

**BEFORE THE CO-INVESTIGATING JUDGES
 EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

Case No: 004/1/07-09-2009-ECCC-OCIJ **Party Filing:** International Co-Prosecutor
Filed to: Co-Investigating Judges **Original language:** English
Date of document: 27 October 2016

CLASSIFICATION

Classification of the document
suggested by the filing party: CONFIDENTIAL with CONFIDENTIAL ANNEXES
Classification by OCIJ: សម្ងាត់/Confidential
Classification Status:
Review of Interim Classification:
Records Officer Name:
Signature:



**INTERNATIONAL CO-PROSECUTOR'S RULE 66 FINAL SUBMISSION AGAINST
 IM CHAEM**

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I. INTRODUCTION

A. CASE OVERVIEW

1. **Im Chaem** is criminally responsible for the crimes against humanity and violations of international humanitarian law set out herein. These crimes occurred during the Communist Party of Kampuchea's ("CPK" or the "Party") widespread and systematic attack against the Cambodian population from 17 April 1975 to 6 January 1979. **Im Chaem** significantly contributed to this criminal campaign intended to radically transform Cambodian society and which resulted in the CPK or "Angkar" exercising absolute control over the lives of all civilians: enslaving the people, depriving them of their most basic human rights and freedoms, imprisoning multitudes and ultimately killing them in massive numbers.
2. **Im Chaem** held significant positions of power in both the Southwest Zone and Northwest Zones for most of the Democratic Kampuchea ("DK") regime. Her loyalty and efficacy in implementing the CPK's criminal policies led to her rapid promotion to positions of increasing authority. **Im Chaem** was the Koh Andet District Secretary and the Sector 13 Committee Member in the Southwest Zone from 1976 until mid-1977. There, her responsibility included Wat Ang Srei Mealy security office and the large-scale persecution of the Khmer Krom and those associated with the Khmer Krom in Sector 13. **Im Chaem** was then entrusted by the highest CPK cadres, including Pol Pot and Ta Mok, to lead the purge of the Northwest Zone, where she ordered and facilitated the removal of cadres at all echelons from their positions and their punishment or killing for failing to implement the CPK's policies. Many of these cadres were sent to the infamous S-21 security office in

Phnom Penh where they were tortured and executed. **Im Chaem** became Preah Net Preah District Secretary as well as Sector 5 Committee Member and later Deputy Secretary of Sector 5 in the Northwest Zone from mid-1977 until January 1979. During that period, her responsibility included various security offices and execution sites such as Phnom Trayoung, Chakrey, Wat Chamkar Khnol and Wat Preah Net Preah; forced labour sites including Trapeang Thma and Spean Spreng; and, the large-scale persecution of persons of Vietnamese ethnicity or persons perceived to be connected to Vietnam.

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3. **Im Chaem** wielded immense power due to her positions. Districts were a key part of the CPK structure as districts maintained “security offices” which distinguished between “enemies” to be disposed of locally and those who would be sent to higher-level authorities.¹ District secretaries were considered “a crucial level of leadership, second in importance only to the CPK Central Committee itself, because they linked the cooperatives to the higher echelons”.² Additionally Sector Committees had “overall charge” of all matters within their jurisdiction – both military and civilian.³ **Im Chaem** thus had *de jure* and/or *de facto* authority and responsibility for all that occurred in the districts and sectors in which she held power.
4. **Im Chaem** used these positions to implement the CPK’s policies by: assigning victims to forced labour sites knowing that the conditions amounted to enslavement; planning and organising cooperatives at which people were forced to live and work; participating in forced marriages; instigating/aiding and abetting other perpetrators by espousing propaganda about searching for and killing “enemies” – resulting in an atmosphere of paranoia and fear; ruthlessly purging cadres who were not considered to be fulfilling the CPK’s policies – and replacing them with loyal followers; and, ordering that persons be arrested, detained and killed. **Im Chaem** exercised superior authority over the perpetrators of offences in the areas under her authority while knowing that crimes were being

or ordered in the area under his authority, while knowing that crimes were being committed and failing to take necessary or reasonable measures to prevent or punish the perpetrators.

5. **Im Chaem**'s implementation of the CPK's policies in the Southwest and the Northwest Zones resulted in thousands of people, including countless children, being forced to work under conditions amounting to enslavement; widespread forced marriage and forcible consummation of marriage; thousands suffering physical and mental torture; living under constant fear of punishment or death, being separated from family, experiencing mass disappearances, witnessing or hearing killings and rapes; thousands of arrests, confinement and killing of persons considered opposed to Angkar's "revolution"; and, thousands of deaths because of starvation, exhaustion and illness.
6. **Im Chaem** operated under the guidance and instructions of the most senior CPK figures, being appointed to positions in Sector 13 of the Southwest Zone and Sector 5 of the

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Northwest Zone by Pol Pot and Ta Mok. She worked, in her own words, happily and dutifully, to implement the CPK's disastrous attack on Cambodian society.

B. PROCEDURAL HISTORY

OPENING OF INVESTIGATION

7. On 10 July 2006, pursuant to Rule 50 of the ECCC Internal Rules, the Co-Prosecutors commenced a preliminary investigation to determine whether evidence indicated that crimes within the jurisdiction of the ECCC had been committed and to identify potential suspects and witnesses.
8. On 20 November 2008, having found that there was reason to believe that crimes within the jurisdiction of the ECCC were committed by three new suspects, the International Co-Prosecutor requested a judicial investigation be conducted regarding the responsibility of **Im Chaem**, Ao An and Yim Tith for crimes within the jurisdiction of the ECCC. The

International Co-Prosecutor's Third Introductory Submission ("Introductory Submission") requested the Co-Investigating Judges to investigate a number of alleged crimes committed during the DK period.⁴ The Introductory Submission contained a summary of the facts, the offences alleged, the relevant provisions of the law that define and punish the crimes, and the names of the persons to be investigated. The submission was accompanied by the Case File, which included both inculpatory and exculpatory evidence. The Case File supporting the Introductory Submission was comprised of over 1,000 documents.

9. The International Co-Prosecutor has submitted four Supplementary Submissions to expand and/or qualify the scope of the judicial investigation in relation to the following locations and events: (i) Sector 1 of the Northwest Zone and persecution and genocide of Khmer Krom in the Southwest and Northwest Zones;⁵ (ii) forced marriage and sexual or gender-based violence;⁶ (iii) Wat Ta Meak;⁷ and (iv) forced marriages in Sectors 1 and 4.⁸
10. On 24 February 2012, the Reserve International Co-Investigating Judge notified **Im Chaem** that she was a suspect in the ongoing investigation of Case 004 and informed her of her right to, *inter alia*, legal representation of her choice and access to the Case File.⁹

CO-PROSECUTORS' DISAGREEMENT

11. On 20 November 2008, the International Co-Prosecutor registered a disagreement with the National Co-Prosecutor on the prosecution of new suspects, pursuant to Internal Rule 71.2.¹⁰ The National Co-Prosecutor subsequently made written submissions to the Pre-Trial Chamber regarding the disagreement.¹¹ Having obtained further particulars and observations on the matter,¹² the Pre-Trial Chamber was unable to reach the required number of votes for a decision on the Co-Prosecutors' disagreement.¹³ Pursuant to Internal Rules 74.1 and 53.1 the Acting International Co-Prosecutor then forwarded the

Introductory Submission to the Co-Investigating Judges to open judicial investigations.¹⁴

CHANGES OF INVESTIGATING JUDGE DURING THE INVESTIGATION

12. The investigation against **Im Chaem** commenced under International Co-Investigating Judge Marcel Lemonde and National Co-Investigating Judge You Bunleng.¹⁵ International Co-Investigating Judge Lemonde resigned in November 2010¹⁶ and was succeeded by Siegfried Blunk. On 9 October 2011, Judge Blunk resigned.¹⁷ The Reserve International Co-Investigating Judge Kasper-Ansermet, though sworn in as such before a plenary assembly of the ECCC on 21 February 2011, never had his nomination confirmed by the Council of Magistracy.¹⁸ Reserve Judge Kasper-Ansermet subsequently tendered his resignation in March 2012.¹⁹ On 26 October 2012, Mark Harmon was sworn in as the International Co-Investigating Judge.²⁰ On 31 July 2015, Judge Harmon announced his resignation and was replaced by current International Co-Investigating Judge, Michael Bohlander.²¹

SUMMONS AND ARREST WARRANT

13. On 29 July 2014, the International Co-Investigating Judge summoned **Im Chaem** for an initial appearance at the ECCC on 8 August 2014.²² The summons was served on **Im Chaem** on 31 July 2014.²³ On 1 August 2014, **Im Chaem** informed the Office of the Co-Investigating Judges that she did not consider the summons to be valid as it was issued by the International Co-Investigating Judge alone.²⁴ The International Co-Investigating Judge responded, on the same day, that he could validly issue the summons pursuant to Rule 72 – referring to the Pre-Trial Chamber’s decision in Case 002 that such action was legally valid.²⁵

14. On 6 August 2014, **Im Chaem** filed a request to the Co-Investigating Judges for annulment of the summons²⁶ and a request to the Pre-Trial Chamber to stay the summons prior to the determination of her appeal in relation to the validity of the summons issued by the

International Co-Investigating Judge alone.²⁷ On 8 August 2014, the Pre-Trial Chamber dismissed **Im Chaem**'s request,²⁸ noting that "the Pre-Trial Chamber previously confirmed that one Co-Prosecutor or Investigating Judge can act alone when a disagreement has been registered within the Office of the Co-Prosecutors or the Co-Investigating Judges, as appropriate, and the period for bringing a disagreement before the Pre-Trial Chamber has elapsed".²⁹

15. Following **Im Chaem**'s failure to comply with the summons, the International Co-Investigating Judge issued an arrest warrant on 14 August 2014 to secure her attendance for an initial appearance at the ECCC.³⁰ The Judicial Police failed to execute the warrant. On 30 January 2015, the International Co-Investigating Judge stated in a letter to the Chairman of the Security Commission for the ECCC that if **Im Chaem** failed to appear or if she was not arrested by 18 February 2015, she would be charged *in absentia*.³¹

CHARGES IN ABSENTIA

16. On 3 March 2015, the International Co-Investigating Judge charged **Im Chaem** *in absentia*³² for the crimes and with the modes of responsibility specified in the Notification of Charges.³³ **Im Chaem** was charged with: violations of the 1956 Penal Code through commission (via co-perpetration), planning, instigating, ordering, and aiding and abetting;³⁴ crimes against humanity through commission via participation in a joint criminal enterprise, planning, instigating, ordering, and aiding and abetting;³⁵ and violations of the 1956 Penal Code and crimes against humanity through superior responsibility.³⁶

'SENIOR AND MOST RESPONSIBLE' SUBMISSIONS

17. On 24 July 2015, Co-Investigating Judges You Bunleng and Mark Harmon requested submissions from the parties on whether **Im Chaem** should be considered a "senior leader of Democratic Kampuchea" or among "those who were most responsible for the crimes and serious violations of Cambodian laws related to crimes, 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".³⁷

18. The Defence, the International Co-Prosecutor, and the National Co-Prosecutor made submissions.³⁸ Both the National Co-Prosecutor and Defence submitted that **Im Chaem** was neither a senior leader nor among those most responsible and thus fell outside the personal jurisdiction of the ECCC.³⁹ The International Co-Prosecutor submitted that **Im Chaem** was not a senior leader⁴⁰ but was among those most responsible and thus fell within the personal jurisdiction of the ECCC.⁴¹

CLOSURE OF INVESTIGATION AND SEVERANCE OF CASE FILE 004/01

19. On 18 December 2015, Co-Investigating Judges You Bunleng and Michael Bohlander filed the "Notice of Conclusion of Judicial Investigation against **Im Chaem**".⁴² On the same day, the Co-Investigating Judges filed the "Notice of Intent to Dismiss the Charges against Im Chaem and to Sever the Proceedings against Her",⁴³ stating that they were "inclined to dismiss the charges [...] due to a lack of personal jurisdiction" and "to sever the proceedings" against **Im Chaem** from the other Charged Suspects in Case 004.⁴⁴
20. On 8 January 2016, the Defence made submissions in support of the severance of **Im Chaem** from Case 004.⁴⁵ On 15 January 2016, the Co-Prosecutors informed the Co-Investigating Judges that they did not object to the severance.⁴⁶ As a result, on 5 February 2016, the Co-Investigating Judges severed the case against **Im Chaem** from Case 004,⁴⁷ in order to bring the proceedings against her to a conclusion while continuing the investigations for the remainder of the Charged Suspects. On the same day, the Co-Investigating Judges rescinded the arrest warrant against **Im Chaem**, stating that there was "currently no need for [her] to attend any hearing on the notification of charges."⁴⁸
21. On 27 July 2016, the Co-Investigating Judges issued the Forwarding Order pursuant to Rule 66(4).⁴⁹ Noting that **Im Chaem** has the right to have the proceedings against her concluded within a reasonable time, the Co-Investigating Judges invited the Co-Prosecutors to file their final submission within three months as provided in Rule 66(5).⁵⁰

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OUTSTANDING PRE-TRIAL CHAMBER LITIGATION

22. On 16 February 2016, **Im Chaem** submitted an application to seize the Pre-Trial Chamber with a view to annulling transcripts and written records of witnesses interviews.⁵¹ On 3 March 2016, **Im Chaem** filed an *addendum* to the request including additional documents.⁵² The request alleged that specified interviews suffered from procedural defects.⁵³ On 6 May 2016, the Co-Investigating Judges partially granted the request in respect of a limited number of interviews and instructed the Greffier to forward Case File 004/01 to the Pre-Trial Chamber pursuant to Internal Rule 76(3) for its determination.⁵⁴ The proceedings are currently pending before the Pre-Trial Chamber. The Co-Investigating Judges have stated that a closing order will not be issued before the Pre-Trial Chamber's decision regarding the request.⁵⁵

EVIDENCE ON CASE FILE 004/01

23. At the close of the investigation, there were approximately 8,900 documents on the Case 004/01 Case File.⁵⁶ This includes 1,450 written records of witness interviews conducted by the OCIJ as well as numerous: contemporaneous CPK and DK records; S-21 prisoner lists; DC-Cam interviews and documentation; trial transcripts from Cases 001, 002/01 and 002/02; photographs; maps; academic books and articles.

The Case File also contains a number of interviews conducted with **Im Chaem**. These include extensive admissions regarding, *inter alia*, her positions and authority within the CPK,⁵⁷ relationship with Ta Mok and the upper echelons,⁵⁸ control over forced labour sites⁵⁹ and conditions in areas under her responsibility.⁶⁰ **Im Chaem's** various admissions are corroborated by other evidence on the Case File, while her denials and attempts to underplay her role in the DK regime are flatly contradicted by the evidence, as set out herein. Additionally, there were 287 Civil Party applications on the Case File relating to **Im Chaem's** responsibility and the crime sites over which she had authority.⁶¹ These applications represent an important source of pertinent and probative evidence. For

example, numerous Civil Party applications specifically identify **Im Chaem** as overseeing forced labour work sites and giving orders for arbitrary detention and execution of persons.⁶²

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24. The evidence on Case File 004/01 demonstrates how the operation of the CPK's strict hierarchical authority structure and communications network, as well as the powers delegated to **Im Chaem**, ensured the effective implementation of CPK policy. In both the Southwest Zone and the Northwest Zone, the evidence definitively establishes the extent to which **Im Chaem** was involved in, and is responsible for, the crimes alleged herein.

C. STANDARD OF PROOF REQUIRED TO SEND A CHARGED PERSON FOR TRIAL

25. Rule 67(3)(c) of the Internal Rules states that the Co-Investigating Judges shall issue a Dismissal Order, *inter alia*, where "there is not sufficient evidence against the Charged Person".⁶³ Similarly, Article 247(3) of the Code of Criminal Procedure of the Kingdom of Cambodia provides that an investigating judge will issue an order of non-suit where "[t]here is insufficient evidence for a conviction of the charged person".⁶⁴ Neither document defines what "sufficient evidence" means in practice.⁶⁵
26. The Co-Investigating Judges have applied the standard of "sufficient evidence" in Cases 001⁶⁶ and 002⁶⁷ to send the Charged Persons forward for trial. The Co-Investigating Judges held that the applicable standard of proof encompassed by the term "sufficient evidence" is probability of guilt rather than mere possibility of guilt.⁶⁸ The Co-Investigating Judges explained that "the evidentiary material in the Case File must be sufficiently serious and corroborative to provide a certain level of probative force".⁶⁹ The ultimate determination of guilt beyond reasonable doubt remains to be assessed by the Trial Chamber.⁷⁰

27. In support of this definition of “sufficient evidence”, the Co-Investigating Judges referred, *inter alia*, to French law and international criminal law jurisprudence.⁷¹ With regard to French law, Article 177 of the French Code of Criminal Procedure contains the same standard of proof of “charges suffisantes” (“sufficient evidence”),⁷² but offers no definition. In the French system, Investigating Judges are afforded unfettered discretion in making the determination in practice.⁷³
28. International criminal jurisprudence provides more guidance for assessing the requisite standard of evidence for committal to trial. At the ICC, Article 61(5) governing the

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confirmation of charges states that “the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged”.⁷⁴ In its recent decision in the *Al Mahdi* case, Pre-Trial Chamber I stated that the purpose of confirming charges is to ensure that “‘only those persons against whom sufficiently compelling charges going beyond mere theory or suspicion have been brought’ are committed for trial.”⁷⁵ It added that the applicable evidentiary standard is established where the Prosecutor offers “concrete and tangible proof demonstrating a clear line of reasoning underpinning [...] specific allegations”.⁷⁶

29. The Rules of Procedure and Evidence of the Residual Mechanism for the International Criminal Tribunals for Rwanda and the former Yugoslavia provides that the Prosecutor shall proceed to indictment if “there is sufficient evidence to provide reasonable grounds for believing that a crime [...] has been committed”.⁷⁷ The ICTR previously held that “reasonable grounds can be interpreted as facts and circumstances, which could justify a reasonable or ordinary prudent person in believing that a suspect has committed a crime. There must be facts which raise a clear suspicion that the suspect is guilty of committing the offence, for reasonable grounds to exist”.⁷⁸
30. Additionally, the Statutes of both the ICTY and the ICTR require a Trial Chamber Judge to

30. Additionally, the Statute of both the ICTY and the ICC requires that a trial judge be "satisfied that a prima facie case has been established" in order to confirm the charges.⁷⁹ The ICTY defined a "prima facie case" as "a credible case which would (if not contradicted by the Defence) be a sufficient basis to convict the accused on the charge".⁸⁰

II. MATERIAL FACTS

A. ARMED CONFLICT

OVERVIEW

31. A state of armed conflict existed between Cambodia and the Socialist Republic of Vietnam ('SRV') between May 1975 and January 1979.⁸¹ During this period, the armed forces of the two countries engaged in numerous attacks and counter-attacks, employing extensive military resources and capturing each other's territory. With a number of military clashes and incursions during 1975, the intensity of the conflict increased from 1976 onward,

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eventually leading to a full-scale invasion of Cambodia by the Vietnamese forces in December 1978.⁸²

32. The causes of the armed conflict are both historical and complex, but are rooted in large part in territorial claims between the two countries. The DK leaders held intense and often paranoid fear of Vietnamese domination.⁸³
33. Despite public reporting of the conflict, the regimes of the two countries allowed little reporting of the conflict until 31 December 1977, when DK officially severed its relations with Vietnam, citing the latter's occupation of parts of Cambodia.⁸⁴ The existence of an increasingly large scale armed conflict at this time is widely accepted among academics and experts.⁸⁵

34. Armed conflict broke out in early May 1975 when Khmer Rouge forces attacked the islands of Phu Quoc (Koh Tral) and Tho Chu (Poulo Panjang or Koh Krachak Ses), which the CPK claimed were part of Cambodia.⁸⁶ The attack was repulsed in a major offensive by the Vietnamese two weeks later, with some 300 Cambodian soldiers taken as prisoners.⁸⁷ In the early DK period, Khmer Rouge forces also undertook incursions into Vietnam along the land border.⁸⁸ As a reprisal for Khmer Rouge attacks, the Vietnamese temporarily captured the Cambodian island of Puolo Wai on or about 13 June 1975.⁸⁹ Numerous military incidents were reported to senior CPK leaders ("Party Centre") during 1975, leading to the organisation of a defence plan by the CPK.⁹⁰

1976

35. Further military altercations occurred in early 1976.⁹¹ In February 1976, the CPK Standing Committee responded by issuing instructions on military matters such as gunpowder production and training, and the establishment of an airfield, military hospital, and ordnance factories.⁹² Throughout the course of 1976, various clashes between DK and SRV forces took place.⁹³ In December 1976, DK Foreign Affairs Minister Ieng Sary gave one of the earliest public acknowledgments of the conflict, alluding that the Vietnamese aggression against Cambodia would be resisted.⁹⁴

1977

36. From the beginning of 1977, the armed conflict escalated further, and relations between the two countries deteriorated rapidly.⁹⁵ In April and September 1977, DK forces mounted a series of large scale attacks on locations in Vietnam, committing extensive crimes against the local populations, including the killing of thousands of civilians and destruction of non-military property.⁹⁶ From June 1977 onward, major clashes took place in the East Zone,⁹⁷ which ultimately resulted in a major incursion into Cambodian territory by SRV forces.⁹⁸

Fighting was particularly intense in the East Zone between 26 October 1977 and 27 December 1977.⁹⁹ In November 1977, international media also reported that DK forces launched another “major attack” into Vietnam’s Tay Ninh Province.¹⁰⁰ By December 1977, international media were reporting “full scale battles” between DK and SRV, referring to the use of warplanes and artillery, as well as the heavy casualties on both sides.¹⁰¹ As a result, on 31 December 1977, the DK Ministry of Foreign Affairs (‘MFA’) publicly announced a break of diplomatic relations with Vietnam, due to what it described as Vietnam’s acts of aggression and invasion.¹⁰²

1978-1979

37. In early 1978, DK divisions were relocated from the Southwest Zone to the East Zone, to engage in combat against the Vietnamese.¹⁰³ A 10 May 1978 Phnom Penh Home Service broadcast indicated that during the period 17 April 1977 to 17 April 1978, “fighting took place continuously in small, medium and large-scale battles.”¹⁰⁴ Subsequently, in September 1978, the MFA issued the publication “Black Paper: Facts and Evidences of the Acts of Aggression and Annexation of Vietnam Against Kampuchea.”¹⁰⁵ Fighting was continuous throughout 1978 and ended with a full scale invasion of DK by Vietnamese forces on 25 December 1978, resulting in the capture of Phnom Penh and the fall of the regime on 6 January 1979.¹⁰⁶

B. AUTHORITY STRUCTURE

CPK AUTHORITY STRUCTURE

38. The CPK controlled DK¹⁰⁷ via a strict hierarchical structure within which orders were systematically passed down from the highest level to the lowest echelons and rigidly

implemented. The CPK Statute identified the Central Committee as the “highest operational unit throughout the country.”¹⁰⁸ The Central Committee – also referred to as

“Committee 870”¹⁰⁹ – had a total of at least 30 members.¹¹⁰ The Central Committee comprised members of the Standing Committee – a sub-committee of the Central Committee – and included Zone and Sector Secretaries.¹¹¹ The Central Committee met every six months.¹¹²

39. In practice, the Standing Committee¹¹³ was the highest and most authoritative unit within the CPK and the DK government.¹¹⁴ Khieu Samphan stated that “the political line and decision making process were [...] established at the standing committee,”¹¹⁵ and Duch has declared that it was “the most important body within the Party.”¹¹⁶ The headquarters of the Central and Standing Committee in Phnom Penh was known as “Office 870”. During the DK period, the Standing Committee had seven members, five of whom were “full rights” members and two of whom were “candidate,” “reserve” or “alternate” members.¹¹⁷ As of April 1975, the “full rights” members included Pol Pot, Nuon Chea, Ieng Sary, East Zone Secretary Sao Phim and Southwest Zone Secretary Ta Mok.¹¹⁸
40. The Standing Committee created, directed and monitored the implementation of all CPK and DK government policies. Specifically, the Standing Committee controlled policies regarding internal and external security,¹¹⁹ foreign affairs,¹²⁰ domestic affairs including finance, commerce, industry, agriculture, health and social affairs,¹²¹ propaganda and re-education,¹²² and CPK and State personnel, and administrative matters.¹²³ The Standing Committee discussed and ordered large-scale forced movements,¹²⁴ the use of forced labour¹²⁵ and the arrest and interrogation of “enemies,”¹²⁶ monitored living conditions throughout the country,¹²⁷ and had the authority to order the summary execution of people at will.¹²⁸
41. Directives of the Central and Standing Committees were sent to zone offices, military divisions and ministries, where they were disseminated to sectors, districts and other lower echelons.¹²⁹ Explicit instructions were provided in directives on how they were to be communicated and implemented.¹³⁰ Standing Committee Members also conducted inspections of the Zones.¹³¹

42. The Central and Standing Committees strictly defined and enforced CPK policies, which were collectively known as the Party “line.”¹³² As described by a CPK cadre, “everything” originated from the Party Centre.¹³³ Any attempt to criticise or alter the “Party line” was regarded as a treasonous act of “revisionism.”¹³⁴ The CPK Statute prohibited any “independentism, liberalism [and] sectarianism,” and disciplined any Party member “opposing the Party political line” and “Party ideological stances.”¹³⁵
43. Before 17 April 1975 the CPK divided the country into the five core regions with coded numbers: the Northeast (108), North (304), Northwest (560), Southwest (405) and East (203) Zones and the “Special Zone” consisting of the area around Phnom Penh.¹³⁶ Immediately after the war, the West Zone (401) was created from a division of Southwest Zone.¹³⁷ In mid-1977, a seventh Zone was created when the previous autonomous Sectors 103 and 106 became the new North Zone (801), and the old North Zone was renamed the Central Zone.¹³⁸
44. Zones were subdivided into units known as sectors, which were in turn divided into districts.¹³⁹ A district was composed of several communes or sub-districts, which contained numerous villages. Farming and other traditional labour practices were gradually eliminated and reorganised into “co-operatives.”¹⁴⁰ The branch was the lowest level of organisation in the CPK hierarchy, and was formed at each co-operative, factory, military company-level unit, worksite and ministry office.¹⁴¹
45. Zones, sectors, districts and branches were instrumental in implementing the directives of the CPK Central and Standing Committees throughout the country. A three-person committee consisting of a secretary, deputy secretary and member governed each echelon in the CPK organisational hierarchy. For example, zone committees were responsible for overseeing the implementation of Party plans, tasks and lines in the sectors, districts and branches in that zone, and “reporting to the Central Committee on the situation and the work of the Zone.”¹⁴² The committees at the sector, district and branch levels fulfilled a similar function of implementing the tasks assigned by the CPK upper echelon and reporting to the upper echelon on their respective situations and work.¹⁴³ Each committee member was generally tasked with a particular role: the secretary was responsible for appointing and removing members of the committee, the deputy secretary was responsible

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- for security and the Member was responsible for economics.¹⁴⁴ However, committee meetings were regularly held at each level of organisation to examine, monitor and deliberate on work,¹⁴⁵ and all members had substantive input on the committee's affairs.¹⁴⁶
46. Zone committees were required to "hold ordinary meetings once every three months to examine, monitor, and deliberate on old work and to bring up new work."¹⁴⁷ Zone committee members generally held positions in the CPK Standing and/or Central Committees.¹⁴⁸ In most zones, each of the sector secretaries attended the meetings of the zone committee and held a position as either the zone deputy secretary, member or alternate member of the zone committee.¹⁴⁹
47. Sector committees were required to hold meetings on a monthly basis.¹⁵⁰ Sector committees were tasked with coordinating all work done in the sector in line with Party policy.¹⁵¹ The sector committee was responsible for ensuring that persons in the sector were ideologically and politically prepared in accordance with the "Party line".¹⁵² The sector committee was also charged with administering "discipline"¹⁵³ and the "defence" of the DK regime.¹⁵⁴ The sector committee was required to report to the upper echelon on the situation in the area.¹⁵⁵
48. District committees were required to hold monthly meetings.¹⁵⁶ They were to lead and oversee the work of all cadres, branches, cooperatives and military in their area in accordance with the "Party line".¹⁵⁷ The district committee was also directed by the Party to ensure the ideological and political teaching of all persons in the district and the "defence" of the DK regime.¹⁵⁸ This included administering "discipline".¹⁵⁹ The district committee was required to maintain "a system of reporting to the upper echelon on the situation and the work of the district".¹⁶⁰
49. The DK Constitution gave the Revolutionary Army of Kampuchea ("RAK"), formally created in 1975, the task to "defend the State power" and "help to build [the] country."¹⁶¹

The three branches of the RAK – the regular or main-force army, the sector army, and the militias or *chhlop* – provided internal and external security under the absolute leadership of the CPK.¹⁶² At the zone level, a number of standing divisions were kept in place, charged with the day-to-day security of the zone.¹⁶³ Districts also maintained battalions for local defence¹⁶⁴ in addition to controlling local militias.¹⁶⁵

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THE SOUTHWEST ZONE AUTHORITY STRUCTURE 1976-1977

SOUTHWEST ZONE

50. There were four sectors in the Southwest Zone.¹⁶⁶ From 1975, Ta Mok was the Southwest Zone Secretary.¹⁶⁷ His subordinates on the committee included Ta Si,¹⁶⁸ Ta Bit,¹⁶⁹ and Ta Chab.¹⁷⁰ Ta Mok ordered prominent cadres such as **Im Chaem**¹⁷¹ and Yim Tith¹⁷² to be sent from the Southwest Zone to the Northwest Zone from 1976 onwards.
51. The Southwest Zone Committee received orders from the Central Committee.¹⁷³ It then disseminated those instructions to lower levels through meetings and education sessions, including warning about “enemies” and against making mistakes.¹⁷⁴ The Zone Committee also coordinated forced marriages conducted at the lower levels.¹⁷⁵

Sector 13

52. There were five districts in Sector 13: Tram Kak District, Angkor Chey District, Treang District, Koh Andet District, and Kirivong District.¹⁷⁶ Ta Saom was the Sector 13 Committee Secretary until 1976¹⁷⁷ and was replaced by Ta Prak.¹⁷⁸ Meas Muth was the Deputy Secretary of the Sector 13 Committee.¹⁷⁹ **Im Chaem** became a member of the Sector 13 Committee in 1976.¹⁸⁰
53. The Sector Committee strictly followed instructions from the Zone Committee¹⁸¹ and oversaw; *inter alia*, study sessions, propaganda, education, work and security.¹⁸² Sector meetings were frequently held with all the district and/or commune secretaries within the Sector where instructions were passed down from the upper echelons.¹⁸³ These meetings

discussed, *inter alia*, CPK policy, work projects, living conditions, vigilance against enemies and information on what was happening at lower levels.¹⁸⁴

Koh Andet District

54. There were six communes in Koh Andet District. Sieng was the Koh Andet District Committee Secretary until his transfer to Kirivong District in 1976.¹⁸⁵ **Im Chaem** was then appointed Secretary of the District.¹⁸⁶ Ouch Neang *alias* San was the Koh Andet Deputy Secretary under both Sieng¹⁸⁷ and **Im Chaem**.¹⁸⁸
55. The District Committee organised the cooperatives and communes, assigned people to work and held regular education sessions and meetings for members of the lower

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echelons.¹⁸⁹ The District Committee controlled security within the district,¹⁹⁰ including ordering lower level cadres to target groups deemed “enemies” – such as the Vietnamese, Lon Nol soldiers, and “17 April” people.¹⁹¹

THE NORTHWEST ZONE AUTHORITY STRUCTURE 1977-1979

NORTHWEST ZONE

56. There were seven sectors within the Northwest Zone.¹⁹² From the beginning of the DK Regime, Ruos Nhim was the Northwest Zone Secretary.¹⁹³ Ta Keu was the Deputy Secretary¹⁹⁴ and Ta Pet *alias* Heng Teav was a member of the Committee.¹⁹⁵ Ruos Nhim was purged in 1978¹⁹⁶ and replaced by Ta Mok.¹⁹⁷ Ta Pet was also removed in 1978.¹⁹⁸ Ta Mok was then Secretary of both the Northwest Zone and Southwest Zone.¹⁹⁹
57. Northwest Zone committee members held meetings²⁰⁰ where sector and district attendees were told to live and work in accordance with the “Party line”.²⁰¹ Instructions from the Centre included working hard to increase crop production²⁰² and searching out internal “enemies” including KGB agents and the “Yuong”.²⁰³ Committee Members visited worksites,²⁰⁴ presided over forced marriage ceremonies²⁰⁵ and instructed the lower

echelons regarding security issues such as ordering that certain people be sent for “education” – meaning they would be killed.²⁰⁶

Sector 5

58. There were four districts within Sector 5: Phnom Srok District, Sisophon District, Thma Puok District and Preah Net Preah District.²⁰⁷ In late 1978, the Northwest Zone sectors were reorganised and a northern part of Sector 3 was merged into Sector 5.²⁰⁸ Men Chun *alias* Hoeng was the Sector 5 Secretary.²⁰⁹ Ta Vuth was the Deputy Secretary.²¹⁰ Kong Lem *alias* Lai was a member of the Committee²¹¹ and Ta Chiel was an assistant.²¹² Southwest cadre Heng Rin replaced Hoeng as Sector 5 Secretary in June 1977.²¹³ Rin was subsequently purged in November 1978.²¹⁴ After Ta Vuth disappeared in September 1977,²¹⁵ Ta Cheal effectively acted as Deputy Secretary.²¹⁶ When Ta Cheal was sent to S-21 in June 1978,²¹⁷ **Im Chaem** became the Deputy Secretary of Sector 5.²¹⁸ **Im Chaem** had already replaced Ta Lai to become a Sector 5 Committee member shortly after her arrival in the Northwest Zone in mid-1977.²¹⁹

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59. Sector Committee members frequently travelled throughout the Sector, including visiting worksites²²⁰ and security offices.²²¹ Sector Members held regular meetings to disseminate CPK policy to lower level cadres and ordinary workers from all districts in the sector.²²² The Sector Committee oversaw the movement of people,²²³ control of food rations,²²⁴ forced marriages²²⁵ and security issues such as the targeting of certain groups deemed “enemies”, including former Lon Nol officials and “17 April” people.²²⁶

Preah Net Preah

60. There were six communes in Preah Net Preah District: Rohal Commune, Preah Net Preah Commune, Prasat Commune, Teuk Chor Commune, Phnom Leap Commune and Tean Kam Commune.²²⁷ An Maong²²⁸ was the Preah Net Preah District Secretary and Sâm-At²²⁹ the Deputy Secretary from 1975 until the purge of the district by Southwest Zone cadres.

Kho was the District Committee member²³⁰ from the start of the DK Regime and remained part of the Committee after the arrival of the Southwest Zone cadres.²³¹ **Im Chaem** was Preah Net Preah District Secretary from her arrival in mid-1977²³² until the end of the DK Regime.²³³ **Im Chaem** claims she alone was sent as leader.²³⁴ Northwest cadres, including commune leaders, were also removed and executed during the purge.²³⁵ Preah Net Preah was then re-organised and Southwest cadres appointed to positions.²³⁶ Having brought militiamen from the Southwest Zone²³⁷ **Im Chaem** disarmed those already in the District.²³⁸

61. District Secretary **Im Chaem** frequently travelled throughout the District²³⁹ including visiting worksites²⁴⁰ and security offices.²⁴¹ Work projects in the District were approved by the upper echelons.²⁴² **Im Chaem** held regular meetings²⁴³ including in communes,²⁴⁴ worksites²⁴⁵ and security offices.²⁴⁶ Meetings were used to exert control and disseminate CPK policies such as the need to work hard²⁴⁷ and identify “enemies”.²⁴⁸ The District Committee organised forced marriages²⁴⁹ and was responsible for security within the District, which included targeting of certain groups deemed “spies” and “internal enemies” including the Vietnamese, Khmer Krom, former Lon Nol regime officials, and “17 April” people.²⁵⁰

C. CPK COMMUNICATIONS SYSTEM

62. The CPK established a system in which lower echelons regularly reported to the upper

echelons on their “situation” and “work”.²⁵¹ The communication system allowed the Standing Committee to issue directives to the lower echelons, enabling the Standing Committee to maintain tight control over the implementation of Party policies. The CPK employed a variety of means to maintain communication, including a nationwide radio system, telephones, telegraphs and messengers.²⁵²

63. The Party Centre exchanged information with the zones at regular scheduled times using

radio transmissions.²⁵³ The Centre communicated to the districts through the zones and sectors.²⁵⁴ Meetings were utilised at the sector and district levels to disseminate the Party Centre's instructions, which would in turn be transmitted to commune and cooperative leaders.²⁵⁵ At the commune and village levels, communications were delivered by messengers who carried letters²⁵⁶ or passed on messages verbally.²⁵⁷ Communications from district to district, sector to sector or zone to zone were discouraged, with all communications required to go through the Centre.²⁵⁸

64. CPK leaders also regularly used written documents such as letters, memoranda, reports, policy directives and official publications to disseminate instructions and policy.²⁵⁹ The 'Revolutionary Flag' and 'Revolutionary Youth' publications were the official sources for internal dissemination of CPK policy.²⁶⁰ These publications were distributed to party members at the zone, sector, district and commune levels²⁶¹ and were read out during meetings and study sessions.²⁶²

COMMUNICATIONS IN THE SOUTHWEST ZONE (1976-1977)

MEETINGS AND PROPAGANDA SESSIONS IN SECTOR 13 AND THE SOUTHWEST ZONE

65. Sector 13 leaders met two to three times per month with district level cadres.²⁶³ Sector leaders including **Im Chaem** would talk at these meetings about issues such as identifying internal "enemies".²⁶⁴ The Sector also held an annual meeting at which all district leaders attended.²⁶⁵ These meetings were used to instruct leaders on broad issues including politics and military affairs.²⁶⁶ Southwest Zone Secretary Ta Mok, a member of the CPK Standing Committee, also met with leaders, including **Im Chaem**, to provide instructions on the organisation of lower echelons.²⁶⁷
66. District level meetings were used to instruct commune leaders on CPK policies two or

three times a month.²⁶⁸ Commune and cooperative leaders²⁶⁹ were instructed on topics such

as work projects, food production, and purging internal enemies. These issues from these lower levels were also transmitted to the district level.²⁷³

67. Study sessions were regularly held in communes, villages and worksites by leaders such as **Im Chaem**²⁷⁴ to instruct and indoctrinate workers.²⁷⁵ Attendees were reminded to work hard to achieve CPK targets, and that “traitors” who betrayed Angkar would be killed.²⁷⁶

REPORTING THROUGH THE ECHELONS OF SECTOR 13 TO THE PARTY CENTRE

68. The Southwest Zone made weekly and monthly reports to Office 870 based on information passed from the lowest levels upwards.²⁷⁷ The lower echelons reported on security within the districts, such as capturing “enemies”²⁷⁸ and provided detailed information on rice production, including the number of hectares to be planted in each district.²⁷⁹ The Southwest Zone sent messages and instructions to the sectors through telegrams.²⁸⁰ Telegrams were coded and sent through special telegram operators.²⁸¹ They were then delivered as letters by messengers on bicycle or horse.²⁸² These letters generally contained information that leaders did not want to announce over radio.²⁸³
69. Sector 13 received regular reports from district committees which were then sent to the Southwest Zone.²⁸⁴ Sector leaders also communicated reports to Southwest Zone Secretary Ta Mok regarding security offices in Sector 13.²⁸⁵ District committees provided reports to Sector 13²⁸⁶ in the form of telegrams delivered by messengers or through walkie-talkies.²⁸⁷ Only authorised messengers delivered written reports from the districts to the sector.²⁸⁸ These reports contained information from the lower echelons on internal and external “enemies”, food production, work projects and workers’ living conditions.²⁸⁹
70. Commune leaders had to provide regular detailed reports to their respective district.²⁹⁰ These were delivered to district leaders by messengers throughout Sector 13.²⁹¹ Commune leaders also prepared lists containing names, ages, and family details of those in the commune every two or three months.²⁹² The lists were used when implementing the forcible movement of people to different communes.²⁹³ Village chiefs also created written biographies that contained information on people’s backgrounds and ethnicities²⁹⁴ that were sent to the commune and district level.²⁹⁵ Based on this information, further lists were prepared²⁹⁶ of those to be “swept completely clean”, naming those within targeted groups

such as ethnic Vietnamese, Khmer Krom and others deemed “enemies”.²⁹⁷ Forced marriages were also reported from the commune through to Sector 13, and leaders from the lower echelons regularly sent lists of couples to be married.²⁹⁸

COMMUNICATIONS IN THE NORTHWEST ZONE (1977-1979)

MEETINGS AND PROPAGANDA SESSIONS IN SECTOR 5 AND THE NORTHWEST ZONE

71. Northwest Zone leaders attended large meetings with lower level cadres to instruct them on CPK policies and ideology.²⁹⁹ Zone leaders also instructed the lower levels regarding work projects.³⁰⁰ During the purges, such meetings were used to publicly accuse purged Northwest Zone cadres of being “traitors”.³⁰¹
72. Sector 5 leaders provided instructions on CPK policy to district level cadres at meetings,³⁰² emphasising issues such as work projects and increased food production.³⁰³ Meetings were used also by sector leaders to remove lower level cadres from their positions during the purges.³⁰⁴ Women were frequently called to meetings with sector leaders such as **Im Chaem** to coerce them into forced marriages.³⁰⁵
73. District committees held meetings with cooperative leaders approximately three times each month.³⁰⁶ At these meetings, cooperative and commune chairmen received instructions to make arrests from **Im Chaem**.³⁰⁷ She also issued instructions on producing crops and digging canals.³⁰⁸ **Im Chaem** also led cadres in study sessions throughout Sector 5 on the organisation of the lower echelons.³⁰⁹
74. Commune leaders held a meeting every month³¹⁰ and large meetings attended by all individuals in the communes were held periodically.³¹¹ **Im Chaem** spoke regularly at such meetings³¹² and at worksites around Preah Net Preah District.³¹³ Workers were instructed to eliminate internal “enemies”,³¹⁴ warned to follow CPK policy,³¹⁵ and told to work hard.³¹⁶ Copies of DK magazines containing Party propaganda were disseminated every six months.³¹⁷ CPK publications were distributed to districts first, then to the villagers at meetings.³¹⁸

REPORTING THROUGH THE ECHELONS OF SECTOR 5 TO THE PARTY CENTRE

75. Based on reports from the lower levels, the Northwest Zone would make monthly reports

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example, Northwest Zone Secretary Ruos Nhim requested instructions on how to deal with “enemies” that had been captured³²⁰ and signed off another report by requesting “Please, Angkar, give ideas and advice.”³²¹

76. Sector 5 sent weekly written reports to the Northwest Zone documenting issues such as the number of internal “enemies” that had been swept “cleanly away” from communes and villages.³²² The reports also detailed how the commune and district levels adhered to CPK policies,³²³ such as information about “indoctrinating” workers at meetings³²⁴ and updates on food production.³²⁵
77. District leaders regularly prepared written reports to send to Sector 5.³²⁶ Such reports included information that had been received from the cooperative and commune chiefs.³²⁷ In addition to reports from the lower echelons, **Im Chaem** received population lists when she arrived as Preah Net Preah District Secretary.³²⁸ She was also given biographies³²⁹ that contained information on targeted groups, such as those of Vietnamese ethnicity.³³⁰
78. After **Im Chaem** and the Southwest Zone cadres arrived, commune leaders were instructed to check people’s backgrounds and report on suspected “enemies”.³³¹ Workers and villagers were instructed to report on CIA, KGB and Vietnamese networks.³³² Group chiefs would prepare reports about a suspected “enemy”³³³ and send them to the district level.³³⁴

D. COMMON CRIMINAL PLAN

79. **Im Chaem** is responsible for committing the crimes alleged in this Submission through two joint criminal enterprises – one in the Southwest Zone and one in the Northwest Zone. The common plan of both JCE’s was to eliminate perceived enemies and opposition to the CPK leadership and implement the Party’s radical agrarian, economic and social policies through the commission of crimes.
80. As detailed below, the CPK’s targeting of perceived opposition took the form of

identifying, arresting, detaining and killing various categories of perceived “enemies”, who were summarily executed or sent to security offices. Implementation of the CPK’s radical agrarian, economic and social policies involved forcibly relocating civilians to worksites and cooperatives in the countryside under conditions amounting to enslavement as well as forcing couples to marry to increase DK’s population.

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ELIMINATION OF ENEMIES AND OPPOSITION TO CPK LEADERSHIP

81. As early as the First Party Congress in 1960, the Khmer Rouge resolved to use armed violence to crush the “enemy” and increasingly over time applied this policy not just to military opponents but any civilians seen as potential political threats.³³⁵ The CPK Statute exhorted members to maintain vigilance against the “enemy” and defend revolutionary forces, both inside and outside the party.³³⁶ Article 10 of the DK Constitution stated that “dangerous activities” must be “condemned to the highest degree” and that “other cases” should be subject to constructive re-education.³³⁷
82. The CPK did not define who constituted an “enemy”, but targeted any individual or group deemed to be opposed or a threat to the DK regime. This included: former Lon Nol regime officials;³³⁸ Buddhists;³³⁹ Vietnamese;³⁴⁰ Khmer Krom;³⁴¹ Cham;³⁴² those considered to be CIA and KGB “spies”; and, those from the “bourgeois”, “feudalist” or “capitalist” classes.³⁴³ The CPK stirred “hatred against the enemy”³⁴⁴ and constantly emphasized the need to maintain “high revolutionary vigilance”.³⁴⁵
83. The CPK abolished all judicial or legal structures³⁴⁶ and implemented this policy of targeting perceived opponents through summary detentions and executions and the creation of a vast network of security offices.³⁴⁷ A 1976 Central Committee decision gave particular zone committees the “right to smash inside and outside the ranks”.³⁴⁸ The term “smash” referred to extra-judicial executions.³⁴⁹ In certain areas, decisions to “smash” were further delegated to sectors³⁵⁰ and districts.³⁵¹ At security offices nationwide, individuals were

detained, interrogated, tortured and killed.³⁵² The torture and interrogation of those deemed “enemies” often involved coerced confessions implicating others – creating a cycle of arrests and killings.³⁵³

84. The policy of “smashing enemies” and arresting “bad elements” was disseminated via the CPK’s national publications,³⁵⁴ CPK radio broadcasts,³⁵⁵ and CPK meetings at all echelons.³⁵⁶ The “smashing” of “enemies” was consistently recorded in ‘Revolutionary Flag’ and ‘Revolutionary Youth’ magazines between 1975 and 1979.³⁵⁷ Telegrams between various levels of the CPK hierarchy also reported “enemy activity” and details of people killed.³⁵⁸
85. In 1977, the CPK’s elimination of “traitors” and “enemies”, as well as their families,³⁵⁹

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escalated.³⁶⁰ The Centre coordinated mass purges of CPK cadres,³⁶¹ including the purge of the Northwest Zone by Southwest Zone cadres.³⁶² As the war with Vietnam intensified, the CPK also intensified attacks on remaining Vietnamese in Cambodia,³⁶³ and anyone linked to Vietnam,³⁶⁴ including the Khmer Krom.³⁶⁵ A 1978 ‘Revolutionary Flag’ ordered every level of the Party to “adopt the role of leading the army and the people to attack all [...] enemies, sweep them cleanly away, sweep, sweep and sweep again and again ceaselessly, so that our Party forces are pure, our leading forces at every level and in every sphere are clean at all times.”³⁶⁶

AGRARIAN, ECONOMIC AND SOCIAL POLICIES

ESTABLISHMENT OF COOPERATIVES AND WORKSITES

86. The CPK sought to rapidly create a socialist state in which all citizens worked collectively in agriculture and industry to ensure the DK’s economic strength and self-sufficiency.³⁶⁷ Implementing this policy led to the creation and operation of cooperatives and worksites in which citizens were forced to live and work under conditions that amounted to enslavement.³⁶⁸

87. From 1972, the CPK established cooperatives and worksites in territories they controlled.³⁶⁹ Currency and private markets were abolished.³⁷⁰ In 1973, the CPK adopted a policy of forcibly moving civilian populations out of urban areas to work in cooperatives and worksites in the countryside.³⁷¹ The policy had economic, political and ideological objectives: (i) to attack the economic power of the “feudalists and land owners”,³⁷² (ii) to disperse, monitor, control and kill any people opposed to the CPK and the revolution,³⁷³ and, (iii) to rapidly increase agricultural production.³⁷⁴
88. The CPK established cooperatives and worksites across the country upon gaining power.³⁷⁵ These included farming cooperatives; worksites to construct irrigation networks,³⁷⁶ dams,³⁷⁷ airfields,³⁷⁸ salt fields, and stone quarries.³⁷⁹ Mobile units were created to work on multiple worksites and agricultural cooperatives.³⁸⁰ The CPK’s policy regarding cooperatives and worksites³⁸¹ was disseminated through CPK directives,³⁸² meetings at all echelons,³⁸³ publications,³⁸⁴ and CPK radio broadcasts.³⁸⁵ Cooperatives and worksites were required to adopt a similar structure and method of operation across the country.³⁸⁶ The CPK acknowledged the coercion of the policy,³⁸⁷ stating that production was to be

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- achieved by any means necessary³⁸⁸ and deploying the army to enforce it.³⁸⁹ The CPK set unrealistic production quotas, such as requiring three tons of paddy per hectare.³⁹⁰
89. The forced population transfers rapidly expanded the population of cooperatives and worksites.³⁹¹ People were forced to live and work in inhumane conditions. This included: inhumane work quotas and hours, insufficient food, separation of family members, lack of hygiene and medicine, and harsh discipline. Labour was done almost exclusively without the assistance of machinery.³⁹² CPK cadres classified starving workers foraging for food, visiting family without permission, or trying to flee, as betraying the revolution.³⁹³ The inhumane conditions were widely known and reported.³⁹⁴ CPK leaders at various levels visited worksites³⁹⁵ and food shortages and disease were acknowledged at meetings,³⁹⁶ in

CPK publications⁴⁰⁰ and reported through telegrams.⁴⁰¹

90. Despite insufficient food at worksites and cooperatives,³⁹⁹ the DK regime claimed to have surplus rice for export⁴⁰⁰ and declined international aid.⁴⁰¹ In 1977, amidst reports of starvation in the Northwest Zone,⁴⁰² the Party Centre sent Southwest Zone cadres and hundreds of workers to the Northwest Zone⁴⁰³ to purge the leadership of the Northwest Zone.⁴⁰⁴ Conditions significantly worsened with a reduction in already limited rations⁴⁰⁵ and an increase in arrests and killings.⁴⁰⁶ Ultimately, the CPK's policy response to its systemic ill-treatment of the people was to seek out and purge enemies with greater vigour.⁴⁰⁷

FORCED MARRIAGE

91. After gaining power in 1975, the CPK propagated its policy of the "revolutionary family", which was to replace the traditional Cambodian family.⁴⁰⁸ The CPK warned against individual concerns and emotions,⁴⁰⁹ characterising unsanctioned relationships with the opposite sex as distractions from the "revolution".⁴¹⁰ Family ties were instead to be focused on producing children.⁴¹¹
92. The CPK sought to rapidly increase Cambodia's population – to have soldiers to defend it from "enemies" and more workers to build the economy.⁴¹² In January 1977, the CPK announced that DK needed 15 to 20 million people to meet the needs of the land within five to ten years.⁴¹³ Pol Pot himself explained that this goal was to be achieved through the organisation of marriages.⁴¹⁴

93. The CPK controlled family building by forcing couples to marry⁴¹⁵ and imposing morality restrictions on all other relationships.⁴¹⁶ Spouses were to be selected with clean backgrounds and couples had to belong to the same political class.⁴¹⁷ Individuals often did not know the person who they were being forced to marry.⁴¹⁸ The CPK cadres' decisions on marriages were to be "absolutely respected".⁴¹⁹ Those who refused to marry risked being re-educated, imprisoned or executed.⁴²⁰

94. Wedding ceremonies, involving up to 100 couples,⁴²¹ were collective and replaced Khmer wedding traditions.⁴²² Couples were forced to consummate the marriage,⁴²³ with those who refused threatened⁴²⁴ and sometimes killed.⁴²⁵ CPK cadres presiding over the ceremonies often told the newlyweds to “have babies for Angkar”.⁴²⁶ Once the marriage was consummated, couples were usually separated to continue their labour and saw each other periodically.⁴²⁷

E. ROLE OF IM CHAEM

OVERVIEW

95. **Im Chaem** was born and raised in Cheang Tong Commune, Kbal Ou Village, Tram Kak District, Takeo province.⁴²⁸ Tram Kak was also the birthplace of Ta Mok and was one of the core Khmer Rouge bases.⁴²⁹ **Im Chaem** joined the Khmer Rouge in 1970, stating that she did so because of fear “that our territory and Khmer race might be lost.”⁴³⁰ Though describing herself as an “ordinary member at the lower rank [who] just followed the leaders”,⁴³¹ the facts demonstrate that **Im Chaem** steadily ascended the Khmer Rouge to eventually hold positions at the district and sector levels.
96. **Im Chaem**’s role is marked by her association with Standing Committee member Ta Mok. Every position **Im Chaem** held in the Southwest and Northwest Zones was assigned to her by Ta Mok. **Im Chaem** was one his closest cadres,⁴³² variously described as “the second person after Ta Mok”,⁴³³ “the right hand of Ta Mok”⁴³⁴ and “Ta Mok’s special person”.⁴³⁵ **Im Chaem** states that she knew Ta Mok “very well” and was not afraid to disagree and argue with him.⁴³⁶
97. Pol Pot personally entrusted **Im Chaem** to lead the purge in the first region of the Northwest Zone to be ‘cleansed’.⁴³⁷ **Im Chaem** has herself acknowledged that the Central

in at least two S-21 “confessions”.⁴³⁹ So close were her relations with the highest levels of the Party that she was confident Northwest Zone leader Ruos Nhim “dared not to arrest me”.⁴⁴⁰ Throughout various internal purges, **Im Chaem** was repeatedly called upon to assume positions of authority. In her own words: “anywhere I have been to I was always [...] chosen to be a leader.”⁴⁴¹

98. **Im Chaem**’s loyal implementation of the CPK’s policies was rewarded by her rapid promotions from a Khmer Rouge collective labour leader to ultimately hold the position of Deputy Secretary of a major sector in the Northwest Zone. Her ascent to hold such power is well explained by her admission that during the Khmer Rouge regime she was “extremely loyal to [her] work”.⁴⁴² Indeed, she was undeterred by the fall of the regime, working under Ta Mok in Anglong Veang until the 1990s,⁴⁴³ and continues to express admiration for figures such as Pol Pot, Ta Mok, Nuon Chea and Khieu Samphan.⁴⁴⁴ Despite suggesting that she was only following orders,⁴⁴⁵ **Im Chaem** states that she was “happy to do [her] work”.⁴⁴⁶ Yet when asked specifically about the huge number of people killed by the Khmer Rouge, **Im Chaem** distances herself from any plan that caused such killings, describes herself as having “struggled for my nation and race”⁴⁴⁷ and expresses no feelings of remorse for what occurred.⁴⁴⁸
99. **Im Chaem**’s claims to have worked to improve the conditions of the people under her authority are contradicted by the evidence.⁴⁴⁹ Despite the secrecy of the regime,⁴⁵⁰ she earned a reputation for cruelty,⁴⁵¹ exemplified by telling those forced to attend her meetings that it was better to keep rice seeds than human genes.⁴⁵² **Im Chaem** has described in detail the conditions of the people in Preah Net Preah when she arrived as District Secretary,⁴⁵³ referring, *inter alia*, to the “very terrible situation” in which 10,000 had disappeared.⁴⁵⁴ Southwest Zone cadres told people that the Northwest cadres had made mistakes which caused the food shortages.⁴⁵⁵ However, the evidence is unequivocal that conditions under **Im Chaem** and the Southwest Zone cadres were worse than those under the Northwest cadres.⁴⁵⁶ People were forced to do additional labour⁴⁵⁷ and there were many more arrests, disappearances,⁴⁵⁸ and killings.⁴⁵⁹ There was not enough food⁴⁶⁰ and those caught with food would be punished.⁴⁶¹ Large numbers died from starvation and illness.⁴⁶²

100. **Im Chaem**'s claims to have protected people such as Bin Sokh⁴⁶³ and Khou⁴⁶⁴ have been directly contradicted by Bin Sokh⁴⁶⁵ and Khou⁴⁶⁶ themselves. What such fabrications, as well as her claims to have refused orders to arrest people⁴⁶⁷ do show, however, is that **Im Chaem** had the authority to protect people, but that she chose not to. **Im Chaem** had the ultimate power of life or death over the people under her control in her various positions in the Southwest and Northwest Zones. **Im Chaem** has bragged about her life or death power, saying that even if people were wrongly accused of being an enemy, "if I, as the leader, agreed to it, the life of these people would be gone. These innocent people would be taken away to be killed."⁴⁶⁸

SOUTHWEST ZONE 1970-1977

POSITION AND AUTHORITY

Pre 1976

101. **Im Chaem** held various positions and responsibilities in the Southwest Zone during the 1970-1975 war and the period of the CPK regime prior to the purge of the Northwest Zone.⁴⁶⁹ In 1971, Ta Mok appointed **Im Chaem** to run a labour collective in Cheang Tong Commune, Tram Kak District, Takeo Province,⁴⁷⁰ where she was in charge of overseeing the completion of daily labour tasks. She then became chairperson of Cheang Tong Commune and organised the villages therein.⁴⁷¹ As a CPK party member, **Im Chaem** organised cooperatives following the political and ideological stance of the Party.⁴⁷² **Im Chaem** proselytized to the masses the ideology and organisation of the CPK,⁴⁷³ pursued the defence of the DK regime and the achievement of its stated aims of rapid reform,⁴⁷⁴ unconditionally respected CPK organisational discipline,⁴⁷⁵ and strived to consolidate internal Party unity while maintaining vigilance for that which could undermine the Party.⁴⁷⁶
102. In 1972, **Im Chaem** was assigned to take charge of a female military unit comprising 400-500 women at Damrei Romiel Mountain, Tram Kak District, Takeo Province.⁴⁷⁷ Her responsibilities included educating and training the women in politics and production.⁴⁷⁸ The girls had to comply with moral codes and **Im Chaem** was involved in arranging marriages.⁴⁷⁹ **Im Chaem** was trusted to take charge of supervising all of the women in

marriages. **Im Chaem** was trusted to take charge of supervising all of the women in Sector 13 in 1973.⁴⁸⁰ She had supervision of thousands of women from the five districts of

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Sector 13,⁴⁸¹ Kirivong, Koh Andet, Treang, Angkor Chey and Tram Kak.⁴⁸² She had the power to assign the women to positions in village, commune and district cooperatives and to the Women's Unit,⁴⁸³ as well as recruit them to join the Khmer Rouge.⁴⁸⁴

103. When the Khmer Rouge took over Phnom Penh in 1975, **Im Chaem** was responsible for people who were evacuated to Takeo province⁴⁸⁵ and admits that it was a Khmer Rouge plan to evacuate people once they captured an area.⁴⁸⁶ As a supervisor of the women in the sector, **Im Chaem** would conduct study and education sessions in communes and villages.⁴⁸⁷ Those who were considered to have a bad background were required to undergo additional education.⁴⁸⁸ She retained this role while holding other leadership positions in the Southwest Zone until her transfer to the Northwest Zone in 1977.

104. In 1974, Ta Mok and Pol Pot assigned **Im Chaem** to supervise the people of Angkor Chey District.⁴⁸⁹ She organised the labour of those in the district,⁴⁹⁰ including the length of the working day.⁴⁹¹ While in charge of Angkor Chey, she admits to supervising the production of three tonnes of rice per hectare pursuant to the policy set down by Pol Pot.⁴⁹² As part of her role in Angkor Chey, **Im Chaem** inspected worksites.⁴⁹³ Her husband, Nop Nhen, would later become the Secretary of Angkor Chey District.⁴⁹⁴

1976 to 1977

105. In 1976, **Im Chaem** was transferred from Angkor Chey District to Koh Andet⁴⁹⁵ and appointed the District Secretary.⁴⁹⁶ **Im Chaem** had demonstrated the necessary ideological stance⁴⁹⁷ and commitment to the CPK's absolute "struggle in the national defense and national construction of Democratic Kampuchea in the direction of socialist revolution".⁴⁹⁸ **Im Chaem** has said that she was assigned to replace the previous Koh Andet District Secretary because she "could fulfil the plan".⁴⁹⁹ Her deputy in Koh Andet was Neang Ouch alias Ta San, the brother-in-law of Ta Mok who would later become the Secretary of Tram

Kak District.⁵⁰⁰ In March 1976, **Im Chaem** was also appointed a Southwest representative in the DK People's Representative Assembly.⁵⁰¹

106. In Koh Andet, **Im Chaem** organised villages and assigned people to work.⁵⁰² Youth groups were tasked with farming rice and building irrigation projects such as dams, canals and dikes.⁵⁰³ **Im Chaem** periodically met Ta Mok to receive instructions regarding her organisation of the district.⁵⁰⁴ She also participated in meetings,⁵⁰⁵ including a three-day

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meeting in 1976 where the 1,500 attendees were told about the invasion of the Vietnamese, the mobilisation of all forces to work at cooperatives,⁵⁰⁶ and the reassignment of Southwest Zone cadres to the Northwest Zone.⁵⁰⁷ As District Secretary, **Im Chaem** had authority over Wat Ang Srei security office and the adjacent Prey Sokhon execution site.⁵⁰⁸

107. In 1976, **Im Chaem** was also appointed Member of the Sector 13 Committee⁵⁰⁹ alongside, *inter alia*, Meas Muth.⁵¹⁰ As both Koh Andet District Secretary⁵¹¹ and Sector 13 Committee Member,⁵¹² **Im Chaem** was involved in all decision making affecting the district and sector.⁵¹³ Instructions were delivered to the lower echelons,⁵¹⁴ and the lower echelons duly reported back on the implementation of their work.⁵¹⁵ **Im Chaem** was subsequently transferred by Ta Mok to Takeo provincial town – the location of the Sector 13 and Southwest Zone offices.⁵¹⁶ There she worked at the district and sector levels: continuing as the Koh Andet District Secretary, the supervisor of the women in Sector 13 and Sector 13 Committee Member.⁵¹⁷

PARTICIPATION IN CRIMES

108. As a District Secretary and Sector Member, **Im Chaem** implemented CPK policies, including “vigilance” against perceived internal and external enemies⁵¹⁸ and searching out any such threats.⁵¹⁹ **Im Chaem** participated in meetings as a sector level cadre in Sector 13⁵²⁰ at which attendees were told that those who committed moral offences would be “smashed”.⁵²¹ The organisation of forced marriages was discussed at meetings,⁵²² as were

“security matters” such as fighting the invading “Yuon” and vigilance against those who got sick or damaged work equipment who could be “enemy spies”.⁵²³ At the sector meetings **Im Chaem** attended there was also discussion of people dying from starvation.⁵²⁴ Instructions were given to lower echelons to seek out those identified as “internal enemies”.⁵²⁵ Additionally, arrests were made at sector level meetings.⁵²⁶ **Im Chaem**, as a Sector Member, ordered District Security Chairman Ta Soeun to make arrests.⁵²⁷

109. **Im Chaem** also participated in study sessions in Takeo during this time.⁵²⁸ At one such gathering, **Im Chaem** led 1,500 attendees in a three-day session at which attendees were: told that the Vietnamese bombed CPK bases and burned houses; told that Southwest cadres would be sent to the Northwest Zone; and ordered to work hard to quickly achieve CPK targets.⁵²⁹

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110. **Im Chaem** states that she was in Takeo for about one year before being transferred to the Northwest Zone.⁵³⁰

TRANSFER TO NORTHWEST ZONE (MID 1977)

111. In mid-1977, **Im Chaem** led a group of over 1,000 people from the Southwest Zone to the Northwest.⁵³¹ Ta Mok⁵³² and Pol Pot sent **Im Chaem** to lead the purge of the Northwest Zone.⁵³³ Those sent with **Im Chaem** included ordinary people, village chiefs and commune chiefs.⁵³⁴ **Im Chaem** chose those people because she needed them to work in the Northwest Zone⁵³⁵ and serve as “role-models” for the “base people” in the Northwest Zone.⁵³⁶ The group also included 500 military personnel to be placed at work sites.⁵³⁷ **Im Chaem** states that no other Committee members were sent with her and she was the leader of the group.⁵³⁸ **Im Chaem's** implementation of the purge accorded with the CPK's stated aim to ensure “discipline” within the Party.⁵³⁹
112. The group left from Takeo on a train organised by Ta Mok.⁵⁴⁰ On the way to the Northwest Zone they stopped in Phnom Penh to attend a meeting with Pol Pot.⁵⁴¹ **Im Chaem** sat at

the front of the meeting with the general members of the CPK.⁵⁴² Pol Pot said that they were being sent to farm and exchange experience with those in the Northwest.⁵⁴³ **Im Chaem** has stated that she met personally with Pol Pot and he explained why she was being sent to the Northwest Zone.⁵⁴⁴ During the time in Phnom Penh, **Im Chaem** also met with upper echelon cadres⁵⁴⁵ and presided over meetings where forces were divided prior to departing for the Northwest.⁵⁴⁶

113. After they arrived at Svay Saophan District in Banteay Meanchey Province,⁵⁴⁷ people were gathered and assigned to work in various communes in Preah Net Preah District.⁵⁴⁸ Once they reached the communes, they were then sent to different cooperatives.⁵⁴⁹ **Im Chaem** ordered the arrangement of these forces.⁵⁵⁰

NORTHWEST ZONE 1977-1979

POSITION AND AUTHORITY

114. **Im Chaem** describes her initial organisation of Preah Net Preah District as being pursuant to duties tasked to her by the upper levels.⁵⁵¹ As the District Secretary,⁵⁵² **Im Chaem** controlled all the cooperatives, communes,⁵⁵³ villages and mobile units in Preah Net Preah

District,⁵⁵⁴ numbering 100,000 people: 10,000 'old people' and 90,000 'new people' who had been evacuated from Phnom Penh and elsewhere.⁵⁵⁵

115. In addition to being Preah Net Preah District Secretary, **Im Chaem** also took up sector level positions after figures on the Sector Committee were purged. Initially, **Im Chaem** became a Member of the Sector 5 Committee shortly after arriving in the Northwest Zone.⁵⁵⁶ Subsequently, in mid-to-late 1978, **Im Chaem** became the Deputy Secretary of Sector 5.⁵⁵⁷ Contemporaneous documents establish the dates when the previous Sector 5 Committee members were arrested and **Im Chaem** would have assumed her position as Member and then as Deputy Secretary. **Im Chaem** states that former Sector 5 Secretary Hoeng had been taken away before she arrived in Northwest Zone.⁵⁵⁸ leaving "Ta Lai and

Chiel [son of Zone Secretary Rhos Nhim]" at the Sector level.⁵⁵⁹ Sector 5 Committee Member Lai *alias* Kong Lêm entered S-21 on 2 September 1977,⁵⁶⁰ while Chiel was arrested about the same time as his father in June 1978.⁵⁶¹ Vuth, the other member of the former Sector Committee, was also purged in 1977.⁵⁶² Southwest cadre Heng Rin *alias* Mei replaced Hoeng as Sector 5 Secretary.⁵⁶³ Consequently, **Im Chaem** must have become a Sector 5 Committee Member no later than September 1977 (the time of Lai's arrest), and would have become Sector Deputy no later than June 1978 (the time of Chiel's arrest).

116. In late 1978, the Northwest Zone sectors were reorganised and a new Sector formed that merged the northern part of old Sector 3 (Mongkol Borei) into Sector 5.⁵⁶⁴ Rin, the Secretary of old Sector 5, was arrested in November 1978⁵⁶⁵ and replaced by former Tram Kak District chief Ta Chay.⁵⁶⁶ A Southwest Zone cadre who was assigned by Ta Chay to come to the Northwest Zone, and who was present at a meeting of the new sector committee, has testified that **Im Chaem** became the deputy secretary of that new sector.⁵⁶⁷ He also states that Nhen, Chaem's husband, became the Member of the sector committee.⁵⁶⁸ At Sector 5 level, **Im Chaem** had authority and responsibility for affairs in the districts of Phnom Srok, Preah Net Preah, Ou Chrov, Serei Saophoan, Thma Puok and Svay Chek.
117. **Im Chaem** acted both as Preah Net Preah District Secretary⁵⁶⁹ and Sector 5 Member and later Deputy Secretary.⁵⁷⁰ She was involved in all decision making affecting the district

and sector.⁵⁷¹ Instructions were transmitted down from the sector and district to communes and villages,⁵⁷² where the lower echelons implemented those orders and reported back.⁵⁷³

118. **Im Chaem** set up an office and residence in Phnum Lieb Commune,⁵⁷⁴ protected by armed guards.⁵⁷⁵ **Im Chaem** states that when she first arrived to the building, prisoners detained there had to be removed.⁵⁷⁶

PARTICIPATION IN CRIMES

PARTICIPATION IN AND AUTHORITY OVER PEOPLE'S LIVES

119. In areas under **Im Chaem**'s control, CPK cadre exercised powers of ownership over the lives of ordinary people. Individuals were forced to provide unremunerated labour and lived under the constant threat of arrest, detention and death. Family life was regulated and restricted and all expressions of opinion dictated by the CPK policies implemented by **Im Chaem**. Her authority permeated all facets of Preah Net Preah's organisation: she appointed cadres in the district;⁵⁷⁷ transferred persons within the district;⁵⁷⁸ controlled the food that was available;⁵⁷⁹ and controlled even basic movement – a travel permit authorised by **Im Chaem** was required for any movement within the sector.⁵⁸⁰
120. **Im Chaem** frequently held large meetings where cadres and ordinary people were indoctrinated in CPK ideology. **Im Chaem** sent messengers to communicate her orders to lower level cadres and required regular written or verbal reports back from them.⁵⁸¹ Lower echelons carried out the instructions provided by **Im Chaem**.⁵⁸² She would also summon people to her office through her messengers,⁵⁸³ or through the lower echelons.⁵⁸⁴ Messengers also brought communications from the sector level to **Im Chaem** at Phnum Lieb.⁵⁸⁵

Participation in and Authority over Meetings Discussing Crimes

121. Meetings were a core way of controlling people. **Im Chaem** ordered attendance at regular meetings.⁵⁸⁶ Upon becoming District Secretary, **Im Chaem** told attendees that the old Northwest cadres had betrayed the revolution,⁵⁸⁷ after the Northwest cadres had been killed.⁵⁸⁸ **Im Chaem** used meetings to convey CPK policy;⁵⁸⁹ the need to screen for high-ranking persons attached to the old regime to be killed;⁵⁹⁰ vigilance for, and eradication of internal "enemies";⁵⁹¹ warnings against opposing Angkar;⁵⁹² warnings not to be "lazy";⁵⁹³

and threats that people would be taken to study or be punished if they made a mistake.⁵⁹⁴ Meetings were also used to give instructions about building dams and canals,⁵⁹⁵ to work harder and faster,⁵⁹⁶ and to follow Angkar.⁵⁹⁷ Further, meetings were used by **Im Chaem** to send people to be re-educated or to the rear battlefield,⁵⁹⁸ to assign work,⁵⁹⁹ to appoint cadres,⁶⁰⁰ and as a pretext to have cadres arrested and killed.⁶⁰¹

122. **Im Chaem** would meet with villagers,⁶⁰² chiefs of villages and communes,⁶⁰³ mobile units,⁶⁰⁴ and senior unit leaders.⁶⁰⁵ Meetings with villagers were often very large, with thousands of attendees⁶⁰⁶ many of whom were required to travel long distances.⁶⁰⁷ They were held at **Im Chaem**'s office in Phnum Lieb,⁶⁰⁸ at pagodas,⁶⁰⁹ or worksites such as Trapeang Thma dam, Phnom Trayoung rock quarry and Spean Spreng dam,⁶¹⁰ at which daily work quotas were imposed on labourers⁶¹¹ and detainees were warned that they would be killed if they could not be refashioned.⁶¹² Such meetings were chaired either by **Im Chaem** or her subordinates.⁶¹³
123. **Im Chaem** organised and participated in sector meetings.⁶¹⁴ In 1978, she held regular, sometimes bi-weekly, meetings with the sector-level mobile unit leaders.⁶¹⁵ As at district meetings, sector meetings discussed seeking out internal enemies.⁶¹⁶ In 1978, **Im Chaem** and Ta Mok presided over a large meeting at which individuals who spoke against Angkar were taken away, killed and buried in the foundations of Trapeang Thma dam.⁶¹⁷
124. **Im Chaem** was accompanied by armed messengers whenever inspecting villages or attending meetings.⁶¹⁸

Participation in and Authority over Worksites

125. **Im Chaem** admits that she was in control of the labour forces and work in Preah Net Preah.⁶¹⁹ She acknowledged that she implemented plans from upper echelons regarding work projects, communicated with the upper level,⁶²⁰ and sent reports to the Central Committee.⁶²¹ From the time she arrived in the Northwest Zone, **Im Chaem** issued orders regarding how labour forces were to be deployed,⁶²² initiated labour projects,⁶²³ and was in charge of all canal and dam worksites, and all rice fields in the district.⁶²⁴ There were thousands of forced labourers in the various district units over which **Im Chaem** had control.⁶²⁵ These included children's units.⁶²⁶

126. **Im Chaem** visited the rice fields, dam construction sites and various other worksites in cooperatives in Preah Net Preah.⁶²⁷ She inspected the sites and the mobile units and witnesses remember her pressing labourers to work harder.⁶²⁸
127. **Im Chaem** appointed leaders of work units⁶²⁹ and gave instructions to unit chiefs regarding the work to be carried out by labourers.⁶³⁰ She called mobile unit chiefs to report to her on their work⁶³¹ and also received written reports from work units.⁶³² Unit chiefs were required to report to **Im Chaem** on issues like numbers of forces and requests for food.⁶³³ **Im Chaem** issued orders to mobile units and forces to move to different areas⁶³⁴ and instructed the units receiving the labour on monitoring the workers.⁶³⁵ **Im Chaem's** orders regarding labour were followed by the lower echelons.⁶³⁶
128. **Im Chaem** issued instructions to search for and capture labourers who escaped worksites.⁶³⁷ For example, Kor Len, who was chairman of a mobile unit, reported to Ta Poal that people in his work unit escaped. Ta Poal reported this to **Im Chaem**, who ordered militiamen to go and tell cooperative and commune chiefs to search for and bring back the escaped labourers.⁶³⁸ **Im Chaem's** messengers told Kor Len that the labourers had been captured and to collect them from the security office.⁶³⁹
129. By her own admission, **Im Chaem** sent workers and supervised work at Trapeang Thma dam and the rice fields around it.⁶⁴⁰ **Im Chaem** examined the work,⁶⁴¹ accompanied by armed guards,⁶⁴² or sent subordinates to do so.⁶⁴³ People were forced to work under **Im Chaem's** orders with insufficient food.⁶⁴⁴ She set the work that people were required to do,⁶⁴⁵ and was involved in punishing those who breached disciplinary rules.⁶⁴⁶ **Im Chaem** called group and unit chiefs to meetings when she examined the dam.⁶⁴⁷ At meetings led by **Im Chaem** and attended by thousands, participants were required to repeat chants regarding working hard and eliminating the capitalist class.⁶⁴⁸ **Im Chaem** also welcomed visiting delegations from China to Trapeang Thma dam, as well as Pol Pot and Khieu Samphan.⁶⁴⁹ Labourers who escaped the dam would be forced to return under **Im Chaem's** orders,⁶⁵⁰ or would be killed by soldiers under **Im Chaem's** control.⁶⁵¹
130. **Im Chaem** also admits to planning the construction of Spean Spreng dam and Prey

Roneam reservoir, which was dug by hand and took a year to build.⁶⁵² **Im Chaem** sent the labourers,⁶⁵³ set the work quotas,⁶⁵⁴ and oversaw the worksite⁶⁵⁵ – including calling

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meetings when at the site.⁶⁵⁶ **Im Chaem** states that Pol Pot assisted with the construction by providing supplies such as fabrics and food.⁶⁵⁷ Further construction projects were planned but not commenced due to the arrival of the Vietnamese soldiers in 1979.⁶⁵⁸

131. Phnom Trayoung rock quarry, adjacent to Phnom Trayoung security office was a labour site⁶⁵⁹ operating under the authority of **Im Chaem**.⁶⁶⁰ There were also ancillary worksites at the Phnom Trayoung Mountain,⁶⁶¹ including agricultural fields supervised by **Im Chaem**.⁶⁶²

Participation in and Authority over Forced Marriages and Sexual Violence

132. **Im Chaem** presided over forced marriages.⁶⁶³ For example, Thang Thoeuy was 19 years old⁶⁶⁴ when she was forcibly married in a ceremony supervised by **Im Chaem**. Thang Thoeuy initially refused to get married but was told that she would be killed if she did not.⁶⁶⁵ After the marriage, couples were spied on under **Im Chaem**'s orders to ensure that the marriage was consummated.⁶⁶⁶ Some women forcibly married in the same group as Thang Thoeuy were killed because they refused to have sex with their husband.⁶⁶⁷
133. At forced marriage ceremonies, men and women's names were called out and they were required to make a vow to live together as a couple. Such ceremonies were attended by chiefs under **Im Chaem**'s authority.⁶⁶⁸ If anyone refused they would be branded an enemy.⁶⁶⁹ Forced marriages were also held at worksites over which **Im Chaem** had responsibility, after which couples were monitored to ensure that the marriage was consummated.⁶⁷⁰ Additionally, lists of those to be forcibly married were provided to the sector level.⁶⁷¹
134. While men could sometimes request to be married to a particular woman, they were not permitted to marry "17 April" women.⁶⁷² At meetings, **Im Chaem** instructed women to

marry disabled cadres.⁶⁷³ Those who failed to comply were arrested.⁶⁷⁴

135. Additionally, cadres under **Im Chaem**'s authority and acting pursuant to the common plan raped women before killing them in Preah Net Preah District.⁶⁷⁵

Participation in and Authority over 'Re-education' of Enemies

136. **Im Chaem** ordered tempering, correction, re-education and study sessions for all persons seen as suspect by the regime. People in the Northwest were sent to be tempered from the

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arrival of the Southwest cadres.⁶⁷⁶ **Im Chaem** held regular study sessions⁶⁷⁷ and decided on who was to be sent for re-education.⁶⁷⁸ For example, Phoun Sunty received a letter from **Im Chaem** ordering him to Phnum Lieb Commune to study.⁶⁷⁹ Upon arrival in Phnum Lieb, **Im Chaem** then ordered that he go to Phnom Trayoung security office to study,⁶⁸⁰ where he was forced to work and detained in shackles.⁶⁸¹

137. **Im Chaem** ordered lower echelons to send people to be re-educated and corrected.⁶⁸² Chum Kan, who was appointed Phnum Lieb Commune Committee by **Im Chaem**, states that he received many such orders and that failure to carry out such an order could be fatal.⁶⁸³

138. **Im Chaem** established the so-called "education department" at Phnom Trayoung security office,⁶⁸⁴ setting down the rules and policies to be administered for labourers deemed "stubborn" and those prisoners with light punishments.⁶⁸⁵ **Im Chaem** assigned Tum Souen to be in charge.⁶⁸⁶ If someone was considered to have made a 'mistake' at a cooperative, they would be reported to **Im Chaem** who would ask whether that person could be educated in the cooperative. If not, the person would be sent to Phnom Trayoung security office.⁶⁸⁷

139. In 1978, Yeng Chhan was among a group of female forced labourers at Trapeang Thma dam who were arrested by militiamen for searching for water to drink at the worksite.⁶⁸⁸

The other women in the group were tied up and severely beaten and they were all taken for re-education to Rohal village in Preah Net Preah District.⁶⁸⁹ Labourers who could not complete their assigned tasks would also be sent to study.⁶⁹⁰ Most of those called for “re-education” were never seen again and it is apparent that they were simply executed.⁶⁹¹

Participation in and Authority over Arrests, Detention and Killing

140. **Im Chaem** brought 500 armed militiamen to the Northwest Zone.⁶⁹² She admits that upon her arrival she ordered the militias then present in the district to disarm,⁶⁹³ and put these former soldiers to work at labour sites.⁶⁹⁴ Like her predecessor Ta Maong,⁶⁹⁵ **Im Chaem** controlled the armed forces in Preah Net Preah.⁶⁹⁶

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Arrests

141. **Im Chaem** had the power and authority to order the arrest of people in Preah Net Preah District and in Sector 5.⁶⁹⁷ Arrests, including the arrests of Northwest cadres upon the takeover by the Southwest, were conducted by **Im Chaem**'s subordinates – both cadres and military – on her authority.⁶⁹⁸ Bin Heuy was arrested along with his father,⁶⁹⁹ who had been a former ‘Achar’ (Buddhist layman functionary), under the orders of **Im Chaem** because Bin Heuy's father was linked to the former Northwest cadres.⁷⁰⁰ Kim Yet was first transferred to join a three-person medical unit in Phnum Lieb by **Im Chaem** in 1977.⁷⁰¹ Subsequently, he and the members of his unit were arrested under **Im Chaem**'s orders and sent to Phnom Trayoung security office.⁷⁰² Bin Sokh, **Im Chaem**'s former messenger, also describes how cooperative chairpersons visited **Im Chaem** to discuss arrests of large numbers of people.⁷⁰³ Tum Souen, who was chief of Phnom Trayoung security centre, testifies that cooperative chiefs discussed directly with **Im Chaem** arrests to be made.⁷⁰⁴
142. People were often brought to **Im Chaem**'s house in Phnum Lieb before being transported

... people were often brought to **Im Chaem's** house in Phnum Lieb before being transported to Phnom Trayoung security office to be imprisoned and killed.⁷⁰⁵ **Im Chaem's** former messenger Bin Sokh details being sent to collect seven people who had been arrested by cadres in Chub village and bringing them to **Im Chaem's** office in Phum Lieb.⁷⁰⁶

143. Arrests took place at various locations, such as at wats,⁷⁰⁷ worksites⁷⁰⁸ and at meetings⁷⁰⁹ – which were also used by **Im Chaem** to order arrests of non-attendees.⁷¹⁰ Those who fled worksites were reported to **Im Chaem**, who had them arrested and returned to the worksites.⁷¹¹ Similarly, those travelling without authorisation in Preah Net Preah were subject to arrest and detention.⁷¹²

144. **Im Chaem's** power to order arrests extended beyond Preah Net Preah District to other districts in Sector 5. For example, witness Tor Pinthang, who worked in a mobile unit in Serei Saophan District,⁷¹³ was arrested and brought to Phnum Lieb. Following a discussion between his arrestor and **Im Chaem**, the witness was brought to Phnom Trayoung security office and detained.⁷¹⁴

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Detention

145. **Im Chaem** had the power to order that people be detained and was in charge of all the security offices and prisoners in Preah Net Preah.⁷¹⁵ In addition to people being temporarily detained in her office in Phnum Lieb,⁷¹⁶ there was a security office opposite **Im Chaem's** house in Phnum Lieb where large numbers of prisoners were imprisoned before either being sent back to worksites, to Phnom Trayoung security office, or to be killed.⁷¹⁷

146. Phnom Trayoung security office was established after the arrival of **Im Chaem** and the Southwest cadres⁷¹⁸ and was controlled by **Im Chaem**.⁷¹⁹ It had detainees from both the

district and sector.⁷²⁰ **Im Chaem** appointed Tum Soeun to be in charge of the daily running of the security office.⁷²¹ Soeun reported only to **Im Chaem**,⁷²² and she gave orders regarding the detainees.⁷²³ **Im Chaem** instructed Soeun to closely monitor all prisoners before deciding what to do with each⁷²⁴ – for example, whether serious offence prisoners could be unshackled.⁷²⁵ She also sent subordinates to visit the security office.⁷²⁶ **Im Chaem** had the power and authority to release so-called ‘minor offence’ prisoners.⁷²⁷ Soeun reported any escapes from the security office to **Im Chaem**, who would take further action.⁷²⁸ **Im Chaem** communicated to Soeun via her messengers and in person during meetings at the security office,⁷²⁹ and visited in person or sent subordinates to oversee the security office every few days.⁷³⁰

147. Those arrested in cooperatives and accused of being lazy, having made a mistake, or trying to escape were sent to Phnom Trayoung security office.⁷³¹ Detainees also included former officials and soldiers from the Lon Nol regime, “new people” who had been evacuated from Phnom Penh,⁷³² and people accused of committing moral offences.⁷³³ Thip Samphat was arrested and sent to Phnom Trayoung on **Im Chaem**’s written orders for criticizing the food he received in the commune.⁷³⁴ Phuon Sunty was sent by **Im Chaem** to Phnom Trayoung for a “meeting” but was actually shackled and taken to be refashioned.⁷³⁵ Prisoners sent to Phnom Trayoung rarely arrived with any indication as to their alleged wrongdoing.⁷³⁶
148. **Im Chaem**’s authority over arrests and detention is demonstrated by her statement that she once ordered guards to free a man who was detained at her house in Phnum Lieb, because

he was elderly.⁷³⁷ Although she initially claimed not to know where Phnom Trayoung security office was located, **Im Chaem** later admitted that it was located only 200-300 metres from her home in Phnum Lieb.⁷³⁸

Killings

149. **Im Chaem** had the power and authority to order that people be killed.⁷³⁹ Whether as a result of her position as a sector level cadre or not,⁷⁴⁰ it is clear that in practice, **Im Chaem** personally ordered that people be killed. Tum Souen has testified that **Im Chaem** ordered him to kill four serious offence prisoners who were unable to walk after being tortured.⁷⁴¹ Bou Mao, who worked in the Sector 5 mobile unit, saw Moeun, a mobile unit medical chief, detained at **Im Chaem's** house and heard **Im Chaem** say "[i]f she is being difficult or is a traitor, kill her and get rid of her".⁷⁴²
150. Orders went from **Im Chaem** down through the echelons to arrest and kill⁷⁴³ and **Im Chaem** had authority over those directly responsible for killings.⁷⁴⁴ Sam Bun, who was a commune chief, was detained in **Im Chaem's** office in Phnum Lieb before being taken to Phnom Trayoung and killed for moral offences, namely, being visited by women in his home.⁷⁴⁵ Phoun Sunty, who was sent by **Im Chaem** to Phnom Trayoung security office for re-education, witnessed nighttime killings at the security office and was forced to bury the corpses.⁷⁴⁶ **Im Chaem** was present at locations when killings took place⁷⁴⁷ and had the power to release those who would otherwise be killed.⁷⁴⁸ Killings in places such as Chakrey village and Wat Preah Net Preah were conducted under **Im Chaem's** authority.⁷⁴⁹
151. The targeting and killing of former soldiers, officials and those connected to the Lon Nol regime initiated by the Northwest Zone cadres continued after **Im Chaem** and the Southwest cadres arrived.⁷⁵⁰ So too the killing of those connected to the Northwest cadres continued after the initial purges – in line with the policy of digging out the roots in order to dig out the grass.⁷⁵¹ Bin Heuy's father, who was a Buddhist layman functionary, was arrested and killed in Preah Net Preah because of his connection to the Northwest cadres who had controlled the area.⁷⁵² Bin Heuy, who had been arrested and shackled next to his father in Preah Net Preah Commune, describes hearing his father scream for help before being killed.⁷⁵³ Such killings were ordered by **Im Chaem**.⁷⁵⁴

152. Ethnic minorities such as those of Vietnamese background,⁷⁵⁵ Chinese,⁷⁵⁶ and Khmer Krom⁷⁵⁷ were also targeted. For instance, two Vietnamese women were killed in Preah Net Preah District by Southwest Zone cadres under the authority of **Im Chaem**.⁷⁵⁸ The ethnicity of targeted Vietnamese who were subsequently killed was discovered through background searches of people in the district and the creation of biographies which were given to **Im Chaem**.⁷⁵⁹ At the Sector level, Khmer Krom families were taken and beaten to death upon the arrival of the Southwest cadres. This included families of Khmer Krom men married to Khmer women.⁷⁶⁰
153. Targeted groups were also identified from the list of people in Preah Net Preah district which had been prepared by the Northwest Zone cadres prior to the purge.⁷⁶¹ The list was sent to village and commune chiefs to locate those on the list and when found, forces would be sent to arrest and take them away.⁷⁶² **Im Chaem** says that Pol Pot and the Central Committee had ordered that she be provided with the list,⁷⁶³ which she admits receiving from the former district cadres before their deaths.⁷⁶⁴
154. Others targeted for killing under **Im Chaem**'s regime included: those who committed moral offences,⁷⁶⁵ those no longer useful for work,⁷⁶⁶ and those accused of being "traitors"⁷⁶⁷ or "spies".⁷⁶⁸ **Im Chaem** admits to receiving orders from upper echelons to search for and arrest so-called "bad elements", including those connected with the Lon Nol regime, or supposed "spies".⁷⁶⁹
155. Additionally, killings took place subsequent to **Im Chaem** visiting work sites. For example, there was a large-scale killing in Phnom Trayoung security office after a visit by **Im Chaem**.⁷⁷⁰ Pregnant women were also killed and buried in the foundations of a bridge at the Trapeang Thma work site in the belief it would aid the construction project.⁷⁷¹
156. **Im Chaem** denies having the power to kill, asserting that only the military had such power.⁷⁷² This is contradicted by overwhelming evidence to the contrary, including her control over armed forces in Preah Net Preah.⁷⁷³

F. CRIMES**SOUTHWEST ZONE****PERSECUTION OF THE KHMER KROM (1976-1977)**CPK Policy Regarding the Khmer Krom

157. The CPK's policy of targeting the Khmer Krom⁷⁷⁴ evolved from the conflict with Vietnam and the CPK's distrust of anyone with perceived ties to Vietnam.⁷⁷⁵ Khmer Krom were persons of Cambodian ethnicity from areas historically Cambodian but now within Vietnam's borders. Khmer Rouge cadres often accused Khmer Krom of being "Yuan" spies.⁷⁷⁶ At the beginning of the DK period, the CPK received Khmer Krom from Vietnam while forcibly transferring persons of Vietnamese ethnicity living in Cambodia to Vietnam in a series of organised exchanges.⁷⁷⁷ However, as the conflict with Vietnam intensified, the CPK policy evolved into widespread killings of the Khmer Krom because of their perceived Vietnamese ties.⁷⁷⁸

Communication of the CPK Policy Regarding the Khmer Krom

158. The CPK disseminated its policy targeting any individuals with a link to Vietnam from the Party Centre to the lowest echelons.⁷⁷⁹ At meetings throughout Sector 13, Khmer Krom were variously described as "enemies",⁷⁸⁰ "traitors",⁷⁸¹ "Yuan spies",⁷⁸² "KGB agents"⁷⁸³ and having a "Vietnamese brain in a Khmer body".⁷⁸⁴ Southwest cadres told the lower echelons that Khmer Krom had to be "killed" or "smashed"⁷⁸⁵ and that it was "Angkar's work"⁷⁸⁶ that the Khmer Krom be "swept clean".⁷⁸⁷

Implementation of the Policy in Sector 13

159. Southwest cadres in Sector 13 identified the Khmer Krom for targeting in a number of ways. During 1976, Khmer Krom were told to register at cooperative meetings and that "Angkar" would send them back to Kampuchea Krom.⁷⁸⁸ Instead, cadres gathered the Khmer Krom into groups, made lists of their names⁷⁸⁹ and took them away to be killed.⁷⁹⁰
160. CPK cadres also identified Khmer Krom through biographies that the Party required

individuals to prepare.⁷⁹¹ Additionally, Khmer Krom were identified for targeting by their clothing,⁷⁹² accent,⁷⁹³ and fair complexion.⁷⁹⁴

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161. As Koh Andet District Secretary⁷⁹⁵ and Sector 13 Committee Member,⁷⁹⁶ **Im Chaem** ordered arrests⁷⁹⁷ and had authority over the militiamen who carried out killings.⁷⁹⁸ Whole families of Khmer Krom were taken away daily and “disappeared” in the district, meaning they were killed.⁷⁹⁹
162. Khmer Krom were the primary group detained and killed at Wat Ang Srei Mealy security office and the adjacent Prey Sokhon execution site in Koh Andet during the time **Im Chaem** held positions of authority.⁸⁰⁰ They were usually temporarily detained at Wat Ang Srei Mealy prior to being killed.⁸⁰¹ Between 1976 and 1977, mass executions of Khmer Krom took place at Prey Sokhon.⁸⁰² Khmer Krom men and women had their hands tied and were taken in lines to be killed.⁸⁰³ Individuals were beaten to death with wooden clubs⁸⁰⁴ and then thrown into pits.⁸⁰⁵ Witness Mom Phalla, who worked near Prey Sokhon, described hearing the sound of screaming from the execution site.⁸⁰⁶ Killings were so frequent that witnesses say they occurred “day and night”.⁸⁰⁷ Though there is no definitive number of those killed at Wat Ang Srei Mealy and Prey Sokhon, witnesses suggest that there were thousands of killings.⁸⁰⁸

WAT ANG SREI MEALY SECURITY OFFICE AND PREY SOKHON EXECUTION SITE (1976-1977)

Location and Operation

163. Wat Ang Srei Mealy security office⁸⁰⁹ was located in the north of Samply Village, Prey Khla Commune, Koh Andet District, Takeo Province,⁸¹⁰ in Sector 13 of the Southwest Zone.⁸¹¹ Prey Sokhon execution site was north of the security centre, on the path heading north from Samply Village to Sy Sla Village.⁸¹² Both were in operation from April 1975 until at least November 1978.⁸¹³

164. The security office was comprised of the Wat – which was used as a district military base⁸¹⁴ and at least two buildings used to detain people.⁸¹⁵ In 1975, a wooden building was converted from a school to a detention house⁸¹⁶ and in 1976 soldiers built a hall near the Wat to use as a detention office.⁸¹⁷
165. Prey Sokhon execution site⁸¹⁸ was in a dense forest⁸¹⁹ approximately 10 hectares in size.⁸²⁰ Access to the execution site was restricted by the Khmer Rouge,⁸²¹ however people could walk on the route next to the forest, connecting Sy Sla village to Samply village.⁸²²

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Authority Structure and Communication

166. As District Secretary and Sector 13 Member from 1976 to mid-1977, **Im Chaem** had authority over the Wat Ang Srei Mealy security office and Prey Sokhon execution site.⁸²³ **Im Chaem** had the power to order District Security Chairman Ta Soeun to make arrests.⁸²⁴ The district militia, armed with carbines and AK's,⁸²⁵ assisted with arresting and killing people at this security office and execution site.⁸²⁶ **Im Chaem** received instructions directly from Ta Mok on the organisation of Koh Andet District.⁸²⁷
167. **Im Chaem** participated in various meetings in the area⁸²⁸ discussing, *inter alia*: “smashing” those who committed moral offences;⁸²⁹ fighting the invading “Yuon”;⁸³⁰ maintaining strict vigilance against workers who could be “spies”;⁸³¹ and, instructions to seek out “internal enemies”.⁸³²

Unlawful Arrest and Detention

168. People were arrested and detained at Wat Ang Srei Mealy on a daily basis during **Im Chaem**'s control of the district.⁸³³ The primary group targeted were Khmer Krom who had come from Vietnam or border areas,⁸³⁴ continuing the policy existing prior to **Im Chaem**'s appointment.⁸³⁵ Other groups arrested and detained included Khmer Leu,⁸³⁶ Cham,⁸³⁷ and anybody deemed an “enemy”.⁸³⁸ Additionally, people from the surrounding Samply village

and other villages in Koh Andet who were considered “wrongdoers” would be detained at the office or taken away and disappeared.⁸³⁹ Khmer Krom were generally identified for targeting by their accent,⁸⁴⁰ while biographies of villagers were prepared by the lower echelons.⁸⁴¹

Inhumane Conditions, Torture and Sexual Abuse

169. Prisoners at the detention office built in 1976 were shackled by their legs day and night.⁸⁴² Those detained at the temporary detention office located in the old school were unshackled but unable to move freely within the security office.⁸⁴³ Some detainees were interrogated and subjected to torture before being sent to Prey Sokhon for execution.⁸⁴⁴ In at least one instance, a woman was raped at Wat Ang Srei Mealy before being killed.⁸⁴⁵

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Unlawful killings

170. Killings occurred on a frequent basis at the Prey Sokhon execution site throughout the period of **Im Chaem**'s control.⁸⁴⁶ Various groups of people and sometimes entire families were executed at the site. The victims were Khmer Krom,⁸⁴⁷ “17 April people”, and others deemed “spies” or “enemies”.⁸⁴⁸ Those detained in Wat Ang Srei Mealy security office were executed at Prey Sokhon.⁸⁴⁹
171. Prior to execution, people were told they would be returning to their homes⁸⁵⁰ or were being sent to live elsewhere.⁸⁵¹ Instead they were escorted,⁸⁵² by armed militiamen,⁸⁵³ with their hands tied behind their backs⁸⁵⁴ to be executed at Prey Sokhon.⁸⁵⁵ Sticks or clubs were used by militiamen and soldiers⁸⁵⁶ to execute people.⁸⁵⁷ Victims were heard screaming prior to their deaths,⁸⁵⁸ with their bodies left where they were executed or buried in mass pits.⁸⁵⁹ Some victims were buried alive.⁸⁶⁰
172. The Khmer Rouge tried to keep the detention and killings secret by selecting residents

172. The Khmer Rouge tried to keep the detention and killings secret by relocating residents who lived near the security office⁸⁶¹ and preventing access to Prey Sokhon execution site.⁸⁶² The execution site contained three to four large mass graves,⁸⁶³ ranging in size from approximately 20 metres in diameter and two metres deep to 10 metres by five metres and two metres deep.⁸⁶⁴ The graves gave off a foul odour⁸⁶⁵ and some of the corpses were either unburied or half buried.⁸⁶⁶ Though estimates vary, witnesses state that there were thousands of individuals killed at Prey Sokhon.⁸⁶⁷

NORTHWEST ZONE

PURGE OF SECTOR 5 OF THE NORTHWEST ZONE (1977-1979)

173. The purge of the Northwest Zone was organised by the highest echelons of the CPK as a result of perceived treachery by those in the zone.⁸⁶⁸ The Southwest Zone was considered to be where the revolution had begun and contained many loyal cadres.⁸⁶⁹
174. The arrest of Northwest Zone cadres began after **Im Chaem** and the Southwest Zone group arrived in June 1977.⁸⁷⁰ **Im Chaem**'s claim to have arrived in Preah Net Preah in late 1978 or early 1979⁸⁷¹ is contradicted by her own statements. **Im Chaem** replaced former District Secretary An Maong as Preah Net Preah District Committee⁸⁷² and acknowledges that An Maong was still in Preah Net Preah upon her arrival.⁸⁷³ **Im Chaem** admits to meeting with

An Maong to receive a list of the people in Preah Net Preah and states that Maong was then "called to an unknown destination" and disappeared.⁸⁷⁴ S-21 records establish that Preah Net Preah District Secretary An Maong entered S-21 on 28 June 1977, and was arrested at least 10 days earlier.⁸⁷⁵ Therefore, **Im Chaem** must have arrived in Preah Net Preah by at least mid-June 1977. An Maong was eventually executed on the 18th of October 1977, along with 69 other cadres from the Northwest Zone.⁸⁷⁶

175. **Im Chaem** states after An Maong was "taken away",⁸⁷⁷ Deputy District Secretary Sam-At "also disappeared".⁸⁷⁸ However, a local cadre describes how Sam-At was arrested and

removed after a meeting at which **Im Chaem** accused him of being a traitor,⁸⁷⁹ with other Northwest cadres at the meeting also arrested.⁸⁸⁰ Records show that Sam-At was also sent to S-21.⁸⁸¹ An S-21 interrogation report dated 1 August 1977 describes how: “The torture has been quite harsh in the past, and his health is quite weak, but he still pretends to the maximum extent to not know much of anything.”⁸⁸²

176. In addition to former District Secretary An Maong and former Deputy Secretary Sam-At,⁸⁸³ Lor Ken describes waiting close-by when then Preah Net Preah Commune Secretary Ta Krak and other cadres attended a meeting at **Im Chaem**’s house in Phnum Lieb at which they were arrested.⁸⁸⁴ He subsequently heard screams coming from the meeting place, likely the sounds of Ta Krak and the others being killed.⁸⁸⁵ Former Phnum Lieb Commune Secretary Ta Theang was also arrested and executed in Phnum Lieb.⁸⁸⁶ At the Sector 5 level, mobile unit leader Ta Val, Sector Secretary Ta Hoeng and Deputy Secretary Ta Cheal all disappeared.⁸⁸⁷
177. Beyond these examples, the purge encompassed all levels:⁸⁸⁸ from the cooperative,⁸⁸⁹ commune,⁸⁹⁰ mobile units,⁸⁹¹ to the district⁸⁹² and sector.⁸⁹³ Large numbers of Northwest cadres were taken away and “disappeared”,⁸⁹⁴ meaning that they were killed.⁸⁹⁵ In total, over 1,200 Northwest Zone cadres were sent to S-21 and killed, the vast majority between June 1977 and May 1978.⁸⁹⁶ A list of individuals from Sector 5 recorded as being sent to S-21 during this time is attached as Annex 6 to this Submission. Further, the families of Northwest cadres were arrested and detained at Phnom Trayoung security office in Preah Net Preah District.⁸⁹⁷ Ta Mok and other Southwest cadres including **Im Chaem** ordered the arrest and killing of these Northwest cadres.⁸⁹⁸ Having removed the Northwest Zone

cadres, **Im Chaem** and those from the Southwest began appointing their own cadres to the vacant positions.⁸⁹⁹ During this time, **Im Chaem**’s husband, Nhen, was appointed Serei Saophoan District Secretary.⁹⁰⁰ Together they controlled two of the four districts of Sector

178. The purge was assisted by **Im Chaem**'s decision, approved by the upper echelons, to disarm⁹⁰¹ and arrest⁹⁰² existing military in the area and prevent any resistance. **Im Chaem** was accompanied by her own military contingent to the Northwest Zone.⁹⁰³

PERSECUTION OF THE VIETNAMESE (1977-1979)

CPK Policy Regarding the Vietnamese

179. The CPK ordered and enforced a policy of forced deportation of ethnic Vietnamese in Cambodia shortly after taking power.⁹⁰⁴ By September 1975, approximately 150,000 ethnic Vietnamese were deported to Vietnam.⁹⁰⁵ From 1977, the CPK's policy evolved to extermination of the remaining Vietnamese (mostly ethnic Vietnamese spouses or children of mixed couples) in the country.⁹⁰⁶ Additionally, all those perceived as connected or affiliated to Vietnam were considered "enemies" and were targeted for that reason.⁹⁰⁷
180. The CPK justified the killings on the basis of Vietnam's historically expansionist actions towards Cambodia and the existing armed conflict.⁹⁰⁸ CPK propaganda stressed that the mere existence of the Vietnamese in Cambodia represented a threat to the survival of the country and the Khmer race.⁹⁰⁹ By 1979, the vast majority of the Vietnamese remaining in Cambodia, if not all, had been killed⁹¹⁰ as well as countless others deemed "enemies" for being associated with Vietnam.⁹¹¹

Communication of CPK Policy Regarding the Vietnamese

181. The CPK leadership disseminated its policy against the ethnic Vietnamese and those associated with Vietnam, to lower echelons in speeches,⁹¹² meetings,⁹¹³ political training sessions,⁹¹⁴ and propaganda documents.⁹¹⁵
182. After their arrival in the Northwest Zone in mid-1977, the Southwest cadres began identifying ethnic Vietnamese and those associated with Vietnam as being part of "Yuon networks" during meetings.⁹¹⁶ **Im Chaem** discussed "ethnic screening" in Preah Net Preah District.⁹¹⁷ Witnesses also recall Southwest cadres attacking the Vietnamese as "enemies"

in speeches in the district.⁹¹⁸ Villagers and cooperative members were required to “report to Angkar” the presence of “Vietnamese hidden among the people”.⁹¹⁹

183. The discriminatory term “Yuon”, which the DK indicated meant “savage”,⁹²⁰ was frequently used by **Im Chaem**⁹²¹ and other CPK leaders⁹²² to spread fear and hatred towards the Vietnamese and those associated with Vietnam in meetings⁹²³ and through propaganda documents.⁹²⁴ **Im Chaem** continued to use the term after the DK Regime.⁹²⁵ Anyone categorised as a “Yuon” was considered an enemy of the CPK that had to be eliminated.⁹²⁶ Orders to kill any person linked to Vietnam and, *a fortiori*, any ethnic or national Vietnamese were communicated at every echelon.⁹²⁷

Implementation of the Policy in Sector 5

184. Targeting and killings of the Vietnamese and those associated with Vietnam increased in Sector 5 after the arrival of **Im Chaem** and the Southwest Zone cadres.⁹²⁸ **Im Chaem** has admitted receiving orders from upper echelons to search for and arrest “Vietnamese agents”.⁹²⁹
185. Different methods were used to identify the ethnic Vietnamese. For example, individuals were often classified as Vietnamese on the basis of their skin colour.⁹³⁰ A witness who lived in Preah Net Preah described his father being arrested by militiamen and taken away to be killed after being accused of being a “Yuon” because he had a light complexion.⁹³¹ The Vietnamese were also frequently identified through their accent.⁹³² Anyone who did not speak Khmer could also be labelled Vietnamese and killed.⁹³³
186. Those of Vietnamese ethnicity were also discovered through background searches and the creation of biographies.⁹³⁴ Witness Prak Koeun described cadres in Preah Net Preah discussing whether she should be killed after she had revealed that her father was Vietnamese.⁹³⁵ Biographies were sent to the upper echelon, including **Im Chaem**, who would then give orders regarding those identified as Vietnamese.⁹³⁶ **Im Chaem** also received a list identifying all persons in Preah Net Preah upon becoming district secretary.⁹³⁷

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187. Anyone accused of being a Vietnamese “spy” or “agent”,⁹³⁸ or having a “connection” to the Vietnamese,⁹³⁹ was also arrested.⁹⁴⁰ **Im Chaem** has stated that after receiving requests from the upper echelons to search for such people, they were “all captured”.⁹⁴¹
188. In addition to an individual identified as ethnic Vietnamese or having Vietnamese connections, their partners and whole families were often killed, including children.⁹⁴² For example, witness Bou Mao, a mobile unit leader at Trapeang Thma dam, described how the families and children of persons found to have Vietnamese blood or associations would be searched for and killed at the worksite.⁹⁴³
189. Implementation of the policy targeting the Vietnamese and those connected to Vietnam occurred under **Im Chaem**’s authority throughout Preah Net Preah District and Sector 5. At Chamkar Khnol security office,⁹⁴⁴ most of the victims arrested, detained, and executed were Vietnamese.⁹⁴⁵ Witness Sin Khin described truckloads of people being brought to be killed at the adjoining Prey Ta Ruth execution site.⁹⁴⁶ Witness Mak Vonny, a former mobile unit worker who lived close to Prey Ta Ruth, stated that those who were killed there were accused of being Vietnamese.⁹⁴⁷
190. People accused of being Vietnamese were also sent to Phnom Trayoung Security Centre.⁹⁴⁸ Witness Oeur Loeur was detained because she had fair skin, and therefore was assumed to be Vietnamese.⁹⁴⁹ Groups of 15-20 people, including those accused of having Vietnamese connections were killed at Phnom Trayoung on a nightly basis.⁹⁵⁰
191. At Trapeang Thma Dam, workers who were Vietnamese or accused of having Vietnamese connections were sought out and killed.⁹⁵¹ Witness Buth Svoeuy, a former mobile unit leader at Trapeang Thma, described 1,000 Vietnamese families being sent from various cooperatives to Trapeang Thma in 1978 and all subsequently disappearing.⁹⁵²
192. At Spean Spreng worksite, **Im Chaem** ordered the killing of two Vietnamese women who were brutally raped before being killed.⁹⁵³ Witnesses also detail the identification and killing of entire Vietnamese families in the nearby Spean Sraeng Commune in 1978.⁹⁵⁴

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PHNOM TRAYOUNG SECURITY OFFICE AND WORKSITE (1977-1979)

Location and Operation

193. Phnom Trayoung security office, rock quarry, and related worksites were located at Phnom Trayoung Mountain in Phnum Lieb Commune, Preah Net Preah District, Banteay Meanchey Province, Sector 5 of the Northwest Zone.⁹⁵⁵ The security offices and worksites were established and controlled by Southwest Zone cadres⁹⁵⁶ in 1977⁹⁵⁷ and continued operation until January 1979 when the Vietnamese troops arrived.⁹⁵⁸
194. Phnom Trayoung security office and its related worksites was a large facility, covering over two hectares.⁹⁵⁹ The facility was comprised of a series of detention halls and huts, a dining hall, quarry worksite, and agricultural fields,⁹⁶⁰ and expanded over time to accommodate a larger prisoner population.⁹⁶¹ An ox-cart road traversed the facility from National Road 6 to Phnom Tralouk.⁹⁶² Situated to the north of the mountain were detention halls for “serious offenders,”⁹⁶³ housing for guards and the prison chief’s quarters,⁹⁶⁴ and a vast field of mass graves for those who were executed or died of starvation, illness or overwork.⁹⁶⁵ At the east and south of the mountain was housing for “light offenders.”⁹⁶⁶ A dining hall and yard was situated between the prison chief’s quarters and housing for “light offenders.”⁹⁶⁷
195. The rock quarry was situated at the south-western side of the mountain⁹⁶⁸ and was patrolled by guards.⁹⁶⁹ Agricultural fields surrounded the mountain.⁹⁷⁰ The security office did not have an enclosure, and was known as a “prison without walls.”⁹⁷¹ At the time of the arrival of the Vietnamese, preparations were underway to further expand to an additional security facility.⁹⁷² Today, there are no physical remains of the security office.⁹⁷³

security facility. Today, there are no physical remains of the security office.

Authority Structure and Communication

196. Phnom Trayoung security office held prisoners sent from districts throughout the sector.⁹⁷⁴ **Im Chaem** was responsible for the site⁹⁷⁵ and exercised wide-ranging authority, including: creating the rules and policies of the security office,⁹⁷⁶ ordering that people be arrested and detained at the security office,⁹⁷⁷ giving orders on the shackling or release of prisoners,⁹⁷⁸ and ordering executions.⁹⁷⁹ Cooperatives and commune chiefs reported potential arrests to **Im Chaem**,⁹⁸⁰ who authorised arrests and sent arrestees to Phnom Trayoung.⁹⁸¹

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197. Tum Soeun was the security office chief⁹⁸² and was appointed by **Im Chaem**.⁹⁸³ The guards at Phnom Trayoung security office were sent to work there by commune chiefs.⁹⁸⁴ There were approximately 15-30 guards⁹⁸⁵ armed with guns and swords.⁹⁸⁶
198. Tum Soeun verbally reported to **Im Chaem** between once and twice a month.⁹⁸⁷ **Im Chaem** gave him orders,⁹⁸⁸ including whether to shackle or release particular prisoners.⁹⁸⁹ **Im Chaem** held meetings for prison guards at her house⁹⁹⁰ and large meetings at the prison,⁹⁹¹ during which she, *inter alia*, told prisoners to work hard and warned that those who could not rehabilitate themselves would die.⁹⁹²
199. **Im Chaem**'s messengers regularly visited the prison with orders and letters regarding prisoners.⁹⁹³ Witness Thib Samphat, a local medic, described seeing a letter from **Im Chaem** ordering his arrest together with two other persons, as a "traitor to the revolution."⁹⁹⁴ Witness Phoun Sunty detailed receiving a handwritten letter signed by **Im Chaem** requesting that he and his colleague Phon Mon travel to Phnum Lieb to study.⁹⁹⁵ After arriving at **Im Chaem**'s house, **Im Chaem** sent him to Phnom Trayoung, where he was met by armed soldiers and shackled.⁹⁹⁶

Unlawful Arrest and Detention

200. Phnom Trayoung security office extended over time, imprisoning thousands of people

200. Phnom Trayoung security office expanded over time, imprisoning thousands of people throughout its period of operation.⁹⁹⁷ **Im Chaem** issued orders for arrest,⁹⁹⁸ which were carried out by militiamen⁹⁹⁹ under her control.¹⁰⁰⁰ Arrestees arrived at the prison every few days,¹⁰⁰¹ and were brought there on foot,¹⁰⁰² by ox-cart,¹⁰⁰³ tractor¹⁰⁰⁴ truck,¹⁰⁰⁵ or motorbike,¹⁰⁰⁶ often in shackles or with their hands tied.¹⁰⁰⁷ The prison chief or guards received them¹⁰⁰⁸ and separated “light” and “serious offenders.”¹⁰⁰⁹ Prisoners were also transferred from other security offices to Phnom Trayoung.¹⁰¹⁰

201. Prisoners included those who: were perceived to be Vietnamese or associated with the Vietnamese;¹⁰¹¹ were accused of being traitors because they had criticised unequal food rations;¹⁰¹² were hungry and stole food;¹⁰¹³ were accused of stealing;¹⁰¹⁴ had tried to flee;¹⁰¹⁵ had committed “moral offences”;¹⁰¹⁶ were considered “lazy or weak”;¹⁰¹⁷ or were implicated by others.¹⁰¹⁸ Many did not know why they were arrested.¹⁰¹⁹ Families were arrested together,¹⁰²⁰ including children.¹⁰²¹ Relatives of former Lon Nol regime officials¹⁰²² and relatives of those already detained were also targeted for arrest.¹⁰²³

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202. Many arrestees were taken to **Im Chaem**'s house in Phnum Lieb, less than a kilometre from the prison,¹⁰²⁴ before being sent on to the security office.¹⁰²⁵

203. People pleaded with **Im Chaem** to release arrestees or save their lives.¹⁰²⁶ Buth Svoeuy, who was detained at Phnum Lieb commune office for travelling without authorisation, was released after his battalion commander contacted **Im Chaem**.¹⁰²⁷ Kim Yet, who was imprisoned at Phnom Trayoung, was certain he was about to be killed until security office chief Tum Soeun intervened, after Kim Yet's mother had asked **Im Chaem** to keep him alive.¹⁰²⁸

Inhumane Living Conditions

204. “Serious offenders” were shackled during the night in long zinc halls and were released to work during the day,¹⁰²⁹ while “light offenders” were housed unshackled in halls and huts.¹⁰³⁰ Prisoners classified as “serious offenders” included those arrested for trying to

flee,¹⁰³¹ those considered “lazy”,¹⁰³² and those accused of stealing rice.¹⁰³³ In certain instances, **Im Chaem** authorised security office chief Tum Soeun to reclassify a “serious offender” as a “light offender”,¹⁰³⁴ again demonstrating her power.

205. Food was taken from a warehouse close to **Im Chaem**’s house.¹⁰³⁵ Rations generally consisted of a small portion of watery gruel,¹⁰³⁶ leaving prisoners malnourished.¹⁰³⁷ Workers were forced to live in conditions of filth and request permission every time they needed to urinate or defecate.¹⁰³⁸ When prisoners were infrequently allowed to bathe, they were forced to do so in lines and at gunpoint.¹⁰³⁹ Although some prisoners received medical assistance,¹⁰⁴⁰ others died because of the lack of medicine,¹⁰⁴¹ or received only sweet porridge.¹⁰⁴² Thousands of prisoners died due to starvation, illness and overwork.¹⁰⁴³ Bou Tuok described sleeping next to corpses of fellow prisoners whilst waiting for guards to take the bodies away.¹⁰⁴⁴

Forced Labour

206. Phnom Trayoung prisoners were forced to perform hard physical labour. Serious offenders were forced to work at the neighbouring rock quarry.¹⁰⁴⁵ Prisoners climbed the mountain and extracted stone,¹⁰⁴⁶ which other prisoners attempted to break using heavy hammers.¹⁰⁴⁷ Conditions were unsafe and some prisoners were crushed by boulders and killed.¹⁰⁴⁸

207. Prisoners were also forced to undertake agricultural tasks, such as making fertilizer,¹⁰⁴⁹ uprooting bamboo,¹⁰⁵⁰ and, farming rice¹⁰⁵¹ and other crops.¹⁰⁵² Other prisoners were given duties within the security office¹⁰⁵³ such as building shelters and shackles,¹⁰⁵⁴ and cooking.¹⁰⁵⁵ Former prisoners also described being forced to carry and bury the corpses of executed and starved prisoners.¹⁰⁵⁶ Nou Kham described the stench of dead bodies clinging to him and accidentally falling into graves in the night.¹⁰⁵⁷

Torture and Sexual Abuse

208. **Im Chaem** warned, at meetings at Phnom Trayoung, that those who could not improve themselves would die.¹⁰⁵⁸ Prisoners were interrogated about their background and mistakes, sometimes violently.¹⁰⁵⁹
209. Guards tortured prisoners, sometimes to death.¹⁰⁶⁰ Others were brutally beaten with bamboo sticks and wooden clubs as punishment for minor infractions such as being too exhausted to work.¹⁰⁶¹ Former prisoner Leng Voeng described guards jumping up and down on prisoners lying on their backs, and then turning prisoners to lie on their stomachs as the guards beat them with clubs.¹⁰⁶²
210. Prisoners lived in constant fear of execution¹⁰⁶³ after witnessing others disappear,¹⁰⁶⁴ hearing people being killed and raped,¹⁰⁶⁵ being threatened with death,¹⁰⁶⁶ and being forced to bury bodies.¹⁰⁶⁷
211. Former prisoner Chum Chim described how guards allowed girls to live with their parents in the daytime, but raped them in the guards' hall at night.¹⁰⁶⁸ Thib Samphat, who buried bodies of executed prisoners, found that only female corpses were naked.¹⁰⁶⁹

Unlawful Killing

212. Thousands of prisoners from the district and sector were executed at Phnom Trayoung.¹⁰⁷⁰ Guards killed prisoners with Tum Soeun's authorisation,¹⁰⁷¹ while Soeun received orders from **Im Chaem**.¹⁰⁷² For instance, **Im Chaem** ordered Tum Soeun to execute four prisoners who had been badly tortured.¹⁰⁷³
213. Executions took place daily¹⁰⁷⁴ at various sites to the north of the mountain.¹⁰⁷⁵ Prisoners were forced to dig mass grave pits for the bodies.¹⁰⁷⁶ One of the main sites was only 100m to 200m away from Soeun's quarters.¹⁰⁷⁷ Guards killed prisoners with sharpened palm

strips¹⁰⁷⁸ and blades¹⁰⁷⁹ or beat victims to death with wooden clubs or hoes.¹⁰⁸⁰ Some of the guards executing detainees were teenagers.¹⁰⁸¹

214. Victims at Phnom Trayoung included both serious and light “offenders,” “women,” “those considered educated,”¹⁰⁸⁴ those who did not obey cadres,¹⁰⁸⁵ those too weak to work,¹⁰⁸⁶ and those who tried to escape.¹⁰⁸⁷ Victims also included prisoners held at Phnum Lieb and arrestees sent by **Im Chaem**.¹⁰⁸⁸ Phnum Lieb residents regularly saw soldiers taking prisoners from the surrounding area to the jungle north of Phnom Trayoung for execution¹⁰⁸⁹ and witnessed their neighbours disappear.¹⁰⁹⁰ For instance, Pech Ruos witnessed the arrest of Sam Bun, a commune leader, who was taken by militia to **Im Chaem**’s house.¹⁰⁹¹ Separately, during the arrest of a female medic, **Im Chaem** was heard to say: “if she is being difficult or a traitor, get rid of her.”¹⁰⁹² Both individuals were killed at Phnom Trayoung.¹⁰⁹³
215. In the days before the arrival of the Vietnamese and soon after a large meeting held by **Im Chaem** at the prison,¹⁰⁹⁴ Tum Soeun authorised a mass execution of prisoners.¹⁰⁹⁵ Thib Samphat together with four other prisoners were ordered to dig a four metre square and one metre deep pit.¹⁰⁹⁶ Prisoners were clubbed to death ten at a time.¹⁰⁹⁷ Guards would replace one another as they became tired from the killing.¹⁰⁹⁸
216. After the fall of the DK regime, local villagers entered the security office and found dead bodies, some still shackled, and skeletal remains.¹⁰⁹⁹ Many of the bones were burned or collected and stored in a memorial stupa at Phnum Lieb.¹¹⁰⁰

CHAKREY SECURITY OFFICE AND RELATED EXECUTION SITES INCLUDING PREY TA RUTH (1977-1979)

Location and Operation

217. Chakrey security office and its related execution sites, including Prey Ta Ruth execution site, were located in Choup Commune, Preah Net Preah District, Banteay Meanchey Province, Sector 5 of the Northwest Zone.¹¹⁰¹ Chakrey and Prey Ta Ruth started to be used as detention and killing sites, respectively,¹¹⁰² after **Im Chaem** took power in Preah Net Preah in mid-1977¹¹⁰³ and continued to operate until the end of the DK regime in January 1979.¹¹⁰⁴

218. Chakrey security office – also referred to as Chub Veari prison¹¹⁰⁵ – and its adjoining execution sites were in Chakrey village,¹¹⁰⁶ situated to the east of Sisophon city towards Siem Reap province on the right of National Road 6.¹¹⁰⁷ Prey Ta Ruth – also referred to as Prey Bos Chek¹¹⁰⁸ – was in Krasaing Thmei village, approximately three kilometres north east of Chakrey village,¹¹⁰⁹ two kilometres from the junction of National Road 6 along a small road going towards Trapeang Thma.¹¹¹⁰
219. Chakrey security office was a wooden house,¹¹¹¹ about six metres long and five metres wide with a corrugated zinc roof.¹¹¹² The building housed between 20-30 prisoners.¹¹¹³ Within the immediate vicinity of Chakrey security office were two main sites where people were executed: Sras Chob pond,¹¹¹⁴ and an area of coconut trees.¹¹¹⁵ Those killed were buried in pits on both sides of the path leading to National Road 6 or their bodies were disposed of in Sras Chob pond.¹¹¹⁶ The pond was approximately 100 metres south of National Road 6.¹¹¹⁷ The area of coconut trees was located between the grave sites and the prison.¹¹¹⁸
220. Prey Ta Ruth was a large field in which prisoners were killed and buried *en masse*. Five large pits filled with skeletal remains have been uncovered.¹¹¹⁹ The pits vary in size from roughly three by three metres wide and two metres deep, to four by four metres wide and two metres deep.¹¹²⁰

Authority Structure and Communication

221. The prison chief of Chub commune, where Chakrey security office and Prey Ta Ruth execution site were located, was Ream.¹¹²¹ He was a subordinate of **Im Chaem**. Bin Sokh, **Im Chaem**'s messenger, describes being ordered by **Im Chaem** to collect seven prisoners from Ream in Chakrey and transfer them to **Im Chaem**'s office at Phnum Lieb.¹¹²² Ream was a cadre from the Southwest Zone and had been sent to Preah Net Preah District after the arrival of **Im Chaem**.¹¹²³ Given that **Im Chaem** personally appointed Southwest cadres to positions after Northwest cadres were purged, it is likely that Ream was made prison chief by **Im Chaem**.¹¹²⁴
222. **Im Chaem** controlled the militiamen¹¹²⁵ who conducted arrests and killings at Prey Ta Ruth,¹¹²⁶ and also ordered the transfer of prisoners from Chakrey to other security offices within the sector network.¹¹²⁷

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Unlawful Arrest and Detention

223. Arrests were often made under false pretences.¹¹²⁸ People were informed that they were being assigned to new tasks in other locations,¹¹²⁹ or called to a study session,¹¹³⁰ but were in fact taken by militiamen to Chakrey security office and Prey Ta Ruth execution site.¹¹³¹ Those arrested included people accused of being Vietnamese,¹¹³² former Lon Nol soldiers,¹¹³³ and “new people” evacuated from Phnom Penh.¹¹³⁴

Inhumane Living Conditions

224. A former Chakrey security office detainee, who managed to escape, detailed how his hands were tied behind his back and he was pushed into a cell of “twenty to thirty prisoners”,¹¹³⁵ whose hands were cut and swollen from being tied with restraints.¹¹³⁶ Detainees were imprisoned during the day and “disappeared” overnight.¹¹³⁷

Unlawful Killing

225. The detention and killing cycle was frequent.¹¹³⁸ People detained during the day at Chakrey security office were executed at night.¹¹³⁹ Killings of detainees including whole families from Chakrey village,¹¹⁴⁰ targeted groups such as those accused of being Vietnamese,¹¹⁴¹ Khmer Krom,¹¹⁴² former Lon Nol soldiers¹¹⁴³ and “new people”¹¹⁴⁴ took place at Sras Chob pond, the nearby area of coconut trees, and Prey Ta Ruth execution site.

226. Individuals were executed and their bodies disposed of at Sras Chob pond.¹¹⁴⁵ The coconut trees, located between the grave sites and the security office, were used to smash children to death.¹¹⁴⁶ A witness recalled conversations about children being “thrown against trees trunks”.¹¹⁴⁷ Witnesses also described hearing screams coming from the area at night.¹¹⁴⁸

227. Other victims of killings included a man who tried to resist arrest while being transported to Chakrey security office.¹¹⁴⁹ He was shot and then beaten to death with a brick by militiamen.¹¹⁵⁰ A DC-Cam grave mapping report estimated that in total 3,580 victims were killed at Chakrey and its adjoining execution sites.¹¹⁵¹

228. From at least mid-1978, ¹¹⁵² victims were brought in truckloads to Prey Ta Ruth execution site, ¹¹⁵³ killed, and “dumped into pits”. ¹¹⁵⁴ In the evenings, people living in the vicinity of Prey Ta Ruth could hear the “shouting” and “scream[ing]” of those being killed. ¹¹⁵⁵ DC-

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Cam estimated that 3,890 people were killed at the site; ¹¹⁵⁶ with five large pits containing human remains uncovered. ¹¹⁵⁷

WAT CHAMKAR KHNOL SECURITY OFFICE AND RELATED SITES (1977-1979)

Location and Operation

229. Wat Chamkar Khnol security office and related sites were located in an area known as Chamkar Khnol ¹¹⁵⁸ in Ou Ambel commune, Sisophon District, ¹¹⁵⁹ Banteay Meanchey Province, formerly in Battambang Province, ¹¹⁶⁰ in Sector 5 of the Northwest Zone. ¹¹⁶¹ In addition to the Wat ¹¹⁶² (which was a Sector 5 security office ¹¹⁶³), Chamkar Knol was an execution site ¹¹⁶⁴ and forced labour site. ¹¹⁶⁵ Wat Chamkar Khnol and related sites operated from 1975 until Vietnamese troops arrived in 1979. ¹¹⁶⁶
230. Chamkar Khnol security office was located within the pagoda compound which contained multiple buildings. ¹¹⁶⁷ The building in which prisoners were detained was about 30 metres wide and 50 metres long. ¹¹⁶⁸ There were also two thatched houses used for detaining light offenders, ¹¹⁶⁹ and the entire compound was surrounded by barbed wire. ¹¹⁷⁰
231. Chamkar Knol execution site was located to the south of the security office ¹¹⁷¹ and covered a large area ¹¹⁷² of thick forest. ¹¹⁷³ There were mountains on three sides: Phnum Svay to the east, ¹¹⁷⁴ Phnum Doung Peah to the west, ¹¹⁷⁵ and Kang Va Mountain to the north. ¹¹⁷⁶ National Road 5 ran along the south of the site. ¹¹⁷⁷ Grave pits were scattered in the area from the security office to National Road 5. ¹¹⁷⁸

Authority Structure and Communication

232. Chamkar Khnol security office and related sites were under the jurisdiction of the sector authority in Sector 5.¹¹⁷⁹ Prior to the Southwest Zone cadres' purge of the Northwest Zone cadres in 1977,¹¹⁸⁰ Ta Nhan was the Chief of Chamkar Khnol security office.¹¹⁸¹ The Security Chief of Sector 5 was Voan¹¹⁸² and the Sector 5 Secretary was Ta Hoeng.¹¹⁸³ Ta Chiel (son of Ros Nhim) was Deputy Secretary.¹¹⁸⁴ During the purge, these men disappeared and were replaced.¹¹⁸⁵
233. Shortly after arriving in the Northwest Zone in mid-1977, **Im Chaem** became a Member of the Sector 5 Committee¹¹⁸⁶ and her husband, Ta Nhen, became Secretary of the Sisophon

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District Committee.¹¹⁸⁷ As such, **Im Chaem** was involved in and had responsibility for Chamkar Khnol security office and related sites.¹¹⁸⁸

234. Chamkar Khnol was guarded by at least 20 soldiers,¹¹⁸⁹ some of them children,¹¹⁹⁰ who lived in houses close to the pagoda.¹¹⁹¹

Unlawful Arrest and Detention

235. Prisoners were brought *en masse* in trucks to Chamkar Khnol security office.¹¹⁹² Some prisoners were shackled or tied up while being transported¹¹⁹³ and were often transported to the security office from different districts within Sector 5.¹¹⁹⁴ They included purged Northwest cadres¹¹⁹⁵ and their families;¹¹⁹⁶ those who refused forced marriage;¹¹⁹⁷ and, those perceived as "enemies".¹¹⁹⁸ Female and male prisoners were detained in separate locations.¹¹⁹⁹ After being detained at Chamkar Khnol security office, some prisoners were transferred with legs shackled to other security offices and work sites such as Phnom Trayoung,¹²⁰⁰ which were also under the control of **Im Chaem**.

Forced Labour

236. Many people were forced to undertake hard labour at Chamkar Knol worksite.¹²⁰¹

¹²⁰² *Id.* at 1202. ¹²⁰³ *Id.* at 1203.

prisoners cultivated rice fields for harvesting, dug pits to bury corpses, built canals,¹²⁰⁴ and worked at cotton plantations on the foothills of the mountains surrounding Chamkar Khnol.¹²⁰⁵ Oeur Loeur was forced to work growing crops near Chamkar Khnol security office immediately after giving birth.¹²⁰⁶

Inhumane Living Conditions

237. Prisoners died from starvation due to inadequate food rations.¹²⁰⁷ Some prisoners did not have clothes to wear.¹²⁰⁸ One former prisoner describes having her legs chained.¹²⁰⁹ At the worksites surrounding Chamkar Khnol security office, the workers were mainly given watery gruel mixed with leaves.¹²¹⁰ Kinh Ay reported that while working at the Chamkar Khnol cotton plantation, he became so emaciated that his “kneecaps were bigger than [his] head.”¹²¹¹

Torture

238. Prisoners were tortured at Chamkar Khnol security office,¹²¹² including through beatings,¹²¹³ to force a confession prior to execution.¹²¹⁴ Individuals were electrocuted by

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attaching wires to their hands, feet and necks.¹²¹⁵ Others had their nails pulled out, one by one.¹²¹⁶ Torture-like knife wounds and bruises were seen on dead bodies in 1979.¹²¹⁷

Unlawful Killing

239. Thousands were killed at Chamkar Khnol execution site during the period of **Im Chaem**'s authority.¹²¹⁸ Killings intensified in late 1978, with witnesses describing truckloads of detainees being taken to the execution site.¹²¹⁹ People were tied up, blindfolded,¹²²⁰ and executed in lines before being pushed into pits.¹²²¹ Killings mostly occurred at night.¹²²² Workers at nearby worksites could hear weeping, cries for help and screams coming from the execution site.¹²²³ People were killed by being shot¹²²⁴ or beaten to death.¹²²⁵
240. People of all ages¹²²⁶ and from various targeted groups¹²²⁷ were killed, including: Lon Nol soldiers,¹²²⁸ civilians who had served in the Lon Nol administration,¹²²⁹ Northwest Zone

cadres,¹²³⁰ students,¹²³¹ professors,¹²³² Vietnamese,¹²³³ Chinese, Cham, Laotians,¹²³⁴ alleged “traitors”,¹²³⁵ and those who attempted¹²³⁶ or were accused of stealing food.¹²³⁷ Some people were killed after they had completed labour projects.¹²³⁸ Entire families were killed at the site.¹²³⁹ Bodies were generally buried after execution, but some were thrown into uncovered mass pits,¹²⁴⁰ with their hands tied or shackled.¹²⁴¹ Sot Phal detailed seeing people being buried alive.¹²⁴² In 1979, witnesses found bodies, bamboo clubs, hoes, shackles,¹²⁴³ and bloodstains¹²⁴⁴ at Chamkar Khnol security office.

241. Five fields have since been identified at Chamkar Khnol, containing four massive grave pits¹²⁴⁵ and a number of smaller pits ranging in size from three by three metres to five by ten metres.¹²⁴⁶ They are round, rectangular, or in trenches, and were either dug out or pits that formed naturally.¹²⁴⁷ The number of mass graves around the execution site has been estimated to be up to 100.¹²⁴⁸ Smaller pits contained up to 60 bodies while larger graves held up to a thousand bodies.¹²⁴⁹ Decayed bodies, bones and clothes have been discovered,¹²⁵⁰ including in a well at the site.¹²⁵¹ Wat Sopheak Mongkul stupa houses an unknown number of bones exhumed from Chamkar Khnol security office and related sites.¹²⁵² In addition to the pits that have been dug up,¹²⁵³ many graves in more densely overgrown areas¹²⁵⁴ have yet to be excavated.¹²⁵⁵ Although the number and location of graves makes estimating the precise number of bodies difficult, the size and number of the pits suggest that the number of victims ranges from 20,000 to 25,000.¹²⁵⁶

WAT PREAH NET PREAH AND RELATED DETENTION AND EXECUTION SITES (1977-1979)

Location and Operation

242. Wat Preah Net Preah and its related detention and execution sites were located in Preah Net Preah Commune, Preah Net Preah District, Banteay Meanchey Province, in what was Sector 5 of the Northwest Zone.¹²⁵⁷ During the DK regime, Wat Preah Net Preah was surrounded by eleven small villages, which together made Preah Net Preah Commune.¹²⁵⁸

243. The Wat Preah Net Preah compound, located south of National Road 6, contained the Wat and a two-storey building that was used as a hospital from 1976 onward.¹²⁵⁹ The Wat's entrances faced both west and east, and the hospital's entrance faced the Wat.¹²⁶⁰ The Wat and the hospital building still exist today.¹²⁶¹
244. Approximately 800 metres north of the Wat was Ta Krak's house, which, after **Im Chaem** and the Southwest cadres removed Ta Krak from his position as Preah Net Preah commune chief,¹²⁶² was used as a temporary detention centre where people were held until they were taken to be killed.¹²⁶³ Surrounded by thick forest, the building was a single-storey wooden structure with its front entrance facing the dirt road.¹²⁶⁴ Behind the house were a well¹²⁶⁵ and a large grave.¹²⁶⁶ The house can still be found on the left side of a small dirt road that leads north to National Road 6 from Wat Preah Net Preah.¹²⁶⁷
245. The Chamkar Ta Ling execution site was located approximately 50 metres southeast of Wat Preah Net Preah.¹²⁶⁸ Six large grave sites were excavated at Chamkar Ta Ling, each measuring four meters square by two metres deep.¹²⁶⁹ Today, the execution site is mostly empty land, with stupas and a pond.¹²⁷⁰
246. Chamkar Daung and Chamkar Yeay Ning execution sites were 1,000 to 1,500 metres northwest of Ta Krak's house, in Paoy Kdoeung village, Preah Net Preah Commune.¹²⁷¹ The execution sites can be accessed via a footpath to the left of Ta Krak's house. The sites almost face each other, separated by a walking path.¹²⁷²

Authority Structure

247. Wat Preah Net Preah and its surrounding execution sites were subject to the commune and district authority. Prior to the purge, Ta Krak was the Secretary of Preah Net Preah

Commune Committee¹²⁷³ and Ta Phan his deputy.¹²⁷⁴ Ta Krak was removed by **Im Chaem**¹²⁷⁵ and replaced by Neari Tha, a Southwest Zone cadre.¹²⁷⁶

248. As District Secretary, Wat Preah Net Preah and its surrounding execution sites were under **Im Chaem**'s control from mid-1977 until the end of the DK regime.¹²⁷⁷
249. The people in Preah Net Preah Commune reported to their group chairpersons, who reported to the village chiefs.¹²⁷⁸ The village chiefs and the committee members of the commune's three cooperatives were required to report to Preah Net Preah Commune Committee members, Ta Nonh and Neari Tha, who in turn reported directly to **Im Chaem**.¹²⁷⁹
250. **Im Chaem** chaired many large meetings in front of Wat Preah Net Preah.¹²⁸⁰ Thousands of people attended such meetings,¹²⁸¹ where destroying internal "enemies", working hard to produce crops, and living together in solidarity were discussed.¹²⁸²

Inhumane Living Conditions

251. Many people died at the Wat Preah Net Preah hospital¹²⁸³ due to illness, starvation, and lack of medicine.¹²⁸⁴ Patients at the hospital were injected with a soft drink or coconut juice and received rabbit droppings as medication.¹²⁸⁵ The bodies of those that died at the hospital were burned or were buried around the Wat Preah Net Preah compound or at Chamkar Daung and Chamkar Yeay Ning.¹²⁸⁶

Unlawful Arrest, Detention and Killing

252. Background searches were conducted in villages and cooperatives of Preah Net Preah and the results were sent to **Im Chaem**.¹²⁸⁷ Persons accused of committing an offence or being an enemy of Angkar were investigated at each level before a report was made up the chain of command.¹²⁸⁸ **Im Chaem** ordered arrests based on the reports she received from the Commune Committee.¹²⁸⁹
253. People from various villages were arrested¹²⁹⁰ and then temporarily detained at Ta Krak's house¹²⁹¹ until they were sent at night to be killed¹²⁹² behind Ta Krak's house,¹²⁹³ at Chamkar Ta Ling,¹²⁹⁴ Chamkar Daung or Chamkar Yeay Ning execution sites.¹²⁹⁵ Local military and armed cadres escorted lines of arrestees to be detained and killed.¹²⁹⁶

254. Those arrested and killed included “17 April” people,¹²⁹⁷ former Lon Nol soldiers and officials,¹²⁹⁸ those suspected of being associated with the Vietnamese,¹²⁹⁹ Northwest Zone cadres,¹³⁰⁰ former teachers,¹³⁰¹ families of people who had fled to Thailand,¹³⁰² those who stole food,¹³⁰³ and those accused of being traitors.¹³⁰⁴ So-called “moral offenders” were also killed.¹³⁰⁵ Former Preah Net Preah Commune deputy secretary Chhim Phan admits beating to death a man and woman accused of committing moral offences in front of a large crowd at Wat Preah Net Preah after **Im Chaem** and the Southwest Zone cadres had assumed control.¹³⁰⁶
255. Killings increased after the arrival of **Im Chaem** and the Southwest Zone cadres¹³⁰⁷ and were a constant occurrence in the period before the Vietnamese arrived in Preah Net Preah District.¹³⁰⁸ After the fall of the DK regime, bodies were exhumed at Chamkar Ta Ling and burned.¹³⁰⁹ Based on witness accounts of the exhumations of six large pits, each containing 110-120 bodies, there were approximately 700 people buried at Chamkar Ta Ling,¹³¹⁰ with a 1984 report suggesting an additional 253 bodies found at the site.¹³¹¹
256. There are no numbers as to the victims killed and buried in the large grave behind the temporary detention centre at Ta Krak’s house,¹³¹² nor the number of bodies dumped into the well behind Ta Krak’s house.¹³¹³ It is estimated that 200 people were killed at Chamkar Ta Doung and Chamkar Yeay Ning.¹³¹⁴ Screams from victims being executed were heard almost nightly in the final month of the regime.¹³¹⁵ The total number of people killed is unknown as bodies were exhumed and burned after the fall of the regime in 1979.¹³¹⁶

SPEAN SPRENG AND PREY RONEAM DAM WORKSITES (1977-1979)

Location and Operation

257. The Spean Spreng worksite stretched across Phnom Srok and Preah Net Preah Districts in what was Battambang Province and is now Banteay Meanchey, in Sector 5 of the Northwest Zone.¹³¹⁷ Spean Spreng canal – located south of Trapeang Thma dam¹³¹⁸ – was split into two sections, one in Phnom Srok District, the other in Preah Net Preah District.¹³¹⁹ The Phnom Srok section was constructed by the Northwest cadres and the Preah Net Preah section by **Im Chaem** and the Southwest cadres (“Spean Spreng canal”¹³²⁰). The border between these two sections was located at a bridge known as “widows bridge”.¹³²¹

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258. Spean Spreng canal was around 30 metres wide and 15 metres deep, and was constructed with the dual aims of facilitating dry season farming in the area and preventing the communes of Tuek Chor and Phnum Lieb from flooding.¹³²² A series of tributaries and smaller auxiliary canal structures were built in addition to the canal throughout the period that the Southwest Zone cadres were in control.¹³²³
259. The canal flowed north to south for approximately 8 to 10 kilometres and intersected with National Road 6 at a location east of Phnum Lieb and west of Ta Pon.¹³²⁴ North of National Road 6, the canal passed through Phnum Lieb Commune (less than three kilometres from **Im Chaem's** office¹³²⁵) and was consequently known to some workers as the Ou Lieb canal.¹³²⁶ The Spean Spreng canal ended south of National Road 6 at the Prey Roneam Reservoir,¹³²⁷ which was built to facilitate dry season farming.¹³²⁸
260. Initial construction of Spean Spreng canal took a minimum of three months.¹³²⁹ Work continued on the canal, Prey Roneam reservoir and ancillary constructions for at least a further year, until the Vietnamese arrived in 1979.¹³³⁰ Additionally, damage to the canal caused by flooding in 1978 – including to the section in Phnom Srok built by the Northwest cadres prior to the arrival of **Im Chaem** and the Southwest Zone cadres – required extensive repair under the control of **Im Chaem**.¹³³¹ Other irrigation projects were planned for the area around Spean Spreng canal but the arrival of the Vietnamese prevented further construction.¹³³²

Authority Structure and Communication

261. Ta Val, the Sector 5 mobile unit chairman who oversaw construction of the Phnom Srok section of the canal¹³³³ was sent to S-21 along with other Northwest Zone cadres¹³³⁴ shortly after the arrival of **Im Chaem** and the Southwest cadres.¹³³⁵
262. **Im Chaem** assumed authority over all worksites previously controlled by Ta Val upon becoming District Secretary.¹³³⁶ **Im Chaem** directed construction activities across Spean

Spreng and Prey Roneam.¹³³⁷ She ordered each commune in Preah Net Preah District to send a contingent of 200-300 labourers to work on the construction.¹³³⁸ Under **Im Chaem**, Southwest cadre Ta Poal was placed in charge of day-to-day activities at the work sites.¹³³⁹

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263. **Im Chaem** visited the worksites to observe progress, and to push workers to work harder and faster, often through a mixture of fear and intimidation.¹³⁴⁰ She also presided over meetings regarding the worksites¹³⁴¹ and would coordinate with village chiefs concerning specific needs relating to construction.¹³⁴²

Forced Labour

264. Thousands of people were forced to work at the Spean Spreng and Prey Roneam¹³⁴³ in mobile units that varied in size, including children's units.¹³⁴⁴ All labour was completed by hand without the assistance of machinery.¹³⁴⁵ Workers were forced to build canals, dams, and reservoirs, and were sometimes transferred to other irrigation construction projects, such as Trapeang Thma dam.¹³⁴⁶

Inhumane Conditions

265. After the Southwest cadres arrived, conditions for labourers at all worksites in the District, including those at Spean Spreng and Prey Roneam deteriorated, with less food and more deaths.¹³⁴⁷

266. Workers lived in huts and sheds¹³⁴⁸ and were allowed minimal rest.¹³⁴⁹ Food rations were inadequate,¹³⁵⁰ with two cans of rice used to cook porridge for 200 people.¹³⁵¹ Workers were provided two meals per day, usually consisting of watery rice porridge.¹³⁵² Due to the lack of food, individuals resorted to searching for and eating plants such as water hyacinths and jack fruit flowers.¹³⁵³ Food was even scarcer during the rainy season.¹³⁵⁴

267. Due to the conditions and the pressure to work, many workers died.¹³⁵⁵ One worker, [redacted], died of

267. Death from starvation and disease was common. Sick workers were given rabbit droppings" as pills and sent to the commune hospital, where many died.¹³⁵⁶ In some cases ill workers were sent back to their communes.¹³⁵⁷

268. Workers across Spean Spreng canal and Prey Roneam reservoir were expected to work from the early hours of the morning until late in the evening, and were forced to work during the night when quotas were not met.¹³⁵⁸ Work quotas were set during meetings¹³⁵⁹ with individuals required to dig between 1 and 3.5 cubic metres of earth per day.¹³⁶⁰ Non-completion of work resulted in punishment, including reduced food rations, additional work or arrest.¹³⁶¹ Commune chairpersons were responsible for finding replacement forces if workers fell ill, and could be punished for showing any leniency to workers.¹³⁶²

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Forced Marriage

269. Unit chiefs under the control of **Im Chaem** arranged forced marriages for workers at Spean Spreng worksite.¹³⁶³ People could not refuse to marry or else they would be considered an "enemy".¹³⁶⁴

Unlawful Arrest, Detention and Killings

270. **Im Chaem** had the power to order arrests at Spean Spreng canal and Prey Roneam reservoir and to impose punishments, including detention and execution.¹³⁶⁵ Workers accused of minor offences were arrested and "refashioned".¹³⁶⁶ Those who re-offended, or who were deemed to have a "tendency to oppose Angkar" were killed or disappeared.¹³⁶⁷ Disappearances from the worksite were common, and being sent away for education or re-education was understood to mean being killed.¹³⁶⁸ Arrests were carried out at night by armed men with cooperative chiefs giving the names of people to be arrested.¹³⁶⁹ Workers and their families were arrested or punished at Spean Spreng canal and Prey Roneam reservoir¹³⁷⁰ for reasons such as trying to flee, "laziness", and making "mistakes".¹³⁷¹ Two witnesses who worked at the Spean Spreng canal, one of whom was the chairman of a unit

of 200 labourers, described “very thin workers” who sought to escape from the worksites but were arrested and sent back by **Im Chaem’s** forces.¹³⁷²

271. Arrestees were also sent to security centres such as Phnom Trayoung security office,¹³⁷³ where they were often killed.¹³⁷⁴ Those arrested were replaced by new workers.¹³⁷⁵

TRAPEANG THMA DAM WORKSITE (1977-1979)

Location and Operation

272. Trapeang Thma Dam is located near Trapeang Thma Village in Paoy Char Commune, Phnom Srok District, in what is now Banteay Meanchey Province¹³⁷⁶ and formerly Battambang,¹³⁷⁷ in Sector 5 of the Northwest Zone.¹³⁷⁸ Construction of the dam began in 1976¹³⁷⁹ or early 1977¹³⁸⁰ and was ongoing throughout 1978.¹³⁸¹ The dam was rehabilitated in 2004 and continues to operate, with no change to its size but with a somewhat different appearance since its construction in the 1970s.¹³⁸²
273. The dam has two dykes, with the east-west dyke measuring approximately nine kilometres and the north-south dyke measuring approximately 13 kilometres.¹³⁸³ The construction

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plans indicated that the dam was to be eight metres high,¹³⁸⁴ around 20¹³⁸⁵ to 50¹³⁸⁶ metres wide at the top, and approximately 60¹³⁸⁷ to 120¹³⁸⁸ metres thick at the base. The main reservoir had a capacity of nearly 200-million cubic metres.¹³⁸⁹ The dam has three bridges which stretch along the east-west dyke.¹³⁹⁰ Bridge 1 is the easternmost bridge and is situated immediately west of the nexus of the two dykes.¹³⁹¹ The central bridge, Bridge 2, is 3.2 kilometres west of Bridge 1.¹³⁹² Bridge 3 is the westernmost bridge at the end of the east-west dyke and is 3.5 kilometres west of Bridge 2.¹³⁹³ Running along the top of both arms of the two dykes are narrow roads.¹³⁹⁴

274. After the initial phase of building, additional construction work that included expanding the core dam structure,¹³⁹⁵ the construction of a floodgate,¹³⁹⁶ canals,¹³⁹⁷ and rice dykes¹³⁹⁸ occurred throughout 1978. Rice fields adjacent to the reservoir were cultivated from late

1977 onwards.¹³⁹⁹ There was also a significant amount of repair work on the dam after extensive flood damage during the 1978 rainy season.¹⁴⁰⁰

Authority Structure and Communication

275. **Im Chaem** had a dual role at Trapeang Thma, as District Secretary of neighbouring Preah Net Preah District, and as part of the Sector 5 Committee. **Im Chaem** sent labourers to work at Trapeang Thma after becoming Preah Net Preah District Secretary in June 1977.¹⁴⁰¹ In her capacity on the Sector 5 Committee – as a member in 1977¹⁴⁰² and as Deputy Secretary in 1978¹⁴⁰³ – **Im Chaem** also had responsibility for the worksite and its labourers.¹⁴⁰⁴
276. Ta Val had authority over the dam's workers¹⁴⁰⁵ as Sector 5 Mobile Unit Chairman¹⁴⁰⁶ prior to the arrival of **Im Chaem** and the Southwest Zone cadres. He was purged in mid-1977¹⁴⁰⁷ and replaced by Ta Yun, a Southwest Zone cadre.¹⁴⁰⁸
277. **Im Chaem** was actively involved in the construction of the dam.¹⁴⁰⁹ She visited the worksite on a weekly basis¹⁴¹⁰ and sent her subordinates to inspect the site and supervise workers directly.¹⁴¹¹ She also regularly welcomed Khieu Samphan and occasionally Pol Pot to visit the dam, and on at least one occasion accompanied a Chinese delegation to inspect the dam.¹⁴¹²

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278. **Im Chaem** held meetings at the dam¹⁴¹³ organised by her subordinates.¹⁴¹⁴ At such meetings, often attended by thousands of workers,¹⁴¹⁵ **Im Chaem** instructed attendees to work hard, strengthen their stance, and commit to their work.¹⁴¹⁶ **Im Chaem** also told workers at a meeting that they had to “work hard and eliminate all capitalist class”, which the workers were made to chant.¹⁴¹⁷
279. **Im Chaem** controlled and gave orders¹⁴¹⁸ to the district militiamen, soldiers and unit chiefs

who supervised and monitored the workers.¹⁴¹⁹ When workers fled the dam, **Im Chaem** had them arrested and taken to Phnum Lieb security office,¹⁴²⁰ before ordering the unit chief to return the workers to the dam, accompanied by militiamen.¹⁴²¹

Forced Labour

280. Thousands¹⁴²² to tens of thousands¹⁴²³ of workers were forced to construct Trapeang Thma Dam. The number of labourers was so great that some witnesses could not estimate how many people worked at the site.¹⁴²⁴
281. Men, women,¹⁴²⁵ youths¹⁴²⁶ and children¹⁴²⁷ were drawn from all four districts of Sector 5 to work at the site.¹⁴²⁸ The workers were mostly “new people” who had been evacuated from Phnom Penh, with a smaller number of “base people”.¹⁴²⁹ The workforce was divided into 10-person units,¹⁴³⁰ with three units making up a platoon,¹⁴³¹ and approximately three to six platoons in each company.¹⁴³²
282. The numbers of labourers remained constant even after initial construction was complete, with extensive expansion¹⁴³³ as well as repairs to the site after a large flood in 1978¹⁴³⁴ requiring thousands of mobile unit workers.¹⁴³⁵

Inhumane Conditions

283. After **Im Chaem** and the Southwest Zone cadres arrived, working and living conditions at the dam became increasingly inhumane.¹⁴³⁶ Despite claiming to have worked to improve conditions for those under her authority,¹⁴³⁷ food rations were reduced for workers at the site.¹⁴³⁸ Meals were small,¹⁴³⁹ usually consisting of gruel,¹⁴⁴⁰ watery porridge,¹⁴⁴¹ or rice.¹⁴⁴² Some workers were so emaciated, their bodies became disfigured.¹⁴⁴³ Those caught stealing food to relieve their hunger were arrested or killed,¹⁴⁴⁴ including one witness who was four months pregnant.¹⁴⁴⁵

284. Despite knowing of the food shortage, **Im Chaem** increased work quotas¹⁴⁴⁶ to a minimum

of three cubic metres per person per day.¹⁴⁴⁷ Working hours were generally split into three sessions: mornings, afternoons, and evenings.¹⁴⁴⁸ The combination of intense physical labour and insufficient food¹⁴⁴⁹ made many workers ill and led to widespread malnutrition and starvation.¹⁴⁵⁰ If workers failed to meet quotas they would be forced to work during the night,¹⁴⁵¹ have their food withheld,¹⁴⁵² or were killed.¹⁴⁵³ Those who became too physically weak to work were accused of feigning illness,¹⁴⁵⁴ were beaten,¹⁴⁵⁵ detained, or sent to “study sessions” – usually meaning they would be killed.¹⁴⁵⁶

285. Workers built their own shelters adjacent to the site,¹⁴⁵⁷ consisting of halls measuring around 10 metres long, made of wood and covered with thatch¹⁴⁵⁸ or coconut palm leaves.¹⁴⁵⁹ Workers slept on the ground¹⁴⁶⁰ or in rice sack hammocks.¹⁴⁶¹ There were no pillows,¹⁴⁶² blankets,¹⁴⁶³ or mosquito nets.¹⁴⁶⁴
286. Hygiene at the dam was non-existent.¹⁴⁶⁵ There were no toilets, and the workers urinated and defecated in the open.¹⁴⁶⁶ Flies were rampant at the worksite,¹⁴⁶⁷ as were mosquitoes. Snakes and other dangerous animals regularly disturbed workers while they slept in the open.¹⁴⁶⁸ There was insufficient clean water,¹⁴⁶⁹ so workers drank dirty water.¹⁴⁷⁰
287. Illness was widespread. Common ailments included fever,¹⁴⁷¹ abdominal pains,¹⁴⁷² dysentery,¹⁴⁷³ malaria,¹⁴⁷⁴ and cholera.¹⁴⁷⁵ Those designated as ‘medics’ had insufficient or no training¹⁴⁷⁶ and complained about the lack of medical supplies available to help sick workers at the site.¹⁴⁷⁷ They routinely administered “rabbit droppings” or traditional medicines for illnesses.¹⁴⁷⁸ Many workers, including children, died from sicknesses¹⁴⁷⁹ and were buried near the dam.¹⁴⁸⁰ Many seriously ill workers were sent to the nearby Sector 5 hospital, but still died.¹⁴⁸¹ One former medic describes receiving only two or three days of medical training and states that “the patients would survive or die according to their fate.”¹⁴⁸²

Forced Marriage

288. Workers at Trapeang Thma dam were forced to marry.¹⁴⁸³ Forced marriages involved groups of up to 100 couples,¹⁴⁸⁴ who were called to sit next to each other and declare they would serve Angkar.¹⁴⁸⁵ Most couples had never met before their wedding day.¹⁴⁸⁶ One witness states that during her wedding night, militiamen spied on her to ensure she was

“getting on well” with her husband,¹⁴⁸⁷ otherwise known to mean having sexual relations. Forced marriages continued at the site up until shortly before the Vietnamese arrived.¹⁴⁸⁸

Unlawful Arrest, Disappearance and Killing

289. Arrests, including of women and children,¹⁴⁸⁹ were commonplace at the worksite¹⁴⁹⁰ and typically occurred at night.¹⁴⁹¹ While “new people” were the principal targets for arrest,¹⁴⁹² those with Vietnamese connections or perceived Vietnamese connections were also targeted.¹⁴⁹³ Those arrested and escorted from the worksite by soldiers were killed.¹⁴⁹⁴ Witnesses saw lines of prisoners being walked with their hands tied behind their backs.¹⁴⁹⁵ Some were sent to be executed at Phnom Trayoung security office.¹⁴⁹⁶
290. Under **Im Chaem**’s authority, more workers were sent to study sessions and killed than before.¹⁴⁹⁷ One witness describes hearing **Im Chaem** announce that those who had been students, soldiers or civil servants were to be taken and refashioned, with those people also being taken to Phum Trayoung security office to be killed.¹⁴⁹⁸
291. Workers who fled the worksite and returned, or were recaptured, were arrested, sent to study and disappeared.¹⁴⁹⁹ Those who disappeared from the site¹⁵⁰⁰ never returned¹⁵⁰¹ or were killed.¹⁵⁰² Such disappearances were frequent, with one labour unit having two or three people disappear every few nights.¹⁵⁰³ Male and female workers accused of committing moral offences were also taken to be killed.¹⁵⁰⁴
292. Killings were widespread at the worksite.¹⁵⁰⁵ Those with Vietnamese connections,¹⁵⁰⁶ former Khmer Republic soldiers,¹⁵⁰⁷ educated individuals,¹⁵⁰⁸ and “new people” were the primary targets of killings.¹⁵⁰⁹ **Im Chaem** received reports about workers at meetings and authorised the killing of those deemed to be “difficult” or “traitors”.¹⁵¹⁰ Workers with night blindness were also targeted,¹⁵¹¹ being made to walk toward a toilet pit at night.¹⁵¹² Those who fell into the pit of excrement were spared, whereas those who did not were accused of pretending and were arrested and disappeared,¹⁵¹³ or taken to be killed.¹⁵¹⁴
293. The bodies of those killed were often buried in the foundation of the dam¹⁵¹⁵ or placed in pits near the dam.¹⁵¹⁶ One witness describes the bodies of fisherman who could not reach their daily quota being dropped into the water at Trapeang Thma reservoir.¹⁵¹⁷ At a meeting co-chaired by **Im Chaem**, between 80 and 90 individuals who spoke against

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Angkar were arrested, killed and buried in the foundation of Trapeang Thma.¹⁵¹⁸ Witnesses also describe the killing and burial of pregnant women at a bridge of the dam on **Im Chaem**'s orders.¹⁵¹⁹ It was thought their bodies would protect the bridge.¹⁵²⁰

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III. LAW

A. CRIMES

CRIMES AGAINST HUMANITY

294. Article 5 of the ECCC Law confers jurisdiction on the ECCC to try individuals suspected of committing crimes against humanity ("CAH"). CAH formed part of customary international law ("CIL") during the period of the ECCC's temporal jurisdiction.¹⁵²¹ The specific offences include murder, extermination, enslavement, imprisonment, torture, persecutions on political, racial or religious grounds, and other inhumane acts. The elements of each of these offences are discussed below. Commission of a crime may occur through act or omission,¹⁵²² and is not limited to direct physical perpetration.¹⁵²³ The perpetrator must have intended the act or omission, or have been aware of the substantial likelihood that a crime would occur as a consequence of his conduct.¹⁵²⁴

GENERAL REQUIREMENTS

295. CAH under Article 5 of the ECCC Law are distinguished by the general requirement that they are committed "as part of a widespread or systematic attack directed against any civilian population, on national, political, ethnic, racial or religious grounds."¹⁵²⁵ Under CIL in 1975, the definition of CAH did not require a nexus to an armed conflict.¹⁵²⁶

296. The individual components of the *chapeau* requirement are addressed in turn below.

Attack

297. An attack is a course of conduct involving the multiple commission of acts of violence, or any mistreatment of the civilian population, including that reflected by the underlying offences in Article 5 of the ECCC Law.¹⁵²⁷ There may exist, within a single attack, a combination of acts, for example, acts of murder, rape and torture.¹⁵²⁸ The acts which constitute an attack need not themselves be punishable as CAH, and are not limited to the use of armed force.¹⁵²⁹ Moreover, an “attack” on a civilian population is a separate concept from an armed conflict. If there is an armed conflict, an attack may precede, outlast or continue through it, without necessarily being part of it.¹⁵³⁰

Widespread or Systematic

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298. The attack must be either widespread or systematic. These requirements are disjunctive.¹⁵³¹ The term “widespread” refers to “the large-scale nature of the attack and the number of victims”¹⁵³² and may be established by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”¹⁵³³ The term “systematic” does not require the attack to be large-scale but relates to the “organised nature of the acts of violence and the improbability of their random occurrence.”¹⁵³⁴ Systematicity may be established by evidence of a “non-accidental repetition of similar criminal conduct.”¹⁵³⁵
299. Only the attack, not underlying acts, needs to be widespread or systematic.¹⁵³⁶ The acts of the perpetrator need only be a part of this attack, and all other conditions being met, a single or limited number of acts on his part would qualify as a CAH, unless those acts may be said to be isolated or random.¹⁵³⁷
300. Indicators that would tend to prove the occurrence of a widespread or systematic attack include “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities, or any

identifiable patterns of crimes.”¹⁵³⁸ While the existence of a policy or plan may be evidentially relevant in establishing the widespread or systematic nature of the attack, it does not constitute an independent legal element of the crime.¹⁵³⁹ Similarly, the commitment of substantial resources to the attack is not required, but may be of evidential value.¹⁵⁴⁰

Directed Against any Civilian Population

301. The attack must be “directed against any civilian population”. This requires that the civilian population be the primary object, rather than an incidental victim, of the attack.¹⁵⁴¹ The factors determining whether an attack was directed against a civilian population include: the means and method used in the course of the attack; the status of the victims; their number; the discriminatory nature of the attack; the nature of the crimes committed in its course; and where relevant, the extent to which the attacking force may be said to have complied or attempted to comply with the precautionary requirements of the laws of war.¹⁵⁴²
302. The notion of “civilian” for the purposes of this element refers to all persons who are not

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members of the enemy armed forces taking an active part in hostilities and therefore includes persons such as members of the armed forces who have laid down their arms and those persons placed *hors de combat* by sickness, wounds, detention or any other cause.¹⁵⁴³

303. The term “any” ensures that CAH are not restricted in their application to a particular group of civilians, distinguished by their nationality, ethnicity or any other factor.¹⁵⁴⁴ CAH may include a state’s attack on its own population,¹⁵⁴⁵ including a state or organisation’s own armed forces.¹⁵⁴⁶ It is not necessary to show that the entire population of the relevant geographical entity was subject to the attack.¹⁵⁴⁷ It is sufficient that enough individuals were targeted in the course of the attack, or that they were targeted in such a way that the attack was directed against a civilian “population”, rather than against a limited and

randomly selected number of individuals.¹⁵⁴⁸ A “civilian population” may also include non-civilians without forfeiting its civilian character, as long as the population is predominantly civilian.¹⁵⁴⁹

304. Where all other criteria are fulfilled, individual victims of CAH need not themselves be “civilians”.¹⁵⁵⁰

Discriminatory Grounds

305. Article 5 of the ECCC Law requires that the attack against a civilian population in the case of CAH be based on national, political, ethnical, racial or religious grounds.¹⁵⁵¹ This discriminatory requirement is a jurisdictional one that narrows the scope of the ECCC’s jurisdiction over CAH when compared with CIL applying between 1975 and 1979.¹⁵⁵² It qualifies the nature of the broader attack rather than the underlying offences: except in the case of persecution, discriminatory intent is not required by CIL as a legal ingredient for CAH.¹⁵⁵³
306. Jurisprudence concerning the crime of persecution defines an act as discriminatory when a victim is targeted because of his/her membership, or imputed membership, in a political, racial or religious group defined by the perpetrator.¹⁵⁵⁴ The targeted group may be defined broadly by the perpetrator. It can be defined in negative terms and can include affiliates and sympathisers, as well as suspects.¹⁵⁵⁵ This approach is equally applicable to defining a discernible group targeted by an attack.

Nexus between Acts of the Perpetrator and the Attack

307. The acts of the perpetrator must constitute part of the attack. The required nexus between the acts of the perpetrator and the attack consists of two elements: the commission of an act which, by its nature or consequences, is objectively part of the attack;¹⁵⁵⁶ coupled with the knowledge on the part of the perpetrator that there is an attack on the civilian population

and that his/her act is part thereof.¹⁵⁵⁷

308. In relation to the first element, the act need not be committed in the midst of the attack to be sufficiently connected to it. An act committed before or after the main attack, or away from it, could still, if sufficiently connected, be considered to be part of it. The crime must not, however, be an isolated act. A crime would be regarded as an isolated act when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack.¹⁵⁵⁸
309. As for the second element, knowledge of the details of the attack is not required;¹⁵⁵⁹ it is sufficient that the perpetrator knows of the overall context within which his/her acts take place.¹⁵⁶⁰ Knowledge is to be assessed on a case-by-case basis.¹⁵⁶¹ The motive of the perpetrator is irrelevant,¹⁵⁶² and it is not necessary for the perpetrator to share the purpose or goal behind the attack.¹⁵⁶³ It is also irrelevant whether the perpetrator intends his acts to be directed against the targeted population or merely against his victim.¹⁵⁶⁴ There is no requirement that the perpetrator know of the discriminatory nature of the attack.¹⁵⁶⁵

SPECIFIC OFFENCES

Murder

310. Murder was well-established as a CAH under CIL by 1975.¹⁵⁶⁶ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with murder as a CAH.¹⁵⁶⁷
311. The *actus reus* of murder as a CAH requires proof of two elements: (1) the death of the victim and (2) that the death was caused by an act or omission of the perpetrator.¹⁵⁶⁸ The victim's body is not required as evidence to prove death.¹⁵⁶⁹ With regard to the causation requirement, the specification that the victim's death was "caused by" the perpetrator's act or omission does not mean that it need be the sole cause of death; it is sufficient that the

perpetrator's conduct contributed substantially to the death of the person. Both the fact of the victim's death and the causation element may be inferred from the circumstances of the case, provided it is established that the only reasonable inference is that the victim is dead as a result of acts or omissions of the perpetrator(s).¹⁵⁷¹

312. As to *mens rea*, the act must have been done, or the omission made, with the intent to kill, or to cause serious bodily harm in the reasonable knowledge it would likely lead to death.¹⁵⁷² There is no requirement that the killing be premeditated.¹⁵⁷³

Extermination

313. Extermination was recognised as a CAH by 1975.¹⁵⁷⁴ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with extermination as a CAH.¹⁵⁷⁵
314. The crime of extermination is the act of killing on a large scale.¹⁵⁷⁶ The *actus reus* of extermination as a CAH consists of an act or omission, or a combination of each, which contributes to the death of persons on a massive scale.¹⁵⁷⁷ The perpetrator's role may be remote or indirect,¹⁵⁷⁸ and may include creating conditions of life aimed at destroying part of a population, such as withholding food or medicine.¹⁵⁷⁹ There is no requirement that the victims "must have been subjected to conditions *inevitably leading to death*".¹⁵⁸⁰
315. A conviction for extermination only requires satisfaction beyond reasonable doubt of the occurrence of unlawful killings based on the totality of the evidence; it is sufficient to demonstrate that mass killings occurred.¹⁵⁸¹ Precise identification, description or designation by name of the victims is not an element of the crime of extermination.¹⁵⁸² Nor is a determination of the specific number of deaths required.¹⁵⁸³
316. There is no minimum number of victims required to satisfy the requirement that the scale of deaths must be "massive".¹⁵⁸⁴ While extermination as a CAH has been found in relation to the killing of thousands,¹⁵⁸⁵ it has also been found in relation to fewer killings.¹⁵⁸⁶ A particularly large number of victims can be an aggravating circumstance in relation to the sentence if the extent of the killings exceeds that required for extermination.¹⁵⁸⁷
317. The requirement of scale must be assessed on a case-by-case basis taking into account the circumstances in which the killings occurred.¹⁵⁸⁸ Relevant factors include, *inter alia*, the

time and place of the killings,¹⁵⁸⁹ the selection of the victims and the manner in which they were targeted,¹⁵⁹⁰ and whether the killings were aimed at the collective group rather than victims in their individual capacity.¹⁵⁹¹ However, there is no requirement that the perpetrator intended to destroy a group or part of a group to which the victims belong.¹⁵⁹² The preparation and organisation of the crime may also be considered when determining the *actus reus* of extermination.¹⁵⁹³

318. The *mens rea* consists of the intent to (i) kill persons on a massive scale, or (ii) inflict serious bodily injury or create conditions of living that lead to death, in the reasonable knowledge that such act or omission is likely to cause the death of a large number of persons.¹⁵⁹⁴ Neither intent to kill a certain threshold number of victims,¹⁵⁹⁵ nor knowledge of a “vast scheme of collective murder”¹⁵⁹⁶ are elements of extermination.

Enslavement

319. It is undisputed that enslavement was recognised under CIL as a CAH by 1975.¹⁵⁹⁷ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with enslavement as a CAH.¹⁵⁹⁸
320. Enslavement is defined as the exercise over a person of any or all powers attaching to the right of ownership.¹⁵⁹⁹ Indicia of enslavement include: “control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.”¹⁶⁰⁰ The elements of enslavement may be satisfied without evidence of additional ill-treatment.¹⁶⁰¹
321. In examining these indicia, one must above all identify the indicia of “ownership”,¹⁶⁰² that is, facts pointing to the victim being reduced to a commodity, such that the person is an object of “enjoyment of possession”; that he or she can be used (for example, for sexual or other purposes), economically exploited, consumed, and ultimately disposed of.¹⁶⁰³ Implicit in the ownership powers is an effort to accrue some gain through the exercise of those powers, though this is not an additional element of the crime.¹⁶⁰⁴ The period of duration of enslavement is not an element of the crime, but duration may be relevant in

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322. Forced or involuntary labour may also constitute enslavement.¹⁶⁰⁶ It must be established that the relevant person had no real choice as to whether they would work, which is a factual determination that must be made in light of the indicia of enslavement identified.¹⁶⁰⁷ The absence of remuneration is not an element of enslavement, but may constitute a relevant evidentiary factor in determining whether the labour was forced.¹⁶⁰⁸
323. Lack of consent is also not an element of the crime of enslavement, as enslavement is characterised by the perpetrator's exercise of power, but it may be evidentially relevant to proof of the exercise of powers of ownership.¹⁶⁰⁹ The absence of consent may be presumed where the expression of consent is impossible,¹⁶¹⁰ such as where victims live in 'a climate of fear'.¹⁶¹¹ In these circumstances, lack of resistance or the absence of clear and constant lack of consent will not be interpreted as a sign of consent.¹⁶¹² It has been found that severely overcrowded conditions, deplorable sanitation, lack of sleep, insufficient food, locked doors, frequent beatings, psychological abuse and brutal living conditions rendered it impossible for detainees to consent to work and that their labour was forced.¹⁶¹³
324. As to the *mens rea*, it must be shown that the perpetrator intentionally exercised any or all of the powers attaching to the right of ownership.¹⁶¹⁴

Imprisonment

325. Imprisonment was recognised as a CAH by CIL by 1975.¹⁶¹⁵ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with imprisonment as a CAH.¹⁶¹⁶
326. The *actus reus* of imprisonment¹⁶¹⁷ requires that an individual be deprived of his or her liberty arbitrarily *i.e.* without a justifiable legal basis and without due process of law.¹⁶¹⁸ If national law is relied upon, the relevant provisions must not violate international law.¹⁶¹⁹ In

determining whether the grounds and procedure for the initial deprivation of liberty were lawful, the court may take into account factors including whether (i) the arrest was based on a valid warrant;¹⁶²⁰ (ii) the detainee was informed at the time of the arrest of the reasons for the arrest;¹⁶²¹ (iii) the detainee was promptly informed, in detail, of any charges against him and/or formally charged;¹⁶²² (iv) the detainee was informed of his procedural rights,¹⁶²³ including access to legal counsel;¹⁶²⁴ and (v) the detainee was brought promptly before a person authorised by law to exercise judicial power (and that person was

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independent, impartial and objective).¹⁶²⁵ The detainee is entitled to proceedings by which the lawfulness of his detention is decided speedily by a court, and to release if the detention is found to be unlawful.¹⁶²⁶

327. If a legal basis for the initial deprivation does exist, it must continue to exist throughout the period of imprisonment, and where a lawful basis of imprisonment ceases to apply, continued imprisonment will be considered arbitrary.¹⁶²⁷ The detainee is entitled to a fair and public trial within a reasonable time, or release,¹⁶²⁸ and to the presumption of innocence until proven guilty.¹⁶²⁹

328. As to *mens rea*, it must be shown that the perpetrator intended to arbitrarily deprive the individual of liberty, or that he acted in the reasonable knowledge that his actions were likely to cause the arbitrary deprivation of physical liberty.¹⁶³⁰

Torture

329. The crime of torture was recognised as a CAH by 1975.¹⁶³¹ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with torture as a CAH.¹⁶³²

330. Both the PTC and SCC have determined that the definition and elements of torture contained in the 1975 Declaration on Torture reflected CIL in 1975.¹⁶³³

331. The *actus reus* of torture requires an act or omission inflicting severe pain or suffering,

whether physical or mental.¹⁶³⁴ In determining whether an act or omission constitutes severe pain or suffering, it is necessary to consider all subjective and objective factors.¹⁶³⁵ Objective factors include the severity of the harm inflicted. Subjective criteria may include the age, sex, state of health of the victim, or the physical or mental effect of treatment on a particular victim.¹⁶³⁶ In addition, the nature and context of the infliction of pain, the premeditation and institutionalisation of the ill-treatment, the physical condition of the victim, the manner and method used, and the position of inferiority of the victim are all relevant factors.¹⁶³⁷ To the extent that an individual has been mistreated over a prolonged period of time, or that he/she has been subjected to repeated or various forms of mistreatment, the severity of the acts should be assessed as a whole.¹⁶³⁸

332. There is no exhaustive classification of the acts that may constitute torture.¹⁶³⁹ The

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consequences of the act or omission need not be visible on the victim,¹⁶⁴⁰ there is no minimum level of pain that must be inflicted,¹⁶⁴¹ nor is there a requirement that the injury be permanent.¹⁶⁴²

333. Acts that are sufficiently severe to constitute torture may arise from conditions imposed upon detention and have included beating, burning, extraction of nails or teeth, electric shocks, suffocation, sexual violence, prolonged denial of sleep, food, hygiene and medical assistance, being kept in constant uncertainty, abuse during interrogations, simulated executions, and threats to torture, to rape or to kill relatives.¹⁶⁴³ Living in a constant state of anxiety and uncertainty as a result of physical abuse and confinement constitutes mental suffering amounting to torture.¹⁶⁴⁴ Similarly, the credible threat of physical torture constitutes psychological torture.¹⁶⁴⁵ Moreover, a person may suffer serious mental harm by witnessing acts against others.¹⁶⁴⁶ Certain acts are considered by their nature to constitute severe pain and suffering. These include rape,¹⁶⁴⁷ sexual violence,¹⁶⁴⁸ and mutilation of body parts.¹⁶⁴⁹

334. Although, under ICTY/ICTR jurisprudence, the perpetrator need not have acted in an official capacity,¹⁶⁵⁰ the SCC has held the definition of torture found in the 1975 Declaration on Torture, including the public official requirement, to be declarative of CIL in 1975.¹⁶⁵¹ Pursuant to that definition, the act or omission must have been carried out “by or at the instigation of a public official”. The International Co-Prosecutor submits that, whilst this element of the definition of torture reflects CIL as far as the obligation of States is concerned, the ICTY and ICTR have correctly rejected the public official requirement in customary international *criminal* law. The 1975 Declaration on Torture, and later 1984 Torture Convention, were addressed to States and sought to regulate their conduct. In that context, it is understandable that they deal with the acts of individuals acting in an official capacity, however, as a CAH it makes no sense to distinguish individuals who are public officials from others who are not but who commit the same acts, with the same intent and with the same consequence for victims whose suffering is hardly relieved by the knowledge that the individual is not a public official.
335. The pain and suffering amounting to torture must be inflicted intentionally.¹⁶⁵² The act or omission must also have been done or made in order to attain a certain result or purpose.

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Such purposes include obtaining information or a confession, punishment, coercion or intimidation, or discriminating, on any ground, against the victim or a third person.¹⁶⁵³ These purposes do not constitute an exhaustive list under CIL and are instead representative.¹⁶⁵⁴ There is no requirement that the act is committed exclusively for a particular purpose: a particular purpose must be “part of the motivation behind the conduct, and it need not be the predominant or sole purpose”.¹⁶⁵⁵

Persecution on Political, Racial or Religious Grounds

336. Persecution as a CAH existed under CIL by 1975.¹⁶⁵⁶ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with persecution as a

337. The *actus reus* of persecution is an act or omission which discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law.¹⁶⁵⁸

An act/omission denying/infringing upon a fundamental right

338. “Persecutory acts” include the other underlying offences for CAH, as well as other acts or omissions that are of equal gravity or seriousness, whether in isolation or in conjunction with other acts.¹⁶⁵⁹ These other acts or omissions may be,¹⁶⁶⁰ but need not necessarily be,¹⁶⁶¹ international crimes in and of themselves. Whether the acts actually constitute persecution is a fact-specific inquiry.¹⁶⁶²
339. The context in which an act or omission takes place is important for the purpose of assessing its gravity or severity.¹⁶⁶³ Other factors that should be considered in that assessment include (i) whether it was committed in the context of, or as part of a chain of events in a larger persecutory campaign, the ultimate goal and end result of which was extremely grave, resulting in gross violation of fundamental rights,¹⁶⁶⁴ and (ii) the discriminatory effect it seeks to encourage within the general populace against a targeted group.¹⁶⁶⁵
340. Following an extensive review of jurisprudence from the IMT and tribunals acting pursuant to CCL 10, the SCC held that “the other acts not found in the instruments constituted a broad range of breaches of individual rights including rights to property, a fair

trial, equal protection of the law, citizenship, work, education, marriage, privacy and freedom of movement”.¹⁶⁶⁶ In the same vein, the following acts not explicitly listed in Article 5 of the ECCC Law have been considered acts of persecution at the ICTY and ICTR:¹⁶⁶⁷ the destruction of religious buildings;¹⁶⁶⁸ acts of harassment, humiliation, degradation and psychological abuse including forcing a victim to witness or hear torture

interrogation and random brutality in a prison camp;¹⁶⁶⁹ wanton destruction of private and public property, including cultural monuments and sacred sites;¹⁶⁷⁰ destruction, including burning of homes and other means of livelihood;¹⁶⁷¹ forced labour;¹⁶⁷² inhumane living conditions;¹⁶⁷³ enforced disappearances;¹⁶⁷⁴ the denial of the rights to employment, freedom of movement, proper judicial process and proper medical care;¹⁶⁷⁵ and hate speech and calls to violence.¹⁶⁷⁶

Discrimination in fact

341. The act or omission must have actual discriminatory consequences.¹⁶⁷⁷ The SCC has held that ‘discrimination in fact’ occurs where a victim is targeted because of the victim’s real or perceived membership in a group *defined by the perpetrator* on specific grounds, namely on a political, racial or religious basis,¹⁶⁷⁸ and the victim belongs to a sufficiently discernible political, racial or religious group.¹⁶⁷⁹ The group may be defined broadly by the perpetrator. This can be in negative terms and can include affiliates and sympathisers as well as suspects.¹⁶⁸⁰
342. In relation to persecution on political grounds, there is no requirement that the targeted group hold a particular political view. Political persecution may occur where the discrimination is effected according to political motivations or agenda *against* a group based on a subjective assessment as to the group’s political threat or danger to the perpetrator.¹⁶⁸¹ The group or groups persecuted on political grounds may include various categories of persons, such as: officials and political activists; persons of certain opinions, convictions or beliefs; persons of certain ethnicity or nationality; or persons representing certain social strata (e.g. “intelligentsia”, clergy or bourgeoisie).¹⁶⁸²

Mens Rea

343. As to *mens rea*, persecution requires deliberate perpetration of an act or omission with the specific intent to discriminate on political, racial or religious grounds.¹⁶⁸³ Discriminatory

intent requires that the perpetrator acted with the specific intent to harm the victim because he/she belongs to a particular community or group.¹⁶⁸⁴ There is no requirement that the perpetrator possess a persecutory intent – that is, intent to remove targeted persons from society or humanity – over and above a discriminatory intent.¹⁶⁸⁵ Similarly, discriminatory intent does not require that the perpetrator identify himself with the specific underlying tyrannical motives of a regime pursuing a persecutory policy or campaign.¹⁶⁸⁶ The motive out of which the perpetrator engaged in persecution is immaterial to the finding of specific intent.¹⁶⁸⁷

344. While the specific intent may not be inferred merely by reference to the general discriminatory nature of an attack, it may be inferred from such a context as long as, in view of the facts of the case, circumstances surrounding the commission of the alleged acts substantiate the existence of such intent.¹⁶⁸⁸ Circumstances which may be taken into consideration include the systematic nature of the crimes committed against a group and the general attitude of the alleged perpetrator as demonstrated by his behaviour.¹⁶⁸⁹ Intent has been inferred “through a perpetrator’s knowing participation in a system or enterprise that discriminated on political, racial or religious grounds.”¹⁶⁹⁰ However, the existence of a discriminatory policy is not a requirement for proving persecution.¹⁶⁹¹ Evidence of some affiliations with the target group does not necessarily preclude a trier of fact from reasonably finding the requisite intent to commit persecution.¹⁶⁹²

Other Inhumane Acts

345. “Other inhumane acts” was established as a CAH under CIL before 1975.¹⁶⁹³ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged with other inhumane acts as a CAH.¹⁶⁹⁴ “Other inhumane acts” is *in itself* a crime under international law. There is no requirement that each sub-category be criminalised as a distinct CAH from 1975-1979. To require this would be to render the category of “other inhumane acts” meaningless.¹⁶⁹⁵
346. “Other inhumane acts” is a residual category of CAH that criminalises conduct which meets the criteria of a CAH but does not fit within one of the other specified underlying crimes.¹⁶⁹⁶ The act or omission must be sufficiently similar in nature and gravity to other enumerated CAH.¹⁶⁹⁷

347. The elements of the crime of ‘other inhumane acts’ are an act or omission by the perpetrator: (i) causing serious bodily or mental harm or constituting a serious attack on human dignity; that is (ii) performed deliberately 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, or in the knowledge that the act or omission was likely to cause serious physical or mental suffering or a serious attack upon the human dignity of the victim.¹⁶⁹⁸
348. The seriousness of the act is to be assessed on a case-by-case basis, taking account of the individual circumstances of the case.¹⁶⁹⁹ It is therefore a mixed question of law and fact.¹⁷⁰⁰ The individual circumstances may include the nature of the act or omission, the context in which it occurred; the personal circumstances of the victim including age, sex and health; and the physical, mental and moral effects of the act upon the victim.¹⁷⁰¹ There is no requirement that the victim suffer long-term effects, although this may be relevant to the seriousness of the acts.¹⁷⁰²
349. In addition to the acts surveyed in more detail below, ‘other inhumane acts’ have been found to include: forcible displacement and forced transfer;¹⁷⁰³ cruel, humiliating, inhumane or degrading treatment;¹⁷⁰⁴ forced prostitution;¹⁷⁰⁵ serious physical and mental injury;¹⁷⁰⁶ mutilation, beatings and other types of severe bodily harm;¹⁷⁰⁷ sexual violence;¹⁷⁰⁸ and the witnessing of criminal acts against family or friends.¹⁷⁰⁹

Enforced Disappearances

350. The Co-Investigating Judges, the ECCC Trial Chamber, the ICTY and the SCSL have all recognised that enforced disappearance may be serious enough to constitute ‘other inhumane acts’, all other conditions being satisfied.¹⁷¹⁰ The ICC also recognises enforced disappearance as a discrete crime underlying CAH.¹⁷¹¹
351. Enforced disappearance occurs when (i) an individual is deprived of his liberty, such as through arrest, detention or abduction; (ii) the deprivation of liberty is accompanied or followed by the refusal to disclose information regarding the fate or whereabouts of the person concerned, or to acknowledge the deprivation of liberty, and thereby deny the

individual recourse to the applicable legal remedies and procedural guarantees, and (iii) the first and second elements were carried out by state agents, or with the authorisation, support or acquiescence of a State or political organisation.¹⁷¹²

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Rape

352. Although rape is enumerated as a CAH in its own right under Article 5 of the ECCC Law, both the PTC and SCC have held that rape was not a distinct CAH during the ECCC's temporal jurisdiction.¹⁷¹³ The PTC has confirmed that facts characterised as CAH in the form of rape can additionally be categorised as a CAH of "other inhumane acts".¹⁷¹⁴ Moreover, the ICTY, ICTR, SCSL and ICC have all recognised rape as a discrete CAH.¹⁷¹⁵ Rape may also constitute torture where the elements of torture are established.¹⁷¹⁶ The gravity requirement for classification of rape as an "other inhumane act" is therefore clearly met.
353. There has been some divergence in the definition of rape among the international tribunals. The ICTR Trial Chamber has adopted a broad definition of rape, namely "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."¹⁷¹⁷ The OCIJ has previously adopted a similar definition, adding in the alternative that the victim's consent should otherwise be absent.¹⁷¹⁸ In Case 001, the ECCC Trial Chamber followed the ICTY in defining the physical element more narrowly as the sexual penetration, however slight, of (a) the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim.¹⁷¹⁹ The ICC definition falls between the two definitions, requiring that "the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body."¹⁷²⁰ The Co-Prosecutor submits that the correct definition requires penetration, however slight,

of any part of the body of one individual by another, without the consent of either or both participants in the sexual act. Circumstantial evidence may be used to demonstrate rape.¹⁷²¹

354. Consent for this purpose must be given voluntarily, as a result of the victim's free will, assessed in the context of the surrounding circumstances.¹⁷²² Force, or threat of force, may provide evidence of non-consent, but force is not an element of rape, and there are factors other than force which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.¹⁷²³ A person may be incapable of giving genuine

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consent if affected by natural, induced or age-related incapacity.¹⁷²⁴ Proof of resistance (or continuous resistance) by the victim is also not required.¹⁷²⁵ The circumstances prevailing in most cases charged as war crimes or CAH "will be almost universally coercive," thus rendering genuine consent impossible.¹⁷²⁶ Similarly, situations of captivity or detention have been recognised as vitiating true consent.¹⁷²⁷

355. The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.¹⁷²⁸ Knowledge of non-consent may be proven if the perpetrator was aware, or had reason to be aware, of the coercive circumstances that undermined the possibility of genuine consent.¹⁷²⁹

Forced Marriage

356. The OCIJ and SCSL have recognised that forced marriage falls within the purview of "other inhumane acts".¹⁷³⁰
357. The *actus reus* of forced marriage requires that the perpetrator compel a person by force, threat of force, or coercion to serve as a conjugal partner.¹⁷³¹ 'Marriage' implies a relationship of exclusivity between the 'husband' and 'wife'.¹⁷³² The 'marriage' may, depending on the circumstances, involve a variety of duties such as sexual intercourse, domestic labour, enduring pregnancy and caring for the children of the 'marriage',¹⁷³³ and

may involve the commission of one or more international crimes such as enslavement, rape, sexual assault or sexual slavery, among others.¹⁷³⁴ However, forced marriage is not predominantly a sexual crime, and is committed regardless of whether the ‘husband’ and ‘wife’ engage in sexual relations.¹⁷³⁵

358. Force used to compel a person to marry is not limited to physical force, but includes the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment.¹⁷³⁶ Where it is shown that the environment is so coercive that the free exercise of choice is impossible, it is not required to prove the absence of consent to a forced marriage. Circumstances prevailing in most cases charged as war crimes or CAH “will be almost universally coercive,” thus rendering genuine consent impossible.¹⁷³⁷ Similarly, a climate of fear¹⁷³⁸ or situations of captivity or detention¹⁷³⁹ have been recognised as vitiating genuine consent. In an environment of coercion, any relative

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benefits that victims of forced marriage receive from perpetrators neither signifies consent to the forced conjugal association, nor vitiates the criminal nature of the perpetrator’s conduct.¹⁷⁴⁰

359. As to *mens rea*, the perpetrators must intend to force a conjugal partnership upon the victim(s).¹⁷⁴¹

Confinement in inhumane conditions

360. According to international jurisprudence, confinement in inhumane conditions, including deprivations of food, water, adequate shelter and medical assistance, isolation and sub-par sanitary conditions has been found to fall within the purview of “other inhumane acts”.¹⁷⁴² It has also been found to rise to the level of gravity of the other crimes enumerated in Article 5 of the ECCC Law and amount to persecution as a CAH,¹⁷⁴³ as well as constituting the offence of cruel treatment as violations of the laws or customs of war under the ICTY Statute.¹⁷⁴⁴ In the context of genocide, the same deprivations have been considered to

statute. In the context of genocide, the same deprivations have been considered to evidence conditions of life that would bring about a group's physical destruction.¹⁷⁴⁵ Confinement in inhumane conditions may therefore be of similar gravity to the enumerated CAH and thus may fall within the ambit of 'other inhumane acts'.

GRAVE BREACHES OF THE GENEVA CONVENTIONS

361. Article 6 of the ECCC Law allows the ECCC to bring to trial individuals suspected of committing grave breaches of the Geneva Conventions ('grave breaches'). Grave breaches were crimes under international law during the period of the ECCC's temporal jurisdiction, which were foreseeable and accessible to individuals at that time.¹⁷⁴⁶ The specific offences listed in Article 6 include wilful killing, inhuman treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a civilian the rights of fair and regular trial, and unlawful confinement of a civilian. The elements of these offences are discussed below.
362. For the commission of these offences to constitute grave breaches, certain general requirements must be met: (i) the specific offences must be committed in the context of an international armed conflict ("IAC"); (ii) the perpetrator must be aware of the factual circumstances that established the existence of an armed conflict; (iii) the acts must be

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committed against persons or property protected under one or more of the Geneva Conventions of 1949 ("GC" or "GCs"); and (iv) the perpetrator must be aware of the factual circumstances that established this protected status.¹⁷⁴⁷

GENERAL REQUIREMENTS

International Armed Conflict

363. The requirement of an IAC contains two elements: (i) there must be an IAC and (ii) there must be a nexus between the conflict and the crimes alleged.

364. An IAC must exist in fact.¹⁷⁴⁸ An armed conflict exists “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.”¹⁷⁴⁹ An armed conflict assumes an international character when it involves two or more States.¹⁷⁵⁰ The geographic and temporal application of the GCs extend beyond the vicinity of the actual hostilities and the cessation of fighting.¹⁷⁵¹ once it is established that an IAC existed at the place and time relevant to the charges, IHL will apply to the whole territory of the relevant States, whether or not actual combat takes place there, and will continue to apply beyond the cessation of hostilities until a general conclusion of peace is achieved.¹⁷⁵²
365. Additionally, an armed conflict located within the territory of just one State can become “international (or, depending upon the circumstances, be international in character alongside an internal armed conflict) if (i) another State intervenes in that conflict through its troops, or alternatively if (ii) some of the participants in the internal armed conflict act on behalf of that other State.”¹⁷⁵³ An official recognition of a state of war is not required for the grave breaches provisions of the GCs to apply. Rather, *de facto* hostilities between States may be sufficient to satisfy the internationality requirement, where these are conducted through the States’ respective armed forces.¹⁷⁵⁴
366. There must be a nexus between the IAC and the crimes alleged.¹⁷⁵⁵ The nexus requirement is met when it is shown that the alleged crimes were “closely related” to the armed conflict as a whole.¹⁷⁵⁶ To this effect, “[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it,

the manner in which it was committed or the purpose for which it was committed.”¹⁷⁵⁷ It is not necessary to establish that there were actual combat activities in the area where the acts are alleged to have occurred or that they were part of a policy or practice tolerated by one

of the parties to the armed conflict. Where, however, acts occurred in a prisoner camp with the connivance or permission of the authorities running these camps and as part of an accepted policy towards prisoners, those acts will clearly be “closely related” to the armed conflict.¹⁷⁵⁸

Protected Persons

367. Article 6 of the ECCC Law grants the ECCC jurisdiction over “acts against persons [...] protected under provisions” of the GCs.¹⁷⁵⁹ This reference covers “protected persons” as defined pursuant to Article 4 of GC IV (as regards civilian persons).
368. GC IV extends “protected person” status to civilians who are “in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”¹⁷⁶⁰ This protects, *inter alia*, civilians who find themselves on territory controlled by an enemy state.¹⁷⁶¹ However, a person may be accorded protected status notwithstanding the fact that he/she is of the same nationality as a party to the conflict.¹⁷⁶² The protected status of an individual does not depend on formal bonds and purely legal relations, but on the substance of relations that exist between the individual and the State.¹⁷⁶³ The crucial consideration when analysing these substantive relations is the allegiance – or lack thereof – that an individual has to a party to the conflict.¹⁷⁶⁴ Civilians may thus be considered as protected persons for the purpose of GC IV where they are viewed by the State whose hands they are in “as belonging to the opposing party in an armed conflict and as posing a threat to [that] State.”¹⁷⁶⁵

Awareness of Factual Circumstances

369. The perpetrator, in addition to having the requisite *mens rea* for the specific crimes, must be aware of the factual circumstances establishing (i) the existence of an IAC; and (ii) the victim’s protected status.¹⁷⁶⁶ Knowledge that a foreign State was involved in the armed conflict will satisfy the first element.¹⁷⁶⁷ Knowledge that the victim belonged to an adverse party to the conflict will satisfy the second element¹⁷⁶⁸ (although, as noted above, this is not the only scenario covered under CIL).

SPECIFIC OFFENCES

Wilful Killing

370. The elements of the offence of wilful killing¹⁷⁶⁹ under Article 6 of the ECCC Law are the same as those of murder as a CAH under Article 5 of the ECCC Law.¹⁷⁷⁰

Inhuman Treatment

371. Inhuman treatment¹⁷⁷¹ is defined as an intentional act or omission against a person protected under the GCs, which causes serious mental harm, physical suffering or injury, or constitutes a serious attack on human dignity.¹⁷⁷²
372. This category is an umbrella clause under which those violations of sufficient seriousness that are not expressly enumerated in Article 6 may be considered to be grave breaches.¹⁷⁷³ Whether any particular act constitutes inhuman treatment is a question of fact to be judged in light of all the circumstances.¹⁷⁷⁴
373. Acts which constitute torture or wilfully causing great suffering or serious injury to body or health will simultaneously constitute inhuman treatment. The offence extends also to encompass other acts which violate the principle of humane treatment, in particular respect for human dignity.¹⁷⁷⁵ Acts not meeting the threshold of torture because of the failure to prove that they were carried out for a prohibited purpose may also constitute inhuman treatment.¹⁷⁷⁶ The inhumane treatment of detainees has been deemed to fall within the scope of this category of grave breaches.¹⁷⁷⁷ Acts such as mutilation and other types of severe bodily harm, beatings and other acts of violence,¹⁷⁷⁸ and serious physical and mental injury¹⁷⁷⁹ have been considered inhuman treatment.

Wilfully Causing Great Suffering or Serious Injury to Body or Health

374. This crime is defined as an intentional act or omission causing great mental or physical suffering or serious injury to body or health, including mental health.¹⁷⁸⁰ This offence includes acts which do not fulfil the requirements of torture – for example, by requiring a particular purpose – although all acts of torture could fall within the scope of this offence.¹⁷⁸¹ Although the victim must be “seriously” harmed, there is no need to prove that the physical or mental injury is permanent or irremediable,¹⁷⁸² but it must go beyond temporary unhappiness, embarrassment or humiliation,¹⁷⁸³ and beyond harm relating solely

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to the victim's human dignity.¹⁷⁸⁴

Wilful Deprivation of a Fair and Regular Trial

375. Wilfully depriving a civilian of the rights to a fair and regular trial by denying judicial guarantees as defined in GC IV is a grave breach of that convention.¹⁷⁸⁵ These judicial guarantees include: (i) the right to be promptly informed of the offences with which the accused is charged;¹⁷⁸⁶ (ii) the protection against collective penalty;¹⁷⁸⁷ (iii) the right to protection under the principle of legality;¹⁷⁸⁸ (iv) the right not to be punished more than once for the same act or on the same charge (*ne bis in idem*);¹⁷⁸⁹ (v) the right to be informed of rights of appeal;¹⁷⁹⁰ and (vi) the right not to be sentenced or executed without previous judgment pronounced by a regularly constituted court.¹⁷⁹¹

Unlawful Confinement of a Civilian

376. The elements of unlawful confinement¹⁷⁹² as a grave breach of the GCs are the same as the elements of imprisonment as a CAH.¹⁷⁹³
377. The confinement of a civilian "will be lawful only in the conditions prescribed by Article 42 [of GC IV]" and "where the provisions of Article 43 [of GC IV] are complied with."¹⁷⁹⁴ Thus, confinement of a civilian is lawful only where there are reasonable grounds to believe that the security of the detaining power is at risk.¹⁷⁹⁵ Further, an initially lawful internment becomes unlawful if the detaining party fails to respect the detainee's basic procedural rights and does not establish an appropriate court or administrative board as prescribed in Article 43 of GC IV.¹⁷⁹⁶
378. In the determination of the legality of the initial detention, the analysis under Article 42 is informed by other provisions of the GC IV which allow for suspension of certain rights of civilians during an armed conflict, in particular Articles 5 and 27(4).¹⁷⁹⁷ Nevertheless, the GCs do not confer a "blanket power to detain the entire civilian population of a party to the conflict"; "there must be an assessment that each civilian taken into detention poses a *particular risk* to the security of the State."¹⁷⁹⁸

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B. INDIVIDUAL CRIMINAL RESPONSIBILITY

MODES OF RESPONSIBILITY

379. Article 29^{new} of the ECCC Law provides for individual criminal liability of accused who:

(i) planned, instigated, ordered, aided and abetted, or committed crimes within the jurisdiction of the ECCC; and (ii) superiors who failed to prevent or punish the commission of crimes enumerated in the ECCC Law by their subordinates. These forms of criminal responsibility are described in more detail below.

380. For all modes of responsibility, motive must be distinguished from intent.¹⁷⁹⁹ Similarly, the subordinate position of an accused is legally irrelevant to determining individual criminal responsibility.¹⁸⁰⁰

Committing via Joint Criminal Enterprise

381. Joint criminal enterprise ("JCE") is a mode of responsibility that imposes criminal responsibility on individuals for actions perpetrated by a collectivity of persons in furtherance of a common criminal design. Participation in a JCE amounts to commission within the scope of Article 29^{new} of the ECCC Law.¹⁸⁰¹ There are three different but interrelated forms of JCE:

- (1) **Basic** ("JCE I"): all participants act pursuant to a common criminal purpose, and share the same criminal intent when doing so.¹⁸⁰²
- (2) **Systemic** ("JCE II"): this is a variant of the basic form, characterised by the existence of an organised system of ill-treatment such as internment or concentration camps

or an organised system of treatment, such as treatment or concentration camps, with which the participants are involved.¹⁸⁰³

- (3) **Extended** (“JCE III”): all participants act pursuant to a common criminal purpose, possessing a shared criminal intent when doing so, and one or more of the participants carries out an act that, despite going beyond the original criminal purpose, was a natural and foreseeable consequence of that common purpose.¹⁸⁰⁴

382. The PTC and TC have consistently found that, by 1975, both JCE I and JCE II were recognised as modes of responsibility under CIL,¹⁸⁰⁵ and that criminal responsibility pursuant to these modes was both foreseeable and accessible.¹⁸⁰⁶

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383. The same chambers have held that JCE III did not exist in CIL by 1975.¹⁸⁰⁷ This matter is currently an issue before the SCC in Case 002/01 and the Co-Prosecutor respectfully maintains the position, as set out in the Co-Prosecutors’ appeal in that case,¹⁸⁰⁸ that the PTC and TC erred in law in finding that JCE III was not part of CIL prior to 1975.

384. The *actus reus* of all types of JCE is comprised of three elements. First, a “plurality of persons” is required.¹⁸⁰⁹ The group of people need not be organised in a military, political, or administrative structure.¹⁸¹⁰ Whilst it is necessary to identify the plurality of persons participating in the JCE, the participants may be identified by category and need not be named individually.¹⁸¹¹

385. Second, there must be a common¹⁸¹² purpose that amounts to or involves the commission of a crime over which the ECCC has jurisdiction.¹⁸¹³ It is therefore not necessary that the overarching objective of the common plan be a crime, as long as the participants intend it to be implemented through criminal means.¹⁸¹⁴ There is no limit to the scope of a JCE, geographically or otherwise; an accused’s liability “may be as narrow or as broad as the plan in which he willingly participated”.¹⁸¹⁵ This purpose need not have been previously arranged or formulated. It may materialise extemporaneously and be inferred from the facts.¹⁸¹⁶

386. Third, the accused must participate in the common purpose.¹⁸¹⁷ The accused need not have been involved in the formulation of the common plan¹⁸¹⁸ or the commission of a crime.¹⁸¹⁹ Neither the accused's position of authority,¹⁸²⁰ nor his presence at the time when a crime is committed,¹⁸²¹ are required. Moreover, the fact that the accused's participation amounted to no more than his 'routine duties' will not exculpate him.¹⁸²² All that is required is that he participate in some way in the furtherance of the common purpose.¹⁸²³ As the SCSL Appeals Chamber explained, "the manner in which the members of the JCE interact and cooperate can take as many forms as conceived by the participants to pursue the realisation of their shared common criminal purpose."¹⁸²⁴
387. The accused's contribution must be significant,¹⁸²⁵ but it is not required to be necessary or substantial.¹⁸²⁶ As such, it need not be a *sine qua non* for the commission of any crime.¹⁸²⁷ The significance of the contribution to the JCE is to be determined on a case-by-case basis, taking into account a variety of factors, including: the size, seriousness and scope of the

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- criminal plan and crimes committed; the *de jure* or *de facto* position of the accused; the level and efficiency of his participation; any relevant public comments made by him; and any efforts to prevent crimes.¹⁸²⁸
388. Participants in a JCE can incur liability for crimes committed by direct perpetrators who were not JCE members, provided that it has been established that the crimes can be imputed to at least one JCE participant, and that this participant, when using a direct perpetrator, acted to further the common purpose.¹⁸²⁹ The establishment of the link between the crime in question and the JCE member is to be assessed on a case-by-case basis.¹⁸³⁰ The link may be established on showing that the JCE member (i) closely cooperated with the physical perpetrator or intermediary perpetrator in order to further the common purpose,¹⁸³¹ (ii) explicitly or implicitly requested the non-JCE member to commit a crime,¹⁸³² or (iii) instigated, ordered, encouraged, or otherwise availed himself of the

1817. See, e.g., *Prosecution v. Gotovina et al.*, SCSL-04-18-T-137 (2001), paras. 1000-1001.

non-JCE member to commit the crime.””” It may also be relevant whether the crimes were committed by forces under the control of the JCE member,¹⁸³⁴ or acting in coordination with forces under the control of the JCE member.¹⁸³⁵

389. It is not required, however, that the JCE member exercised effective control,¹⁸³⁶ or indeed any “control and influence”¹⁸³⁷ over the perpetrator. Nor do the perpetrator of the crime and the accused need to have an express understanding or agreement between them as regards the commission of the crime.¹⁸³⁸ Moreover, it is not necessary that the non-JCE member shared the *mens rea* of the JCE member, or that he knew of the existence of the JCE.¹⁸³⁹

Mental elements

390. The mental element required for criminal responsibility on the basis of participation in a JCE varies according to the type of JCE.
391. To incur responsibility pursuant to JCE I, the accused must share with the other JCE participants both the intent¹⁸⁴⁰ to commit the crimes within the common purpose and the intent to participate in a common plan aimed at its commission.¹⁸⁴¹ For specific intent crimes, such as persecution as a CAH, the accused must also share the relevant specific intent.¹⁸⁴² Shared criminal intent does not require the accused’s personal satisfaction or enthusiasm or his personal initiative in contributing to the JCE.¹⁸⁴³ Moreover, the accused

is not required to know about the specific criminal incidents in question.¹⁸⁴⁴ Intent can be inferred from a person’s knowledge, combined with continuing participation in the crimes.¹⁸⁴⁵ The significance and scope of the material participation of an individual in a JCE may also be relevant in determining whether that individual had the requisite *mens rea*.¹⁸⁴⁶

392. For JCE II, an accused must have knowledge of the system of ill-treatment and the intent to further this common concerted system of ill-treatment.¹⁸⁴⁷

393. Responsibility for crimes, including crimes of specific intent,¹⁸⁴⁸ under JCE III requires that the accused hold the shared intent for the crimes within the common purpose and the intent to participate in the relevant way in the furtherance of that purpose. He will be held responsible for the commission of crimes outside the common purpose if, under the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or other members of the group, and (ii) the accused willingly took that risk.¹⁸⁴⁹ The crime must be shown to have been foreseeable to the accused in particular.¹⁸⁵⁰ The degree of foresight required is knowledge of a possibility that the crime might occur in the execution of the JCE.¹⁸⁵¹ However, the possibility that a crime could be committed must be sufficiently substantial as to be foreseeable to an accused.¹⁸⁵²

394. Similarly when the accused, or any other member of the JCE, in order to further the common criminal purpose, uses persons who, in addition to (or instead of) carrying out the *actus reus* of the crimes forming part of the common purpose, commit crimes going beyond that purpose, the accused may be found responsible for such crimes provided that he participated in the common purpose with the requisite intent and that, in the circumstances of the case, (i) it was foreseeable that such a crime might be perpetrated by one or more of the persons used by him (or by any other member of the JCE) in order to carry out the *actus reus* of the crimes forming part of the common purpose; and (ii) the accused willingly took that risk – that is the accused, with the awareness that such a crime was a possible consequence of the implementation of that enterprise, decided to participate in that enterprise.¹⁸⁵³

Planning

395. By 1975, planning was a form of individual criminal responsibility recognised by CIL.¹⁸⁵⁴

Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged pursuant to this mode of responsibility.¹⁸⁵⁵

396. The *actus reus* of “planning” requires that one or more persons participate in the design of an act or omission and thereby have a substantial effect on the commission of a crime that is in fact perpetrated.¹⁸⁵⁶ An accused need not therefore design the conduct alone.¹⁸⁵⁷ Nor need he be the originator of the design or plan;¹⁸⁵⁸ it is sufficient to endorse a plan proposed by another.¹⁸⁵⁹ Circumstantial evidence may provide proof of the existence of the plan.¹⁸⁶⁰ A conviction for planning does not require a finding of a position of authority,¹⁸⁶¹ or that the accused was present at the crime scene.¹⁸⁶²
397. The plan must precede and substantially contribute to the criminal conduct.¹⁸⁶³ Whether particular acts amount to a substantial contribution is to be assessed on a case-by-case basis in light of the evidence as a whole.¹⁸⁶⁴ With regard to CAH, whereas the crime *per se* must be committed as part of a widespread or systematic attack, preparatory acts of planning can be accomplished before the commission of the crime and the occurrence of the widespread or systematic attack.¹⁸⁶⁵
398. As to the content of the plan, it need not necessarily devise the commission of a particular crime; the planning can be of an objective that is to be achieved by the commission of crimes. As such, the legitimate character of an operation does not exclude an accused’s criminal responsibility for planning crimes committed in its course if the goal is to be achieved by the commission of crimes.¹⁸⁶⁶ Where an accused plans conduct that has the predominant purpose of indiscriminately attacking civilians, he plans conduct that constitutes crimes.¹⁸⁶⁷
399. As to *mens rea*, the accused must intend, or be aware of the substantial likelihood of, the commission of a crime upon the execution of the plan.¹⁸⁶⁸ The accused’s *mens rea* may be inferred from the circumstances.¹⁸⁶⁹ There is no requirement that the risk of crimes being committed be “reasonable” or “justified”.¹⁸⁷⁰ Where it has been determined that the principal perpetrators were aware of the factual circumstances establishing the status of the victims (*e.g.* civilian, *hors de combat*, etc.), such findings are not necessary for a conviction for planning.¹⁸⁷¹

Instigating

400. Instigating¹⁸⁷² was recognised as a form of individual criminal responsibility in CIL by 1975.¹⁸⁷³ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged pursuant to this mode of responsibility.¹⁸⁷⁴
401. To be held responsible for instigating, an accused must, by way of an act or omission, prompt another person to act in a particular way that has a substantial effect on the commission of the crime.¹⁸⁷⁵ This mode of liability has also been described as “urging or encouraging.”¹⁸⁷⁶ There is no requirement for the instigation to be “direct and public”.¹⁸⁷⁷ Both positive acts and omissions can constitute instigation,¹⁸⁷⁸ which may ensue through implicit, written, or other non-verbal prompting by the accused.¹⁸⁷⁹ It is not necessary to prove the exact instigating language used by an accused.¹⁸⁸⁰
402. Neither a position of authority,¹⁸⁸¹ nor effective control¹⁸⁸² over the direct perpetrator are required elements under this mode of responsibility. Similarly, the accused’s physical presence at the scene of the crime is not required.¹⁸⁸³ A superior’s consistent failure to prevent or punish a perpetrator’s crimes may, in some instances, also amount to instigating the perpetrator to commit further crimes.¹⁸⁸⁴
403. For an accused to be criminally liable on the basis of instigation, a crime must be shown to have actually been committed,¹⁸⁸⁵ although the specific identification of the principal perpetrators of the particular crime is not required.¹⁸⁸⁶ Further, the act of instigation must precede and substantially contribute to the commission of the crime.¹⁸⁸⁷ However, it is not necessary to prove that the crime would not have occurred without the accused’s involvement.¹⁸⁸⁸ With regard to CAH, whereas the crime *per se* must be committed as part of a widespread or systematic attack, instigation can be accomplished before the commission of the crime and the occurrence of the widespread or systematic attack.¹⁸⁸⁹
404. Since the accused need only prompt another to act in a particular way, and not necessarily to commit a crime or underlying offence *per se*, the legitimate character of an operation does not exclude an accused’s criminal responsibility for instigating crimes committed in the course of this operation if the goal is to be achieved by the commission of crimes.¹⁸⁹⁰ Where an accused instigates conduct that has the predominant purpose of indiscriminately attacking civilians, he instigates conduct that constitutes crimes.¹⁸⁹¹

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405. The *mens rea* for responsibility on the basis of instigation is intent to instigate the commission of the crime, or awareness of the substantial likelihood that the crime will be committed as a result of the instigation.¹⁸⁹² There is no requirement that the risk of crimes to be committed be “reasonable” or “justified”.¹⁸⁹³ Where it has been determined that the principal perpetrators were aware of the status of the victims (e.g. civilian, *hors de combat*, etc.), such findings are not necessary for a conviction for instigating.¹⁸⁹⁴

Ordering

406. By 1975, CIL recognised ordering as a form of individual criminal responsibility.¹⁸⁹⁵ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged pursuant to this mode of responsibility.¹⁸⁹⁶

407. The act of ordering occurs when a person in a position of authority instructs another person to carry out an act or engage in an omission that has a substantial effect on the commission of the crime.¹⁸⁹⁷ There is no requirement that the person issuing the order and the direct perpetrator be in a formal superior-subordinate relationship,¹⁸⁹⁸ or that the accused exercise effective control over him,¹⁸⁹⁹ but there must be proof of a position of authority on the part of the accused in law or in fact that would compel another person to commit a crime.¹⁹⁰⁰ However, the accused need not use his position of authority to “convince” the perpetrator to commit the crime or underlying offence.¹⁹⁰¹ The authority may be informal or of a purely temporary nature.¹⁹⁰²

408. The order need not be given in writing or in a particular form,¹⁹⁰³ but as ordering requires a ‘prior positive act’, it is not possible to order by omission.¹⁹⁰⁴ The order can be either explicit or implicit, and can be proved circumstantially.¹⁹⁰⁵ The existence of an order may be inferred from a variety of factors, including the number of illegal acts, the number and type of personnel involved, the effective control and command exerted over these personnel, the logistics involved, the widespread occurrence of similar illegal acts, the tactical tempo of operations, the *modus operandi* of similar acts, the location of the

superior at the time and his knowledge of criminal acts committed under his command.¹⁹⁰⁶

There is no requirement that the accused be physically present at the scene of the crime.¹⁹⁰⁷

409. The accused need not give the order directly to the physical perpetrator. Liability for ordering may ensue where the accused issues, passes down, or otherwise transmits the

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order, including through intermediaries.¹⁹⁰⁸

410. The order must precede and substantially contribute to the commission of a crime that is later perpetrated.¹⁹⁰⁹ But it is not necessary to prove that the crime or underlying offence would not have been perpetrated but for the accused's order.¹⁹¹⁰

411. As to the content of the order, it need only order an act or omission; it is not necessary to prove that the order was illegal on its face,¹⁹¹¹ or explicit in relation to the consequences it would have.¹⁹¹² The legitimate character of an operation does not exclude an accused's criminal responsibility for ordering crimes committed in the course of that operation if the goal is to be achieved by the commission of crimes.¹⁹¹³ Where an accused orders conduct that has the predominant purpose of indiscriminately attacking civilians, he orders conduct that constitutes crimes.¹⁹¹⁴

412. As to *mens rea*, the accused must intend, or be aware of the substantial likelihood, that the execution or implementation of the order will result in the commission of the crime.¹⁹¹⁵ There is no requirement that the risk of crimes to be committed be "reasonable" or "justified".¹⁹¹⁶ Where it has been determined that the principal perpetrators were aware of the status of the victims (*e.g.* civilian, *hors de combat*, etc.), no such findings are necessary for a conviction for ordering.¹⁹¹⁷

Aiding and Abetting

413. By 1975, CIL recognised aiding and abetting¹⁹¹⁸ as forms of individual criminal responsibility.¹⁹¹⁹ Moreover, aiding and abetting liability was foreseeable and accessible to

¹⁹²⁰ ...

an individual at that time.

414. Aiding and abetting¹⁹²¹ consists of practical assistance, encouragement, or moral support that has a substantial effect on the commission of the perpetrated crime.¹⁹²² ‘Specific direction’ is not an element of aiding and abetting liability under CIL.¹⁹²³
415. Aiding and abetting is a form of accessory liability and an accused cannot therefore be convicted of aiding and abetting a crime that was never carried out.¹⁹²⁴ However, the perpetrator of the crime need not have been tried or even identified.¹⁹²⁵ No plan or agreement between the aider and abettor and the principal perpetrator is required for responsibility on the basis of aiding and abetting;¹⁹²⁶ indeed, it is unnecessary for a

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principal perpetrator to even be aware of the aider and abettor’s contribution.¹⁹²⁷

416. Although the aiding and abetting must have a substantial effect on the commission of the crime,¹⁹²⁸ there is no requirement for a cause and effect relationship between the conduct of the aider and abettor and the commission of the crime, or that such conduct was a condition precedent to the commission of the crime.¹⁹²⁹ Whether a particular contribution qualifies as “substantial” is a fact-based inquiry.¹⁹³⁰ Where the crime is persecution, the accused’s contribution to the crime need not go to the discriminatory nature of the crime.¹⁹³¹
417. The conduct constituting the aiding and abetting can occur before, during or after¹⁹³² the commission of the crime, and in a different place from the crime.¹⁹³³ Similarly, with regard to CAH, whereas the crime *per se* must be committed as part of a widespread or systematic attack, aiding and abetting can be accomplished before or after the commission of the crime and the occurrence of the widespread or systematic attack.¹⁹³⁴
418. An individual can be found liable for aiding and abetting a crime when it is established that his conduct amounted to tacit approval and encouragement of the crime and that such conduct substantially contributed to the crime.¹⁹³⁵ The presence of the accused must be

shown to have bestowed legitimacy on, or provided encouragement to, the direct perpetrator, thereby substantially contributing to the crime.¹⁹³⁶ While in such cases the authority of the accused is a factor,¹⁹³⁷ it is not otherwise necessary to show the accused had authority over the direct perpetrator.¹⁹³⁸

419. An accused may also aid and abet by omission, in which case, the *actus reus* and *mens rea* requirements are the same as for aiding and abetting by a positive act.¹⁹³⁹ An accused will be criminally responsible where he fails to discharge a legal duty and, by this failure, assists, encourages or lends moral support that has a substantial effect on the commission of that crime.¹⁹⁴⁰ It must be demonstrated that the accused has “the ability to act, or in other words, that there were means available to the accused to fulfil this duty”.¹⁹⁴¹ Whether the omission has a substantial effect on the commission of a crime is a fact-based inquiry.¹⁹⁴² This aspect of aiding and abetting by omission has been interpreted to mean that had the accused acted, the commission of the crime would have been substantially less likely.¹⁹⁴³
420. As to *mens rea*, an accused must know, at the time he provides the assistance,¹⁹⁴⁴ that a

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crime will probably be committed, and that his conduct assists or facilitates the commission of a crime.¹⁹⁴⁵ Indeed, it is unnecessary for the aider and abettor to know the precise crime to be committed by the principal. It suffices that he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed.¹⁹⁴⁶ The accused must also be aware of the essential elements of the crime, including the perpetrator's state of mind, but need not share the perpetrator's intent to commit the crime.¹⁹⁴⁷ Specific intent crimes require that the aider and abettor must know of, but need not share, the principal perpetrator's specific intent.¹⁹⁴⁸ This knowledge can be inferred from the circumstances.¹⁹⁴⁹ Possession of specific intent does not, however, preclude a conviction for aiding and abetting *i.e.* it does not compel the conclusion that the accused is a principal.¹⁹⁵⁰

421. Superior responsibility, applicable to both military and civilian superiors, was recognised in CIL by 1975.¹⁹⁵¹ Moreover, it was foreseeable and accessible to an individual at that time that he/she could be charged pursuant to this mode of responsibility.¹⁹⁵² In cases involving armed conflict, it applies regardless of whether the conflict is internal or international,¹⁹⁵³ and applies to CAH.¹⁹⁵⁴
422. Under Article 29^{new} of the ECCC Law and CIL, superior responsibility is based on the existence of the following three elements:
- (i) a superior-subordinate relationship between the accused and the person who committed the crime. The superior must have had effective control over the subordinate,¹⁹⁵⁵
 - (ii) that the superior knew, or had reason to know, that the subordinate had committed or was about to commit a crime; and
 - (iii) that the superior failed to take the necessary and reasonable measures to prevent the commission of the crime or to punish the perpetrators.¹⁹⁵⁶
423. A superior may only be held liable for the crimes of his subordinates if the latter are proved to have actually participated in crimes.¹⁹⁵⁷ Responsibility is based not on charging a superior with the crimes of his subordinates, but rather on punishing his failure to carry out

his duty as a superior to exercise command.¹⁹⁵⁸

Superior-subordinate relationship

424. Regardless of whether an accused is a civilian or military superior,¹⁹⁵⁹ the superior-subordinate relationship between the accused and the perpetrator of the crime can exist either formally or informally, i.e. *de jure* or *de facto*.¹⁹⁶⁰ It must be shown that the superior had “effective control” over his subordinate,¹⁹⁶¹ or in other words, the “material ability” to

prevent or punish the subordinate's commission of a crime.¹⁹⁶² The superior-subordinate relationship can be direct or indirect, and need not be exclusive. Every person in the chain of command who exercises effective control over subordinates can be responsible for the crimes of those subordinates.¹⁹⁶³

425. The test of effective control is the same for both military and civilian superiors.¹⁹⁶⁴ When superior responsibility is applied to a civilian, there is no requirement that the control exercised by him be of the same nature as that exercised by a military commander; it need only be of the same degree.¹⁹⁶⁵ However, evidence that a *de facto* civilian superior exercised control in a military fashion or similar in form to that exercised by *de jure* authorities may strengthen a finding that he exercised the requisite degree of effective control.¹⁹⁶⁶

426. The indicators of effective control are a question more of fact than of law, and should be assessed on a case-by-case basis.¹⁹⁶⁷ Factors that would demonstrate that an accused exercised effective control over a subordinate include: the nature of the accused's position, including his position within the military or political structure;¹⁹⁶⁸ the procedure for appointment and the actual tasks performed;¹⁹⁶⁹ the accused's capacity to issue orders and whether or not such orders are actually executed;¹⁹⁷⁰ the fact that subordinates show greater discipline in the presence of the accused;¹⁹⁷¹ the authority to invoke disciplinary measures;¹⁹⁷² and the authority to release or transfer prisoners.¹⁹⁷³ The concept of material ability necessarily also takes into account all factors that might impede a superior's ability to prevent and punish.¹⁹⁷⁴

Knew or had reason to know

427. As for the knowledge requirement, the term "knew" refers to actual knowledge that the

relevant crimes had been committed or were about to be committed, which may be established through direct or circumstantial evidence.¹⁹⁷⁵ The superior must have

knowledge that his subordinate committed a crime, and not simply knowledge of the occurrence of a crime.¹⁹⁷⁶ A superior need not know the precise identity of the subordinates who perpetrate the crimes,¹⁹⁷⁷ although their existence must be proved.¹⁹⁷⁸

428. The “reason to know” test requires that the superior had general information available to him that would put him on notice of possible unlawful acts by his subordinates.¹⁹⁷⁹ The standard is met if the information was sufficiently alarming to justify further inquiry.¹⁹⁸⁰ There is no requirement that there be a “substantial likelihood” or the “clear and strong risk” of subsequent crimes.¹⁹⁸¹ The “reason to know” standard does not impose a duty to obtain information; it is not the same as “should have known”, *i.e.* a negligence standard. A superior cannot be held criminally responsible for failing to seek out the relevant knowledge.¹⁹⁸² However, criminal responsibility will be imposed on an accused who *deliberately* refrains from finding out the relevant information.¹⁹⁸³
429. The information received may be written or oral. It does not need to have the form of specific reports submitted pursuant to a monitoring system,¹⁹⁸⁴ nor does it need to provide specific information about unlawful acts committed or about to be committed.¹⁹⁸⁵ For the purposes of showing that the information was in the superior’s possession, it is not necessary to show that he actually acquainted himself with the information, it needs only to have been provided or available.¹⁹⁸⁶ An accused’s position of command can be a factor demonstrating his knowledge of the crimes committed by his subordinates.¹⁹⁸⁷
430. The superior need not share his subordinate’s intent.¹⁹⁸⁸

Failure to prevent or punish

431. A superior’s duty is discharged when he has taken “necessary and reasonable” measures to prevent or punish the commission of a crime by a subordinate in the context of a particular situation. Hence, liability arises when he fails to do so.¹⁹⁸⁹ The existence of a separate legal obligation to act under domestic law is not required.¹⁹⁹⁰ The duties to prevent and punish are distinct and separately entail criminal responsibility. The duty to prevent a crime arises prior to its commission, as soon as the superior knew or had reason to know of the crimes about to be committed, while the responsibility to punish a perpetrator arises after the

commission of a crime, and will only suffice if the superior did not become aware of the crime until after its commission.¹⁹⁹¹ A superior can be held responsible for his failure to punish crimes committed by a subordinate prior to the superior's assumption of effective control over that subordinate.¹⁹⁹² The failure to prevent or punish crimes may be inferred from factors such as the continuing or widespread nature of the violations committed by the subordinates.¹⁹⁹³ There is no need to show a causal link between the superior's failure to prevent his subordinate's crimes and their occurrence.¹⁹⁹⁴

432. "Necessary" measures are those that are appropriate for the superior to discharge his obligation, showing that he genuinely tried to prevent or punish, and "reasonable" measures are those reasonably falling within the material powers of the superior, *i.e.* that are feasible. The determination of what constitutes necessary and reasonable measures must be made on a case-by-case basis.¹⁹⁹⁵ The determination of what is materially possible in terms of fulfilling the duty should be assessed in light of the degree of the superior's effective control.¹⁹⁹⁶ The existence of a crisis situation does not relieve the superior of his duty.¹⁹⁹⁷
433. A superior's duty to punish the perpetrator of a crime includes at least an obligation to investigate possible crimes, to establish the facts, and either sanction the perpetrator personally, or report him to the competent authorities, as appropriate.¹⁹⁹⁸ However, merely reporting crimes will only suffice if such a report is likely to trigger an investigation or initiate disciplinary or criminal proceedings.¹⁹⁹⁹ If the superior knows that the appropriate authorities are not functioning, or that a report was likely to trigger a sham investigation, such a report would not be sufficient to fulfil the obligation to punish offending subordinates.²⁰⁰⁰ A duty to punish is not fulfilled where a commander was content to rely on assurances which he knew would not be or were not being implemented.²⁰⁰¹

C. PERSONAL JURISDICTION

434. Both the ECCC Agreement²⁰⁰² and ECCC Law²⁰⁰³ provide that the purpose of establishing this Court is to "bring to trial senior leaders of Democratic Kampuchea and those who were most responsible" for the crimes within the ECCC's jurisdiction committed from 17 April 1975 to 6 January 1979.
435. The terms "senior leader" and "most responsible" are not further defined in either the

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ECCC Law or Agreement. Based on extensive analysis of the preparatory work and negotiating history of the ECCC Agreement,²⁰⁰⁴ the SCC in *Duch* found that the ECCC had personal jurisdiction only over Khmer Rouge officials,²⁰⁰⁵ and that the terms “senior leaders” and “most responsible” referred to two separate categories of Khmer Rouge officials:

One category is senior leaders of the Khmer Rouge who are among the most responsible, because a senior leader is not a suspect on the sole basis of his/her leadership position. The other category is non-senior leaders of the Khmer Rouge who are also among the most responsible.²⁰⁰⁶

Accordingly, if a Charged Person was a Khmer Rouge official, he or she need not be a senior leader in order to be among those most responsible.

436. The ICIJ has held that findings as to whether a Charged Person was a “senior leader” and/or one of the “most responsible” Khmer Rouge officials “are to be made at the conclusion of the investigation, based on the totality of the evidence on the Case File.”²⁰⁰⁷

MOST RESPONSIBLE

437. In determining whether a person is among those most responsible for international crimes, the ECCC and international criminal courts and tribunals have adopted two criteria: (i) the gravity of the crimes alleged against the person, and (ii) the level of responsibility of the person alleged to have committed those crimes.
438. The ICTY was mandated as part of its completion strategy to focus on “the most senior leaders suspected of being most responsible for crimes,”²⁰⁰⁸ whilst referring the remaining perpetrators to be prosecuted at the national level.²⁰⁰⁹ In evaluating those who are most responsible, the ICTY Referral Bench considered the “gravity of the crimes charged” and the “level of responsibility of the accused.”²⁰¹⁰ These dual principles are reflected in decisions of the SCSL,²⁰¹¹ statements of the ICC Office of the Prosecutor (“OTP”),²⁰¹² and

have been adopted by the ECCC Trial Chamber,²⁰¹³ SCC²⁰¹⁴ and the CIJs.²⁰¹⁵ The application of these two principles does not require a comparison and ranking of the responsibility of all possible perpetrators,²⁰¹⁶ but instead should have regard to the other cases tried by the Court and the particular circumstances and context in which the crimes were committed.²⁰¹⁷

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439. Relevant factors to determine the gravity of offences committed include: the geographical and temporal scope of the crimes;²⁰¹⁸ the manner in which they were committed;²⁰¹⁹ the number of incidents;²⁰²⁰ and the number of victims.²⁰²¹ Assessing these factors should not be a rigid mathematical exercise, but requires a nuanced cumulative analysis.²⁰²²
440. Relevant factors to determine the level of responsibility of the person alleged to have committed the crimes include: the level of participation in the crimes charged;²⁰²³ the hierarchical rank or position of the accused,²⁰²⁴ including the number of subordinates and echelons above;²⁰²⁵ their effective authority²⁰²⁶ and ability to give orders;²⁰²⁷ the temporal scope of their control;²⁰²⁸ their authority to negotiate, sign or implement agreements;²⁰²⁹ their actual knowledge of crimes, and whether those in more senior ranks have already been convicted.²⁰³⁰

SENIOR LEADERS

441. With regards to the term “senior leaders of Democratic Kampuchea,” the legislative history of the ECCC and international jurisprudence establish that the term is not limited to members of the CPK Standing Committee,²⁰³¹ or to the “architects of an overall policy.”²⁰³² However, it is the Co-Prosecutor’s view that the plain meaning of the term indicates that it encompasses a limited group of individuals at the highest levels of the political or military hierarchy of the CPK and DK regime.

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IV. LEGAL CHARACTERISATION

A. CRIMES

CRIMES AGAINST HUMANITY

442. The evidence on the Case File and referred to in the Material Facts section demonstrates that crimes against humanity punishable under Article 5 of the ECCC Law were committed during the DK period. An overview of the facts establishing the requisite jurisdictional elements and specific crimes is addressed below.

JURISDICTIONAL ELEMENTS OF CRIMES AGAINST HUMANITY

Attack against a civilian population

443. The offences detailed herein were part of an attack involving the commission of numerous crimes within a system of organised repression. These acts followed a violent takeover of power and the imposition of an authoritarian regime by the CPK, which included, (i) forced expulsion of persons from urban centres; (ii) enslavement of persons in cooperatives and worksites established by the CPK; (iii) mass forced labour; (iv) the imposition of

forced marriages; (v) denial of basic human rights and freedoms and confiscation of property; and (vi) enforcement of these various forms of repression through arbitrary arrests, detention and executions. This attack was primarily directed against the entire civilian population of Cambodia, including ethnic and religious minorities.

Widespread or systematic

444. The attack was both widespread and systematic. It was widespread due to its large-scale nature, extended duration, the geographic area in which it occurred and the large number of victims against whom it was directed. The attack targeted the majority of the country's civilian population across the entire territory of Cambodia and lasted over three years and eight months.²⁰³³ More than two million civilians were forcibly moved from urban centres and countless people enslaved in cooperatives and worksites.²⁰³⁴ The CPK established approximately 260 security offices – forming an integral part of the attack on the Cambodian civilian population.²⁰³⁵ Hundreds of thousands were imprisoned, tortured and executed in these and other locations. The total number of deaths resulting from the attack is estimated to be between 1.7 and 2.2 million people.²⁰³⁶

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445. The attack on the civilian population was also systematic. The CPK Standing Committee centrally devised policies involving the commission of crimes, issued directives for their implementation and received regular reports from all CPK echelons on the policies' implementation on the ground.

Discriminatory grounds

446. The attacks were based on discriminatory grounds, namely political, religious and/or ethnic. The CPK imposed, *inter alia*, a political revolution and resisted any opposition. All civilians were considered real or potential enemies and were variously subject to political re-education, enslavement, detention and execution. This included members of the former Lon Nol regime, cadres within the CPK ranks who fell under suspicion, those characterised as “enemies” for foreign governments and “new people” or “17 April” people who the CPK

as spies for foreign governments and their people or as people who are not considered as opposed to the revolution. The CPK used programs such as political indoctrination, study sessions, tempering and constant surveillance to identify those suspected of non-compliance or lacking loyalty.

447. The attack was also based on religious grounds, as it involved, *inter alia*, the abolition and suppression of religions, forced conversions and destruction of religious property. Additionally, the attack was based on ethnic grounds, involving, *inter alia*, the persecution and destruction of minorities, such as the Cham, Khmer Krom and Vietnamese.

Im Chaem's knowledge of the attack

448. **Im Chaem** and the other perpetrators had knowledge of the attack against the civilian population and knew that their acts formed part of the attack. **Im Chaem** participated in the dissemination of the policies pursuant to which the attack was perpetrated. She oversaw the implementation of these policies at both district and sector level and contributed to them in numerous ways, such as: issuing orders and instructions to commit crimes in line with CPK policies; instigating and encouraging crimes within the attack; maintaining authority and oversight over direct perpetrators and receiving reports on the crimes.²⁰³⁷

SPECIFIC CRIMES

449. The evidence on the Case File establishes that the acts amounting to crimes against humanity under Article 5 of the ECCC Law were committed by CPK

cadres/soldiers/militia from 1976-1979 at various locations in Sector 13 of the Southwest Zone and Sector 5 of the Northwest Zone.

450. These CPK cadres/soldiers/militia acted under the direct and/or indirect authority and control of **Im Chaem** or on the basis of her influence, encouragement, or assistance.
451. The crimes against humanity committed were: murder; extermination; enslavement; imprisonment; torture; persecution; and the other inhumane acts of forced marriage, rape

imprisonment, torture, persecution, and, the most inhumane acts of forced marriage, rape, enforced disappearances and confinement in inhumane conditions.

Murder

Acts and Omissions

452. **Im Chaem**, through her acts and omissions, significantly contributed to the killings of countless civilians at worksites; at security offices; during the purges; and through the targeting of ethnic minorities.
453. Thousands of individuals enslaved at cooperatives in Sector 13 in the Southwest Zone and Sector 5 in the Northwest Zone and forced labour sites in both areas died through execution and inhumane conditions. Labourers at the Trapeang Thma,²⁰³⁸ Spean Spreng²⁰³⁹ and Phnom Trayoung²⁰⁴⁰ worksites were killed at those locations or were taken elsewhere to be killed.²⁰⁴¹ Individuals at forced labour sites were singled out and killed for a variety of reasons, including: belonging to or being perceived to belong to targeted groups such as “new people”,²⁰⁴² Lon Nol regime officials,²⁰⁴³ or Vietnamese,²⁰⁴⁴ attempting to escape,²⁰⁴⁵ making “mistakes” or damaging equipment;²⁰⁴⁶ being accused of having links with the CIA or Vietnam;²⁰⁴⁷ being perceived as immoral;²⁰⁴⁸ and, being accused of being lazy,²⁰⁴⁹ sick²⁰⁵⁰ or of stealing food.²⁰⁵¹ Countless others died as a result of exhaustion,²⁰⁵² starvation,²⁰⁵³ and illness.²⁰⁵⁴ All of these deaths were the direct result of the conditions imposed by **Im Chaem** and CPK cadres under her authority.
454. Thousands of people were killed at the CPK security offices of Wat Ang Srei Mealy,²⁰⁵⁵ Phnom Trayoung,²⁰⁵⁶ Phum Chakrey²⁰⁵⁷ and Wat Preah Net Preah.²⁰⁵⁸ All of these security offices had areas, adjoining or nearby, where prisoners were taken to be executed, such as Prey Sokhon,²⁰⁵⁹ Chamkar Ta Ling²⁰⁶⁰ and Prey Ta Ruth.²⁰⁶¹ Detainees were usually killed with blunt instruments and dumped in pits.²⁰⁶² Children were also killed, including some

being smashed against trees at Phnum Chakrey.²⁰⁶³ There is evidence of other brutal

killings on the Case File, such as the rape and mutilation of females in Preah Net Preah District.²⁰⁶⁴

455. The purge of Sector 5 led by **Im Chaem** resulted in the death of scores of cadres. Those killed included leaders at all levels of the CPK echelons.²⁰⁶⁵ In addition to those sent to security offices and executed locally, many were sent to be executed at S-21.²⁰⁶⁶
456. Large numbers of ethnic minorities were killed at locations under **Im Chaem**'s authority. Khmer Krom were killed at various locations in Koh Andet District,²⁰⁶⁷ particularly at Wat Ang Srei Mealy security office in the Southwest Zone.²⁰⁶⁸ Vietnamese were killed throughout Preah Net Preah District and Sector 5 in the Northwest Zone, particularly at Phnom Trayoung²⁰⁶⁹ and Chamkar Khnol²⁰⁷⁰ security offices, and Trapeang Thma²⁰⁷¹ and Speang Spreng worksites.²⁰⁷²

Intent

457. All executions outlined above were carried out with the intent to kill. The direct perpetrators followed the CPK policies of confining people to forced labour sites, cooperatives, security offices and searching out and killing identified individuals and groups. These policies were implemented consistently across sites under **Im Chaem**'s authority. Moreover, **Im Chaem**'s role in ordering killings and instructing cadres about CPK policies such as targeting "enemies",²⁰⁷³ and, the reporting of killings to upper echelons including **Im Chaem**,²⁰⁷⁴ confirm her intent. The execution of Vietnamese, Khmer Krom and CPK cadres during the purge were also carried out systematically and pursuant to Party policy as disseminated and implemented by **Im Chaem**.²⁰⁷⁵
458. In cases where individuals died as a result of beatings or torture and where their death was not specifically intended, the perpetrators intended to cause serious bodily harm or injury which they knew or reasonably should have known was substantially likely to lead to death. In situations where deaths resulted from forced labour, inhumane conditions and escape attempts, the perpetrators either (i) imposed the conditions which caused death with the intent to inflict serious bodily harm on the victims which they knew or reasonably should have known was substantially likely to lead to death; or (ii) failed to act to remedy the inhumane conditions in the knowledge that death was a substantially likely

consequence of their omissions. **Im Chaem**'s criminal intent is established by the fact that she systematically maintained the conditions causing death through her various positions.²⁰⁷⁶ In fact, **Im Chaem** admitted to being fully aware of the conditions in the Sector 5 upon her arrival and yet the evidence clearly shows that living and working conditions deteriorated significantly under her authority.²⁰⁷⁷

Extermination

Acts and Omissions

459. The thousands of deaths – at security offices, forced labour sites, during the purges and elsewhere in Sector 13 and Sector 5 – constituted killings of civilians on a massive scale. These deaths were part of an attack on the civilian population of Cambodia in which one in four citizens died. They were the direct result of centrally devised CPK policies implemented by **Im Chaem** and CPK cadres. The large scale killings at locations under **Im Chaem**'s authority included the thousands of executions at Wat Ang Srei Mealy,²⁰⁷⁸ Chakrey,²⁰⁷⁹ Wat Chamkar Khnol,²⁰⁸⁰ Wat Preah Net Preah,²⁰⁸¹ and Phnom Trayoung²⁰⁸² security offices and the thousands of deaths through starvation, exhaustion, illness and other grossly inhumane conditions at Trapeang Thma²⁰⁸³ and Spean Spreng²⁰⁸⁴ worksites. Evidence of the large scale of the killings includes the: (i) use of lists and biographies to facilitate executions;²⁰⁸⁵ (ii) systematic nature of the executions with detainees moved to killing sites such as Prey Sokhon,²⁰⁸⁶ Prey Ta Ruth²⁰⁸⁷ and Chamkar Ta Ling²⁰⁸⁸ where large pits were dug to be used as mass graves; (iii) large number of killings during the purge;²⁰⁸⁹ (iv) mass killings of Khmer Krom in Sector 13 such as at Wat Ang Srei Mealy,²⁰⁹⁰ and (v) widespread killings of Vietnamese in Sector 5 in locations such as Phnom Trayoung and Chamkar Khnol security offices and Trapeang Thma and Spean Spreng worksites.²⁰⁹¹

Intent

460. The evidence of the circumstances surrounding the killings detailed above illustrates that, in committing the acts and making the omissions which caused the large numbers of deaths, **Im Chaem** and the other perpetrators (i) intended to commit killings on a mass scale; and/or (ii) intended to create conditions of life that led to the death of a large number

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of people – or intended to create such conditions in the knowledge that they were substantially likely to cause deaths of a large number of persons.

461. Evidence of intent to commit killings on a mass scale includes **Im Chaem**'s statements and her dissemination of CPK policy to locate and kill members of targeted groups, such as "enemies" and minorities;²⁰⁹² her visiting and holding meetings at locations where killings occurred;²⁰⁹³ the consistency and systematic nature of the killings;²⁰⁹⁴ the reporting of the killings to **Im Chaem** at the district and sector levels and the sheer number of persons killed.²⁰⁹⁵ Further, as noted, **Im Chaem** was aware of the large numbers of deaths resulting from conditions in the areas under her authority prior to her arrival, but enforced living and working conditions in an even more brutal manner upon taking power.²⁰⁹⁶ Given her position at the district and sector levels, **Im Chaem** knew of the larger scheme of crimes in which she participated and the fact that thousands of civilians were being killed as a result of those policies.

Enslavement

Acts and Omissions

462. As noted above, many of the crimes committed during the attack on the civilian population resulted from the enslavement of thousands of people. The CPK, through **Im Chaem**'s implementation of Party policy, exercised virtually all rights of ownership over civilians in cooperatives and work sites, placing them under its absolute control, and leaving almost no aspect of their lives to their own discretion. CPK cadres controlled housing,²⁰⁹⁷ food,²⁰⁹⁸ medical provisions,²⁰⁹⁹ times and places of work,²¹⁰⁰ sleep and rest.²¹⁰¹ They prohibited the observance of customs,²¹⁰² free movement,²¹⁰³ speech,²¹⁰⁴ and association,²¹⁰⁵ strictly prescribed acceptable forms of 'moral' behaviour,²¹⁰⁶ and denied individuals all fundamental freedoms.²¹⁰⁷ Within this system implemented by **Im Chaem**, civilians were

subjected to political indoctrination²¹⁰⁸ and those failing to comply with rules governing their work or living arrangements were punished and/or tempered or sent to study sessions,²¹⁰⁹ and in many cases arrested and executed.²¹¹⁰ One manifestation of the exercise of ownership was the CPK's policy of forced marriages, whereby the individual's marriage partner was chosen by a CPK cadre.²¹¹¹

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Intent

463. **Im Chaem** intended to implement a policy whereby the CPK exercised all rights of ownership over individuals under their control. Her intent is demonstrated by the many meetings she held in cooperatives, communes and forced labour sites which furthered this policy,²¹¹² as well as her instructions to people to work hard and not oppose Angkar's policies.²¹¹³ **Im Chaem** also imposed or oversaw the punishment of those who failed to comply with the Party's instructions.²¹¹⁴

Imprisonment

Acts and Omissions

464. Thousands of victims were imprisoned at CPK security offices, cooperatives, forced labour sites and other locations throughout the areas under **Im Chaem**'s authority. There was no functioning legal system throughout the DK period and individuals were deprived of their liberty in accordance with CPK policy. Imprisonment was arbitrary, as it occurred without any legal basis or due process of law. Those deprived of their liberty were unable to challenge their arrest and/or detention before any judicial authority.

465. Thousands of individuals were imprisoned at Wat Ang Srei Mealy,²¹¹⁵ Phnom Trayoung,²¹¹⁶ Chakrey,²¹¹⁷ Wat Chamkar Khnol,²¹¹⁸ and Wat Preah Net Preah²¹¹⁹ security offices as well as in a building opposite **Im Chaem**'s residence in Phnum Lieb.²¹²⁰ Reasons for being arrested and imprisoned included being: a member of the Lon Nol

regime;²¹²¹ Vietnamese;²¹²² related to or associated with the Vietnamese;²¹²³ Khmer Krom;²¹²⁴ related to or associated with Khmer Krom;²¹²⁵ considered a “spy” or “traitor” or having affiliations with the “CIA” or “KGB”;²¹²⁶ as well as, failing to follow Party discipline;²¹²⁷ travelling without permission;²¹²⁸ complaining about lack of food;²¹²⁹ or, stealing food.²¹³⁰ Accusations or allegations were enough for an individual to fall under suspicion and be arrested and imprisoned.²¹³¹ Prisoners were usually confined to detention halls or makeshift cells.²¹³² Prisoners were often monitored and supervised by armed guards and were not permitted to move freely.²¹³³ Shackles and/or handcuffs were used to restrain prisoners at Phnom Trayoung²¹³⁴ and Chamkar Khnol²¹³⁵ security offices under **Im Chaem**’s authority. Prisoners were often subjected to physical and psychological abuse, including torture;²¹³⁶ were held in unsanitary conditions;²¹³⁷ received insufficient food;²¹³⁸

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and were forced to provide manual labour.²¹³⁹ Fear of punishment and execution was constant.

466. Thousands were imprisoned at the forced labour sites of Trapeang Thma,²¹⁴⁰ Spean Spreng,²¹⁴¹ Phnom Trayoung rock quarry²¹⁴² and other locations under **Im Chaem**’s authority.²¹⁴³ Individuals were not permitted to move freely and were usually monitored by armed guards.²¹⁴⁴ Every aspect of their lives was controlled by CPK cadres, such as where and for how long they worked,²¹⁴⁵ rested and slept,²¹⁴⁶ when and how much they could eat,²¹⁴⁷ as well as when they were permitted to urinate and defecate.²¹⁴⁸

Intent

467. **Im Chaem** and the other perpetrators intended to arbitrarily deprive individuals of their physical liberty by imprisoning them. **Im Chaem** visited, monitored and oversaw security offices, cooperatives and worksites at which people were detained as well as received reports on the situations therein. **Im Chaem** established rules and gave orders for the running of security offices, cooperatives and worksite,²¹⁴⁹ including treatment of individuals therein.²¹⁵⁰ She also held meetings at security offices, cooperatives and

individuals therein. She also held meetings at security offices, cooperatives and worksites²¹⁵¹ and gave instructions to those imprisoned, pursuant to the CPK's policies.²¹⁵²

Torture

Acts and Omissions

468. Many prisoners were tortured at CPK security offices under **Im Chaem**'s authority, including Chamkar Khnol,²¹⁵³ Phnom Trayoung²¹⁵⁴ and Wat Ang Srei Mealy.²¹⁵⁵ Prisoners were beaten with sticks and clubs,²¹⁵⁶ electrocuted,²¹⁵⁷ had their nails pulled out²¹⁵⁸ and were stabbed with knives.²¹⁵⁹ Some prisoners were tortured so badly they could not walk²¹⁶⁰ or died from their injuries.²¹⁶¹ Cadres purged by **Im Chaem** from Preah Net Preah and Sector 5 were also tortured at S-21.²¹⁶²
469. Prisoners were also subjected to psychological torture throughout the locations under **Im Chaem**'s authority. They lived in constant fear of execution having: witnessed others disappear,²¹⁶³ seen their families arrested,²¹⁶⁴ heard people being killed and raped,²¹⁶⁵ been frequently threatened with death,²¹⁶⁶ and, forced, in some instances, to dig pits and bury bodies.²¹⁶⁷

Purpose

470. The primary purpose of the CPK's security offices, including those under **Im Chaem**'s authority, was to identify and "smash" perceived "enemies" and other undesirable groups. Torture was used to intimidate, punish and ultimately to extract confessions and coerce information about other "traitors" and "enemies".

Intent

471. **Im Chaem** and the direct perpetrators intended that torture be used against prisoners. **Im Chaem** frequently visited and monitored the security centres at which torture was used against prisoners.²¹⁶⁸ In fact, **Im Chaem** gave orders to execute prisoners who had been tortured so badly that they could not walk.²¹⁶⁹ His supervision and orders on running

worked so hard that they could not walk. The supervision and threats on turning security offices²¹⁷⁰ inflicted extensive mental suffering on prisoners who lived in constant fear of being killed.

Persecution

Acts and Omissions

472. Numerous acts constituting crimes against humanity detailed within this section also constituted acts of persecution as they occasioned denials of individuals' fundamental human rights on the basis of their actual or perceived political opinion, race and/or ethnicity. These include imprisonment, torture, murder, extermination, enslavement and other inhumane acts throughout the areas under **Im Chaem**'s authority.
473. Although the CPK considered most of the civilian population to be potential political enemies, former Lon Nol regime officials, "new people" and other political "enemies" and "traitors" were further discriminated against for their perceived political opposition to the CPK. As described above, Lon Nol regime officials and "new people" were singled out, arrested, detained and killed at Phnom Trayoung,²¹⁷¹ Chakrey,²¹⁷² Chamkar Khnol,²¹⁷³ and Wat Preah Net Preah²¹⁷⁴ security offices and Trapeang Thma dam worksite.²¹⁷⁵ Those deemed actual, perceived and potential political enemies of the CPK were executed throughout the areas under **Im Chaem**'s authority. The purge of Northwest cadres in Sector 5 was also conducted to identify and kill those deemed political enemies.²¹⁷⁶

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474. Ethnic Vietnamese, the Khmer Krom and other minorities such as the Cham and Chinese were singled out and discriminated against. As already described, ethnic Vietnamese and those associated with, or perceived to be, Vietnamese, were targeted for arrest, detention and execution at Chakrey,²¹⁷⁷ Chamkar Khnol,²¹⁷⁸ Phnom Trayoung,²¹⁷⁹ and Wat Preah Net Preah²¹⁸⁰ security offices. They were also sought out and killed at worksites such as

²¹⁸¹ *Id.* at 100-101. ²¹⁸² *Id.* at 101-102. ²¹⁸³ *Id.* at 102-103. ²¹⁸⁴ *Id.* at 103-104. ²¹⁸⁵ *Id.* at 104-105. ²¹⁸⁶ *Id.* at 105-106. ²¹⁸⁷ *Id.* at 106-107. ²¹⁸⁸ *Id.* at 107-108. ²¹⁸⁹ *Id.* at 108-109. ²¹⁹⁰ *Id.* at 109-110.

Trapeang Inma²¹⁸³ and Spean Spreng²¹⁸⁴. Persecutory acts against Khmer Krom also occurred in areas under **Im Chaem**'s authority. Khmer Krom or those perceived to be, related to, or associated with, Khmer Krom, were rounded up, detained and executed at Wat Ang Srei Mealy as well as in Koh Andet District and Sector 13.²¹⁸⁵ Other minorities such as the Cham, the Khmer Leu, Laotians and Chinese were similarly sought out, identified, and discriminated against on the basis of their actual or perceived ethnicity at Wat Ang Srei Mealy²¹⁸⁴ and Chamkar Khnol.²¹⁸⁵

Intent

475. **Im Chaem** intended that individuals and groups be discriminated against on political, racial and/or ethnic grounds. The persecutory acts against perceived political opponents and actual or perceived members of ethnic groups were conducted in a deliberate and systematic manner. **Im Chaem** actively disseminated CPK policies targeting these different groups for discrimination²¹⁸⁶ and received reports on the implementation of the policies.²¹⁸⁷ In carrying out persecutory acts, the perpetrators knew that they were implementing the CPK's discriminatory policies.

Other Inhumane Acts

Forced Marriage

Acts and Omissions

476. **Im Chaem** implemented the CPK's policy of forced marriages in the areas under her authority. The policy caused serious psychological and, in many instances physical, harm to the victims. Those affected often did not know the individuals with whom they were forced to marry and have sexual relations. **Im Chaem** presided over forced marriage ceremonies in Sector 5.²¹⁸⁸ She also forced young women in Sector 13 to marry disabled soldiers.²¹⁸⁹ Forced marriages took place at various locations under **Im Chaem**'s authority,

including Trapeang Thma²¹⁹¹ and Spean Spreng worksites.²¹⁹² Many individuals did not resist for fear of being killed. Those who did or who failed to have sexual intercourse with their spouse could be punished or executed.²¹⁹²

Intent

477. **Im Chaem** intended to inflict serious bodily and/or mental harm upon individuals forced to marry. She was actively involved in implementing the CPK's forced marriage policy and knew that serious bodily and/or mental harm would result. Her intent is demonstrated, *inter alia*, by her: threatening individuals to force them to marry;²¹⁹³ and, ordering militias to monitor whether couples were having sex.²¹⁹⁴

Rape

Acts and Omissions

478. Throughout the areas under her authority, many civilians suffered rape and sexual violence which **Im Chaem** approved of or condoned. **Im Chaem** organised and oversaw forced marriages within which rape occurred,²¹⁹⁵ in accordance with CPK policy. Forced marriages were imposed in villages and communes.²¹⁹⁶ Rapes occurred in the course of forced marriages: (i) between non-consenting parties, and (ii) where women were forced to marry a man who had selected them. Individuals engaged in sexual penetration in fear of severe punishment. Those failing to comply were, in some instances, executed.²¹⁹⁷ Local militias would monitor those who had been forcibly married to ensure they had sex.²¹⁹⁸
479. Rapes were perpetrated by guards at security offices including Wat Ang Srei Mealy²¹⁹⁹ and Phnom Trayoung.²²⁰⁰ Female corpses were often found naked at Phnom Trayoung, while male corpses remained clothed.²²⁰¹ Women were also raped in Preah Net Preah District before being killed and at Trapeang Thma dam worksite and buried under the foundations of the dam.²²⁰²

Intent

480. **Im Chaem** intended and/or tolerated and condoned instances of sexual penetration without the individual's consent. She also intended to inflict serious bodily and/or mental harm upon those individuals. **Im Chaem** presided over,²²⁰³ organised,²²⁰⁴ and received reports about forced marriages.²²⁰⁵ **Im Chaem** implemented the CPK policy of forcing people to

marry which was intended to effect sexual intercourse, as demonstrated by eavesdropping and monitoring of those who were forcibly married for sexual activity.²²⁰⁶ Sexual intercourse was necessary to fulfil the CPK policy of increasing the population through child birth. **Im Chaem** knew that sexual acts were being committed, in most instances, without the individual's consent. The absence of consent was clear from, *inter alia*, the lack of physical liberty of individuals at cooperatives, security offices and worksites; the use of punishment against those who failed to consummate their marriage;²²⁰⁷ and the use of monitoring by militias to ensure couples were having sexual intercourse.²²⁰⁸

481. Security guards and cadres who committed rapes intended to sexually penetrate the individuals and knew that the individuals did not consent. The absence of consent is demonstrated by, *inter alia*, the individual's captivity, the use or threat of force to effect sexual penetration and the existence of coercive circumstances under which any meaningful consent was not possible.²²⁰⁹ **Im Chaem** knew or was aware of the substantial likelihood that sexual acts were being committed at security offices and worksites under her authority. She did nothing to prevent such occurrences or punish direct perpetrators.

Enforced Disappearances

Acts and Omissions

482. **Im Chaem** and the CPK deprived thousands of individuals of their liberty throughout Sector 13 and Sector 5. In security offices including Wat Ang Srei Mealy,²²¹⁰ Phnom Trayoung,²²¹¹ Chakrey,²²¹² Wat Chamkar Khnol,²²¹³ Wat Preah Net Preah,²²¹⁴ and a building opposite **Im Chaem's** residence in Phnum Lieb,²²¹⁵ civilians were detained without recourse to legal remedies and procedural guarantees. Witnesses also describe numerous instances at these security offices and at Trapeang Thma and Spean Spreng worksites of individuals being taken away, openly or clandestinely, and never being seen or heard from again.²²¹⁶

Intent

483. **Im Chaem** intended to deprive individuals of their liberty and remove them from the protection of the law. She also intended to inflict serious bodily and/or mental harm upon

those individuals. **Im Chaem** oversaw the security offices at which people were detained

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and the worksites from which people went missing and were never heard from again.²²¹⁷ She visited and held meetings at these security offices and worksites as well as received regular reports on their operations and the situations of workers and detainees.²²¹⁸

Confinement in Inhumane Conditions

Acts and Omissions

484. Thousands of prisoners suffered serious bodily and mental harm at security offices such as Phnom Trayoung,²²¹⁹ Chamkar Khnol,²²²⁰ Wat Ang Srei Mealy,²²²¹ Wat Preah Net Preah,²²²² and Chakrey.²²²³ **Im Chaem** disseminated instructions and criteria, determined by the Standing Committee, resulting in countless individuals being arrested and imprisoned. These individuals were imprisoned without due process and subjected to inhumane and degrading treatment and conditions in various locations under **Im Chaem**'s authority and pursuant to her implementation of CPK policy. This included: psychological and physical abuse and torture; detention with restraints in often cramped and unsanitary conditions;²²²⁴ starvation;²²²⁵ forced labour;²²²⁶ lack of medical attention;²²²⁷ rape²²²⁸ and deprivation of liberty without hope of release. Similarly horrendous conditions were faced by forced labourers at locations including Trapeang Thma²²²⁹ and Spean Spreng²²³⁰ worksites. Individuals were forced to work without remuneration while being subjected to inhumane and degrading treatment. This included: starvation;²²³¹ exhaustion;²²³² arbitrary punishment;²²³³ rape;²²³⁴ unsanitary conditions;²²³⁵ and lack of medical care.²²³⁶ In security offices and worksites, individuals lived in constant fear of punishment and death and were frequently confronted with threats²²³⁷ and the sounds of rapes²²³⁸ and killings.²²³⁹ Some were forced to dig graves and bury those who had been killed.²²⁴⁰

Intent

485. **Im Chaem** intended to inflict serious bodily and/or mental harm on those within each of the security offices, cooperatives and worksites over which she had authority. The sheer extent of suffering caused within each of the sites demonstrates that the other perpetrators held the same intention. **Im Chaem** frequently visited these security offices and worksites²²⁴¹ and, in Sector 5, presided over a deterioration of already abhorrent conditions.²²⁴² She consistently implemented the CPK's policies of cruel and inhumane treatment of enslaved and/or imprisoned civilians.

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GRAVE BREACHES OF THE GENEVA CONVENTIONS

486. The evidence on the Case File and referred to in the Material Facts section demonstrates that grave breaches of the Geneva Conventions punishable under Article 6 of the ECCC Law were committed during the DK period. An outline of the facts establishing the requisite jurisdictional elements and specific crimes is addressed below.

JURISDICTIONAL ELEMENTS OF GRAVE BREACHES

International Armed Conflict

487. As detailed in the Armed Conflict Section,²²⁴³ the evidence on the Case File demonstrates that there was an international armed conflict between DK and the SRV from May 1975 until January 1979.

Protected Persons

488. The ethnic Vietnamese population and those perceived by the CPK as Vietnamese, as well as the Khmer Krom and those perceived by the CPK as Khmer Krom, against whom the crimes described below were committed were protected persons under Geneva Convention IV. These civilians were either (i) in the hands of the DK – a party to the conflict of which they were not nationals; or (ii) perceived by the CPK as belonging to Vietnam – the opposing party in the conflict – and posing a threat to the DK,²²⁴⁴ and as such had the status of 'protected persons'.

Awareness of the Armed Conflict

489. **Im Chaem** and the other perpetrators of the grave breaches against civilians considered Vietnamese or Khmer Krom were aware of the existence of the armed conflict between DK and SRV. For example, **Im Chaem** frequently used meetings with lower echelons to stress the need to fight the invading “Yuon”.²²⁴⁵

SPECIFIC CRIMES

490. The evidence establishes that the following grave breaches of the Geneva Conventions under Article 6 of the ECCC Law were committed by CPK cadres/soldiers/militia from 1976-1979 at various locations in Sector 13 of the Southwest Zone and Sector 5 of the Northwest Zone: wilful killing, inhumane treatment, wilfully causing great suffering or

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serious injury to body or health, wilful deprivation of a fair and regular trial, and unlawful confinement of a civilian.

491. These CPK cadres/soldiers/militia acted under the direct and/or indirect authority and control of **Im Chaem** or on the basis of her influence, encouragement or assistance.
492. The ‘protected persons’ who were victims of the various grave breaches set out below were (i) ethnic Vietnamese civilians or civilians perceived by the CPK as being related to or associated with ethnic Vietnamese civilians or Vietnam (“Vietnamese civilians”) and (ii) Khmer Krom civilians or civilians perceived by the CPK as being related to or associated with the Khmer Krom (“Khmer Krom civilians”).

Wilful Killing

Acts and Omissions

493. Vietnamese and Khmer Krom civilians were specifically identified, arrested, and executed at Wat Ang Srei Mealy,²²⁴⁶ Chakrey,²²⁴⁷ Chamkar Khnol,²²⁴⁸ Phnom Trayoung,²²⁴⁹ and

Wat Preah Net Preah²²⁵⁰ security offices under **Im Chaem**'s authority. Vietnamese civilians were sought amongst the forced labourers at Trapeang Thma worksite²²⁵¹ and killed. **Im Chaem** also ordered the killing of Vietnamese at Spean Spreng worksite.²²⁵²

Intent

494. Those who killed the Vietnamese and Khmer Krom civilians acted with the intent to do so and were pursuing CPK policy. **Im Chaem** intended these killings as part of the implementation of the CPK policy targeting Vietnamese and Khmer Krom civilians in areas under her authority.²²⁵³

Inhumane Treatment

Acts and Omissions

495. Vietnamese and Khmer Krom civilians imprisoned at locations under **Im Chaem**'s authority such as Wat Ang Srei Mealy,²²⁵⁴ Phnom Trayoung,²²⁵⁵ and Chamkar Khnol²²⁵⁶ security offices were subjected to grossly inhumane treatment and conditions. As described above in relation to other inhumane acts as crimes against humanity, they were deprived of food,²²⁵⁷ water,²²⁵⁸ hygiene facilities,²²⁵⁹ and medical care.²²⁶⁰ Similarly deplorable

conditions were suffered by Vietnamese civilians forced to labour at Trapeang Thma²²⁶¹ and Spean Spreng worksites under **Im Chaem**'s authority.²²⁶² Prisoners and forced labourers at these locations lived in a constant state of fear of physical punishment and death. The conditions caused these protected persons serious mental harm and/or physical suffering and constituted a serious attack on their human dignity.

Intent

496. The consistent imposition of inhumane treatment and conditions of detention on Vietnamese and Khmer Krom civilians demonstrates **Im Chaem**'s and the direct perpetrators' intent to commit acts causing serious mental harm and/or physical suffering

on these protected persons.

Wilfully Causing Great Suffering or Serious Injury to Body or Health

497. **Im Chaem**'s acts and/or omissions and intent described above in relation to inhumane treatment are equally applicable to this crime.

Wilful Deprivation of a Fair and Regular Trial

498. The evidence establishes that the offence of wilfully depriving a civilian of the rights of a fair and regular trial as a grave breach of the Geneva Conventions under Article 6 of the ECCC Law was committed by CPK cadres/soldiers/militia from 1976-1979 at various locations in Sector 13 of the Southwest Zone and Sector 5 of the Northwest Zone. These CPK cadres/soldiers/militia acted under the direct and/or indirect authority and control of **Im Chaem** or on the basis of her influence, encouragement or assistance.

Acts and Omissions

499. Prisoners at Wat Ang Srei Mealy,²²⁶³ Phnom Trayoung,²²⁶⁴ and Chamkar Khnol²²⁶⁵ security offices were denied their right to the judicial guarantees provided for in Geneva Convention IV. The treatment to which Vietnamese and Khmer Krom civilians were subjected to in these locations²²⁶⁶ was wholly inconsistent with the observance of such guarantees.

Intent

500. **Im Chaem** and the CPK cadres who enforced the arbitrary imprisonment of Vietnamese and Khmer Krom civilians intended to deprive those individuals of their right to a fair and regular trial. As detailed above, this deprivation was carried out by **Im Chaem** and cadres

²²⁶³ *See* [http://www.eccc.gov.kh/eng/press/press-releases/2012/01/01/01341580.htm](#)

²²⁶⁴ *See* [http://www.eccc.gov.kh/eng/press/press-releases/2012/01/01/01341580.htm](#)

²²⁶⁵ *See* [http://www.eccc.gov.kh/eng/press/press-releases/2012/01/01/01341580.htm](#)

²²⁶⁶ *See* [http://www.eccc.gov.kh/eng/press/press-releases/2012/01/01/01341580.htm](#)

pursuant to the CPK's discriminatory policies.²²⁶⁷

Unlawful Confinement of a Civilian

501. The evidence establishes that the offence of unlawful confinement as a grave breach of the Geneva Conventions under Article 6 of the ECCC Law was committed by CPK cadres/soldiers/militia from 1976-1979 at various locations in Sector 13 of the Southwest Zone and Sector 5 of the Northwest Zone. These CPK cadres/soldiers/militia acted under the direct and/or indirect authority and control of **Im Chaem** or on the basis of her influence, encouragement or assistance.

Acts and Omissions

502. Vietnamese and Khmer Krom civilians were arrested, imprisoned and executed without reasonable grounds to believe that the security of the DK made their confinement necessary,²²⁶⁸ nor was any assessment made of the risk they may have posed to DK security. Instead, Vietnamese and Khmer Krom civilians were arrested and confined to enable their execution.²²⁶⁹ None of the procedural safeguards to which these civilians under **Im Chaem**'s control were entitled under Geneva Convention IV were complied with.

Intent

503. **Im Chaem** and other CPK cadres intended the confinement of Vietnamese and Khmer Krom civilians. Like other crimes, this was carried out systematically in areas under **Im Chaem**'s authority in furtherance of the CPK's discriminatory policies.²²⁷⁰

B. INDIVIDUAL CRIMINAL RESPONSIBILITY

OVERVIEW

504. The evidence in the Case File and referred to in the Material Facts section establishes that **Im Chaem** is individually responsible for crimes against humanity and grave breaches of the Geneva Conventions of 1949 pursuant to Articles 5 and 6 of the ECCC Law.

