

“Keeping Them Alive, One Gets Nothing; Killing Them, One Loses Nothing”¹: Prosecuting
Khmer Rouge Medical Practices as Crimes against Humanity

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I. Introduction

The Communist Party of Kampuchea (CPK), also known as the Khmer Rouge, gained control of Cambodia in 1975 with the intent of setting in motion a “national democratic revolution” and “liberat[ing] the Kampuchean nation and the poor peasant class” from feudalism and U.S. imperialism.² Their pure socialist revolution was based on three strategic premises— independence, sovereignty and self-reliance³—which could only be achieved by throwing off the chains of colonialism and starting life anew at “Year Zero.”⁴ From the beginning of their dictatorial reign, then, the Khmer Rouge implemented severe socialist policies intended to completely restructure Cambodian society. The Party Center, known as Angkar (“The Organization”) believed “the party leading the revolution had to be a party of the working class”⁵; as a result, the capitalist and intellectual oppressors of the Kampuchean people—those with medical, legal, financial and academic training—had to be eliminated and replaced with

¹ GENOCIDE IN CAMBODIA: DOCUMENTS FROM THE TRIAL OF POL POT AND IENG SARY, 294 (Howard J. De Nike, John Quigley & Kenneth J. Robinson eds., 2000) [hereinafter GENOCIDE IN CAMBODIA] (explaining that these words formed a famous slogan the Khmer Rouge used to describe the choice between providing medical care and nutrition to the population or letting them die. Translated from the Khmer: *Touk Ka Min Cham Nenh, Dak Chenh Ka Min Khat*); see also ELIZABETH BECKER, WHEN THE WAR WAS OVER: CAMBODIA AND THE KHMER ROUGE REVOLUTION, 249 (rev. ed. 1998) (Translated from the Khmer as “if you keep this man there is no profit, if he goes there is no loss.”).

² Nuon Chea, Deputy Secretary of the Communist Party of Kampuchea, Statement of the Communist Party of Kampuchea to the Communist Workers’ Party of Denmark (July 30-31, 1978), in Documentation Center of Cambodia Archives Document No. D13311 (remarks translated into English by Ngo Pin, the official interpreter of Democratic Kampuchea).

³ *Id.*

⁴ See, e.g., FRANCOIS PONCHAUD, CAMBODIA: YEAR ZERO (1978) (After the Khmer Rouge takeover of Phnom Penh in April 1975, the regime erased all vestiges of life under previous regimes and used the term “Year Zero” to signify the completeness of their new revolutionary beginning.).

⁵ Nuon Chea, *supra* note 2.

true revolutionaries from the peasantry.⁶ The population was then divided into two categories: “old people” and “new people.” “Old people” (also known as “base people”) had lived in Khmer Rouge-controlled areas during the war and were therefore favored by the new regime, while “new people” (also known as “April 17 people”) had lived in the cities and were “liberated” from their Western ties by the Khmer Rouge’s triumphant march into Phnom Penh on April 17, 1975.⁷ Emphasizing self-sufficiency and independence from foreign influence above all else, the Khmer Rouge eradicated modern technology, machinery, education and health systems in favor of a return to an agrarian society based solely on the people’s physical labor.

The deleterious effects of the Khmer Rouge’s push for “The Super Great Leap Forward” (*moha loot phloh moha oschar*)⁸ were felt deeply in Cambodia’s medical sector, which was decimated by the regime’s policies in two major ways. First, Western-style medical facilities and scientific medicine were prohibited throughout the country. Hospitals were stripped bare of medical equipment and shut down; the trained medical staff working in them were executed or evacuated to the countryside to work in agricultural communes. Child medics, most of whom were illiterate and had received no medical training, replaced doctors and nurses as the country’s primary care givers. The use of scientifically-proven medication to treat illness and disease was banned, as it was seen as a Western invention and therefore anathema to the Khmer Rouge’s policy of self-reliance; instead, child medics created home-made remedies from plants and other natural compounds. Offers of medicine and food from international organizations and foreign governments were also initially denied as “the Khmer Rouge were wedded to the notion of ‘self-

⁶ *Id.*

⁷ *See, e.g.,* BECKER, *supra* note 1, at 202.

⁸ DAVID P. CHANDLER, BEN KIERNAN & CHANTHOU BOUA, POL POT PLANS THE FUTURE: CONFIDENTIAL LEADERSHIP DOCUMENTS FROM DEMOCRATIC KAMPUCHEA, 1976-1977, 11 (1988).

sufficiency' and convinced that those offers were simply means for foreign powers to manipulate and subvert countries like Cambodia.”⁹

Second, the Khmer Rouge leadership approved of several types of medical experimentation on living human subjects that often resulted in their death. The use of home-made remedies to treat common illnesses and injuries was by its nature experimental, as the compounds were not scientifically tested and dosages were not regulated. Khmer Rouge officials also ordered experimental surgeries to be conducted by child medics on unwilling patients for the study of human anatomy and the removal of certain organs to be used in home-made remedies. Finally, medical experiments were conducted on prisoners in Khmer Rouge detention facilities as a method of torture and of extracting blood for use in transfusions for injured military cadre.

Those who suffered most from the destruction of the healthcare system in Cambodia were the very people on whose behalf the Khmer Rouge purported to launch their revolution: the urban working class and peasant farmers in the countryside. As many as two million people are believed to have died during the Khmer Rouge era (April 1975 to January 1979), amounting to nearly one-third of the Cambodian population.¹⁰ Between 500,000 and one million Cambodians were apparently executed outright; the others who died did so primarily from starvation, disease and the medical policies and practices of the Khmer Rouge.¹¹

The denial of medical care and medical experimentation in Democratic Kampuchea were not the ad-hoc result of the confusion and chaos that beset any country following a civil war; Khmer Rouge officials at the highest levels knowingly implemented these medical policies as a

⁹ BECKER, *supra* note 1, at 170. (As discussed in Part IIe below, the Khmer Rouge leadership eventually began importing some types of Western-style medication, particularly for the treatment of malaria, when it became clear that their policy of using only home-made remedies was causing the death of their workforce on a massive scale.).

¹⁰ STEPHEN HEDER WITH BRIAN D. TITTEMORE, SEVEN CANDIDATES FOR PROSECUTION: ACCOUNTABILITY FOR THE CRIMES OF THE KHMER ROUGE 7 (2001); *see also* Ben Kiernan, *The Demography of Genocide in Southeast Asia: The Death Tolls in Cambodia, 1975-79 and East Timor, 1975-80*, 35:4 CRITICAL ASIAN STUDIES 585, 586-87 (2003) (Kiernan puts the death toll between 1.671 and 1.871 million people, or 21 to 24 percent of the population.).

¹¹ HEDER, *supra* note 10.

part of their larger strategy to make Democratic Kampuchea self-sufficient and independent. Pol Pot, the regime's senior-most leader, mandated the use of home-made remedies rather than scientifically-tested medication at a meeting of top Khmer Rouge officials, saying: "We have to establish a research team to do research and conduct experiments on traditional drugs. Even though we do not have proper formulas, we can still produce them. We are practicing self-reliance in medicine."¹² Nuon Chea, the regime's second-in-command, also spoke publicly about the need for medical care in Democratic Kampuchea to reflect the regime's revolutionary goals; to the Party, a potential medic's devotion to Party ideology was more important than his medical training or ability.¹³ These directives by the two most powerful leaders within the Khmer Rouge regime—made to other Party officials and in public speeches—as well as other comments detailed in the memo below show that the decision to revolutionize medical care and conduct medical experiments was made knowingly and intentionally at the Party Center and disseminated to lower level cadre for implementation.

The individuals most responsible for drafting the CPK's medical policies, including Pol Pot and Nuon Chea, were those that comprised the Party Center and its affiliated committees—the Central Committee and the Standing Committee. Three of the four senior CPK leaders currently awaiting trial in Case 002 at the Extraordinary Chambers in the Courts of Cambodia (ECCC) (the Accused)—Nuon Chea, Ieng Sary and Khieu Samphan—held leadership roles in these committees during the Khmer Rouge era. Nuon Chea, known as "Brother Number Two" in the Khmer Rouge leadership hierarchy behind Pol Pot, was the Deputy Secretary of the Central

¹² Sokhym Em, *'Rabbit Dropping' Medicine*, 30 SEARCHING FOR THE TRUTH, 22 (June 2002) [hereinafter Sokhym, *'Rabbit Dropping' Medicine*]

¹³ Sokhym Em, *Female Patients*, 33 SEARCHING FOR THE TRUTH 25, 26 (Sept. 2002) [hereinafter Sokhym, *Female Patients*] (Interview with Matt Ly).

Committee from 1960 onward.¹⁴ He was also the Chairman of the Standing Committee, where he was placed in charge of “Party work, social welfare, culture, propaganda and formal education;”¹⁵ these responsibilities likely included oversight of the country’s medical care systems. Ieng Sary was a member of both the Central Committee and the Standing Committee and was placed in charge of Party and State foreign affairs.¹⁶ Khieu Samphan joined the Central Committee in 1971 as an alternate member, and had become a full member by the time of the CPK Congress in January 1976.¹⁷ That same year Khieu Samphan publically proclaimed his role as Chairman of the Democratic Kampuchea State Presidium, a role that, though largely ceremonial, allowed him to become a public spokesman for the regime’s policies.¹⁸ In 1977, Khieu Samphan was promoted to Chairman of “Office 870,” which operated as a form of cabinet for the CPK Central Committee.¹⁹

Ieng Thirith, the fourth senior Khmer Rouge leader awaiting trial at the ECCC, was the Minister of Social Affairs and Action under the CPK regime. Though she was not part of the Central or Standing Committees, Ieng Thirith was responsible for implementing the medical policies and food rationing that led to illness and death for hundreds of thousands of Cambodians.²⁰ Additionally, she was sent by Pol Pot to investigate and report on health issues in the Northwest Zone and therefore probably knew that many Cambodians were starving and ill during the regime’s reign.²¹

¹⁴ HEDER, *supra* note 10, at 42; *see also* BECKER, *supra* note 1, at 173.

¹⁵ HEDER, *supra* note 10, at 44.

¹⁶ *Id.* at 44; *see also* BECKER, *supra* note 1, at 173.

¹⁷ Heder, *supra* note 10, at 80.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ BECKER, *supra* note 1, at 171.

²¹ *See* JAYA RAMJI-NOGALES AND ANNE HEINDEL, GENOCIDE: WHO ARE THE SENIOR LEADERS TO BE JUDGED? THE IMPORTANCE OF CASE 002 6 (2010); BECKER, *supra* note 1, at 236.

This memo will attempt to describe in detail the two major results of the Khmer Rouge's policies of independence and self-sufficiency with respect to the country's medical sector—the denial of access to proper medical care and medical experimentation on unwilling human subjects. It will then examine the role of the four Accused in creating and implementing these policies. In the final, forthcoming section, the memo will analyze the possibility of prosecuting the four Accused at the ECCC for the deaths that resulted from the DK regime's medical policies.

II. Denial of Access to Medical Care and Medicine

A. Evacuation of Hospitals and Destruction of Healthcare Infrastructure

The Khmer Rouge's revolutionary restructuring of the country's healthcare sector began with the evacuation of existing hospitals and the destruction of modern medical equipment and technology. One of the "eight provisions" the Khmer Rouge formulated for turning Cambodia into a utopia stated "Angkar is obliged to abolish all hospitals and their staff left by previous regimes with a view to establishing hospitals of a new style with a socialist character—revolutionary pureness and cleanliness."²² In compliance with the provision, when the Khmer Rouge took control of Cambodia, patients, doctors and nurses were removed from hospitals in Phnom Penh and the provinces and forced to relocate to Khmer Rouge-controlled communes.²³ Some of the patients were recovering from potentially lethal diseases and injuries but were forced to join the thousands upon thousands of "new people" being evacuated from the city.²⁴

²² Sokhym, *Female Patients*, *supra* note 13, at 26.

²³ See, e.g., KAMPUCHEA: DEATH AND REBIRTH (GERMANY, 1980) (documentary film) ("Many patients had to leave the hospital. Wounded people with their bodies covered with crusted blood, with sodden bandages who should have been changed, begged for help. But there was nobody there who could help them. Everyone tried to help themselves, to escape the terror of the [Pol Pot, Ieng Sary] clique.").

²⁴ HAING S. NGOR WITH ROGER WARNER, SURVIVING THE KILLING FIELDS: THE CAMBODIAN ODYSSEY OF HAING S. NGOR 84 (1988).

Even pregnant women in labor were required to leave the hospital and begin the march to the provinces.²⁵

Once evacuated, the hospitals were ransacked—medical instruments were destroyed or left to rust; bedding and sanitary equipment were removed and replaced with rudimentary beds and dirty mats; clean lavatories were replaced with latrines; and doors and windows were disassembled for their spare parts.²⁶ At the Khmer-Soviet Friendship Hospital—a gift from the Soviet Union to neutral Cambodia and at the time one of the most modern facilities in Southeast Asia—electrical generators, refrigerators for medicine, and healthcare equipment were destroyed; the operating rooms were left in ruins.²⁷ Other medical facilities, such as the former Ta Khmau psychiatric hospital in Kandal Province (also known as the Prek Tnaot Asylum) were turned into detention centers.²⁸

In addition to hospitals, hubs of medical knowledge were destroyed. The library of the Medical Faculty in Phnom Penh, which contained medical manuscripts, books and periodicals, was raided and its collection set on fire. The Phnom Penh Medical School was emptied of its students, who were evacuated from the city,²⁹ and its laboratory equipment, which was thrown onto the sidewalks.³⁰ Other valuable medical technology was moved to unattended warehouses,

²⁵ CAROL WAGNER, *SOUL SURVIVORS: STORIES OF WOMEN AND CHILDREN IN CAMBODIA 177-79* (2002).

²⁶ See GENOCIDE IN CAMBODIA, *supra* note 1, at 332 (Hospitals that were targeted in Phnom Penh included the Revolution Hospital (formerly Calmette Hospital), the Khmer-Soviet Friendship Hospital and the January 7 Hospital.).

²⁷ See KAMPUCHEA: DEATH AND REBIRTH, *supra* note 23. (The film shows footage of the Khmer-Soviet Friendship Hospital abandoned and destroyed. The narrator described what they saw: “We find the installations smashed with every sign of malicious destruction. The dull enmity of the Pol Pot clique for the Soviet Union was here transferred to a medical installation, once one of the most modern in Southeast Asia.”)

²⁸ Pong Rasy Pheng, *Place of Asylum Transformed into Incarceration Center*, 9 SEARCHING FOR THE TRUTH, 16 (Sept. 2000) (describing what the Khmer Rouge did when they arrived at the asylum center. They expelled the staff and opened the doors so that the patients, many of whom were suffering from mental illness, could escape. The building was then outfitted with metal foot and handcuffs chained to the walls and floors).

²⁹ KAMPUCHEA: DEATH AND REBIRTH, *supra* note 23.

³⁰ GENOCIDE IN CAMBODIA, *supra* note 1.

where it was allowed to fall into disrepair.³¹ In a few short days, the medical prowess of Cambodia's finest doctors and the modern technology of its largest hospitals were obliterated, to be replaced by the Khmer Rouge's self-sufficient revolutionary medical system.

B. Purges of Trained Medical Staff

When the Khmer Rouge fell from power in January 1979, less than fifty medical doctors had survived the regime's purges of urban dwellers and intellectuals.³² Trained medical staff fell victim to the Khmer Rouge's policy of replacing "new people" with "base people," as allegiance to the Party was valued more highly than medical qualifications or experience. According to Nuon Chea, "Revolutionary medics have to be from the worker-farmer class because it is the biggest and most progressive class . . . *The party needs stance more than ability in building the country.*"³³

The initial purges of the country's trained medical staff occurred on April 17, 1975, when the Khmer Rouge captured Phnom Penh. Soldiers ordered the evacuation of the city's hospitals, and physicians, nurses, midwives and other medical personnel were forced to leave their posts, sometimes in the midst of operations or other treatment.³⁴ They were driven out of Phnom Penh along with the rest of the "new people" and made to march toward the "liberated zones" in the

³¹ *Id.*

³² See WAGNER, *supra* note 25, at 14, 96 ("After the Khmer Rouge regime there were only forty doctors left in the country. Nearly all the older doctors had died, so we had no specialists or experts. There wasn't a single psychiatrist in Cambodia. Only eighteen out of the fifty medical students in my class survived, and I was the only woman."); *Coping with the Psychological Trauma of the Khmer Rouge* (Documentation Ctr. of Cambodia), May 29, 2007, at 4 ("In the early 1970s, Cambodia had an estimated 450 qualified doctors; only 43 of them survived the Khmer Rouge regime. Most of the educated people in the country had either died during the regime or fled the country in its aftermath.").

³³ Sokhym, *Female Patients*, *supra* note 13 (emphasis added); see also Sokhym Em, *Revolutionary Female Medical Staff in Tram Kak District*, 34 *Searching for the Truth*, 24, 25 (Oct. 2002) [hereinafter Sokhym, *Revolutionary Female Medical Staff*] ("A letter of Office 870 [Office of the Central Committee] and a letter by comrade Son Sen, called Khieu, revealed that 'a medical staff has to have good political attitude and social class.'").

³⁴ See GENOCIDE IN CAMBODIA, *supra* note 1, at 325; NGOR, *supra* note 24, at 77-79.

countryside.³⁵ Doctors who were recognized by Khmer Rouge cadre on the march were arrested and disappeared.³⁶

The evacuation and elimination of trained doctors and nurses was not confined to Phnom Penh; scenes from that city's takeover were replayed throughout the country as doctors were stripped of their credentials and forced to become physical laborers for the Khmer Rouge. The town of Battambang was evacuated on April 25, and trained medical staff were removed from hospitals and clinics.³⁷ The day before, on April 24, the Khmer Rouge leadership in the area called a meeting of the Battambang provincial hospital staff and declared, "'The peasant class is a pioneering class, capable of leading the country in all sectors . . . Angkar announces the dismissal of the present hospital director and requests that you elect a new hospital director from among janitors and cleaners because these people are also from the poor peasant class.'"³⁸ The order from Angkar was carried out, and a new director was chosen from the janitorial staff. The "revolutionary physicians" that replaced the hospital's old staff were required to undergo only one week of medical training.³⁹

When the trained medical staff had been purged from the country's hospitals and clinics, young children who had no formal education or relations to enemies of the regime ("clean cut" children)⁴⁰ were routinely chosen by the Khmer Rouge to become Democratic Kampuchea's new revolutionary medical staff.⁴¹ Girls between the ages of eleven and fifteen, who had never

³⁵ See GENOCIDE IN CAMBODIA, *supra* note 1, at 325.

³⁶ *Id.* at 326 (listing names of doctors that had been arrested, disappeared and/or murdered during the evacuation of Phnom Penh).

³⁷ Michelle Vachon, *Revolutionary Medicine*, CAMBODIA DAILY, Apr. 24-25, 2010 at 6.

³⁸ *Id.* (as told by Dr. Hun Chhunly).

³⁹ *Id.*

⁴⁰ Keo Kanitha Kim, *Clean-Cut Children, A Failure of the Revolution*, 21SEARCHING FOR THE TRUTH 20, 20 (Sept. 2001).

⁴¹ *Id.* ("'Only children can purely serve the revolution and eliminate reactionism, since they are young, obedient, loyal and active,' said Ieng Thirith, Minister of Culture and Social Affairs, in a Council of Ministers meeting on May 31, 1976.").

studied medicine and were often illiterate, were particularly susceptible to being chosen to work as nurses at Khmer Rouge hospitals.⁴² “April 17” women, however, were rarely given jobs as nurses because Pol Pot mandated in 1978 that healthcare not be delivered in a capitalist or Westernized fashion.⁴³ In fact, many young girls wanted to become nurses, as the Khmer Rouge regarded the health sector as second in importance only to national defense.⁴⁴ Additionally, medical staff were relatively insulated from the physical labor of planting rice and the oppression of the local commune authority.⁴⁵

Training for these young women (and sometimes men) lasted at most three months and as little as several days,⁴⁶ after which period they were considered to be professional physicians and nurses.⁴⁷ Medical instruction consisted mostly of teaching the children how to recognize different types of home-made medicines and how to give injections.⁴⁸ Because most nurses and physicians under the Khmer Rouge were illiterate, many of them could only recognize medicine by its shape and color⁴⁹ and could not understand medical documents (which were often written in French) or read or write prescriptions.⁵⁰ Injections were practiced on banana trees and cushions.⁵¹

⁴² See GENOCIDE IN CAMBODIA, *supra* note 1, at 328; Sokhym, *Female Patients*, *supra* note 13, at 26; Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 25.

⁴³ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 25-26.

⁴⁴ *Id.* at 25. (“The Khmer Rouge had a slogan ‘daughters should grow up to be medical staff, while sons, to be soldiers.’”).

⁴⁵ *Id.*

⁴⁶ “Meng Sokhom: A Khmer Rouge Medical Staff Cadre, 44 SEARCHING FOR THE TRUTH, 24 (2003) (Khmer Edition; Translated from the Khmer by Suyheang Kry of the Documentation Center of Cambodia) (Meng Sokhom received only eight days of training before beginning work at a hospital as a nurse).

⁴⁷ See Sokhym, *Female Patients*, *supra* note 13; Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁴⁸ See Keo, *supra* note 40; Sokhym, *Female Patients*, *supra* note 13.

⁴⁹ See Keo, *supra* note 40; Vachon, *supra* note 37, at 7 (“In Battambang town, [Dr. Chhunly] writes, the civilian hospital staff was illiterate or barely literate and distributed only drugs they made themselves and had named “rabbit stool.”).

⁵⁰ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁵¹ Keo, *supra* note 40.

The brevity of the medical training, coupled with the medical staff's illiteracy, produced disastrous results. Though it appears that many of the medics did indeed want to help the sick and injured, their rudimentary training led them to make lethal mistakes.⁵² The same medication and dosages were given to all patients regardless of their illness.⁵³ Injections were either given improperly, filled with the incorrect medication or filled with a liquid that was mistaken for medication.⁵⁴ Because they were not trained to recognize the symptoms of various diseases, nor were there technical instruments to guide their examinations, the Khmer Rouge medics were only able to effectively treat and diagnose obvious illnesses like wounds, diarrhea, cholera and mild fevers.⁵⁵ “Hidden” diseases relating to the womb, bowel or stomach—which could not be felt with the hand⁵⁶ or seen with the eye—went undiagnosed, and patients who complained of these illnesses were accused of pretending to be sick or having a “consciousness” disease.⁵⁷ Patients whose diseases were too serious to treat were simply left to die.⁵⁸

C. Reliance on Home-Made Medication

The Khmer Rouge's healthcare revolution also included a prohibition on the use by medical staff of scientifically-tested medication to treat illness and injury.⁵⁹ Angkar declared, “We do not rely on technology. We develop our country through revolutionary attitude. Things that are not revolutionary are not to be done. Socialist medical staff must eliminate rubbish from

⁵² Sokhym, *Female Patients*, *supra* note 13.

⁵³ *See id.*; GENOCIDE IN CAMBODIA, *supra* note 1, at 330 (“Most often, a given medicine was a ‘cocktail for a hundred diseases.’”).

⁵⁴ *See* Sokhym, *Female Patients*, *supra* note 13 (“In 1975 Kim An, a resident of Toul Tbeng village, Cheang Torng subdistrict, almost died because of an injection. Immediately after the medic removed the syringe, she experienced a seizure and became unconscious. He had apparently injected Kim An with chicken soup, which had been placed close to the medicine.”); NGOR, *supra* note 24, at 147-49 (discussing attempt by author, a trained physician, to treat a sick baby who was instead given an injection of excessive amounts of Vitamin B by Khmer Rouge medics and subsequently died).

⁵⁵ Sokhym, *Female Patients*, *supra* note 13.

⁵⁶ *Id.* at 27.

⁵⁷ *Id.* at 26, 27.

⁵⁸ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁵⁹ *See, e.g.*, Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 26 (“Patients received only tablets produced by Angkar.”).

the old society and modern medication.’’⁶⁰ As part of the Party Center’s emphasis on self-reliance, Pol Pot officially mandated that all medicine used in the country should be manufactured by Khmer Rouge cadre in their hospitals and clinics: “‘We have to establish a research team to do research and conduct experiments on traditional drugs. *Even though we do not have proper formulas, we can still produce them.* We are practicing self-reliance in medicine.’’’⁶¹

The Democratic Kampuchea Ministry of Health conducted training sessions for Khmer Rouge medical cadre—mostly female medics—to teach them how to manufacture remedies for common illnesses such as fevers, headaches, stomach aches and faintness.⁶² This home-made “medicine” consisted of plant roots, tree bark, the sap of the tropical thnung tree, and other “natural” compounds. It was known throughout the country as “rabbit dropping” or “rabbit pellet” medicine (*achtunsai*) because of its appearance and ineffectiveness. Made without scientific testing, rabbit pellets more often killed patients or made them worse than healed them,⁶³ especially because they were given to all sick patients regardless of their symptoms.⁶⁴

The medical staff conscripted to make these compounds knew they were ineffective but felt forced to obey Angkar’s commands.⁶⁵ Similarly, many patients who were given rabbit pellets

⁶⁰ Sokhym Em, ‘*Rabbit Dropping*’ *Medicine*, *supra* note 12, at 22.

⁶¹ *Id.* (emphasis added); *see also* Sokhym, *Female Patients*, *supra* note 13 (“The few medicines [the local Khmer Rouge] hospital possessed were produced by the medical staff themselves because Khmer Rouge leaders rejected western medical science.”).

⁶² Sokhym, ‘*Rabbit Dropping*’ *Medicine*, *supra* note 12.

⁶³ *Id.*; *see also* Lakhena Tat, *The Struggling of a 6 January Nurse*, 2d. Quarter, SEARCHING FOR THE TRUTH 8, 8 (2008); GENOCIDE IN CAMBODIA, *supra* note 1, at 330 (“Bark, roots, and leaves of medicinal herbs cut into fine pieces were dried in the sun on a mat where poultry, pigs, children, and [traditional healers]... might walk on them. Preparations were made without any measurement of dosage. Most of those medicine-making houses had no scale, no test tubes or any other measuring instruments.”).

⁶⁴ *See, e.g.*, Sokhym, *Female Patients*, *supra* note 13; GENOCIDE IN CAMBODIA, *supra* note 1, at 330; Vachon, *supra* note 37, at 7.

⁶⁵ Sokhym, ‘*Rabbit Dropping*’ *Medicine*, *supra* note 12.

knew the medicine was either ineffective or dangerous but had no choice not to take them.⁶⁶

Some individuals were so hungry that they ate rabbit pellets for any potential nutritional value they had, despite the possible adverse effects the pills could have on the individuals' health.⁶⁷

In addition to manufacturing home-made rabbit pellets, the Khmer Rouge created liquid concoctions that were used in injections for sick and wounded patients. The "natural" compounds used in the rabbit pellets were turned into liquid and injected into patients' veins and hips.⁶⁸ As one former doctor purged by the Khmer Rouge recalled, "They also had serum for injections, sweet and salty water stored in soft drink bottles covered with plastic bags. That water frightened me as did their injections of coconut milk."⁶⁹ Another former doctor explained that certain kinds of fresh coconut juice can have healing qualities in emergency situations, but Khmer Rouge medics were not trained to know which coconuts had medicinal uses, which ones were fresh, or how to cut them without contaminating them. Coconut juice-injections were therefore often lethal.⁷⁰ Because many Khmer Rouge medics were illiterate, there were additional problems of injecting patients with what the medics thought was home-made medicine but was actually unrelated liquid left near the injection needles. Some patients were injected with such things as water, chicken soup and palm juice for this reason.⁷¹

Separate from the illnesses and deaths caused by the contents of the injections were those caused by the method with which injections were given. Without a steady supply of modern medical equipment, the injection serums were kept in old soda bottles that were not properly

⁶⁶ See *id.* ("Comrade Krin, the chief of a hospital in Dei Chhnang, Western Zone, swallowed three tablets of rabbit dropping medicine, one after another, trying to make a quick recovery from malaria. But he died immediately after taking them. At a hospital in Kampong Cham, three pregnant women miscarried soon after taking rabbit dropping medicine. Oeun almost lost her life in a hospital in Prey Lvea because of rabbit dropping medicine. Each time she took them, she was "poisoned," became dizzy, and lost her ability to reason.").

⁶⁷ See NGOR, *supra* note 24, at 256.

⁶⁸ See Keo, *supra* note 40.

⁶⁹ WAGNER, *supra* note 25, at 99.

⁷⁰ See NGOR, *supra* note 24, at 116-17.

⁷¹ See Sokhym, *Female Patients*, *supra* note 13.

sterilized.⁷² Khmer Rouge medics used the same few syringes and blunt needles over and over again. Before an injection, nurses wiped the needle “clean” with their dirty fingers; a needle was sometimes used for multiple injections before it was “disinfected.”⁷³ As a result, the infection rate after injections reached 90 percent in some remote villages, and sick individuals became fearful of treatment by injection.⁷⁴

D. Availability of Western Medicine to Khmer Rouge Leadership

While the vast majority of Cambodian citizens living under the Khmer Rouge regime who suffered and died from treatable illnesses did so because they were denied medical care or improperly treated, the Khmer Rouge leadership and cadre had access to modern medical technology and scientifically-tested medicine. It appears that there were at least three tiers of medical care available in Democratic Kampuchea. At the highest level, the Party Center and other top cadre had access to reasonably modern Western-style medical care in the cities.⁷⁵ The P-17 Hospital in Phnom Penh had modern medical equipment and instruments that had been imported from abroad. Ieng Thirith and her husband received medical checkups and treatment there, and between 1977 and 1978, Khieu Samphan and Nuon Chea also visited the hospital several times.⁷⁶ Outside the cities, where such modern medical equipment was not readily available, the best scientific medicine was still reserved for top Khmer Rouge cadre. Chinese-

⁷² See GENOCIDE IN CAMBODIA, *supra* note 1, at 328; NGOR, *supra* note 24, at 255.

⁷³ See GENOCIDE IN CAMBODIA, *supra* note 1, at 328; NGOR, *supra* note 24, at 255.

⁷⁴ See GENOCIDE IN CAMBODIA, *supra* note 1, at 329; WAGNER, *supra* note 25, at 152 (relating the story of ‘Bopha,’ a woman who survived the Khmer Rouge regime’s medical treatment: “Once I became very sick with a high fever, and I ran away from the nurse because I didn’t want to get an injection.”).

⁷⁵ See NGOR, *supra* note 24, at 255; GENOCIDE IN CAMBODIA, *supra* note 1, at 294 (“It is true that some scientific medicines were used, but they were reserved exclusively for the rulers.”).

⁷⁶ Long Dany, “Batt Nan: The Former Nurse at Hospital P-17 Talking about Ieng Thirith, 89 SEARCHING FOR THE TRUTH, 26 (2007) (Khmer Edition; Translated from the Khmer by Suyheang Kry of the Documentation Center of Cambodia).

made medications such as aspirin, sulfaguanidine, anti-malarials, chloramphenicol and tetracycline were regularly provided to such officials.⁷⁷

At the next level, lower-ranking Khmer Rouge cadre and “old people” (“base people”) could seek treatment in smaller regional and military hospitals that sometimes had access to scientific medicine and that might have been staffed by medical personnel trained prior to the Khmer Rouge takeover in 1975.⁷⁸ Old people were better able to avoid serious illness and death than the new people because they had fought with the Khmer Rouge during the civil war and therefore were favored by Angkar. Khmer Rouge medics, who were also old people, oftentimes tried to give base people better than average medical treatment and reserved any scientific medication they had for them and the Khmer Rouge cadres.⁷⁹

“New people” and other worker-peasants were resigned to treatment at clinics staffed by young children and offering only home-made rabbit pellets and injections.⁸⁰ Because they were unaccustomed to agricultural work and poor food rations, the new people fell prey to disease and malnutrition far more easily than old people. Yet their status as new people made them “practically ineligible for medicine that could help them, [and] they died from diarrhea, dysentery, malaria, and typhoid.”⁸¹ New people were also often accused of having “consciousness illnesses” rather than actual medical ailments (usually because their illnesses were not visible and therefore unable to be diagnosed by the child medics) and they were denied treatment as a result.⁸² Women especially were not allowed to seek treatment at a hospital until

⁷⁷ GENOCIDE IN CAMBODIA, *supra* note 1, at 328.

⁷⁸ NGOR, *supra* note 24, at 255; *see also* Vachon, *supra* note 37, at 7 (“In Battambang town, [Dr. Chhunly] writes, the civilian hospital staff was illiterate or barely literate and distributed only drug they made themselves and had named “rabbit stool.” Khmer Rouge military hospitals, however, employed some staff who had been trained prior to 1975 and used proper medicine imported from China for Khmer Rouge officials and soldiers.”).

⁷⁹ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 26.

⁸⁰ NGOR, *supra* note 24, at 255.

⁸¹ BECKER, *supra* note 1, at 247.

⁸² Sokhym, *Female Patients*, *supra* note 13.

they were unconscious.⁸³ When new people were given the rare opportunity to be treated in a hospital, they received inferior treatment to the old people and the Khmer Rouge cadre. A Khmer Rouge medic at P-1 Hospital claimed that the hospital treated both children whose parents were Khmer Rouge cadres and those whose parents were new people; the April 17 children were never treated well, the medic said, and many of them died every day from treatable illnesses like tetanus, measles, small pox, tuberculosis, jaundice, fever and diarrhea.⁸⁴ Most of these diseases were brought on or exacerbated by neglect and lack of hygiene on the part of the nurses at the hospital.⁸⁵ This tiered system of care serves as evidence of the Party Center's knowledge that the medical services they provided to the majority of Cambodia's citizens were woefully inadequate. It also gives lie to the Party's commitment to self-reliance in the medical sector, as Western-style medical technology was available to those same individuals who forbade its use for the good of the revolution.

E. Importation of Western-Style Medicine

One of the most severe consequences of the Khmer Rouge's push for self-reliance was the country's isolation from the international economic community. The closure of markets, the banning of the use of currency and the prohibition on trade with other countries lead to years of severe autarky, the negative effects of which were felt most deeply by the "new people" and the worker-peasant class. In 1977, with a population on the brink of exhaustion and a full-scale war with Vietnam on the horizon, the Party Center increasingly looked to foreign capitalist countries to supply the regime with the basic items it could not produce: medicine, food and weapons.⁸⁶

⁸³ *Id.* at 27.

⁸⁴ *Id.* at 28.

⁸⁵ *Id.*

⁸⁶ Nayan Chanda, *Cambodia Goes to Market*, FAR E. ECON. REVIEW, May 20, 1977 (Documentation Center of Cambodia Archives Document No. D16186); *see also* BEN KIERNAN, THE POL POT REGIME: RACE, POWER, AND GENOCIDE IN CAMBODIA UNDER THE KHMER ROUGE, 1975-79, 376 (2d. ed. 2002) [hereinafter KIERNAN, THE POL POT REGIME] ("Like the pace of other developments in Democratic Kampuchea, foreign trade picked up rapidly in

In the first three months of that year, for example, Cambodia purchased more than HK\$16 million (US\$3.5 million) worth of foreign goods in Hong Kong from primarily British, French and American suppliers, compared with HK\$11 million worth in all of 1976.⁸⁷ Of this amount, HK\$1,172,346 was devoted to purchases of foreign-made medication, compared to HK\$1,635,455 during the entirety of 1976.⁸⁸ Most of this medication was for the treatment of malaria, which even official Cambodian media sources admitted in 1977 was seriously affecting the ability of the population to work in the rice fields.⁸⁹ As a result of the malaria-epidemic, “Cambodian leaders have relaxed their previous insistence on relying on home-grown herbal medicines”⁹⁰; by the end of 1977, they had imported 227 tons of American DDT and 1,250 tons of DDT from a British firm in Hong Kong.⁹¹ Even in 1976, Cambodia was reported to have bought US\$1.6 million worth of DDT from an American company for anti-malarial spraying and to have accepted a small quantity of anti-malarial drugs as a gift from the American Quakers.⁹²

III. Denial of Medical Care: What the Party Center Knew

There is evidence that the Khmer Rouge leadership currently awaiting trial at the ECCC knew of the harm caused by their policy of ‘revolutionizing’ the country’s medical sector, especially the decision to replace trained medical staff with young, illiterate revolutionary medics. At one Party Central Committee meeting attended by Pol Pot, Nuon Chea, Khieu Samphan and Ieng Thirith, a hospital chief named Sim Leanghak (alias Sei) presented a report

early 1977.”); BECKER, *supra* note 1, at 247 (“The epidemics were so widespread that first year that the Khmer Rouge broke their golden rule of self-sufficiency and asked for DDT from an American charity to help control mosquitoes carrying malaria.”).

⁸⁷ Chanda, *supra* note 86 (“And as invoices for purchases are submitted to the Bank of China for payment, it seems Peking is providing the finance.”).

⁸⁸ *Id.* (see table from the Census and Statistics Department in Hong Kong).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ KIERNAN, THE POL POT REGIME, *supra* note 86, at 382 (The cost of the DDT from the British firm could be reflected in the financial accounting of the medication Democratic Kampuchea purchased from Hong Kong in 1997).

⁹² Chanda, *supra* note 86.

that stated there were many instances where the wrong drugs were provided to patients in Khmer Rouge hospitals because the nurses were illiterate.⁹³ Ieng Thirith admitted at that meeting that nurses did have a difficult time treating patients because they were uneducated⁹⁴ and trained in medical skills by Chinese doctors who did not speak the nurses' language.⁹⁵

Ieng Thirith was also aware that at the April 17 Hospital, hundreds of Khmer Rouge medical cadre were imprisoned and executed for minor offenses against the Party (such as lack of morality and lack of responsible speech), and others were arrested for causing the deaths of patients by improper treatment.⁹⁶ These arrests were not ordered for the purpose of addressing poor medical treatment in the country, but rather as a way for the hospital to present a front for the Party Center that everything was functioning as it should. Ieng Thirith attended the meetings where these arrests occurred, making her privy to information about improper treatment resulting in patient deaths. Though she most likely knew, or at least should have known, that it was the Party Center's medical policies that led untrained medics to accidentally kill patients, she made no move to prevent arrests or improve the treatment available at the hospital. Throughout the country, no changes were made to retrain doctors and nurses during the Khmer Rouge's reign.

The Party Center also had knowledge of the ineffectiveness—and lethality—of the Khmer Rouge's home-made medicines. At a meeting of the Party's Standing Committee, Ieng Thirith reported on the ineffectiveness of many Khmer Rouge medicines. Pol Pot nevertheless insisted that they be used: “Ineffective or effective, these drugs have to be used so that we can learn.”⁹⁷ Additional evidence of the Party Center's knowledge comes from Pol Pot's directive in 1976 that Ieng Thirith visit the Northwest Zone to investigate charges of shortcomings in the

⁹³ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁹⁴ See Keo, *supra* note 40; Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁹⁵ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

⁹⁶ Sokhym Em, *Criticism and Self-Criticism*, 31 SEARCHING FOR THE TRUTH 18, 18 (July 2002).

⁹⁷ Sokhym, *'Rabbit Dropping' Medicine*, *supra* note 12, at 23.

health, diet and housing of the worker-peasants.⁹⁸ Ieng Thirith found evidence of many

“‘problems’” there:

‘Conditions there were very queer.’ . . . ‘In Battambang I saw they [the cadre] made all the people go to the rice fields. The fields were very far away from the villages. The people had no homes and they were all very ill . . . I know the directives of the Prime Minister [Pol Pot] were that no old people, pregnant women, women nursing babies, or small children were to work in the fields. But I saw everybody in the open rice fields, in the open air and very hot sun, and many were ill with diarrhea and malaria.’⁹⁹

In her report to the Party Center regarding her visit, Ieng Thirith blamed “enemy agents” for the sub-standard living conditions she witnessed rather than the Party’s medical policies or its deportation of 800,000 people to the Northwestern Zone:¹⁰⁰ “‘Agents had got into our ranks . . . and they had got into the highest ranks. They had to behave with double faces in order to make as if they were following our line.’”¹⁰¹

Ieng Thirith was not the only Khmer Rouge leader to report to the Party Center on the deplorable living conditions most Cambodians faced. In its June 1977 report to Office 870 (the cabinet of the Central Committee), the Southwest Zone authorities vaguely admitted to problems with the people’s living conditions in the various districts under their control:

[Region 25]: The people’s living standard: Nowadays, the people’s living condition seems to be all right. Although the living standard of the people in Kien Svay and Leuk Dek District has faced the problem, it is getting better . . . At region 33, the people’s living standard seems to be all right, but if there is a problem, it will be at the sub-districts. Anyway it can be addressed. . . . The living standard and health of the people in the 4 regions [combined]: Nowadays, in Kampot, Kampong Speu and Takeo Province, the people have got cholera, and some people died.¹⁰²

⁹⁸ BECKER, *supra* note 1, at 236. (Interview between Ieng Thirith and Elizabeth Becker).

⁹⁹ *Id.*

¹⁰⁰ KIERNAN, THE POL POT REGIME, *supra* note 86, at 236.

¹⁰¹ BECKER, *supra* note 1, at 236.

¹⁰² Rep. No. 10 to Office 870 of the Central Committee (June 3, 1977) in Documentation Center of Cambodia Archives Document No. D01610.

Nhim Ros, the Second Vice President in the State Presidium, also submitted regular reports to Office 870 that contained information about people's living conditions. In one dated May 16-17, 1978, he summarized the poor living conditions that existed in all regions of the country¹⁰³ and then specifically mentioned his own problems with the country's lack of medical care:

I have received the telegram in which it said I was allowed to stay in hospital. My illness came as a result of changing blood pressure. Now the disease has developed to a heap [sic] pain that lasted for two or three days, making it impossible for me to sit and walk. I got ill from overwork and incessant work. There is no medical worker for treatment. There has been a young medical worker but [he/she] has just been taught how to measure blood pressure and give away medicines [to patients]. For my treatment, I will go for it when I am seriously ill because now I have much work to do especially on people's living conditions and many other works.¹⁰⁴

From at least 1976 on, then, the Party Center knew from various sources of the deplorable health conditions its policies had created, yet no substantive steps were taken over the next three years to improve the standard of medical care available to the Cambodian people.

A third piece of evidence highlighting the Party Center's knowledge of the severity of the country's healthcare crisis can be seen in the leadership's resort to the importation of medical supplies from neighboring countries. By 1977 at the latest, the Party Center was aware of the failure of its home-made compounds to protect the country's citizens from malaria and to effectively treat those who were infected. While the DDT and anti-malarial medication imported after 1977 may have ameliorated the malaria epidemic in the country, thousands of individuals had already succumbed to the illness by then. Furthermore, the importation of anti-malarial medication was merely a stop-gap measure intended to prevent the population from becoming too ill to complete their work assignments. It was not a systematic attempt to reform the

¹⁰³ Rep. No. 326 to Office 870 of the Central Committee (May 16-17, 1978) in Documentation Center of Cambodia Archives Document No. D02131.

¹⁰⁴ *Id.*

country's medical infrastructure and, therefore, did nothing to stem the tide of death and chronic illness caused by other diseases that continued to go undiagnosed and untreated by the Khmer Rouge child medics.

Perhaps the clearest evidence that the Party Center knew of and in fact mandated the denial of medical care and the use of home-made remedies in Democratic Kampuchea is the overwhelming universality of the experience Cambodians in distinct parts of the country had with respect to medical care. Though this memo does not provide a perfect sampling of the quality and availability of medical care in each of Cambodia's provinces during the Khmer Rouge era, it does show that men and women throughout the country shared in common the same suffering from untreated illness and the same fear of home-made remedies and injections. Hospitals were evacuated the same way in Phnom Penh as they were in Battambang.¹⁰⁵ Young children were forced to become medics in each of Cambodia's provinces, and they all underwent the same brief and cursory training.¹⁰⁶ Cambodians throughout the country referred to home-made remedies as "rabbit pellets" and received the same types of injections.¹⁰⁷

When Cambodian refugees streamed into Thailand in the final months of the Khmer Rouge regime, they all told similar stories of death and illness from lack of medicine and trained medical staff.¹⁰⁸ After compiling interviews with refugees at the Thai border with Cambodia in 1978, one reporter for the *New York Times Magazine* wrote about what he learned of the medical system under the Khmer Rouge:

¹⁰⁵ See, e.g., Sokhym, *Female Patients*, *supra* note 13; Vachon, *supra* note 37.

¹⁰⁶ See, e.g., Tat, *supra* note 63 (discussing the story of Van Mon, a child nurse from Kompong Speu province); Keo, *supra* note 40 (discussing the story of Chey Sarin, a child nurse from Takeo Province)

¹⁰⁷ See, e.g., Keo, *supra* note 40 (discussing the use of home-made injections); Sokhym, 'Rabbit Dropping' *Medicine*, *supra* note 12 (discussing widespread use of home-made medicine and the term 'rabbit dropping' to describe it); Tat, *supra* note 63 (describing the "rabbit excrement" medicine given to a child nurse who fell ill).

¹⁰⁸ See, e.g., Henry Kamm, *The Agony of Cambodia*, N.Y. TIMES MAGAZINE, Nov. 19, 1978 at 40; Lewis M. Simons, *Disease, Hunger Ravage Cambodia as Birthrate Falls*, THE WASHINGTON POST, July 22, 1977 at A16.

Medical care is dispensed only by Khmer Rouge medics, who are said to have no medical training and to concentrate their care on cadres and soldiers rather than the people. The only medicines available are traditional remedies made of herbs, roots and tree bark. ‘The sick person stays in his hut and waits for death,’ said [one refugee].¹⁰⁹

Though it is possible that Zone commanders in every part of the country independently mandated the use of homemade medicines and the removal of scientifically-trained medical staff, it is more likely that these uniform directives came from the Party Center. The individuals who comprised that body, including Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith, could thus be held responsible for the hundreds of thousands of deaths that resulted from their medical policies.

IV. Medical Experimentation

A. Experimentation to Test Effectiveness of Remedies

Pol Pot’s directive to practice “self-reliance in medicine”¹¹⁰ not only resulted in the purging of trained medical staff and the denial of scientific medical care to Cambodian citizens; it also led to medical experimentation on human subjects for the purposes of testing Khmer Rouge-made remedies and for torture in detention facilities. With respect to medical experimentation to test drugs’ effectiveness, it appears as though all medical treatment under the Khmer Rouge was experimental in a general sense. The regime’s medics prescribed rabbit pellets to the sick regardless of their symptoms, gave injections of coconut juice for the sole purpose of observing their effects on patients, and failed to measure medication dosages or the amount of certain natural substances that went into each batch of home-made medicine.¹¹¹

In a speech given to mark the third anniversary of the Khmer Rouge’s April 17, 1975 takeover, Khieu Samphan explicitly acknowledged the general experimental nature of medical

¹⁰⁹ *Id.* at 152.

¹¹⁰ Sokhym, ‘Rabbit Dropping’ Medicine, *supra* note 12.

¹¹¹ GENOCIDE IN CAMBODIA, *supra* note 1, at 295, 330.

treatment in Democratic Kampuchea, even if he couched it in terms of progress rather than failure:

In the field of health and social affairs, many units have fulfilled or exceeded the plan of producing medicines for improving the people's standard of living . . . Each cooperative has its medical center and its center of making medicines. By this way, we have given an impulse to all forces of the people's mass to actively participate everywhere in making medicines. *Although they are still at the handicraft stage*, our medicines meet the needs of our people and their efficiency has unceasingly been improved. It is only by doing so that we can carry out our line of independence, sovereignty and self-reliance in the production of medicines as well as in all other fields.¹¹²

This general experimental nature of the Khmer Rouge's medical practices was a direct consequence of the regime's emphasis on self-reliance and its prohibition on access to Western-style medical care; without the ability to follow scientific guidelines on medicine production, testing medicine on humans became inevitable.

In addition to the general experimentation on humans derived from inadvertent and intentional drug testing on patients, Khmer Rouge medics also specifically conducted planned medical experiments on human subjects to study anatomy, pharmacology and physiology.¹¹³ In a hospital in Kampong Cham province, for example, a group of "surgeons" was directed by the Khmer Rouge to conduct studies on how tissue healed by conducting a laparotomy on a living, non-consenting human. The person's small intestine was cut off and its ends joined so the physicians could study the healing process; within three days the patient had died of the wounds sustained to his abdomen.¹¹⁴ A second group of Khmer Rouge-trained physicians in the same hospital opened the chest of a living patient to observe his heart, resulting in the patient's

¹¹² Khieu Samphan, President of the Presidium of the State of Democratic Kampuchea, Speech at the Mass Meeting Held on the Occasion of the Third Anniversary of the Glorious April 17 and the Founding of Democratic Kampuchea speech (April 17, 1978), in Documentation Center of Cambodia Archives Document No. D21934, at 7-8 (emphasis added).

¹¹³ GENOCIDE IN CAMBODIA, *supra* note 1, at 329; *see also* DAVID CHANDLER, VOICES FROM S-21: TERROR AND HISTORY IN POL POT'S SECRET PRISON 32 (1999) [hereinafter CHANDLER, VOICES FROM S-21] ("Elsewhere in the country, fatal surgery was sometimes carried out on anaesthetized prisoners to teach anatomy to medical cadres.").

¹¹⁴ GENOCIDE IN CAMBODIA, *supra* note 1, at 329.

immediate death.¹¹⁵ In a military hospital near Battambang, Khmer Rouge health staff practiced general anesthesia and tracheal catheter insertion on live and unwilling patients.¹¹⁶

Another common medical experiment under the Khmer Rouge concerned the removal of gall bladders and their use in home-made medicine. In some instances, gall bladders were taken from individuals who had already been executed by the Khmer Rouge;¹¹⁷ some hospitals received shipments of gall bladders from Khmer Rouge detention facilities where they had been extracted from prisoners.¹¹⁸ In other instances, Khmer Rouge soldiers cut open the bellies of living humans to extract their gall bladders.¹¹⁹ The medical cadres were able to distinguish between gall bladders from healthy persons, which were full of fluid, and those from unhealthy individuals, which were not.¹²⁰ The ‘healthy’ gall bladders were sent to nearby hospitals where their fluids were mixed with flour and a variety of plants to make a version of rabbit pellet medicine.¹²¹ Khmer Rouge medics also conducted experimental surgery to remove living humans’ gall bladders and compare them with those from corpses; these tests had no medicinal value.¹²²

B. Experimentation as Torture in Detention Facilities: Toul Sleng Case Study

Khmer Rouge medics had a steady stream of human test subjects on which to conduct experiments in the detention facilities the regime established throughout the country. Like the Nazi medical doctors who worked in concentration camps, Khmer Rouge child medics experimented on prisoners in the regime’s security centers both as a form of torture and in a sadistic attempt to learn more about human anatomy. Nowhere was the practice of experimenting

¹¹⁵ *Id.*

¹¹⁶ Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

¹¹⁷ See Sokhym, ‘Rabbit Dropping’ *Medicine*, *supra* note 12, at 23.

¹¹⁸ See Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

¹¹⁹ See Sokhym, ‘Rabbit Dropping’ *Medicine*, *supra* note 12, at 23.

¹²⁰ See *id.*

¹²¹ See Sokhym, *Revolutionary Female Medical Staff*, *supra* note 33, at 27.

¹²² GENOCIDE IN CAMBODIA, *supra* note 1, at 329.

on prisoners more systematized and extensive than at Tuol Sleng (S-21), the headquarters of the Khmer Rouge special police and the center for torturing and executing people accused of betraying the regime.¹²³

The general medical conditions at Tuol Sleng created an environment conducive to carrying out experimentation on humans. Workers at the detention facility were divided into three main units: interrogation, documentation and defense.¹²⁴ Within the defense unit, the largest at S-21 and headed by Khim Vat (alias Ho), was a subunit staffed by fifteen paramedics that certified deaths and provided rudimentary medical services to sick and wounded prisoners. According to the confession of one of these paramedics, there were only three Khmer Rouge-trained medical personnel at S-21 responsible for overseeing thousands of prisoners.¹²⁵ Many of the medical staff were children who knew little about medicine; they simply asked injured and ill prisoners routine questions and then prescribed them home-made medication such as rabbit pellets.¹²⁶ As a result, according to prison records, thousands of prisoners died from malaria, diarrhea, “emaciation,” “tiredness,” and mistreatment.¹²⁷

Because Tuol Sleng was a secret facility, its existence known only to the Party Center and those who worked there,¹²⁸ only the general contours of the regime’s medical experimentation on prisoners can be ascertained. Several medical study notebooks were recovered at S-21 after the Vietnamese invasion that suggest prison personnel carried out such

¹²³ See BECKER, *supra* note 1, at xiv; GENOCIDE IN CAMBODIA, *supra* note 1, at 372 (“There were other camps which were to some extent dependent on Tuol Sleng, notably the camp of Takhmau, formerly a psychiatric hospital, the camp of the former National Police Headquarters south of the New Market, the Vat Phnom camp set up in the former Navy officers building, the camp of the former Sangkum High school, and the camp of Prey Sar west of Phnom Penh in Kandal province. All these dependent camps were placed under the command of Tuol Sleng, and were also known under the abbreviation of ‘S-21,’ that is ‘Security 21’ which reported directly to the Defense ministry of the Pol Pot-Ieng Sary regime.”).

¹²⁴ CHANDLER, VOICES FROM S-21, *supra* note 113, at 17.

¹²⁵ *Id.* at 31 (The paramedic forced to confess was Phoung Damrei (alias Phoeun)).

¹²⁶ GENOCIDE IN CAMBODIA, *supra* note 1, at 374.

¹²⁷ CHANDLER, VOICES FROM S-21, *supra* note 113, at 31.

¹²⁸ *Id.* at 7.

experiments as bleeding prisoners to death and seeing how long it took for dead bodies to rise to the surface of a tank of water.¹²⁹ One such notebook, found in a house near Tuol Sleng, contains five handwritten pages on “Human Experiments” (*pisaot menuh*) that record the results of eleven experiments on seventeen prisoners, living and dead.¹³⁰

They begin, ‘1. A 17-year-old girl, with her throat and stomach slashed, put in water from 7:55 p.m. until 9:20 a.m., when the body begins to float slowly to the top, which it reaches by 11:00 am. 2. A 17-year-old girl bashed to death, then put in water as before, for the same period, but the body rises to the top at 1:17 p.m.’ Similar details were recorded for ‘a big woman, stabbed in the throat, her stomach slashed and removed,’ and ‘a young male bashed to death,’ then ‘four young girls stabbed in the throat,’ and ‘a young girl, still alive, hands tied, placed in water.’¹³¹

The clearest evidence that the medical staff at Tuol Sleng conducted experiments on humans comes from the testimony before the Extraordinary Chambers in the Courts of Cambodia (the Tribunal) of Kaing Guek Eav (alias Duch), the Chairman and Secretary of S-21 from 1976 to 1979. In his June 16, 2009 testimony, Duch admitted he was aware of four types of medical experimentation conducted at Tuol Sleng:

First, the live prisoner was used for the surgical study and training. Second, the blood drawing was also done and it became a practice until my time, and there are some S-21 surviving documents that I instructed them to do, based on the instructions from the upper echelon regarding the blood drawing in order to protect those people who need blood transfusions. . . . So, as a result, there were about 100 victims who died due to blood drawing. That is the second case. For the third case, the medicine which was prepared, normally they would use to experiment on the prisoners because if they used the experiment -- if they used the drugs on themselves that would not be the method, but they used the newly composed medicine to trial on the prisoners. The fourth case, Uncle Nuon [Chea] gave me some medicine to use and test on the prisoners, although I was sure that the powder was used in exchange of the paracetamol [a mild pain relief drug], but anyway it was used to test on the prisoners, although the medicine was not poisonous -- but the prisoners knew that the medicine was an experimental one. So these are the four cases of medical experiments conducted at S-21.¹³²

¹²⁹ *Id.* at 32.

¹³⁰ KIERNAN, THE POL POT REGIME, *supra* note 86, at 439.

¹³¹ *Id.*

¹³² Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 81-2 (Trial Chamber, June 16, 2009).

The first type of medical experimentation—surgery on living and dead prisoners—was conducted to study human anatomy and to train new Khmer Rouge medics on operation techniques.¹³³ Vivisections were commonly performed for these reasons.¹³⁴ Duch testified that anatomy studies were conducted on live prisoners or on prisoners killed specifically for experimental surgery because they were better test subjects than those who had died ‘naturally’ from torture or disease in the detention center.¹³⁵

Bloodletting, a second type of experimentation conducted at Tuol Sleng, was a practice initiated by Son Sen, the Minister of Defense in Democratic Kampuchea.¹³⁶ When blood supplies ran low at hospitals that treated wounded Khmer Rouge military cadre, such as Hospital 98 and the Khmer-Soviet Friendship Hospital in Phnom Penh, blood was drawn from prisoners at the detention facility and used in transfusions for the combatants.¹³⁷ The detainees would be taken to the medical office at Tuol Sleng and made to lie blindfolded on their backs on a bed while their legs were shackled. The blood was then drawn out through needles inserted into the prisoners’ veins.¹³⁸

Initially, prisoners were not screened for disease before their blood was drawn, and Khmer Rouge soldiers who received transfusions often developed skin rashes as a result.¹³⁹ Duch testified that he eventually implemented a stricter screening process so that only ‘healthy’

¹³³ *Id.* at 94-5.

¹³⁴ Bethany Lindsay, *Duch Admits to Draining Live Victims’ Blood*, CAMBODIA DAILY, June 17, 2009, at 1.

¹³⁵ *Id.*

¹³⁶ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 91 (Trial Chamber, June 16, 2009).

¹³⁷ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 91-2 (Trial Chamber, June 16, 2009); Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 37 (Trial Chamber, July 21, 2009); *see also* Lindsay, *supra* note 134, at 29.

¹³⁸ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 36 (Trial Chamber, July 21, 2009) (Testimony of former S-21 interrogator Prek Khan).

¹³⁹ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 91 (Trial Chamber, June 16, 2009).

prisoners were selected for bloodletting. But he also admitted that the bloodletting process at S-21 was never regulated, resulting in the death of about 100 prisoners because “the blood was drawn until there was no blood in their body.”¹⁴⁰ Prek Khan, a former S-21 interrogator gave further evidence that bloodletting procedures were not well-controlled. He testified that four to ten individuals had their blood drawn at the same time, and that oftentimes blood was taken until the prisoner “gasp[ed] or was dying.”¹⁴¹ When asked if the blood drawing practice was meant to kill the detainees, Prek Khan answered “So far as I witnessed after blood was drawn no one would ever leave because they were dying already while they were being—their blood was being taken.”¹⁴²

Medical experimentation also occurred at Tuol Sleng through the practice of testing home-made remedies on sick and wounded prisoners rather than allowing them access to Western-style medicine. It appears that the dire medical conditions created throughout Democratic Kampuchea under the Khmer Rouge were also in place at Tuol Sleng. Sek Dan, a child medic at Tuol Sleng beginning in 1978, testified at the Duch trials about his experience distributing medicine and cleaning the wounds of detainees at the prison.¹⁴³ During the time he worked in Tuol Sleng, Sek Dan was illiterate and, like the other child medics, had not received any medical training before being assigned to work at S-21 (Duch testified that young boys from the provinces were actually chosen to work as child medics at S-21 because of their “limited

¹⁴⁰ *Id.* at 82.

¹⁴¹ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 37, 38 (Trial Chamber, July 21, 2009); *see also* Cheang Sokha, *Former interrogator recalls blood-drawing at Tuol Sleng: Duch subordinate details torture by electric shock, suffocation*, PHNOM PENH POST, July 22, 2009.

¹⁴² Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 37, 38 (Trial Chamber, July 21, 2009).

¹⁴³ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 2-3, 23 (Trial Chamber, Aug. 3, 2009) (At trial, Duch questioned whether Sek Dan was a medic at Tuol Sleng because there seemed to be a discrepancy between the current age Sek Dan gave in court (48 years old) and the age he said he was when he began working at Tuol Sleng (11 years old). Duch did admit that he selected young boys from Kampong Chhang province, where Sek Dan was from, to work at S-21, and that it was possible Sek Dan made a mistake about his age when he began working at the prison because of “low memory.”); *see also* Associated Press, *Ex-Khmer Rouge Medic Testifies in Cambodia Trial*, N.Y. TIMES, Aug. 3, 2009.

memory and education.”¹⁴⁴) Sek Dan testified that most of the prisoners he treated had diarrhea, fever or headaches and had torture wounds on their backs, fingers and toes.¹⁴⁵ Yet he “knew for sure at that time there was nothing but the rabbit pellets medicines” to treat detainee’s illnesses, and only saline solution to treat wounds.¹⁴⁶ Furthermore, prisoners were only given enough medicine to keep them alive until they could be interrogated, and their wounds were only treated to shorten recovery time so torture sessions could begin again.¹⁴⁷ Asked by judges Silvia Cartwright and Jean-Marc Lavergne to describe the types of medication given to detainees, Sek Dan testified:

‘Those medicines were locally produced; they were known as rabbit pellet medicine. They were black in colour. . . . They were only produced after 1975. . . . Those medicines could provide some treatments, some of them were effective and some were not. I actually ate a handful of those medicines and it did not have any effect on me; I ate those medicines because I was hungry.’¹⁴⁸

Other child medics at Tuol Sleng also testified that they were illiterate, received only basic medical training¹⁴⁹ and were only able to provide home-made remedies to sick and injured

¹⁴⁴ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 50 (Trial Chamber, Aug. 3, 2009).

¹⁴⁵ *Id.* at 7, 9-10.

¹⁴⁶ *Id.* at 7 (Later on in his testimony, Sek Dan appears to admit other types of medicine in addition to rabbit pellets were available at Tuol Sleng: “[Q]uestion. All of this medicine was it always rabbit pellets or were there different kinds of medicines, other than the rabbit pellets? A[ns]wer]: There were some other medicines too and delivered in different forms except from the rabbit pellet medicine.”); *see also* Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 31-32 (Trial Chamber July 1, 2009) (Bou Meng, one of the few prisoners to survive S-21, said torture wounds on his back were treated by pouring bowls of salt water over them.).

¹⁴⁷ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 10, 21-22 (Trial Chamber, June 16, 2009); Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 36 (Trial Chamber, July 13, 2009).

¹⁴⁸ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 17-19 (Trial Chamber, June 16, 2009).

¹⁴⁹ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 17 (Trial Chamber, July 13, 2009) (Nam Mon described this training at her civil party testimony before the Tribunal: “I undertook the medical training by doing hands-on practice, by providing real wound cleaning, for instance. I was pretty young. I was taught how to recognize the medicine when it was given to me, and that I could then distribute those medicines to the patients. . . . I only learned to memorize what I was told. For example, for this particular medicine, it was for the treatment of a particular sickness or disease, so I memorized what I was told but I, myself, could not read.”).

prisoners. Nam Mon, a medic at Tuol Sleng from the time she was 15-years-old,¹⁵⁰ said that Western-style medication like paracetamol was available for distribution to the prisoners in the early years of the regime; when the supplies ran out, however, only “traditional herb medicines” were distributed to the patients.¹⁵¹ Nam Mon testified that she did not know what was in the medication; Khmer Rouge cadres at Tuol Sleng simply gave it to her and told her to hand it out to the prisoners.¹⁵² She was able to distinguish one home-made remedy from another only by looking at the labels on the bottles, which she could not read but which looked different.¹⁵³

In addition to the general experimental nature of medical care at Tuol Sleng, Duch appears to have carried out planned experiments at the direction of Nuon Chea to test new medication on patients. When asked at trial how he participated in the medical experiments conducted at S-21, Duch responded:

Mr. President, I personally did it [the medical experiments]. Nobody knew and only two people were aware of this. That was I, myself, and Uncle Nuon [Chea]. I did it personally. Each day I gave them two pills and next day I gave them two more pills for three days in a row. The rest saw me taking these three people and letting them stay at the photography and the painting section. In the afternoon I took the pills, by myself, to give them to take. So I did this by myself and people would know that this is a medical experiment, and the victims themselves knew it was a medical experiment. This is another type of criminal act that I committed.¹⁵⁴

¹⁵⁰ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 53 (Trial Chamber, July 13, 2009) (Duch testified that Nam Mon was not a medic at S-21 because, according to him, there were no female medics “produced by S-21” at the detention facility. (In his July 22, 2009 testimony, Duch admitted two female detainees at S-21 were chosen to become medics.) Several other medics and S-21 staff, including Prek Khan (July 21, 2009 testimony at page 40) said they personally saw female medics at the prison. Prek Khan said he does not remember Nam Mon specifically, but that “from the way she spoke [during her testimony at the Tribunal] I was pretty sure that she was that female medic.”).

¹⁵¹ *Id.* at 13.

¹⁵² *Id.*

¹⁵³ *Id.* at 17-18.

¹⁵⁴ Prosecutor v. Kaing Guek Eav *alias* “Duch,” Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 83-4 (Trial Chamber, June 16, 2009).

Duch later claimed that without Nuon Chea's knowledge, he replaced the potentially poisonous experimental medication with paracetamol:¹⁵⁵ "I swapped the flower pills and I used the paracetamol pills instead because the pill was in the capsule form . . . I threw away the flower inside—the powder inside, and then I cleaned inside the capsule with a cotton bud and I replace it with paracetamol powder."¹⁵⁶ Duch claims to have done this because he feared Nuon Chea's pills were poisonous, and if the prisoners died as a result "they would die under my act with my own hands, who gave them the medicine, the poison. That's why I tried not to be involved in the killing of those people directly."¹⁵⁷

Medical experimentation continued at Tuol Sleng until the Vietnamese invasion of 1979 pushed the Khmer Rouge from power. The practice of bloodletting may have ended a few months earlier, when the medics trained to drain blood and conduct transfusions were swept up in purges of Khmer Rouge cadre at Tuol Sleng and the hospitals in Phnom Penh.¹⁵⁸ Duch and the rest of the medical staff at Tuol Sleng remained at the prison until the evening of January 7, 1979, when they walked out of Phnom Penh and disappeared from sight.¹⁵⁹

V. Medical Experimentation: What the Party Center Knew

Because Pol Pot himself ordered the replacement of scientific medicine with experimental home-made remedies to treat illnesses in Democratic Kampuchea, other Party Center members certainly knew of this facet of Khmer Rouge medical experimentation. Both Pol Pot and Khieu Samphan spoke directly and publically about the need to use medicines "still at the handicraft stage" whether or not they were effective.¹⁶⁰ Their words prove not only that they

¹⁵⁵ Lindsay, *supra* note 134, at 29.

¹⁵⁶ Prosecutor v. Kaing Guek Eav *alias* "Duch," Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 96 (Trial Chamber, June 16, 2009).

¹⁵⁷ *Id.* at 99.

¹⁵⁸ *Id.* at 92.

¹⁵⁹ CHANDLER, VOICES FROM S-21, *supra* note 113, at 22-23.

¹⁶⁰ Khieu, *supra* note 112, at 7-8; Sokhym, 'Rabbit Dropping' Medicine, *supra* note 12, at 23.

knew of the experimental nature of Khmer Rouge-created remedies, but also that they knew about and indeed mandated their use.

Nuon Chea also appears to have known and approved of the fact that the medical treatment available in Cambodia was, at best, rudimentary. In a July 1978 speech to the Communist Workers' Party of Denmark, he admitted that a medical cadre's commitment to the Party's ideological stance was more important than his medical training.¹⁶¹ He further stated that international humanitarian aid should be rejected, no matter the cost to Cambodian citizens' health and well-being:

We try to teach our people the principle of self-reliance in order to avoid making ourselves a burden for friendly countries. While they might like to help us, they must make their own revolutions and improve the living standard of their own people. Thus, we try as much as possible to avoid outside aid, to overcome all forms of suffering without seeking aid unless it is absolutely necessary.¹⁶²

Finally, as Minister of Social Affairs and Action, Ieng Thirith oversaw the provision of medical care throughout the country and was therefore in a position to know that the use of home-made medication was a form of medical experimentation.

There is also substantial evidence linking the Party Center to the medical experiments that took place in detention facilities like Tuol Sleng. Duch admitted to journalists as early as 1999 that Nuon Chea was deeply involved in and aware of activities at Tuol Sleng, including executions, medical experimentation and forced confessions.¹⁶³ In the first days of his trial at the ECCC, Duch again admitted that he dealt directly with Son Sen, the Minister of Defense, and with Nuon Chea, both of whom were believed to have been acting on behalf of the entire

¹⁶¹ Sokhym, *Female Patients*, *supra* note 13, at 26.

¹⁶² Nuon, *supra* note 2.

¹⁶³ Nic Dunlop and Nate Thayer, Cambodia: Duch Confesses, *FAR E. ECON. REVIEW*, May 6, 1999.

Standing Committee.¹⁶⁴ In his June 16, 2009 testimony before the ECCC, Duch further said Nuon Chea had specific knowledge of the human experiments conducted at Tuol Sleng, even ordering Duch to give potentially poisonous medicine to prisoners to test its effect.¹⁶⁵ The orders for this research on poison are believed to have come from the entire Central Committee, with Nuon Chea acting as liaison to Duch.¹⁶⁶

Nuon Chea's connection to medical experimentation at Tuol Sleng is the most direct of any of the defendants awaiting trial at the ECCC. But because of their positions in the Central and Standing Committees, Khieu Samphan and Ieng Sary also likely knew these experiments were being conducted at S-21. Reports on killings and other activities at S-21 were signed by Nuon Chea and contained "notations to or from 'Elder Brother' or simply the ominous 'Organization,' as the Standing Committee of the Communist Party was known."¹⁶⁷ The fact that these reports were sent to the Party Center as a whole indicates that the other members of that group had at least a general sense of the killing and torture occurring at Tuol Sleng but took no affirmative steps to prevent it.

VI. Conclusion

This memo has attempted to document several types of medical crimes committed by the leaders of the Khmer Rouge from 1975-1979—namely, the decision to deny the vast majority of Cambodians access to proper medical care and the decision to conduct medical experiments on living human subjects. The forthcoming final sections of the memo will analyze the possibility of prosecuting Nuon Chea, Khieu Samphan, Ieng Sary and Ieng Thirith at the ECCC for the deaths

¹⁶⁴ Prosecutor v. Kaing Guek Eav *alias* "Duch," Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 63 (Trial Chamber, April 1, 2009).

¹⁶⁵ Prosecutor v. Kaing Guek Eav *alias* "Duch," Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 82 (Trial Chamber, June 16, 2009).

¹⁶⁶ Prosecutor v. Kaing Guek Eav *alias* "Duch," Case No. 001/18-07-2007/ECCC-TC, Transcript of Proceedings at 79 (Trial Chamber, April 1, 2009).

¹⁶⁷ Dunlop and Thayer, *supra* note 163.

that resulted from their medical policies. The most probable avenue for prosecution of these medical crimes is to find that they were recognized by the international community as crimes against humanity during the period 1975-1979, over which the ECCC has jurisdiction. The post-World War II prosecution of Nazi doctors for medical experiments on Jewish prisoners at the Nuremberg Military Tribunals under Control Council Law No. 10 provides precedent to charge the Accused with crimes against humanity for ordering or acquiescing in the performance of medical experiments on non-consenting humans. However, because governments do not have an affirmative duty to provide their citizens with medical care, it will be more difficult and problematic to argue that there was precedent before 1975 to prosecute the denial of access to medical care as a crime against humanity. The memo will therefore compare the situation in Democratic Kampuchea between 1975 and 1979 to that of a state-run detention facility or occupied territory, where government officials do have a heightened duty to provide treatment for illness, injury and disease.