



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

**Kingdom of Cambodia
Nation Religion King**

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

**Royaume du Cambodge
Nation Religion Roi**

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

Case File No: 004/1/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges

Date: 10 July 2017

Language(s): Khmer/English [Original]

Classification: សាធារណៈ/Public

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception): 10 / 07 / 2017
ម៉ោង (Time/Heure): 13:00
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RAA

CLOSING ORDER (REASONS)

Distribution:

Co-Prosecutors
CHEA Leang
Nicholas KOUMJIAN

Im Chaem Defence
BIT Seanglim
Wayne JORDASH

Civil Party Lawyers
CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov

Laure DESFORGES
Isabelle DURAND
Emmanuel JACOMY
Martine JACQUIN
Lyma NGUYEN

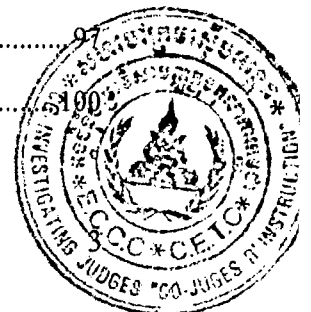


Table of Contents

1. INTRODUCTION	6
2. APPLICABLE LAW	6
2.1 Personal Jurisdiction at the ECCC.....	6
2.1.1. The Position of the ECCC within the Cambodian Legal System – Exclusive Personal, Temporal and Subject-matter Jurisdiction	9
2.1.2. Criminal Law Principles – the Effect of “In Dubio Pro Reo”, Strict Construction, Selective Jurisdiction and Selective Prosecution.....	13
2.1.3. Criteria for the Exercise of Discretion – Decision-making in the DK Structures....	17
2.2 Crimes under the Jurisdiction of the ECCC.....	19
2.2.1. National crimes (Violations of the 1956 Penal Code)	19
2.2.1.1. Homicide	19
2.2.1.2. Torture	20
2.2.1.3. Religious Persecution	21
2.2.2. Crimes against Humanity	22
2.2.2.1. Chapeau Elements of Crimes against Humanity	23
2.2.2.2. Elements of the Crimes against Humanity Listed in Article 5 of the ECCC Law	25
2.3 Modes of Liability	31
2.3.1. Modes of Liability Applicable to International Crimes (Crimes against Humanity) ..	31
2.3.2. Modes of Liability Applicable to National Crimes (Violations of the 1956 Penal Code)	39
3. EVIDENTIARY CONSIDERATIONS.....	40
3.1 Statements Other than Written Records of Interviews Generated by the OCIJ.....	40
3.2 Torture-tainted Evidence	41
3.3 1997 and 1998 Documentation Center of Cambodia Reports	43
3.3.1. Methodology.....	43
3.3.2. 1984 Cambodian Government Report and Its Use by DC-Cam.....	45
3.3.3. Number of Deaths.....	47
3.3.4. Conclusion.....	47



3.4 Interviews of Im Chaem with DC-Cam and Other Entities	50
4. FACTUAL ANALYSIS AND FINDINGS	51
4.1 Im Chaem before April 1975 and after 6 January 1979.....	51
4.2 Role and Authority of Im Chaem in the Southwest Zone.....	52
4.3 Southwest Zone Cadres' Takeover of the Northwest Zone	55
4.4 Role and Authority of Im Chaem in the Northwest Zone.....	59
4.4.1. Im Chaem's Transfer to the Northwest Zone	59
4.4.2. Secretary of Preah Net Preah District.....	60
4.4.3. Role on the Sector 5 Committee	61
4.4.4. Im Chaem's Responsibilities, Authority, and Sources of Knowledge in Sector 5 of the Northwest Zone.....	66
4.4.4.1. Statutory Powers of Sectors and Districts in Democratic Kampuchea.....	66
4.4.4.2. Evidence on Im Chaem's Exercise of Responsibilities and Authority	68
4.4.4.3. Sources of Knowledge.....	71
4.5 Evidence of Im Chaem's Conduct in the Northwest Zone	72
4.6 Charged Crimes	75
4.6.1. Phnom Trayoung Security Centre.....	75
4.6.1.1. Introduction.....	75
4.6.1.2. Location and Establishment.....	76
4.6.1.3. Structure and Personnel	77
4.6.1.4. Arrests and Detention	79
4.6.1.5. Deaths and Disappearances.....	86
4.6.1.6. Visits of Im Chaem	93
4.6.2. Spean Sreng Canal Worksite	94
4.6.2.1. Introduction.....	94
4.6.2.2. Location and Establishment.....	94
4.6.2.3. Structure and Personnel	95
4.6.2.4. Living and Working Conditions	
4.6.2.5. Arrests, Deaths, and Disappearances	



4.6.2.6. Visits of Im Chaem.....	101
5. EVIDENCE OF CRIMES ALLEGED BY THE ICP BUT NOT CHARGED BY THE INTERNATIONAL CIJ	102
5.1 Preliminary Considerations	102
5.2 Summary Review of the Evidence on the Alleged Crimes Not Charged against Im Chaem	103
5.2.1. Preliminary Considerations on Im Chaem’s Potential Involvement with the Crime Sites Reviewed in this Section.....	103
5.2.2. Wat Ang Srei Muny and Prey Sokhon Execution Site	104
5.2.3. Wat Preah Net Preah and Related Sites	105
5.2.4. Phnum Chakrey Security Centre	108
5.2.5. Prey Taruth Execution Site.....	110
5.2.6. Wat Chamkar Khnol.....	111
5.2.7. Trapeang Thma Dam Worksite	113
5.2.8. Rape and Murder of Two Women of Vietnamese Descent in Preah Net Preah	118
6. LEGAL FINDINGS ON CRIMES.....	119
6.1 <i>Chapeau</i> Elements of Crimes against Humanity.....	119
6.2 Legal Characterisation of Crimes Found to Have Been Committed at Phnom Trayoung Security Centre and Spean Sreng Canal Worksite.....	120
6.2.1. Phnom Trayoung Security Centre.....	120
6.2.1.1. Crime against Humanity of Murder.....	120
6.2.1.2. Crime against Humanity of Extermination	121
6.2.1.3. Crime against Humanity of Enslavement	121
6.2.1.4. Crime against Humanity of Imprisonment	122
6.2.1.5. Crime against Humanity of Other Inhumane Acts	122
6.2.1.6. Crime against Humanity of Persecution on Political Grounds	123
6.2.1.7. National Crime of Premeditated Murder	123
6.2.2. Spean Sreng Canal Worksite	123
6.2.2.1. Crime against Humanity of Murder	123
6.2.2.2. Crime against Humanity of Enslavement	123



6.2.2.3. Crime against Humanity of Imprisonment 124

6.2.2.4. Crime against Humanity of Other Inhumane Acts 125

6.2.2.5. National Crime of Premeditated Murder 125

6.3 Observations on Crimes Alleged but not Charged against Im Chaem 125

7. CONCLUSIONS ON THE ECCC’S PERSONAL JURISDICTION OVER IM CHAEM
..... 126

7.1 Im Chaem’s Individual Criminal Responsibility for the Crimes Committed at Phnom
Trayoung Security Centre and Spean Sreng Canal Worksite 126

7.2 Reasons why Im Chaem Does Not Fall under the Jurisdiction of the ECCC 128

Annex I – Table 1

Annex II – List of Acronyms



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**, in spite of evidence indicating her involvement in serious criminal conduct, does not fall within the personal jurisdiction of the ECCC.
2. In this Closing Order (Reasons), the factual findings on her involvement in the crimes found to have been committed 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 87 (1).



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

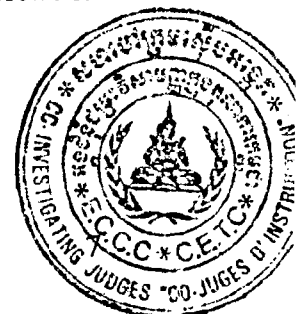
“The purpose of this law is to bring to trial senior leaders of Democratic Kampuchea and those who were the most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed 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.



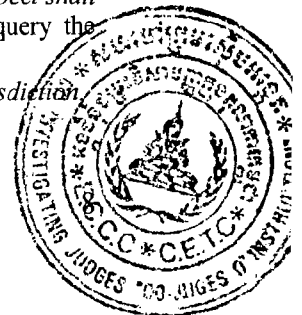
and in essence non-justiciable before the Trial Chamber or SCC, short of a showing of abuse of discretion through bad faith or unsound professional judgement.⁶

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 Case File No. 003-D181, *Consolidated Decision on Meas Muth's Requests on Personal Jurisdiction*, 1 February 2016, para. 30.



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 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.

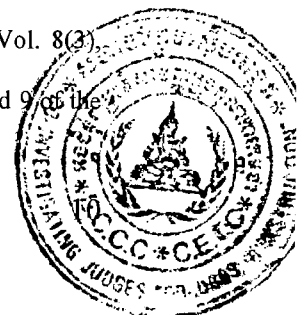
¹⁰ Case File No. 002-D427/2/15, *Decision on Appeals by Nuon Chea and Ieng Thirith against the Closing Order*, 15 Feb 2011, para. 103.

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 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 391*, 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

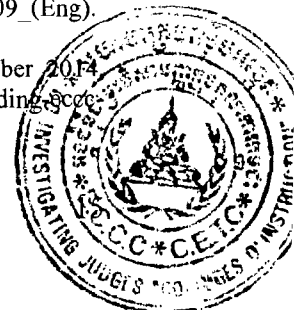
31. The ECCC is quite clearly a court which exercises selective justice in the objective sense of the word, because only a certain small group of people will ever be prosecuted in the courts of Cambodia for the atrocities which occurred during the DK, namely those which fall under its own jurisdiction.
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-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

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

³¹ **D219/80**, Written Record of Interview of Witness Thou Leang, 18 November 2014, ERN 01067788, A34.

³² **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207-00938208, A31. See also on guards boasting **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066830, A32.

³³ **D118/240**, Written Record of Interview of Civil Party Applicant Hoey San, 19 May 2014, ERN 01033042, A71; **D118/155**, Written Record of Interview of Witness Hao Yan, 6 December 2013, ERN 00978589-00978591, A22-A35; **D219/55**, Written Record of Interview of Witness Hao Yan, 27 October 2014, ERN 01053831-01053832, A10-A11. See also **D219/269**, Written Record of Interview of Witness Yun Saroeun, 10 April 2015, ERN 01098494, A44; **D119/125**, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035086-01035087, A9-A10.



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.

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.

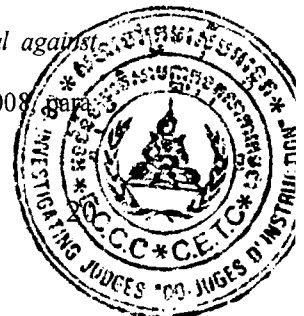
⁴⁴ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, para. 83.

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, paras 72.

⁵¹ Case File No. 001-D99/3/42, *Decision on Appeal against Closing Order*, 5 December 2008, paras 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 Appeals Against the Closing Order*, order 11(2); Case File No. 002-D427, *Closing Order*, 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 *Krnjelac Trial Judgement*, para. 112.

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



- (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 2004, 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.

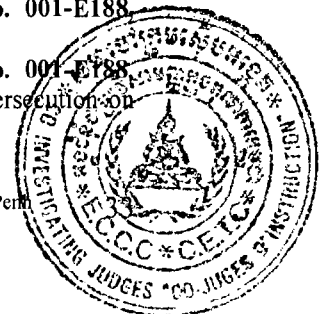
¹³¹ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 706.

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 Simatović*, *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.

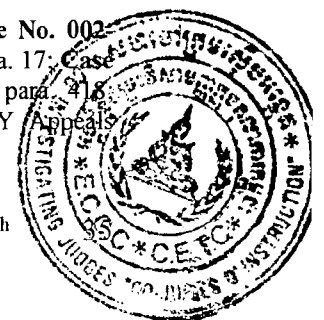
¹⁴⁷ Case File No. 002-E313, *Judgement*, 7 August 2014, para. 690; *Prosecutor v. Tadić* Judgement, ICTY Appeals Chamber (IT-94-1-A), 15 July 1999, paras 196-204 (“Tadić Appeal Judgement”).

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. 80; 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. Đorđević*, 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.

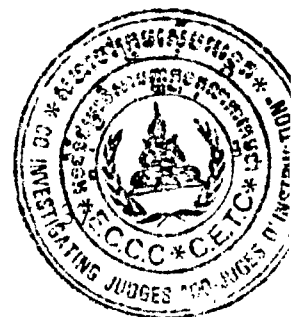
¹⁶³ Case File No. 002-F36, *Appeal Judgement*, 23 November 2016, para. 984.

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

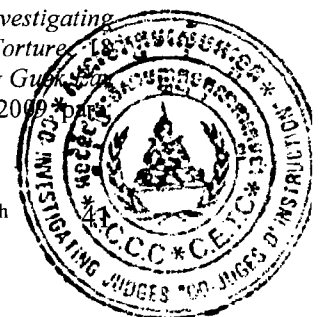
¹⁸² Case File No. 002-F36, *Appeal Judgement*, 23 November 2016, para. 296.

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*, 28 October 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 organigram 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

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 The WRIs and specific answers affected by this practice are: **D119/29**, Written Record of Interview of Witness Pan Chhuong, 14 March 2013 – Question and Answer 17 (English ERN 00937036-00937037); **D119/33**, Written Record of Interview of Witness Chhit Yoek, 26 April 2013 – Question and Answer 13 up to and including Question and Answer 32 (English ERN 00923046-00923050); **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014 – Question and Answer 95 (English ERN 00985688-00985690); **D119/112**, Written Record of Interview of Witness Sengly, 1 April 2014 – Question and Answer 40 (English ERN 00987784); **D119/135**, Written Record of Interview of Witness Riem Iem, 21 July 2014 – Investigator’s notes after Question and Answer 17.



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. For the same reason, the *Investigator's notes* after Question and Answer 32, as well as Question and Answer 33 of D219/477 (English ERN 01141203-01141204) have been disregarded.

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 Sin Khin, 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

(English ERN 01040527-01040528); **D119/137**, Written Record of Interview of Witness Ith Iet, 23 July 2014 – Investigator's notes after Question and Answer 26 (English ERN 01044782-01044783); **D219/477**, Written Record of Interview of Witness Samut Van, 21 August 2015 – Investigator's notes after Question and Answer 41 (English ERN 01141206-01141207).

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

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

¹⁹⁵ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087420, A13 (1997 Report); **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087435, A30 (1998 Report).

¹⁹⁶ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087420, A15.

¹⁹⁷ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421.

¹⁹⁸ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087420.



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.
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 Sin Khin 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

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

²⁰⁰ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421, A19.

²⁰¹ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087420, A11.

²⁰² **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421, A24.

²⁰³ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421, A22.

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



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 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 (also an OCIJ witness), 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 Sin Khin, DC-Cam received the 1984 Government Report from Hab Soeurn, the head of the Preah Net Preah District office, and Thlang Thong, an official from the district culture office,²¹¹ following DC-Cam requests²¹² to the provincial and district offices of culture.²¹³

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.

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 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 00938416-00938427.

²¹¹ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A29.

²¹² **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421.

²¹³ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087431.



121. Sin Khin 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 included information on location and number of sites,²¹⁸ and number of victims.²¹⁹ Districts then sent these reports to the provinces.²²⁰
122. Sin Khin 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. Nith Sorth, 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

²¹⁴ **D219/204**, Written Record of Interview of Sin Khin, 4 March 2015, ERN 01087422, A27. 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 **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A31.

²¹⁷ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A30.

²¹⁸ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087421, A26.

²¹⁹ **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. See also **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A31.

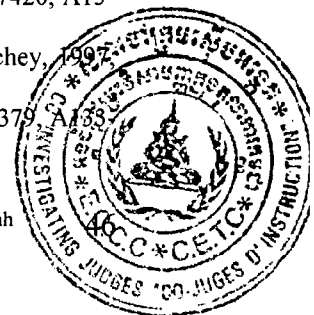
²²⁰ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A44.

²²¹ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A27. 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 **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087420, A13-A14.

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

²²⁴ **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037375, A134.



Preah Net Preah District²²⁵ “*might not have been correct*”.²²⁶ Based on Nith Sorth’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.

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 Sin Khin, 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), Sin Khin 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

²²⁵ **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037379, A133.

²²⁶ **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037379-01037380, A133.

²²⁷ **D219/204**, Written Record of Interview of Witness Sin Khin, 3 March 2015, ERN 01087422, A31.

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

²²⁹ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A43-A44.

²³⁰ See **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A43-A44.

²³¹ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A43-A44. 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.



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, Sin Khin 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 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

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

²³³ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A42.

²³⁴ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087435, A37; **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1997, ERN 00218610.

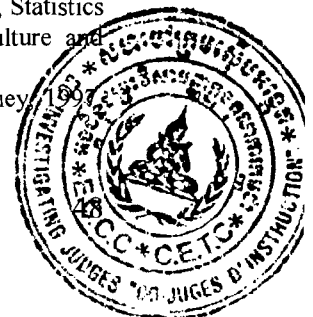
²³⁵ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087436, A39.

²³⁶ **D1.3.10.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 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 Manthey, ERN 00218606.



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, Sin Khin 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 Sin Khin remembers visiting the Trapeang Thma Reservoir in Phnom Srok District in 1998.²⁴⁶

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.

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

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

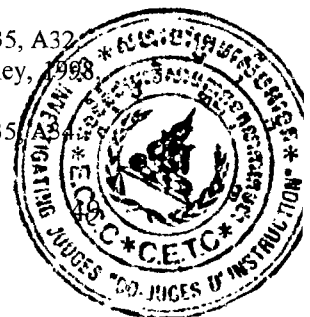
²⁴² **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1998, ERN 00078068.

²⁴³ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087435, A30. See also **D1.3.27.10**, DC-Cam Report, Mapping the killing fields of Cambodia – Banteay Manthey, 1998, ERN 00078073.

²⁴⁴ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087435, A32.

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

²⁴⁶ **D219/206**, Written Record of Interview of Witness Sin Khin, 5 March 2015, ERN 01087435.



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 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

²⁴⁷ Internal Rules 21 and 58.

²⁴⁸ Case File No. 002-D344/1, Order on Investigative Request Regarding the Film "Enemy People", 9 April 2010, para. 3.



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 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

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.

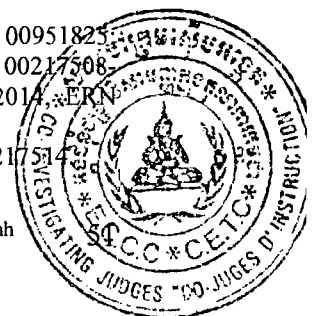
²⁵¹ **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089771-00089790; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951825-00951881.

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

²⁵³ **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217508-00217555.

²⁵⁴ **D123/1/5.1c**, Transcript of DC-Cam Interview of Im Chaem, 6 April 2012, ERN 00951825-00951881; **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217508-00217509; **D118/208**, Written Record of Interview of Witness Ul Hoeun, 4 March 2014, ERN 00981817, A57.

²⁵⁵ **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217508-00217555.



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.
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*

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

²⁵⁷ **D118/208**, Written Record of Interview of Witness Hul Hoeun, 4 March 2014, ERN 00981817, A57; **D118/285**, Written Record of Interview of Witness Nop Ngim, 12 August 2014, ERN 01044677, A24.

²⁵⁸ **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044807, A62.

²⁵⁹ **D119/68**, Written Record of Interview of Witness Phi Phuon, 28 November 2013, ERN 00975044-00975045, A1.

²⁶⁰ **D118/150**, Written Record of Interview of Witness Hem Moeun, 21 November 2013, ERN 00975017, A82; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951827. *See also* **A150**, Summons of Im Chaem for Initial Appearance, 29 July 2014.

²⁶¹ *See* regarding location of Koh Andet District, **D119/82**, Written Record of Interview of Witness Neang Ouch, 28 January 2014, ERN 00981139, A16.

²⁶² **D304/2**, *International Co-Prosecutor's Rule 66 Final Submission against Im Chaem*, 27 October 2016, paras 105-107.



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.

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

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

²⁶⁴ **D119/82**, Written Record of Interview of Witness Neang Ouch, 28 January 2014, ERN 00981144-00981146, A40-A51.

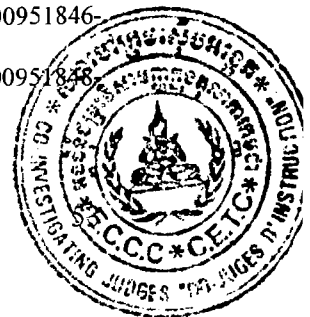
²⁶⁵ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000669-01000670, A28-A31.

²⁶⁶ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671-01000672, A41-A43.

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

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

²⁶⁹ See Section 3.1.



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

²⁷⁰ **D118/78**, Written Record of Interview of Witness On Sopheap, 25 June 2013, ERN 00976636, A8; **D119/13**, Written Record of Interview of Witness Chaem Chreav, 26 February 2013, ERN 00900310, A6; **D219/37**, Written Record of Interview of Witness Suon Mot, 16 October 2014, ERN 01053614, A17.

²⁷¹ **D119/83**, Written Record of Interview of Witness Moeng Vet, 10 February 2014, ERN 00982073, A18-A19; **D119/84**, Written Record of Interview of Witness Moeng Vet, ERN 00982703, A19-A20, 00982706-00982708, A29-A31; **D118/79**, Written Record of Interview of Witness Pech Chim, 26 June 2013, ERN 00947188, A6; **D6.1.688**, Written Record of Interview of Witness Bun Thien, 17 August 2009, ERN 00384405; **D119/15**, Written Record of Interview of Witness Sao Van, 27 February 2013, ERN 00901570, A12; **D118/274**, Written Record of Interview of Witness Bun Thien, 10 July 2014, ERN 01031975, A28; **D219/521**, Written Record of Interview of Witness Toeb Phy, 14 September 2015, ERN 01167997, A63; **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671-01000672, A40-A45; **D119/149**, Written Record of Interview of Witness Bun Thoeun, 26 August 2014, ERN 01031913, A32-A34; **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671, A40-A41.

²⁷² **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671, A41-A43.

²⁷³ **D119/156**, Written Record of Interview of Witness Choeun Chhoeng, 4 September 2014, ERN 01044843, A13-A14; **D119/84**, Written Record of Interview of Witness Moeng Vet, ERN 00982705-00982706, A19-A20, 00982708, A32, A37.

²⁷⁴ **D6.1.648**, Written Record of Interview of Witness Uk Phorn, 22 August 2009, ERN 00372931.

²⁷⁵ **D119/149**, Written Record of Interview of Witness Bun Thoeun, 26 August 2014, ERN 01031913, A32-A34; **D119/156**, Written Record of Interview of Witness Choeun Chhoeng, 4 September 2014, ERN 01044843-01044844, A15-A17; **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671, A40; **D118/208**, Written Record of Interview of Witness Hul Hoeun, 4 March 2014, ERN 00981817, A56; **D1.3.11.19**, OCP Interview of Kao Cheng, 14 August 2008, ERN 00219264. In **D119/16**, Written Record of Interview of Witness Kao Cheng, 28 February 2013, ERN 00919151, A24, Kao Cheng states that **Im Chaem** was in charge of the military in the Koh Andet District (District 108). This evidence is isolated. Further, Kao Cheng never met **Im Chaem** and only heard about her being in charge of the district's military from other people, *see* ERN 00919152.

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

²⁷⁷ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000682, A124.



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
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

²⁷⁸ **D118/208**, Written Record of Interview of Witness Ul Hoeun, ERN 00981818, A62-A64; **D118/209**, Written Record of Interview of Witness Ul Hoeun, 19 March 2014, ERN 00983583, A128-A129.

²⁷⁹ **D119/149**, Written Record of Interview of Witness Bun Thoeun, 26 August 2014, ERN 01031913, A32-A34.

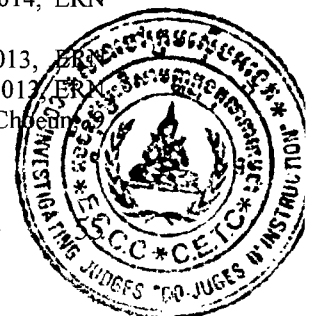
²⁸⁰ **D119/149**, Written Record of Interview of Witness Bun Thoeun, 26 August 2014, ERN 01031913, A34.

²⁸¹ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000671-01000672, A40-A45; **D119/15**, Written Record of Interview of Witness Sao Van, 27 February 2013, ERN 00901570, A12; **D119/83**, Written Record of Interview of Witness Moeng Vet, 10 February 2014, ERN 00982073, A18, A19; **D118/79**, Written Record of Interview of Witness Pech Chim, 26 June 2013, ERN 00947188, A6; **D118/209**, Written Record of Interview of Witness Ul Hoeun, 19 March 2014, ERN 00983583, A128, A129. *See also* **D119/149**, Written Record of Interview of Witness Bun Thoeun, 26 August 2014, ERN 01031913-01031914, A35-A40.

²⁸² **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978770, A15.

²⁸³ **D118/60**, Written Record of Interview of Witness Long Sokhy, 22 May 2013, ERN 00943608, A15, A27; **D118/87**, Written Record of Interview of Witness Tep Sien, 13 August 2013, ERN 00976971, A7; **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111828, A9-A10, A15, ERN 01111829, A20, ERN 01111830, A32, A36, ERN 01111831, A43-A44; **D118/285**, Written Record of Interview of Witness Nop Ngim, 12 August 2014, ERN 01044678, A27-A29, ERN 01044680-01044681, A38-A41; **D219/62**, Written Record of Interview of Witness Preap Kap, 3 November 2014, ERN 01053905, A22, ERN 01053907, A32, ERN 01053908, A33, A36, ERN 01053909, A39; **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055653, A25-A27.

²⁸⁴ **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978771, A22; **D118/107**, Written Record of Interview of Witness Set Dun, 23 September 2013, ERN 00976910-00976911, A6-A8; **D118/85**, Written Record of Interview of Witness Chea Chhin, 23 August 2013, ERN 00976943, A10, ERN 00976944, A13.



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

²⁸⁵ **D219/228**, Written Record of Interview of Witness Nut Nov, 17 March 2015, ERN 01087490, A46, A48-A50; **D118/285**, Written Record of Interview of Witness Nop Ngim, 12 August 2014, ERN 01044680, A37-A40.

²⁸⁶ **D118/85**, Written Record of Interview of Witness Chea Choem, 9 August 2013, ERN 00976943, A9-A12.

²⁸⁷ **D118/107**, Written Record of Interview of Witness Set Dun, 23 September 2013, ERN 00976908-00976909, A2, A5-A6.

²⁸⁸ **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978770, A16, ERN 00978771, A22, A25.

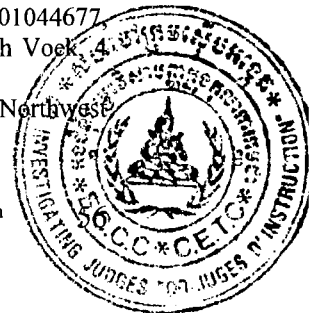
²⁸⁹ **D118/84**, Written Record of Interview of Witness Toch Phoeun, 8 August 2013, ERN 00976936, A14; **D118/87**, Written Record of Interview of Witness Tep Sien, 13 August 2013, ERN 00976974, A28, ERN 00976975, A37-A41; **D118/285**, Written Record of Interview of Witness NOP Ngim, 12 August 2014, ERN 01044680-01044681, A38-A41.

²⁹⁰ **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978776, A54.

²⁹¹ **D118/86**, Written Record of Interview of Witness Nhoek Ly, 11 August 2013, ERN 00976960, A13; **D118/107**, Written Record of Interview of Witness set Dun, 23 September 2013, ERN 00976913, A29; **D118/250**, Written Record of Interview of Witness Muth Voek, 4 June 2014, ERN 01032480, A70, ERN 01032482, A87.

²⁹² **D118/107**, Written Record of Interview of Witness Set Dun, 23 September 2013, ERN 00976908-00976910, A2, A6, A11, ERN 00976913, A29; **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978767-00978768, A3-A4; **D118/137**, Written Record of Interview of Witness Chhorn Vorn, 31 October 2013, ERN 00970080-00970081, A8-A9; **D118/4**, Written Record of Interview of Witness Kan Choek, 11 January 2013, ERN 00935585-00935586, A15-A17; **D118/285**, Written Record of Interview of Witness Nop Ngim, 12 August 2014, ERN 01044677, A25, ERN 01044678, A28, A31; **D118/250**, Written Record of Interview of Witness Muth Voek, 4 June 2014, ERN 01032480, A70.

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. Hem Moeun, 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

²⁹⁴ **D118/107**, Written Record of Interview of Witness Set Dun, 23 September 2013, ERN 00976913, A29; **D118/86**, Written Record of Interview of Witness Nhoek Ly, 11 August 2013, ERN 00976961, A13, ERN 00976966, A41-A43; **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111833, A61; **D118/102**, Written Record of Interview of Witness TOAT Thoeun, 10 September 2013, ERN 00974015-00974020, A15-A32.

²⁹⁵ **D118/150**, Written Record of Interview of Witness Hem Moeun, 21 November 2013, ERN 00975007, A5, ERN 00975010, A23-A25, ERN 00975015-00975014, A60. *See also* **D118/137**, Written Record of Interview of Witness Chhorn Vorn, 31 October 2013, ERN 00970087, A58; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975038-00975039, A7-A14; **D118/106**, Written Record of Interview of Witness Huon Choeum, 22 September 2013, ERN 00978417, A2.

²⁹⁶ **D118/136**, Written Record of Interview of Witness CHHEAN Hea, 30 October 2013, ERN 00969636-00969637, A2; **D118/77**, Written Record of Interview of Witness Nang Ny, 23 June 2013, ERN 00970456, A30; **D118/285**, Written Record of Interview of Witness Nop Ngim, 12 August 2014, ERN 01044680, A37, A40, ERN 01044681, A42; **D118/290**, Written Record of Interview of Witness Kong Vach, 26 August 2014, ERN 01066771, A30-A34; **D219/20**, Written Record of Interview of Civil Party Applicant Chhum Vanny, 2 October 2014, ERN 01050471, A50, A52; **D118/4**, Written Record of Interview of Witness Kan Choek, 11 January 2013, ERN 00935585-00935586, A15-A17. For the arrests and execution of military personnel, *see* **D219/263**, Written Record of Interview of Witness Chham Luy, 8 April 2015, ERN 01097407-01097409, A1-A24; **D219/172**, Written Record of Interview of Witness Toch Bunthy, 12 February 2015, ERN 01076958, A3, ERN 01076964-01076965, A25-A26; **D219/20**, Written Record of Interview of Civil Party Applicant Chhum Vanny, 2 October 2014, ERN 01050481-01050482, A115-A122; **D119/73**, Written Record of Interview of Witness Nou Chuong, 20 January 2014, ERN 00980542-00980543, A16-A17; **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055654, A29-A32.

²⁹⁷ **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111828, A12-A14; **D118/86**, Written Record of Interview of Witness Nhoek Ly, 11 August 2013, ERN 00976958, A4, ERN 00976961, A13, ERN 00976962, A18-A21; **D118/150**, Written Record of Interview of Witness Hem Moeun, 21 November 2013, ERN 00975009, A16-A19, ERN 00975011, A35, A37; **D118/136**, Written Record of Interview of Witness Chhean Hea, 30 October 2013, ERN 00969638, A2; **D123/1/5.1a**, DC-Cam Transcript of Interview of Im Chaem, 4 March 2007, ERN 00089777.



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 Hem Mean's statement that contacts between the district and zone level were impossible, and that **Im Chaem**'s communications had to pass through Ta Chay, a sector-level cadre, before reaching Ta Mok.³⁰³ However, Hem Mean, 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**

²⁹⁸ **D118/250**, Written Record of Interview of Witness Muth Voek, 4 June 2014, ERN 01032473, A16, ERN 01032480, A68-A70, ERN 01032482, A88; **D118/102**, Written Record of Interview of Witness Toat Thoen, 10 September 2013, ERN 00974015, A15, ERN 00974017, A28; **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055652, A22, ERN 01055655, A36; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147820, A18, ERN 01147822, A39, ERN 01147822, A44-A45; **D219/475**, Written Record of Interview of Witness It Hal, 19 August 2015, ERN 01173549, A9-A10; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742-00950743, A10-A14.

²⁹⁹ **D119/68**, Written Record of Interview of Witness Phy Phuon, 28 November 2013, ERN 00975047, A10; **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055652, A23.

³⁰⁰ **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055652, A22, ERN 01055655, A35, ERN 01055656, A38; **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111833, A63-A65; **D123/1/5.1b**, DC-Cam Transcript of Interview of Im Chaem, 20 June 2008, ERN 00951812.

³⁰¹ **D119/123**, Written Record of Interview of Witness Hem Mean, 6 May 2014, ERN 01033095-01033096, A20; **D123/1/5.1a**, Im Chaem DC-Cam interview, 4 March 2007, ERN 00089777.

³⁰² **D304/6**, *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submissions against Her*, 28 November 2016, paras 68-74.

³⁰³ **D304/6**, *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submissions against Her*, 28 November 2016, para. 70.

³⁰⁴ **D119/123**, Written Record of Interview of Witness Hem Mean, 6 May 2014, ERN 01033095-01033096, A18-A20.

³⁰⁵ **D304/6**, *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submissions against Her*, 28 November 2016, para. 72.



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

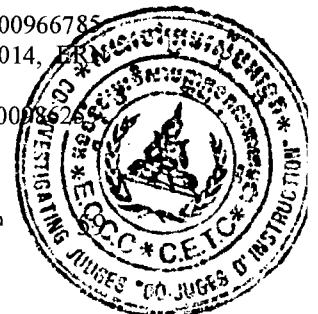
156. In or around mid-1977, most likely in March as discussed below, Ta Mok sent 500 to 600 families by train from Takeo, in the Southwest Zone, to the Northwest Zone. **Im Chaem** led the group during the transfer.³⁰⁶ The group, which also included between 300 and 500 soldiers,³⁰⁷ stopped for one or 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 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

³⁰⁶ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A30-31, ERN 00966783-00966784, A40-A44; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805994, A6-A13; **D219/37**, Written Record of Interview of Witness Suon Mot, 16 October 2014, ERN 01053617, A31-A35; **D118/153**, Written Record of Interview of Witness Long Vonn, 26 November 2013, ERN 00978776, A53; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938204, A5; **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 **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A30-31, ERN 00966783-00966784, A40-A44; **D1.3.12.1**, Interview of Im Chaem by Smiling Toad Productions, 26 April 2007, ERN 00217519.

³⁰⁸ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A47-A50; **D219/37**, Written Record of Interview of Witness Suon Mot, 16 October 2014, ERN 01053617, A33.

³⁰⁹ **D119/108**, Written Record of Interview of Witness Sok Rum, 19 March 2014, ERN 00986256, A46-A50.



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 Tum Soeun, 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

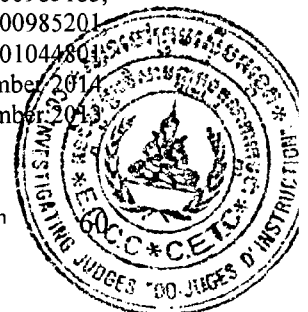
³¹⁰ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000670, A32, ERN 01000673, A54.

³¹¹ **D118/259**, Written Record of Interview of Witness Pech Chim, 19 June 2014, ERN 01000683, A138-A139.

³¹² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A31, ERN 00966783-00966784, A40-A44, ERN 00966786, A62; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077036-01077037, A16; **D119/21**, Written Record of Interview of Witness Uk Dieng, 14 March 2013, ERN 00919156, A11; **D119/23**, Written Record of Interview of Witness Buth Svoeuy, 19 March 2013, ERN 00935607, A14; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938204, A4-A6; **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920589, A33-A34; **D101/1.1**, Written Record of Interview of Witness Por Bandeth, 2 September 2011, ERN 00746366; **D43**, Written Record of Interview of Witness Yuok Neam, 29 July 2011, ERN 00727233; **D119/49**, Written Record of Interview of Witness Thib Sambath, 15 June 2013, ERN 00966728, A16; **D119/52**, Written Record of Interview of Witness Mom Chhouk, 17 June 2013, ERN 00966763, A28-A29; **D119/139** Written Record of Interview of Mun Mot, 25 July 2014, ERN 01044807, A61; **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047894, A34.

³¹³ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A31, ERN 00966783-00966784, A40-A44, ERN 00966786, A62.

³¹⁴ **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842035, A34; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985201, A16; **D119/23**, Written Record of Interview of Witness Buth Svoeuy, 19 March 2013, ERN 00935607, A14; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938204, A4-A5; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982762, A42; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985185, A11; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985201, A16; **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044807, A38, 01044806, A58; **D119/154**, Written Record of Interview of Witness Iv Mara, 2 September 2014, ERN 01044833, A31; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975037, A4.



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

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

³¹⁵ **D119/145**, Written Record of Interview of Civil Party Applicant Thip Kimlun, 21 August 2014, ERN 01079710, A75.

³¹⁶ **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985185, A9, A11; **D219/23**, Written Record of Interview of Witness Pum Kho, 6 October 2014, ERN 01050546, A69; **D119/49**, Written Record of Interview of Witness Thib Sambath, 15 June 2013, ERN 00966728, A15-A16; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842035, A34; **D1.3.4.1**, S-21 Confession of An Maong, ERN 00786944. *See also* **D101/1.1**, Written Record of Interview of Witness Por Bandeth, 2 September 2011, ERN 00746366.

³¹⁷ **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975039, A12; **D119/73**, Written Record of Interview of Witness Nou Choung, 20 January 2014, ERN 00980544, A25; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061160, A54; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059944, A65; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985677, A44.

³¹⁸ **D119/74**, Written Record of Interview of Witness Chrach Kit, 21 January 2014, ERN 00981124, A2; **D119/52**, Written Record of Interview of Witness Mom Chhouk, 17 June 2013, ERN 00966763, A28-A29.

³¹⁹ **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975039, A4; **D6.1.364**, Written Record of Interview of Witness Chhoeun Sem, 21 April 2009, ERN 00338674, A3; **D6.1.365**, Written Record of Interview of Witness Chhoeun Sem, 21 April 2009, ERN 00338375; **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277840; **D119/30**, Written Record of Interview of Witness Phoun Sunty, ERN 00938208, A3.



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 Tum Soeun, 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

³²⁰ **D119/136**, Written Record of Interview of Witness Pan Chhuong, 22 July 2014, ERN 01044770, A48; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975038, A9.

³²¹ **D219/494.1.8**, Transcript of hearing on the substance in Case 002/02, 17 August 2015, ERN 01132282-01132283. *See also* **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290358; **D6.1.431**, Written Record of Interview of Witness Chiep Chhean, 20 December 2008, ERN 00277817.

³²² **D118/102**, Written Record of Interview of Witness Toat Thoeun, 10 September 2013, ERN 00974027, A63, ERN 00974028, A74.

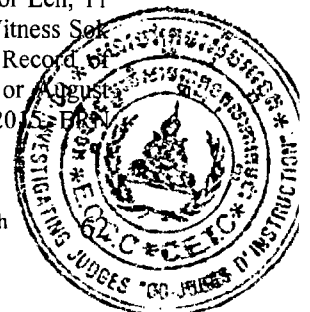
³²³ **D118/102**, Written Record of Interview of Witness Toat Thoeun, 10 September 2013, ERN 00974027, A63, ERN 00974028, A74; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966787, A63; **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044800, A37; **D219/35**, Written Record of Interview of Witness Sorm Seila, 14 October 2014, ERN 01053588, A28; **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, 6 April 2012, ERN 00951863.

³²⁴ **D6.1.364**, Written Record of Interview of Witness Chhoeun Sem, 21 April 2009, ERN 00338374-00338375; **D6.1.358**, Written Record of Interview of Witness Ma Sa Em, 28 March 2009, ERN 00322027; **D118/102**, Written Record of Interview of Witness Taot Thoeun, 10 September 2013, ERN 00974049, A181; **D118/150**, Written Record of Interview of Witness Hem Moeun, 21 November 2013, ERN 00975009, A15.

³²⁵ **D119/68**, Written Record of Interview of Witness Phi Phuon, 28 November 2013, ERN 00975048, A11; **D118/102**, Written Record of Interview of Witness Taot Thoeun, 10 September 2013, ERN 00974027, A63; **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 **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966787, A63.

³²⁷ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966793, A93-95; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982759, A26; **D119/156**, Written Record of Interview of Witness Choeng Choeun, 4 September 2014, ERN 01044847, A29; **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290358 (end of 1977); **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985185, A9 (mid-1978); **D119/108**, Written Record of Interview of Witness Sok Rum, 19 March 2014, ERN 00986265-00986266, A90-A94 (1978); **D118/150**, Written Record of Interview of Witness Hem Moeun, 21 November 2013, ERN 00975009, A17-A21 (July or August 1978); **D219/494.1.8**, Transcript of hearing on the substance in Case 002/02, 17 August 2015, ERN 01132311.



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 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**

³²⁸ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966813, A224; **D119/29**, Written Record of Interview of Witness Pan Chhuong, 14 March 2013, ERN 00937036, A13; **D119/156**, Written Record of Interview of Witness Chhoeng Choeun, 4 September 2014, ERN 01044847, A29; **D85/5.1.4.2**, Written Record of Interview of Witness Pao Bandet, 25 August 2011, ERN 00981160, A12.

³²⁹ **D219/37**, Written Record of Interview of Witness Suon Mot, 16 October 2014, ERN 01053613 A8, ERN 01053620, A49-A50; **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111830, A41, ERN 01111831, A44-A45; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975039, A11; **D118/93**, Written Record of Interview of Witness Prak Some, 1 September 2013, ERN 00967036, A7-A8, ERN 00967038, A19.

³³⁰ **D118/93**, Written Record of Interview of Witness Prak Some, 1 September 2013, ERN 00967036, A7-A8, ERN 00967038, A19.

³³¹ **D219/575**, Written Record of Interview of Witness Toek Suong, 13 October 2015, ERN 01179814-01179815, A16-A19; **D119/20**, Written Record of Interview of Witness Li Sinh, 13 March 2013, ERN 00901019, A16; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00967038-00967039, A9, A11; **D118/65**, Written Record of Interview of Witness Chim Chanthoeun, 27 May 2013, ERN 00950708, A29; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985202, A22; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013, ERN 01035121, A87, 01035123, A96; **D119/20**, Written Record of Interview of Witness LI Sinh, 13 March 2013, ERN 00901019-00901020, A16; **D67.9**, Annex 9: DC-Cam Document “Interview with Chhit Yoeuk”, 19 June 2011, 00731142.

³³² **D119/52**, Written Record of Interview of Witness Mom Chhouk, 17 June 2013, ERN 00966763, A29; **D119/74**, Written Record of Interview of Witness Chrach Kith, 21 January 2014, ERN 00981124, A2; **D119/154**, Written Record of Interview of Witness Iv Mara, 2 September 2014, ERN 01044833, A31.

³³³ **D119/91**, Written Record of Interview of Witness Chiem Tab, 19 February 2014, ERN 00982323-00982324, A15. See also **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975038, A9.

³³⁴ **D119/67**, Written Record of Interview of Witness Net Chhuong, 26 November 2013, ERN 00980430, A9-A11; **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoey, 16 June 2014, ERN 01025293, A34, ERN 01025296, A54, A56, ERN 01025297, A60, ERN 01025305-01025306, A121-124; **D119/90**, Written Record of Interview of Witness Chuon Pheng, 19 February 2014, ERN 00982317, A13.



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
- (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

³³⁵ **D61**, Written Record of Interview of Witness Pan Chhuomg, 19 August 2011, ERN 00738312.

³³⁶ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179866, A95, ERN 01179867, A97-A99, ERN 01179869, A111-A112; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985681, A61.

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

³³⁸ **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128308, A2; **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982333, A21; **D119/93**, Written Record of Interview of Witness Chan Phon, ERN 00982749, A18.

³³⁹ **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985685, A85-A86.

³⁴⁰ **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975039, A13; **D219/37**, Written Record of Interview of Witness Suon Mot, 16 October 2014, ERN 01023620, A52.

³⁴¹ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01023620, A26-A29. See also below the section dedicated to the Spean Sreng Canal worksite.



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

³⁴² **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059944, A65, ERN 01059945-01059946, A75-A77. *See also* **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061161, A66.

³⁴³ **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111831-0111832, A41, ERN 01111832, A54-59.

³⁴⁴ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982740 A19.

³⁴⁵ *See* the section dedicated to the Trapeang Thma Dam worksite.

³⁴⁶ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059950, A109.



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 Muol Eng, 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 enemy

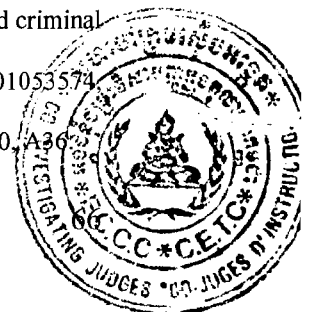
³⁴⁷ **D1.3.20.1**, CPK Legal Document entitled 'Communist Party of Kampuchea Statute', January 1976.

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 **D219/34**, Written Record of Interview of Witness UI Hoeun, 13 October 2014, ERN 01053574, A23-A24.

³⁵¹ **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111830, A36



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

³⁵² **D219/294**, Written Record of Interview of Witness Muol Eng, 4 May 2015, ERN 01111837-01111845, A185-A190.

³⁵³ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute, January 1976, ERN 00184038, Article 7, para 4; **D6.1.533**, Written Record of Analysis by Craig C. Etcheson, 18 July 2007, ERN 00146823, para. 9.

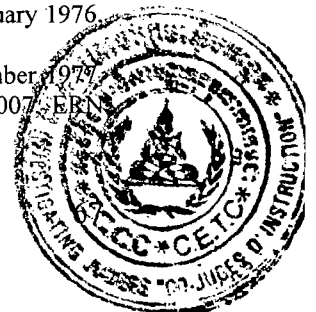
³⁵⁴ **D6.1.533**, Written Record of Analysis by Craig C. Etcheson, 18 July 2007, ERN 00146823, para. 10.

³⁵⁵ **D1.3.20.1**, CPK Legal Document entitled ‘Communist Party of Kampuchea Statute’, January 1976, ERN 00184041, Article 12; **D6.1.533**, Written Record of Analysis by Craig C. Etcheson, 18 July 2007, ERN 00146823, para. 9.

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; **D6.1.533**, Written Record of Analysis by Craig C. Etcheson, 18 July 2007, ERN 00146841, para. 77.



CPK encouraged the investigation of the presence of such people particularly at 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

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

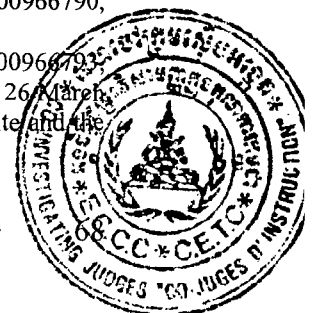
³⁶⁰ **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920589, A34; **D119/20**, Written Record of Interview of Witness Li Sinh, 13 March 2013, ERN 00901019, A14; **D119/144**, Written Record of Interview of Witness Lat Suoy, 18 August 2014, ERN 01031895, A50; **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067922, A19; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2013, ERN 01059946, A77; **D219/173**, Written Record of Interview of Witness Lies Sdeung, 9 February 2015, ERN 02086976, A33; **D219/383**, Written Record of Interview of Witness Oeury Poeu, 24 June 2015, ERN 01128298, A34-A36; **D119/21**, Written Record of Interview of Witness Uk Deang, 14 March 2013, ERN 00919156, A11-A12.

³⁶¹ **D119/22**, Written Record of Interview of Witness Phauk Kuy, 16 March 2013, ERN 00919160-00919161, A7-A9; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966804, A171; **D119/94** Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982765, A56. *See also* the section dedicated to the Phnom Trayoung security centre.

³⁶² **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982335, A31; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950743, A16; **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128308, A4; **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982317, A12; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796, A111-A112, ERN 00966810, A207; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985190, A32. Evidence on Im Chaem's control over specific worksites is also discussed below in the sections dedicated to the specific crime sites.

³⁶³ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966790, A80, ERN 00966791, A82, ERN 00966792, A85.

³⁶⁴ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966790, A96, ERN 00966812, A222; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985676, A41. *See also* the section dedicated to the Spean Sreng Canal worksite and the Phnom Trayoung security centre.



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 which were carried out by militia under her control.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 Tum Soeun,³⁶⁹ former chief of the Phnom Trayoung security centre, that **Im Chaem** had the authority to order executions. 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

³⁶⁵ **D119/49**, Written Record of Interview of Witness Thip Samphat, 15 June 2013, ERN 00966730, A26-A30.

³⁶⁶ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966812-00966813, A222-A223, ERN 00966814, A229; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061145, A44; **D119/154** Written Record of Interview of Witness Iv Mara, 2 September 2014, ERN 01044833, A31, ERN 01044835, A36; **D219/130** Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059944, A65-A67; **D119/30**, Written Record of Interview of Witness Phoun Sunt, 20 March 2013, ERN 00938204-00938205, A9-A15; **D119/49**, Written Record of Interview of Witness Thip Samphat, 15 June 2013, ERN 00966731-00966732, A36, A39, A43, A44; **D119/66**, Written Record of Interview of Witness Bin Heuy, 27 November 2013, ERN 00975038-00975039, A7-A14; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842007, A11; **D106/4** Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842023, A22-A23.

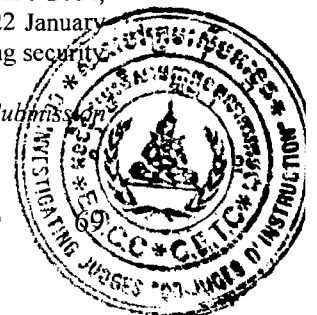
³⁶⁷ **D119/73**, Written Record of Interview of Witness Nou Choung, 20 January 2014, ERN 00980544-00980545, A26-A34; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982763, A46, ERN 00982764, A54; **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoeuy, 16 June 2014, ERN 01025304-01025305, A120-A121. *See also* the section dedicated to the Phnom Trayoung security centre.

³⁶⁸ *See below* the section dedicated to the Phnom Trayoung security centre.

³⁶⁹ **D230** Written Record of Confrontation, 3 December 2014, ERN 01072613.

³⁷⁰ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982763, A46; **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoeuy, 16 June 2014, ERN 01025296, A54-A56; **D219/151** Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064163, A11-A12. *See also below* the section dedicated to the Phnom Trayoung security centre.

³⁷¹ **D304/6**, *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submission Against Her*, 28 November 2016, ERN 01354678, para. 75.



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. The first is Sek Sam At, *alias* Yeay Rim, who was the former Bakan District Secretary.³⁷³ Two witnesses provide direct evidence of her authority over and involvement with arrests and executions.³⁷⁴ The second is Prak Yut, former Kampong Siem District Secretary,³⁷⁵ who, according to her own testimony, not only implemented sector-issued orders to arrest and execute religious minorities and perceived enemies of the CPK,³⁷⁶ but had broad discretion in implementing these orders, including in deciding who would be arrested and executed.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

³⁷² **D304/6**, *Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submission Against Her*, 28 November 2016, ERN 01354680, footnotes 229-230.

³⁷³ **D219/222**, Written Record of Interview of Witness Touch Seng, 11 March 2015, ERN 01088584, A119, ERN 01088585, A131; **D219/187**, Written Record of Interview of Witness [REDACTED] Khorn, 16 February 2015, ERN 01104747-01104748, A33-A34, A37.

³⁷⁴ **D118/1**, Written Record of Interview of Witness Uk Soeum, 14 December 2012, ERN 00876120, A17-A20; **D6.1.991**, Written Record of Interview of Witness Uk Soeum, 3 March 2010, ERN 00491352, A13-A14; **D219/188**, Written Record of Interview of Witness [REDACTED] Khorn, 17 February 2015, ERN 01106442, A120-A121, A123-A124, ERN 01106442, A131, ERN 01106443-01106444, A137-A139, A141.

³⁷⁵ **D6.1.730**, Written Record of Interview of Witness Prak Yut, 21 July 2009, ERN 00364081; **D117/70**, Written Record of Interview of Witness Prak Yut, 28 May 2013, ERN 01056217, A26.

³⁷⁶ **D117/71**, Written Record of Interview of Witness Prak Yut, 19 June 2013, ERN 01056228-01056229, A47-A52; **D117/72**, Written Record of Interview of Witness Prak Yut, 21 June 2013, ERN 01056235, A6-A8; **D117/73**, Written Record of Interview of Witness Prak Yut, 27 October 2013, ERN 01056239-01056240, A10-A12.

³⁷⁷ **D219/120**, Written Record of Interview of Witness Prak Yut, 30 September 2014, ERN 01063611-A25, A27, ERN 01063612, A29.

³⁷⁸ **D101/1.2** Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751068-00751069; **D304/2**, *International Co-Prosecutor's Rule 66 Final Submission against Im Chaem*, 27 October 2016, para. 144.



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

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

³⁷⁹ See below the section dedicated to the Phnom Trayoung security centre.

³⁸⁰ **D119/96**, Written Record of Interview of Civil Party Applicant Im Man, 26 February 2014, ERN 00986800, A74; **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037366-01037367, A36, A39, A40; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985677, A45; **D119/52**, Written Record of Interview of Witness Mom Chhouk, 17 June 2013, ERN 00966761, A18.

³⁸¹ **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982333, A20-A21, ERN 00982335, A31; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985190, A32; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 February 2012, ERN 00842034, A23-A24; **D119/42**, Written Record of Interview of Witness KRET Ret, 20 May 2013, ERN 00950743, A15; **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982749, A18; **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982317, A12; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013, ERN 01035129, A139; **D219/506**, Written Record of Interview of Witness Sen Sophon, 15 September 2015, ERN 01167928, A46-47. **Im Chaem**'s visits to worksites are discussed in the crime-base sections of this Closing Order (Reasons).

³⁸² **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059950, A109; **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113712, A47.

³⁸³ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966797 A117, ERN 00966812, A215.

³⁸⁴ **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985204, A32; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966812 A189.



Trayoung and Wat Preah Net Preah,³⁸⁵ and received reports from prison chiefs.³⁸⁶

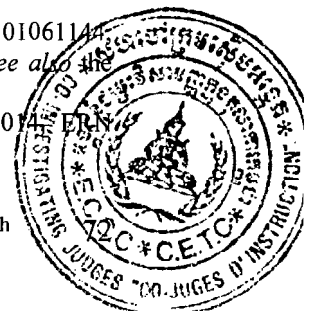
4.5 Evidence of Im Chaem's Conduct in the Northwest Zone

180. In this section we will review evidence related to **Im Chaem's** general conduct upon her relocation in Sector 5 of the Northwest Zone. Evidence of **Im Chaem's** conduct specific to the crime sites will also be reviewed, as appropriate, in the relevant crime-base sections below.
181. There is extensive evidence that, upon her arrival to Sector 5, **Im Chaem** publicly spoke against the Northwest Zone cadres, exhorted the local population to be vigilant against possible enemies of the CPK, and instructed workers to follow the CPK's ideology and work hard, under threat of dire consequences if they failed to do so.
182. For instance, a witness recalls that **Im Chaem**, at a meeting in Laote Village, Phnom Lieb Commune, Preah Net Preah District, stated that *"The wheel of history has begun to move. If your hands touch it, it will take your hands. If your legs touch it, it will take your legs. [...] It is better to keep rice seeds rather than human genes. [...] To keep you is no gain. To take you out is no loss. [...] Rice is screened for whole rice: they don't take the debris. [...] Don't understand that there are two revolutions: there is only one, Angkar's Revolution"*. The witness also recalls that she accused Northwest Zone cadres of plotting a *"second revolution"*.³⁸⁷ Another witness recalls that, at a meeting in Phnum Lieb Commune, **Im Chaem** called those in attendance to identify *"high-ranking*

³⁸⁵ **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066831, A34; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147825-01147826, A64-70; **D119/34**, Written Record of Interview of Witness Sem Lai Hieng, 29 April 2013, ERN 00920597, A17; **D119/96**, Written Record of Interview of Civil Party Applicant Im Man, 26 February 2014, ERN 00986805, A104. *See also* the section dedicated to Phnom Trayoung security centre.

³⁸⁶ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061144, A37-A40; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072621. *See also* the section dedicated to the Phnom Trayoung security centre.

³⁸⁷ **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047894-01047895, A36-A38.



persons to be killed” to ensure food for those loyal to the DK.³⁸⁸ At meetings held at the commune level, **Im Chaem** warned those in attendance about “*bad psychological elements*”, reminded them of the importance of working hard, and that arrest would befall those who did not.³⁸⁹

183. A former detainee states that during a meeting at the Phnom Trayoung security centre attended by about 100 people, **Im Chaem** addressed inmates stating that those who did not rehabilitate themselves would die, which according to the witness meant that she would have ordered the guards to execute them.³⁹⁰
184. **Im Chaem** also spoke at meetings attended by large number of workers, instructing them to work hard and to be vigilant against possible enemies.³⁹¹ There is evidence that **Im Chaem** warned workers that those who failed to work hard and to “*re-fashion*” themselves would die.³⁹² At a meeting attended by the chiefs of all communes in the Preah Net Preah District, **Im Chaem** warned those in attendance that persons who would get involved with the CIA, be lazy, or otherwise oppose Angkar would be sent “*to study*”,³⁹³ which very often meant to be detained or killed.³⁹⁴
185. These were not empty threats. After the Southwest Zone cadres and **Im Chaem** took control of Sector 5 in mid-1977, they carried out a systematic campaign of

³⁸⁸ **D119/155**, Written Record of Interview of Witness Lach Chheanlong, ERN 01045565-01045566, A41, A43-A47.

³⁸⁹ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842023, A22-A23.

³⁹⁰ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147825-01147826, A64-69.

³⁹¹ **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037367-01037368, A43-A49.

³⁹² **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147826, A68-69.

³⁹³ **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938204, A7-A8.

³⁹⁴ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059945, A71; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938205-00938206, A12-A18; **D219/380**, Written Record of Interview of Witness Pok Sophat, 22 June 2015, ERN 01123450, A22-A24 and **D219/360.1**, Annex: Former Committee of Division 2, Northwest Zone, April 2015, ERN 01112064; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982759, A28; **D6.1.452**, Written Record of Interview of Witness Pa Koeut, 31 January 2009, ERN 00290352; **D219/173**, Written Record of Interview of Witness Sdeung, 9 February 2015, ERN 01076975, A27; **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037368, A48.



arrests targeting Northwest cadres³⁹⁵ at the cooperative, commune, district, and sector levels.³⁹⁶

186. The Southwest Zone cadres did not only target Northwest Zone cadres. Witnesses state that after the arrival of the Southwest Zone cadres and under **Im Chaem**'s tenure as Preah Net Preah District Secretary, workers who committed mistakes, people with ties to Vietnam, and former Khmer Republic officials were arrested and killed.³⁹⁷ Arrests were discussed with cooperative chairmen during meetings at **Im Chaem**'s house. While it was **Im Chaem** who decided on the arrests of large numbers of people, cooperative chairmen may at times have conducted single arrests out of their own initiative.³⁹⁸ Preah Net Preah District's militiamen under the direct control of the communes also carried out arrests in the cooperatives.³⁹⁹
187. A witness states that, during a meeting held in 1978 in Battambang attended by thousands of persons and led by Ta Mok and **Im Chaem**, people who had

³⁹⁵ **D119/73**, Written Record of Interview of Witness Nou Choung, 20 January 2014, ERN 00980544-00980545, A24-A34; **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047896, A40; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985187-00985188, A19-A25; **D219/381**, Written Record of Interview of Witness Chan Ratana, 24 June 2015, ERN 01128281, A4-A7; **D119/154**, Written Record of Interview of Witness IV Mara, 2 September 2014, ERN 01044833, A31, ERN 01044835, A36-A38.

³⁹⁶ **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920586, A8, ERN 00920587, A20, ERN 00920588, A25, ERN 00920589, A34; **D119/43**, Written Record of Interview of Witness Sva Nung, 23 May 2013, ERN 00944491-00944492, A13-A17; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985185, A7-A11; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985201, A15-A16; **D119/100**, Written Record of Interview of Witness Cheam Kin, 13 February 2014, ERN 00985175, A8, ERN 00985177, A21-A23; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966728, A12-A16; **D119/89**, Written Record of Interview of Witness Chhum Seng, 18 February 2014, ERN 00982308, A22-A23; **D118/102**, Written Record of Interview of Witness Toat Thooun, 10 September 2013, ERN 00974015, A15, ERN 00974017, A28; **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2013, ERN 01067925-01067927, A35-A44. *See also* the section dedicated to **Im Chaem**'s arrival and role in the Northwest Zone; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077037, A16.

³⁹⁷ **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077038, A18-A19; **D119/125**, Written Record of Interview of Witness Mak Vonny, 9 May 2014, ERN 01035088, A14-A18; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982761, A37; **D119/22**, Written Record of Interview of Witness Phauk Kuy, 16 March 2013, ERN 00919160, A6; **D61**, Written Record of Interview of Witness Pan Chhuong, 19 August 2011, ERN 00738312-00738313; **D219/212**, Written Record of Interview of Witness Khop Sok, 5 March 2015, ERN 01088534, A29-A30; **D119/43**, Written Record of Interview of Witness Sva Nung, 23 May 2013, ERN 00944492, A22; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147826, A68.

³⁹⁸ **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128312, A42.

³⁹⁹ **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985188, A25; **D106/2**, Written Record of Interview of Witness Chrach Kit, 27 April 2012, ERN 00784869, A15.



criticised the work plan were arrested and possibly killed.⁴⁰⁰ Several witnesses state that they were arrested on **Im Chaem**'s orders.⁴⁰¹

188. As shown by the evidence discussed above in relation to **Im Chaem**'s role and authority, **Im Chaem** ran security centres and worksites both within and outside the Preah Net Preah District. In the following section we will analyse in detail the evidence relevant to the two crime sites for which she was charged (Phnom Trayoung security centre and Spean Sreng Canal worksite). In that section, in addition to the evidence already reviewed concerning the extent of her authority and her general conduct in Sector 5 and in the Preah Net Preah District, we will review additional evidence of her specific involvement with the crimes allegedly committed at these locations.

4.6 Charged Crimes

4.6.1. *Phnom Trayoung Security Centre*

4.6.1.1. Introduction

189. Phnom Trayoung was a Sector 5 security centre. It was run by Tum Soeun, a Southwest Zone cadre who reported directly to **Im Chaem**. During the Southwest Zone rule, hundreds of prisoners, if not more, were mistreated, underfed, and subjected to hard labour while detained there. Hundreds died as a consequence of malnutrition and illness. Based on the available evidence, we have estimated that more than 2,000 prisoners were executed by the prison guards between mid-1977 and January 1979.

⁴⁰⁰ **D119/66**, Written Record of Interview of Witness Bin Huey, 27 November 2013, ERN 00975040, A15.

⁴⁰¹ **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842007, A11; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966732, A44; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056907, A19; **D219/92**, Written Record of Interview of Witness Phoun Sunt, 1 December 2014, ERN 01056892, A14-A16; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842057-00842058, A7-A13; **D119/94**, Written Record of Interview of Witness Bou Mao, 20 February 2014, ERN 00982763, A46; **D119/30**, Written Record of Interview of Witness Phoun Sunt, 20 March 2013, ERN 00938205, A12. *See also* **D106/4**, Written Record of Interview of Witness Khann, 28 March 2012, ERN 00842023, A22-A23.



4.6.1.2. Location and Establishment

190. The Phnom Trayoung security centre was located in the Phnom Lieb (or Liep) Commune, Preah Net Preah District, Banteay Meanchey Province, Sector 5 of the Northwest Zone, near the Phnom Trayoung Mountain and along a path running south from National Road 6.⁴⁰² Several witnesses state that the security centre was established by the Southwest Zone cadres upon their arrival in 1977,⁴⁰³ while others state that it was established in 1975 at the onset of the DK and was enlarged after the arrival of the Southwest Zone cadres.⁴⁰⁴
191. A hospital,⁴⁰⁵ the residence of the Security Centre Chief Tum Soeun,⁴⁰⁶ multiple execution sites and burial pits,⁴⁰⁷ and the accommodations for serious offenders⁴⁰⁸ were located along an oxcart path between National Road 6 and the security centre. Guards and “light” offenders were housed separately to the east

⁴⁰² **D106/18**, Report of the Execution of Rogatory Letter, dated 11 April 2012: Site Identification Report Phnom Trayoung Security Centre, ERN 00801027-00801028; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A36; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805995-00805996, A21.

⁴⁰³ **D119/20**, Written Record of Interview of Witness Li Sinh, 13 March 2013, ERN 00901019, A15; **D119/21**, Written Record of Interview of Witness Uk Dieng, 14 March 2013, ERN 00919155, A7; **D219/152**, Written Record of Interview of Witness Meth Doung, 22 January 2015, ERN 01066815, A5; **D119/22**, Written Record of Interview of Witness Phauk Kay, 16 March 2013, ERN 00919160, A5; **D106/7**, Written Record of Interview of Witness Sum Sal, 21 March 2012, ERN 00842048, A33; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842061, A39; **D119/137**, Written Record of Interview of Witness Ith Iet, 23 July 2014, ERN 01044780, A12; **D219/141**, Written Record of Interview of Witness Youk Neam, 13 January 2015, ERN 01063691, A5; **D219/318**, Written Record of Interview of Civil Party Applicant Dan Tam, 20 May 2015, ERN 01112014, A58.

⁴⁰⁴ **D119/48**, Written Record of Interview of Witness Duong Vandy, 14 June 2013, ERN 00966720-00966721, A2; **D119/153**, Written Record of Interview of Witness Kong Vin, 1 September 2014, ERN 01045555, A29; **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047897, A44; **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118002, A76-78.

⁴⁰⁵ **D106/18**, Report of the Execution of Rogatory Letter, dated 11 April 2012: Site Identification Report Phnom Trayoung Security Centre, ERN 00801028; **D219/151**, Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064159-01064160, A1; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805995-00805996, A21.

⁴⁰⁶ **D106/18**, Report of the Execution of Rogatory Letter, dated 11 April 2012: Site Identification Report Phnom Trayoung Security Centre, ERN 00801028; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A36.

⁴⁰⁷ **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A36; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A20, A21; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2103, ERN 00901013, A34-35; **D219/151**, Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064161, A7; **D219/152**, Written Record of Interview of Witness Meth Doung, 22 January 2015, ERN 01066817, A13; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056895, A31, ERN 01056895, A34.

⁴⁰⁸ **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A19, ERN 00938212; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047029, A47; **D119/159.1**, Sketch of places.



of Phnom Trayoung Mountain,⁴⁰⁹ a large rock quarry was located to the southwest.⁴¹⁰ A witness who worked nearby the prison states that the complex comprised about 100 houses and wooden halls.⁴¹¹

4.6.1.3. Structure and Personnel

192. Tum Soeun, who travelled with **Im Chaem** to Preah Net Preah District in March 1977,⁴¹² is widely identified as the Southwest Zone cadre in charge of the security centre.⁴¹³ Tum Soeun himself confirms that he was the prison's chief starting from May 1978, and that it was **Im Chaem** who appointed him to that position.⁴¹⁴

⁴⁰⁹ **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842058, A21, ERN 00842060, A36; **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842047, A23-25; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047029, A47; **D119/159.1**, Sketch of places.

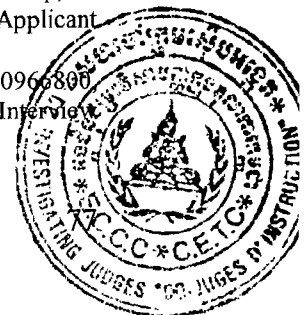
⁴¹⁰ **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A36; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805995-00805996, A21; **D119/98**, Written Record of Interview of Witness Kor Len, ERN 00985186, A14.

⁴¹¹ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842022, A9.

⁴¹² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966782, A31; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805994, A11.

⁴¹³ **D61**, Written Record of Interview of Witness Pan Chhuong, 19 August 2011, ERN 00738313; **D119/29**, Written Record of Interview of Witness Pan Chhuong, 14 March 2013, ERN 00937037, A18; **D101/1.1**, Written Record of Interview of Witness Por Bandeth, 2 September 2011, ERN 00746367; **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751069; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901012, A32; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842008, A18; **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842045, A9; **D106/8**, Written Record of Interview of Thib Witness Samphat, 2 April 2012, ERN 00842058, A16; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966732, A42; **D119/30**, Written Record of Interview of Witness Phoun Senty, 20 March 2013, ERN 00938206, A24; **D119/51**, Written Record of Interview of Witness Rin Kheng, 16 June 2013, ERN 00966752, A34; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985186, A16; **D119/136**, Written Record of Interview of Witness Pan Chhuong, 22 July 2014, ERN 01044772, A54; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066826, A13; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064154, A36; **D219/93**, Written Record of Interview of Witness Thib Samphat, ERN 01061183, 1 December 2014, A7; **D219/92**, Written Record of Interview of Witness Phoun Senty, 1 December 2014, ERN 01056896, A36; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056905, A4; **D219/174**, Written Record of Interview of Witness Lem Phenh, 10 February 2015, ERN 01076994, A66; **D219/256**, Written Record of Interview of Witness Mi Tal, 02 April 2015, ERN 01095825, A28; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A29; **D219/318**, Written Record of Interview of Civil Party Applicant Dan Tam, 20 May 2015, ERN 01112014, A60.

⁴¹⁴ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966800, A141-144, ERN 00966802, A158, ERN 00966805, A175-177; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061139, A6-A7.



193. Several witnesses identify Phnom Trayoung as a sector-level security centre, as it held detainees from different districts of Sector 5.⁴¹⁵ For instance, workers arrested in the Svay Sisophon District were detained at the security centre.⁴¹⁶ Prisoners from Siem Reap, which one witness places in Sector 4, were also detained at Phnom Trayoung security centre.⁴¹⁷ However, the witness may have been mistaken with regard to Siem Reap being in Sector 4, as there is evidence that it was in Sector 106, or possibly 103, of a special autonomous region.⁴¹⁸ It is also possible that Phnom Trayoung was originally a district-level security centre and became a sector-level one around the beginning of 1978.⁴¹⁹

194. The evidence of the prison chief, Tum Soeun, is different on this point, as he states that prisoners came only from cooperatives within the Preah Net Preah District.⁴²⁰ We have considered that several witnesses state that the security centre held persons from different districts, and that former inmates, who during their detention are likely to have talked to the other prisoners, are a reliable source on this point, who do not have apparent reasons to be untruthful. On the other hand Tum Soeun, whom we consider overall to be reliable on issues concerning the administrative structure and chain of command at Phnom Trayoung security centre, has proved sometimes less credible on issues concerning the number of inmates, their treatment, and the magnitude of the operation of the security centre. We thus find credible the evidence of former inmates that the prison held detainees from different districts of Sector 5.

⁴¹⁵ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147825, A56-A57; **D119/20**, Written Record of Interview of Witness Li Sinh, 13 March 2013, ERN 00901019, A11; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056897, A42; **D219/255**, Written Record of Interview of Witness Phok Roeub, 01 April 2015, ERN 01095819, A19; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966733, A49.

⁴¹⁶ **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118002-01118003, A76-81; **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751068-00751069; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207, A30.

⁴¹⁷ **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056911, A52; **D106/6**, Written Record of Interview of Witness Kim Yet, 13 March 2012, ERN 00842009, A28; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207, A30.

⁴¹⁸ See **D6.1.456**, Written Record of Interview of Civil Party Applicant Sum Rithy, 6 March 2009 and **D179/1.2.43**, Transcript of Trial Proceedings, 8 October 2012, ERN 00855078.

⁴¹⁹ **D219/150**, Written Record of Interview of Witness Phoun Sunty, 21 January 2015, ERN 01066808-01066809, A4.

⁴²⁰ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966809-A200.



195. **Im Chaem** had overall authority over the prison and was Tum Soeun's direct superior.⁴²¹ She issued the security centre's regulations and oversaw its operation.⁴²² Tum Soeun received orders from **Im Chaem** either personally or through her messengers. He reported directly to her, for instance on the number of prisoners, and made requests for food and supplies.⁴²³
196. In spite of the security centre chief's somewhat inconsistent evidence on presence of guards,⁴²⁴ there is ample and reliable evidence that there were about 15 to 30 armed guards at the prison.⁴²⁵

4.6.1.4. *Arrests and Detention*

197. Prisoners arrived every week but also as often as on a daily basis,⁴²⁶ either on foot⁴²⁷ or by truck,⁴²⁸ and were separated upon arrival into "serious" and "light"

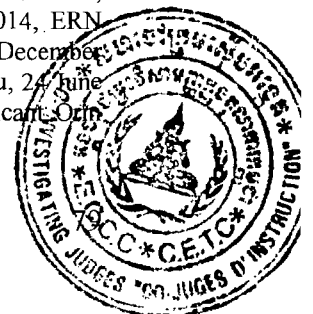
⁴²¹ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061140, A13; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966809, A198-A199, ERN 00966812, A215; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072598-01072599, 01072613; **D219/256**, Written Record of Interview of Witness Mi Tal, 2 April 2015, ERN 01095825, A24; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A35; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966736, A75; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985686, A89.

⁴²² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966804, A171.

⁴²³ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061140, A14-A19, ERN 01061145, A46-47; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072598-01072599, 01072613, 01072622; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056907-01056908, A20-27; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985686, A90.

⁴²⁴ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966802, A157; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072594-01072595.

⁴²⁵ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842021-00842022, A8-A9; **D106/7**, Written Record of Interview of Witness Sum Sal, 1 March 2012, ERN 00842045, A7, ERN 00842046, A11; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938208, A32; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966733-00966734, A54; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047029, A49; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061154, A13-A15; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056899-01056900, A54-55; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056914, A77-A78; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064152, A27; **D219/95**, Written Record of Interview of Witness Phon Mon, 1 December 2014, ERN 01056924-01056925, A18; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072591; **D219/129**, Written Record of Interview of Civil Party Applicant Un Yeng, 18 December 2014, ERN 01059932, A17; **D219/383**, Written Record of Interview of Witness Oeury Poeu, 24 June 2015, ERN 01128297, A26; **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075208, A39.



offenders.⁴²⁹ They arrived in small or larger groups ranging from two to 200 at a time.⁴³⁰ Many witnesses estimate that the security centre prisoner population was in the hundreds,⁴³¹ with some stating that the number was as high as one thousand, or even more.⁴³² A worker who farmed paddies near the prison states that arrests intensified in the period between 1977 and November 1978.⁴³³ Tum

⁴²⁶ **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066827-01066828, A21; **D106/6**, Written Record of Interview of Witness Kim Yet, 13 March 2012, ERN 00842009, A29; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056910, A46; **D219/230**, Written Record of Interview of Witness Leng Voeng, 18 March 2015, ERN 01089997, A25.

⁴²⁷ **D119/30**, Written Record of Interview of Witness Phoun Sunt, 20 March 2013, ERN 00938205, A14; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061147, A58.

⁴²⁸ **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901010, A19, ERN 00901011, A24; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842009, A27; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047027, A35-A37 (by ox-cart); **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064150, A19-A20 (by tractor); **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061147, A58 (ordinary people by truck, and wrongdoers were tied and transported by motorbike, sometimes escorted by foot); **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072612; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147831, A108 A38 (by tractor).

⁴²⁹ **D106/7**, Written Record of Interview of Witness Sum Sal, 1 March 2012, ERN 00842045, A7, ERN 00842046, A15; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061146, A53; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072597; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061155, A23-A26; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966803, A168.

⁴³⁰ **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056910, A46; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064151, A21; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A25; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061146-01061147, A55-A57.

⁴³¹ **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056914, A76; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842010 A31; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805995, A21; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061139, A11; **D119/88**, Written Record of Interview of Witness Kao Phan, 17 February 2014, ERN 00981995, A20; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047029, A49; **D219/92**, Written Record of Interview of Witness Phoun Sunt, 1 December 2014, ERN 01056895, A30; **D219/129**, Written Record of Interview of Civil Party Applicant Un Yeng, 18 December 2014, ERN 01059932, A16; **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075207, A33.

⁴³² **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966733, A53; **D119/51**, Written Record of Interview of Witness Rin Kheng, 16 June 2013, ERN 00966751, A26; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066827-01066828, A21; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064154, A37; **D219/252**, Written Record of Interview of Witness Deng Leap, 27 March 2015, ERN 01095797, A31.

⁴³³ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842021, A1.



Soeun states that when they were brought to the prison, prisoners had no accompanying papers explaining the reasons for their detention.⁴³⁴

198. Prisoners were sometimes first detained at the Phnum Lieb security office, located approximately 100 metres from **Im Chaem**'s house, before they were sent to Phnom Trayoung.⁴³⁵
199. It is not possible to determine with any degree of accuracy the number of people who were detained at Phnom Trayoung. However, we find that even by a conservative estimate, between mid-1977 and the end of 1978, at least hundreds, but possibly a few thousand people must have been detained at the security centre.
200. **Im Chaem**, who had the authority to order arrests in the Preah Net Preah District,⁴³⁶ held monthly or bi-monthly meetings with the cooperative chiefs and Tum Soeun to determine who had to be sent to the security centre.⁴³⁷ She often ordered arrests by way of letters, and used militiamen to arrest mobile unit and cooperative workers, Northwest cadres, medical personnel, and other people who were then taken to Phnom Trayoung security centre.⁴³⁸ She also personally instructed people to attend "meetings" in Phnom Trayoung, where they were

⁴³⁴ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061147, A63.

⁴³⁵ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982760, A32-A36, ERN 00982763, A46; **D119/138**, Written Record of Interview of Witness Sar Lorm, 24 July 2014, ERN 01040536, A30-31; **D219/151**, Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064160, A3-A4; **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751069; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 10 March 2013, ERN 00938205-00938206, A15-A18; **D119/154**, Written Record of Interview of Witness Iv Mara, 2 September 2014, ERN 01044835, A38. *See also* **D219/397**, Written Record of Interview of Witness Bin Sokh, 2 July 2015, ERN 01128310-01128311, A20-27; **D119/75**, Written Record of Interview of Witness Bin Sokh, 21 January 2014, ERN 00981131, A19.

⁴³⁶ We have reviewed evidence supporting this conclusion in the section above dedicated to Im Chaem's role and authority in the Northwest Zone.

⁴³⁷ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966812-00966813, A222-A223.

⁴³⁸ **D119/73**, Written Record of Interview of Witness Nou Chuong, 20 January 2014, ERN 00980544, A25-31, ERN 00980545, A34; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985683, A76, ERN 00985684, A77, A78-A79, A81; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966732, A42-A44; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982763, A46-A47; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056907, A19; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842007, A11; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842057, A11; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056892-01056893, A14-24.



subsequently detained.⁴³⁹ Tum Soeun personally arrested people on the basis of letters either signed by **Im Chaem** or signed by other sector-level cadres and forwarded to him by **Im Chaem**.⁴⁴⁰ Tum Soeun received either oral messages from **Im Chaem**'s messengers or written messages from her informing him when people from the cooperatives were to arrive and requesting reports on the new arrivals.⁴⁴¹

201. Tum Soeun claims that he “*sometimes*” exercised discretion to release prisoners whom he found had not committed serious mistakes, without **Im Chaem**'s knowledge.⁴⁴² He and several other witnesses state that all prisoners were released just prior to the arrival of the Vietnamese troops,⁴⁴³ although he admits executing four prisoners during this period on the orders of **Im Chaem**.⁴⁴⁴
202. Prisoners at the security centre included “new people”, Phnom Penh “evacuees”, former officials, soldiers, and police officers under the Khmer Republic government, and their families, doctors, teachers, individuals accused of being capitalists, Northwest Zone cadres, and Vietnamese and Chinese citizens.⁴⁴⁵ People were arrested for different reasons, such as making “*mistakes*” at

⁴³⁹ **D119/30**, Written Record of Interview of Witness Phoun Sunt, 10 March 2013, ERN 00938205-00938206, A15-A18; **D219/92**, Written Record of Interview of Witness Phoun Sunt, 1 December 2014, ERN 01056892, A15-A16.

⁴⁴⁰ **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985671, A17, ERN 00985683, A76; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966732, A45-46.

⁴⁴¹ **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805997, A29; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072598; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061140, A19.

⁴⁴² **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072612- ERN 01072613.

⁴⁴³ **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805995, A21; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047028, A46; **D106/7**, Written Record of Interview of Witness Sum Sal, 21 March 2012, ERN 00842047, A28.

⁴⁴⁴ **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072613.

⁴⁴⁵ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842021, A8; **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751068-00751069 (villagers and their families; as well as “new people”); **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966807, A185 (Khmer Republic soldiers); **D119/155**, Written Record of Interview of Witness Lach Chheanlong, 3 September 2014, ERN 01045570, A71 (two Phnom Penh “evacuees”); **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061146, A55; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066826, A14 (a relative of a Khmer Republic official); **D219/175**, Written Record of Interview of Witness Hang Horn, 11 February 2015, ERN 01077005, A30 (Northwest Zone cadres and their families); **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075206, A23 (relatives of a Khmer Republic soldier); ERN 01075205, A14).



work,⁴⁴⁶ stealing food to eat,⁴⁴⁷ “betraying” the revolution, and being “lazy”.⁴⁴⁸ People were also arrested without being given any explanation.⁴⁴⁹ Relatives of those arrested, including children, were also often detained.⁴⁵⁰

203. Prisoners were divided into “serious” and “light” offenders. “Serious” offenders were kept separate and in shackles,⁴⁵¹ and were guarded while working.⁴⁵² Tum Soeun states that **Im Chaem** was the one who decided whether to unshackle prisoners.⁴⁵³ According to a civil party applicant who was arrested by the

⁴⁴⁶ **D119/136**, Written Record of Interview of Witness Pan Chhuong, 22 July 2014, ERN 01044773, A56; **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805996, A23; **D61**, Written Record of Interview of Witness Pan Chhuong, 19 August 2011, ERN 00738313; **D63**, Written Record of Interview of Witness Pann Thy, 19 August 2011, ERN 00738213; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966807, A185.

⁴⁴⁷ **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805996, A23 (catching fish or frogs during working time); **D119/155**, Written Record of Interview of Witness Lach Chheanlong, 3 September 2014, ERN 01045570, A73 (killing a cow); **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047026, A28 (stealing rice); **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842009 A28 (stealing cassava).

⁴⁴⁸ **D106/8**, Written Record of Interview of Witness Thib Samphat 2 April 2012, ERN 00842057, A10; **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118003, A85 (“despising” *Angkar*).

⁴⁴⁹ **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901010, A20.

⁴⁵⁰ **D101/1.2**, Written Record of Interview of Witness Torn Pinthang, 2 September 2011, ERN 00751069; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207, A31; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072598; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A37.

⁴⁵¹ **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842046, A15; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842058, A21; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047026, A30, ERN 01047026, A30, ERN 01047029, A47; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056894, A26, ERN 01056900, A58; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147828, A84; **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751068; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011-00901012, A22, A27; **D119/137**, Written Record of Interview of Witness Ith Iet, 23 July 2014, ERN 01044786, A44; **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047897, A42; **D219/152**, Written Record of Interview of Witness Meth Doung, 22 January 2015, ERN 01066818, A18; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066827, A21; **D219/150**, Written Record of Interview of Witness Phoun Sunty, 21 January 2015, ERN 01066808, A4; **D219/95**, Written Record of Interview of Witness Phon Mon, 1 December 2014 ERN 01056924, A11, A16; **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075210, A55; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A32; **D219/230**, Written Record of Interview of Leng Voeng, 18 March 2015, ERN 01089996, A15.

⁴⁵² **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A27; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A19; **D219/383**, Written Record of Interview of Witness Oeury Poeu, 24 June 2015, ERN 01128297, A22.

⁴⁵³ **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061145, A45.



Southwest Zone cadres and detained at Phnom Trayoung security centre,⁴⁵⁴ “serious” offenders were only kept in the prison for about two days, and they were then taken away.⁴⁵⁵ Witnesses saw as many as 70 “serious” offenders kept in a long hall. According to one witness they were all men.⁴⁵⁶ There were several halls housing prisoners.⁴⁵⁷ Tum Soeun provides a different number, stating that there were fewer than seven or eight “serious” offenders imprisoned at any one time.⁴⁵⁸ He also gives a contradictory and thus unreliable account on the issue of shackles.⁴⁵⁹ Again, we are of the view that Tum Soeun, on this occasion, may have had ulterior motives to provide smaller figures than those testified to by former prisoners.

204. Prisoners were made to work in a rock quarry adjacent to the prison.⁴⁶⁰ They were also employed in other activities, such as farming⁴⁶¹ and cutting trees.⁴⁶² Witnesses state that either “serious” offenders⁴⁶³ or male detainees generally⁴⁶⁴

⁴⁵⁴ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147822, A45-A48.

⁴⁵⁵ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147828, A84.

⁴⁵⁶ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147829, A94; **D219/174**, Written Record on Interview of Witness Lem Phenh, 10 February 2015, ERN 01076993, A62.

⁴⁵⁷ **D219/475**, Written Record of Interview of Witness It Hal, 19 August 2015, ERN 01173550, A15.

⁴⁵⁸ **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072612.

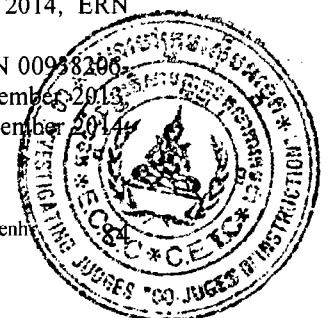
⁴⁵⁹ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966801, A153, ERN 00966804, A169; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061141, A21, ERN 01061144, A41; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072613.

⁴⁶⁰ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842023, A21; **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842046, A11; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147824, A50, ERN 01147828, A84; **D219/102**, Written Record of Interview of Witness Tum Soeun, 2 December 2014, ERN 01061143, A35; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047030, A51; **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044797, A17; **D119/155**, Written Record of Interview of Witness Lach Chheanlong, 3 September 2014, ERN 01045567, A56; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059945, A69, ERN 01059970, A273; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066829, A24; **D219/383**, Written Record of Interview of Witness Oeury Poeu, 24 June 2015, ERN 01128296-01128297, A22, A27.

⁴⁶¹ **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842046, A10-12; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A27; **D119/30**, Written Record of Interview of Witness Phoun Suntly, 20 March 2013, ERN 00938205-00938206, A18.

⁴⁶² **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047030, A51-52.

⁴⁶³ **D119/30**, Written Record of Interview of Witness Phoun Suntly, 20 March 2013, ERN 00938206-00938207, A25; **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2013, ERN 01053558, A29; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061159, A51.



worked in the quarry, while “light” offenders⁴⁶⁵ or female detainees⁴⁶⁶ farmed. Children were assigned to make fertilizer.⁴⁶⁷

205. Armed guards on duty at the prison watched over prisoners at the quarry.⁴⁶⁸ Witnesses report instances when prisoners were crushed by rocks and killed.⁴⁶⁹
206. Former detainees portray a very dire picture of the conditions in the prison, which some defined as horrible, with insufficient food and water being provided to the prisoners.⁴⁷⁰ The statements of Tum Soeun regarding food rations are contradictory and, considering his responsibilities as prison chief, his credibility on this issue is low.⁴⁷¹ There were no toilets in the halls housing the prisoners, who had to ask for permission to go outside to defecate and were made to urinate inside the halls.⁴⁷²

⁴⁶⁴ **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842046, A14; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A31.

⁴⁶⁵ **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206-00938207, A25; **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2013, ERN 01053558, A29; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061159, A51.

⁴⁶⁶ **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842046, A14; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A31.

⁴⁶⁷ **D119/51**, Written Record of Interview of Witness Rin Kheng, 16 June 2013, ERN 00966751, A24.

⁴⁶⁸ **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2013, ERN 01053564, A53; **D219/475**, Written Record of Interview of Witness It Hal, 19 August 2015, ERN 01173550, A16; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064152, A27.

⁴⁶⁹ **D219/17**, Written Record of Interview of Witness Prang Sal, 15 December 2014, ERN 01053561-01053562, A39; **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179863, A76.

⁴⁷⁰ **D219/318**, Written Record of Interview of Civil Party Applicant Dan Tam, 20 May 2015, ERN 01112013-01112014, A55; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056918, A103; **D219/95**, Written Record of Interview of Witness Phon Mon, 1 December 2014, ERN 01056928, A45; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064152, A29; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059945, A69; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A27; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938205-00938206, A18; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066827-01066828, A21.

⁴⁷¹ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966806, A181, ERN 00966812, A218; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072622.

⁴⁷² **D219/475**, Written Record of Interview of Witness It Hal, 19 August 2015, ERN 01173550; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064152, A26.



207. A witness reports that guards beat and mistreated prisoners on a daily basis.⁴⁷³ Guards used metal poles to beat prisoners who had tried to escape after having tied them to a tree,⁴⁷⁴ and beat shackled prisoners with clubs to the point that a witness considered it unlikely that the prisoners would have survived the beating.⁴⁷⁵

4.6.1.5. *Deaths and Disappearances*

208. There is extensive and consistent evidence that detainees were routinely executed at Phnom Trayoung security centre.⁴⁷⁶ Former prisoners state that they were ordered to dig graves⁴⁷⁷ and had to bury the bodies of executed prisoners.⁴⁷⁸ After the arrival of the Southwest Zone cadres in 1977, people other than detainees of the security centre were also killed there, with trucks transporting shackled prisoners to Phnom Trayoung Mountain every two to

⁴⁷³ **D219/230**, Written Record of Interview of Witness Leng Voeng, 18 March 2015, ERN 01089996, A18; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047028, A40-A42.

⁴⁷⁴ **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056915-01056916, A85-88.

⁴⁷⁵ **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047026, A28, ERN 01047028, A40-A43.

⁴⁷⁶ **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751068; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A22-A23; **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842010, A31-A33; **D119/48**, Written Record of Interview of Witness Duong Vandy, 14 June 2013, ERN 00966722, A6-A8; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A31, ERN 01095798, A41; **D219/211**, Written Record of Interview of Witness Oeun Chanry, 4 March 2014, ERN 01088527, A18; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147830, A98-A100, ERN 01147832-01147833, A108-A120; **D119/138**, Written Record of Interview of Witness Sar Lorm, 24 July 2014, ERN 01040536-10140537, A30-A34; **D119/153**, Written Record of Interview of Witness Kong Vin, 1 September 2014, ERN 01045555, A28-A30; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066830, A31-A32; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985205-00985206, A35; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207, A31.

⁴⁷⁷ **D219/150**, Written Record of Interview of Witness Phoun Sunty, 21 January 2015, ERN 01066809, A6; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056895, A31; **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095798, A42; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966734, A58-A59.

⁴⁷⁸ **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842059, A22; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A22; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901011, A34; **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2014, ERN 01179863, A75-A76.



three days.⁴⁷⁹ These prisoners were then executed northeast of Phnom Trayoung Mountain, where mass graves were found after the end of the DK.⁴⁸⁰

209. Executions were carried out with a variety of weapons including axes, clubs, and hoes.⁴⁸¹ One witness who was only once tasked with burying executed prisoners states that women, men, and children were buried naked, and that some were still moving.⁴⁸² There is evidence that sometimes corpses were burnt.⁴⁸³ Guards boasted about executing prisoners and bragged among themselves as to who had killed more people.⁴⁸⁴
210. Witnesses report that prisoners were executed for a number of different reasons, including their background,⁴⁸⁵ mistakes, even minor ones,⁴⁸⁶ and being too weak and exhausted to work.⁴⁸⁷ Prisoners who attempted to run away were also shot.⁴⁸⁸ A former prison guard states that while guards had been instructed to shoot prisoners who tried to escape, they did not do that nor did they beat the

⁴⁷⁹ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147823, A43; ERN 01147831-01147832, A108-A119; **D119/21**, Written Record of Interview of Witness Uk Dieng, 14 March 2013, ERN 00919156, A14-A15.

⁴⁸⁰ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147838, A162-164; **D219/151**, Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064160, A4.

⁴⁸¹ **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A20; **D106/8**, Written Record of Interview of Witness Thib Samphat, 2 April 2012, ERN 00842060, A30-A31; **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842022, A14.

⁴⁸² **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901013, A34.

⁴⁸³ **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118005, A105, A107-108.

⁴⁸⁴ **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056915, A82-83; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938207-00938208, A31; **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066830, A32.

⁴⁸⁵ **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842022, A13-A14.

⁴⁸⁶ **D219/211**, Written Record of Interview of Witness Oeun Chanry, 4 March 2014, ERN 01088527, A18; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147830, A98.

⁴⁸⁷ **D219/252**, Written Record of Interview of Witness Deng Leap, 13 March 2015, ERN 01095797, A31.

⁴⁸⁸ **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966734, A55; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056915-01056916, A85-88; **D219/230**, Written Record of Interview of Witness Leng Voeng, 18 March 2015, ERN 01089997, A27. **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056900, A57; **D219/211**, Written Record of Interview of Witness Oeun Chanry, 4 March 2014, ERN 01088527, A14; **D119/30**, Written Record of Interview of Witness Phoun Sunty, 20 March 2013, ERN 00938206, A24.



prisoners,⁴⁸⁹ while Tum Soeun states that escapees were “re-educated”, without elaborating further.⁴⁹⁰ Considering the evidence of mistreatment and killings provided by several former inmates, and that the guard and Tum Soeun may have a motive to conceal the punishment that they themselves may have ordered and administered, we find their evidence not credible on this point.

211. Witnesses, most of them former prisoners, provide different estimates of the number of people executed at the prison from the arrival of **Im Chaem** and the Southwest Zone cadres. Two witnesses, including a prisoner who was later assigned supervisory duties,⁴⁹¹ say that 30 to 50 prisoners were killed every day during a five month period in 1978⁴⁹² or from 1978 until the end of the DK,⁴⁹³ respectively; a civil party applicant states 15 to 20 prisoners every two to three days (in 1978).⁴⁹⁴ Yet other estimates are 20 to 30 prisoners weekly (between 1976 and November 1978);⁴⁹⁵ eight to 10 prisoners every 10 days (for two years before the arrival of the Vietnamese troops) according to a former staff of the nearby hospital;⁴⁹⁶ and during a period of 3 months in 1977, 80 to 100 every two to three days.⁴⁹⁷
212. Tum Soeun gives a contradicting account ranging from no deaths,⁴⁹⁸ to 300 or 400,⁴⁹⁹ a number that he later explicitly denies.⁵⁰⁰ During a confrontation, Tum

⁴⁸⁹ **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061157, A37-38.

⁴⁹⁰ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966803, A165-167.

⁴⁹¹ **D119/30**, Written Record of Interview of Witness Phoun Senty, 20 March 2013, ERN 00938202, A24.

⁴⁹² **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2013, ERN 01053555, A10, ERN 01053565, A54; **D231**, Written Record of Confrontation, 4 December 2014, ERN 01056932, A31.

⁴⁹³ **D119/30**, Written Record of Interview of Witness Phoun Senty, 20 March 2013, ERN 00938207-00938208, A31, A36; **D219/92**, Written Record of Interview of Witness Phoun Senty, 1 December 2014, ERN 01056899, A52.

⁴⁹⁴ **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064150, A18, ERN 01064152-01064153, A30-31, ERN 01064154, A38.

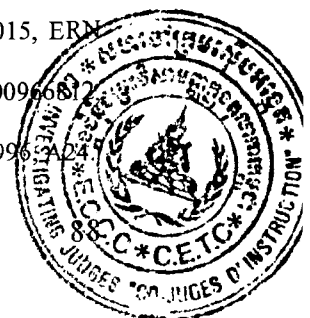
⁴⁹⁵ **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842006, A5, ERN 00842007, A8, ERN 00842010, A31-32; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056904, A2, ERN 01056911-01056912, A54-55, ERN 01056913, A68, ERN 01056914, A70.

⁴⁹⁶ **D219/152**, Written Record of Interview of Witness Meth Doung, 22 January 2015, ERN 01066817, A13.

⁴⁹⁷ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147825, A58, ERN 01147831, A108.

⁴⁹⁸ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966803, A217.

⁴⁹⁹ **D106/5**, Written Record of Interview of Witness Tum Soeun, 29 March 2012, ERN 00805996, A217.



Soeun only admitted that he ordered the guards to kill four prisoners, after **Im Chaem** had ordered him to do so.⁵⁰¹ Considering the contradicting nature of Tum Soeun's statements, and that he may have had motives to downplay the extent of the executions, we do not find his evidence on numbers to be credible.

213. There is also evidence of a single operation during which several hundreds of people were reportedly executed. This evidence comes from Nou Kham, a former inmate who was arrested and detained at Phnom Trayoung security centre after the arrival of Southwest Zone cadres on accusation of being a traitor.⁵⁰² He says that during a meeting at Phnom Trayoung security centre attended by senior cadres, including **Im Chaem**,⁵⁰³ between 700 and 1,000 prisoners, which is also the number of inmates whom according to the witness were detained at the prison at the time,⁵⁰⁴ were executed on accusation of being "traitors".⁵⁰⁵ The witness provides specific details of the incident, which according to his evidence we understand to have happened towards the end of 1978.⁵⁰⁶ He says that seven prison guards from the Southwest Zone, whom he names, carried out the killings with a large club.⁵⁰⁷ Victims were killed one or two at the time over the course of one night and the following morning, while the other prisoners were waiting blindfolded a few metres away.⁵⁰⁸ The victims' bodies were then placed, unburied, in a pond located 50 to 100 metres away from the security centre.⁵⁰⁹ The victims were stripped of their clothes, which

⁵⁰⁰ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966809, A196.

⁵⁰¹ **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072613.

⁵⁰² **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179854, A24-A27, ERN 01179860, A58-A62.

⁵⁰³ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179866-01179867, A95-A97, ERN 01179869, A111-A112.

⁵⁰⁴ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179854, A24-A27, ERN 01179859, A52.

⁵⁰⁵ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A59, ERN 01179862-01179863, A68-A73.

⁵⁰⁶ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179862, A70-A71.

⁵⁰⁷ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A59, ERN 01179865-01179866, A84-A93.

⁵⁰⁸ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A59, ERN 01179865, A85-A87.

⁵⁰⁹ **D219/583**, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A75, A78.



were placed in a pile and were later taken away.⁵¹⁰ There are, however, some details in Nou Kham's account that we find unconvincing.

214. Firstly, he states that the guards executed one or two prisoners at the time while the others were kept just five or six meters away. While he states that the prisoners were blindfolded, because "*if they had seen the killings, they would have certainly screamed*",⁵¹¹ we find it hard to believe that a blindfold would have been sufficient to prevent the group from realising that, for many consecutive hours, their fellow prisoners were being clubbed to death a few meters away. There will have been screams by the victims and general commotion. Even the sound of the large club as it impacted against the victims may have been audible at such short distance. In such a scenario, seven guards would not have been able to contain hundreds of people, who could conceivably have attempted to react if they had realised that they were about to be killed. Secondly, the number of people that the witness says were killed corresponds to the number of people that he estimates were detained at the prison at the time. However, the witness also states that an unspecified number of inmates were spared and attended the meeting, while others were killed as the meeting was ongoing,⁵¹² which implies that not all the inmates were executed. The witness states that he himself attended the meeting,⁵¹³ but he also states that at some point he crawled to the execution location where he saw the killings being carried out, in spite of having being prohibited to approach the location.⁵¹⁴ Considering the presence of armed guards and the witness' knowledge that execution often befell those who breached the rules, we have some reservations with regard to this part of the witness' account.

215. On the other hand, the witness provides a very detailed account of the execution, including the names of the executioners, which lends credibility to his

⁵¹⁰ D219/583, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A59, ERN 01179864, A82-A83.

⁵¹¹ D219/583, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179865, A86-A87.

⁵¹² D219/583, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179861, A66.

⁵¹³ D219/583, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179860, A67.

⁵¹⁴ D219/583, Written Record of Interview of Witness Nou Kham, 3 November 2015, ERN 01179865, A73.



testimony. There is also a civil party applicant who speaks of executions involving the entirety of the prison's population, which was then refilled with new prisoners, but his evidence is insufficiently specific to understand if he is referring to the same incident recounted by Nou Kham.⁵¹⁵

216. In conclusion, we have considered that some circumstances of Nou Kham's evidence do not appear fully plausible, but we have also considered his detailed account, and the fact that many other witnesses state that people were regularly executed at Phnom Trayoung. We are thus of the view that the execution recounted by the witness happened. However, while from the witness' account this incident may have involved a high number of victims, we believe that the 700 to 1000 victims' estimate is not sufficiently supported and hence ultimately unreliable as far as exact numbers are concerned.

217. With regard to Nou Kham's identification of **Im Chaem** as the woman who attended the meeting during which this large execution took place, we note that he did so only after the investigator mentioned her name. He also states that the woman had a "*large physique*" which is not an accurate description of **Im Chaem**.⁵¹⁶ On the other hand, he correctly states that she had a dark complexion and provides an age estimate which is compatible with **Im Chaem**'s. If a meeting was held at Phnom Trayoung with cadres in attendance, **Im Chaem**'s presence would not have been surprising, since she was the district secretary, was in charge of the security centre, and there is other evidence that she visited the prison.

218. It is, ultimately, impossible to reach a precise estimate of the number of people executed at Phnom Trayoung security centre under **Im Chaem**'s tenure. We have decided to give more weight to the evidence provided by the prisoners and a former guard. On the basis of conservative calculations using the lowest estimate provided by each former prisoner and the guard, it can be concluded that, during the Southwest Zone rule, there were at least about 1000 prisoners

⁵¹⁵ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147826, A68-69.

⁵¹⁶ See **D119/124.1**, Photos, 16 May 2014, ERN 00987290, ERN 00987291 and **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055657.



killed in 1977⁵¹⁷ and about 1000 in 1978.⁵¹⁸ This estimate does not include the incident where 700 to 1000 prisoners were reportedly killed, which we have found to be not reliable on the numbers.

219. In addition to being executed, prisoners also died of starvation, disease, overwork,⁵¹⁹ and physical mistreatment.⁵²⁰ A witness saw the corpses of two prisoners still in shackles in a hall at the prison half a month after the arrival of the Vietnamese troops.⁵²¹
220. Former prisoners report that large numbers of detainees died of starvation.⁵²² Estimates from former prisoners vary: a witness estimates thousands,⁵²³ a civil party applicant estimates about 100 during a three-month period,⁵²⁴ and another two witnesses state two or three per day.⁵²⁵ While it is not possible to establish with precision the number of people who starved at the prison, we are satisfied that between the arrival of the Southwest Zone cadres in mid-1977 until the

⁵¹⁷ Minimum calculations based on **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842006, A5, ERN 00842007, A8, ERN 00842010, A31-32; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056904, A2, ERN 01056911-01056912, A54-55, ERN 01056913, A68, ERN 01056914, A70. *See* witness with the highest minimum estimate of 2400 prisoners killed: **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147825, A58, ERN 01147831, A108.

⁵¹⁸ Minimum calculations based on **D106/6**, Written Record of Interview of Witness Kim Yet, 30 March 2012, ERN 00842006, A5, ERN 00842007, A8, ERN 00842010, A31-32; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056904, A2, ERN 01056911-01056912, A54-55, ERN 01056913, A68, ERN 01056914, A70. *See* witness with the highest minimum estimate of 10,800 prisoners killed, **D119/30**, Written Record of Interview of Witness Phoun Senty, 20 March 2013, ERN 00938207-00938208, A31, A36; **D219/92**, Written Record of Interview of Witness Phoun Senty, 1 December 2014, ERN 01056899, A52.

⁵¹⁹ **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842048, A31; **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842022, A13; **D219/318**, Written Record of Interview of Civil Party Applicant Dan Tam, 20 May 2015, ERN 01112014, A63-A64; **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2013, ERN 01053555, A10, ERN 01053565, A54.

⁵²⁰ **D219/230**, Written Record of Interview of Leng Voeng, 18 March 2015, ERN 01089995, A7.

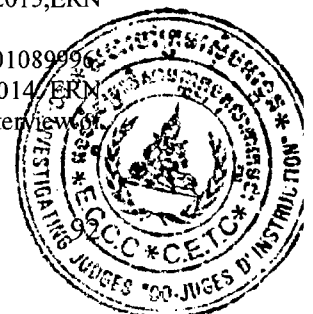
⁵²¹ **D219/141**, Written Record of Interview of Witness Youk Neam, 13 January 2015, ERN 01063691-01063691, A11-17; **D43**, Written Record of Interview of Witness Youk Neam, 29 July 2011, ERN 00727234.

⁵²² **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075208, A47; **D219/318** Written Record of Interview of Civil Party Applicant Dan Tam, 20 May 2015, ERN 01112014, A58, A64; **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147822, A37.

⁵²³ **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066827-01066828, A21.

⁵²⁴ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147823, A43-A47, ERN 01147827-01147828, A80-A81.

⁵²⁵ **D219/230**, Written Record of Interview of Witness Leng Voeng, 18 March 2015, ERN 01089995, A21-A22; **D119/159**, Written Record of Interview of Witness Leng Voeng, 12 September 2014, ERN 01047026, A28, ERN 01047028, A46, ERN 01047029, A50; **D119/49**, Written Record of Interview of Witness Thib Samphat, 15 June 2013, ERN 00966734, A57.



arrival of the Vietnamese troops in January 1979, hundreds of people died of starvation at Phnom Trayoung security centre.

221. Victims of executions and persons who had died of starvation were buried in pits on the northern side of the Phnom Trayoung Mountain.⁵²⁶ People who had died at a nearby hospital were also buried in the vicinity of Phnom Trayoung Mountain. However, a hospital worker who was ordered to bury bodies states that deceased patients were buried in individual graves while victims of executions were buried in different, common graves.⁵²⁷

4.6.1.6. *Visits of Im Chaem*

222. While several former detainees never saw **Im Chaem** visiting the prison during their detention,⁵²⁸ two witnesses recall seeing **Im Chaem** at the security centre,⁵²⁹ including once when she warned prisoners that, if they did not “refashion” themselves through hard work, they would be executed.⁵³⁰ She was also regularly seen travelling by motorbike in the direction of Phnom Trayoung Mountain.⁵³¹ Tum Soeun, the prison chief, states that he never saw **Im Chaem** at the prison, but concedes that she may have gone there when he was visiting other communes for work. Tum Soeun however speaks about discussing with

⁵²⁶ **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985207, A42; **D119/137**, Written Record of Interview of It Iet, 23 July 2014, ERN 01044786-01044787, A44-A46; **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075210, A61-A62; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061159, A47-A50; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061158, A44-A45; **D219/151**, Written Record of Interview of Witness Uk Deang, 22 January 2015, ERN 01064162, A8-A9.

⁵²⁷ **D219/152**, Written Record of Interview of Witness Meth Doung, 22 January 2015, ERN 01066815-01066816, A7-A10.

⁵²⁸ **D101/1.2**, Written Record of Interview of Witness Tor Pinthang, 2 September 2011, ERN 00751069; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901014, A40; **D106/4**, Written Record of Interview of Witness Lay Khann, 28 March 2012, ERN 00842023, A19; **D106/7**, Written Record of Interview of Witness Sum Sal, 31 March 2012, ERN 00842048, A35; **D119/51**, Written Record of Interview of Witness Rin Kheng, 16 June 2013, ERN 00966753, A42; **D119/88**, Written Record of Interview of Witness Kao Phan, 17 February 2014, ERN 00981996, A28; **D219/92**, Written Record of Interview of Witness Phoun Sunty, 1 December 2014, ERN 01056896, A39; **D219/94**, Written Record of Interview of Witness Kim Yet, 1 December 2014, ERN 01056916, A91; **D219/95**, Written Record of Interview of Witness Phon Mon, 1 December 2014, ERN 01056926, A22.

⁵²⁹ **D219/153**, Written Record of Interview of Witness Im Soeun, 23 January 2015, ERN 01066831, A34.

⁵³⁰ **D219/400**, Written Record of Interview of Civil Party Applicant Bou Tuok, 9 July 2015, ERN 01147826, A65-A69, ERN 01147835-01147836, A144-A160.

⁵³¹ **D219/383**, Written Record of Interview of Witness Oeury Poeu, 24 June 2015, ERN 01066833, A33.



her the release of prisoners, and that **Im Chaem**'s messengers came to the security centre every two or three days.⁵³²

223. In her DC-Cam statement, **Im Chaem** denies any involvement with the Phnom Trayoung security centre, but states that it was close to her house, between 200 metres and one kilometre.⁵³³ Considering the proximity between the centre and her residence, and the evidence of witnesses who saw her there, we find **Im Chaem**'s denial not credible.

4.6.2. *Spean Sreng Canal Worksite*

4.6.2.1. *Introduction*

224. At Spean Sreng, in late 1977 and early to mid-1978, **Im Chaem** initiated and directed the extension of an existing canal and water reservoir. Thousands of workers, including former Northwest Zone cadres, were forced to work there. The number of arrests, disappearances, and deaths is unknown.

4.6.2.2. *Location and Establishment*

225. The Spean Sreng Canal worksite began in Phum Char Village, Spean Sreng Commune, Phnom Srok District, Banteay Meanchey Province, Sector 5, Northwest Zone⁵³⁴ and ran south through Teuk Chour Commune, Preah Net Preah District, Banteay Meanchey Province⁵³⁵ to Prey Roneam Reservoir in Prasat and Phnom Lieb communes, Preah Net Preah District.⁵³⁶
226. The canal built by the Southwest Zone cadres was the extension of a pre-existing section of the canal, located in the Phnom Srok District, built under the Northwest Zone leadership prior to the arrival of the Southwest Zone cadres.⁵³⁷

⁵³² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966806, A183; **D230**, Written Record of Confrontation, 3 December 2014, ERN 01072598.

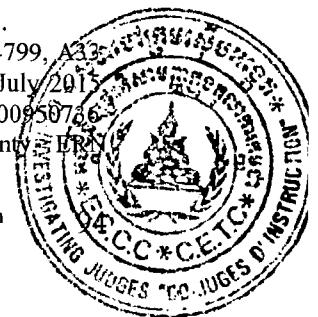
⁵³³ **D123/1/5.1c**, DC-Cam Transcript of Interview of Im Chaem, ERN 00951858-00951859.

⁵³⁴ **D106/19**, Spean Sreng Worksite Site Identification Report, 11 April 2012, ERN 00801031.

⁵³⁵ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966794, A98; **D106/9**, Written Record of Interview of Witness Tak Buy, 3 April 2012, ERN 00842066, A27; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842035, A29.

⁵³⁶ **D106/19**, Spean Sreng Worksite Site Identification Report, 11 April 2012, ERN 00801031.

⁵³⁷ **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044799, A12-ERN 01044807, A60; **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128308, A6; **D119/40**, Written Record of Interview of Witness Chhay Phan, ERN 00950737, A12-A15; **D119/30**, Written Record of Interview of Witness Phoun Suntu, ERN 00950737, A12-A15.



The new extended canal was eight to 10 kilometres long and 15 metres wide⁵³⁸ and connected the original canal with Prey Roneam Reservoir to the south.⁵³⁹

227. The construction of the canal extension, known as Au Lieb (or Liep) Canal or Dam,⁵⁴⁰ commenced in late 1977 or early 1978 and was completed in approximately two to three months.⁵⁴¹ An 11 May 1978 telegram from the Northwest Zone Secretary Ta Nhim to Office 870, the Central Committee in Phnom Penh,⁵⁴² states that the reservoir was nearly finished.⁵⁴³

4.6.2.3. Structure and Personnel

228. It was **Im Chaem**, upon her relocation to Sector 5 of the Northwest Zone, who ordered the construction of the canal extension and the reservoir.⁵⁴⁴ She was in charge of the site, where she conducted inspections, addressed the workers, and received reports on the progress of the work.⁵⁴⁵ According to Tum Soeun, who

00938208, A37; **D119/137**, Written Record of Interview of Witness Ith Iet, 23 July 2014, ERN 01044788, A59; **D119/133**, Written Record of Interview of Witness Nith Sorth, 3 July 2014, ERN 01037378, A121-124; **D119/89**, Written Record of Interview of Witness Chhum Seng, 18 February 2014, ERN 00982310, A33, A35.

⁵³⁸ **D106/19**, Spean Sreng Worksite Site Identification Report, 11 April 2012, ERN 00801031.

⁵³⁹ **D119/129**, Written Record of Investigation Action, 8 May 2014, 00988076.

⁵⁴⁰ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982749-00982750, A23-A24, A31; **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982333, A21; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985203, A24-25.

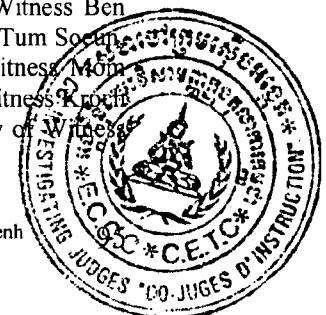
⁵⁴¹ **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985681, A65; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966794, A103-104; **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067925, A38.

⁵⁴² **D219/665**, Written Record of Interview of Witness Norng Sophang, ERN 01204275, A12-13; **D6.1.1051**, Written Record of Interview of Charged Person Kaing Guek-Eav *alias* Duch, 4 December 2007, ERN 00154910-00154911.

⁵⁴³ **D6.1.586**, The Khmer Rouge Communication Document 1975-1978, 14 November 2006, ERN 00143070.

⁵⁴⁴ **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128308, A6; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842032; A3, 00842033, A12-15; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796-00966797, A111, A117.

⁵⁴⁵ **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982333, A20-A21, ERN 00982335, A31; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950743, A15-16, A19; **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982749, A18-A24; **D219/397**, Written Record of Interview of Witness Ben Sokh, 2 July 2015, ERN 01128308, A4; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796, A112; **D119/52**, Written Record of Interview of Witness Mon Chhouk, 17 June 2013, ERN 00966761, A18; **D119/69**, Written Record of Interview of Witness Kong Vin, 1 September 2014, ERN 01045554, A19.



between January and May 1978⁵⁴⁶ was in charge of the Sector 5 Mobile Unit that worked the canal,⁵⁴⁷ Sector 5 put the Preah Net Preah District in charge of the project, with **Im Chaem** reporting back to the sector on the progress.⁵⁴⁸ The Sector Mobile Unit, together with other units referred to as women and youth's units, made up the workforce at the canal site.⁵⁴⁹ The Sector Mobile Unit was comprised of several smaller mobile units, each numbering up to hundreds of workers.⁵⁵⁰

229. Two witnesses state that a Southwest Zone cadre named Ta Poal, the Sector 5 Mobile Unit Deputy Chairman, was in charge of the site in the period between the arrival of the Southwest Zone cadres and the Vietnamese troops.⁵⁵¹ Tum Soeun, however, states that **Im Chaem** selected him for the role of Sector 5 Mobile Unit Chief at the site and he and the other mobile unit chiefs reported directly and exclusively to her.⁵⁵² Irrespective of whether there were one or more people directly overseeing the daily operation of the workers at the canal, the evidence shows that they ultimately reported to **Im Chaem**, who was overall in charge of the project.

230. Witnesses' accounts on the number of workers at the site vary. Tum Soeun and other witnesses directly involved in the construction of the canal (one of them assigned labourers to the canal) state that the project employed thousands to tens of thousands of people.⁵⁵³ A civil party applicant who worked on a stretch of the

⁵⁴⁶ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966794, A103.

⁵⁴⁷ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966792, A87, 00966794, A99.

⁵⁴⁸ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796-00966797, A116-A127.

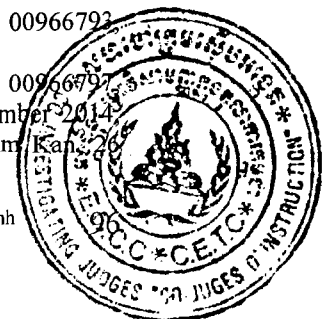
⁵⁴⁹ **D219/23**, Written Record of Interview of Witness Pum Kho, ERN 01050551, A97; **D219/13**, Written Record of Interview of Witness Khun Sevinn, 17 September 2014, ERN 01047900, A51; **D219/253**, Written Record of Interview of Witness Sann Hov, 31 March 2015, ERN 01095805, A27; **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966794, A99.

⁵⁵⁰ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796-00966797, A116-A127; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985188, A26.

⁵⁵¹ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982761, A37, A39; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059949, A013, ERN 01059965, A228-230.

⁵⁵² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966792, A96, 00966797, A117.

⁵⁵³ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966792, A123; **D219/1**, Written Record of Interview of Civil Party Applicant You Mut, 8 September 2014, ERN 01044866, A85. *See also* **D119/110**, Written Record of Interview of Witness Chum Kan,



canal about 100 metres long state that there were about 150 workers employed in that section.⁵⁵⁴ A former labourer provides a lower estimate, stating that there were only about 500 workers digging the entire canal and about 100 building bridges under the Southwest Zone cadres.⁵⁵⁵ In resolving this discrepancy, we have considered the large size of the project and the relatively short time (about three months) taken to build it. We have also considered that three witnesses, including the former commune committee member assigning workers to the project and the Sector 5 Mobile Unit Chief Tum Soeun, speak of thousands of workers at the site, and that others speak of several units in the Sector Mobile Unit each numbering hundreds of workers. Based on these considerations, we are satisfied that thousands of workers were employed in the canal project.

4.6.2.4. Living and Working Conditions

231. Witnesses, including a former militiaman at the site, state that under the Southwest Zone cadres, armed and unarmed guards watched over the workers to prevent their escape and arrested those who committed mistakes.⁵⁵⁶
232. Differently, Tum Soeun and two labourers working on the canal state that those workers were not monitored.⁵⁵⁷ We do not find this evidence to be reliable (with regard to the two workers) or credible (with regard to Tum Soeun), and consider that Tum Soeun may have had ulterior motives to hide some of the hardships that were suffered by workers under his control. We also note the evidence of a former Northwest Zone cadre who states that Northwest Zone leaders, ranking from regiment down to platoon commanders, were sent to work for “re-education” after being branded as traitors. After being transported to Spean

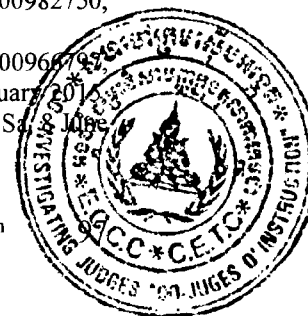
March 2014, ERN 00985678-00985679, A48-A49 (tens of thousands of people); **D219/291**, Written Record of Interview of Civil Party Applicant Chhou Samrit, 7 April 2015, ERN 01111799, A78.

⁵⁵⁴ **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118001-01118002, A68-A71.

⁵⁵⁵ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059966, A236-A237.

⁵⁵⁶ **D219/127**, Written Record of Interview of Witness Prang Sal, 15 December 2014, ERN 01053555-01053556, A14, A16; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059964, A219-221, ERN 01059967-01059968, A247-249; **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982748, A16, ERN 00982750, A28-A30.

⁵⁵⁷ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN, 00965710; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064148, A13; **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01117997, A12-13, ERN 01118001, A62.



Sreng Canal worksite at gun point, they were made to work, and those who committed minor mistakes were accused of being traitors and could be killed.⁵⁵⁸ It would have been difficult to enforce this regime without guards watching over the workers and having the means to administer coercive measures.

233. Labourers state that they were required to move a daily quota of soil, which was somewhere between two and five cubic metres.⁵⁵⁹ **Im Chaem** reportedly set the quota of three cubic metres a day.⁵⁶⁰ Labour was done by hand.⁵⁶¹ Those who could not carry earth were assigned to make fertiliser from human excrement by drying it, or uproot rice seedlings under threat of being killed if it was not done according to the instructions.⁵⁶²
234. Former labourers and mobile unit chiefs speak about long working hours (with the exception of one witness who speaks about 4-hour shifts per day),⁵⁶³ insufficient food rations, and a general climate of fear at the worksite.⁵⁶⁴ Labourers who failed to meet their daily quotas were given less food or no food at all.⁵⁶⁵ Witnesses state that less food was provided to the workers after the

⁵⁵⁸ **D219/381**, Written Record of Interview of Witness Chan Ratana, 24 June 2015, ERN 01128281-01128282, A4-A13.

⁵⁵⁹ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982750, A26 (two cubic metres a day, then three, and five cubic metres); **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842032, A7-A8 (3.5 cubic metres a day); **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059966, A238 (20 cubic metres within 5 days); **D219/175**, Written Record of Interview of Witness Hang Horn, 11 February 2015, ERN 01077004, A27.

⁵⁶⁰ **D119/153**, Written Record of Interview of Witness Kong Vin, 1 September 2014, ERN 01045554, A19.

⁵⁶¹ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966795, A107.

⁵⁶² **D219/381** Written Record of Interview of Witness Chan Ratana, 24 June 2015, ERN 01128281, A13.

⁵⁶³ **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985679, A49 (two groups, the first from 7 a.m. to 11 a.m., and the second from 2 p.m. to 4 p.m.).

⁵⁶⁴ **D119/41**, Written Record of Interview of Witness Touch Phean, 20 May 2013, ERN 00944485, A10; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950744, A23; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842032, A7, ERN 00842033, A16; **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982750, A26; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985186, A13, ERN 00985192, A42; **D219/1**, Written Record of Interview of Civil Party Applicant You Mut, 8 September 2014, ERN 01044866, A84; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013, ERN 01035119, A70; **D219/175**, Written Record of Interview of Witness Hang Horn, 11 February 2015, ERN 01077004, A27; **D219/291**, Written Record of Interview of Civil Party Applicant Chhou Samrit, 7 April 2015, ERN 01111799-01111800, A79, A90; **D119/152**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901007-00901009.

⁵⁶⁵ **D119/153**, Written Record of Interview of Witness Kong Vin, 1 September 2014, ERN 01045554, A19-A25; **D119/152**, Written Record of Interview of Witness Van Teav, 1 September 2014, ERN 01045554, A19-A25.



arrival of the Southwest Zone cadres, and that people became sick as a consequence.⁵⁶⁶

235. Former workers state that they were not allowed to rest, or to have any days off.⁵⁶⁷ One former worker states that he was denied permission to leave the worksite to visit his parents.⁵⁶⁸ There is evidence of one worker who was allowed to leave the site for one day to see his new-born baby.⁵⁶⁹
236. Tum Soeun himself concedes that at times there were food shortages in some mobile units.⁵⁷⁰ **Im Chaem** states that she saw malnourished workers digging the canals, but claims that she took measures to ameliorate their condition.⁵⁷¹ There is evidence that there was a hall at the worksite where some workers slept on the ground.⁵⁷²
237. Former labourers who worked at the site in the late part of 1977⁵⁷³ state that workers who became sick were evacuated back to their villages or to a local hospital,⁵⁷⁴ although from Tum Soeun's evidence it seems that the sick were not

01045544, A30; **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057742, A55.

⁵⁶⁶ **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985186, A13, ERN 00985192, A42; **D119/78**, Written Record of Interview of Witness Lort Bandet, 24 January 2014, ERN 00983722, A19; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842035, A31.

⁵⁶⁷ **D219/494.1.1**, Transcript of hearing on the substance in Case 002/02, 27 July 2015, ERN 01122685; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013 ERN 01035119, A70.

⁵⁶⁸ **D219/494.1.1**, Transcript of hearing on the substance in Case 002/02, 27 July 2015, ERN 01122685; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013m ERN 01035119, A70.

⁵⁶⁹ **D119/138**, Written Record of Interview of Witness Sar Lorm, 24 July 2014, ERN 01040535, A20.

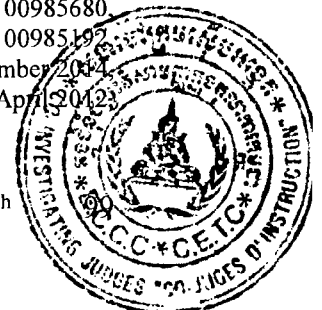
⁵⁷⁰ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966795, A107.

⁵⁷¹ **D123/1/5.1a**, DC-Cam Transcript of interview of Im Chaem, 4 March 2007, ERN 00089776.

⁵⁷² **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966795, A107; **D219/291**, Written Record of Interview of Civil Party Applicant Chhou Samrit, 7 April 2015, ERN 01111799, A79.

⁵⁷³ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059964, A215-A221; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842032-00842033, A5, A9; **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985681, A65; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985188, A26.

⁵⁷⁴ **D119/110**, Written Record of Interview of Witness Chun Kan, 26 March 2014, ERN 00985680, A52; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985188, A42; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059967, A243-245; **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842032-00842035, A28.



always allowed to leave the worksite.⁵⁷⁵ According to a civil party applicant, sick workers were given less food and were treated with root-based “*rabbit droppings*” pills provided by “*Social Affairs*”.⁵⁷⁶ Sometimes, people who were hospitalised were not seen again.⁵⁷⁷

4.6.2.5. *Arrests, Deaths, and Disappearances*

238. Upon their arrival, the Southwest Zone cadres arrested Ta Val, a Northwest Zone cadre in charge of a mobile unit at the worksite.⁵⁷⁸ Arrests and disappearances of workers were common occurrences at Spean Sreng Canal worksite.⁵⁷⁹ Reasons for arrests varied. People were arrested for failing to meet their required work quotas, a punishment that had been threatened by **Im Chaem** during a meeting when she had addressed the workers.⁵⁸⁰ Other reasons included family ties, for instance with persons of Vietnamese origin,⁵⁸¹ or attempts to escape or leave the site to visit family members. In this regard, former workers state that people were sent for “re-education” after the first attempt to flee; after repeated attempts, they would be arrested.⁵⁸² A witness states that the arrests were carried out by militiamen at night.⁵⁸³
239. Tum Soeun denies that labourers were arrested, but states that “*stubborn*” labourers were sent for “*re-education*”,⁵⁸⁴ without specifying what it consisted

⁵⁷⁵ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966799-00966800, A139-A140.

⁵⁷⁶ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059967, A243-245.

⁵⁷⁷ **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985192, A42.

⁵⁷⁸ **D119/43**, Written Record of Interview of Witness Sva Nung, 23 May 2013, ERN 00944491-00944492, A12-A17; **D119/100**, Written Record of Interview of Witness Cheam Kin, 13 February 2014, ERN 00985175, A8, ERN 00985177, A21; **D219/506**, Written Record of Interview of Witness Sen Sophon, 15 September 2015, ERN 01167929, A48.

⁵⁷⁹ **D106/10**, Written Record of Interview of Witness Rim Seut, 4 April 2012, ERN 00842033-00842034, A17, A18, A21; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2013, ERN 00901007-00901009, A5, A7, A13, A15; **D219/175**, Written Record of Interview of Witness Hang Horn, 11 February 2015, ERN 01077004, A28.

⁵⁸⁰ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982748, A12-A14, ERN 00982750, A28-A30.

⁵⁸¹ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982761, A37.

⁵⁸² **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059967-01059968, A247-A249; **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057747, A94.

⁵⁸³ **D106/10**, Written Record of Interview of Witness Rim Seut, 00842034, A20-A22.

⁵⁸⁴ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966799-00966801, A140.



of. A former labourer, who worked at this site in the entire dry season of 1977, states that he never witnessed labourers being punished and does not recall labourers disappearing; however, he also states that he fled the worksite as he was afraid to be killed and heard from his co-workers about disappearances of people.⁵⁸⁵

240. Labourers arrested at the worksite were sent to the Phnom Trayoung security centre.⁵⁸⁶

241. Former workers at the site states that labourers died of overwork, disease, and exhaustion.⁵⁸⁷

242. Finally, several witnesses report that workers disappeared from the worksite.⁵⁸⁸

4.6.2.6. Visits of Im Chaem

243. Several witnesses, including mobile unit chiefs and labourers, state that **Im Chaem** visited the site regularly⁵⁸⁹ and held meetings there.⁵⁹⁰ On one occasion **Im Chaem** visited the construction site accompanied by 5 to 10 armed soldiers, and cautioned the workers that if the production goals were not achieved, they would be punished.⁵⁹¹ A mobile unit chief states that during her visits she would

⁵⁸⁵ **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064149, A12-A16.

⁵⁸⁶ **D219/357**, Written Record of Interview of Civil Party Applicant Heak Sa, 8 June 2015, ERN 01118002-01118003, A76-81.

⁵⁸⁷ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982764, A51; **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057747, A96; **D119/40**, Written Record of Interview of Witness Chhay Phan, ERN 00950736, A19.

⁵⁸⁸ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059955, A148, ERN 01059968, A252; **D219/149**, Written Record of Interview of Civil Party Applicant Chum Chim, 20 January 2015, ERN 01064149, A16; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985186, A14; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013, ERN 01035119, A71-A72; **D219/506**, Written Record of Interview of Witness Sen Sophon, 15 September 2015, ERN 01167928, A42-43; **D119/19**, Written Record of Interview of Witness Phon Mon, 12 March 2103, ERN 00901009, A15.

⁵⁸⁹ **D119/65**, Written Record of Interview of Witness Tum Soeun, 16 October 2013, ERN 00966796, A112; **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982333, A21; **D219/506**, Written Record of Interview of Witness Sen Sophon, 15 September 2015, ERN 01167928, A46-47.

⁵⁹⁰ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982749, A19; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985191, A39; **D119/69**, Written Record of Interview of Witness Kroch Toem, 4 December 2013, ERN 01035129, A139; **D119/139**, Written Record of Interview of Witness Mun Mot, 25 July 2014, ERN 01044808, A64.

⁵⁹¹ **D119/93**, Written Record of Interview of Witness Chan Pon, 20 February 2014, ERN 00982749, A20, A22.



sometimes help the workers to carry the soil,⁵⁹² which is something that **Im Chaem** herself confirms, stating she did that as a trust-building exercise.⁵⁹³

5. EVIDENCE OF CRIMES ALLEGED BY THE ICP BUT NOT CHARGED BY THE INTERNATIONAL CIJ

5.1 Preliminary Considerations

244. **Im Chaem** was only charged for some of the crimes for which the ICP alleged that she is criminally responsible, namely violations of the 1956 Penal Code and crimes against humanity allegedly committed at Phnom Trayoung security centre and Spean Sreng Canal worksite.⁵⁹⁴

245. Nevertheless, the ICP requests the CIJs to indict **Im Chaem** for a much wider set of crimes, committed via more modes of liability, than those that she was charged with.⁵⁹⁵ As correctly objected to by the Defence, this is impermissible. Being informed in detail of the nature and cause of the charges is a fundamental pillar of due process,⁵⁹⁶ and it is critical to the effective exercise of a charged person's right to prepare his or her defence.⁵⁹⁷ A charged person may thus only be indicted for crimes that he or she has been charged with and duly notified of.⁵⁹⁸

246. The Defence also argue that, in assessing personal jurisdiction, the CIJs can only rely on evidence pertaining to the charges against **Im Chaem**.⁵⁹⁹ This is a different issue than that of indicting her for crimes that were not charged, and human rights and ECCC's jurisprudence offer limited guidance for its

⁵⁹² **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985190, A32.

⁵⁹³ **D219/264.1**, Transcript of Interview of Im Chaem by Youth for Peace in 2011, ERN 01117969.

⁵⁹⁴ **D239.1**, Annex: Notification of Charges against Im Chaem, 3 March 2015.

⁵⁹⁵ **D304/2**, International Co-Prosecutor's Rule 66 Final Submission against Im Chaem, 27 October 2016, paras 449-541.

⁵⁹⁶ See Internal Rules 21(1)(d) and 57 and Article 14(3)(a) of the International Covenant on Civil and Political Rights, 19 December 1966.

⁵⁹⁷ See ECtHR, *Dallos v. Hungary*, 1 March 2001, para. 47; ECtHR, *Péllissier and Sassi v. France*, 25 March 1999, paras 50-54.

⁵⁹⁸ **Case File No. 002-D198/1**, Order concerning the Co-Prosecutors' Request for Clarification of Charges, 20 November 2009, para. 10.

⁵⁹⁹ **D304/6**, Im Chaem's Response to the International Co-Prosecutor's Rule 66 Final Submission against Her, 28 November 2016, paras 50, 54-58.



resolution. The jurisprudence of the ICTY's referral bench, relied on by the Defence, is only of limited value due to the fundamental procedural differences with the ECCC. It is not necessary, however, to examine in detail the extent to which evidence of facts not charged against **Im Chaem** may be used to make personal jurisdiction determinations. We are in fact satisfied that, even if **Im Chaem** had been charged for the full array of allegations levied against her by the ICP, she would still fall outside the jurisdiction of the ECCC. It is for this reason that we will provide a brief overview of the evidence related to crime sites in Sector 5 for which **Im Chaem** has not been charged.

5.2 Summary Review of the Evidence on the Alleged Crimes Not Charged against Im Chaem

5.2.1. Preliminary Considerations on Im Chaem's Potential Involvement with the Crime Sites Reviewed in this Section

247. The crime sites located in the Preah Net Preah District were, according to our findings in Section 4.4.2. above, within the authority of **Im Chaem**. Wat Ang Srei Muny and Prey Sokhon execution site were located in the Koh Andet District, Sector 13 of the Southwest Zone. In Section 4.2. we have found that **Im Chaem** had no executive authority in that district. Finally, two remaining sites, Wat Chamkar Khnol and Trapeang Thma Dam, were located in the Sisophon and Phnom Srok districts of Sector 5. We have found in Section 4.4. above that **Im Chaem** sat on the Sector 5 Committee after the removal of its Northwest Zone members, and that there are indications that her authority went beyond the administrative boundaries of the Preah Net Preah District. However, we have also found that the extent and contours of this authority have not been clearly established by the investigation. There are some inconclusive indications of her possible involvement with the Trapeang Thma Dam construction. They are discussed in Section 5.2.7. below.



5.2.2. *Wat Ang Srei Munny and Prey Sokhon Execution Site*

248. Wat Ang Srei Mealy was located in Prey Khla Commune, Koh Andet District, Sector 13 of the Southwest Zone.⁶⁰⁰ It comprised a pagoda and at least two buildings used to detain people.⁶⁰¹ Prey Sokhon was an execution site in the forest close to Wat Ang Srei Mealy, which a number of witnesses describe as a place where people were sent to be killed.⁶⁰²
249. Both of these sites were in operation from April 1975 until at least November 1978.⁶⁰³ The evidence suggests that during this time, the prisoners detained at Wat Ang Srei Mealy were Khmer Krom and “17 April people”,⁶⁰⁴ a number of whom would be taken to be killed in Prey Sokhon. One witness states that 17 April people were made to dig their own graves and saw two or three people being beaten to death with bamboo sticks every day for one month.⁶⁰⁵ Another witness considers that killings occurred “*from day to day on a continuing basis*”

⁶⁰⁰ **D219/568**, Written Record of Interview of Witness Mom Pholla, 30 October 2015, ERN 01182728, A54-A57; **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945874, A36; **D119/82**, Written Record of Interview of Witness Neang Ouch, 28 January 2014, ERN 00981139, A16, ERN 00981147, A62. *See also* **D119/9**, OCIJ Site Identification Report, 4 December 2012, ERN 00887253-00887254; **D1.3.10.14**, DC-Cam Takeo Province Analytical Report, 11 August 1998, ERN 00207676-00207677; **D119/9.1**, Annex 1: Map of Takeo Road Network, 4 December 2012, ERN 00887256.

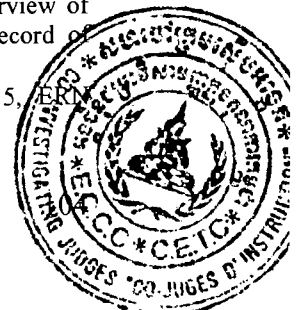
⁶⁰¹ **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945874, A33; **D119/9**, OCIJ Site Identification Report, 4 December 2012, ERN 00887254.

⁶⁰² **D119/5**, Written Record of Interview of Witness Hang Song, 7 December 2012, ERN 00876145-00876146, A35-A37; **D119/7**, Written Record of Interview of Witness Mom Pholla, 8 December 2012, ERN 00876159, A21-A28; **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945873, A28, A30, ERN 00945874, A34; **D219/591**, Written Record of Interview of Witness Sam Kun, 10 November 2015, ERN 01178844, A34, A36, ERN 01178845, A37; **D119/16**, Written Record of Interview of Witness Kao Chheng, 28 February 2013, ERN 00919150, A12; **D219/604**, Written Record of Interview of Witness Sam Touch, 18 November 2015, ERN 01184874, A69. *See also* **D119/4**, Written Record of Interview of Witness Sam Kun, 7 December 2012, ERN 00876981, A30.

⁶⁰³ **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945874, A34; **D219/591**, Written Record of Interview of Witness Sam Kun, 10 November 2015, ERN 01178845, A47; **D119/10**, OCIJ Site Identification Report, 6 December 2012, ERN 00887251.

⁶⁰⁴ **D219/568**, Written Record of Interview of Witness Mom Pholla, 30 October 2015, ERN 01182728, A61. *See also* **D119/4**, Written Record of Interview of Witness Sam Kun, 7 December 2012, ERN 00876982, A36; **D219/591**, Written Record of Interview of Witness Sam Kun, 10 November 2015, ERN 01178849, A71-A74; **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945872, A17-A19; **D219/604**, Written Record of Interview of Witness Sam Touch, 18 November 2015, ERN 01184874, A74.

⁶⁰⁵ **D219/604**, Written Record of Interview of Witness Sam Touch, 18 November 2015, ERN 01184874, A70-A74.



throughout the DK period,⁶⁰⁶ and a separate witness explains that this was because of a Khmer Rouge plan to stem any revolutionary movements.⁶⁰⁷

250. A number of graves or pits were discovered after 1979 but it is not possible to accurately ascertain how many bodies they contained. One witness estimates that there were likely hundreds of people detained at Wat Ang Srei Mealy,⁶⁰⁸ and another witness estimates that approximately 4,000 people were killed at Prey Sokhon.⁶⁰⁹
251. There is no evidence of **Im Chaem**'s involvement with this crime site. Contrary to the allegations made by the ICP,⁶¹⁰ there is no evidence that **Im Chaem** held a position in relation to the operations at Wat Ang Srei Mealy or Prey Sokhon, that she visited these sites, or that she issued any orders directly pertaining to these sites.

5.2.3. *Wat Preah Net Preah and Related Sites*

252. The evidence shows that under the rule of Southwest Zone cadres from at least 1977 to 6 January 1979, an unknown number of persons were detained and killed or died from starvation or disease at Wat Preah Net Preah and its related sites.
253. Wat Preah Net Preah and its related sites were located in Preah Net Preah District, Banteay Meanchey Province, Sector 5, Northwest Zone.⁶¹¹ Wat Preah Net Preah was used as a hospital at the time **Im Chaem** was in Preah Net Preah

⁶⁰⁶ **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945874, A34.

⁶⁰⁷ **D119/16**, Written Record of Interview of Witness Kao Chheng, 28 February 2013, ERN 00919150, A12.

⁶⁰⁸ **D219/591**, Written Record of Interview of Witness Sam Kun, 10 November 2015, ERN 01178844, A35.

⁶⁰⁹ **D119/2**, Written Record of Interview of Witness Vorng Nob, 5 December 2012, ERN 00945874, A32. The witness states that to his understanding, 1,000 families were killed and that the average family would have had four members.

⁶¹⁰ **D304/2**, *International Co-Prosecutor's Rule 66 Final Submission Against Im Chaem*, 27 October 2016, ERN 01341502, paras 166-167.

⁶¹¹ **D106/12**, Report of the Execution of Rogatory Letter: Site Identification Report, 14 February 2012, ERN 00783172-00783173.



District.⁶¹² **Im Chaem** held several meetings at Wat Preah Net Preah,⁶¹³ some of which were reportedly attended by thousands of people.⁶¹⁴

254. Ta Krak was Preah Net Preah Commune Secretary at the time of the arrival of the Southwest Zone cadres, but after a few months the Southwest Zone cadres arrested him on accusation of being a traitor.⁶¹⁵ Ta Krak's replacement⁶¹⁶ reported directly to **Im Chaem**.⁶¹⁷

255. Numerous witnesses state that individuals were arrested and detained temporarily at Ta Krak's house,⁶¹⁸ at the very latest from June 1978 until the end of the DK.⁶¹⁹ Arrestees were seen walking in lines at night and during the day and then disappeared.⁶²⁰ The individuals detained at Ta Krak's house were –

⁶¹² **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470, A20.

⁶¹³ **D119/34**, Written Record of Interview of Witness Sem Lai Hieng, 29 April 2013, ERN 00920597, A17-A18. *See also* **D219/177**, Written Record of Investigation Action, 16 February 2015, ERN 01066009.

⁶¹⁴ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470, A19.

⁶¹⁵ **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950741, A4, ERN 00950742-00950743, A10-A14; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077036-01077038, A12-A19; **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920587-00920588, A20, A25.

⁶¹⁶ Witnesses give different accounts of who replaced Ta Krak: a female Southwest Zone cadre named Neri Tha (**D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920588, A25; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077040, A26, ERN 01077043, A36; **D119/96**, Written Record of Interview of Civil Party Applicant Im Man, 26 February 2014, ERN 00986794, A47, 00986802, A94) who may have been succeeded or preceded by another Southwest Zone cadre Ta Nohn (referring to "Lohn" instead of "Nohn", **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077040, A26; ERN 01077043, A36); alternatively, Sokha (**D119/144**, Written Record of Interview of Witness Lat Suoy, 18 August 2014, ERN 01031894, A45-A46) or Ta Phan (**D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985201, A16).

⁶¹⁷ **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077043, A36. This is also consistent with **Im Chaem**'s role as Preah Net Preah District Secretary at the time.

⁶¹⁸ **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920588-00920589, A25, A30; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A10, ERN 00950741-00950742 A6-A7; **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944475-00944476, A9, A15, A18. *See also* **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077039, A21; **D119/94**, Written Record of Interview of Witness Bou Mou, 21 February 2014, ERN 00982757, A15.

⁶¹⁹ **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077037, A16, ERN 01077038, A19; **D119/32**, Written Record of Interview of Witness Chhim Phan, 13 April 2013, ERN 00920587, A20, ERN 00920588 A25; **D219/347**, Written Record of Interview of Witness Chhim Phan, 2 June 2015, ERN 01116123, A23; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A10; **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944475, A9, A12, A15. *Cf.* **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985202, A19.

⁶²⁰ **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950741, A6-A7; *See also* **D119/94**, Written Record of Interview of Witness Bou Mou, 21 February



amongst others – “new people” from Phnom Penh and the Southwest Zone,⁶²¹ “ordinary people”, “base people”,⁶²² former officials and soldiers under the Khmer Republic,⁶²³ and former teachers.⁶²⁴

256. Evidence indicates that victims were killed in the vicinity of Ta Krak’s house,⁶²⁵ during the day and at night.⁶²⁶ One witness specifies that one month before the end of the DK, people were taken away to be killed almost every night.⁶²⁷

257. Killings around Ta Krak’s house happened before and after the arrival of the Southwest Zone cadres,⁶²⁸ including in the early period of their rule, when Northwest and Southwest Zone cadres worked together⁶²⁹ and after Ta Krak’s arrest.⁶³⁰ After the Northwest Zone cadres’ arrests by the Southwest Zone cadres, the house may have been dismantled, and replaced by a new house.⁶³¹ Killings in the compound increased prior to the arrival of the Vietnamese troops in 1979.⁶³²

2014, ERN 00982757, A15; **D119/52**, Written Record of Interview of Witness Mom Chhouk, 17 June 2013, ERN 00966762, A23.

⁶²¹ **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A8.

⁶²² **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A8.

⁶²³ **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077038, A19; **D119/39**, Written Record of Interview of Witness Chan Diea, 18 May 2013, ERN 00944479, A7; **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944468 A4.

⁶²⁴ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944468 A4.

⁶²⁵ **D119/39**, Written Record of Interview of Witness Chan Diea, 18 May 2013, ERN 00944479, A5, A6; **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742-00950741, A6; **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944468 A4; **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944474, A6; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077038, A18. *See also* **D219/177**, Written Record of Investigation Action, 16 February 2015, ERN 01066009.

⁶²⁶ **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A7.

⁶²⁷ **D119/152**, Written Record of Interview of Witness Van Teav, 1 September 2014, ERN 01045542, A19. *See also* **D219/177**, Written Record of Investigation Action, 16 February 2015, ERN 01066009.

⁶²⁸ **D119/42**, Written Record of Interview of Witness Kret Ret, 20 May 2013, ERN 00950742, A6; **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077038, A19.

⁶²⁹ **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944474, A5, ERN 00944475, A12, A15.

⁶³⁰ **D219/181**, Written Record of Interview of Witness Pao Bandet, 16 February 2015, ERN 01077038, A19, ERN 01077039, A21.

⁶³¹ **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944475, A15.

⁶³² **D119/152**, Written Record of Interview of Witness Van Teav, 1 September 2014, ERN 01045542, A19, A25.



258. A number of people also died from starvation and disease⁶³³ at Wat Preah Net Preah hospital, which lacked medical staff and medicine.⁶³⁴ Those who died in the hospital were cremated⁶³⁵ or buried within or nearby the Wat Preah Net Preah complex,⁶³⁶ as well as at sites near Ta Krak's house.⁶³⁷
259. In sum, while there is evidence of killings in Wat Preah Net Preah and its surrounding areas, there is no clear evidence of precisely how many people died here. There is also no direct evidence of **Im Chaem**'s involvement with deaths and arrests at this location. We note, however, that Wat Preah Net Preah was within the district controlled by **Im Chaem**, and we refer to our findings on the extent of **Im Chaem**'s authority within the Preah Net Preah District.

5.2.4. *Phnum Chakrey Security Centre*

260. The evidence shows that over the course of about a year until late 1978 or 7 January 1979, arrestees were killed at Phum Chakrey security centre. This site was in Chakrey Village, Chob (or Chub) Veari Commune, Preah Net Preah District, Banteay Meanchey Province, Sector 5, Northwest Zone.⁶³⁸
261. It appears that people were briefly detained at Phum Chakrey security centre before being executed and that persons detained in at least one other location were brought to the site for execution.⁶³⁹ The victims of killings at the Phum

⁶³³ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470, A22. On death following illness *see* **D119/52**, Written Record of Interview of Witness Mom Chuok, 17 June 2013, ERN 009666763, A26. *See also* **D106/11**, Written Record of Investigation Action, 14 February 2012, ERN 00780979.

⁶³⁴ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470 A21; **D119/145**, Written Record of Interview of Civil Party Applicant Thip Kimlun, 21 August 2014, ERN 01079716, A116. *See also* **D119/24**, Written Record of Investigation Action, 13 March 2013, ERN 00894523.

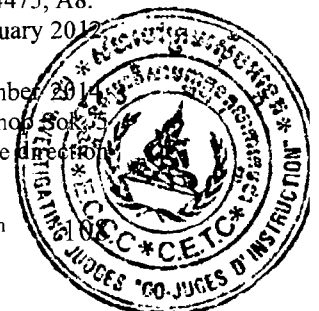
⁶³⁵ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470, A23.

⁶³⁶ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944470-00944471, A23. *See also* **D106/11**, Written Record of Investigation Action, 14 February 2012, ERN 00780979; **D119/24**, Written Record of Investigation Action, 13 March 2013, ERN 00894523; **D119/145**, Written Record of Interview of Civil Party Applicant Thip Kimlun, 21 August 2014, ERN 01079716, A117.

⁶³⁷ **D119/37**, Written Record of Interview of Witness Song Pharath, 17 May 2013, ERN 00944469, A12; **D119/38**, Written Record of Interview of Witness Sos Narin, 17 May 2013, ERN 00944475, A8.

⁶³⁸ **D106/15**, Report of the Execution of Rogatory Letter: Site Identification Report, 15 February 2012, ERN 00787078.

⁶³⁹ *See* **D219/1**, Written Record of Interview of Civil Party Applicant You Mut, 8 September 2014, ERN 01044859-01044860, A43-A44; **D219/212**, Written Record of Interview of Witness Khob Sok, 16 March 2015, ERN 01088533, A24 that people arrested at Chob Veari were transported "in the direction of"



5.2.5. Prey Taruth Execution Site

264. The evidence shows that Prey Taruth was an execution site in Krasaing Thmei Village, Chob Commune,⁶⁵⁰ Preah Net Preah District, Banteay Meanchey Province, Sector 5, Northwest Zone, north-east of Phum Chakrey and the District Office.⁶⁵¹ The execution site was first used after the arrival of the Southwest Zone cadres in late 1977 or early 1978,⁶⁵² and operated throughout 1978.⁶⁵³
265. One witness recalls that the soldiers transporting people to Prey Taruth execution site may have been either from the district level or cooperatives militiamen.⁶⁵⁴
266. Under the control of the Southwest Zone leadership, men, women, children, infants, and the elderly⁶⁵⁵ were regularly brought by truck to Prey Taruth and subsequently killed, often in the evening.⁶⁵⁶ Witnesses describe a less frequent pattern of trucks arriving in early 1978 compared to an increased, regular number of trucks arriving from June or July 1978 until the end of the DK.⁶⁵⁷

⁶⁵⁰ Alternative translations for Chob include “Choup,” “Chub,” and “Chup”. See **D106/15**, Report of the Execution of Rogatory Letter, 15 February 2012: Site Identification Report, ERN 00787079; **D219/387**, Written Record of Investigative Action, 26 June 2015, ERN 01113246-01113247; **D1.3.10.10**, Mapping of the Killing Fields of Cambodia 1997: Khet Banteay Meanchey, 29 April 1997, ERN 00218610; **D219/384**, Written Record of Interview of Witness Dik Kuy, 26 June 2015, ERN 01132650, A21.

⁶⁵¹ **D106/15**, Report of the Execution of Rogatory Letter, 15 February 2012: Site Identification Report, ERN 00787078; **D106/2**, Written Record of Interview of Witness Chrach Kit, 15 February 2012, ERN 00784871, A26. See also **D219/387**, Written Record of Investigative Action, 26 June 2015, ERN 01113246-01113247.

⁶⁵² **D106/3**, Written Record of Interview of Witness Hiem Sakhan, 16 February 2012, ERN 00784864-00784865, A23, A24.

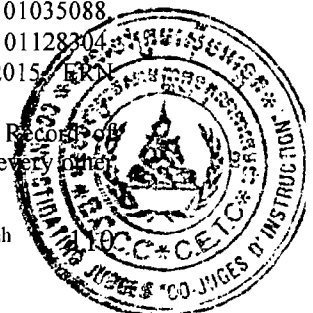
⁶⁵³ **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A28; **D119/125**, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035088, A17; **D119/93**, Written Record of Interview of Witness Chan Phon, 20 February 2014, ERN 00982751, A34.

⁶⁵⁴ **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A29.

⁶⁵⁵ **D219/385**, Written Record of Interview of Witness Nuon Hoeuk, 26 June 2015, ERN 01128304, A21, A28; **D119/125**, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035088, A16.

⁶⁵⁶ **D119/92**, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A28; **D119/93**, Written Record of Interview of Witness Chan Phon, 20 February 2014, ERN 00982751, A34; **D119/125**, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035088, A16; **D219/385**, Written Record of Interview of Witness Nuon Hoeuk, 26 June 2015, ERN 01128304, A20; **D219/173**, Written Record of Interview of Witness Lies Sdeung, 9 February 2015, ERN 01076978, A43.

⁶⁵⁷ Compare three trucks over a two month period in early 1978 (**D119/125**, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035088, A16, A17) with daily or every other



Witnesses also provide evidence of executions,⁶⁵⁸ hearing shouting and screaming during executions,⁶⁵⁹ and seeing bodies at the site before the collapse of the DK.⁶⁶⁰

267. The estimates provided by OCIJ witnesses who saw pits vary from less than one hundred victims in three pits to several hundred in two pits.⁶⁶¹ The OCIJ investigation reveals that at least five pits were located at the Prey Taruth execution site.⁶⁶² Taking the lowest estimate for five pits provides sufficient evidence to believe all the pits together accommodated, at the very least, one hundred victims.

5.2.6. *Wat Chamkar Khnol*

268. The Wat Chamkar Khnol site comprised a security centre and execution sites which were operational throughout the DK period,⁶⁶³ for a minimum period from 1976⁶⁶⁴ to, at the latest, the end of November 1978.⁶⁶⁵ Wat Chamkar

day from June or July 1978 until the end of the DK (D119/92, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A28). *See also* D219/173, Written Record of Interview of Witness Lies Sdeung, 09 February 2015, ERN 01076978, A43, that one to two trucks arrived on three consecutive nights.

⁶⁵⁸ D119/92, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A26, A28; D119/93, Written Record of Interview of Witness Chan Phon, 20 February 2014, ERN 00982751, A34; D119/125, Written Record of Interview of Witness Mak Vanny, 9 May 2014, ERN 01035088, A18; D219/173, Written Record of Interview of Witness Lies Sdeung, 09 February 2015, ERN 01076977-01076978, A42; D219/385, Written Record of Interview of Witness Nuon Hoeuk, 26 June 2015, ERN 01128304, A20-A28; D106/3, Written Record of Interview of Witness Hiem Sakhan, 16 February 2012, ERN 00784864, A20, A23; D219/384, Written Record of Interview of Witness Dik Kuy, 26 June 2015, ERN 01132649-01132650, A21-24.

⁶⁵⁹ D119/92, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982334, A28; D219/173, Written Record of Interview of Witness Lies Sdeung, 09 February 2015, ERN 01076977-01076978, A42.

⁶⁶⁰ D119/93, Written Record of Interview of Witness Chan Phon, 20 February 2014, ERN 00982751, A34.

⁶⁶¹ D119/92, Written Record of Interview of Witness Sum Tao, 20 February 2014, ERN 00982335, A30; D119/93, Written Record of Interview of Witness Chan Phon, 20 February 2014, ERN 00982751, A35.

⁶⁶² D106/15, Report of the Execution of Rogatory Letter, 15 February 2012: Site Identification Report, ERN 00787078- 00787079.

⁶⁶³ D119/108, Written Record of Interview of Witness Sok Rum, 19 March 2014, ERN 00986271, A119; D119/115, Written Record of Interview of Witness Til Hev, 3 April 2014, ERN 00987794, A27. *See also* D119/118, Written Record of Investigation Action, 3 April 2014, ERN 00982278.

⁶⁶⁴ D219/130, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059958, A169, A173.

⁶⁶⁵ D119/113, Written Record of Interview of Witness Toem Ratanak, 2 April 2014, ERN 00986762, A1, ERN 00986764, A11. *See also* D119/111.1, Annex, ERN 00987765.



Khnol, also known as Wat Chum Kiri,⁶⁶⁶ was located in O Ombel Village, O Ombel Commune, Sisophon District,⁶⁶⁷ Sector 5,⁶⁶⁸ Northwest Zone.⁶⁶⁹

269. The evidence does not establish who was responsible for or in control of Wat Chamkar Khnol under Southwest Zone rule. However, under both the Northwest Zone and the Southwest Zone leadership, people were detained and killed at the site. The evidence suggests that executions took place within the pagoda compound⁶⁷⁰ and the surrounding area,⁶⁷¹ with one witness seeing “*many bodies scattered along [the pagoda’s] wall*”, as well as blood-stained rooms and the hand-cuffed and shackled bodies of people who had been executed within the compound⁶⁷² in November 1978.⁶⁷³ The bodies had bruises and knife wounds and the witness concluded that they had been tortured before being killed.⁶⁷⁴ A number of graves have since been discovered at this site.⁶⁷⁵
270. Evidence on the numbers of detainees and victims of executions varies. It is, however, unclear what proportion of victims was killed by Southwest Zone cadres. During a site visit, two persons showed the OCIJ investigator five burial

⁶⁶⁶ **D119/111**, Written Record of Interview of Witness Saom Lang, 31 March 2014, ERN 00987769, A2; **D119/118.3**, Written Record of Investigation Action: Annex 3, 3 April 2014, ERN 00982276.

⁶⁶⁷ **D119/118**, Written Record of Investigation Action, 3 April 2014, ERN 00982277; **D119/111**, Written Record of Interview of Witness Saom Lang, 31 March 2014, ERN 00987770, A4; **D119/115**, Written Record of Interview of Witness Til Hev, 3 April 2014, ERN 00987794, A29.

⁶⁶⁸ **D118/25**, Written Record of Interview of Witness Tann Say, 12 February 2013, ERN 00903211, A16.

⁶⁶⁹ **D119/118**, Written Record of Investigation Action, 3 April 2014, ERN 00982277.

⁶⁷⁰ **D119/113**, Written Record of Interview of Witness Toem Ratanak, 2 April 2014, ERN 00986765-00986766, A18-A21.

⁶⁷¹ **D119/111**, Written Record of Interview of Saom Lang, 31 March 2014, ERN 00987772, A12; **D118/25**, Written Record of Interview of Witness Tann Say, 12 February 2013, ERN 00903212-00903213, A22; *See also* **D1.3.27.11**, Reports by Henri Locard entitled “Research Notes on Democratic Kampuchea Prison Network: Northwest Region – Peayaoap” and “Sisophon and Battambang – Addendum”, 26 July 1991, ERN 00087317.

⁶⁷² **D119/113**, Written Record of Interview of Witness Toem Ratanak, 2 April 2014, ERN 00986765-00986766, A18, A22.

⁶⁷³ **D119/113**, Written Record of Interview of Witness Toem Ratanak, 2 April 2014, ERN 00986765-00986766, A18-A20.

⁶⁷⁴ **D119/113**, Written Record of Interview of Witness Toem Ratanak, 2 April 2014, ERN 00986766, A21.

⁶⁷⁵ **D118/38**, Report of the Execution of Rogatory Letter: Site Identification Report, 25 March 2013, ERN 00900785. *See also* **D1.3.10.10** Mapping the Killing Fields of Cambodia 1997: Khet Banteay Meanchey, 29 April 1997, ERN 00218605. *See also* **D119/111**, Written Record of Interview of Witness Saom Lang, 31 March 2014, ERN 00987771, A8; **D119/114**, Written Record of Interview of Witness Hong Srey, 2 April 2014, ERN, 00986771, A1, ERN 00986772, A6; and **D119/112**, Written Record of Interview of Witness Til Sengly, 1 April 2014, ERN 00987781, A28.



pits, all of which had been exhumed.⁶⁷⁶ There are different estimates on casualties, but these do not specify when victims were killed: a witness who was involved in the exhumation of the site in the 1980s⁶⁷⁷ counted the bodies in five graves as holding 10, 16, 20, 43 and hundreds, respectively,⁶⁷⁸ and saw another grave with bodies scattered throughout.⁶⁷⁹ One witness approximates that 1,000 people died,⁶⁸⁰ and another saw two mass graves, one of which contained an estimated 1,000 corpses.⁶⁸¹

5.2.7. Trapeang Thma Dam Worksite

271. The Trapeang Thma Dam was located in Trapeang Thma Village, Paoy Char Commune,⁶⁸² Phnom Srok District,⁶⁸³ Sector 5, Northwest Zone,⁶⁸⁴ approximately 50 kilometres north-east of Sisophon Town.⁶⁸⁵ Construction of the Trapeang Thma Dam commenced in 1976⁶⁸⁶ or 1977,⁶⁸⁷ and continued

⁶⁷⁶ **D118/38**, Report of the Execution of Rogatory Letter: Site Identification Report, 25 March 2013, ERN 00900785-00900788.

⁶⁷⁷ **D118/38**, Report of the Execution of Rogatory Letter: Site Identification Report, 25 March 2013, ERN 00900785. *See also* **D119/114**, Written Record of Interview of Witness Hong Srey, 2 April 2014, ERN 00986771, A1, A2, ERN 00986772, A4, A5.

⁶⁷⁸ **D119/114**, Written Record of Interview of Witness Hong Srey, 2 April 2014, ERN 00986771, A1.

⁶⁷⁹ **D119/114**, Written Record of Interview of Witness Hong Srey, 2 April 2014, ERN 00986772, A6.

⁶⁸⁰ **D119/112**, Written Record of Interview of Witness Til Sengly, 1 April 2014, ERN 00987781, A28.

⁶⁸¹ **D199/111**, Written Record of Interview of Witness Saom Lang, 31 March 2014, ERN 00987771, A7.

⁶⁸² **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277841.

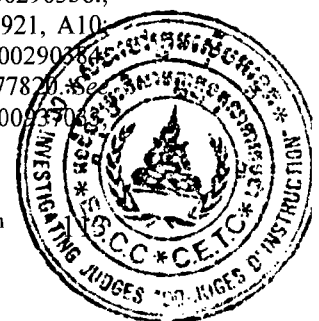
⁶⁸³ **D6.1.710**, Report of the Execution of Rogatory Letter: Site Identification Report, 6 January 2010, ERN 00428004-00428008. *See also* **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277821; **D6.1.766**, Revolutionary Youth Number 7-8 July-August 1977, ERN 00509685.

⁶⁸⁴ **D6.1.710**, Report of the Execution of Rogatory Letter: Site Identification Report, 6 January 2010, ERN 00428004.

⁶⁸⁵ **D6.1.710**, Report of the Execution of Rogatory Letter: Site Identification Report, 6 January 2010, ERN 00428005.

⁶⁸⁶ **D219/35**, Written Record of Interview of Witness Sorm Seila, 14 October 2014, ERN 01053589, A30, A31; **D6.1.449**, Written Record of Interview of Witness Dan Sa, 29 January 2009, ERN 00289932; **D6.1.357**, Written Record of Interview of Witness Peng Bunthara, 27 March 2009, ERN 00322935; **D6.1.428**, Written Record of Interview of Witness Chhit In, 19 December 2008, ERN 00277811; **D6.1.431**, Written Record of Interview of Witness Chiep Chhean, 20 December 2008, ERN 00277815. *See also* **D119/68**, Written Record of Interview of Witness Phy Phuon, 28 November 2013, ERN 00975046, A6; **D118/61**, Written Record of Interview of Witness Chiep Chhean, 23 May 2013, ERN 00945838, A10.

⁶⁸⁷ **D6.1.453**, Written Record of Interview of Witness Heng Samuot, 31 January 2009, ERN 00289999; **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277841; **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290358; **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067921, A10; **D6.1.451**, Written Record of Interview of Witness Saing Nhma, 30 January 2009, ERN 00290359; **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277821; *also* **D119/29**, Written Record of Interview of Witness Pan Chhuong, 14 March 2013, ERN 00986771, A2.



arrested and detained in 1977,⁶⁹¹ but it is unclear if **Im Chaem**⁶⁹² or someone else⁶⁹³ took over his position.

273. There is sufficient evidence from three witnesses to believe that **Im Chaem** visited Trapeang Thma Dam at least once, either attending the site⁶⁹⁴ or at a meeting.⁶⁹⁵ Other witnesses report that she did not attend the site personally,⁶⁹⁶ but in either case, her precise role in relation to Trapeang Thma is not clear.

274. Thousands of people were forced to work in constructing the dam and died of illness, starvation, exhaustion and killings. Work under the Southwest Zone rule included digging and carrying soil,⁶⁹⁷ with the majority of witnesses agreeing that the quota per person was three cubic metres.⁶⁹⁸ The working day was long,

Interview of Witness Kor Len, 11 March 2014, ERN 00985187, A18; **D219/175**, Written Record of Interview of Witness Hang Horn, 11 February 2015, ERN 01077001, A7.

⁶⁹¹ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059942-01059943, A51, A53-A54; **D6.1.883**, Annex 1: Revised S-21 Prisoner List, ERN 00329599, Entry 81. See also **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057741, A45.

⁶⁹² **D59**, Written Record of Interview of Witness Lach Kea, 18 August 2011, ERN 00737709; **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982317, A12.

⁶⁹³ A Southwest Zone cadre named “Ta Yon” is mentioned but he was also replaced before the end of the DK: **D118/61**, Written Record of Interview of Witness Chiep Chhean, 23 May 2013, ERN 00945838, A20, A23. See also **D106/9**, Written Record of Interview of Witness Tak Buy, 3 April 2012, ERN 00842066, A22. Ta Poal is also mentioned: **D119/29**, Written Record of Interview of Witness Pan Chhuong, 14 March 2013, ERN 00937035, A7; **D119/89**, Written Record of Interview of Witness Chhum Seng, 18 February 2014, ERN 00982308, A23, 00982310, A33; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059949, A103.

⁶⁹⁴ One witness saw her “once in a while” at Trapeang Thma Dam worksite, and identified her during his interview with OCIJ: **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982317, A12. A photographer for the CPK government saw **Im Chaem** on his second visit to the dam in June or July 1977 and heard that she was one of the cadres in charge of Trapeang Thma Dam worksite: **D119/124**, Written Record of Interview of Witness Nhem En, 7 May 2014, ERN 01055648, A2, 01055651-01055652, A16, A18, A19.

⁶⁹⁵ The witness attended two meetings at Trapeang Thma Dam and Kaun Kleng Dam, with thousands of others, where **Im Chaem** introduced herself to the crowd: **D59**, Written Record of Interview of Witness Lach Kea, 18 August 2011, ERN 00737709.

⁶⁹⁶ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059950, A109; **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113712, A47; **D119/20**, Written Record of Interview of Witness Li Sinh, 30 March 2013, ERN 00901018, A8; **D119/22**, Written Record of Interview of Witness Phauk Kuy, 16 March 2013, ERN 00919160, A1.

⁶⁹⁷ **D6.1.433**, Written Record of Interview of Witness Nhim Loh, 23 December 2008, ERN 00277836; **D119/132**, Written Record of Interview of Witness Yeng Chhan, 25 June 2014, ERN 01035104, A83; **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113712, A38, ERN 01113714, A76. See also **D6.1.429**, Written Record of Interview of Witness Dan Thev, 19 December 2008, ERN 00280020.

⁶⁹⁸ **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290378; **D6.1.431**, Written Record of Interview of Witness Chiep Chhean, 20 December 2008, ERN 00277836; **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277836; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982716.



running from as early as 3 a.m.⁶⁹⁹ until as late as 11 p.m.,⁷⁰⁰ and if the quotas were not met, workers would be asked to work late⁷⁰¹ or be disciplined.⁷⁰²

275. The coercive nature of the work is also exemplified by witnesses' statements that they were supervised by armed guards,⁷⁰³ threatened and forced to work,⁷⁰⁴ and punished by having their food reduced.⁷⁰⁵ Further, deserters were reportedly punished with more hard labour,⁷⁰⁶ sent "to study" and never seen again,⁷⁰⁷ or at best had their background studied and given a "light punishment".⁷⁰⁸ Workers were scared to escape for fear of being seen⁷⁰⁹ and killed if caught.⁷¹⁰ Some escapees from the dam worksite were detained at the Phnum Lieb security

D219/130, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059941, A36; **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113714, A76. *See also* **D6.1.426**, Written Record of Interview of Witness Liv Saleang, 18 December 2008, ERN 00277832 (two cubic metres); **D6.1.428**, Written Record of Interview of Witness Chhit In, 19 December 2008, ERN 00277811 (two cubic metres).

⁶⁹⁹ The following witnesses specify earlier starting times: **D6.1.453**, Written Record of Interview of Witness Heng Samuot, 31 January 2009, ERN 00290000 (3 a.m.); **D6.1.345**, Written Record of Interview of Witness Sot Phal, 4 February 2009, ERN 00293004 (3 a.m. or 4 a.m.); **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982316, A8 (3 a.m.); **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoeuy, 16 June 2014, ERN 01025294, 01025303, A44, A108 (3 a.m. or 4 a.m.).

⁷⁰⁰ **D6.1.431**, Written Record of Interview of Witness Chiep Chhean, 20 December 2008, ERN 00277816; **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057752, A131; **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290358; **D6.1.451**, Written Record of Interview of Witness Saing Nhma, 30 January 2009, ERN 00290385; **D6.1.345**, Written Record of Interview of Witness Sot Phal, 4 February 2009, ERN 00293004; **D6.1.426**, Written Record of Interview of Witness Liv Saleang, 18 December 2008, ERN 00277832; **D6.1.453**, Written Record of Interview of Witness Heng Samuot, 31 January 2009, ERN 00290000. *See also* **D6.1.428**, Written Record of Interview of Witness Chhit In, 19 December 2008, ERN 00277811; **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277821; **D219/1**, Written Record of Interview of Civil Party Applicant You Mut, 8 September 2014, ERN 01044854, A13.

⁷⁰¹ **D6.1.431**, Written Record of Interview of Witness Chiep Chhean, 20 December 2008, ERN 00277816; **D119/73**, Written Record of Interview Witness Nou Choung, 12 January 2014, ERN 00980542, A11; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059953, A134.

⁷⁰² **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277821; **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277841.

⁷⁰³ **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075216, A104-A105.

⁷⁰⁴ **D119/130**, Written Record of Interview of Civil Party Applicant Orm Huon, 27 May 2014, ERN 01075215, A96.

⁷⁰⁵ **D119/78**, Written Record of Interview of Lort Bandet, 24 January 2014, ERN 00983720, A11.

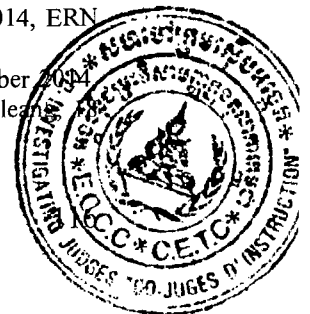
⁷⁰⁶ **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277821.

⁷⁰⁷ **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113713, A57. *See also* **D219/35**, Written Record of Interview of Witness Sorm Seila, 14 October 2014, ERN 01053589-01053590, A33, A35.

⁷⁰⁸ **D6.1.357**, Written Record of Interview of Witness Peng Bunthara, 27 March 2009, ERN 00322936.

⁷⁰⁹ **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057753, A137.

⁷¹⁰ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059953, A133. *See also* **D6.1.426**, Written Record of Interview of Witness Liv Saleang, 18 December 2008, ERN 00277832.



office,⁷¹¹ located approximately 100 metres from **Im Chaem**'s house, as discussed above.

276. Covering a period of late 1976 to late 1978, witnesses state that workers were sent to re-education classes⁷¹² or to study,⁷¹³ arrested⁷¹⁴ or taken away,⁷¹⁵ and often never seen again.⁷¹⁶ One civil party applicant explicitly states that more people were sent to study sessions for failing to meet quotas and were never seen again after **Im Chaem**'s arrival than in the period before it.⁷¹⁷ Another civil party applicant asserts that **Im Chaem** ordered militia to beat and arrest people who collapsed from exhaustion.⁷¹⁸ A former worker says that within a 24-hour period in 1978, approximately 1,000 "Vietnamese" families from surrounding cooperatives disappeared from the worksite.⁷¹⁹ This would amount to a considerable part of the work force. It is also unclear if these many Vietnamese families actually worked at the dam. Given the large number of people 1,000 families would amount to and that their overnight disappearance would have to have been noticed by other workers as well, the absence of any corroboration of that witness' testimony by other evidence leads us to doubt the accuracy of the statement.

⁷¹¹ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982759-00982760, A29, A32.

⁷¹² **D6.1.425**, Written Record of Interview of Witness Tann; **D6.1.345**, Written Record of Interview of Witness Sot Phal, 4 February 2009, ERN 00293004.

⁷¹³ **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982759, A28; **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277842. *See also* **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Teus, 10 June 2015, ERN 01113715, A85.

⁷¹⁴ **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290357; **D6.1.426**, Written Record of Interview of Witness Liv Saleang, 8 December 2008, ERN 00277833; **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277822; **D6.1.452**, Written Record of Interview of Witness Pai Koeut, 31 January 2009, ERN 00290352.

⁷¹⁵ **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982316, A11; **D219/1**, Written Record of Interview of Civil Party Applicant You Mut, 8 September 2014, ERN 01044854, A15, A16.

⁷¹⁶ **D6.1.450**, Written Record of Interview of Witness Saom Phan, 30 January 2009, ERN 00290357-00290358; **D6.1.452**, Written Record of Interview of Witness Pai Koeut; 31 January 2009, ERN 00290352; **D6.1.425**, Written Record of Interview of Witness Tann Than, 18 December 2008, ERN 00277842; **D119/94**, Written Record of Interview of Witness Bou Mao, 21 February 2014, ERN 00982759, A28; **D119/90**, Written Record of Interview of Civil Party Applicant Chuon Pheap, 18 February 2014, ERN 00982316, A11. *Cf.* **D6.1.430**, Written Record of Interview of Witness Kan Thol, 20 December 2008, ERN 00277822.

⁷¹⁷ **D219/361**, Written Record of Interview of Civil Party Applicant Leuy Taes, 10 June 2015, ERN 01113715, A90.

⁷¹⁸ **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoeuy, 16 June 2014, ERN 01025305, A121.

⁷¹⁹ **D119/23**, Written Record of Interview of Witness Buth Svoeuy, 19 March 2013, ERN 00982608, A20.



277. Witnesses also describe dam workers dying of starvation or disease due to lack of food,⁷²⁰ and from exhaustion whilst working, under both the Northwest and Southwest Zone leadership.⁷²¹ A civil party applicant states that people died of starvation and disease,⁷²² and “many” of them, especially “new people”, of malaria.⁷²³ However, no time frame is provided.
278. There is additional evidence in relation to killings and disappearances for which it is not possible to establish a temporal scope.⁷²⁴ It is also not possible to accurately establish the number of people who worked at Trapeang Thma, in which time period, and the total number of people who may have died at the site, from the available evidence.

5.2.8. Rape and Murder of Two Women of Vietnamese Descent in Preah Net Preah

279. Two witnesses describe the killing of two sisters of Vietnamese descent⁷²⁵ in an unspecified location in Preah Net Preah District.⁷²⁶ One witness states that before being killed they were raped by members of a mobile unit, however, at the time, he heard of this incident from the other witness,⁷²⁷ who in turn denies that the incident occurred.⁷²⁸ Both witnesses disagree about its timing.⁷²⁹

⁷²⁰ **D119/120**, Written Record of Interview of Civil Party Applicant Sam Sak, 23 April 2014, ERN 01057753-01057754, A145, A146.

⁷²¹ **D6.1.345**, Written Record of Interview of Witness Sot Phal, 4 February 2009, ERN 00293004; **D119/131**, Written Record of Interview of Civil Party Applicant Thang Thoeuy, 16 June 2014, ERN 01025304, A114.

⁷²² **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059951, A124.

⁷²³ **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 8 December 2014, ERN 01059952, A125.

⁷²⁴ **D6.1.428**, Written Record of Interview of Witness Chhit In, 19 December 2008, ERN 00277811-00277812; **D6.1.345**, Written Record of Interview of Witness Sot Phal, 4 February 2009, ERN 00293004; **D6.1.343**, Written Record of Interview of Witness Yi Laisauv, 2 February 2009, ERN 00288641.

⁷²⁵ **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985205, A33; **D123/1/2.52**, DC-Cam Interview with Pech Ruos, 17 June 2011, ERN 00969844.

⁷²⁶ **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067920, A3, A5, ERN 01067922, A18; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985204, A31.

⁷²⁷ **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985205, A33.

⁷²⁸ **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067920, A4, ERN 01067921, A11. Kor Len says he heard about the killing only (**D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067921, A12, ERN 01067923, A22) and that he did not know who ordered or perpetrated the killing (**D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067922, A20, ERN 01067929, A47).



280. Overall, there is insufficient evidence on the alleged killing and rape, its location and timing, the identity of the direct perpetrators, and which mobile unit may have been involved in it.

6. LEGAL FINDINGS ON CRIMES

6.1 Chapeau Elements of Crimes against Humanity

281. We are satisfied that between approximately April 1976 and 6 January 1979, which is the time relevant to the charges against **Im Chaem**,⁷³⁰ Southwest Zone cadres carried out an attack against the civilian population in the Northwest Zone of the DK, including in Sector 5. The evidence shows that the attack took the form of forced labour and the imposition of harsh living conditions. Workers endured great physical and mental suffering and commonly died from exhaustion, starvation, and disease. Second, the attack included the “re-education” or elimination of all real or perceived “bad elements” or “enemies” of the CPK, people thought to have ties with the Vietnamese, former civil servants and military personnel of the Khmer Republic and their families, and Northwest Zone cadres. People identified as belonging to these groups were arrested and detained at security and execution sites in Sector 5, such as the Phnom Trayoung security centre, where they were executed in the hundreds.

282. Numbers of victims in the crime sites under examination are consistently difficult to determine with precision. Nevertheless, the evidence shows that, even relying on conservative estimates, thousands of people throughout Sector 5 were targeted by the attack, which may therefore be characterised as widespread. The attack was also systematic, with perceived enemies of the CPK arrested and killed and people subjected to harsh work conditions throughout Sector 5.

⁷²⁹ **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985201, A15; **D119/121**, Written Record of Interview of Witness Kor Len, 29 April 2014, ERN 01067920, A3. After May 1977, see **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, 00985187, A19.

⁷³⁰ **D239.1**, *Annex: Notification of Charges against Im Chaem*, 3 March 2015, para. 3.



283. This attack was directed against the civilian population on political grounds. It targeted people considered to be politically unreliable, former officers and officials of the former Khmer Republic, Northwest Zone cadres accused of being “traitors”, and those considered to undermine the revolution by being lazy or making “mistakes”. The attack was, in essence, the implementation of the CPK political agenda.
284. **Im Chaem** had direct contacts with Ta Mok, who was the main engineer of the transfer of Southwest Zone cadres to the Northwest Zone and of the ensuing purge. She led the Southwest Zone cadres to the Northwest Zone, and once there became responsible for worksites and a sector-level security centre. The evidence shows that she was informed of what was happening on the ground through multiple sources such as reports, personal visits, meetings, and messengers. We are thus satisfied that she was aware of the existence of the attack and that her actions were part of it.

6.2 Legal Characterisation of Crimes Found to Have Been Committed at Phnom Trayoung Security Centre and Spean Sreng Canal Worksite

6.2.1. Phnom Trayoung Security Centre

6.2.1.1. Crime against Humanity of Murder

285. We are satisfied that the hundreds of executions carried out between mid-1977 and the end of the DK at Phnom Trayoung security centre amount to murder as a crime against humanity.
286. Further, we recall that prisoners were consistently underfed while forced to perform hard manual labour. As a consequence, hundreds died of starvation and overwork. We are of the view that the perpetrators must have, at a minimum, foreseen that the impositions of hard labour on underfed prisoners, or the deprivation of food itself, could lead to their starvation and death. We are thus also satisfied that these deaths also amount to murder as a crime against humanity.



6.2.1.2. Crime against Humanity of Extermination

287. We recall the evidence of one witness about the killing of a large number of people in one night and one morning at Phnom Trayoung security centre. We found that the number of 700 to 1000 victims provided by the witness was not reliable. The fact that the victims of that incident were allegedly many, killed as part of the same operation and during a short period of time, does not support a finding of killing on a massive scale for the purposes of extermination. The evidence of the witness is too unreliable to base a finding of a group identity on, which would satisfy the high threshold established by the SCC; the same applies to the criterion of “massive scale”. It cannot be excluded that this event was one, albeit a major incident, of the overall number of regular killings.

288. As for the killings committed on a regular basis at Phnom Trayoung security centre, the aggregate number reaches the threshold of massiveness. They were also killed for similar reason; that is behaviour contrary to the ideology and policies of the CPK. These killings, however, were carried out during a longer period of time and possibly by different physical perpetrators. These circumstances make it unclear whether the executions were carried out with the *ex ante* intent to kill on a massive scale. We are thus not satisfied that there are reasonable grounds to believe that these deaths, in addition to murder, also amounted to extermination.

6.2.1.3. Crime against Humanity of Enslavement

289. There are strong grounds to believe that the crime of enslavement was committed at Phnom Trayoung security centre. Prisoners, including children, were escorted and watched over by armed guards while workers who were working were threatened, and those who tried to escape were punished and possibly killed. We are satisfied that the prison authorities intended to and indeed exercised powers normally attaching to ownership over the persons detained and working at Phnom Trayoung security centre.



6.2.1.4. Crime against Humanity of Imprisonment

290. The evidence discussed above also establishes that those detained at Phnom Trayoung security centre were arrested on arbitrary grounds (such as being “lazy”, committing mistakes during their work, or simply because they were related to someone who had been arrested). Sometimes those arrested were not told, even in vague terms, the reasons for their arrest, nor was any document explaining the reason for the detention provided to the prison warden upon a prisoner’s arrival to Phnom Trayoung security centre. All prisoners were deprived of their liberty and kept in detention without due process of law. Finally, people’s detention was of sufficient duration to reach a threshold of gravity similar to that of other offences listed under Article 5 of the ECCC Law.
291. The evidence, insofar as it shows arbitrary reasons or a lack of reasons for the arrests, points to the authorities’ intent to effect arrests without criminal process; the perpetrators must have known that these arrests were not carried out pursuant to a criminal process.
292. We are thus satisfied that the detention of more than a thousand persons at Phnom Trayoung security centre between mid-1977 and the end of 1978 amounted to imprisonment as a crime against humanity.

6.2.1.5. Crime against Humanity of Other Inhumane Acts

293. Prisoners at Phnom Trayoung security centre were routinely deprived of adequate food and water. This is clearly demonstrated by the consistent reports of large number of deaths from starvation. They were kept in dire sanitary conditions. Further, prisoners labelled as serious offenders were shackled at night. We are satisfied that the imposition of these conditions constitutes an attack on human dignity of sufficient gravity as to amount to the crime against humanity of other inhumane acts.
294. There are reports of prisoners who disappeared and were never seen again. There is, however, no evidence to indicate that authorities denied requests to disclose information about the whereabouts and fate of victims – a key element of the crime of enforced disappearance. Considering our findings on murders and



extermination, it is also possible that those who were never seen again had in fact been executed.

6.2.1.6. *Crime against Humanity of Persecution on Political Grounds*

295. Many of the people detained, enslaved, and killed at Phnom Trayoung security centre were Northwest Zone cadres, former Khmer Republic officials, persons thought to have links with Vietnam, or persons perceived as “traitors” of the CPK or “bad elements”, which was essentially a characterisation reserved to those whose behaviour was perceived to be against or incompatible with the CPK ideals and policies. They were targeted and deprived of fundamental rights, such as personal freedom, physical integrity, and their right to life, because they belonged to these categories. We are thus satisfied that the crimes of imprisonment, murder, extermination, enslavement, and other inhumane acts committed against these categories of people also amount to the crime against humanity of persecution on political grounds.

6.2.1.7. *National Crime of Premeditated Murder*

296. The executions at Phnom Trayoung security centre also amount to premeditated homicide under Article 506 of the 1956 Penal Code.

6.2.2. *Spean Sreng Canal Worksite*

6.2.2.1. *Crime against Humanity of Murder*

297. There is no clear evidence of workers being executed at Spean Sreng Canal worksite. However, workers at the worksite were underfed while subjected to hard manual labour, under threat of arrest or worse if they did not meet their work quotas. As a consequence, workers fell sick and a number of them died of exhaustion from the combination of overwork and undernourishment. It was also, at a minimum, foreseeable that subjecting workers to such harsh conditions may have caused them to die. We are thus satisfied that there is sufficient evidence that murder as a crime against humanity was committed Spean Sreng Canal worksite.



6.2.2.2. Crime against Humanity of Enslavement

298. Southwest Zone cadres exercised powers of ownership over the labourers, in particular by determining where they slept, when they got up, what (if anything) they ate, and forcing them to do hard labour, sometimes under guard and effectively under threat of death if they did not meet work quotas or follow specifications. Based on the organised and systematic nature of the worksite, we are satisfied that these conditions were imposed with the intent to exercise powers of control over the prisoners. We thus consider that the evidence supports that the crime against humanity of enslavement was committed at the Spean Sreng Canal worksite.

6.2.2.3. Crime against Humanity of Imprisonment

299. Workers at Spean Sreng Canal worksite who committed mistakes or attempted to flee were arrested and detained at Phnom Trayoung security centre. Workers were arrested arbitrarily and at night. There is no evidence that those who were arrested were afforded any rights or brought before any person who had the power to review the legitimacy of their arrest. There is also no indication that there was any predetermined duration of the detention. Finally, it is evident that those who ordered and carried out the arrests were aware of the arbitrariness of the arrests. We are thus satisfied that imprisonment as a crime against humanity was committed at Spean Sreng Canal worksite. We note that imprisonment is what in general criminal law theory is characterised as a continuous crime. Thus, the imprisonment of people arrested at Spean Sreng and transferred to Phnom Trayoung, where their detention continued, amounts to the same crime. Had **Im Chaem** been indicted for imprisonment at these two sites, instances of imprisonment found at Spean Sreng could not be counted again against her in relation to Phnom Trayoung.

300. We are not satisfied that the enslavement of the workers at Spean Sreng Canal worksite amounted to imprisonment. While there is evidence that permits were required to leave the site, there is also evidence that sick workers were allowed to return back to their villages or to the local hospital. It is also unclear whether the entire workforce was forced to remain on-site overnight, or was allowed



back to their villages. In sum, while there is evidence that workers' freedom was restricted, we cannot conclude that, outside of working hours, their freedom was restricted to a degree comparable to that suffered by persons in detention.

6.2.2.4. *Crime against Humanity of Other Inhumane Acts*

301. There is a reasonable basis to conclude that food rations at Spean Sreng Canal worksite decreased after the arrival of Southwest Zone cadre, and in any case that food rations were insufficient. There is reliable evidence that labourers who did not meet their daily work quotas were denied food completely as a form of punishment, and that workers became sick due to the lack of food. We found that this conduct caused serious bodily harm and also amounted to an attack against human dignity. We are thus satisfied that the deprivation of food amounted to the crime against humanity of other inhumane acts.
302. There is ample evidence that labourers were arrested, taken away, or disappeared from the Spean Sreng Canal worksite; and that those who disappeared from the site may have been executed at Phnom Trayoung security centre. Although there is little doubt that disappeared labourers' families were unable to determine their fate or whereabouts, there is no evidence to indicate that inquiries to that effect were made of the authorities in charge at the site. For this reason alone, the evidence does not allow us to conclude that the crime against humanity of other inhumane acts by enforced disappearance was committed at Spean Sreng Canal worksite.

6.2.2.5. *National Crime of Premeditated Murder*

303. There is no evidence of premeditated murder at Spean Sreng Canal worksite.

6.3 Observations on Crimes Alleged but not Charged against Im Chaem

304. In Section 5.2. above we have summarily reviewed evidence on a number of crime sites that, while not charged against **Im Chaem**, form part of the allegations levied against her by the ICP.
305. For the purpose of our findings on personal jurisdiction, discussed in the next section, we note that the evidence indicates that the crimes against humanity



imprisonment, murder, enslavement, other inhumane acts, persecution, as well as the national crime of homicide were committed at Wat Ang Srei Mealy and Prey Sokhon execution site, Wat Preah Net Preah and related sites, Phum Chakrey security centre, Prey Taruth execution site, Wat Chamkar Khnol, and Trapeang Thma worksite.

7. CONCLUSIONS ON THE ECCC'S PERSONAL JURISDICTION OVER IM CHAEM

7.1 Im Chaem's Individual Criminal Responsibility for the Crimes Committed at Phnom Trayoung Security Centre and Spean Sreng Canal Worksite

306. We have found that the crimes against humanity of murder, enslavement, imprisonment, persecution, and other inhumane acts were committed at the Phnom Trayoung security centre, and that the crimes against humanity of murder, enslavement, imprisonment, and other inhumane acts were committed at Spean Sreng Canal worksite. We also found that premeditated murder was committed at Phnom Trayoung security centre.
307. The evidence on **Im Chaem's** authority, responsibilities, and conduct strongly indicates that she could be criminally responsible for these crimes through the modes of liability listed in the Notification of Charges.⁷³¹
308. First, from about March 1977, when Ta Mok sent **Im Chaem** to Sector 5 of the Northwest Zone, until the end of the DK in early January 1979, Ta Mok, **Im Chaem**, and other Southwest Zone cadres shared the plan to replace the Northwest Zone cadres in the administration of the Northwest Zone and to successfully implement the CPK's policies. They did so by arresting and killing local cadres at all level of the administration, from the zone to the cooperative level. They also detained and killed workers who were perceived as enemies and people who were considered to have connection with Vietnam or with the Khmer Republic. Further, they imposed conditions of labour that we have found

⁷³¹ **D239.1**, Annex: Notification of Charges against Im Chaem, 3 March 2015.

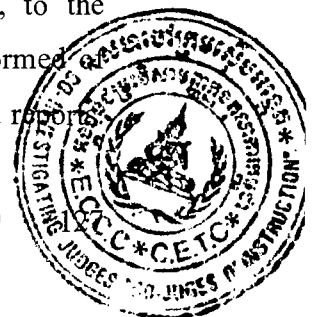


at Phnom Trayoung security centre and Spean Sreng Canal worksite to have amounted to enslavement and other inhumane acts.

309. **Im Chaem** contributed to this plan by running worksites and security centres, and by ordering arrests and executions, which were carried out by militia under her control. Further, her continued participation in the enslavement, arrests, and killings of Northwest Zone cadres and other people perceived as hostile to the CPK is evidence of her intent to commit these crimes. She could thus be responsible for the crimes against humanity found to have been committed at Phnom Trayoung security centre and Spean Sreng Canal worksite as a member of a JCE. We note, however, that while her initial role may suggest that she was a key player in this criminal plan (as she led a large group of civilian and military cadres to the Northwest Zone in mid-1977), upon her relocation her contribution to the plan was limited to the Preah Net Preah District (where she did, however, have authority on workers and inmates from other districts) and – possibly – to overseeing one or more worksites in other districts of Sector 5. While we have found that she also became a member in the Sector 5 Committee, her role and authority in this capacity are not clear and the evidence does not indicate that she was involved with the administration of the sector as a whole. The scope of her contribution to the criminal plan is something that we have taken into account in our findings on personal jurisdiction.

310. By virtue of her role and authority, **Im Chaem** planned the work at Phnom Trayoung security centre and Spean Sreng Canal worksite. She instigated, through her speeches, the enslavement of the population and the imprisonment and murder of those who were perceived as enemies of the DK. She ordered the enslavement, imprisonment, and execution of people at the Phnom Trayoung security centre, and the enslavement of the workers at Spean Sreng Canal worksite.

311. By virtue of her position, speeches, and management and supervision of both Phnom Trayoung security centre and Spean Sreng Canal worksite she substantially contributed, by providing material and moral support, to the commission of these crimes. We have seen that **Im Chaem** was informed what happened at these sites by virtue of personal visits, meetings, and reports.



We are thus satisfied that she was aware that, through her conduct, she was aiding and abetting the commission of crimes.

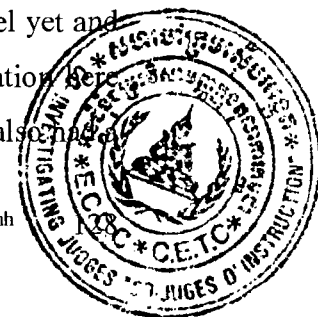
312. However, we are of the view that **Im Chaem** does not fall under the jurisdiction of the ECCC.

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

313. Our finding that **Im Chaem** falls outside of the ECCC's personal jurisdiction is made, firstly, taking into account the crime sites that **Im Chaem** has been charged with. However, we find that, secondly, even taking into account the evidence related to the other allegations made by the ICP but not charged by the CIJs, she would still fall outside of the jurisdiction of the ECCC, under all alleged modes of liability. While she may have been a member of a zone-wide JCE, her contribution was limited to mainly one district, with only unclear evidence available for her activities in other districts and on the sector level. Because of this, it was not necessary for her to be charged with any remaining allegations.

314. There is a strong indication that **Im Chaem** was initially considered by the ICP as being one of the persons most responsible and included in an introductory submission because of the alleged number of 40,000 deaths arising from the Phnom Trayoung security centre alone. That was certainly an arguable contention at the time, but the number could not be supported by the evidence which delivered a far lower range of victim numbers, as we described above and will analyse further below.

315. Based on the descriptions of her biography, of the crime sites and the related linkage evidence set out above, **Im Chaem** was not a senior leader. There is some indication in the evidence that she was what one might, for want of a better word, call a "rising star" in the DK hierarchy at the time, and that, had the DK continued to exist, she might well at some stage have joined the highest echelons of the CPK nomenclature and become a senior leader herself. As things stand, however, based on the evidence, she had not arrived at that level yet and indeed her formal rank for the time and the locations under investigation were mainly that of the district secretary in Preah Net Preah, who later also had



position on the Sector 5 Committee. The mere fact that she seems to have enjoyed personal access to people who could have qualified as senior leaders at the time does not equate to a finding of her own status as a senior leader. She would thus have to fall into the residual category of those others who were “most responsible”. However, we find that the evidence does not support such a finding, either.

316. In **Im Chaem**’s case, there were more than a hundred other district secretaries besides her during the time of the DK,⁷³² such as Prak Yut and Yeay Rim, and indeed the position of a district secretary was merely the third rung from the bottom in the hierarchy (above village and commune). We are aware of the fact that based on the evidence available to us she was tasked to lead the Southwest Zone cadres to the Northwest Zone and thus had a role which did not correspond to the average district secretary. Nonetheless, the fact that she was initially only given a role as a district secretary despite this earlier major coordination task must be taken into account, and militates against a significantly elevated role. The fact that **Im Chaem** may have been an official at sector level in the Southwest Zone before she arrived in the Northwest Zone and again became involved at the sector level in the Northwest Zone is a relevant factor to be considered, yet at the end of the day not in and of itself determinative for the evaluation of her position at the time of the Northwest Zone purges for which she was mainly investigated.

317. To classify **Im Chaem** as one of the most responsible persons, one must thus look beyond her formal status and at the level of seriousness of her own actions and the gravity of their effects. This must take into account the nature and number of the allegations in the ICP’s Introductory and Supplementary Submissions, and the extent to which they have been borne out by the evidence gathered in the course of the investigation. Finally, unpalatable as it may appear and as was already alluded to above, whatever remains must be put into relief against the background of the entirety of the suffering caused by the implementation of the regime’s policies, and that will inevitably include looking

⁷³² See on this also the reflections particularly on **Im Chaem** by the previous International Investigating Judge, Marcel Lemonde, in M. Lemonde and J. Reynaud, *Un juge face aux Khmers rouges*, 2013, Seuil, 211.



at the total number of deaths from execution, intentional or reckless starvation of forced labourers and prisoners, and insufficient public health services in general during the period of the DK, the number of displaced persons and those who were forced to do hard labour, etc.

318. However, we wish to make it clear again that victim numbers must be seen in the context of the entirety of the evidence of each individual case; in other words, the numbers established on the evidence and set out below are not absolute thresholds to be applied mechanically in future closing orders, but must be seen together with **Im Chaem's** individual position, development and actions.
319. Against that background, we have to conclude that her actions and their consequences, bear out a case against her as being responsible for a number of atrocious crimes, but they do not suffice for her to cross the threshold of personal jurisdiction.
320. The evidence found during the investigation and evaluated under the conservative method we described above allows the following conclusions on victim numbers: in the two charged crime sites, the combined victims of murder range from 2,000 to a maximum of 10,800. The cases of imprisonment are impossible to specify beyond giving a minimum within the hundreds and a maximum extending possibly into the thousands. The victims of enslavement similarly are impossible to number exactly and range from thousands in the single figures to an unspecified maximum in the tens of thousands. In all of these, we adopted the conservative minimum threshold.
321. As far as the remaining crime sites that were not charged are concerned, the combined picture for the Northwest Zone crime sites is even more blurred: Murder victims range from an established minimum of 1,500 to a possible conservative maximum of 8,300, based on one witness' specific count of 1,000 at one crime site and a calculated maximum of 7,300 at another. This does not incorporate an unspecific count of "hundreds" at a third crime site. Two sites have no known victim numbers, and one site has only two alleged murders which we found had not been established to the necessary standard. The



combined number for imprisonment is entirely unclear, and the one for enslavement only allows an estimate in the thousands.

322. The one crime site in the Southwest Zone, in which **Im Chaem's** involvement was moreover not sufficiently established, had murder victims in a calculated range of hundreds, with only one witness giving an outlier fixed number of 4,000.
323. Multiple possible legal characterisations of the same facts (including, for example, as persecution or other inhumane acts, or homicide offences under national law) allow for multiple charging and possibly eventually conviction, but they do not significantly enhance the gravity of the actions of **Im Chaem**, either.
324. Nor does the fact that **Im Chaem** had, according to some witnesses, a reputation as being “very cruel”,⁷³³ equate *eo ipso* to an *enhanced* responsibility in a system that thrived, on the outside as much as on the inside, on a rule by terror and fear through the intentional very use of cruelty and mass atrocities. It is a consistent pattern in many witness statements by former Khmer Rouge, including soldiers, that they themselves were in constant fear for their lives because of the perceived utter arbitrariness and unpredictability of the whims of their superiors when sanctioning even minor deviations from their orders or *Angkar's* policies.⁷³⁴ To put it another way, cruelty and horror were the norm. The evidence collected during the investigation does not support the conclusion

⁷³³ **D219/128**, Written Record of Interview of Witness Sokh Lorn, 17 December 2014, ERN 01059925, A7; **D106/3**, Written Record of Interview of Witness Hiem Sakhan, 16 February 2012, ERN 00784863, A14; **D219/384**, Written Record of Interview of Witness Dik Kuy, 26 June 2015, ERN 01132650, A25; **D219/433**, Written Record of Interview of Witness Yong Sin, 27 July 2015, ERN 01142968, A32; **D219/130**, Written Record of Interview of Civil Party Applicant Chhao Chat, 18 December 2014, ERN 01059970, A267; **D119/144**, Written Record of Interview of Witness Lat Suoy, 18 August 2014, ERN 01031899, A70; **D119/96**, Written Record of Interview of Witness Im Man, 26 February 2014, ERN 00986801, A87; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985192, A41; **D119/99**, Written Record of Interview of Witness Pech Ruos, 12 March 2014, ERN 00985207, A41; **D119/137**, Written Record of Interview of Witness Ith Iet, 23 July 2014, ERN 01044787, A64-65; **D219/567**, Written Record of Interview of Witness Hem Soeun, 30 October 2015, ERN 01182712, A142-145.

⁷³⁴ **D119/110**, Written Record of Interview of Witness Chum Kan, 26 March 2014, ERN 00985684, A79-A80; and **D219/9**, Written Record of Interview of Witness Khun Samoeun, 16 September 2014, ERN 01047799, A29-A30; **D219/103**, Written Record of Interview of Witness Sum Sal, 2 December 2014, ERN 01061161, A67; **D119/98**, Written Record of Interview of Witness Kor Len, 11 March 2014, ERN 00985192, A41; **D106/3**, Written Record of Interview of Witness Hiem Sakhan, 16 February 2012, ERN 00784863, A14.



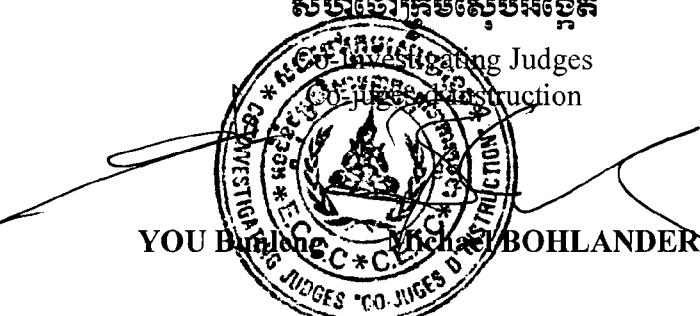
that **Im Chaem** exceeded that norm in a significant manner that in and of itself would justify her inclusion among those most responsible.

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
 of the ECCC
 អង្គជំនុំជម្រះវិសាមញ្ញ
 Extraordinary Chambers
 in the Courts of Cambodia
 YOU BURLONG * C. BOHLANDER



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.

He furthermore notes that under domestic Cambodian practice, facts not subjected to notification/proven during investigation do not normally receive a legal characterisation in a closing order. However, since the present closing order dismisses the case only due to the lack of personal jurisdiction before the ECCC, a criterion not applicable in the same way in domestic law, he accepts that apart from a description of the facts related to the participation of the suspect and the gravity of the alleged crimes, their brief legal characterisation is necessary, albeit purely for the determination of the question of whether they would have fallen under the ECCC's subject-matter jurisdiction at all and thus be capable of forming part of the determination of the gravity of the alleged crimes in the context of personal jurisdiction.