

## SUMMARY OF JUDGEMENT IN CASE 002/01

### 1. Introduction

1. The following is a summary of the Trial Chamber's judgement in Case 002/01. The only authoritative account of the findings is contained in the full written judgement, which will be made available in Khmer, English and French immediately after this hearing.
2. Case 002 concerns the responsibility of NUON Chea and KHIEU Samphan for crimes committed in Democratic Kampuchea ("DK") between 17 April 1975 and 6 January 1979. Following the issuance of the Closing Order by the Co-Investigating Judges on 15 September 2010, concluding almost 3 years of judicial investigations, NUON Chea and KHIEU Samphan were brought to trial. This case originally included two further Accused, IENG Thirith and IENG Sary. In 2011, the proceedings against IENG Thirith were stayed and the charges against her severed from the case after she was found unfit to stand trial due to a progressive, dementing disease. IENG Sary's death in 2013 extinguished all criminal and civil actions against him before the ECCC.
3. During the period from 17 April 1975 to 6 January 1979, NUON Chea is alleged to have served as Deputy Secretary of the Communist Party of Kampuchea ("CPK"), a full-rights member of the CPK Central and Standing Committees, Chairman of the People's Representative Assembly and, on occasion, Acting Prime Minister of the DK government. KHIEU Samphan allegedly held various positions in the CPK and DK, including President of the State Presidium. He is also alleged to have been Chairman of Political Office 870 and a member of the CPK Standing Committee.
4. The Initial Hearing in Case 002 was held from 27 to 30 June 2011. In September 2011, the Trial Chamber severed the proceedings in Case 002 into a series of smaller trials because of the size and complexity of the Closing Order and the age and health of the Accused. The Trial Chamber limited the scope of the first trial in Case 002 (referred to since as "Case 002/01") to crimes against humanity alleged to have been committed during: first, the evacuation of Phnom Penh on 17 April 1975 (which has been referred to in these proceedings as "movement of population (phase one)"); and second, movements of population in other regions of Cambodia from September 1975 until December 1977 ("movement of population (phase two)"). The Trial Chamber started hearing evidence on 21 November 2011, and in

October 2012, following an application by the Office of the Co-Prosecutors, expanded the scope of the charges in Case 002/01 to include charges related to the alleged executions of former Khmer Republic officials at Tuol Po Chrey from April 1975.

5. The scope of the charges relevant to Case 002/01 include factual allegations concerning the Accused's responsibility for the following crimes:

- In relation to the evacuation of Phnom Penh on 17 April 1975, the Accused are alleged to be responsible for the following crimes against humanity: murder, extermination, political persecution, other inhumane acts (in the form of forced transfers); and other inhumane acts (in the form of attacks against human dignity);
- In relation to the movements of population from, to and within the Central (old North), Southwest, West and East Zones from September 1975 to December 1977, the Accused are alleged to be responsible for the following crimes against humanity: extermination, political persecution, other inhumane acts (in the form of forced transfers); other inhumane acts (in the form of attacks against human dignity) and other inhumane acts (in the form of enforced disappearances);
- In relation to Tuol Po Chrey, the Accused are alleged to be responsible for the crimes against humanity of murder, extermination and political persecution.

6. It is alleged that each Accused committed a number of these crimes by participating in a joint criminal enterprise the common purpose of which was to implement rapid socialist revolution in Cambodia through a "great leap forward" and to defend the Party against enemies by whatever means necessary. It is alleged that, in order to achieve this common purpose, the Accused designed a number of policies the implementation of which resulted in and/or involved a number of the crimes against humanity charged in Case 002/01 and which the Accused intended to be committed. It is further alleged that the Accused planned, ordered, instigated, aided and abetted the aforementioned crimes against humanity. In the alternative, the Accused are also alleged to be responsible on the basis of superior responsibility.

7. Over the course of 20 months of evidentiary hearings, the Trial Chamber heard the testimony of 92 individuals, including three experts, 53 fact witnesses, five character

witnesses and 31 Civil Parties. More than 5,800 evidentiary documents were subjected to examination and admitted, totalling over 222,000 pages over the three official languages. The Chamber admitted 1,124 written statements and transcripts of witnesses and Civil Parties who did not appear before the Chamber in place of oral testimony. The hearing of evidence in Case 002/01 concluded on 23 July 2013. Closing arguments took place in October 2013.

8. Before beginning the evidentiary hearings, the Trial Chamber determined a large number of preliminary and procedural issues which it considered constituted a potential barrier to the commencement of trial, while others are addressed in the judgement. The Trial Chamber concluded that it has personal jurisdiction over NUON Chea and KHIEU Samphan and that the crimes against humanity for which the Accused are charged in Case 002/01 fall within the subject-matter and temporal jurisdiction of the ECCC.

## **2. Historical Background**

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

10. The Trial Chamber finds that in 1959, TOU Samuth, POL Pot and NUON Chea began the process of creating a new Cambodian Communist Party free of the Vietnamese influence characterised by the earlier Indochina Communist Party. The founding principles of this party were Marxism-Leninism and democratic centralism. The First Party Congress was held from 28 to 30 September 1960, during which the Party's statute was adopted and the leadership committee appointed. TOU Samuth was appointed Secretary and NUON Chea Deputy Secretary of the Party, with POL Pot and MA Mang as the other members of the Standing Committee. In addition to the members of the Standing Committee, Central Committee members were also recruited, including IENG Sary, KEO Meas, Chong and VORN Vet. At the Second Party Congress in February 1963, where POL Pot was appointed Party Secretary and NUON Chea Deputy Party Secretary, the use of political and revolutionary violence was reaffirmed. The Third Party Congress was held in 1971 and reiterated the Party's strategic lines adopted at the First and Second Congresses.

11. By 1969 the economy in Cambodia was flagging and there was uncertainty as to whether it would be dragged into the war in Vietnam despite NORODOM Sihanouk's official policy of neutrality. From 1969, devastating American bombings in Cambodia served to push North-Vietnamese troops further into the country which heightened the crisis. In 1970, LON Nol who was supported by the U.S.A. overthrew NORODOM Sihanouk, who was outside of Cambodia at the time. NORODOM Sihanouk created the National United Front of Kampuchea ("FUNK"), a political movement to fight against those who instigated his overthrow. In May of that year, NORODOM Sihanouk, with the tacit support of the CPK, formed a new government in exile called the Royal Government of National Union of Kampuchea ("GRUNK"). KHIEU Samphan was the Deputy Prime Minister and the Minister of National Defence of GRUNK, in which roles he served as the link between NORODOM Sihanouk and POL Pot. The GRUNK administration lacked real power in Cambodia, although NORODOM Sihanouk remained influential overseas. The CPK was in fact responsible for the armed struggle in Cambodia. The CPK leaders had a strict policy of secrecy and did not disclose their identities publicly. Instead they favoured the use of the term "Angkar", a deliberately vague and obfuscatory term, purporting to refer to an entity which led the country and which ordinary people understood had the power to control the entire nation. They also used public figures such as KHIEU Samphan and NORODOM Sihanouk locally and internationally, to present a respectable façade for their actions and policies.

12. Before 17 April 1975, CPK leaders designed and implemented the policies that are the subject of Case 002. As a result of the Trial Chamber's severance decision, two of these five policies are the subject of the charges at issue in Case 002/01 and were examined in detail; first, the repeated movement of the population from towns and cities to rural areas, as well as from one rural area to another; and second, the targeting of specific groups, in particular former officials of the Khmer Republic, including both civil servants and former military personnel and their families. The other policies will be examined more thoroughly in Case 002/02 and in any subsequent trial(s).

13. In relation to the movement of the population, the Chamber finds that from 1970 people were forcibly transferred from villages by the Khmer Rouge and sent to remote areas. There was a repetitive pattern of forced transfers which reached its climax when the Khmer Rouge took control of the whole country and Phnom Penh and other cities were emptied of their inhabitants. CPK leaders considered city-dwellers to be intrinsically disloyal and concluded

that they would remain politically and ideologically corrupt as well as difficult to control if they were allowed to stay in the cities. The Chamber finds that the evacuation of cities had a dual purpose: preventing enemies from destabilising CPK forces and preventing cadres from being corrupted by the urban population.

14. In relation to the targeting policy, although there was no written directive on the issue, the Chamber finds that the CPK established a policy of targeting Khmer Republic soldiers and officials. The policy regarding captured Khmer Republic soldiers and officials radicalised from 1970 until 1975. Initially a distinction was drawn between LON Nol soldiers and those suspected of being spies: soldiers were often re-educated and forgiven, whereas suspected spies were usually executed. However, from around 1972 or 1973, Khmer Republic soldiers were less likely to be forgiven and more likely to be executed if captured by CPK forces. The evolution of the policy to target Khmer Republic soldiers and officials was marked by an increasing use of violence. In the months leading to the final assault on Phnom Penh, the FUNK struck a conciliatory tone in radio broadcasts directed at Khmer Republic officials and soldiers, inviting them to defect and informing them that they would be welcomed to join the Khmer Rouge forces should they defect. The Chamber finds that these messages were a calculated attempt to reduce opposition to the Khmer Rouge advance and to lull Khmer Republic officials into a false sense of security.

### **3. Movement of Population Phase One**

15. The Trial Chamber finds that on the morning of 17 April 1975, Khmer Rouge forces from Zones across Cambodia attacked and entered Phnom Penh from all directions. Various Khmer Rouge divisions took control of different areas of Phnom Penh. In the hours after the Khmer Rouge entered Phnom Penh, the population celebrated, believing that peace would return to Cambodia. However, in the following hours, the Khmer Rouge began to direct the population to leave Phnom Penh immediately. The Khmer Rouge told the local population that it was a temporary evacuation whose purpose was to protect them against aerial bombardments by the U.S.A. or to allow *Angkar* to ensure the safety of the city. Even residents who did not believe these statements evacuated Phnom Penh in the face of threats by Khmer Rouge soldiers.

16. Khmer Rouge soldiers were under orders to forcibly evacuate the city using any means. The population of Phnom Penh was subjected to threats and physical abuse. Those who did

not obey or who resisted were shot and killed on the spot. Without exception, and in spite of the intense heat, the entire population of Phnom Penh was forced to leave, including monks, the elderly, young people, the sick and injured from the city's hospitals, pregnant women and those who had recently given birth. Civil Party PIN Yathay described how the further they travelled from the capital, the more that exhaustion claimed the sick, the injured, the lame and the old, and increasingly they began to see bodies left beside the highway. PECH Srey Phal stated that by the time they reached Stung Meanchey, they saw dead people on hospital beds abandoned by the roadside. PECH Srey Phal, having no breast milk, milk or medicine for her baby, could only feed her baby water; her baby soon died and she was instructed to bury her in the forest. Others, such as BAY Sophany's youngest daughter who suffered from dysentery and vomiting, died from inadequate medical care.

17. On 17 April 1975, the population of Phnom Penh was in the region of 2 to 2.5 million people. Many had fled to the city in order to escape fighting and bombing in other regions. Upon being ordered out of the city, the population used whatever means available to them to leave Phnom Penh, mostly on foot, but also by bike, pushcart and car. Conditions throughout the journey were appalling, characterised by insufficient food, water, medicine and accommodation, and many evacuees suffered terror, threats or incidents of violence by Khmer Rouge soldiers. There were numerous instances of Khmer Rouge soldiers shooting and killing civilians during the course of the evacuation, while many others died of exhaustion, malnutrition or disease. Civil Party CHHENG Eng Ly recalled seeing a Khmer Rouge soldier tear apart a crying baby who was crawling on his dead mother's body. Many evacuees, including children, were separated from their families.

18. The Khmer Rouge established checkpoints along the roads leading out of Phnom Penh and in certain other towns, where people were searched and questioned about their biography, their family members and the work they did in Phnom Penh. Many people identified by the Khmer Rouge as Khmer Republic officials were either arrested and thereafter disappeared, or were killed in the days following 17 April 1975. Evacuees from Phnom Penh travelled between several days to several weeks and settled in rural areas throughout the rest of the country.

19. The Trial Chamber finds that at least two million people were forcibly transferred from Phnom Penh by Khmer Rouge soldiers under false pretexts and threats, often at gunpoint, with almost no prior warning and in terrifying and violent circumstances, resulting in large

numbers of people being killed or dying of exhaustion, starvation or illness. The Chamber does not find credible the Defence claims that Phnom Penh was evacuated to protect the people from American bombing. The CPK's own leadership came to Phnom Penh in the days following 17 April 1975, basing themselves in prominent locations apparently without any significant attempt to take precautions against bombing which had in any event halted in 1973. Nor does the Chamber accept that shortage of food in Phnom Penh was the reason for evacuating the population. The CPK military had blocked the Mekong River and bombarded Pochentong Airport, both used intensively before Phnom Penh fell to provide food for the city's population. After 17 April 1975, the Khmer Rouge forces had control of all transportation routes, including the Mekong, Pochentong airport which was still functional, and the port of Kampong Som which could have been used to import supplies. Although food was in short supply, the CPK leadership, applying its stance of independence and mastery, refused foreign humanitarian aid unless it came without conditions therefore ensuring that there was no means to provide adequately for the residents of Phnom Penh. In any event, the Trial Chamber rejects any suggestion that it was necessary or proportionate in the circumstances to empty virtually the entire city of Phnom Penh.

20. The only reasonable conclusion is that the leadership decided to transfer the population of Phnom Penh based in part on its earlier experience of evacuating other areas for military, economic and ideological reasons, and to allow the leadership better control of the people and to prevent enemies from destabilising CPK forces.

#### **4. Movement of Population Phase Two**

21. The Trial Chamber finds that after 17 April 1975, defending and building the country became the main Party line. The Party focused on building and expanding cooperatives to advance both the class struggle – the “dictatorship of the proletariat” – and agricultural production, thereby securing the socialist revolution. In order to build and expand the cooperatives, people had to be moved. The Party leadership believed that population movements allowed it to overcome challenges in building and defending the country and re-organising the people, economy, politics and military.

22. The Trial Chamber finds that between September 1975 and early 1977, at least 300,000 to 400,000 people were forcibly displaced from various locations in Kandal, Kampong Thom, Kampong Cham, Takeo, Kampong Speu, Kampong Chhnang, Prey Veng and Svay Rieng

Provinces (Central, Southwest, West and East Zones) to Battambang and Pursat Provinces (Northwest Zone), Kampong Thom Province (Central Zone) and Preah Vihear Province (Sector 103). The Chamber has further found that, between September 1975 and December 1977, more than 30,000 people were displaced to Kratie (Sector 505), from and within Prey Veng and Svay Rieng Provinces (East Zone), within Kampong Thom and Kampong Cham Provinces (Central Zone) and within Battambang Province (Northwest Zone). There was insufficient evidence for the Chamber to find at the required standard of proof that people were also moved to Siem Reap Province (Sector 106) and to Kampong Cham Province (Central Zone (old North Zone)).

23. During movement of population (phase two), most people were ordered to leave their locations and transferred under armed guard. Those who refused transfer or attempted escape were arrested, detained or transferred in a further round of movements. Khmer Rouge guards provided no assistance and often no information as to the destination of the transferees. Khmer Rouge soldiers and officials forcibly transferred people by various methods including threats, force and deception. People were frightened and lived in a state of terror, unwilling or unable to disobey or question orders. During a brief stop at Samraong Yaong market, KONG Vach's son, who had diarrhoea and swollen limbs, died. Khmer Rouge soldiers instructed KONG Vach to leave his body with them; she did not know what they did with it.

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

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

**5. Tuol Po Chrey**

26. The Chamber finds that immediately after 17 April 1975, at least 250 LON Nol officials were transported from Pursat to Tuol Po Chrey and then executed. The executions were carried out by Khmer Rouge soldiers from the North-West Zone. Soldiers from battalions 201 or 202 were tasked with guarding the road during the executions. The victims, who comprised both former LON Nol soldiers and civilian officials of the previous regime who had surrendered and were no longer taking active part in hostilities, were targeted in accordance with CPK policy and were later either buried at Tuol Po Chrey or bulldozed into a pond using equipment sent by the Zone Committee.

**6. Crimes Against Humanity**

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

28. In relation to movement of population (phase one), the Trial Chamber finds that the following crimes against humanity were perpetrated: murder; extermination; political persecution; and other inhumane acts in the forms of forced transfer and attacks against human dignity.

29. In relation to movement of population (phase two), the Trial Chamber finds that the following crimes against humanity were perpetrated: extermination; political persecution; and other inhumane acts in the form of forced transfer, attacks against human dignity and enforced disappearances.

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

## **7. Joint Criminal Enterprise**

31. In relation to the alleged Joint Criminal Enterprise, the Chamber concludes that the Closing Order, as limited in Case 002/01, did not charge the Accused with responsibility for the crime of extermination on the basis of JCE in relation to the movement of population (phases one and two). Further, the Closing Order did not charge the Accused with responsibility for enforced disappearances on the basis of JCE in relation to movement of population (phase two). Further still, the Closing Order did not charge the Accused with responsibility for political persecution on the basis of JCE in relation to events at Tuol Po Chrey. For these specific crimes, the Chamber concludes that the Closing Order charged the Accused with responsibility on the basis of modes of liability other than JCE. Joint Criminal Enterprise was, however, charged in relation to the other crimes described above.

32. The Trial Chamber finds that, throughout the time period relevant to Case 002/01, there existed a plurality of persons who shared the common purpose of implementing rapid socialist revolution through a ‘great leap forward’ by whatever means necessary. The participants included members of the Standing and Central Committees, government ministers and Zone secretaries (including, at least, POL Pot, NUON Chea, KHIEU Samphan, IENG Sary, SON Sen, VORN Vet, Ta Mok, SAO Phim, ROS Nhim, KOY Thuon, KE Pauk, CHANN Sam, CHOU Chet, IENG Thirith and MEY Prang). The evidence establishes that this common purpose to rapidly build and defend the country through a socialist revolution was based on the principles of secrecy, independence, self-reliance and collectivisation, and was firmly established by June 1974, continuing at least until December 1977.

33. The Chamber finds that there was a joint criminal enterprise to achieve the common purpose through, amongst other means, policies to forcibly displace people from cities and towns and between rural areas. The crimes committed in the course of movements of population (phases one and two) were carried out in furtherance of the Party’s plans and policies. The Chamber further finds that the Party divided the Cambodian people according to their classification, and that the “New People”, meaning all former city dwellers forcibly transferred to the countryside after the 17 April 1975, were to be re-educated. “New People”

were not trusted by the CPK as they were perceived as enemies of the revolution and the collective system. Further, all bad elements who could not be re-educated and all “remnants” of the former feudalist, imperialist and capitalist regimes were to be eliminated. Any who opposed or were perceived to oppose the revolution were targets for mistreatment and acts of violence. The Chamber further finds that these crimes are properly imputed to the members of the joint criminal enterprise.

34. The Chamber finds that during the time period at issue in Case 002/01, there was a joint criminal enterprise to achieve the common purpose through, amongst other means, a policy to target former Khmer Republic officials. The Chamber finds that the murders and extermination committed at Tuol Po Chrey were carried out in furtherance of Party plans and policies, and that these crimes can be imputed to at least one member of the joint criminal enterprise. The Chamber now turns to summarise the criminal responsibility of each Accused in this case.

## **8. Role and Functions of NUON Chea**

35. NUON Chea, whose birth name is LAO Kim Lorn, was born on 7 July 1926, in Voat Kor Village, Sangkae District, Battambang Province. In 1941, he moved to Thailand where he studied and worked in the Thai Ministry of Finance and the Thai Ministry of Foreign Affairs. In 1950 he joined the Communist Party of Thailand and later returned to Cambodia to join the resistance movement. NUON Chea then joined the Indochina Communist Party. From about 1950, his activism intensified as he engaged in propaganda and education activities. He also engaged in underground work for the revolutionary movement in Phnom Penh as a member of the Party City Committee, while working variously as a teacher, a vendor, or a clerk for an import-export company. NUON Chea was introduced to POL Pot in 1955 or 1956. POL Pot and NUON Chea, who were both members of the Khmer People’s Revolutionary Party, initially worked together as assistants to TOU Samuth.

36. During the First Congress of the Party in 1960, NUON Chea was nominated Deputy Secretary and the Party was renamed the Workers’ Party of Kampuchea. NUON Chea retained the position of Deputy Secretary of the CPK throughout the DK period. He was also a full rights member of both the CPK Central and Standing Committees, as well as Chairman of the Standing Committee of the People’s Representative Assembly. From September 1976

on several occasions NUON Chea officially exercised the role of Acting Prime Minister of DK, up until 1977 when POL Pot resumed his duties.

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

38. The Chamber has not been satisfied on the evidence that NUON Chea was a member of the Military Committee of the CPK. However, his involvement in military and security matters was intrinsically linked with his long-standing authority within the Party. NUON Chea actively participated in the operations of the army, particularly concerning the war against Vietnam, receiving regular reports and providing instructions with regards to security matters either directly or through decisions of the Party.

39. Due to his seniority within the leadership of the CPK, NUON Chea enjoyed oversight of all Party activities extending beyond the roles and responsibilities formally entrusted to him during the DK period. The Chamber finds that within the Standing Committee, NUON Chea, with POL Pot, exercised the ultimate decision-making power of the Party. As Deputy Secretary of the Party, his control extended not only to political decisions, but also to the government and the administration of DK and to military matters.

## **9. Criminal Responsibility of NUON Chea**

40. According to the Closing Order, as limited in Case 002/01, NUON Chea, through a JCE, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during movement of population (phase two); and murder and extermination through executions of Khmer Republic officials at Tuol Po Chrey. According to the Closing Order, NUON Chea intentionally participated in, or contributed to, the design and implementation of the common purpose which resulted in and/or involved the commission of crimes both before and during the DK era. In his capacities as Deputy

Secretary of the CPK, member of the Military Committee and full-rights member of the Central and Standing Committees, NUON Chea attended high-level meetings where policy was developed, participated in elaborating the CPK's official policy documents and publicly explained, endorsed and encouraged CPK policies through speeches, propaganda and political training. On this basis, the Closing Order also alleges that NUON Chea planned, ordered, instigated, aided and abetted or, alternatively, is responsible as a superior for all crimes falling within the scope of Case 002/01.

41. The Chamber finds that NUON Chea made a significant contribution to the realisation of the common plan through his involvement in policy and propaganda, education and public training, through which he contributed to the development, planning, dissemination and implementation of the common purpose. As a full-rights member of the Standing and Central Committees, NUON Chea was a key actor responsible for the formulation of Party policies. He participated in meetings at which the forced transfer of the inhabitants of Phnom Penh and other population movements were decided upon. Before and during the DK regime, NUON Chea focused on propaganda and training of Khmer Rouge cadres and appeared as the chairman, trainer or speaker at a range of meetings, trainings or study sessions. He also played an instrumental role in issuing the *Revolutionary Flag*. The Chamber finds that through these publications, speeches and public statements, NUON Chea helped to divide the population, differentiating between peasant 'Base People' and their urban counterpart 'New People', and sowed seeds of distrust among cadres and the rural population in respect of those in the cities. The Chamber finds that NUON Chea contributed significantly to the realisation of the common purpose and that he intended to further the implementation of the common purpose through his actions. He shared with the other JCE participants the intent to commit the crimes involved. Further, in light of his contribution to developing the Party line on class struggle and the policy to target Khmer Republic officials, the Chamber is also satisfied NUON Chea shared with the other members of the JCE the requisite discriminatory intent for the crime of political persecution (committed during movement of population (phases one and two)).

42. Accordingly, the Chamber finds that NUON Chea, through a JCE, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against

human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey. The Chamber further finds that NUON Chea planned, ordered, instigated, aided and abetted the aforementioned crimes. Considering NUON Chea's participation in the JCE encompasses all the conduct forming the basis of the Chamber's findings on these other forms of responsibility, the Chamber has entered a conviction for commission of these crimes only through a JCE.

43. In relation to the crimes for which the Trial Chamber concluded that Joint Criminal Enterprise was not charged in the Closing Order, the Chamber finds that NUON Chea planned, ordered, instigated, aided and abetted the crimes of extermination (during movement of population (phases one and two)), political persecution (at Tuol Po Chrey), and other inhumane acts (comprising enforced disappearances) (during movement of population (phase two)).

44. Further, the Chamber finds that NUON Chea is both directly responsible and responsible as a superior for all crimes committed in the course of movement of population (phases one and two), and for the crimes committed at Tuol Po Chrey. Having found that NUON Chea was directly responsible for these crimes, the Chamber declines to enter a conviction under the doctrine of superior responsibility, instead considering NUON Chea's superior position in sentencing.

## **10. Role and Functions of KHIEU Samphan**

45. KHIEU Samphan *alias* "Haem", "Hem" or "Nan" was born on 27 July 1931 in Chek or Rumchek Commune, Rumduol District, Svay Rieng Province. He began to study law in Phnom Penh and then in 1953, having been awarded a scholarship by the Cambodian government, he travelled to France to study law and economics. In Paris, KHIEU Samphan joined the 'Marxist Circle' founded prior to his arrival in France and regularly attended by other Khmer students including IENG Sary, POL Pot, IENG Thirith and SON Sen, and, upon the departure of IENG Sary, became its leader. Like other members of the Circle, KHIEU Samphan joined the French Communist Party. He also assumed the leadership of the Union of Khmer Students. In 1959, KHIEU Samphan presented his doctoral thesis entitled 'L'Économie du Cambodge et ses Problèmes d'Industrialisation' ('The Economy of Cambodia and its Problems of Industrialisation').

46. In 1962, after returning to Cambodia, KHIEU Samphan was elected to the National Assembly and appointed Secretary of State for Commerce. By the early 1960s, KHIEU Samphan had informal contact with senior CPK members. KHIEU Samphan became a candidate member of the CPK Central Committee in 1971 and a full-rights member in 1976. In 1970, KHIEU Samphan was named Deputy Chairman of FUNK and Commander-in-Chief of the Cambodian People's National Liberation Armed Forces ("CPNLAf"). In reality, KHIEU Samphan held no direct military authority, and it was POL Pot who was in charge of the CPNLAf forces. KHIEU Samphan also assumed the posts of Deputy Prime Minister and Minister of National Defence in GRUNK. After the fall of Phnom Penh in April 1975, KHIEU Samphan retained his roles as Deputy Prime Minister, Minister of National Defence and CPNLAf Commander-in-Chief, and as such continued to exercise certain diplomatic functions, such as meeting visiting delegations from foreign countries and leading Cambodian delegations on trips abroad.

47. In April 1976, KHIEU Samphan was appointed President of the State Presidium, a role which was largely symbolic and in which he had no executive power. As President of the State Presidium, he continued to perform diplomatic and ceremonial functions. KHIEU Samphan was never formally a member of the CPK Standing Committee but actively participated in some Standing Committee meetings. In October 1975, the CPK Standing Committee assigned KHIEU Samphan responsibility for "the Front and the Royal Government, and Commerce for accounting and pricing". Around October 1975, KHIEU Samphan became one of two members of Office 870 which oversaw the implementation of Standing Committee decisions. However, the Chamber is not satisfied that, as has been alleged, KHIEU Samphan ever served as the Chairman of Office 870.

48. The Chamber finds that KHIEU Samphan's role during the DK period proves that he had the confidence and trust of the other members of the Party Centre. Despite holding an array of titles, the evidence suggests that KHIEU Samphan's decision-making power was primarily limited to matters of economics and foreign trade. However, he had broader authority and influence by virtue of his senior position. Through his attendance at Central and Standing Committee meetings, his work in Office 870, his close and ongoing association with other CPK leaders, his supervision of the Commerce Committee and the content of the speeches he made, he had knowledge of the CPK's policies and access to information about the situation in Cambodia generally.

## **11. Criminal Responsibility of KHIEU Samphan**

49. According to the Closing Order as limited in Case 002/01, KHIEU Samphan, through a JCE, committed the crimes against humanity of murder, political persecution, and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination through executions of Khmer Republic officials at Tuol Po Chrey. According to the Closing Order, KHIEU Samphan intentionally participated in, or contributed to, the design and implementation of the common purpose which resulted in and/or involved the commission of crimes both before and during the DK era. By virtue of his positions during the DK era, including his membership of the Central Committee and Office 870, the Closing Order alleges that KHIEU Samphan attended and contributed to meetings, including Standing Committee meetings, where policy was discussed and disseminated. He also made public statements, performed diplomatic functions and participated in indoctrination sessions, thereby endorsing and disseminating the common purpose internationally and domestically. On this basis, the Closing Order also alleges that the Accused planned, ordered, instigated, aided and abetted or, alternatively, is responsible as a superior for all crimes falling within the scope of Case 002/01.

50. The Chamber finds that KHIEU Samphan made a significant contribution to the realisation of the common plan and that he intended to further the implementation of the common purpose through his actions. KHIEU Samphan attended policy meetings of the Standing and Central Committees, as well as Party Congresses, where the common purpose and policies were planned and developed. He attended and participated in meetings where instructions and lessons concerning the common purpose and policies were given. KHIEU Samphan was present, together with army officers, at B-5 during the final offensive against Phnom Penh. He addressed combatants in various broadcasts. KHIEU Samphan held economic positions where, drawing on his experience and education, he implemented elements of the common purpose relating to trade, imports/exports and commerce. He made public statements endorsing the common purpose and policies, and encouraging all to build and defend the country according to the Party line. Finally, in his roles as liaison with NORODOM Sihanouk and as a diplomat, KHIEU Samphan justified, defended and praised the common purpose and policies, winning support for the Khmer Rouge both locally and

abroad and permitting the secret and largely unhindered implementation of the common purpose through radical policies. He also shared with the other JCE participants the intent to commit the crimes involved.

51. Accordingly, the Chamber finds that KHIEU Samphan through a JCE committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase one); political persecution and other inhumane acts (comprising forced transfer and attacks against human dignity) during movement of population (phase two); and murder and extermination at Tuol Po Chrey. The Chamber also finds that the Accused planned, instigated, aided and abetted the aforementioned crimes during movement of population (phases one and two), and at Tuol Po Chrey. Considering that the Accused's participation in the JCE encompasses all the conduct forming the basis of the Chamber's findings on these other forms of responsibility, the Chamber will enter a conviction for commission of these crimes only through a JCE.

52. In relation to the crimes for which the Trial Chamber concluded that Joint Criminal Enterprise was not charged in the Closing Order, the Chamber finds that KHIEU Samphan planned, instigated, aided and abetted the crimes of extermination (during movement of population phases one and two), political persecution (at Tuol Chrey), and other inhumane acts (comprising enforced disappearances) (during movement of population phase two).

53. The Chamber is not satisfied that KHIEU Samphan held a position of sufficient authority to issue orders to commit the crimes. The Chamber therefore dismisses the charge that he ordered the crimes. In addition, the Chamber is not satisfied that the totality of the evidence demonstrates that KHIEU Samphan exercised effective control over the perpetrators of crimes, in the sense of having the ability to decide upon and take measures to prevent or punish perpetrators. Accordingly, the Chamber dismisses the allegations in relation to superior responsibility.

## **12. Civil Party Reparations**

54. A total of 3,869 Civil Parties were admitted in the present case and comprised the consolidated group of Civil Parties at trial represented by two Lead Co-Lawyers.

55. The Chamber notes that both of the Accused in Case 002 have been found to be indigent. Under the ECCC Internal Rules, the Civil Party Lead Co-Lawyers may request the Trial Chamber to recognise specific reparations measures. Such measures have been designed or identified in coordination with the Victims Support Section in order to appropriately acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes at issue in Case 002/01 and to provide benefits to the Civil Parties that address this harm. In Case 002/01, the Civil Party Lead Co-Lawyers sought the judicial recognition of thirteen projects as appropriate reparations.

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

57. The Trial Chamber endorses projects concerning: the institution of a National Remembrance Day project; the construction of a memorial in Phnom Penh to honour victims of forced evacuations; a testimonial therapy project; self-help groups; a permanent exhibition; a mobile exhibition and education project; the inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum; the construction of a peace learning centre; a booklet on adjudicated facts and civil party participation at the ECCC; two editions of the verdict in Case 002/01; and inclusion of Civil Party names on the ECCC website. The Chamber finds that sufficient funding and collaboration has been secured to ensure their implementation. Full details of these projects are provided in the judgement.

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

### **13. Disposition and Sentence**

59. This completes the summary of the Chamber's findings. I will now read out the disposition. [Accused please rise.]

60. Pursuant to Articles 5, 29 (new) and 39 (new) of the ECCC Law, the Trial Chamber finds the Accused **NUON Chea** to be **GUILTY** of the crimes against humanity of extermination (encompassing murder), political persecution, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed within the territory of Cambodia between 17 April 1975 and December 1977.

61. Pursuant to Articles 5, 29 (new) and 39 (new) of the ECCC Law, the Trial Chamber finds the Accused **KHIEU Samphan** to be **GUILTY** of the crimes against humanity of extermination (encompassing murder), political persecution, and other inhumane acts (comprising forced transfer, enforced disappearances and attacks against human dignity) committed within the territory of Cambodia between 17 April 1975 and December 1977.

62. The Chamber has considered the gravity of the crimes for which the Accused have been convicted, as well as relevant aggravating and mitigating circumstances, and witnesses' testimony regarding the character of KHIEU Samphan. In determining the sentence, the Chamber has also taken into account the Supreme Court Chamber's pronouncements on sentencing in Case 001 and precedents from other international tribunals whose judgements have also evaluated sentencing considerations in relation to crimes of a massive scale. The Chamber sentences the Accused, NUON Chea to **LIFE IMPRISONMENT**. The Chamber sentences the Accused, KHIEU Samphan, to **LIFE IMPRISONMENT**.

63. The Chamber declares that Nuon Chea was taken into Pre-Trial detention on 19 September 2007 and that Khieu Samphan was taken into Pre-Trial detention on 19 November 2007 and that both Accused have remained in detention until the delivery of the verdict and sentence on 7 August 2014. This judgement is publicly pronounced in the ECCC main court room on 7 August 2014 and is appealable by the Parties in accordance with the Internal Rules. Given the gravity of the crimes for which they have been convicted, and subject to any order of the Supreme Court Chamber, NUON Chea and KHIEU Samphan shall remain in detention until this judgement becomes final.

64. This hearing is now adjourned. Security personnel are directed to bring the Convicted Persons NUON Chea and KHIEU Samphan to the Detention Facility.