

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

FILING DETAILS

Case No: 002/19-09-2007/ECCC/OCIJ
Party Filing: Co-Lawyers for Civil Parties
Filed to: Office of Co-Investigating Judges
Original Language: English
Date of Document: 3 December 2009
Total number of pages: 49 pages (excluding Cover Pages)

CLASSIFICATION

Suggested Document Classification: Confidential
Classification by OCIJ: សាធារណៈ / Public
Classification Status:
Records Officer:
Signature:

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de réception): 04 12 2009	
ម៉ោង (Time/Heure): 10 : 50	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SAMN RADA	

**CIVIL PARTIES' REQUEST FOR SUPPLEMENTARY INVESTIGATIONS REGARDING
GENOCIDE OF THE KHMER KROM & THE VIETNAMESE**

Filed by:

Co-Lawyers for Civil Parties:
Mr. NY Chandy
Mr. Mahdev MOHAN
Ms. Lyma NGUYEN

Distributed to:

Co-Investigating Judges:
Judge YOU Bun Leng
Judge Marcel LEMONDE

Co-Lawyers' Associates:

Prof. Laurel FLETCHER
Mr. Bradley KRACK
Mr. Jeffrey BAE

Copied to:

Charged Persons:
Mr. NUON Chea
Mr. IENG Sary
Ms. IENG Thirith
Mr. KHIEU Sampan
Mr. KANG Guek Eav alias DUCH

Joined by:

Co-Lawyers for Civil Parties:
Mr. HONG Kimsoun
Mr. KONG Pisey
Mr. David BLACKMAN
Ms. Silke STUDZINSKY

Counsel for Charged Persons:

Mr. SON Arun
Mr. Michael PESTMAN
Mr. Victor KOPPE
Mr. ANG Udom
Mr. Michael G. KARNAVAS
Mr. PHAT Pouv Seang
Ms. Dianna ELLIS
Dr. SA Sovan
Mr. Jacques VERGES

ឯកសារច្បាប់សម្រាប់ប្រើប្រាស់តាមច្បាប់ដើម	
CERTIFIED COPY/COPIE CERTIFIÉE CONFORME	
ថ្ងៃ ខែ ឆ្នាំ ធ្វើការបញ្ជាក់ (Certified Date/Date de certification): 22 12 2009	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: Ratanak	

no/n: D250/3

Co-Prosecutors:

Ms. CHEA Leang

Mr. William SMITH

Trial Chamber:

Judge NIL Nonn

Judge Sylvia CARTWRIGHT

Judge YA Sokhan

Judge Jean-Marc LAVERGNE

Judge THOU Mony

I. INTRODUCTION

1. Pursuant to ECCC Internal Rule 55(10), we submit this Request for Supplementary Investigation (“Request”) on behalf of our Khmer Krom and Vietnamese clients, which will be crucial to support the ongoing investigation concerning Case No. 002/19-09-2007/ECCC/OCIJ (Case 002), relating to the Charged Persons NUON Chea, IENG Sary, IENG Thirith, KHIEU Sampan and KANG Guek Eav alias DUCH. This Request aims to (1) draw the Co-Investigating Judges’ attention to new evidence establishing the crimes of genocide and crimes against humanity committed against the Khmer Krom minority group in Pursat and Takeo Provinces during the Democratic Kampuchea (“DK”) period; and (2) supplement the Co-Prosecutors’ Introductory Submission (“IS”) with evidence that the territorial sweep of the genocide and crimes against humanity committed against the ethnic Vietnamese minority group extended to Kampong Chhnang Province during the same period. These crimes are described in paragraphs 19-39 and 41-63 of this Request and fall within the jurisdiction of the ECCC, being punishable under Articles 4, 5, 29(new) and 39(new) of the ECCC law. We ask that these crimes become part Case 002 and, if appropriate, other Cases which are currently being investigated by the Co-Investigating Judges and/or the Co-Prosecutors.
2. This Request is based on the new evidence of our Khmer Krom and Vietnamese clients – both Civil Parties and Civil Party Applicants – whose Victim Information Forms and relevant supporting documents has been furnished to the Victim’s Unit, for the consideration and acceptance of the Co-Investigating Judges. Additionally, this Request sets out our fresh investigative field research conducted with the expert assistance of the Khmer Krom Human Rights Association (“KKKHRA”)¹. In order to ensure that the identity of our clients and other persons interviewed remains confidential in the meantime, we refer to our clients and interviewees by pseudonyms in this Request. A table identifying the persons who correspond to such pseudonyms as well as a consolidated 100-page report of the interviews and audio-visual recordings conducted in Pursat, Takeo and Kampong Chhnang provinces can be made

available to the Co-Investigating Judges at their request. This Request also benefits from the legal research and secondary data analysis of the International Human Rights Law Clinic, University of California, Berkeley, School of Law.² This secondary data is set out in the accompanying List & Bundle of Authorities (**Annex I**), as specified in Article 6 of the relevant Practice Direction (Practice Direction ECCC/01/2007/Rev.4).

3. The new evidence that follows must be understood in the context of the Communist Party of Kampuchea's ("CPK") visceral animosity towards, deep suspicion of and subsequent policy of persecution and genocide against the country's ethnic Vietnamese population and the Khmer Kampuchea Krom population. The Khmer Krom originated from Kampuchea Krom (or southern Vietnam) and were perceived by the CPK to be nationally and/or ethnically linked to the Vietnamese, regardless of the fact that their Khmer ancestry dates back to the first century Norkor Kok Thlork Empire.
4. Similarly, this new evidence must also be understood in the context of the persistent geo-political tensions and armed conflicts waged by/between the KR regime and/against their Vietnamese counterparts since the beginning of the DK period, escalated from 1976 and lasted until the fall of the Khmer Rouge. These tensions/conflicts shaped the KR's genocidal policy against the ethnic Vietnamese and Khmer Krom minority groups. The escalation of the Vietnam War during the 1960s had forced Vietnamese communist forces to seek refuge in "neutral" Cambodia,³ promoting anti-Vietnamese sentiments among Cambodians.⁴ After Field Marshall Lon Nol overthrew Prince Norodom Sihanouk's government in 1970, the new regime targeted ethnic Vietnamese and the Khmer Krom in a policy of "open persecution."⁵ Thousands lost their lives and approximately 250,000 ethnic Vietnamese fled to the Republic of Vietnam.⁶ Even after KR forces toppled the Lon Nol regime, a similar policy was adopted towards these minority groups. Early on, in 1973, CPK documents in the Southwest Zone (commonly considered Pol Pot's

stronghold) referred to the Vietnamese and those associated with them as the “hereditary enemy.”⁷

5. Upon assuming power on 17 April 1975, the CPK continued Lon Nol’s policy of persecution and expelled an additional 170,000 ethnic Vietnamese from Cambodia.⁸ As political/armed tensions and conflicts with Vietnam intensified in 1976, the CPK purged and replaced ethnic Vietnamese and Khmer Krom Commune and District cadres in heartland Vietnamese or Khmer Krom Communes. In April 1975, the CPK Party Centre issued a directive that instructed District level KR officials to arrest and detain all ethnic Vietnamese and Khmers who spoke Vietnamese or were associated with the Vietnamese – they were then turned over to KR security forces, and the majority of them were systematically killed.⁹ Alluding to the Jewish Holocaust, journalist Nayan Chanda has called this official decree by the CPK their “final solution” to what they perceived as the threat of *Youn* (Vietnamese) infiltration and attack.¹⁰

6. It is estimated that the KR eliminated about 40% of the ethnic and/or religious Lao, Thai, and Cham populations in Cambodia. While obviously a staggering loss of life amongst these minorities, this death toll is not proportionately comparable to the destruction of the ethnic Vietnamese and the Khmer Krom during the DK period. Of the over 400,000 ethnic Vietnamese residents in Cambodia in 1970, only 30,000 remained during the DK period, of whom almost all were exterminated.¹¹ An estimated 125,000 Khmer Krom were massacred during the same period, which is considered to be a majority proportion of their population in Cambodia.¹² Our client [REDACTED] states that more than 80% of the Khmer Krom residents in [REDACTED] [REDACTED] – once Khmer Krom heartland communes in Bakan District (Pursat Province) – were singled out and exterminated.

7. We incorporate by reference the IS of the Co-Prosecutors. As set forth in that document, the CPK implemented a policy to physically eliminate the entire Vietnamese population of Prey Veng Province through execution.¹³ Yet, with respect, the IS captures neither the extent of the crimes committed against the ethnic Vietnamese, nor any of the crimes committed against the Khmer Krom minority on the basis of their actual or perceived national and/or ethnic affiliation to the Vietnamese.

8. Our Request seeks to fill these *lacunae*. We wish to emphasize that the CPK's policy of genocide and persecution against minority groups resident in Cambodia included the Khmer Krom, who were gathered, relocated, and taken to security centers and execution sites to be killed as part of a pattern of conduct and in a concerted effort to physically eliminate all the Khmer Krom in their home villages, especially in the Eastern Zone (Svay Rieng Province), North-western Zone (Pursat Province) and the South-western Zone (Takeo Province), and even Kampuchea Krom or southern Vietnam. The occurrence of such crimes in multiple Zones evidences that these activities were widespread, systematic, planned, coordinated and/or specifically intended by the senior leaders of the CPK to destroy the Khmer Krom. Further, the policy of genocide and persecution of the ethnic Vietnamese was not limited to the Eastern Zone (Prey Veng Province), but extended to the Western Zone (Kampong Chhnang Province) where the ethnic Vietnamese were, *inter alia*, forcibly relocated, prevented from reproducing, forced into mixed marriages, enslaved and bartered for rice and salt, and executed as part of a similar pattern of conduct and in a concerted effort to physically eliminate all the Vietnamese. It is critically important to our clients, the historical/legal record, and the ECCC's legacy that the Co-Investigating Judges acknowledge that these crimes occurred, investigate the animus, nature and scope of these crimes, and include them in the charges to be preferred against the Charged Persons.

II. CASE CONCERNING THE KHMER KROM MINORITY

A. “Khmer Bodies with Vietnamese Minds” - The Khmer Krom As a Protected Minority Group

9. For the purposes of Article 4 of the ECCC Law, the Khmer Krom were part of the Vietnamese “national group” because they belonged, or were perceived by the KR as belonging to, the Vietnamese national group, and/or had, or were perceived by the KR as having, a distinctive Vietnamese heritage and identity in terms of nationality and/or common national origin. Alternatively, the Khmer Krom were a separate and distinct “ethnic group” and/or were perceived as such by the KR. Further, the Khmer Krom minority were a “stable and permanent group”, which the drafters of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) intended to protect from genocide, as can be seen by the Convention’s *travaux préparatoires*.¹⁴

i. The Khmer Krom as Part of the Vietnamese National Group

Objective Evidence

10. The objective standard used to determine whether or not a particular entity constitutes a “national group” for the purposes of genocide or persecution is the group’s “distinctive identity in terms of nationality or of national origin.”¹⁵ Applying this standard, the Khmer Krom, or the lowland Khmer,¹⁶ qualified as a “national group” during the DK period because their distinctive identity was derived from their common national origin: Kampuchea-Krom, a geographical area of 68,965 square kilometers spread across mainland and islands located near the lower Mekong River Delta, which has been part of the defined territory of the sovereign state of Vietnam since 1949.¹⁷

Subjective Evidence

11. Further, in *Prosecutor v. Jeslić*, the ICTY Trial Chamber noted that it was “appropriate to evaluate the status of a national, ethnical or racial group from *the*

point of view of those persons who wish to single that group out from the rest of the community."¹⁸ Affirming this point, the ICTR Trial Chamber in *Prosecutor v. Bagilishema* held that, "if a victim was *perceived by a perpetrator* as belonging to a protected group, the victim could be considered by the Chamber as a member of the protected group, for the purposes of genocide"¹⁹ Based on the evidence to follow, we submit that the KR perceived the Khmer Krom as members of the Vietnamese national group and therefore part of a "Vietnamese network of traitors" that had to be eliminated.²⁰

12. Although the CPK's irredentist desires to "liberate Kampuchea-Krom" from the "Vietnamese aggressor," are well documented,²¹ it is critical to note that the CPK desired only to reclaim Krom *territory*; they did not seek to incorporate the Krom *people* into the new state.²² To KR officials and cadres, the Khmer Krom were Vietnamese.²³ The KR also described them as having "Khmer bodies but Vietnamese minds"²⁴ or branded the Khmer Krom as agents and spies of the *Yuon*, a label given to the Vietnamese national group.²⁵ In the eyes of the KR, the Khmer Krom minority were perfect spies for Vietnam: they were Vietnamese nationals who used their Khmer ancestry to cross from southern Vietnam into Cambodia, infiltrate and blend with the majority central Khmer population in Cambodia, and "eavesdrop" for Vietnam.²⁶ Legal scholar John Ciorciari describes the KR's perception of the Khmer Krom as follows:

Kampuchea-Krom featured centrally in Khmer Rouge thinking. It represented a "lost province" and reminder of the historical humiliation that Cambodians had suffered during centuries of Siamese and Vietnamese expansion and subsequent imperial rule. *[It] was also a major source of perceived threat to the paranoid KR regime. Given their ability to blend into Cambodian society, Khmer Krom were considered as potentially ideal agents for Vietnamese interference.*²⁷

ii. The Khmer Krom As An Ethnic Group

Objective Evidence

13. The Khmer Krom minority also constituted a separate and distinct "ethnic group" under Article 4 of the ECCC law because they shared a "common language and

culture”, which the ICTR Trial Chamber in *Prosecutor v. Kayishema* determined to be a defining trait of an “ethnic group” in the context of the legal meaning of genocide.²⁸ During the DK period, the minority Khmer Krom resident in Cambodia, unlike the majority central Khmer, shared the following communal characteristics and practices which evidenced a common language and culture indicative of a separate and distinct Khmer Kampuchea Krom ethnic group (“Markers of Khmer Krom Identity”):

- a. The Khmer Krom were effectively bilingual and spoke the Vietnamese language in addition to the Khmer language.²⁹ While Khmer was their mother tongue, Vietnamese was their state or national language.³⁰
- b. Even when the Khmer Krom spoke in Khmer, they tended to use Vietnamese words that became part of Khmer Krom everyday parlance. For instance, the central Khmer used the words *khreh* to refer to bed and *kahyo* to refer to glass, while the Khmer Krom used the Vietnamese words *yuun* and *lee* to refer to the same.³¹
- c. The Khmer Krom also shared linguistic commonalities in the way they spoke Khmer. The particular *patois*, or dialect, of Khmer that the Khmer Krom spoke – and the accent and inflections with which they spoke it – were markedly different from that of the central Khmer.³² Khmer Krom living on the east of the Bassak River in [REDACTED] and Preah Trapeang Provinces, for example, spoke with a heavy Vietnamese accent.³³ Khmer Krom to the west of the Bassak in [REDACTED] and [REDACTED] spoke with a lighter Vietnamese accent.³⁴ Khmer Krom in [REDACTED] in [REDACTED] Province spoke in a light musical or sing-song voice.³⁵

Case No.: 002/19-09-2007/ECCC/OCIJ

- d. The Khmer Krom dressed in traditional clothing that was different from that of the central Khmer. Khmer Krom women commonly wore *khmat preah*, or baggy trousers and long skirts, while the central Khmer primarily wore sarongs.³⁶ Khmer Krom men and women also wore the *k'bun* as part of their dress, which is a harness that is slung across the back in order to carry a heavy load or a baby. The central Khmer did not use this device.³⁷
- e. The Khmer Krom shared common last names that were unique to their ethnic minority group and alluded to their places of origin in Kampuchea Krom/southern Vietnam. Examples of common family names included:
[REDACTED]
[REDACTED]
[REDACTED]³⁸
- f. The Khmer Krom hoisted two *Tong Puleung* or white flags with symbols of the crocodile or *Krapeuh* at the entrances of and within the walls of their houses and pagodas to symbolize their Khmer Kampuchea Krom “soul”, which is believed to have descended from the mythical crocodile. The central Khmer hoisted such flags only at funerals, whereas the Khmer Krom did so for all occasions.³⁹
- g. The front gates of most Khmer Krom pagodas always depicted *Reehu Chap Chan* or the protective symbol of the ancient Hindu/ Buddhist god “Rahu” swallowing the moon, which is similar to an image of a snake swallowing its tail. Viewing themselves as the moon and the central Khmer as Rahu, the Khmer Krom interpreted this to suggest that if they met, these separate yet ancestrally linked communities would embrace and complete each other.⁴⁰

- h. The Khmer Krom identified themselves as a minority ethnic group by living together in concentrated clusters before the CPK forcibly relocated them to KR-controlled communes.⁴¹ For example, between 1927 and 1941, a group of Khmer Krom from Kampuchea Krom migrated to Bakan District of Pursat Province to build homes and set up farms (see paragraph 19 below).⁴² Upon finding fertile land, more ethnic Khmer Krom minority group families moved into the area and formed a Khmer Krom village.⁴³ Khmer Krom villages were always identifiable by the makeshift bamboo fences that surrounded them – a practice that the central Khmer did not share.⁴⁴

Subjective Evidence

14. In any event, the Khmer Krom identified themselves as a separate and distinct ethnic group for the reasons set out above in paragraph 13 and were perceived as such by the KR who used these Markers of Khmer Krom Identity to identify and, *inter alia*, segregate, persecute, execute and destroy the Khmer Krom (see paragraphs 19-39 below).
15. The KR's genocidal policy towards the Khmer Krom was motivated, in part, by what they perceived as the Khmer Krom's allegiance to the Vietnamese national group (regardless of their Khmer ancestry), but it is also attributable to the emergent ethnic activism amongst some quarters of the Khmer Krom minority that the KR sought to crush.
16. During the DK period, some Khmer Krom banded together and engendered a sense of Khmer Krom ethnic solidarity by forming separatist movements located within or aligned with Vietnam that were purportedly dedicated to liberating Cambodia from KR rule and re-uniting it with their homeland, Kampuchea Krom. Some ethnic Khmer Krom associated with the anti-communist Khmer Serei (Free Khmer) opposition militia led by Khmer Krom revolutionary and (briefly) former Cambodian

Prime Minister during the Lon Nol regime, Son Ngoc Thanh. Others associated with the US-backed *Front de Lutte des Khmers du Kampuchea Krom* militia or Khmer Kampuchea-Krom Liberation Army (KKKLA), more commonly known as the 'White Scarves'. Led by Khmer Krom monk Samouk Sen but financed and trained by the CIA's elite Mobile Strike Force Command, or MIKE Force (see paragraph 17 below).⁴⁵ Although these movements primarily were political entities, their call for Khmer Krom solidarity constituted assertions of ethnic identity manifested through political rebellion. Through these oppositional militias, many ethnic Khmer Krom minority members sought to reclaim their homeland of Kampuchea-Krom from the KR.⁴⁶

17. To the CPK, these militia groups were a threat to its authority and had to be ferreted out and systematically eliminated (see paragraphs 19-39 below). In 1976, for instance, our client [REDACTED] witnessed 67 heavily armed Khmer Krom 'White Scarves' arrive in [REDACTED] Takeo Province. The White Scarves sought an audience with DK President and Charged Person KHIEU Samphan to discuss what they believed to be a common cause – the return of Kampuchea Krom to Cambodia/Democratic Kampuchea. Despite persuading the White Scarves to lay down their arms and load up into trucks on the pretext that they would be granted their request to meet KHIEU, Takeo District KR officials sent the leader of the White Scarves mission to S-21 and the rest to Kiri Vong District Security Centre, named Wat Preatheath Prison, to be interrogated and executed. According to our client [REDACTED], only three of these White Scarves survived. Commenting on this documented incident, historian Ben Kiernan writes:

"The fate of the sixty-eight White Scarves showed the colors of the Pol Pot regime. Its two major enemies, US imperialism and Vietnam, were embodied in this pathetic group. *Born in Vietnam, the country of the 'hereditary enemy', they wore long hair in the "imperialist fashion".* Despite their (White Scarves') ethnicity and their new racially driven embrace of Democratic Kampuchea, the regime considered [the White Scarves] dangerous. *They were 'Khmer bodies with Vietnamese minds'.* This slogan, which was to echo throughout the DK experience, suggests the readiness of the Pol Pot regime to suppress not only the

ethnic minorities like the Cham, but also huge numbers of the Khmer majority. *This readiness was justified on racial grounds that they were not really Khmer, evidently because their minds could not be controlled. Racial ideology expressed political suspicion.*⁴⁷

iii. The Khmer Krom as A Stable and Permanent Group

18. For the reasons stated above, the Khmer Krom also qualified as a protected “stable and permanent group”, consistent with a proper reading of the *travaux préparatoires* of the Genocide Convention.⁴⁸ In *Prosecutor vs. Akayesu*, the ICTR identified “stable” groups as those that were “constituted in a permanent fashion and membership of which is determined by birth, with the exclusion of the more ‘mobile’ groups which one joins through individual voluntary commitment, such as political and economic groups.”⁴⁹ The criterion used by the court is that “membership in such groups would seem to be normally not challengeable by its members, who belong to it *automatically, by birth, in a continuous and often irremediable manner.*”⁵⁰ The Khmer Krom’s common national origin, long history, language, culture and traditions support their status as a “stable and permanent” group that enjoys protection under the Genocide Convention.

B. “Purge All the Agents of the *Youn*” - Policy of Persecution, Forcible Transfer and Imposing Measures to Prevent Births

19. Within Pursat Province, [REDACTED] in Bakan District (which the Khmer Krom called [REDACTED]) became a focal point for the Khmer Krom.⁵¹ When our clients and others came to live in [REDACTED] and its communes in Bakan District in the 1920s, there were only 10 Khmer Krom families there.⁵² By the early 1970s, however, the Khmer Krom settlement in [REDACTED] alone had increased to 150 families.⁵³ Peaceful and voluntary resettlement of the Khmer Krom from Vietnam to Cambodia ceased during the DK Period.⁵⁴ Today, however, only 30 families remain in [REDACTED].⁵⁵ The Khmer Krom communities in Cambodia were subjected to persecution and targeted by the CPK from the moment the KR took control of their areas. On orders from CPK leadership,

District KR chiefs at communal meetings of Khmer Krom residents in Pursat and Takeo Provinces declared that KR cadres must purge all the agents of the *Youn* (elaborated on below). All Khmer Krom minority group members, whether civilians or members of an opposition/separatist movement, faced persecution even if they did not have any actual ties to Vietnam. The CPK's orders – and the zeal with which they were implemented – are well corroborated not only by our clients, but also by former Khmer Rouge cadres we have interviewed in Pursat province (see paragraph 2 above).

20. For the reasons stated above, the CPK senior leadership ordered Provincial, District, Cooperative and Unit KR chiefs and officers in areas of principal concentration of the Khmer Krom, such as Svay Rieng, Pursat and Takeo Provinces to identify and eliminate members of the Khmer Krom minority group due to their perceived affiliation with “Vietnamese networks.”⁵⁶ Several of our Khmer Krom male clients in these Communes were often separated from the women and children, and moved to different areas as part of mobile work brigades. Khmer Krom women, such as the wife of our central Khmer client [REDACTED], were separated from their husbands and children for being “bad seeds within the commune” or for having “Khmer bodies with Vietnamese minds”. KR cadres persecuted the Khmer Krom residing in Cambodia (and Kampuchea Krom) by subjecting them to a policy of persecution – screening, separation or abduction and forced relocation – amounting to crimes against humanity. As we shall demonstrate below, this policy ultimately led to genocide through imprisonment, measures intended to prevent births, mass execution, and other conditions of life calculated to bring about its physical destruction in whole or in part.

Svay Rieng Province (Eastern Zone)

21. Beginning in 1977, the KR forcibly relocated many Khmer Krom from Svay Rieng Province to the North-Western Zone (Pursat Province) and Southwestern Zone (Takeo Province), as the KR feared that the ethnic Khmer Krom would defect and join a Vietnamese invasion.⁵⁷ Once the Khmer Krom arrived in Pursat and Takeo

Provinces, they were segregated from the central Khmers, persecuted for being perceived to be ethnically Vietnamese or agents of Vietnam, and imprisoned and/or executed.⁵⁸

22. Client [REDACTED] states that the KR cadres even coined a slogan around this policy of persecution: i.e., it was “better to eat mango than tamarind”.⁵⁹ Mango is “Svay” and was meant to represent people from Svay Rieng (the Eastern Zone) and tamarind is “Ampel”, which sounds like *Dop Pram Pii Ampel*, which meant 17th April and was meant to represent the 17th April people (the New People). In other words, the slogan was intended to mean that the Khmer Krom people who inhabited the Eastern Zone were perceived as a grave threat and should be killed first, even before the KR moved on to one of its chief goals - ‘re-educating’ the central Khmer city-folk and the intelligentsia.

Pursat Province (Northwestern Zone)

23. In 1976 and 1977, KR commune and village chiefs began recording the national identity of civilian [REDACTED] by asking the head of the household if the family was central Khmer or Khmer Krom.⁶⁰ [REDACTED] of Bakan District was told that the purpose of these questions was to “send the Khmer Krom away and separate them from the rest of the villagers.”⁶¹ The KR asked these questions frequently and compared the results for consistency in order to be certain that they were targeting the Khmer Krom.⁶²
24. For example, in 1977, the KR convened a meeting in [REDACTED] [REDACTED] to instruct leaders of the Bakan District to compile the personal histories of people living in the village to determine which of them were members of the ethnic Khmer Krom minority group, and as such, suspected supporters of opposition/separatist groups.⁶³ As a pretext, the KR stated that Angkar would separate the different ethnic groups and reward the groups that produced rice most quickly in order to identify and separate the Khmer Krom.⁶⁴ The KR cadres added

that the Khmer Krom had nothing to fear in being identified and coming forward as they would simply be made to farm in the service of Angkar – i.e., “pick corn and dig potatoes.”⁶⁵

25. Later in 1977 and 1978, the KR used the results from the surveys they had conducted in order to identify Khmer Krom minority group members and forcibly separate them from the rest of the central Khmer population.⁶⁶ Khmer Krom residents of [REDACTED] – once Khmer Krom heartland communes in Bakan District, Pursat Province – were gathered and taken to security centers or holding areas in [REDACTED] (see paragraphs 30-36 below) to be killed as a pattern of conduct and in a concerted effort to physically eliminate all the Khmer Krom in those areas. This forced relocation was meant specifically for the Khmer Krom; their Khmer spouses were neither required nor desired to accompany them in transit.⁶⁷ ‘Hybrid’ children from mixed Khmer Krom and Khmer marriages were forced to select which parent that they would stay with after separation and if they followed their Khmer Krom parent, they were killed.⁶⁸ According to our clients, the KR isolated members of the Khmer Krom minority group from different communes of Bakan District in order to “purge all the agents of the *Youn*.”⁶⁹

Kampuchea Krom (southern Vietnam) & Takeo Province (South Western Zone)

26. Between 1975 to 1977, the KR conducted a similar census in Takeo Province to identify all Khmer Krom for the purposes the CPK policy of persecution through separation and relocation.⁷⁰ In November 1975, our client [REDACTED] states that heard on the Khmer Rouge radio station an announcement of a new policy toward the ethnic Vietnamese and Khmer Krom minority group. The CPK offered to send them back to Vietnam and allow Khmer Krom living in Vietnam to settle in Cambodia. In February 1976, KR officials began to implement this new policy. They came to all households in and asked the Khmer Krom to identify themselves as such so that they could be “returned to Kampuchea Krom”. According to [REDACTED], this was a

disingenuous ruse, calculated to allow the “Khmer Rouge learn who was Khmer Krom... (and) later turned out to be fatal” for the Khmer Krom who came forward and were then relocated. A number of Khmer Krom living in Kampuchea Krom were also abducted by KR forces from Vietnamese soil and brought into Takeo Province. In particular, in mid-1978, there was a KR military incursion into Mout Chouk Province in Kampuchea-Krom (also known as An Giang Province in southern Vietnam) designed, in part, to forcibly repatriate and reclaim the Khmer Krom to Kouk Prech Commune, Kiri Vong District.⁷¹ In the course of this KR incursion, [REDACTED] and 400 other monks were de-frocked and forced, under pain of death, to become farmers in Takeo Province.⁷² Khmer Krom who refused to obey the KR were killed, as were Khmer Krom married to Vietnamese spouses.⁷³ The KR interrogated and killed many of the Khmer Krom who were repatriated to Takeo Province for allegedly being Vietnamese agents and spies.⁷⁴

C. Mass Execution & Other Conditions of Life Calculated to Bring About the Khmer Krom Group’s Physical Destruction

[REDACTED] (*Pursat Province, Northwestern Zone*)

27. As we have shown, from 1977 onwards The Khmer Rouge’s general policy of persecution against the Khmer Krom became a genocide, as the KR became deeply suspicious of the Khmer Krom in the midst of the full-blown armed conflict that had erupted between Cambodia and Vietnam and sought. In 1977 and 1978, whole Khmer Krom communities in [REDACTED] were gathered by the KR to be killed, among other places, at [REDACTED] [REDACTED]⁷⁵ and in the vicinity of [REDACTED].⁷⁶ The KR grouped and transported 350 Khmer Krom families (about 1000 persons) from all over Bakan District to Prey Krabau on the pretext that Angkar wanted them to farm the land in that village.⁷⁷

28. As the Khmer Krom made their way to Prey Krabau Village, their hands were tied behind their backs and they were made to walk in a straight line, 20 to 23 persons per

row.⁷⁸ At Prey Krabau, they were held in cow-sheds or *Kraols* for several days without food or water and ultimately killed.⁷⁹ Their bodies were tossed into mass grave sites that covered almost 1 hectare of land and several hundred large pits, some of which remain unexcavated killing fields to this day.⁸⁰ During the execution, able-bodied Khmer Krom men were the first to be killed.⁸¹ Next, Khmer Krom women were killed; and finally, the elderly, sick, and Khmer persons married to Khmer Krom persons were executed.⁸² Likewise, the KR rounded-up and sent off Khmer Krom temporarily held at [REDACTED] to Prey Thom to “pick corn and dig potatoes.”⁸³ Of the more than 700 Khmer Krom gathered, no known survivors remain.⁸⁴ Our client [REDACTED] states that some of the skeletal remains of the Prey Krabau genocide were discovered in 1979 after the KR retreated. These remains were transported to [REDACTED] by ox-cart by the few Khmer Krom who remained alive in Bakan District after the KR retreated in response to the arrival of Vietnamese forces into Pursat Province. [REDACTED]

[REDACTED] (*Takeo Province, Southwestern Zone*)

29. The CPK similarly executed the segregated [REDACTED] Khmer Krom *en masse*. At the end of 1977, the KR massacred Khmer Krom at [REDACTED].⁸⁵ In early 1978, for instance, at [REDACTED], the KR killed 67 Khmer Krom White Scarves militia-men (see paragraphs 16 and 17 above).⁸⁶

D. Imprisonment & Interrogation for Being Khmer Krom

Pursat Province (Veal Prison)

30. In addition to the mass killings and other conditions of life stated above which the KR deliberately inflicted upon the Khmer Krom, calculated to bring about its physical destruction. Unlike the central Khmer who were arrested and detained for ‘mistakes’,

the Khmer Krom were arrested, imprisoned and tortured purely on allegations of being Vietnamese spies, for originating from or residing in Kampuchea Krom (southern Vietnam) or for being linked with Khmer Krom opposition/separatist movements aligned with or based in Vietnam. From 1976, the KR took several thousand Cambodians to Veal Village Prison (VVP) where they tortured, interrogated, and eventually executed.⁸⁷ This practice only stopped when the Vietnamese forces arrived in Pursat Province in April of 1979.⁸⁸ In 1977, the initial wave of prisoners who were brought to VVP consisted almost entirely of members of the Khmer Krom minority, which was consistent with orders from CPK's Party Center to KR security center chiefs, such as Charged Person Duch, that all ethnic Vietnamese and Khmer Krom had to be eradicated since they were traitors from Vietnam.⁸⁹ Our client [REDACTED], one amongst a handful of survivors of VVP, confirms that his interrogators presumed from his Khmer Krom ethnicity/background that he was a traitor or spy colluding with the Vietnamese, regardless of his innocence or guilt. Questions he was asked included: "(1) Where did you live before the KR time? (2). Why do you speak with a strange accent? (3) Since you are Khmer Krom, have you communicated with the Vietnamese? (4) How many are there in your group of spies?."

31. In VVP, Khmer Krom prisoners recognized each other from their home villages/communes and as they had all been rounded up from these villages/communes and arrested.⁹⁰ The Khmer Krom who were interred in VVP included residents of [REDACTED].⁹¹ The KR prison guards screened and separated the Khmer Krom from the central Khmer in these villages and then sent the Krom to VVP for interrogation and ultimately execution.⁹²

32. Khmer Krom prisoners in VVP were, *inter alia*, accused of affiliating with the Khmer Serei organization and being "two-headed people." Our clients believe that a leader

of the Khmer Serei Movement, [REDACTED], and other Khmer Krom people they met with were captured and interred in VVP.⁹³ Several of our clients were told by prison guards that all the members of the Khmer Krom minority group in the abovementioned villages would eventually be sent to VVP and executed, confirming their suspicions that the Khmer Krom were rounded up for detention, persecution, and execution.⁹⁴

33. On average, at least 100 prisoners arrived in VVP every 2 to 3 days.⁹⁵ At the same time, as prisoners arrived, the KR took away prisoners and killed them, dumping their bodies in nearby mass graves.⁹⁶ At any one time between 1977 and 1979, there were at least 1,000 prisoners interred at VVP.⁹⁷ (A detailed diagram of VVP complex provided by our clients [and VVP survivors] [REDACTED] and [REDACTED] has been provided to the Victim's Unit).

34. In late 1977 and 1978, hundreds of Khmer Krom people from Svay Rieng Province (Eastern Zone) were sent to VVP. The KR rounded up anywhere from 100 to 300 Eastern Zone victims each night and led them away to nearby empty rice fields at night for mass execution.⁹⁸ [REDACTED] witnessed the KR make these victims sit down, put their hands behind their backs and then hit them with blunt sticks on the back of their head.⁹⁹ Other KR security guards then used bayonets to slit the throats of the victims.¹⁰⁰ These bodies were then kicked into shallow, open graves or left on the rice fields.¹⁰¹ [REDACTED] confirms that these mass graves were 3 meters high and about 10 meters wide.¹⁰²

Takeo Province (Wat Preatheath & Wat So Ben Prisons)

35. Our clients state that the KR rounded up ethnic Khmer Krom minority group members from [REDACTED] [REDACTED] and transported them to the District Security Offices, namely Wat So Ben and Wat Preatheath prisons.¹⁰³ Between 1975 and 1977, both prisons were notorious sites where the Khmer Krom were detained on allegations of

treason, compelled to 'confess' to their links with the Vietnamese, and were subsequently executed.¹⁰⁴ On one day in 1977, our client [REDACTED] witnessed 35 Khmer Krom persons who had been abducted by the KR from Kampuchea Krom arrive in Wat So Ben prison. After being detained and interrogated at the prison and compelled to 'confess'. At night, they were brought to the nearby bushes and slaughtered *en masse*. [REDACTED]

36. Additionally, the KR accused prisoners of false crimes such as "incitement of people to enter Vietnam" and "hiding weapons in the mountains with other people" and beat them with wooden sticks, suffocated them with plastic bags, and used shock treatment in order to extract confessions.¹⁰⁵ Prisoners also either died from starvation or from illness caused by porridge cooked in canal water.¹⁰⁶ Prisoners were forced to perform forced labor such as digging out tree roots and climbing palm trees to produce palm sugar.¹⁰⁷

E. Elimination

37. The result of these mass killings was that a substantial part of the Khmer Krom minority group in Pursat and Takeo Provinces was eliminated. While further investigation by the Co-Investigating Judges is required to determine exactly how many members of the Khmer Krom minority were killed in Pursat and Takeo Province, the estimated Khmer Krom death toll provided by our client [REDACTED] for Bakan District alone demonstrates that the Khmer Krom were, in fact, victims of genocide.

38. In [REDACTED], there were approximately 200 Khmer Krom families before the KR regime, and only 30 remained after the DK period.¹⁰⁸ Of the approximately 200 families who were located in [REDACTED] before the KR, only 10 remained after the genocide.¹⁰⁹ Only 6 of the 50 families in [REDACTED] survived the KR regime.¹¹⁰ In [REDACTED], there were approximately 20

Khmer Krom families before the KR, and only 2 survived the genocide.¹¹¹ Again, these figures ought to further investigated and verified by the Co-Investigating judges as we suspect that the actual physical destruction of the Khmer Krom in Bakan District may be than these estimates. It bears mentioning that some Khmer Krom families who live in Bakan now cannot be counted as Bakan District survivors as they were not ordinarily resident in Bakan District during the DK period, but migrated there from other provinces or from southern Vietnam after the DK period, as it is Khmer Krom practice, even now, to live together or in neighboring villages in communal clusters.

39. Suffice it to say for the purposes of this Request for further investigation, that the Khmer Krom were singled out by the KR for genocide and suffered a “comparatively high proportion of killing” estimated at more than 100,000 persons¹¹² on the basis of their perceived affiliation with a Vietnamese national and/or Khmer Krom ethnic group.¹¹³

F. Genocide & Crimes Against Humanity Established on the Facts

40. The following evidence establishes that the mass executions of members of the Khmer Krom residing in Pursat and Takeo Provinces were planned by the Defendants and other senior leaders of the CPK and committed with the intent to destroy, in whole or in part, the Khmer Krom minority group in those areas:

- a. The KR regime targeted the Khmer Krom minority group for elimination because of its perceived Vietnamese national identity.¹¹⁴
- b. On June 10, 2009, Duch confirmed the CPK’s association of the Khmer Krom with Vietnam and stated:

[T]he real truth is that anyone who came from Vietnam into Cambodia, a civilian or combatant, they were considered as spies. So let me indicate to you, the *Vietnamese immigrants from South Vietnam (Kampuchea Krom) and the Vietnamese*

*who lived in Cambodia for a long time, they were all arrested and sent to prisons. It is because they acted against the authority. As for the Vietnamese who went into Cambodia after the 17th of April 1975, they were considered as spies; no matter if it was a wrong accusation or another matter, they were sent to prison.*¹¹⁵

- c. The Khmer Krom's stable and permanent territory in Kampuchea-Krom became an integral part of Vietnam in 1949. By 1977, the CPK Central Committee came to view the Khmer Krom minority as agents of the Vietnamese. The CPK therefore felt that the Khmer Krom minority posed a threat to the regime and declared it to be an enemy of the state.
- d. The CPK maintained a policy to kill the “*Youn*” (Vietnamese) and any “agents of the *Youn*.”¹¹⁶ Furthermore, during a nationwide radio address in May of 1978, Pol Pot, as Secretary of the CPK Central Committee, directed every CPK soldier to “kill 30 Vietnamese” in order to defend “Cambodian territory and the Cambodian race.”¹¹⁷
- e. In late 1977, Pol Pot addressed a group of Khmer Krom at Phnom Penh Olympic Stadium, telling them that he would only “keep” those who agreed to follow Angkar.¹¹⁸
- f. The areas selected by the CPK for mass executions were the heartland of the Khmer Krom population in Cambodia – villages in Takeo and Pursat Provinces, areas with large concentrations of Khmer Krom residents.¹¹⁹ This demonstrates the CPK’s intent to destroy the Khmer Krom minority group.
- g. The genocidal acts described in paragraphs 19-39 above were not isolated killings, but rather mass executions of entire Khmer Krom communities organized by the CPK district KR chiefs responsible for those areas.¹²⁰ District KR chiefs at communal meetings of Khmer Krom residents in

Pursat and Takeo Provinces declared that “at this time, we must purge all the agents of the *Youn*.”¹²¹

- h. In Bakan District, CPK cadres separated Khmer Krom residents from central Khmer residents and relocated the Khmer Krom to security centers, namely Prey Krabau Village Corral and Veal Village Prison, to be executed for being associated with the Vietnamese.¹²² The CPK regime persecuted, executed, imprisoned, and eliminated the Khmer Krom living in Pursat and Takeo Provinces. These acts, as experienced and witnessed by our Khmer Krom clients constitute, *inter alia*, genocide by killing, bodily harm, and by conditions of life sufficient to cause death.
- i. Genocidal killings are established by evidence of direct¹²³ or indirect¹²⁴ killing methods, or evidence that killings or attacks occurred.¹²⁵ The Khmer Krom in Pursat and Takeo Provinces directly witnessed other Khmer Krom killed by their captors with such weapons as bayonets and then thrown into mass graves. Additionally the KR placed them in living conditions where they were not given enough food to eat or given food cooked in canal water. KR soldiers forced the Khmer Krom to bury their dead in mass graves, and the Khmer Krom witnessed dead bodies in mass graves.
- j. Genocide by bodily harm is established, *inter alia*, by evidence of acts of torture¹²⁶ and administration of electric shocks¹²⁷. The KR tortured our Khmer Krom clients by beating them with sticks, suffocating them with bags, and using shock treatment to extract confessions for the purposes of eliminating them as a group. These crimes constituted genocide by bodily harm.
- k. Genocide by conditions of life sufficient to cause death are evidenced, *inter alia*, by evidence of deprivation of food and water,¹²⁸ insufficient

medical treatment,¹²⁹ and imposition of excessive work or physical exertion.¹³⁰ KR soldiers overworked Khmer Krom clients to the point of death in corrals, labor camps and prisons without adequate food, water, or medical treatment, thus committing genocide against them.

- l. Unlike the central Khmer, CPK members arrested Khmer Krom minority members regardless of whether they had committed mistakes or for some other arbitrary reason.¹³¹ KR officials executed the Khmer Krom minority members immediately or shortly after their arrest¹³² as the CPK was not merely seeking to eliminate Khmer Krom who were connected to politically motivated groups, but rather all Khmer Krom people.¹³³ When they were interrogated on specific issues evincing the KR's genocidal policy against them based on perceived ethnic and/or national affiliation with the Vietnamese. In other words, the Khmer Krom were presumed to be Vietnamese, Vietnamese spies and/or associated with Khmer Krom opposition/separatist militias aligned with or based within Kampuchea Krom (southern Vietnam).
- m. The CPK policy of separating and killing Khmer Krom spouses married to Khmer persons demonstrates that the Khmer Krom minority group was specifically targeted based on its perceived Vietnamese nationality and/or ethnicity.¹³⁴ Importantly, central Khmer spouses and children were spared.
- n. In 1978, KR soldiers entered Kampuchea Krom and abducted Khmer Krom minorities living there and executed them.¹³⁵ The CPK feared that the Khmer Krom would, because of their national and/or ethnic identity, align politically and militarily with the Vietnamese and other resistance forces to oppose the DK regime.

- o. The genocide against Khmer Krom minority group residents resulted in killing a substantial portion of the group in [REDACTED].¹³⁶
- p. The KR targeted and attacked the civilian Khmer Krom population in Takeo and Pursat Provinces in a widespread manner as evidenced by the wide geographical scope and the means and methods employed by the CPK to carry out its policy.¹³⁷ The KR was so committed to carrying out its plan of elimination that it even abducted Khmer Krom from Kampuchea Krom. The KR subjected the Khmer Krom to a systematic pattern of separation, imprisonment, execution, and elimination.¹³⁸ The attacks all temporally coincided, especially with the escalation of the war between Vietnam and Cambodia in 1977 and 1978.¹³⁹
- q. As detailed above, KR soldiers committed mass killings of the Khmer Krom minority group in a widespread and systematic manner, thus also constituting murder and extermination as crimes against humanity. As set out above, our clients both witnessed mass killings¹⁴⁰, lost family to such killings and saw mass graves¹⁴¹ containing bodies of Khmer Krom victims.
- r. Based on their ethnical, political, or national identity, the KR sent Khmer Krom living in Pursat Province *en masse*¹⁴² to Veal Village Prison, where they were confined to severe conditions¹⁴³ where a few hundred prisoners per night were executed *en masse* by the KR. The KR sent others in Takeo Province to Wat Preatheath & Wat So Ben prisons where they were tortured and executed. These imprisonments, and the related crimes Khmer Krom prisoners suffered while in prison, had no basis in international law¹⁴⁴ and thus constituted imprisonment as a crime against humanity.

- s. Khmer Krom in Veal Village, Wat So Ben and Wat Preatheth prisons, in the custody and under the control of the KR, were tortured, and suffered severe pain and suffering.¹⁴⁵ The KR additionally committed the above mentioned crimes against the Khmer Krom based on political grounds for their perceived¹⁴⁶ affiliation with the Vietnamese or opposition/separatist militias such as Khmer Serei and White Scarves (and by extension the CIA and the Lon Nol regime) which constituted persecution as a crime against humanity.

III. CASE CONCERNING THE ETHNIC VIETNAMESE MINORITY

A. The Ethnic Vietnamese Minority in [REDACTED] (Kampong Chhnang Province)¹⁴⁷

41. Beginning in 1973, the KR effectively controlled [REDACTED].¹⁴⁸ As early as 1974, the KR began to implement its policies in the district, as authorities at [REDACTED] started to abolish private property and established collective groups in the area, with land, housing and private property belonging to the collective.¹⁴⁹

i. April 1975: Forced Relocation of Ethnic Vietnamese Minority Group to [REDACTED]

42. In or around April 1975, the KR took control of the city areas in Kampong Chhnang Province. Military authorities relocated the ethnic Vietnamese populations residing in the towns and cities around the shores of the Tonle Sap River (areas around Kampong Chhnang City in Kampong Chhnang District) to various communes within [REDACTED], on the eastern side of the Tonle Sap River.¹⁵⁰ There were 11 communes in [REDACTED] District during the KR regime, mostly situated on [REDACTED].¹⁵¹

43. The accounts of our clients indicate that the KR relocated ethnic Vietnamese residents to various communes including [REDACTED].

[REDACTED]

[REDACTED]¹⁵² Among these communes, the evicted ethnic Vietnamese minority was primarily divided between [REDACTED] [REDACTED] (which is further away).¹⁵³ Within one week of the KR's occupation and control of the Kampong Chhnang city areas in April 1975, the KR relocated about 200 ethnic Vietnamese families (approximately 500 people) from Kampong Chhnang's city and town areas to [REDACTED].¹⁵⁴

44. One client, VN10, stated that the KR told the ethnic Vietnamese residents in [REDACTED] [REDACTED] to go to [REDACTED] where they would be safer, because Lon Nol soldiers would bomb the village.¹⁵⁵ The KR rounded up ethnic Vietnamese and Khmer villagers in [REDACTED] to go to [REDACTED].¹⁵⁶ The KR separated the ethnic Vietnamese and sent them to [REDACTED] to make a dam in [REDACTED].¹⁵⁷ A total of 115 ethnic Vietnamese families from [REDACTED].¹⁵⁸

ii. April 1975 – August 1975 : Crimes On and Around [REDACTED]

45. On [REDACTED], the KR forced the ethnic Vietnamese to undertake heavy manual agricultural labor while living under conditions of extreme deprivation.¹⁵⁹ The KR forced ethnic Vietnamese to construct dams and work on other irrigation projects.¹⁶⁰ Eleven-hour workdays were routine, and at times, KR cadres ordered laborers to toil until midnight.¹⁶¹ Workers were allowed minimal breaks, keeping them perpetually fatigued and many died from exhaustion and overwork.¹⁶² The KR enforced this rigid and harsh work regime through routine beatings and executions.¹⁶³ Those captured after attempts to escape were killed.¹⁶⁴

46. The KR provided ethnic Vietnamese laborers insufficient food and many died from malnutrition, disease, and starvation.¹⁶⁵ VN16 describes how the KR fed workers only small amounts of rice gruel for lunch, and dinner typically consisted of rice with convolvulus (water morning glory) or porridge.¹⁶⁶ Each family was given one small

can of condensed milk.¹⁶⁷ Families of six people were given one can of rice; smaller families received less and workers were not given any fish or salt,¹⁶⁸ traditional staples of the ethnic Vietnamese diet. During meals, the KR conducted head counts to make sure that all the ethnic Vietnamese workers were accounted for – those missing would face beatings and execution.¹⁶⁹ Laborers rarely left their houses when not working.¹⁷⁰

47. The KR killed members of the ethnic Vietnamese minority for various reasons. The cadres killed those workers who they deemed to be weak, lazy, or otherwise unfit to work.¹⁷¹ The Vietnamese were considered worthless by the KR – the proverb: “To keep you is no profit and to kill you is no loss” was applied to the ethnic Vietnamese.¹⁷² VN04 heard the cadres state: “if [something] is not useful, kill it.”¹⁷³

48. The same client witnessed the execution of his father, uncle, and grandmother because they were considered too old to work – he saw their hands being tied around their backs, blindfolded, and led away to a site approximately 100 meters from the living area.¹⁷⁴ There, they were hit on the head with a bamboo stick and then pushed into a grave.¹⁷⁵ Some ethnic Vietnamese victims who were taken away to a remote location were often forced to dig their own graves without knowing what the graves would be used for.¹⁷⁶ The KR commonly carried out executions by lining Vietnamese victims in front of a pit, hitting their heads with garden tools or bamboo sticks, and letting the bodies to drop into the graves.¹⁷⁷

49. VN16 described the KR practice of cutting open ethnic Vietnamese bodies, sometimes while the victims were still alive, and removing their gallbladders as a way of terrorizing the living ethnic Vietnamese victims.¹⁷⁸ Whenever the KR carried out a mass killing within the commune, they would leave between 70 and 100 gallbladders would be left outside on the trees to dry.¹⁷⁹ Once dry, the KR would either sell or eat the gallbladders themselves.¹⁸⁰

50. Anyone who was caught trying to run away from the commune would be promptly executed.¹⁸¹ VN15, witnessed the execution of her aunt and uncle, caught after trying to escape together to look for food because they were both starving.¹⁸² VN15 saw the cadres smash her aunt and uncle's skulls, but neither she nor anyone else who witnessed the killing spoke out for fear of being executed.¹⁸³
51. VN12 stated that at [REDACTED], two Vietnamese Buddhist monks were killed after they organized a gathering of about 20 families (70 people) where they advised those assembled to work hard in order to avoid being killed.¹⁸⁴ The KR took these two monks away in the afternoon and when they returned, they carried only the monks' blood-drenched clothes.¹⁸⁵ Another woman who spoke up at the meeting later disappeared.¹⁸⁶
52. VN07 stated that the KR killed half the ethnic Vietnamese after moving them from their home village to [REDACTED].¹⁸⁷ The KR killed approximately 10 families at a time, targeting former village leaders, those with money, and those who had more education.¹⁸⁸ They would first take victims' money and belongings and then kill them by using a stick and hitting them in the back of the head.¹⁸⁹ The killings took place 50 meters from VN07's house.¹⁹⁰ The KR would round up a group and take them to the killing spot in the morning.¹⁹¹ The victims were made to stand while the KR forced them to take off their clothing, leaving them standing naked.¹⁹² The KR kept the clothing for themselves and their families.¹⁹³ The KR told people that they took the hearts, thighs and other body parts of those killed and ate them.¹⁹⁴
53. Involvement in an uprising was also grounds for execution. VN06 witnessed the mass execution of 200-300 ethnic Vietnamese families after they resisted being sent to Vietnam.¹⁹⁵ The KR created a large mass grave in [REDACTED] (50 meters by 20 meters), lined-up the resisters and beat them to death with sticks.¹⁹⁶

54. On one occasion, around 70 ethnic Vietnamese people were brought from [REDACTED] to a site [REDACTED].¹⁹⁷ [REDACTED] was a school turned into a one-time prison holding ethnic Vietnamese prisoners before they were sent to be killed at a nearby mass grave (later referred to as the "[REDACTED] mass grave").¹⁹⁸ This was the "last place" where the ethnic Vietnamese at [REDACTED] were killed before they were forcibly deported to Vietnam.¹⁹⁹

55. Following news of the 70 or so ethnic Vietnamese who were killed at [REDACTED], other ethnic Vietnamese protesters tried to escape from their communes to [REDACTED] a military lake at [REDACTED].²⁰⁰ Kampong Chhnang Provincial military authorities sent troops to [REDACTED] to prevent the group from reaching [REDACTED] and Provincial Chief (named [REDACTED]) ordered that the ethnic Vietnamese protestors be killed, resulting in the death of around 50 ethnic Vietnamese people.²⁰¹ After the victims were killed at (Lake) [REDACTED], it took on its nickname "[REDACTED]," literally meaning "Lake where the Vietnamese were killed."²⁰²

56. In the latter part of 1975, there was an uprising involving 500 ethnic Vietnamese people from [REDACTED].²⁰³ They protested their transfer to [REDACTED] because they had come from living on floating villages where they relied on fishing as a livelihood and could not adapt to the environment and conditions of life on the highlands.²⁰⁴ Around 50-60 ethnic Vietnamese were killed as a result of this event, and their remains sent back to their houses in [REDACTED].²⁰⁵

iii. August 1975: Forced Relocation of Ethnic Vietnamese Minority Group to Vietnam

57. Evidence from our clients indicates that the KR transferred ethnic Vietnamese from various communes in [REDACTED] to Vietnam via boat.²⁰⁶ The majority

of our ethnic Vietnamese clients recounted that the KR traded them to the Vietnamese government in exchange for husk rice and salt between June and August 1975.²⁰⁷

58. For example, in around May 1975, our client, VN11, was at [REDACTED] (also known as District 18) when the agreement between the KR and the Vietnamese government was signed.²⁰⁸ The KR transferred 400 ethnic Vietnamese families, including his own, to Vietnam.²⁰⁹ One afternoon in June 1975, the KR ordered the ethnic Vietnamese in District 18 to leave, without telling them where they were going.²¹⁰ They realized they were in Vietnam once they had arrived.²¹¹ This voyage was one of the first “fleets” to Vietnam, and there was no exchange for rice and salt for the transfer of the ethnic Vietnamese on this occasion.²¹²
59. Upon arrival in Vietnam, the Vietnamese authorities asked the transferees whether there were any other ethnic Vietnamese people who remained in Cambodia.²¹³ The new arrivals told the Vietnamese about the thousands of ethnic Vietnamese held at [REDACTED].²¹⁴ The Vietnamese and Cambodian authorities then negotiated an exchange of rice and salt for the Vietnamese people in Cambodia.²¹⁵
60. Subsequently, the KR transferred several of our ethnic Vietnamese clients to Vietnam in a similar manner in exchange for rice and salt. For example, VN07 from [REDACTED], stated that on 14 July 1975 (on the Vietnamese calendar), the KR relocated the ethnic Vietnamese people in his area.²¹⁶ One day before the relocation, the KR told everyone that they would be relocated to Long Bun area, near Vietnam, but did not explain why they had to leave.²¹⁷ The journey took seven days by ferry.²¹⁸ During the trip, VN07 saw other boats filled with ethnic Vietnamese people also traveling with his group.²¹⁹ Upon arrival at Long Bun, the ethnic Vietnamese people numbered approximately 200.²²⁰ The next day, boats from Vietnam arrived with Vietnam officials who gave the KR authorities 20 kilos of rice and 20 kilos of salt for each ethnic Vietnamese person.²²¹

61. Civil Party VN04 stated that on the way to Vietnam, he saw mass graves, filled with corpses, far from ██████████, Kg Chhnang City, but still within Cambodia.²²² VN04 knew that the mass graves contained the remains of many Vietnamese people because they were located in areas where the Vietnamese people lived.²²³

iv. Mixed Marriage Policy for Members of the Ethnic Vietnamese Minority Group Who Remained in Cambodia

62. For the few ethnic Vietnamese who remained in Cambodia following the mass transfers to Vietnam in mid-1975, the KR, in 1976, established a policy in the communes at ██████████ instructing Khmer men and women in mixed marriages to kill their ethnic Vietnamese spouses and their mixed children.²²⁴ The purported reason the KR gave for this policy was that ethnic Vietnamese were of the “Yuon” class, meaning that these people were derived from the Vietnamese race.²²⁵ This policy was designed to “eliminate the Vietnamese root from the Cambodian population.”²²⁶

63. If a Khmer husband or wife refused to kill his or her mixed family, the entire family would be killed as punishment.²²⁷ Only if the ethnic Vietnamese spouse was killed would the Khmer spouse be allowed to live and survive in Cambodia.²²⁸ Some ethnic Vietnamese spouses returned to Vietnam, understanding that if they remained with their Khmer partner in Cambodia, they would all be killed.²²⁹

B. Genocide and Crimes Against Humanity Established on the Facts

i. Forced Deportation to Vietnam as an Act of Genocide

64. In the circumstances described above, the systematic and widespread transfers to Vietnam of the ethnic Vietnamese people from Kampong Chhnang Province amounts to forcible deportation or forced relocation of this group from Cambodia. Given the extreme circumstances of duress, any consent by the victims to be transferred to Vietnam cannot be regarded as true consent arising from a genuine choice. Moreover,

consent is not an issue in circumstances where there is no real choice but to comply with an order.²³⁰

65. The forced deportation of the ethnic Vietnamese from areas in Kampong Chhnang to Vietnam constitute genocide, in that these actions involved acts committed with an intention to destroy, in whole or in part, a particular ethnic group.²³¹ The mass killings of the 200 – 300 ethnic Vietnamese who resisted being returned to Vietnam from Chrolong Village, Dar Commune²³² indicates the intention of the KR authorities to transfer all remaining ethnic Vietnamese to Cambodia as a means of ridding Cambodia of this group. These were acts taken with intent to destroy the ethnic Vietnamese people in Cambodia. The exchange of salt and rice for each ethnic Vietnamese person transferred to Vietnam was a means by which the KR obtained an additional commercial benefit from an activity it engaged to further its plan to eliminate the ethnic Vietnamese group from Cambodia.

ii. Deliberately Inflicting Conditions of Life Calculated to Bring about the Destruction of the Ethnic Vietnamese as an Act of Genocide

66. The attempt to eliminate the ethnic Vietnamese from Kampong Chhnang included inflicting conditions of life calculated to bring about the destruction of this ethnic and racial group, amounting to genocide. These acts were committed in two phases:

1. The forced relocation and gathering of ethnic Vietnamese in various areas in [REDACTED] to various Communes on [REDACTED] around April 1975, and
2. Forcible deportation or forced transfer of the ethnic Vietnamese on [REDACTED] [REDACTED] to Vietnam from July to August 1975.

67. Once the ethnic Vietnamese were gathered at communes at [REDACTED], they were able to be transferred en mass to Vietnam. Our clients' experiences of forced relocations in April 1975 from their home villages within Kampong Chhnang Province to communes on [REDACTED], combined with their forcible deportations

from [REDACTED] to Vietnam around July and August 1975 were inflictions by the CPK of conditions of life calculated to bring about the destruction of the ethnic Vietnamese people. Firstly, this involved initially removing the members of this group from their homes on floating villages and subjecting them to living conditions on the highlands of the [REDACTED] that were difficult for them to adjust to.²³³ At the Communes on [REDACTED], our clients were subjected to conditions such as forced labor, overwork, exhaustion, starvation, malnutrition, disease, and ill-treatment, which were calculated to and/or had the effect of, destroying them as a group.²³⁴ Secondly, once grouped together on [REDACTED], the ethnic Vietnamese were subjected to collective removal from Cambodia.²³⁵

68. The mass killings of the 200 – 300 ethnic Vietnamese who resisted being returned to Vietnam from [REDACTED] [REDACTED]²³⁶ is a strong indication of an intention by the KR authorities to transfer any remaining ethnic Vietnamese to Cambodia as a means of eliminating them from Cambodia and demonstrates an intent to destroy the ethnic Vietnamese people in Cambodia, in whole or in part.

iii. Imposing Measures to Prevent Births as an Act of Genocide

69. The mixed marriage policy implemented in Kampong Chhnang in 1976, whereby Khmer men and women in mixed Khmer/Vietnamese marriages were instructed to kill their ethnic Vietnamese spouses and all their mixed children on threat of death, was a genocidal policy imposing a measure intended to prevent the births within the Vietnamese group (referred by the KR by the derogatory term, “Yuon”). If a Khmer husband or wife refused to kill his or her mixed family, the entire family would be killed as punishment.²³⁷ This policy was designed to “eliminate the Vietnamese root from the Cambodian population”²³⁸ and demonstrates an intention to destroy the ethnic Vietnamese group in whole or in part. Civil Party VN02 states that some Vietnamese spouses had to flee to Vietnam on the understanding that if they remained with their Khmer partner in Cambodia, they would all be killed.²³⁹ The Co-Prosecutors have already alluded to a similar mixed marriage policy in Svay Rieng

Province,²⁴⁰ demonstrating that this conduct took place in the context of a manifest pattern of similar conduct directed against the ethnic Vietnamese group. As this policy was implemented after the mass forcible deportations of ethnic Vietnamese to Vietnam, there is a strong inference that it was directed at the few Vietnamese who remained in Kampong Chhnang after August 1975. The mixed marriage policy was a measure that could in itself effect actual destruction of the ethnic Vietnamese group in Cambodia and amounts to the crime of genocide.

v. Forced Relocation as a Crime Against Humanity and/or Extermination of the Ethnic Vietnamese Minority Group as a Crime against Humanity

70. The ethnic Vietnamese people, having lived for generations in Kampong Chhnang, were lawfully present in that province and their forcible deportation from Cambodia to Vietnam was without grounds permitted under international law.²⁴¹ No genuine consent to be transferred can be made out as there was no real choice for our clients but to comply with an order or face further harm and suffering, including death.²⁴² The experience of deportation or forced transfer was consistent for all of our clients who lived in various villages and communes in [REDACTED], Kampong Chhnang Province, signifying that these actions on the part of the KR leadership were carried out in a systematic manner and had widespread effect.²⁴³ For this reason, the initial forced relocation of this group, both initially within [REDACTED] (and for some victims, several times between different communes) and finally, to Vietnam amounts to a crime against humanity.²⁴⁴

71. In the alternative, the same conduct amounts to an attempt to exterminate this ethnic group (from Cambodia) and constitutes a crime against humanity. This conduct took place within the context of a widespread and systematic attack by virtue of the CPK's implementation of a policy to eliminate the entire ethnic Vietnamese population of Prey Veng Province through execution, and similar policies implemented in Svay Rieng Province.²⁴⁵ The Prosecution has asserted that CPK policies of discrimination

and killing (“purging”) ethnic Vietnamese and anyone considered to be associated with them became one of eliminating all those with any connections to Vietnam.²⁴⁶

vi. Enslavement as a Crime against Humanity

72. The bartering, trading and selling of ethnic Vietnamese persons from Kampong Chhnang to Vietnam amounts to commercial conduct involving the exercise of any or all of the powers attaching to the rights of ownership over these persons.²⁴⁷ The effect of the forced transfer of these persons, in addition to the conditions of forced labor, deprivation of liberty, use of force and threats by the KR, and absolute deprivation of personal autonomy over the victims’ daily routines, was the reduction of the ethnic Vietnamese people to the condition of slavery and the status of slaves.²⁴⁸ These acts were committed as part of widespread and systematic conduct, committed against our ethnic Vietnamese clients in Kampong Chhnang Province, and amount to enslavement as a crime against humanity. We respectfully request that this Court refer prosecution of these crimes as part of Case No. 002/19-09-2007/ECCC/OCIJ.

vii. Persecution as a Crime against Humanity

73. Our clients from Kampong Chhnang, who constitute a “civilian population,” were deprived of fundamental rights against their person and their property by reason of their ethnic Vietnamese identity. The Co-Prosecutors already have demonstrated that the CPK implemented a policy of targeted systematic discrimination against the ethnic minority Vietnamese group.²⁴⁹

74. The testimony of KANG Guek Eav (Duch) in the Case File 001 proceedings on 10 June 2009 further highlights the CPK’s discriminatory intent against the ethnic Vietnamese in Cambodia through policies resulting in the deprivation of the fundamental rights of this ethnic group (as well as those of the Khmer Krom on the basis of their perceived links with the Vietnamese). Duch confirmed the policy that was implemented in S-21 (see paragraph 40 above).

75. The crimes committed against our clients demonstrate that the crime of persecution against the ethnic Vietnamese in Cambodia²⁵⁰ extended in geographical scope to Kampong Chhnang Province in the Western Zone. Persecution of this group is largely evidenced through targeted crimes such as murder, extermination, enslavement, deportation, imprisonment, and torture against members of this group, committed in a widespread and systematic manner, and aimed at, or having the effect of, depriving the ethnic Vietnamese of their fundamental rights. In being deprived of their fundamental rights, our clients were stripped of their human dignity and their value as human beings.

IV. LEGAL ANALYSIS OF CRIMES COMMITTED AGAINST THE KHMER KROM & THE VIETNAMESE

76. We have reason to believe that the facts described above in paragraphs 19-39 and 42-63 constitute crimes within the jurisdiction of the court, including but not limited to:

- a) **GENOCIDE** of the Khmer Krom and ethnic Vietnamese minority groups. This constitutes a violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, punishable under Articles 4, 29 (new), and 39 (new) of the ECCC Law.
- b) Murder, Extermination, Imprisonment, Torture, Persecutions on political grounds of the Khmer Krom minority group constitute **CRIMES AGAINST HUMANITY**, punishable under Articles 5, 29 (new), and 39 (new) of the ECCC Law.
- c) Homicide, Torture and Persecution of the Khmer Krom and the Vietnamese. These constitute violations of the **1956 PENAL CODE**, punishable under Articles 3, 29 (new), and 39 (new) of the ECCC Law.

V. SIGNIFICANCE OF THE LEGAL CHARGES FOR THE KHMER KROM AND ETHNIC VIETNAMESE MINORITIES

i. Why Genocide Charges?

77. The crime of genocide occupies a privileged place among international crimes. It is uniquely capable of acknowledging and conveying global condemnation for acts of unfathomable horror: the intentional extermination of a people. The scale and nature of human suffering represented by genocide has led it to be called “the supreme crime, in the view of the international community, of history, of victims, and of generations of their descendants.”²⁵¹

78. Although peoples have been targeted for extinction at various points in history, genocide emerged as a distinct legal concept in response to the Holocaust. In the post-war period, Polish lawyer Raphael Lemkin coined the term “genocide” to characterize the Nazi’s campaign to destroy the European Jewry.²⁵² Lemkin sought to convey through this term the scope of the worst evil unleashed by man: “a coordinated plan to destroy the ‘essential foundations’ of the life of a group, with the aim of eliminating that group.”²⁵³ Justice Robert H. Jackson, Chief of Counsel for the United States at Nuremburg, expressed the urgency of the global community to respond to these atrocities in his opening statement:

The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.²⁵⁴

79. Since Nuremburg, the international community has progressively reinforced the prohibition and punishment of genocide both as *jus cogens* norm as well as through codification in the Genocide Convention. More recently, genocide has been incorporated into the statutes of most of the internationalized criminal tribunal established since the Second World War.²⁵⁵ The first of these, the International Criminal Tribunal for the Former Yugoslavia recognized the special significance of a genocide charge and the importance of the court to identify and convict defendants

responsible for this crime to ensure that perpetrators “will bear this stigma,” and to “serve as a warning to those who may in future contemplate the commission of such a heinous act.”²⁵⁶

80. This capacity of the law to reflect and convey social approbation of normative breaches assumes heightened importance in the case of genocide.²⁵⁷ The genocide charge differentiates and elevates the severity of the crime commensurate with universal condemnation and revulsion against mass killing aimed at the destruction of a people. Proper legal characterization is essential for the historic record; indeed, it is essential if the ECCC to have any legitimacy in the eyes of its most important constituent – survivors of the DK regime. Our insistence on the crimes committed by the Khmer Rouge genocide – and the stigma that it rightly conveys – is not an exercise in semantics “[i]f the result of the terminological quarrel is to insist upon the supreme heinousness of ‘racial hatred’ ... and to reiterate society’s condemnation of ... mass killings ... the distinction retains and deserves all of its significance.”²⁵⁸

81. Unfortunately, the potential for the ECCC to instantiate appropriate social norms against genocide has been called into question. Co-Investigating Judge Marcel Lemonde stated that a genocide charge against the KR was not critical to the case:

I can only confirm that we are still working on the question of a possible genocide charge... If ultimately a genocide charge is not retained, this will certainly not have the effect of minimizing the scale of suffering or of giving it a weaker name.²⁵⁹

We respectfully disagree. While we do not discount the gravity of other forms of mass crime, without genocide charges, the animus behind the crimes committed against our clients would be lost on the ECCC. We have found that many survivors demand an accurate depiction of the crimes that they suffered. Our clients are no different. We are instructed that they wish for the trust to be stated in plain terms – i.e. that the CPK deliberately targeted the ethnic Khmer Krom and Vietnamese minorities for destruction and therefore committed genocide. This Court should refer charges of genocide against defendants for these crimes so that the distinct suffering

of the victims may be acknowledged in law and the defendants answer for the true horror of their crimes.

ii. For the ECCC's Legitimacy

82. The ECCC has been lauded for extending a prominent role to victims of the KR regime.²⁶⁰ Under the Court's Internal Rules victims are allowed to join the criminal trial as Civil Parties, and granted equal standing with the Prosecution and the Defense.²⁶¹ Kheat Bophal, the former Head of the Victim's Unit, noted that victim participation has the potential to transform Cambodian victims into agents and beneficiaries of a rule of law culture:

It is essential for the effectiveness and legitimacy of the Court that victims are part of the (KR Tribunal's) process, and that they have their own voice. Participation restores faith in the justice system and provides the first hand-satisfaction of making public the harm suffered.²⁶²

Yet, the Khmer Krom minority has been excluded from the ECCC's justice process thus far. The Khmer Krom have not had an opportunity to truly tell their story for the purposes of the ECCC or, importantly, for their progeny. Prosecuting Defendants for the genocide they perpetrated against the ethnic Khmer Krom minority group may liberate victims from defining themselves in relation to the crimes they endured. Media studies expert Nancy Wood suggests that victim participation ensures that "transmission [of victim stories] [will] eventually achieve a *selfhood* released from the singular identity of the survivor."²⁶³ As noted by one civil party at the French trial of Maurice Papon, former French regional official convicted of crimes against humanity for his role in arrest and subsequent deportation of French Jews during World War II, the participation of victims enabled a potential transformation: "[W]e have been survivors, we hope to become living people."²⁶⁴ Victim participation enables ethnic Khmer Krom minority victims to reconstitute their identity in post-conflict Cambodia and furthers the broader goals of the ECCC to promote healing of the victims of genocide.

iii. For the Victims/Survivors

84. The Khmer Krom minority's desire to utilize this Court to seek truth and justice is supported by a recent national population-based survey conducted by the Human Rights Center at the University of California, Berkeley.²⁶⁵ The vast majority of those surveyed (85.5%) stated that it was necessary to find out the truth about what happened during the KR regime.²⁶⁶ Significantly, 64.2% of respondents held the belief that the Cambodian people would not be able to reconcile without such knowledge.²⁶⁷ According to Sok-Kheang Ly, DC-Cam outreach coordinator, the ethnic Khmer Krom who attended the Duch trial "consider themselves to be representing those who died at that time. They want to see justice delivered for Khmer Krom and all Cambodian people."²⁶⁸ Failure to prefer genocide charges will deprive the ethnic Khmer Krom of the opportunity to discover the truth about Defendants' role in their suffering and to seek justice for the most heinous of crimes they endured.

85. Our client, [REDACTED], a Khmer Krom survivor who resides in Bakan district considers the failure by the Co-Prosecutors to refer genocide charges regarding his ethnic group a deep affront to this family who perished as a result of defendants' actions: "If there is no special recognition; if the Khmer Krom are considered just like other Cambodians, it means that the court does not care about us."²⁶⁹ The experience of the Khmer Krom ethnic minority during the DK period is unique: they were targeted for elimination because the KR considered the Khmer Krom ethnicity and/or national group a threat to the DK regime. The Defendants' crimes against the Krom are not currently charged. Such a failure to provide an avenue for justice jeopardizes the legitimacy of the Court as a neutral arbiter of the senior leaders and those most responsible for the crimes of the DK period. We humbly ask that the Co-Investigating Judges address this *lacuna* in the investigations and prefer charges against defendants as stated above in paragraph 76.

mmp: D250/3

Case No.: 002/19-09-2007/ECCC/OCIJ

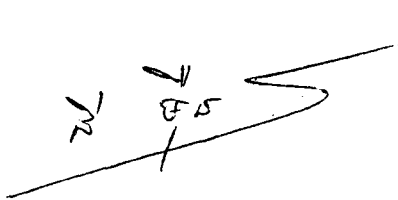
iv. For the Record

86. Finally, in view of the fact that the reparations granted by the ECCC will be moral or collective (not individual), the judgment in Case 002 will assume a heightened importance in the event of a conviction. The publication of the judgment itself will provide the most tangible, direct, and official acknowledgment of the CPK's crimes. Possibly, some peace and sense of closure and selfhood for the survivors. Yet, if the crimes committed against our clients do not find their way into the judgment or are inadequately classified, the judgment may, as our client [REDACTED] maintains, only serve to worsen the blow, fostering the belief that underserved minorities are beyond the gaze of justice.

VI. WITNESS PROTECTION MEASURES

87. We request that the Co-Investigating Judges grant measures for the protection of our clients and interviewees (whose interviews can be made available on request – see paragraph 2). Until a complete assessment is made regarding any risk to their lives, families and properties, and the Co-investigating Judges determine whether to grant protection measures, we request that their evidence be withheld from the public and defence teams of suspects.

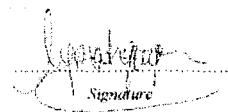
Respectfully submitted,



NY Chandy



Mahdev MOHAN



Lyma NGUYEN

Signed in Phnom Penh on 3 December 2009

¹ We are grateful for the assistance of KKKHRA's Executive Director and Khmer Rouge Tribunal Project Officer Mr. ANG Chanrith and Mr. SOURN But Mao as well as KKKHRA provincial staff from Pursat, Takeo and Kampong Chhnang Provinces.

² We are grateful for the assistance of Laurel E. FLETCHER, Clinical Professor of Law and Director of the International Human Rights Law Clinic and clinic interns, Mr. Bradley Davis KRACK '11 and Mr. Jeffrey BAE '11.

³ Ben Kiernan, The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975-1979 17 (1996), Annex I.

⁴ Ramses Amer, Cambodia's Ethnic Vietnamese: Minority Rights and Domestic Politics, 34 J. S.E. Asian Stud. 388, 389 (2006), Annex I. In 1969, the United States began a series of bombing raids over Cambodian territory with the intent to destroy or drive out Vietnamese communists; see Kiernan, supra note 3, at 1.

⁵ See Amer, supra note 4, at 389; Ben Kiernan, The Survival of Cambodia's Ethnic Minorities, 14.3 Cultural Survival Quarterly 1 (Fall 1990), <http://www.culturalsurvival.org>, Annex I.

⁶ Amer, supra note 4, at 389.

⁷ Ben Kiernan, How Pol Pot Came to Power, 361 (2004), Annex I.

⁸ Id. at 389-90; Amer, supra note 4, at 390.

⁹ Kiernan, supra note 3, at 460 ("There is no question that DK waged a campaign of genocide against ethnic Vietnamese. It is not true that 'virtually all' were expelled in 1975.")

¹⁰ Nayan Chanda, Brother Enemy: The War after the War 86 (1986), Annex I.

¹¹ Id. See also Kiernan, supra note 3, at 296, 458 ("Approximate death tolls in Democratic Kampuchea, 1975-79.")

¹² Kanika Mak, Genocide and Irredentism under DK (1975-79) 21 (Yale Centre for International and Area Studies, Paper No. 23, 2004), Annex I.

¹³ Introductory Submission, ¶ 69.

¹⁴ Official Records of the Third Session of the General Assembly, Part I, Sixth Committee.

¹⁵ International Commission of Inquiry on Darfur, Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, ¶ 494 (Jan. 25, 2005).

¹⁶ In the Vietnamese language, the Khmer persons from this region are known as *Khmer Crom* or *Khmer d'oi*, which literally means "Khmer from below" ("below" referring to the lower areas of the Mekong delta).

¹⁷ See Maps 1 & 2, attached in Annex I. Kampuchea-Krom is composed of 68,965 square kilometers, 21 provinces and municipalities, two large islands 171 districts, 1,368 communes, and 14,778 villages. Once part of a larger Khmer empire, French colonizers renamed Kampuchea-Krom as Cochin China in 1863. In 1949, the French ceded this territory to the newly formed State of Vietnam (since 1955, this state has been recognized as the Socialist Republic of Vietnam). The provinces, districts, communes, villages, and islands of former Kampuchea-Krom have since been assigned Vietnamese names and have become part of Vietnam.

¹⁸ Prosecutor v. Jelisić, Case No. IT-95-10-T, Trial Judgment, ¶ 70-71 (Dec. 14, 1999)(emphasis added).

¹⁹ Prosecutor v. Bagilishema, Case No. ICTR-95-1A-T, Trial Judgment, ¶ 65 (June 7, 2001)(emphasis added).

²⁰ See Keokanitha Kim, Khmer Kampuchea Krom, 31 Searching for the Truth 26 (July 2002), Annex I.

²¹ Department of Press and Information, DK Ministry of Foreign Affairs, Black Paper: Facts and Figures and Evidences of the Acts of Aggression and Annexation of Vietnam against Kampuchea (1978), Annex I.

²² See Kiernan, supra note 3, at 300, 361; see also Hedva Ben-Israel Nationalism Reexamined, in Irredentism and International Politics 24 (1991)(explaining that the KR's affinity towards the Krom territory as opposed to the people is not unusual), Annex I:

The key aspect of irredentism, I would suggest, is the tension between land and people... Irredentism pertains in the first place to territory demanded by a state on the ground that it had been or should have been an integral part of the national heritage. Ethnic populations often come into it, but it is, in my opinion, **territory more than population** that is central to irredentist movements, and this distinguishes irredentist from pan movements.(emphasis added)

²³ [REDACTED] Affidavit.

- ²⁴ See [REDACTED] Affs.
- ²⁵ [REDACTED] Aff; Keokanitha Kim, [REDACTED]: Khmer Krom Under Khmer Rouge 9 (unknown date) (Unpublished Essay), Annex I.
- ²⁶ The forced confession of [REDACTED], who was brought to S-21 on 6 January 1978 and killed on 10 June 1978 states that he was “a Vietnamese spy sent to cavesdrop in Cambodia.” See Kim, supra note 20, at 27.
- ²⁷ John Ciorciari, The Khmer Krom and the Khmer Rouge Trials 2(August 2008) (Unpublished article), Annex I (emphasis added).
- ²⁸ Prosecutor v. Kayishema, Case No. ICTR-95-1-T, Trial Judgment, ¶ 98 (May 21, 1999).
- ²⁹ Kim, supra note 25, at 3 n.14. See also William A. Schabas, Groups Protected by the Genocide Convention: Conflicting Interpretations From the International Criminal Tribunal for Rwanda, 6 ILSA J. Int’l & Comp. L. 375, 376 (2000), Annex I.
- ³⁰ Kim, supra note 25, at 3 n.14.
- ³¹ [REDACTED] Aff., Annex I.
- ³² [REDACTED] Supp. Affs.; [REDACTED] Affs.; Kim, supra note 25, at 3 n.14.
- ³³ Id.
- ³⁴ Id.
- ³⁵ Id.
- ³⁶ [REDACTED] and [REDACTED] Supp. Affs..
- ³⁷ [REDACTED] Aff.
- ³⁸ [REDACTED] Supp. Aff..
- ³⁹ [REDACTED] Aff..
- ⁴⁰ [REDACTED] Aff.
- ⁴¹ See [REDACTED] Supp. Aff..
- ⁴² Kim, supra note 25, at 1.
- ⁴³ Id.
- ⁴⁴ See [REDACTED] and [REDACTED] Supp. Affs..
- ⁴⁵ See [REDACTED] and [REDACTED] Aff.; See also Kiernan, supra note 3, at 3 n. 5; John Ciorciari, supra note 27, at 1: During the Vietnam War, the U.S. government capitalized on that sense of injustice, training significant numbers of Khmer Krom to raise arms against the Viet Cong. Those lowland Khmer soldiers became known as “White Scarves” and later established the Struggle Front of the Khmer of Kampuchea Krom (KKK), an organization bent on the recapture of the delta for ethnic Cambodians. During the same period, Son Ngoc Thanh—who was himself Khmer Krom—attempted to revive the conservative *Khmer Serei* (“Free Khmer”) movement, oust Prince Sihanouk, and repel Cambodian communist advances. The Khmer Serei drew many of its guerilla soldiers from the lowland Khmer population.
- ⁴⁶ See [REDACTED] and [REDACTED] Aff..
- ⁴⁷ Kiernan, supra note 3, at 3 (emphasis added); Sopheap Vichea, Tieng, Khmer Kampuchea Krom Prisoners, Searching for the Truth Magazine, Issuc 2, February 2000, at 12 Annex I. (“A further sample of the documentary evidence demonstrating the Khmer Rouge targeting of Khmer Kampuchea Krom for extermination is a report dated December 11, 1976, that was sent to the Takeo Regional Chief, stating that on December 10, 1976, in [REDACTED], the Khmer Rouge arrested 67 Khmer soldiers, equipped with 37 weapons who were fleeing Vietnam. Among them were Khmer from both Cambodia and Kampuchea Krom. They fled from Vietnam on December 8, 1976 and stayed one night in Phnom Saom. They were accused by the Khmer Rouge of being members of the Indochina Great Solidarity Movement, who were fighting against the Vietnamese Communists and asking for assistance from the United States. At dawn of December 11, 1976, these prisoners were sent to the District Security Office. On the way, eight of the prisoners who attempted to flee were shot dead”.)
- ⁴⁸ Official Records of the Third Session of the General Assembly, Part I, Sixth Committee.
- ⁴⁹ Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Trial Judgment, ¶ 511, 516, 701 (Sept. 2, 1998).
- ⁵⁰ Id.
- ⁵¹ Kim, supra note 25, at 1.
- ⁵² Sok-Kheang Ly, Khmer Kampuchea Krom: From Justice Voyage to Memorial Initiative, Searching for the Truth Magazine (July 2009), available at <http://prevnokor.info/category/general/>, Annex I.

53 Id.
54 Id.
55 [redacted] Supp. Aff.
56 Kim, supra note 25, at 11.
57 [redacted] Affs..
58 [redacted] Affs..
59 [redacted] Supp. Aff.
60 [redacted] Supp. Aff.; see Kim, supra note 25, at 3. Cf. [redacted] Aff., (stating that KR identified Khmer Krom by “asking people around the community”).
61 [redacted] Supp. Aff.; see Kim, supra note 25, at 3.
62 Id.
63 [redacted] Supp. Aff., Annex I.
64 See [redacted] Supp. Aff., Annex I; Kim, supra note 25, at 2.
65 See [redacted] Affs.; [redacted] Supp. Aff.; Kim, supra note 25, at 4-11 (noting that the order to “pick corn and dig potatoes” became virtually synonymous with being sent off to be killed from 1977 onwards).
66 [redacted] Supp. Aff.; Kim, supra note 25, at 4.
67 Id.
68 [redacted] Aff.; Kim, supra note 20, at 26.
69 [redacted] Affs..
70 [redacted] Affs.; see Kim, supra note 25, at 10.
71 [redacted] Affs..
72 [redacted] Aff..
73 [redacted] Affs.
74 See [redacted] Aff..
75 [redacted] Affs..
76 [redacted] Aff.; see Kim, supra note 25, at 7.
77 [redacted] Aff..
78 [redacted] Aff..
79 [redacted] Aff.; see also Kim, supra note 25, at 7.
80 [redacted] Affs.
81 [redacted] Aff..
82 Id.
83 [redacted] Aff., Annex I; [redacted] Supp. Aff.; Kim, supra note 25, at 7.
84 Kim, supra note 25, at 6.
85 [redacted] Affs..
86 [redacted] Aff..
87 [redacted] Affs..
88 [redacted] Affs..
89 [redacted] Aff.. See also note 115 below ; Sopheak Vichea, Tieng, supra note , 47 at 11 (Many of the Kampuchea Krom people were accused by the Khmer Rouge of being enemies, and detained at Tuol Sleng Prison. The Kampuchea Krom prisoners were divided into three separate groups: 1) those accused of being soldiers and spying for Vietnam; 2) those accused of being supporters of the recently defeated Lon Nol regime; and 3) ordinary people who had resided in Kampuchea Krom.”)
90 See [redacted] Aff. (recognizing [redacted]).
91 See [redacted] Affs..
92 See [redacted] Affs..
93 See [redacted] Aff..
94 [redacted] Affs..
95 [redacted] Aff..
96 [redacted] Affs..
97 [redacted] Affs..
98 [redacted] Aff..
99 Id.

- 100 Id.
- 101 Id.
- 102 [REDACTED] Aff..
- 103 [REDACTED] and [REDACTED] Affs..
- 104 Id.
- 105 [REDACTED] Aff..
- 106 Id.
- 107 [REDACTED] Aff..
- 108 [REDACTED] Supp. Aff..
- 109 Id.
- 110 Id.
- 111 Id.
- 112 John Ciorciari, supra note 27, at 2; see also Kiernan, supra note 3, at 423-425; Kim, supra note 20, at 26, Annex I; cf. Timothy Carney, The Organization of Power in Cambodia 1975-1978: Rendezvous with Death 83 n.3 (1989) (asserting that a “nationwide campaign” against ethnic Vietnamese and Khmer Krom was in place by 1978), Annex I.
- 113 [REDACTED] and [REDACTED] Aff.; [REDACTED] Supp. Affs.; Kiernan, supra note 3, at 300; see Kanika Mak, Genocide and Irredentism under DK (1975-79) 21 (Yale Centre for International and Area Studies, Paper No. 23, 2004), Annex I.
- 114 See supra . note 20.
- 115 ECCC Trial Tr. 56 (10 June 2009)(Duch’s testimony)(emphasis added).
- 116 [REDACTED] Aff.; Kim, supra note 25, at 9.
- 117 Cambodia’s Strategy of Defense against Vietnam, Phnom Penh Radio Home Service (May 10, 1978)(quoted in BBC Summary of World Broadcasts, FE/5813/A3/1), Annex I.
- 118 Kim, supra note 25, at 11.
- 119 See [REDACTED] Supp. Aff.; Kim, supra note 25, at 1.
- 120 See e.g. [REDACTED] Affs..
- 121 [REDACTED] Aff..
- 122 See [REDACTED] Affs..
- 123 Evidence of killing by particular method and that killing was occurring suffice to establish direct methods. See e.g. Rutaganda v. Prosecutor, Case No. ICTR-96-03-R, Trial Judgment, ¶¶ 177, 183, 197 (Dec. 8, 2006)(killing by machete); Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T, Trial Judgment, ¶¶ 95, 118, 141 (May 16, 2003)(general evidence of attacks).
- 124 Indirect killing methods include substandard living conditions in detention centers that cause death. See Prosecutor v. Blagojević, Case No. IT-02-60-T, Trial Judgment, ¶¶ 348, 920, 931, 943 (Jan. 17, 2005)(death from lack of air, medical treatment, adequate water supply).
- 125 See e.g. Prosecutor v. Kajelijeli, Case No. ICTR-98-44A-T, Trial Judgment, ¶¶ 541, 562, 589 (Dec. 1, 2003)(where witnesses buried bodies in graves, witnessed dead bodies and identified them as part of the targeted group).
- 126 See e.g. Akayesu, supra note 49, at ¶¶ 504, 711-712, 720 (establishing acts of torture as a form of serious bodily harm).
- 127 See e.g. Prosecutor v. Brdjanin, Case No. IT-99-36-T, Trial Judgment, ¶¶ 744, 772 (Sept. 1, 2004) (establishing electric shock as a form of serious bodily harm).
- 128 See e.g. id. at ¶ 691 (establishing that subjecting the group to a subsistence diet can constitute genocide).
- 129 See e.g. id. (establishing that denying the group medical services can constitute genocide).
- 130 See e.g. id. (establishing that creating the circumstances leading to a slow death such as excessive work or physical exertion can constitute genocide).
- 131 See [REDACTED] Aff.
- 132 [REDACTED] Affs..
- 133 [REDACTED] Aff., Annex I; [REDACTED] Supp. Aff..
- 134 See [REDACTED] Affs..
- 135 [REDACTED] Affs..
- 136 [REDACTED] Aff., Annex I.

¹³⁷ **Attack:** See Akayesu, *supra* note 49, at ¶ 581:

The concept of 'attack' maybe defined as a unlawful act of the kind enumerated in Article 3(a) to (l) of the Statute, like murder, extermination, enslavement etc. An attack may also be non violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic manner.

Civilian population: See Prosecutor v. Kunara, Case No. IT-96-23 & IT-96-23/1-A, Appeal judgment, ¶ 92 (June 12, 2002):

The Appeals Chamber is satisfied that the Trial Chamber correctly defined and identified the "population" which was being attacked and that it correctly interpreted the phrase "directed against" as requiring that the civilian population which is subjected to the attack must be the primary rather than an incidental target of the attack.

Widespread or systematic: See Akayesu, *supra* note 49, at ¶ 580:

The concept of widespread may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. The concept of systematic may be defined as thoroughly organised and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.

¹³⁸ See *supra* at ¶¶ 19-39.

¹³⁹ See e.g. Prosecutor v. Blaski, Case No. IT-95-14-T, Trial Judgment, ¶ 573 (Mar. 3, 2000)(stating that contemporaneous nature and similar location of attacks indicate "organized and massive nature").

¹⁴⁰ Akayesu, *supra* note 49, at ¶ 162:

All the way through we could see on the [...] hillside, where there were communities, people [...] being pulled out by people with machetes, and we could see piles of bodies. In fact the entire landscape was becoming spotted with corpses, with bodies, all the way from there until almost Burundi's border.

¹⁴¹ *Id.* at ¶¶ 158 - 159, 160 - 162, 181. ("158. [...] On the road from Butare to Burundi on 19 April 1994, Dr. Zachariah sated that saw civilians being massacred in villages throughout the countryside and at roadblocks.)

¹⁴² Blaski, *supra* note 139, at ¶ 413 ([...] According to the Commission on Human Rights, "approximately 150 Muslims were rounded up and detained for sixteen days in the Braca Ribara school in Dubravica. [...]").

¹⁴³ See *supra* at ¶¶ 30-34.

¹⁴⁴ See Prosecutor v. Delali et. al., Case No. IT-96-21-T, Trial Judgment, ¶¶ 568, 1130 (Nov. 16, 1998):

While there is no requirement that the particular activity in question must be judged as criminal under national law before a State can derogate from the rights of protected civilians under article 5, it is almost certain that the condemned activity will in most cases be the subject of criminal punishment under national law.

¹⁴⁵ The Tokyo Judgment, International Military Tribunal for the Far East, 406-07 (29 April 1946 – 12 November 1948) (establishing "water treatment" and electric shocks as evidence of physical pain or suffering).

¹⁴⁶ Prosecutor v. Naletili and Martinovi, Case No. IT-98-34-T, Trial Judgement, ¶ 636 (Mar. 21, 2003):

The targeted group does not only comprise persons who personally carry the (religious, racial or political) criteria of the group. The targeted group must be interpreted broadly, and may ... include such persons who are defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group.

¹⁴⁷ This narrative of the events in [REDACTED] between 1973 and 1975 is a synthesis of interviews conducted by Access to Justice Asia and KKKHRA with victims and persons playing more authoritative roles under the Khmer Rouge regime.

¹⁴⁸ Interview with VNI-1 (May 5, 2009). VNI-1 stated in his interview that the whole of [REDACTED] around the path of the river was already "liberated" (under KR control) in 1970.

¹⁴⁹ Interview with VNI-1 (May 5, 2009).

¹⁵⁰ Id.; See also VN01, VN02, VN03, VN04, VN06, VN07, VN12, VN13, VN14, VN15, and VN16 Affs., Annex I.

¹⁵¹ Interview with VNI-1 (May 5, 2009). There were 11 communes altogether in [REDACTED].

¹⁵² Id.

¹⁵³ Interview with VNI-2 (May 5, 2009).

¹⁵⁴ Interview with VNI-1 (May 5, 2009).

¹⁵⁵ VN10 Aff.; see also VN06 Aff. for a similar account in [REDACTED].

¹⁵⁶ VN10 Aff..

¹⁵⁷ Id.

¹⁵⁸ Id.

¹⁵⁹ See VN02, VN03, VN04, VN13, VN14, VN15, and VN16 Affs..

¹⁶⁰ See VN02, VN03, VN04, VN05, VN06, and VN14 Affs.. Three dams, including Chy Cla Dam Nuok Lur Dam and Ta So Dam were built by manual labor of ethnic Vietnamese; see Interview with VNI-2 (May 5, 2009).

¹⁶¹ See VN03, VN14, and VN16 Affs..

¹⁶² See VN14 Affs..

¹⁶³ See VN01, VN02, VN03, VN04, VN06, VN10, VN14, VN15, and VN16 Affs..

¹⁶⁴ See VN12 and VN15 Affs..

¹⁶⁵ See VN01, VN03, VN06, VN07, VN13, VN14, and VN16 Affs..

¹⁶⁶ See VN14 Aff. See also VN01, VN02, VN03, VN04, VN 06, VN07, and VN16 Affs..

¹⁶⁷ See VN16 Aff..

¹⁶⁸ See VN04 and VN16 Affs..

¹⁶⁹ See VN02 Aff..

¹⁷⁰ See VN16 Aff..

¹⁷¹ See VN01, VN02, VN03, VN04, VN06, VN14, VN15, and VN16 Affs..

¹⁷² See VN10 Aff..

¹⁷³ See Summary Translation of Victims Information Form for VN04.

¹⁷⁴ See VN04 Aff..

¹⁷⁵ Id.

¹⁷⁶ See VN03 Aff..

¹⁷⁷ See VN02, VN04, VN07, VN13, and VN14 Affs..

¹⁷⁸ See VN03 and VN16 Affs..

¹⁷⁹ See VN03, VN13, and VN16 Affs..

¹⁸⁰ See VN07 and VN16 Affs.; Cf. Alexander Hinton, Anthropologies of the Khmer Rouge Part II, Genocidal Bricolage 15 (Yale University: Genocide Studies Working Paper, 1998), Annex V:

In Cambodian and East Asian cultures, eating gallbladders carries symbolic significance. According to anthropologist Alexander Hinton, this practice may serve to purge the Khmer Rouge of their humanity, express anger or “[assert] certainty about the identities of alleged ‘enemies’, and increase the audacity and fearlessness in killing others. The Khmer Rouge often selected heavy set ethnic Vietnamese for evisceration, presumably believing that the larger the gallbladder, the greater effect the practice of eating it would have.

¹⁸¹ See VN15 Aff..

¹⁸² Id.

¹⁸³ Id.

¹⁸⁴ VN12 Aff.

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ See VN07 Aff..

¹⁸⁸ Id.

¹⁸⁹ Id.

¹⁹⁰ Id.

¹⁹¹ Id.

MUN D250/3

Case No.: 002/19-09-2007/ECCC/OCIJ

- ¹⁹² Id.
¹⁹³ Id.
¹⁹⁴ Id.
¹⁹⁵ See VN06 Aff..
¹⁹⁶ Id.
¹⁹⁷ See Interview with VNI-3 (May 4, 2009).
¹⁹⁸ Id.
¹⁹⁹ Id.
²⁰⁰ Id.
²⁰¹ Interview with VNI-1 (May 5, 2009). The District Chief was named [REDACTED] and the Provincial Chief's name was [REDACTED].
²⁰² Id.
²⁰³ Interview with VNI-1 (May 5, 2009).
²⁰⁴ Id.
²⁰⁵ Id.
²⁰⁶ VN01, VN02, VN04, VN06, VN07, VN08, VN09, VN11, VN12, VN13, and VN16 Affs..
²⁰⁷ VN01, VN02, VN03, VN04, VN05, VN07, and VN11 Affs..
²⁰⁸ Summary Translation of Victim Information Form for VN11.
²⁰⁹ See VN11 Aff..
²¹⁰ Id.
²¹¹ Id.
²¹² Id.
²¹³ Id.
²¹⁴ Id.
²¹⁵ VN11 Aff.. Initially, the exchange was considered in terms of a certain amount of rice and salt per family. However, this later became per person.
²¹⁶ See VN07 Aff..
²¹⁷ Id.
²¹⁸ Id.
²¹⁹ Id.
²²⁰ Id.
²²¹ VN07 Aff.; see also VN02 Supp. Aff.; VN01, VN08, and VN12 Aff..
²²² VN04 Aff..
²²³ Id.
²²⁴ VN02 and VN03 Aff..
²²⁵ VN02 Aff..
²²⁶ VN02 and VN03 Aff..
²²⁷ Id.
²²⁸ Id.
²²⁹ Id.
²³⁰ Prosecutor v. Krnojelac, Case No. IT-97-25-A, Appeals Judgment, ¶¶ 228 – 29 (Sept. 17, 2003):
The Trial Chamber held that "there was general evidence" that the detainees wanted to be exchanged Yet it is the absence of genuine choice that makes displacement unlawful. Similarly, it is impossible to infer genuine choice from the fact that consent was expressed, given that the circumstances may deprive the consent of any value.
²³¹ Prosecutor v. Karadžić and Mladić, Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence, Cases No. IT-95-5-R61 & IT-95-18-R61, ¶ 93 (Jul. 11, 1996) ("Some of the acts presented to the Trial Chamber may be characterised pursuant to (a), (b) and (c) of paragraph 2 of article 4. Thus ... the causing of serious bodily or mental harm to the member or members of the group or groups occurred through ... deportation.".)
²³² VN06 Aff..
²³³ Interview with VNI-1 (May 5, 2009).
²³⁴ See generally all Statements of VN clients.

²³⁵ See generally all Statements of VN clients.

²³⁶ VN06 Supp. Aff..

²³⁷ *Id.*

²³⁸ VN03 Aff..

²³⁹ VN02 Aff..

²⁴⁰ Introductory Submission ¶ 69.

²⁴¹ Prosecutor v. Krstić, Case No. IT-98-33-T, Trial Judgment, ¶ 521 (Aug. 2, 2001). (“Both deportation and forcible transfer relate to the involuntary and unlawful evacuation of individuals from the territory in which they reside.”)

²⁴² Krnojelac, *supra* note 232, at ¶ ¶ 228 – 229.

²⁴³ See e.g. VN03, VN13, VN14, VN15, and VN16 Affs..

²⁴⁴ ECCC Law, Article 5.

²⁴⁵ Introductory Submission ¶ 69.

²⁴⁶ *Id.* at ¶ 12.

²⁴⁷ Kunara, *supra* note 137, at ¶ ¶ 42, 75, 213, 587, 756, 779.

²⁴⁸ *Id.* at ¶¶ 43, 225, 542 (“[I]ndications of enslavement include [...] the restriction or control of an individual’s autonomy, freedom of choice [...]”).

²⁴⁹ Introductory Submission, ¶ 12.

²⁵⁰ Introductory Submission, ¶ 122.

²⁵¹ Diane Marie Amann, Group Mentality, Expressivism, and Genocide, 2 Int’l. Crim. L. Rev. 93, 118 (2002), Annex I.

²⁵² John B. Quigley, The Genocide Convention: An International Law Analysis 5 (2006), Annex I.

²⁵³ Raphael Lemkin, Axis Rule in Occupied Europe 79 (1944), Annex I.

²⁵⁴ Robert H. Jackson, Opening Statement, Nuremberg, Germany, (Nov. 21, 1945), Annex I.

²⁵⁵ See Statute of the International Criminal Tribunal for the Former Yugoslavia, annexed to Resolution 827, SC Res. 827, UN SCOR, 48th sess., 3217th mtg., UN Doc. S/RES/927 (1993); Statute of the International Criminal Tribunal for Rwanda, annexed to Resolution 955, SC Res. 955, UN SCOR, 49th sess., 3453rd mtg., UN Doc. S/RES/955 (1994); Reg. No. 2000/15 on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, UN Transitional Administration in East Timor, UN Doc. UNTAET/REG/2000/15 (June 6, 2000); Rome Statute of the International Criminal Court, 2187 U.N.T.S. 3, 37 I.L.M. 999 (1998), entered into force 1 July 2002.

²⁵⁶ Prosecutor v. Kristić, Case No. ICTY-IT-98-33-A, Appeals Judgment (April 19, 2004).

²⁵⁷ See Amann, *supra* note 253, at 118.

²⁵⁸ William A. Schabas, Genocide in International Law: The Crime of Crimes, 15 (2009), Annex I.

²⁵⁹ Douglas Gillison, Genocidal Intent Still a Quandary, Says KR Investigator, Cambodia Daily, Jun. 20, 2009), Annex I.

²⁶⁰ Seth Mydans, In the Khmer Rouge Trials, Victims Will Not Stand Idly By, N.Y. Times, Jun. 17, 2008 (“Diane Orentlicher, Special Counsel of the Open Society Justice Initiatives believes that the Tribunal marks the evolution of international criminal justice.”), Annex I.

²⁶¹ ECCC Internal Rule 23, March 2009 Revision.

²⁶² Interview with Keat Bopha, Head of the Victim’s Unit at ECCC, 11 Access Victims’ Rights Working Group Bulletin 4 (Spring 2008), Annex I.

²⁶³ Nancy Wood, The Papon Trial in an Era of Testimony, in The Papon Affair: Memory and Justice on Trial 100-01 (R. Golsan ed., 2000), Annex I.

²⁶⁴ *Id.*

²⁶⁵ UC Berkeley Human Rights Center, A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia, 27 (2009), Annex I.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ Ly, *supra* note 52, available at <http://preynokor.info/category/general>.

²⁶⁹ Interview with ████████ Bakan district, Pursat Province, Cambodia. 10 July 2009. Record of interview on file with counsel. See also Mahdev Mohan, Re-constituting the ‘Un-Person’: The Khmer Krom and the Khmer Rouge Tribunal (2009) 12 SYBIL 1–13, Annex I.