



ព្រះរាជាណាចក្រកម្ពុជា  
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Nation Religion Roi  
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Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia  
Chambres extraordinaires au sein des Tribunaux cambodgiens

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត  
Office of the Co-Investigating Judges  
Bureau des Co-juges d'instruction

Case File No.: 003/07-09-2009-ECCC-OCIJ

Before: **YOU Bunleng**  
**Laurent KASPER-ANSERMET**  
Date: **02 May 2012**  
Original: **English**  
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**DECISION ON PERSONAL JURISDICTION AND INVESTIGATIVE  
POLICY REGARDING SUSPECT**

**Co Prosecutors**

Mrs. CHEA Leang  
Mr. Andrew CAYLEY

**Lawyers for the Civil Parties**

Ms. NGUYEN Lyma  
Mr. SOKONG Sam

**We, Laurent Kasper-Ansermet, International Reserve Co-Investigating Judge at the Extraordinary Chambers in the Courts of Cambodia,**

**Noting** the Agreement signed on 6 June 2003 between the United Nations and the Royal Government of Cambodia for the purpose of bringing to trial senior leaders of Democratic Kampuchea and those who were the most responsible for the crimes and serious violations of Cambodian and international law committed during the period of Democratic Kampuchea from 17 April 1975 to 6 January 1979 (“the ECCC Agreement”), in particular articles 1, 5(3) and 6(3);

**Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“the ECCC Law”), in particular articles 1, 2 (new), 23 (new) and 29 (new);

**Noting** the Preamble to the Internal Rules of the ECCC, as well as articles 21, 53, 55 and 56 of the Internal Rules;

**Noting** the judicial investigation against Suspect ██████████ relating to charges of crimes against humanity, grave breaches of the Geneva Conventions of 12 August 1949, torture and murder, offences defined and punishable under Articles 3, 5, 6, 29 (new) and 39 (new) of the ECCC Law, and 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code of Cambodia;

**Noting** the Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, dated 20 November 2008;<sup>1</sup>

**Noting** the International Co-Prosecutor’s Request that the Co-Investigating Judge’s Criteria for Determination of Personal Jurisdiction be placed onto the Case File, dated 2 September 2011<sup>2</sup>;

**Noting** the Notification of Rights done by us to the Suspect ██████████ regarding his rights throughout the judicial investigation in Case File 003;<sup>3</sup>

1. The present decision is issued in reference to the International Co-Prosecutor’s request that the Co-Investigating Judges’ criteria for determination of personal jurisdiction be placed onto Case File 004<sup>4</sup>. This request was submitted in response to several rejections by the Co-Investigating Judges of motions and investigative requests into Cases 003 and 004. In order to allow proper review of the investigative decisions of the Co-Investigating Judges and to ensure due process and transparency of proceedings in Case

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<sup>1</sup> **D1** [CF003] Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008 (hereinafter “the Second Introductory Submission”).

<sup>2</sup> **D104** [CF004] International Co-Prosecutor’s Request that the Co-Investigating Judge’s Criteria for Determination of Personal Jurisdiction be placed onto the Case File, 2 September 2011.

<sup>3</sup> **D30** [CF003] Notification of Suspect’s Rights [Rule 21(1)(d)], 24 February 2012.

<sup>4</sup> **D104** [CF004] International Co-Prosecutor’s Request that the Co-Investigating Judge’s Criteria for Determination of Personal Jurisdiction be placed onto the Case File, 2 September 2011.

003, the International Reserve Co-Investigating Judge hereby details the criteria developed as to the interpretation of “those who were most responsible” and its application to Suspect [REDACTED]

2. The Co-Prosecutors’ Second Introductory Submission alleges that the Suspect is responsible for planning, instigating, ordering, aiding and abetting or committing, individually or by participating in a joint criminal enterprise, the following crimes under the jurisdiction of the ECCC:
  - a. Murder, extermination, enslavement, imprisonment, torture, persecutions on political, racial and religious grounds, which constitute crimes against humanity, punishable under Article 5, 29 (new) and 39 (new) of the ECCC Law;
  - b. Unlawful detention of civilians, willful deprivation of prisoners of war and civilians of their rights of fair a regular trial, inhuman treatment, willfully causing great suffering or serious injury to body or health, torture and murder, which constitute grave breaches of the 12 August 1949 Geneva Conventions, punishable under articles 6, 29 (new) and 39 (new) of the ECCC Law;
  - c. Homicide, torture, which constitute violations of the 1956 Penal Code (articles 500, 501, 503, 504, 505, 506, 507 and 508), punishable under articles 3 (new), 29 (new) and 93 (new) of the ECCC Law;

Based on offences committed from 17 April 1975 to 6 January 1979 on the Cambodian territory as a senior leader of the Democratic Kampuchea and/or a person most responsible for the above-mentioned crimes, having held the position of Secretary of Division 164 of the Revolutionary Army of Kampuchea and having been responsible for the control of the city of Kampong Som between April 1975 and 1978.

3. The Second Introductory Submission was first submitted on 20 November 2008 by the International Co-Prosecutor acting individually.<sup>5</sup> As the National Co-Prosecutor expressed her disapproval of this submission, a record of disagreement was filed,<sup>6</sup> in accordance with Internal Rule 71, and the Pre-Trial Chamber was seized of the matter. One of the grounds raised by the National Co-Prosecutor against the filing of the Introductory Submission was the lack of personal jurisdiction of the ECCC over the Suspects therein named: “the National Co-Prosecutor is of the view that the suspects identified in the new Introductory Submissions are not senior leaders or those most responsible because of their comparatively lower rank in the Democratic Kampuchea regime, and thus they do not fall within the jurisdiction of the ECCC.”<sup>7</sup> The Pre-Trial

<sup>5</sup> D1 [CF003] Co-Prosecutors’ Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008.

<sup>6</sup> International Co-Prosecutor’s Written Statement of Facts and Reasons for Disagreement pursuant to Rule 71(2) [Disagreement n°001/18-11-2008-ECCC/PTC], 20 November 2008, PTC Doc. No 1.

<sup>7</sup> Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors pursuant to Internal Rule 71 [Disagreement n°001/18-11-2008-ECCC/PTC], 18 August 2009.

Chamber was unable to reach the required majority, therefore, pursuant to Internal Rule 74(1), the action of the International Co-Prosecutor was ordered to be executed, and the Second Introductory Submission was duly filed on 7 September 2009.<sup>8</sup>

4. Despite the decision of the Pre-Trial Chamber, on 11 May 2011 the National Co-Prosecutor has once again manifested her opposition to the pursuit of the judicial investigation in Case File 003, maintaining “that the suspects mentioned in the Case File 003 were not either senior leaders or those who were most responsible during the period of Democratic Kampuchea.”<sup>9</sup>
5. On 2 December 2011, considering that the investigations led thus far in Case 003 were not complete and the Co-Investigating Judges were not in a position to decide on a number of judicial matters, the International Reserve Co-Investigating Judge ordered the resumption of the judicial investigation. Following this Order, further investigative acts were completed by the OCIJ, leading to the collection of additional evidence, both inculpatory and exculpatory. In light of these considerations it appears possible and necessary, at this stage of the procedure, to assess whether the Suspect under investigation falls within the scope of the Extraordinary Chambers’ personal jurisdiction.
6. According to the Internal Rules, the Co-Prosecutors’ Submission seizes the Co-Investigating Judges of the facts therein set out, falling within the jurisdiction of the ECCC, *ratione materiae*, *ratione temporis* as well as *ratione loci*, and only these. If new facts are uncovered during the course of the judicial investigation, the Co-Investigating Judges must refer these to the Co-Prosecutors, who may then issue a Supplementary Submission in order to initiate a judicial investigation on these facts. The Co-Investigating Judges do not have the power to investigate new facts *proprio motu*. However, they “have the power to charge any Suspects named in the Introductory Submission. They may also charge any other persons against whom there is clear and consistent evidence indicating that such a person may be criminally responsible for the commission of a crime referred to in an Introductory Submission or a Supplementary Submission, even where such persons were not named in the submission.”<sup>10</sup> As part of their responsibilities, the Co-Investigating Judges must decide on the dual issue of investigative policy regarding suspects and of personal jurisdiction. While related and similar, these issues are not identical, and must be examined successively.

#### A. Personal jurisdiction of the ECCC

7. The Law and the Agreement on the ECCC declare that the purpose of the Extraordinary Chambers is “to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6

<sup>8</sup> D1/1 [CF003], Acting International Co-Prosecutor’s Notice of Filing of the Second Introductory Submission, 7 September 2009.

<sup>9</sup> Press Release, Statement by the National Co-Prosecutor regarding Case File 003.

<sup>10</sup> Internal Rule 55(4): General Provisions Concerning Investigations.

January 1979.”<sup>11</sup> They also clearly and exhaustively define the material, geographical and temporal scope of the ECCC’s jurisdiction. Neither the Law nor the Agreement set out the matter of personal jurisdiction in as clear a manner, however.

8. Where the Law and the Agreement do not unequivocally define the scope of the ECCC’s personal jurisdiction, the records of the negotiations leading to the adoption of the Agreement between the United Nations and the Royal Government of Cambodia provide the necessary elements for decision. In light of statements made by the then-Secretary-General of the United Nations,<sup>12</sup> Members of the Cambodian National Assembly,<sup>13</sup> of the wording of a General Assembly Resolution,<sup>14</sup> and of the Report of the Group of Experts mandated by the Secretary-General to assess the “feasibility of bringing Khmer Rouge leaders to justice”,<sup>15</sup> the ECCC’s Supreme Court Chamber has found that, “at a minimum, the term ‘senior leaders of Democratic Kampuchea and those who were most responsible’, reflects the intention of the United Nations and the Royal Government of Cambodia to focus finite resources on the criminal prosecution of certain surviving officials of the Khmer Rouge. The Supreme Court Chambers also finds that the term excludes persons who are not officials of the Khmer Rouge.”<sup>16</sup>
9. The Chamber further stated that “Each suspect before the ECCC must be a Khmer Rouge official. This term involves a question of historical fact that is intelligible, precise, and leaves little or no room for the discretion of the Trial Chamber. While an accused might contest that s/he was a Khmer Rouge official, the Trial Chamber is well suited to decide this factual issue. Thus, the Supreme Court Chamber finds that the personal jurisdiction of the ECCC covers Khmer Rouge officials, and the question of whether an accused was a Khmer Rouge official is justiciable before the Trial Chamber.”<sup>17</sup>
10. The Co-Prosecutors’ Second Introductory Submission alleges that Suspect █████ held, within the temporal frame of the ECCC’s jurisdiction, the position of Secretary of Division 164 of the Revolutionary Army of Kampuchea from April 1975 until January 1979, and was also responsible for the control of the city of Kampong Som. In light of the evidence made available to the Co-Investigating Judges during the judicial

<sup>11</sup> Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the Period of Democratic Kampuchea, as promulgated on 27 October 2004, article 1.

<sup>12</sup> Kofi A. Annan, Human Rights Questions: Identical letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council, 53rd Sess., Agenda Item 110(b), U.N. Doc A/53/850-S/1999/231 (16 March 1999), p. 3.

<sup>13</sup> First Session of the Third Term of the Cambodian National Assembly, 4-5 October 2004, “Debate and Approval of the Agreement between the United Nations and the Royal Government of Cambodia and Debate and Approval of Amendments to the Law on Trying Khmer Rouge Leaders”.

<sup>14</sup> Situation of human rights in Cambodia, G.A. Res 52/135, U.N. Doc. A/Res/52/135 (27 February 1998).

<sup>15</sup> UN Doc. A/53/850-S/1999/231, Annex, “Report of the Group of Experts for Cambodia established pursuant to General Assembly Resolution 52/135, 18 February 1999.

<sup>16</sup> F28 [CF001], Appeal Judgement, 3 February 2012, para. 52.

<sup>17</sup> *Ibid.*, para. 61.

investigation, the personal jurisdiction of the ECCC over Suspect [REDACTED] a “Khmer Rouge official”, is established in a sufficient and reliable manner.<sup>18</sup>

### **B. Investigative policy regarding Suspect**

11. The question of whether a suspect falls within the category of people designated in the Law and the Agreement on the ECCC – that is, “senior leaders of Democratic Kampuchea or those who were most responsible for the commission of the crimes falling within the jurisdiction of the Extraordinary Chambers” – is one that must be decided upon in first place by the Co-Prosecutor, but also and at a later stage by the Co-Investigating Judges, during the course of their judicial investigation. The Co-Investigating Judges may decide to charge the Suspects named in the Introductory or Supplementary Submission, but they may also decide not to charge these persons, or to charge any other person, as they are not bound by the Co-Prosecutors’ Submissions. The decision is not one of jurisdiction, but of criminal policy for the judicial investigation.
12. In its Appeal Judgment in Case 001,<sup>19</sup> the Supreme Court Chamber has confirmed the non-jurisdictional nature of the decision of the Co-Investigating Judges in this matter:

“the term ‘most responsible’ cannot be a jurisdictional requirement for many reasons, including: the notion of comparative responsibility is inconsistent with the ECCC Law’s prohibition of a defence of superior orders; and the determination of whether an accused is ‘most responsible’ requires a large amount of discretion. The Supreme Court Chamber therefore finds that the term ‘most responsible’ should be interpreted as a non-justiciable, policy guide for the Co-Investigating Judges and the Co-Prosecutors in the exercise of their discretion as to the scope of investigations and prosecutions. Regarding the term ‘senior leaders’, the Supreme Court Chamber finds that it, too, is a non-justiciable, policy guide, rather than a jurisdictional requirement, due, among other reasons, to the flexibility in the term’s definition. In the absence of bad faith, or a showing of unsound professional judgement, the Trial Chamber has no power to review the alleged abuse of the Co-Investigating Judges’ or Co-Prosecutor’s discretion under Articles 5(3) and 6(3) of the UN-RGC Agreement regarding the scope of investigations and prosecutions. Whether an accused is a senior leader or one of those most responsible are exclusively policy decisions for which the Co-Investigating Judges and Co-Prosecutors, and not the Chambers, are accountable.”<sup>20</sup>

<sup>18</sup> **D1.3.12.1** DK Military Report entitled Rice Consumption Plan for 1976 by unit, 4 January 1976; **D1.3.30.2** DK Military Report, D60-00035, 5 January 1976; **D1.3.30.25** DK Military Report from Division 164, Political Section “Secret Telephone dated 1 April 1978”, 1 April 1978; **D1.3.33.7** Cambodian Military Court Suspect Statement of KAING Guek Eav alias Duch, 4 June 1999; **D1.3.33.13** KAING Guek Eav alias DUCH OCIJ Statement, 4 December 2007; **D1.3.33.10** KAING Guek Eav alias DUCH OCIJ Statement, 2 June 2008; **D12** KAING Guek Eav alias DUCH OCIJ Statement, 27 April 2011; **D1.3.33.15** Written Record of Interview of Charged Person KHIEU Samphan, 13 December 2007; **D1.3.33.16** Statement of [REDACTED], 20 July 2001; **D1.3.7.8 Media Article** by Erika KINETZ and [REDACTED] entitled *Let Bygones Be Bygones*, 1-2 March 2008.

<sup>19</sup> Supreme Court Chamber, Judgment Summary, 3 February 2012.

<sup>20</sup> *Ibid.*, para. 10.

13. The interpretation of the terms “senior leader” and “person most responsible” rests with the Co-Investigating Judges in the discharge of their duty to conduct a full and impartial judicial investigation under the Internal Rule 55. They must assess whether the persons under investigation are, *prima facie*, either “senior leaders” or “persons most responsible” for the crimes in order to justify the pursuit of the investigation *in personam*. These requirements non-cumulative. While the Report of the Group of Experts for Cambodia did not define either of the terms, it did specify that a Suspect needed to meet only one of the criteria to fall within the scope of the ECCC’s jurisdiction. It concluded by recommending that “any tribunal focus upon those persons most responsible for the most serious violations of human rights during the reign of DK. This would include senior leaders with responsibility over the abuses as well as those at lower levels who are directly implicated in the most serious atrocities.”<sup>21</sup>
14. Notwithstanding the non-jurisdictional nature of the assessment, the criteria established by the Office of the Co-Investigating Judges in the previous cases<sup>22</sup> remain valid for the purposes of the judicial investigation in Case File 003, *mutatis mutandis*. Whilst the notion of “senior leader” may be understood as a more formal assessment of hierarchical position and authority, that of “person most responsible” allows for a wider evaluation, taking into account a number of informal elements, including the *de facto* as well as the *de jure* situation of the Suspects during the time and within the location under the jurisdiction of the court.
15. None of the texts directly applicable to the ECCC provide guidance on how these requirements should be applied. However, the Co-Investigating Judges may seek guidance in the “procedural rules established at the international level.”<sup>23</sup> Before the ICTY, Rule 28 of the Rules of Procedure and Evidence sets out guidelines for the Prosecutor in establishing his prosecutorial strategy: “On receipt of an indictment for review from the Prosecutor, the Registrar shall consult with the President. The President shall refer the matter to the Bureau which shall determine whether the indictment, *prima facie*, concentrates on one or more of the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal. If the Bureau determines that the indictment meets this standard, the President shall designate one of the permanent Trial Chamber Judges for the review under Rule 47. If the Bureau determines that the indictment does not meet this standard, the President shall return the indictment to the Registrar to communicate this finding to the Prosecutor.”<sup>24</sup> Although it is not a jurisdictional matter, but only

<sup>21</sup> UN Doc. A/53/850-S/1999/231, Annex, “Report of the Group of Experts for Cambodia established pursuant to General Assembly Resolution 52/135, 18 February 1999, para. 110.

<sup>22</sup> **D99** [CF001] Closing Order Indicting Kaing Guek Eav alias Duch, 8 August 2008; **D427** [CF002] Closing Order, 16 September 2010.

<sup>23</sup> Law on the ECCC, article 23.

<sup>24</sup> Similarly, Article 1(1) of the Statute of the Special Court for Sierra Leone gives the Court “the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.” This article has also been understood by the Trial Chamber 2 and the Appeal Chamber as a policy guide for the Prosecutors, and

one of policy for the Office of the Prosecutor, the Chambers of the ICTY have on numerous occasions examined the question of the definition of the terms “the most senior leaders suspected of being most responsible for crimes within the jurisdiction of the Tribunal”. The words “most responsible” encompass a large number of possible situations in which a Suspect, Charged Person or Accused may have found himself at the time of the commission of the crimes alleged, and the assessment of this responsibility must take into account factual as well as legal elements. Two criteria have been developed by international jurisprudence, and retained by the Co-Investigating Judges: the gravity of the crimes alleged or charged, and the level of responsibility of the Suspect, Charged Person or Accused.<sup>25</sup>

A. Gravity of the crimes alleged against the Suspect

16. With regard to the gravity of the crimes alleged, relevant factors include but are not limited to: (a) the number of victims; (b) the geographic and temporal scope of the crimes; and (c) the manner in which the crimes were committed and the number of separate incidents.
17. The Co-Prosecutors’ Second Introductory Submission alleges that Suspect ██████ was responsible for the crimes committed in the events listed below:
  - a. The events that occurred at Security Centre S-21;
  - b. The events that occurred at the Wat Eng Tea Nhien operated by Division 164
  - c. The events that occurred at Stung Hav Rock Quarry under the command of Division 164;
  - d. The events that occurred during the arrest of citizens of Thai, Vietnam and other countries by the DK Navy;
  - e. The event that occurred during attacks into Vietnam in late 1977 and 1978
18. With regard to the S-21 Security Centre, Suspect ██████ exercised full authority over the members of Division 164, including their arrest and transfer to S-21. He was aware of

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not as a rule on jurisdictional matters. See *Prosecutor v. Brima*, SCSL-04-16-T [20 June 2007] Judgment, TC 2, and *Prosecutor v. Brima*, SCSL-2004-16-A [22 February 2008] Judgment, AC.

<sup>25</sup> E188 [CF001], Judgment, 26 July 2010 para. 22; ICTY, *Prosecutor v. Lukic et al.* (IT-98-32/1-PT) [5 April 2007] Decision on Referral of Case Pursuant to Rule 11bis, Referral Bench, paras 26-30; *Prosecutor v. Lukic et al.* (IT-98-32/1-AR11bis.1) [11 July 2007] Decision on Milan Lukic’s Appeal Regarding Referral, AC, para. 19-22; *Prosecutor v. Rasevic and Todovic* IT-97-258/1-AR11bis.1 and IT-97-258/1-AR11bis.2 [4 September 2006], Appeal Judgment, AC, para.14-26; *Prosecutor v. Ljubicic* (IT- 00-41-PT) [12 April 2006] Decision to Refer the Case to Bosnia and Herzegovina Pursuant to Rule 11bis, Referral Bench, paras 18-19; *Prosecutor v. Kovacevic*, (IT-01-42/2-1) [17 November 2006] Decision on Referral of Case Pursuant to Rule 11bis, Referral Bench, para. 20; *Prosecutor v. D. Milošević*, (IT-98-29/1-PT) [8 July 2005] Decision on Referral of Case Pursuant to Rule 11bis, Referral Bench, paras 23-24; *Prosecutor v. Jankovic*, (IT-96-23/2-PT) [22 July 2005] Decision on Referral of Case Pursuant to Rule 11bis, Referral Bench, para. 19; *Prosecutor v. Ademi et al.*, (IT-04-78-PT) [14 September 2005] Decision on Referral to the Authorities of the Republic of Croatia Pursuant to Rule 11bis, Referral Bench, paras 28-29; See as well for similar criteria applied by the ICC: Situation in the DRC, *Prosecutor v. Ntaganda*, (ICC-01/04-02/06-20-Anx2) [10 February 2006] Decision on the Prosecutor’s Application for Warrants of Arrest, Article 58, ICC Pre-Trial Chamber I, para. 51-89.



the confessions taken from the members of Division 164 who were detained at S-21. The confessions were sent back to Suspect [REDACTED] for further identification of enemies.<sup>26</sup> Evidence establishes that at least 54 members of Division 164 were sent to S-21 and subsequently executed.

19. With regard to Wat Eng Tea Nhien Security Centre, evidence establishes that it was under the control of Division 164, which was commanded by Suspect [REDACTED] Formerly a functioning monastery, Wat Eng Tea Nhien Security Centre was located in Kampong Som town (Sihanoukville) and was used as a prison, execution site, and grave site. It was used to detain members of Division 164 as well as "captured enemies". It was operational during the entire DK period.<sup>27</sup> Evidence demonstrates that a number of victims first imprisoned at Wat Eng Tea Nhien, were subsequently transported to S-21. In the early 1980s some 200 bodies were reportedly recovered from a burial site located about 100 meters east of the Wat.<sup>28</sup>
20. With regard to Stung Hav Rock Quarry, it was located in Kampong Som Province (Sihanoukville) and was used as a forced labour working site.<sup>29</sup> Evidence suggests that approximately 100 people were engaged in force labour at this site. The working site was operational until at least 1976 as the road construction from Stung Hav to Sihanoukville completed in 1976.<sup>30</sup>
21. In 1977 there "were problems" (purges) within the Division. Former East Zone soldiers were arrested and removed from the units. First leaders were taken, later all ranks of the East Zone were removed.<sup>31</sup> Those who survived were taken to Division 164 work / re-education sites.<sup>32</sup> Those who were identified as having former regime connections were sent away and were most likely executed.<sup>33</sup>

<sup>26</sup> **D1.3.2.2** Instructions of Son Sen to Division 164, 4 November 1976; **D1.3.33.9** Written record of interview of Charged Person KAING Guek Eav alias DUCH, 2 April 2008; **D1.3.18.1S-21** Confession of HANG Doeun alias Dim, D81-00001, 15 May 1977; **D1.3.18.3** S-21 Confession of KUN Dim, 10 September 1977; **D1.3.1.7** S-21 Confession of PAEN Ham, 24 May 1977; **D1.3.18.1** S-21 Confession of HANG Doeun alias Dim, D81-00001, 15 May 1977; **D1.3.18.2** S-21 Confession of HANG Doeun alias Dim, DCCN H127, 1 August 1977; **D1.3.1.4** S-21 Confession of MEN Nget, DCCN M061, 03 June 1977; **D1.3.1.3** S-21 Confession of MOM Chim alias Ya, DCCN M148, 6 October 1977; **D1.3.1.9** S-21 Confession of SAN Seab alias SAM, DCCN S219, 11 September 1977; **D1.3.18.4** S-21 Confession of KORNG Kien, 26 May 1977; **D1.3.1.2** S-21 Confession of KORNG Kien, DCCN K172, 16 May 1977; **D1.3.1.6** S-21 Confession of PEN Ham, DCCN P320, 30 May 1977; **D1.3.18.3** Confession of KUN DIM, 20 July 1977; **D1.3.4.2** A letter from SON Sen to Comrade Dim Deputy Secretary of Division 164, 26 November 1976; **D1.3.4.1** Letter to respected Brother 89 and forwarding note from SON Sen aka Khiev to Brother Nuon, 19 October 1976; **D1.3.8** DK Military Meeting Minutes entitled "Minutes of Meeting of 164 Comrades", 09 September 1976.

<sup>27</sup> **D1.3.13.1** Witness OCP-00143, OCP Interview Notes, 12 August 2008; **D1.3.13.8**, Witness OCP-00117, OCP Interview Notes, 13 August 2008; **D1.3.13.12**, Witness OCP-00154, OCP Interview Notes, 12 August 2008.

<sup>28</sup> **D1.3.13.1** Witness OCP-00143, OCP Interview Notes, 12 August 2008; **D1.3.13.12** Witness OCP-00154, OCP Interview Notes, 12 August 2008.

<sup>29</sup> **D2/23** Site Identification Report, Stung Hav Rock Quarry, 03 December 2010.

<sup>30</sup> **D2/7** OCIJ-Written Record of Interview of [REDACTED] 26 Aug 2010.

<sup>31</sup> **D2/16** OCIJ-Written Record of Interview of Witness [REDACTED] 11 Nov 2010.

<sup>32</sup> **D2/16** OCIJ-Written Record of Interview of Witness [REDACTED] 11 Nov 2010; **D2/10** OCIJ-Written Record of Interview of Witness [REDACTED] 9 September 2010.

<sup>33</sup> **D1.3.13.8**, Witness OCP-00117, OCP Interview Notes, 13 August 2008; **D2/7** OCIJ-Written Record of Interview of [REDACTED] 26 Aug 2010.

22. Evidence shows that the Division 164 / DK Navy units arrested and killed Thai and Vietnamese fisherman and civilians at sea many of whom reportedly were sent to S-21<sup>34</sup> A small number of the Some Thai fishermen who were captured were returned to Thailand,<sup>35</sup> but reports indicate that many more Thai fishermen were detained by the DK Navy.<sup>36</sup>
23. Evidence demonstrates that during the attacks into Vietnam in late 1977 and 1978, Division 164 cadres commanded troops from other divisions.<sup>37</sup> DK cadres attacked sub-districts, killing as many Vietnamese troops and civilians as possible and burning homes, hospitals and factories. Although they had no specific orders to kill ordinary Vietnamese people, many were killed. Captured Vietnamese, many of whom were children, were sent back to Division headquarters.<sup>38</sup>

**B. Level of responsibility of the Suspect**

24. In relation to the level of responsibility of the Suspect, the Co-Investigating Judges must take into account the Suspect's *de facto* authority as well as his *de jure* authority. Relevant factors include, but are not limited to : (a) the Suspect's position in the hierarchical structure;<sup>39</sup> (b) the procedure followed for his appointment to said position;<sup>40</sup>

<sup>34</sup> **D1.3.34.10** Military Telegram entitled Telegram No 44, sent to respected Brother 89 for his knowledge about the situation in August 1976, D60-00048, 23 August 1976; **D1.3.12.7** DK Government Report, 31 August 1976; **D1.3.27.18** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, 19 September 1976; **D1.3.12.18** DK Military Report, 29 May 1977; **D1.3.34.23** DK Military Telegram, D60-00084, 12 August 1977; **D1.3.12.20** DK Military Report entitled Reported on 12/8/77 by secret telephone about situation along the border with Thailand, DCCN D01966, 12 August 1977; **D1.3.34.28** DK Military Telegram entitled Report by Secret Telephone, to Brother Division Commander, D60-00094, 15 September 1977; **D1.3.34.31** DK Military Telegram entitled Telegram 45, D60-00098, 6 October 1977; **D1.3.34.64** DK Military Telegram entitled To respected Brother 89 about the situation on the sea, D60-00215, dated 20 March 1978; **D1.3.34.66**, DK Military Telegram entitled Telegram 01, D60-00225, D60-00225, 31 March 1978; **D1.3.25.47** Media Article entitled Cambodian Attack on Thai Fishermen, D91-00012, 19 June 1978; **D1.3.25.48** Media Article entitled Cambodia Said to Attack Thai Fishing Boats, D56-00112, 20 June 1978; **D1.3.13.11**, Witness OCP-00138, OCP Interview Notes, 12 August 2008; **D1.3.25.2**, Media Article entitled Thailand reports brief naval clash with Cambodians, D60-00022, dated 13 June 1975; **D1.3.25.4**, Article entitled Thai-Cambodian Clash, D60-00023, dated 14 June 1975; **D1.3.25.7**, Media Article entitled Vietnamese, Thai clashes, D60-00030, dated 26 July 1975; D4.1.5 DC Cam Media Article entitled "List of Foreigners Smashed at S-21"

<sup>35</sup> **D1.3.25.44**, Media Article entitled Near Thai-Cambodia Frontier Tension and Danger are the rule, D60-00259 4 May 1978; **D1.3.25.40**, Media Article entitled Cambodian Offer to Release Thai Fishermen, D60-00222 30 March 1978; **D1.3.30.25**, Military Report, , dated 1 April 1978; **D1.3.25.42**, Media Article entitled Thai Trade with Cambodia, D56-00102, 19 April 1978; **D1.3.13.11**, Witness OCP-00138, OCP Interview Notes, 12 August 2008.

<sup>36</sup> **D1.3.30.25** Military Report, 1 April 1978; **D1.3.25.44**, Media Article entitled Near Thai-Cambodia Frontier Tension and Danger are the rule, D60-00259 4 May 1978; **D1.3.25.60** Media Article entitled Tough Warning from Bangkok, D60-00292 31 July 1978; **D1.3.25.36** Media Article entitled Thai Trade with Cambodia, D56-00098, 10 February 1978; **D1.3.13.11** Witness OCP-00138, OCP Interview Notes, 12 August 2008; **D1.3.13.8** Witness OCP-00117, OCP Interview Notes, 13 August 2008; **D1.3.13.13**, Witness OCP-00153, OCP Interview Notes, dated 16 August 2008.

<sup>37</sup> **D1.3.32.26**, [REDACTED] DC-Cam Statement, dated 27 June 2003; **D1.3.32.26** [REDACTED] DC-Cam Statement, 27 June 2003.

<sup>38</sup> **D1.3.32.26**; [REDACTED] DC-Cam Statement, 27 June 2003.

<sup>39</sup> *Prosecutor v. Kordic et al.* (IT-95-14/2-T) [26 February 2001] Trial Judgement, TC, para 418; *Prosecutor v. Halilovic* (IT-01-48-A) [16 October 2007], Appeal Judgement, AC, para 204; *Prosecutor v. Blaskic* (IT-95-14-A) [29 July 2004] Appeal Judgement, AC, para 256; *Prosecutor v.*

(c) the permanency of his position;<sup>41</sup> (d) the number of subordinates;<sup>42</sup> (e) the Suspect's capacity to issue orders;<sup>43</sup> (f) whether the orders were in fact followed by his subordinates;<sup>44</sup> (g) the Suspect's actual knowledge that his subordinates were committing crimes, including knowledge on the number, type and scope of the crimes, the time during which they were committed, their geographic location, as well as the eventual widespread nature of the acts;<sup>45</sup> (h) the Suspect's authority to negotiate, sign or implement agreements;<sup>46</sup> (i) the temporal scope of the Suspect's control;<sup>47</sup> (j) control of access to territory;<sup>48</sup> (k) the actual role of the Suspect in the commission of the crimes;<sup>49</sup> (l) whether those more senior in rank than the Suspect have already been convicted.<sup>50</sup>

25. Suspect ██████ was Secretary of the Centre Division 164 of the RAK as well as the Commander of the DK Navy.<sup>51</sup> He was reportedly either a member of the Central Committee of the CPK or a member of the Assisting Committee of the Central Committee.<sup>52</sup> The Central Committee was one of the key administrative structures of the CPK Centre. As member of Central Committee or Assisting Committee, Suspect

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*Strugar* (IT-01-42-T) [31 January 2005] Trial Judgement, TC, paras 394-397; *Prosecutor v. Dragomir Milosevic* (IT-98-29/1-PT) [8 July 2005] Decision on Referral of case pursuant to Rule 11bis, Referral Bench, para 23; *Prosecutor v. Ademi* (IT-04-78-PT) [14 September 2005] Decision for Referral to the Authorities of the Republic of Croatia pursuant to Rule 11bis, para 29; *Prosecutor v. Kovacevic* (IT-01-42/2-I) [17 November 2006] Decision on Referral of case pursuant to Rule 11bis, para 20; *Prosecutor v. Lukic* (IT-98-32/1-AR11bis.1) [11 July 2007] Decision on Milan Lukic's Appeal regarding Referral, para. 28.

<sup>40</sup> *Prosecutor v. Kordic* Trial Judgement, para 418; *Prosecutor v. Halilovic* Appeal Judgement, para 204; *Prosecutor v. Blaskic* Appeal Judgement, para 256; *Prosecutor v. Strugar* Trial Judgement, paras 394-397.

<sup>41</sup> *Prosecutor v. Dragomir Milosevic*, Decision on Referral of case pursuant to Rule 11bis, para 23.

<sup>42</sup> *Idem*.

<sup>43</sup> *Prosecutor v. Kordic* Trial Judgement, para 418; *Prosecutor v. Halilovic* Appeal Judgement, para 204; *Prosecutor v. Blaskic* Appeal Judgement, para 256; *Prosecutor v. Strugar* Trial Judgement, paras 394-397.

<sup>44</sup> *Prosecutor v. Strugar* (IT-01-42-A) [17 July 2008] Appeal Judgement, AC, para. 256; *Prosecutor v. Strugar* Trial Judgement, paras 394-397.

<sup>45</sup> *Prosecutor v. Delalic et al.* (IT-96-21-T) [16 November 1998] Trial Judgement, TC, para 386; *Prosecutor v. Blaskic* Trial Judgement, para 307; *Kordic* Trial Judgement, para 427; *Prosecutor v. Strugar* Trial Judgement, para 368; *Prosecutor v. Mrksic* (IT-95-13/1-T) [27 September 2007] Trial Judgement, TC, para 563.

<sup>46</sup> *Prosecutor v. Dragomir Milosevic*, Decision on Referral of case pursuant to Rule 11bis, para 23; *Prosecutor v. Ademi*, Decision for Referral to the Authorities of the Republic of Croatia pursuant to Rule 11bis, para 29.

<sup>47</sup> *Prosecutor v. Dragomir Milosevic*, Decision on Referral of case pursuant to Rule 11bis, para 23.

<sup>48</sup> *Idem*.

<sup>49</sup> *Prosecutor v. Ademi*, Decision for Referral to the Authorities of the Republic of Croatia pursuant to Rule 11bis, para 29; *Prosecutor v. Lukic*, Decision on Milan Lukic's Appeal regarding Referral, para 28.

<sup>50</sup> *Prosecutor v. Kovacevic*, Decision on Referral of case pursuant to Rule 11bis, para 20.

<sup>51</sup> **D1.3.8.3** DK Military Meeting Minutes regarding Deployment of the DK Navy, 03 August 1976; **D1.3.12.2** Report from ██████ to Brother89 (SonSen) regarding the situations in areas west of Pring island, Tral island.

<sup>52</sup> **D1.3.33.15** KHIEU Samphan OCIJ Statement, 13 December 2007; **D1.3.33.13** KAING Guek Eav alias DUCH OCIJ Statement, December 2007; **D1.3.33.10**, KAING Guek Eav alias DUCH OCIJ Statement, 2 June 2008; **D1.3.33.13** KAING Guek Eav alias DUCH OCIJ Statement, dated 4 December 2007.

would have been entitled to Political Training within the structures of Office 870.<sup>53</sup> Suspect [REDACTED] not only reported to the General Staff on military matters, but further he would regularly attend, participate in and contribute to General Staff meetings where instructions and orders to the Secretaries of other RAK Divisions were discussed and disseminated.<sup>54</sup> Matters discussed included internal and external enemy situations, agricultural production and logistical issues.<sup>55</sup> Suspect [REDACTED] role of Secretary of the

<sup>53</sup> **D1.3.33.10** KAING Guek Eav alias DUCH OCIJ Statement, 2 June 2008; **D1.3.33.13** KAING Guek Eav alias DUCH OCIJ Statement, 4 December 2007.

<sup>54</sup> **D1.3.27.20** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.27.8** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Economics of Divisions, 16 May 1976; **D1.3.8.2** DK Military Meeting Minutes entitled Minutes of the Meeting of All Division Committees, 1 June 1976; **D1.3.27.12** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 18 August 1976; **D1.3.27.13** DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 30 August 1976; **D1.3.27.16** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 16 September 1976; **D1.3.27.18** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, 19 September 1976; **D1.3.27.20** DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.8.7** DK Military Meeting Minutes entitled Meeting Minutes of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 18 October 1976; **D1.3.27.21** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 11 November 1976; **D1.3.27.22** DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Divisions, 21 November 1976; **D1.3.27.23** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, 15 December 1976; **D1.3.27.26** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 1 March 1977; **D1.3.8.3** DK Meeting Minutes entitled Minutes of meeting of the military work in Kampong Som, 3 August 1976; **D1.3.8.4** DK Military Meeting Minutes entitled Minutes of Meeting of 164 Comrades; **D1.3.30.4** DK Military Meeting Minutes entitled Summary of the Situation from 15 July until 31 August 1976; **D1.3.27.18** DK Military Meeting Minutes entitled Minute of Divisional and Regiment Secretary-Undersecretary of Logistics Meeting, 19 September 1976; **D1.3.27.20** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Division and Independent Regiments, 9 October 1977; **D1.3.27.22** DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Divisions, 21 November 1976; **D1.3.7.8** Media Article by Erika KINETZ and [REDACTED] entitled Let Bygones be Bygones, dated 1-2 March 2008; **D1.3.33.16** [REDACTED] Interview, by [REDACTED] and [REDACTED]

<sup>55</sup> **D1.3.27.8**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Economics of Divisions, 16 May 1976; **D1.3.8.2**, DK Military Meeting Minutes entitled Minutes of the Meeting of All Division Committees, 1 June 1976; **D1.3.27.10**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions, Secretaries and Deputy Secretaries of Regiments, 2 August 1976; **D1.3.27.11**, DK Military Meeting Minutes entitled Minutes of the Meeting of the Committees attached to Divisions and Independent Regiments, 12 August 1976; **D1.3.27.12**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 18 August 1976; **D1.3.27.13**, DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 30 August 1976; **D1.3.27.16**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 16 September 1976; **D1.3.27.18**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, 19 September 1976; **D1.3.27.20**, DK Military Meeting Minutes entitled Minutes of the Meetings of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.8.7**, DK Military Meeting Minutes entitled Meeting Minutes of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 18 October 1976; **D1.3.27.21**, DK Military Meeting Minutes entitled Minutes of the

Division would include responsibility for the security situation within the Division in order to purge alleged traitors and “undesirable elements”,<sup>56</sup> including the functioning of security centres, executions sites and re-education sites, notably Wat Eng Tea Nhien security<sup>57</sup> centre and the Stung Hav rock quarry,<sup>58</sup> both of which were used for the execution or re-education of purged Division members. Furthermore, some Division 164 members viewed as unable to be re-educated would be transferred to the S-21 security centre in Phnom Penh for interrogation and execution.

Suspect [REDACTED] would attend and participate in General Staff meetings to discuss security within the Divisions and organise the purging of Divisions where necessary.<sup>59</sup>

26. In addition to these positions, Suspect [REDACTED] was also the Secretary of Kampong Som Committee.<sup>60</sup> It is estimated that between 8,500-10,000 combatants in Division 164 were under the direct military authority of Suspect [REDACTED] with some evidence suggesting in excess of 10,000 subordinates.<sup>61</sup> In his capacity, Suspect [REDACTED] also had 17,000 civilian

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Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 11 November 1976; **D1.3.27.22**, DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Divisions, 21 November 1976; **D1.3.27.23**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Logistics of Divisions and Independent Regiments, 15 December 1976; **D1.3.27.26**, DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 1 March 1977.

<sup>56</sup> **D1.3.27.20** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D2/15** Written Record of Witness [REDACTED] 10<sup>th</sup> November 2010; **D2/16** Written Record of Witness [REDACTED] 11<sup>th</sup> November 2010.

<sup>57</sup> **D1.3.12.3** DK Military Telegram, dated 22 February 1976; **D1.3.34.11** DK Military Telegram, D56-00059, 24 September 1976; **D1.3.34.23** DK Military Telegram, D60-00084, 12 August 1977; **D1.3.12.20** DK Military Report, 12 August 1977; **D1.3.30.4** DK Government Report entitled Summary of the Situation from 15 July until 31 August 1976, 31 August 1976; **D1.3.34.64** DK Military Telegram, D60-00215, 20 March 1978; **D1.3.30.25** DK Military Telegram, 1 April 1978; **D1.3.34.23** DK Military Telegram, D60-00084, 12 August 1977; **D1.3.12.20** DK Military Report, 12 August 1977; **D1.3.34.10** DK Military Telegram, D60-00048, 13 August 1976; **D1.3.12.7** DK Government Report entitled A summary of situations from 15 July to 31 August 1976, 31 August 1976; **D1.3.13.8** Witness OCP-00117, OCP Interview Notes, 13 August 2008; **D1.3.13.13** Witness OCP-00153, OCP Interview Notes, 16 August 2008; **D1.3.13.12** Witness OCP-00154, OCP Interview Notes, 12 August 2008; **D1.3.13.1** Witness OCP-00143, OCP Interview Notes, 12 August 2008; **D1.3.13.8** Witness OCP-00117, OCP Interview Notes, 13 August 2008; **D1.3.13.12** Witness OCP-00154, OCP Interview Notes, 12 August 2008; **D1.3.13.1** Witness OCP-00143, OCP Interview Notes, 12 August 2008; **D1.3.13.13** Witness OCP-00153, OCP Interview Notes, 16 August 2008; **D1.3.33.9** KAING Guek Eav alias DUCH OCIJ Statement, 2 April 2008; **D2/4** Written Record of Witness [REDACTED] 28<sup>th</sup> July 2010

<sup>58</sup> **D1.3.13.11** Witness OCP-00138, OCP Interview Notes, 13 August 2008; **D2/15** Written Record of Witness [REDACTED] 10<sup>th</sup> November 2010; **D2/7** Written Record of Witness [REDACTED] 26<sup>th</sup> August 2010.

<sup>59</sup> **D1.3.27.12** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 18 August 1976; **D1.3.30.4** DK Military Meeting Minutes entitled Summary of the Situation from 15 July until 31 August 1976, 31 August 1976; **D1.3.27.18** DK Military Meeting Minutes entitled Minutes of Divisional and Regiment Secretary-Undersecretary of Logistics Meeting, 19 September 1976; **D1.3.27.20** DK Military Meeting Minutes entitled Minutes of the Meeting of Secretaries and Deputy Secretaries of Divisions and Independent Regiments, 9 October 1976; **D1.3.27.22** DK Military Meeting Minutes entitled Minutes of the Plenary Meeting of Division, 21 November 1976.

<sup>60</sup> **D196.12** DK Media Report entitled “Chinese Delegation Visits Kompong Som Area”, 13 December 1977.

<sup>61</sup> **D1.3.5.3** DK Military List by [REDACTED] entitled Daily List of Forces 27 October 1976, 27 October 1976; **D1.3.18.3** S-21 Confession of [REDACTED] 10 September 1977; **D1.3.30.9** DK Military Report entitled

and division personnel under his authority.<sup>62</sup> In his role as Head of the Division Suspect also undertook diplomatic and representative roles.<sup>63</sup> This is clear evidence of the high level of authority [REDACTED] he was able to speak on behalf of the party to foreign dignitaries in the presence of POL Pot.

27. The judicial investigation conducted by the Office of the Co-Investigating Judges has thus established that Suspect [REDACTED] may be considered as one of the persons most responsible for the crimes enumerated in the Co-Prosecutors' Second Introductory Submission. This does not establish that the Suspect is guilty, nor is it a finding of the commission of the crimes alleged in the Second Introductory Submission, which are matters left to the jurisdiction of the Trial Chamber and have yet to be established. The Co-Investigating Judges consider that the present Decision settles an issue of criminal policy and the findings herein entitle them to continue the judicial investigation in Case 003 pursuant to their duty to conduct a full and impartial investigation.
28. The criteria of "senior leaders" and persons "most responsible" being non-cumulative, it is at present unnecessary to examine whether the Suspect was also a senior leader of the Democratic Kampuchea between 17 April 1975 and 6 January 1979.

**FOR THE REASONS STATED ABOVE, WE, THE UNDERSIGNED,**

**Decide** that Suspect [REDACTED] was a Khmer Rouge official between 17 April 1975 and 6 January 1979 and that the Extraordinary Chambers in the Courts of Cambodia have jurisdiction to bring this Suspect to justice;

**Decide** that, for the purposes of the judicial investigation of Case File 003, and notwithstanding his right to be presumed innocent as long as his guilt has not been established, the Suspect [REDACTED] is to be considered as one of those most responsible for crimes committed during the period from 17 April 1975 to 6 January 1979;

**Decide** that there is no need to consider the issue of whether the Suspect was a senior leader of the Democratic Kampuchea.

**Decide** that, in accordance with Internal Rule 56(2)(a), the present decision shall be made public in view of the victims' right to information under Internal Rule 21(1)(c)

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DK Military Report re Overall Force Statistics for Army, 7 April 1977; **D1.3.33.16** Statement of [REDACTED] 20 July 2001; **D1.3.7.8** Media Article by Erika KINETZ and [REDACTED] entitled Let Bygones Be Bygones, 1-2 March 2008; **D1.3.13.11** Witness OCP-00138, OCP Interview Notes, 12 August 2008.  
<sup>62</sup> **D1.3.27.18** DK Military Meeting Minutes entitled Minutes of Divisional and Regiment Secretary-Undersecretary of Logistics Meeting, 19 September 1976; **D1.3.8.2** DK Military Meeting Minutes entitled Meeting of All Open Division Committees, 1 June 1976.

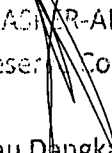
<sup>63</sup> **D196.12** DK Media Report entitled "Chinese Delegation Visits Kompong Som Area", 13 December 1977.

and given that the Suspect has been notified of the charges against him in under Internal Rule 21(1)(d).

Done in Phnom Penh, on 02 May 2012

**សហចៅក្រមស៊ើបអង្កេតប្រចំណងជាតិ**

**International Reserve Co-Investigating Judge**

  
Judge Laurent KASER-ANSERMET  
International Reserve Co-investigating Judge  
OCIJ- ECCC  
NR4 Chaom Chau Dangkao  
Phnom Penh  
Cambodia