

Annex A – Summary of Grounds for KHIEU Samphân’s Appeal (002/02)

(with identification of errors in the Notice of Appeal)

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TRANSLATION/TRADUCTION
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PRIMARY REASONS

SUMMARY

Challenged approach: Judgment on 16.11.2018, followed by the communication of the reasons in writing on 28.03.2019 (E1/529.1 between 11.28.58 and 11.37.34; E465).

Error(s): Failure to apply the compulsory procedures prescribed by the Internal Rules, *ultra vires* (act). [0.1]

Violated right(s): The right to a tribunal established in accordance with the law (0.3), the right to legal and procedural certainty (0.5), the right to transparent proceedings (0.12), the right to be informed of the reasoning of the decisions and judgment (0.13), the right to a fair and public hearing (0.10), the right to an effective defence (0.11), the right to be tried without undue delay (0.2).

Consequence (impact/remedy): Nullity of the Sentencing Judgment.

ALTERNATIVE REASONS

INTRODUCTION

Part I. ERRORS MADE IN VIOLATION OF THE BASIC RULES PERTAINING TO THE RIGHT TO A FAIR TRIAL

Title I. APPLICABLE LAW

Title II. BIASED APPROACH OF THE GUIDING PRINCIPLES OF THE CRIMINAL TRIAL

Chapter I. FLAWED AND BIASED APPROACH TO CRIMINAL LAW

Chapter II. FLAWED AND BIASED APPROACH TO CRIMINAL PROCEEDINGS

Section I. A LENGTHY TRIAL WITH AN AMBIGUOUS SCOPE

SUMMARY

Challenged approach: Lack of precision regarding the delimitation of accusations and extensive vision of the referral (paras 13, 16, 169; Part II below).

Error(s): Failure to apply the correct legal and procedural criteria in respect of information relating to the charges and compliance with the referral. [1.1; 1.2; 2.35; Part II below]

Violated rights: The right to be informed of the nature and reasons of the charges brought against him, the right to have adequate time and resources necessary for the preparation of his defence, the right to a tribunal that respects its jurisdiction and is established in accordance with the law, the right to legal and procedural certainty, the right to be tried without undue delay. [0.4; 0.8; 0.3; 0.5; 0.6; 0.2]

Consequence (impact/remedy): Overturn the findings based on facts outside the referral (Part II below) and note the unfairness of KHIEU Samphân's trial.

Section II. A TRIAL OF HISTORICAL PROPORTIONS

SUMMARY

Challenged approach: Review and use of evidence regarding facts that KHIEU Samphân was not being prosecuted for (paras 60, 177-178, 181-185, 186-188, 189-190; see Factual submissions).

Error(s): Failure to apply the correct legal principles regarding referral. [2.16; 2.37; 2.39; 2.40; 2.41]

Violated rights: The right to be informed of the nature and the reasons of the charges brought against him, the right to have adequate time and resources necessary for the preparation of his defence, the right to a tribunal that respects its jurisdiction and is established in accordance with the law, the right to legal and procedural certainty, the right to an impartial tribunal, the right to be tried without undue delay. [0.4; 0.8; 0.3; 0.5; 0.6; 0.2]

Consequence (impact/remedy): Overturn the findings based on facts outside the referral and establish the unfairness of KHIEU Samphân's trial.

Chapter III. FLAWED AND BIASED APPROACH TO CASE 002/02 AFTER HAVING RULED ON CASE 002/01

Section I. THE BIAS OR PREJUDICE OF THE JUDICIARY

SUMMARY

Challenged finding: Lack of response to the allegations of bias in Case 002/02 stemming from previously having heard Case 002/01 (paras 113-115).

Errors: Lack of reasoning and inability to set aside one's prejudices and prejudgment. [2.29]

Violated rights: The right to be informed of the reasoning of the decisions and judgment, the right to the presumption of innocence, the right to an impartial tribunal. [0.13; 0.7; 0.6]

Consequence (impact/remedy): Establish the unfairness of KHIEU Samphân's trial.

Section II. JUDGES WITH A UNITARY VISION OF TRIALS

I. ILLUSTRATION FROM A LEGAL POINT OF VIEW

A. *Bis in idem*

SUMMARY

Challenged approach: New convictions in Case 002/02 for facts on which a final judgement had already been rendered in Case 002/01 (Part II.IV.III).

Error: Failure to observe the authority of *res judicata*. [Part II.IV.III]

Violated rights: The right not to be prosecuted or punished again for an offence for which one has already been finally acquitted or convicted, the right to legal certainty. [0.15; 0.5]

Consequence (impact/remedy): Reversal of the findings based on facts outside the referral. Overturn the new convictions (Part II.IV.III) and establish the unfairness of KHIEU Samphân's trial.

B. Illicit legal recharacterisation

SUMMARY

Challenged approach: Legal re-characterisation of acts of extermination to *dolus eventualis* murder (paras 153-157, Part III *below*).

Error: Failure to apply the correct legal and procedural criteria for re-characterisation [2.32; Part III *below*]
Violated rights: The right to be informed of the nature and reasons of the charges brought against oneself, the right to have adequate time and resources necessary for the preparation of his defence, the right to adversarial proceedings, the right to legal and procedural certainty, the right to transparent proceedings, the right to an impartial tribunal. [0.4; 0.8; 0.9; 0.5; 0.12; 0.6]
Consequence (impact/remedy): Quash convictions and recharacterise acts previously characterized as extermination to *dolus eventualis* murder (Part III below) and establish the unfairness of KHIEU Samphân's trial.

II. ILLUSTRATION FROM AN EVIDENTIARY POINT OF VIEW

SUMMARY

Challenged approach and rulings: Ruling on the basis of uncontested evidence from 002/01 and refusal to summon witnesses requested by the Defence who have already appeared in 002/01 (paras 36, 126-127; Memorandum of 03.11.2016, E408/6/2, Ruling of 18.07.2017, E459).

Errors: Failure to systematically apply the procedural consequences of the disjunction to the proof and manifest errors of assessment resulting in prejudice. [2.28; 2.3; 2.30]

Violated rights: The right to adversarial proceedings, the right to be informed of the nature and reasons of the charges brought against oneself and the judgement, the right to a fair and public hearing, the right to equality of arms, the right to an impartial tribunal, the right to be tried without undue delay. [0.9; 0.13; 0.10; 0.14; 0.6; 0.2]

Consequence (impact/remedy): Invalidate the findings and convictions based on uncontested evidence (see Factual submissions) and establish the unfairness of KHIEU Samphân's trial.

Title III. PARTIAL APPROACH TO THE SUBMISSION OF EVIDENCE

Chapter I. ERRORS REGARDING ADMISSION OF EVIDENCE DURING THE TRIAL

Section I. RULINGS ON APPEARANCES AS THEY OCCUR

SUMMARY

Challenged approach and rulings: Rulings on requested pre-trial testimony and given during the trial on the merits and without reason (E-mails of 19.09.2014 at 14:06, of 10.10.2014 at 14:35, of 10.12.2014 at 9:00, of 19.01.2015 at 12:37, of 20.01.2015 at 11:59, of 27.02.2015 at 10:02, of 27.02.2015 at 11:45, of 06.03.2015 at 15:25, of 28.04.2015 at 10:58, of 12.05.2015 at 14:01, of 22.06.2015 at 16:29, of 07.08.2015 at 15:34 E366/1.2, of 18.09.2015 at 10:39 E381.1.1, of 20.10.2015 at 14:36, of 06.11.2015 at 11:33 E381.1.3, of 24.12.2015 at 10:05 E364/1.1, of 11.01.2016 at 13:34 E380/2.2, of 13.01.2016 at 14:23, of 14.01.2016 at 15:15, of 22.01.2016 at 14:03, of 05.02.2016 at 13:33 E390/1.1.1, of 12.02.2016 at 12:45 E405.1.1, of 07.03.2016 at 16:25 E392.1.1, of 08.04.2016 at 10:44 E408/6.1, of 03.06.2016 at 13:51 E431/2.2, of 30.06.2016 at 14:01 E434.1.2, of 06.09.2016 at 8:54, of 13.09.2016 at 14:06 E448.1.1, of 14.09.2016 at 16:15 E453/1.2, of 06.12.2016 at 15:13; reasons in the ruling of 18.07.2017, E459).

Error: Manifest error of assessment causing prejudice by not providing a comprehensive and reasoned decision at the start of the trial on the appearances requested prior to the trial. [Appendixes to the Notice of Appeal E465/4/1.4 to E465/4/1.6]

Violated rights: The right to have adequate time and facilities for the preparation of one's defence, the right to transparent proceedings, the right to be informed of the grounds for the decisions, the right to be informed of the nature and grounds of the accusation brought against oneself, the right to legal and procedural certainty, the right to be tried without undue delay, the right to an impartial tribunal. [0.8; 0.12; 0.13; 0.4;

0.5; 0.2; 0.6]

Consequence (impact/remedy): Establish the prejudice and the unfairness of KHIEU Samphân’s trial.

Section II. DISREGARD FOR THE EXCEPTIONAL CHARACTER OF RULE 87-4

SUMMARY

Challenged approach and decisions: Admission of a very large number of new evidence during the trial (paras 43, 56; decisions referenced *below*, the following sections III and IV).

Errors: The exceptional character of Rule 87-4 of the IR was not strictly applied, and manifest assessment errors caused prejudice. [2.5; 2.14; 2.29; Appendixes to the Notice of Appeal E465/4/1.4 to E465/4/1.6]

Violated right(s): The right to have adequate time and facilities for the preparation of one's defence, the right to legal and procedural certainty, the right to be tried without undue delay. [0.8; 0.5; 0.2]

Consequence (impact/remedy): Establish the prejudice and the unfairness of KHIEU Samphân's trial.

Section III. ELEMENTS FROM CASES 003 AND 004

SUMMARY

Challenged approach and decisions: Introduction and admission of large amounts of evidence from cases 003 and 004 that are still pending trial, during the trial (paras 139-148 - Decision of 24.12.2014, E319/7; Memorandum of 26.02.2015, E319/11/1; Memorandum of 08.04.2015, E319/17/1; Memorandum of 17.07.2015, E319/22/1; Memorandum of 01.10.2015, E372 (disposition) and Decision of 24.12.2015, E366/3 (reasons); Decision of 22.10.2015, E363/3; e-mail of 11.01.2016, E380/2.2 and Memorandum of 12.01.2016, E380/1 (substantive provision) and Decision of 25.05.2016, E380/2 (reasons); Memorandum of 18.02.2016, E319/32/1; E-mail of 01.09.2015, E364.2 and e-mail of 24.12.2015, E364/1.1 (substantive provision) and Memorandum of 18.02.2016, E364/1 (reasons); Decision of 25.05.2016, E319/36/2; Memorandum of 29.06.2016, E319/47/3; Oral decision T. 24.03.2016, E1/408.1, between 09.07.33 and 09.10.21 (partial disposition) and Memorandum of 11.07.2016, E390/3 (reasons); e-mail of 10.08.2016 11:32 (attached) and Memorandum of 07.09.2016, E425/2; E-mail of 13.09.2016 14:06 E448.1.1 (or E444.1.2) and oral decision T. 22.09.2016, E1/479.1, between 09.05.55 and 09.07.55; Memorandum of 17.10.2016, E436/1; partial oral decisions T. 13.10.2016, E1/483.1, 13:33-38 and T. 25.10.2016, E1/489.1, 13:35-38 and Decision of 08.12.2016, E319/56/3 (reasons).

Errors: Failure to apply the correct legal criteria regarding the Prosecution's obligation to disclose manifest errors of judgement resulting in prejudice. [2.31; Annexes to the Notice of Appeal E465/4/1.4 to E465/4/1.6]

Violated rights: The right to be tried without undue delay, the right to be informed of the nature and reasons of the accusation brought against oneself, the right to legal and procedural certainty, the right to an impartial tribunal, the right to have adequate time and facilities for the preparation of one's defence, the right to adversarial proceedings, the right to a fair and public hearing, the right to an effective defence, the right to be informed of the reasoning of the decisions, the right to equality of arms. [0.2; 0.4; 0.5; 0.6; 0.8; 0.9; 0.10; 0.11; 0.13; 0.14]

Consequence (impact/remedy): Establish the prejudice and the unfairness of KHIEU Samphân's trial.

Section IV. EVIDENCE FROM HISTORIANS WHO DID NOT TESTIFY

I. ADMISSION OF PROFESSOR GOSCHA'S DOCUMENTS

SUMMARY

Challenged approach: The steps taken by the Chamber to obtain the documents from Professor Goscha and having them admitted respected "all the procedural rights granted to the accused". Professor Goscha's 13 documents were *prima facie* reliable and authentic" (Decision E327/4/7). The Chamber concluded that it could use these documents "for corroboration purposes" (paras 352-354).

Error(s): The Chamber committed an error by not justifying its decision to take steps to obtain 13 documents from Professor Goscha. The Chamber made a mistake by considering that they were reliable and

authentic and by admitting them *proprio motu* on this basis. Finally, the Chamber committed an error by distorting the evidence in order to authenticate these documents. [5.7; 5.8]

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal, the right to adversarial proceedings, the right to transparent proceedings, the right to be informed of the reasoning of the decisions and judgment. [0.5; 0.6; 0.9; 0.12; 0.13]

Consequence (impact/remedy): All findings and convictions based on the documents from Professor Goscha must be invalidated and the unfairness of KHIEU Samphân’s trial must be established (paras 284, 357, 364, 377, 415, 421, 427, 504, 543, 554-556, 1459, 1723, 1763, 2006, 2010, 2016, 3397, 3740, 3805, 3814 and 4126).

II. ADMISSION OF THE S-21 ORANGE LOGBOOK

SUMMARY

Challenged approach: The S-21 orange logbook E3/10770 has been authenticated by SUOS Thy. It is therefore deemed “generally reliable” (para. 2123).

Error(s): The Chamber erred in law by admitting the S-21 logbook into evidence without recalling the witnesses to the bar and allowing them to authenticate the document, and failing to summon Professor HEYNOWSKI, holder of said document. [12.15] See also decision E443/3.

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal, the right to adversarial proceedings, the right to transparent proceedings. [0.5; 0.6; 0.9; 0.12]

Consequence (impact/remedy): All findings and convictions based on the orange logbook (E3/10770) must be invalidated and the unfairness of KHIEU Samphân’s trial must be established (paras 419, 1467, 2115, 2116, 2122, 2123, 2289, 2296, 2297, 2299, 2369, 2397, 2436, 2443, 2505, 2549-2551, 2886, 3054 and 3058).

Chapter II. ERRORS REGARDING THE APPROACH TO THE EVIDENCE IN GENERAL

Section I. INTIME CONVICTION versus BEYOND ALL REASONABLE DOUBT

SUMMARY

Challenged finding: Adopting a common approach between *intime conviction* (reasonable certainty) and beyond a reasonable doubt due to a possible conflict (paras 38-40).

Errors: Failure to apply the correct legal criteria of conviction beyond a reasonable doubt; contradiction of reasons. [2.4; 2.28; 18.365 à 18.367; 20.11]

Violated rights: The right to the presumption of innocence, the right to be informed of the reasoning of the decisions and judgment, the right to an impartial tribunal. [0.7; 0.13; 0.6]

Consequence (impact/remedy): Invalidate all findings made applying a standard inferior to the conviction beyond a reasonable doubt and sentencing based on these erroneous findings (paras 4236-4238, 4400, 4402); establish the unfairness of KHIEU Samphân’s trial.

Section II. DISTORTION/MISREPRESENTATION OF EVIDENCE

SUMMARY

Challenged approach: The Chamber distorted and misrepresented the evidence by adopting a biased view (*in particular* para. 3739).

Error(s): The Chamber committed legal and factual errors by distorting and misrepresenting the evidence [16.9].

Violated right(s): The right to legal and procedural certainty and the right to an independent and impartial tribunal [0.5; 0.6].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (in particular para. 3739).

Section III. DOUBLE STANDARD BETWEEN INCULPATORY AND EXCULPATORY

SUMMARY

Challenged approach: The Chamber applied a double standard in its assessment of the evidence by contradicting itself in its own reasons (paras 36, 38, 40, 49, 53, 60, 61, 62, 63, 64-66, 69, 71, 72, 73, 194, 344, 351, 354, 470, 471, 472, 479).

Error(s): The Chamber committed legal and factual errors when assessing the evidence by violating the principles it had established and by creating a double standard. [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal, the right to have adequate time and facilities for the preparation of one's defence, the right to adversarial proceedings, the right to a fair and public hearing, the right to an effective defence, the right to transparent proceedings, the right to be informed of the reasoning of the decisions and judgement and the right to equality of arms [0.5; 0.6 ;0.7; 0.8; 0.9; 0.10; 0.11; 0.12; 0.13; 14].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial.

(in particular paras 234, 392-395, 397, 3471).

Section IV. OMISSION OF EXCULPATORY EVIDENCE

SUMMARY

Challenged approach: The Chamber failed to apply the principle according to which it must consider whether there are other plausible interpretations, including some which are susceptible to being exculpatory. (paras 40, 65).

Error(s): The Chamber committed a legal error by contradicting itself in its reasons that raised the principle of exculpatory evidence [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to the presumption of innocence [0.5; 0.6; 0.7].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (in particular para. 4399).

Section V. BURDEN OF PROOF

SUMMARY

Challenged approach: The Chamber set forth a framework for assessing the burden of proof that it did not respect in the reasons for the judgement under appeal. (para. 38).

Error(s): The Chamber committed legal errors by contradicting itself in its reasons and by not respecting the principle according to which the burden of proof lies with the Prosecution [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to the presumption of innocence [0.5; 0.6; 0.7].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section VI. DEDUCTIVE APPROACH/CIRCUMSTANTIAL EVIDENCE

SUMMARY

Challenged approach: The Chamber provided a framework for assessing the deductive steps which it did not respect in the reasons for the judgement under appeal (paras 64-65).

Error(s): The Chamber committed legal errors by failing to respect the principle according to which, when a finding is based on a deduction made on the basis of indirect evidence, it is only considered to be proven beyond a reasonable doubt if it was the only logical finding that could be made base on the evidence. [2.20; 2.28].

Violated right(s): The right to legal and procedural certainty, the right to the presumption of innocence and the right to be informed of the reasoning for the decisions and judgment [0.5; 0.7; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section VII. EXTRAPOLATIONS / GENERALISATIONS

SUMMARY

Challenged approach: By extrapolating on and generalising the evidence, the Chamber contradicted itself in its reasons on proof beyond a reasonable doubt (paras 64-65).

Error(s): The Chamber committed errors of law by failing to respect the principle whereby if there is a finding of guilt, this finding must be the only one that can reasonably be drawn from the evidence produced during the trial [2.20; 2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal the right to the presumption of innocence and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.6; 0.7; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section VIII. AMOUNT AND PROBATIVE VALUE OF EVIDENCE

Challenged approach: The Chamber contradicted itself in its reasons by failing to systematically apply the principle of prohibiting the inconsistent evaluation of evidence since the evidence does not have to be added to meet the burden of proof. (para. 40).

Error(s): The Chamber committed errors of law by not upholding the established principle [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.6; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section IX. CORROBORATION

SUMMARY

Challenged approach: The Chamber provided a framework for assessing the corroboration of evidence which it did not respect in the reasons for judgement under appeal (paras 49, 53).

Error(s): Legal and factual errors in assessing corroborative evidence [2.28]

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to be informed of the reasoning for the decisions and judgment [0.5; 0.6; 0.13].

Consequence (impact/remedy): invalidate the findings based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section X. CONTRADICTIONS

SUMMARY

Challenged approach: The Chamber contradicted itself in its reasons by failing to systematically apply the framework for assessing the evidence in the event of contradictions in testimony by civil parties, witnesses and experts (paras 49, 53, 61).

Error(s): The Chamber committed errors of law by not upholding the established principle [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.6; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section XI. STATEMENTS BEFORE AND AFTER

I. ADMISSIBILITY

SUMMARY

Challenged conclusion(s): The Chamber contradicted itself in its jurisprudence on the admissibility of written statements by refusing to reopen the proceedings following the late disclosure of statements by persons having appeared previously in conjunction with cases 003 and 004 (para. 51).

Error(s): The Chamber erred in law by allowing the minutes of previous hearings to be reread before the court appearance [0.16 ;2.11].

Violated right(s): The right to adversarial proceedings, the right to an effective defence and the right to equality of arms [0.9; 0.11; 0.14]

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

II. REREADING PRIOR TO APPEARANCE

Challenged conclusion(s): The Chamber confirmed its practice of allowing witnesses to read over the minutes of previous hearings before placing them on the stand (paras 52, 53, 62).

Error(s): The Chamber erred in law by allowing the witnesses to read over the minutes of previous hearings before appearing on the stand [2.12 ;2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal, the right to adversarial proceedings, the right to transparent proceedings and the right to equality of arms [0.5; 0.6; 0.9; 0.12, 0.14].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section XII. REASONS FOR LYING

SUMMARY

Challenged approach: The Chamber has not consistently applied the established principle regarding reasons for lying (paras 49, 53, 61, 62).

Error(s): The Chamber erred in law by contradicting itself in its reasons and by applying a double standard to grounds for lying [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.6; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section XIII. CULTURAL BIASES

SUMMARY

Challenged conclusion(s): The Chamber stated that when assessing the credibility of a witness, it relied on the appreciation of its Cambodian members to avoid any bias related to cultural prejudices (para. 62).

Error(s): The Chamber committed legal and factual errors by underlining an insufficient legal framework which it did not even apply in the reasons for the judgement under appeal [2.19].

Violated right(s): The right to an independent and impartial tribunal and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (*in particular* para. 1298, see also Factual submissions).

Chapter III. ERRORS IN RELATION TO CERTAIN TYPES OF EVIDENCE

Section I. STATEMENTS/WORKS OF KHIEU SAMPHÂN

SUMMARY

Challenged approach: The Chamber provided a framework for assessing the statements and works of KHIEU Samphân which it did not respect in the reasons for the judgement under appeal. (paras 192-195).

Error(s): The Chamber committed (a) legal and factual error(s) in assessing the evidence [3.3; 2.28; 20.1]

Violated right(s): The right to legal and procedural certainty and the right to an independent and impartial tribunal [0.5; 0.6]

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU

Samphân's trial. (*in particular* para. 4345, see also Factual submissions).

Section II. EVIDENCE OBTAINED THROUGH TORTURE

SUMMARY

Challenged approach: The use of evidence taken from information obtained through torture is authorized. The use of statements obtained through torture. The information contained in a statement obtained through torture may be used for a purpose other than establishing the veracity of the information contained therein, but for the sole purpose of establishing what actions were taken as a result of this statement. Notebooks or logbooks of interrogators at security centres may be used. (paras 75, 77).

Error(s): Violation of the principle of legality. Failure to comply with the object and purpose of the Convention, the ruling of the Supreme Court and international jurisprudence. [2.27; 12.1] Decision E350/8.

Violated right(s): The right to an independent and impartial tribunal [0.6]

Related errors: The Chamber committed an error by using the testimony of Duch who allegedly had a conversation with Pang at S-21 about the fact that KHIEU Samphân was invited to participate in the deliberations on the fate of CHOU Chet [18.60]

Consequence (impact/remedy): The Chamber used the evidence tainted by torture which allowed it to make findings on important elements of the trial (paras 358, 375, 1115, 1358, 2274, 2276, 2277, 2279, 2284 to 2296, 2300-2302, 2313, 2320, 2322, 2327, 2578, 2670, 2717, 2720, 2724, 2725, 2729, 2788-2790, 4228).

Section III. PROPAGANDA

SUMMARY

Challenged approach: The Chamber provided a framework for evaluating propaganda which it did not respect in the reasons for the judgement under appeal (para. 65).

Error(s): The Chamber committed legal and factual errors in assessing the evidence of propaganda documents [2.28].

Violated right(s): The right to legal and procedural certainty and the right to an independent and impartial tribunal [0.5; 0.6].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section IV. WRITTEN STATEMENTS

SUMMARY

Challenged approach: The Chamber provided a framework for assessing written statements that it did not comply with in the reasons for the judgement under appeal (paras 51, 69-72).

Error(s): The Chamber committed legal and factual errors in assessing the evidence stemming from written statements [2.11; 2.23; 2.24; 2.25; 2.26; 2.28; 14.34]

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal, the right to have adequate time and facilities for the preparation of one's defence, the right to adversarial proceedings, the right to a fair and public hearing, the right to an effective defence, the right to transparent proceedings, the right to be informed of the reasoning of the decisions and judgement and the right to equality of arms [0.5; 0.6; 0.7; 0.8; 0.9; 0.10; 0.11; 0.12; 0.13; 14].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (*in particular* paras 3430, 4228).

Section V. EXTRAJUDICIAL STATEMENTS

SUMMARY

Challenged approach: The Chamber provided a framework for assessing extrajudicial statements that did not comply with the reasons for the judgement under appeal (paras 61, 69).

Error(s): The Chamber committed legal and factual errors in assessing the evidence of extrajudicial statements [2.28; 14.34].

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions and judgement [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section VI. HEARSAY

SUMMARY

Challenged approach: The Chamber provided a framework for assessing hearsay that it did not comply with in the reasons for the judgement under appeal (para. 63).

Error(s): The Chamber committed legal and factual errors in assessing hearsay evidence [2.28].

Violated right(s): The right to legal and procedural certainty, the right to an independent and impartial tribunal and the right to be informed of the reasoning of the decisions and judgement and the right to equality of arms [0.5; 0.6; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (*in particular* paras 3505-3507; 3431).

Section VII. CIVIL PARTY STATEMENTS

I. CIVIL PARTY APPLICATIONS

SUMMARY

Challenged approach: The Chamber provided a framework for assessing civil party applications which it did not comply with in the reasons for the judgement under appeal (para. 73).

Error(s): The Chamber committed legal and factual errors in the assessment of the civil party applications [2.28].

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (*in particular* paras 3422; 3505).

II. ASSESSING STATEMENTS

SUMMARY

Challenged approach: The Chamber provided a framework for the assessment of civil party statements which it did not comply with in the reasons for the judgement under appeal (para. 67).

Error(s): The Chamber committed legal and factual errors in the assessment of civil party statements. [2.21].

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section VIII. DOCUMENTS ENJOYING PRESUMPTIONS

SUMMARY

Challenged approach: The Chamber provided a framework for the assessment of documents enjoying presumptions which it did not comply with in the reasons for the judgement under appeal (para. 46).

Error(s): The Chamber committed legal and factual errors in assessing the evidence of documents with presumptions [2.6; 2.7; 2.8; 2.9]

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions).

Section IX. DOCUMENTARY EVIDENCE AND AUTHENTICITY

SUMMARY

Challenged approach: The Chamber provided a framework for assessing the documentary evidence and epochal documents which it did not comply with in the reasons for the judgement under appeal. (paras 57, 61, 344; 347-351, 398).

Error(s): The Chamber committed legal and factual errors in the assessment of documentary evidence and documents from that time [2.1; 2.28; 5.3; 5.5; 5.6; 5.23].

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (*in particular* paras 304, 344, 347-348, 398).

Section X. EXPERTS

SUMMARY

Challenged approach: The Chamber provided a framework for assessing expert evidence which it did not comply with in the reasons of the judgement under appeal (paras 66, 192 to 195).

Error(s): The Chamber committed legal and factual errors in assessing expert evidence [2.28; 3.2; 14.5].

Violated right(s): The right to legal and procedural certainty and the right to be informed of the reasoning of the decisions [0.5; 0.13].

Consequence (impact/remedy): Invalidate the findings and convictions based on this inadequate assessment of the evidence (see Factual submissions below) and establish the unfairness of KHIEU Samphân's trial. (see Factual submissions below)

Samphân's trial. (see Factual submissions).

Title IV. FINDING – CUMULATIVE EFFECT OF THE VIOLATIONS

Part II. ERRORS REGARDING THE JURISDICTION

Title I. EXCEEDING THE REFERRAL OF THE CIJ

Chapter I. THE LAW

SUMMARY

Challenged finding: Inadmissibility of requests for finding of irregular referral following a breach of the jurisdiction by the Co-Investigating Judges (CIJ), qualified as late preliminary objections (paras 158-165).

Error(s): Incorrect interpretation and application of Internal Rule 89. [2.33; see Chapter II below]

Consequence (impact/remedy): Invalidation of KHIEU Samphân's convictions that were based on the findings of the Trial Chamber which ruled on events it was not normally seized of (see Chapter II below).

Chapter II. ERRORS AND IMPACT BY CRIME SITE

Section I. TRAM KOK

I. LACK OF GEOGRAPHICAL REFERRAL BEYOND THE EIGHT MUNICIPALITIES IN THE TK DISTRICT

SUMMARY

Challenged finding: The geographical referral of the Chamber extended to all co-ops located throughout the TK district. (paras 161, 808, 809).

Error(s): The Chamber committed an error when declaring that the Defence submissions about limiting the trial to the facts charged in the Closing Order in the eight municipalities mentioned in the Prosecutors' Introductory Submission (PIS) were inadmissible and unfounded. [2.33; 10.1; 10.2]

Subsequent/related errors: [10.18; 10.20; 10.42; 10.44; 10.51; 16.168; 16.169; 16.174; 16.175; 16.345; 16.350; 16.354; 16.355; 18.297; 18.304; 18.336; 18.344-347; 18.352-356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber's geographical referral did not include events that occurred outside the eight municipalities in the Prosecutors' Introductory Submission (PIS). The findings of the Chamber relating to the gathering of evidence of the crimes of *dolus eventualis* murder, persecution on political grounds of former Khmer Republic soldiers at TK and targeting the new people in TK which are based on facts that occurred outside the eight municipalities targeted in the PIS must be quashed. These acts of persecution on political grounds were not part of a criminal policy. The conviction of KHIEU Samphân for CAH based on these facts must be overturned. (161, 808, 809, 1011, 1013, 1016, 1018 and 1019 1020, 1037, 1055, 1062 and 1063, 1066, 1080 and 1081, 1142, 1144 and 1145, 1175, 1177, 4058, 4060 and 4061, 4306, 4318 to 4328, 4400, 4402)

II. LACK OF JURISDICTION FOR DEATHS OTHER THAN DEATHS FROM STARVATION

SUMMARY

Challenged finding: The Chamber's subject-matter jurisdiction extended to deaths due to living conditions other than deaths from starvation (paras 808-809, 811, 1141).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the hunger-related deaths mentioned in the Prosecutors' Introductory Submission and referred to in the Closing Order of which the Co-Investigating Judges had been properly seized. [2.3, 10.2; 10.3]

Subsequent/related errors: [10.42; 10.44; 18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber's subject-matter jurisdiction did not include deaths other than those due to starvation. The recharacterisation of deaths other than those from starvation to the crime against humanity of murder must be reversed. The conviction of KHIEU Samphân for the CAH of *dolus eventualis* murder in respect of these facts must be reversed. (808 and 809, 811, 1141 to 1146, 4311, 4315 to 4318, 4328, 4363, 4366, 4383, 4400, 4402).

III. DEPORTATION

SUMMARY

Challenged finding: Facts characterized as deportation were part of the facts to be examined (paras 166-168).

Error(s): Misinterpretation of the Prosecutors' Introductory Submission and the scope of the Co-Investigating Judges' referral. [2.34; 2.35]

Subsequent/related errors: [10.47; 10.53; 10.54; 13.117; 13.118; 13.119; 13.120; 13.121; 13.122; 13.125; 13.128; 13.151; 13.154; 13.155; 13.168; 13.169; 13.170; 13.171; 13.172; 13.173; 13.174; 13.175; 13.176; 13.177; 13.178; 13.279; 16.288; 16.289; 16.290; 16.292; 16.293; 16.294; 16.295; 16.296; 16.297; 16.298; 16.299; 16.316; 18.83; 18.84; 18.88; 18.162; 18.228; 18.229; 18.230; 18.282; 18.308; 18.309]

Consequence (impact/remedy): The Chamber was improperly seized of acts constituting deportation of Vietnamese nationals. Deportation was not part of the policy against the Vietnamese. KHIEU Samphân must be acquitted of the charge of deportation of Vietnamese people at TK and Prey Veng. KHIEU Samphân must be acquitted of the charge of persecution on racial grounds of the Vietnamese at TK and of deportations in Prey Veng (paras 168, 1110-1125, 1156-1159, 3502-3509, 3512, 3513, 4004, 4012, 4237, 4292).

Section II. TRAPEANG THMA DAM WORKSITE

SUMMARY

Challenged finding: The Chamber is seized of other inhumane acts (OIA) in the form of forced disappearances at the Trapeang Thma Dam worksite (paras 1206, 1424-1429).

Error(s): The Chamber committed a legal error in considering itself seized of forced disappearances at the Trapeang Thma Dam worksite and in considering them to be established. [11.1; 11.27]

Consequence (impact/remedy): Findings relating to forced disappearances from the Trapeang Thma Dam worksite and the resulting convictions must be invalidated. (paras 1424-1429, 3927, 4282, 4287, 4306).

Section III. 1ST JANUARY DAM WORKSITE

I. LACK OF JURISDICTION FOR THE EXECUTIONS AT THE BARAY CHOAN DEK PAGODA

SUMMARY

Challenged finding: The Chamber was properly seized and had jurisdiction to try the executions that occurred at the Baray Choan Dek pagoda (paras 165, 1434, 1665).

Error(s): The Chamber made an error in ruling that the Defence's arguments that the trial should be limited to the facts referred to in the Closing Order and for which the Co-Investigating Judges were seized were inadmissible and unfounded. [2.33; 11.28]

Subsequent/related errors: [11.42; 11.54; 16.163-16.164; 16.175; 18.202; 18.270]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include executions that took place at the Baray Choan Dek pagoda. The crime of murder is not established for executions carried out at the pagoda. The finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of murder in relation to the executions at the Baray Choan Dek pagoda through joint criminal enterprise (JCE) must be invalidated (paras 165, 1434, 1665-1666, 3920, 3928, 4306).

II. LACK OF JURISDICTION FOR DEATHS CAUSED BY ACCIDENTS

SUMMARY

Challenged finding: The Chamber’s *rationae materiae* extended to deaths due to accidents at the 1st January Dam worksite (para. 1668).

Error(s): The Chamber committed legal errors by declaring itself competent to be seised of deaths caused by accidents at the 1st January Dam worksite while the findings of the Co-Investigating Judges that the Chamber relies on to say that it is competent to be seised of facts other than deaths due to starvation, harassing work and executions mentioned in the Prosecutors’ Introductory Submission violate the jurisdiction of the Co-Investigating Judges. [11.55-11.56]

Subsequent/related errors: [18.336; 18.344-347; 18.352-356; 18.359; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include deaths caused by accidents at the 1st January Dam worksite. The Chamber’s findings on the recharacterisation of deaths caused by accidents at the 1st January Dam worksite to the crime against humanity of murder must be reversed. The conviction of KHIEU Samphân for the crime against humanity of *dol eventualis* murder in respect of these acts must be reversed (paras 1668, 1670-1673, 4311, 4315 to 4318, 4328, 4363, 4366, 4383, 4400, 4402).

III. LACK OF JURISDICTION FOR “DISCRIMINATION” ON POLITICAL GROUNDS TARGETING THE NEW PEOPLE

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try the “discrimination” of the New People which occurred at the 1st January Dam worksite (paras 161, 1435, 1685).

Error(s): The Chamber erred in law by declaring itself competent to be seised of facts relating to “discrimination” of the New People which occurred at the 1st January Dam worksite while the findings of the Co-Investigating Judges that the Chamber relies on to say that it is competent to be seised of these violent crimes violate the referral of the Co-Investigating Judges [2.33; 11.30]

Subsequent/related errors: [11.59; 16.162; 16.169; 18.220; 18.298]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include the “discrimination” against New People that occurred at the 1st January Dam worksite. The crime against humanity of persecution on political grounds is not established with respect to the New People at the 1st January Dam worksite. Therefore, any finding incorporating these facts into a policy described as “criminal” must be annulled. Consequently, the conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds targeting the New People at the 1st January Dam worksite through JCE for these facts must be reversed (paras 161, 1435, 1685, 1688-1689, 1691-1692, 3919, 3924-3925, 4287, 4306).

IV. LACK OF JURISDICTION FOR “DISCRIMINATION” ON RELIGIOUS GROUNDS

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try facts relating to the “discrimination” of the Cham on religious grounds which occurred at the 1st January Dam worksite (paras 161, 1435, 1693).

Error(s): The Chamber erred in law by declaring itself competent to be seised of facts relating to the “discrimination” of the Cham on religious grounds which occurred at the 1st January Dam worksite while the findings of the Co-Investigating Judges that the Chamber relies on to say that it is competent to be seised of these violent crimes violate the referral of the Co-Investigating Judges. [2.33; 11.30; 11.60]

Subsequent/related errors: [11.61; 16.271-16.273; 16.383-16.384; 18.307]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include “discrimination” against the Cham on religious grounds that occurred at the 1st January Dam worksite. The crime of persecution on political grounds is not established with respect to the Cham at the 1st January Dam worksite. Therefore, any finding incorporating these facts into a policy described as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of persecution on religious grounds targeting the Cham at the 1st January Dam worksite through JCE for these facts must be reversed (paras 161, 1435, 1693, 1695-1697, 3998, 4070, 4073-4074, 4306).

V. LACK OF JURISDICTION FOR DISAPPEARANCES

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try facts relating to disappearances which occurred at the 1st January Dam worksite (paras 161, 1435, 1708).

Error(s): The Chamber erred in law by declaring itself competent to be seised of disappearances which occurred at the 1st January Dam worksite while the findings of the Co-Investigating Judges that the Chamber relies on to say that it is competent to be seised of these violent crimes violate the referral of the Co-Investigating Judges. [2.33; 11.30; 11.63]

Subsequent/related errors: [11.64; 16.272-16.273; 16.275; 18.322]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include disappearances that occurred at the 1st January Dam worksite. (161, 1435, 1708). The crime against humanity of other inhumane acts in the form of forced disappearances has not been established. Therefore, any finding incorporating these facts into a policy described as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of other inhumane acts in the form of forced disappearances at the 1st January Dam worksite through JCE for these facts must be reversed (paras 161, 1435, 1708, 1710-1712, 3927-3928, 4306).

Section IV. PHNOM KRAOL

I. ENSLAVEMENT

SUMMARY

Challenged finding: The Chamber is seised of enslavement with respect to K17 and PK (paras 3024; 3119-3026).

Error(s): The Chamber committed an error in considering that it had jurisdiction to try acts of enslavement at the sites K17 and PK since they are the result of a breach of the referral by the Co-Investigating Judges [12.220; 12.221]

Consequence (impact/remedy): The Chamber was unable to establish guilt on the basis of illegal prosecutions. All of the findings and convictions relating to enslavement at the K17 and PK sites must therefore be invalidated. (paras 3120-3126; 4282; 4287; 4306).

II. OTHER INHUMANE ACTS THROUGH ATTACKS AGAINST HUMAN DIGNITY

SUMMARY

Challenged finding: Acts relating to the crime against humanity of other inhumane acts through attacks against human dignity include torture (paras 3152-3159).

Error(s): The Chamber made an error by including torture in its referral for other inhumane acts through attacks against human dignity at the PK worksite. [12.226; 12.227]

Consequence (impact/remedy): Any findings of guilt relating to torture must be invalidated (paras 3152-3159; 4282; 4287; 4306).

III. OTHER INHUMANE ACTS THROUGH FORCED DISAPPEARANCES

SUMMARY

Challenged finding: The Chamber is seised of forced disappearances with respect to PK, K11 and K17 (paras 3160-3166).

Error(s): The Chamber made an error by including forced disappearances in its referral for acts in regard to K11 and PK since they were based on a procedural violation by the Co-Investigating Judges. [12.228; 12.229]

Consequence (impact/remedy): Findings with respect to forced disappearances at K11 and PK must be invalidated (paras 3160-3166; 3986; 4282; 4287; 4306).

Section V. KRAING TA CHAN

I. LACK OF JURISDICTION FOR DEATHS DUE TO THE DETENTION CONDITIONS

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try deaths due to detention conditions at KTC (paras 161, 2638).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. [2.33; 12.118]

Subsequent/related errors: [12.149; 18.354-18.357; 18.363]

Consequence (impact/remedy): The Chamber's subject-matter jurisdiction did not include deaths due to detention conditions at KTC. The crime against humanity of *dol eventualis* murder with respect to these acts has not been established. Therefore, the conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in respect of these facts must be reversed. (paras 161, 2638, 2815-2817, 4317-4318).

II. LACK OF JURISDICTION FOR ENSLAVEMENT

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of enslavement at KTC (paras 161, 2638, 2640).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. [2.33; 12.118-12.119]

Subsequent/related errors: [12.151; 16.226; 16.237-16.238; 18.287]

Consequence (impact/remedy): The Chamber’s *rationae materiae* did not include enslavement at KTC. The crime against humanity of enslavement has not been established. Therefore, the finding incorporating these facts into a policy defined as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of enslavement at KTC through JCE in respect of these facts must be reversed. (paras 161, 2638, 2640, 2822-2823, 3979, 3987, 4306).

III. LACK OF JURISDICTION FOR TORTURE

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of torture that occurred at KTC (paras 161, 2638, 2828).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. [2.33; 12.118]

Subsequent/related errors: [12.153; 16.229-16.230; 16.237-16.238; 18.295]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include torture at KTC. The crime against humanity of torture has not been established. Therefore, the finding incorporating these facts into a policy qualified as ‘criminal’ must be annulled. The conviction of KHIEU Samphân for the crime against humanity of torture at KTC through JCE in respect of these facts must be reversed. (paras 161, 2638, 2828-2832, 3979, 3981, 3987, 4306).

IV. LACK OF JURISDICTION FOR MISTREATMENT

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of mistreatment by guards and interrogators at KTC (paras 161, 2638, 2848).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. [2.33; 12.118]

Subsequent/related errors: [12.156; 16.233-234; 18.317]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include mistreatment by guards and interrogators at KTC. The crime against humanity of other inhumane acts in relation to these facts has not been established. Therefore, the finding incorporating these facts into a policy qualified as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of other inhumane acts at KTC through JCE in respect of these facts must be reversed. (paras 161, 2638, 2848-2849, 2851, 3985, 4306).

V. LACK OF JURISDICTION FOR DISAPPEARANCES

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of disappearances that took place at KTC (paras 161, 2638, 2852).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. [2.33; 12.118]

Subsequent/related errors: [12.157; 16.235; 18.324]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include disappearances at KTC. The crime against humanity of other inhumane acts in relation to these facts has not been established. Therefore, the finding incorporating these facts into a policy qualified as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of other inhumane acts at KTC through joint criminal enterprise in respect of these facts must be reversed (paras 161, 2638, 2848, 2853-2858, 3986, 4306).

Section VI. AU KANSENG

I. PERSECUTION ON RACIAL GROUNDS

SUMMARY

Challenged finding: The Chamber considers itself seized of persecution on racial grounds committed against the Vietnamese at AuKg. (para. 2994).

Error(s): The Co-Investigating Judges did not have a mandate to investigate persecution on racial grounds against the Vietnamese. The findings in the Closing Order were reached in breach of the referral. [12.190; 12.191]

Consequence (impact/remedy): The Chamber could not examine these facts. Thus, the findings in respect of the crime of persecution on racial grounds at AuKg must be invalidated, and KHIEU Samphân must be acquitted of this crime. (paras 2994-2999, para. 3982 and para. 4306).

II. OTHER INHUMANE ACTS THROUGH ATTACKS ON HUMAN DIGNITY

SUMMARY

Challenged finding: The Chamber considers itself seized of other inhumane acts through attacks on human dignity at AuKg in light of the “lack of medical treatment” and the “physical and psychological mistreatment inflicted on the detainees” (para. 3003).

Error(s): This was done in violation of the referral of the Co-Investigating Judges. [12.192; 12.193]

Consequence (impact/remedy): The Chamber could not examine these facts. Thus, the findings in respect of the crime of other inhumane acts through attacks on human dignity inflicted on the detainees in light of the lack of medical treatment and the mistreatment must be invalidated, and KHIEU Samphân must be partially acquitted of this crime. (paras 3004, 3006, 3008 and para. 4306).

Section VII. PURGES

SUMMARY

Challenged finding: The Chamber’s subject-matter jurisdiction extended to purges in addition to the ones that took place in ZN in 1976 and ZE in 1978 (paras 1893, 1898-1899, 1903, 1920, 1929-1931, 1936, 1941 to 1945, 2001, 2012-2038, 2063, 2066, 2068-2072, paras 2284-2296, 2297-2307, 2321).

Error(s): [5.20; 5.26; 12.3-12.12; 12.21; 12.36-12.38; 12.45; 12.47; 12.52; 12.58]

Subsequent/related errors: [18.33-18.73; 18.204-18.220]

Consequence (impact/remedy): The Chamber’s *rationae materiae* and *rationae temporis* did not include purges in addition to the ones that took place in the northern zone in 1976 and in the eastern zone in 1978. The Chamber committed an error in finding that KHIEU Samphân was aware of and had contributed to the crimes committed during the internal purges throughout Democratic Kampuchea even though they were outside the scope. Samphân must be acquitted of crimes committed in the security centres S-21, AuKg and

PK. (paras 4235, 4306).

Chapter III. ERRORS AND IMPACT ON SPECIFIC GROUPS

Section I. BUDDHISTS

SUMMARY

Challenged finding: The Chamber was properly seised and has jurisdiction to try acts of “discrimination” against Buddhists and Buddhist monks that took place in the Tram Kok cooperatives. (paras 165, 809, 815, 1180).

Error(s): The Chamber made an error in declaring inadmissible and unfounded the Defence arguments relating to the fact that the trial was limited to the facts referred to in the Closing Order of which the Co-Investigating Judges had been seised. **2.33; 10.2]**

Subsequent/related errors: [**10.52; 16.322; 16.326-327; 18.242-243; 18.248; 18.306]**

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include “discrimination” against Buddhists and Buddhist monks that took place in the Tram Kok cooperatives. The crime of persecution on religious grounds is not established in relation to Buddhists and Buddhist monks in Tram Kok. Therefore, the finding incorporating these facts into a policy qualified as “criminal” must be annulled. The conviction of KHIEU Samphân for the crime against humanity of persecution on religious grounds through JCE in respect of these facts must be reversed (paras 165, 809, 815, 1180, 1183-1187, 4019, 4021-4022, 4296, 4298, 4306).

Section II. VIETNAMESE

SUMMARY

Challenged finding: The Chamber is seised of measures against the Vietnamese at a national level (paras 3356-3360).

Error(s): Breach of referral of the Co-Investigating Judges, misinterpretation of the Closing Order. [**13.91; 13.93; 13.97. 13.205; 13.232; 13.254; 13.275; 13.284; 16.275; 16.276]**

Consequence (impact/remedy): Genocide by murder, CAH of murder and extermination of the Vietnamese outside the provinces of Prey Veng and Svay Rieng could not be examined and could therefore not be established. Khieu Samphân must be acquitted of these crimes. (paras 3456-3488, 3490, 3492-3497, 3498-3502, 3514-3519, 4002, 4003 and 4306).

Title II. INSUFFICIENT CHARGES TO SEND TO TRIAL

Chapter I. THE LAW

SUMMARY

Challenged finding: Request to find that the Chamber was improperly seised due to the insufficient charges for trial in the absence of clear indications was denied (paras 179-180).

Error(s): Failure to respond to the Defence’s unambiguous findings. [**2.38; see Chapter II below]**

Consequence (impact/remedy): Reversal of the convictions of KHIEU Samphân based on the findings of the Chamber that ruled on facts for which it was improperly seised (see Chapter II below).

Chapter II. ERRORS AND IMPACT IN TRAM KAK

I. EXCEEDING THE CRIMES

A. Lack of jurisdiction for death due to starvation in the Tram Kak municipalities

SUMMARY

Challenged finding: The Chamber’s subject-matter jurisdiction includes death due to starvation in the Tram Kak cooperatives (paras 808-809, 811, 1141).

Error(s): The Chamber made a legal error in dismissing *ex officio* the arguments of the Defence with respect to limiting the trial to the facts referred to and legally characterized in the Closing Order supported by evidence reaching the level required to justify sending the case to trial. [2.38; 10.3]

Subsequent/related errors: [10.42; 10.44; 18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include deaths due to starvation. The recharacterisation of death due to starvation to the crime against humanity of murder must be invalidated. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be stricken (paras 808-809, 811, 1141-1146, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

B. Lack of jurisdiction for “discriminatory treatment” of the New People

SUMMARY

Challenged finding: The Chamber is properly seised and has jurisdiction to try acts of “discriminatory treatment” against the New People in the Tram Kak cooperatives (paras 180, 813, 1169, 1171).

Error(s): The Chamber committed a legal error in dismissing *ex officio* the arguments of the Defence with respect to limiting the trial to the facts referred to in the Closing Order supported by evidence reaching the level required to justify sending the case to trial. [2.38; 10.5; 10.49]

Subsequent/related errors: [10.51; 16.168-16.169; 16.174-16.175; 18.297]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include “discriminatory treatment” against the New People that occurred at Tram Kak. The crime against humanity of persecution on political grounds is not established in respect of the New People at Tram Kak. As a result, the finding incorporating these facts into a policy qualified as “criminal” must be reversed. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds targeting the New People at TK through JCE in relation to these facts must be stricken (paras 180, 813, 1169, 1171, 1176-1179, 3924-3925, 3928, 4306).

II. LACK OF JURISDICTION FOR SURVEILLANCE AND THE DISAPPEARANCE OF FORMER KHMER REPUBLIC SOLDIERS

SUMMARY

Challenged finding: The Chamber is properly seised and has jurisdiction to try acts of “discriminatory treatment” against the former Khmer Republic soldiers in the Tram Kak cooperatives (paras 180, 812, 1172).

Error(s): The Chamber committed a legal error by dismissing *ex officio* the arguments of the Defence with respect to limiting the trial to the facts referred to in the Closing Order supported by evidence reaching the level required to justify sending the case to trial. [2.38; 10.4; 10.50]

Subsequent/related errors: [10.51; 16.169; 16.174-16.175; 16.345; 16.350; 16.354-16.355; 18.304]

Consequence (impact/remedy): The scope of the Chamber’s subject-matter jurisdiction did not include “discriminatory treatment” against the former Khmer Republic soldiers that occurred at Tram Kak. The crime against humanity of persecution on political grounds is not established in respect of the former Khmer Republic soldiers at Tram Kak. As a result, the finding incorporating these facts into a policy qualified as “criminal” must be reversed. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds targeting the former Khmer Republic soldiers at TK through JCE in relation to these facts must be stricken (paras 180, 812, 1172, 1175, 1177 to 1179, 3924-3925, 3928, 4050, 4058, 4060-4061, 4306).

Title III. LACK OF LEGALLY QUALIFIED ESSENTIAL FACTS

Chapter I. THE LAW

Chapter II. ERRORS AND IMPACT BY CRIME SITE

Section I. TRAM KOK

I. LACK OF JURISDICTION FOR DEATHS DUE TO HEALTH PROBLEMS AND LIVING CONDITIONS

SUMMARY

Challenged finding: The Chamber was properly seised and has jurisdiction to try deaths due to living conditions, including housing, hygiene, means to provide medical assistance and very arduous labour that took place in the Tram Kok cooperatives. (paras 811, 1138-1139, 1141).

Error(s): Misinterpretation of the indictment and scope of the Chamber’s referral. [10.3; 10.41]

Subsequent/related errors: [10.42; 10.44; 18.336; 18.344-347; 18.352-356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include deaths other than those due to starvation. The recharacterisation of the crime against humanity of murder to deaths other than those due to starvation must be reversed. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder for these facts must be stricken. (808 and 809, 811, 1141 to 1146, 4311, 4315 to 4318, 4328, 4363, 4366, 4383, 4400, 4402).

II. LACK OF JURISDICTION FOR DEATHS DUE TO STARVATION OUTSIDE SAMRONG AND TA PHEM

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try deaths due to starvation outside the communities of Samrong and Ta Phem (paras 811, 1140-1141).

Error(s): Misinterpretation of the indictment and scope of the Chamber’s jurisdiction. [10.3; 10.41]

Subsequent/related errors: [10.42; 10.44; 18.336; 18.344-347; 18.352-356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber was improperly seised of deaths due to starvation that occurred outside the communities of Samrong and Ta Phem. KHIEU Samphân must be acquitted of the crime against humanity of murder at Tram Kak for deaths due to starvation that occurred outside the two communities of Samrong and Ta Phem (paras 1144-1145; 4311; 4315-4318)

III. LACK OF JURISDICTION FOR “DISCRIMINATION” AGAINST THE NEW PEOPLE OTHER THAN LIMITING THE EXERCISE OF CERTAIN “POLITICAL RIGHTS”

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try “discrimination” against the New People other than limiting the exercise of certain “political rights” (paras 813, 1170-1171).

Error(s): Misinterpretation of the indictment and scope of the Chamber’s referral. [10.5; 10.49]

Subsequent/related errors: [10.51; 16.162; 16.168-16.169; 16.174-16.176; 18.297]

Consequence (impact/remedy): The Chamber was improperly seised of “discrimination” other than restricting certain “political rights” targeting the New People. The discriminatory treatment of the New People was not part of the policy of the cooperatives. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds. (1178 and 1179, 3319, 3324 and 3325, 3928 and 3929, 4306).

Section II. THE TRAPEANG THMA DAM WORKSITE

Persecution on political grounds

SUMMARY

Challenged finding: The Chamber is not exclusively seised of the three groups mentioned in the Closing Order in relation to the crime of persecution in that they are not exhaustive and are intended to evolve over time (paras 170; 1405).

Error(s): The Chamber committed a legal error by extending its referral to persecution on political grounds at the Trapeang Thma Dam beyond members of the New People [11.23; 11.24].

Consequence (impact/remedy): The findings of guilt based on persecution on political grounds against members of the New People at the Trapeang Thma Dam must be stricken. (paras 1407-1429; 3924-3925; 4306).

Section III. THE 1ST JANUARY DAM WORKSITE

I. LACK OF JURISDICTION FOR DEATHS THAT OCCURRED OUTSIDE THE 1ST JANUARY DAM WORKSITE

SUMMARY

Challenged finding: The scope of the Chamber’s subject-matter jurisdiction included deaths that had occurred in the villages and local dispensaries. (paras 1629, 1670).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s jurisdiction. [11.46]

Subsequent/related errors: [11.56; 18.336; 18.344-347; 18.352-356; 18.359; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include deaths that occurred outside of the 1st January Dam worksite. The recharacterisation to crime against humanity of murder for the deaths that occurred outside of the 1st January Dam worksite must be stricken. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be stricken (paras 1629, 1670-1673, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

II. LACK OF JURISDICTION FOR DEATHS DUE TO ACCIDENTS

SUMMARY

Challenged finding: The Chamber’s subject-matter jurisdiction included deaths due to accidents that occurred at the 1st January Dam worksite (para. 1668).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s referral. [11.55-11.56]

Subsequent/related errors: [18.336; 18.344-347; 18.352-356; 18.359; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The Chamber’s subject-matter jurisdiction did not include deaths due to accidents that occurred at the 1st January Dam worksite. The recharacterisation to crime against humanity of *dolus eventualis* murder in relation to these facts must be stricken (paras 1668, 1670-1673, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

III. LACK OF JURISDICTION FOR “DISCRIMINATION” AGAINST FORMER KHMER REPUBLIC SOLDIERS

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of discrimination against the former Khmer Republic soldiers (paras 161, 1435, 1685).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s jurisdiction. [11.30; 11.58]

Subsequent/related errors: [11.52-11.53; 11.59; 16.169; 16.344-16.345; 16.350-16.354; 18.103; 18.249-18.254; 18.298; 18.304]

Consequence (impact/remedy): The Chamber was improperly seised of acts of “discrimination” against the former Khmer Republic soldiers. This does not constitute a crime against humanity of persecution on political grounds in respect of the former Khmer Republic soldiers detained at the 1st January Dam worksite. The finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds against the former Khmer Republic soldiers at the 1st January Dam worksite in relation to these facts must be stricken. (paras 161, 1435, 1685, 1690-1692, 3924-3925, 4049-4050, 4058-4061, 4246, 4299-4300, 4306).

Section IV. KAMPONG CHHNANG AIRFIELD

Persecution on political grounds

SUMMARY

Challenged finding: The Chamber is not exclusively seised of the three groups mentioned in the Closing Order in relation to persecution in that they are not exhaustive and are intended to evolve over time (paras 170 ;1818-1828).

Error(s): The Chamber committed a legal error by finding KHIEU Samphân guilty of facts which were based on an unlawful referral in the absence of an identified group and defined in the Closing Order [11.80; 11.81].

Consequence (impact/remedy): All findings relating to the politically motivated persecution at the Kampong Chhnang airfield must be stricken. (paras 1820-1828; 3924-3925; 4306).

Section V. KRAING TA CHAN

I. LACK OF JURISDICTION FOR “DISCRIMINATION” AGAINST THE NEW PEOPLE

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of “discrimination” against the New People that occurred at Kraing Ta Chan (paras 2835-2836).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s jurisdiction. [12.154]

Subsequent/related errors: [12.155; 16.231-16.232; 16.237-16.238; 16.354-16.355; 18.301]

Consequence (impact/remedy): The Chamber was improperly seised of acts of “discrimination” against the former New People that occurred at Kraing Ta Chan. These acts are not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds against the New People at Kraing Ta Chan through JCE (paras 161, 2835-2836, 2839-2843, 3982-3983, 3987, 4306).

II. LACK OF JURISDICTION FOR “DISCRIMINATION” TARGETING THE FORMER KHMER REPUBLIC SOLDIERS

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of “discrimination” against the former Khmer Republic soldiers that occurred at Kraing Ta Chan (paras 2835-2837).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s referral. [12.154]

Subsequent/related errors: [12.155; 16.344-16.345; 16.350-16.355; 18.103; 18.249-18.254; 18.301; 18.304]

Consequence (impact/remedy): The Chamber was improperly seised of the acts of discrimination against former Khmer Republic soldiers that occurred at Kraing Ta Chan. The crime of persecution on political grounds against former Khmer Republic soldiers at Kraing Ta Chan has not been established. These acts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds against the former Khmer Republic soldiers through JCE. (paras 2835-2839, 2841-2843, 4058-4061, 4246, 4299-4300, 4306).

III. JURISDICTION LIMITED TO 3 GROUPS DEFINED IN THE LEGAL CHARACTERISATION OF THE CLOSING ORDER

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to try acts of “discrimination” against the “group” of real or presumed enemies, aside from the three groups defined in the Closing Order. (paras 170, 2834, 2837).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s jurisdiction. [2.36; 12.154]

Subsequent/related errors: [12.155; 16.217; 16.231-16.232; 16.237-16.238; 18.301]

Consequence (impact/remedy): The Chamber was improperly seised of “discrimination” targeting real or supposed “enemies” in addition to the three groups defined in the Closing Order. The crime of persecution on political grounds targeting this “group” at Kraing Ta Cham has not been established. These acts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds giving rise to Joint Criminal Enterprise. (paras 170, 2834, 2837, 2839, 2841-2843, 3973, 3982-3983, 3987, 4306).

Section VI. AU KANSENG

SUMMARY

Challenged finding: According to the Indictment, the Chamber is seised of persecution on political grounds at AuKg targeting “real or supposed adversaries of the CPK” (paras 2980-2982).

Error(s): The Chamber committed a legal error by considering itself seised of the acts described in the Closing Order and that were not legally qualified by the Co-Investigating Judges. [2.36; 12.188; 12.189]

Consequence (impact/remedy): The Chamber could not examine these facts. Thus, the findings concerning the politically motivated crime of persecution in AuKg must be invalidated and KHIEU Samphân acquitted of this crime. (paras 2983-2993, paras 3982, 4306).

Section VII. PHNOM KRAOL

Persecution on political grounds

SUMMARY

Challenged finding: The Chamber is not exclusively seised of the three groups mentioned in the Closing Order in that they are not exhaustive and are intended to evolve over time. In the absence of any identification of persecuted group(s) in the Closing Order, the Chamber was still seised of political persecution at the Phnom Kraol worksite (paras 170; 3136-3151).

Error(s): The Chamber committed a legal error by judging these facts stemming from an illegal referral and carried out in violation of the procedural rights of the Accused [12.224; 12.225].

Consequence (impact/remedy): The Chamber could not convict KHIEU Samphân of these crimes and all related findings must be invalidated (paras 170; 3136-3151; 3982 ;4306).

Chapter III. ERRORS AND IMPACT ON SPECIFIC GROUPS

Section I. CHAM

I. LACK OF JURISDICTION FOR EXECUTIONS THAT TOOK PLACE IN THE VILLAGE TREA

SUMMARY

Challenged finding: The Chamber was seised and competent to hear matters relating to the executions of the Cham in the village of Trea (paras 3184, 3305).

Error(s): Misinterpretation of the indictment and scope of the Chamber’s jurisdiction. [13.3]

Subsequent/related errors: [13.81; 16.246; 16.254-16.255; 16.271-16.272; 18.276]

Consequence (impact/remedy): The Chamber was not seised of the executions of the Cham that took place in the village Trea. The crime of murder relating to the executions of the Cham in the village Trea. The crime of murder relating to the executions of the Cham in the village Trea has not been established. These acts are not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of murder through joint criminal enterprise with regard to the execution of the Cham in the village of Trea (paras 3184, 3305, 3303-3308, 3992-3998, 4306).

II. LACK OF JURISDICTION FOR PERSECUTION/POLITICAL GROUNDS THROUGH JOINT CRIMINAL

ENTERPRISE**SUMMARY**

Challenged finding: The Chamber was seised and competent to hear matters relating to facts constituting the politically motivated crime of persecution of the Cham through joint criminal enterprise (JCE) (para. 3991).

Error(s): Misinterpretation of the indictment and scope of the Chamber’s referral. [16.245]

Subsequent/related errors: [16.246; 16.260-16.264; 16.271-16.272; 18.305]

Consequence (impact/remedy): The Chamber was not seised of the politically motivated crime of persecution through JCE. These acts are not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of politically motivated persecution of the Cham through JCE. (para. 4306).

Section II. THE VIETNAMESE**SUMMARY**

Challenged finding: The Chamber considers itself seised of facts relating to the Vietnamese in the territorial waters of Democratic Kampuchea. (para. 3357).

Error(s): The facts in the Closing Order relating to the treatment of the Vietnamese at sea are almost inexistent and not legally qualified. Insufficient to allow KHIEU Samphân to properly prepare his defence. [13.92; 13.206]

Decisions that resulted in a miscarriage of justice: T. 07.12.2015, E1/363.1, 13:33-13:39; E-mail of Senior Trial Attorney 11.01.2016, E380/2.1; Ruling of 12.01.2016, E380/1; T. 25.01.2016, E1/381.1, 15h04, Ruling of 25.05.2016, E380/2.

Consequence (impact/remedy): The Chamber should not have examined the facts relating to the Vietnamese at sea. Consequently, the Chamber should not have found KHIEU Samphân guilty of the crime of genocide by murder, of the crime against humanity of extermination and of the crime against humanity of murder for facts relating to the Vietnamese at sea (paras 3456-3461, 3490, 3493, 3499-3501, 3514-3519, 4306).

Section III. FORMER KHMER REPUBLIC SOLDIERS**SUMMARY**

Challenged finding: The Chamber was seised and competent to hear matters relating to an alleged policy of specific measures against soldiers of the former Khmer Republic (paras 174, 3520, 3988, 4023-4024).

Error(s): Misinterpretation of the indictment and of the scope of the Chamber’s jurisdiction. [2.36; 16.328] Ruling of 26 August 2015 for an interlocutory appeal [E-mail of 26.08.2015, E362]

Subsequent/related errors: [16.329-16.344; 18.249; 18.304]

Consequence (impact/remedy): The Chamber had not been seised and competent to hear matters relating to an alleged policy of specific measures against soldiers of the former Khmer Republic. These facts are not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of politically motivated persecution of soldiers of the former Khmer Republic through joint criminal enterprise. (paras 174, 3520, 3988, 4023-4024, 4026-4035, 4049, 4051, 4299, 4306).

Title IV. EXCLUSION BY ADDITIONAL SEVERANCE

Chapter I. THE LAW

Chapter II. ERRORS AND IMPACT ON SPECIFIC GROUPS

Section I. THE CHAMS

I. LACK OF JURISDICTION FOR PERSECUTION/POLITICAL GROUNDS AND OTHER INHUMANE ACTS/FORCED MOVEMENTS

SUMMARY

Challenged finding: The Chamber was properly seised and had jurisdiction to hear facts relating to “discrimination” on political grounds and forced movements (para. 3184).

Error(s): Misinterpretation of the Decision on Additional Severance and the scope of the Chamber’s referral. [13.3; 13.56]

Subsequent/related errors: [13.85; 13.87; 16.259-16.264; 16.268-16.272; 18.305; 18.326]

Consequence (impact/remedy): The Chamber was improperly seised of “discrimination” on political grounds, and acts constituting forced movements. The crime against humanity of persecution on political grounds against the Cham and the crime against humanity of other inhumane acts through forced movements of the Cham have not been established. These acts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds and of other inhumane acts through forced movements through joint criminal enterprise. (paras 3184, 3320, 3322-3326, 3336-3340, 3995-3998, 4306).

II. LACK OF JURISDICTION FOR OTHER INHUME ACTS/FORCED MOVEMENTS DURING THE MOVEMENT OF THE POPULATION (PHASE 2)

SUMMARY

Challenged finding: The Chamber was improperly seised to hear facts relating to the crime against humanity of other inhumane acts through the forced movement of the Cham population during the Movement of the Population (phase 2). (para. 3340).

Error(s): Breach of the *non bis in idem* principle [13.3].

Subsequent/related errors: [13.87; 16.268-16.272; 18.326]

Consequence (impact/remedy): The Chamber was not competent to hear facts constituting the crime against humanity of other inhumane acts relating to forced movement of the Cham population during the Movement of Population (phase 2). The crime against humanity of other inhumane acts relating to forced movement of the Cham population during the Movement of Population (phase 2) has not been established. These acts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3184, 3335-3340, 3997-3998, 4306).

Section II. THE VIETNAMESE

SUMMARY

Challenged finding: The Chamber can examine facts of other inhumane acts in the form of Vietnamese disappearances in the Tram Kok cooperatives, even “if this was not specifically stated” (para. 3352).

Error(s): Erroneous reading of Closing Order, out-of-scope Additional Severance. [10.55; 10.56; 13.88;

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18.320]

Consequence (impact/remedy): The crime against humanity of other inhumane acts through enforced disappearances of the Vietnamese in the Tram Kok district must be disregarded (paras 1201-1204), the crime against humanity of other inhumane acts through enforced disappearances of the Vietnamese in Tram Kok was part of the common purpose (para. 3927, fn. 13113), KHIEU Samphân must be acquitted of the crime against humanity of other inhumane acts through enforced disappearances of the Vietnamese in the Tram Kok district (para. 4306).

Part III. ERRORS WITH RESPECT TO THE CRIMES**Title I. VIOLATION OF THE PRINCIPLE OF LEGALITY****Chapter I. ERRORS WITH RESPECT TO THE PRINCIPLE OF LEGALITY****SUMMARY**

Challenged finding: Compliance with the principle of legality (paras 20-32, 300, 325-326, 651, 654, 661, 672-673, 688, 700, 712, 723, 757, 759, 761-763, 765-767, 770-771, 780-781, 784-789, 3703, 3704, 3707, 3721).

Error(s): Failure to apply the correct legal criteria of the principle of legality. [**2.2; 4.15; 4.30; 9.1; 9.1; 15.1; 18.365-18.367; 20.11**]

Consequence (impact/remedy): Invalidation of erroneous findings relating to the compliance with the principle of legality (paras 20-32, 300, 326, 651, 654, 661, 673, 688, 700, 712, 723, 789, 3703, 3704, 3707) as well as with the convictions and punishment based on those errors (paras 4236-4328, 4400, 4402).

Chapter II. ERRORS WITH RESPECT TO THE CRIME AGAINST HUMANITY OF MURDER**Section I. THE LAW: FAILURE TO INCLUDE *DOLUS EVENTUALIS* IN THE *MENS REA*****SUMMARY**

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder included *dolus eventualis* in 1975 (para. 650).

Error(s): Incorrect definition of the *mens rea* of the crime against humanity of murder. [**9.3**]

Subsequent/related errors: [**10.42; 10.44; 11.21; 11.55; 11.56; 11.78; 12.107; 12.219; 12.149; 18.336; 18.344-18.348; 18.352-18.364; 18.367; 20.6; 20.7; 20.11**]

Consequence (impact/remedy): These errors invalidate all the findings relating to *dolus eventualis* murder at Tram Kak, at the 1st January Dam, at the Trapeang Thma Dam, the Kampang Chhnang Airfield, at S-21, at Kraing Ta Chan, and at Phnom Kraol since it was never established that the perpetrators or KHIEU Samphân intended to kill. The guilty sentence (as well as its cumulation with others) and the conviction of KHIEU Samphân for *dolus eventualis* murder at Tram Kak, at the 1st January Dam, at the Trapeang Thma Dam, the Kampang Chhnang Airfield, at S-21, at Kraing Ta Chan, and at Phnom Kraol must be overturned (paras 634-650, 1141-1146, 1387-1389, 1670-1673, 1801-1806, 2565, 2815, 3116-3117, 4318, 4328, 4363, 4366, 4383, 4400 et 4402).

Section II. ERRORS AND IMPACT BY CRIME SITE

I. AT THE TRAM KOK, AT THE 1ST JANUARY DAM, AT THE TRAPEANG THMA DAM, THE KAMPANG CHHNANG AIRFIELD WORKSITES

TRAM KOK

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [10.42; 10.44; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization to crime against humanity of murder for deaths resulting from the living conditions at the Tram Kok worksite must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (1141 to 1146, 4311, 4315 to 4318, 4328, 4363, 4366, 4383, 4400, 4402).

1ST JANUARY DAM

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [11.21; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization to crime against humanity of murder for deaths resulting from the living conditions at the Trapeang Thma Dam worksite must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1387-1389, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

TRAPEANG THMA DAM

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [11.55; 11.56; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization to crime against humanity of murder for deaths resulting from the living conditions at the 1st January Dam worksite must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1670-1673, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

KAMPANG CHHNANG AIRFIELD

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

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Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [11.78; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization to crime against humanity of murder for deaths resulting from the living conditions at the Kampang Chhnang Airfield worksite must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1801-1806, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

II. IN THE S-21, KRAING TA CHAN AND PHNOM KRAOL SECURITY CENTRES

S21

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [12.107; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The finding according to which the crime against humanity of murder for deaths due to blood samples taken at S-21 occurred must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 2565, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

Kraing Ta Chan

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [12.149; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The finding according to which the crime against humanity of murder for deaths due to treatment suffered at Kraing Ta Chan occurred must be overturned. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 2815, 2817, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

PHNOM KRAOL

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of murder extended to *dolus eventualis* in 1975 (para. 650).

Error(s): Misinterpretation of the law. [9.3]

Subsequent/related errors: [12.219; 18.336; 18.344; 18.345; 18.346; 18.347; 18.348; 18.352; 18.353; 18.354; 18.355; 18.356; 18.357; 18.358-18.364; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The finding according to which the crime against humanity of murder for the death of Touch due to the detention conditions at Phnom Kraol occurred and must be invalidated. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 3116-3117, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

Chapter III. ERRORS WITH RESPECT TO THE CRIME AGAINST HUMANITY OF PERSECUTION

Section I. THE LAW

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of persecution did not require establishing the goal of distancing the group or excluding it from society (para. 713).

Error(s): Incorrect definition of the *mens rea* of the crime against humanity of persecution. [9.1; 9.13]

Subsequent/related errors: [10.52, 13.85; 13.86; 16.322; 16.326-327; 16.239; 16.245-16.246; 16.260-16.265; 16.267-16.273 18.242-243; 18.248; 18.305-18.307]

Consequence (impact/remedy): The crime against humanity of persecution on religious grounds is not established for Buddhists and Buddhist monks at Tram Kok. The crimes against humanity of persecution on political and religious grounds against the Cham are unfounded. These facts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 1183-1187, 1654-1659, 1695-1697, 3320-3326, 3243, 3329, 3332, 3990-3998, 4019, 4021-4022, 4296, 4298, 4306).

Section II. ERRORS AND IMPACT BY CRIME SITE

I. NO INTENT TO DISCRIMINATE AGAINST BUDDHISTS AND BUDDHIST MONKS

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of persecution did not require establishing the goal of distancing the group or excluding it from society (para. 713).

Error(s): Misinterpretation of the law. [9.3].

Subsequent/related errors: [10.52, 16.322; 16.326-327; 18.242-243; 18.248; 18.306]

Consequence (impact/remedy): The crime of persecution on religious grounds is not established for Buddhists and Buddhist monks at Tram Kok. Consequently, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of persecution on religious grounds through joint criminal enterprise in relation to these facts must be overturned (paras 1183-1187, 4019, 4021-4022, 4296, 4298, 4306).

II. NO INTENT TO DISCRIMINATE AGAINST THE CHAM

SUMMARY

Challenged finding: The definition of the *mens rea* of the crime against humanity of persecution did not require establishing the goal of distancing the group or excluding it from society (para. 713).

Error(s): Misinterpretation of the law. [9.3].

Subsequent/related errors: [13.85; 13.86, 16.239; 16.245-16.246; 16.260-16.265; 16.267-16.273; 18.305; 18.307]

Consequence (impact/remedy): The crime against humanity of persecution on religious grounds against the Cham has not been established. These facts were not part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 1654-1659, 1695-1697, 3320-3326, 3243, 3329, 3332, 3990-3998, 4306).

**Chapter IV. ERRORS WITH RESPECT TO OTHER INHUMANE ACTS
CONSTITUTING CRIMES AGAINST HUMANITY**

Section I. ERRONEOUS ASSESSMENT OF THE LEGALITY OF THE CRIME OF OIA

SUMMARY

Challenged finding: Generally speaking, in 1975 the Accused could foresee that the facts qualified as other inhumane acts were punishable as crimes against humanity and have access to legal standards that could be used as a basis for such legal action (paras 723-727).

Error(s): The Chamber made an error in defining the crime of other inhumane acts and in its review of the legality [9.14]

Consequence (impact/remedy): (paras 723-727; 3686-3701).

Section II. TRUNCATED REMINDER OF THE FORMAL ILLICITNESS REQUIREMENT

SUMMARY

Challenged finding: According to the Supreme Court Chamber, determining whether the conduct violates “fundamental human rights as enshrined in international legal instruments is one of the ways to introduce a “formal international illicitness requirement” (paras 723-727).

Error(s): The Chamber made an error in defining the crime of other inhumane acts by giving a truncated account of the formal illicitness requirement [9.14].

Title II. ERRORS WITH RESPECT TO THE GATHERING OF ELEMENTS

Chapter I. COOPERATIVES AND WORKSITES

Section I. TRAM KAK

I. LACK OF *DOLUS EVENTUALIS* MURDER

A. Errors of law in relation to the “guilty” omission

SUMMARY

Challenged finding: The *actus reus* of murder is satisfied through an omission of deaths due to the living conditions at Tram Kak (paras 1144-1145).

Error(s): Incorrect application of the law. [10.42; 10.44]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization to crime against humanity of murder for deaths due to the living conditions at Tram Kak must be overturned because the *actus reus* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1141-1146, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

B. Errors of law in relation to “*dolus eventualis*”

SUMMARY

Challenged finding: The *actus reus* of murder is satisfied through *dolus eventualis* in relation to the living conditions at Tram Kak (paras 1144-1145).

Error(s): Incorrect application of the law. [10.42; 10.44]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization of deaths due to living conditions as crime against humanity of murder must be overturned because the *mens rea* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1141-1146, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

C. Unreasonable character and findings of fact**1. Lack of evidence at the required level for the alleged deaths****SUMMARY**

Challenged finding: The *actus reus* of murder is satisfied in relation to deaths due to the living conditions in Tram Kak (paras 1144-1145).

Error(s): Misconstruction of the evidence. [10.18; 10.23; 10.42; 10.44]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization of deaths due to the living conditions as crime against humanity of murder must be overturned because the *actus reus* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1141-1146, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

2. Lack of evidence of *dolus eventualis* for deaths due to hunger and the living conditions**SUMMARY**

Challenged finding: The *mens rea* of murder is satisfied in the form of *dolus eventualis* for deaths due to the living conditions in Tram Kak (paras 1144-1145).

Error(s): Misconstruction of the evidence. [10.42; 10.44]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterization of deaths due to the living conditions as crime against humanity of murder must be overturned because the *mens rea* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1141-1146, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

II. ERRORS IN MAKING THE FINDING OF DEPORTATION OF THE VIETNAMESE**SUMMARY**

Challenged finding: The crime against humanity of deportation has been established for a large number of Vietnamese people expelled from the Tram Kak district and sent to Vietnam without their consent in 1975 and 1976 (para. 1159).

Error(s): The Chamber did not demonstrate beyond a reasonable doubt that the Vietnamese gathered at Tram Kak actually crossed the Vietnamese border (*actus reus*), nor that there was an intention to deport these Vietnamese over the Vietnamese border (*mens rea*). [3.23; 10.34; 10.35; 10.36; 10.37; 10.38; 10.47]

Subsequent/related errors: [13.114; 13.117; 13.151; 13.154; 16.288 à 16.290; 16.316; 18.83; 18.229;

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18.230; 18.232]

Consequence (impact/remedy): KHIEU Samphân is not responsible for the crime against humanity of deportation at Tram Kak (paras 4004, 4237, 4271, 4292, 4306).

A. Error in concluding that the victims actually crossed a national border

SUMMARY

Challenged finding: Some Vietnamese people who were gathered in the Tram Kak district did indeed cross the international border and were sent to Vietnam. (para. 1158).

Error(s): Failure to state reason, other reasonable findings possible, misrepresentation of evidence, evidence obtained under torture, out-of-scope evidence [10.7; 10.34; 10.36; 10.37; 10.38; 10.47; 13.120]

Consequence (impact/remedy): The *actus reus* of the crime against humanity of deportation has not been established (para. 1159).

B. Error regarding intent to forcibly move victims across a national border

SUMMARY

Challenged finding: Intention to move Vietnamese people from the Tram Kak district across an established national border (para. 1158).

Error(s): Lack of motivation, other reasonable findings possible [10.34; 10.36; 10.37; 10.38; 10.47]

Consequence (impact/remedy): The *mens rea* of the crime against humanity of deportation is not established (para. 1159).

III. NO PERSECUTION ON POLITICAL GROUNDS

A. No persecution on political grounds against the former Khmer Republic soldiers

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution on political grounds against the former Khmer Republic soldiers has been established (paras 1178-1179).

Error(s): Misconstruction of the evidence. [10.26; 10.29; 10.51]

Subsequent/related errors: [16.169; 16.174-16.175; 16.345; 16.350; 16.354-16.355; 18.304]

Consequence (impact/remedy): The crime of persecution on political grounds has not been established in relation to the former Khmer Republic soldiers in Tram Kak. Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity on political grounds against former Khmer Republic soldiers in Tram Kak through joint criminal enterprise must be overturned (paras 180, 812, 1172, 1175, 1177-1179, 3924-3925, 3928, 4050, 4058, 4060-4061, 4306).

B. No persecution on political grounds against the New People

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution on political grounds against the New People in Tram Kak has been established (paras 1178-1179).

Error(s): Misconstruction of the evidence. [10.51]

Subsequent/related errors: [16.169; 16.174-16.175; 16.345; 16.350; 16.354-16.355; 18.304]

Consequence (impact/remedy): The crime of persecution on political grounds has not been established in

relation to the New People in Tram Kak Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity on political grounds against the New People in Tram Kak through joint criminal enterprise must be overturned. (paras 1176-1179, 3924-3925, 3928, 4306).

IV. NO PERSECUTION ON RELIGIOUS GROUNDS

A. Equal treatment not constituting discriminatory treatment

SUMMARY

Challenged finding: The crime of persecution on religious grounds against Buddhists and Buddhist monks has been established (para. 1185)

Error(s): Misinterpretation of the law on de facto discrimination [10.52]

Subsequent/related errors: [16.322; 16.326-327; 18.242-243; 18.248; 18.306]

Consequence (impact/remedy): The crime of persecution on religious grounds has not been established in relation to Buddhists and Buddhist monks in Tram Kak. Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity on religious grounds through joint criminal enterprise must be overturned. (paras 1183-1187, 4019, 4021-4022, 4296, 4298, 4306).

B. No evidence of physical or moral impact on Buddhists

SUMMARY

Challenged finding: The crime of persecution on religious grounds against the Buddhists and Buddhist monks has been established (para. 1185)

Error(s): Misconstruction of the evidence. [10.52]

Subsequent/related errors: [16.322; 16.326-327; 18.242-243; 18.248; 18.306]

Consequence (impact/remedy): The crime of persecution on religious grounds has not been established in relation to the Buddhists and Buddhist monks in Tram Kak. Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity on religious grounds through joint criminal enterprise must be overturned. (paras 1183-1187, 4019, 4021-4022, 4296, 4298, 4306).

V. ERRORS IN FINDING PERSECUTION OF VIETNAMESE PEOPLE ON RACIAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on racial grounds has been established in relation to the Vietnamese people deported from the Tram Kak district in 1975 and 1976 (paras 1189-1192).

Error(s): Having been unable to demonstrate beyond a reasonable doubt that the Vietnamese people from the Tram Kak district were deported, the Chamber could not consider the *actus reus* of the crime against humanity of persecution on racial grounds as established. The Chamber also relied on insufficient evidence to conclude that the *mens rea* was established. [10.33; 10.34; 10.35; 10.38; 10.54]

Subsequent/related errors: [13.151; 13.154; 16.289; 16.295; 16.290; 16.297; 16.298; 16.299; 16.316; 18.229; 18.230; 18.235; 18.308; 18.309]

Consequence (impact/remedy): KHIEU Samphân is not responsible for the crime against humanity of persecution on racial grounds in Tram Kak. (para. 4306).

VI. ERRORS IN FINDING FORCED DISAPPEARANCES OF VIETNAMESE PEOPLE

SUMMARY

Challenged finding: Forced disappearances of Vietnamese people from the Tram Kak district (para. 1201).

Error(s): Violation of the principle of *in dubio pro reo*; elements not demonstrated ADTDR [10.38; 10.55; 10.56]

Subsequent/related errors: [16.172; 16.173; 16.175; 18.202; 18.320]

Consequence (impact/remedy): The crime against humanity of other inhumane acts in the form of forced disappearances in Tram Kak (including disappearances of Vietnamese people) was not part of the common purpose (paras 3927-3928). KHIEU Samphân cannot be held responsible for the forced disappearance of the Vietnamese people in the Tram Kak district (paras 4282, 4306).

VII. ERROR IN FINDING FORCED DISAPPEARANCES OF KHMER KROM

SUMMARY

Challenged finding: Forced disappearances of Khmer Krom from the Tram Kak district (para. 1201).

Error(s): The Chamber committed an error by using irrelevant facts regarding the Khmer Krom in order to establish the crime against humanity of other inhumane acts in the form of forced disappearances in Tram Kak [10.7; 10.56]

Consequence (impact/remedy): The crime against humanity of other inhumane acts through forced disappearances in Tram Kak (including the disappearance of the Khmer Krom) was not part of the common purpose (paras 3927-3928); KHIEU Samphân cannot be held responsible for the forced disappearance of the Khmer Krom in the Tram Kak district (paras 4282, 4306).

Section II. TRAPEANG THMA DAM

I. DOLUS EVENTUALIS MURDER SUBSEQUENT TO THE RECHARACTERISATION OF ACTS OF EXTERMINATION

SUMMARY

Challenged finding: The crime against humanity of *dolus eventualis* murder has been established for the Trapeang Thma Dam. (paras 1383-1390).

Error(s): The Chamber committed an error by recharacterizing acts of extermination to crimes against humanity of *dolus eventualis* murder [11.21; 18.364; 18.367].

Consequence (impact/remedy): The findings of guilt relating to this recharacterisation to *dolus eventualis* murder must be invalidated and KHIEU Samphân must be acquitted (paras 1383 and 1390; 4318; 4328).

II. PERSECUTION ON POLITICAL GROUNDS

Errors in the characterisation of the discrimination against members of the New People

SUMMARY

Challenged finding: The crime against humanity of persecution on political grounds against workers who were members of the New People at the Trapeang Thma Dam worksite has been established (paras 1407-1413).

Error(s): The Chamber committed a legal error by saying that the crime of persecution on political grounds was committed at the Trapeang Thma Dam worksite [11.25].

Consequence (impact/remedy): The findings that the crime of persecution on political grounds was committed at the Trapeang Thma Dam worksite must be overturned. (paras 1407-1429; 3924-3925; 4306).

Section III. 1st JANUARY DAM

I. NO *DOLUS EVENTUALIS* MURDER

A. Legal errors with regard to the “guilty” omission

SUMMARY

Challenged finding: The *actus reus* of murder is satisfied in the form of an omission with regard to deaths due to the living conditions and accidents at the 1st January (paras 1670, 1672).

Error(s): Incorrect application of the law. [11.56]

Subsequent/related errors: [18.336; 18.344-347; 18.352-356; 18.359; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterisation of deaths due to living conditions to crime against humanity of murder must be overturned because the *actus reus* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1670-1673, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

B. The unreasonable character of the findings that form the basis of the *actus reus* of murder/*dolus eventualis*

SUMMARY

Challenged finding: The *actus reus* of murder with regard to deaths caused by living and working conditions at the 1st January Dam worksite is satisfied (paras 1670, 1672-1673).

Error(s): Misconstruction of the evidence. [11.46; 11.55-11.56]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterisation of deaths due to living conditions to crime against humanity of murder must be overturned because the *actus reus* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (1670 to 1673, 4311, 4315 to 4318, 4328, 4363, 4366, 4383, 4400, 4402).

C. No proof of *dolus eventualis* for deaths due to starvation and living conditions

SUMMARY

Challenged finding: The *mens rea* of murder has been established for deaths due to the living and working conditions at the 1st January Dam worksite (paras 1671-1673).

Error(s): Misconstruction of the evidence. [11.47; 11.55-11.56]

Subsequent/related errors: [18.336; 18.344-347; 18.352, 18.355-18.356; 18.358; 18.367; 20.6; 20.7; 20.11]

Consequence (impact/remedy): The recharacterisation of deaths due to living conditions to crime against humanity of murder must be overturned because the *mens rea* of murder has not been established. The conviction of KHIEU Samphân for the crime against humanity of *dolus eventualis* murder in relation to these facts must be overturned (paras 1671-1673, 4311, 4315-4318, 4328, 4363, 4366, 4383, 4400, 4402).

II. NO PERSECUTION ON POLITICAL GROUNDS

A. Treatment of the New People

1. No discrimination against the New People

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution on political grounds against the New People at the 1st January Dam has been established (paras 1688-1689).

Error(s): Misconstruction of the evidence and misinterpretation of the law. [11.48; 11.59]

Subsequent/related errors: [16.162; 16.169; 18.220; 18.298]

Consequence (impact/remedy): The crime against humanity of persecution on political grounds against the New People at the 1st January Dam has not been established. Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds against the New People at the 1st January Dam through joint criminal enterprise based upon those facts must be overturned. (paras 1688-1689, 1691-1692, 3919, 3924-3925, 4287, 4306).

2. Alleged treatment of the New People

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution on political grounds against the New People at the 1st January Dam has been established (paras 1688-1689).

Error(s): Incorrect application of the law. [11.48; 11.59]

Subsequent/related errors: [16.162; 16.169; 18.220; 18.298]

Consequence (impact/remedy): The crime against humanity of persecution on political grounds against the New People at the 1st January Dam has not been established. Therefore, the finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds against the New People at the 1st January Dam through joint criminal enterprise based upon those facts must be overturned. (paras 1688-1689, 1691-1692, 3919, 3924-3925, 4287, 4306).

B. Treatment of the former Khmer Republic soldiers

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution on political grounds against the former Khmer Republic soldiers at the 1st January Dam worksite has been established. (paras 1690-1692).

Error(s): Misconstruction of the evidence. [11.52-11.53; 11.59]

Subsequent/related errors: [16.169; 16.344-16.345; 16.350-16.354; 18.103; 18.249-18.254; 18.298; 18.304]

Consequence (impact/remedy): The crime against humanity of persecution on political grounds against the former Khmer Republic soldiers at the 1st January Dam has not been established. The finding incorporating these acts into a policy qualified as “criminal” must be set aside. The conviction of KHIEU Samphân for the crime against humanity of persecution on political grounds against the former Khmer Republic soldiers at the 1st January Dam through joint criminal enterprise based upon those facts must be overturned. (paras 1690-1692, 3924-3925, 4049-4050, 4058-4061, 4246, 4299-4300, 4306).

III. NO PERSECUTION ON RELIGIOUS GROUNDS

A. No discrimination against the Cham**SUMMARY**

Challenged finding: The *actus reus* of the crime of persecution on religious grounds against the Cham at the 1st January Dam worksite has been established (paras 1695-1697).

Error(s): Misconstruction of the evidence. [11.49; 11.51; 11.61; 13.44].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecution on religious grounds against the Cham has not been established. These facts were not part of a policy qualified as “criminal”. The charges of crime against humanity for persecution on political grounds through joint criminal enterprise against KHIEU Samphân must be dismissed (paras 1654-1659, 1695-1697, 3243, 3990-3998, 4306).

B. Equal treatment not constituting discriminatory treatment**SUMMARY**

Challenged finding: The *actus reus* of the crime of persecution on religious grounds against the Cham at the 1st January Dam worksite has been established (paras 1695-1697).

Error(s): Misinterpretation of the law [11.49; 11.51; 11.61; 13.44].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecution on religious grounds against the Cham has not been established. These facts were not part of a policy qualified as “criminal”. The charges of crime against humanity for persecution on political grounds through joint criminal enterprise against KHIEU Samphân must be dismissed (paras 1654-1659, 1695-1697, 3243, 3990-3998, 4306).

Section IV. KAMPONG CHHNANG AIRFIELD**Deaths due to the living and working conditions: Errors in recharacterizing extermination to *dolus eventualis* murder****SUMMARY**

Challenged finding: The crime against humanity of *dolus eventualis* murder at the Kampong Chhnang Airfield has been established. (paras 1800-1806).

Error(s): The Chamber committed an error by recharacterizing extermination at the Kampong Chhnang Airfield as *dolus eventualis* murder. [11.78]

Consequence (impact/remedy): The findings relating to *dolus eventualis* murder at the Kampong Chhnang Airfield worksite must be overturned and KHIEU Samphân must be found not guilty. (paras 1800-1806; 4318; 4328)

Persecution on political grounds**SUMMARY**

Challenged finding: The crime against humanity of persecution on political grounds at the Kampong Chhnang Airfield worksite has been established (paras 170; 1818-1828).

Error(s): The Chamber committed a legal error by trying KHIEU Samphân for facts that were based on an illegal referral [11.80; 11.81].

Consequence (impact/remedy): All the findings relating to persecution on political grounds at the

Kampong Chhnang Airfield worksite must be overturned (paras 1820-1828; 3924-3925; 4306).

Chapter II. SECURITY CENTRES

Section I. S-21

I. PERSECUTION ON POLITICAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on political grounds at S-21 has been established. (paras 2598-2604).

Error(s): The Chamber committed an error in considering that the group of “real or perceived enemies” was sufficiently identifiable. The Chamber committed an error in considering that the acts directed at this group introduced a *de facto* discrimination [12.110]

Consequence (impact/remedy): The crime against humanity of persecution on political grounds could not be established. KHIEU Samphân must be acquitted of this crime (paras 2604, 4306).

II. PERSECUTION ON RACIAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on racial grounds at S-21 has been established. (paras 2607-2610).

Error(s): The Chamber committed an error in considering that the Vietnamese at S-21 were targeted on the basis of their race [12.111; 13.143]

Consequence (impact/remedy): The crime against humanity of persecution on racial grounds could not be established. KHIEU Samphân must be acquitted of this crime (paras 2610, 4306).

Section II. KRAING TA CHAN

SUMMARY

Challenged finding: The underlying act of enforced disappearance can be committed more than once against the same person (para. 2854).

Error(s): Misinterpretation of the law [12.157]

Subsequent/related errors: [16.235; 16.237-16.238; 18.324]

Consequence (impact/remedy): The *actus reus* of the crime against humanity of other inhumane acts in the form of forced disappearances at Kraing Ta Chan has not been established. These facts cannot be included in a policy qualified as “criminal”. KHIEU Samphân must be acquitted of this crime (paras 2854-2858, 3986-3987, 4306).

Section III. AU KANSENG

I. MURDER AND EXTERMINATION OF SIX VIETNAMESE INDIVIDUALS

SUMMARY

Challenged finding: The crimes against humanity of murder and extermination have been established with regard to the execution of six Vietnamese individuals (paras 2959, 2967-2968).

Error(s): Legal and factual errors were committed by finding that the six Vietnamese were murdered based

on a vague written statement. [12.175; 12.180; 12.182; 12.183]

Consequence (impact/remedy): The crimes against humanity of murder and extermination with regard to the six Vietnamese individuals has not been established. KHIEU Samphân must be acquitted of this crime (paras 2959, 2967, 2969 and 4306).

II. PERSECUTION ON POLITICAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on political grounds has been established (paras 2980-2993).

Error(s): Error in considering that the group of “real or perceived enemies” was sufficiently identifiable. Error in considering that the treatment of this group was a *de facto* discrimination. [12.189]

Consequence (impact/remedy): The crime against humanity of persecution on political grounds cannot be established. KHIEU Samphân must be acquitted of this crime (paras 2993, 4306).

III. PERSECUTION ON RACIAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on racial grounds has been established (paras 2994-2999).

Error(s): Error in considering that six Vietnamese individuals were arrested and executed at Au Kanseng. Error in considering that the six Vietnamese individuals were arrested and executed because of their race. [12.175; 12.180; 12.182; 12.183; 12.191]

Consequence (impact/remedy): The crime against humanity of persecution on racial grounds could not be established. KHIEU Samphân must be acquitted of this crime (paras 2999, 4306).

Section IV. PHNOM KRAOL

I. MURDER

A. Error in finding the murder of Heus was intentional

SUMMARY

Challenged finding: The constitutive elements of the crime against humanity are characterized for the murder of the prisoner named Heus (para. 3115).

Error(s): Misjudgement of the evidence, violation of the law of evidence [12.219].

Consequence (impact/remedy): The findings of guilt for this crime must be invalidated (paras 3115; 3973; 3975; 3976; 4306).

B. Errors in finding intent in the form of *dolus eventualis* in the murder of Touch

SUMMARY

Challenged finding: The *actus reus* of the crime and the definition of *mens rea* of the crime against humanity of murder which extended to *dolus eventualis* in 1975 have been established. (para. 3116).

Error(s): The Chamber erred in law by concluding that *actus reus* and *dolus eventualis* have been established in connection with the murder of a prisoner named Touch at the Phnom Kraol prison site.

[12.219]

Consequence (impact/remedy): The findings of guilt for this *dolus eventualis* murder must be invalidated (paras 3116; 3977; 4311; 4317; 4318; 4328).

II. ENSLAVEMENT

SUMMARY

Challenged finding: The crime against humanity of enslavement at Phnom Kraol has been established (paras 3119-3126).

Error(s): The Chamber committed an error by considering that the crime against humanity of enslavement at Phnom Kraol was established, while this conviction is based on an illegal referral and insufficient evidence [12.198; 12.220; 12.221]

Consequence (impact/remedy): All findings of guilt relating to the crime against humanity of enslavement at Phnom Kraol must be invalidated and KHIEU Samphân acquitted (paras 3119-3126; 3979; 4306).

III. PERSECUTION ON POLITICAL GROUNDS

SUMMARY

Challenged finding: The crime against humanity of persecution on political grounds at Phnom Kraol has been established (paras 3136-3139).

Error(s): The Chamber made an error by considering that the crime against humanity of persecution on political grounds was established at Phnom Kraol even though it is based on a violation of the referral [12.224; 12.225]

Consequence (impact/remedy): The findings of guilt relating to this crime must be invalidated (paras 3136-3139; 3982; 4306).

IV. OTHER INHUMANE ACTS IN THE FORM OF FORCED DISAPPEARANCES

SUMMARY

Challenged finding: The crime against humanity of other inhumane acts characterized as forced disappearances at Phnom Kraol has been established (paras 3160-3166).

Error(s): The Chamber erred in its assessment of the evidence and could not establish said crime [12.228]

Consequence (impact/remedy): The findings of the crime against humanity of other inhumane acts through forced disappearances must be invalidated and KHIEU Samphân acquitted (paras 3160-3166; 3986; 4306).

Chapter III. SPECIFIC GROUPS

Section I. THE CHAM

I. INSUFFICIENT EVIDENCE WITH REGARD TO THE MURDERS AT TREA AND THE TRAKUON PAGODA

A. Lack of precision and generalisation on the executions carried out at the Trea Village Security Centre

SUMMARY

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Challenged finding: The *actus reus* of murder has been established for the executions carried out at the Trea Village security centre in 1978 (paras 3276-3281, 3271, 3306).

Error(s): Misconstruction of the evidence. [13.65; 13.66; 13.81].

Subsequent/related errors: [16.239; 16.246; 16.248; 16.250-16.251; 16.253-16.255; 16.271-16.273; 18.276]

Consequence (impact/remedy): The crime against humanity of murder has not been established for these facts. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of murder through joint criminal enterprise (paras 3317-3319, 3306-3308, 3992-3998, 4306).

B. Insufficient evidence of the alleged executions at the Au Trakuon Pagoda

SUMMARY

Challenged finding: The *actus reus* of murder has been established with respect to the executions carried out at the Au Trakuon pagoda in 1977 (paras 3292-3293, 3296-3297, 3300, 3302, 3306).

Error(s): Misconstruction of the evidence [13.76-13.77; 13.80-13.81].

Subsequent/related errors: [16.239; 16.246; 16.247; 16.250-16.251; 16.253-16.255; 16.271-16.273; 18.276]

Consequence (impact/remedy): The crime against humanity of murder has not been established for these facts. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of torture through joint criminal enterprise (paras 3292-3293, 3296-3297, 3300, 3302, 3306-3308, 3992-3998, 4306).

II. EXTERMINATION

A. Unreasonable findings with respect to the numerical threshold of established executions

SUMMARY

Challenged finding: The *actus reus* of the crime of extermination has been established with respect to the executions carried out at the Au Trakuon pagoda in 1977 and the village Trea (paras 3311-3312).

Error(s): Misconstruction of the evidence [13.82].

Subsequent/related errors: [16.239; 16.246; 16.247; 16.250-16.251; 16.253-16.255; 16.271-16.273; 18.281]

Consequence (impact/remedy): The crime against humanity of murder has not been established for these facts. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of torture through joint criminal enterprise (paras 3311-3312, 3992-3998, 4306).

B. Unreasonable findings with respect to the intent to carry out a large-scale killing of the Cham

SUMMARY

Challenged finding: The *mens rea* of the crime of extermination has been established with respect to the executions carried out at the Au Trakuon pagoda in 1977 and in the Trea Village (paras 3191, 3273-3275, 3285-3289, 3313).

Error(s): Misconstruction of the evidence [13.69-13.75; 13.82].

Subsequent/related errors: [16.239; 16.246; 16.247; 16.250-16.251; 16.253-16.255; 16.271-16.273; 18.281]

Consequence (impact/remedy): The crime against humanity of murder has not been established for these facts. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of torture through joint criminal enterprise (paras 3313, 3992-3998, 4306).

III. TORTURE

SUMMARY

Challenged finding: The *actus reus* of the crime of torture has been established with respect to beatings of IT Sen and Cham males at the security centre of Trea Village on the day IT Sen was arrested in 1978 (paras 3317-3319).

Error(s): Misconstruction of the evidence [13.65; 13.84].

Subsequent/related errors: [16.246; 16.248; 16.256-16.258; 16.271-16.273; 18.296]

Consequence (impact/remedy): The crime against humanity of torture has not been established for these facts. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of torture through joint criminal enterprise (paras 3317-3319, 3992-3998, 4306).

IV. NO PERSECUTION ON POLITICAL GROUNDS

A. No de facto discrimination against the Cham during the Movement of the Cham people (Phase 2)

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution against the Cham on political grounds has been established (paras 3322-3323, 3326).

Error(s): Misinterpretation and incorrect application of the law [13.85].

Subsequent/related errors: [16.260-16.264; 16.268-16.272; 18.305]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on political grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3322-3326, 3995-3998, 4306).

B. Error with respect to the main purpose of the MOP

SUMMARY

Challenged finding: The *mens rea* of the crime of persecution of the Cham on political grounds has been established (paras 3268, 3322-3323, 3326).

Error(s): Misconstruction of the evidence [13.59; 13.85].

Subsequent/related errors: [16.259-16.264; 16.268-16.272; 18.305; 18.326]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on political grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3322-3326, 3995-3998, 4306).

C. Illegal mention of out-of-scope arrests in an attempt to establish the required level of severity

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution against the Cham on political grounds has been established (paras 3325-3326).

Error(s): Misinterpretation and incorrect application of the law [13.85].

Subsequent/related errors: [16.260-16.264; 16.268-16.272; 18.305]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on political grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3325-3326, 3995-3998, 4306).

V. NO PERSECUTION ON RELIGIOUS GROUNDS**A. No evidence of *de facto* discrimination against the Cham****1. Evidence of undifferentiated treatment with respect to food provided and restrictions on religious and cultural practices under the Democratic Kampuchea****SUMMARY**

Challenged finding: The *actus reus* of the crime of persecution against the Cham on religious grounds has been established (paras 3228-3229, 3232, 3242, 3246-3250, 3328).

Error(s): Misconstruction of the evidence [13.38; 13.40; 13.48; 13.50; 13.86].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3328, 3332, 3990-3998, 4306).

2. Prohibited restrictions on freedom of religion**SUMMARY**

Challenged finding: The *actus reus* of the crime of persecution against the Cham on religious grounds has been established (paras 3228-3229, 3232, 3242, 3246-3250, 3328).

Error(s): Misconstruction of the evidence [13.38; 13.40; 13.48; 13.50; 13.86].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3328, 3332, 3990-3998, 4306).

3. Unlawful criminalisation of alleged indirect discrimination**SUMMARY**

Challenged finding: The *actus reus* of the crime of persecution against the Cham on religious grounds has been established (paras 3228-3229, 3232, 3242, 3246-3250, 3328).

Error(s): Incorrect application of the law [13.38; 13.40; 13.48; 13.50; 13.86].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint

criminal enterprise (paras 3328, 3332, 3990-3998, 4306).

B. Lack of intent to discriminate in relation to religious/cultural practices

SUMMARY

Challenged finding: The *mens rea* of the crime of persecution of the Cham on religious grounds has been established (para. 3329).

Error(s): Incorrect application of the law [13.86].

Subsequent/related errors: [16.239; 16.245 to 16.246; 16.265; 16.267; 16.271 to 16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3329, 3332, 3990-3998, 4306).

C. Violation of fundamental rights

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution against the Cham on religious grounds has been established (paras 3328, 3330).

Error(s): Incorrect application of the law [13.86].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on religious grounds through joint criminal enterprise (paras 3329, 3332, 3990-3998, 4306).

D. Threshold of the seriousness of acts that characterise *de facto* discrimination

SUMMARY

Challenged finding: The *actus reus* of the crime of persecution against the Cham on religious grounds has been established (para. 3331).

Error(s): Incorrect application of the law [13.86].

Subsequent/related errors: [16.239; 16.245-16.246; 16.265; 16.267; 16.271-16.273; 18.307]

Consequence (impact/remedy): The crime against humanity of persecutions against the Cham on religious grounds has not been established. These facts did not form part of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3331, 3990-3998, 4306).

VI. VIOLATION OF THE DOCTRINE OF *RES JUDICATA*

SUMMARY

Challenged finding: The crime against humanity of other inhumane acts in the form of forced transfers of the Cham people during MOP Phase 2 (para. 3340)

Error(s): Violation of *res judicata* [13.87].

Subsequent/related errors: [16.268-16.272; 18.326]

Consequence (impact/remedy): The crime against humanity of other inhumane acts in the form of forced transfers of the Cham people during MOP Phase 2 has not been established. These facts did not form part

of a policy qualified as “criminal”. KHIEU Samphân must be acquitted of the crime against humanity of persecution on political grounds through joint criminal enterprise (paras 3335-3340, 3997-3998, 4306).

Section II. THE VIETNAMESE

I. DEPORTATION

SUMMARY

Challenged finding: A large number of ethnic Vietnamese were deported from the Prey Veng province in 1975 and 1976 (paras 3502-3507).

Error(s): The Chamber has extrapolated unreasonably. The evidence as a whole did not make it possible to conclude beyond a reasonable doubt that a large number of Vietnamese were deported from the Prey Veng province. [13.169; 13.170; 13.171; 13.172; 13.173; 13.174; 13.175; 13.176; 13.177; 13.178]

Subsequent/related errors: [13.151; 13.154; 16.288; 16.289; 16.290; 16.292; 16.316; 18.83; 18.84; 18.88; 18.229; 18.230; 18.282]

Consequence (impact/remedy): The deportation of Vietnamese people was not part of the common project. KHIEU Samphân must be acquitted of the crime against humanity of deportation of Vietnamese people in Prey Veng province (paras 4004, 4306).

II. MURDER OF VIETNAMESE PEOPLE

A. Error in concluding the murder of four Vietnamese families in Svay Rieng

SUMMARY

Challenged finding: Specific murder cases were established in the Svay Rieng province in 1978 (paras 3455, 3490, 3491-3497).

Error(s): The evidence in support of this finding rests entirely on uncorroborated hearsay. 13.192; 13.193; 13.194; 13.195, 13.196; 13.197; 13.198; 13.199; 13.200; 13.201; 13.202; 13.203; 13.204]

Subsequent/related errors: [16.280; 16.287; 16.280; 16.287; 16.316; 18.88; 18.232; 18.233; 18.275]

Consequence (impact/remedy): The crime against humanity of murder at Svay Rieng has not been established. KHIEU Samphân must be acquitted of this crime (paras 3455, 3490, 3491, 3497, 4306).

B. Errors in concluding the murder of Vietnamese at sea

SUMMARY

Challenged finding: Vietnamese fishermen and refugees were intentionally killed after April or May 1977 in the port of Ou Chheu Teal and on March 19, 1978. (paras 3459-3461, 3493 and 3497)

Error(s): Error by relying on a copy of an epochal document. Error in reaching the finding of crime against humanity of murder against persons involved in the hostilities. Error in considering that Vietnamese fishermen or refugees were killed intentionally. [13.225; 13.226; 13.227; 13.228; 13.274]

Consequence (impact/remedy): The crime against humanity of murder of Vietnamese in the territorial waters of Democratic Kampuchea has not been established. KHIEU Samphân must be acquitted of this crime (paras 3497, 4306).

C. Error in concluding the murder of Vietnamese in the West Zone

SUMMARY

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Challenged finding: The Chamber concluded that the wife, children and mother-in-law of PRAK Doeun were murdered along with Vietnamese members of six different families on the island of Ta Mov in 1977 (paras 3466-3467, 3471, 3494, 3497).

Error(s): Evidence to support this finding is based on unsubstantiated hearsay. [13.240; 13.242; 13.248; 13.274]

Consequence (impact/remedy): The crime against humanity of murder in the West Zone has not been established. KHIEU Samphân must be acquitted of this crime (paras 3497, 4306).

D. Error in concluding the murder of Vietnamese at the Ksach pagoda

SUMMARY

Challenged finding: The Chamber is convinced that at least 10 to 20 Vietnamese civilians were killed at the Ksach pagoda. (paras 3477-3482, 3495, 3497).

Error(s): Error in reaching a guilty verdict for the murder of Yeay Hay and Ta Khut. Error in reaching a guilty verdict for the murder of Chum's family members. Error in concluding that all the Vietnamese from the village of Yeang and the surrounding areas were killed in the Ksach pagoda. Error in reaching a guilty verdict for the murders committed at the Ksach pagoda. Error in finding that the murders at the Ksach pagoda were committed on the order of higher-ranking officers. [13.257; 13.260; 13.261; 13.263]

Consequence (impact/remedy): The crime against humanity of murder of Yeay Hay, Ta Khut and Chum's family members has not been established. The murders were not committed on the order of a higher-ranking officer. Khieu Samphân must be acquitted of the crime against humanity of murder at the Ksach pagoda. (paras 3497, 4306).

E. Error in concluding the murder of the Vietnamese in Section 505 (Kratie)

SUMMARY

Challenged finding: 13 members of the Vietnamese family UCH Sunlay as well as the wives and children of three or four other Khmers were deliberately executed in September 1978 in the Kratie province (paras 3483-3485, 3496-3497).

Error(s): Error in relying solely on the account of a civilian party who came to testify about his suffering. Error committed when contradicting themselves in the findings in relation to the murder of the mother-in-law of the civil party. 13.264; 13.272; 13.274]

Consequence (impact/remedy): The crime against humanity of murder in Kratie has not been established. KHIEU Samphân must be acquitted of this crime (paras 3497, 4306).

III. EXTERMINATION OF THE VIETNAMESE

SUMMARY

Challenged finding: The crime against humanity of extermination has been established for the murders committed at Svay Rieng in 1978, at Kampong Chhnang in 1977, at the Ksach pagoda at the end of 1978, in Kratie in September 1978, and in the territorial waters of Democratic Kampuchea after April or May 1977 and 19 March, 1978. (paras 3499-3501).

Error(s): The above-mentioned murders have not been established. The required level of amplitude has not been achieved. The separate events are not part of the same murderous operation. There is no basis for the Chamber's estimated number of deaths [13.277]

Consequence (impact/remedy): The crime against humanity of extermination of the Vietnamese has not been established. (paras 3501, 4306).

IV. PERSECUTION ON RACIAL GROUNDS**SUMMARY**

Challenged finding: The crime against humanity of persecution on racial grounds has been established with respect to the Vietnamese in the Prey Veng and Svay Rieng provinces (paras 3508-3513).

Error(s): Error with respect to the Vietnamese living in Cambodia as an identifiable racial group. Errors in considering that the Vietnamese people in Prey Veng and Svay Rieng were persecuted through acts of deportation, arrest and murder, and that these acts constituted *de facto* discrimination, since the Vietnamese were intentionally targeted [13.144; 13.151; 13.158; 13.159; 13.160; 13.161; 13.162; 13.163; 13.164; 13.165; 13.166; 13.167; 13.168; 13.283; 18.308]

Consequence (impact/remedy): The crime against humanity of persecution on racial grounds has not been established for Prey Veng and Svay Rieng. KHIEU Samphân must be acquitted of this crime. (paras 3513, 4306).

V. GENOCIDE**SUMMARY**

Challenged finding: The Chamber considers that the crime of genocide by murder of members of the Vietnamese group has been established (paras 3515-3519).

Error(s): The murders of the Vietnamese have not been established. The Vietnamese of AuKg, S-21 and in territorial waters were not part of the protected group. The Chamber did not establish that there was an intent to destroy “in whole or in part”. There was no policy aimed at destroying the protected group. [13.108; 13.110-13.167; 13.285; 16.101; 16.110-16.113; 16.122; 16.285]

Consequence (impact/remedy): The crime of genocide of members of the Vietnamese group has not been established. KHIEU Samphân must be acquitted of this crime. (paras 3514-3519, 4306).

CHAPTER IV. MARRIAGE AND RAPE IN THE CONTEXT OF MARRIAGE**Section I. MARRIAGE****I. ERRORS WITH RESPECT TO THE LEGALITY OF FORCED MARRIAGES AS OTHER INHUMANE ACTS BETWEEN 1975 AND 1979****A. Erroneous analysis of the formal condition of illicitness****SUMMARY**

Challenged finding: The crime against humanity of other inhumane acts in the form of forced marriages has been established (paras 727, 740-749; 3686-3694).

Error(s): The Chamber made a mistake in its definition of other inhumane acts and in its review of legality [9.14, 9.17, 14.85]

Consequence (impact/remedy): The findings indicating that KHIEU Samphân committed the crime against humanity of other inhumane acts through forced marriage which formed part of the CPK’s policy and common purpose must be invalidated (paras 4303; 4304; 4305; 4306).

B. Lack of real articulation between the rights and restrictions at the time**II. ERRORS WITH RESPECT TO THE EXAMINATION OF THE ELEMENTS OF OTHER INHUMANE ACTS IN THE FORM OF FORCED MARRIAGE**

A. Errors with respect to the examination of the criteria of nature and a seriousness similar to those of the other crimes against humanity listed

SUMMARY

Challenged finding: The acts have a similar degree of seriousness as the other crimes against humanity enumerated such that the *actus reus* required for the crime against humanity of other inhumane acts to qualify as acts of forced marriages has been established (paras 3689, 3692).

Error(s): The Chamber made a mistake in considering that the crime against humanity of other inhumane acts in the form of forced marriages has been established and in providing an erroneous examination of the *actus reus* [9.17; 14.85].

Consequence (impact/remedy): The findings indicating that KHIEU Samphân is guilty of the crime against humanity of other inhumane acts through forced marriages which formed part of the CPK's policy and common purpose must be invalidated (paras 4303; 4304; 4305; 4306).

1. Forced marriage was not a criminal offence prior to the fact

2. Forced marriage as an offence is still not self-evident after the fact

3. Therefore, forced marriage was not a criminal offence at the time of these facts

4. Erroneous findings by the Chamber by establishing a distinction between arranged and forced marriages

SUMMARY

Challenged finding: Arranged marriages were free from all constraints regarding the mutual trust that existed between parents and children (paras 266-267, 3688-3689)

Error(s): Arranged marriages were based on mutual trust between parents and children and were free from all constraints, whereas marriage under Democratic Kampuchea in most cases did not correspond to real consent, so that what ensued reached the same degree of gravity as the other crimes against humanity listed [3.40; 14.85]

Consequence (impact/remedy): KHIEU Samphân committed the crime against humanity of other inhumane acts through forced marriage which formed part of the CPK's policy and common purpose (paras 4303; 4304; 4305; 4306)

B. Errors in examining the suffering endured in marriages

SUMMARY

Challenged finding: The impact of forced marriages under Democratic Kampuchea establishes the same level of severity as for the other crimes against humanity listed. (paras 3679-3683, 3686-3694).

Error(s): The Chamber committed factual and legal errors by dismissing the evidence regarding the impact of forced marriages and discarding all evidence, thereby precluding finding the same degree of seriousness as for the other crimes against humanity listed. [14.80; 14.81; 14.82; 14.85]

Consequence (impact/remedy): The distortion resulted in a miscarriage of justice since it was used to convict KHIEU Samphân of the crime against humanity of other inhumane acts in the form of forced marriages (paras 3686-3694, 4306, 4361-4376, 4400, 4402).

C. Errors regarding the regulation of marriage and its implementation

KHIEU SAMPHÂN APPEAL BRIEF (002/02)

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SUMMARY

Challenged finding: The regulation of marriage during Democratic Kampuchea consisted of forcing people across the country to marry by using threats, organizing ceremonies and monitoring the consumption of marriages to increase the population. This intentional behaviour constitutes the *mens rea* for the crime against humanity of other inhumane acts in the form of forced marriages. (paras 3539-3548, 3686-3694, 4064-4067).

Error(s): The distortion of essential evidence on the regulation of marriage (official documents and speeches); partial and biased review of testimonies; unreasonable findings regarding the policies of the CPK. (paras 3539-3548, 3686-3694, 4064-4067) resulting in a miscarriage of justice.

[14.9-14.10; 14.13-13.14; 14.85-14.86; 16.358-365; 16.367; 16.369; 16.371] [14.14; 14.22; 14.75; 14.10-14.13; 14.15-14.16; 14.51; 14.54]

Subsequent/related errors:

Consequence (impact/remedy): KHIEU Samphân is not guilty of crimes against humanity of other inhumane acts in the form of forced marriages and rape (paras 3686-3700, 4067, 4306-4307, 4361-4376, 4400, 4402).

1. Errors with respect to the content of the regulation of marriage during the Democratic Kampuchea

a. Errors with respect to two marriage conditions imposed by the CPK

SUMMARY

Challenged finding: The consent to marriage was not a condition imposed by the regulation of marriage under Democratic Kampuchea. (paras 3540-3548, 3560-3561, 3618, 3620, 3622-3625, 3633-3634).

Error(s): Biased study and partial approach to the evidence on the official CPK regulation of marriage and its objectives. Decision 03.11.2016, E408/6/2.

Consequence (impact/remedy): The Chamber could not use its biased interpretation of the official rules to conclude that the CPK intended to force people into marriage and find KHIEU Samphân guilty of the crime against humanity of other inhumane acts in the form of forced marriage (paras 3686-3694, 4306, 4361-4376, 4400, 4402).

b. Errors with respect to the objectives of the CPK

SUMMARY

Challenged finding: The objective of forced marriages was to increase the population, in particular to fight neighbouring Vietnam (paras 3540-3541, 3543-3548, 3556-3563, 3618, 3620, 3622-3625, 3665-3669, 3686-3694).

Error(s): The biased and partial analysis of the evidence regarding the traditional Khmer marriage, the content and objectives of the regulation of marriage under Democratic Kampuchea. [14.10-14.13; 14.15-14.24; 14.51; 14.54; 14.85]

Consequence (impact/remedy): This erroneous finding was used to conclude the existence of a criminal policy of forced marriages and find KHIEU Samphân guilty of the crime against humanity of other inhumane acts through forced marriages and rape in the context of forced marriage (paras 3686-3700, 4306, 4361-4376, 4400, 4402).

2. Errors with respect to the implementation of the regulation of marriage

SUMMARY

Challenged finding: The marriages were arranged by the authorities in accordance with instructions from above throughout the regime in many parts of the country, and both men and women were forced to marry. Several arrangements were not in accordance with tradition and pressure was brought to bear in the marriages (paras 3686-3700, 4064-4067, 4306).

Error(s): The Chamber committed factual errors by misrepresenting and distorting the evidence, and again by omitting the exculpatory evidence without reason. [14.85-14.86; 16.358-365; 16.367; 16.369; 16.371; 18.261-264; 18.327; 20.11]

Consequence (impact/remedy): These errors led to a miscarriage of justice in view of the fact that the Chamber used them to hold that the CPK intended to force people to marry and have forced sex, and found KHIEU Samphân guilty of /CAH of OIA in the context of forced marriages and rape (paras 3686-3700, 4293-4294, 4306, 4370, 4400, 4402).

a. Errors with respect to the supervision and transmission of the regulation

SUMMARY

Challenged finding: The communication and transmission of instructions in relation to marriages between upper and lower ranks down to subordinate ranks establishes the existence of the CPK's policy of forced marriage. (paras 3564-3568).

Error(s): The Chamber committed a factual error by distorting and warping the evidence and by rejecting evidence that was contrary to its findings without reasons. [14.25-14.29]

Consequence (impact/remedy): The inaccurate assessment of the evidence led to a miscarriage of justice in that the Chamber used it to find that the CPK, and by extension KHIEU Samphân, intended to force people to get married and consummate their marriage, and find him guilty of the CAH of OIA in the context of forced marriage (paras 3690-3691, 3693, 4293-4294, 4307, 4370, 4400, 4402).

b. Errors with respect to conditions external to the regulation

SUMMARY

Challenged finding: The authorities adopted a criminal behaviour, namely pairing couples without their consent, using threats, excluding parents, intervening in marriages with the approval of or instructions from above (paras 3572-3585, 3592-3597, 3602-3612, 3633, 3635-3640, 3645, 3559).

Error(s): The Chamber committed a factual error by distorting and warping the evidence and finding that it was the intention of the CPK to adopt such behaviours [14.35-14.37; 14.44-14.47, 14.56]

Consequence (impact/remedy): The Chamber used these erroneous findings to reach a conclusion about the intent of the CPK, and therefore of KHIEU Samphân, to force people to marry and find him guilty of the CAH of OIA in the context of forced marriage and rape through joint criminal enterprise. (paras 4293-4294, 4307, 4370, 4400, 4402).

- **Use of threats and coercion in the country**

SUMMARY

Challenged finding: Absolute respect for discipline prevented individuals from genuinely consenting to marriage in the country's climate of fear (paras 3535, 3617-3625, 3646, 3650-3652, 3658, 3670, 3672-3678).

Error(s): Distortion and partial and biased assessment of the evidence. [14.3; 14.6-14.7; 14.50-14.53; 14.71-14.79]

Consequence (impact/remedy): This erroneous finding was used to conclude that the CPK intended to

force people to marry and consummate their marriage and to find KHIEU Samphân guilty of the CAH of OIA by forced marriage and rape in the context of forced marriage (paras 3690-3691, 3693, 4293-4294, 4307, 4370, 4400, 4402).

Section II. RAPE COMMITTED IN THE CONTEXT OF FORCED MARRIAGES

I. ERRORS WITH RESPECT TO THE LEGALITY OF RAPES COMMITTED IN THE CONTEXT OF MARRIAGE AS OTHER INHUMANE ACTS BETWEEN 1975 ET 1979

SUMMARY

Challenged finding: The crime against humanity of other inhumane acts through rape in the context of forced marriages has been established (paras 727-732; 3684-3694).

Error(s): The Chamber made a mistake in its review of the legality of rape in the context of forced marriages [9.15; 14.86]

Consequence (impact/remedy): The conviction of KHIEU Samphân for the crime against humanity of other inhumane acts through rape committed in the context of forced marriages must be invalidated (paras 4065, 4066, 4067, 4303, 4305, 4306)

II. ERRORS IN THE EXAMINATION OF ELEMENTS OF OTHER INHUMANE ACTS IN THE FORM OF RAPE IN THE CONTEXT OF FORCED MARRIAGES

SUMMARY

Challenged finding: The crime against humanity of other inhumane acts through rape in the context of forced marriages has been established (paras 727-732; 3684-3694).

Error(s): The Chamber made a mistake in its review of the main elements of the CAH of OIA through rape committed in the context of forced marriages [9.15; 14.86].

Consequence (impact/remedy): The conviction of KHIEU Samphân for the crime against humanity of other inhumane acts through rape committed in the context of forced marriages must be invalidated (paras 4065, 4066, 4067, 4303, 4305, 4306).

A. Errors in the examination of the criterion of similar nature and gravity

B. Errors in the examination of suffering endured as the result of sexual intercourse in the context of marriage

SUMMARY

Challenged finding: Women in particular experienced severe and lasting trauma resulting from forced sex as part of the forced marriage policy under Democratic Kampuchea (paras 3683-3685).

Error(s): The Chamber committed factual and legal errors by using a selective weight-of-evidence approach in order to build its case regarding the impact of forced intercourse on women in the context of forced marriage [14.83; 14.84]

Consequence (impact/remedy): This erroneous finding allowed the Chamber to find KHIEU Samphân guilty of the CAH of OIA through rape in the context of forced marriage (paras 3686-3694, 4303-4306, 4361-4376, 4400, 4402).

C. Errors with respect to the control of the consummation of the marriage

SUMMARY

Challenged finding: The measures were reportedly taken by the authorities to impose the consummation of marriage on new couples. In a context of coercion, women were raped in forced marriages (paras 3641-3654, 3656-3662, 3674).

Error(s): Misconstruction of and biased approach to the evidence [14.7; 14.57-14.67; 14.74]

Consequence (impact/remedy): The misguided assessment of the evidence led to a miscarriage of justice in view of the fact that the Chamber used it to establish CPK's intent to force people to marry and consummate their marriage, and find KHIEU Samphân guilty of the CAH of OIA through forced marriage and rapes in the context of forced marriages (paras 3691-3700, 4303-4306, 4400, 4402).

Part IV. ERRORS WITH RESPECT TO THE COMMON PURPOSE

Title I. ERRORS WITH RESPECT TO THE CPK'S PROJECT FOR A SOCIALIST REVOLUTION

Chapter I. ERRORS WITH RESPECT TO THE LAW

SUMMARY

Challenged general finding: Although the primary objective was not to commit crimes, the success of the common purpose required the execution of destructive policies and the elimination of all counter-revolutionary elements perceived as obstructing the Party (para. 3743).

Error(s): Violation of the extent of the Chamber's referral and a misguided approach to the evidence with a view to making findings on the common purpose [16.1; 16.2].

Consequence (impact/remedy): The Chamber's findings on the common purpose which are in violation of its referral and based on an erroneous analysis of the evidence must be invalidated. (paras 3733-3743)

Chapter II. ERRORS WITH RESPECT TO THE FACTS

Section I. POLITICAL RELATIONS WITH VIETNAM BEFORE 17.04.1975

Section II. ERRORS WITH RESPECT TO THE SUBSTANCE OF THE "SOCIALIST REVOLUTION"

SUMMARY

Challenged general finding: Although the primary objective was not to commit crimes, the success of the common purpose required the execution of destructive policies and the elimination of all counter-revolutionary elements perceived as obstructing the Party. (para. 3743).

Error(s): Biased and erroneous interpretation of the evidence and failure to consider the exculpatory material. [16.4; 16.8, 16.9, 16.11, 16.16, 16.17]

Consequence (impact/remedy): The Chamber used its misguided vision of the CPK's socialist revolution project to find that crimes were committed to ensure the implementation of the project and that KHIEU Samphân therefore, by virtue of his loyalty to the political project had knowledge of these crimes and the intent to commit them. The findings made on the basis of a misguided analysis of the evidence shall be invalidated. (paras 3743; 4206; 4218; 4219; 4235-4237)

Section III. DISSEMINATION OF THE "SOCIALIST REVOLUTION" POLITICAL PROJECT

I. ERRORS REGARDING THE POLICY PROPAGATION CHANNELS

SUMMARY

Challenged general finding: Although the primary objective was not to commit crimes, the success of the common purpose required the execution of destructive policies and the elimination of all counter-revolutionary elements perceived as obstructing the Party. (para. 3743).

Error(s): Error in assessing the evidence and failure to take the exculpatory elements into consideration

[6.1; 6.6 -6.12; 16.18]

Consequence (impact/remedy): The Chamber used its misguided vision of the socialist revolution project of the CPK to find that crimes were committed to ensure the implementation of the project. The findings made on the basis of a misguided analysis of the evidence must be invalidated. (paras 3733-3743)

Title II. ERRORS WITH RESPECT TO THE FIVE ALLEGED POLICIES OF THE COMMON PURPOSE AND THEIR CRIMINAL CHARACTER

Introduction. FLAWED APPROACH TO REVIEWING POLICIES

SUMMARY

Challenged general finding: The CPK’s political purpose was implemented through five policies which involved the commission of crimes. (paras 4067-4074).

Error(s): Errors in the approach and the appreciation of the evidence to make the finding that five policies existed. [16.123]

Consequence (impact/remedy): The Chamber should not have held that the political project of the CPK was criminal in nature. His loyalty to the political project of the CPK did not make it possible to find that KHIEU Samphân made a significant contribution to a JCE (paras 4256-4305) or that he was guilty by virtue of his participation in the JCE (paras 4306-4307).

Chapter I. ERRORS WITH RESPECT TO THE CPK ENEMY DESIGN

SUMMARY

Challenged general finding: The CPK policy was characterized by the struggle against the “enemy” whose notion has evolved over time (paras 3751-3763; paras 3934-3941).

Error(s): Misconstruction of the evidence in particular by lack of real consideration of the armed conflict [4.7; 4.8; 16.19-16.27; 16.31-16.68; 16.70; 16.72-16.74; 16.76; 16.80 -16.83; 16.85; 16.86; 16.88; 16.90-16.92; 16.95-16.98; 16.102-16.107; 16.115-16.121; 16.178-16.179; 16.88]

Consequence (impact/remedy): The Chamber used this broad and shifting concept of enemies to find that the “elimination of enemies” by murder of a criminal nature was part of the CPK common purpose. All subsequent findings used to characterize the KHIEU Samphân’s intent to commit the various crimes against the “alleged enemies” are factually inaccurate (paras 4279-4299) and the findings regarding his liability must be invalidated (paras 4306-4307; paras 4316-4318; paras 4326-4328).

Chapter II. “POLICIES”, MOP, COOPERATIVES AND WORKSITES

Section I. EXISTENCE OF THE MOP POLICY

SUMMARY

Challenged finding: One of the important strategic lines of the revolution was to “control” and “seize the population” (para. 3877).

Error(s): Exceeding the referral. [4.1; 16.135]

Consequence (impact/remedy): These elements cannot be used directly or indirectly to characterize the policy of creating cooperatives and worksites as criminal. (paras 3916, 3918-3929).

Section II. THE OBJECTIVE OF COOPERATIVES

I. FLAWED FINDINGS REGARDING CPK POLICY

SUMMARY

Challenged finding: Cooperatives were created to control people by ensuring a distinction between base people and new people regardless of their living conditions or the treatment that was inflicted upon them by a policy encouraging “great leaps forward” in order to build the country, to defend it against the enemies and radically transform the population into a homogenous society of peasants and workers. (paras 3866-3867, 3889, 3918).

Error(s): Incorrect assessment and biased interpretation of the evidence. Rejection of the Defence’s detailed arguments. [3.31; 3.34; 16.124-128; 16.131; 16.139; 16.141; 16.143-16.144; 16.147-16.151; 16.154; 16.156; 16.157]

Consequence (impact/remedy): These errors formed the basis of the finding that the cooperatives were a means to “fight the enemy” and to establish that crimes committed in the cooperatives and at worksites fell within the scope of the common purpose and uphold the responsibility of KHIEU Samphân for these crimes. All such findings must be invalidated (paras 4314-4315, 4317, 4326-4328).

II. ERRORS REGARDING KHIEU SAMPHAN’S ROLE IN CONNECTION WITH THE COOPERATIVES

SUMMARY

Challenged finding: KHIEU Samphân encouraged, supported, endorsed the principle that the economic and ideological objectives of the CPK should be achieved and was aware of the mistreatment of the population and the crimes committed in the cooperatives. (paras 3879; 3884-3885, paras 3887-3888, 3897, 3916-3917).

Error(s): Distortion of the evidence, use of statements made well after the facts [16.130; 16.132; 16.136-16.138; 16.140; 16.142; 16.145; 16.152; 16.155; 16.158-16.161]

Consequence (impact/remedy): These errors served as the basis to establish the *mens rea* of KHIEU Samphân in order to retain his responsibility in the JCE and in aiding and abetting crimes committed in the cooperatives and at the worksites and tried in Case 002/02 (paras 4314-4315, 4317, 4326-4328).

III. ERRORS REGARDING THE CRIMINAL NATURE OF THE POLICY

SUMMARY

Challenged finding: The policy aimed at creating and operating cooperatives and worksites involved the commission of crimes in furtherance of the common purpose. (paras 3919-3920; 3922-3923; 3927-3929).

Error(s): Incorrect assessment of the evidence, unreasonable finding [16.162; 16.164; 16.166-16.167; 16.173-16.176]

Consequence (impact/remedy): These errors served as the basis to establish the *mens rea* of KHIEU Samphân in order to retain his responsibility in the JCE and in aiding and abetting crimes committed in the cooperatives and at the worksites and tried in Case 002/02 (paras 4255-4278, 4280-4282, 4299, 4306, 4313-4315, 4326-4328).

Chapter III. “POLICY” APPLIED AT SECURITY CENTRES AND EXECUTION SITES

SUMMARY

Challenged finding: The CPK had a policy that aimed to identify, arrest, isolate and smash individuals viewed as the most dangerous enemies which was applied at security centres and execution sites throughout the country and implemented by the entire Party administrative network (para. 3965).

Error(s): [16.206; 16.207; 16.209, 16.213-16.215; 16.219-16.221; 16.224-16.225, 16.227-16.228- 16.230; 16.232, 16.234; 16.236]

Consequence (impact/remedy): The findings relating to the existence of this policy allowed the Chamber to find the Appellant liable of all the crimes committed at the security centres even though they did not fall within his area of responsibility. (paras 3978-3981, 3983, 3985-3987)

Chapter IV. "POLICY" WITH RESPECT TO SPECIFIC GROUPS

Section I. ALLEGED POLICY WITH RESPECT TO THE VIETNAMESE

SUMMARY

Challenged finding: The policy of hostile measures against the Vietnamese and aimed at destroying the Vietnamese population in Cambodia was encompassed by the common purpose. (paras 4000-4015).

Error(s): Misconstruction of the evidence, unreasonable findings [16.274; 16.284; 16.286; 16.287; 16.290-16.294; 16.297-16.299; 16-302-16.305; 16.307; 16.310; 16.311-16.316]

Consequence (impact/remedy): Based on this incorrect assumption that this policy did in fact exist, the Chamber condemned KHIEU Samphân of the crime of genocide by murder of members of the racial, national and ethnic group and of grave breaches of the Geneva Conventions committed against Vietnamese prisoner at S-21. (paras 4291-4295).

Section II. ALLEGED POLICY WITH RESPECT TO THE CHAM

SUMMARY

Challenged finding: The policy with respect to the Cham applied throughout Democratic Kampuchea which intensified after the series of rebellions in 1975 formed part of the common purpose. This policy involved discriminatory measures against the Cham who were considered the enemy during the MOP2 and on religious grounds from late 1975 until 6 January 1979 (paras 3990, 3997, 4288).

Error(s): Misconstruction of the evidence, unreasonable findings [13.18; 13.21; 13.27; 16.239; 16.243; 16.244; 16.246; 16.253-16.258; 16.263; 16.269; 16.270].

Consequence (impact/remedy): Based on this incorrect assumption that this policy did in fact exist, the Chamber condemned KHIEU Samphân of the crimes targeting the Cham through JCE. He will have to be acquitted. (paras 4289; 4326-4327).

Section III. ALLEGED POLICY WITH RESPECT TO THE FORMER KHMER REPUBLIC SOLDIERS

SUMMARY

Challenged finding: The policy of discriminatory measures against the former soldiers of the Khmer Republic and their elimination was encompassed by the common purpose. (paras 4060-4061).

Error(s): Misconstruction of the evidence, unreasonable findings [16.329-16.335; 16.343; 16.344; 16.347-16.355]

Consequence (impact/remedy): Based on the incorrect assumption that this policy did in fact exist, the

Chamber condemned KHIEU Samphân of the crime of persecution on political grounds and CAH at TK, 1st January Dam, at S-21 and KTC. He will have to be acquitted. (para. 4299).

Section IV. ALLEGED POLICY WITH RESPECT TO THE BUDDHISTS

SUMMARY

Challenged finding: The policy of hostile and discriminatory measures against Buddhists was encompassed by the common purpose (paras 4017-4022).

Error(s): Legal error and misconstruction of the evidence [16.320-16.321; 16.325; 16.326; 16.327]

Consequence (impact/remedy): Based on the incorrect assumption that this policy did in fact exist, the Chamber condemned KHIEU Samphân of the crime of persecution on religious grounds and CAH TK, 1st January Dam, at S-21 and KTC. He will have to be acquitted. (paras 4297-4298).

Chapter V. REGULATION OF MARRIAGE

Chapter VI. ERRORS WITH RESPECT TO THE ALLEGED COMMON PURPOSE

SUMMARY

Challenged finding: The criminal policies were intrinsically linked to the common purpose and involved the commission of crimes and the participants in the JCE, including KHIEU Samphân, used individuals who acted as direct perpetrators to commit crimes in furtherance of the common purpose. (para. 4068)

Error(s): Misconstruction of the evidence, unreasonable findings [16.372-16.384]

Consequence (impact/remedy): It was on the basis of this erroneous definition of the common purpose that the Chamber found KHIEU Samphân guilty and sentenced him for all the crimes in Case 002/02 (with the exception of the Cham genocide). All of these findings must be set aside, and the Appellant acquitted. (paras 4297-4298).

Part V. ERRORS WITH RESPECT TO RESPONSABILITY

Title I. VIOLATION OF THE PRINCIPLE OF INDIVIDUAL LIABILITY

Chapter I. LACK OF CONNECTION BETWEEN THE APPELLANT AND THE CRIME SITES

Chapter II. PRETENSES TO COMPENSATE FOR THE LACK OF CONNECTION AND COLLECTIVISATION OF THE LIABILITY

Section I. ERRORS IN THE USE OF GENERIC EXPRESSIONS

I. "PARTY CENTRE"

SUMMARY

Challenged finding: The “Party Centre” refers collectively to the senior executive organs of the CPK based in Phnom Penh, including KHIEU Samphân (paras 360-361, 483-493, 496-497, 499, 509, 32032, 3213, 3272, 3879, 3910-3913, 3962-3963, 4065, 4068-4074).

Error(s): Misrepresentation of evidence, misuse of the moving expression “Party Centre” in order to include KHIEU Samphân in the senior executive organs of the CPK [**5.15; 6.17-6.33, 6.40, 13.15-13.16; 13.23; 13.60; 16.132; 16.153-16.155; 16.204; 16.359-16.364; 16.372; 18.15-18.16; 18.18-18.19; 18.340; 18.342-18.343; 18.354-18.357; 18.365-18.367; 20.7**]

Consequence (impact/remedy): The use of this ambiguous expression allowed the Chamber include the Appellant in an undefined collective entity to find him guilty and sentence him for different crimes owing to his participation in the JCE and for A&E (paras 4208, 4236-4328, 4314, 4317, 4382-4383).

II. "ANGKAR"

SUMMARY

Challenged finding: Although it recognized that the term *Angkar* could take on different meanings depending on the context, the Chamber used the term ambiguously in its collective sense. (paras 342-454, 388-389, 3831, 3879, 3910, 3911-3913, 3962-3964, 4065, 4068-4074).

Error(s): The erroneous use of the term *Angkar* as a synonym of the terms “Party Centre”, Central Committee, Standing Committee [**5.15; 5.21; 16.91; 16.132; 16.153-16.155; 16.204-16.205; 16.359-16.364; 16.372; 19.108; 18.150; 18.153; 18.261; 20.7**]

Consequence (impact/remedy): The use of the term “*Angkar*” allowed the Chamber include the Appellant in an undefined collective entity to find him guilty and sentence him for different crimes owing to his participation in the JCE and A&E. Any findings to that effect must be overturned. (paras 4208, 4248, 4304, 4382-4383).

III. "870"

SUMMARY

Challenged finding: As a “member” of Office 870, KHIEU Samphân contributed to the alleged crimes by participating in the implementation of the various policies and had to be aware of the arrest and execution of Doeun (paras 362-365, 4071, 4225, 4257, 4386, 4389-4390).

Error(s): Distortion of the evidence on KHIEU Samphân’s role in relation to Office 870 to make the finding

that he contributed to the crimes in the implementation of various policies that were relevant to the common purpose. [5.16-5.18; 16.381; 18.42-18.43; 18.45; 18.48; 18.125; 18.130; 20.8]

Consequence (impact/remedy): The Chamber’s extrapolation on Office 870 led to a miscarriage of justice by including KHIEU Samphân in the CPK’s collective responsibility and finding him guilty and condemning him of different crimes from Case 002/02 owing to his participation in the JCE. All findings to that effect must be overturned. (paras 4071, 4225, 4257, 4389).

Section II. ERRORS WITH RESPECT TO THE MEANS OF COMMUNICATION

I. REVOLUTIONARY FLAG AND REVOLUTIONARY YOUTH MAGAZINES

SUMMARY

Challenged finding: The Revolutionary Flag and Revolutionary Youth magazines covering the implementation of the various policies were intended for Party members. Through his access to these publications by virtue of his positions of responsibility, KHIEU Samphân became aware of the crimes that he is accused of (paras 475, 477, 478, 3739-3741, 3747, 3856-3863, 3938).

Error(s): Distortion of the evidence in order to make the finding that KHIEU Samphân knew about and contributed to the crimes through the implementation of various policies under the common purpose. [6.13-6.16; 16.12; 16.27; 16.115; 16.185; 18.50-18.52; 18.116; 18.159]

Consequence (impact/remedy): The erroneous assessment of the Revolutionary Flag and the Revolutionary Youth magazines and the access that KHIEU Samphân had to these publications was used to find that he knew about and was guilty of the various crimes in Case 002/02 through JCE, invalidating all subsequent findings. (paras 4226, 4253, 4269).

II. MILITARY STRUCTURES AND COMMUNICATION

SUMMARY

Challenged finding: Military matters were the responsibility of the “Party Centre” and/or the Central Committee (paras 424, 427, 450, 454, 508-511, 3962-3963).

Error(s): Distortion and misrepresentation of the evidence, concealment of essential exculpatory evidence without reasons. [5.33-5.38; 6.37-6.42; 16.204; 16.372; 18.15; 18.16; 18.18-18.19; 18.131-18.133; 18.354-18.357; 18.365]

Consequence (impact/remedy): The use of this artificial means to find that KHIEU Samphân had military authority by proxy was used to find him guilty by virtue of his participation in the JCE (paras 3962-3963, 4068-4074, 4208, 4317, 4236, 4258).

Section III. PRINCIPLE OF SECRECY

SUMMARY

Challenged finding: The principle of secrecy within the CPK only applied to KHIEU Samphân occasionally. (paras 342-454, 3927, 3958, 3968, 3986, 4208, 4281).

Error(s): Improper assessment of the evidence regarding the principle of secrecy. [5.1; 16.173, 16.200, 16.209, 16.236, 18.17; 18.200]

Consequence (impact/remedy): The omission of the essential principle of how the CPK functioned allowed the Chamber to extrapolate on KHIEU Samphân’s alleged knowledge of the various crimes from Case 002/01 and hold him responsible of JCE. Any subsequent findings to this effect must be overturned.

(paras 3927, 3986, 4208, 4281).

Title II. GENERAL ERRORS REGARDING KHIEU SAMPHÂN'S ROLES

Chapter I. ERRORS REGARDING THE PERIOD PRIOR TO DK

Section I. CHILDHOOD, YOUTH AND CAREER

SUMMARY

Challenged finding: Presentation of KHIEU Samphân's life before Democratic Kampuchea (paras 565-566, 567-568, 569-571).

Errors: Misrepresentation of his thesis and other evidence [8.1-8.4; 16.138; 18.2; 18.122]

Consequence (impact/remedy): Refuting the findings according to which KHIEU Samphân was willing to accept the policies of CPK and supported the common purpose since 1967 (paras 3884, 4206, 4257).

Section II. MEMBER OF THE CPK

SUMMARY

Challenged finding: Entering the *maquis* and joining the CPK (paras 211, 573-574).

Errors: Partial distortion of the evidence and speculation [3.13; 8.5-8.8; 18.18; 18.122]

Consequence (impact/remedy): Refuting the findings according to which KHIEU Samphân was aware of the fact that crimes would be committed from the time he joined the CPK and supported the common purpose since 1967 (paras 4207, 4257).

Section III. FROM 1970 TO 17 APRIL 1975

SUMMARY

Challenged finding: KHIEU Samphân played an important role in enabling the spread of support in favour of the revolutionary movement between 1970 and 1975. Through his functions and activities, he contributed to conferring and reinforcing the legitimacy of the resistance movement which was dominated by the CPK. (paras 219, 220, 231-232, 575-582, 4257, 4389).

Error(s): Incorrect assessment and distortion of evidence. [3.15; 3.16; 3.26-3.29; 8.9-8.19; 18.122; 18.124-18.125; 18.130; 20.8]

Consequence (impact/remedy): These erroneous findings were used by the Chamber to find KHIEU Samphân criminally responsible for the crimes he was charged with (paras 582, 4257, 4306, 4389).

Section IV. PARTICIPATION IN THE JUNE 1974 AND THE APRIL 1975 CC MEETINGS

SUMMARY

Challenged finding: In particular as a result of his participation in the meeting in B-5 in Taing Poun in April 1975, KHIEU Samphân reportedly agreed to the evacuation of the population on 17 April and to the MOP which were part of the common purpose. (paras 230, 233, 581, 583-588).

Error(s): Bias and incorrect assessment of the evidence surrounding the meetings on the evacuation of Phnom Penh, in particular through a reversal of the finding in Judgement 002/01 finding that he participated in a meeting in June 1974. [3.24; 3.30; 8.20-8.21; 16.133-16.134]

Consequence (impact/remedy): This erroneous finding was used to find that KHIEU Samphân was responsible for making a significant contribution to and aiding and abetting in the evacuations and the policy

of MOP toward cooperatives through JCE. (paras 3880-3882) The erroneous arguments invalidate the findings on his responsibility (paras 4280-4282; 4306; 4313-4315; 4326-4328)

Chapter II. ERRORS REGARDING PLACES OF RESIDENCE, OF WORK AND MOVEMENTS

SUMMARY

Challenged finding: KHIEU Samphân was in close contact with POL Pot and NUON Chea and travelled within Cambodia to visit worksites during DK and was therefore apprised of what was going on in the country. (paras 484, 581, 583-588).

Error(s): Incorrect assessment of the evidence and speculation [6.19; 8.22-8.23; 18.12; 18.14-18.19; 18.42-18.44; 18.338; 18.341-18.343]

Consequence (impact/remedy): The Chamber used these errors to hold KHIEU Samphân criminally responsible, in particular with regard to his knowledge of the elaboration of plans and the implementation of the crimes charged (paras 4208, 4306, 4313-4318.).

Chapter III. ERRORS REGARDING ROLES DURING DK

Section I. DEPUTY PRIME MINISTER, MINISTER OF NATIONAL DEFENCE AND COMMANDER-IN-CHIEF OF CPNLAF

SUMMARY

Challenged finding: KHIEU Samphân presided over several national congresses and FUNK in 1975, thereby conferring legitimacy to the program of the CPK at an international level and attended several important military meetings and gatherings. (paras 593, 510).

Error(s): Incorrect assessment of the evidence and the historical context [8.24; 16.4; 16.145; 18.145]

Consequence (impact/remedy): The Chamber based its findings of KHIEU Samphân's criminal responsibility on these errors, in particular in the common purpose and his support of this project (paras 593; 3735; 3897, 4306-4308).

Section II. PRESIDENT OF THE STATE PRESIDUM

SUMMARY

Challenged finding: Nominated and appointed President of the State Presidium (paras 414, 596, 598-599, 3739, 3742).

Error(s): Distortion of evidence, bias. [5.27; 8.25-8.27; 16.9; 16.17; 16.50; 16.67; 16.81; 16.118; 16.152; 16.158; 16.211; 18.95; 18.96; 18.107-18.109; 18.126, 18.127, 18.129; 18.130; 18.149-18.153; 18.156-18.161; 20.8]

Consequence (impact/remedy): Invalidation of the findings according to which KHIEU Samphân, by virtue of his role as President of the Presidium and the speeches delivered in this capacity, was aware of the crimes and contributed to them, this role constituting an aggravating circumstance (paras 4241-4243, 4253, 4257, 4262-4264, 4265-4270, 4271, 4273, 4281, 4314, 4389).

Section III. "MEMBER" OF THE CC AND SC

SUMMARY

Challenged conclusions: As a result of his membership in the CC, KHIEU Samphân was part of a restricted

group of knowledgeable CPK and he also held a unique position in the Party through his participation in several SC meetings, where important issues were debated and critical decisions were made. He attended CC and SC meetings in accordance with the principle of democratic centralism giving him the opportunity to intervene (paras 227, 230, 239, 343, 345, 355, 356, 357, 390-397, 399, 402, 414, 416, 424, 484, 574, 596, 600, 602, 603, 604, 624, 1723, 1727, 2321, 3738, 3740, 3748, 3872, 3880, 3891, 3899, 3913, 3940, 3955, 3956, 3964).

Errors: Improper, unreasonable and biased examination of the evidence. [3.19; 3.24; 3.31; 5.2; 5.4; 5.9 - 5.12; 5.22; 5.25; 5.27-5.28; 5.34; 6.18; 8.8; 8.25; 8.28-8.34; 8.62; 11.69; 11.70; 12.59; 16.6; 16.13; 16.14; 16.28; 16.124; 16.133; 16.142; 16.147; 16.154-16.155; 16.186; 16.198 -16.199; 16.205; 18.4-18.5; 18.14; 18.40; 18.44; 18.60; 18.61; 18.63; 18.65; 18.66; 18.67; 18.78; 18.87; 18.123; 18.127 -18.128; 18.131-18.136; 18.139; 18.140; 18.143; 18.181-18.183; 18.207-18.208; 18.337; 18.338; 18.365; 18.366; 18.367; 20.11]

Consequence (impact/remedy): Overturn the criminal convictions and sentence based on these errors that triggered a miscarriage of justice (paras 4207, 4208, 4224, 4225, 4228, 4229, 4230, 4236, 4239, 4257, 4258, 4259, 4260, 4277, 4284, 4313, 4316, 4322, 4326, 4327, 4328, 4400, 4402).

Section IV. RESIDUAL FUNCTIONS

I. TRAINING SESSIONS

SUMMARY

Challenged finding: KHIEU Samphân provided political training during which he taught participants to identify “enemies” and ferret out “traitors”. (paras 605; 607; 3736; 3739).

Error(s): Errors in assessing evidence, partial and biased analysis of witness testimony. [8.35; 8.37-8.41; 16.5]

Consequence (impact/remedy): The Chamber used this erroneous finding to hold that KHIEU Samphân substantially contributed to the JCE, in particular to the alleged policy against enemies and also to convict him of aiding and abetting. This finding, as well as all findings resulting from it, must be quashed. (paras 4253, 4262, 4264, 4272, 4306)

II. MEMBER OF OFFICE 870

SUMMARY

Challenged finding: KHIEU Samphân became a member of Office 870 in October 1975 and Doeun was his predecessor (paras 608; 616, 362-365, 493).

Error(s): Errors in assessing evidence relating to KHIEU Samphân’s collaboration with Office 870. [5.17 5.18; 6.29-6.30; 8.42-8.45]

Consequence (impact/remedy): The Chamber used these erroneous findings to hold that KHIEU Samphân substantially contributed to the JCE. (paras 4225, 4257, 4276, 4306, 4307)

III. SUPERVISION OF THE COMMERCE COMMITTEE

SUMMARY

Challenged finding: As the head of the Commerce Committee, KHIEU Samphân had a significant level of oversight over trade matters (paras 422, 505, 617-621).

Error(s): Biased review and incorrect assessment of testimonial and documentary evidence [5.29; 5.30; 5.30-5.32; 6.36; 8.46-8.58]

Consequence (impact/remedy): The Chamber’s erroneous finding was used to establish KHIEU Samphân’s guilt in order to establish that he significantly contributed to the JCE. This finding, as well as all findings resulting from it, must be quashed. (paras 4247, 4249, 4257, 4262, 4264, 4272-4274, 4276, 4306-4307).

IV. HEAD OF THE MINISTRY OF FOREIGN AFFAIRS (MFA)

SUMMARY

Challenged finding: KHIEU Samphân provided his temporary assistance in several fields of government administration as a special residual function in particular in the Ministry of Foreign Affairs, in addition to his official duties (para. 623).

Error(s): Distortion of evidence, assumptions and bias. [8.59-8.61; 16.343; 18.110; 18.118]

Consequence (impact/remedy): Invalidation of the findings according to which KHIEU Samphân Invalidation of the finding reached with regard to KHIEU Samphân’s knowledge of the crimes, according to which he could not ignore the letters from Amnesty International addressed to him owing to his close ties with IENG Sary and the MFA (para. 4048, 4250, 4053).

Title III. ERRORS WITH RESPECT TO KHIEU SAMPHÂN’S KNOWLEDGE

Chapter I. VARIATION IN LEVEL OF KNOWLEDGE DEPENDING ON THE TIME

SUMMARY

Challenged finding: The level of knowledge required varied depending on whether the acts that the Defendant is accused of occurred before, during or after the crimes were committed (para. 4204).

Error(s): Misinterpretation and incorrect application of the law [18.1]

Consequence (impact/remedy): KHIEU Samphân’s knowledge of the *dolus eventualis* murders at Tram Kok, the 1st January Dam, the Trapeang Thma Dam, the Kampong Chhnang Airfield, S-21, at Kraing Ta Chan and Phnom Kraol at the time they were committed has not been demonstrated. KHIEU Samphân cannot be held liable for aiding and abetting in *dolus eventualis* murders (paras 4318, 4328).

Chapter II. AWARENESS THAT CRIMES WOULD BE COMMITTED

SUMMARY

Challenged finding: KHIEU Samphân was aware of the real likelihood that the continued implementation of these policies would lead to the commission of crimes falling within the scope of the second trial in Case No. 002 (para. 4208).

Error(s): The *dolus eventualis* or any other intentional act of a lesser degree did not exist at the time these acts took place. The Chamber distorted KHIEU Samphân’s thesis. The Chamber committed an error in considering KHIEU Samphân was an “important member of the DK leadership”. The Chamber did not justify its finding that KHIEU Samphân knew that crimes would likely be committed. The Chamber committed an error in making its findings with regard to KHIEU Samphân’s role. [18.2-18.19]

Consequence (impact/remedy): The Chamber could not use KHIEU Samphân’s knowledge that the crimes would likely be committed to prove he knew these acts were contributing to the commission of crimes through aiding and abetting. (paras 4315, 4317-4319).

Marriage

SUMMARY

KHIEU SAMPHÂN APPEAL BRIEF (002/02)

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Challenged finding: From the start of 1974, the CPK began arranging marriages of officials. As an “important member” of the CPK, KHIEU Samphân was aware of the policies and the consistent pattern that became apparent between 1969 and 1975, and was conscious of the real likelihood that its continued implementation would bring about the commission covered by this trial (para. 4207, 4208).

Error(s): Distortion and misrepresentation of evidence, lack of reasoning. [18.3; 18.10; 18.12-18.19]

Consequence (impact/remedy): It was an error to find that KHIEU Samphân was [aware of the fact that] crimes of forced marriage and the rapes committee in the context of marriage would be committed and sentence him for these crimes. Any such findings must be overturned. (paras 4303-4308, 4326-4327).

Chapter III. KNOWLEDGE OF THE CRIMES AT THE TIME THEY WERE COMMITTED

Section I. COOPERATIVES AND WORKSITES

I. ERRORS COMMON TO ALL SITES

SUMMARY

Challenged finding: KHIEU Samphân was aware of the fact that crimes were being committed as part of the policy to establish and operate cooperatives and worksites (paras 4210-4218).

Error(s): Distortion of evidence and adoption of a deductive approach [to] find that the Appellant was aware of the crimes [18.21-18.32].

Consequence (impact/remedy): Invalidation of the findings regarding KHIEU Samphân’s knowledge of the crimes committed as part of the policy aimed at creating and operating cooperatives and worksites (paras 4210-4218).

II. TRAM KAK

SUMMARY

Challenged finding: KHIEU Samphân was aware of the fact that crimes were being committed as part of the policy to establish and operate cooperatives and worksites (paras 4210-4218).

Error(s): Distortion of evidence and adoption of a deductive approach to find that the Appellant was aware of the crimes [18.21-18.32].

Consequence (impact/remedy): Invalidation of the findings regarding KHIEU Samphân’s knowledge of the crimes committed as part of the policy aimed at creating and operating cooperatives and worksites. Invalidation of all the convictions relating to the Tram Kak worksite (paras 4210-4218; 4283-4287).

III. TRAPEANG THMA DAM

SUMMARY

Challenged finding: KHIEU Samphân was aware of the fact that crimes were being committed as part of the policy to establish and operate cooperatives and worksites (paras 4210-4218).

Error(s): Distortion of evidence [18.25-18.32].

Consequence (impact/remedy): Invalidation of the findings regarding KHIEU Samphân’s knowledge of the crimes committed as part of the policy aimed at creating and operating cooperatives and worksites. Invalidation of all the convictions relating to the Trapeang Thma Dam worksite (paras 1378-1429; 4210-4218).

IV. 1ST JANUARY DAM

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SUMMARY

Challenged finding: KHIEU Samphân was aware of the fact that crimes were being committed as part of the policy to establish and operate cooperatives and worksites (paras 4210-4218).

Error(s): Distortion of evidence and adoption of a deductive approach [18.21-18.32].

Consequence (impact/remedy): Invalidation of the findings regarding KHIEU Samphân's knowledge of the crimes committed as part of the policy aimed at creating and operating cooperatives and worksites. Invalidation of all the convictions relating to the 1st January Dam worksite (paras 4210-4218; 4283-4287).

V. KAMPONG CHHNANG AIRFIELD**SUMMARY**

Challenged finding: The Chamber is convinced that KHIEU Samphân was aware of the crimes committed as part of the policy to establish and operate the Kampong Chhnang Airfield (paras 4210-4218).

Error(s): Distortion of evidence and adoption of a deductive approach to find that the Appellant was aware of the crimes committed at the Kampong Chhnang Airfield worksite [11.69; 11.70; 18.21-18.32].

Consequence (impact/remedy): The findings indicating that KHIEU Samphân was aware of the crimes committed as part of the policy aimed at creating and operating cooperatives and worksites must be overturned. (paras 1723-1730; 1800-1845; 4210-4218).

Section II. SECURITY CENTRES**I. NO KNOWLEDGE AT THE TIME OF THE FACTS****A. No knowledge of the fact that crimes were being committed at S-21****B. No knowledge of the fact that crimes were being committed at Kraing Ta Chan****C. No knowledge of the fact that crimes were being committed at Au Kanseng****D. No knowledge of the fact that crimes were being committed at Phnom Kraol****SUMMARY**

Challenged finding: KHIEU Samphân was aware of the crimes committed during the internal purges carried out throughout the DK period (para. 4235).

Error(s): The Chamber established KHIEU Samphân's knowledge of the crimes perpetrated at Phnom Kraol through the general finding relating to purges and through a distortion of the evidence. [12.200-12.204; 12.209; 12.215; 18.73].

Consequence (impact/remedy): All findings of guilt relating to the Phnom Kraol security centre must be quashed together with those regarding the Appellant's knowledge. (paras 3019-3166; 3115-3166; 3973-3987; 4219-4235; 4306; 4318).

II. ERRORS WITH RESPECT TO THE KNOWLEDGE OF THE CRIMES COMMITTED DURING THE PURGES**SUMMARY**

Challenged finding: The Chamber committed an error in concluding that KHIEU Samphân was aware of the crimes committed during the internal purges throughout the DK period (para. 4235).

Error(s): Use of KHIEU Samphân's statements made after the DK. Distortion of KHIEU Samphân's statements. Unreasonable extrapolation [18.33-18.73]

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Consequence (impact/remedy): The Chamber could not use this knowledge to infer that KHIEU Samphân intended to commit crimes in security centres (paras 4283-4287).

Section III. SPECIFIC GROUPES

I. THE CHAM

SUMMARY

Challenged finding: KHIEU Samphân knew crimes targeting the Cham were being committed during DK (para. 4236).

Error(s): Misconstruction of the evidence et errors of law [18.74-18.80].

Subsequent/related errors: [18.276; 18.281; 18.293; 18.296; 18.305; 18.307; 18.326]

Consequence (impact/remedy): At the time of the facts, KHIEU Samphân did not know that these alleged crimes were being committed. Consequently, the alleged knowledge cannot be used to demonstrate the intent to commit these crimes. He must be acquitted of murder, extermination, imprisonment, torture, political persecution, religious persecution, other inhumane acts through forced transfers (para. 4306)

II. THE VIETNAMESE

SUMMARY

Challenged finding: KHIEU Samphân knew crimes targeting the Vietnamese were being committed during DK. (para. 4239).

Error(s): Lack of evidence proving KHIEU Samphân's knowledge that crimes were committed against the Vietnamese during DK. The Chamber distorted the speeches and words of KHIEU Samphân. The Chamber made no distinction between the Vietnamese from Vietnam (military officials, political representatives) and ethnic Vietnamese living in Cambodia. [18.81-18.88]

Consequence (impact/remedy): KHIEU Samphân had no knowledge of crimes against the Vietnamese being committed during the DK. KHIEU Samphân could not be held accountable and must therefore be acquitted of these crimes. (paras 4239, 4306).

III. BUDDHISTS

SUMMARY

Challenged finding: KHIEU Samphân knew that the CAH of persecution on religious grounds was being committed against Buddhists and Buddhist monks during DK. (paras 4297-4298).

Error(s): Errors of law and misconstruction of the evidence and [10.30; 10.31; 18.89-18.99].

Consequence (impact/remedy): At the time of the facts, KHIEU Samphân did not know that these alleged crimes were being committed. Consequently, the alleged knowledge cannot be used to demonstrate the intent to commit this crime. He must be acquitted of the CAH of persecution on religious grounds (para. 4306)

IV. FORMER KHMER REPUBLIC SOLDIERS

SUMMARY

Challenged implicit finding: KHIEU Samphân knew that the CAH of persecution on political grounds was committed against the former Khmer Republic soldiers at Tram Kok, 1st January Dam, S-21 and Kraing Ta Chan and that the CAH of murder was committed against the former Khmer Republic soldiers between 20 April 1975 and the end of May 1975 and again between October 1975 and the end of the DK at S-21 and Kraing Ta Chan (paras 4244-4245 and reference to paras 4300-4302)

Error(s): Errors of law and misconstruction of the evidence [18.100-18.103].

Consequence (impact/remedy): At the time of the facts, KHIEU Samphân did not know that these alleged crimes were being committed. Consequently, the alleged knowledge cannot be used to demonstrate the intent to commit this crime. He must be acquitted of the CAH of persecution on religious grounds and of murder against the former Khmer Republic soldiers (para. 4306)

Section IV. ERRORS WITH RESPECT TO KNOWLEDGE OF CRIMES IN MARRIAGES**SUMMARY**

Challenged finding: It is established that KHIEU Samphân gave instructions regarding marriage as part of a policy to increase the population at a meeting in Wat Ounalom. He personally promoted this policy in his speeches. (paras 4247, 4248, 3569-3571, 3548, 3557, 3581, 3590, 3611, 3635)

Error(s): Distortion and misconstruction of the evidence, bias. [18.104; 18.105-18.109; 14.32; 14.33; 14.14-14.15; 14.20; 14.30-14.34; 14.38-14.40; 14.47; 16.56]

Consequence (impact/remedy): The Chamber used this erroneous finding to hold KHIEU Samphân responsible of these crimes through JCE owing to the fact that he knew that forced marriage and rape were being committed as part of the CPK's national policy. (paras 4247-4249, 4326-4327)

Chapter IV. KNOWLEDGE OF THE FACT THAT CRIMES HAD BEEN COMMITTED**Marriages****SUMMARY**

Challenged finding: Through his participation in study sessions and gatherings where criminal behaviour was discussed, adopted and implemented and his access to CPK documents, KHIEU Samphân knew that the crimes had been committed (paras 4253, 4254, 4273).

Error(s): Distortion and misinterpretation of the evidence, bias of the Chamber. [18.114-18.119; 18.172]

(impact/remedy): The Chamber used this erroneous finding to find KHIEU Samphân guilty of knowing the crimes had been committed (paras 4303-4308, 4326-4327).

Title IV. ERRORS WITH RESPECT TO JOINT CRIMINAL ENTERPRISE**Chapter I. JCE IN LAW****Section I. THE CRIMINAL NATURE OF THE PURPOSE AT THE HEART OF THE ACTUS REUS****SUMMARY**

Challenged finding: The Chamber did not consider the specificity of the definition of the alleged common purpose which in itself was not criminal in Case No 002 to precisely define and qualify the *actus reus* of JCE 1 (paras 3708-3711). The significant contribution to the common purpose which in itself is non-criminal

is enough to make the finding that there was a significant contribution to the JCE. (paras 4255-4256).

Error(s): Error in law and shortcomings in the definition of the *actus reus* of the JCE on the various criteria to be established in the context of a non-criminal project with a vast JCE, in particular on the possibility of making a significant contribution by omission. Error in the legal characterisation of the facts and how the significant contribution is determined. **15.2; 15.4; 15.5; 18.120]**

Consequence (impact/remedy): As a result of these errors, the Chamber wrongly held KHIEU Samphân liable for JCE because the conditions relating to the *actus reus* of this type of liability had not been met (para. 4306).

Section II. LA MENS REA: THE INTENT TO COMMIT A CONCERTED CRIME AT THE HEART OF THE COMMON PURPOSE

SUMMARY

Challenged finding: The intent to participate in the common purpose even though it is not criminal in itself and the intention to commit the crime is sufficient to characterise the *mens rea* of the JCE (paras 3712, 4279).

Error(s): Error of law in determining the *mens rea* of the JCE [**15.6; 18.189]**

Consequence (impact/remedy): The Chamber wrongly held KHIEU Samphân liable for the JCE without establishing his intention to contribute to committing the crimes. (para. 4306).

Chapter II. ERRORS COMMITTED TO CIRCUMVENT THE ACTUS REUS

Section I. CHRONOLOGICAL EVOLUTION OF THE JCE AND DEFINITION OF THE COMMON PURPOSE

Section II. ERRORS WITH RESPECT TO KHIEU SAMPHÂN'S CONTRIBUTION

I. GENERAL ERRORS

SUMMARY

Challenged finding: The significant contribution as a necessary element of the *actus reus* in order to qualify a JCE has been established insofar as KHIEU Samphân contributed significantly to the common purpose (para. 4256).

Error(s): Incorrect application of the law pertaining to the requirement of significant contribution and wrong assessment of the facts regarding KHIEU Samphân's role [**18.120 -18.121]**

Consequence (impact/remedy): The liability of the Appellant cannot be invoked (para. 4306).

II. ALLEGED SUPPORT

SUMMARY

Challenged finding: KHIEU Samphân not only adhered to the common purpose, but he publicly supported it throughout the DK. (para. 4261).

Error(s): The Chamber erred in its assessment of the evidence which allowed it to consider that KHIEU Samphân had supported the common purpose including involving the commission of crimes. [**18.122-18.144]**

Consequence (impact/remedy): The Appellant did not contribute or participate in the common purpose involving the commission of crimes. He therefore could not be held liable for JCE. (paras 4257-4308, 4306).

III. ALLEGED PROMOTION**SUMMARY**

Challenged finding: KHIEU Samphân not only adhered to the common purpose, but as a senior official he actively and energetically advocated, confirmed and defended it both domestically and internationally (paras 4262-4264).

Error(s): Poor assessment of the evidence [18.145; 18.146; 18.147; 18.148; 18.149; 18.150; 18.151].

Consequence (impact/remedy): All of these findings must be overturned and KHIEU Samphân acquitted (paras 4257-4308).

IV. ALLEGED ENCOURAGEMENT, INSTIGATION AND LEGITIMIZATION**SUMMARY**

Challenged finding: KHIEU Samphân adhered to the common purpose but also encouraged and instigated its implementation through various policies of the CPK, using his position as a senior leader to legitimize the common purpose (paras 4265-4270).

Error(s): Wrong assessment of the evidence and multiple errors of fact [18.152- 18.161].

Consequence (impact/remedy): The findings on KHIEU Samphân's contribution to the common purpose must be quashed (paras 4257-4308).

V. ALLEGED INSTRUCTIONS**SUMMARY**

Challenged finding: Not only did KHIEU Samphân adhere to the common purpose, [...] he also actively gave instructions regarding its implementation through various policies. (para. 4274).

Error(s): The Chamber relied heavily on Civil Parties who were not credible, such as EM Oeun, EK Hen, CHEA Deap, PREAP Chhon and by distorting the words of the witness BIT Na. By relying on the SWB and FBIS documents to attribute comments to KHIEU Samphân. By relying on NEOU Sarem's out-of-court written statement. [18.162-18.173]

Consequence (impact/remedy): KHIEU Samphân did not contribute to the common purpose involving the commission of crimes and could therefore not be held responsible for the crimes committed through JCE. (paras 4257-4308, 4306).

VI. ALLEGED FACILITATION AND SUPERVISION**SUMMARY**

Challenged finding: KHIEU Samphân adhered to the common purpose and facilitated and supervised its implementation through various policies that were enacted (paras 4275-4277).

Error(s): In order to say declare that the Appellant had facilitated and supervised the implementation of the common purpose, the Chamber relied on a poor assessment of the evidence and made multiple factual errors. [18.174-18.188]

Consequence (impact/remedy): The findings on KHIEU Samphân's contribution to the common purpose should be invalidated. (paras 4257-4308).

Chapter III. ERRORS COMMITTED WITH RESPECT TO THE *MENS REA*

Section I. GENERAL ERRORS WITH RESPECT TO THE ELEMENT OF INTENT

I. REMINDER OF ERRORS WITH RESPECT TO THE INTENT TO ADHERE TO A CRIMINAL COMMON PURPOSE

SUMMARY

Challenged finding: KHIEU Samphân intended to participate in a common purpose of a criminal nature (para. 4279).

Error(s): Incorrect application of the law [18.189-18.191]

Consequence (impact/remedy): KHIEU Samphân's responsibility for JCE cannot be upheld (para. 4306)

II. FLAWED REASONING TO PROVE CRIMINAL INTENT

SUMMARY

Challenged finding: KHIEU Samphân intended to commit the underlying crimes (4280 to 4307).

Error(s): Incorrect application of the law. [18.192]

Consequence (impact/remedy): KHIEU Samphân's responsibility for JCE cannot be upheld (para. 4306)

Section II. COOPERATIVES AND WORKSITES

SUMMARY

Challenged finding: KHIEU Samphân was motivated by the intent to commit the CAH of murder, enslavement, OIA/attacks against human dignity and enforced disappearances as well as persecution on political grounds committed at Tram Kok, 1st January Dam, Trapeang Thma Dam and the Kampong Chhnang Airfield (para. 4282).

Error(s): Misconstruction of the evidence and errors of law [18.192-18.203]

Consequence (impact/remedy): KHIEU Samphân did not intend to commit these crimes. He must be acquitted of the CAH of murder, enslavement, other inhumane acts (OIA)/attacks against human dignity, enforced disappearances and persecution on political grounds (para. 4306).

Section III. SECURITY CENTRES, EXECUTION SITES AND INTERNAL PURGES

SUMMARY

Challenged finding: KHIEU Samphân intended to commit the CAH of murder, extermination, enslavement, imprisonment, torture, persecution on political grounds and OIA through attacks against human dignity and facts described as enforced disappearances (para. 4287).

Error(s): The Chamber had no evidence of KHIEU Samphân's intent to commit crimes in the security centres of S-21, KTC, AuKg and PK. [18.204-18.220]

Consequence (impact/remedy): By reason of his participation in the JCE, KHIEU Samphân must be acquitted of the crimes committed at the security centres S-21, KTC, AuKg and PK. (para. 4306).

Section IV. SPECIFIC GROUPS

I. THE CHAM

SUMMARY

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Challenged finding: KHIEU Samphân was motivated by the requisite intent with respect to the alleged crimes against the Cham (4289).

Error(s): Misconstruction of the evidence and errors of law [18.192; 18.221-18.227].

Subsequent/related errors: [18.276; 18.281; 18.293; 18.296; 18.305; 18.307; 18.326]

Consequence (impact/remedy): KHIEU Samphân did not intend to commit these crimes. He must be acquitted of the CAH of murder, extermination, imprisonment, torture, persecution on political grounds, persecution on religious grounds, of other inhumane acts through forced transfers. (para. 4306)

II. THE VIETNAMESE

A. No intent to deport

SUMMARY

Challenged finding: Together with other participants in the JCE, KHIEU Samphân shared the intent to deport Vietnamese people to Vietnam (para. 4292).

Error(s): [18.229; 18.230]

Consequence (impact/remedy): Because of his participation in the JCE, KHIEU Samphân is not guilty of the CAH of deportation of the Vietnamese (paras 4292, 4306).

B. No intent to commit the crimes of murder and extermination

SUMMARY

Challenged finding: Together with other participants in the JCE, KHIEU Samphân shared the intent to kill Vietnamese in Cambodia on a large scale, from April 1977 to 6 January 1979 (para. 4293).

Error(s): [18.231; 18.232; 18.233]

Consequence (impact/remedy): Because of his participation in the JCE, KHIEU Samphân is not guilty of the CAH of murder and extermination of the Vietnamese (paras 4293, 4306).

C. No intent to commit the crimes of persecution on racial grounds

SUMMARY

Challenged finding: Together with other participants in the JCE, KHIEU Samphân shared the specific intent to discriminate against the Vietnamese on racial (para. 4293).

Error(s): xxx. [18.234; 18.235]

Consequence (impact/remedy): Because of his participation in the JCE, KHIEU Samphân is not guilty of the CAH of persecution on racial grounds through deliberate murder by means of large-scale killings of the Vietnamese (paras 4293, 4306).

D. No intent to commit the crime of genocide by murder

SUMMARY

Challenged finding: Together with other participants in the JCE, KHIEU Samphân shared “the genocidal intent to commit [...] the crime of genocide by murdering members of the Vietnamese racial, national and ethnic group. (para. 4294).

Error(s): xxx. [18.236; 18.237; 18.238]

Consequence (impact/remedy): KHIEU Samphân is not guilty of the CAH of genocide of the Vietnamese people (paras 4294, 4306).

E. No intent to commit grave breaches of the Geneva Conventions**SUMMARY**

Challenged finding: Together with other participants in the JCE, KHIEU Samphân shared the intent to commit grave breaches of the Geneva Conventions against Vietnamese prisoners who were detained at S-21. (para. XXX).

Error(s): xxx. [18.239 -18.241]

Consequence (impact/remedy): KHIEU Samphân is not guilty of grave breaches of the Geneva Conventions against the Vietnamese in S-21 (paras 4295, 4306).

III. BUDDHISTS**SUMMARY**

Challenged finding: KHIEU Samphân was motivated by the requisite intent to commit the crime of persecution on religious grounds against Buddhists and Buddhist monks (paras 4297, 4298).

Error(s): Errors of law, lack of reasons, misconstruction of the evidence [18.242-18.248].

Consequence (impact/remedy): KHIEU Samphân did not intend to commit these crimes. He must be acquitted of the CAH of persecution on religious grounds against Buddhists and Buddhist monks (para. 4306)

IV. Ex-RK**SUMMARY**

Challenged finding: KHIEU Samphân was motivated by the requisite intent to commit the crime of persecution on political grounds against former Khmer Republic soldiers at TK, 1st January Dam, S-21 and KTC and the crime of murder committed against the former Khmer Republic soldiers between 20 April 1975 and the end of May 1975 and against between October 1975 and the end of the DK at S-21 and KTC (paras 4299-4302).

Error(s): Misconstruction of the evidence and legal errors [18.249-18.258]

Consequence (impact/remedy): KHIEU Samphân did not intend to commit these two crimes. He must be acquitted of the crime of persecution on political grounds against the former Khmer Republic soldiers at TK, B1J, S-21 and KTC and the crime of murder against the former Khmer Republic soldiers between 20 April 1975 and the end of May 1975 and against between October 1975 and the end of the DK at S-21 and KTC (para. 4306)

Section V. MARRIAGES**SUMMARY**

Challenged finding: The CAH of other inhumane acts in the form of forced marriage and rape on the context of forced marriage have been established and were the result of a policy of founding families that was part of the CPK's common purpose. (paras 4303-4305).

Error(s): Distortion and misinterpretation of the evidence, failure to state reasons for rejecting the exculpatory and/or conflicting evidence, bias of the Chamber [18.259-18.264]

Consequence (impact/remedy): The Chamber used this erroneous finding to find KHIEU Samphân guilty of CAH of OIA in the form of forced marriages and rape in the context of forced marriages through JCE.

All such findings must be overturned (paras 4303-4306).

Title V. ERRORS WITH RESPECT TO AIDING AND ABETTING

Chapter I. AIDING AND ABETTING IN LAW

SUMMARY

Challenged finding: The *mens rea* of aiding and abetting is established when the accused “acts with the knowledge that the crime is likely to be committed”. (para. 3722).

Error(s): Incorrect definition of the law [15.8; 18.344; 18.353-18.354]

Subsequent/related errors: [18.357-18.364; 18.367]

Consequence (impact/remedy): KHIEU Samphân could not incur responsibility for aiding and abetting *dolus eventualis* murders at TK, 1st January Dam, AKC, S-21, KTC and PK (paras 4318, 4328).

Chapter II. ERRORS COMMITTED WITH RESPECT TO THE *ACTUS REUS*

I. LACK OF THE *ACTUS REUS* REQUIRED FOR THE *DOLUS EVENTUALIS* MURDERS AT TK, 1ST JANUARY DAM, AT THE TRAPEANG THMA DAM AND AT THE KAMPANG CHHNANG AIRFIELD

SUMMARY

Challenged finding: The *actus reus* of the mode of liability of aiding and abetting in alleged *dolus eventualis* murders at TK, 1st January Dam, Trapeang Thma Dam, and at the Kampang Chhnang Airfield is established (paras 4313-4315).

Error(s): No reasoning, incorrect application of the law and misconstruction of the evidence. [18.337-18.340; 18.342-345] - **Subsequent/related errors:** [18.347; 18.358-18.361]

Consequence (impact/remedy): The Appellant could not incur responsibility for aiding and abetting alleged *dolus eventualis* murders at TK, 1st January Dam, Trapeang Thma Dam, and at the Kampang Chhnang Airfield (paras 4315, 4318, 4328).

II. LACK OF THE REQUIRED *ACTUS REUS* FOR THE *DOLUS EVENTUALIS* MURDERS AT S-21, KTC AND PK

SUMMARY

Challenged finding: The *actus reus* of the mode of liability of aiding and abetting in alleged *dolus eventualis* murders at S-21, KTC and PK is established (paras 4316, 4317).

Error(s): No reasoning, incorrect application of the law and misconstruction of the evidence. [18.349-18.351; 18.355-18.355] - **Subsequent/related errors:** [18.357; 18.362-18.364]

Consequence (impact/remedy): The Appellant could not incur responsibility for aiding and abetting alleged *dolus eventualis* murders at S-21, KTC and PK (paras 4317, 4318, 4328).

Chapter III. ERRORS COMMITTED WITH RESPECT TO THE *MENS REA*

I. LACK OF *MENS REA* FOR *DOLUS EVENTUALIS* MURDERS AT TK, 1ST JANUARY DAM, TRAPEANG THMA DAM, AND AT THE KAMPANG CHHNANG AIRFIELD

SUMMARY

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Challenged finding: The *mens rea* of the mode of liability of aiding and abetting in alleged *dolus eventualis* murders at TK, 1st January Dam, Trapeang Thma Dam, and at the Kampang Chhnang Airfield is established (paras 4314-4315).

Error(s): No reasoning, incorrect application of the law and misconstruction of the evidence. [18.341; 18.344; 18.346] - **Subsequent/related errors:** [18.358-18.361]

Consequence (impact/remedy): The Appellant could not incur responsibility for aiding and abetting alleged *dolus eventualis* murders at TK, 1st January Dam, Trapeang Thma Dam, and at the Kampang Chhnang Airfield (paras 4318, 4328).

II. LACK OF MENS REA FOR DOLUS EVENTUALIS MURDERS AT S-21, KTC AND PK

SUMMARY

Challenged finding: The *mens rea* of the mode of liability of aiding and abetting in alleged *dolus eventualis* murders at S-21, KTC and PK is established (paras 4316-4317).

Error(s): No reasoning, incorrect application of the law and misconstruction of the evidence. [18.348; 18.352-18.354] **Subsequent/related errors:** [18.357; 18.362-18.364; 18.367]

Consequence (impact/remedy): The Appellant could not incur responsibility for aiding and abetting *dolus eventualis* murders at S-21, KTC and PK (paras 4318, 4328).

SUMMARY

Challenged general finding: KHIEU Samphân committed all the crimes that are the subject of Case No. 002/02 through his contribution to a JCE or by aiding and abetting. (paras 4326-4329)

Error(s): Accumulation of legal and factual errors, bias. [18.365-18367]

Consequence (impact/remedy): Invalidation of all convictions and sentences handed down against KHIEU Samphân. (paras 4326-4329, 4341)

SUMMARY

Challenged finding: KHIEU Samphân is guilty of the crime of extermination at PK. (para. 4306, paras 4316-4318, 4337, 4341)

Error(s): Contradiction of reasons with the finding in para. 3118 according to which the crime of extermination has not been established [18.279, 19.1]

Consequence (impact/remedy): Invalidation of the conviction for extermination and the aggregation of liability for the CAH of murder and extermination at PK (paras 4337, 4341)

IN THE FURTHER ALTERNATIVE

I. DEMONSTRATION OF BIAS ON THE OBJECTIVES OF SENTENCING

SUMMARY

Challenged finding: The Chamber passed a sentence above all to demonstrate to others that the law was being applied (para. 4348).

Error(s): The Chamber committed a factual error by specifying the length of the sentence to be served in violation of the objectives and guiding principles in the sentence. [20.2; 20.11]

Consequence (impact/remedy): The length of KHIEU Samphân's punishment must be reduced (paras 4400, 4402).

II. ERRORS WITH RESPECT TO THE GRAVITY OF THE CRIMES COMMITTED

SUMMARY

Challenged finding: The Chamber based its findings on the rape of prisoners and described KHIEU Samphân's role as broad and decisive in determining the gravity of the crimes that he is alleged to have committed (paras 4361-4376, 4382-4385).

Error(s): The Chamber committed a legal and factual error by establishing the serious nature of the crime based on facts of which it was never seised. The Chamber also committed legal and factual errors by failing to consider the nature and the extent of KHIEU Samphân participation in the crimes. [20.6; 20.7; 20.11]

Consequence (impact/remedy): The serious nature of the crimes must be re-evaluated, and the sentence against KHIEU Samphân reduced accordingly (paras 4361-4376, 4400, 4402).

III. ERRORS WITH RESPECT TO AGGRAVATING CIRCUMSTANCES

SUMMARY

Challenged finding: The Chamber considered that the abuse of KHIEU Samphân's position of authority and influence as well as his high level of education constituted aggravating circumstances (paras 4350, 4351; 4389, 4390).

Error(s): The Chamber committed legal errors by counting the same factor twice. It also committed legal and factual errors by considering an irrelevant factor as an aggravating circumstance. [20.3; 20.8; 20.11]

Consequence (impact/remedy): The aggravating circumstances that were retained by the Chamber must be dismissed and KHIEU Samphân's sentence must be reduced accordingly (paras 4386, 4389, 4390, 4400, 4402).

IV. ERRORS WITH RESPECT TO MITIGATING CIRCUMSTANCES

SUMMARY

Challenged finding: The Chamber found that none of the mitigating circumstances were applicable to KHIEU Samphân (paras 4350, 4352-4354, 4391, 4396-4398).

Error(s): The Chamber committed legal and factual errors by failing to consider relevant mitigating circumstances. [20.1; 20.4; 20.9; 20.11]

Consequence (impact/remedy): The mitigating circumstances set aside by the Chamber must be upheld and the sentence against KHIEU Samphân must be reduced accordingly (paras 4398, 4400, 4402).

A. Error with respect to KHIEU Samphân's cooperation with the ECCC

B. Errors with respect to taking into account the age and the health of the Appellant

C. Error with respect to his good character

SUMMARY

Challenged finding: The Chamber did not hear any character witnesses for KHIEU Samphân (para. 4399).

Error(s): The Chamber committed legal and factual errors by omitting the character witnesses heard in Case No 002/01 without reconsidering their weight. [20.10; 20.11]

Consequence (impact/remedy): KHIEU Samphân's good character must be taken into consideration as a mitigating factor and his sentence reduced accordingly (paras 4399, 4400, 4402).