



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

ព្រះរាជាណាចក្រកម្ពុជា
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Nation Religion King
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Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

ឯកសារដើម
ORIGINAL/ORIGINAL
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Case File N° 002-01/19-09-2007-ECCC/TC

7 August 2014
Pronouncement of the Judgement in Case 002/01

Before the Judges:

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Jean-Marc LAVERGNE
YOU Ottara
THOU Mony (Reserve)
Claudia FENZ (Reserve)

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List of Speakers

Language used unless specified otherwise in the transcript

Speaker	Language
THE PRESIDENT (NIL Nonn, Presiding)	Khmer

1 P R O C E E D I N G S

2 (Court opens at 0902H)

3 MR. PRESIDENT:

4 Please be seated.

5 This Thursday, 7 August 2014, the Trial Chamber in the
6 Extraordinary Chambers in the Courts of Cambodia continues its
7 public hearing for the pronouncement of the Judgement in Case
8 002/01, which is the first segment of Case 002/19-09-2007/ECCC/TC
9 against the accused Nuon Chea, born on 7 July 1926, and Khieu
10 Samphan, born on 27 July 1931.

11 Ms. Se Kolvuthy, could you report to the attendance of the
12 parties and individuals to this proceeding?

13 THE GREFFIER:

14 Mr. President, the Greffier observes that all parties to the
15 proceedings are present.

16 MR. PRESIDENT:

17 Thank you, Ms. Se Kolvuthy.

18 Security guards, you are instructed to bring the Accused to the
19 dock before this Chamber.

20 (Mr. Khieu Samphan is taken to the dock)

21 Mr. Khieu Samphan, you may be seated.

22 (Mr. Nuon Chea is taken to the dock)

23 [09.07.13]

24 Before the pronouncement of the Judgement the Trial Chamber would
25 like to inform the parties and the general public that only a

2

1 summary of the Judgement will be pronounced. In the summary the
2 Chamber will use the ECCC abbreviation in place of the
3 Extraordinary Chambers in the Courts of Cambodia.

4 The following is a summary of the Judgement in Case 002/01.

5 The following is a summary of the Judgement in Case 002/01. The
6 only authoritative account of the findings is contained in the
7 full written Judgement which will be made available in Khmer,
8 English, and French immediately after this hearing.

9 Case 002 concerns the responsibility of Nuon Chea and Khieu
10 Samphan for crimes committed in Democratic Kampuchea - that is,
11 DK - between 17 April 1975 and 6 January 1979.

12 [09.08.48]

13 Following the issuance of the Closing Order by the
14 Co-Investigating Judges on 15 September 2010, concluding almost
15 three years of judicial investigations, Nuon Chea and Khieu
16 Samphan were brought to trial.

17 This Case originally included two further accused, Ieng Thirith
18 and Ieng Sary. In 2011, the proceedings against Ieng Thirith were
19 stayed, and the charges against her severed from the Case after
20 she was found unfit to stand trial due to a progressive dementing
21 disease.

22 Ieng Sary's death in 2013 extinguished all criminal and civil
23 actions against him before the ECCC. During the period from 17
24 April 1975 to 6 January 1979, Nuon Chea is alleged to have served
25 as Deputy Secretary of the Communist Party of Kampuchea - that

1 is, CPK - a full-rights member of the CPK Central and Standing
2 Committees, Chairman of the Peoples Representative Assembly and,
3 on occasion, acting Prime Minister of the DK Government.

4 [09.10. 38]

5 Khieu Samphan allegedly held various positions in the CPK and DK,
6 including President of the State Presidium. He is also alleged to
7 have been Chairman of Political Office 870 and a member of the
8 CPK Standing Committee.

9 The initial hearing in Case 002 was held from 27 to 30 June 2011.
10 In September 2011, the Trial Chamber severed the proceedings in
11 Case 002 into a series of smaller trials because of the size and
12 complexity of the Closing Order and the age and health of the
13 Accused.

14 The Trial Chamber limited the scope of the first trial in Case
15 002, referred to since as Case 002/01, to crimes against humanity
16 alleged to have been committed during, first, the evacuation of
17 Phnom Penh on 17 April 1975, which has been referred to in these
18 proceedings as movement of population phase 1, and second,
19 movements of population in other regions of Cambodia from
20 September 1975 until December 1977 - movement of population phase
21 2.

22 [09.12.43]

23 The Trial Chamber started hearing evidence on 21st November 2011
24 and in October 2012, following an application by the Office of
25 the Co-Prosecutor's, expanded the scope of the charges in Case

1 002/01 to include charges related to the alleged executions of
2 former Khmer Republic officials at Tuol Po Chrey from April 1975.
3 The scope of the charges relevant to Case 002/01 includes factual
4 allegations concerning the Accused's responsibility for the
5 following crimes.

6 In relation to the evacuation of Phnom Penh on 17 April 1975, the
7 Accused are alleged to be responsible for the following crimes
8 against humanity: murder, extermination, political persecution,
9 other inhumane acts in the form of forced transfers, and other
10 inhumane acts in the form of attacks against human dignity.

11 [09.14.14]

12 In relation to the movements of population from, to, and within
13 the Central - old North - Southwest, West, and East Zones from
14 September 1975 to December 1977, the Accused are alleged to be
15 responsible for the following crimes against humanity:

16 extermination, political persecution, other inhumane acts in the
17 form of forced transfers, other inhumane acts in the form of
18 attacks against human dignity, and other inhumane acts in the
19 form of enforced disappearances.

20 In relation to Tuol Po Chrey, the Accused are alleged to be
21 responsible for the crimes against humanity of murder,
22 extermination, and political persecution. It is alleged that each
23 Accused committed a number of these crimes by participating in a
24 joint criminal enterprise, the common purpose of which was to
25 implement rapid socialist revolution in Cambodia through a "great

1 leap forward" and to defend the Party against enemies by whatever
2 means necessary.

3 [09.15.47]

4 It is alleged that in order to achieve this common purpose, the
5 Accused designed a number of policies, the implementation of
6 which resulted in and/or involved a number of the crimes against
7 humanity charged in Case 002/01 and which the Accused intended to
8 be committed. It is further alleged that the Accused planned,
9 order, instigated, aided, and abetted the aforementioned crimes
10 against humanity.

11 In the alternative, the Accused are also alleged to be
12 responsible on the basis of superior responsibility. Over the
13 course of 20 months of evidentiary hearings, the Trial Chamber
14 heard the testimony of 92 individuals, including three experts,
15 53 fact witnesses, five character witnesses, and 31 civil
16 parties. More than 5,800 evidentiary documents were subjected to
17 examination and admitted, totalling over 222,000 pages over the
18 three official languages. The Chamber admitted 1,124 written
19 statements and transcripts of witnesses and civil parties who did
20 not appear before the Chamber in place of oral testimony.

21 The hearing of evidence in Case 002/01 concluded on 23 July 2013.
22 Closing arguments took place in October 2013. Before beginning
23 the evidentiary hearings, the Trial Chamber determined a large
24 number of preliminary and procedural issues which it considered
25 constituted a potential barrier to the commencement of trial,

1 while others are addressed in the Judgement.

2 The Trial Chamber concluded that it has personal jurisdiction
3 over Nuon Chea and Khieu Samphan and that the crimes against
4 humanity, for which the Accused are charged in Case 002/01, fall
5 within the subject matter and temporal jurisdiction of the ECCC.

6 [09.18.44]

7 Historical Background:

8 As a preliminary matter, the Trial Chamber examined the
9 historical development of the CPK and its policies, including the
10 forced movements of the population from the cities and targeting
11 of Khmer Republic soldiers and civilian officials. The Chamber
12 has also examined the general conditions in Phnom Penh leading up
13 to the Khmer Rouge final assault on the city which began in
14 January 1975 and culminated in the takeover and forced transfer
15 of the inhabitants of Phnom Penh on 17 April 1975.

16 The Trial Chamber finds that in 1959, Tou Samouth, Pol Pot, and
17 Nuon Chea began the process of creating a new Cambodian Communist
18 Party, free of the Vietnamese influence characterized by the
19 early Indochina Communist Party. The founding principles of this
20 Party were Marxism, Leninism, and Democratic Centralism. The
21 First Party Congress was held from 28 to 30 September 1960,
22 during which the Party's Statute was adopted and the leadership
23 committee appointed. Tou Samouth was appointed Secretary, and
24 Nuon Chea, Deputy Secretary of the Party, with Pol Pot and Ma
25 Mang as the other members of the Standing Committee. In addition

1 to the members of the Standing Committee, Central Committee
2 members were also recruited, including Ieng Sary, Keo Meas,
3 Chong, and Vorn Vet. At the Second Party Congress in February
4 1963, where Pol Pot was appointed Party Secretary and Nuon Chea,
5 Deputy Party Secretary, the use of political and revolutionary
6 violence was reaffirmed. The Third Party Congress was held in
7 1971 and reiterated the Party's strategic lines adopted at the
8 first and second congresses.

9 [09.21.20]

10 By 1969, the economy in Cambodia was flagging and there was
11 uncertainty as to whether it would be dragged into the war in
12 Vietnam, despite Norodom Sihanouk's official policy of
13 neutrality. From 1969, devastating American bombings in Cambodia
14 served to push North Vietnamese troops further into the country,
15 which heightened the crisis.

16 In 1970, Lon Nol, who was supported by the U.S.A., overthrew
17 Norodom Sihanouk, who was outside of Cambodia at that time.
18 Norodom Sihanouk created the National United Front of Kampuchea,
19 FUNK, a political movement to fight against those who instigated
20 his overthrow. In May of that year, Norodom Sihanouk, with the
21 tacit support of the CPK, formed a new government-in-exile called
22 the Royal Government of National Union of Kampuchea, GRUNK. Khieu
23 Samphan was the Deputy Prime Minister and the Minister of
24 National Defence of GRUNK, in which roles he served as the link
25 between Norodom Sihanouk and Pol Pot. The GRUNK Administration

1 lacked real power in Cambodia although Norodom Sihanouk remained
2 influential overseas.

3 [09.23.17]

4 The CPK was in fact responsible for the armed struggle in
5 Cambodia. The CPK leaders had a strict policy of secrecy and did
6 not disclose their identities publicly. Instead, they favoured
7 the use of the term "Angkar", a deliberately weak and obfuscatory
8 term purporting to refer to an entity which led the country and
9 which, ordinary people understood, had the power to control the
10 entire nation. They also used public figures such as Khieu
11 Samphan and Norodom Sihanouk locally and internationally to
12 present a respectable façade for their actions and policies.
13 Before 17 April 1975, CPK leaders designed and implemented the
14 policies that are the subject of Case 002. As a result of the
15 Trial Chamber's Severance Decision, two of these five policies
16 are the subject of the charges at issue in Case 002/01 and were
17 examined in detail: first, the repeated movement of the
18 population from towns and cities to rural areas, as well as from
19 one rural area to another; and, second, the targeting of specific
20 groups, in particular former officials of the Khmer Republic,
21 including both civil servants and former military personnel and
22 their families. The other policies will be examined more
23 thoroughly in Case 002/02 and in any subsequent trials.

24 [09.25.32]

25 In relation to the movement of the population, the Chamber finds

1 that from 1970 people were forcibly transferred from villages by
2 the Khmer Rouge and sent to remote areas. There was a repetitive
3 pattern of forced transfers which reached its climax when the
4 Khmer Rouge took control of the whole country and Phnom Penh and
5 other cities were emptied of their inhabitants. The CPK leaders
6 considered city-dwellers to be intrinsically disloyal and
7 concluded that they would remain politically and ideologically
8 corrupt as well as difficult to control if they were allowed to
9 stay in the cities.

10 The Chamber finds that the evacuation of cities had a dual
11 purpose: preventing enemies from destabilizing CPK forces and
12 preventing cadres from being corrupted by the urban population.
13 In relation to the targeting policy, although there was no
14 written directive on the issue, the Chamber finds that the CPK
15 established a policy of targeting Khmer Republic soldiers and
16 officials.

17 The policy regarding captured Khmer Republic soldiers and
18 officials radicalized from 1970 until 1975. Initially, a
19 distinction was drawn between Lon Nol soldiers and those
20 suspected of being spies. Soldiers were often re-educated and
21 forgiven, whereas suspected spies were usually executed. However,
22 from around 1972 to - or 1973, Khmer Republic soldiers were less
23 likely to be forgiven and more likely to be executed if captured
24 by the CPK forces. The evolution of the policy to target Khmer
25 Republic soldiers and officials was marked by an increasing use

1 of violence.

2 [09.28.10]

3 In the months leading to the final assault on Phnom Penh, the
4 FUNK struck a conciliatory tone in radio broadcasts directed at
5 the Khmer Republic officials and soldiers, inviting them to
6 defect and informing them that they would be welcome to join the
7 Khmer Rouge forces, should they defect.

8 The Chamber finds that these messages were a calculated attempt
9 to reduce opposition to the Khmer Rouge advance and to lull Khmer
10 Republic officials into a false sense of security.

11 Movement of Population Phase 1:

12 The Trial Chamber finds that on the morning of 17 April 1975,
13 Khmer Rouge forces from zones across Cambodia, attacked and
14 entered Phnom Penh from all directions. Various Khmer Rouge
15 divisions took control of different areas of Phnom Penh. In the
16 hours after the Khmer Rouge entered Phnom Penh, the population
17 celebrated, believing that peace would return to Cambodia.

18 However, in the following hours, the Khmer Rouge began to direct
19 the population to leave Phnom Penh immediately. The Khmer Rouge
20 told local population that it was a temporary evacuation whose
21 purpose was to protect them against aerial bombardments by the
22 United - by the U.S.A. or to allow Angkar to ensure the safety of
23 the city. Even though - even residents who did not believe these
24 statements evacuated Phnom Penh in the face of threats by the
25 Khmer Rouge soldiers.

1 [09.30.20]

2 Khmer Rouge soldiers were under orders to forcibly evacuate the
3 city using any means. The population of Phnom Penh were subjected
4 to threats of physical abuse. Those who did not obey or resisted
5 were shot and killed on the spot. Without exception and in spite
6 of the intense heat, the entire population of Phnom Penh was
7 forced to leave, including monks, the elderly, young people, the
8 sick and injured from the city's hospital, pregnant women, and
9 those who have recently given birth.

10 Civil Party Pin Yathay described how the further they travelled
11 from the capital, the more that the exhaustion claimed the sick,
12 the injured, the lame, and the old, and increasingly they began
13 to see bodies left beside the highway.

14 Pech Srey Phal stated that by the time they reached Stung
15 Meanchey, they saw dead people on hospital beds abandoned by the
16 roadside. Pech Srey Phal, having no breast milk or medicine for
17 her baby, could only feed her baby water. Her baby soon died, and
18 she was instructed to bury her in the forest.

19 Others, such as Bay Sophany's youngest daughter, who suffered
20 from dysentery and vomiting, died from inadequate medical care.

21 [09.32.11]

22 On 17 April 1975, the population of Phnom Penh was in the region
23 of 2 to 2.5 million people. Many had fled to the city in order to
24 escape fighting and bombing in other regions. Upon being ordered
25 out of the city, the population used whatever means available to

12

1 them to leave Phnom Penh - mostly on foot, but also by bike,
2 push-cart, and car. Conditions throughout the journey were
3 appalling, characterized by insufficient food, water, medicine,
4 and accommodation, and many evacuees suffered terror, threats, or
5 incidents of violence by Khmer Rouge soldiers. There were
6 numerous instances of Khmer Rouge soldiers shooting and killing
7 civilians during the course of the evacuation, while many others
8 died of exhaustion, malnutrition or disease. Civil Party Chheng
9 Eng Ly recalled seeing a Khmer Rouge soldier tear apart a crying
10 baby who was crawling on his dead mother's body. Many evacuees,
11 including children, were separated from their families.

12 The Khmer Rouge established checkpoints along the roads leading
13 out of Phnom Penh, and in certain other towns where people were
14 searched and questioned about their biography, their family
15 members, and the work they did in Phnom Penh.

16 [09.34.13]

17 Many people identified by the Khmer Rouge as Khmer Republic
18 officials were either arrested and thereafter disappeared or were
19 killed in the days following 17 April 1975.

20 Evacuees from Phnom Penh travelled between several days to
21 several weeks and settled in rural areas throughout the rest of
22 the country.

23 The Trial Chamber finds that at least 2 million people were
24 forcibly transferred from Phnom Penh by the Khmer Rouge soldiers
25 under false pretext and threats, often at gunpoint, with almost

1 no prior warning or in terrifying and violent circumstances,
2 resulting in large numbers of people being killed or dying of
3 exhaustion, starvation, or illness.

4 The Chamber does not find credible, the defence claims that Phnom
5 Penh was evacuated to protect the people from American bombing.
6 The CPK's own leadership came to Phnom Penh in the days following
7 17 April 1975, basing themselves in prominent locations
8 apparently without any significant attempt to take precautions
9 against bombing, which had, in any event, halted in 1973. Nor
10 does the Chamber accept that shortage of food in Phnom Penh was
11 the reason for evacuating the population.

12 [09.36.26]

13 The CPK military had blocked the Mekong River and bombarded
14 Pochentong Airport, both used intensively before Phnom Penh fell
15 to provide food for the city's population. After 17 April 1975,
16 the Khmer Rouge forces had control of all transportation routes,
17 including the Mekong, Pochentong Airport, which was still
18 functional, and the port of Kampong Som, which could have been
19 used to import supplies. Although food was in short supply, the
20 CPK leadership applying its stance of independence and mastery,
21 refused foreign humanitarian aid unless it came without
22 conditions, therefore ensuring that there was no means to provide
23 adequately for the residents of Phnom Penh.

24 In any event, the Trial Chamber rejects any suggestion that it
25 was necessary or proportionate, in the circumstances, to empty

1 virtually the entire city of Phnom Penh. The only reasonable
2 conclusion is that the leadership decided to transfer the
3 population of Phnom Penh based in part on its earlier experience
4 of evacuating other areas for military, economic, and ideological
5 reasons and to allow the leadership better control of the people
6 and to prevent enemies from destabilizing CPK forces.

7 [09.38.20]

8 Movement of Population Phase 2:

9 The Trial Chamber finds that after 17 April 1975, defending and
10 building the country became the main Party line. The Party
11 focused on building and expanding cooperatives to advance both
12 the class struggle, the dictatorship of the proletariat, and
13 agricultural production, thereby securing the Socialist
14 Revolution. In order to build and expand the cooperatives, people
15 had to be moved. The Party leadership believed that population
16 movements allowed it to overcome challenges in building and
17 defending the country, and reorganizing the people, economy,
18 politics, and military.

19 The Trial Chamber finds that between September 1975 and early
20 1977, at least 300,000 to 400,000 people were forcibly displaced
21 from various locations in Kandal, Kampong Thom, Kampong Cham,
22 Takeo, Kampong Speu, Kampong Chhnang, Prey Veng, and Svay Rieng
23 provinces, Central, Southwest, West, and East Zones, to
24 Battambang and Pursat provinces, Northwest Zone, Kampong Thom
25 province, Central Zone, and Preah Vihear province, Sector 103.

1 The Chamber has further found that between September 1975 and
2 December 1977, more than 30,000 people were displaced to Kratie,
3 Sector 505, from and within Prey Veng and Svay Rieng provinces,
4 East Zone, within Kampong Thom and Kampong Cham provinces,
5 Central Zone, and within Battambang province, Northwest Zone.

6 [09.40.38]

7 There was insufficient evidence for the Chamber to find the
8 required standard of proof that people were moved to Siem Reap
9 province, Sector 106, and to Kampong Cham province, Central Zone,
10 or North Zone.

11 During movement of population phase 2, most people were ordered
12 to leave their locations and transferred under armed guard. Those
13 who refused transfer or attempted escape were arrested, detained,
14 or transferred in a further round of movements.

15 Khmer Rouge guards provided no assistance and often no
16 information as to the destination of the transferees. Khmer Rouge
17 soldiers and officials forcibly transferred people by various
18 methods, including threats, force, and deception. People were
19 frightened and lived in a state of terror, unwilling or unable to
20 disobey or question orders.

21 During a brief stop at Samraong Yaong Market, Kung Vach's son,
22 who had diarrhoea and swollen limbs, died. Khmer Rouge soldiers
23 instructed Kung Vach to leave his body with them, and she did not
24 know what they did with it.

25 [09.42.11]

1 People were transported by different modes, including truck,
2 boat, ox-cart, and foot. The conditions of their transfer
3 depended on the particular mode of transportation. For example,
4 trucks to assembly points, including at Phnom Penh and Kampong
5 Chhnang, West Zone, were crowded. People were constantly
6 monitored. They had no water and insufficient food and were not
7 allowed to carry any belongings. People were sick on the trucks
8 but received no assistance. Those transported by truck were
9 guarded by armed Khmer Rouge soldiers, who shot at those who
10 tried to escape. Many were sick, had diarrhoea, and had to
11 relieve themselves on the truck. Due to exhaustion, starvation or
12 illness, some people died.

13 The Chamber finds that those who went willingly, due to the poor
14 living conditions, had left a catastrophic humanitarian situation
15 created by the Khmer Rouge, and consequently any apparent
16 willingness to be relocated under promises of better conditions
17 cannot be seen as a genuine exercise of choice.

18 [09.43.55]

19 Tuol Po Chrey:

20 The Chamber finds that immediately after 17 April 1975, at least
21 250 Lon Nol officials were transported from Pursat to Tuol Po
22 Chrey and then executed. The executions were carried out by Khmer
23 Rouge soldiers from the Northwest Zone. Soldiers from Battalion
24 201 or 202 were tasked with guarding the road during the
25 executions. The victims, who comprised both former Lon Nol

1 soldiers and civilian officials of the previous regime who had
2 surrendered and were no longer taking active part in hostilities,
3 were targeted in accordance with CPK policy and were later either
4 buried at Tuol Po Chrey or bulldozed into a pond using equipment
5 sent by the Zone Committee.

6 [09.45.09]

7 Crimes Against Humanity:

8 The Chamber is satisfied that beginning by 17 April 1975 and
9 continuing at least until December 1977, the temporal period at
10 issue in Case 002/01, there was a widespread and systematic
11 attack against the civilian population of Cambodia. The attack
12 took many forms, including forced transfer, murder,
13 extermination, enforced disappearances, attacks against human
14 dignity, and political persecution. This attack victimized
15 millions of civilians throughout Cambodia and resulted in a large
16 number of refugees fleeing through neighbouring countries. The
17 attack was carried out in furtherance of and pursuant to Party
18 policies and plans to build socialism and defend the country.
19 The Chamber is satisfied that the attack was widespread in both
20 its geographic scope and number of victims. The Chamber also
21 finds that the attack was systematic, insofar as crimes of such
22 scope and magnitude could not have been random, and were carried
23 out in furtherance of and pursuant to Party policies. The Chamber
24 finds that this attack was directed against the civilian
25 population of Cambodia.

1 [09.47.00]

2 In relation to movement of population phase 1, the Trial Chamber
3 finds that the following crimes against humanity were
4 perpetrated: murder, extermination, political persecution, and
5 other inhumane acts in the form of forced transfers and attacks
6 against human dignity.

7 In relation to movement of population phase 2, the Trial Chamber
8 finds that the following crimes against humanity were
9 perpetrated: extermination, political persecution, and other
10 inhumane acts in the form of forced transfer, attacks against
11 human dignity, and enforced disappearances.

12 In relation to the events at Tuol Po Chrey, the Chamber finds
13 that the executions described above constitute the crimes of
14 murder, extermination, and political persecution as crimes
15 against humanity.

16 Joint Criminal Enterprise:

17 In relation to the alleged joint criminal enterprise, the Chamber
18 concludes that the Closing Order , as limited in Case 002/01, did
19 not charge the Accused with responsibility for the crimes of
20 extermination on the basis of JCE in relation to the movement of
21 population phases 1 and 2. Further, the Closing Order did not
22 charge the Accused with responsibility for enforced
23 disappearances on the basis of JCE in relation to movement of
24 population phase 2. Further still, the Closing Order did not
25 charge the Accused with responsibility for political persecution

1 on the basis of JCE in relation to events at Tuol Po Chrey.

2 [09.49.05]

3 For these specific crimes, the Chamber concludes that the Closing
4 Order charged the Accused with responsibility on the basis of
5 modes of liability other than JCE. Joint criminal enterprise was
6 however charged in relation to the other crimes described above.
7 The Trial Chamber finds that throughout the time period relevant
8 to Case 002/01, there existed a plurality of persons who shared
9 the common purpose of implementing rapid socialist revolution
10 through a "great leap forward" by whatever means necessary. The
11 participants included members of the Standing and Central
12 Committees, government ministers, and zone secretaries, including
13 at least Pol Pot, Nuon Chea, Khieu Samphan, Ieng Sary, Son Sen,
14 Vorn Vet, Ta Mok, So Phim, Ros Nhim, Koy Thuon, Ke Pauk, Chan
15 Sam, Chou Chet, Ieng Thirith, and Mey Prang. The evidence
16 establishes that this common purpose to rapidly build and defend
17 the country through a socialist revolution was based on the
18 principles of secrecy, independence, self-reliance, and
19 collectivization and was firmly established by June 1974,
20 continuing at least until December 1977.

21 [09.50.54]

22 The Chamber finds that there was a joint criminal enterprise to
23 achieve the common purpose through, among other means, policies
24 to forcibly displace people from cities and towns and between
25 rural areas. The crimes committed in the course of movements of

1 population phases 1 and 2 were carried out in furtherance of the
2 Party's plans and policies.

3 The Chamber further finds that the Party divided the Cambodian
4 people according to their classification and that the New People
5 - meaning all former city dwellers - forcibly transferred to the
6 countryside after the 17 April 1975, were to be re-educated. New
7 People were not trusted by the CPK, as they were perceived as
8 enemies of the Revolution and the collective system. Further, all
9 bad elements who could not be re-educated and all remnants of the
10 former feudalism, imperialist, and capitalist regimes were to be
11 eliminated. Any who opposed or were perceived to oppose the
12 Revolution were targets for mistreatment and acts of violence.
13 The Chamber further finds that these crimes are properly imputed
14 to the members of the joint criminal enterprise.

15 [09.52.37]

16 The Chamber finds that during the time period at issue in Case
17 002/01, there was a joint criminal enterprise to achieve the
18 common purpose through, amongst other means, a policy to target
19 former Khmer Republic officials. The Chamber finds that the
20 murders and extermination committed at Tuol Po Chrey were carried
21 out in furtherance of Party plans and policies and that these
22 crimes can be imputed to at least one member of the joint
23 criminal enterprise.

24 The Chamber now turns to summarize the criminal responsibility of
25 each Accused in this Case.

1 Role and Functions of Nuon Chea:

2 Nuon Chea, whose birth name is Lao Kim Lorn, was born on 7 July
3 1926, in Voat Kor village, Sangkae district, Battambang province.
4 In 1941, he moved to Thailand, where he studied and worked in the
5 Thai Ministry of Finance and the Thai Ministry of Foreign
6 Affairs. In 1950, he joined the Communist Party of Thailand, and
7 later returned to Cambodia to join the Resistance Movement. Nuon
8 Chea then joined the Indochina Communist Party. From about 1950,
9 his activism intensified as he engaged in propaganda and
10 education activities. He also engaged in underground work for the
11 Revolutionary Movement in Phnom Penh as a member of the Party
12 City Committee, while working variously as a teacher, a vendor or
13 a clerk for an import/export company.

14 [09.54.46]

15 Nuon Chea was introduced to Pol Pot in 1955 or 1956. Pol Pot and
16 Nuon Chea, who were both members of the Khmer People's Revolution
17 Party, initially worked together as assistants to Tou Samouth.
18 During the First Congress of the Party in 1960, Nuon Chea was
19 nominated Deputy Secretary, and the Party was renamed the
20 Workers' Party of Kampuchea.

21 Nuon Chea retained the position of Deputy Secretary of the CPK
22 throughout the DK period. He was also a full-rights member of
23 both the CPK Central and Standing Committees, as well as Chairman
24 of the Standing Committee of the Peoples' Representative
25 Assembly.

1 From September 1976, on several occasions, Nuon Chea officially
2 exercised the role of Acting Prime Minister of DK up until 1977,
3 when Pol Pot resumed his duties.

4 Nuon Chea had primary responsibility for propaganda-related
5 matters, as well as for the education of peasants, cadres, and
6 other Party members, focusing on particular on main principles
7 and economic policies of the Party. Nuon Chea's formal
8 responsibility for propaganda and education-related matters also
9 extended to the discipline of cadres and other internal security
10 matters, as well as the enemy situation more generally, where he
11 advocated that enemies be uncovered and eliminated.

12 [09.56.46]

13 The Chamber has not been satisfied on the evidence that Nuon Chea
14 was a member of the Military Committee of the CPK. However, his
15 involvement in military and security matters was intrinsically
16 linked with his longstanding authority within the Party. Nuon
17 Chea actively participated in the operations of the army,
18 particularly concerning the war against Vietnam, receiving
19 regular reports and providing instructions with regard to
20 security matters, either directly or through decisions of the
21 Party. Due to his seniority within the leadership of the CPK,
22 Nuon Chea enjoyed oversight of all the Party's activities,
23 extending beyond the roles and responsibilities formally
24 entrusted to him during the DK period.

25 The Chamber finds that within the Standing Committee, Nuon Chea,

1 with Pol Pot, exercised the ultimate decision-making power of the
2 Party. As Deputy Secretary of the Party, his control extended not
3 only to political decisions, but also to the government and the
4 administration of DK and to military matters.

5 [09.58.08]

6 Criminal Responsibility of Nuon Chea:

7 According to the Closing Order as limited in Case 002/01, Nuon
8 Chea, through a JCE, committed the crimes against humanity of:
9 murder, political persecution, and other inhumane acts comprising
10 forced transfers and attacks against human dignity during
11 movement of population phase 1; political persecution and other
12 inhumane acts comprising forced transfers and attacks against
13 human dignity during movement of population phase 2; and murder
14 and extermination through executions of Khmer Republic officials
15 at Tuol Po Chrey. According to the Closing Order, Nuon Chea
16 intentionally participated in or contributed to the design and
17 implementation of the common purpose which resulted in and/or
18 involved the commission of crimes both before and during the DK
19 era.

20 [09.59.25]

21 In his capacities as Deputy Secretary of the CPK, member of the
22 Military Committee, and full-rights member of the Central and
23 Standing Committees, Nuon Chea attended high-level meetings where
24 policy was developed, participated in elaborating the CPK's
25 official policy documents, and publicly explained, endorsed, and

1 encouraged CPK policies through speeches, propaganda, and
2 political trainings. On this basis, the Closing Order also
3 alleges that Nuon Chea planned, ordered, instigated, aided, and
4 abetted or, alternatively, is responsible, as a superior, for all
5 crimes falling within the scope of Case 002/01.

6 [10.00.22]

7 The Chamber finds that Nuon Chea made a significant contribution
8 to the realization of the common plan through his involvement in
9 policy and propaganda, education, and public training, through
10 which he contributed to the development, planning, dissemination,
11 and implementation of the common purpose. As a full-rights member
12 of the Standing and Central Committees, Nuon Chea was a key actor
13 responsible for the formulation of Party policies. He
14 participated in meetings at which the forced transfer of the
15 inhabitants of Phnom Penh and other population movements were
16 decided upon.

17 Before and during the DK regime, Nuon Chea focused on propaganda
18 and training of Khmer Rouge cadres and appeared as the chairman,
19 trainer, or speaker at a range of meetings, trainings, or study
20 sessions; he also played an instrumental role in issuing the
21 "Revolutionary Flag".

22 The Chamber finds that through these publications, speeches, and
23 public statements, Nuon Chea helped to divide the population,
24 differentiating between peasants - Base People - and their urban
25 counterparts - New People - and sow seeds of distrust among

1 cadres and the rural population in respect of those in the
2 cities.

3 The Chamber finds that Nuon Chea contributed significantly to the
4 realization of the common purpose, and that he intended to
5 further the implementation of the common purpose through his
6 actions. He shared with the other JCE participants the intent to
7 commit the crimes involved.

8 [10.02.31]

9 Further, in light of his contribution to developing the Party
10 line on class struggle and the policy to target Khmer Republic
11 officials, the Chamber is also satisfied that Nuon Chea shared
12 with the other members of the JCE the requisite discriminatory
13 intent for the crime of political persecution committed during
14 movement of population phases 1 and 2.

15 Accordingly, the Chamber finds that Nuon Chea, through a JCE,
16 committed the crimes against humanity of: murder, political
17 persecution, and other inhumane acts comprising forced transfers
18 and attacks against human dignity during movement of population
19 phase 1; political persecution and other inhumane acts comprising
20 - comprising of forced transfer and attacks against human dignity
21 during movement of population phase 2; and murder and
22 extermination at Tuol Po Chrey.

23 [10.03.48]

24 The Trial Chamber further finds that Nuon Chea planned, ordered,
25 instigated, aided and abetted the aforementioned crimes.

1 Considering Nuon Chea's participation in JCE encompasses all the
2 conduct forming the basis of the Chamber's finding on these other
3 forms of responsibility, the Chamber has entered a conviction for
4 commission of these crimes only through a JCE.

5 In relation to the crimes for which the Trial Chamber concluded
6 that joint criminal enterprise was not charged in the Closing
7 Order, the Chamber finds that Nuon Chea planned, ordered,
8 instigated, aided, and abetted the crimes of extermination during
9 movement of population phases 1 and 2, political persecution at
10 Tuol Po Chrey, and other inhumane acts, comprising enforced
11 disappearances during movement of population phase 2.

12 [10.05.00]

13 Further, the Chamber finds that Nuon Chea is both directly
14 responsible and - responsible, as a superior, for all crimes
15 committed in the course of movement of population phases 1 and 2
16 and for the crimes committed at Tuol Po Chrey. Having found that
17 Nuon Chea was directly responsible for these crimes, the Chamber
18 declines to enter a conviction under the doctrine of superior
19 responsibility, instead considering Nuon Chea's superior position
20 in sentencing.

21 Role and Functions of Khieu Samphan:

22 Khieu Samphan, alias Hem - Hem or Nan, was born on the 27 of July
23 1931 in Chek, or Rumchek commune, Rumduol district, Svay Rieng
24 province. He began to study law in Phnom Penh, and then, in 1953,
25 having been awarded a scholarship by the Cambodian Government, he

1 travelled to France to study law and economics. In Paris, Khieu
2 Samphan joined the Marxist Circle, founded prior to his arrival
3 in France and regularly attended by other Khmer students,
4 including Ieng Sary, Pol Pot, Ieng Thirith, and Son Sen, and,
5 upon the departure of Ieng Sary, became its leader. Like other
6 members of the Circle, Khieu Samphan joined the French Communist
7 Party. He also assumed the leadership of the Union of Khmer
8 Students. In 1959, Khieu Samphan presented his doctoral thesis
9 entitled "The Economy of Cambodia and Its Problems of
10 Industrialisation".

11 [10.07.10]

12 In 1962, after returning to Cambodia, Khieu Samphan was elected
13 to the National Assembly and appointed Secretary of State for
14 Commerce. By the early 1960s, Khieu Samphan had informal contact
15 with senior CPK members. Khieu Samphan became a candidate member
16 of the CPK Central Committee in 1971 and a full-rights member in
17 1976.

18 In 1970, Khieu Samphan was named Deputy Chairman of FUNK and
19 Commander-in-Chief of the Cambodian People's National Liberation
20 Armed Forces. In reality, Khieu Samphan held no direct military
21 authority, and it was Pol Pot who was in charge of the CPNLF
22 forces.

23 Khieu Samphan also assumed the post of Deputy Prime Minister and
24 Minister of National Defence in GRUNK. After the fall of Phnom
25 Penh in April 1975, Khieu Samphan retained his roles as Deputy

1 Prime Minister, Minister of National Defence, and the People's
2 National Liberation Armed Forces' Commander-in-Chief, and as such
3 continued to exercise certain diplomatic functions such as
4 meeting, visiting delegations from foreign countries and leading
5 Cambodian delegations on trips abroad.

6 [10.09.05]

7 In April 1976, Khieu Samphan was appointed President of the State
8 Presidium, a role which was largely symbolic and in which he had
9 no executive power. As President of the State Presidium, he
10 continued to perform diplomatic and ceremonial functions. Khieu
11 Samphan was never formally a member of the CPK's Standing
12 Committee, but actively participated in some Standing Committee
13 meetings.

14 In 1975, the CPK's Standing Committee assigned Khieu Samphan
15 responsibility for the Front and the Royal Government and
16 Commerce, for accounting and pricing.

17 Around October 1975, Khieu Samphan became one of the two members
18 of Office 870 which oversaw the implementation of Standing
19 Committee decisions. However, the Chamber is not satisfied that,
20 as has been alleged, Khieu Samphan ever served as the Chairman of
21 Office 870.

22 The Chamber finds that Khieu Samphan's role during the DK period
23 proves that he had the confidence and trust of the other members
24 of the Party Centre. Despite holding an array of titles, the
25 evidence suggests that Khieu Samphan's decision-making power was

1 primarily limited to matters of economics and foreign trade.
2 However, he had broader authority and influence by virtue of his
3 senior position.

4 [10.10.55]

5 Through his attendance at Central and Standing Committee
6 meetings, his work in Office 870, his close and ongoing
7 association with other CPK leaders, his supervision of the
8 Commerce Committee, and the content of the speeches he made, he
9 had knowledge of the CPK's policies and access to information
10 about the situation in Cambodia generally.

11 Criminal Responsibility of Khieu Samphan:

12 According to the Closing Order as limited in Case 002/01, Khieu
13 Samphan, through a JCE, committed the crimes against humanity of:
14 murder, political persecution, and other inhumane acts comprising
15 forced transfer and attacks against human dignity during the
16 movement of population phase 1; political persecution and other
17 inhumane acts comprising forced transfer and attacks against
18 human dignity during the movement of population phase 2; and
19 murder and extermination through execution of Khmer Republic
20 officials at Tuol Po Chrey.

21 [10.12.14]

22 According to the Closing Order, Khieu Samphan intentionally
23 participated in or contributed to the design and implementation
24 of the common purpose which resulted in and/or involved the
25 commission of crimes both before and during the DK era.

1 By virtue of his positions during the DK era, including his
2 membership of the Central Committee and Office 870, the Closing
3 Order alleges that Khieu Samphan attended and contributed to
4 meetings, including Standing Committee meetings, where policy was
5 discussed and disseminated. He also made public statements,
6 performed diplomatic functions, and participated in
7 indoctrination sessions, thereby endorsing and disseminating the
8 common purpose internationally and domestically. On this basis,
9 the Closing Order also alleges that the Accused planned, ordered,
10 instigated, aided, and abetted or, alternatively, is responsible,
11 as a superior, for all crimes falling within the scope of Case
12 002/01.

13 [10.13.39]

14 The Chamber finds that Khieu Samphan made a significant
15 contribution to the realization of the common plan and that he
16 intended to further the implementation of the common purpose
17 through his actions. Khieu Samphan attended policy meetings of
18 the Standing and Central Committees, as well as Party congresses
19 where the common purpose and policies were planned and developed.
20 He attended and participated in meetings where instructions and
21 lessons concerning the common purpose and policies were given.

22 [10.14.21]

23 Khieu Samphan was present, together with other army officers, at
24 B-5 during the final offensive against Phnom Penh. He addressed
25 combatants at various broadcast. Khieu Samphan held economic

1 positions where, drawing on his experience and education, he
2 implemented elements of the common purpose relating to trade,
3 import, export, and commerce. He made public statements endorsing
4 the common purpose and policy, encouraging all to build and
5 defend the country according to the Party line.

6 Finally, in his roles as liaison with Norodom Sihanouk and as a
7 diplomat, Khieu Samphan justified, defended, and praised the
8 common purpose and policies, winning support for the Khmer Rouge
9 both locally and abroad and permitting the secret and largely
10 unhindered implementation of the common purpose through radical
11 policy. He also shared with the other JCE participants the intent
12 to commit the crimes involved.

13 Accordingly, the Chamber finds that Khieu Samphan, through a JCE,
14 committed the crimes against humanity of: murder, political
15 persecution and other inhumane acts comprising forced transfer
16 and attacks against human dignity during movement of population
17 phase 1; political persecution and other inhumane acts comprising
18 forced transfer and attacks against human dignity during movement
19 of population phase 2; and murder and extermination at Tuol Po
20 Chrey.

21 [10.16.22]

22 The Chamber also finds that the Accused planned, instigated,
23 aided, and abetted the aforementioned crimes during the movement
24 of population phases 1 and 2 and at Tuol Po Chrey.

25 Considering that the Accused's participation in the JCE

1 encompasses all the conducts forming the basis of the Chamber's
2 findings on these other forms of responsibility, the Chamber will
3 enter a conviction for commission of these crimes only through a
4 JCE.

5 In relation to the crimes for which the Trial Chamber concluded
6 that the joint criminal enterprise was not charged in the Closing
7 Order, the Chamber finds that Khieu Samphan planned, instigated,
8 aided, and abetted the crimes of extermination during forced -
9 during movement of population phases 1 and 2, political
10 persecution at Tuol Po Chrey, and other inhumane acts comprising
11 enforced disappearances during movement of population phase 2.
12 The Chamber is not satisfied that Khieu Samphan held a position
13 of sufficient authority to issue orders to commit the crimes. The
14 Chamber, therefore, dismisses the charge that he ordered the
15 crimes.

16 [10.17.57]

17 In addition, the Chamber is not satisfied that the totality of
18 the evidence demonstrates that Khieu Samphan exercised effective
19 control over the perpetrators of crimes in the sense of having
20 the ability to decide upon and take measures to prevent or punish
21 perpetrators. Accordingly, the Chamber dismisses the allegations
22 in relation to superior responsibility.

23 Civil Party Reparations:

24 A total of 3,869 civil parties were admitted in the present Case
25 and comprised a consolidated group of civil parties at trial

1 represented by two Lead Co-Lawyers. The Chamber notes that both
2 of the Accused in Case 002 have been found indigent. Under the
3 ECCC Internal Rules, the Civil Party Lead Co-Lawyers may request
4 the Trial Chamber to recognize specific reparation measures. Such
5 measures have been designed or identified in coordination with
6 the Victims Support Section in order to appropriately acknowledge
7 the harm suffered by civil parties as a result of the commission
8 of crimes at issue in Case 002/01 and to provide benefits to the
9 civil parties that address this harm.

10 [10.19.30]

11 In Case 002/01, the Civil Party Lead Co-Lawyers sought the
12 judicial recognition of 13 projects as appropriate reparations.
13 The Chamber finds that, as a consequence of the crimes of which
14 the Accused have been convicted, the civil parties and a very
15 large number of additional victims have suffered immeasurable
16 harm, including physical suffering, economic loss, loss of
17 dignity, psychological trauma, and grief arising from the loss of
18 family members and close relations.

19 The Trial Chamber endorses projects concerning the institution of
20 a national remembrance day project, the construction of a
21 memorial of Phnom Penh to honour victims of forced evacuations, a
22 testimonial therapy project, self-help groups, a permanent
23 exhibition, a mobile exhibition, and education project, the
24 inclusion of a chapter on forced population movements and
25 executions at Tuol Po Chrey within the Cambodian school

1 curriculum, the construction of a peace learning centre, a
2 booklet on adjudicated facts and civil party participation at the
3 ECCC, two editions of the Verdict in Case 002/01, and inclusion
4 of civil party names on the ECCC website.

5 [10.21.22]

6 The Chamber finds that sufficient funding and collaboration has
7 been secured to ensure their implementation. Full details of
8 these projects are provided in the Judgement.

9 Finally, the Chamber considers that while the award sought in two
10 remaining projects concerning a public memorial initiative and
11 the construction of a memorial to the victims of the Khmer Rouge
12 regime for Cambodians living in France may well appropriately
13 address the harm suffered by victims and may provide moral and
14 collective reparations to the civil parties' suffering, it is
15 unable to endorse these projects. The Chamber finds that in
16 regard to the memorials contemplated in Cambodia, no sufficiently
17 detailed information, such as their proposed locations or the
18 agreement of any involved third parties, has been provided and
19 that, for both these two remaining projects, it has not been
20 fully demonstrated that sufficient external funding has been
21 secured.

22 [10.23.08]

23 Disposition and Sentence:

24 This completes the summary of the Chamber's findings. I will now
25 read out the Disposition.

1 The Accused, please rise.

2 (Short pause)

3 Mr. Nuon Chea, please rise.

4 [10.23.30]

5 MR. NUON CHEA:

6 (Microphone not activated)

7 MR. PRESIDENT:

8 Due to his age and his health problems, Mr. Nuon Chea cannot
9 stand to hear the Disposition. The Chamber allows him to sit and
10 listen to the Disposition.

11 Pursuant to Articles 5, 29new, and 39new of the ECCC Law, the
12 Trial Chamber finds the accused Nuon Chea guilty of the crimes
13 against humanity of extermination, encompassing murder, political
14 persecution, and other inhumane acts comprising forced transfer
15 and enforced disappearances, and attacks against human dignity
16 committed within the territory of Cambodia between 17 April 1975
17 and December 1977.

18 Pursuant to Articles 5, 29new, and 39new of the ECCC Law, the
19 Trial Chamber finds the accused Khieu Samphan guilty of the
20 crimes against humanity of extermination, encompassing murder,
21 political persecution, and other inhumane acts comprising forced
22 transfer and enforced disappearances, and attacks against human
23 dignity committed within the territory of Cambodia between 17
24 April 1975 and December 1977.

25 [10.25.52]

1 The Chamber has considered the gravity of the crimes for which
2 the Accused have been convicted, as well as relevant aggravating
3 and mitigating circumstances and witnesses testimony regarding
4 the character of Khieu Samphan. In determining the sentence, the
5 Chamber has also taken into account the Supreme Court Chamber's
6 pronouncements on sentencing in Case 001 and precedents from
7 other international tribunals whose judgements have also
8 evaluated sentencing considerations in relation to crimes of a
9 massive scale.

10 The Chamber sentences the accused Nuon Chea to life imprisonment.

11 The Chamber sentences the accused Khieu Samphan to life
12 imprisonment.

13 The Chamber declares that Nuon Chea was taken into pre-trial
14 detention on 19 September 2007 and that Khieu Samphan was taken
15 into pre-trial detention on 19 November 2007, and that both
16 Accused have remained in detention until the delivery of the
17 verdict and sentence on 7 August 2014.

18 This Judgement is publicly pronounced in the ECCC main courtroom
19 on 7 August 2014 and is appealable by the parties in accordance
20 with the Internal Rules.

21 [10.27.52]

22 Given the gravity of the crimes for which they have been
23 convicted, and subject to any order of the Supreme Court Chamber,
24 Nuon Chea and Khieu Samphan shall remain in detention until this
25 Judgement becomes final.

1 This hearing is now adjourned.

2 Security personnel are directed to bring the convicted persons
3 Nuon Chea and Khieu Samphan to the detention facility.

4 THE GREFFIER:

5 All rise.

6 (Court adjourns at 1028H)

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