



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

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Nation Religion King**

**Royaume du Cambodge
Nation Religion Roi**

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**Office of the Co-Investigating Judges
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1. INTRODUCTION

1. We hereby provide the reasons for our decision to dismiss the charges against **Im Chaem** based on lack of personal jurisdiction.¹ We will set out the applicable law on personal jurisdiction and on the crimes charged against **Im Chaem** as well as on individual criminal responsibility, followed by an explanation of how we have assessed the evidence. We will analyse the evidence relevant to all allegations and charges against **Im Chaem** and its legal characterisation. Finally, we will explain why we find that **Im Chaem**, [REDACTED], does not fall within the personal jurisdiction of the ECCC.
2. In this Closing Order (Reasons), the factual findings [REDACTED] are based on a probability standard required for a decision on an indictment, and not on the “beyond reasonable doubt” standard required for a conviction following a trial.² However, our overall finding that she is not under the ECCC’s personal jurisdiction is made even if taking the available evidence at its highest. We are, in other words, convinced that she does not meet the jurisdictional threshold criteria.

2. APPLICABLE LAW

2.1 Personal Jurisdiction at the ECCC

3. Under Article 1 of the ECCC Agreement, signed on 6 June 2003,

“the purpose of the Agreement is to regulate the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”

¹ Case File No. 004/1-D308, *Closing Order (Disposition)*, 22 February 2017.

² See Case File No. 002-D427, *Closing Order*, 15 September 2010, paras 1323-1326 and Internal Rule 87 (1).

4. Article 1 of the ECCC Law, promulgated on 27 October 2004 on the basis of the ECCC Agreement,³ states:

“The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were the most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.”

5. Article 2 of the ECCC Law reiterates that the ECCC shall be established to bring to trial *“senior leaders of Democratic Kampuchea and those who were most responsible for the crimes [...] that were committed during the period from 17 April 1975 to 6 January 1979.”*
6. The SCC has interpreted the terms *“senior leaders of Democratic Kampuchea and those who were most responsible”* as referring to two categories, namely, senior leaders of the Khmer Rouge who are among the most responsible, as well as non-senior leaders of the Khmer Rouge who are also among the most responsible. Both categories of persons must be Khmer Rouge officials *and* among the most responsible in order for the Court to properly exercise personal jurisdiction; the criteria are thus cumulative, not disjunctive.⁴
7. The SCC also pronounced itself on the jurisdictional nature of Article 1 of the ECCC Law. In this regard, the SCC found that the question of whether an accused is a Khmer Rouge official *“involves a question of historical fact that is intelligible, precise, and leaves little or no room for discretion of the Trial Chamber,”* and is therefore a justiciable issue covered by the personal jurisdiction of the ECCC.⁵
8. Conversely, with respect to the terms *“senior leaders”* and *“most responsible”*, the SCC found that these two categories were not jurisdictional criteria *stricto sensu*, but merely described the outlines of the prosecution and investigation policies to be employed by the Co-Prosecutors and, independently, by the OCIJ. It found them to be in principle unfettered by any strict rules of interpretation

³ Article 2 of the ECCC Agreement.

⁴ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, para. 57.

⁵ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, para. 61.

and in essence non-justiciable before the Trial Chamber or SCC, short of a showing of abuse of discretion through bad faith or unsound professional judgement.⁶

9. Nonetheless, in a judicial context, such an important threshold criterion, whatever its exact legal nature, cannot be interpreted without recourse to at least some pivotal considerations. Indeed, the very reference to an abuse of discretion based on bad faith or unsound professional judgement presupposes that there are parameters against which the exercise of the discretion can and must be measured, i.e. what constitutes the boundaries of good faith and sound professional judgement before the decision moves into the field of arbitrariness. The SCC cannot have had in mind an entirely free-wheeling selection policy approach by the OCP or OCIJ. We also disagree in principle with the argument that comparisons to other persons are not appropriate or feasible.⁷ Against this background, it becomes a secondary question of terminology whether one calls the criterion a jurisdictional requirement or a policy guideline. In essence, it entails a wide but not entirely non-justiciable margin of appreciation for the OCP and OCIJ.
10. While we have declared here (and the International CIJ separately elsewhere)⁸ that we disagree with the SCC's classification of "personal jurisdiction" as a non-jurisdictional criterion, we feel bound, by reason of practical judicial deference to the Court's supreme appellate body, to follow the substance of the SCC case law unless there are exceptional reasons for a disagreement and for taking an openly dissenting stance. This is the case notwithstanding the fact that the only direct appellate panel for the decisions of the OCIJ is the PTC and that in a civil law system such as that of Cambodia there is no doctrine of *stare decisis*. It would nonetheless be undesirable from the point of view of clarity

⁶ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, paras 79-81. We note, however, that neither the judgement in Case 001 nor that in Case 002/1 makes any reference to Internal Rule 98(7).

⁷ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, para. 62: "*First, there is no objective method for the Trial Chamber to decide on, compare, and then rank the criminal responsibility of all Khmer Rouge officials. Second, the notion of comparative criminal responsibility is inconsistent with Article 29 of the ECCC Law, which states, '[t]he position or rank of any Suspect shall not relieve such person of criminal responsibility or mitigate punishment.'*" – We also query the correctness of the reference to Article 29 in this context.

⁸ [REDACTED].

and uniformity of the law in a legal environment as closed as that of the ECCC for judges lower in the court hierarchy to disregard the SCC case law unless there were exceptional reasons.

*2.1.1. The Position of the ECCC within the Cambodian Legal System –
Exclusive Personal, Temporal and Subject-matter Jurisdiction*

11. The ECCC's personal jurisdiction criterion, however, gives rise to another potentially serious policy concern which needs to be addressed in this context in order to gauge the consequences of a finding of lack of personal jurisdiction, and what impact it should have on the exercise of the policy discretion by the CIJs when deciding to dismiss a case based on personal jurisdiction alone.
12. The matter in question is the absence of a residual jurisdiction for the ordinary Cambodian courts over crimes committed by those who do not fall under the categories of "senior leader" or "person most responsible". Upon a close study of the negotiation history preceding the establishment of the ECCC and the development since, especially as set out by the SCC, we are convinced that currently no other Cambodian court has jurisdiction over any person or course of events which are within the personal, temporal and subject-matter jurisdiction of the ECCC. An argument might therefore be made that we should counter the obvious effect of this view and exercise our discretion as broadly as possible in favour of a finding of personal jurisdiction in order to avoid an unwanted impunity gap. We disagree with that reasoning for the reasons set out below.
13. The SCC was aware, when expressing the above-mentioned principles, that unlike in other international(ised) jurisdictions which it cited in its argument, during the negotiation history between the UN and Cambodia the contours of the law on the ECCC were settled in the knowledge that there was no negotiated residual jurisdiction of the ordinary Cambodian courts or of an internationalised system as operated, for example, in Bosnia and Herzegovina and Kosovo, or the military tribunals after World War II, for any of the perpetrators that would remain below the ECCC's envisaged responsibility threshold.
14. Indeed, the SCC explicitly acknowledged the unique position of the ECCC as compared, for example, to that of the ICTY by stating:

“[...] the ECCC exists within the Cambodian legal system in which it exercises exclusive jurisdiction and no referral to another court is possible.”⁹

15. Similarly, the PTC had in 2011 already held that the Cambodian Government could have used its own ordinary courts to try the Khmer Rouge but instead it opted for the establishment of the ECCC:

“The [...] Government was [...] free to prosecute such crimes [...] as a basic exercise of its jurisdiction [...]. However, rather than using its pre-existing court structure, the [...] Government [...] agreed with the United Nations to establish the ECCC [...] and delegated its jurisdiction to hear these cases” (emphasis added).¹⁰

16. No attempts were ever made by either the Cambodian government or the United Nations to regulate the investigation and prosecution of those who would fall short of the personal jurisdiction threshold of the ECCC, because they were not among those most responsible. That stands to reason, because the goal of peace and reconciliation, which entails reintegration of the Khmer Rouge into society, was another paramount motivation of the Cambodian government.¹¹ It is worth noting that the – unlawful – detention of Kaing Guek Eav *alias* Duch by the Military Court of Cambodia had begun before the ECCC Law entered into force on 10 August 2001.¹² This so-called “impunity gap” and its relationship to the reintegration policy was expressly acknowledged as a fact – and as an anomaly compared to other tribunals – as early as 2008, for example, by the former Head of the DSS, Rupert Skilbeck.¹³
17. More specifically, unlike other courts or tribunals set up at the international level or as a hybrid (national) tribunal,¹⁴ neither the ECCC Agreement nor the ECCC Law contain a vertical *ne bis in idem* or primacy clause, i.e. a provision regulating the relationship between investigations, prosecutions and decisions at the national level in the ordinary courts and those at the level of the specialist

⁹ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, para. 71.

¹⁰ **Case File No. 002-D427/2/15**, *Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order*, 15 Feb 2011, para. 103.

¹¹ David Scheffer, “The Extraordinary Chambers in the Courts of Cambodia” in M. Cherif Bassiouni (ed.), *International Criminal Law, Volume III: International Enforcement*, 2008, 3rd ed., Koninklijke Brill NV, pp. 224-225, 240.

¹² **Case File No. 001-E39/5**, *Decision on Request for Release*, 15 June 2009.

¹³ Rupert Skilbeck, “Defending the Khmer Rouge”, *International Criminal Law Review*, Vol. 8(3), 2008, pp. 433-434.

¹⁴ Articles 9 and 10 of the ICTY Statute; Articles 8 and 9 of the ICTR Statute; Articles 8 and 9 of the SCSL Statute; Articles 4 and 5 of the STL Statute.

court. The applicable law before the ECCC hence does not *a priori* envisage a situation where a conflict of jurisdictions could exist that would require such a regulation.

18. An unqualified comparison to the referral bench's case law, for example, of the ICTY under Rule 11 *bis* of the Rules of Procedure and Evidence in order to gauge comparable levels of seriousness and responsibility is therefore ultimately not helpful because the *negotiated context* in the case of the ECCC was knowingly different: the drafters of the law wanted to restrict personal jurisdiction to those with the greatest responsibility under the DK, fully aware that the total death toll, for example, was in the region of a conservatively estimated 1.7 million people¹⁵ at the time. This is incidentally about the same as the major modern conflicts, including all situations before the ICC to date, combined (*see* Table 1 in Annex I). They also knew that there were a large number¹⁶ of potential perpetrators who each alone could have been responsible for hundreds or thousands of deaths – scenarios in which the ICTY Appeals Chamber, for example, overturned a referral decision because it took into account, *inter alia*, that the offender was deemed responsible for the deaths of 140 victims.¹⁷
19. The sheer scale of the casualties in the Khmer Rouge period, the negotiation history set out by the SCC,¹⁸ as well as the evidence from the investigation in Case 004/1 alone makes adopting a similar approach impossible, because measuring in such numerical categories would make many ordinary soldiers who routinely performed mass executions over periods of time, or their direct superior officers who ordered them, into persons most responsible, possibly leading to numerous new investigations under Internal Rule 55(4). That was clearly not something envisaged by the drafters of the law governing the ECCC, yet they were aware of the fact that this massive category of perpetrators existed and would not face justice. In this regard, between May and August 2016 and in

¹⁵ See David Scheffer, "The Extraordinary Chambers in the Courts of Cambodia" in M. Cherif Bassiouni (ed.), *International Criminal Law*, 2008, 3rd ed., Koninklijke Brill NV, p. 219.

¹⁶ David Scheffer, "The Extraordinary Chambers in the Courts of Cambodia" in M. Cherif Bassiouni (ed.), *International Criminal Law*, 2008, 3rd ed., Koninklijke Brill NV, p. 240.

¹⁷ *Prosecutor v. Lukić and Lukić*, Decision on Milan Lukić's appeal regarding referral, ICTY Appeals Chamber (IT-98-32/1-AR11bis.1), 11 July 2007, para. 25.

¹⁸ **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, paras 46-56.

an attempt to shed as much light as possible on the intentions of the parties to the ECCC Agreement, International CIJ Bohlander requested from the United Nations' Archives the records of the negotiations between the United Nations and the Royal Government of Cambodia on the establishment of the ECCC. However, the United Nations denied disclosure of the majority of the requested documents for confidentiality reasons.¹⁹

20. The fact that, for example, the 2009 Penal Code contains provisions on genocide, crimes against humanity and war crimes in Articles 183 to 198 and a general provision in Article 8 Penal Code declaring that the Penal Code shall

“not constitute a condition for denial of justice for the victims of serious offences provided in a separate law in relation to violations of international humanitarian law, international practices, or international conventions recognized by the Kingdom of Cambodia” (emphasis added),

does not allow the conclusion that there is jurisdiction for the ordinary courts: the reference above is to the ECCC Law, not to any law retrospectively authorising the ordinary courts.

21. Articles 3 and 10 of the 2009 Penal Code together embrace the rules of *nullum crimen* and of *lex mitior*, i.e. that the most lenient law has to be applied if the law between the commission of the offence and the trial is amended. The 1956 Penal Code did not contain any provisions on the above-mentioned crimes, which would leave only domestic offences as a theoretical residual category.
22. It is also far from clear whether Cambodian constitutional law would allow the direct application of offences recognised under international customary criminal law outside the remit of the ECCC Agreement and ECCC Law, because Article 31 of the 1993 Constitution only refers to *human rights* standards as possibly directly applicable. As the International CIJ explained in a different context, violations of human rights standards as such do not necessarily equate to criminal liability.²⁰

¹⁹ See **Case File No. 003-D181/2**, *Notice of Placement on the Case File of Available Records relating to the Establishment of the ECCC*, 8 September 2016, para. 19.

²⁰ **Case File No. 003-D191/18**, *Notification on the Interpretation of 'Attack Against the Civilian Population' in the Context of Crimes Against Humanity With Regard to a State's or Regime's Own Armed Forces*, 7 February 2017, para. 61.

23. In sum, the effect of the ECCC Law on personal jurisdiction is in our view twofold:
- (a) it restricts the ECCC's own personal jurisdiction to those most responsible; and
 - (b) it excludes any personal or subject-matter jurisdiction by the ordinary Cambodian courts over the events under the ECCC's temporal jurisdiction.
24. This doctrinal conclusion is also borne out by the empirical fact that there have been no investigations or prosecutions of such cases for lower-level perpetrators before any ordinary Cambodian court *after* the establishment of the ECCC, despite the fact that the DK period has left a major trauma in Cambodian society and there were thousands of potential perpetrators still alive who had committed serious crimes, either directly or as superiors.
25. There is thus a massive impunity gap for crimes committed during the DK era. For the reasons set out in the next section, however, this finding must have no policy impact on our exercise of discretion regarding personal jurisdiction.

2.1.2. Criminal Law Principles – the Effect of “In Dubio Pro Reo”, Strict Construction, Selective Jurisdiction and Selective Prosecution

26. Among the factors to be considered for the exercise of discretion are the principles of *in dubio pro reo* and of strict construction of the criminal law. We are of the view, in line with the interpretation of the principle by the SCC, that *in dubio pro reo* has a residual role in the interpretation of legal provisions, and its application is limited to doubts that remain after the application of the standard rules of interpretation.²¹ In some jurisdictions, the same effect would be achieved by the application of the principle of strict construction, for example, in Cambodian law²² and also at the ICC.²³

²¹ **Case File No. 003-D191/18**, *Notification on the Interpretation of ‘Attack Against the Civilian Population’ in the Context of Crimes Against Humanity With Regard to a State’s or Regime’s Own Armed Forces*, 7 February 2017, para. 21.

²² See Article 5 of the 2009 Penal Code.

²³ Article 22(2) of the ICC Statute:

27. The application of *in dubio pro reo* / strict construction is all the more crucial in systems where the law is often not fully settled, as is still the case in many areas of international(ised) criminal law. Particularly, but not only, from the point of view of the defence, the charges they have to defend and their legal content often have the appearance and nature of moving targets: The instances of divergent interpretation of identical legal concepts in the ECCC and other courts, not least on the very issue of personal jurisdiction,²⁴ are clear evidence of this.²⁵ The case of a special court with a narrowly tailored personal, temporal and subject-matter jurisdiction, based on contentious negotiations between a national government and the international community in a post-conflict transitional scenario, which began operations almost 30 years after the events in question, is a prime example for the need for interpretational judicial restraint.
28. This is true not least because of the pressure exerted by the public's expectations and the media on the grounds of concerns around the concept of impunity for mass atrocities, political agendas as well as previous historical research into the underlying events. In other words, in scenarios of this kind, the guilt of the suspects, charged persons and accused often seems beyond debate *ab initio* and the judicial proceedings are not infrequently expected simply to attach the seal of official approval and confirmation to the pre-existing general view of history.

"The definition of a crime shall be strictly construed and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted."

²⁴ See **Case File No. 001-F28**, *Appeal Judgement of Case 001*, 3 February 2012, para. 69.

²⁵ For example at the ECCC, the PTC has previously held that customary international law during 1975-1979 required a nexus between the underlying acts of crimes against humanity and an armed conflict; see **Case File No. 002-D427/2/12**, *Decision on Ieng Thirith and Nuon Chea's Appeal against the Closing Order*, 13 January 2011, p.6; and amended closing orders **Case File No. 002-D427/4/14**, *Decision on Khieu Samphan's Appeal against the Closing Order*, 13 January 2011, p. 4; and **Case File No. 002-D427/1/26**, *Decision on Ieng Sary's Appeal against the Closing Order*, 13 January 2011, pp. 4-5. However, the Trial Chamber later rejected the nexus requirement being part of the crimes against humanity definition during 1975-1979; see **Case File No. 002-E95/8**, *Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes against Humanity*, 26 October 2011, para. 33. Similarly, whereas the Trial Chamber considered rape to be a recognized offence under ECCC Law and international criminal law, the SCC held that rape was not a distinct crime against humanity during the ECCC's temporal jurisdiction; see **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 366; and **Case File 001-F28**, *Appeal Judgement*, 3 February 2012, paras 207-213. The PTC has since followed the SCC's ruling; see **Case File No. 002-D427/1/30**, *Decision on Ieng Sary's Appeal against the Closing Order*, 11 April 2011, paras 371-372. The Co-Prosecutors have again sought to characterize rape as a distinct crime against humanity, and the Trial Chamber is expected to deal with the issue in its Case 002/02 judgement; see **Case File 002-E99**, *Co-Prosecutors' Request for the Trial Chamber to recharacterize the facts establishing the conduct of rape as the crime against humanity of rape rather than the crime against humanity of other inhumane acts*, 16 June 2011; and **Case File 002-E124**, *Severance Order Pursuant to Internal Rule 89ter*, 22 September 2011, p. 4.

29. However, it is apposite to recall Robert H. Jackson's words spoken at the conference of the American Society of International Law on 13 April 1945 on the contentious judicial approach to punishing the Nazi war criminals before the start of the Nuremberg trials:

*"That is one of the risks that are taken whenever trials are commenced. The ultimate principle is that you must put no man on trial under the forms of judicial proceedings if you are not willing to see him freed if not proven guilty."*²⁶

30. To disregard this banal, yet vital truth would be tantamount to subscribing to the odious statement by Benedict Carpzov from 1652, that

*"[i]t is well-known that in the cases of the most serious offences the boundaries of the law may be disregarded because of the enormity of the crime."*²⁷

31. The ECCC is quite clearly a court which exercises selective justice in the objective sense of the word, because only a certain small group of people will ever be prosecuted in the courts of Cambodia for the atrocities which occurred during the DK, namely those which fall under its own jurisdiction.
32. Signing the ECCC Agreement in the absence of a residual jurisdiction in the ordinary Cambodian courts was a conscious political choice during the negotiations, balancing the call for integration of the remaining Khmer Rouge into society against the desire for some form of judicial closure for the horrendous suffering of the victims, whether they are dead or still alive, their families and society as a whole.
33. In this context, the fact that the ICP himself had already on 8 September 2009²⁸ and again on 26 November 2014²⁹ publicly indicated that there would be no more new investigations initiated after Cases 003 and 004 needs to be

²⁶ Cited in Christoph Safferling, "Nürnberg und die Zukunft des Völkerstrafrechts", *Juristenzeitung*, Vol. 70(22), 2015, p. 1063, fn. 34.

²⁷ *Notissimum est, quod in delictis atrocissimis propter criminis enormitatem jura transgredi liceat.* Benedict Carpzov, *Practica nova imperialis Saxonica rerum criminalium*, 1652, Pars III, Quaestio C II.

²⁸ "Statement of the Acting International Co-Prosecutor – Submission of Two New Introductory Submissions", 8 September 2009, available at: [https://www.eccc.gov.kh/sites/default/files/media/ECCC_Act_Int_Co_Prosecutor_8_Sep_2009_\(Eng\).pdf](https://www.eccc.gov.kh/sites/default/files/media/ECCC_Act_Int_Co_Prosecutor_8_Sep_2009_(Eng).pdf) (last accessed on 28 June 2017).

²⁹ "Statement by the International Co-Prosecutor regarding ECCC caseload", 26 November 2014, available at: <https://www.eccc.gov.kh/en/articles/statement-international-co-prosecutor-regarding-eccc-caseload> (last accessed on 28 June 2017).

mentioned: while no offender can under law claim that they are being treated unfairly because many others are not prosecuted who may be as responsible as they are, as long as they themselves receive a fair trial, selective prosecution in an already selective jurisdiction may present wider issues of moral fairness.³⁰ This enhances the need for an acknowledgment of the fact that a rigorous and robust evaluation of the evidence against those few who are being investigated is required.

34. It is undoubtedly difficult from the point of view of general criminal policy for the public and the victims in the wider meaning of the term to accept, for example, that even the soldiers who routinely killed small children by bashing their heads against trees³¹ or who had competitions about who could kill the greatest number of people,³² should not face justice. The same applies to those who directly committed many gruesome and cruel barbarities such as, for example, eviscerating victims before executing them, collecting their gall bladders or livers and in some instances even cooking and eating them.³³ In many domestic criminal justice systems such conduct would attract a whole life sentence without parole and in some countries possibly even the death penalty for *each individual act* of each individual offender.
35. This discrepancy, to reiterate what was said above, was known during the negotiations by both the national and international sides. It is also a common feature of any international(ised) jurisdiction set up to bring judicial closure to post-conflict scenarios. The selective approach to jurisdiction with a *de facto* negotiated impunity for virtually the entirety of the former Khmer Rouge will appear unpalatable and indeed unfair to many. However, on the one hand the informed political decision of the drafters must be respected by the judges of the ECCC and, on the other hand, this state of affairs must not and cannot equate to a presumption of guilt or, more to the point, to an automatic presumption of senior responsibility for those few who *are* brought before the court by allegations of the OCP.

³⁰ See e.g. Robert Cryer, *Prosecuting International Crimes- Selectivity and the International Criminal Law Regime*, 2005, Cambridge University Press.

³¹ [REDACTED].

³² [REDACTED].

³³ [REDACTED].

36. If at all, any such presumption must operate the other way. The fact that after such a long time some of the crucial evidence, through witnesses or otherwise, may have deteriorated to a point where reliable details, and indeed witnesses, may become difficult to come by, is not something which can ever be laid at the feet of the defence in criminal investigations or give rise to a lesser standard of proof for indictment or conviction. The defence are entitled to a dispassionate evaluation of the evidence and interpretation of the law at all levels of the ECCC's judicial hierarchy, beginning with the OCIJ.

2.1.3. Criteria for the Exercise of Discretion – Decision-making in the DK Structures

37. We note that by adopting the definition laid out in its judgement in Case 001, the SCC also implicitly held that there is no merit in any historical-political contention that the negotiations around the establishment of the ECCC led to a joint and binding understanding that only a certain finite number of (named) individuals were to be under the Court's jurisdiction: the selection of persons to be investigated and indicted was and is purely a matter for the discretion of the OCP and OCIJ, and based entirely on the merits of each individual case.
38. In theory, a senior leader who had not been substantially involved in the criminal activities of the DK might fall outside the ambit of the court's jurisdictional reach as not being most responsible. Conversely, someone on the lower rungs of the hierarchy could be considered as one of the most responsible depending on their individual contribution to the atrocities. The relative gravity of the person's own actions and their effects are thus another valid point of reference, subject to what was said above with regard to the overall impact of mere numbers. In that sense, the considerations to be employed for the question of personal jurisdiction are not entirely dissimilar to those one would use for sentencing purposes.
39. This should not detract from the obvious initial filtering effect that a person's formal position in the hierarchy has. One important, but not conclusive or exclusive, consideration in deciding who was among those "most responsible" is

the degree to which the offender was able to contribute to or even determine policies and/or their implementation.

40. As our analysis of the evidence below will show, another general fact needs to be borne in mind, namely that despite the regular meetings held, decision-making in the Khmer Rouge hierarchy was not a formal democratic process with the possibility for egalitarian input from functionaries at any level and an ensuing discussion of the way forward: decisions were made at the top and then implemented by the lower levels on pain of personal consequences at any level, but increasingly so the further down the chain of command one looks, if the orders were not adhered to. This does not contradict the fact that the policies were often couched in rather general terms by the top echelons and the lower cadres were given some leeway regarding the details of their implementation; nor does the increasing difficulty of maintaining organisational structures towards the end of the DK mandate a different point of view. Whether someone developed or had to develop their own initiative in these circumstances is not in and of itself a criterion that would elevate them into the category of those most responsible. The fact remains that at all times, the ultimate definition of the content of policies and the means of their implementation rested with the top echelons, which could interfere at will.
41. This was combined with the pervasive use of mostly vertical lines of communication in the chain of command and the accompanying intended secrecy which generally did not permit, or at least did not encourage or facilitate, a free, egalitarian horizontal exchange of tactical and operational information on the levels below the top leadership. Indeed, openly discussing instructions from *Angkar* between, for example, regimental or battalion commanders could easily have been considered by the superior levels as the first step to insubordination, and no-one could be safe in the assumption that such conversations would not be reported in interested quarters with adverse effect upon themselves.

2.2 Crimes under the Jurisdiction of the ECCC

42. National and international crimes under the jurisdiction of the ECCC are listed in Articles 3 to 7 of the ECCC Law. This section will only summarise the law relevant to the crimes alleged and charged against **Im Chaem**.

2.2.1. National crimes (Violations of the 1956 Penal Code)

43. Article 3 new of the ECCC Law gives the CIJs jurisdiction over the crimes of homicide,³⁴ torture,³⁵ and religious persecution³⁶ as violations of the 1956 Penal Code, which was the criminal code applicable from 1975 to 1979.³⁷

2.2.1.1. Homicide

44. There are two forms of the domestic crime of homicide under the 1956 Penal Code: (1) homicide without the intent to kill,³⁸ and (2) premeditated murder.³⁹

45. The domestic crime of homicide requires the following elements:

- (a) *Actus reus*: For both forms of homicide, the perpetrator must have caused the death of another person.⁴⁰
- (b) *Mens rea*:
 - (i) For homicide without the intent to kill, the perpetrator must have taken acts “*with the aim of harming persons*” but not with “*the intent to cause death*”.⁴¹
 - (ii) For premeditated murder, the perpetrator must have had taken acts “*with premeditation*” and “*with the intent to cause death*”.⁴²

³⁴ Articles 501, 503, 504, 505, 506, 507, and 508 of the 1956 Penal Code.

³⁵ Article 500 of the 1956 Penal Code.

³⁶ Articles 209 and 210 of the 1956 Penal Code.

³⁷ Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, para. 92.

³⁸ Article 503 of the 1956 Penal Code; **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, paras 74-75.

³⁹ Article 506 of the 1956 Penal Code; **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, paras 74, 76.

⁴⁰ **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, para. 74.

⁴¹ **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, para. 75.

Premeditation is defined as “*the decision to act before the action is actually undertaken, whereby the amount of time after this decision must be long enough for the author to perform preparatory acts*”.⁴³

46. The PTC has found that homicide without the intent to kill is subsumed by the international crime of murder,⁴⁴ while premeditated murder, which requires premeditation and a higher *mens rea*, i.e. the intent to kill rather than the lesser intent to cause serious bodily harm, is not.⁴⁵

2.2.1.2. Torture

47. The domestic crime of torture under the 1956 Penal Code requires the following elements:

- (a) *Actus reus*: The perpetrator must have committed “*acts of torture on another person*”.⁴⁶
- (b) *Mens rea*: The *perpetrator* must have committed such acts (1) for the purpose of obtaining information “*useful for the commission of a felony or a misdemeanour*”; (2) “*out of reprisal*”; or (3) “*out of barbarity*”.⁴⁷

48. While the 1956 Penal Code does not indicate what might constitute “acts of torture”, there is no indication that the *actus reus* differs from that of the international crime of torture (i.e. “*infliction, by an act or omission, of severe pain or suffering, whether physical or mental*”).⁴⁸

49. The PTC has found that of the three alternative forms of *mens rea*, the second (reprisal) is subsumed by the international crime of torture, while the first

⁴² Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 76.

⁴³ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 78.

⁴⁴ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 83.

⁴⁵ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 84.

⁴⁶ Article 500 of the 1956 Penal Code; Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 62.

⁴⁷ Article 500 of the 1956 Penal Code; Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 62.

⁴⁸ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 68.

(obtaining information useful for the commission of a crime) and the third (barbarity) are not.⁴⁹ Therefore, the PTC has not considered the crime of torture set forth in Article 500 of the 1956 Penal Code to be subsumed under torture as a crime against humanity.⁵⁰

50. The PTC has not addressed the meaning of “barbarity”, and there is no guidance in the 1956 Penal Code. However, the PTC found that there was insufficient evidence in the Case 001 Closing Order that the torture at S-21 was committed out of barbarity.⁵¹

2.2.1.3. Religious Persecution

51. Articles 209 and 210 of the 1956 Penal Code set out the crimes of religious persecution. Article 209 reads in French:

“L’attentat contre la vie d’un religieux pratiquant un culte reconnu par le Gouvernement cambodgien, dans l’exercice ou à l’occasion de l’exercice de sa profession, est puni de la peine criminelle du troisième degré.”

52. With the assistance of the French translation, the English translation from the original Khmer version of Article 209 is determined to be as follows:

“The attack on the life of a minister of a religion recognised by the Cambodian Government, while performing, or in the context of performing his or her ministry, is punishable by criminal penalty of the third degree.”

53. Article 210 reads in French:

“L’attentat contre la personne d’un religieux pratiquant un culte reconnu par le Gouvernement cambodgien, dans l’exercice ou à l’occasion de l’exercice de sa profession, est puni de la peine criminelle du deuxième degré.”

54. With the assistance of this French translation, the English translation from the original Khmer version of Article 210 is determined to be as follows:

⁴⁹ **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, paras 69-71.

⁵⁰ **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, para. 72.

⁵¹ **Case File No. 001-D99/3/42**, *Decision on Appeal against Closing Order*, 5 December 2008, para. 101.

“The attack on the person of a minister of a religion recognised by the Cambodian Government, while performing, or in the context of performing his or her ministry, is punishable by criminal penalty of the second degree.”

55. Based on the above, the elements of the crimes of religious persecution are as follows:

- (a) *Actus reus*: The perpetrator must have committed attacks against the life or the person of a “*minister practising a religion recognised by the Cambodian Government, while performing, or in the context of performing his or her ministry*”.⁵²
- (b) *Mens rea*: While the 1956 Penal Code does not specifically address the necessary *mens rea*, general principles of Cambodian criminal law dictate that the perpetrator must have intentionally committed the *actus reus*.

56. The 1956 Penal Code specifies that “*Buddhism is the State religion*”.⁵³ The notes that follow each of Articles 209 and 210 state that for attacks on the life or person of a non-Buddhist religious practitioner, to refer to Articles 495 (attacks on the person) and 501 (homicide) of the 1956 Penal Code.⁵⁴ Therefore, the applicability of the domestic crime of religious persecution is restricted to attacks on Buddhist monks.

2.2.2. Crimes against Humanity

57. The sources of applicable international law during the relevant period are international conventions, customary international law, and general principles of law recognised by the community of nations.⁵⁵ While the jurisprudence of the *ad hoc* tribunals established since the 1990s is not binding in proceedings before the ECCC,⁵⁶ the SCC has accepted reliance on their decisions, insofar as the

⁵² Articles 209 and 210 of the 1956 Penal Code.

⁵³ 1956 Penal Code, Book V, Chapter II.

⁵⁴ The note following Article 209 reads in French: “*Attentat contre la vie d’un religieux non bouddhiste: voir Code Pénal : articles 501 et suivants.*” The note following Article 210 reads in French: “*Attentat contre la personne d’un religieux non bouddhiste, voir Code Pénal : articles 495 et suivants.*”

⁵⁵ **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 17-18; **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, para. 92.

⁵⁶ **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, para. 97, *citing* Article 38 of the Statute of the International Court of Justice.

tribunals' holdings on elements of crimes and modes of liability reflect the law as it existed during the temporal jurisdiction of the ECCC and were foreseeable and accessible to the charged persons at the time relevant to the charges.⁵⁷

58. Article 5 of the ECCC law gives the ECCC jurisdiction over crimes against humanity, which it defines as “*any acts committed as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnical, racial or religious grounds*” such as murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political, racial, and religious grounds, and other inhumane acts.
59. These crimes against humanity, with the exception of rape, were part of customary international law between 1975 and 1979.⁵⁸ With regard to rape, the SCC held that it was not a distinct crime against humanity between 1975 and 1979, the period covered by the ECCC jurisdiction.⁵⁹ However, the ECCC has jurisdiction over rape as an act of torture, when all the other elements of torture are satisfied,⁶⁰ and as an act amounting to other inhumane acts.⁶¹

2.2.2.1. Chapeau Elements of Crimes against Humanity

60. ***Existence of an Attack*** – An attack is a course of conduct involving a series of acts of violence, which is not strictly limited to the use of armed force, and may

⁵⁷ **Case File No. 001-F28, Appeal Judgement**, 3 February 2012, para. 97.

⁵⁸ **Murder: Case File No. 002-E313, Judgement**, 7 August 2014, para. 411; **Extermination: Case File No. 002-E313, Judgement**, 7 August 2014, para. 415; **Enslavement: Case File No. 001-E188, Judgement**, 26 July 2010, para. 342; **Imprisonment: Case File No. 001-E188, Judgement**, 26 July 2010, para. 347; **Torture: Case File No. 001-E188, Judgement**, 26 July 2010, para. 353; **Case File No. 001-F28, Appeal Judgement**, 3 February 2012, paras 195-205; **Persecution on Political Grounds: Case File No. 002-E313, Judgement**, 7 August 2014, para. 426; **Case File No. 001-F28, Appeal Judgement**, 3 February 2012, para. 225; **Other Inhumane Acts: Case File No. 002-E313, Judgement**, 7 August 2014, para. 435.

⁵⁹ **Case File No. 001-F28, Appeal Judgement**, 3 February 2012, paras 180-183.

⁶⁰ **Case File No. 001-F28, Appeal Judgement**, 3 February 2012, paras 207-208, 213.

⁶¹ **Case File No. 002-D427/2/12, Pre-Trial Chamber Decision on Ieng Thirith's and Nuon Chea's Appeals Against the Closing Order**, order 11(2); **Case File No. 002-D427, Closing Order**, 15 September 2010, para. 1433; **Prosecutor v. Akayesu**, ICTR-96-4-T, Trial Judgement, 2 September 1998, para. 688.

include mistreatment of the civilian population.⁶² An attack on the civilian population is a different concept from that of an armed conflict.⁶³

61. ***Widespread or systematic nature of the attack*** – The ‘widespread’ requirement refers to the large-scale nature of the attack and the number of victims, whereas the ‘systematic’ element refers to the organised nature of the acts of violence.⁶⁴ Proof of either the widespread or systematic character of the attack is sufficient to satisfy this *chapeau* element of crimes against humanity.⁶⁵
62. ***Directed against any civilian population*** – The attack must be primarily directed against a civilian population.⁶⁶ It is not necessary to show that the entire population of a geographic entity was subject to the attack. It is sufficient that enough individuals were targeted in the course of the attack.⁶⁷ The population subject to the attack must be predominantly civilian in nature.⁶⁸ The presence, within the civilian population, of individuals who do not qualify as civilians does not necessarily deprive the population of its civilian character.⁶⁹
63. ***On national, political, ethnical, racial or religious grounds*** – Article 5 of the ECCC Law requires that the attack as defined above be carried out on national, political, ethnical, racial, or religious, but not necessarily on discriminatory grounds.⁷⁰ This is a jurisdictional requirement that applies to the attack in

⁶² **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 178; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 298.

⁶³ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 178; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 298.

⁶⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 179; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 300.

⁶⁵ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 179; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 300.

⁶⁶ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 182; *Prosecutor v. Kunarac et al.*, *Judgement*, ICTY Appeals Chamber (IT-96-23 & IT-96-23/1-A), 12 June 2002, paras 91-92 (“Kunarac Appeal Judgement”).

⁶⁷ **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 182-183; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 302-303, 305, 308.

⁶⁸ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 738, 740; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 183; *Prosecutor v. Dragomir Milošević*, *Judgement*, ICTY Appeals Chamber (IT-98-29/1-A), 12 November 2009, paras 50-51.

⁶⁹ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 740; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 183; *Prosecutor v. Galić*, *Judgement*, ICTY Appeals Chamber (IT-98-29-A), 30 November 2006, paras 136-138.

⁷⁰ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 742, 744-745; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 188.

general, and not to the underlying offences.⁷¹ It is, therefore, not necessary to prove discriminatory intent for all the underlying crimes against humanity. Discriminatory intent is only a requirement in relation to the underlying crime of persecution.⁷²

64. ***Nexus between the acts of the charged person and the attack*** – The acts of the perpetrator must, by their nature or consequences, be objectively part of the attack against the civilian population.⁷³
65. ***Requisite knowledge*** – A perpetrator must have known of the attack on the civilian population and that his or her acts were part of it. He or she is not required to be aware of the details of the attack or share the purpose or goals of the broader attack.⁷⁴
66. ***No nexus with armed conflict*** – The existence of a nexus between crimes against humanity and an armed conflict was no longer a constitutive element of crimes against humanity between 1975 and 1979.⁷⁵

2.2.2.2. *Elements of the Crimes against Humanity Listed in Article 5 of the ECCC Law*

67. The elements of **murder** are:

⁷¹ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 744; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 188.

⁷² **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 744; **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 188-189; **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, para. 238. *See also Prosecutor v. Akayesu*, *Judgement*, ICTR Appeals Chamber (ICTR-96-4-A), 1 June 2001, paras 465-466.

⁷³ **Case File No. 002-F36**, *Appeal Judgement*, paras 753-754; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 190; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 318; Kunarac *Appeal Judgement*, para. 99.

⁷⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 191; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 319; Kunarac *Appeal Judgement*, paras 102-103.

⁷⁵ **Case File No. 003-D87/2/1.7/1**, *Decision on Meas Muth's Request for Clarification Concerning Crimes Against Humanity and the Nexus with Armed Conflict*, 5 April 2016. *See also Case File No. 002-E313*, *Case 002/1 Judgement*, 7 August 2014, para. 177 and **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 721, 732. The PTC had found in 2011 that the nexus was an element of crimes against humanity between 1975 and 1979, *see Case File No. 002-D427/3/15*, *Decision on Appeal by Nuon Chea and Ieng Thirith against the Closing Order*, 15 February 2011 and **Case File No. 002-D427/1/30**, *Decision on Ieng Sary's Appeal against the Closing Order*, 11 April 2011. However, following an appeal against the International CIJ's Case 003 decision of 5 April 2016 (**Case File No. 003-D87/2/1.7/1**), the PTC has reconsidered its previous stance and found that no nexus was required, thereby aligning itself with the other ECCC chambers, *see Case File No. 003-D87/2/1.7/1/1/7*, *Decision on Meas Muth's Appeal against the International Co-Investigating Judge's Decision on Meas Muth's Request for Clarification concerning Crimes against Humanity and the Nexus with Armed Conflict*, 10 April 2017.

- (a) *Actus reus*: an act or omission resulting in the death of the victim.⁷⁶
- (b) *Mens rea*: the intent of the perpetrator to either kill or cause serious bodily harm in the reasonable knowledge that such act or omission would likely lead to the death of the victim.⁷⁷

68. The elements of **extermination** are:

- (a) *Actus reus*: an act, omission, or a combination of both, resulting in the death of persons on a massive scale.⁷⁸ There is no minimum number of victims required to establish extermination.⁷⁹ The assessment of the “massive scale” requirement must be made on case-by-case basis, having regard to such factors as the time and place of the killings, the selection of the victims and the manner in which they were targeted, and whether the killings were aimed at the collective group rather than the victims in their individual capacity.⁸⁰
- (b) *Mens rea*: the intent to kill persons on a massive scale, or to inflict serious bodily injury or create living conditions calculated to bring about the destruction of a numerically significant part of the population.⁸¹ The SCC took the position that the aim of extermination is to eliminate individuals that are part of a group and that it is thus incompatible with the notion of *dolus eventualis*. It then clarified that, however, knowledge that the *actus reus* would cause certain death is not required, but rather, what is necessary is “a showing that the killing of members of a group is what was desired by the perpetrator, irrespective of whether he was certain that this

⁷⁶ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 412; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 331.

⁷⁷ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 391, 409, 410; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 412; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 333.

⁷⁸ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 520; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 416; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 334.

⁷⁹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 416; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 336.

⁸⁰ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 525, 527; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 416; *Prosecutor v. Lukić and Lukić*, *Judgement*, ICTY Appeals Chamber (IT-98-32/1-A), 4 December 2012, para. 538.

⁸¹ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 520, 522, citing *Prosecutor v. Krstić*, *Judgement*, ICTY Trial Chamber (IT-98-33-T), 2 August 2001, para. 503; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 338.

would actually happen. Mere knowledge that deaths may occur would be insufficient.”⁸²

69. The elements of **enslavement** are:

- (a) *Actus reus*: the exercise of any or all powers attaching to ownership over a person.⁸³ Forced or involuntary labour may constitute enslavement.⁸⁴ Proof of ill-treatment is not necessary to find the existence of the crime of enslavement.⁸⁵
- (b) *Mens rea*: the perpetrator must have intentionally exercised a power attaching to ownership over a person.⁸⁶

70. The elements of **imprisonment** are:

- (a) *Actus reus*: the arbitrary deprivation of liberty without due process of law, or based on national legal provisions that violate international law.⁸⁷ Not every minor infringement of the right to liberty amounts to imprisonment, and such deprivation must be of similar gravity and seriousness as the other crimes against humanity set forth in Article 5 of the ECCC Law.⁸⁸
- (b) *Mens rea*: the perpetrator intended to arbitrarily deprive the individual of his or her liberty, or acted with the reasonable knowledge that his or her actions were likely to cause the arbitrary deprivation of liberty.⁸⁹

71. The elements of **torture** are:

⁸² **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 520.

⁸³ **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 342, 346.

⁸⁴ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 344; *Prosecutor v. Krnojelac*, *Judgement*, ICTY Trial Chamber (IT-97-25T), 15 March 2002, para. 359 (“Krnojelac Trial Judgement”); *Prosecutor v. Kunarac et al.*, *Judgement*, ICTY Trial Chamber (IT-96-23-T & IT-96-23/1-T), 22 February 2001, paras 542-543.

⁸⁵ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 344; *Kunarac Appeal Judgement*, para. 123, citing *US v. Oswald Pohl and Others*, *Judgement*, 3 November 1947, reprinted in *Trials of War Criminals before the Nuremberg Military Tribunals under Control Council No. 10*, Vol. 5, (1997), p. 970.

⁸⁶ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 345; *Kunarac Appeal Judgement*, para. 122.

⁸⁷ **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 347-348.

⁸⁸ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 349, citing *Prosecutor v. Ntagerura et al.*, *Judgement*, ICTR Trial Chamber (ICTR-99-46-T), 25 February 2004, para. 702. *See contra* Krnojelac Trial Judgement, para. 112.

⁸⁹ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 350; Krnojelac Trial Judgement, para. 115.

- (a) *Actus reus*: any act causing severe pain or suffering, whether physical or mental, committed or instigated by a public official, for such purposes as obtaining information or a confession; punishment; or intimidation.⁹⁰
- (b) *Mens rea*: the perpetrator must intend to inflict severe pain or suffering on the victim.⁹¹

72. The SCC has held that **rape** may amount to torture, when all the other elements of the crime of torture are also established.⁹² The Trial Chamber in Case 001, endorsed by the SCC,⁹³ characterised rape as:

- (a) *Actus reus*: the sexual penetration, however slight, of the vagina or anus of the victim by a penis or any other object; or the mouth of the victim by a penis, where such sexual penetration occurs without the consent of the victim or under circumstances where no consent was possible.⁹⁴
- (b) *Mens rea*: the perpetrator must have acted with the intent to effect this sexual penetration, in the knowledge of the lack of consent of the victim or of the coercive circumstances within which no consent was possible.⁹⁵

73. The elements of the crime of **persecution** are:

- (a) *Actus reus*: an act or omission which discriminates in fact and denies or infringes upon a fundamental right laid down in international customary law or treaty.⁹⁶ The discriminatory element in the *actus reus* is established when the victim is targeted due to membership of a group that is subjectively defined and consequently persecuted by the perpetrator on political, racial, or religious grounds.⁹⁷ The victim must also actually belong to a sufficiently discernible political, racial, or religious group,

⁹⁰ Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, para. 195.

⁹¹ Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, para. 195.

⁹² Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, paras 207-208, 213.

⁹³ Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, para. 208.

⁹⁴ Case File No. 001-E188, *Judgement*, 26 July 2010, para. 362.

⁹⁵ Case File No. 001-E188, *Judgement*, 26 July 2010, para. 365.

⁹⁶ Case File No. 002-F36, *Appeal Judgement*, 23 November 2016, paras 667-668; Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, paras 257, 261-262, 267, 271-278; Case File No. 002-E313, *Judgement*, 7 August 2014, paras 427-428.

⁹⁷ Case File No. 002-F36, *Appeal Judgement*, 23 November 2016, paras 667, 678-679, 687, 695; Case File No. 001-F28, *Appeal Judgement*, 3 February 2012, paras 272-273, 274, 276, 277; Case File No. 002-E313, *Judgement*, 7 August 2014, para. 428.

such that the requisite persecutory consequences occur for the group.⁹⁸ In this regard, the SCC has held that there is no discrimination when there is a mistake of fact by the perpetrator as to whether a victim actually belongs to the defined targeted group, or when the perpetrator targets victims irrespective of whether they fall under the discriminatory criterion, or, in other words, when the targeting is “indiscriminate”.⁹⁹ Persecution on political grounds takes into account the perpetrator’s perspective when defining the group that is the object of persecution and thus does not require that the members of the targeted group hold common, or even any, political views.¹⁰⁰ Persecution may be committed through one or more of the other underlying crimes against humanity listed in Article 5 of the ECCC Law, as well as through other acts which are characterised by the same level of gravity or seriousness, including acts which are not necessarily crimes in and of themselves.¹⁰¹

- (b) *Mens rea*: the deliberate perpetration of an act or omission with the intent to discriminate on political, racial, or religious grounds.¹⁰² According to consolidated international jurisprudence, even when the underlying acts amount to crimes under international law, the *mens rea* required for these crimes need not be established: it suffices to prove that the underlying act was carried out with the required discriminatory intent.¹⁰³

74. The elements of **other inhumane acts** are:

- (a) *Actus reus*: an act or omission of the perpetrator causing serious bodily or mental harm or constituting a serious attack on human dignity.¹⁰⁴ The acts

⁹⁸ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 668; **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, paras 274-277; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 428.

⁹⁹ **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, para. 277. *See also* paras 272-276.

¹⁰⁰ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 668, 677-680; **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, paras 272-273.

¹⁰¹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 433; *Prosecutor v. Brđanin*, *Judgement*, ICTY Appeals Chamber (IT-99-36-A), 3 April 2007, para. 296 (“Brđanin Appeal Judgement”); *Prosecutor v. Blaškić*, *Judgement*, ICTY Appeals Chamber (IT-95-14-A), 29 July 2004, para. 135 (“Blaškić Appeal Judgement”).

¹⁰² **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 427; **Case File No. 001-F28**, *Appeal Judgement*, 3 February 2012, para. 257.

¹⁰³ *Prosecutor v. Popović et al.*, *Judgement*, ICTY Appeals Chamber (IT-05-88-A), 30 January 2015, para. 738 (“Popović Appeal Judgement”); Brđanin Appeal Judgement, para. 296.

¹⁰⁴ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 580.

or omissions of the perpetrator must be of a nature and gravity similar to the other crimes against humanity enumerated under Article 5 of the ECCC Law, assessed on a case-by-case basis, with due regard to the individual circumstances of the case.¹⁰⁵ The effect of the suffering is not required to be long-term, although this may be a relevant factor for the determination of the seriousness of the act.¹⁰⁶

- (b) *Mens rea*: the perpetrator must have deliberately performed the act or omission with the intent to inflict serious bodily or mental harm or commit a serious attack upon the human dignity of the victim at the time of the act or omission.¹⁰⁷

75. Enforced disappearances¹⁰⁸ and attacks against human dignity¹⁰⁹ may qualify as other inhumane acts.

76. ***Enforced disappearances*** – The elements of enforced disappearances are: (i) an individual is deprived of his or her liberty; (ii) the deprivation of liberty is followed by the refusal to disclose information regarding the fate or whereabouts of the person concerned, or to acknowledge the deprivation of liberty; (iii) the individual is denied recourse to the applicable legal remedies and procedural guarantees; and (iv) the first and second elements were carried out by state agents, or with the authorisation, support or acquiescence of a state or political organisation.¹¹⁰

77. ***Attacks against human dignity*** – Deprivation of food, water, adequate shelter, medical assistance, and the subjection of an individual to unacceptable sanitary conditions, in the context of detention, may constitute attacks against the human

¹⁰⁵ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, paras 567, 586; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 438.

¹⁰⁶ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 439; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 369.

¹⁰⁷ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 580; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 437; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 368, 371.

¹⁰⁸ **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 444-448; *Prosecutor v. Kupreškić et al.*, *Judgement*, ICTY Trial Chamber (IT-95-16-T), 14 January 2000, para. 566; *Prosecutor v. Brima et al.*, *Judgement*, SCSL Appeals Chamber (SCSL-04-16-A), 22 February 2008, para. 184 (“Brima Appeal Judgement”).

¹⁰⁹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 458.

¹¹⁰ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 448.

dignity of the detainees¹¹¹ and may fall within the ambit of ‘other inhumane acts’ when they are of similar gravity to the other crimes against humanity listed under Article 5 of the ECCC Law.¹¹²

2.3 Modes of Liability

2.3.1. Modes of Liability Applicable to International Crimes (Crimes against Humanity)

78. Pursuant to Article 29 of the ECCC Law, an individual may be held criminally responsible through the modes of liability of commission (including by participation in a JCE), planning, instigating, ordering, aiding and abetting, and superior responsibility. These forms of liability were all part of customary international law during the time period covered by the ECCC’s temporal jurisdiction.¹¹³
79. **Commission** – This form of criminal liability encompasses physical perpetration or culpable omission of an act.¹¹⁴ The alleged perpetrator must have acted with the intent to commit the crime, or with an awareness of the substantial likelihood that the crime would occur as a consequence of the alleged conduct.¹¹⁵ Commission also encompasses participation in a JCE,¹¹⁶ which is discussed further below.
80. **Planning** – This form of criminal liability arises when one or more persons design criminal conduct constituting one or more crimes that were later perpetrated.¹¹⁷ The planning must have preceded and substantially contributed to

¹¹¹ **Case File No. 002-E313, Judgement**, 7 August 2014, para. 457; *Prosecutor v. Prlić et al.*, Judgement, Vol. III, ICTY Trial Chamber III (IT-04-74-T), 29 May 2013, paras 1159, 1162 (“Prlić Trial Judgement”).

¹¹² **Case File No. 002-E313, Judgement**, 7 August 2014, para. 458.

¹¹³ **Commission: Case File No. 001-E188, Judgement**, 26 July 2010, para. 479; **Planning: Case File No. 002-E313, Judgement**, 7 August 2014, para. 697; **Instigating: Case File No. 002-E313, Judgement**, 7 August 2014, para. 699; **Ordering: Case File No. 002-E313, Judgement**, 7 August 2014, para. 701; **Aiding and Abetting: Case File No. 002-E313, Judgement**, 7 August 2014, para. 703; **Superior Responsibility: Case File No. 002-E313, Judgement**, 7 August 2014, para. 714.

¹¹⁴ **Case File No. 001-E188, Judgement**, 26 July 2010, para. 479.

¹¹⁵ **Case File No. 001-E188, Judgement**, 26 July 2010, para. 481.

¹¹⁶ **Case File No. 001-E188, Judgement**, 26 July 2010, para. 479.

¹¹⁷ **Case File No. 002-E313, Judgement**, 7 August 2014, para. 698; **Case File No. 001-E188, Judgement**, 26 July 2010, para. 518; *Prosecutor v. Kordić and Čerkez*, Judgement, ICTY Appeals Chamber (IT-95-14/2-A), 17 December 2004, para. 26 (“Kordić Appeal Judgement”).

the commission of the crimes.¹¹⁸ The alleged perpetrator must have had the intent for the crime to be committed, or have been aware of the substantial likelihood that the crime would be committed in the execution or implementation of the plan.¹¹⁹

81. **Instigating** – This form of criminal liability arises when an individual, through an act or an omission, prompts another person to commit a crime.¹²⁰ Instigation may be established through implicit written or other non-verbal prompting, and it is not necessary to establish authority between the alleged instigator and perpetrator.¹²¹ The instigation must precede and substantially contribute to the commission of the crime.¹²² The instigator must intend to provoke or induce the commission of the crime, or be aware of the substantial likelihood that a crime would be committed in the execution of the instigation.¹²³
82. **Ordering** – This form of criminal liability arises when an individual, in a position of *de facto* or *de jure* authority, instructs another person to commit a crime.¹²⁴ No formal superior-subordinate relationship is required between the person giving the instruction and the person receiving it.¹²⁵ The order in question, which is not required to take any particular form,¹²⁶ must have substantially contributed to the criminal conduct.¹²⁷ Responsibility for ordering may ensue also where an individual passes down or otherwise transmits an order, including through intermediaries.¹²⁸ The ordering person must have had

¹¹⁸ Case File No. 001-E188, *Judgement*, 26 July 2010, para. 518.

¹¹⁹ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 698; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 519.

¹²⁰ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 700; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 522.

¹²¹ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 700; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 522.

¹²² Case File No. 002-E313, *Judgement*, 7 August 2014, para. 700; Kordić Appeal Judgement, para. 27.

¹²³ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 700; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 524.

¹²⁴ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 702; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 527.

¹²⁵ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 702; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 527.

¹²⁶ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 702; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 527.

¹²⁷ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 702; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 527.

¹²⁸ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 702; Case File No. 001-E188, *Judgement*, 26 July 2010, para. 527.

the intent to bring about the commission of the crime, or have been aware of the substantial likelihood that the crime would be committed as a consequence of the execution or implementation of the order.¹²⁹

83. ***Aiding and Abetting*** – This form of criminal liability arises when an individual provides practical assistance, encouragement, or moral support, which has a substantial effect on the commission of a crime.¹³⁰ Both acts and omissions may constitute aiding and abetting.¹³¹ A plan or a prior agreement between the principal perpetrator and the aider or abettor is not required.¹³² Further, it is not required to establish that the acts of the aider or abettor were specifically directed to assist, encourage, or lend moral support to the perpetration of a crime. The relevant consideration is whether the practical assistance, encouragement, or moral support had a substantial effect on the commission of the crime.¹³³
84. As for the required *mens rea*, the alleged aider or abettor must have been aware that a crime would likely be committed and that his or her conduct assisted or facilitated the commission of a crime.¹³⁴ He or she should have also been aware of the essential elements of the crime committed by the perpetrator.¹³⁵
85. ***Superior Responsibility*** – Superior (or command) responsibility is a mode of criminal responsibility by culpable omission pursuant to which a military or civilian superior may be held criminally responsible for having failed to prevent and/or punish crimes committed by subordinates.

¹²⁹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 702; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 528.

¹³⁰ **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 704, 712-713; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 528, 533.

¹³¹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 706.

¹³² **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 704; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 534.

¹³³ **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 708-710; *see also Prosecutor v. Taylor*, *Judgement*, SCSL Appeals Chamber (SCSL-03-01-A), 26 September 2013, para. 638; *Prosecutor v. Šainović et al.*, *Judgement*, ICTY Appeals Chamber (IT-05-87-A), 23 January 2014, para. 1649; *Prosecutor v. Stanisic and Simatovic*, *Judgement*, ICTY Appeals Chamber (IT-03-69-A), 9 December 2015, paras 104, 106, 108.

¹³⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 704; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 534-535.

¹³⁵ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 704; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 535; this also applies to ‘specific intent’ in case of ‘Persecution on Political Grounds.’

86. The first requirement is the existence of a superior-subordinate relationship,¹³⁶ which can be either *de jure* or *de facto*.¹³⁷ Further, superior responsibility applies to both military and civilian superiors.¹³⁸ The superior, whether military or civilian, must have had effective control, which is the material ability to prevent and/or punish the crimes of the subordinate-perpetrator.¹³⁹ Finally, the superior must have failed to take the necessary and reasonable measures to prevent the commission of such crime or punish the perpetrator.¹⁴⁰ According to the jurisprudence of the *ad hoc* tribunals, it is not necessary to prove a causal link between a superior's failure to prevent the subordinate's crimes and the occurrence of these crimes.¹⁴¹
87. In addition, to incur criminal responsibility the superior must have known or had reason to know, by being in possession of information sufficiently alarming to justify further enquiry, that a crime was about to be, or had been, committed by one or more of his or her subordinates.¹⁴²
88. The failure to prevent and the failure to punish are legally and factually distinct modes of liability representing two distinct legal obligations. A superior may be held responsible for both failures.¹⁴³
89. Superior responsibility can exist on the basis of both direct and indirect relationships of subordination, such that each person in the chain of command who exercises effective control over subordinates is responsible for the crimes

¹³⁶ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 538; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 715.

¹³⁷ **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 540; *see also Prosecutor v. Delalic et al.*, *Judgement*, ICTY Appeals Chamber (IT-96-21-A), 20 February 2001, paras 191-192 ("Čelebići Appeal Judgement"); and *Popović Appeal Judgement*, para. 1038.

¹³⁸ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 714.

¹³⁹ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 715; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 540-542.

¹⁴⁰ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 716; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 545-547.

¹⁴¹ *Prosecutor v. Hadžihasanović and Kubura*, *Judgement*, ICTY Appeals Chamber (IT-01-47-A), 22 April 2008, para. 40 ("Hadžihasanović Appeal Judgement").

¹⁴² **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 715; **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 543-544.

¹⁴³ **Case File No. 001-E188**, *Judgement*, 26 July 2010, paras 545-547; *see also* Hadžihasanović Appeal Judgement, paras 259-260.

of those subordinates, provided the other requirements of superior responsibility are met.¹⁴⁴

90. *Joint Criminal Enterprise* – Participation in a JCE amounts to commission under Article 29 of the ECCC Law.¹⁴⁵ JCE is a form co-perpetration where a plurality of persons shares a common purpose or objective which amounts to or involves the commission of one or more crimes.¹⁴⁶
91. International criminal courts and tribunals have identified three forms of JCE.¹⁴⁷ The first and second forms of JCE existed in customary international law between 1975 and 1979 and are applicable at the ECCC.¹⁴⁸ The second form of JCE, which has essentially the same elements as the first one, is not charged against **Im Chaem**. The third form of JCE was not part of customary international law during that period and is therefore not applicable at the ECCC.¹⁴⁹ Thus, only the elements of the first form of JCE will be summarised in this section.
92. *Common purpose* – The common purpose or objective can either be inherently criminal (such that the common purpose *amounts to* the commission of a crime or crimes),¹⁵⁰ or have a non-criminal objective which the plurality of persons intends to achieve through criminal means (such that the common purpose *involves* the commission of a crime or crimes).¹⁵¹

¹⁴⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 716; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 721; **Case File No. 001-E188**, *Judgement*, 26 July 2010, para. 542, citing Blaškić Appeal Judgement, para. 67 and Čelebići Appeal Judgement, para. 252.

¹⁴⁵ **Case File No. 002-E100/6**, *Decision on the Applicability of Joint Criminal Enterprise*, 12 September 2011, para. 22; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 690.

¹⁴⁶ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 692.

¹⁴⁷ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 690; *Prosecutor v. Tadić* Judgement, ICTY Appeals Chamber (IT-94-1-A), 15 July 1999, paras 196-204 (“Tadić Appeal Judgement”).

¹⁴⁸ **Case File No. 002-E100/6**, *Decision on the Applicability of Joint Criminal Enterprise*, 12 September 2011, para. 22; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 691; **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 791.

¹⁴⁹ **Case File No. 002-E100/6**, *Decision on the Applicability of Joint Criminal Enterprise*, 12 September 2011, paras 35, 38; **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 791; **Case File No. 002-D97/15/9**, *Decision on the Appeals against the Co-Investigating Judges’ Order on Joint Criminal Enterprise*, 20 May 2010, paras 77, 87-88.

¹⁵⁰ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 814.

¹⁵¹ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 814; **Case File No. 002-E100/6**, *Decision on the Applicability of Joint Criminal Enterprise*, 12 September 2011, para. 17; **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 696; Brđanin Appeal Judgement, para. 418; Brima Appeal Judgement, para. 80. *See also* *Prosecutor v. Kvočka*, Judgement, ICTY Appeals Chamber (IT-98-30-/1-A), 28 February 2005, para. 46 (“Kvočka Appeal Judgement”).

93. In Case 002/1, for example, the Trial Chamber and SCC found that the JCE members shared a common purpose to implement a socialist revolution in Cambodia, which itself was not a criminal purpose, but it involved the commission of crimes to bring the common purpose to fruition.¹⁵²
94. There is no requirement for a previously arranged or formulated plan by the participants. The common purpose or objective may materialise extemporaneously and may be inferred from the fact that a plurality of persons acts in unison to put into effect a JCE.¹⁵³
95. *Plurality of Persons* – JCE requires the participation of a plurality of persons in the common criminal purpose.¹⁵⁴ It is not necessary to identify, by name, all JCE participants and it may be sufficient to adequately refer to categories or groups of persons.¹⁵⁵ The plurality of persons need not be organised in a military, political or administrative structure.¹⁵⁶ JCE members may vary or evolve over time.¹⁵⁷
96. *Participation in the Common Purpose* – Participation in the common purpose need not involve carrying out any part of the *actus reus* of a crime forming part of the common purpose.¹⁵⁸ It suffices that the conduct of the participant is in

¹⁵² **Case File No. 002-E313**, *Judgement*, 7 August 2014, paras 778, 804, and 834; **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 816. Similarly, in the Prlić Trial Judgement, paras 24, 41-43, 65-68, the Trial Chamber found that the JCE members shared the objective to create an independent state separate from Bosnia and Herzegovina. While this objective is not criminal, the JCE members meant to achieve it through the commission of a number of crimes against the Muslim population.

¹⁵³ Tadić Appeal Judgement, para. 227(ii); Brđanin Appeal Judgement, para. 418; *Prosecutor v. Mpambara*, Judgement, ICTR Trial Chamber I (ICTR-01-65-T), 11 September 2006, para. 13: “Unlike conspiracy, no specific agreement to commit the crime need be shown: the common purpose may arise spontaneously and informally, and the persons involved need not be associated through a formal organization”.

¹⁵⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 692; Kvočka Appeal Judgement, para. 81.

¹⁵⁵ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 692; Brđanin Appeal Judgement, para. 430; *Prosecutor v. Dorđević*, Judgement, ICTY Trial Chamber II (IT-05-87/1-T), 23 February 2011, para. 1861: “It is not necessary to identify by name each of the persons involved; depending on the circumstances of the case, it can be sufficient to refer to categories or groups of persons. However, such categories or groups must be adequately identified as to avoid vagueness or ambiguity”. For an example of too vague a characterisation of the members of a JCE, see *Prosecutor v. Krajišnik* Judgement, ICTY Appeals Chamber (IT-00-39-A), 17 March 2009, paras 156-157 (“Krajišnik Appeal Judgement”).

¹⁵⁶ Tadić Appeal Judgement, para. 227(i).

¹⁵⁷ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 692; Brđanin Appeal Judgement, para. 430.

¹⁵⁸ Brđanin Appeal Judgement, para. 427; Tadić Appeal Judgement, para. 227(iii); Krajišnik Appeal Judgement, para. 215.

some way directed to furthering the crimes forming part of the common purpose.¹⁵⁹ A JCE member's conduct can take the form of an act or culpable omission,¹⁶⁰ and their contribution need not be a necessary one, without which the crime(s) part of the common purpose could not or would not have been committed,¹⁶¹ but must, however, at least amount to a significant contribution to the crimes.¹⁶²

97. Even activities that are, on their face, unrelated to the commission of crimes may be taken into account when determining whether the JCE member made a significant contribution.¹⁶³ Such activities may nevertheless further and support the commission of crimes, if only indirectly.¹⁶⁴ In making this assessment, the totality of the activities should be considered, and particular contributions should not be assessed in isolation.¹⁶⁵ The significance of a contribution to the JCE should be determined on a case-by-case basis, taking into account a variety of factors, including the position of the charged person, level and efficiency of participation, and any efforts to prevent crimes.¹⁶⁶
98. *Mens rea* – A JCE member must intend the commission of each crime part of the common purpose, that is, the intent must cover both the common purpose and the crimes it encompasses.¹⁶⁷ This intent must be shared by and be common

¹⁵⁹ Tadić Appeal Judgement, paras 191, 227 (iii) and 229 (iii); Kvočka Appeal Judgement, para. 187. *Prosecutor v. Krajišnik*, Judgement ICTY Trial Chamber I (IT-00-39-T), 27 September 2006 (“Krajišnik Trial Judgement”) provides a good example of conduct which is not criminal *per se*, but which in the circumstances of the case had significantly contributed to the commission of the crimes. The Trial Chamber found that Krajišnik’s overall contribution to the JCE was to help establish and perpetuate the SDS party and state structures “that were instrumental to the commission of the crimes” (paras 1120 and 1121). The Appeals Chamber upheld the Trial Chamber’s judgement, stating that “the participation of an accused in the JCE need not involve the commission of a crime, what is important is that it furthers the execution of the common objective or purpose involving the commission of crimes”. See Krajišnik Appeal Judgement, paras 215, 218. See also Brđanin Appeal Judgement, para. 430.

¹⁶⁰ **Case File No. 002-E313**, Judgement, 7 August 2014, para. 693; Kvočka Appeal Judgement, paras 187, 421, 556. As a matter of general principle, the ICTY and ICTR Appeals Chambers have consistently held that a crime may be committed by culpable omission where there is a duty to act, and that an accused may be held directly responsible for contributing to a crime by omission where an accused had a duty to act, see Blaškić Appeal Judgement, para. 663; *Prosecutor v. Galić*, Judgement, ICTY Appeals Chamber (IT-98-29-A), 30 November 2006, para. 175.

¹⁶¹ Kvočka Appeal Judgement, paras 98, 193.

¹⁶² **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 980; Brđanin Appeal Judgement, para. 430; Krajišnik Appeal Judgement, paras 215, 696; Tadić Appeal Judgement, para. 191.

¹⁶³ **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 984.

¹⁶⁴ **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 984.

¹⁶⁵ **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 980.

¹⁶⁶ **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 980.

¹⁶⁷ **Case File No. 002-F36**, Appeal Judgement, 23 November 2016, para. 1053.

to all JCE members.¹⁶⁸ Where the crime involves persecution or genocide, the JCE members must share the special intent required for those crimes.¹⁶⁹

99. The SCC has recently clarified that, in the instance of a common purpose *involving* the commission of a crime or crimes, it is not necessary that those who agree on the common purpose actually desire that the crime be committed, as long as they recognise that the crime is to be committed to achieve the ulterior objective.¹⁷⁰ The SCC added that this may include crimes that are foreseen as a means to achieve a given common purpose, even if their commission is not certain.¹⁷¹ If attaining the objective of a common purpose may bring about the commission of crimes, but it is agreed to pursue the objective regardless, the common purpose encompasses these crimes because, even though not directly intended, they are contemplated in it.¹⁷² We interpret this holding of the SCC, also on the basis of its use of the word “*desire*”, as a clarification that the commission of the crimes need not be the primary objective of the JCE members. However, there remains the need to show intent to commit the crimes by the JCE members, which is a fundamental requirement of the first type of JCE.
100. *Physical Perpetrators* – JCE members can be held responsible for crimes committed by physical perpetrators who were not members of the JCE, as long as the crimes were part of the common purpose and committed in its

¹⁶⁸ Brđanin Appeal Judgement, para. 430; Krajišnik Appeal Judgement, para. 200; *Prosecutor v. Stakić* Judgement, ICTY Appeals Chamber (IT-97-24-A), 22 March 2006, para. 65. *See also* Tadić Appeal Judgement, para. 196: “*The first such category is represented by cases where all co-defendants, acting pursuant to a common design, possess the same criminal intention; for instance, the formulation of a plan among the co-perpetrators to kill, where, in effecting this common design (and even if each co-perpetrator carries out a different role within it), they nevertheless all possess the intent to kill. The objective and subjective prerequisites for imputing criminal responsibility to a participant who did not, or cannot be proven to have, effected the killing are as follows: (i) the accused must voluntarily participate in one aspect of the common design (for instance, by inflicting non-fatal violence upon the victim, or by providing material assistance to or facilitating the activities of his co-perpetrators); and (ii) the accused, even if not personally effecting the killing, must nevertheless intend this result,*” and para. 228; *Prosecutor v. Ntakirutimana and Ntakirutimana*, Judgement, ICTR Appeals Chamber (ICTR-96-10-A & ICTR-96-17-A), 13 December 2004, para. 463: “*The first category is a ‘basic’ form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention*”; **Case File No. 002-E313**, Judgement, 7 August 2014, para. 694; *Prosecutor v. Vasiljević*, Judgement, ICTY Appeals Chamber (IT-98-32-A), 25 February 2004, para. 101.

¹⁶⁹ Kvočka Appeal Judgement, para. 110; Krnojelac Appeal Judgement, paras 111-112.

¹⁷⁰ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 808.

¹⁷¹ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 808.

¹⁷² **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 808

furtherance.¹⁷³ To hold a member of a JCE responsible for crimes committed by non JCE-members, it must be shown that the crime can be imputed to at least one member of the JCE, and that this member – when using a physical perpetrator who was not a member of the JCE – acted to further the common purpose.¹⁷⁴ The existence of this link is a matter to be assessed on a case-by-case basis.¹⁷⁵

2.3.2. *Modes of Liability Applicable to National Crimes (Violations of the 1956 Penal Code)*

101. The CIJs in Case 002 found that commission through participation in a JCE, superior responsibility and instigation only apply to international crimes.¹⁷⁶ The PTC has not specifically addressed the applicability of superior responsibility and instigation to national crimes, but rejected the civil parties' argument that JCE is applicable to national crimes. In the PTC's view, participation in a JCE embraces situations where the charged person may be "*more remote from the actual perpetration of the actus reus of the crime than those foreseen by the direct participation required under domestic law.*"¹⁷⁷ The PTC has also expressed the view that the domestic form of co-perpetration set forth in Article 82 of the 1956 Penal Code is, like JCE, a form of commission which falls under Article 29 of the ECCC Law.¹⁷⁸

¹⁷³ Brđanin Appeal Judgement, paras 410-413; Krajišnik Appeal Judgement, para. 225.

¹⁷⁴ **Case File No. 002-E313**, *Judgement*, 7 August 2014, para. 693

¹⁷⁵ Brđanin Appeal Judgement, paras 413, 418; Krajišnik Appeal Judgement, paras 225-226. According to the Krajišnik Appeal Judgement, para. 226: "*Factors indicative of such a link include evidence that the JCE member explicitly or implicitly requested the non-JCE member to commit such a crime or instigated, ordered, encouraged, or otherwise availed himself of the non-JCE member to commit the crime.*" According to the Brđanin Appeal Judgement, para. 410: "*In cases where the principal perpetrator of a particular crime is not a member of the JCE, this essential requirement may be inferred from various circumstances, including the fact that the accused or any other member of the JCE closely cooperated with the principal perpetrator in order to further the common criminal purpose.*"

¹⁷⁶ **Case File No. 002-D427**, *Closing Order*, 15 September 2010, para. 1307; **Case File 002-D427/1/30**, *Decision on Ieng Sary's Appeal Against the Closing Order*, 11 April 2011, para. 296.

¹⁷⁷ **Case File No. 002-D97/15/9**, *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise*, 20 May 2010, para. 101.

¹⁷⁸ Article 82 of the 1956 Penal Code reads in French: "*Toute personne participant volontairement, soit directement, soit indirectement, à la perpétration d'un crime ou d'un délit, est passible des peines applicables à l'auteur principal. La participation directe constitue la coaction, la participation indirecte constitue la complicité.*"; **Case File No. 002-D97/15/9**, *Decision on the Appeals against the Co-Investigating Judges Order on Joint Criminal Enterprise*, 20 May 2010, para. 101.

102. Thus, applying the PTC's formulation of domestic modes of liability and taking into account the CIJs' approach in Case 002, the modes of liability of commission (whether as a single or a co-perpetrator), planning, ordering, and aiding and abetting will be considered with regard to violations of the 1956 Penal Code.

3. EVIDENTIARY CONSIDERATIONS

3.1 Statements Other than Written Records of Interviews Generated by the OCIJ

103. The vast majority of the evidence relied on in Case 004/1 consists of written records of interviews generated by the OCIJ during the investigation, which are prepared under judicial supervision and subject to specific legal and procedural safeguards, and are thus entitled to a presumption of relevance and reliability.¹⁷⁹ We consider that transcripts of trial proceedings from other ECCC cases, placed on Case File 004/1 because of their relevance to the allegations, enjoy the same presumption.
104. Statements or other evidence collected without judicial supervision by entities external to the ECCC enjoy no such presumption.¹⁸⁰ An exception to this rule is represented by statements prepared by DC-Cam, which the Trial Chamber has found to enjoy a rebuttable presumption of *prima facie* relevance and reliability.¹⁸¹ However, DC-Cam statements were generated without the judicial guarantees and formality that characterise WRIs.

¹⁷⁹ **Case File No. 002-E96/7**, *Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber*, 20 June 2012, paras 26-27, 29, note 48; **Case File No. 002-E162**, *Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158*, 31 January 2012, para. 3; **Case File No. 002-E185**, *Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01*, 9 April 2012, para. 20.

¹⁸⁰ **Case File No. 002-E96/7**, *Decision on Co-Prosecutors' Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber*, 20 June 2012, para. 29.

¹⁸¹ **Case File No. 002-E185**, *Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order Relevant to the First Two Trial Segments of Case 002/01*, 9 April 2012, para. 28; **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 373.

105. Interviews conducted by the Co-Prosecutors during their preliminary investigations, although prepared specifically for criminal proceedings, are not conducted under oath and are prepared by a party with an inherent interest in the outcome of the case.
106. Such statements are, however, collected for the purpose of a criminal trial and are therefore, in principle, afforded higher probative value than evidence not collected specifically for that purpose (including DC-Cam evidence).¹⁸²
107. Civil party applications enjoy no presumption of reliability and have been afforded little, if any, probative value if the circumstances in which they were recorded are not known.¹⁸³ Civil party applications and victim complaints offering only general conclusions and therefore representing a “*common narrative*” as opposed to personal experiences have been treated as insufficient to establish relevant facts.¹⁸⁴ Out-of-court statements by civil parties have been afforded low probative value.¹⁸⁵
108. In conclusion, and balancing these considerations, written records of interviews generated by the OCIJ and trial transcripts enjoy a higher reliability presumption and have been afforded a higher probative value than statements prepared by other entities. With regard to the latter, a more cautious approach has been adopted in their assessment, and the information contained therein has been relied on only when corroborated by other sources.

3.2 Torture-tainted Evidence

109. Pursuant to Article 15 of the Convention against Torture, there is an absolute prohibition against relying on information contained in statements obtained under torture¹⁸⁶ and in using such statements in the questioning of witnesses.¹⁸⁷

¹⁸² **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 296.

¹⁸³ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 296.

¹⁸⁴ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 457.

¹⁸⁵ **Case File No. 002-F36**, *Appeal Judgement*, 23 November 2016, para. 550.

¹⁸⁶ **Case File 002-D130/9/21**, *Decision on Admissibility of the Appeal against the Co-Investigating Judges' Order on Use of Statements Which Were or May Have been Obtained by Torture*, 18 December 2009, para. 30; **Case File 001-E1/27.1**, *Transcript of Trial Proceedings – Kaing Guek Eav “Duch”*, 28 May 2009, pp. 8-9; **Case File 001-E176**, *Trial Chamber Decision*, 28 October 2009, para. 8; **Case File 002-E1/129.1**, *Trial Transcript from 3 October 2012*, 3 October 2012, para. 74.

110. Confessions of prisoners detained in the S-21 security centre are presumed to have been made under torture. This is a rebuttable presumption.¹⁸⁸
111. Information contained in S-21 confessions that originates from persons other than the torture victim, for example annotations made by the torturer, does not fall under this prohibition.¹⁸⁹ Nor does Article 15 prohibit the use of information found in statements taken under torture during the DK to locate witnesses and possibly interview them.¹⁹⁰ There is thus no prohibition against the use of evidence of witnesses identified in torture-tainted statements such as S-21 confessions and subsequently interviewed by the OCIJ.¹⁹¹
112. During the judicial investigation, the OCIJ created an organisational chart of the administration of Sector 5 of the Northwest Zone, including the Preah Net Preah District, intended for internal use only. Some of the names of persons in the organisogram were taken from S-21 confessions. In a small number of cases, this organisational chart was used beyond its intended purpose and was put to witnesses who were asked to comment on it.¹⁹² Considering the presumption of torture attached to S-21 confessions and the prohibition against the use of information contained therein in the questioning of witnesses, any answer of witnesses based on or linked to this organisational chart has been disregarded. [REDACTED].

¹⁸⁷ **Case File No. 002-F26/12**, *Decision on Objections to Document Lists – Full Reasons*, 31 December 2015 (“Document Lists Decision”), para. 47; **Case File 002-E1/129.1**, *Trial Transcript from 3 October 2012*, 3 October 2012, para. 74.

¹⁸⁸ Document Lists Decision, paras 57-58.

¹⁸⁹ Document Lists Decision, paras 66-68.

¹⁹⁰ One of the policy rationales underpinning Article 15 of the Convention against Torture is to remove any incentive for states to engage in torture. To avoid frustrating this policy rationale, in stating the legitimacy of using evidence located through information obtained under torture it is necessary to distinguish between the following two scenarios. Firstly, a situation where torture information is used by the torturing authorities to locate witnesses, suspects, fugitives or to otherwise further an ongoing investigation; and secondly, a situation where a judicial authority investigating the torturers seeks to use information elicited by the latter in order to identify possible sources of evidence against them. Allowing the use of torture information as investigative leads in the first scenario could incentivise the use of torture. So, for example, if an intelligence agency obtains a statement through torture, and subsequently uses names provided in that statement to locate a stash of documents or a person with information relevant to the investigation, those documents or the testimony of that person should not be admitted as evidence in any proceedings. In the second scenario, however, the judicial authority is neither directly nor indirectly connected to the torturing authorities, and would use possible leads to locate evidence *against* the torturers. In our view, evidence from witnesses located on the basis of statements obtained under torture can only be used in the second scenario.

¹⁹¹ **Case File No. 002-E350/8**, *Decision on evidence obtained through torture*, 5 February 2016, paras 63, 70.

¹⁹² [REDACTED].

3.3 1997 and 1998 Documentation Center of Cambodia Reports

113. Two reports by DC-Cam contain information potentially relevant to the investigation into allegations against **Im Chaem**. The first report documents a field-mission carried out on 29 April 1997 (“1997 Report”)¹⁹³ and the second a field-mission on 19 August 1998 (“1998 Report”).¹⁹⁴ Together, both reports provide information on numbers of graves and victims’ estimates in relation to 13 sites, seven of which are part of the allegations in Case 004/1.

3.3.1. Methodology

114. The OCIJ interviewed [REDACTED], who was a DC-Cam investigator involved in the creation of both reports.¹⁹⁵ He states that the field-mission team consisted of him, who was collecting information, conducting interviews and drafting reports, and a GPS expert, who identified the locations.¹⁹⁶ Reports were then transcribed by a third person at DC-Cam.¹⁹⁷

115. The team visited the eight sites listed in the table of the 1997 Report,¹⁹⁸ namely Chamkar Khnol and Wat Sophak Mong Kol in Sisophon (or Serey Sophorn) District; Cham Ka Yeay Heum, La-ang Kouy Yum, and Wat Banteay Neang in Mongkol Borey District; and Chamkar Ta Ling / Wat Preah Net Preah compound, Prey Taruth and Phum Chakrey in Preah Net Preah District.

116. The DC-Cam team also visited six sites included in the 1998 Report,¹⁹⁹ namely Chamkar Khnol and Wat Sophak Mong Kol in Sisophon (or Serey Sophorn) District; already visited in 1997; and the district security office, La-ang Trapeang Thma Reservoir, Prey Kok Trach and Wat Kandal in Phnom Srok District.

¹⁹³ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1997, ERN 00218603-00218611.

¹⁹⁴ **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1998, ERN 00078066-00078073.

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ [REDACTED].

¹⁹⁸ [REDACTED].

¹⁹⁹ **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1998, ERN 00078066-00078073.

117. The 1997 Report on killing sites in Banteay Meanchey Province is a summary of the information gathered by DC-Cam.²⁰⁰ For each site, DC-Cam interviewed two or three persons,²⁰¹ who were selected based on the information provided by the districts' cultural officials regarding former detainees at the sites.²⁰² [REDACTED] provided the OCIJ with all the interviews conducted at each of the eight sites.²⁰³
118. The English and Khmer versions of the 1998 Report on Case File 004/01 are different. In particular, the table included in the English translation²⁰⁴ does not appear in the Khmer version. The table contains the number of mass graves and number of victims given by one source for each site. While there is no information to that effect on the Case File, the table may have been added by DC-Cam when translating the document.
119. This being said, a review of a similar table in the 1997 Report shows that it does not fully reflect the information which was provided by interviewees to DC-Cam and included in the report. In some instances this discrepancy is relevant in relation to the investigation against **Im Chaem**. Firstly, the table just lists the interviewees, who provided information on the number of victims, and only one such name per site. For instance, the table shows 20,000 victims at Chamkar Khnol, a number given by Khuon Say. However, a second source referred to 10 to 20 trucks operating continuously, and the third one did not give any number.²⁰⁵ Secondly, the table does not reflect the investigator's estimate in the report for at Chamkar Khnol, namely "*more than 2,000 victims (approx. 25,000)*".²⁰⁶ Thirdly, in instances where interviewees provided different figures, the table only contains the highest number in that range, or even higher numbers. This is the case for four sites, including Chamkar Ta Ling which is relevant for the investigation in Case 004/01. Fourthly, the table does not reflect

²⁰⁰ [REDACTED].

²⁰¹ [REDACTED].

²⁰² [REDACTED].

²⁰³ [REDACTED].

²⁰⁴ **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1998, ERN 00078066.

²⁰⁵ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218605-00218606.

²⁰⁶ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218606.

some of the discrepancies in the 1997 Report. For instance, with respect to Chamkar Ta Ling, the table lists 720 victims under Tum Soeun's name [REDACTED], whereas the report itself mentions that Tum Soeun referred to 660 to 720 deaths and an unnamed document to 467 bodies.²⁰⁷ In addition the report also refers to 253 bodies, a number of victims taken from the Cambodian Government dated 1984 ("1984 Government Report").²⁰⁸

3.3.2. 1984 Cambodian Government Report and Its Use by DC-Cam

120. In relation to Wat Preah Net Preah, Phum Chakrey and Prey Taruth,²⁰⁹ DC-Cam used data from the 1984 Government Report for its 1997 Report. The 1984 Government Report relevant to Preah Net Preah District is on Case File 004/01.²¹⁰ According to [REDACTED], DC-Cam received the 1984 Government Report from [REDACTED], the head of the Preah Net Preah District office, and [REDACTED], an official from the district culture office,²¹¹ following DC-Cam requests²¹² to the provincial and district offices of culture.²¹³
121. [REDACTED] provides evidence on the methodology of the 1984 Government Report.²¹⁴ Specifically, villagers gave information on the location of mass graves and other sites and on the number of victims²¹⁵ to the village and the commune chiefs,²¹⁶ who forwarded the data to the relevant district authorities.²¹⁷ Based on that information, the cultural office of districts prepared reports, which

²⁰⁷ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²⁰⁸ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²⁰⁹ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²¹⁰ **D119/50.2**, Preah Netr Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00938416-00938427.

²¹¹ [REDACTED].

²¹² [REDACTED].

²¹³ [REDACTED].

²¹⁴ [REDACTED]. See data used for Prey Taruth and Phum Chakrey, in **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²¹⁵ See **D119/50.2**, Preah Netr Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00938421-00938423.

²¹⁶ [REDACTED].

²¹⁷ [REDACTED].

included information on location and number of sites,²¹⁸ and number of victims.²¹⁹ Districts then sent these reports to the provinces.²²⁰

122. [REDACTED] states that when unable to conduct visits to the sites in the 1997 Report, DC-Cam used the number of victims contained in the 1984 Government Report.²²¹ However, in an apparent discrepancy, the witness also says that for the 1997 Report he visited each of the eight sites.²²² This being said, it appears that in its 1997 Report, DC-Cam relied upon data from the 1984 Government Report whenever their interviewees did not provide numbers of victims, as was the case in relation to Prey Taruth and Phum Chakrey.²²³
123. [REDACTED], who served as Preah Net Preah District Secretary shortly after the issuance of the 1984 Government Report, provides further information on the methodology of this report. He believes that the numbers of victims referred to in the report were likely collected through individual interviews, rather than a body count.²²⁴ He concludes that the figure of over 78,000 victims throughout Preah Net Preah District²²⁵ “*might not have been correct*”.²²⁶ Based on [REDACTED]’s observations, it can be concluded that the number of victims in Wat Preah Net Preah, Phum Chakrey and Prey Taruth taken from the 1984 Government Report may also be based on interviews rather than a body count.
124. It is also worth mentioning that in the 1997 Report, DC-Cam also relies on information gathered by the national Government in 1979 in the context of the court established against the members of the DK administration.²²⁷ However, no evidence is available as to the methodology of the Cambodian government.

²¹⁸ [REDACTED].

²¹⁹ **D119/50.2**, Preah Net Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00938421 – 00938423. *See also* [REDACTED].

²²⁰ [REDACTED].

²²¹ [REDACTED]. *See* data used for Prey Taruth and Phum Chakrey, in **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²²² [REDACTED].

²²³ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609-00218610.

²²⁴ [REDACTED].

²²⁵ [REDACTED].

²²⁶ [REDACTED].

²²⁷ [REDACTED].

3.3.3. *Number of Deaths*

125. Both DC-Cam reports contain numbers of deaths. The 1997 Report includes the numbers of victims who died during the DK in the current Banteay Meanchey and Battambang provinces. It refers to a total of 471,761 victims divided into the following categories: farmers (271,541), civil servants and workers (54,230), Buddhist monks (1,525), disabled (14,219), and ethnic minority groups (92,573).²²⁸ According to [REDACTED], DC-Cam collected the information during interviews with each inhabitant of the relevant villages.²²⁹ It is unclear whether the numbers for the categories of victims, which may overlap with each other, stem from interviews conducted by DC-Cam or the 1984 Government Report.²³⁰ Regarding the total number (471,761), [REDACTED] says it was given by a provincial office of culture.²³¹
126. In addition, as stated above, DC-Cam conducted interviews with sources who provided numbers of casualties for 8 out of 13 sites referred to in the two reports: Chamkar Khnol and Wat Sophak Mong Kol in Sisophon (or Serey Sophorn) District; Cham Ka Yeay Heum, La-ang Kouy Yum and Wat Banteay Neang in Mongkol Borey District; Chamkar Ta Leung, Wat Preah Net Preah compound and Phnom Trayoung in Preah Net Preah District; the district security office, and Trapeang Thma in Phnom Srok District.
127. As for the number of victims at sites relevant to the investigation in Case 004/01, the 1997 Report refers to 40,000 victims at Phnom Trayoung, which is described as containing a security office, prison and a large execution site.²³² Despite his involvement, [REDACTED] has no knowledge as to who exactly drafted this part of the report.²³³ He was neither able to visit this site, nor to interview people who had been there.²³⁴ He assumes that the figure was

²²⁸ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218604.

²²⁹ [REDACTED].

²³⁰ See [REDACTED].

²³¹ [REDACTED]. Note that the sum of the different categories of victims amounts to a total number of 434,088 victims and that these categories could overlap.

²³² **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218610.

²³³ [REDACTED].

²³⁴ [REDACTED]; **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218610.

provided by an unnamed interviewee, based on a district report.²³⁵ Thus, the origin of the data is unclear.

128. The 1997 Report refers to 3,890 victims at Prey Taruth,²³⁶ while the 1984 Government Report provides that there were 3,896 bodies.²³⁷ This discrepancy may be based on the lack of readability of this particular number in the 1984 Report. The copy available to the OCIJ is barely readable,²³⁸ but the quality of the written information received by DC-Cam is unknown. This is, therefore, speculative.
129. There is also discrepancy in the 1997 and 1998 reports regarding Chamkar Khnol. The 1997 Report refers to 2,000,²³⁹ 20,000²⁴⁰ or 25,000 victims,²⁴¹ and the 1998 Report refers to 4,000 to 5,000 bodies.²⁴² Despite his role in the 1998 Report,²⁴³ when asked about this discrepancy, [REDACTED] appears not to have gone to Chamkar Khnol in 1998.²⁴⁴
130. In relation to Ang Trapeang Thma Reservoir in Phnom Srok District, one DC-Cam interviewee in the 1998 Report gave an estimate of 2,000 victims.²⁴⁵ [REDACTED] remembers visiting the Trapeang Thma Reservoir in Phnom Srok District in 1998.²⁴⁶

²³⁵ [REDACTED].

²³⁶ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218609.

²³⁷ **D119/50.2**, Preah Netr Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00938421.

²³⁸ **D119/50.2**, Preah Netr Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00938421. See for the Khmer version **D119/50.2**, Preah Netr Preah District, Statistics of Ancient Temples, Shrines and Artists by the Battambang Provincial Propaganda, Culture and Information Office Committee No 711 P.P.C.I, 28 June 1984, ERN 00933219.

²³⁹ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218606.

²⁴⁰ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218603.

²⁴¹ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1997, ERN 00218606.

²⁴² **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1998, ERN 00078068.

²⁴³ [REDACTED]. See also **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1998, ERN 00078073.

²⁴⁴ [REDACTED].

²⁴⁵ **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Mancheay, 1998, ERN 00078071.

²⁴⁶ [REDACTED].

3.3.4. *Conclusion*

131. The 1997 and 1998 reports are mainly based on field visits and interviews with sources and also include information from the 1984 Government Report. They provide information on site locations and numbers of victims.
132. As for the numbers of victims, only one or two DC-Cam sources per site provided such numbers. The DC-Cam reports, which are summaries, do not contain the full record of the conversations conducted with the different sources and thus lack information such as the basis of knowledge of the sources on victim numbers. Moreover, the numbers are not consistent and the causes of death are unclear.
133. Based on the methodology, it appears that the victim numbers in the 1984 Government Report are based on information which was gathered more systematically and through a broader range of sources than the data from DC-Cam. The 1984 Government Report also provides causes of the death but does not specify how this information was established. It does not contain a record of the conversations held with the sources.
134. None of these reports refer to the date on which the victims died, or to the administrative structure and chain of command under which the deaths occurred. It is, therefore, impossible to determine whether the deaths fall under the relevant temporal jurisdiction.
135. Based on the above, we find that the numbers of victims provided in DC-Cam's 1997 and 1998 reports and the 1984 Government Report are unreliable and have little probative value. We have consequently not relied on them. The numbers and causes of death provided by witnesses to the OCIJ have been relied on instead.

3.4 Interviews of Im Chaem with DC-Cam and Other Entities

136. While the Internal Rules provide a regime governing the interview of suspects and charged persons (the respect of which is a pre-requisite for admissibility),²⁴⁷

²⁴⁷ Internal Rules 21 and 58.

they do not explicitly govern the use of statements given by suspects and charged persons to other entities or organisations, whether before or after becoming aware of being a suspect or being charged under an ECCC investigation.

137. The CIJs in Case 002 accepted a request of the Co-Prosecutors to place on the case file a film in which Nuon Chea, prior to being charged, was interviewed and made declarations relevant to the charges in Case 002. In that instance, the CIJs did not consider that there was any bar against the use of those statements as evidence. They only noted, consistent with the general rules on the evaluation of evidence recalled above in this section, that the contents of the film and the declarations made by the charged person “*must be afforded a lesser degree of weight compared to evidence gathered directly by the CIJs during the investigation.*”²⁴⁸
138. In the Case 002/1 Judgement, the Trial Chamber relied on parts of Nuon Chea’s interview, accepting some inculpatory statements as credible and disbelieving statements which may have been exculpatory. In so doing, the Trial Chamber assessed Nuon Chea’s statements together with other evidence on the case file, and essentially exercised its discretion according to the normal canons of evidence evaluation.²⁴⁹ On appeal, the SCC approved the Trial Chamber’s methodology and reliance on sections of inculpatory evidence found in that video, as well as the Trial Chamber’s rejection of sections of exculpatory evidence contained in the same interview.²⁵⁰
139. Two statements given by **Im Chaem** to DC-Cam,²⁵¹ one statement to Youth for Peace²⁵² and one statement to Smiling Toad Productions²⁵³ have been considered in this Closing Order (Reasons). Consistent with the approach taken in Case 002 and with the general rules of evaluation of evidence explained in

²⁴⁸ [REDACTED].

²⁴⁹ **Case File No. 002/01-E313, Judgement**, 7 August 2014, paras 501-503, note 1510, paras 938-939.

²⁵⁰ **Case File No. 002-F36, Appeal Judgement**, 23 November 2016, paras 358-359.

²⁵¹ **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089771-00089790; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951825-00951881.

²⁵² **D219/264.1**, Transcript of Interview of Im Chaem by Youth for Peace in 2011, ERN 01117939-01117976.

²⁵³ **D13.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217508-00217555.

this section, these statements have been given less weight than interviews conducted by the OCIJ. Their credibility and probative value have been assessed in light of all the other evidence on the Case File.

4. FACTUAL ANALYSIS AND FINDINGS

4.1 Im Chaem before April 1975 and after 6 January 1979

140. **Im Chaem** was born in 1946 in Kbal O Village, Tram Kak District, in Takeo Province²⁵⁴ and joined the Khmer Rouge movement in 1970.²⁵⁵ After joining the Khmer Rouge, she was commune chief of Cheang Torng Commune for two years.²⁵⁶ Witnesses state that she remained in the Tram Kak District until about April 1975.²⁵⁷

141. A witness reports that, at the time of the arrival of the Vietnamese forces in 1979, **Im Chaem** fled to the forest, possibly near the Thai border.²⁵⁸ She may have remained near the Thai border during the 1980s, as another witness met her at a meeting chaired by Ta Mok in Surin Province, Thailand.²⁵⁹

142. **Im Chaem** currently lives in Ou Angre Village, Trapeang Tav Commune, Anlong Veng District, Oddar Meanchey Province.²⁶⁰

4.2 Role and Authority of Im Chaem in the Southwest Zone

143. For the reasons explained in this section, we find that while in the Southwest Zone, **Im Chaem**'s role was that of secretary of the Sector 13 Women's Association, and that in that capacity she was responsible for the political education of women in the various districts of Sector 13.

²⁵⁴ **D123/1/5.1c**, Transcript of DC-Cam Interview of Im Chaem, 6 April 2012, ERN 00951825; **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 0217508-0217509; [REDACTED].

²⁵⁵ **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217514.

²⁵⁶ **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007 ERN 00217515.

²⁵⁷ [REDACTED].

²⁵⁸ [REDACTED].

²⁵⁹ [REDACTED].

²⁶⁰ [REDACTED]; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951827. *See also* [REDACTED].

144. The ICP argues that, starting in 1976, **Im Chaem** was both secretary of the Koh Andet District in Sector 13 of the Southwest Zone,²⁶¹ and a member of the Sector 13 Committee. As such, she is alleged to have been involved in all decision-making affecting the Koh Andet District and Sector 13.²⁶² We do not find that the evidence supports either of these contentions.
145. The ICP bases his submission that **Im Chaem** was District Secretary in Koh Andet on one of **Im Chaem**'s statements and on the evidence of one witness. In that statement, however, **Im Chaem** only says that in Koh Andet District, she "*worked with the people in transplanting rice*", that she did not hold "*any substantial post*", and that she was in charge of the evacuation of women.²⁶³ The witness relied on by the ICP only relates that **Im Chaem** went to Koh Andet from the "*Women's Association of Region 13*", that he did not know if she was Koh Andet District Secretary, and that while he was not sure of what her responsibilities were, he saw her going to the district office "*calling women to meetings*". He also adds that **Im Chaem** did not go to the district office often, but only "*once in a long while*."²⁶⁴
146. Pech Chim, who was deputy secretary of the Tram Kak District, Sector 13, from 1975 until the end of 1976,²⁶⁵ states that **Im Chaem** did not have an official position in the Koh Andet District Committee, but that she went to work in all districts of Sector 13 as part of her role as chief of the Sector 13 Women's Association.²⁶⁶ **Im Chaem** does state, in a later interview, that upon her transfer to Koh Andet she was part of a three-person committee where she focused on rice production.²⁶⁷ However, in light of the evidence reviewed in this paragraph, and for the reasons explained in the remainder of this section, we are of the view that **Im Chaem** was not Koh Andet District Secretary, but worked there by virtue of her position as chief of the Sector 13 Women's Association.

²⁶¹ See regarding location of Koh Andet District, [REDACTED].

²⁶² [REDACTED].

²⁶³ **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089783-00089784.

²⁶⁴ [REDACTED].

²⁶⁵ [REDACTED].

²⁶⁶ [REDACTED].

²⁶⁷ **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951846-00951847.

147. With regard to **Im Chaem** being a member of the Sector 13 Committee, the ICP relies on one of **Im Chaem**'s statements, where she states that she took the place of Ta Saom (who was the Sector 13 District Secretary), for a short time, once he became ill.²⁶⁸ The ICP also relies on a number of civil party applications, which we consider to have little or no probative value.²⁶⁹
148. Indeed, there are three witnesses who state, with different degrees of certainty and specificity, that **Im Chaem** was a member of the committee of Sector 13 of the Southwest Zone.²⁷⁰ However, a higher number of witnesses provide more specific evidence on this issue, stating that **Im Chaem**'s role in Sector 13 was that of chief of the Women's Association.²⁷¹ Among them is Pech Chim, who explains that in this role, **Im Chaem** travelled to different districts in Sector 13, where she conducted study sessions with women, assessed their background, and assigned them to different tasks and locations.²⁷² For instance, **Im Chaem** participated and spoke at meetings in the Angkor Chey District, Sector 13,²⁷³ where she was in charge of the district's women,²⁷⁴ as well as in other districts of the same sector, where her responsibilities included assigning people to different jobs and locations.²⁷⁵ **Im Chaem** herself confirms that she had this role.²⁷⁶ She was directly supervised by the secretary of Sector 13, Ta Saom.²⁷⁷
149. A single witness explains **Im Chaem**'s presence in Angkor Chey by stating that she was the district secretary.²⁷⁸ However, this evidence is isolated, its foundation unclear, and is also contradicted by a witness who states that while **Im Chaem** did attend meetings in Angkor Chey she did not do so as district secretary,²⁷⁹ a function that was held by Ta Nhen according to this witness.²⁸⁰

²⁶⁸ **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951848-00951849.

²⁶⁹ See Section 3.1.

²⁷⁰ [REDACTED].

²⁷¹ [REDACTED].

²⁷² [REDACTED].

²⁷³ [REDACTED].

²⁷⁴ [REDACTED].

²⁷⁵ [REDACTED].

²⁷⁶ **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089784.

²⁷⁷ [REDACTED].

²⁷⁸ [REDACTED].

²⁷⁹ [REDACTED].

²⁸⁰ [REDACTED].

150. **Im Chaem** headed the Women's Association in Sector 13 from 1970 or 1972 to about February or March 1977, when she relocated to the Northwest Zone.²⁸¹

4.3 Southwest Zone Cadres' Takeover of the Northwest Zone

151. Beginning in 1976 and continuing through 1978, Ta Mok, who was secretary of the Southwest Zone,²⁸² sent groups of Southwest Zone cadres to replace local cadres in the administrative structure of the Northwest Zone.²⁸³ Several witnesses who were relocated to the Northwest Zone attended meetings in Takeo before their departure, where Ta Mok announced that Battambang was a "*newly liberated area*", that the situation there "*was not good*", and that the Zone needed help.²⁸⁴ Ta Mok blamed the Northwest cadres for these problems.²⁸⁵ The meetings took place in 1976,²⁸⁶ 1977,²⁸⁷ and 1978.²⁸⁸ Ta Mok and other high-ranking cadres assigned Southwest Zone cadres to different tasks and locations once they arrived to the Northwest Zone.²⁸⁹
152. Ta Mok sent Southwest Zone cadres to the Northwest Zone in three main waves:²⁹⁰ the first wave occurred in 1976, when a small number of Southwest Zone cadres were sent to the Northwest Zone to work alongside the Northwest Zone cadres, but did not replace or supervise them.²⁹¹ The second wave was in 1977 and early 1978, when Ta Mok sent Southwest Zone cadres, together with their families, to arrest and replace Northwest Zone cadres at the commune, cooperative, and district levels,²⁹² and was led by **Im Chaem** who subsequently relocated to Preah Net Preah District, in Sector 5.²⁹³ The third wave of cadres was sent in mid-1978. At this time, Southwest Zone cadres replaced the highest echelons of the Northwest Zone by purging Northwest Zone cadres at the sector

²⁸¹ [REDACTED]. See also [REDACTED].

²⁸² [REDACTED].

²⁸³ [REDACTED].

²⁸⁴ [REDACTED].

²⁸⁵ [REDACTED].

²⁸⁶ [REDACTED].

²⁸⁷ [REDACTED].

²⁸⁸ [REDACTED].

²⁸⁹ [REDACTED].

²⁹⁰ [REDACTED].

²⁹¹ [REDACTED].

²⁹² [REDACTED].

²⁹³ Evidence on this topic is reviewed in the section dedicated to **Im Chaem**'s role in the Northwest Zone.

and zone levels, but also lower cadres at district and commune levels who had worked under the zone and sector cadres prior to their purge.²⁹⁴

153. Ta Mok tasked Southwest Zone military forces with purging the Northwest Zone cadres. [REDACTED], a soldier and relative of Ta Mok's who worked closely with Ta Mok in the Northwest Zone, states that before his military division was sent to Battambang in early 1978, Ta Mok ordered them "*to get rid of the Northwest Zone people.*"²⁹⁵ After the arrival of the Southwest Zone cadres, Northwest Zone military and civilian cadres were arrested and detained in security centres throughout the Northwest Zone and in S-21 in Phnom Penh, assigned to various worksites in the Northwest Zone for "re-fashioning", or killed.²⁹⁶ In mid-1978, after the arrest and removal of the highest cadres, Ta Mok formally became Northwest Zone Secretary.²⁹⁷

154. Ta Mok's purge included Sector 5 of the Northwest Zone, where local leaders and lower-ranking cadres were arrested and killed, starting in mid-1977, by the Southwest Zone cadres.²⁹⁸ As will be seen in the following section, **Im Chaem** relocated to Sector 5 of the Northwest Zone in mid-1977, and replaced former Northwest cadres both at the district and sector levels.

155. Witnesses state that Ta Mok selected his close associates to lead the Southwest Zone cadres to the Northwest Zone.²⁹⁹ There is evidence, corroborated by **Im Chaem**'s own statements, that **Im Chaem** was Ta Mok's trusted and close aide³⁰⁰ and that the two had a direct channel of communication.³⁰¹ The Defence contest that **Im Chaem** had any specific relationship with Ta Mok.³⁰² They rely, *inter alia*, on witness [REDACTED]'s statement that contacts between the district and zone level were impossible, and that **Im Chaem**'s communications

²⁹⁴ [REDACTED].

²⁹⁵ [REDACTED].

²⁹⁶ [REDACTED]; [REDACTED], *see* [REDACTED].

²⁹⁷ [REDACTED]; **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089777.

²⁹⁸ [REDACTED].

²⁹⁹ [REDACTED].

³⁰⁰ [REDACTED]; **D123/1/5.1b**, DC-Cam Transcript of Interview of Im Chaem, 20 June 2008, ERN 00951812.

³⁰¹ [REDACTED]; **D123/1/5.1a**, Im Chaem DC-Cam interview, 4 March 2007, ERN 00089777.

³⁰² [REDACTED].

had to pass through Ta Chay, a sector-level cadre, before reaching Ta Mok.³⁰³ However, [REDACTED], who was Ta Chay's messenger at the time, adds that while initially written communications between Ta Mok and **Im Chaem** were not direct, "*later*" he delivered letters from Ta Mok directly to **Im Chaem**.³⁰⁴ The Defence also argue that **Im Chaem**'s statements on the nature of her relationship with Ta Mok have little probative value because they were not given under oath.³⁰⁵ We have specified above in the evidentiary section of this Closing Order (Reasons) our views on **Im Chaem**'s interviews' probative value. In this instance, we consider them corroborated by the evidence that **Im Chaem** was chosen to lead the second wave of Southwest Zone cadres to the Northwest Zone in an operation engineered and overseen by Ta Mok and by the statements of other witnesses considered in this paragraph. We thus find the evidence that **Im Chaem** had a close relationship to Ta Mok, who trusted her, to be credible. We do not consider, however, that this close relationship is in and of itself particularly significant in assessing **Im Chaem**'s authority and level of responsibility in relation to her alleged criminal conduct. **Im Chaem**'s level of authority and her relevant conduct will be considered in the next section.

4.4 Role and Authority of Im Chaem in the Northwest Zone

4.4.1. Im Chaem's Transfer to the Northwest Zone

156. In or around mid-1977, most likely in March as discussed below, Ta Mok sent 500 to 600 families by train from Takeo, in the Southwest Zone, to the Northwest Zone. **Im Chaem** led the group during the transfer.³⁰⁶ The group, which also included between 300 and 500 soldiers,³⁰⁷ stopped for one or two nights in Phnom Penh before reaching the Northwest Zone. In Phnom Penh, they were addressed by Pol Pot, with **Im Chaem** sitting in the front seats.³⁰⁸ It is possible that **Im Chaem** knew of the plan to relocate Southwesterners to the

³⁰³ [REDACTED].

³⁰⁴ [REDACTED].

³⁰⁵ [REDACTED].

³⁰⁶ [REDACTED]; **D123/1/5.1b**, DC-Cam Transcript of interview of Im Chaem, 20 June 2008, ERN 00951798-00951799; **D123/1/5.1c**, DC-Cam Transcript of interview of Im Chaem, 6 April 2012, ERN 00951852.

³⁰⁷ [REDACTED]; **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217519.

³⁰⁸ [REDACTED].

Northwest Zone as early as 1976, as a witness states that, in that year, **Im Chaem** attended a large meeting held in the Koh Andet District, Sector 13 of the Southwest Zone, where that plan was discussed, albeit just in general terms.³⁰⁹

157. Pech Chim, who had been deputy secretary of the Tram Kak District in the Southwest Zone, was told that there were traitors in the Northwest,³¹⁰ and that Ta Mok had sent **Im Chaem** to deal with the “*rebellion*”.³¹¹

4.4.2. *Secretary of Preah Net Preah District*

158. Upon her relocation, **Im Chaem** was appointed as secretary of the Preah Net Preah District in Sector 5, Northwest Zone. Witnesses state that her relocation happened in 1977, with some narrowing this time-reference to dry season, before Khmer New Year or, even more precisely, March 1977.³¹² It is [REDACTED], who travelled with **Im Chaem** from the Southwest to the Northwest Zone, who places her arrival around March 1977.³¹³ This date is also consistent with the evidence on the arrest and replacement of **Im Chaem**’s predecessor, Ta Maong, a Northwest cadre, who was the Preah Net Preah District Secretary until early to mid-1977,³¹⁴ and worked together with **Im Chaem** for some time before being arrested.³¹⁵ Upon the arrival of **Im Chaem** and of the other Southwest Zone cadres, Ta Maong was arrested and brought to S-21. Witnesses date the arrest around mid-1977, and Ta Maong’s S-21 confession confirms that the arrest was carried out before 8 July 1977.³¹⁶

159. In the Northwest Zone, **Im Chaem** lived and worked in the Phnum Lieb Village of the Preah Net Preah District.³¹⁷

160. She held the position of Preah Net Preah District Secretary until the arrival of the Vietnamese troops in January 1979.³¹⁸

³⁰⁹ [REDACTED].

³¹⁰ [REDACTED].

³¹¹ [REDACTED].

³¹² [REDACTED].

³¹³ [REDACTED].

³¹⁴ [REDACTED].

³¹⁵ [REDACTED].

³¹⁶ [REDACTED]. *See also* [REDACTED].

³¹⁷ [REDACTED].

³¹⁸ [REDACTED].

4.4.3. *Role on the Sector 5 Committee*

161. Evidence from a number of witnesses also points to **Im Chaem** having a role in the Sector 5 Committee, in addition to her role as Preah Net Preah District Secretary.
162. Before **Im Chaem** and the Southwest Zone cadres arrived in the Northwest Zone in March 1977, Ta Hoeng (or Ta Hing), Ta Cheal (or Ta Chiel), Ta Val, and possibly Ta Vuth were the members of the Sector 5 Committee.³¹⁹ Ta Hoeng was the first one to be arrested, and according to a witness this was done by **Im Chaem** and Ta Mok after their arrival to the Northwest Zone.³²⁰ After Ta Hoeng was arrested, Ta Cheal was appointed as an “*interim leading person*” before another cadre named Ta Rin took over as Ta Hoeng’s replacement.³²¹ Ta Cheal, *alias* Chhnang,³²² was a Northwest cadre and the son of Muol Sambath *alias* Ruos Nhim,³²³ the secretary of the Northwest Zone Committee,³²⁴ and the son-in-law of Sao Phim, another top-ranking CPK cadre.³²⁵ According to [REDACTED], it was Ta Cheal who had appointed **Im Chaem** as secretary of Preah Net Preah District upon her arrival to the Northwest Zone.³²⁶
163. Ta Cheal, however, was arrested on accusation of being a traitor and sent to Phnom Penh for execution, likely around early or mid-1978, since he is said to have been arrested together with his father, Ta Nhim.³²⁷ Following Ta Cheal’s arrest, Ta Rin, a Southwest Zone cadre, was appointed as Sector 5 Secretary.³²⁸ Ta Rin was subsequently also removed, after which Ta Chay became chief of the Sector 5 Committee and **Im Chaem** became deputy secretary.³²⁹ As Sector 5

³¹⁹ [REDACTED].

³²⁰ [REDACTED].

³²¹ **D219/494.1.8**, Transcript of hearing on the substance in Case 002/02, 17 August 2015, ERN 01132282-01132283. *See also* [REDACTED].

³²² [REDACTED].

³²³ [REDACTED]; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951863.

³²⁴ [REDACTED].

³²⁵ [REDACTED]; **D1.3.29.1**, Suspect Statement of Ieng Sary *alias* Van, 17 December 1996, ERN 00417600; **D6.1.529**, Transcription of Interview of Ouk Bunchhoeun conducted by Steve Heder, ERN 00350208.

³²⁶ [REDACTED].

³²⁷ [REDACTED]; **D219/494.1.8**, Transcript of hearing on the substance in Case 002/02, 17 August 2015, ERN 01132311.

³²⁸ [REDACTED].

³²⁹ [REDACTED].

Deputy Secretary, **Im Chaem** continued administering the Preah Net Preah District.³³⁰

164. Many witnesses provide evidence that **Im Chaem** sat on the Sector 5 Committee³³¹ until the arrival of the Vietnamese troops at the beginning of 1979.³³² A witness states that it was **Im Chaem** herself who told him that she was the new Sector 5 “Committee” and that she was replacing Ta Hoeng, who was a traitor.³³³ Other witnesses believe that she was a Sector level cadre in charge of the military.³³⁴
165. One witness states that while there was some confusion among the people as to whether **Im Chaem** was a district or sector level cadre, he knew that she had a district role, although he also adds, somewhat contradictorily, that **Im Chaem** had taken over Sector 5.³³⁵ In any event, the evidence of **Im Chaem** being a member of the Sector 5 Committee is quantitatively superior and qualitatively more reliable. It is also indirectly corroborated by several circumstances showing a level of authority which was higher than that of a district secretary and extended beyond the boundaries of Preah Net Preah District:
- (a) **Im Chaem** was seen attending a meeting with sector and zone level cadres;³³⁶
 - (b) **Im Chaem** received instructions on waterworks projects directly from Ta Mok after he acquired control from the Northwest Zone. There was, thus, at least on some instances, no apparent intermediate level between Zone Secretary Ta Mok and **Im Chaem**;³³⁷
 - (c) **Im Chaem**’s movements were not limited to the Preah Net Preah District, as she travelled to Phnom Srok and other districts in Sector 5, where she visited worksites in an oversight capacity;³³⁸

³³⁰ [REDACTED].

³³¹ [REDACTED]; **D67.9**, Annex 9: DC-Cam Document “Interview with Chhit Yoeuk”, 19 June 2011, 00731142.

³³² [REDACTED].

³³³ [REDACTED]. See also [REDACTED].

³³⁴ [REDACTED].

³³⁵ [REDACTED].

³³⁶ [REDACTED].

³³⁷ See above the section dedicated to the Southwest Zone cadres’ takeover of the Northwest Zone.

³³⁸ [REDACTED].

- (d) A witness states that the Preah Net Preah District did not have its own vehicles, while Sector 5 did, and he saw **Im Chaem** travelling by car with sector and zone level cadres;³³⁹
- (e) Aside from Preah Net Preah District, **Im Chaem** worked and had offices in the Svay Sisophon and Phnom Srok districts;³⁴⁰
- (f) **Im Chaem** had authority over Tum Soeun when he was the Sector 5 Mobile Unit Chief;³⁴¹
- (g) With respect to the Phnom Srok District, a civil party applicant states that while it was headed by Nhen, **Im Chaem's** husband, **Im Chaem** exercised authority there. The civil party applicant added that she was very powerful and controlled the military, although it is not clear whether the civil party applicant referred to the district or sector military.³⁴² A former district secretary of the Bavel District (which was originally in Sector 5 but then became part of Sector 3), who attended a meeting with Ta Mok, **Im Chaem**, and other cadres, states that **Im Chaem** was in charge of the Phnom Srok District, and that he could not recall what other positions she had;³⁴³
- (h) **Im Chaem** once called a meeting at the Ou Lieb Dam, which was attended by representatives of all districts in Sector 5;³⁴⁴
- (i) workers at Trapeang Thma Dam, Phnom Srok District, which was under **Im Chaem's** control,³⁴⁵ came from three different districts in Sector 5, namely Preah Net Preah, Svay Sisophon, and Phnom Srok;³⁴⁶

166. In light of the above, we are satisfied that upon her arrival to the Northwest Zone in or around March 1977, **Im Chaem** was appointed as secretary of the Preah Net Preah District. Around the beginning or middle of 1978 she also

³³⁹ [REDACTED].

³⁴⁰ [REDACTED].

³⁴¹ [REDACTED]. See also [REDACTED].

³⁴² [REDACTED]. See also [REDACTED].

³⁴³ [REDACTED].

³⁴⁴ [REDACTED].

³⁴⁵ See [REDACTED].

³⁴⁶ [REDACTED].

became a member of the Sector 5 Committee, a position that she held until the arrival of the Vietnamese in January 1979.

4.4.4. *Im Chaem's Responsibilities, Authority, and Sources of Knowledge in Sector 5 of the Northwest Zone*

4.4.4.1. *Statutory Powers of Sectors and Districts in Democratic Kampuchea*

167. The constitutional framework of the DK is set forth in the CPK Statute, which specifies the roles, powers, and prerogatives of DK's political bodies and administrative levels.³⁴⁷ In order to establish what responsibilities **Im Chaem** had at the times relevant to the allegations against her, and what level of authority she wielded in relation to these responsibilities, we have first reviewed the powers and prerogatives of the sector and district levels as laid out in the CPK Statute, and then evidence on what powers were actually exercised by **Im Chaem** on the ground.
168. The CPK Statute made sector committees responsible for the implementation at the district and commune levels of the plans put in place by the zone level, in line with the principles governing the CPK's socialist revolution. They were also in charge of "*constantly and tightly*" guiding the political and ideological stance of the lower echelons and the people, in line with the CPK's political ideology. Finally, they were in charge of managing the property of the sector, administering discipline, and reporting to the upper echelons on the situation within the sector.³⁴⁸ Sectors decided the work plans which were then relayed to the districts.³⁴⁹ Similarly, sectors provided lists to the districts with names of people to be arrested.³⁵⁰ [REDACTED], a former district secretary in Sector 3 of the Northwest Zone,³⁵¹ states that the arrest and release of prisoners within districts had to be authorised by the sector level. If the district detected possible

³⁴⁷ **D1.3.20.1**, CPK Legal Document entitled 'Communist Party of Kampuchea Statute', January 1976.

³⁴⁸ **D1.3.20.1**, CPK Legal Document entitled 'Communist Party of Kampuchea Statute', January 1976, ERN 00184042-00184043, Article 16.

³⁴⁹ The role of the central and standing committees, as well as of the zone level, is not discussed in this section, which only focuses on the administrative levels relevant to assess Im Chaem's alleged criminal liability.

³⁵⁰ [REDACTED].

³⁵¹ [REDACTED].

enemy activity, it would report it to the sector which would in turn instruct the district on what to do.³⁵²

169. Districts were the administrative units below the sector level. Like sectors, they were governed by three-people party committees consisting of a secretary, a deputy secretary, and a member.³⁵³ Districts were divided in communes, which were in turn divided in villages. Villages were often combined into larger entities known as cooperatives.³⁵⁴
170. The secretary was responsible for appointing and removing the other members of the committee, with the approval of the sector and zone secretaries and the Standing Committee.³⁵⁵
171. The CPK Statute gave district committees the authority to designate new work in accordance with the CPK line (and, as set out above, with the instructions received from the sector).³⁵⁶ They also had the duty to administer discipline within the district and to report to the sector on work and other matters within the district.³⁵⁷
172. District secretaries were considered by the CPK as a crucial level of leadership, as district committees constituted an important bridge between the cooperatives and the sector.³⁵⁸ In an issue of the *Revolutionary Flag*, a CPK-published magazine, for December 1977 to January 1978, the CPK stressed the importance of monitoring the presence of people with ideas different from the official party lines, who were defined as “*maggots in our flesh which must be dug out.*” The CPK encouraged the investigation of the presence of such people particularly at

³⁵² [REDACTED].

³⁵³ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute, January 1976, ERN 00184038, Article 7, para 4; [REDACTED].

³⁵⁴ [REDACTED].

³⁵⁵ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute’, January 1976, ERN 00184041, Article 12; [REDACTED].

³⁵⁶ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute’, January 1976, ERN 00184041, Article 12.

³⁵⁷ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute’, January 1976, ERN 00184042, Article 12.

³⁵⁸ **D6.1.740**, CPK Magazine entitled ‘Revolutionary Flag, Special Issue’, October - November 1977, ERN 00182559; [REDACTED].

the district and cooperative levels, because of the proximity of these administrative levels to the working people.³⁵⁹

4.4.4.2. *Evidence on Im Chaem's Exercise of Responsibilities and Authority*

173. The evidence shows that **Im Chaem** exercised, within the Preah Net Preah District, all the statutory powers of district secretaries in the DK. It further indicates that she was involved in official business outside of the Preah Net Preah District, which is consistent with her holding a sector-level position in addition to the district-level one. However, the extent and precise contours of her authority over sector-related matters remain unclear.
174. As Preah Net Preah District Secretary, **Im Chaem** was in overall charge of the district, including its communes and villages.³⁶⁰ **Im Chaem's** authority extended to security centres³⁶¹ and worksites³⁶² within the district. She managed the workforce,³⁶³ appointed chiefs of communes and worksites,³⁶⁴ and issued travel permits to move within the district.³⁶⁵ She also visited the Trapeang Thma Dam construction located in the Phnom Srok District, although the extent of her involvement and authority over that project is somewhat unclear.
175. There is extensive evidence that **Im Chaem** had the authority to order arrests in the Preah Net Preah District,³⁶⁶ [REDACTED].³⁶⁷ There was a temporary security centre next to her house in Phnum Lieb, where prisoners were held before being sent to Phnom Trayoung security centre.³⁶⁸ There is also reliable evidence, including from [REDACTED],³⁶⁹ former chief of the Phnom Trayoung security centre, that **Im Chaem** had the authority to order executions.

³⁵⁹ **D1.3.22.5**, CPK Magazine entitled 'Revolutionary Flag, Special Issue', December - January 1977-1978, ERN 00184321.

³⁶⁰ [REDACTED].

³⁶¹ [REDACTED]. See also [REDACTED].

³⁶² [REDACTED]. [REDACTED].

³⁶³ [REDACTED].

³⁶⁴ [REDACTED]. See also [REDACTED].

³⁶⁵ [REDACTED].

³⁶⁶ [REDACTED].

³⁶⁷ [REDACTED]. See also [REDACTED].

³⁶⁸ See [REDACTED].

³⁶⁹ [REDACTED].

The evidence establishes that such authority extended to people within her district and those detained at the Phnom Trayoung security centre.³⁷⁰

176. The Defence argue that **Im Chaem**'s authority over security matters was limited *"due to the prevailing gender based system where it was highly unlikely that a female cadre could have played any significant role in affairs related to security."*³⁷¹ In making this submission, the Defence rely on facts such as women prisoners in the Northwest Zone never being recorded as holding security positions, and that 24 security centres and prisons in the Northwest Zone were all headed by men.³⁷² This contention is unpersuasive. First, the evidence of **Im Chaem**'s authority over security matters comes from multiple witnesses many of whom had direct knowledge of this matter, and is consistent with the statutory role and powers of district secretaries in the DK. Second, the evidence on the Case File provides at least two examples of women district secretaries, other than **Im Chaem**, exercising significant authority in relation to security matters. [REDACTED].³⁷³ [REDACTED].³⁷⁴ [REDACTED].³⁷⁵ [REDACTED].³⁷⁶ [REDACTED].³⁷⁷

177. The ICP submits that **Im Chaem**'s power to order arrests extended to other districts in Sector 5. In so doing, he relies on the evidence of a witness arrested in the Svay Sisophon District, brought to **Im Chaem**, and eventually detained at Phnom Trayoung security centre, Preah Net Preah District.³⁷⁸ We are not satisfied that this evidence supports the ICP's contention, as the evidence does not clarify on whose orders the witness was arrested. However, we are satisfied that, by being in charge of the Phnom Trayoung security centre, **Im Chaem**'s authority extended to detainees coming from different districts in Sector 5.³⁷⁹

³⁷⁰ [REDACTED]. See also [REDACTED].

³⁷¹ [REDACTED].

³⁷² [REDACTED].

³⁷³ [REDACTED].

³⁷⁴ [REDACTED].

³⁷⁵ [REDACTED].

³⁷⁶ [REDACTED].

³⁷⁷ [REDACTED].

³⁷⁸ [REDACTED].

³⁷⁹ [REDACTED].

4.4.4.3. *Sources of Knowledge*

178. **Im Chaem** was informed of the progress on construction projects, food production, and other work-related matters through a number of different sources. She chaired and participated in meetings in various communes of the Preah Net Preah District to discuss work and ongoing projects,³⁸⁰ inspected worksites either personally³⁸¹ or through her subordinates,³⁸² and received reports on the progress of the work.³⁸³ Evidence that she visited the Trapeang Thma Dam project also suggests that her knowledge of the events on the ground went beyond the boundaries of the Preah Net Preah District.
179. With regard to security matters, **Im Chaem** received reports on people's backgrounds after assessments were conducted in villages and cooperatives. She then decided what disciplinary measures needed to be taken, including detention.³⁸⁴ She also personally visited security centres such as Phnom Trayoung and Wat Preah Net Preah,³⁸⁵ and received reports from prison chiefs.³⁸⁶

4.5 [REDACTED]

180. [REDACTED].
181. [REDACTED].
182. [REDACTED].³⁸⁷ [REDACTED].³⁸⁸ [REDACTED].³⁸⁹
183. [REDACTED].³⁹⁰
184. [REDACTED].³⁹¹ [REDACTED].³⁹² [REDACTED],³⁹³ [REDACTED].³⁹⁴

³⁸⁰ [REDACTED].

³⁸¹ [REDACTED]. [REDACTED].

³⁸² [REDACTED].

³⁸³ [REDACTED].

³⁸⁴ [REDACTED].

³⁸⁵ [REDACTED]. *See also* [REDACTED].

³⁸⁶ [REDACTED]. *See also* [REDACTED].

³⁸⁷ [REDACTED].

³⁸⁸ [REDACTED].

³⁸⁹ [REDACTED].

³⁹⁰ [REDACTED].

185. [REDACTED]³⁹⁵ [REDACTED].³⁹⁶

186. [REDACTED].³⁹⁷ [REDACTED].³⁹⁸ [REDACTED].³⁹⁹

187. [REDACTED].⁴⁰⁰ [REDACTED].⁴⁰¹

188. [REDACTED].

4.6 [REDACTED]

4.6.1. [REDACTED]

4.6.1.1. [REDACTED]

189. [REDACTED].

4.6.1.2. [REDACTED]

190. [REDACTED].⁴⁰² [REDACTED],⁴⁰³ [REDACTED].⁴⁰⁴

191. [REDACTED],⁴⁰⁵ [REDACTED],⁴⁰⁶ [REDACTED],⁴⁰⁷ [REDACTED]⁴⁰⁸
[REDACTED],⁴⁰⁹ [REDACTED].⁴¹⁰ [REDACTED].⁴¹¹

4.6.1.3. [REDACTED]

192. [REDACTED],⁴¹² [REDACTED].⁴¹³ [REDACTED].⁴¹⁴

³⁹¹ [REDACTED].

³⁹² [REDACTED].

³⁹³ [REDACTED].

³⁹⁴ [REDACTED].

³⁹⁵ [REDACTED].

³⁹⁶ [REDACTED].

³⁹⁷ [REDACTED].

³⁹⁸ [REDACTED].

³⁹⁹ [REDACTED].

⁴⁰⁰ [REDACTED].

⁴⁰¹ [REDACTED].

⁴⁰² [REDACTED].

⁴⁰³ [REDACTED].

⁴⁰⁴ [REDACTED].

⁴⁰⁵ [REDACTED].

⁴⁰⁶ [REDACTED].

⁴⁰⁷ [REDACTED].

⁴⁰⁸ [REDACTED].

⁴⁰⁹ [REDACTED].

⁴¹⁰ [REDACTED].

⁴¹¹ [REDACTED].

193. [REDACTED].⁴¹⁵ [REDACTED].⁴¹⁶ [REDACTED].⁴¹⁷ [REDACTED].⁴¹⁸
[REDACTED].⁴¹⁹

194. [REDACTED].⁴²⁰ [REDACTED].

195. [REDACTED].⁴²¹ [REDACTED].⁴²² [REDACTED].⁴²³

196. [REDACTED].⁴²⁴ [REDACTED].⁴²⁵

4.6.1.4. [REDACTED]

197. [REDACTED].⁴²⁶ [REDACTED].⁴²⁷ [REDACTED].⁴²⁸ [REDACTED].⁴²⁹
[REDACTED].⁴³⁰ [REDACTED].⁴³¹ [REDACTED].⁴³² [REDACTED].⁴³³
[REDACTED].⁴³⁴

198. [REDACTED].⁴³⁵

199. [REDACTED].

200. [REDACTED].⁴³⁶ [REDACTED].⁴³⁷ [REDACTED].⁴³⁸ [REDACTED].⁴³⁹
[REDACTED].⁴⁴⁰ [REDACTED].⁴⁴¹

⁴¹² [REDACTED].

⁴¹³ [REDACTED].

⁴¹⁴ [REDACTED].

⁴¹⁵ [REDACTED].

⁴¹⁶ [REDACTED].

⁴¹⁷ [REDACTED].

⁴¹⁸ [REDACTED].

⁴¹⁹ [REDACTED].

⁴²⁰ [REDACTED].

⁴²¹ [REDACTED].

⁴²² [REDACTED].

⁴²³ [REDACTED].

⁴²⁴ [REDACTED].

⁴²⁵ [REDACTED].

⁴²⁶ [REDACTED].

⁴²⁷ [REDACTED].

⁴²⁸ [REDACTED].

⁴²⁹ [REDACTED].

⁴³⁰ [REDACTED].

⁴³¹ [REDACTED].

⁴³² [REDACTED].

⁴³³ [REDACTED].

⁴³⁴ [REDACTED].

⁴³⁵ [REDACTED].

⁴³⁶ [REDACTED].

201. [REDACTED].⁴⁴² [REDACTED],⁴⁴³ [REDACTED].⁴⁴⁴
202. [REDACTED].⁴⁴⁵ [REDACTED],⁴⁴⁶ [REDACTED],⁴⁴⁷ [REDACTED].⁴⁴⁸
[REDACTED].⁴⁴⁹ [REDACTED].⁴⁵⁰
203. [REDACTED],⁴⁵¹ [REDACTED].⁴⁵² [REDACTED].⁴⁵³ [REDACTED],⁴⁵⁴
[REDACTED].⁴⁵⁵ [REDACTED].⁴⁵⁶ [REDACTED].⁴⁵⁷ [REDACTED].⁴⁵⁸
[REDACTED].⁴⁵⁹ [REDACTED].
204. [REDACTED].⁴⁶⁰ [REDACTED]⁴⁶¹ [REDACTED].⁴⁶² [REDACTED]⁴⁶³
[REDACTED]⁴⁶⁴ [REDACTED]⁴⁶⁵ [REDACTED]⁴⁶⁶ [REDACTED].⁴⁶⁷
205. [REDACTED].⁴⁶⁸ [REDACTED].⁴⁶⁹
206. [REDACTED].⁴⁷⁰ [REDACTED].⁴⁷¹ [REDACTED].⁴⁷²

⁴³⁷ [REDACTED].
⁴³⁸ [REDACTED].
⁴³⁹ [REDACTED].
⁴⁴⁰ [REDACTED].
⁴⁴¹ [REDACTED].
⁴⁴² [REDACTED].
⁴⁴³ [REDACTED].
⁴⁴⁴ [REDACTED].
⁴⁴⁵ [REDACTED].
⁴⁴⁶ [REDACTED].
⁴⁴⁷ [REDACTED].
⁴⁴⁸ [REDACTED].
⁴⁴⁹ [REDACTED].
⁴⁵⁰ [REDACTED].
⁴⁵¹ [REDACTED].
⁴⁵² [REDACTED].
⁴⁵³ [REDACTED].
⁴⁵⁴ [REDACTED].
⁴⁵⁵ [REDACTED].
⁴⁵⁶ [REDACTED].
⁴⁵⁷ [REDACTED].
⁴⁵⁸ [REDACTED].
⁴⁵⁹ [REDACTED].
⁴⁶⁰ [REDACTED].
⁴⁶¹ [REDACTED].
⁴⁶² [REDACTED].
⁴⁶³ [REDACTED].
⁴⁶⁴ [REDACTED].
⁴⁶⁵ [REDACTED].
⁴⁶⁶ [REDACTED].
⁴⁶⁷ [REDACTED].
⁴⁶⁸ [REDACTED].
⁴⁶⁹ [REDACTED].
⁴⁷⁰ [REDACTED].
⁴⁷¹ [REDACTED].

207. [REDACTED].⁴⁷³ [REDACTED],⁴⁷⁴ [REDACTED].⁴⁷⁵

4.6.1.5. *[REDACTED]*

208. [REDACTED].⁴⁷⁶ [REDACTED]⁴⁷⁷ [REDACTED].⁴⁷⁸ [REDACTED].⁴⁷⁹
[REDACTED].⁴⁸⁰

209. [REDACTED].⁴⁸¹ [REDACTED].⁴⁸² [REDACTED].⁴⁸³ [REDACTED].⁴⁸⁴

210. [REDACTED],⁴⁸⁵ [REDACTED],⁴⁸⁶ [REDACTED].⁴⁸⁷ [REDACTED].⁴⁸⁸
[REDACTED],⁴⁸⁹ [REDACTED].⁴⁹⁰ [REDACTED].

211. [REDACTED],⁴⁹¹ [REDACTED]⁴⁹² [REDACTED],⁴⁹³ [REDACTED].⁴⁹⁴
[REDACTED],⁴⁹⁵ [REDACTED];⁴⁹⁶ [REDACTED].⁴⁹⁷

212. [REDACTED],⁴⁹⁸ [REDACTED],⁴⁹⁹ [REDACTED].⁵⁰⁰ [REDACTED].⁵⁰¹
[REDACTED].

⁴⁷² [REDACTED].

⁴⁷³ [REDACTED].

⁴⁷⁴ [REDACTED].

⁴⁷⁵ [REDACTED].

⁴⁷⁶ [REDACTED].

⁴⁷⁷ [REDACTED].

⁴⁷⁸ [REDACTED].

⁴⁷⁹ [REDACTED].

⁴⁸⁰ [REDACTED].

⁴⁸¹ [REDACTED].

⁴⁸² [REDACTED].

⁴⁸³ [REDACTED].

⁴⁸⁴ [REDACTED].

⁴⁸⁵ [REDACTED].

⁴⁸⁶ [REDACTED].

⁴⁸⁷ [REDACTED].

⁴⁸⁸ [REDACTED].

⁴⁸⁹ [REDACTED].

⁴⁹⁰ [REDACTED].

⁴⁹¹ [REDACTED].

⁴⁹² [REDACTED].

⁴⁹³ [REDACTED].

⁴⁹⁴ [REDACTED].

⁴⁹⁵ [REDACTED].

⁴⁹⁶ [REDACTED].

⁴⁹⁷ [REDACTED].

⁴⁹⁸ [REDACTED].

⁴⁹⁹ [REDACTED].

⁵⁰⁰ [REDACTED].

⁵⁰¹ [REDACTED].

213. [REDACTED].⁵⁰² [REDACTED],⁵⁰³ [REDACTED],⁵⁰⁴ [REDACTED].⁵⁰⁵
 [REDACTED].⁵⁰⁶ [REDACTED].⁵⁰⁷ [REDACTED].⁵⁰⁸ [REDACTED].⁵⁰⁹
 [REDACTED].⁵¹⁰ [REDACTED].

214. [REDACTED],⁵¹¹ [REDACTED],⁵¹² [REDACTED],⁵¹³ [REDACTED].⁵¹⁴
 [REDACTED].

215. [REDACTED].⁵¹⁵

216. [REDACTED].

217. [REDACTED].⁵¹⁶ [REDACTED].

218. [REDACTED]⁵¹⁷ [REDACTED].⁵¹⁸ [REDACTED].

219. [REDACTED],⁵¹⁹ [REDACTED].⁵²⁰ [REDACTED].⁵²¹

220. [REDACTED].⁵²² [REDACTED],⁵²³ [REDACTED],⁵²⁴ [REDACTED].⁵²⁵
 [REDACTED].

221. [REDACTED].⁵²⁶ [REDACTED].⁵²⁷

⁵⁰² [REDACTED].

⁵⁰³ [REDACTED].

⁵⁰⁴ [REDACTED].

⁵⁰⁵ [REDACTED].

⁵⁰⁶ [REDACTED].

⁵⁰⁷ [REDACTED].

⁵⁰⁸ [REDACTED].

⁵⁰⁹ [REDACTED].

⁵¹⁰ [REDACTED].

⁵¹¹ [REDACTED].

⁵¹² [REDACTED].

⁵¹³ [REDACTED].

⁵¹⁴ [REDACTED].

⁵¹⁵ [REDACTED].

⁵¹⁶ [REDACTED].

⁵¹⁷ [REDACTED].

⁵¹⁸ [REDACTED].

⁵¹⁹ [REDACTED].

⁵²⁰ [REDACTED].

⁵²¹ [REDACTED].

⁵²² [REDACTED].

⁵²³ [REDACTED].

⁵²⁴ [REDACTED].

⁵²⁵ [REDACTED].

⁵²⁶ [REDACTED].

⁵²⁷ [REDACTED].

4.6.1.6. [REDACTED]

222. [REDACTED],⁵²⁸ [REDACTED],⁵²⁹ [REDACTED].⁵³⁰ [REDACTED].⁵³¹
[REDACTED].⁵³²

223. [REDACTED].⁵³³ [REDACTED].

4.6.2. [REDACTED]

4.6.2.1. [REDACTED]

224. [REDACTED].

4.6.2.2. [REDACTED]

225. [REDACTED]⁵³⁴ [REDACTED]⁵³⁵ [REDACTED].⁵³⁶

226. [REDACTED].⁵³⁷ [REDACTED]⁵³⁸ [REDACTED].⁵³⁹

227. [REDACTED],⁵⁴⁰ [REDACTED].⁵⁴¹ [REDACTED],⁵⁴² [REDACTED].⁵⁴³

4.6.2.3. [REDACTED]

228. [REDACTED].⁵⁴⁴ [REDACTED].⁵⁴⁵ [REDACTED]⁵⁴⁶ [REDACTED],⁵⁴⁷
[REDACTED].⁵⁴⁸ [REDACTED].⁵⁴⁹ [REDACTED].⁵⁵⁰

⁵²⁸ [REDACTED].

⁵²⁹ [REDACTED].

⁵³⁰ [REDACTED].

⁵³¹ [REDACTED].

⁵³² [REDACTED].

⁵³³ [REDACTED].

⁵³⁴ [REDACTED].

⁵³⁵ [REDACTED].

⁵³⁶ [REDACTED].

⁵³⁷ [REDACTED].

⁵³⁸ [REDACTED].

⁵³⁹ [REDACTED].

⁵⁴⁰ [REDACTED].

⁵⁴¹ [REDACTED].

⁵⁴² [REDACTED].

⁵⁴³ [REDACTED].

⁵⁴⁴ [REDACTED].

⁵⁴⁵ [REDACTED].

⁵⁴⁶ [REDACTED].

⁵⁴⁷ [REDACTED].

⁵⁴⁸ [REDACTED].

229. [REDACTED].⁵⁵¹ [REDACTED].⁵⁵² [REDACTED].

230. [REDACTED].⁵⁵³ [REDACTED].⁵⁵⁴ [REDACTED].⁵⁵⁵ [REDACTED].

4.6.2.4. [REDACTED]

231. [REDACTED].⁵⁵⁶

232. [REDACTED].⁵⁵⁷ [REDACTED].⁵⁵⁸ [REDACTED].

233. [REDACTED].⁵⁵⁹ [REDACTED].⁵⁶⁰ [REDACTED].⁵⁶¹ [REDACTED].⁵⁶²

234. [REDACTED].⁵⁶³ [REDACTED].⁵⁶⁴ [REDACTED].⁵⁶⁵ [REDACTED].⁵⁶⁶

235. [REDACTED].⁵⁶⁷ [REDACTED].⁵⁶⁸ [REDACTED].⁵⁶⁹

236. [REDACTED].⁵⁷⁰ [REDACTED].⁵⁷¹ [REDACTED].⁵⁷²

237. [REDACTED].⁵⁷³ [REDACTED].⁵⁷⁴ [REDACTED].⁵⁷⁵ [REDACTED].⁵⁷⁶
[REDACTED].⁵⁷⁷

⁵⁴⁹ [REDACTED].

⁵⁵⁰ [REDACTED].

⁵⁵¹ [REDACTED].

⁵⁵² [REDACTED].

⁵⁵³ [REDACTED].

⁵⁵⁴ [REDACTED].

⁵⁵⁵ [REDACTED].

⁵⁵⁶ [REDACTED].

⁵⁵⁷ [REDACTED].

⁵⁵⁸ [REDACTED].

⁵⁵⁹ [REDACTED].

⁵⁶⁰ [REDACTED].

⁵⁶¹ [REDACTED].

⁵⁶² [REDACTED].

⁵⁶³ [REDACTED].

⁵⁶⁴ [REDACTED].

⁵⁶⁵ [REDACTED].

⁵⁶⁶ [REDACTED].

⁵⁶⁷ [REDACTED].

⁵⁶⁸ [REDACTED].

⁵⁶⁹ [REDACTED].

⁵⁷⁰ [REDACTED].

⁵⁷¹ [REDACTED].

⁵⁷² [REDACTED].

⁵⁷³ [REDACTED].

⁵⁷⁴ [REDACTED].

⁵⁷⁵ [REDACTED].

⁵⁷⁶ [REDACTED].

⁵⁷⁷ [REDACTED].

4.6.2.5. [REDACTED]

238. [REDACTED].⁵⁷⁸ [REDACTED].⁵⁷⁹ [REDACTED].⁵⁸⁰ [REDACTED].⁵⁸¹
[REDACTED].⁵⁸² [REDACTED].⁵⁸³

239. [REDACTED].⁵⁸⁴ [REDACTED].⁵⁸⁵

240. [REDACTED].⁵⁸⁶

241. [REDACTED].⁵⁸⁷

242. [REDACTED].⁵⁸⁸

4.6.2.6. [REDACTED]

243. [REDACTED].⁵⁸⁹ [REDACTED].⁵⁹⁰ [REDACTED].⁵⁹¹ [REDACTED].⁵⁹²
[REDACTED].⁵⁹³

5. [REDACTED]

5.1 [REDACTED]

244. [REDACTED].⁵⁹⁴

245. [REDACTED].⁵⁹⁵ [REDACTED].⁵⁹⁶ [REDACTED].⁵⁹⁷ [REDACTED].⁵⁹⁸

⁵⁷⁸ [REDACTED].

⁵⁷⁹ [REDACTED].

⁵⁸⁰ [REDACTED].

⁵⁸¹ [REDACTED].

⁵⁸² [REDACTED].

⁵⁸³ [REDACTED].

⁵⁸⁴ [REDACTED].

⁵⁸⁵ [REDACTED].

⁵⁸⁶ [REDACTED].

⁵⁸⁷ [REDACTED].

⁵⁸⁸ [REDACTED].

⁵⁸⁹ [REDACTED].

⁵⁹⁰ [REDACTED].

⁵⁹¹ [REDACTED].

⁵⁹² [REDACTED].

⁵⁹³ [REDACTED].

⁵⁹⁴ [REDACTED].

⁵⁹⁵ [REDACTED].

⁵⁹⁶ [REDACTED].

246. [REDACTED].⁵⁹⁹ [REDACTED].

5.2 [REDACTED]

5.2.1. [REDACTED]

247. [REDACTED].

5.2.2. [REDACTED]

248. [REDACTED].⁶⁰⁰ [REDACTED].⁶⁰¹ [REDACTED].⁶⁰²

249. [REDACTED].⁶⁰³ [REDACTED].⁶⁰⁴ [REDACTED].⁶⁰⁵ [REDACTED].⁶⁰⁶
[REDACTED].⁶⁰⁷

250. [REDACTED].⁶⁰⁸ [REDACTED].⁶⁰⁹

251. [REDACTED].⁶¹⁰ [REDACTED].

5.2.3. [REDACTED]

252. [REDACTED].

253. [REDACTED].⁶¹¹ [REDACTED].⁶¹² [REDACTED].⁶¹³ [REDACTED].⁶¹⁴

254. [REDACTED].⁶¹⁵ [REDACTED].⁶¹⁶ [REDACTED].⁶¹⁷

⁵⁹⁷ [REDACTED].

⁵⁹⁸ [REDACTED].

⁵⁹⁹ [REDACTED].

⁶⁰⁰ [REDACTED].

⁶⁰¹ [REDACTED].

⁶⁰² [REDACTED].

⁶⁰³ [REDACTED].

⁶⁰⁴ [REDACTED].

⁶⁰⁵ [REDACTED].

⁶⁰⁶ [REDACTED].

⁶⁰⁷ [REDACTED].

⁶⁰⁸ [REDACTED].

⁶⁰⁹ [REDACTED].

⁶¹⁰ [REDACTED].

⁶¹¹ [REDACTED].

⁶¹² [REDACTED].

⁶¹³ [REDACTED].

⁶¹⁴ [REDACTED].

⁶¹⁵ [REDACTED].

⁶¹⁶ [REDACTED].

255. [REDACTED],⁶¹⁸ [REDACTED].⁶¹⁹ [REDACTED].⁶²⁰ [REDACTED],⁶²¹
[REDACTED],⁶²² [REDACTED],⁶²³ [REDACTED].⁶²⁴

256. [REDACTED],⁶²⁵ [REDACTED].⁶²⁶ [REDACTED].⁶²⁷

257. [REDACTED],⁶²⁸ [REDACTED].⁶²⁹ [REDACTED].⁶³⁰ [REDACTED].⁶³¹
[REDACTED].⁶³²

258. [REDACTED].⁶³³ [REDACTED].⁶³⁴ [REDACTED].⁶³⁵ [REDACTED],⁶³⁶
[REDACTED].⁶³⁷

259. [REDACTED].

5.2.4. [REDACTED]

260. [REDACTED].⁶³⁸

261. [REDACTED].⁶³⁹ [REDACTED],⁶⁴⁰ [REDACTED].⁶⁴¹ [REDACTED].⁶⁴²
[REDACTED].⁶⁴³ [REDACTED].⁶⁴⁴

262. [REDACTED].⁶⁴⁵

⁶¹⁷ [REDACTED].

⁶¹⁸ [REDACTED].

⁶¹⁹ [REDACTED].

⁶²⁰ [REDACTED].

⁶²¹ [REDACTED].

⁶²² [REDACTED].

⁶²³ [REDACTED].

⁶²⁴ [REDACTED].

⁶²⁵ [REDACTED].

⁶²⁶ [REDACTED].

⁶²⁷ [REDACTED].

⁶²⁸ [REDACTED].

⁶²⁹ [REDACTED].

⁶³⁰ [REDACTED].

⁶³¹ [REDACTED].

⁶³² [REDACTED].

⁶³³ [REDACTED].

⁶³⁴ [REDACTED].

⁶³⁵ [REDACTED].

⁶³⁶ [REDACTED].

⁶³⁷ [REDACTED].

⁶³⁸ [REDACTED].

⁶³⁹ [REDACTED].

⁶⁴⁰ [REDACTED].

⁶⁴¹ [REDACTED].

⁶⁴² [REDACTED].

⁶⁴³ [REDACTED].

⁶⁴⁴ [REDACTED].

263. [REDACTED]⁶⁴⁶ [REDACTED]⁶⁴⁷ [REDACTED].⁶⁴⁸ [REDACTED].⁶⁴⁹

5.2.5. [REDACTED]

264. [REDACTED],⁶⁵⁰ [REDACTED].⁶⁵¹ [REDACTED],⁶⁵² [REDACTED].⁶⁵³

265. [REDACTED].⁶⁵⁴

266. [REDACTED]⁶⁵⁵ [REDACTED].⁶⁵⁶ [REDACTED].⁶⁵⁷ [REDACTED],⁶⁵⁸
[REDACTED],⁶⁵⁹ [REDACTED].⁶⁶⁰

267. [REDACTED].⁶⁶¹ [REDACTED].⁶⁶² [REDACTED].

5.2.6. [REDACTED]

268. [REDACTED],⁶⁶³ [REDACTED]⁶⁶⁴ [REDACTED].⁶⁶⁵ [REDACTED],⁶⁶⁶
[REDACTED],⁶⁶⁷ [REDACTED],⁶⁶⁸ [REDACTED].⁶⁶⁹

269. [REDACTED]⁶⁷⁰ [REDACTED],⁶⁷¹ [REDACTED]⁶⁷² [REDACTED].⁶⁷³
[REDACTED].⁶⁷⁴ [REDACTED].⁶⁷⁵

⁶⁴⁵ [REDACTED].

⁶⁴⁶ [REDACTED].

⁶⁴⁷ [REDACTED].

⁶⁴⁸ [REDACTED].

⁶⁴⁹ [REDACTED].

⁶⁵⁰ [REDACTED].

⁶⁵¹ [REDACTED].

⁶⁵² [REDACTED].

⁶⁵³ [REDACTED].

⁶⁵⁴ [REDACTED].

⁶⁵⁵ [REDACTED].

⁶⁵⁶ [REDACTED].

⁶⁵⁷ [REDACTED].

⁶⁵⁸ [REDACTED].

⁶⁵⁹ [REDACTED].

⁶⁶⁰ [REDACTED].

⁶⁶¹ [REDACTED].

⁶⁶² [REDACTED].

⁶⁶³ [REDACTED].

⁶⁶⁴ [REDACTED].

⁶⁶⁵ [REDACTED].

⁶⁶⁶ [REDACTED].

⁶⁶⁷ [REDACTED].

⁶⁶⁸ [REDACTED].

⁶⁶⁹ [REDACTED].

⁶⁷⁰ [REDACTED].

⁶⁷¹ [REDACTED].

⁶⁷² [REDACTED].

270. [REDACTED].⁶⁷⁶ [REDACTED]⁶⁷⁷ [REDACTED],⁶⁷⁸ [REDACTED].⁶⁷⁹
[REDACTED],⁶⁸⁰ [REDACTED].⁶⁸¹

5.2.7. [REDACTED]

271. [REDACTED],⁶⁸² [REDACTED],⁶⁸³ [REDACTED]⁶⁸⁴ [REDACTED].⁶⁸⁵
[REDACTED]⁶⁸⁶ [REDACTED],⁶⁸⁷ [REDACTED].⁶⁸⁸ [REDACTED].⁶⁸⁹

272. [REDACTED].⁶⁹⁰ [REDACTED],⁶⁹¹ [REDACTED]⁶⁹² [REDACTED]⁶⁹³
[REDACTED].

273. [REDACTED]⁶⁹⁴ [REDACTED].⁶⁹⁵ [REDACTED],⁶⁹⁶ [REDACTED].

274. [REDACTED],⁶⁹⁷ [REDACTED].⁶⁹⁸ [REDACTED]⁶⁹⁹ [REDACTED],⁷⁰⁰
[REDACTED]⁷⁰¹ [REDACTED].⁷⁰²

275. [REDACTED],⁷⁰³ [REDACTED],⁷⁰⁴ [REDACTED].⁷⁰⁵ [REDACTED],⁷⁰⁶
[REDACTED],⁷⁰⁷ [REDACTED].⁷⁰⁸ [REDACTED]⁷⁰⁹ [REDACTED].⁷¹⁰
[REDACTED],⁷¹¹ [REDACTED].

⁶⁷³ [REDACTED].

⁶⁷⁴ [REDACTED].

⁶⁷⁵ [REDACTED].

⁶⁷⁶ [REDACTED].

⁶⁷⁷ [REDACTED].

⁶⁷⁸ [REDACTED].

⁶⁷⁹ [REDACTED].

⁶⁸⁰ [REDACTED].

⁶⁸¹ [REDACTED].

⁶⁸² [REDACTED].

⁶⁸³ [REDACTED].

⁶⁸⁴ [REDACTED].

⁶⁸⁵ [REDACTED].

⁶⁸⁶ [REDACTED].

⁶⁸⁷ [REDACTED].

⁶⁸⁸ [REDACTED].

⁶⁸⁹ [REDACTED].

⁶⁹⁰ [REDACTED].

⁶⁹¹ [REDACTED].

⁶⁹² [REDACTED].

⁶⁹³ [REDACTED].

⁶⁹⁴ [REDACTED].

⁶⁹⁵ [REDACTED].

⁶⁹⁶ [REDACTED].

⁶⁹⁷ [REDACTED].

⁶⁹⁸ [REDACTED].

⁶⁹⁹ [REDACTED].

⁷⁰⁰ [REDACTED].

⁷⁰¹ [REDACTED].

⁷⁰² [REDACTED].

276. [REDACTED]⁷¹² [REDACTED],⁷¹³ [REDACTED]⁷¹⁴ [REDACTED],⁷¹⁵
 [REDACTED].⁷¹⁶ [REDACTED].⁷¹⁷ [REDACTED].⁷¹⁸ [REDACTED].⁷¹⁹
 [REDACTED].

277. [REDACTED],⁷²⁰ [REDACTED].⁷²¹ [REDACTED],⁷²² [REDACTED].⁷²³
 [REDACTED].

278. [REDACTED].⁷²⁴ [REDACTED].

5.2.8. [REDACTED]

279. [REDACTED]⁷²⁵ [REDACTED].⁷²⁶ [REDACTED],⁷²⁷ [REDACTED].⁷²⁸
 [REDACTED].⁷²⁹

280. [REDACTED].

⁷⁰³ [REDACTED].
⁷⁰⁴ [REDACTED].
⁷⁰⁵ [REDACTED].
⁷⁰⁶ [REDACTED].
⁷⁰⁷ [REDACTED].
⁷⁰⁸ [REDACTED].
⁷⁰⁹ [REDACTED].
⁷¹⁰ [REDACTED].
⁷¹¹ [REDACTED].
⁷¹² [REDACTED].
⁷¹³ [REDACTED].
⁷¹⁴ [REDACTED].
⁷¹⁵ [REDACTED].
⁷¹⁶ [REDACTED].
⁷¹⁷ [REDACTED].
⁷¹⁸ [REDACTED].
⁷¹⁹ [REDACTED].
⁷²⁰ [REDACTED].
⁷²¹ [REDACTED].
⁷²² [REDACTED].
⁷²³ [REDACTED].
⁷²⁴ [REDACTED].
⁷²⁵ [REDACTED].
⁷²⁶ [REDACTED].
⁷²⁷ [REDACTED].
⁷²⁸ [REDACTED].
⁷²⁹ [REDACTED].

6. [REDACTED]

6.1 [REDACTED]

281. [REDACTED],⁷³⁰ [REDACTED].

282. [REDACTED].

283. [REDACTED].

284. [REDACTED].

6.2 [REDACTED]

6.2.1. *[REDACTED]*

6.2.1.1. *[REDACTED]*

285. [REDACTED].

286. [REDACTED].

6.2.1.2. *[REDACTED]*

287. [REDACTED].

288. [REDACTED].

6.2.1.3. *[REDACTED]*

289. [REDACTED].

6.2.1.4. *[REDACTED]*

290. [REDACTED].

291. [REDACTED].

292. [REDACTED].

⁷³⁰ [REDACTED].

6.2.1.5. [REDACTED]

293. [REDACTED].

294. [REDACTED].

6.2.1.6. [REDACTED]

295. [REDACTED].

6.2.1.7. [REDACTED]

296. [REDACTED].

6.2.2. [REDACTED]

6.2.2.1. [REDACTED]

297. [REDACTED].

6.2.2.2. [REDACTED]

298. [REDACTED].

6.2.2.3. [REDACTED]

299. [REDACTED].

300. [REDACTED].

6.2.2.4. [REDACTED]

301. [REDACTED].

302. [REDACTED].

6.2.2.5. [REDACTED]

303. [REDACTED].

6.3 [REDACTED]

304. [REDACTED].

305. [REDACTED].

7. [REDACTED]**7.1 [REDACTED]**

306. [REDACTED].

307. [REDACTED].⁷³¹

308. [REDACTED].

309. [REDACTED].

310. [REDACTED].

311. [REDACTED].

312. [REDACTED].

7.2 Reasons why Im Chaem Does Not Fall under the Jurisdiction of the ECCC

313. [REDACTED].

314. [REDACTED].

315. [REDACTED].

316. [REDACTED],⁷³² [REDACTED].

317. [REDACTED].

318. [REDACTED].

319. [REDACTED].

⁷³¹ [REDACTED].

⁷³² See [REDACTED].

320. [REDACTED].

321. [REDACTED].

322. [REDACTED].

323. [REDACTED].

324. [REDACTED],⁷³³ [REDACTED].⁷³⁴ [REDACTED].

325. In sum, neither the individual nor the combined weight of the factors taken into account and described above allow us to arrive at the conclusion that **Im Chaem** falls into the category of a person who was one of those most responsible within the meaning of the law applicable before the ECCC.

Based on the above, we⁷³⁵ **FIND** that **Im Chaem** does not fall under the Court's personal jurisdiction.

Dated 10 July 2017, Phnom Penh

សហចៅក្រមស៊ើបអង្កេត

Co-Investigating Judges
Co-juges d'instruction

YOU Bunleng Michael BOHLANDER

⁷³³ [REDACTED].

⁷³⁴ [REDACTED].

⁷³⁵ The National Co-Investigating Judge wishes to recall his objection at the time to former International Co-Investigating Judge Harmon's unilateral charging of IM Chaem *in absentia*.

Nor does he recognise or accept as valid any documents created and/or filed by former International Reserve Co-Investigating Judge Laurent Kasper-Ansermet, and hence the case file document numbering should run from the last document put on the case file by former International Co-Investigating Judge Blunk and not count any documents filed by Judge Kasper-Ansermet.

[REDACTED].