁶ Thus:

The work was sent to Comrade Doeun and later on it had to be referred to respective section. For example, Foreign Affairs it had to deal with Foreign Affairs. We do not want the work to be concentrated at the Standing Office because the Standing Office had to follow respective offices in implementing the Party line.⁴⁵⁷

191. As the minutes of Standing Committee meetings show, deliberations within the Committee took place at only the highest level of general strategy. Discussions on topics as broad as ‘situation at the border’ occupy about one page.⁴⁵⁸ The instructions of the Standing Committee are similarly expressed in the most general of terms. For example, in November 1975, the Standing Committee had this to say in connection with Democratic Kampuchea’s relations with Vietnam:

Therefore, the direction of our solution is that if there are new cadres, we will set up new leadership in the Northeast. But in the immediate future, we will have someone go to grasp the situation. As for the matter of attacking, Comrade Deng can master that. Diplomatically, when we meet the Vietnamese, we will say that: We take Vietnamese laborers and Vietnamese people as close friends. At the base there may be some excesses but our Party will continue to resolve this.⁴⁵⁹

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192. The general tenor of these instructions is repeated in every set of meeting minutes on the record. For example, on 9 January 1976, the Standing Committee covered the ‘good qualities and deficiencies’ of the Ministry of Propaganda, the border to the west, the border to the east, the national construction situation, the promulgation of the Constitution, ‘our influence on the international stage’ and ‘The World Situation’ in six pages. Recommendations of the Committee include: ‘solve things using revolutionary stances’ and ‘expand and strengthen our measures one after another’.⁴⁶⁰ The 22 February 1976 Standing Committee meeting minutes summarize ‘the situation on the Eastern border’, ‘the matter of Chinese air and naval assistance’, ‘Transporting ammunition’ and ‘Military hospitals’ in one page.⁴⁶¹ Recommendations include to ‘prepare defence forces’, ‘be ready to fight when they come’, ‘defend our forces, do not let them smash our forces’ and ‘Communications must be quiet.’⁴⁶² A meeting on 11 March 1976 concerning the ‘situation on the eastern frontier’ focused on the historical background of Cambodia’s relationship with Vietnam before setting out vague principles of political, military and diplomatic engagement.⁴⁶³ Other meeting minutes are equally abstract.⁴⁶⁴
193. The few occasions on which the Standing Committee did give more specific instructions were those concerning economic production and foreign affairs. On 22 February 1976, the Committee proposed increasing salt production by 20%, using one million dollars of Yugoslav aid to purchase medicines, ‘especially fever medication, disease fighting of all kinds, for example antibiotics, energy medications, serum, etc.’, and distributing newly acquired rice to various parts of the country.⁴⁶⁵ On 17 May 1976, the Standing Committee discussed Cambodia’s diplomatic relations with foreign states, with extensive commentary from Pol Pot concerning diplomatic missions to and from Cambodia.⁴⁶⁶ On 30 May 1976, the Standing Committee provided instructions about the deployment of RAK soldiers for agricultural work.⁴⁶⁷ On 26 March 1976, the Standing Committee received an update from Northeast Zone secretary Ney Saran alias Ya concerning negotiations with Vietnam in relation to the situation at the border.⁴⁶⁸ In that same meeting, Nuon Chea made his only substantive contribution on record, suggesting that Comrade Ya ‘keep implementing’ the vague principles set out in the 11 March 1976 meeting of the Standing Committee, that Son Sen ‘prepare maps’ and that cadres near the border greet representatives of the Vietnamese government ‘as guests of the Party in the status of representatives of a state’.⁴⁶⁹ Nuon Chea also summarized recent Vietnamese incursions into Cambodian territory and instructed the continued use of political, diplomatic and military tactics.

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194. The only discussion of enemies at any meeting of the Standing Committee was on 8 March 1976. The minutes of that meeting describe the arrest of 34 persons in sector 303 and the capture of Thai spies inside the border.⁴⁷⁰ No unlawful conduct is involved. The ‘Opinions and Instructions’ of Angkar are to ‘concentrate on the East and West’ and to be vigilant against the Thai government, which ‘fears’ and ‘hates’ Cambodia’s revolution.⁴⁷¹ This analysis, during the height of the Thai government’s crackdown against its own Communist insurgency and sixth months before it massacred left-wing activists at Thammasat University in Bangkok – Nuon Chea’s alma mater – was undoubtedly accurate.⁴⁷²

ii – Zone-level structures

195. The lack of specificity reflected in the minutes of Standing Committee meetings was a direct consequence of the practical limitations on the Committee’s ability to exercise authority over the national administrative structure, which was in practice under the control of zone leaders. Professor Chandler made a sharp distinction between the authority of the Party as it was expressed in the CPK Statute and what he described as the ‘real world’: ‘as soon as you get into that operations question, you’re into the whole real history of DK; that’s a phenomenon that’s still evolving, that I have no claim to genuine authority about’.⁴⁷³
196. Within the military, it is uncontested that, prior to July 1975, there was not even a formal structure linking Nuon Chea with military forces. Indeed, the Closing Order asserts that, ‘Despite being ultimately under the command of the Centre, [zone armies] were integrated into the Zone administration.’ The evidence cited in connection with this claim amply supports the second half of the sentence.⁴⁷⁴ The first half of that sentence, that zone armies were ‘ultimately under the command of the Centre’, is unsupported by any evidence at all.
197. Contradicting directly Philip Short’s sweeping and baseless claim that zone leaders could not order executions contrary to the instructions of the Party center,⁴⁷⁵ Ieng Sary explains that both Sao Phim and Ta Mok ‘made the decisions in their two Zones; they made their own decisions there, and acted.’⁴⁷⁶ He continues:

Even Pol Pot and Nuon Chea, when they were in SAO Phim’s Zone, the East Zone, they were afraid of Ta Phim. I went with them once, and I knew that and saw that. That is, Pol Pot himself did not dare go down below: he was afraid of Ta Phim. So, in that Zone, if SAO Phim wanted to kill and wanted to do something, it was not necessary for him to ask upper echelon. The organization was like that; each Zone was independent, almost what would be called kill as you please, do as you please.⁴⁷⁷ (emphasis added)

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Nuon Chea concurs, stating that he was required to seek approval from zone leaders even to *travel* within their territory.⁴⁷⁸ Other witnesses have testified that Ta Mok was functionally a ‘warlord’ in the Southwest Zone⁴⁷⁹ and that executions in the Central Zone took place ‘under the supervision’ of Kae Pauk.⁴⁸⁰ Numerous witnesses certified as experts by this Chamber make similar claims.⁴⁸¹

198. It is in this light that the 30 March 1976 decision of the Central Committee concerning the so-called ‘right’ to smash must be seen.⁴⁸² Contrary to the interpretation given to this document by witnesses who appeared before the Chamber, the document did not confer authority to the zone leaders but rather acknowledged the balance of power within the Party. As Ieng Sary indicated, zone leaders jealously guarded their authority within their own territory. Phnom Penh had no ability to interfere, a reality reflected in the ‘decision’ of the Central Committee.
199. The autonomous authority of zone officials is corroborated by the significant variations in conditions across Democratic Kampuchea – a feature of the regime universally acknowledged by observers.⁴⁸³
200. The clearest evidence that base areas were under the control of zone secretaries – who in turn did not report to the Phnom Penh-based branch of the Party center – is the Closing Order’s allegation that purges led by Kae Pauk were carried out in the Old North, New North and East Zones beginning in late 1976.⁴⁸⁴ The existence of outright conflict among zone-based forces in more than half of Cambodia for two-plus years is powerful evidence that the country was not under unified command. Professor Kiernan concludes that Pauk was aligned with Ta Mok, Pol Pot and Nuon Chea against opposing factions based in the Eastern and Northern parts of the country.⁴⁸⁵ This claim is false, but if it were true, the implications for structure would be the same: it would show that Pol Pot was unable to exercise regular authority over the administrative entities in place in the ‘purged’ areas of the country, and was instead required to use military force to impose his will.
201. Even the zone leaders had only limited control over developments in districts and cooperatives. As Nuon Chea explained to Thet Sambath,

[C]adres in the provinces exaggerated Khmer Rouge policy and didn’t understand what the leaders in Phnom Penh wanted. ‘The organization was firm but the bottom rung was weak. People in the remote areas and local authorities thought of their personal problems, but we didn’t think about this. We didn’t frequently inspect the areas. We had a principle to increase our population, not decrease it.⁴⁸⁶ Even people in the village could decide everything and not ask permission from the region. So in some places the top leaders didn’t know what was going on and sometimes the region didn’t tell us, so everybody was doing what they wanted and not telling us [...] I would like

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to accept all the mistakes they had done because I am the leader. But this mistake is the unintentional result of how we did our jobs, not because of a principle to smash the people.⁴⁸⁷

Steve Heder concurs, explaining that although the zone committee had formal authority over discipline through the zone, ‘practice in general did not follow this formal procedure [...] It was relatively rarely the case that the decision went as high as the Zone Standing Committee [...] it was often the case that the decision was made lower down, sometimes as low as the district, sometimes even lower than the district.’⁴⁸⁸ Other evidence on the case file shows that food supplies and discipline policies can be traced to specific leaders in charge of a given region at specific times.⁴⁸⁹

202. The diffuse nature of authority throughout the regime is also reflected in the arbitrary use of phrases such as ‘Party’ or ‘Angkar’ by cadres at all levels of the regime to cloak themselves in the authority of the regime. Multiple witnesses testified to this phenomenon.⁴⁹⁰

iii – Communication structures

203. Nuon Chea agrees that, as the Closing Order alleges, when CPK cadres did communicate information, they generally did so only with the levels immediately below and above them in the CPK hierarchy.⁴⁹¹ Consequently, in the instances in which Nuon Chea was provided information, he only received that which was communicated to him by zone and autonomous sector secretaries. Thus, if any information concerning activities at the base was sent to Nuon Chea, it passed through at least three levels of reporting before it was received. Because the communication hierarchy was so rigid, at each level cadres had *de facto* absolute discretion to determine which information would be remitted up the hierarchy; after all, lower-level cadres could not have known the substance of the information reported further up the chain. Cadres at all levels of the regime had a strong incentive to overstate production results and downplay discipline problems.⁴⁹² That risk was amplified as reporting information passed through multiple levels on its way to the Party center.
204. Nor did the Party center frequently issue communications to the base. According to Norng Sophang, after the liberation of Phnom Penh the number of telegrams received by the Party center was ‘reduced dramatically’.⁴⁹³ Only occasional messages were addressed to Nuon Chea.⁴⁹⁴ Outgoing telegrams from K-1 were even less frequent, were ‘very brief’ and were mainly ‘about distribution of the goods that Khieu Samphan would like them to be distributed to the bases.’⁴⁹⁵ Norng Sophang recalled encoding a message from Nuon Chea only twice: once, in connection with a meeting of the People’s Representative Assembly,⁴⁹⁶ and a second time, in the aftermath of a flood, to

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‘urge the cadres to go see the people’ and encourage them to plant new crops.⁴⁹⁷ A simple malfunction in a zone-based telegraph machine was capable of interrupting all communication to the center for months.⁴⁹⁸

205. Although Nuon Chea disagrees with much (if not most) of Philip Short’s testimony before this Chamber, Short’s analysis was correct in at least one important respect: within the CPK, the teachings of the Party center were disseminated not through formal orders but by inculcating a political consciousness in its members.⁴⁹⁹ Cadres were expected to discern the proper course of conduct by absorbing the political and strategic lines of Angkar and adopting proletarian consciousness. Hence, the task of the Party leadership was the ‘promotion of our daily internal consciousness.’⁵⁰⁰ Implementation was delegated to committees who ‘mobilize[d] the base level component in particular to ensure an honest and absolute stance in implementing the Party’s line [and] educating and nurturing politics, perceptions, and working techniques by adopting a political consciousness as a foundation.’⁵⁰¹
206. Within this framework there was substantial space for opportunistic and misguided cadres to act, sometimes criminally, beyond the scope of the CPK’s intent. For that reason, as the Defence has previously argued, it is imperative that any finding concerning Nuon Chea’s intent be based on direct evidence of his state of mind.

IV. APPLICABLE LAW

207. The Defence incorporates in full its previous filing, ‘Preliminary Submissions Concerning the Applicable Law’ (‘Preliminary Applicable Law Filing’).⁵⁰² The Defence furthermore adds the following with regard to select legal issues.

A. Crimes Against Humanity: Chapeau Elements

i – Attack based on discrimination

208. Pursuant to Article 5, a crime against humanity must be directed against a civilian population ‘on national, political, ethnical, racial or religious grounds.’⁵⁰³ The *Duch* Supreme Court Chamber interpreted this as ‘an added jurisdictional requirement that goes to the nature of the attack.’⁵⁰⁴ The Defence emphasizes that consistent with this reading of the chapeau elements, the Prosecutor must establish that the Accused had knowledge of the discriminatory nature of any widespread and systematic attack with which he is charged.

ii – Nexus between the acts of the Accused and the attack

209. The required nexus between the acts of the Accused and the attack consists of two elements: (i) the commission of an act which, by its nature or consequences, is objectively part of the attack; coupled with (ii) knowledge on the part of the Accused

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that there is an attack on the civilian population and that his act is a part thereof.⁵⁰⁵ A crime would be regarded as an ‘isolated act’ when it is so far removed from the attack that, having considered the context and the circumstances, it cannot reasonably be said to have been part of the attack.⁵⁰⁶ The acts of the Accused must, by their nature or consequences, objectively be a part of the attack, such that they are not wholly divorced from the context of the attack.⁵⁰⁷

iii – Requirement of a state policy

210. The Nuon Chea Defence strongly contends that the existence of a state policy or plan was required under customary international law during the operative period.
211. Crucially, in the IMT’s analysis of the law applicable to crimes against humanity, it made reference to a ‘policy of terror [and] persecution [...] in Germany.’⁵⁰⁸ Several judgements rendered in subsequent cases by military tribunals under the Control Council Law No. 10 also incorporated the element of state policy in their discussion of the applicable law. For example, in the *Justice* case, the tribunal clearly held that ‘governmental participation is a material element of the crime against humanity,’ adding that Control Council Law No. 10 was ‘directed against offences [...] systematically organised and conducted by or with the approval of government.’⁵⁰⁹ Similarly, in the *Einsatzgruppen* case, reference is made to ‘the state involved’ in crimes against humanity.⁵¹⁰
212. In the Draft Code of Offences against the Peace and Security of Mankind adopted by the ILC in 1954, crimes against humanity were defined as acts committed ‘by the authorities of a State or by private individuals acting at the instigation or with the toleration of such authorities’.⁵¹¹ The Commission specifically modified the earlier draft ‘in order not to characterize any inhuman act committed by a private individual as an international crime.’⁵¹² Finally, in the *Eichmann* case (decided 1961), the District Court of Jerusalem discussed at length the existence of a ‘plan’ and ‘official policy’ of persecution and its different stages;⁵¹³ and in *Menten* (decided 1977), the District Court of Amsterdam required the existence of ‘a consciously pursued policy.’⁵¹⁴ State practice until the mid-1990s did not depart from this approach.⁵¹⁵
213. The Defence respectfully disagrees with the *Duch* Trial Chamber’s finding that a state policy is not a chapeau requirement, for the authorities relied upon by the Trial Chamber, dating from the 2000s, are irrelevant in determining the state of the law during the Democratic Kampuchea period. The Defence further concurs with the submission previously made by the Ieng Sary Defence on this issue.⁵¹⁶

iv – Nexus with an armed conflict

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214. The Defence incorporates in full the arguments previously made by the Ieng Sary Defence team that the definition of crimes against humanity during the operative time period requires a nexus with an armed conflict.⁵¹⁷

B. Extermination

215. The *actus reus* of extermination requires ‘an act, omission or combination of each that results in the death of persons on a massive scale.’⁵¹⁸ Extermination contemplates acts or omissions that are collective in nature rather than directed towards specific individuals.⁵¹⁹ Courts have found that there must be a numerically significant group of victims.⁵²⁰
216. Regarding the *mens rea* element of extermination, the Defence strongly contends that the principle of legality requires that the Co-Prosecutors establish the Accused’s knowledge that his action is part of ‘a vast murderous enterprise’ in which a large number of individuals are systematically marked for killing or killed.⁵²¹ Pre-1975 jurisprudence demonstrates that this definition of extermination reflects customary international law at the operative time period.
217. Though there is little discussion or commentary on the definition of extermination in the lead up to the Charter’s adoption,⁵²² the term was clarified in Chief Prosecutor Robert H. Jackson’s opening statement in the Nuremberg case, in which he stated that ‘the Nazi conspiracy always contemplated not merely overcoming current opposition, but exterminating elements which could not be reconciled with its philosophy of the State.’⁵²³
218. The Judgement at Nuremberg referred consistently to the Nazi plan of the extermination of the Jews as the ‘final solution’ to ‘the Jewish problem’ and differentiated massacres and killings from the ‘systematic extermination of Jews in concentration camps.’⁵²⁴ Judgements in the Nuremberg *Justice* and *Medical* cases, and then later the *Eichmann* case in 1961, referred to extermination in the same manner: as a well-established and institutional program or policy for murdering victims.⁵²⁵ It is clear, therefore, that as found by the *Vasiljevic* Trial Chamber, the crime of extermination requires that the Prosecutor prove the Accused knew of ‘a vast murderous enterprise.’⁵²⁶
219. The *Duch* Trial Chamber, citing the *Bagosora* Trial Judgement, described the *mens rea* for extermination as requiring that the perpetrator acted with ‘the intent to kill persons on a massive scale, or to inflict serious bodily injury or create conditions of life that lead to death in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons.’⁵²⁷ The above standard, however, is not the

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correct statement of the law provided for in *Bagosora*, which requires that the Accused ‘intend to kill persons on a massive scale or to subject a large number of people to conditions of living that would lead to their deaths in a widespread or a systematic manner.’⁵²⁸ This heightened *mens rea* standard has been adopted and confirmed in many of the most recent trial and appeals judgements from both the ICTY and ICTR.⁵²⁹ As such, in the alternative of finding that extermination requires a murderous plan or scheme, the Defence requests that this Chamber adopt the *mens rea* standard of the *Bagosora* Judgement.

C. Persecution

220. Persecution consists of an act or omission which discriminates in fact, and which denies or infringes upon a fundamental right laid down in international customary or treaty law.⁵³⁰ To reach the level of gravity required for persecution, the act or omission generally must be a gross or blatant denial of a fundamental human right,⁵³¹ and one that is ‘the same level of gravity as the other crimes against humanity.’⁵³²
221. It is well-established law that persecution must be pled with specificity:
- [T]he fact that the offense of persecution is a so-called umbrella crime does not mean that an indictment need not specifically plead the material aspects of the Prosecution case with the same detail as other crimes. Persecution cannot, because of its nebulous character, be used as a catch-all charge. [...] An indictment must delve into particulars. [...] Failure to do so results in the indictment being unacceptably vague, since such an omission would impact negatively on the ability of the Accused to prepare his Defence.⁵³³
222. The *Duch* Supreme Court found that a victim of persecution must actually belong to a ‘sufficiently discernible political, racial or religious group’, and that there was no persecution where ‘no discernible criteria applied in targeting the victims.’⁵³⁴ In addition, there is no ‘discrimination in fact’ where there is a mistake of fact by the perpetrator as to whether a victim actually belongs to the targeted group, or the perpetrator targets victims irrespective of whether they fall under the discriminatory criterion.⁵³⁵
223. The limited jurisprudence shaping the contours of political persecution indicates that courts focus on the victims’ political views or membership in a political group or political party. For example, the Trial Chamber in *Simic et al.*, found the Accused guilty of political persecution where members of the Party of Democratic Action and the Croatian Democratic Party were arrested and detained, while members of the Serbian Democratic Party were not.⁵³⁶
224. In contrast, courts have found a political group was not established in circumstances where the victims did not have a distinct connection to political views. The *Semanza*

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Trial Chamber rejected the Prosecution's contention that moderate Hutus or Tutsi sympathisers were a 'political' group.⁵³⁷ The Trial Chamber in the *Media* case did enter a conviction for persecution but also did not find that moderate Hutu political opponents were a 'political group.'⁵³⁸ Despite substantial factual findings that opponents of the Hutu regime and Tutsi sympathisers were attacked⁵³⁹ the Chamber held there was 'persecution on political grounds of an ethnic character.'⁵⁴⁰ Notably, in considering the crimes against humanity chapeau requirement of a discriminatory 'attack' on political grounds, the *Akayesu*, *Kayishema and Ruzidana*, and *Bagosora* Trial Chambers referred to the victims' 'political beliefs', 'political ideology' or 'political leanings' in defining a political group.⁵⁴¹ These findings should apply, *mutatis mutandis*, to the Chamber in considering the definition of a political group.

225. The *Duch* Supreme Court Chambers' categorisation of certain types of persons as political groups, including 'officials and political activists; persons of certain opinions, convictions and beliefs; [...] or persons representing certain social strata (intelligentsia, clergy or bourgeoisies, for example),' similarly has no support in international criminal law. Not one case that has developed persecution as a crime against humanity, including cases from the *ad hoc* tribunals, has defined political groups' as broadly.⁵⁴²
226. Finally, the *mens rea* of persecution requires that an act or omission be carried out with the specific intent to discriminate on political, racial or religious grounds.⁵⁴³ Discriminatory intent describes the 'specific intent to cause injury to a human being because he belongs to a particular community or group.'⁵⁴⁴

D. Other Inhumane Acts through Enforced Disappearances

227. For an inhumane act to be established, it must be proven that a victim suffered serious harm to body or mind, and that the suffering was the result of an act or omission of the perpetrator.⁵⁴⁵ In addition, the act or omission must be 'sufficiently similar in gravity to the other enumerated crimes against humanity'.⁵⁴⁶
228. The Closing Order states that enforced disappearances require a deprivation of liberty followed by 'the refusal to provide access to, or convey information on the fate or whereabouts of such persons'.⁵⁴⁷ This latter element determines the distinct wrongfulness of enforced disappearances as opposed to arbitrary detention or similar human rights violations. However, the Closing Order fails to demonstrate that such conduct was criminalised as an 'other inhumane act' as a crime against humanity or that it was otherwise prohibited under international law in 1975–1977.
229. The Closing Order cites no authority predating the Democratic Kampuchea period that explicitly mentions the term 'enforced disappearances,' let alone refers to its

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constitutive elements. References to the fate of persons fallen into the hands of the enemy⁵⁴⁸ or reported missing⁵⁴⁹ in times of war, to the right not to be subject to arbitrary detention and the right to a fair trial,⁵⁵⁰ or to the rules applicable to the registration of prisoners generally,⁵⁵¹ are irrelevant. Post-World War II cases cited in the Closing Order are no more persuasive. Neither the judgement of the Nuremberg IMT nor the judgement in the *Justice* case, which use a language vaguely linked to the contemporary definition of enforced disappearances only as part of a broader discussion of wholly different issues,⁵⁵² say anything of enforced disappearances having any legal significance, either as a discrete crime or as ‘other inhumane acts’. The only authorities cited in the Closing Order that do address enforced disappearances all postdate the alleged facts;⁵⁵³ they are thus irrelevant. There is no basis to affirm the existence of any principle or customary norm criminalising enforced disappearances at the time. Accordingly, Nuon Chea was not able to appreciate that his conduct was criminal in the sense generally understood.⁵⁵⁴

E. Superior Responsibility

230. For an Accused to be held criminally responsible pursuant to superior responsibility, three elements must be fulfilled: a) a superior-subordinate relationship between the Accused and the person who committed the crime; b) the Accused knew, or had reason to know, that the crime was about to be or had been committed; and c) the Accused failed to take the necessary and reasonable measures to prevent the crime or to punish the perpetrator.⁵⁵⁵
231. The Accused must have exercised effective control over the subordinate, meaning the material ability to prevent or punish the subordinate’s commission of the crime.⁵⁵⁶ *De jure* power is not in itself sufficient to trigger criminal responsibility.⁵⁵⁷ Thus, the ability to issue orders does not by itself establish effective control,⁵⁵⁸ and the absence of authority to issue orders speaks against the existence of effective control.⁵⁵⁹ Moreover, ‘substantial influence’ falls short of the possession of effective control: in other words, the fact that the Accused was an influential person is irrelevant if he did not have the material ability to prevent or punish the commission of crimes by his subordinates.⁵⁶⁰ The mere fact of being a high-level government official is not tantamount to enjoying superior responsibility over a wide range of government subordinates such as ministry staff, government officials, or local militias.⁵⁶¹
232. Command responsibility is not a form of strict liability; a superior may only be held liable for the acts of his subordinates if it is shown that he ‘knew or had reason to know’ about them.⁵⁶² In addition, where superior responsibility is alleged in relation to

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crimes requiring a specific intent – such as persecution – it must be demonstrated that the Accused also knew, or had reasons to know, that the perpetrator acted with the requisite intent.⁵⁶³

233. The knowledge of the superior may not be presumed;⁵⁶⁴ the superior must have knowledge of the alleged criminal conduct of his or her subordinates and not simply knowledge of the occurrence of the crimes themselves.⁵⁶⁵ In addition, liability only arises only if ‘information was available to him that would put him or her on notice of the offences about to be committed by subordinates.’⁵⁶⁶ Notably, the information available to the Accused must allow him to identify all of the constitutive elements of the relevant offense.⁵⁶⁷ Finally, the necessary and reasonable measures to prevent or punish the commission of crimes are those reasonably falling within the material powers of the superior.⁵⁶⁸

V. NUON CHEA IS NOT GUILTY OF CRIMES CHARGED IN CONNECTION WITH THE EVACUATION OF PHNOM PENH

234. Nuon Chea accepts and stands by his role in the decision to evacuate Phnom Penh. He contends, however, that the evacuation, and the manner in which it was implemented, was not unlawful. Any crimes which may have been committed in the course of the evacuation were furthermore not intended, planned, instigated or encouraged by Nuon Chea. Two of those alleged crimes, extermination and political persecution, were not committed at all. Two others, other inhumane acts through attacks against human dignity and murder, were not committed with Nuon Chea’s knowledge, intent or participation. Nor are the chapeau elements of crimes against humanity satisfied.

A. No Nexus to an Attack on Discriminatory Grounds

235. Article 5 of the ECCC Law requires that crimes against humanity be ‘committed as part of [an] attack directed against any civilian population, on national, political, ethnical, racial or religious grounds’. This requirement is not fulfilled.

i – An attack against ‘the entire Cambodian population’ cannot be discriminatory

236. The Closing Order alleges that ‘[t]he target of the attack was the entire population of Cambodia’.⁵⁶⁹ This claim defies logic and common sense. Such an attack cannot, by definition, be discriminatory, as it does not differentiate between different groups of people. The Prosecution must demonstrate the existence of attacks targeting specific categories of people on identifiable discriminatory grounds.
237. Discrimination is commonly understood to entail *differential treatment between distinct groups of people*. The online Oxford English Dictionary thus defines discrimination as ‘the unjust or prejudicial treatment of different categories of people’.⁵⁷⁰ International

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instruments prohibiting certain forms of discrimination insist that discrimination requires *distinction* based on specific criteria.⁵⁷¹ Under Cambodian law, discrimination is defined by reference to a person's belonging to a specific group, his or her personal characteristics, situation, or activities.⁵⁷² Cambodia's population was and remains strongly diverse, gathering individuals with different ethnic backgrounds, political ideas, and religious beliefs. An attack launched against every single person in the country would be blind to such diversity – it would be, by definition, indiscriminate. As Nuon Chea indicated, 'you could not treat everyone as enemy'⁵⁷³ – it would simply not make sense. As a result, the approach adopted by the CIJs in the Closing Order cannot seriously be considered by the Trial Chamber.

238. The discriminatory nature of the attack is a prerequisite for the exercise of the ECCC's jurisdiction.⁵⁷⁴ To hold that the conditions of Article 5 are satisfied, the Chamber must identify precise grounds of discrimination underlying an attack directed against specific groups of people. It is for the Co-Prosecutors to demonstrate on which basis a given group of people was targeted. Acceptable grounds of discrimination are defined in Article 5: 'national, political, ethnical, racial or religious grounds'. Acts of violence carried out for other motives fall outside the jurisdiction of the ECCC.

ii – No attack against a legally relevant group can be established

239. There is no nexus between the evacuation of Phnom Penh and any attack on national, political, ethnical, racial or religious grounds. As the Defence will show in section V-E, *infra*, the population of Phnom Penh is not a political group for these purposes.

B. Food, Security and Aid in April 1975

240. As the Chamber is aware, Nuon Chea's defences to the crimes charged in connection with the evacuation of Phnom Penh are based in part on the context which surrounded it. Accordingly, the analysis presented herein explains the circumstances which informed the evacuation prior to proceeding to Nuon Chea's defences in relation to each crime charged.
241. Humanitarian conditions in Cambodia in April 1975 were dire. Rice yields across the country had been devastated by the US bombing and the civil war and were insufficient to support the population. In Phnom Penh, the food supply had reached crisis levels. Other essentials, including medical care and fuel, were dangerously absent. Cambodia's key sources of humanitarian aid – on which the Khmer Republic had relied to avoid catastrophe – were withdrawn just days prior to liberation.
242. The Defence articulated these facts to the best of its ability on the basis of publicly available material in its Twelfth Request for Investigative Action, filed in 2009.⁵⁷⁵ Four

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years later, there is little more to go on. Despite nominally acceding to the Twelfth RIA, the CIJs made only passing reference to, and badly misrepresented, the relevant facts in the Closing Order.⁵⁷⁶ This Chamber rejected repeated reasoned requests to hear testimony in relation to those facts, despite calling dozens of prosecution witnesses and virtually none sought by the defence.⁵⁷⁷

243. Under these circumstances, the Defence is able only to reiterate the (already compelling) evidence it presented to the CIJs in its Twelfth RIA:

The devastation wrought on Cambodia in the early 1970s led to a significant drop in Cambodia's annual rice yields.

Heavy US bombing of the provinces making up the Cambodia's rice basket not only killed many thousands of farmers, but also radically defaced the countryside, destroying paddy fields, irrigation systems and dikes, and liquidating the livestock used to assist farmers. This seriously jeopardized all current and future harvests. In May 1975, almost two years after the bombing ceased, the journalist Sydney Schanberg observed that paddy fields were still 'gouged with bomb craters as big as a swimming pool'. This, in turn, had a critical impact on the country's capabilities to produce rice, the essential component of the population's diet.⁵⁷⁸

Moreover, despite extensive US efforts to bolster the rapidly failing economy, rampant inflation, black market sales to neighboring Vietnam, and the corrupt practices of the Khmer Republic meant that rice became 'as cherished as gold' by 1973. Market prices for food rose at a shocking rate. By April 1975, this catastrophic spike in prices left the majority of the urban population unable to acquire enough food to survive.

A refugee crisis began in earnest with the onset of the civil war, and dramatically increased as the US escalated its 'saturation-bombing' missions. The majority of displaced persons fled to Phnom Penh. Accordingly, the city swelled from a modest pre-war population of 600,000 to an estimated three million by 1975.

Even by 1973, Cambodia's refugee situation was desperate, with 'serious health problems' rampant and thousands 'without housing, without work, and completely dependent on outside assistance for their very survival'.

It was clear even to the US Senate that if something dramatic were not done to alleviate the refugee and food crises, 'rampant malnutrition and probably starvation' would quickly ensue. Moreover, by 1974 'large numbers of children' were suffering from severe malnutrition; Based on one analysis of the available data, the month of March 1975 alone saw '250 deaths per day from starvation' and during the last five months of the war, there were 'at least 15,000 [deaths] and possibly far more'.

Lack of Sufficient Food and Fuel Aid

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[...T]he food relief effort was largely left to a handful of charitable agencies and donor countries. but, ‘they had neither the manpower nor the money really to relieve the suffering of the refugees’.

In addition, civilian consumption of petroleum was severely rationed,⁵⁷⁹ with public utilities—responsible for meeting the country’s water and electricity demands—necessarily consuming the lion’s share of available petroleum⁵⁸⁰ which, after rice, was the most vital commodity financed by USAID.⁵⁸¹ Without a sustained influx of petroleum to generate electricity and water, Phnom Penh would have been unfit for habitation by the large numbers of refugees that had fled there.

Michael Vickery has noted that by February 1975 ‘a family was only allowed [...] 270 grams a day, *just slightly more than the DK milk tin*’. Government and international relief efforts notwithstanding, the majority of Cambodia’s refugees were receiving inadequate daily rations to sustain their survival.

Corruption and Incompetence

As Cambodia’s agricultural economy was collapsing around them, officials of the Khmer Republic did little to improve the situation: incompetence and endemic corruption were unfortunate hallmarks of the Lon Nol regime. This resulted ‘in the disappearance of a large proportion of the rice that was supposed to be sold on the official market at controlled prices’. Foreign aid meant for Cambodians subsidized a ‘military and civilian elite, with senior government officials unashamedly pocketing large amounts cash for their personal use.

The Situation Post 17 April 1975

USAID officials reported on 15 April—two days prior to the fall of the Khmer Republic—that ‘stockpiles of rice in Phnom Penh could last for six days’. The bleak outlook for the country’s immediate future was quite candidly described by departing USAID officials:

Even with completely favorable natural conditions, the prospects for a harvest this year good enough to move Cambodia very far back toward rice self-sufficiency are not good. *Most of the proposed planting program will have to be accomplished by the hand labor of seriously malnourished people.* Land not planted for a number of years becomes badly overgrown, making the plowing job difficult even with mechanized equipment. Weed control will also be a serious problem. *Without substantial foreign aid the task will be brutally difficult and the food supply crisis can be expected to extend over the next two to three years.*

If ever a country needed to beat its swords into plowshares in a race to save itself from hunger, it is Cambodia. The prospects that it can or will do so are poor. Therefore, without large scale external food and equipment assistance *there will be widespread starvation between now and next February and probably more of the same next year, though to a lesser*

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degree. Slave labor and starvation rations for almost half the nation's people (probably heaviest among those who supported the GKR) will be a cruel necessity for this year and general deprivation and suffering will stretch over the next two to three years before Cambodia can get back to rice self-sufficiency.

Based on this dire assessment, *any* successor government 'would have been confronted with almost insurmountable problems of food and agriculture', let alone DK which was 'immediately alienated [by] many who had viewed it with sympathy' for its alleged policy of urban evacuation.⁵⁸²

244. The limited testimony given at trial in relation to conditions of life in Phnom Penh prior to April 1975 corroborates these facts. David Chandler described those conditions as 'horrendous'.⁵⁸³ Francois Ponchaud, who was living in Phnom Penh, testified that 'the people could not survive because they did not grow rice, they could not do their business'.⁵⁸⁴ Numerous witnesses have described the living conditions in Phnom Penh⁵⁸⁵ and the terror and general devastation caused by the bombings.⁵⁸⁶ Sum Chea, a RAK soldier, described the destruction of homes and rice fields.⁵⁸⁷
245. Sydney Schanberg's testimony that refugees in Phnom Penh in April 1975 had fled the Khmer Rouge and not the American bombardments is inconsistent with all of the evidence.⁵⁸⁸ According to David Chandler, 'a primary effect of this bombing was the forced exodus from the countryside, especially around Phnom Penh, into Phnom Penh for – to take refuge.'⁵⁸⁹ Francois Ponchaud testified that refugees in Phnom Penh had fled the countryside for a variety of reasons, including the American bombardments, the civil war, and the policies of the CPK.⁵⁹⁰ As the evidence marshaled in Nuon Chea's Twelfth RIA shows, malnutrition had already begun in 1972 and escalated into a crisis throughout 1973 – before supply lines to Phnom Penh from Prey Nokor had been cut by CPK advances.

C. Nuon Chea is Not Guilty of Other Inhumane Acts through Forced Transfer

246. As the Defence has previously argued, forcible transfer within the territory of a state was not unlawful as such in 1975, nor was it comparable to deportation or transfers in occupied territory. Accordingly, the standards applicable to the latter are inapplicable to population movements effected by a state within its own borders.⁵⁹¹ The legality of a particular instance of forced transfer in 1975 can only be evaluated on the totality of the circumstances.
247. Circumstances in Cambodia in April 1975 were such that resettlement of the urban population to the countryside was essential to the Cambodian economy. Cambodia was suffering a severe rice shortage, its arable land was badly underutilized, and millions of

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farmers sat idle in the cities instead of tending to their land. A mass exodus from the city back to the countryside was critical to the economy.

248. In April 1975, the CPK's policy program was not unusual or unreasonable. It was certainly not unlawful. In 1982, the UN recognized the value of land resettlement was a common method to increase agricultural production.⁵⁹² That was especially true in Southeast Asia.⁵⁹³ For reasons already described, no country in the world had better reason than Cambodia to resettle city residents into rural areas. The so-called 'forced transfer' – the act of sending those living in Phnom Penh in April 1975 to the countryside – was *in itself* lawful. Indeed, it was necessary and logical.
249. In many ways, the CPK's plan worked. David Chandler testified that for the first several months evacuees generally had enough to eat such that they would later 'look back on these months as a comparable Golden Age.'⁵⁹⁴ By contrast, Phnom Penh prior to 17 April 1975 'was jammed with people who did not have enough to eat or sanitary conditions to live under.'⁵⁹⁵ That testimony is corroborated by evidence of a strong harvest in 1975 and good conditions at destination cooperatives.⁵⁹⁶ Francois Ponchaud described Angkar's plan to enhance Cambodia's agricultural infrastructure by building dams and as one that 'I myself find [...] satisfactory'.⁵⁹⁷
250. As the Defence has previously shown, in 1975, involuntary population movements – a more polite rendering of 'forced transfer' – were regularly supported by reputable international organizations, such as the World Bank, when their political objectives were deemed necessary or appropriate. The most vivid example concerns dam construction, which often displaced tens or hundreds of thousands of people in affected areas.⁵⁹⁸ These projects were seen as acceptable because their objective – to generate electricity – were more consistent with the common narrative of progress than the objectives of the CPK. Even today, a massive dam construction project along the Mekong is likely to deprive millions of people of access to food and potentially create widespread displacement. A disproportionate impact is expected in Cambodia.⁵⁹⁹
251. The evacuation of Phnom Penh for the purpose of enhancing the productivity and equity of Cambodia's economy was therefore not illegal *as such*. The key reason why the CPK decided to evacuate *in the manner* that it did was the food supply within the city. Although under different circumstances, the CPK could have resettled Phnom Penh more gradually, that option was not available to the CPK in April 1975. On 17 April 1975, there was six days-worth of rice available in the capital, which means that by April 23 there would have been no reserves remaining *at all*. Reports indicate that in March 1975, 250 people were dying *each day* of starvation. Those reports pre-date the

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termination of the US airlift, the primary source of rice in Phnom Penh in that period, on 11 April 1975. By 17 April 1975, the crisis was on the verge of exploding into a full-fledged catastrophe.

252. As Ieng Sary correctly indicated in an interview with Steve Heder, the exact parameters of the evacuation were not set until a short time before the liberation of Phnom Penh.⁶⁰⁰ One option under consideration was a targeted evacuation of the refugees from the provinces, leaving the ‘genuine’ city-dwellers in Phnom Penh, at least temporarily.⁶⁰¹ That solution was ultimately rejected for two reasons. First, the logistics of determining the origins of 2.5 million people in the relative chaos of post-liberation Phnom Penh would have been impossible. Second, the CPK’s experience in the liberated zones prior to April 1975 proved that the continued operation of markets, which was inevitable in the cities, distorted the distribution of rice by diverting the limited paddy available to those who could afford it – in other words, the rich.⁶⁰²
253. The Co-Prosecutors, along with certain witnesses who appeared at trial, have sought to delegitimize the CPK’s decision to evacuate Phnom Penh by arguing that it was driven by ‘ideology’ rather than considerations of economics or food supply.⁶⁰³ That assessment lays bare the western, capitalist bias entrenched in the proceedings against Nuon Chea.⁶⁰⁴ What witnesses refer to dismissively as ‘ideology’ was Nuon Chea’s ‘ideology’ about *how to improve production*. Underpinning the characterization of CPK policy as ideological is an assumption that competing modes of production – namely, western ones – are somehow neutral or ideology-free. Needless to say, Nuon Chea disagrees.
254. The Co-Prosecutors have similarly sought to persuade the Chamber that the objectives of the evacuation of Phnom Penh were not ‘humanitarian’.⁶⁰⁵ Yet, never once has Nuon Chea claimed that the evacuation of Phnom Penh was a ‘humanitarian’ act. The evacuation of Phnom Penh was a legitimate policy decision taken by a government following its assessment of a constellation of factors which included, among others, Cambodia’s long-term economic viability and short-term considerations of food supply and security.⁶⁰⁶ No one factor was controlling.
255. The Co-Prosecutors have focused heavily in their submissions on a small selection of documents linking the evacuation of Phnom Penh and other cities, such as Banam and Udong, to the CPK’s effort to ‘seize the people’ and ‘dry up the people from the enemy’. Nuon Chea does not dispute that the CPK employed that terminology. Nuon Chea does dispute the precise meaning of the phrase and its importance as a reason for the evacuation of Phnom Penh.

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256. Steve Heder explained that the phrase ‘seize the people’ signified one party’s victory over another in their battle to win administrative control over the population in a contested area.⁶⁰⁷ His explanation in that regard is accurate, and is also consistent with the CPK’s economic rationale for the evacuation of Phnom Penh, which depended on bringing the population within its newly established economic order. That was the primary meaning of ‘seize the people’ in the context of the evacuation of Phnom Penh.
257. Finally, the CIJs suggest the CPK could have avoided the evacuation merely by accepting foreign humanitarian aid, or otherwise making use of readily available rice stored elsewhere in Cambodia.⁶⁰⁸ Yet as the Defence has already shown, the evidence fails to establish that any concrete aid was offered, what volume of aid might have been available, and what conditions would have been attached to that aid had it been accepted.⁶⁰⁹ Francois Ponchaud testified that the assertion in his book that large reserves of rice in Kompong Som were left to rot in April 1975 was based on a story he had read in a news article.⁶¹⁰ There is no explanation of the origins of this rice, why it was stored in Kompong Som, or the sources for the article’s claims. Nor are these assertions in this article, which is not before the Chamber, at all rational: even assuming the very worst of the CPK, they would at least have used freely available rice to feed RAK troops.
258. Although the Co-Prosecutors allege that aid was readily available to the CPK on 17 April 1975, it is Nuon Chea who has repeatedly sought the appearance of witnesses at trial to speak to that question. The Defence’s February 2011 witness list sought numerous witnesses from key aid organizations functioning in Phnom Penh at the time, including UNICEF, Worldvision International and Catholic Relief Services.⁶¹¹ The narrowly tailored list of four priority witnesses sought by Nuon Chea in September 2012 included [REDACTED], the head of the Phnom Penh office of UNICEF or, in the alternative, his deputy [REDACTED]. Those witnesses were sought for the express purpose of describing ‘the successes and failures of aid missions prior to 1975 and the probability of their success had they continued through the late 1970s.’⁶¹² The Chamber declined to hear that testimony. It may not now glibly conclude on the basis of a collection of vague telegrams that the CPK could have remedied the crisis in Phnom Penh merely by accepting foreign humanitarian aid.

D. The Elements of Extermination are not Established

259. The Closing Order alleges that the evacuation of Phnom Penh resulted in deaths on a massive scale, amounting to the crime against humanity of extermination. More specifically, the Closing Order states that extermination was established via evidence

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that ‘many people died as a result of the conditions imposed during [the evacuation of Phnom Penh].’⁶¹³

260. The Defence does not deny that deaths occurred during the evacuation of Phnom Penh. Nevertheless, the Defence disputes Nuon Chea’s criminal liability for extermination for four reasons: (i) deaths during the evacuation were not the *result* of the conditions *imposed* during the evacuation, but of pre-existing conditions in Phnom Penh; (ii) Nuon Chea did not act with the requisite *mens rea* to establish the crime of extermination; (iii) conditions during the evacuation of Phnom Penh were not ‘calculated to bring about’ the destruction of the population;⁶¹⁴ and (iv) the evacuation was not part of a ‘vast murderous enterprise.’⁶¹⁵

i – Causation is not established

261. The Defence denies that deaths which occurred during the evacuation were the *result* of the evacuation. As already noted, by April 1975 malnutrition had been rampant in Phnom Penh for well over two years.⁶¹⁶ By March 1975, hundreds of people were dying from starvation each day. The evacuation lasted for several weeks.⁶¹⁷ In all likelihood, thousands of people would have died in Phnom Penh if the evacuation had not taken place. There is no clear evidence either of how many people died during the evacuation or how many people in Phnom Penh would have died otherwise.⁶¹⁸ As already noted, the Chamber declined to call witnesses sought repeatedly by the Defence for the purpose of testifying to living conditions in Phnom Penh in April 1975 and the prospects for those conditions going forward.⁶¹⁹ The Chamber may not now make assumptions prejudicial to Nuon Chea with regard to facts to which those witnesses would have testified.

ii – The *mens rea* for extermination is not established

262. The Closing Order alleges that the perpetrators of the evacuation acted with the knowledge that the conditions imposed during the evacuation would result in a large number of deaths. In addition, despite being informed of the number of deaths resulting from these conditions, they persisted in imposing them.⁶²⁰
263. The Closing Order, however, misstates the *mens rea* for extermination. As outlined previously, the *mens rea* requires that the perpetrator act with the *intent to kill* persons on a massive scale, or *the intent to subject* a large number of people to conditions of living that would lead to their deaths in a widespread or a systematic manner.⁶²¹ That standard requires that the accused acted with direct intent. Accordingly, extermination is not established so long as an accused does not *mean to* cause death on a massive scale.⁶²²

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264. Not a single piece of evidence establishes that any member of the Party center – including Nuon Chea – had the direct intent to kill residents of Phnom Penh on a massive scale. The proposition that CPK leaders would purposefully impose harsh conditions on their citizens in order to eliminate enemies is illogical, given that the evacuation was directed at every person in Phnom Penh and not simply ‘enemies’ of the regime. Further, this is contrary to the Closing Order’s allegation that the evacuation was effectuated in order to provide labour in the cooperatives.⁶²³ Professor Chandler rightly testified that the CPK never sought to exterminate ‘New People’.⁶²⁴
265. The evidence establishes clearly that the CPK did not see the population of Phnom Penh on 17 April 1975 as enemies of the Party.⁶²⁵ The Standing Committee met with the chairmen of every zone to inform them of the evacuation and plan the best way to accommodate those evacuated.⁶²⁶ The zones confirmed that ‘people at the base’ would behave properly to the evacuees, and though some groups ‘created havoc,’ the Party center gave repeated instructions otherwise.⁶²⁷
266. The Defence notes additionally that, although irrelevant to the applicable direct intent standard, Nuon Chea did not know that the evacuation of Phnom Penh would cause death on a massive scale. Nuon Chea could not have known that removing the population of Phnom Penh from conditions of imminent starvation would cause more, rather than fewer deaths. Even if the Chamber were to conclude that Nuon Chea was aware of the possibility or even the likelihood that excess death would occur on a massive scale (which he was not), it could not on that basis hold Nuon Chea liable pursuant to the intent standard applicable to extermination.

iii – Conditions were not calculated to bring about destruction of the population

267. For similar reasons, conditions imposed during the evacuation of Phnom Penh were not ‘calculated to bring about’ death on a massive scale. Conditions during the evacuation were not ‘calculated’ at all, but rather a consequence of the speed with which the evacuation was carried out. The variability in conditions across the city, and especially between zones, corroborates this.⁶²⁸ Indeed, for reasons already articulated, the death of a large number of people during the evacuation was *contrary to* the objectives of the CPK. Accordingly, the evacuation could not have been ‘calculated’ to cause it.

iv – Evacuation was not part of a vast murderous enterprise

268. The crime of extermination requires that the accused act as part of a vast murderous enterprise.⁶²⁹ The evacuation was not a ‘murderous enterprise’ but rather an effort to send city-dwellers to the countryside.

E. The Elements of Political Persecution are not Established

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269. The Closing Order alleges that the legal elements of the crime against humanity of persecution were established with regards to acts committed during the first population movement. The CIJs have charged Nuon Chea with political persecution against two groups: (i) former Lon Nol civilian and military personnel; and (ii) 'April 17 People'.

i – April 17 People

270. The Closing Order alleges that CPK authorities identified groups as 'enemies' based on their real or perceived political beliefs or political opposition to those wielding power within the regime. The entire population remaining in towns after the CPK came to power was labelled as 'New People' and subject to harsher treatment than the 'Base People', with a view to re-educating them or identifying alleged enemies amongst them.⁶³⁰ These allegations do not constitute political persecution for two reasons: 'the population of Phnom Penh' is not sufficiently cohesive to constitute a political group, nor was the entire population of Phnom Penh defined by the CPK as political opponents.

271. The category of 'all persons who were evacuated from Phnom Penh' cannot constitute a defined, let alone political, group. The Closing Order lists all those persons who were evacuated from Phnom Penh and subsequently defined as New People as: civilians, men, women, the elderly, children, monks, hospital patients, 'the wounded' or 'sick,' and 'mothers who had just given birth.' As the Closing Order states, '[e]ntire families were made to leave Phnom Penh,' and the total number of evacuees has been estimated at '1.5 to 2.6 million people.'⁶³¹

272. In light of the composition of this population, and the sheer number of persons evacuated, the Defence is hard-pressed to find any characteristic common to every individual said to have left Phnom Penh. More importantly, the Co-Prosecutors have presented no evidence that any of these evacuees shared a common political belief or opposition to the CPK. At least 75% of the population evacuated from Phnom Penh – amounting to more than 1.5 million people – were refugees from the provinces of Cambodia, and members of the CPK's supposedly preferred peasant class.

273. In not one case in the long line of jurisprudence that has developed persecution as a crime against humanity – from Nuremberg to the establishment of the ECCC – has a Chamber defined persecution as broadly as the Co-Prosecutors now propose to do.⁶³² International jurisprudence on political persecution focuses on victims' political ideology or membership in a political party, not vague categorizations of people without any connection to politics.⁶³³ In this fashion, the very concept of a political group loses meaning.

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274. As emphasized by the Duch Supreme Court, the crime of persecution is different than other crimes against humanity, in that the *mens rea* requires that the Accused have a specific intent to persecute on, in this case, political grounds.⁶³⁴ Defining the victim group as broadly as the entire population of Phnom Penh eviscerates this specific intent, giving persecution the same *mens rea* as every other crime against humanity – such as extermination or murder - in violation of historical precedent. The Defence emphasizes that, as noted by the Duch Supreme Court, persecution belongs to the same genus as genocide, in that the perpetrators of genocide must target their victims on the basis of group membership.⁶³⁵ Asking the Chamber to find that the CPK persecuted every person evacuated from Phnom Penh is analogous to asking it to find that genocide occurred against all evacuees, which would, of course, be irrational.
275. Even if the entire population of Phnom Penh could, in principle, constitute a unified group, they were not seen as opponents by the CPK and therefore do not qualify as a political group for the purposes of persecution.⁶³⁶ As demonstrated in section III-B, *supra*, CPK publications consistently show that the CPK set out to help, not harm, ordinary citizens. Indeed, the population is described as needing *liberation from* the enemy. The Co-Prosecutors have consistently taken the position that the purpose of the evacuation of Phnom Penh was to ‘dry up the people from the enemy.’ Yet, to dry up the ‘people’ from the ‘enemy’ draws an explicit distinction between the population on the one hand and the enemy on the other. David Chandler stated that during the evacuation from Phnom Penh, New People were not necessarily considered ‘enemies at the time’, and the CPK ‘didn’t know exactly who all these people were in terms of class or loyalty.’⁶³⁷
276. The notion that the CPK persecuted New People by sending them to the countryside and thereby treating them as Base People defies common sense. In the usual case, persecution is constituted of one group, which is disfavored, being treated worse than another group, which is favored. In this case, the Co-Prosecutors allege that the CPK persecuted a disfavored group by treating them *more like* the favored group. This assertion is logically inconsistent with the very idea of persecution.
277. Tellingly, the only evidence that evacuees were seen as antagonistic to the CPK was given by foreigners who studied Democratic Kampuchea from afar and have, in this respect, badly misunderstood CPK policy. During the war, Phnom Penh was seen as a *stronghold* of the enemy *in which* everyday people lived. Witnesses consistently note the abrupt end of violence the moment RAK troops entered Phnom Penh, a remarkable fact at the conclusion of a long and vicious civil war.⁶³⁸

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278. This distinction between wartime opponents and the ordinary population came starkly to light during the testimony of Chhouk Rin, an ordinary but longtime RAK combatant. In the course of his testimony, Chhouk agreed to a statement from his WRI that prior to 1975, citydwellers were understood to be ‘with the’ enemy. In a deliberate effort to misconstrue that testimony, the Co-Prosecutors asked, ‘when was it, then, that people were speaking to you about the 17th of April People being enemies?’ Chhouk was not misled, and confirmed twice that he ‘never received any instructions that the 17 of April People being considered as enemies’.⁶³⁹
279. The next day, the Co-Prosecutors tried again to misrepresent the substance of Chhouk’s testimony, asserting, wrongfully, ‘You said yesterday that even a baby would have known in 1973 that city dwellers were the enemy.’ Chhouk stood firm, correcting the prosecution for a second time:
- We never treated anyone, including a baby, as an enemy [...] because we had to liberate the cities and we never waged war with the civilians. Indeed, we treated other opponents, like other - the soldiers of the other party opposing us as our enemies, but we never treated civilians as our enemies.⁶⁴⁰ (emphasis added)
280. Not surprisingly, there is no consistent evidence of discriminatory treatment against New People upon arrival at their destinations, as would be expected had April 17 People been perceived as political opponents. Many witnesses testified that once they arrived at their destination cooperatives, April 17 People shared food with Base People and were treated equally.⁶⁴¹ Hun Chhunly testified that evacuees found food for themselves but they also shared with the Base People and that starvation did not exist in 1975.⁶⁴² ████████, ████████ and ████████ all testified to the fact that when the New People arrived, they were provided housing and food by the villagers.⁶⁴³ Pin Yathay testified that when he arrived at Chhey Khmau after the evacuation April 17 People were greeted and given food.⁶⁴⁴ They were not mistreated and merely instructed that they had to refashion themselves in conformity with the revolution.⁶⁴⁵
281. Some witnesses cited in the Closing Order do describe being labelled as ‘New People’ following the evacuation. Yet they do not speak of any differential treatment.⁶⁴⁶ The same can be said for the April 1977 issue of Revolutionary Flag cited by the CIJs, which merely identifies three categories of cooperative members.⁶⁴⁷
282. Evacuees who do claim to have experienced a form of differential treatment were not, as defined under law, subject to ‘discrimination’. In being treated the same as Base People, April 17 People experienced for the first time the difficulties of a new life working in the fields – as rural Cambodians had done for millenia. Lay Bony explained

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this well, saying that the evacuees were from the business classes and thus never got used to farming, and thus they did not do well in performing their farming tasks.⁶⁴⁸

283. Yim Sovann only states that she cried when she saw what she was given to eat in her new life, and felt sick when she worked.⁶⁴⁹ Chum Sokha testified that the New People had to build their own houses, and give up their belongings to be ‘like everyone else.’⁶⁵⁰ Mom Sam Oeurn stated that soon after the evacuation her husband and sons were ordered to herd cows in the field, but her son was injured because as a city dweller he had never herded cattle before.⁶⁵¹ When Maung Ret testified that in her village, New People were required to perform ‘harder labour’ than the Base People, this is likely only a reflection of these same difficulties.⁶⁵² Other witnesses speak of a ‘fear’ of discrimination, but provide no evidence that their fears were well founded, or that actual persecution occurred.⁶⁵³

ii – Lon Nol soldiers and officials

284. The Closing Order advances three allegations in relation to the political persecution of Lon Nol soldiers during the evacuation of Phnom Penh: that Lon Nol soldiers were separated from those leaving the city,⁶⁵⁴ disarmed,⁶⁵⁵ and made to leave the city with the civilian population.⁶⁵⁶ The Closing Order also alleges that Lon Nol soldiers were murdered; these allegations are addressed in the section that follows.
285. The evidence upon which the Closing Order relies to prove that Lon Nol soldiers were separated from civilians is hearsay, and speculative. The first witness relied upon, Pech Chim, has no first-hand knowledge as to whether Lon Nol soldiers were separated out from the civilian population, as he was given this information by the wives of soldiers who had been evacuated.⁶⁵⁷ More crucially, neither Pech Chim nor the second witness, Chum Sokha, provide any information as to what happened to these soldiers after they were allegedly separated from the general population.⁶⁵⁸ In fact, as the Closing Order agrees, the opposite was true: Lon Nol soldiers were not singled out for discriminatory treatment but were disarmed, and left the city with the civilian population. ██████████ ██████████ stated that his unit was told to instruct Lon Nol soldiers to lay down their weapons and join the evacuation as ordinary citizens, and did so when he came upon one Lon Nol unit.⁶⁵⁹ Witness ██████████ did the same,⁶⁶⁰ and ██████████ testified to having been a Lon Nol soldier who was simply disarmed and sent to work in a cooperative like all other civilians.⁶⁶¹ As described in section VII, *infra*, the testimony of four other witnesses – Chum Sokha, Ieng Phan, ██████████, ██████████ – state that Lon Nol soldiers were told by RAK troops to join the civilian population in the evacuation of Phnom Penh.⁶⁶²

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286. Even if were true that Lon Nol soldiers were separated from civilians, this alleged treatment does rise to the level of political persecution as a crime against humanity. For reasons previously stated before the Chamber and outlined further in section VII, *infra*, the mere separation of soldiers from a larger group does not establish that they were mistreated.⁶⁶³ Persecution requires an act or omission that denies or infringes upon a fundamental right laid down in international customary or treaty law.⁶⁶⁴ Mere separation from a group does not suffice, nor does it support an inference to that effect.

iii – Other supposed enemy groups

287. Nor is persecution established in relation to any other subset of the population of Phnom Penh. For reasons already stated, the CPK did not conceive of any group of people as enemies of the Party, seeking instead to dismantle systems of economic and political authority.⁶⁶⁵ Accordingly, no relevant political group(s) exist.

288. Even if the Chamber determines, wrongfully, that the CPK did define certain groups as Party opponents, the Co-Prosecutors are unable to establish discrimination in fact: the evacuation of Phnom Penh affected all of its inhabitants indiscriminately. Indiscriminate treatment negates discrimination in fact and cannot amount to persecution.⁶⁶⁶ Nor is there any credible evidence that sub-groups within the population were evacuated in a differential manner.

F. Evidence of Murder is Limited and Unreliable

289. Allegations of murder in connection with the evacuation of Phnom Penh in the Closing Order concern two discernable groups: civilians and former Khmer Republic soldiers.

i – Civilians

290. Although well over one hundred witnesses gave evidence in connection with the evacuation of Phnom Penh,⁶⁶⁷ the overwhelming majority testified to having seen no violence, let alone killing, on the part of RAK troops. Chum Sokha stated that he ‘did not see any mistreatment of people committed by the Khmer Rouge soldiers.’⁶⁶⁸ Kung Kim testified that killings occurred only in the course of war, and that after troops entered Phnom Penh, the soldiers were ordered not to shoot.⁶⁶⁹ Despite travelling the city extensively, Al Rockoff testified that he did not observe the use of violence against civilians on 17 April 1975.⁶⁷⁰ The Defence agrees with the CIJs’ conclusion that ‘most witnesses stated that there was no particular violence on the part of the CPK troops’ during the evacuation.⁶⁷¹ In fact, the use of violence was not necessary because, as noted in the Closing Order, most evacuees did not resist instructions to leave Phnom Penh.⁶⁷² More than two-dozen witnesses testified that they left the city because they

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were told by the CPK of an imminent bombing by American forces, and/or that they would return to their homes in three days' time.⁶⁷³

291. The evidence relied upon by the CIJs to charge Nuon Chea with the murder of civilians in connection with the evacuation of Phnom Penh is unpersuasive. For instance, the CIJs cite evidence that CPK troops engaged in 'beatings',⁶⁷⁴ 'threats',⁶⁷⁵ and 'the use of force to ensure people left their homes.'⁶⁷⁶ The CIJs further contend that RAK soldiers were instructed to 'do whatever they needed to do to ensure people left Phnom Penh,'⁶⁷⁷ and that witnesses reported hearing gunshots,⁶⁷⁸ and seeing dead bodies on the roads.⁶⁷⁹ The Defence notes, however, that even if proven these acts do not establish the *actus reus* of murder, which requires the *death* of a victim as a result of the acts or omission of a perpetrator.
292. Even should the Chamber take these facts as circumstantial evidence of murder, however, the Defence notes that a majority of this evidence is either vague, hearsay, or conjecture. For example, in support of the contention that RAK troops engaged in 'acts of violence', the Closing Order cites to the written statement of Sum Chea, who in fact admitted both in his written statement and in court, that no violence occurred in the area in which he was working. 'Other forces,' he stated, 'committed beatings and mistreatment,' but he provided no basis for his knowledge of the actions of soldiers in other zones.⁶⁸⁰
293. Testimony that witnesses heard 'shooting in the air' is equally specious, for not one witness testified to this causing actual harm to a civilian. In fact, ██████████, a RAK soldier involved in the evacuation, heard gunshots but was told by his superiors that this was done only to evacuate people, but they were 'not shooting the enemies.'⁶⁸¹ This is corroborated by ██████████, an evacuee who stated that shots were 'not aimed at people', but intended just to keep people walking on the road.⁶⁸² In addition, Al Rockoff further stated that this was a dark, rainy day and it was not unusual for Cambodians to fire up into the sky to chase away bad weather.⁶⁸³
294. The CIJs' assertion that witnesses 'saw dead bodies on the streets of Phnom Penh and on their journey out of town' is also non-probative. Not one witness testified to first-hand knowledge of the circumstances leading to these alleged deaths, nor the identity of the perpetrators - whether RAK troops, Lon Nol soldiers, or ordinary citizens.⁶⁸⁴ Further, those witnesses specifying that the corpses they encountered were civilians did not provide any basis for this conclusion.⁶⁸⁵ In fact one witness, Francois Bizot, testified that when he was able to leave the French Embassy, where he was contained by the CPK, stated he 'would just like to indicate the contrary to what has been said

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many times, I did not see many corpses in the city, I saw only four, five no more than that.’⁶⁸⁶

295. The evidence cited by the CIJs which does purport to relate directly to the murder of civilians is also mis-characterized, vague or based on conjecture. For example, the Closing Order alleges that civilians were shot in CPK cross-fire targeting Lon Nol soldiers.⁶⁸⁷ This does not, however, establish the *mens rea* for murder, which would require the perpetrator to have the intent to cause death to the civilians – and not Lon Nol soldiers engaged in active combat. Yim Sovann, one of the two witnesses relied upon by the CIJs in this regard, furthermore stated vaguely that she saw this activity while passing by and she ‘did not understand what was going on.’⁶⁸⁸
296. The CIJs further contend that witnesses testified to persons being killed on the road ‘for small things such as not wanting to abandon their bicycles.’⁶⁸⁹ This assertion is based, however, on the written statement of Francois Bizot, who in fact stated that he was told this by ‘refugees arriving at the [French] embassy.’ As such, this evidence is hearsay, and has not been cross-examined in court.
297. Finally, the CIJs point to five witness statements to support the conclusion that people were shot dead if they refused to leave their homes,⁶⁹⁰ but much of this evidence is conjecture. For example, Sot Sem reports seeing persons shot by CPK soldiers, but ‘believed’ they were civilians who refused to leave their homes. In fact, the witness provided no details on the identity of these victims – whether civilian or soldier engaged in active combat – or the circumstances surrounding these deaths.⁶⁹¹ ██████ stated vaguely that if persons failed to leave they would be killed, but gave no evidence of a specific incident of this occurring. The witness then clearly stated that he was not an eye-witness to any shootings, and that - aside from looting - he did not see any CPK soldiers mistreat civilians.⁶⁹² Chum Sokha made no mention at all civilians being shot by CPK soldiers; instead, as already noted, he stated that he ‘did not see any mistreatment of people committed by the Khmer Rouge soldiers.’⁶⁹³ The Los Angeles Times article cited in the Closing Order contains a hearsay statement from an unnamed individual identified as ‘one old widow,’ with no basis in fact.⁶⁹⁴ Lay Bony admitted at trial that her statement that anyone who returned to Phnom Penh during the evacuation was shot was hearsay and conjecture.⁶⁹⁵ Other witnesses who testified to the killing of civilians during the evacuation were vague⁶⁹⁶ and/or based on hearsay.⁶⁹⁷

ii – Lon Nol soldiers and officials

298. The CIJs allege that, during the evacuation of Phnom Penh, the CPK announced that all officers of the former regime other than the seven ‘supertrators’ would be forgiven and

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should return to work for the Party; but that once these people surrendered, they were taken to an unknown location and disappeared.⁶⁹⁸ The evidence fails to support this allegation. The WRI of the first witness relied upon in the Closing Order, Chum Sokha, describes the announcement that Angkar would forgive all persons except the seven supertraitors, but makes no mention of the subsequent killing of lower level officials.⁶⁹⁹ At trial the witness testified that he did not even hear the announcement, which instead was described to him by his superior, Koeun.⁷⁰⁰

299. Curiously, the second witness, [REDACTED], made not one mention of this alleged announcement or the return of Lon Nol officials to work.⁷⁰¹ Only one witness, [REDACTED], described both hearing an announcement from Angkar and seeing an arrest of Lon Nol soldiers, but gave no evidence that one resulted from the other. Nareth also provided no testimony that the soldiers were murdered, but stated explicitly that he ‘did not know where they were taken because I continued on my journey to my hometown.’⁷⁰²
300. The Closing Order also alleges that Lon Nol soldiers were shot if they ‘refused to lay down their arms or showed any resistance.’⁷⁰³ This statement by definition, however, indicates that the soldiers had not surrendered and were still in active combat, and thus their killing was justified. For example, witness [REDACTED], cited in the Closing Order, testified to the killing of Lon Nol soldiers, but explicitly stated that those soldiers were exchanging fire with RAK soldiers. He further indicated that when he arrested Lon Nol soldiers in Phnom Penh, he did not murder them but questioned them and sent them to another location.⁷⁰⁴
301. Long Mary’s evidence is inconsistent and contradictory. She first stated that she received an order from her superiors to kill Lon Nol soldiers, but then clarified that a she herself never killed a Lon Nol soldier, nor saw any violence whatsoever committed during the evacuation. She later indicated that Lon Nol soldiers who surrendered would be taken in trucks to an unknown location. This latter statement is vague, and is also inconsistent with the proposition that Lon Nol soldiers were shot immediately if they resisted.⁷⁰⁵ These contradictions could have been resolved had the witness been cross-examined at trial – as requested by the Defence – but unfortunately this did not occur.⁷⁰⁶ Witness Chum Sokha’s OCIJ statement that he at some point saw Lon Nol soldiers tied together and ‘[t]hose who were arrested were to be killed’⁷⁰⁷ is mere speculation: when asked how his unit treated soldiers waving white flags when they entered Phnom Penh, Chum Sokha stated simply ‘We asked them to evacuate the city.’⁷⁰⁸

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302. Numerous other former RAK soldiers witnesses who participated in the evacuation of Phnom Penh testified to the same: Ieng Phan stated that he never received orders to mistreat or execute Lon Nol soldiers, and before the attack on Phnom Penh he was ordered to treat captured enemy combatants as prisoners of war. His unit disarmed Lon Nol soldiers and sent them to the rear along with civilians.⁷⁰⁹ ██████████'s unit told surrendering Lon Nol soldiers to remove their uniforms, and sent them out of the city with the rest of the evacuees.⁷¹⁰ ██████████ stated that after he entered Phnom Penh his unit asked Lon Nol soldiers to take of their uniforms, throw down their weapons, and 'go wherever they wanted.' The witness did not see anyone kill any Lon Nol soldiers.⁷¹¹
303. The Closing Order cites to one witness, ██████████, to support a finding that Son Sen ordered the arrest and killing of high-level Lon Nol officials.⁷¹² The Defence notes that this is a mis-characterization of the evidence, which is also hearsay and conjecture. First, a careful examination of the audio recording of this interview indicates that the witness did not say explicitly that Son Sen gave this order, but only that the order was from the division, which received the order from the 'upper echelon.' The witness mentioned Son Sen only when asked next whom he believed was the 'upper echelon,' answering, 'Son Sen, because he controlled all of the divisions.'⁷¹³ The witness has no basis for knowing that the alleged order came from Son Sen; additionally, this order was passed down three levels of hierarchy before it reached the witness, and is thus triple-hearsay. In addition, even if proven to be true, the order only called for the arrest, and not the killing, of former officials, and only those who refused to leave the capital; it does not offer proof of murder of Lon Nol soldiers. Finally, the witness states that heard about a killing that occurred from soldiers who participated.⁷¹⁴ ██████████ offered no proof that the murder was connected to this order from the upper echelon. In addition, he was not an eye-witness to the alleged incident, and thus there is no direct evidence that this crime occurred.
304. Finally, as the Defence has previously argued,⁷¹⁵ the alleged 'execution order' of Comrade Pin listing former Lon Nol soldiers and officials to be 'smashed' proves nothing. There is no indication as to its authorship, it has not been signed, and no proof that it was received by anyone – high or low level – exists. Other statements in evidence are vague, constitute hearsay or conjecture and are therefore not probative.⁷¹⁶

G. Nuon Chea is not Criminally Responsible for Crimes Committed during the Evacuation of Phnom Penh

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305. Though criminal acts may have been committed by troops evacuating Phnom Penh, none are legally attributable to Nuon Chea. There can be no evidence that Nuon Chea participated in a joint criminal enterprise with, or had command and control over, the perpetrators of these crimes because, the Defence will show, they were either independent actors, or were under the command of zone leaders beyond Nuon Chea's control. Neither could Nuon Chea have planned, ordered or instigated these crimes for the same reason.

i – Command structures in place during and after the evacuation of Phnom Penh

306. Troops responsible for the liberation, occupation and evacuation of Phnom Penh were zone-based forces reporting to division commanders and ultimately the zone secretaries. Zone leaders agreed with other members of the Standing Committee to the liberation and evacuation of Phnom Penh, but not to the details of its implementation.

307. As noted above, zone authorities exercised considerable autonomy in, and especially prior to, Democratic Kampuchea. That reality manifested starkly during the evacuation of Phnom Penh, the first time that the zone armies were required to cooperate closely in a single operation. Not only did troops under the command of each zone conduct themselves differently, they were engaged in open combat with each other even while they occupied the city. According to Ben Kiernan:

The Northerners soon became known for their use of methods even more brutal than those of the Southwest and Special Zone forces [...] 'The Easterners used kind methods along the road. They gave out medicine and rice.' Unlike the Southwesterners, they did not open fire....The Eastern Zone forces were generally much better behaved [...] [H]e found the Northern Zone 'blackshirts' very harsh to the refugees; at the same time these Khmer Rouge were very critical of the Khmer Rouge across the river, in the Eastern Zone.... [The East Zone soldiers] were helpful... good commie soldiers.⁷¹⁷

308. Philip Short's account is similar:

To confound the confusion, troops from the four different zones responsible for occupying the city issued contradictory orders...But on the whole, the South-Westerners, who answered to Mok and Chou Chet, used the velvet glove more than the iron fist. One deportee remembered them 'shepherding [us] quietly along, without too much brutality.' Pin Yathay found them 'as polite as they were implacable.' Mok's troops allowed them to make for their home villages, even if it meant leaving the main column. Yathay was able to drive his car as far as Koh Thom, forty-five miles south of Phnom Penh, and when eventually it was confiscated he was given a receipt. In the North, such niceties were unknown. The South-westerners were also more selective in their treatment of republican soldiers. Some, but not all senior officers were killed, and junior officers and NCOs were spared. The Special Zone troops on Highways 3 and 4, leading to Kampot and Kompong Som, who answered to Vorn Vet, adopted a similar approach...Deportees who travelled eastward down Highway 1 gave glowing accounts of their treatment by the green-uniformed Easterners who, in

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contrast with the callousness of the men in black, 'helped everyone who was overloaded.'⁷¹⁸

309. These accounts are confirmed by the testimony of soldiers at different ranks and in different zones, including witnesses who appeared before this Chamber. At least two witnesses have testified that the military divisions which took and occupied Phnom Penh on 17 April 1975 divided the city into four distinct zones over which each faction had *de facto* exclusive control.⁷¹⁹ They have also testified that ordinary soldiers were so tightly restricted to their respective zones that they were aware of the conditions only in the limited section of the city to which they had access.⁷²⁰ ██████████ explained to Ben Kiernan that the separation between the zone armies was so acute that armed clashes erupted between the four zone armies, and that troops who strayed into a quadrant of the city controlled by another army were arrested and detained.⁷²¹

ii – Nuon Chea is not criminally responsible through participation in a JCE

310. Nuon Chea did not agree to the material elements of murder, extermination or other inhumane acts through attacks against human dignity. Nuon Chea did not have the requisite intent in relation to murder, other inhumane acts through attacks against human dignity, political persecution or extermination. Accordingly, he may not be found guilty through participation in a joint criminal enterprise for any such crime which the Chamber determines took place in the course of the evacuation of Phnom Penh.

311. Zone leaders, who were themselves members of the Standing and/or Central Committees, agreed to the evacuation only in general terms. Detailed modalities for the implementation of the evacuation were not formulated, largely because the Standing Committee had only limited *de facto* control over the conduct of troops on the ground. No direct evidence to the contrary exists: there is no documentary or testimonial evidence of any kind describing in detail discussions within the Standing and Central Committees, including the zone leaders.

312. Circumstantial evidence supports the inference that, if criminal acts were committed during the evacuation, they were initiated by zone leaders, local commanders or even individual soldiers. Violence against civilians was rare (at best)⁷²² and troops evacuating the population persuaded them to leave – instead of using violence – by explaining that the evacuation was temporary and that an American bombardment was imminent.⁷²³ Had Nuon Chea agreed with other senior leaders to murder civilians in the course of the evacuation, killings would have been far more widespread. The evidence furthermore shows that the treatment of Lon Nol soldiers and officials, and of the civilian population in general, varied considerably on the basis of the zone in which

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they were located.⁷²⁴ By the same reasoning, that evidence is inconsistent with a centrally-planned directive.

313. This conclusion is further corroborated by the limited evidence of mistreatment of April 17 People which does exist on the case file. Many of the incidents cited in the Closing Order clearly constitute the conduct of individual groups of Base People acting without any authority. For instance, Yim Sovann testified that the Base People ‘caused trouble’, and took clothing and valuables from the evacuees. They expressed hatred toward them, and blamed them for being 17 April people.⁷²⁵ Mom Sam Oeurn testified that some Base People accused New People of being opportunists and coming to the cooperatives to steal their food.⁷²⁶
314. The Defence notes, finally, that, of the small selection of testimony which did describe killings or mistreatment in the course of the evacuation, most concerned the conduct of cadres in their destination cooperatives.⁷²⁷ None make mention of a broader policy directive from higher levels, or indeed, any facts beyond the very narrow scope of their personal experience. The evidence that the conduct of cadres at the base was discretionary is even stronger than the evidence RAK troops acted under zone authority during the evacuation itself.⁷²⁸ It is no coincidence that the limited evidence of killings of civilians in connection with population movement phase I disproportionately concerns events which occurred ‘upon arrival’. Nor is it any coincidence that it concerns events in the Northwest Zone, where the evidence consistently establishes the conduct of CPK cadres was the worst, and least in line with CPK policy.⁷²⁹
315. A conviction may be based on an inference drawn from circumstantial evidence only if no other reasonable inference is available.⁷³⁰ The evidence clearly supports the inference that murders of the civilian population, if any, were committed by individual soldiers acting without instructions from superiors. The evidence furthermore supports the inference that conditions imposed during the evacuation, and the treatment of persons associated with the Khmer Republic, were decided upon by zone leaders without instruction from the Standing Committee. Accordingly, Nuon Chea may not be convicted on any theory of commission for any crimes committed in the course of the evacuation.

iii – Nuon Chea is not criminally responsible by any other form of commission

316. For the same reasons as has been made clear, above, Nuon Chea is not responsible via any other forms of criminal responsibility. Nuon Chea did not plan, or ‘design’ the murder, extermination or persecution perpetrated on the ground. Even arguing that Nuon Chea ‘planned’ ‘instigated’ or ‘ordered’ the evacuation of Phnom Penh, his

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conduct did not ‘substantially contribute’ to or have a ‘substantial effect’ on the criminal conduct: as stated, the acts were committed by independent soldiers and rogue commanders.

iv – Nuon Chea is not responsible as a superior

317. Nuon Chea is not responsible for the crimes perpetrated during the evacuation via a theory of superior responsibility. The Defence points to the same evidence, supra, that the crimes were committed by independent soldiers and rogue zone leaders, as proof of this fact. There is no evidence of a superior-subordinate relationship between Nuon Chea and the soldiers or zone leaders; in no way did Nuon Chea have the ability to prevent or punish the crimes. Further there is no evidence that Nuon Chea knew, or had reason to know, that the crimes on the ground had been or was about to be committed.⁷³¹

VI. NUON CHEA IS NOT GUILTY OF CRIMES CHARGED IN CONNECTION WITH THE ALLEGED PHASE TWO POPULATION MOVEMENT

318. Nuon Chea maintains that the decision to implement the second population movement was taken by zone leaders, not the Party center. As one document clearly states, ‘the Zone was to remove 50,000 people and turn them over to the North.’⁷³² Such responsibility is additionally illustrated in a September 1975 Party document indicating that 500,000 people were to be relocated to the Northwest, 20,000 to Preah Vihear and others to Kampong Thom in the North Zone:⁷³³ ‘each Zone must make appropriate preparations and not let things sway back and forth.’⁷³⁴ The Zone’s responsibility for the implementation of the second movement confirms that authority over the movement was not in the hands of Nuon Chea or the Standing Committee.
319. The sole evidence, cited repeatedly by both the Co-Prosecutors and the CIJs, in support of Party center’s involvement is an alleged document of the Standing Committee that refers only to the need to add 400,000 or 500,000 people to the population of the Northwest Zone and relocate an unspecified number of people to the then North Zone.⁷³⁵ On its face, this document establishes nothing more than the CPK’s vague desire to increase the population in the Northwest Zone. It does not remotely establish, beyond a reasonable doubt, that either Nuon Chea or the Standing Committee agreed, planned, ordered or instigated the alleged second population movement. Instead, in light of the evidence of zonal control over the movement, any conclusion to the contrary could be based only on conjecture.
320. Nuon Chea is charged, in connection with the phase II population movement, with extermination, political and religious persecution, and other inhumane acts through enforced disappearances, forced transfer and attacks against human dignity. Evidence

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before the Chamber concerning the phase II population movement is limited, vague and largely untested by cross-examination. Accordingly, the Co-Prosecutors are unable to establish the elements of any of these crimes. For reasons already described, the Co-Prosecutors are similarly unable to establish a connection between Nuon Chea and any of the acts alleged to comprise the material elements of the offences charged.

A. Nuon Chea is Not Guilty of Extermination

321. The Closing Order alleges that acts and omissions during the second population movement resulted in death on a massive scale, amounting to the crime against humanity of extermination.⁷³⁶ The Co-Prosecutors have failed to substantiate that allegation.

i – No evidence of death on a mass scale

322. The *actus reus* of extermination requires ‘an act, omission or combination of each that results in the death of persons on a massive scale.’⁷³⁷ Not a single witness’s testimony established such facts. No testimony was given of a ‘numerically significant’⁷³⁸ number of deaths during, or in direct connection with the second movement. The limited testimony which did purport to describe deaths concerned events at the evacuees’ destination long after the population transfer was complete.⁷³⁹ Nor were these accounts ‘numerically significant’ for the purposes of extermination,⁷⁴⁰ or based on first hand-knowledge or observation.⁷⁴¹
323. Several witnesses testified that no deaths occurred in the course of the second phase population movement.⁷⁴² For instance, when questioned as to whether ‘people were executed or tortured’, witness Toeung Sokha replied that she did not see dead people at that time and that, ‘when I was on the truck I did not see any people being killed.’⁷⁴³
324. Trial testimony furthermore revealed that no physical violence or torture was used against the evacuees,⁷⁴⁴ that CPK cadres took affirmative steps to care for evacuees when possible and provide food and basic necessities,⁷⁴⁵ and that the physical condition of the evacuees was stable.⁷⁴⁶ Lay Bony testified that, from the early days of the second movement to the time period immediately after re-settling, the physical health of the evacuees was ‘normal’.⁷⁴⁷
325. This lack of support for the charge of extermination pervades the evidence before the Chamber. The evidence cited in the relevant sections of the Closing Order,⁷⁴⁸ and elsewhere on the case file,⁷⁴⁹ fails to establish that deaths occurred on a mass scale in conjunction with the second population movement. None of the witness statements cited in the Closing Order allege facts to support a charge of extermination. Not one

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first-hand report of mass (or significant) numbers of deaths in connection with the second population movement is cited.⁷⁵⁰

326. What the evidence cited in the Closing Order does reveal is that the CIJs found only two witness statements to support the allegation that *any* deaths occurred before or during the second population movement evacuation.⁷⁵¹ Of these two statements, one recounts the death of a single elderly person en route to the train to Battambang,⁷⁵² while the other describes two deaths caused by disease and diarrhoea.⁷⁵³ The witness statements relied upon by the CIJs to support the allegation that deaths occurred after the journey⁷⁵⁴ reference the same statements, supplemented by three additional statements all alleging the occurrence of deaths in cooperatives unrelated to the movement itself.⁷⁵⁵ None of these statements, individually or in the aggregate, rise to the level of extermination.
327. Numerous other witness statements indicate that witnesses did not observed killings, were not mistreated, and did not experience the use of violence during the second evacuation.⁷⁵⁶ Although some witnesses stated that conditions during the population movement were grim,⁷⁵⁷ not a single witness with first-hand knowledge of events reported that these conditions resulted in death in significant numbers. At trial, expert Philip Short had no specific knowledge as to whether the second population movement had been marred by deaths, let alone deaths rising to the level necessary for a finding of extermination.⁷⁵⁸
328. With no direct evidence to establish mass deaths in conjunction with the second population movement, it is impossible to conclude that such a crime occurred, let alone find that any policy or intent on behalf of the CPK existed to exterminate mass numbers of evacuees.

ii – No evidence of specific intent

329. The *mens rea* for extermination requires *direct intent* to subject a large number of people to conditions of life calculated to bring about their deaths.⁷⁵⁹ It is accordingly insufficient that the accused knows that death on a massive scale is likely or even certain, if death is not intended.
330. No evidence in Case 002/01 suggests that Nuon Chea intended to cause death on a massive scale. Indeed, the only direct evidence of any involvement by the Party center, cited repeatedly by both the Co-Prosecutors and the CIJs in the Closing Order, is an alleged ‘document of the Standing Committee dated August 1975 [which purports to] refer[] to the need to add 400,000 or 500,000 people to the population of the Northwest Zone and also to relocate an unspecified number of people to the then North Zone.’⁷⁶⁰

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Large-scale death was therefore inconsistent with, and would have defeated, the alleged purpose of the population movement.

331. Furthermore, as noted above witnesses reported significant variance in conditions during the alleged transfer. Had those conditions been *calculated to bring about* large-scale death, no such variations would have been reported. Indeed, the cadres who assisted evacuees, as the evidence shows that they did, would have been acting in contravention of the orders of their superiors. For the reasons above, Nuon Chea did not have the requisite intent for extermination.

iii – No agreement, plan, order or instigation to exterminate

332. The Co-Prosecutors have presented no evidence that Nuon Chea participated in a common purpose, designed any plan, issued any order or instigated any person to inflict conditions of life calculated to bring about the death of a large number of people. As already noted, there is no direct evidence that the Standing Committee even agreed, planned, ordered or instigated to initiate the alleged population movement itself. Finally, there is no evidence of any kind of the Committee intent in relation to the conditions of the transfer, and still less, the large-scale death of the alleged evacuees.
333. For these reasons, a reasonable trier of fact can come to no conclusion other than that Co-Prosecutors have not proven beyond a reasonable doubt that Nuon Chea is guilty of extermination. Accordingly, the Chamber must acquit Nuon Chea.

B. Nuon Chea is Not Guilty of Political Persecution

334. The Closing Order alleges that Nuon Chea is guilty of political persecution in connection with the phase two population movement. The Co-Prosecutors have failed to establish the elements of that offence.

i – No evidence of differential treatment

335. The evidence reveals that the second population movement was not a persecutory act, but one intended only to shift a much needed workforce to the countryside.⁷⁶¹ Groups were not subject to differential treatment based on their past origins, be they urban⁷⁶² or previous association with the Lon Nol regime.
336. The mere fact that certain evacuees were originally ‘city dwellers’ or members of the former Lon Nol Regime is not sufficient to establish the elements of political persecution. As many persons with affiliations to the Khmer Republic and ‘April 17 People’ had been integrated into villages and collectives after 17 April 1975, certain evacuees surely fit those descriptions. Yet, no evidence was presented that the CPK singled out either group.⁷⁶³

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337. The evidence shows that the alleged phase two population movement was comprised of both ‘New’ and ‘Base’ People.⁷⁶⁴ Evidence that ‘new people’ were moved first⁷⁶⁵ does not establish differential treatment, because the evidence establishes that, by the conclusion of the second phase movement, both new and base people had been moved.⁷⁶⁶ As Lay Bony testified before the CIJs, ‘we were happy to go because we knew that there was a lot of rice and fruit [in Battambang].’⁷⁶⁷
338. Neither does the evidence establish that these ‘groups’ were treated differentially or singled out for mistreatment during the evacuation. On the contrary, many witnesses indicated that they were not mistreated and were rather provided with basic necessities by the CPK,⁷⁶⁸ while others indicated that they were happy to join the second movement.⁷⁶⁹ As Lay Bony testified before the CIJs, ‘we were happy to go because we knew that there was a lot of rice and fruit [in Battambang].’⁷⁷⁰ Of the witnesses who did report poor conditions and treatment, nothing suggests that such conduct was based on their affiliations as ‘April 17 People’ or their affiliation to the Khmer Republic.⁷⁷¹
339. No consistent evidence of discriminatory treatment of evacuees upon arrival at their destination was presented. Instead, the evidence shows that ‘New People’ were resettled amongst and with ‘Base People’,⁷⁷² and that they were supplied with basic necessities.⁷⁷³ In certain cases, evacuees were allowed to choose what villages in which they wished to re-settle.⁷⁷⁴ Such treatment was not dependent on the evacuees’ backgrounds. No evidence was presented establishing that the Khmer Rouge treated former Lon Nol evacuees or ‘New People’ in a discriminatory fashion once resettled.⁷⁷⁵

ii – No evidence of specific intent

340. There is no evidence that anyone in the Party center, including Nuon Chea, acted with the specific intent⁷⁷⁶ to cause injury to evacuees because of their former association with the Khmer Republic or as ‘New People’.
341. As noted, the very limited evidence of the CPK’s knowledge or intent in relation to the alleged forced movement concerns labour needs in the Northwest Zone. Thus, the intent to relocate people was based solely on a need to establish a productive workforce in the “bread basket” of the country. The evidence indicates nothing more. No desire to harm any particular group was involved in that decision. Nor is the suggestion that new people were moved first, before Old People, in and of itself discriminatory, as order of movement alone cannot indicate a specific animus.
342. This conclusion is corroborated by the authority of the zones in Democratic Kampuchea. It is uncontested that general policy was set by the Standing Committee but implemented by the zones.⁷⁷⁷ The Co-Prosecutors’ theory in relation to the second

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phase population movement is that Party policy was concerned with the distribution of labour needs across the country.⁷⁷⁸ It follows that the question of who ought to fulfil those requirements was a matter of implementation, and thus within the responsibility of lower-level authorities.

343. At a minimum, the inference that the decision as to who precisely would be moved and under what conditions was made within the zone structure is reasonable on all of the evidence. The Chamber is accordingly precluded from holding that Nuon Chea was responsible for or knew of those decisions, and therefore that he had the requisite specific intent.

iii – No agreement, plan, order or instigation to persecute

344. For all of the same reasons, no evidence that Nuon Chea participated in any agreement, designed any plan, issued any order or instigated any person to inflict conditions amounting to political persecution was presented by the Co-Prosecutors. A reasonable trier of fact must therefore conclude that the Co-Prosecutors have not proven beyond a reasonable doubt that Nuon Chea is guilty of political persecution.

C. Nuon Chea is Not Guilty of Religious Persecution

345. The Closing Order alleges that Nuon Chea is guilty of religious persecution committed against Cham Muslims in the course of the alleged phase two population movement. The evidence fails to support that allegation. The Co-Prosecutors apparently agree: they recently requested that the Chamber ‘specifically exclude from consideration the allegations related to the Cham that are included in some of the paragraphs discussing the 2nd Forced Movement’ because ‘no witnesses were heard in this trial relating to the forced movement of the Cham population.’⁷⁷⁹ The Defence nevertheless presents the following.

i – No evidence of discriminatory treatment

346. A review of the evidence reveals no direct, first-hand evidence of religious persecution in the course of the alleged second population movement. Although evidence cited in the Closing Order establishes that Cham Muslims were ‘amongst the persons moved during the second population movement’,⁷⁸⁰ that allegation is *prima facie* insufficient to sustain a charge of persecution.
347. No evidence establishes that the Cham were singled out during the second evacuation, treated in a discriminatory fashion, or forced to endure worse conditions than other evacuees.⁷⁸¹ Only two witness statements referred to in the relevant portion of the Closing Order allege violent conduct against the Cham. Both statements are based on hearsay and refer to a time-period outside the scope of the second population

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movement.⁷⁸² No other evidence cited in the Closing Order establishes the use of violence against, or discriminatory conduct towards, the Cham during the second population movement.

348. Live testimony in Case 002/01 was similarly silent regarding the treatment of the Cham during the second population movement. Not one witness testified that the Cham were treated more harshly during, or in direct connection with, the second movement.
349. The only conclusion supported by the evidence is that the experience of the Cham during the second population movement was not unique. The evacuees during the alleged second population movement experienced similar treatment regardless of religious affiliation. Instead, Cham families were grouped together in new villages,⁷⁸³ or allowed to remain in their original villages,⁷⁸⁴ while others were dispersed amongst new villages and non-Chams.⁷⁸⁵

ii – No evidence of specific intent

350. No testimony was given indicating any specific intent or policy on behalf of the CPK to discriminate against the Cham during the second movement. Nor does the documentary evidence establish that the Cham's (limited) involvement within the second movement was designed to be discriminatory against them or infringe upon their fundamental rights because of their religious affiliation.⁷⁸⁶ The principal evidence cited in the Closing Order to support the assertion that the CPK's plan to evacuate the Cham had a discriminatory intent is a single telegram *from* a single East Zone official *to* Pol Pot.⁷⁸⁷ On its face, the telegram is therefore incapable of establishing the intent of Nuon Chea or anyone else within the Party center. Nor does the substance of the telegram evince any discriminatory intent on its own terms. Instead, it shows the opposite: an effort to integrate the Cham into the greater population.⁷⁸⁸ The Co-Prosecutors have accordingly failed to establish the *mens rea* of religious persecution.

iii – No agreement, plan, order or instigation to persecute

351. No evidence was presented by the Co-Prosecutors that Nuon Chea participated in any common purpose, designed any plan, issued any order or instigated any person to inflict conditions amounting to religious persecution. This lack of evidence again requires a reasonable trier of fact to find that the Co-Prosecutors have not met their burden of establishing, beyond a reasonable doubt, that Nuon Chea is guilty of religious persecution.

D. Nuon Chea is Not Guilty of Other Inhumane Acts through Enforced Disappearances

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352. Nuon Chea is charged with other inhumane acts through enforced disappearance in connection with the alleged phase two population movement. As stated, *supra*, that charge cannot be sustained because it violates the principle of legality.⁷⁸⁹ Other reasons why this count must be dismissed are addressed herein.

i – No evidence that Enforced Disappearances occurred

353. According to the CIJs, the actus reus of Enforced Disappearances is that

victims endured great suffering, or serious mental suffering or injury or a serious attack on human dignity as a result, on one hand, of the arrest, detention or abduction of loved ones and others in conditions which placed them outside of the protection of the law, and on the other hand, the refusal to provide access to, or convey information on the fate or whereabouts of such persons, saying that the perpetrators acted with the authorization and the support of the State or of ‘Angkar’.⁷⁹⁰

No evidence admitted in Case 002/01 even remotely establishes these facts beyond a reasonable doubt.

354. Six witness statements were cited in the Closing Order in support of the enforced disappearances charge.⁷⁹¹ Of those six witnesses, none established the facts necessary to support a conclusion that the crime occurred. Three witness statements fail to establish beyond a reasonable doubt that the disappearances referred to therein occurred during the second phase population movement.⁷⁹² Another documents a separation between a witness and her children, but states that the witness was aware of the children’s location, that the re-location was to facilitate their care, and that the witness visited them.⁷⁹³ A fifth statement described the separation of the witness from his two family members but failed to offer any facts indicating that the separation was caused by an arrest, detention or abduction by the CPK.⁷⁹⁴ According to the Closing Order, the last witness was ‘told at a meeting that those who would refuse to leave [as part of the second evacuation] would be sent for reeducation from where people never returned.’⁷⁹⁵ This characterization egregiously misstates the actual language used by the witness, who neither observed, nor was told nor warned of, individuals being sent for re-education and disappearing as punishment for not cooperating in the second evacuation.⁷⁹⁶ Of the testimonial evidence heard at trial regarding the second population movement, only two witnesses addressed the disappearance of evacuees.⁷⁹⁷ Neither witness could provide any direct or specific evidence concerning these disappearances, including the circumstances in which they were separated from the alleged victim, whether or not the alleged disappearance was the result of an arrest, detention or abduction by CPK cadre, or whether the cadre refused to provide access to, or convey information regarding the fate or whereabouts of such persons.⁷⁹⁸

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355. Of the other witness statements on the case file, only a small handful include any allegation that the witness was separated from anyone in the course of their journey.⁷⁹⁹ In none of these cases, however, does the witness indicate with specificity the circumstances under which they were separated, including whether it was caused by an arrest, detention or abduction by CPK cadres. It is equally possible that the parties were separated accidentally as a consequence of the vicissitudes of the journey. Nor is there any indication that CPK cadres sought to disguise the whereabouts of the party allegedly separated. In several cases it is furthermore unclear whether the alleged separation took place in the course of the second transfer.
356. Accordingly, there is no credible evidence that any enforced disappearances, as the CIJs defined that crime, took place.

ii – No evidence of intent

357. No direct evidence establishes that Nuon Chea intended the enforced disappearance of evacuees during the second phase of the population movement, or that he was aware of a substantial likelihood that such disappearances would occur.⁸⁰⁰ The fact that these disappearances occurred rarely, if ever, establishes the opposite.

iii – No agreement, plan, order, instigation or encouragement

358. For similar reasons, there is no evidence of the material elements of Nuon Chea's individual responsibility for enforced disappearance through any form of commission. No direct evidence exists of a directive or agreement emanating from the Party center, nor is there any evidence of a pattern of conduct probative of such a policy.
359. With no evidence to establish that enforced disappearances occurred, let alone the Party center's knowledge or intent in relation thereto, the only avenue available to the Trial Chamber is an acquittal.

E. Nuon Chea is Not Guilty of Other Inhumane Acts through Attacks Against Human Dignity

360. The CIJs have charged Nuon Chea with the crime of other inhumane acts through 'attacks against human dignity', arguing that the accused deprived the civilian population of adequate food, shelter, medical assistance and minimum sanitary conditions thereby resulting in serious mental and physical suffering and injury. This, they claim, amounted to an attack on human dignity of similar gravity to other crimes against humanity.
361. As the Chamber has no doubt observed, the testimony of witnesses who appeared before the Chamber was extremely varied in relation to the conditions of the second population movement. Although certain witnesses testified that conditions were

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difficult, others directly refuted those claims by reporting that conditions were decent and the health of evacuees was normal,⁸⁰¹ and even that food,⁸⁰² shelter,⁸⁰³ and land,⁸⁰⁴ were provided for by CPK cadres.

362. The same inconsistencies are reflected in the statements of witnesses who did not appear at trial. Although some witnesses describe difficult conditions,⁸⁰⁵ others state that the physical health of evacuees was cared for,⁸⁰⁶ that food was provided during (and immediately after) the evacuation,⁸⁰⁷ and that evacuees were to be provided with shelter upon their resettlement.⁸⁰⁸ The Co-Prosecutors have accordingly failed to establish beyond a reasonable doubt that the *actus reus* of “attacks on human dignity” were established.
363. There was additionally not one piece of evidence establishing the intent of Nuon Chea or the CPK to intentionally inflict upon the evacuees serious physical or mental suffering, or evidence that the CPK knew that the conditions of the evacuation were likely to cause serious physical or mental suffering or a serious attack on their human dignity.
364. Finally, there is no evidence to support the material elements of Nuon Chea’s individual responsibility. No direct evidence exists of a directive or agreement emanating from the Party center, nor is there any evidence of a pattern of conduct probative of such a policy. With no evidence to support such a nexus between Nuon Chea and the alleged crimes, the Chamber is left with no choice but to acquit Nuon Chea on this charge.

F. Nuon Chea is Not Guilty of Other Inhumane Acts through Forced Transfer

365. The *actus reus* of other inhumane acts through forced transfer is not satisfied for two reasons: the movement was not ‘forced’ and it did not occur under circumstances which render it criminal.
366. The evidence establishes that the alleged victims of the second population movement in fact volunteered to move to the Northwest Zone or were otherwise happy and willing to do so.⁸⁰⁹ Thus, the absence of force, physical or otherwise, would require dismissal of the forced transfer charge.⁸¹⁰
367. The Co-Prosecutors have not established that the phase two population movement amount to the crime of other inhumane acts through forced transfer even if it had been forced. As already discussed, the alleged second phase population movement was not a single or cohesive event. The alleged victims, their places of origin and the conditions under which they were allegedly transferred vary considerably.⁸¹¹ The Chamber is

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accordingly unable to make any findings in relation to whether the so-called phase two population movement was unlawful.

368. If at any time the movement did become sufficiently serious to constitute an other inhumane act, the variability of the evacuees' experience establishes, for reasons already discussed, that decisions concerning the conditions of the transfer were taken by implementing cadres without the input or knowledge of Nuon Chea or anyone else within the Party center. Accordingly, Nuon Chea cannot be held criminally liable for other inhumane acts through forced transfer.

VII. NUON CHEA IS NOT GUILTY OF CRIMES ALLEGEDLY COMMITTED AT TUOL PO CHREY

369. Nuon Chea may not be held criminally responsible for the alleged execution of former officials and military officers of the Khmer Republic at Tuol Po Chrey in the days following the liberation of Pursat town on 19 April 1975. There are three principal reasons for this: (i) the Chamber's unreasoned refusal to hear the most important witnesses in connection with Nuon Chea's intent precludes a conviction; (ii) the CPK never adopted a policy of targeting officials and military officers of the Khmer Republic for execution; and (iii) Nuon Chea never agreed to, intended, ordered, planned, instigated or learned of any executions at Tuol Po Chrey. Each of these arguments is sufficient to negate Nuon Chea's criminal liability.

A. Prosecution of Crimes Allegedly Committed at Tuol Po Chrey Infringes Nuon Chea's Right to Present a Defence

370. The crimes charged in connection with Tuol Po Chrey must be dismissed due to the RGC's refusal to cooperate with the proceedings by giving crucial, exculpatory evidence.

i – The RGC continues to interfere with the presentation of exculpatory evidence

371. The only evidence before the Chamber in Case 002/01 directly relevant to an alleged policy to execute soldiers and officials of the Khmer Republic is in the form of statements given by ██████████, ██████████ ██████████ Ieng Sary and Phy Phuon.⁸¹² As discussed above (and the Chamber is aware), the first three of these witnesses are high-ranking members of the governing Cambodia People's Party. ██████████ ██████████ the chairman of the Senate, and ██████████ ██████████ the chairman of the National Assembly, are the second and third ranking members of the RGC. ██████████ ██████████ is a senator. All three were summonsed to appear before the CIJs but unlawfully refused. Their statements on the case file were instead given to academics years before the advent of the Tribunal.

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372. For reasons described in greater detail herein, the appearance of these witnesses before the Chamber is critical to Nuon Chea's right to a fair trial. Although the statements of all three witnesses are in evidence, the most important facts therein concern the acts and conduct of the accused, which are inadmissible (absent cross-examination) to prove the truth of their contents.⁸¹³ The substance of the three statements is, moreover, inconsistent: [REDACTED] statement is directly exculpatory, [REDACTED] statement appears to be inculpatory, and [REDACTED] statement is ambiguous.⁸¹⁴ Live testimony subject to examination by all of the parties is the only way for the Chamber to ascertain the veracity of their statements.
373. The failure of these witnesses to appear before the Tribunal notwithstanding the singular importance of their testimony is a simple consequence of government control over the proceedings. There is no serious question that the witnesses themselves, the Cambodian government, the national CIJ, and other national staff all at various times interfered with the administration of justice. International Co-Investigating Judge Marcel Lemonde publicly admitted in January 2013 to concealing information from the parties in connection with the witnesses' failure to appear, demonstrating the complicity of the international side of the Tribunal.⁸¹⁵
374. As the Defence has argued in past submissions, both the Chamber and the Co-Prosecutors have done nothing in response to the witness' total disregard for the authority of the Tribunal. The Trial Chamber rejected numerous applications for various forms of relief on the grounds that the issue had been litigated at the investigative stage; in fact, it was frustrated by the national judges of the Pre-Trial Chamber.⁸¹⁶ The Trial Chamber then chose to take action against counsel for Nuon Chea for continuing to seek relief.⁸¹⁷ The Co-Prosecutors have similarly never sought to hear any of these witnesses at trial, despite the obvious importance of their testimony to the allegations at issue in Case 002/01.⁸¹⁸ Instead, the Co-Prosecutors have ignored the issue, failing even once to openly criticize the RGC for its brazen interference in the work of the Tribunal.⁸¹⁹

ii – Dismissal of the charges concerning Tuol Po Chrey is required

375. Under these circumstances, the charges against Nuon Chea cannot be sustained. The ECCC, a court established under the authority of the Cambodian state pursuant to a law adopted by the Cambodian legislature, may not accuse Nuon Chea of criminal conduct while three of its most senior representatives refuse to testify.
376. The Supreme Court Chamber has twice recognized that the failure of these witnesses to appear could potentially implicate Nuon Chea's right to a fair trial. That Chamber held:

The question that remains relevant to the Accused's rights concerns the availability of certain Defence witnesses who were not heard in the investigative stage. This question is to be determined during the ongoing trial in Case 002 in which a broad range of options is still open to address the concerns that exculpatory evidence might be improperly prevented from entering the trial. This depends, for example, on whether the Defence persists in its requests for evidence, whether such requests are admissible under Rule 87, whether the facts for which the testimonies are proposed are disputed, whether the called witnesses appear and, if they fail to do so, whether the facts upon which they had been called to testify may be established otherwise.⁸²⁰

377. Since the above decision was issued in April 2012, the violation of Nuon Chea's trial rights has become considerably more serious. The Defence has vigorously persisted in its requests for evidence;⁸²¹ the facts for which the testimony is proposed – whether the CPK adopted a policy to execute soldiers and officials of the Khmer Republic and Nuon Chea's intent in that regard – is now at the core of the dispute between the parties; the requirements of Rule 87 are clearly satisfied⁸²²; the Trial Chamber failed to summons the witnesses, for reasons that undoubtedly redound to the influence of the government; and no other comparable evidence exists.
378. The Chamber's refusal to hear relevant and exculpatory evidence this crucial to the proceedings is by itself sufficient to require dismissal of the charges. Its failure to justify this refusal violates the fundamental right of the accused to examine of witnesses on his behalf.⁸²³ Where witnesses have been intimidated, 'it is incumbent upon a Trial Chamber to do its utmost to ensure that a fair trial is possible.' Countering such interference 'is especially pressing when outside forces seek to undermine the ability of a party to present its evidence at trial.'⁸²⁴ The *Haradinaj* Appeals Chamber, for example, over turned the convictions and ordered the retrial of one count against the defendants as a consequence of the Trial Chamber's repeated refusals to hear crucial evidence.⁸²⁵
379. The violation of Nuon Chea's rights is aggravated considerably because of the RGC's refusal to cooperate with this Tribunal. The RGC bears ultimate responsibility for the administration of justice in Case 002; it cannot simultaneously pursue the prosecution of the accused and persist in obstructing the proceedings. Established principles of law require termination of the proceedings where it would be 'repugnant to the rule of law to put the accused on trial'.⁸²⁶ Relevant circumstances in that regard include whether the state is responsible for 'grave violations of the rights of the accused'⁸²⁷ prejudicial to the fairness of the proceedings.⁸²⁸ These include any significant deprivation of the Accused's 'full rights of defence'.⁸²⁹
380. The RGC, and through it the Co-Prosecutors, have an obligation to come before the Chamber with clean hands. Thus, in assessing whether to dismiss the charges, a court

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must consider ‘how the Parties have been conducting themselves in the context of a particular case. [...] The finding [...] that the State must come to court with clean hands applies equally to the Prosecution coming to a Trial Chamber of this Tribunal.’⁸³⁰

381. In circumstances strikingly similar to those at issue in this case, the ICTR Appeals Chamber in *Bagosora* reprimanded the Trial Chamber for ignoring repeated requests by the Defence to enforce an outstanding, validly issued subpoena against a then-current Rwandan government official. The Appeals Chamber ordered the witness to appear in order to determine whether the Trial Chamber’s failure to enforce the subpoena violated the defendant’s fair trial rights. The Appeals Chamber found that it had, stating that the Chamber should have ‘taken every measure within its capacity to enforce its order in the event of non-compliance.’⁸³¹
382. There is no serious question that the conduct of the Royal Government of Cambodia has been deplorable through the entirety of the Case 002 proceedings. Nor is there any doubt that its conduct has directly obstructed Nuon Chea’s fundamental right to mount an effective defence. The only remedy is termination of the proceedings.

B. No Policy of Targeting Khmer Republic Officials for Execution Existed

383. The Defence notes that the only witnesses who testified with any confidence that the CPK executed Khmer Republic soldiers and officials were foreign observers who were not present in Democratic Kampuchea between 1975 and 1979. Their conclusions in that regard were ultimately based on interviews they conducted, the most important of which are on the case file and can be evaluated by the Chamber on their own terms. Philip Short, for example, was unable to identify a single CPK insider in support of his conclusions other than Phy Phuon – who testified repeatedly before this Tribunal that Pol Pot warned cadres *not* to harm Khmer Republic soldiers. Most of Steve Heder’s key interviews in that regard are analyzed in detail herein.⁸³² Also on the case file are dozens of statements from witnesses who claim to know about executions of Khmer Republic soldiers and officials. If that evidence fails on its merits to establish that a policy existed, the Chamber ought not to adjust its view to accommodate contrary conclusions of fact drawn by witnesses with no first-hand knowledge evaluating the same or similar evidence.⁸³³

i – Direct evidence is limited and inconsistent

384. Of the five witness statements on the case file which purport to give first-hand evidence of a CPK policy in relation to the execution of Lon Nol soldiers and officials, the most compelling testimony is given by ██████████ According to Ben Kiernan, ██████████

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recalls Nuon Chea's exact words on a precise occasion and specifically denies that a policy of killing Khmer Republic soldiers or officials existed:

██████████, then studying military affairs under Son Sen, was also at the meeting. He recalls the use of another term: 'They did not say kill, they said scatter the people of the old government. Scatter (*komchat*) them away, don't allow them to remain in the framework. It does not mean smash (*komtec*)...Smash means kill but they use a general word scatter. Nuon Chea used this phrase.'⁸³⁴

385. ██████████ ██████████ account of this same meeting corroborates ██████████ ██████████ recollection. According to ██████████ at this meeting Pol Pot stated that cadres must:

firmly oppose and root out the previous regime based on political, consciousness, and organizational works. They announced like this because they thought that as long as influences from previous regime were not yet rooted out in the field of politics, military, economics, social affairs and consciousness, socialist revolution would not be uphold. (emphasis added)⁸³⁵

Pol Pot's instruction to eliminate influences and ideology from various spheres of life is sharply distinct from killing or execution. Even more than the English translation, the original Khmer version makes this clear. ██████████'s description is therefore almost identical to ██████████'s explanation that Khmer Republic officials should not be killed, but rather not allowed to 'remain in the framework'. ██████████'s account also resonates strongly with the general tone of CPK policy, which focused on ideological correctness and the elimination of opposing stances and influences.⁸³⁶

386. ██████████'s account of the May 1975 conference is also significant because that conference came one month *after* he claims that Pol Pot formulated a policy to 'cleanse'⁸³⁷ and 'purge' these same Khmer Republic officials. The Co-Prosecutors are likely to suggest that these terms were euphemisms for execution. The Defence contests that interpretation in light of the testimony of numerous witnesses that neither term meant 'kill'.⁸³⁸ Any ambiguity is, however, resolved by the May 1975 meeting. It would have been illogical for Pol Pot to order the execution of all former high level Khmer Republic officials in April 1975, and then one month later indicate that those same officials should be removed from positions of authority. The only reasonable interpretation is that, like ██████████ ██████████ agrees that CPK policy never intended the execution of Khmer Republic soldiers and officials.

387. Phy Phuon's evidence is similar to ██████████ he recalls the exact words of the CPK's senior leadership and denies on that basis that any policy to harm Khmer Republic soldiers existed. Asked whether there were instructions to seek out Lon Nol soldiers during the evacuation of Phnom Penh, Phy Phuon responded:

During war, on the battlefield, that was different. Now they had surrendered to us, and we need not touch them, just welcome them and greet them, and

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respond to the questions which they asked us. He said that they were “Cambodians, like us”. Don’t touch them at all. Those were the words of Pol Pot.⁸³⁹ (emphasis added)

Phy Phuon repeated this testimony, which was given before the CIJs, during his appearance before the Trial Chamber.⁸⁴⁰

388. Although limited evidence of a CPK policy of executing Khmer Republic soldiers and officials exists, it too comes from witnesses who have not appeared before the Chamber.⁸⁴¹ Having chosen not to summons these witnesses notwithstanding repeated requests from the Defence, the Chamber should not perform guesswork on conflicting versions of events or the precise meanings of words appearing in statements without cross-examination or attestations of accuracy by the speaker. The Chamber must make every reasonable inference in favour of the Accused, and conclude that no policy to execute Khmer Republic soldiers and officials existed.

ii – Evidence on the ground is selective and unreliable

389. As the Defence has previously shown, evidence before the Chamber of conduct on the ground fails to establish the existence of a CPK policy to execute Lon Nol soldiers or officials.⁸⁴² The Defence notes that it sought the appearance at trial of well over 100 witnesses who purported to give out of court statements concerning the treatment of Lon Nol soldiers and officials.⁸⁴³ The Chamber declined.⁸⁴⁴ Those witnesses who did appear before the Chamber and testify in relation to the supposed execution of former Khmer Republic soldiers and officials consistently qualified and retracted their prior written statements.⁸⁴⁵ In accordance with this Chamber’s jurisprudence and accepted principles of international procedures, the statements of those witnesses who did not appear are entitled to little or no weight.⁸⁴⁶
390. Substantial testimony heard before this Chamber establishes that Lon Nol soldiers and officials were *not* harmed. Prum Sou testified that although some persons with connections to the Lon Nol regime may at some point have been separated, ‘after 17 April, former Lon Nol soldiers stayed within the cooperatives, and some were sent to various other production units. As far as I know, there were no purges of those people; they were grouped together in various production units.’⁸⁴⁷ To the contrary, they ‘lived mixed with the people in the cooperatives [...] as repairmen or the drivers for the sector’.⁸⁴⁸ The witness, himself a ‘former teacher of the old regime [...] was assigned to work within the movement of Democratic Kampuchea.’⁸⁴⁹ Testimony from RAK soldiers was consistent that combatants of the Khmer Republic who were captured in battle or surrendered on April 17 were not harmed.⁸⁵⁰ ██████████’s testimony – although unreliable in any case⁸⁵¹ – was that he received orders to kill Lon Nol officials

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who refused to evacuate Phnom Penh, which means he had no orders to kill Lon Nol soldiers in general.⁸⁵² According to Kiernan, 400 Khmer Republic officials and the 'great majority' of the 580 soldiers detained in the East Zone April 1975 were released in July after a period of reeducation.⁸⁵³

391. Not one of the 96 witnesses who appeared before the Chamber testified to having personally witnessed the execution of a single soldier or official of the Khmer Republic. Despite conducting and/or having access to thousands of interviews of people at all level of the regime, the CIJs and the Co-Prosecutors were able to identify approximately four witnesses who claim to have personally observed such an execution. None of those witnesses appeared before the Chamber for cross-examination.
392. Several witnesses testified before the CIJs that Lon Nol soldiers or officials were removed by CPK cadres from a larger group. Yet none of these witnesses has any first-hand knowledge of what transpired after those officials were allegedly taken away. Any number of possible outcomes might have followed, including transfer to a worksite or cooperative, reeducation or detention. Indeed, this evidence is consistent with ██████████ ██████████ claim that officials of the Lon Nol regime were to be 'removed from the framework' rather than killed.⁸⁵⁴
393. Substantial evidence on the case file establishes that in Democratic Kampuchea, people who 'disappeared' were not necessarily arrested, let alone killed. Suong Sikoen, one of the senior-most former members of Democratic Kampuchea to have appeared before this Tribunal, made this point exactly. Clarifying his previous day's testimony that a particular person had 'disappeared', he explained:

Like yesterday, I talked about the disappearance and I listened to the radio, and then it -- they reported that there were arrests. I would like to make a distinction between arrests and disappeared. It was not the arrest; what I knew was the disappearance. I did not know where those people were taken to; they disappeared, but that does not mean that they were arrested. I simply said yesterday that they disappeared. One of the radio station -- it could have been either Voice of America or Radio Free Asia -- reported that I said those people were arrested, but I said yesterday that they disappeared and I did not know where those people were taken to and I had no idea whether or not those people were arrested or they were simply removed or transferred to other post. They disappeared from Ministry of Foreign Affairs, and some were transferred to Ministry of Industry, and some may have been transferred to other ministry. That I did not know. So I want to emphasize -- I cannot say for sure whether or not Ieng Sary defended those people, because I did not know whether or not those people were subject to arrest or they simply disappeared to somewhere else.⁸⁵⁵ (emphasis added)

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Another witness, Nou Mouk, was less careful. After testifying on direct that people taken away from his commune ‘never returned’ and therefore must have been killed, he conceded on cross-examination that he did not know who those people were or where they were from. Nor did he later try to find out what happened to them. He knew only two facts: the CPK brought them to his commune and then later took them away from his commune.⁸⁵⁶ In reality, the witness had no idea whether they were killed, because if they were still alive, he would have had no way to know.

394. Philip Short warns that assumptions such as Nou Mouk’s are often in error. Discussing a group of workers from Phnom Penh who were separated from the larger group during the evacuation, Short explains: ‘When nothing further was heard from [the workers], many deportees concluded that they had been killed. In fact, most had been taken to Phnom Penh to help restore production in the factories where they had worked previously.’⁸⁵⁷ Steve Heder likewise explained that in Democratic Kamuchea a person’s ‘removal’ might indicate ‘removal from the post or removal from the post followed by something else [...O]ne could be removed by being arrested among many other possibilities.’⁸⁵⁸ Ben Kiernan’s description of nearly a thousand Khmer Republic soldiers and officials who were detained in April 1975 but released a few months later is a concrete example.⁸⁵⁹ Other witnesses furthermore testified that ‘temper’, ‘purge’, ‘remove’ and ‘sweep clean’ did not signify killing.⁸⁶⁰
395. Other evidence before the Chamber is even weaker. Numerous statements relay distant hearsay, often from unspecified sources, that certain people known to the witness who previously held a position in the former regime were arrested, ‘disappeared’, or killed. None of these witnesses has first-hand knowledge of any treatment of former soldiers or officials, let alone their execution. In many of these statements, there is furthermore no basis at all upon which to conclude that the alleged victims, if indeed they were killed, were targeted on the basis of having previously been a member of the former regime. Other witnesses merely describe hearing others characterize officials of the former regime as ‘enemies’ or assert in general terms that such people should be killed. Others claim to have seen dead bodies, but have no information about how they were killed. Indeed, in some cases, it is unclear how they know the alleged victims were former Lon Nol soldiers or officials; in other cases, it is apparent they were soldiers only because they had almost certainly just been killed in battle. In other cases, the basis of the witness’s claim that Lon Nol soldiers or officials were killed is not clear at all.
396. Given the opportunity to highlight evidence before the Chamber in support of their view that a ‘policy’ of executing former soldiers and officials of the Khmer Republic

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existed, the Co-Prosecutors were able to identify nothing compelling. In recent oral submissions before the Chamber, the Co-Prosecutors highlighted the testimony of two specific witnesses in relation to the existence of a policy of targeting soldiers and officials of the Khmer Republic. The Co-Prosecutors misrepresented the substance of both witnesses' testimony, neither of whom corroborates the existence of an alleged execution policy.

397. The first witness, Meas Voeun did not, as the Co-Prosecutors alleged⁸⁶¹, testify that a special unit in his division was responsible for 'purging' individuals with connections to the Lon Nol regime. He testified that in his unit in Koh Kong, some soldiers were taken to dig canals at Banteay Long Vek.⁸⁶² He also indicated that the children of ranking Khmer Republic officials were sent to 'the rear' but that he did not know where.⁸⁶³ In that regard, he contradicted the written record of his interview with the CIJs that such people were taken to Koh Kyang security centre. He explained that after people were identified 'they were taken to Kaoh Kyang Security Centre or elsewhere. I was not completely sure on that.'⁸⁶⁴ The factual allegations in the Closing Order in connection with Koh Kyang security centre say nothing about the detention of children of former Khmer Republic officials.⁸⁶⁵
398. The Co-Prosecutors also claim that Duch testified that 'the first group of victims who were targeted in the early days of S-21 was [...] persons associated with the Lon Nol regime.'⁸⁶⁶ That characterization is incomplete and misleading. To begin with, as the Defence has previously observed,⁸⁶⁷ the Closing Order alleges that of roughly 12,000 detainees at S-21, only 328 were 'former soldiers and cadres of the Khmer Republic or of FUNK'.⁸⁶⁸ The detention of Khmer Republic soldiers and officials was therefore a minor aspect of S-21's function. Nor is there any basis on which to conclude that those individuals were detained *because* they were formerly aligned with the Lon Nol regime.
399. Duch's live testimony supports these conclusions. He testified upon review of a sequence of three documents that approximately 200 former soldiers and officials and others with connections to the Khmer Republic were executed between March 1976 and January 1977.⁸⁶⁹ It follows from the S-21 prisoner list produced by the Co-Prosecutors that possibly a few dozen 'persons associated with the Lon Nol regime' were detained at S-21 over the entire rest of the Democratic Kampuchea period, including but not limited to the 'early days of S-21'. Although Duch did state in passing that '[i]mmediately after [he] arrived they arrested the former officers of the Lon Nol's regime', in light of the other evidence the *maximum possible* number of detainees in that timeframe is very small. This contradicts the Co-Prosecutors'
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allegation that the CPK sought to execute Khmer Republic soldiers and officials *in general*.

400. For completeness, the Defence notes that all of Duch's other evidence in relation to soldiers and officials of the Khmer Republic was irrelevant. Duch gave generalized testimony about CPK enemy policy, about which he has no specialised knowledge.⁸⁷⁰ He testified that Khmer Republic soldiers were detained at M-13 prior to 1975, during the CPK's civil war against the army to which those soldiers belonged. Duch confirmed that the detainees were deserters from the republican army but added that 'before they came to the place they fired their guns, there were conflicts.'⁸⁷¹ There is no evidence as to how these soldiers captured in armed conflict were treated.

Pre-April 1975

401. The Defence adds that the evidence is clear that even prior to April 1975, when an outright armed conflict was ongoing, no policy of executing Lon Nol soldiers and officials existed. Numerous witnesses testified, for instance, to the evacuation of Udong in 1974 – which Phy Phuon describes as a trial run for the evacuation of Phnom Penh⁸⁷² – but said nothing of the execution of Lon Nol soldiers.⁸⁷³ Steve Heder, who travelled to Udong in the aftermath of its liberation by the CPK, recalled seeing a small number of bodies but 'I certainly don't recall seeing any bodies of Lon Nol Khmer Republic military personnel. I may have been told there were executions. I don't specifically recall that I was.'⁸⁷⁴ Refugees interviewed by Steve Heder indicate that prior to April 1975, the large majority of Lon Nol soldiers were re-educated, forgiven and released.⁸⁷⁵ Only so-called agents – presumably, spies – were executed.
402. Philip Short testified that following the evacuation of Udong in 1974, Khmer Republic officers were separated from the evacuees and then executed.⁸⁷⁶ His testimony in that regard was unreliable and should be rejected in full. Short indicated that the sources listed in his book with regard to the evacuation of Udong – which included an interview with Phy Phuon, interviews with 'one or two' of local villagers, and two secondary sources – constituted the totality of his evidence.⁸⁷⁷ He added that he could not recall whether any of the villagers mentioned the execution of Lon Nol officers but that his interview with Phy Phuon was most likely the key source.⁸⁷⁸ Yet as indicated above, Phy Phuon told this Chamber the opposite: he testified that Lon Nol soldiers were unharmed once they surrendered.⁸⁷⁹ Despite examining Phy Phuon extensively with regard to the evacuation of Udong, the Co-Prosecutors chose not to raise the question of the treatment of Lon Nol soldiers.⁸⁸⁰ Presumably, they were afraid of the answer.

iii – Evidence on the ground is limited to the Southwest and Northwest Zones

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403. The statements in evidence are furthermore concerned overwhelmingly with events in the Southwest and Northwest Zones. Accordingly, even if those statements were accepted at face value, they would be of no probative value in relation to an alleged CPK-directed policy of execution. Rather, they are consistent with Nuon Chea's assertion that zone leaders possessed wide-ranging authority with which the Party center could not interfere. The Closing Order concedes that the evidence is concentrated 'in particular in the Northwest Zone and the Southwest Zone.'⁸⁸¹ Francois Ponchaud acknowledged on cross-examination that his depiction of Democratic Kampuchea in *Cambodia: Year Zero* wrongly assumed that the experiences of the refugees across the Thai border, who had come overwhelmingly from the Northwest Zone, reflected policies across the regime.⁸⁸²
404. The Defence has previously identified a list of 111 witnesses cited by either the Co-Prosecutors or the CIJs in support of the allegation that a CPK policy of targeting the soldiers and officials of the previous regime existed.⁸⁸³ Of these, at least seven witnesses either give no direct evidence that any such people were killed, or suggest that such killings did not take place.⁸⁸⁴ Of the remaining 104 witnesses, 61 describe events in either the Southwest or Northwest Zones,⁸⁸⁵ only two of the nine administrative areas in existence in April 1975.
405. Although the majority of these statements are not based on the direct, first-hand knowledge of their authors, their geographic concentration in the Southwest and Northwest Zones is significant, suggesting that *if* an alleged pattern or policy to target former Lon Nol soldiers could be established, it would be one limited to certain zone-based forces.
406. In addition to this concentration of evidence within the Southwest and Northwest zones, fifteen statements describe events in and around Phnom Penh in the course of the evacuation.⁸⁸⁶ Another twenty witnesses are relied upon to establish the events that occurred in all other areas of the country combined.
407. Even this limited evidence of killings outside the Southwest and Northwest Zones *supports* the Defence position that any alleged pattern or policy was limited to selected zone-based forces. Of the 15 statements that address events within Phnom Penh, eight concern the conduct of Southwest Zone troops or occurred in areas under the control of Southwest Zone troops.⁸⁸⁷ The remaining seven are ambiguous with respect to the parts of the city in which the events they describe took place.⁸⁸⁸ The evidence of that troops from the Special, East or North Zones killed former soldiers and officials of the Khmer Republic in the course of the evacuation of Phnom Penh is limited. Instead,

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their benign treatment of Lon Nol soldiers during the evacuation is often documented.⁸⁸⁹

408. What the evidence does suggest is the overwhelming role the Southwest zone played in the aggression against former Lon Nol officials and soldiers. As described by witness [REDACTED], a former East zone Khmer Rouge cadre present in Phnom Penh during the evacuation who had instructed former Lon Nol soldiers to lay down both their guns and uniforms and “did not cause any harm to them,”⁸⁹⁰ it was Khmer Rouge soldiers from the Southwest Zone who came in, rounded up former Lon Nol soldiers onto trucks and “all former soldiers and those who got into the trucks may probably be killed.”⁸⁹¹ This wide variation that existed among the different zone armies which occupied Phnom Penh in terms of their treatment of officials of the former regime was even confirmed by Philip Short.⁸⁹²
409. Refugee statements taken by Francois Ponchaud are similar. Although the majority of those statements are anonymous and hence of minimal credibility, the events they purport to describe occur overwhelmingly in the Northwest Zone.⁸⁹³ Of the few refugee statements that allege conduct outside the Northwest Zone, certain statements were not based on direct, eye-witness observations,⁸⁹⁴ others amount only to commentary by Ponchaud himself,⁸⁹⁵ with others allege conduct in an unclear location,⁸⁹⁶ or in the case of refugee Pok Sareth, simply documents the registration of former Lon Nol officers from the East Zone.⁸⁹⁷
410. A similar pattern is revealed by an analysis of the few statements that concern events in the rest of the country. Of the 20 statements, at least six explicitly state that Lon Nol officials were targeted by troops from the Southwest Zone in 1977 or later, after those troops are alleged to have begun to clash with those in the Central, North and East Zones.⁸⁹⁸ These statements demonstrate starkly the regional limitations of this alleged policy: they show that in these parts of the country, former Khmer Republic soldiers and officials were unharmed, until troops from the Southwest Zone arrived to implement a decidedly different policy.
411. The remaining 13 statements constitute the totality of the evidence before the Chamber that a supposed policy targeting officials of the former regime was implemented outside the Southwest and Northwest Zones.⁸⁹⁹ Almost all concern individual events in which a small number of acquaintances of the witness, who happened to be former Khmer Republic soldiers, were allegedly killed. In most cases there is no evidence of any specific effort to target officials of the Khmer Republic, and the witness has no first-hand knowledge of even the very limited claim that one such official was executed. In

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no case is there any evidence of any linkage to any authority above the Sector (and usually much lower) level. Furthermore, only three of these witnesses were subject to cross-examination.⁹⁰⁰ The statements of the others are accordingly entitled to ‘limited’ or no weight.⁹⁰¹

C. Nuon Chea is Not Guilty of Crimes Alleged at Tuol Po Chrey by Virtue of His Participation in a Joint Criminal Enterprise

412. No evidence establishes a link between Nuon Chea and the alleged executions of Khmer Republic soldiers and officials at Tuol Po Chrey. There is no evidence of any face-to-face meetings nor of any communication between Nuon Chea and officials in the Northwest Zone on or around the time of the liberation of Pursat. For the reasons already discussed, there is no compelling evidence of Nuon Chea’s intent to execute soldiers and officials of the Khmer Republic.
413. Given the absence of any direct evidence that Nuon Chea was involved, the Chamber is entitled to infer his involvement from circumstantial evidence only if there is no other reasonable conclusion available on the basis of the evidence before it.⁹⁰² In this case, there are *two* reasonable alternatives to the conclusion that Nuon Chea was responsible for these killings: first, that the events at Tuol Po Chrey were instigated by officials at the sector or district level in order to exact revenge or eliminate rivals; or second, that they were organized by Northwest Zone secretary Ruos Nhim as part of a zone-wide effort to maintain order. Nuon Chea knows nothing of any executions at Tuol Po Chrey and does not know what happened there.

i – Nuon Chea did not intend to execute Lon Nol soldiers or officials

414. The foregoing analysis demonstrating that no CPK policy to execute Lon Nol soldiers or officials existed applies equally to Nuon Chea’s intent. The only direct evidence of Nuon Chea’s intent in this regard is Ben Kiernan’s account of [REDACTED] statement, which is directly exculpatory.⁹⁰³ Having chosen not to summons him, or any of the other witnesses with purported direct evidence of the intent of the Party center, the Chamber is now precluded from making a contrary finding beyond a reasonable doubt.
415. The Defence furthermore notes that none of the other direct evidence of CPK policy in relation to Lon Nol soldiers and officials concerns Nuon Chea specifically. Even Steve Heder’s account of his interview with Ke Pauk concerns only Pauk’s interpretation of CPK policy. It does not purport to describe Nuon Chea’s role or his intent.⁹⁰⁴

ii – Nuon Chea did not agree to execute Lon Nol soldiers or officials

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416. As already noted, no direct evidence of any meeting or communications between Nuon Chea and Ruos Nhim or any other Northwest Zone official in April 1975 exists. Nor does the Closing Order state with any specificity when this alleged agreement was formed. The Closing Order asserts that a general policy of ‘targeting’ Khmer Republic soldiers and officials came into effect prior to 1975.⁹⁰⁵ Even if that were true of *targeting*, the evidence shows that there was no policy of *executing* soldiers and officials prior to 1975.⁹⁰⁶ Hence, there is no clear indication of the circumstances under which an agreement to *execute* is alleged to have been formed. These facts alone are sufficient to acquit Nuon Chea of responsibility through participation in a joint criminal enterprise for the crimes allegedly committed at Tuol Po Chrey.
417. The Defence notes that in April 1975 Nuon Chea was located at B-5 in Kampong Chhnang province in what was then the Southwest Zone. Cadres present at B-5 in that period included Pol Pot, Ke Pauk, Sao Phim, Vorn Vet, Ta Mok and Son Sen. Neither Ruos Nhim, nor any other representative of the Northwest Zone, was present. The subject under discussion at B-5 was principally the liberation and subsequent evacuation of Phnom Penh.⁹⁰⁷ No evidence exists that persecution, still less execution, of Lon Nol officials, was discussed.

iii – Nuon Chea did not agree to execute Lon Nol soldiers or officials at Tuol Po Chrey

418. The Defence maintains firmly that no policy, nor any agreement among the CPK leadership, existed to execute soldiers and officials of the Khmer Rouge. The Defence notes, however, that even the limited and contradictory evidence relied upon by the Co-Prosecutors to support their position that such an agreement did exist would tend to suggest that this supposed agreement came into effect sometime after May 1975 – after the alleged events at Tuol Po Chrey. That same evidence furthermore concerns only senior military officers and the highest ranking civilian officials of the Khmer Republic. The evidence before the Chamber shows that the alleged victims at Tuol Po Chrey were overwhelmingly low-ranking officials, ordinary civilians and ordinary soldiers. In both respects, the evidence fails to establish Nuon Chea’s criminal responsibility for the alleged events at Tuol Po Chrey.

No agreement existed in April 1975

419. The only concrete evidence that the Standing Committee came to any agreement concerning the treatment of Khmer Republic officials concerns the 20 May 1975 conference described by Professor Kiernan. Although differing accounts of that conference exist, the parties agree that Khmer Republic soldiers and officials were a subject of discussion. The Co-Prosecutors encouraged the Chamber to refer to Chea

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Sim's (incorrect) recollection that a decision was taken at that conference to execute soldiers and officials above a certain rank.⁹⁰⁸ Accordingly, they assert that this supposed policy was communicated at this conference. Yet, if an agreement with zone officials already existed in April 1975, there would have been no need to communicate it in May 1975.

420. The Defence notes that, according to Phy Phuon, Sao Phim was present with Pol Pot and Nuon Chea for an extended period at B-5 in April 1975. As senior military officials in the East Zone, it is almost certain that if Sao Phim had agreed with Nuon Chea to execute all Lon Nol soldiers and officials prior to liberation, [REDACTED] and [REDACTED] would have been informed. Yet it is apparent from the evidence that they learned of the CPK's policy in relation to Lon Nol soldiers and officials for the first time on 20 May 1975.⁹⁰⁹ It is also implausible that Nuon Chea agreed with Ruos Nhim, who was not then a member of the Standing Committee or present at B-5, but not Sao Phim, who was both a member of the Standing Committee and present at B-5, on such a plan.
421. Steve Heder similarly testified that Ke Pauk told him that '*as Secretary of the CPK North (later Central) Zone Committee*, he had implemented a CPK policy of killing Khmer Republic officials.'⁹¹⁰ Heder then explained that Pauk was 'from around May 75 Secretary of the North Zone'.⁹¹¹ Thus, even if Pauk's testimony were accepted at face value, it would establish that a policy of executing Khmer Republic officers and officials began sometime after May 1975. The Defence notes that Pauk was the chief military commander in the North Zone from long before May 1975;⁹¹² indeed, he was present at B-5 with Pol Pot and Nuon Chea prior to the liberation of Phnom Penh.⁹¹³ He would surely have been involved in the CPK's supposed policy in that capacity, had one existed.

Alleged victims at Tuol Po Chrey were ordinary soldiers and low-level officials

422. Testimony heard before the Chamber fails to establish that any high-ranking officials were present at the provincial town hall meeting that preceded the alleged killings at Tuol Po Chrey. Ung Chhat claims to have recognized a single mid-ranking military officer, named Pel. Other than Pel, Mr. Ung 'did not recognize anyone [...] I did not know any other people.'⁹¹⁴ He explained that the statement in his Written Record of Interview that 'generals' were in attendance was a suggestion put to him by the investigators, and that he was able only to 'presume' that people attended the meeting 'would be' those of senior rank.⁹¹⁵ Lim Sat merely witnessed trucks drive past from the side of the road,⁹¹⁶ and was accordingly unable to testify as to the identity or seniority of any of the alleged victims. Although Lim claims to have been able to see that people

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on the truck were wearing military uniforms indicating rank, that testimony is contradicted by Ung Chhat, who indicates that they were all in civilian dress.⁹¹⁷ Lim does not, in any event, claim to know the identity or rank of anyone allegedly on those trucks.

423. The third and final witness to testify to events at Tuol Po Chrey before the Chamber was Sum Alat. After stating initially that he personally knew '10 to 20' senior officers at the provincial town hall meeting, counsel's repeated efforts on cross-examination to obtain a single name of a ranking officer were rebuffed in a series of evasive and non-committal responses.⁹¹⁸ The witness eventually produced two names – Prum Li Huon, the Pursat provincial governor, and a second person whom the witness called 'Nu Soeun' and described as 'the governor of that province'.⁹¹⁹ That answer is internally inconsistent, as it was Prum Li Huon, not 'Nu Soeun', who was the Governor of Pursat. Most important, however, is Sum Alat's claim that he himself – a 21-year old low ranking soldier – participated. Either Sum was present at the meeting, establishing that it was not a gathering of senior officers, or he was not, and his testimony is not credible. Neither possibility bodes well for the Co-Prosecutors' account of the events.
424. The limited evidence that does exist concerning the composition of the meeting establishes that substantial numbers of ordinary soldiers, students and low-level officials were present. Sum Alat testified that 60% of the attendees were civilians,⁹²⁰ yet no witness identifies the presence of a single senior civilian authority other than the provincial governor, Prum Li Huon.⁹²¹ Sum Alat specifically added that ordinary civilians and students were in attendance,⁹²² and Ung Chhat indicates that all of the attendees were wearing civilian clothes.⁹²³ To the extent that military personnel were present, the evidence shows that, at a minimum, the large majority were ordinary soldiers. Both Ung Chhat and Sum Alat testified that soldiers from the Tuol Po Chrey fort attended the meeting as a group.⁹²⁴ Estimates of the number of soldiers stationed at the Tuol Po Chrey fort range from 30 to 200.⁹²⁵ Sum Alat furthermore stated specifically that ordinary soldiers were present.⁹²⁶
425. Witnesses who did not appear before the Chamber said little about the composition of the group who attended the meeting. [REDACTED] claims that the provincial governor was among those present but indicated also that he observed only passing trucks from the side of the road.⁹²⁷ Accordingly he could not have known the identity of any of the people involved. [REDACTED] similarly claims that the provincial governor was present but was not himself in attendance either at the meeting in the provincial town hall or at Tuol Po Chrey. Indeed, he testified that he did not know what the meeting was about,

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and it is apparent from his statement that he did not observe the events inside the town hall compound.⁹²⁸ The WRI of a single witness, [REDACTED], states, 'I heard the Khmer Rouge announce that the Lon Nol soldiers from second lieutenant to colonel were to go to study at Angkor Wat'.⁹²⁹ The witness's actual testimony, as the audio recording shows, was that he was told about this 'announcement' by an unspecified 'someone' and that he knew nothing about it: including the means by which it was conveyed, its timing, source or recipient(s).⁹³⁰ No other witness testified to hearing such an announcement, which establishes with near certainty that it was not publicly made.

426. The Defence notes that it sought the appearance of all three of these witnesses, in addition to a fourth, [REDACTED], specifically for the purpose of challenging these exact assertions in open court.⁹³¹ These questions of fact go to the heart of the dispute between the parties on a point about which the evidence presently before the Chamber is conflicted and confusing.⁹³² The Defence's request that these witnesses appear was narrowly focused and would have required one week of the court's time. Indeed, both the Defence *and* the Co-Prosecutors sought the appearance of [REDACTED].⁹³³ The Chamber, however, refused to grant this request. Minimum fair trial guarantees require that the Chamber now disregard these statements entirely and make every reasonable inference in favour of the Accused.⁹³⁴

iv – The evidence corroborates two distinct alternative theories

427. Nuon Chea has no knowledge of any executions at Tuol Po Chrey and does not know what took place. He can only assume that if there were executions, they must have been driven either by zone-level or local authorities. His assertion in that regard is corroborated by the crime-base evidence, the history of animosity between RAK soldiers and the Republican army, and the decentralized nature of authority in Democratic Kampuchea.

Events at Tuol Po Chrey were Inconsistent with an Organized, Centralized Process

428. The evidence establishes that the events prior to, during and after the meeting at the provincial town hall were disorganized, haphazard and inconsistent with a centrally directed policy. Attendees were invited to the meeting by word of mouth without any effort to search out, gather or even transport specific individuals or groups to the meeting.⁹³⁵ Sum Alat testified that no effort was made to verify the identity or position of any of the attendees,⁹³⁶ and the evidence universally shows that there was no selection process to identify targets for transportation to Tuol Po Chrey from among those who attended. Rather, every person who chose to arrive at the meeting is alleged

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to have been placed on trucks destined for Tuol Po Chrey. If Sum's account is to be believed, dozens of people who could not fit in the initial convoy were left standing by the side of the road after the meeting without any effort to retrieve them.⁹³⁷

429. This sequence of events would be an odd approach to the implementation of an order from the Standing Committee in the context of a regime which, the Co-Prosecutors consistently allege, governed through a climate of absolute terror. If indeed even the slightest failure was punishable by death, cadres would presumably not have easily forgotten about 60 confessed traitors literally clamoring to be transported to their death.⁹³⁸

Corroborating facts: local revenge

430. Further corroborating this account is the evidence of extreme animosity between local Khmer Republic soldiers and members of the CPK and RAK. The liberation of Pursat on 19 April 1975 marked the end of a brutal five-year civil war, over the course of which vicious acts of violence were committed by combatants on both sides of the conflict. By April 1975, the hatred was intense and mutual.⁹³⁹
431. From the perspective of longtime RAK combatants, animosity toward symbols of the Lon Nol regime ran especially deep. Throughout the 1960s, members of the CPK were ruthlessly hunted down, tortured and executed by Lon Nol's security forces.⁹⁴⁰ Most pointedly, nearly all of the RAK forces and CPK cadres had experienced the devastating effects of the American bombing. Many of their families' villages had undoubtedly been obliterated.
432. There is no serious doubt that throughout Cambodia in April 1975, this anger translated into widespread and spontaneous acts of violence. Ben Kiernan describes the reaction of enraged Khmer Rouge forces entering Battambang, the closest urban center to Pursat: 'Finding two T-28s, they tore the planes apart with their bare hands [...] "They would have eaten them if they could."' ⁹⁴¹ Nor was this kind of post-war violence unique to Cambodia. Philip Short, for instance, describes the spontaneous violence which followed France's liberation from Germany following the Second World War, in which 10,000 people were killed by angry mobs.⁹⁴²
433. At Tuol Po Chrey, the evidence equally shows that CPK cadres needed no encouragement to exact vengeance from their former opponents. In the film *One Day at Po Chrey*, one of the two former cadres who claimed to have been involved in killings described how commander Pel and his deputy, Run, were decapitated, their heads placed on sticks and dug into the ground at either end of the field in which the executions allegedly took place.⁹⁴³ That behavior is strikingly similar to Lon Nol's

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treatment of RAK soldiers, who were suddenly in a position in April 1975 to react in kind.⁹⁴⁴ There is no serious allegation that this conduct was ordered by the Party center. If indeed local cadres took it upon themselves to perform executions as gruesomely as *One Day at Po Chrey* suggests, it is hardly difficult to imagine that they would have taken it upon themselves to perform the executions in the first place.

Corroborating Facts: Zone Authority

434. Also possible is that these executions were ordered at the zone level. Although this possibility seems inconsistent with the informal manner in which the events at the town hall allegedly unfolded, there is some evidence on the case file that executions were committed elsewhere in the Northwest and Southwest zone at around the same time.⁹⁴⁵ For reasons already discussed, that evidence is unreliable. On its face, however, it is indicative of the possibility that there was a tendency toward executions in the Northwest and Southwest zones, which suggests that orders may have come from zone authorities rather than those (formally speaking) above or below them.
435. The viability of this thesis is augmented substantially by the extent of the authority generally exercised by powerful zone leaders, such as Ruos Nhim, within their territory.⁹⁴⁶ Ben Kiernan describes the effort of the Party center to exercise authority over the Northwest Zone and explains that only after April 1975 did that control begin 'gradually increasing'.⁹⁴⁷ Kiernan's discussion of Ruos Nhim's leadership in the Northwest Zone demonstrates in numerous ways Nhim's hardline attitude, a description replicated in Nuon Chea's conversations with Thet Sambath.⁹⁴⁸ David Chandler and Michael Vickery both describe conditions in the Northwest Zone as abnormally bad, which they attribute to the leadership of poorly trained, uneducated local cadres.⁹⁴⁹ According to Professor Chandler, conditions were likely the worst in *damban* 2 and 6, in Pursat province.⁹⁵⁰ Professor Chandler adds that massacres in Battambang following 17 April 1975 were known to be the most 'extensive' in Cambodia.⁹⁵¹
436. Nuon Chea strongly suspects that the conditions in the Northwest Zone were the consequence of Ruos Nhim's opposition to the Party center. He is confident that Ruos Nhim was plotting against the Party center and hypothesizes that the conditions which apparently existed in the Northwest Zone constituted a part of his effort to foment dissatisfaction with the CPK.
437. The Defence notes, finally, that the importance of Ruos Nhim's role at Tuol Po Chrey is corroborated by Rob Lemkin, the co-director/producer of the film *One Day at Po Chrey*, who asserts that the events at Tuol Po Chrey were 'ordered by Ruos Nhim, not central command'.⁹⁵² In assessing the probative value of that assertion, the Defence

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urges the Chamber to consider two facts, which are apparent from interviews with Lemkin and Thet Sambath entered into evidence by the Co-Prosecutors. First, every minute of every interview taken by Thet for the purposes of his collaboration with Lemkin has been translated into English.⁹⁵³ Thus, the fact that Lemkin is not a Khmer speaker, which has been noted by both the Co-Prosecutors and the Chamber,⁹⁵⁴ is irrelevant. Second, it is apparent that although Thet conducted the interviews, it was Lemkin's responsibility to review that footage for the purpose of creating *One Day at Po Chrey*.⁹⁵⁵ That, of course, is only logical: of the two men, Lemkin is the filmmaker.

438. In light of these facts, the Co-Prosecutors' repeated reliance on the film is an implicit endorsement of Lemkin's understanding of the facts and renders their position that he is unfamiliar with those facts illogical. Indeed, the probative value of his information is rooted in the fact that the film is in evidence before the Chamber, yet by definition is an incomplete account of the information gathered by Thet and Lemkin. That was precisely the nature of the defendants' objections to the film when it was first tendered for admission. The film is now in evidence, and Lemkin's email merely serves to enhance the Chamber's understanding of it. The Chamber should accordingly either reject both the film and Lemkin's explanation of its significance, or consider them both in combination; there is no principled reason to consider one and not the other.

D. Nuon Chea is Not Guilty of Crimes Alleged at Tuol Po Chrey by Virtue of Any Form of Commission Other than Joint Criminal Enterprise

439. For largely the same reasons that Nuon Chea is not guilty of the crimes allegedly committed at Tuol Po Chrey by virtue of his participation in a joint criminal enterprise, he is also not guilty of those alleged crimes by virtue of any other form of commission.
440. Planning requires that Nuon Chea 'design[ed] the criminal conduct that constitutes' the offence.⁹⁵⁶ As discussed above, there is no evidence that Nuon Chea ever decided, by himself or in collaboration with others, to execute former officials or soldiers of the Khmer Republic. There is still less evidence that he decided to execute former officials or soldiers of the Khmer Republic at Tuol Po Chrey. It follows that he never 'designed' that conduct.
441. Ordering, instigating and aiding and abetting all require that Nuon Chea conveyed information – instructions, encouragement or assistance – to a person criminally responsible for the offence. As discussed above, there is no direct evidence that Nuon Chea conveyed any information to any authority in the Northwest Zone at around the time of the liberation of Pursat. Nor does the circumstantial evidence support an inference that he did, because the evidence equally supports the conclusion that

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officials in the Northwest Zone acted without instructions, encouragement or assistance from Phnom Penh.

442. Planning, ordering and instigating all furthermore require that the Accused either intended to commit the underlying offence or knew of a substantial likelihood that the crimes would be committed. As already discussed, Nuon Chea did not intend to execute former soldiers and officials of the Khmer Republic in general, nor those allegedly killed at Tuol Po Chrey in particular. He was similarly unaware of any likelihood that those crimes would be committed (if in fact they were). Aiding and abetting requires ‘proof that the accused knew that a crime would probably be committed, that the crime was in fact committed, and that the accused was aware that his conduct assisted the commission of the crime.’⁹⁵⁷ For all of the same reasons, no part of this standard is satisfied.
443. There is no allegation that Nuon Chea is guilty of personally committing the alleged crimes at Tuol Po Chrey.

E. Nuon Chea is Not Guilty of Superior Responsibility for Crimes Alleged at Tuol Po Chrey

444. Nuon Chea is not guilty of crimes allegedly committed at Tuol Po Chrey via superior responsibility for five reasons: (i) superior responsibility did not exist in 1975; (ii) if superior responsibility did exist, it applied only to Nuon Chea’s direct subordinates, none of whom committed the alleged crimes at Tuol Po Chrey; (iii) the alleged perpetrators of the alleged crimes were not under Nuon Chea’s effective control; (iv) Nuon Chea did not know and had no reason to know that those crimes were about to be or had been committed; and (v) Nuon Chea took corrective action to the extent of his *de facto* authority. These first two arguments negate liability as such and are advanced in section IV, *supra*, and in related filings.⁹⁵⁸ The latter three are developed herein in the alternative.

i – The Alleged Perpetrators were not Under Nuon Chea’s Effective Control

445. In order to establish that Nuon Chea exercised effective control over the alleged perpetrators, the Co-Prosecutors are required to prove that he had the material ability to prevent the crime or punish its perpetrators. Relevant factors in that regard include his ability to issue binding orders to, invoke disciplinary measures against and remove the perpetrators from their positions, whether the perpetrators reported back to Nuon Chea on what had occurred, and more broadly the nature of Nuon Chea’s tasks.⁹⁵⁹ Superior responsibility may be applied to civilian authorities such as Nuon Chea only ‘to the extent they exercised a degree of control over their subordinates [...] similar to that of

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military commanders.’⁹⁶⁰ Senior government officials do not, by virtue of their position alone, enjoy ‘superior responsibility over every person in the jurisdiction.’⁹⁶¹

446. Nuon Chea did not have effective control over the low-ranking cadres alleged to have executed former government officials at Tuol Po Chrey. Communications to and from Nuon Chea were almost exclusively with zone and autonomous sector secretaries,⁹⁶² who exercised *de facto* absolute control over the content of information reported to the Standing Committee and the orders delivered to officials within the zone.⁹⁶³ Nuon Chea interacted with (non-autonomous) sector and district officials almost exclusively at large political gatherings.⁹⁶⁴ Although Nuon Chea did occasionally discipline cadres within the national administrative structure, his ability to enforce that discipline in practice required the consent and cooperation of zone level officials.⁹⁶⁵ That was especially so in the early days of the regime, when the influence of the center at the base was at its lowest point.⁹⁶⁶

ii – Nuon Chea had no Specific Knowledge of the Events at Tuol Po Chrey

447. There is no direct evidence that Nuon Chea was informed of the alleged events at Tuol Po Chrey. There are no communications addressed to Nuon Chea (or anyone else) describing executions at Tuol Po Chrey, nor is there any testimony that any such information was conveyed to Nuon Chea. Indeed, there is no evidence that any person proximate to Nuon Chea was informed of executions at Tuol Po Chrey by any means. Instead, the evidence before this Chamber which concerned Tuol Po Chrey was given by witnesses close to the base who had no substantive contact with Nuon Chea or anyone else in the Party center. Philip Short conducted five years of research on Democratic Kampuchea, on the basis of which he was designated as an expert by this Chamber, yet he had never heard of Tuol Po Chrey.⁹⁶⁷
448. As the Defence has previously observed before the Chamber, in his interview with Thet Sambath in *One Day at Po Chrey*, Nuon Chea denied having had any knowledge of the alleged executions at Tuol Po Chrey. Indeed, he explained to Thet that:

At that time, I did not know about these killings. And if I had known, we would have taken preventive measures to stop that kind of killing. They had done nothing wrong, they were normal people, no different from ordinary people.⁹⁶⁸

449. The Defence submits that the genuine nature of that response is apparent from Nuon Chea’s demeanor in the film. It is furthermore corroborated by the fact that Thet was Nuon Chea’s trusted confidant.
450. The Chamber is entitled to infer Nuon Chea’s knowledge on the basis of circumstantial evidence only if there is no other reasonable inference available on the basis of the

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evidence before it. The evidence establishes that reporting to the Party center was filtered through multiple levels and ultimately the zone committee before reaching the Standing Committee.⁹⁶⁹ There is no evidence that Nuon Chea consistently received complete and accurate accounts of events at the base, and indeed the opposite is true.⁹⁷⁰ Nuon Chea's assertion – that he was never informed of the alleged events at Tuol Po Chrey – is entirely reasonable. The Chamber is precluded from drawing a contrary inference.

451. Nuon Chea did learn, in broad and general terms, of violence against former Khmer Republic officials in certain parts of Cambodia in the weeks following 17 April 1975. Some of those reports concerned the Northwest Zone. Although he had no legal obligation to do so as a civilian authority, he did take the limited corrective action available to him under the circumstances (*see infra*).

iii – Nuon Chea took Corrective Action within his Authority

452. Thirty-eight years later, Nuon Chea does not recall with specificity the events in the Northwest Zone in the weeks following 17 April 1975. He does, however, recall receiving unconfirmed reports that executions may have taken place and is certain that to that extent, the Party center sought to restrain them. In practice, however, the authority of the Party center at the base depended on the cooperation of zone leaders. Even zone leaders were able to exercise only partial control.
453. Nuon Chea's account is corroborated by Ben Kiernan's interviews exploring the situation in the Northwest Zone during this timeframe. According to Kiernan, several interviewees describe receiving or hearing about instructions sometime between April and October 1975 to stop executions, especially of former government officials.⁹⁷¹ The interviewees are Khmer Republic officials and low-level CPK cadres, such that the provenance of those instructions is unclear. Professor Kiernan summarizes his findings as follows:

[I]n Phnom Penh from May to October 1975, several attempts were made to end or at least limit the killing, not entirely effectively. The CPK Center was either struggling to maintain control or temporarily outmaneuvered by different government organs or factions. The Center, different Zone administrations [...] and the military-dominated Phnom Penh committee of which Nhim was vice-president are all possible authors of the series of orders. Their drift was clear: to limit the number of executions and the ability of lower levels to carry them out.⁹⁷²

454. Kiernan's account supports Nuon Chea's in two ways: that efforts were made to restrain the killings and that there were practical limitations on the ability of formally 'higher-ranking' cadres to do so. Nuon Chea took as much action as was possible in practice, given the limits of the information in his possession and his ability to control

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or punish subordinates. Under these circumstances, Nuon Chea may not be held liable as a superior responsible for the crimes allegedly committed at Tuol Po Chrey.

VIII. POLICIES OUTSIDE THE SCOPE OF CASE 002/01

455. The Chamber's systematic exclusion of facts on the ground from live evidence given at trial renders findings of fact in relation to those policies difficult.⁹⁷³ In assessing the existence of supposed policies of the CPK, the Chamber should require that direct evidence of the intentions of the Party center be so clear that a policy must have existed even if its implementation was sporadic and regional. For the reasons that follow, no such evidence exists.
456. The Defence notes that on 27 May 2013, the Co-Prosecutors filed their Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts ('Response to Witness Statement Objections').⁹⁷⁴ In that filing, the Co-Prosecutors made a variety of submissions concerning the evidence allegedly tending to establish the existence of policies concerning cooperatives, security centers, the targeting of groups and forced marriage. The Defence will draw on this filing to demonstrate the weakness of the evidence in relation to these policies.

A. Cooperatives and Worksites

457. As the Defence has previously demonstrated, the documentary evidence shows little more than that the Standing Committee established cooperatives and initiated certain projects described by the Closing Order as 'worksites'.⁹⁷⁵ Nuon Chea does not dispute that this occurred, that the Standing Committee was involved or that he was aware of it. He does dispute that he had any personal role in establishing or operating cooperatives or 'worksites' other than in his capacity as a member of the Standing Committee. The documentary evidence also establishes that a variety of purposes motivated the creation of cooperatives, including economic production and distribution, the institution of collectivity and security.⁹⁷⁶ Again, Nuon Chea does not deny any of this. He does deny that any of these motives are in themselves unlawful or render the establishment of cooperatives unlawful. Indeed, he asserts that cooperatives were necessary to remedy persistent and systemic inequities in the Cambodian economy.
458. The expert testimony given in relation to cooperatives and so-called worksites was equally general. Professor Chandler merely agreed that 'the establishment and operation of cooperatives and worksites' was one of the important policies of the CPK.⁹⁷⁷ Philip Short testified that as a policy, collectivization through the establishment of cooperatives was neither pernicious nor extreme. He explained that the cooperatives policy was independent from population movement and did not require

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even a physical change in the location or size of a village. Most cooperatives were rather created ‘on the basis of existing villages.’⁹⁷⁸ Establishing a cooperative only meant that ‘instead of working individually or in small mutual aid teams, [people] were dragged into cooperatives of 30 or 40 families who farmed the land in common.’⁹⁷⁹

459. Short furthermore explained that collectivization ‘happened in all Communist countries to a greater or lesser degree’⁹⁸⁰ and that its objectives were both reasonable and commendable:

In Communist systems, collectively owned property is held to be more just, better for everyone concerned than private ownership and the exploitation of man by man, as in a Cambodian capitalist system.

There was also the practical rationale which we discussed yesterday of controlling the rice supply, preventing it from being available to the Vietnamese allies, allies with problems. And then there is the ideological element which we’ve just been discussing; the desire to produce a system in which everybody was equal, which was not, I mean they were good reasons or at least worthy motives for it. It would raise up the poorest peasantry which again, as we heard yesterday, Pol Pot wished to make were the majority of Cambodians. That was not true, but it was a justification advanced, and in the Communist system as they conceived it, agricultural production was going to be the way in which Democratic Kampuchea developed, became prosperous and strong and therefore, the more people who could be put into collectives and made to work on the farms, the more agricultural production there would be; the stronger, the more quickly a strong Cambodia would develop.

Again, if I might just add one word, there was – this was not illogical. There was a great deal that made sense in this. The problem, the greatest problem, was the way it was carried out. I mean it is possible to imagine that a system of this kind could have been just and fair and equitable and would have achieved many of its goals without the suffering that resulted from the way it was carried out.⁹⁸¹

Later that day, Short used exactly this language to distinguish those aspects of the regime functionally within the control of cadres at the base from those that were centrally directed: ‘The policy was the same, the implementation was different. So, yes, it happened everywhere, but with very significant differences in how it was carried out.’⁹⁸² Although he made this claim in connection with the evacuation of Phnom Penh, it is apparent from his work that it applies more broadly to the functioning of and conditions in Democratic Kampuchea.⁹⁸³

460. There is no clear evidence that Nuon Chea was aware of systemic food shortages in cooperatives. Saut Toeng, who accompanied Nuon Chea on several trips outside of Phnom Penh, testified that in Battambang, the situation of the people was ‘normal’, and that ‘some [people] were thin, some were healthy, some suffered not having enough to

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eat.⁹⁸⁴ In the East Zone, too, the situation was ‘normal’ and the people ‘were better in terms of food consumption and availability.’⁹⁸⁵ Norng Sophang, who worked for most of Democratic Kampuchea as a telegram decoder in Phnom Penh – and therefore regularly read telegrams destined for Pol Pot and Nuon Chea – testified that he remained unaware of the state of living conditions at the base until after 1979.⁹⁸⁶ Meas Voeun testified that he was instructed by Pol Pot in 1978 to investigate possible food shortages in Sector 103, which indicates that these were a matter of concern for the Party center. He explained further that upon arrival in Sector 103 he found that there were food shortages, which were later alleviated by the rice harvest.⁹⁸⁷ Although he did not report back to Pol Pot, he informed his direct superior whom he expects relayed the information.⁹⁸⁸

461. Witnesses furthermore testified that when Nuon Chea visited the base, sector leaders defied Nuon Chea’s instructions in relation to both work hours and food rations, increasing the former and decreasing the latter.⁹⁸⁹ Other evidence, discussed in section V-E, *supra*, demonstrates the effort of the Party to provide for the evacuees arriving in cooperatives.⁹⁹⁰ That testimony is consistent with CPK publications, which encourage cadres to ‘respect and love the popular masses’ and never ‘let[] the people experience shortages and hunger’.⁹⁹¹
462. Telegrams in evidence before the Chamber and addressed to entities within the Party center include occasional reference to food shortages and illness in the cooperatives, but do not establish that these shortages were common across the country. Indeed, several telegrams copied to Nuon Chea describe strong harvests.⁹⁹² Nor do these communications establish whether the conditions in Democratic Kampuchea were unusual relative to those in liberated and/or non-liberated zones prior to April 1975.⁹⁹³ Nor is there evidence of how the conditions described in those communications compared to expected rice yields as of April 1975, which were anticipated to be disastrously low due in part to the widespread destruction of rice paddies caused by the American bombing campaign.⁹⁹⁴
463. Finally, the Defence notes that, while evidence of actual conditions in cooperatives concerns the implementation of the alleged policy and is therefore beyond the scope of this trial, the occasional testimony given before the Chamber in that regard was inconsistent and reflects the variations which persisted across Democratic Kampuchea.⁹⁹⁵ Norng Sophang testified that his colleagues in Phnom Penh who returned from visiting their homes in base areas told him that ‘in certain areas they were good leaders, and they had sufficient food to eat [but] in other places [...] the leaders were not that good, and people had to eat porridge.’⁹⁹⁶ He added that ‘clothes

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and materials' distributed by Angkar to the people were frequently not put to good use in part because of 'the incompetence of the local authority in leading their own location.'⁹⁹⁷ This testimony reinforces the Defence's position that the Chamber may not rely on the arbitrary selection of implementation evidence before it support of any finding concerning the putative cooperatives 'policy' or Nuon Chea's roles and responsibilities in relation thereto.

B. Killing of Enemies

464. As the Defence demonstrated in its response to the Co-Prosecutors' document presentation hearing (*see also* section III-B, *supra*), CPK publications address only the general political objectives of the socialist revolution.⁹⁹⁸ In a new revolutionary state, these objectives included the defence of the country. Accordingly, cadres were warned that the CPK was at risk both from forces outside the state, including the Vietnamese and the United States, and potential counter-revolutionaries within the state, including former capitalists and feudalists. Nuon Chea believes today that those concerns were warranted, and indeed that they were vindicated by history. It was, of course, equally true that the feudalist-colonialist regimes that preceded the CPK were threatened by (and took action against) Communist and Issarak revolutionaries within their borders.
465. The Co-Prosecutors' claim appears to be that CPK documents evince the Party center's intent to employ violence against so-called enemies of the Party. But the language used to describe measures taken against enemies is exactly the same as the language employed to describe the rice harvest and dam construction.⁹⁹⁹ It is also exactly the same as the language used to describe the indoctrination of cadres.¹⁰⁰⁰ Revolutionary Flag and Revolutionary Youth magazines furthermore repeatedly explain that class struggle post-liberation is *not* intended to be violent – that it proceeds *without* 'bloodshed', 'killing' or 'armed combat'.¹⁰⁰¹ For the CPK, it was entirely consistent that this struggle could be both bloodless and 'tense', 'tenacious', 'sharp', 'profound' and even 'life and death'.¹⁰⁰²
466. Political education given by the Party center corroborates this interpretation. Suong Sikoen explained that study sessions led by Ieng Sary emphasized 'the enemy within ourselves' over foreign enemies, such as the Americans and the Vietnamese, or domestic enemies, such as those burrowing from within.¹⁰⁰³ Accordingly, 'getting rid of the enemies meant that the enemies themselves were secondary.' The main target was not the 'individual' but the 'feudalist mentality and systems.'¹⁰⁰⁴ The Defence strongly urges the Chamber to refer to Sikoen's original Khmer language testimony, which differs in subtle but important respects from the (wrongly translated) English. The Defence submits that in Khmer, there is little doubt that according to Suong Sikoen, the

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enemy of the Party was not the people themselves but their state of mind: greed, ambition and materialism.

467. Nuon Chea had no direct role in the CPK's effort to protect the state against either external or internal enemies. Nuon Chea's role within the CPK concerned propaganda and education and in that capacity he frequently led political education sessions. The evidence shows that the purpose of these sessions was to instruct Party cadres in the history and objectives of the socialist revolution.¹⁰⁰⁵ Accordingly, the sessions primarily concerned economics and agriculture, including target rice yields and the distribution of materials to the population.¹⁰⁰⁶
468. At no time during these political education sessions did Nuon Chea instruct or encourage Party cadres to execute or otherwise mistreat anyone. For the same reason that CPK documents discuss in general terms the threats posed by both internal and external enemies, Nuon Chea's political instruction encouraged cadres to be vigilant in the face of such threats. In a variety of ways, circumstances in Democratic Kampuchea were such that vigilance on the part of local cadres was essential: communication structures throughout the country were weak, especially at the base level;¹⁰⁰⁷ travel was difficult, even with modern vehicles, on Cambodian roads,¹⁰⁰⁸ and the CPK was justifiably aware that numerous forces, both internal and external, were aligned against them. Vigilance was not only logical, it was necessary and prudent. Without the assistance of cadres at all levels of the regime, it would have been impossible.
469. Evidence that arrests and executions took place in cooperatives and security centers concerns implementation of the alleged policy and is beyond the scope of this trial. In that regard, the Defence reiterates the argument it developed in relation to the alleged cooperatives policy: it is not seriously contested that the practices and methods at security centers across the country varied widely. Kim Vun, who worked in the propaganda ministry, testified that the 'minister who disseminated information in various political training sessions' talked about forgiving enemies.¹⁰⁰⁹ These variations are reflected even within the allegations in the Closing Order.¹⁰¹⁰ Because of these variations, the Chamber is unable to form any conclusions about the alleged 'enemies' policy absent clear direct evidence of Party intent.
470. The Co-Prosecutors argue in their Response to Witness Statement Objections that the wide variations across security centers are irrelevant because 'the nature of this case [...] concerns a policy of re-educating bad elements and smashing enemies.'¹⁰¹¹ The Defence has difficulty following this argument. The evidence shows that security centers detained people for different reasons, used different methods against them and communicated different types of information to the Party center. It is accordingly

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unlikely that the parameters of any putative policy encompassed any of these facts. If the Co-Prosecutors' position is only that a policy existed to punish prohibited conduct, the Defence agrees. The Defence submits that such a policy would place Democratic Kampuchea on par with roughly 200 member states of the United Nations.

471. The Defence notes that, according to DC-Cam, 196 security centers operated in Democratic Kampuchea.¹⁰¹² Yet only eleven are charged in the Closing Order. The Co-Prosecutors apparently concluded prior to filing the Introductory Submission that Nuon Chea was not criminally responsible for events at 185 security centers across the country. It follows that even the Co-Prosecutors concede that the overwhelming majority of arrests and executions in Democratic Kampuchea were committed beyond the authority of the Party center. That fact underscores the importance of establishing Nuon Chea's intent, role and responsibility by direct evidence, and not merely by inference from those crimes which may have been committed by lower ranking cadres.

C. Targeting of Groups

i – Buddhists

472. The Co-Prosecutors' Response to Witness Statement Objections identified nine live witnesses and a selection of documentary evidence in relation to the alleged policy of targeting Buddhists. As the Defence showed in its objections to the Co-Prosecutors' and civil parties' requests to put witness statements before the Chamber ('Witness Statements Objections'),¹⁰¹³ witnesses much more senior in the regime than those cited by the Co-Prosecutors repeatedly testified that *no* policy existed. These included Sao Sarun, secretary of Autonomous Sector 105, and Saloth Ban and Ny Kan, both of whom worked in the Ministry of Foreign Affairs. Ny Kan testified that he had 'not heard of witness any ban – prohibition – concerning these religious practice.'¹⁰¹⁴
473. Professor Chandler testified that Buddhist monks were sometimes criticized at study sessions and/or removed from positions of authority.¹⁰¹⁵ Yet when he was asked more pointedly about the existence of a policy of targeting Buddhists, he reluctantly replied that any such policy could only refer more specifically to Buddhist monks.¹⁰¹⁶ In other words, if a policy did exist it was not targeted at 'Buddhists' but at the position of social authority held by the monkhood.¹⁰¹⁷ Philip Short was even more reticent. He testified that Buddhist sites were not systematically destroyed, even though there were instances of such destruction.¹⁰¹⁸ The Defence submits that the context in which Short gave this testimony – which was prompted by a question about whether lower level cadres in Democratic Kampuchea could act without instructions from their superiors – demonstrates that in his view, the destruction of Buddhist sites was not the consequence of a CPK-driven policy.

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474. The documentary evidence cited by the Co-Prosecutors in the Response to Witness Statement Objections is irrelevant. A June 1977 issue of Revolutionary Flag states that monks voluntarily joined the revolutionary movement.¹⁰¹⁹ A September 1975 purported Party policy document makes a single offhand reference to monks as part of a vague, theoretical class analysis.¹⁰²⁰ Neither document describes any policy to take any action against Buddhism or Buddhists, or any such action that was taken. The Co-Prosecutors' third document is a news article by a Yugolsav journalist who has never appeared before this tribunal, which serves to highlight the weakness of the Co-Prosecutors' evidence.¹⁰²¹

ii – Cham

475. The only witnesses to testify to CPK policy in relation to the Cham were Professor Chandler and Philip Short. Professor Chandler stated: 'But the Cham, certainly, were not targeted from the beginning, *if they were systematically targeted*.'¹⁰²² He added that 'the Cham were not considered to be enemies of the state.'¹⁰²³ Philip Short similarly testified that the CPK did not specifically intend to exterminate the Cham.¹⁰²⁴ Conclusions in Ysa Osman's work which contradict this in court expert testimony and have never been discussed before the Chamber are entitled to no probative value.¹⁰²⁵ Assessments of CPK policy from nameless 'survivors' who have never been identified, let alone cross-examined, are especially insignificant.¹⁰²⁶ Evidence in Osman's work concerning the treatment of Cham people constitutes inadmissible implementation evidence.

476. The Co-Prosecutors' Response to Objections to the Admission of Statements cited four fact witnesses and a small selection of documentary evidence in relation to the alleged treatment of the Cham. All of it plainly constitutes inadmissible implementation evidence.¹⁰²⁷ One of those witnesses was Duch, whose knowledge of any treatment of the Cham is obviously beyond the scope of his knowledge.¹⁰²⁸ Suon Kanil testified that he 'did not know anything about the situation of the Muslim Cham'.¹⁰²⁹ Yun Kim testified that the Cham were not targeted but rather treated the same as other Khmer people.¹⁰³⁰ Pe Chuy Chipse's testimony did not concern any supposed CPK policy in relation to the treatment of the Cham.¹⁰³¹

477. The documentary evidence cited by the Co-Prosecutors is similarly irrelevant. Telegram 15 dated 30 November 1975 concerns the movement of Cham and non-Cham people from the East to the North Zone.¹⁰³² The sender, from the East Zone, indicates that the North Zone had refused to accept the 'Islamic people' but it is 'no problem' if they remain in the East Zone.¹⁰³³ The May 1977 report from sector 5 was not sent to or from the Party center and constitutes inadmissible implementation evidence.¹⁰³⁴ A

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single reference to the Cham as an ‘enemy’ in a telegram from Ke Pauk does not reflect CPK policy or the views of Nuon Chea.¹⁰³⁵

iii – Vietnamese

478. Sao Sarun, the secretary of the Sector 105 (which shared a border with Vietnam), testified that he was aware of no policy to target the Vietnamese and was instructed to ‘resist’ the Vietnamese only in the context of their invasion of Cambodia.¹⁰³⁶ The Co-Prosecutors claim in their Response to Witness Statement Objections that Klan Fit testified that he was instructed to describe the Vietnamese as Yuon, but in reality his testimony in that regard was inconsistent and contradictory.¹⁰³⁷ The word ‘Yuon’ was in any event common in Khmer usage long before Democratic Kampuchea and is therefore not probative of any animus in the part of the CPK. Witness Kim Vun used the word ‘Yuon’ repeatedly in his testimony before the Chamber, before pausing to explain:

[Yuon] was the traditional word that describes the Vietnamese [...] So, when I used Yuon in this context before this Chamber in my testimony, it does not mean that I am expressing my contempt against the Vietnamese people. It was not a derogatory remark against the Vietnamese.¹⁰³⁸

Kham Phan alias Phan Van does not explain how he knew whether a particular decision to arrest Vietnamese people came from the Center.¹⁰³⁹ That testimony, which concerns Sector 105, is furthermore directly inconsistent with Sao Sarun’s account that he was aware of no policy in relation to the treatment of Vietnamese people. As the secretary of Sector 105, Sarun’s testimony on this point is to be preferred.

479. The documentary evidence cited by the Co-Prosecutors shows that Party policy in relation to the Vietnamese concerned the ‘external’, or military conflict with Vietnam, and not ethnic Vietnamese within Cambodian territory. Telegram 15 dated 19 January 1978 and Telegram 18 dated 8 April 1978 both describe military operations on the border and in Vietnamese territory.¹⁰⁴⁰ Telegram 21 dated 21 March 1976 appears to concern Vietnamese people unlawfully on Cambodian territory near the border.¹⁰⁴¹ The so-called ‘CPK Directive’ dated 1 January 1979 – in the midst of the full-scale Vietnamese invasion of Cambodia – concerns ‘enemy aggressors’ and ‘expansionist land-grabbers’ and is primarily directed to military defence against external enemies.¹⁰⁴² The April 1978 issue of Revolutionary Flag again concerns the military conflict.¹⁰⁴³ The assertion that previously there had been 1,000,000 Vietnamese in Cambodia and there are now none to be found is irrelevant to CPK policy, and still less to a supposed CPK policy to kill ethnic Vietnamese. Widespread executions of ethnic Vietnamese were carried out under the authority of both Lon Nol and Prince Sihanouk

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in the 1960s and 1970s.¹⁰⁴⁴ The Closing Order furthermore alleges that Vietnamese persons were systematically expelled from Cambodian territory by the CPK,¹⁰⁴⁵ as indeed were all foreigners.

480. Evidence that ethnic Vietnamese people suffered mistreatment in Cambodia does not show that those people were targeted *because* they were Vietnamese. That is true, for instance, of evidence that Vietnamese people were interrogated at S-21.¹⁰⁴⁶ The evidence shows that Vietnamese people interrogated at S-21 were largely soldiers captured in battle,¹⁰⁴⁷ which is not probative of any policy in relation to Vietnamese civilians within Cambodia. Other evidence cited by the Co-Prosecutors purports to describe individual instances in which Vietnamese civilians were killed and therefore constitutes inadmissible implementation evidence.¹⁰⁴⁸ It does not, in any event, establish that such killings, if they occurred, were centrally directed or the manifestation of a supposed policy.
481. The expert testimony before the Chamber is inconclusive with regard to the CPKs intentions in relation to the treatment of the Vietnamese. Philip Short testified, that ‘the Khmer Rouge did not set out to exterminate a national, ethnic, racial, or religious group, whether their own, the Vietnamese, the Cham, or any other.’¹⁰⁴⁹ Even Professor Chandler’s testimony that a policy of targeting the Vietnamese on ethnic grounds eventually developed is limited to sometime in 1978.¹⁰⁵⁰

D. Forced Marriage

482. As the Defence showed in its response to the Co-Prosecutors’ document presentation on alleged CPK policies, the evidence of a Party center policy concerning forced marriage is non-existent.¹⁰⁵¹ The CPK sought to increase Cambodia’s population, an objective sought by most governments, and proposed to do so by improving living conditions.¹⁰⁵² As a socialist entity, the CPK was also opposed to various forms of private ownership.¹⁰⁵³ None of these vague political objectives has anything to do with marriage, let alone its regulation. The occasional references to marriage which do exist in CPK publications do not instruct, or even imply, that cadres ought to coerce unwilling parties into pre-arranged marriages.¹⁰⁵⁴
483. Expert testimony does no better. Professor Chandler testified that he was not aware of any ‘high-level documentation for the policy of the arranged marriages.’¹⁰⁵⁵ Philip Short’s vague generalization that ‘romantic attachment between a couple was something that the Khmer Rouge had very little time for’ – even if it could be accepted on its own terms – says nothing about forcing people to marry or about the connection of any such marriages, if indeed they occurred, to anyone within the Party center.¹⁰⁵⁶

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484. Testimony tending to show that forced marriages took place establishes no connection to Nuon Chea and constitutes inadmissible implementation evidence.¹⁰⁵⁷ The Defence furthermore notes that where testimony concerning forced marriage was given, several witnesses indicated that none occurred.¹⁰⁵⁸ These witnesses included Sao Sarun, the secretary of Sector 105, who reported directly to Pol Pot.¹⁰⁵⁹ ‘Scholarly research’ by authors who have not appeared before the Chamber on subjects specifically excluded from witness examination at trial should be disregarded altogether.¹⁰⁶⁰

CO-LAWYERS FOR NUON CHEA



SON Arun



Victor KOPPE

¹ Document No. **E1/94.1**, ‘Transcript of Trial Proceedings,’ 23 July 2012, p. 18:12-14.

² Document No. **E3/4078**, ‘Attachment 5: Bombs over Cambodia,’ ERN 00809337.

³ Document No. **E1/94.1**, ‘Transcript of Trial Proceedings,’ 23 July 2012, p. 66:12-14

⁴ Document No. **E1/199.1**, ‘Transcript of Trial Proceedings,’ 30 May 2013, p. 84:1-12.

⁵ David Scheffer, ‘The Extraordinary Chambers in the Courts of Cambodia’, 2008, p. 5 (in the view of the UN Group of Experts, ‘only an international tribunal would guarantee international standards of justice, fairness and due process of law’).

⁶ Document No. **E3/1593**, Ben Kiernan, ‘The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979,’ ERN 00678507.

⁷ Document No. **E3/1686**, ‘A History of Cambodia,’ ERN 00422833-34; Document No. **E1/180.1**, ‘Transcript of Trial Proceedings,’ 11 April 2013, p. 35:25-36:3; Document No. **E1/178.1**, ‘Transcript of Trial Proceedings,’ 9 April 2013, p. 52:12-24.

⁸ See section III-A, *infra*.

⁹ Document No. **E1/150.1**, ‘Transcript of Trial Proceedings,’ 7 December 2012, pp. 94:3-96:18; Document No. **E3/3351**, ‘The Life of a Physician under the Khmer Rouge Regime,’ ERN00369813.

¹⁰ *United States of America et al. v. Araki et al.*, International Military Tribunal for the Far East, ‘Judgment’, 4 November 1948, Justice Radhabinod Pal dissenting, p. 21.

¹¹ *United States of America et al. v. Araki et al.*, International Military Tribunal for the Far East, ‘Judgment’, 4 November 1948, Justice Radhabinod Pal dissenting, p. 10

¹² Carla del Ponte, ‘Madame Prosecutor: Confrontations with Humanity’s Worst Criminals and the Culture of Impunity’, 2009, pp. 223-230.

¹³ Document No. **E1/178.1**, ‘Transcript of Trial Proceedings,’ 9 April 2013, p. 14:9.

¹⁴ Document No. **E1/180.1**, ‘Transcript of Trial Proceedings,’ 11 April 2013, p. 25:23-24.

¹⁵ Document No. **E1/122.1**, ‘Transcript of Trial Proceedings,’ 5 September 2012, p. 25:3-12.

¹⁶ Document No. **E1/189.1**, ‘Transcript of Trial Proceedings,’ 6 May 2013, p.6:22-24

¹⁷ Document No. **E1/180.1**, ‘Transcript of Trial Proceedings,’ 11 April 2013, p.43:24-25.

¹⁸ Document No. **E1/95.1**, ‘Transcript of Trial Proceedings,’ 24 July 2012, pp. 93:18-94:4.

¹⁹ See para I-D, *infra*.

²⁰ See para I-D, *infra*.

²¹ Bastin stepped down in September 2009 and issued his statement on 08 October 2009. *See* Case of IENG Sary, 002/09-10-2009-ECCC/PTC(01), Document No. 1, 'Ieng Sary's Application to Disqualify Co-Investigation Judge Marcel Lemonde & Request for a Public Hearing', 9 October 2009, fn 2. Bastin's professional expertise and credibility are beyond dispute; he is currently serving as a Police Officer in Australia. He has 31 years of service, mostly in the areas of Organized Crime and Homicide, where his major role is that of an Intelligence Manager. He has previously served for 12 months with the International Criminal Tribunal for Rwanda as an Analyst/Investigator, and has spent 12 months with the Special Court for Sierra Leone where he was Chief of the Intelligence Unit. He was also a senior Investigator with the U.N. Independent Special Commission of Inquiry for Timor Leste in 2006, and was responsible for establishing the Intel Unit at the ECCC in 2007. He returned to the ECCC in 2008 and served as Chief of the Intelligence and Analysis Unit.

²² *See* Annex A, attached to Case of IENG Sary, 002/09-10-2009-ECCC/PTC(01), Document No. 1, 'Ieng Sary's Application to Disqualify Co-Investigation Judge Marcel Lemonde & Request for a Public Hearing', 9 October 2009; Document No. **D264/2/1.2**, Notes of Wayne Bastin at Meeting with Judge Lemonde.

²³ *See* Case of IENG Sary, 002/09-10-2009-ECCC/PTC(01), Document No. 4, 'Consolidated Response by Co-Investigating Judge Marcel Lemonde to Applications to Disqualify Filed on Behalf of Ieng Sary and Khieu Samphan', Document No. 4, para. 26.

²⁴ Document No. **D164/2**, 'Order on the Request for Investigative Action to Seek Exculpatory Evidence in the SMD', 19 June 2009, para. 6 (emphasis added).

²⁵ Document No. **A110**, 'IENG Sary's Lawyers' Letter,' 20 December 2007; Document No. **A110/I**, OCIJ's Letter entitled 'Response to Your Letter Dated 20 December 2007 Concerning the Conduct of the Judicial Investigation,' 10 January 2008.

²⁶ *See e.g.*, French Code de Procédure Pénale, Arts 120, 82.1.

²⁷ Document No. **A110/I**, OCIJ's Letter entitled 'Response to Your Letter Dated 20 December 2007 Concerning the Conduct of the Judicial Investigation', 10 January 2008.

²⁸ Document No. **A110/I**, OCIJ's Letter entitled 'Response to Your Letter Dated 20 December 2007 Concerning the Conduct of the Judicial Investigation', 10 January 2008; Document No. **D367**, 'Order Issuing Warnings under Rule 38', 25 February 2010; Document No. **D367/1/5**, 'Decision on Appeal against the Co-Investigating Judges' Order Issuing Warnings under Rule 38', 7 June 2010.

²⁹ Document No. **D171/5**, Memorandum from Co-Investigating Judges entitled 'Your "Request for Investigative Action", Concerning, *inter alia*, the Strategy of the Co-Investigating Judges in regard to the Judicial Investigation', 11 December 2009 (providing that information for the first time).

³⁰ *See* Document No. **D130/11**, 'Fifteenth Request for Investigative Action', 1 September 2009, para. 4.

³¹ *See* Rules 53, 55.

³² Document No. **D318**, 'Nineteenth Request for Investigative Action', 13 January 2010, paras 9-14; Document No. **D319**, 'Twentieth Request for Investigative Action', 13 January 2010, paras 10-15; Document No. **D320**, 'Twenty-First Request for Investigative Action', 15 January 2010, paras 9-14; Document No. **D336**, 'Twenty-Second Request for Investigative Action', 26 January 2010, paras 10-15; Document No. **D338**, 'Twenty-Third Request for Investigative Action', 27 January 2010 paras 9-14; Document No. **D339**, 'Twenty-Fourth Request for Investigative Action', 2 February 2010, paras 10-15; Document No. **D340**, 'Twenty-Fifth Request for Investigative Action', 3 February 2010, paras 9-14.

³³ Document No. **D318**, 'Nineteenth Request for Investigative Action', 13 January 2010, paras 9-14; Document No. **D319**, 'Twentieth Request for Investigative Action', 13 January 2010, paras 10-15; Document No. **D320**, 'Twenty-First Request for Investigative Action', 15 January 2010, paras 9-14; Document No. **D336**, 'Twenty-Second Request for Investigative Action', 26 January 2010, paras 10-15; Document No. **D338**, 'Twenty-Third Request for Investigative Action', 27 January 2010 paras 9-14; Document No. **D339**, 'Twenty-Fourth Request for Investigative Action', 2 February 2010, paras 10-15; Document No. **D340**, 'Twenty-Fifth Request for Investigative Action', 3 February 2010, paras 9-14.

³⁴ *See e.g.*, Document No. **D194**, 'Fourteenth Request for Investigative Action', 14 August 2009; Document No. **E234**, 'Ieng Sary's Request that the Trial Chamber Seek Clarification From the OCIJ as to the Questioning of Witness Norng Sophang on 17 February 2009 and Summon the OCIJ Investigators to Give Evidence Regarding this Interview', 27 September 2012; Document No. **E234/2**, 'Notice of Joinder to Ieng Sary's Request E234', 2 November 2012; Document No. **E142**, 'Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews', 17 November 2011; Document No. **E221**, 'Ieng Sary's Request to Hear Evidence from the Interpreter Concerning Witness Phy Phoun's Second OCIJ Interview Whereby Irregularities Occurred Amounting to Subterfuge', 23 August 2012; Document No. **E224**, 'Ieng Sary's Request that the Trial Chamber Seek Clarification from the OCIJ as to the Existence of any Record Relating to the Questioning of Witness Oeun Tan on 8 October 2008', 29 August 2012.

³⁵ Document No. **E291**, 'Urgent Request to Summons Key Witnesses in Respect of Tuol Po Chrey', 17 June 2013.

³⁶ Document No. **E3/5774**, Written Record of Interview of Witness Ung Chhat, ERN 00284417; Document No. **E3/364**, 1st Written Record of Interview of Witness Lim Sat, 23 November 2008, ERN 00250759; Document No. **E3/4601**, 2nd Written Record of Interview of Witness Lim Sat, 18 November 2009, ERN 00412159;

Document No. **E3/4638**, Written Record of Interview of Witness Suy Seng Chhorn, 11 June 2008; Document No. **E3/4637**, Written Record of Interview of Witness Sum Alat, 10 June 2008.

³⁷ Document No. **D125/217**, 'Site Identification Report: Pursat Region', 9 September 2009 (emphasis in original).

³⁸ Closing Order, para. 711.

³⁹ Closing Order, para. 21.

⁴⁰ Closing Order, para. 35.

⁴¹ Closing Order, paras 39, 44.

⁴² Closing Order, para. 41.

⁴³ Closing Order, para. 53.

⁴⁴ Closing Order, para. 98.

⁴⁵ See e.g., Closing Order, paras 870, 875, 886.

⁴⁶ Document No. **E280/2.2**, 'Un Juge Face Aux Khmer Rouges', 8 May 2013, ERN 00907871.

⁴⁷ Document No. **E3/377**, Written Record of Interview of Witness Suong Sikoen, ERN 00327248.

⁴⁸ Closing Order, fns 454-456.

⁴⁹ Document No. **E1/122.1**, 'Transcript of Trial Proceedings', 5 September 2012, pp. 75:18-21; Document No. **E1/123.1**, 'Transcript of Trial Proceedings', 6 September 2012, pp. 15:22-16:6 (witness 'was supposed to know the general information like other people in the world would know [...] I did not understand the internal working arrangement of the Standing Committee.').

⁵⁰ Closing Order, para. 47.

⁵¹ See section II-G, *infra*.

⁵² See e.g., Document No. **E3/86**, 'The True Fact about Pol Pot's Dictatorial Regime', 8 September 1996, ERN 00081214-15 (Ieng Sary denies responsibility for taking part in decisions, *cf.* Closing Order, paras 1016-17, 1028, 1049, 1073), 00081215, 00081220 (Ieng Sary denies responsibility for playing a role in politics and for being one of the leader figures, *cf.* Closing Order, paras 997, 1001-03, 1008-11, 1016-17), 00081218-19 (Ieng Sary denies responsibility for being informed about the evacuation of Phnom Penh, *cf.* Closing Order, paras 1018-22, 1024), 00081220-21 (Ieng Sary denies responsibility for knowing about the killings, *cf.* Closing Order, paras 1023, 1048-49, 1051-52, 1055-57, 1061-62, 1071-72, 1080, 1091-92, 1109, 1115-19), 00081220 (Ieng Sary denies responsibility for agreeing to the policy of sending people to work camps, *cf.* Closing Order, paras 1026, 1028, 1030, 1036-37, 1043-46).

⁵³ Closing Order, para. 977.

⁵⁴ Document No. **E3/1593**, Ben Kiernan, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-1979', ERN 00678476-00678740.

⁵⁵ Document No. **E3/24**, 'Written Record of Interview of Witness Phy Phuon,' 5 December 2007 ERN 00223578-00223588.

⁵⁶ See generally, Closing Order.

⁵⁷ See Document No. **E182/1**, 'Co-Prosecutors' Response to Nuon Chea's "Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context"', 29 March 2012, paras 4-7.

⁵⁸ Document No. **E182**, 'Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context', 16 March 2012, paras 32-33.

⁵⁹ Document No. **E182**, 'Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context', 16 March 2012, paras 34-35.

⁶⁰ Document No. **A110/I**, OCIJ's Letter entitled 'Response to Your Letter Dated 20 December 2007 Concerning the Conduct of the Judicial Investigation', 10 January 2008.

⁶¹ See Document No. **E182**, 'Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context', 16 March 2012, paras 31-35.

⁶² Constitution of the Kingdom of Cambodia, Art. 38; Code of Criminal Procedure, Art. 351; Internal Rule 21 (1)(d); International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(2); *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950, entered into force on 3 September 1953, 213 UNTS 221, Art. 6(2); American Convention on Human Rights, San José, 22 November 1969, entered into force on 18 July 1978, 1144 UNTS 143, Art. 8(2); Universal Declaration of Human Rights, annexed to UN General Assembly Resolution 217 (III), 10 December 1948, UN Doc. A/RES/217(III), Art.11.

⁶³ See ECCC Law, Art. 35 new; Code of Criminal Procedure, Art. 300; London Charter of the International Military Tribunal annexed to Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis between the United Kingdom of Great Britain and Northern Ireland, the United States of America, France, and the Union of Soviet Socialist Republics, London, 8 August 1945, 82 UNTS 280, Art. 16 ('A Defendant shall have the right through himself or through his Counsel to present evidence at the Trial in support of his defence'); International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(3) ('In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality [...] (e) [...] to

obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him’); *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950, entered into force on 3 September 1953, 213 UNTS 221, Art. 6(d) (right ‘to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him’); *Vidal v Belgium*, ECtHR, 12351/86, 22 April 1992 (defendant’s fair trial rights violated where court declined, without reason, to call witnesses requested by the defendant); Rome Statute of the International Criminal Court, Rome, 17 July 1998, entered into force on 1 July 2002, 2187 UNTS 3, as amended on 11 June 2010, Art. 67(1)(e) (right ‘to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute.’); *Prosecutor v Lubanga Dyilo*, ICC-01/04-01/06-T-3, Transcript of First Appearance, 20 March 2006, p. 4. Manifestations of the right to present a defence are found in domestic jurisdictions the world round. See Document No. **E182**, ‘Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context’, 16 March 2012, fn 27.

⁶⁴ ECCC Law, Art. 35 new (‘In determining charges against the accused, the accused shall be equally entitled to the following minimum guarantees, in accordance with Article 14 of the International Covenant on Civil and Political Rights. [...] (e) to examine evidence against them and obtain the presentation and examination of evidence on their behalf under the same conditions as evidence against them’); International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(3)(e); Code of Criminal Procedure, Art. 298 (‘Summons of Witness by Accused Person and Civil Party - At his expenses, the accused and the civil party may summons witnesses who have not been summonsed by the Prosecutor.’); see also *id.*, Art. 334 (‘Until the end of the trial hearing, the accused [...] may make written statements and submit all documents or evidence that they think will be conducive to ascertain the truth.’); Internal Rule 80(2) (‘Where the Accused and/or the consolidated group of Civil Parties wishes to summon any witnesses who are not on the list provided by the Co-Prosecutors, they shall submit an additional list [...]).’)

⁶⁵ Internal Rule 21(a); International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14; *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950, entered into force on 3 September 1953, 213 UNTS 221, Art. 6.

⁶⁶ Constitution of the Kingdom of Cambodia, Art. 128 new; International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(1) (‘In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.’); Universal Declaration of Human Rights, annexed to UN General Assembly Resolution 217 (III), 10 December 1948, UN Doc. A/RES/217(III), Art. 10 (‘[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the full determination of his rights and obligations of any criminal charge against him.’); *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4 November 1950, entered into force on 3 September 1953, 213 UNTS 221, Art. 6(1) (‘everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.’); American Convention on Human Rights, San José, 22 November 1969, entered into force on 18 July 1978, 1144 UNTS 143, Art. 8(1) (‘[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law.’); African Charter on Human and Peoples’ Rights, Nairobi, 27 June 1981, entered into force on 21 October 1986, 1520 UNTS 217, Art. 7(1)(d) (right to have case tried ‘within a reasonable time by an impartial court or tribunal.’).

⁶⁷ See fns 62-66, *supra*.

⁶⁸ Document No. **E9/10.1**, ‘Annex D: Witness Summaries with Points of the Indictment’, 15 February 2012; Document No. **E93/4.3**, ‘Primary List: Witness Summaries’, 21 June 2011; Document No. **E1/40.1**, ‘Transcript of Trial Proceedings’, 8 February 2012, pp. 3:15-4:7, 32:23-33:9; Document No. **E155/1**, ‘List of Additional Witnesses Regarding Historical Context’, 9 February 2012; Document No. **E189/3/1/7.1.5**, Request to Hear Witness Concerning Population Movement Phase I and II, 15 March 2013 (submissions attached to a subsequent filing with the Supreme Court Chamber); Document No. **E236/5/1**, ‘Request to Summons TCW-223 as a Character Witness on Behalf of Nuon Chea’, 22 February 2013; Document No. **E291**, ‘Urgent Request to Summons Key Witnesses in Respect of Tuol Po Chrey’, 17 June 2013; Document No. **E236/5/1/1**, ‘Sixth and Final Request to Summons TCW-233’, 22 July 2013.

⁶⁹ Document No. **E172**, Trial Chamber Memorandum entitled ‘Next Group of Witnesses, Civil Parties, and Experts to be Heard in Case 002/01’, 17 February 2012, ERN 00780657; Document No. **E236/1**, Trial Chamber Memorandum entitled ‘Preliminary Indication of Individuals to be Heard during Population Movement Trial Segments in Case 002/01’, 02 October 2012, para. 6; Annexes Attached to Email from Susan Lamb, dated 6 June 2013.

⁷⁰ Document No. **E236/5/1/1**, ‘Sixth and Final Request to Summons TCW-223’, 22 July 2013, para. 12.

⁷¹ Document No. **E236/5/1/1**, ‘Sixth and Final Request to Summons TCW-223’, 22 July 2013, para. 11.

⁷² See paras 385-386, *infra*.

⁷³ The three individuals were summonsed, along with other key Government insiders. See Document No. **D136/2/1**, 'Witness Summons: ██████████', 25 September 2009; Document No. **D136/3/1**, 'Witness Summons: ██████████', 25 September 2009; Document No. **A299/1**, 'Witness Summons: ██████████', 25 September 2009; Document No. **A296/1**, 'Witness Summons: ██████████', 25 September 2009; Document No. **A298/1**, 'Witness Summons: ██████████', 25 September 2009; Document No. **A297/1**, 'Witness Summons: ██████████', 25 September 2009.

⁷⁴ Document No. **D314/1/5**, 'International Co-Prosecutor's Observations on Ieng Sary and Nuon Chea's Appeals on the Summoning of Additional Witnesses', 29 March 2010.

⁷⁵ Document No. **E131/2.1.1**, 'Criminal Complaint', 24 October 2011, para. 2(c) (describing the witnesses' failure to appear); Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011, para. 2(c) (same).

⁷⁶ Closing Order, fns 398, 497, 501, 512, 564, 686, 3753, 3755, 3756, 3821, 3870, 4073, 4077, 4083. Several of these statements directly concern the acts and conduct of the accused, including, *id.*, fns 3821, 3870, 4073, 4077 & 4083.

⁷⁷ Document No. **E96/8.2**, 'Annex 1—Witness Statements: Corroborative Evidence', entry number 558; Document No. **E1/93.1**, 'Transcript of Trial Proceedings', 20 July 2012, pp. 89:7-91:25.

⁷⁸ Document No. **D314/1/12**, 'Opinion of Judges Catherine Marchi-Uhel and Rowan Downing' in 'Second Decision on Nuon Chea's and Ieng Sary's Appeal Against OCIJ Order on Requests to Summons Witnesses', 9 September 2010, para. 12.

⁷⁹ See e.g. Document No. **E1/45.1**, 'Transcript of Trial Proceedings', 16 February 2012, p. 25:19.

⁸⁰ The Nuon Chea team attempted three times to discuss ██████████ role and the exculpatory statements he made to Ben Kiernan. On the first attempt, the Trial Chamber ruled that the witness being examined was not present at that interview and any answers in relation to it would be speculative and therefore inappropriate. See Document No. **E1/60.1**, 'Transcript of Trial Proceedings', 5 April 2012, p. 28:13. The second attempt by the Defence was blocked by the trial chamber under the guise that using the interview was inappropriate because it related to events outside the witness's knowledge. See Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, p. 38:11. In the third, the trial chamber held that questions concerning the interview were repetitive and therefore impermissible. See Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, p. 78:23.

⁸¹ Document No. **E228**, 'Ieng Sary's Rule 87(4) Request to Hear Testimony from ██████████ and ██████████', 14 September 2012; Document No. **E228/2**, 'Motion in Support of Ieng Sary's Request to Hear ██████████ and ██████████', 11 October 2012.

⁸² Document No. **E228/1**, 'International Co-Prosecutor's Response to "Ieng Sary's Rule 87(4) Request to Hear Testimony from ██████████ and ██████████"', 28 September 2012, fn 2. See also, Document No. **E228/4**, 'Reply to International Co-Prosecutor's Response to Nuon Chea's Motion in Support of Ieng Sary's Request to ██████████ and ██████████', 23 November 2012, paras 9-10 (showing that the International Co-Prosecutor failed to contest the relevance of the witnesses' testimony).

⁸³ Document No. **E228/4**, 'Reply to International Co-Prosecutor's Response to Nuon Chea's Motion in Support of Ieng Sary's Request to Hear ██████████', 23 November 2012, paras 4-6.

⁸⁴ Document No. **E294**, 'Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation', 11 July 2013; Document No. **E294/1**, 'Decision on Nuon Chea Request to Admit New Evidence, to Initiate an Investigation and to Summons Mr. Rob Lemkin', 24 July 2013.

⁸⁵ Document No. **E294**, 'Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation', 11 July 2013.

⁸⁶ Document No. **E294/1**, 'Decision on Nuon Chea Request to Admit New Evidence, to Initiate an Investigation and to Summons Mr. Rob Lemkin', 24 July 2013, paras 23-24.

⁸⁷ Document No. **E294/1**, 'Decision on Nuon Chea Request to Admit New Evidence, to Initiate an Investigation and to Summons Mr. Rob Lemkin', 24 July 2013, para. 24.

⁸⁸ Document No. **D173**, 'Twelfth Request for Investigative Action', 3 June 2009; Document No. **D105**, 'Fifth Request for Investigative Action', 26 September 2008.

⁸⁹ See para. 37, *supra*.

⁹⁰ See Document No. **E182**, 'Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context', 16 March 2012, para. 4; Document No. **E9/10.1**, 'Order to File Materials in Preparation for Trial Annex D: Witness Summaries with Points of the Indictment', 23 February 2011 (those witnesses relevant to 'Pre-1975 Conditions').

⁹¹ Document No. **E155/1**, 'List of Additional Witnesses Regarding Historical Context', 9 February 2012 (The 47 witnesses identified by the Defence were not accompanied by detailed written submissions, as Judge Cartwright had requested the Defence to provide such a list on only 24 hours' notice).

⁹² Document No. **E189/3/1/7.1.5**, Request to Hear Witnesses Concerning Population Movement Phase I and II, 5 September 2012.

⁹³ Document No. **E1/44.1**, 'Transcript of Trial Proceedings', 15 February 2012, pp. 83:19-85:8; Document No. **E1/45.1**, 'Transcript of Trial Proceedings', 16 February 2011, pp. 10:9-14:16.

⁹⁴ Document No. **E182**, ‘Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context’, 16 March 2012.

⁹⁵ Document No. **E189/3/1/7.1.5**, ‘Request to Hear Witnesses Concerning Population Movement Phase I and II’, 5 September 2012; Document No. **E236/1**, Trial Chamber Memorandum entitled ‘Preliminary Indication of Individuals to be Heard during Population Movement Trial Segments in Case 002/01’, 2 October 2012.

⁹⁶ Document No. **E163/5/11**, ‘Preliminary Submissions Concerning the Applicable Law’, 18 January 2013.

⁹⁷ Document No. **E182**, ‘Request to Hear Defence Witnesses and to Take Other Procedural Measures in Order to Properly Assess Historical Context’, 16 March 2012; Document No. **E189/3/1/7.1.5**, ‘Request to Hear Witness Concerning Population Movement Phase I and II, 15 March 2013.’

⁹⁸ See *Prosecutor v. Tadic*, IT-94-1-T, ‘Opinion and Judgment’, 7 May 1997, paras 53-126; *Prosecutor v. Akayesu*, ICTR-96-4-T, ‘Judgment’, 2 September 1998, paras 78-111 (emphasizing the importance of context and providing a history of Rwanda ‘from the pre-colonial period up to 1994’, which was ‘necessary in order to understand the events alleged in the Indictment’).

⁹⁹ Document No. **E1/123.1**, ‘Transcript of Trial Proceedings’, 6 September 2012, p. 25:21 (after witness communicated he had knowledge of crimes committed by foreign perpetrators prior to 1975 defence counsel is prohibited from asking questions).

¹⁰⁰ Annex to Email from Susan Lamb to Parties, 6 June 2013. These exclude witnesses called to give evidence of victim impact, the character of the Accused or the admissibility of documents.

¹⁰¹ Document No. **E1/94.1**, ‘Transcript of Trial Proceedings’, 23 July 2012, pp. 72:25-75:7

¹⁰² Document No. **E1/105.1**, ‘Transcript of Trial Proceedings’, 9 August 2012, pp. 70:3-73:4

¹⁰³ Document No. **E1/150.1**, ‘Transcript of Trial Proceedings’, 7 December 2012, pp. 80:17-87:7

¹⁰⁴ The trial chamber halted discussion of these issues on the grounds that they fell outside the temporal jurisdiction of the ECCC and were therefore irrelevant. See Document No. **E1/94.1**, ‘Transcript of Trial Proceedings’, 23 July 2012, pp. 73:5-75:7; Document No. **E1/105.1**, ‘Transcript of Trial Proceedings’, 9 August 2012, pp. 70:3-72:19, 74:18-75:23, 81:14-82:14, 82:17-83:16; Document No. **E1/123.1**, ‘Transcript of Trial Proceedings’, 6 September 2012, pp. 26:2-27:13; Document No. **E1/150.1**, ‘Transcript of Trial Proceedings’, 7 December 2012, pp. 78:12-79:8, 87:5-7, 88:11-14, 90:7-13.

¹⁰⁵ Document No. **E1/123.1**, ‘Transcript of Trial Proceedings’, 6 September 2012, pp. 26:2-27:12; Document No. **E1/126.1**, ‘Transcript of Trial Proceedings’, 25 September 2012, pp. 94:2-95:22; Document No. **E1/150.1**, ‘Transcript of Trial Proceedings’, 7 December 2012, pp. 75:22-76:11, 76:23-25, 78:3-5, 78:8-24; Document No. **E185/2**, ‘Third Decision on Objection to Documents Proposed for Admission before the Trial Chamber’, 12 August 2013, para. 23.

¹⁰⁶ Document No. **E1/22.1**, ‘Transcript of Trial Proceedings’, 14 December 2011, pp. 46:9-53:5; Document No. **E1/24.1**, ‘Transcript of Trial Proceedings’, 10 January 2012, p. 102:9-21; Document No. **E1/34.1**, ‘Transcript of Trial Proceedings’, 26 January 2012, pp. 57:13-58:10, 67:25-68:25; Document No. **E1/51.1**, ‘Transcript of Trial Proceedings’, 20 March 2012, p. 29:8-15; Document No. **E1/57.1**, ‘Transcript of Trial Proceedings’, 2 April 2012, pp. 19:6-22:14; Document No. **E1/79.1**, ‘Transcript of Trial Proceedings’, 31 May 2012, pp. 22:20-23:20; Document No. **E1/102.1**, ‘Transcript of Trial Proceedings’, 6 August 2012, pp. 26:10-27:8.

¹⁰⁷ Document No. **E1/22.1**, ‘Transcript of Trial Proceedings’, 14 December 2011, pp. 46:9-53:5; Document No. **E1/24.1**, ‘Transcript of Trial Proceedings’, 10 January 2012, p. 102:9-21; Document No. **E1/34.1**, ‘Transcript of Trial Proceedings’, 26 January 2012, pp. 57:13-58:10, 67:25-68:25; Document No. **E1/51.1**, ‘Transcript of Trial Proceedings’, 20 March 2012, p. 29:8-15; Document No. **E1/57.1**, ‘Transcript of Trial Proceedings’, 2 April 2012, pp. 19:6-22:6-14; Document No. **E1/79.1**, ‘Transcript of Trial Proceedings’, 31 May 2012, pp. 22:20-23:20; Document No. **E1/102.1**, ‘Transcript of Trial Proceedings’, 6 August 2012, pp. 26:10-27:8.

¹⁰⁸ Document No. **E1/78.1**, ‘Transcript of Trial Proceedings’, 30 May 2012, pp. 88:9-89:5; Document No. **E1/83.1**, ‘Transcript of Trial Proceedings’, 7 June 2012, p. 88:15-20.

¹⁰⁹ See Document No. **E206**, ‘Notice of Impeachment Material for TCW-487’ 28 May 2012, paras 2-3; Document No. **E1/59.1**, ‘Transcript of Trial Proceedings’, 4 April 2012, pp. 11:8-20, 15:5-19, 17:1-13, 18:3-11, 23:6-11, 38:2-8, 39:24-40:13; Document No. **E1/70.1**, ‘Transcript of Trial Proceedings’, 30 April 2012, pp. 85:20-86:11; Document No. **E1/71.1**, ‘Transcript of Trial Proceedings’, 2 May 2012, pp. 14:23-15:17, 17:23-18:22; Document No. **E1/73.1**, ‘Transcript of Trial Proceedings’, 17 May 2012, pp. 69:8-15, 78:5-9, 81:19-82:14; Document No. **E1/75.1**, ‘Transcript of Trial Proceedings’, 23 May 2012, p. 22:3-16.

¹¹⁰ See e.g., Document No. **E199**, Trial Chamber Memorandum entitled ‘Directions regarding documents sought for impeachment purposes’, 24 May 2012 (ruling that no document may be used for any purpose if not included on a Rule 80 list); Document No. **E1/91.1**, ‘Transcript of Trial Proceedings’, 18 July 2012, p.5:22-6:19 (ruling that documents not included on Rule 80 lists may be used only if the requirements of Rule 87(4) are satisfied); See also, Document No. **E1/71.1**, ‘Transcript of Trial Proceedings’, 2 May 2012, p. 15:4-5; Document No. **E206**, ‘Notice of Impeachment Material for TCW-487’, 28 May 2012, paras 2-3.

¹¹¹ Document **E131/1**, Trial Chamber Memorandum, 25 October 2011, p. 4.

¹¹² Document No. **E218**, ‘Trial Chamber’s Memorandum Entitled “Scheduling of Trial Management Meeting to Enable Planning of the Remaining Trial Phases in Case 002/001 and Implementation of Future Measures Designed to Promote Trial Efficiency”, para. 22 (ruling that a request to use new documents pursuant to Rule

87(4) will be entertained only if filed more than two weeks prior to the beginning of a witness' testimony); Document No. **E1/104.1**, 'Transcript of Trial Proceedings,' 8 August 2012, p. 2:23-3:7 (same).

¹¹³ Rule 87

¹¹⁴ See Code of Criminal Procedure, Art. 321.

¹¹⁵ See Code of Criminal Procedure, Art. 321.

¹¹⁶ Both the ICTY and the ICC have stated, 'it would be wholly inappropriate to exclude relevant evidence due to procedural considerations, as long as the fairness of the trial is guaranteed'. See *The Prosecution v. Brdanin*, 'Decision on the Defence "Objection to Intercept Evidence"', 3 October 2003, para. 63, cited in *The Prosecution v. Lubanga*, 'Decision on the Admission of Material from the "bar Table"', 24 June 2009, para. 30.

¹¹⁷ *The Prosecution v. Prlić*, 'Decision on Presentation of Documents', 27 November 2008, paras 24-25.

¹¹⁸ See Email from Senior Legal Officer to the parties, re: 'Responses to questions posed during the Trial Management Meeting', 8 April 2011 ('The Chamber confirms that all parties are obliged, on 19 April [2011], to file only those documents germane to their witnesses sought and the case against their particular client. There is no obligation to submit documents assumed to be of relevance to witnesses called by other parties.').

¹¹⁹ See Document No. **E1/59.1**, 'Transcript of Trial Proceedings', 4 April 2012, p. 19:5-16 (William Smith: 'Secondly, in relation to the use of documents that haven't been put forward on the Defence list of which they wish to put before the Chamber, we do understand there is a difference between some documents that may be required to be used to test the reliability and credibility of a witness. If those documents need to be used, we have certainly discussed with the [SLO] at the trial management meeting that there should be some notice provided to the parties in advance of the documents that they intend to use to challenge the credibility of the witness; otherwise, what will happen is documents will be produced in this Court and the parties will have little knowledge of where they've come from and the purpose for which they're used.'). Document No. **E1/60.1**, 'Transcript of Trial Proceedings', 5 April 2012, p. 51:17-25 (William Smith: 'Mr President, we agree that there are – circumstances can arise where documents become significant at a later time, in relation to the – testing witnesses credibility. So we're not suggesting that every document has to be placed before the Chamber. Certainly, counsel for Nuon Chea hadn't made it completely clear for what purpose he was using this document, whether he wanted to place it before the Chamber or, alternatively, just to confront the witness.').

¹²⁰ See Document No. **E1/60.1**, 'Transcript of Trial Proceedings', 5 April 2012, p. 51-1:9 (Michiel Pestman: 'And if I remember correctly, for example, when the director of DC-Cam was interviewed, or examined in Court, both the prosecutor and counsel for the civil parties used the website – which is not on the case file, has no number, and we were not warned that they were going to do that – used the website DC-Cam has and, in one case, even a PowerPoint presentation from that website to examine the witness. What I'm doing is exactly the same as what both the prosecutor and counsel for the civil parties have done in the past.')

¹²¹ Document No. **E9**, 'Order to File Material in Preparation for Trial', 17 January 2011.

¹²² Document No. **E9**, 'Order to File Material in Preparation for Trial', 17 January 2011, paras 12-14.

¹²³ Document No. **E51/3**, 'Consolidated Preliminary Objections', 25 February 2011, paras 66-69, 72; Code of Criminal Procedure, Art. 321.

¹²⁴ ECCC Agreement, Art. 12(1).

¹²⁵ Code of Criminal Procedure, Art. 321.

¹²⁶ Document No. **E51/14**, 'Decision on Nuon Chea's Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules', 8 August 2011, para. 7.

¹²⁷ Document No. **E51/14**, 'Decision on Nuon Chea's Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules', 8 August 2011, para. 7.

¹²⁸ Document No. **E218**, 'Trial Chamber's Memorandum Entitled "Scheduling of Trial Management Meeting to Enable Planning of the Remaining Trial Phases in Case 002/01 and Implementation of Future Measures Designed to Promote Trial Efficiency"', 3 August 2012, para. 22.

¹²⁹ Document No. **E1/71.1**, 'Transcript of Trial Proceedings', 2 May 2012, p. 15:15-16.

¹³⁰ Many witnesses, including Elizabeth Becker, were scheduled and then cancelled by the Chamber.

¹³¹ See Document No. **E276/2**, Trial Chamber Memorandum, 10 April 2013 (admitting one document not subsequently used, see Document No. **E1/181.1**, 'Transcript of Trial Proceedings,' 22 April 2013; Document No. **E1/182.1**, 'Transcript of Trial Proceedings,' 23 April 2013).

¹³² Document No. **E141**, 'Trial Chamber Memorandum entitled "Response to Issue Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011"', 17 November 2011; Document No. **E141/1**, 'Trial Chamber Memorandum entitled "Provision of Prior Statement to Witnesses in Advance of Testimony at Trial"', 24 November 2011.

¹³³ Document No. **E1/16.1**, 'Transcript of Trial Proceedings', 5 December 2011, pp. 30:15-31:9; Document No. **E142**, 'Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews', 17 November 2011, paras 22-24.

¹³⁴ Document No. **E141/1**, 'Trial Chamber Memorandum entitled "Provision of Prior Statement to Witnesses in Advance of Testimony at Trial"', 24 November 2011, p. 1.

¹³⁵ See Document No. **E292/2**, ‘Request that the Chamber Not Provide Prior Statements to Tuol Po Chrey Witnesses before Testifying’, 24 June 2013; Document No. **E292/2/1**, Memorandum from President to Parties, 27 June 2013.

¹³⁶ Document No. **A110/I**, OCIJ Letter entitled ‘Response to Your Letter Dated 20 December 2007 Concerning the Conduct of the Judicial Investigation’, 10 January 2008; French Code de Procédure Pénale, Art. 120 (‘Le juge d’instruction dirige les interrogatoires, confrontations et auditions. Le procureur de la République et les avocats des parties et du témoin assisté peuvent poser des questions ou présenter de brèves observations.’), Art. 82.1 (‘Les parties peuvent, au cours de l’information, saisir le juge d’instruction d’une demande écrite et motivée tendant à ce qu’il soit procédé à leur audition ou à leur interrogatoire, à l’audition d’un témoin, à une confrontation ou à un transport sur les lieux, à ce qu’il soit ordonné la production par l’une d’entre elles d’une pièce utile à l’information, ou à ce qu’il soit procédé à tous autres actes qui leur paraissent nécessaires à la manifestation de la vérité.’).

¹³⁷ *Prosecutor v. Kupreskic et al.*, ‘Appeal Judgement’, 23 October 2001, para. 31 (‘The presence of inconsistencies in the evidence does not, per se, require a reasonable Trial Chamber to reject it as being unreliable. Similarly, factors such as the passage of time between the events and the testimony of the witness, the possible influence of third persons, discrepancies, or the existence of stressful conditions at the time the events took place do not automatically exclude the Trial Chamber from relying on the evidence. However, the Trial Chamber should consider such factors as it assesses and weighs the evidence.’) (emphasis added).

¹³⁸ Document No. **E1/56.1**, ‘Transcript of Trial Proceedings’, 29 March 2012, p. 97:11-24.

¹³⁹ Document No. **A110**, Letter re ‘Conduct of the Judicial Investigation’, 20 December 2007, ERN 001573551-00157352, p.1; Document No. **E1/39.1/1**, ‘Further Submissions Relating to Request for Clarification of Provenance/Chain of Custody of DC-Cam Documents’, 9 February 2012, ERN 00777270-00777276, paras 10-13 (describing Defence requests to the OCIJ throughout the investigation, including in the the 2009 Seventeenth Request for Investigation, to ‘identify, with precision, the source of each specific item of [...] documentary material’ that it was intending to rely on in the Closing Order’ and to ‘[e]stablish, with precision, the chain-of-custody---from inception to receipt by the OCIJ---for each specific item of said documentary material’).

¹⁴⁰ Document No. **E211**, ‘Notice to the Trial Chamber Regarding Research at DC-Cam’, 19 June 2012, para. 11.

¹⁴¹ Document No. **E1/39.1/1**, ‘Further Submissions Relating to Request for Clarification of Provenance/Chain of Custody of DC-Cam Documents’, 9 February 2012.

¹⁴² See Document No. **E211**, ‘Notice to the Trial Chamber Regarding Research at DC-Cam’, 19 June 2012, para. 6 (The Chamber concluded that ‘the methodology used by DC-Cam in obtaining, archiving and preserving contemporaneous DK-era documents [was] reliable’ and ‘entitled to a rebuttable presumption of prima facie relevance and reliability’ and articulating that it was “satisfied that processes employed by DC-Cam provides no reasonable apprehension that documents originating from this source could have been subject to tampering, distortion or falsification.’).

¹⁴³ Document No. **E211**, ‘Notice to the Trial Chamber Regarding Research at DC-Cam’, 19 June 2012, para. 11.

¹⁴⁴ Document No. **E185**, ‘Decision on Objections to Documents to be Put Before the Chamber on the Co-Prosecutors’ Annexes AI-AS and to Documents Cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01’, 9 April 2012, paras 27-28.

¹⁴⁵ Attempts to access the DC-Cam documents via the DC-CAM website were unsuccessful. See <http://www.dccam.org/Database/Index1.htm>.

¹⁴⁶ See e.g., Document No. **E1/221.1**, ‘Transcript of Trial Proceedings’, 10 July 2013.

¹⁴⁷ Document No. **E1/181.1**, ‘Transcript of Trial Proceedings’, 22 April 2013, pp. 37:13-39:14.

¹⁴⁸ See para. 31, *supra*.

¹⁴⁹ Although only 96 witnesses appeared before the chamber roughly 1,400 written statements were admitted into evidence. See Document No. **E299**, ‘Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers,’ 15 August 2013

¹⁵⁰ See para. 31, *supra*.

¹⁵¹ Document No. **D194**, ‘Fourteenth Request for Investigative Action’, 14 August 2009; Document No. **D130/11**, ‘Fifteenth Request for Investigative Action’, 1 September 2009; Document No. **D265**, ‘Seventeenth Request for Investigative Action’, 8 December 2009; Document No. **D318**, ‘Nineteenth Request for Investigative Action’, 13 January 2010; Document No. **D319**, ‘Twentieth Request for Investigative Action’, 13 January 2010; Document No. **D320**, ‘Twenty-First Request for Investigative Action’, 15 January 2010; Document No. **D336**, ‘Twenty-Second Request for Investigative Action’, 26 January 2010; Document No. **D338**, ‘Twenty-Third Request for Investigative Action’, 27 January 2010; Document No. **D339**, ‘Twenty-Fourth Request for Investigative Action’, 2 February 2010; Document No. **D340**, ‘Twenty-Fifth Request for Investigative Action’, 3 February 2010; Document No. **D356**, ‘Twenty-Sixth Request for Investigative Action’, 12 February 2010; Document No. **E142**, ‘Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 17 November 2011; Document No. **E234/2**, ‘Notice of Joinder to Ieng Sary’s Request E-234’, 2 November 2012.

¹⁵² Document No. **E142/3**, ‘Decision on Nuon Chea’s Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 13 March 2012.

¹⁵³ Document No. **D375/1/8**, ‘Decision on Appeal and Further Submissions in Appeal Against OCIJ Order on Nuon Chea’s Requests for Interview of Witnesses (D318, D319, D320, D336, D338, D339 & D340)’, 20 September 2010, para. 57.

¹⁵⁴ Document No. **E142/3**, ‘Decision on Nuon Chea’s Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 13 March 2012, para.14.

¹⁵⁵ Document No. **E1/23.1**, ‘Transcript of Trial Proceedings’, 15 December 2011, pp. 24:4-27:5.

¹⁵⁶ See e.g., Document No. **E234**, ‘IENG Sary’s Request that the Trial Chamber seek Clarification from the OCIJ as to the Questioning of Witness Norng Sophang on 17 February 2009 and Summon the OCIJ Investigators to Give Evidence Regarding this Interview,’ 27 September 2012; Document No. **E1/122.1**, ‘Transcript of Trial Proceedings’, 5 September 2012, pp. 86:21-99:3; Document No. **E1/137.1**, ‘Transcript of Trial Proceedings’, 23 October 2012, pp. 59:10-64:8; Document No. **E1/23.1**, ‘Transcript of Trial Proceedings’, 15 December 2011, pp. 24:4-27:5.

¹⁵⁷ Document No. **E1/144.1**, ‘Transcript of Trial Proceedings’, 14 November 2012, pp. 40:19-53:12.

¹⁵⁸ Document No. **E1/35.1**, ‘Transcript of Trial Proceedings’, 30 January 2012, pp. 74:9-77-8, 77:20-79:3, 80:25-81:23; Document No. **E1/128.1**, ‘Transcript of Trial Proceedings’, 2 October 2012, pp. 18:9-22:3; Document No. **E1/94.1**, ‘Transcript of Trial Proceedings’, 23 July 2012 p.117:12-120:7.

¹⁵⁹ Document No. **E142**, ‘Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 17 November 2011, para. 4(a); Document No. **E142/3**, ‘Decision on Nuon Chea’s Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 13 March 2012.

¹⁶⁰ See e.g., Document No. **E234**, ‘Ieng Sary’s Request that the Trial Chamber seek Clarification from the OCIJ as to the Questioning of Witness Norng Sophang on 17 February 2009 and Summon the OCIJ Investigators to Give Evidence Regarding this Interview’, 27 September 2012; Document No. **E1/122.1**, ‘Transcript of Trial Proceedings’, 05 September 2012, pp. 86:21-102:15; Document No. **E142/3**, ‘Decision on Nuon Chea’s Request for Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews’, 13 March 2012.

¹⁶¹ Document No. **E1/23.1**, ‘Transcript of Trial Proceedings’, 15 December 2011, pp. 24:4-27:5.

¹⁶² Document No. **E1/137.1**, ‘Transcript of Trial Proceedings’, 23 October 2012, pp. 59:10-64:21.

¹⁶³ The Trial Chamber holding that the assertion was unfounded and instructing the witness not to respond to it. See Document No. **E1/144.1**, ‘Transcript of Trial Proceedings’, 14 November 2011, pp. 40:19-53:12. (Although the TC did allow the Nuon Chea Defence to play the tape, the TC prohibited the team from putting questions to the witness).

¹⁶⁴ See Document No. **E287/2**, ‘Withdrawal of Notice of Intent Pursuant to Internal Rule 90,’ 30 July 2013, para. 14

¹⁶⁵ See Document No. **E1/224.1**, ‘Transcript of Trial Proceedings’, 16 July 2013, pp. 26:2-28:3.

¹⁶⁶ Document No. **E1/32.1**, ‘Transcript of Trial Proceedings’, 24 January 2012, pp. 44:19-45:21; Document No. **E1/89.1**, ‘Transcript of Trial Proceedings’, 20 June 2012, p. 46:7-47:9 (articulating Trial Chamber rule that witnesses can only be presented with witness statements of witnesses who are not coming to testify).

¹⁶⁷ On 17 May 2012, the Chamber modified its previous ruling and allowed the parties to use the statements of third parties who will not appear as witnesses before the Chamber for the purpose of testing the credibility of a testifying witness. This ruling was confirmed on 5 June 2012, when the Chamber permitted the parties to directly confront a witness with the statements made by other persons whom the Chamber has not summonsed. On 12 June 2012, the Trial Chamber departed even further from its original ruling and considered it to be ‘appropriate’ for the Defence to use statements of witnesses who were summonsed to appear in Court, as long as the identity of those witnesses is not revealed to the testifying witness. This ruling was confirmed on 2 October 2012, when the Defence was permitted to quote the transcripts of the testimony of a witness who previously appeared in Court.

¹⁶⁸ Document No. **E1/59.1**, ‘Transcript of Trial Proceedings’, 4 April 2012, pp. 37:1-44:13.

¹⁶⁹ Document No. **E1/59.1**, ‘Transcript of Trial Proceedings’, 4 April 2012, p. 38:12-13.

¹⁷⁰ Duch testified extensively on Nuon Chea’s alleged role and responsibilities. See Document No. **E1/55.1**, ‘Transcript of Trial Proceedings’, 20 March 2012, pp. 11:8-17 (Nuon Chea acting Prime Minister), 21:13-18 (Duch reported to Nuon Chea on a regular basis); Document No. **E1/52.1**, ‘Transcript of Trial Proceedings’, 21 March 2012, pp. 31:3-4 (under supervision of Nuon Chea), 80:5-11 (Nuon Chea led the party); Document No. **E1/53.1**, ‘Transcript of Trial Proceedings’, 26 March 2012, pp. 56:23-25 (Nuon Chea was brother number 2), 94:19-24 (how often Duch reported to Nuon Chea); Document No. **E1/54.1**, ‘Transcript of Trial Proceedings’, 27 March 2012, pp. 14:2-7 (alleging Nuon Chea’s signature on confessions), 39:14-18 (Nuon Chea became the person Duch directly reported to), 48:1-2 (Nuon Chea in higher position than Khieu Samphan), 51:3-10 (what Duch allegedly reported to Nuon Chea), 72:20-21 (Nuon Chea was first deputy-secretary), 86:14-20 (power was shared between Nuon Chea and Pol Pot); Document No. **E1/56.1**, ‘Transcript of Trial Proceedings’, 29 March 2012, p. 71:3-6 (annotations belonged to Nuon Chea); Document No. **E1/57.1**, ‘Transcript of Trial

Proceedings', 2 April 2012, pp. 3:4-10 (Nuon Chea attended rallies and meetings), 59:13-20 (Nuon Chea was Angkar), 60:4-8 (Nuon Chea took over from Son Sen and was Duch's superior); Document No. **E1/58.1**, 'Transcript of Trial Proceedings', 3 April 2012, p. 60:13-14 (Nuon Chea and Pol Pot were at the top of the Party).

¹⁷¹ Document No. **E1/142.1**, 'Transcript of Trial Proceedings', 8 November 2012, pp. 90:22-93:18 (allowing defence counsel to put statements by a third party to a witness).

¹⁷² The Defence has described these issues at length in past filings. See e.g., Document No. **E116/1/1**, 'Immediate Appeal Against the Trial Chamber Decision Regarding the Fairness of the Judicial Investigation', 10 October 2011, paras 2-11; Document No. **E131/2.1.1**, 'Criminal Complaint', 24 October 2011, para. 2; Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011, paras 2-8; Document No. **E189**, 'Application for Immediate Action Pursuant to Rule 35', 25 April 2012; Document No. **E189/3/1/7**, 'Request to Consider Additional Evidence', 15 March 2013, paras 4-5.

¹⁷³ *Gonzalez del Rio v. Peru*, Communication No. 263/1987, U.N. Doc. CCPR/C/46/D/263/1987, 28 October 1992 (the guarantee of independence and impartiality 'is an absolute right that may suffer no exceptions') (emphasis added). See also ECCC Agreement, Art. 13(1) ('[t]he rights of the accused enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights ("ICCPR") shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing'); International Covenant on Civil and Political Rights, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(1) ('everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.');

Universal Declaration of Human Rights, annexed to UN General Assembly Resolution 217 (III), 10 December 1948, UN Doc. A/RES/217(III), Art. 10 ('[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations of any criminal charge against him.');

European Convention on Human Rights, Art. 6(1) ('everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.');

American Convention on Human Rights, San José, 22 November 1969, entered into force on 18 July 1978, 1144 UNTS 143, Art. 8(1) ('[e]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law.');

African Charter on Human and Peoples' Rights, Art. 7(1)(d) (every person shall have the right to have his case tried 'within a reasonable time by an impartial court or tribunal.')

¹⁷⁴ See e.g., Document No. **D158**, 'Eleventh Request for Investigative Action', 27 March 2009, paras 4-12; Document No. **D158/5/1/1**, 'Appeal against Order on eleventh Request for Investigative Action', 4 May 2009, paras 2-6; Document No. **D254**, 'Request for Investigation', 30 November 2009, paras 4-7; Document No. **D254/2**, 'Addendum to "First Request for Investigation"', 7 December 2009, para. 4; Document No. **D314/2/4**, 'Appeal Against OCIJ Order on Nuon Chea and Ieng Sary's Request to Summon Witnesses', 16 March 2010, paras 2-12; Special Casefile No. 002/17-06-2010 ECCC/PTC(09), Document No. 1, 'Application for Disqualification of Judge You Bunleng', 17 June 2010, paras 2-11; Document No. **D314/2/9**, 'Further Submissions in the Appeal against the OCIJ Order on Nuon Chea and Ieng Sary's Request to Summon Witnesses', 22 June 2010, paras 2-5; Document No. **D384**, 'Second Request for Investigation', 7 July 2010, paras 2, 6-8; Special Case file No. 002/07-07-2010-ECCC/PTC(1), Doc. No 1, 'Second Request for Investigation', 7 July 2010, paras 4-15; Document No. **E51/3**, 'Consolidated Preliminary Objections', 25 February 2011, paras 4-14; Clair Duffy, 'In Cambodia, "Greater Cooperation with the Government" Isn't the Answer', 12 July 2012, available at <http://www.soros.org/voiccs/cambodia-greater-cooperation-government-isn-t-answer>; Open Society Justice Initiative, 'The Future of Cases 003/004 at the Extraordinary Chambers in the Courts of Cambodia', October 2012, pp. 24-29, available at: http://www.soros.org/sites/default/files/eccc-report-cases3and4-100112_0.pdf.

¹⁷⁵ *Id.*; see also Document No. **E116/1/1**, 'Immediate Appeal against the Trial Chamber Decision Regarding the Fairness of the Judicial Investigation', 10 October 2011; Document No. **E131/2.1.1**, 'Criminal Complaint', 24 October 2011; Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011; Case Nos. 003 & 004, Document No. **D38**, 'Note of the International Reserve Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the Proper Conduct of Investigations in Cases 003 and 004', 21 March 2012, ERN 00791885-00791898.

¹⁷⁶ See e.g., Document No. **E116/1/1**, 'Immediate Appeal against the Trial Chamber Decision Regarding the Fairness of the Judicial Investigation', 10 October 2011; Document No. **E131/2.1.1**, 'Criminal Complaint', 24 October 2011; Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011.

¹⁷⁷ Document No. **E116/1/1**, 'Immediate Appeal against the Trial Chamber Decision Regarding the Fairness of Judicial Investigation', 10 October 2011, para. 3(b); Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011, para. 2(a).

¹⁷⁸ Document No. **E116/1/1**, 'Immediate Appeal against the Trial Chamber Decision Regarding the Fairness of Judicial Investigation', 10 October 2011, para. 3(c); Document No. **E131/2**, 'Request for Adjournment of Opening Statement and Substantive Hearing', 26 October 2011, para. 2(b)-(d); Document No. **D254**, 'Request for Investigation', 30 November 2009, paras 6-7.

¹⁷⁹ Document No. **E116/1/1**, ‘Immediate Appeal against the Trial Chamber Decision Regarding the Fairness of Judicial Investigation’, 10 October 2011, para. 3(d); Document No. **E131/2**, ‘Request for Adjournment of Opening Statement and Substantive Hearing’, 26 October 2011, paras 2(e)-(i).

¹⁸⁰ The Cambodian CIJ has ‘committed major procedural irregularities, including backdating documents, secretly altering documents, and failing to send proper notifications to lawyers in Case 003. See Julia Wallace, Cambodia Daily, ‘KRT Judges List Failings of Blunk, Bunleng’, 26 October 2011.

¹⁸¹ See letter from Nuon Chea Defence Team to Judge You Bunleng re ‘Request for list of tainted material in Case 002 and call for resignation’, 27 October 2011. Given Bunleng’s principal role in shaping the judicial investigation and crafting the Closing Order in Case 002, the Defence argued that further revelations regarding Bunleng’s behavior cast even further doubt on the integrity of the case-file and Closing Order.

¹⁸² Case Nos 003/07-09-2009-ECCC-OCIJ and 004/07-09-2009-ECCC-OCIJ, Document No. **D38**, ‘Note of the International Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the Proper Conduct of Investigations in Case 003 and 004’, 21 March 2012, p.13.

¹⁸³ See Document No. **E176**, ‘Application for Summary Action against ██████ Pursuant to Rule 35’, 22 February 2012, para. 2.

¹⁸⁴ Document No. **E1/24.1**, ‘Transcript of Trial Proceedings’, 10 January 2012, pp. 2:1-3:16; See Document No. **E176**, ‘Application for Summary Action against ██████ Pursuant to Rule 35’, 22 February 2012, para. 2.

¹⁸⁵ Document No. **E1/31.1**, ‘Transcript of Trial Proceedings’, 23 January 2012, p. 2:19.

¹⁸⁶ Document No. **E1/38.1**, ‘Transcript of Trial Proceedings’, 2 February 2012, p. 113:5-22.

¹⁸⁷ The Cambodia Herald, ██████ calls for government response to accusations by Nuon Chea’s lawyer’, 18 February 2012 (‘Reacting to Defence efforts to condemn his remarks, the Prime Minister attempted to downplay the impact of his statement at a public forum: “I want to make a public announcement about Brother Number Two Nuon Chea’s lawyer who wants to sue me”, he said, calling for a response from Cabinet Minister Sok An. “I was asked in Vietnam about Pol Pot’s crimes in the Khmer Rouge regime, but Nuon Chea’s lawyer accuses me of interfering in the Khmer Rouge trial. My speeches over [sic] Pol Pot, Nuon Chea, Khieu Samphan, and Ieng Sary didn’t influence the current court [...] The court can do whatever it wants but I had the right the right to condemn Khmer Rouge leaders’). See also Vong Sokheng & David Boyle, The Phnom Penh Post, ‘KR leadership fair game: PM’, 20 February 2012 (‘During a closed-door meeting with government officials and civil society representatives on Friday, the premier said he would not be prevented from freely expressing himself about Nuon Chea’s alleged crimes under the Khmer Rouge. “Preventing me from speaking to condemn Nuon Chea and Pol Pot regime means that I was wrong to fight to topple the Pol Pot regime,” he was recorded saying. “Look! Together help to defend me and do not allow Nuon Chea’s lawyer to act arrogantly”).’).

¹⁸⁸ See Document No. **E176**, ‘Application for Summary Action against ██████ Pursuant to Rule 35’, 22 February 2012, paras 2-7.

¹⁸⁹ Document No. **E176/2/1/1**, ‘Immediate Appeal Against Trial Chamber Decision on Rule 35 Request for Summary Action Against ██████’, 11 June 2012.

¹⁹⁰ Document No. **E176/2/1/4**, ‘Decision on NUON Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35 Application for Summary Action,’ 14 September 2012 para. 61.

¹⁹¹ Document No. **E176/2/1/4**, ‘Decision on NUON Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35 Application for Summary Action,’ 14 September 2012, paras 68, 69.

¹⁹² Document No. **E176/2/1/4**, ‘Decision on NUON Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35 Application for Summary Action,’ 14 September 2012, para. 68.

¹⁹³ On 2 August 2012, ██████ issued the following statement:

It is unfortunate that those who continue to defend the legacy of the Khmer Rouge regime seek, in the interest of their defence, to deflect attention from themselves and their cases, by way of stirring up controversy around public figures like myself. I want to offer this brief statement about my history to dispel this controversy. The Khmer Rouge regime is an epic tragedy that continues to haunt Cambodia’s people today. As a prisoner at Boeng Trabek re-education camp where I lost two sisters, their husbands, children, and a niece as well as countless colleagues, I have nothing but sorrow and empathy for the victims and their families. Cambodians continue to suffer from the crimes of the Khmer Rouge even today. The Khmer Rouge not only destroyed a generation of Cambodian people but also, in many ways, a civilization. We are still rebuilding this civilization today. The Extraordinary Chambers in the Courts of Cambodia is a court of law, and not a political forum, and I believe attempts to politicize the court or stir up controversy are inappropriate.

My greatest hope is that one day justice is done and the legacy of the Khmer Rouge is given its place in the dustbin of history—without defence or controversy.

See Document No. **E219**, ‘Rule 35 Request Calling for Summary Action Against Minister of Foreign Affairs ██████ 13 August 2012, para. 2; see also ‘Short Comment of HE Deputy Prime Minister ██████ Minister of Foreign Affairs and International Cooperation’, 2 August 2012 (available at

<http://cambodinfo.org>); Lauren Crothers, [REDACTED] 'Addresses Boeng Trabek Claims', Cambodia Daily, 3 August 2012, p 1; 'Comment of [REDACTED]', Phnom Penh Post, 3 August 2012, p. 3.

¹⁹⁴ Document No. **E1/102.1**, 'Transcript of Trial Proceedings', 6 August 2012, p. 35:3-14.

¹⁹⁵ Document No. **E1/108.1**, 'Transcript of Trial Proceedings', 15 August 2012, pp. 42:9-44:22.

¹⁹⁶ Document No. **E1/126.1**, 'Transcript of Trial Proceedings', 25 September 2012, pp. 92:10-93:9.

¹⁹⁷ See para. 46, *supra*.

¹⁹⁸ Document No. **E1/84.1**, 'Transcript of Trial Proceedings', 11 June 2012, pp. 91:23-93:14; Document No. **E1/105.1**, 'Transcript of Trial Proceedings', 9 August 2012, pp. 83:20-84:17.

¹⁹⁹ Document No. **E1/105.1**, 'Transcript of Trial Proceedings', 9 August 2012, pp. 81:14-82:12.

²⁰⁰ Document No. **E1/105.1**, 'Transcript of Trial Proceedings', 9 August 2012, pp. 82:17-83:16.

²⁰¹ The OSJI denounced the UN's consistent failure to reign-in counting RGC interference over the years, stating 'The problem is that the more the issue has been allowed to unravel, the more institutional damage has been done, and we know that some of these problems in 003 and 004 have exponentially bled into Case 002. See Julia Wallace, 'Swiss judge quits Khmer Rouge Tribunal', Cambodia Daily, 20 March 2012; *see also*, Irwin Loy 'Cambodia War Crimes Tribunal Under Pressure After Judge Resigns', Voice of America, 20 March 2012 ('The problem here is the UN hasn't actually done anything concrete to address the government continuing to try to control the court's docket,' said Duffy. 'Last year we repeatedly asked the UN to investigate the government's interference in the court and it didn't. All we've seen in recent months is that crisis deepening.'). Bridget Di Certo, "Blocked" judge quits court: UN appointee slams "dysfunctional", Phnom Penh Post, 20 March 2012; OSJI Press Release, 'UN Must Reconsider Commitment to Khmer Rouge Court', 21 March 2012.

²⁰² Amnesty International urged the UN 'to immediately set conditions for its continued involvement at the court, including an end to political interference by the government. See Julia Wallace, 'Swiss judge quits Khmer Rouge Tribunal' Cambodia Daily, 20 March 2012; *see also*, 'Cambodia: Khmer Rouge Tribunal at risk as second judge resigns', Amnesty International, 20 March 2012 ("The UN must demand that the Cambodian government desists from this political interference, and make clear the consequences should it continue," said Rupert Abbott.). Echoing previously articulated Defence concerns, OU Virak, president of the Cambodian Center for Human Rights ('CCHR'), stated, 'if the government is willing to go to such lengths to block cases it doesn't want to go ahead, how confident can we really be that it hasn't already determined the outcome in the cases that have been allowed to go ahead - Cases 001 and 002?'. See Julia Wallace & Kuch Naren, 'UN "Concerned" About Judge's Resignation', Cambodia Daily, 21 March 2012; *see also* Bridget Di Certo, 'Judge's exit shakes KR tribunal', Phnom Penh Post, 21 March 2012 ('Despite assurances from the UN that allegations of political interference were being dealt with, we find ourselves with another international investigating judge tendering his resignation on grounds of interference. This is not acceptable.'). Human Rights Watch- like OSJI, Amnesty, and CCHR- called for a serious UN rethink in response to the latest revelations. See Bridget Di Certo, 'Judge's exit shakes KR tribunal', Phnom Penh Post, 21 March 2012 ("The UN will have to think hard about whether to continue its participation in the Khmer Rouge trials," HRW Asia director Brad Adams said.).

²⁰³ Document No. **E131/2/1**, Trial Chamber Memorandum entitled 'Trial Chamber Response to Nuon Chea's Request to Temporarily Stay the Proceeding in Case 002 (E131/2)', 2 November 2011; Document No. **E116**, 'Decision on Nun Chea Motions Regarding Fairness of the Judicial Investigation', 9 September 2011.

²⁰⁴ Document No. **E51/3**, 'Consolidated Preliminary Objections', 25 February 2011, paras 66-69.

²⁰⁵ See paras 60-67, *supra*.

²⁰⁶ See paras 73-77, *supra*.

²⁰⁷ See paras 102-110, *infra*.

²⁰⁸ See paras 60-67, *supra*.

²⁰⁹ See paras 41-59, *supra*.

²¹⁰ Document No. **E141/1**, Trial Chamber Memorandum entitled 'Provision of Prior Statement to Witnesses in Advance of Testimony at Trial', 24 November 2011; *see* paras 68-70, *supra*.

²¹¹ See paras 78-79, *supra*.

²¹² For past critiques of the Trial Chamber's reasoning in this regard, *see* Document No. **E189/2/1**, 'Appeal Against Constructive Dismissal of Application for Immediate Action Pursuant to Rule 35', 10 October 2012; Document No. **E189/3/1/1**, 'Immediate Appeal Against Trial Chamber Decision on Application for Immediate Action Pursuant to Rule 35,' 24 December 2012; Document No. **E176/2/1/1**, 'Immediate Appeal Against Trial Chamber Decision on Rule 35 Request for Summary Action Against [REDACTED]', 11 June 2012.

²¹³ *See e.g.*, *Prosecutor v. Momir Nikolic*, Case No IT-02-60/1-A, 'Judgement on Sentencing Appeal', 8 March 2006, para 96; *Prosecutor v. Dragoljub Kunarac*, Case No IT-96-23/1-A, 'Judgment', 12 June 2002, para 41. Such a requirement 'enables a useful exercise of the [defendant's] right of appeal'. *See Kunarac*, para 41. The requirement also 'allows the [appellate body] to understand and review the findings of the [lower court] as well as its evaluation of evidence.' *Ibid.* A truly reasoned decision is one in which the rationale is fully 'comprehensible from the decision itself and which 'set[s] out [...] the relevant facts and legal arguments that [...] were found to be persuasive for the determination it reached'. *See Prosecutor v Thomas Lubanga Dyilo*, Case No ICC-01/04-01/06 (OA 6), 'Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision

of Pre-Trial Chamber I entitled “Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81””, 14 December 2006, para 33.

²¹⁴ Document No. **E116/1/7**, ‘Decision on Immediate Appeal by NUON Chea Against the Trial Chamber’s Decision on Fairness of Judicial Investigation,’ 27 April 2012, para.28.

²¹⁵ See para. 59, *supra*.

²¹⁶ See paras 45-46, *supra*.

²¹⁷ See Document No. **E1/60.1**, ‘Transcript of Trial Proceedings’, 5 April 2012, p. 51:1-9 (Michiel Pestman: ‘And if I remember correctly, for example, when the director of DC-Cam was interviewed, or examined in Court, both the prosecutor and counsel for the civil parties used the website – which is not on the case file, has no number, and we were not warned that they were going to do that – used the website DC-Cam has and, in one case, even a PowerPoint presentation from that website to examine the witness. What I’m doing is exactly the same as what both the prosecutor and counsel for the civil parties have done in the past.’).

²¹⁸ See paras 78-79, *supra*.

²¹⁹ Document No. **E124**, ‘Severance Order pursuant to Internal Rule 89 *ter*’, 22 September 2011.

²²⁰ Document No. **E124/7**, ‘Decision on Co-Prosecutors’ Request for Reconsideration of the Terms of the Trial Chamber’s Severance Order (E124/2) and Related Motions and Annexes’, 18 October 2011.

²²¹ Document No. **E124/7.3**, ‘Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber’s Decision on IENG Thirith’s Fitness to Stand Trial (E138) and the Trial Chamber’s Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163)’.

²²² Document No. **E1/219.1**, ‘Transcript of Trial Proceedings,’ 8 July 2013, pp. 5:11-8:11; Document No. **E284/4/5**, ‘Addendum to Reply to OCP Response to Nuon Chea’s Immediate Appeal Against Trial Chamber’s Second Decision on Severance’, 3 July 2013, ‘Severance Appeal Second Addendum’.

²²³ Document No. **E1/213.1**, ‘Transcript of Trial Proceedings,’ 26 June 2013, p. 43:20.

²²⁴ Document No. **E284/4/5**, ‘Addendum to Reply to OCP Response to NUON Chea’s Immediate Appeal against Trial Chamber’s Second Decision on the Severance’, 3 July 2013, para. 6.

²²⁵ Document No. **E284/4/5**, ‘Addendum to Reply to OCP Response to NUON Chea’s Immediate Appeal against Trial Chamber’s Second Decision on the Severance’, 3 July 2013, paras. 17-21.

²²⁶ Document No. **E124/9**, ‘Co-Prosecutors’ Request for Clarification of the Scope of the First Trial’, 4 November 2011, paras. 11, 13.

²²⁷ Document No. **E141**, ‘Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting With Senior Legal Officer on 18 November 2011’, 17 November 2011, p. 2.

²²⁸ Document No. **E124**, ‘Severance Order pursuant to Internal Rule 89 *ter*’, 22 September 2011, para. 7.

²²⁹ Document No. **E124/7.3**, ‘Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber’s Decision on IENG Thirith’s Fitness to Stand Trial (E138) and the Trial Chamber’s Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163)’, section 2.

²³⁰ Document No. **E1/126.1**, ‘Transcript of Trial Proceedings,’ 25 September 2012, p. 31:3-13 (Co-Prosecutors seeking to ask questions with regard to forced marriage because it ‘has an administrative structures component’);

²³¹ Document No. **E1/218.1**, ‘Transcript of Trial Proceedings,’ 4 July 2013, pp. 45:23-46:13, 49:4-18.

²³² Document No. **E124/7**, ‘Decision on Co-Prosecutors’ Request for Reconsideration of the Terms of the Trial Chamber’s Severance Order (E124/2) and Related Motions and Annexes’, 18 October 2011, para.10.

²³³ Document No. **D427**, ‘Closing Order’, paras. 62-63.

²³⁴ See *e.g.*, ‘Closing Order’, paras. 189, 196, 198, 201, 371, 376, 389, 427-430, 825, 845, 945-948, 1055, 1058, 1078, 1087-1088, 1184, 1190, 1199.

²³⁵ Document No. **E124/7.3**, ‘Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber’s Decision on IENG Thirith’s Fitness to Stand Trial (E138) and the Trial Chamber’s Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163)’, section 3(a).

²³⁶ ‘Closing Order’, paras. 874, 877.

²³⁷ ‘Closing Order’, paras. 881, 883-884, 887.

²³⁸ ‘Closing Order’, para. 883.

²³⁹ ‘Closing Order’, paras. 945-948, 958.

²⁴⁰ ‘Closing Order’, paras. 1126-1200.

²⁴¹ ‘Closing Order’, paras. 76-77, 103, 113.

²⁴² Document No. **E145**, Memorandum from Trial Chamber, 29 November 2011, pp. 2-3; Document No. **E172/10**, Memorandum from Trial Chamber, 28 March 2012 (defining scope of testimony as to particular witnesses); Document No. **E172/27**, Memorandum, from Trial Chamber, 15 June 2012 (similar); Document No. **E1/173.1**, ‘Transcript of Trial Proceedings’, 21 February 2013, p. 22:7-11 (Co-Prosecutor noting that examination outside the scope of Case 002/01 is limited to certain witnesses); Document No. **E1/177.1**, ‘Transcript of Trial Proceedings’, 8 April 2013, pp. 19:13-21:13 (objection to questions beyond the scope

overruled because relevant to structure); Document No. **E1/159.1**, 'Transcript of Trial Proceedings', 13 January 2013, pp. 91:22-93:9 (similar); Document No. **E1/150.1**, 'Transcript of Trial Proceedings', 7 December 2012, pp. 1:23-2:5 (President reminding parties to examine only as to evacuations policy and administrative structures); Document No. **E1/35.1**, 'Transcript of Trial Proceedings', 30 January 2012, pp. 59:13-19 (civil party attorney noting that questions are posed only for the purpose of establishing structure).

²⁴³ Document No. **E1/180.1**, 'Transcript of Trial Proceedings', 11 April 2013, pp. 18:23-19:01, 43:19-44:23.

²⁴⁴ Document No. **E1/190.1**, 'Transcript of Trial Proceedings', 7 May 2013, p. 84:5-7.

²⁴⁵ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012; Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013; Document No. **E223/2/8/1**, 'Supplementary Annexes in Connection with Objections to Statements and Transcripts,' 29 April 2013; Document No. **E299**, 'Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcript Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers', 15 August 2013, paras. 33-35, 40-41.

²⁴⁶ *Rome Statute of the International Criminal Court*, Rome, 17 July 1998, entered into force on 1 July 2002, 2187 UNTS 3, as amended on 11 June 2010, Article 69(2): the "testimony of a witness at trial shall be given in person, except to the extent provided by [...] the Rules of Procedure and Evidence".

²⁴⁷ Document No. **E1/81.1**, 'Transcript of Trial Proceedings', 22 April 2013, pp. 25:23-25, 26:1-2.

²⁴⁸ Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber', 20 June 2012, para. 25; Document No. **E299**, 'Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcript Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers', 15 August 2013, para. 29 & fn. 69.

²⁴⁹ *The Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.4, 'Decision on Appeals against the Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence', 23 November 2007, paras. 45, 52.

²⁵⁰ *The Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.2, 'Decision on Admissibility of Prosecutor Investigator's Evidence', 30 September 2002, para.18; *The Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.2, 'Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements', 30 September 2003, paras. 14, 19.

²⁵¹ *The Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.2, 'Decision on Admissibility of Prosecutor Investigator's Evidence', IT-02-54-AR73.2, 30 September 2002, para.18; *The Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.4, 'Decision on Interlocutory Appeal on the Admissibility of Evidence-in-Chief in the Form of Written Statements', 30 September 2003, paras. 14, 19.

²⁵² *The Prosecutor v. Jadranko Prlić et al.*, IT-04-74-AR73.4, 'Decision on Appeals against the Decision Admitting Transcript of Jadranko Prlić's Questioning into Evidence', 23 November 2007, para. 55 ('as a matter of principle nothing bars the admission of evidence of the acts and conduct of the accused to be evaluated later in light of the whole trial record').

²⁵³ Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber', 20 June 2012, paras. 20-33 & fns. 38-56.

²⁵⁴ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 12-13.

²⁵⁵ ECCC Agreement, Art. 12(1).

²⁵⁶ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 12-13.

²⁵⁷ Document No. **E299**, 'Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcript Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers', 15 August 2013, para. 18 & fn. 69.

²⁵⁸ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 12-13.

²⁵⁹ Document No. **E96**, 'Co-Prosecutors' Rule 92 Submission Regarding the Admission of Written Witness Statements Before the Trial Chamber', 15 June 2011, paras. 12-27.

²⁶⁰ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 5-16 (citing rules and jurisprudence from the ICTY, ICTR and SCSL).

²⁶¹ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 5-16.

²⁶² Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber', 20 June 2012, fn. 50 (citing jurisprudence setting out the relevant factors).

²⁶³ Document No. **E299**, 'Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcript Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers', 15 August 2013, fn. 69.

- ²⁶⁴ *The Prosecutor v. Bemba*, ICC-01/05-01/08, 'Judgment on the Appeals of Mr. Jean-Pierre Bemba Gombo and the Prosecutor against the Decision of Trial Chamber III entitled "Decision on the Admission into Evidence of Materials contained in the Prosecution's List of Evidence"', 3 May 2011, para. 56.
- ²⁶⁵ Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents Before the Trial Chamber', 20 June 2012, para. 20.
- ²⁶⁶ *The Prosecutor v. Bemba*, ICC-01/05-01/08, 'Judgment on the Appeals of Mr. Jean-Pierre Bemba Gombo and the Prosecutor against the Decision of Trial Chamber III entitled "Decision on the Admission into Evidence of Materials contained in the Prosecution's List of Evidence"', 3 May 2011, paras. 56-57.
- ²⁶⁷ *The Prosecutor v. Bemba*, 'Judgment on the Appeals of Mr. Jean-Pierre Bemba Gombo and the Prosecutor against the Decision of Trial Chamber III entitled "Decision on the Admission into Evidence of Materials contained in the Prosecution's List of Evidence"', ICC-01/05-01/08, 3 May 2011, para. 78.
- ²⁶⁸ Document No. **E299**, 'Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcript Proposed by the Co-Prosecutors and Civil Party Lead Co-Lawyers', 15 August 2013, fn. 91.
- ²⁶⁹ Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, paras. 24-30.
- ²⁷⁰ Document No. **E96/8.3**, 'Annex 2 – Case File 001 Trial Transcripts: Corroborative Evidence', 27 July 2012.
- ²⁷¹ See section II-B, *supra*.
- ²⁷² Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, para. 24.
- ²⁷³ *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, 'Judgement,' 28 November 2007, 'Nahimana Appeal Judgement' para. 199, citing *The Prosecutor v. Sylvestre Gacumbitsi*, ICTR-2001-64-T, 'Decision on Expert Witnesses for the Defence, Rules 54, 73, 89 and 94 bis of the Rules of Procedure and Evidence', 11 November 2003, 'Gacumbitsi Decision of 11 November 2003', para. 8. See also, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 'Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness', 9 March 1998, p. 2 ('in order to be entitled to appear, an expert witness must not only be recognized expert in his field, but must also be impartial in the case.').
- ²⁷⁴ Document No. **E3/56**, 'Transcript of Trial Proceedings – Kaing Duek Eav "Duch"', 26 May 2009, pp. 62:14-63:3; 71:11-72:6; 78:22-79:11.
- ²⁷⁵ Document No. **E3/56**, 'Transcript of Trial Proceedings – Kaing Duek Eav "Duch"', 26 May 2009, pp. 79:13-80:12.
- ²⁷⁶ See e.g., Document No. **E3/2983**, 'Transcript of Trial Proceedings – Kaing Duek Eav "Duch"', 27 May 2009, pp. 85-87.
- ²⁷⁷ Among other things, Professor Chandler reads and speaks Khmer fluently, which Dr. Etcheson does not.
- ²⁷⁸ See e.g., Document No. **E1/94.1**, 'Transcript of Trial Proceedings,' 23 July 2012, pp. 60:20-65:20.
- ²⁷⁹ Case 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgment', 26 July 2010, '*Duch* Trial Judgment', para. 43, citing *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, 'Judgement,' 28 November 2007, 'Nahimana Appeal Judgement', para. 509; *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement', 20 February 2001, 'Delalić Appeal Judgement', para. 458.
- ²⁸⁰ Case 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgment', 26 July 2010, '*Duch* Trial Judgment', para. 43.
- ²⁸¹ *The Prosecutor v. Limaj et al.*, IT-03-66-T, 'Judgement', 30 November 2005, 'Limaj Trial Judgement'; *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, 'Judgement', 01 September 2004, 'Brđanin Trial Judgement', para. 27; *The Prosecutor v. Naser Orić*, IT-03-68-T, 'Judgement', 30 June 2006, 'Orić Trial Judgement', para. 18.
- ²⁸² *The Prosecutor v. Simeon*, ICTR-01-63-A, 'Judgment', 18 March 2010, 'Nchamihigo Appeal Judgement', para. 42, 48, citing *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, 'Judgement', 28 November 2007, 'Nahimana Appeal Judgement', para. 439; *André Ntagerura et al. v. The Prosecutor*, ICTR-99-46-A, 'Judgement', 07 July 2006, 'Ntagerura Appeal Judgement', paras. 203-206; *The Prosecutor v. Eliézer Niyitegeka*, ICTR-96-14-A, 'Judgement', 9 July 2004, 'Niyitegeka Appeal Judgement', para. 98. See also, *The Prosecution v. Alex Tamba Brima et al.*, SCSL-2004-16-A, 'Judgement', 22 February 2008, 'AFRC Appeal Judgment', paras. 128-129. See also, *The Prosecutor v. Momčilo Krajišnik*, IT-00-39-A, 'Judgment', 17 March 2009, 'Krajišnik Appeal Judgement', para. 146.
- ²⁸³ *The Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, 'Oral Ruling on Qualification of Expert Witness Mbonyinkebe', 2 May 2005; *The Prosecutor v. Pauline Nyiramasuhuko et al.*, ICTR-98-42-T, 'Oral Decision on the Qualification of Mr. Edmond Babin as Defence Expert Witness', 13 April 2005, para. 5; *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, 'Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown', 3 June 2003, p. 4; *The Prosecutor v. Stanislav Galić*, IT-98-29-T, 'Decision on the Expert Witness Statements Submitted by the Defence', 27 January 2003, p. 3.
- ²⁸⁴ *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, 'Judgement,' 28 November 2007, 'Nahimana Appeal Judgement' para. 108, citing *The Prosecutor v. Laurent Semanza v. Prosecutor*, ICTR-97-20-A, 'Judgement,' 20 May 2005, 'Semanza Appeal Judgement', para. 303. See also *The Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, 'Decision on Casimir Bizimungu's Urgent Motion for the Exclusion of the

Report and Testimony of Déo Sebahire Mbonyinkebe (Rule 89(C))', 2 September 2005, para. 11; *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Decision on Motion for Exclusion of Expert Witness Statement of Filip Reyntjens', 28 September 2004, para. 8; *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 'Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness', 9 March 1998, p. 2.

²⁸⁵ *The Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, 'Decision on Defense Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges', 2 September 2005, para. 19, citing *The Prosecutor v. Radoslav Brđanin*, 'Decision on Prosecutions Submission on Statement of Expert Witness Ewan Brown', 3 June 2003, p. 5.

²⁸⁶ *The Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, 'Decision on Defense Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges', 2 September 2005, para. 21.

²⁸⁷ *The Prosecutor v. Casimir Bizimungu et al.*, ICTR-99-50-T, 'Decision on Defense Motion for Exclusion of Portions of Testimony of Expert Witness Dr. Alison Des Forges', 2 September 2005, para. 21.

²⁸⁸ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 40-45; Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, paras. 40-42.

²⁸⁹ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, paras. 42-43.

²⁹⁰ Document No. **E96/8/1**, 'Preliminary Response to Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts', 8 November 2012, para. 44.

²⁹¹ Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, pp. 1:24-2:9, 45:23-47:20.

²⁹² Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, p. 72:19-23.

²⁹³ Document No. **E1/51.1**, 'Transcript of Trial Proceedings,' 20 March 2012, p. 42:14-15.

²⁹⁴ Document No. **E1/60.1**, 'Transcript of Trial Proceedings,' 5 April 2012, p. 67:2-20.

²⁹⁵ Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, p. 25:20-24.

²⁹⁶ Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, pp. 14:1-15:7.

²⁹⁷ Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, p. 15:12-20.

²⁹⁸ Document No. **E1/60.1**, 'Transcript of Trial Proceedings,' 5 April 2012, pp. 73:24-76:12, 79:2-22.

²⁹⁹ Document No. **E1/61.1**, 'Transcript of Trial Proceedings,' 9 April 2012, pp. 64:3-67:17.

³⁰⁰ Document No. **E1/51.1**, 'Transcript of Trial Proceedings,' 20 March 2012, p. 42:20-22.

³⁰¹ See para. 116, *supra*.

³⁰² Document No. **E3/86**, 'The True Fact about Pol Pot's Dictatorial Regime, 1975-1978'.

³⁰³ See e.g., Document No. **E3/86**, 'The True Fact about Pol Pot's Dictatorial Regime', ERN 00081214-00081215 (Ieng Sary denies responsibility for taking part in decisions, cf. 'Closing Order', paras. 1016-17, 1028, 1049, 1073), 00081215, 00081220 (Ieng Sary denies responsibility for playing a role in politics and for being one of the leader figures, cf. 'Closing Order', paras. 997, 1001-03, 1008-11, 1016-17), 00081217, 00081218 (Ieng Sary denies responsibility for being informed about the evacuation of Phnom Penh, cf. 'Closing Order', paras. 1018-22, 1024), 00081219-00081220 (Ieng Sary denies responsibility for knowing about the killings, cf. 'Closing Order', paras. 1023, 1048-49, 1051-52, 1055-57, 1061-62, 1071-72, 1080, 1091-92, 1109, 1115-19), 00081219 (Ieng Sary denies responsibility for agreeing to the policy of sending people to working camp, cf. 'Closing Order', paras. 1026, 1028, 1030, 1036-37, 1043-46).

³⁰⁴ *The Prosecutor v. Milomir Stakić*, IT-97-24-A, 'Judgement', 22 March 2006, para. 219; *The Prosecutor v. Zoran Kupreškić et al.*, IT-95-16-A, 'Appeal Judgment', 23 October 2001, para. 303; *The Prosecutor v. Dario Kordić & Mario Čerkez*, IT-95-14/2-A, 'Appeal Judgment', 17 December 2004, para. 834.

³⁰⁵ *The Prosecutor v. Milomir Stakić*, IT-97-24-A, 'Judgement', 22 March 2006, para. 219, citing *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Appeal Judgment', 20 February 2001, para. 458; *Justin Mugenzi and Prosper Mugiraneza v. The Prosecutor*, ICTR-99-50-A, 'Judgement', 4 February 2013, para. 88, citing *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-A, 'Appeal Judgment', 28 November 2007, para. 896. See also Case No. 001/18-07-2007-ECCC/SC, Doc. No. **E188**, 'Judgement,' 26 July 2010, 'Duch Trial Judgement', para. 332.

³⁰⁶ *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Appeal Judgment', 20 February 2001, para. 458.

³⁰⁷ Document No. **E1/16.1**, 'Transcript of Trial Proceedings,' 5 December 2011; Document No. **E1/17.1**, 'Transcript of Trial Proceedings,' 6 December 2011; Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011; Document No. **E1/22.1**, 'Transcript of Trial Proceedings,' 14 December 2011; Document No. **E1/23.1**, 'Transcript of Trial Proceedings,' 15 December 2011; Document No. **E1/25.1**, 'Transcript of Trial Proceedings,' 11 January 2012; Document No. **E1/26.1**, 'Transcript of Trial Proceedings,' 12 January 2012; Document No. **E1/35.1**, 'Transcript of Trial Proceedings,' 30 January; Document No. **E1/36.1**, 'Transcript of Trial Proceedings,' 31 January 2012; Document No. **E1/40.1**, 'Transcript of Trial Proceedings,' 08 February 2012.

³⁰⁸ Document No. **E287**, 'Notice of Intent Pursuant to Internal Rule 90,' 27 May 2013.

³⁰⁹ See Document No. **E1/225.1**, 'Transcript of Trial Proceedings,' 17 July 2013, pp. 67:08-68:05.

- ³¹⁰ Document No. **E1/225.1**, ‘Transcript of Trial Proceedings,’ 17 July 2013, pp. 68:09-71:19 (incorporating the arguments advanced in Document No. **E288/4/1**, ‘Co-Prosecutors’ Response to Khieu Samphan’s Withdrawal from Testifying and a Request for Adverse Inferences to Be Drawn’, 16 July 2013.
- ³¹¹ Document No. **E287/2**, ‘Withdrawal of Notice of Intent Pursuant to Internal Rule 90’, 30 July 2013.
- ³¹² Document No. **E288/4/1**, ‘Co-Prosecutor Response to Khieu Samphan’s Withdrawal from Testifying and a Request for Adverse Inferences to Be Drawn’, 16 July 2013.
- ³¹³ ECCC Law, Art. 35new(g); *International Covenant on Civil and Political Rights*, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 14(g). *See also*, Code of Criminal Procedure, Art. 143.
- ³¹⁴ Document No. **E174**, ‘Co-Prosecutors’ Request for Notice to Be Given to Accused Khieu Samphan on the Consequences of a Refusal to Respond to Questions at Trial’, 17 February 2012, para. 22, citing *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, ‘Appeal Judgment’, 20 February 2001, paras. 781–783.
- ³¹⁵ *See* case law cited by the Co-Prosecutors in: Documents No. **E1/220.1**, ‘Transcript of Trial Proceedings,’ 9 July 2013, pp. 35:23-36:02; Document No. **E174**, ‘Co-Prosecutors’ Request for Notice to Be Given to Accused Khieu Samphan on the Consequences of a Refusal to Respond to Questions at Trial’, 17 February 2012, para. 22; Document No. **E288/4/1**, ‘Co-Prosecutors’ Response to Khieu Samphan’s Withdrawal from Testifying and a Request for Adverse Inferences to Be Drawn’, 16 July 2013, para. 29. These cases include: *John Murray v. the United Kingdom*, European Court of Human Rights, App. No. 18731/91, 8 February 1996, para. 47 (‘Whether the drawing of adverse inferences from an accused’s silence infringes [fair trial rights] is a matter to be determined in the light of all the circumstances of the case, having particular regard to the situations where inferences may be drawn, the weight attached to them by the [...] courts in their assessment of the evidence and the degree of compulsion inherent in the situation’); *The Prosecutor v. Vidoje Blagojević and Dragan Jokić*, IT-02-60-T, ‘Decision on Vidoje Blagojević’s Oral Request’, 30 July 2004, p. 7; *The Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07, ‘Decision on the request of the Defence for Mathieu Ngudjolo to obtain assurances with respect to self-incrimination’, 13 September 2011, paras. 7-8.
- ³¹⁶ *John Murray v. the United Kingdom*, European Court of Human Rights, App. No. 18731/91, 8 February 1996, para. 51; *Thomas Telfner v. Austria*, European Court of Human Rights, App. No. 33501/96, 20 March 2001, para. 18.
- ³¹⁷ *William Condron v. the United Kingdom*, European Court of Human Rights, App. No. 35718/97, 2 May 2000, paras. 57, 61; *Keith A. Beckles v. the United Kingdom*, European Court of Human Rights, App. No. 44652/98, 8 October 2002, para. 62.
- ³¹⁸ *Keith A. Beckles v. the United Kingdom*, European Court of Human Rights, App. No. 44652/98, 8 October 2002, para. 64.
- ³¹⁹ *Keith A. Beckles v. the United Kingdom*, European Court of Human Rights, App. No. 44652/98, 8 October 2002, para. 62.
- ³²⁰ Although on one occasion Nuon Chea indicated that he exercised his right to remain silent, he had just previously attempted to answer a similar question and indicated that he did not understand the language used by the Co-Prosecutors. Accordingly this should not be interpreted as a blanket refusal to answer questions. *See* Document No. **E1/26.1**, ‘Transcript of Trial Proceedings,’ 12 January 2012, pp. 44:19-50:24.
- ³²¹ Document No. **E1/227.1**, ‘Transcript of Trial Proceedings,’ 23 July 2013, p. 69:07-17.
- ³²² Document No. **E287**, ‘Notice of Intent Pursuant to Internal Rule 90,’ 27 May 2013.
- ³²³ Document No. **E1/14.1**, ‘Transcript of Trial Proceedings,’ 22 November 2011, p. 77:16-22.
- ³²⁴ *See e.g.*, numerous references in the Co-Prosecutors’ document presentation hearing on the alleged policies of the CPK: Document No. **E1/211.1**, ‘Transcript of Trial Proceedings,’ 24 June 2013; Document No. **E1/212.1**, ‘Transcript of Trial Proceedings,’ 25 June 2013; Document No. **E1/213.1**, ‘Transcript of Trial Proceedings,’ 26 June 2013; Document No. **E1/214.1**, ‘Transcript of Trial Proceedings,’ 27 June 2013.
- ³²⁵ Document No. **E1/42.1**, ‘Transcript of Trial Proceedings,’ 13 February 2012, p. 46:8.
- ³²⁶ *See* section I-D, *supra* (describing the Chamber’s persistent refusal to hear relevant evidence of context).
- ³²⁷ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422768.
- ³²⁸ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422777.
- ³²⁹ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422785.
- ³³⁰ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422787.
- ³³¹ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422784.
- ³³² Document No. **E3/4202**, ‘Behind the killing fields : a Khmer Rouge leader and one of his victims’, ERN 7488 (Nuon Chea describing seeing ‘Thai people living with shortages and being oppressed by authorities, while the people in Cambodia and Laos were treated badly and killed by the French.’), 7490 (‘I got information about French people shooting Cambodians and Laotians dead along the Mekong [...] I got news frequently about the bad treatment of Cambodians by France. I thought I could not stay here. I had to go to Cambodia and help liberate my country. How could I stay in Thailand when France was treating Cambodians as slaves?’).
- ³³³ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422768.
- ³³⁴ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422743-4.
- ³³⁵ Document No. **E3/1686**, ‘A History of Cambodia’, ERN 00422744.

- ³³⁶ Document No. **E3/1686**, 'A History of Cambodia', ERN 00422753-4.
- ³³⁷ Document No. **E3/20**, 'When the War Was Over: Cambodia and the Khmer Rouge Revolution', ERN 00237712 (describing 'Sihanouk's deeply rooted if not stated presumptions that the peasants could just pick the fruit of the trees and live comfortably, an idea that ignores the excruciating hard work of wet rice cultivation in the tropics').
- ³³⁸ Document No. **E3/20**, 'When the War Was Over: Cambodia and the Khmer Rouge Revolution', ERN 00237712.
- ³³⁹ Document No. **E1/16.1**, 'Transcript of Trial Proceedings,' 5 December 2011, p. 48:2-5.
- ³⁴⁰ Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011, p. 7:17-18.
- ³⁴¹ Quoted in Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396334-5.
- ³⁴² Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396369; Document No. **E1/178.1**, 'Transcript of Trial Proceedings,' 9 April 2013, pp. 11:12-13:8; (Francois Ponchaud describing the use of violence by Lon Nol's troops against unarmed civilians); Document No. **E1/96.1**, 'Transcript of Trial Proceedings,' 25 July 2012, pp. 56:15-57:20 (according to David Chandler, in the 1960s, Cambodian Communists were oppressed by Sihanouk and were forced to either take up arms, 'shut up or get killed'); Document No. **E3/1683**, 'The Tragedy of Cambodian History', ERN 00193266 (describing Sihanouk's brutal political repression); Document No. **E3/4202**, 'Beyond the Killing Fields', ERN 00757525 (describing arrests, torture and execution of communists).
- ³⁴³ Document No. **E1/36.1**, 'Transcript of Trial Proceedings,' 31 January 2012, pp. 38:20-39:16; Document No. **E3/4202**, 'Behind the killing fields : a Khmer Rouge leader and one of his victims', ERN 00757483.
- ³⁴⁴ Document No. **E1/36.1**, 'Transcript of Trial Proceedings,' 31 January 2012, p. 12:7-16.
- ³⁴⁵ Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011, p. 10:21-11:1.
- ³⁴⁶ Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011, p. 11:1-18.
- ³⁴⁷ Document No. **E3/4202**, 'Behind the killing fields : a Khmer Rouge leader and one of his victims', ERN 00757483.
- ³⁴⁸ Document No. **E3/4078**, 'Attachment 5: Bombs over Cambodia', ERN 00809337.
- ³⁴⁹ Document No. **E3/1683**, 'The Tragedy of Cambodian History', ERN 00193309.
- ³⁵⁰ Document No. **E3/4078**, 'Attachment 5: Bombs over Cambodia', ERN 00809337.
- ³⁵¹ 'Closing Order', para. 1453.
- ³⁵² Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. res. 2625, Annex, 25 UN GAOR, Supp. (No. 28), U.N. Doc. A/5217 at 121 (1970).
- ³⁵³ Document No. **E1/212.1**, 'Transcript of Trial Proceedings,' 25 June 2013, p. 32:12-14.
- ³⁵⁴ Document No. **E3/4202**, 'Behind the killing fields : a Khmer Rouge leader and one of his victims', ERN 7490 ('The victory in China [in 1949] gave greater hope to communists in Southeast Asia.').
- ³⁵⁵ Document No. **E1/104.1**, 'Transcript of Trial Proceedings,' 8 August 2012, pp. 40:15-41:4 (witness Suong Sikoen); Document No. **E1/178.1**, 'Transcript of Trial Proceedings,' 9 April 2013, p. 57:8-11 (Khmer Rouge 'wanted to eliminate the city and they want the country to be equal, they want to eliminate social injustice, they want everyone to be equal. They did not want to mistreat people. '); Document No. **E1/82.1**, 'Transcript of Trial Proceedings,' 6 June 2012, pp. 11:17-12:8 (witness Sao Sarun testified that meetings at sector level involved reporting about management, welfare and livelihood of the people, including ways to 'lift up poverty of the people').
- ³⁵⁶ Document No. **E1/179.1**, 'Transcript of Trial Proceedings,' 10 April 2013, p. 100.
- ³⁵⁷ Document No. **E3/2683**, François PONCHAUD, 'Democratic Kampuchea: A Radical Revolution', *Mondes Asiatiques*, ERN 00755555.
- ³⁵⁸ Document No. **E3/759**, 'Revolutionary Flag', April 1976, ERN 00517856; Document No. **E3/742**, 'Revolutionary Flag', April 1977, ERN 00478502; Document No. **E3/729**, 'Revolutionary Youth', October 1975, ERN 00357916 (numerous references to offensives against paddy dikes and rice growing). 00357925 (similar); Document No. **E3/730**, 'Revolutionary Youth', December 1975, ERN 00363430, 00363436; Document No. **E3/751**, 'Revolutionary Youth', February 1976, ERN 00583767; Document No. **E3/757**, 'Revolutionary Youth', November 1976, ERN 00543714 (numerous references to offensives against and fighting livelihood and making medicines), 00543715 (similar), 00543719 (similar); Document No. **E3/732**, 'Revolutionary Youths', April 1976, ERN 00392455.
- ³⁵⁹ Document No. **E3/146**, 'Revolutionary Male and Female Youths', August-September 1974, ERN 00538752 ('attack rainy season rice'); Document No. **E3/752**, 'Revolutionary Male and Female Youths', March 1976, ERN 00593556 ('attack to produce their own foods').
- ³⁶⁰ Document No. **E3/760**, 'Revolutionary Flag', June 1976, ERN 00509607.
- ³⁶¹ Document No. **E3/729**, 'Revolutionary Youth', October 1975, ERN 00357903 ('production cooperatives fight day and night to increase production, fight ceaselessly, without any rest at all, to resolve the problem of water'); Document No. **E3/758**, 'Revolutionary Male and Female Youths', December 1976, ERN 00544884-5.
- ³⁶² Document No. **E3/224**, 'Minutes of the Standing Committee Meeting', 30 May 1976, ERN 00182668.

³⁶³ Document No. **E3/750**, ‘Revolutionary Male and Female Youths’, November 1975, ERN 00522463 (‘smashing up the new colonist regime of the American imperialist and the feudal-capitalist regime’); Document No. **E3/732**, ‘Revolutionary Youth’, April 1976, ERN 00392445 (‘We the revolutionary youth must see [...] every task large and small of every kind’); Document No. **E3/757**, ‘Revolutionary Youth’, November 1976, ERN 00543701 (‘If we want to smash the capitalist regime, we must smash personal ownership [...] and from our entire national society’), 00543704 (‘must resolve to smash and totally clean out and forget forever private property stances of every kind in order to constantly indoctrinate ourselves and strengthen and expand the proletarian collective stance of the Party and the good and pure socialist stance of the Party’); Document No. **E3/758**, ‘Revolutionary Male and Female Youths’, December 1976, ERN 00544860 (‘smash these forms of private possession’).

³⁶⁴ Document No. **E3/750**, ‘Revolutionary Male and Female Youths’, November 1975, ERN 00522462 (‘overthrown the feudal and capitalist classes’ and ‘smashed the private possession’); Document No. **E3/751**, ‘Revolutionary Youth’, February 1976, ERN 00583779 (‘smash the American imperialists and the feudal and capitalist classes mightily everywhere’).

³⁶⁵ Document No. **E3/752**, ‘Revolutionary Male and Female Youths’, March 1976, ERN 00593550 (‘We must fight to destroy its classes, political regime, economic base, ideology [...] from our individual selves’).

³⁶⁶ Document No. **E3/750**, ‘Revolutionary Male and Female Youths’, November 1975, ERN 00522459 (cadres ‘eliminate’ ‘the ideological stance of the imperialist, feudal and capitalist classes’).

³⁶⁷ Document No. **E3/1**, ‘Abbreviated Lesson on the History of the Kampuchean Revolutionary Movement Led by the Communist Party of Kampuchea’, ERN 00000371.

³⁶⁸ Document No. **E3/729**, ‘Revolutionary Youth’, October 1975, ERN 00357911.

³⁶⁹ Document No. **E3/759**, ‘Revolutionary Flag’, April 1976, ERN 00517874; Document No. **E3/729**, ‘Revolutionary Youth’, October 1975, ERN 00357910 (‘If we make a superficial examination of outward appearances [...] we must fight with aphysical enemies and adversaries who can neither be seen nor captured.’); Document No. **E3/762**, ‘Revolutionary Flag’, August 1976, ERN 00486753-4 (‘So then, this is why we purge in terms of the views and stance and ideology of socialist revolution more than we did previously, and in tandem we have eradicated much non-socialist ideology. Now we are fighting on [...] Awareness of socialist revolution ideology transforms into a mighty combat force. Each unit armed with this weapon has strong momentum to prepare itself for combat.’), ERN 00486767 (cadres should be ‘combat-active’ by ‘totally eradicat[ing] private ownership in terms of materials and in terms of non-proletarian ideological views and stances.’).

³⁷⁰ Document No. **E3/748**, ‘Revolutionary Flag’, October-November 1975, ERN 00495802.

³⁷¹ Document No. **E3/760**, ‘Revolutionary Flag’, June 1976, ERN 00509615; Document No. **E3/751**, ‘Revolutionary Youth’, February 1976, ERN 00583760 (‘Only when we constantly and strongly [...] criminal hands of the enemy of every type’); Document No. **E3/166**, ‘Revolutionary Flag’, February-March 1976, ERN 00517815 (Socialist revolution ‘is done ideologically, organizationally, economically, culturally, socially, technically and scientifically.’).

³⁷² Document No. **E1/219.1**, ‘Transcript of Trial Proceedings,’ 8 July 2013, p. 27:5-24; Document No. **E3/730**, ‘Revolutionary Youth’, December 1975, ERN 00363428 (‘permanent success in guaranteeing that feudal-capitalist regimes or private ownership regimes will never be able to raise their heads again’); Document No. **E3/751**, ‘Revolutionary Youth’, February 1976, ERN 00583763 (‘The enemies of every type are routinely maneuvering [sic] and acting to attack us overtly and covertly in terms of ideological views and stances.’).

³⁷³ Document No. **E1/42.1**, ‘Transcript of Trial Proceedings,’ 13 February 2012, 45:17-25.

³⁷⁴ Document No. **E3/729**, ‘Revolutionary Youth’, October 1975, ERN 00357910.

³⁷⁵ Document No. **E3/783**, ‘Revolutionary Flag’, September-October 1972, ERN 00720208-9. *See also id.*, ERN 00720223 (the influence of the capitalist class is eliminated on the ‘political-economic battlefield’ and ‘also and in the battlefield of perceptions’).

³⁷⁶ Document No. **E3/146**, ‘Revolutionary Male and Female Youths’, August-September 1974, ERN 00538736.

³⁷⁷ Document No. **E3/749**, ‘Revolutionary Youth’, August 1975, ERN 00532686-7. *See also* Document No. **E3/748**, ‘Revolutionary Flag’, October-November 1975, ERN 00495804 (enforcement of political stances), 00495805 (guard against influence of non-revolutionary ideologies); Document No. **E3/760**, ‘Revolutionary Flag’, June 1976, ERN 00509608 (‘carry out socialist revolution’ means ‘eradicate mandarin stances, eradicate capitalist stances, and build the stance of socialist revolution by being close to the people, close to the base areas, and close to the cooperatives’); Document No. **E3/762**, ‘Revolutionary Flag’, August 1976, ERN 00486754 (‘Every revolution has contradictions, that is, antagonistic contradictions, internal contradictions and secondary contradictions. These types of contradictions exist in socialist revolution, but when we make socialist revolution well [...] we are able to sort them out by the method of successive education and building. We can even sort out antagonistic contradictions and they will weaken and disappear.’).

³⁷⁸ Document No. **E3/9**, Philip SHORT, ‘Pol Pot: The History of a Nightmare’, 2004, ERN 00396307 (‘The idea that “proletarian consciousness” could be forged, independent of a person’s class origins or economic status, became the central pillar of Khmer communism.’).

³⁷⁹ Document No. **E3/10**, ‘Revolutionary Flag’, September-October 1976, ERN 00450510. *See also*, Document No. **E3/783**, ‘Revolutionary Flag’, September-October 1972, ERN 00720211 (Class struggle proceeds by

‘vigorously implementing land policy, to produce crops, and to improve the people’s livelihood. This is a shrewd class struggle because it changes the view of the previous regime, which has rooted for thousands of years.’); Document No. **E3/146**, ‘Revolutionary Male and Female Youths’, August-September 1974 (‘in the liberated zones, we have overthrown the oppressive classes and basically destroyed the previously dominated production cooperatives’); Document No. **E3/730**, ‘Revolutionary Youth’, December 1975, ERN 00363424 (‘As for the capitalist-feudalist classes inside Kampuchea, we have basically attacked and eradicated them, meaning they have disintegrated both in terms of their political system and their economic foundations [...] Their economic exploitation has been attacked and toppled. Their state authority apparatus has also been attacked and smashed.’), 00363425 (the bourgeoisie ‘that had previously been dependent upon the economic foundations and political regime of the imperialists, feudalists and capitalists’ disintegrated’);

³⁸⁰ Document No. **E3/760**, ‘Revolutionary Flag’, June 1976, ERN 00509618 (collectivism defeats the private regime by ensuring that cows have grass; otherwise, the private regime will supply what the collective could not); Document No. **E3/757**, ‘Revolutionary Youth’, November 1976, ERN 00543697 (where collective regime is strong, no enemy can enter).

³⁸¹ See e.g., Document No. **E1/212.1**, ‘Transcript of Trial Proceedings,’ 25 June 2013 (numerous references to CPK’s class struggle).

³⁸² Document No. **E1/25.1**, ‘Transcript of Trial Proceedings,’ 11 January 2012, pp. 21:13-22:9.

³⁸³ Document No. **E1/25.1**, ‘Transcript of Trial Proceedings,’ 11 January 2012, p. 27:14-16.

³⁸⁴ Document No. **E1/25.1**, ‘Transcript of Trial Proceedings,’ 11 January 2012, p. 28:18.

³⁸⁵ Document No. **E1/25.1**, ‘Transcript of Trial Proceedings,’ 11 January 2012, p. 25:23-25.

³⁸⁶ Document No. **E1/219.1**, ‘Transcript of Trial Proceedings,’ 11 January 2012, pp. 14-44.

³⁸⁷ Document No. **E3/11**, ‘Revolutionary Flag’, September 1977, ERN 00486234.

³⁸⁸ Document No. **E3/146**, ‘Revolutionary Male and Female Youths’, August-September 1974, ERN 00538748.

³⁸⁹ Document No. **E3/146**, ‘Revolutionary Male and Female Youths’, August-September 1974, ERN 00538748.

See also, Document No. **E3/11**, ‘Revolutionary Flag’, September 1977, ERN 00486233-4.

³⁹⁰ Document No. **E3/759**, ‘Revolutionary Flag’, April 1976, ERN 00517855.

³⁹¹ Document No. **E3/387**, ‘DC-Cam Interview of Ouk Bunchhoen by Steve Heder’, ERN 00350204; Document No. **E1/222.1**, ‘Transcript of Trial Proceedings,’ 11 July 2013, pp. 9:15-10:12, 11:23-12:12.

³⁹² Document No. **E3/118**, ‘Foreign Broadcast Information Service collection of reports for April 1975’, ERN 00166949; Document No. **E3/120**, ‘Foreign Broadcast Information Service collection of reports for March 1975’, ERN 00166809 (appealing to ‘all fraternal countrymen in Phnom Penh and other provincial capitals’ including ‘workers, labourers, teachers, lecturers, students and schoolchildren’, all of whom have suffered under the old regime)..

³⁹³ Document No. **E3/729**, ‘Revolutionary Youth’, October 1975, ERN 00357903.

³⁹⁴ Document No. **E1/79.1**, ‘Transcript of Trial Proceedings,’ 31 May 2012, pp. 7:25-8:14; Document No. **E1/76.1**, ‘Transcript of Trial Proceedings,’ 28 May 2012, pp. 22:23-23:6 (food was shared with evacuees from cities), 25:9-17 (no classification of people into categories such as potential enemies, task in propaganda was to ensure unity and solidarity), 75:7-19 (evacuees had to be received and food offered, no one regarded as an enemy), 76:19-77:2 (similar); Document No. **E1/78.1**, ‘Transcript of Trial Proceedings,’ 30 May 2012, pp. 12:13-13:4 (revolutionary flags emphasized livelihood of the people and ‘enhance solidarity and unity between the New People and the old ones’); Document No. **E1/82.1**, ‘Transcript of Trial Proceedings,’ 6 June 2012, p. 9:10-12 (witness Sao Sarun never heard of the term New People), 45:17-24 (no division of population in Monduliri, ‘there were only citizens in the province’); Document No. **E1/112.1**, ‘Transcript of Trial Proceedings,’ 22 August 2012, p. 59:5-22 (witness Kim Vun, who worked in the propaganda ministry, testified that, ‘As a matter of our publication policies, there was no distinction whatsoever between the Old and New People’); Document No. **E1/194.1**, ‘Transcript of Trial Proceedings,’ 21 May 2013, pp. 50:6-15, 52:5-19.

³⁹⁵ Document No. **E3/1714**, ‘Interviews with Cambodian Refugees at the Thai-Cambodia Border’, February-March 1980, ERN 00170719. See also, Document No. **E3/387**, DC-Cam, Interview of Ouk Bunchhoen by Steve Heder, ERN 00350205 (according to Ouk Bunchhoen, Pol Pot ordered cooperatives to begin preparing lodging for evacuees in February 1975); Document No. **E1/194.1**, ‘Transcript of Trial Proceedings,’ 21 May 2013, p. 13:11-17.

³⁹⁶ Document No. **E3/4202**, ‘Behind the killing fields : a Khmer Rouge leader and one of his victims’, ERN 00757493.

³⁹⁷ Document No. **E3/146**, ‘Revolutionary Male and Female Youths’, August-September 1974, ERN 00538747.

³⁹⁸ Document No. **E3/749**, ‘Revolutionary Youth’, August 1975, ERN 00532684 (feudalist and capitalist ‘classes were overthrown and people were sent down to increase production with everyone else’).

³⁹⁹ Document No. **E3/123**, ‘Cambodia’s Economy and Industrial Development’, ERN 00750601.

⁴⁰⁰ Document No. **E1/16.1**, ‘Transcript of Trial Proceedings,’ 5 December 2011, p. 44:2-7.

⁴⁰¹ Document No. **E3/9**, ‘Pol Pot: The History of a Nightmare’, ERN 00396498.

⁴⁰² Document No. **E1/21.1**, ‘Transcript of Trial Proceedings,’ 13 December 2011, pp. 3:19-4:1.

⁴⁰³ See e.g., Antony Anghie, *Time Present and Past: Globalization, International Financial Institutions, and the Third World* (2000) 32 N.Y.U. J. Int’l L. & Pol. 243; B.S. Chimni, *International Institutions Today: An Imperial*

Global State in the Making (2000) 15:1 Eur. J. Int'l L; See also, Document No. **E3/2412**, 'Kampuchea: Revolutionary Economy', ERN 00598533 (Ponchaud 'subscribe[s] to a large extent' to the view that 'only food self-sufficiency enables a country to free itself from the shackles of the "agri-business" of the US and other developed countries, which impoverish countries by granting them commercial development assistance, and from "neo-capitalism" into which most developing countries have sank.').

⁴⁰⁴ See e.g., 'Closing Order', para. 177.

⁴⁰⁵ Document No. **E3/182**, 'Meeting of the Standing Committee', 9 October 1975, ERN 00183405.

⁴⁰⁶ Document No. **E1/40.1**, 'Transcript of Trial Proceedings,' pp. 15:14-16:7.

⁴⁰⁷ Document No. **E3/230**, 'Minutes, Meeting of the Standing Committee', 22 February 1976; Document No. **E3/238**, 'Minutes of the Meeting of the Standing Committee', 28 February 1976, ERN 00424113-4; Document No. **E3/223**, 'Minutes of the Standing Committee Meeting', 17 May 1976, ERN 00182712.

⁴⁰⁸ Document No. **E3/762**, 'Revolutionary Flag', August 1976, ERN 00486745.

⁴⁰⁹ See Document No. **E3/230**, 'Minutes of Permanent Committee Meeting', 22 February 1976; Document No. **E3/238**, 'Minutes of the Standing Committee Meeting', 26 February 1976; Document No. **E3/223**, 'Minutes of Permanent Committee Meeting', 17 May 1976.

⁴¹⁰ 'Closing Order', fns. 565, 567.

⁴¹¹ Document No. **E3/4154**, Sydney SCHANBERG, 'Cambodia Reds Are Uprooting Millions As They Impose a 'Peasant Revolution' in New York Times, 9 May 1975 ('foreigners and foreign aid are not wanted - at least not for now'); Document No. **E3/4158**, 'Urban Exodus Complete, Cambodia Refugees Say', in New York Times, 13 June 1975 (in the last two months the Cambodian Communists have repeatedly shunned offers of foreign assistance); Document No. **E3/3373**, 'Cambodians Are Starving, Refugees Say' in Washington Post, 23 June 1975.

⁴¹² As an example, the refusal of one teacher and a few medics from the French embassy do not establish a policy against "foreign" aid. See Document No. **E3/2693**, 'Télégramme intitulé La situation à Phnom Penh, 14heures' (documenting a visit to the French Embassy by 3 anonymous members of 'city committee' on 18 April 1975 and their refusal to "accept" the services of a few French medics and one teacher).

⁴¹³ Document No. **E3/2720**, 'Télégramme intitulé Situation des refugies de Phnom Penh', ERN 00517789 (reports that there is no opinion on the acceptance of Foreign assistance-"Foreign assistance? He was unable to provide an opinion").

⁴¹⁴ Document No. **E3/3005**, 'Memo from the President's Assistant for National Security Affaires, Brent Scocroft to President Ford', 10 May 1976, ERN 00495445; Document No. **E3/4138**, 'Télégramme intitulé Message pour la Croix-Rouge International à Phnom-Penh', 22 April 1975.

⁴¹⁵ Document No. **E3/3376**, 'Cambodian Leader Cites Progress' in New York Times, 19 April 1977; Document No. **D36/1.1.13**, 'Millions sent to retraining zones' in Los Angeles Times, 8 May 1975; Document No. **E3/4154**, 'Cambodia Reds Are Uprooting Millions As They Impose a 'Peasant Revolution' in New York Times, 9 May 1975; Document No. **E3/4155**, 'Khmer Upheaval' in New York Times, 10 May 1975; Document No. **E3/4158**, 'Urban Exodus Complete, Cambodia Refugees Say' in New York Times, 13 June 1975; Document No. **E3/3005**, 'Memo from the President's Assistant for National Security Affaires, Brent Scocroft to President Ford', 10 May 1976, ERN 00495446; Document No. **D172.8**, 'Cambodia: Year Zero' p.55; Document No. **E3/209**, 'Nuon Chea's speech at Army Anniversary Meeting', 17 January 1977; Document No. **E3/191**, 'Nuon Chea 's speech at Army Anniversary meeting', 20 January 1977, ERN 00004076; Document No. **E3/86**, 'The True Fact about Pol Pot's Dictatorial Regime'; Document No. **E3/201**, 'Khieu Samphan's Speech at Second Anniversary Meeting', 19 April 1977, ERN 00419516; Document No. **D56-Doc. 103** The speech of comrade Ieng Sary, member of the standing committee of the central committee of the Kampuchea Communist Party at the welcoming dinner with Daniel Leon Burstein, member of central committee of communist party, Marxist-Leninist of the USA p.2; Document No. **E3/77**, 'Foreign Broadcast Information Service', 15 November 1978, ERN 00170084-85.

⁴¹⁶ Document No. **E3/223**, 'Minutes of the Standing Committee Meeting', 17 May 1976, ERN 00182711.

⁴¹⁷ Document No. **E3/223**, 'Minutes of the Standing Committee Meeting', 17 May 1976, ERN 00182711.

⁴¹⁸ Document No. **E3/223**, 'Minutes of the Standing Committee Meeting', 17 May 1976, ERN 00182711.

⁴¹⁹ Document No. **E3/238**, 'Minutes of the Meeting of the Standing Committee', 28 February 1976, ERN 00424113-14.

⁴²⁰ Document No. **E3/238**, 'Minutes of the Meeting of the Standing Committee', 28 February 1976, ERN 00424113.

⁴²¹ Document No. **E3/238**, 'Minutes of the Meeting of the Standing Committee', 28 February 1976, ERN 00424113; Document No. **E3/2657**, 'Note interne intitulée Bordereaux collectifs No. 116 : Le Cambodge un an après et note 104 de la sous discretion Cambodge-Laos-Vietnam, 26 April 1976, ERN 00525799 (CPK setting up embassies in Albania, Yugoslavia, Cuba, Algeria, North Korea, Socialist Republic of Vietnam, Laos and China).

⁴²² Document No. **E3/223**, 'Minutes of the Standing Committee Meeting', 17 May 1976, ERN 00182711, 00182713.

⁴²³ Document No. **E1/16.1**, 'Transcript of Trial Proceedings,' 5 December 2011, p. 43:3-14.

- ⁴²⁴ Document No. **E1/16.1**, 'Transcript of Trial Proceedings,' 5 December 2011, p. 44:11-14.
- ⁴²⁵ Document No. **E1/16.1**, 'Transcript of Trial Proceedings,' 5 December 2011, p. 53:19-20; Document No. **E3/4202**, 'Behind the killing fields : a Khmer Rouge leader and one of his victims', ERN 00757552 (Nuon Chea explaining to Thet Sambath that his own relatives died during Democratic Kampuchea, and that he thought about his sister, but assumed she was well because he believed conditions were good).
- ⁴²⁶ Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396189; E3/1593, ERN 00678482; Document No. **E3/1683**, 'The Tragedy of Cambodian History', ERN 00193116.
- ⁴²⁷ Document No. **E1/35.1**, 'Transcript of Trial Proceedings,' 30 January 2012, p. 42:2-3.
- ⁴²⁸ See 'Closing Order', fn. 3668.
- ⁴²⁹ Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011, pp. 51:18-52:19.
- ⁴³⁰ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN, ERN 00757527.
- ⁴³¹ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757535-7.
- ⁴³² Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757535-36.
- ⁴³³ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power, and Genocide in Cambodia', ERN 00678511, 00678516, 00678522, 00678597-9, 00678656.
- ⁴³⁴ Document No. **E1/224.1**, 'Transcript of Trial Proceedings,' 16 July 2013, p.85:6-8.
- ⁴³⁵ See section VII, *infra*.
- ⁴³⁶ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757536.
- ⁴³⁷ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757537.
- ⁴³⁸ See e.g., Document No. **E1/191.1**, 'Transcript of Trial Proceedings', pp. 117-118.
- ⁴³⁹ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757512.
- ⁴⁴⁰ Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396288.
- ⁴⁴¹ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757502. See also *id.*, ERN 00757504 ('We were all happy and cooperated with the Vietnamese and we were close').
- ⁴⁴² Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396232 (Vietnamese treating Indochina as a 'single battlefield'), ERN 00396438-39 (Vietnamese still speaking of Indochinese federation in the early 1970s), ERN 00396571-72 (Vietnamese still speaking of the 'special relationship' with Laos and Cambodia in December 1976).
- ⁴⁴³ Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396381.
- ⁴⁴⁴ Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396571-2.
- ⁴⁴⁵ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757512.
- ⁴⁴⁶ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757511; Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', ERN 00396405.
- ⁴⁴⁷ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of Its Victims', ERN 00757511.
- ⁴⁴⁸ Case No. 001/18-07-2007-ECCC/SC, Doc. No. **E188**, 'Judgement,' 26 July 2010, 'Duch Trial Judgement', paras. 66 ff.
- ⁴⁴⁹ Document No. **E3/517**, 'Written Record of Interview of Witness ██████████', 4 September 2009, ERN 00375881.
- ⁴⁵⁰ Document No. **E3/1568**, 'Retyped from a handwritten interview from ██████████ and ██████████ Phnom Penh', 2 & 3 December 1991, ERN 00651900.
- ⁴⁵¹ Document No. **E3/218**, 'Record of Meeting of the Standing Committee', 26 March 1976, ERN 00182657.
- ⁴⁵² Document No. **E3/20**, 'Cambodia and the Khmer Rouge Revolution', ERN 00238041.
- ⁴⁵³ Document No. **E1/94.1**, 'Transcript of Trial Proceedings,' 23 July 2012, p. 29:8-11; Document No. **E1/95.1**, 'Transcript of Trial Proceedings,' 24 July 2012, pp. 93:18-94:4.
- ⁴⁵⁴ Document No. **E1/105.1**, 'Transcript of Trial Proceedings,' 9 August 2012, pp. 66:24-68:24; see also Document No. **E3/1714**, 'Interviews with Kampuchean Refugees at Thai-Cambodia Border', February-March 1980, ERN 00170702 (either Ong Thong Hoeng or another individual, Sauv Khim, indicating that the Vietnamese 'came to Tuol Sleng before anyone else and took away some of the documents').
- ⁴⁵⁵ See Document No. **D102**, 'Fourth Request for Investigative Action', 27 August 2008, para. 9(b); Document No. **D315**, 'Order on NUON Chea's Request for Investigative Action Relating to Foreign States (D101, D102, D105, D126 & D128)', 13 January 2010, paras. 28-30; Document No. **D292/3**, 'Rogatory Letter of Completion Report', 30 December 2008, p. 2.

- ⁴⁵⁶ Document No. **E3/182**, 'Meeting of the Standing Committee', 9 October 1975, ERN 00183395. *See also*, Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, pp. 37:17-38:1 (the Standing Committee was a 'supervisory and policy-forming body' but was unable to track events across the country 'given the range of problems, communications, and so on').
- ⁴⁵⁷ Document No. **E1/134.1**, 'Transcript of Trial Proceedings', 18 October 2012, p. 23:9-14. NB: this translation was provided by the interpreters during the national Co-Prosecutors' document presentation on 18 October 2012. It varies slightly from the translated version of the original document, **E3/182**, on the case file. Our review of the original Khmer indicates that this translation is the better one.
- ⁴⁵⁸ Document No. **E3/227**, 'Standing Committee Meeting', 2 November 1975, ERN 00183412-3.
- ⁴⁵⁹ Document No. **E3/227**, 'Standing Committee Meeting', 2 November 1975, ERN 00183413.
- ⁴⁶⁰ Document No. **E3/228**, 'Minutes: Meeting of the Standing Committee', 6 January 1976.
- ⁴⁶¹ Document No. **E3/229**, 'Minutes: Meeting of Standing Committee', 22 February 1976, ERN 00182625-6.
- ⁴⁶² Document No. **E3/229**, 'Minutes: Meeting of Standing Committee', 22 February 1976, ERN 00182626.
- ⁴⁶³ Document No. **E3/217**, 'Record of Meeting of the Standing Committee', 11 March 1976.
- ⁴⁶⁴ Document No. **E3/231**, 'Minutes of the 8 March 1976 Meeting on Propaganda', 8 March 1976, ERN 00528386-7 (recommendations in relation to a 'meeting on propaganda' limited to a request to inform Angkar on a regular basis of the most important news items); Document No. **E3/233**, 'Minutes of Meeting of the Standing Committee', 13 March 1976 (appointing two committees to make preparations for purchasing merchandise and 'the matter of banks', and a delegation to make purchases from China); Document No. **E3/219**, 'Minutes of Meeting of the Standing Committee', 5 March 1976 (deciding to attend a meeting in Algiers in preparation for the Colombo Conference); Document No. **E3/235**, 'Summary of the Decisions of the Standing Committee in the Meeting of 19-20-21 April 1976', 21 April 1976 (instructions of the Standing Committee include: appointment of a series of committees, to invite ambassador and minister level missions 'from among African nations', 'set up [military airfield] operations in Kampong Chhnang', 'push expansion of rubber', 'push early season rice'); Document No. **E3/220**, 'Record of Standing Committee Meeting', 7 May 1976 (assigning responsibility over commerce related issues to various cadres); Document No. **E3/222**, 'Minutes of Meeting of the Standing Committee', 15 May 1976 (after receiving technical advice from China about construction of a new factory, Committee decides: 'In principle, do it near Phnom Penh and call it a repair shop. Do ideological work for cadres and soldiers. The roads in and out, through Samrong. But must be most quiet.').
- ⁴⁶⁵ Document No. **E3/230**, 'Minutes: Meeting of Standing Committee', 22 February 1976. *See also* Document No. **E3/238**, 'Minutes of the Meeting of the Standing Committee', 28 February 1976, ERN 00424114-5 (specifying the use of Swedish aid to make specific purchases).
- ⁴⁶⁶ Document No. **E3/233**, 'Minutes of Meeting of the Standing Committee', 13 March 1976.
- ⁴⁶⁷ Document No. **E2/224**, 'Minutes of the Standing Committee Meeting', 30 May 1976.
- ⁴⁶⁸ Document No. **E3/218**, 'Record of Meeting of the Standing Committee', 26 March 1976.
- ⁴⁶⁹ Document No. **E3/218**, 'Record of Meeting of the Standing Committee', 26 March 1976, ERN 00182656-7.
- ⁴⁷⁰ Document No. **E3/232**, 'Minutes on Meeting on Base Work', 8 March 1976, ERN 00182630-1.
- ⁴⁷¹ Document No. **E3/232**, 'Minutes on Meeting on Base Work', 8 March 1976, ERN 00182633.
- ⁴⁷² *See* 'At Least 15 Die in Thailand as Police Raid Campus in Political Dispute', *New York Times* 6 October 1976, p. 3; 'Thai Police Burn Student Literature', *The Guardian* (11 October 1976), p. 3.
- ⁴⁷³ Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, p. 64:16-19.
- ⁴⁷⁴ 'Closing Order', para. 133.
- ⁴⁷⁵ Document No. **E1/192.1**, 'Transcript of Trial Proceedings,' 9 May 2013, pp. 11:17-12:16.
- ⁴⁷⁶ Document No. **E3/89**, Interview of Ieng Sary by Steve Heder, 17 December 1996, ERN 00417607.
- ⁴⁷⁷ Document No. **E3/89**, Interview of Ieng Sary by Steve Heder, 17 December 1996, ERN 00417608.
- ⁴⁷⁸ Document No. **E1/40.1**, 'Transcript of Trial Proceedings,' 8 February 2012, p. 12:14-17.
- ⁴⁷⁹ Document No. **E1/132.1**, 'Transcript of Trial Proceedings,' 9 October 2012, p. 22:5-21 (Ta Mok had 'absolute power, and he could make any decision on his own'); Document No. **E1/191.1**, 'Transcript of Trial Proceedings,' 8 May 2013, p. 138:11-22 (the intellectuals from Paris and the 'old school, hardboiled, tough cadre from the Issarak movement' never completely came together; told by Khieu Samphan that atrocities were the responsibility of 'the old Issaraks who had become the warlords, the zone leaders in the provinces.').
- ⁴⁸⁰ Document No. **E3/5527**, Written Recorded Interview of Seng Srun, 9 December 2009, ERN 00423721. *See also*, Document No. **E3/3005**, 'Memo from the President's Assistant for National Security Affairs, Brent Scroft to President Ford, 10 May 1976, ERN 00495447 ('The central government is remote and largely unknown, and there is much local autonomy'). Although the Defence generally doubts the credibility of Duch's claims beyond the purview of S-21, we note that in Case 001, he testified that Kae Pok, as the secretary of the Central Zone, 'had the authority to arrest anyone or to free anyone or to spare anyone or to smash anyone [...] Kae Pok had his authority and Pol Pot would not dare to interfere'.
- ⁴⁸¹ Document No. **E3/20**, 'When the war was over', ERN 00237878 (the armed forces of Democratic Kampuchea were in reality six separate armies, belonging to the Northern, Northeastern, Eastern, Southwestern, Northwestern, and Special Zones [...] Each zone leader had been expected to operate semiautonomously.);

Document No. **E1/222.1**, 'Transcript of Trial Proceedings,' 11 July 2013, p. 28:1-13 ('it was up to the zone leadership to grasp the line of the Party and ensure that districts and other localities followed it').

⁴⁸² Document No. **E3/12**, 'Decision of Central Committee on a number of problems', 30 March 1976.

⁴⁸³ Document No. **E1/180.1**, 'Transcript of Trial Proceedings,' 11 April 2013, pp. 43-45.

⁴⁸⁴ 'Closing Order', paras. 192-203.

⁴⁸⁵ Kiernan book

⁴⁸⁶ As the Co-Prosecutors recognize: see Document No. **E1/213.1**, 'Transcript of Trial Proceedings,' 26 June 2013, pp. 19:2-3 ('the ultimate objectives of the regime in terms of population growth'), 19:24-20:2, 21:14-15 (increase of population is a 'policy of the regime').

⁴⁸⁷ TS, ERN 00757528.

⁴⁸⁸ Document No. **E1/222.1**, 'Transcript of Trial Proceedings,' 11 July 2013, pp. 56:20-57:11. See also *id.*, p. 27:11-25; Document No. **E1/180.1**, 'Transcript of Trial Proceedings,' 11 April 2013, pp. 55:6-56:13; Document No. **E1/95.1**, 'Transcript of Trial Proceedings,' 24 July 2012, p. 56:20-22 (according to David Chandler, 'the story of the gaps between theory and practice in [...] the history of Cambodia at this time, rather, are well documented and very interesting.');

Document No. **E3/4527**, 'Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes: Cambodian Accountability in Comparative Perspective', ERN 00661466; Document No. **E1/94.1**, 'Transcript of Trial Proceedings,' 23 July 2012, pp. 64:14-65:20.

⁴⁸⁹ Document No. **E3/57**, Written Record Interview of Kham Phan, ERN 00290508 (witness claims that during the time of his Ta Laing's control over Sector 105 there was no killing but that there were arrests 'during Ta Sarun era', referring to sector secretary Sao Sarun); cf. Document No. **E1/131.1**, 'Transcript of Trial Proceedings,' 8 October 2012, p. 78:4-14 (Meas Voeun decided on his own authority to release prisoners in Rovieng district).

⁴⁹⁰ Document No. **E1/194.1**, 'Transcript of Trial Proceedings,' 21 May 2013, pp. 7:18-8:4.

⁴⁹¹ 'Closing Order', paras. 68, 142; Document No. **E1/81.1**, 'Transcript of Trial Proceedings,' 5 June 2012, pp. 92:21-93:8; Document No. **E1/21.1**, 'Transcript of Trial Proceedings,' 13 December 2011, pp. 15:23-17:4.

⁴⁹² Document No. **E1/94.1**, 'Transcript of Trial Proceedings,' 23 July 2012, pp. 59:19-60:17, 62:24-63:3; Document No. **E1/123.1**, 'Transcript of Trial Proceedings,' 6 September 2012, pp. 20:16-21:18; TS, ERN 00757514-15, 00757554 (was not alerted to food shortage, Angkar wanted the people to be well-fed).

⁴⁹³ Document No. **E1/117.1**, 'Transcript of Trial Proceedings,' 29 August 2012, pp. 75:11-76:8.

⁴⁹⁴ Document No. **E1/117.1**, 'Transcript of Trial Proceedings,' 29 August 2012, pp. 47:25-48:3.

⁴⁹⁵ Document No. **E1/117.1**, 'Transcript of Trial Proceedings,' 29 August 2012, pp. 75:11-76:8.

⁴⁹⁶ Document No. **E1/121.1**, 'Transcript of Trial Proceedings,' 4 September 2012, p. 36:3-11.

⁴⁹⁷ Document No. **E1/123.1**, 'Transcript of Trial Proceedings,' 6 September 2012, pp. 16:15-17:19.

⁴⁹⁸ Document No. **E1/131.1**, 'Transcript of Trial Proceedings,' 8 October 2012, p. 82:9-13.

⁴⁹⁹ Document No. **E1/192.1**, 'Transcript of Trial Proceedings,' 9 May 2013, pp. 2:24-3:20. See Document No. **E3/783**, 'Revolutionary Flag', December 1972, ERN 00720205 ('all of our comrades must grasp the "evolving state" of our movement's revolutionary struggle');

⁵⁰⁰ Document No. **E3/783**, 'Revolutionary Flag', December 1972, ERN 00720222.

⁵⁰¹ Document No. **E3/783**, 'Revolutionary Flag', December 1972, ERN 00720221. See also ERN 00720215 ('The Party's leading cadres at all levels are the ones who decide the destiny of the people and the revolution in accordance with their responsibilities and frameworks. If they lead well, they will bring prosperity to the Party, revolution, class and people. However, if they do not lead properly, they will affect the people and internal solidarity and unity, resulting in a disaster for the Party, revolution, class and people. Therefore, the Party's cadres must adopt the viewpoints, actions and words based on the Party's line and principles so as to benefit the Party, revolution, class and people that are as sacred as their own lives.');

⁵⁰² Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law,' 18 January 2013, 'Preliminary Applicable Law filing', paras. 1-49. The Defence reserved the right to elaborate on the positions expressed in this filing and make additional arguments in its Closing Brief. *Ibid.* para. 3.

⁵⁰³ ECCC Law, Art. 5.

⁵⁰⁴ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, 'Duch Trial Judgement,' paras. 313.

⁵⁰⁵ *The Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23 & IT-96-23/1-A, 'Judgement,' 12 June 2002, 'Kunarac Appeal Judgement', para. 99, citing *The Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23 & IT-96-23/1-A, 'Judgement,' 22 February 2011, 'Kunarac Trial Judgement', para. 418; *The Prosecutor v. Duško Tadić*, IT-94-1-A, 'Judgement,' 15 July 1999, 'Tadić Appeal Judgement', paras. 248, 251 and 271; *The Prosecutor v. Duško Tadić*, IT-94-1-T, 'Opinion and Judgement,' 7 May 1997, 'Tadić Trial Judgement', para. 659; *The Prosecutor v. Mile Mrkšić et al.*, IT-95-13a, 'Indictment,' 3 April 1996, 'Mrkšić Indictment', para. 30.

⁵⁰⁶ *The Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23 & IT-96-23/1-A, 'Judgement,' 12 June 2002, 'Kunarac Appeal Judgement', para. 100, fn. 119 with further references; See also *The Prosecutor v. Popović et al.*, IT-05-88-T, 'Judgement,' 10 June 2010, 'Popović Trial Judgement', para. 757.

⁵⁰⁷ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, 'Duch Trial Judgement,' para. 318, citing *The Prosecutor v. Dragoljub Kunarac et al.*, IT-96-23 & IT-96-23/1-A,

'Judgement,' 12 June 2002, 'Kunarac Appeal Judgement', para. 100; *The Prosecutor v. Mile Mrkšić et al.*, IT-95-13/1-A, 'Judgment,' 5 May 2009, 'Mrkšić Appeal Judgement', para. 41; *The Prosecutor v. Laurent Semanza*, ICTR-97-20-T, 'Judgement and Sentence,' 15 May 2003, 'Semanza Trial Judgement', para. 326.

⁵⁰⁸ Judgement of the IMT, 30 September – 1 October 1946, in *Trial of the Major War Criminals before the International Military Tribunal*, vol. XXII, at 493.

⁵⁰⁹ *United States v. Josef Altstötter et al.*, 3–4 December 1947, 'Justice case', in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, vol. III, at 973, 984. See also at 1063: 'The overt acts of the several defendants must be seen and understood as deliberate contributions towards the effectuation of the policy of the Party and state.'

⁵¹⁰ *United States v. Otto Ohlendorf et al.*, 8–9 April 1948, 'Einsatzgruppen case', in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, vol. IV, at 498.

⁵¹¹ Report of the International Law Commission covering the work of its sixth session, 3 June – 28 July 1954, UN Doc. A/2693, reproduced in *Yearbook of the International Law Commission* (1954), vol. II, at 150, Article 2(11).

⁵¹² *Ibid.*

⁵¹³ *The Attorney-General v. Adolf Eichmann*, Case No. 40/61, 'Judgment', 11 December 1961, in particular paras. 56–88.

⁵¹⁴ *Public Prosecutor v. Menten*, 14 December 1977, (1981) 75 ILR 331, at 363.

⁵¹⁵ *Barbie case*, Cass. crim., 3 June 1988, no. 87-84240, Bull. Crim. no. 246 (1988), at 637; *Touvier case*, Cass. crim., 27 November 1992, no. 92-82409, Bull. Crim. no. 394 (1992), at 1082 (finding that crimes against humanity must be committed 'in the name of a state practicing a hegemonic political ideology'); *R. v. Finta*, 24 March 1994, [1994] 1 SCR 701, at 823 (finding that a state action or policy was a requirement for crimes against humanity). See also M. Cherif Bassiouni, *Crimes against Humanity: Historical Evolution and Contemporary Application* (Cambridge: Cambridge University Press, 2011), at 20 ff. (arguing that state policy is the 'indispensable link that warrants inclusion in the international criminal category').

⁵¹⁶ Document No. **D378/2**, 'Ieng Sary's Alternative Motion on the Limits of the Applicability of Crimes against Humanity at the ECCC', 23 June 2010, para. 10; Document No. **D390/1/2/1.3**, 'Ieng Sary's Response to the Co-Prosecutor's Rule 66 Final Submission and Additional Observations', 1 September 2010, para. 37; Document No. **E163/5/10**, 'Ieng Sary's Submission on Applicable Law in Case 002/01', 18 January 2013, paras 4–6; Document No. **E163/5/10.2**, 'Annex A: Ieng Sary's Submission on Applicable Law in Case 002/01', 18 January 2013, paras 7–10.

⁵¹⁷ See Document No. **E163/5/10**, 'Ieng Sary's Submission on Applicable Law in Case 002/01,' 18 January 2013, para. 6; See Document No. **E163/5/10.2**, 'Annex A to Ieng Sary's Submission on Applicable Law in Case 002/01,' 18 January 2013, para. 11-12. See also *The Prosecutor v. Jovica Stanišić et al.*, IT-03-69-T, 'Judgement,' 30 May 2013, 'Stanišić Trial Judgement', para. 961.

⁵¹⁸ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 334, citing *The Prosecutor v. Vidoje Blagojević et Dragan Jokić*, IT-02-60-T, 'Judgement,' 17 January 2005, 'Blagojević Trial Judgement', para. 572; *The Prosecutor v. Anthanase Seromba*, ICTR-01-66-A, 'Judgement,' 12 March 2008, 'Seromba Appeal Judgement', para. 189.

⁵¹⁹ See e.g., *The Prosecutor v. George Rutaganda*, ICTR-96-3-T, 'Judgement and Sentence,' 6 December 1999, 'Rutaganda Trial Judgement', para. 84; *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, 'Judgement,' 21 May 1999, 'Kayishema and Ruzindana Trial Judgement', para. 144; *The Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-T, 'Judgement,' 7 June 2001, 'Bagilishema Trial Judgement', para. 89. *Accord Mpambara Trial Judgement*, para. 9; *Simba Trial Judgement*, para. 422.

⁵²⁰ See *The Prosecutor v. Mitar Vasiljević*, IT-98-32-T, 'Judgement,' 29 November 2002, 'Vasiljević Trial Judgement', para. 227; *The Prosecutor v. Elizaphan and Gerard Ntakirutimana*, ICTR-96-10-T & ICTR-96-17-T, 'Judgement and Sentence,' 21 February 2003, 'Ntakirutimana Trial Judgement', para. 813-14; *The Prosecutor v. Eliézer Niyitegeka*, ICTR-96-14-T, 'Judgement and Sentence,' 16 May 2003, 'Niyitegeka Trial Judgement', para. 450.

⁵²¹ See *The Prosecutor v. Mitar Vasiljević*, IT-98-32-T, 'Judgement,' 29 November 2002, 'Vasiljević Trial Judgement', para. 227-228.

⁵²² *The Prosecutor v. Mitar Vasiljević*, IT-98-32-T, 'Judgement', 29 November 2002, 'Vasiljević Trial Judgement', para. 217, citing E. Schwelb, 'Crimes Against Humanity, 1946 British Yearbook of International Law, 178, 192 (stating that 'drafters may have included extermination in order to bring the earlier stages in the organization of a policy of extermination under the action of law.')

⁵²³ *The Prosecutor v. Mitar Vasiljević*, IT-98-32-T, 'Judgement,' 29 November 2002, 'Vasiljević Trial Judgement', para 218, citing Opening Speeches of the Chief Prosecutors, The Trial of German Major War Criminals by the International Military Tribunal Sitting at Nuremberg Germany, 20 November 1945 p. 13. Jackson also referred to the Nazi plan 'to exterminate peoples and institutions' and 'the extermination of Jews in Germany.' Opening Speeches of the Chief Prosecutors, The Trial of German Major War Criminals by the International Military Tribunal Sitting at Nuremberg Germany, 20 November 1945 p. 14-18.

⁵²⁴ Judgement of the IMT, 30 September – 1 October 1946, in *Trial of the Major War Criminals before the International Military Tribunal*, vol. XXII, at 494.

⁵²⁵ *United States v. Josef Altstötter et al.*, 3–4 December 1947, 'Justice case', in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, vol. III; *United States v. Brandt and others* ('Medical case'), II *Trials of War Criminals before the Nuremberg Military Tribunal under Control Council Law No. 10*; *Attorney-general v. Adolph Eichmann*, District Court of Jerusalem, Criminal Case No. 40/61, 36 *International Law Report*, para. 79 ff.

⁵²⁶ Though this does not speak to international customary law during the operative period, the Defence notes that the ICC Statute provides for a similar requirement that the killings be 'calculated to bring about the destruction of part of a population.' See ICC Statute, Art. 7(2)(b).

⁵²⁷ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement', 26 July 2010, '*Duch Trial Judgement*', para. 338, citing *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, 'Bagosora Trial Judgement', para. 2191.

⁵²⁸ *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, 'Bagosora Trial Judgement', para. 2191, affirmed on appeal in *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-A, 'Judgement', 14 December 2011, 'Bagosora Appeal Judgement', paras 392-400, citing *The Prosecutor v. Radoslav Brđanin*, IT-99-36-A, 'Judgement', 3 April 2007, 'Brđanin Appeal Judgement', para. 476; *The Prosecutor v. Milomir Stakić*, IT-97-24-A, 'Judgement', 22 March 2006, 'Stakić Appeal Judgement', paras 259-260; *The Prosecutor v. Sylvestre Gacumbitsi*, ICTR-01-64-A, 'Judgement', 7 July 2006, 'Gacumbitsi Appeal Judgement', para. 86; *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, ICTR-01-64-10-A & ICTR-96-17-A, 'Judgement', 13 December 2004, 'Ntakirutimana and Ntakirutimana Appeal Judgement', para. 522.

⁵²⁹ See e.g., *The Prosecutor v. Sylvestre Gacumbitsi*, ICTR-01-64-A, 'Judgement', 7 July 2006, 'Gacumbitsi Appeal Judgement', para. 86; *The Prosecutor v. Elizaphan Ntakirutimana and Gérard Ntakirutimana*, ICTR-01-64-10-A & ICTR-96-17-A, 'Judgement', 13 December 2004, 'Ntakirutimana and Ntakirutimana Appeal Judgement', para. 522; *The Prosecutor v. Milomir Stakić*, IT-97-24-A, 'Judgement', 22 March 2006, 'Stakić Appeal Judgement', para. 260; *The Prosecutor v. Emmanuel Rukundo*, ICTR-01-70-T, 'Judgement', 27 February 2009, 'Rukundo Trial Judgment', para. 586; *The Prosecutor v. Yussuf Muniyaki*, ICTR-97-36A-A, 'Judgement', 28 September 2011, 'Muniyaki Appeals Judgment', paras 141-142; *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008 'Bagosora Trial Judgement', para. 2190, affirmed on appeal in *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-A, 'Judgement', 14 December 2011, 'Bagosora Appeal Judgement', paras 392-400; *The Prosecutor v. Mićo Stanišić and Stojan Župljanin*, IT-08-91-T, 'Judgement', 27 March 2013, 'Stanišić and Župljanin Trial Judgment', para. 45.

⁵³⁰ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement', 26 July 2010, '*Duch Trial Judgement*', paras 376, citing *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, 'Bagosora Trial Judgement', para. 2208; *The Prosecutor v. Georges Ruggiu*, ICTR-97-32-1, 'Judgement and Sentence', 1 June 2000, 'Ruggiu Trial Judgement', para. 21; *The Prosecutor v. Blagoje Simić*, IT-95-9-A, 'Judgement', 28 November 2006, 'Simić et al. Appeal Judgement', para. 177, affirmed on appeal by Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, '*Duch Appeal Judgement*', para. 257, 262 (The analysis lies in 'determining whether or not the persecutory acts or omissions, when considered cumulatively and in context, result in a gross or blatant breach of fundamental rights such that it is equal in gravity of severity to other underlying cries against humanity.')

⁵³¹ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement', 26 July 2010, '*Duch Trial Judgement*', para. 378, citing *The Prosecutor v. Vidoje Blagojević et Dragan Jokić*, IT-02-60-T, 'Judgement', 17 January 2005, 'Blagojević Trial Judgement', para. 580; *The Prosecutor v. Georges Ruggiu*, ICTR-97-32-1, 'Judgement and Sentence', 1 June 2000, 'Ruggiu Trial Judgement', para. 21. See also Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, '*Duch Appeal Judgement*', paras 255-257.

⁵³² Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement', 26 July 2010, '*Duch Trial Judgement*', para. 378; *The Prosecutor v. Milorad Krnojelac*, IT-97-25-T, 'Judgement', 15 March 2002, 'Krnojelac Trial Judgement', para. 199.

⁵³³ *The Prosecutor v. Kupreškić et al.*, IT-95-16-A, 'Appeal Judgement', 23 October 2001, 'Kupreškić Appeal Judgement', para. 98. See also Document No. **E58**, 'Teng Sary's Motion to Strike Portions of the Closing Order due to Defects', 24 February 2011, paras. 12-13. Crucially, the *Duch Trial Chamber* noted that persecution was not outlawed at Nuremberg, nor detailed in other historical instruments defining international law, but instead has been developed by the *ad hoc* tribunals; thus, in defining persecution courts must be sensitive to the principle of legality. Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement', 26 July 2010, '*Duch Trial Judgement*', paras 374-375.

⁵³⁴ Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, '*Duch Appeal Judgement*', paras 274, 283.

⁵³⁵ Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, '*Duch Appeal Judgement*', para. 277.

⁵³⁶ *Prosecutor v. Blagoje Simić et al.*, IT-95-9-T, 'Judgement', 17 October 2003, 'Simic Trial Judgement', paras 684-685, 837.

⁵³⁷ *The Prosecutor v. Laurent Semanza*, ICTR-97-20-T, 'Judgement and Sentence', 15 May 2003, 'Semanza Trial Judgement', paras.470-472.

⁵³⁸ *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-T, 'Judgement and Sentence', 3 December 2003, 'Media Case', paras 1069-1084.

⁵³⁹ *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-T, 'Judgement and Sentence', 3 December 2003, 'Media Case', paras 242, 296-301, 468-469, 475, 487, 754-755.

⁵⁴⁰ *The Prosecutor v. Ferdinand Nahimana et al.*, ICTR-99-52-T, 'Judgement and Sentence', 3 December 2003, 'Media Case', para. 1071.

⁵⁴¹ *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, 'Judgement', 2 September 1998, 'Akayesu Trial Judgement', para. 583; *The Prosecutor v. Clément Kayishema and Obed Ruzindana*, ICTR-95-1-T, 'Judgement', 21 May 1999, 'Kayishema and Ruzindana Trial Judgement', para. 130; *The Prosecutor v. Théoneste Bagosora et al.*, ICTR-98-41-T, 'Judgement and Sentence', 18 December 2008, 'Bagosora Trial Judgement', paras 2167, 2178-2185.

⁵⁴² See Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, '*Duch* Appeal Judgement', paras 215-225.

⁵⁴³ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 377-379, citing *The Prosecutor v. Vidoje Blagojević et al.*, IT-02-60-T, 'Judgement,' 17 January 2005, 'Blagojević Trial Judgement', para. 583; *The Prosecutor v. Miroslav Kvočka et al.*, IT-98-30/1-A, 'Judgement,' 28 February 2005, 'Kvočka Appeal Judgement', para. 460; *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement', para. 165. Affirmed on appeal by Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement,' 3 February 2012, '*Duch* Appeal Judgement', para 240.

⁵⁴⁴ *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement', para. 165.

⁵⁴⁵ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 368, citing *The Prosecutor v. Dario Kordić et al.*, IT-95-14/2-A, 'Judgement,' 17 December 2004, 'Kordić Appeal Judgement', para. 117.

⁵⁴⁶ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 367, citing *The Prosecutor v. Mladen Naletilić and Vinko Martinović*, IT-98-34-T, 'Judgement,' 31 March 2003, 'Naletilić and Martinović Trial Judgement', para. 247; *The Prosecutor v. Eliézer Niyitegeka*, ICTR-96-14-T, 'Judgement and Sentence,' 16 May 2003, 'Niyitegeka Trial Judgement', para. 460.

⁵⁴⁷ Closing Order, para. 1471. ("With respect to the actus reus, victims endured great suffering, or serious mental suffering or injury or a serious attack on human dignity as a result, on one hand, of the arrest, detention or abduction of loved ones and others in conditions which placed them outside of the protection of the law, and on the other hand, the refusal to provide access to, or convey information on the fate or whereabouts of such persons, saying that the perpetrators acted with the authorization and the support of the State or of "Angkar.")

⁵⁴⁸ *Hague Convention (IV) respecting the Laws and Customs of War on Land and its Annex : Regulations concerning the Laws of Customs of War on Land*, The Hague, 18 October 1907, Regulations: Art. 14; *Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, Geneva, 12 August 1949, Art. 16 and 17; *Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, Geneva, 12 August 1949, Art. 18 and 20; *Geneva Convention (III) relative to the Treatment of Prisoners of War*, Geneva, 12 August 1949, Art. 17, 103 and 122; *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, Art. 26 and 137.

⁵⁴⁹ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, Art. 32, 33(1) and (3) – moreover, this instrument entered into force in December 1978, and required only two instruments of ratification (Art. 95(1)); *General Assembly Resolution A/RES/3220 (XXIX)*, 6 November 1974, Assistance and cooperation in accounting for persons who are missing or dead in armed conflicts; *General Assembly Resolution A/RES/3450 (XXX)*, 9 December 1975, Missing persons in Cyprus; *General Assembly Resolution A/RES/32/128*, 16 December 1977, Missing persons in Cyprus; *General Assembly Resolution A/RES/33/172*, 20 December 1978, Missing persons in Cyprus.

⁵⁵⁰ *The Magna Carta (The Great Charter)*, 1215, Art. 39; *International Covenant on Civil and Political Rights*, New York, 16 December 1966, entered into force on 23 March 1976, 999 UNTS 171, Art. 9(3) and 14(3)(c); *European Convention on Human Rights*, Rome, 4 November 1950, entered into force on 3 September 1953, 213 UNTS 221, Art. 5(3) and 6(1); *American Convention on Human Rights*, San José, 22 November 1969, entered into force on 18 July 1978, 1144 UNTS 143, Art. 8(1); *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949, Article 71; *General Assembly Resolution A/RES/3448 (XXX)*, 9 December 1975, Protection of human rights in Chile; *General Assembly Resolution A/RES/31/124*, 16 December 1976, Protection of human rights in Chile.

⁵⁵¹ *Standard Minimum Rules for the Treatment of Prisoners*, adopted in August 30th 1955, U.N. Doc. A/CONF/611, annex I, E.S.C res. 663, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977), Rule 7.

⁵⁵² *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg*, vol. XXII, at 475, 510 (discussing murder and ill-treatment of the civilian population as war crimes, and the functioning of the *Gestapo* and the *Sicherheitsdienst*); US Military Tribunal, *United States v. Josef Altstötter et al.*, in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10*, vol. III, at 1056–1059 (discussing deportation as a crime against humanity).

⁵⁵³ *General Assembly Resolution A/RES/32/118*, 16 December 1977, Protection of human rights in Chile ('disappearance of persons whose detention is systematically denied or never acknowledged'); *General Assembly Resolution A/RES/33/173*, 20 December 1978, Disappeared persons ('persistent refusal of such authorities or organizations to acknowledge that they hold such persons in their custody or to otherwise to account for them'); *General Assembly Resolution A/RES/33/175*, 20 December 1978, Protection of human rights in Chile ('refusal of the Chilean authorities to accept responsibility or account for the large number of persons reported to have disappeared for political reasons, or to undertake an adequate investigation [...] to clarify the fate of these persons').

⁵⁵⁴ Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement,' 3 February 2012, '*Duch* Appeal Judgement', para. 96.

⁵⁵⁵ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 538.

⁵⁵⁶ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 545-547, citing *The Prosecutor v. Ignace Bagilishema*, ICTR-95-1A-A, 'Judgement,' 03 July 2002, 'Bagilishema Appeal Judgement'. See also *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement', para. 198; *The Prosecutor v. Alex Tamba Brima et al.*, SCSL-04-16-A, 'Judgement,' 22 February 2008, 'Brima Appeal Judgement', para. 257.

⁵⁵⁷ *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement', para. 197; *The Prosecutor v. Enver Hadžihanović & Amir Kubura*, IT-01-47-T, 'Judgement,' 15 March 2006, Hadžihanović Trial Judgement, para. 21 (stating rather ambiguously: 'Even when a superior is found to have *de jure* authority over his subordinates, the Prosecution still has to prove beyond reasonable doubt that this superior exercised effective control over his subordinates, unless the Accused does not challenge having exercised such control').

⁵⁵⁸ *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement', paras. 69, 485.

⁵⁵⁹ *The Prosecutor v. Dario Kordić et al.*, IT-95-14/2-A, 'Judgement,' 17 December 2004, 'Kordić Appeal Judgement', para. 847.

⁵⁶⁰ *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement', para. 266. See also *Prosecutor v. Sefer Halilović*, IT-01-48-A, Halilović Trial Judgement, 16 October 2007, para. 752; *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, 'Judgement,' 1 September 2004, 'Brđanin Trial Judgement', para. 276, 281.

⁵⁶¹ *The Prosecutor v. Augustin Bizimungu et al.*, ICTR-00-56-T, 'Judgement and Sentence', 17 May 2011, 'Bizimungu Trial Judgement', para. 1878, 1891.

⁵⁶² *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement', para. 239.

⁵⁶³ See, in respect of genocide: *The Prosecutor v. Radoslav Brđanin*, IT-99-36-T, 'Judgement,' 1 September 2004, 'Brđanin Trial Judgement', para. 721; *The Prosecutor v. Vidoje Blagojević et Dragan Jokić*, IT-02-60-T, 'Judgement,' 17 January 2005, 'Blagojević Trial Judgement', para. 686.

⁵⁶⁴ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, "Judgement," 26 July 2010, "*Duch* Trial Judgement," para. 543, citing *The Prosecutor v. Dario Kordić et al.*, IT-95-14/2-T, 'Judgement,' 26 February 2001, 'Kordić Trial Judgement', para. 427; ; *The Prosecutor v. Issa Sesay et al.*, 'Judgement,' SCSL-04-15-A, 26 October 2009, 'Sesay Appeal Judgement', para. 309.

⁵⁶⁵ Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement' para. 543, citing *The Prosecutor v. Naser Orić*, IT-03-68-A, 'Judgement,' 03 July 2008, 'Orić Appeal Judgement', paras. 57-58.

⁵⁶⁶ *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement', para. 241; *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement', para. 62.

⁵⁶⁷ *The Prosecutor v. Zejnil Delalić et al.*, IT-96-21-A, 'Judgement,' 20 February 2001, 'Delalić Appeal Judgement'; *The Prosecutor v. Milorad Krnojelac*, IT-97-25-T, 'Judgement,' 15 March 2002, 'Krnojelac Trial Judgement', para. 155.

⁵⁶⁸ *The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement',

para. 72; Case No. 001/18-07-2007-ECCC/SC, Document No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 545; *The Prosecutor v. Enver Hadžihasanović & Amir Kubura*, IT-01-47-T, 'Judgement,' 15 March 2006, Hadžihasanović Trial Judgement, para. 152.

⁵⁶⁹ Closing Order, para. 1362. *See also* paras 1350-1, 1363.

⁵⁷⁰ Online at <http://english.oxforddictionaries.com/definition/discrimination>.

⁵⁷¹ *See, e.g.*, *International Convention on the Elimination of All Forms of Racial Discrimination*, New York, 7 March 1966, entered into force on 4 January 1969, 660 UNTS 195, Art. 1(1); *Convention on the Elimination of All Forms of Discrimination against Women*, New York, 18 December 1979, entered into force on 3 September 1981, 1249 UNTS 13, Art. 1.

⁵⁷² *See, e.g.*, Criminal Code of the Kingdom of Cambodia, Arts 265 and 266.

⁵⁷³ Document No. **E1/25.1**, 'Transcript of Trial Proceedings', 11 January 2012, p. 22:1-3.

⁵⁷⁴ Case 001/18/07-2007-ECCC/SC, 'Judgement', 3 February 2012, '*Duch* Trial Judgement', para. 313; Closing Order, para. 1315.

⁵⁷⁵ Document No. **D173**, 'Twelfth Request for Investigative Action', 3 June 2009.

⁵⁷⁶ *See* section I-C, *supra*.

⁵⁷⁷ *See* section I-D, *supra*.

⁵⁷⁸ Document No. **E3/4178**, 'Annex 13: USAID, Cambodia Termination Report volume I.', 1975, ERN 00291328 ; *see also ibid*, 00291342 ('Cambodia slipped in less than five years from a significant exporter of rice to large-scale imports, and when these ended in April 1975, to the brink of starvation.')

⁵⁷⁹ From 1972 to 1975 it was projected that Cambodia's average daily consumption of petroleum products was rationed as much as 25.5%, and in Phnom Penh, the daily quote for the civilian population was cut from 520 cubic meters prior to November 1973 to a mere 163 cubic meters by February 1975. *See* Document No. **E3/4178**, 'Annex 13: USAID, Cambodia Termination Report volume I.', 1975, ERN 00291293.

⁵⁸⁰ *Ibid*, ERN 00291294.

⁵⁸¹ In 1974 Cambodia imported 186,550 cubic meters of petroleum at a cost of \$19 million. The projected import required for 1975 was 158,200 cubic meters, although how much, if any, of that amount actually made it to Cambodia is unknown. *See* Document No. **E3/4178**, 'Annex 13: USAID, Cambodia Termination Report volume I.', 1975, ERN 00291292-93; *see also* Document No. **E3/88**, William SHAWCROSS, 'Sideshow – Nixon, Kissinger and the Destruction of Cambodia', 1991, ERN 00430017-18.

⁵⁸² Document No. **D173**, 'Twelfth Request for Investigative Action', 3 June 2009.

⁵⁸³ Document No. **E1/94.1**, 'Transcript of Trial Proceedings', 23 July 2012, p. 48:3-6.

⁵⁸⁴ Document No. **E1/178.1**, 'Transcript of Trial Proceedings', 9 April 2013, p. 60:21-22.

⁵⁸⁵ *See e.g.*, Document No. **E1/137.1**, 'Transcript of Trial Proceeding,' 23 October 2012, p. 85:1-25; Document No. **E1/165.1**, 'Transcript of Trial Proceeding', 28 January 2013, pp. 82:23-83:7; Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, pp. 86:15-89:21. *See also* Document No. **E3/2720**, CPK Telegram titled 'Situation of Refugees from Phnom Penh', 28 April 1978, ERN 00517789 ('Lon Nol left a desert in his wake. Phnom Penh lacks everything').

⁵⁸⁶ *See e.g.*, Document No. **E1/140.1**, 'Transcript of Trial Proceedings', 5 November 2012, pp. 77:1-17; Document No. **E1/128.1**, 'Transcript of Trial Proceedings', 2 October 2012, pp. 24:22-25:24; Document No. **E1/153.1**, 'Transcript of Trial Proceedings', 13 December 2012, pp. 57:4-59:1.

⁵⁸⁷ Document No. **E1/140.1**, 'Transcript of Trial Proceedings', 5 November 2012, p. 78:8-11; *see also*, Document No. **E1/153.1**, 'Transcript of Trial Proceedings', 13 December 2012, pp. 57:4-59:1.

⁵⁸⁸ Document No. **E1/201.1**, 'Transcript of Trial Proceedings', 5 June 2013; Document No. **E1/202.1**, 'Transcript of Trial Proceedings', 6 June 2013; Document No. **E1/203.1**, 'Transcript of Trial Proceedings', 7 June 2013.

⁵⁸⁹ Document No. **E1/94.1**, 'Transcript of Trial Proceedings', 23 July 2012, p. 46:6-8.

⁵⁹⁰ Document No. **E1/179.1**, 'Transcript of Trial Proceedings', 10 April 2013, p. 4:17-24. *See also*, Document No. **E1/189.1**, 'Transcript of Trial Proceedings', 6 May 2013, p. 21:16-19.

⁵⁹¹ *See* Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, paras 6-27.

⁵⁹² Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, para. 19.

⁵⁹³ Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, para. 19.

⁵⁹⁴ Document No. **E1/94.1**, 'Transcript of Trial Proceedings', 23 July 2012, p. 50:12-13.

⁵⁹⁵ Document No. **E1/94.1**, 'Transcript of Trial Proceedings', 23 July 2012, p. 48:4-5.

⁵⁹⁶ *See also*, Document No. **E3/3005**, 'Memorandum for the President entitled "Life Inside Cambodia"', May 10, 1976, ERN 00495453 ('a group of refugee who visited Battambang province in February from Thailand's Chanthaburi province observed that, "about food khmer rouge had give much better than before"); Document No. **E3/4158**, 'Urban Exodus Complete, Cambodian Refugees Say', 13 June 1975, ERN 445283 ('the refugees who were interviewed said that they had been well treated and never wanted for basic food, principally rice').

⁵⁹⁷ Document No. **E1/178.1**, 'Transcript of Trial Proceedings', 9 April 2013, pp. 89:23-90:4.

- ⁵⁹⁸ Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, paras 18-21.
- ⁵⁹⁹ See 'Laos approves Xayaburi "mega" dam on Mekong', BBC News, 6 November 2012, available online at: <http://www.bbc.co.uk/news/world-asia-20203072>; Kirk Herbertson, 'Mekong countries at odds over Mega-Dams', 5 February 2013, available online at: <http://www.fairobserver.com/article/mekong-countries-odds-over-mega-dams>.
- ⁶⁰⁰ Document No. **E3/89**, 'Steven Heder Interview of Ieng Sary', 17 December 1996, ERN 00003663.
- ⁶⁰¹ Document No. **E3/89**, 'Steven Heder Interview of Ieng Sary', 17 December 1996, ERN 00003664.
- ⁶⁰² Document No. **E3/9**, 'Pol Pot: The History of Nightmare', 2004, ERN 00396485.
- ⁶⁰³ Document No. **E3/9**, 'Pol Pot: The History of Nightmare', 2004, ERN 003966495.
- ⁶⁰⁴ Document No. **E1/178.1**, 'Transcript of Trial Proceedings', 9 April 2013, pp. 76:21-78:4.
- ⁶⁰⁵ Document No. **E1/165.1**, 'Transcript of Trial Proceedings', 28 January 2013, pp. 64:22-65:2.
- ⁶⁰⁶ Document No. **E3/749**, 'Revolutionary Youth, Issue 8', August 1975 (describing how the evacuation of Phnom Penh sorted out problems, including food supply).
- ⁶⁰⁷ Document No. **E1/223.1**, 'Transcript of Trial Proceedings', 15 July 2013, pp. 22:24-23:20.
- ⁶⁰⁸ Closing Order, para. 1459.
- ⁶⁰⁹ See section III, *supra*.
- ⁶¹⁰ Document No. **E1/178.1**, 'Transcript of Trial Proceedings', 9 April 2013; Document No. **E1/179.1**, 'Transcript of Trial Proceedings', 10 April 2013; Document No. **E1/180.1**, 'Transcript of Trial Proceedings', 11 April 2013.
- ⁶¹¹ See Document No. **E93/4.3**, 'Materials in Preparation for Trial: Witness Summaries – Nuon Chea Defence Team', 21 June 2011, nos. 133, 177, 202, 295.
- ⁶¹² Document No. **E189/3/1/7.1.5**, 'September 2012 Witnesses Request', 5 September 2012, para. 26.
- ⁶¹³ Closing Order, para. 1387.
- ⁶¹⁴ Closing Order, para. 1382.
- ⁶¹⁵ See section IV, *supra*.
- ⁶¹⁶ See section V-B, *supra*.
- ⁶¹⁷ Closing Order, para. 224.
- ⁶¹⁸ Document No. **E1/189.1**, 'Transcript of Trial Proceedings', 16 May 2013, p. 39:24-40:4.
- ⁶¹⁹ See section I, *supra*.
- ⁶²⁰ Closing Order, para. 1389.
- ⁶²¹ See section IV, *supra*.
- ⁶²² See section IV, *supra*.
- ⁶²³ Closing Order, para. 1368.
- ⁶²⁴ Document No. **E1/93.1**, 'Transcript of Trial Proceedings', 20 July 2012, pp. 103:24-104:8.
- ⁶²⁵ See section III, *supra*.
- ⁶²⁶ Document No. **E1/202.1**, 'Transcript of Trial Proceedings', 6 June 2013, pp. 38:12-40:17. This is corroborated by both PECH Chim, who stated that before the evacuees arrived the Sector held a meeting to plan how to receive them. Document No. **E3/4628**, 'Written Record of Interview of Witness PECH Chim', 26 August 2009, ERN 00379307-08, and SOU Soeun, whose district committee told him to get ready to receive the evacuees before they arrived. Document No. **E3/5294**, 'Written Record of Interview of Witness SOU Soeun', 5 July 2009, ERN 00360111-12.
- ⁶²⁷ Document No. **E1/202.1**, 'Transcript of Trial Proceedings', 6 June 2013, pp. 38:12-40:17.
- ⁶²⁸ See section III, *supra*.
- ⁶²⁹ See section IV, *supra*.
- ⁶³⁰ Closing Order, para. 1417.
- ⁶³¹ Closing Order, paras 225-226.
- ⁶³² See Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, 'Duch Appeal Judgement', paras 215-225.
- ⁶³³ See Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, 'Duch Appeal Judgement', paras 215-225.
- ⁶³⁴ Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, 'Duch Appeal Judgement', paras. 232-234, 238. See also *The Prosecutor v. Popović et al.*, IT-05-88-T, 'Judgement', 10 June 2010, 'Popović Trial Judgement', para. 965, citing *The Prosecutor v. Duško Tadić*, IT-94-1-A, 'Judgement', 15 July 1999, 'Tadić Appeal Judgement', para. 305; *The Prosecutor v. Milorad Krnojelac*, IT-97-25-A, 'Judgement', 17 September 2003, 'Krnojelac Appeal Judgement', para. 184.
- ⁶³⁵ Case 001//18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, 'Duch Appeal Judgement', para. 268. See also *The Prosecutor v. Kupreškić et al.*, IT-95-16-T, 'Judgement', 14 January 2000, 'Kupreškić et al. Trial Judgement', para. 636.
- ⁶³⁶ See section IV, *supra* (political groups are defined subjectively by the Accused).
- ⁶³⁷ Document No. **E1/91.1**, 'Transcript of Trial Proceedings', 18 July 2012, p. 22: 7-16; Document No. **E1/92.1**, 'Transcript of Trial Proceedings', 19 July 2012, p. 62: 24-25.

⁶³⁸ See section III F, *infra*.

⁶³⁹ Document No. **E1/181.1**, 'Transcript of Trial Proceedings', 22 April 2013, p. 54:8-15.

⁶⁴⁰ Document No. **E1/182.1**, 'Transcript of Trial Proceedings', 23 April 2013, pp. 5:23-6:9.

⁶⁴¹ Document No. **E3/4657**, 'Written Record of Interview of Civil Party of [REDACTED]', 9 July 2009; Document No. **E3/5132**, 'Written Record of Interview of Witness [REDACTED]', 15 November 2007, ERN 00223189-90; Document No. **E3/415**, 'Written Record of Interview of Witness [REDACTED]', 31 August 2009, ERN 00404279-80; Document No. **E3/5498**, 'Written Record of Interview of Witness [REDACTED]', 17 August 2009, ERN 00384399-400; Document No. **E3/5255**, 'Written Record of Interview of Interview of Witness [REDACTED]', 18 November 2008, ERN 00250043-44; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 103:23-104:3; Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013, p.34:15-16; Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013, p. 35:14-17; Document No. **E3/5510**, 'Written Record of Interview of Civil Party of [REDACTED]', 27 October 2009, ERN 00411490-91; Document No. **E3/5515**, 'Written Record of Interview of Civil Party of [REDACTED]', 12 November 2009, ERN 00410246; Document No. **E3/5135**, 'Written Record of Interview of Civil Party of [REDACTED]', 27 November 2007, ERN 00233132-33; Document No. **E3/5294**, 'Written Record of Interview of Civil Party of [REDACTED]', 5 July 2009, ERN 00360111-12.

⁶⁴² Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 103:23-104:3.

⁶⁴³ Document No. **E3/5255**, 'Written Record of Interview of Civil Party [REDACTED]', 18 November 2008, ERN 00250043-44; Document No. **E3/5510**, 'Written Record of Interview of Civil Party [REDACTED]', 27 October 2009, ERN 00411490-91.

⁶⁴⁴ Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013, p.34:15-16.

⁶⁴⁵ Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013, ERN p. 35:14-17.

⁶⁴⁶ Document No. **E3/5518**, 'Written Record of Interview of Witness [REDACTED]', 21 November 2009, ERN 004113901; Document No. **E3/5124**, 'Written Record of Interview of witness [REDACTED]', 22 October 2007, ERN 00223393; Document No. **E3/3956**, 'Written Record of Interview of Witness SOKH Chhin', 8 December 2009, ERN 00426295; Document No. **E3/5219**, 'Written Record of Interview of Witness [REDACTED]', 9 October 2008, ERN 00233465; Document No. **E3/5128**, 'Written Record of Interview of Witness [REDACTED]', 26 October 2007, ERN 00163441-41; Document No. **E3/403**, 'Written Record of Interview of Witness [REDACTED]', 12 October 2009, ERN 00403010; Document No. **E3/5200**, 'Written Record of Interview of Witness [REDACTED]', 7 August 2008, ERN 00275120-21.

⁶⁴⁷ Document No. **E3/742**, 'Revolutionary Flag, Special Issue', April 1977, ERN 00478505.

⁶⁴⁸ Document No. **E1/138.1**, 'Transcript of Trial Proceedings', 24 October 2012, pp. 9:21-10:16.

⁶⁴⁹ Document No. **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012, pp. 85:24-86:23.

⁶⁵⁰ Document No. **E1/136.1**, 'Transcript of Trial Proceedings', 22 October 2012, pp. 83:15-84:1; 102:5-16.

⁶⁵¹ Document No. **E1/141.1**, 'Transcript of Trial Proceedings,' 6 November 2012, pp. 17:2-18; 30:21-31:4.

⁶⁵² Document No. **E3/5592**, 'Written Record of Interview of Civil Party [REDACTED]', 29 December 2009, ERN 00434941.

⁶⁵³ Document No. **E1/148.1**, 'Transcript of Trial Proceedings', 5 December 2012, ERN 00868147-50; Document No. **E1/141.1**, 'Transcript of Trial Proceedings', 6 November 2012, pp. 14:22-15:8; 23:21-24:9; 26:12-22; 29:7-15; 30:21-31:5; 50: 21-51:1; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, ERN 00868944, 00868972-73; Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, ERN 00868397-98, 402, 410-15.

⁶⁵⁴ Closing Order, para. 234, citing: Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12; Document No. **E3/4628**, 'Written Record of Interview of Witness PECH Chim', 26 August 2009, ERN 00379307.

⁶⁵⁵ Closing Order, para. 234, citing: Document No. **E3/509**, 'Written Record of Interview of Witness [REDACTED]', 8 January 2009, ERN 00282215-16; Document No. **E3/5276**, 'Written Record of Interview of Witness [REDACTED]', 17 February 2009, ERN 00287354-55.

⁶⁵⁶ Closing Order, para. 234, citing: Document No. **E3/471**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008, ERN 00223335-36.

⁶⁵⁷ Document No. **E3/4628**, 'Written Record of Interview of Witness PECH Chim', 26 August 2009, ERN 00379307.

⁶⁵⁸ Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12; Document No. **E3/4628**, 'Written Record of Interview of Witness PECH Chim', 26 August 2009, ERN 00379307.

⁶⁵⁹ Document No. **E3/509**, 'Written Record of Interview of Witness [REDACTED]', 8 January 2009, ERN 00282215-16.

⁶⁶⁰ Document No. **E3/471**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008, ERN 00223335.

⁶⁶¹ Document No. **E3/5276**, 'Written Record of Interview of Witness [REDACTED]', 17 February 2009, ERN 00287354-55.

⁶⁶² Document No. **E1/138.1**, 'Transcript of Trial Proceedings', 24 October 2012, pp. 108:15-109:2; Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, pp. 49:19-50:5; Document No. **E1/193.1**, 'Transcript of Trial Proceedings', 20 May, 2013, pp. 15:23-16:3, 36:1-43:9, 66:4-71:20, 69:12-73:15; Document No. **E3/5152**, 'Written Record of Interview of Witness [REDACTED]', 7 March 2008, ERN 00205080-81; Document No. **E3/470**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008, ERN 00205008.

⁶⁶³ See section VII, *infra*. Document No. **E1/219.1**, 'Transcript of Trial Proceedings', 8 July 2013, pp. 47-51.

⁶⁶⁴ See section IV, *supra*.

⁶⁶⁵ See section IIIB, *supra*.

⁶⁶⁶ Case 001/18/07-2007-ECCC/SC, Document No. **F28**, 'Appeal Judgement', 3 February 2012, 'Duch Appeal Judgement', paras 274, 283.

⁶⁶⁷ See Annex to Email from Susan Lamb to Parties, dated 6 June 2013; Document No. **E208.1**, OCP List of Phase I Population Witness Statements Tendered for Admission. See also statements cited in paras 224-240 of the Closing Order.

⁶⁶⁸ Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12.

⁶⁶⁹ Document No. **E1/138.1**, 'Transcript of Trial Proceedings', 24 October 2012, pp. 105:13-14.

⁶⁷⁰ Document No. **E1/165.1**, 'Transcript of Trial Proceedings', 28 January 2013, p. 45:18-25.

⁶⁷¹ Closing Order, para. 231, citing Document No. **E3/4657**, 'Written Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353700-01; Document No. **E3/395**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379156; Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12; Document No. **E3/5556**, 'Written Record of Interview of Civil Party [REDACTED]', 1 September 2009, ERN 00377358; Document No. **E3/5540**, 'Written Record of Interview of Civil Party [REDACTED]', 31 August 2009, ERN 00384417; Document No. **E3/509**, 'Written Record of Interview of Witness [REDACTED]', 8 January 2009, ERN 00282215-16; Document No. **E3/370**, 'Written Record of Interview of Witness Francois PONCHAUD', 18 February 2009, ERN 00333952; Document No. **E3/5556**, 'Written Record of Interview of Civil Party [REDACTED]', 1 September 2009, ERN 00377359. See also Document No. **E3/5165**, 'Written Record of Interview of Witness [REDACTED]', 1 April 2008, ERN 00195392.

⁶⁷² Closing Order, para. 231, citing Document No. **E3/5165**, 'Written Record of Interview of Witness [REDACTED]', 1 April 2008, ERN 00195392; Document No. **E3/5231**, 'Written Record of Interview of Witness [REDACTED]', 18 December 2008, ERN 00279249-50; Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12; Document No. **E3/370**, 'Written Record of Interview of Witness PONCHAUD Francois', 18 February 2009, ERN 00333952; Document No. **E1/76.1**, 'Transcript of Trial Proceedings', 28 May 2012, p. 77:13-19.

⁶⁷³ Document No. **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012, pp. 81:1-4, 90:15-17; Document No. **E1/148.1**, 'Transcript of Trial Proceedings', 5 December 2012, p. 86:7-9; Document No. **E1/165.1**, 'Transcript of Trial Proceedings', 28 January 2013, p. 36:18-19; Document No. **E1/178.1**, 'Transcript of Trial Proceedings', 9 April 2013, pp. 15:8-14, 23:8-17; Document No. **E1/146.1**, 'Transcript of Trial Proceedings', 23 November 2012, p. 47:7-13; Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, pp. 39:25-40:6; Document No. **E1/148.1**, 'Transcript of Trial Proceedings', 5 December 2012, pp. 15:23-18:3; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009; Document No. **E3/5231**, 'Written Record of Interview of Witness [REDACTED]', 18 December 2008; Document No. **E3/5191**, 'Written Record of Interview of Witness [REDACTED]', 3 July 2008; Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009; Document No. **E3/5559**, 'Written Record of Interview of Civil Party [REDACTED]', 9 September 2009; Document No. **E3/1747**, 'Written Record of Interview of Witness [REDACTED]', 16 July 2008; Document No. **E3/509**, 'Written Record of Interview of Witness [REDACTED]', 8 January 2009; Document No. **E3/470**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008; Document No. **E3/5523**, 'Written Record of Interview of Witness [REDACTED]', 9 December 2009; Document No. **E3/470**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008; Document No. **E3/471**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008; Document No. **E3/5505**, 'Written Record of Interview of Witness [REDACTED]', 23 October 2009; Document No. **E3/5562**, 'Written Record of Interview of Civil Party SENG Chon', 16 October 2009; Document No. **E3/5613**, 'Written Record of Interview of Witness [REDACTED]', 26 March 2010; Document No. **E3/5173**, 'Written Record of Interview of Witness [REDACTED]', 8 May 2008; Document No. **E3/5267**, 'Written Record of Interview of Witness [REDACTED]', 14 January 2009; Document No. **D22/270a**, 'Supplementary Information Form of Civil Party YUOS Phal', 19 March 2010.

⁶⁷⁴ Closing Order, para. 233, citing Document No. **E3/3961**, 'Written Record of Interview of Witness SOUM Chea', 6 March 2008, ERN 00223345-46; Document No. **E3/3970**, 'Written Record of Interview of Civil Party PECH Srey Phal', 29 December 2009, ERN 00434429-31.

⁶⁷⁵ Closing Order, para. 231, citing Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00373421; Document No. **E3/5559**, 'Written Record of Interview of Civil Party [REDACTED]', 9 September 2009, ERN 00377368; Document No. **E3/1747**, 'Written Record of Interview of

Witness ██████████, 16 July 2008, ERN 00243009; Document No. **E3/5273**, 'Written Record of Interview of Witness ██████████', 12 February 2009, ERN 00290499; Document No. **E3/5556**, 'Written Record of Interview of Civil Party ██████████', 1 September 2009, ERN 00377358; Document No. **E3/4608**, 'Written Record of Interview of Civil Party SOU Sotheavy', 13 October 2009, ERN 00426416; Document No. **E3/5239**, 'Written Record of Interview of Witness ██████████', 3 December 2008, ERN 00244186; Document No. **E3/5543**, 'Written Record of Interview of Witness ██████████', 11 September 2009, ERN 00384778.

⁶⁷⁶ Closing Order, para 231, citing Document No. **E3/4657**, 'Written Record of Interview of Civil Party ██████████', 9 July 2009, ERN 00353700-00353701; Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379156; Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00373421; Document No. **E3/5238**, 'Written Record of Interview of Civil Party ██████████', 19 January 2008, ERN 00270670 ; Document No. **E3/5280**, '2nd Written Record of Interview of Witness ██████████', 10 March 2009, ERN 00205081; Document No. **E3/3976**, 'Written Record of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346931; Document No. **E3/509**, 'Written Record of Interview of Witness ██████████', 8 January 2009, ERN 00282215-16; Document No. **E3/4630**, 'Written Record of Interview of Witness LEV Lam', 1 July 2008, ERN 00274646; Document No. **E3/3961**, 'Written Record of Interview of Witness SOUM Chea', 6 March 2008, ERN 00223345-46; Document No. **E3/3959**, 'Written Record of Interview of Witness KUNG Kim alias Kae or LENG Kim', 9 January 2009, ERN 00278682-83; Document No. **E3/5565**, 'Written Record of Interview of Witness ██████████', 13 August 2009, ERN 00365537-38; Document No. **E3/1747**, 'Written Record of Interview of Witness ██████████', 16 July 2008, ERN 00243009; Document No. **E3/5231**, 'Written Record of Interview of Witness ██████████', 18 December 2008, ERN 00279249-50; Document No. **E3/5133**, 'Written Record of Interview of ██████████', 19 November 2007, ERN 00278678; Document No. **E3/5556**, 'Written Record of Interview of Civil Party ██████████', 1 September 2009, ERN 00377358; Document No. **E3/5540**, 'Written Record of Interview of Civil Party ██████████', 31 August 2009, ERN 00384416; Document No. **E3/4608**, 'Written Record of Interview of Civil Party SOU Sotheavy', 13 October 2009, ERN 00426416; Document No. **E3/435**, '1st Written Record of Interview of Witness SAKIM Lmut', 27 August 2009, ERN 00425911; Document No. **E3/5562**, 'Written Record of Interview of Civil Party ██████████', 16 October 2009, ERN 00400454; Document No. **E3/451**, 20th 'Written Record of Interview of Charged Person Kaing Guek Eav alias DUCH', 5 May 2008, ERN 0020450.

⁶⁷⁷ Closing Order, para, 232, citing Document No. **E3/3959**, 'Written Record of Interview of Witness KUNG Kim alias Kae or LENG Kim', 9 January 2009, ERN 00278682-83; Document No. **E3/5540**, 'Written Record of Interview of Civil Party ██████████', 31 August 2009, ERN 00384416; Document No. **E3/3961**, 'Written Record of Interview of Witness SOUM Chea', 6 March 2008, ERN 00223345-46; Document No. **E3/362**, 'Written Record of Interview of Witness CHHOUK Rin', 29 July 2008, ERN 00268896.

⁶⁷⁸ Closing Order, para. 231, citing Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379156; Document No. **E3/5562**, 'Written Record of Interview of Civil Party ██████████', 16 October 2009, ERN 00400454; Document No. **E3/369**, 'Written Record of Interview of Witness ██████████', 29 May 2009, ERN 00272719.

⁶⁷⁹ Closing Order, para. 232, citing Document No. **E3/5562**, 'Written Record of Interview of Civil Party ██████████', 16 October 2009, ERN 00400454; Document No. **E3/1805**, 'Analytical Report by the Government of Norway entitled 'Submission of the Government of Norway to the United Nations Commission on Human Rights'', 18 July 1978, ERN 00087548-49.

⁶⁸⁰ Document No. **E3/3961**, 'Written Record of Interview of Witness SOUM Chea', 6 March 2008, ERN 00223345-46; Document No. **E1/140.1**, 'Transcript of Trial Proceedings', 5 November 2012, pp. 14:8-16, 113:7-10.

⁶⁸¹ Document No. **E3/369**, 'Written Record of Interview of Witness ██████████', 29 May 2009, ERN 00272719.

⁶⁸² Document No. **E3/5539**, 'Written Record of Interview of Civil Party ██████████', 28 August 2009, ERN 00380124.

⁶⁸³ Document No. **E1/165.1**, 'Transcript of Trial Proceedings', 28 January 2013, pp. 72:16-20, 103:9-20.

⁶⁸⁴ Document No. **E3/5562**, 'Written Record of Interview of Civil Party ██████████', 16 October 2009, ERN 00400454; Document No. **E3/1805**, 'Analytical Report by the Government of Norway entitled 'Submission of the Government of Norway to the United Nations Commission on Human Rights'', 18 July 1978, ERN 00087548-49; Document No. **E3/5238**, 'Written Record of Interview of Civil Party ██████████', 19 January 2008, ERN 00270673; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009 ERN 00346930-32; Document No. **E3/5559**, 'Written Record of Interview of Civil Party ██████████', 9 September 2009, ERN 00377368; Document No. **E3/4148**, 'American Talks of Phnom Penh After the Fall', 5 July 2006, ERN 00413479; Document No. **D304/L.3**, 'Children and UNICEF in Cambodia: From 1952 To Year Zero', 1 October 2009; Document No. **E3/3006**, 'Embassy Bangkok Report 09757', May 1975, ERN 00495563, 00495566; Document No. **E3/3004**, 'Embassy Bangkok Report 1975', June 1975, ERN 00495557; Document No. **E3/5278**, 'Written Record of Interview of Witness ██████████', 4 March 2009, ERN p.3; Document No. **E3/5267**, 'Written Record of Interview of Witness ██████████', 14 January 2009, ERN 00282351-53; Document No. **E3/5310**, 'Written Record of Interview of Civil Party ██████████', 7 July

2009, ERN 00353484. In one particularly unreliable piece of evidence, OCP sites to a prior interview with Ear Sopal, who was less than one year old at the time of the evacuation, and thus was told of these alleged dead bodies by his mother. Document No. **E3/5238**, 'Written Record of Interview of Civil Party [REDACTED]', 19 January 2008, ERN 00270673.

⁶⁸⁵ Document No. **E3/5238**, 'Written Record of Interview of Civil Party [REDACTED]', 19 January 2008, ERN 00270673; Document No. **E3/5562**, 'Written Record of Interview of Civil Party [REDACTED]', 16 October 2009, ERN 00400454-55; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346930-32; Document No. **E3/5267**, 'Written Record of Interview of Witness [REDACTED]', 14 January 2009, ERN 00282351-53.

⁶⁸⁶ Document No. **E3/5137**, 'Written Record of Interview of Witness [REDACTED]', 22 January 2009, ERN 00233536-38.

⁶⁸⁷ Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00373422.

⁶⁸⁸ Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00373422. The other statement, of [REDACTED], is not in evidence.

⁶⁸⁹ Document No. **E3/5137**, 'Written Record of Interview of Witness [REDACTED]', 22 January 2009, ERN 00233536-37.

⁶⁹⁰ Document No. **E3/4654**, 'Written Record of Interview of Civil Party [REDACTED]', 15 October 2009, ERN 00400463-64; Document No. **E3/5559**, 'Written Record of Interview of Civil Party [REDACTED]', 9 September 2009, ERN 00377368; Document No. **E3/5562**, 'Written Record of Interview of Civil Party [REDACTED]', 16 October 2009, ERN 00400454; Document No. **E3/5799**, 'Written Record of Interview of Civil Party CHUM Sokh'a, 2 September 2009, ERN 00380711-12; Document No. **E2/4150**, 'Evacuees Tell of Executions, Kindness', *Los Angeles Times*, 8 May 1975.

⁶⁹¹ Document No. **E3/4654**, 'Written Record of Interview of Civil Party [REDACTED]', 15 October 2009, ERN 00400463-64

⁶⁹² Document No. **E3/5799**, 'Written Record of Interview of Civil Party CHUM Sokha, 2 September 2009, ERN 00380711-12.

⁶⁹³ Document No. **E3/5799**, 'Written Record of Interview of Civil Party CHUM Sokha, 2 September 2009, ERN 00380711-12.

⁶⁹⁴ Document No. **E3/4150**, 'Evacuees Tell of Executions, Kindness', *Los Angeles Times*, 8 May 1975.

⁶⁹⁵ Document No. **E1/137.1**, 'Transcript of Trial Proceedings', 23 October 2012, pp. 90:18-91:4.

⁶⁹⁶ (Mom Sam Ourn) Document No. **E1/141.1**, 'Transcript of Trial Proceedings', 6 November 2012, p. 15:13-17; ([REDACTED]) Document No. **E3/5505**, 'Written Record of Interview of Witness [REDACTED]', 23 October 2009, ERN 00399168; Document No. **E3/5509**, 'Written Record of Interview of Witness [REDACTED]', 29 October 2009, ERN 00403064; Document No. **E3/5233**, 'Written Record of Interview of Witness [REDACTED]', 23 December 2008, ERN 00279260; Document No. **E3/4627**, '1st Written Record of Interview of Witness [REDACTED]', 30 October 2007, ERN 00223476-77; Document No. **E3/5541**, 'Written Record of Interview of Civil Party [REDACTED]', 31 August 2009, ERN 00374818.

⁶⁹⁷ (Hun Chhunly) Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 42:22-43:12, 65:19-66:12; (Pechuy Chipse) Document No. **E1/143.1**, 'Transcript of Trial Proceedings', 12 November 2012, pp. 70:4-73:6, 90:13-93:22; (Lev Lam) Document No. **E1/216.1**, 'Transcript of Trial Proceedings', 2 July 2013, pp. 22:7-10, 87:18-21; Document No. **E291/2**, 'Request to Summons Witnesses in Respect of Alleged Policy of Targeting Khmer Republic Officials', 25 July 2013, para. 18 (Describing Lev Lam prior statement and testimony); Document No. **E3/5256**, 'Written Record of Interview of Witness [REDACTED]', 23 November 2008, ERN 00739469; Document No. **E3/5250**, 'Written Record of Interview of Witness [REDACTED]', 13 October 2008, ERN 00235489.

⁶⁹⁸ Closing Order para 234, citing **E3/1747**, 'Written Record of Interview of Witness [REDACTED]', 16 July 2008, ERN 00243009.

⁶⁹⁹ Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha, 2 September 2009, ERN 00380711.

⁷⁰⁰ Document No. **E1/140.1**, 'Transcript of Trial Proceedings', 5 November 2012, pp. 99:23-101:10, 73:24-74:14. The witness further stated that "Koeun" was a "daring man," and "a very fierce and harsh guy," further proof that even if this incident was proven, the crime was ordered by rogue commanders, and not through Party policy.

⁷⁰¹ Document No. **E3/5539**, 'Written Record of Interview of Witness [REDACTED]', 28 August 2009, ERN 00380124.

⁷⁰² Document No. **E3/1747**, 'Written Record of Interview of Witness [REDACTED]', 16 July 2008, ERN 00243009;

⁷⁰³ Document No. **E3/5556**, 'Written Record of Interview of Civil Party [REDACTED]', 1 September 2009, ERN 00377358; Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380711-12; Document No. **E3/5540**, 'Written Record of Interview of Civil Party [REDACTED]',

31 August 2009, ERN 00384416; Document No. **E3/464**, Written Record of Interview of Witness ██████████, 19 January 2008, ERN 00226108-09.

⁷⁰⁴ Document No. **E3/464**, 'Written Record of Interview of Witness ██████████', 19 January 2008, ERN 00226108-09;

⁷⁰⁵ Document No. **E3/5540**, 'Written Record of Interview of Civil Party ██████████', 31 August 2009, ERN 00384416.

⁷⁰⁶ See Document No. **E291/2**, 'Request to Summons Witnesses in Respect of Alleged Policy of Targeting Khmer Republic Officials', 25 July 2013; Document No. **E291/2.1**, 'Annex A: Witnesses Cited by CIJs and Co-Prosecutors in Connection with Alleged Policy to Target Lon Nol Soldiers and Officials for Execution'.

⁷⁰⁷ Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 380711-12.

⁷⁰⁸ Document No. **E1/138.1**, 'Transcript of Trial Proceedings', 24 October 2012, pp. 108:25-109:4; **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, ERN 00857849-51.

⁷⁰⁹ Document No. **E1/193.1**, 'Transcript of Trial Proceedings,' 20 May 2013, pp. 15:23-16:3, 36:4-5, 66:5-9, 68:15-69-2.

⁷¹⁰ Document No. **E3/5152**, 'Written Record of Interview of Witness ██████████', 7 March 2008, ERN 00205080-81.

⁷¹¹ Document No. **E3/470**, 'Written Record of Interview of Witness ██████████', 4 March 2008, ERN 00205008.

⁷¹² Closing Order, para. 235, citing Document No. **E3/3962**, 'Written Record of Interview of Witness ██████████', 6 March 2009, ERN 00293365.

⁷¹³ Document No. **D166/117R**, Audio Record of Witness ██████████, 6 March 2009, 48:08-51:50.

⁷¹⁴ Document No. **E3/3962**, 'Written Record of Interview of Witness ██████████', 6 March 2009, ERN 00293365.

⁷¹⁵ Document No. **E1/219.1**, 'Transcript of Trial Proceedings', 8 July 2013, pp. 64:1-65:15.

⁷¹⁶ Document No. **E3/5267**, 'Written Record of Interview of Witness ██████████', 14 January 2009, ERN 00282351-53; Document No. **E3/5149**, 'Written Record of Interview of Witness ██████████', 5 March 2008, ERN 00205044; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 46:25-47:9 (testimony of Hun Chhunly); Document No. **E1/144.1**, 'Transcript of Trial Proceedings', 14 November 2012, pp. 16:1-13, 32:2-19 (testimony of Pechuy Chipse); Document No. **E3/5542**, 'Written Record of Interview of Witness ██████████', 3 September 2009, ERN 00373227; Document No. **E3/369**, 'Written Record of Interview of Witness ██████████', 29 May 2008, ERN 00272719; Document No. **E3/368**, 'Written Record of Interview of Witness YUN Kim alias Kham', 12 June 2009, ERN 00345195; Document No. **E3/5511**, 'Written Record of Interview of Witness ██████████', 29 October 2009, ERN 00412171-72.

⁷¹⁷ Document No. **E3/1593**, Ben KIERNAN, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge, 1975-79', 1996, ERN 00678514-8.

⁷¹⁸ Document No. **E3/9**, Philip SHORT, 'Pol Pot, The History of a Nightmare', 2004, ERN 00396480-85.

⁷¹⁹ Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, pp. 51:23-52:8 (Phnom Penh divided into zones), 53:11-18 (not allowed to leave the small area he was guarding); Document No. **E1/140.1**, 'Transcript of Trial Proceedings', 5 November 2012, p. 88:2-89:1, 91:14-25, 92:13-19.

⁷²⁰ Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, pp. 55:19-56:12 (no knowledge outside his area), 71:10-25 (similar), 73:24-76:2 (similar). See also, Document No. **E1/180.1**, 'Transcript of Trial Proceedings,' 11 April 2013, pp. 38:20-39:19 (different groups giving different instructions and with different attitudes and orders).

⁷²¹ Document No. **E3/1568**, Ben Kiernan Notes of Interview with ██████████ and ██████████ see also, Document No. **E3/9**, Philip SHORT, 'Pol Pot, The History of a Nightmare', 2004, ERN 00396483-85 ('Day one of the new regime was marked by sporadic clashes between the different Khmer Rouge units in Phnom Penh [...]Tensions continued, and during the weekend, in one of the strangest incidents of that week, the National Bank was blown up with dynamite...It was never completely clear who was responsible, but the Bank was at the limit of Eastern and South-Western control. The likeliest explanation is that it was pillaged by men from Chakrey's Eastern Zone headquarters.').

⁷²² See section V-F, *supra*.

⁷²³ See section V-F, *supra*.

⁷²⁴ See section VII, *infra*.

⁷²⁵ Document No **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012 pp. 86:10-86:25.

⁷²⁶ Document No. **E1/141.1**, 'Transcript of Trial Proceedings', 6 November 2012, pp. 31:17-32:3, 37:19-38:3, 50:1-13.

⁷²⁷ See Document No. **E3/4632**, 'Written Record of Interview of Witness ██████████', 27 October 2009, ERN 00403117-20; Document No. **E3/4631**, 'Written Record of Interview of ██████████', 6 August 2008, ERN 00275128-30; Document No. **E3/4634**, 'Written Record of Interview of Witness ██████████', 27 October 2009, ERN 00408404-06; Document No. **E3/5521**, 'Written Record of Interview of Civil Party of ██████████', 1 December 2009, ERN 00422319-22; Document No. **E3/5591**, 'Written Record of Interview of Civil Party of ██████████', 18 December 2009, ERN 00426487-88; Document No. **E1/145.1**, Transcript of Trial

Proceedings, 22 November 2012, pp. 10:8-15:12; Document No. **E1/148.1**, 'Transcript of Trial Proceedings', 5 December 2012, pp. 104:20-108-17; Document No. **E1/145.1**, 'Transcript of Trial Proceedings', 22 November 2012, pp. 10:8-15:12.

⁷²⁸ See section III-D, *supra*.

⁷²⁹ See section VII, *infra*. See also Document No. **E1/224.1**, 'Transcript of Trial Proceedings', 16 July 2013, p.85:6-8.

⁷³⁰ See section II-H, *supra*.

⁷³¹ Case No. 001/18-07-2007-ECCC/SC, Doc. No. **E188**, 'Judgement,' 26 July 2010, '*Duch* Trial Judgement,' para. 538.

⁷³² Document No. **E3/154**, CPK Telegram by Chhon entitled 'Telegram 15 - With Respect to Beloved Brother Pol', 30 November 1975, ERN 00185064 (emphasis added).

⁷³³ Document No. **E3/1765**, 'Examination of the Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector', 19 September 1975, ERN 00523590-91.

⁷³⁴ Document No. **E3/1765**, 'Examination of the Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector', 19 September 1975, ERN 00523591 (emphasis added).

⁷³⁵ Closing Order, para. 264; Document No. **E3/154**, CPK Standing Committee Document entitled 'Minutes on the Standing [Committee's] Visit to Northwest Zone, August 20-24 1975', ERN 00850978.

⁷³⁶ Closing Order, para. 1381.

⁷³⁷ See Closing Order, para. 1382; Case No. 001, Document No. **E188**, 'Judgment,' 26 July 2010, para. 334, citing *Prosecutor v. Blagojević*, IT-02-60-T, 17 January 2005, para. 572; *Prosecutor v. Seromba*, ICTR-01-66-A, 12 March 2008 ('Seromba Appeal Judgment'), para. 189.

⁷³⁸ See section IV, *infra*.

⁷³⁹ Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013, pp. 9:21-10: 8 (only observed deaths of re-settled evacuees in a village in Veal Vong, and testified that deaths were caused by over-work in the village, as well as starvation and disease).

⁷⁴⁰ Document No. **E1/170.1**, 'Transcript of Trial Proceedings' 7 February 2013, p. 41:1-2 (testified that during the second evacuation, he observed two people faint and subsequently die); Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, p. 51:16-17 (infant daughter died upon their re-settling in Battambang); Document No. **E1/137.1**, 'Transcript of Trial Proceedings', 23 October 2012, p. 26:4-8 (witness could not say how many bodies he saw or buried).

⁷⁴¹ Document No. **E1/137.1**, 'Transcript of Trial Proceedings', 23 October 2012, pp. 22:19–26:22 (witness saw and buried bodies found beside train tracks in Leach, but could not say how many bodies he saw or buried, did not know how or when they died, and had not witnessed them die).

⁷⁴² See Document No. **E1/147.1**, 'Transcript of Trial Proceedings' 4 December 2012, p. 50:4-10; Document No. **E1/137.1**, 'Transcript of Trial Proceedings' 23 October 2012; Document No. **E1/146.1**, 'Transcript of Trial Proceedings' 23 November 2012, p. 15: 13-16.

⁷⁴³ Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, p. 50:4-10.

⁷⁴⁴ Not a single witness testified that they observed physical violence or torture used by the KR against the second wave evacuees during the second movement. See *generally*; Document No. **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012; Document No. **E1/137.1**, 'Transcript of Trial Proceedings', 23 October 2012; Document No. **E1/138.1**, 'Transcript of Trial Proceedings', 24 October 2012, pp. 3:9-4:19; Document No. **E1/146.1**, 'Transcript of Trial Proceedings', 23 November 2012; Document No. **E1/147.1**, 'Transcript of Trial Proceedings' 4 December 2012; Document No. **E1/148.1**, 'Transcript of Trial Proceedings', 5 December 2012; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012; Document No. **E1/150.1**, 'Transcript of Trial Proceedings', 7 December 2012; Document No. **E1/151.1**, 'Transcript of Trial Proceedings', 11 December 2012; Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013.

⁷⁴⁵ Document No. **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012, p. 100:8-14 (3 kilo rice per family, one loaf of bread); Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 103: 23-104:3 (given free land upon resettling); Document No. **E1/146.1**, 'Transcript of Trial Proceedings', 23 November 2012, pp. 61:9-15, 70:2-8 (new houses built for the 'new people'); Document No. **E1/147.1**, 'Transcript of Trial Proceedings', 4 December 2012, pp. 50:21–51:2 (evacuees being given meals whilst on train journeys); Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2012, pp. 8:25 – 9:1 (evacuees given daily rice ration and upon re-settling were given land); Document No. **E1/135.1**, 'Transcript of Trial Proceedings', 19 October 2012, p.100: 6-14 (during the second evacuation witness and fellow evacuees were given rice, bread, and allowed to drink water from a pond).

⁷⁴⁶ Document No. **E1/ 138.1**, 'Transcript of Trial Proceedings', 24 October 2012, p.13:2-7 (physical health of the evacuees was normal).

⁷⁴⁷ Document No. **E1/ 138.1**, 'Transcript of Trial Proceedings', 24 October 2012, p.13: 2-7 (physical health of the evacuees was normal).

⁷⁴⁸ Closing Order, para. 269.

⁷⁴⁹ See statements summarised in Document No. **E208/2.3**, 'Annex III: Statements Relating to Evacuation (Phase 2) arranged alphabetically,' ERN 00822498-00822499; *see also*, Document No. **E3/5466**, 'Complaint of [REDACTED],' 15 November 2007; Document No. **E3/5358**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5329**, 'Complaint of [REDACTED],' 1 November 2007; Document No. **E3/5333**, 'Complaint of [REDACTED],' 15 May 2008; Document No. **E3/5463**, 'Complaint of [REDACTED],' 7 December 2007; Document No. **E3/5464**, 'Complaint of DUL Phuong,' 30 October 2009; Document No. **E3/5376**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5352**, 'Complaint of [REDACTED],' 29 June 2009; Document No. **E3/5390**, 'Complaint of [REDACTED],' 21 November 2008; Document No. **E3/5458**, 'Complaint of [REDACTED],' 15 January 2010; Document No. **E3/5460**, 'Complaint of [REDACTED],' 30 October 2009; Document No. **E3/5354**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5467**, 'Complaint of [REDACTED],' 30 October 2009; Document No. **E3/5478**, 'Complaint of [REDACTED],' 16 September 2009; Document No. **E3/5327**, 'Complaint of [REDACTED],' 25 August 2009; Document No. **E3/5331**, 'Complaint of [REDACTED],' 3 February 2008; Document No. **E3/5323**, 'Complaint of [REDACTED],' 19 May 2009; Document No. **E3/5322**, 'Complaint of [REDACTED],' 30 April 2008; Document No. **E3/5330**, 'Complaint of [REDACTED],' 31 March 2009; Document No. **E3/5361**, 'Complaint of [REDACTED],' 14 September 2008; Document No. **E3/5477**, 'Complaint of [REDACTED],' 24 August 2009; Document No. **E3/5365**, 'Complaint of [REDACTED],' 19 May 2009; Document No. **E3/5328**, 'Complaint of [REDACTED],' 1 November 2007; Document No. **E3/5423**, 'Complaint of [REDACTED],' 27 February 2009; Document No. **E3/5440**, 'Complaint of [REDACTED],' 30 April 2009; Document No. **E3/5424**, 'Complaint of [REDACTED],' 17 February 2009; Document No. **E3/5377**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5392**, 'Complaint of [REDACTED],' 3 November 2008; Document No. **E3/5382**, 'Complaint of [REDACTED],' 3 October 2008; Document No. **E3/5436**, 'Complaint of [REDACTED],' 10 May 2009; Document No. **E3/5393**, 'Complaint of [REDACTED],' 16 November 2008; Document No. **E3/5428**, 'Complaint of [REDACTED],' 20 April 2009; Document No. **E3/5381**, 'Complaint of [REDACTED],' 11 June 2009; Document No. **E3/5427**, 'Complaint of [REDACTED],' 19 April 2009; Document No. **E3/5387**, 'Complaint of [REDACTED],' 19 May 2009; Document No. **E3/5461**, 'Complaint of [REDACTED],' 7 December 2007; Document No. **E3/5324**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5378**, 'Complaint of [REDACTED],' 25 August 2009; Document No. **E3/5394**, 'Complaint of [REDACTED],' 31 July 2009; Document No. **E3/5443**, 'Complaint of [REDACTED],' 28 October 2011; Document No. **E3/5178**, 'Written Record of Interview of Witness [REDACTED],' 10 June 2008; Document No. **E3/436**, 'Written Record of Interview of Witness [REDACTED],' 23 November 2009; Document No. **E3/419**, 'Written Record of Interview of Witness IENG Phan,' 23 November 2009; Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony,' 26 August 2009; Document No. **E3/5543**, 'Written Record of Interview of Civil Party [REDACTED],' 11 September 2009; Document No. **E3/5258**, 'Written Record of Interview of Witness [REDACTED],' 4 December 2008; Document No. **E3/5531**, 'Written Record of Interview of Witness [REDACTED],' 18 December 2009; Document No. **E3/5227**, 'Written Record of Interview of Witness [REDACTED],' 18 November 2008; Document No. **E3/3970**, 'Written Record of Interview of Civil Party PECH Srey Phal,' 29 December 2009; Document No. **E3/5132**, 'Written Record of Interview of Witness [REDACTED],' 15 November 2007; Document No. **E3/5187**, 'Written Record of Interview of Witness [REDACTED],' 18 June 2008; Document No. **E3/5562**, 'Written Record of Interview of Witness [REDACTED],' 16 October 2009; Document No. **E3/5613**, 'Written Record of Interview of Witness [REDACTED],' 26 March 2010; Document No. **E3/5254**, 'Written Record of Interview of Witness [REDACTED],' 15 November 2008; Document No. **E3/3956**, 'Written Record of Interview of Witness SOKH Chhin,' 8 December 2009; Document No. **E3/5196**, 'Written Record of Interview of Witness [REDACTED],' 10 July 2008; Document No. **E3/5248**, 'Written Record of Interview of Witness [REDACTED],' 7 October 2008; Document No. **E3/5244**, 'Written Record of Interview of Witness [REDACTED],' 17 September 2008; Document No. **E3/5787**, 'Written Record of Interview of Witness YIM Sovann,' 27 August 2009.

⁷⁵⁰ Faced with such an absence of evidence surrounding the charge of extermination, the Co-Prosecutors have resorted to relying on a New York Times news article alleging the deaths of 600 refugees within the first month of arrival after the second evacuation in an area of Phnom Srok. Such information, alleged in a news article by an unnamed 'refugee' is both double hearsay and of very low probative value given both the anonymity of the refugee and the absence of first-hand testimony or witness statements regarding extermination admitted in Case 002/01. *See* Document No. **E3/4170**, 'Cambodia: The New York Times Reports New and Forced Movements with a High Death Toll,' 21 January 1976.

⁷⁵¹ Closing Order, para. 269

⁷⁵² Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346934.

⁷⁵³ Document No. **E3/5590**, 'Written Record of Interview of Civil Party [REDACTED]', 17 December 2009, ERN 00426477 (deaths of the witnesses's young son and infant daughter).

⁷⁵⁴ Closing Order, para. 269

⁷⁵⁵ Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082 (after being re-located to village in Kampong Thom, 40 people died of malaria); Document No. **E3/5210**, 'Written Record of Interview of Witness [REDACTED]', 16 August 2008, ERN 00242073 (after 1978 and the Vietnamese liberation, family members dies of malaria and starvation); Document No. **E3/5206**, 'Written Record of Interview of Witness [REDACTED]', 13 August 2008, ERN 00275381 (after being resettled in banteay chey in the northwest zone, 15 members of the witness's uncle's family died of disease, with no indication when the deaths took place).

⁷⁵⁶ Document No. **E3/5289**, 'Written Record of Interview of Witness [REDACTED]', 20 May 2009, ERN 00340182; Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/1678**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353494; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346934 (no killings or deaths reported during evacuee train trip to Battambang); Document No. **E3/4657**, 'Written Record of Interview of Civil Party of [REDACTED]', 9 July 2009, ERN 00353700; Document No. **E3/5193**, 'Written Record of Interview of Civil Party [REDACTED]', 8 July 2008, ERN 00274704-00274705.

⁷⁵⁷ Closing Order, paras 267, 269.

⁷⁵⁸ Document No. **E1/190.1**, 'Transcript of Trial Proceedings', 7 May 2013, pp. 123:22 - 124:5.

⁷⁵⁹ See section IV, *supra*.

⁷⁶⁰ Closing Order, para. 264.

⁷⁶¹ See Document No. **E3/216**, 'Record of Standing Committee's visit to the Northwest Zone', 20-24 August 1975, ERN 00850978 (evidencing CPK plan to increase the labour force in the Northwest zone); Document No. **E3/781**, 'Examination of the Control and Implementation of the Policy Line on Restoring the Economy and Preparations to Build the Country in Every Sector', 19 September 1975, ERN 00523590 (evidencing CPK need to increase workforce in the Northwest).

⁷⁶² Closing Order, para. 265 (alleging that the 'new' people were targeted because of their former association as such).

⁷⁶³ Document No. **E3/5531**, 'Witness Record of Interview of Witness [REDACTED]', 18 December 2009, ERN 00425891 (witness stated that during the second evacuation, the new people were evacuated first, but that most people ended up being re-located from their home lands); Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (although Khmer Rouge sent 'New People' to Pursat first, witness observed that many people were headed to Pursat at that time because there 'was a lot of rice there').

⁷⁶⁴ Document No. **E3/5531**, 'Witness Record of Interview of Witness [REDACTED]', 18 December 2009, ERN 00425891 (witness stated that during the second evacuation, the new people were evacuated first, but that most people ended up being re-located from their home lands); Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (although Khmer Rouge sent 'New People' to Pursat first, witness observed that many people were headed to Pursat at that time because there 'was a lot of rice there').

⁷⁶⁵ Document No. **E3/5531**, 'Witness Record of Interview of Witness [REDACTED]', 18 December 2009, ERN 00425891; Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314; Document No. **E3/3958**, 'Witness Record of Interview of Civil Party LAY Bony' 26 August 2009, ERN 00379159.

⁷⁶⁶ Document No. **E3/5531**, 'Witness Record of Interview of Witness [REDACTED]', 18 December 2009, ERN 00425891 (witness stated that during the second evacuation, the new people were evacuated first, but that most people ended up being re-located from their home lands); Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (although Khmer Rouge sent 'New People' to Pursat first, witness observed that many people were headed to Pursat at that time because there 'was a lot of rice there').

⁷⁶⁷ Document No. **E3/3958**, 'Witness Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379160.

⁷⁶⁸ Document No. **E3/4657**, 'Witness Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353702 (all evacuees were provided with a rice ration); Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (new people provided with rice during the journey, her family given a house upon arrival in Pursat); Document No. **E3/415**, 'Witness Record of Interview of Witness [REDACTED]', 31 August 2009, ERN 00375692 (there was an instruction from the upper echelon to have rice, water and housing prepared for all the newly evacuated people).

⁷⁶⁹ Document No. **E3/5787**, 'Witness Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (stated she and family went willing because KR family friend advised them to go to Pursat because there was a lot of rice there); Document No. **E3/3958**, 'Witness Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379160 (no one refused to go to Battambang).

⁷⁷⁰ Document No. **E3/3958**, 'Witness Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379160.

⁷⁷¹ None of the following witness statements allege facts suggesting that the Khmer Rouge specifically targeted people based on those affiliations: See Document No. **E3/5590**, 'Written Record of Interview of Civil Party [REDACTED]', 12 December 2009, ERN 00426475-6; Document No. **E3/4657**, 'Written Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353703; Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314; Document No. **E3/5289**, 'Written Record of Interview of Witness [REDACTED]', 20 May 2009, ERN 00340182; Document No. **E3/5207**, 'Written Record of Interview of Witness [REDACTED]', 14 August 2008, ERN 00242078; Document No. **E3/5193**, 'Written Record of Interview of Witness [REDACTED]', 8 July 2008, ERN 00274704; Document No. **E3/5208**, 'Written Record of Interview of Witness [REDACTED]', 14 August 2008, ERN 00235139; Document No. **E3/1678**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353494-5; Document No. **E3/5290**, 'Written Record of Interview of Witness [REDACTED]', 21 May 2009, ERN 00340172-3; Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/5257**, 'Written Record of Interview of Witness [REDACTED]', 24 November 2008, ERN 00251016; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346934; Document No. **E3/5525**, 'Written Record of Interview of Witness [REDACTED]', 10 December 2009, ERN 00422361; Document No. **E3/415**, 'Written Record of Witness [REDACTED]', 31 August 2009, ERN 00375692; Document No. **E3/3957**, 'Written Record of Interview of Witness [REDACTED]', 8 December 2009, ERN 00422352-3; Document No. **E3/3956**, 'Written Record of Interview of Witness SOKH Chhin', 8 December 2009, ERN 00426295.

⁷⁷² Document No. **E3/415**, 'Written Record of Witness [REDACTED]', 31 August 2009, ERN 00375692 (evacuees from PP sent to his village, reported that new people could live with base people who were their relatives).

⁷⁷³ Document No. **E3/415**, 'Written Record of Witness [REDACTED]', 31 August 2009, ERN 00375692 (there was an instruction from the upper echelon to have rice, water, housing prepared for newly evacuated people); Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379314 (CPK provided family with rice and a house in Pursat).

⁷⁷⁴ Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379160 (evacuees were allowed to choose which cooperative to go to).

⁷⁷⁵ Document No. **E3/4657**, 'Written Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353703; Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379311, 00379314; Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379156, 00379159; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346930, 00346934; Document No. **E3/415**, 'Written Record of Interview of Witness [REDACTED]', 31 August 2009, ERN 00375692; Document No. **E3/5531**, 'Written Record of Interview of Witness [REDACTED]', 18 December 2009, ERN 00425891; Document No. **E3/5310**, 'Written Record of Interview of Civil Party [REDACTED]', 7 July 2009, ERN 00353484; Document No. **E3/5590**, 'Written Record of Interview of Civil Party [REDACTED]', 12 December 2009, ERN 00426475.

⁷⁷⁶ See section IV, *supra*.

⁷⁷⁷ See paras III-D, *supra*.

⁷⁷⁸ Closing Order, para. 276

⁷⁷⁹ Document No. **E284/5**, 'OCP Request for Clarification of Findings Regarding the Joint Criminal Enterprise Alleged in Case 002/01', 7 August 2013, paras 10-11.

⁷⁸⁰ Closing Order, para. 268.

⁷⁸¹ The simple fact that witness statements allege that Cham evacuees were dispersed throughout new villages and collectives after the second population movement does not establish that this resettling constituted differential treatment. See Document No. **E3/5290**, 'Written Record of Interview of Witness [REDACTED]', 21 May 2009, ERN 00340171-2; Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/1678**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353493; Document No. **E3/2653**, 'The Cham Rebellion: Survivors' Stories from the Villages' (cited in Document No. **E3/5195**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 9 July 2008, ERN 00204441-2; Document No. **E3/5203**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 11 August 2008; Document No. **E3/5205**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 13 August 2008, ERN 00221859-60; Document No. **E3/5206**, 'Written Record of Interview of Interview of Witness [REDACTED] Annex 1', 13 August 2008, ERN 00221898; Document No. **E3/5289**, 'Written Record of Interview of Interview of Witness [REDACTED] Annex 1', 20 May 2009, ERN 00219125-6; Document No. **E3/5204**, 'Written Record of Interview of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/5193**, 'Written Record of Interview of Interview of Witness [REDACTED]', 8 July 2008, ERN 00274703-4; Document No. **E3/5192**, 'Written Record of Interview of Interview of Witness [REDACTED]', 7 July 2008, ERN 00242111.

⁷⁸² Both statements refer to time-period before the second population movement. See Document No. **E3/2653**, 'The Cham Rebellion: Survivors' Stories from the Villages,' Ysa Osman (cited in Document No. **E3/5289**, 'Written Record of Interview of Interview of Witness [REDACTED] Annex 1', 20 May 2009, ERN 00219125-6); Document No. **E3/5207**, 'Written Record of Interview of Interview of Witness [REDACTED]', 14 August 2008, ERN 00242077-8.

⁷⁸³ Document No. **E3/5290**, 'Written Record of Interview of Witness [REDACTED]', 21 May 2009, ERN 00340172-3; Document No. **E3/1678**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353493; Document No. **E3/5289**, 'Written Record of Interview of Witness [REDACTED]', 20 May 2009, ERN 00340182; Document No. **E3/5257**, 'Written Record of Interview of Witness [REDACTED]', 24 November 2008, ERN 00251015.

⁷⁸⁴ Document No. **E3/5207**, 'Written Record of Interview of Witness [REDACTED]', 14 August 2008, ERN 00242077; Document No. **E3/2653**, 'The Cham Rebellion: Survivors' Stories from the Villages' Ysa Osman (cited in Document No. **E3/5203**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 11 August 2008, ERN 00218503); Document No. **E3/5196**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2008, ERN 00223087.

⁷⁸⁵ Document No. **E3/5290**, 'Written Record of Interview of Witness [REDACTED]', 21 May 2009, ERN 00340171-2; Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/1678**, 'Written Record of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353493; Document No. **E3/2653**, 'The Cham Rebellion: Survivors' Stories from the Villages' Ysa Osman (cited in Document No. **E3/5195**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 9 July 2008, ERN 00204441; Document No. **E3/5203**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 11 August 2008, ERN 00218503; Document No. **E3/5206**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 13 August 2008, ERN 00221859); Document No. **E3/5205**, 'Written Record of Interview of Witness [REDACTED]', 13 August 2008, ERN 00275163.

⁷⁸⁶ Document No. **E3/5290**, 'Written Record of Interview of Witness [REDACTED]', 21 May 2009, ERN 00340172-3; Document No. **E3/2653**, 'The Cham Rebellion: Survivors' Stories from the Villages' Ysa Osman (cited in Document No. **E3/5192**, 'Written Record of Interview of Witness [REDACTED] Annex 1', 7 July 2008, ERN 00204426; Document No. **E3/5193**, 'Written Record of Interview of Witness of [REDACTED] Annex 1', 8 July 2008, ERN 00204453); Document No. **E3/5289**, 'Written Record of Interview of Witness [REDACTED]', 20 May 2009, ERN 00340182; Document No. **E3/5207**, 'Written Record of Interview of Witness [REDACTED]', 14 August 2008, ERN 00242077; Document No. **E3/5208**, 'Written Record of Interview of Witness [REDACTED]', 14 August 2008, ERN 00235138-9; Document No. **E3/5204**, 'Written Record of Interview of Witness [REDACTED]', 12 August 2008, ERN 00242082; Document No. **E3/5216**, 'Written Record of Interview of Witness [REDACTED]', 10 September 2008, ERN 00225498; Document No. **E3/5210**, 'Written Record of Interview of Interview of Witness SUON Kanil', 18 August 2009, ERN 00384434; Document No. **E3/5257**, 'Written Record of Interview of Interview of Witness [REDACTED]', 24 November 2008, ERN 00251015; Document No. **E3/5206**, 'Written Record of Interview of Interview of Witness [REDACTED]', 13 August 2008, ERN 00275381; Document No. **E3/1678**, 'Written Record of Interview of Interview of Witness [REDACTED]', 10 July 2009, ERN 00353493; Document No. **E3/4657**, 'Written Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353704-5; Document No. **E3/3970**, 'Written Record of Interview of Civil Party PECH Srey Phal', 29 December 2009, ERN 00434932-3; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346934; Document No. **E3/5310**, 'Written Record of Interview of Civil Party [REDACTED]', 7 July 2009, ERN 00353487; Document No. **E3/5590**, 'Written Record of Interview of Civil Party [REDACTED]', 12 December 2009, ERN 00426478; Document No. **E3/5542**, 'Written Record of Interview of Civil Party [REDACTED]', 3 September 2009, ERN 00373227-8.

⁷⁸⁷ See Document No. **E3/154**, 'CPK Telegram by Chhon entitled 'Telegram 15 – With Respect to Beloved Brother Pol'', 30 November 1975, ERN 00185064-5.

⁷⁸⁸ Document No. **E3/154**, 'CPK Telegram by Chhon entitled, 'Telegram 15 – With Respect to Beloved Brother Pol'', 30 November 1975, ERN 00185064-5.

⁷⁸⁹ See section IV, *supra*.

⁷⁹⁰ Closing Order, para. 1471.

⁷⁹¹ Closing Order, para. 270.

⁷⁹² Document No. **E3/5206**, 'Written Record of Interview of Witness [REDACTED]', 13 August 2008, ERN 00275380; Document No. **E3/3976**, 'Written Record of Interview of Civil Party AFFONCO Denise', 3 June 2009, ERN 00346935; Document No. **E3/5193**, 'Written Record of Interview of Witness [REDACTED]', 8 July 2008, ERN 00274704-5.

⁷⁹³ Document No. **E3/5590**, 'Written Record of Interview of Civil Party [REDACTED]', 12 December 2009, ERN 00426476, 00426478.

⁷⁹⁴ Document No. **E3/5542**, 'Written Record of Interview of Civil Party [REDACTED]', 3 September 2010, ERN 00373230 (witness recounts that during his transfer to Bakan in 1978, he was separated from his mother and the aunt of his wife and subsequently could not find them).

⁷⁹⁵ Closing Order, para. 270.

⁷⁹⁶ Document No. **E3/4657**, 'Written Record of Interview of Civil Party [REDACTED]', 9 July 2009, ERN 00353703.

⁷⁹⁷ Document No. **E1/170.1**, 'Transcript of Trial Proceedings', 7 February 2013; Document No. **E1/146.1**, 'Transcript of Trial Proceedings', 23 November 2012.

⁷⁹⁸ Document No. **E1/146.1**, ‘Transcript of Trial Proceedings’, 23 November 2012, p. 6:14-20; Document No. **E1/170.1**, ‘Transcript of Trial Proceedings’, 7 February 2013, p. 57:1–7.

⁷⁹⁹ See Document No. **E3/5460**, ‘Complaint of [REDACTED]’, 30 October 2009, ERN 00806112-3; Document No. **E3/5478**, ‘Complaint of [REDACTED]’, 16 September 2009, ERN 00815159-60; Document No. **E3/5477**, ‘Complaint of [REDACTED]’, 24 August 2009, ERN 00824661; Document No. **E3/5328**, ‘Complaint of [REDACTED]’, 1 November 2007, ERN 00832949; Document No. **E3/5393**, ‘Complaint of [REDACTED]’, 16 November 2008, ERN 00873802-3; Document No. **E3/5427**, ‘Complaint of [REDACTED]’, 19 April 2009, ERN 00873843-4; Document No. **E3/5394**, ‘Complaint of [REDACTED]’, 31 July 2009, ERN 00872930-1; Document No. **E3/3970**, ‘Written Record of Interview of Civil Party PECH Srey Phal’, 29 December 2009, ERN 00434932; Document No. **E3/5562**, ‘Written Record of Interview of Civil Party [REDACTED]’, 16 October 2009, ERN 00400456.

⁸⁰⁰ See section IV, *supra*.

⁸⁰¹ Document No. **E1/ 138.1**, ‘Transcript of Trial Proceedings,’ 24 October 2012, p. 13:2-7 (physical health of the evacuees was normal).

⁸⁰² Document No. **E1/135.1**, ‘Transcript of Trial Proceedings’, 19 October 2012, p. 100:8-14 (3 kilo rice per family, one loaf of bread provided during evacuation); Document No. **E1/170.1**, ‘Transcript of Trial Proceedings’, 7 February 2013, p. 8:25–9:1 (evacuees given daily rice ration); Document No. **E1/147.1**, ‘Transcript of Trial Proceedings’ 4 December 2012, pp. 50:21–51:2.

⁸⁰³ Document No. **E1/146.1**, ‘Transcript of Trial Proceedings’, 23 November 2012, p. 61:1-15 (new houses built for the ‘new people’).

⁸⁰⁴ Document No. **E1/149.1**, ‘Transcript of Trial Proceedings’, 6 December 2012, p. 103:23 – 104: 3 (given free land upon resettling); Document No. **E1/170.1**, ‘Transcript of Trial Proceedings’, 7 February 2013, pp. 8:25 – 9:1 (evacuees given land upon resettlement);

⁸⁰⁵ See Document No. **E3/5590**, ‘Written Record of Interview of Civil Party [REDACTED]’, 12 December 2009, ERN 00426475-6; Document No. **E3/4657**, ‘Written Record of Interview of Civil Party [REDACTED]’, 9 July 2009, ERN 00353703; Document No. **E3/5787**, ‘Written Record of Interview of Civil Party YIM Sovann’, 27 August 2009, ERN 00379314; Document No. **E3/5289**, ‘Written Record of Interview of Witness [REDACTED]’, 20 May 2009, ERN 00340182; Document No. **E3/5207**, ‘Written Record of Interview of Witness [REDACTED]’, 14 August 2008, ERN 00242078; Document No. **E3/5193**, ‘Written Record of Interview of Witness [REDACTED]’, 8 July 2008, ERN 00274704; Document No. **E3/5208**, ‘Written Record of Interview of Witness [REDACTED]’, 14 August 2008, ERN 00235139; Document No. **E3/1678**, ‘Written Record of Interview of Witness [REDACTED]’, 10 July 2009, ERN 00353494-5; Document No. **E3/5290**, ‘Written Record of Interview of Witness [REDACTED]’, 21 May 2009, ERN 00340172-3; Document No. **E3/5204**, ‘Written Record of Interview [REDACTED]’, 12 August 2008, ERN 00242082; Document No. **E3/5257**, ‘Written Record of Interview of Witness [REDACTED]’, 24 November 2008, ERN 00251016; Document No. **E3/3976**, ‘Written Record of Interview of Civil Party AFFONCO Denise’, 3 June 2009, ERN 00346934; Document No. **E3/5525**, ‘Written Record of Interview of Witness [REDACTED]’, 10 December 2009, ERN 00422361; Document No. **E3/415**, ‘Written Record of Interview of Witness [REDACTED]’, 31 August 2009, ERN 00375692; Document No. **E3/3957**, ‘Written Record of Interview of Witness [REDACTED]’, 8 December 2009, ERN 00422352-3; Document No. **E3/3956**, ‘Written Record of Interview of Witness SOKH Chhin’, 8 December 2009, ERN 00426295.

⁸⁰⁶ Document No. **E3/4657**, ‘Written Record of Interview of Civil Party [REDACTED]’, 9 July 2009, ERN 00353704 (Khmer Rouge treated people who fell sick);

⁸⁰⁷ Document No. **E3/4657**, ‘Written Record of Interview of Civil Party [REDACTED]’, 9 July 2009, ERN 00353702-4 (provided with rice during (and after) the journey); Document No. **E3/5787**, ‘Written Record of Interview of Civil Party YIM Sovann’, 27 August 2009, ERN 00379314 (new people provided with rice during the journey); Document No. **E3/415**, ‘Written Record of Interview of Witness [REDACTED]’, 31 August 2009, ERN 00375692 (there was an instruction from the upper echelon to have rice and water prepared for the newly evacuated people).

⁸⁰⁸ Document No. **E3/5787**, ‘Written Record of Interview of Civil Party YIM Sovann’, 27 August 2009, ERN 00379314 (her family given a house upon arrival in Pursat); Document No. **E3/415**, ‘Written Record of Interview of Witness [REDACTED]’, 31 August 2009, ERN 00375692 (there was an instruction from the upper echelon to have housing prepared for the newly evacuated people).

⁸⁰⁹ See section VI-B, *supra*.

⁸¹⁰ See Preliminary Applicable Law filing.

⁸¹¹ See section VI-B, *supra*.

⁸¹² See section VII-B, *infra*.

⁸¹³ Document No. **E299**, ‘Decision on Objections to the Admissibility of Witness, Victim and Civil Party Statements and Case 001 Transcripts Proposed by The Co-Prosecutors and Civil Party Lead Co-Lawyers’, 15 August 2013, paras 23, 24

⁸¹⁴ See section VII-B, *infra*.

⁸¹⁵ Document No. **E189/3/1/7**, ‘Request to Consider Additional Evidence,’ 15 March 2013, para. 21.

⁸¹⁶ See section I, *supra*.

- ⁸¹⁷ Document No. **E214/3.2**, 'Complaint to the New York and Amsterdam Bar Associations', para. 6.2
- ⁸¹⁸ Document No. **E9/14/1/1/1**. 'Co-Prosecutors' Further Objection and Observation to the Witnesses and Experts Proposed By The Other Parties', 11 March 2011.
- ⁸¹⁹ See e.g. Document No. **E228/4**, 'Reply to International Co-Prosecutor's Response to Nuon Chea's Motion in Support of Ieng Sary's Request to Hear ██████████ and ██████████' 23 November 2012 (analyzing the International Co-Prosecutor's convoluted efforts to describe the failure of ██████████ and ██████████ to appear without acknowledging the obvious role of RGC interference).
- ⁸²⁰ Document No. **E116/1/7**, 'Decision on Immediate Appeal by NUON Chea Against the Trial Chamber's Decision of Fairness of Judicial Investigation,' 27 April 2012., para. 32.
- ⁸²¹ Document No. **E189/3/1/7.1.5**, 'September 2012 Witnesses Request', 5 September 2012, paras 31-37; Document No. **E236/5/1/1**, 'Sixth and Final Request to Summon TCW-223, 22 July 2013', paras 3-7.
- ⁸²² As the Defence has previously argued, the requirements of Rule 87 would be satisfied even if the testimony proved impossible to obtain due to the witnesses' failure to appear. See Document No. **E228/4**, 'Reply to International Co-Prosecutor's Response to Nuon Chea's Motion in Support of Ieng Sary's Request to Hear ██████████', 23 November 2012, para. 10.
- ⁸²³ *Vidal v. Belgium*, ECtHR, App. No. 12351/86, 'Judgment (Merits)', 22 April 1992, paras. 34–35.
- ⁸²⁴ *Prosecutor v. Haradinaj et al.*, IT-04-84-A, 'Judgement', 19 July 2010, para. 35.
- ⁸²⁵ *Prosecutor v. Haradinaj et al.*, IT-04-84-A, 'Judgement', 19 July 2010, paras 34-50.
- ⁸²⁶ Case No. 001, Document No. **F28**, 'Appeal Judgment', 3 February 2012, para. 392.
- ⁸²⁷ Case No. 001., Document No. **C5/2**, 'Order of Provisional Detention', 31 July 2007, para. 21; *Prosecutor v. Karadžić*, IT-95-5/18-PT, 'Decision on the Holbrooke Agreement Motion', 8 July 2009, para. 85.
- ⁸²⁸ *Prosecutor v. Karadžić*, IT-95-5/18-PT, 'Decision on the Holbrooke Agreement Motion', 8 July 2009, paras. 84–85.
- ⁸²⁹ Case No. 001, Document No. **C5/2**, 'Order of Provisional Detention', 31 July 2007, para. 21.
- ⁸³⁰ *Prosecutor v. Nikolić*, IT-94-2-PT, 'Decision on Defence Motion Challenging the Exercise of Jurisdiction by the Tribunal', 9 October 2002, para. 111, citing *State v. Ebrahim*, 2 SALR 553, 'Judgement' 26 February 1991,
- ⁸³¹ *Prosecutor v. Theoneste Bagosora and Anatole Nsengiyumva*, ICTR-98-41-A, 'Judgement', 14 December 2011, para. 532-533, citing *Prosecutor v. Duško Tadić*, IT-94-1-A, 'Appeal Judgement', 15 July 1999 para. 52.
- ⁸³² See e.g., Document No. **E3/89**, 'Interview Transcript Steve Heder with Ieng Sary', 17 December 1996; Document No. **E3/387**, 'Interview Transcript Steve Heder with UK Bunchhoeun'.
- ⁸³³ See section II, *supra*.
- ⁸³⁴ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia Under the Khmer Rouge, 1975-79', ERN 00678523.
- ⁸³⁵ Document No. **E3/387**, 'Interview Transcript Steve Heder with UK Bunchhoeun'.
- ⁸³⁶ See section III-B, *supra*.
- ⁸³⁷ Although the English translation on the case file states 'wipe out', Heder explained in testimony that it actually translates to 'sweep clean'. Our internal analysis indicates 'cleanse'.
- ⁸³⁸ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p. 44:1-12 (witness explaining that he was 'purged' by being 'screened');
- ⁸³⁹ Document No. **E3/24**, Written Record of Interview of Witness Phy Phuon, 05 December 2007, ERN 00223582
- ⁸⁴⁰ Document No. **E1/98.1**, 'Transcript of Trial Proceedings', 30 July 2012, p. 88:2-10.
- ⁸⁴¹ Document No. **E1/222.1**, 'Transcript of Trial Proceedings,' 11 July 2013, pp. 20:12-21:14; Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia Under the Khmer Rouge, 1975-79'.
- ⁸⁴² Document No. **E1/219.1**, 'Transcript of Trial Proceedings', 08 July 2013, p. 83:1 – 90:24.
- ⁸⁴³ Document No. **E291/2**, 'Request to Summons Witnesses in Repect of Alleged Policy of Targeting Khmer Republic Officials', 25 July 2013.
- ⁸⁴⁴ Document No. **E299**, 'Decision on Objection to the Admissibility of Witness, Victim and Civil party Statements and Case 001 Transcripts Proposed by the Co-Prosecutors and Civil party Lead Co-Lawyers', 15 August 2013, paras 37-39.
- ⁸⁴⁵ Document No. **E291/2**, 'Request to Summons Witnesses in Repect of Alleged Policy of Targeting Khmer Republic Officials', 25 July 2013, paras 17-19.
- ⁸⁴⁶ Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber', 20 June 2012, para. 25; see section II-B, *supra*.
- ⁸⁴⁷ Document No. **E1/194.1**, 'Transcript of Trial Proceedings,' 21 May 2013, pp. 33:19-34:2.
- ⁸⁴⁸ Document No. **E1/195.1**, 'Transcript of Trial Proceedings,' 22 May 2013, p. 37:11-25.
- ⁸⁴⁹ Document No. **E1/195.1**, 'Transcript of Trial Proceedings,' 22 May 2013, p. 37:8-10.
- ⁸⁵⁰ Document No. **E1/207.2**, 'Transcript of Trial Proceedings ,', 13 June 2013, p. 27:3-28:15; Document No. **E1/193.1**, 'Transcript of Trial Proceedings', 20 May 2013, pp. 36:9 - 43:9, 65:21 - 71:20; Document No. **E1/129.1**, 'Transcript of Trial Proceedings', 3 October 2012, p. 97:1-12; Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, pp. 50:18-51:3; Document No. **E1/177.1**, 'Transcript of Trial

Proceedings', 8 April 2013, pp. 64:14-65:1; Document No. **E3/464**, 'Written Record of Interview of Witness [REDACTED]', 19 January 2008, ERN 00226108 (during the evacuation of Phnom Penh, disarmed soldiers were questioned and then sent on their way to Kampong Thom).

⁸⁵¹ See para. 303, *supra*.

⁸⁵² Document No. **E3/3962**, 'Written Record of Interview of Witness [REDACTED]', 6 March 2009, ERN 00293362-00293369.

⁸⁵³ Document No. **E3/1593**, 'The Pol Pot Regime: Race Power and Genocide in Cambodia under the Khmer Rouge, 1975-79', ERN 00678599.

⁸⁵⁴ See Document No. **E291**, 'Urgent Request to Summons Key Witnesses in Respect of Tuol Po Chrey', 17 June 2013, paras 31-33.

⁸⁵⁵ Document No. **E1/103.1**, 'Transcript of Trial Proceedings', 07 July 2013, pp. 12:20 - 13:14.

⁸⁵⁶ Document No. **E1/210.1**, 'Transcript of Trial Proceedings', 20 June 2013, pp. 18:19 - 22:22.

⁸⁵⁷ Document No. **E3/9**, 'Pol Pot: The History of Nightmare', ERN 00396488; E1/189.1, p. 36:22-25.

⁸⁵⁸ Document No. **E1/223.1**, 'Transcript of Trial Proceedings', 15 July 2013. pp. 5:6 - 6:1.

⁸⁵⁹ Document No. **E3/1593**, 'The Pol Pot Regime: Race Power and Genocide in Cambodia under the Khmer Rouge, 1975-79', ERN 00678599.

⁸⁶⁰ Document No. **E1/110.1**, 'Transcript of Trial Proceedings,' 20 August 2012, p. 90:3-7 (witness describing her own personal experience being sent to be 'tempered'); Document No. **E1/122.1**, 'Transcript of Trial Proceedings,' 5 September 2012, pp. 22:18 - 24:14 ('purge' means literally to 'sweep clean', which signifies 'removal' and has a weaker connotation than 'smash').

⁸⁶¹ Document No. **E1/227.1**, 'Transcript of Trial Proceedings,' 23 July 2013, p.57:9-16.

⁸⁶² Document No. **E1/130.1**, 'Transcript of Trial Proceedings', 4 October 2013, p. 41:10-21.

⁸⁶³ Document No. **E1/130.1**, 'Transcript of Trial Proceedings', 4 October 2013, p. 39:21 - 40:6; Document No. **E3/80**, 'Written Record of Interview of Witness MEAS Voeun, 3 March 2010, ERN 00491657 (Answer 10: 'I do not recall where they were taken to').

⁸⁶⁴ Document No. **E1/130.1**, 'Transcript of Trial Proceedings', 4 October 2012, p. 40:4-6.

⁸⁶⁵ Closing Order, paras 516, 533.

⁸⁶⁶ Document No. **E1/227.1**, 'Transcript of Trial Proceedings', 23 July 2013, p. 58:1-3.

⁸⁶⁷ Document No. **E1/219.1**, 'Transcript of Trial Proceedings', 8 July 2013, p. 67:8-19.

⁸⁶⁸ Closing Order, para. 432.

⁸⁶⁹ Document No. **E1/58.1**, 'Transcript of Trial Proceeding', 3 April 2012, pp. 14:23 - 17:13.

⁸⁷⁰ Document No. **E1/52.1**, 'Transcript of Trial Proceedings', 21 March 2012, p. 26:9-25.

⁸⁷¹ Document No. **E1/58.1**, 'Transcript of Trial Proceedings', 3 April 2012, p. 58:2-3.

⁸⁷² Document No. **E1/97.1**, 'Transcript of Trial Proceedings', 26 July 2012, pp. 31:8 - 32:8.

⁸⁷³ Document No. **E1/209.1**, 'Transcript of Trial Proceedings,' 19 June 2013, pp. 6: 11-17, 41:9 – 44:2, 56: 15-22; Document No. **E1/221.1**, 'Transcript of Trial Proceedings,' 10 July 2013, p. 87:1-3; Document No. **E1/223.1**, 'Transcript of Trial Proceedings,' 15 July 2013, pp. 33:13-23, 36:18 – 37:2; Document No. **E1/157.1**, 'Transcript of Trial Proceedings,' 9 January 2013, pp. 36:8 – 37:24; Document No. **E1/129.1**, 'Transcript of Trial Proceedings,' 3 October 2012, p. 112:1-3; Document No. **E1/130.1**, 'Transcript of Trial Proceedings,' 4 October 2012, pp. 6:11 - 9:16; Document No. **E1/76.1**, 'Transcript of Trial Proceedings,' 28 May 2012, p. 67:10-21; Document No. **E1/58.1**, 'Transcript of Trial Proceedings,' 3 April 2012, p. 44:12-16; Document No. **E1/40.1**, 'Transcript of Trial Proceedings,' 8 February 2012, p. 30:3-7.

⁸⁷⁴ Document No. **E1/221.1**, 'Transcript of Trial Proceedings', 10 July 2013, pp. 86:22-87:3.

⁸⁷⁵ Document No. **E3/1714**, 'Interviews with Kampuchean Refugees at Thai-Cambodia Border', ERN 00170716, 00170732.

⁸⁷⁶ Document No. **E1/190.1**, 'Transcript of Trial Proceedings' 07 May 2013, pp. 71:9 - 72:13.

⁸⁷⁷ Document No. **E1/190.1**, 'Transcript of Trial Proceedings' 07 May 2013, pp. 71:9 - 73:1.

⁸⁷⁸ Document No. **E1/191.1**, 'Transcript of Trial Proceedings', 08 May 2013, pp. 96:11 - 97:5.

⁸⁷⁹ See para. 36, *supra*.

⁸⁸⁰ See e.g., Document No. **E1/97.1**, 'Transcript of Trial Proceedings', 26 July 2012, pp. 25:32.

⁸⁸¹ Closing Order, para. 209.

⁸⁸² Document No. **E1/180.1**, 'Transcript of Trial Proceedings', 11 April 2013, pp. 43:11 - 44:23.

⁸⁸³ For an explanation of the manner in which these statements are identified, see Document No. **E291/2**, 'Request to Summons Witnesses in Respect of Alleged Policy of Targeting Khmer Republic Officials', 25 July 2013, paras 5-8.

⁸⁸⁴ Document No. **E190.1.63**, 'Interview notes: [REDACTED]', 3 August 2008, ERN 00210465 (located in NEZ, describes that people detained were those who had 'tendencies' because their parents had been LN soldiers or they had a connection with the previous regime, but people not killed because of their association with former regime; Document No. **E3/5663**, 'Interview notes: [REDACTED]', 27 May 2004, ERN 00184195 (Khmer Rouge soldiers found to have a parent or sibling who served in Sangkum or the Lon Nol army or police were downgraded to ordinary combatants); Document No. **E1/129.1**, 'Transcript of Trial Proceedings,' 3 October 2012, p. 97:1-4 (no information on whether or not a policy to target or kill Lon Nol soldiers existed); Document

No. **E3/5780**, 'Written Record of Interview of Civil Party ROMAM Yun,' 8 July 2009, ERN 00350300-00350308; Document No. **E1/24.1**, 'Transcript of Trial Proceedings', 10 January 2012; Document No. **E1/25.1**, 'Transcript of Trial Proceedings', 11 January 2012, (no evidence given regarding treatment of Lon Nol soldiers); Document No. **E1/139.1**, 'Transcript of Trial Proceedings', 25 October 2012, pp.50:18-51:3 (testified that if Lon Nol soldiers surrendered their arm, they could mingle with the population and move on); Document No. **D125/116**, 'Written Record of Interview of Witness [REDACTED]', 20 January 2009, ERN 00275416 (no direct evidence that Lon Nol soldiers were killed); Document No. **E3/5335**, 'Complaint of [REDACTED]', 31 March 2009, ERN 00939541 (no indication she had any first hand, direct evidence, that her brother was taken away because he was a former Lon Nol soldier, or what happened to him afterwards).

⁸⁸⁵ Document No. **D125/48**, 'Written Record of Interview of Witness SUM Alat' 20 January 2009, ERN 00242122-00242129; Document No. **E3/5126**, 'Written Record of Interview of Witness [REDACTED]', 25 October 2007, ERN 00163417-00163421; Document No. **E3/5506**, 'Written Record of Interview of Witness [REDACTED]', 25 October 2009, ERN 00398860-00398867; Document No. **E3/5501**, 'Written Record of Interview of Witness [REDACTED]', 29 August 2009, ERN 00373306-00373312; Document No. **D125/68**, 'Written Record of Interview of Witness LEV Lam', 1 July 2008, ERN 00274642-00274651; Document No. **E3/4634**, 'Written Record of Interview of Witness [REDACTED]', 28 October 2009, ERN 00408403-00408407; Document No. **E3/5516**, 'Written Record of Interview of Witness [REDACTED]', 16 November 2009, ERN 00412137-00412140; Document No. **E3/4632**, 'Written Record of Interview of Witness [REDACTED]', 27 October 2009, ERN 00403116-00403120; Document No. **E3/4631**, 'Written Record of Interview of Witness [REDACTED]', 29 December 2009, ERN 00434687-00434697 (not thing about 'upper level'); Document No. **E3/5199**, 'Written Record of Interview of Witness [REDACTED]', 13 December 2009, ERN 00455250-00455253; Document No. **E3/5201**, 'Written Record of Interview of Witness [REDACTED]', 30 December 2009, 00425878-00425882; Document No. **D125/176**, 'Written Record of Interview of Witness UNG Chhat', 31 January 2009, ERN 00284415-00284424; Document No. **D232/65**, 'Written Record of Interview of Witness LIM Sat', 18 November 2009, ERN 00412156-00412160; Document No. **E3/4627**, 'Written Record of Interview of Witness [REDACTED]', 30 October 2007, ERN 00223472-00223482; Document No. **E3/5518**, 'Written Record of Interview of Witness [REDACTED]', 21 November 2009, ERN 00413895-00413902; Document No. **D232/86**, 'Written Record of Interview of Witness [REDACTED]', 15 December 2009, ERN 00424727-00424731; Document No. **E3/5522**, 'Written Record of Interview of Witness [REDACTED]', 8 December 2009, 00426297-00426305; Document No. **E3/5218**, 'Written Record of Interview of Witness [REDACTED]', 18 September 2008, ERN 00276789-00276796; Document No. **E3/5123**, 'Written Record of Interview of Witness [REDACTED]', 19 October 2007, ERN 00163207-00163213; Document No. **E3/5191**, 'Written Record of Interview of Witness [REDACTED]', 3 July 2008, ERN 00274678-00274685; Document No. **D125/66**, 'Written Record of Interview of Witness [REDACTED]', 1 July 2008, ERN 00274621-00274630; Document No. **D125/89**, 'Written Record of Interview of Witness [REDACTED]', 18 July 2008, ERN 00275089-00275094; Document No. **D125/96**, 'Written Record of Interview of Witness [REDACTED]', 7 August 2008, ERN 00275153-00275160; Document No. **E3/5174**, 'Written Record of Interview of Witness [REDACTED]', 27 May 2008, ERN 00231662-00231671; Document No. **E3/5211**, 'Written Record of Interview of Witness [REDACTED]', 26 August 2008, ERN 00275397-00275403; Document No. **E3/5228**, 'Written Record of Interview of Witness [REDACTED]', 19 November 2008, ERN 00250271-00250275; Document No. **E3/5545**, 'Written Record of Interview of Civil Party [REDACTED]', 29 September 2009, ERN 00387498-00387503; Document No. **E3/5498**, 'Written Record of Interview of Witness [REDACTED]', 17 August 2009, ERN 00384395-00384410; Document No. **E3/4652**, 'SOAS Interview of [REDACTED]', 15 October 2005, ERN 00352075-00352076; Document No. **D25/26**, 'Written Record of Interview of Witness [REDACTED]', 29 October 2007, ERN 00223459-00223465; Document No. **E3/5481**, 'Complaint of [REDACTED]', 26 November 2010, ERN 00890632-00890639; Document No. **E3/5445**, 'Complaint of [REDACTED]', 20 May 2009, ERN 00842292-00842300; Document No. **E3/5454**, 'Complaint of [REDACTED]', 27 November 2009, ERN 00474445-474455; Document No. **E3/5415**, 'Complaint of [REDACTED]', 29 October 2008, ERN 00872965-00872971; Document No. **E3/5415**, 'Complaint of [REDACTED]', 15 December 2009, ERN 00939597-00939602; Document No. **E3/5373**, 'Complaint of [REDACTED]', 27 August 2008, ERN 00939590, 00939596; Document No. **E3/5425**, 'Complaint of [REDACTED]', 16 February 2009, ERN 00829754-00829759; Document No. **E3/5434**, 'Complaint of [REDACTED]', 10 May 2009, ERN 00939619-00939622; Document No. **E3/5368**, 'Complaint of [REDACTED]', 22 August 2008, ERN 00824831-00824838; Document No. **E3/5344**, 'Complaint of [REDACTED]', 22 May 2008, ERN 00883875-00883880; Document No. **E3/5349**, 'Complaint of [REDACTED]', 23 May 2008, ERN 00883881-00883886; Document No. **E3/5346**, 'Complaint of [REDACTED]', 23 May 2008, ERN 00835181-00835188; Document No. **E3/5476**, 'Complaint of [REDACTED]', 21 July 2009, ERN 00824002-00824010; Document No. **E3/5439**, 'Written Record of Interview of Witness [REDACTED]', 25 October 2007, ERN 00939625-00939631; Document No. **E3/445**, 'Written Record of Interview of Witness [REDACTED]', 5 April 2010, ERN 00508570-00508575; Document No. **E3/5509**, 'Written Record of Interview of Witness [REDACTED]', 29 October 2009, ERN 00403062-00403065; Document No. **E3/5521**, 'Written Record of Interview of Witness [REDACTED]', 1 December 2009, ERN 00422315-00422331; Document No. **E3/5787**, 'Written Record of Interview of Civil Party YIM Sovann', 27 August 2009, ERN 00379309-00379317; Document No. **E3/1714**, 'Interview with Kampuchean Refugees at Thai-Cambodian Border',

February-March 1980, ERN 00170719; Document No. **E3/5788**, 'Written Record of Interview of Civil Party CHUM Sokha', 2 September 2009, ERN 00380709-00380718; Document No. **E3/3958**, 'Written Record of Interview of Civil Party LAY Bony', 26 August 2009, ERN 00379154-00379165; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, p. 35:20-25 (witness Hun Chhunly describing events in Battambang); Document No. **E3/162**, 'Written Record of Interview of Witness PRAK Yut', 19 November 2009, ERN 00407802-00407808; Document No. **E3/1647**, 'Written Record of Interview of Witness KHOEM Ngorn', 16 August 2009, ERN 00375672-00375680; Document No. **E1/149.1**, 'Transcript of Trial Proceedings', 6 December 2012, pp. 23-24 (witness Kim Vanndy describing killings in Chhuk district in the Southwest Zone); Document No. **E3/5517**, 'Written Record of Interview of Witness ██████████', 17 November 2009, ERN 00413911-00413915; Document No. **E3/2048**, 'Report on enemy's actions for Tram Kak District Police', 3 June 1977, ERN 00276562-00276570 (prisoner list in Takeo); Document No. **E3/2441**, CPK Telegram, ERN 00369463-00369489 (report on enemies in SWZ). With regard to Francois Ponchaud, *see* para. 409, *infra*.

⁸⁸⁶ Document No. **E3/369**, 'Written Record of Interview of Witness ██████████', 29 May 2008, ERN 00272713-00272719 (East Zone soldier participating in evacuation of Phnom Penh. Disarmed LN soldiers but says they did them no harm. SWZ troops then came and rounded officers up on trucks, thought they 'May probably be killed' by the SWZ soldiers, but Koy Mon saw and did nothing); Document No. **E3/419**, 'Written Record of Interview of Witness IENG Phan', 23 November 2009, ERN 00411004 (SWZ soldier who participated in the evacuation of PP. Told by Brigade commander Sam Bit that evacuation was to be done 'with the goal of assessing to see who were Lon Nol soldiers'); Document No. **E3/1747**, 'Written Record of Interview of Witness ██████████', 16 July 2008, ERN 00243009 (Evacuee from PP that traveled down highway 4, thus the SWZ. During evacuation, KR soldiers announced that PMs, police officers and soldiers were needed for work with the Party. Once she saw a gathering of soldiers in uniform but does not know where they were taken); Document No. **E3/5278**, 'Written Record of Interview of Witness ██████████', 4 March 2009, ERN 00292821 (SWZ soldier involved in evacuation. Nothing at all about LN soldiers); Document No. **E3/5191**, 'Written Record of Interview of Witness ██████████', 3 July 2008, ERN 00274679 (evacuee, saw corpses in SWZ area); Document No. **E3/5360**, 'Complaint of ██████████', 14 August 2008, ERN 00869909 (speculates husband (a former colonel with lon nol) taken by KR and speculates was killed by KR. No knowledge of such, but her (husband) disappeared. Unclear whether she actually witnessed KR taking husband. Not clear whether alleged event occurred in Phnom P); Document No. **E3/5426**, 'Complaint of ██████████', 17 April 2009, ERN 00939615-00939616 (KH translation only. EN summary available states that her husband and older brother and nephews were tied by KR in Phnom Penh on 17 April '75 (because they were Lon Nol's soldiers) and then were killed by KR. She didn't actually witness any of these events but heard it from a nephew); Document No. **E3/5424**, 'Complaint of ██████████', 17 February 2009, ERN 00873875 (During evacuation from PP, husband was arrested (in PP) and put on a truck b/c he was a LN soldier. Kr told her husband was going to work, but husband disappeared. After husband arrested, Kr evacuated her and her fam. to Takeo prov. Statement suggests involvement of SWZ soldiers because they went to Chaom Chao intersection and then down Road 3 to Takeo); Document No. **E3/5392**, 'Complaint of ██████████', 3 November 2008, ERN 00873795 (reports, but did not witness, allegation that her father (a former LN military commander) was arrested and taken with other LN officers to garrison at the Royal palace and then killed); Document No. **E3/5355**, 'Complaint of ██████████', 19 June 2008, ERN 00869873-00869874 (Two brothers, both LN soldiers, were allegedly taken to Siem Reap province and killed, witness doesn't know why and did not witness killings. Reports that husband, who was a LN soldier was evacuated to Kampong Thom and in 1977 and witness speculates he was executed because he was LN); Document No. **E3/464**, 'Written Record of Interview of Witness ██████████', 19 January 2008, ERN 00226108 (Kr soldier involved in PP evacuation. During evac. of PP, arrested Lon Nol's, questioned them, and sent them on to Kompong Thom); Document No. **E3/4626**, 'Written Record of Interview of Witness PECH Chim', 27 August 2009, ERN 00380135 (SWZ official, states that during evacuation killing of soldier families did not happen); Document No. **E3/5556**, 'Written Interview of Witness ██████████', 1 September 2009, ERN 00377358-00377359 (during evacuation of PP, saw KR shoot a LN soldier in uniform that refused to leave house. Said that KR evacuated PP because they wanted to mop up LN soldiers. No indication which zone KR soldiers were from); Document No. **E3/3961**, 'Written Record of Interview of Witness SUM Chea', 6 March 2008, ERN 00223346 (soldiers killed in Prek Phneou, Kandal Province in the SWZ. Had no first-hand knowledge of any of the events he described, had only heard of them from someone else); Document No. **E3/3962**, 'Written Record of Interview of Witness ██████████', 6 March 2009, ERN 00293365 (Order supposedly from son sen to arrest high ranking civil servants LN regime who refused to leave PP and patients who were LN soldiers being treated in hospital. Statement is unreliable for reasons stated in para. 303, *supra*).

⁸⁸⁷ *See* section V, *supra* (describing the division of the city into zones); *see also* Document No. **E3/369**, 'Written Record of Interview of Witness ██████████', 29 May 2008, ERN 00272713-00272719 (East Zone soldier participating in evacuation of Phnom Penh. Disarmed LN soldiers but says they did them no harm. SWZ troops then came and rounded officers up on trucks, and thought they 'may probably be killed' by the SWZ soldiers); Document No. **E3/419**, 'Written Record of Interview of Witness IENG Phan', 23 November 2009, ERN 00411004 (a SWZ soldier who participated in the evacuation of PP. Told by Brigade commander Sam Bit that

evacuation was to be done 'with the goal of assessing to see who were Lon Nol soldiers); Document No. **E3/1747**, 'Written Record of Interview of Witness [REDACTED]', 16 July 2008, ERN 00243009 (Evacuee from PP that traveled down highway 4, thus the SWZ. During evacuation, KR soldiers announced that PMs, police officers and soldiers were needed for work with the Party. Once she saw a gathering of soldiers in uniform but does not know where they were taken); Document No. **E3/5248**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2009, ERN 00292821 (SWZ soldier involved in evacuation. Nothing at all about LN soldiers); Document No. **E3/5191**, 'Written Record of Interview of Witness [REDACTED]', 3 July 2008, ERN 00274679 (evacuee, saw corpses in SWZ area); Document No. **E3/5424**, 'Complaint of [REDACTED]', 17 February 2009, ERN 00873875 (During evacuation from Phnom Penh, husband was arrested and put on a truck because he was a LN soldier. Khmer Rouge told her husband was going to work, but husband disappeared. After husband arrested, Khmer Rouge evacuated her and her family to Takeo prov. Her statement suggests involvement of SWZ soldiers because they went to Chaom Chao intersection and then down Road 3 to Takeo); Document No. **E3/4626**, 'Written Record of Interview of Witness PECH Chim', 27 August 2009, ERN 00380135 (a SWZ official, stated that during evacuation killing of soldier families did not happen); Document No. **E3/3961**, 'Written Record of Interview of Witness SUM Chea', 6 March 2008, ERN 00223346 (soldiers killed in Prek Phneou, Kandal Province in the SWZ. Had no first-hand knowledge of any of the events he described, had only heard of them from someone else).

⁸⁸⁸ Document No. **E3/5360**, 'Complaint of [REDACTED]', 14 August 2008, ERN 00869909 (speculates husband, a former Lon Nol colonel, was taken by Khmer Rouge and speculates was killed by KR, but had no personal knowledge of such. Unclear whether she actually witnessed KR taking husband. Not clear whether alleged events occurred in Phnom Penh); Document No. **E3/5426**, 'Complaint of [REDACTED]', 17 April 2009, ERN 00939615-00939616 (EN summary available states that her husband, older brother and nephews were tied by KR in Phnom Penh on 17 April '75 (because they were Lon Nol soldiers) and then were killed by KR. Kim Sambaur didn't actually witness any of these events but heard them from a nephew. No indication what part of Phnom Penh events occurred in); Document No. **E3/5392**, 'Complaint of [REDACTED]', 3 November 2008, ERN 00873795 (reports, but did not witness, an allegation that her father, a former LN military commander, was arrested and taken with other LN officers to garrison at the Royal palace and then killed. No indication what part of Phnom Penh events occurred in); Document No. **E3/5355**, 'Complaint of [REDACTED]', 19 June 2008, ERN 00869873-00869874 (Two brothers, both LN soldiers, were allegedly taken to Siem Reap province and killed, witness doesn't know why and did not witness killings. Reports that husband, who was a LN soldier was evacuated to Kampong Thom and in 1977 witness speculates he was executed because he was LN. For events allegedly occurring in Phnom Penh, no indication what part of the city they occurred in.); Document No. **E3/464**, 'Written Record of Interview of Witness [REDACTED]', 19 January 2008, ERN 00226108 (RAK soldier involved in PP evacuation. During evacuation of PP, arrested Lon Nol soldiers, questioned them, and sent them on to Kompong Thom); Document No. **E3/5556**, 'Written Interview of Witness [REDACTED]', 1 September 2009, ERN 00377358-00377359 (during evacuation of PP, saw KR shoot a LN soldier in uniform that refused to leave house. No indication which zone KR soldiers were from); Document No. **E3/3962**, 'Written Record of Interview of Witness [REDACTED]', 6 March 2009, ERN 00293365 (RAK cadre describes order from son to arrest high ranking civil servants LN regime who refused to leave PP and patients who were LN soldiers being treated in hospital. Heard that many LN soldiers and servants arrested in PP and killed and thrown into a well in Tuol Kok area but Khoem Samhuon had no personal knowledge of these allegations and had no information which areas of Phnom Penh such allegations occurred in).

⁸⁸⁹ Document No. **E3/5152**, 'Written Record of Interview of Witness [REDACTED]', 7 March 2008, ERN 00205081 (Khmer Rouge cadre from the North Zone involved in evacuation of Phnom Penh and instructed Lon Nol soldiers to "take off their clothes and to mingle in with the people leaving."); Document No. **E3/470**, 'Written Record of Interview of Witness [REDACTED]', 4 March 2008, ERN 00205008 (North Zone Khmer Rouge cadre involved in the evacuation of Phnom Penh who reported she saw no killing of Lon Nol soldiers and stated that they "had Lon Nol soldiers take off their clothing, hats, and boots, throw down their weapons, and go wherever they wanted."). Other statements referencing the treatment of Lon Nol soldiers are either silent on what region the Khmer Rouge cadre are from or are based solely on speculation and conjecture of the witness, or both. See Document No. **E3/5149**, 'Written Record of Interview of Witness [REDACTED]', 5 March 2008, ERN 00205044; Document No. **E3/5542**, 'Written Record of Interview of Witness [REDACTED]', 3 September 2009, ERN 00373227 (no first-hand knowledge of treatment of Lon Nol soldiers); Document No. **E3/5590**, 'Written Record of Interview of Witness [REDACTED]', 17 December 2009, ERN 00426476 (husband, a former Lon Nol soldier, evacuated Phnom Penh with witness and then disappeared days later).

⁸⁹⁰ Document No. **E3/369**, 'Written Record of Interview of Witness [REDACTED]', 29 May 2008, ERN 00272719.

⁸⁹¹ Document No. **E3/369**, 'Written Record of Interview of Witness [REDACTED]', 29 May 2008, ERN 00272719 (East Zone soldier participating in evacuation of Phnom Penh. Disarmed LN soldiers but says they did them no harm. SWZ troops then came and rounded officers up on trucks, thought they 'May probably be killed' by the SWZ soldiers, but Koy Mon saw and did nothing)

⁸⁹² See section V, *supra*.

⁸⁹³ Document No. **D133/1.5**, 'Translation and Summaries of Refugee Accounts and Interviews Conducted in Paris or in Thailand', ERN 00875034-00875291; Document No. **E3/4590**, 'Refugee Accounts', ERN 00820319-00820634.

⁸⁹⁴ See Document No. **E3/4590**, 'Refugee Accounts', ERN 00820590 et seq (██████████ refugee account), 00820450 (██████████ refugee account); see Document No. **D133/1.5**, 'Translation and Summaries of Refugee Accounts and Interviews Conducted in Paris or in Thailand', ERN 00875112, 00875115, 00875220.

⁸⁹⁵ See Document No. **D133/1.5**, 'Translation and Summaries of Refugee Accounts and Interviews Conducted in Paris or in Thailand', ERN 00875289.

⁸⁹⁶ See Document No. **D133/1.5**, 'Translation and Summaries of Refugee Accounts and Interviews Conducted in Paris or in Thailand', ERN 00875268.

⁸⁹⁷ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-79', 1996, ERN 00678599 (400 former regime families given permission to return. senior officers returned in December, reeducated at organized schools).

⁸⁹⁸ Document No. **E3/5169**, 'Written Record of Interview of Witness ██████████', 21 April 2008, ERN 00250081 (in 1977 he saw SWZ soldiers come to arrest LN soldiers near his village); Document No. **E3/5216**, 'Written Record of Interview of Witness ██████████', 9 September 2008, ERN 00275442-00275443 (Five days after Chikreng rebellion, SWZ soldiers brought witness to Watt Kok Thlork 100 people tied up; 'some were former soldiers, police, and government officials'. They were taken by truck to Siem Reap and 'disappeared'); Document No. **D125/116**, 'Written Record of Interview of Witness ██████████', 27 August 2008, ERN 00275416 (One group arrested because they 'talked about' the Lon Nol regime. Witness states he knows that' in 1977 students and Lon Nol soldiers who came from Siem Reap were arrested and taken to Phnom Trung Bat and killed as part of the SWZ purge); Document No. **E3/5356**, 'Complaint of ██████████', 25 June 2008, ERN 00939580 (Husband was a former LN soldier. In Siem Reap Province, husband taken to live (with ██████████) at Kralang Pagoda with other former soldier families. At Pagoda, SW zone Cadre had a meeting and picked husband to be re-educated. Husband taken with other former soldiers, and Yanna heard that they were killed); Document No. **E3/1714**, 'Interviews with Kapuchean Refugees at Thai-Cambodian Border', 28 February 1980, ERN 00170695; Document No. **E3/5451**, 'Complaint of ██████████', 9 July 2009, ERN 00812391-00812397.

⁸⁹⁹ Document No. **E3/5358**, 'Complaint of ██████████', 28 June 2008, ERN 00885707-00885712; Document No. **E3/5357**, 'Complaint of ██████████', 28 June 2008, ERN 00835189-00835195; Document No. **E3/5339**, 'Complaint of ██████████', 24 March 2008, ERN 00890703-00890709; Document No. **E3/5397**, 'Complaint of ██████████', 28 May 2008, ERN 00834016-00834022; Document No. **E3/5342**, 'Complaint of ██████████', 20 March 2008, ERN 00829564-00829570; Document No. **E3/409**, 'Written Record of Interview of Witness ██████████', 11 November 2009, ERN 00412176-00412187; Document No. **E3/5395**, 'Complaint of ██████████', 13 June 2008, ERN 00870336-00870341; Document No. **D166/82**, 'Written Record of Interview of Witness ██████████', 14 January 2009, ERN 00282350-00282358; Document No. **E3/5598**, 'Statement of ██████████', 15 January 2005, ERN 00526857; Document No. **E3/5505**, 'Complaint of ██████████', 23 October 2009, ERN 00399166-00399174; Document No. **E3/410**, 'Written Record of Interview of YUN Kim', 12 November 2009, ERN 00412188-00412202; Document No. **E3/5545**, 'Written Record of Interview of Civil Party ██████████', 31 August 2009, ERN 00384411-00384421; Document No. **E3/3964**, 'Written Record of Interview of Witness PECHUY Chipse', 10 September 2008, ERN 00225209-00225214. It is unclear where the events described by Denise Affonco occurred. See Document No. **E3/3976**, 'Written Record of Interview of Witness Denise AFFONCO', 3 June 2009.

⁹⁰⁰ Document No. **E1/ 88.1**, 'Transcript of Trial Proceedings', 19 June 2012 (Yun Kim); Document No. **E1/ 89.1**, 'Transcript of Trial Proceedings', 20 June 2012 (Yun Kim); Document No. **E1/ 143.1**, 'Transcript of Trial Proceedings', 12 November 2012 (Pechy Chipse); Document No. **E1/ 144.1**, 'Transcript of Trial Proceedings', 14 November 2012 (Pechy Chipse); Document No. **E1/ 152.1**, 'Transcript of Trial Proceedings', 12 December 2012 (Denise Affonco); Document No. **E1/ 153.1**, 'Transcript of Trial Proceedings', 13 December 2012 (Denise Affonco).

⁹⁰¹ Document No. **E96/7**, 'Decision on Co-Prosecutors' Rule 92 Submission regarding the Admission of Witness Statements and Other Documents before the Trial Chamber', 20 June 2012, para. 25.

⁹⁰² See section II-H, *supra*.

⁹⁰³ See section VII-B, *supra*.

⁹⁰⁴ Document No. **E3/4527**, 'Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes : Cambodian Accountability in Comparative Perspective', ERN 00661459, fn 14.

⁹⁰⁵ Closing Order, para. 208.

⁹⁰⁶ See section VII-B, *supra*.

⁹⁰⁷ Document No. **E3/24**, Written Record of Interview of Rochoem Ton, 5 December 2007, ERN 00223581.

⁹⁰⁸ Document No. **E1/207.1**, 'Transcript of Trial Proceedings', 13 June 2013, pp. 82:19-83:10.

⁹⁰⁹ See section VII-B, *supra*.

⁹¹⁰ Document No. **E3/4527**, 'Reassessing the Role of Senior Leaders and Local Officials in Democratic Kampuchea Crimes : Cambodian Accountability in Comparative Perspective', ERN 00661459, fn 14.

- ⁹¹¹ Document No. **E1/222.1**, 'Transcript of Trial Proceedings', 11 July 2013, p. 21:18.
- ⁹¹² Document No. **E3/1593**, Ben Kiernan, 'The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge', 1975-1979', ERN 00678670-71.
- ⁹¹³ Document No. **E3/24**, Written Record of Interview of Rochoem Ton, 5 December 2007, ERN 00223581.
- ⁹¹⁴ Document No. **E1/186.1**, 'Transcript of Trial Proceedings', 30 April 2013, p. 33:6-17.
- ⁹¹⁵ Document No. **E1/186.1**, 'Transcript of Trial Proceedings', 30 April 2013, pp. 77:18-78:5.
- ⁹¹⁶ Document No. **E1/187.1**, 'Transcript of Trial Proceedings', 2 May 2013, p. 22:4-5.
- ⁹¹⁷ Document No. **E1/186.1**, 'Transcript of Trial Proceedings', 11 April 2013, p.13:6-9.
- ⁹¹⁸ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, pp. 83:1-84:4.
- ⁹¹⁹ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p. 84:12-18.
- ⁹²⁰ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p.17:7-11.
- ⁹²¹ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p.84:12-18.
- ⁹²² Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, pp.16:20-22, 90:17-18.
- ⁹²³ Document No. **E1/186.1**, 'Transcript of Trial Proceedings', 11 April 2013, p.13:6-9.
- ⁹²⁴ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p.79:9-20; Document No. **E1/188.1**, 'Transcript of Trial Proceedings', 3 May 2013, p.30:2-3.
- ⁹²⁵ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p.23:12-14; Document No. **E1/186.1**, p. 46:1-9; Document No. **E1/188.1**, 'Transcript of Trial Proceedings', 3 May 2013, p. 3:4.
- ⁹²⁶ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, pp.16:16-17:6.
- ⁹²⁷ Document No. **E3/4638**, 'Written Record of Interview of Witness [REDACTED]', 11 June 2008, ERN 00242119.
- ⁹²⁸ Document No. **E3/5500**, 'Written Record of Interview of Witness [REDACTED]', 22 August 2009, ERN 00367287-00367288.
- ⁹²⁹ Document No. **E3/5275**, 'Written Record of Interview of Witness [REDACTED]', 15 January 2009, ERN 00287329.
- ⁹³⁰ Document No. **E3/5275**, 'Written Record of Interview of Witness [REDACTED]', 15 July 2009, ERN 00287329.
- ⁹³¹ Document No. **E3/24**, Written Record of Interview of Rochoem Ton, 5 December 2007, ERN 00223581.
- ⁹³² See section II-B, *supra*; Document No. **E96/7**, 'Decision on Co-Prosecutors' Rules 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber, 20 June 2012, ERN 00812157.
- ⁹³³ Document No. **E1/207.1**, 'Transcript of Trial Proceedings', 13 June 2013, p. 74:6-9.
- ⁹³⁴ See section II-H, *supra*.
- ⁹³⁵ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013.
- ⁹³⁶ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, p. 83:7-10.
- ⁹³⁷ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, pp. 25:14-26:11.
- ⁹³⁸ Document No. **E1/218.1**, 'Transcript of Trial Proceedings', 4 July 2013, pp. 25:14-26:11.
- ⁹³⁹ Document No. **E1/186.1**, 'Transcript of Trial Proceedings', 30 April 2013, p. 47-48.
- ⁹⁴⁰ See section III-A, *supra*.
- ⁹⁴¹ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge', 1975-1979', ERN 00678507.
- ⁹⁴² Document No. **E3/9**, 'Pol Pot: The History of a Nightmare', 2004, ERN 00396483; Document No. **E1/190.1**, 'Transcript of Trial Proceeding', 7 May 2013, p. 88:3-24.
- ⁹⁴³ Document No. **E186/1R**, 'One Day at Po Chrey', 18:30-20:05.
- ⁹⁴⁴ Document No. **E1/179.1**, 'Transcript of Trial Proceedings', 10 April 2013, pp. 5:19-6:5; Document No. **E3/1683**, 'The Tragedy of Cambodian History', ERN 00193266 (describing Sihanouk's rewards 'given for rebels' severed heads').
- ⁹⁴⁵ See section III-B, *supra*.
- ⁹⁴⁶ See section III-D, *supra*.
- ⁹⁴⁷ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge 1975-1979', 1996, ERN 00678508.
- ⁹⁴⁸ Document No. **E3/4202**, 'Behind the Killing Fields: A Khmer Rouge Leader and One of his Victims', ERN 00757515, 00757531-32.
- ⁹⁴⁹ Document No. **E3/1683**, 'The Tragedy of Cambodian History: Politics, War, and Revolution since 1945', ERN 00193387.
- ⁹⁵⁰ Document No. **E3/1683**, 'The Tragedy of Cambodian History: Politics, War, and Revolution since 1945', ERN 00193387.
- ⁹⁵¹ Document No. **E3/1683**, 'The Tragedy of Cambodian History: Politics, War, and Revolution since 1945', ERN 00193349.
- ⁹⁵² Document No. **E294**, 'Request to Admit New Evidence, Summons Rob Lemkin and Initiate an Investigation', 11 July 2013, para. 2.

- ⁹⁵³ Document No. **E1/186.1R**, 'Additional Footage: Director Interview 1', 2:10-2:30 (Lemkin describing his review of the translated footage).
- ⁹⁵⁴ Document No. **E294/1**, 'Decision on Nuon Chea Request to Admit New Documents, to Initiate an Investigation and to Summons Mr. Rob LEMKIN', 24 July 2013, para.15; Document No. **E1/223.1**, 'Transcript of Trial Proceedings', 15 July 2013, p.123:3-4.
- ⁹⁵⁵ Document No. **E1/186.1R**, 'Additional Footage: Director Interview 1', 02:10-02:30 (describing the process of crafting storylines on the basis of the greater body of film).
- ⁹⁵⁶ See section IV, *supra*.
- ⁹⁵⁷ Case 0011/18/07-2007-ECCC/SC, Doc. No. **F28**, 'Appeal Judgement,' 3 February 2012, '*Duch* Appeal Judgement', para. 533, *citing The Prosecutor v. Tihomir Blaškić*, IT-95-14-A, 'Judgement,' 29 July 2004, 'Blaškić Appeal Judgement', paras. 45-46; *The Prosecutor v. Sylvestre Gacumbitsi*, ICTR-01-64-A, 'Judgement,' 7 July 2006, 'Gacumbitsi Appeal Judgement', para. 140; *The Prosecutor v. Milan Milutinović et al.*, IT-05-87-T, 'Judgement,' 26 February 2009, 'Milutinović Trial Judgement', para. 89.
- ⁹⁵⁸ Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, paras 38-48.
- ⁹⁵⁹ See section IV, *supra*.
- ⁹⁶⁰ Document No. **E163/5/11**, 'Preliminary Submissions Concerning the Applicable Law', 18 January 2013, para. 46.
- ⁹⁶¹ See section IV, *supra*.
- ⁹⁶² See sections III-C & D, *supra*.
- ⁹⁶³ See sections III-C & D, *supra*.
- ⁹⁶⁴ See sections III-C & D, *supra*.
- ⁹⁶⁵ See section III-D, *supra*.
- ⁹⁶⁶ See section III- D, *supra*.
- ⁹⁶⁷ Document No. **E1/189.1**, 'Transcript of Trial Proceedings', 6 May 2013, p. 43:3-4.
- ⁹⁶⁸ Document No. **E186/1R**, 'One Day at Po Chrey', 22:30-24:00.
- ⁹⁶⁹ See section III- D, *supra*.
- ⁹⁷⁰ See section III- D, *supra*.
- ⁹⁷¹ Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge 1975-1979', ERN 00678541.
- ⁹⁷² Document No. **E3/1593**, 'The Pol Pot Regime: Race, Power and Genocide in Cambodia under the Khmer Rouge 1975-1979', ERN 00678541.
- ⁹⁷³ See Document No. **E145**, 'Memorandum from Trial Chamber', 29 November 2011, pp. 2-3; Document No. **E172/10**, 'Memorandum from Trial Chamber', 28 March 2012 (defining scope of testimony as to particular witnesses); Document No. **E172/27**, 'Memorandum from Trial Chamber', 15 June 2012; Document No. **E1/173.1**, 'Transcript of Trial Proceedings,' 21 February 2013, p. 22:7-11 (Co-Prosecutor noting that examination outside the scope of Case 002/01 is limited to certain witnesses); Document No. **E1/177.1**, 'Transcript of Trial Proceedings,' 8 April 2013, pp. 19:13-21:13 (objection to questions beyond the scope overruled because relevant to structure); Document No. **E1/159.1**, 'Transcript of Trial Proceedings,' 13 January 2013, pp. 91:22-93:9 (similar); Document No. **E1/150.1**, 'Transcript of Trial Proceedings,' 7 December 2012, pp. 1:23-2:5 (President reminding parties to examine only as to evacuations policy and administrative structures); Document No. **E1/35.1**, 'Transcript of Trial Proceedings,' 30 January 2012, pp. 59:13-19 (civil party attorney noting that questions are posed only for the purpose of establishing structure).
- ⁹⁷⁴ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012.
- ⁹⁷⁵ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, p. 106:17-21.
- ⁹⁷⁶ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, p. 106:17-21.
- ⁹⁷⁷ Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, pp. 43:22-44:16; *see also*, Document No. **E1/93.1**, 'Transcript of Trial Proceedings,' 20 July 2012, pp. 89:21-91:25.
- ⁹⁷⁸ Document No. **E1/189.1**, 'Transcript of Trial Proceedings,' 6 May 2013, pp. 93:10-94:4.
- ⁹⁷⁹ Document No. **E1/189.1**, 'Transcript of Trial Proceedings,' 6 May 2013, p. 92:8-11.
- ⁹⁸⁰ Document No. **E1/190.1**, 'Transcript of Trial Proceedings,' 7 May 2013, p. 13:6-8.
- ⁹⁸¹ Document No. **E1/190.1**, 'Transcript of Trial Proceedings,' 7 May 2013, pp. 14:1-15:14.
- ⁹⁸² Document No. **E1/190.1**, 'Transcript of Trial Proceedings,' 7 May 2013, p. 84:5-7.
- ⁹⁸³ Document No. **E3/9**, 'Pol Pot The History of a Nightmare' by Philip SHORT, 2004, ERN 00396489 ('Unlike orthodox communist states, where decision-making is highly centralized and implementation is in theory monolithic, Khmer Rouge Cambodia was unruly. Directives from the CPK standing committee were obeyed, but each Zone interpreted them in its own fashion'), ERN 00396490 ('CPK standing committee guidelines were transmitted orally to low level officials - which meant that only the most simplistic, broad-brush principles were retained. All the rest were improvisation. The way in which policies were carried out depended on the whim of the individual and the attitude of the higher-ups in his k'saw'), ERN 00396528 ('Local leaders looked after their

own: what happened in the next district, the next village was not their concern. It made a mockery of central directives, as Pol was well aware'), ERN 00396499 ('It is also true that the way the new system (DK system) was interpreted varied hugely from zone to zone, region to region and even village to village. In some areas, cadres were lenient; in others, harsh'), ERN 00396528 ('Discipline varied at the whim of each village chief, there were 'good' villages in the worst regions, and 'bad' villages in the best').

⁹⁸⁴ Document No. **E1/64.1**, 'Transcript of Trial Proceedings,' 19 April 2012, p. 50:17-21; *see also*, Document No. **E1/156.1**, 'Transcript of Trial Proceedings,' 8 January 2013, pp. 34:24-25:20 (to Sa Vi's knowledge, Nuon Chea did not go often on trips to the countryside; he did not know what happened there).

⁹⁸⁵ Document No. **E1/64.1**, 'Transcript of Trial Proceedings,' 19 April 2012, p. 53:6-15.

⁹⁸⁶ Document No. **E1/123.1**, 'Transcript of Trial Proceedings,' 6 September 2012, p.20:2-8

⁹⁸⁷ Document No. **E1/131.1**, 'Transcript of Trial Proceedings,' 8 October 2012, pp. 15:21-16:8.

⁹⁸⁸ Document No. **E1/132.1**, 'Transcript of Trial Proceedings,' 9 October 2012, p. 67:14-23.

⁹⁸⁹ Document No. **E1/64.1**, 'Transcript of Trial Proceedings,' 19 April 2012, p. 68:4-23.

⁹⁹⁰ *See* section V-E, *supra*.

⁹⁹¹ Document No. **E3/732**, 'Revolutionary Youth', April 1976, ERN 00392445 (*see* point 3 in full).

⁹⁹² *See e.g.*, Document No. **E3/1102**, 'Telegram 11', 20 October 1976; Document No. **E3/1104**, 'Telegram 05-83', 13 November 1976.

⁹⁹³ Document No. **E3/20**, 'When the War was Over', ERN 00237863 (during the civil war, the areas in liberated zones managed to increase rice yields between 1973 and 1975 notwithstanding the US bombing due to the productive capacity of the cooperatives).

⁹⁹⁴ Document No. **E3/4178**, 'Annex 13: USAID, Cambodia Termination Report volume I.', 1975, ERN 00291328-00291342.

⁹⁹⁵ *See e.g.*, Document No. **E1/156.1**, 'Transcript of Trial Proceedings,' 8 January 2013, pp. 38:13-41:14; Document No. **E1/79.1**, 'Transcript of Trial Proceedings,' 31 May 2012, pp. 6:21-7:1; Document No. **E1/81.1**, 'Transcript of Trial Proceedings,' 5 June 2012, p. 95:21-25.

⁹⁹⁶ Document No. **E1/123.1**, 'Transcript of Trial Proceedings,' 6 September 2012, p. 20:9-11.

⁹⁹⁷ Document No. **E1/123.1**, 'Transcript of Trial Proceedings,' 6 September 2012, pp. 21:19-22:3.

⁹⁹⁸ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, pp. 9:21-10:13, 109:20-110:2.

⁹⁹⁹ *See* section III-B, *supra*.

¹⁰⁰⁰ *See* section III-B, *supra*.

¹⁰⁰¹ *See* section III-B, *supra*.

¹⁰⁰² *See* section III-B, *supra*.

¹⁰⁰³ Document No. **E1/102.1**, 'Transcript of Trial Proceedings,' 6 August 2012, pp. 47:16-48:14.

¹⁰⁰⁴ Document No. **E1/102.1**, 'Transcript of Trial Proceedings,' 6 August 2012, pp. 48:17-49:3. *See also*, Document No. **E3/4202**, 'Annex 2: Book by Gina Chon and THET Sambath entitled "Behind the killing fields : a Khmer Rouge leader and one of his victims"', ERN 00757493-00757494.

¹⁰⁰⁵ Document No. **E1/102.1**, 'Transcript of Trial Proceedings,' 6 August 2012, pp. 74:22-75:15.

¹⁰⁰⁶ Document No. **E1/81.1**, 'Transcript of Trial Proceedings,' 5 June 2012, pp. 81:16-82:5; Document No. **E1/82.1**, 'Transcript of Trial Proceedings,' 6 June 2012, pp. 33-34 (three day political education meeting chaired by Pol Pot and Nuon Chea concerned building the country, getting rid of famine and improving living conditions), 44:4-7 (no discussion of enemies at this same meeting), 66:6-17 (same).

¹⁰⁰⁷ Document No. **E1/131.1**, 'Transcript of Trial Proceedings,' 8 October 2012, p. 82:9-13.

¹⁰⁰⁸ *See e.g.*, Document No. **E3/3342**, 'River of Time' by Jon SWAIN, 1998, ERN 00431296 (Jon Swain describing the two 'bone-jarring' days traveling the first 80 miles of the trip toward the Thai border after leaving the French embassy: 'Much of our progress over the bomb-damaged roads was at less than five miles per hour').

¹⁰⁰⁹ Document No. **E1/112.1**, 'Transcript of Trial Proceedings,' 22 August 2012, pp. 16:21-17:3.

¹⁰¹⁰ Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, para. 30.

¹⁰¹¹ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 43.

¹⁰¹² Document No. **E3/2763**, 'Burial', 18 February 2008.

¹⁰¹³ Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013.

¹⁰¹⁴ Document No. **E1/76.1**, 'Transcript of Trial Proceedings,' 28 May 2012, p. 28:2-24.

¹⁰¹⁵ Document No. **E1/93.1**, 'Transcript of Trial Proceedings,' 20 July 2012, pp. 123:12-124:15, 134:10-136:11.

¹⁰¹⁶ Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, p. 45:10-14.

¹⁰¹⁷ As Nuon Chea indicated to Thet Sambath, neither he nor the CPK had any objection to Buddhism – indeed, Nuon Chea himself had been a monk. *See* Document No. **E3/4202**, 'Behind the killing fields : a Khmer Rouge leader and one of his victims', ERN 00757497.

¹⁰¹⁸ Document No. **E1/192.1**, 'Transcript of Trial Proceedings,' 9 May 2013, pp. 12:18-13:19.

- ¹⁰¹⁹ Document No. **E3/135**, 'Revolutionary Flag', 6 June 1977, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 39 & fn. 90.
- ¹⁰²⁰ Document No. **E3/99**, 'Follow-up of Implementation of the Political Line in Mobilizing the National Democratic Front Forces of the Party', 22 September 1975, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 39 & fn. 90.
- ¹⁰²¹ Document No. **E3/2306**, 'Cambodia, A Yugoslav Journalist's Impressions of His Visit', 29 April 1978, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 39 & fn. 90.
- ¹⁰²² Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, p. 45:14-15.
- ¹⁰²³ Document No. **E1/93.1**, 'Transcript of Trial Proceedings,' 20 July 2012, p. 141:1.
- ¹⁰²⁴ Document No. **E1/192.1**, 'Transcript of Trial Proceedings,' 9 May 2013, pp. 18:1-19:15.
- ¹⁰²⁵ Document No. **E3/2653**, 'The Cham Rebellion, Survivors' Stories from the Villages', ERN 00219075; Document No. **E3/1822**, 'Oukoubah, Justice for the Cham Muslims under the Democratic Kampuchea Regime', *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 40 & fn. 102.
- ¹⁰²⁶ Document No. **E3/2653**, 'The Cham Rebellion, Survivors' Stories from the Villages', ERN 00219075.
- ¹⁰²⁷ See section II-A, *supra*.
- ¹⁰²⁸ See section II-F, *supra*.
- ¹⁰²⁹ Document No. **E1/155.1**, 'Transcript of Trial Proceedings,' 17 December 2012, p. 17:6-7.
- ¹⁰³⁰ Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, para. 26.
- ¹⁰³¹ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fns. 97-98.
- ¹⁰³² Document No. **E3/154**, 'Telegram 15', 30 November 1975, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 40 & fn. 100.
- ¹⁰³³ Document No. **E3/154**, 'Telegram 15', 30 November 1975.
- ¹⁰³⁴ Document No. **E3/178**, 'Weekly Report of Sector 5 committee', 21 May 1977, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 40 & fn. 101.
- ¹⁰³⁵ Document No. **E3/952**, 'Telegram 4', 2 April 1976, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 40 & fn. 99.
- ¹⁰³⁶ Document No. **E1/82.1**, 'Transcript of Trial Proceedings,' 6 June 2012, pp. 78:14-19 84:12-85:25; Document No. **E1/84.1**, 'Transcript of Trial Proceedings,' 11 June 2012, p. 7:11-22; Document No. **E1/85.1**, 'Transcript of Trial Proceedings,' 12 June 2012, pp. 56:12-57:10.
- ¹⁰³⁷ Document No. **E223/2/8**, 'Objections to Requests to Put Before the Chamber Written Statements and Transcripts', 26 April 2013, para. 27.
- ¹⁰³⁸ Document No. **E1/112.1**, 'Transcript of Trial Proceedings,' 22 August 2012, p. 14:5-11.
- ¹⁰³⁹ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 41 & fn. 105.
- ¹⁰⁴⁰ Document No. **E3/243**, 'Telegram 15', 19 January 1978; Document No. **E3/1075**, 'Telegram 18', 8 April 1978, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fn. 107.
- ¹⁰⁴¹ Document No. **E3/871**, 'Telegram 21', 21 March 1976, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fn. 107.
- ¹⁰⁴² Document No. **E3/722**, 'Announcement of Steady and Absolute Combat Against the Yvon Enemy Aggressors and Expansionist Land-grabbers', 1 January 1979, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fn. 106.
- ¹⁰⁴³ Document No. **E3/4604**, 'Revolutionary Flag', 4 April 1978, *cited in* Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fn. 106.
- ¹⁰⁴⁴ Document No. **E1/180.1**, 'Transcript of Trial Proceedings,' 11 April 2013, pp. 35:25-36:3; Document No. **E1/178.1**, 'Transcript of Trial Proceedings,' 9 April 2013, p. 52:12-24 (Francois Ponchaud describing the murder of 2,000 Vietnamese by Lon Nol troops on one occasion).
- ¹⁰⁴⁵ Closing Order, paras 794-796.
- ¹⁰⁴⁶ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 41.

- ¹⁰⁴⁷ Document No. **E3/351**, Written Record of Interview of [REDACTED], 7 November 2007, ERN 00162917-00162920.
- ¹⁰⁴⁸ See e.g., Document No. **E3/1094**, 'Monthly Report', 4 August 1978, cited in Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, fn. 107.
- ¹⁰⁴⁹ Document No. **E1/192.1**, 'Transcript of Trial Proceedings,' 9 May 2013, pp. 18:1-19:15.
- ¹⁰⁵⁰ Document No. **E1/96.1**, 'Transcript of Trial Proceedings,' 25 July 2012, pp. 19:1-20:5.
- ¹⁰⁵¹ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, pp. 94:7-9, 99:19-21.
- ¹⁰⁵² Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, pp. 94:25-95:3.
- ¹⁰⁵³ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, p. 96:4-8.
- ¹⁰⁵⁴ Document No. **E1/219.1**, 'Transcript of Trial Proceedings,' 8 July 2013, pp. 101:1-102:2, on Document No. **E3/775**, 'Revolutionary and Non-Revolutionary World Views Regarding Matter of Family Building', 2 June 1975.
- ¹⁰⁵⁵ Document No. **E1/91.1**, 'Transcript of Trial Proceedings,' 18 July 2012, p. 46:20-21.
- ¹⁰⁵⁶ Document No. **E1/190.1**, 'Transcript of Trial Proceedings,' 7 May 2013, p. 10:9-10.
- ¹⁰⁵⁷ See e.g., Document No. **E1/183.1**, 'Transcript of Trial Proceedings,' 24 April 2013, pp. 22:24-23:10, 75:15-76:14.
- ¹⁰⁵⁸ Witness Yun Kim: Document No. **E1/88.1**, 'Transcript of Trial Proceedings,' 19 June 2012, pp. 60:15-62:7; Document No. **E1/89.1**, 20 June 2012, 'Transcript of Trial Proceedings,' pp. 20:11-21:14. Witness Chhuon Thi: Document No. **E1/183.1**, 'Transcript of Trial Proceedings,' 24 April 2013, pp. 21:13-22:21. Witness Meas Voeun: Document No. **E1/131.1**, 'Transcript of Trial Proceedings,' 8 October 2012, p. 64:1-17.
- ¹⁰⁵⁹ Document No. **E1/82.1**, 'Transcript of Trial Proceedings,' 6 June 2012, pp. 67:4-72:21; Document No. **E1/85.1**, 'Transcript of Trial Proceedings,' 12 June 2012, pp. 28:25-29:16, 35:1-3 (according to the Civil Party Lead Co-Lawyer, 'he said there were no forced marriages').
- ¹⁰⁶⁰ Document No. **E277/1**, 'Co-Prosecutors' Combined Response to Defence Objections to the Admission of Witness Statements, Complaints and Transcripts', 27 May 2012, para. 42 & fns. 115-117.